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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Tanya A. Gee, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge on Remand

Case No. 2014-CP-40-6228 – Appellate No.: 2016-000462

Joseph C. Rivett.....Respondent,

v.

Bruce Ludlum and Celadon Trucking Services Inc.....Appellants,

RECORD ON APPEAL

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Brandon R. Gottschall
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4006228

Joseph C Rivett

William Joe Jackson

PLAINTIFF(S)

Bruce Ludlum

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of Oct, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Michael R. Jeffcoat

Tucker S. Player

Christopher J. Daniels

Phillip Jason Reynolds

James Eric Cavanaugh

Mark Steven Barrow

Brandon Robert Gottschall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

IN THE COURTS OF SOUTH CAROLINA
FOR THE FIFTH JUDICIAL CIRCUIT

JOSEPH C. RIVETT,)

PLAINTIFF,)

VS.)

WILLIAM JOE JACKSON, BRUCE)

LUDLUM and CELADON)

TRUCKING SERVICES, INC.,)

DEFENDANTS.)

C/A No.: 2014-CP-40-6228

ORDER

CLERK OF DISTRICT COURT
FILED
2011 OCT -4 AM 9:20
JANUARY 2011
C.S. 2011

The matter comes to this Court via an Order from the South Carolina Court of Appeals granting leave to Defendants to file a motion pursuant to Rule 60(b), SCRPC with this Court. The presiding judge who issued the Order being challenged passed away during the pendency of the appeal. I took this matter under advisement as the Chief Administrative Judge and heard arguments from Counsel on July 21, 2017. I ordered counsel to submit proposed orders within five days. Plaintiff submitted his order on July 25, 2017. Defendants did not submit a proposed order until August 1, 2017. After consideration of the applicable law and arguments of counsel, I deny Defendants' motion.

FACTUAL BACKGROUND

This matter was heard by a Richland County Jury on February 2, February 3, and February 4, 2016, resulting in a judgment for Plaintiff in the amount of \$300,000.00. The Honorable Tanya Gee presided over the trial. Judge Gee passed away in 2016 after a long battle with cancer.

During the first day of trial, an issue arose with regard to the scheduling of witnesses to testify. Plaintiff testified as the first witness. Thereafter, Plaintiff played the video depositions of the treating physicians. Plaintiff intended to call the South Carolina State Trooper who witnessed the accident to testify at trial as well. A discussion took place on the record which established three things: (1) Plaintiff conditioned his willingness to delay calling Trooper Trotter until February 3, 2016 because Defendants intended to call him as a witness; (2) Counsel for Defendant represented to the Court that he intended to call Trooper Trotter to the stand after he had heard all of Plaintiff's testimony; and (3) everyone understood that Trooper Trotter was supposed to testify at 9:30am on the morning of February 3, 2016. *Trial Transcript, February 2, 2016, Pages 96-98.*

After Court on February 2, 2016, Counsel for Plaintiff spoke with Trooper Trotter telephonically and confirmed that he would be in the courtroom ready to testify at 9:30am on the morning of February 3, 2016. *See Affidavit of Tucker Player, ¶¶ 5 and 6; Trial Transcript, February 2, 2016, Page 137, lines 4-7.*

The following morning, Trooper Trotter did not appear to testify. A discussion took place on the record in which Counsel for Defendants indicated that he released Trooper Trotter from his subpoena the night before. After an examination of the subpoena Plaintiff served on the trooper, Judge Gee determined that the subpoena was defective as it only compelled Trooper Trotter to testify during the week of January 19, 2016. Judge Gee allowed Plaintiff until 2:00pm to produce the trooper to testify. *Trial Transcript, February 3, 2016, Pages 110-118.*

Once court reconvened at 2:00pm, counsel for Plaintiff informed Judge Gee that he had served Trooper Trotter with a subpoena at his home in Gilbert, South Carolina and the Trooper did not "indicate" he would not appear to testify. *Trial Transcript, February 3, 2016, page 120.*

Plaintiff then called William Jackson to the stand. After Mr. Jackson testified, Trooper Trotter had yet to appear. Judge Gee allowed counsel to walk outside to see if the trooper was in the courthouse. When counsel returned, he said the trooper was not there but "he told me he would be here at 2:30." *Trial Transcript, February 3, 2016*, Page 132, lines 15-16. Shortly thereafter, Plaintiff made a motion to read the deposition transcript into the record pursuant to Rule 32(a)(3)(E), SCRPC arguing that exceptional circumstances made it desirable and in the interests of justice to allow such reading. Judge Gee allowed the transcript to be read to the jury pursuant to this Rule. At no point did she mention any concern or consideration over counsel's representation that Trotter told him he would appear at 2:30pm on February 3, 2016.

STANDARD OF REVIEW

Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). The standard of review, therefore, is limited to determining whether there was an abuse of discretion. A party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). In order to establish a prima facie case to shift the burden to Plaintiff, Defendants are required to demonstrate fraud, misrepresentation or misconduct by clear and convincing evidence. *Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792, (Ct. App. 2009).

RULING OF THE COURT

On the Issue of Fraud

At the hearing, counsel for Defendants claimed that the basis of this motion was on a “misrepresentation” made by counsel. Yet, after the hearing, counsel submitted the case of *Chewning v. Ford Motor Company, Inc.* 354 S.C. 72, 579 S.E.2d 605 (2003), which deals exclusively with fraud upon the court, in support of its motion. This Court is uncertain exactly what Defendants are claiming in pursuit of this motion, so both standards will be addressed.

There were three assertions by Mr. Player concerning what Trooper Trotter communicated on February 3, 2016. In two of those assertions, counsel said that Trooper “indicated” that he would attend. Only a single sentence is referenced by Defendants in which counsel specifically asserted that he spoke with Trooper Trotter on February 3, 2016. To the extent that the language used by counsel in that single sentence was inaccurate, all parties agree. When counsel stated “he told me he would be here at 2:30” in referring to Trooper Trotter, this statement was false. Both affidavits submitted to this Court concede that Trooper Trotter did not actually speak to Mr. Player on February 3, 2016. However, I find that this does not constitute fraud.

Plaintiff submitted the Affidavit of Tucker S. Player as Exhibit A. The Affidavit establishes that there was no intention of misleading Judge Gee and that counsel accurately presented what he believed was communicated by Trooper Trotter to a third-party on February 3, 2016. Moreover, Judge Gee knew Trooper Trotter was not in the courtroom at 2:30pm when she agreed to allow his deposition testimony to be read some time after 2:37pm that day. Judge Gee knew it was not true when it was made and allowed the reading of the deposition to the jury. If Defendants are alleging that somehow the issue of counsel actually speaking to Trooper Trotter was the “fraud”, they have failed to provide any evidence that this particular issue played a role in Judge Gee’s decision to allow the deposition into the record. The transcript is clear that when

counsel argued about representations of the Trooper, he was referring to the February 2, 2016 conversation during which all parties agree the trooper told counsel he would be present to testify at 9:30am on February 3, 2016. *See Transcript of February 3, 2016, page 133, lines 17-21; See Transcript of February 3, 2016, page 142, lines 6-12.* More importantly, it is clear that Judge Gee was referring to the conversation during the evening of February 2, 2016 when she made her decision concerning the deposition. *See Transcript of February 3, 2016, page 135, lines 25 – Page 136, line 8; See Transcript of February 3, 2016, page 136, lines 16-23; See Transcript of February 3, 2016, page 139, lines 15-16.* The transcript indicates that Judge Gee ultimately based her decision to allow the deposition to be read because she found Defendants would suffer no prejudice as a result. *Transcript of February 3, 2016, page 140, lines 16.* As discussed below, I agree with Judge Gee's ruling.

With regard to fraud on the court, such an assertion is without merit. The very case cited and produced by Defendants discusses fraud of the court at length:

Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court. Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978) *citing* United States v. Int'l Telephone & Telegraph Corp., 349 F. Supp. 22, 29 (D. Conn. 1972) (internal citations omitted).

Fraud upon the court is a "serious allegation . . . involving 'corruption of the judicial process itself.'" Cleveland Demolition Co., Inc. v. Azcon Scrap Corp., 827 F.2d 984, 986 *quoting* In re Whitney-Forbes, 770 F.2d 692, 698 (7th Cir. 1985).

. . . 'Fraud on the court,' whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests of finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing of conscious wrongdoing - - what can properly be characterized as a deliberate scheme to defraud - - before relief from a final judgment is appropriate. . . . Thus, when there is no

intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court.'

Chewning v. Ford Motor Company, Inc. 354 S.C. 72, 579 S.E.2d 605 (2003).

To allege that the representation of Mr. Player amounts to a "corruption of the judicial process" or "most egregious conduct" is unsupported by the evidence in the record.

Extrinsic Fraud vs. Intrinsic Fraud

In South Carolina, a party can obtain equitable relief from a judgment based on fraud only upon a showing that the fraud is extrinsic. *See Bryan v. Bryan*, 220 S.C. 164, 66 S.E.2d 609 (1951). In *Bryan*, our Supreme Court explained as follows:

There is no doubt that a court of equity has inherent power to grant relief from a judgment on the ground of fraud. However, not every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered; intrinsic fraud is not sufficient for equitable relief.
Id. at 167-68, 66 S.E.2d at 610.

Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004).

Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. *Id.*

Defendants cannot demonstrate how this inaccurate statement induced Defendants not to present their case or deprived them of the opportunity to be heard. The sole reason Trooper Trotter was not in court at 9:30am on February 3, 2016 was because Defendants released him from their subpoena. The only way Defendants could be prejudiced by the non-appearance of Trooper Trotter was if they knew he would not appear to testify after they released him from their subpoena, which was vehemently denied by counsel at trial. See *Trial Transcript of*

February 3, 2016, page 138-139, and 142. Counsel for Defendants stated to the Court that they decided they didn't need the trooper's testimony and that was the only reason they released him from the subpoena. Mr. Barrow's exact words were "I only told him he was released from my subpoena because I had gotten everything out of the Plaintiff that I was going to get from the trooper." *Transcript of February 3, 2016*, page 138, line 23 through p. 139, line 1. What is important about this representation by Mr. Barrow is that he had "gotten everything out of the Plaintiff" when he represented to Judge Gee that he still intended to call Trooper Trotter on February 2, 2016. See *Transcript of February 2, 2016*, page 97. Finally, despite the claim in Defendants' motion that Trooper Trotter's testimony was "highly prejudicial" and they were deprived of their ability to cross-examine Trooper Trotter as to causation, the deposition testimony read to the jury did not include a single question from any attorney representing Plaintiff. The portions of the deposition transcript read to the jury contained questions from attorney Chris Daniels, who represented Defendant William Jackson, and Eric Cavanaugh, the attorney for Defendants. For Defendants to claim that they were prejudiced by the inability to cross-examine Trooper Trotter is unsupported by the record.

Defendants look to the *Chewning* case as support that the fraud they allege was extrinsic fraud. In *Chewning*, the offending lawyers suborned perjured testimony and intentionally concealed documents. Nothing remotely akin to these egregious acts took place here. More importantly, extrinsic fraud "requires a showing that one has acted with an intent to deceive or defraud the court" *Id.* Defendants have not and cannot offer any proof of any fraudulent or improper intent on behalf of counsel. Therefore, they cannot establish the requisite proof of extrinsic fraud to entitle them to relief under Rule 60(b)(3), SCRCP.

Rule 61, SCRCP

Rule 61, SCRCP states :

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

Defendants claim that they were deprived of the ability to cross-examine Trooper Trotter. Even discounting the fact that Trooper Trotter's appearance was procured through the actions of Defendants in releasing him from a subpoena, there is no merit to this argument. First and foremost, Defendants cannot point to a single issue or line of testimony upon which they would need to "cross examine" Trooper Trotter. Trooper Trotter only testified to four issues that were arguably positive towards Plaintiff's case:

1. It was raining at the time of the accident;
2. Traffic was heavy at the time of the accident;
3. He witnessed the accident, and he saw Defendant Celadon's truck strike William Jackson's vehicle and "push" it into the rear of Plaintiff's vehicle; and
4. The Celadon truck was traveling approximately 30 miles per hour immediately prior to the accident.

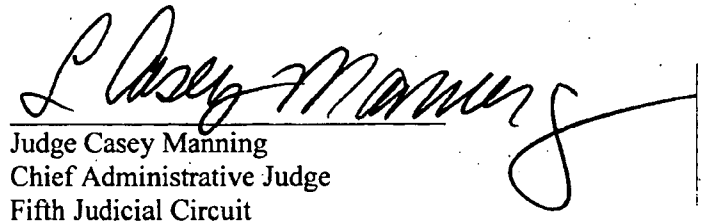
This Court reviewed the trial transcript and it is clear that all of these assertions by Trooper Trotter were introduced into evidence through other witnesses. Msrs. Jackson and Ledlum testified that it was raining and traffic was heavy at the time of the accident. *Trial Transcript*, pages 122 and 162. Mr. Jackson testified that he was struck in the rear of his vehicle by the Celadon truck and pushed into Plaintiff. *Trial Transcript*, page 123 and 127. Defendant Ledlum admitted that he was travelling between 25 and 30 miles per hour immediately prior to the incident. *Trial Transcript*, page 164. Finally, Mr. Ledlum testified that he struck Mr. Jackson in

the rear. *Trial Transcript*, page 164. It is difficult, if not impossible, to conceive of a line of cross examination questions that Defendants were deprived of using because of Trooper Trotter's absence at trial. Moreover, Trooper Trotter's deposition testimony refuted Plaintiff's claim that there was two separate collisions and affirmed that Plaintiff did not seek medical assistance at the scene of the accident. This latter issue, it appears, was the only reason Defendants intended to call the trooper according to counsel. Defendants have not, and cannot, provide any specific argument of how the deposition testimony of the trooper caused them any harm. Therefore, it is clear that even if Judge Gee made an error in allowing Trooper Trotter's deposition transcript, which she did not, it was harmless error and does not entitle Defendants to a new trial.

For the foregoing reasons, the motion is DENIED.

IT IS SO ORDERED.

This 3 day of July, 2017,


Judge Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Joseph C. Rivett)

Plaintiff,)

v.)

Bruce Ludlum and Celadon Trucking)

Services, Inc.)

Defendants.)

IN THE COURT OF COMMON PLEAS

THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-40-6228

VERDICT FORM

FILED
2016 FEB -5 PM 2:32
JEANETTE W. MCBRIDE
CLERK OF COURT

This Jury has examined and considered all of the evidence concerning who is at fault in this lawsuit. ON the questions submitted, this Jury finds as follows.

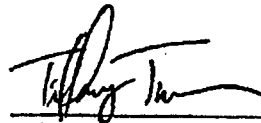
1. Do you find that the Defendants were negligent and that such negligence proximately caused the Plaintiff's injuries?

☒ Yes. If you answer yes, GO TO QUESTION 2.

☐ No. If you answer no, STOP AND DELIBERATE NO FURTHER.

2. Please state the amount of total damages, if any, sustained by the Plaintiff:

\$ 300,000



Foreperson

Columbia, South Carolina

February 4, 2016

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP- 6228

Joseph C. Rivett

William Joe Jackson, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Joseph Rivett	Bruce Ludlum + Celadon Trucking Servs.	\$ 300,000
		\$
		\$

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

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

James A. Gm
Circuit Court Judge

2756
Judge Code

2/4/2016
Date

For Clerk of Court Office Use Only

This judgment was entered on the 5 day of Feb, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 5 day of Feb, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Tucker Player

Mark S. Barrow
James E. Cavanaugh

ATTORNEY(S) FOR THE PLAINTIFF(S)

Shanette W. H. Hinde

ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE 5TH JUDICIAL CIRCUIT

Joseph C. Rivett,

Plaintiff,

v.

William Joe Jackson and Bruce Ludlum, and
Celadon Trucking Services, Inc.

Defendants.

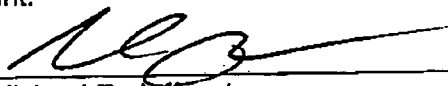
Case Number: 2014-CP-40-

2014 OCT 10 AM 9:54
CLERK OF COURT
JUDICIAL CIRCUIT 5
SOUTH CAROLINA

SUMMONS

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office at 4723-A Sunset Boulevard, Lexington, South Carolina, 29072 within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court of a judgment by default for the relief demanded in the Complaint.


Michael R. Jeffcoat
MICHAEL R. JEFFCOAT,
ATTORNEY AT LAW, P.C.
(4723-A Sunset Boulevard)
Post Office Box 1860
Lexington, SC 29071
Phone: 803-808-9600
Facsimile: 803-808-2240
E-mail: mri@thejeffcoatfirm.com

D. Patrick Keating
Keating Law Firm, L.L.C.
3714 Airline Drive
Metairie, Louisiana 70001
Telephone: (504) 832-2232
Facsimile: (504) 532-0856

ATTORNEYS FOR THE PLAINTIFF

October 2, 2014
Lexington, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Joseph C. Rivett,)
Plaintiff,)

v.)

William Joe Jackson, Bruce)
Ludlum and Celadon Trucking)
Services, Inc.)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 5th JUDICIAL CIRCUIT

Case No.: 2014-CP-40-_____

COMPLAINT
(Automobile Collision)
(Jury Trial Requested)

The Plaintiff complaining of the Defendants would respectfully allege and show unto this honorable court:

A. PARTIES

1. Plaintiff, Joseph C. Rivett (hereinafter the "Plaintiff"), is a citizen and resident of Livingston Parish, Louisiana.

2. Defendant William Joe Jackson (hereinafter "Jackson") is, upon information and belief, a citizen and resident of Richland County, South Carolina.

3. Defendant Bruce Ludlum (hereinafter, "Ludlum") is, upon information and belief, a citizen and resident of Lee County, North Carolina.

4. Defendant Celadon Trucking Services, Inc. (hereinafter "Celadon Trucking") is upon information and belief a corporation duly organized under the laws of North Carolina, operating and doing business in the State of South Carolina, including Richland County, by its use of the public highways and roads to transact business throughout the State.

B. JURISDICTION & VENUE

5. The Court has jurisdiction over this matter and the parties hereto pursuant to the long arm statute, S.C. Code Ann. § 36-2-803 (1976) and the common law of this State because Defendant, Jackson committed a tortious act within this State and entered into a contract to be partially performed within this State.

6. Venue is proper in this county because this is the county where the most substantial part of the act or omission giving rise to the cause of action pursuant to S.C. Code Ann. § 15-7-30 (Supp. 2005) and the Common Law of this State.

C. FACTS

7. On or about September 8, 2012 at Plaintiff was traveling east on I-20, in the City of Columbia, County of Richland, South Carolina.

8. Defendant, Ludlum was driving an 18-wheeler tractor trailer truck which was owned or leased by Defendant Celadon Trucking.

9. Defendant Ludlum was headed east on I-20 at a high rate of speed, approaching Defendant Jackson's vehicle from the rear.

10. Suddenly and without any warning, Defendant Ludlum struck the rear of Defendant Jackson's vehicle, thereby causing Defendant Jackson to strike the rear of Plaintiff's vehicle causing Plaintiff to sustain serious injuries.

11. Defendant Jackson was travelling east on I-20 at a high rate of speed striking Plaintiff's vehicle, causing a collision and causing Plaintiff to sustain serious injuries.

12. Defendants Jackson and Ludlum collided into the vehicle driven by Plaintiff, inflicting upon Plaintiff serious and grievous injuries to his neck and back, Plaintiff's injuries were of such nature as to require him to expend monies for hospitalization, doctors' care, and other medical necessities; that Plaintiff lost time from work, and Plaintiff will in the future have

a loss of earning capacity; that at all times since the happening of the collision, Plaintiff has suffered and will continue to suffer great pain and mental anguish, all to his damage in an appropriate amount.

D. FOR A CAUSE OF ACTION AS TO DEFENDANTS LUDLUM AND JACKSON
(Negligence)

13. Plaintiff hereby realleges each and every allegation above as if fully stated verbatim here.

14. Defendants Ludlum and Jackson owed a duty of care to the Plaintiff, and to members of the traveling public, to operate the vehicles which they were driving with due care.

15. At the time and place mentioned above, Defendants Ludlum and Jackson breached their duty of care to Plaintiff and to the public and was negligent, grossly negligent, reckless, careless, willful and wanton, in the following particulars, to-wit:

- (a) In operating the motor vehicle at a rate of speed which was excessive for the circumstances then prevailing;
- (b) In failing to maintain proper control over the vehicle;
- (c) In failing to keep a proper lookout;
- (d) In failing to yield the right-of-way;
- (e) In operating a motor vehicle in a dangerous and improper manner without regard to the rights of others on the roadways of the State of South Carolina;
- (f) In failing to avoid the collision involving Plaintiff's vehicle after having ample opportunity to do so;
- (g) In driving his vehicle into and against the Plaintiff's vehicle, causing Defendant's vehicle to strike the Plaintiff's vehicle;
- (h) In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances;

- (i) In failing to apply brakes in time to avoid a collision;
- (j) In operating a motor vehicle while his ability or alertness was impaired in violation of applicable State and Federal laws, including 40 CFR Part 392-3; and
- (k) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances.

E. FOR A CAUSE OF ACTION AS TO DEFENDANT CELADON TRUCKING SERVICES, INC.
(Negligence)

16. Plaintiff hereby realleges each and every allegation above as if stated verbatim here.

17. At all times pertinent to this action, Defendant Ludlum was acting in the scope of his employment, as an agent servant and or employee of and under the control of Defendant Celadon Trucking and in furtherance of Defendant Celadon Trucking's interests.

18. At all times pertinent to this collision, Defendant Celadon Trucking entrusted said vehicle to Defendant Ludlum, when Defendant Celadon Trucking knew or should have known that Defendant Ludlum was reckless. The negligence of Defendant Celadon Trucking was the proximate cause of the injuries and/or losses suffered by Plaintiff. As a result, Defendant Celadon Trucking is liable of its own individual negligence in the hiring, training, and supervision of Defendant Ludlum.

19. Defendant Celadon Trucking was negligent, grossly negligent, reckless, careless, willfull, and wanton in the following particulars, to-wit:

(a) In failing to provide and sufficient training for their driver, Defendant Ludlum;

(b) In failing to properly investigate Defendant Ludlum's driving record and employment background prior to hiring Defendant Ludlum;

(c) In failing to provide Defendant Ludlum with sufficient and adequate orientation training;

(d) In failing to provide and document Defendant Ludlum's road test at the time of employment;

(e) Upon information and belief, in negligently permitting a driver, in this case Defendant Ludlum, to drive a commercial motor vehicle in a high risk situation while his ability or alertness was or was likely to be impaired through fatigue and in violation of the laws of the State of South Carolina and of the United States; and

(f) In failing to have sufficient policies, procedures and implementation of such policies and procedures, so as to prevent drivers such as Defendant Ludlum from driving commercial vehicles in high risk situations while impaired or likely to be impaired through fatigue.

23. As a direct result and proximate result of one or more of the foregoing described negligent, careless, reckless, willful, wanton, grossly negligent and negligent *per se* acts or omissions of all of the Defendants, individually and by and through their agents and servants, the tractor trailer being driven by Defendant Ludlum did collide with Defendant Jackson's vehicle causing a chain reaction and striking Plaintiff's vehicle, thereby causing Plaintiff serious and permanent injuries.

24. As a result of the foregoing acts and omissions of the Defendants which directly and proximately caused the afore-described collision, Plaintiff endured and will continue to endure pain and suffering from severe and permanent injuries received on September 08, 2012.

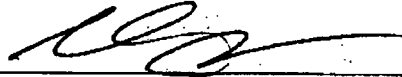
F. PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants for the following:

- a. Actual damages in an appropriate amount;
- b. Punitive damages in an appropriate amount;
- c. Interest, both prejudgment and postjudgment where authorized by law;
- d. The costs of this action; and

e. All other relief the Court deems appropriate.

Respectfully submitted,



Michael R. Jeffcoat
MICHAEL R. JEFFCOAT,
ATTORNEY AT LAW, P.A.
(4723-A Sunset Boulevard)
Post Office Box 1860
Lexington, South Carolina 29071
Telephone: (803) 808-9600
Facsimile: (803) 808-2240

D. Patrick Keating
Keating Law Firm, L.L.C.
3714 Airline Drive
Metairie, Louisiana 70001
Telephone: (504) 832-2232
Facsimile: (504) 532-0856

ATTORNEYS FOR THE PLAINTIFF

October 2, 2014
Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Joseph C. Rivett

Plaintiff(s)

vs.

William Joe Jackson, Bruce Ludlum and Celadon
Trucking Services, Inc.

Defendant(s)

(Please Print)

Submitted By: Michael R. Jeffcoat

Address: P.O. Box 1860, Lexington, SC 29071

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40- 6228

SC Bar #: 13492

Telephone #: 803-808-9600

Fax #: 803-808-2240

Other:

E-mail: mrj@thejeffcoatfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Label (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☒ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Filing Party Signature: 

Date: October 1, 2014

Voluntary civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Joseph C. Rivett) Civil Action No.: 2014-CP-40-6228

Plaintiff,

v.

William Joe Jackson, Bruce Ludlum
and Celadon Trucking Services, Inc.

Defendant.

ANSWER TO PLAINTIFF'S COMPLAINT
ON BEHALF OF BRUCE LUDLUM AND
CELADON TRUCKING SERVICES, INC.

RICHLAND COUNTY
FILED
NOV 21 AM 10:18
JANETTE W. MCBRIDE
C.P. & G.S.

COMES NOW, the Defendants Bruce Ludlum and Celadon Trucking Services, Inc., by and through its undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. Defendants admit upon information and belief the allegations of Paragraphs 1, 2 and 3.
3. Defendants admit only so much of Paragraph 4 as Defendant Celadon Trucking Services, Inc. does operate in the State of South Carolina. As to all other allegations contained in Paragraph 4, the Defendants demand strict proof thereof.
4. Defendants lacks sufficient knowledge and information to form a belief as to the allegations of Paragraphs 5 through 24 and thereby deny the same.

FOR A SECOND DEFENSE
(Failure to State a Claim)

5. The allegations contained in paragraphs 1 through 4 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

6. The Defendant would show that the Plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Comparative Negligence)

7. The allegations contained in paragraphs 1 through 6 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

8. The Defendants would show that such injuries or losses that Plaintiff sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiff, combining, concurring and contributing with the negligence, if any, on the part of this Defendant, to such a degree that Plaintiff's recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE
(Intervening and Superseding Negligence)

9. The allegations contained in paragraphs 1 through 8 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

10. The Defendants would show that such injuries or losses that Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, was not due to or caused by any negligence on the part of the Defendants, but was rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which the Defendants had no control.

FOR A FIFTH DEFENSE
(Sudden Emergency)

11. The allegations contained in paragraphs 1 through 10 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

12. Even assuming Defendants were negligent in any respect, which is expressly denied, the Defendants would show that the Plaintiff's injuries or losses were the result of and reaction to a sudden emergency over which Defendant had no control and, therefore, Plaintiff's action is barred.

FOR A SIXTH DEFENSE
(Assumption of Known Risk)

13. The allegations contained in paragraphs 1 through 12 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

14. The Defendants would show that the Plaintiff knew of the probable risk of injury or harm resulting from Plaintiff's actions, and therefore, the Defendant would plead the doctrine of assumption of a known risk as a complete bar to this action.

FOR A SEVENTH DEFENSE
(Unavoidable Accident)

15. The allegations contained in paragraphs 1 through 14 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

16. The Defendants would show that such injuries or losses that the Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, was not due to or caused by the negligence on the part of the Defendants, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR AN EIGHTH DEFENSE
(Waiver and Estoppel)

17. The allegations contained in paragraphs 1 through 16 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

18. The Defendants would show that Plaintiff's Complaint is barred by the doctrine of waiver and estoppel.

FOR A NINTH DEFENSE
(Improper Venue)

19. The allegations contained in paragraphs 1 through 18 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

20. Defendants plead the defense of improper venue in the County of Richland, State of South Carolina.

FOR A TENTH DEFENSE
(Statute of Limitations)

21. The allegations contained in paragraphs 1 through 20 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

22. The Defendants would show that this action is barred by the applicable Statute of Limitations.

FOR AN ELEVENTH DEFENSE
(Spoliation)

23. The allegations contained in paragraphs 1 through 22 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

24. The Defendants would show that Plaintiff's Complaint is barred by the doctrine of spoliation.

FOR A TWELFTH DEFENSE
(Punitive Damages)

25. The allegations contained in paragraphs 1 through 24 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

26. The Defendants allege that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

27. The Defendants allege that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

28. The Defendants allege that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

29. The Defendants allege that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

30. Defendants would show, upon information and belief, that the Plaintiff's claim for punitive Damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that

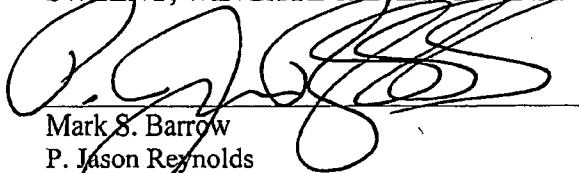
Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

The Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
P. Jason Reynolds
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
November 19, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-6228

Joseph C. Rivett

Plaintiff,

vs.

William Joe Jackson, Bruce Ludlum and Celadon Trucking
Services, Inc.

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Tucker S. Player, Bar No.
Post Office Box 21005
Columbia, SC 29221
Phone: 803-772-8008 Fax: 803-772-8037
E-mail: tucker@playerlawfirm.com Other:

Defendant's Attorney:
Brandon R. Gottschall, Bar No.
Post Office Box 12129
Columbia, SC 29211
Phone: (803) 256-2233 x7132 Fax: (803) 256-9177
E-mail: brg@swblaw.com Other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Defendant Bruce Ludlum and Celadon Trucking Services, Inc.'s Rule 60(b) Motion
Estimated Time Needed: .30 Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature]
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

April 10, 2017

Date submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$ 25.00**
☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED – AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) THE FIFTH JUDICIAL CIRCUIT

Joseph C. Rivett

) Civil Action No.: 2014-CP-40-6228
)
)

Plaintiff,

v.

) BRUCE LUDLUM AND CELEDON
) TRUCKING SERVICES, INC.'S RULE 60(b)
) MOTION
)

William Joe Jackson, Bruce Ludlum
and Celadon Trucking Services, Inc.

Defendant.

RICHLAND COUNTY
FILED
2017 APR -7 AM 11:56
JEANNETTE W. MOORE
C.C.P. & G.S. DE

PLEASE TAKE NOTICE that Bruce Ludlum and Celadon Trucking Services, Inc. ("Defendants") hereby move for a new trial in this matter pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. Pursuant to Rule 60(b), Defendants seek a new trial in this matter based on material misrepresentations made to the trial court regarding the attendance and testimony of a trial witness, State Trooper Brian Trotter, despite the absence of a timely subpoena.

On September 8, 2012, Plaintiff Joseph C. Rivett, Defendant driver Bruce Ludlum, and former defendant William Joseph Jackson, were traveling on Interstate 20 in Columbia, South Carolina when they came upon a traffic slowdown. The slowdown was caused by an earlier automobile accident that had blocked the right lane of travel. As Mr. Rivett, Mr. Jackson and Mr. Ludlum passed the accident scene, a collision, or collisions occurred involving each of them. As a result of the accident or accidents, Mr. Rivett brought suit against Mr. Jackson, Mr. Ludlum and Mr. Ludlum's employer Celadon Trucking Services. Mr. Rivett's Complaint asserted causes of action against the defendants sounding in negligence. Mr. Rivett seeks damages for injuries

he claims to have suffered as a result of the accident(s). Mr. Jackson settled with the Plaintiff and is no longer a defendant in the case. Defendants Ludlum and Celadon Trucking Services deny Plaintiff's allegations.

This matter was tried before a jury and a verdict for the Plaintiff was entered on February 5, 2016. Thereafter, Defendants filed a notice of appeal on March 3, 2016. Following a delay during which the trial transcript was being prepared, Defendants filed a motion with the court of appeals on January 3, 2017, for leave to file a Rule 60 motion with the trial court. The court of appeals granted the motion on March 24, 2017, allowing Defendants fifteen days to file the Rule 60 motion with the circuit court. See Court of Appeals Order, attached as **Exhibit A**.

This Motion will be supported by filed Affidavit(s) and Memorandum of Law prior to a hearing on the Motion.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Brandon R. Gottschall
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
April 10, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Joseph C. Rivett) Civil Action No.: 2014-CP-40-6228
Plaintiff,)
v.) MEMORANDUM IN SUPPORT OF BRUCE
William Joe Jackson, Bruce Ludlum) LUDLUM AND CELEDON TRUCKING
and Celadon Trucking Services, Inc.) SERVICES, INC.'S RULE 60(b) MOTION
Defendant.)

Defendants Bruce Ludlum and Celadon Trucking Services, Inc. ("Defendants") submit this memorandum in support of their motion filed on April 6, 2017, seeking relief from the trial court's judgment and grant a new trial in this matter pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.

NATURE OF THE CASE

On September 8, 2012, Plaintiff Joseph C. Rivett and others, including Defendant driver Bruce Ludlum as well as former defendant William Joseph Jackson, were traveling on Interstate 20 in Columbia, South Carolina when they came upon a traffic slowdown. The slowdown was caused by an earlier automobile accident that had blocked the right lane of travel. As Mr. Rivett, Mr. Jackson and Mr. Ludlum passed the accident scene, a collision, or collisions occurred involving each of them. As a result of the accident or accidents, Mr. Rivett brought suit against Mr. Jackson, Mr. Ludlum and Mr. Ludlum's employer Celadon Trucking Services. Mr. Rivett's Complaint asserted causes of action against the defendants sounding in negligence. Mr. Rivett seeks damages for injuries he claims to have suffered as a result of the accident(s). Mr. Jackson

settled with the Plaintiff and is no longer a defendant in the case. Defendants Ludlum and Celadon Trucking Services deny Plaintiff's allegations.

This matter was tried before a jury and a verdict for the Plaintiff was entered on February 5, 2016. Thereafter, Defendants filed a notice of appeal on March 3, 2016. Following a delay during which the trial transcript was being prepared, Defendants filed a motion with the court of appeals on January 3, 2017, for leave to file a Rule 60 motion with the trial court. The parties briefed the motion, with the Plaintiff filing a motion opposing remand. The court of appeals granted the motion on March 24, 2017, allowing Defendants fifteen days to file the Rule 60 motion with the circuit court. See Court of Appeals Order, attached as **Exhibit A**.

STANDARD

Rule 60(b) provides that:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

...

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party[.]

The decision to grant a motion under Rule 60(b) is within the sound discretion of the trial court.

Bowman v. Bowman, 357 S.C. 146, 151, 591 S.E.2d 654, 656 (Ct. App. 2004).

ARGUMENT

Pursuant to Rule 60(b), Defendants seek a new trial in this matter based on material misrepresentations made by Plaintiff's counsel to the trial court that ultimately deprived Defendants of their right to confront and cross-examine a witness. The right to confront and cross-examine a witness is one of the minimum procedural due process elements that must be present pursuant to the Fourteenth Amendment. See In re Vora, 354 S.C. 590, 595, 582 S.E.2d

413, 416 (2003) (noting that, according to the United States Supreme Court, procedural due process requires that “certain elements must be present... (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.”).

Defendants became aware of the misrepresentation after trial based on an affidavit from South Carolina Highway Patrol Trooper Brian Trotter. See Affidavit of Trooper Brian Trotter, attached as **Exhibit B**. Trooper Trotter is a witness Plaintiff intended to call as a causation witness at trial. However, Trooper Trotter was not present when Plaintiff sought to call him to the stand, and it was determined that the Trooper was not under any active subpoena. As a result, at 10:12 a.m., the trial court recessed so that Plaintiff could attempt to reach Trooper Trotter. Transcript of Record, attached as **Exhibit C**, at 117-118. When the trial court reconvened at 2:05 p.m. the same day, Respondent represented to the trial court that “he [Trooper Trotter] told me that he would be here by 2:30.” Transcript of Record at 132:15-16 (emphasis added). A few minutes later, Plaintiff’s counsel again reaffirmed that Trooper Trotter “indicated he would be here by 2:30.” Id. at 134:18-20.

When Trooper Trotter still did not appear, Respondent moved to introduce the Trooper’s deposition testimony pursuant to Rule 32(a)(3) of the South Carolina Rules of Civil Procedure. Under Rule 32, deposition testimony is generally not admissible, absent specific circumstances. Plaintiff’s counsel argued that, pursuant to Rule 32(a)(3)(D), the deposition testimony was admissible because he had subpoenaed the Trooper that day. In addition, Plaintiff’s counsel argued that exceptional circumstances existed for admission of the deposition pursuant to Rule 32(a)(3)(E). The exceptional circumstances introduced were Plaintiff’s Counsel’s representations that the Trooper indicated he would appear in court that day. Id. at 132-134.

The trial court promptly indicated that the deposition testimony was not admissible under 23(a)(3)(D), finding that a subpoena served at 12:45 p.m. for a 2 p.m. appearance is not “the type of subpoena that someone can normally answer.” Id. at 140:3-8. However, having heard testimony from Plaintiff’s counsel that the Trooper told counsel he would be present, the trial court found exceptional circumstances to admit the deposition testimony. Id. at 132-134. As a result, the court permitted deposition testimony to be read at trial. Thereafter, Plaintiff relied on the deposition testimony of Trooper Brian Trotter for evidence to survive Appellants’ motion for judgment as a matter of law. Id. at 147:15-156:2 156:2.

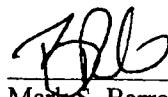
However, it is now apparent that Trooper Trotter never represented to anyone that he would be in court on February 3, 2016. See Affidavit of Trooper Brian Trotter; see also Affidavit of Tucker S. Player, attached as **Exhibit D**. In fact, Trooper Trotter did not have any contact with Plaintiff’s counsel whatsoever. Nonetheless, based on Plaintiff’s counsel’s misrepresentation to the court, Trooper Trotter’s deposition testimony was admitted.

As a result, the misrepresentations made to the trial court were highly prejudicial. Furthermore, in Trooper Trotter’s absence, Appellants were deprived of their valuable right cross-examine Trooper Trotter in court before the jury. See Goolsby v. Goolsby, 229 S.C. 101, 112, 92 S.E.2d 57, 62 (1956) (stating that the right to cross-examination “is a most valuable right” and that “[t]he power of cross-examination has been justly said to be one of the principal, as it certainly is one of the most efficacious, tests which the law has devised for the discovery of truth.”); In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) (noting that right to cross-examination is an element of constitutional due process).

For the foregoing reasons, Defendants move, pursuant to Rule 60(b) of the South Carolina Rules for Civil Procedure, for relief from the trial court's judgment.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Brandon R. Gottschall
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
May 6, 2017

The South Carolina Court of Appeals

Joseph C. Rivett, Respondent,

v.

Bruce Ludlum and Celadon Trucking Service, Inc.,
Appellants.

Appellate Case No. 2016-000462

The Honorable Tanya A. Gee
Richland County
Trial Court Case No. 2014CP4006228

ORDER

The time for serving and filing Respondent's return to Appellants' motion for leave to file a Rule 60 motion is hereby extended until January 27, 2017.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Mark Steven Barrow, Esquire
James Eric Cavanaugh, Esquire
Tucker S. Player, Esquire
Brandon Robert Gottschall, Esquire

FILED

January 19, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

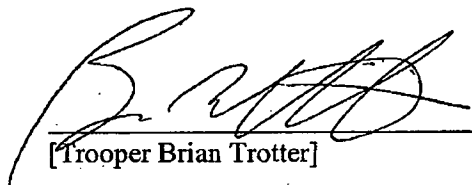
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**AFFIDAVIT OF
BRIAN TROTTER**

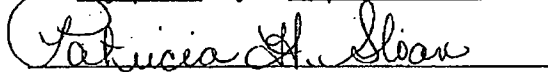
PERSONALLY APPEARED BEFORE ME, the undersigned, Brian Trotter, who after being duly sworn, deposes and says:

1. I am Brian Trotter, a resident of Lexington County, State of South Carolina and I currently reside at 838 Windy Road.
2. I am employed with the South Carolina Highway Department and was the responding officer at the accident scene that is the subject of the underlying case in this matter.
3. Plaintiff's counsel served a subpoena requiring my attendance on January 19, 2016, at 9:30 a.m., approximately two weeks prior to the date of the trial in this case.
4. Plaintiff's counsel did not serve a subpoena requiring my attendance on the dates of trial.
5. During the trial, on February 3, 2016, Plaintiff's counsel served a subpoena commanding my attendance at trial less than two hours later. I was unable to comply with the subpoena due to the short time frame and did not attend the trial.
6. At no point on February 3, 2016 did I tell Plaintiff's counsel or a representative for Plaintiff's counsel that I would be at trial.

FURTHER AFFIANT SAYETH NOT.


[Trooper Brian Trotter]

SWORN TO and subscribed before me
this 21st day of December, 2016.


Notary Public for South Carolina
My Commission Expires: Feb 11, 2020

1 THE COURT: Uh-huh. Right.

2 MR. BARROW: I mean, I can't ---

3 THE COURT: Sure. He can't come here ---

4 MR. BARROW: If I miss him today, I've lost him, I'm
5 afraid.

6 THE COURT: Uh-huh. All right. Mr. Player, the best
7 I can do is to give you until this afternoon to get to the
8 -- get -- get the trooper in. He's not under subpoena, so
9 it's not -- you know, you do have the problem that we have
10 and that's why I'll give you a short continuance until this
11 afternoon.

12 But otherwise, we need -- we're in the middle of the
13 trial. We're going to have to keep rolling on the trial.
14 We don't want to have this case mistried.

15 So we will break until -- tell me what time you need -
16 - we need -- we need to have time for the trooper to
17 testify and we need to have the expert testify. And if we
18 have to be here late, I don't care about that, but I don't
19 want to start -- I mean, two o'clock is probably about the
20 latest I can give you.

21 MR. PLAYER: The trooper won't take 30 minutes.

22 THE COURT: Okay. All right. Well, get him here by
23 two o'clock, or otherwise we'll close your case and move
24 on.

25 All right. Do you want me to bring the jurors out

1 here to tell them that, or we'll just let them know they're
2 released until two o'clock?

3 MR. BARROW: Right.

4 THE COURT: I'll just have the bailiff let them know
5 they're released 'til two.

6 MR. BARROW: Right.

7 THE COURT: We'll get them back in here 1:45.

8 (To the bailiff) Thank you, Mr. Tolbert.

9 THE BAILIFF: You're welcome, Your Honor.

10 (Off the record at 10:12 a.m.)

11 (On the record at 2:05 p.m.)

12 THE COURT: Thank y'all. Be seated.

13 All right. Every time we take a break, I come back
14 with a note. This one is just a housekeeping matter and
15 it's not a big deal.

16 One of the jurors wrote a note -- he's Juror No. 144.
17 He says (as read): "This is to inform you that after
18 Friday, February 5, 2016, I will be unable to serve as a
19 juror as my wife is having hip replacement surgery on
20 Monday, February 8, 2016, and I will be assisting in her
21 recovery until approximately May 1, 2016. Therefore, I
22 will be unavailable to serve as a juror. Thank you for
23 your consideration, Thomas Landrum, Jr., Juror 144."

24 I'll just generally let the jury know that we do plan
25 to be through with this tomorrow. Is that fair?

1 THE WITNESS: Thank you.

2 THE COURT: --- so much.

3 THE WITNESS: Thank you.

4 THE COURT: Does anyone object to him being released
5 from his subpoena?

6 MR. BARROW: No objection.

7 MR. PLAYER: No objection, Your Honor.

8 THE COURT: All right. And you may -- you are free to
9 go as well. Thank you.

10 All right. Mr. Player?

11 MR. PLAYER: Your Honor, can I check and see if the
12 trooper is outside?

13 THE COURT: Sure.

14 (Brief pause.)

15 MR. PLAYER: Don't see him yet, Your Honor. He told
16 me he would be here by 2:30.

17 THE COURT: Okay. We'll take a five-minute break. If
18 he isn't here by 2:30, then we're going to go ahead and
19 move on, okay?

20 MR. PLAYER: Okay.

21 THE COURT: All right. Let's go ahead and take about
22 a five-minute break, and we'll come back in the courtroom.
23 Thank you. Please don't discuss this case while you're in
24 the jury room.

25 (The jury exits the courtroom at 2:23 p.m.)

1 THE COURT: Did you say you were also going to call
2 the Defendant, or did you mean Mr. Jackson when you said
3 that?

4 MR. PLAYER: No, that was -- when they stipulated
5 that, you know, Celadon ---

6 THE COURT: Okay. We'll be back on the record in a
7 little bit.

8 (Off the record at 2:24 p.m.)

9 (Back on the record at 2:37 p.m.)

10 THE COURT: Mr. Player.

11 MR. PLAYER: Your Honor, considering he's not here, I
12 would ask to be allowed to read his transcript of the
13 deposition. He is -- he was served with a subpoena today,
14 12:48. That's one of the conditions to be allowed to
15 recite his deposition. And the other one is under
16 extraordinary circumstances.

17 I mean, I spoke with the man yesterday, he told me he
18 would be here at 9:30. I assumed he was still under
19 subpoena and he was. Everybody in this courtroom knew I
20 intended to call him first today. And he's not here
21 because of Mr. Barrow withdrawing his subpoena.

22 THE COURT: And what rule -- let me go to the rule.
23 Can you tell me which rule that is?

24 MR. PLAYER: 32, Your Honor.

25 THE COURT: Okay. Thank you.

1 MR. PLAYER: 32(A)(3), deposition of a witness (as
2 read): "Whether or not a party could be used by any party
3 for any purposes, if the Court finds the witness is dead or
4 a distance greater than a hundred miles, unable to testify
5 -- unable to attend or testify due to age, illness, or term
6 of imprisonment, that the party offering the deposition has
7 been unable to procure attendance through subpoena, and
8 such exception -- exceptional circumstances exist to make
9 it desirable, in the interest of justice and with due
10 regard to the importance of presenting testimony of
11 witnesses orally in open court, to allow a deposition to be
12 used.

13 So under the last two, we did put him under subpoena
14 today. I understand the lateness of that, but it wasn't
15 like it was a surprise to him that he was wanted to be in
16 court today by either side. It's certainly not a surprise
17 in terms of his testimony to anybody in this courtroom.
18 And considering that we got him under subpoena and he
19 indicated he would be here by 2:30 and he's not here -- I
20 don't know if it's because of weather. He was traveling
21 from Gilbert.

22 Due to the necessity of testimony happening today
23 because of Defendant's expert witness -- which, by the way,
24 we started a day late to accommodate their witness, I
25 think, at this point, I should be allowed to read the

1 We all know what happened. And now, based on the rules, is
2 a deposition appropriate?

3 And you're saying that it's appropriate under Rule 32
4 subsection D and subsection E. Now, D requires a subpoena,
5 and I don't think subpoenaing someone at 12:45, to be at
6 court by two o'clock, is the type of subpoena that someone
7 can normally answer. So I don't know whether D is going to
8 work for you, but I'll -- I'll hear you on that.

9 And then subsection E is why I just had that
10 conversation with Mr. Barrow, to understand the
11 circumstances and whether the circumstances are exceptional
12 enough as to allow, in the interest of justice, this
13 deposition testimony.

14 MR. PLAYER: If he knew I intended to call him, if he
15 knew I intended him to be here this morning, there was ---

16 THE COURT: There was no prejudice.

17 MR. PLAYER: --- no need to release him from his
18 subpoena except to cause that confusion.

19 MR. BARROW: May I add this because I think this is
20 important for the Court's consideration. When the Court
21 asked me yesterday, when we had this discussion was I
22 calling the trooper, and I said yes, my plans are to cause
23 -- to call the trooper, but ---

24 THE COURT: But. Right.

25 MR. BARROW: --- those plans can change. And I

1 Q And what -- what were the traffic conditions like on
2 I-20 eastbound?

3 A Very heavy and slow moving.

4 Q Do you know, Trooper, if the prior accident also --
5 was also in the eastbound lane?

6 A It was.

7 Q Did you actually witness this accident involving these
8 three vehicles?

9 A Yes, sir, I did.

10 Q Tell me what you saw -- and tell me what you saw.

11 A Well, I was working the first collision, whatever it
12 was, on the shoulder of the eastbound lane of I-20 between
13 Exits 70 and 71. I heard the sound of brakes locking up,
14 which I assume -- but I don't know for sure, I assume was
15 on the tractor-trailer. I looked up from what I was doing.
16 I saw the tractor-trailer under heavy braking, struck the
17 rear of Mr. Jackson's blue Ford Focus; and as a result of
18 that, push it into the rear of Mr. Rivett's Chevrolet
19 pickup truck.

20 Q So the only collision you saw was -- so the only
21 collision you saw between Mr. Jackson's Ford Focus and Mr.
22 Rivett's vehicle was after it was struck by the tractor-
23 trailer.

24 A Yes, sir. It was pushed.

25 Q Pushed into it?

1 A Yeah.

2 Q What were the speed of the vehicles? Were they going
3 very fast at the time?

4 A No. Well, on my report, I have Mr. Jackson and Mr.
5 Rivett at 25 miles per hour; and then Mr. Ledlum, who was
6 in the tractor-trailer, at 30 miles per hour.

7 Q And what was that based on?

8 A That was an estimate from my observation.

9 Q Okay. Did you see any type of second collision or
10 initial collision before the one you just described?

11 A No. This is the only thing I saw.

12 Q So you only saw one impact between my client, who
13 would be Mr. Jackson's vehicle, and the Plaintiff's truck?

14 A Your client being Mr. Jackson?

15 Q That is correct.

16 A That's correct. He was struck first by the tractor-
17 trailer and he pushed, he being the tractor-trailer, pushed
18 Mr. Jackson into the rear of Mr. Rivett's pickup truck.

19 Q And that caused your attention -- and what caused your
20 attention to that was the noise of the brakes on the
21 tractor-trailer.

22 A That's correct.

23 Q Did you have a chance to talk to the Plaintiff, Mr.
24 Rivett, following the accident?

25 A I did. And I reviewed my video from this collision

1 and unfortunately, there's a hole in there. There's a gap
2 where the interview with these three drivers is not
3 recorded on video.

4 Q Okay.

5 A So it's been so long now, but I believe I can remember
6 it; but I'm not positive enough to really testify as to
7 what they told me.

8 Q Do you recall them telling you there were two impacts
9 at any time?

10 A I don't recall that.

11 Q That he got hit twice?

12 A I don't recall that, no.

13 Q Do you recall any of the three parties with whom you
14 spoke indicating that there were two impacts?

15 A Not that I recall, no.

16 Q Did you ask the Plaintiff, Mr. Rivett, if he was
17 injured or hurt?

18 A I don't recall whether I asked him or not.

19 Q Is that a standard practice of yours? When you
20 interview someone who's been in an accident, do you ask if
21 they've been injured or hurt?

22 A It's the norm that I would ask. I don't always ask
23 it.

24 Q Why would you not ask it?

25 A Well, if they're up and around and talking to me and,

1 you know, people are very willing to ask for an ambulance
2 if they need one.

3 Q Okay. Did Mr. Rivett ask for an ambulance?

4 A Not that I recall. He was not transported by
5 ambulance. I can tell you that with certainty, so ...

6 Q Okay. Did anybody ask for an ambulance?

7 A No.

8 Q Did anybody appear injured, any of the three
9 individuals involved appear injured in this case?

10 A No.

11 Q Did you notice any cuts or blood or bleeding, any type
12 of injury on the Plaintiff, Mr. Rivett?

13 A Not that I recall.

14 Q As we sit here today, is there anything else you can
15 recall that may have been said by any of the three parties
16 to this accident?

17 A Well, like I said, I did review the video and none of
18 this is recorded unfortunately. It's certainly not
19 anything I did intentionally, but I do recall Mr. Rivett --
20 let me make sure I've got the names right. Mr. Rivett
21 saying something to the effect of do I need to stick around
22 or do I need to wait here because there was little to no
23 damage to his vehicle. And I don't remember exactly what
24 it was. I just said zero here, which means none or minor.

25 But anyway, I remember him saying something to the

1 effect of he wanted to know if I could leave -- if he could
2 leave, and I said, "No, sir, you're part of this now and I
3 need to have you on the report."

4 So then he stuck around and I finished what I needed
5 to do and gave his copy of everything.

6 Q Was an ambulance called to the scene?

7 A No, sir.

8 Q When you released the parties, did the Plaintiff drive
9 off in his truck?

10 A He did.

11 Q What about the tractor-trailer, did it drive off or
12 was it towed?

13 A It was towed, and I -- I'm not positive, but I believe
14 it was a ruptured radiator.

15 Q Okay. And what about the Blue Focus, that was the
16 middle vehicle, was it towed or was it driven off?

17 A It was towed by Wingard Trucking or Towing.

18 MR. PLAYER: That's all I have. Eric's going to read
19 for --

20 THE COURT: Okay. Go ahead.

21 MR. CAVANAUGH: May it please the Court? This is on
22 page 17, line 6.

23 Whereupon Mr. Cavanaugh and Mr
24 Yarborough continue to read from the deposition transcript
25 of Trooper Trotter as follows:

1 BY MR. CAVANAUGH:

2 Q And I believe you indicated that you do not recall Mr.
3 Rivett asking for any medical assistance; is that correct?

4 A That's correct.

5 Q Okay. So based upon the fact that he didn't need any
6 medical assistance and he had no damage to his vehicle, is
7 that why Mr. Rivett was asking you if he could go ahead and
8 get on down the road? Was that your impression?

