

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2017-002145

Glenda R. Couram Appellant,

vs

Sherwood Tidwell Respondent.

RECORD ON APPEAL
Volume II

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EXHIBIT CASE LAW:

Todd v Joyner, 685 SE 2d 596 SC Sup Ct., 2009 - Rule 803(4), SCRE (2008) The medical history referenced falls within the ambit of Rule 803(4) and

therefore, does not run afoul of the hearsay rule. 478

Waters v Young 100 F.3d 1437, 1441 (9th Cir.1996): Relatedly, a party who has rested may move to reopen her case in order to cure an evidentiary deficiency identified in a Rule 50(a) motion; the Court recognizes its obligation to freely give leave to amend when justice so requires, Fed. R. Civ. P. 15(a)(2), and to "ensure that pro se litigants do not unwittingly fall victim to procedural requirements," The purpose behind these requirements is to sufficiently apprise the non-moving party and the court of deficiencies in proof offered by the opposing party and to provide that party an opportunity to correct those deficiencies¹. (In *Jamali v Maricopa County* the District Court of Arizona 2013 - "As a general matter, this court has long sought to ensure that pro se litigants do not unwittingly fall victim to procedural requirements that they may, with some assistance from the court, be able to satisfy.") 482

Pike v SCDOT - or an issue to be preserved for appeal, it must have been raised to and ruled upon by the trial court; 326 S.C. 289, 306-307, 486 S.E.2d 750, 759 (1997) 488

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Email when Judge Newman suddenly became part of the Discussion 504

Judge Newman Offered to Conduct Trial if pro se Appellant agreed to no Witnesses (Appellant was going to subpoena her former employer and co workers, Lori Shortt and Amy Cofield she had emailed the list to Ms. Spitz they were her Former clients and current client of Attorney Matthews, if that had been disclosed Appellant would not have agreed to her Offer)

Email regarding 59(e) Motion 508

CERTIFICATE OF COUNSEL 509

¹ Sloas v. CSX Transportation, Inc., Dist. Court, SD West Virginia, 2009

- 1 A --- about ten ---
- 2 Q --- been involved ---
- 3 A --- years ---
- 4 Q --- in one other ---
- 5 A Over ten years ---
- 6 Q --- motor ---
- 7 A --- ago, I believe. Yes.
- 8 Q And in that accident you injured your neck, your
- 9 back, and your shoulder, correct?
- 10 A No, ma'am. I don't believe I -- I -- I don't think
- 11 so. I don't remember doing that. I remember injuring my
- 12 back. But that was taken care of by a chiropractor after
- 13 six months.
- 14 Q Okay.
- 15 A And I ---
- 16 Q So you ---
- 17 A --- was ---
- 18 Q --- did injure your back?
- 19 A There was back pain. Yes.
- 20 Q Okay. Prior to the accident we're here about, you
- 21 had a history of high blood pressure, correct?
- 22 A I had a history of high blood pressure, but not a
- 23 history of 147/54. My blood pressure always remained
- 24 around 130 or something to that effect.
- 25 Q That is a yes, you had a history of high blood

1 pressure?

2 A Yes, ma'am. Ten years.

3 Q And you were taking high blood pressure medication
4 at the time of this accident?

5 A Procardia, 25 milligrams. Yes.

6 Q And you mentioned, when you were testifying, that
7 you have a history of panic attacks; is that right?

8 A Yes, ma'am.

9 Q And you have a history of chronic anxiety; is that
10 right?

11 A Yes, ma'am.

12 Q That's before the accident?

13 A Yes, ma'am. 2009.

14 Q And you had a history of chronic stress before the
15 accident?

16 A Stress, not chronic.

17 Q And prior to the accident, you were taking
18 medications for your anxiety/panic-attack issues; is that
19 right?

20 A Yes. I was taking Xanax, alprazolam, and
21 Wellbutrin.

22 Q Now, after the accident that we're here about, Mr.
23 Tidwell came over to check on you?

24 A Uh-huh. Yes.

25 Q And you said that you were okay?

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1 A I told him I didn't know.

2 Q But you were able to pull your vehicle over after
3 the accident?

4 A Yes. I was just stunned.

5 Q And you did get out of the scene -- you did get out
6 of your vehicle at the scene of the accident, correct?

7 A Yes, I did.

8 Q You actually started taking pictures of your vehicle
9 at the scene of the accident?

10 A I took a couple pictures of my vehicle at the scene
11 of the accident. And when I got home, I took a couple
12 more. Yes.

13 Q And you never requested an ambulance?

14 A There was no need for an ambulance. No.

15 Q You drove your vehicle from the scene of the
16 accident?

17 A Yes, ma'am. As I stated, I'm the only one that
18 could have.

19 Q And you actually didn't have your vehicle repaired
20 until a couple weeks after the accident, right?

21 A That's not true, ma'am. I believe that was up to --
22 you're opening the door -- you're asking -- you're saying
23 I can't say anything about the insurance. But then,
24 you're asking me a question about it.

25 Q Ms. Couram, I was asking you anything about that.

1 MS. SPITZ: Your Honor, I would move to instruct the
2 witness ---

3 THE COURT: Ladies and gentlemen of the jury, please
4 disregard that last comment. And, Ms. Couram, I ask that
5 you respect and follow the Court's ruling on that matter.

6 MS. COURAM: I don't know how to answer that
7 question, then.

8 THE COURT: Did you get your vehicle fixed?

9 MS. COURAM: Yes. They -- I was provided a -- a
10 temporary car. Yes.

11 THE COURT: Okay.

12 Q My point was, your vehicle was drivable up until you
13 got it repaired; is that right?

14 A Until it was arranged for me to get it repaired.
15 Yes.

16 Q And the photos that you have shown to the jury,
17 their fairly and accurately represent your vehicle
18 following the accident?

19 A The indention and the -- the imprint of the Cadillac
20 emblem in my car fender. Yes. But there was nothing
21 wrong with the front of my car.

22 Q Okay. But that would be yes, those photographs
23 fairly and accurately depict it after the accident?

24 A Yes.

25 Q Okay. And you didn't seek any medical treatment

1 after the accident until five days later?

2 A Would I ---

3 Q It -- it's a ---

4 A I didn't ---

5 Q --- "yes" or "no" ---

6 A --- I didn't ---

7 Q --- question.

8 A --- I did not seek -- till I knew that I had a
9 problem. I went to a doctor's office.

10 Q And that ---

11 A I went ---

12 Q --- was five ---

13 A --- to a medical ---

14 Q --- days later?

15 A It was Saturday and Sunday -- the accident happened
16 on a Friday. I got home Saturday. I didn't want to go
17 anywhere or get back in the car Saturday and Sunday. And
18 I went back to work on Monday. And that's when the
19 injuries occurred. So I had no need to go to the
20 doctor's office until I had a problem.

21 Q You mentioned earlier, when you were testifying,
22 that at some point after the accident, you treated at
23 Vital Energy; is that right?

24 A Yes.

25 Q When you were released from Vital Energy, you said

1 that you were feeling good, unless you worked too hard or
2 did something strenuous; is that right?

3 A I don't remember saying that, but it's pretty --
4 pretty much true.

5 Q And up through -- the accident happened in September
6 2015, correct?

7 A Yes. 18, 2015.

8 Q And you did not start treating with Palmetto Spine
9 until October or November of 2016?

10 A As I stated, ma'am, the 1,000 flood hit. By the
11 time when we were able to get back on the road, per the
12 governor of South Carolina -- and I'm a state employee.
13 Mine ---

14 Q I don't think you're responding to my question. I
15 said: You didn't treat at Palmetto Spine until October
16 of 2016?

17 A Palmetto Spine when my injuries -- when my injuries
18 started getting worse again. Dr. Birdsong -- yes -- did
19 refer me to Palmetto Spine Center.

20 Q And that would've been October 2016?

21 A I'm not sure what the date was. Wait a minute. I
22 don't think it's in here, though. No. It's not in
23 those. So -- so if your records show that, then that's
24 -- that probably is right.

25 Q Before you went to Palmetto Spine, you didn't seek

1 any psychiatric or psychological care; is that correct?

2 A No.

3 Q Because I know you mentioned you had some counseling
4 at Palmetto Spine. But before that point, you hadn't
5 done any of that; is that right?

6 A Not after this accident. No. At Palmetto Spine it
7 was part of their treatment plan.

8 Q Okay. And you finished your treatment at Vital
9 Energy in February of 2016; is that right?

10 A I think so. Yes.

11 Q Okay. And as I mentioned a moment ago, I believe
12 you started treating at Palmetto Spine in October of
13 2016. Does that sound right to you, the -- the latter
14 part of 2016?

15 A Probably. Yes.

16 Q Okay. But between your discharge from Vital Energy
17 and your treatment beginning at Palmetto Spine, you
18 weren't actively treating anywhere for the injuries
19 you're claiming?

20 A I had to stop treatment -- I couldn't -- I was -- I
21 felt that -- I can't answer that question, ma'am, because
22 of the stipulation the judge has put on me. The -- the
23 -- the ---

24 Q Ms. Couram ---

25 A --- I don't know ---

1 Q --- my question ---

2 A --- how to answer your question without giving --
3 saying something I'm not supposed to say. So I can't
4 answer that question for you.

5 Q Ms. Couram, I'll ask you the question again and ask
6 that you respond. You did not seek any medical treatment
7 for the injuries you're claiming related to this accident
8 between February 2016 and October 2016; is that right?

9 A I don't know. I -- I have to see your notes -- I
10 mean, the -- information. Because I don't know what -- I
11 don't know how to answer your question. I finished my
12 treatment in February at Vital Energy. I didn't feel I
13 had any -- I was use -- doing the physical therapy they
14 told me to do at home.

15 And then, when I had my appointment with Dr.
16 Birdsong, she -- and I told her I was still having
17 problems, she -- she had me do -- have two X-rays done.
18 I had two X-rays done to my back. And I think they were
19 MIRs [sic]. They were two. One she did for lower back,
20 because she didn't realize I was saying ---

21 Q All right. Ms. Couram, I think you answered my
22 question. We'll move along. You never had an MRI
23 following this accident, correct?

24 A I had X-rays done. I -- I don't know if Dr. ---

25 Q But you did not have an MRI ---

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1 A I don't ---

2 Q --- done ---

3 A --- know. What I'm trying to say is I don't know
4 what it was called. I don't know what she referred me to
5 -- I think she told me -- had me -- what's an MIR -- MRI?
6 What happens?

7 Q Well, you know, that big machine you lay down on and
8 it slides you in and there's a ---

9 A No. I ---

10 Q --- machine ---

11 A --- didn't have ---

12 Q --- you go ---

13 A --- an MRI. She just did regular X-rays ---

14 Q Okay.

15 A --- around.

16 Q I'd like to move on now to your treatment at
17 Palmetto Health Spine Center. You mentioned, of course,
18 that you had some counseling there. During your
19 counseling sessions at Palmetto Spine, you reported that
20 you had several significant life stressors going on; is
21 that right?

22 A Yes, ma'am. That's why I have PTSD and anxiety
23 disorder.

24 Q You reported that your significant life stressors
25 included three of your ongoing lawsuits?

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1 A Yes. Against my employer? Yes. And I don't know
2 if -- is it three? I have a lawsuit to -- the -- the
3 lawsuit I have, if you're talking about the lawsuits that
4 I have, there were three that had to do with my house --
5 related to my house: that my land was -- that they were
6 trying to take my land. So in order to keep my land, I
7 had to sue, because they wouldn't stop.

8 So I sued. I didn't get anything monetarily, but I
9 got my property back. I had to take Time Warner to court
10 because they tried to take additional parts of my land.
11 And I didn't get any money, but I got my land back.

12 And then, there is the -- there was one with South
13 Carolina Housing Authority. And that was put into
14 bankruptcy, Chapter 13. I worked my way out of that
15 bankruptcy. And in 2011 I believe I completed it.

16 So there were -- there -- there were lawsuits. But
17 they were necessary lawsuits to keep my property.

18 Now, if you're talking about the lawsuit against my
19 employer, that is something that's ongoing. Yes.
20 Because I lost my job.

21 Q Okay. During your treatment at Palmetto Health
22 Spine, you also complained of significant stress at work;
23 is that correct?

24 A I have problems at work, ma'am. That's why --
25 that's why the legal action is pending -- is -- is going

1 forward. And I lost my job.

2 Q Do you recall, on December 28th, 2016, stating to
3 your doctor, "I don't really have any pain if I rest. If
4 I don't have to deal with anyone, my pain is less"? Do
5 you recall stating that?

6 A Yeah. I -- she -- I think she wrote that in the
7 record. Yes.

8 Q But do you recall stating that?

9 A Not that -- not in that way. But I remember -- I
10 know it's in that record. Yes.

11 Q And you complained that you felt that stress was
12 increasing your pain; is that right?

13 A I think the doctor said that, not me.

14 Q And during your treatment at Palmetto Health Spine,
15 part of that included you trying to have more positive
16 thoughts and thought modification; is that right?

17 A Yes, ma'am. That's what the counseling was for.

18 Q But you didn't comply with that?

19 A Yes, I did.

20 Q You have not treated with an orthopaedist since this
21 accident happened?

22 A I cannot, ma'am, because I can't afford it.

23 Q You haven't treated with any other type of
24 specialist?

25 A I can't afford it at the time right now. I have

1 issues with my left arm, and I can't go and check that
2 out either because I don't have the insurance to do it
3 with.

4 Q You mentioned a moment ago that you had an ongoing
5 lawsuit with your employer. In your complaint you have
6 claimed several injuries; is that correct?

7 A No, ma'am. I did not -- I do not claim any injuries
8 in that lawsuit. And if you tell me what the -- what
9 injuries there were, I'll tell you -- I'll -- I will say
10 "yes" or "no" to them. Because I don't -- I don't -- I
11 never got hurt at my job.

12 Q Okay. We'll go through a list. You've claimed
13 severe emotional distress?

14 A Yes, ma'am. It's in -- it's in the lawsuit. I --
15 yes.

16 Q You claim mental anguish?

17 A That's in the lawsuit. Yes.

18 Q You claim bodily injury, which includes
19 stomachaches?

20 A Did I say that? I don't think I did.

21 Q You claim sleep loss?

22 A If that's in the -- if that's in there, I did. But
23 that's not -- ma'am, that's not the case that's pending
24 now -- right now, is it?

25 Q Ms. Couram, in that lawsuit you're also claiming

1 feelings of worthlessness and that you required an
2 increase in your medication?

3 A No, ma'am, I did not say that.

4 Q You're claiming feelings of depression and anger?

5 A Yes, ma'am.

6 Q Claiming feelings of irritability?

7 A Yes, ma'am. But that has nothing to do with the
8 pain I'm in. That has to do with the mental anguish I'm
9 in. The accident caused pain. The mental anguish and
10 the mental issues were already present. This is
11 something that happened as a result of the car accident,
12 not what was already in place at the time. That's how he
13 -- Mr. Tidwell found me.

14 Q Ms. Couram ---

15 A He didn't ---

16 Q --- you mentioned that you were recently let go from
17 your employment; is that right?

18 A Yes.

19 Q And the reason you were let go is because you did
20 not comply with certain policies and procedures?

21 A That's not true. I did comply with the policy and
22 procedures.

23 Q But you were doing legal research at work?

24 A No, I was not, except on my breaks. My -- our
25 policy says that you can use the Internet intermittently

1 on breaks/lunch. I have two breaks, and I have a lunch.

2 Q So you're ---

3 A And I ---

4 Q --- denying that ---

5 A --- used the ---

6 Q --- you were ---

7 A --- Internet ---

8 Q --- doing legal research at work?

9 A I denied ---

10 Q Is that correct?

11 A --- I was doing legal research outside my work hours

12 ---

13 Q Okay.

14 A --- in my -- within my work hours. I was -- I'm not
15 denying the fact that DMV allows us to use the Internet
16 during nonwork hours.

17 Q Now, you would e-mail regarding personal matters
18 while you were at work?

19 A No, ma'am. Those e-mails came to me. The e-mail
20 that you're speaking of were ---

21 Q I'm not ---

22 A --- e-mails ---

23 Q --- speaking of a specific e-mail.

24 A Well, ma'am, you're -- you're asking me question
25 about the e-mail, and that's the reason I was dismissed,

1 is those e-mails you're talking about. It's those e-
2 mails, and you don't want me to talk about those e-mails.

3 So I can't answer ---

4 Q I'm not ---

5 A --- your question.

6 Q --- asking you about specific e-mails, Ms. Couram.

7 A Then, that's -- those are the only e-mails there is.

8 Q I don't have any further questions. Thank you.

9 THE COURT: Okay. Thank you, Ms. Couram. You may
10 step down.

11 (Whereupon, the plaintiff exited the witness stand.)

12 THE COURT: Call your next witness, Ms. Couram.

13 MS. COURAM: Ma'am, my -- my employer and their
14 attorney is here. My next was going to be Mr. Tidwell.

15 THE COURT: Okay. Actually, you know what? You
16 know, we've been going a little while. Let's take just a
17 few-minute -- 15-minute break. I'm going to excuse you
18 to your jury room. Do not discuss the case.

19 There should be some snacks back there, I hope,
20 something to drink. You can take a little bathroom
21 break. And we'll have you back in about 15 minutes.

22 (Whereupon, the jury exited the courtroom at 2:47
23 p.m.)

24 (Off the record briefly.)

25 THE COURT: Ms. Spitz -- y'all can be seated. Did

1 you have an issue? It sounded like you were about to say
2 something.

3 MS. SPITZ: No, Your Honor. I know the issue of
4 insurance was brought up a few times during Ms. Couram's
5 testimony. And the first was referring to health
6 insurance. But definitely, when I asked about -- an
7 unrelated question about getting her vehicle repaired,
8 she did mention insurance in front of the jury. At this
9 point I would move for a mistrial, as Ms. Couram was
10 clearly instructed not to bring up the issue of
11 insurance.

12 THE COURT: What say you, Ms. Couram?

13 MS. COURAM: I can't -- I fail to see how a mistrial
14 would be appropriate here. I'm not even sure, when I
15 said -- when I was talking about insurance, it was my
16 health insurance. I was saying that my health insurance
17 -- no one said I didn't -- couldn't say the -- what my --
18 what I was going to say is my health -- dropped me when I
19 turned 55. You said I could not say anything about the
20 accident insurance.

21 THE COURT: No.

22 MS. COURAM: Not ---

23 THE COURT: What I said ---

24 MS. COURAM: --- health ---

25 THE COURT: --- to you ---

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1 MS. COURAM: --- insurance.

2 THE COURT: No, ma'am. What I said to you is that
3 you are not to mention insurance whatsoever. I, in fact,
4 went on -- just to be crystal clear, went on to give you
5 a list of names of insurance companies, which included
6 BlueCross BlueShield, which I'm sure was your health
7 insurer as a state employee, I'm sure, on the BlueCross
8 BlueShield State Health Plan. That's the road that I
9 seemed to be going down. I mentioned names of adjusters
10 and gave you a -- a list -- not a full, comprehensive
11 list, but I certainly gave you some suggestions and told
12 you not to mention insurance whatsoever and, in fact,
13 clarified that I wasn't just telling you not to, but
14 ordering that that is not ---

15 MS. COURAM: No.

16 THE COURT: --- appropriate ---

17 MS. COURAM: I did ---

18 THE COURT: --- in this ---

19 MS. COURAM: --- not ---

20 THE COURT: --- case.

21 MS. COURAM: --- do that intentionally. I -- I
22 explained to you that I'm pro se and I will do the best I
23 can. When I mentioned my health insurance, I was going
24 to tell the jury about the fact that my -- my health
25 insurance dropped me when I turned 55.

1 So at 58 I'm going to -- my -- my injuries and
2 what's happening to me, things that's happening, it's
3 going to get worse and worse because of my age. That's
4 all I was going to say about that insurance.

5 The other insurance, I'm not even sure what -- what
6 it is I said wrong.

7 THE COURT: Listen, it -- it does not matter what
8 reason that you have or what justification you believe
9 exists for mentioning insurance. You were ordered by
10 this Court not to -- whether you think it should be okay
11 or not is not your choice to make.

12 MS. COURAM: Ma'am, I didn't do that intentionally.
13 I did not do that intentionally. I was just -- this is
14 what I prepared to say to the jury when I was at home
15 last night and for the last -- since this accident
16 occurred. I did not do that intentionally. It was an
17 unintentional thing.

18 And a mistrial is way -- it's -- it's way out of
19 place in something like this for something that I did not
20 do intentionally. I did not mention my health insurance
21 because of -- it had nothing to do with the car
22 insurance. It was just a comment about what was
23 happening when -- when I get older -- when a person gets
24 older and your insurance company drops them when they get
25 older.

1 And now I have no insurance. I have nothing,
2 because I don't have my job anymore. Now, as I said,
3 with the other issues, I don't even know -- I don't even
4 remember why I was -- it was an objection, because I
5 don't even know what I was saying when I was talking. If
6 you can tell me what I was saying, then I can -- then --
7 then I can -- maybe I can explain why I said what I said.

8 THE COURT: When you were on the verge of telling
9 the jury about automobile insurance, liability insurance,
10 when you were asked whether your car had been repaired or
11 whether it had been -- I don't know -- ten days or two
12 weeks or some period of time before your car was
13 repaired, which I recall to have been a "yes" or "no"
14 question. But -- and -- and certainly, you were
15 interrupted before you got to the point of saying
16 Nationwide or whichever insurance company ---

17 MS. COURAM: I was not ---

18 THE COURT: --- the name ---

19 MS. COURAM: --- mentioning ---

20 THE COURT: --- of that ---

21 MS. COURAM: --- names.

22 THE COURT: --- insurance ---

23 MS. COURAM: I was ---

24 THE COURT: --- company. However, it was clear to
25 me, probably because you had made comments about

1 insurance several times leading up to that -- it was
2 clear to me, from the faces of the jurors, that they
3 seemed to know what direction you were headed in.

4 Further, I have the issue of -- on a couple of
5 occasions, whether it was the e-mails or something else,
6 you telling the jury that, "Well, I want to answer the
7 question, but I'm not allowed to say that," because the
8 jury's not even entitled to know that there is something
9 that I told you not to say.

10 MS. COURAM: Ma'am, I'm pro se.

11 THE COURT: I understand.

12 MS. COURAM: I did not do -- anything that I did was
13 not done with the intention of -- of -- of -- of foiling
14 your -- your orders.

15 THE COURT: Well ---

16 MS. COURAM: I did not say -- I was trying to -- she
17 -- she -- she asked me questions. And the only answers I
18 could give was related to insurance. The insurance
19 company fixed my car. The insurance company paid for the
20 -- the -- the -- the -- the rental.

21 I didn't know how else to answer her question. I
22 didn't do it.

23 THE COURT: In 99 percent of car accident cases,
24 there is an insurance company that pays for repairs of
25 something or pays some bills or something. There is

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1 certainly a way to do it. And -- and whether you can
2 conceive of that at this point or not, you were certainly
3 instructed not to do that. That, in fact, is why we
4 spent two hours this morning, before starting this trial
5 ---

6 MS. COURAM: And I ---

7 THE COURT: --- for your edification and to give you
8 some instruction from the Court and, in fact, a -- sort
9 of a short course or tutorial in what you are permitted
10 to say and what not to say.

11 MS. COURAM: And ---

12 THE COURT: We spent ---

13 MS. COURAM: --- then ---

14 THE COURT: --- the entire morning doing that. And
15 you violated the Court's order.

16 MS. COURAM: And, ma'am?

17 THE COURT: Yes, ma'am.

18 MS. COURAM: I said, when you gave me the order,
19 that I'm going to make a mistake. And I did. I did -- I
20 told you I couldn't -- I wasn't -- I wasn't going to say
21 I couldn't -- I wasn't going to do something when I
22 didn't know if I would or not.

23 I'm a -- I'm a pro se litigant. When you tell me
24 something, I'm not going to necessarily remember what you
25 tell me as I'm talking and ---

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1 THE COURT: In fact ---

2 MS. COURAM: --- giving my ---

3 THE COURT: --- I believe ---

4 MS. COURAM: . --- side of the ---

5 THE COURT: --- I suggested ---

6 MS. COURAM: --- issue.

7 THE COURT: --- that you write it down on a Post-It
8 or something else this morning so that you would not do
9 that.

10 MS. COURAM: I did not do it intentionally, ma'am.

11 THE COURT: And it occurred anyway. My only
12 question is whether the appropriate remedy is to order a
13 mistrial. Let's take a break and I'll let y'all know.

14 (Off the record from 2:55 p.m. until 3:12 p.m.)

15 THE COURT: All right, folks. Mistrials are to be
16 granted when there is manifest necessity to do so. It is
17 certainly in the Court's discretion to determine whether
18 such manifest necessity exists. Part of the analysis in
19 making that determination is whether there is some
20 prejudicial effect to the moving party, resulting from
21 the nonmoving party's conduct.

22 In this case, although the Court is concerned about
23 the near mention of liability insurance as it relates to
24 the accident, automobile insurance -- and I do believe
25 that the jury knew that that's where Ms. Couram was

1 headed at the time -- I think that a curative instruction
2 will be sufficient due to the single near mention of that
3 issue.

4 The remaining offenses were as to Ms. Couram's
5 health insurance. And although I may be missing
6 something that -- in the analysis, Ms. Spitz, and -- and
7 certainly, will give you the opportunity to enlighten the
8 Court if -- if I have missed something. But I don't know
9 that any -- that there is any severe prejudicial effect
10 to Mr. Tidwell by Ms. Couram mentioning her own health
11 insurance.

12 And so that -- for those reasons, subject to
13 anything you need to add, Ms. Spitz, I would respectfully
14 deny the motion for a mistrial. And I'm happy to hear
15 from you in response, if necessary.

16 MS. SPITZ: Your Honor, I don't have anything to
17 add. Thank you.

18 THE COURT: Okay. Now, Ms. Couram, I've denied her
19 motion for a mistrial. However, we still have a lot of
20 trial left. And just because I've denied the motion at
21 this time does not mean that I will deny any further
22 motions made or additional motions for mistrial made by
23 the defense.

24 And so at this time, I instruct you once again to
25 refrain from discussing insurance of any kind whatsoever,

1 whether it's your health insurance, whether it's
2 automobile insurance, whether it's life -- I don't care
3 what kind of insurance it is. It could be flood
4 insurance on your house. I -- do not talk about it,
5 period. The topic of insurance, the names of any
6 insurance companies, the fact that you no longer have
7 health insurance, none of it is appropriate for this jury
8 to hear. And as I told you earlier, that includes the
9 names of any insurance adjusters who you have dealt with
10 over the course of this litigation.

11 Additionally, as I said just before the break, if
12 there is some topic, whether that is the substance of e-
13 mails or whatever other topic I ruled to be not relevant
14 and inadmissible before this jury, you are not to even
15 mention the fact that the Court ruled those things to be
16 inadmissible. You can't stand there and say, "Well, the
17 judge told me not to talk about it, so I can't." That is
18 absolutely inappropriate and cannot, will not be
19 tolerated.

20 And that is as to a number of issues. And in the
21 moment if you have a question, your question is for the
22 Court and not for the jury to hear. And we may need to
23 excuse the jury so that I can clarify for you. That can
24 happen.

25 But you are ordered not to make any mention

1 whatsoever of any of those things in front of the jury.
2 They are not entitled to know that there is a thing that
3 I told you not to talk about. That's absolutely improper
4 and inappropriate.

5 Do you have any questions about that?

6 MS. COURAM: I don't -- if I can answer the question
7 without -- without saying certain things, do I just say,
8 "I can't answer that question" and moving on -- and --
9 and -- and the -- and the other side just let it go?

10 THE COURT: Well, at this point your testimony is
11 concluded, so you wouldn't be answering any questions.
12 However, up until this point, there has been no question
13 asked of you that could not be answered without offending
14 the Court's ruling. In fact, Ms. Spitz has been very
15 careful to phrase her questions such that the prohibited
16 topics would not be raised.

17 Now, I know that you want to offer some explanation.
18 But a question such as "Did you get your car fixed two
19 weeks later?" is a "yes" or "no" question. It has
20 nothing to do with insurance. Although insurance may
21 have paid for it, that was not the question.

22 Your responsibility is to answer the question that
23 is asked of you and not go on some long diatribe about
24 whatever you want to talk about.

25 MS. COURAM: Okay.

1 THE COURT: Any other questions?

2 MS. COURAM: No.

3 THE COURT: Anything, Ms. Spitz?

4 MS. SPITZ: No, Your Honor.

5 THE COURT: Okay. Bring the jury.

6 (Off the record briefly.)

7 THE COURT: Okay. I have a note from the jury that
8 says: "Jury requests minimal breaks if administratively
9 possible." I'm not entirely sure what that means. I'll
10 have that -- mark it as a Court's exhibit.

11 THE COURT REPORTER: Your Honor, this will be
12 Court's 2.

13 (Whereupon, Court's Exhibit 2 was marked for
14 identification.)

15 THE BAILIFF: They're ready.

16 THE COURT: Bring the jury, please.

17 (Off the record briefly.)

18 (Whereupon, the jury entered the courtroom at 3:21
19 p.m.)

20 THE COURT: There are no assigned seats, folks.
21 Come on in wherever you want to sit.

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: Thank you, sir. All right, folks.

24 Before we proceed, I did receive a note from one of you
25 that asks for minimal breaks, if possible. I'm not

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1 entirely sure what that means. But I won't ask for a
2 clarification.

3 What I'll simply tell you is that we take breaks
4 periodically. And there is -- there are -- there are a
5 lot of factors that determine when we take those breaks,
6 whether, you know, it's -- it just feels like a good time
7 to pause between witnesses. We try not to take a break
8 while a witness is on the stand.

9 Whether it's that I need to discuss something with
10 the parties outside your presence or whether nature calls
11 and I just need a break, frankly, there are a number of
12 factors that go into that. So I will say, though, that
13 if you all feel like you need a break -- because you
14 can't just jump up and walk out -- if, you know, you need
15 a bathroom break or you're about to have a coughing
16 attack and need to run out or whatever it is, just raise
17 your hand. And that'll let me know that it -- it's a
18 good time for y'all to take a break.

19 Otherwise, I try to take breaks about every hour to
20 hour and a half. But, you know, like I said, all those
21 things go into determining when exactly is the best time
22 to break. So -- and we did so just now because we were
23 between witnesses and other things.

24 So anyway, we're ready to proceed with the trial.
25 Ms. Couram, call your next witness.

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1 MS. COURAM: Mr. Tidwell, please.

2 THE COURT: Mr. Tidwell, come around and be sworn.

3 (Whereupon, the witness came forward.)

4 SHERWOOD TIDWELL, having been first duly sworn,
5 testified as follows:

6 THE COURT: Say your full name for the record, sir.

7 THE WITNESS: Sherwood Frost Tidwell.

8 THE COURT: Your witness, Ms. Couram.

9 DIRECT EXAMINATION

10 BY MS. COURAM:

11 Q Mr. Tidwell, there's really not a lot to ask you.

12 Just can you tell -- tell the jury what happened on the
13 18th of September?

14 A On the day of the accident?

15 Q Yes, sir.

16 A Yeah. I was traveling eastbound down I-20 in the
17 center lane, approaching Broad River Road. And there was
18 traffic backing up. So as I proceeded, there was a big
19 truck. There was a semi truck, and then a smaller box
20 truck.

21 As I proceeded up, they slowed down. So I -- when I
22 moved over to the outside lane, that's when y'all were
23 there. I -- I didn't really see anybody until I had made
24 the lane change. Totally an accident, and driving --
25 that's probably the second-newest vehicle I've owned in

1 my life. And I wasn't used to the braking system on --
2 on the van. I didn't know you had to hit them and then
3 hit them again.

4 But I hit Mr. Brown. And Mr. Brown, as I hit him,
5 it knocked him into her. And that's what happened.

6 Q Is the braking system an ABS system? It's the same
7 ---

8 A Yes.

9 Q --- as right here ---

10 A Yes.

11 Q --- as everybody else?

12 Did you happen to notice what type of car Mr. Brown
13 was driving that day?

14 A Yes. A pearl-white Cadillac SUV.

15 Q SUV?

16 Why is it that you saw one car and I saw a different
17 one?

18 MS. SPITZ: Objection, Your Honor.

19 THE COURT: Sustained.

20 MS. COURAM: But I'm ---

21 THE COURT: Ask your next question.

22 MS. COURAM: Okay.

23 Q Had you had any previous accidents prior to this?

24 A No.

25 Q In -- in the last year or two?

1 A No.

2 Q No accidents at all?

3 A (No audible response.)

4 Q Now, when you hit Mr. Tidwell's [sic] car, did it --
5 did it do any damage to the -- to his car, the car that
6 you said was there that was ---

7 A Mr. Brown's ---

8 Q --- this ---

9 A --- car?

10 Q Uh-huh. Did it ---

11 A It ---

12 Q --- do any ---

13 A --- it ---

14 Q --- damage to ---

15 A It did some damage to the rear deck lid. And that's
16 all that I seen. You know, I actually got out and walked
17 up past him ---

18 Q Uh-huh.

19 A --- and really didn't see you until I got past the
20 Cadillac SUV before I knew you were up there.

21 Q So you said it did damage to the rear? Is that the
22 damage you're talking about?

23 A Yes, ma'am.

24 Q And your -- your car did that -- that -- that damage
25 to his car?

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1 A Yes, ma'am.

2 Q Your -- your commercial vehicle -- and how much
3 damage did -- did -- when you -- your car hit his car,
4 how severe was the damage to your car?

5 A It had broke the front grill and pushed in the
6 bottom piece that wraps around.

7 Q So that's -- but that was more than just a tap, I
8 would say?

9 A Yes, ma'am. A little more than a tap.

10 Q So it was a tap hard enough to do that much damage.
11 Was your -- was your car towed -- towed?

12 A No.

13 Q It was not towed ---

14 A No.

15 Q --- that day?

16 A No.

17 Q And the cost to fix your car?

18 A I don't really -- I don't really know.

19 Q Okay. I got an estimate from the -- okay. Now, did
20 you talk to Mr. Brown?

21 A I did.

22 Q Was he in his car the entire time, or was he
23 outside?

24 A He actually got out and looked at his car. I've
25 talked to him long enough to know that he was going to

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1 school, because he was a student at Midlands Tech. And
2 this was after I come up asked you if you were all right.
3 And we discussed how -- an inconvenience it is when you
4 have accidents.

5 Q Who discussed -- you and Mr. Brown?

6 A Yes.

7 Q Okay. Because I don't remember having a lengthy
8 conversation.

9 A Yes.

10 Q And when you asked me if I was okay, what -- do you
11 recall what I said?

12 A I really don't. I think you said that you didn't
13 know. It was very difficult to understand you. And no
14 offense. But I just -- I wanted to make sure everybody
15 was okay.

16 Q Explain what you said when you said that it was
17 difficult to understand me. Was it because I was kind of
18 surprised about being hit or what? What did you mean by
19 that?

20 A I -- I would think -- I would think so more
21 surprised. I think, before I even got to you to ask you
22 that question, you already had gotten out of and looked
23 and went back and sat back down.

24 Q Yeah.

25 A And I think I come back the second time and asked

1 you again, "Are you sure you're okay?"

2 Q And I said -- I made the same statement as to -- to
3 your question?

4 A I don't think you replied at all. I don't think you
5 -- if you did, I didn't hear you.

6 Q Well, what was I doing? Do ---

7 A You were ---

8 Q --- you recall?

9 A --- sitting in -- you were sitting ---

10 Q I was ---

11 A --- in the ---

12 Q --- sitting ---

13 A --- driver's side ---

14 Q Still ---

15 A --- with the door open.

16 Q Would you say I was still stunned that I got hit?

17 MS. SPITZ: Objection ---

18 Q Surprised?

19 MS. SPITZ: --- Your Honor.

20 THE COURT: Sustained. Move on to your next
21 question, ma'am.

22 MS. COURAM: Okay.

23 Q Now, when you talked to Mr. Brown and you said that
24 he -- the damage to your car -- your car wasn't at --
25 your -- because you -- you moved your car -- well, we

1 both moved our cars before the police got there further
2 over on the left -- to the left so it wouldn't impede the
3 traffic; is that -- isn't that correct? Because I know I
4 moved mine.

5 A Yeah. We didn't move them until the highway
6 patrolman had got on the scene and the SHIP had showed up
7 to block the traffic so we could move them over, because
8 it had caused such a -- so much traffic on I-20.
9 Everybody here knows how that traffic is. They had to
10 get there before we could even move, because we were all
11 right beside the wall.

12 Q No. But you don't recall that I and Mr. Brown got
13 in our car and moved our cars further over to the left so
14 that we wouldn't stop the traffic from going? You don't
15 recall that? I mean, not -- we didn't leave the left-
16 hand -- we didn't leave the lane. I mean, we remained in
17 the -- in the lane where the accident occurred. But you
18 don't recall us just moving over? Because the traffic
19 was stopping, and we got in our cars and moved it over it
20 so it could keep -- continue? You don't recall that?

21 A I don't ---

22 MS. SPITZ: Objection ---

23 A --- I don't ---

24 MS. SPITZ: --- Your Honor.

25 A --- I don't recall that.

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1 THE COURT: Hold on. Sustained. Move on to your
2 next question.

3 A I don't recall that.

4 Q Okay. Thank you. And what type of work do you do?

5 A Pardon me?

6 Q What type -- I'm sorry. It's cold in here. I'm
7 going to lose my voice. What type of work do you do?

8 A I'm a plumber.

9 Q Plumber?

10 And you use this vehicle as your -- as your work
11 vehicle? This is ---

12 A Correct.

13 Q --- the vehicle that you use?

14 A Yes.

15 Q How fast would you think you were going that day?

16 A 30/35 miles an hour.

17 Q And so when the -- so what -- were you surprised
18 when the traffic kind of slowed?

19 A I could see it from where I was at. But everybody
20 was moving slow. There was no fast traffic at all.

21 Q Uh-huh.

22 A And what I did was got over in the outside lane
23 simply because the trucks had stopped in front of me ---

24 Q Right.

25 A --- which one was a semi-truck ---

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1 Q Right.

2 A --- and you could not see around him. So when I
3 changed lanes from the middle lane to the left lane,
4 there y'all were. It was like there. It was -- there
5 was no -- there was no time to -- to make a -- a
6 judgement. I -- I would've rather hit the wall than to
7 hit anybody.

8 Q I know -- I know it was a accident. And I know ---

9 A Yes.

10 Q --- what happened ---

11 A Yes.

12 Q --- was unintentional.

13 A Yes.

14 Q And I -- and it was an accident, just simple as
15 that.

16 A Yes, ma'am.

17 Q But unfortunately, accident can cause an injury
18 sometimes.

19 MS. SPITZ: Objection, Your Honor.

20 THE COURT: Ms. Couram -- sustained. Ms. Couram,
21 you have to ask questions. You can't just talk.

22 MS. COURAM: Okay. I'm sorry. I'm trying to be
23 friendly.

24 Q But so don't -- don't you think that going 30 --
25 given -- this is South Carolina and this was rush hour

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1 and this was a Friday, don't you think that going 30
2 miles an hour was a bit ---

3 A In -- I don't think -- in that situation, no.
4 Because everybody was moving at about that pace until the
5 big truck stopped. Matter of fact, I even think in the
6 far-right-hand -- they were still moving, because they
7 were exiting on Broad River Road.

8 Q Yeah. They were ---

9 A And -- yeah. So I just moved over.

10 Q Uh-huh. And you -- you'd never noticed that the
11 traffic had -- had started to stop?

12 A No, ma'am. I don't think 30 or 35 miles an hour was
13 excessive. I do not believe that.

14 Q For that time of day?

15 A No, ma'am. Not at all. What you don't expect is
16 for the -- is for the -- the far-left-hand lane to be
17 completely stopped.

18 Q Uh-huh.

19 A And again, I could not see around the trucks. And
20 they had come to a stop. So I just moved over. And as
21 soon as I moved over, y'all were right there. There was
22 no way to be -- to see those cars.

23 Q And you didn't slow down when you went around the
24 trucks?

25 A I did.

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1 Q So you ---

2 A I actually got over ---

3 Q --- hit Mr. Tidwell ---

4 A --- at -- at 35, dropped down as soon as -- anytime
5 you do a lane change, I looked in my rearview mirror.

6 Q Uh-huh.

7 A Made the lane change, and there y'all were.

8 Q But you didn't expect the traffic to be stopped
9 there because you didn't see it, right?

10 A Correct. You couldn't see around the trucks.

11 Q Couldn't see around the trucks?

12 A Right.

13 Q So I -- I don't recall you really looking at my car.
14 I recall you being concerned about Mr. Brown and myself.

15 MS. SPITZ: Objection, Your Honor.

16 THE COURT: Sustained. You -- you have to ask
17 questions. You can't just tell him what you think. You
18 have to ask him a question.

