

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2018-000897

RECEIVED
DEC 31 2018
SC Court of Appeals

Rosa S. St. Gelais

Appellant,

v.

Julius L. Leary

Respondent.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP2401100

Rosa S St Gelais
PLAINTIFF(S)

Julius L Leary
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter is before the Court on Plaintiff's Motion for New Trial. After careful consideration of Plaintiff's motion, the Court respectfully denies the same.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/10/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenwood Common Pleas

Case Caption: Rosa S St Gelais VS Julius L Leary

Case Number: 2015CP2401100

Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-04-10 12:56:05 page 3 of 3

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-24-00110

VERDICT

Defendant.

- ROA 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

ROSA S. ST. GELAIS

Plaintiff(s)

vs.

JULIUS L. LEARY

Defendant(s)

Submitted by: Marvin R. Watson
Address: Watson Law Firm, P.A.
333 Main St, PO Drawer 799
Greenwood, SC 29648

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 -CP- 24 - 01100

SC Bar#: 5969
Telephone#: 864-229-2569
Fax#: 864-229-1819

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

DOCKETING INFORMATION (Check all that apply)

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

NATURE OF ACTION (Check One Box Below)

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

- TORTS-PROFESSIONAL MALPRACTICE**
- ☐ Dental Malpractice (200)
 - ☐ Legal Malpractice (210)
 - ☐ Medical Malpractice (220)
 - ☐ Notice/File Med mal (230)
 - ☐ Other (299)

- TORTS-PERSONAL INJURY**
- ☐ Assault/Slander/Libel(300)
 - ☐ Conversion (310)
 - ☒ Motor Vehicle Accident(320)
 - ☐ Premises Liability (330)
 - ☐ Products Liability (340)
 - ☐ Personal Injury (350)
 - ☐ Wrongful Death (360)
 - ☐ Other (899)

- REAL PROPERTY**
- ☐ Claim & Delivery (400)
 - ☐ Condemnation (410)
 - ☐ Foreclosure (420)
 - ☐ Mechanics Lien(430)
 - ☐ Partition (440)
 - ☐ Possession (450)
 - ☐ Building Code Violation(460)
 - ☐ Other (499)

- INMATE PETITIONS**
- ☐ PCR (500)
 - ☐ Mandamus
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

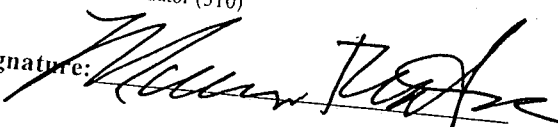
- JUDGMENTS/SETTLEMENTS**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Other (799)

- SPECIAL/COMPLEX/OTHER**
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)
- ☐ Sexual Predator (510)

- ADMINISTRATIVE LAW/REL**
- ☐ Reinstate Drivers License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction(830)
 - ☐ Forfeiture-Petition (840)
 - ☐ Forfeiture-Consent Order(850)
 - ☐ Other (899)

- APPEALS**
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil(910)
 - ☐ Mag-Criminal(920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOT (950)
 - ☐ Workers Comp (960)
 - ☐ Zoning Board(970)
 - ☐ Admin Law Judge (980)
 - ☐ Public Serv Comm(990)
 - ☐ Employ Sec Comm (991)
 - ☐ Other (999)

Submitting Party Signature: 

Date: OCTOBER, 29, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
JURY TRIAL DEMANDED

ROSA S. ST. GELAIS)
)

SUMMONS

Plaintiff,)

2015-CP-24 01100

vs.)

JULIUS L. LEARY)

Defendant.)

2015 NOV - 2 PM 2:38

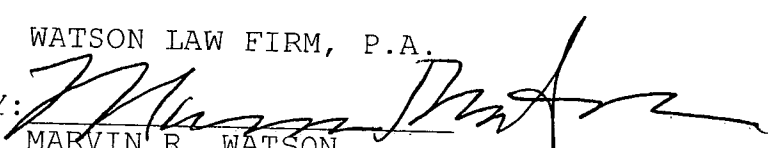
FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this Action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office, 333 Main Street, Greenwood, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff(s) in this Action will apply to the Court for the relief demanded in the Complaint.

WATSON LAW FIRM, P.A.

BY:


MARVIN R. WATSON

Attorney for Plaintiff
333 Main Street
P.O. Drawer 799
Greenwood, S.C. 29648
(864) 229-2569

Greenwood, South Carolina

OCTOBER 29 , 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
JURY TRIAL DEMANDED

ROSA S. ST. GELAIS)
Plaintiff,)

-vs-

JULIUS L. LEARY)
Defendant.)

COMPLAINT
CIVIL ACTION NO. 2015-CP-24 0118

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

2015 NOV -2 PM 2:38

The Plaintiff, complaining of the above Defendant, respectfully shows unto the Court and alleges:

1. That the Plaintiff, Rosa St. Gelais referred to as the Plaintiff, is a citizen and resident of the County of Greenwood, State of South Carolina.
2. The Defendant, Julius L. Leary, hereinafter referred to as the Defendant is a resident of Greenwood, State of South Carolina.
3. That on or about August 19, 2013, Plaintiff was stopped at traffic light Hwy 25/South Main Street. Defendant failed to stop and struck the Plaintiff in the rear. The Defendant, who was operating the vehicle in wilful, wanton, and grossly negligent manner, did cause serious bodily injury and property damage to the Plaintiff's vehicle.
4. That as a result of the vehicle in which Plaintiff was driving, the Plaintiff suffered great physical harm and injury from being thrown about inside her vehicle, all of which has and will in the future casue her to undergo much physical pain and suffering, has and will in the future cause her to undergo much physical pain and suffering, has and will in the future cause her to have to spend

#1
ROA 9

money for medical expenses and possibly incurred loss wages and she is informed and believes that she has suffered permanent injury to her body and property damage to the Plaintiff's vehicle.

5. Plaintiff alleges that the proximate cause of the collision, impact, and injuries sustained, were due to the Defendant's wilful, wanton, negligent, grossly negligent, and reckless acts of driving in the following particulars to wit:

- (a) In driving too fast for conditions
- (b) In failing to maintain a proper lookout;
- (c) In failing to keep the vehicle under proper control;
- (d) In failing to use the degree of care and caution that a reasonably prudent person would have used under circumstances then and there prevailing;
- (e) In failing to take evasive action to avoid a collision; and failed to yield right of way to Plaintiff's vehicle
- (f) In failing to operate the vehicle in accordance with the statutes and laws of this State, all of which were the direct and proximate cause of the collision, injuries sustained by the Plaintiff, and damages accruing to the Plaintiff.

6. Plaintiff alleges that she has accrued the following medical expenses,

EMS	\$ 515.98
ER	\$ 545.00
Self Regional Healthcare	\$ 13,662.66
Self Regional Healthcare	\$ 3,265.45
Self Regional Healthcare	\$ 264.29
Self Regional Healthcare	\$ 271.04


ROA 10

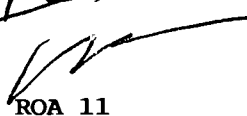
Self Regional Healthcare	\$ 1,419.62
Self Regional Healthcare	\$ 1,839.24
Carolina Center For Advanced MGT	\$ 178.50
DR. Hatfield	\$ 277.00
Upper Savannah	\$ 686.00
Abbeville Hospital	\$ 635.00
Abbeville Hospital	\$ 202.00
Abbeville Hospital	\$ 14.82
Greenwood Sports & Rehab	\$ 74.88
Walgreen's	\$ 94.58

TOTAL \$23,949.06

LOST WAGES \$720.00

will continue to have medical expenses in the future, has and will suffer excruciating pain and suffering and loss income and permanent injury to her body.

7. That the Plaintiff is informed and believes that she is entitled to a judgment against the Defendant, as the trial and evidence may determine, for both actual and punitive damages.

H 3

 ROA 11

WHEREFORE, Plaintiff prays for relief as follows:

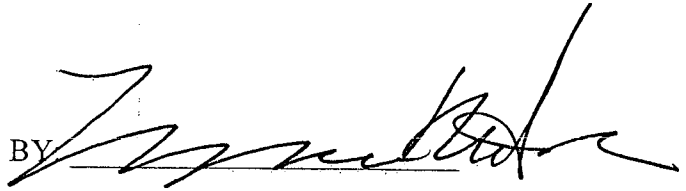
FIRST: For a judgment against the Defendant for such damages, both actual and punitive. as may be determined by a trial by jury in this case.

SECOND: For such other and further relief as may be just and proper.

WATSON LAW FIRM, P.A.

GREENWOOD, SOUTH CAROLINA

October 29, 2015

BY 

Marvin R. Watson
Attorney for Plaintiff
333 Main Street
Greenwood, SC 29646
864-229-2569

IN THE COURT OF COMMON PLEAS

C/A No.: C.A. No. 2015-CP-24-01100

Plaintiff,

DEFENDANT'S ANSWER

Defendant.

(JURY TRIAL DEMANDED)

FIELD BOUNDARY MEAS
8713 DOWD CIRCLE
GREENWOOD, S.C.

FOR A FIRST DEFENSE

1. Admitted upon information and belief.
2. Admitted.
3. It is admitted that the Defendant made contact with rear of the Plaintiff's vehicle on August 19, 2013 on Hwy 25/South Main Street. Except as specifically admitted herein; all other allegations are denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.

FOR A SECOND DEFENSE

1. The Summons and Complaint fail to state facts sufficient to state a cause of action.

FOR A THIRD DEFENSE

1. The Defendants would allege that upon information and belief that the claims of the Plaintiff are barred or partially barred by virtue of the Plaintiff's failure to mitigate Plaintiff's alleged damages.

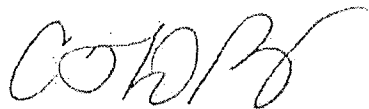
FOR A THIRD DEFENSE

1. Punitive damages are unconstitutional fifth (5th), eighth (8th) and fourteenth (14th) amendments of the United States Constitution and some of the provisions of the South Carolina Constitution.

WHEREFORE, having truly answered the Complaint of the Plaintiff, Defendant, Julius L. Leary prays that the complaint be dismissed, with costs assessed to Plaintiff, and for such and further relief as the Court may deem proper.

THIS THE 4TH DAY OF JANUARY, 2016.

Willson Jones Carter & Baxley, P.A.



Carrie Hailman O'Brien

Email: chobrien@wjlaw.net

6701 Carmel Road, Suite 475

Charlotte, NC 28226

(704) 247-9679 (phone)

(704) 544-1719 (fax)

ATTORNEYS FOR DEFENDANT



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
Rosa S. St. Gelais,	)	Case No. 2015-CP-24-01100
	)	
Plaintiff,	)	PLAINTIFF'S MOTION TO EXCLUDE
	)	
vs.	)	
	)	
Julius L. Leary,	)	
	)	
Defendant.	)	
	)	

Plaintiff anticipates that one of the defenses in this case will be to contend that the collision between Defendant's automobile and the vehicle operated by Plaintiff caused "minimal damage" to the Plaintiff's vehicle, and therefore could not have and/or did not cause the injuries sustained by Plaintiff. A typical car crash deals with physics, biomechanics, and other fields of specialized knowledge in wreck dynamics. Applying these scientific principles to the facts of any case requires resolution of the following issues:

- The amount of force required to cause a given degree of vehicle damage.
- How much of that force that would be transmitted to the injury victim.
- The amount of force required to cause the injuries sustained in the crash.
- The amount and type of treatment needed for those injuries.
- How much force it would take to cause a certain injury to a certain person.
- What kind of injury could be expected in a particular crash.
- How long it should take someone to recover from these types of injuries.

Defendant's contention is not based upon expert testimony. Rule 702, SCRE, provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an

expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

“Expert testimony may be used to help the jury to determine a fact in issue based on the expert’s specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 445 (2010). “Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.” *Id.* at 445-46. “As a general rule, a party in a personal injury case may not directly argue that the seriousness of personal injuries from a car accident correlates to the extent of the damage to the cars, unless the party can produce competent expert testimony on the issue.” *Davis v. Maute*, 770 A.2d 36, 40 (2001) (footnote omitted). “Absent such expert testimony, any inference by the jury that minimal damage to the plaintiff’s car translates into minimal personal injuries to the plaintiff would necessarily amount to unguided speculation.” *Id.* (footnote omitted).

Automobile safety issues in our country are regulated by the U.S. Department of Transportation. The National Highway Traffic Safety Administration, part of the DOT, has said the following regarding efforts to determine impact speed from property damage.

Is there a way to determine how fast a car was going during a rear end crash based on the damaged bumper(s)?

No. We do not collect any data that would be useful in determining the impact speed. Many parameters such as vehicle masses, the pre-impact velocity of both vehicles, impact angles, crush resistance, metallurgical fatigue, etc., affect how the bumpers behave during an impact. Each crash must be analyzed with respect to all of the parameters before an estimate can be made.

<http://www.nhtsa.dot.gov/cars/problems/studies/Bumper/Index.html>.

In *Davis v. Maute*, 770 A.2d 36, 38 (2001), the court held that “counsel may not argue that there is a correlation between the extent of the damage to the automobiles in an accident and the extent of the occupants’ personal injuries caused by the accident in the absence of expert

testimony.” The court further held “it was error to admit the photographs of the plaintiff’s car without a specific instruction limiting the jury’s use of the photographs.” *Id.* First, the court determined that the admissibility of the photographs turned “on whether the risk that the jury will draw an improper inference from the photographs ‘substantially outweighs’ the probative value of the photographs” *Id.* at 41. Even though the trial court let the photographs in, the appellate court stated “we can discern no relevancy to the photographs other than to suggest that Davis could not have sustained serious injuries from an apparently minor accident, and this inference is impermissible.” *Id.* at 42. The appellate court went on to state that the trial court’s failure to give an instruction that “there is no evidence of a correlation between the damage shown in the photographs and the severity of Davis’ personal injuries” was reversible error. *Id.* at 42.

Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears. *State v. Schmidt*, 288 S.C. 301, 342 S.E.2d 401 (1986). As there will be no expert testimony on the issue to correlate the extent of the damage to the automobiles and the extent of Plaintiff’s personal injuries, defense counsel should not be allowed to introduce the photographs of the vehicles; should not be allowed to quantify the wreck as a “tap” or “bump” and should not be allowed to argue that the minor impact between and/or lack of damage to the parties’ vehicles correlates to a lack of the severity of Plaintiff’s injuries sustained in the motor vehicle collision at issue. Further:

- Defendant has identified no experts that will testify on his behalf as to this theory.
- Plaintiff is not making a claim for property damage.
- The treating physician testified to the following:
 - Dr. Asa Hatfield

Q: Is the ... speed or impact of the collision determinative of ... what a car wreck's going to do to somebody?

A. No, sir.

Assuming, for the sake of argument, it is somehow relevant, it is still inadmissible because of the danger of unfair prejudice, confusion of the issues or misleading the jury. SCRE 401, 402 and 403.

The Court should also prohibit the introduction of evidence regarding Plaintiff purportedly testing positive for marijuana at the emergency room. The records simply state for the medical urine drug screen "Marijuana: Positive not confirmed verified by repeat analysis." The note further states "No chain of custody result must not be used for non medical purposes (employment or legal testing)." The results do not state what level of marijuana was in her urine or how long it had been in there.

In *Kennedy v. Griffin*, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2004), the court of appeals overturned the trial court's ruling in allowing a blood test that showed the plaintiff had marijuana in his system where the drug test did not specify the quantity of marijuana in the plaintiff's system or show how recently the plaintiff had used marijuana. The court held that the mere presence of marijuana without more would mislead the jury so it should not have been admitted. *Id.* at 128. "The admission of this evidence was more prejudicial than probative because there was no correlation between the marijuana and the accident." *Id.*

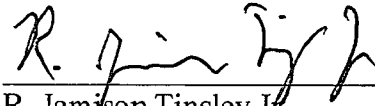
Given the lack of reliability of the drug screen from the emergency room, the court would allow speculation by the jury if it allows this evidence. Defendant does not have any proof that Plaintiff was under the influence of marijuana at the time of the wreck or that this potential marijuana use affected her damages. Such evidence is, therefore not relevant, but even if it were

relevant the court should prohibit the admission of this urine screen because any minimal probative value is substantially outweighed by the unfair prejudice, confusion of the issues, and misleading of the jury that such evidence would cause.

WHEREFORE, Plaintiff respectfully requests that this court exclude argument or introduction of any evidence, by testimony or otherwise, that the minor impact between and/or lack of damage to the parties' vehicles correlates to a lack of severity of the Plaintiff's injuries sustained in the motor vehicle collision at issue in this lawsuit. Plaintiff also requests that this court exclude the admission of her emergency room urine screen that showed her positive for marijuana, as well as any and all other relief to which she may be entitled.

TINSLEY & TINSLEY, P.C.

Attorney for Plaintiff



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(864) 223-0770
Fax: (864) 377-8278
Tinslerj@gmail.com
S.C. Bar No. 79903

Greenwood, South Carolina

March 19, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
Rosa S. St. Gelais,	)	Case No. 2015-CP-24-01100
	)	
Plaintiff,	)	PLAINTIFF'S MOTION FOR A NEW
	)	TRIAL
vs.	)	
	)	
Julius L. Leary,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW THE PLAINTIFF, by and through her undersigned counsel, moving this Honorable Court to grant her a new trial. Plaintiff moves this Court pursuant to South Carolina Rule of Civil Procedure 59(a).

The Court should grant Plaintiff (Rosa Cardona f/k/a Rosa St. Gelais) a new trial in this matter that resulted in a verdict for Defendant on March 20, 2018, because the evidence does not support that verdict, and the Court let improper testimony before the jury.

FACTS

Ms. Cardona brought this action against Leary claiming negligence in a motor vehicle accident Aug. 19, 2013. Cardona was stopped at the stop light on South Main Street in Greenwood at the intersection of South Main Street and Marshall Road when Leary rear-ended her. They were in the right, north-bound lane when the collision occurred. Cardona was in an SUV, and Leary was in a pickup truck. Leary admitted he was at fault in the accident but denied that the accident caused Cardona's damages.

Cardona testified that she was injured mainly in her neck and the back of her head. She produced testimony of her primary care physician, Dr. Asa Hatfield, who testified to her neck tenderness. He further testified to prescribing her steroids and then non-steroidal anti-

inflammatory drugs and that he had never treated her for neck pain prior to the wreck. He testified that her condition was consistent with being rear-ended in a motor vehicle. After three visits, he scheduled her for an MRI of the neck and referred her to a neurologist, which he testified was reasonable and necessary treatment. Cardona testified that she treated with him multiple times and that he referred her for epidural injections, which she underwent.

Cardona testified that she incurred medical bills of \$23,469.52 because of her treatment following the accident. Most of this amount was related to her emergency room visit immediately following the accident. She testified about her continuing pain in her neck and headaches in the back of her head. She also testified to various activities such as playing the guitar and walking that she could no longer perform after the wreck like she had before.

LEGAL STANDARD

The thirteenth juror doctrine allows the judge to sit as a thirteenth juror at the trial and grant a new trial if justice has not prevailed or if the jury's verdict is not supported by the evidence. Howard v. Roberson, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct. App. 2007).

A plaintiff must establish the following elements in a negligence cause of action: "1) the defendant owes a duty of care to the plaintiff, 2) the defendant breached the duty by negligent act or omission, 3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and 4) the plaintiff suffered an injury or damages." Moore v. Weinberg, 383 S.C. 583, 588, 681 S.E.2d 875, 878 (2009).

ANALYSIS

- I. The Court should grant Cardona a new trial because the jury's verdict was not supported by the evidence so justice did not prevail as the evidence showed she suffered at least some damage as a result of Leary's negligence.

No dispute exists as to whether Leary negligently rear-ended Cardona. He admitted he was at fault in the accident because he quit paying attention to the road in front of him to look at a gas station to see its gasoline price. As a result, Cardona called 911 because she was in pain. She was transported to the emergency room where they ran a battery of tests on her. Leary argued to the jury that Cardona caused these tests by exaggerating her symptoms. The evidence, on the other hand, shows her complaints to the emergency room were consistent with her complaints throughout. Dr. Hatfield testified "That's just emergency room medicine nowadays; they order a lot of tests."

While Leary argued that Cardona suffered from neck pain and headaches prior to the accident, the evidence presented at trial did not support this contention. Leary relied on some prior neck treatment Cardona received from a chiropractor without presenting records or testimony to support the argument that this treatment was for identical injuries to what she claimed the wreck caused. Cardona testified these were simple adjustments and massages related to stress she felt in her neck after her mother died. Dr. Hatfield testified that his treatment prior to the wreck never included treatment of the neck.

While Dr. Hatfield had treated her for headaches in the past, such treatment involved sinus issues. At trial, Ms. Cardona testified that the headaches she suffered from after the wreck were in the back of her head rather than in the front like the migraines Dr. Hatfield had treated her for. The evidence, therefore, did not support the defense's argument that Ms. Cardona's injuries occurred prior to the accident.

Ms. Cardona incurred medical bills that she would not have incurred but for Leary's negligence. Even if the jury did not believe her injuries were as bad as she testified to, she would not have suffered this damage without Leary's negligence. The evidence supports only this

conclusion, so the jury's verdict was erroneous. The Court, therefore, should grant Cardona a new trial or in the alternative reform the verdict to allow Cardona to recover her medical bills at a minimum.

II. The Court should grant Cardona a new trial because it should not have allowed the jury to hear evidence of marijuana being in Cardona's urine screen at the emergency room.

To be admissible, evidence must be relevant. See Rule 402, SCRE. "'Relevant evidence' means evidence having 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." Rule 401, SCRE.

This marijuana evidence was not relevant because it could not have contributed to fault or Cardona's damages. Leary admitted fault, and Cardona could not have been at fault as she was sitting stopped properly at a red light when Leary hit her in the rear. Marijuana in her system, therefore, could not have any effect on who was at fault. Leary did not present any evidence that marijuana in her system affected her damages because this purportedly ingested marijuana at some undeterminable time before the wreck could not have affected her injuries. A headache after being rear-ended does not suggest marijuana would have been the cause. Her symptoms, as Dr. Hatfield testified, were consistent with someone being hit in the rear in a motor vehicle accident.

The test results themselves cast doubt on their reliability. The medical record where the urine results appears states "Marijuana: Positive Not Confirmed Verified By Repeat Analysis." It also states "Drug Screen Note: No Chain Of Custody Result Must Not Be Used For Non Medical Purposes (Employment or Legal Testing)."

Even if the Court determines evidence of marijuana in Cardona's urine was relevant, it should have still excluded the evidence. The inquiry does not end with the determination of

relevance as the court may exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....” Rule 403, SCRE.

In Kennedy v. Griffin, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2004), the court of appeals overturned the trial court in a wreck case for allowing into evidence a blood test that showed the plaintiff had marijuana in his system where the drug test did not specify the quantity of marijuana in the plaintiff’s system or show how recently the plaintiff had used marijuana. The court held that the mere presence of marijuana without more would mislead the jury so it should not have been admitted. Id. at 128. “The admission of this evidence was more prejudicial than probative because there was no correlation between the marijuana and the accident.” Id.

The facts in this case or in line with Kennedy. As discussed above, the evidence of marijuana in Cardona’s system lacked probative value. This evidence further lacked probative value because by Leary’s own admission the marijuana could have been ingested several days prior to the motor vehicle accident. On the other hand, this evidence was highly prejudicial in an unfair manner, though, given that it portrayed Cardona as a drug abuser despite drug use having no bearing on the outcome of the case. Allowing this evidence gave the jury the opportunity to base its decision on passion against drug use rather than on proper evidence. Given the total lack of probative value where fault for the wreck was not an issue, the unfair prejudice of allowing the jury to hear about the marijuana in her system substantially outweighed the evidence’s probative value. The Court, thus, should have excluded that evidence pursuant to Rule 403 as it allowed the jury to decide the case based on improper considerations.

The Court’s decision to allow the evidence to impeach Cardona’s testimony was also misplaced. Leary relied on Cardona answering no to an interrogatory that asked whether she had

“consumed any ... drugs of any sort, including but not limited to marijuana, on the date of the Accident or within twenty-four (24) hours prior to the accident.” Marijuana showing up positive on a urine screen at the emergency room following a wreck that she did not cause does not discredit this response. As Leary admitted, a urine screen can come back positive for marijuana based on marijuana ingested at least one week prior to the test. Furthermore, no evidence at the scene indicated Cardona was under the influence at the time as she did not exhibit any bad driving, was on her way to work, and was not charged or investigated for driving under the influence.

Leary also relied on Cardona stating that she had a headache at the scene of the accident to allow the marijuana in her urine to impeach her testimony. Leary produced no evidence of when Cardona allegedly ingested the marijuana or the level of marijuana in her system. Without this information, no evidence exists to suggest that marijuana in Cardona’s urine caused or contributed to her having a headache following the motor vehicle accident. Dr. Hatfield testified that Ms. Cardona’s complained-of symptoms were consistent with someone being hit in the rear in a motor vehicle accident. The admission of the marijuana in Ms. Cardona’s urine screen did not contradict her testimony and statement at the scene that she suffered a headache from the wreck.

CONCLUSION

Based on the properly admitted evidence presented at trial, the jury’s verdict in favor of Defendant was not supported by the evidence so justice requires that the judge, sitting as the thirteenth juror, grant Plaintiff a new trial or reform the verdict to award Plaintiff at least her medical bills incurred from the wreck. The jury’s verdict was based on improper prejudices rather than applying the law to the proper evidence in the case.

Respectfully Submitted,

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Greenwood, South Carolina

March 30, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

ROSA ST. GELAIS,)
)
PLAINTIFF,)
)
-VS-)
)
JULIUS L. LEARY,)
)
DEFENDANT.)
_____)

CASE NO.: 2015-CP-24-001100

TRANSCRIPT OF RECORD

MARCH 19, 20, 2018
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LETITIA VERDIN, JUDGE

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

ATTORNEY FOR PLAINTIFF:

CARRIE HAILMAN O'BRIEN, ESQUIRE

ATTORNEY FOR DEFENDANT:

ROBERT JAMISON TINSLEY, JR. ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 TRIAL DAY 1: March 18, 2018

2 THE COURT: If you all are ready to start. I don't
3 know what motions you exactly have, so it doesn't matter to
4 me what order you go in. You all -- you all can just begin
5 as you think would work. Looks like Mr. Tinsley is on his
6 feet.

7 MR. TINSLEY: Your Honor, may it please the Court. I'm
8 going to hand out the voir dire and stuff that I emailed to
9 you Friday, as well as the motion that I've worked on over
10 the weekend.

11 Basically, I'm going to make a motion in limine to
12 exclude any photographs of the car. This is a minor impact
13 that the Defense will argue. So I think any testimony about
14 low impact not being able to cause injuries, or any kind of
15 significant injuries should be excluded by the Court,
16 because there's going to be no -- no expert testimony to
17 back that up, and I think that would be required. It's not
18 in the common knowledge of a lay-juror about what type of
19 impact could cause major injuries. So I think any
20 photographs of the cars, as well as any testimony to that
21 effect, should be excluded by the Court.

22 Also, there is a medical record from the emergency room
23 that says she took a medical urine drug screen and it reads,
24 "Marijuana, positive. Not confirmed. Verified by repeat
25 analysis." Then it further states in the record, "No chain

1 of custody. Result must not be used for non-medical
2 purposes". Then it has in parenthesis, "employment or legal
3 testing". So I would argue that, number one, such that this
4 marijuana testimony, it's not -- it's not reliable. Also,
5 it has no probative value. There's no -- no indication from
6 anything that I've seen that there was suspicion of
7 marijuana use at the time of the accident by my client.
8 Furthermore, the results do not say how much marijuana was
9 in there or how long it had been in there. Nothing to show
10 that it contributed to the accident or to my client's
11 damages. So I would argue -- I've cited *Kennedy vs. Griffin*
12 --

13 THE COURT: Understood.

14 MR. TINSLEY: -- and would ask that the Court exclude
15 that.

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

17 MS. O'BRIEN: Thank you, Your Honor. Good morning.
18 May it please the Court.

19 THE COURT: Yes.

20 MS. O'BRIEN: Your Honor, with respect to the photos in
21 this accident. The Plaintiff has testified that it was a
22 very hard impact and that there was significant damage done
23 to her vehicle. The photos will impeach her testimony. I
24 am not using the photos for the purpose of proving or not
25 proving damage. It is for the purposes of impeaching her

1 testimony.

2 THE COURT: Understood. Understood. And, of course,
3 that's just something -- as most motions in limine
4 unfortunately are, that's just something we're going to have
5 to -- that's a bridge we'll have to cross when we get there.
6 But if for impeachment purposes, if it seems relevant at
7 that time, I won't exclude it just on the basis that there
8 is not any expert testimony about it.

9 Furthermore, you know, like I said, we'll just have to
10 look at it when we get there. Yes, ma'am.

11 MS. O'BRIEN: Your Honor, with respect to the issue for
12 marijuana. Number one, I would like to point out that with
13 respect to the fact that the Plaintiff, whenever she
14 answered her discovery responses, we asked her if she had
15 consumed any alcoholic beverages, prescription medications
16 or any sort of drug, and her response to that was no alcohol
17 consumption or under the influence of any illegal drugs.
18 Dr. Leary will testify that whenever -- after the accident
19 happened, that he went to her vehicle in scrubs and that she
20 was in a very large, exaggerated state. She was hollering,
21 she was screaming. He was attempting to render medical
22 assistance to her to see if there was something he could do
23 to help her. She refused to speak to him and that she
24 refused to, at any time during this period, simmer down.

25 So here are some of the issues in this case, is after

1 she went to the emergency room, she continued to complain of
2 things that were, in no way, associated with this accident.

3 THE COURT: Okay.

4 MS. O'BRIEN: She was complaining of some dizziness.
5 We know from her testimony that she did not hit her head.
6 We know from Dr. Leary and his testimony that this was a
7 very minor accident where no one's body moved forward
8 whatsoever.

9 And, Your Honor, it is out position that number one, if
10 you specifically look at *Jameson vs. Morris*, which is 385
11 South Carolina 2015, it stands for the purpose that when you
12 are in a civil case, that you do not need to have a chain of
13 custody, and it allows that 8036 that specifically says,
14 "Any records that are regularly within conducted activity,"
15 such as medical records. I presume that they aren't going
16 to argue today that her medical records aren't admissible,
17 because if they are, then they're going to have to bring
18 somebody here to testify that they should come in and they
19 come in under 8036, being a regularly conducted activity and
20 a record that is kept in the normal conduct of business. So
21 we're not going to have that issue. The next issue should
22 only be is, is it probative value.

23 THE COURT: That's my next -- yeah, that was my next
24 question.

25 MS. O'BRIEN: Yes.

1 THE COURT: Yeah.

2 MS. O'BRIEN: And absolutely. And here's why this is
3 different. Had she been smoking marijuana and there had
4 been no exaggeration, there had not been this claim of oh,
5 I'm dizzy, I can't stand up straight, which is one of the
6 factors that goes with smoking marijuana, this exaggerated
7 sense of I am so injured, I can't move. Screaming and
8 hollering. And Dr. Leary immediately was like something
9 else is going on here. From day one, he said I will be --
10 and I will also tell you, when the records were initially
11 provided to me in discovery, this one page was conveniently
12 left out. I was never provided any of the records that
13 dealt with toxicology. I then sent a subpoena to Self
14 Regional because Dr. Leary kept saying something else was
15 going on, this was not a normal, typical reaction to a very
16 minor accident. When I got the medical records from Self
17 Regional and got all of them, in fact, there was in there
18 the fact that she had marijuana in her system. I then
19 followed up with discovery and asked her in discovery if she
20 had anything in her system and she denied that. And so, I
21 would argue, Your Honor, that based upon Dr. Leary, his
22 testimony today will be that there was an exaggerated
23 complaint of issues. There are things that she's
24 complaining of that do not typically correlate to a minor
25 accident when there is no head injury, when there is no

1 hitting of the head whatsoever. We do have medical records
2 that she had said in the medical records she did not injure
3 her head, and based upon the fact that has now -- the
4 discovery responses are under oath, that she has denied that
5 she had anything in her system, I believe it comes in under
6 the fact that it can be, number one, used to impeach her
7 and, number two, that there are additional issues going on
8 that are in no way explained other than the fact that she
9 had something in her system.

10 And, Your Honor, if you also look at the ex parte DHEC
11 case law, that specifically is 350 SC at 250, it deals with
12 that, you know, you can bring in these records and that if
13 they were purposes of -- for diagnosing and treating the
14 Plaintiff, as these were -- that was the purpose. They did
15 them to ensure that she could be treated appropriately, then
16 there is no issue with a chain of custody.

17 THE COURT: Let me just ask you this very quickly, Mr.
18 Tinsley. Are you going to -- are you going to argue that
19 dizziness or headache or disorientation was part of the
20 injury at the scene?

21 MR. TINSLEY: Well, I mean, I think that dizziness was
22 just -- that was what she experienced at the time of the
23 wreck. Now, the headaches, she talked about going forward
24 her head still hurting, and received treatment from Dr.
25 Hatfield for these type of headaches.

1 THE COURT: Here's what I'm going to do. I'm probably
2 going to allow the marijuana just for purposes to rebut any
3 sort of testimony with regard to dizziness or any symptoms
4 that could be attributable to marijuana. I think the
5 Defendant's entitled to go into that. I do not mind giving
6 the jury some instruction, if you want to think about that.
7 Some instruction, at some point, that it's not to be
8 considered for any other purpose than for this. And it
9 sounds like, potentially, impeachment may be -- it may be
10 available of impeachment purposes, too. But, of course, I
11 don't know that until I've heard testimony. All right.

12 Now, I've got a -- I've got a Plaintiff's witness list
13 and I've got a short statement of the facts from the
14 Plaintiff. Anything from the Defense? Do you all plan to
15 call any witnesses?

16 MS. O'BRIEN: Yes, Your Honor. And I would like to
17 hand up the jury voir dire, if I may. May I approach?

18 THE COURT: Sure.

19 MS. O'BRIEN: And, Your Honor, with respect to a
20 witness list, we are only going to have Dr. Leary testify,
21 and the Plaintiff had the officer that is listed on his
22 witness list, so I have not included that. But the officer,
23 if the Plaintiff does not call him, I intend to.

24 THE COURT: Okay. So -- and what is Dr. Leary's full
25 name?

1 MS. O'BRIEN: Dr. Julius Leary.

2 THE COURT: And where does he practice?

3 MS. O'BRIEN: In Greenwood.

4 THE COURT: Okay. Okay.

5 MS. O'BRIEN: And, Your Honor, I have a few motions.

6 But just when you're ready.

7 THE COURT: All right. Well, I think our jury's
8 outside waiting right now. Do any of those impact -- I'm
9 sorry.

10 (OFF THE RECORD BRIEFLY)

11 THE COURT: We're going to have a little bit of
12 activity going on here as we check in the jurors, but I
13 think we might have a little bit of time to where we could
14 go ahead -- where we could go ahead and hear a couple of
15 your motions maybe.

16 MS. O'BRIEN: Okay. Thank you, Your Honor. With
17 respect to the deposition testimony of Dr. Hatfield. Dr.
18 Hatfield was the primary care physician. He was not the
19 emergency room doctor. So initially after this accident,
20 she went to the emergency room. The emergency room told her
21 that she should followup with her primary care physician in
22 three to five days. Eight days later, she showed up at Dr.
23 Hatfield's office and she treated with Dr. Hatfield three
24 times as a result of this accident. Dr. Hatfield, at some
25 point later, also referred her to an additional doctor, Dr.

1 Scott. He is listed on the Plaintiff's witness list, but I
2 asked him this morning if Dr. Scott was planning on coming
3 today and he said he wasn't sure. And here's why, from my
4 standpoint, this would be an issue. With respect to --
5 causation has always been an issue in this case --

6 THE COURT: Sure.

7 MS. O'BRIEN: -- and if she was actually injured as a
8 result of this accident. The only question that was posed
9 to the doctor, with respect to causation by the Plaintiff's
10 attorney, was on page 13, line 18. "Okay. All right. In
11 the treatment you gave Ms. St. Gelais, do you believe, in
12 your opinion, to a reasonable degree of medical certainty,
13 that it was necessary and reasonable treatment?", and the
14 answer was, "Absolutely". And, Your Honor, it is my
15 position that it's not a question of whether the treatment
16 was reasonable and necessary, but whether the treatment was
17 as a result of this accident and that this accident causally
18 related her injuries. And I went on to ask the doctor, in
19 his deposition later, whenever I had cross-examined him,
20 that he was aware that -- before this accident, that the
21 Plaintiff had been treating with a chiropractor for neck
22 problems. He testified no. I asked him if he was aware
23 that the Plaintiff had been treating with prior back
24 problems and he testified no. In the Plaintiff's deposition
25 testimony and in her discovery responses, she listed Dr.

