

20635

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Robin R. Stilwell, Judge

Case No. 2011-CP-23-02204
Appellate Case No. 2011-204086

Deena L. Bettencourt and Scott Bettencourt, ... Appellants,
v.
Mary R. Wald, ... Respondent.

RECORD ON APPEAL - Volume I

Marcus K. McGarr
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Counsel for Respondent

Robert C. Childs, III
CHILDS LAW FIRM
2100 Poinsett Highway, Suite D
Greenville, SC 29609
(864) 242-9997

Robert C. Ray
Robert C. Ray and Assoc.
306-A Mills Avenue
Greenville, SC 29605
(864) 233-4555

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellants

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Robin R. Stilwell, Judge

Case No. 2011-CP-23-02204
Appellate Case No. 2011-204086

Deena L. Bettencourt and Scott Bettencourt, ... Appellants,
v.
Mary R. Wald, ... Respondent.

RECORD ON APPEAL - Volume I

Marcus K. McGarr
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Counsel for Respondent

Robert C. Childs, III
CHILDS LAW FIRM
2100 Poinsett Highway, Suite D
Greenville, SC 29609
(864) 242-9997

Robert C. Ray
Robert C. Ray and Assoc.
306-A Mills Avenue
Greenville, SC 29605
(864) 233-4555

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellants

INDEX

VOLUME I

Order on Plaintiff's Motion for Costs	1
Motion and Affidavit for Costs	3
Order on Motion for Reconsideration	7
Verdict	13
Order granting Summary Judgment	14
Complaint	15
Answer of National	18
Answer of American	22
Motion for summary judgment or judgment on pleadings	24
Offer of judgment	26
Defendant's response to Plaintiff's requests to admit	27
Motion and affidavit for costs	29
Motion and affidavit for attorney fees and costs	29
Memorandum in opposition to request for costs	48
Motion for reconsideration	52
TRANSCRIPT	
Court reporter's index	56
Motions	78
Opening Remarks	
Plaintiff	92
Defendant	99
PLAINTIFF'S WITNESSES	
Officer Michael Dean	
Direct	103
Cross	109
Kim McFall	
Direct	136
Cross	147
Dr. Michael Shride (via video)	157, 701
Ashley Shramek	
Direct	159
Cross	164
Dr. Randall Jones	
Direct	168

Cross	201
Redirect	203
Dr. Kathy Benson (via video)	206, 556
Dr. Kent Kistler (via video)	209, 603
Dr. Cecil Huey	
Direct	220
Cross	240
Redirect	240
Judith Waite	
Direct	242
Scott Bettencourt	
Direct	257
Cross	279
Redirect	300
Deena Bettencourt	
Direct	304
Cross	386
VOLUME II	
Redirect	453
Recross	466
Redirect	467
Dr. Phillip Swicegood	
Direct	469
Cross	475
Dr. Robert Brabham	
Direct	480
Cross	514
DEFENSE WITNESSES	
Ruth Wald	
Direct	520
Cross	523
Redirect	532
Motions	533
Question of the Jury	548
Verdict	551
Deposition of Kathy Bernson F.N.P.	
direct	556

cross	601
redirect	639
recross	642
P. Ex. 1	579
Deposition of Kent Kistler M.D.	
Direct	603
Cross	624
Redirect	689
Recross	684
P. Ex. 1	623
Deposition of Michael C. Shride, D.C.	
Direct	701
Cross	716
Redirect	745
Recross	760
Plaintiff's Exhibits	
1 Chiropractic bill	765
2 Statement Dr. Jones	767
3 Statement Premier Family Medicine	768
4 Statement Neurology Associates	769
5 Statement Matrix Rehabilitation	772
6 Statement Diagnostic Health Corporation	775
7 Statement GHS Billing System	776
8 Summary Medical Expenses	777
Defendant's Exhibits	
1 Plaintiff's First Supplemental Answers to Interrogatories	780
2 Photo car	782
3 Photo car	733
4 Photo car	784
5 Photo car	785
6 Photo car	786
7 Photo car	787
Court Exhibits	
5 Jury Question	789
6 Jury Question	790
7 Jury Question	791
Certificate of Counsel	Last

ENTERED COMPUTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. and Scott Bettencourt,)

Plaintiff,)

vs.)

Mary Ruth Wald,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

**ORDER ON PLAINTIFF'S MOTION
FOR COSTS AND ATTORNEY'S FEES**

Case No.: 2010-CP-23-2204

FILED-CLERK OF COURT
GREENVILLE CO, S.C.
2010 OCT 27 PM 4:03

WLC

This matter comes before the Court pursuant to the Plaintiff's Post-Trial Motion for Attorney's Fees and Costs. Each party presented Memoranda and Affidavits in advocacy of their respective positions.

In this case, the jury returned a verdict for \$16,500.00 which closely approximates the amount of medical expenses incurred incident to the accident. In her response to the Plaintiff's Request to Admit, the Defendant denied that the Plaintiff sustained a physical injury in the accident. At trial the Defendant ultimately conceded that the Plaintiff had been injured and further conceded that she owed a duty of care to the Plaintiff and had breached the same.

After having reviewed the motions and applied substantial scrutiny to the Affidavit of Attorney's Fees and Request to Admit, this Court finds that reasonable costs and attorney's fees should be awarded. This Court does this while taking into consideration the four specific grounds set forth in Rule 37(c) of the South Carolina Rules of Civil Procedure which could preclude the award of expenses. The Court has reviewed the Attorney's Fee Affidavit and has determined which costs and expenses were incurred as a direct consequence of the failure to admit and that, further, would not have been incurred but for the requirement to proceed as

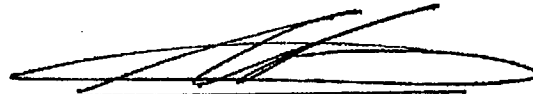
133

SCANNED

RECORD ON APPEAL PAGE 1

though proof must be offered. Having done so, this Court would award attorney's fees in the amount of Four Thousand One Hundred Ninety Dollars (\$4190.00) to the Plaintiff. The Court further awards costs of Two Thousand One Hundred Forty-One Dollars (\$2141.00) as conceded by the Defendant in her Memorandum in Opposition to Costs and Attorney's Fees together with costs of One Hundred Eighty-Five Dollars (\$185.00) for filing and service.

AND IT IS SO ORDERED.



ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT
#2158

October 21, 2011
Greenville, South Carolina

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deena L. and Scott Bettencourt,
Plaintiff,

v.

Mary Ruth Wald,
Defendant.

2011 SEP 23

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2010-CP-23-2204

MOTION AND AFFIDAVIT FOR
COSTS TO BE TAXED BY THE
CLERK OF COURT

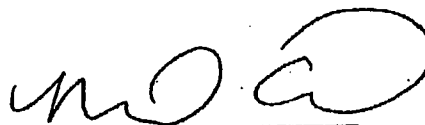
Whereas, a verdict in the amount of \$16,500.00 was rendered in favor of the Plaintiff on September 15, 2011. Now, therefore, the Plaintiff moves pursuant to Rule 54(d) for the following costs, in addition to those under consideration by the court, to be taxed against the Defendant by the Clerk of Court.

Filing Fee: \$150.00

Service of Process Fee: \$35.00

Total to be taxed by Clerk: \$185.00

I, Robert C. Childs, III do swear and affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was served upon opposing counsel



Robert C. Childs, III, #1218
Attorney for Plaintiff
2100 Poinsett Hwy, Suite D
Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914

SWORN to before me this
23rd Day of September 2011.


Notary Public for South Carolina
My Commission Expires: 9/7/2021

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DEENA L. and SCOTT BETTENCOURT

Plaintiff,

vs.

MARY RUTH WALD,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-23-2204

FILED CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSNER

VERDICT

We, the jury, find for the Plaintiff against the Defendant in the amount of
\$ 16,500.00 actual damages.

We, the jury, find for the Defendant.

Greenville, South Carolina

September 15th, 2011

Harold D. Black
Foreperson

A Certified Copy
Paul B. Wickensner
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 9/16/11

ENTERED COMPUTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. and Scott Bettencourt,)

Plaintiff,)

vs.)

Mary Ruth Wald,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

**ORDER ON PLAINTIFF'S MOTION
FOR COSTS AND ATTORNEY'S FEES**

Case No.: 2010-CP-23-2204

FILED-11-01-01 COURT
CLERK OF COURT
OCT 27 PM 4:03

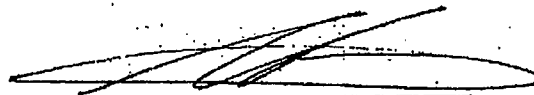
This matter comes before the Court pursuant to the Plaintiff's Post-Trial Motion for Attorney's Fees and Costs. Each party presented Memoranda and Affidavits in advocacy of their respective positions.