9 A That was my general impression, yes.

10 Q Thank you.

11 MR. PLAYER: That's it, Your Honor.

12 THE COURT: All right. Thank you. You may step down.

13 (Mr. Yarborough complies.)

14 THE COURT: Any further witnesses, Mr. Player?

15 MR. PLAYER: No, Your Honor. The Plaintiff rests.

16 THE COURT: All right. Ladies and gentlemen, at this
17 times I need to take up a matter of law with the attorneys.
18 I'm going to have you step into the jury room and I'll get
19 you back out here as soon as possible. Thank you.

20 (The jury exits the courtroom at 3:57 p.m.)

21 THE COURT: All right. Mr. Barrow.

22 MR. BARROW: Mr. Cavanaugh.

23 THE COURT: Mr. Cavanaugh.

24 MR. CAVANAUGH: Your Honor, this is the appropriate
25 time. I -- I believe the evidence is clear that there is

1 no evidence of negligence on behalf of Mr. -- of Celadon
2 Trucking and Mr. Ledlum. The Plaintiff's presented no
3 evidence that we actually struck the Plaintiff's vehicle,
4 Your Honor, as a result, there's no evidence of negligence.
5 And for that reason, I believe it would be appropriate to -
6 - I move for judgment as a matter of law for the Defendants
7 as to the claims of the Plaintiff.

8 THE COURT: All right. Mr. Player.

9 MR. PLAYER: Your Honor, the testimony of the
10 Plaintiff about the impact, obviously, that he was struck.
11 Mr. Jackson testified, you know, exactly what happened when
12 the truck struck him. You know, he said that he was
13 stopped, saw the truck coming, didn't think it was going to
14 stop. He said, you know, it was Celadon Trucking. Trooper
15 Trotter just named Mr. Ledlum as the driver.

16 So I think there's sufficient evidence to demonstrate
17 -- at least to submit to the jury with regards to the
18 impact. Mr. Jackson said -- admitted that it was the
19 impact from the truck that pushed him into the Plaintiff.
20 The trooper testified that's what he saw. The truck
21 traveling, locking its brakes, then hitting Mr. Jackson and
22 pushing Mr. Jackson into Mr. Rivett. So we think there's
23 sufficient evidence to submit this to the jury.

24 THE COURT: All right. Viewing the evidence in the
25 light most favorable to the Plaintiff, as I must, I find

1 that there is sufficient evidence and deny the motion for
2 directed verdict respectfully.

3 MR. CAVANAUGH: Thank you, Your Honor. I do have one
4 other motion to make.

5 THE COURT: Sure.

6 MR. CAVANAUGH: Your Honor, as -- as it relates to
7 causation, Your Honor, I -- I am moving also for a directed
8 verdict as to causation, Your Honor. There is no evidence
9 in the record that would tend to show the collision between
10 my driver and -- between Mr. Ledlum and the -- Mr. Jackson
11 actually caused or led to the injuries that the Plaintiff's
12 complaining about in the case -- this case. I think, in
13 fact, the evidence is contrary.

14 And as a result, I believe the Plaintiff's failed to
15 prove his case as to causation; and therefore, move
16 respectfully for directed verdict as to causation in this
17 case.

18 THE COURT: All right. Mr. Player?

19 MR. PLAYER: Thank you, Your Honor. I will just point
20 to the deposition testimony of Dr. Boucree who said that,
21 in his medical opinion to the -- to the reasonable degree
22 of medical certainty, that the injuries for which my -- my
23 client underwent surgery were caused by the traffic
24 accident.

25 THE COURT: All right.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURTS OF SOUTH CAROLINA
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-40-6228

JOSEPH C. RIVETT,)
PLAINTIFF,)
VS.)

AFFIDAVIT OF TUCKER S. PLAYER

WILLIAM JOE JACKSON, BRUCE)
LUDLUM and CELADON)
TRUCKING SERVICES, INC.,)
DEFENDANTS.)

NOW COMES TUCKER S. PLAYER who being duly sworn deposes as follows:

1. I am over eighteen (18) years of age and I am competent to testify under the laws of the State of South Carolina. I give this affidavit of my own personal knowledge for use in opposition to a Motion for Leave to File a Rule 60 Motion of a Motion to Set Aside the Verdict in the above-captioned matter and for other lawful purposes.
2. I am a resident of Richland County, State of South Carolina.
3. On February 2, 2015, I engaged in a discussion with Judge Tanya Gee and Defense counsel Mark Barrow regarding the order of witness testimony in the above-captioned matter. This conversation is on the record and can be found on pages 96 through 98 of the Trial Transcript.
4. During the discussion of witness order, I offered to bring Trooper Trotter into testify on the afternoon of February 2, 2016 at 4:00pm. I suggested that it may be more efficient if he testified the following morning since Defendants intended to call him as well. Counsel for Defendant indicated he still intended to call the trooper at that time and

Judge Gee indicated that it would be better to call Trooper Trotter the following morning as opposed to that afternoon.

5. At the end of the day on February 2, 2016, Judge Gee asked, and I confirmed, that the Trooper would testify at 9:30am the following morning. This conversation is on the record and can be found on page 100 of the Trial Transcript.
6. I called Trooper Trotter at approximately 5:00pm on February 2, 2016 and told him to be in court at 9:30am the following morning. I told him I had subpoenaed him in January and he specifically stated that he would be in Courtroom 3-B at 9:30am on the morning of February 3, 2016 to testify.
7. After learning that the Trooper would not be appearing at trial on the morning of February 3, 2016, I immediately began calling both dispatch and his cell phone number provided by Defense counsel. Trooper Trotter did not answer his phone or respond to me in any way.
8. I contacted Steve Smith of SWS Process Servers to deliver a subpoena to Trooper Trotter at his home in Gilbert, South Carolina.
9. SWS dispatched a process server to Trooper Trotter's home in Gilbert, South Carolina to serve a subpoena.
10. I contacted Trooper Levine, the immediate supervisor of Trooper Trotter, and spoke with him about my need for Trooper Trotter to appear in court to testify that day. At that point, I had secured an alternate witness, William Joe Jackson, to testify at 2:00pm. I told Trooper Levine to tell Trooper Trotter that he was not needed until 2:30pm as Mr. Jackson would be testifying at 2:00pm.

11. I also left a voicemail message on Trooper Trotter's cell phone that he was not needed in court until 2:30pm that day.
12. I also called Steve Smith and provided him with Trooper Trotter's cell phone number. I believed Trooper Trotter was intentionally avoiding my phone calls and I asked Mr. Smith to tell Trooper Trotter he was not needed until 2:30pm that day.
13. Steve Smith called me to confirm that his process server served the subpoena on Trooper Trotter at 12:48pm.
14. I specifically remember that Steve Smith told me that Trooper Trotter said "message received" after he was served with the subpoena and was told he did not need to be in court until 2:30pm. Steve Smith did indicate that Trooper Trotter was not happy, but he never indicated he would not appear in court.
15. I believed that Trooper Trotter's statement of "message received" indicated he would be in court at 2:30pm as opposed to the 2:00pm time stated on the subpoena.
16. Shortly after 2:00pm, I indicated that I had served Trooper Trotter and stated: "And he did not indicate any - I don't think he was terribly pleased, but didn't indicate he was not going to appear." This conversation is on the record and can be found on page 120 of the Trial Transcript.
17. After Mr. Jackson testified, I did state that Trooper Trotter said he would be in court by 2:30pm. I made this statement in good faith believing that his comment of "message received" meant he would be in court by 2:30pm.
18. I also believed that if Trooper Trotter did not intend to appear in court after being served with a subpoena, he would have had the decency to tell either the process server or Steve

Smith when called Trooper Trotter to convey the message about appearing in court at 2:30pm.

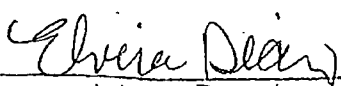
19. I called Trooper Trotter's cell phone 8 times between 12:18pm and 3:33pm. He never answered and never called me back.

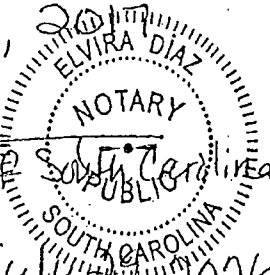
FURTHER AFFIANT SAYETH NOT


Tucker S. Player
Player Law Firm
Attorney for Plaintiff
P.O. Box 21005
Columbia, SC 29221
Ph: (803) 772-8008
Fax: (803) 772-8037

State of South Carolina
County of Richland

Sworn to before me this 26th
day of January, 2017


Notary Public - State of South Carolina



My commission expires: July 1, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JOSEPH C. RIVETT,)
PLAINTIFF,)
VS.)
WILLIAM JOE JACKSON, BRUCE)
LUDLUM and CELADON)
TRUCKING SERVICES, INC.,)
DEFENDANTS.)

IN THE COURTS OF SOUTH CAROLINA
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-40-6228

MEMORANDUM IN OPPOSITION TO MOTION

RICHLAND COUNTY
FILED
2017 JUL 21 AM 11:45
JEANNETTE W. MCGONNELL
C.C.P. & G.S.

Plaintiff submits this response to Defendants' Motion for relief from Judgment.

Defendants seek to have the ruling of Judge Tanya Gee reversed pursuant to Rule 60, SCRPC. The motion is devoid of merit and should be denied.

FACTUAL BACKGROUND

This matter was heard by a Richland County Jury on February 2, February 3, and February 4, 2016, resulting in a judgment for Plaintiff in the amount of \$300,000.00. During the first day of trial, an issue arose with regard to the scheduling of witnesses to testify. Plaintiff initially called the plaintiff as its first witness, and then played the video depositions of the treating physician. Plaintiff intended to call the Trooper who witnessed the accident to testify at trial as well. The following discussion occurred on the record between counsel for all parties and Judge Tanya Gee regarding when Trooper Trotter would be called to testify:

- 2 THE COURT: All right. Anything from either side
- 3 before we take our break?
- 4 MR. BARROW: Nothing, Your Honor.
- 5 MR. PLAYER: Just one quick thing, Your Honor, as to
- 6 Trooper Trotter. Looks like now, when we start back at
- 7 2:30, the video is one hour and 25 minutes.
- 8 THE COURT: Okay.
- 9 MR. PLAYER: So that's about four when Boucree's video

10 will be over. I know that the Defense intends to call Mr.
11 Trotter. I don't want to make him come up here two days in
12 a row. If he can be here at four and testify and be done,
13 I think he'd probably prefer that considering he's on duty
14 at one o'clock this week.
15 But I didn't know. If the Defense was definitely
16 going to bring him back tomorrow morning, then maybe we can
17 break at four and I'll finish in the morning. I just don't
18 want to make the trooper come twice.
19 THE COURT: Okay. Y'all have a position on that?
20 MR. BARROW: We don't.
21 THE COURT: Okay. Do you plan to call him?
22 MR. BARROW: Right now, we do, but ---
23 THE COURT: Okay.
24 MR. BARROW: --- I mean, that -- not that that plan
25 can't change.
97
1 THE COURT: It's subject to change, of course.
2 MR. BARROW: But -- but right now, we do.
3 THE COURT: Okay.
4 MR. PLAYER: It's just we got to tell him at one,
5 that's when he comes on, whether to be -- I think he was
6 planning on being here tomorrow.
7 THE COURT: Sure.
8 MR. PLAYER: But I didn't think we'd get to today, but
9 we're moving faster than I thought.
10 THE COURT: Right. Well, and what I don't want to do
11 is, if we break at four o'clock today, where we bleed into
12 Thursday. Does anybody think that we would based on the
13 pace we're going ---
14 MR. BARROW: No, no, I hope not.
15 THE COURT: Okay.
16 MR. PLAYER: I've got basically four questions for the
17 troop -- for the trooper and -- I mean, he's not going to
18 be a very long witness, at least, from our standpoint.
19 MR. BARROW: I hope -- I hope we're not here. We're
20 only -- we think we'll be pretty quick tomorrow morning and
21 then wait for the doctor.
22 THE COURT: Okay. Yeah. And when is the doctor
23 getting here?
24 MR. CAVANAUGH: Your Honor, he is going to try to get
25 here by one o'clock tomorrow.
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1 THE COURT: Sure. And again, that's always subject to
2 change ---
3 MR. BARROW: It is.
4 THE COURT: --- when traveling. So it may actually be

5 helpful to break at four o'clock so we have a little
6 something tomorrow and then it may all work out with the
7 timing. So we'll go ahead and we'll -- what we'll plan to
8 do is you can do the other video deposition and then after
9 that we'll break.

10 MR. PLAYER: Okay. What time will we start in the
11 morning?

12 THE COURT: Let's do 9:30.

13 MR. PLAYER: Okay. I'll tell him to be here at 9:30
14 in the morning.

15 THE COURT: All right. We will see you at 2:15.

16 MR. PLAYER: Thank you.

17 (Off the record at 12:57 p.m.)

18 (On the record at 2:22 p.m.)

Trial Transcript, February 2, 2016, Pages 96-98.

The foregoing discussion clearly establishes three things: (1) Plaintiff conditioned his willingness to delay calling Trooper Trotter until February 3, 2016 on the fact that Defendants intended to call him as a witness; (2) Counsel for Defendant represented to the Court that he intended to call Trooper Trotter to the stand AFTER he had heard all of Plaintiff's testimony; and (3) everyone understood that Trooper Trotter was supposed to testify at 9:30am on the morning of February 3, 2016.

After Court on February 2, 2016, Counsel for Plaintiff spoke with Trooper Trotter telephonically and confirmed that he would be in the courtroom ready to testify at 9:30am on the morning of February 3, 2016. *See Affidavit of Tucker Player*, ¶5 and 6.

The following morning, Trooper Trotter did not appear to testify. The following conversation between counsel and Judge Tanye Gee occurred on the record:

1 THE COURT: All right. Anything further from the
2 attorneys?

3 (Brief pause.)

4 MR. PLAYER: Your Honor, I spoke with Trooper Trotter.
5 He was supposed to be here at 9:30 this morning, but it
6 took me an hour to get here where it usually takes 30
7 minutes. It was a wreck on I-20.

8 THE COURT: Oh, dear. Okay.

9 MR. BARROW: When did you -- when did you speak with
10 him?
11 MR. PLAYER: Around five.
12 MR. BARROW: Yesterday afternoon?
13 (No audible response.)
14 MR. BARROW: I released Trooper Trotter last night
15 from my subpoena. Told him I didn't need him. Did you
16 have him under subpoena?
17 MR. PLAYER: I did.
18 MR. BARROW: I just wanted to let the Court know ---
19 THE COURT: Sure.
20 MR. BARROW: --- I released ---
21 THE COURT: Sure. Right. There could have been some
22 confusion in that respect, but it sounds like he was under
23 ---
24 MR. BARROW: And I asked if he was coming and his
25 response to me was I can only come if I'm under subpoena
111
1 by, I guess, highway department rules.
2 So I didn't see your subpoena, but I told him he was
3 released from mine.
4 THE COURT: Mr. Player, why don't you place another
5 phone call to him just to --
6 MR. PLAYER: The only way that we've been allowed to
7 get to him is through dispatch.s
8 THE COURT: I understand.
9 MR. PLAYER: But I'll certainly try.
10 THE COURT: Is that the only way you've been able to
11 get in touch with him, too, Mr. Barrow, dispatch?
12 MR. BARROW: I got in touch with him through a cell
13 phone number.
14 THE COURT: Can you -- can -- let's try to contact him
15 via cell phone.
16 (To the bailiff) Mr. Tolbert, you can go ahead and
17 release Juror No. 100. Tell him he can go down to the jury
18 assembly room. We'll seat the -- the alternate juror, but
19 don't bring the jurors in yet.
20 THE BAILIFF: I understand.
21 THE COURT: Okay. Thank you.
22 THE BAILIFF: So we're going to be seating 173?
23 THE COURT: That's correct.
24 THE BAILIFF: All right.
25 THE COURT: Do you have a copy of your subpoena, Mr.
112
1 Player?
2 MR. PLAYER: Yes, ma'am?
3 THE COURT: How about pass it up.

4 MR. PLAYER: I didn't hear what you said.
5 MR. BARROW: Copy of your subpoena.
6 THE COURT: Can you pass up a copy of your subpoena?
7 MR. PLAYER: We do it electronically. I'll get my
8 office ---
9 THE COURT: Sure.
10 (Brief pause.)
11 THE COURT: It sounds like Mr. Trotter does -- or
12 Trooper Trotter believed that he was released and he didn't
13 believe he had any additional subpoenas, that he just was
14 subpoenaed by the Defense. So ...
15 MR. PLAYER: Well, we do have his deposition
16 transcript.
17 THE COURT: I'm sorry?
18 MR. PLAYER: We do have his deposition transcript.
19 THE COURT: Okay.
20 MR. BARROW: You can't use it under the Rule.
21 THE COURT: Oh. Of -- oh. I thought you meant
22 another -- I thought you meant of another witness. You
23 mean Trooper Trotter's deposition. Right, we can't use
24 that under the rule. Agreed.
25 MR. BARROW: Your Honor, we talked to our doctor last
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1 night, just so the Court knows, and he has two surgeries
2 this morning, but he says he's actually starting them
3 early. Slept in the -- said he was sleeping in the
4 hospital last night in order to get an early start to get
5 here. And he said, you know, I hope to be there between
6 1:00 and 1:30. That's his goal.
7 THE COURT: Okay. Great.
8 (Brief pause.)
9 THE COURT: Any luck?
10 MR. PLAYER: Not with his telephone. And I can get --
11 -
12 THE COURT: Subpoena?
13 MR. PLAYER: --- affidavit of service and I can pull
14 up the subpoena next.
15 MR. BARROW: What's the date on that?
16 THE COURT: I'm looking here.
17
18 MR. PLAYER: The first time it came up for trial.
19 THE COURT: January ---
20 MR. PLAYER: But typically we subpoena them, and they
21 know they're under subpoena until they get called to trial.
22 MR. BARROW: Did you subpoena him for that week or did
23 you -- because I subpoenaed him twice. When it didn't go
24 the first week, I sent another subpoena so he'd be under

25 subpoena.

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1 MR. PLAYER: This is how I've done it in the past.

2 It's always -- they know they're under subpoena. Matter of
3 fact, I had them schedule with Eric ---

4 MR. BARROW: Well, does -- I guess my question is --

5 no. No. We sent two separate subpoenas. The way we do it
6 is subpoenas are only good for the week and we put the
7 dates in there.

8 THE COURT: Let me see the actual subpoena. That's
9 the affidavit of service. I see where it says, "You are
10 commanded to appear in the above-named court and place and
11 time specified below to testify." And it says date and
12 time: January 19, 2016, 9:30 a.m.

13 And then you didn't serve another subpoena? You just
14 assumed he would remain under subpoena for longer than that
15 time?

16 MR. PLAYER: Yes, ma'am, to avoid additional cost and
17 to ---

18

19 THE COURT: Sure.

20 MR. PLAYER: --- avoid additional inconvenience for
21 him.

22 THE COURT: And you talked to him yesterday.

23 MR. PLAYER: Yes. And he said he would be here at
24 9:30.

25 THE COURT: That's what's frustrating is that you
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1 talked to him and he didn't let you know.

2 MR. PLAYER: No, he did not. If there was an issue, I
3 would have gotten a subpoena yesterday.

4 THE COURT: Sure.

5 MR. PLAYER: He said he would be here at Courtroom
6 3-B, at 9:30. Now, I can do my best to contact him and get
7 him a new subpoena and get him here this afternoon.

8 THE COURT: Uh-huh.

9 MR. BARROW: The problem is that you're at the close
10 of your case. And we don't want to put our case up while
11 your case is still pending.

12 THE COURT: Sure. Well, and -- and I can just
13 continue it until this afternoon.

14 MR. PLAYER: Okay.

15 THE COURT: But there's -- we don't know at this point
16 whether he can be here this afternoon. He's not compelled
17 to be here this afternoon. But I do -- I'm not
18 unsympathetic to what happened.

19 While certainly the subpoena's an issue: You did not

20 re-subpoena him, that would have been the appropriate thing
21 to do. Considering you talked to him yesterday, I see how
22 we're in this situation.

23 MR. BARROW: Did he tell you he was going to be here
24 because he was under my subpoena when you had the
25 conversation with him.

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1 MR. PLAYER: No. I told him I had him under subpoena.

2 MR. BARROW: Okay. Well, I talked to him, probably
3 around 6:30 last night, when I called him to say I am
4 releasing you from my subpoena. We got what we needed
5 yesterday. And he said that you had called him and he said
6 he was searching for your subpoena.

7 THE COURT: Uh-huh.

8 MR. BARROW: That he had not found a subpoena from
9 you, and that their regulations do not require him to come
10 to court without a subpoena. I get that. I've always
11 known that.

12 THE COURT: Sure. Well, he had a subpoena -- I mean,
13 he showed me a subpoena. Now, it was from January the 19th,
14 granted, but ...

15 And your -- tell me about your case. You have the
16 expert that's coming in.

17 MR. BARROW: We have our truck driver.

18 THE COURT: And you have your truck driver.

19 MR. BARROW: And we have another witness.

20 THE COURT: Okay.

21 MR. BARROW: So we won't finish it today if you
22 continue it, obviously.

23 THE COURT: Right.

24 MR. BARROW: I guess that means that -- of course,
25 we're going to have to have the doctor testify today.

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1 THE COURT: Uh-huh. Right.

2 MR. BARROW: I mean, I can't ---

3 THE COURT: Sure. He can't come here ---

4 MR. BARROW: If I miss him today, I've lost him, I'm
5 afraid.

6 THE COURT: Uh-huh. All right. Mr. Player, the best
7 I can do is to give you until this afternoon to get to the
8 -- get -- get the trooper in. He's not under subpoena, so
9 it's not -- you know, you do have the problem that we have
10 and that's why I'll give you a short continuance until this
11 afternoon.

12 But otherwise, we need -- we're in the middle of the
13 trial. We're going to have to keep rolling on the trial.
14 We don't want to have this case mistried.

15 So we will break until -- tell me what time you need -
16 - we need -- we need to have time for the trooper to
17 testify and we need to have the expert testify. And if we
18 have to be here late, I don't care about that, but I don't
19 want to start -- I mean, two o'clock is probably about the
20 latest I can give you.
21 MR. PLAYER: The trooper won't take 30 minutes.
22 THE COURT: Okay. All right. Well, get him here by
23 two o'clock, or otherwise we'll close your case and move
24 on.
25 All right. Do you want me to bring the jurors out.
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1 here to tell them that, or we'll just let them know they're
2 released until two o'clock?
3 MR. BARROW: Right.
4 THE COURT: I'll just have the bailiff let them know
5 they're released 'til two.
6 MR. BARROW: Right.
7 THE COURT: We'll get them back in here 1:45.

Trial Transcript, February 3, 2016, Pages 110-118.

Over the course of the next several hours, Counsel for Plaintiff took several measures to procure the appearance of Trooper Trotter to testify. He immediately began calling both Highway Patrol dispatch and Trotter's cell phone number provided by Defense counsel. Trooper Trotter did not answer his phone or respond to him in any way. *See Affidavit of Tucker Player*, ¶7. He contacted Steve Smith of SWS Process Servers to deliver a subpoena to Trooper Trotter at his home in Gilbert, South Carolina. *See Affidavit of Tucker Player*, ¶8.

Counsel also contacted Trooper Levine, the immediate supervisor of Trooper Trotter, and spoke with him about the need for Trooper Trotter to appear in court to testify that day. At that point, Counsel had secured an alternate witness, William Joe Jackson, to testify at 2:00pm. I told Trooper Levine to tell Trooper Trotter that he was not needed until 2:30pm as Mr. Jackson would be testifying at 2:00pm. *See Affidavit of Tucker Player*, ¶10. He also left a voicemail message on Trooper Trotter's cell phone that he was not needed in court until 2:30pm that day. *See Affidavit of Tucker Player*, ¶11

Counsel called Steve Smith and provided him with Trooper Trotter's cell phone number. He believed Trooper Trotter was intentionally avoiding my phone calls and I asked Mr. Smith to tell Trooper Trotter he was not needed until 2:30pm that day. *See Affidavit of Tucker Player*, ¶12.

Steve Smith called Counsel to confirm that his process server served the subpoena on Trooper Trotter at 12:48pm. *See Affidavit of Tucker Player*, ¶13. Steve Smith said that Trooper Trotter said "message received" after he was served with the subpoena and was told he did not need to be in court until 2:30pm. Steve Smith did indicate that Trooper Trotter was not happy, but he never indicated he would not appear in court. *See Affidavit of Tucker Player*, ¶14.

Counsel believed that Trooper Trotter's statement of "message received" indicated he would be in court at 2:30pm as opposed to the 2:00pm time stated on the subpoena. *See Affidavit of Tucker Player*, ¶15.

Shortly after 2:00pm, the following discussion took place on the record between counsel and Judge Tanya Gee:

3 THE COURT: All right. And Mr. Player, who -- you'll
4 be calling the trooper first or someone else first?
5 MR. PLAYER: Mr. Jackson is here
6 THE COURT: Okay.
7 MR. PLAYER: We'll call him first. The trooper's
8 supposed to be here between 2:00 and 2:30.
9 THE COURT: Great.
10 MR. PLAYER: I just emailed the proof of service of
11 the subpoena. Even though it was today, he -- he is now
12 under subpoena.
13 THE COURT: Great.
14 MR. PLAYER: And did not indicate any -- I don't think
15 he was terribly pleased, but didn't indicate he was not
16 going to appear.
17 THE COURT: Okay. Wonderful.

Trial Transcript, February 3, 2016, page 120.

After Mr. Jackson testified, the following conversation took place on the record between counsel and Judge Tanya Gee:

8 THE COURT: All right. And you may -- you are free to
9 go as well. Thank you.
10 All right. Mr. Player?
11 MR. PLAYER: Your Honor, can I check and see if the
12 trooper is outside?
13 THE COURT: Sure.
14 (Brief pause.)
15 MR. PLAYER: Don't see him yet, Your Honor. He told
16 me he would be here by 2:30.
17 THE COURT: Okay. We'll take a five-minute break. If
18 he isn't here by 2:30, then we're going to go ahead and
19 move on, okay?
20 MR. PLAYER: Okay

Trial Transcript, February 3, 2016, page 132.

Counsel made this statement in good faith believing that Trooper Trotter's comment of "message received" meant he would be in court by 2:30pm. *See Affidavit of Tucker Player, ¶18.* In all, Counsel called Trooper Trotter's cell phone 8 times on February 3, 2016 without a single response. *See Affidavit of Tucker Player, ¶19.*

Once it was obvious that Trooper Trotter was not going to appear to testify, Counsel requested that he be allowed to read the deposition transcript into the record. Counsel for all parties made arguments to the Court, which can be found at pages 133 to 142. The most significant portion of that discussion follows:

25 THE COURT: That's what's frustrating is that you
1 talked to him and he didn't let you know.
2 MR. PLAYER: No, he did not. If there was an issue, I
3 would have gotten a subpoena yesterday.
4 THE COURT: Sure.
5 MR. PLAYER: He said he would be here at Courtroom
6 3-B, at 9:30. Now, I can do my best to contact him and get
7 him a new subpoena and get him here this afternoon.
8 THE COURT: Uh-huh.

Trial Transcript, February 3, 2016, page 114-115.

25 THE COURT: Well, here's where I'm sympathetic to Mr.
1 Player. Yesterday when we talked about this trooper coming
2 in to testify and the convenience of allowing him to just
3 testify one day because you both were going to call him, at
4 that point, y'all weren't sure whether you would or would
5 not call him. But that -- and that was probably yesterday
6 afternoon.
7 And then at some point thereafter, say six o'clock at
8 night, y'all decided that you weren't going to need him ---
9 MR. BARROW: Right.
10 THE COURT: --- and you told him he was relieved of
11 your subpoena.
12 MR. BARROW: Right.
13 THE COURT: Which is a confusing situation for someone
14 who's a witness. Maybe less so confusing for someone who's
15 a trooper who gets subpoenaed a fair amount.
16 And what I'm concerned about is that it seems as
17 though there was some discussion with the trooper about
18 whether or not he needed to be here. And I don't know what
19 was said after that point, but it should have been clear
20 that he was expected here tomorrow at 9:30.
21 And so I'm a little concerned about that aspect of his
22 being relieved from the subpoena and perhaps being told
23 that he did not need to be here by 9:30.

Trial Transcript, February 3, 2016, page 136 -137.

The transcript makes it clear that the only representation of Trooper Trotter that factored into Judge Gee's decision to allow the deposition transcript to be read was his statement on February 2, 2016 that he would appear at 9:30am to testify. At no point did she mention any concern over counsel's representation that Trotter would appear at 2:30pm on February 3, 2016.

LEGAL ARGUMENTS

NO FRAUD, MISREPRESENTATION OR MISCONDUCT OCCURRED

Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). The standard of review, therefore, is limited to determining whether there was an abuse of discretion. Plaintiff submits the Affidavit of Tucker S. Player as Exhibit A. The Affidavit establishes that there was

no intention of misleading the lower court and that counsel accurately presented what he believed was communicated by Trooper Trotter on February 3, 2017. If Trooper Trotter never intended to appear in court on February 3, 2016, he should have conveyed that information to someone. Trooper had been under subpoena, and told counsel for Plaintiff that he would be in court at 9:30am that morning, yet he was "unable to attend court" according to his Affidavit submitted by Defendants. Counsel for Plaintiff made 8 phone calls to Trotter on February 3, 2016, left several phone messages on Trotter's phone, asked Trotter's supervisor to contact him about the subpoena and the change in time to 2:30pm, and had his process server call him as well to convey the change in time. The Affidavit of Brian Trotter does not state that he ever told anyone that he would not appear in court on February 3, 2017. Counsel for Plaintiff was told by Steve Smith that Trotter said "message received." It was reasonable to interpret this statement as an affirmation that Trotter would appear in court, especially since the only "message" transmitted was that he need not appear in court until 2:30pm as opposed to the designated time of 2:00pm on the face of the subpoena. In the initial dialogue with the lower court, which Defendantss failed to cite in their motion, Counsel for Plaintiff stated that Trooper Trotter was not pleased, but did not indicate that he would not appear. *See Transcript of February 2, 2016, page 120.* There is nothing false or inaccurate in this statement to the court. In order to establish a prima facie case to shift the burden to Plaintiff, Defendants are required to demonstrate fraud, misrepresentation or misconduct by clear and convincing evidence. *Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792, (Ct. App. 2009). The Affidavit of Brian Trotter does not establish any fraud, misrepresentation, or misconduct on behalf of Defendants or his counsel, much less constitute clear and convincing evidence of such malfeasance. Therefore, the motion must be denied.

EXTRINSIC FRAUD VS. INTRINSIC FRAUD

In South Carolina, a party can obtain equitable relief from a judgment based on fraud only upon a showing that the fraud is extrinsic. *See Bryan v. Bryan*, 220 S.C. 164, 66 S.E.2d 609 (1951). In *Bryan*, our Supreme Court explained as follows:

There is no doubt that a court of equity has inherent power to grant relief from a judgment on the ground of fraud. However, not every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered; intrinsic fraud is not sufficient for equitable relief. *Id.* at 167-68, 66 S.E.2d at 610.

Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004).

Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. *Id.*

Defendants' claim of misconduct is based on counsel's statement that Trooper Trotter said he would appear in court at 2:30pm on February 3, 2016. First and foremost, this was proven to be inaccurate when Trooper Trotter did not actually appear in court at 2:30pm on February 3, 2016. Thus, Judge Gee knew it was not true at the time she allowed made her decision. More importantly, Defendants cannot demonstrate how this inaccurate statement induced Defendants not to present their case or deprived them of the opportunity to be heard. The sole reason Trooper Trotter was not in court at 9:30am on February 3, 2016 was because Defendants released him from their subpoena. The only way Defendants could be prejudiced by the non-appearance of Trooper Trotter was if they knew he would not appear to testify after they released him from their subpoena, which was vehemently denied by counsel at trial. See *Trial Transcript of February 3, 2016*, page 138-139, and 142. Counsel for Defendants stated to the

Court that they decided they didn't need the trooper's testimony and that was the only reason they released him from the subpoena. Mr. Barrow's exact words were "I only told him he was released from my subpoena because I had gotten everything out of the Plaintiff that I was going to get from the trooper." *Transcript of February 3, 2016*, page 138, line 23 through p. 139, line 1. What is important about this representation by Mr. Barrow is that he had "gotten everything out of the Plaintiff" when he represented to Judge Gee that he still intended to call Trooper Trotter on February 2, 2016. See *Transcript of February 2, 2016*, page 97. Finally, despite the claim in Defendants' motion that Trooper Trotter's testimony was "highly prejudicial" and they were deprived of their ability to cross-examine Trooper Trotter as to causation, the deposition testimony read to the jury did not include a single word or question from any attorney representing Plaintiff. The portions of the deposition transcript read to the jury contained questions from attorney Chris Daniels, who represented Defendant William Jackson, and Eric Cavanaugh, the attorney for Defendants. For Defendants to claim that they were prejudiced by the inability to cross-examine Trooper Trotter is ridiculous. This is especially true considering that Defendants Bruce Ledlum testified that (1) he did, in fact, collide with the vehicle of William Jackson (*Transcript* pp. 164-166) and (2) he was travelling "about 25/30 miles an hour". *Transcript* p. 164, lines 2-3. Both of these statements are the only two issues of fact concerning causation that Trotter's deposition testimony touched upon, and Defendants' testimony matches that of Trooper Trotter. Defendants suffered no prejudice, were not denied access to any witness or argument at trial, and were certainly not prevented from presenting any evidence that contradicted or mitigated the testimony of Trooper Trotter. Therefore, the motion must be denied.

THE ALLEGED FRAUD WAS IMMATERIAL

Even if the nonexistent fraud alleged by Defendants actually occurred, which it didn't, and was intrinsic as opposed to extrinsic, which it isn't, it was not material to Judge Gee's ruling on the motion for directed verdict. Judge Gee made it clear that her primary concern was the representation of Trooper Trotter made during the telephone conversation on February 2, 2016. As both counsel agreed at trial, Trooper Trotter stated during his conversation with Counsel for Plaintiff on February 2, 2016 that he would be in court to testify at 9:30am on February 3, 2016. Counsel for Plaintiff stated this at trial (*See Transcript of February 3, 2016, page 110, lines 4-7*) and in his Affidavit (*Affidavit of Tucker S. Player, Paragraph 6*) and it was confirmed by Mark Barrow at trial (*See Transcript of February 3, 2016, page 137, lines 4-7*). It was this representation by Trooper Trotter that concerned Judge Gee as she stated on more than one occasion. It was the representation of Trooper Trotter on February 2, 2016 that counsel argued to the court, not any representation made on February 3, 2016. *See Transcript of February 3, 2016, page 133, lines 17-21; See Transcript of February 3, 2016, page 142, lines 6-12.* Ultimately, Judge Gee found that Defendants suffered no prejudice by allowing the deposition transcript to be read to the jury. *See Transcript of February 3, 2016, page 140, line 16.* There is no evidence that the representation Trooper Trotter indicated he would appear in court at 2:30pm played any role in Judge Gee's decision to allow the deposition transcript to be read, much less clear and convincing evidence required by the rule. Therefore, the motion must be denied.

This 19th day of July, 2017,



/s/ Tucker S. Player
Player Law Firm
Attorney for Plaintiff
P.O. Box 21005
Columbia, SC 29221
Ph: (803) 772-8008

STATE OF SOUTH CAROLINA	)	IN THE COURTS OF SOUTH CAROLINA
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	C/A No.: 2014-CP-40-6228
JOSEPH C. RIVETT,	)	
	)	
PLAINTIFF,	)	
VS.	)	AFFIDAVIT OF TUCKER S. PLAYER
	)	
WILLIAM JOE JACKSON, BRUCE	)	
LUDLUM and CELADON	)	
TRUCKING SERVICES, INC.,	)	
	)	
DEFENDANTS.	)	

NOW COMES TUCKER S. PLAYER who being duly sworn deposes as follows:

1. I am over eighteen (18) years of age and I am competent to testify under the laws of the State of South Carolina. I give this affidavit of my own personal knowledge for use in opposition to a Motion for Leave to File a Rule 60 Motion of a Motion to Set Aside the Verdict in the above-captioned matter and for other lawful purposes.
2. I am a resident of Richland County, State of South Carolina.
3. On February 2, 2015, I engaged in a discussion with Judge Tanya Gee and Defense counsel Mark Barrow regarding the order of witness testimony in the above-captioned matter. This conversation is on the record and can be found on pages 96 through 98 of the Trial Transcript.
4. During the discussion of witness order, I offered to bring Trooper Trotter into testify on the afternoon of February 2, 2016 at 4:00pm. I suggested that it may be more efficient if he testified the following morning since Defendants intended to call him as well. Counsel for Defendant indicated he still intended to call the trooper at that time and

Judge Gee indicated that it would be better to call Trooper Trotter the following morning as opposed to that afternoon.

5. At the end of the day on February 2, 2016, Judge Gee asked, and I confirmed, that the Trooper would testify at 9:30am the following morning. This conversation is on the record and can be found on page 100 of the Trial Transcript.
6. I called Trooper Trotter at approximately 5:00pm on February 2, 2016 and told him to be in court at 9:30am the following morning. I told him I had subpoenaed him in January and he specifically stated that he would be in Courtroom 3-B at 9:30am on the morning of February 3, 2016 to testify.
7. After learning that the Trooper would not be appearing at trial on the morning of February 3, 2016, I immediately began calling both dispatch and his cell phone number provided by Defense counsel. Trooper Trotter did not answer his phone or respond to me in any way.
8. I contacted Steve Smith of SWS Process Servers to deliver a subpoena to Trooper Trotter at his home in Gilbert, South Carolina.
9. SWS dispatched a process server to Trooper Trotter's home in Gilbert, South Carolina to serve a subpoena.
10. I contacted Trooper Levine, the immediate supervisor of Trooper Trotter, and spoke with him about my need for Trooper Trotter to appear in court to testify that day. At that point, I had secured an alternate witness, William Joe Jackson, to testify at 2:00pm. I told Trooper Levine to tell Trooper Trotter that he was not needed until 2:30pm as Mr. Jackson would be testifying at 2:00pm.

11. I also left a voicemail message on Trooper Trotter's cell phone that he was not needed in court until 2:30pm that day.
12. I also called Steve Smith and provided him with Trooper Trotter's cell phone number. I believed Trooper Trotter was intentionally avoiding my phone calls and I asked Mr. Smith to tell Trooper Trotter he was not needed until 2:30pm that day.
13. Steve Smith called me to confirm that his process server served the subpoena on Trooper Trotter at 12:48pm.
14. I specifically remember that Steve Smith told me that Trooper Trotter said "message received" after he was served with the subpoena and was told he did not need to be in court until 2:30pm. Steve Smith did indicate that Trooper Trotter was not happy, but he never indicated he would not appear in court.
15. I believed that Trooper Trotter's statement of "message received" indicated he would be in court at 2:30pm as opposed to the 2:00pm time stated on the subpoena.
16. Shortly after 2:00pm, I indicated that I had served Trooper Trotter and stated: "And he did not indicate any – I don't think he was terribly pleased, but didn't indicate he was not going to appear." This conversation is on the record and can be found on page 120 of the Trial Transcript.
17. After Mr. Jackson testified, I did state that Trooper Trotter said he would be in court by 2:30pm. I made this statement in good faith believing that his comment of "message received" meant he would be in court by 2:30pm.
18. I also believed that if Trooper Trotter did not intend to appear in court after being served with a subpoena, he would have had the decency to tell either the process server or Steve

Smith when called Trooper Trotter to convey the message about appearing in court at 2:30pm.

19. I called Trooper Trotter's cell phone 8 times between 12:18pm and 3:33pm. He never answered and never called me back.

FURTHER AFFIANT SAYETH NOT

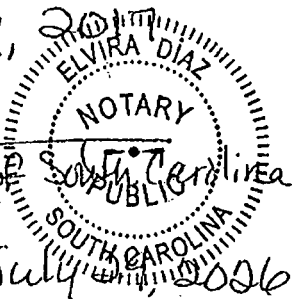

Tucker S. Player
Player Law Firm
Attorney for Plaintiff
P.O. Box 21005
Columbia, SC 29221
Ph: (803) 772-8008
Fax: (803) 772-8037

State of South Carolina
County of Richland

Sworn to before me this 26th
day of January, 2017



Notary Public - State of South Carolina



My commission expires: July 1, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Joseph C. Rivett

Plaintiff,

vs.

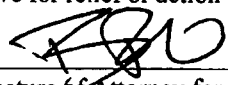
William Joe Jackson, Bruce Ludlum and Celadon Trucking
Services, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-6228

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Tucker S. Player, Bar No. Post Office Box 21005 Columbia, SC 29221 Phone: 803-772-8008 Fax: 803-772-8037 E-mail: tucker@playerlawfirm.com Other:		Defendant's Attorney: Brandon R. Gottschall, Bar No. Post Office Box 12129 Columbia, SC 29211 Phone: (803) 256-2233 x7132 Fax: (803) 256-2177 E-mail: brg@swblaw.com Other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Motion to Assign Successor</u> Estimated Time Needed: <u>.30</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  _____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant July 18, 2017 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>met/s</u> Date Filed: <u>7/18/17</u> ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) THE FIFTH JUDICIAL CIRCUIT

Joseph C. Rivett

) Civil Action No.: 2014-CP-40-6228
)
)

Plaintiff,

v.

William Joe Jackson, Bruce Ludlum
and Celadon Trucking Services, Inc.

Defendant.

MOTION TO ASSIGN SUCCESSOR

RICHLAND COUNTY
FILED
2017 JUL 8 PM 4:55
JEANNE E. W. MCORRINE
C.C. & G.S.

Defendants Bruce Ludlum and Celadon Trucking Services, Inc. ("Defendants") hereby move for assignment of a successor judge to hear and decide the Defendants' Rule 60(b) motion in this matter. Defendants' motion is based on the unfortunate passing of the trial judge in this matter, Judge Tanya Gee.

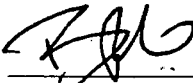
This matter was tried by jury before the Honorable Judge Tanya Gee, and a verdict for the Plaintiff was entered on February 5, 2016. Thereafter, Defendants filed a notice of appeal on March 3, 2016. Following a delay during which the trial transcript was being prepared, Defendants filed a motion with the court of appeals on January 3, 2017, for leave to file a Rule 60 motion with the trial court. The parties briefed the motion, with the Plaintiff filing a motion opposing remand. The court of appeals granted the motion on March 24, 2017, allowing Defendants fifteen days to file the Rule 60 motion with the circuit court and remanding the matter for a total of 90 days. Defendants filed their Rule 60 motion on April 7, 2017, and the motion has been briefed by Defendants and is ready for hearing.

Rule 63 of the South Carolina Rules of Civil Procedure provides for assignment of a successor judge if, "at any time after a trial or hearing has been commenced, but before the final order or judgment has been issued, the judge is unable to proceed, a successor judge shall be assigned." Tragically, the trial judge in this matter, Judge Tanya Gee, passed away following the trial of this matter but prior to the Court of Appeal's remand. As a result, it appears that there is not a judge currently assigned to this matter.

As a result, pursuant to Rule 63, the Court's authority to manage the docket, and other applicable South Carolina law, Defendants request a successor judge be assigned to this matter for additional proceedings as set forth in Defendants' Rule 60(b) motion and supporting memorandum.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Brandon R. Gottschall
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(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
July 18, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Tanya A. Gee, Circuit Court Judge

Appellate No. 2016-000462
Case No. 2014-CP-40-6228

Joseph C. Rivett, ...Respondent,

v.

Bruce Ludlum and Celadon Trucking Services, Inc., ...Appellants.

**APPELLANTS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE RULE 60(b)
MOTION WITH TRIAL COURT**

Appellants hereby submit this Reply in support of their January 3, 2017 Motion for leave to file a Rule 60(b) motion with the Trial Court. Respondent filed a Return to the Motion on January 26, 2017. As explained below, Respondent's Return in opposition to Appellant's Motion is without merit.

1. Respondent's Misrepresentations

Respondent first asserts that no fraud, misrepresentation, or misconduct occurred in this case because his statements to the court were based on a misinterpretation of Trooper Trotter's statements. Respondent's contention, however, is without merit. Respondent represented to the trial court that "he [Trooper Trotter] told me that he would be here by 2:30." Transcript of Record at 132:15-16 (emphasis added). This statement communicates to the court that Respondent's counsel was personally told by Trooper Trotter that the Trooper would be in court at a specific time. Nor was this a one-time slip, as counsel later again stated that Trooper Trotter "indicated he would be here by 2:30." *Id.* at 134:18-20. However, Trooper Trotter never told anyone that he would be in court at 2:30 on February 3, 2016, much less Respondent's counsel personally. *See* Affidavit of Trooper Brian Trotter, Exhibit A to Appellant's Motion for Leave; *see also* Affidavit of Tucker S. Player, Exhibit A to Respondent's Return. Moreover, Trooper Trotter's alleged statement "message received," made to the process server and passed second-hand to Respondent's counsel, in no way affirmed that the Trooper would appear in court. *See* Affidavit of Tucker S. Player, Exhibit A to Respondent's Return. Rather, the reasonable

interpretation is simply what the words convey: that the Trooper received the subpoena. Thus, the record reflects that a misrepresentation was made to the court.

2. Respondent's Misrepresentations were Extrinsic

Respondent next asserts that equitable relief from the trial court's judgement is unavailable in this matter because Appellants' motion is based on extrinsic rather than intrinsic fraud. However, this matter involves misrepresentation by "an attorney—an officer of the court," and as such is extrinsic rather than intrinsic. Chewning v. Ford Motor Co., 354 S.C. 72, 82, 579 S.E.2d 605, 610 (2003). This misrepresentation deprived the Appellants from the opportunity to cross-examine a witness in court. The importance of this right is demonstrated by the fact that Rule 23(a)(3)(E) permits deposition testimony to be read only in *exceptional* circumstances. Respondent's failure to properly subpoena a witness is not an exceptional circumstance, as the trial court found (*see* Transcript of Record at 140:3-7); rather, the court relied on Respondent's representation that Trooper Trotter "told me that he would be here."

Respondent appears to assert that Appellants' claim of prejudice is "ridiculous." However, the importance of Trooper Trotter's testimony is illustrated by Respondent's own extensive efforts to introduce the testimony. Specifically, Respondent shuffled other witnesses' schedules, sought additional time from the trial court, and asserted that exceptional circumstances existed for admission of the trooper's deposition testimony. Furthermore, Respondent cited the trooper's testimony in his opposition to Appellants' motion for directed verdict. Yet Appellants were deprived of an opportunity to cross-examine this witness based on a misrepresentation by Respondent. As a result, Appellants seek leave from the Court to file a Rule 60 motion with the trial court.

3. Respondent's Misrepresentations were Material

Respondent next asserts that there is no evidence that the trial court relied on Respondent's misrepresentations to admit Trooper Trotter's deposition testimony in the Trooper's absence. However, the only pieces of evidence before the court as to whether exceptional circumstances existed for use of the deposition testimony were Respondent's failure to properly subpoena the trooper to appear at 9:30 a.m., the Respondent's subsequent untimely subpoena for the trooper to appear later the same day at 2 p.m., and Respondent's representation that the trooper told Respondent's counsel that he would be in court at 2:30 p.m.

The trial court found that the first two pieces of evidence were insufficient. Regarding Respondent's belief that the trooper would appear at 9:30, the court stated "[y]ou do have to subpoena him, and there was an issue with your subpoena, which I gave you an opportunity to get the trooper here by two o'clock. When we got here by two o'clock, he said he'll be here by 2:30." Transcript of Record at 139:11-14. Regarding the Respondent's subsequent subpoena for the trooper to appear at 2 p.m. the same day, the court found that such a subpoena did not provide sufficient time. *Id.* at 134:1-21. Thus, Respondent's representation that the trooper told Respondent he would be present was the only material piece of evidence before the court.

To the extent Respondent's Return attempts to blame the trooper's failure to appear on the fact that Appellants released the trooper from their own subpoena, the Respondent's contention was fully addressed by the trial court. See Respondent's Return at 4-5. Respondent selectively cites portions of the record, leaving out the court's later statement that "... I think it's good that we got it cleared up on the record because I do think there is some confusion over exactly what happened and that has been cleared up." Transcript of Record at 141:13-16 (emphasis added).

Respondent also asserts that the trial court "found that Appellants suffered no prejudice" from the deposition testimony. Respondent's Return at 4. The "finding" cited by the Respondent is not a finding at all; it appears the trial court was simply attempting to finish Respondent's sentence. See Transcript of Record at 140:14-18. The deposition testimony had not even been reviewed at that time.

4. The Rule 60(b) Motion is an Appropriate use of Time and Resources

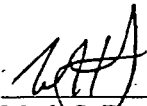
Finally, Respondent argues that Appellant's motion is a waste of time and resources because the presiding trial judge has since passed away. As a result, Respondent asserts that no judge could appropriately rule on the Rule 60 motion. However, motions are frequently heard by trial judges who were not involved in the original proceedings, and the record here provides a roadmap for the trial court judge who would hear the motion.

To the extent Respondent asserts the Rule 60(b) motion would be sought "in place" of an appeal and that such action is not "allowed under South Carolina law," the Respondent's contention is without merit. Rule 60(b) plainly allows a party to seek leave to file a motion for relief from a judgment. Furthermore, the importance of providing this review is made clear by the different standards applied in the trial court as opposed to the Court of Appeals. Specifically, the trial court has within its sound discretion the decision whether to grant a Rule 60(b) motion. The Court of Appeals, in contrast, reviews the trial judge's decision only for an abuse of discretion.

As a result, Appellants Motion for Leave to File a Rule 60(b) Motion should be granted.

February 6, 2017

Respectfully,


for Mark S. Barrow
Brandon R. Gottschall
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(803)256-2233
Attorneys for Appellant

State of South Carolina) In the Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2014-CP-40-06228

Joseph Rivett,

Plaintiff,

Vs.

Bruce Ledlum and Celadon
Trucking Services, Inc.,

Defendant.

Transcript of Record

February 2 - 4, 2016
Columbia, South Carolina

B e f o r e:

The Honorable Tanya Gee, Judge

A p p e a r a n c e s:

Tucker S. Player, Esquire
Attorney for the Plaintiff

J. Eric Cavanaugh, Esquire
Mark Barrow, Esquire
Attorneys for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

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D-7	Physician Note/Our Lady, 1 pg.		6
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DAY ONE

(Plaintiff Exhibits No. 1 through 6 and Defendant Exhibits No. 1 through 9 in evidence by stipulation.)

1 THE COURT: Good morning, everyone.

2 PROSPECTIVE JURORS: Good morning.

3 THE COURT: My name is Tanya Gee and I will be
4 presiding over this trial today. I'm delighted that you're
5 here in Richland County today. I understand that there
6 were some of you who were a little late this morning. This
7 morning is a trial run for people. You might not know the
8 ins and outs of the traffic flow into the courthouse. You
9 might not understand how difficult it sometimes is to park
10 and then walk over, but let this -- today be kind of a
11 lesson for you so that you're not late if you're selected
12 for the jury because that can cause all sorts of problems
13 when it happens. so I just want to make sure that y'all
14 are aware when court starts, we need to start on time.

15 I do also understand the inconvenience of jury
16 service. It's something that people usually aren't
17 thrilled to do, but I hope that if you're selected for this
18 jury, that you'll find it to be an enjoyable experience.
19 I'll certainly try not to waste your time while we're here
20 in the courtroom.

21 And what I've found is that jurors often make friends
22 on the jury. There are not many times in modern life right

1 now where you aren't on your phone or you're not on social
2 media all the time. Well, guess what? When you're
3 selected for a jury, you're not allowed to constantly be on
4 electronics, and so it's a real good chance to meet your
5 neighbor. So I think you'll find that you'll enjoy it if
6 you are selected.

7 (To the bailiff) Do we have the last juror?

8 THE BAILIFF: Yes, the last juror. Do you want him to
9 come in?

10 THE COURT: Have -- have the person come in.

11 THE BAILIFF: Thank you.

12 THE COURT: Thank you. All right. We now have the
13 entire jury panel. And we are about to begin the trial of
14 the case of Joseph C. Rivett against Bruce Ledlum and
15 Celadon Trucking Services, Incorporated.

16 Before we select a jury, there are several questions
17 which I'll ask you.

18 Will the clerk please swear in the jury panel?

19 THE CLERK: Yes, ma'am. Ladies and gentlemen of the
20 jury, will you please stand and raise your right hand.

21 (The jury is sworn.)

22 THE CLERK: Thank you.

23 THE COURT: Is any member of the jury panel related by
24 blood or marriage to either Joseph Rivett or Bruce Ledlum?
25 If so, please stand.

1 (No one responds.)

2 THE COURT: Does any member of the jury panel have a
3 close personal or social relationship with Joseph Rivett or
4 Bruce Ledlum? If so, please stand.

5 (No one responds.)

6 THE COURT: Has any member of the jury panel or close
7 family member ever had any dealings whatsoever with Celadon
8 Trucking Services, Incorporated?

9 (No one responds.)

10 THE COURT: The following is a list of possible
11 witnesses in this case: Lance Corporal Brian Trotter;
12 William Jackson, he goes by Bill Jackson; Dr. Charles
13 Hughes; Dr. Joseph Archer; Dr. Joseph Boucree; Dr. John
14 O'Neal.