1 Hatfield as being her primary care physician from 2003.
2 Yet, whenever I deposed Dr. Hatfield and asked him when he
3 first began treating the Plaintiff, the first time he had
4 ever seen her was in 2010. And so, he was unaware that
5 there were any prior issues before. He admitted that he
6 could not state to a reasonable degree of medical certainty
7 whether she had neck pain or back pain before this accident.
8 He admitted on cross-examination that he had absolutely no
9 clue whether she was born with a abnormal curvature in her
10 spine or whether that was as a result of this accident. And
11 so, it's our position that the question that was posed to
12 him, considering that the issue has been causation in this
13 case, that they have not met the burden of proof. And, Your
14 Honor, if I may hand up the case law?

15 THE COURT: All right.

16 MS. O'BRIEN: Thank you, Your Honor.

17 THE COURT: Not to tell you how to try your case, but
18 I'm sort of wondering why you don't want the Doctor to
19 testify.

20 MS. O'BRIEN: Well --

21 THE COURT: I mean, if you -- I mean, it sounds like
22 you crossed the Doctor in --

23 MS. O'BRIEN: Well, Your Honor, it would be my position
24 that if the Doctor can't testify, and if the Doctor can't
25 relate his treatment, then the treatment should not come in

1 at all.

2 And, Your Honor, I'm happy to hand up, so that you have
3 a copy of Dr. Hatfield's deposition. But Dr. Hatfield does
4 not, at any time -- and after I cross-examined him, there
5 was no questions that were then reposed to him about
6 causation. There were no questions that brought it back
7 within the scope, and it is my position that, based upon
8 *Baughman vs. American Telephone Company*, that specifically,
9 that the Court has ruled that you don't necessarily have to
10 use the word probably, but that you do have to have some
11 testimony that whenever you are specifically dealing with
12 causation that deals not with whether the treatment is
13 reasonable, not with whether the treatment was necessary,
14 because the treatment could be reasonable and necessary --

15 THE COURT: Sure.

16 MS. O'BRIEN: -- because she was having prior problems,
17 or because something else happened. There are also gaps in
18 treatment with respect to this. The question that needed to
19 be posed so that this goes before the jury on causation was
20 as a result of this accident was the Plaintiff injured, and
21 whether he said more probably than not or to a reasonable
22 degree of medical certainty, I think there has to be -- any
23 of those words are acceptable per the Court, but there has
24 to be some link, and there has been absolutely no link as
25 the testimony from Dr. Hatfield. And, Your Honor, I'm -- I

1 will hand up Dr. Hatfield's deposition. And, again,
2 specifically, it is on page 13 where the only question was
3 posed to him with respect to whether the treatment was
4 rendered as a result of this accident.

5 MR. TINSLEY: And, Judge, I'd just like to point out --

6 THE COURT: Yes, sir.

7 MR. TINSLEY: -- Ms. O'Brien asked on page 32, "Okay.
8 And, Doctor, as we sit here today, do you have any objective
9 evidence that you could point to, to a reasonable degree of
10 medical certainty, that proves that the Plaintiff was
11 injured as a result of this accident?", and he answered,
12 "Only my exam, and I have to assume that people are telling
13 me the truth and see if my exam goes along with it. On her
14 original visit and on her followup visit, she was tight in
15 the neck and she did have tenderness on palpation.
16 Although, at physical therapy, that they did say the neck
17 was responding somewhat to the therapy. Other than that,
18 that would be a good question.". And I think that's enough.
19 And, quite frankly, I've never seen the chiropractor notes
20 from his prior treatment. I know that in her deposition,
21 Ms. Cardona, the Plaintiff, testified about some prior
22 treatment when things got tight and stressed out and had to
23 be given adjustments.

24 THE COURT: At least from what I'm hearing right now,
25 I'm probably going to allow that testimony. Now, whether or

1 not I ultimately allow that to be in any prayer for damages,
2 if it gets that far. I don't -- you know, I don't know.
3 But, at this point, I probably would allow at least the
4 testimony from just -- from what I've heard about that --
5 from the deposition. You know, and not to comment,
6 certainly -- and I wouldn't do this in front of the jury,
7 but not to comment on the evidence, that one's thin. It's
8 thin. So we'll see how the testimony goes.

9 MS. O'BRIEN: And, Your Honor, I would just ask you
10 actually read what he just read in conjunction with the
11 questions that were asked --

12 THE COURT: Okay.

13 MS. O'BRIEN: -- because the questions that were posed
14 before that is, "Can you say to a reasonable degree of
15 medical certainty whether she had neck pain before this
16 accident?", and he said no. And so, it is in conjunction
17 with that --

18 THE COURT: Understood.

19 MS. O'BRIEN: -- and I respect your opinion.

20 THE COURT: No. No. I appreciate -- I appreciate it.

21 MS. O'BRIEN: And -- all right. Your Honor, with
22 respect to the next issue. I was given a list of medical
23 bills that the Plaintiff intends to offer into evidence
24 today. And some of my objection with respect to the
25 Walgreens' prescriptions is, number one, I have never seen

1 the Walgreens' prescriptions.

2 THE COURT: Okay.

3 MS. O'BRIEN: They have not been provided to me, and I
4 am not blaming Mr. Tinsley. There was another attorney in
5 this case and it was a little difficult to get things, but I
6 have not seen those. And the reason why Walgreens is
7 important to me is because the Plaintiff testified in her
8 deposition that the only place that she got her
9 prescriptions filled was Walgreens. I then sent a subpoena
10 to Walgreens and I got a response back that they could not
11 find anyone by that name or with that Social Security
12 number. And I will tell you that we learned in the
13 deposition that she has gone by Cardona, St. Gelais,
14 Sullivan, Prather, back to Cardona. And so, it's perplexing
15 to me that whenever I deposed Dr. Hatfield, I specifically
16 asked him if he had seen in the records that the Plaintiff
17 was treating for depression before this accident and who
18 would have been prescribing those medical prescriptions.
19 Dr. Hatfield said he did see that and he couldn't explain
20 that because he was not prescribing that medication. Again,
21 I asked him, you know, my discovery, who she was treating
22 with for a 10 year period before this accident and there are
23 no other doctors listed, other than her primary care
24 physician, her gynecologist, and then the doctors that she
25 treated with after this accident. So I wanted to get the

1 Walgreens records so that I could figure out what other
2 doctors she was treating with and those had not been
3 provided. My understanding from the Plaintiff's counsel
4 this morning is that he has, from Walgreens, a -- not a list
5 of the prescriptions, but the actual receipt, and I would
6 like to see a list of the prescriptions -- of every
7 prescription she had, and I would argue that today is not
8 the day for me to be getting this information. Again, I
9 know that, you know, Mr. Tinsley's done the best he can
10 coming in, but this case was continued because I was in
11 trial and this has been an ongoing discussion. So I would
12 object to any bills or any testimony regarding treatment for
13 those bills because they have not provided to me before
14 today.

15 THE COURT: Okay. Mr. Tinsley, what about it on the
16 Walgreens prescriptions? I mean, what's the amount we're
17 talking about?

18 MR. TINSLEY: \$140.

19 THE COURT: Okay. All right. If they've not been
20 provided to Ms. O'Brien, I don't know that we can -- that I
21 can allow you to ask the jury about that because she didn't
22 have any opportunity to fully cross-examine anybody about it
23 or --

24 MR. TINSLEY: I don't have --

25 THE COURT: -- anything like that.

1 MR. TINSLEY: -- I don't have anything other than these
2 receipts from Walgreens.

3 THE COURT: Understood. Understood. Understood.
4 Understood. If we're talking about \$140, I'm probably not
5 going to allow you to ask them that.

6 MR. TINSLEY: Yeah. I mean, that's --

7 THE COURT: Unless you find something and Ms. O'Brien's
8 got a few minutes to, at least, look it over, then, you know
9 --

10 MR. TINSLEY: Anything I have, I've given to her this
11 morning.

12 THE COURT: Understood. Understood. And I -- and I
13 wouldn't do that if she hadn't made reasonable efforts to
14 get in touch with Walgreens and they're saying they don't
15 have anything by that name. All right.

16 MS. O'BRIEN: I have one quick issue.

17 THE COURT: Sure.

18 MS. O'BRIEN: And it's the last one, Your Honor. With
19 respect to lost wages, the Plaintiff testified that she lost
20 some time as a result of this accident. I specifically
21 asked Dr. Hatfield, in his deposition testimony, if he ever
22 wrote the Plaintiff out of work as a result of this
23 accident, his answer was no. The emergency room records
24 don't show that anyone wrote her out of work or that there
25 was any lost wage information that was applied. And all I

1 have, Your Honor, is a interrogatory that says that she made
2 \$12 an hour and that she worked -- that she missed 60 hours
3 from work. Again, there's no doctor that has written her
4 out of work. I don't -- her testimony in the deposition was
5 that she thinks that she missed three or four days from
6 work, and then I received a note -- not an affidavit, some
7 type of note that says that she missed 60 hours. There's no
8 listing of the dates, it doesn't say it was -- excuse me, is
9 a result of this accident. And so, it would be my position
10 that there has no evidence that has been provided, other
11 than the Plaintiff saying she missed work. No doctor
12 supporting that they wrote her out of work, and no
13 information from her provider that has been any type of
14 sworn testimony or through a sworn affidavit, why or how she
15 could have missed 60 hours from work is a result of this
16 accident.

17 THE COURT: All right. Mr. Tinsley?

18 MR. TINSLEY: I mean, I think her testimony, basically,
19 would be that she missed, like Ms. O'Brien said, three or
20 four days immediately after the accident. And then, the way
21 the total got to 60 hours, was she missed -- when she had to
22 go to the doctor, she generally missed half a day.

23 THE COURT: Okay.

24 MS. O'BRIEN: And my position would be how do I
25 cross-examine anyone on that and how do I verify that that

1 is, in fact, accurate. I asked for W2s to be provided in
2 discovery. They weren't provided. So where is the
3 information that would support that, other than her
4 testimony, and how do I cross-examine someone on her missed
5 time from work when the doctors have already said they
6 didn't write her out of work?

7 THE COURT: Okay.

8 MR. TINSLEY: I mean, I would say that's how she
9 cross-examines it is to say you don't have any doctor's
10 notes, but that's fine.

11 THE COURT: I'm going to allow the Plaintiff to testify
12 as to that. I know you're going to cross-examine her
13 thoroughly on it. Again, whether or not I submit -- allow
14 you to submit lost wages to the jury or not, we'll just kind
15 of see once we get there. But -- all right. Anything else
16 we need to take up?

17 MS. O'BRIEN: No, ma'am.

18 MR. TINSLEY: The only thing I'll just bring to the
19 Court's attention is, before we -- and it doesn't have to be
20 addressed right now, is there's a few objections on the --
21 during the Doctor's deposition. So you may want to take a
22 look at it at some point.

23 MS. O'BRIEN: I wonder if they got cured, if she allows
24 in the marijuana.

25 MR. TINSLEY: They very well may.

1 THE COURT: Okay.

2 MS. O'BRIEN: I think they've been cured, because the
3 only real objection was as to the marijuana, and the other
4 issue was whether he would be able to testify as to some
5 additional issues. But it sounds like she's going to allow
6 that, and then decide.

7 MR. TINSLEY: Okay.

8 MS. O'BRIEN: But we can look at it over a break and
9 make sure we're in agreement.

10 THE COURT: All right. So I've got for a witness list,
11 the Plaintiff, Corey Boyter, Asa Hatfield, Glenn Scott and
12 Julius Leary; is that right?

13 MS. O'BRIEN: Yes, ma'am.

14 THE COURT: All right.

15 MS. O'BRIEN: Thank you.

16 THE COURT: You all think this trial is going to end up
17 tomorrow? Is that --

18 MS. O'BRIEN: I'd like to hope not, but -- and I'll be
19 quick. I can tell you. I mean, the officer's going to be
20 on the witness stand for longer than, I would think, 10
21 minutes.

22 THE COURT: Okay.

23 MS. O'BRIEN: I think the longest is going to be the
24 Plaintiff. Dr. Hatfield's deposition was --

25 MR. TINSLEY: Forty-five minutes.

1 MS. O'LEARY: Yeah. I mean, it's not -- and I guess it
2 depends on whether you bring in Dr. Scott.

3 MR. TINSLEY: Yeah. I mean, it's not a long trial for
4 sure.

5 THE COURT: Okay.

6 MR. TINSLEY: I mean, I agree with her analysis that
7 the longest testimony would be from the Plaintiff.

8 THE COURT: Okay.

9 MS. O'BRIEN: I would be very happy if we were done
10 today.

11 THE COURT: Okay. All right. Well, let me ask you
12 this, Mr. Tinsley. Are you still seeking -- I noticed that
13 in the complaint that was filed you're seeking punitives.

14 MR. TINSLEY: I don't think we're going to be.

15 THE COURT: Okay.

16 MR. TINSLEY: I mean, you know --

17 THE COURT: Okay.

18 MR. TINSLEY: -- we'll see how the case goes. But it
19 doesn't strike me as a --

20 THE COURT: Okay. And -- All right. All right. And
21 any charges you're looking for other than just the
22 negligence charge and --

23 MR. TINSLEY: Well, I think we'll probably have a
24 charge about -- you know, you take the Plaintiff as you find
25 him.

1 THE COURT: Okay.

2 MR. TINSLEY: I think that would be appropriate in this
3 case. And I may -- like we talked about the marijuana, I've
4 got to give that some thought --

5 THE COURT: Okay.

6 MR. TINSLEY: -- as well, as I've got a charge I'm
7 going to present to you about -- about the issue about the
8 minor -- minor impact that I want you to consider.

9 THE COURT: Okay.

10 MR. TINSLEY: I've got to get --

11 THE COURT: All right. All right. Well, if we are
12 thinking about finishing up today, you know, I probably
13 would love to have those by maybe the end of the lunch hour
14 or something like that, so my -- so we don't have to revive
15 my law clerk over here. But, we'll -- but, that sounds
16 good. It may -- I will tell you, my preference would be --
17 I don't know if either of you ever had tried -- ever had the
18 pleasure of trying a case in front of the late Judge Pyle.
19 I hate saying the late Judge Pyle. But he had a rule that
20 you should never charge a jury after 3:30 in the afternoon.
21 So -- and I --

22 MS. O'BRIEN: I work for Markley Dennis, who would be
23 -- he would charge a jury a 7:00 o'clock at night.

24 THE COURT: He does it, too.

25 MS. O'BRIEN: Not that anyone --

1 THE COURT: I do know that Judge Dennis would --
2 definitely would do that. I will say to you, probably, I
3 don't -- I probably don't want to go too late this evening.
4 Unfortunately, I'm -- I don't want to sound like too much of
5 a wimp, but I'm -- I do not have the flu anymore, but I'm
6 recovering from the effects of the flu. And so, I probably
7 would not mind -- I probably -- if we get to 3:30, I may
8 follow the Judge Pyle rule, just to let you know. And I
9 know you all have traveled from Charlotte and I know an
10 extra day of trial is not what anybody wants. But that --
11 we'll just kind of see where we are.

12 MS. O'BRIEN: I'm fine with whatever you want.

13 THE COURT: Okay. Okay. Thank you. All right. Well,
14 we can go ahead and bring the jury in.

15 (Whereupon the jury pool entered the courtroom.)

16 (Whereupon, roll call and qualifications were
17 conducted.

18 THE COURT: All right. Ladies and gentlemen, I've got
19 some good news, you're all qualified to serve this week in
20 Greenwood County. Now, I need to turn to find out if you
21 are qualified to serve on this particular case, and for that
22 I'm going to ask you some more questions. More and more
23 questions. Some more questions, and if any of you need to
24 respond, then I want you to stand.

25 (Whereupon, there was a brief discussion off the

1 record.)

2 THE COURT: If you will stand and give me your name
3 when I call on you if you need to respond to any of these
4 questions whatsoever, then we'll kind of move on from here.
5 I promise you that as soon as I get through these questions
6 we're not going to have much more, I promise, until we get
7 rolling. All right.

8 Now, to begin with, this is, as I told you, a civil
9 case. And please don't get upset with me if I say your name
10 wrong. This is Rosa St. Gelais -- Gelais?

11 MR. TINSLEY: Gelais.

12 THE COURT: Gelais, but she goes by Cardona? Cardona,
13 right?

14 MS. O'BRIEN: Yes.

15 THE COURT: Okay. So this is Rosa St. Gelais vs.
16 Julius L. Leary. Ms. Gelais also -- or now goes by the name
17 -- not also goes, but now goes by the name of Cardona. So
18 Rosa Cardona. And I'm going to ask you a few questions.
19 I'm going to begin by asking Mr. Tinsley to introduce
20 himself and introduce his client, please.

21 MR. TINSLEY: Thank you. My name is Jamison Tinsley.
22 I practice law here in Greenwood at Tinsley & Tinsley Law
23 Firm and I represent Ms. Rosa Cardona, who is the Plaintiff
24 in this case.

25 THE COURT: Any member of the jury panel related by

1 blood or marriage or otherwise acquainted with Mr. Tinsley
2 or Ms. Gelais, Ms. Cardona, and if so, please stand?

3 (Whereupon, no member of the jury panel stands.)

4 THE COURT: And let me put a little finer point on it.
5 Anybody ever been involved in a case with the Tinsley &
6 Tinsley Law Firm, ever been represented by them, ever been
7 adverse to them in any kind of a lawsuit? Anything like
8 that? And if so, please stand.

9 (Whereupon, a member of the jury panel stands.)

10 THE COURT: Yes, ma'am. Tell me your name, please.

11 THE JUROR: Dana Jennings.

12 THE COURT: Yes, ma'am.

13 THE JUROR: We just work in the same office, Mr.
14 Tinsley and my attorney, so I don't know if that --

15 THE COURT: Okay. Okay. And you're Ms. Jennings.
16 Okay. And when you say work in the same office -- I haven't
17 been here in a while, so how close is that?

18 THE JUROR: His office and Ms. Compton all have space
19 in the same building with Billy Garrett. In the same
20 building.

21 THE COURT: Understood. Now I -- now I do know where
22 you're talking about. I know exactly where you're talking
23 about. Okay. All right. We'll -- I'll tell you what, you
24 have a seat and I'll speak -- I'll speak about that in just
25 a minute, if you don't mind. Okay. Anyone else? All

1 right. I'm sorry. I got myself backwards here. All right.
2 And Ms. O'Brien, will you stand and please introduce
3 yourself?

4 MS. O'BRIEN: Good morning, ladies and gentlemen.
5 Carrie O'Brien. I'm with the law firm of Willson, Jones
6 Carter and Baxley and I represent Dr. Leary.

7 THE COURT: Any member of the jury panel related by
8 blood or marriage, otherwise acquainted with in any way, Ms.
9 O'Brien or Dr. Leary? And if so, please stand.

10 (Whereupon, no member of the jury panel stands.)

11 THE COURT: And that includes ever been treated by Dr.
12 Leary. Anything like that. If so, please stand.

13 (Whereupon, members of the jury panel stands.)

14 THE COURT: Okay. All right. All right. I'm going to
15 just start here in the front. Yes, ma'am? In the polka
16 dot.

17 THE JUROR: Dr. Leary has been my doctor for quite a
18 few years.

19 THE COURT: Okay.

20 THE JUROR: He's actually done surgery on me --

21 THE COURT: Okay.

22 THE JUROR: -- and fertility treatment.

23 THE COURT: Understood. Tell me your name, please.

24 THE JUROR: Julie Fuller.

25 THE COURT: Julie Fuller. Thank you so much. All

1 right. Yes, ma'am. Tell me your name and -- excuse me,
2 your name, please.

3 THE JUROR: Nikyia Davis.

4 THE COURT: Yes, ma'am.

5 THE JUROR: And I saw Dr. Leary from time to time
6 during my first two pregnancies in 2000 and 2002.

7 THE COURT: Okay. Tell me this. But you don't -- you
8 aren't currently a patient of his?

9 THE JUROR: No, ma'am.

10 THE COURT: Knowing that he is a party to this lawsuit,
11 do you think you could be a fair and impartial juror in the
12 trial of this case?

13 THE JUROR: Yes, ma'am.

14 THE COURT: Thank you so much. I sure do appreciate
15 it. Yes, ma'am. In the pink.

16 THE JUROR: Yeah. My name's Annie Beasley and Dr.
17 Leary -- he did my caesarean when I had my son, he did my
18 hysterectomy and -- yeah.

19 THE COURT: Okay. When was the last time you think you
20 saw Dr. Leary?

21 THE JUROR: I'd say probably about three or four years.

22 THE COURT: Three or four years ago? Tell me this. Do
23 you think -- knowing that he's party to this lawsuit, do you
24 think that you could be a fair and impartial juror in the
25 trial of this case?

1 THE JUROR: Yes, ma'am.

2 THE COURT: Okay. All right. Thank you. Yes, ma'am.

3 THE JUROR: Ruth LaForge. We go to the same church.

4 THE COURT: All right. And do you feel like you have
5 pretty -- I'm not asking how often you go to church. I
6 won't call anybody -- I won't ask how often he goes to
7 church. I won't call anybody out on that. But do you feel
8 like you see him a good bit, very often?

9 THE JUROR: On Sundays.

10 THE COURT: All right. Being that you go to church
11 with Dr. Leary and knowing that he's a party to this
12 lawsuit, this involves an automobile accident, do you think
13 you could be a fair and impartial juror in the trial of this
14 case?

15 THE JUROR: Yes.

16 THE COURT: All right. Thank you. Yes, sir. Tell me
17 your name.

18 THE JUROR: James LaForge and I also go to church with
19 Dr. Leary.

20 THE COURT: Okay. And tell me this, do you think you
21 could be a fair and impartial juror in the trial of this
22 case?

23 THE JUROR: Yes, ma'am.

24 THE COURT: All right. Thank you so much. All right.
25 I promise I don't have much more. I'm just getting my ducks

1 in a row here. Where's my list. Here it is. Thank you.
2 All right. I have a few witnesses that I want to read to
3 you. If any member of the jury panel believes he or she
4 knows any of these witnesses, ever been acquainted with any
5 of these witnesses in any way, I'd ask you to please stand.
6 Corey Boyter of the Greenville (SIC) police, Dr. Asa
7 Hatfield or Dr. Glenn Scott. Any member of the jury panel
8 related by blood or marriage or otherwise acquainted with,
9 in any way, any of these potential witnesses? And if so,
10 please stand.

11 Corey Boyter is with the Greenwood police. I'm going
12 to say Greenville all day, and I'm so sorry. He is with the
13 -- he, she is with the Greenwood police.

14 (Whereupon, members of the jury panel stands.)

15 THE COURT: All right. Yes, sir.

16 THE JUROR: I'm just familiar with Corey. I grew up
17 with him -- well, he grew up with my kids in church.

18 THE COURT: Okay. All right. Well, let me ask you
19 this. Knowing that he may be a witness in this case, do you
20 think you could still be a fair and impartial juror in the
21 trial of this case?

22 THE JUROR: Yes, ma'am.

23 THE COURT: Thank you so much. Tell me your name. I'm
24 sorry.

25 THE JUROR: Joseph Parks.

1 THE COURT: Parks. Yes, sir. All right. Anyone else?
2 Yes, ma'am?

3 THE JUROR: My name is April Eanes and I live -- I grew
4 up a few houses down the street from Corey.

5 THE COURT: Okay. And tell me this. Do you -- knowing
6 that he will likely be a witness in this case, do you think
7 you could be a fair and impartial juror in the trial of this
8 case?

9 THE JUROR: Yes.

10 THE COURT: All right. Thank you.

11 MS. O'BRIEN: I'm sorry, Your Honor. What is her name,
12 again?

13 THE COURT: Tell me your name again.

14 THE JUROR: It's April Eanes Rayzar. It's supposed to
15 be Rayzar on the --

16 THE COURT: Okay. But it's Eanes on there. Thank you.
17 Anyone else need to respond? All right.

18 Has any member of the jury panel ever been involved in
19 an automobile accident that resulted in a lawsuit? And if
20 so, please stand.

21 (Whereupon, members of the jury panel stand.)

22 THE COURT: Anyone else? All right. Yes, ma'am. Tell
23 me your name please.

24 THE JUROR: Maria Landron.

25 THE COURT: Yes, ma'am.

1 THE JUROR: I -- while I was with my job, I was walking
2 across the street at the light and a van ran the redlight
3 and hit me, which is why I'm disabled now.

4 THE COURT: Understood. Understood. Okay. I'm sorry
5 about that. Tell me this. So you filed a lawsuit? You
6 were the Plaintiff in that?

7 THE JUROR: Yes.

8 THE COURT: All right. And did that case actually go
9 to trial or anything like that?

10 THE JUROR: It's finishing up and it's pending.

11 THE COURT: Understood. It's pending right now. Okay.
12 Thank you so much. All right. You can have a seat. Yes,
13 sir.

14 THE JUROR: James Tollison.

15 THE COURT: Yes, sir.

16 THE JUROR: And, yes, I was in one back in the late
17 '90s.

18 THE COURT: Yes, sir.

19 THE JUROR: It was with a company vehicle and -- but I
20 was not involved from the lawsuit side of it because it was
21 defended by the company lawyers.

22 THE COURT: Understood. Understood.

23 THE JUROR: They settled out of court.

24 THE COURT: Okay. Perfect. Thank you so much. Anyone
25 else need to respond to that in any way? All right. All

1 right. And let me just tell you a little bit, just to make
2 sure that none of you think you might know anything about
3 this particular incident. This incident occurred on August
4 19th of 2013. It was an automobile accident at the corner
5 of South Main Street and Marshall Road in Greenwood and it
6 involved the Plaintiff and the Defendant in this case.

7 Any member of the jury panel believe he or she knows
8 anything about this particular automobile accident or
9 anything about the facts of this case or any treatment as a
10 result of this case whatsoever? And if so, please stand.

11 (Whereupon, no member of the jury panel stand.)

12 THE COURT: And none are standing. I think I've
13 covered everything in the proposed voir dire from both.
14 Anything else?

15 MS. O'BRIEN: Your Honor, may we --

16 THE COURT: Absolutely.

17 MS. O'BRIEN: -- chat for a minute?

18 THE COURT: Absolutely. Please approach. Give us just
19 one moment, ladies and gentlemen.

20 (Whereupon, a sidebar was held out of the hearing of
21 the jury panel.)

22 THE COURT: Okay. Ladies and gentlemen, I understand
23 that it's a good time to take a restroom break. I tell you
24 what, if you all will step outside and you can plan to go to
25 the restroom or do whatever you need to do for a few

1 minutes, but here's what I want to say to you. You don't
2 know enough about this case to really discuss much of it,
3 but please don't discuss this case with anyone. Just
4 pretend like you don't know. You hadn't heard anything
5 about it. Okay? And I'll ask you to just step outside for
6 a break. We'll be in recess for 10 minutes.

7 (Whereupon, a recess was held from 11:30 a.m. to 11:46
8 a.m.)

9 THE COURT: There was one juror who needed to speak
10 with me. Sir, will you stand, please, and tell me your
11 name?

12 THE JUROR: My name's Donald Wright.

13 THE COURT: White?

14 THE JUROR: Wright.

15 THE COURT: Wright. I'm sorry. Yes, sir.

16 THE JUROR: The issues was a question was asked did I
17 know the Plaintiff, and I'm thinking there was a case maybe
18 15 years ago where a relative of mine was involved in a case
19 with the Doctor.

20 THE COURT: Okay. And tell me this. Based on that, do
21 you think you could be a fair and impartial juror on the
22 trial of this case?

23 THE JUROR: Yes, ma'am.

24 THE COURT: Perfect. Thank you. And that's just the
25 kind of information I need, so that's perfect. So all

1 right. I'll tell you what's going to happen.

2 MS. O'BRIEN: Your Honor, may I have a minute?

3 THE COURT: Sure. Just so you all kind of know the
4 procedure that we're going to follow in just a moment.
5 You're going to hear some numbers being called out -- and
6 some of you may or may not know your juror number, it
7 doesn't matter. You may some hear some numbers being called
8 out and if you hear your juror number being called out,
9 we're not talking about you, because we've put you into the
10 computer, and with the magic of computers it's given us a
11 list and it's given you a brand new number. And so, you'll
12 hear us kind of saying some numbers back and forth.

13 Now, right after that, if we call your name, then we'll
14 ask you to come forward and be seated in the jury box.
15 We'll direct you through the whole thing. A couple of
16 things. Bring your belongings with you when you come up
17 here because if your name is called, because you won't be
18 returning to your seat. And if you don't get picked for the
19 jury -- I know it probably won't tear anybody up too much.
20 But if you don't get picked for the jury, please don't get
21 your feelings hurt. I can tell you that when I practiced
22 law, I struck jurors for a whole host for reasons and none
23 of them were personal. So I just want you to know that.

24 Is there anything we need to take up before we get
25 going?

1 MS. O'BRIEN: No, ma'am.

2 THE COURT: All right. So we'll strike through one

3 through 20, and then our alternate after that. All right.

4 MADAM CLERK: Plaintiff strike first.

5 MR. TINSLEY: Number five.

6 THE COURT: Okay.

7 MADAM CLERK: Defense strike.

8 MS. O'BRIEN: The Defense strikes number three.

9 MADAM CLERK: Plaintiff strike.

10 MR. TINSLEY: Number 10.

11 MADAM CLERK: Defense strike.

12 MS. O'BRIEN: Defendant strikes number six.

13 MADAM CLERK: Plaintiff.

14 MR. TINSLEY: Number three -- I mean -- excuse me,

15 number 20.

16 MADAM CLERK: Defense.

17 MS. O'BRIEN: Defendant strikes number 11.

18 MADAM CLERK: Plaintiff strike.

19 MR. TINSLEY: Number 18.

20 MADAM CLERK: Defense strike.

21 MS. O'BRIEN: If I may a minute, please.

22 THE COURT: Sure.

23 MS. O'BRIEN: Defendant strikes number four.

24 THE COURT: Okay.

25 MADAM CLERK: Alternate strike. Twenty-one through 24

1 -- 23, excuse me. The Plaintiff?

2 MR. TINSLEY: Number 23.

3 MADAM CLERK: Defense.

4 MS. O'BRIEN: Defendant strikes Number 22.

5 MADAM CLERK: I'm going to give you the strikes.

6 Plaintiff strikes five, 10, 18 and 20; is that correct?

7 MR. TINSLEY: Correct.

8 MADAM CLERK: Defense strikes three, four, six, 11 --

9 MS. O'BRIEN: Yes, ma'am.

10 MADAM CLERK: -- and 22?

11 MS. O'BRIEN: Yes, ma'am.

12 THE COURT: And then Plaintiff on 23 on the --

13 MADAM CLERK: Right. Plaintiff on 23.

14 MR. TINSLEY: Correct.

15 THE COURT: Just to be sure. All right. Any objection
16 manner -- even before we even call the jurors up, any
17 objection to the manner in which the jury is selected from
18 the Plaintiff?

19 MR. TINSLEY: No objection, Your Honor.

20 THE COURT: All right. Any from the Defense?

21 MS. O'BRIEN: No, ma'am.

22 THE COURT: All right. All right. Let's go ahead and
23 call our jurors.

24 MADAM CLERK: 151, Colleen Tebo. Bring your belongs
25 and come have a seat in the jury panel, please.

1 (Whereupon, the juror took a seat in the jury box.)
2 MADAM CLERK: 39, Daniel Donaldson.
3 (Whereupon, the juror took a seat in the jury box.)
4 MADAM CLERK: 20, Yolanda Carter.
5 (Whereupon, the juror took a seat in the jury box.)
6 MADAM CLERK: 95, Amber Moreno.
7 (Whereupon, the juror took a seat in the jury box.)
8 MADAM CLERK: 131, Melinda Rowell.
9 (Whereupon, the juror took a seat in the jury box.)
10 MADAM CLERK: 136, Carol Schneider.
11 (Whereupon, the juror took a seat in the jury box.)
12 MADAM CLERK: 41, April Eanes.
13 (Whereupon, the juror took a seat in the jury box.)
14 MADAM CLERK: 164, Elizabeth Welch.
15 (Whereupon, the juror took a seat in the jury box.)
16 MADAM CLERK: 149, Donald Talley.
17 (Whereupon, the juror took a seat in the jury box.)
18 MADAM CLERK: 161, Heather McDade.
19 (Whereupon, the juror took a seat in the jury box.)
20 MADAM CLERK: 27, Roberta Collier.
21 (Whereupon, the juror took a seat in the jury box.)
22 MADAM CLERK: 91, Jacki McCulloch.
23 (Whereupon, the juror took a seat in the jury box.)
24 MADAM CLERK: And alternate is 70, Shiquetta Jones.
25 (Whereupon, the juror took a seat in the jury box.)

1 THE COURT: Mr. Donaldson, I'll tell you. I was
2 thinking you might be alone, our sole man on the jury there
3 for a minute, then -- but, then we got Mr. Talley. So,
4 yeah. You all are two lucky men in with a group of
5 wonderful ladies. All right. Anything we need to take up
6 before I excuse the remainder of our jurors? Anything from
7 the Plaintiff?

8 MR. TINSLEY: Nothing from the Plaintiff, Your Honor.

9 MS. O'BRIEN: Nothing from the Defense.

10 THE COURT: Ladies and gentlemen, thank you so much for
11 your service in this case. Don't leave quite yet. I've got
12 something very important to tell you. You're going to get a
13 card with some money on it and they're going to give it to
14 you outside. And so, don't leave until you get a copy of
15 that -- or that card, but you just wait. You all can head
16 on out right now. Thank you so much.

17 (Whereupon, the remainder of the jury panel was
18 dismissed.)

19 THE COURT: I've got to tell you, you all are lucky.
20 In Greenville, where I normally am, those chairs -- oh, my
21 gosh. I sat in the -- I sat in them for swearing in, they
22 were awful. Awful. But these are so nice.

23 Well, I have seen that look of envy before where folks
24 leave out of the courtroom -- your fellow jurors leave out
25 of the courtroom and leave you here to try the case, but I

1 want to give you some good news. Number one, these are
2 outstanding lawyers who are trying this case here today, so
3 you're going really see, what I believe, is going to be a
4 good case. It's also a case that's important to both sides.
5 And, as I said, I hear time and time again people tell me,
6 I'm so glad I got to serve, at the end of a jury trial. And
7 a lot of times that will be at the end of a week or a two
8 week long one. The attorneys in this case have worked
9 together and really paired this case down to where they feel
10 like they could try it. I don't know if we'll get it all in
11 today, but it will be in your hands, we expect, by tomorrow
12 morning at the latest. So this is actually, if you're going
13 to be a juror on a case, this will be a fantastic one to
14 start with. Do you mind swearing in the jurors?

15 MADAM CLERK: Yes, ma'am. Not a problem.

16 THE COURT: Thank you.

17 (Whereupon, the jury was sworn at 12:00 p.m.)