In this case, the jury returned a verdict for \$16,500.00 which closely approximates the amount of medical expenses incurred incident to the accident. In her response to the Plaintiff's Request to Admit, the Defendant denied that the Plaintiff sustained a physical injury in the accident. At trial the Defendant ultimately conceded that the Plaintiff had been injured and further conceded that she owed a duty of care to the Plaintiff and had breached the same.

After having reviewed the motions and applied substantial scrutiny to the Affidavit of Attorney's Fees and Request to Admit, this Court finds that reasonable costs and attorney's fees should be awarded. This Court does this while taking into consideration the four specific grounds set forth in Rule 37(c) of the South Carolina Rules of Civil Procedure which could preclude the award of expenses. The Court has reviewed the Attorney's Fee Affidavit and has determined which costs and expenses were incurred as a direct consequence of the failure to admit and that, further, would not have been incurred but for the requirement to proceed as

though proof must be offered. Having done so, this Court would award attorney's fees in the amount of Four Thousand One Hundred Ninety Dollars (\$4190.00) to the Plaintiff. The Court further awards costs of Two Thousand One Hundred Forty-One Dollars (\$2141.00) as conceded by the Defendant in her Memorandum in Opposition to Costs and Attorney's Fees together with costs of One Hundred Eighty-Five Dollars (\$185.00) for filing and service.

AND IT IS SO ORDERED.



ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT
#2158

October 21, 2011
Greenville, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-23-2204

Deena L. Bettencourt

Mary Ruth Ward

Scott Bettencourt

JUL 7 PM 2:05

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge Robin B. Stilwell

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

The Plaintiff's Motion for Reconsideration is respectfully DENIED. The Court makes the factual finding that the fees awarded were reasonable and those that were not were patently unreasonable.

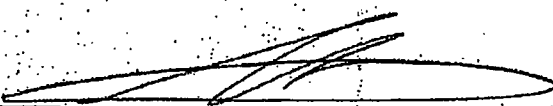
INFORMATION FOR THE PUBLIC INDEX

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

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

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

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


Circuit Court Judge

#2158
Judge Code

7 Nov 2011
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8th day of Nov, 20 11 and a copy mailed first class or placed in the appropriate attorney's box on this 8th day of Nov, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Childs
2100 Pinsett Hwy Ste D
Greenville SC 29609
ATTORNEY(S) FOR THE PLAINTIFF(S)

Marcus McGarr
108 Whitcomb St
Greenville SC 29601
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ENTERED COMPUTER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT

Deena L. and Scott Bettencourt,

Plaintiff,

**ORDER ON PLAINTIFF'S MOTION
FOR COSTS AND ATTORNEY'S FEES**

vs.

Mary Ruth Ward,

Defendant.

Case No.: 2010-CP-23-2204

FILED
OCT 27 PM 4:03
WLC

This matter comes before the Court pursuant to the Plaintiff's Post-Trial Motion for Attorney's Fees and Costs. Each party presented Memoranda and Affidavits in advocacy of their respective positions.

In this case, the jury returned a verdict for \$16,500.00 which closely approximates the amount of medical expenses incurred incident to the accident. In her response to the Plaintiff's Request to Admit, the Defendant denied that the Plaintiff sustained a physical injury in the accident. At trial the Defendant ultimately conceded that the Plaintiff had been injured and further conceded that she owed a duty of care to the Plaintiff and had breached the same.

After having reviewed the motions and applied substantial scrutiny to the Affidavit of Attorney's Fees and Request to Admit, this Court finds that reasonable costs and attorney's fees should be awarded. This Court does this while taking into consideration the four specific grounds set forth in Rule 37(c) of the South Carolina Rules of Civil Procedure which could preclude the award of expenses. The Court has reviewed the Attorney's Fee Affidavit and has determined which costs and expenses were incurred as a direct consequence of the failure to admit and that, further, would not have been incurred but for the requirement to proceed as

Verified

RECORD ON APPEAL PAGE 9

though proof must be offered. Having done so, this Court would award attorney's fees in the amount of Four Thousand One Hundred Ninety Dollars (\$4190.00) to the Plaintiff. The Court further awards costs of Two Thousand One Hundred Forty-One Dollars (\$2141.00) as conceded by the Defendant in her Memorandum in Opposition to Costs and Attorney's Fees together with costs of One Hundred Eighty-Five Dollars (\$185.00) for filing and service.

AND IT IS SO ORDERED.



ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT
#2158

October 21, 2011
Greenville, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-23-2204

Deena L. Bettencourt

Mary Ruth Ward

JAN 7 PM 2:05 gw

Scott Bettencourt

PLAINTIFF(S)

DEPENDANT(S)

Submitted by: Judge Robin B. Stilwell

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

The Plaintiff's Motion for Reconsideration is respectfully DENIED. The Court makes the factual finding that the fees awarded were reasonable and those that were not were patently unreasonable.

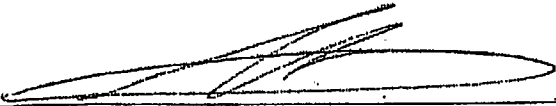
INFORMATION FOR THE PUBLIC INDEX

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

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

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

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


Circuit Court Judge

#2158
Judge Code

7 Nov 2011
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8th day of Nov, 20 11 and a copy mailed first class or placed in the appropriate attorney's box on this 8th day of Nov, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Childs
2100 Pinsett Hwy Ste D
Greenville SC 29609
ATTORNEY(S) FOR THE PLAINTIFF(S)

Marcus McGarr
108 Whitsett St
Greenville SC 29601
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

DEENA L. and SCOTT BETTENCOURT)

CASE NO. 2010-CP-23-2204

Plaintiff,)

vs.)

MARY RUTH WALD,)

Defendant.)

VERDICT

_____ We, the jury, find for the Plaintiff against the Defendant in the amount of

\$ 16,500.00 actual damages.

_____ We, the jury, find for the Defendant.

Harold J. Black
Foreperson

Greenville, South Carolina

September 15th, 2011

SCANNED

Verified

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. & Scott Bettencourt,)
Plaintiff,)

v.)

Mary R. Wald,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2010-CP-23-2204

ORDER GRANTING SUMMARY
JUDGEMENT TO PLAINTIFF ON
LIABILITY

ENTERED COMPUTER

This matter came before me on Plaintiffs motion for summary judgment/judgment on the pleadings on the issue of the Defendant's liability ^{negligence with regard to} for this automobile accident. Based upon the arguments of counsel, the pleadings, defendant's answers to interrogatories and the deposition of the Defendant it appears that there is no genuine issue of material fact as to the Defendants ^{negligence in causing the} liability ~~for the~~ automobile accident subject to this lawsuit.

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED that summary judgment on the issue of the Defendant's ^{negligence in causing} liability ~~for~~ the automobile accident subject to this action is granted to the Plaintiffs.

IT IS SO ORDERED;

SCANNED

Jan 1-

D. Garrison Hill
Presiding Judge
13th Judicial Circuit

Greenville, South Carolina
Date: 4/13/2011

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
APR 18 2011

2011 APR 18 P 3 45

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. & Scott Bettencourt,
Plaintiff,)

v.)

Mary R. Ward,
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2010-CP-23- 2204/

COMPLAINT
(Jury Trial Requested)

FILED
2010 MAR 18 AM 9:33

The Plaintiffs, complaining of the Defendant above named, would respectfully show unto the Court as follows:

1. Plaintiffs are citizens and residents of the County of Greenville, State of South Carolina.
2. Plaintiffs are wife and husband, having been married on the 29th day of December, 1990.
3. Upon information and believe, Defendant is a citizen and resident of the County of Greenville, State of South Carolina and on September 4, 2008 was the owner of a 1996 with vehicle identification number N4FT7856TL288071.
4. On September 4, 2008, Plaintiff Deena L. Bettencourt was operating a leased 2009 Toyota with vehicle identification number JTEGW21A170021994 in a northerly direction on Augusta Street in the County of Greenville at proximately 2:15 p.m. in the afternoon.
5. At approximately the same time, the Defendant was traveling in the same direction on Augusta Street, following Plaintiff Deena L. Bettencourt in the same lane of travel as Plaintiff Deena L. Bettencourt.
6. As Plaintiff Deena L. Bettencourt approached the intersection of Augusta Place Street, she stopped to turn left onto Augusta Place Street and the Defendant violently struck

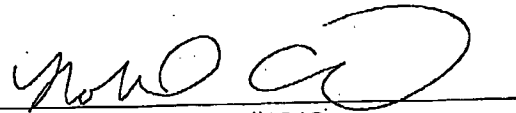
Plaintiff Deena L. Bettencourt's vehicle, knocking Plaintiff Deena L. Bettencourt's vehicle across the intersection and into oncoming traffic.