15 Is any member of the jury panel related by blood or
16 marriage to any of the people I've just listed, or does
17 anyone have a close personal or social relationship with
18 any of these people? If so, please stand.

19 (No one responds.)

20 THE COURT: The attorneys in this case are Tucker
21 Player of the Player Law Firm.

22 Mr. Player, if you could please stand?

23 (Mr. Player complies.)

24 THE COURT: He represents the Plaintiff.

25 And Mark Steven Barrow and James Eric Cavanaugh of the

1 law firm Sweeney, Wingate, and Barrow on behalf of
2 Defendants Bruce Ledlum and Celadon Trucking Services,
3 Incorporated.

4 Has any member of the jury panel ever been represented
5 by any of the attorneys involved in the case or by their
6 law firms?

7 (No one responds.)

8 THE COURT: Is any member of the jury panel related by
9 blood or marriage to or have a close personal or social
10 relationship with any of the attorneys involved in this
11 case or anyone in their law firms?

12 (Juror stands.)

13 Yes, sir, if you could please state your jury number
14 for me?

15 PROSPECTIVE JUROR: Steve -- 224.

16 THE COURT: And your name?

17 PROSPECTIVE JUROR: Steve Searcy. I'm a real estate
18 attorney here in town, and I've represented Sweeney,
19 Wingate, and Barrow on real estate matters before, the law
20 firm.

21 THE COURT: Okay. And would that relationship with
22 the law firm affect your ability to be fair and impartial
23 in this particular case?

24 PROSPECTIVE JUROR: It would not.

25 THE COURT: Okay. Thank you, sir.

1 This case involves an automobile accident in which the
2 Plaintiff, Joseph Rivett, alleges he was injured. Has any
3 member of the jury panel formed or expressed an opinion
4 about any issue or matter involved in this case?

5 (No one responds.)

6 THE COURT: Has any member of the jury panel or close
7 family member ever been a plaintiff or a defendant in a
8 lawsuit involving an automobile accident? If so, please
9 stand.

10 (Jurors stand.)

11 Yes, ma'am, if you could state your juror number for
12 me?

13 PROSPECTIVE JUROR: 13.

14 THE COURT: Okay. And was it you or a family member?

15 PROSPECTIVE JUROR: It was myself and my father. It -
16 - in 2000.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: I was 20.

19 THE COURT: Were you the plaintiff ---

20 PROSPECTIVE JUROR: I ---

21 THE COURT: --- or the defendant? Were you the one --

22 PROSPECTIVE JUROR: Defense.

23 THE COURT: You were the -- okay. So you were the one
24 who allegedly was at fault?

25 PROSPECTIVE JUROR: Correct.

1 THE COURT: Having been involved as a defendant in a
2 lawsuit that involved in an automobile wreck, would you
3 that affect your ability to be fair and impartial in this
4 particular case?

5 PROSPECTIVE JUROR: No, ma'am.

6 THE COURT: Thank you very much.

7 Ma'am, if you'll give me your jury number?

8 PROSPECTIVE JUROR: 293.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: Youtha Worthy. My daughters and
11 granddaughter.

12 THE COURT: Okay. Were they the plaintiff or the
13 defendant in the lawsuit?

14 PROSPECTIVE JUROR: Plaintiff.

15 THE COURT: Okay. Having had a daughter and
16 granddaughters involved in a lawsuit involving an
17 automobile accident, would that affect your ability to be
18 fair and impartial in this particular case?

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Thank you, ma'am.

21 Sir?

22 PROSPECTIVE JUROR: 260.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: And my son and my daughter were
25 involved in an accident.

1 THE COURT: All right. Were they -- was there a
2 lawsuit that ---

3 PROSPECTIVE JUROR: Yeah. We sued the -- the -- the
4 other person.

5 THE COURT: The other side. So they were the
6 plaintiffs. Would that affect your ability to be fair and
7 impartial in this particular lawsuit?

8 PROSPECTIVE JUROR: Probably not.

9 THE COURT: Okay. Thank you, sir.

10 Has any member of the jury panel or close family
11 member been employed by or received services from a
12 chiropractor? If so, please stand.

13 (Jurors stand.)

14 All right. We'll start from left to right over here,
15 sir? Yes.

16 PROSPECTIVE JUROR: Juror 276, William B. Whitney. My
17 mother had to go to a chiropractor from a car accident.

18 THE COURT: Okay. Thank you. You can have a seat.

19 Yes, ma'am?

20 PROSPECTIVE JUROR: Juror 27, Makila Bowman. I
21 attended a chiropractor for a car accident.

22 THE COURT: You went to a chiropractor after a car
23 accident?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay. Would that affect your ability to

1 be fair and impartial in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Thank you.

4 Yes, ma'am?

5 PROSPECTIVE JUROR: Jury No. 111, Alana Herman. I see
6 a chiropractor from time to time, not as a result of an
7 accident.

8 THE COURT: Okay. Thank you, ma'am. You may have a
9 seat.

10 Sir?

11 PROSPECTIVE JUROR: 260, same accident. My son had to
12 go and my daughter, too.

13 THE COURT: Okay. And again, would that affect your
14 ability to be fair and impartial in this case?

15 PROSPECTIVE JUROR: No, ma'am.

16 THE COURT: Okay. Thank you, sir.

17 Ma'am, in the pink?

18 PROSPECTIVE JUROR: 149. I have seen a chiropractor
19 years ago, but not related to an automobile accident.

20 THE COURT: Okay. Thank you. You may have a seat.

21 Yes, sir?

22 PROSPECTIVE JUROR: 100. I went to a chiropractor,
23 probably 12 years ago, for a pinched nerve.

24 THE COURT: Okay. Thank you, sir. You can have a
25 seat.

1 Yes, ma'am?

2 PROSPECTIVE JUROR: 268. I see a chiropractor
3 regularly for my back.

4 THE COURT: Okay. All right.

5 PROSPECTIVE JUROR: Not a -- not a -- not an accident.

6 THE COURT: Thank you, ma'am. You may have a seat.

7 All right. There may be some overlap with this
8 question, but just bear with me: Has any member of the
9 jury panel or close family member ever been diagnosed with
10 and/or treated for neck or back injury? If so, please
11 stand.

12 (Jurors stand.)

13 PROSPECTIVE JUROR: 173.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: I had a back injury about 25 years
16 ago.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: I got treated and I'm fine now.

19 THE COURT: All right. Thank you, sir.

20 Let's start way over on the left here, sir, in the
21 jacket.

22 PROSPECTIVE JUROR: Jerry Mitchell, No. 176. I'm
23 currently being treated by a doctor with Midlands
24 Orthopedic for back problems.

25 THE COURT: Okay. Thank you. You may have a seat.

1 Yes, ma'am, in the front?

2 PROSPECTIVE JUROR: No. 138, Sharon Keith. My husband
3 was in an injury -- had an injury at work several years ago
4 and had a back issue.

5 THE COURT: Okay. Thank you, ma'am.

6 Yes, ma'am, next?

7 PROSPECTIVE JUROR: 74, Leslie Downs. My son had some
8 neck issues.

9 THE COURT: Okay. Thank you.

10 Sir?

11 PROSPECTIVE JUROR: Same here -- I'm sorry, 276. Same
12 here from that accident.

13 THE COURT: From the accident before?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Thank you. You can have a seat.

16 Yes, ma'am?

17 PROSPECTIVE JUROR: 27, Makila Bowman. Just a neck
18 injury.

19 THE COURT: Okay. Thank you.

20 PROSPECTIVE JUROR: 149. Back injury, 20 -- 20-plus
21 years ago.

22 THE COURT: Okay. Thank you, ma'am.

23 Does any member of the jury panel know of any reason
24 whatsoever why he or she could not be fair and impartial in
25 this case? If so, please stand.

1 (No one responds.)

2 THE COURT: All right. Are there any additional
3 questions from either the Plaintiff or the Defendant side?

4 MR. CAVANAUGH: Your Honor, the trucking industry
5 question.

6 THE COURT: All right. Thank you. I'm sorry. I had
7 that circled and I didn't ask that.

8 Has any juror or any member of their immediate family
9 ever worked in the trucking industry? If so, please stand.

10 (Jurors stand.)

11 All right. Again, if you'll say your number for the
12 record?

13 PROSPECTIVE JUROR: Sure. 276, William B. Whitney. I
14 owned a brokerage company for a short period of time in
15 Louisville, Kentucky.

16 THE COURT: Okay. And that was a -- that was a
17 trucking company?

18 PROSPECTIVE JUROR: Yes, it was. We -- we transported
19 -- we brokered the transportation ---

20 THE COURT: Okay. Thank you very much.

21 Yes, ma'am?

22 PROSPECTIVE JUROR: 282, my dad worked for a trucking
23 company. I don't remember which one.

24 THE COURT: Okay. Thank you, ma'am.

25 Yes, ma'am?

1 PROSPECTIVE JUROR: 258. My mom worked for
2 Southeastern -- Southeastern Freight Lines couple years
3 ago.

4 THE COURT: Okay. Thank you.

5 THE CLERK: She said 258?

6 THE COURT: 258 is your number?

7 PROSPECTIVE JUROR: Yes, 258.

8 THE COURT: Yes, ma'am. All right.

9 Mr. Player, Mr. Barrow, and Mr. Cavanaugh, you have
10 before you the strike sheets, unless there are additional
11 questions. Did you have an additional question, Mr.
12 Barrow?

13 MR. BARROW: No -- no additional questions. You're
14 going to give us a few minutes after this to go ---

15 THE COURT: I ---

16 MR. BARROW: --- look at this.

17 THE COURT: I will.

18 MR. BARROW: Thank you.

19 THE COURT: I'll give you about five minutes, okay?

20 MR. BARROW: Okay. Great.

21 (Brief pause.)

22 THE COURT: All right. Are both sides ready to
23 proceed with the strikes?

24 (No one responds.)

25 Mr. Player, you go first.

1 MR. PLAYER: Plaintiff strikes No. 3.

2 THE CLERK: Plaintiff strikes 3.

3 MR. BARROW: Defendant strikes No. 9.

4 THE CLERK: Defendant strikes 9.

5 MR. PLAYER: Plaintiff strikes 12.

6 THE CLERK: Plaintiff strikes 12.

7 MR. BARROW: Defendant strikes 14.

8 THE CLERK: Defendant strikes 14.

9 MR. PLAYER: Plaintiff strikes 23.

10 THE CLERK: It's 1 through 20, Mr. ---

11 MR. PLAYER: Oh, I'm sorry.

12 THE CLERK: That's all right.

13 MR. PLAYER: Number 2.

14 THE CLERK: Plaintiff strikes 2.

15 MR. BARROW: Defendant strikes 15.

16 THE CLERK: Defendant strikes 15.

17 MR. PLAYER: Plaintiff strikes 13.

18 THE CLERK: Plaintiff strikes 13.

19 MR. BARROW: Defendant strikes 20.

20 THE CLERK: Defendant strikes 20.

21 (To the Court) Are we doing an alternate?

22 THE COURT: Yes. We're going to do two alternates.

23 So 21 through 23 will be your choices for the -- you each

24 get one strike to select the alternate between 21 and 23.

25 And then we'll do a second alternate between 24 and 27 --

1 26, I'm sorry.

2 MR. PLAYER: Plaintiff strikes 23.

3 THE CLERK: Plaintiff strikes 23.

4 MR. BARROW: Defendant strikes 22.

5 THE CLERK: Defendant strikes 22.

6 THE COURT: Now, from 24 to 26.

7 MR. PLAYER: Plaintiff strikes 24.

8 THE CLERK: Plaintiff strikes 24.

9 MR. BARROW: Defendant strikes 26.

10 THE CLERK: Defendant strikes 26.

11 Counsel, allow me to review your strikes, please. For
12 the Plaintiff, I have 3, 12, 2, 13, 23, and 24.

13 MR. PLAYER: That is correct.

14 THE CLERK: Thank you.

15 For the Defendant I have 9, 14, 15, 20, 22, and 26.

16 MR. BARROW: That's correct.

17 THE COURT: All right. Madam Clerk, can you please
18 seat the jury?

19 THE CLERK: Thank you, Your Honor. Ladies and
20 gentlemen, as I call your name, please come down, bring all
21 your belongings with you, and have a seat in the jury box.

22 Graham Hoynes.

23 (A white male comes forward.)

24 William Whitney.

25 (A black male comes forward.)

1 Tiffany Turner.
2 (A black female comes forward.)
3 Is it Nontombe Brown?
4 (A black female comes forward.)
5 John Haddon.
6 (A white male comes forward.)
7 Ty'esha Williams.
8 (A black female comes forward.)
9 Perry Edmonds.
10 (A black male comes forward.)
11 Regina Washington.
12 (A black female comes forward.)
13 Thomas Landrum.
14 (A white male comes forward.)
15 Sharon Keith.
16 (A white female comes forward.)
17 Stacy Young.
18 (A white female comes forward.)
19 Alana Herman.
20 (A white female comes forward.)
21 Christopher Miller.
22 (A white male comes forward.)
23 Youtha Worthy.
24 (A black female comes forward.)
25 THE CLERK: Y'all can breathe now. It's okay.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, I'm going to excuse you just for a moment so I can
3 give instructions to those folks who are still in the
4 audience. If you will follow the bailiff to the jury room.

5 You are not to discuss this case yet. I'm going to go
6 ahead and tell you that. You don't know anything about
7 this case, but every time that I release you from the
8 courtroom, I'm going to let you know that you can't talk
9 about this case to people on the jury, people off the jury.
10 You can't discuss the case at all until after the verdict
11 or until I tell you that you can deliberate with your
12 fellow jurors. Don't discuss what's gone on in the
13 courtroom. Thank y'all very much.

14 (The jury exits the courtroom at 10:13 a.m.)

15 THE COURT: All right. Are there any matters to be
16 discussed about jury selection?

17 MR. PLAYER: None from Plaintiff, Your Honor.

18 MR. BARROW: Not for the Defendant.

19 THE COURT: Wonderful.

20 All right. Ladies and gentlemen, you are not on this
21 particular jury. You are excused for the day. Have you
22 received the call-in information yet?

23 (No one responds.)

24 THE COURT: Not yet, so you'll be going --
25

1 (No audible response.)

2 THE COURT: Okay. You have -- they need to go
3 downstairs before leaving. Okay.

4 Ms. Shirley is telling me -- pointing downstairs, so
5 you can't leave quite yet. You'll be given instructions
6 about what to do from here on out. You'll be calling into
7 a certain telephone number, usually after six o'clock, but
8 they'll give you those instructions when you go downstairs
9 back to the jury assembly room. I hope you have a great
10 day.

11 (Jury panel exits the courtroom at 10:17 a.m.)

12 THE COURT: We can bring the jury back in.

13 THE BAILIFF: Okay.

14 (The jury enters the courtroom at 10:19 a.m.)

15 THE BAILIFF: Jury panel's seated, Judge.

16 THE COURT: All right. Ladies and gentlemen, I am
17 going to ask that Ms. Turner be seated as the foreperson.
18 I think she is right here. Yep.

19 (To Juror Turner) And that's fine for you to sit here.
20 As fore -- as foreperson, I'll ask you to do basically
21 three things. You're the spokesperson for the jury. If
22 somebody needs to use the restroom and can't seem to get my
23 attention, you can tap on her shoulder and she will make
24 sure she gets my attention. She can also speak with one of
25 the bailiffs, try to get their attention if -- if someone

1 needs a break.

2 She also will preside over the deliberations.
3 Everyone has an equal vote in deliberations. You'll hear,
4 at the end when I give you instructions, that the verdict
5 has to be unanimous, but it helps for someone to sort of
6 take the lead and get the -- the ball rolling. And so she
7 will be the one to preside over the deliberations.

8 She's also responsible for writing on the verdict
9 form. When a verdict is rendered, Ms. Turner, you will
10 actually sign the verdict form on behalf of the jury.

11 Mr. Miller and Ms. -- is it Worthy?

12 JUROR: Worthy.

13 THE COURT: Worthy, okay. You all both have been
14 selected as alternates. Your role is to replace other
15 jurors if, for some reason, they are unable to serve. In
16 that event, you will become the 12th juror. If, at the
17 end, no alternates are needed, then your service will end.

18 And Madam Clerk, can you go ahead and swear the -- the
19 jury panel?

20 THE CLERK: Yes, ma'am. Ladies and gentlemen of the
21 jury, please stand and raise your right hand to be sworn.

22 (The jury is sworn.)

23 THE COURT: Ladies and gentlemen of the jury, the case
24 we're about to try is the case of *Joseph C. Rivett,*
25 *Plaintiff, vs. Bruce Ledlum and Celadon Trucking Services,*

1 *Incorporated, Defendants.*

2 Before we begin the trial, I want to tell you that
3 this trial probably will be different from what you might
4 expect. Many people don't have the chance to attend actual
5 court sessions as you're doing now, and you may think from
6 watching TV or movies or reading books that trials are
7 always full of high drama, intense action, and riveting
8 circumstances.

9 While all of those things may be true at times, this
10 trial is not for entertainment. It's a fundamental part of
11 our democracy, a search for truth, in an effort to make
12 sure that justice is done between the parties before the
13 Court. Searching for the truth and making sure that
14 justice is done is often slow, deliberate, and repetitive,
15 the opposite of what you may have seen on TV or in movies
16 or read in books.

17 This courtroom is a place of honor dedicated to the
18 protection and preservation of citizens rights through what
19 many have called "the greatest justice system in the
20 world."

21 The attorneys appearing before you are advocates
22 foremost, and they are officers of the court. They are
23 sworn to uphold the integrity and fairness of our judicial
24 system and to help you in the search for the truth. You
25 should expect them to be professional, competent, and

1 ethical in their representation of their client's
2 interests. Remember that you have taken an oath to try
3 this case and reach a fair and just verdict; and you are
4 also expected to be professional, reasonable, and ethical.
5 Thank you for accepting the important responsibility of
6 jury service and for your contribution today to our justice
7 system.

8 What I will now say is meant to serve as an
9 introduction to the trial of this case. These remarks are
10 not a charge on the law in this case. I'll instruct you on
11 the law at the end of the trial, before you retire to
12 decide the case. Before the trial begins, I want to
13 explain the procedure that we'll follow so that you can
14 better understand what's happening.

15 You have been selected as fair and impartial jurors
16 whose purpose is to find and determine the facts. You are
17 the sole judge of the facts. If at any time I make a
18 comment regarding the facts, you must disregard it. You
19 are to determine the facts from the testimony you hear and
20 any other evidence that is presented. You should not be
21 influenced by any opinions or statements you may have heard
22 outside this courtroom.

23 On the other hand, and with an equal emphasis, the
24 same law that makes you the judges of the facts makes me
25 the judge of the law. The law, as given by the Court, is

1 the only law you may consider. You must accept and follow
2 it even though you may disagree with it. I cannot tell you
3 what the facts are and you cannot disagree with me about
4 what the law is or should be.

5 Your job is to take the law as I give it to you and
6 apply it to the facts, as you find them, from the testimony
7 of the witnesses and any other evidence that is presented.
8 After doing that, you will render your verdict.

9 Until I advise you to begin your deliberations, you
10 must not discuss this case with anyone, including your
11 fellow jurors, friends, family members, and anyone involved
12 in the case. This includes discussions face-to-face and
13 those by electronic means. You may not use a computer,
14 cell phone, or other electronic device with communication
15 capabilities at any time while in the courtroom or during
16 deliberations. You may use these devices during breaks;
17 however, you may not at any time use these devices to get
18 or send information about the case.

19 After the case is submitted to you, you must discuss
20 it only in the jury room with your fellow jurors. So if
21 you see anyone involved in the case in the hallways during
22 breaks and they do not even say hello, they're not being
23 unfriendly. They just know that they're not allowed to
24 speak with you.

25 It's important that you keep an open mind and not

1 decide any issue in the case until all the evidence has
2 been presented, the parties have made their closing
3 arguments, and I have instructed you on the law in this
4 case.

5 Now, in just a moment, the attorney for the Plaintiff
6 will make what is called an "opening statement." The
7 attorney will explain to you the issues in the case or at
8 least what the attorney believes the issues -- believes the
9 issues to be. The attorney for the Defendant will also
10 make an opening statement. What the attorneys tell you
11 during their opening statements is not evidence in this
12 case. It is only their contention as to what the issues
13 are. The evidence in this case will be presented to you by
14 the testimony of sworn witnesses from the witness stand and
15 by exhibits that may be introduced into evidence.

16 From time to time during the trial, you may hear one
17 of the lawyers say something like "we have a matter of law
18 that needs to be discussed with you" or they may ask to
19 approach the bench and we may whisper at the bench; or I
20 may actually send you out of the room so I can discuss a
21 matter of law with the attorneys. The reason for this is
22 because you are the judges of the facts in this ,and
23 sometimes when I'm discussing matters of law with the
24 attorneys, it may be necessary for me to make a comment as
25 to the facts in connection with ruling whether or not a

1 particular law applies.

2 I'm not supposed to tell you what I think the facts
3 are, so I'll excuse you from the courtroom while these
4 discussions take place so that you will not be influenced
5 by anything that I may say or do in connection with the
6 facts.

7 In determining what the true facts are in this case,
8 you must decide whether or not the testimony of the
9 witnesses is believable. It will be my responsibility to
10 rule as a matter of law as to whether certain testimony is
11 admissible at all or not, but once that testimony is
12 admitted, whether or not you believe it is solely for you
13 to determine.

14 You have a right to consider anything in the record
15 that will help you evaluate the testimony of the witnesses.
16 That means it's your duty to pay close attention to the
17 witnesses, to observe the witnesses, to listen to the
18 witnesses, and to pay close attention to the attorneys and
19 to the Court. Don't let your thoughts wander, but pay
20 attention to the testimony so that at the end of the trial,
21 you'll be able to determine what the true facts are, to
22 apply the law to those facts, and render a true and just
23 verdict. We will now begin the trial.

24 Mr. Player.

25 MR. PLAYER: Good morning, everybody.

1 THE JURORS: Good morning.

2 MR. PLAYER: My name's Tucker. I represent J. C.
3 Rivett. Mr. Rivett is from Louisiana, so he's traveled
4 quite a way. Mr. Rivett, I believe, is 62.

5 Is that correct, J. C.? How old are you?

6 MR. RIVETT: Sixty-one right now.

7 MR. PLAYER: Sixty-one. I can't count. That's why I
8 practice law.

9 All his life he's worked. He's worked as a truck
10 driver. He's worked labor. He's worked as a pipe fitter.
11 He worked in prison as a supervisor. He's always worked.
12 A life of hard work leads to issues with his body.

13 This case, more than anything else, is about what we
14 call a "pre-existing condition." And you're going to learn
15 a lot more than you ever thought you'd learn about pre-
16 existing conditions, what they are, and what the law says
17 you can recover if you have a pre-existing condition.

18 Essentially, as the Judge told you earlier, this is
19 about a traffic accident. Okay. J. C. was working in
20 North Carolina, for Westinghouse, as a pipe fitter and he
21 lives in Louisiana. Long drive. He was driving through
22 our fair city on the way going to a job, and traffic was
23 stopped because of another traffic accident. While J. C.
24 was stopped in traffic, he was hit from behind. And there
25 was a small sedan behind him and the truck of the

1 Defendant, Celadon, driven by Mr. Ledlum, was behind that
2 car.

3 Now, what J. C. remembers is that he was hit twice,
4 but he didn't see the wreck. And other people that did see
5 the wreck say there was only one contact, so that's an
6 issue. But the important thing is that J. C. was stopped
7 in traffic and he was hit from behind through no fault of
8 his own.

9 At the scene -- well -- and I'll tell you about the
10 hitch, okay. Because J. C. did so much traveling, he
11 carried an RV with him. He would go to sites all over the
12 country and basically bed down and work on what's called
13 "shut-downs," which means the plant's shut down and they
14 want you working as many hours as you can to get it done so
15 they can stop being shut down.

16 Well, he obviously is not going to make the commute
17 from North Carolina to Louisiana everyday. He -- he has to
18 have some place to live. So he took his place to live with
19 him, and that required him to have a big box hitch on the
20 back of his truck. That box hitch is what the car behind
21 him struck when it struck him, when it was struck by the
22 truck driven by Celadon. There was no damage to that hitch
23 and subsequently no damage to J. C.'s truck. There was
24 damage to the car behind him.

25 It was raining. He was trying to get to North

1 Carolina, and at the time of the accident, he didn't feel
2 anything. He didn't think he was hurt. So he said, "I
3 don't need an ambulance. I just want to get going." So he
4 left.

5 And on the way to North Carolina, about the time that
6 he hit that world-famous landmark, South of the Border, the
7 he pain hit him and he had to pull over and stop. He
8 couldn't make it, couldn't drive to South Port because of
9 the pain in his neck and his shoulders and radiating down
10 an arm. So that was on a Saturday.

11 On Monday, he went to see a chiropractor where he was
12 working in North Carolina called "Cypress Chiropractic."
13 Well, one of the -- probably the biggest issue in the case
14 is Cypress Chiropractic because J. C. -- this wasn't the
15 first time he had been there. Okay. He's been going to
16 chiros pretty much his whole life. But he had gone to
17 Cypress about three weeks before because he bumped his head
18 on the mirror at the site and he had a crick in his neck.
19 That's how he described it in his deposition.

20 Now, the symptoms that he described to Cypress are
21 similar to what he's complaining about here that he wants
22 to blame on the accident with Celadon, on paper. J. C.'s
23 the one that felt the pain. He's the one that was injured
24 and he will tell you that they're different. The Defense
25 is going to want you to think that it's the same, and their

1 truck, their 18-wheeler that struck him, was not the cause
2 of his injury, it was him bumping his head on a mirror.
3 Okay. That's going to be for you, and you're going to hear
4 from J. C. on that issue.

5 So J. C. had already decided he was tired of driving.
6 He was going home. Got a job at a prison in Louisiana. So
7 he treats for a couple of weeks at Cypress, he goes home to
8 his family chiropractor. A fellow by the name of "Dr.
9 Archer," and you're going to hear from Dr. Archer.

10 And over the course of -- again, I have to count --
11 five months, four or five months, he sees Dr. Archer. And
12 he gets some improvement. Okay. But according to both Dr.
13 Archer and to J. C., he wasn't cured, he wasn't fixed.
14 There were still issues, and he needed to do something else
15 because it wasn't going away.

16 And you're going to see a piece of paper that was
17 signed by J. C. where he says "pain level zero." But I
18 just ask you to wait for Dr. Archer's testimony to tell you
19 exactly what that meant -- well, what -- just wait for Dr.
20 Archer's testimony.

21 So J. C. is not fixed. Eventually, he talked to some
22 folks and he goes to see a lawyer in Louisiana. And the
23 lawyer says, "It sounds like you've got something serious.
24 Let's get you an MRI." They do things differently down
25 here -- down there than they do up here.

1 He gets the MRI. He goes to see an orthopedic surgeon
2 who specializes in the spine, and that surgeon tells him
3 you -- you need to be operated on immediately because you
4 have serious issues with your neck. And that's what
5 happens -- happened. They cut his neck, they break his
6 neck, they rebuild it, and fuse two of the vertebrae in his
7 neck.

8 For the next year, he is recuperating and he can't
9 work. Okay. The prison kept him on for a while, but
10 eventually they couldn't hold the job for him, and they had
11 to -- he got let go. When he was finally released for
12 work, Dr. Boucree instructs him he can't pipe fit any
13 longer.

14 And J. C.'s going to tell you that he made more money
15 pipe fitting than anything else he's ever done. And we're
16 going to show you tax records to show you how his income
17 has basically been cut in half over the last five years
18 because of everything that's gone on with the wreck, the
19 treatment, the surgery, and the aftermath.

20 Now, you're going to hear from Dr. Boucree. Dr.
21 Boucree is going to tell you that, in his medical opinion,
22 the surgery was necessitated by the accident. He's not
23 going to tell you that it caused all the injuries. He is
24 going to tell you J. C.'s 61, J.C. worked hard his whole
25 life. J.C.'s been in a lot of traffic accidents, which

1 you'll hear about.

2 But when the Judge charges you, you'll understand how
3 you have to treat pre-existing conditions. And we're not
4 denying that the conditions that had to be fixed were there
5 in a dormant state before this accident. It was the
6 accident that triggered it, it's the accident that made him
7 stop pipe fitting; and more importantly, it's the accident
8 that put it in a condition where he had to have the
9 operation.

10 And that operation is expensive. Just the meds in
11 this case are well over a hundred thousand dollars. That's
12 what was charged by the chiropractor he saw, the
13 orthopedic, and the hospital for the surgery.

14 He's lost over a hundred thousand dollars in income
15 that we'll put up before you. So we're talking about a lot
16 of money that has devastated J. C.'s life.

17 With regard to Dr. Boucree, it all goes back to
18 Cypress. J. C. sees Dr. Boucree a year later and when he
19 goes to see Dr. Boucree, Dr. Boucree says, "What's wrong?"
20 J. C. says, "I was in a wreck. I messed up my neck."

21 He doesn't mention Cypress. He doesn't mention
22 bumping his head on a mirror. So as you can imagine, the
23 fine gentlemen at that table (indicates) are going to tell
24 you that he wasn't honest with Dr. Boucree. He was trying
25 to hide something from him.

1 But I ask you to listen to J. C. That's not what was
2 in his mind. He'll explain it to you. He'll explain why
3 he didn't mention it, because he didn't think it was
4 important. But again, that's going to be for you.

5 So I ask you to listen to all the evidence. Don't
6 make any predetermined decision. Give J. C. a chance to
7 tell you his story, tell you how this has affected his
8 life; and in the end, I think you're going to find that
9 there's no issue about what we call "liability," whose
10 fault the accident was. The focus of this trial is going
11 to be how much of that accident can be attributable -- or
12 how much of J. C.'s injuries, his medical bills, and
13 everything he's gone through is attributable to the
14 negligence of Celadon Trucking.

15 Because when you run into somebody in front of you
16 that's stopped -- well, it'll be for you, but I don't think
17 that's going to be the hard decision. The decision is
18 going to be to determine is Celadon responsible for J. C.'s
19 injuries and if so, how much?

20 So I look forward to it. Hopefully, we're not going
21 to keep y'all long and it won't be terribly boring. And
22 thank you for listening to me.

23 THE COURT: Mr. Barrow?

24 MR. BARROW: May it please the Court, Your Honor.

25 Good morning.

1 THE JURORS: Good morning.

2 MR. BARROW: Ladies and gentlemen, let me introduce
3 myself again. My name is Mark Barrow. I practice law with
4 the firm of Sweeney, Wingate, & Barrow. We're here in
5 Columbia. I want to again introduce who you will be seeing
6 in the courtroom.

7 Eric Cavanaugh is a lawyer with me. You'll see him in
8 the courtroom. You'll hear from him as well. Mr. Ken
9 Carpenter's with Celadon Trucking. He'll be here
10 throughout the trial. And then Bruce Ledlum is the driver,
11 and you'll hear from his testimony as well. So I wanted to know
12 -- you to know who the players are, so to speak.

13 Obviously, there's a -- I -- I know you know this.
14 There's a -- there's two sides to this story or we would
15 not be here today, I assure you of that. If things were
16 exactly as you just heard, this case would have been
17 settled, we would not be sitting here in front of you, you
18 wouldn't be sitting in this jury box if things were exactly
19 the way you just heard. But as you might surmise, we have
20 a completely different story to tell.

21 Now, one of the things I just heard was that the 18-
22 wheeler struck him. The 18-wheeler did not strike him.
23 You'll hear testimony from the Plaintiff himself in the
24 jury box -- or the witness box, excuse me, that he was
25 struck actually twice. He's going to say he was struck

1 twice and he was struck twice by a Ford Focus that's not
2 going to be in this courtroom.

3 You're going to hear testimony and you're going to
4 actually see photographs that, even as a result of being
5 struck twice in an accident that they claim caused him such
6 injury and damages that necessitated back surgery and put
7 him out of work for a year, that it didn't even leave a
8 scratch on his trailer hitch, not one scratch. There's not
9 one item of damage on his truck or even on his trailer
10 hitch, not a scratch. And he says he's hit twice.

11 After the accident, you're going to hear testimony
12 that he got out of his car, he spoke to the driver that --
13 that hit him, said he was fine. Told the trooper he didn't
14 need an ambulance, wanted to get on his way. Told him he
15 was in a hurry to get back to Wilmington, North Carolina.
16 And in fact, that's exactly what he did.

17 You're going to hear testimony and you're actually
18 going to see records of this -- we're going to put those
19 into evidence for you to look at -- that he was actually
20 seeing a chiropractor right up until the time of this
21 accident. And he's seeing a chiropractor because he was
22 injured again when he struck a mirror on the side of a
23 vehicle. You're going to see those chiropractor's records
24 that says that the Plaintiff told that chiropractor he's
25 been treated for neck and back injuries since the 1980's, a

1 continuous ongoing treatment with various doctors and
2 chiropractors for neck and back injuries from a severe
3 accident that occurred in the 1980's.

4 You're going to hear testimony that since that
5 accident, he was involved in three more -- three or four
6 more other accidents.

7 So when he gets back to Wilmington, North Carolina
8 after this accident, he goes back to see the chiropractor
9 that was treating him right before this accident and
10 continued to be treated by him.

11 He then quits the job as a pipe fitter at Westinghouse
12 in North Carolina. He quit that job to take another job in
13 Louisiana, then moves to Louisiana.

14 On October the 3 -- this accident happened on
15 September the 8, of 2012. On October the 3, he goes to see
16 another chiropractor, a guy named "Dr. Archer," you're
17 going to hear his testimony.

18 Now, Dr. Archer treated him for -- I agree with Mr.
19 Player, probably five or six months. I know it was March
20 of the next year -- you're going to see documents and we're
21 going to put those into evidence for you to see because we
22 want you to see the records because the records and the
23 photographs tell a big story.

24 And those records are going to indicate that at the
25 time he finished treating with that chiropractor, Mr. --

1 the Plaintiff, Mr. Rivett, in his own handwriting says, "I
2 ain't in no pain and I have no problems." And the
3 chiropractor says, "You're released."

4 It's not 'til several months later that he goes to see
5 Dr. Boucree, the orthopedic surgeon -- and he was sent by
6 his Louisiana lawyer who's not in this courtroom -- to go
7 see his doctor, Dr. Boucree.

8 Now, what's interesting about that is that you're
9 going to hear testimony that Mr. Rivett had been seeing an
10 orthopedic surgeon on and off in Louisiana, Dr. Rills, for
11 5 to 10 years for neck and back problems. So in addition
12 to seeing chiropractors in North Carolina, he had been
13 seeing an orthopedic specialist in Louisiana for over 5 to
14 10 years.

15 He never goes to see Dr. Rills, his long-time
16 orthopedic surgeon, for injuries from this accident. He
17 goes to see Dr. Boucree, tells him he was in this
18 automobile accident. Dr. Boucree looks at him and says,
19 "You know what, you have options. Here are the options:
20 You can -- you can proceed with some of the conservative or
21 you can have surgery." He elects to have surgery. And in
22 fact, Dr. Boucree performs that surgery.

23 Dr. Boucree's testimony, you're going to see by video,
24 says based on the history -- in other words, what he was
25 told by Mr. Rivett -- he is of the opinion that this

1 accident exacerbated a pre-existing condition.

2 But he's asked several times, "Now, what's that
3 opinion based on?" "The history given to him by Mr.
4 Rivett." "Is that history important to you?" "Yes, it is.
5 I have to take them at their word."

6 What was not told to Dr. Boucree and what he never saw
7 was the -- was the records and the history of this man
8 being treated for a number of years, ongoing, even at the
9 time of this accident, for the exact same injuries. Never
10 told that to Dr. Boucree. Never showed the records to Dr.
11 Boucree. In fact, the chiropractor who treated him in
12 Louisiana, the one I was telling you about, Mr. Archer, who
13 released him in March where he said no pain, no problems,
14 those records were not provided to Dr. Boucree.

15 It's a different story we have to tell. It's a story
16 of a minimal accident, an accident so minimal, it didn't
17 leave a scratch. It's a story that there was no pain, no
18 damage, no injury, no call for an ambulance. Return back,
19 saw the same chiropractor.

20 And then finally, you're going to hear testimony from
21 an orthopedic surgeon in South Carolina, Dr. Hughes. Dr.
22 Hughes, unlike Dr. Boucree, has seen all of his medical
23 records. He's examined everything. He's going to testify
24 that that surgery is not as a result of this accident.

25 So you see, both in terms of how the accident happened

1 and the injuries that followed, we have a completely
2 different story to tell you. And that's the reason why
3 we're here.

4 I appreciate your patience. I -- I know you'd all
5 rather be doing something else rather than sitting in a
6 jury box in Richland County, but it's -- it's important to
7 us. It's important to Mr. Ledlum. It's important to Mr.
8 Carpenter. So we appreciate your time. I think we -- we
9 can probably get this to you in two days. Thank you very
10 much.

11 THE COURT: Mr. Player, you may call your first
12 witness.

13 MR. PLAYER: Thank you, Your Honor. The Plaintiff
14 would call J. C. Rivett.

15 THE COURT: All right.

16 J. C. RIVETT, having been first
17 duly sworn, testifies as follows:

18 THE CLERK: Thank you. Have a seat in the witness
19 stand, please. State your name for the record.

20 THE WITNESS: Joseph C. Rivett, Jr.

21 **DIRECT EXAMINATION**

22 BY MR. PLAYER:

23 Q Mr. Rivett, how do you like to be called, Joe or J.
24 C.?

25 A J. C. or Joe, either one's fine.

1 Q Okay. Where do you live?

2 A Walker, Louisiana.

3 Q How long you lived there?

4 A Since 1987.

5 Q 1987. Did you ever live in North Carolina as a
6 permanent resident?

7 A No, sir.

8 Q What's your educational background?

9 A Twelve years of school, some trade school, other
10 training in different places.

11 Q Tell me a little bit about your work history, what --
12 what you been doing for your life to earn keep.

13 A I've done carpenter work, built houses. I've done
14 pipe fitting. I've done truck driver, mechanic work, car
15 dealerships, service managers, performance, equipment
16 operator, whatever it took to make a living.

17 Q Are you married?

18 A Yes, I am.

19 Q What's your wife's name?

20 A Tammy.

21 Q How long you been married?

22 A Twenty-eight years.

23 Q Does Tammy work?

24 A No, sir.

25 Q Why not?

1 A She's disabled.

2 Q You mentioned "pipe fitter" earlier. What -- what
3 does a pipe fitter do?

4 A They have to measure pipe to go in these flats, cut
5 it, bevel it, grind it, fit it together so the welders can
6 weld it. You have to carry it different places, certain
7 weights, different lengths. It's manual labor.

8 Q So it's not a desk job?

9 A No, sir.

10 Q You've been doing that type of work most your life?

11 A Since I turned about 50 -- 49, 50 years old, I been --
12 I started doing it. Enjoyed it and kept doing it.

13 Q And who were you working for when you were pipe
14 fitting?

15 A Westinghouse.

16 Q How long did you work for them?

17 A Since 2007.

18 Q Until when?

19 A 2012.

20 Q And why did you leave them in 2012?

21 A To go home and be closer to my wife.

22 Q And in 2012, when you left, where were you -- what
23 plant were you at?

24 A Brunswick Nuclear Power Plant in South Port, North
25 Carolina.

1 Q Okay. And that's where you were working at the time
2 that the accident in this case occurred?

3 A Yes, sir.

4 Q Okay. Let's talk about the bus a few weeks before.
5 Can you tell me about when you bumped your head on a bus?

6 A That was in July in Rawlins, Wyoming. That was at
7 Rawlins Refinery over there. We were working night shift.
8 You could not walk around the plant. They had a school bus
9 to come around, pick you up, bring you from one spot to
10 another. And with a hard hat on, I was walking in front
11 that bus and it had a mirror sticking out on it. And it
12 grazed the top of my hard hat and it give me a little
13 crick.

14 Q A crick?

15 A Yes. It was a crick in my neck.

16 Q And did you go see somebody about that crick?

17 A No, sir, I did not. It didn't bother me a whole lot
18 at that point.

19 By the time I left that job and went to the job in
20 North Carolina, it got to bothering me a little bit, so I
21 decided to go see a chiropractor and get it straightened
22 out.

23 Q Do you remember the name of that chiropractor?

24 A O'Brien Cypress Chiropractic Center.

25 Q Cypress Chiropractic. Do you remember what you told

1 them when you started seeing them at Cypress?

2 A I told them what happened to my neck over there in
3 Wyoming and I got a crick in it.

4 Q Okay. You remember describing your injuries to them
5 when you went to Cypress?

6 A That was it. I told him what happened: I walked into
7 a mirror.

8 Q Okay. I'm going to hand you what's been entered as
9 Defendant's Exhibit 6. Do you recognize that document?

10 A Never seen this before 'til today.

11 Q Do you see where it discusses what they purport you
12 told them about your injuries? I think that's a copy.

13 Yeah. That was lawyer language. Hold on.

14 "Subjective complaints."

15 A This ain't right. I reported a pain in my left side
16 of my neck and my left shoulder, but the left arm and left
17 hand, I don't know where he got that from.

18 Q So you were experiencing pain in your neck and your
19 shoulder?

20 A Yeah. It's right through here (indicates.)

21 Q Okay. What about your restrictions on daily
22 activities? How were -- how was the crick affecting the
23 injuries -- your ability to do your day-to-day activities?

24 A It was uncomfortable, but I was able to function -- my
25 duties.

1 Q Do you recall how many times you saw Cypress about the
2 crick in your neck?

3 A Couple times a week.

4 Q And this was at the job site in North Carolina?

5 A Right.

6 Q Let's talk about September 8, 2012. What were you
7 doing on September 8, 2012?

8 A Traveling from my home in Walker to -- excuse me --
9 South Port, North Carolina.

10

11 (The witness coughs.)

12 Q You need some water?

13 A I just -- happens.

14 Q What happened when you traveled through Columbia on
15 September 8?

16 A Rolled up on an accident, and traffic was stopped and
17 we all stopped. Traffic started moving after a period of
18 time, started moving, traffic stopped. I stopped and then
19 I got hit.

20 Q And how many times did you get hit?

21 A I felt it twice.

22 Q Did you see anybody hit you?

23 A I couldn't see anything.

24 Q You just felt two impacts?

25 A That's correct.

- 1 Q Was there a difference between the impacts?
- 2 A Not in my opinion.
- 3 Q So after the impact --
- 4 A Sir?
- 5 Q After the impact, what happened?
- 6 A State trooper came over, asked could we move the
- 7 vehicles. Told him, "Yes, sir." So we moved them to the
- 8 shoulder. Asked if I was all right. At that time, I felt
- 9 all right.
- 10 Q So at the time of the accident, you didn't feel any
- 11 pain?
- 12 A No, sir.
- 13 Q Okay. Did you get out and inspect your vehicle?
- 14 A Yes, I did.
- 15 Q Was there any damage to your vehicle?
- 16 A No, sir, there was not.
- 17 Q What part of your vehicle was struck?
- 18 A My trailer and trailer hitch.
- 19 Q Okay. I'm going to ask you ---
- 20 A It's very large.
- 21 Q --- what's been introduced as Defendant's Exhibit 1.
- 22 A Uh-huh.
- 23 Q Is that a picture of your hitch?
- 24 A Yes, it is.
- 25 Q Okay. So this isn't just a regular boat hitch?

1 A That's correct.

2 Q Was there any damage to the hitch?

3 A No, sir.

4 Q What about the car behind you?

5 A Severe damage.

6 Q What damage did you witness to that vehicle?

7 A The front end was crushed in from hitting the trailer
8 hitch. The back end was crushed in from the truck that hit
9 him.

10 Q Anything else?

11 A Not that I can recollect.

12 Q Okay. At some point, did you tell anybody that you
13 were in a hurry?

14 A I don't recall.

15 Q Is it possible you said that?

16 A Possibility, yes.

17 Q Okay. So eventually you get to leave the scene,
18 correct?

19 A That is correct.

20 Q At some point, did you begin to feel pain in your
21 neck?

22 A By the time I got close to South of the Border up
23 there, I was feeling it pretty good and decided it was time
24 to stop and go ahead and get some rest and see if that
25 couldn't ease up.

1 Q Did it help?

2 A Not very much, but I was able to get some rest before
3 the next morning came around and get on into South Port.

4 Q Did you eventually go see somebody about the pain you
5 were feeling after the accident?

6 A Yes. That Monday I went back to Cypress Chiropractic
7 and told him that I had been in an accident and that things
8 were a whole lot worse than what they ever were.

9 Q Okay. And at the time that you got back and you went
10 to see Cypress for the first time, had -- had you already
11 secured the job in Louisiana?

12 A Not at that point, no. It was two weeks later before
13 I even heard I had a job.

14 Q Had you been seeking a job before the accident?

15 A I applied for it.

16 Q Okay. So you were -- you had intended to go back to
17 Louisiana before this accident occurred?

18 A I intended to if I got the job, yes.

19 Q Okay. So you continued treating at Cypress until you
20 went home?

21 A That is correct.

22 Q And then when you got back to Louisiana, did you see a
23 doctor there?

24 A Yes, I did.

25 Q Who'd you see?

1 A Dr. Archer.

2 Q And does your family have a history with him?

3 A My wife sees -- used to see him regular.

4 Q Okay. And when you went to see Dr. Archer, what did
5 you tell him about your injuries?

6 A I told him what happened: I'd been in an automobile
7 accident and I was having a lot of pain here (indicates.)

8 Q Okay. The pain that you were feeling after September
9 8, was it the same pain that you were feeling after the
10 incident where you bumped your head on the bus?

11 A No, sir.

12 Q How was it different?

13 A It was a whole lot worse and it radiated down this arm
14 (indicates.)

15 Q Okay. Did you -- did you get any improvement when you
16 saw Dr. Archer?

17 A Some, to a degree.

18 Q Okay. At some point did you leave his care?

19 A Yes, I did.

20 Q And why did you leave his care?

21 A Didn't feel like I was getting any further with
22 treatment.

23 Q I'm going to hand you what's been marked as
24 Defendant's Exhibit 4. See if you recognize that. The
25 front page is the main part.

1 (Brief pause.)

2 A Yeah.

3 Q See down at the bottom where you said pain was zero
4 and then the doctor wrote released?

5 A Yeah.

6 Q Had your pain completely resolved at that point?

7 A Not completely, but it eventually came back.

8 Q But you were the one that actually circled or put zero
9 there for pain, correct?

10 A That's right.

11 Q So if you weren't resolved, why did you put zero?

12 A I wasn't getting any better. It was time to do
13 something else. Dr. Archer and I had discussed that. It
14 was time for me to seek other avenues.

15 Q Okay. So that was a discussion that you had with Dr.
16 Archer?

17 A That is correct.

18 Q So after you finished treating with Dr. Archer, what
19 did you do?

20 A Nothing for a while. The more I hurt, the more I
21 complained. The more I complained, the more the family
22 kept telling me you need to find somebody to get you some
23 help. And I finally got a hold to my lawyer because
24 everybody -- they wanted payment up front, money up front.
25 I didn't have any health insurance. I don't have a whole

1 lot of money. So they had to make arrangements for things
2 to be taken care of so I could get treatment.

3 Q So once you contacted the lawyer -- Patrick Keating,
4 correct?

5 A That's right.

6 Q -- what did he do?

7 A Set me up for an MRI.

8 Q Okay.

9 A And then I was sent to Dr. Boucree and Dr. Boucree
10 went over everything. Asked me what happened, I told him
11 what happened. He told me what was wrong with my neck and
12 told me what needed to be done.

13 Q Now, did you tell Dr. Boucree about bumping your head
14 on the mirror?

15 A No, sir, I didn't.

16 Q Why not?

17 A Didn't even think about it.

18 Q Why not?

19 A I didn't see it as important at the time. I knew what
20 caused me to have all my pain. The greatest part of it was
21 from the accident with the truck. What I was feeling with
22 -- from the mirror was a crick in there.. And I'm sure
23 everybody in this room has had a crick in their neck
24 before. They know what that feels like. What I felt after
25 that accident was not the same as a crick in your neck.

1 Q Now, there was mention in opening arguments about the
2 discussion with Dr. Boucree about your options. What did
3 you understand your options to be when Dr. Boucree told you
4 what he thought was wrong with you?

5 A Have surgery and be fixed or risk being paralyzed from
6 the neck down if I went out and did something the wrong
7 way. That was what I understood my options were.

8 Q Did you see that as an option?

9 A What?

10 Q Did you really think you had a choice between those --

11 A No. That -- to me, there was no option.

12 Q Okay.

13 A I went home, I discussed things with my wife, and we
14 decide to go ahead and get it fixed before -- I could -- I
15 could have fell down, run into a wall, or anything and --
16 and been paralyzed. And I surely didn't want that.

17 Q Okay. So you had the surgery.

18 A Yes, I did.

19 Q What --- what did they do to you in the surgery?

20 A Removed two discs, put a plate in my neck.

21 Q How did they get to it?

22 A They cut through the front of my neck.

23 Q What did you feel after the surgery?

24 A Total relief.

25 Q No more pain?

1 A No more pain in the neck.

2 Q And has that pretty much stayed the way -- that way
3 until today?

4 A Pretty much. You know, I get tired. You know, you
5 get a little stiffness here and there from working all day,
6 but that's nothing to deal with.

7 Q So did you go back to work?

8 A Oh, yes, sir.

9 Q What did you do after the -- after the doctor released
10 you?

11 A I went back to work March or April of '14. I can't
12 remember the exact dates, but went back to work at a
13 chemical company doing sales. I worked there until -- I
14 think it was around February of '15. I was laid off. I
15 couldn't produce enough sales to justify them keeping me
16 on.

17 Q And that was February of this year?

18 A Fifteen.

19 Q Oh, yeah.

20 A Last year.

21 Q Last year.

22 A And started drawing unemployment, and a few months
23 later, I found the job that I have at present. I tried to
24 find jobs with companies that paid more money, but I just
25 can't seem to get anywhere with any of them. Once they

1 find out you've had neck surgery, they don't never call you
2 back.

3 Q Can you physically pipe fit anymore?

4 A I wouldn't want to, not after the doctor told me he
5 didn't want me to pipe rack anymore, don't want me beating
6 and banging my head around in there. If you're going to
7 pipe rack, you're going to be beating and banging your
8 head.

9 Q All right. So you get the crick in your neck when you
10 bump the bus. Did you quit working?

11 A No. Kept right on working.

12 Q All right. And then you go to North Carolina to the
13 South Port job. You're still working, correct?

14 A Yes, sir.

15 Q And then when this accident occurs, the one that we're
16 here about today, on September 8, did you stop working?

17 A No, sir. Kept working.

18 Q All right. And then you talked about you left
19 Westinghouse and you went back to Louisiana.

20 A That's right.

21 Q And that was -- what were you doing then?

22 A Working at the prison, 'round the sub plants.

23 Q So you get back, you start treating with Dr. Archer.

24 A That's right.

25 Q Did you quit work?

1 A No.

2 Q Miss work?

3 A No, sir.

4 Q Okay. All the way up until you meet Patrick Keating
5 and get the MRI, are you working?

6 A Yes, sir.

7 Q Working at the prison?

8 A Yes, sir.

9 Q Up until the point of the surgery with Dr. Boucree,
10 you were working?

11 A Yes, sir.

12 Q Did the prison keep you on after the surgery?

13 A Until my leave time and vacation time ran out.

14 Q And were you physically able to go back to that job
15 before they terminated you?

16 A No, sir.

17 Q So you lost the job because of the surgery?

18 A Yes, sir, because it took so long to heal.

19 Q Since -- how much money did you make when you pipe
20 fitting?

21 A Thirty-two dollars an hour.

22 Q How much you making now?

23 A Fifteen.

24 Q I'm going to ask you to look at Plaintiff's Exhibits 2
25 through 6. These are your tax returns from 2010 to 2014.

1 A Okay.

2 Q I just want you to tell me the wages you made each
3 year.

4 A Well, don't know exactly where that's at.

5 Q All right. I'll help you. These are your tax
6 returns, right?

7 A Yes, sir.

8 Q All right. See --

9 A Okay. 2010, \$63,211.

10 Q All right. Then 2011, you're still working at
11 Westinghouse, correct?

12 A \$64,614.00.

13 Q 2012, the year happened -- the accident happened in
14 September.

15 A \$63,979.00

16 Q In 2013, it's the next page, I think.

17 A 40,744.

18 Q And then 2014, which is the year you were able to go
19 back to work after the doctor, what were your wages?

20 A 36,627.

21 Q Do you know what your wages were for 2015?

22 A \$22,000.

23 Q So before the wreck, you were making 63 pretty
24 consistently, correct?

25 A Yes, sir.

1 Q And now after the accident, last year, you made 22?

2 A Yes, sir.

3 Q Now, you were laid off for a period of time, right, in
4 2015?

5 A Two -- couple of months, two and a half months.

6 Q How has the lack of funds affected you and your
7 family?

8 A You don't do nothing. You go to work, you come home,
9 you buy a few little groceries, and pay your bills.
10 There's no money left to do anything else.