18 THE COURT: All right. Ladies and gentlemen, what I'm
19 going to say to you now is not meant as my instruction on
20 the law in this case. This is just merely to talk to you a
21 little bit about the procedures that we'll follow throughout
22 the trial of this case. I'm going to give you my charge on
23 the law at the end of this case when you've heard -- after
24 you've heard all of the evidence in the case and you've
25 heard final arguments from the attorneys. So -- but I do

1 want to go through and talk to you a little bit about the
2 procedures in this case. You've been selected as fair and
3 impartial jurors and your purpose is to find and determine
4 the facts in this case. You're the sole judge of the facts
5 in this case. A trial judge can't have an opinion on the
6 facts in a case and I do not. If anything I say makes you
7 think I have an opinion, please disregard it because I
8 don't. You are to determine the testimony -- excuse me, the
9 facts in this case from the testimony and the evidence that
10 are presented here today. Don't be influenced by any
11 opinions or anything you might have heard outside of this
12 courtroom, you just listen to what you hear presented here
13 today and determine the facts based on that. On the other
14 hand, the same judge that makes you -- the same law that
15 makes you the judge of the facts makes me the judge of the
16 law. I'm going to give you the law at the end, but you must
17 take that law as I give it to you and apply the facts as you
18 find them to be, and from that you'll come up with your
19 verdict in this case. You know, you can't decide that's not
20 what I think the law is or what the law ought to be. You'll
21 have to just take it as I give it to you under your juror
22 oath. Until I advise you to begin your deliberations, you
23 must not discuss this case with anyone. There's at least a
24 possibility you might have this case overnight and, of
25 course, you're going to go home and, of course, your

1 family's going to say -- or friends or anybody's going say,
2 you know, are you on the jury, did you get picked for a
3 jury. You can tell them that you're on a jury, but please
4 don't tell them anything other than that because that may
5 elicit a comment from them and I don't want you to be
6 influenced in any way.

7 You can't discuss the case with your fellow jurors or
8 anyone else, and that surprises people from time to time
9 because that's not how it looks on TV. I mean, jurors are
10 talking about it the whole time. But, at least, in South
11 Carolina -- I can speak for South Carolina that the law is
12 that we don't want you to discuss with anyone because we
13 don't want you to make you mind up about any fact
14 whatsoever. We want you to keep an open mind until the very
15 end and decide the case once you've heard all the testimony
16 and seen all the evidence in the case.

17 In this day and age, I have to talk to you a little bit
18 about social media. That means you can't discuss it on
19 Facebook or anything else. Can't discuss it until the case
20 is over with, and then, of course, you're free to discuss it
21 with anyone you like to.

22 These attorneys are fantastic, as I told you, and they
23 would never dream of speaking to you about this case, and I
24 don't think anybody involved in this case would. But if you
25 were to inadvertently overhear somebody talking while you're

1 in the courthouse today and tomorrow -- or today and,
2 possibly, tomorrow, and -- then you should just identify
3 yourself as a juror. If the person does not immediately
4 quit talking to you about it, then speak with Mr. Willingham
5 and Mr. Poletti here. They will speak with me. The
6 Bailiffs, they will speak with me, and I assure you I will
7 take care of that right away.

8 From time to time, you may hear the attorneys say
9 something like they need to approach on a matter of law or I
10 need to excuse you to your jury deliberation room. Just to
11 let you know what we're doing, we're not trying to hide the
12 ball from you or anything like that, but sometimes -- I told
13 you I can't have an opinion on the facts in a case.
14 Sometimes in determining a matter of law I have to talk
15 about the facts. So as not to influence you in any way,
16 I'll ask you to step to your jury deliberation room, or if
17 it's something we can talk about very quickly up here, we'll
18 do it. But I want to give you my assurance and these
19 attorneys' assurance that if you all are in there waiting on
20 us, we're working. We know how valuable your time is and we
21 don't want to trespass on it anymore than is absolutely
22 necessary.

23 In just a moment, the attorneys in this case will give
24 what's called an opening statement that they'll just lay out
25 for you what they believe the issues in the case to be.

1 It's not evidence, it shouldn't be considered by you in any
2 way, as evidence, but it just lays out where they anticipate
3 their case to go. Of course, you're going to have to
4 determine the credibility of witnesses in a trial.
5 Credibility simply means believability. You do that like
6 you do everyday. You look how somebody acts. You think
7 about how it matches up with what other testimony may or may
8 not be. You look at the physical evidence in the case, see
9 how it matches up. You can use anything in the record to
10 determine who you believe, if anyone, is telling the truth.

11 And, as I told you, we'll talk more about the evidence
12 in this case. We'll talk more about the burden in this
13 case. We'll talk more about your ultimate decision on the
14 verdict in this case. We'll do that towards the end. Right
15 now, I want to ask everyone to please hold your attention
16 with us here today throughout the trial of this case. I
17 will tell you one thing is if anybody cannot hear something
18 -- they've put in these wonderful sound panels since I've
19 been here last and it really makes the acoustics good in
20 this courtroom. But if you can't hear something, please let
21 me know. Please signal to me, signal to the Bailiffs. If
22 you need a break for any reason, just signal to me or just
23 signal to the Bailiffs. We'll take a break right --
24 immediately. The other thing I want to say is as we're
25 changing up witnesses and whatnot throughout the trial, I

1 may stand and stretch, and I encourage you to do it. Don't
2 feel like you're chained to these chairs, but it --
3 sometimes it's very refreshing to get up and stretch just a
4 little bit. I anticipate what we'll do here now in just a
5 moment is do our opening statements. Those, I don't think,
6 are going to be lengthy by any means, and then we'll take a
7 break for lunch. Let you go out and get some lunch, and
8 then we'll get into the real -- into the real testimony of
9 the case after that.

10 Now, Ms. Jones, you're our alternate? Yes, ma'am.
11 You're our alternate in here. You probably know what an
12 alternate is, but just so I've read it -- I've said it for
13 the record. You will stay with us through the balance of
14 the trial, listen to all of the testimony and evidence. If
15 I had to remove a juror for some reason or a juror had an
16 emergency, something like that, you could just step in if
17 you're one of the 12 jurors all along. I appreciate -- and
18 when we get to deliberations, if your services aren't
19 needed, I'll excuse you before deliberations. Okay? Thanks
20 so much for your service. Ms. Tebo.

21 THE JUROR: Yes.

22 THE COURT: I'm going to ask you to serve as foreperson
23 of our jury.

24 THE JUROR: Okay.

25 THE COURT: And let me explain to you what a foreperson

1 is. Your verdict has to be a unanimous one, so nobody's
2 opinion is more important than another, but I need someone
3 who can lead the discussions in the jury deliberation room
4 and who will fill out the verdict form and sign and date it.
5 Would you be willing to do that for me?

6 THE JUROR: Yes, ma'am.

7 THE COURT: Thank you so much. I surely do appreciate
8 it. You're in the perfect seat and I ask you to stay there
9 throughout the balance of the trial. Ms. Jones, if you'll
10 stay in that seat. Other than that, you all are free to
11 move around as much as you'd like when you come in and out
12 of the courtroom to different seats. But those two seats
13 need to stay fairly the same, absent some compelling
14 circumstances. All right.

15 Any objection to my initial instructions from the
16 Plaintiff?

17 MR. TINSLEY: No, Your Honor.

18 THE COURT: Any from the Defense?

19 MS. O'BRIEN: No' ma'am.

20 THE COURT: All right, then. Are you all ready to --
21 you all free ready to proceed?

22 MS. O'BRIEN: Yes.

23 MR. TINSLEY: Yes, ma'am.

24 THE COURT: All right, then. Very well. Mr. Tinsley,
25 I'll turn it over to you.

1 MR. TINSLEY: Thank you, Your Honor, may it please the
2 Court.

3 OPENING STATEMENT

4 BY MR. TINSLEY: Ladies and gentlemen of the jury, this
5 case is a motor vehicle accident case. Let me tell you what
6 that's about in my eyes. We live in a very transient
7 society where everybody's moving around, and we depend on
8 our road system and we have a set of rules that govern
9 everybody on the roads behavior, and when those rules are
10 breached and someone is injured, this is where they come to
11 get justice, from a jury of 12 such as yourselves. And if
12 those rules aren't followed, then we have a breakdown --
13 it's a breakdown of our society, of our system. And you're
14 going to hear -- hear evidence here today that my client,
15 Ms. Rosa Cardona, on the morning of August the 19th, 2013,
16 when she was 43-years-old, was driving to work and coming up
17 Main Street -- South Main, which I'm sure we're all familiar
18 with, coming up South Main heading towards town, and at the
19 intersection of South Main and Marshall Road, as they were
20 coming North. And, of course, now, Marshall Road's on your
21 right -- or Epting Avenue is what it turns into at that
22 stoplight. She was sitting there at a stoplight,
23 stationary, when she was hit in the back by the Defendant,
24 Mr. Leary.

25 Now, I'm not going to get up here and say Mr. Leary is

1 some terrible person or anything like that, but he made a
2 mistake. He did not pay close enough attention to where he
3 was going and he hit my client, Ms. Cardona, and as a result
4 she suffered injuries, and that's why she brought this case
5 alleging that he was negligent. And the evidence will show
6 that he was negligent in hitting her stopped car at that
7 stoplight that morning. And you will hear -- hear evidence
8 of the injuries that Ms. Cardona's claiming. She was
9 initially taken to the emergency room by the EMS. She
10 called EMS right after the wreck. She had -- initially, she
11 had neck pain, she had a headache, she had problems in her
12 back. Well, a few days later -- eight days later, to be
13 exact, she was still having trouble with it, so she went and
14 saw her primary physician, Dr. Hatfield, as she was
15 instructed to do at the emergency room, and Dr. Hatfield
16 examined her, and you'll hear his testimony. She was
17 suffering from neck pain. He found tenderness on his exam,
18 so initially, he treated her with some steroids and muscle
19 relaxers, then changed up -- changed up the type of pills
20 she was taking to a non-steroidal at a later visit. She
21 visited with him three times after that accident during
22 August and September. And, also, during that time, she
23 underwent some physical therapy. And as she was still
24 suffering from this neck pain and these headaches from the
25 back of her head, she'll describe it more fully when she's

1 up there on the stand, she was still suffering from it, so
2 Dr. Hatfield sent her to a neurologist, Dr. Glenn Scott,
3 over in Abbeville, for treatment that he -- to see if he
4 could improve her. And saw her a couple of times and sent
5 her to get steroid injections into her neck for the pain.

6 Ms. Cardona is going to tell you that, as we sit here
7 some four and a half years later, she's still having
8 problems from this wreck. She's still having neck pain,
9 head's still hurting in the back, she still -- and what it's
10 done to her life. She doesn't have the energy she used to.
11 She can't play the guitar like she used to. She has a
12 situation like today when she's under stress, being in the
13 courtroom and on trial tend to make things worse in her neck
14 area, and as a result she doesn't exercise as much as she
15 used to. She doesn't walk as much as she used to. Has
16 problems sleeping a lot at nights. And we're going to ask
17 that you take all of this into account when we get done with
18 the case and factor all of that in.

19 Let me tell you just a little bit about the -- about
20 the process. Ms. Cardona brought this case alleging
21 negligence against Mr. Leary and as a result we have the
22 burden to prove it. Let me explain to you what that is.
23 This is a civil case, not a criminal case. We're all, I'm
24 sure, familiar with the criminal standard of beyond all
25 reasonable doubt. That's not the case here today. All we

1 have to prove is that Dr. Leary was negligent and, as a
2 result, Ms. Cardona was injured and suffered damages by a
3 preponderance of the evidence.

4 Best way I know how to describe a preponderance of the
5 evidence. We all know the blind lady justice, all seen the
6 symbol, I'm sure, around the courthouse here somewhere. On
7 the scales of justice, we put something that's favorable to
8 our case, put a stone here. It tilts a little bit this way.
9 The Defense puts something up that's a little favorable to
10 them, put a stone on the other side. It's tilts that. All
11 we have to do, when the case is done, is have the scales
12 tipped ever so slightly in our favor. Then we have met our
13 burden of proof. And we're going to show you that after
14 this wreck -- which Ms. Cardona certainly was not at fault
15 for. She was sitting stopped at the stoplight as the law
16 required. Given the breakdown of the system, for whatever
17 reason, Dr. Leary hit her in the back and she was injured.
18 And, you know, you're going to listen to Ms. Cardona's
19 testimony, as well, as the Doctor's testimony verifying her
20 injuries. And the Defense will probably argue that it was a
21 minor impact and, luckily, the car was not destroyed, but
22 she'll testify to all the work they had to do. I'll submit
23 to you that don't get sidetracked. Listen to the evidence.
24 Listen to the damages my client has suffered, and when you
25 do, you'll find that she has met her case for negligence.

1 And just to reintroduce myself to you, my name's
2 Jamison Tinsley. I practice law here in Greenwood. I've
3 been practicing for eight years now. I'm a lawyer with my
4 father, Lawyer Robert Tinsley, who was the public defender
5 for Greenwood and Abbeville Counties for many years. And,
6 unfortunately, I inherited this case from -- originally it
7 was filed by her previous lawyer, our friend Marvin Watson,
8 who's now deceased. I just ask that you listen to all the
9 evidence, and at the end we can't take this pain away from
10 Ms. Cardona that she has suffered and still has a problem
11 with to this day. The only thing we can do is compensate
12 her for it. A substitute. We're going to ask that you, at
13 the end, find that Dr. Leary was at fault and that my client
14 suffered injuries. She's had, roughly, \$23,000 in medical
15 bills from the ER and the various doctor visits. So she's
16 entitled to be reimbursed for that, as well as compensated
17 for the pain and the suffering and the loss of enjoyment of
18 life that she has suffered as a result. So, at that time,
19 I'm going to ask that you give her a monetary figure.

20 And I thank you for paying attention to me and
21 listening to all of the evidence and I submit to you that at
22 the end of the case that you give my client justice. Thank
23 you.

24 THE COURT: Thank you, Mr. Tinsley. Ms. O'Brien?

25 MS. O'BRIEN: Thank you, Your Honor. May it please the

1 Court.

2 THE COURT: Yes.

3 OPENING STATEMENT

4 BY MS: O'BRIEN: Good afternoon, ladies and gentlemen
5 of the jury. Carrie O'Brien. I have the pleasure of
6 representing Dr. Leary. If what the Plaintiff said today
7 was completely true, you would not be sitting here. So here
8 is what I want to make sure every single person does on this
9 jury. Every single one of you was chosen by me because I am
10 confident that you can use the skills that you have been
11 given and your common sense to determine this case. I don't
12 think we even need a doctor to come in and testify as to
13 anything, but, thankfully, there will be one. Listen
14 carefully to what he says.

15 The day of this accident, the Plaintiff was stopped at
16 a stoplight. You will hear Dr. Leary testify that he was
17 going no more than two or three miles per hour when he made
18 contact and barely bumped the rear of the Plaintiff's
19 vehicle. You will see pictures of the vehicle, of Dr.
20 Leary's vehicle and of the Plaintiff's vehicle. There is no
21 visible damage whatsoever to either of these vehicles. You
22 will hear the Plaintiff testify that he was going more than
23 35 miles per hour when he hit her. That is simply not true.
24 You will hear the Plaintiff testify -- previously, she
25 testified in what was known as a deposition where she

1 promised to tell the truth, that she was hit so hard that
2 she was pushed into the intersection. Again, take a look
3 the pictures and you tell me if she was hit hard enough that
4 she could have been pushed into an intersection and there be
5 no visible damage on either of the vehicles.

6 You will then also hear that as soon as there was
7 contact made, that Dr. Leary immediately got out of his
8 vehicle and went to the Plaintiff's vehicle. As soon as he
9 got to her window, she was already hollering and screaming
10 that she had a headache, that she was in pain. And he was
11 in scrubs. He offered to render any assistance that he
12 could to her and she absolutely refused and continued
13 screaming at the top of her lungs.

14 You will hear testimony in this trial as to why she
15 would have been doing that. You will hear that she was
16 dizzy at the scene and why she would have been dizzy. You
17 will hear that she continued to complain of headaches after
18 this accident. She testified before this accident that she
19 did not have any type of headaches or chronic headaches.
20 You will see medical records that show that before this
21 accident, she, in fact, had suffered from chronic headaches
22 and that she had had a CT scan done to her head before this
23 accident because of chronic headaches.

24 You will, also, hear before this accident that she had
25 treated with a chiropractor for neck, shoulder and back

1 issues. When I asked her in her deposition if she had
2 treated within recent times for any of those issues, she
3 testified no. Three months before this accident, she was
4 treating at the chiropractor and she complained of having
5 pain from the middle of her neck to the middle of her back.
6 The same exact injuries that she is claiming as a result of
7 this accident. When she went to the emergency room, they
8 did not find anything wrong with her at the emergency room.
9 They told her that if she was complaining of pain, that she
10 could followup with her primary care physician in three to
11 five days. She followed up with her primary care physician,
12 Dr. Hatfield eight days later. When Dr. Hatfield was
13 deposed, I asked Dr. Hatfield how long he had been treating
14 the Plaintiff for because she testified that he had been her
15 primary care physician since 2003, but we couldn't find
16 records from any doctor that went back to 2003. Dr.
17 Hatfield testified he, in fact, had not treated her until
18 2010 and that he had treated her for headaches as a result
19 of ongoing sinus issues. Dr. Hatfield treated her in this
20 case for the very last time on September the 30th. There
21 was absolutely no treatment with any doctor from September
22 30th until December the 2nd. On December the 2nd, she was
23 treated at Abbeville, and whenever she went there she was
24 treated twice. The doctor, on -- at the end of December,
25 recommended that she go seek some chiropractic treatment,

1 she never did that. Three months later, after she -- it was
2 recommended that she go get chiropractic treatment to see if
3 it could relieve some of her complaints, she then decided to
4 have injections. After she had the injections to her neck,
5 you will hear her testify that they did not help her at all.
6 The doctor then recommended that she go get some acupuncture
7 treatment. That has never been done.

8 Interestingly enough, what you will hear, and what I
9 question Dr. Hatfield about, is in the very last record from
10 June of 2014. Her doctor was recommending that she talk to
11 her attorney about her medical treatment. I asked Dr.
12 Hatfield, in his deposition, why would any doctor recommend
13 that his patient go talk to her attorney about medical
14 treatment. Dr. Hatfield testified he does not know unless
15 there was an issue with medical treatment, which he saw of
16 none, and that he also thought that was strange.

17 Ladies and gentlemen, I submit to you that this case
18 comes from nothing more than us being in a society of where
19 people are litigious. Every single little thing that
20 happens, no matter how minor or how insignificant, you run to
21 the doctor, run up bills, come to a courtroom and ask to be
22 compensated. She is asking to give her money because she
23 continues to suffer to this day of neck pain, back pain,
24 headaches, she can't enjoy her life, she can't work the way
25 she used to. But when I asked her in her deposition have

1 you treated with any doctor whatsoever for any of those
2 alleged problems since 2014, the answer was no, not for any
3 of them. I submit to you that if you're having problems and
4 if you're complaining of the injuries that you claim you
5 injured as a result of this accident, that when you went to
6 your primary care physician after this, after 2014, you'd
7 mention your neck, you'd mention your back, you'd mention
8 your headaches, you'd mention your pain. None of that has
9 been done. She has continued to treat with doctors, but
10 never once has she mentioned any of the problems that she
11 alleges from this accident.

12 I would submit to you that she was having these issues
13 before this accident and this accident is nothing more than
14 an opportunity to receive a paycheck. Listen to the
15 evidence. Listen to the facts. Take a look at the
16 pictures. It is going to be the one thing in this case that
17 cannot lie. What you see is exactly what you get with the
18 pictures. Use your common sense and we believe, once you've
19 done that, that you will render a verdict that says that the
20 Plaintiff has not met her burden of proof in this case and
21 that she has not proven that she was injured as a result of
22 this accident. Thank you.

23 THE COURT: Thank you. All right. Ladies and
24 gentlemen, we've now come to a good point for a lunch break.
25 I am going to ask you to be back in your jury deliberation

1 room at 1:45. So if you'll be back there at 1:45, then we
2 will begin promptly thereafter.

3 Again, I sound like a broken record and I'm so sorry,
4 but please don't discuss the case with anyone. I don't -- I
5 hope it's not still raining outside, but I hope you have a
6 good lunch, and please don't discuss the case, as I said.
7 And I'll just ask everybody to remain seated while the jury
8 leaves. All right? All right.

9 (Whereupon, the jury exited the courtroom at 12:28
10 p.m.)

11 THE COURT: All right. If I could take just one moment
12 just to -- just to reiterate a couple of things. First of
13 all, the reason I ask everybody not to stand is I had some
14 people one time stand up and started talking and the jury
15 came back and reported that they could hear the whole
16 conversation, so I just asked everybody to stay seated.

17 I'd ask you, also, to be careful of reactions to
18 testimony and things like that that's coming up in this
19 case. I know -- I know today's an emotional day for
20 everybody involved, but I'd just ask you to be careful about
21 that. Jurors pick up on those sorts of things. And so,
22 thank you so much for doing that. All right.

23 Is there anything else we need to take up before we
24 break for lunch?

25 MS. O'BRIEN: No. I would just say, I think that we

1 are calling the police officer, perhaps, because you think
2 -- or maybe you thought that we weren't going to stipulate
3 that we caused the accident.

4 THE COURT: Okay.

5 MS. O'BRIEN: I don't know that we even need the police
6 officer. We admit that we hit her in the rear. So that may
7 get rid of one witness.

8 THE COURT: Okay.

9 MS. O'BRIEN: And then, I think if we have the
10 Plaintiff and the 45 minute testimony of Dr. Hatfield, and
11 then Dr. Leary.

12 THE COURT: Maybe we'll just --

13 MS. O'BRIEN: I think -- I think we can.

14 THE COURT: Yeah. Maybe. Maybe, so. So I don't know.
15 You all talk about it and see, you know, how much you all
16 feel like you can reasonably pare it down, and then we'll
17 get going. I know the jury would certainly be happy about
18 that and I can -- I'm happy to do whatever is all right with
19 everybody.

20 MS. O'BRIEN: And, Your Honor, I'm not going to leave
21 for lunch. So if there's anything that you needed with
22 respect to the jury charges, I'm happy to help you with
23 that.

24 THE COURT: If there's anything that you've got. I've
25 got -- I've got a new causation charge that I think would

1 work pretty well, but I'll take a look at all that and see.

2 MS. O'BRIEN: Admitted negligent, not causation.

3 THE COURT: Well, I should say -- yeah.

4 MS. O'BRIEN: Yes.

5 THE COURT: Not necessarily any damages.

6 MS. O'BRIEN: Yes, right.

7 THE COURT: So -- and that's the reason I'm careful not
8 to say admitted liability.

9 MS. O'BRIEN: Yes, thank you.

10 THE COURT: All right. We'll be in recess until 1:45.

11 MR. TINSLEY: Great. Thank you.

12 MS. O'BRIEN: Thank you.

13 THE COURT: Thank you.

14 (Whereupon, a lunch recess was held from 12:28 p.m.
15 until 1:45 p.m.)

16 THE COURT: Did you all decide -- over the lunch break,
17 did you all have an opportunity to think about or decide
18 whether or not you're going to call the officer?

19 MR. TINSLEY: I told him, as of right now, I didn't
20 think we were going to need him.

21 THE COURT: Okay. Okay. Perfect. Very good, then.
22 All right.

23 MS. O'BRIEN: Your Honor, the only thing -- just for
24 the east of flow, to make it quicker. The only thing that I
25 object to with respect to Dr. Hatfield's deposition, and I

1 think it actually goes to the Plaintiff's attorney's point,
2 that no one can testify as to whether the speed caused the
3 injury. And the last question that's just asked is if the
4 speed of the impact of the collision was determinative of,
5 you know, whether someone was injured. I would just address
6 that if he doesn't want me to go into the speed of the
7 impact and whether it could have caused injury, that that
8 last question be struck from the deposition testimony.

9 THE COURT: All right. Mr. Tinsley?

10 MR. TINSLEY: Well, I mean, I just -- you know, I think
11 it was a question to the Doctor, you know, on that point,
12 which is really the ultimate issue in this case and he --
13 you know, answered that it's not determinative. So there's
14 no evidence in the record that says it automatically is. So
15 I don't -- I don't know why him answering that question is
16 going to --

17 THE COURT: I'm going to -- here's what I'm going to
18 do. I'm going to allow that question, but, certainly I'll
19 allow you to do anything you need to do to rebut it as well.

20 MS. O'BRIEN: Well, I can't rebut it because it was --
21 I objected to the question and this is deposition testimony.

22 THE COURT: Let me take a look -- I don't -- and I'm
23 sorry. I'm kind of -

24 MR. TINSLEY: And this may be a good time. I'm not --
25 let me make sure we can get this thing hooked to the TV.

1 THE COURT: Okay.

2 MS. O'BRIEN: So this is the deposition testimony --

3 THE COURT: Okay.

4 MS. O'BRIEN: -- of Dr. Hatfield and the question.

5 And, Your Honor, here's my argument. He just wrote an
6 entire memorandum on the reason why we should not be allowed
7 to argue that because there was low speed, therefore, there
8 can't be injuries. And I agree that that's not a proper
9 argument --

10 THE COURT: Right.

11 MS. O'BRIEN: -- because there is no expert here to
12 talk about how --

13 THE COURT: I got you.

14 MS. O'BRIEN: -- the -- you know, the velocity, et
15 cetera. So if it's inappropriate for me to talk about, then
16 it's inappropriate for him to ask --

17 THE COURT: Okay. I understand.

18 MS. O'BRIEN: -- a doctor whether the low velocity, she
19 could still have injuries. It's not appropriate of anyone,
20 other than someone who is an expert in that realm who --
21 that would be an accident reconstructionist or an engineer,
22 and Dr. Hatfield is neither of those things.

23 THE COURT: And there's nobody coming for that, and the
24 officer couldn't have testified to that, I assume. Anyway
25 -- okay. All right, then. Very well. Well, we'll strike

1 that question because, I guess, the officer wasn't prepared
2 to testify to anything like that anyways. No accident
3 reconstruction or anything?

4 MR. TINSLEY: That's right. Yeah. He wouldn't have
5 any --

6 THE COURT: I got you. I got you.

7 MR. TINSLEY: -- any opinion on that.

8 THE COURT: Okay.

9 MR. TINSLEY: The officer didn't witness --

10 THE COURT: Okay. Thank you.

11 MR. TINSLEY: -- didn't witness the wreck.

12 MS. O'BRIEN: So I would just request that we stop the
13 tape on page 35, line 10, when I am done with my
14 cross-examination.

15 THE COURT: Understood. Okay. And you think you've
16 got it hooked up or no?

17 MR. TINSLEY: That's what I'm going to do.

18 (Whereupon, a brief pause was taken.)

19

20 THE COURT: Are we ready to bring the jury back in?

21 MR. TINSLEY: I believe so.

22 THE COURT: All right, then.

23 (Whereupon, the jury entered the courtroom at 1:54
24 p.m.)

25 THE COURT: We're ready to begin. Mr. Tinsley.

1 MR. TINSLEY: I'll call Rosa Cardona to the stand.

2 ROSA CARDONA, having first been
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TINSLEY:

6 Q Please state and spell your name for the record.

7 A Rosa Cardona. R-o-s-a, C-a-r-d-o-n-a.

8 Q Ms. Cardona, where do you currently live?

9 A At this time I live in Oriental, North Carolina.

10 Q And you used to live in Greenwood?

11 A I did.

12 Q When did you move to Greenwood?

13 A 2003.

14 Q How did you come about moving to Greenwood?

15 A Met a gentleman, Stanley Sullivan, in 2002 and married
16 him in December 2002, and we moved here March -- I moved
17 here, he already lived here, in 2003.

18 Q And Mr. Sullivan since passed away?

19 A Yes.

20 Q When did you move out of Greenwood?

21 A I have to think about this one. I believe it was
22 August of 2015.

23 Q Just a couple of years ago?

24 A Yeah.

25 Q What did you do for a living when you left here in

1 Greenwood?

2 A I was an administrative assistant. I worked in an
3 office.

4 Q Where all did you work?

5 A I worked for Capsugel, a division of Pfizer, for almost
6 four years and was laid off. And then I moved back to -- I
7 moved to Massachusetts to visit -- well, I was visiting
8 there and got a position. Seeing that I didn't live -- you
9 know, I didn't have a -- well, when I was laid off -- I'm
10 sorry, guys. Excuse me. I'm just a little nervous. I got
11 to take a deep breath. In 2006, I got laid off from
12 Capsugel and moved to Massachusetts where I then acquired a
13 position for Maritime Registry and was there for about six
14 months in 2006. And then my mom was living here at the time
15 and she got very sick, so I had to come back to Greenwood in
16 2007.

17 Q And were you working also or just taking care of mom at
18 that point?

19 A I was working and taking care of my mother.

20 Q Where did you work then?

21 A I acquired a job at SingleSource Apparel. I worked
22 there for about two years, and left there, I believe it was,
23 in 2010 or 2011.

24 Q Where were you working at the time of this accident in
25 August of 2013?

1 A Burnstein in Abbeville. Burnstein Precision Casting in
2 Abbeville.

3 Q And what did you do for them?

4 A I was an administrative assistant.

5 Q Let's go to the date of the wreck, August 19th, 2013.

6 Do you -- can you tell us about your morning routine that
7 day?

8 A It was another normal day. Get -- left the house about
9 7:20. Got to the stop sign, took a left -- took a right
10 rather. Excuse me.

11 Q Let's back up. Where did you live?

12 A I lived on Kentucky Court.

13 Q Is that one of the mill villages off --

14 A Yeah.

15 Q -- of South Main?

16 A Correct.

17 Q Is that Panola or Matthews? Do you remember?

18 A I'm not sure. They're Blyth -- I think it was Blyth.
19 Right behind the Garden Grille.

20 Q So you got to South Main from your house?

21 A Correct. Took a right. At the stop sign took a right.
22 Was just proceeding to work. And at the light I believe it
23 is Epting and South Main. Stopped, it was a red light, and
24 just waiting to go to work.

25 Q I'm going to show you a picture.

1 (Whereupon, Plaintiff's Exhibit No. 1 was marked for
2 identification.)

3 Q I'm showing you what has been marked as Plaintiff's
4 Exhibit 1. Is this the stoplight that you're referring to
5 at Epting and South Main Street?

6 A yes.

7 Q That's an accurate picture of that intersection?

8 A Yes.

9 MR. TINSLEY: I'll move to enter Plaintiff's 1 into
10 evidence.

11 THE COURT: Any objection?

12 MS. O'BRIEN: Your Honor, no objection, as long as we
13 understand that this is not a picture from the day of the
14 accident. It was just taken at a later time.

15 THE COURT: Understood. All right.

16 MR. TINSLEY: Correct.

17 Q And that's your understanding of this picture as well?

18 A Correct.

19 THE COURT: So admitted.

20 (Whereupon, Plaintiff's Exhibit No. 1 was admitted into
21 evidence.)

22 Q And which lane were you in?

23 A I was on the left lane.

24 Q So you were in the same lane -- basically where this
25 truck --

1 A Correct.

2 Q -- is parked? And were you stopped at the stoplight?

3 A Yes. It was red.

4 Q It was red. I understand. And take us into what you
5 observed from when you stopped until the point of the
6 collision.

7 A It was about 7:30 -- 7:20 in the morning and I'm at the
8 stoplight and there was no vehicles. Just going east and
9 west, and there was no vehicles on the road. So I see --
10 look in my rearview mirror and I see this vehicle and I
11 thought to myself this guy's going pretty fast, you know, on
12 this road. And I thought, well, you know, he's going to
13 stop. So I'm just sitting there, and I look up again and I
14 see that he's not going to stop, and I kept thinking, oh, my
15 God, this guy's not going to stop. And that's when the
16 impact -- he hit me from behind. I was looking up and
17 checking to see, you know, if he was going to stop because
18 he was not -- he was going pretty fast, as far as I know. I
19 mean, I don't know what speed he was. But to not see me --
20 I mean, I don't understand why he didn't stop. There was no
21 other vehicles. So then that's -- that was it. He hit me
22 from -- you know, he collided into me.

23 Q. What kind of automobile were you in?

24 A. I had a 2006 Nissan Xterra.

25 Q. Is that a sports utility vehicle?

1 A. Yes.

2 Q. And do you recall what -- what kind of vehicle Dr.
3 Leary was in?

4 A. I do not.

5 Q. Do you know whether it was a car or a truck?

6 A. It looked like to be a truck. A four-wheel drive or
7 something. A four -- but I'm not sure what it was.

8 Q. It was Dr. Leary, who's the Defendant here today, that
9 was the driver of the other vehicle?

10 A. Yes.

11 Q. So tell us what happened after -- after he collided
12 with you?

13 A. Well, I immediately called 911. I called my work to
14 let them know I wasn't going to come in, and I hear -- I
15 hear a tap on the window. I turn around and it was Dr.
16 Leary asking me if I was okay, and I said, "No, I'm not",
17 and he walked away. And that was the last I seen. The next
18 thing, the police officer came and had me to move the
19 vehicle to the Walgreens parking lot. And as I waited there
20 they were -- the ambulance was coming. So when I tried to
21 get out of the car, I opened the car door, and the ambulance
22 -- the EMT gentlemen were trying to help me out and I told
23 them that I was, you know, feeling a little dizzy at the
24 moment. So they had me sit back down. And then they got
25 the gurney and strapped me in and brought me to the

1 emergency room.

2 Q What kind of -- what all symptoms were you -- were you
3 feeling at that point?

4 A Well, I was shaken (PHONETIC) up, of course, because I
5 wasn't expecting that at 7:30 in the morning. But I was
6 telling them that right back here, the back of my head, the
7 back area right here was hurting, and the back -- my neck
8 area, I can remember, and my head. I was telling them my
9 head hurts, my head hurts, but more upper in this area.
10 Cranial part. So they did what they had to do. I guess,
11 what they do in the emergency room, took x-rays. Had me lay
12 on the gurney for, you know, several hours, I guess, until
13 they discharged me, so...

14 Q And did they give you any instructions for -- for when
15 you left for what to do about symptoms?

16 A Just to followup with my primary care physician if I
17 have other issues. Or if I'm having continuous pains, just
18 followup with the primary care physician.

19 Q And did you, in fact, followup with your primary care
20 physician?

21 A I did.

22 Q And who is your primary physician?

23 A Asa Hatfield at the time, yeah.

24 Q And how long did it take you to get in to see Dr.
25 Hatfield?

1 A Well, let's see. A couple of days -- the next day I
2 was a little sore and I tried to call. And I called them
3 and they -- due to scheduling I didn't get in until, I think
4 it was, the 27th.

5 Q So eight days later?

6 A Yes.

7 Q And how did your symptoms -- how did -- what happened
8 during this intervening eight days?

9 A Well, I just took some Tylenol and, I mean, just --
10 there's nothing I could have done. I mean, I was just in a
11 lot of pain. But I just -- I had to deal with the pain.

12 Q Did it get worse during that time, better, stay the
13 same?

14 A Actually -- well, it did get worse. I mean, the day
15 next it just -- you could -- I could feel the -- from, you
16 know, the impact, just the tightness back here and the
17 tenderness in the back of my head. Back of my neck.

18 Q And when you went to see Dr. Hatfield what did he do
19 for you?

20 A Well, he gave me some prescriptions, see if they would
21 work. I believe it was some prednisone, some pain kills or
22 -- and, I'm sorry, muscle relaxers to see if that would
23 work. And it didn't -- I took them. And I explained that
24 because of my Crohn's I'm having issues with taking some --
25 those pills. It just can't be aspirin-based. But he

1 prescribed them and I was taking them at night, because
2 during the day, I mean, there's no way I can function on
3 some -- on pain pills and muscle relaxers while I'm at work.

4 Q Okay. Did you continue treatment with Dr. Hatfield?

5 A He then sent me to some -- to physical therapy. After
6 the -- after taking the prednisone and the pain killers and
7 the muscle relaxers it didn't seem to work very well. But
8 he sent me to some physical therapy.

9 Q And how did physical therapy help you?

10 A It -- it did a little bit, but it didn't really take
11 the pain away. I mean, it just basically just -- just the
12 short time that -- you know, that I went -- because after I
13 had to go back to Dr. -- for a followup with Dr. Hatfield.
14 The report that I believe was sent to him stated that there
15 was just --

16 MS. O'BRIEN: Your Honor, I'm going to object.

17 THE COURT: Sustained.

18 Q Yeah, you can't tell us what the report --

19 A Oh, I'm sorry. I'm sorry.

20 Q -- what any reports to him said.

21 A I'm sorry.

22 Q But just tell us what -- what you know about the -- how
23 the treatment helped -- helped you. Your personal
24 experience.

25 A Just very little.

1 Q And what was hurting you at this point?

2 A The same area. The back. The back of my neck up in
3 the upper area right up here right in this area.

4 Q So neck to the beginning of your shoulders? Is that
5 kind of --

6 A Right.

7 Q And were you having headaches at this point?

8 A Yes.

9 Q Can you describe those for us?

10 A The headaches were back here. It's like -- more like
11 the cranial area. It's just -- it's undescribable. I mean,
12 it's just constant -- a constant head about ache. Pressure
13 and -- it's undescribable, and it's all in the back of this
14 area right here.