7. As a direct and proximate result thereof, Plaintiff Deena L. Bettencourt was violently thrown about the vehicle causing injuries to her person and psyche, which has and will continue to cause her to incur medical and medical related expenses, physical impairment, a loss of earnings and earning capacity, and to suffer great mental pain, anguish, and suffering.
8. Plaintiffs also suffered depreciation of their leased vehicle and costs for towing and repair of the vehicle.
9. As a further direct and proximate result thereof, Plaintiff Scott Bettencourt has and will suffer the loss of the care, comfort, companionship, and assistance of his wife.
10. Defendant was willful, wanton, reckless, careless, negligent, and/or grossly negligent in the following and other particulars to wit:
 - a. following Plaintiff's vehicle too closely;
 - b. driving too fast for conditions;
 - c. driving in excess of the speed limit;
 - d. failing to keep a proper lookout;
 - e. failing to properly slow her vehicle;
 - f. driving while distracted; and
 - g. failing to do such other and further things as a reasonably prudent person would have done under the circumstances then and there existing.
11. Said acts being in violation of the statutory and common laws of the State of South Carolina.

12. As a direct and proximate result thereof, Plaintiffs suffered the damaged alleged herein.
13. Plaintiffs are informed and believe that they are entitled to judgment against Defendant for actual and punitive damages in an amount to be determined by a jury.

WHEREFORE, having fully plead, Plaintiffs pray for the following:

1. A jury trial on all issues to triable.
2. For judgment against Defendant for actual and punitive damages in an amount to be determined by a jury.
3. For such other and further relief as the court deems just and proper.



Robert C. Childs, III, #1218
Attorney for Plaintiffs
2100 Poinsett Hwy, Suite E
Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914

Greenville, South Carolina

Date: 3-16-10

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Deena L. & Scott Bettencourt,)
Plaintiffs,)
v.)
Mary R. Ward,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-23-2204

2010 JUN 18 A 11:08

ANSWER TO COMPLAINT BY
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA
(Jury Trial Demanded)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
WICKENSIMER

Defendant and putative underinsured motorist insurance carrier, National Union Fire Insurance Company of Pittsburgh, PA (hereinafter "National Union"), files its Answer to Plaintiffs' Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim on which relief may be granted against National Union.

SECOND DEFENSE

Responding to the individually numbered allegations of Plaintiffs' Complaint, National Union states:

1. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

2. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

3. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

4. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

5. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

6. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

7. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

8. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

9. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

10. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

11. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

12. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations.

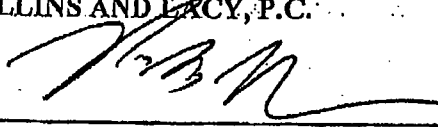
13. National Union is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of Plaintiffs' Complaint, and therefore can neither admit nor deny these allegations. However, National Union denies that it owes any obligation or is liable in any way to Plaintiffs in any fashion or in any amount.

14. Any and all allegations set forth in Plaintiffs' Complaint which have not heretofore been either expressly admitted or denied, are hereby denied.

WHEREFORE, having fully responded to the allegations of Plaintiffs' Complaint, National Union respectfully prays that it be granted a trial by jury as to all appropriate issues, that it be discharged from this action without liability, and that all costs of same be cast upon Plaintiff.

Respectfully submitted,

COLLINS AND LACY, P.C.

By: 

Ross B. Plyler, S.C. Bar #71688
37 Villa Road, Suite 500 (29606)
Post Office Box 5819
Greenville, South Carolina 29615
Telephone: 864-282-9100
Telefax: 864-282-9101
E-Mail: rplyler@collinsandlacy.com

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, L.L.C.

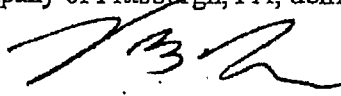
John C. Bonnie, S.C. Bar #62997
950 East Paces Ferry Road, Suite 3000
Atlanta, Georgia 30326
Telephone: 404-876-2700
Telefax: 404-875-9433
E-Mail: jbonnie@wwhgd.com

ATTORNEYS FOR NATIONAL UNION
FIRE INSURANCE COMPANY OF
PITTSBURGH, PA, PUTATIVE
UNDERINSURED MOTORIST CARRIER

Greenville, South Carolina

June 18, 2010

Defendant National Union Fire Insurance Company of Pittsburgh, PA, demands a jury trial.

By: 

Ross B. Plyler, S.C. Bar #71688

ATTORNEY FOR NATIONAL UNION
FIRE INSURANCE COMPANY OF
PITTSBURGH, PA

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. & Scott Bettencourt,)

Plaintiffs,)

v.)

Mary R. Ward,)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-23-2204

ANSWER TO COMPLAINT BY
AMERICAN HOME ASSURANCE
COMPANY
(Jury Trial Demanded)

COMES NOW American Home Assurance Company (hereinafter "American Home"),
and answers the Plaintiffs' Complaint as follows:

FOR A FIRST DEFENSE

The Complaint fails to state a claim on which relief may be granted against American Home.

FOR A SECOND DEFENSE

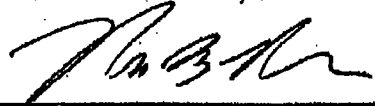
American Home incorporates by reference the Answer to Complaint, dated June 18, 2010, filed in this action by National Union Fire Insurance Company of Pittsburgh, PA.

WHEREFORE, having fully answered, American Home prays that the Complaint of Plaintiffs be dismissed and for such other and further relief as the Court may deem just and proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

COLLINS AND LACY, P.C.

By: 

Ross B. Plyler, S.C. Bar #71688
37 Villa Road, Suite 500 (29606)
Post Office Box 5819
Greenville, South Carolina 29615
Telephone: 864-282-9100
Telefax: 864-282-9101
E-Mail: rplyler@collinsandlacy.com

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, L.L.C.

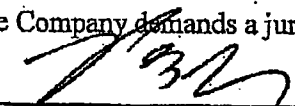
John C. Bonnie, S.C. Bar #62997
950 East Paces Ferry Road, Suite 3000
Atlanta, Georgia 30326
Telephone: 404-876-2700
Telefax: 404-875-9433
E-Mail: jbonnie@wwhgd.com

ATTORNEYS FOR AMERICAN
HOME ASSURANCE COMPANY

Greenville, South Carolina

August 3, 2010

American Home Assurance Company demands a jury trial.

By: 

Ross B. Plyler, S.C. Bar #71688

ATTORNEY FOR AMERICAN
HOME ASSURANCE COMPANY

August 3, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Deena L. & Scott Bettencourt,
Plaintiff,

v. .

Mary R. Ward,
Defendant.

FILED AUG -9

A. No. 2010-CP-23-2204

FILED CLERK OF COURT
GREENVILLE

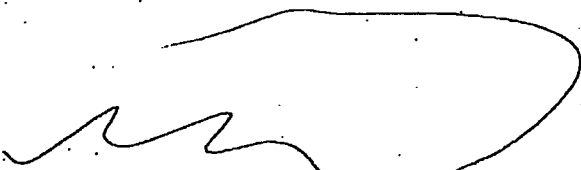
**MOTION FOR SUMMARY
JUDGMENT OR JUDGMENT ON THE
PLEADINGS**

TO: MARCUS K. MCGARR, ATTORNEY FOR DEFENDANT MARY R. WARD AND
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.

The Defendant having answered Plaintiff's Complaint admitting that the Defendant failed to keep a proper lookout and that the Plaintiff suffered the damages alleged in Plaintiff's Complaint as a direct and proximate result thereof. Furthermore, the Defendant in her answers to interrogatories does not contend that the Plaintiff acted in such a manner as to cause or contribute to the occurrence and does not contend that a person not a party to this action acted in such a manner as to cause or contribute to the occurrence.

Therefore, there is no genuine issue of material fact that the Defendant is liable for the damages sustained by the Plaintiffs as a result of the occurrence alleged in Plaintiff's Complaint.

Therefore, Plaintiff's move for summary judgment on the issue of liability for damages sustained by the Plaintiffs as a result of the occurrence alleged in Plaintiff's Complaint. Alternatively, Plaintiffs move for judgment on the pleadings on that issue.



Robert C. Childs, III, #1218
Attorney for Plaintiff
2100 Poinsett Hwy, Suite E

Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914

Greenville, South Carolina
Date: 8-2-2016

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. and Scott Bettencourt,)

Plaintiffs,)

vs.)