19 Q Did you look at my car and notice any damage to my
20 car? I -- did you even pay attention to my car?

21 A I did.

22 Q You did?

23 Did you notice there -- if there was any damage or
24 anything like that?

25 A At the point when I seen it, I really did not see

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1 any damage.

2 Q And when you look at the photos of my car ---

3 A Yes.

4 Q Yes? You can see damage? Is that what you meant?

5 A Did you ask me if I had looked at them?

6 Q Yeah. I was going to ask: Have you -- have you
7 looked at -- if you would look at these photos ---

8 A Yes.

9 Q --- of my car, you will notice that there was damage
10 done to my car when you -- when you slammed into Mr.
11 Tidwell?

12 A At -- at the -- at the point when I looked at it,
13 when ---

14 Q I ---

15 A --- we had the accident ---

16 Q Because it was a ---

17 A --- you -- you really could not see that. I mean
18 ---

19 Q What type of day was it?

20 A Three-thirty or four o'clock in the afternoon.

21 Q No. What -- what -- I guess what was the weather
22 like?

23 A Clear.

24 Q Right.

25 A Yes.

1 Q It -- it was -- was it bright?

2 A I do believe the sun was shining.

3 Q So it would've made it even more difficult for you,
4 -- just when you walked past, to just glance, you
5 probably wouldn't have noticed that type of damage,
6 right?

7 A No, ma'am. It -- it was just so difficult to ---

8 Q Uh-huh.

9 A I looked at it. I really didn't see any damage. It
10 -- to be honest, I -- for a second, I didn't even think
11 that you were involved until you got -- until the door
12 opened.

13 Q Until the door opened?

14 A Yeah. From your car, when -- when you were getting
15 out. I -- I had no idea -- yeah. I didn't see you until
16 I got to Mr. Brown's car.

17 Q Yeah.

18 A And that's when I noticed.

19 Q I got -- I -- I have to ask you -- well, I -- it is
20 very unusual -- I -- have you ever been in a three-car --
21 you stated you've never been in an accident before. And
22 you never been in a three-car collision before either,
23 have you, at any time in your lifetime?

24 A No, ma'am.

25 Q Never been ---

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1 A No.

2 Q Okay. I think that's all I have. I ---

3 A Okay.

4 Q --- don't have anything else.

5 MS. COURAM: One minute, please.

6 THE COURT: Yes, ma'am.

7 Q Oh, I'm sorry. Mr. Brown, could you -- Mr. Tidwell,
8 could you tell the jury what type of car you were -- we
9 -- we established that you were driving a commercial
10 vehicle. But what type of car was it and what year and
11 make was -- was it?

12 A It's a 2014 Nissan NV.

13 Q And -- and would that car be considered -- it's not
14 -- it's not a Mack truck or -- or -- or a tractor-trailer
15 truck. But would that car be considered a heavy-duty
16 truck?

17 A No.

18 Q It would be -- would it be considered a truck -- a
19 -- in the same category as my car?

20 A Not as a compact. No.

21 Q How about the -- the SUV that Mr. -- you -- that the
22 records -- you said Mr. Brown was driving?

23 A It would be in that category. It would -- in a van,
24 to be exact.

25 Q Uh-huh. And it wasn't specially equipped for

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1 anything for the type of work you do? There was nothing
2 special about your -- your car? Because ---

3 A No. No.

4 Q The -- the records indicates that -- but you did
5 know that your car was a commercial vehicle?

6 A Yes.

7 Q Okay. And what -- when you -- you were ticketed,
8 right?

9 A Pardon me?

10 Q Were you ticketed at the time of the accident at the
11 -- on the day?

12 A Was I working?

13 Q Ticketed. Were you given a ticket?

14 A Yes.

15 Q Do you recall what that ticket was for?

16 A For driving too fast for conditions.

17 Q Did you contest the ticket?

18 A No.

19 Q Is there any particular reason why?

20 A Pardon me?

21 Q Is there any reason why you didn't contest the
22 ticket?

23 A No.

24 Q You did -- you just felt that it was your
25 responsibility or you just didn't want to bother going

1 out to the courthouse?

2 MS. SPITZ: Objection, Your Honor.

3 THE COURT: Sustained. Ask your next question.

4 Q That's all. Thank you, sir.

5 A Thank you.

6 THE COURT: Would you like to cross-examine Mr.
7 Tidwell?

8 MS. SPITZ: I don't have any questions, Your Honor.

9 THE COURT: Okay. Thank you, sir. You may step
10 down.

11 THE WITNESS: Thank you, ma'am.

12 THE BAILIFF: Watch your step, please.

13 (Whereupon, the witness exited the witness stand.)

14 THE COURT: Ms. Couram, do you have any additional
15 witnesses?

16 MS. COURAM: Is Ms. -- is Mr. -- I'm sorry. Is the
17 attorney and Ms. Martin here to testify or be a witness
18 ---

19 THE COURT: If ---

20 MS. COURAM: --- in this issue?

21 THE COURT: She's right there if you would like to
22 call her as a witness.

23 MS. COURAM: (No audible response.)

24 THE COURT: Do -- do you want to call her as a
25 witness?

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1 MS. COURAM: If she's ---

2 MS. SPITZ: Your Honor, could we approach?

3 THE COURT: Well, yeah. Come on.

4 (Whereupon, a bench conference was held off the
5 record in the presence of the jury, but out of the
6 hearing of the jury.)

7 MS. COURAM: I call Ms. Martin to the stand.

8 THE COURT: Ms. Martin, if you'd come around,
9 please.

10 (Whereupon, the witness came forward.)

11 HEATHER MARTIN, having been first duly sworn,
12 testified as follows:

13 THE WITNESS: My name is Heather Angelique Martin.

14 DEPUTY CLERK OF COURT: Heather?

15 THE WITNESS: Yes.

16 MS. COURAM: Ms. Martin ---

17 THE COURT: Your witness, Ms. Couram.

18 DIRECT EXAMINATION

19 BY MS. COURAM:

20 Q Ms. Martin, why are you here?

21 A I was subpoenaed by the attorney here just in case I
22 needed to testify today.

23 Q And what would be under -- what were you going to
24 testify about?

25 MS. SPITZ: Objection, Your Honor.

1 THE COURT: Sustained. Ask your next question.

2 MS. COURAM: Okay.

3 Q I had stated that I lost my job on the second; is
4 that correct?

5 MS. SPITZ: Objection, Your Honor: leading.

6 THE COURT: Overruled. You can continue, Ms.
7 Couram.

8 Q I lost my job on the second; is that correct? From
9 DMV -- SCDMV?

10 A I believe that is the correct date. Yes.

11 Q And it -- it was either the second or the third, I
12 believe.

13 A Is that of April?

14 Q April 2nd or the 3rd.

15 A Uh-huh.

16 Q What was the reason -- what was -- in terminating --
17 termination letter, there were two issues. One was --
18 had to do with looking up information about this
19 accident. And I was suspended for that, even though we
20 -- I -- let me -- let me try and ask a question. We are,
21 as DMV employees, are allowed to update our records as
22 needed; is -- isn't that correct? Based on the Internet?
23 There's a little, square box that says . . .

24 A I don't really understand your question, Ms. Couram.

25 Q Are we, as SCDMV employees, allowed to look at our

1 records and update those records as needed to make sure
2 the information is correct?

3 A What records are you speaking about?

4 Q Our -- our job records, our jobs. Our records.

5 A Yes. I would say you have access to that and you
6 can update that as needed. Yes.

7 Q Okay. And was there ever a -- to your -- to your
8 knowledge, was -- was it ever stated to us that we were
9 restricted on using the e-mail?

10 A To my knowledge -- and according to our policy, you
11 were able to use incidental use of the Internet ---

12 Q Do you ---

13 A --- but only when you're on your breaks, not during
14 ---

15 Q Were ---

16 A --- working time.

17 Q Were we restricted on using the e-mails?

18 A I can't quote the policy on that. But I know the
19 biggest thing is -- is on your break -- while only on
20 your break time.

21 Q But I'm talking about -- you're talking about the
22 Internet.

23 A Uh-huh.

24 Q I'm talking about the e-mail. Were we ever -- was
25 there ever anything given to us restricting our use of

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1 the Internet -- of the e-mail?

2 A Well, e-mail is through the Internet, so yes.

3 Q Okay. And you -- and in the termination letter that
4 you -- that you terminated me, you said that there was an
5 anonymous person that called in and reported the fact ---

6 MS. SPITZ: Objection ---

7 Q --- that I was ---

8 MS. SPITZ: --- Your Honor.

9 THE COURT: Sustained. Move on to the next
10 question.

11 MS. COURAM: I'm -- I'm trying to ask it.

12 Q Who was that person?

13 MS. SPITZ: Objection, Your Honor.

14 THE COURT: Sustained. Move on to the next topic.

15 Q What -- what was my record -- what was my -- my
16 record like at DMV -- SCDMV, in my -- my evaluation? Did
17 I ever get a -- a bad evaluation or was my record
18 satisfactory in the last ten years or so that I worked at
19 DMV?

20 A Ms. Couram, I don't think I can really speak to
21 that. I've worked there since January 2nd of this year.

22 Q Uh-huh.

23 A And so I can only speak to the short portion of time
24 that I was there.

25 Q So why are you here?

1 MS. SPITZ: Objection, Your Honor.

2 THE COURT: Sustained.

3 MS. COURAM: Okay. I -- I don't have nothing else.

4 THE COURT: Okay. Any cross-examination?

5 MS. SPITZ: No, Your Honor.

6 THE COURT: Okay. Thank you, Ms. Martin. You may
7 step down.

8 THE WITNESS: All right. Thank you.

9 THE BAILIFF: Watch your step.

10 (Whereupon, the witness exited the witness stand.)

11 THE COURT: Any additional witnesses, Ms. Couram?

12 MS. COURAM: No, ma'am.

13 THE COURT: Okay.

14 MS. COURAM: I'm sorry. No, ma'am.

15 THE COURT: All right. Ladies and gentlemen, there
16 is a matter of law that I need to take up outside of your
17 presence. I'm going to excuse you to the jury room for
18 about 15 minutes. You know, these are vague estimates,
19 but we'll have you back in the courtroom shortly. Do not
20 discuss the case amongst yourselves.

21 (Whereupon, the jury exited the courtroom at 3:47
22 p.m.)

23 (Off the record briefly.)

24 THE COURT: All right. Any motions?

25 MS. SPITZ: Yes, Your Honor. At this time the

1 defense moves for a directed verdict, pursuant to South
2 Carolina Rule of Civil Procedure 50. There's no factual
3 dispute for the jury to decide here.

4 Considering all facts, even in the light most
5 favorable to Ms. Couram, there has been absolutely no
6 evidence presented today by Ms. Couram regarding
7 causation, which, of course, is an element -- a necessary
8 element to prove negligence. And there has been
9 absolutely no evidence regarding any alleged damages.
10 There's no medical -- medical bills even referenced or
11 entered into evidence today.

12 THE COURT: Okay.

13 MS. SPITZ: Thank you.

14 MS. COURAM: I intend to -- in my closing argument,
15 I intend to introduce the medical -- the -- the damages
16 that I suffered as a result of the accident.

17 THE COURT: Well, let me interrupt you real quick.
18 You told -- I -- maybe I should have asked this at the
19 outset. You told me you have no other witnesses,
20 correct?

21 MS. COURAM: No witnesses, yes.

22 THE COURT: Okay. So you have rested your case at
23 this time; is that correct?

24 MS. COURAM: No. No. Not -- not as far as putting
25 in my medicals and so forth.

1 THE COURT: Okay. When do you intend to do that?

2 MS. COURAM: Well, ma'am, you said I couldn't. So I

3 -- so I ---

4 THE COURT: Oh.

5 MS. COURAM: --- was going ---

6 THE COURT: Well ---

7 MS. COURAM: --- to just ---

8 THE COURT: --- okay.

9 MS. COURAM: --- you said ---

10 THE COURT: Right.

11 MS. COURAM: --- I couldn't ---

12 THE COURT: I don't know what you have over there.

13 That's correct. I ruled that you couldn't. So since you
14 cannot introduce those as exhibits, have you now rested
15 your case?

16 MS. COURAM: No. Because I have to -- if -- if I
17 don't -- the -- if I don't present my damages, which is
18 my medicals -- and my -- and I don't understand the
19 ruling either, because I've been studying up on this.
20 And I have not seen where a directed verdict is
21 appropriate in this type of case, for one.

22 THE COURT: Well ---

23 MS. COURAM: And I haven't ---

24 THE COURT: --- I'm not ---

25 MS. COURAM: --- seen where ---

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1 THE COURT: --- even there yet. I'm not even there
2 yet. I'm asking if -- if you are finished presenting all
3 of the evidence that you are permitted to introduce.

4 MS. COURAM: But what -- yeah. What I'm trying to
5 find out is how can I present my -- my -- my injuries and
6 my medicals if I can't present them?

7 THE COURT: Well, I can't give you legal advice or
8 tell you how to -- to conduct the trial. My question to
9 you is -- I mean, you know my ruling from earlier is that
10 those medical records contain impermissible hearsay and
11 cannot be introduced as exhibits in this case, in
12 particular because you don't have a sponsoring witness
13 that would somehow make them fall under a hearsay
14 exception. So because those medical records cannot be
15 introduced, do you have other evidence, other witnesses
16 ---

17 MS. COURAM: I have the bills and so forth that I
18 can present to the jury. I -- I have the bills. I have
19 the information from Palmetto Spine Center that shows the
20 bills that the -- the bills that I incurred at the -- as
21 a result of the injury.

22 From Vital Energy, I have those bills. I have Dr.
23 Birdsong bills. I have the Lexington Urgent Care bills,
24 which I mentioned -- all of this I mentioned up there.
25 That I went to -- how -- I had to pay for those things.

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1 And I -- I mentioned the -- all the other bills that
2 I had and so forth. And the -- I was going to go further
3 into that. But if I can submit those bills into
4 evidence, then I will.

5 But I -- I'm trying to do what you tell me to do.
6 I'm trying to follow your orders or your rules. And you
7 said that I could not. So I don't know ---

8 THE COURT: Well ---

9 MS. COURAM: --- it -- I can present them in
10 evidence, but I can't present them as an exhibit, which
11 evidence is an exhibit.

12 THE COURT: Absolutely. And our conversation
13 earlier was about all of your medical records. I didn't
14 know that there will bills over there too. So let me
15 hear from Ms. Spitz as to her position on the
16 introduction of the medical bills.

17 MS. SPITZ: Your Honor, the plaintiff has rested at
18 this point. So I do object to entering any additional
19 evidence at this time. We do not stipulate to the
20 medical bills.

21 And she failed to present those or even testify
22 about them during her direct testimony to the jury. She
23 could've said, "Oh, I incurred X amount here, X amount
24 there." I think she had the records up there with her.
25 But she simply failed to do so.

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1 THE COURT: Yes, ma'am.

2 MS. COURAM: I have -- I rested my cases as far as
3 not having any witnesses. But I did not rest my case as
4 far as putting forth my bills and my injuries, my damages
5 as a result of this accident.

6 THE COURT: Okay. Well, when are you going to do
7 that?

8 MS. COURAM: I -- I can do it now. I have the
9 bills. I'm -- I'm -- they're here.

10 THE COURT: Okay. So let me hear from Ms. Spitz as
11 to the admissibility of those documents, not the timing
12 of their offer of admission.

13 MS. SPITZ: Your Honor, we would object to the
14 admission of the medical bills because there has been no
15 testimony to support their admissibility. There's been
16 no one on the witness stand to say, "These are the bills
17 I received for the medical treatment that I think is
18 related to this accident."

19 It's improper for Ms. Couram to rest, and then she
20 hears my directed-verdict argument, and then seek to
21 introduce this evidence, simply not the proper time to do
22 so, Your Honor. And there's not the testimony to support
23 introducing those exhibits. When Ms. Couram was
24 testifying, she did not even discuss them.

25 I think, if she had discussed them, this would be a

1 -- a different issue. But she didn't even mention the
2 bills or the amounts.

3 MS. COURAM: I mentioned Palmetto Spine Center. I
4 mentioned that I went there for a certain period of time.
5 You even asked a question about it.

6 I mentioned that I went to Vital Energy. I
7 mentioned that I went to Dr. Birdsong. I went -- I
8 mentioned that I went to the Urgent -- Lexington County
9 Urgent Care. I -- I've mentioned that the fact that I
10 went into physical therapy.

11 The only thing I didn't mention was the amount of
12 those bills that -- at that time. And being so
13 restricted as to what I can and cannot say, I do -- I --
14 I don't see why I cannot present into evidence -- this is
15 a damages -- damaging -- damages hearing. A damages
16 hearing means that I have to put forth the damages that I
17 -- that was -- that I incurred as a result of the
18 accident. I cannot present those damages if I don't put
19 them in the record -- if I'm not allowed to put them in
20 the record.

21 This is for damages. This is not for liability.
22 It's for damages. And I did -- the cause -- the direct
23 cause, and I provided a link to that accident and for day
24 by day as to that accident and the causation. The fact
25 that Mr. Tidwell was negligent is cause right there. He

1 caused the accident. He caused the injury.

2 And I have the bills to put in. And I should be
3 allowed to place my bills into record -- into the record.
4 I should not be denied that. He was negligent. He
5 should not be allowed to get away with that negligence.

6 THE COURT: I -- I understand that that's your
7 position. I'm talking specifically about medical bills
8 right now.

9 Ms. Spitz?

10 MS. SPITZ: Your Honor, if I may add as well, I
11 think my argument pretrial, and your ruling as well, was
12 very clear that it was medical records that fell within
13 the hearsay rule. Bills were absolutely never mentioned.
14 There was no reason for Ms. Couram to misunderstand that
15 ruling or to think, for some reason, she couldn't enter
16 the bills. She didn't even ask me, when we were
17 premarking exhibits, whether I would agree to them.

18 And, Your Honor, if I -- if I may add to that, in
19 support of my directed-verdict motion, that there was no
20 evidence or testimony presented to support that even if
21 she had entered her medical bills, they were responsible
22 and necessary. And the plaintiff bears the burden of
23 proving that.

24 THE COURT: Ms. Couram, give me a stack of all the
25 medical bills that you propose to introduce as evidence

1 in this case.

2 (Off the record briefly.)

3 MS. COURAM: I'm -- I'm -- I'm looking for Palmetto

4 ---

5 THE COURT: So these were not gathered in the stack
6 of exhibits that you ---

7 MS. COURAM: Ma'am, this ---

8 THE COURT: --- were intending to introduce when I
9 gave ---

10 MS. COURAM: You ---

11 THE COURT: --- you that time over lunch? Is ---

12 MS. COURAM: You ---

13 THE COURT: --- that correct?

14 MS. COURAM: You said that I could not -- could not
15 introduce the insurance information. I'm -- I ---

16 THE COURT: The ---

17 MS. COURAM: --- I'm doing ---

18 THE COURT: --- the answer ---

19 MS. COURAM: --- the best ---

20 THE COURT: --- is ---

21 MS. COURAM: --- I can to follow ---

22 THE COURT: I ---

23 MS. COURAM: --- your instructions.

24 THE COURT: I hear you. It's a "yes" or "no"
25 question. Were these collected by you in the stack of

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1 exhibits that you intended to introduce?

2 MS. COURAM: No, ma'am. Because you said I could
3 not do it.

4 THE COURT: Okay. I mean, we disagree with what I
5 said, but okay. Well, that being the case, the more I
6 think about it, you will not be allowed to introduce
7 those.

8 One, there is no sponsoring witness at this point.
9 You've told me that you have no further witnesses, which
10 amounted to you resting your case. You had the
11 opportunity to do it and chose not to.

12 My pretrial ruling was specifically as to medical
13 records, diagnoses, and doctors' statements contained
14 within medical records. I tend to doodle as I talk, and
15 I made those notes. That is my recollection of what my
16 ruling was.

17 As I said, we never discussed the issue of medical bills.
18 Bills and -- and narrative records are certainly two
19 different things. And so it would be inappropriate for
20 the Court to allow the introduction of those things now,
21 after you have heard the defense's directed-verdict
22 motion. And to now, in response to that motion for a
23 directed verdict, try to cure any defect by introducing
24 those exhibits, and the fact that you are scrambling to
25 find them now and compile them now ---

1 MS. COURAM: Ma'am, I ---

2 THE COURT: --- suggests ---

3 MS. COURAM: --- have the ---

4 THE COURT: --- to me ---

5 MS. COURAM: --- the ---

6 THE COURT: Don't interrupt me, ma'am ---

7 MS. COURAM: The ---

8 THE COURT: --- suggests ---

9 MS. COURAM: --- the records ---

10 THE COURT: Ma'am ---

11 MS. COURAM: It was ---

12 THE COURT: --- don't ---

13 MS. COURAM: --- in the documents you said I could
14 not read to the -- to the Court.

15 THE COURT: I'm not going to allow you to interrupt
16 me. I'm talking. But the fact that you are compiling
17 them now suggests to me that you never intended to
18 introduce them as exhibits, as you were instructed to
19 compile a stack of proposed exhibits. Those certainly
20 were not in the stack, which means that you did not
21 intend to offer them. You only made that offer after
22 hearing the defense's motion for directed verdict. So
23 your request to ---

24 MS. COURAM: And ---

25 THE COURT: --- enter those exhibits and -- I'm

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1 still talking. Your request to enter those medical bills
2 as exhibits is denied.

3 MS. COURAM: Ma'am, these -- these bills are on
4 these -- the direct things that you said I could not read
5 into the record. They are on these -- the -- to Mr. Rick
6 Sturko (phonetic). They are -- they have Nationwide
7 nonstandard claims on it. You said that I could not read
8 these into the record. So I ---

9 THE COURT: Ms. Couram ---

10 MS. COURAM: --- did not read them.

11 THE COURT: Ms. Couram, I ---

12 MS. COURAM: And ---

13 THE COURT: --- have ruled on -- Ms. Couram, I've
14 ruled on this issue. And that's the end of it.

15 Now, let me hear your response as to why I should
16 not grant a directed verdict on this action.

17 MS. COURAM: Because it's a -- just totally
18 inappropriate to call the -- a directed verdict and with
19 the jury's -- with a sitting jury. And this is a case
20 for damages. And I should've been allowed -- in my
21 closing argument, I can also present my -- my bills and
22 tell the jury what took place and how it took place and
23 the amount of -- the -- the damage -- the -- the bills
24 that I had incurred as a result of that -- of this
25 accident and the fact that you placed restrictions on me

1 as to what I could and could not do.

2 You said I could not read the documents that had my
3 bills in it. So I could not read those. You said that I
4 could look at them, but I could not read them.

5 I did, in fact, state that I went to Palmetto Spine
6 Center. Only thing I did not say was how much it cost.
7 But I did say that I went there.

8 I've said I went to Palmetto. I said I had two X-
9 rays done. I said I had X-rays done by Dr. Birdsong.
10 And I said that I went to Lexington County Medical
11 Center. All of these things indicates damages and bills
12 incurred as a result of going to the doctor's office,
13 going to have X-rays done, and going to have physical
14 therapy done.

15 These are bills. And if I go to these places, I'm
16 going to incur bills. So there's no reason that's --
17 it's just unfair and unjust to allow a directed verdict
18 at this time without this going to a jury and without my
19 having opportunity to do my closing argument.

20 THE COURT: Okay. Ms. Couram, let me just caution
21 you, while it's on my mind, that closing argument is not
22 the appropriate time to introduce evidence. That's not
23 permissible in any way, shape, or form. In fact, you
24 know, you just cannot do that.

25 Furthermore, to the -- to your point that a directed

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1 verdict is not appropriate where there is a sitting jury,
2 directed verdict is a procedure primarily used when there
3 is a sitting jury. So that would not be grounds for the
4 Court to deny the motion for directed verdict.

5 That said, as you know, Ms. Spitz, a -- the Court's
6 consideration on a motion for directed verdict is with
7 the existence of evidence, not weighing that evidence or
8 determining its credibility. But if there is the
9 existence of any competent evidence before the jury of
10 each of the elements of the plaintiff's claim, the claim
11 is properly submitted to the jury.

12 In this case both a duty of care and breach of that
13 duty have been established by court order prior to
14 beginning of the trial, leaving only causation and the
15 existence of damages and -- and the calculation of those
16 damages for the jury. Based solely on Ms. Couram's
17 testimony, if nothing else, I know that, to some extent,
18 there is some legal opinion involved in her testimony
19 that -- that causation is there.

20 But she did also testify that she did not have the
21 pains that she currently has prior to the accident; that,
22 in fact, they are a direct result of the accident; and
23 that she did suffer defense as a result in treating at
24 Urgent Care, Vital Energy and Care, and Palmetto Spine
25 Center. And while no bills have been introduced to allow

1 the jury to calculate the amount of damages with any
2 mathematical certainty, that is not required. You know
3 the law says they cannot -- damages cannot be left to
4 speculation or conjecture, but they need not be
5 calculated with mathematical certainty.

6 And so I think the jury has at least some evidence
7 -- there is the existence of some evidence by which they
8 could find in favor of Ms. Couram. And so for those
9 reasons, your motion for directed verdict is respectfully
10 denied.

11 MS. SPITZ: Yes, Your Honor. And I did not mention,
12 when I originally made the directed-verdict motion, I
13 would also like to make a directed-verdict motion as to
14 any allegation of punitive damages. Those were pled in
15 the complaint. But there's simply been no evidence of
16 any willful, wanton, or reckless conduct.

17 THE COURT: Okay. Ms. Couram?

18 MS. COURAM: The mere fact that Mr. -- that Mr. ---

19 THE COURT: Tidwell.

20 MS. COURAM: --- Tidwell violated the state code is
21 -- statute is -- punitive damages is -- would be
22 appropriate in that instance. There is a case that --
23 that -- from the Supreme Court, I believe it is, that
24 says that if a driver violates a state statute, then
25 punitive damage -- I'm so dry -- there -- punitive

1 damages is appropriate because he did violate that state
2 statute by driving too fast for conditions.

3 THE COURT: Okay. The reality is, in most car
4 accidents, someone has violated some state statute, some
5 law or prohibition against whatever they've done -- not
6 all the time, but very often. I know of no case law that
7 says that that is -- is per se actionable in a punitive-
8 damages arena.

9 Punitive damages, Ms. Couram, are intended to punish
10 reprehensible conduct. And both your testimony and,
11 frankly, your commentary during Mr. Tidwell's testimony
12 that you know it was an accident, that it wasn't
13 deliberate, nobody does that, you understand it was
14 without intention; and then, your leading question or
15 commentary during your questioning, saying to Mr.
16 Tidwell, "I know it was an accident; I know what happened
17 was unintentional," those kinds of things are the very
18 antithesis of what punitive damages are intended for.

19 Therefore, I grant the defendant's motion on the
20 issue of punitive damages. And that will not be
21 submitted to the jury.

22 MS. SPITZ: Thank you, Your Honor.

23 THE COURT: Okay. Are you intending to call any
24 witnesses?

25 MS. SPITZ: Your Honor, the only witness we intended

1 to call was just the reading of the deposition excerpts
2 for Mr. Brown, which really shouldn't take very long.

3 THE COURT: Okay.

4 MS. SPITZ: I don't have someone here right now to
5 sit on the witness stand to read from his deposition. I
6 don't know if there's someone in the courthouse that
7 would be willing to do it. Or I can call my associate,
8 Ms. Wilkerson, to -- to come over.

9 THE COURT: Let's take a ten-minute break. And
10 hopefully, we can find somebody ---

11 MS. SPITZ: Okay.

12 THE COURT: --- in those ---

13 MS. SPITZ: I think ---

14 THE COURT: --- ten minutes.

15 MS. SPITZ: --- I can. Thank ---

16 THE COURT: Flag down ---

17 MS. SPITZ: --- you, Judge.

18 THE COURT: --- a stranger or something. I don't
19 know. We'll be at ease for ten minutes.

20 (Off the record from 4:10 p.m. until 4:21 p.m.)

21 THE COURT: Yes.

22 MS. SPITZ: Your Honor, we have Ms. Heather Martin,
23 who testified earlier. She said she'd be willing to read
24 the deposition. I'd just ask that you instruct the jury,
25 of course, that she is just reading the deposition

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1 transcript of Brandon Brown; of course, none of the
2 statements are her own. The DMV doesn't have a stake in
3 this case either way. She just happened to be in here
4 was a -- an able-bodied person to read it.

5 THE COURT: Have you clearly marked the designations
6 for her?

7 MS. SPITZ: Yes. I've highlighted throughout the
8 deposition. We've got that.

9 THE COURT: Okay. That is fine, then.

10 MS. SPITZ: I do need to grab those exhibits, maybe.
11 I think they were just kind of ---

12 THE COURT: Mr. Matthews, did you need me?

13 MR. MATTHEWS: Actually, Ms. Spitz -- my only
14 concern was to make sure that you understood SCDMV takes
15 no position on this particular matter and that Ms.
16 Martin, who is an employee of a client of mine, is a --
17 and I can assist the Court -- she's a live body with
18 faults and can read.

19 THE COURT: Wonderful.

20 MR. MATTHEWS: Okay.

21 THE COURT: Thank you, sir.

22 MR. MATTHEWS: In fact, I'll -- I'll go make sure
23 she knows the Court's ready.

24 THE COURT: Okay.

25 (Off the record briefly.)

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1 THE COURT: All right. Bring the jury.

2 (Off the record briefly.)

3 (Whereupon, the jury entered the courtroom at 4:23
4 p.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Thank you, sir. (To the court reporter)
7 You can put it on the back if you want.

8 (Whereupon, Court's Exhibit 3 was marked for
9 identification.)

10 THE COURT: Okay. Because -- this is the court
11 reporter over here. I'm sure y'all have figured that
12 out. And this is a court of record, and everything has
13 to be taken down. So I have to wait to start talking
14 till she's ready to start recording. That's what that
15 was.

16 Okay. Ms. Couram has rested her case, which means
17 that you have heard all the evidence you are going to
18 hear from Ms. Couram in this case. It is now time for
19 the defense to present their case. Ms. Spitz, the
20 attorney for Mr. Tidwell, tells me that their first --
21 her first witness will be Brandon S. Brown. You know,
22 you've heard Mr. Brown's name before. And he is not
23 here.

24 What happened was his deposition was taken some time
25 ago. And a deposition, for your education, is really

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1 just a question-answer sessions. It happens in the same
2 way that it happens on this witness stand. It's just in
3 another office, a conference room, somewhere else. And a
4 court reporter is there, and they make a transcript of --
5 of that too.

6 So his testimony is going to be presented by
7 deposition because he cannot be here today. So the
8 person who will be reading Mr. Brown's testimony is going
9 to be Ms. Martin. And I'm -- I'm telling you all this
10 just to clarify.

11 You've heard from Ms. Martin already. She had
12 testified on her own behalf. However, she is going to
13 switch roles, change hats, and step into the shoes of Mr.
14 Brown. So she is going to come up to the witness stand
15 and -- and read his portion of the deposition.

16 Ms. Spitz, of course, will be asking the questions,
17 as she did on the day of the deposition. I just don't
18 want you to confuse anything and think that what she is
19 about to say represents her own opinions, her own
20 answers. She is playing the role of Brandon S. Brown at
21 this time.

22 So, Ms. Spitz, you may proceed and call Ms. Martin

23 ---

24 MS. SPITZ: Thank you, Your Honor.

25 THE COURT: --- or Ms. Brown to the ---

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1 MS. SPITZ: This ---

2 THE COURT: --- Mr. Brown.

3 MS. SPITZ: At this time ---

4 THE COURT: Uh-huh.

5 MS. SPITZ: --- the defense calls Ms. Martin to read
6 the -- or the deposition transcript of Brandon Brown --
7 portions of it.

8 (Whereupon, Ms. Martin came forward.)

9 (Whereupon, excerpted portions of the deposition of
10 Brandon Brown were read.)

11 MS. SPITZ: Your Honor, that is the conclusion of
12 the deposition excerpt for Mr. Brown's deposition
13 testimony. I ask that Ms. Martin be able to step down
14 from the stand.

15 THE COURT: Yes, ma'am. You may step down.

16 MS. MARTIN: Thank you.

17 (Whereupon, Ms. Martin exited the witness stand.)

18 MS. SPITZ: And, Your Honor, at this time the
19 defense rests.

20 THE COURT: Okay. All right. The defense has now
21 rested their case, which means that is the -- all of the
22 evidence and testimony you are going to hear from the
23 defendant in this case. All that leaves for us to do is
24 for them to present their closing arguments to you and me
25 to charge you on the law applicable to this case. And

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1 then you'll deliberate and render your verdict.

2 It's 4:30, though. And sometimes closing arguments,
3 jury charges, all that can take a good bit of time. And
4 I don't think anyone really wants to be here all night,
5 necessarily, or even for the next several hours. So
6 we're going to do all that in the morning.

7 I'm going to excuse you for the night; tell you do
8 not discuss the case, amongst yourselves or with anyone
9 else. Do not do any research about the case. And does
10 anybody -- I'm going to ask you -- raise your hand if you
11 have any problem being back at 9 a.m.

12 (Whereupon, no juror gestured.)

13 THE COURT: Wonderful. I'll have you back in the
14 jury room at 9 a.m. And we will conclude the trial at
15 that time. Thank you.

16 (Off the record briefly.)

17 THE COURT: Okay. Hold on one second before y'all
18 leave. I did -- or we did receive your note about work
19 excuses. I know that the clerk called downstairs to see
20 about getting work excuses.

21 But since it's only 4:30, you have time to run down
22 there and get them. Flo was going to bring them up, but
23 you've got time. So head down there if that's what you
24 need to do. Okay. Thank you.

25 (Whereupon, the jury exited the courtroom at 4:33

1 p.m.)

2 (Off the record briefly.)

3 THE COURT: All right, folks. Let's talk about jury
4 charges before we leave for the night so I can be
5 prepared ---

6 MS. SPITZ: Your Honor ---

7 THE COURT: --- in the morning. Oh, I'm ---

8 MS. SPITZ: --- to interrupt ---

9 THE COURT: --- sorry.

10 MS. SPITZ: --- just real quick, I wanted to renew
11 the defendant's motion for a directed verdict based on
12 the previously stated grounds that there's been no
13 evidence of causation or damages in this case.

14 THE COURT: Okay. And for the same reasons that
15 motion is respectfully denied.

16 MS. SPITZ: Thank you, Your Honor.

17 THE COURT: Okay.

18 (Off the record briefly.)

19 THE COURT: Did you have proposed jury charges, Ms.
20 Spitz?

21 MS. SPITZ: Yes, Your Honor, I do. Unfortunately, I
22 only have this one copy with me. And I did let Ms.
23 Couram look at them earlier. And I have no problem e-
24 mailing them to her if she needs.

25 THE COURT: Okay. And, Ms. Couram, I did receive

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1 your e-mail earlier. Have you had the opportunity to
2 look through Ms. Spitz's proposed charges?

3 MS. COURAM: Yes. There were something -- there was
4 one or two things in there that bothered me.

5 THE COURT: Okay. Tell me what those are.

6 MS. COURAM: I don't ---

7 THE COURT: I know it's ---

8 MS. COURAM: Can I ---

9 THE COURT: --- hard to ---

10 MS. COURAM: --- come up and look at it -- look at
11 it?

12 THE COURT: You know what? Let's just take five
13 minutes, and we'll make a couple extra copies so we can
14 all be on the same page. Okay.

15 MS. SPITZ: Sorry about that, Judge.

16 THE COURT: Don't go far.

17 MS. COURAM: Could you also make copies of mine for
18 -- I don't think she has a copy.

19 THE COURT: Do you not have a copy?

20 MS. SPITZ: I -- I have it in my e-mail, if it's
21 okay if I pull it up ---

22 THE COURT: Right.

23 MS. SPITZ: --- on my phone.

24 THE COURT: That's what I was going to do. Okay.
25 Actually -- yeah. Let's just take a couple minutes.

1 (Off the record from 4:35 p.m. until 4:40 p.m.)

2 THE COURT: All right. Okay. Let me first hear
3 from Ms. Spitz as to Ms. Couram's proposed jury charges.

4 MS. SPITZ: Yes, Your Honor. I did want to know --
5 I think we can take out Charge No. 7 of mine.

6 THE COURT: Okay.

7 MS. SPITZ: That was if I were calling a medical
8 expert, and that didn't come up. So ---

9 THE COURT: Okay.

10 MS. SPITZ: Okay. As to Ms. Couram's proposed
11 charges, I think under the heading A, injury, pain,
12 disability, disfigurement, I think B and C I would have
13 an issue with, B being medical expenses. As we've
14 discussed, there have been no medical expenses presented
15 to the jury. And C, lost earnings, lost time, lost
16 earning capacity, there's been no testimony or evidence
17 regarding any alleged lost wages or anything like that.
18 So those two, under Heading A, I would ask that the Court
19 not include those charges, if Ms. Couram wants to object
20 to that.

21 MS. COURAM: I object, ma'am. I may not have given
22 the jury the exacts costs of medical expenses or lost
23 wages or any of those things. I mean, I had opportunity
24 to do that. But I did say that I had medical expenses.
25 When I said that I have -- I went to doctors and I went

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1 to physical therapy and all those, the only difference is
2 that I did not give an exact amount of what those damages
3 were -- or medical expenses were.

4 THE COURT: Okay. I will charge the jury as to
5 medical expenses because Ms. Couram did testify that she
6 received medical treatment. And although she has not
7 given any exact amounts, I mean, that goes back to my
8 reasons for denying the motion for directed verdict. You
9 know, the jury certainly can infer that medical treatment
10 is not free and that, you know, she did testify about the
11 duration of her treatment, etc. So I will charge the
12 jury on medical expenses.

13 However, there has been no testimony regarding lost
14 earnings, lost earning capacity, etc. So that will be
15 removed from the jury charge.

16 Okay. The next issue?

17 MS. SPITZ: And not to backtrack, but as to Part A,
18 I don't have an issue necessarily with that charge. I
19 would just ask that it be read in conjunction with a
20 charge that says the damages cannot be based on
21 speculation or conjecture.

22 THE COURT: Okay. That's part of the standard
23 charge anyway. Okay.

24 MS. SPITZ: As to other contributing causes of
25 damages, I'm fine with the eggshell-plaintiff rule being

1 instructed to the jury.

2 THE COURT: Uh-huh.

3 MS. SPITZ: I don't think the mortality-tables
4 instruction is applicable here.

5 THE COURT: Yes, ma'am.

6 MS. COURAM: I would object because of the simple
7 fact that I still -- have talked about my age and where I
8 -- where I am at this particular moment of my time -- my
9 life. I started out at 55, and I'm -- now I'm 58. There
10 is not much mortality left. So I don't see why it
11 wouldn't be -- wouldn't be a factor in this.

12 THE COURT: Okay. There is no evidence of permanent
13 injury; therefore, the mortality table is not appropriate
14 and will not be charged.

15 MS. COURAM: I did testify to permanent injury,
16 ma'am. I did testify to permanent injury.

17 THE COURT: Okay. With all due respect, Ms. Couram,
18 I want to say this in the nicest way possible. You seem
19 to approach each issue as though it's a debate, and it's
20 not. I hear from one side; I hear from the other side.
21 I make a decision. And then it's over.

22 You may disagree with those decisions. You probably
23 disagree with half of them, maybe more than half. But
24 once I've made a decision, that is the end of the
25 discussion.

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1 MS. COURAM: Okay.

2 THE COURT: I am ---

3 MS. COURAM: So ---

4 THE COURT: --- now moving on ---

5 MS. COURAM: --- I object ---

6 THE COURT: --- to the ---

7 MS. COURAM: --- then?

8 THE COURT: --- issue. I'm moving on to the next
9 issue that Ms. Spitz with your proposed jury
10 instructions. You may have a seat, ma'am.

11 MS. SPITZ: Your Honor, in regard to the next
12 heading, reduction of damages to present value, this
13 charge is related to future medical expenses. And that
14 -- there has been no evidence or testimony that Ms.
15 Couram would require future medical expenses during the
16 trial. So I don't think this charge should be instructed
17 to the jury.