11 Q Are you able to pay your bills easily?

12 A I wouldn't say easily, but I get them paid.

13 Q The treatment with the chiropractors and the surgery,
14 that wasn't free, was it?

15 A No, sir.

16 Q Going to hand you what's been marked as Exhibit 1. I
17 want you to look through this. There's a top page and then
18 bills attached behind it. Look through that. I just want
19 you to verify that those are the bills that were charged to
20 you as a result of your treatment with Cypress, Archer,
21 Boucree, and the operation.

22 (The witness complies.)

23 A Yep. These are all mine.

24 Q What's the total of those bills?

25 A That's \$140,000.

1 Q How many traffic accidents have you been in, in your
2 lifetime?

3 A I honestly don't know. More than five.

4 Q More than five? You ever sued anybody over them?

5 MR. BARROW: Objection, Your Honor. I mean, whether
6 or not he brought previous lawsuits ---

7 THE COURT: Okay.

8 MR. BARROW: --- isn't relevant to this case.

9 THE COURT: All right. Any response to that?

10 MR. PLAYER: Your Honor, I -- I think they're trying
11 to show him as trying to capitalize on a minor traffic
12 accident. What I'm trying to show is if that's who this
13 person was, then he'd have lawsuits coming out the wazoo.

14 THE COURT: All right. I'll let him answer the
15 question. Your objection is overruled.

16 BY MR. PLAYER:

17 Q You ever sue anybody over a traffic accident?

18 A No, sir.

19 Q Did you ever file worker's compensation claims?

20 A Yes, sir.

21 Q When did you do that?

22 A 1989. 1989.

23 Q What happened in that?

24 A I fell off the back of a truck and a piece of
25 equipment, wound up breaking this shoulder. One bone was

1 stuck inside the other and broke some ribs.

2 Q Now, you were in a pretty bad traffic -- traffic
3 accident back in 1981, right?

4 A Yes, sir.

5 Q What happened in that traffic accident?

6 A Went around a curve. There was a kid jogging in my
7 lane. I swerved to the left to miss him, tires got off the
8 side of the road, street sign hooked in the bumper and
9 flipped and got thrown [sic] out the truck.

10 Q Did you get hurt?

11 A Yes, sir.

12 Q What did you hurt?

13 A Had three concussions, had some neck injuries, broke
14 my arm, barbed wire cut my leg -- my arm up, broke some
15 ribs, cracked my pelvis, tore up my knee.

16 Q You got pretty messed up, didn't you?

17 A Yes, sir.

18 Q And you said neck injuries, right?

19 A Yes, sir.

20 Q So you did hurt your neck back in 1981.

21 A Yes, sir.

22 Q Did that injury -- did the pain from that injury
23 resolve itself between 1981 and 2012?

24 A It resolved itself by 1985.

25 Q Did you ever have any lingering pain from it?

1 A I have now. I have a little aggravation from it, but
2 it wasn't nothing to stop me from working or doing anything
3 I wanted to do.

4 Q Now, when you talked to Cypress, Cypress says you told
5 them you had longstanding injuries.

6 A I had what?

7 Q That -- let's -- I'm gonna read it to you (as read):
8 "This is an exacerbation of a longstanding neck issue that
9 he's had since the car accident in the 80's."

10 A Every now and then I have a problem with it, but I
11 guess if that's what he calls long-lasting, I guess it is.

12 Q Is the neck issue from the 1980's different than the
13 neck issue you're complaining about today?

14 A Well, of course.

15 Q How?

16 A Pain-wise.

17 Q Is it in the same place?

18 A No.

19 Q (Holds up a document) This is -- been entered as
20 Defendant's Exhibit 5. Do you recognize that?

21 A Yeah.

22 Q Did you write that?

23 A Yeah.

24 Q Sign it?

25 A Yes.

1 Q Did you say you weren't injured in this?

2 A No, that is not what that says.

3 Q Okay. But you don't dispute, at the time of the
4 wreck, you didn't think you were injured.

5 A That's correct.

6 Q And that's what you told the cop.

7 A That's correct.

8 Q (Holds up a document) This has been marked as
9 Defendant's Exhibit 2. This is your application when you
10 started treating with Dr. Archer. And I want you to look
11 on the first page.

12 A Okay.

13 Q Kind of the third section down (as read): "Have you -
14 - have you had similar symptoms or injuries before?"

15 A Yeah.

16 Q And you checked, "Yes, other accidents." What
17 accidents were you talking about?

18 A Wreck in '81, when I fell off that truck in '89.

19 Q For the worker's comp?

20 A Right.

21 Q So it was just any neck injury you were mentioning?

22 A Any injuries.

23 Q Okay.

24 A I thought that's what he wanted to know, any injuries.

25 Q When you -- you went to him complaining of neck,

1 shoulder, and arm pain; correct?

2 A Correct.

3 Q Did you have neck, shoulder, or arm pain from the '81
4 accident?

5 A I had neck pain from back then and shoulder pain from
6 back then, but that all went away.

7 Q All right. In '89, when you fell off the truck --

8 A Uh-huh.

9 Q -- did you have neck, shoulder, and arm pain?

10 A No, shoulder.

11 Q Shoulder.

12 A Tore the shoulder up and my ribs on the right side.

13 Q On the right side. And this was on the left, correct?

14 A Yes.

15 Q And my question to you, J. C., is all the times that
16 you were hurt in the past --

17 A Uh-huh.

18 Q -- is it the same thing that you're complaining of and
19 asking the jury to give you damages for today?

20 A No.

21 Q How are they different?

22 A The severity of the pain and location of the pain.

23 Q So it's different in both cases.

24 A Yes.

25 Q Do you know what a pre-existing condition is?

1 A Yes.

2 Q Do you agree that you had pre-existing conditions?

3 A Yes.

4 Q Pretty much everywhere?

5 A Yes.

6 Q My question to you is the pain and the problems that
7 led you to Patrick Keating and the MRI, had you ever felt
8 those before?

9 A No.

10 Q So they were, you know -- how were they different one
11 more time?

12 A Different in the severity and the location.

13 Q So in your mind, this has always been about what
14 happened in the wreck?

15 A Yes.

16 Q Not what happened in 1981?

17 A (Witness shakes head.)

18 Q You have to verbalize it.

19 A No, not what happened in 1981.

20 Q What about '89, when you fell off the truck?

21 A No, totally different.

22 Q Okay. What about when you bumped your head on the
23 bus?

24 A That was different. It was different from what
25 happened with the wreck.

1 Q Okay.

2 MR. PLAYER: Thank you. No further questions.

3 THE COURT: All right. Before we do cross-
4 examination, I think this is a good time for a break.
5 We've been in the courtroom for about an hour and a half.

6 I like to take breaks about every hour, hour and a
7 half to allow you all to get up, stretch, make sure you're
8 listening, make sure you can use the restroom facilities,
9 if necessary. So we're going to take about a 10-minute
10 break at this point. Thank you. If you'll follow the
11 bailiff, he'll bring you to the jury room.

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

13 THE COURT: Now, Mr. Rivett, you are still under oath.
14 You can take a break as well and step down from the witness
15 stand, but you cannot talk to your attorney at all about
16 your testimony. You still are -- are going to have to be
17 cross-examined, so you can -- may not speak with him about
18 your testimony. But of course, you can step down and use
19 the restroom if you need to.

20 All right. We'll be at ease for about 10 or 15
21 minutes.

22 MR. PLAYER: Thank you, Your Honor.

23 (Off the record at 11:19 a.m.)

24 (On the record at 11:38 a.m.)

25 THE COURT: All right. We can bring the jury back in.

1 Let's go ahead and get the witness back on the stand.

2 THE BAILIFF: Yes, ma'am.

3 THE COURT: And Mr. Rivett, remember -- and it's
4 Rivett?

5 THE WITNESS: Rivett.

6 THE COURT: Rivett, okay. I keep muddling through
7 your last name. Remember that you're under oath and you
8 remain under oath.

9 THE WITNESS: Yes, ma'am.

10 (The jury enters the courtroom at 11:40 a.m.)

11 THE BAILIFF: The jury panel's present, Judge.

12 THE COURT: All right. We'll resume with the trial.
13 Mr. Barrow.

14 MR. BARROW: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. BARROW:

18 Q Good morning, Mr. Rivett. Sorry to see you here under
19 these circumstances.

20 A Myself.

21 Q All right. As I understand your testimony so far, you
22 were struck twice in the rear by a blue Ford Focus,
23 correct?

24 A That's my understanding.

25 Q All right. Now, you also indicated -- and there's a

1 document that's going to go back to the jury in your
2 handwriting -- that there was no damage to your vehicle ---

3 A That's correct.

4 Q --- is that right?

5 A That's correct.

6 Q And there was not even a scratch on your trailer
7 hitch; isn't that true?

8 A It says "no damage to my trailer hitch."

9 Q Yes, sir. And you testified there was not even a
10 scratch; isn't that true?

11 A That is correct.

12 Q All right. And you got hit twice.

13 A Yes, sir, I did.

14 Q All right. Now, you didn't complain of any injuries
15 on the scene, correct?

16 A No, sir.

17 Q All right. And then you went back to Wilmington,
18 North Carolina, correct?

19 A That's right.

20 Q Where you had been working as a pipe fitter with
21 Westinghouse since 2007, right?

22 A That's right.

23 Q All right. Now, there's been some testimony as I
24 listened, Mr. Rivett, about your seeing this chiropractor
25 in Wilmington prior to the accident; you remember that?

1 A That's right.

2 Q And you remember going to see that chiropractor. And
3 I think you said you bumped your head on a mirror somewhere
4 in Wyoming; is that right?

5 A That's right.

6 Q All right. And you testified that it was like a crick
7 in the neck; is that correct?

8 A That's right.

9 Q And that really was all it was. And then you got in
10 this accident, and you had a more serious injury; isn't
11 that your testimony?

12 A That is correct.

13 Q All right. And the injury was different from what
14 you'd had in the past; is that correct?

15 A That is correct.

16 Q All right. I'm going to show you Exhibit No. 6 which
17 you looked at a minute ago. Now, you testified when your
18 lawyer showed you that that you had never seen that
19 document before today; is that correct?

20 A That is correct.

21 Q Look down at the bottom right-hand corner of that
22 document. Do you see where it says "Plaintiff Production
23 69"?

24 A Uh-huh.

25 Q You see that?

1 A Yes.

2 Q Did your lawyer not tell you that he provided this to
3 us in discovery and that's why it's marked Plaintiff
4 Production 69?

5 A I haven't seen this before.

6 Q Okay. You know where your lawyer got it from?

7 A No.

8 Q You think your lawyer got it from the chiropractor
9 that you were seeing?

10 A I guess he did.

11 Q All right. Let's look at this a little more closely
12 because I think there's some details that the jury hadn't
13 heard yet. This is dated Friday, August the 24th. You see
14 that at the top? Very top.

15 A Yeah.

16 Q Beside your name,

17 A Yeah.

18 Q All right. It says "Date of injury, August 16, 2012;
19 you see that?

20 A Okay.

21 Q And this accident was September the 8t, 2012; is that
22 right?

23 A That's right.

24 Q All right. So just right before this accident, you
25 were seeing this chiropractor for an injury that we've now

1 talked about. And I'm going to read the first full
2 paragraph where it says "the patient." You see that?

3 A Yes.

4 Q (As read) "The patient presented to this office with a
5 complaint of left upper track, and left-side and neck pain,
6 with some radiation into the left hand." Do you see that?

7 A Yes, I do.

8 Q Isn't it true, Mr. Rivett, that Dr. Bucree's records
9 and his testimony also indicated that you complained to him
10 about left-sided neck pain; isn't that true?

11 A Yes.

12 Q Okay. Now, and it goes on to say (as read): "The
13 patient states that the presenting complaints are due to
14 walking into a mirror on the side of a bus while he was
15 wearing his hard hat." That's what you were telling us
16 earlier, right?

17 A That's right.

18 Q And it goes on to say that you told him (as read):
19 "The patient states that this is an exacerbation of a
20 longstanding neck issue that he's had since a car accident
21 in the mid-1980's." Did I -- did I read that correctly?

22 A That's right.

23 Q You don't deny that that's what you told this
24 chiropractor, do you?

25 A No, I don't.

- 1 Q I mean, you -- you chose him, didn't you?
- 2 A Do what?
- 3 Q You chose this chiropractor ---
- 4 A Yes, I did.
- 5 Q --- I mean, you went to see him?
- 6 A Yes, I did.
- 7 Q Right. And you were paying him, correct?
- 8 A Yes, I was.
- 9 Q Okay. So this is all accurate what he's writing;
- 10 isn't that right?
- 11 A Yes.
- 12 Q All right. It says (as read): "The patient has been
- 13 under regular chiropractic care and is here working at the
- 14 nuclear plant," right?
- 15 A I don't know what he calls "regular chiropractic
- 16 care."
- 17 Q All right.
- 18 A Prior to seeing him, I can't remember when the last
- 19 time I saw one was.
- 20 Q Do you know why he would say that?
- 21 A No, I don't. You'd have to ask him.
- 22 Q Do you -- do you disagree with what he has in his
- 23 records?
- 24 A Yes, I do.
- 25 Q Okay. Well, let's keep reading. (As read) "The

1 patient states that he really needs to get some relief so
2 he can get back to work. The patient also notes that he
3 always does well with chiropractic care."

4 A When I need it.

5 Q Did you tell him all that?

6 A Yes.

7 Q All right. Now, let's go down to subjective
8 complaints. Okay. Second sentence it says (as read):
9 "His first symptom is cramping and stinging pain in the
10 left upper back on the left side." Do you see that?

11 A That's not true.

12 Q All right. That's not true either?

13 A No, sir.

14 Q All right. Well, let me -- I'm going to keep reading.
15 (As read) "He reported that the pain radiates into the left
16 side of his neck." Did you tell him that?

17 A That's where the pain was.

18 Q Okay. So that's true.

19 A I don't -- I don't understand what he says by "he
20 reported the pain radiates into the left side of the neck."
21 The pain was the left side of the neck.

22 Q All right. Let's keep reading. (As read) "The left
23 shoulder, the left arm, and the left hand," right?

24 A Left shoulder.

25 Q Okay. So some -- some of that's not true either.

1 A That's correct.

2 Q All right. And it says -- he goes on to say (as
3 read): "It occurs between one-half and three-fourths of
4 the time when he is awake and causes serious diminution of
5 his capacity to carry out his daily activities."

6 A I don't know where he got that from.

7 Q He -- he didn't get it from you.

8 A No.

9 Q You didn't tell him that.

10 A No.

11 Q It just appeared in his record.

12 A I have no idea. I didn't write this. I didn't tell
13 him this.

14 Q You didn't tell him that?

15 A No.

16 Q Okay. Let -- let me keep on reading. (As read) "It
17 is aggravated by bending forward, bending backward,
18 lifting, arising in the morning, and by the time evening
19 arrives." Did I read that correctly?

20 A You read it correct, but it ain't correct.

21 Q Let's go on to the next paragraph. (As read) "And Mr.
22 Rivett, Jr.'s second stated symptom is cramping pain in the
23 low back on the left side." Is that right?

24 A No, sir.

25 Q That's not right either?

1 A No, sir. Did not go to him for back pain.

2 Q Okay.

3 A I went there for a crick in my neck.

4 Q Just a crick in your neck.

5 A That's it.

6 Q Just a crick in your neck. Doesn't say that, does it?

7 A No, it doesn't.

8 Q Right. Now, you actually went back to see him again
9 after this accident, didn't you?

10 A Yes, I did.

11 Q Okay. All right. So Mr. Rivett, you -- you had been
12 seeing Dr. Rills, an orthopedic surgeon, for five to 10
13 years in Louisiana, hadn't you?

14 A That is correct.

15 Q Okay. And you didn't go to see him after this
16 accident for this -- for your injuries, did you?

17 A Well, it's not for what I figured his area of
18 expertise was. He tended to my knees and my shoulder, my
19 right shoulder.

20 Q All right. All right. Now, let's take a look at -- I
21 think you testified that you moved back to Louisiana,
22 correct?

23 A Yes.

24 Q Quitting the job -- job at Westinghouse and finding
25 other employment there in Louisiana; is that right?

1 A That's right.

2 Q And you went to work at the prison, I think you said -

3 --

4 A Yes, sir.

5 Q --- is that correct? Now, after you got back to
6 Louisiana, you then continued on with your chiropractic
7 treatment with Denham Springs Chiropractic; is that right?

8 A That's right.

9 Q That's Mr. Archer; is that correct?

10 A That's right.

11 Q All right. And you've been shown this, but let's take
12 a look at it again because there's some things that the
13 jury didn't hear. (Hands document to the witness) That's
14 Exhibit No. 2, Defendant's Exhibit No. 2. All right. Now,
15 let's take a look at -- this is your handwriting; is it
16 not?

17 A That's right.

18 Q Okay. So no doubt you wrote these things, correct?

19 A That's right.

20 Q All right. It says (as read): "Please describe the
21 principle health problems which you come into this office."
22 And you said, "Neck and left shoulder pain and upper back,"
23 right?

24 A That's right.

25 Q Now, if you look on down a little bit, it says (as

1 read): "Have you lost any days from work?" And you -- you
2 put, "No;" is that right?

3 A That's right.

4 Q And this is October the 3rd, correct?

5 A That's right.

6 Q All right. It says (as read): "Have you had similar
7 symptoms or injuries before?" And you checked the box
8 "Yes."

9 A That's right.

10 Q (As read) "If yes, explain." "Other accidents,"
11 correct?

12 A That's right.

13 Q All right. Talking about the same injuries.

14 Go on down under the heading past injury, past history
15 (as read): "Have you had -- have you or any relative
16 received chiropractic treatment previously?" "Yes." "If
17 yes, explain." And it says, "Other injuries;" is that
18 right?

19 A That's right.

20 Q Go to the second page. It says (as read): "List the
21 conditions that you are most interested in getting
22 corrected in the order of importance." "Neck, upper back,
23 left shoulder." And then you sign it ---

24 A That's right.

25 Q --- is that right?

1 A That's right.

2 Q Okay. Next, I'm going to show you Defendant's Exhibit
3 No. 3, which is a form entitled "Automobile Accident
4 Questionnaire." You see that?

5 A Uh-huh.

6 Q That's your handwriting, isn't it?

7 A Looks like it.

8 Q All right. Let's go on down to the bottom of that.
9 It says (as read): "Have you had an automobile accident in
10 the past?" "Yes." "If so, what areas of the body were
11 injured?" "Neck and upper back." Did I read that
12 correctly?

13 A Yeah.

14 Q All right. And that's your handwriting, correct?

15 A That's right.

16 Q And the date of that is 10/03/12 as well; is that
17 right?

18 A That's right.

19 Q Okay. Let's take a look again at Exhibit No. 4,
20 Denham Springs Chiropractic, which you were shown
21 previously by your lawyer. And the date on that document
22 is 03/18/13; is that right?

23 A That's right.

24 Q Now, you testified on direct examination that you left
25 Denham Springs Chiropractic because you weren't getting any

1 better ---

2 A I got ---

3 Q --- right?

4 A I got better to a point and that was it.

5 Q Right, but you were still in pain?

6 A Yes.

7 Q You still needed treatment?

8 A Yes.

9 Q You just weren't getting what you needed at the
10 chiropractic office; is that correct?

11 A That's correct.

12 Q That's your testimony; is that right?

13 A That's correct.

14 Q Now, this document is in your handwriting and signed
15 by you; is it not?

16 A Yes.

17 Q All right. Well, let's review it. It says (as read):
18 "Your condition in the spaces below." You wrote, "Neck and
19 left shoulder." Is that right?

20 A Where you at?

21 Q First page, in the box (as read): "Name your
22 condition in the spaces below." Do you see that?

23 A Yeah.

24 Q Okay. You wrote, "Neck and left shoulder;" is that
25 right?

- 1 A Yes.
- 2 Q All right. And it says (as read): "Please circle
- 3 current pain level." Do you see that?
- 4 A Yes.
- 5 Q And it goes from 0 to 10 ---
- 6 A Yes.
- 7 Q --- is that right?
- 8 A Yes.
- 9 Q And that's for the neck. And then underneath that
- 10 where you put left shoulder, it has 0 to 10 as well,
- 11 correct?
- 12 A Yes.
- 13 Q And tell the jury what you circled for both neck and
- 14 left shoulder.
- 15 A Zero.
- 16 Q Zero. And then it has another place there. It says
- 17 (as read): "Compared to the last visit;" do you see that?
- 18 A Yes.
- 19 Q It says (as read): "Better, same, or worse," right?
- 20 A Yes.
- 21 Q And you circled "better" for both neck and left
- 22 shoulder; is that right?
- 23 A That's right.
- 24 Q So you've told the chiropractor you had zero pain,
- 25 you've gotten better; and then under doctor's notes, he

1 releases you; is that correct?

2 A Yes, it is correct.

3 Q All right. Now, I'm going to show you what we've
4 marked as Defendant's Exhibit No. 7. Do you have that --
5 see that?

6 A Yes.

7 Q All right. This is a medical record from Our Lady of
8 the Lake Regional Medical Center in Baton Rouge, Louisiana.

9 A Yes, it is.

10 Q Is that right?

11 A Yes, it is.

12 Q It says (as read): "Admit date 04/12/2013;" is that
13 right?

14 A That's right.

15 Q All right. So that's a -- just a few weeks after you
16 had been released by this chiropractor, correct?

17 A That's right.

18 Q All right. Now, I'm going to read the history of the
19 present illness (as read): "The patient presents with back
20 pain that began around 14 hours ago when the patient picked
21 up a light-weighted table and felt a click. Pain worsening
22 since and worse with movement, twisting, position change.
23 The onset was 14 hours ago," correct?

24 A Correct.

25 Q Now, go down to the very bottom there. It says,

1 "Additional history: None," correct?

2 A Where we at?

3 Q Talking about that -- still that first paragraph.

4 They're taking a history from you (as read): "Additional

5 history: None," correct? You see it?

6 A No.

7 Q I'm sorry. Go to that paragraph I was just reading
8 and just go to the last sentence.

9 A Associated symptoms?

10 Q No, sir. Okay. Right above where it says "Review of
11 symptoms" under "History of Present Illness." You want me
12 to point it out to you?

13 A Please.

14 Q Okay. (Indicates) Right there.

15 A Oh.

16 Q Got it?

17 A Last word ---

18 Q All right. Next, I want to show you what we marked as
19 Defendant's ---

20 A Well, wait a minute.

21 Q --- Exhibit No. 8.

22 A What about this?

23 Q I'm going to show you this one next.

24 A This was ---

25 Q It was part of it.

1 A Really.

2 Q It said (as read): "Our Lady of the Lake Regional
3 Medical Center," doesn't it?

4 A Yes.

5 Q All right. And it's dated 4/12/2013; is that right?

6 A Yes.

7 Q All right. Look down, it says (as read): "Addendum,
8 by Dr. Rohe, S.; on April 13th, at 3:40;" you see that?

9 A Yes.

10 Q Last sentence (as read): "The patient has seen Dr.
11 Rills and he is referred back to him, but he can see an
12 orthopedic spine specialist -- specialist in that
13 practice;" is that right?

14 A Yes.

15 Q All right. And you did not go back to see Dr. Rills,
16 did you?

17 A Didn't see anybody because they took care of it. It
18 was muscle spasms.

19 Q Muscle spasms.

20 A Yes, it was.

21 Q All right. Now, you were testifying that you were, of
22 course, still in pain. Weren't getting any help from your
23 chiropractor, left him in March. You have this action in
24 April, but you don't see Dr. Boucree until August; is that
25 correct?

1 A That's correct.

2 Q All right. And you don't go back to see Dr. Rills,
3 correct?

4 A No, sir.

5 Q All right. And you go to see Dr. Boucree. You saw
6 him on one occasion and he laid out the options; is that
7 right?

8 A That's right.

9 Q And you chose surgery, correct?

10 A I don't see where I had a choice.

11 Q Okay. And you did not tell Dr. Boucree about your
12 previous neck, shoulder, or back problems, did you?

13 A No.

14 Q Right. You didn't tell him about your previous
15 treatment for those problems, did you?

16 A No.

17 Q Right. Now, it's your testimony that you didn't have
18 any pain in your back or your neck since 1985 -- I wrote
19 that down. That's correct, isn't it?

20 A Pretty much ---

21 Q Isn't that your testimony?

22 A --- yeah.

23 Q Right.

24 A Hadn't missed no work or nothing.

25 Q All right. I'm going to show you Exhibit No. 9.

1 Initial evaluation, history, and physical, that -- that's
2 from Dr. Boucree's office, dated 1/22/15. And I'm going to
3 read the first sentence under history and physical. (As
4 read) "60-year-old male presents to the office with his
5 lovely wife for evaluation and treatment recommendations
6 for neck pain, associated arm radicular pain, and bilateral
7 shoulder mechanical pain following a motor vehicle accident
8 of January the 13, 2015;" isn't that right?

9 A That's right. And what's your question?

10 Q Let me -- let me ask you a few questions about your
11 employment history now, Mr. Rivett. All right. You ---

12 A Jump around.

13 Q I'm sorry?

14 A You jumping around.

15 Q Okay. Now, you were working for Westinghouse in 2007
16 up 'til the time of this accident, you've already testified
17 to that, right?

18 A Yes.

19 Q All right. You voluntarily quit that job as a pipe
20 fitter to move to Louisiana, correct?

21 A Yes.

22 Q And you quit that job after this accident; isn't that
23 right?

24 A Yeah.

25 Q All right. You -- you moved to Louisiana and you got

1 a job, was it with Prison Enterprises?

2 A Yes.

3 Q All right. And then you quit that job and you went to
4 work --

5 A Nope.

6 Q -- as a salesman?

7 A Nope, I did not quit that job.

8 Q Okay.

9 A I was laid off because I could not fill my position
10 because I was still having treatment.

11 Q Okay. And then you went to work for a chemical
12 manufacturing company as a salesman.

13 A That is correct.

14 Q All right. And you were laid off from that job
15 because of low sales.

16 A Right.

17 Q Right. And then where did you go to work after that?

18 A V-Tech, a company out of Loganville, Georgia, that has
19 a branch in Denham Springs, Louisiana, Washington,
20 Louisiana, which is close to my house.

21 Q All right. Just one -- bear with me one moment.

22 MR. BARROW: All right, Mr. Rivett, I think that's all
23 the questions I have for you. I appreciate it.

24 THE COURT: All right. Mr. Player, redirect?

25 MR. PLAYER: Just a few.

RE-DIRECT EXAMINATION

BY MR. PLAYER:

Q J. C., if I took a push pin and jammed it in your neck, would that cause you pain?

A Of course, it would.

Q What if I took a bowie

A knife and jammed it in your neck, is that going to cause pain?

A It would probably kill me.

Q Is it two different kinds of pain?

A A lot different.

Q The Exhibit 9, that was from BOucree in January of 2015?

A Yes, sir.

Q That -- that was a traffic accident, correct?

A Yes, sir, it was.

Q But you're not asking for compensation for -- for any money dealing with that accident, correct?

A No, sir. That ain't got nothing to do with this.

Q And there was -- he also asked you about the -- being hit twice.

A Uh-huh.

Q And you said you were hit twice --

A That's what I felt.

Q -- by a blue sedan, correct?

1 A That's what I felt.

2 Q Okay.

3 A I felt two hits.

4 Q But when you got out and looked, had something struck
5 the blue car?

6 A Yes.

7 MR. BARROW: Objection to form, Your Honor. It calls
8 for hearsay. May counsel approach?

9 THE COURT: You may.

10 MR. PLAYER: Hearsay?

11

12 (Bench conference.)

13 THE COURT: All right. Mr. Player, will you please
14 repeat your question?

15 MR. PLAYER: Certainly.

16 BY MR. PLAYER:

17 Q When you got out of your car after the accident, was
18 anything in contact with the blue sedan that was behind
19 you?

20 A Was there anything touching it?

21 Q Yes.

22 A No.

23 Q So that ---

24 MR. PLAYER: No further questions.

25 THE COURT: All right. Thank you. You may step down.

1 MR. BARROW: No further questions.

2 (The witness complies.)

3 THE COURT: Mr. Player, you may call your next
4 witness.

5 MR. PLAYER: Your Honor, the next two witnesses are de
6 bene esse video depositions.

7 THE COURT: Okay. How long are they?

8 MR. PLAYER: Might be a good -- if you want to start
9 one now, I think Archer is an hour or break for lunch.

10 THE COURT: I'd like to break for lunch at about one
11 o'clock.

12 MR. PLAYER: Okay.

13 THE COURT: So let's go ahead and get in the video
14 deposition.

15 MR. PLAYER: Okay.

16 (Brief pause to set up video.)

17 MR. CAVANAUGH: Your Honor --

18 THE COURT: Go ahead.

19 MR. CAVANAUGH: -- if I may, there are a couple of
20 questions -- and they're not very many -- in the -- in the
21 video where I objected and stated on the record why I was
22 objecting. The witness went ahead and answered as we would
23 expect him to do. I don't know if that's something you
24 want to deal with before the video starts to play. There
25 are a couple, probably two.

1 THE COURT: Okay.

2 MR. CAVANAUGH: At the most.

3 MR. PLAYER: Actually, I think it's one. I think he
4 objected, I changed the question, he objected again, and
5 the witness answered.

6 THE COURT: Okay. Let me go ahead and send the jury
7 out for a moment so I can kind of get -- understand better
8 what the nature of the objection is.

9 Ladies and gentlemen, please go to the jury room. And
10 again, don't discuss this case. I'll try to get you back
11 out here as soon as possible.

12

13 (The jury exits the courtroom at 12:06 p.m.)

14 THE COURT: All right. Mr. Cavanaugh.

15 MR. CAVANAUGH: Thank you, Your Honor. On Page 20 of
16 the transcript --

17 THE COURT: And does someone have a copy of it for me
18 to look at?

19 MR. CAVANAUGH: I have one copy, Your Honor. I
20 apologize. I'm assuming Mr. Player would have a printed
21 copy, also ---

22 MR. PLAYER: I've got it.

23 THE COURT: If nobody does, that's fine. You can read
24 it to me. I just --

25 MR. BARROW: They have one.

1 THE COURT: Okay. Thank you. And you said page...?

2 MR. CAVANAUGH: Page 20, Your Honor.

3 THE COURT: Twenty. Okay.

4 MR. CAVANAUGH: You'll see on line 20, Mr. Player
5 asked the witness, "When he says ground zero, did you take
6 that to mean that he felt like he had lost any improvements
7 he had gained?" I objected as it called for speculation.
8 The witness still answered the question, "Correct".

9 Mr. Player attempts to rephrase the question, "How did
10 you interpret ground zero?" I'm sorry you wrote down fell
11 back to ground zero. What did you interpret Joe was
12 telling you?" I objected again based on speculation, and
13 the witness, of course, answered the question.

14 You know, he's reading his medical records, and you
15 know, he's essentially asking the -- the chiropractor to
16 essentially discern what the Plaintiff did -- was meaning
17 by his statements to him. And I just think that calls for
18 speculation. These medical records speak for themselves,
19 Your Honor, and I don't believe the witness should be
20 allowed to testify to that.

21 THE COURT: Okay. Mr. Player.

22 MR. PLAYER: Your Honor, I mean, the entire purpose of
23 that -- these are forms that the patient fills out every
24 time he goes to see the doctor. And the whole sole purpose
25 is for the doctor to effectively communicate with the

1 client. So I'm asking him: "This is what the client told
2 you, what did you understand it to mean?"

3 I don't think it calls for speculation. It's ground
4 zero. I don't think he was saying that, you know, he was
5 at the World Trade Center in New York. I think he was
6 saying he's lost all the progress that he had. It was
7 somewhat common sense, but it's part of the -- the
8 doctor/patient dialogue that's necessary and required by
9 the actual form that the doctor was reading from.

10 THE COURT: All right. All right. I'll overrule the
11 objection and I'll allow the answer to come in.

12 MR. PLAYER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. CAVANAUGH: And then on page 35, there's -- it's a
15 similar objection. We might as well deal with it.

16 THE COURT: Sure. Let's go ahead. Thank you for
17 bringing it up now.

18 MR. CAVANAUGH: Yes, Your Honor. On page 35, which is
19 the end of the transcript on Mr. Player's redirect --

20 MR. PLAYER: That's 30.

21 MR. CAVANAUGH: I'm sorry.

22 THE COURT: Thirty or 35?

23 MR. CAVANAUGH: No. On 35 is where the objection is.

24 THE COURT: Thirty-five. Okay. All right.

25 (Brief pause.)

1 THE COURT: Yeah. There's an objection on 35. "Does
2 it mean he's cured? No. Object."

3 MR. CAVANAUGH: Right. That -- that's the same
4 objection, Your Honor. You know, it calls for speculation
5 as to whether he's cured or not. The medical record speaks
6 for itself. The Plaintiff indicated he was not in pain.
7 He indicated zeros, indicated he was better. He was
8 released.

9 (Brief pause.)

10 MR. CAVANAUGH: And the Plaintiff ---

11 THE COURT: All right.

12 MR. CAVANAUGH: I'm sorry, Your Honor.

13 THE COURT: No. But go ahead. You -- were you going
14 to make another point?

15 MR. CAVANAUGH: I was just going to say the
16 Plaintiff's already testified that he wrote zero, that he
17 had no pain twice in both his neck and left shoulder and
18 that he was better. I think that record speaks for itself.
19 The doctor is sort of interpreting what -- you know, he
20 goes beyond the record and is outside of the record and is
21 really speculative as to whether or not the Plaintiff was
22 cured or not.

23 THE COURT: Okay. Mr. Player?

24 MR. PLAYER: My understanding is the objection to,
25 "Does it mean he's cured?"

1 Is that it? Is that the only thing?

2 MR. CAVANAUGH: That's what I objected to, yes.

3 MR. PLAYER: So, I mean, the following -- the
4 following question where I say "Did you intend to say that
5 all his problems have been resolved?" You don't have any
6 objection to that?

7 MR. CAVANAUGH: Yes, I'm sorry. The objection is to
8 the entire series of questions there. I don't have it in
9 front of me, Your Honor.

10 THE COURT: All right. Sure. Sorry ---

11 MR. CAVANAUGH: I'm sorry, Your Honor.

12 THE COURT: So this is how it begins, because this is
13 on reexamination and it's real short: Mr. Player says,
14 "What does maximum medical improvement mean?"

15 And the answer is, "It was circled with the intent of
16 I'd done all I can do for him. We're not going to get any
17 benefit out of continuing treatment through me."

18 "Does it mean it's cured -- he's cured?"

19 Answer, "No."

20 That's where the objection comes.

21 Sounds to me like Mr. Player is asking the doctor to
22 explain what he meant by maximum medical improvement. And
23 I think that's fair game and I'll allow that question and
24 answer in. All right.

25 MR. CAVANAUGH: Okay. Thank you, Your Honor.

1 THE COURT: Thank you. All right. Let's go ahead and
2 get the jurors back in ---

3 MR. PLAYER: Hold on. Hold on.

4 THE COURT: Oh. Is there something else?

5 MR. PLAYER: Neither one of them is working.

6 THE COURT: Oh, neither of the video -- discs are
7 working. And if we can't find one that works, of course,
8 this would be a great time for a lunch break. So we can --
9 we can make it so that there's an opportunity to find one
10 that works.

11 (Brief pause.)

12 THE COURT: Ah. That one works. Wonderful. And does
13 that say it's 38 minutes and 51 seconds?

14 MR. PLAYER: Yes.

15 THE COURT: Oh, perfect. Wonderful.

16 MR. PLAYER: Thought it was an hour, but ...

17 THE COURT: The jury will be pleasantly surprised.

18 MR. PLAYER: Now, in terms of -- do you want this
19 here, do you want to see the jury, move it out?

20 THE COURT: That -- no, that's fine. I can move over
21 and look at it. I'll move if I want to see it. Otherwise,
22 I'm satisfied to --

23 MR. PLAYER: Okay.

24 THE COURT: -- read it and not actually watch the
25 faces.

1 (Brief pause.)

2 THE COURT: All right. We're ready to bring the jury
3 back in.

4 And I'll give -- if it's okay with everyone, I'll give
5 the court reporter the copy I have?

6 MR. PLAYER: Yes, that's fine. I have it by e-mail,
7 so.

8 THE COURT: Okay. Great.

9 (Marked Court's Exhibit No. 1, video and transcript of
10 Dr. Boucree.)

11 (The jury enters the courtroom at 12:14 p.m.)

12 THE BAILIFF: The jury panel is present, Judge.

13 THE COURT: All right. Thank you. All right. Mr.
14 Player, you may begin the video.

15 (The video deposition of Dr. Archer is played.)

16 (Marked video deposition of Dr. Archer as Court's
17 Exhibit No. 2.)

18 THE COURT: All right. Thank you, Mr. Player.

19 Ladies and gentlemen, it is now five minutes until one
20 o'clock and we are going to take a lunch break. I ask that
21 you be back to the courthouse by 2:15, back in the jury
22 room by 2:15. You are not to talk to anyone about this
23 case, including your fellow jurors or anyone who you may
24 enjoy lunch with this afternoon. And we'll see you soon.
25 Thank you.

1 (The jury exits the courtroom at 12:55 p.m.)

2 THE COURT: All right. Anything from either side
3 before we take our break?

4 MR. BARROW: Nothing, Your Honor.

5 MR. PLAYER: Just one quick thing, Your Honor, as to
6 Trooper Trotter. Looks like now, when we start back at
7 2:30, the video is one hour and 25 minutes.

8 THE COURT: Okay.

9 MR. PLAYER: So that's about four when Boucree's video
10 will be over. I know that the Defense intends to call Mr.
11 Trotter. I don't want to make him come up here two days in
12 a row. If he can be here at four and testify and be done,
13 I think he'd probably prefer that considering he's on duty
14 at one o'clock this week.

15 But I didn't know. If the Defense was definitely
16 going to bring him back tomorrow morning, then maybe we can
17 break at four and I'll finish in the morning. I just don't
18 want to make the trooper come twice.

19 THE COURT: Okay. Y'all have a position on that?

20 MR. BARROW: We don't.

21 THE COURT: Okay. Do you plan to call him?

22 MR. BARROW: Right now, we do, but ---

23 THE COURT: Okay.

24 MR. BARROW: --- I mean, that -- not that that plan
25 can't change.

1 THE COURT: It's subject to change, of course.

2 MR. BARROW: But -- but right now, we do.

3 THE COURT: Okay.

4 MR. PLAYER: It's just we got to tell him at one,
5 that's when he comes on, whether to be -- I think he was
6 planning on being here tomorrow.

7 THE COURT: Sure.

8 MR. PLAYER: But I didn't think we'd get to today, but
9 we're moving faster than I thought.

10 THE COURT: Right. Well, and what I don't want to do
11 is, if we break at four o'clock today, where we bleed into
12 Thursday. Does anybody think that we would based on the
13 pace we're going ---

14 MR. BARROW: No, no, I hope not.

15 THE COURT: Okay.

16 MR. PLAYER: I've got basically four questions for the
17 troop -- for the trooper and -- I mean, he's not going to
18 be a very long witness, at least, from our standpoint.

19 MR. BARROW: I hope -- I hope we're not here. We're
20 only -- we think we'll be pretty quick tomorrow morning and
21 then wait for the doctor.

22 THE COURT: Okay. Yeah. And when is the doctor
23 getting here?

24 MR. CAVANAUGH: Your Honor, he is going to try to get
25 here by one o'clock tomorrow.

1 THE COURT: Sure. And again, that's always subject to
2 change ---

3 MR. BARROW: It is.

4 THE COURT: --- when traveling. So it may actually be
5 helpful to break at four o'clock so we have a little
6 something tomorrow and then it may all work out with the
7 timing. So we'll go ahead and we'll -- what we'll plan to
8 do is you can do the other video deposition and then after
9 that we'll break.

10 MR. PLAYER: Okay. What time will we start in the
11 morning?

12 THE COURT: Let's do 9:30.

13 MR. PLAYER: Okay. I'll tell him to be here at 9:30
14 in the morning.

15 THE COURT: All right. We will see you at 2:15.

16 MR. PLAYER: Thank you.

17 (Off the record at 12:57 p.m.)

18 (On the record at 2:22 p.m.)

19 THE BAILIFF: Jury panel's present, Judge.

20 THE COURT: All right. I hope you all had a good
21 lunch. I feel like I should stand up so y'all can see me.

22 As you can see from the TV, we're not about to watch
23 an episode of Judge Judy. We got another video deposition
24 that we're going to watch right back from lunch.

25 So I hope you enjoyed your lunch, and Mr. Player, I'll

1 let you take it away.

2 MR. PLAYER: Thank you.

3 (Brief pause to start video.)

4 (Video deposition of Dr. Joseph Boucree is played.)

5 MR. BARROW: Could we take a break?

6 (Video continues to play while Mr. Barrow speaks.)

7 MR. BARROW: He went off the record and -- you want to
8 take a break. The jury's been sitting here a good while.

9 THE COURT: Sure. Let's go ahead and pause it. Can
10 you pause it?

11 MR. PLAYER: (No audible response.)

12 THE COURT: You don't know how?

13 (Video is paused.)

14 THE COURT: All right. We'll figure out where it was
15 ---

16 MR. PLAYER: If ---

17 THE COURT: --- if we need to. We're going to take a
18 short comfort break. I know it's hard to sit and listen to
19 a television for a long period of time when it's not the
20 program of your choice.

21 So we'll take a quick break. Again, do not discuss
22 the -- the -- anything that's happened in the courtroom
23 during this break. We'll be back on the record in about 10
24 minutes.

25 (Jury exits the courtroom at 3:32 p.m.)

1 THE COURT: All right. I'm not sure how much longer
2 is even on that DVD. Do you have any sense?

3 THE COURT REPORTER: We've been on 64 minutes, Your
4 Honor.

5 MR. CAVANAUGH: We have about 10 pages left.

6 THE COURT: Okay. So we're pretty close

7 MR. CAVANAUGH: Not -- not much.

8 MR. PLAYER: It is one hour and 24 minutes long.

9 THE COURT: Okay. And then after that -- after this
10 deposition, the next witness is that trooper for tomorrow
11 morning; is that correct?

12 MR. PLAYER: Yes. Yes, ma'am.

13 THE COURT: Okay. All right. Well, this may be a
14 little bit of a strange break for them if they come back
15 for just about 10 more minutes, but I don't think any --
16 anyone will really mind it. So let's go ahead and take a
17 little break ourselves, and we just need to make sure we
18 get back to the point where we were.

19 And the court reporter said it was about 64 minutes
20 in, if that's helpful.

21 THE COURT REPORTER: 63/64 minutes.

22 MR. PLAYER: I've got it paused,

23 THE COURT: Oh.

24 MR. PLAYER: The one thing I would ask is -- the
25 question was asked, he's getting ready to answer. Would we

1 be able to read that from the transcript and then go ---

2 THE COURT: Sure.

3 MR. PLAYER: --- because I'm not sure they listened to
4 it while we were --

5 THE COURT: That's fine. No problem. Just read it
6 from the ---

7 MR. PLAYER: Because I stopped it. ---

8 THE COURT: --- transcript.

9 MR. PLAYER: You can rewind it. If -- if I stop it,
10 we got to watch another hour --

11 THE COURT: Right, right, right. We don't want to do
12 that.

13 MR. PLAYER: Yeah. Cause a problem.

14 THE COURT: All right. That's how we'll handle it.

15 (Off the record at 3:34 p.m.)

16 (Back on the record at 3:44 p.m.)

17 THE COURT: All right. Are we ready to bring the jury
18 back in?

19 MR. BARROW: We are, Your Honor.

20 THE COURT: Okay.

21 MR. BARROW: Thank you.

22 THE COURT: Yeah. Absolutely.

23 (The jury enters the courtroom at 3:45 p.m.)

24 THE BAILIFF: Jury panel's seated, Judge.

25 THE COURT: All right. Welcome back, ladies and

1 gentlemen. We were somewhat discussing whether or not to
2 take a break, the lawyers and I, while -- the last question
3 was read.

4 Because we didn't want to mess the point at which we
5 were on in the DVD, I'm going to have Mr. Player read the
6 question, then we'll queue up the answer on the TV and
7 we'll roll from there.

8 Mr. Player?

9 MR. PLAYERS: Yes, ma'am. I -- I said, "Dr. Boucree,
10 would you say that Joseph Rivett had any permanent injury
11 resulting from his condition that he initially came to see
12 you for."

13 (Brief pause to set up video.)

14 (Video plays.)

15 (Marked Court's Exhibit No. 3, DVD of Dr. Boucree.)

16 THE COURT: All right. Ladies and gentlemen, it is
17 four o'clock in the afternoon. Normally we go til about
18 five, but based on some scheduling issues, we're going to
19 break now, at four o'clock. And we'll come back tomorrow
20 at 9:30 in the morning.

21 And I would ask that y'all get here by 9:15. I'd like
22 to start at 9:30. I'll bring y'all a little something to
23 eat when you get here at 9:15, and then we'll hopefully be
24 able to roll right at 9:30.

25 Just as I've told you before, please don't talk about

1 this case. You've now heard from witnesses. Obviously,
2 when you go home, family members may ask you about the
3 case. You can let them know that you've been selected for
4 a jury, that you can't talk about it with them now; but
5 once a verdict has been rendered, you'll be allowed to
6 speak to them about it. But just not tonight.

7 I hope y'all have a great afternoon, and just what
8 time do I expect you here tomorrow morning?

9 JURORS: 9:15.

10 THE COURT: Very good. Excellent. Thank y'all.

11 (Jury exits the courtroom at 4:00 p.m.)

12 (Marked Court's Exhibit No. 4, transcript of Dr.
13 Archer's deposition.)

14 THE COURT: All right. And I already have the
15 Plaintiff's request to charge. If the Defendants could
16 send me something tonight, I would appreciate that. I'm
17 working on the jury charge now.

18 MR. CAVANAUGH: I will do that, Your Honor.

19 THE COURT: Thank you.

20 MR. CAVANAUGH: I'll -- first thing.

21 THE COURT: Sure. Mr. Player?

22 MR. PLAYER: The -- I handed up the transcript of Dr.
23 Archer?

24 THE COURT: Yes.

25 MR. PLAYER: Can I get the -- just a -- the mini?

1 THE COURT: Yes, you may. You can have whatever you
2 need back. And ---

3 MR. PLAYER: Thank you.

4 THE COURT: --- does the court reporter already have a
5 copy of this or not yet? I'm giving her ---

6 THE COURT REPORTER: I have Archer.

7 THE COURT: You do have Archer.

8 MR. PLAYER: She does have Archer.

9 THE COURT: Okay. Well, then you can keep -- you can
10 keep the whole thing.

11 MR. PLAYER: Okay. Thank you.

12 THE COURT: All right. Thank y'all.

13 MR. BARROW: Thank you, Judge.

14 THE COURT: I usually get here -- I drop my kids off
15 at school, so I'm here about 8:15/8:30 every morning. So
16 if there's something that comes up in the morning, I'll be
17 available.

18 MR. CAVANAUGH: Thank you, Your Honor.

19 THE COURT: All right. Thank y'all. Have a great
20 evening.

21 (Off the record at 4:03 p.m.)

22 DAY TWO

23 THE COURT: I got a note from a juror this morning
24 that I wanted to take up first. Wait for the court
25 reporter to be set. All right. It says -- are you ready,

1 Bonnie?

2 THE COURT REPORTER: Yes, ma'am.

3 THE COURT: I just wanted to make sure.

4 THE COURT REPORTER: Oh, yes.

5 THE COURT: (As read) "Your Honor, my name is John
6 Hadden, Juror 100, currently empaneled on the trial you are
7 presiding over. After viewing the deposition yesterday
8 from the orthopedic surgeon, I felt that I should share
9 that I have had a very similar operation as well as the
10 pain patterns -- patterns discussed by the surgeon.

11 Due to my knowledge of this procedure and what I was
12 told by my doctor, I feel that I will -- will not be able
13 to remain impartial for the duration of the trial."

14 What say you, Mr. Player?

15 MR. PLAYER: Well, obviously, I think I want to keep
16 him, but if he says he can't be impartial, I'm not sure I
17 have much of a leg to stand on.

18 THE COURT: Uh-huh. I'm happy to bring him out here
19 so that I can ask him a couple of questions about his --
20 what he means by not being able to remain impartial.
21 Sometimes I wonder ---

22 MR. PLAYER: What ---

23 THE COURT: --- whether what juror's definition of
24 impartial is the same as our definition of impartial.

25 MR. PLAYER: I mean, if he has personal knowledge, I

1 don't think -- unless that's going to shade him to one side
2 or the other, I don't think that's necessarily to be
3 excused so long as he's told that he cannot share that
4 information with the rest of the jury.

5 THE COURT: Correct. Mr. Barrow?

6 MR. BARROW: One thing that concerns us besides that
7 is we asked a question in voir dire about back injuries,
8 and Mr. Hadden was not one of the witnesses that I had
9 designated stood up and talked about that.

10 MR. PLAYER: He did say ---

11 THE COURT: He ---

12 MR. PLAYER: --- chiro -- said he'd been seeing a
13 chiro.

14 THE COURT: Yeah. I do know he stood up. I do
15 remember that, but I -- I can't say for certain what he
16 said when he stood up. I don't know that he said that he
17 had had back surgery.

18 MR. PLAYER: I do not recall surgery, but I do recall
19 that he said he'd been treated by a chiro. I think this is
20 the fellow with the Boston accident?

21 THE COURT: Well, I -- my note on him is that he looks
22 like Judge Wilkins, so...

23 MR. BARROW: We have a note, "went to chiro."

24 THE COURT: Okay. Yeah.

25 MR. BARROW: We have a note went to chiro.

1 THE COURT: Uh-huh. Okay.

2 MR. BARROW: But -- but given that, I -- I would
3 respectfully request that the first alternate be seated in
4 his place.

5 THE COURT: All right. I'm going to call him out here
6 and just ask him a couple questions. I do take -- when
7 somebody says they can't be impartial, I take them at their
8 word for that for the most part. But I just want to
9 inquire just a little bit to make sure that we all are
10 understanding what the word "impartial" means.

11 So do you mind, please, bringing in Juror No. 100.

12 (Juror No. 100 enters the courtroom.)

13 THE COURT: Thank you, sir. I called you in here
14 because I received your note this morning and I have shared
15 it with the attorneys. And I understand from your note
16 that you had a surgery that was similar to what you heard
17 on the deposition yesterday, and you were concerned that
18 you cannot remain impartial as a result of that.

19 JUROR: That's correct.

20 THE COURT: And when you say that you are unable to
21 remain impartial, do you mean that you do not think that
22 you can be a fair juror for the Plaintiff or the Defendant
23 based on that experience that you had?

24 JUROR: Yes.

25 THE COURT: Okay. All right. And that having had

1 that experience, you're not able to separate your own
2 experience from what someone else might have had --

3 JUROR: I ---

4 THE COURT: And it's okay if the answer's yes, I just
5 want to make sure that you understand what I'm looking for
6 when it comes to an impartial juror. Having knowledge of
7 something, everybody comes in with some knowledge, some
8 personal life experience and that piece is okay. But if
9 you can't be fair to someone, that -- that is a problem and
10 I appreciate your note. So that's what I want to get to
11 the bottom of.

12 JUROR: I think it may affect my ability to look at
13 both sides fairly.

14 THE COURT: Okay. Okay. And now, as you know from my
15 instruction in the beginning, jurors are required to only
16 consider evidence that they've heard from this witness
17 stand. And you're saying that you would be considering
18 stuff -- it would be impossible for you to just ---

19 JUROR: Well, I'd be ---

20 THE COURT: --- become a blank slate?

21 JUROR: I'd be relating my own experience. That's --
22 I definitely would like to stay, but ---

23 THE COURT: Sure.

24 JUROR: --- I'm just concerned my experience might
25 overshadow other things.

1 THE COURT: Okay. Okay. So I can't get into your own
2 head. So if you tell me that you don't think you can be
3 impartial, I'll take you at your word for that.

4 JUROR: Okay.

5 THE COURT: And I'm going to excuse you from this
6 trial and I appreciate your service and I appreciate the
7 note that you've given to me.

8 JUROR: Okay.

9 MR. BARROW: Can I ask the Court to inquire one other
10 thing?

11 THE COURT: Sure.

12 MR. BARROW: If Mr. Hadden has communicated both his
13 prior experience and those thoughts with any other juror
14 members.

15 JUROR: I have not.

16 THE COURT: Okay. Thank you.

17 MR. BARROW: Thank you, Mr. Hadden.

18 THE COURT: Thank you so much. And I'm going to make
19 this note a Court's Exhibit.

20 (Marked Court's Exhibit No. 5, juror note.)

21 THE BAILIFF: I'm going to send him back down to the
22 jury assembly room or you're going to excuse him?

23 THE COURT: Go ahead and send him back. I want to
24 talk with the attorneys for just a second and I'll tell you
25 when he can be excused.

1 THE COURT: All right. Anything further from the
2 attorneys?

3 (Brief pause.)

4 MR. PLAYER: Your Honor, I spoke with Trooper Trotter.
5 He was supposed to be here at 9:30 this morning, but it
6 took me an hour to get here where it usually takes 30
7 minutes. It was a wreck on I-20.

8 THE COURT: Oh, dear. Okay.

9 MR. BARROW: When did you -- when did you speak with
10 him?

11 MR. PLAYER: Around five.

12 MR. BARROW: Yesterday afternoon?

13 (No audible response.)

14 MR. BARROW: I released Trooper Trotter last night
15 from my subpoena. Told him I didn't need him. Did you
16 have him under subpoena?