Mary R. Ward,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2010-CP-23-2204

OFFER OF JUDGMENT

FILED
2011 APR 19 AM 9:20

YOU WILL PLEASE TAKE NOTICE that the defendant, by and through her undersigned counsel of record, and pursuant to Rule 68 of the *South Carolina Rules of Civil Procedure*, hereby makes an Offer of Judgment to the Plaintiff named herein in the amount of Fifteen Thousand Dollars (\$ 15,000.00). This offer shall be deemed withdrawn if written notice of acceptance is not served within twenty (20) days of the date of service herein.

As provided in Rule 68, should this case go to trial and the Plaintiff not receive a judgment in an amount exceeding the amount herein, the defendant will move that s/he be reimbursed by the Plaintiff for all costs, expenses, interest, and attorney's fees incurred in defense of this action accruing from the time of service of this Offer of Judgment.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, S.C. 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
ATTORNEY FOR DEFENDANT

Greenville, South Carolina
April 4, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2010-CP-23-2204

Deena L. and Scott Bettencourt,)

Plaintiffs,)

vs.)

Mary R. Ward,)

Defendant.)

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' REQUEST FOR ADMISSIONS**

The Defendant, by and through her undersigned attorney, hereby submits the following responses to the Plaintiffs' Request for Admissions:

1. Admit that the Plaintiff Deena L. Bettencourt sustained a physical injury as a direct and proximate result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

2. Admit that the Plaintiff Deena L. Bettencourt experienced pain and suffering as a result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

3. Admit that the Plaintiffs incurred medical expenses for the treatment of injuries sustained as a result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

4. Admit that the Plaintiff Deena L. Bettencourt incurred medical expenses in the amount of \$2,015.00 with Carolina Spine and Rehab as a result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

5. Admit that the Plaintiff Deena L. Bettencourt incurred medical expenses with Palmetto Imaging, Inc. in the amount of \$5,104.25 as a result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

6. Admit that the Plaintiff Deena L. Bettencourt suffered a traumatic brain injury as a result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

7. Admit that the Plaintiff Deena L. Bettencourt sustained no less than \$13,000.00 in medical expenses to date as a result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied.

Greenville, South Carolina
August 17, 2010



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, S.C. 29601
(864) 298-0089
(864) 235-0503
ATTORNEY FOR THE DEFENDANT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deena L. and Scott Bettencourt,
Plaintiff,

v.

Mary Ruth Wald,
Defendant.

2011 SEP 23
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2010-CP-23-2204

MOTION AND AFFIDAVIT FOR
COSTS TO BE TAXED BY THE
CLERK OF COURT

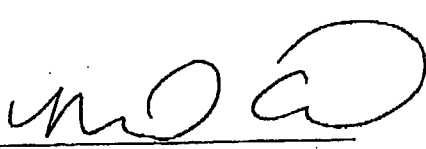
Whereas, a verdict in the amount of \$16,500.00 was rendered in favor of the Plaintiff on September 15, 2011. Now, therefore, the Plaintiff moves pursuant to Rule 54(d) for the following costs, in addition to those under consideration by the court, to be taxed against the Defendant by the Clerk of Court.

Filing Fee: \$150.00

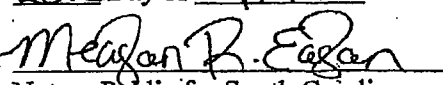
Service of Process Fee: \$35.00

Total to be taxed by Clerk: \$185.00

I, Robert C. Childs, III do swear and affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was served upon opposing counsel


Robert C. Childs, III, #1218
Attorney for Plaintiff
2100 Poinsett Hwy, Suite D
Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914

SWORN to before me this
23rd Day of September 2011.


Notary Public for South Carolina
My Commission Expires: 9/7/2021

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deena L. and Scott Bettencourt,
Plaintiff,

v.

Mary Ruth Wald,
Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMMER

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2010-CP-23-2204

MEMORANDUM AND
AFFIDAVIT OF ATTORNEY'S
FEES AND COSTS
IN SUPPORT OF 37(c) MOTION

MEMORANDUM

This matter was tried before your honor and a verdict rendered in favor of the Plaintiff in the amount of \$16,500.00. During the course of the litigation the Plaintiffs submitted the following requests to admit;

Admit that the Plaintiff Deena L. Bettencourt sustained a physical injury as a direct and proximate result of the collision between the vehicle Mrs. Bettencourt and the Defendant on September 4, 2008.

RESPONSE: Denied (see attached Defendant's response).¹

At trial the Plaintiff's proved the truth of the matter that Plaintiff sustained a physical injury.

Under Rule 37(c) of the South Carolina Rules of Civil Procedure,

[i]f a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to

¹ Plaintiff submits that she proved 2 through 7 of the Request to Admit as well. For simplicities sake it is easiest to reach the denial of Request to Admit 1 but raises all denials in her motion.

admit. Sessions v. Withers, 327 S.C. 409, 488 S.E.2d 888 (S.C. App. 1997).

As noted above, Rule 37(c) provides that the party failing to admit the truth of a matter shall be required to pay expenses "if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter." Rule 37(c), SCRPC (emphasis added).

The Defendant denied that the Plaintiff sustained a physical injury in the accident. However, the Defendant admitted she was injured in the accident (see attached Response to Second Set of Requests to Admit). The Defendant at the conclusion of the trial finally admitted through her own testimony that she believed the Plaintiff was injured in the accident. There was no reasonable basis to deny the slightest injury in the accident. Therefore, the Plaintiff is entitled to the following attorney's fees and costs necessary to prove an injury. (Co-Counsel will submit a separate Affidavit).

AFFIDAVIT

I, Robert C. Childs, III, Esquire, being duly sworn, do swear and affirm as follows:

1. I am the attorney representing the Plaintiffs in the above-captioned case. My normal hourly rate is \$300.00 per hour. My normal in court rate is \$600.00 per hour. Paralegal expenses are \$125.00 per hour.
2. The following is an itemized list of attorney's fees and costs necessary to prove that the Plaintiff Deena L. Bettencourt sustained a physical injury in the accident:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
08/18/10	Meeting with client and co-counsel on preparation of injury proof.	2.75
08/25/10	Preparation and review of medical proof.	2.00
08/31/10	Status review.	.75
09/02/10	Coordination of injury proof materials.	1.00
09/07/10	Prepared letter to clients regarding their Depositions, review file.	.75

09/07/10	Prepared Notice of Deposition of Mary Wald.	.50
09/07/10	Prepared letter to Plyler and McGarr confirming Depositions of The Defendant and Plaintiffs, further injury proof preparation.	1.25
09/08/10	Review letter from McGarr regarding depositions.	.25
09/16/10	Prepared Amended Notice of Deposition, preparation of Plaintiff's and Defendants Depositions.	3.00
09/16/10	Prepared letter to Plyler and McGarr regarding deposition of Defendant and Plaintiffs.	.25
09/17/10	Meeting with clients concerning their injuries and in preparation for their Depositions.	3.00
09/24/10	Further injury proof preparation and file development.	1.50
10/04/10	Request for updated medicals to Dr. Kistler.	.25
10/01/10	Prepared for and attended Deposition of Mary Wald.	1.25
10/01/10	Prepared for and attended Deposition of Deena Bettencourt.	2.00
10/01/10	Prepared for and attended Deposition of Scott Bettencourt.	.50
10/11/10	Prepared Second Supplemental Responses to Request to Produce.	1.25
10/11/10	Prepared Subpoena to Greenville Hospital System to prove Wald's injury.	.50
10/11/10	Prepared letter to Greenville Police Records requesting the incident Report of the accident.	.25
10/11/10	Prepared Subpoena to Grover at Internal Medicine for Wald's records.	.50
10/11/10	Prepared Subpoena to Jim R. Baucum for Wald's records.	.50
10/11/10	Prepared Subpoena to Gregg Kaizer at Carolina Consultants for Wald's records.	.50
10/11/10	Prepared Subpoena to Verizon on Haywood Road for Wald's records.	.50
10/11/10	Prepared Subpoena to Greenville Count EMS for Wald's records.	.50
10/11/10	Prepared Third Supplemental Responses to Request to Produce with additional medical records of injury.	1.75
10/15/10	Review letter from County Attorney regarding Wald's and Bettencourt's EMS run report.	.25
10/20/10	Review letter from McGarr on mediation.	.25
10/22/11	Review letter from McGarr on Subpoena of medical records of Bettencourt. File injury development.	1.00
10/27/10	Review file for medical and litigation status.	1.75
10/27/10	Review Wald's records and prepared Letter to McGarr enclosing medical records of Defendant proving her injury.	.75
10/27/10	Prepared Letter to clients regarding mediation set for 12/17/10.	.25
10/27/10	Prepared Letter to McGarr requesting responses to Subpoenas.	.25
10/28/10	Reviewed Interrogatories and Request to Produce to Plaintiffs.	1.25
11/01/10	Prepared Answers to National Union Fire and AIG's First Set of Interrogatories and Request to Produce.	2.25
11/01/10	Letter to clients enclosing Answers to National Union Fire's First set of Interrogatories showing injury to Plaintiff.	.25
11/01/10	Prepared letter to Plyler asking for an extension in answering Interrogatories of National Union Fire.	.25
11/04/10	Prepared letter to Greenville Hospital System regarding a Subpoena for Wald's medical records.	.25