18 THE COURT: Okay. Let me hear from you on that
19 specific issue.

20 MS. COURAM: As I stated, I did state that I
21 continue to have problems with my arm to this day, since
22 2015. And as -- and if able, I will be go -- will be
23 going back into physical therapy or whatever treatments I
24 would need down the road when -- when I can. Therefore,
25 I believe that I did mention or have implied that there

1 will be future medical expenses in this matter.

2 THE COURT: Okay. As to that issue, I'm going to
3 review my notes as to Ms. Couram's testimony. And I'll
4 let y'all know about that one in the morning.

5 Anything else, Ms. Spitz?

6 MS. SPITZ: Yes, Your Honor. The next heading is an
7 instruction on the collateral-source rule. I don't think
8 this is appropriate to be instructed to the jury. We've
9 been trying to keep insurance out all day, and this
10 mentions it a few times.

11 THE COURT: Okay. Let me hear from you, Ms. Couram,
12 as to the collateral-source rule.

13 MS. COURAM: My understanding of collateral-source
14 rule is to state that there can be no reduction in the
15 medical expenses that's put forth. For instance, if I --
16 my insurance paid \$24 and there was a charge of \$189, the
17 collateral source just states that the defense or the
18 defendants cannot reduce that amount. So I don't know if
19 it's applicable or not in the sense that ---

20 THE COURT: Okay. I'll let you know about that one
21 in the morning too. I do plan to include a charge
22 regarding the mention of insurance, just because it came
23 up so many times ---

24 MS. SPITZ: Uh-huh.

25 THE COURT: --- and instructing the jury that that's

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1 not a proper consideration. So that may tie in somehow,
2 but I'll look at that overnight. I'll let y'all know in
3 the morning.

4 Okay. Ms. Couram, you now have a set of proposed
5 jury charges from Ms. Spitz. You indicated that you have
6 some issue with some language in there. If you would
7 tell me what you object to, please.

8 MS. COURAM: One moment. I have -- I take issue
9 with No. 9, where it states that a defendant is not
10 liable for the natural progression or worsening of a
11 preexisting condition or disease.

12 THE COURT: Okay. Well, what that means is -- and I
13 -- I don't have any problem charging that. I think you
14 may be -- and I don't want to be presumptuous. But you
15 may be confusing that with the eggshell plaintiff or --
16 or something along those lines.

17 Certainly, the defendant could be liable for
18 aggravation of an existing condition caused -- if that
19 aggravation is caused by the accident. What this is
20 saying is that, you know, if you were to have
21 degenerative disc or something like that that is going to
22 naturally worsen anyway, that the defendant is not
23 responsible for any natural deterioration of that
24 condition, something that would happen anyway just
25 because of nature. So that's what that charge talks

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1 about. So I -- I do think it's appropriate. But your
2 exception is noted.

3 Are there any others?

4 MS. COURAM: Yes. I have issue with No. 6.

5 THE COURT: Yes, ma'am.

6 MS. COURAM: The fact that the conclusion was that
7 the vehicle injured -- the collision was slight and the
8 plaintiff had no interest -- had interest in the outcome
9 of the -- of the case is sufficient to cast doubt on the
10 plaintiff's uncontradicted testimony that she was
11 injured, so the jury is not required to accept his or her
12 testimony. I ---

13 THE COURT: Okay.

14 MS. COURAM: Is this saying that they can't -- they
15 are not required to accept my testimony?

16 THE COURT: Yeah. Let me hear from Ms. Spitz on
17 that one.

18 MS. SPITZ: Your Honor, of course, we're directly
19 citing case law on point here. I think that this quote
20 from this *Black v. Hodge* case is particularly applicable
21 here, given the evidence presented throughout the trial
22 of the minimal damage and light impact.

23 THE COURT: Actually, I believe there is a factual
24 dispute as to whether the collision was, quote/unquote,
25 slight. Ms. Couram contends that it was more than

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1 slight. In fact, that was -- there was an entire line of
2 questioning for Mr. Tidwell about that. And calling it
3 more than just a tap, I believe, was the verbiage used.

4 Since there is a factual dispute about that, I don't
5 believe this charge is appropriate. And I'm going to
6 grant Ms. Couram's request not to charge that portion of
7 the law.

8 MS. SPITZ: Yes, Your Honor. Thank you.

9 THE COURT: Anything else, ma'am?

10 MS. COURAM: I have issue with 8.

11 THE COURT: Okay.

12 MS. COURAM: It talks about negligence. Negligence
13 has already been established in this case. Fault has
14 already been established. The only issue is damages. So
15 I don't see where that charge plays a role.

16 MS. SPITZ: Your Honor, I -- I think that very
17 statement makes this charge applicable. Given that
18 negligence or fault is admitted her, that doesn't mean
19 that the jury has to necessarily draw that an injury
20 occurred.

21 THE COURT: I understand your point. But I
22 understand Ms. Couram's point. And frankly, given the
23 posture of this case, I don't particularly like the way
24 this is worded. I may -- I will probably charge some
25 language similar to this. And, of course -- and I keep

1 saying I'll let you know in the morning. I'll have a
2 finished charge for you in the morning and -- that you
3 can review and lodge any objections to that at that time.

4 But I understand her point that, you know, just
5 because an accident occurred doesn't mean someone's
6 negligent. And I know -- we keep using the word
7 negligence very flexibly. I understand that duty and
8 breach of duty have been established. But the term
9 negligence typically encompasses all four elements --
10 that being causation and damages. So I will reword this
11 in some manner to make it appropriate for this case.

12 MS. COURAM: And 5.

13 THE COURT: Okay.

14 MS. COURAM: It questioned my credibility as a
15 witness.

16 THE COURT: I'm sorry?

17 MS. COURAM: Oh. It's ---

18 THE COURT: Repeat yourself?

19 MS. COURAM: Again, it's questioning my credibility
20 as a witness. It says that the uncontradicted testimony
21 of injury, you are a jury -- you, as a jury, are not
22 required to accept that testimony.

23 THE COURT: Oh, that's simply true. That's a
24 statement of fact. Just because you're the only that
25 said it doesn't mean they have to believe it. I don't

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1 find anything inappropriate about that.

2 I mean, it's not telling them that you must not be
3 believed. They can choose to believe you or not to
4 believe you. And -- and that, I would charge the jury
5 anyway in my charge on credibility.

6 MS. COURAM: And 4, negligent -- negligent act or
7 omission is proximate cause of injury if, in a natural
8 and continuous sequence of event -- events, it produces
9 an injury and without it, the injury would not have
10 occurred; or the injury complained of is not reasonably
11 foreseeable, there is no liability. Liability has
12 already been established.

13 THE COURT: Right. Again, I think that's a question
14 of semantics, to some extent, or the use of certain legal
15 terminology. I'll work on that to some extent.

16 Any others?

17 MS. COURAM: Yes. I don't see it. There was one --
18 I guess she must have taken -- Ms. Spitz must've taken it
19 out.

20 MS. SPITZ: I just took the one out about the
21 medical expert. I think it was No. 8.

22 MS. COURAM: It has something ---

23 MS. SPITZ: No.

24 MS. COURAM: --- to do ---

25 MS. SPITZ: I'm sorry.

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1 MS. COURAM: --- with the ---

2 MS. SPITZ: Number 7.

3 MS. COURAM: --- use of terminology for -- for
4 preponderance of the evidence. It used another
5 terminology, reasonable something.

6 THE COURT: And you have to tell me where it is.

7 MS. COURAM: Okay. There's no medical expert -- did
8 y'all -- I think 7 is already out.

9 THE COURT: It is.

10 MS. SPITZ: Yes. We took that one out.

11 MS. COURAM: Two. It says that damages must be
12 proved with a reasonable degree of certainty. It --
13 shouldn't that be the preponderance of the evidence?

14 THE COURT: No, ma'am. That is a correct statement
15 of the law. And even if she had not suggested it, I
16 would have read that to the jury anyway.

17 Okay. Is that it?

18 MS. COURAM: I have something else that's not
19 related to this.

20 THE COURT: Okay. Yes, ma'am.

21 MS. COURAM: Tomorrow when -- when we -- when I do
22 closing, I am going to talk about damages. So what can't
23 -- can't I say? Because I'm -- I was going to say about
24 the loss -- loss of work and time. I was going to --
25 give the amount, rather, and the amount of damage -- I

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1 mean, the amounts that I had to pay out to the hospitals
2 and so forth. So ---

3 THE COURT: The only thing that you are permitted to
4 talk about in your closing argument is anything that is
5 already in evidence in this case. That means that
6 because those bills are not in evidence and because you
7 did not testify as to the amounts of the bills, you
8 cannot present that to the jury during your closing
9 argument.

10 MS. COURAM: The amount ---

11 THE COURT: Similarly, you cannot -- similarly,
12 there is no evidence before the jury of loss of income or
13 loss of capacity to work or anything of that nature. So
14 you cannot argue that in closing argument. It must be
15 confined to a summary of the evidence that they have
16 already heard and your suggestion as to how they should
17 view that evidence and what verdict they should render,
18 based on the evidence they've already heard. You cannot
19 introduce anything new.

20 MS. COURAM: So, ma'am, are you saying that I cannot
21 say the numbers or I cannot say the -- the -- the -- just
22 the numbers? I can say in my closing argument that I've
23 been -- I had bills related to dah, dah, dah, dah, dah,
24 but not say the amount? Is that -- I'm -- I'm trying to
25 be clear. Because I'm going to write this out when I get

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1 to the house.

2 THE COURT: Correct. I think ---

3 MS. COURAM: The amount?

4 THE COURT: --- that's appropriate. You cannot give
5 the amounts because that's not in evidence.

6 MS. COURAM: Okay.

7 THE COURT: But as I ruled earlier, even though you
8 -- you never did testify that you have bills, I think
9 that that is a -- a logical assumption for the jury to
10 make. So I -- I don't think that violates any rules or
11 is prejudicial to the defendant that you did, in fact,
12 have bills. Everyone knows medical treatment is not
13 free. So because you testified that you went to the
14 doctor, of course, you can tell them you have bills from
15 those doctors.

16 MS. COURAM: So ---

17 THE COURT: But ---

18 MS. COURAM: --- can I use words like substantial?

19 THE COURT: Sure.

20 MS. COURAM: Okay.

21 THE COURT: Absolutely.

22 MS. COURAM: That's all.

23 THE COURT: Okay. Anything else?

24 MS. SPITZ: No, Your Honor.

25 THE COURT: Okay. I'll see y'all at nine o'clock

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1 tomorrow morning.

2 MS. SPITZ: All right.

3 THE COURT: All right.

4 (Whereupon, the proceedings were adjourned at 5:00 p.m.)

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TRIAL DAY 2 - 03/31/17

(Whereupon, the proceedings were reconvened at 9:11 a.m.)

THE COURT: All right. Good morning, folks.
Anything before we do closing arguments?

MS. SPITZ: Your Honor, I don't have anything additional to what we went over yesterday. I would just ask the Court to again remind Ms. Couram that she's not to address anything in her closing that -- that was not brought up during testimony or evidence yesterday during trial.

THE COURT: Okay. Is that understood, Ms. Couram?

MS. COURAM: What I put forth is a statement that describes everything that took place in the -- at the trial that was testified to by myself and Mr. Tidwell and a -- the reading in for Mr. Brown. I also added in the question that was asked about why it took me so long to go to -- to get my car repaired. I put in information about the time line from when -- when something happened to -- to when it ended.

I put in information about when we used the word -- you said yesterday I could use the word "substantial" in describing my damages. And in each place I -- I went to, I don't know if saying thousands of damages would be appropriate or not. But I put substantial, if it's -- if it's okay to use thousand, I would like to know.

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1 THE COURT: Yes, ma'am.

2 MS. SPITZ: Your Honor, I would object to putting
3 any number with it, given that that did not come out at
4 trial yesterday. And I think thousands would qualify as
5 a number.

6 THE COURT: I tend to agree with Ms. Spitz. You can
7 use words like substantial or similar adjectives, but
8 nothing involving numbers, since there is no evidence of
9 that before the jury.

10 Now, that doesn't mean, Ms. Couram, that you cannot
11 ask the jury to award you a specific dollar amount,
12 total, as your damages, whether it's, you know -- when --
13 and it usually happens -- and I'm not telling you how to
14 do your closing argument. But it usually happens sort of
15 towards the end of a closing argument, where an attorney
16 will say, "I'm asking that you award my client, you know,
17 \$5,000 or 10,000 or 100,000 or a -- whatever it is,
18 whatever number you think will compensate you. That is
19 perfectly fine. You just can't dissect that amount into
20 "this is X dollars and X cents for medical bills" and
21 that kind of thing because the medical bills are not in
22 evidence. You understand what I'm saying?

23 MS. COURAM: Yes, ma'am.

24 THE COURT: Okay.

25 MS. COURAM: Also, I said that I'm entitled to all

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1 medicals, lost wages, past and future expenses, and so
2 forth. Is that okay?

3 THE COURT: Not lost wages because that's not before
4 the jury. Oh, and let me pause you there.

5 As to your question yesterday, Ms. Spitz, about
6 future medicals, I know there are no dollar amounts, no
7 bills before the jury, and no medical reports that talk
8 about future medical treatment. However, I have included
9 in the jury charge future damages because of Ms. Couram's
10 testimony that she still has these problems.

11 I think, in the light most favorable to her, that
12 can be construed as an indication that she may need some
13 ongoing treatment because the problems have not resolved.
14 There -- there's a -- sort of to do it in a reverse
15 fashion, there is no evidence that she has completed
16 treatment. And -- and I know it's sort of a fine line.
17 But I have included future medicals or future expenses,
18 future damages in the charge. I think that's
19 appropriate.

20 MS. SPITZ: Yes, Your Honor. I understand ---

21 THE COURT: Okay.

22 MS. SPITZ: --- the ruling.

23 THE COURT: Okay.

24 MS. SPITZ: Thank you.

25 THE COURT: I just wanted to clarify. You can

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1 continue, Ms. Couram.

2 MS. COURAM: I also included the cost of Mr. --
3 damage to Mr. Brown's car, that he paid 1734 to get it
4 fixed.

5 THE COURT: That's not before the jury. Take that
6 out.

7 MS. COURAM: And also, I asked the question -- I
8 asked a question to Mr. Tidwell about how much his car
9 cost. And he said he did not know.

10 THE COURT: Uh-huh.

11 MS. COURAM: Can that be included?

12 THE COURT: The fact that he doesn't know can be.
13 But what the amount was -- because he doesn't remember,
14 you may know what it is, but you can't now tell the jury
15 what that number is. You can include the fact that he
16 said he didn't know.

17 MS. COURAM: But I can use substantial?

18 THE COURT: Sure.

19 MS. SPITZ: I would object to Ms. Couram using
20 substantial in regard to the repair cost for Mr.
21 Tidwell's vehicle, because there was certainly no
22 evidence of that. I understand the Court's ruling
23 regarding substantial being used for her medical bills,
24 though.

25 THE COURT: Right. And I -- I feel like we're, you

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1 know, talking about super-fine points here. Again, I
2 agree with Ms. Spitz that you can't say the cost to
3 repair Mr. Tidwell's vehicle was substantial, because
4 there's no evidence of that. What you can say is that
5 maybe the damage to his vehicle was substantial.

6 And I -- I know that seems like a super-fine line.
7 But I will allow that because you're entitled to give the
8 jury your view of what the evidence is. And because he
9 did -- did testify that it was more than a tap, you know,
10 or more than a -- whatever it was, you know -- more than
11 a minimal thing, you can give your impression that it --
12 not only was it more than a tap, but that it -- that was
13 substantial -- that the damage was substantial, not the
14 cost to repair it. Okay?

15 MS. COURAM: Okay. I hope I've taken out everything
16 I'm not -- not supposed to have in here, unless you want
17 to look at it.

18 THE COURT: No, ma'am. I did want to go back -- you
19 mentioned something about car repairs or why it took you
20 so long to make the car repairs. I just want to make
21 sure that you don't intend to mention insurance or
22 waiting on an insurance company or waiting on an adjuster
23 or anything like that.

24 MS. COURAM: No. I just said -- I think I just said
25 that it took me this long because of this and -- this,

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1 that, and I was off -- oh.

2 I did say that -- that when I got -- when -- when we
3 were hurt -- when the accident occurred on the 18th, that
4 was a Friday. So I didn't go anywhere on that weekend.
5 And I didn't do anything Monday, Tuesday, and Wednesday
6 because I didn't -- I was hoping that things would work
7 itself out.

8 And I said that -- I kind of got to the point where
9 that's why it took so long to get to this place because
10 ---

11 THE COURT: That's fine.

12 MS. COURAM: --- every ---

13 THE COURT: I think that's fine. I just -- no
14 insurance, okay?

15 MS. COURAM: I don't think I have insurance in this
16 paper anywhere.

17 THE COURT: Okay. I want you to double-check.

18 MS. COURAM: Okay.

19 THE COURT: Do we have all the jurors?

20 THE BAILIFF: Yes, we do.

21 THE COURT: Okay. Let's give Ms. Tidwell just two
22 minutes -- Ms. -- I keep doing it -- Ms. Couram ---

23 MS. COURAM: Does Mr. Tidwell go first?

24 THE COURT: No. You go first. You go first; then
25 Ms. Spitz ---

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1 MS. COURAM: I mean Ms. Spitz ---

2 THE COURT: And then ---

3 MS. COURAM: --- goes first.

4 THE COURT: --- you can have a brief rebuttal after
5 Ms. Spitz. But you got to do your full argument first.
6 So everything that you planned on saying, you ---

7 MS. COURAM: Uh-huh.

8 THE COURT: --- got to -- you go first.

9 MS. COURAM: And is there a time length -- frame --
10 frame?

11 THE COURT: How long do you think you need?

12 MS. COURAM: I don't know. Hopefully, not long.

13 THE COURT: Okay.

14 MS. COURAM: It's ten pages.

15 THE COURT: Okay. I think that's fine.

16 MS. COURAM: Okay.

17 THE COURT: But when I tell you, you get a brief
18 rebuttal after Ms. Spitz, that is only to address
19 anything new that she brought up that you didn't expect
20 her to say. You know? So that ten pages, I would guess
21 you would read -- you know, go over that first. And --
22 because that's really the bulk of your argument.

23 The little time you get at the end after Ms. Spitz
24 is just if you need it. You don't even have to take it.
25 But if you want to, you can to address anything -- you

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1 know, respond to anything that she's just told the jury.

2 MS. COURAM: One more thing.

3 THE COURT: Yes, ma'am.

4 MS. COURAM: I -- I tend to get fever blisters when
5 I'm really, really stressed out. And I have one now. So
6 if I mention that to the jury, is that appropriate?

7 THE COURT: No.

8 MS. COURAM: So not -- do not mention that?

9 THE COURT: Correct.

10 MS. COURAM: Okay.

11 THE COURT: Okay. Would it help you to have this
12 podium to put your papers on when you stand up in front
13 of the jury, or are you okay?

14 MS. COURAM: I don't think it will help.

15 THE COURT: Okay. All right. I just want to ask
16 y'all real quick about the verdict form. Do you have any
17 objections to the verdict form as it's written, Ms.
18 Spitz?

19 MS. SPITZ: No, Your Honor, I don't.

20 THE COURT: Okay. Ms. Couram?

21 MS. COURAM: I -- I -- I -- I was reading over the
22 part where I asked about -- and I'm not sure if I'm at
23 that section or not, where I asked you about the thin
24 skull -- this thin-skull rule -- eggshell rule. And I
25 think you -- you brought it up on page 8, preexisting

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1 condition injury?

2 THE COURT: Yes, ma'am.

3 MS. COURAM: You didn't use that terminology.

4 THE COURT: I didn't use that terminology. But the
5 substance of what you want is there. We try to put jury
6 charges in the plainest, easiest-to-understand language.
7 And I think that eggshell plaintiff is a legal term. I'm
8 not saying that it could not be understood by the jurors.
9 But -- but I think the substance of that is in here. So
10 it's not necessary to use that terminology.

11 MS. COURAM: Right. But I -- unless I'm
12 misunderstanding, which I could be, it -- it doesn't
13 imply -- we knew -- we know I have preexisting condition,
14 because of -- I've testified to it without hesitation.

15 But it doesn't say -- but it doesn't indicate that
16 the physical injuries that took place after those --
17 after that accident was not present at the time of the
18 accident and it was a direct result of the accident --
19 not the preexisting condition, but the physical injuries.

20 THE COURT: I -- I understand that it's not in there
21 because that's for the jury to decide. I know that you
22 testified that it's brand new as a result of the
23 accident, but that's what the jury has to determine:
24 whether they believe your testimony or not. They may
25 find otherwise.

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1 MS. COURAM: Well, I'm going to say I'm object.
2 Because if I file the appeal, at least I have that on
3 record.

4 THE COURT: Absolutely.

5 MS. COURAM: Okay.

6 THE COURT: Okay. All right. Let's bring the jury.

7 (Off the record briefly.)

8 (Whereupon, the jury entered the courtroom at 9:24
9 a.m.)

10 THE BAILIFF: The jurors are now present, Your
11 Honor.

12 THE COURT: Thank you. Good morning, folks.

13 JURORS: Good morning.

14 THE COURT: As I told you, we're ready now to
15 conclude the trial. All that's left is the closing
16 arguments of the parties and my charge on the law, after
17 which you will deliberate and render your verdict. So
18 we're prepared for closing arguments. I'll call on Ms.
19 Couram first to make her argument.

20 CLOSING ARGUMENT BY MS. COURAM

21 MS. COURAM: Okay. I'm going to read my closing
22 argument, because I get sort of confused about things.
23 And I'm going to try and keep it in sequence. Because
24 I'm going to try and establish -- relate what -- what was
25 testified to last night -- I mean, yesterday during the

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1 trial, what Mr. Tidwell said and I said and what was read
2 in Mr. Brown's deposition by Ms. Martin. So if you'll
3 bear with me, I'll try not to bore you to death.

4 I'll start with Mr. Brown. Ms. -- Ms. Martin read
5 several excerpts from the deposition done by Mr. Brown.
6 He was not present. And one of the things she asked is
7 how old he was. And he said he was born in 1986,
8 compared to my 1958. And she asked -- at the time of the
9 accident, he was 29 years old.

10 And she asked was he injured. He said no. See,
11 that's why I need to read it. I'm sorry. Could that
12 have been -- could the car with -- the car he was driving
13 was what I said it was and was able to deflect the hit.
14 He -- as I told you during the testimony, he said he was
15 driving an SUV. To my recollection, he was driving a
16 really long Cadillac.

17 And the photos that we showed you during the
18 testimony show that the Cadillac had a -- must've had a
19 point to it because it dented my fender down here, caused
20 a scratch here, and then it branded the end of my fender
21 here, which means it must've pushed it in and it must
22 come back -- popped back out. I'm not an expert at that
23 either. And then, it scratched my car here.

24 And the photos show that as a result of that, the
25 fact that it was -- my car was hit so hard, that I heard

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(BBS)

1 a loud thump; that the Chrysler emblem was embedded into
2 my fender when my car was hit -- or when Mr. Brown shoved
3 -- Mr. Tidwell shoved Mr. Brown's car into mine.

4 So it was not a -- a mere tap. It was a substantial
5 hit. And the pictures of Mr. Tidwell's car also shows
6 that it was not a tap, but it was a substantial hit.
7 You'll have those for you to take back to with you, I'm
8 sure.

9 Ms. Martin also read into the record that the
10 collision was -- Mr. Brown said the collision was between
11 5 and 5:30. And both Mr. Tidwell and I and the record
12 shows that the collision was between 4 and 4:30. So we
13 left there about 5 and 5:30. So he probably lost that
14 bit of time in there. But that was not an accurate
15 statement.

16 There was substantial damage, substantial damage to
17 his car. Now, what I'm going to attempt is to provide a
18 time line as what was testified to yesterday and up to --
19 leading up to where -- why we're here today. The
20 accident occurred on September 18th, 2015, at 4:20 p.m.,
21 around that time.

22 Mr. Tidwell testified he knew the traffic was heavy
23 when he was coming from the direction -- he was coming
24 from work, I believe he said. He was in the middle lane.
25 He -- suddenly he realized that the truck in front of him

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1 in the middle lane was stopping or had come to a stop and
2 he reacted.

3 Going 30 miles an hour, he swerved and got into the
4 left lane. And he didn't -- apparently -- apparently, he
5 didn't realize there were other cars already stopped in
6 that left lane. And as a result, that's why he hit Mr.
7 Brown's car.

8 He said that his brakes -- he wasn't used to his
9 brakes. Well, we all have ABS brakes. And if Mr. Brown
10 -- Mr. Tidwell had -- knew he was going to hit this truck
11 that was in front of him in the beginning, he should've
12 already started to pump his brakes to stop. And when he
13 swerved in the other lane, he should've had control over
14 his brakes.

15 But he was traveling -- evidently, he was driving
16 fast enough that it just wouldn't -- it didn't make any
17 difference. He was just driving too fast for conditions,
18 for the traffic on I-20 during rush hour on a Friday.

19 As -- as I said, he -- so -- so when he swerved, he
20 thought he had a option in the left lane. He didn't --
21 he said -- he testified he didn't see any traffic in the
22 left lane. I don't know why. But maybe there was
23 something -- I -- I don't know the reason why he didn't
24 see the traffic in the left lane. Let me just put it
25 that way.

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1 He was still going 30 miles an hour. Mr. -- Mr.
2 Brown Cadillac was in -- in the way. He collided with
3 that Cadillac, as I said. It was -- as I said, it was
4 not a slight hit.

5 And the damages to Mr. Tidwell's car or his
6 commercial vehicle that he used in his business clearly
7 shows that the damage was not slight. It took out his
8 whole fender. So there was no -- nothing slight about
9 that damage. And that -- and this will go back with you
10 when you go back.

11 So the hit was substantial to my car, to Mr. Brown's
12 car, to -- and to my car. And that was a chain reaction.
13 Mr. -- Mr. Tidwell car hits Mr. Brown's car; hits my car.

14 We were able to drive our cars home. I thought Mr.
15 Tidwell's car had been towed. But he testified that it
16 had not been. He was able to drive it home.

17 The rules all say that if you -- what you --
18 regarding -- South Carolina Code of Laws says that --
19 state said it's unlawful for a person to drive a vehicle
20 on a highway at a speed greater than is reasonable and
21 prudent under the conditions and having regard to the
22 actual and potential hazards then existing. Speed must
23 be controlled to avoid colliding with a person, a
24 vehicle, or a conveyance.

25 Mr. -- Mr. Tidwell did not contest the ticket. He

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BAPD

1 -- he was given a ticket. He did not contest it. He
2 paid it. And by paying that ticket, he pled guilty to
3 the negligence. And that has already been established
4 previously in this Court.

5 He also found by the Court to be -- he was also
6 found by the Court to be liable for the negligence that
7 resulted from September 15, 2015.

8 It -- it seemed that there was a issue made out of
9 the fact that I had the present of mind enough to get out
10 of my car and take pictures -- a couple of pictures of my
11 car. If I hadn't, then I probably wouldn't have caught
12 the damage to my car at the time of the accident. And I
13 don't apologize for that.

14 I also don't apologize for taking a couple minutes,
15 once I got the car back to the house, and taking pictures
16 of it. I don't -- I think that everybody should do that,
17 unless they're out -- totally out or they could -- they
18 can't do it because they're physically incapacitated.
19 Pictures are a great -- can show a great deal.

20 As I testified yesterday, as to medical treatment, I
21 told you about my treatments with Vital Energy, Palmetto
22 Health -- I mean, Palmetto Spine Center, Dr. Birdsong. I
23 also told you about my treatment at the Lexington County
24 -- Lexington Urgent -- Urgent Care.

25 Those -- there was substantial bills related to

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1 that. I -- I erred, because I did not ---

2 MS. SPITZ: Objection, Your Honor.

3 MS. COURAM: I can't ---

4 THE COURT: Move on.

5 MS. COURAM: (Gestured.)

6 THE COURT: Move on to the next thing.

7 MS. COURAM: Oh. Anyway, I said -- when I -- when I
8 -- when we left, I went home. I did tell Mr. Tidwell
9 that I wasn't injured -- not that I wasn't injured, but
10 that I didn't know. Each time he asked me -- and I think
11 he asked me three times -- I said I did not know.

12 And he testified that I was -- I appeared to be a
13 little bit out of it. So as I said, I did not claim I --
14 that I was not injured. I did not claim that I was
15 injured. I simply did not know.

16 At the time I didn't feel anything that would lead
17 me to believe that I needed to have them call a ambulance
18 out. So I didn't -- I didn't -- and furthermore, I hate
19 hospitals. I used to tell my -- my coworkers, if I fell
20 out, just put me in a corner somewhere until I woke up.
21 I just don't want to be in a hospital.

22 And I testified that I cleaned up Cashie. And I
23 testified that the accident happened on the 21st -- on
24 the 18th. When I got home, I cleaned up Cashie and
25 cleaned up the mess she made.

BBP

1 On the 19th, which was a Saturday, I went to bed.
2 On the 20th, I stayed at the house. I didn't get back in
3 the car, so I had no idea what was going to happen on the
4 21st, Monday.

5 And I testified that I was struck with paralyzing
6 fear. My imagination ran away with me. I saw cars
7 coming from every direction. I saw cars coming into my
8 lane.

9 Whether that was my imagination or not, I don't
10 know. But that's what I felt and that's what I saw. And
11 that's why I continue to react to it.

12 I -- I also testified that I had never had anybody
13 else that I had to be responsible for. And I started
14 thinking about all those things. And I had that little
15 dog. It's a dog. It's not a child, but a living,
16 breathing being. And there's nobody there to take care
17 of it.

18 And by -- if I die or I'm not there, then she will
19 suffer greatly in that house, because nobody will come by
20 and get her, unless I made arrangements. And I don't
21 have family here. I -- my family is in Virginia.

22 So I had to do something. And that's when I
23 testified that I had to get my neighbor to -- I -- I told
24 her where my keys were and if I wasn't home by a certain
25 period of time, that she is to go inside and get Cashie.

[Handwritten signature]

1 And that's how afraid I was.

2 On the 22nd, the same thing happened as happened on
3 Monday, that paralyzing fear. I -- but I dealt with it.
4 I finished my job.

5 On Wednesday, by twelve o'clock, I just simply could
6 not deal with the pain anymore. It just wouldn't stop.
7 The poking in my back, under my shoulder blades, it
8 simply would not stop.

9 So I went to an -- Lexington Urgent Care. That bill
10 was also a substantial bill. I was prescribed something
11 called Tramadol. And when I got -- and then I told you
12 about the fact that my blood pressure had skyrocketed to
13 over 140.

14 And the Tramadol was -- was -- I -- would react to
15 the medications I was taking for my anxiety: Xanax,
16 Wellbutrin, and the other two. So I had to stop taking
17 those because of the -- I don't know if the pharmacist
18 said it caused death or just suicidal thoughts. Whatever
19 it was, they could not be taken together. So I had to
20 stop taking those so I could take the Tramadol and get --
21 and go to work and so forth.

22 I was out of work for two days after that visit to
23 Lexington County Urgent Care, the 24th and 25th. And
24 then that was a week -- then I was -- that was -- a
25 weekend came, 26th and 27th. So that's why I didn't go

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1 -- my car was going nowhere, so I didn't go and get it
2 fixed.

3 I went back work -- back to work the following week
4 with the pain pills. I could not get appointment with my
5 doctor until October the 2nd. I had to stop taking --
6 and she told me to stop taking ---

7 MS. SPITZ: Objection, Your Honor.

8 MS. COURAM: I went to ---

9 THE COURT: Sustained. Don't tell them anything
10 anybody told you.

11 MS. COURAM: I -- I'm sorry.

12 I had to stop taking the Tramadol so I could start
13 taking my other medication for my anxiety and so forth.
14 When I got to the doctor's office, she put me on another
15 pill called nexopren (phonetic). And that's another pain
16 pill.

17 But that caused me to sleep, and I couldn't drive to
18 work every day, knowing that I might fall asleep at the
19 wheel. So I had to stop taking that and restarted just
20 taking the ibuprofen.

21 At that appointment I was referred to Vital Energy.
22 I stayed with Vital Energy. I -- I was not able to get
23 that appointment till the 23rd because, like -- like I
24 testified to, all this stuff happened, unfortunately,
25 during the flood that we all had to experience. So a lot

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1 -- people had a lot more things to think about and worry
2 about and be concerned with.

3 So I just had to wait until I could get an
4 appointment. And I wasn't able to get an appointment
5 until the 23rd. And I couldn't just go. I had to have a
6 referral. I -- I had to be referred.

7 After my time with Vital Energy -- I was with Vital
8 Energy from the -- October 23rd until -- I think it was
9 May -- May 2016, if I'm -- I will say that. It was a
10 time period when we stopped the treatment because we -- I
11 thought it was okay. But then Dr. Birdsong allowed them
12 to another time frame -- allowed another referral. So I
13 went back. And that's why it lasted until the -- 2016.

14 And when that was over, I was okay. Not okay -- I
15 still had the pain. But they gave me exercising and so
16 forth to -- to do while I was at the house.

17 As I said, I was with Vital Energy from the 23rd
18 till May 16, 2016. And you can imagine that was a
19 substantial bill as well. My time with -- to Vital
20 Energy ended. There was a period of time when I was --
21 when I felt that I was all right and had no problems.

22 Then I went back to see Dr. Birdsong. And I told
23 her that I was still having problems. She had me take --
24 to -- to -- she had me do two X-rays. And that was a --
25 a substantial bill.

1 And then she referred me to Palmetto Spine Center.
2 I was with them from November the 3rd, 2016, which
3 November 3rd is my birthday, and until January 4th, 2017.
4 Again, substantial bill.

5 That -- we talked about the length of time it took
6 me. And I think I explained it already. The accident
7 happened on the 23rd. There was a weekend. There was
8 two days I had to take off due to what was going on, my
9 pain and so forth.

10 And it didn't -- we had -- then I had to make
11 arrangement, because I want a Honda dealer -- dealer to
12 fix my Honda. I didn't want just any dealership to do
13 it. A Honda is very expensive, and the taxes are
14 extranomical [sic]. So I found -- that's why I took a
15 little bit of time to get it taken care of.

16 What's going to happen now is that you have to
17 decide -- your role is to determine if I've provided you
18 that extra boost or that -- what makes my claim more --
19 if I met the burden of proving my claim of damages. We
20 know Mr. Tidwell was negligent. And we know he was found
21 guilty, because he paid the traffic tiffit -- ticket.

22 We know that I had anxiety and stress and PDS [sic]
23 and panic disorder when he found me on September the
24 18th, which I'm sure he regrets. We know he was -- and
25 also, we have to go back to when I went to -- on October

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1 2nd about the high blood pressure being 1 -- I think it
2 was 151 when I got there. And we -- and I could not
3 leave until it went down. I stayed there for a while.

4 We know -- we know he wasn't the cause of my mental
5 problems. We know I -- I also had -- I was taking
6 Procardia. I had high blood pressure, but I was on the
7 same medication for ten -- for ten years, until this
8 accident occurred.

9 And then my medication had to be changed once; it
10 didn't work. The second time it was changed, it caused
11 an allergic reaction to me. And -- and I was coughing my
12 lungs out throughout that -- for -- for about a month.

13 And finally, Dr. Birdsong was able to find a blood
14 pressure medication that worked. And that's what I'm
15 using today.

16 The judge will explain to you about preexisting
17 conditions and -- and all that. And I'm not going to get
18 into that part because I -- I'm -- I'm a layperson, just
19 like you are, and I really don't want to confuse you. So
20 I'm not going to say anything about that.

21 The -- but the law in South Carolina says that when
22 you injure someone through your own negligence in a car,
23 you are responsible for all losses that is a result of
24 whatever that -- whatever the -- that damage is or
25 whatever that person loses, regardless of what it is.

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1 Out-of-pocket expenses; medical expenses, regardless of
2 how substantial those medical expenses are; future
3 medical expenses; permanent damages, because as I
4 testified, I still have issues with my left arm. As I
5 testified, the other day I had to mow my grass with my
6 right arm. And fortunately, I had a self motor.

7 And if I hit my arm in a certain way, it hurts. And
8 my shoulder cracks. I never heard a shoulder crack
9 before. So my shoulder cracks at times. It's -- it's a
10 scary thing.

11 Mr. Tidwell is also responsible for mental anguish,
12 regardless if it was there before or not. He's
13 responsible for mental distress, regardless if it was
14 already a preexisting condition or not. He's responsible
15 for anxiety, whether or not it was preexisting or not --
16 condition or not.

17 And he is -- he's responsible for whatever physical
18 damage he caused to the person he hit, whether it's you,
19 me, or any person in this room. We are all liable to
20 each other, and we're responsible if we hurt each other
21 in some way. And we should not be allowed to -- to not
22 take responsibility and pay for the damages that we cause
23 to someone.

24 I am asking -- I have a lot more stuff to read, but
25 I think -- I don't think I need to bore y'all anymore.

1 I'm -- I'm not asking for a great deal. The money I'm
2 asking for is between 65 and 80 thousand dollars -- or
3 more, if you feel that I -- I'm entitled to more.

4 I have -- I am 58 years old. I don't have my job
5 right now. I lost it. And that's indirectly --
6 indirectly is related to this car accident.

7 My back is not going to get any better. I'm 58.
8 It's not like -- and one thing people don't want is a
9 back issue, a back problem. Nobody wants a back problem.

10 I didn't want a back problem. And I wish to
11 goodness I never got found by Mr. Tidwell. But I have
12 it.

13 I have a -- I have a problem with my arm. And I'm
14 limited in what I can do with my arm. I have to be
15 careful when I pick up Cashie. I have to be careful when
16 I pick up anything and -- unless it slips out of my hand
17 without me realizing I'm not having it tightly enough.

18 And I tend to use my left side more than my right
19 side. I guess -- I -- I think -- I think they call that
20 left-brained, even though I'm right-handed.

21 So I'm -- but so this 65 or 80 thousand dollars I'm
22 asking for is nothing compared to the damages and pain
23 that I suffer as a result of this accident. And I'll be
24 paying -- I'm paying a greater price than Mr. Tidwell
25 will ever pay.

1 Because he will go on. You will go on. Everybody
2 in this courtroom will go on. But I'm going to still be
3 at the home -- house, and I'm going to still be hurting.

4 And this money is not going to last forever,
5 whatever you decide to give me. It's not going to --
6 it's not going to -- or -- or award me. It's not going
7 to last forever.

8 But the pain will, because of the simple fact -- and
9 I keep harping on this, because I know Mr. Brown said he
10 was -- turned 29 years old. He was not hurt. His car
11 was damaged far worse than mine. But he was not hurt.
12 Why? Because he's younger. And he's -- his -- he's
13 easier to bounce back than -- than when we get older.

14 So that's what I'm asking for. And that's all I
15 have to say, I guess. Thank you.

16 THE COURT: Ms. Spitz?

17 MS. SPITZ: Yes, Your Honor. May it please the
18 Court?

19 THE COURT: Yes, ma'am.

20 CLOSING ARGUMENT BY MS. SPITZ

21 MS. SPITZ: Your Honor, ladies and gentlemen of the
22 jury, I told you yesterday when we started the trial that
23 this case was going to be about causation. And that
24 remains true. The plaintiff just got up here and talked
25 to you about negligence. Well, what she's forgetting is

1 she still has to prove causation and damages.

2 Mr. Tidwell has accepted responsibility for the
3 accident. That's not been in dispute. He's accepted
4 responsibility from day one.

5 But it's still the plaintiff's burden to prove the
6 accident caused her injuries. Not only that, she must
7 prove that her medical treatment after the accident was
8 responsible and necessary. We haven't heard anything
9 about that.

10 The plaintiff has simply failed to meet the burden
11 and prove her case. But you all have seen numerous
12 photos throughout the trial. I think some of the most
13 important photos you've seen are the photos of Mr. -- Ms.
14 Couram's vehicle after the accident. Seen this one.

15 How does an accident this minor cause the injuries
16 she's claiming? If you don't know, she's failed to meet
17 her burden.

18 Speaking of injuries, you have not heard any
19 testimony, any evidence of a diagnosis, of a prognosis.
20 If you don't even know what the injury is, the plaintiff
21 has failed to meet her burden.

22 You also did not hear any testimony or evidence of
23 any medical bills or damages. If you don't know what the
24 damages are, the plaintiff has failed to meet her burden
25 and prove her case. Simply, our position, the accident

1 was too minor to have caused the injuries she's claiming.