15 Q And have you experienced some headaches with sinus
16 issues in the past?

17 A Yes.

18 Q Were they sinuses headache after the wreck?

19 A No.

20 Q What were those like?

21 A They were right up here. The pressure, right up in
22 this area.

23 Q And then I believe it looks like, from what we've --
24 the documents we've seen, that you went to Dr. Hatfield one
25 more time at the end of September. Is that -- is that your

1 recollection?

2 A That I could recall, yes.

3 Q And that was after you'd done some physical therapy?

4 A Correct.

5 Q What did Dr. Hatfield do for you at that visit?

6 A He referred me to Dr. Scott.

7 Q Who's Dr. Scott?

8 A I believe -- he's a neurologist in Abbeville.

9 Q And did Dr. Hatfield also order that you undergo an MRI
10 of your neck at that point?

11 A Correct.

12 Q And did you do that sometime in the middle of October?

13 A That I can recall, yes.

14 Q And then it looks like your first visit to Dr. Scott
15 was December 2nd of 2013?

16 A I believe so, yes.

17 Q And can you explain to us why there was -- why it went
18 from September 30th to the MRI in October, to seeing Dr.
19 Scott in December?

20 A It was due to scheduling.

21 Q And what did Dr. Scott do for you?

22 A Well, first he evaluated me. And he ran some times
23 that I had done in the office, and he had requested --
24 recommended that I go for some injections as well, so...

25 Q So it was a two visit process with Dr. Scott in

1 December?

2 A I believe so, yes.

3 Q And did you eventually go and get the injections done?

4 A I did.

5 Q And looks like once in March, once in April. Is that

6 -- does that seem right to your recollection?

7 A Yes, that's correct.

8 Q And can you just -- can you describe for us what they

9 -- what they did to you? What the process of getting those
10 injections were?

11 A Went into the room and they put some numbing agent in
12 the back area, and then they -- they inject, I guess -- I'm
13 not sure if it's prednisone or cortisone. I'm not sure what
14 it is. But it was right in the back of this area where they
15 injected with some -- or maybe it was prednisone, or
16 cortisone shots. And after that, I had to wait a period of,
17 I think, six weeks to get the next one.

18 Q Was that a pleasant experience getting those
19 injections?

20 A No.

21 Q Was that a pleasant experience getting those
22 injections?

23 A No.

24 Q Did you get any relief from those injections?

25 A Not really, no.

1 Q So let me back up. Can you tell us what they were
2 doing for you in physical therapy? What the actual -- when
3 you'd go in there, what they'd actually have you do?

4 A They had me to -- first they'd put some heat on my back
5 area, this neck area. Then they had me to some lifting of
6 weights and pulling of like elastic bands. And just
7 basically stuff that you find at like a gym museum -- a
8 gymnasium. And just pulling -- pull down exercises, pull
9 forward exercises, lifting my arm exercises. So just basic
10 exercises like that.

11 Q Was that a fun thing to do?

12 A Not really.

13 Q Was it hard work?

14 A It was.

15 Q It looks like you went back after the injections and
16 saw Dr. Scott in followup at some point?

17 A I did.

18 Q And was there anything -- what was he doing for you
19 then, or recommending at that point?

20 A He recommended that I do acupuncture.

21 Q And did you ever get acupuncture done?

22 A No.

23 Q And why not?

24 A Because I couldn't afford it.

25 Q And the injections you had done, those were at Self

1 Regional here in Greenwood?

2 A Correct.

3 (Whereupon, Plaintiff's Exhibit No. 2 was marked for
4 identification purposes.)

5 Q I'm going to hand you what's been marked as Plaintiff's
6 Exhibit No. 2, and the court reporter has informed me that
7 she needs us both to speak a little bit louder and clearer.

8 A Okay.

9 Q So you work on it and I'll work on it.

10 A Okay.

11 Q All right. That is a document -- are you familiar with
12 this document and the -- and the bills behind it?

13 A I am.

14 Q And it appears to show various charges from the EMS,
15 the hospital and all the various medical providers that you
16 just testified about; is that right?

17 A Correct.

18 Q And are these, in fact, the accurate charges from your
19 medical treatment that you're aware of?

20 A Yes. Yes.

21 Q And it has a total of medical bills of \$23,459.62 on
22 the second page --

23 A Yes.

24 Q -- is that right?

25 A That's correct.

1 Q And are those -- these, in fact, medical bills that you
2 are claiming from this accident?

3 A Correct.

4 MR. TINSLEY: I'd move to enter Plaintiff's 2 into
5 evidence.

6 MS. O'BRIEN: No objection.

7 THE COURT: All right. Then it's admitted without
8 objection.

9 (Whereupon, Plaintiff's Exhibit No. 2 was admitted into
10 evidence.)

11 Q Now, can you tell us -- tell us how this accident and
12 the aftermath of your injuries have affected your life.

13 A Well, I did own a home here and -- for 10 years in
14 Greenwood, and I used to always take my dog for a walk, used
15 to always play the guitar, always be active, go swimming.
16 Just a normal person doing their normal everyday thing
17 enjoying life, and it's just not the same anymore. There's
18 not -- I don't have the energy anymore, the -- it's just the
19 constant pain in the back, in this area, that is just
20 nonstop.

21 Q So you're feeling it even today?

22 A I am.

23 Q Does it -- do your -- does the pain, does it ebb and
24 flow, do you have some relief times?

25 A Usually when I'm -- I can't even stay sleeping. But

1 when I'm at a place where just calm, relaxed, just not
2 really doing very much as far as just relaxing or just, you
3 know, trying to not do as much as I used to do. I mean, I
4 don't -- it's hard because, you know, I played the guitar a
5 lot and played, you know, the piano, and it's just sitting
6 there. And trying to do it or hold the guitar, it's not --
7 I can't -- it's not -- I can't do it like I used to.

8 Q What do you mean by that, that you can't do it like you
9 used to?

10 A There's numbness and tingling and tingling in my
11 fingers. It comes -- it radiates from this area and it goes
12 down into my arms and it -- it's just constant, you know.

13 Q And how's your neck feel itself when you -- when you're
14 playing -- try to play the guitar?

15 A Again, it's that tenderness, tightness feeling that
16 doesn't allow me to enjoy what I used to.

17 Q And there's been some talk about prior treatment with a
18 chiropractor during the opening statements. Can you -- can
19 you tell us about any prior treatment you had before the
20 wreck?

21 A Well, my mother passed away in April 2013, and it was
22 more or less -- I was under a lot of stress. So I went to
23 visit to see if I could get a maintenance adjustment, or
24 something like that, with a massage therapist to relieve
25 some stress.

1 Q And did the issues then, like was the pain the same as
2 it was after the wreck, or how was that? Compare them?

3 A I'm sorry. I didn't understand your question.

4 Q Can you compare the issues you had before the wreck to
5 the pain that you've testified to experiencing after the
6 wreck?

7 A Well, it wasn't really pain as far as the visits. It
8 was more just for stress relief and -- but it's -- this is
9 just something that's -- it's undescrivable. It's just a
10 constant burn -- like a burning, aching tightness in the --
11 in the -- like I said, in that area. In the back.

12 Q And did you miss some time from work as a result of the
13 wreck?

14 A I did.

15 Q And how much money were you making at that time?

16 A About \$12, I believe. Twelve or 12.50, I think.

17 Q Twelve an hour, okay. And what was the name of the
18 place in Abbeville that you worked at?

19 A Burnstein Precision Casting.

20 Q And how much time did you miss in total from the wreck?

21 A I don't recall. I don't know if it was a week or -- as
22 far as hours or days or --

23 MS. O'BRIEN: Your Honor, I'm going to object.

24 THE COURT: I'll allow her to finish answering the
25 question.

1 A Can you repeat that question?

2 Q Yeah. How much time did you miss from work? You said
3 you -- we're just trying to put a number on it for the jury.

4 A Oh, I'm sorry. Yeah. Probably about 60 hours.

5 Q And can you -- was it all at lunch, or how did you miss
6 this time?

7 A Well, I recall the first couple days, it could have
8 been from after the accident, and then after that it was
9 from going to my appointments that I had like half days. I
10 had to miss half days to go to my -- the visits of physical
11 therapy, Dr. Hatfield's appointments and Dr. Scott's
12 appointments.

13 Q You were never written out of work for any lengthy
14 period of time, though, were you?

15 A No.

16 THE COURT: Is there anything else you want to put on
17 the record with regard to that?

18 MS. O'BRIEN: I'll do so when we take a break.

19 THE COURT: All right. Your objection's noted.

20 Q Did you eventually have to change jobs after the car
21 wreck?

22 A I did.

23 Q Do you remember how long after the wreck it was?

24 A I don't. I'm trying to think. I don't.

25 Q Where did you move -- change to?

1 A From Burnstein I went to DHEC. Moved -- I'm sorry.
2 Department of -- Greenwood Health Department.

3 Q So here in Greenwood. And what were you doing for
4 them?

5 A I was an administrative assistant.

6 Q And why did you change jobs?

7 MS. O'BRIEN: Your Honor, I'm going to object. None of
8 this has been provided in discovery, nor was it provided in
9 deposition testimony.

10 THE COURT: You all approach for just a moment.

11 (Whereupon, a side bar was held.)

12 THE COURT: I tell you what. We're at a good point to
13 take a quick break. I'll ask the jurors to step to your
14 jury deliberation room for just a moment and take a quick
15 break. Everybody remain seated, please.

16 (Whereupon, the jury exited the courtroom at 2:25 p.m.)

17 THE COURT: Ms. Cardona, you can step down if you'd
18 like to, if you want to take a break, but you can't discuss
19 your testimony with anyone. Okay?

20 THE WITNESS: Thank you.

21 THE COURT: All right. We'll be in recess for five
22 minutes.

23 (Whereupon, a recess was held from 2:25 p.m. to 2:35
24 p.m.)

25 THE COURT: Ma'am, will you please retake the stand.

1 Thank you.

2 (Whereupon, the witness returns to the witness stand.)

3 Q Ms. Cardona, you had just testified that you had left
4 Von Seelen and gone to work at -- or Burnstein, I mean, and
5 gone to work at Greenville DHEC. What prompted that change
6 of employment?

7 A It was a lot closer to home.

8 Q Easier drive?

9 A Yes. I could actually walk there if I needed to,
10 really.

11 Q Okay. So did the pain affect your -- you talked about
12 things that it affected. I don't think we touched on
13 driving. Did it affect you driving a car?

14 A Yes. Because it's -- it's not the same. I don't feel
15 safe behind the wheel anymore after this accident, so...

16 Q And do you feel that you could have done anything to
17 avoid this accident back in August, 2013?

18 A Not really, no.

19 Q There was talk from Defense counsel during her opening
20 statement about running up bills and then coming to court.
21 Is that why you went to the doctor these times that you've
22 testified to and documented?

23 A Yes.

24 Q To run up bills?

25 A Oh, no, no. I'm sorry. No. No, sir. I misunderstood

1 your question.

2 Q Okay. Well, what -- let me put it to you this way.

3 Why did you go to the doctor?

4 A Because I was in pain.

5 Q And the last treatment we've gone over is 2014. Why no
6 further treatment behind that point?

7 A Because I couldn't afford it.

8 Q You testified a little bit about issues with sleeping.
9 Can you give us a little more clarity of your sleeping
10 situation since the accident?

11 A Been waking up with numbness, tingleness (PHONETIC),
12 and like pins and needles in the middle of the night. In my
13 hands, again, with the numbness and the pins and needles.

14 MR. TINSLEY: If you ask any questions that Ms. O'Brien
15 has at this point.

16 THE COURT: Ms. O'Brien.

17 MS. O'BRIEN: Thank you.

18 CROSS-EXAMINATION

19 BY MS. O'BRIEN:

20 Q Ms. Cardona, how are you?

21 A I'm okay. Thank you.

22 Q If I call you Ms. St. Gelais, please for me. In my
23 head, since this has been going on so long, you're Ms. St.
24 Gelais. So don't take offense by that if I slip up and call
25 you Ms. St. Gelais. I want to talk about the actual impact.

1 You said -- and you testified in your deposition that you
2 were hit very hard in this accident; isn't that correct?

3 A I don't recall saying that, no.

4 Q All right. You recall me taking your deposition on
5 June 21st of 2016?

6 A Yes.

7 Q Do you recall that one of the first things that I said
8 to you, and I'm going to read it to you, "Number one, you
9 have understood my question and, number two, that if you've
10 answered my question, you have done so honestly and
11 truthfully; is that okay?"

12 A Yeah, correct.

13 Q And you responded that you would be willing to do that;
14 isn't that correct?

15 A Yes.

16 Q All right. Specifically I asked you --

17 MS. O'BRIEN: And, Your Honor, if we may open the
18 original deposition transcript.

19 THE COURT: All right. Please do.

20 MS. O'BRIEN: Thank you. May I approach the witness?

21 THE COURT: Please.

22 MS. O'BRIEN: Thank you.

23 THE COURT: And I'll give both parties blanket
24 permission to do that throughout the trial.

25 MS. O'BRIEN: Thank you.

1 Q Ms. Cardona, I'm going to have you turn specifically to
2 pay 39 of your deposition transcript. And if you'll look in
3 the top right-hand corner, that is the actual page number.
4 And then on the left side of each page is the line number.
5 Does that make sense?

6 A Yes. Yes.

7 Q And so, on page 39, a question starting on -- starting
8 on line five. "What did the impact feel like, light,
9 medium, hard?" And what was your answer?

10 A Hard.

11 Q All right. And then I asked you if the vehicle was
12 coming at a high rate of speed or how fast the vehicle was
13 going. And if you will, let's take a look at page 38. And
14 38, line 12. And I said -- well, let's go back. So you
15 testified -- look at page -- line one. You said, "So before
16 I knew it, I'm looking at the light and looking at him
17 hoping the light would turn green. And before I knew it,
18 I'm hanging on because I knew it was going to be an impact.
19 He didn't slow down or anything, and that's when he hit from
20 behind." And the question I asked you was, "What was the
21 speed limit on the road that you all were on?" And do you
22 see your answer?

23 A Correct, 30. Yes.

24 Q It says, "That was 35. I believe right there the areas
25 if 35", correct?

1 A Yes.

2 Q And then I said, "All right. And your testimony is
3 that he was going at a high rate of speed?" And what was
4 your answer?

5 A Yes.

6 Q And then I asked you, "By high rate of speed, do you
7 think he was going faster than 45?" And what was your
8 answer?

9 A Yes.

10 Q All right. So your testimony today is that you believe
11 that Dr. Leary was going 35 miles per hour or faster?

12 A Faster.

13 Q Okay. And when he hit you, I believe you also had told
14 a doctor that you were hit so hard that you were pushed into
15 the intersection?

16 A I don't recall saying that.

17 Q All right. Let me show you your medical record from
18 December the 2nd of 2013. And this is Dr. Scott. This is
19 the only one I have, so I'm going to let you share with me.
20 It says, and let me know if I read any of this incorrectly,
21 "She was stopped at a red light when she was struck by a
22 vehicle coming up behind her and was pushed into the
23 intersection."

24 A That was not my words.

25 Q Okay. Well, how would the doctor have known that you

1 were at a red light and you were pushed into the
2 intersection if you're not the one that told the doctor?

3 A But I wasn't pushed into any intersection.

4 Q Okay. So where would the doctor have gotten that
5 information?

6 A I honestly don't know.

7 Q You didn't tell the doctor that?

8 A No, ma'am.

9 Q Do you recall telling me in your deposition that you
10 hit your head in this accident you were hit so hard?

11 A Yes.

12 Q Okay. So you believe that Dr. Leary was traveling more
13 than 35 miles per hour when he made contact with your
14 vehicle, correct?

15 A Yes.

16 Q You were hit so hard that you hit your head in this
17 accident, correct?

18 A Hit the steering wheel.

19 Q All right. You did not tell any doctor that you were
20 pushed into the intersection, even though your medical
21 records say that, correct?

22 A That's correct.

23 Q All right. And then I also want to show you on the
24 same record, December 2nd of 2013, where Dr. Scott
25 specifically notes in your record -- and again, I'm reading.

1 Correct me if I read it incorrectly. "She did not hit her
2 head." Did I read that correctly?

3 A Yes.

4 Q All right. So I guess you didn't tell Dr. Scott that
5 you didn't hit your head either?

6 A I didn't hit my head on the -- I hit -- it was on the
7 steering wheel, but I don't recall telling him that.

8 Q Well, why would you not have told your neurologist that
9 you hit your head?

10 A It was -- it should have been in the records. I
11 believe it was in the records with -- emergency room
12 records. Everything that I told them at the emergency room.

13 Q Do you have your emergency room records to show where
14 you ever complained of hitting your head as a result of this
15 accident?

16 A I don't have them with me.

17 MR. TINSLEY: Judge, I mean, if we're going to go into
18 the records, I mean, I've got all the records here.

19 THE COURT: All right. I'll allow you to -- when you
20 have redirect, if you want to go into that with her.

21 Q As a result of this accident did you have any cuts to
22 your forehead?

23 A No.

24 Q Any scraps to your forehead?

25 A No, ma'am.

- 1 Q Any bruising to your forehead?
- 2 A No, ma'am.
- 3 Q Any bleeding to your forehead?
- 4 A No, ma'am.
- 5 Q And you didn't lose consciousness in this accident,
- 6 correct?
- 7 A I don't recall. No, I don't think I did.
- 8 Q And I believe you told me in your deposition that you
- 9 felt pain immediately in your neck, your shoulders, your
- 10 forehead and the back of your head; is that correct?
- 11 A That's correct.
- 12 Q Can you explain why the emergency room records don't
- 13 mention anything about any pain in your shoulders?
- 14 A No, I can't answer that. No.
- 15 Q Can you explain why the emergency room records don't
- 16 mention anything about there being any back pain?
- 17 A I can't explain -- answer that. No, I can't.
- 18 Q Explain why when you followed up with your primary care
- 19 physician eight days later there's no mention about any
- 20 problems with your shoulders?
- 21 A No, I can't explain that.
- 22 Q Explain why there's no mention of any problems with
- 23 your back eight days later?
- 24 A No, I can't explain.
- 25 Q So if you were having pain in your neck, your

1 shoulders, your head and in your back, why would all of
2 those complaints not be listed in the emergency room
3 records?

4 A I can't answer that.

5 Q All right. Why would all those complaints not be
6 listed with Dr. Hatfield?

7 A I can't answer that either.

8 Q All right. And I believe you told me that after this
9 accident that you immediately felt pain in your head on a
10 pain of zero being no pain, 10 being the worst pain you've
11 ever been in, like when you're giving birth to a child, you
12 described the pain in your head as being an eight or a nine;
13 isn't that correct?

14 A That's correct.

15 Q And you described the pain in your back as being an
16 eight or a nine on a pain scale of 10?

17 A Yes.

18 Q And you describe the pain in your shoulders as being an
19 eight or a nine?

20 A Yes.

21 Q And the neck pain as being an eight or a nine?

22 A Correct.

23 Q And do you recall after this accident hollering and
24 yelling about how you immediately had a headache?

25 A No, I don't recall that.

1 Q Okay. And do you recall that immediately after this
2 accident one of the things that you complained of to the EMS
3 was that you felt very dizzy?

4 A A little lightheaded, yes.

5 Q Well, have you seen your records where they
6 specifically state that you felt dizzy as a result of this
7 accident?

8 A No, I have not seen those records.

9 Q Okay. And let me ask you, I sent you discovery. Do
10 you recall where I sent you a list of questions and asked
11 you to answer those questions for me?

12 A Vaguely.

13 Q Let me show you a document that has been provided by
14 your previous attorney where I sent a list of questions and
15 the answers were answered and they all reviewed to I as in I
16 being Rosa Cardona.

17 A Right. Well, I don't recall what year that was.

18 Q Well, do you recall me asking if at any time during
19 this accident, or a period before this accident, if you were
20 taking any type of illicit drugs, if you were using any type
21 of medication or anything before this accident?

22 A During the deposition?

23 Q No, ma'am. In the list of questions that I sent. And
24 specifically I'm going to refer to question number 12 where
25 I asked you had you consumed any alcoholic beverages,

1 prescription medication or any drugs of any sort, including
2 but not limited to marijuana on the date of the accident or
3 within 24 hours prior to the accident. And it says, "If so,
4 please state the type of substance consumed, the amount
5 consumed and the time at which the substance was consumed."

6 And what is your answer?

7 A No alcoholic consumption or -- I can't read it.

8 Q I'm sorry.

9 A It says, "No alcoholic consumption or under the
10 influence of any illegal drugs."

11 Q All right. And --

12 MR. TINSLEY: Judge, if we could, I'd like to put on
13 the record, probably outside the presence of the jury, what
14 we discussed this morning and ask where it's -- where it's
15 heading.

16 THE COURT: All right. Would you all approach for just
17 a second?

18 (Whereupon, a sidebar was held.)

19 Q Ms. Cardona, let's go back to question number 12. You
20 agree that whenever you were asked that question that you
21 responded, "No alcohol consumption or under the influence of
22 illegal drugs"; is that correct?

23 A Yes.

24 Q All right. And the emergency room records that I
25 subpoenaed specifically show that you were, in fact, using

1 marijuana; isn't that correct?

2 A I don't recall that, no.

3 Q Well, did you --

4 A I don't -- I don't know -- I don't understand your
5 question.

6 Q Okay. Had you been using marijuana before this
7 accident?

8 A No.

9 Q Can you explain to the jury why your records -- your
10 emergency room records would indicate that you were positive
11 for marijuana?

12 A No, I cannot.

13 Q Okay. You have any reason to disagree with those
14 records?

15 A I don't -- I don't agree with them, but I don't know
16 how they would have gotten that. I mean, I don't understand
17 where they got that from.

18 Q So is it your testimony that you had not been smoking
19 marijuana?

20 A That's correct.

21 Q And that the emergency room records were wrong?

22 A I don't know about that, the records. I don't even
23 know that I was even tested for anything.

24 Q Have you reviewed your emergency room records?

25 A No, ma'am.

1 Q Okay. And I believe I also asked you in your
2 deposition if you had ever suffered from chronic headaches
3 before this accident, and you --

4 THE COURT: Just take -- just one break.

5 MS. O'BRIEN: Sure.

6 THE COURT: I'm sorry to interrupt you. I just want to
7 say that I allowed defense counsel to go into some records
8 just now. Those records are not to be considered for any
9 purpose other than them talking about the symptoms in this
10 case or any symptoms that the Plaintiff alleges that she
11 had. Fault is not an issue in this case, so that it
12 shouldn't be considered by you as to fault in any -- in any
13 way. Defendant has admitted he was at fault in causing this
14 accident. So, in other words, you can only use that
15 testimony -- whatever that you believe about that testimony
16 you can only use it for that limited purpose of -- as
17 related to an potential symptoms in this case. All right?
18 Yes, ma'am.

19 MS. O'BRIEN: Thank you.

20 Q Ms. Cardona, you recall that I asked you in your
21 deposition where you agreed that you would tell the truth
22 about any prior issues that you had had, and I asked you if
23 you had ever had any ongoing headaches or had headaches
24 prior to this accident. And do you recall what your
25 deposition testimony was?

1 A No, I don't.

2 Q Okay. Do you recall that I asked you -- and let's
3 specifically look at page 29, and then once you get to page
4 29, line 21. On line 21 I asked you, "Ever have chronic
5 headaches before this accident?" And what was your answer?

6 A What was the question? What number again? I'm sorry.

7 Q Line 21. I asked you if you had ever had chronic
8 headaches before this accident, and what was your answer?

9 A No.

10 Q All right. Let me show you a record that I subpoenaed
11 from the hospital that is dated March 30th of '09 that
12 specifically when you went to the emergency room. Can you
13 tell me what is highlighted as to what you were complaining
14 about?

15 A Chronic headache. Chronic headache.

16 Q And I also asked you in that deposition testimony if
17 you had ever had a CT scan or any type of x-ray to your head
18 as a result of headaches, and do you recall what you told
19 me?

20 A I do not.

21 Q All right. Let's look at page 28, line 21. On page
22 28, line 21, and just let me know when you're there. It
23 says, "All right. Ever had a CT scan to your head before
24 this accident?" And what was your answer?

25 A No.

1 Q All right. Ms. Cardona, if I may show you a record,
2 again from the hospital, that specifically shows that you
3 had a CT head without contrast as a result of complaining of
4 headaches.

5 A Okay.

6 Q Any reason to disagree with that record?

7 A No. But that -- that was -- up in front. That was
8 ocular. That was just the reason why. But at the time of
9 the deposition I didn't think about that, because that
10 wasn't what -- I didn't recall at that point having a CT
11 scan done. It was in 2009, so...

12 Q You also told me in your deposition testimony that you
13 had treated, and I believe you testified here today, that
14 you treated for some neck and back issues before this
15 accident after April of 2013 when your mom had passed away;
16 is that correct?

17 A Yes.

18 Q And that you had gone and gotten this treatment for --
19 chiropractic treatment and massages because of stress; is
20 that correct?

21 A Yes.

22 Q So can you explain to me why the only time you need to
23 get neck and back treatment was after your mom passed away
24 why there would be records from 2011 indicating that you
25 were treating with a chiropractor for your neck, your back,

1 and your shoulders?

2 A That was just -- it was stress-related.

3 Q All right. Did you bother to tell me that in the
4 deposition?

5 A I did.

6 Q Did you bother to tell me in 2012 that you were
7 treating for neck, back, all the way down to your lower
8 back?

9 A I'm sorry. Repeat that question.

10 Q Sure. Did you tell me in your deposition, or tell
11 anybody here today, that you also were treating in 2012 with
12 a chiropractor, because you were hurting from your mid-back
13 all the way down to your low back in 2012?

14 A I don't recall that, but it's possible, yes.

15 Q And then less than three months before this accident,
16 or about three months before this accident, you were at the
17 same chiropractor and you were treating in 2013 for neck to
18 mid-back problems; is that correct? From your neck all the
19 way down to your mid-back?

20 A There wasn't problems. It was just maintenance.
21 Chiropractic maintenance that I can recall.

22 Q And you've said today that you got massages in 2013.

23 A I think it was just the one that I can recall.

24 Q Who was doing those massages? That's the first I've
25 heard of that today.

- 1 A It was probably in the same office.
- 2 Q Did you bother to tell me about that in your
3 deposition?
- 4 A You didn't ask, ma'am.
- 5 Q Ma'am, in your discovery that I sent you, and I'm going
6 to point you specifically of where I asked you --
- 7 A Okay.
- 8 Q -- of any doctors that you had treated with since 2003.
- 9 A Okay.
- 10 Q Period, any doctors. Number 32, and let me show you.
11 "Please state the name, business address, and telephone
12 number of your internist, family physicians, OB/GYN,
13 cardiologist, or other primary care physician since August
14 19th of 2013."
- 15 A Is this the question? You said number 33?
- 16 Q Number 32. And you responded, "Dr. Hatfield". You
17 gave me the name of two OB/GYNs, the names of the doctors
18 you treated after this accident, and then the doctor that
19 you were treating for Crohn's disease, correct?
- 20 A Correct.
- 21 Q You didn't bother to provide me the names of the
22 chiropractor, or the names of anybody that was giving you
23 massages, or any other treatment that you had since 2003; is
24 that correct?
- 25 A That's correct.

1 Q I asked you in your deposition who your primary care
2 physician had been since 2003, and do you recall you
3 testified that Dr. Hatfield had been your primary care
4 physician since 2003?

5 A That's correct.

6 Q Are you aware that Dr. Hatfield has testified the first
7 time he ever treated you was in 2010, specifically on July
8 16th of 2010?

9 A That could be because I did leave, and they probably
10 started a new patient, but I don't know why. I know he's
11 only been my doctor since 2003. Now, I did move to
12 Massachusetts, so I don't know if that would be used as a
13 new patient. So I probably became a new patient again once
14 -- because on my records I've been transferred to Dr. -- or
15 whoever the doctor was in Massachusetts, and then when I
16 came back to South Carolina -- South Carolina, then that's
17 possibly what it could have been. That would be a new
18 patient.

19 Q You're also claiming that as a result of this accident
20 that you suffered from depression?

21 A What was the question?

22 Q You had claimed, and you told me in your deposition, as
23 a result of this accident that you suffer from depression?

24 A I don't suffer from depression, but after this accident
25 -- it's a little depressing to change a lifestyle.

1 Q Okay. And you recall me asking you on page 29, line 24
2 if you had ever suffered with depression before this
3 accident, and what was your answer?

4 A What was the page again?

5 Q Yes, ma'am. Page 29, line 25. Question, "Ever suffer
6 with depression before this accident", and on page 30, line
7 one, what was your answer?

8 A No.

9 Q All right. That's not an accurate statement, is it?

10 A I don't understand the question.

11 Q You had been prescribed medication before this accident
12 on numerous occasions for depression; isn't that correct?

13 A. Not that I'm aware of. No, ma'am.

14 Q. All right. Let me show you the same record where you
15 were complaining of chronic headaches at the hospital, and
16 one of the medications that they list is that you were on
17 what?

18 A That says Zoloft.

19 Q And do you know what Zoloft is prescribed for?

20 A Anxiety.

21 Q And do you know -- have you read Dr. Hatfield's
22 deposition?

23 A No, ma'am.

24 Q Are you aware that Dr. Hatfield has testified that he
25 saw in your records that you were suffering from depression,

1 but that he wasn't the one prescribing you depression
2 medication?

3 A No, I didn't read that.

4 Q So if he's your primary care physician and he's not
5 prescribing you medication, who was?

6 A Well, that could have been when my husband died in
7 2006.

8 Q No, ma'am. This record is dated 2009. Would you like
9 for me to show it to you to make sure I'm accurate?

10 A Yeah. I mean, that's fine. I just don't recall. I
11 don't recall.

12 Q What's the date on the top left of that record?

13 A 2009.

14 Q Okay. So in 2009, if Dr. Hatfield is your primary care
15 physician, like you've testified to, and he wasn't
16 prescribing you medication, who was?

17 A I didn't have another doctor.

18 Q Let's talk about after the accident. After the
19 accident you would agree with me that you went to the
20 emergency room; is that correct?

21 A Yes.

22 Q And you would agree with me that all the x-rays that
23 were taken at the emergency room were 100 percent normal,
24 other than showing that you had chronic changes?

25 MR. TINSLEY: Objection. She -- she's not qualified to

1 speak on an x-ray result.

2 THE COURT: I'll allow her to answer the question if
3 she knows the answer.

4 A What was the question again?

5 Q Sure. You would agree with me that the x-rays at the
6 hospital were 100 percent normal?

7 A I can't answer that question. No, I don't.

8 Q Did any doctor tell you at the emergency room that they
9 had found anything wrong with you whenever they x-rayed you?

10 A No, but I don't recall.

11 Q And no doctor at the emergency room, or anybody at the
12 emergency room told you that you needed to take some time
13 off of work, or gave you any kind of work note or release
14 record with respect to working; isn't that correct?

15 A I don't recall that. No, ma'am.

16 Q Well, have you looked at your records to see if there
17 was anything included where any doctor told you to take a
18 few days after this accident?

19 A I don't have my records.

20 Q You've never looked at your records?

21 A I didn't -- I don't have my records. No, ma'am.

22 Q Your attorney has the records.

23 A Those records, yeah.

24 Q Well, the emergency room records are included in those
25 records.

1 A Okay.

2 Q You agree with me that the emergency room told you if
3 you continued to have problems, that you could followup with
4 your primary care physician in three to five days?

5 A Yes.

6 Q All right. And your testimony on direct examination
7 was the reason why you didn't do that is because it took you
8 some time to get into your primary care physician, correct?

9 A The answer was that -- that's correct, yeah.

10 Q All right. And then the first time you went to Dr.
11 Hatfield, your primary care physician, was eight days after
12 the accident, correct?

13 A It's possible. Yes, ma'am.

14 Q And Dr. Hatfield didn't write you out of work, did he?

15 A No, ma'am.

16 Q And Dr. Hatfield told you that if you were having
17 problems, that you could go to physical therapy; is that
18 correct?

19 A Yes.

20 Q And you were written a prescription for physical
21 therapy for three times a week for two weeks; is that
22 correct?

23 A That's correct.

24 Q So that would have meant that you would have gone to
25 physical therapy a total of six times?

1 A Correct.

2 Q And I show per your records that you went to physical
3 five times and never went back again?

4 A That's because it wasn't doing anything for me.

5 Q Thank you for bringing me to that point. Physical
6 therapy did not help you at all; is that correct?

7 A Correct.

8 Q Okay. And in between the first time you went to Dr.
9 Hatfield and the last time you saw him, you, in fact, did
10 treat with him on September the 9th. So the first time you
11 treated with him was August 27th, per your records. The
12 next time I show treatment was on September the 9th. Do you
13 recall what you were at his office complaining of on
14 September the 9th?

15 A I don't recall, ma'am. What year was this?

16 Q The year of the accident.

17 A 2013?

18 Q Yes, ma'am.

19 A Okay.

20 Q Have you seen your records where you were there
21 complaining about a sinus headache and you were given an
22 antibiotic?

23 A I have to think about that. It's possible, yes.

24 Q And you would agree with me that you had struggled with
25 having sinus issues before this accident?

- 1 A Yes.
- 2 Q And that you had headaches before this accident?
- 3 A Yes.
- 4 Q And then it looks like that the last time you've ever
5 seen Dr. Hatfield for anything affiliated with this accident
6 was on September the 30th; is that correct?
- 7 A Yes. It's possible. Yes, ma'am.
- 8 Q Okay. And he basically said there's nothing else to be
9 done? You need to go somewhere else?
- 10 A Yes.
- 11 Q And then on September the 30th you didn't treat with
12 any doctor whatsoever regarding this accident until December
13 the 2nd; isn't that correct?
- 14 A Was that with Dr. Scott?
- 15 Q Yes, ma'am.
- 16 A That's possible, yeah.
- 17 Q And the reason why you testified you didn't treat with
18 any doctor was because, again, you had to wait to get in to
19 be seen?
- 20 A Yes.
- 21 Q All right. So you are telling the jury that it took
22 you over two months to get an appointment with a doctor in
23 Abbeville?
- 24 A Yes.
- 25 Q Okay. And what did you do in those two months for your

1 pain?

2 A Just with whatever I had. The prednisone and the pain
3 killers that was prescribed, the muscle relaxers that were
4 prescribed.

5 Q All right. And then you treated with Dr. Scott on
6 December the 2nd, and then again on December the 30th; is
7 that correct?

8 A That's correct.

9 Q And do you recall Dr. Scott listing in his medical
10 records that he recommended that if you were still having
11 problems that you should perhaps seek out some chiropractic
12 treatment?

13 A I don't recall that, no.

14 Q All right. Any reason to disagree if that's what your
15 records indicate?

16 A Correct.

17 Q And you never went and sought any type of chiropractic
18 treatment, did you?

19 A After the -- I couldn't afford it. After the -- after
20 his initial -- I do recall him mentioning acupuncture, but
21 not chiropractic.

22 Q Okay. So the reason why you didn't seek chiropractic
23 treatment was because you couldn't afford it?

24 A That's correct.

25 Q But you could afford to go get the injections?

1 A I couldn't afford to do that either.

2 Q So then there's a gap in treatment of over three
3 months; isn't that correct?

4 A I don't recall. It's possible, but I honestly don't
5 recall.

6 Q Well, if your records indicate that you saw Dr. Scott
7 on December the 30th and that you didn't seek treatment
8 until March 27th for an epidural injection, would you have
9 any reason to disagree with that?

10 A No.

11 Q And then it looks like you had your second epidural
12 injection on April the 10th, correct?

13 A Yes. I believe so, yes.

14 Q And those epidural injections didn't help you at all,
15 did they?

16 A No, ma'am.

17 Q And then you, in May, started complaining about how now
18 you were having this numbness and tingling that went down
19 into your arms; is that correct?