11/05/10	Review Plyler response on extension request.	.25
11/06/11	Review letter from McGarr.	.25
11/08/10	Letter to Clients regarding mediation set for 01/05/11.	.25
11/15/10	Prepared letter to Lyndall Coker at the Courthouse requesting the Plaintiff's Motion for Summary Judgment be reset.	.25
11/15/10	Prepared Second Amended Answers and letter to McGarr enclosing Second Amended Answers to Request to Produce.	2.00
11/15/10	Prepared letter to McGarr enclosing Wald's medical records and Pointing out that Wald denied Plaintiff's injuries in answers to Request to Admit.	.25
11/30/10	Review file for injury status. Client being referred to additional treatment.	1.50
12/07/10	E-mail to Ross Plyler x 2.	.50
12/08/10	E-mail to Barbara Spearman x. 2.	.50
12/09/10	Review letter from Plyler.	.50
12/09/10	Conference and coordination with Mr. Ray concerning injury development and litigation proceedings.	1.00
12/10/10	Review e-mail from Lopez on McGarr request.	.25
12/14/10	Review letter fro Plyler.	.25
12/20/10	Review letter from Plumblee on mediation.	.25
12/21/10	Prepared letter to Lee Plumblee enclosing documents of pleadings in preparation of the mediation.	.25
12/21/10	Prepared letter to clients enclosing an agreement to be signed.	.25
12/22/10	Prepared further discovery.	1.25
12/23/10	Review e-mail from Lopez resetting motion.	.25
01/03/11	Review e-mail from Clark resetting motion.	.25
01/03/11	Review e-mail from McGarr.	.25
01/04/11	Prepare medical evidence for presentation at mediation.	3.00
01/05/11	Attend mediation.	6.00
01/21/11	Meeting with Mr. Ray to review medical issues.	.50
01/24/11	Reviewed the list of items in response to Request to Produce.	2.00
01/24/11	Prepared Answers to Request to Admit of McGarr.	1.00
02/02/11	Further file preparation, analysis review by Dr. Herring in consult with Dr. Brabham.	2.00
02/08/11	Review e-mail from Bob Ray concerning Roger C. Peace treatment.	.25
02/09/11	Review e-mail from Bob Ray.	.25
02/11/11	Review letter from McGarr concerning genuineness of medical records.	.25
02/11/11	Further development of file litigation review of all medicals and summarize.	2.25
02/18/11	Revise Plaintiff's Answers to Request to Admit.	1.25
02/24/11	Review letter from McGarr regarding authenticity of medical records.	.25
02/28/11	Update file and review status.	1.25
03/02/11	Prepared Fourth Supplemental Responses to Request to Produce.	1.00
03/03/11	Prepared Second set of Request to Admit.	.75
03/08/11	Prepared Second Supplemental Answers to Interrogatories.	1.00
03/08/11	Prepared letter to McGarr requesting Plaintiffs be permitted to	

	inspect Wald's car.	.25
03/10/11	Review of medical expense at Roger C. Peace and summarize.	.75
03/10/11	Review letter from McGarr on authenticity of medical records.	.25
03/10/11	Review e-mail from client on future treatment at Roger C. Peace.	.25
03/14/11	Prepared letter to McGarr regarding records of Plaintiff and Second Request to Admit as to Authenticity of Wald's ER records.	.25
03/16/11	Review letter from Plyler and coordination of documentation.	.75
03/18/11	Review letter from McGarr on air bag deployment speed of Jeep Cherokee.	.25
03/21/11	Prepared letter to Clients enclosing a Notice of Deposition.	.25
03/21/11	Prepared letter to Plyler enclosing documents he requested.	.25
03/21/11	Prepared letter to Clients enclosing a Greenville Hospital System Consent for Release of Information.	.25
03/22/11	Prepared Status Conference Form.	.25
03/23/11	Attend Status Conference.	1.25
03/25/11	Reviewd e-mail from Bob Ray.	.25
03/31/11	Prepared letter to Plyler and McGarr regarding inspection of Wald's Car, and DeBene Esse Video Depositions.	.25
03/31/11	Contact with Dr. Cecil Huey, telephone and e-mail contact on expert Testimony about velocity of crash.	1.00
03/31/11	Review entire file for jury roster docketing. Review Dr. Benson, Dr. Kistler, Dr. Jones, Dr. Swicegood and Dr. Herring.	3.75
04/01/11	Prepared letter to Dr. Brannon regarding De Bene Esse Deposition.	.25
04/01/11	Prepared letter to Dr. Kistler regarding De Bene Esse Deposition.	.25
04/01/11	Prepared letter to Dr. Jones regarding his testimony at trial.	.25
04/01/11	Prepared letter to Dr. Swicegood regarding his testimony at trial.	.25
04/05/11	Review Defendant's responses to Request to admit that Mrs. Wald was injured in the accident.	.50
04/05/11	Review letter from McGarr and offer of Judgment by Defendant for \$15,000.00.	.50
04/11/11	Prepared letter to McGarr enclosing Second Amended Answers to Defendant's request to produce and Amended Answers to Request to Produce Authenticity of Documents.	.25
04/11/11	Prepared Second Amended Answer to Request to Produce.	.55
04/11/11	Prepared Amended Answers to Request to Admit Authenticity of Documents.	.50
04/12/11	Preparation for Motion for Summary Judgment Hearing.	2.20
04/13/11	Further preparation and attend Motion for Summary Judgment Hearing.	2.00
04/13/11	Prepared Order Granting Summary Judgment to Plaintiff on liability.	.50
04/21/11	Meeting with Dr. Shride to prove that Plaintiff was injured in accident.	1.00
04/27/11	Meeting with Dr. Benson concerning testimony of Plaintiff's injury.	.75
04/27/11	Call from Dr. Jones about testifying at trial about Plaintiff's injuries sustained in the accident.	.25
05/02/11	Prepared Notice of De Bene Esse Video Deposition	.25
05/02/11	Prepared letter to Plyler and McGarr enclosing the Notice of Deposition for Dr. Shride on 5/12/11.	.25

05/10/11	Review e-mail and report from Dr. Huey on severity of accident.	2.25
05/10/11	Review e-mail on roster of Defendant's Motion concerning medical records.	.25
05/11/11	Prepared Fifth Supplemental Response to Request to Produce.	.25
05/11/11	Prepared letter to Plyler and McGarr reminding of the request to inspect Wald's car.	.25
05/11/11	Prepared letter to Plyler and McGarr enclosing Notice of Deposition For Dr. Shride on 6/7/11.	.25
05/13/11	Prepared letter to Plyler and McGarr enclosing Fifth Supplemental Responses to Request to Produce.	.25
05/16/10	Review e-mail and revised report of Dr. Huey.	.75
05/17/11	Prepared Notice of Deposition on Dr. Kistler	.25
05/17/11	Prepared Notice of Deposition on Dr. Benson.	
05/17/11	Prepared letter to Plyler and McGarr enclosing Notice of Deposition of Dr. Benson on 7/6/11.	.25
05/17/11	Prepared letter to Plyler and McGarr enclosing Notice of Deposition of Dr. Kistler on 6/16/11.	.25
05/18/11	Prepared letter to Plyler and McGarr enclosing Sixth Supplemental Response to Request to Produce.	.25
05/20/11	Review file in preparation for trial.	2.25
05/26/11	Reviewed e-mail from Client regarding therapy costs.	.25
05/26/11	Meeting with Dr. Brabham to prepare his testimony about Plaintiff's injuries.	1.25
05/31/11	Prepared letter to Judge Stilwell requesting hearing be reset for August.	.25
06/07/11	Review and reply to various e-mails between parties about scheduling trial.	.75
06/07/11	Prepare for and conduct Deposition of Dr. Michael Schride.	4.25
06/08/11	Prepared letter to Plyler and McGarr waiving objection to McGarr's Request to Admit and Plaintiff's fourth request to inspect Wald's car.	.25
06/14/11	Meeting with Dr. Herring at Roger C. Peace to prove Plaintiff's injuries.	1.00
06/16/11	Prepare for and conduct Deposition of Dr. Kent Kistler.	2.00
06/16/11	Prepared Notice of Deposition on Dr. Benson.	.25
06/22/11	Prepared letter to Plyler and McGarr enclosing Notice of Deposition of Dr. Benson on 8/3/11.	.25
08/03/11	Prepared fax to Premier Family Medicine requesting bills.	.25
08/03/11	Prepare for and conduct Deposition of Dr. Kathy Benson.	3.50
08/17/11	Prepared Subpoena to Kim McFall.	.25
08/17/11	Prepared Subpoena to Scot Adams.	.25
08/17/11	Prepared Subpoena to Judith Waite.	.25
08/17/11	Prepared Subpoena to Ashley Sharmek.	.25
08/17/11	Prepared Subpoena to Debra Milsap.	.25
08/17/11	Prepared Subpoena to Dr. Jones.	.25
08/17/11	Prepared Subpoena to Dr. Swicegood.	.25
08/22/11	Prepared Subpoena to Dr. Brabham.	.25
08/22/11	Prepared Subpoena to Dr. Huey.	.25
08/22/11	Prepared letter to Dr. Brabham enclosing Subpoena.	.25