2 Now, the judge is going to instruct you on the law
3 in just a moment. And the judge will instruct you not
4 only does the plaintiff have the burden of proving that
5 the accident caused her injuries, she also has the burden
6 of proving her damages within a reasonable degree of
7 certainty.

8 You are not permitted to speculate, to guess, or to
9 base your verdict on passion or even sympathy. That's
10 what the plaintiff is asking you to do. She's asking you
11 to speculate about her injuries. She's asking you to
12 guess about her medical bills and her damages. She
13 simply has not proven her case.

14 The plaintiff could've called a doctor or a
15 physician to come in and tell you what her injuries are.
16 But she didn't. You have to ask yourself, Why not?

17 So we're asking today that you find a verdict in
18 favor of the defense in saying that we're not calling the
19 plaintiff a liar. We're not saying she's a bad person.
20 She just hasn't met her burden in the case. Thank you.

21 THE COURT: Any rebuttal, Ms. Couram?

22 MS. COURAM: Yes.

23 REPLY ARGUMENT BY MS. COURAM

24 MS. COURAM: I did prove causation. Causation is
25 bur for Mr. Tidwell's negligence, would I be in this

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1 courtroom before you now? The answer is no. But for his
2 hitting Mr. Brown's car and to his subsequently hitting
3 -- causing the hit on my car, would I be before you now?
4 No.

5 So but for his actions, I would not be here. But
6 for what he -- his failure to abide by the laws of this
7 state, I would not be here.

8 So that's causation. That's negligence. That's the
9 fact that Mr. Brown [sic] violated the South Carolina
10 code as to how he conduct himself when driving in this
11 state. He shouldn't have been driving 30 miles an hour
12 during rush hour in rush-hour traffic. But that's what
13 he was doing.

14 He realized that he -- he was going to hit another
15 car and he swerved. And unfortunately, he was not able
16 to avoid hitting a car. So the -- the end result was he
17 hit my -- he hit Mr. Brown and then he hit me.

18 So as far as causation is concerned, none of the --
19 this would've happened if not for the actions of Mr.
20 Brown -- Mr. Tidwell. Not one bit of it would've
21 happened. I wouldn't be here, as I stated. I'd be at
22 work. I would still have my job if not for Mr. Tidwell's
23 actions on September the 15th.

24 So he cannot just say that my injuries are -- my
25 injuries are insubstantial. I know the damages to my car

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1 was not bad. We're not saying that. We never even
2 testified to the fact that the damages were substantial.

3 What we're -- what I'm testifying to, in fact, is
4 that he hit my car and, as a direct result of that, he
5 caused physical injuries to me. I had -- I had mental
6 injuries. But my back did not hurt. My arm did not
7 hurt. My shoulder did not hurt.

8 And yes. I did not -- I don't have witnesses here.
9 I'm pro se. I don't have witnesses here. I have medical
10 diagnosis, but I'm not allowed to present those diagnosis
11 to you.

12 MS. SPITZ: Objection, Your Honor.

13 MS. COURAM: I'm sorry.

14 THE COURT: Sustained.

15 MS. COURAM: I'm -- I'm ---

16 THE COURT: Please disregard that comment.

17 MS. COURAM: I'm sorry. I -- I -- I really -- I --
18 I'm sorry.

19 South Carolina code that says that we are all -- we
20 all have to drive our vehicles in a way that protects
21 each other -- each other. We have to realize that
22 there's going to be a hazard around the next corner.

23 And all of us know -- and it's not unforeseeable for
24 any of us on I -- I-20 on a Friday that whatever we do
25 could cause somebody to get hurt. I mean, if you're

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1 driving on I-20 on a Friday during rush hour, traffic is
2 there. And we have to be responsible, slow our speed,
3 keep watch, and keep -- and just keep tunnel vision on
4 what's going on in front of us. No texting, no talking
5 on the cell phone, nothing.

6 I'm not saying Mr. Brown -- Mr. Tidwell was doing
7 all those things. But I do know that he was driving too
8 fast for the condition on September the 18th, 2015. And
9 he could've hit -- he -- he could've hit that truck in
10 front of him, but he chose to swerve from that truck and
11 he -- and ultimately, he caught -- he entered -- entered
12 my life.

13 And he found me as he found me: as I said,
14 prediabetic, a little bit overweight, and trying to work
15 on that. He found me with preexisting conditions of
16 anxiety, stress, panic attack, PTSD. That's how he found
17 me.

18 Just if I hit you, whatever your problems are,
19 that's how I found you. And that's what I'm responsible
20 for. If I hurt you, then I'm responsible for fixing it
21 or finding a way to fix it. Or if I can't fix it, then I
22 pay you for your damages. And your damages may be
23 substantial.

24 You may be paralyzed. And no amount of money in
25 this world is going to make up for that.

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1 Ms. -- Ms. Spitz also said that I did not present
2 any medical bills. That's true. But I -- but I did tell
3 you that I had all these services done at these
4 hospitals, with my doctor, with the physical therapist,
5 and so forth.

6 And those things are not going to be done free. So
7 there are bills. So there -- there are bills, just not
8 submitted into evidence.

9 And again, I never said this accident caused --
10 caused the physical injuries. I said the accident -- the
11 mental injuries. I said the accident caused the physical
12 injuries -- was a direct connection to the physical
13 injuries that I suffer now.

14 And I should not have to pay to -- I should not have
15 the responsibility of taking care of any of the medicals
16 or any of that sort of thing. That's Mr. Tidwell's
17 responsibility. Those are all his responsibility. It's
18 not mine. Because I did not hit Mr. Tidwell. He hit me.

19 And I should not be responsible for damages that he
20 caused to someone else. He knows it. I know it. And I
21 hope you know it.

22 And I said you did hear about the medicals. You
23 just don't have the numbers, the actual numbers. Thank
24 you.

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CHARGE OF THE COURT

THE COURT: All right, folks. It is now time for me to give you the law that is applicable to this case.

I remind you that during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case. And I also have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the evidence before you. If there was any testimony ordered stricken from the record during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of the parties.

I have the additional duty to charge you the law applicable to this case. It is your duty as jurors to accept and apply the law as I now state it to you. If you think you have any idea as to what the law is or what the law ought to be and it does not agree with what I tell you the law is, you must forget that idea, because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this Court before a jury, the jury becomes the sole and exclusive judge of the facts.

1 A trial judge cannot comment on or make any statement
2 about the facts in a case. Since you are the sole judges
3 of the facts, do not think by anything I have said during
4 -- during the trial that I have any opinion about the
5 facts in this case. The law does not allow me to have
6 opinion -- an opinion about the facts of the case.

7 The burden of proof in this case is by a
8 preponderance of the evidence. A preponderance of the
9 evidence simply means the greater weight of the evidence.
10 It is evidence which, as a whole, shows the -- that the
11 fact sought to be proved is more likely true than not
12 true.

13 This can be illustrated by imagining a set of
14 scales. When the case begins, the scales are even.
15 After all of the evidence has been presented, if the
16 scales remain even or if they tip even slightly in favor
17 of the defendant, then the plaintiff has failed to meet
18 the burden of proof and would not be entitled to recover
19 in this case.

20 If, on the other hand, the scales tip even slightly
21 in favor of the plaintiff, the plaintiff will have met
22 the burden of proof and you should return a verdict for
23 the plaintiff.

24 The preponderance of evidence is not determined by
25 the number of witnesses. Instead, it must be determined

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1 by the greater weight of all of the evidence.

2 There are two types of evidence generally presented
3 during a trial: direct evidence and circumstantial
4 evidence.

5 Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact, such as an
7 eyewitness. It is evidence which immediately establishes
8 the main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It
11 is evidence which immediately establishes collateral
12 facts from which the main fact may be inferred.

13 Circumstantial evidence is based on inference and not on
14 personal knowledge or observation. It is proof that does
15 not actually establish the fact in question, but that
16 asserts or describes something else from which you may
17 either reasonably infer the truth of the fact or at least
18 reasonably infer an increase in the probability that the
19 fact is true.

20 For circumstantial evidence to be sufficient to
21 warrant a finding of fact, the circumstances must lead to
22 that fact with reasonable certainty. The facts and
23 circumstances should be considered in light of ordinary
24 experience and common sense. The existence of a fact
25 cannot be based on speculation, surmise, or conjecture.

[Handwritten signature]
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1 The example that is typically given with
2 circumstantial evidence is rain or snow. Direct evidence
3 would be if you're standing in the rain or the snow and
4 you actually experience it happening. That -- you are an
5 eyewitness to it. That would be direct evidence, your
6 testimony about that.

7 However, if you are driving around on a clear day
8 and you go park your car and you go inside your house and
9 it was clear when you went inside your house, but you
10 come out in two hours and there's rain or snow all over
11 your car, that would be circumstantial evidence that it,
12 in fact, rained or snowed while you were inside the
13 house.

14 The law makes absolutely no distinction between the
15 weight or value to be given to either direct or
16 circumstantial evidence, nor is a greater degree of
17 certainty required of circumstantial evidence than of
18 direct evidence.

19 Necessarily, you must determine the credibility of
20 witnesses who have testified in this case. Credibility
21 simply means believability. It becomes your duty as
22 jurors to evaluate the evidence and determine which
23 evidence convinces you that it is true.

24 In determining the believability of witnesses who
25 have testified in this case, you may believe one witness

1 over several witnesses or several witnesses over one
2 witness. You may believe a part of the testimony of a
3 witness and reject the remaining part of the testimony of
4 that same witness.

5 You may believe the testimony of a witness in its
6 entirety or reject the testimony of a witness in its
7 entirety. You may consider whether the witness has an
8 interest in the result of the trial, whether the witness
9 is prejudiced toward either the plaintiff or the
10 defendant, the opportunity of the witness to have seen
11 the matters and things about which the witness may
12 testify, and the way the way the witness act on the
13 witness stand.

14 Additionally, even if there is uncontradicted
15 testimony, you are not required to accept that testimony.
16 You must evaluate the credibility, or believability, of
17 that testimony which is uncontradicted in the same manner
18 as you must evaluate any other testimony.

19 The plaintiff claims that the defendant was
20 negligent and should compensate the plaintiff for the
21 injuries the plaintiff suffered as a result of the
22 defendant's negligence. In order to prove that the
23 defendant was negligent, the plaintiff must prove by a
24 preponderance, or greater weight, of the evidence the
25 following things: The plaintiff must prove that the

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1 defendant owed the plaintiff a duty of care and that the
2 defendant breached the duty of care by a negligent act or
3 omission. In this case those issues have already been
4 determined by the Court. Therefore, you -- you need not
5 decide these two issues.

6 What remains for you to determine in this case is:

7 (1) whether the plaintiff has proved by a preponderance,
8 or greater weight, of the evidence that she suffered
9 damages as a result of the defendant's breach of duty;
10 and (2) whether the plaintiff has proven by a
11 preponderance, or greater weight, of the evidence that
12 the damages were proximately caused by the defendant's
13 breach of duty.

14 Proximate cause is something that produces a natural
15 chain of events which, in the end, brings about the
16 injury. It is the direct cause of the injury.

17 To prove that the defendant's negligence proximately
18 caused the plaintiff's injury, the plaintiff must first
19 prove causation in fact. This is proven by showing that
20 the injury would not have occurred but for the
21 defendant's negligence.

22 The plaintiff must also prove legal cause. Legal
23 cause is proven by showing that the injury was
24 foreseeable. This means that the injury occurred as a
25 natural and probable consequence of the defendant's

1 negligence. The plaintiff must prove that some injury
2 from the defendant's negligence was foreseeable, but does
3 not have to prove that the particular injury that
4 occurred was foreseeable.

5 However, the defendant cannot be held responsible
6 for things which could not be expected to happen. If
7 there is no foreseeability, there is no liability.

8 Proximate cause does not mean the only cause. The
9 -- the defendant's act can be a proximate cause of the
10 plaintiff's injury if it was at least one of the direct,
11 concurring causes of the injury.

12 The mere fact that an -- an injury or accident
13 happened, standing alone, does not permit you, the jury,
14 to draw any inference that such an injury or accident
15 must have caused the damages to the plaintiff or to draw
16 any inference that the injury or accident was the cause
17 of the plaintiff's damages. Instead, the plaintiff must
18 prove each of these things by the preponderance, or
19 greater weight, of the evidence.

20 The defendant has answered the plaintiff's complaint
21 with a general denial. That means that although the
22 Court has already determined that the defendant breached
23 the duty of care owed to the plaintiff, the defendant has
24 denied that he is responsible for the plaintiff's
25 injuries. In other words, the defendant has denied that

1 the plaintiff suffered damages, and has also denied that
2 any damages she alleges were proximately caused by the
3 defendant's actions. Because of this denial, the
4 plaintiff has the burden of proving each and every
5 element of her cause of action.

6 If you decide that the plaintiff is entitled to a
7 verdict, your next step would be to decide how much money
8 the defendant should be required to pay. Actual damages
9 are to compensate the plaintiff for the plaintiff's
10 injuries or loss and to put the plaintiff as near as
11 possible in the same position that the plaintiff was in
12 before the incident occurred. In other words, actual
13 damages would be the actual losses and expenses which the
14 plaintiff has suffered because of the defendant's
15 negligence.

16 Actual damages are awarded when a wrongful act has
17 caused a loss or injury which can be assessed in money,
18 the universal and cardinal principle being that the
19 person injured shall receive compensation commensurate
20 with his loss or injury and no more.

21 Pain and suffering compensates the plaintiff for
22 physical discomfort and emotional response to the
23 sensation of pain caused by the injury itself. There is
24 no definite standard by which to compensate the plaintiff
25 for pain and suffering. You have the authority to

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1 determine the amount, if any, to be allowed for pain and
2 suffering using calm and reasonable judgment to ensure
3 that the damages are just and reasonable in light of the
4 testimony presented in the case.

5 Loss of enjoyment of life compensates the plaintiff
6 for limitations on the plaintiff's ability to participate
7 in and derive pleasure from the normal activities of
8 daily life.

9 The plaintiff must prove that expenses caused by the
10 injury were necessary and reasonable. Actual damages for
11 a plaintiff who has been physically injured include pain
12 and suffering, both past and future, as well as mental
13 anguish and impairment of health or physical condition.

14 In determining the amount of compensation for
15 personal injuries, it is proper to consider past and
16 present aspects of the injury. This would include
17 physical and mental pain and suffering, expenses incurred
18 for necessary medical treatment, the loss of enjoyment of
19 life suffered as a result of the injury, and any other
20 losses which are reflected by the character of the
21 injury.

22 The injured party may recover for those future
23 damages that are reasonably sure to result from the
24 injuries. The principle underlying compensation for
25 future damages is that only one action can be brought

1 and, therefore, only one recovery had. It is proper to
2 include any estimate of future damages, compensation for
3 loss of attention to the plaintiff's ordinary business,
4 future medical expenses, and pain and suffering which
5 will, with reasonable certainty, result.

6 The existence -- the existence, causation, or amount
7 of damages cannot be left to conjecture, guesswork, or
8 speculation. However, proof with mathematical certainty
9 of the amount of loss or damage is not required. Damages
10 must be proved with a reasonable degree of certainty.

11 In other words, a plaintiff is never entitled to
12 recover conjectural or speculative damages. But if you
13 find the plaintiff is entitled to a verdict for actual
14 damages, your verdict should include an amount to cover
15 any past, present, and future damages which were
16 proximately caused by the defendant.

17 Any future damages must be reasonably certain to
18 occur in the future as a result of the defendant's acts.
19 Actual damages need not be proved to a mathematical
20 certainty or be based on evidence of the precise amount
21 of damages the plaintiff has suffered. Instead, the
22 evidence must allow you to determine what amount of
23 damages is fair, just, and reasonable.

24 Any future damages must be calculated to have
25 resulted from the alleged injury or damage sustained in

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1 this case. Future damages must be reduced to their
2 present cash value.

3 The defendant claims that the plaintiff had
4 preexisting injury or condition prior to the date that
5 the plaintiff claims that the defendant injured her. If
6 you find that the plaintiff has received an injury as a
7 result of the negligence of the defendant and is entitled
8 to recover for that injury, the fact that the plaintiff
9 had a preexisting injury or condition would not prevent
10 the plaintiff from recovering. The defendant is
11 responsible for all ill effects which, considering the
12 plaintiff's condition of health when the plaintiff was
13 injured, naturally and necessarily followed the injury.

14 The defendant takes the plaintiff as the plaintiff
15 is found, whether the plaintiff is in perfect health, in
16 poor health, or somewhere in between. A defendant's
17 liability is in no way lessened or affected because of
18 the fact that the injury would not have resulted or would
19 have -- would not have been as severe or serious had the
20 plaintiff been in good health or that the injuries were
21 aggravated and rendered more difficult to cure by reason
22 of the fact that the plaintiff was not in good health.
23 In other words, if the presence of a preexisting injury
24 or condition aggravates and prolongs the injury and
25 increases the damages, the plaintiff should be

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1 compensated for the increased or added damages.

2 A person with a preexisting injury or condition is
3 not, however, entitled to any compensation for the
4 preexisting injury or condition. In addition, if the
5 problems are the result of the natural progression of the
6 worsening of a preexisting injury or condition, then a
7 plaintiff would not be entitled to be compensated for
8 those problems.

9 Mental suffering, apprehension, shock, fright,
10 emotional upset, humiliation, and anxiety, either present
11 or expected in the future, can properly be considered as
12 an element of damages. The amount of damages for mental
13 suffering cannot be exactly measured.

14 Now, in reaching any verdict, you should not
15 consider whether any party in this case was or was not
16 covered by insurance. As you may know, some plaintiffs
17 are covered and some are not. And some have various
18 forms of partial coverage.

19 The same is true for the defendants. The law does
20 not allow the parties to present any evidence about
21 insurance or lack of insurance or amount of insurance.
22 And there is no way that you can accurately determine
23 whether any party in this case has insurance coverage;
24 or, if they have it, how much insurance they have.

25 More importantly, insurance or lack of insurance has

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1 no bearing on whether the defendant was or was not
2 negligent or on how much damage, if any, the plaintiff
3 has suffered.

4 Now, there are two possible verdicts you may find in
5 this case: in favor of the plaintiff in some amount, or
6 in favor of the defendant. And there is no significance
7 whatsoever in the order in which I state these possible
8 verdicts. It's simply that one must be stated first.

9 Now, you have been chosen and sworn to give the
10 parties in this case a fair and impartial trial. When
11 you have done so, you will have complied with your oath
12 and no one will have a right to criticize your verdict.
13 You must not be influenced by the opinions or expression
14 of opinion you may have heard outside the courtroom, but
15 rather should base your verdict solely on the testimony
16 of the sworn witnesses who took the stand, the exhibits
17 received into evidence, and the law which I have stated.

18 You should not be swayed by caprice, passion,
19 prejudice, or improper sympathy for or against anyone in
20 this case. Remember, you have no friends to reward or
21 enemies to punish, and all parties are entitled to a fair
22 and impartial trial.

23 It is your duty as jurors to consult with one
24 another and to deliberate in an effort to reach an
25 agreement. Each of you must decide this case for

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1 yourself, but only after impartial consideration of all
2 the evidence with your fellow jurors.

3 In the course of your deliberations, do not hesitate
4 to reexamine your own views and change your opinion if
5 you become convinced it is erroneous. However, do not
6 surrender your honest conviction as to the weight or
7 effect of the evidence solely because of the opinion of
8 your fellow jurors or for the mere purpose of returning a
9 verdict.

10 As I stated earlier, you are the judges: judges of
11 the facts. Your verdict must represent the considerate
12 judgment of each juror. All 12 of you must agree on the
13 verdict. In other words, your verdict must be unanimous.

14 Now, you may have noticed that I have read these
15 instructions. I do so to give you the law as accurately
16 as possible. I will give you a copy of these
17 instructions to have in the jury room. You may refer to
18 these instructions to assist you in your deliberations.
19 You must consider the instructions as a whole and may not
20 follow some and ignore others.

21 Now, I haven't selected a foreman yet. But in the
22 white shirt right here in the front row, you're in the --
23 the hot seat. So we'll just make you the foreperson.

24 So, Mr. Foreman, it will be your duty to preside
25 over the deliberations of the jury. If, during your

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1 deliberations, you should desire to communicate with the
2 Court, please reduce your message or question to writing,
3 signed by the foreperson only, and pass the note to the
4 bailiff, who will bring it to my attention. I will then
5 respond as promptly as possible, either in writing or by
6 having you return to the courtroom.

7 I caution you, however, with regard to any message
8 or question you might send, that you should never state
9 or specify your numerical division at the time.

10 Now, you have heard the evidence, and you have heard
11 the law. Whatever your verdict, Mr. Foreman, you will
12 indicate it on the verdict form and sign and date your
13 verdict.

14 And I'll just sort of show you the verdict form.
15 It's not overly complicated. You know, some just have
16 little two boxes to check. But there are three questions
17 on here. If -- you'll answer Question 1 first. If your
18 answer to Question 1 is yes, then you go on to No. 2. If
19 the answer is no, you stop right there and you're done
20 deliberating.

21 The same with Question 2: If the answer is yes,
22 you'll go on to Question 3. But if it is no, you will
23 stop deliberating.

24 And if you get to Question 3, then there is a blank
25 there. It's self-explanatory. And then, Mr. Foreman,

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1 you will sign your name at the bottom of the jury form
2 and return it, along with the instructions, to the Court.

3 Now, remember that although the foreperson is the
4 only juror who writes the verdict, it is not his alone.
5 The verdict has to be unanimous. Mr. Foreman, you are
6 not authorized to write the verdict until all of you have
7 agreed on the verdict.

8 Now, ladies and gentlemen, I'm going to send you to
9 your jury room, but do not discuss the case until you
10 have received a copy of this jury charge, the verdict
11 form, and the exhibits. Once you receive those things,
12 that will be your signal to begin your deliberations.

13 Once you begin your deliberations, you'll deliberate
14 until you have reached a verdict, at which time you will
15 knock on the door, advise the bailiff, and we will bring
16 you back into the courtroom to receive that verdict.

17 So I'm going to send you back to your jury room now.
18 It should only be a minute or two. I just need to check
19 with the parties to make sure that I've told you
20 everything correctly. But as I said, when you get the
21 verdict form, the jury instructions, and the evidence,
22 you'll begin deliberating. Okay. Thank you.

23 (Whereupon, the jury exited the courtroom at 10:19
24 a.m.)

25 THE COURT: All right. Any objections or exception

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1 to the jury instructions from the defendant?

2 MS. SPITZ: No, Your Honor.

3 THE COURT: From the plaintiff?

4 MS. COURAM: No, ma'am.

5 THE COURT: Okay. If y'all will check the evidence
6 to make sure that only those that were admitted into
7 evidence are there, and we'll send them back to the jury.

8 (Off the record at 10:20 a.m.)

9 (Whereupon, the jury began deliberating at 10:22
10 a.m.)

11 (On the record at 10:24 a.m.)

12 (Whereupon, the alternate juror entered the
13 courtroom at 10:24 a.m.)

14 THE COURT: Hello.

15 ALTERNATE JUROR: I'm lucky No. 13.

16 THE COURT: Exactly. So I just brought you in and
17 you can quickly just put this record, Maryann, just that
18 I excused her. I just brought you in to let you go. All
19 12 have made it to the end. We usually pick alternates
20 in case -- you know, you never know what's going to
21 happen.

22 ALTERNATE JUROR: Yeah.

23 THE COURT: And especially when it's going to last
24 more that one day, someone could've gotten into a car
25 accident, ironically, on the way here or something.

1 ALTERNATE JUROR: Right.

2 THE COURT: So ---

3 ALTERNATE JUROR: Right.

4 (Off the record from 10:24 a.m. until 12:01 p.m.)

5 (Whereupon, Court's Exhibits 4 and 5 were marked
6 while off the record.)

7 THE COURT: All right. I am told that we have a
8 verdict.

9 (Off the record briefly.)

10 THE COURT: You can bring the jury, please.

11 (Off the record briefly.)

12 (Whereupon, the jury entered the courtroom at 12:01
13 a.m.)

14 THE BAILIFF: The jurors are present and seated,
15 Your Honor.

16 THE COURT: Thank you. All right. Mr. Foreman, I
17 understand the jury has reached a verdict; is that
18 correct?

19 THE FOREPERSON: Yes, Your Honor.

20 THE COURT: If you would hand the verdict form to
21 the bailiff, please.

22 THE FOREPERSON: (Complied.)

23 THE COURT: Thank you.

24 (Off the record briefly.)

25 THE COURT: All right. Madam clerk, if you would

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1 publish the verdict, please.

2 DEPUTY CLERK OF COURT: May it please the Court?

3 THE COURT: Yes, ma'am.

4 VERDICT OF THE JURY

5 DEPUTY CLERK OF COURT: (As read): "In the Court of
6 Common Pleas for the Fifth Judicial Circuit, Civil Action
7 No. 2016-CP-40-2350, State of South Carolina, County of
8 Richland, *Glenda R. Couram, plaintiff, v. Sherwood*
9 *Tidwell, defendant*, No. 1: Do you, the jury, unanimously
10 find that the plaintiff, Glenda R. Couram, suffered
11 damages? Yes is checked. If the answer to Question 1 is
12 yes, proceed to Question 2.

13 "Question 2: Do you, the jury, unanimously find
14 that the damages suffered by plaintiff, Glenda R. Couram,
15 were proximately caused by the conduct of defendant,
16 Sherwood Tidwell? Yes is checked. If the answer to
17 Question 2 is yes, proceed to Question 3.

18 "Question 3: We, the jury, unanimously award
19 plaintiff, Glenda R. Couram, damages in the amount of
20 \$1,000. Signed" ---

21 THE FOREPERSON: --- Braden E. Wallace.

22 DEPUTY CLERK OF COURT: Thank you. --- "Braden E.
23 Wallace, jury foreperson, June 16th, 2017, Columbia,
24 South Carolina."

25 THE COURT: All right. Anything -- any request of

1 the jury before they are dismissed, Ms. Couram?

2 MS. COURAM: (Shook head from side to side.)

3 THE COURT: I need you to answer verbally.

4 MS. COURAM: No.

5 THE COURT: Okay. Anything from the defendant?

6 MS. SPITZ: No, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, thank
8 you for your jury service. Hold on -- hold on, hold on.
9 Give me two seconds. I know it's Friday afternoon and
10 you want to run. But just -- yeah.

11 I just wanted to thank you for being here. Of
12 course, we can't do what we do without having people here
13 willing to serve. And you have all been patient and
14 attentive, and I appreciate that.

15 So on behalf of Ms. Couram and Mr. Tidwell and
16 everybody here in Richland County, we absolutely
17 appreciate it. I'm going to let you go back to the jury
18 room to, you know, turn in your tags and work -- to get
19 work excuses. And we already have your checks. So I'm
20 going to ask you to just wait back there.

21 I also want to come talk to y'all just real quickly.
22 It won't take long. But I'll let you go on back to your
23 jury room now and just wait there for just a moment.
24 Okay. Thank you.

25 (Whereupon, the jury exited the courtroom at 12:06

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1 p.m.)

2 THE COURT: Any posttrial matters, Ms. Couram?

3 MS. COURAM: I will file a 59 motion -- 56 or 59,
4 whatever it's called.

5 THE COURT: Okay. How about you do that in writing.
6 And pursuant to the rules -- you know, within the
7 confines of the rules, make sure you send me a copy via
8 U.S. Mail or you -- I mean, you can drop it off in the
9 clerk's office, whatever, but make sure that at least one
10 copy comes directly to me, okay?

11 MS. COURAM: Okay.

12 THE COURT: Anything, Ms. Spitz?

13 MS. SPITZ: Your Honor, the only thing, I would note
14 that since the defense did file an offer of judgment for
15 \$20,000, that we would be entitled to a reduction for the
16 costs ---

17 THE COURT: Okay.

18 MS. SPITZ: --- that are provided under the statute
19 or rule.

20 THE COURT: Okay. Within that same time frame, if
21 you would provide proof of those costs, you know, an
22 affidavit of costs ---

23 MS. SPITZ: Yes, Your Honor.

24 THE COURT: --- whatever needs to go along with the
25 offer of judgment in order for me to make that

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1 determination. And make sure a copy of that comes to my
2 chambers as well.

3 MS. SPITZ: Yes, Your Honor. Would you like that in
4 the next ten days? Is that what you said or ---

5 THE COURT: Ten days.

6 MS. SPITZ: Okay.

7 THE COURT: Yes.

8 MS. SPITZ: Thank you.

9 THE COURT: Okay. Thank you all.

10 THE DEFENDANT: Thank you.

11 THE COURT: If there's nothing else ---

12 MS. SPITZ: All right.

13 THE COURT: --- we will stand adjourned.

14 MS. SPITZ: Thank you, Judge.

15 THE COURT: Thank you.

16 (Whereupon, the proceedings were concluded at 12:07 p.m.)

17 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth 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 Circuit Court for Richland County, South Carolina, on the 15th and 16th days of June, 2017.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
December 26, 2017

B02

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Sept 23, 2015

Lexington Medical Center - Lexington
Lexington, SC

COURAM, GLENDA

November 3, 1958

Born

Female

Sex

1326204

MRN

104 MACAW LN
LEXINGTON, SC 29073
Address

English (preferred)
Language

Other Race
Race

Not Hispanic or Latino
Ethnicity

Exhibit 1

Visit Summary

Reason for Visit

Health Issues Reviewed:

Motor vehicle accident

Strain of neck muscle, initial encounter

Strain of rhomboid muscle, initial encounter

Treatment Plans

Planned Goals not documented

Interventions Provided

Tramadol HCl - 50 MG Oral Tablet - Start

Printed Prescription

Labs/Procedure/Imaging

XR Cervical Spine AP Lateral and Odontoid (Trauma); To Be Done: 23 Sep 2015

XR Chest PA and Lateral; To Be Done: 23 Sep 2015

Follow-up with your regular physician if no improvement come back if you get worse or have any problems.

Instructions

Instructions not documented

Vitals

BP Systolic	143 mm[Hg]
BP Diastolic	99 mm[Hg]
Temperature	98.2 f
Height	62 in
Weight	191.125 lb
Body Mass Index Calculated	34.96 kg/m2
Body Surface Area Calculated	1.87
Heart Rate	85 /min
Physical Findings	18
O2 SAT	96 %
Physical Findings	8

Documented Progress

Documented Pain Scale

Medications

ALPRAZolam 0.5 MG Oral Tablet

Take 1 tablet daily as needed

Started 2/20/2013

BuPROPion HCl ER (XL) 300 MG Oral Tablet Extended Release 24 Hour

Take 1 tablet daily

Started 2/20/2013

Multiple Vitamin TABS

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NIFEdipine ER Osmotic 30 MG Oral Tablet Extended Release 24 Hour
TAKE 1 TABLET DAILY.
Quantity 30

Started 5-June-2013

Sept 23, 2015

Phentermine HCl CAPS

TraMADol HCl - 50 MG Oral Tablet
TAKE 1 TO 2 TABLETS EVERY 4 TO 6 HOURS AS NEEDED FOR PAIN.
Quantity 30

STAGGS, Clifford M.D.

Started 23-Sep-2015

Exhibit 1

Venlafaxine HCl ER 75 MG Oral Capsule Extended Release 24 Hour (Effexor XR) LYLE, David M.D.
TAKE 1 CAPSULE DAILY.
Quantity 30 Refills 5

Started 5-June-2013

Problems

Anxiety
Cervical cancer screening
Cervical polyp
Depression
Encounter for routine gynecological examination
Endocervical polyp
Hypertension
Motor vehicle accident
Panic attack
Strain of neck muscle, initial encounter
Strain of rhomboid muscle, initial encounter

Allergies

Estrogens

Results

Results not documented

Immunizations

Immunizations not documented

Social History

Smoking Status

Never smoker

Health Care Providers

Ambulatory Health Care Facilities
Clifford Staggs, M.D.

Unknown
Address

donotuse@lexhealth.org
Apple Email

Ambulatory Health Care Facilities
David Lyle, M.D.

Unknown
Address

donotuse@lexhealth.org
Apple Email

Pharmacy
WAL-MART PHARMACY 881

LEXINGTON, SC 29057-7066
Address

Document Details

Lexington Medical Center - Lexington
511 West Main Street (803) 358-6100
Lexington, SC 29012 Work Phone
1-800-665

11 410.895 C. transform 4.1.7.1
September 23 2015 17:34-0400
Sherril Ranta
Created

Powered by Allscripts™

Style sheet V2.2

9/23/2015
Instructions for GLENDA R COURAM

Urgent Care LMC-Lexington

Torticollis, Acute, Adult

What is it?

Torticollis is a sudden stiffening of the big muscle on one side of the neck. This may cause the neck to twist or the head to tilt to one side. It can be very painful. It is sometimes called wry neck.

What is the cause?

The stiffness is caused by a spasm in the big muscle that runs from just behind the ear down the neck to the collarbone and breastbone. This is called the sternocleidomastoid muscle. Spasm can occur after a minor injury. It may be caused by sleeping with the neck in a twisted position. Cold weather may make it worse. Sometimes torticollis occurs after an accident, such as a car accident.

What are the symptoms?

Your neck is stiff and painful on one side. The pain often may *not start until a couple of days after an injury*. Your head may be pulled to one side because of the tight muscle. It may be hard to move your head to one or both sides. There is often an obvious lump in the neck muscle. You may have a headache. One shoulder may be higher than the other.

How is it treated?

We usually recommend a soft neck brace and rest. We may recommend anti-inflammatory medicines or muscle relaxants. Warm compresses or a heating pad may help the muscle relax. We can show you some gentle exercises to stretch the neck muscle. We may suggest you go to a physical therapist. You *can also try massage therapy*.

What can I expect?

Torticollis usually gets better in a few days with treatment and goes away within a week or two. It may occur again. If it does not go away as expected, or keeps returning, we may need to do more tests.

What to watch for.

Call us if your neck does not get better as expected. Let us *know if new symptoms develop*. Watch for fever, nausea, and vomiting. Let us know if this problem returns. Call us if you get tingling, numbness, or weakness in your arm.

Sep 23, 2015

Lexington Medical Center - Lexington
811 West Main Street
Lexington, SC 29072
(803)358-6100

9/23/2015

Instructions for GLENDA R COURAM

Urgent Care LMC-Lexington

TraMADol HCl - 50 MG Oral Tablet ; TAKE 1 TO 2 TABLETS EVERY 4 TO 6 HOURS AS NEEDED FOR PAIN

Exhibit 1

396

Sept 23, 2015

Lexington Medical Center - Lexington
811 West Main Street
Lexington, SC 29072
(803)358-6100

9/23/2015
Instructions for GLENDA R COURAM

Urgent Care LMC-Lexington

Motor vehicle accident

Tests:

Ordered Today :

XR Cervical Spine AP Lateral and Odontoid (Trauma) Requested for: 23Sep2015 ;

XR Chest PA and Lateral Requested for: 23Sep2015 ;

Strain of rhomboid muscle, initial encounter

Medications Prescribed:

TraMADol HCl - 50 MG Oral Tablet ; TAKE 1 TO 2 TABLETS EVERY 4 TO 6 HOURS AS NEEDED FOR PAIN

Miscellaneous

Tests:

UCC Vital Signs Requested for: 23Sep2015 ;

No visit orders documented

Oct 2, 2015

***Diagnoses this Visit**

Back pain, thoracic (M54.6)
Lumbago (M54.5)
Muscle spasm (M62.838)

Exhibit 2

Referral and Consult Requests this Visit

Referral

Date/Time: 10/02/2015 By: Frick FNP, Kimberly

Referred To Specialty: Physical Therapy

Referred To: --

*Reason for Referral: Neck, upper back and low back pain s/p MVC on 9/18/2015

Procedures Documented this Visit

No Procedures documented

Smoking Status

Never

Patient Education Materials Provided this Visit

No Patient Education documented

Additional Visit Comments:

398

October 2, 2015 Parkridge Medical

Visit Summary for GLENDA COURAM

We would like to thank you for allowing us to assist you with your healthcare needs. Our entire staff strives to provide an excellent experience for our patients and their families. The following includes information regarding your visit.

Age: 56 years Sex: Female DOB: 11/03/1958 MRN: 138495
Address: 104 MACAW LN LEXINGTON, SC 29073
Home: (803) 358-0127 Work: (803) 896-7509 Mobile: (803) 409-9427
Primary Care Provider: Birdsong MD, Claire
Race: Ethnicity: Not Hispanic or Latino
Preferred Language: English
Health Plan: 1°BCBS STATE HEALTH PLAN -3707

Exhibit 2

Visit Information

 Parkridge Medical Associates
100 Palmetto Health Parkway, Suite 220 Columbia, SC, 29212
Phone: (803) 749-0693 Fax: (803) 749-3986

 Visit Date: 10/02/2015 01:40 pm
 Scheduled Provider: Frick, Kimberly FNP
Visit Provider: Frick FNP, Kimberly
Referring Provider: --
 Reason for Visit: Shoulder/ back pain. ---Has been having headaches.

Future Appointments

Appt. Date: 10/05/2015 08:20:00 am
Scheduled Provider: Frick, Kimberly FNP
Location: Parkridge Medical Associates

Appt. Date: 12/30/2015 08:00:00 am
Scheduled Provider: Birdsong Claire MD
Location: Parkridge Medical Associates

Problems and Health Issues

Acute Venous Embolism and Thrombosis of Other Specified Veins (453.8)
Anxiety State, Unspecified (300.00)
Excessive or Frequent Menstruation (626.2)
Leiomyoma of Uterus, Unspecified (218.9)
Other Abnormality of Red Blood Cells (790.09)
Other and Unspecified Hyperlipidemia (272.4)
Unspecified Essential Hypertension (401.9)
Anemia, iron deficiency (280.9)
Elevated hemoglobin A1c (2870876016)
No Problem, Feared Complaint Unfounded (V65.5)
Obesity (278.00)

Allergies

estrogens Reactions: DVT (deep venous thrombosis) 14-SEP-2015 23:52:08

Oct. 2, 2015

All Known Current Prescriptions and Reported Medications

Prescriptions

phentermine 37.5 mg oral capsule (phentermine)

Take 1 cap(37.5 Milligram) oral daily, 2 refills authorized

Instructions: for appetite suppression

Procardia XL 30 mg oral tablet, extended release (NIFEdipine)

Take 1 tab(s)(30 Milligram) oral daily, 11 refills authorized

Skelaxin 800 mg oral tablet (metaxalone)

Take 1 tab(s)(800 Milligram) oral 3 times a day for 14 Days, 0 refills authorized

venlafaxine 75 mg oral capsule, extended release (venlafaxine)

Take 1 cap(75 Milligram) oral daily, 11 refills authorized

Wellbutrin XL 300 mg/24 hours oral tablet, extended release (buPROPion)

Take 1 tab(s)(300 Milligram) oral daily, 11 refills authorized

Xanax 0.5 mg oral tablet (alprazolam)

Take 1 tab(s)(0.5 Milligram) oral daily for anxiety, 0 refills authorized

Exhibit 2

Other Reported Medications

Multiple Vitamins oral tablet (multivitamin)

Take 1 tab(s) oral daily

tramadol 50 mg oral tablet (tramadol)

Take 1 tab(s)(50 Milligram) oral every 4 hours for pain

New Medications this Visit

New Prescriptions

Skelaxin 800 mg oral tablet (metaxalone)

Take 1 tab(s)(800 Milligram) oral 3 times a day for 14 Days, 0 refills authorized

Vitals and Measurements this Visit (last charted value for your 10/02/2015 visit)

Height:: 62 in

Weight:: 194.4 lb

Body Mass Index:: 35.55 kg/m2

BSA: 1.96 m2

Systolic Blood Pressure: 154 mmHg

Diastolic Blood Pressure: 109 mmHg

Mean Arterial Pressure: 124 mmHg

Peripheral Pulse Rate: 87 bpm

Allergies Verified?: Yes

Medication History Verified?: Yes

Comments: Pt. states she is having some anxiety in office due to recent traffic accident.