17 MR. PLAYER: I did.

18 MR. BARROW: I just wanted to let the Court know ---

19 THE COURT: Sure.

20 MR. BARROW: --- I released ---

21 THE COURT: Sure. Right. There could have been some
22 confusion in that respect, but it sounds like he was under
23 ---

24 MR. BARROW: And I asked if he was coming and his
25 response to me was I can only come if I'm under subpoena

1 by, I guess, highway department rules.

2 So I didn't see your subpoena, but I told him he was
3 released from mine.

4 THE COURT: Mr. Player, why don't you place another
5 phone call to him just to --

6 MR. PLAYER: The only way that we've been allowed to
7 get to him is through dispatch.s

8 THE COURT: I understand.

9 MR. PLAYER: But I'll certainly try.

10 THE COURT: Is that the only way you've been able to
11 get in touch with him, too, Mr. Barrow, dispatch?

12 MR. BARROW: I got in touch with him through a cell
13 phone number.

14 THE COURT: Can you -- can -- let's try to contact him
15 via cell phone.

16 (To the bailiff) Mr. Tolbert, you can go ahead and
17 release Juror No. 100. Tell him he can go down to the jury
18 assembly room. We'll seat the -- the alternate juror, but
19 don't bring the jurors in yet.

20 THE BAILIFF: I understand.

21 THE COURT: Okay. Thank you.

22 THE BAILIFF: So we're going to be seating 173?

23 THE COURT: That's correct.

24 THE BAILIFF: All right.

25 THE COURT: Do you have a copy of your subpoena, Mr.

1 Player?

2 MR. PLAYER: Yes, ma'am?

3 THE COURT: How about pass it up.

4 MR. PLAYER: I didn't hear what you said.

5 MR. BARROW: Copy of your subpoena.

6 THE COURT: Can you pass up a copy of your subpoena?

7 MR. PLAYER: We do it electronically. I'll get my
8 office ---

9 THE COURT: Sure.

10 (Brief pause.)

11 THE COURT: It sounds like Mr. Trotter does -- or
12 Trooper Trotter believed that he was released and he didn't
13 believe he had any additional subpoenas, that he just was
14 subpoenaed by the Defense. So ...

15 MR. PLAYER: Well, we do have his deposition
16 transcript.

17 THE COURT: I'm sorry?

18 MR. PLAYER: We do have his deposition transcript.

19 THE COURT: Okay.

20 MR. BARROW: You can't use it under the Rule.

21 THE COURT: Oh. Of -- oh. I thought you meant
22 another -- I thought you meant of another witness. You
23 mean Trooper Trotter's deposition. Right, we can't use
24 that under the rule. Agreed.

25 MR. BARROW: Your Honor, we talked to our doctor last

1 night, just so the Court knows, and he has two surgeries
2 this morning, but he says he's actually starting them
3 early. Slept in the -- said he was sleeping in the
4 hospital last night in order to get an early start to get
5 here. And he said, you know, I hope to be there between
6 1:00 and 1:30. That's his goal.

7 THE COURT: Okay. Great.

8 (Brief pause.)

9 THE COURT: Any luck?

10 MR. PLAYER: Not with his telephone. And I can get --

11 -

12 THE COURT: Subpoena?

13 MR. PLAYER: --- affidavit of service and I can pull
14 up the subpoena next.

15 MR. BARROW: What's the date on that?

16 THE COURT: I'm looking here.

17

18 MR. PLAYER: The first time it came up for trial.

19 THE COURT: January ---

20 MR. PLAYER: But typically we subpoena them, and they
21 know they're under subpoena until they get called to trial.

22 MR. BARROW: Did you subpoena him for that week or did
23 you -- because I subpoenaed him twice. When it didn't go
24 the first week, I sent another subpoena so he'd be under
25 subpoena.

1 MR. PLAYER: This is how I've done it in the past.
2 It's always -- they know they're under subpoena. Matter of
3 fact, I had them schedule with Eric ---

4 MR. BARROW: Well, does -- I guess my question is --
5 no. No. We sent two separate subpoenas. The way we do it
6 is subpoenas are only good for the week and we put the
7 dates in there.

8 THE COURT: Let me see the actual subpoena. That's
9 the affidavit of service. I see where it says, "You are
10 commanded to appear in the above-named court and place and
11 time specified below to testify." And it says date and
12 time: January 19, 2016, 9:30 a.m.

13 And then you didn't serve another subpoena? You just
14 assumed he would remain under subpoena for longer than that
15 time?

16 MR. PLAYER: Yes, ma'am, to avoid additional cost and
17 to ---

18
19 THE COURT: Sure.

20 MR. PLAYER: --- avoid additional inconvenience for
21 him.

22 THE COURT: And you talked to him yesterday.

23 MR. PLAYER: Yes. And he said he would be here at
24 9:30.

25 THE COURT: That's what's frustrating is that you

1 talked to him and he didn't let you know.

2 MR. PLAYER: No, he did not. If there was an issue, I
3 would have gotten a subpoena yesterday.

4 THE COURT: Sure.

5 MR. PLAYER: He said he would be here at Courtroom
6 3-B, at 9:30. Now, I can do my best to contact him and get
7 him a new subpoena and get him here this afternoon.

8 THE COURT: Uh-huh.

9 MR. BARROW: The problem is that you're at the close
10 of your case. And we don't want to put our case up while
11 your case is still pending.

12 THE COURT: Sure. Well, and -- and I can just
13 continue it until this afternoon.

14 MR. PLAYER: Okay.

15 THE COURT: But there's -- we don't know at this point
16 whether he can be here this afternoon. He's not compelled
17 to be here this afternoon. But I do -- I'm not
18 unsympathetic to what happened.

19 While certainly the subpoena's an issue: You did not
20 re-subpoena him, that would have been the appropriate thing
21 to do. Considering you talked to him yesterday, I see how
22 we're in this situation.

23 MR. BARROW: Did he tell you he was going to be here
24 because he was under my subpoena when you had the
25 conversation with him.

1 MR. PLAYER: No. I told him I had him under subpoena.

2 MR. BARROW: Okay. Well, I talked to him, probably
3 around 6:30 last night, when I called him to say I am
4 releasing you from my subpoena. We got what we needed
5 yesterday. And he said that you had called him and he said
6 he was searching for your subpoena.

7 THE COURT: Uh-huh.

8 MR. BARROW: That he had not found a subpoena from
9 you, and that their regulations do not require him to come
10 to court without a subpoena. I get that. I've always
11 known that.

12 THE COURT: Sure. Well, he had a subpoena -- I mean,
13 he showed me a subpoena. Now, it was from January the 19th,
14 granted, but ...

15 And your -- tell me about your case. You have the
16 expert that's coming in.

17 MR. BARROW: We have our truck driver.

18 THE COURT: And you have your truck driver.

19 MR. BARROW: And we have another witness.

20 THE COURT: Okay.

21 MR. BARROW: So we won't finish it today if you
22 continue it, obviously.

23 THE COURT: Right.

24 MR. BARROW: I guess that means that -- of course,
25 we're going to have to have the doctor testify today.

1 THE COURT: Uh-huh. Right.

2 MR. BARROW: I mean, I can't ---

3 THE COURT: Sure. He can't come here ---

4 MR. BARROW: If I miss him today, I've lost him, I'm
5 afraid.

6 THE COURT: Uh-huh. All right. Mr. Player, the best
7 I can do is to give you until this afternoon to get to the
8 -- get -- get the trooper in. He's not under subpoena, so
9 it's not -- you know, you do have the problem that we have
10 and that's why I'll give you a short continuance until this
11 afternoon.

12 But otherwise, we need -- we're in the middle of the
13 trial. We're going to have to keep rolling on the trial.
14 We don't want to have this case mistried.

15 So we will break until -- tell me what time you need --
16 -- we need -- we need to have time for the trooper to
17 testify and we need to have the expert testify. And if we
18 have to be here late, I don't care about that, but I don't
19 want to start -- I mean, two o'clock is probably about the
20 latest I can give you.

21 MR. PLAYER: The trooper won't take 30 minutes.

22 THE COURT: Okay. All right. Well, get him here by
23 two o'clock, or otherwise we'll close your case and move
24 on.

25 All right. Do you want me to bring the jurors out

1 here to tell them that, or we'll just let them know they're
2 released until two o'clock?

3 MR. BARROW: Right.

4 THE COURT: I'll just have the bailiff let them know
5 they're released 'til two.

6 MR. BARROW: Right.

7 THE COURT: We'll get them back in here 1:45.

8 (To the bailiff) Thank you, Mr. Tolbert.

9 THE BAILIFF: You're welcome, Your Honor.

10 (Off the record at 10:12 a.m.)

11 (On the record at 2:05 p.m.)

12 THE COURT: Thank y'all. Be seated.

13 All right. Every time we take a break, I come back
14 with a note. This one is just a housekeeping matter and
15 it's not a big deal.

16 One of the jurors wrote a note -- he's Juror No. 144.
17 He says (as read): "This is to inform you that after
18 Friday, February 5, 2016, I will be unable to serve as a
19 juror as my wife is having hip replacement surgery on
20 Monday, February 8, 2016, and I will be assisting in her
21 recovery until approximately May 1, 2016. Therefore, I
22 will be unavailable to serve as a juror. Thank you for
23 your consideration, Thomas Landrum, Jr., Juror 144."

24 I'll just generally let the jury know that we do plan
25 to be through with this tomorrow. Is that fair?

1 MR. PLAYER: Yes, Your Honor.

2 MR. BARROW: I mean, it -- it's possible ---

3 THE COURT: Today -- how about I say this is not going
4 to last ---

5 MR. BARROW: Right.

6 THE COURT: --- beyond Friday, don't worry about that.
7 And we can pleasantly surprise them; how about that?

8 MR. BARROW: Right. I like that.

9 THE COURT: All right. And I'll just make this a
10 Court's Exhibit.

11 (Marked Court's Exhibit No. 6, juror note.)

12 THE COURT: Mr. Player?

13 MR. PLAYER: Your Honor, I was preoccupied with my
14 panic this morning. This lists William Joe Jackson as a
15 defendant and he's been dismissed from the case.

16 THE COURT: Yes, for the verdict form. Let's take his
17 name off of there. And I can --

18 MR. PLAYER: Yeah. I do it all the time. It's an
19 oversight ---

20 THE COURT: Yeah.

21 MR. PLAYER: --- I'm sure ---

22 MR. CAVANAUGH: Your Honor, I'll get my office to ---

23 THE COURT: Or hand it up to -- I've got a law clerk
24 right here who is willing and ready to help with that. She
25 can just redo the form and she'll take the -- make the

1 caption different.

2 MR. CAVANAUGH: It's -- it's short, so ...

3 THE COURT: All right. And Mr. Player, who -- you'll
4 be calling the trooper first or someone else first?

5 MR. PLAYER: Mr. Jackson is here

6 THE COURT: Okay.

7 MR. PLAYER: We'll call him first. The trooper's
8 supposed to be here between 2:00 and 2:30.

9 THE COURT: Great.

10 MR. PLAYER: I just emailed the proof of service of
11 the subpoena. Even though it was today, he -- he is now
12 under subpoena.

13 THE COURT: Great.

14 MR. PLAYER: And did not indicate any -- I don't think
15 he was terribly pleased, but didn't indicate he was not
16 going to appear.

17 THE COURT: Okay. Wonderful.

18 All right. Well, let's bring this jury back in. I
19 know they're probably a little frustrated. And we'll try
20 to ease them back in, and we'll get this show on the road.

21 (To the bailiff) Mr. Tolbert, thank you.

22 (The jury enters the courtroom at 2:08 p.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right. Thank you.

25 Thank you, ladies and gentlemen. I know it's been

1 quite a delay this morning. I want you to know that I take
2 full responsibility for that. So to the extent you feel
3 any frustration about the strange schedule we have, that
4 falls completely on my shoulders and I apologize to you.

5 We are in the middle of the Plaintiff's case. One of
6 you has expressed a little bit of concern about the
7 schedule, worried about whether we would go into next week.
8 You do not need to worry about that. We will not go into
9 next week. That -- that will not be an issue at all. We
10 hope to be done tomorrow. I don't want to get anybody's
11 hopes up too high and maybe we can pleasantly surprise you.
12 So we'll -- we'll see. But certainly, we won't go into
13 Monday at all. This will be your -- your week of jury
14 service.

15 And with that being said, I'll turn it over to you,
16 Mr. Player, and you can call your next witness.

17 MR. PLAYER: Thank you, Your Honor. The Plaintiff
18 calls William Joe Jackson.

19 WILLIAM JOE JACKSON, having been
20 first duly sworn, testifies as follows:

21 THE CLERK: Have a seat in the witness box, please.
22 State your name for the record with the spelling.

23 THE WITNESS: William Joe Jackson.

24 DIRECT EXAMINATION

25 BY MR. PLAYER:

DIRECT EXAMINATION BY MR. PLAYER - WILLIAM JOE JACKSON 122

1 Q Good afternoon, Mr. Jackson.

2 A Hey.

3 Q Can you tell the jury where you live?

4 A Yacht Cover, on Lake Murray, here in -- in Columbia.

5 Q Okay. And what do you do for a living?

6 A I'm an ATM technician. I -- I fix ATMs.

7 Q Okay. You're aware of what we're about -- what we're
8 here about today ---

9 A Oh --

10 Q --- the traffic accident?

11 A Yes, sir.

12 Q What do you know about the traffic accident that
13 occurred on September 8, 2012?

14 A I know pretty much everything about that accident.

15 Q And why is that?

16 A Because I was involved in it.

17 Q Okay. So what were you driving that day?

18 A A 2012 Ford Focus hatchback.

19 Q Okay. And where exactly did the accident occur?

20 A I-20. I was on my way to Camden for a service call.
21 Going down I-20 in the fast lane -- would you like me to
22 tell you?

23 Q Sure.

24 A Okay. The -- it was moderately raining. Wasn't hard
25 raining, wasn't light raining. Just kind of moderate rain.

1 As I approached the -- where the traffic was slowing
2 down, there was a car overturned in the ditch and there was
3 a highway patrolman on the scene tending to that accident.

4 So traffic had started slowing down. I slowed down
5 and got in line with the traffic. I can't tell you if the
6 traffic was stopped or rolling forward because right when I
7 got in line, I looked in my rearview mirror because it's
8 what I would do. You're on I-20 in the fast lane and you
9 stop, you're going to look behind you.

10 And I looked behind me and I saw the truck coming. I
11 said, "He's -- he might not stop."

12 So I braced. I put my feet on the brake, my hands on
13 the -- on the steering wheel, and I remembered one thought
14 went through my mind was, "It'll be over in a second."

15 And the truck impacted the rear of my car, bumped me
16 forward, where I tapped the rear of his vehicle. And want
17 me to continue on what -- what happened after -- after the
18 tap and everything?

19 Q Sure.

20 A Okay. So I -- I relaxed and went, "Oh, my gosh, it's
21 okay."

22 I look out my right-side window and I see the police
23 officer, that was tending to that previous wreck, looking
24 right at me.

25 Q Let's not say what the police officer said.

1 A I didn't -- he didn't say anything.

2 Q I know. I was just -- just in case ---

3 A Oh. Okay.

4 Q Sometimes people say, "... and then he said ..."

5 A Oh, no. I just noticed he was looking at me. I'm
6 sorry.

7 So I get out of my car and I go around behind it, and
8 I see -- survey the damage that happened when the truck hit
9 me from the rear. And it was -- the back was smashed in a
10 little. The glass showered me -- the rear glass of the
11 hatchback showered me when it cracked and broke open. And
12 it was raining.

13 I had my -- I walked over toward the tractor-trailer.
14 He was still in the cab, way up high, and I said - and I
15 looked at him and he looked at me, He goes, "Sir, there's
16 no way I could have stopped in time." And I gave him a
17 thumbs up and I walked back to my car.

18 And I looked -- the officer came to me and said, "Are
19 you okay?" I said, "Yeah, I'm -- I'm fine." And he asked
20 me if my vehicle was driveable. I said, "I don't know
21 yet".

22 And then he -- I started picking up all my bank keys
23 off the -- my bank keys are kept in the hatchback of the
24 car, keys I use to open the banks to get in to fix ATMs. I
25 didn't want to lose any of those. So I -- I was picking up

1 all the bank keys off the highway. And the officer was
2 like -- I was like, "I'm so sorry, sir. I've just got to
3 get these. I can't lose a bank key."

4 And I picked up all my bank keys. And then I got in
5 the car and limp -- it limped off to the side of the road.

6 The Plaintiff's vehicle was pulled to the side of the
7 road, mine behind his, and the tractor-trailer behind me.

8 It's still raining. I didn't want to sit in the car
9 because it was right on the edge of the road and I'm always
10 thinking I might get hit by someone going by. So I get out
11 of the car, put on my rain gear that I wear when I'm
12 working in the rain, and I sit on the -- what's it called,
13 the -- the guard rail. And I -- I'm sitting on the guard
14 rail making a bunch of phone calls, calling my manager
15 telling him, "Oh, my gosh, I -- I've been in a wreck."
16 Calling my teammates to tell them I can't make it to the --
17 to the ATM to fix it, can someone take over the call.
18 Called my wife to let her know that I'm okay. Just a bunch
19 of phone calls. And while that was going on -- it was
20 while, it was probably over 20 minutes. And the officer
21 was talking to either -- I -- I can't say what he was
22 doing, like you said, but he wasn't tending to us yet. He
23 -- he hadn't come to talk to me yet.

24 The Plaintiff walked up and said, "How much longer is
25 this going to take? Can I just go?" And I said, "I -- I

1 don't -- it can't that much longer. Let's just kinda
2 wait".

3 So -- and it took a little longer. The officer then
4 came to me and gave me some paperwork and verified, "Are
5 you sure you're okay?" I went, "Oh, yeah, I'm great". And
6 then I called PHH, which is a -- this is a fleet vehicle,
7 so I called the company that owns the fleet vehicle, PHH,
8 and said, "Can you please send me a wrecker?" And they
9 sent me a tow truck.

10 Q Now, the 18-wheeler that struck you --

11 A Yes.

12 Q -- did -- do you see the driver of the 18-wheeler in
13 the courtroom today?

14 A I never could place my -- I never saw him beyond being
15 in the cab on a rainy day, and so I couldn't really make
16 out his face. So I can't promise you that.

17 Q Okay.

18 A Because it was really -- because this happened 40
19 minutes before dark roughly, right. And it was dark by the
20 time this all ended. I never really got to see him
21 clearly.

22 Q Okay.

23 A So, I mean, I can't -- I'm sure he's here.

24 Q Is there anybody that you recognize from the wreck?

25 A The -- the gentleman who was in front of me, right

1 there, the Plaintiff. That was all of us, I guess.

2 Q Okay.

3 A It -- it was just the three of us and the officer.

4 Q Did you get the driver of the truck's name?

5 A I saw it after the fact on the paperwork that I was
6 handed.

7 Q Okay. Was there anything written on the side of the
8 truck?

9 A Well, the name of the company.

10 Q Do you remember what that was?

11 A Like Celadon.

12 Q Celadon Trucking?

13 A Uh-huh.

14 Q Were you able to drive your vehicle away from the
15 scene?

16 A No. I could get it to the side of the road, but I had
17 to have -- a flatbed came and towed it away.

18 Q Okay. Do you know if the 18-wheeler, was that driven
19 away or did it have to get towed?

20 A I don't -- I'm unaware of that.

21 Q Okay.

22 A I didn't see any of that happen. Uh-uh.

23 Q And I assume you weren't injured in the accident?

24 A You assume I ...?

25 Q You weren't injured in the accident.

1 A I were -- I was not.

2 Q Okay. And how old are you, Mr. Jackson?

3 A Fifty-two.

4 Q Okay.

5 MR. PLAYER: No further questions, Your Honor.

6 THE COURT: All right. Thank you.

7 Mr. Cavanaugh.

8 MR. CAVANAUGH: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. CAVANAUGH:

12 Q Mr. Jackson?

13 A Yes, sir.

14 Q Good to see you today. You're a little bit under the
15 weather?

16 A Yeah. It's pretty bad.

17 Q Right. Well, I -- I want to get you up and down as
18 quick as I can, and hopefully we'll stay far enough part
19 that I don't get sick and infect my family.

20 A No problem.

21 Q Thanks for being here today, especially under the
22 circumstances. I certainly appreciate it.

23 A Uh-huh.

24 Q I -- I -- I do just have a couple of questions for
25 you. You mentioned -- Mr. Player asked you some questions

1 about the accident, and you indicated that you tapped the
2 rear of the Plaintiff's vehicle. Would that -- wouldn't
3 that be an accurate description?

4 A Yeah. I mean, I -- I chose that word carefully.

5 Q All right. And -- and you say "tapped," if I gave you
6 a scale of 1 to 10, with 10 being the most severe accident
7 you can think of -- the most -- the most severe accident
8 you can think of, and 1 being the least severe accident you
9 can think of, can you rate the -- the severity of the
10 impact between your vehicle and the Plaintiff's vehicle?

11 A Well, if 10 is like a fatal collision and you saying,
12 like, 1 is like a speed bump?

13 Q One ---

14 A Like ---

15 Q The least severe you can think of.

16 A Well, then, slightly less than 1.

17 Q Okay. So -- so it really was a tap?

18 A It was a tap.

19 Q Right. Okay. Now, isn't it correct that your air --
20 your airbags did not deploy at any time during the
21 accident?

22 A No, no airbags.

23 Q Right. And you were not injured.

24 A No.

25 Q And isn't it true that you never heard the Plaintiff

1 say he was injured?

2 A No.

3 Q And isn't it true the Plaintiff never complained of
4 being sore?

5 A No. But like I said, I only heard one sentence
6 between us.

7 Q Right. I understand. But you never heard him
8 complain about being sore.

9 A No.

10 Q You never heard him complain about being injured.

11 A Uh-uh.

12 Q And you were fine.

13 A Yes.

14 Q Great. All right. Now, you're here today under
15 subpoena from us; is that correct? I subpoenaed you.

16 A Well, yeah, that's true.

17 Q Right. Okay. Well, great.

18 MR. CAVANAUGH: Well, thank you, Mr. Jackson. I
19 appreciate your time today. And answer any further
20 questions Mr. Player may have for you.

21 THE COURT: Any re-direct?

22 RE-DIRECT EXAMINATION

23 BY MR. PLAYER:

24 Q There was damage to the front of your vehicle after
25 the accident, correct?

1 A Yeah, there was a ding on the top of the hood where
2 his trailer hitch had touched the car.

3 Q Okay.

4 A And the -- the front of a Ford Focus that year -- I
5 guess they're the same still -- is plastic, and it was kind
6 of cracked.

7 Q Okay. Do you crack your bumper and ding your hood
8 when you go over a speed bump?

9 A Well, no.

10 Q Okay. So you still say it's less than 1?

11 A The impact was less than 1.

12 Q And yet it cracked your bumper and dinged your hood to
13 the point where you couldn't drive away.

14 A Well, no. The damage that kept me from driving the
15 vehicle was done to the rear of the vehicle.

16 Q Okay.

17 A The front was not bad at all.

18 Q But there was still damage that you had to have
19 repaired?

20 A Well, yes.

21 MR. PLAYER: No further questions.

22 THE COURT: All right.

23 MR. CAVANAUGH: Your Honor, no further questions.

24 THE COURT: All right. You may step down. Thank you

25 ---

1 THE WITNESS: Thank you.

2 THE COURT: --- so much.

3 THE WITNESS: Thank you.

4 THE COURT: Does anyone object to him being released
5 from his subpoena?

6 MR. BARROW: No objection.

7 MR. PLAYER: No objection, Your Honor.

8 THE COURT: All right. And you may -- you are free to
9 go as well. Thank you.

10 All right. Mr. Player?

11 MR. PLAYER: Your Honor, can I check and see if the
12 trooper is outside?

13 THE COURT: Sure.

14 (Brief pause.)

15 MR. PLAYER: Don't see him yet, Your Honor. He told
16 me he would be here by 2:30.

17 THE COURT: Okay. We'll take a five-minute break. If
18 he isn't here by 2:30, then we're going to go ahead and
19 move on, okay?

20 MR. PLAYER: Okay.

21 THE COURT: All right. Let's go ahead and take about
22 a five-minute break, and we'll come back in the courtroom.
23 Thank you. Please don't discuss this case while you're in
24 the jury room.

25 (The jury exits the courtroom at 2:23 p.m.)

1 THE COURT: Did you say you were also going to call
2 the Defendant, or did you mean Mr. Jackson when you said
3 that?

4 MR. PLAYER: No, that was -- when they stipulated
5 that, you know, Celadon ---

6 THE COURT: Okay. We'll be back on the record in a
7 little bit.

8 (Off the record at 2:24 p.m.)

9 (Back on the record at 2:37 p.m.)

10 THE COURT: Mr. Player.

11 MR. PLAYER: Your Honor, considering he's not here, I
12 would ask to be allowed to read his transcript of the
13 deposition. He is -- he was served with a subpoena today,
14 12:48. That's one of the conditions to be allowed to
15 recite his deposition. And the other one is under
16 extraordinary circumstances.

17 I mean, I spoke with the man yesterday, he told me he
18 would be here at 9:30. I assumed he was still under
19 subpoena and he was. Everybody in this courtroom knew I
20 intended to call him first today. And he's not here
21 because of Mr. Barrow withdrawing his subpoena.

22 THE COURT: And what rule -- let me go to the rule.
23 Can you tell me which rule that is?

24 MR. PLAYER: 32, Your Honor.

25 THE COURT: Okay. Thank you.

1 MR. PLAYER: 32(A)(3), deposition of a witness (as
2 read): "Whether or not a party could be used by any party
3 for any purposes, if the Court finds the witness is dead or
4 a distance greater than a hundred miles, unable to testify
5 -- unable to attend or testify due to age, illness, or term
6 of imprisonment, that the party offering the deposition has
7 been unable to procure attendance through subpoena, and
8 such exception -- exceptional circumstances exist to make
9 it desirable, in the interest of justice and with due
10 regard to the importance of presenting testimony of
11 witnesses orally in open court, to allow a deposition to be
12 used.

13 So under the last two, we did put him under subpoena
14 today. I understand the lateness of that, but it wasn't
15 like it was a surprise to him that he was wanted to be in
16 court today by either side. It's certainly not a surprise
17 in terms of his testimony to anybody in this courtroom.
18 And considering that we got him under subpoena and he
19 indicated he would be here by 2:30 and he's not here -- I
20 don't know if it's because of weather. He was traveling
21 from Gilbert.

22 Due to the necessity of testimony happening today
23 because of Defendant's expert witness -- which, by the way,
24 we started a day late to accommodate their witness, I
25 think, at this point, I should be allowed to read the

1 testimony into the testimony --

2 THE COURT: All right.

3 MR. PLAYER: -- I mean, the deposition into the
4 record.

5 THE COURT: Okay. Thank you.

6 Mr. Barrow.

7 MR. BARROW: Yes, Your Honor, if it pleases the Court.
8 We -- we're here right now because the Court was indulgent,
9 if you will, with the Plaintiff when it was shown and
10 proven that the Plaintiff actually did not serve a subpoena
11 on the trooper to be here today. And that's the sole
12 reason why we're standing here before the Court at 20 'til
13 3, having taken off -- otherwise, he would have had to --
14 at that point, he would have had to of -- of ended his
15 case.

16 Now, the Court's given him several hours and he's
17 gotten Mr. Jackson here, even though he still wasn't under
18 his subpoena, put him up. And now he's asking for
19 additional allowances to put in the deposition of the
20 trooper.

21 And respectfully, I think it is prejudicial to the --
22 to the Defendant because if the Court had required him to
23 go forward, at that point he would have had to have ended
24 his case.

25 THE COURT: Well, here's where I'm sympathetic to Mr.

1 Player. Yesterday when we talked about this trooper coming
2 in to testify and the convenience of allowing him to just
3 testify one day because you both were going to call him, at
4 that point, y'all weren't sure whether you would or would
5 not call him. But that -- and that was probably yesterday
6 afternoon.

7 And then at some point thereafter, say six o'clock at
8 night, y'all decided that you weren't going to need him ---

9 MR. BARROW: Right.

10 THE COURT: --- and you told him he was relieved of
11 your subpoena.

12 MR. BARROW: Right.

13 THE COURT: Which is a confusing situation for someone
14 who's a witness. Maybe less so confusing for someone who's
15 a trooper who gets subpoenaed a fair amount.

16 And what I'm concerned about is that it seems as
17 though there was some discussion with the trooper about
18 whether or not he needed to be here. And I don't know what
19 was said after that point, but it should have been clear
20 that he was expected here tomorrow at 9:30.

21 And so I'm a little concerned about that aspect of his
22 being relieved from the subpoena and perhaps being told
23 that he did not need to be here by 9:30.

24 MR. BARROW: Well, no one -- no -- and -- and I'm glad
25 the Court has raised that because I didn't know the Court

1 was thinking that. And I'm happy to address it because
2 that's the last thing I want you to think.

3 THE COURT: Sure.

4 MR. BARROW: And I think I indicated this this morning
5 that he told me he had had a conversation with him and said
6 he would be here at 9:30, and I said, "That's fine. I'm
7 just telling you I'm releasing you from my subpoena."

8 And he said -- and I think I relayed this to you that
9 he said, "Well, I -- I can only show up if I've been
10 subpoenaed per our regulations or something". And I said,
11 "That's fine." And he said, "I'm going to go check and see
12 if I've got a subpoena."

13 THE COURT: Uh-huh.

14 MR. BARROW: In no ---

15 THE COURT: So there was no conversation ---

16 MR. BARROW: --- in no -- and I would never do that.

17 THE COURT: Sure.

18 MR. BARROW: Why would I want to do that? I would
19 never do that.

20 My sole purposes for calling him was as a damages
21 witness because he testified that this man told him that he
22 wasn't -- that he wasn't -- didn't need an ambulance, just
23 wanted to get out of there, wasn't injured and wanted to go
24 home. That's ---

25 MR. PLAYER: No, he did not. No, he did not.

1 MR. BARROW: He did. He did. I've got -- I've got --

2

3 THE COURT: I'll hear from you, Mr. Player ---

4 MR. BARROW: --- right here.

5 THE COURT: --- in a moment. I'll let you ---

6 MR. PLAYER: Please ---

7 THE COURT: --- respond to that.

8 MR. PLAYER: --- read it to me. Please read it to me.

9 THE COURT REPORTER: One at a time, gentlemen.

10 MR. BARROW: It's all on Page 12 where he says Mr.

11 Rivett made comments to him about wanting to leave and that

12 there was no damage to his vehicle (as read): "Did anyone

13 appear injured?" Depo, Page 12. "No."

14 MR. PLAYER: That's not what he just represented ---

15 THE COURT: Okay. Mr. Player, you ---

16 MR. PLAYER: --- to the Court.

17 THE COURT: I'll give you a chance to respond. Let me
18 hear from Mr. Barrow right now.

19 MR. BARROW: The -- the point is this: At no time,
20 Judge, in that conversation did I ever advise this trooper
21 not to show up or ever counsel him not to show up.

22 THE COURT: Okay.

23 MR. BARROW: I on -- I -- I know better than that. I
24 only told him he was released from my subpoena because I
25 had gotten everything out of the Plaintiff that I was going

1 to get from the trooper.

2 THE COURT: Okay.

3 MR. BARROW: And that was all it was.

4 THE COURT: Okay. Thank you.

5 Mr. Player.

6 MR. PLAYER: Your Honor, everybody in this room knew I
7 intended to call him as a witness in the morning.

8 THE COURT: I -- but having good intentions ---

9 MR. PLAYER: So -- so ---

10 THE COURT: Wait, wait, wait. Having good intentions
11 isn't enough. You do have to subpoena him, and there was
12 an issue with your subpoena, which I gave you an
13 opportunity to get the trooper here by two o'clock. When
14 we got here at two o'clock, he said he'll be here by 2:30.

15 Again, I gave you that half an hour because I
16 understand what a shock it was to you this morning. And I
17 -- I don't think that -- that -- that, you -- you know, you
18 intended for this to happen. And I can understand how it
19 happened. I know how it is practicing law. I get -- I see
20 -- I see how it unfolded. I absolutely see how it
21 unfolded. And I'm not unsympathetic.

22 But now, here we are: We're going to say two o'clock,
23 then, okay, 2:30; and now, here we are 2:45 and still no
24 trooper.

25 And so the question really is all based on the rules.

1 We all know what happened. And now, based on the rules, is
2 a deposition appropriate?

3 And you're saying that it's appropriate under Rule 32
4 subsection D and subsection E. Now, D requires a subpoena,
5 and I don't think subpoenaing someone at 12:45, to be at
6 court by two o'clock, is the type of subpoena that someone
7 can normally answer. So I don't know whether D is going to
8 work for you, but I'll -- I'll hear you on that.

9 And then subsection E is why I just had that
10 conversation with Mr. Barrow, to understand the
11 circumstances and whether the circumstances are exceptional
12 enough as to allow, in the interest of justice, this
13 deposition testimony.

14 MR. PLAYER: If he knew I intended to call him, if he
15 knew I intended him to be here this morning, there was ---

16 THE COURT: There was no prejudice.

17 MR. PLAYER: --- no need to release him from his
18 subpoena except to cause that confusion.

19 MR. BARROW: May I add this because I think this is
20 important for the Court's consideration. When the Court
21 asked me yesterday, when we had this discussion was I
22 calling the trooper, and I said yes, my plans are to cause
23 -- to call the trooper, but ---

24 THE COURT: But. Right.

25 MR. BARROW: --- those plans can change. And I

1 remember the Court saying of course, something to the
2 effect of yes. I telegraphed to him what I was thinking,
3 that those -- not that I'd made a decision.

4 And this happens all the time at trial, as the Court
5 knows. You go back, you review the evidence, you sit there
6 with your clients and the other lawyers and you make -- you
7 make a game plan.

8 But I advised the Court and the co-counsel yesterday,
9 I said those plans could change. That is clearly putting
10 him on notice that I may not call him. So this -- this --
11 this inference that I did something unethical is ---

12 THE COURT: And I'm sorry if I -- I'm the one who
13 brought up that inference. And I think it's good that we
14 got it cleared up on the record because I do think there is
15 some confusion over exactly what happened and that has been
16 cleared up.

17 MR. BARROW: Thank you.

18 THE COURT: You called the trooper to let him know
19 that you were releasing him from subpoena.

20 MR. BARROW: Right.

21 THE COURT: So in the event that the Plaintiff also
22 was releasing him from subpoena, he didn't show up just to
23 testify for you because you weren't going to need him
24 anymore.

25 MR. BARROW: Correct.

1 THE COURT: And you had -- you never indicated to him
2 that he did not need to be here at 9:30.

3 MR. BARROW: Not in any way, shape, or form. I would
4 never say that.

5 THE COURT: All right. All right.

6 MR. PLAYER: And Your Honor, under E, it's in the
7 interest of justice. The man's been deposed. He was
8 expected to be here. It's not any type of surprise to
9 anyone. I did everything I could -- and -- and you know,
10 when Mr. Barrow said that yesterday, that's why I called
11 the trooper and verified that he would be here at 9:30 this
12 morning.

13 THE COURT: All right. I find in the interest of
14 justice that the deposition testimony can be read in under
15 Rule 32, subsection E, and I'll allow that to happen.

16 Let's bring in the jury.

17 How are you going to read it in? You don't have a
18 cohort here with you to read.

19 MR. PLAYER: No. I'm willing to use one of theirs --

20 THE COURT: All right.

21 MR. PLAYER: -- or read it myself.

22 THE COURT: All right.

23 MR. PLAYER: Or have the clerk read it.

24 THE COURT: Mr. Barrow, would you prefer for Mr.

25 Player to just read the question and answers or would you

1 like to put someone on the stand to play the part of the
2 trooper? I know you don't want either, I get that, so ---

3 MR. BARROW: Yeah.

4 THE COURT: --- but that being my ruling, which would
5 you prefer?

6 MR. BARROW: He can read it himself. It's fine.

7 THE COURT: Okay. That's what we'll do.

8 Just make sure you always say question and then
9 answer, question and then answer, so there's no confusion.

10 Do you have a copy for me so I can follow along? And
11 do we have any objections we need to deal with?

12 MR. BARROW: Again, Your Honor, just for the record, I
13 would object to this based on all of the discussion had
14 right now.

15 THE COURT: Sure.

16 MR. BARROW: I don't think under 32(e) there's any
17 exceptional circumstances. But I understand the Court's
18 ruling and we're prepared to go forward.

19 THE COURT: Okay. Thank you. And do -- I thank you
20 for putting that objection on the record. What I also
21 wanted to know is are there objections in the deposition
22 transcript that we need to deal with before we bring this
23 jury out?

24 MR. BARROW: Well, I guess that's an issue because we
25 weren't prepared for that.

1 THE COURT: Sure. Right.

2 MR. BARROW: You know, there's a rule ---

3 THE COURT: Go ahead and take a look.

4 MR. BARROW: There's a rule dealing -- dealing with
5 that as well for publication of depositions and --

6 THE COURT: Were there -- were there objections in the
7 depo? How long is the deposition?

8 MR. BARROW: That's what I'm looking for now.

9 THE COURT: Okay. And if someone could pass me up a
10 copy, I would appreciate it.

11 (Brief pause.)

12 MR. BARROW: I -- I don't see any objections, Your
13 Honor. It's only 20 -- 19 pages, but I don't see any
14 objections in the deposition.

15 Do -- do you have a copy?

16 THE COURT: I don't, not yet.

17 MR. BARROW: Oh, I'm sorry. I thought he had handed
18 one up.

19 THE COURT: Y'all, there's a tornado warning that's
20 just been issued for downtown Columbia and we're to seek
21 safe shelter immediately, move to an interior hallway at a
22 lower level.

23 So let me -- I want to make sure that we -- I mean, I
24 want to keep y'all safe, but I really want to make sure our
25 jurors are safe, too. I feel like I've got a

1 responsibility to make sure that we take care of them.

2 Let me -- we're going to go ahead and I would tell you
3 all to get down to the lower level of the building, stay
4 away from windows and glass doors, don't go on the
5 elevators. And we will get back when we have that
6 opportunity.

7 MR. BARROW: I do want to let the Court know this, my
8 orthopedic surgeon's right here. He cannot come back
9 tomorrow.

10 THE COURT: Okay. Well --

11 MR. BARROW: He -- he -- he has his own medical issues
12 he has to deal with first thing in the morning.

13 THE COURT: I -- I understand that. We're going to
14 have to deal with this one thing at a time.

15 MR. BARROW: I -- I got you.

16 (Off the record at 2:52 p.m.)

17 (On the record at 3:46 p.m.)

18 THE COURT: This is from Juror No. 111. She says,
19 "Hi. I only have childcare until 6:00 p.m. and need to
20 leave by 5:30."

21 So let's be through with the Plaintiff's case and
22 through with the expert by 5:30. I think we can do that.
23 Let's get started right off the bat. And I'll mark this as
24 a Court's Exhibit, and we can bring in the jurors.

25 (Marked Court's Exhibit No. 7, juror note.)

1 (The jury enters the courtroom at 3:47 p.m.)

2 THE BAILIFF: Jury's seated, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, thank
4 you very much. I cannot even begin to say that this is the
5 smoothest trial you've ever seen. Mother Nature has not
6 been kind. There's been several interruptions to the
7 trial.

8 But I will say that y'all are fantastic jurors. Thank
9 you for rolling with the punches. I said at the beginning
10 that I hoped y'all can be friends. And if you can't be
11 friends after a tornado warning -- I think we've got some
12 flash floods going on -- I don't know how we can make y'all
13 friends. It's like you've gone through basic training with
14 each other.

15 I do understand that people have childcare issues. We
16 will get you out of here by 5:30 this evening so that you
17 can pick up kids. And we will -- I will not delay you any
18 further.

19 And we'll go to Mr. Player for the next witness.

20 MR. PLAYER: Your Honor, Plaintiff would like to read
21 portions of the deposition of Trooper Brian N. Trotter.

22 THE COURT: All right. Ladies and gentlemen, you're
23 going to hear deposition testimony read to you by Mr.
24 Player and ---

25 MR. YARBOROUGH: William Yarborough.

1 THE COURT: Go ahead. And -- William -- what was the
2 last name again?

3 MR. PLAYER: Yarborough.

4 THE COURT: The -- Mr. Yarborough is answering the
5 written deposition testimony that was transcribed during a
6 deposition. This testimony was given under oath by -- it's
7 Trooper Trotter; is that correct?

8 MR. PLAYER: Correct.

9 THE COURT: -- by a trooper, Mr. Trotter. And so this
10 was transcribed during a deposition while both attorneys
11 were present. They could answer questions and the answers
12 were under oath.

13 Go ahead, Mr. Player.

14 MR. PLAYER: Thank you.

15 (Whereupon, the deposition was read
16 into the record by Mr. Player and Mr. Yarborough.)

17 BY MR. PLAYER:

18 Q Give us your full name, if you would.

19 A Okay. Brian Nelson Trotter.

20 Q All right. You're with the South Carolina Highway
21 Patrol?

22 A Yes, sir.

23 Q And how long have you been with the highway patrol?

24 A Since December of 2011.

25 Q All right. Now, what was your position with the

1 highway patrol on September the 8, 2012?

2 A I was a trooper.

3 Q And as I told you, this lawsuit arises out of an
4 accident that was eastbound on '20 on that day. And it
5 involved a pickup truck driven by Mr. Rivett, Ford Focus
6 driven by Mr. Jackson, and a tractor-trailer being driven
7 by ---

8 MR. PLAYER: I think if you'll scratch that last
9 question, Your Honor, and I apologize.

10 The next question is:

11 Q All right. Do you recall this incident?

12 MR. PLAYER: And this is on eight, starting at seven.

13 A I do.

14 Q You do?

15 A I do.

16 Q All right. We've taken the deposition of Plaintiff
17 and I understand that there's another accident that
18 occurred before this one, and you were investigating that
19 accident; is that correct?

20 A Yes, sir, it is.

21 Q Do you recall anything about that accident?

22 A No, I can't remember anything about the first one.

23 Q All right. What was the weather like on this day,
24 Trooper?

25 A It was heavy rain on that day.

1 Q And what -- what were the traffic conditions like on
2 I-20 eastbound?

3 A Very heavy and slow moving.

4 Q Do you know, Trooper, if the prior accident also --
5 was also in the eastbound lane?

6 A It was.

7 Q Did you actually witness this accident involving these
8 three vehicles?

9 A Yes, sir, I did.

10 Q Tell me what you saw -- and tell me what you saw.

11 A Well, I was working the first collision, whatever it
12 was, on the shoulder of the eastbound lane of I-20 between
13 Exits 70 and 71. I heard the sound of brakes locking up,
14 which I assume -- but I don't know for sure, I assume was
15 on the tractor-trailer. I looked up from what I was doing.
16 I saw the tractor-trailer under heavy braking, struck the
17 rear of Mr. Jackson's blue Ford Focus; and as a result of
18 that, push it into the rear of Mr. Rivett's Chevrolet
19 pickup truck.

20 Q So the only collision you saw was -- so the only
21 collision you saw between Mr. Jackson's Ford Focus and Mr.
22 Rivett's vehicle was after it was struck by the tractor-
23 trailer.

24 A Yes, sir. It was pushed.

25 Q Pushed into it?

1 A Yeah.

2 Q What were the speed of the vehicles? Were they going
3 very fast at the time?

4 A No. Well, on my report, I have Mr. Jackson and Mr.
5 Rivett at 25 miles per hour; and then Mr. Ledlum, who was
6 in the tractor-trailer, at 30 miles per hour.

7 Q And what was that based on?

8 A That was an estimate from my observation.

9 Q Okay. Did you see any type of second collision or
10 initial collision before the one you just described?

11 A No. This is the only thing I saw.

12 Q So you only saw one impact between my client, who
13 would be Mr. Jackson's vehicle, and the Plaintiff's truck?

14 A Your client being Mr. Jackson?

15 Q That is correct.

16 A That's correct. He was struck first by the tractor-
17 trailer and he pushed, he being the tractor-trailer, pushed
18 Mr. Jackson into the rear of Mr. Rivett's pickup truck.

19 Q And that caused your attention -- and what caused your
20 attention to that was the noise of the brakes on the
21 tractor-trailer.

22 A That's correct.

23 Q Did you have a chance to talk to the Plaintiff, Mr.
24 Rivett, following the accident?

25 A I did. And I reviewed my video from this collision

1 and unfortunately, there's a hole in there. There's a gap
2 where the interview with these three drivers is not
3 recorded on video.

4 Q Okay.

5 A So it's been so long now, but I believe I can remember
6 it; but I'm not positive enough to really testify as to
7 what they told me.

8 Q Do you recall them telling you there were two impacts
9 at any time?

10 A I don't recall that.

11 Q That he got hit twice?

12 A I don't recall that, no.

13 Q Do you recall any of the three parties with whom you
14 spoke indicating that there were two impacts?

15 A Not that I recall, no.

16 Q Did you ask the Plaintiff, Mr. Rivett, if he was
17 injured or hurt?

18 A I don't recall whether I asked him or not.

19 Q Is that a standard practice of yours? When you
20 interview someone who's been in an accident, do you ask if
21 they've been injured or hurt?

22 A It's the norm that I would ask. I don't always ask
23 it.

24 Q Why would you not ask it?

25 A Well, if they're up and around and talking to me and,

1 you know, people are very willing to ask for an ambulance
2 if they need one.

3 Q Okay. Did Mr. Rivett ask for an ambulance?

4 A Not that I recall. He was not transported by
5 ambulance. I can tell you that with certainty, so ...

6 Q Okay. Did anybody ask for an ambulance?

7 A No.

8 Q Did anybody appear injured, any of the three
9 individuals involved appear injured in this case?

10 A No.

11 Q Did you notice any cuts or blood or bleeding, any type
12 of injury on the Plaintiff, Mr. Rivett?

13 A Not that I recall.

14 Q As we sit here today, is there anything else you can
15 recall that may have been said by any of the three parties
16 to this accident?

17 A Well, like I said, I did review the video and none of
18 this is recorded unfortunately. It's certainly not
19 anything I did intentionally, but I do recall Mr. Rivett --
20 let me make sure I've got the names right. Mr. Rivett
21 saying something to the effect of do I need to stick around
22 or do I need to wait here because there was little to no
23 damage to his vehicle. And I don't remember exactly what
24 it was. I just said zero here, which means none or minor.

25 But anyway, I remember him saying something to the

1 effect of he wanted to know if I could leave -- if he could
2 leave, and I said, "No, sir, you're part of this now and I
3 need to have you on the report."

4 So then he stuck around and I finished what I needed
5 to do and gave his copy of everything.

6 Q Was an ambulance called to the scene?

7 A No, sir.

8 Q When you released the parties, did the Plaintiff drive
9 off in his truck?

10 A He did.

11 Q What about the tractor-trailer, did it drive off or
12 was it towed?

13 A It was towed, and I -- I'm not positive, but I believe
14 it was a ruptured radiator.

15 Q Okay. And what about the Blue Focus, that was the
16 middle vehicle, was it towed or was it driven off?

17 A It was towed by Wingard Trucking or Towing.

18 MR. PLAYER: That's all I have. Eric's going to read
19 for --

20 THE COURT: Okay. Go ahead.

21 MR. CAVANAUGH: May it please the Court? This is on
22 page 17, line 6.

23 Whereupon Mr. Cavanaugh and Mr
24 Yarborough continue to read from the deposition transcript
25 of Trooper Trotter as follows:

1 BY MR. CAVANAUGH:

2 Q And I believe you indicated that you do not recall Mr.
3 Rivett asking for any medical assistance; is that correct?

4 A That's correct.

5 Q Okay. So based upon the fact that he didn't need any
6 medical assistance and he had no damage to his vehicle, is
7 that why Mr. Rivett was asking you if he could go ahead and
8 get on down the road? Was that your impression?

9 A That was my general impression, yes.

10 Q Thank you.

11 MR. PLAYER: That's it, Your Honor.

12 THE COURT: All right. Thank you. You may step down.
13 (Mr. Yarborough complies.)

14 THE COURT: Any further witnesses, Mr. Player?

15 MR. PLAYER: No, Your Honor. The Plaintiff rests.

16 THE COURT: All right. Ladies and gentlemen, at this
17 times I need to take up a matter of law with the attorneys.
18 I'm going to have you step into the jury room and I'll get
19 you back out here as soon as possible. Thank you.

20 (The jury exits the courtroom at 3:57 p.m.)

21 THE COURT: All right. Mr. Barrow.

22 MR. BARROW: Mr. Cavanaugh.

23 THE COURT: Mr. Cavanaugh.

24 MR. CAVANAUGH: Your Honor, this is the appropriate
25 time. I -- I believe the evidence is clear that there is

1 no evidence of negligence on behalf of Mr. -- of Celadon
2 Trucking and Mr. Ledlum. The Plaintiff's presented no
3 evidence that we actually struck the Plaintiff's vehicle,
4 Your Honor, as a result, there's no evidence of negligence.
5 And for that reason, I believe it would be appropriate to -
6 - I move for judgment as a matter of law for the Defendants
7 as to the claims of the Plaintiff.

8 THE COURT: All right. Mr. Player.

9 MR. PLAYER: Your Honor, the testimony of the
10 Plaintiff about the impact, obviously, that he was struck.
11 Mr. Jackson testified, you know, exactly what happened when
12 the truck struck him. You know, he said that he was
13 stopped, saw the truck coming, didn't think it was going to
14 stop. He said, you know, it was Celadon Trucking. Trooper
15 Trotter just named Mr. Ledlum as the driver.

16 So I think there's sufficient evidence to demonstrate
17 -- at least to submit to the jury with regards to the
18 impact. Mr. Jackson said -- admitted that it was the
19 impact from the truck that pushed him into the Plaintiff.
20 The trooper testified that's what he saw. The truck
21 traveling, locking its brakes, then hitting Mr. Jackson and
22 pushing Mr. Jackson into Mr. Rivett. So we think there's
23 sufficient evidence to submit this to the jury.

24 THE COURT: All right. Viewing the evidence in the
25 light most favorable to the Plaintiff, as I must, I find

1 that there is sufficient evidence and deny the motion for
2 directed verdict respectfully.

3 MR. CAVANAUGH: Thank you, Your Honor. I do have one
4 other motion to make.

5 THE COURT: Sure.

6 MR. CAVANAUGH: Your Honor, as -- as it relates to
7 causation, Your Honor, I -- I am moving also for a directed
8 verdict as to causation, Your Honor. There is no evidence
9 in the record that would tend to show the collision between
10 my driver and -- between Mr. Ledlum and the -- Mr. Jackson
11 actually caused or led to the injuries that the Plaintiff's
12 complaining about in the case -- this case. I think, in
13 fact, the evidence is contrary.

14 And as a result, I believe the Plaintiff's failed to
15 prove his case as to causation; and therefore, move
16 respectfully for directed verdict as to causation in this
17 case.

18 THE COURT: All right. Mr. Player?

19 MR. PLAYER: Thank you, Your Honor. I will just point
20 to the deposition testimony of Dr. Boucree who said that,
21 in his medical opinion to the -- to the reasonable degree
22 of medical certainty, that the injuries for which my -- my
23 client underwent surgery were caused by the traffic
24 accident.

25 THE COURT: All right.

1 MR. PLAYER: That was contingent on the history, but
2 that was his opinion and he offered no other.

3 THE COURT: All right. Again, I respectfully deny the
4 -- the motion based on causation. There is enough
5 evidence, viewing it in the light most favorable to the
6 Plaintiff, to allow it to go to the jury.

7 MR. CAVANAUGH: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. PLAYER: Thank you, Your Honor.

10 THE COURT: All right. Let's bring the jury back in
11 so we can move along for the expert.

12 (The jury enters the courtroom at 4:01 p.m.)

13 THE BAILIFF: Jury's seated, Your Honor.

14 THE COURT: All right. Thank you. Ladies and
15 gentlemen of the jury, the Plaintiff has rested. And now
16 I'll turn to Mr. Barrow.

17 MR. BARROW: Thank you.

18 THE COURT: You may call your first ---

19 MR. BARROW: Mr. Cavanaugh's going to call our first
20 witness, Your Honor.

21 THE COURT: Okay. Mr. Cavanaugh. I keep turning to
22 you, Mr. Barrow. Sorry. Mr. Cavanaugh.

23 MR. CAVANAUGH: Thank you, Your Honor. The Defendants
24 call Bruce Ledlum to the stand.

25 BRUCE LEDLUM, having been first

1 duly sworn, testifies as follows:

2 THE CLERK: Have a seat in the witness box, please.

3 State your name for the record, along with the spelling of
4 your last name, please.

5 THE WITNESS: Bruce D. Ledlum, L-e-d-l-u-m.

6 THE COURT: Go ahead.

7 DIRECT EXAMINATION

8 BY MR. CAVANAUGH:

9 Q Thank you, Mr. Ledlum. I appreciate you being here
10 today. Now, where -- where are you from? Where do you
11 live today?

12 A Sanford, North Carolina.

13 Q All right. About how far is Sanford from Columbia?

14 A About three and a half hours.

15 Q Right. And you traveled down here for this trial
16 today?

17 A Yes.

18 Q Great. I appreciate it. Now, how old are you, Mr.
19 Ledlum?

20 A Sixty-three.

21 Q Now, are you married?

22 A Yes.

23 Q How long?

24 A Thirteen years.

25 Q Right. And your wife has come -- come to Columbia --

1 beautiful Columbia with you.