20 A Yes.

21 Q Didn't mention anything about that the day on the
22 accident, did you?

23 A It wasn't -- it didn't occur that day.

24 Q Didn't occur the next day after the accident, did it?

25 A No.

1 Q Didn't -- it hadn't occurred on August 27th, the first
2 time you saw Dr. Hatfield, had it?

3 A No, ma'am, not that I can recall. No.

4 Q Didn't have that issue on September the 9th when you
5 saw Dr. Hatfield, correct?

6 A Correct.

7 Q Then when you saw Dr. Hatfield on September the 30th
8 you weren't having any problems with numbness or tingling in
9 your arms, correct?

10 A Correct.

11 Q And then when you saw Dr. Scott on December the 2nd you
12 weren't having any complaints of numbness and tingling in
13 your arms, correct?

14 A Correct.

15 Q So we're now over four months after the accident and
16 you don't have any numbness or tingling in your arms. It's
17 not until May of the next year that you first start
18 complaining of numbness and tingling in your arms; is that
19 correct?

20 A I believe so, yes.

21 Q And in May they sent you to have a nerve conduction
22 study done; is that correct? Do you recall that?

23 A If that -- was that through Dr. Hatfield?

24 Q That's through Dr. Scott.

25 A I'm sorry. Dr. Scott. That's right.

- 1 Q Yes, ma'am.
- 2 A Yes, ma'am.
- 3 Q And, in fact, that nerve conduction study test showed
- 4 that it was 100 percent normal; isn't that correct?
- 5 A I don't know. I didn't see that report.
- 6 Q Did your doctor never talk to you about your test?
- 7 A Dr. Hatfield or Dr. Scott?
- 8 Q Dr. Scott.
- 9 A I haven't seen Dr. Scott.
- 10 Q Well, you saw Dr. Scott after you had the nerve
- 11 conduction study done, because I show you saw him on June
- 12 26th of 2014, after the nerve conduction study. Did no one
- 13 mention to you that that test was completely normal?
- 14 A No, ma'am.
- 15 Q And then it looks like on June 26th of 2014 Dr. Scott
- 16 recommended that you talk to your attorney about treatment.
- 17 Any idea what that means?
- 18 A Treatment? I don't recall that.
- 19 Q All right. And Dr. Scott recommended that if you were
- 20 still continuing to have problems, that there was nothing
- 21 more that he could do, so then he told you to go seek
- 22 acupuncture; isn't that correct?
- 23 A That's correct.
- 24 Q And you didn't do that, did you?
- 25 A That's correct.

1 Q And Dr. Scott told you that if you were still having
2 problems there wasn't anything else he could offer you, but
3 then perhaps you needed a repeat MRI, and you've not had
4 that done either?

5 A I can't afford to do that.

6 Q Now, you cannot afford to go do those things. You have
7 been back to Dr. Hatfield numerous times since 2014
8 complaining of other issues; isn't that correct?

9 A I don't recall.

10 Q Well, you've been back to Dr. Hatfield since 2014 for
11 ongoing sinus issues?

12 A You mean as an office visit?

13 Q Correct.

14 A Well, that's different. If -- going for an office
15 visit is probably, I don't know, \$30.

16 Q All right. You've been to your OB/GYN?

17 A Again, that's probably a copayment, \$30.

18 Q You've had mammograms?

19 A I may have had one in 2000. I can't recall if it was
20 '14 or '15.

21 Q You've treated for your Crohn's disease since 2014?

22 A I'm trying to recall. It's possible, but I honestly
23 don't recall.

24 Q So your testimony today is that even now in 2018,
25 almost five years since this accident, that you still

1 continue to have pain in your neck, your back, your
2 shoulders, headaches, and numbness and tingling in your
3 arms; is that correct?

4 A Yes, ma'am.

5 Q And that this accident has totally changed the way you
6 live your life?

7 A That's correct.

8 Q Okay. But you've not bothered to seek treatment with
9 any medical provider regarding any of these issues, nor have
10 you bothered to mention any of these issues to your primary
11 care physician since September the 30th of 2013; isn't that
12 correct?

13 A I don't recall that.

14 Q And you said that you were out of work, and that you
15 weren't really sure how long you were out of work for or how
16 many hours you were out of work for; is that correct?

17 A Yes.

18 Q And there's no one here today, or that plans on
19 testifying, as to how many days you missed from work; is
20 that correct?

21 A That's correct.

22 Q And there's no one here to tell us how much you made an
23 hour; isn't that correct?

24 A There's nobody here. That's correct.

25 Q And I believe your testimony on direct examination was

1 you thought you made 12 or 12.50 an hour but you weren't
2 sure?

3 A It's probably 12 or 12.50 at that time. Yes, ma'am.

4 Q And the reason why you have not sought treatment is
5 because you were unable to pay for it; is that correct?

6 A That's correct.

7 Q Have you received a bill from the hospital from the day
8 of this accident?

9 MR. TINSLEY: Objection. The bill's in the evidence.

10 A I don't have it.

11 THE COURT: I'll allow her to answer it. You can
12 answer.

13 Q Have you received a bill from the hospital from the day
14 of the accident?

15 A It's possible, but I don't -- I don't have it with me.

16 Q I'm willing, just for ease of things, feel free to look
17 at the copy that is in evidence. But what I have from the
18 hospital is that the bill from the day of the accident was
19 sent to Watson Law Firm, PA, 333 Main Street in Greenwood,
20 South Carolina.

21 A What year was it again?

22 Q I'm sorry?

23 A I'm sorry. What year was that?

24 Q August 19th, 2013, the day of the accident. Can you
25 explain to me why the hospital would be sending a bill to

1 your previous attorney for this accident?

2 MR. TINSLEY: Judge, I'm going to object.

3 A No, ma'am.

4 THE COURT: Overruled.

5 A I sure can't.

6 THE COURT: Overruled.

7 Q And can you explain to me why the -- when it lists the
8 payer's name it would list Watson Law Firm?

9 A No, ma'am. I cannot answer that.

10 Q Have you ever received a bill from the hospital from
11 the day of this accident for the treatment that was rendered
12 that you claim is as a result of this accident?

13 A If I received a bill, it's probably in with -- you
14 know, at my house or something. I might have it in my
15 house. But how would they get that information I don't
16 know. I mean, why it would be sent to Watson Law Firm I
17 have no idea.

18 MS. O'BRIEN: That's all the questions I have. Thank
19 you.

20 THE COURT: Mr. Tinsley?

21 MR. TINSLEY: Thank you, Your Honor.

22 REDIRECT-EXAMINATION

23 BY MR. TINSLEY:

24 Q Ms. Cardona, are you an expert in estimating the speed
25 that a car that was in an accident was traveling?

1 A No, sir.

2 Q And there's been testimony about the impact, how -- how
3 hard it was. Can you tell us what you had to have done to
4 your car after the incident?

5 MS. O'BRIEN: And, Your Honor, I'm going to object.
6 It's beyond the scope of cross-examination.

7 MR. TINSLEY: I heard her --

8 THE COURT: I'm sorry. I didn't -- would you repeat
9 the question? I apologize.

10 MR. TINSLEY: I'm just asking the work she had done to
11 her car from the damage, because they cross-examined her
12 extensively about whether it was a hard impact, a light
13 impact, anything like that.

14 MS. O'BRIEN: And my objection is that's beyond the
15 cross-examination. We didn't talk about anything other than
16 describing the impact.

17 THE COURT: I'll allow you to ask the question, but
18 that one and that one only.

19 Q Could you explain -- explain the work you had done to
20 the car?

21 A I have -- I'm not a professional. All I know is they
22 had -- it was over -- almost close to \$1,000 worth of repair
23 work.

24 MS. O'BRIEN: I'm going to object, Your Honor.

25 THE COURT: All right. If she doesn't know exactly

1 what was done to the car, I'm going to strike that
2 testimony.

3 MR. TINSLEY: Can I ask her what part of the car had
4 work done to it?

5 THE COURT: Sure. I'll allow you to ask that question.

6 A I may have misunderstood your question, but...

7 Q Where was damage to your car?

8 A In the back and the rear bumper near the -- I had a
9 hitch there as well.

10 Q And you had it repaired?

11 A Correct.

12 Q When you went to the doctor and talked about the wreck,
13 did you just answer the questions as the doctors or medical
14 staff posed them to you?

15 A I'm sorry. I didn't understand what you said. I'm
16 sorry.

17 Q There's been -- there was testimony during cross-
18 examination --

19 A Okay.

20 Q -- about some things in the medical records. Did you
21 go volunteering information to the doctor, or were you just
22 simply responding to questions asked to you?

23 A I was responding to questions asked.

24 Q And there's been testimony about headaches suffered
25 prior.

1 A Right.

2 Q Did you ever have -- and you've described after the
3 wreck having headaches to the back of your head. Had you
4 ever had headaches of that nature prior to the wreck?

5 A No, sir.

6 Q And she was questioning you about records from 2009 and
7 2011. Do you have much memory of that treatment?

8 A Not really.

9 Q Had you ever treated with a medical doctor prior to
10 this wreck for neck problems?

11 A No.

12 Q And you volunteered to Ms. O'Brien at the deposition
13 about your prior treatment with the chiropractor; is that
14 correct?

15 A I'm sorry. What was the question?

16 Q Did you volunteer to Ms. O'Brien that you had treated
17 with a chiropractor when she deposed you?

18 A Yes.

19 Q I'm going to show you a medical record from when you
20 went to the emergency room. Page three from that visit on
21 August the 19th under this section, review of symptoms.
22 Would you read from right there on the top line to right
23 there?

24 A "Has headache, has dizziness, has lightheadness, has
25 neck pain, has back pain."

1 Q Thank you. How did they find that information out?

2 Was that from you?

3 A Yes.

4 Q And you reported that to the staff at the hospital?

5 A Correct.

6 Q There's been some questions about depression in the
7 past. Can you give us a little insight of when you took
8 some Zoloft, I believe it was?

9 A If I recall, it could have been after my husband passed
10 away in 2006. In April of 2006. That I was working with
11 Capsugel and they recommended I see a -- I believe it was a
12 counselor or a psychiatrist for the grieving process. And I
13 believe at that time -- I don't recall the woman's name. It
14 was a brief, maybe three visits. And at that time it could
15 have been that she had prescribed some -- some Zoloft.

16 Q And so, you struggled with your husband's death?

17 A I did.

18 Q How did he die?

19 A He got in a car -- it was a car accident.

20 Q Okay. There's been questions about not reporting your
21 symptoms to Dr. Hatfield after the September 30th visit.
22 Were you dealing with him about your injuries on that case
23 anymore?

24 A I don't think so. I think it was with Dr. -- Dr.
25 Scott.

1 Q And is that -- and that's who Dr. Hatfield had referred
2 you to for those specific problems, right?

3 A Correct.

4 Q And didn't you have to go get an MRI at the hospital in
5 between treatment with Dr. Hatfield and when you -- when Dr.
6 Scott would see you? Didn't you get that done in October?

7 A I believe so, yes.

8 Q Did Dr. Scott ever discuss with you whiplash being your
9 problem?

10 A He mentioned it.

11 MS. O'BRIEN: I'm going to object to what Dr. Scott
12 told her.

13 MR. TINSLEY: Fair enough. She's --

14 THE WITNESS: I'm sorry.

15 MR. TINSLEY: Fair enough. She's already been into
16 these records, so I think I can let -- think that's opened
17 the door for my client to take a look at them.

18 THE COURT: In terms of any diagnoses that the doctors
19 made, I sustain that objection.

20 MR. TINSLEY: Okay. Fair enough.

21 Q And why was there -- why was there any discussion
22 between you and Dr. Scott about you having an attorney in
23 this matter? Do you remember?

24 A Could have been because I couldn't afford to pay my
25 bills. Couldn't afford to seek treatment, if you will.

1 Q And there was a question about the bill going to the
2 Watson Law Firm from the hospital. When did you hire them,
3 Mr. Watson? Was it immediately after the wreck?

4 A No. No. After -- I would say, if I can recall,
5 possibly in 2016 maybe.

6 Q As part of his representation did you sign a HIPAA
7 authorization for him to get your medical records and bills?

8 MS. O'BRIEN: I'm going to object.

9 THE COURT: What's the basis for your objection?

10 MS. O'BRIEN: Leading.

11 THE COURT: All right. Sustained. If you'll rephrase
12 it.

13 Q As part --

14 MR. TINSLEY: Well, I don't know that it's leading.

15 It's a yes or no question. But I didn't suggest an answer.

16 THE COURT: All right. Just ask -- just rephrase your
17 question.

18 Q Are you aware that Mr. Watson gathered up records and
19 bills?

20 MS. O'BRIEN: Again, leading.

21 THE COURT: Just -- if you'll just answer the question.

22 A No.

23 Q You don't know?

24 A I don't know.

25 Q We've had a lot of medical records here. Did you

1 compile those or did somebody else?

2 A They're probably mine.

3 Q No, no, no. Did you go actually to the medical
4 providers and get these records --

5 A No.

6 Q -- yourself?

7 A No.

8 Q And how do you deal -- what do you do to cope with your
9 pain now?

10 A Well, basically I just live with it right now. There's
11 nothing I can do. Just cope with it. Tylenol and pretty
12 much just that's it. I can't take -- there's nothing else I
13 can take.

14 MR. TINSLEY: No further questions.

15 THE COURT: Any followup?

16 MS. O'BRIEN: Yes, ma'am, please.

17 RE CROSS-EXAMINATION

18 BY MS. O'BRIEN:

19 Q Your testimony is that you hired Mr. Watson in 2016?

20 A That I can recall, yes.

21 Q Let me show you the complaint that has been filed in
22 this matter and tell me the date that the complaint was
23 filed.

24 A October -- oh, 2015. I couldn't recall the year.

25 Q And you hired him way before this complaint was filed,

1 didn't you?

2 A Did I hire him?

3 Q Correct.

4 A I don't recall hiring him. I recall that complaint.

5 Q Well, in order for that complaint to be drafted, you
6 had to go meet with him or someone from his office, correct?

7 A Right.

8 Q And you did that way before 2015; isn't that correct?

9 A I don't recall.

10 Q And you also said that your husband passed away in
11 2006, and that's why you would have been taking some
12 depression medication?

13 A It's possible.

14 Q Can you explain to me -- well, I want to go back. You
15 said -- your attorney asked you if you had compiled these
16 records. You didn't provide me any of these records that I
17 requested through the discovery process, did you?

18 A I don't know. I don't remember.

19 Q Okay. Can you explain to me why in 2010 you would have
20 been taking Zoloft?

21 A No, I don't.

22 Q Can you -- I'm going to show you the records just so we
23 can make sure that what I'm saying is not disputed. And I
24 apologize, I didn't print all of these out, but I didn't
25 think it would be an issue. Let me show you. Do you see

1 the record December the 2nd of 2010?

2 A Yes.

3 Q And you see where it lists the medicals that you're
4 taking is Zoloft?

5 A Yes.

6 Q And then let's take a look at the records from 2011,
7 specifically September 19th of 2011, and it lists that
8 you're also taking Zoloft?

9 A Oh, I did take Zoloft.

10 Q Okay. And then on February 22nd, 2012 it also lists
11 that you were taking Zoloft?

12 A I see that.

13 Q So if your husband passed away in 2006, and you sought
14 treatment with somebody, you think, three times, why would
15 you have still been on Zoloft into 2012 and 2013?

16 A I don't know.

17 Q Do you know any reason why you would have told me in
18 your deposition that you had never suffered from depression
19 before this accident?

20 A No.

21 Q Let me show you the record from July 6th of 2010, also
22 at the hospital. And if you can read to me one of the
23 symptoms that you were having from 2010.

24 A I can barely read that. I can't read that, ma'am.

25 Q How about read the last letters.

1 A No known drug allergies.

2 Q No. Right here that's highlighted.

3 A Oh. I still can't read that.

4 Q Does that not look to you like D-e-p-r-e-s-s-I-o-n?

5 A It's possible, but I can't read that.

6 Q Is it -- what can't you read of that?

7 A I can't -- I don't know what it says, because I can't
8 read what it's saying.

9 Q Okay. So -- all right. But your testimony here today
10 is that you weren't suffering and had not suffered from
11 depression before this accident?

12 A Not that I can recall, no.

13 Q And that it's this accident that has caused you to be
14 depressed?

15 A I'm not depressed.

16 MR. TINSLEY: Your Honor, I think we beat this horse
17 enough. She testified that she's sad with her lifestyle. I
18 don't think she introduced any depression diagnosis.

19 THE COURT: I'll allow her to finish her question,
20 because I don't think we got -- I mean, finish her answer.
21 I don't think the jury got to hear that.

22 A I said I'm not depressed.

23 Q All right. Do you recall testifying in your deposition
24 that one of the questions I asked you was what you were
25 claiming as a result of this accident and you said that you

1 were claiming depression?

2 A I don't recall that.

3 Q Do I need to show you that in your deposition
4 testimony? So I'm not asking you these questions, Ms.
5 Cardona to make you feel bad. I understand people suffer
6 from depression. But if you're going to ask my client to
7 pay you money for depression as a result of this accident,
8 it's important for me to determine if before this accident
9 you had depression.

10 A But I'm not asking --

11 MR. TINSLEY: Judge, there's no question there.

12 THE COURT: Sustained.

13 Q Are you claiming depression as a result of this
14 accident?

15 A No.

16 Q Are you claiming that you are depressed or sad as a
17 result of this accident?

18 A No. I'm not sad. I'm not depressed.

19 Q So can you tell me as a result of this accident what
20 you're claiming? What injury?

21 A I would just like to get my -- my medical bills paid,
22 my injuries -- it's just a constant -- the pain is just
23 constant.

24 Q In what parts of your body?

25 A Right up this area in the back of my neck (INDICATING),

1 right in the cranial area is where I'm complaining of this.

2 It's constant pain.

3 Q How about your back?

4 A My back doesn't hurt. Maybe in between the shoulder
5 blades, but no. It's mainly right up here (INDICATING).

6 Q How about the tingling and numbness in both hands and
7 arms?

8 A That could be -- I'm not an expert, but it could be
9 just from that right up in this area.

10 Q Anything else?

11 A No, ma'am.

12 MS. O'BRIEN: Thank you.

13 THE COURT: Anything else for this witness?

14 MR. TINSLEY: Nothing further, Your Honor.

15 THE COURT: Ma'am, you can step down.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness steps down from the witness
18 stand.)

19 THE COURT: All right. Mr. Tinsley?

20 MR. TINSLEY: We will produce Dr. Hatfield's testimony.

21 THE COURT: All right. Is everybody all right? We've
22 got about, oh, I'd say, a 40 minute --

23 MR. TINSLEY: Forty-five minutes.

24 THE COURT: Forty-five minute? Okay, very well.

25 Ladies and gentlemen, you are now going hear testimony

1 presented by way of deposition. You've heard a little talk
2 about a deposition here, but I need to take a minute to
3 explain it to you. A deposition is a document that contains
4 sworn testimony given by a witness outside of the Court in
5 the presence of lawyers for each party who may ask questions
6 of the witness. This testimony is entitled to the same
7 consideration and judged as to its credibility and weighed
8 by you in the same way as if the witness were present and
9 gave the testimony about to be played for you from the
10 witness stand. It is then for you, the jury to determine
11 the effect, value, weight and truth of the testimony given
12 in the deposition. In case I didn't say, it was given under
13 oath.

14 All right. So proceed.

15 MR. TINSLEY: Let's see if I can figure -- figure this
16 out.

17 (Whereupon, a brief pause was taken.)

18 THE COURT: I tell you what, now might be a good minute
19 for a break.

20 MR. TINSLEY: It's playing, but it's not playing.

21 THE COURT: That's okay. That's okay. I promise you
22 we had it working before you all came in. Let's take a five
23 minute break. You all step to your jury deliberation room
24 for just a moment, but don't discuss.

25 (Whereupon, the jury exited the courtroom at 3:37 p.m.)

1 (Whereupon, a recess was held from 3:37 p.m. to 3:50
2 p.m.)

3 (Whereupon, the jury entered the courtroom at 3:50
4 p.m.)

5 THE COURT: All right. So the wonders of technology.
6 We've got the doctor on the screen and we're ready to
7 proceed.

8 And seriously, you all on the front, if it gets to be
9 too much of a problem, do feel free to move. You can even
10 more back to one of these seats back here if you wanted.

11 MR. TINSLEY: I don't know what to say, other than -- I
12 mean, I know I can play it on this computer if that's fine
13 with --

14 THE COURT: Let's try to do that. If we can just play
15 it on the computer and --

16 THE TINSLEY: On the computer.

17 THE COURT: And, ladies and gentlemen, I'm just going
18 to ask you if you can't hear it or something like that, to
19 try to move to where you can. We'll play it on the computer
20 here.

21 MR. TINSLEY: I apologize. I don't know --

22 THE COURT: Well, things happen. That's just the way
23 it goes.

24 (Whereupon, the video deposition of Dr. Asa Hatfield
25 was published for the jury.)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) C/A NO.: 2015-CP-24-01100

Rosa St. Gelais,)
)
 Plaintiff,)
)
v.)
)
Julius Leary,)
)
 Defendant.)

)

VIDEO DEPOSITION OF

ASA HATFIELD, M.D.

Friday, February 23, 2018

1:55 p.m. - 2:40 p.m.

The video deposition of ASA HATFIELD, M.D., was taken before Andrea R. Taylor, a notary public in and for the State of South Carolina, commencing on Friday, February 23, 2018, at the law offices of Billy Garrett, Jr., 109 Oak Avenue, Greenwood, South Carolina, pursuant to Notice of Videotaped Deposition.

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2/23/2018

ASA HATFIELD, M.D.

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ASA HATFIELD, M.D.

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EXHIBITS

(There were no exhibits marked during the deposition.)

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This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

VIDEOGRAPHER: My name is Easton Rice from Rice Video Productions in Greenwood, South Carolina. I am the videographer in today's video deposition. Today is Friday, February 23rd, 2018, and the time is 1:55 p.m. This deposition is Asa Hatfield. And we're at the law office of Billy Grant -- Billy Garrett in Greenwood, South Carolina. This case number is 2015-CP-24-01100, which is Rosa St. Glennis (ph) --

VIDEOGRAPHER: -- Gelais, as the plaintiff, vs. Julius Leary as the defendant. I will now ask the court reporter and the attorneys for both sides to

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1 identify themselves for the video.

2 MR. TINSLEY: I'm Jamison Tinsley here representing
3 the plaintiff.

4 MS. O'BRIEN: Carrie O'Brien and I represent Mr.
5 Julius Leary.

6 COURT REPORTER: Andie Taylor, court reporter.

7 VIDEOGRAPHER: Okay. Go ahead.

8 Whereupon,

9 ASA HATFIELD, M.D., being duly sworn and
10 cautioned to speak the truth, the whole truth,
11 and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TINSLEY:

14 Q. All right. Dr. Hatfield, my name is Jamison
15 Tinsley, and I'm representing Ms. Rosa, it's Cardona
16 now, but when you treated her I believe it was St.
17 Gelais.

18 A. Uh-huh.

19 Q. And, first of all, can I ask you your educational
20 background?

21 A. Finished Newberry High School, went to Erskine
22 College and then taught and coached for about five
23 years and went back to pharmacy school at the
24 Medical University of South Carolina and graduated
25 there. Practiced pharmacy for three years. Then I

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1 went back to medical school and finished there in
2 December of 1984. And then came to Greenwood to the
3 -- what's now the Montgomery Center and did my
4 residency; and went to Saluda in 1987 and then Honea
5 Path. And I've been in Greenwood ever since
6 December of 1990.

7 Q. Okay. And what sort of medicine do you practice?

8 A. Family practice.

9 Q. Okay. And how long have you been in Greenwood, you
10 said?

11 A. Well, I came here in '85 to do my residency. And
12 then I opened my practice here in December of 1990.

13 Q. Okay.

14 MR. TINSLEY: All right. I would -- I would move Dr.
15 Hatfield be qualified as an expert in family
16 practice and --

17 MS. O'BRIEN: No objection.

18 BY MR. TINSLEY:

19 Q. All right. And you have had the occasion to treat
20 Rosa St. Gelais in the past?

21 A. I have.

22 Q. Okay. When did you -- do you know when you started
23 treating her?

24 A. Looks like my first visit with her was in July of
25 2010.

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1 Q. All righty. And she was just -- well, can you just
2 kind of -- was she a -- a standing patient from that
3 time on or -- as far as a regular patient, I guess,
4 would be the -- the way to put it?

5 A. Yeah, she came in sporadically. She wasn't on any
6 continuing medications. That particular visit was
7 like for an earache, and then we had a recheck on
8 that. And mostly it's been sinus and cough,
9 congestion, those kind of visits.

10 Q. All right. And did she treat with you following her
11 car wreck in August of 2013?

12 A. Yes, sir. I saw her August 27, 2013, related to a
13 motor vehicle accident.

14 Q. Okay. What -- what sort of complaints did she have?

15 A. The nurses wrote down that the accident was a week
16 before this, and she went to the emergency room for
17 headache and neck pain.

18 Q. Okay. And what could you do for her on that visit?

19 A. Well, I talked to her, I asked her, you know, what
20 happened. She said she was hit from behind and she
21 had pain in her posterior neck and the base of her
22 skull. And I did an exam on her, and she had a
23 normal neurological exam. No deficits, sensory or
24 motor of any kind. So everything seemed normal.
25 The neck, of course, was tender and muscles in the

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1 posterior neck were tight. And she had no radiation
2 from the neck. Nothing went out her arms to her
3 fingers or anything like that. So I diagnosed her
4 with muscle spasm, neck pain, and headache. And her
5 treatment was we were giving some steroids, a
6 tapering dose where she took 30 milligrams of
7 steroids, of Prednisone three times a day for three
8 days and then two times a day for three days and
9 then one time a day for five days. She was given a
10 muscle relaxer and some -- some pain medicine and
11 told to come back in 12 days.

12 Q. Okay. And were her symptoms, were they common for
13 somebody who's been in a car wreck from --

14 A. Yes, sir.

15 Q. -- your experience?

16 A. Yes, sir, pretty common for hitting from behind.

17 Q. Okay. And did she follow up with you as instructed?

18 A. She did. She came back on September the 9th still
19 with a bad headache and pain in the back of her
20 neck. Still tender on exam in the posterior neck at
21 the base of her neck, headache over her frontal
22 spinus, tender to palpation. Again, she had a
23 normal neurological exam, no deficit of any kind.
24 She had good strength in both hands. And checking
25 her pupils and everything, everything looked fine

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1 neurologically. So again, she was diagnosed with
2 neck pain, muscle spasm, and headache. She was
3 given what we call an NSAID, which is an anti-
4 inflammatory that's not steroidal, a muscle relaxer,
5 medicine for pain. And I thought at that time her
6 headache, from looking up in her nostrils, was from
7 probably some sinus, so we gave her some antibiotic
8 for ten days.

9 Q. Okay. And did she follow up with you again after
10 that?

11 A. She did. She came in on September the 30th. That
12 was a three week follow up, still with pain, no
13 better. Still with headaches. Still had a normal
14 neurological exam, good equal strength in her hands
15 and wrists. Again, the diagnosis neck pain and
16 headaches. We continued the non-steroidal anti-
17 inflammatories, the muscle relaxers, and the pain
18 medication.

19 Q. All right. And did you -- at that point, did you
20 refer her to another physician?

21 A. I did. I -- I ordered an MRI of -- of her neck and
22 made her an appointment with Dr. Glen Scott, who's a
23 neurologist over in Abbeville. And that was
24 basically the last time that I saw her.

25 Q. Okay. Why did you send her to Dr. Scott?

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1 A. Because of the continued headache and because of the
2 neck pain, even though she didn't have any deficits,
3 I did want a neurologist to look over and check and
4 make sure there wasn't anything there that I may be
5 missing or just to be a little more thorough.

6 Q. Okay. And do you have knowledge about Dr. Scott as
7 far as what he could do for her?

8 A. I have a note from him where he saw her -- let's
9 see, he saw her multiple times.

10 Q. Okay. And do you know what treatment he -- he gave
11 her?

12 A. Get these in order. Let's see. The first one I see
13 here, I think he saw her before this. I've got one
14 here where he saw her on -- this may be the first
15 one -- August the 19th, 2013. And he did a good
16 exam on her and neurological and so forth. And --

17 MS. O'BRIEN: Mr. Tinsley, I -- Tinsley, I hate to
18 interrupt --

19 MR. TINSLEY: Yeah.

20 MS. O'BRIEN: -- but I don't have these records.

21 MR. TINSLEY: Yeah, I think that he's looking at when
22 she first went into the emergency room is what it --
23 what it looks like from that day.

24 THE WITNESS: Yeah, and I'm -- Dr. Scott's note is
25 6/26/14. And he saw her and had the history of the

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1 present illness, what happened about the accident
2 and so forth. No -- neurological exam. He did a
3 mental status and thought the cranial nerves were
4 okay, motor strength was full and without any kind
5 of tremor. She had sensation and they were intact
6 to light touch. Reflexes were symmetrical.
7 Coordination was intact. Rapid alternating
8 movements are full and her gait is normal. So
9 pretty normal neurological exam.

10 MR. TINSLEY: Okay. Can we go --

11 VIDEOGRAPHER: Okay. This is Easton Rice, the
12 videographer. We're stopping recording and the time
13 is 2:06 p.m.

14 (Off the Record)

15 VIDEOGRAPHER: This is Easton Rice, the videographer.
16 We're starting recording back at 2:07 p.m.

17 BY MR. TINSLEY:

18 Q. All right. So do you know -- so when you initially
19 sent Rosa to Dr. Scott, what he -- the actual
20 treatment that he -- that he gave -- gave her?

21 A. He had the diagnosis of cervical strain and sprain
22 with chronic headache, and he suggested that she
23 give consideration to possible acupuncture as
24 conservative treatments -- "because conservative
25 treatments had not given her much of any durable

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1 relief. The other alternative is to repeat an MRI
2 of her cervical spine to compare to the one that was
3 done nine months ago. At this time, she has
4 involved an attorney and I suggested she discuss her
5 options further with this person as well."

6 Q. Okay.

7 A. "The diagnosis and plan of care, including the risks
8 and benefits, as well as the potential side effects
9 of medication were discussed with the patient and
10 their representative, and they agreed to the above."
11 And he told her to follow up with him as needed.

12 Q. And do you know what conservative treatment he had
13 given her prior to that?

14 A. This one was after that one. No, I do not.

15 Q. Okay. And that MRI from nine months earlier, is
16 that the one that you had ordered?

17 A. That's correct.

18 Q. And he had on -- at one point he mentioned a
19 cervical epidural steroid injection being a
20 possibility?

21 A. Right.

22 Q. Are you familiar with -- with that in her record?

23 MS. O'BRIEN: Mr. Tinsley, excuse me, I'm going to
24 object because the doctor's already testified he
25 doesn't know what treatment she received from

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1 Abbeville.

2 MR. TINSLEY: Well, I'm just asking him to look at his
3 -- look at his records that he has.

4 A. So go ahead and answer the question?

5 Q. Yes, sir, go ahead and answer.

6 A. I'm looking here at one from December 27, 2013, and
7 he suggested that she "Give a chiropractor a try
8 because it may allow for more mobilization of the
9 muscles and some relaxation. If not, we will
10 arrange for an evaluation by pain management for a
11 cervical epidural steroid injection. And then
12 she'll be seen in follow up in six to eight weeks or
13 sooner, if needed."

14 Q. Okay. And at that point, you no longer treated her,
15 so you don't know what happened after that; is that
16 --

17 A. That's correct.

18 Q. Okay. All right. And the treatment that you gave
19 Ms. St. Gelais, do you believe in your opinion, to a
20 reasonable degree of medical certainty, that it was
21 necessary and reasonable treatment?

22 A. Absolutely.

23 Q. Okay. And would you say the same for your referral
24 to the neurologist, Dr. Scott?

25 A. Yes, sir.

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ASA HATFIELD, M.D.

1 Q. Okay. All right. I think that's all the questions
2 I have.

3 CROSS-EXAMINATION

4 BY MS. O'BRIEN:

5 Q. Dr. Hatfield, Carrie O'Brien and I represent Dr.
6 Leary. Let me ask you, prior to the date of this
7 accident on August 23rd, had you ever treated the
8 plaintiff for neck pain?

9 A. I don't have anything in my records that I saw her
10 for any kind of neck pain. No, ma'am.

11 Q. All right. How -- go ahead.

12 A. No, that was it.

13 Q. Okay. Had you ever treated her for any prior back
14 pain before this accident?

15 A. No, ma'am.

16 Q. Are you aware that she was actively treating for
17 neck pain with a chiropractor within a few months
18 before this accident?

19 A. No, ma'am.

20 Q. Were you aware that she was actively treating for
21 back pain within a few months before this accident
22 with a chiropractor?

23 A. No, ma'am.

24 Q. Had you ever referred her to a chiropractor?

25 A. I did not, no, ma'am.

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1 Q. Do you know why she would have been treating with a
2 chiropractor for neck or back pain?

3 A. I do not have any idea why that would be. I'm
4 assuming she had back pain and went there herself,
5 but I'm not sure.

6 Q. Okay. Did she ever mention that in any of the
7 visits that you treated her for for anything
8 regarding any of her body that she was having neck
9 or back pain?

10 A. Not that I remember or documented.

11 Q. Okay. And it looks like from the records that you
12 had provided that you had treated her consistently
13 for sinus issues; is that correct?

14 A. That's correct.

15 Q. And you would agree with me, Doctor, that frequently
16 when people have sinus issues that they have ongoing
17 headaches?

18 A. That's correct. When they're flared up, pressure-
19 type headaches. Yes, ma'am.

20 Q. Okay. And are you aware that she had also been
21 diagnosed with Crohn's disease?

22 A. Not that I know of.

23 Q. Okay. Do you know who would have been treating her
24 for the Crohn's disease if you were her primary care
25 physician?

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1 A. I have some other records here I think were after
2 the date or -- from the Digestive Disease Group here
3 in Greenwood, Dr. Gilchrist and Green and so forth.

4 Q. Okay. Do you know who would have diagnosed her with
5 Crohn's disease? Because the records that I have
6 show that she was diagnosed with Crohn's disease
7 before this accident ever took place, but we've been
8 unable to locate any doctor that would have
9 diagnosed her with Crohn's disease. Because I would
10 have presumed she would have treated with you for
11 those issues.

12 A. Now, I'm looking at a visit from February 21, 2014,
13 from the Digestive Disease Group, and -- try to see
14 which doctor did this. And I've got another one for
15 1/17/13, and that was Dr. Sadurski. He said on
16 there his assessment was Crohn's, colitis. And
17 don't know if he's made the diagnosis or if he's
18 carrying that diagnosis over from a previous visit.
19 And he just had the note that it responded to
20 antibiotics, Prednisone, and no Asacol.

21 Q. Okay. So she would have been taking Prednisone
22 before this accident it sounds like?

23 A. Yeah. Again, it's kind of like with the sinuses,
24 you take a burst of steroids for a --

25 Q. Right.

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1 A. -- short period of time with a decreasing dose, you
2 know, each day or every two days.

3 Q. And do you have anywhere in your records where she
4 gets her prescriptions filled?

5 A. I wouldn't unless we called something in. And I'm
6 just looking to see if we called anything in for
7 her. I've got one back from March of 2012 where,
8 apparently, she had a headache and some nausea, and
9 we called in a couple of prescriptions to Carolina
10 Community Pharmacy on Epting Avenue.

11 Q. Thank you, Doctor. We have requested that
12 information in discovery, so I appreciate you
13 providing that. And my understanding is that there
14 was a history of depression with Ms. Gelais, is that
15 correct, before this accident?

16 A. I only know that because of the medication that she
17 was on, which was Zoloft, which is an
18 antidepressant.

19 Q. Okay. And any idea who was prescribing the Zoloft
20 medication?

21 A. No, ma'am.

22 Q. Okay. But it wasn't you?

23 A. No, ma'am.

24 Q. Okay. So she would have been treating with some
25 other doctor other than yourself that would have had

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ASA HATFIELD, M.D.