Laboratory and Radiology this Visit (last charted value for your 10/02/2015 visit)

No Laboratory and Radiology documented

Orders this Visit

Name: COURAM, GLENDA R
10/2/2015 2:18:35 PM

DOB: 11/3/1958

MRN: 349004
Page: 2

400

No Laboratory and Radiology documented

Palmetto Health
Spine
11/3/16

* Orders this Visit

Requests (General Services)

Physical Therapy Evaluation and Treatment

Requested Date: 11/03/2016

Requests (Return to Office)

Return Requested Date: 11/03/2016

Return in 5 weeks

* Diagnoses this Visit

Myalgia (M79.1)

Pain in thoracic spine (M54.6)

Referral and Consult Requests this Visit

Referral

Date/Time: 11/03/2016 By: Singh DO, Amit

Referred To Specialty: Psychology

Referred To: Dr Huss

Reason for Referral: -

Procedures Documented this Visit

No Procedures documented

Smoking Status

Never smoker

* Patient Education Materials Provided this Visit

BACK AND NECK PAIN, General

Additional Visit Comments:

401

January 06, 2017

File No.: 20160881.000

CUSTODIAN OF RECORDS

Parkridge Medical Associates
190 Parkridge Dr, Ste 200
Columbia, SC 29212

Re: Glenda R. Couram v. Sherwood Tidwell
Case No. 2016-CP-40-02350
Name: Glenda R. Couram
DOB: November 3, 1958

Dear Sir/Madam:

Enclosed please find our subpoena requesting that you produce to us a **complete** copy of your records on **Glenda R. Couram; DOB: November 3, 1958, by January 26, 2017.**

Please be sure to include copies of any and all medical records within your possession or control, including all medical records, reports, documents, interdepartmental notes, all inpatient, outpatient and emergency medical records, **health care questionnaires, prior medical history questionnaires, new patient questionnaires, correspondence,** medical reports, test results, lab test results, x-rays, x-ray reports, CT scans, MRI's, physician's reports, progress notes, consultation reports, office notes, nurses' notes, evaluations, interviews, charts, diagrams, treatment plans, medical flow sheets, telephone call reports, medical logs, disability determination information, questionnaires, **bills for services rendered,** and any other written, printed, or electronic information contained in your medical file concerning treatment of the above-named patient **FOR ALL DATES OF SERVICE after March 23, 2016.**

Please return with your records the enclosed **Affidavit of Records Custodian,** certifying that the records provided in response to this subpoena are, a complete and accurate copy of the patient's medical records.

These records are sought with regard to a personal injury liability claim. S.C. General Statute § 38-77-341 sets the maximum charges permissible for medical records requested in personal injury liability claims as follows: "The maximum fee for each request shall be sixty-five cents (\$0.65) per page for the first 30 pages, fifty cents (\$.50)

per page for all other pages, provided that the health care provider may impose a minimum fee of up to fifteen dollars (\$15.00), inclusive of copying costs." *Prior to preparing these copies, please notify us if the cost is expected to exceed \$75.00.*

HIPAA COMPLIANCE INFORMATION

Please note that under HIPAA, 45 C.F.R. 164.512, it is appropriate to respond to a "subpoena, discovery request or other lawful process that is not accompanied by an order of a court" if the covered entity receives a written statement and accompanying documentation demonstrating that the party requesting such information has made a good faith attempt to provide written notice to the individual and the notice includes specific information about the litigation to permit the individual to raise an objection to the court or administrative tribunal and the time for raising objections has lapsed and no objections were filed.

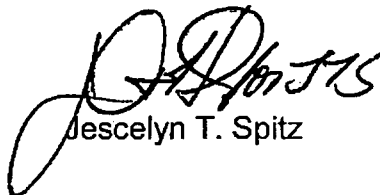
A copy of the subpoena and cover letter you have received has been served on counsel, for the Plaintiff, Glenda Couram, or the Plaintiff if proceeding without counsel. The time for objections under Rule 45 of the South Carolina General Statute is fourteen (14) days (or by the date of the subpoena if the subpoena requests records to be produced in less than fourteen days). Provided that no objection is raised within that time frame, we would insist that you honor the provisions of 45 CFR 164.512 and provide us with the all requested records without further action.

We would request that you not send us the records any sooner than fourteen days after the date of this subpoena so as to afford the patient time to object under the rules. Should this office receive notice of an objection, we will notify you and we will ask that you await resolution of the matter by the courts. Again, provided no objection is filed within fourteen days, please provide the records to our office by January 26, 2017.

Thank you for your attention to this request. Should you have any questions, please call my paralegal, Jeana Jenkins, at (800) 774-8242.

Very truly yours,

CLAWSON and STAUBES, LLC



Jescelyn T. Spitz

JTS/gjj
Enclosures

cc: Glenda R. Couram

403

STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS IN THE COUNTY OF RICHLAND

Glenda R. Couram, Plaintiff

v.

SUBPOENA DUCES TECUM IN A CIVIL CASE

Sherwood Tidwell, Defendant

Case Number: 2016-CP-40-02350

Pending in Richland County

TO: CUSTODIAN OF RECORDS

Parkridge Medical Associates
190 Parkridge Dr, Ste 200
Columbia, SC 29212

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME at

CLAWSON and STAUBES, LLC
1612 Marion Street, Suite 200
Columbia, South Carolina 29201-2939

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below: **SEE ATTACHMENT "A"**

PLACE

DATE AND TIME at

CLAWSON and STAUBES, LLC
1612 Marion Street, Suite 200
Columbia, South Carolina 29201-2939

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

CLAWSON and STAUBES, LLC

Jescelyn T. Spitz

January 06, 2017

Jescelyn T. Spitz

Date

Print Name

1612 Marion Street, Suite 200,
Columbia, South Carolina 29201-2939
(800) 774-8242
Attorney for Defendant

PROOF OF SERVICE

SERVED	DATE January 06, 2017	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE Parkridge Medical Associates 190 Parkridge Dr, Ste 200 Columbia, SC 29212	
SERVED ON	Parkridge Medical Associates	MANNER OF SERVICE
SERVED BY	Jeana Jenkins	TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on January 6, 2017

Jeana Jenkins
SIGNATURE OF SERVER
1612 Marion Street, Suite 200
Columbia, South Carolina 29201-2939
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

405

CERTIFICATE OF AUTHENTICITY

The undersigned, hereby certified that the enclosed documents are a complete, true and accurate copy of the records regarding Glenda R. Couram, as kept in the normal course of business at the offices of:

CUSTODIAN OF RECORDS

Parkridge Medical Associates
190 Parkridge Dr, Ste 200
Columbia, SC 29212

Signed: _____

Position: _____

Today's Date: _____

Company: _____

Address: _____

Number of Pages: _____

406

ATTACHMENT "A"

Name: Glenda R. Couram
DOB: November 3, 1958

Copies of any and all medical records within your possession or control, including but not limited to any and all medical records, reports, documents, interdepartmental notes or records pertaining to the treatment of the above named, including, but not limited to, all inpatient, outpatient and emergency medical records, medical reports, test results, lab test results, x-rays, x-ray reports, CT scans, MRI's, physician's reports, progress notes, consultation reports, office notes, nurses' notes, health care questionnaires, correspondence, bills for services rendered, evaluations, interviews, charts, diagrams, treatment plans, medical flow sheets, telephone call reports, medical logs, disability determination information, questionnaires, and any other written or printed information contained in your medical file concerning treatment of the above-named patient. This subpoena is deemed continuing until the last date of treatment.

407

Reason for Visit: New Patient-(Ref By Dr. Birdsong) Pain in upper back and left shoulder.

Palmetto Hlth
Spine
11/3/16

Future Appointments

Appt. Date: 11/08/2016 08:00:00 am
Scheduled Provider: Turner, Carmel
Location: Palmetto Health Spine Center

Appt. Date: 11/08/2016 09:00:00 am
Scheduled Provider: Huss Ph.D., Debra
Location: Palmetto Health Spine Center

Appt. Date: 12/08/2016 08:00:00 am
Scheduled Provider: Singh, Amit
Location: Palmetto Health Spine Center

Appt. Date: 03/28/2017 08:15:00 am
Scheduled Provider: Birdsong Claire MD
Location: Parkridge Medical Associates

Exhibit 3

Problems and Health Issues

Acute Venous Embolism and Thrombosis of Other Specified Veins (453.8)
Anxiety State, Unspecified (300.00)
Excessive or Frequent Menstruation (626.2)
Leiomyoma of Uterus, Unspecified (218.9)
Other Abnormality of Red Blood Cells (790.09)
Other and Unspecified Hyperlipidemia (272.4)
Unspecified Essential Hypertension (401.9)
Anemia, iron deficiency (280.9)
Elevated hemoglobin A1c (2870876016)
No Problem, Feared Complaint Unfounded (V65.5)
Obesity (278.00)

Allergies

estrogens Reactions: DVT (deep venous thrombosis)..

All Known Current Prescriptions and Reported Medications

Prescriptions

ALPRAZolam 0.5 mg oral tablet (ALPRAZolam)

Take 1 tab(s)(0.5 Milligram) oral 3 times a day for anxiety, 0 refills authorized

408

Nov 3, 2016
Palmetto Health Spine

Exhibit 3

Document info

Result type:

Result date:

Result status:

Performed by:

Verified by:

Modified by:

Visit Summary

* Nov 03, 2016, 10:55 a.m.

altered

Sherry Cooper

Sherry Cooper

Sherry Cooper

Visit Summary

Patient:

GLEND A COURAM

DOB:

Nov 03, 1958

Visit Summary

Visit Summary for GLEND A COURAM

We would like to thank you for allowing us to assist you with your healthcare needs. Our entire staff strives to provide an

excellent experience for our patients and their families. The following includes information regarding your visit.

Age: 58 years Sex: Female DOB: 11/03/1958 MRN: 138495

Address: 104 MACAW LN LEXINGTON, SC 29073

Home: (803) 358-0127 Work: (803) 896-7509 Mobile: (803) 409-9427

Primary Care Provider: Birdsong MD, Claire

Race: Black or African American Ethnicity: Not Hispanic or Latino

Preferred Language: English

Health Plan: 1st BCBS STATE HEALTH PLAN -3707

Visit Information

* Palmetto Health Spine Center

Palmetto Health Spine Center Columbia, SC, 29212

Phone: (803) 907-7675 Fax: (803) 907-7699

Visit Date: 11/03/2016 08:30 am

Scheduled Provider: Singh, Amit

Visit Provider: Singh DO, Amit

Referring Provider: --

409

Palmetto H/Th
Spine
11/3/16

Instructions: called to Walmart

Lotrel 5 mg-10 mg oral capsule (amlODIPine-benazepril)

Take 1 cap oral daily, 11 refills authorized

Instructions: cancel refills on procordia

metaxalone 800 mg oral tablet

Exhibit 3

Instructions: TAKE ONE TABLET BY MOUTH THREE TIMES DAILY FOR 14 DAYS

naproxen 500 mg oral tablet (naproxen)

Take 1 tab(s)(500 Milligram) oral 2 times a day for pain, 0 refills authorized

Instructions: with food for low back pain

Procardia XL 30 mg oral tablet, extended release (NIFEdipine)

Take 1 tab(s)(30 Milligram) oral daily, 11 refills authorized

venlafaxine 75 mg oral capsule, extended release (venlafaxine)

Take 1 cap(75 Milligram) oral daily, 11 refills authorized

Wellbutrin XL 300 mg/24 hours oral tablet, extended release (buPROPion)

Take 1 tab(s)(300 Milligram) oral daily, 11 refills authorized

Other Reported Medications

Multiple Vitamins oral tablet (multivitamin)

Take 1 tab(s) oral daily

New Medications this Visit

New Prescriptions

No new prescriptions for this visit

Vitals and Measurements this Visit (last charted value for your 11/03/2016 visit)

Height:: 62 in

Weight:: 214 lb

Body Mass Index:: 39.14 kg/m2

BSA: 2.06 m2

Systolic Blood Pressure: 124 mmHg

Diastolic Blood Pressure: 92 mmHg

Mean Arterial Pressure: 103 mmHg

Peripheral Pulse Rate: 88 bpm

Oxygen Saturation: 95 %

Respiratory Rate: 18 br/min

Allergies Verified?: Yes

Medication History Verified?: Yes

Medical History Verified?: Yes

Laboratory and Radiology this Visit (last charted value for your 11/03/2016 visit)

4/10

Exhibit #3

CERTIFICATE OF AUTHENTICITY

The undersigned, hereby certified that the enclosed documents are a complete, true and accurate copy of the records regarding Glenda R. Couram, as kept in the normal course of business at the offices of:

CUSTODIAN OF RECORDS

Palmetto Health Spine Center
100 Palmetto Health Pwy Ste 250
Columbia, SC 29212-1757

Signed: _____

Position: _____

Today's Date: _____

Company: _____

Address: _____

Number of Pages: _____

Manager
4/6/2017
Palmetto Health Spine Center
100 Palmetto Health Pkwy, Ste 250
Columbia, SC 29212
87

411

PH Spine Center Note

Patient: COURAM, GLENDA R MRN: 138495 FIN: B2016102702406
Age: 58 years Sex: Female DOB: 11/3/1958
Associated Diagnoses: Pain in thoracic spine; Myalgia
Author: Singh DO, Amit

Visit Information

Date of Service: 11/03/2016 07:56 am Performing Location: Palmetto Health Spine Center Encounter#: B2016102702406

Primary Care Provider (PCP): Birdsong MD, Claire NPI# 1346216306

Chief Complaint

11/3/2016 8:22 AM EDT New Patient-(Ref By Dr. Birdsong) Pain in upper back and left shoulder.

History of Present Illness

Patient presents as a referral to be evaluated for chronic back pain at this point. She states that her symptoms began after a MVC in 09/18/2015. Since that time she has worked with physical therapy for a proximally 7 months. She states that she did have improvement however her symptoms seem to have plateaued. She presents today continuing to complain of what she describes as constant mid back pain that is actively worse on the left compared to the right. Worsen the pain is typically right below the left scapula. It is described as stabbing, muscular, throbbing, sharp and aching. Aggravating factors include any type of physical activity including prolonged sitting, walking, lifting or driving. Alleviating factors include sitting up, medications and the supine position. She denies any radiation of the pain. She denies any upper or lower extremity symptoms. She does endorse a history of anxiety, depression.

Review of Systems

Constitutional: Fatigue.
Eye: Negative.
Ear/Nose/Mouth/Throat: Negative.
Respiratory: Negative.
Cardiovascular: Negative.
Gastrointestinal: Negative.
Genitourinary: Negative.
Hematology/Lymphatics: Negative.
Endocrine: Negative.
Immunologic: Negative.
Musculoskeletal: Back pain, Neck pain, Muscle spasm.
Integumentary: Negative.
Neurologic: Negative.
Psychiatric: Anxiety.
All other systems reviewed and negative

Health Status

Allergies:

Allergic Reactions (All)

Severe

Estrogens (Dvt (deep venous thrombosis)..)

Canceled/Inactive Reactions (All)

No known allergies

Medications: (Selected)

Prescriptions

Prescribed

Blood Pressure medication
ALPRAZolam 0.5 mg oral tablet: 1 tab(s) (0.5 mg), PO, TID, Instructions: called to Walmart, PRN: for anxiety, # 30 tab(s), 0 Refill(s), Type: Maintenance
Lotrel 5 mg-10 mg oral capsule: 1 cap(s), PO, Daily, Instructions: cancel refills on procordia, # 30 cap(s), 11 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 cap(s) po daily, Instr: cancel refills on procordia

Printed by: Colodny, Lauren
Printed on: 1/16/2017 11:13 AM EST

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Page 1 of 4
(Continued)

Procardia XL 30 mg oral tablet, extended release: 1 tab(s) (30 mg), po, daily, # 30 tab(s), 11 Refill(s), Type: Soft Stop, 1 tab(s) po daily
 Wellbutrin XL 300 mg/24 hours oral tablet, extended release: 1 tab(s) (300 mg), po, daily, # 30 tab(s), 11 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 tab(s) po daily
 metaxalone 800 mg oral tablet: See Instructions, Instructions: TAKE ONE TABLET BY MOUTH THREE TIMES DAILY FOR 14 DAYS, # 42 tab(s), Type: Soft Stop, Pharmacy: Wal-Mart Pharmacy 4521, TAKE ONE TABLET BY MOUTH THREE TIMES DAILY FOR 14 DAYS
 naproxen 500 mg oral tablet: 1 tab(s) (500 mg), PO, BID, Instructions: with food for low back pain, PRN: for pain, # 20 tab(s), 0 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 tab(s) po bid, PRN: for pain, Instr: with food for low back pain
 venlafaxine 75 mg oral capsule, extended release: 1 cap(s) (75 mg), po, daily, # 30 cap(s), 11 Refill(s), Pharmacy: Wal-Mart Pharmacy 4521, 1 cap(s) po daily

Documented MedicationsDocumented

Multiple Vitamins oral tablet: 1 tab(s), po, daily, 0 Refill(s), Type: Maintenance

Problem list:All Problems

Acute Venous Embolism and Thrombosis of Other Specified Veins / ICD-9-CM 453.8
 Anemia, iron deficiency / ICD-9-CM 280.9 / Confirmed
 Anxiety State, Unspecified / ICD-9-CM 300.00
 Excessive or Frequent Menstruation / ICD-9-CM 626.2
 Elevated hemoglobin A1c / SNOMED CT 2870876016 / Confirmed
 Leiomyoma of Uterus, Unspecified / ICD-9-CM 218.9
 No Problem, Feared Complaint Unfounded / ICD-9-CM V65.5 / Confirmed
 Obesity / ICD-9-CM 278.00 / Probable
 Other Abnormality of Red Blood Cells / ICD-9-CM 790.09
 Other and Unspecified Hyperlipidemia / ICD-9-CM 272.4
 Unspecified Essential Hypertension / ICD-9-CM 401.9
 Resolved: Anxiety / ICD-9-CM 300.00
 Resolved: Depression / ICD-9-CM 311
 Resolved: DVT left leg due to oral contraceptives
 Resolved: Excessive Weight Gain / ICD-9-CM 783.1
 Resolved: Fatigue / ICD-9-CM 780.79
 Resolved: hand tendinitis
 Resolved: HTN / ICD-9-CM 401.9
 Resolved: Hyperlipidemia LDL Goal < 100 / ICD-9-CM 272.4
 Resolved: Long-Term (Current) Use of Anticoagulants / ICD-9-CM V58.61
 Resolved: Obesity / ICD-9-CM 278.00
 Resolved: Other Dyspnea and Respiratory Abnormality / ICD-9-CM 786.09
 Resolved: Other Nonspecific Findings on Examination of Blood / ICD-9-CM 790.99
 Resolved: Pain in Limb / ICD-9-CM 729.5
 Resolved: Uterine Fibroids Affecting Pregnancy / ICD-9-CM 654.10

Histories**Past Medical History:**Resolved

Fatigue (780.79): Onset on 7/31/2012 at 53 years. Resolved.
 Excessive Weight Gain (783.1): Onset on 7/31/2012 at 53 years. Resolved.
 DVT left leg due to oral contraceptives: Onset on 1/1/2011 at 52 years. Resolved.
 HTN (401.9): Resolved.
 Anxiety (300.00): Resolved.
 Hyperlipidemia LDL Goal < 100 (272.4): Resolved.
 Uterine Fibroids Affecting Pregnancy (654.10): Resolved.
 hand tendinitis: Resolved.
 Depression (311): Resolved.
 Obesity (278.00): Resolved.

Family History:

High blood pressure
 Father (living)
 Hypertension..

Behavioral Health Consultation *

Patient: COURAM, GLENDA R MRN: 138495 FIN: B2016110300488

Age: 58 years Sex: Female DOB: 11/3/1958

Associated Diagnoses: Post-traumatic stress disorder, unspecified; Generalized anxiety disorder;
Major depressive disorder, single episode, moderate

Author: Huss Ph.D, Debra B

Behavioral Health Initial Evaluation

Visit Information

Date of Service: 11/08/2016 07:53 am Performing Location: Palmetto Health Spine Center Encounter#: B2016110300488

Primary Care Provider (PCP): Birdsong MD, Claire NPI# 1346216306

Referring Provider: Dr. Amit Singh, D.O. referred patient for a behavioral health evaluation to address anxiety that may negatively impact pain symptoms.

Health Status

Medications: (Selected)

Prescriptions*Prescribed*ALPRAZolam 0.5 mg oral tablet: 1 tab(s) (0.5 mg), PO, TID, Instructions: called to Walmart,
PRN: for anxiety, # 30 tab(s), 0 Refill(s), Type: MaintenanceLotrel 5 mg-10 mg oral capsule: 1 cap(s), PO, Daily, Instructions: cancel refills on procardia, #
30 cap(s), 11 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 cap(s) po
daily, Instr:cancel refills on procardiaProcardia XL 30 mg oral tablet, extended release: 1 tab(s) (30 mg), po, daily, # 30 tab(s), 11
Refill(s), Type: Soft Stop, 1 tab(s) po dailyWellbutrin XL 300 mg/24 hours oral tablet, extended release: 1 tab(s) (300 mg), po, daily, #
30 tab(s), 11 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 tab(s) po
dailymetaxalone 800 mg oral tablet: See Instructions, Instructions: TAKE ONE TABLET BY
MOUTH THREE TIMES DAILY FOR 14 DAYS, # 42 tab(s), Type: Soft Stop, Pharmacy:Printed by: Colodny, Lauren
Printed on: 1/16/2017 11:13 AM EST

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(Continued)

Wal-Mart Pharmacy 4521, TAKE ONE TABLET BY MOUTH THREE TIMES DAILY FOR 14 DAYS

naproxen 500 mg oral tablet: 1 tab(s) (500 mg), PO, BID, Instructions: with food for low back pain, PRN: for pain, # 20 tab(s), 0 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 tab(s) po bid, PRN: for pain, Instr: with food for low back pain
venlafaxine 75 mg oral capsule, extended release: 1 cap(s) (75 mg), po, daily, # 30 cap(s), 11 Refill(s), Pharmacy: Wal-Mart Pharmacy 4521, 1 cap(s) po daily.

Documented Medications

Documented

Multiple Vitamins oral tablet: 1 tab(s), po, daily, 0 Refill(s), Type: Maintenance

Problem list:

All Problems

Acute Venous Embolism and Thrombosis of Other Specified Veins / ICD-9-CM 453.8
Anemia, iron deficiency / ICD-9-CM 280.9 / Confirmed
Anxiety State, Unspecified / ICD-9-CM 300.00
Excessive or Frequent Menstruation / ICD-9-CM 626.2
Elevated hemoglobin A1c / SNOMED CT 2870876016 / Confirmed
Leiomyoma of Uterus, Unspecified / ICD-9-CM 218.9
No Problem, Feared Complaint Unfounded / ICD-9-CM V65.5 / Confirmed
Obesity / ICD-9-CM 278.00 / Probable
Other Abnormality of Red Blood Cells / ICD-9-CM 790.09
Other and Unspecified Hyperlipidemia / ICD-9-CM 272.4
Unspecified Essential Hypertension / ICD-9-CM 401.9
Resolved: Anxiety / ICD-9-CM 300.00
Resolved: Depression / ICD-9-CM 311
Resolved: DVT left leg due to oral contraceptives
Resolved: Excessive Weight Gain / ICD-9-CM 783.1
Resolved: Fatigue / ICD-9-CM 780.79
Resolved: hand tendinitis
Resolved: HTN / ICD-9-CM 401.9
Resolved: Hyperlipidemia LDL Goal < 100 / ICD-9-CM 272.4
Resolved: Long-Term (Current) Use of Anticoagulants / ICD-9-CM V58.61
Resolved: Obesity / ICD-9-CM 278.00
Resolved: Other Dyspnea and Respiratory Abnormality / ICD-9-CM 786.09
Resolved: Other Nonspecific Findings on Examination of Blood / ICD-9-CM 790.99
Resolved: Pain in Limb / ICD-9-CM 729.5
Resolved: Uterine Fibroids Affecting Pregnancy / ICD-9-CM 654.10

Histories**Past Medical History:**Resolved

Fatigue (780.79): Onset on 7/31/2012 at 53 years. Resolved.
Excessive Weight Gain (783.1): Onset on 7/31/2012 at 53 years. Resolved.
DVT left leg due to oral contraceptives: Onset on 1/1/2011 at 52 years. Resolved.
HTN (401.9): Resolved.
Anxiety (300.00): Resolved.
Hyperlipidemia LDL Goal < 100 (272.4): Resolved.
Uterine Fibroids Affecting Pregnancy (654.10): Resolved.
hand tendinitis: Resolved.
Depression (311): Resolved.
Obesity (278.00): Resolved.

Family History:

High blood pressure
Father (living)
Hypertension..
Father (living)

Procedure history:

no surgery.

Social History:

Alcohol Assessment: Denies Alcohol Use
Never

Tobacco Assessment: Denies Tobacco Use
Never

Substance Abuse Assessment: Denies Substance Abuse
Never

Employment and School Assessment
Employed

Comments:
06/05/2013 - Witherspoon MD, Alexandra
DMV Blythewood

Home and Environment Assessment

Marital status: Single. Lives with Self. 0 children. Living situation: Home/Independent.

Nutrition and Health Assessment

Type of diet: Regular. Caffeine intake amount: NONE.

Exercise Assessment

Exercise frequency: Never. Exercise type: Bicycling, Walking, Weight lifting.

Sexual Assessment

Sexually active: No. Number of current partners: 1. Sexual orientation: Heterosexual. History of STD: No.

History of sexual abuse: No.

Health Maintenance:

Opioid Risk Tool: 5 ; moderate risk

PEG scale score: 8

Start Back screening Tool: Total Score 7; subscore 5

Patient's Rights and Confidentiality: Provider explained the purpose of the evaluation, confidentiality and the limits thereof, and patient's rights. Patient actively participated in this process and agreed to the evaluation and rights discussed.

Patient Report of Symptoms: Patient was seen by Dr. Singh on 11/3/16 for an initial evaluation for chronic back pain. Patient reports symptoms have been present since MVC 9/18/15 which has resulted in constant midback pain that is described as stabbing, muscular, and throbbing. Any activity increase pain including prolonged sitting, standing, bending or lifting. Patient works full time at the DMV headquarters which requires prolonged sitting at computer desk during the day. Patient lives alone with her dog and spends her days when not at work sedentary as well. Patient reports significant life stressors including currently involved in 3 litigation issues for which she is representing herself (1 includes the car accident). Patient also reports financial concerns and job stress. Patient's primary support is her dog. Patient reports lifetime of anxiety including history of trauma. Patient reports being diagnosed with anxiety and depression for 10 years ago but reports symptoms have been present all her life. She sought talk therapy counseling in 2013 but primarily treats symptoms with medications which she feels helps to some degree. Patient has been on FMLA with work for her panic attacks and currently will roughly miss a few days a month from work due to pain/anxiety. Patient explained after the accident she noticed an increase in anxiety and panic particularly related to driving. She reports driving with heightened anxiety or will avoid heavy traffic areas whenever possible. She notes periods of hyperventilation, holding her breath, dry mouth and sore throat, increase in BP, and fearing something bad will happen. Patient reports also avoiding certain environments related to stressors at work and triggers of past traumas. She notes episodes of nightmares and relieving past traumas (flashbacks). As child she reported periods of depersonalization but none as an adult. Additional symptoms include: intrusive thoughts and anxiety related to the car accident and past trauma, dreams about trauma and stressors, increase in physiological arousal when exposed to or thinking about triggers of past trauma including car accident, persistent avoidance of stimuli associated with trauma, negative beliefs about herself and others as a result of traumas, decreased interest in positive activities, feelings of detachment from others, history of irritability behavior as child, hypervigilance, exaggerated startle response. Patient also reports current generalized anxiety including feeling nervous, anxious or on edge many days, worrying about variety of everyday worries and stressors, not being able to control these

worries, trouble relaxing, some irritability, and feeling afraid as if something awful may happen. Depressive symptoms currently include: feeling down or depressed most of the day everyday, anhedonia, withdrawal, fatigue, feeling bad about one self/guilt, overeating resulting in gaining 14 pounds in one year. Patient reports always having depressive symptoms with no period of relief of symptoms in her lifetime. Patient reported history of SI in 2013 with plan (she did not want to describe the plan) but reported no history of attempt or intent. She says she immediately got a dog which has given her a reason to live. No history or current substance use, AH/VH/delusions or manic symptoms.

Relevant Content: Reviewed patient's pain complaints, history and current mental health symptoms, stressors, lifestyle, support and coping. Discussed factors that influence pain. Discussed BHC interventions for anxiety, PTSD, and depression as well as strategies to address pain. Recommended patient begin catching muscle tension and breathing throughout the day and prevent prolonged sitting. Discussed increase in exercise and importance of practicing HEP exercises from PT at home regularly. Patient agreed to let therapist or physician know if SI occurred.

Physical Examination

Psychiatric: Cooperative, Non-suicidal.

Mood and affect: Anxious.

Behavior: Restless, chest breathing rapid, increase muscle tension across body, stuttering, fidgeting behaviors. .

Judgment: Able to make sensible decisions.

Abnormal / Psychotic thoughts: none.

Thought process: coherent, ruminative thoughts present.

Impression and Plan

Diagnosis

Post-traumatic stress disorder, unspecified (ICD10-CM F43.10).

Generalized anxiety disorder (ICD10-CM F41.1).

Major depressive disorder, single episode, moderate (ICD10-CM F32.1).

Plan: FU in 1 week to learn relaxation strategies and work on awareness of posture, physiological arousal and unnecessary muscle tension. Increase exercise and positive activities. .

Orders

Orders

Charges:

90791 psychiatric diagnostic evaluation (Charge) (Order): Quantity: 1, Post-traumatic stress disorder, unspecified | Generalized anxiety disorder | Major depressive disorder, single episode, moderate.

Patient presents with long standing generalized anxiety, PTSD and depression symptoms that appear to have increased with recent stressors related to work, car accident, and pain. (Depression screener=

14; GAD7= 10). These symptoms appears to significantly impact her daily functioning as she misses work, has limited social activities and remains primarily in her home and experiences distress when outside her home. Patient exhibits overactive sympathetic response and has limited active coping strategies and support. Patient's sympathetic arousal and anxiety/depression may likely negatively impact pain symptoms and treatment. She would likely benefit BHC interventions to teach physical self-regulation strategies and thought modification as well as increase overall physical activity. Patient may also benefit from additional interpersonal coping strategies to address work stressors and improve relationships. Patient is not currently experiencing SI and is motivated to make changes.

Assessment and Plan**Plan**

Debra B. Huss, Ph.D.

Licensed Psychologist

Signature Line

Signed and Authored by Debra Huss Ph.D on 11/08/2016 09:33 AM EST

Charted Date: November 08, 2016 9:06 AM EST
Subject / Title: Behavioral Health Consultation *
Performed By: Huss Ph.D, Debra B on November 08, 2016 9:33 AM EST
Electronically Signed By: Huss Ph.D, Debra B on November 08, 2016 9:33 AM EST
Visit Information: B2016110300488, Palmetto Spine, Outpatient, 11/8/2016 - 11/10/2016

Exhibit 3

Follow-Up

Patient: COURAM, GLENDA R MRN: 138495 FIN: B2016112901111

Age: 58 years Sex: Female DOB: 11/3/1958

Associated Diagnoses: Major depressive disorder, single episode, moderate; Panic disorder [episodic paroxysmal anxiety] without agoraphobia; Acute stress reaction

Author: Huss Ph.D, Debra B

Visit Information

Date of Service: 12/07/2016 08:39 am Performing Location: Palmetto Health Spine Center Encounter#: B2016112901111

Primary Care Provider (PCP): Birdsong MD, Claire NPI# 1346216306

Referring Provider: No referring provider recorded for selected visit.

Review of Systems

Health Maintenance:

PEG scale score:4

Symptom Description and Patient Report: patient reported improvement in neck pain with more concern related to lower back. Patient is using timer and tracking arousal and activity level. Patient feels overall she is catching arousal and guardedness and able to relax more during day even at work. She notes overall anxiety is improving. no panic attacks and no missed work days. Patient reported breathing is becoming easier and helps with sleep. Some night disruptions but no nightmares. Still feels tired at end of work day. She noted trying to focus on her music and getting her work done at work. She stated she "does controls her thoughts and controls how others and pain impact" her. She has not changed her activity level at home and has not increased positive activities.

Relevant Content: Reviewed mood, pain, activity level and use of skills. Encouraged continued use of pacer to catch arousal with particular focus still on breathing and now thoughts. Discussed patient's lack of change regarding activity level at home and reviewed importance of engaging in positive activities for mood, stress arousal and coping. Patient stated she no longer feels like herself after 10 years and noted she does not feel worthwhile. Spent some time identifying positive characteristics and gifts and talents. Discussed how these characteristics do not change but our beliefs about ourselves and world and others can influence our behavior and making these purposes a priority. Discussed healthy boundaries and importance of focusing not on what others do or don't do but instead of what she has within her control- her arousal, her thoughts and her feelings. Reminded patient to make positive statements not negative ones and begin focusing on truth. Practiced breathing while monitoring heart rate. Patient judged herself that she was not breathing with her diaphragm or doing the exercise correctly. Provided feedback

Exhibit 3

that the monitor and BHC observation indicated she was doing it well but still some muscle tension likely due to judgement and emotions. Discussed importance of paying attention to observable, measurable factors and not negative judgements.

Assessment: patient presented with improvement in neck pain and ability to recognize arousal. Anxiety and sleep is beginning to improve as is her use of breathing to cope. Patient still has not made changes to activity level and engages in high amount of rumination and negative self-judgment. This thinking pattern appears to influence arousal level and pain. Patient is making good progress and working towards goals. With practice she can improve diaphragmatic breathing and reduce breathing rate but natural breathing still with chest and tends to overbreathe.

Mental Status Exam:

Cognitive Functioning: oriented and alert
Mood: good - anxiety 4/10
Affect: flat, anxious but better
Interpersonal: interactive
Thoughts: coherent, negative and ruminative
Speech: normal rate, intonation, and volume
Risk Assessment: Suicidal Ideation: No
Homicidal Ideation: No
AH/VH: No
Delusions: No

Health Status**Medications: (Selected)**Prescriptions*Prescribed*

ALPRAZolam 0.5 mg oral tablet: 1 tab(s) (0.5 mg), PO, TID, Instructions: called to Walmart, PRN: for anxiety, # 30 tab(s), 0 Refill(s), Type: Maintenance
Lotrel 5 mg-20 mg oral capsule: 1 cap(s), PO, Daily, Instructions: change in dose d/c Lotrel 5mg-10mg, # 30 cap(s), 11 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart
Neighborhood Market 5291, 1 cap(s) po daily, Instr: change in dose d/c Lotrel 5mg-10mg
Procardia XL 30 mg oral tablet, extended release: 1 tab(s) (30 mg), po, daily, # 30 tab(s), 11 Refill(s), Type: Soft Stop, 1 tab(s) po daily
Wellbutrin XL 300 mg/24 hours oral tablet, extended release: 1 tab(s) (300 mg), po, daily, # 30 tab(s), 11 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 tab(s) po daily
metaxalone 800 mg oral tablet: See Instructions, Instructions: TAKE ONE TABLET BY MOUTH THREE TIMES DAILY FOR 14 DAYS, # 42 tab(s), Type: Soft Stop, Pharmacy: Wal-Mart Pharmacy 4521, TAKE ONE TABLET BY MOUTH THREE TIMES DAILY FOR 14 DAYS

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naproxen 500 mg oral tablet: 1 tab(s) (500 mg), PO, BID, Instructions: with food for low back pain, PRN: for pain, # 20 tab(s), 0 Refill(s), Type: Maintenance, Pharmacy: Wal-Mart Pharmacy 4521, 1 tab(s) po bid, PRN: for pain, Instr: with food for low back pain
venlafaxine 75 mg oral capsule, extended release: 1 cap(s) (75 mg), po, daily, # 30 cap(s), 11 Refill(s), Pharmacy: Wal-Mart Pharmacy 4521, 1 cap(s) po daily

Documented MedicationsDocumented

Multiple Vitamins oral tablet: 1 tab(s), po, daily, 0 Refill(s), Type: Maintenance

Problem list:All Problems (Selected)

Acute Venous Embolism and Thrombosis of Other Specified Veins / ICD-9-CM 453.8
Anemia, iron deficiency / ICD-9-CM 280.9 / Confirmed
Anxiety State, Unspecified / ICD-9-CM 300.00
Excessive or Frequent Menstruation / ICD-9-CM 626.2
Elevated hemoglobin A1c / SNOMED CT 2870876016 / Confirmed
Leiomyoma of Uterus, Unspecified / ICD-9-CM 218.9
No Problem, Feared Complaint Unfounded / ICD-9-CM V65.5 / Confirmed
Obesity / ICD-9-CM 278.00 / Probable
Other Abnormality of Red Blood Cells / ICD-9-CM 790.09
Other and Unspecified Hyperlipidemia / ICD-9-CM 272.4
Unspecified Essential Hypertension / ICD-9-CM 401.9

Histories**Past Medical History:**Resolved

Fatigue (780.79): Onset on 7/31/2012 at 53 years. Resolved.
Excessive Weight Gain (783.1): Onset on 7/31/2012 at 53 years. Resolved.
DVT left leg due to oral contraceptives: Onset on 1/1/2011 at 52 years. Resolved.
HTN (401.9): Resolved.
Anxiety (300.00): Resolved.
Hyperlipidemia LDL Goal < 100 (272.4): Resolved.
Uterine Fibroids Affecting Pregnancy (654.10): Resolved.
hand tendinitis: Resolved.
Depression (311): Resolved.
Obesity (278.00): Resolved.

Family History:

High blood pressure
Father (living)

Exhibit 3

Hypertension..
Father (living)

Procedure history:

no surgery.

Social History:

Alcohol Assessment: Denies Alcohol Use
Never

Tobacco Assessment: Denies Tobacco Use
Never

Substance Abuse Assessment: Denies Substance Abuse
Never

Employment and School Assessment
Employed

Comments:

06/05/2013 - Witherspoon MD, Alexandra

DMV Blythewood

Home and Environment Assessment

Marital status: Single. Lives with Self. 0 children. Living situation: Home/Independent.

Nutrition and Health Assessment

Type of diet: Regular. Caffeine intake amount: NONE.

Exercise Assessment

Exercise frequency: Never. Exercise type: Bicycling, Walking, Weight lifting.

Sexual Assessment

Sexually active: No. Number of current partners: 1. Sexual orientation: Heterosexual. History of STD: No.

History of sexual abuse: No.

Impression and Plan

Diagnosis

Major depressive disorder, single episode, moderate (ICD10-CM F32.1).

Panic disorder [episodic paroxysmal anxiety] without agoraphobia (ICD10-CM F41.0).

Acute stress reaction (ICD10-CM F43.0).

Plan: FU 1 week to review increase in positive activity and overall activity at home. Review breathing and practice while monitoring heart rate. Discuss mindfulness and practice sitting meditation. .

Orders

Orders

Charges:

423

90834 psychotherapy patient +/- family 45 minutes (Charge) (Order): Quantity: 1, Panic disorder [episodic paroxysmal anxiety] without agoraphobia | Major depressive disorder, single episode, moderate | Acute stress reaction.

Professional Services*Debra B. Huss, Ph.D*

Licensed Psychologist

Signature Line

Signed and Authored by Debra Huss Ph.D on 12/07/2016 04:31 PM EST

Charted Date: December 07, 2016 4:19 PM EST
Subject / Title: Follow-Up
Performed By: Huss Ph.D, Debra B on December 07, 2016 4:31 PM EST
Electronically Signed By: Huss Ph.D, Debra B on December 07, 2016 4:31 PM EST
Visit Information: B2016112901111, Palmetto Spine, Outpatient, 12/7/2016 - 12/9/2016

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

Exhibit 4

December 11, 2015

To Whom It May Concern:

Due to an auto accident, Glenda R. Couram (xxx-xx-6529) had time loss at work starting September 23, 2015 through December 09, 2015.

From my understanding from Ms. Couram, treatments are continuing until further notice.

Total Hours Lost---54.00 hours

54.00 hours @\$12.05

Gross wages was lost \$650.70

If you have any questions or concerns, I can be reached at (803) 896-8909

Thanking you in advance,

A handwritten signature in cursive script that reads "Maggie P. Wilson".

Maggie P. Wilson

SCDMV Payroll

Phone (803) 896-8909

Fax (803) 896-8911

Email:maggie.wilson@scdmv.net

425

Wilson, Maggie P

Exhibit 4

From: Couram, Glenda R
Sent: Monday, March 07, 2016 8:36 AM
To: Wilson, Maggie P
Subject: TOTAL LOST PAY 36 HRS FW: the hours to be verified for insurance company

Morning Maggie

Could you please write another letter with these hours of lost pay.