08/22/11	Prepared letter to Dr. Huey enclosing Subpoena.	.25
08/22/11	Prepared letter to Kim Mcfall enclosing Subpoena.	.25
08/22/11	Prepared letter to Ashley Sharmek enclosing Subpoena.	.25
08/22/11	Prepared letter to Debra Milsap enclosing Subpoena.	.25
08/22/11	Prepared letter to Dr. Swicegood enclosing Subpoena.	.25
08/22/11	Prepared letter to Dr. Jones enclosing Subpoena.	.25
08/22/11	Prepared letter to Judith Waite enclosing Subpoena.	.25
08/22/11	Prepared letter to Scott Adams enclosing Subpoena.	.25
08/24/11	Meeting with Client at Bob Ray's office.	.50
08/30/11	Prepared Subpoena to Officer M.C. Dean.	.25
08/30/11	Prepared letter to Officer M.C. Dean enclosing Subpoena.	.25
09/01/11	Conferences with Ms. Waite, Ms. Milsap, Ms. Sharmek and Dr. Huey.	4.25
09/01/11	Prepared Witness Trial Notebook and trial preparation.	3.50
09/02/11	Phone conference with Dr. Swicegood.	.50
09/06/11	Prepared letter clients enclosing their depositions.	.25
09/06/11	Prepared fax to McGarr and Plyler with names of witnesses and copies of their Subpoenas.	.25
09/06/11	Meeting with Dr. Jones.	1.00
09/07/11	Prepared fax to Plyler and McGarr enclosing e-mail from Lorraine Green regarding future medical expenses.	.25
09/07/11	Meeting with Scott to prepare for trial to establish injuries.	2.75
09/08/11	Prepared Medical Expense Summary for Trial.	1.00
09/08/11	Prepared Witness List for trial.	.25
09/08/11	Prepared fax to Plyler and McGarr enclosing re-dacted medicals.	.25
09/08/11	Prepared fax to Dr. Brabham enclosing medicals regarding his testimony.	.25
09/08/11	Review of Wald's deposition and prepared fax to Plyler and McGarr enclosing deposition excerpts of Wald to be used during trial.	2.25
09/09/11	Meeting with Deena to prepare for trial to establish injuries.	4.25
09/11/11	Preparation for trial.	6.25
09/12/11	Attended Trial and further preparation.	3.00
09/13/11	Attended Trial and further preparation.	12.00
09/14/11	Prepared Plaintiff's Request to Charge.	.50
09/14/11	Attended Trial and further preparation.	11.25
09/15/11	Attended Trial and finalize.	12.50

Total Hours	184.50
Total Out of Court Fees (184.5 Hours @ \$300.00 per hour)	\$55,350.00
Total In Court Fees (38.75 @ an additional \$300.00 per our)	\$11,625.00
Total Attorney Fees	\$66,975.00

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
09/02/10	Coordination of medicals in file.	2.50
09/16/10	Review file for depositions.	1.75

10/04/10	Post-deposition review of injury issues.	2.25
10/10/10	Prepared letter to Clerk and a Certificate of Service.	.50
10/11/10	Review file for Subpoenas of Wald's medical records.	2.75
10/11/10	Prepared letter to Clerk and a Certificate of Service.	.50
10/12/10	Prepared letter requesting records from Neurology Associates.	.25
10/14/10	Prepared letter to Clerk and a Certificate of Service.	.50
10/14/10	Prepared Certificate of Service of Third Supplemental Responses to Request to Produce.	.25
10/27/10	Review file for medical and litigation status.	2.00
10/27/10	Prepared letter to Clerk and a Certificate of Service.	.50
11/01/10	Review file for medical and litigation status.	.25
11/15/10	Coordination of Second Amended Answers.	.75
12/21/10	Review file for further discovery.	2.25
02/18/11	Prepared three letters to Clerk and three Certificates of Service.	1.25
03/03/11	Prepared a Certificate of Service to National Union Fire.	.25
03/08/11	Prepared letter to Clerk and a Certificate of Service.	.50
03/09/11	Prepared letter to Clerk and a Certificate of Service.	.50
03/11/11	Prepared letters requesting medical and bill records from Roger C. Peace Rehabilitation Hospital.	.50
04/12/11	Prepared letter to Clerk and a Certificate of Service.	.50
05/02/11	Prepared letter to Clerk and a Certificate of Service.	.50
05/11/11	Prepared letter to Clerk and A certificate of Service.	.50
05/17/11	Prepared two letters to Clerk and two Certificates of Service.	1.00
05/18/11	Prepared letter to clerk and a Certificate of Service.	.50
06/17/11	Prepared letter to Brandi Williams enclosing Plaintiff's Exhibit One.	.25
08/23/11	Prepared two letters Clerk.	.50
08/23/11	Prepared eight Certificates of Service.	1.75
08/30/11	Prepared letter to Clerk and a Certificate of Service.	.50
09/08/11	Preparation of file for trial.	7.25
09/12/11	Trial witness coordination.	2.75
09/13/11	Trial witness coordination and trial attendance.	4.00
09/14/11	Trial witness coordination.	2.25

Total Hours	42.25
Total Paralegal's Fees (42.25 Hours @ \$125.00 per hour)	\$ 5,281.25

<u>DATE</u>	<u>DESCRIPTION</u>	<u>COST</u>
08/23/10	Postage	.44
09/07/10	Postage	3.08
09/07/10	Copies	3.20
09/16/10	Postage	1.76
09/16/10	Copies	1.60

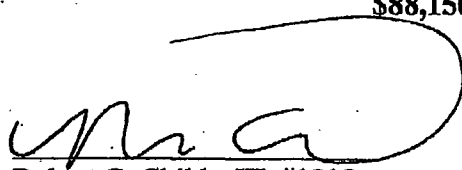
10/01/10	Copies	65.06
10/12/10	Postage	6.67
10/12/10	Copies	5.00
10/19/10	Greenville County Department of Records Fee	6.00
10/22/10	Gallagher Court Reporting	510.00
10/27/10	Postage	8.50
10/27/10	Copies	45.00
10/28/10	Postage	.44
10/28/10	Copies	.20
11/03/10	Postage	3.56
11/03/10	Copies	6.00
11/15/10	Postage	6.95
11/15/10	Copies	13.60
12/13/10	Gallagher Court Reporting	286.92
12/30/10	Postage	.78
12/30/10	USPS Postage	23.53
12/30/10	Copies	15.00
01/24/11	Postage	3.94
01/24/11	Copies	21.00
03/03/11	Postage	5.96
03/03/11	Copies	25.60
03/04/11	Postage	8.28
03/04/11	Copies	17.60
03/15/11	Postage	1.32
03/15/11	Copies	.60
03/18/11	Postage	3.02
03/18/11	Copies	2.40
03/21/11	Postage	1.93
03/21/11	Copies	2.80
03/23/11	Copies	105.60
04/04/11	Postage	3.08
04/04/11	Copies	7.20
04/12/11	Postage	5.97
04/12/11	Copies	15.00
04/13/11	Internal Medicine Associates of Greenville, Medical Records	79.95
04/13/11	Copies	4.80
04/19/11	Greenville Memorial Hospital Medical Records	23.81
04/25/11	Greenville Hospital System Medical Records	19.55
05/04/11	Postage	4.23
05/04/11	Copies	7.00
05/06/11	Premier Family Medicine, Meeting with Dr. Benson	175.00
05/16/11	Postage	9.12
05/16/11	Copies	52.80
05/18/11	Postage	6.56
05/18/11	Copies	10.40
06/08/11	Postage	1.32