- 1 to have prescribed Zoloft; is that correct?
- 2 A. That's correct.
- 3 Q. Okay. And, Dr. Hatfield, have you have an -- had an
- 4 occasion to look at the records from the emergency
- 5 room on August 23rd?
- 6 A. Yes, ma'am. Okay.
- 7 Q. You would agree with me that it was noted that she
- 8 had no weakness in her arms, correct?
- 9 A. Yes. And the one I'm looking at says 8/19/13.
- 10 Q. Okay. So on August 19th, no issues with any type of
- 11 numbness, correct, in her arms?
- 12 A. I'm looking at her neurological exam and looks like
- 13 everything was appropriate, speech clear and
- 14 developmentally appropriate for age.
- 15 Q. Okay. No weakness in her arms, no numbness in her
- 16 arms were noted, correct?
- 17 A. That's correct.
- 18 Q. She had full range of motion in her upper
- 19 extremities, correct?
- 20 A. Let's see. It said normal -- normal ambulatory
- 21 status of musculoskeletal/extremities.
- 22 Q. Okay. It was noted that there was no tenderness in
- 23 her lower back, correct?
- 24 A. I don't see that. Let me turn the page here.
- 25 Nothing there. I just see pain noted over the

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ASA HATFIELD, M.D.

1 posterior scalp.

2 Q. Do you have the physical exam from the hospital?

3 A. Okay. I've got that one now.

4 Q. All right. Where it shows upper extremities weren't
5 tender, full range of motion in the --

6 A. Right.

7 Q. -- upper extremities?

8 A. Right.

9 Q. Lower extremities weren't tender?

10 A. Right.

11 Q. Full range of motion in the lower extremities,
12 correct?

13 A. Yes, ma'am.

14 Q. And then they did some x-rays of her and the x-rays
15 were to her neck, her abdomen, and her head and
16 chest, and those were all normal, correct?

17 A. Yeah. They did a CT of her cervical spine, x-ray of
18 her thoracic spine, a CAT scan of her head without
19 contrast, CT of the abdomen and pelvis, and --

20 Q. And I also show her chest?

21 A. Yeah, they did a -- I think it was a portable chest,
22 yeah.

23 Q. Okay. Any idea why they would have done an x-ray of
24 her abdomen when she wasn't complaining of any
25 problems in her abdomen?

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1 A. That's just emergency room medicine nowadays; they
2 order a lot of tests.

3 Q. Any idea why they would have done an x-ray of her
4 thoracic or her mid-back if she wasn't complaining
5 of any back pain?

6 A. No, ma'am.

7 Q. Any idea why they would have done an x-ray of her
8 chest if she wasn't complaining of any chest pain?

9 A. No, ma'am.

10 Q. Okay. And then it looks like they told her to
11 follow up in three to five days; is that correct?

12 A. I'm looking.

13 Q. And if you will look under the discharge
14 instructions -- if you have that page -- it mentions
15 that she's to follow up with her primary care
16 physician in three to five days.

17 A. I see a sentence here under disposition that says,
18 "If you have further concerns, call your primary
19 care physician or return to the emergency
20 department."

21 Q. And then under additional follow-up instructions it
22 says, "Please follow up with your primary care
23 physician within three to five days."

24 A. I see that above that, yes, ma'am.

25 Q. Okay. So if she was still having problems, she was

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1 supposed to follow up with you or whoever else she
2 may have treated with in three to five days; is that
3 correct?

4 A. That's what she was instructed to do, yes, ma'am.

5 Q. Okay. And it looks like eight days later is the
6 first time that anyone ever saw her related to this
7 accident; is that correct?

8 A. That's correct.

9 Q. Okay. And on August 27th, she was only complaining
10 of pain in her neck and her head; is that correct?

11 A. That's correct.

12 Q. Never complained of her left shoulder, did she?

13 A. No, ma'am.

14 Q. Didn't complain of her right shoulder?

15 A. No, ma'am.

16 Q. Didn't complain of pain in between her shoulders,
17 did she?

18 A. No, ma'am.

19 Q. Okay. And at the emergency room, she wasn't
20 complaining of any left shoulder pain, right
21 shoulder pain, or pain in between her shoulders, was
22 she?

23 A. No, ma'am, don't see it.

24 Q. Okay. And then on August 27th, you told her to
25 follow up with you. And she showed back up to see

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1 you September the 9th, correct?

2 A. I believe that's correct. Let me be sure.

3 Q. And --

4 A. Yeah, she --

5 Q. -- on September the 9th, she was still having a
6 headache and you thought that headache was
7 associated with sinus issues, correct?

8 A. At least partially contributed to by sinus. And she
9 had --

10 Q. Okay.

11 A. -- tenderness in the posterior neck.

12 Q. Okay. And you put her on an antibiotic for ten
13 days, correct?

14 A. I did.

15 Q. I didn't hear you. I'm sorry.

16 A. I did. I'm sorry.

17 Q. Okay. And you would agree with me that the
18 antibiotic doesn't have anything to do with this
19 accident?

20 A. That's correct.

21 Q. Okay. And then on September the 30th, she came back
22 and was still having a headache, even though her
23 neurological exam was completely normal, correct?

24 A. Correct.

25 Q. And then I showed that she came back to you on

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ASA HATFIELD, M.D.

1 October the 9th because she was still having issues
2 with sinus and she was still complaining of the
3 headaches associated with sinus issues; do you have
4 that visit?

5 A. I did. Actually, she came back to the office.
6 That's Dr. Robin Lanford, who worked for me at least
7 a day a week or so, and that's who she saw that
8 time. I've got that note.

9 Q. Okay. And so from the time that you saw her on
10 September the 9th until he saw her on October the
11 9th, she was still continuing to have sinus issues?

12 A. Apparently so, yes, ma'am.

13 Q. And she was still complaining of a -- of a headache,
14 correct?

15 A. Correct.

16 Q. And you would agree with me, like you already have,
17 that whenever you have sinus issues that flare up,
18 it's not unusual to have headaches associated with
19 sinus issues?

20 A. Correct.

21 Q. All right. And then I don't show that you ever
22 treated her again for anything related to this
23 accident after September the 30th, 2014; is that
24 correct?

25 A. That's correct.

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1 Q. Okay. And you ordered an MRI because she was saying
2 she was still having neck pain, correct?

3 A. Correct.

4 Q. And the MRI showed that she had stenosis; is that
5 correct?

6 A. It said she had some mild spinal canal stenosis.
7 Yes, ma'am.

8 Q. All right. And an accident doesn't cause stenosis,
9 does it?

10 A. I would not expect it to, no, ma'am.

11 Q. And the x-rays from the hospital stated that she had
12 degenerative changes in her neck. Did you see that?

13 A. I did.

14 Q. And an accident doesn't cause degenerative changes
15 in your neck, correct?

16 A. It can aggravate them, but that's just kind of
17 caused by time.

18 Q. Right. That's just because it's age related,
19 correct?

20 A. Yes, ma'am.

21 Q. And we know that -- well, you don't know, but we
22 know that she was treating with a chiropractor for
23 her neck and her back before this accident?

24 A. Right.

25 Q. Any idea whether it was age-related issues that

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1 required her to treat with a chiropractor before
2 this accident --

3 MR. TINSLEY: I'm going to --

4 Q. -- or some other motor vehicle accident?

5 MR. TINSLEY: I'm going to object because he doesn't
6 -- he's already testified he doesn't know anything
7 about that treatment. But you can go ahead and
8 answer, Dr. Hatfield.

9 A. Yeah. I -- I don't know what she told the
10 chiropractor. No, ma'am.

11 Q. All right. And any objective findings? And,
12 Doctor, for the jury, explain what objective
13 findings are.

14 A. Objective findings are things that we can see, like
15 on an x-ray or doing an exam, something abnormal
16 that we saw as opposed to subjective findings, which
17 are things that the patient tells you.

18 Q. And was there anything objectively on the MRI that
19 indicated she had been injured in this accident?

20 A. No, she had some mild broad-based disc bulging at
21 C4-C5 producing mild bilateral neural foraminal
22 narrowing. The disc bulging, I'm not an expert in
23 that field, but that's something that certainly
24 could be aggravated. Whether or not it can be
25 caused by the accident, I couldn't say.

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1 Q. Okay. You don't have any idea whether the -- there
2 are objective findings that show that she was
3 injured in this accident, other than her saying, "I
4 feel some pain"?

5 A. Yeah, other than the reversal of normal cervical
6 lordosis, which is what you see in whiplash, that
7 was seen on the x-ray and diagnosed with that
8 diagnosis by Dr. Scott. And that did show up on the
9 x-ray, and that's kind of what I saw on my visit,
10 the first visit that --

11 Q. Well, Doctor, you would agree with me that there are
12 people that are born and are genetically born with -
13 - can have a normal lordosis curvature, correct?

14 A. Yeah, they -- they could have that reversed lordosis
15 but usually --

16 Q. Right.

17 A. -- if it goes back to normal, then you assume it was
18 from the wreck.

19 Q. Well, do we have any indication before this accident
20 as to how her neck was before; any x-rays --

21 A. We do not.

22 Q. -- any MRIs?

23 A. And I don't know if we have any after either, so --
24 I mean after her --

25 Q. Well, we do have --

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ASA HATFIELD, M.D.

- 1 A. -- treat --
- 2 Q. -- x-rays afterwards.
- 3 A. -- after her treatment, I mean.
- 4 Q. Correct?
- 5 A. No, I'm saying I -- I didn't hear what you said. I
- 6 was saying the only thing after were the things that
- 7 happened as we were treating her. Now, you know, a
- 8 year down the road, I don't know if that was still
- 9 there or not, was what I was getting at.
- 10 Q. Okay.
- 11 A. That would help --
- 12 Q. And so as we sit here today, can you tell the jury
- 13 to a medical degree of reasonable certainty that she
- 14 didn't have a reversal of her neck spine before this
- 15 accident?
- 16 A. No, ma'am.
- 17 Q. Okay. And as we're sitting here today, can you tell
- 18 the jury to a reasonable degree of medical certainty
- 19 that she didn't have neck pain before this accident?
- 20 A. No, ma'am.
- 21 Q. As we're sitting here today, can you tell the jury
- 22 to a reasonable degree of medical certainty that she
- 23 didn't have back pain before this accident?
- 24 A. No, ma'am.
- 25 Q. All right. And, Doctor, it looks like that you then

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ASA HATFIELD, M.D.

1 sent her on September 30th, you referred her to
2 Abbeville Medical Center; is that correct?

3 A. I referred her to Dr. Scott in Abbeville, that's
4 right.

5 Q. Okay. Do you have any idea why it would have taken
6 three months for her to treat in Abbeville?

7 MR. TINSLEY: Objection. Mischar- -- misstatement of
8 facts. You can go ahead and answer.

9 MS. O'BRIEN: She didn't treat until December the
10 12th. How is that a mischaracterization of facts?

11 MR. TINSLEY: September 30th to December 2nd is two
12 months and two days.

13 MS. O'BRIEN: December 12th. I -- the first visit I
14 have from Abbeville is December the 12th. Do you
15 have something before then?

16 MR. TINSLEY: No, it's December 2nd, is what the
17 admission date that I have says. I have December
18 2nd and December 29th.

19 MS. O'BRIEN: Okay.

20 MR. TINSLEY: December 27th.

21 MS. O'BRIEN: I'm going to have --

22 MR. TINSLEY: Excuse me.

23 MS. O'BRIEN: -- to get your records then, because I
24 have December 12th and December 27th.

25 MR. TINSLEY: I have a three-page one from December

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1 2nd. I have no December 12th, and I have a three-
2 page one from December 27th.

3 BY MS. O'BRIEN:

4 Q. Okay. So two and a half months after -- after you
5 referred her, or a little over two months, she
6 showed up at Abbeville; is that correct?

7 A. I have one for 12/27/13 and then the next one is
8 June 26, 2014, that I have.

9 Q. Okay. So from December 27th until June 26 of 2014,
10 can we agree that that's a six-month gap in
11 treatment, Doctor?

12 A. Tell me the first date again.

13 Q. You just said December 27th of 2000- --

14 A. '13, right.

15 Q. Correct.. And then June 26 of 2014.

16 A. That's about six months.

17 Q. Okay. And the visit that you talked about earlier
18 on direct examination on December 27th, the doctor
19 recommended that she treat with a chiropractor; is
20 that correct?

21 A. That's correct.

22 Q. And do you have any records showing that she ever
23 followed the doctor's orders?

24 A. I do not.

25 Q. All right. And then it looks like on June 26 of

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1 2014, the doctor recommended that she might want to
2 try acupuncture; is that correct?

3 A. I don't see that right now. I saw it earlier. I
4 remember possibly chiropractor.

5 Q. Can you put your hands on the record from June 26,
6 2014?

7 A. I can.

8 Q. Okay. If you'll take a look at that record,
9 assuming that we have the same record, my record
10 indicates on June 26, 2014, that it was recommended
11 that she receive acupuncture if she was still having
12 problems --

13 A. Yeah, he said I --

14 Q. -- and I think you actually read it into the record.

15 A. I did. He said, "I suggest that" --

16 Q. Okay.

17 A. -- "she give consideration to acupuncture."

18 Q. All right. Do you have any records indicating that
19 she ever went and received any type of acupuncture
20 as the doctor suggested?

21 A. I do not.

22 Q. All right. And he suggested if she didn't want to
23 do acupuncture that she could get another MRI; is
24 that correct?

25 A. Yeah. That was the other alternative, repeat and

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1 see if they were similar or if anything had changed.

2 Q. And do you have any records to indicate or to show
3 that she actually followed up and had another MRI?

4 A. I do not. That wouldn't have come to me since I
5 didn't order it.

6 Q. Okay. Would the doctor have typically sent you the
7 results of the MRI since you're the one that
8 referred her to him?

9 A. Not necessarily. We were --

10 Q. Okay.

11 A. -- far past the accident and so forth. And if she
12 told him she hadn't seen me since August, then he
13 probably assumed that I was not seeing her for this
14 anymore.

15 Q. Okay. And the record also indicates, I think you
16 said on direct examination, that she was told that
17 she could discuss these issues with her attorney?

18 A. I remember that, yes.

19 Q. Okay. What would she be discussing with her
20 attorney about her medical treatment?

21 A. That's a good question. I don't know.

22 Q. Do you typically recommend that your patients when
23 you're treating them go have conversations with
24 their attorney as to their medical treatment?

25 A. It's according to what I'm treating. Not anything

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1 very common. If I thought somebody was mistreated,
2 then I might say they need to maybe speak to an
3 attorney. But that's the only indication that I
4 would probably say that.

5 Q. Is there anything in the records that would indicate
6 that Ms. Gelais was mistreated medically in this
7 case?

8 A. Not that I've seen.

9 Q. Do you see any reason why she would need to speak
10 with her attorney about her medical treatment in
11 this case?

12 A. Well, let me read that sentence again to myself
13 here. I -- I do not.

14 Q. Okay. And, Doctor, as we sit here today, do you
15 have any objective evidence that you can point to to
16 a reasonable degree of medical certainty that proves
17 that the plaintiff was injured as a result of this
18 accident?

19 A. Only my exam, and I -- I have to assume people are
20 telling me the truth and see if my exam goes along
21 with it. But on her original visit, and on her
22 follow-up visit, she was tight in that neck and she
23 did have tenderness on palpation; although at
24 physical therapy, they did say the neck was
25 responding somewhat to the therapy. But other than

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1 that, that would be a good question for Dr. Scott.

2 Q. Okay. And did -- did you see anywhere where she had
3 any cuts, scrapes, or bruises as a result of this
4 accident?

5 A. Only thing that really addressed any active bleeding
6 or those kind of things was the ER visit, and they
7 were not there.

8 Q. Okay. And did you see in the emergency room visit
9 that she tested positive for marijuana?

10 A. I did not.

11 MR. TINSLEY: Objection, relevance. Continue on.

12 Q. Go ahead and answer, Doctor.

13 A. I did not.

14 Q. If the lab results indicate that she was positive
15 for marijuana, would you have any reason to disagree
16 with that?

17 A. No, ma'am.

18 Q. Okay. That's all the questions I have. Thank you
19 very much for your time today.

20 REDIRECT EXAMINATION

21 BY MR. TINSLEY:

22 Q. Briefly on follow up. As a doctor, any time you're
23 treating somebody you rely on what they tell you; is
24 that right?

25 A. That's correct.

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ASA HATFIELD, M.D.

1 Q. Okay. And there's been testimony about x-rays. Can
2 you explain to us what an x-ray will actually show
3 you?

4 A. According to what kind of x-ray it is, plain x-ray,
5 like a chest x-ray, is going to show you, you know,
6 the bones; it's going to show her lungs; going to
7 show her heart; going to show some blood vessels,
8 but certainly not in detail with the blood vessels
9 and so forth. And then when you get to an MRI, they
10 take small slices. You get a lot more information,
11 but you kind of decide this is a place you want to
12 zero in on and you want to get as much information
13 as you can. And you certainly get it. And a CAT
14 scan is kind of the same way.

15 Q. Okay. And if somebody's experiencing pain, does it
16 always show up on an x-ray or an MRI?

17 A. No, sir.

18 Q. All right. And is it -- in your experience, is it
19 common for somebody to develop symptoms sometime
20 after the initial motor vehicle accident?

21 A. Yes, sir.

22 MS. O'BRIEN: Objection.

23 MR. TINSLEY: Okay. I think that's all I have.

24 RECROSS-EXAMINATION

25 BY MS. O'BRIEN:

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1 Q. Doctor, one more question. It's equally as common
2 for people to be involved in a minor vehicle
3 accident and not be injured at all; isn't that
4 correct?

5 A. I'm sorry. Would you repeat that?

6 Q. It's just as common for people to be involved in a
7 minor vehicle accident and not be injured at all;
8 isn't that correct?

9 A. Yes, ma'am.

10 Q. That's all the questions I have.. Thank you.

11 FURTHER REDIRECT EXAMINATION:

12 BY MR. TINSLEY:

13 Q. Just one follow up to that one. Is the, I guess,
14 speed or the impact of the collision determinative
15 of what it's going -- what a car wreck's going to do
16 to somebody?

17 A. No, sir.

18 Q. Okay. That's it.

19 MS. O'BRIEN: I don't have any other questions. Dr.
20 Hatfield, thank you very much.. I appreciate your
21 time today.

22 THE WITNESS: Thank you, ma'am.

23 MR. TINSLEY: And I thank you, Carrie, and we will --
24 it's Walgreens you said, right?

25 MS. O'BRIEN: Yes. My -- I mean the information that

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ASA HATFIELD, M.D.

1 was listed in the discovery said that she was
2 getting prescriptions filled at Walgreens --
3 MR. TINSLEY: Hey, can you hang tight? Can you hang
4 tight? I forgot that we've got to go off the video.
5 I'm sorry.
6 VIDEOGRAPHER: This is Easton Rice, the videographer.
7 This concludes the video deposition of Dr. Asa
8 Hatfield, and the time is 2:40 p.m.
9 (There being nothing further, the video deposition
10 concluded at 2:40 p.m.)
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2/23/2018

ASA HATFIELD, M.D.

CERTIFICATE

Be it known that I, Andrea R. Taylor, do hereby certify that ASA HATFIELD, M.D., appeared before me and I took the foregoing deposition at the time and place aforesaid by means of stenomask with backup; that I was then and there a notary public in and for the State of South Carolina and that by virtue thereof, I was duly authorized to administer an oath; that the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth.

I further certify that the foregoing transcript represents a true, accurate and complete transcript of said deposition. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

Witness my hand and seal this 9th day of March, 2018.



Andrea R. Taylor
Notary Public for South Carolina
My Commission Expires: 2/18/2024

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ROA 195

1 THE COURT: Ladies and gentlemen, the rules of evidence
2 ordinarily don't permit witnesses to testify as to opinions
3 or conclusions. Exception for this -- to this rule, are for
4 witnesses that we call expert witnesses. A witness who by
5 education or experience has become an expert in some field
6 may give an opinion as to the subject in which the witness
7 has been qualified as an expert and may also give the
8 reasons for his opinion. This witness has been qualified to
9 give his opinion in the area of family practice medicine; is
10 that right? And you may give that opinion the weight you
11 decide it deserves and you may use the opinion any way you
12 see fit. All right. Yes, sir.

13 (Whereupon, the publishing of the video deposition of
14 Dr. Asa Hatfield was resumed.)

15 THE COURT: All right. So I think we've come to a good
16 point for -- to break for the evening. We know now we are
17 not going to finish the case. Although, I think that the
18 attorneys' original estimate that the case will be in your
19 hands tomorrow is correct.

20 Is there anything we need to take up before I release
21 the jury for the evening --

22 MS. O'BRIEN: No, Your Honor.

23 THE COURT: -- from the Plaintiff?

24 MR. TINSLEY: No, Your Honor.

25 THE COURT: None from the Defense. All right. Ladies

1 and gentlemen, we're going to start back tomorrow morning at
2 9:30. As I said, we still anticipate that you will have
3 this case in your hands before lunchtime.

4 Please don't discuss the case with anyone. I've
5 already talked to you about that. I know that sometimes
6 listening to a deposition late in the afternoon is a little
7 bit tough, and tomorrow morning we'll probably -- everyone
8 will be a little fresher. But I'm going to ask everybody
9 tomorrow to please be alert. I think most people have been,
10 but just ask everyone to be alert for tomorrow as we finish
11 up this trial. Thank you so much.

12 MS. O'BRIEN: Your Honor, I apologize. Before we
13 excuse the jury, my understanding from Mr. Tinsley is that
14 he does not intend to call anymore witnesses.

15 THE COURT: Is that right, Mr. Tinsley?

16 MR. TINSLEY: That's correct, Your Honor.

17 THE COURT: And so, you'd like to rest?

18 MR. TINSLEY: Yes, ma'am, Your Honor.

19 THE COURT: And so, you'd like to rest?

20 MR. TINSLEY: Yes, ma'am, Your Honor.

21 THE COURT: All right, then. So the Plaintiff has
22 concluded her side of the case, and we will pick up tomorrow
23 morning with whatever we need to do tomorrow. All right?
24 Thank you so much, and I hope you have a great evening.

25 (Whereupon, the jury exited the courtroom at 4:40 p.m.)

1 THE COURT: Just before I forget, I did email both of
2 you a copy of the jury charge just in case you wanted to
3 take a look at it.

4 All right. Is there any matters we need to take up?

5 MS. O'BRIEN: Yes, ma'am, Your Honor. At this time the
6 Defendant would like to make a motion for a directed
7 verdict. Specifically with respect to punitive damages, I
8 don't believe there's been any evidence that would support
9 sending this case to the jury with respect to punitives.

10 THE COURT: And you're abandoning the punitives anyway?

11 MR. TINSLEY: Yeah.

12 THE COURT: All right. Very well then. For the
13 record, that directed verdict on that.

14 MS. O'BRIEN: Also, Your Honor, with respect to any
15 future treatment, there has been no one that has testified
16 that the Plaintiff has ongoing issues or needs any type of
17 future treatment. So we would request any medical
18 deposition testimony or any testimony, we request it be a
19 directed verdict with respect to any future treatment.

20 THE COURT: All right. Future damages, what do you
21 guys say about that?

22 MR. TINSLEY: All I'd say, I don't think we have any --
23 any concrete treatment we can -- we can point to. I mean,
24 she testified that she's still dealing with the issues to
25 this day, so...

1 THE COURT: But so far as any future medical treatment?

2 MR. TINSLEY: As far as any -- I mean, yeah, we can't
3 -- can't say she's going to have x-amount of dollars --

4 THE COURT: Right.

5 MR. TINSLEY: -- to get herself right. We don't --

6 THE COURT: Well, I think as to any future medical
7 treatment then I'll direct a verdict as to that.

8 MS. O'BRIEN: And with respect to pain and suffering,
9 Your Honor, I would submit that since there has been no
10 treatment beyond 2014 for this accident, that they should be
11 limited to only arguing pain and suffering as she has said
12 she still has it, not that any doctor said she still has
13 pain or that she still suffers as a result of this accident.

14 THE COURT: I'm going to deny your motion as to that.
15 I think there's enough evidence to submit that to the jury,
16 albeit only the Plaintiff's testimony with regard to it.
17 But I'll allow that to go to the jury.

18 MS. O'BRIEN: And, Your Honor, with respect to
19 causation, it would be our position that specifically that
20 when you read Dr. Hatfield's deposition, and after listening
21 to it, that Dr. Hatfield specifically said that he doesn't
22 know what treatment Dr. Scott rendered. That that question
23 would be better left to Dr. Scott. And so, therefore, it
24 would be our position that any treatment other than what Dr.
25 Hatfield has rendered is not -- should not go to this jury

1 because there has been no doctor that has suggested or
2 testified that the treatment that was rendered was causally
3 related to this accident.

4 THE COURT: What about that, Mr. Tinsley?

5 MR. TINSLEY: I would say that he testified that Dr.
6 Scott diagnosed her as having whiplash. These symptoms were
7 common and appropriate for somebody who'd been rear-ended.
8 That, you know, basically that he turned it over to Dr.
9 Scott at that point. And he did go through the records what
10 he had -- what he was familiar with, which was the whiplash
11 diagnosis, as well as the stuff with the chiropractor that
12 he didn't know anything about, and the acupuncture. I think
13 -- I think his -- when you take his testimony as a whole, it
14 does get to why -- why he sent her to a neurologist. It was
15 necessary given her symptoms after being -- being
16 rear-ended, and that this was appropriate -- this is
17 appropriate for the jury to consider.

18 MS. O'BRIEN: And, Your Honor, it's my position that he
19 did refer her to a neurologist, that he admitted that there
20 was a gap in treatment, that's he's unsure why there was a
21 gap in treatment, and that Dr. Scott is the appropriate
22 person to testify as to her symptoms and as to the issues
23 that she was having with respect to the MRI and whether
24 those were related to this accident. And so, it's our
25 position that the treatment that she had, and that Dr. Scott

1 has rendered, that it is not -- and it would not be allowed
2 for one doctor to say this treatment is admissible or this
3 treatment is appropriate, because it is an out of court
4 statement that they are relying upon that contains a
5 diagnosis. The only person that can use that diagnoses and
6 rely upon it, unless that is their field of expertise, is
7 the doctor. And he specifically stated this was not his
8 field of expertise, that he is a -- I made sure that we
9 designated him as the appropriate person. He's designated
10 as a family doctor. That's his expertise. That's it. He
11 can't testify as to whether the MRI was causally related,
12 whether the changes in her neck were from this accident or
13 from before. I asked those questions. And that it would be
14 up to Dr. Scott to testify as to those things and he's not
15 here to testify.

16 MR. TINSLEY: And he further testified about the
17 bulging disc. That's certainly aggravation there. And
18 that's -- you know, you take the Plaintiff as you find it,
19 and the Defendant is liable for an aggravation.

20 MS. O'BRIEN: I think you have to read his testimony.
21 The question was not did she have bulging discs from this
22 accident. The question was could she have. And what he
23 said was is someone could have. That is not the standard.
24 The standard is as I said.

25 THE COURT: Mr. Tinsley, I can't allow the jury to

1 speculate, and I believe allowing those damages with regard
2 to Dr. Scott would put the jury in a position of speculating
3 and they simply just don't have enough information to draw
4 that conclusion. So I'll grant your directed verdict as to
5 those damages. Anything else?

6 MR. TINSLEY: Just in response. The diagnosis being
7 there and I think that takes it out of the realm of
8 speculation.

9 THE COURT: Understood.

10 MR. TINSLEY: Also, I'll just reiterate my earlier
11 motions. I don't think this marijuana stuff is appropriate.
12 That's -- talking about rampant speculation with no -- you
13 know, I haven't heard any -- I don't anticipate us hearing
14 any testimony that that had anything to do with anything in
15 this case.

16 THE COURT: Right.

17 MR. TINSLEY: I think it's being put in, you know, to
18 show bad character is their --

19 THE COURT: And I will say this much. Not to comment
20 too much on it. I thought your client handled it well on
21 the stand.

22 MR. TINSLEY: I don't disagree with that.

23 THE COURT: Handled that situation well. I've let it
24 in just for the limited purpose with regard to the dizziness
25 and that sort of thing, and I let it in just for that. I'm

1 happy to give another limiting instruction of some kind.

2 But it doesn't sound like we're going too much further into
3 it anyway.

4 Anything else, Ms. O'Brien, while we're on your motions
5 for directed verdict?

6 MS. O'BRIEN: I just think that we need to clear it up.
7 And I can't put my hands on the most recent medicals, but my
8 position would be any medicals that have gone beyond when
9 the doctor sent her to get the MRI. That any of those --
10 the injections, all of those deal with Dr. Scott and his
11 treatment. Dr. Hatfield did not refer her for any of that
12 treatment.

13 THE COURT: All right. You all can look it over this
14 evening. I think we've got a list right here. But you all
15 can look it over this evening and we can -- let's try to
16 reconvene tomorrow morning about 9:20 and to go back over
17 things and kind of regroup in light of my recent rulings.
18 All right? Thank you all very much. And I did email the
19 jury charge to you. It does include future pain -- future
20 pain and suffering in it. And, of course, I'll go back
21 through and take out anything that needs to be. I'll take
22 that over -- out over the evening, so --

23 MS. O'BRIEN: Your Honor, do you want to hear the rest
24 of my motions?

25 THE COURT: Oh, I'm sorry. I thought you were

1 finished.

2 MS. O'BRIEN: No. With respect to lost wages. That's
3 the remaining issue.

4 THE COURT: Oh, yeah.

5 MS. O'BRIEN: The testimony by the Plaintiff is that
6 she is not sure how many days that she missed from work, nor
7 was she sure whether she was making either 12 or 12.50. I
8 think allowing that to go to the jury would require
9 speculation on the part of the jury considering the
10 Plaintiff doesn't have anyone here, nor any W2s to support
11 that she lost wages from the accident.

12 MR. TINSLEY: I would just argue that that goes to the
13 weight of the evidence. She's testified 60 hours, and she
14 wasn't sure if it was straight. She made 12 or 12.50. I
15 mean, I was going to argue it at the 12 because that's, you
16 know, the lowest.

17 THE COURT: I mean -- Mr. Tinsley, I mean, I hate it,
18 but she just was not certain enough to be able to submit
19 that, and I think we all kind of knew that. She wasn't
20 certain enough to submit that, and I appreciate her candor.
21 But it was just -- she didn't have any pay records to back
22 it up, wasn't sure what her hourly rate was, wasn't sure,
23 you know, when she had actually missed. And that number 60
24 was -- I think the jury would have walked away with an
25 inability to be able to calculate it without violating my

1 instructions with regard to speculation.

2 MS. O'BRIEN: Nothing further.

3 THE COURT: Anything else? All right. I had --
4 thinking that, Ms. O'Brien, though, you would ask for
5 directed verdict on lost wages I had taken that out just
6 preliminarily. So you all don't need to look for that in
7 the jury charge, just based on what I had seen.

8 All right. Anything else we need to take up before we
9 break for the evening? Anything from either side? All
10 right, then. We'll be in recess until 9:20 tomorrow
11 morning, so we have a few minutes to talk about things.
12 Thank you.

13 (Whereupon, the proceedings adjourned at 4:47 p.m.)

14 TRIAL DAY 2-March 20, 2018

15 THE COURT: All right. Thank you all very much for
16 sending your request to charge and we can -- but I know that
17 there's probably a matter that Ms. O'Brien wants to take up
18 first, put on the record, and I certainly do understand
19 that. And -- yes.

20 MS. O'BRIEN: Thank you, Your Honor. With respect to
21 the causation as it relates to Dr. Scott. My understanding
22 from your email last night is that you are going to allow in
23 the bills as to Mr. Scott and the -- excuse me, Dr. Scott,
24 and then the subsequent treatment, and I just want to note
25 for the record that, specifically, Dr. Hatfield in this case

1 testified, number one, that he did not know what treatment
2 had been rendered, that he did not have all of the records
3 from Dr. Scott, that he was not sure what treatment had been
4 performed, that Dr. Scott had not informed him of that, and
5 that if there had been another MRI, he had not received
6 that. So my position is, because there was a gap, I
7 understand in South Carolina that whenever it's an emergency
8 room record or a bill that it's in close proximity to the
9 accident, that the Plaintiff can then testify that they were
10 having pain, and then they subsequently went to the ER, but
11 because there is a gap in treatment of three months or --
12 well, excuse me, almost two and a half months from the
13 accident, and then a little over two months from whenever
14 she last treated with Dr. Hatfield. It would be our
15 position that there has been no causal connection.

16 THE COURT: And I -- and that's exactly what I looked
17 at last evening, just to explain myself to you all. I
18 guess, maybe a ride home -- an hour drive home is probably
19 not a good thing, because I began to think about the trial a
20 little bit and I began to think about this gap in treatment
21 and this time period. And when I initially ruled, I think
22 that -- in all frankness with you all, I think I had thought
23 that gap was a little longer than it was. When I went back
24 and looked in my notes, I realized that it was about two,
25 two and a half months, and I decided that the Plaintiff

1 deserves the benefit of the jury making that decision as to
2 whether or not that is close enough in time. And, of
3 course, as you know, in South Carolina the standard to
4 submit something to the jury is very, very low. Very, very
5 low. And I got to thinking about it and I'm going to let
6 the jury decide that issue.

7 Now, on the wage -- lost wages, however, I just --
8 there just is not enough. I mean, there's just not enough
9 and I'm going to be able to do it, but your objection is
10 certainly noted and I appreciate -- I appreciate your
11 putting that on the record.

12 Did you have a chance to -- while I'm talking to you,
13 did you have a chance to look at Mr. Tinsley's proposed
14 charges?

15 MS. O'BRIEN: I did. And, Your Honor, I do not agree
16 with the language in either of those charges. I think it is
17 beyond the scope of what is allowed for case law. I, also,
18 think that the standard jury charges cover both of those
19 issues, and I went back and looked specifically at what you
20 had listed in your jury charges and I think that those are
21 completely appropriate and I think his charges are beyond.
22 They're very pro-Plaintiff and I understand why he wrote
23 them --

24 THE COURT: Sure.

25 MS. O'BRIEN: -- but I think that they are -- I don't

1 -- I do not think that they are fair to both sides.

2 THE COURT: Okay. All right. Yes, sir.

3 MR. TINSLEY: At least with respect to the take the
4 Plaintiff as you find it, it's pro-Plaintiff law. I mean, I
5 don't -- you know, I don't --

6 THE COURT: I'm probably -- I want to think about it a
7 little bit more and we can -- and we can talk about this. I
8 certainly will let you know before you, you know, get up to
9 argue, but I'm probably going to -- probably going to
10 include that. I think that's probably what I'm going to
11 include from that is maybe another -- is maybe an extra
12 statement. I've done that before, an extra statement about
13 taking the Plaintiff as you find them.

14 What about mitigation from Ms. O'Brien?

15 MR. TINSLEY: I mean, I don't think there's evidence
16 that she hasn't mitigated her loss. I mean, they've made
17 the argument that she's gone to the doctor just to run up
18 bills, and now they're saying she hasn't gone to the doctor
19 enough.

20 THE COURT: Well, I agree. But, as I showed you all
21 last night, we're all entitled to change our mind. We --
22 no, I'm kidding. We -- I'm going to allow the mitigation.
23 I think that there's, at least, some question and there's
24 been enough question about continuing with treatment. And,
25 really, the only reason that I would include it is because

1 there is a -- is a claim now that she's continuing to suffer
2 from the effects of this and I think not following through
3 with some of the treatment, certainly, the jury could
4 consider that. Yes, sir.

5 MR. TINSLEY: And as for my first jury charge, they're
6 going -- that's dealing with the -- I guess, the minor
7 impact, you would say, and I think that just will avoid
8 confusion on the jury. Just basing it strictly off these
9 photographs, which is why I made the motion before the trial
10 to keep them out. So I think this --

11 THE COURT: All right. Well --

12 MR. TINSLEY: -- limiting instruction would --

13 THE COURT: I probably don't need an argument on that
14 one. I'm --

15 MS. O'BRIEN: I mean, I do want the first part. I
16 mean, we do -- there are going to be photographs. So I
17 think the first part of -- you know, that you can decide
18 what you want as to the photographs. Whatever those simple
19 jury charge is for photographs. I didn't see anything in
20 your jury charge about photographs.

21 THE COURT: I usually don't because --

22 MS. O'BRIEN: Okay.

23 THE COURT: -- I just tell them, you know, that they
24 can interpret the evidence that, you know --

25 MS. O'BRIEN: Okay.

1 THE COURT: But I don't mind adding something about the
2 photographs. I don't mind adding a little bit about it, but
3 --

4 MS. O'BRIEN: Yeah. But here's my issue.

5 THE COURT: -- going on, I think is an -- I think that
6 I'm being -- guiding them in interpreting those photographs.
7 I don't -- at the remainder of the charge. I'm not -- I'm
8 not going to charge that. Yes, ma'am.