ATTN:

[REDACTED]

[REDACTED]

December 15, 2015	1 hr ✓
December 17, 2015	1 hr ✓
December 22, 2015	1 hr ✓
January 4, 2016	7.5 hrs LWOP ✓
January 5, 2016	7.5 hrs LWOP ✓
January 6, 2016	7.5 hrs LWOP ✓
January 26, 2016	1 hr ✓
January 28, 2016	1 hr ✓
February 2, 2015	1 hr ✓
February 4, 2015	1 hr ✓
February 9, 2015	1 hr ✓
February 16, 2015	1 hr ✓
February 23, 2015	1 hr ✓
March 1, 2016	1 hr ✓
March 8, 2016	1 hr ✓
March 15, 2016	1 hr (future)
March 22, 2016	1 hr (future)

Thank you

426

South Carolina Department of Motor Vehicles
10311 Wilson Blvd
Blythewood, SC 29016
(803) 896-7509
Glenda.Courant@scdmv.net
grecourt@hotmail.com

Exhibit 4

427

Nikki R. Haley
Governor



Kevin A. Skwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

Exhibit 4

March 9, 2016

To Whom It May Concern:

Due to lost wages, Glenda R. Couram (xxx-xx-6529) had time loss at work on:
December 15, 2015 and March 08, 2016.

Total Hours Lost---34.50 hours
34.50 hours @\$12.05
Gross wages was lost \$415.73

If you have any questions or concerns, I can be reached at (803) 896-8909

Thanking you in advance,


Maggie P. Wilson

DMV Payroll

Phone (803) 896-8909

Fax (803) 896-8911

Email:maggie.wilson@scdmv.net

428

copy

Exhibit 4

Lost wages

May 23, 2016

Anna Wade Sumner, Esq.
Clawson and Staubes, LLC
1612 Marion Street, Suite 200
Columbia, SC 29201-2939

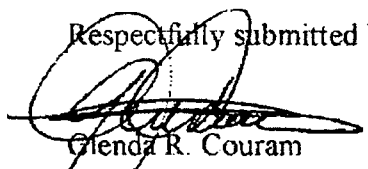
1897

[REDACTED]

Dear Ms. Sumner:

Attached is the wages for the period of December 15 to March 8, 2016; this was previously submitted but I understand Tracy to say she did not have December 15, 17 and March 8.

Respectfully submitted by,



Glenda R. Couram
pro se
104 Macaw Lane
Lexington, SC 29073
803 358-0127
grcouram@hotmail.com

c:

[REDACTED]

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

Exhibit H

May 23, 2016

To Whom It May Concern:

Due to lost wages, Glenda R. Couram (xxx-xx-6529) had time loss at work on:

March 31, 2016	1.0 hour
April 21, 2016	1.0 hour
April 28, 2016	1.0 hour
May 05, 2016	1.0 hour
May 13, 2016	1.0 hour
May 19, 2016	1.0 hour

Total Hours Lost--6.0 hours
6.0 hours @\$12.05
Gross wages was lost \$72.30

If you have any questions or concerns, I can be reached at (803) 896-8909

Thanking you in advance,

A handwritten signature in cursive script, reading "Maggie P. Wilson".

Maggie P. Wilson

DMV Payroll

Phone (803) 896-8909

Fax (803) 896-8911

Email: maggie.wilson@scdmv.net

Subrogation/Workers' Compensation
I-20 at Alpine Road, Mail Code AX-460
Columbia, SC 29219-0001
800-288-2227 / 803-788-0222

Exhibit 5



South Carolina

BlueCross BlueShield of South Carolina
is an independent licensee of the
Blue Cross and Blue Shield Association

July 22, 2016

Glenda Couram
104 MacAw Ln.
Lexington, SC 29073

Exhibit 5

RE: Member: Glenda Couram
 Identification Number: ZCS72364883
 Date of Accident: 9/18/15

Dear Ms. Couram:

We hope you or the family member listed above is feeling much better after your accident. We value you as a BlueCross member and your health is important to us.

Why we are writing:

When you were hurt, your health insurance plan paid claims for your medical care. However, because another person caused the accident, this person and/or another insurance company may be responsible for paying these expenses. You may receive a settlement to cover these medical costs — including those initially paid by your health plan.

If you receive a settlement:

If you receive a settlement from the other person or another insurance company for this accident, under your health plan, you must repay us for any medical bills we paid relating to this accident. To date, we have made these payments related to your case:

Total charges:	\$ 10,447.00
Our payment:	\$ 2,303.68
Refund due to BlueCross:	\$ 2,303.68

7.5

We have included a Statement of Benefits which shows the claims that were paid. Periodically, we will send you updated statements.

What we need you to do:

Before you settle your case with the person who caused the accident or with any other insurance company, please contact us for an updated Statement of Benefits so that you will know how much to reimburse us at the time of your settlement.

Page 1 of 2

For online tools and information, visit www.SouthCarolinaBlues.com.
SouthCarolinaBlues.com is a product of an independent company that provides
administrative support and services to your local Blue health plan.

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Exhibit 5



South Carolina

Blue Cross Blue Shield of South Carolina
is an independent licensee of the
Blue Cross and Blue Shield Association

When you receive the settlement money for this accident, please contact your reimbursement specialist (below). Your reimbursement specialist is familiar with your case and can answer any questions. We want to make it easy for you to reimburse these claims and keep your insurance benefits up to date.

How to contact us:

Reimbursement Specialist:

Phone:

Email:

Address:

Latisha Billingsley

1-800-288-2227 or 803-788-0222 ext. 42148

Latisha.Billingsley@bcbssc.com

• I-20 @ Alpine Rd, MC: AX-460
Columbia, SC 29219-0001

Sincerely,

Latisha Billingsley
Subrogation/Workers' Compensation
Columbia Service Center
Fax 803-865-0654

Page 2 of 2

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administrative support and services to your local Blue health plan.

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Exhibit 5

STATEMENT OF BENEFITS

July 22, 2016

REFERENCE: Subrogation
 PATIENT: Glenda R Couram
 IDENTIFICATION NUMBER: ZCS72364883
 DATE OF ACCIDENT: 09/18/15

TOTAL CHARGES: \$ 10,447.00
 PAYMENTS: \$ 2,303.68
 REFUNDS:
 BALANCE: \$ 2,303.68

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<u>DATE OF TREATMENT</u>	<u>TYPE TREATMENT</u>	<u>PROVIDER</u>	<u>CHARGE</u>	<u>PAYMENT</u>	<u>PAYMENT SENT TO</u>
5/20/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 135.00	\$ 43.20	Provider
5/13/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 135.00	\$ 43.20	Provider
5/5/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
4/28/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
4/21/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
3/31/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
3/22/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 135.00	\$ 43.20	Provider
3/15/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
3/8/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
3/1/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
2/23/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
2/23/2016 - 3/8/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 540.00	\$ 138.40	Provider
2/16/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 16.80	Provider
2/16/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	\$ 60.80	Provider
2/9/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	Deductible	Provider
2/9/2016	Physical Therapy	Vital Energy Occupational Ther	\$ 180.00	Deductible	Provider
2/4/2016	Physical Therapy	Vital Energy Occupat	\$ 180.00	Deductible	Provider
2/4/2016	Physical Therapy	Vital Energy Occupat	\$ 180.00	Deductible	Provider
2/2/2016	Physical Therapy	Vital Energy Occupat	\$ 135.00	Deductible	Provider
2/2/2016	Physical Therapy	Vital Energy Occupat	\$ 135.00	Deductible	Provider
1/28/2016	Physical Therapy	Vital Energy Occupat	\$ 135.00	Deductible	Provider
1/28/2016	Physical Therapy	Vital Energy Occupat	\$ 135.00	Deductible	Provider
1/26/2016	Physical Therapy	Vital Energy Occupat	\$ 180.00	Deductible	Provider
1/26/2016	Physical Therapy	Vital Energy Occupat	\$ 180.00	Deductible	Provider
1/21/2016	Physical Therapy	Vital Energy Occupat	\$ 135.00	Deductible	Provider
1/21/2016	Physical Therapy	Vital Energy Occupat	\$ 135.00	Deductible	Provider

Exhibit 5

STATEMENT OF BENEFITS

July 22, 2016

12/18/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 43.20	Provider
12/15/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
12/15/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 52.80	Provider
12/9/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
12/7/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
12/7/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 52.80	Provider
12/3/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
11/30/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 43.20	Provider
11/23/2015	Physical Therapy	Vital Energy Occupat	\$ 186.00	\$ 80.00	Provider
11/23/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 43.20	Provider
11/19/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 43.20	Provider
11/19/2015	Physical Therapy	Vital Energy Occupat	\$ 186.00	\$ 80.00	Provider
11/17/2015	Physical Therapy	Vital Energy Occupat	\$ 135.00	\$ 43.20	Provider
11/17/2015	Physical Therapy	Vital Energy Occupat	\$ 90.00	\$ 35.20	Provider
11/13/2015	Physical Therapy	Vital Energy Occupat	\$ 184.00	\$ 66.40	Provider
11/9/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
11/9/2015	Physical Therapy	Vital Energy Occupat	\$ 90.00	\$ 34.40	Provider
11/6/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
11/5/2015	Physical Therapy	Vital Energy Occupat	\$ 139.00	\$ 48.80	Provider
11/2/2015	Physical Therapy	Vital Energy Occupat	\$ 182.00	\$ 64.00	Provider
11/2/2015	Physical Therapy	Vital Energy Occupat	\$ 94.00	\$ 41.60	Provider
10/29/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
10/26/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 70.40	Provider
10/26/2015	Physical Therapy	Vital Energy Occupat	\$ 160.00	\$ 32.00	Provider
10/23/2015	Physical Therapy	Vital Energy Occupat	\$ 180.00	\$ 60.80	Provider
10/20/2015	Physical Therapy	Vital Energy Occupat	\$ 160.00	\$ 48.80	Provider
10/2/2015	Medical Care	Parkridge Medical As	\$ 95.00	\$ 45.13	Provider
9/23/2015	Medical Care, X-ray	Lmc Lexington Urgent	\$ 1,591.00	\$ 16.95	Provider
9/23/2015	Professional Component	Lexington Radiology	\$ 90.00	Deductible	Provider

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Exhibit 6

RE: medical release and exercises

Sunshine Cobb

Tue 6/21/2016 8:31 PM

To: 'glen evans' <grcouram@hotmail.com>;

3 attachments (1 MB)

G. COURAM Discharge Summary.pdf; HEPT.pdf; G. COURAM 2016 Statement.pdf;

Hi Mrs. Couram,

Please see your documents attached. I also took the liberty to attach your final statement. Please let me know if you have any questions!

Best,
Sunshine

--
Sunshine K. Cobb, MHA
Practice Operations Manager

Vital Energy Wellness and Rehab Center
163 Charter Oak Rd.
Lexington, SC 29072
Phone: (803) 359-1551
Fax: (803) 359-0362
admin@vitalenergytherapy.com

**EMAIL BEING SENT IS FROM SECURE EMAIL ACCOUNT AND IS PROTECTED THROUGH FIREWALLS
ESTABLISHED ON OUR NETWORK.**

Confidentiality Notice: The information in this mail is confidential and intended only for the above named persons. If you are not the intended recipient, you are hereby notified that disclosure, photocopy, or other distribution of this material is prohibited. Please notify sender of any material received in error. Thank you.

From: glen evans [mailto:grcouram@hotmail.com]
Sent: Monday, June 20, 2016 8:44 PM
To: admin@vitalenergytherapy.com
Subject: RE: medical release and exercises

Thank you

435

Glen

From: admin@vitalenergytherapy.com
To: grcouram@hotmail.com
Subject: RE: medical release and exercises
Date: Mon, 20 Jun 2016 16:48:00 -0400

Hi Mrs. Couram,

I apologize for the delayed response, but Marshal is out today. He will be back tomorrow, and I will speak to him regarding your request. I will make sure that you are sent what you need. Thanks and have a good night.

--

Sunshine K. Cobb, MHA
Practice Operations Manager

Vital Energy Wellness and Rehab Center
163 Charter Oak Rd.
Lexington, SC 29072
Phone: (803) 359-1551
Fax: (803) 359-0362
admin@vitalenergytherapy.com

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From: glen evans [<mailto:grcouram@hotmail.com>]
Sent: Saturday, June 18, 2016 8:08 PM
To: admin@vitalenergytherapy.com; glenda.couram@scdmv.net
Subject: medical release and exercises

Hi

Marshall was to send me my medical release I have not received it to date and it has been almost a month now. I have also not received the exercises to do.

I will call you Monday but please forward that to me for insurance.

Glenda Couram

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Vital Energy Wellness & Rehab - Lexington
163 Charter Oak Road
Lexington, SC 29072-9246
Phone: (803)359-1551
Fax: (803)359-0362
Locally owned by Hima Dalal

**Physical Therapy
Discharge
Summary
Addendum**



Patient Name: Couram, Glenda R.
Date of Birth: 11/03/1958
Referring Physician(s): Frick, Kimberly NP

Date of Discharge Summary: 05/19/2016
Injury/Onset/Change of Status Date: 10/20/2015
Diagnosis: ICD10: M54.5: Low back pain, M54.6: Pain in thoracic spine, M62.838: Other muscle spasm
Visit No.: 33

Date of Original Eval: 10/20/2015
Treatment Diagnosis: ICD10: M54.5: Low back pain, M54.6: Pain in thoracic spine, M62.838: Other muscle spasm

Subjective

History of Present Condition/Mechanism of Injury: Pt reports being in car accident September 18th. Pt reports SEVERE anxiety and soreness in mid back. Pt reports pain in neck and shoulders. Pt reports aggravated factors include sitting. Pt reports no activity level. Pt reports alleviating factors include walking.

Current Complaints / Gains: Pt states, "I'm doing alright. I think this is probably the best improvement, and i don't think it's going to get any better."

Prior Level of Function:

Changing & Maintaining Body Position: Maintaining a Body Position: Remaining Seated

Mobility: Walking & Moving Around: IADLs

Current Functional Limitations:

Changing & Maintaining Body Position: Maintaining a Body Position: Remaining Seated

Other: Strenuous activity, over doing it.

Functional Deficits / Gains: Pt. is able to do almost everything without pain except prolonged activity or strenuous activity.

Pain Scale: Worst: 7 Best: 2 Current: 7 *Previous Findings as of 05/20/2016 - Worst:7 Best:2 Current:7

Aggravating Factors: Sitting

General Health: Fair

Home Health Care: No

Medical History: Diabetes Mellitus Type 2, High Blood Pressure

Mental Status/Cognitive Function Appears Impaired? No

Current Medications: see chart

Objective

Inspection

Patient Consent

Patient/Parent/Guardian Consent Yes

Outcome Measurement Tools

Lower Extremity

Lower Extremity 60/80

Functional Scale

38

Spine

Oswestry Low Back Pain 14% disability

Observation

Posture

Forward Head, Rounded Shoulders

Comments

Range of Motion

*Previous Findings as of 03/31/2016

Hip AROM
Flexion

Right
WNL

Left
WNL

Right
WNL

Left
WNL

Vital Energy Wellness & Rehab - Lexington
 163 Charter Oak Road
 Lexington, SC 29072-9246
 Phone: (803)359-1551
 Fax: (803)359-0362
 Locally owned by Hima Dalal

Physical Therapy Discharge Summary Addendum

Patient Name: Couram, Glenda R.
 Date of Birth: 11/03/1958
 Document Date: 05/19/2016

Extension	WFL	WFL	WFL	WFL
Abduction	WFL	WFL	WFL	WFL
Adduction	WFL	WFL	WFL	WFL
Internal Rotation	WFL	WFL	WFL	WFL

Knee AROM	Right	Left	Right	Left
Flexion	WNL	WNL	WNL	WNL
Extension	WNL	WNL	WNL	WNL

Ankle AROM	Right	Left	Right	Left
Dorsiflexion at 0 Knee Flexion	WNL	WNL	WNL	WNL
Dorsiflexion at 90 Knee Flexion	WNL	WNL	WNL	WNL
Plantarflexion	WNL	WNL	WNL	WNL
Inversion	WNL	WNL	WNL	WNL
Eversion	WNL	WNL	WNL	WNL

Comments AROM = WNL t/o lumbar and thoracic spine. AROM = WNL t/o lumbar and thoracic spine.

Strength *Previous Findings as of 03/31/2016

Gross Muscle Tests Lower

Hip	Right	Left	Right	Left
Hip Flexion	5/5	5-/5	5/5	5-/5
Hip Extension	4+/5	4+/5	4+/5	4+/5
Hip Abduction	5/5	5/5	5/5	5/5
Hip Adduction	5/5	5/5	5/5	5/5

Knee	Right	Left	Right	Left
Knee Flexion	5/5	5-/5	5/5	5-/5
Knee Extension	5/5	5/5	5/5	5/5

Assessment

Assessment/Diagnosis: Patient has progressed towards goal status for Oswestry functional outcome. Patient is able to perform therex with minimal cues. Does well with Core stability exercises. Patient shows return democratization with exercises. At this point patient is being discharged from PT since therapist and patient has agreed with significant progress made. Patient questions answered at this time.

Rehab Potential: Good

Short Term Goals:

- 1: (2 Weeks) | Goal Met | Pt will be I with basic HEP |
- 2: (2 Weeks) | Goal Met | Pt will demonstrate restoration of strenth to functional resistance levels |
- 3: (2 Weeks) | 50% | pt will report no more than 1/10 pain |
- 4: (2 Weeks) | Goal Met | Pt will score at least 60% on Oswestry |

Long Term Goals:

- 1: (5 Weeks) | 80% | pt will restore functional level from prior level |
- 2: (5 Weeks) | 85% | Pt will score at least 0% on Oswestry |
- 3: (5 Weeks) | 70% | pt will report 0/10 pain |
- 4: (5 Weeks) | Goal Met | pt will be I with advanced HEP |

Plan

Reason: All Goals Met

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Vital Energy Wellness & Rehab - Lexington
163 Charter Oak Road
Lexington, SC 29072-9246
Phone: (803)359-1551
Fax: (803)359-0362
Locally owned by Hima Dalal

Physical Therapy Discharge Summary Addendum

Patient Name: Couram, Glenda R.
Date of Birth: 11/03/1958
Document Date: 05/19/2016

Discharge: Discharge

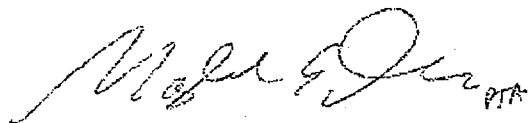
Original Note Completed On: May 20, 2016 8:22am
Addendum Completed On: May 20, 2016 8:03pm

Certification of Medical Necessity: It will be understood that the treatment plan mentioned above is certified medically necessary by the documenting therapist and referring physician mentioned in this report. Unless the physician indicates otherwise through written correspondence with our office, all further referrals will act as certification of medical necessity on the treatment plan indicated above.

Thank you for this referral. If you have questions regarding this plan of care, please contact me at (803)359-1551. Please sign and return: Fax#: (803)359-0362

I certify the need for these services furnished under this plan of treatment and while under my care.

☐ I have no revisions to the plan of care.
☐ Revise the plan of care as follows _____



Marshal Edrada
License #2878
Completed by Marshal Edrada on May 20, 2016 at 8:03 pm

Physician Signature _____
K. Frick, NP

Date: _____

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Vital Energy Wellness and Rehab Center

163 CHARTER OAK RD.
LEXINGTON, SC 29072
P (803) 359-1551
F (803) 359-0362
www.vitalenergytherapy.com

Inv Date: 06/21/2016

Inv #: S004831

Balance: \$61.20

To: **GLENDIA COURAM**
104 MACAW LANE
LEXINGTON, SC 29073

Pay By Credit Card

Name on Card

Credit Card Number

Expires

Signature

Account Balance Statement

Invoice Balance: \$61.20

This invoice covers the period: 01/01/2016 to 06/21/2016

Finalized Charges

Below are balances that are due. Each line shows a service performed. The balance is the original charge amount minus payments and adjustments applied to that service.

DOS	Class	Loc	POS	Service	Diag	Units	Provider	Charge	Payments and Adjustments			Balance
									Ins	Client	Adj	
01/21/16		1	11	97110.GP 0		3.00	S WILBERT	135.00	0.00	66.00	69.00	0.00
01/26/16		1	11	97110.GP 0		4.00	M EDRADE	180.00	0.00	88.00	92.00	0.00
01/28/16		1	11	97110.GP 0		3.00	S WILBERT	135.00	0.00	66.00	69.00	0.00
02/02/16		1	11	97110.GP 0		3.00	M EDRADE	135.00	0.00	66.00	69.00	0.00
02/04/16		1	11	97110.GP 0		4.00	M EDRADE	180.00	0.00	88.00	92.00	0.00
02/09/16		1	11	97110.GP 0		4.00	S WILBERT	180.00	0.00	88.00	92.00	0.00
02/16/16		1	11	97110.GP 0		4.00	M EDRADE	180.00	16.80	71.20	92.00	0.00
02/23/16		1	11	97110.GP 0		4.00	A BAGGETT	180.00	60.80	27.20	92.00	0.00
03/01/16		1	11	97110.GP 0		4.00	A BAGGETT	180.00	60.80	27.20	92.00	0.00
03/08/16		1	11	97110.GP 0		4.00	K SOUTHER	180.00	60.80	27.20	92.00	0.00
03/15/16		1	11	97110.GP 0		4.00	S WILBERT	180.00	60.80	27.20	92.00	0.00
03/22/16		1	11	97110.GP 0		3.00	M EDRADE	135.00	43.20	22.80	69.00	0.00
03/31/16		1	11	97110.GP 0		4.00	M EDRADE	180.00	60.80	27.20	92.00	0.00
04/21/16		1	11	97110.GP 0		4.00	K SOUTHER	180.00	60.80	27.20	92.00	0.00
04/28/16		1	11	97110.GP 0		4.00	M EDRADE	180.00	60.80	27.20	92.00	0.00
05/05/16		1	11	97110.GP 0		4.00	M EDRADE	180.00	60.80	11.60	92.00	15.60
05/13/16		1	11	97110.GP 0		3.00	M EDRADE	135.00	43.20	0.00	69.00	22.80
05/20/16		1	11	97110.GP 0		3.00	M EDRADE	135.00	43.20	0.00	69.00	22.80
Total:								2970.00	632.80	758.00	1518.00	61.20

All fees payable to Vital Energy Wellness and Rehab Center,
by phone or by credit card/check mailed to 163 Charter Oak Rd., Lexington, SC 29072. Thank you!

Client/Patient Information

Name: GLENDIA COURAM Record #: 000TB1174

Diagnosis

Name: GLENDIA COURAM ID Case: 0 ICD-9: None Listed
ICD-10: M54.5, M54.6, M62.838

Location (Loc) Code Addresses

Loc: 1 Address: 163 Charter Oak Road Lexington, SC 290729246

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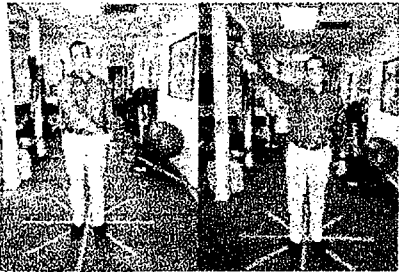
Total 18



Stair Stepper

Duration 30 Minutes

Use stair stepper machine



PNF 2 Flexion

Repeat 10 Times

PNF 2 Flexion Pattern

Hold 0 Seconds

Complete 3 Sets

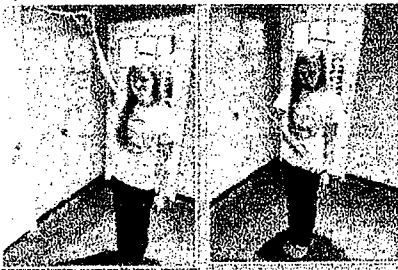
Start with arm internally rotated with your palm facing behind you on the opposite side of the arm you are exercising.

Perform 1 Time(s) a Day

Slowly and controlled raise your arm to the opposite side with your elbow slightly bent approximately 5-10 degrees and rotate your arm/shoulder so that your palm is facing in front of you.

Make sure to squeeze your shoulder blades together and start rotating your shoulder at chest level.

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PNF D2 Extension

Start with arm up and out, palm facing forward. Bring arm down and across your body, elbow bent, and palm facing behind you. Return slowly to start position. Keep upper torso from rotating by engaging abdominal muscles throughout the motion.

Repeat 10 Times

Complete 3 Sets

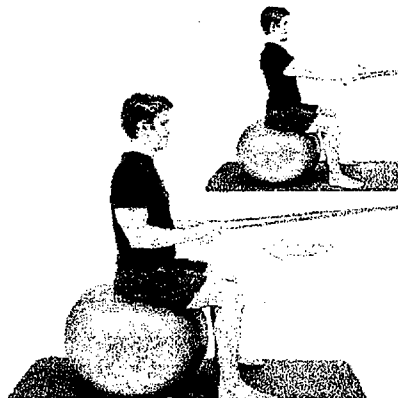


PNF D2 Flexion

Start with arm up and out to the side, palm facing away from you (thumb pointed towards the ceiling). Bring arm down and across your body, elbow bent, rotating arms as you go so thumb ends at opposite hip. Return to start.

Repeat 10 Times

Complete 3 Sets



BALL SEATED ROWS

While seated on an exercise ball, pull back on an elastic band in both arms as you bend your elbows.

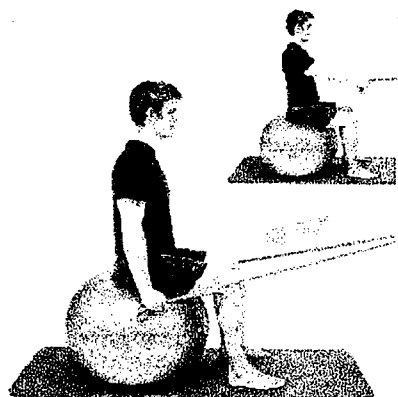
Maintain erect posture the entire time.

Repeat 10 Times

Hold 1 Second

Complete 3 Sets

Perform 1 Time(s) a Day



BALL SEATED SHOULDER EXTENSION

While seated on an exercise ball, pull on elastic bands downward keeping your elbows straight.

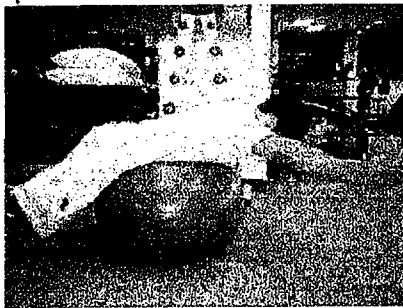
Maintain erect posture the entire time.

Repeat 10 Times

Hold 1 Second

Complete 3 Sets

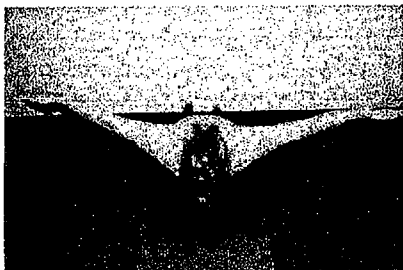
Perform 1 Time(s) a Day



Prone

On Stomach over ball. Legs slightly apart and straight.
Tighten abs and tuck chin to maintain straight back.
Lift arms up in front at 45 deg. angle thumbs up.
Keep shoulder slightly retracted.

Repeat 10 Times
Complete 3 Sets



Prone

You can do this exercise over a stability ball as pictured or laying flat on your stomach on the ground. Bring your arms straight out to your sides, palms down, making a "T" shape with your arms and body. Raise your arms back, pinching your shoulder blades together, then lower down and repeat.

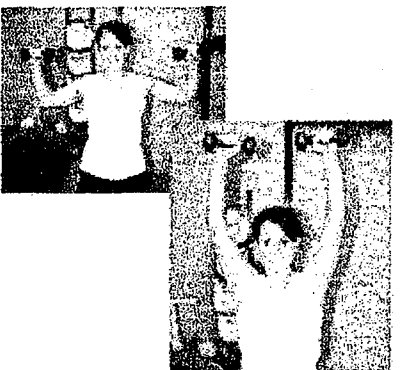
Repeat 10 Times
Complete 3 Sets



Prone I

Lay your stomach against the ball, keeping yourself horizontal with your chin tucked and hands by your hips. Squeeze your shoulder blades together and release.

Repeat 10 Times
Complete 3 Sets



Standing Overhead Press

Standing with shoulder blades squeezed together, bring your arms up to shoulder height, elbows bent at 90 degrees. Straighten arms up overhead, bringing the weights together. Bend elbows, lowering the weights. Repeat.

Repeat 10 Times
Complete 3 Sets

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Standing Flexion

Start with elbows straight, arms at your side, lift weights upward to shoulder height. Squeezing your shoulder blades down and in. Lower arms and repeat.

Repeat 10 Times

Complete 10 Sets



Dumbbell Abduction

Position the body as shown with knee slightly bent and core tight. Raise the arms straight out to the side with palms down. Do not raise the arms over shoulder height. Lower slowly keeping the elbows straight.

Repeat 10 Times

Complete 3 Sets



LOWER TRUNK ROTATIONS - LTR

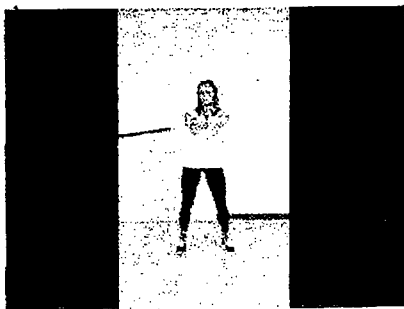
Lying on your back with your knees bent, gently move your knees side-to-side.

Repeat 10 Times

Hold 1 Second

Complete 3 Sets

Perform 1 Time(s) a Day



Sport Cord Trunk Rotations - Twists

While standing with both feet shoulder width apart, grasps band with both hands straight and at chest level. Rotate the trunk and upper body as a whole keeping the hips from moving. Return to start.

Can be done in a squat position or on a bosu ball

Repeat 10 Times
Complete 3 Sets

BRIDGING

While lying on your back, tighten your lower abdominals, squeeze your buttocks and then raise your buttocks off the floor/bed as creating a "Bridge" with your body.

Repeat 10 Times
Hold 1 Second
Complete 3 Sets
Perform 1 Time(s) a Day



EXERCISE BALL - FLOOR BRIDGE

While lying on the floor, place an exercise ball under your lower legs and then raise up your buttocks.

Repeat 10 Times
Hold 1 Second
Complete 3 Sets
Perform 1 Time(s) a Day



SUPINE HIP ABDUCTION - ELASTIC BAND CLAMS

Lie down on your back with your knees bent. Place an elastic band around your knees and then draw your knees apart.

Repeat 10 Times
Hold 1 Second
Complete 3 Sets
Perform 1 Time(s) a Day





Sidelying Clams

Laying on your side, hips directly over one another and knees bent. Place a band around your knees and lift your top knee upward stretching into the resistance of the band. Make sure to keep your hips over one another and your feet together. Lower knee back down. Repeat.

Repeat 10 Times
Complete 3 Sets

At approximately 4:30 pm on September 18, 2015, the day was clear, no rain, not cold but the traffic was heavy. Ms. Couram was in the far left lane. Traffic came to a standstill. Ms. Couram stopped behind the vehicle in front of her the middle car stopped behind her. Your

policyholder slammed into middle car's rear bumper causing severe damage to his truck resulting in his truck being tolled. As a result, of your insured slamming into the middle car so severely the middle slammed into Ms. Couram's car rear bumper causing damage and grave harm to her.

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Ms. Couram asked the middle motorist to call *HP which he did. After Officer came out cars were moved to right side of road - we were about 2 miles plus from Broad River Exit on 20 coming from Blythewood towards Lexington. (See police report)

The responding Officer Riley asked Ms. Couram if she was okay she told him, she did not know, she was still in shock she had been hit. The Officer asked a couple of times if she was okay to drive she stated, she was. He asked if she wanted an ambulance (you're insured also asked this questions), at the time she did not, still in shock at being hit and feeling extremely tired and unfocused. The cars were moved to the right side of the road that is when Ms. Couram notice the damage to your insured's truck it appeared to be totaled. Ms. Couram did ask the middle driver what happened he confirmed your insured impact forced the middle car into Ms. Couram's car. Ms. Couram did not notice any damage to middle car rear bumper.

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This accident happened on a Friday, September 18, 2015; the weekend went okay, Ms. Couram did not go out, do any work, however the extent of her injury manifested itself on Monday morning, September 21, 2015, on her way to work when Ms. Couram suffered the aftermath of the accident she felt an intense sense of dread, fear of every car was driving to close, coming into her lane, big rigs commercial trucks and cars on her bumper for almost 40 minutes she feared being hit until she got to work she remained tense, tighten up she attempted to call her doctor's office to find out how long the aftermath will last, the same things happened on Tuesday except upon getting to work her muscles and her back hurt, at times it felt as if someone was digging their knuckle into her back, to work she had to sit up ram rod straight with a pad in her back, movement hurt. She was unable to relax, suffered headaches and pain in her back

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NOTE: Ms. Couram's blood pressure went up drastically by the time she got to Lexington Medical documented at 143/99. (See report from Lexington)

The pain got worse especially when driving to work. The medication made her sleepy and with the attacks and back pain it felt like someone jamming their finger in the middle of my back, I stayed off from work for three days September 24, 25 and 28, 2015. When she returned to work the anxiety, fear and panic continued, the pain continued. She was unable to take other medication with the Tramadol.

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The referral to Vital Energy finally came thru around October 20, 2015, due to the flooding, etc., there was a delay --Ms. Couram went for an evaluation at Vital Energy Wellness and Rehabilitation on or about October 20, 2015 and being treatment on October 23, 2015. The facility is located in Lexington, SC, 163 Charter Oak Road, Lexington, SC 29072-9246, Owner Hima Dalal, (803) 359-1551. (Ms. Couram was off work for a week due to flooding)

Ms. Couram continues that treatment as of the date of this letter. It is important to note when she gets tired the middle of her back continues to ache. Her fear related to driving is much better and the headaches are few but she still has issues now with driving particularly in heavy traffic. She now utilize the hazard signal when traffic is heavy.

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Ms. Couram would not be suffering the fears she has to endure the mental anguish, emotional distress and back neck pain (on a daily basis which strikes midday at work). The accident has pointed out to her the danger/vulnerability of her dog if something should happen to her – after the accident she made arrangements with her neighbor and will give her access to her home in case she does not return or permission to break in with the police if she does not return timely. (Ms. Couram never had to worry about anyone else before, if something happened to her “okay.” Fear of loss of car and the subsequent monthly payment (car note) she can ill afford as her car is refinance into her mortgage. These factors had caused severe distress, anxiety and panic on a daily basis and the fear of diabetes since September 21st, 2015. She will now always have issues with driving to and from work as it has been almost three months and she still suffer from panic and anxiety in any type of heavy traffic which elevates her blood pressure. Ms. Couram has an appointment with Dr. Birdsong on December 30, 2015 in regards to the issue of diabetes and what stage she is in or status.

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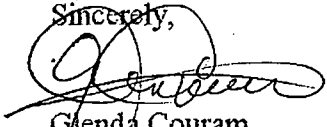
Ms. Couram also had to cancel plans during the thanksgiving holiday with the therapy appointments, her schedule with dealing with her dog, etc., due to her back pain which as stated gets worse as the day goes.

~~_____~~

~~_____~~

If you have any additional questions please call at the number below or e-mail which is best way to contact. Thank you for your consideration in advance. I look forward to your response.

Sincerely,

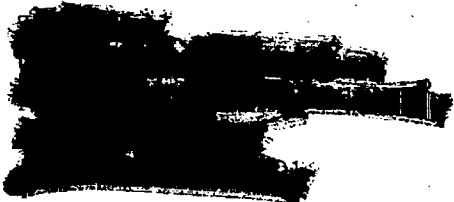

Glenda Couram
104 Macaw Lane
Lexington, SC 29073
(803) 358-0127
grcouram@hotmail.com

/grc

Enclosures: photos taken September 18, 2015

August 2, 2016

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Exhibit 8

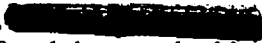

Re: Sherwood Tidwell
Claimant: Glenda R Couram
Date of Accident: September 18, 2015

Dear Ms. Peer:

This is a quick letter to recap the settlement talks from yesterday August 2, 2016 at about 9:30 am. You discounted three (3) days lost pay because I did not go to treatment and several hours were you said I did not receive treatment and not entitled to repayment. I objected but you responded it was not important.

You then stated that medicals were excessive. Then stated that your calculations added up to determine what your claim is worth about \$8144 despite the Subrogation amount from my insurance company of \$10,441.

According to the rules and laws of South Carolina as your client was 100 percent at fault and ticketed for "driving too fast for condition." He did not contest the ticket, therefore, I am entitled to all *medical care and related expenses, income lost because of the accident, because of time spent unable to work or undergoing treatment for injuries*, emotional damages, such as stress, embarrassment, depression, or strains on family relationships, anxiety and damaged property (special damages and general damages).

In our telephone conversation, you,  offered to settle my claim for \$15,000 (virtually the same amount offered that resulted in the filing of this lawsuit). However, none of the reasons you gave for such a low offer is supported by the facts.

In an effort to settle before filing the legal action (I tried at least 3 times to settle with offers) I detailed my injuries, etc., sent pictures of damages and how your client hit of the middle care spilt my back bumper. I was sitting still in bumper to bumper rush hour traffic, I made sure I was good distance behind the car in front of me and that Cadillac sedan was safely stopped behind me and taken completely by surprise, your insured slammed into the middle car so hard it cracked by back bumper causing damage.

In addition, you state my medical treatments were excessive after you stated to me to complete all treatment before trying to settle again and my loss of wages was discounted because I did not go to the doctor for treatment. I sent several letters with detailed information of the

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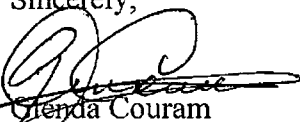
injuries and pain I suffered and continue to suffer to day including new anxiety and panic with driving. I have sent you all medical records along with the letters.

Yesterday you came back with an exceptionally low offer of \$15,000 after depreciating my medicals by almost \$2,500 and discounting lost pay, etc., I countered with \$60,000. You decided there was no point in continuing and getting an arbitrator. I stated I was surprised you even called to try and settle and with your offer that is even more so.

I am attempting to get a list from the court and will let you know when I do so we can select a mediator or arbitrator. I e-mailed a copy to the attorney.

I am emailing this to you and will put a signed copy in the mail.

Sincerely,



Glenda Couram
104 Macaw Lane
Lexington, SC 29073
803 409-9427

/grc

Exhibit 9

March 1, 2016

Rick Skurko, CPCU, AIC
Claims Specialist II, Commercial Casualty
Nationwide Non-Standard Claims
PO Box 93863
Cleveland, OH 44101

RE: CLAIM No.: 144356-gc

Dear Mr. Skurko:

In our correspondence and last phone conversation you offered to settle my claims by paying the medical bills and pain and suffering \$2500 pain and suffering totaling about \$8,000.00 due to my inability to immediately go into treatment after referral from my doctor for physical therapy. However, none of the reasons you gave for such a low offer is supported by the facts.

Fact one, this accident occurred on a Friday, in September 18, 2015, I went home and stayed in after cleaning up after my dog due to the accident (I was late)

Fact two, I stayed in all weekend, went nowhere sore but okay with IB

Fact three, Monday, September 21, 2015, on way to work had panic attack, stiffened up so tightly I caused severe damage to myself

Fact four, by September 23, 2015 pain became unbearable left work early and went to Lexington Urgent Care - left with prescription Tramadol after x rays -- crying back hurt so bad

Fact five, out on sick leave September 24, 25 and 28.

Fact six, called and scheduled appt October 2, 2015, Dr. Birdsong the pain was not getting any better, had panic attack on way there ended up with elevated blood pressure by the time reach the office -- got referral for physical therapy

Fact seven, flooding begin - out of work from 5-9 of October 2015

Fact eight, we were allowed to return to work on October 12, 2015

Fact nine, waited for referral - I finally called about it and got referral to Vital Energy -- called got appointment for October 20, 2015

Fact ten, evaluation scheduled for October 20, 2015

Fact eleven, therapy started October 23, 2015

As you know the accident was 100 % your [REDACTED] fault as you have admitted. The police report confirms this as your [REDACTED] hit one car who hit my car causing damage and injury. No, I did not have an ambulance come out because I was not aware what I was hoping I would be okay I drove home and stayed in all weekend sleeping.