06/08/11	Copies	.20
06/24/11	Postage	2.40
06/24/11	Copies	4.40
07/13/11	Gallagher Court Reporting, Deposition of Dr. Shride.	330.55
07/13/11	Postage	4.72
07/13/11	Copies	1.80
07/21/11	Gallagher Court Reporting, Deposition of Dr. Kistler.	471.45
07/22/11	Deposition fee of Dr. Kistler.	750.00
07/22/11	Roger C. Peace Rehabilitation Center Forensic Consult with Dr. Herring	187.00
07/22/11	Michael Arrison, Video Deposition of Dr. Shride.	265.00
07/22/11	Argyle Media, Deposition of Dr. Kistler.	375.00
08/03/11	Premier Family Medicine, Medical Records	17.60
08/23/11	Postage	7.08
08/23/11	Copies	8.20
08/23/11	Argyle Media, Deposition of Dr. Benson.	205.00
08/23/11	Gallagher Court Reporting, Deposition of Dr. Benson.	255.15
08/23/11	Deposition fee of Dr. Benson.	1,137.15
08/30/11	Postage	.88
08/30/11	Copies	1.60
09/06/11	Fee for meeting Dr. Jones.	300.00
09/09/11	Staples, large copies for Trial	19.56
09/15/11	Fee for Dr. Swicegood's Court Testimony.	400.00
09/20/11	Fee for Dr. Brabham's Court Testimony and mileage.	3,200.00
09/22/11	Fee for Dr. Huey's Court Testimony.	4,810.00
09/___/11	Fee for Dr. Jones's Court Testimony.	1,500.00(estimated)
Total costs		15,893.87

TOTAL FEES AND COSTS

\$88,150.12

Further affiant sayeth not.


 Robert C. Childs, III, #1218
 Attorney for Plaintiff
 2100 Poinsett Hwy, Suite D
 Greenville, SC 29609
 (864) 242-9997
 Fax (864) 242-9914

SWORN to before me this
23rd Day of September 2011.


 Notary Public for South Carolina
 My Commission Expires: 9/7/2021

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. and Scott Bettencourt,)

Plaintiffs,)

vs.)

Mary R. Ward,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2010-CP-23-2204

**DEFENDANT'S RESPONSES TO
PLAINTIFFS' SECOND SET OF REQUESTS
TO ADMIT**

The Defendant, by and through her undersigned attorney, hereby submits the following responses to the Plaintiffs' Second Set of Requests to Admit:

8. Admit that on September 4, 2008 the Defendant was admitted to the Greenville Memorial medical Center Emergency Room for neck pain, forearm, and knee abrasions, left knee pain, painful walking, ecchymosis, swelling, and tenderness of the left knee, mandible tenderness with ecchymosis paraspinal muscular tenderness, ecchymosis and swelling of the left forearm, multiple contusions and acute cervical strain as a result of the accident subject to this lawsuit.

RESPONSE: It is admitted that Ms. Wald went to the hospital and walked into the examination room without difficulty. While there, she was noted to be in no apparent distress. However, she did state her airbag deployed which caused her to have some neck pain as well as some left forearm bruising and knee pain. She also stated she was having a headache. Upon examination, she was found to have a tender jaw bone, with some scratching, tenderness in her neck, and scratches and swelling on her left forearm and her knee. As a result she was checked, released from the hospital, and walked out with out any assistance.

9. Admit that on September 4, 2008 the Defendant informed Dr. Edward Anderson at the Greenville Memorial Medical Center Emergency Room that her speed at the time of the accident was 25 - 35 miles per hour.

RESPONSE: It is admitted that Ms. Wald informed the hospital that she estimated that her speed was somewhere between 25-35 mph at the time of the accident.

10. Admit that the attached documents are true and accurate copies of the medical records of that Defendant which have been kept in the normal course of the business of the custodian.

RESPONSE: Admitted.

11. Admit that the preset airbag deployment threshold for the Defendant's 1996 Jeep Cherokee for a frontal impact with a stationary rigid wall is from 12 to 16 miles per hour.

RESPONSE: This Defendant cannot admit or deny this particular Request to Admit because the Defendant nor her attorney have any idea how to confirm or deny this statement. Just as important, Ms. Wald's attorney has asked Mr. and Mrs. Bettencourt's attorney to provide him with a way to find out this knowledge by letters dated March 16, 2011, March 23, 2011, and March 28, 2011. Despite these requests, the Bettencourt's attorney refused to provide us with the ability to even obtain knowledge of this sort.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, S.C. 29601
Telephone: (864) 298-0089
Facsimile: (864) 235-0503
ATTORNEY FOR THE DEFENDANT.

Greenville, South Carolina
April 4, 2011

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKEN
 2011 SEP 23 10:49

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
 Client L. and Scott Bettencourt,)
 Plaintiffs,)
 v.)
 Mary Ruth Wald,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 C.A. No.: 2010-CP-23-2204
**AFFIDAVIT OF ATTORNEY'S
 FEES AND COSTS
 IN SUPPORT OF 37(c) MOTION**

I, Robert C. Ray, Esquire, being duly sworn, do swear and affirm as follows:

- I am one of the attorneys representing the Plaintiffs in the above-captioned case.
 My normal hourly rate is \$325.00 per hour and my court hourly rate is \$600.00.
 Paralegal expenses are \$150.00 per hour.
- The following is an itemized list of attorney's fees and costs necessary to prove that the Plaintiff Client L. Bettencourt sustained a physical injury in the accident:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
8-17-10	email from Attorney Childs X 3	0.25hrs
8-18-10	worked on proposed settlement - researched	2.5 hrs
8-18-10	drafted Amended statement for Bettencourt	2.0 hrs
8-18-10	meeting with Drew and email from and to Client	3.0 hrs
8-18-10	email to Drew and call to Dr. Jones	0.25hrs
8-20-10	reviewed response to Req to Admit	0.5 hrs
8-23-10	reviewed responses to additional rogs	0.25hrs
8-26-10	research case law	1.5 hrs
9-1-10	email from Attorney Childs and to Brabham X2	0.5 hrs
9-1-10	research of meaning of an fMRI	1.5 hrs
9-8-10	telephone conv. with Client	0.25hrs
9-9-10	review ltr from Attorney Childs regarding Wald depo	0.5 hrs
9-13-10	telephone conv. with Client	0.25hrs
9-14-10	telephone conv. with Client	0.25hrs
9-15-10	telephone conv. with Client	0.25hrs
9-15-10	telephone calls to Emory University about fMRI	1.0 hrs
9-17-10	conference with Client and Attorney Childs	2.0 hrs
9-20-10	ltr from Attorney Childs on Client's depo: email to Client	0.25hrs
9-29-10	telephone conv. with Client	0.25hrs
9-30-10	telephone conv. with Client	0.25hrs

9-30-10	email to Client X2	0.25hrs
10-1-10	Client's depo; Mary Wald depo; prep for both	3.0 hrs
10-4-10	fax to Kistler	0.25hrs
10-4-10	call with Client	0.25hrs
10-5-10	call with Client	0.25hrs
10-6-10	call with Client	0.25hrs
10-7-10	fax from Brabham	0.25hrs
10-8-10	fax from Kistler with records and email to Client	0.25hrs
10-10-10	email to Client	0.25hrs
10-11-10	spoke with Dr. Madeline from Memorial Hospital and Dr. Parti	1.0 hrs
10-11-10	email to Attorney Childs	0.25hrs
10-12-10	call with Client	0.25hrs
10-15-10	email from Client and fax from Carolina Spine	0.25hrs
10-16-10	email to and from Attorney Childs	0.25hrs
10-19-10	reviewed fax from Brabham	0.25hrs
10-20-10	telephone conv. with Client	0.25hrs
10-25-10	telephone conv. with Client	0.25hrs
10-27-10	email to Attorney Childs	0.25hrs
10-28-10	draft Plyler first rogs and RTP	1.5 hrs
10-29-10	received and reviewed 114 pages of Wald medical records	1.5 hrs
11-8-10	ltr from Roger C. Peace to Client and received brochure	0.25hrs
11-8-10	call with Client	0.25hrs
11-10-10	reviewed Wald, Scott, and Client depo	3.0 hrs
11-10-10	call with Client	0.25hrs
11-10-10	fax from Carolina Spine and fax from Dr. Jones	0.25hrs
11-11-10	call with Client	0.25hrs
11-11-10	ltr from Roger C. Peace	0.5 hrs
11-17-10	reviewed 20 pages of Wald records	1.0 hrs
11-18-10	call to Client	0.25hrs
11-22-10	email from Attorney Childs	0.25hrs
12-14-10	call with Client	0.25hrs
12-27-10	call with Client	0.25hrs
1-3-11	call with Client	0.25hrs
1-3-11	draft brief opposing motion to dismiss	1.0 hrs
1-4-11	email from Attorney Childs and research for letter to Sherman	1.0 hrs
1-5-11	mediation and preparation	6.5 hrs
1-26-11	reviewed McGarr request to admit and for authenticity	0.5hrs
2-1-11	call with Client	0.25hrs
2-2-11	meeting w/Client	2.0hrs
2-3-11	call with Client	0.25hrs
2-10-11	call with Client	0.25hrs
2-15-11	call with Client	0.25hrs
3-1-11	call with Client	0.25hrs
3-2-11	call with Client	0.25hrs
3-3-11	email to Attorney Childs	0.25hrs
3-8-11	call with Client	0.25hrs