9 MS. O'BRIEN: The only other addition is that I am
10 going to read into evidence an interrogatory, so I would
11 like an interrogatory request, also.

12 THE COURT: All right.

13 MS. O'BRIEN: And that was addressed where I used
14 interrogatories on cross-examination.

15 THE COURT: Okay. All right.

16 MS. O'BRIEN: Yeah.

17 THE COURT: And I didn't give them any the instruction
18 during the trial on that. All right. Anything else we need
19 to take up?

20 MS. O'BRIEN: No, ma'am.

21 MR. TINSLEY: None from the Plaintiff, Your Honor.

22 THE COURT: All right, then. Very well. Do we have
23 our jurors? Oh, we've probably still got a couple late.

24 MR. TINSLEY: I'm not -- I'm not sure.

25 (Whereupon, there was a brief pause in the

1 proceedings.)

2 THE COURT: Mr. Tinsley and Ms. O'Brien. Ms. O'Brien?

3 MS. O'BRIEN: I'm sorry.

4 THE COURT: You're fine. You're fine. I don't think I
5 had my mic on, but that's fine. The -- Dr. Hatfield -- the
6 video, and then the deposition transcript -- and what is
7 that? Is that the --

8 COURT REPORTER: This is for Ms. Cardona.

9 THE COURT: Okay. This is the Plaintiff's. The
10 Plaintiff's deposition transcript and the video of Dr.
11 Hatfield -- am I saying that right? We need to mark those
12 and I'd just propose to mark them as Court's Exhibit 1 and
13 2.

14 MS. O'BRIEN: I'm fine with that.

15 THE COURT: Fine with that?

16 MR. TINSLEY: Yes, ma'am.

17 THE COURT: All right. Very well.

18 MS. O'BRIEN: Thank you.

19 (Whereupon, Court's Exhibit Nos. 1 and 2 were marked
20 for identification purposes.)

21 (Whereupon, there was a brief pause in the
22 proceedings.)

23 THE COURT: All right. Everybody ready? All right,
24 then.

25 (Whereupon, the jury entered the courtroom at 9:40

1 a.m.)

2 THE COURT: Well, good morning, ladies and gentlemen.

3 I hope you had a good evening. Today is the first day of

4 spring. It doesn't look like it outside, but we'll hope

5 it'll all be up from here. We're now ready to begin with

6 the Defendant's case. Ready to proceed?

7 MS. O'BRIEN: Thank you, Your Honor. May I please call

8 Dr. Leary to the stand?

9 THE COURT: Please. All right.

10 JULIUS L LEARY, having first been

11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. O'BRIEN:

14 Q Good morning, Dr. Leary. If you will, state your name

15 for the record, please.

16 A Julius L. Leary, Jr.

17 Q All right. And, Dr. Leary, what do you do for a

18 living?

19 A I'm a trained obstetric gynaecologist.

20 Q All right. And where do you practice?

21 A Greenwood OB/GYN.

22 Q Okay. And how long have you practiced in Greenwood?

23 A I've been in Greenwood, coming up on my 35th year.

24 Q Okay. And how long have you lived in Greenwood?

25 A All my life, except for the 12 years of training.

1 Q All right. You were involved in an automobile
2 accident; is that correct?

3 A That's correct.

4 Q Okay. Tell me a little bit about what you did when you
5 got up that morning?

6 A I had surgery at the Outpatient Surgery Center. It
7 started about 7:30. So I got up, got in my truck, as usual.
8 I had my scrubs on, which I normally wear when I go to
9 surgery. Drove Highway 248 -- I live in Ninety Six, so I
10 drove on Highway 248 to Highway 178 to 25 South. As I was
11 coming into town the speed limits changed. I changed the
12 speed limit appropriately and as I was coming up to the
13 intersection where the accident happened, I fully saw the
14 red light, had my foot on the brakes, was decelerating. I
15 saw the car stopped at the red light, continued to
16 decelerate, and thought that I had come to a complete stop.
17 At the very last minute -- this is when -- I don't know if
18 you all remember, but this when gas prices were like 3.50 or
19 3.75 a gallon or something like that and there was a new
20 filling station across the street, and I just, right before
21 stopping, diverted my attention over to see what the prices
22 on that gas station were, and when I did, I rolled in and I
23 bumped the car in front of me.

24 Q All right. And you've heard testimony from the
25 Plaintiff, Dr. Leary, that you were going in access of 35

1 miles per hour when you made contact with the Plaintiff. Do
2 you agree with that statement?

3 A That's absolutely not true. I had my foot on the
4 brake. I was almost at a complete stop.

5 Q All right. And, Dr. Leary, there is also -- there was
6 a mention in the Plaintiff's medical records that her
7 vehicle was pushed into the intersection as a result of this
8 accident. Is that statement true in any way, shape, or
9 form?

10 A No. In fact, when the accident occurred, I got out and
11 walked. There were no skidmarks. As you all know, most
12 cars of made of plastic. The front, the grills and the
13 bumpers and stuff are plastic or either fiberglass that
14 cracks very easily. There was no cracked fiberglass, no
15 pieces of headlight, no pieces of taillight, no damage at
16 all to either vehicle. The -- no skidmarks. Nothing like
17 that.

18 Q All right. Dr. Leary, I'm to show you what I'm going
19 to mark as Defendant's Exhibit No. 1.

20 MS. O'BRIEN: And I'm actually going to mark all of
21 them, so it's a total of six.

22 (Whereupon, Defendant's Exhibit Nos. 1 through 6 were
23 marked for identification purposes.)

24 Q Dr. --

25 MS. O'BRIEN: Any objection to the pictures?

1 MR. TINSLEY: Just to note my prior objection that I
2 made prior to the trial.

3 THE COURT: I'm sorry?

4 MR. TINSLEY: I just note my prior objections.

5 THE COURT: All right. It's noted for the record.

6 Q Dr. Leary, let me show you what has been marked as
7 Defendant's Exhibit No. 1. Can you tell me what Defendant's
8 Exhibit No. 1 is?

9 A That is the front of my truck after the accident.

10 Q All right. And is that an accurate and correct
11 depiction of the way the front of your vehicle looked --

12 A Yes. It --

13 Q -- after this accident?

14 A It is.

15 MS. O'BRIEN: Your Honor, I would move to have
16 Defendant's Exhibit No. 1 admitted.

17 THE COURT: All right. Subject to your objection from
18 earlier, it's so admitted.

19 (Whereupon, Defendant's Exhibit No. 1 was admitted into
20 evidence).

21 MS. O'BRIEN: May I publish to the jury?

22 THE COURT: Please.

23 Q Dr. Leary, I'm going to show you what's been marked as
24 Defendant's Exhibit No. 6. If you can tell me what
25 Defendant's Exhibit No. 6 is, please?

1 A That is a closeup of my grill and bumper of my truck.

2 Q And, Dr. Leary, is that an accurate and correct
3 depiction in the way your vehicle looked after this
4 accident?

5 A After the accident, it is.

6 MS. O'BRIEN: May I publish -- Your Honor, may I have
7 Defendant's Exhibit No. 6 admitted and published?

8 THE COURT: All right. Noting your objection from
9 earlier, I will admit it.

10 MS. O'BRIEN: Thank you.

11 (Whereupon, Defendant's Exhibit No. 6 was admitted into
12 evidence.)

13 Q And, Dr. Leary, while the jury is looking at the
14 pictures of your vehicle, at any time was there anything on
15 your vehicle? Any bumper plastic? Any piece of your
16 vehicle that needed to be repaired at all?

17 A Absolutely not.

18 Q Was there any damage to your vehicle whatsoever?

19 A None that I saw.

20 Q You've also heard the Plaintiff testify that this
21 impact was a hard impact. Do you agree with that statement?

22 A No, ma'am.

23 MR. TINSLEY: Objection. Pitting the witness.

24 THE COURT: I'm sorry?

25 MR. TINSLEY: She's pitting the witnesses testimony

1 against each other.

2 THE COURT: Overruled.

3 Q All right. Dr. Leary, do you agree with that
4 statement?

5 A It was a very minor impact. It was certainly not a
6 high impact.

7 Q Okay. And how fast do you believe that you were going
8 in the time of the accident?

9 A Two, three miles an hour.

10 Q All right. Dr. Leary, I'm also going to show you
11 what's been marked as Defendant's Exhibit No. 2. If you can
12 tell the jury what Defendant's Exhibit No. 2 is, please?

13 A That is the back of the vehicle that I hit after the
14 accident.

15 Q All right. And, Dr. Leary, can you describe the rear
16 of the vehicle, specifically with respect to the trailer
17 hitch?

18 A Yeah. And her deposition agrees with this. It says
19 that she has a towing package on her vehicle, which means
20 that it's made for towing and that sort of thing. It's a
21 trailer hitch with a ball on it.

22 Q Okay. And so, the -- what is sticking out is the
23 trailer hitch with the ball; is that correct?

24 A That's correct.

25 Q And then, there is the bumper; is that correct?

1 A That's correct.

2 Q All right. Was there any damage done to your vehicle
3 as a result of the trailer hitch in your vehicle making
4 contact with one another?

5 A There may have been a blemish somewhere, but not any
6 kind of damage or anything like that.

7 Q Okay. And, Dr. Leary, is the Defendant's Exhibit No. 2
8 an accurate and correct depiction of the way the Plaintiff's
9 vehicle looked after this accident?

10 A It is.

11 MS. O'BRIEN: Your Honor, we would move to admit
12 Plaintiff's Exhibit -- excuse me, Defendant's Exhibit No. 2
13 and publish.

14 THE COURT: All right. Same?

15 MR. TINSLEY: Making the same objection.

16 THE COURT: All right, then. It's noted and admitted
17 and published.

18 (Whereupon, Defendant's Exhibit No. 2 has been admitted
19 into evidence.)

20 Q And, Dr. Leary, I'm going to show you Defendant's
21 Exhibit No. 3, which is just another view of the Plaintiff's
22 vehicle after the accident. Do you recognize that picture?

23 A That is her vehicle again. Same vehicle.

24 Q And, Dr. Leary, is that an accurate and correct
25 depiction of the way her vehicle looked after the accident?

1 A Sure. I can see no damage there. I see no damage
2 here.

3 Q All right. After the accident, you had an opportunity
4 to get out of your vehicle and look at her vehicle, correct?

5 A Correct.

6 Q Did you see any damage to her vehicle?

7 A No. Again, there was nothing on my vehicle. There was
8 nothing on her vehicle. No broken plastic, no taillights,
9 no skidmarks, no anything.

10 MS. O'BRIEN: All right. If I may publish Defendant's
11 Exhibit No. 3 and have it admitted.

12 THE COURT: All right. Any -- the same objection?

13 MR. TINSLEY: Same objection.

14 THE COURT: All right. That's noted and it's admitted.

15 (Whereupon, Defendant's Exhibit No. 3 was admitted into
16 evidence.)

17 Q Dr. Leary, there was testimony yesterday from the
18 Plaintiff regarding the bill that she received from -- or
19 the bill that was sent to her lawyer with respect to Self
20 Regional Medical Center and there was a mention about there
21 being a HIPAA authorization and that's why the bill was sent
22 to the lawyer. You are in practice; is that correct?

23 A Correct.

24 Q Had your office and have you received HIPAA
25 authorizations before?

1 A Yes. I have.

2 Q And whenever you all receive HIPAA authorizations for
3 medical records, do you then make sure that the bill goes to
4 the person that sent the HIPAA authorization?

5 A If they have --

6 MR. TINSLEY: Objection. What his office does and what
7 Self Regional do are not the same thing.

8 THE COURT: I'll allow him to testify to what his
9 office does and just know that -- certainly and I know
10 you'll point it out on cross-examination. All right. Go
11 ahead.

12 A HIPAA, for educational purposes, is the way to protect
13 patients' rights and protect patient information, so that if
14 I get a request from -- if you authorize a request for a
15 document or your medical record to be sent somewhere else, I
16 do not change the name on that to a law firm or to whatever.
17 It stays in your name, and then I send a copy of that, per
18 your authorization, to that entity.

19 Q Dr. Leary, in your experience, is there any reason why
20 a bill would be going to a law firm?

21 A Yes, ma'am.

22 Q What is it?

23 A I think it's because I'm sitting up here today.

24 Q Okay. You think it's because there's a lawsuit
25 involved?

1 A Oh, yes, ma'am.

2 Q All right. And, Dr. Leary, I want to talk about after
3 the accident. What did you do immediately after the
4 accident?

5 A Well, after -- as I said, after the -- immediately
6 after the accident, I got out of my truck and I had my
7 scrubs on. It was pretty obvious I was a physician. Walked
8 -- looked at the vehicles real quickly and saw there was no
9 damage there, walked over to her window and her window was
10 rolled up. It was a pretty nice August morning, but her
11 window was rolled up and she was inside saying, "I've got a
12 terrible headache", and I tapped on the window and I said --
13 I said -- and she cracked it just a little bit, which was a
14 little bit unusual. But she cracked it and I said, "Ma'am,
15 I'm Dr. Leary." I said, "I just ran into the back of you."
16 I said, "I don't see any damage to either vehicle", and
17 everything, and she just started screaming and she was
18 holding the front of her head and she was saying, "I have a
19 headache, I have a headache." That, generally, is not what
20 a person complains of when they immediately are in an
21 accident. Generally, they complain of their head hurting,
22 but not a frontal headache. I did not see any blood. I
23 didn't see any bruising. I didn't see any cuts. I didn't see
24 any kind of evidence of trauma to her, but I said, "Can I do
25 anything for you?" And she said -- she said, "No, I've

1 already called 911 and the ambulance and the police are on
2 their way." This was 30 seconds after I bumped her, so
3 there was nothing for me to do except for to go back. She
4 rolled the window back up and I went back and sat in the
5 truck until the officer came.

6 Q And, Dr. Leary, when you and I first became involved
7 and when you first talked to me about this case, what was
8 your initial concern after her response?

9 MR. TINSLEY: Objection to what he was talking to his
10 lawyer about.

11 MS. O'BRIEN: Well, I think that's my privilege --

12 THE COURT: It is.

13 MS. O'BRIEN: -- and if I choose to waive it, I can.

14 THE COURT: It is. Just -- I'll caution you not to
15 become a witness in the case, but go ahead.

16 MS. O'BRIEN: Thank you.

17 A I -- this was -- I've handled car accidents before, and
18 I've handled trauma and that sort of thing. And I told my
19 lawyer, I said, something is just not right here. I mean,
20 her exaggerated response to a minor impact, her screaming,
21 her keeping the window rolled up, it just -- it's just not a
22 normal response in this type of accident.

23 Q All right. And what did you suggest that we do?

24 A I said, I think we need to get the emergency room
25 records and let me review them to see if I can see something

1 that makes sense out of this, because it just didn't make
2 any sense. And so, I think that's when you got the records
3 and everything.

4 Q All right. And what did we find out when we got the
5 records?

6 A We found out that she was -- that she had marijuana in
7 her system. And, of course, marijuana is a mind-altering
8 drug. Not saying it's a terrible thing, but it's a
9 mind-altering drug. And I think -- now, thinking back over
10 it, that her responses were exaggerated, and because they
11 were exaggerated, and her perception of the accident was
12 exaggerated, that caused the emergency room to run excessive
13 amount of tests on her, caused her to perceive the accident
14 different than what it was, and caused the bills to be run
15 up a lot higher than they would have been in a normal
16 response. In somebody who had responded normally.

17 Q Were you injured at all in this accident?

18 A Not at all.

19 Q Did you have to seek any type of medical treatment as a
20 result of this accident?

21 A I didn't even think about it.

22 MS. O'BRIEN: All right. That's all the questions I
23 have. Thank you.

24 THE COURT: Mr. Tinsley?

25 CROSS-EXAMINATION

1 BY MR. TINSLEY:

2 Q So you don't dispute that you ran into the back of Ms.
3 Cardona?

4 A Not at all. It was my fault. I admitted to her. I
5 admitted it to the police officer.

6 Q And you would agree with me that we have rules of the
7 road to govern everybody's conduct on the road?

8 A Absolutely.

9 Q And that is to keep people from getting injured, for
10 the most part?

11 A Sure.

12 Q Okay. And you were distracted that morning as you were
13 driving?

14 A Correct. Right before I stopped.

15 Q So for at least that period of time you weren't
16 watching where you were going?

17 A I was not.

18 Q All right. And let's talk about this marijuana. It
19 was a urine screen that was in the medical records that you
20 reviewed?

21 A It was.

22 Q And you would agree with me that that doesn't show
23 whether it was active in her system at the time of the
24 accident?

25 A It means that she had THC in her bloodstream.

1 Q You're sure?

2 A Yeah, sure. Your kidneys filter your blood, so it has
3 to come from the blood.

4 Q Okay. But you would agree that marijuana could have
5 been smoked a week before?

6 A It could have, or it could have been smoked 15 minutes
7 before.

8 Q Okay. And the police officer didn't charge her with
9 driving under the influence, to your knowledge, did he?

10 A No. He did not.

11 Q Okay. All right. And you've never treated Ms.
12 Cardona, have you?

13 A No. I've never treated her, but I think she knows me.

14 Q Okay. So your knowledge of her injuries come from the
15 records you looked at, as well, as the testimony here in
16 this case?

17 A And from my initial observation of her after the
18 accident.

19 Q And did you ever observe her after the accident until
20 we got to court?

21 A No, sir.

22 Q Okay. You never called her and checked on her to see
23 how she was doing?

24 A In cases of liability, we're told not to do that.

25 Q So that's a no?

1 A That's a no.

2 Q And you don't have any control over Self Regional
3 Healthcare's billing policies, do you, as far as how they
4 make out their bills?

5 A I wish I did.

6 Q And the wreck was in August of 2013, so that's when
7 Self would have generated the emergency room bill,
8 presumably, correct?

9 A Presumably.

10 Q Okay. And the lawsuit wasn't filed until November of
11 2015. Does that sound right to you?

12 A That's when it was filed. That's not when it was
13 started.

14 Q And you talked about what you and your attorney
15 discussed, initially. Isn't it true that you all's
16 discussion centered around minimizing Ms. Cardona's
17 recovery?

18 A Well, it centered around getting to the truth.

19 MR. TINSLEY: Okay. No further questions.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. O'BRIEN:

23 Q Dr. Leary, have you had an occasion to work with Ms.
24 Gelais or Ms. Cardona's ex-husband?

25 A I have.

1 Q Do you believe that Ms. Gelais --

2 MR. TINSLEY: Objection. This is way past anything I
3 cross-examined him on.

4 MS. O'BRIEN: Actually, he asked if she knew her -- if
5 they knew one another.

6 MR. TINSLEY: No. I asked him if he treated her.

7 THE COURT: You all approach for just a second. I'd
8 like to know what this is about.

9 (Whereupon, a sidebar was held.)

10 Q Dr. Leary, have you had an occasion to employ Ms.
11 Gelais' ex-husband?

12 A I have.

13 Q Do you believe that Ms. Gelais was aware of who you
14 were at the time of this -- or after this accident?

15 A I think, initially, she -- probably not facial
16 recognition, but when I said, I'm Dr. Leary and I was
17 obviously in scrubs, I mean, that would be a -- it'd be a
18 guess. But her husband has worked for me and I feel sure
19 they probably -- she knew that.

20 Q Okay. And there's been a lot of mention about how
21 there was a lawsuit filed in October of 2015. You and I
22 have been involved in this case way before 2015; is that
23 correct?

24 A Yeah, that's correct.

25 Q And this accident happened in 2013, correct?

1 A It did.

2 Q And she was seeking damages immediately after this
3 accident as a result of this accident; isn't that correct?

4 A Yeah. There would be no reason for Watson Law Firm to
5 get her bill immediately after the accident. Now, the
6 interesting thing is that the police officer did not charge
7 me. I did not get a ticket for driving too fast, for
8 reckless driving, for negligent driving. He did not charge
9 me with anything from this. I think he looked at the --
10 looked at the whole picture and didn't even give me a
11 ticket.

12 MS. O'BRIEN: That's all the questions I have. Thank
13 you.

14 THE COURT: Mr. Tinsley, anything else for this
15 witness?

16 MR. TINSLEY: Briefly, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. TINSLEY:

19 Q You weren't charged criminally, but he did cite you at
20 fault for the accident, correct?

21 A No, sir.

22 Q Well, he found you contributing to the collision and
23 Ms. Cardona didn't?

24 A Oh, I admitted that to start off with. I ran into the
25 back of her.

1 Q So that's a yes?

2 A Oh, yes.

3 MR. TINSLEY: Okay. No further questions?

4 THE COURT: Anything else?

5 MS. O'BRIEN: Nothing further.

6 THE COURT: Doctor, you can step down.

7 (Whereupon, the witness stepped down for the witness
8 stand.)

9 THE COURT: Ms. O'Brien, anything else?

10 MS. O'BRIEN: Your Honor, the last thing that the
11 Defendant would like to read is the Plaintiff's response to
12 interrogatories, the questions that we sent with regards to
13 permanent injury.

14 THE COURT: All right. Will the attorneys approach for
15 just a moment?

16 (Whereupon, a sidebar was held.)

17 THE COURT: All right. Ladies and gentlemen, you are
18 about to hear some answers to interrogatories or an answer
19 to interrogatories read. I need to give you an instruction
20 as to what an interrogatory is. Pursuant to the rules of
21 court, any party may serve upon another -- any other party
22 written interrogatories to be answered by the party served.
23 Each interrogatory must be answered separately and fully in
24 writing under oath and signed by the person making them,
25 certifying, to the best of her knowledge, that the

1 information contained in that interrogatory is true and
2 correct. All right.

3 MS. O'BRIEN: Thank you, Your Honor. I would like to
4 read the Plaintiff's response to interrogatory number 30
5 that asks, "Do you allege that you have suffered permanent
6 injuries as a result of this accident? If so, please state
7 exactly what permanent injuries you allege to have suffered,
8 the nature and extent of said permanent injury and the name,
9 address and medical specialty of each physician who has
10 indicated to you or your attorney that you have suffered a
11 permanent injury as a result of the alleged incident". Ms
12 Cardona's response, "Yes. I have constant headaches and
13 pain in my neck, which runs down to my shoulders. I cannot
14 sleep well due to the pain in my neck when I lay down. I am
15 in constant pain and depressed due to always being in pain".

16 With respect to interrogatory number 12, "Had you
17 consumed any alcoholic beverages, prescription medications,
18 or any other drug of any sort, including but not limited to
19 marijuana, on the date of the accident or within 24 hours
20 prior to the accident? If so, please state the type of
21 substance consumed, the amount consumed, and the time at
22 which the substance was consumed". Ms Cardona's response,
23 "No alcohol consumption or under the influence of any
24 illegal drugs".

25 Question number 13, "At the time of the accident, were

1 you under medical care for any physical, mental, or
2 emotional problem? If so, your answer should include the
3 nature of the problem, the type of treatment of you were
4 receiving, and identify the medical personnel providing your
5 treatment". Ms. Cardona's response, answer, "No. I was not
6 under any medical care". And the Defense rests, Your Honor.

7 THE COURT: All right.

8 MR. TINSLEY: I will just ask that the date be read.
9 These were submitted February 2, 2016, just to make a record
10 complete.

11 THE COURT: All right. Very well. Very well. Mr.
12 Tinsley, do you anticipate any reply testimony?

13 MR. TINSLEY: I don't think so, Your Honor.

14 THE COURT: All right, then. Ladies and gentlemen,
15 we've now come to a point where we've concluded all of the
16 testimony and evidence that's to be presented in this trial.
17 I'm going to ask you to step to your jury deliberation room
18 for a few moments. We need to take up a couple of matters,
19 and then we will turn next to closing arguments from the
20 attorney and my -- from the attorneys and my final charge on
21 the law. All right? Thank you so much. You still can't
22 discuss the case with one another, though. Thank you.

23 (Whereupon, the jury exited the courtroom at 10:09
24 a.m.)

25 THE COURT: All right. And any matters we need to take

1 up?

2 MS. O'BRIEN: Your Honor, the Defendant would like to
3 renew their motion for causation with respect to the
4 accident and with respect to future pain and suffering.

5 THE COURT: All right. I respectfully deny your
6 motions at this time and we'll turn next to -- yes, sir.
7 I'm sorry.

8 MR. TINSLEY: I will just ask that you direct the
9 verdict on the issue of negligence in the Plaintiff's favor.
10 There's no question he's admitted negligence, which a jury
11 charge is pretty -- covers that.

12 THE COURT: Right. Okay. All right. And I felt like
13 the record was clear about that earlier, but if not, to the
14 extent that it's necessary, based on what Dr. Leary says,
15 then I'll find that -- I'll direct a verdict as to
16 negligence. Anything --

17 MS. O'BRIEN: Your Honor, I just want to be clear. We
18 stipulate that we caused the accident --

19 THE COURT: Yes.

20 MS. O'BRIEN: -- and one of the problems of negligence
21 is causation --

22 THE COURT: Absolutely and I'm sorry. I misspoke and
23 that's the second time I've done that. I'm sorry. Just to
24 say that he was at fault -- he's admitted that he was at
25 fault in causing the accident.

1 MR. TINSLEY: And he had a duty and he breached it.

2 THE COURT: And he had a duty and he breached that
3 duty.

4 MR. TINSLEY: So the issues are causation and damages.

5 THE COURT: Yeah. That's exactly right. So --

6 MS. O'BRIEN: We agree to that.

7 THE COURT: Okay. Very good. Okay. Now, we'll next
8 turn to closing arguments. Do y'all anticipate lengthy
9 closing arguments? I wouldn't think so. My charge, I've
10 included something about mitigation. I've included an
11 additional statement with regard to you take the Plaintiff
12 as you find them. I have included the charge on
13 interrogatory. I will recharge the jury on that one. Other
14 than that, any objections to my charge from what you all saw
15 last night? Mr. Tinsley?

16 MR. TINSLEY: Just -- I would ask that my two charges
17 be --

18 THE COURT: Certainly. Certainly. And that's noted.
19 for the record. And if you want, I'd be happy to print off
20 -- you've got them? Okay. We'll mark those as a Court's
21 Exhibit 3 for the record, and I included -- just to be
22 clear, I included part of charge number two. I did not,
23 however, include -- I did not include charge number one.

24 MR. TINSLEY: Thank you, Your Honor.

25 (Whereupon, Court's Exhibit No. 3 was marked for

1 identification.)

2 THE COURT: Okay. Thank you. All right. And, Mr.
3 Tinsley, I know I don't have to say this to you, but you
4 know, of course, that if there's anything you're going talk
5 about so far as damages are concerned or anything like that,
6 for it to be when you first speak with the jury and not in
7 reply.

8 MR. TINSLEY: Yes.

9 THE COURT: I only say that because we've had a near --
10 well, a disaster of sorts in another county, so I just
11 wanted to remind you of that and not to tell you how to try
12 your case. All right. Do you all want a break? Anybody
13 want a break? We need to print off the jury charge, so if
14 you all do want a --

15 MS. O'BRIEN: That's fine.

16 THE COURT: -- take a little break, feel free to. Mr.
17 Tinsley, will you take a look -- I mean, this is the
18 simplest verdict from there's ever been, but do you mind
19 taking a look at it? Thank you so much.

20 MS. O'BRIEN: We still need the issue on causation.

21 THE COURT: You want an interrogatory -- a special
22 interrogatory as to causation?

23 MS. O'BRIEN: Correct.

24 THE COURT: All right.

25 MS. O'BRIEN: Because this presumes that they either --

1 that they have to award money, and my argument is they have
2 to get to the element of causation before they go to
3 damages.

4 THE COURT: Well, sure. But to find for the Plaintiff,
5 they've got to -- they've got to find that she's entitled to
6 damages, as well.

7 MR. TINSLEY: I think it's implicative.

8 MS. O'BRIEN: And my argument would be it's implicit to
9 use, not the jury. We get it.

10 MR. TINSLEY: The charges on the -- on the elements were
11 there.

12 THE COURT: Yeah. All right. I may work on this one a
13 little bit myself, so -- all right. Are y'all ready to
14 bring the jury back in? Is everybody good?

15 (Whereupon, there was a brief pause in the
16 proceedings.)

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

18 (Whereupon, the jury entered the courtroom at 10:16
19 a.m.)

20 THE COURT: All right. Ladies and gentlemen, we are
21 now ready to begin with closing arguments.

22 MR. TINSLEY: Thank you, Your Honor. May it please the
23 Court.

24 THE COURT: Yes.

25 CLOSING ARGUMENT

1 BY MR. TINSLEY: All right. Ladies and gentlemen of
2 the jury, as I told you at the beginning of the case
3 yesterday, this case, it's about a breakdown of our system
4 and to ensure that people follow the rules -- that they go
5 out there, they pay attention to where they're and don't hit
6 other people. That is why we come to court and have juries
7 enforce the rules because, otherwise, people could go wreck
8 people and if not charged criminally, there would no remedy
9 for it and that's what we're asking you for here today, to
10 look at it that way. And I'm going to go through the
11 elements of a negligence case, which is what Ms. Cardona has
12 brought against Dr. Leary. The first issue of negligence
13 is, there has to be a duty. Well, that's easy. Everybody
14 on the road owes a duty to everybody else to pay attention
15 to where they're going, to keep a lookout, to stop when
16 there's a car in front of them stopped at a red light. The
17 second issue is, the Defendant has to breach that duty and
18 here, he's not disputing that he's breached that duty. He's
19 admitted that he ran into the back of her because he was
20 paying attention to see where he could get the cheapest gas
21 price rather than watching out for others on the road. So
22 that gets us to the crux of the case. Did he cause damages?
23 Causation of damages are our last two issues. Well, he hit
24 her in the back and we've heard -- they've produced pictures
25 of the car with, admittedly, minimal damage, but, you know,

1 we all know from common experience that you can't just look
2 at a car and tell how somebody -- how much somebody was hurt
3 from looking at it. I mean, we've all seen cars that were
4 demolished and nobody was hurt and this would be the inverse
5 of that situation. And it's unfortunate for Ms. Cardona and
6 there very well may have been a lot of people that would not
7 have been injured at all from this accident. But, as the
8 Judge will instruct you on the law, the Defendant who's
9 tortious conduct, who's negligence, injures a Plaintiff
10 takes the Plaintiff in the condition they find him -- as
11 they find him. If the Plaintiff -- you know, if the
12 Plaintiff's more susceptible to being injured, then the
13 Defendant just has to deal with it and be responsible for
14 the damage he caused. And let's talk about that.
15 Unfortunately, yeah. It would be great if we could just
16 rewind the clock, take the pain that Ms. Cardona suffered
17 and continues to suffer to some extent away from her, but
18 we're people. We can't do that just because we're in a
19 courtroom. All we can do is substitute for it and that's
20 compensation and that's what we're asking you for. And
21 they've painted Ms. Cardona as a greedy, selfish -- just
22 somebody with their hand out, wanting a check, whereas I
23 would commit to you, she has been the exact opposite. She
24 got up here and testified, she just wants some medical bills
25 paid and I'm going to explain to you that's entitled to more

1 than that. She's entitled to not only her medical bills
2 being paid, but, also, pain and suffering and the loss of
3 enjoyment of life. Let's start with medical bills. Her
4 total bills, which have been entered into evidence, have
5 totaled \$23,459.62 and they have argued that she ran up --
6 went to the doctors, kept going up there to run up bills.
7 Well, I'm just going to tell you that a good chunk of these
8 bills came from the first day, the day she went to the
9 emergency room. The Self bill was \$13,662, and I think it's
10 appalling that the Defense is arguing that because Marvin
11 Watson's name is on the bill because he got a copy of it
12 that, somehow, she's not entitled to that. Use your common
13 sense. He needed to get a copy of the bill for whatever
14 reason. I don't know. She very well may have lost her
15 original copy. You know, I know we all lose plenty of
16 things, needed a clean copy. But, anyway. That's the first
17 bill and we all know that she doesn't have any control over
18 Self charges her, and then the Self Regional ER physicians,
19 \$545 that day and the EMS bill to get to the hospital was
20 \$515. So you're talking just under \$15,000 on that day
21 alone, and then her other bills were -- we've heard from Dr.
22 Hatfield that he treated with her multiple times. Had
23 tightness in her neck that was consistent with somebody
24 who'd been rear-ended and that he -- when he felt like he
25 couldn't help her anymore, he sent her to get a MRI of her

1 neck, and then sent her on the Dr. Scott. And he testified
2 that Dr. Scott mentioned whiplash, which is consistent with
3 Dr. Hatfield's treatment. Then, Dr. Scott sent her to --
4 back to Self to get a couple epidural steroids in her neck,
5 which, unfortunately, didn't help. And that's another thing
6 that has irked me about this case. They're arguing that she
7 has run up bills, is faking an injury or exaggerating an
8 injury or whatnot. She went through physical therapy, she
9 so she's got to do all that exercising, working out --
10 getting worked on by these therapists. She described how
11 unpleasant that steroid injection was. And so, you know,
12 that just seems like an awful lot for somebody to be faking
13 an injury to me. I just -- it doesn't pass the smell test.
14 So I'm going to -- you are ultimately the -- you determine
15 what her damages were in this case caused by the Defendant.
16 And there's no set way to do it, but I'll just write some
17 numbers up here and give you an idea for one formula, you
18 can use it. All right.

19 Well, let's start with the medical bills. Those equal,
20 as I said a minute ago, \$23,459.62. Our next elements --
21 and I'm going to kind of combine them because while they're
22 a little bit separate, they kind of run together. That
23 would be your pain and suffering and your loss of enjoyment
24 of life. The pain and suffering would be the damage she
25 feels, the pain she has felt since the date of this

1 accident. The hurt neck. The suffering, not being able to
2 sleep at night. And then, you also have loss of enjoyment
3 of life and she is entitled under the law, as the Judge will
4 instruct you, to compensation for that. And that would be
5 things like she can't walk like she used to. Her energy's
6 lower than she used to. She tries to play the guitar and
7 the piano like she used to, but she just can't do it like
8 she used to. So she's entitled to compensation for that
9 under the law. We'll just write pain and suffering and loss
10 of enjoyment. We'll do them like this. And there's no
11 number like there is with the medical bills where we can
12 just point to it and say black and white, here it is.

13 So there's many ways that people can try to put a
14 number on it, because that's what you're going to have to
15 do. And one way that I looked at doing it, she felt pain
16 and suffering, she's testified, and still to this day. And
17 the date of the accident was August 9, 2013. So that's
18 1,674 days ago. So one thing you could do would be to
19 figure out, all right, let's see she's lost everyday between
20 the pain she has to suffer, as well as not being able to do
21 what she used to do. And, you know, you can put whatever
22 number you want on that. I -- you know, I just put a very
23 conservative number of \$30 per day, which would come to --
24 you do six -- multiply 1,674 times whatever number you come
25 up with. And if you do it by 30, it comes out to \$50,220.

1 Whatever you think she's entitled to for pain and suffering.
2 And, also, I haven't even included any future problems, pain
3 and suffering, that she's going to experience and the loss
4 of enjoyment of life. If it hadn't gotten better now, it
5 doesn't appear that it's going to happen. And the Judge
6 will tell you that, under the law, she's entitled to
7 compensation for her future pain and suffering. And
8 one thing to be clear. Today is her only day in court.
9 Today is her only shot. It's not like she can -- if she
10 gets worse, she can come back. This is it. But, whatever
11 number she's entitled to for past, present, and future pain
12 and suffering and loss of enjoyment that you come up with,
13 you would add it to the medical bills. So if you did --
14 picked the number that I did, add 23,459.62 to 50,220, which
15 would come up with -- that would come up to \$73,679.62
16 there.