You claimed that because I was unable to obtain an immediate referral it was the reason that I could not have been in pain and you offered to pay the medical bills and settle pain and suffering with 2,500.00. Well between the time this accident happened and I got the referral, we had a declared disaster in South Carolina what is referred to as the "1000 year flood" (I have

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attached news reports and documents declaring Carolina a disaster area by the President) as well as the Governor of South Carolina who closed state offices due to lack of water for a week plus, and we were told to stay off the roads (I am employed by the state). I was one of the fortunate ones whose house was not flooded/destroyed which I am grateful for with the accident and that I do not know what I would have done. I was not the only person in pain, I had a back injury others lost their homes and livelihood. (You can see why making or arranging a referral for me was not priority and only emergency personnel was allowed on the roads etc., and staff was short.). It does not mean I did not hurt or was not in pain what it means is that I had to wait and take pain pills until my pain became a priority again over the deaths and destruction that resulted from the floods.

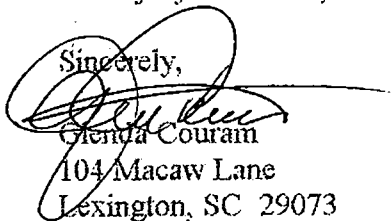
I would have preferred not to have had my car damaged or been hurt but I had no choice in either disaster, no one asked me. As I attempted to explain before you can see why the referral took so long in coming about the minute we were allowed back to work and on the roads I called about the referral and obtained it on or about and begin treatment. It does not mean I was not hurt or in pain, unforeseen circumstances took place that was beyond my control.

So, your determination that I was not hurting or that my pain and suffering was "minor" due to the length of time therapy begin is completely off base, I hurt when working at my job, working at home doing housework, or when I am tired or after exercising and suffering anxiety when driving to and from work and your comments about how long it took for me to go into therapy were completely unjustified, I continue to be in pain under on my left side beneath my left shoulder blade and it is not going away anytime soon it has been over six months. My next appoint with my doctor is March 23, 2016 and I will only go to therapy as needed as they will release me after that. (I have to put something in my back to keep sitting up straight while at work).

As I offered previously I am willing to settle for \$28,000 to settle this claim. I am resubmitting the bills to you to date and my understanding is that if the pain is continuing six month later it is diagnosed as chronic and the last things I want in this life is chronic back pain.

Please provide me with your response within that time frame (by March 23, 2016) about four weeks from the date of this letter. As I stated I intend to file to the circuit court of Richland County by March 30, 2016.

Sincerely,


Glenda Couram

104 Macaw Lane

Lexington, SC 29073

803 358-0127

grcouram@hotmail.com

/grc

Attachments related to flood

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Bills.

MEDICAL BILLS AND COST

LEXINGTON URGENT CARE September 23	1591.00	
LEXINGTON RADIOLOGY September 23	90.00	
DR BIRDSONG - OCTOBER 2, 2015	95.00	
MY INSURANCE WENT UP \$10 X 36	360.00	3 YEARS
VITAL ENGERY	5501.00	
FUTURE LOST INCOME MEDICAL	1300.00	
TOTAL	7637.00	
LOST INCOME, GAS, MILEAGE	1190.00	
TOTAL	10127.00	
PAIN AND SUFFERING	18274.00	
	*2.00	
	26241.00	

(I used a multiplier for general damages of 2 x 10127 p&s 18274 = 28401.00)



FEMA

Story highlights

- At least 11 dams have failed or been breached in South Carolina, authorities say
- More than 400,000 South Carolina residents under a "boil water advisory"
- At least 17 people are dead -- 15 reported in South Carolina and two in North Carolina

(CNN)The rain may have stopped, but South Carolina is grappling with a host of new concerns. Dam breaks. Billions of dollars in damage. And rivers that still haven't crested.

"We still have to be cautious," Gov. Nikki Haley told reporters on Tuesday afternoon. "The next 36 to 48 hours are going to be a time that we need to continue to be careful."

Haley declined to provide an estimated cost of the damage -- which she called "disturbing" -- but said state and Federal Emergency Management Agency officials were making assessments.

"It's hard to look at the loss we're going to have," she said. "This could be any amount of dollars."

More than 400,000 state residents were under a "boil water advisory" affecting about 16 water systems, said Jim Beasley, a spokesman for the S.C. Emergency Response Team.

Read into Record
Exhibit ~~10~~ 10

December 13, 2015

Judge Refused
to allow OR
look at

[REDACTED]

Please find enclosed the necessary medical documents, letter regarding wages/time lost and physicians' report from the time frame or date of the above referenced accident. Ms. Couram is also sending copies of medical documents related to the date of accident instead of signing the releases.

This accident occurred at a very bad time for Ms. Couram as she was just told on the 15th of September 2015 by Dr. Birdsong that she was borderline diabetic (the week of the accident). They set a goal for her to lose weight before it became official diagnoses so you can see why this accident caused her great harm in more ways than physical, see Doctor's letter/report dated September 15, 2015. The goal and hope was to have her weight down by December 30, 2015 the next appointment. (Ms. Couram also just recently lost her mother).

To Ms. Couram detriment, as a result of the accident, that goal will not be reached certainly not by the 30th of December all she can do is hope she stays borderline and start over once unforeseen medical issue ends, due to the current limitations and her state of mind she will probably gain weight pushing her into being diagnosed as a diabetic.

Ms. Couram's date of birth was on November 3rd, ¹⁹⁵⁸ ~~2015~~ all plans were put on hold as to leave for the holidays because much of what leave she had and have was and is being used towards the medical appointments. She also had to cancel end of the year holiday plans.

WHAT HAPPENED ON SEPTEMBER 18, 2015

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468

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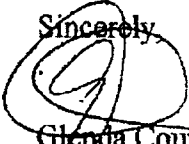
Enclosed is a release of information for Vital Energy ONLY; copies of Lexington Urgent Care and Palmetto Associates reports for September 23, 2015 and October 2, 2015 respectively; wage statement from her employer, subrogation amount to reimburse is to December 9, 2015, is \$1300.00, you should have a copy of that statement and the auto repair statement.

[REDACTED]

[REDACTED] 15).

[REDACTED]

Sincerely,



Glenda Couram
104 Macaw Lane
Lexington, SC 29073
(803) 358-0127
grcouram@hotmail.com

/grc

Enclosures

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Exhibit 11

December 13, 2015

These Itr could have easily have been sent to
the attorney Jerry, I believe

ATTN: [REDACTED] Adjuster

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Redacted

Fax: 855-262-5670

RE: Y [REDACTED] Sherwood Tidwell [REDACTED]

Date of Accident/Loss: September 18, 2015

Claimant/Injured: Glenda Couram

[REDACTED]

Redacted

Dear Mr. Skurko:

Please find enclosed the necessary medical documents, letter regarding wages/time lost and physicians' report from the time frame or date of the above referenced accident. Ms. Couram is also sending copies of medical documents related to the date of accident instead of signing the releases.

This accident occurred at a very bad time for Ms. Couram as she was just told on the 15th of September 2015 by Dr. Birdsong that she was borderline diabetic (the week of the accident). They set a goal for her to lose weight before it became official diagnoses so you can see why this accident caused her great harm in more ways than physical, see Doctor's letter/report dated September 15, 2015. The goal and hope was to have her weight down by December 30, 2015 the next appointment. (Ms. Couram had also lost her mother on or about July 20, 2015).

To Ms. Couram detriment, as a result of the accident, that goal will not be reached certainly not by the 30th of December all she can do is hope she stays borderline and start over once unforeseen medical issue ends, due to the current limitations and her state of mind she will probably gain weight pushing her into being diagnosed as a diabetic.

Ms. Couram's date of birth was on November 3rd, all plans were put on hold as to leave for the holidays because much of what leave she had and have was and is being used towards the medical appointments. She also had to cancel end of the year holiday plans.

WHAT HAPPENED ON SEPTEMBER 18, 2015

At approximately 4:30 pm on September 18, 2015, the day was clear, no rain, not cold but the traffic was heavy. Ms. Couram was in the far left lane. Traffic came to a standstill. Ms.

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Couram stopped behind the vehicle in front of her the middle car stopped behind her. Your policyholder slammed into middle car's rear bumper causing severe damage to your insured's truck – he had to be tolled. As a result, of your policyholder slamming into the middle car the middle slammed into Ms. Couram's car back bumper causing damage.

Ms. Couram never saw it coming, she was safely stopped and the middle car was safely stopped. So when the impact occurred she was caught completely off guard. After the impact the parties got out of the cars, your insured came and asked if Ms. Couram was okay several times, she told him "I did not know," she was still shaken up. The second motorist also asked Ms. Couram the same question she gave him the same response, your insured came back same response.

Ms. Couram asked the middle motorist to call *HP which he did. After Officer came out cars were moved to right side of road – we were about 2 miles plus from Broad River Exit on 20 coming from Blythewood towards Lexington. (See police report)

The responding Officer Riley asked Ms. Couram if she was okay she told him, she did not know, she was still in shock she had been hit. The Officer asked a couple of times if she was okay to drive she stated, she was. He asked if she wanted an ambulance (you're insured also asked this questions), at the time she did not, still in shock at being hit and feeling extremely tired and unfocused. The cars were moved to the right side of the road that is when Ms. Couram notice the damage to your insured's truck it appeared to be totaled. Ms. Couram did ask the middle driver what happened he confirmed your insured impact forced the middle car into Ms. Couram's car. Ms. Couram did not notice any damage to middle car rear bumper.

Highway Patrol Officer Riley gave permission for Ms. Couram and the middle driver to leave. Your policyholder remained waiting for a tow.

When Ms. Couram arrived to her house she found that her dog had messed up the house pretty well, smelled, etc., was about two hours late, had to clean that up. She later went to her neighbor to arrange for her to get the dog if for some reason she did not make it home one day (by a certain time). The accident made her realize the vulnerability of her dog if something happened to her. (Prior to getting her dog in 2013, she only had herself to worry about).

This accident happened on a Friday, September 18, 2015; the weekend went okay, Ms. Couram did not go out, do any work, however the extent of her injury manifested itself on Monday morning, September 21, 2015, on her way to work when Ms. Couram suffered the aftermath of the accident she felt an intense sense of dread, fear of every car was driving to close, coming into her lane, big rigs commercial trucks and cars on her bumper for almost 40 minutes she feared being hit until she got to work she remained tense, tighten up she attempted to call her doctor's office to find out how long the aftermath will last, the same things happened on Tuesday except upon getting to work her muscles and her back hurt, at times it felt as if someone was digging their knuckle into her back, to work she had to sit up ram rod straight with a pad in her back, movement hurt. She was unable to relax, suffered headaches and pain in her back

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On September 23, 2015, Ms. Couram could not bear the pain in her back and across her shoulders any longer she went to Lexington Urgent Care and saw Dr. Skaggs. Dr. Skaggs ordered x-rays (XR Cervical Spine AP Lateral and Odontoid Trauma and XR Chest PA and Lateral (\$1591). (See Report); upon release she was unable to get in her car and stood in the parking lot for 15 minutes to a half hour before she was able to get in her car. She was diagnosed with strain of neck muscle and strain of rhomboid muscle and given prescription for Tramadol. Ms. Couram still in pain had to wait an hour for the prescription then was told by the pharmacist about the dangers of that medication to another she was taking and not to take both together. (Walgreen - See receipt \$9.00) (See Report \$1591)

NOTE: Ms. Couram's blood pressure went up drastically by the time she got to Lexington Medical documented at 143/99. (See report from Lexington)

The pain got worse especially when driving to work. The medication made her sleepy and with the attacks and back pain it felt like someone jamming their finger in the middle of my back, I stayed off from work for three days September 24, 25 and 28, 2015. When she returned to work the anxiety, fear and panic continued, the pain continued. She was unable to take other medication with the Tramadol.

On October 2, 2015, Ms. Couram's pain got progressively worse so she called to arrange appointment with her regular doctor's office, during the drive she began having anxiety/panic attack, throat began to ache/close up as a result her blood pressure was documented at 142/116. The pressure had not gone down by the end of the evaluation and she could not leave until it went down a bit. (See Report from Palmetto Medical Associates - Frick-FNP).

Ms. Couram was diagnosed with muscle spasm, back pain thoracic and lumbago and given a prescription for 800 mg Skelaxin and a referral for physical therapy. (See Report).

The referral to Vital Energy finally came thru around October 20, 2015, due to the flooding, etc., there was a delay --Ms. Couram went for an evaluation at Vital Energy Wellness and Rehabilitation on or about October 20, 2015 and being treatment on October 23, 2015. The facility is located in Lexington, SC, 163 Charter Oak Road, Lexington, SC 29072-9246, Owner Hima Dalal, (803) 359-1551. (Ms. Couram was off work for a week due to flooding)

Ms. Couram continues that treatment as of the date of this letter. It is important to note when she gets tired the middle of her back continues to ache. Her fear related to driving is much better and the headaches are few but she still has issues now with driving particularly in heavy traffic. She now utilize the hazard signal when traffic is heavy.

On or about October 26, 2015, Ms. Couram called Dr. Birdsong's Office explaining the Skelaxin (\$9) was not helping and she was prescribed Naproxen 5. (\$4).

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ITEMIZED MEDICAL BILLS TO DATE (SPECIAL DAMAGES):

Lexington Urgent Care	\$	1591.00	
Lexington Radiology Assoc.		90.00	
Palmetto Associates		95.00	
Vital Energy PT and OT (on going)	\$	3026.00	as of December 12 10,447
Prescription Costs (3)	\$	22.00	(2 @ \$9 and 1 @ \$4)
<i>Palmetto Spine Ctr</i>	<i>R</i>	<i>~3337</i>	
TOTAL MEDICAL	\$	4824.00	to December 7, 2015

TOTAL PROPERTY \$ ≈570.00

Current **WAGE** Loss to December 9, 2015 \$ **671.00**

Gas/Mileage .23 mile incl. gas \$ ≈ **108.00** 18.4 mi rd trip 2 days wk

TOTAL \$ **9951.00**

Future Medical Expenses \$ 10000.00 (5 months)

Future Wage Loss \$ 670.70

Future Gas/Mileage \$ ≈ 108.00

TOTAL \$ **16778.00**

In summary, the initial report from Lexington Urgent Care shows strain of the neck muscle and strain of the rhomboid muscle due to motor vehicle accident. (See Report). Dated September 23, 2015. It also shows severely elevated blood pressure reading and a prescription for Tramadol HCI 50 MG and the report from my doctor's office, Parkridge Medical Associates shows a diagnoses as a result of the accident on September 18, 2015. Muscle spasm, lumbago and back pain, thoracic. As well elevated blood pressure due to the anxiety and panic attack on that same visit. (See report). Dated October 2, 2015. And, referral to physical therapy.

Ms. Couram would not be suffering the fears she has to endure the mental anguish, emotional distress and back neck pain (on a daily basis which strikes midday at work). The accident has pointed out to her the danger/vulnerability of her dog if something should happen to her – after the accident she made arrangements with her neighbor and will give her access to her home in case she does not return or permission to break in with the police if she does not return timely. (Ms. Couram never had to worry about anyone else before, if something happened to her "okay." Fear of loss of car and the subsequent monthly payment (car note) she can ill afford as her car is refinance into her mortgage. These factors had caused severe distress, anxiety and panic on a daily basis and the fear of diabetes since September 21st, 2015. She will now always have issues with driving to and from work as it has been almost three months and she still suffer from panic and anxiety in any type of heavy traffic which elevates her blood pressure. Ms. Couram has an appointment with Dr. Birdsong on December 30, 2015 in regards to the issue of diabetes and what stage she is in or status.

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She will continue the PT and OT to deal with the panic and anxiety attacks and the back pain especially since both impacts and interferes with her ability to make a living and continue her employment.

Ms. Couram also had to cancel plans during the thanksgiving holiday with the therapy appointments, her schedule with dealing with her dog, etc., due to her back pain which as stated gets worse as the day goes.

Note: Ms. Couram did not calculate the Occupational Therapy (OT) which took place two (2) days a week approximately 1 hr ($45 \times 12.05 = \approx \$542$) to date of December 7th, 2015 in the same time frame of the Physical Therapy (PT). As of December 9, 2015, the OT will be once a week with the PT two days a week until she is released by Vital Energy.

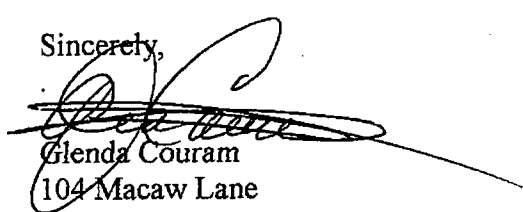
Enclosed is a release of information for Vital Energy ONLY; copies of Lexington Urgent Care and Palmetto Associates reports for September 23 and October 2, 2015; wage statement from her employer, subrogation amount to reimburse is currently about \$800 you should have a copy of that statement and the auto repair statement. Please let me know if you need anything else.

SETTLEMENT OFFER:

I am willing to settle this matter for \$60,000 - *redacted*

Thank you for your consideration in advance. I look forward to your response within the next twenty (20) days as of the date of this letter.

Sincerely,


Glenda Couram
104 Macaw Lane
Lexington, SC 29073
(803) 358-0127

/grc

Enclosures

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EXHIBIT 12

Todd v Joyner, 685 SE 2d 596 SC Sup Ct., 2009 - Rule 803(4), SCRE (2008) The medical history referenced falls within the ambit of Rule 803(4) and therefore, does not run afoul of the hearsay rule.

Exhibit 12

THE STATE OF SOUTH CAROLINA
In The Supreme Court
Frances Irene Todd, Petitioner,
v.
Barbara C. Joyner, Respondent.
ON WRIT OF CERTIORARI TO THE COURT
OF APPEALS

Appeal from Georgetown County
Thomas A. Russo, Circuit Court Judge
Opinion No. 26722
Heard June 9, 2009 – Re-filed November 2,
2009

AFFIRMED

Gene M. Connell, Jr., of Kelaher, Connell &
Connor, of Surfside Beach, for Petitioner.
Linda Weeks Gangi, of Thompson and Henry, of
Conway, for Respondent.

JUSTICE PLEICONES: This case stems from
an auto accident in which Petitioner Frances
Irene Todd was injured. A jury awarded Todd
\$37,191.11. Petitioner appealed and the Court
of Appeals affirmed. Todd v. Joyner, Op. No.
4315 (S.C. Ct. App. re-filed January 18, 2008)
(2009 Shearouse Adv. Sh. No. 46 at 15).[1] We
granted certiorari and, finding no error, now
affirm the Court of Appeals.

FACTS

A car driven by Joyner collided with a car in
which Todd was a passenger. Todd sustained
injuries and sued for damages. State Farm,
Joyner's insurer, defended her at trial. Joyner
admitted negligence and the trial court directed a
verdict on liability. Consequently, the sole issue
before the jury was the amount of damages
owed Todd. In disputing Todd's claimed
damages, Joyner presented Dr. Richard J.
Friedman as an expert in orthopedic surgery.
Because Dr. Friedman was unavailable during
trial, his deposition testimony was read to the
jury. At the deposition, Todd questioned Dr.
Friedman concerning his relationship with State
Farm, but Friedman was unable to provide
answers to most questions. Dr. Friedman
testified that he did not know the number of
times he testified for other lawyers in defense
cases or how many depositions he testified in
per year. He explained that he does not keep
records and routinely throws out invoices
relating to past expert testimony once his bill is
paid. Moreover, when asked what percentage of
his practice was comprised of expert testimony,

Dr. Friedman answered "very small" and
outlined a typical busy work week which left
"not much time . . . for anything else."

Following the deposition, Todd subpoenaed
payment records from State Farm for regarding
Dr. Friedman's expert consultation in any case
for the past three years. The records supplied
showed that Friedman was paid between
\$50,000 and \$60,000 for work on eighteen
different claim numbers during calendar years
2003-2005. Todd attempted to introduce the
payment records at trial as evidence of bias, but
the trial judge refused, citing Rule 403 of the
South Carolina Rules of Civil Procedure
(SCRPC).

In his testimony, Dr. Friedman opined that Todd
suffered no permanent impairment from the auto
accident and that any treatment she received
more than roughly four months after the accident
was not reasonable and necessary or proximately
caused by the accident. Dr. Friedman was the
only expert whose testimony was offered at
trial. At the conclusion of the trial, the jury
found for Todd in the amount of \$37,191.11, the
amount of medical bills presented at the trial.
Todd moved for additur and filed a motion for a
new trial, both of which were denied.

Todd contested a number of evidentiary rulings
by the trial court as well as the trial court's
refusal to grant her motion for additur. The
Court of Appeals affirmed the trial court's
rulings on all points. Todd, 376 S.C. 144, 654
S.E.2d 862. We granted certiorari.

ISSUES

I. Did the Court of Appeals err in affirming the
trial court's decision to bar the introduction of
evidence of payments made by State Farm to the
expert?

II. Did the Court of Appeals err in affirming the
trial court's decision allowing Joyner's expert to
read from Todd's medical records during his
testimony?

DISCUSSION

I. Yoho v. Thompson

On certiorari, Todd argues that the Court of
Appeals erred in affirming the trial court's
refusal to allow introduction of the payment
records because the records were properly
admissible to show bias under Yoho v.

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Thompson, 345 S.C. 361, 548 S.E.2d 584 (2001). We disagree.

Prior to 1995, the long-standing rule in South Carolina was that, in an action for damages, a defendant's insurance coverage should not be revealed to the jury. Yoho, 345 S.C. at 365, 548 S.E.2d at 585. Rule 411 of the South Carolina Rules of Evidence (SCRE) altered the bar on evidence of insurance and provides:

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 411, SCRE (2008).

In Yoho, we adopted a framework for analysis in considering whether or not to admit evidence of insurance. We held that if Rule 411 does not require the exclusion of evidence of insurance, the court should then proceed to perform Rule 403 analysis and consider whether the probative value of the evidence is substantially outweighed by the prejudicial effect and potential for confusing the jury. Yoho, 345 S.C. at 365, 548 S.E.2d at 586. As liability was admitted in this case, Rule 411 is not implicated and the question whether the records are admissible turns on Rule 403.

In considering whether an expert's connection to a defendant's insurer is sufficiently probative to outweigh the prejudice to the defendant resulting from the jury's knowledge that the defendant carries liability insurance, this Court adopted the "substantial connection" analysis employed in a majority of jurisdictions. Id. at 366, 548 S.E.2d at 586. Applying the "substantial connection" test, the Yoho Court noted (1) that the expert was not merely paid an expert fee in the case but instead maintained an employment relationship with the insurance company and other insurance companies; (2) the expert consulted for the insurance company and gave lectures to its agents and adjusters; (3) 10-20% of the expert's practice consisted of reviewing records for insurance companies; and (4) the expert's yearly salary was based in part on his insurance consulting work. Id. Based on these facts, the Yoho Court found that the expert had a

substantial connection to the insurance company and therefore, the trial court erred in barring admission of evidence of insurance. Id.

Todd showed, through payment records and the testimony of Potts, that Dr. Friedman earned approximately \$50,000 from State Farm during calendar years 2003-2005 based on work on eighteen claims, but presented no evidence as to Dr. Friedman's total earnings during that period. Moreover, unlike Yoho, the evidence appears to show that Dr. Friedman was paid an expert fee rather than having an employment relationship with State Farm. In short, the evidence presented by Todd does not show as strong a connection between the expert and the insurance company as in Yoho and we cannot conclude that the Court of Appeals erred in affirming the trial court.

II. Medical Records

Todd contends that the Court of Appeals erred in upholding the trial court's decision allowing Dr. Friedman to read from Todd's medical records at trial. We disagree.

During the deposition, which was read to the jury at trial, Dr. Friedman was asked to comment on the reasonableness of Todd's medical treatment and whether injuries Todd claimed resulted from the car accident actually existed before that time. Dr. Friedman based his opinions, in part, on a review of Todd's medical records and, in explaining his opinions, Dr. Friedman referenced Todd's medical records a number of times and occasionally read from the records. Since Dr. Friedman's testimony centered on the idea that injuries Todd claimed resulted from the wreck actually existed prior to the accident, most of the portions of the records read by Dr. Friedman referred to Todd's statements or complaints to her doctors.[2] At trial, Todd objected to Dr. Friedman's testimony as to medical records as hearsay. We find no error. We find that the records introduced through Dr. Friedman's testimony referring to complaints or statements Todd made to her physicians are not barred by the hearsay rule. Rule 803, SCRE provides as follows: The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment; provided, however, that the admissibility of statements made after commencement of the litigation is left to the court's discretion.

Rule 803(4), SCRE (2008). The medical history referenced by Dr. Friedman falls within the ambit of Rule 803(4) and therefore, does not run afoul of the hearsay rule. The Court of Appeals, therefore, did not err in affirming the trial court's decision to allow the testimony.

CONCLUSION

We find that the Court of Appeals did not err in affirming the trial court's finding that Todd did not show a "substantial connection" between State Farm and Dr. Friedman to require admission of evidence of insurance. We further find no error in the decision to allow Dr. Friedman to refer to Todd's medical records, and therefore affirm on this ground. We affirm all remaining issues under Rule 220(c).

AFFIRMED.

TOAL, C.J., WALLER, J., and Acting Justice E. C. Burnett, III, concur. BEATTY, J., dissenting in a separate opinion.

JUSTICE BEATTY: I respectfully dissent. Dr. Friedman was employed by State Farm on eighteen different occasions over a three year period immediately prior to trial. This employment relationship clearly constitutes a substantial connection between State Farm and Dr. Friedman. Evidence of this substantial connection should have been admitted to show possible bias on Dr. Friedman's part. See *Yoho v. Thompson*, 345 S.C. 361, 548 S.E.2d 584 (2001) (holding evidence of a defense expert's medical consulting work for an insurance carrier was admissible, even though the evidence contained a reference to insurance, because considerable latitude is allowed during cross-examination to test a witness's bias, prejudice, or credibility).

The probative value of this evidence far outweighed its prejudicial effect. See *id.* at 366, 548 S.E.2d at 586 (stating that a substantial

connection between an expert and a defendant's insurer is sufficiently probative on the issue of bias so as to outweigh the prejudice to the defendant resulting from the fact that the jury knows the defendant carries liability insurance). Considering the fact that liability insurance has been required in South Carolina for decades, see S.C. Code Ann. §§ 56-10-10, -20, -220 (2006), it is highly probable that every juror already knew that insurance was available. The only unknown was the name of the carrier. Therefore, it is probable that there was no prejudicial effect to be concerned with.

Connecting Dr. Friedman to the insurance carrier was highly probative on the issue of his bias in favor of the insurance carrier, State Farm, and Joyner. In my view there was very little, if any, unfair prejudice to Joyner.

I concur in the remaining issues.

[1] The Court of Appeals filed the original opinion in this matter on November 27, 2007. The Court of Appeals denied the petition for rehearing but withdrew the original opinion and substituted the above-referenced opinion, which makes only minor changes to the original version. Apparently, the new opinion was never submitted for publication. We now revise the citation to reference the re-filed opinion.

[2] For example, Dr. Friedman testified that Todd "did complain of headaches to her doctor on March 19th, 1998."

Waters v Young 100 F.3d 1437, 1441 (9th Cir.1996): Relatedly, a party who has rested may move to reopen her case in order to cure an evidentiary deficiency identified in a Rule 50(a) motion; the Court recognizes its obligation to freely give leave to amend when justice so requires, Fed. R. Civ. P. 15(a)(2), and to "ensure that pro se litigants do not unwittingly fall victim to procedural requirements." The purpose behind these requirements is to sufficiently apprise the non-moving party and the court of deficiencies in proof offered by the opposing party and to provide that party an opportunity to correct those deficiencies¹. (In *Jamali v Maricopa County the District Court of Arizona* 2013 - "As a general matter, this court has long sought to ensure that pro se litigants do not unwittingly fall victim to procedural requirements that they may, with some assistance from the court, be able to satisfy.").

¹ *Sloas v. CSX Transportation, Inc.*, Dist. Court, SD West Virginia, 2009

WATERS v. YOUNG
No. 95-56055.

100 F.3d 1437 (1996)

B. Benedict WATERS, Plaintiff-Appellant, v. Charles YOUNG, Defendant, and Paul Townsend and William Cormier, Defendants-Appellees.

United States Court of Appeals, Ninth Circuit.
Argued and Submitted October 11, 1996.
Decided November 19, 1996.

- [View Case](#)
- [Cited Cases](#)
- [Citing Case](#)

Attorney(s) appearing for the Case

B. Benedict Waters, Los Angeles, CA, in pro per for plaintiff-appellant.

Melinda W. Ebelhar, Hagenbaugh & Murphy, Glendale, CA, for defendants-appellees. Before PREGERSON, BOOCHEVER and REINHARDT, Circuit Judges.

REINHARDT, Circuit Judge:

Byron Benedict Waters appeals from the district court's rejection of his civil rights claims under 42 U.S.C. §§ 1981, 1983, and 1985(3) against employees of the University of California at Los Angeles (UCLA). Waters argues on appeal that the district court erred in granting the defendants' motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) without first apprising him of the deficiencies in his proof and giving him an opportunity to present further evidence on any dispositive facts. We agree and remand for a new trial.

BACKGROUND

Waters is an African-American male who formerly worked as a temporary employee at UCLA. From 1986 to 1987, he was assigned to work in the mailroom at UCLA Capital Programs, an organization that performs general contracting work for the university. During that time, he met his current girl-friend, a white woman and mailroom co-worker. Waters has alleged that one of his supervisors at Capital Programs made a variety of disparaging and racist remarks about his interracial relationship.

When a career position in the mailroom opened, it was offered to him, but following the alleged criticism of his interracial relationship, the offer was withdrawn. Waters then applied for another career position at Capital Programs as an "Administrative Assistant II." Citing budgetary constraints, Capital Programs simultaneously [100 F.3d 1439] eliminated both that position and Waters' temporary position in the mailroom. Alleging civil rights violations, Waters filed a variety of lawsuits in state and federal court against Capital Programs staff and other UCLA employees.

In 1989, Waters again applied to work at Capital Programs, this time as a "Secretary II." Responsibility for the decision to reject his application was apparently shared by appellees Paul Townsend, an executive assistant at Capital Programs, and William Cormier, the director of operations at Capital Programs. Cormier's letter informed Waters that he would not be considered either for that position or for others that might become available at Capital Programs "in the near future." Although the letter specifically denied that the decision to exclude Waters was in response to his previous lawsuits against UCLA employees, it characterized his conduct in the prosecution of those suits as "seek[ing] only to ridicule, embarrass, degrade and intimidate University employees, including those who would be your co-workers."¹ In 1990, Waters filed the present pro se action in district court against twenty-two defendants, including Townsend, Cormier, and UCLA Chancellor Charles Young. Waters asserted, inter alia, claims under 42 U.S.C. § 1981 for employment discrimination on the basis of race; claims under 42 U.S.C. § 1983 for retaliatory refusal-to-hire based on his prior lawsuits; and claims under 42 U.S.C. § 1985(3) for conspiracy to violate his civil rights. Prior to trial, the district court dismissed or otherwise rejected all of his claims except for his §§ 1981, 1983, and 1985(3) claims against Townsend and Cormier.

Waters' remaining claims against Townsend and Cormier proceeded to trial in 1995. Waters represented himself throughout the district court proceedings, which lasted a total of one hour and twenty minutes. Following opening arguments,

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Waters examined himself regarding his employment history and his current duties as chief neuropsychological assessor at the Brentwood Movement Disorders Clinic, a research project funded by UCLA. Waters testified that in 1989 he applied for a "Secretary II" position advertised at UCLA Capital Programs, and that he received a letter from Cormier informing him that he would not be considered for any position at Capital Programs then or in the near future. Although Waters testified as to his own job skills and qualifications, he did not testify as to the requirements of the Secretary II position or the qualifications of the person eventually hired.

At the end of his testimony, Waters stated that he had completed his direct examination.

Prompted by the district court, the defendants made their first motion for judgment as a matter of law under Rule 50(a):

THE COURT: Okay.

Mr. Waters has completed his direct examination, now. This is the beginning of cross examination, correct?

MR. WATERS: Yes.

MS. MUSICANT: Yes.

THE COURT: One minute. In my view, he's has [sic] not made a prima facie case. Do you have a motion?

MS. MUSICANT: I move for judgment as a matter of law under Federal Rule of Civil Procedure 50.

THE COURT: Motion granted

MR. WATERS: I'll be calling other witnesses.

THE COURT: You will be calling — you didn't testimony me that [sic]. MR. WATERS: Mr.

Cormier and Mr. Townsend.

THE COURT: I asked you that; you said, no.

MR. WATERS: I can't testify as to their position after that.

THE COURT: All right. All right.

The trial continued, and Waters called Townsend as his second witness. Townsend testified only that his duties included hiring for the position Waters had sought, that he had rejected Waters' application, and that he had

subsequently hired a white woman for the position.

Waters then called Cormier as his third and final witness. Cormier testified as to the nature of his involvement in the decision to reject Waters and to Townsend's participation in that decision. Cormier asserted that Waters had made threats of physical violence against Townsend and a former supervisor, and claimed these threats as the basis for the rejection of Waters' application. Cormier also acknowledged that he had previously described Waters' behavior as "threatening" to himself, but clarified that what he found "threatening," "harassing," and "intimidating" was "the process of being involved in repeated litigation where I was called a racist."

Following Cormier's brief testimony, Waters rested. At this point, the district court again prompted defendants' counsel to move for judgment as a matter of law, and a brief sidebar ensued:

MR. WATERS: I'll rest my case, your Honor.

THE COURT: Very well. Is there a motion?

MS. MUSICANT: Shall we approach?

THE COURT: Approach sidebar. (SIDEBAR CONFERENCE BETWEEN THE COURT AND PARTIES HELD ON THE RECORD.)

MS. MUSICANT: Your Honor, I make a motion under Federal Rule of Civil Procedure 50 on the grounds that Mr. Waters has not sustained his burden of proof and defendant should be entitled to judgment as a matter of law.

THE COURT: Motion granted.

MR. WATERS: I wish to be heard on the motion.

THE COURT: Briefly. MR. WATERS: I did present a prima facie case. I applied for the job, submitted a written application. The application was rejected. After the application was rejected, they interviewed — they continued to interview. They hired a caucasian.

THE COURT: Is that it?

MR. WATERS: Yes.

HE COURT: Motion granted. (END OF SIDEBAR CONFERENCE)

In a subsequent written order granting the motion, the district court stated that it found no legally sufficient evidentiary basis for a reasonable jury to have found for Waters on any of his claims. Included among the reasons given by the district court for its ruling was Waters' failure to introduce any evidence of the skills required for the Secretary II position, or of the qualifications of the person ultimately hired. The district court also stated, *post hoc*, that Waters failed to introduce evidence to show that the defendants' stated reason for their refusal to hire him was pretextual.

DISCUSSION

Waters argues on appeal that Federal Rule of Civil Procedure 50(a) requires that a non-moving party be apprised of the deficiencies in its proof. Rule 50(a) reads:

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue. (2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

Fed.R.Civ.P. 50(a) (emphasis added). Rule 50(a) thus explicitly requires the moving party to "specify ... the law and the facts on which [it] is entitled to judgment." The Advisory [100 F.3d 1441] Committee Note to Rule 50 makes it clear that the trial court has an overlapping responsibility to inform the non-moving party of deficiencies in its proof and to afford that party an opportunity to correct any such deficiency. That note reads in relevant part:

[T]he second sentence of paragraph (a)(1) authorizes the court to consider a motion for judgment as a matter of law as soon as a party has completed a presentation on a fact essential

to that party's case. Such early action is appropriate when economy and expedition will be served. In no event, however, should the court enter judgment against a party who has not been apprised of the materiality of the dispositive fact and been afforded an opportunity to present any available evidence bearing on that fact.

Fed.R.Civ.P. 50 advisory committee's note to 1991 amendment (emphasis added). The Advisory Committee note guides our interpretation of Rule 50. See *Selph v. Council of the City of Los Angeles*, 593 F.2d 881, 883 (9th Cir.1979) (citing *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444, 66 S.Ct. 242, 245-46, 90 L.Ed. 185 (1946)).

These obligations reflect a major purpose of the motion for judgment as a matter of law, which is "to call the claimed deficiency in the evidence to the attention of the court and to opposing counsel at a time when the opposing party is still in a position to correct the deficit." *Lifshitz v. Walter Drake & Sons*, 806 F.2d 1426, 1429 (9th Cir.1986) (emphasis added); see also *Farley Transp. Co. v. Santa Fe Trail Transp. Co.*, 786 F.2d 1342, 1345-47 (9th Cir.1985). This purpose is further demonstrated by the requirement in paragraph (a)(2) of Rule 50 that an initial motion for judgment be made prior to the close of trial: "The purpose of this requirement is to assure the responding party an opportunity to cure any deficiency in that party's proof that may have been overlooked until called to the party's attention by a late motion for judgment." Fed.R.Civ.P. 50 advisory committee's note to 1991 amendment. Because a properly made motion under Rule 50(a) "specifies] the law and the facts on which the moving party is entitled to judgment," Fed.R.Civ.P. 50(a)(2), the motion itself will ordinarily inform the non-moving party of the deficiencies in its proof by identifying the dispositive fact, and the trial court's remaining responsibility will be to afford that party "an opportunity to present any available evidence bearing on that fact" before ruling on the motion. Fed.R.Civ.P. 50 advisory committee's note to 1991 amendment; see also *Francis v. Clark Equipment Co.*, 993 F.2d 545, 553-56 (6th Cir.1993) (reversing judgment

under Rule 50 where the trial court had interrupted plaintiff's case and granted judgment based on a summation of the evidence to be presented without specifying the dispositive issue or the controlling law). When a Rule 50 motion fails to identify the deficiencies in the non-moving party's proof, however, the trial court may not rule on the motion until it first apprises the non-moving party "of the materiality of the dispositive fact," Fed.R.Civ.P. 50 advisory committee's note. This requirement is a necessary and integral part of Rule 50: insofar as a Rule 50 motion is intended "to assure the responding party an opportunity to cure any deficiency in that party's proof," *id.*, that "opportunity" is rendered meaningless if the responding party is not informed of the dispositive facts on which it must introduce evidence.

It is especially important that trial courts fulfill their duties under Rule 50 when confronted with pro se litigants, who may be capable of producing the evidence necessary to sustain their claims but may not understand the time and manner in which they must do so.

As a general matter, this court has long sought to ensure that pro se litigants do not unwittingly fall victim to procedural requirements that they may, with some assistance from the court, be able to satisfy. See, e.g., *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.1987) (reasserting that pro se litigants must be given leave to amend complaint unless it is absolutely clear that amendment would be futile); *Garaux v. Pulley*, 739 F.2d 437, 439-40 (9th Cir.1984) (recognizing need to provide pro se litigants with proper notice of summary judgment procedures); *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir.1977) (recognizing that pleadings in pro se employment discrimination suit must be viewed under less stringent [100 F.3d 1442] standard); *Armstrong v. Rushing*, 352 F.2d 836, 837 (9th Cir.1965) (setting forth procedural protections for pro se civil rights plaintiffs). The present case illustrates the particular need for trial courts to observe the requirements of Rule 50 where pro se litigants are involved. Having twice elicited and entertained Rule 50 motions that improperly failed to state the law

and facts on which judgment was sought, the district court then failed to inform Waters of the deficiencies in his proof or to afford him the opportunity to present needed evidence. Yet the record reveals that evidence exists that, if introduced at trial, might have enabled him to overcome at least some of the purported deficiencies. For example, although the job applications of both Waters and the person who was ultimately hired for the Secretary II position set forth their respective qualifications and had been submitted by Waters as part of his successful effort to resist summary judgment, Waters never attempted to produce these at trial; nor did he testify as to the work he had performed as the equivalent of a "Secretary II" at the Brentwood Movement Disorders Laboratory. By introducing evidence that he was qualified for the position of Secretary II and that the person ultimately hired was similarly or less qualified than himself, he could have supplied missing elements of a prima facie case of disparate treatment. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973); *Lam v. University of Hawaii*, 40 F.3d 1551, 1559 (9th Cir.1994). We need not discuss here the evidence that Waters possessed or had already placed in the record regarding whether the reasons offered by the appellees for their refusal to hire him were pretextual. It appears from the circumstances of this case that pretext was a plausible contention. Indeed, the district court had previously denied appellees' motion for summary judgment on this very point. If the district court did not find Waters' showing at trial adequate on the issue of pretext, it was obligated to advise him of that fact before entering judgment against him.