2 A Right.

3 Q All right. Now, do you have children?

4 A Three.

5 Q Three children. And does your wife have children?

6 A Yes.

7 Q Right. Okay. And your children are older; is that
8 correct?

9 A Yes.

10 Q And do you have grandchildren?

11 A Nine, I believe.

12 Q Nine grandchildren. And what are their age ranges?

13 A Oh, I don't know. Probably 24 on up.

14 Q Okay. So you've got -- so do you have grand -- greaqt
15 grandchildren also?

16 A Yes, about 11.

17 Q Eleven. And I'm sure none of them are spoiled; are
18 they?

19 A No, not a bit.

20 Q Well, I appreciate you be -- being here today. Now,
21 at one time -- now, I understand you're not longer employed
22 by Celadon Trucking ---

23 A No, sir.

24 Q --- is that correct?

25 A That's right.

1 Q And who do you work for today?

2 A AB -- ABM Security.

3 Q And how long have you been with ABM Security?

4 A Three years now.

5 Q All right. And what do you do for ABM?

6 A I am a security guard at their -- one of their plants.

7 Q All right. Is that close to your home in Sanford?

8 A It's about seven minutes.

9 Q All right. And now, when you worked for Celadon, you
10 previously worked for other trucking companies; is that
11 correct?

12 A Yes, sir.

13 Q All right. And when did you first start driving
14 trucks?

15 A 1991.

16 Q All right. You worked for a number of different
17 trucking companies?

18 A Yes.

19 Q Including Celadon.

20 A Yes.

21 Q And that -- you -- as a trucker, you didn't run what
22 they call an "LTL," did you, a local route?

23 A No.

24 Q You ran an over-the-road route ---

25 A That's correct.

1 Q --- that correct? That required you to be away from
2 home --

3 A A month, two months at a time.

4 Q Right. Now, your job today with ABM Security, you ---

5 A I'm home everyday.

6 Q Right. You don't have much travel involved.

7 A No.

8 Q Like you said, it was about seven minutes.

9 A That's right.

10 Q All right. Well, I'm going -- I'm going to cut sort
11 of straight to the chase here and ask you about this
12 accident that we're here about today. You remember this
13 accident that occurred September of 2012?

14 A Yes, sir.

15 Q All right. Now, where had you left from that day?
16 Where were you ---

17 A Atlanta, Georgia.

18 Q Atlanta, Georgia?

19 A Yes, sir.

20 Q And how long had you been driving before you -- before
21 the accident occurred?

22 A About three and a half/four hours.

23 Q All right. And had you taken a stop somewhere ---

24 A I had taken ---

25 Q --- in between?

1 A --- a bathroom stop, yes, sir, along the way.

2 Q All right. And where were you ultimately headed that
3 evening?

4 A To North Carolina, to my home.

5 Q And that was about how much further up the road?

6 A Three and a half/four hours.

7 Q And you -- what road would you have taken from Atlanta
8 to Columbia? Would that have been ---

9 A I-20.

10 Q --- I-20. All right. I know there's another way you
11 can go around ---

12 A Yes.

13 Q --- Greenville.

14 A Yes.

15 Q But you went I-20 this time?

16 A Yes, sir.

17 Q All right. Now, you got in the Columbia area, what
18 was the weather like?

19 A All right. It was a heavy downpour of rain.

20 Q All right. That -- did that cause you to slow down?

21 A Yes, sir.

22 Q All right. And did you, in fact, slow down for the
23 weather?

24 A Oh, yes.

25 Q All right. Now, when you got in the -- when you got

1 into Columbia and you -- did you encounter another
2 accident?

3 A Yes, sir.

4 Q All right. And was that slowing traffic down?

5 A Yes, it was.

6 Q All right.

7 A It was stop and go.

8 Q Stop and go. All right. And did -- was the -- was
9 the accident off to the side, on the right side, left side
10 of the road?

11 A On the right side.

12 Q All right. And what did you do when you saw that
13 accident up ahead?

14 A I immediately worked my way over to the left-hand --
15 far left-hand lane ---

16 Q All right.

17 A --- with my four ways on.

18 Q Okay. And did you -- now, you said traffic was stop
19 -- stop and go. It wasn't -- did it ever come to a
20 complete stop at any point or was it just moving ---

21 A Occasionally it did, yes.

22 Q Okay. But at the time you came up to the -- on the
23 collision ---

24 A Right.

25 Q --- you were moving?

1 A Very slowly, yes.

2 Q Right. Okay. And about how fast were you going?

3 A I'd say once it got started, about 25/30 miles an
4 hour.

5 Q Okay. And so tell me, you came up on the collision
6 and did your accident occur before you got to the collision
7 or after you ---

8 A After.

9 Q --- had sort of passed it?

10 A After.

11

12 Q All right. Almost immediately after.

13 A Almost, yes, sir.

14 Q All right. And o when you're pulling in the left-hand
15 -- you're in the left-hand lane traveling, you're driving
16 about 30 -- 25/30 miles an hour. You're passing and then
17 what happens? What causes you to --

18 A Well, the car that was in front of me hit his brake
19 lights and I automatically hit my brakes.

20 Q Okay. And -- and -- but you ended up impacting his
21 rear.

22 A That's correct.

23 Q All right. And did your vehicle immediately come to a
24 stop?

25 A Yes.

1 Q All right. And what happened then?

2 A An officer came over from the right-hand lane,
3 motioned for us to get over in the right-hand -- right-hand
4 shoulder.

5 Q Okay. All right. And did you in fact move your truck
6 over that way?

7 A Yes, sir.

8 Q And now, the car in front of you, what color was the
9 car in front of you?

10 A Blue, I believe.

11 Q Okay. And did it also move over to the ---

12 A Yes, sir.

13 Q And did -- was there another vehicle there also?

14 A The other one was a pickup truck, but I didn't even
15 know it was even involved.

16 Q Okay. And -- but it moved over to the right-hand ---

17 A That's correct.

18 Q --- side of the road also.

19 A That's correct.

20 Q All right. And when you pulled over to the right-hand
21 side of the road, what did you do?

22 A I got out of my truck and went up to see if the other
23 people were all right --

24 Q Okay.

25 A -- if nobody was injured.

1 Q Okay. Did anybody indicate to you that they were
2 injured?

3 A No, sir.

4 Q All right. Did you talk to Mr. Jackson? You saw him
5 here earlier today?

6 A Yes, I did.

7 Q All right. And did you ask him if he was okay?

8 A Yes. Yes, I did.

9 Q And he indicated he was fine.

10 A He said he was all right.

11 Q All right. And what about the other gentleman? Did -
12 - was that Mr. Rivett?

13 A Yes, it was.

14 Q All right. Did he say he was fine?

15 A He said he was all right. He wasn't hurt.

16 Q Okay. Was it still raining at that time also?

17 A Yes, very hard.

18 Q Okay. And did -- did -- but did -- now, you had a
19 very brief opportunity to interact with Mr. Rivett, I -- I
20 understand?

21 A Very -- very little, yes.

22 Q All right. And a very brief opportunity to interact
23 with Mr. Jackson.

24 A Yes. Because it was pouring down rain and I was
25 getting soaked as it was.

1 Q Okay. And did -- did Mr. Rivett appear to be injured
2 at all to you?

3 A No, sir, he did not.

4 Q Okay. And was -- was he -- did he complain to you of
5 injury?

6 A No, sir.

7 Q And did you go back to your truck ---

8 A Yes ---

9 Q --- get back in your truck afterwards?

10 A Yes, I did.

11 Q Okay. And then at some point, did you leave the
12 accident scene?

13 A Yes.

14 Q And your truck was towed from the scene; is that
15 correct?

16 A That's correct.

17 Q Do you know if Mr. Rivett's car was towed or truck was
18 towed or if he drove off?

19 A He drove off as far as I can remember -- far as I
20 know.

21 Q Okay. And Mr. Jackson's vehicle was ...

22 A He was towed off.

23 Q All right. And then you -- but you -- but someone
24 came to the accident scene to get you and ---

25 A Right.

1 Q --- took you from the accident scene, right?

2 A That's correct.

3 MR. CAVANAUGH: All right. That's all the questions I
4 have for you, Mr. Ledlum. Answer any questions ---

5 THE WITNESS: Thank you.

6 MR. CAVANAUGH: --- Mr. Player has for you.

7 CROSS-EXAMINATION

8 BY MR. PLAYER:

9 Q Afternoon, Mr. Ledlum.

10 A How you doing?

11 Q Do you remember the date that you stopped working for
12 Celadon?

13 A Yes, two days after that.

14 Q Two days after the accident?

15 A Yes, sir.

16 Q Did you leave or were you terminated?

17 A I left on my own.

18 Q Okay. Would you agree with me that it's a driver's
19 responsibility to make sure there's enough distance between
20 his vehicle and the vehicle in front of him so that he
21 could stop safely in -- in case of an emergency?

22 A Yes, sir.

23 Q And did you do that on this date?

24 A Yes, sir.

25 Q But you still hit somebody, correct?

1 A That's correct.

2 Q So if you had enough space to stop safely before you
3 hit him, why did you hit him?

4 A You got a 40,000-pound load on a trailer, there's a
5 lot of weight pushing you.

6 Q But aren't you supposed to consider ---

7 A Yes, sir, I did.

8 Q --- your vehicle and the conditions, correct?

9 A That's correct.

10 Q The road was wet, right?

11 A That's right.

12 Q So you got 20 tons of steel in a load, wet road,
13 shouldn't you put a whole lot of distance between you and
14 the person in front of you?

15 A I believe I did.

16 Q Okay. If you had done that, would you have struck
17 him?

18 A It's a possibility.

19 Q Okay. So you don't think you had a responsibility to
20 make sure that you were far enough back that in the case
21 somebody slams on their brakes, that you wouldn't hit them?

22 A That's correct. I wouldn't have hit him if obviously
23 enough distance back.

24 Q So ---

25 A It's a possibility I wouldn't have hit him. It's not

1 guaranteed.

2 Q Okay. But you don't think you have a responsibility
3 to make sure, absolutely sure, when you're driving 20 tons
4 of vehicle and load to make sure that you're far enough
5 back that if they slam on their brakes, you won't hit them?

6 A Of course you have to keep enough distance between
7 you.

8 Q But you didn't?

9 A Yes, I did.

10 Q Then why did you hit him?

11 A Like I said, momentum and weight, it pushes you.

12 Q But that's everything -- you're supposed to consider
13 all that stuff, right?

14 A It -- it was considered, sir.

15 Q Okay. And I'm not -- I'm not trying to say you're a
16 bad person, Mr. Ledlum.

17 A Uh-huh.

18 Q I'm just trying to say: Did you make a misjudgment?

19 A No.

20 MR. PLAYER: Okay. No further questions.

21 MR. CAVANAUGH: No further questions, Your Honor.

22 Thank you.

23 THE COURT: All right. Thank you, Mr. Ledlum. You
24 may step down.

25 (The witness complies.)

1 MR. CAVANAUGH: Your Honor, Defendant calls Dr.
2 Charles Hughes to the stand, please.

3 CHARLES HUGHES, M.D., having been
4 first duly sworn, testifies as follows:

5 THE CLERK: Have a seat in the witness box, please.
6 State your name for the record along with the spelling.

7 THE WITNESS: Charles H. Hughes, Jr.

8 THE COURT REPORTER: Spell your last name.

9 THE WITNESS: H-u-g-h-e-s.

10 DIRECT EXAMINATION

11 BY MR. CAVANAUGH:

12 Q Thank you, Dr. Hughes. Appreciate you being here
13 today. Would you please summarize your -- well, would you
14 please tell the jury what you do for a living?

15 A I'm an orthopedic surgeon.

16 Q And where do you practice medicine?

17 A In Hampton Regional Hospital, in Hampton, South
18 Carolina.

19 Q About an hour and 45 minutes, two hours from here?

20 A Correct.

21 Q All right. Now, would you please tell the jury a
22 little bit about your education and -- and your work
23 experience.

24 A Okay. I was born in Denmark -- Blackville/Denmark,
25 South Carolina, went to Wofford College, did my medical

1 training at the Medical University of South Carolina; did
2 my orthopedic surgery training at Greenville Hospital
3 System at Shriner's Hospital in Greenville, South Carolina.

4 Q And you've been -- you've actually been admitted a --
5 admitted and Board certified since what year?

6 A Yes. You know, you have to practice two years, so I
7 was Board certified in 1993, went into private practice in
8 1990. And then I got re-certified and then just re-
9 certified again. Every 10 years recertify.

10 Q Will you tell the jury just a little bit about what's
11 involved in certification?

12 A Well, after two years of practice, you take six months
13 of case list; and you go have an oral exam in Chicago in
14 one day, where 450 of you and your colleagues go and they
15 ask you oral examinations for several hours. About 65
16 percent people pass the first time and 35 percent get to
17 come back and try it again.

18 And then the -- the re-certification is a computer
19 test. After 10 years, you recertify with character
20 backgrounds and you take a computer test. I've done that
21 twice and passed.

22 Q And how long is your recertification for, 10 years,
23 every 10 years?

24 A Ten -- to 2023. Yes, sir.

25 Q So just recently you were recertified?

1 A Yes.

2 Q And Dr. Hughes, are you a member -- other than being
3 certified, are you a member of any professional
4 organizations?

5 A The American Academy of Orthopedic Surgeons, the
6 American Board of Orthopedic Surgeons.

7 Q All right. And now, you mentioned a minute ago you
8 were currently a practicing orthopedic surgeon; is that
9 correct?

10 A Correct.

11 Q And in fact, you do perform surgeries ---

12

13 A Yes.

14 Q --- is that correct?

15 A Yes, I do.

16 Q And I believe you were telling me that when we -- that
17 you had done some surgeries this week, in fact?

18 A Yes. I did five yesterday: Hip replacements, hip
19 fractures, broken bones, rotator cuffs, knee scopes,
20 general orthopaedics.

21 Q And about how many surgeries -- orthopedic surgeries
22 do you do on average a week?

23 A Five to seven on average right now.

24 Q All right. Now, Dr. Hughes, you -- you reviewed the
25 Plaintiff's records in this case and -- and other things,

1 correct?

2 A That is correct.

3 Q All right. And you -- you are familiar with the
4 surgery the Plaintiff underwent in this case, right?

5 A Very familiar, yes.

6 Q All right. And you actually have assisted and did
7 part of the surgeries -- a surgery similar to what the
8 Plaintiff underwent during your career; is that correct?

9 A Yes.

10 Q All right.

11 MR. CAVANAUGH: Your Honor, I -- I -- we'd like to
12 move to offer Dr. Hughes as an expert in the field of
13 orthopedics and orthopedic surgery.

14 MR. PLAYER: No objection, Your Honor.

15 THE COURT: All right. He is so qualified to testify.

16 MR. CAVANAUGH: Thank you. Thank you, Your Honor.

17 BY MR. CAVANAUGH:

18 Q And Dr. Hughes, you -- again, you had an opportunity
19 to review Mr. Rivett's medical and treatment records; is
20 that correct?

21 A That's correct.

22 Q And did those medical records also include medical
23 records from prior to the incident that is the subject of
24 this case?

25 A Yes.

1 Q All right. And now, in particular, have -- do you
2 recall -- during your review, you recall reviewing medical
3 records and treatment records from Cypress Chiropractic?

4 A Yes, I do.

5 Q All right. From August of 2012?

6 A Correct.

7 Q All right. Now, I'm going to show you what I
8 previously -- what's been previously marked as Defendant's
9 Exhibit 6. (Hands exhibit to the witness) Give you that,
10 Dr. Hughes. Do you recognize those records?

11 A Yes, I do.

12 Q All right. And in fact, are those the records from
13 prior chiropractic treatment Mr. Rivett received prior to
14 the accident that occurred in this case?

15 A That is correct.

16 Q All right. Now, if you look at the first page, it's
17 dated -- it looks like the visit is August the 24th; is
18 that right?

19 A Correct.

20 Q All right. And the date of injury onset, August 16;
21 is that correct?

22 A Correct.

23 Q And in your review of this record and the attached
24 records, is there anything that really stood out to you in
25 these records?

1 A Well, I think that first paragraph is very telling
 2 looking at the entirety of his case. When he went in, he
 3 said he presented complaining -- had complaints due to
 4 walking into a mirror on the side of a bus while he was
 5 wearing his hard hat. He says (as read): "The patient
 6 states that this is an exacerbation of a longstanding neck
 7 issue that he has had since a car accident in the mid 80's.
 8 The patient has been under regular chiropractic care and is
 9 working in a nuclear plant."

10 So it sounds like he's had a longstanding problem
 11 that's been treated for many years, since the 1980's.

12 Q All right. And does it -- does it appear from your
 13 review of this record and the records that are attached
 14 that this issue is ongoing and he is currently seeking
 15 treatment for that?

16 A That is correct.

17 Q All right. Now, is there anything else under
 18 "Subjective Complaints" that -- that you noticed regarding
 19 the severity of the pain that he was under -- that he was
 20 experiencing at the time he went in on August the 24th?

21 A Yes. He -- he reports to the -- the doctor there that
 22 he has pain in the left side of his neck, left shoulder,
 23 left arm, and left hand. And he -- he says here (as read):
 24 "It occurs between one-half and three-fourths of the time
 25 when he is awake and causes a serious diminution of his

1 capacity to carry out daily activities."

2 Q And "serious" is italicized?

3 A Correct.

4 Q All right. Now, in -- in your experience as an
5 orthopedic surgeon and you have reviewed this and -- does
6 this indicate to you that the patient is having some
7 serious problems with his neck and back pain that he's
8 complaining of?

9 A Absolutely.

10 Q All right. And there's several other doctor visits
11 attached there -- well, I want to ask you to flip over to
12 page 2 if you can, of that first record.

13

14 (The witness complies.)

15 Q And is there -- under prognosis, if you would look at
16 prognosis, it's -- did it indicate to you that there was
17 some permanent -- permanency already present with the
18 Plaintiff?

19 A Yes. It says under prognosis (as read): "At this
20 time, Mr. Rivett's prognosis is fair. His case is
21 complicated, but continued improvement is expected despite
22 permanent residuals being a probability."

23 Q All right. And then I want to direct your attention
24 back to the first page. Now, he came in -- did you notice
25 whether or not he was working at the time he came in and

1 was treating for this accident? Did -- did you notice what
2 he told the chiropractor that he working at the time he
3 came in for treatment?

4 A Well, I don't really know what he was doing exactly.
5 He said he needed to get back to work. But it said when he
6 hit the mirror, he had his hard hat. So I'm not sure who
7 wears a hard hat if they're not working, so ...

8 Q Right. But would it appear from your review of the
9 record that he was not working when he went into the -- for
10 treatment?

11 A That's correct. Yes.

12 Q All right. And then if you'll look -- glance at the
13 other two records that are with it on page 2 -- I mean,
14 excuse me, on page 1, which is marked at the bottom
15 Plaintiff Production 71, does it indicate, under "Objective
16 Evaluation/Palpation Evaluation," seems like he's still in
17 severe -- experiencing severe pain on -- as of August 28th;
18 is that correct?

19 A Yes.

20 Q All right. And then on August 31, he's still having
21 severe pain in his cervical region, is that correct, on
22 Plaintiff's Production 73?

23 A Yes.

24 Q All right. Now, Dr. Hughes, did you -- you mentioned
25 you had an opportunity to review all the medical records in

1 this case, correct?

2 A Correct.

3 Q And you reviewed the depositions of the Plaintiff and
4 Dr. Boucree and Dr. -- the chiropractor, Archer; is that
5 correct?

6 A Correct.

7 Q All right. And you had an opportunity to review Dr.
8 Archer's records as well as Dr. Boucree's records, correct?

9 A Correct.

10 Q All right. And is there anything from -- following
11 the accident, is there anything in those records that would
12 indicate to you that the Plaintiff -- Plaintiff would have
13 suffered any type of neck injury or back injury as a result
14 of the accident that occurred on September the 8, 2012?

15 A No.

16 Q All right. And is there anything in those records
17 that would indicate that the accident on September 8, 2012,
18 caused him to have any kind of permanency as a result of
19 the accident?

20 A No.

21 Q All right. And is it your opinion that the injuries
22 and surgery that the Plaintiff's claiming in this case were
23 preexisting and not exacerbated by the accident that
24 occurred in this case?

25 A That is correct.

1 Q All right. And is it -- it -- is it also your opinion
2 -- is there anything you saw in your review of the complete
3 medical records, including the records from Cypress
4 Chiropractic, that would -- you -- lead you to believe that
5 the Plaintiff was any way debilitated or not able to work
6 as a result of the accident that is the subject of this
7 case?

8 A No, I saw nothing.

9 Q All right. And Dr. -- Dr. Hughes, those -- are those
10 your opinion -- are those your opinions in this case?

11 A Yes.

12 Q And are those opinions to a reasonable degree of
13 medical certainty?

14 A Yes, as an orthopaedic surgeon.

15 Q And they're based on your experience and training in -
16 - in the field of orthopedic -- in the field of orthopedics
17 and orthopedic surgery; is that correct?

18 A Yes.

19 Q All right.

20 MR. CAVANAUGH: Thank you, Dr. Hughes.

21 CROSS-EXAMINATION

22 BY MR. PLAYER:

23 Q Good afternoon, Doctor.

24 A Hello.

25 Q Do you still have Defendant's Exhibit 6?

- 1 A Yes.
- 2 Q Okay. Just keep -- hold onto it. Did you talk to the
- 3 doctor that made those notes?
- 4 A No.
- 5 Q Can you tell me the doctor that made those notes?
- 6 A Tell me -- tell you the doctor?
- 7 Q Yeah, his name.
- 8 (Brief pause as the witness looks through a document.)
- 9 A I do not see it on this record.
- 10 Q Okay. Look through all of them. Name of a doctor, a
- 11 nurse, a receptionist. Do you see any name as to who made
- 12 those documents?
- 13 A Not on this exhibit.
- 14 Q Okay.
- 15 A Not that I can see.
- 16 Q Okay.
- 17 A When I reviewed this, there was a cover sheet from
- 18 this -- from this practicing chiropractor that's not part
- 19 of this.
- 20 Q Okay. But the actual notes that you're basing your
- 21 opinion on, you can't tell me who made those notes?
- 22 A Not from what I can see.
- 23 Q Okay. Did you -- but you know they came from Cypress,
- 24 right, Cypress Chiropractic?
- 25 A Correct.

1 Q Did you call them and talk to them about these notes
2 and -- and their treatment of Mr. Rivett?

3 A I would have no reason to.

4 Q Oh, okay. You mentioned that yesterday you operated
5 on five people, correct?

6 A Correct.

7 Q Did you examine those folks?

8 A Yes.

9 Q You talk to them?

10 A Yes.

11 Q Okay. Did you perform tests and stuff?

12 A Of course.

13 Q So you didn't just read their stuff and start cutting?

14 A No.

15 Q Okay. Can you tell me when you talked to Mr. Rivett?

16 A I've never spoken to him.

17 Q Oh. What about Dr. Archer?

18 A Never talked to him.

19 Q What about Dr. Boucree?

20 A I would have no reason to.

21 Q No reason to. So you're forming an opinion about
22 whether or not his injuries are related to this accident,
23 and you didn't so much as pick up the phone and call the --
24 the physicians that's talked to him, did the tests, treated
25 him, and made the decision for the surgery?

1 A That's correct.

2 Q Okay. How much are you being paid for your testimony?

3 A I'm being paid for my time and my opinion.

4 Q How much?

5 A Two -- \$250 an hour.

6 Q How many hours have you spent on this?

7 A Probably 8 to 10.

8 Q 8 to 10. And how much of that -- is that 8 to 10
9 before you get here?

10 A Yes.

11 Q Is there a different rate for testifying in court?

12 A I have no idea. I've never done this before.

13 Q Well, I'm just -- I'm just asking about your
14 arrangement for them.

15 A We've not talked about it.

16 Q Okay. Are you here today for free?

17 A I'm assuming it's the same rate.

18 Q Okay. Now, question: If you had said that Mr.
19 Rivett's injuries were related to the accident, you think
20 you'd be sitting here today?

21 A I'm giving an honest opinion.

22 Q I understand.

23 A I take -- I take my oath on the Bible very seriously.

24 Q I'm not saying that you're lying, Doctor. I'm just
25 asking, there was -- I'm asking you to admit that there was

1 a financial incentive for you to give an opinion to help
2 the Defendants, since they are -- they're the ones that are
3 cutting you the check.

4 A If you want to paraphrase it that way.

5 Q Okay. Do you know what an IME is?

6 A Yes.

7 Q What is that?

8 A An independent medical evaluation.

9 Q Have you ever done that?

10 A Yes.

11 Q How many times?

12 A Probably a hundred.

13 Q Okay. Were you asked to do that in this case?

14 A No.

15 Q Explain to the jury what an independent medical
16 examination is.

17 A You see a patient, you review all the records, you do
18 an examination ---

19 Q Do an examination, correct?

20 A Correct.

21 Q And then you give an opinion.

22 A And you look at the x-rays, MRIs, and the -- the
23 totality of their care.

24 Q Sure. But they didn't ask you to do that in this
25 case?

1 A No.

2 Q How often have you testified in litigation, just say
3 in the last five years?

4 A What -- what do you mean by "testify"?

5 Q Either in a deposition or in a courtroom like this
6 where you testified as a medical expert in a personal
7 injury case.

8 A In -- in what time frame, I'm sorry?

9 Q Last five years.

10 A Maybe 10.

11 Q Maybe 10. Okay. And do you know what split during
12 that time period you did for plaintiffs or defendants?

13 A I think maybe two plaintiff and eight defendant.

14 MR. PLAYER: Okay. No further questions. Thank you,
15 Dr. Hughes.

16 THE COURT: Mr. Cavanaugh?

17 RE-DIRECT EXAMINATION

18 BY MR. CAVANAUGH:

19 Q Dr. Hughes, did you look at the MRIs that were
20 provided to you of the Plaintiff?

21 A Yes, I did.

22 Q And did you -- did you review those?

23 A Yes, I did.

24 Q What did you see? Did you -- tell me what you
25 remember seeing in the MRIs that you reviewed.

1 A He had a -- between the -- we name -- number the discs
2 Cervical 1 through 7, and between C-5/6, which is one
3 level, and C-6/7, he had degenerative discs with bone spurs
4 that were pressing on his spinal cord.

5 Q And tell the jury a little bit about what you mean by
6 "degenerative discs"?

7 A Well, degenerative, there's a lot -- it's a fancy word
8 for saying "old age." But some people degenerate faster.
9 Smoking can increase it, your activity levels, accidents,
10 you know, previous accidents, the type of work you do.

11 But "degenerative" means that -- particularly of the
12 discs, the water content comes out and the disc kind of
13 settles; and as it settles, the bones rub, and then they
14 get bone spurs. So it's something that happens over a
15 longstanding period of time.

16 Q Did you see any acute injuries that the Plaintiff ---

17 A No.

18 Q --- might have suffered?

19 A No.

20 Q And by "acute," will you tell the jury what that
21 means.

22 A Well, an acute injury, on an MRI, you can see blood,
23 you can see bruising, you can see bruising of nerves,
24 spinal cord, disc, fracture. But none of those were
25 apparent.

1 Q And the only thing you saw on the MRI was degenerative
2 conditions that appeared like they had existed for some
3 period of time.

4 A That's correct.

5 Q All right. Now, you're a practicing orthopedist,
6 you're a practicing orthopedic surgeon, right?

7 A Correct.

8 Q And that's what you do on a daily basis.

9 A That's correct.

10 Q This is not what you do on a daily basis; is that
11 right?

12 A Correct.

13 Q All right. And in fact, you did five surgeries
14 yesterday, and I believe you saw some patients this
15 morning; is that right?

16 A Yeah. I did two patients this morning, yes.

17 Q And you'd rather be there than here; isn't that right?

18 A Yes.

19 Q And now -- but you see patients before you operate on
20 them. Do you evaluate the patients?

21 A Yes.

22 Q And do you look at MRIs and x-rays and you put a
23 puzzle together.

24 A All day long.

25 Q All right. And as part of that puzzle that you put

1 together, does part of that puzzle include a history?

2 A Yes.

3 Q All right. And that history can come from a number of
4 sources; isn't that correct?

5 A That's correct.

6 Q All right. One of those things, would that be past
7 medical records?

8 A Yes.

9 Q All right. What else -- where else do you get a
10 history from?

11 A Well, we used to get them a lot better. We get them
12 from other doctors, but now with electronic medical
13 records, we don't really get that. But you know, for the
14 most part -- and I've always told, you know, students that
15 -- that I mentor, you know, listen to the patient because
16 90 percent of what's going on they tell you by their
17 history. So listening to the patient is a very important
18 part of this.

19 Q And is it -- you say "very important." Sounds like
20 it's the most important part; is that right?

21 A It -- it is as important as the -- the x-rays and
22 physical exam, yes.

23 Q And in giving you that history, is it -- is it
24 important for a patient to tell you everything that's going
25 on or has been going on with their condition that they come

1 to you for treatment for; is that important?

2 A Absolutely.

3 Q All right. And you rely on that information, that
4 history, in your treatment and the decisions that you make
5 going forward regarding whether or not they need physical
6 therapy, non-invasive surgery, surgery. You rely on that
7 history, don't you?

8 A Correct.

9 MR. CAVANAUGH: Thank you, Doctor.

10 MR. PLAYER: Very briefly.

11 RE-CROSS-EXAMINATION

12 BY MR. PLAYER:

13 Q Acute injury and MRIs, would you expect them -- the --
14 the bruising and bleeding, would you expect to see them a
15 year after a traumatic event?

16 A Most likely not.

17 Q Okay. And in terms of the puzzle -- I want to make
18 sure because Dr. Boucree -- you weren't here -- talked a
19 lot about puzzles yesterday. And the puzzle is all of the
20 various information, examinations, MRI, all that stuff,
21 including the input from the -- from the patient, is all
22 part of that puzzle, correct?

23 A That's correct.

24 Q And you didn't have the input directly from Mr. Rivett
25 in forming your opinion, correct?

1 A That's correct.

2 MR. PLAYER: Thank you.

3 MR. CAVANAUGH: No further questions, Your Honor.

4 THE COURT: Thank you. You may step down.

5 (The witness complies.)

6 THE COURT: Does anyone object to him being relieved
7 from his subpoena?

8 MR. BARROW: Thank you.

9 THE COURT: Dr. Hughes, you're relieved. Thank you
10 very much for your testimony today.

11 Any additional witnesses?

12 MR. BARROW: The Defendant rests, Your Honor.

13 THE COURT: All right.

14 All right. Ladies and gentlemen, it is now a little
15 after 4:30. We still have closing arguments and a jury
16 instruction to give you before you can deliberate. And I
17 do not want to give this case to you at this late time. I
18 know people have children to pick up. And even if they
19 didn't, it's not a great time to give a case to a jury.

20 So we're going to come back tomorrow morning at 9:30,
21 just like we did this morning. So again, if you can be
22 here at 9:15, you will hear closing arguments from the --
23 from the attorneys, and then you will get an instruction on
24 the law from me; and then it will be time to deliberate.

25 Thank you all very much for your service. Please do

1 not speak about this case yet. I have not given you the
2 permission to talk about this case with each other. Thank
3 you.

4 (The jury exits the courtroom at 4:35 p.m.)

5 THE COURT: All right. Any additional motions?

6 MR. BARROW: The Defendant renews its motions, Your
7 Honor.

8 THE COURT: All right. And I ---

9 MR. BARROW: All those previously made.

10 THE COURT: Thank you. And I respectfully deny your
11 motion for directed verdict, but note your renewal of those
12 for the record.

13 And we have already discussed the jury charge, so I
14 think we're squared away there. Anything else we need to
15 discuss before tomorrow morning?

16 MR. PLAYER: Just the -- the verdict form. Is that --
17 -

18 THE COURT: We're -- at least we're working on it.
19 We'll have that ready for tomorrow. It's done, yeah.
20 We'll have that ready and the jury charge ready for
21 tomorrow morning. And I know today was a bit of an unusual
22 and trying day, but we got through it. Look at us. We --
23 we -- we got here -- earlier than expected, as a matter of
24 fact, so ...\

25 In between throwing up children and tornados and flash

1 floods, we made it. All right. We'll see you tomorrow
2 morning.

3 (Marked Court's Exhibit No. 9, deposition transcript
4 of Trooper Trotter.)

5 (Off the record at 4:37 p.m.)

6 DAY THREE

7 THE COURT: All right. We can bring in the jury.

8 (The jury enters the courtroom at 9:34 a.m.)

9 THE BAILIFF: The jury's seated, Your Honor.

10 THE COURT: Thank you, Mr. Dye.

11 Good morning and welcome back.

12 JURORS: Good morning.

13 THE COURT: Appreciate y'all being here this morning,
14 And we are ready to entertain closing arguments in this
15 case, and after you hear closing, I will charge you on the
16 law of this case.

17 Mr. Player.

18 MR. PLAYER: Morning, everybody.

19 ALL JURORS: Good morning.

20 MR. PLAYER: Mr. Rivett is here. He ate something
21 that disagreed with him, so he may be running down the hall
22 several times during closing.

23 Thank you for listening for the past couple of days.
24 Sorry for the delays. Everybody kind of knows what the
25 case is about now. And what's going to happen is I get to

1 speak to you and then Defense counsel will speak to you and
2 then I get to make the final statement. So what I like to
3 do initially is go through what we think are the undisputed
4 facts of the case. Of course, Defense might disagree with
5 undisputed, but I think from the evidence, there's stuff
6 that you can take as the truth in this case in making your
7 decision.

8 So let's talk about the accident. Okay. In the
9 accident, we know from the test -- from the testimony of
10 Mr. Jackson, who was in the blue Focus between the
11 Defendant's truck and my client's truck, that he was struck
12 by Celadon's truck driven by Mr. Ledlum, and he was pushed
13 into my client and the hitch on the back of my client's
14 truck, which was marked as Exhibit 1.

15 We know from the trooper that he heard brakes lined up
16 on the truck, it hit the Focus, and pushed the Focus into
17 my client's car.

18 We know from Mr. Jackson and from Mr. Ledlum, who was
19 driving the truck, the speeds were 25 to 30 miles an hour.
20 We know from Mr. Ledlum that Celadon's truck was 40,000
21 pounds, 20 tons.

22 Mr. Jackson said he tapped him. He also said he was
23 pretty scared when he saw that big truck bearing down on
24 him and didn't think it was going to stop.

25 So Defense, obviously, wants you to believe this was a

1 very minor collision. To me, 40,000 pounds, moving at 25
2 to 30 miles an hour, I don't see how that could be a minor
3 collision. But again, that's within your province. But we
4 know Celadon and Mr. Ledlum were driving the truck that was
5 going too fast for the conditions, or at least didn't put
6 enough space between them and the blue Focus to stop before
7 contact.

8 And as a result of this minor accident and this tap
9 the blue Focus was crushed in the back. My client said it
10 was crushed in the front. Mr. Jackson said cracked bumper
11 and a dented hood. I've tapped people before: I didn't
12 dent my hood; I didn't lose my bumper. That's why the
13 bumper's there. The bumper's there to tap somebody.
14 Hopefully, it minimizes the damage.

15 But after this accident, both the Focus and the 40,000
16 pound truck were towed from the scene. That's -- that's
17 damage. That's a fair amount of damage. There's a lot of
18 force involved and that force went somewhere. And what was
19 the end point of the force? My client's truck and his
20 hitch.

21 I told you from the very beginning of this case that
22 J. C. didn't think he was hurt. Okay. He got out of his
23 truck, he didn't feel anything. We never -- we never hid
24 that. Never tried to hide it. He didn't think he was
25 hurt. An hour and a half later, he was feeling the pain.

1 Stopped for the night and immediately went to see his
2 chiropractor in North Carolina. We've never hidden that.

3 Once J. C. got a job at home, he went to Dr. Archer at
4 home. And you heard from J. C. and Dr. Archer, he got a
5 little better. The pain subsided, but it wasn't fixed. It
6 didn't go away. Dr. Archer told you he knew, once he ended
7 his treatment, that he was under the understanding that J.
8 C.'s issues weren't resolved. Okay. There were still
9 issues. And the entire time, J. C.'s telling his doctors,
10 "This is from the traffic accident."

11 He's not hiding the fact that he's lived with pain for
12 a long time. Never hid that. He's got a lot of problems.

13 Dr. Boucree, I don't know if you got the whole bank
14 robbery thing, but Dr. Boucree said, "This man's messed up
15 He's got lumbar problems. He's got problems everywhere.
16 He's got arthritis everywhere."

17 But the bank robbery story was to tell you when you go
18 to do something, you have to prioritize what is most
19 important. And Dr. Boucree told you the C5/C6 or C5/6,
20 that -- the area in his neck, it had to be fixed. It was
21 bulging out. It was unstable. Your vertebra in your spine
22 is unstable. It had to be fixed.

23 Now, Defense is going to go back to the Archer records
24 where J. C. said, "Zero, no pain, let me go." You heard
25 his testimony, "I wasn't fixed. I didn't think it was

1 going to do any good anymore." You heard Dr. Archer say,
2 "I'd done everything I could for him, so I let him go, but
3 I knew his issues weren't resolved."

4 So that's why it's important, you can't just look at
5 the paper. You gotta talk to the people involved. And we
6 did that. You heard from J. C., you heard from Dr. Archer.
7 They told you what the understanding was: "I've done all
8 can -- I can do for you. I made you a little better, but
9 it's not fixed."

10 Then we have a gap from Dr. Archer to Dr. Boucree.
11 And I'm pretty sure Defense is going to like to focus on
12 the lawyer in Louisiana. He went to a lawyer and that's
13 how he got to Dr. Boucree. The lawyer got the MRI. Yeah.
14 They do things differently down there.

15 What the lawyer didn't do: He didn't take the MRI.
16 He didn't change the MRI. He didn't interpret the MRI. He
17 got it taken. He got it to a spine specialist, Dr.
18 Boucree. It was Dr. Boucree, who you heard at length, tell
19 you what he saw.

20 Then what did he do? Then he did examinations. He
21 talked about a lot of tests, a lot of names that I can't
22 spell. But you've heard him talk about the puzzle, just
23 like Dr. Hughes, the man who testified here -- the doctor
24 who testified yesterday. You've got to take all of those
25 pieces of information and put a puzzle together to figure

1 out what's wrong, what caused it, and how you fix it. And
2 his conclusion, at the end of that puzzle, was you need to
3 get your neck fixed or you might be paralyzed.

4 I don't know if you remember back in opening
5 statements, Defendant said J. C. had a choice. He chose
6 the surgery. If you listen to his testimony, and the
7 physician who operated on him and made that decision with
8 him, he didn't have a choice. He thought paralysis or try
9 and fix it where I still might be paralyzed, but it was the
10 only way to get relief.

11 All this comes back to what I was talking about at the
12 beginning, which was pre-existing condition. We're not
13 saying that J. C. was a healthy man when he was struck by
14 the blue Focus that was driven into him by the Defendant.
15 He had a lot of issues.

16 What Judge Gee is going to tell you is that under the
17 law, defendants take the plaintiff as they find him. If
18 you get one in good health, like Mr. Jackson, thought he
19 wasn't in great health yesterday, he didn't have any spine
20 issues, obviously. He wasn't hurt in the wreck. Okay.
21 Good health. J. C., you know, we know the problems that he
22 had.

23 What your decision is, is to determine if the
24 negligence of Celadon, which was driving into somebody from
25 the rear when they're stopped on the highway, if that

1 aggravated or activated the preexisting condition, if it
2 became symptomatic, that's the word that Dr. Boucree uses.
3 If he didn't have issues before, but after the accident he
4 did, they have to pay for it.

5 In law we call it the "eggshell plaintiff," kind of
6 like Humpty Dumpty. All right. You got Mr. Jackson, he's
7 a regular Joe. You got J. C., he's Humpty Dumpty. Mr.
8 Jackson can take a substantial impact, walk away, no
9 problem. Humpty Dumpty can't. They don't get to take
10 advantage because J. C. was Humpty Dumpty. If his bones or
11 his health was akin to an eggshell and it got cracked, they
12 have to pay for the crack. That's what the law says.
13 That's what Judge Gee is going to instruct you.

14 Now, I didn't think negligence was going to be an
15 issue. You know, he's driving a \$40,000 truck -- I mean, a
16 40,000-pound truck and you hit two people on the interstate
17 when they're stopped, seems like their negligent. But you
18 heard Mr. Ledlum yesterday. He told you, he admitted he
19 had an absolute duty to make sure, especially when you're
20 driving 20 tons, 20 tons on the interstate, to make sure
21 there's enough distance that if an emergency arises, you
22 can stop before you hit somebody. He admitted he was
23 supposed to do that, but he wouldn't admit that he violated
24 that duty. It doesn't make sense.

25 I understand not wanting to take responsibility, but

1 you know, we've taken responsibility for all the warts in
2 our case and all the problems. It's real simple to say, "I
3 guess I misjudged it" because it's obvious: If you're
4 supposed to make sure there's enough room and you still hit
5 somebody, guess what, you didn't do your job making sure
6 there was enough distance.

7 So way back in the beginning, I told you about Cypress
8 Chiropractic. How many times have they mentioned that? A
9 bunch. Those notes from Cypress Chiropractic, before the
10 accident, after he bumps his head on the bus, that's the
11 key piece of evidence for them. That's what -- they're
12 trying to tell you he was already hurt. We didn't do this
13 and he was already hurt. And we're going to talk about
14 that when I come back. The only medical record that was
15 really mentioned by Dr. Hughes yesterday was Cypress
16 Chiropractic. He doesn't know who wrote it. But that's
17 what they focused on. J. C. tells you, "I didn't say all
18 of that. I said some of it."

19 But the issue for you is they want you to think that
20 he was walking around the side of the bus, bumped his head
21 on the mirror, and now he's got \$120,000 in meds, \$90,000
22 in lost wages, and he can't do what he used to do making
23 \$32 an hour. He has to do 15 -- working \$15 an hour.
24 Instead of -- when he got hit by a 20-ton -- well,
25 technically, the Focus hit him -- but he was in a wreck in

1 which a 20-ton 18-wheeler struck another vehicle, drove it
2 into him while driving 25/30 miles an hour.

3 Bumping your head on a mirror or the 20-ton truck?

4 Seems to me it's far more likely that the injuries that he
5 suffered came from that truck and not bumping his head on a
6 mirror.

7 Exhibit 2 are the medical records that J. C. accrued
8 through seeing Cypress, seeing Archer, seeing Boucree, and
9 the surgery. There's a summary sheet on top. You can go
10 through and make sure it all adds up. Because like I said,
11 I'm not good with math, that's why I'm a lawyer. But it's
12 been admitted by stipulation, \$121,000 and some change.
13 That's how much he was charged to get where he is now. And
14 he says that he's fixed, in terms of what he thinks came
15 from the accident. He obviously still has issues. We know
16 that from Boucree.

17 We know he has lumbar issues. And if you remember
18 Boucree, lumbar is the low spine. (Indicates) This is
19 cervical, thoracic, lumbar. He's not asking for lumbar.
20 He was in a wreck in January of last year, not asking for
21 that, even though they put the records in the summary. All
22 he's asking for is the pain that he felt and he relates to
23 this accident.

24 There's only one person that knows what pain he felt
25 when he was at Cypress from bumping his head on a mirror

1 and what pain he felt when he was hit by the Focus hit by
2 the truck. That's J. C. If J. C. was opportunistic, if he
3 was litigious, as we say, sue happy, why is this the only
4 time he's ever sued anybody? Now, he's been in more wrecks
5 than my entire family, and this is the one he chose? The
6 one where he left the scene and said "I wasn't hurt"? The
7 one immediately after the incident in Wyoming when he
8 bumped his head?

9 Dr. Boucree told you he sliced his neck open and broke
10 his neck. Is that something anybody -- well, that's
11 traumatic. That's not something that somebody does willing
12 or does for fun. That's scary, that's your spine, and
13 that's what happened in this case.

14 And the one thing I want you to remember and the one
15 thing J. C. wants you to remember: He never stopped
16 working. He never laid out. He never said give me
17 disability. He never said let the taxpayers pay for me.
18 He kept working. He wanted to keep making \$32 an hour, but
19 he couldn't.

20 You see in Dr. Archer's records -- or in Dr. Archer's
21 testimony, he was bemoaning the fact when he was seeing
22 Archer. He was like, you know, "I'm depressed because I
23 can't pipe fit. I wish I could pipe fit. I can't pipe fit
24 anymore. The money's killing me."

25 Boucree told you that he specifically told J. C., "You

1 can't pipe fit anymore. You can't do it."

2 He was making \$32 an hour, now he's making 15. When
3 you look at the tax records -- 2010, 2011, and 2012 -- J.
4 C. made 63, 64, 63,000 in wages. You'll see other numbers
5 on there. You'll see numbers from disability, but as you
6 recall, he told you his wife was disabled. What you need
7 to focus on are the wages that he was able to earn in the
8 three years leading up to the accident. 2013, 63/64 drops
9 to 40. 2014, it's 36. Last year, it's 22.

10 The only reason J. C. did not work during that time is
11 either under doctor's orders, or he was looking for a job
12 because he got terminated for not making enough sales.
13 J.C. is a simple guy, straightforward. He doesn't
14 elaborate. He's not what we call "gregarious." He's not
15 going to be a very good salesman. Probably a bad decision
16 on his part. So he lost -- the difference between those
17 numbers, between the three years before and the three years
18 after, is \$90,000. Does he get all that? Probably not.
19 Some of it's getting fired, some of it's just not being
20 able to get the job he wants.

21 But the judge is going to instruct you if you find he
22 had a loss in earning capacity, you're to consider his life
23 span. 19 years she's going to tell you.

24 Obviously J. C. couldn't pipe fit for 19 years. Okay.
25 He wants to retire when he's 66. So whatever the lost

1 earning capacity that you determine, we -- he should be
2 entitled to that until he was going to retire under his
3 original plan.

4 There's also an element of damages that is completely
5 up to you, and the judge is going to instruct you, called
6 "pain and suffering." And I know you probably all heard of
7 that. Pain and suffering is the inconvenience, pain,
8 worry, aggravation, frustration, inconvenience that he
9 suffered from the time of the accident really until today.
10 And that's all you, you get to decide whether he gets that.

11 When I come back in the closing, I'll suggest a
12 number, but it's merely a suggestion. There is no way to
13 calculate it. That's what the judge is going to tell you.
14 That is completely within your province.

15 So thank you for listening to me. I'm going to turn
16 it over to the Defense, and then I'll come back and make a
17 few closing remarks. Thank you.

18 THE COURT: All right. Mr. Barrow.

19 MR. BARROW: Please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. BARROW: Good morning, ladies and gentlemen.

22 JURORS: Good morning.

23 MR. BARROW: I appreciate you being here. We hoped to
24 get this case to you a little bit earlier, thought we could
25 get it to you hopefully by yesterday. Unfortunately, it

1 didn't work out that way. But what I do know is you've
2 been very attentive throughout this trial.

3 My father was a bailiff in this courthouse for 16
4 years. One of the things he's always told me is never take
5 a jury for granted. And I hope you know that we haven't
6 taken you for granted even though it's taken longer than we
7 had hoped or anticipated. I understand that you're giving
8 up things to be here. I know that. But we appreciate you
9 being here because we couldn't do this without you.

10 Now, I told you in the beginning that we're here for a
11 specific reason because there was two sides to this story.
12 And I think you've now heard the testimony and the
13 evidence. So I think most of -- most of what I'm going to
14 review with you, you've heard. And individually and
15 collectively, when you go back to your jury room, you're
16 going to get it all. I mean, it's all going to be here
17 before you in exhibits, but between all of you, you're
18 going to remember it just exactly as it was said.

19 But I need to review it with you, if you don't mind.
20 And I'll try to be brief, but I -- I understand that --
21 that you've heard it.

22 What is this case about? Well, it's about a surgery
23 that a man had on his back, the Plaintiff, in Louisiana. A
24 surgery for, even as his own doctor says, a degenerative
25 disc disease, which is a condition that both doctors agree

1 occurs over a period of time. Often see it with someone
2 who's advancing in age, and someone who's had labor-skilled
3 jobs. And that there were bone spurring as well. So this
4 was going to happen.

5 So the question becomes: Well, did it happen because
6 of this accident? Really, that's the question before you,
7 I think. So let's talk about that because I -- I think
8 that's -- really is the focus of our case.

9 The accident itself -- you might recall in the
10 beginning of the case, that the Plaintiff testified he was
11 hit twice. I don't think there's any testimony in this
12 case that he was hit twice, but that's what he said. And
13 he said, on cross-examination to me, that he was hit twice
14 by the Ford Focus.

15 Well, you might recall -- and -- and we -- we said
16 this because we wanted you to hear this. We subpoenaed Mr.
17 Jackson. You remember that? The last question that Mr.
18 Cavanaugh asked of Mr. Jackson was, "Did we subpoena you to
19 be here?" And he said, "Yes, you -- yes, you did." That's
20 why he's here. He called him first because he's here, but
21 we subpoenaed him.

22 And there's a reason why we subpoenaed Mr. Jackson.
23 Not because we were afraid that he was going to tell you we
24 hit him in the rear, we did. We subpoenaed Mr. Jackson
25 because he's probably the most objective witness in the

1 case, if you thinking 'bout -- from that perspective,
2 because he has nothing to win or lose.

3 And the Judge is going to charge you that as the
4 finders of the fact, which y'all are, you get to go --
5 bring your common sense with you, and you get to consider
6 whether someone has something to win or lose in a trial.
7 Mr. Jackson had none of that. He's not being sued. He's
8 not the Plaintiff. He was involved in this accident. We
9 wanted him here because we wanted him to tell you what
10 happened. He was hit in the rear by the Celadon truck one
11 time. Pushed into the rear of the Plaintiff one time.

12 What did he say about that accident? He said it was a
13 tap into the rear trailer hitch. Well, in the scale of 1
14 to 10, one being the least, 10 being the most severe, tell
15 us what the severity of that impact was. And Mr. Jackson's
16 words, Mr. Jackson's words were, "Less than one." Did he
17 make that up? And he said his car got towed because of the
18 impact to the rear, not because of anything that happened
19 to him in the front. You heard the Plaintiff admit on
20 cross-examination that the two impacts didn't even put a
21 scratch on his trailer hitch.

22 So tells the trooper -- oh, by the way, 5this I
23 thought this was interesting. Mr. Rivett said that he was
24 stopped. I don't know if you recall this, I hope so, but
25 yesterday, when we read the trooper's deposition, he said

1 that the tractor-trailer was going about 30 miles an hour
2 and that he said that Mr. Rivett was going 25 miles an hour
3 and Mr. Jackson was going 25 miles an hour. So that's a
4 five-mile-an-hour speed change. It's almost the same as if
5 somebody stopped and somebody is going five miles an hour.
6 It's the same analogy. It's a five-mile-an-hour speed
7 change. But all three vehicles were proceeding at a
8 certain speed, according to the trooper who eye witnessed
9 it.

10 And the trooper admits, as everybody else does, that
11 no one claimed to be injured after the accident and every -
12 - and at least Mr. Rivett drove off and the other two
13 vehicles were towed away.

14 So then the question becomes, as Mr. Rivett testified,
15 that he goes back and he goes to see Cypress Chiropractic
16 because of these injuries. And we're going to go through
17 that a little bit. But then he goes on, of course, to see
18 Mr. Archer, the chiropractor, and then he goes on to see
19 Dr. Boucree, the orthopedic surgeon.

20 I -- I -- I have the transcript from Dr. Boucree's
21 testimony. In other words, you saw him on video,
22 (indicates) this is the transcript of his testimony. The
23 most important thing in this case, especially from a
24 medical doctor's perspective -- and Dr. Hughes told you
25 this as well -- is to get an accurate history; that you

1 need an accurate history in order to help diagnose and
2 treat the patient. Dr. Boucree said no less than five
3 times that the history was important.

4 The question was asked, "In the course of your
5 treatment of Mr. Rivett, did you reach an opinion to a
6 reasonable degree of medical certainty what the cause of
7 his overall condition was?" He said, "Certainly. If you
8 look at his plane x-rays, MRI images, it demonstrates
9 degenerative disease, which was pre-existing throughout his
10 cervical spine more pronounced." And here we have at C5-6
11 and 6-7, so we know that. But we do know, if his history
12 is accurate, that he was without pain. That is crucial for
13 your determination as to whether or not this tap to the
14 back of his trailer hitch, that didn't put a scratch on it,
15 caused this surgery.

16 And important to Dr. Boucree's analysis in his
17 testimony is whether or not it was asymptomatic, meaning,
18 as he says here, "without pain." That's important for
19 Boucree -- Boucree to be able to say it was caused by the
20 accident. He says again, "So when you have" -- excuse me,
21 he says again, "You have an accident that causes it to be
22 symptomatic, or more pronounced where it requires further
23 evaluation. So you have a condition that was pre-existing
24 and asymptomatic based on history. When you say
25 asymptomatic, his answer is, "Without symptoms, if his

1 history is correct."

2 Dr. Boucree goes on to say on a third occasion, "So do
3 you think, to a reasonable degree of medical certainty,
4 it's more likely than not he became symptomatic as a direct
5 result of this accident?" "If his history is correct, I
6 would say yes."