17 So, like I say, you're the judges of what her damages
18 are. That's one way you can go about attacking it in a
19 mathematical sense. And let's talk about some of the smoke
20 screens we've heard today. They were relying on her getting
21 some chiropractor treatment before this accident. She
22 testified she -- yeah. She get stressed out. She was going
23 through a lot. Her mother had died that April. She would
24 go get a massage and get an adjustment from the
25 chiropractor. Never got any treatment from the medical

1 doctor for those injuries. Dr. Hatfield made clear he never
2 treated her beforehand for that and -- but after the wreck,
3 he did and she didn't seek any chiropractic treatment at
4 that point. And let me let you in on a little secret. Had
5 she gone to the chiropractor, they would have pointed at
6 that as junk science, that's just getting bills up. That's
7 what we would have been hearing from the Defense, had that
8 happened. But I don't think that's of any relevance. And,
9 you know, they've beaten her up about when she was on some
10 depression pills years and years before this accident. And
11 then, you know, she doesn't remember. I mean, you know, she
12 had a time after her husband died when she struggled with
13 that, but that -- clearly, there's no link that that had
14 anything to do with this accident or why -- or how she was
15 injured in it. So that's all irrelevant.

16 They're trying to paint her as a bad person that can't
17 be believed and what that's all about. And I -- you watched
18 her testimony. She didn't get up there and lie. She
19 answered all of the questions straightforward, it appeared
20 to me. I think you saw that, as well. And the other smoke
21 screen is this marijuana. It was -- clearly, it didn't have
22 anything to do with the accident. She wasn't at fault. She
23 was sitting at the stop light like she was supposed to be
24 when she got rear-ended. So they're just doing that to show
25 that she's some sort -- trying to show she was sort of

1 druggie who was out of it, but she wasn't charged with a
2 DUI. I can tell you, I do a decent amount of criminal
3 defense work. When the police have that suspicion for DUI,
4 they do not hesitate to write a blue ticket for somebody for
5 that. And no marijuana found. And the doctor himself
6 testified that she may not have been under the influence.
7 It could have been seven days earlier. You just don't know
8 based off that test, so I wouldn't give that any weight. I
9 wouldn't give that any weight. It's distracting you from
10 the issue. The issue being that my client was injured in
11 this car wreck, and as a result she's got to live with it.
12 She's got to deal with it. And this is her one shot at
13 justice.

14 And, as I've told you at the beginning of the case,
15 the burden of proof is on us and I submit to you that we
16 have met that burden. We don't have to tilt it way down
17 here in our favor like the State does in a criminal case
18 when they want to convict somebody. We just have to have
19 slight -- the greater weight, ever so slightly, in our favor
20 and here we have a case where my client, Ms. Cardona, was
21 doing exactly what she was supposed to do. Stopped at the
22 red light and gets hit and her whole life's turned upside
23 down. And it's not pleasant to come up here and put your
24 life -- make it an open book in open court to be picked
25 apart by the defense attorney and the Defendant, but she's

1 done that. And she's -- she wants her justice and you are
2 the folks who can give it to her, and I thank you for
3 delivering my client.

4 MS. O'BRIEN: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 CLOSING ARGUMENT

7 MS. O'BRIEN: Ladies and gentlemen of the jury, what
8 the Plaintiff's attorney keeps saying is that she is
9 entitled to compensation under the law. No, she's not
10 entitled to compensation under the law unless she has proven
11 that she was injured as a result of this accident. The
12 reason why I asked her the questions that I asked her about
13 depression, neck issues, back issues, not because anybody
14 thinks that if you have suffered from depression that that
15 means that you're a bad person. It's because, if you're
16 going to come into the courtroom and say, I am now depressed
17 as a result of this accident from the pain, then I have a
18 right to know if before this accident, you were suffering
19 from depression. So the reason why I asked her those
20 questions was because she said in her discovery responses
21 where she agreed to tell the truth that number one, she had
22 constant headaches as a result of this accident. So then, I
23 asked her in her deposition, "Ms. Cardona, did you suffer
24 from headaches at all before this accident?" and her
25 testimony when she swore to tell the truth was that she did

1 not have any prior headaches. I asked her if she had ever
2 had a CT scan to her head before this accident and her
3 response under oath was no. I asked her if she suffered
4 from any type of depression before this accident and she
5 testified no. The reason why I brought out the fact that
6 she had continued to suffer from depression before this
7 accident is because she has testified on the witness stand
8 and under oath in her deposition that she did not have those
9 issues. And whenever I said, well, when did you start
10 having them, her response yesterday was, "In April of 2013,
11 I went and had some treatment for my neck and my back after
12 my mother died,". Okay. Well, how does that explain 2011,
13 the chiropractic treatment, and 2012, the chiropractic
14 treatment? It doesn't. Those records were not provided to
15 me in discovery because they did not want you to know about
16 them. The records were not provided to me in discovery with
17 respect to her depression that was in 2010, 2011, 2012, and
18 2013 because they did not want you to know about them. When
19 I asked her who her primary care physician was, she said it
20 was Dr. Hatfield since 2003, yet Dr. Hatfield says the first
21 time he treated her was in 2012 and he's not prescribed her
22 Zoloft, which is an anti-depressant. So who is treating her
23 for these issues that she claims that she has never had
24 before this accident. Then, with respect to the shoulders,
25 she testified that she did not feel any type of shoulder

1 pain at the emergency room, she did not feel any emergency
2 pain -- any shoulder pain when she Dr. Hatfield. It wasn't
3 until months later that she started having shoulder pain and
4 numbness and tingling in her arms. Explain to me how, if
5 this accident caused numbness and tingling in your arms, you
6 would not have felt it within a few days after this
7 accident. And why is this important? Because it all goes
8 to credibility and that is exactly what this case is about.
9 This case is about, that when you are involved in an
10 accident and you say, I was hit going 35 -- more than 35
11 miles per hour. My car was pushed into the intersection.
12 All of that is so that when the doctor hears you, the doctor
13 believes that you are injured. Had the doctor known that no
14 one was going 35 miles per hour, that there's no damage to
15 the vehicles, that she wasn't complaining of all of this
16 pain at the emergency room, that she was smoking marijuana,
17 that she felt dizzy, that she had an exaggerated sense of,
18 oh, my gosh, I immediately have a headache, it is a totally
19 different case. Totally different. The emergency room
20 doctor had to take her exactly like they found her and when
21 she went to the emergency room, she said, my head, my neck,
22 my back, my chest, my stomach, everything is hurting. Do
23 you realize the only thing they did not x-ray was her legs
24 and her feet? Her entire upper body to her abdomen was
25 x-rayed as a result of getting in an accident where someone

1 was going two to three miles per hour when they tapped her.

2 Plaintiff's attorney keeps saying, why would the bills
3 be sent. Well, I've never seen bills sent to an attorney
4 before. Why would the bills be sent to her attorney? It's
5 not just one. Take a look at the bills. The day of the
6 accident, the bill gets sent to her attorney. I asked her
7 if she's ever received that bill and she can't remember.
8 She hadn't received the bill. That means she hadn't paid
9 the bill. She's coming into court asking you to reward her
10 and award her money for bills that she hasn't ever paid.
11 Then, we've got a bill for the MRI to her attorney. Another
12 bill. Watson Law Firm, 333 Main Street. Did she receive
13 that bill? Clearly not. The bill is addressed to her
14 attorney. Ladies and gentlemen, I submit to you that
15 when you are involved in an accident, you absolutely have a
16 right to be awarded money if you are injured. I can assure
17 you, I don't stand before you and say, no, you don't have a
18 right to receive money. The reason why I went to law school
19 was for justice. I can assure you of that. And I will tell
20 you, if she was injured and if she had told the truth from
21 day one about her injuries, which -- I'm not sure what they
22 are still to this day. She now comes to court saying, it's
23 2018 and I'm still hurting in my neck. Still hurting in my
24 head. Still hurting all over. I can't drive. I can't
25 walk. I can't play the guitar. I can't play the piano.

1 Use your common sense. For me, that's what this case is
2 about. Use your common sense.

3 Look at the pictures where she testified that she was
4 hit going 35 miles per hour. That she was hit so hard that
5 she was pushed into the intersection. That she was hit so
6 hard that she now has neck, back, headaches, can't sleep,
7 can't play the guitar, can't walk, can't drive. She can't
8 do anything. Her life has been altered forever as a result
9 of this accident. Use your common sense and tell me what
10 this case is about. She sat on the witness stand yesterday
11 and she said all she wants is her medical bills to be paid,
12 yet, today, they're not asking for just her medical bills to
13 be paid. The case from day one has been exaggerated, has
14 been completely overstated. They have hid the ball and I
15 will tell you, I don't take it lightly when I say Ms.
16 Cardona has not been honest about her prior treatment.
17 She's not been honest about what happened in this accident,
18 and I do not believe she's being honest about her injuries
19 as a result of this accident. Look at the case. Look at
20 the facts. Listen to what is being said. Listen to what
21 was testified to. But more importantly, use your common
22 sense. If this case is about honesty, if this case is
23 about, I was involved in an accident and here's what I
24 injured, why not -- and marijuana is not a factor, why not
25 admit then that you were smoking? Who cares? Why not admit

1 that you had depression before the accident? Who cares?
2 Why not admit that you sought chiropractic treatment before
3 the accident? Who cares? Why not admit that you'd had a CT
4 scan to your head? Who cares? Because it was all about
5 hiding the truth.

6 When you go back to the jury room, all of you will have
7 to collectively decide what, if anything, she is awarded. I
8 would submit to you that the Plaintiff in this case has not
9 met her burden of proof and has not proven that she was
10 injured as a result of this accident and that is based upon
11 the fact that, yet -- whether it was in her deposition or
12 yesterday, she has yet to be honest about what exactly
13 happened. And if she can't be honest about the accident and
14 if she can't be honest about her prior injuries, then what
15 is she being honest about? Why would you believe that she
16 was injured from this accident, and then reward her money as
17 a result of this accident? Thank you for your time. I have
18 watched you. You have listened. I don't envy your position.
19 If we could agree, I can assure you, we would not be here.
20 We cannot agree, so we need your help. Whatever decision
21 you render, both sides will respect it and it will be your
22 verdict and it will be your version of the truth. Thank you
23 very much.

24 THE COURT: Anything in reply, Mr. Tinsley?

25 MR. TINSLEY: Yes, Your Honor. May it please the

1 Court?

2 THE COURT: Yes, sir.

3 CLOSING ARGUMENT

4 MR. TINSLEY: Now, dates from several years back,
5 they're a funny thing. Ms. O'Brien just told you that Dr.
6 Hatfield didn't begin seeing Ms. Cardona until 2012 and he
7 actually said 2010 and I'm not saying she's trying to
8 mislead you, I'm just saying it's hard to keep up with
9 dates. Especially things that happened several years ago.
10 So to hold that against her, to call her a liar -- and make
11 no bones about it. That's what they're doing. A liar and a
12 faker is what they're calling her. I think that would be a
13 gross miscarriage of justice. And as for the depression,
14 she specifically said -- yeah. She was upset about the pain
15 she feels and the pain she's in. She's not seeking any
16 extra damages because she's clinically depressed. She said
17 that from the jury stand. So, once again, smoke screen and
18 that's why we're here today. She said marijuana doesn't
19 matter, who cares. If they didn't care, she wouldn't have
20 brought it out in court. She wants to paint her as a bad
21 person, so, obviously, it cares in her mind and I think
22 that's pretty low and that's why we're here today is for
23 these smoke screens and for her to call my client a liar.
24 So, she's seeking justice and we're asking that you give it
25 to her. And she's been consistent throughout. She's -- her

1 neck and her headaches -- yeah. She's testified. Yeah.
2 I've had some problems with headaches with my sinuses up in
3 the front, top of my head, but this is different. This is
4 in the back of my head, where her necks hurting, after she
5 was rear-ended. After she was rear-ended through no fault
6 of her own. And here in Greenwood, we've got to uphold the
7 law, and that's what we're asking you to do.

8 MS. O'BRIEN: Objection.

9 MR. TINSLEY: I think --

10 THE COURT: Sustained.

11 MS. O'BRIEN: Motion to strike.

12 THE COURT: So struck. All right. Go ahead.

13 MR. TINSLEY: Okay. She's going to instruct you on the
14 law, and it's your duty to take everything you've heard from
15 there from everybody and come up with verdict by applying
16 the law as she instructs you. That's her -- that's her duty
17 and your duty to apply that. And this case is about these
18 injuries that she's suffered and getting her compensation,
19 her fair day in court. All this chiropractor stuff and
20 marijuana stuff, don't let it get you off the path. She
21 wasn't -- didn't have these neck problems, wasn't treating
22 with a doctor -- a medical doctor, and then after this, she
23 was. And I'll submit to you, which we have proven, that was
24 for her injuries caused in this accident, not some
25 litigation technique. I mean, no way that these bills

1 having Watson Law Firm and there's absolutely nothing -- and
2 we've heard no evidence that she hasn't paid these bills, so
3 I would ask that you ignore that because it's not supported
4 by the evidence. You have to take the evidence that you've
5 heard and you've seen and render a verdict. And I will say
6 that you will -- that that evidence leads you to one -- only
7 one conclusion and that is to find for the Plaintiff. And I
8 gave you a way to calculate the damages and you all can
9 figure that out. You're intelligent people. You've been
10 paying attention and I ask that you deliver my client with a
11 verdict. Thank you.

12 THE COURT: Is everybody okay to -- for me to give you
13 my charge on the law now? If anybody needs a break, that's
14 fine. All right. Members of the jury, you have heard the
15 evidence and the arguments of both parties. I will now
16 explain the law to you that applies in this action. In this
17 action in -- this is an action, excuse me, in which Rosa St
18 Gelais or Ms. Cardona, whom I will refer to as the
19 Plaintiff, claims that she has been injured by the actions
20 of Julius L Leary, whom I will refer to as the Defendant.
21 In bringing the lawsuit, the Plaintiff claims that the
22 Defendant should compensate her for her injuries. I remind
23 you that during this trial, you and I have certain duties to
24 perform. As the trial judge, it is my responsibility to
25 preside of the trial of this case and I also have the duty

1 to rule on the admissibility of the evidence offered during
2 this trial. You are to consider only the evidence before
3 you. If there was any testimony ordered stricken from the
4 record during this trial, you must disregard that testimony.
5 You are to consider only testimony which has been presented
6 from this witness stand, any exhibits which have been made
7 apart of the record in this case, and any stipulations of
8 counsel. I have the additional duty to charge you the law
9 applicable to this case. It is your duty as jurors to
10 accept and apply the law as I now state it to you. If you
11 think you have any idea as to what the law or what the law
12 ought to be and it does not agree with what I tell you the
13 law is, you must forget that idea because you are sworn to
14 accept the law and apply the law exactly as I state it to
15 you. In every case tried in this court before a jury, the
16 jury becomes the sole and exclusive judge of the facts. A
17 trial judge cannot comment on or make any statement about
18 the facts in a case. Since you are the sole judges of the
19 facts, do not think about anything I have said during the
20 trial that I have any opinion about the facts in this case.
21 The law does not allow me to have an opinion about the facts
22 and I do not.

23 The burden of proof in this case is by preponderance of
24 the evidence. A preponderance of the evidence simply means,
25 by the greater weight of the evidence. It is evidence,

1 which, as a whole, shows that the facts sought to be proved
2 is more likely true than not true. This could be illustrated
3 by imagining a set of scales. When the case begins, the
4 scales are even. After all of the evidence has been
5 presented, if the scales remain even or if they tip even
6 slightly in favor of the Defendant, then the Plaintiff has
7 not -- has failed to meet the burden of proof and would not
8 be entitled to recover in this case. If, on the other hand,
9 the scales tip even slightly in favor of the Plaintiff, the
10 Plaintiff will have met the burden of proof and you should
11 return a verdict for the Plaintiff. The preponderance of
12 evidence is not determined by the number of witnesses.
13 Instead, it must be determined by the greater weight of all
14 the evidence.

15 There are two types of evidence generally presented
16 during a trial, direct evidence and circumstantial evidence.
17 Direct evidence is the testimony of a person who claims to
18 have actual knowledge of a fact such as an eye witness. It
19 is evidence which immediately establishes the main fact to
20 be proved. Circumstantial evidence is proof of a chain of
21 facts and circumstances indicating the existence of a fact.
22 It is evidence which immediately establishes collateral
23 facts from which the main fact may be inferred.
24 Circumstantial evidence is based on inference and not on
25 personal knowledge or observation. It is proof that does

1 not actually establish the fact in question, but that
2 asserts or describes something else from which you may
3 either reasonably infer the truth of the fact or, at least,
4 reasonably infer an increase in the probability that the
5 fact is true. For circumstantial evidence to be sufficient
6 to warrant the finding of a fact, the circumstances must
7 lead to that fact with reasonably certainty. The facts and
8 circumstances should be considered in light of ordinary
9 experience and common sense. The existence of a fact cannot
10 be based on speculation, surmise, or conjecture. The law
11 makes absolutely no distinction between the weight or value
12 to be given to either direct or circumstantial evidence nor
13 is a greater degree of certainty required of circumstantial
14 evidence than of direct evidence.

15 Necessarily, you must determine the credibility of
16 witnesses who have testified in this case. Credibility
17 simply means believability. It becomes your duty as jurors
18 to evaluate the evidence and determine which evidence
19 convinces you it is true. In determining the believability
20 of witnesses who have testified in this case, you may
21 believe one witness over several witnesses or several
22 witnesses over one witness. You may believe apart of the
23 testimony of a witness and reject the remaining part of the
24 testimony of that same witness. You may believe the
25 testimony of a witness in it's entirety or reject the

1 testimony of a witness in it's entirety. You may consider
2 whether the witness has an interest in the result of the
3 trial, whether the witness is prejudice towards either the
4 Plaintiff or the Defendant, the opportunity for the witness
5 to have seen the matters and things about which the witness
6 may testify and the way the witness acts on the witness
7 stand. The rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses we call expert
10 witnesses -- excuse me, a witness who, by education and
11 experience, has become an expert in some art, science or a
12 profession may give an opinion as to the subject the witness
13 claims to be an expert in and may also give the reasons for
14 the opinion. You should consider any expert opinion given
15 by a witness and, like any other evidence, give it the
16 weight you think it deserves. If you decide that an expert
17 witnesses opinion is not based on sufficient education and
18 experience or if you decide that the reasons given in
19 support of the opinion are not sound or that the opinion is
20 outweighed by other evidence, you may disregard the opinion
21 entirely. An expert witnesses testimony is to be given no
22 greater weight than that of other witnesses simply because
23 the witness is an expert and you do not have to accept an
24 expert's opinion, even though it is uncontradicted.

25 You have heard testimony presented by deposition. A

1 deposition is a document containing sworn testimony -- is a
2 document or a recording containing sworn testimony given by
3 a witness outside of court in the presence of lawyers for
4 each party who may ask questions of the witness. If any
5 objections were made at the deposition, I had ruled on them
6 previously. This testimony is entitled to the same
7 consideration and is to be judged as to credibility and
8 weighed by you in the same way as if the witness were
9 present and gave the testimony about -- that you have heard
10 -- And weighed by you in the same way as if the witness had
11 been present and gave the testimony from the witness stand.
12 It is then for you, the jury, to determine the effect,
13 value, weight and truth of the testimony given in the
14 deposition. Pursuant to the rules of court, any party may
15 serve upon another party written interrogatories to be
16 answered by the party served. Each interrogatory must be
17 answered separately and fully in writing under oath and
18 signed by the person making them, certifying, to the best of
19 her knowledge, that the information contained in her
20 interrogatory is true and correct.

21 The Plaintiff claims that the Defendant was negligent
22 and should compensate her for the injuries the Plaintiff
23 suffered as a result of the Defendant's negligence. In
24 order to prove that the Defendant was negligent, the
25 Plaintiff must prove, by preponderance or greater weight of

1 the evidence, that one, the Defendant owed the Plaintiff a
2 duty of care, two, the Defendant failed to exercise that
3 duty of care, three, the Plaintiff suffered injuries and
4 four, the Plaintiff's injuries were approximately caused by
5 the Defendant's failure to exercise his duty of care. The
6 Defendant has admitted that he caused the accident that is
7 the subject of this lawsuit. Therefore, you must only
8 determine if the Plaintiff suffered injuries and if those
9 injuries were approximately caused by this accident. The
10 Plaintiff must prove, by preponderance or greater weight of
11 the evidence, that she suffered damages as a result of the
12 Defendant's breach of duty. I will discuss damages in
13 greater detail in a few moments. The Plaintiff must also
14 prove, by preponderance -- excuse me, or greater weight of
15 the evidence that the damages were approximately caused by
16 the Defendant's breach of duty. Proximate cause is
17 something that produces a natural chain of events, which, in
18 the end, brings about the injury. It is the direct cause of
19 the injury. To prove that the Defendant's negligence
20 proximately caused the Plaintiff's injuries, the Plaintiff
21 must first prove causation in fact. This is proven by
22 showing that the injuries would not have occurred but for
23 the Defendant's negligence. The Plaintiff must also prove
24 legal cause. Legal cause is proven by showing that the
25 injuries were foreseeable. This means that the injuries

1 occurred as a natural and probable consequence of the
2 Defendant's negligence. The Plaintiff must prove that some
3 injury from the Defendant's negligence was foreseeable, but
4 does not have to prove that the particular injury that
5 occurred was foreseeable. However, the Defendant cannot be
6 responsible for things which could not be expected to
7 happen. Proximate cause does not mean the only cause. The
8 Defendant's act can be a proximate cause of the Plaintiff's
9 injuries if it was, at least, one of the direct concurrent
10 causes of the injury. If you decide that the Plaintiff is
11 entitled to a verdict, your next step would be to decide the
12 value of her injuries. The damages include physical
13 injuries, pain and suffering, and mental anguish. An
14 injured person is only entitled to recovery damages caused
15 by the Defendant's negligence. A negligent Defendant takes
16 his Plaintiff as he finds him, whether the Plaintiff be in
17 perfect health or in poor health or somewhere in-between.
18 This means, when Plaintiff's pre-existing physical or mental
19 condition is aggravated or activated by a subsequent act,
20 the Defendant is liable to the extent that his wrongful act
21 proximately and naturally aggravated or activated the
22 Plaintiff's pre-existing condition. Actual damages are to
23 compensate the Plaintiff for her injuries or losses and to
24 put the Plaintiff, as near as possible, in the same position
25 that she was in before the incident occurred. In other

1 words, actual damages would be the actual losses and
2 expenses which the Plaintiff has suffered because of the
3 Defendant's negligence. Actual damages for a Plaintiff who
4 has been physically injured include pain and suffering, both
5 past and future, as well, as mental anguish and impairment
6 of health or physical condition. Pain and suffering damages
7 compensate the Plaintiff for physical discomfort and
8 emotional response to the sensation of pain caused by the
9 injury itself. There is no definite standard by which to
10 compensate the Plaintiff for pain and suffering. You have
11 the authority to determine the amount, if any, to be allowed
12 for pain and suffering using calm and reasonable judgment to
13 ensure that the damages are just and reasonable in light of
14 the testimony and evidence presented in the case. In
15 determining the amount of compensation for personal
16 injuries, it is proper to consider past and present aspects
17 of the injuries. This would include physical and mental
18 pain and suffering, expenses incurred for necessary medical
19 treatment, the loss of enjoyment of life suffered as a
20 result of the injury and any other losses which are
21 reflected by the character of the injury. The injured party
22 may recover for those future damages that are reasonable
23 sure to result from the injuries. The principle underlying
24 compensation for future damages is that only one action can
25 be brought and, therefore, only one recovery had. It is

1 proper to include in the estimate of future pain and
2 suffering -- in the estimate, future pain and suffering,
3 which, with reasonable certainty, will result. A Plaintiff
4 is never entitled to recover conjectural or speculative
5 damages, but if you find the Plaintiff is entitled to a
6 verdict for actual damages, your verdict should include an
7 amount to cover any past, present and future damages, which
8 were proximately caused by the Defendant. Any future
9 damages must be reasonably certain to occur in the future as
10 a result of the Defendant's acts. Actual damages need not
11 be proven to a mathematical certainty or based on evidence
12 of the precise amount of the damages the Plaintiff has
13 suffered. Instead, the evidence must allow you to determine
14 the amount -- what amount of damages is fair, just and
15 reasonable. Any future damages must be reasonable
16 calculated to have resulted from the alleged injury
17 sustained in this case and must be reduced to their present
18 cash value. The Plaintiff must prove that expenses caused
19 by the injury were necessary and reasonable. The Plaintiff
20 has the duty to minimize the damages caused by Defendant's
21 breach. The test is whether the Plaintiff would have --
22 excuse me. The Plaintiff has the duty to minimize the
23 damages caused by the Defendant's negligence. The test is
24 whether the Plaintiff has done what an ordinarily prudent
25 person would have done under the circumstances and use

1 reasonable care to reduce the losses. If the Plaintiff has
2 not done so, then you would reduce the damages accordingly.
3 I promise, I'm going to struggle until the end. Okay? I'm
4 so sorry. Nothing that I may have said or done during the
5 course of this trial has been, in any way, intended to
6 express or suggest a view of the case or an opinion as to
7 the facts, the weight of the evidence or the credibility of
8 the witnesses. If any of my actions or words seemed to have
9 indicated such, you will disregard such and form your own
10 opinion as to these matters. I am required to declare the
11 law as I have done through these instructions now being
12 given to you to help you -- help guide you to adjust a
13 lawful verdict. Whether some of these instructions will
14 apply will depend upon what you find the facts to be. The
15 fact that I've instructed you on various subjects in this
16 case, including damages, must not be taken as indicating an
17 opinion of this Court as to what you should find the facts
18 to be or as to which party is entitled to your verdict.
19 There are two possible verdicts in this case, for the
20 Plaintiff, for the Defendant and I have done a verdict form,
21 which is self-explanatory and you will go through and follow
22 the directions, Madam Foreperson, on this verdict form. I
23 think it is self-explanatory.

24 All 12 must agree on the verdict. Your verdict cannot
25 be based on sympathy, passion, prejudice, emotion or any

1 other consideration in this case -- not in the evidence in
2 this case. Madam Foreperson, when the jury agrees on the
3 verdict, you will sign your name as the foreperson on the
4 line underneath the jury verdict, then knock on the jury
5 room door and inform the Bailiff that you have reached a
6 verdict at that time. We'll receive you back into the
7 courtroom. I'm going to ask you to now return to your jury
8 deliberation room and -- but do not begin your deliberations
9 quite yet until you're instructed to do so. When you get
10 the exhibits in this case and the verdict form, it will be
11 your direction to begin your deliberations. Thank you so
12 much for your service in this case. I appreciate it very
13 much.

14 (Whereupon, the jury exited the courtroom at 11:03
15 a.m.)

16 THE COURT: Is there any objection by charge of the law
17 by the Plaintiff?

18 MR. TINSLEY: Just -- I think request number one should
19 have been included.

20 THE COURT: Certainly. Certainly. And that -- and
21 it's noted for the record and your objection to that not
22 being included is noted. Thank you.

23 MS. O'BRIEN: No objection from the Defendant.

24 THE COURT: Thank you.

25 MS. O'BRIEN: May Dr. Leary go to his office and see

1 patients?

2 THE COURT: Please. Whatever any of you need to do.

3 MS. O'BRIEN: And, Your Honor, the only thing I think
4 that I would add to the verdict form -- and it's, I mean,
5 completely up to you with respect to mitigation of damages.
6 Sometimes the judge will do an additional question about
7 that.

8 THE COURT: Okay. I -- since I've instructed them on
9 mitigation of damages, I'm going to leave that off. I have
10 seen that done, as well, but I'm going to leave it off. I
11 think that's going to be confusing. They might get a little
12 bit confused. All right. And will you all check and make
13 sure we've got all of the exhibits?

14 (Whereupon, deliberations began at 11:06 a.m.)

15 (Whereupon, the jury knocked with a verdict at 11:15
16 a.m. The jury entered the courtroom at 11:32 to publish the
17 verdict.)

18 THE COURT: All right. Madam Foreperson, it's my
19 understanding that the jury's reached a verdict; is that
20 correct?

21 THE FOREPERSON: Yes.

22 THE COURT: Would you please hand the verdict to the
23 Bailiff, please? The verdict forms appears to be in order.

24 CLERK OF COURT: State of South Carolina, County of
25 Greenwood. Rosa St Gelais v Julius Leary, case number

1 2015-CP-24-00110. Has Plaintiff proven by the preponderance
2 of the evidence that the Defendant's negligence was the
3 proximate cause of injury to the Plaintiff. No. Signed by,
4 Colleen Tebo. Dated March 20, 2018.

5 THE COURT: Anything else before I release the jury?
6 From the Plaintiff?

7 MR. TINSLEY: Nothing for the jury, Your Honor.

8 THE COURT: Anything from the Defense?

9 MS. O'BRIEN: No, ma'am.

10 THE COURT: Ladies and gentlemen, I speak for all the
11 parties and the attorneys involved in this case. Thank you
12 so much for your service. I cannot tell you how much I
13 appreciate it and I appreciated how great you were to work
14 with. Thank you so much. Thank you, Madam Foreperson, for
15 your service and thank you for your patience with me as I
16 struggled with my voice today. So thank you so much. I
17 think they've got, I guess, the box to get your tags back.
18 If anybody needs a work note, and then I think we've got
19 some money for you, too. So good. Hey, don't spend it all
20 in one place. All right. Thank you all so much. All
21 right. And this concludes your jury service. You're good
22 for three years. Okay. Thank you.

23 (Whereupon, the jury exited the courtroom at 11:33
24 a.m.)

25 THE COURT: Well, there's always got to be one person

1 who wins and one person who doesn't, but I think everybody
2 can take heart in this that your attorneys did everything
3 possible for you. And so, I was impressed by this trail and
4 impressed by both parties. And Dr. Leary, I said this while
5 you were gone and I'll say this to Ms. Cardona that I don't
6 know when I've tried a case with nicer parties and I really
7 do appreciate that and your attorneys were outstanding, too.
8 So thank you all so much. Ten days for any post-trial
9 motions. Is that fair enough?

10 MR. TINSLEY: That'll be fine, Your Honor.

11 THE COURT: Okay. Anything else we need to take up?
12 All right?

13 MS. O'BRIEN: Nothing. Thank you.

14 THE COURT: Thank you all again.

15 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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Emergency Department Chart

Patient Name: ST GELAIS, ROSA S. Birthdate: 11/14/1969 Gender: F Address: 105 KENTUCKY CT GREENWOOD, SC 29646 Phone: (508)971-0871 (864)223-2270 (864)344 8767	MRN: 000269495 Account Number: 1323100079 PHN: 267-67-6205 Primary MD: ASA HATFIELD MD Attending MD: RICHARD GRAHAM MD Arrival Date: 08/19/2013 08:23 Visit Date: 08/19/2013 08:25
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Results

ALCOHOL, MEDICAL SERUM: 08/19/2013 09:06:00 (: ALCOHOL, MEDICAL) (RBG9 10:50)
 - ALCOHOL, MEDICAL: NONE DETECTED-LIMIT OF DETECTION 10 MG/DL NO CHAIN OF CUSTODY RESULT MUST NOT BE USED FOR NON MEDICAL PURPOSES (EMPLOYMENT OR LEGAL TESTING) MG/DL (NL = 0) *N* (RBG9 10:50)
 BASIC METABOLIC PANEL: 08/19/2013 09:06:00 (: BASIC METABOLIC) (RBG9 10:50)
 - GLUCOSE: 89 MG/DL (NL = 74-106) *N* (RBG9 10:50)
 - BUN: 11 MG/DL (NL = 7-18) *N* (RBG9 10:50)
 - CREATININE: 0.46 MG/DL (NL = 0.6-1.3) *L* (RBG9 10:50)
 - SODIUM: 136 MMOL/L (NL = 136-145) *N* (RBG9 10:50)
 - POTASSIUM: 3.9 MMOL/L (NL = 3.5-5.1) *N* (RBG9 10:50)
 - CHLORIDE: 103 MMOL/L (NL = 98-107) *N* (RBG9 10:50)
 - CO2: 24 MMOL/L (NL = 21-32) *N* (RBG9 10:50)
 - ANION GAP: 9.0 *N* (RBG9 10:50)
 - OSMOLALITY, CALCULATED: 271 *N* (RBG9 10:50)
 - CALCIUM: 9.2 MG/DL (NL = 8.5-10.1) *N* (RBG9 10:50)
 - eGFR AFRICAN AMER: >60 ML/MIN/1.73 M (NL = >60) *N* (RBG9 10:50)
 - eGFR NON AFR/AMER: >60 ML/MIN/1.73 M (NL = >60) *N* (RBG9 10:50)
 - eGFR NOTES: The MDRD eGFR SHOULD NOT BE USED IN RENAL DOSING OF MEDICATION OR RADIOCONTRAST DYE. FOR RENAL DOSING, OBTAIN AN eCrCl FROM PHARMACY SERVICES. The MDRD eGFR is not accurate in patients with extremes of body size or nutritional status, amputees or acute illnesses. Estimated GFR should be interpreted in clinical context and an alternative method such as a timed urine collection for measured creatinine clearance used to verify questionable results. *N* (RBG9 10:50)
 HEMOGRAM: 08/19/2013 09:06:00 (: HEMOGRAM) (RBG9 10:50)
 - WBC COUNT: 7.3 K/uL (NL = 4.0-10.5) *N* (RBG9 10:50)
 - RBC COUNT: 5.34 M/uL (NL = 3.55-5.20) *H* (RBG9 10:50)
 - HEMOGLOBIN: 11.7 GM/DL (NL = 11.5-15.0) *N* (RBG9 10:50)
 - HEMATOCRIT: 35.6 % (NL = 33.3-44.9) *N* (RBG9 10:50)
 - MCV: 66.6 FL (NL = 80-96) *L* (RBG9 10:50)
 - MCH: 21.9 PG (NL = 26.5-33) *L* (RBG9 10:50)
 - MCHC: 32.8 G/DL (NL = 32.5-35.9) *N* (RBG9 10:50)
 - RDW: 14.7 % (NL = 11.5-15.3) *N* (RBG9 10:50)
 - PLATELET COUNT: 277 K/uL (NL = 150-400) *N* (RBG9 10:50)
 - MPV: 8.0 FL (NL = 7.4-10.4) *N* (RBG9 10:50)
 MEDICAL URINE DRUG SCREEN: 08/19/2013 09:06:00 (: MEDICAL URINE DR) (RBG9 10:50)
 - PCP: NEGATIVE (NL = NEG) *N* (RBG9 10:50)
 - BENZODIAZEPINES: NEGATIVE (NL = NEG) *N* (RBG9 10:50)
 - COCAINE: NEGATIVE (NL = NEG) *N* (RBG9 10:50)
 - AMPHETAMINES: NEGATIVE (NL = NEG) *N* (RBG9 10:50)
 - MARIJUANA: POSITIVE NOT CONFIRMED VERIFIED BY REPEAT ANALYSIS (NL = NEG) *A* (RBG9 10:50)
 - OPIATES: NEGATIVE (NL = NEG) *N* (RBG9 10:50)
 - BARBITURATE: NEGATIVE (NL = NEG) *N* (RBG9 10:50)
 DRUG SCREEN NOTE: NO CHAIN OF CUSTODY RESULT MUST NOT BE USED FOR NON MEDICAL PURPOSES (EMPLOYMENT OR LEGAL TESTING) Certain drugs and their metabolites may cause cross-reactivity. Confirmation testing is recommended for presumptive positive immunoassay results, if clinically indicated. *N* (RBG9 10:50)
 - DRUG SCREEN CUT-OFFS: DRUG SCREEN CUT-OFF VALUES AMPHETAMINES 1000 ng/mL BARBITURATES 2500 ng/mL BENZODIAZEPINES 200 ng/mL COCAINE 300 ng/mL OPIATES 300 ng/mL PCP 2500 ng/mL MARIJUANA 50 ng/mL *N* (RBG9 10:50)
 PT AND INR: 08/19/2013 09:06:00 (: PT AND INR) (RBG9 10:50)
 - PT: 12.3 SEC (NL = 12.0-15.0) *N* (RBG9 10:50)
 - INR: 0.92 (NL = 0.79-1.29) *N* (RBG9 10:50)
 INR LIMITATION: THE INR IS RECOMMENDED FOR MONITORING PATIENTS ON STABILIZED COUMARIN THERAPY. SUGGESTED THERAPEUTIC RANGES ARE 2.0-3.0 EXCEPT MECHANICAL PROSTHETIC HEART VALVES FOR WHICH 2.5-3.5 IS RECOMMENDED. IF ORAL ANTICOAGULANT IS ELECTED IN SURVIVORS OF ACUTE MYOCARDIAL

Certificate of Counsel

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



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December 27, 2018

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