Appellees attempt to salvage the district court's ruling by arguing that, because Waters has experience in bringing civil rights suits and was therefore familiar with the elements of such claims, he was not prejudiced by the district court's failure to give him the notice to which he was entitled under Rule 50. It is quite obvious from his actions that Waters did not understand the nature of the proof that he was required to introduce. More important, however, the relative legal expertise of a party cannot excuse the

district court from its duties under Rule 50. The extent of a party's legal expertise is irrelevant for purposes of that rule. By its language, Rule 50 applies in all cases, including those in which parties are represented by highly qualified counsel. Compliance with the Rule, including the fulfilling by the court of its obligations as explained in the Advisory Committee note, is mandatory.

CONCLUSION

Federal Rule of Civil Procedure 50 requires district courts to apprise parties of the deficiencies in their proof, and to give them an opportunity to present further evidence on the dispositive facts, before granting judgment as a matter of law against them. Although this requirement follows from the text, purpose, structure, and legislative history of Rule 50 and is mandatory in *all cases*, *it is a particularly important requirement in the case of pro se litigants*. Because Waters did not receive the *notice and opportunity to which he was entitled* under Rule 50, we must reverse and remand for a new trial.

REVERSED AND REMANDED.

FootNotes

1. Waters' conduct in the prosecution of these suits has been less than exemplary. He has repeatedly insulted UCLA staff and attorneys in his correspondence and has also been responsible for a variety of willful procedural violations, including his failure to appear at one deposition and his refusal to answer any questions at a subsequent deposition that the district court ordered him to attend. In an unpublished disposition, this court affirmed the dismissal of one of his suits as a result of these violations. *Waters v. Blackman*, Nos. 90-55675, 91-55053, 1991 WL 216978, at *3 (9th Cir. Oct. 24, 1991).

CASE LAW:

EXHIBIT 14

Pike v SCDOT - or an issue to be preserved for appeal, it must have been raised to and ruled upon by the trial court; 326 S.C. 289, 306-307, 486 S.E.2d 750, 759 (1997).

343 S.C. 224 (2000)
540 S.E.2d 87

Michael PIKE, as Personal Representative of
the Estate of Melissa P. Pike, Respondent,

v.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, Petitioner.

No. 25208.

Supreme Court of South Carolina.

Heard October 4, 2000.

Decided November 6, 2000.

*225 William McBee Smith of Smith & Haskell,
L.L.P., of Spartanburg, for petitioner.

James Fletcher Thompson of Thompson &
Sinclair, of Spartanburg, for respondent.
WALLER, Justice:

This is a wrongful death action. Respondent's wife, Melissa Pike (Melissa), was involved in a car accident at an intersection in Spartanburg; she died from injuries sustained in the *226 collision. The jury found petitioner, the Department of Transportation (DOT), liable in the amount of \$730,000. The DOT appealed, and the Court of Appeals affirmed. *Pike v. South Carolina Dep't of Transp.*, 332 S.C. 605, 506 S.E.2d 516 (Ct.App.1998). We granted the petition for a writ of certiorari to review the Court of Appeals' decision. We affirm as modified.

FACTS

The accident occurred on June 24, 1992, when Melissa attempted to turn left from Park Road onto United States Highway 176. A car traveling south on Highway 176 collided with Melissa's car. She died the next day. Respondent alleged that the DOT was negligent in failing to move a directional sign, reading "CHAPMAN HIGH SCHOOL," because the sign obstructed motorists' view of oncoming traffic from Highway 176 when they were stopped at the stop sign on Park Road. Respondent also claimed that the DOT negligently maintained the intersection by not installing a traffic signal. The DOT asserted discretionary immunity under the South Carolina Tort Claims Act as a defense. The trial court denied the DOT's motions for directed verdict. The jury found in favor of respondent and awarded \$730,000. In addition to

moving for JNOV, or in the alternative, a new trial, the DOT also moved to reduce the verdict to \$250,000, the statutory cap under the Tort Claims Act. The trial court denied the DOT's post-trial motions.

ISSUES

1. What is the burden of proof for the affirmative defense of discretionary immunity?
2. Did the trial court err in admitting evidence of prior accidents at the intersection and letters to the DOT regarding the intersection?
3. Does the statutory cap on damages under the South Carolina Tort Claims Act apply to this case?

*227 I. BURDEN OF PROOF ON DISCRETIONARY IMMUNITY

The DOT argues that it only needs to produce "some evidence" in order to gain immunity under the South Carolina Tort Claims Act. See S.C.Code Ann. § 15-78-60(5) & (15) (Supp.1999).^[1] We disagree.

At trial, Respondent presented evidence that the DOT had notice of problems at this intersection based on letters received by the department and accidents occurring at the intersection. Specifically regarding the Chapman High School sign, the DOT received a letter in November 1990 from James Everhart. The letter had a sketch of the intersection and stated that: The newly erected Chapman High School sign and the tree limbs over the sidewalk a little farther up toward Asheville make it difficult for one to see the traffic coming from toward [sic] Asheville. Therefore crossing this intersection is a little dangerous.

Removal of sign, trimming limbs and installing a traffic light might be the answer to this dangerous situation.

Gary Thompson, a DOT district engineer, testified that in response to the Everhart letter, the department sent Rodney Wilson to evaluate the intersection. Wilson was a "civil engineer associate," but he did not have a technical degree of any kind. According to Thompson, Wilson was qualified to gather data upon which sight distances could be calculated, *228 but he was not qualified to actually calculate sight distance.^[2] Wilson stated that in November 1990 he estimated the available sight distance at the intersection to be between 500 and 600 feet. He also went back to the intersection in July 1991

Exhibit 14

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and determined that the tree limbs did not block visibility.

There was no testimony that anyone other than Wilson visited the intersection between November 1990, when the Everhart letter was received, and June 1992, when Melissa had her accident. Moreover, prior to the accident, no calculations were performed by DOT engineers to determine the minimum sight distance required at the intersection. Instead, Thompson testified that a "rule of thumb" was used to estimate adequate sight distance - ten multiplied by the speed limit. Based on the 40 mph speed limit, Thompson ascertained that 400 feet would be enough sight distance at the intersection. Thompson then relied on Wilson's estimate of 500 to 600 feet of available sight distance and determined that this estimate exceeded the 400 feet "ballpark" estimate for the minimum sight distance required.

Nonetheless, Thompson acknowledged that other variables should be considered when calculating sight distance, such as the grade and width of the road. In addition, Thompson conceded that adequate sight distance is properly calculated based on the "prevailing speed" of motorists, which in this case was 48 mph.^[3] Most significantly, Thompson testified that moving the Chapman High School sign was never even contemplated or discussed.

Respondent's expert in traffic engineering, Dr. Robert Roberts, opined that it was a violation of accepted engineering practices to not move a sign when the department had notice that the sign was obstructing motorists' vision. Dr. Roberts *229 also stated that because the Chapman High School sign was a "guide sign," and thus low down on the hierarchy of signs, the sign should have been moved. In Dr. Roberts's opinion, it was a deviation from accepted standards of engineering practices to estimate available sight distance, rather than make precise measurements. Furthermore, Dr. Roberts believed it was inappropriate to estimate the minimum sight distance required based on the rule of thumb; instead, calculations should be done which take into consideration the width of the road and the prevailing speed at the intersection.

Using the prevailing speed of 48 mph, Dr. Roberts calculated the minimum sight distance

required at the intersection at 564 feet. This exceeded 525 feet, the actual amount of available sight distance at the intersection.^[4] The DOT's expert, Dr. James Clark, had a different opinion. Dr. Clark calculated the required sight distance at 470 feet, which did not exceed 525 feet. Although Dr. Clark admitted that the prevailing speed is usually used to make these determinations and the prevailing speed at this intersection was 48 mph, Dr. Clark used 40 mph in his calculations.

The DOT moved for a directed verdict at the close of Respondent's case, renewed the motion at the close of its own case, and moved for JNOV or a new trial after the verdict. The DOT argued it had presented evidence that it had evaluated competing alternatives in dealing with the intersection and therefore it was entitled to discretionary immunity as a matter of law. The trial court denied the motions.

On appeal, the Court of Appeals found Respondent had presented evidence that the DOT failed to utilize accepted professional engineering standards in analyzing the visibility of the intersection. Although the DOT "presented evidence that could dispute some of [Respondent's] evidence," the Court of Appeals held that Respondent "produced more than enough evidence for the judge to send the issue of discretionary immunity to the jury." *Pike*, 332 S.C. at 612, 506 S.E.2d at 519. Accordingly, the Court of Appeals decided that the *230 trial court had not erred in denying the directed verdict and JNOV motions.

The Court of Appeals, however, did not address the DOT's argument that it merely had to produce "some evidence" in order to be entitled to immunity. *Id.* at 612 n. 3, 506 S.E.2d at 520 n. 3. The DOT argues that its burden of proof on discretionary immunity is a burden of production, not a burden of persuasion. Specifically, the DOT maintains that a governmental entity must only show more than a scintilla of evidence that it weighed competing considerations and utilized accepted professional standards in order to be entitled to discretionary immunity. Because it presented some evidence of this, the DOT contends that the trial court should not have submitted the case to the jury. The Tort Claims Act waives immunity for torts committed by the State, its political

subdivisions, and governmental employees acting within the scope of their official duties. See S.C.Code Ann. § 15-78-40 (Supp.1999). There are several exceptions to this waiver of immunity, including what is known as discretionary immunity. See, e.g., S.C.Code Ann. § 15-78-60(5) (Supp.1999). This Court has repeatedly stated that the burden of establishing a limitation on liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense. E.g., *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999); *Strange v. South Carolina Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994); *Foster v. South Carolina Dep't of Highways and Pub. Transp.*, 306 S.C. 519, 413 S.E.2d 31 (1992).

To establish discretionary immunity, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice. *Foster*, 306 S.C. at 525, 413 S.E.2d at 35. Furthermore, "the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. It is not enough to say the defect was noted and a decision was made not to repair it." *Id.*

*231 The DOT asserts that by applying a preponderance of the evidence standard to the discretionary immunity defense, the Court will, in effect, judicially abolish the defense by allowing juries to second guess the DOT's discretionary decisions. It therefore argues that a "some evidence" standard should apply, i.e., a governmental entity merely has the burden of production, not the burden of persuasion. The DOT's argument is wholly meritless. By adopting a "some evidence" standard, the DOT would avail itself of an affirmative defense but effectively be relieved of proving the defense. This, in our opinion, flies in the face of the well-established rule that the party pleading an affirmative defense "has the burden of proving it." *Hoffman v. Greenville County*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963); accord *McCabe v. Sloan*, 184 S.C. 158, 162, 191 S.E. 905, 906 (1937) ("It seems unnecessary to cite authorities

in support of the postulate that when one pleads an affirmative defense, the burden is on him to prove it.").

Furthermore, basic hornbook law compels rejection of the DOT's contention that this burden of proof is merely one of production. A burden of production generally means the burden on a party to come forward with evidence in order to defeat a directed verdict motion. 2 MCCORMICK ON EVIDENCE § 336 (5th ed.1999). In other words, the burden of production is directed to the judge. *Id.* In contrast, the burden of persuasion is directed at the jury and comes into play only after the parties have sustained their respective burdens of production. *Id.* Additionally, "the party who has the burden of pleading a fact will have the burdens of producing evidence and of persuading the jury of its existence." *Id.* at § 337 (emphasis added). Finally, we note that the measure of persuasion in civil cases is, generally, by a preponderance, or greater weight, of the evidence. *Id.* at § 339. In the instant case, the DOT moved for a directed verdict. While a burden of production is appropriate to defeat a directed verdict motion, see *id.* at § 336, it is simply illogical to apply the same burden to grant a directed verdict motion.

Moreover, given the standard a governmental entity must meet to establish discretionary immunity, we find that the burden of proof must be one of persuasion. In *Foster*, the *232 Court mandated that when a governmental entity was claiming discretionary immunity, it "must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them." *Foster*, 306 S.C. at 525, 413 S.E.2d at 35 (emphasis added). This standard is inherently factual. To allow the DOT to shield itself with only a showing of "some evidence" would eviscerate the standard enunciated by this Court. Certainly a governmental entity should not be entitled to discretionary immunity as a matter of law merely by creating an issue of fact. We hold that when a governmental entity asserts the affirmative defense of discretionary immunity under the Tort Claims Act, the burden of proof is on the governmental entity and this burden is one of persuasion by a preponderance of the evidence.

Accordingly, the Court of Appeals correctly analyzed this issue in terms of whether a jury issue was presented. *See, e.g., Strange*, 314 S.C. at 429-30, 445 S.E.2d at 440 ("In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt."). Because there was an issue of fact on whether: (1) the DOT's employees actually weighed competing considerations and made a conscious choice regarding the Chapman High School sign, and (2) the DOT established that in weighing competing considerations and alternatives, it utilized accepted professional standards, we find the trial court correctly denied the DOT's motions. Consequently, we affirm the Court of Appeals on this issue.

2. ADMISSIBILITY OF EVIDENCE OF PRIOR ACCIDENTS AT INTERSECTION AND LETTERS TO DOT ABOUT INTERSECTION

The DOT argues that the admission of evidence on 19 previous accidents which occurred at or near the intersection was prejudicial error because 18 of the 19 accidents were not similar to Melissa's accident. The DOT also argues that the trial court erroneously admitted letters written to the DOT about the intersection.

*233 At trial, Respondent presented evidence to support his claim that the DOT negligently maintained the intersection by failing to install a traffic signal. The DOT's expert, Dr. Clark testified that The Manual on Uniform Traffic Control Devices has specific criteria known as "warrants." One of these warrants is whether "a minimum of five traffic accidents per year could be corrected by the installation of a signal." Thus, if five accidents in one year could be corrected by a traffic light, then this weighs in favor of installing a light. Thompson even stated that when reviewing accident history, the department looks for a pattern and therefore, it could take even less than five accidents a year to warrant installation of a traffic signal. Thompson was asked about the 19 previous accidents and he explained that prior to Melissa's accident, only one accident occurred when a car turned left from Park Road onto

Highway 176. Thompson testified that the other accidents which occurred at or near the intersection were not under similar circumstances.

Over objection, Respondent was also permitted to admit several letters from politicians and citizens. These letters expressed concern about the safety of the intersection and requested that either a traffic signal be installed or a feasibility study be conducted on whether a traffic signal was needed.^[5] Thompson testified that in response to the letters, the DOT evaluated the intersection several times to determine whether a traffic signal should be installed. Based on the studies that were performed, the DOT recommended no traffic signal at the intersection.^[6]

*234 The DOT argues that the admission of both the prior accidents and the letters was prejudicial error. We disagree.

Evidence is relevant and admissible if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Rules 401, 402, SCRE. Relevant evidence may be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE.* It is well settled that the admission and rejection of testimony is largely within the trial court's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion. *E.g., Baber v. Greenville County*, 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997).

In our opinion, the evidence of the previous accidents and the letters was relevant to the issue of whether the DOT was negligent in failing to install a traffic signal at the intersection. Regarding the prior accidents, the evidence showed that more than five accidents occurred in 1990, and thus was specifically relevant to the warrant outlined in The Manual on Uniform Traffic Control Devices. Moreover, because the DOT's own engineer, Thompson, stated that even less than five accidents could signal a safety problem at an intersection, the evidence of the previous accidents was properly admitted. The letters, which requested either the installation of a traffic signal or an investigation on the feasibility of a signal, served to show that

the DOT knew that the intersection was dangerous and potentially required a traffic light. Thus, the letters were clearly relevant on the issue of notice.

Accordingly, we hold that the trial court properly allowed this evidence to be admitted.

3. STATUTORY CAP ON DAMAGES

The DOT argues that the verdict in this case should have been reduced to \$250,000 in accordance with the reenactment of the statutory cap. See 1997 S.C. Acts No. 155, § 55(C); S.C. Code Ann. 15-78-120(a)(1).^[7] We disagree. *235 On appeal, the DOT argued that section 55(C) of the 1997 Appropriations Act reenacted the statutory cap and therefore, the verdict must be reduced. Section 55(F) states that "[e]xcept where otherwise provided, this section takes effect upon approval of the Governor and applies to claims or actions pending on that date or thereafter filed, except where final judgment has been entered before that date." (Emphasis added). This section was approved by the Governor on June 14, 1997. The DOT argued that the statutory cap applied because the appeal was still pending as of June 14, 1997, and therefore the case was an action "pending on that date." The Court of Appeals, however, found that the words "final judgment" meant the verdict in the trial court. Since the verdict in this case was rendered on July 18, 1996, the Court of Appeals held that the 1997 reenactment of the statutory cap did not apply. *Pike*, 332 S.C. at 618-19, 506 S.E.2d at 523.

Subsequent to the Court of Appeals' decision, this Court faced the same issue in *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). Based on the separation of powers doctrine, the *Steinke* Court held that the Legislature could not by retroactive amendment overrule this Court's prior precedent that the statutory cap does not apply to actions filed before July 1, 1994.^[8] Because the action in *Steinke* had been filed on June 29, 1994, two days before the reinstatement of the limits on July 1, 1994, the Court held that the statutory cap did not apply. The instant action was filed on June 23, 1994. Pursuant to *Steinke*, the statutory cap simply does not apply. We *236

therefore affirm the result reached by the Court of Appeals on this issue.

CONCLUSION

We hold that a governmental entity has the burden of persuasion by a preponderance of the evidence when asserting discretionary immunity under the Tort Claims Act. Thus, because a jury issue was created, the Court of Appeals correctly affirmed the trial court's denial of the DOT's directed verdict and post-trial motions. We also hold that the trial court correctly admitted evidence of prior accidents at the intersection and letters to the DOT about the intersection. Finally, we hold that the statutory cap does not apply to this case based on the recent *Steinke* decision. The Court of Appeals' decision is **AFFIRMED AS MODIFIED**.

TOAL, C.J., MOORE, BURNETT and
PLEICONES, JJ., concur.

NOTES

[1] Subsection (5) states that a governmental entity is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." Subsection (15) shields the government from liability resulting from:
absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity

S.C. Code Ann. § 15-78-60(5) & (15)
(Supp. 1999).

[2] Sight distance is a measure of the visibility from a particular location. We use the term "available sight distance" to refer to the amount of sight distance actually available to a motorist when stopped at the intersection. We use the term "adequate sight distance" or "minimum sight distance required" to refer to the sight

distance needed by a motorist stopped at the intersection to safely make a left turn onto Highway 176. When the available sight distance is less than the minimum sight distance required, a safety problem is presented.

[3] The prevailing speed is also known as the 85th-percentile speed which is the speed at which 85 percent of motorists travel.

[4] After Melissa's accident, DOT engineer Rochelle Garrett went to the intersection with Wilson. Stopping at the most restrictive point the point where Garrett had to look underneath the sign she measured the available sight distance as 525 feet.

[5] The letters from politicians noted traffic problems at the intersection of Highway 176 and Chapman High School and requested studies on the feasibility of a traffic light. Another letter was from the Bergs, parents of a Chapman High School student, who informed the DOT of the "terribly hazardous" traffic situation and requested an investigation and traffic light. The Bergs wrote that it would be "well worth the effort of an investigation to save a life." A letter from another citizen, Mrs. Rector, stated that "numerous accidents" had occurred at the intersection and asked for a traffic light to be installed "as quickly as possible."

[6] The DOT determined that due to the intersection's location at the bottom of two downgrades, a traffic signal would potentially increase the danger of collision.

[7] We note that under current law, the limitation on liability is \$300,000. See S.C. Code Ann. 15-78-120(a)(1) (Supp. 1999).

[8] See *Southeastern Freight Lines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395 (1994) (where the Court held that the Legislature, by enacting inconsistent provisions in the Uniform Contribution Among Tort-Feasors Act, had impliedly repealed the statutory cap of the Tort Claims Act); *McClain v. South Carolina Dep't of Education*, 323 S.C. 132, 473 S.E.2d 799 (1996) (holding that the statutory limit in Tort Claims Act does not apply to cases filed before July 1, 1994, even when there are no joint tortfeasors with the governmental entity); *Knoke v. South Carolina Dep't of Parks, Recreation, and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996) (holding that *Southeastern Freight Lines* and *McClain* apply to the \$500,000 per

occurrence cap, not just the \$250,000 individual cap); *Wooten v. South Carolina Dep't of Transp.*, 326 S.C. 516, 485 S.E.2d 119 (Ct.App. 1997) (determining the statutory limit was inapplicable in case filed before July 1, 1994), *aff'd as modified*, 333 S.C. 464, 511 S.E.2d 355 (1999).

To: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>
Subject: FW: FOR JUDGE BENJAMIN'S LAW CLERK Fw: DEFENDANTS' SECOND REQUEST

Exhibit 15

From: glenda c [<mailto:grcouram@hotmail.com>]
Sent: Thursday, April 6, 2017 9:13 AM
To: Benjamin, DeAndrea G. <dbenjaminj@sccourts.org>
Cc: CLAWSON AND STAUBES LLC <jspitz@clawsonandstaubes.com>
Subject: FOR JUDGE BENJAMIN'S LAW CLERK Fw: DEFENDANTS' SECOND REQUEST

Morning Ms. Burns

Please see below, as stated Judge Hood allowed one continuance for the Defendants that I did not disagree with and as I understand it as a pro se and not attorney I would have to agree to another continuance. I do not agree. There is no need to prolong this it has been since September 2015 and both of us has had more than enough time to prepare for trial on the 17th.

Please deny the continuance, when I get the motion in the mail by the defendants I will respond accordingly but in case it was sent some time ago this is the quickest way to get my response to the court.

Thank you

Glen

From: glenda c <grcouram@hotmail.com>
Sent: Thursday, April 6, 2017 1:02 PM
To: Jescelyn Spitz
Subject: Re: DEFENDANTS' SECOND REQUEST

I have to agree according to Judge Hood the last time and I do not agree to a continuance this time. I will send a copy of this to Judge Benjamin's Office

I will forward a copy this to Judge Benjamin via clerk

Glen

PS sorry about the bad grammar a lot going on right now

From: Jescelyn Spitz <jspitz@clawsonandstaubes.com>
Sent: Thursday, April 6, 2017 12:53 PM
To: glenda c
Subject: RE: Trial on the 17th

495

Ms. Couram:

You will receive a copy of my formal motion for continuance by mail, which was sent out yesterday.

<image001.png>

Jescelyn T. Spitz

Licensed in SC

1612 Marion Street, Suite 200 | Columbia SC | 29201

Phone: 800 774 8242 Ext. 2395 | Fax: 843 722 2867 | Cell: 803-968-9169

Website: www.clawsonandstaubes.com | Email:

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www.clawsonandstaubes.com

As a full-service law firm committed to excellence, Clawson and Staubes, LLC has been providing clients with quality legal services for more than 40 years.

jspitz@clawsonandstaubes.com | Location: [Map](#)

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From: glenda c [<mailto:grcouram@hotmail.com>]

Sent: April 06, 2017 8:51 AM

To: Jescelyn Spitz

Subject: Trial on the 17th

Ms. Spitz

I spoke with Ms. Hensley at the Court she says we are having the trial on the 17th which will determine if I understand what will happen on the 27th

I could never reach Judge Benjamin's clerk Ms. Hensley says its because a trial they are involved in at this time.

Thank you

Glen

496

My concern was that the same case is scheduled with Judge Hood on the 27th to hear motion for summary judgment and motion to quash anyway what the email was about is that Ms. Spitz is *filing for another continuance* (the other one was done via email with Judge Hood's Clerk he granted because I agreed - no formal motion was filed).

Now Ms. Spitz is requesting another continuance with a formal Motion and the last time Judge Hood said I had to agree I was sending the email to Ms. Burns but could not find an email address that's why I put to *Attention of Law Clerk hoping she answered the Judges emails because of the exparte issue, I guess it did not work* - I had not received the formal Motion and send this email to ensure Judge Benjamin knew I did not agree to another continuance and wanted this matter to go to trial as scheduled for the 17th.

Please call me if you still have questions 803 409-9427 or 358-0127

Glen

From: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>

Sent: Thursday, April 6, 2017 1:59 PM

To: Jescelyn T. Spitz (jspitz@clawsonandstaubes.com); grcouram@hotmail.com

Subject: FW: FOR JUDGE BENJAMIN'S LAW CLERK FW: DEFENDANTS' SECOND REQUEST

Good morning Counsel,

Judge Benjamin received the following email (chain forwarded below) and neither of us can discern what the email refers to. The email was sent directly to Judge Benjamin and I was not cc'd. Please provide further clarification as to what your request for Judge Benjamin is and how I may assist.

Jasmine Burns
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Benjamin, DeAndrea G.

Sent: Thursday, April 6, 2017 9:49 AM

497

D
Jescelyn T. Spitz
Licensed in SC

1612 Marion Street, Suite 200 | Columbia SC | 29201
Phone: 800 774 8242 Ext. 2395 | Fax: 843 722 2867

Website: www.clawsonandstaubes.com | **Email:** jspitz@clawsonandstaubes.com | **Location:** Map

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Please excuse the brevity of this message and any typographical errors as this message was sent from my iPhone.

On Apr 6, 2017, at 10:22 AM, glenda c <grcouram@hotmail.com> wrote:

No I am not see below forgot to cc you a copy

Glen

From: glenda c <grcouram@hotmail.com>
Sent: Thursday, April 6, 2017 2:20 PM
To: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)
Subject: EXPLANATION

Sorry about the confusing I was trying to send this to Ms. Burns not the Judge (I have tried to contact Ms. Burns several times (about a conference/status call) and was told this morning by Ms. Henley that you were busy with a trial)

I am pro se this is a car accident case Ms. Spitz is the Attorney - September 15, 2015
Mediation completed, COURAM V TIDWELL

A couple of weeks ago Ms. Spitz asked for a conference or status and Ms. Burns was to get back with us and never did. I have been calling and emailing to find out if the trial is still scheduled for the 17th. Spoke with Ms. Henley and she said it was.

498

To: dbbenjaminlc@sccourts.org
Cc: CLAWSON AND STAUBES LLC
Subject: Re: EXPLANATION

Ms. Burns

If Ms. Spitz say I am confused I guess I am.

However, I do not believe I have stated at any time I was against her request for a status/conference with the Judge however if says otherwise I will clarify I do not have any problem with a conference call if that is what she wants.

I do state in this email *that I oppose a continuance* in this matter there has been more than enough time that the defendants and this plaintiff could have done all that is needed in this not complicated case (if the one witness Mr. Brown has not shown up for their deposition he can be ordered by the court.

As the Defendants is well aware Fault is not an issue it has been admitted verbally and in writing to such an extent *the Defendants has not even bothered to file a response to the Motion for full and partial Summary Judgment* filed by the pro se plaintiff, again

I have no issue with a conference/status call before trial on the 17th of April 2017

I do oppose a continuance in this matter

Glen

From: Jescelyn Spitz <jspitz@clawsonandstaubes.com>
Sent: Thursday, April 6, 2017 3:10 PM
To: glenda c; DBenjaminLC@sccourts.org
Subject: Re: EXPLANATION

Ms. Burns,

It's my understanding that Ms. Couram is opposing my request for a status conference and a motion for a continuance. I would note that I have never requested a continuance from Judge Hood related to the trial of this case. I think Ms. Couram is confused as it relates to a motion for sanctions that was brought by the mediator, which was continued.

Kind regards,

Jescelyn

499

RE: EXPLANATION

Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>

Fri 4/14/2017 6:44 PM

To: glenda c <grcouram@hotmail.com>; dbenjaminlc@sccourts.org <dbenjaminlc@sccourts.org>;

Cc: CLAWSON AND STAUBES LLC <jspitz@clawsonandstaubes.com>;

Good morning,

Please attend the roster meeting on Monday. Judge Benjamin will be available for a status conference next week.

Jasmine Burns

Law Clerk to the Honorable DeAndrea Gist Benjamin

Richland County Judicial Center

P.O. Box 192

1701 Main Street, Suite 215

Columbia, SC 29201

Phone: 803-576-1511

Fax: 803-576-1777

www.sccourts.org

dbenjaminlc@sccourts.org

From: glenda c [<mailto:grcouram@hotmail.com>]

Sent: Wednesday, April 12, 2017 12:01 PM

To: dbenjaminlc@sccourts.org

Cc: CLAWSON AND STAUBES LLC <jspitz@clawsonandstaubes.com>

Subject: Re: EXPLANATION

Hello Ms Burns

I was just following up on the trial for Monday and the conference call to find out if the 17th is still good for the trial and if there will be the conference call
Glen

From: glenda c <grcouram@hotmail.com>

Sent: Thursday, April 6, 2017 4:15 PM

500

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## RE: COURT DATES CERTAIN FOR TRIAL NEXT WEEK

Exhibit  
16

Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)

Mon 6/12/2017 6:57 PM

To: Jescelyn Spitz <jspitz@clawsonandstaubes.com>; glenda c <grcouram@hotmail.com>;

Good afternoon,

I will relay the request for a date certain next week. It would need to start Monday since both trial judges have scheduling conflicts for Friday.

Jasmine Burns  
Law Clerk to the Honorable DeAndrea Gist Benjamin  
Richland County Judicial Center  
P.O. Box 192  
1701 Main Street, Suite 215  
Columbia, SC 29201  
Phone: 803-576-1511  
Fax: 803-576-1777  
[www.sccourts.org](http://www.sccourts.org)  
[dbenjaminlc@sccourts.org](mailto:dbenjaminlc@sccourts.org)

**From:** Jescelyn Spitz [mailto:jspitz@clawsonandstaubes.com]  
**Sent:** Monday, June 12, 2017 1:52 PM  
**To:** glenda c <grcouram@hotmail.com>; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>  
**Subject:** RE: COURT DATES CERTAIN FOR TRIAL NEXT WEEK

Jasmine,

As we mentioned this morning, our expert witness' availability is limited to Monday's and Friday's, because he is a practicing orthopedic surgeon. We would request if Judge Benjamin set a date certain, that this issue be considered. As to Ms. Couram's indication that she plans to subpoena the Nationwide adjuster, this would be completely inappropriate; any mention of insurance at trial would be prohibited by the SCRCF.

Kind regards,

502



Jescelyn T. Spitz

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Phone: 800 774 8242 Ext. 2395 | Fax: 843 722 2867 | Cell: 803-968-9169

Website: [www.clawsonandstaubes.com](http://www.clawsonandstaubes.com) | Email: [jspitz@clawsonandstaubes.com](mailto:jspitz@clawsonandstaubes.com) | Location: [Map](#)

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---

**From:** glenda c [<mailto:grcouram@hotmail.com>]

**Sent:** June 12, 2017 1:31 PM

**To:** Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)

**Cc:** Jescelyn Spitz

**Subject:** COURT DATES CERTAIN FOR TRIAL NEXT WEEK

Hello

I have the paperwork to send out the subpoenas but no dates - I need to fill out and bring back to the court for the clerk to sign in order for them to be serviced as pro se I am not allowed to do this. Will you please provide a *firm date or dates certain for trial next week* so I can provide to Sheriff Office for service on witnesses -

Two is in Lexington and the other 3 is in Blythewood and I am waiting on a name for subpoenaing a nationwide adjuster to testify

Thank you

Glen

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503

Re: Trial - Couram v. Tidwell

Exhibit 17

glenda c

Wed 6/14/2017 6:15 PM

To: Newman, Jocelyn <jnewmanj@sccourts.org>;

Cc: CLAWSON AND STAUBES LLC <jspitz@clawsonandstaubes.com>;

no projection stand or props for the jury so they can see the evidence and hear it, I take it, well i will do my best with what i have

Thank you for responding and understanding my situation - very professional

Glen

From: Newman, Jocelyn <jnewmanj@sccourts.org>

Sent: Wednesday, June 14, 2017 6:09 PM

To: glenda c

Cc: CLAWSON AND STAUBES LLC; Newman, Jocelyn Law Clerk (Christopher Campbell)

Subject: RE: Trial - Couram v. Tidwell

Ms. Couram:

The court does not furnish any equipment for litigants. All parties are required to come prepared.

Judge Newman

From: glenda c [mailto:grcouram@hotmail.com]

Sent: Wednesday, June 14, 2017 2:03 PM

To: Newman, Jocelyn <jnewmanj@sccourts.org>

Cc: CLAWSON AND STAUBES LLC <jspitz@clawsonandstaubes.com>

Subject: Re: Trial - Couram v. Tidwell

Ms. Newman

Could I have projectors or stand and screen and recorder in the courtroom to use to play recordings to jury and defendants and emails for evidence display please as this is a damages only hearing, liability has been established via court order

504

Thank you

Glen

From: glenda c <grcouram@hotmail.com>
Sent: Wednesday, June 14, 2017 5:57 PM
To: Newman, Jocelyn
Subject: Re: Trial - Couram v. Tidwell

jury trial correct?

Thank you

Glen

From: Newman, Jocelyn <jnewmanj@sccourts.org>
Sent: Wednesday, June 14, 2017 5:55:48 PM
To: Jescelyn Spitz
Cc: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns); glenda c; Newman, Jocelyn Law Clerk (Christopher Campbell)
Subject: RE: Trial - Couram v. Tidwell

Great. I will see you all tomorrow at 10:00 in courtroom 2B.

Jocelyn Newman

From: Jescelyn Spitz [mailto:jspitz@clawsonandstaubes.com]
Sent: Wednesday, June 14, 2017 1:54 PM
To: Newman, Jocelyn <jnewmanj@sccourts.org>
Cc: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; glenda c <grcouram@hotmail.com>
Subject: RE: Trial - Couram v. Tidwell

Judge Newman:

We are ready to proceed. If we will be proceeding tomorrow, I just need to confirm my client and 3 witnesses are still available since I had called them on Monday indicating we weren't going forward following the roster meeting.

Thank you and kind regards,

505



Jescelyn T. Spitz
Licensed in SC

1612 Marion Street, Suite 200 | Columbia SC | 29201

Phone: 800 774 8242 Ext. 2395 | Fax: 843 722 2867 | Cell: 803-968-9169

Website: www.clawsonandstaubes.com | Email: jspitz@clawsonandstaubes.com | Location: [Map](#)

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From: Newman, Jocelyn [<mailto:jnewmanj@sccourts.org>]

Sent: June 14, 2017 1:35 PM

To: glenda c

Cc: Jescelyn Spitz; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)

Subject: RE: Trial - Couram v. Tidwell

If Plaintiff is prepared to proceed without witnesses, this matter can be heard tomorrow, June 15, beginning at 10:00 a.m. Please advise as to whether the defense is ready to proceed at that time.

Jocelyn Newman

From: glenda c [<mailto:grcouram@hotmail.com>]

Sent: Wednesday, June 14, 2017 1:31 PM

To: Newman, Jocelyn <jnewmanj@sccourts.org>

Cc: CLAWSON AND STAUBES LLC <jspitz@clawsonandstaubes.com>; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; Manning L Casey Law Clerk (Jonathan Pierce) <CanningLC@sccourts.org>

Subject: Re: Trial - Couram v. Tidwell

With all due respect Judge Benjamin my case has been before you twice now and each time you have been unable to conduct the trial or timely provide a date for trial so that I could get the subpoenas served. As a pro se you are aware I cannot just send out subpoenas without the court's signature and several times I have asked for dates certain and you had not responded or ignored my requests. The following is the outrage i feel and the why I feel judge shopping had been done and condoned.

506

I am more than willing to have this matter heard and settled as you implied Monday June 12, 2016 without witnesses

I can come up with only one solution on the part of the Defendants with the help of the court Judge Shopping to ensure I am before Judge Manning once again a Judge who looked me in the eye and called me his "son" THIS IS SO UNJUST and wrong. Will it be 2018 before I see justice in this matter. Ms. Spitz asked you to have this matter moved to July this year I objected and somehow she managed to have that happen anyway now I know why

I have the paperwork for the witnesses all I needed was a date for next week or even confirmation and could have had them served this week.

Thank you

Glen

From: Newman, Jocelyn <jnewmanj@sccourts.org>
Sent: Wednesday, June 14, 2017 4:18:11 PM
To: jspitz@clawsonandstaubes.com; grcouram@hotmail.com
Cc: Newman, Jocelyn Law Clerk (Christopher Campbell); Manning, L. Casey Law Clerk (Jonathan Pierce); Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)
Subject: Trial - Couram v. Tidwell

Ms. Sptiz and Ms. Couram:

This case was assigned to me for trial this week. However, I understand that Ms. Couram has not ready for trial since her witness subpoenas have not been served. Therefore, although I intended to begin the trial of this case today, that cannot happen.

I also understand that Ms. Couram would like a date certain for this trial. Judge Benjamin will not schedule one in June. Because it will be July 1 or later, you must contact Judge Manning's clerk (who is copied on this email) to make that request.

Thanks,

Jocelyn Newman

Circuit Court Judge

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507

Fwd: REGARDING FILING 59 MOTION

Exhibit 18

Newman, Jocelyn

Sat 6/17/2017 1:02 PM

To: jspitz@clawsonandstaubes.com <jspitz@clawsonandstaubes.com>; Newman, Jocelyn Law Clerk (Christopher Campbell)  
<jnewmanlc@sccourts.org>;

Cc: grcouram@hotmail.com <grcouram@hotmail.com>;

FYI

Sent from my iPhone

Begin forwarded message:

From: glenda c <grcouram@hotmail.com<mailto:grcouram@hotmail.com>>  
Date: June 17, 2017 at 8:57:05 AM EDT  
To: "Newman, Jocelyn" <jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org>>  
Subject: Re: REGARDING FILING 59 MOTION

Thank you and okay

NOTE: I tried to send this to Mr. Campbell it would not go thru on address provided, sorry.

Glen

---

From: Newman, Jocelyn <jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org>>  
Sent: Saturday, June 17, 2017 12:40 PM  
To: glenda c  
Cc: jspitz@clawsonandstaubes.com<mailto:jspitz@clawsonandstaubes.com>; Newman, Jocelyn Law Clerk  
(Christopher Campbell)  
Subject: Re: REGARDING FILING 59 MOTION

Ms. Couram, please copy Ms. Spitz and my law clerk (who are both copied on this email) on all correspondence with the court.

Jocelyn Newman  
Circuit Court Judge

508

Sent from my iPhone

On Jun 17, 2017, at 5:47 AM, glenda c

<grcouram@hotmail.com<mailto:grcouram@hotmail.com> <mailto:grcouram@hotmail.com>> wrote:

I intend to file and understand the ten days. I cannot find subsection g but if the one i found is about frivolous proceedings == the SC Supreme Court has stated in order to file an Appeal i must file a rule 59 first.

If will be nice if you would give me the exact rules as i am still a pro se litigant and the courts have ruled that judges are allowed to assist pro se litigants to a certain degree without giving legal advice when I find the case law I will send them to you.

Do you think you could add your title to your email address so a pro se would know you are a Judge.

Thank you

Glen

---

From: Newman, Jocelyn

<jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org> <mailto:jnewmanj@sccourts.org>>

Sent: Friday, June 16, 2017 8:47 PM

To: glenda c

Cc: CLAWSON AND STAUBES LLC

Subject: Re: REGARDING FILING 59 MOTION

Ms. Couram,

As i told you earlier, if you intend to file such a motion, I am allowing you ten days to do so. The other portion of my comments was directed at your compliance with subsection (g) of that rule.

Thanks,

Jocelyn Newman

Circuit Court Judge

On Jun 16, 2017, at 3:32 PM, glenda c

<grcouram@hotmail.com<mailto:grcouram@hotmail.com> <mailto:grcouram@hotmail.com> <mailto:grcouram@hotmail.com>> wrote:

509

Hello

I think this is what you want me to do. I am filing a 59 Motion for new trial and reconsideration of the verdict and appeal. I understand I have to get your ruling on this Motion first

I will have filed in your office or to you within ten days. If you do not allow such A Motion to Reconsider please let me know and I just go to work on the appeal

Thank you

Glen

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510

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2017-002145

RECEIVED

AUG 30 2018

SC Court of Appeals

Glenda R. Couram Appellant,

vs

Sherwood Tidwell Respondent.

CERTIFICATE OF COUNSEL

I certify that to the best of my knowledge and pursuant to Rule 210(g) SCACR the
Record on Appeal contains all material proposed to be included by any of the parties and not any
other material and is in substantial compliance.



Glenda Couram
104 Macaw Lane
Lexington, SC 29073
(803) 358-0127
PRO SE APPELLANT

Lexington, South Carolina
August 27, 2018