7 If his history is correct. Why is the doctor
8 continuing to say that? That's the third time. He could
9 have just said yes, but he goes nope, if his history is
10 correct, if his history is that he was asymptomatic.

11 A fourth time, "You indicated that if his history is
12 accurate, you would be able to attribute that some of those
13 symptoms were from the accident; is that correct?" "Yes, I
14 would say most of his symptoms to the accident, if his
15 history is correct, as I've documented in my medical
16 records."

17 And then he's asked, "Isn't it accurate, Dr. Boucree,
18 that on August 26, 2013, the only prior neck and back
19 injuries that Mr. Rivett indicated" -- excuse me -- "the
20 only prior injuries that Mr. Rivett indicated to you that
21 was he had a right shoulder and knee pain, which was
22 unrelated to the vehicle accident; isn't that correct?"
23 "That I'm aware of, yes."

24 Dr. Boucree, on four different occasions, uses the
25 word "history" and at the end says, "He only told me about

1 a prior shoulder and knee injury. He never told me about
2 the neck and back problems. He never told me he was in
3 pain. In fact, he told me he was without pain. And as a
4 result of that history, I am of the opinion that I relate
5 the surgery to the accident." That's Dr. Boucree.

6 Now, what is the history? What is the evidence in the
7 case? Now, the Plaintiff's lawyer is correct. We -- we --
8 we think this chiropractic record, going back in August of
9 2012 -- which was provided to us by the Plaintiff's
10 attorney, that's why I pointed it out in cross. You'll see
11 at the bottom of it's "Plaintiff Production 69." That's
12 how we got them -- indicates some very interesting history
13 of the Plaintiff himself; but beside that, you'll recall,
14 and I'll bring this out, testimony that came out during
15 cross-examination of the Plaintiff. But we've talked about
16 this and he says that the -- the patient states that this
17 is an exacerbating -- exacerbation of a longstanding neck
18 issue that he's had since a car accident in the mid-80's.
19 And he goes on to say the patient states that he really
20 needs to get some relief so he can get back to work.

21 Why is that important? Well, obviously, from this
22 little bump in the head, this little crick in his neck, as
23 he testified, unless his own doctor's lying, he was out of
24 work. He testified to me that he was still working as a
25 pipe fitter, and then quit after the accident to take

1 another job in Louisiana and denied that this record was
2 accurate. Though he would say some of this is accurate,
3 you recall; but, "No, I didn't say that. I don't know why
4 he put that in there."

5 And -- and he goes on to say his first symptom is
6 cramping and stinging in the upper back on the left side,
7 radiates into the left side of the neck. Why is that
8 important? Because you'll recall that on direct
9 examination his lawyer asked him, "Now, what's the
10 difference between this accident and your previous
11 injuries? He said, "Well, it's in a different location" --
12 remember he said that -- "and the pain was a lot more." He
13 said that.

14 Well, I think we've -- there's no -- no medical
15 testimony in this case and all the records indicate his
16 previous problem was the same location that Dr. Boucree
17 testified and Dr. Boucree operated. And Dr. Hughes said
18 that as well: Left side, left side, left side.

19 Here's the other thing you can consider as jurors.
20 It's not just the testimony from the witnesses before you.
21 You can consider the lack of testimony from witnesses that
22 aren't before you. Now, what do I mean by that? If these
23 records weren't true or weren't accurate or there had been
24 a mistake in these records and maybe the doctor didn't
25 write them or maybe part of them dealt with somebody --

1 some other patient that got transposed, don't you think
2 they would have had that doctor here to testify to that? I
3 kept waiting for that. Why didn't they bring this
4 chiropractor to say, "Oh, no, that was a mistake. I didn't
5 mean to say that. I got that wrong. That was about some
6 other patient or some other time."

7 That's -- you didn't hear that testimony. They've got
8 the burden of proof. They have to -- they have to -- they
9 have to prove, by a preponderance of the evidence, meaning
10 more evidence than not, that this is wrong, that this did
11 not occur. And the way to do that is to bring the doctor
12 himself here.

13 And they -- this doctor says -- he actually goes on to
14 say a lot more. He talks about the degree of pain. His
15 first symptom -- the -- he reported that the pain radiates
16 into the left side of his neck. He says his second
17 symptom's cramping.

18 But this is important. When you turn the page -- and
19 you might recall Dr. Hughes testified to this: palpation
20 evaluation. "Palpation" is when you put your hands on
21 them. He says this, "The cervical region" -- that would be
22 the neck -- "revealed the following: Severe pain,
23 articular fixations, severe pain, severe pain."

24 He goes on to say that, "It's complicated. He thinks
25 he can continue to improve, despite permanent residuals

1 being a probability." That was on August the 24th.

2 He sees him again on the 28th: "Cervical region,
3 severe pain." Same assessment.

4 Goes on to see him again, August the 31st, one week
5 before the accident. (As read) "Palpation examination.
6 Cervical region examination revealed the following: severe
7 pain."

8 Is he lying? Does he have his patients mixed up? Has
9 he got the wrong person in front of him? Is it not Joseph
10 Rivett, Jr. standing in front of him who he's palpating,
11 who he's been treating now for three times in a row? Did
12 he -- did he miss it all three times? Did he make a
13 mistake three times in a row? Meant to document no pain.
14 All three times, he writes severe pain.

15 And under subjective complaints, as Dr. Hughes
16 testified and you'll see, he does this, which I find very
17 interesting. He says that it occurs between one-half and
18 three-fourths of the time when he is awake and causes --
19 and he puts this word in italics, "serious diminution of
20 his capacity to carry out his daily activities." He -- je
21 puts in italics the word "serious." In other words, don't
22 miss this. This is serious. It's important.

23 He's getting that from the patient himself. Is it an
24 important record? Absolutely. Is it crucial for your
25 determination? Absolutely. Why is that? Well, we've just

1 gone through Dr. Boucree's testimony. What happens after
2 this? He does to see another chiropractor, Dr. Archer.
3 And he visits with Dr. Archer from October of 2012 to March
4 of 2013.

5 And I find this very interesting. Dr. Archer's
6 testimony that you heard -- and this is his transcript as
7 well (indicates) -- "And did you -- and you spoke about you
8 had received some treatment records from a prior
9 chiropractor who had treated Mr. Rivett; do you recall
10 that?"

11 "I do."

12 "And I believe your records reflect that the first
13 date of treatment from the chiropractor that you received
14 was -- excuse me -- September the 11th?"

15 "That's correct."

16 "Isn't it true that you don't have any records prior
17 to that?"

18 "Correct."

19 I guess they got lost in the mail.

20 You can consider all those things when you go back to
21 your jury box because that's just all common sense stuff.
22 It's something going on here.

23 They don't send these records to Dr. Boucree. He said
24 that. They don't tell Dr. Boucree in the history anything
25 about this or about his previous neck and back problems at

1 all which he admitted, on my cross-examination, had begun
2 in the 1980's, though he said he was pain free from 1985
3 on.

4 But then also remember this: I got him to admit that
5 he had been seeing an orthopedic surgeon named Dr. Rills
6 for 5 to 10 years. But they don't send these records to
7 Dr. Archer. The lawyer sends him only the records after
8 the accident.

9 Why is that? Why is that? Because in order to make a
10 case to get paid for the surgery that's going to happen and
11 if you're going to base it on a preexisting injury, you've
12 got to say you were asymptomatic. In other words, pain
13 free, problem free, doing great. But this tap in my rear,
14 or as he said, " ... this -- this car wreck that hit me
15 twice" caused this injury. But we're going to leave this
16 out. We're not going to tell Dr. Archer. We're not going
17 to tell Dr. Boucree. Just don't want him to know that.

18 Though it's interesting to me that -- I showed you
19 some other records, when he filled out the application for
20 treatment for Dr. Archer, it says, "Have you or any
21 relative received chiropractic treatment previously?" He
22 said, "Yes." If yes, explain. "Other injuries."

23 And then he said this, maybe more importantly, "Have
24 you had similar symptoms or injuries before?" "Yes." "If
25 yes, explain." "Other accidents." All his handwriting.

1 "Neck and left shoulder."

2 Then on the automobile accident questionnaire, he
3 says, "Have you had an automobile accident in the past?"
4 "Yes." "What areas of the body were injured?" "Neck and
5 upper back." Same thing again.

6 Then we go to this little form that the Plaintiff
7 wants you to believe is not to be believed for what it
8 says, but you should believe that it really doesn't say
9 this and it really doesn't mean this because, as he said,
10 "It's just a record."

11 Ladies and gentlemen, it's a record in the Plaintiff's
12 own handwriting. And the record says -- this is his
13 release on March 18th, "Neck and left shoulder, please
14 circle current pain level." "Zero."

15 Now, it wasn't zero he says. He just couldn't -- he
16 couldn't fix it. So I'll put zero anyway, even though it's
17 1 through 10. Could have put one, two, three, four, five.
18 Compared to last visit, "better." Could have put "same."
19 What Dr. Archer says, "Yeah, yeah, I knew he was still
20 having problems and I just couldn't do anything for him.
21 So I was just going to release him."

22 Well, the back of Dr. Archer's form that you'll have
23 before you as well, Dr. Archer circles Prognosis, MMI --
24 which is medical improvement -- maximum medical
25 improvement. He circles (as read): "Plan: Discontinue

1 treatment."

2 Now, what else is on that form that Dr. Archer could
3 have circled if, in fact, he believed this guy still needed
4 treatment? Well, it says (as read): "Patient referred for
5 evaluation or treatment." Doesn't circle that. "Referred
6 for specific diagnostic imaging, CT or MRI." He's still
7 having a problem, why not do that? Didn't circle that.
8 "Patient referred for rehab." Why not circle that? Didn't
9 circle that.

10 So he didn't refer him on to anyone else. Didn't say
11 well, you know, look, I can't fix your problem. I know
12 you're saying you're not in -- you -- you're circling
13 you're not in pain, but you really are in pain; and I can't
14 fix your problem, so I -- why not say I'm just going to
15 send you to somebody else? That doesn't happen either. So
16 -- so this isn't to be believed and this isn't to be
17 believed because they're just records.

18 Now, what happened after that? Well, Mr. Rivett shows
19 up in the emergency room of Our Lady of the Lake Registered
20 Medical Center on 04/12. Again, an injury to his back from
21 lifting a table. In that record -- in that record, the ER
22 physician refers him back to Dr. Rills, his order --
23 orthopedic spine specialist.

24 Now, if he's hurting really bad and -- and he's not
25 being able to be fixed by this chiropractor and he shows

1 back up in the emergency room three weeks later because of
2 another accident; and they say, "Look, you need to go see
3 Dr. Rills" -- they got Dr. Rills's name from him -- and
4 then he doesn't go see him, the guy he admits he's seen for
5 5 to 10 years.

6 Then he goes to see his lawyer, his lawyer sends him
7 -- the first thing his lawyer does, you might recall, is
8 call Dr. Archer and say, "Hey, how about order an MRI."
9 And you recall Dr. Archer's testimony, he did that. You'll
10 also recall that Dr. Archer said he didn't read the MRI,
11 and it's the first time in his career he's not read the
12 MRIs, they were forwarded on. He ordered them and he
13 didn't get to see them and didn't read them. He said it's
14 never happened before. They were forwarded on to Dr.
15 Boucree and then Dr. Boucree looked at them.

16 We're not making an issue out of the MRIs. I think
17 Dr. Hughes was real definitive as Dr. Boucree. They both
18 agreed that this is severe degenerative disc disease with
19 spurring. So we know that happened. But -- but what's the
20 cause of it?

21 And then we showed you this record where he was in
22 another accident in January of -- of 2015 and goes back to
23 see Dr. Boucree, who's -- as we showed you, has been
24 following him since then for that. Why is that important?
25 Well, because he's making a lost wage claim.

1 You heard him say consider the tax returns, when in
2 2015, he's down to \$22,000 a year. Now, when they ask --
3 when they tell you that so they can get you to go back
4 there and give him some more money on lost wages, they
5 can't forget, though they did, that he's in another
6 automobile accident on January the 13th of 2015 for which
7 he's being treated. We certainly can't be responsible for
8 that.

9 There's a lot of inconsistencies in this case that
10 bring us before you, which is why we're here. Because
11 history is accurate, because someone who's got something to
12 gain or lose is important, because Mr. Jackson had neither
13 of those and just stood up before you and told you exactly
14 how it was; because the chiropractic visit, where he says
15 he just had a crick in his neck, says a whole lot more.
16 And that was never given to Dr. Archer or Dr. Boucree.

17 We don't -- we don't deny that the truck driver hit
18 him in the rear, that's obvious. Heavy raining, he's
19 trying to stop. He didn't stop, hit him in the rear. Mr.
20 Jackson says, "Yeah, I wasn't injured and it pushed me into
21 him. It was a tap. It was less than one."

22 You've got to go back today, after hearing all this
23 evidence, and you have to make a decision. And that
24 decision is: Are these records falsehoods? Are they made
25 up or contrived? And if not, why did they not provide

1 those records to their doctors? Why did they not tell
2 their doctors that he had a longstanding history of neck
3 and back pain? Why did he not tell his doctor that he had
4 had serious pain, significant pain; and he was actually out
5 of work at the time of the accident?

6 Ladies and gentlemen, we think and we're going to ask
7 you to return a verdict in favor of Celadon. That verdict
8 has nothing to do with whether or not we hit him in the
9 rear. We did. That verdict has everything to do with
10 whether that accident caused this surgery, which we submit
11 that, based on even Dr. Boucree's testimony, when looking
12 at the totality of the evidence, it did not and it could
13 not. Thank you.

14 THE COURT: Mr. Player, reply?

15 MR. PLAYER: Sure.

16 Mr. Barrow talked in the beginning about taking the
17 jury for granted. Let's go through the evidence.

18 He spent a lot of time on Cypress Chiropractic. Said
19 "doctor." (Holds up a document) Ain't no doctor name on
20 it. Not a single page.

21 Says why didn't we go and get that doctor to explain
22 it away. That's the Defendant's Exhibit. We had to give
23 it to them. It was a document in our possession. We can't
24 hide it, so we gave it to them. We're not trying to hide
25 anything.

1 J. C., in the bathroom, and me went 600 miles to
2 Louisiana. And you heard from the doctors that we wanted
3 you to hear from, Dr. Archer, Dr. Boucree. Cypress is less
4 than 200 miles away. J. C. made \$22,000 last year.
5 Celadon Trucking probably made more than that. So why is
6 Cypress Chiropractic not here? Why was a deposition not
7 taken to show in front of you on the TV? Why is there not
8 a deposition for them to read like we did with the trooper?
9 Ask yourself that.

10 It's the heart of their case and there's nobody here.
11 So you either believe Casper, the chiropractic ghost, or
12 you believe my client, who told you the truth.

13 Now, let's talk about some truth. Let's go to Lady of
14 the Lake. Let's read what it says. He said they referred
15 him back to who? Dr. Rills. Big deal. Dr. Rills is his
16 chiropractor, been seeing him for years. For what? His
17 shoulder and his knee.

18 They asked him on the stand, "Why didn't you go back
19 to Dr. Rills?" "He wasn't a spine specialist." Guess who
20 else says that, Lady of the Lake.

21 Let's read what they say (as read): "Has seen Dr.
22 Rills and is referred back to him, but can see a spine
23 specialist in his practice." If Dr. Rills was a spine
24 specialist, why does he have to go see somebody else? He's
25 not a spine specialist. But you know Dr. Boucree is, so

1 there we go. A little bit of a stretch.

2 January, 2015, he was in a wreck. Told you he was in
3 a wreck. What else did we tell you? We don't want any
4 money for that. 2015. You don't have tax records from
5 2015. You have tax records up to 2014. This had nothing
6 to do with it. And he lost 24 in 2013, and he lost 27 in
7 2014. Wages: Says he made 63/64, and then he made 40 and
8 then he made 36. Now, unless the accident in 2015 can go
9 back in time and affect him, it has nothing to do with at
10 least those two years in the tax records that are
11 introduced to you.

12 I'm not telling you that these are lies. What I'm
13 telling you is this is a piece of paper. This is a form of
14 communication. If you want to know the truth, you usually
15 need to talk to the people that wrote this, created it, put
16 the information on it. What did they intend when they
17 circled stuff? The two parties to this document have told
18 you J. C. wasn't fixed when he left Dr. Archer.

19 He says oh, no, no, no, no, it's a conspiracy.
20 There's something going on. From South Port, North
21 Carolina to New Orleans, Louisiana, they're all conspiring
22 against Celadon Trucking.

23 Now, let's go back to the records. See, we're not
24 supposed to put evidence in during closing arguments, but
25 somehow the transfer of medical records, which nobody has

1 mentioned in this trial, now lies with J. C. and the lawyer
2 in Louisiana.

3 But it seems like there was somebody else that
4 testified about transfer of medical records in this court
5 during this trial. Oh, yeah, it was the guy they paid to
6 not examine my client to say he wasn't hurt. If you
7 recall, there was a question about the medical records
8 offered to Dr. Hughes. He said, "Yeah, we used to have --
9 we used to -- didn't have a problem getting those records,
10 but now everybody does it electronically and it's hard to
11 get them.

12 So instead of listening to evidence presented by
13 Defense counsel, go back and look at the case.

14 You think J. C. Rivett is driving around with a folder
15 full of medical bills? No. There's not one shred of
16 evidence in this trial that he had anything to do with what
17 went to Archer, with what came from Cypress, with what went
18 to Boucree.

19 Now, let's talk about Boucree because they love to
20 focus on that question. Isn't the medical history
21 important? Yes, it's very important. But if you recall, I
22 asked Dr. Boucree, I said, "What caused his injuries?" And
23 he said it, this was his opinion, these are the magic words
24 that we use in the courtroom, "To a reasonable degree of
25 medical certainty, it was the wreck."

1 Now, there's no rule that says the magic Casper the
2 Chiropractic records couldn't be handed to Dr. Boucree,
3 "Here, look at this. Look at what he said. Does this
4 change your opinion?" Never asked the question. Why?
5 Because they didn't want him to answer it because they knew
6 what the answer was.

7 He was hurt because of their driver. And if he
8 wasn't, the man who says he was was sitting right there.
9 We went 600 miles to hear what he had to say. They didn't
10 even mention it. They said, "If you knew he had been hurt
11 two weeks before, would that be important?" "Yeah."
12 Nothing further.

13 How hard is it to say would that change your opinion
14 about the cause of this accident? No, they didn't want to
15 ask him that question. They want to go pay somebody to
16 read his records.

17 You heard about the IME, independent medical
18 examination. He's done a hundred of them. Why not examine
19 J. C.? Why not have him talk to him, talk to the doctor,
20 actually perform a test? Because they don't want the
21 truth. They got their -- they got their paper from Casper
22 and they want to get away with it. And you can't let them
23 do that. If they had somebody from Cypress here who said
24 oh, yeah, absolutely, J. C. said that, it's a different
25 case. But they didn't do that. And nothing prevented them

1 from doing it.

2 Now, he does make a good point with regard to the
3 wages. In the three years since the accident, it's \$90,000
4 in terms of the difference of what he made the three years
5 before and the three years since.

6 He had the wreck. He had the back thing that he went
7 to the hospital for. Never stopped working. Never stopped
8 working. But there was a lay off period. There's a lot of
9 factors that may-be -- probably aren't related to the
10 accident, but it's not much. So instead of 30 a year,
11 reduce it by a third: \$20,000 a year for 2012 until four
12 years from now 2020, seven years. Seven years of lost
13 income in the amount of \$20,000. If he was making 32 in
14 2010 and 2011, and up until he left in 2012, now, he's
15 making 15. That's 30 grand a year, but that's probably not
16 justified, but 20 is.

17 So you've got 141 in medical bills for the surgery,
18 nothing else. Not Lady of the Lake, not the 2015. And 140
19 in lost income until his retirement age. That's \$280,000,
20 a lot of money. But that's what we would say is an out-of-
21 pocket loss. That's what he lost before any pain and
22 suffering is considered, factored, or decided by you.

23 One last thing that I skipped. Out of work. He said
24 this is just proof you can't trust this document. This is
25 Cypress -- you know, this is Casper again. Casper says he

1 wants to get back to work. Why is he in North Carolina if
2 he's not working? He lives in Louisiana. He was hurt in
3 Wyoming. So, according to them, he's hurt so bad by
4 bumping his head on the mirror that instead of going home
5 to Louisiana and going to Dr. Archer, he goes to North
6 Carolina to see a chiropractor to get him back to work.

7 They said he was out of work the date of the accident.
8 Where was he going? He was going to South Port. He was,
9 going to work. It was Saturday. He was going back to
10 work. He was at work. It proves to you, you can't trust
11 the document.

12 Again, how hard is it to send a subpoena to
13 Westinghouse or get those records, find out if J. C. was
14 working that day? That ain't hard, but they didn't do it.
15 Why? Because they like their story better than the truth.

16 So back to damages: 280 out of pocket. When I have a
17 wreck case it's usually not this much damages, but again,
18 you take the Plaintiff as you find him. I asked for twice
19 the specials, twice the out of pocket. That's \$840,000, a
20 lot of money. J. C. told me what he wants is just twice
21 what's out of his pocket, \$560,000. That's what he thinks
22 are his out-of-pocket cost and his pain and suffering for
23 this case.

24 Now, let's go back to what the judge is going to
25 charge you with the pre-existing condition. You take the

1 Plaintiff as you find him, okay. But you have a lot of
2 discretion in what you decide he's owed because you have to
3 determine first were they negligent -- I think they just
4 admitted that -- in terms of violating a duty.

5 Then you have to determine, No. 1, did the wreck cause
6 the injury. If it didn't, we're done. I don't think
7 that's what the evidence shows.

8 If you think that the accident aggravated, activated
9 the pre-existing condition that we admit existed, the
10 degenerative disk disease in his back, then you have to
11 determine how much. How much were those costs and those
12 lost wages? How much in terms of a percentage, a ratio?
13 How much of it was related to what was already there in
14 terms of symptoms and what was directly caused by the
15 accident? You choose that. We think it's a hundred
16 percent, from J. C., what he felt.

17 And you know, yeah, he said neck and shoulder pain.
18 There's a lot of room up there. There's a lot of different
19 kinds of pain: dull pain, sharp pain, shock pain, lots of
20 different pain. The only person that knows what he felt is
21 J. C., okay, and he told you it was different. That's all
22 he knows to tell you. It was more severe. It was in a
23 different place. (Indicates) This is a different place
24 from this. But guess what? It's all in the neck. It's
25 all in the right side. That's what's on the paper.

1 That's why what Dr. Hughes did can't be relied on.
2 All he relied on was what somebody put on paper. He never
3 talked to anybody. He never found out, did any tests. He
4 doesn't know. All he knows is what's in the records. And
5 we know the records can be misleading.

6 So that's what we're asking is two times 280 is 560.
7 It's a lot of money. But remember, they cut his neck, they
8 broke it, and he basically couldn't work for a year on
9 doctor's order. And now, he can't do what he was making
10 before to support his family, his disabled wife. It's
11 affected his life drastically.

12 I thank you for listening to me. Sorry if I got too
13 long. But again, thank you for your services.

14 THE COURT: All right. Ladies and gentlemen, it is
15 now time for me to instruct you on the law. I will give
16 you a copy of this charge in written form. During your
17 deliberations, you may refer to the instructions to guide
18 your decision making. You must consider the instructions
19 as a whole and not follow some and ignore others. Please
20 return these instructions to the Court at the time your
21 verdict is rendered.

22 Under our constitution and code of laws, only you, the
23 jury, can make the findings of fact in this case. I am not
24 permitted to indicate to you how I may feel about the
25 testimony and evidence which has been presented. And

1 throughout this trial, it has been my intention to be fair
2 and impartial toward each of the parties involved.

3 To determine the facts in this case, you'll have to
4 evaluate the credibility and believability of each witness.
5 Some of the things you may consider as you decide whether
6 or not to believe a witness's testimony about a particular
7 matter include: The manner and appearance of a witness who
8 testified, was he straightforward or hesitant in answering?
9 Was the testimony of a witness consistent or inconsistent?
10 How did the witness come to know the facts that he
11 testified to? Is there some reason a witness would want to
12 give testimony which would help or hurt one side or the
13 other? In other words, was the witness biased or
14 prejudiced? Was the testimony of the witness strengthened
15 or weakened by other testimony or evidence? You can
16 believe as much or as little of each witness's testimony as
17 you think proper.

18 Of course, you do not determine the truth merely by
19 counting the number of witnesses presented by each side.
20 Throughout this process, you have but one objective: to
21 seek the truth regardless of its source.

22 The same constitution and law which designate and make
23 you the finders of the facts also make me the sole
24 instructor in the law. The attorneys are not the
25 instructors of the law. Do not make your decision based

1 upon what you think the law should be or what you have
2 heard it is. Only base your decision on what the law is as
3 I instruct you.

4 You have heard me refer to the parties to this action
5 as the plaintiff and the defendants. The plaintiff is the
6 person who brought the action by filing and serving a
7 summons and complaint. The defendants are the people
8 against whom the action was brought. Since it is the
9 plaintiff that brought the action, the plaintiff has the
10 burden of proof, as I will explain to you in just a moment.

11 Both the plaintiff and the defendants are entitled to
12 a fair and impartial trial. It would be improper for you
13 to decide this case based upon sympathy, passion,
14 prejudice, emotion, or any other consideration not in
15 evidence in this case. Your job is to fairly and
16 impartially decide this case based on the evidence
17 presented and the law as I give it to you in these
18 instructions.

19 The evidence from which you are to decide what the
20 facts consist of includes: one, the sworn testimony of
21 witnesses, both on direct and cross-examination, regardless
22 of who called the witness; two, the exhibits that have been
23 received into evidence; and three, any facts to which all
24 the lawyers have agreed or stipulated.

25 Certain things are not in evidence and you may not

1 consider them in deciding what the facts are. I will list
2 them for you. One, arguments and statements by lawyers are
3 not evidence. The lawyers are not witnesses. What they
4 have said in their opening statements, closing arguments,
5 and at other times is intended to help you interpret the
6 evidence, but it is not evidence. If the facts as you
7 remember them differ from the way the lawyers have stated
8 them, your memory controls.

9 Two, questions and objections by lawyers are not
10 evidence. Attorneys have a duty to their clients to object
11 when they believe a question is improper under the rules of
12 evidence. You should not be influenced by the objection or
13 by the Court's ruling on it.

14 Three, anything you may have seen or heard when the
15 Court was not in session is not evidence. You are to
16 decide the case solely on the evidence received at trial.

17 There are two types of evidence generally presented
18 during a trial, direct evidence and circumstantial
19 evidence. Direct evidence is the testimony of a person who
20 claims to have actual knowledge of a fact, such as an
21 eyewitness. Circumstantial evidence is proof of a chain of
22 facts and circumstances indicating the existence of a fact.
23 The existence of a fact cannot be based on speculation,
24 surmise, or conjecture.

25 The law makes absolutely no distinction between the

1 weight or value to be given to either direct or
2 circumstantial evidence. Nor is a greater degree of
3 certainty required of circumstantial evidence than of
4 direct evidence. You should weigh all the evidence in the
5 case.

6 To determine the facts in this case, you will have to
7 evaluate the credibility, which means the believability, of
8 each witness. On a contested factual issue, you may have
9 some direct evidence and some circumstantial evidence.

10 During the trial, you heard what we refer to as
11 "deposition testimony." A deposition is a document
12 containing sworn testimony given by a witness, outside of
13 court, in the presence of lawyers for each party who may
14 ask questions of the witness. This testimony is entitled
15 to the same consideration and as -- is to be judged as to
16 credibility and weighed by you in the same way as if the
17 witness were present and gave the testimony that was read
18 to you. It is then for you, the jury, to determine the
19 effect, value, weight and truth of the testimony given in
20 the deposition.

21 You have also heard expert testimony during this
22 trial. The rules of evidence ordinarily do not permit
23 witnesses to testify to opinions or conclusions. An
24 exception to this rule exists for witnesses we call "expert
25 witnesses." A witness, who by education and experience,

1 has become expert in some art, science, or profession may
2 give an opinion as to the subject the witness claims to be
3 an expert in and may also give the reasons for the opinion.

4 You should consider any expert opinion given by a
5 witness, and like any other evidence, give it the weight
6 you think it deserves. If you decide that an expert
7 witness's opinion is not based on sufficient education and
8 experience or if you decide that the reasons given in
9 support of the opinion are not sound or that the opinion is
10 outweighed by other evidence, you may disregard the opinion
11 entirely.

12 An expert witness's testimony is to be given no
13 greater weight than that of other witnesses simply because
14 the witness is an expert. And you do not have to accept an
15 expert's opinion even though it is uncontradicted.

16 Foreperson and members of the jury, the plaintiff has
17 the burden of proving the claims in this case. The
18 plaintiff must meet this burden by proving the claims by
19 the greater weight or the preponderance of the evidence.
20 What we mean by the greater weight of the evidence can be
21 illustrated by imagining a set of scales.

22 When the case begins, the scales are even. After all
23 of the evidence has been presented, if the scales remain
24 even or if they tip even slightly in favor of the
25 Defendants, then the plaintiff will have failed to meet the

1 burden of proof; and your verdict would be for the
2 defendants on the plaintiff's claim.

3 If, on the other hand, the scales should tip even
4 slightly in favor of the plaintiff, then the plaintiff will
5 have met the burden of proof and your verdict should be for
6 the plaintiff on the plaintiff's claim.

7 Now, of course, there's no way to weigh evidence
8 except through the exercise of your good common sense and
9 judgment. It is entirely a mental process. And the
10 evidence you should give the most weight to is that which
11 convinces you of its truth, regardless from whom or what
12 source it comes.

13 Ladies and gentlemen of the jury, the State of South
14 Carolina recognizes what is called "common law." The
15 common law of this state governs and controls the
16 operations of motor vehicles. The common law rules of the
17 road require the exercise of due care, that degree of care
18 which would have been exercised by a person of ordinary
19 reason and prudence, operating the same vehicle at the same
20 time and place, under the same circumstances.

21 This common law duty includes that of maintaining a
22 proper lookout for other vehicles or pedestrians which may
23 be upon the highway. It includes the duty to keep the
24 vehicle under proper control so that the driver is able to
25 slow down, stop, or turn the automobile to avoid colliding

1 with other vehicles.

2 In this case, the Plaintiff claims that the Defendants
3 not only violated common law, but that they also violated
4 statutory law, specifically 56-5-1930, subsection A. That
5 section states the driver of a motor vehicle shall not
6 follow another vehicle more closely than is reasonable and
7 prudent, having due regard for the speed of such vehicles
8 and the traffic upon and the condition of the highway.

9 The plaintiff claims that the defendants were
10 negligent and should compensate the plaintiff for the
11 injuries the plaintiff suffered as a result of the
12 defendant's negligence. The plaintiff is suing defendant
13 Ledlum because he was the driver of the truck involved in
14 the accident. The plaintiff is suing Celadon Trucking
15 Services under a legal concept called "*respondeat*
16 *superior*." The parties stipulate, that is, they agree,
17 that defendant Ledlum was employed by Celadon Trucking
18 Services and was working within the scope of that
19 employment when this car accident occurred. An employer is
20 liable for the negligent acts or omissions of employees,
21 which are within the scope of the employee's employment,
22 and which proximately cause injury to another person.

23 In order to receive compensation for negligence, the
24 plaintiff must prove, by a preponderance or greater weight
25 of the evidence, three things: One, that the defendant

1 breached a duty of care by a negligent act or omission;
2 two, that the plaintiff suffered damages as a result of the
3 defendant's breach of duty; and three, that the damages
4 sustained by the plaintiff were proximately caused by the
5 defendant's breach of duty.

6 Proximate cause is something that produces a natural
7 chain of events, which in the end, brings about the injury.
8 It is the direct cause of the injury. To prove the
9 defendant's negligence proximately caused the plaintiff's
10 injury, the plaintiff must first prove causation in fact.
11 This is proven by showing that the injury would not have
12 occurred but for the defendant's negligence.

13 The plaintiff must also prove legal cause. Legal
14 cause is proven by showing that the injury was foreseeable.
15 This means that the injury occurred as a natural and
16 probable consequence of the defendant's negligence. The
17 plaintiff must prove that some injury from the defendant's
18 negligence was foreseeable, but the plaintiff does not have
19 to prove that the particular injury that occurred was
20 foreseeable. However, the defendant cannot be held
21 responsible for things which could not be expected to
22 happen.

23 Proximate cause does not mean the only cause. The
24 defendant's acts can be a proximate cause of the
25 plaintiff's injury if they were at least one of the direct

1 concurring causes of the injury.

2 The chain of causation between the defendant's
3 negligence and the injury may be broken by the independent
4 intervening acts or omissions of another person over whom
5 the defendant has no control. In order to decide whether
6 an intervening act breaks the chain of causation, you must
7 determine whether the intervening act or omission was
8 reasonably foreseeable by the defendant. If the
9 intervening act or omission was a probable consequence of
10 the defendant's negligence, the defendant is responsible
11 for the plaintiff's injury.

12 If, however, you find that the intervening act or
13 omission was not foreseeable, the defendant is not liable
14 unless his actions alone would have caused the plaintiff's
15 injury even without the intervening act or omission.

16 Defendants claim they should not be held responsible
17 for the plaintiff's injuries because of a sudden emergency.
18 If a driver proves, by a preponderance of the evidence,
19 three elements of a sudden emergency, then the driver is
20 not guilty of negligence. The three elements are: One,
21 the driver must show that an actual or apparent emergency
22 existed, which was not reasonably anticipated; two, the
23 emergency must not have been caused by or contributed to by
24 the defendant's own conduct. The emergency must have been
25 created by the negligence of another person. Finally, the

1 defendant asserting the defense must prove that the actions
2 he took were ones that would have been taken by an
3 ordinarily prudent person in the same or similar
4 circumstances.

5 The defendants also claim that they should not be held
6 responsible for the plaintiff's injuries and resulting
7 damages because the accident was unavoidable. The operator
8 of a motor vehicle is not responsible for unavoidable or
9 inevitable accidents. The mere fact that an accident
10 occurs which results in injury, death, or property damage
11 does not leave the defendant responsible. The plaintiff
12 must prove that the defendant was negligent.

13 An unavoidable accident is an accident which, under
14 the circumstances and conditions, could not have been
15 foreseen or anticipated in the exercise of ordinary care
16 and skill. An unavoidable accident happens from natural
17 causes without negligence or fault on either side.

18 If you decide that the plaintiff is entitled to a
19 verdict, your next step would be to decide how much money
20 the defendants should be required to pay. Actual damages
21 are to compensate the plaintiff for the plaintiff's
22 injuries and to put the plaintiff, as near as possible, in
23 the same position that the plaintiff was before the
24 incident occurred. In other words, actual damages would be
25 the actual losses and expenses which the plaintiff has

1 suffered because of the defendant's negligence.

2 Actual damages for a plaintiff who has been physically
3 injured include medical expenses, pain and suffering, both
4 past and future; as well as lost wages, loss of earning
5 capacity, and loss of enjoyment of life. The plaintiff
6 must prove that expenses caused by the injury were
7 necessary and reasonable. I will explain each of these
8 types of damages in turn, starting with medical expenses.

9 A person who suffers injuries because of the
10 negligence of another is entitled to recover the reasonable
11 value of medical care and expenses incurred that were
12 necessary for the treatment of those injuries. Recovery
13 for medical expenses is controlled by what the services
14 rendered were reasonable worth and not by what was actually
15 paid or contracted to be paid. Your barometer for
16 determining the amount of medical expenses is to decide
17 whether the expenses were reasonable and necessary.

18 Pain and suffering compensates the plaintiff for
19 physical discomfort and emotional response to the sensation
20 of pain caused by the injury itself. There is no definite
21 standard by which to compensate the plaintiff for pain and
22 suffering. You have the authority to determine the amount,
23 if any, to be allowed for pain and suffering, using calm
24 and reasonable judgment to ensure that the damages are just
25 and reasonable in light of the testimony and evidence

1 presented in this case.

2 The loss or impairment of earning capacity resulting
3 from injuries to the plaintiff is also a proper element of
4 damages. In determining the amount of damages due to the
5 plaintiff for loss or impairment of earning capacity, you
6 should consider the following: One, the loss of future
7 earning power. This requires you to consider all matters
8 that relate to the issue of any impairment. Two, the
9 affect which the impairment will have on the plaintiff's
10 capacity to work. Three, the extent to which the
11 impairment will impair the plaintiff's earning capacity.
12 Four, the present value of all losses due to the
13 plaintiff's impaired earning power and the physical pain
14 and suffering as reasonably certain will result in the
15 future from the injuries to the plaintiff. And five, the
16 evidence of what the plaintiff had previously earned when
17 employed in the past is a factor on which to base any loss
18 or impairment of earning capacity.

19 In awarding damages for loss or impairment to earning
20 capacity, the plaintiff may recover for the loss or
21 decrease of earning capacity during his entire expectancy
22 of life. In determining the loss of earning capacity which
23 may result in the future, the fact that the plaintiff is
24 making the same or more earnings since the injury is only
25 one factor to consider. If you determine that the

1 plaintiff is entitled to damages for impairment of earning
2 capacity, then you must decide the amount of damages using
3 the life expectance table as a guide.

4 There's a statute in this state by which average life
5 expectancies are determined. Under the terms of this
6 statute, a man who is 61 years old may be expected to live
7 for another 19.06 years.

8 Loss of enjoyment of life compensates the Plaintiff
9 for limitations on the Plaintiff's ability to participate
10 in and derive pleasure from the normal activities of daily
11 life. In determining the amount of compensation for
12 personal injuries, it is proper to consider past and
13 present aspects of the injury. This would include physical
14 and mental pain and suffering, expenses incurred for
15 necessary medical treatment, the loss of enjoyment of life
16 suffered as a result of the injury, and any other losses,
17 which are reflected by the character of the injury.

18 If you find that the plaintiff received an injury as a
19 result of the negligence of the defendants and is entitled
20 to recover for that injury, the fact that the plaintiff had
21 a pre-existing injury or condition would not prevent the
22 plaintiff from recovering. The defendants are responsible
23 for all ill effects which, considering the plaintiff's
24 condition of health when the plaintiff was injured,
25 naturally and necessarily follow the injury. The

1 defendants take the plaintiff as the plaintiff is found,
2 whether the plaintiff is in perfect health, in poor health,
3 or somewhere in between.

4 The defendant's liability is in no way lessened or
5 affected because of the fact that the injury would not have
6 resulted or would not have been as serious or severe had
7 the plaintiff been in good health or that the injuries were
8 aggravated and rendered more difficult to cure by reason of
9 the fact that the plaintiff was not in good health. In
10 other words, if the presence of a pre-existing injury or
11 condition aggravates and prolongs the injury and increases
12 the damages, the plaintiff should be compensated for the
13 increased or added damages.

14 A person with a pre-existing injury or condition is
15 not, however, entitled to any compensation for the pre-
16 existing injury or condition. In addition, if the problems
17 are the result of the natural progression of the worsening
18 of a pre-existing injury or condition, then the plaintiff
19 would not be entitled to be compensated for those problems.

20 The defendants have denied the plaintiff sustained any
21 real or substantial personal injuries as a result of the
22 accident. If you find the defendant's negligence caused
23 the plaintiff some damages as a proximate result of the
24 defendant's negligence, you could find nominal damages in
25 favor of the plaintiff. Nominal damages are a trivial or

1 trifling sum awarded to a plaintiff in an action where
2 there is not substantial loss or injury to be compensated,
3 but still the law recognizes a technical invasion of the
4 plaintiff's rights.

5 You have been selected as fair and impartial jurors,
6 sworn to impartially try and determine the facts of this
7 case. You are to decide this case according to the
8 testimony that you have heard from the lips of the sworn
9 witnesses along with other evidence introduced.

10 I charge you that, as jurors, you must decide the
11 issues in this proceeding without bias and without
12 prejudice to any party. You cannot allow yourself to be
13 governed by sympathy, by prejudice, by passion, by public
14 opinion, or any other arbitrary factor. Both the Plaintiff
15 and the Defendants have the right to expect that each of
16 you will carefully and impartially consider all of the
17 evidence in the case and that you will follow the law as I
18 have explained it to you.

19 Under the Constitution of this state, the jury verdict
20 must be unanimous. Unanimity is mandated. Every single
21 juror must agree on the jury verdict. There cannot be any
22 split or divided vote, in any form or fashion, such as 11
23 to 1, 10 to 2, 9 to 3. Every single juror must agree on
24 the jury verdict. When the foreperson writes the verdict
25 and signs the name as the foreperson, that is your support

1 that the jury verdict is unanimous.

2 I'm going to now ask the bailiff to bring you to the
3 jury room. Do not begin deliberating until we bring to you
4 these instructions, this verdict form, and all the exhibits
5 in the case.

6 So at this point, just go ahead and go in the jury
7 room, just as before, without discussing the case yet. And
8 we'll get this material to you as soon as possible.

9 And the alternate, you may stay in the courtroom if
10 you would like.

11 (The jury exits the courtroom at 10:55 a.m.)

12 THE COURT: All right. Any objections to the jury
13 charge?

14 MR. PLAYER: None from the Plaintiff, Your Honor.

15 MR. CAVANAUGH: None from the Defendant, Your Honor.

16 THE COURT: All right. Let's go ahead and look at the
17 exhibits, make sure that they're all in order, and we will
18 get them to the jury as soon as possible.

19 (To the alternate) And Ms. Warner, if you'll meet me
20 out in the hallway, I'll come chat with you. I think your
21 service is done, so I'll talk with you out here.

22 (Off the record at 10:57 a.m.)

23 (Back on the record at 11:35 a.m.)

24 THE COURT: We have a question from the jury. And the
25 question is, "Can we have all the depositions for the

1 witnesses?"

2 Now, I -- I personally interpret that to mean the
3 deposition testimony that was read or watched, you know, in
4 -- in the courtroom, not depositions that weren't presented
5 as testimony. So I'll hear from y'all on that question.

6 MR. PLAYER: I have no objection to the two videos.
7 The problem with Trooper Trotter is that we didn't put the
8 entire thing in.

9 THE COURT: Okay.

10 MR. PLAYER: And that was -- we -- we piecemealed that
11 to make it shorter and there were stuff in there that, you
12 know, would make the already appealable issue much bigger.
13 And I didn't want to -- to complicate things.

14

15 THE COURT: Sure.

16 MR. PLAYER: There's -- there's stuff in there that --
17 where he's speculating about damages and -- and he mentions
18 his report and he mentions citing Mr. Ledlum.

19 So I don't think the Trotter depo can go in without a
20 lot of work.

21 THE COURT: Okay. What we would have to redact,
22 although that -- we could replay that testimony. It was
23 about 10 minutes, I think.

24 MR. BARROW: For who?

25 MR. PLAYER: Trotter. Now, if they're just talking

1 about Dr. Archer and Boucree, then we just hand them the
2 depositions is fine with me.

3 THE COURT: Mr. Barrow?

4 MR. BARROW: Usually, unless there's an exhibit, then
5 it would not go back to the jury.

6 THE COURT: Well, both transcripts have been made
7 Court Exhibits and they have -- I mean, normally, what we
8 do when -- when the jurors ask for transcripts is we tell
9 them I'm sorry, you'll have to listen -- re-listen to all
10 the testimony because we don't have a transcript.

11 Here, we just so happen that we do have a transcript
12 of the DVD. We could certainly send the DVDs back there
13 with a computer to make them watch it all again. But since
14 we have the convenience of the transcript and it's was just
15 -- there was nothing that I redacted from the transcript.

16 MR. BARROW: Well, I guess I was thinking of -- I
17 understand that, but -- but the DVDs were -- they were not
18 marked and entered as an exhibit, were they?

19 MR. PLAYER: Court Exhibits.

20 MR. BARROW: I know, which is not -- I mean, it's not
21 back there with them because it's not an exhibit into
22 evidence.

23 THE COURT: Sure. But -- however, when jurors wish to
24 rehear testimony, we replay testimony for them. And I
25 would certainly allow them to rewatch the video, whether

1 it's back there with them or not.

2 MR. BARROW: Sure. Sure.

3 MR. PLAYER: The only thing is if it goes on -- if it
4 goes on this, they can't fast forward it. They've got to
5 watch the whole thing again. If they do it by computer,
6 Archer's is fine. All that is is a video. They got the
7 disc for Boucree is -- I think they have to have depo view
8 for it. There may be a way to avoid that. And when depo
9 view pops up, it's a picture and then the transcript is
10 next to it, and it's like a highlight going through the
11 transcript.

12 THE COURT: Sure. I would prefer to just give them
13 the transcript back there.

14 MR. BARROW: I would, too, rather than sending the
15 DVDs back.

16 THE COURT: Uh-huh.

17 MR. PLAYER: And that way, they can go to what they
18 want ---

19 THE COURT: Exactly.

20 MR. BARROW: I think that's simpler and quicker and
21 more efficient than just sending the DVDs back.

22 THE COURT: Okay. And then with regard to the
23 Trooper's --

24 MR. BARROW: Well, let -- let's find out ---

25 THE COURT: Let's ask which depositions they wish for?

1 MR. BARROW: Right. Because the trooper, we'd have to

2 ---

3 THE COURT: We'd have to -- I think we'd have to play
4 that testimony just to make sure that we didn't ---

5 MR. PLAYER: Because the transcript can't go back
6 there because that's not in evidence.

7 MR. BARROW: Yeah, the transcript can't go back
8 because we didn't even publish -- as he's already said.

9 THE COURT: Correct.

10 MR. BARROW: Just a small portion.

11 THE COURT: Correct. All right. Let's bring the
12 jurors back in here so I can ask which -- the deposition
13 for which witnesses particularly because they may only be
14 thinking about the -- the ---

15 MR. PLAYER: Doctors.

16 THE COURT: --- doctors. Thank you.

17 (The jury enters the courtroom at 11:40 a.m.)

18 THE BAILIFF: The jury's seated, Your Honor.

19 THE COURT: All right. I received a note asking "Can
20 we have all the depositions for the witnesses?" And I just
21 wanted to ask a question back to you: Which witnesses were
22 you seeking the deposition for?

23 THE FOREPERSON: Dr. -- Dr. Archer, the police off --
24 the trooper.

25 THE COURT: Okay.

1 THE FOREPERSON: The ones from the videos.

2 THE COURT: Okay.

3 THE FOREPERSON: Yeah.

4 THE COURT: So we have two doctors, who you watched
5 videos for, and we do have deposition transcripts that we
6 could provide to you in the jury room. With regard to the
7 trooper -- you also wanted the trooper?

8 THE FOREPERSON: Yes.

9 THE COURT: That, we would have to replay the
10 testimony for rather than give you -- we don't have a
11 written document that is suitable to go to you right now,
12 so we will have to replay what you heard. I think it's
13 about 10 minutes. It's not that lengthy. So it will take
14 us a minute to find that part of the tape. The court
15 reporter will have to find that specific part of the tape,
16 but we will play that for you.

17 I'll just let you go back to the jury room. You can
18 continue to deliberate. We will get you the transcripts
19 from the doctors. And when you are ready to hear the
20 officer's testimony, we will have it queued up and ready
21 for you. Does that sound good?

22 THE FOREPERSON: Yes.

23 THE COURT: All right. Thank you.

24 (The jury exits the courtroom at 11:42 a.m.)

25 (Marked Court's Exhibit No. 9, juror note.)

1 (Flash drive completed of Trooper Trotter's deposition
2 testimony as read.)

3 (Law clerk takes flash drive to the jury to play audio
4 of Trooper Trotter.)

5 (Off the record at 11:54 a.m.)

6 (On the record at 2:13 p.m.)

7 THE COURT: All right. I understand we have a
8 verdict.

9 LAW CLERK: We never ended up playing it for them.
10 They never wanted it.

11 THE COURT: They never did hear, just so y'all know.
12 They never wanted to.

13 MR. PLAYER: Oh. They never heard the ---

14 THE COURT: All right. You can bring in the jury,
15 please.

16 (The jury enters the courtroom at 2:17 p.m.)

17 THE BAILIFF: The jury's seated, Your Honor.

18 THE COURT: All right. Madam Foreperson, I understand
19 you have a verdict?

20 THE FOREPERSON: Yes.

21 THE COURT: Is it a unanimous verdict?

22 THE FOREPERSON: Yes, it is.

23 THE COURT: If you'll please pass it to the bailiff.

24 (The foreperson complies and the bailiff passes it to
25 the Court.)

1 THE COURT: (Hands verdict form to the clerk) I'll ask
2 the clerk to please publish the verdict.

3 THE CLERK: (As read) "In the State of South Carolina,
4 in the Court of Common Pleas, County of Richland, the Fifth
5 Judicial Circuit, case number 2014-CP-40-6228, Joseph --
6 the case of Joseph Rivett against Bruce Ledlum and Celadon
7 Trucking Service, Income -- Incorporated, sorry. The jury
8 has examined and considered all of the evidence considering
9 who was at fault in this lawsuit. Do you find that the
10 Defendants were negligent and that such negligence
11 proximately caused the Plaintiff's injuries? Yes. The
12 amount of total damages is \$300,000. Signed by Foreperson
13 Tiff --

14 Is it Tiffany?

15 THE FOREPERSON: Tiffany Turner.

16 THE CLERK: -- Tiffany Turner on February 4, 2016.

17 Is this is your verdict ---

18 THE FOREPERSON: Yes.

19 THE COURT: All right. Any motions while the jury is
20 here?

21 MR. PLAYER: Not from the Plaintiff, Your Honor.

22 MR. BARROW: Not while the jury is here, Your Honor.

23 THE COURT: All right. Thank you.

24 Ladies and gentlemen, thank you so much for your
25 service this week at Richland County. We certainly

1 appreciate your attention. You've been a fantastic jury.
2 I really appreciate your service this week.

3 Please know that you are now able to talk about this
4 case. Before I told you that you couldn't talk to your
5 family or friends about it. You are now free to talk to
6 anyone about it. You may hear from the attorneys who may
7 wish to talk to you about the case.

8 It is up to you whether or not you want to talk to
9 people about the case. You can tell them I'd rather not
10 discuss it and that's fine, but if you wish to discuss it,
11 there's no longer a prohibition against that from me.

12 So thank you all very much. You can go back to your
13 jury room to collect any things you might have and you're
14 free to go. Thank you.

15 (The jury exits the courtroom at 2:19 p.m.)

16 THE COURT: All right. I'll hear from you for post-
17 trial motions.

18 MR. CAVANAUGH: Yes, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, sir.

21 MR. CAVANAUGH: Defendant moves for a judgment
22 notwithstanding the verdict, pursuant to Rule 59, on the
23 basis that the preponderance of the evidence certainly
24 shows the Defendant -- certainly proves the Defendant was
25 not negligent; and as a result, we move for a judgment

1 notwithstanding the verdict. And negligence did not
2 proximately cause the damage to the Plaintiff.

3 THE COURT: All right. All right. Having listened to
4 the testimony, I believe that there was enough testimony on
5 both negligence with regard to causation and the breach of
6 duty and the causation and proximate cause to send the
7 matter to the jury. It was in the jury's province and I
8 will not upset that jury verdict. And your motion for JNOV
9 is respectfully denied.

10 MR. CAVANAUGH: Thank you, Your Honor. Defendant also
11 moves for a new trial pursuant to Rule 59.

12 THE COURT: All right. A new trial absolute?

13 MR. CAVANAUGH: Yes, Your Honor.

14 THE COURT: All right. That motion is also denied.

15 MR. CAVANAUGH: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. CAVANAUGH: Defendant also moves for a remittitur,
18 pursuant to Rule 59, on the basis that the amount of
19 damages to the Plaintiff is shocking to the -- shocking and
20 as a result, we ask for a remittitur, Your Honor.

21 THE COURT: All right. That motion is denied. The
22 amount of the verdict was within the realm of evidence that
23 was presented with regard to damages for actual medical
24 expenses, the lost earning capacity, and any pain and
25 suffering they may have awarded to the Plaintiff. And so

1 your motion is denied.

2 MR. CAVANAUGH: Thank you, Your Honor.

3 THE COURT: Thank you. All right. Thank you,
4 everyone. I know this was a long week and I appreciate ---

5 MR. PLAYER: Thank you, Your Honor.

6 MR. BARROW: Thank you, Your Honor.

7 THE COURT: --- y'all. Thank you.

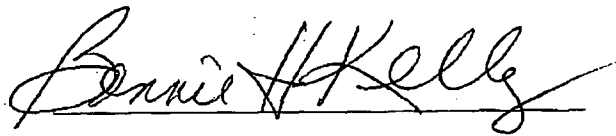
8

9 -- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the F Circuit Court for Richland County, South Carolina, on the 2nd day of February, 2016.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

October 10, 2016

1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

} COURT OF COMMON PLEAS
2014-CP-40-6228

3
4 Joseph C. Rivett,

5 Plaintiff,

6 vs.

7 Celadon Trucking,

8 Defendant.

} TRANSCRIPT OF RECORD

9 July 21, 2017
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE L. CASEY MANNING, JUDGE.

15
16
17 A P P E A R A N C E S:

18 TUCKER S. PLAYER, ESQ.
Attorney for the Plaintiff

19 BRANDON R. GOTTSCHALL, ESQ.
20 Attorney for the Defendant

21
22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

(WHEREUPON, no witnesses were called
during these proceedings.)

EXHIBITS

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JULY 21, 2017

2 THE COURT: Are you ready?

3 MR. GOTTSCHALL: Yes, Your Honor.

4 THE COURT: You are the moving party. You may
5 proceed.

6 MR. GOTTSCHALL: Your Honor, good morning.
7 Brandon Gottschall, for the Defendants, Celadon
8 Trucking and Bruce Ludlum.

9 We are here on the Defendant's motion, a Rule
10 60(b) motion. This matter is a straightforward but
11 also very serious issue. The underlying case is a
12 straightforward auto accident case. The Plaintiff
13 testified. It involved two different accidents.
14 And there are handful of witnesses. It was tried
15 before Judge Gee before she passed away,
16 unfortunately. It is a car accident. It didn't
17 even scratch the Plaintiff's car, but it still
18 resulted in a \$300,000 verdict for the Plaintiff.

19 Your Honor, the basis for our Rule 60(b)
20 motion, one of the witnesses that was initially to
21 testify -- that the Plaintiff intended to testify
22 at trial -- was not able to appear at trial. This
23 was an officer, Trooper Brian Trotter. And this
24 was a 3-day trial. On June -- or, sorry,
25 January 2nd of 2016, Trooper Trotter was going to

1 testify initially for the Plaintiff. That was
2 later delayed until January 3rd. The morning of
3 January 3rd it became apparent that there was not
4 an active subpoena. The Plaintiff did not have a
5 subpoena on the officer. The Defendants had had a
6 subpoena on the officer, but they released him on
7 the night of January 2nd.

8 THE COURT: Why did they release him?

9 MR. GOTTSCHALL: The Defendants reviewed their
10 case. There was no need to call him for damages at
11 that time. The only reason the Defendants would
12 have needed Trooper Trotter was for
13 cross-examination if he was later called.

14 THE COURT: The reason I ask that question,
15 it appears to be heading toward the suggestion that
16 because the trooper wasn't here something went
17 awry? I don't know, you tell me. I don't want to
18 guess what you want to tell me, so go ahead.

19 MR. GOTTSCHALL: Certainly. At 9:30 a.m. that
20 morning Trooper Trotter did not show up again
21 because he was not under valid subpoena. Judge Gee
22 addressed the situation and gave the Plaintiff's
23 counsel until after lunch to attempt to get this
24 witness to court.

25 After lunch, the parties reconvened, and the

1 Plaintiff's counsel told the Court -- and I have
2 the direct quote -- that: He -- Trooper Trotter --
3 told me that he would be here by 2:30. And that is
4 on Page 132, Lines 15 through 16 of the record.

5 And there was a one-time slip later on. He
6 testified that he again --

7 THE COURT: "He" who? When you say "he
8 testified," who testified?

9 MR. GOTTSCHALL: The Plaintiff's counsel.

10 THE COURT: How can he be a lawyer and a
11 witness on the same case? I'm confused.

12 MR. GOTTSCHALL: The lawyer represented to the
13 Court that the officer told --

14 THE COURT: So he -- Go ahead. I'm sorry.
15 Don't let me stop you.

16 MR. GOTTSCHALL: The officer had told the
17 Plaintiff's counsel that he would be in court that
18 day, January 3rd, at 2:30.

19 This happened twice on the record, and it led
20 the Court to believe that the trooper --

21 THE COURT: Stop. Are you telling me what the
22 Court believed now? You are suggesting there is
23 something that kind of led the Court to believe or
24 reach some conclusion? I'm trying to follow the
25 record.

1 MR. GOTTSCHALL: Yes, sir. We have the trial
2 transcript.

3 THE COURT: I understand that. But when you
4 say that something led the Court to believe. Go
5 ahead. Let me just hear your whole argument first.
6 I'm sorry.

7 MR. GOTTSCHALL: This indicated to the Court
8 and the Defendant's counsel that Trooper Trotter
9 had told counsel he would be in court that day at
10 2:30.

11 THE COURT: All right.

12 MR. GOTTSCHALL: At 2:30 and then after the
13 trooper did not appear in court.

14 THE COURT: Okay.

15 MR. GOTTSCHALL: Based on those circumstances,
16 the Plaintiff's counsel requested the admission of
17 Trooper Trotter's deposition testimony, discovery
18 deposition, not a deposition for trial.

19 THE COURT: Was there any objection to that?

20 MR. GOTTSCHALL: There was objection, yes,
21 sir.

22 THE COURT: All right.

23 MR. GOTTSCHALL: There were extensive
24 arguments on the record. The Defendants objected
25 to that. And Judge Gee, after hearing the

1 arguments about the trooper testifying or stating
2 he would be in court at 2:30, Judge Gee ultimately
3 allowed the Plaintiff, over the objections of the
4 Defendant's counsel, to read his deposition
5 testimony in.

6 THE COURT: All right.

7 MR. GOTTSCHALL: We proceed to the rest of the
8 trial. There was a directed verdict motion. The
9 trooper's testimony was -- from the deposition --
10 was discussed in the directed verdict motion. The
11 verdict was for the Plaintiff. And after the
12 trial, actually after the appeal had already begun,
13 we talked to the trooper and found out that he had
14 never told anybody he had --

15 THE COURT: Do you have an affidavit from the
16 trooper to that effect?

17 MR. GOTTSCHALL: I do, yes, Your Honor.

18 THE COURT: Continue. Go ahead.

19 MR. GOTTSCHALL: And the trooper testified
20 that in the affidavit that at no point on February
21 3rd --

22 THE COURT: Let me ask you this. Did the
23 Plaintiff's counsel have an opportunity to
24 cross-examine -- well, you can't cross-examine an
25 affidavit, we know that. So Defense gets an

1 affidavit from the trooper that may be contrary to
2 assertions made to the Court?

3 MR. GOTTSCHALL: Correct, Your Honor.

4 THE COURT: All right, go ahead.

5 MR. GOTTSCHALL: Yes, Your Honor. At no point
6 on February 3rd -- this is the trooper's
7 affidavit -- did I, Trooper Trotter, tell the
8 Plaintiff's counsel or a representative of
9 Plaintiff's counsel that I would be at trial. He
10 did not have any conversation with the Plaintiff's
11 counsel, despite the Plaintiff's counsel's
12 representation to the Court that he had -- that
13 Trooper Trotter had told counsel that he would be
14 in court at 2:30.

15 Again, these are the exceptional circumstances
16 that led to the admission of the deposition
17 testimony and that deprived Defense counsel not
18 only of the opportunity to --

19 THE COURT: I thought you said you had the
20 trooper under subpoena yourselves also?

21 MR. GOTTSCHALL: We had freed him the day
22 before.

23 THE COURT: I know, but he subpoenaed him --
24 the Plaintiff subpoenaed and you subpoenaed him?

25 MR. GOTTSCHALL: That's correct.

1 THE COURT: You decided to release him from
2 your subpoena?

3 MR. GOTTSCHALL: That's correct.

4 THE COURT: Okay, go ahead.

5 MR. GOTTSCHALL: Because our only need for the
6 trooper was to cross-examine him if he was brought
7 in by the Plaintiff's counsel.

8 THE COURT: All right.

9 MR. GOTTSCHALL: And, Your Honor, so based on
10 this representation to the Court, exceptional
11 circumstances, and the introduction of the
12 deposition testimony, the Defendants were deprived
13 of their constitutional rights.

14 THE COURT: Let me ask you this. Didn't you
15 make the same arguments post-trial in front of
16 Judge Gee?

17 MR. GOTTSCHALL: We did not, Your Honor,
18 because we did not have the trooper's affidavit.

19 THE COURT: All right. You finished the
20 trial?

21 MR. GOTTSCHALL: Yes, sir.

22 THE COURT: You had a chance for post-trial
23 motions?

24 MR. GOTTSCHALL: Yes, sir.

25 THE COURT: Did you make those post-trial

1 motions?

2 MR. GOTTSCHALL: We did not have the
3 opportunity to make those because we did not have
4 testimony from the trooper at that time.

5 THE COURT: All right. I think you have ten
6 days to make post-trial motions. Did Judge Gee
7 give you ten days to make post-trial motions?

8 MR. GOTTSCHALL: Of course we had ten days.

9 THE COURT: I'm just trying to understand
10 this. After the trial she gave you ten days to
11 make post-trial motions?

12 MR. GOTTSCHALL: That's right.

13 THE COURT: Did you make any post-trial
14 motions within the ten day period?

15 MR. GOTTSCHALL: Not to this effect, Your
16 Honor, no, sir.

17 THE COURT: All right, say that again.

18 MR. GOTTSCHALL: We did not raise this issue
19 in that period.

20 THE COURT: All right. She gave you ten days
21 to file all post-trial motions. You filed no
22 post-trial motions after the ten days, after the
23 expiration of ten days?

24 MR. GOTTSCHALL: None -- Your Honor, none to
25 this effect. I would have to check the record to

1 see if any --

2 THE COURT: You know, I'm listening, I'm
3 trying to understand. I'm not trying to jump on
4 you or anything. The trial has ended, she gives
5 you ten days to file post-trial motions?

6 MR. GOTTSCHALL: That's right.

7 THE COURT: Are we in agreement so far?

8 MR. GOTTSCHALL: Yes, sir.

9 THE COURT: Were any motions filed within that
10 ten day period?

11 MR. GOTTSCHALL: None that I --

12 THE COURT: Okay. We can doublecheck it. So
13 no post-trial motions were made. That is why you
14 come in under 60(b), I do believe?

15 MR. GOTTSCHALL: That's correct.

16 THE COURT: All right. Do you have any -- and
17 what is your request? I'm just trying to
18 understand. Go ahead.

19 MR. GOTTSCHALL: Your Honor, we're asking for
20 a new trial at this time.

21 THE COURT: Based on the affidavit from the
22 trooper; is that right?

23 MR. GOTTSCHALL: Based -- the affidavit is the
24 evidence that there was misrepresentation that
25 deprived us from constitutional rights.

1 THE COURT: Well, let me ask you this: Didn't
2 you have the right to keep the trooper under
3 subpoena yourself?

4 MR. GOTTSCHALL: We certainly did.

5 THE COURT: You had the right to keep the
6 trooper under subpoena. You let that right expire,
7 or waived it, I guess. And you didn't file any
8 post-trial motions within a ten day period? That's
9 why you are bringing this motion under 60(b)?

10 MR. GOTTSCHALL: That's correct.

11 THE COURT: All right. Anything further?

12 MR. GOTTSCHALL: Yes, Your Honor.

13 THE COURT: I'm sorry, go ahead.

14 MR. GOTTSCHALL: The reason we didn't raise
15 the ten day motion, we didn't know anything about
16 the trooper --

17 THE COURT: Well, ten days is ten days. It
18 doesn't matter. Let me ask you this. Do you have
19 any authority to support your position under the
20 facts you have asserted to me here today to give me
21 a basis for ruling for you?

22 MR. GOTTSCHALL: I do, yes, Your Honor.

23 THE COURT: What is it?

24 MR. GOTTSCHALL: The basis is that we were
25 deprived --

1 THE COURT: Do you have a case?

2 MR. GOTTSCHALL: I do, yes, Your Honor.

3 THE COURT: Well, listen to me carefully, son.

4 Do you have a case that supports your position?

5 MR. GOTTSCHALL: I do, Your Honor.

6 THE COURT: Well, hand it up.

7 (Hands to Court.)

8 THE COURT: Mr. Gottschall, I might have read

9 some of this the last couple of weeks by

10 communication back and forth, I can't recall off

11 the top of my head. But I will hear from you, hear

12 from Mr. Player, and I will take my time and make a

13 decision. Don't worry about it.

14 MR. GOTTSCHALL: And the case I have right

15 here, Your Honor --

16 THE COURT: Have you showed it to Mr. Player?

17 MR. GOTTSCHALL: This has been briefed in the
18 past, yes, sir.

19 THE COURT: All right. Well, if it is in the

20 brief, I can read it later on. But you can point

21 out specifically for the record right now the case

22 that you rely on to grant the relief you seek.

23 MR. GOTTSCHALL: Certainly. Well, in here it

24 says the bases are built on Rule 60(b), which,

25 according to the rule, provides the Court with

1 authority under the rules to -- based on
2 misrepresentation, even if it is not discovered,
3 misrepresentation to the Court, and --

4 THE COURT: And my question is, do you have a
5 case that supports your position based on
6 misrepresentation to the Court?

7 MR. GOTTSCHALL: Your Honor, I have a variety
8 of cases that --

9 THE COURT: Well, which one do you
10 specifically rely on? Pick one case that you rely
11 on that will give me a reason to grant the relief
12 you are seeking.

13 MR. GOTTSCHALL: Well, I point the Court then
14 to In Re Vora. This is 354 S.C. 590, specifically
15 at Page 595. And this is the case in its entirety.
16 It is a 2003 case. And in In Re Vora held that the
17 right to cross-examination is an element of
18 constitutional due process.

19 We also cited to Goolsby v. Goolsby --
20 G-O-O-L-S-B-Y -- 229 S.C. 109. And it states that
21 the right to cross-examination is a most valuable
22 right and that the power of cross-examination has
23 been justly said to be one of the principal --

24 THE COURT: So you are saying that Judge Gee
25 abused her discretion by letting the deposition

1 testimony of the trooper in?

2 MR. GOTTSCHALL: Not at all, Your Honor.

3 THE COURT: Well, continue.

4 MR. GOTTSCHALL: We are saying the evidence
5 was not in front of Judge Gee. There was a
6 misrepresentation to Judge Gee. She made a ruling
7 based on the evidence that she had in front of her
8 at that time. She didn't know that the trooper had
9 never talked to the Plaintiff's counsel, had never
10 indicated to anybody that he would be in court at
11 2:30 that day, and she made a ruling based on
12 exceptional circumstances. It had been represented
13 that the trooper had said he would be there and he
14 wasn't there. It looks like the trooper is making
15 a representation that is false to an officer of the
16 court, the attorney. Excuse me. And based on
17 that, the Defendant's counsel was deprived of their
18 right to cross.

19 THE COURT: Thank you for your presentation.

20 Mr. Player, I will be happy to hear from you.

21 MR. PLAYER: Your Honor, as I pointed out in
22 my brief, there is a lot more to this story. This
23 case was initially set for trial on January 19th.
24 My wife had a medical emergency which necessitated
25 a continuance from the 19th to February 2nd. And I

1 had subpoenaed Trooper Trotter for the initial
2 trial. And in between that time period we actually
3 traveled I believe to Louisiana to do some video
4 depositions. And my letter with Trooper Trotter
5 that accompanied the subpoena originally said, You
6 are under the subpoena until I release you. And I
7 ask, you know, the troopers that work with me in
8 Richland County, they have always -- you know, I do
9 that to avoid them having to come sit on Monday and
10 wait to be called. You know, Wait until I call you
11 and tell you to be there. So my assumption was
12 that my subpoena was still valid. Judge Gee did
13 specifically rule that was not the case.

14 THE COURT: She ruled that your subpoena was
15 not valid?

16 MR. PLAYER: Right. That the January 19th
17 subpoena wasn't valid. But the key is, the first
18 day of trial I called the Plaintiff, he finished
19 testifying, and we broke for lunch. When we came
20 back we were going to watch one of these doctors on
21 video deposition.

22 And I had a conversation with the Court. I
23 said, I can bring Trooper Trotter to be here at
24 4:00 o'clock when the video deposition would be
25 finished. He will finish by 5:00, but the

1 Defendants also have him under subpoena, and he is
2 supposed to be here tomorrow under their subpoena.
3 So I don't want to bring him up here twice, but,
4 you know, I'm sure he doesn't want to be here
5 twice. I can bring him up today or we can break at
6 4:00 today and bring him first thing in the
7 morning.

8 And the Court talked with me and Mr. Barrow.
9 Mr. Gottschall was not involved at that time. And
10 Mr. Barrow said, It is our intention to call him,
11 that can change, but right now we intend to call
12 Trooper Trotter.

13 THE COURT: All right.

14 MR. PLAYER: So the judge said, Well, since we
15 are going to accommodate the Defendants because
16 their doctor can't be here until the middle of the
17 day tomorrow, we'll save the trooper for the
18 morning.

19 After court I called Trooper Trotter, and
20 Mr. Barrow confirms that Trooper Trotter said he
21 spoke with me and told me he would be there to
22 testify at 9:30 the next morning.

23 THE COURT: Is that so, Mr. Gottschall? He is
24 telling me about a conversation he had with
25 Mr. Barrow. You are suggesting to me -- Continue.

1 Relax. I'm listening to everything. So you were
2 in the presence of his senior --

3 MR. PLAYER: No, I wasn't in the presence.
4 This is what happened. That night I called -- I
5 was going to call -- I called Trooper Trotter at
6 1:00. I did not have his cell phone number. I
7 called dispatch, Ask him to call me.

8 When we got out of court that afternoon I got
9 a call from Trooper Trotter. He said, I got a call
10 about the trial that is going on in Columbia.

11 I said, yes. You know, we didn't need you
12 today. If you can just be there at 9:30 in the
13 morning.

14 He said, Okay, I'm -- you know -- at that time
15 he said, Okay, I will be at Courtroom 3B at 9:30
16 tomorrow morning to testify. That was around
17 5:00 o'clock. The next morning he didn't show up.

18 I told the Court, I spoke with him last night
19 and he said he was going to be here at 9:30. That
20 is when Mr. Barrow said, Well, I called him last
21 night and released him from my subpoena. And he
22 said he talked to you. He said he told you he was
23 going to be here, but when I released him from my
24 subpoena I said I didn't need him. And that is
25 when he told Mr. Barrow that I didn't have him

1 under subpoena. So Mr. Barrow said numerous times
2 during the colloquy with the Court that he would
3 never tell Trooper Trotter not to show up, but
4 Trooper Trotter didn't show up.

5 So the judge said, Well, this is technically
6 for the 19th, so I can't really say he is under
7 subpoena. I'll give you until 2:30 to get him
8 here.

9 I called Trooper Trotter eight times on the
10 cell phone that day. Never called me back. Would
11 not respond. I had my process server drive to his
12 house. So this idea that he was unable to attend
13 court we would submit is a lie, because he was just
14 sitting at home. It was his day off and he didn't
15 want to come to court. So I had him served around
16 12:30.

17 And in the interim, the main problem -- you
18 know, the issue that we had was the collision. The
19 truck hit a car and that car hit my client. I got
20 the guy in the middle car who had been previously
21 dismissed from the case to come and testify at 2:00
22 o'clock.

23 So the subpoena I sent to Trooper Trotter said
24 be here at 2:00. I called my process server and I
25 said, Here is the trooper's cell phone number. He

1 will not respond to me. Maybe he will respond to
2 you. Let him know he doesn't have to be here until
3 2:30.

4 I called his supervisor, Trooper Levine.
5 Trooper Levine said, If he told you he was going to
6 be there, I can't imagine why he wouldn't be there.
7 I'll call him.

8 I said, When you call him, tell him he doesn't
9 have to be here until 2:30.

10 My process server, after Trooper Trotter was
11 served, he called him and said -- or, you know, You
12 just got subpoenaed. The lawyer wanted me to tell
13 you you don't have to be in court until 2:30.

14 Trooper Trotter said to Mike Smith, who is
15 my -- or Steve Smith, my process server, Message
16 received. That is the only thing he said. Steve
17 said, He didn't sound happy but, he certainly
18 didn't say, I'm not coming to court.

19 So when I came to the Court and said, The
20 trooper said he was going to be here at 2:30, that
21 was my interpretation of his statement, Message
22 received. I thought the message was, You don't
23 have to be here at 2:00, you have to be here at
24 2:30. The transcript said I said he told him.
25 That was untrue. I never spoke with him. But it

1 was -- in my mind, when the trooper said to my
2 process server, Message received, he was going to
3 be here at 2:30. Now, he didn't show up at 2:30.

4 And what actually happened was, shortly after
5 2:30, he wasn't here, we had a tornado warning.
6 The jury had to go down to the jail cells in the
7 basement, and we came back up here like at 3:30.
8 He still wasn't here at 3:30.

9 And I think that is when I made my motion
10 to -- I want to read his transcript. Mr. Barrow
11 objected, said, He is not under proper subpoena.
12 And Judge Gee said, I don't think I can treat a
13 subpoena that was served at noon, you know, two
14 hours before he was supposed to appear, you can't
15 justify reading his transcript under that.

16 And then I argue, Well, exceptional
17 circumstances because the trooper told me he was
18 going to be here last night --

19 THE COURT: The trooper actually spoke to your
20 process server, was that it?

21 MR. PLAYER: Sir?

22 THE COURT: You never spoke to the trooper, he
23 spoke with your process server?

24 MR. PLAYER: My process server is the one who
25 spoke with Trooper Trotter, yes.

1 THE COURT: All right, go ahead.

2 MR. PLAYER: But at this point in the
3 afternoon, there is no misrepresentation. The
4 trooper is not there. The judge knows he is not
5 there. Knows he is not there, and knows he is not
6 coming. That was the entire basis of it.

7 And the judge did talk about what concerned
8 her was the statement of the trooper that he was
9 going to appear in court. She was not talking
10 about anything I was talking about on February 3rd.
11 What she was talking about was the day before when
12 he told me the night before trial, I will be there
13 at 9:30 to testify, because if he had said then,
14 Well, you don't have me under subpoena, I'm not
15 coming, I could have gotten a subpoena to him that
16 night. I could have done something. I could have
17 had something done first thing in the morning to
18 fix that. But he told me, I will be there at 9:30
19 in the morning to testify. And those were the --

20 THE COURT: Is all this included in your
21 brief, sir?

22 MR. PLAYER: Yes.

23 THE COURT: All right.

24 MR. PLAYER: Now, with regard to the law, even
25 if I did -- if there is a misrepresentation, the

1 law is very clear under 60(b) it has to be
2 extrinsic and not intrinsic fraud. It has to be a
3 fraud that prevents the other side from prosecuting
4 their case.

5 Now, the one thing this Court has to
6 understand is the deposition that was taken of
7 Deputy Trotter, I didn't ask a single question.
8 The only thing I said in that entire deposition
9 was, No questions. The questions were asked by
10 counsel for Celadon and counsel for the car in the
11 middle. So I don't know what they wanted to
12 cross-examine because nothing that was presented to
13 that jury was a question that was asked by me. And
14 the reason that he did not appear in court was
15 because they told him he didn't have to.

16 So, you know, first of all, they can't show
17 what the law requires, which is, Is it extrinsic
18 fraud?

19 And the last part of it is, even if that was
20 somehow error, which it wasn't, I don't think it
21 was a misrepresentation, it certainly wasn't
22 extrinsic fraud, but most of all it was harmless.
23 Because what Trooper Trotter testified to,
24 everything he testified to was testified to by
25 other witnesses in this case, so it was

1 duplicative. I really didn't need it, but at that
2 time I was panicked because my witness didn't show
3 up and, you know, it is in the middle of trial. I
4 wanted what he had to say in the record. And, you
5 know, there is just no basis to reverse this. And
6 the entire premise of their argument is that Judge
7 Gee let me read the transcript because the trooper
8 lied to me about being there at 2:30. And that is
9 not the case. She said it over and over again on
10 the transcript, What concerns me is he told you
11 last night he was going to be here and now he is
12 not here.

13 THE COURT: All right. Thank you, Mr. Player.
14 Anything in reply or response?

15 MR. GOTTSCHALL: Yes, Your Honor, just a few
16 items.

17 Judge Gee at trial speaks to counsel's
18 concerns about --

19 THE COURT: Your argument about what Judge Gee
20 said or what she did, you are referring to the
21 deposition because you weren't present, were you?
22 You were not present?

23 MR. GOTTSCHALL: I was not present. I do have
24 the transcript.

25 THE COURT: Well, you made the presentation to

1 me just a moment ago what Judge Gee said as if you
2 were here. So you were not at the trial?

3 MR. GOTTSCHALL: I was not, Your Honor.

4 THE COURT: So what you are conveying to me is
5 not first-hand knowledge from you?

6 MR. GOTTSCHALL: From the transcript.

7 THE COURT: I'm just trying to sort it out.
8 Continue with your response.

9 MR. GOTTSCHALL: All right. Judge Gee
10 addressed in her transcript, as the transcript
11 shows, that the 9:30 appearance on January 3rd --

12 THE COURT: Stop. I have heard enough from
13 both of you. I will give you five days to submit
14 proposed orders. I appreciate it.

15 MR. GOTTSCHALL: May I pass up my exhibits,
16 Your Honor?

17 THE COURT: Yes, sure. Introduce anything you
18 want, but I have heard enough. You can do proposed
19 orders within five days.

20 Thank you all so very much for your lively
21 presentation.

22 MR. GOTTSCHALL: Thank you.

23 MR. PLAYER: Thank you, Your Honor.

24 (WHEREUPON, the proceedings were
25 concluded at 11:43 a.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 21st day of July, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 1, 2017

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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RECEIPT FOR EXHIBITS

Case No. 14-10228
 Plaintiff: JC RIVERA
 Defendant: W.J. JACKSON
 Date Trial Started: 7/21/17

Judge C. Manning
 Plt's Atty. Fischer Plauer
 Def's Atty. BRANDON GOTTSCHELL
 Date Trial Ended: 7/21/17

Received of Quoniam Mundy, Court Reporter for the above case, these exhibits:

	Clerk of Court Use
1 <u>Agreed</u>	<u>AM</u>
2 <u>Williams v Ford Motion</u>	<u>AM</u>
3 <u>Deos. Proctor Brian N. TROPER</u>	<u>AM</u>
4 <u>Trial Transcript 2/2-4/10</u>	<u>AM</u>
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9	Add to 60 (b) hearing transcript
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This 26th day of July 20 17.

Page ____ of ____

By: [Signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

COPY

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
3 C.A. NO.: 2014-CP-40-6228
4
5 JOSEPH C. RIVETT,)
6 PLAINTIFF,)
7 VS.) DEPOSITION OF
8 TROOPER BRIAN N. TROTTER
9 WILLIAM JOE JACKSON, BRUCE) MAY 15, 2015
10 LUDLUM AND CELADON TRUCKING)
11 SERVICES, INC.,)
12 DEFENDANTS.)
13
14
15 Deposition on oral examination of Trooper Brian N.
16 Trotter, reported by Laura S. DeCillis, Certified Court
17 Reporter and Notary Public in and for the State of South
18 Carolina; said deposition taken at the Law Offices of Nelson
19 Mullins Riley & Scarborough, LLP, Meridian, Seventeenth
20 Floor, 1320 Main Street, Columbia, South Carolina, on
21 Friday, the 15th day of May 2015, scheduled for 9:00 a.m.
22 and commencing at the hour of 8:55 a.m.
23
24
25

1 APPEARANCES

2 Representing the Plaintiff:

3 TUCKER S. PLAYER, ESQUIRE
4 1415 Broad River Road
5 Columbia, South Carolina 29210

6 Representing William Joe Jackson:

7 CHRISTOPHER J. DANIELS, ESQUIRE
8 Nelson Mullins Riley &
9 Scarborough, LLP
10 Meridian, Seventeenth Floor
11 1320 Main Street
12 Columbia, South Carolina 29021

13 Representing Bruce Ludlum and Celadon Trucking Services,
14 Inc.:

15 P. JASON REYNOLDS, ESQUIRE
16 Sweeny, Wingate & Barrow, P.C.
17 1515 Lady Street
18 Columbia, South Carolina 29201

19 Also Present:

20 Will Yarborough
21
22
23
24
25

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7 EXHIBITS

8 (None were proffered)

1 This deposition is taken in accordance with the
2 South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent and
4 respective counsel that the reading and signing of the
5 deposition by the deponent is expressly waived.

6 Whereupon:

7 Brian N. Trotter, having been duly sworn and
8 cautioned to speak the truth, the whole truth and
9 nothing but the truth, testified as follows:

10 EXAMINATION BY MR. DANIELS:

11 Q. Trooper Trotter, my name is Chris Daniels and I
12 represent Mr. Jackson in a lawsuit that's been brought by a
13 Mr. Rivett, the result of an automobile accident out on I-20
14 that I understand you investigated and even witnessed; is
15 that correct?

16 A. Yes, sir, it is.

17 Q. All right. Let me get a little bit of
18 background information about you before we get started.
19 Give us your full name, if you would.

20 A. Okay. Brian Nelson Trotter.

21 Q. And your address?

22 A. Work or home?

23 Q. Work will be fine. It doesn't matter.

24 A. Okay. 1626 Shop Road in Columbia, 29201.

25 Q. All right. You've given a deposition before, I

1 assume?

2 A. No. Actually, no.

3 Q. First one?

4 A. First one.

5 Q. All right.

6 MR. REYNOLDS: Lucky guy.

7 BY MR. DANIELS:

8 A. It's been all criminal until now.

9 Q. Okay. Well, let me spend a few minutes and
10 explain to you the process. I'm going to be asking you a
11 series of questions, a little bit about your background and
12 about your investigation of the accident, and these other
13 lawyers may ask some questions as well.

14 If at any time I ask a question that is
15 confusing, unclear, I speak too fast or you don't understand
16 my accent, tell me to rephrase it or repeat it because I
17 don't want you to answer a question unless you are
18 comfortable that you understand the question.

19 A. Okay.

20 Q. Will you do that for me?

21 A. I will do that.

22 Q. All right. And I will assume, Trooper, that if
23 you do not ask me to rephrase it, that you have understood
24 it; is that fair enough?

25 A. That's very fair.

1 Q. All right. The court reporter here is taking
2 down everything that is said, so if you would let me finish
3 my question before you provide your answer, we will also let
4 you finish your answer before we ask the next the question.
5 It makes it so much easier for our court reporter to come up
6 with an accurate record, all right?

7 A. Right. Okay.

8 Q. But any time you need to take a break, let me
9 know. I don't think this will take that long, but if you
10 need a break, just let me know and we'll accommodate you.

11 A. Okay.

12 Q. All right. You're with the South Carolina
13 Highway Patrol?

14 A. Yes, sir.

15 Q. And for how long have you been with the highway
16 patrol?

17 A. Since December of 2011.

18 Q. And are you from South Carolina?

19 A. No.

20 Q. Where are you from?

21 A. I grew up in Tennessee, then spent 20 years in
22 the navy living all over the place.

23 Q. All right. And you joined the highway patrol in
24 December of 2011?

25 A. Yes, sir.

1 Q. Did you go through the 12-week basic training
2 course --

3 A. Well, it's 19.

4 Q. 19 weeks?

5 A. Yes.

6 Q. And was that here in Columbia?

7 A. Yes, sir.

8 Q. All right. Tell me what sort of training you
9 went through with the highway patrol, please.

10 A. Well, I went through the Criminal Justice
11 Academy which is the core curriculum that all police
12 officers go through.

13 Q. Right.

14 A. I went through Basic Collision Investigation
15 there. At the completion of that, I went over to the -- I
16 finished up the highway patrol training and I did Advanced
17 Collision Investigation and Collision Reconstruction school.

18 Q. All right. Now, what was your position on the
19 highway patrol on September the 8th, 2012?

20 A. I was a trooper.

21 Q. Now, as I told you, this lawsuit arises out of
22 an accident that was eastbound on 20 on that day and it
23 involved a pickup truck being driven by Mr. Rivett, a Ford
24 Focus being driven by Mr. Jackson and a tractor-trailer
25 being driven by --

1 MR. DANIELS: What's your guy's name?

2 MR. REYNOLDS: Ludlum.

3 BY MR. DANIELS:

4 Q. -- Mr. Ludlum. And you were the highway
5 patrolman who investigated that accident?

6 A. Yes, sir.

7 Q. All right. Do you recall this incident?

8 A. I do.

9 Q. You do?

10 A. I do.

11 Q. All right. We've taken the deposition of the
12 plaintiff and I understand that there was another accident
13 that had occurred before this one and you were investigating
14 that accident; is that correct?

15 A. Yes, sir, it is.

16 Q. Do you recall anything about that accident?

17 A. No. I can't remember anything about the first
18 one.

19 Q. All right. What was the weather like on this
20 day, Trooper?

21 A. It was heavy rain on that day.

22 Q. And what were the traffic conditions like on
23 I-20 eastbound?

24 A. Very heavy and slow moving.

25 Q. Do you know, Trooper, if the prior accident was

1 also in the eastbound lane?

2 A. It was.

3 Q. Did you actually witness this accident involving
4 these three vehicles?

5 A. Yes, sir, I did.

6 Q. And tell me what you saw.

7 A. Well, I was working the first collision,
8 whatever it was, on the shoulder of the eastbound lane of
9 I-20 between exit 70 and 71. I heard the sound of brakes
10 locking up, which I assume -- but I don't know for sure -- I
11 assume was on the tractor-trailer.

12 I looked up from what I was doing. I saw the
13 tractor-trailer under heavy braking, struck the rear of
14 Mr. Jackson's blue Ford Focus and, as a result of that,
15 pushed it into the rear of Mr. Rivett's Chevrolet pickup
16 truck.

17 Q. So the only collision you saw between
18 Mr. Jackson's Ford Focus and Mr. Rivett's vehicle was after
19 it was struck by the tractor-trailer?

20 A. Yes, sir. It was pushed.

21 Q. Pushed into it?

22 A. Yeah.

23 Q. What were the speed of these vehicles? Were
24 they going very fast at the time?

25 A. No -- well, on my report, I have Mr. Jackson and

1 Mr. Rivett at 25 miles per hour and then Mr. Ludlum who was
2 in the tractor-trailer at 30 miles per hour.

3 Q. And what was that based on?

4 A. That was an estimate from my observation.

5 Q. Okay. Did you see any type of second collision
6 or initial collision before the one you've just described?

7 A. No. This is the only thing I saw.

8 Q. So you saw one impact between my client's
9 vehicle and the plaintiff's truck?

10 A. Your client, being Mr. Jackson?

11 Q. That is correct.

12 A. That's correct. He was struck first by the
13 tractor-trailer and he pushed -- he, being the
14 tractor-trailer, pushed Mr. Jackson into the rear of
15 Mr. Rivett's pickup truck.

16 Q. And what caused your attention to that was the
17 noise of the brakes on the tractor-trailer?

18 A. That's correct.

19 Q. Did you have a chance to talk to the plaintiff,
20 Mr. Rivett, following the accident?

21 A. I did. And I reviewed my video from this
22 collision and, unfortunately, there's a hole in there,
23 there's a gap where the interview with these three drivers
24 is not recorded on video.

25 Q. Okay.

1 A. So it's been so long now that I believe I can
2 remember it but I'm not positive enough to really testify as
3 to what they told me.

4 Q. Do you recall him telling you there were two
5 impacts at any time --

6 A. I don't recall that.

7 Q. -- that he got hit twice?

8 A. I don't recall that, no.

9 Q. Do you recall any of the three parties with whom
10 you spoke indicating there were two impacts?

11 A. Not that I recall, no.

12 Q. Did you ask the plaintiff, Mr. Rivett, if he was
13 injured or hurt?

14 A. I don't recall whether I asked him or not.

15 Q. Is that a standard practice of yours? When you
16 interview someone who has been in an accident, do you ask if
17 they've been injured or hurt?

18 A. It's the norm that I would ask that. I don't
19 always ask it.

20 Q. Why would you not ask it?

21 A. Well, if they're up and around and talking to me
22 and, you know -- people are very willing to ask for an
23 ambulance if they need one.

24 Q. Okay. Did Mr. Rivett ask for an ambulance?

25 A. Not that I recall. He was not transported by

1 ambulance. I can tell you that with certainty, so --

2 Q. Okay. Did anybody ask for an ambulance?

3 A. No.

4 Q. Did anybody appear injured, any of the three
5 individuals involved appear injured in this case?

6 A. No.

7 Q. Did you notice any cuts or blood or bleeding or
8 any type of injury on the plaintiff, Mr. Rivett?

9 A. Not that I recall.

10 Q. As we sit here today, is there anything else you
11 can recall that may have been said by any of the three
12 parties to this accident?

13 A. Well, like I said, I did review the video and
14 none of this is recorded, unfortunately. It's certainly not
15 anything I did intentionally. But I do recall Mr. Rivett --
16 let me make sure I've got the names right -- Mr. Rivett
17 saying something to the effect of, do I need to stick around
18 or do I need to wait here? Because there was little to no
19 damage to his vehicle. And I don't remember exactly what it
20 was. I just have zero here which means none or minor.

21 But, anyway, I remember him saying something to
22 the effect of, he wanted to know if he could leave and I
23 said, no, sir, you're a part of this now and I need to have
24 you on the report. So then he stuck around and I finished
25 what I needed to do and gave him his copy of everything.

1 Q. Was an ambulance called to the scene?

2 A. No, sir.

3 Q. When you released the parties, did the plaintiff
4 drive off in his truck?

5 A. He did.

6 Q. How about the tractor-trailer? Did it drive off
7 or was it towed?

8 A. It was towed and I -- I'm not positive, but I
9 believe it was a ruptured radiator.

10 Q. Okay. And how about the blue Focus that was in
11 the middle vehicle? Was it towed or was it driven off?

12 A. It was towed by Wingard Towing.

13 Q. Okay. Officer, do you have your accident report
14 here today?

15 A. I do, yes, sir.

16 Q. Did you make any other notes other than your
17 accident report?

18 A. I did.

19 Q. Okay.

20 A. And I don't recall which law firm it was, but I
21 responded to a couple of FOIA, Freedom of Information Act,
22 requests and provided my field notes in there.
23 Unfortunately, on this particular day, it was pouring down
24 rain and I had a notebook just like this -- and I know we're
25 being recorded, but I'm referring to a steno pad. Once this

1 thing gets wet, you really can't write on it anymore.

2 I normally take pretty good notes for a
3 collision like this. But in this case, I saw it, there's no
4 question in my mind what happened. I knew everything I
5 needed to know to write this collision report, with the
6 exception of telephone numbers, driver's licenses,
7 registrations and insurance cards. So they handed me all
8 the documentation I needed so my field notes consisted of a
9 soaking wet piece of paper with telephone numbers on it.

10 Q. Okay. I think we sent a FOIA request but I
11 don't recall getting any field notes. But it didn't have
12 anything substantive on them?

13 A. It was a page just like this -- and I'm
14 referring to a steno pad -- with three scribbled phone
15 numbers on it, and two of them are probably smeared from the
16 rain.

17 Q. Okay.

18 A. So that's the extent of my field notes from this
19 collision.

20 Q. Did you cite my client, Mr. Jackson, with any
21 citation or charge?

22 A. No, I did not.

23 Q. Is there anything else you can tell us about
24 this accident that you remember other than what you've told
25 us here today?

1 A. Other than -- well, I wrote Mr. Ludlum a
2 citation for driving too fast for conditions and I believe
3 we've covered everything else.

4 Q. Okay. And you saw the whole thing?

5 A. I did.

6 Q. That's kind of unusual for a highway patrolman
7 to actually witness the accident, isn't it?

8 A. It is. And I've investigated about close to 800
9 reportable collisions and I've witnessed about four of them.

10 Q. Okay. I don't believe I have any other
11 questions, Trooper. Thank you very much.

12 A. Okay. Thank you.

13 EXAMINATION

14 BY MR. REYNOLDS:

15 Q. Just real quick, I'm Jason Reynolds and I
16 represent the tractor-trailer driver, Mr. Ludlum, and his
17 employer. The speeds, you said that was an estimate based
18 on what you saw?

19 A. Yes, sir.

20 Q. I know you do have some training in accident
21 reconstruction, but as I understand it, you did not actually
22 reconstruct this accident and calculate these speeds,
23 correct?

24 A. That's correct.

25 Q. So this is just a best guess based on what you

1 witnessed with your own eyes?

2 A. That's correct.

3 Q. Okay. Based upon your testimony a moment ago
4 where you indicated that you do recall Mr. Rivett wanting to
5 maybe leave the scene before you were done with your
6 investigation, is that a fair characterization of that?

7 A. Yes, sir.

8 Q. Okay. Did you get the impression that he didn't
9 really feel like he was really even a part of this accident?

10 A. Well, it was probably -- and, again, this has
11 been so long that I can't remember the exact damage to the
12 car and I hate to guess at these things. But I believe he
13 had one of those square trailer hitch receivers which is
14 common on a truck like that and when you get hit by a little
15 car on a truck like that, that hitch receiver usually takes
16 most of it. Now, I can't tell you for certain that that's
17 what it was, but --

18 Q. I'll show you Exhibit number 2 to Mr. Rivett's
19 deposition. This is a photograph that he provided to us of
20 this very large trailer hitch that he says is what was
21 contacted.

22 A. Right.

23 Q. And I'm just characterizing his testimony for
24 you, what was contacted by the Ford Focus, I believe. Does
25 that look similar to what you recall him having as the

1 trailer hitch?

2 A. I believe so.

3 Q. Okay.

4 A. I've done hundreds of these and this was two
5 years ago so I can't say for sure.

6 Q. I understand. I understand. And I believe you
7 indicated that you do not recall Mr. Rivett asking for any
8 medical assistance; is that correct?

9 A. That's correct.

10 Q. Okay. So based upon the fact that he didn't
11 need any medical assistance and he had no damage to his
12 vehicle, is that why Mr. Rivett was asking you if he could
13 go ahead and get on down the road?

14 MR. PLAYER: Object to the form.

15 BY MR. REYNOLDS:

16 Q. Was that your impression?

17 A. That was my general impression, yes.

18 Q. But you told him he needed to stay because he
19 was involved and you were doing your investigation; is that
20 right?

21 A. Right.

22 Q. Now, prior to hearing the tractor-trailer, or
23 you said you heard some brakes that you assumed were the
24 tractor-trailer, you looked up and you saw the
25 tractor-trailer trying to stop; is that right?

1 A. Yes, sir.

2 Q. Okay. Prior to that, you were investigating the
3 first accident; is that correct?

4 A. Yes, sir.

5 Q. Okay. So before you heard the tractor-trailer
6 brakes, were you looking down at your notes, were you
7 talking to a witness? Do you recall what you were doing
8 when you heard that?

9 A. I remember I was -- I do remember that I was
10 outside the car, but I couldn't -- I can't remember what I
11 was doing.

12 Q. Okay. What direction were you facing?

13 A. I would have been facing east, parallel with the
14 interstate.

15 Q. Okay. And were you standing in the center
16 median or were you standing --

17 A. No, sir. I was standing on the shoulder.

18 Q. Okay. So looking at your accident report, just
19 so I understand, if we're looking at your accident report,
20 you've got the vehicles drawn up here in lane one, you've
21 got the center median with -- was that a wall or was that a
22 cable?

23 A. It's just a concrete barrier.

24 Q. A concrete barrier? Okay. So you were across
25 the road on the right-hand shoulder of the road --

1 A. Yes, sir.

2 Q. -- is that correct?

3 A. Right.

4 Q. And you said you were facing east?

5 A. Right. So I was facing --

6 Q. So you were facing the direction in which the
7 vehicles that were involved in the accident were traveling?

8 A. Yes, sir.

9 Q. Okay. So the tractor-trailer and the Ford Focus
10 would have come from behind you; is that correct?

11 A. Right. I was -- and, again, I know we're being
12 recorded so pointing doesn't help. But to refer to this
13 diagram, I was standing somewhere near the letter U and the
14 word Unit 2.

15 Q. Okay. And you were facing the direction in
16 which those vehicles that you've drawn there are traveling?

17 A. Yes, sir.

18 Q. Okay. And then you heard something behind you
19 and you turned around and that's when you saw the
20 tractor-trailer?

21 A. Yes, sir.

22 Q. Okay. I don't think I have any other questions.
23 Thank you.

24 MR. PLAYER: No.

25 MR. DANIELS: That's it. You're done.

1 CERTIFICATE OF REPORTER

2 I, Laura S. DeCillis, Certified Court Reporter and
3 Notary Public in and for the State of South Carolina at
4 Large, do hereby certify:

5 That the foregoing deposition was taken before me
6 on the date and at the time and location stated on Page 1 of
7 this transcript; that the deponent was duly sworn to testify
8 to the truth, the whole truth and nothing but the truth;
9 that the testimony of the deponent and all objections made
10 at the time of the examination were recorded
11 stenographically by me and were thereafter transcribed; that
12 the foregoing deposition as typed is a true, accurate and
13 complete record of the testimony of the deponent and of all
14 objections made at the time of the examination to the best
15 of my ability.

16 I further certify that I am neither related to nor
17 counsel for any party to the cause pending or interested in
18 the events thereof.

19 I further certify that the original of said
20 transcript shall be hereafter sealed and delivered to
21 CHRISTOPHER J. DANIELS, ESQUIRE, Nelson Mulins Riley &
22 Scarborough, LLP, Meridian, Seventeenth Floor, 1320 Main
23 Street, Columbia, South Carolina, 29201, and that this
24 original transcript shall be retained by the above party,
25 who shall be responsible for filing same with the court
prior to trial or any hearing which might result in a final
order on any issue.

Witness my hand, I have hereunto affixed my
official seal this 29th day of May 2015, at Columbia,
Richland County, South Carolina.

Laura S. DeCillis

Laura S. DeCillis,
Certified Court Reporter
State of South Carolina at Large
My Commission expires
August 10, 2015

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GARBER REPORTING SERVICE

803-256-4500

STATE OF SOUTH CAROLINA)

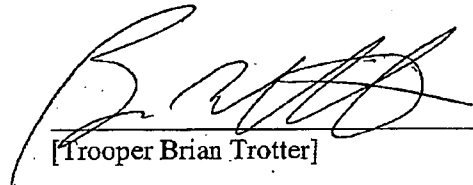
COUNTY OF RICHLAND)

**AFFIDAVIT OF
BRIAN TROTTER**

PERSONALLY APPEARED BEFORE ME, the undersigned, Brian Trotter, who after being duly sworn, deposes and says:

1. I am Brian Trotter, a resident of Lexington County, State of South Carolina and I currently reside at 838 Windy Road.
2. I am employed with the South Carolina Highway Department and was the responding officer at the accident scene that is the subject of the underlying case in this matter.
3. Plaintiff's counsel served a subpoena requiring my attendance on January 19, 2016, at 9:30 a.m., approximately two weeks prior to the date of the trial in this case.
4. Plaintiff's counsel did not serve a subpoena requiring my attendance on the dates of trial.
5. During the trial, on February 3, 2016, Plaintiff's counsel served a subpoena commanding my attendance at trial less than two hours later. I was unable to comply with the subpoena due to the short time frame and did not attend the trial.
6. At no point on February 3, 2016 did I tell Plaintiff's counsel or a representative for Plaintiff's counsel that I would be at trial.

FURTHER AFFIANT SAYETH NOT.


[Trooper Brian Trotter]

SWORN TO and subscribed before me
this 21st day of December, 2016.


Notary Public for South Carolina
My Commission Expires: Feb 11, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
JOSEPH C. RIVETT,)
PLAINTIFF,)
VS.)
WILLIAM JOE JACKSON, BRUCE)
LUDLUM and CELADON)
TRUCKING SERVICES, INC.,)
DEFENDANTS.)

IN THE COURTS OF SOUTH CAROLINA
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-40-6228

AFFIDAVIT OF TUCKER S. PLAYER

NOW COMES TUCKER S. PLAYER who being duly sworn deposes as follows:

1. I am over eighteen (18) years of age and I am competent to testify under the laws of the State of South Carolina. I give this affidavit of my own personal knowledge for use in opposition to a Motion for Leave to File a Rule 60 Motion of a Motion to Set Aside the Verdict in the above-captioned matter and for other lawful purposes.
2. I am a resident of Richland County, State of South Carolina.
3. On February 2, 2015, I engaged in a discussion with Judge Tanya Gee and Defense counsel Mark Barrow regarding the order of witness testimony in the above-captioned matter. This conversation is on the record and can be found on pages 96 through 98 of the Trial Transcript.
4. During the discussion of witness order, I offered to bring Trooper Trotter into testify on the afternoon of February 2, 2016 at 4:00pm. I suggested that it may be more efficient if he testified the following morning since Defendants intended to call him as well. Counsel for Defendant indicated he still intended to call the trooper at that time and

Judge Gee indicated that it would be better to call Trooper Trotter the following morning as opposed to that afternoon.

5. At the end of the day on February 2, 2016, Judge Gee asked, and I confirmed, that the Trooper would testify at 9:30am the following morning. This conversation is on the record and can be found on page 100 of the Trial Transcript.
6. I called Trooper Trotter at approximately 5:00pm on February 2, 2016 and told him to be in court at 9:30am the following morning. I told him I had subpoenaed him in January and he specifically stated that he would be in Courtroom 3-B at 9:30am on the morning of February 3, 2016 to testify.
7. After learning that the Trooper would not be appearing at trial on the morning of February 3, 2016, I immediately began calling both dispatch and his cell phone number provided by Defense counsel. Trooper Trotter did not answer his phone or respond to me in any way.
8. I contacted Steve Smith of SWS Process Servers to deliver a subpoena to Trooper Trotter at his home in Gilbert, South Carolina.
9. SWS dispatched a process server to Trooper Trotter's home in Gilbert, South Carolina to serve a subpoena.
10. I contacted Trooper Levine, the immediate supervisor of Trooper Trotter, and spoke with him about my need for Trooper Trotter to appear in court to testify that day. At that point, I had secured an alternate witness, William Joe Jackson, to testify at 2:00pm. I told Trooper Levine to tell Trooper Trotter that he was not needed until 2:30pm as Mr. Jackson would be testifying at 2:00pm.

11. I also left a voicemail message on Trooper Trotter's cell phone that he was not needed in court until 2:30pm that day.
12. I also called Steve Smith and provided him with Trooper Trotter's cell phone number. I believed Trooper Trotter was intentionally avoiding my phone calls and I asked Mr. Smith to tell Trooper Trotter he was not needed until 2:30pm that day.
13. Steve Smith called me to confirm that his process server served the subpoena on Trooper Trotter at 12:48pm.
14. I specifically remember that Steve Smith told me that Trooper Trotter said "message received" after he was served with the subpoena and was told he did not need to be in court until 2:30pm. Steve Smith did indicate that Trooper Trotter was not happy, but he never indicated he would not appear in court.
15. I believed that Trooper Trotter's statement of "message received" indicated he would be in court at 2:30pm as opposed to the 2:00pm time stated on the subpoena.
16. Shortly after 2:00pm, I indicated that I had served Trooper Trotter and stated: "And he did not indicate any – I don't think he was terribly pleased, but didn't indicate he was not going to appear." This conversation is on the record and can be found on page 120 of the Trial Transcript.
17. After Mr. Jackson testified, I did state that Trooper Trotter said he would be in court by 2:30pm. I made this statement in good faith believing that his comment of "message received" meant he would be in court by 2:30pm.
18. I also believed that if Trooper Trotter did not intend to appear in court after being served with a subpoena, he would have had the decency to tell either the process server or Steve

Smith when called Trooper Trotter to convey the message about appearing in court at 2:30pm.

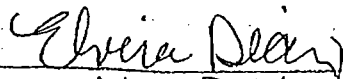
19. I called Trooper Trotter's cell phone 8 times between 12:18pm and 3:33pm. He never answered and never called me back.

FURTHER AFFIANT SAYETH NOT


Tucker S. Player
Player Law Firm
Attorney for Plaintiff
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Ph: (803) 772-8008
Fax: (803) 772-8037

State of South Carolina
County of Richland

Sworn to before me this 26th
day of January, 2017



Notary Public - State of South Carolina



My commission expires: July 1, 2016



SWEENEY WINGATE & BARROW P.A.

July 24, 2017

Reply to: Main Office

Brandon R. Gottschall
(803) 256-2233 x7132
brg@swblaw.com

The Honorable L. Casey Manning
Chief Administrative Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

8-3-17 file

RE: Joseph C. Rivett v. Celadon Trucking
Civil Action No.: 2014-CP-40-6228 - Appellate No.: 2016-000462
Claim No.: BL-108004
Our File: 2772-9340

Dear Judge Manning:

Please allow this letter to serve to further identify the exhibits the Court permitted Defendants to introduce at the close of the hearing on Defendants' Rule 60(b) motion on Friday, July 21, 2017. Specifically, at that time Defendants counsel submitted, with oral approval from Plaintiff's counsel:

1. A complete copy of the trial record. This exhibit is introduced, among other things, to provide Mr. Mark Barrow's representation to the Court indicating that Trooper Trotter had been released from Defendants' subpoena prior to February 3, 2016, when he was called by Plaintiff's counsel. It is also introduced to demonstrate that at no point during trial did Defendants counsel waive their right to cross-examine Trooper Trotter;
2. A copy of Defendants' Court of Appeals filing captioned "Appellants' Reply in Support of Motion for Leave to File Rule 60(b) Motion with Trial Court," which establishes Plaintiff's arguments that any misrepresentations at trial were extrinsic, not intrinsic;
3. A copy of the Chewning v. Ford Motor Co. case, 354 S.C. 72, 579 S.E.2d 605 (2003), cited in support of Defendants' contention that the misrepresentations were extrinsic; and
4. A copy of the deposition transcript of Trooper Trotter's deposition.

The above documents are submitted in addition to the other cases cited in the hearing by counsel and in addition to Defendants' Rule 60(b) motion and Memorandum in Support, which were separately filed with the Court.

RM

July 24, 2017
Page 2 of 2

Please do not hesitate to contact us should you have any questions or concerns.

Respectfully,

SWEENEY, WINGATE & BARROW, P.A.



Brandon R. Gottschall

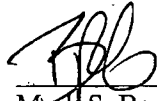
BRG/brg

cc: Tucker S. Player, Esquire, Player Law Firm, LLC

Certificate of Counsel

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

April 23, 2018



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