3-10-11	call with Client	0.25hrs
3-10-11	email from Client and email from Attorney Childs	0.25hrs
3-14-11	call with Client	0.25hrs
3-16-11	results from Roger C. Peace & call from Client & to Roger C. Peace	0.5 hrs
3-17-11	call with Client	0.25hrs
3-23-11	pre-trial and email to Brabham	3.5 hrs
4-1-11	call from Client	0.25hrs
4-5-11	reviewed group of ltrs from Attorney Childs to doctors	0.75hrs
4-5-11	call with Client	0.25hrs
4-6-11	call with Client	0.25hrs
4-15-11	call with Client	0.25hrs
5-6-11	notice of Shride depo	0.25hrs
5-13-11	receive ltr from Attorney Childs and notice of Shride depo	0.25hrs
5-19-11	notice of Benson and Kistler depo	0.25hrs
5-24-11	call to Client	0.25hrs
5-26-11	call to Client	0.25hrs
6-6-11	call from Attorney Childs's office	0.25hrs
6-7-11	Shride depo and preparation	2.5 hrs
6-14-11	reviewed Shride depo	1.5hrs
6-16-11	Kistler depo and preparation	3.5hrs
6-27-11	email from Attorney Childs with Kistler depo	0.25hrs
7-14-11	call to Client	0.25hrs
7-20-11	call to Client	0.25hrs
7-21-11	call to Client	0.25hrs
8-1-11	filed court doc	0.5hrs
8-1-11	call with Client	0.25hrs
8-3-11	Benson depo and preparation	3.0hrs
8-3-11	call with Client	0.25hrs
8-9-11	call with Client	0.25hrs
8-16-11	call to Brabham to set appointment	0.25hrs
8-16-11	call with Client	0.25hrs
8-17-11	call with Client	0.25hrs
8-17-11	call from Client	0.25hrs
8-19-11	call with Client	0.25hrs
8-24-11	call from Brabham's office	0.5 hrs
8-24-11	meeting with Client and Brabham and email from Meagon	2.0 hrs
8-25-11	email to Brabham	0.25hrs
8-26-11	call with Client	0.25hrs
8-29-11	call from and to Dr. Swicegood	0.5 hrs
9-1-11	call with Client	0.25hrs
9-2-11	call with Scott	0.25hrs
9-2-11	email from Attorney Childs	0.25hrs
9-6-11	meeting with Dr. Jones and preparation	2.0 hrs
9-8-11	redacted medicals	0.5hrs
9-8-11	call with Client	0.25hrs

9-9-11	reviewed juror list	1.5 hrs
9-12 to 9-15	Court	35.0hrs
TOTAL HRS @ \$325.00 HR.	79.25 = \$25,756.25	
COURT HRS @ \$600.00/HR.	35.0 = \$21,000.00	
TOTAL ATTORNEY FEE	\$46,756.25	

PARALEGAL HOURS

8-17-10	review BAB depo and email Attorney Childs	2.0 hrs
8-17-10	email from and to Jim Sherman	0.25hrs
8-17-10	outline for meeting with Drew	0.5 hrs
8-20-10	review response to Req to Admit	0.5 hrs
8-23-10	review responses to Ps additional rogs	0.25hrs
8-30-10	review response to rogs from Plyler	0.5 hrs
9-9-10	review ltr from Attorney Childs regarding Wald depo	0.25hrs
9-20-10	review ltr from Attorney Childs on Client's depo	0.25hrs
10-1-10	Client's depo, Mary Wald depo, and prep for both	2.0 hrs
10-4-10	review fax to Kistler	0.25hrs
10-7-10	review fax from Brabham	0.25hrs
10-8-10	review fax from Kistler with records	0.25hrs
10-15-10	review fax from Carolina Spine	0.25hrs
10-19-10	review fax from Brabham	0.25hrs
10-28-10	proof Plyler first rogs and RTP	1.0 hrs
10-29-10	review 114 pages of Wald medical records	1.5 hrs
11-3-10	review bill from court reporter	0.25hrs
11-5-10	review draft of Ps reply to rogs and RTP and request for extension	0.5 hrs
11-5-10	review notice of mediation	0.25hrs
11-8-10	review ltr from Roger C. Peace to Client and brochure	0.25hrs
11-10-10	review Wald, Scott, and Client depo	1.5 hrs
11-10-10	review fax from Carolina Spine and fax from Dr. Jones	0.25hrs
11-11-10	receive notice of depo change	0.25hrs
11-11-10	review ltr from Roger C. Peace	0.25hrs
11-17-10	receive 20 pages of Wald records and request for hearing change	0.5 hrs
1-3-11	review brief opposing motion to dismiss	0.5 hrs
1-5-11	mediation and prep	4.0 hrs
1-6-11	research and ltr to Attorney Childs and worked on ltr to Sherman	1.5 hrs
1-26-11	reviewed McGarr's request to admit and for authenticity	0.25hrs
2-2-11	meeting w/Client	1.25hrs
2-18-11	review PLCG invoice for copies and receive mediation invoice	0.25hrs
3-16-11	review results from Roger C. Peace	0.5 hrs
3-23-11	pre-trial prep	1.0 hrs
4-5-11	review group of ltrs from Attorney Childs to doctors	0.75hrs
5-13-11	review ltr from Attorney Childs and notice of Shride depo	0.25hrs
5-19-11	review notice of Benson and Kistler depo	0.25hrs
6-7-11	Shride depo prep	1.0 hrs
6-14-11	review Shride depo	0.5 hrs
6-16-11	Kistler depo prep	1.0 hrs

6-27-11	review Kistler depo	1.0 hrs
6-28-11	notice of change of Benson depo	0.25hrs
8-3-11	Benson depo prep	1.0 hrs
8-10-11	review Benson depo	1.0 hrs
8-24-11	meeting with Client and Brabham	2.0 hrs
9-8-11	review redacted medicals faxed from Attorney Childs	0.25hrs
9-9-11	reviewed juror list	1.5 hrs
9-12-11	Court and prep for next day	4.0 hrs
9-13-11	Court and prep for next day	10.5 hrs
9-14-11	Court and prep for next day	9.0 hrs
9-14-11	worked on closing argument and emailed to Attorney Childs	1.0 hrs
9-15-11	Court	6.0 hrs

TOTAL HRS @ \$150.00/HR

64.75 = \$9,712.50

ADVANCED COSTS

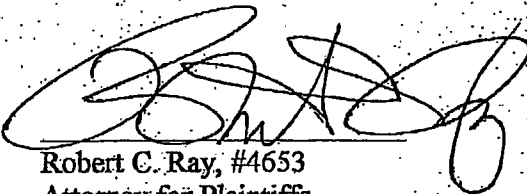
8-18-10	Copies	1.75
8-23-10	Copies	6.25
8-26-10	Fax	1.00
8-26-10	Copies	2.25
9-1-10	Copies	3.75
9-9-10	Copies	0.75
9-9-10	Fax	1.00
9-14-10	Fax	3.00
9-15-10	Copies	2.50
9-29-10	Fax	1.00
10-1-10	Copies	4.50
10-4-10	Fax	1.00
10-7-10	Fax	2.00
10-8-10	Fax	1.00
10-12-10	Copies	11.75
10-15-10	Fax	1.00
10-19-10	Fax	1.00
10-28-10	Copies	3.25
11-10-10	Fax	2.00
11-17-10	Copies	4.75
12-14-10	Copies	0.50
1-5-11	Copies	3.25
2-15-11	Copies	0.75
3-8-11	Copies	1.25
3-23-11	Copies	4.50
5-6-11	Copies	1.00
6-7-11	Copies	4.00
6-16-11	Fax	1.00
6-27-11	Copies	1.25
7-21-11	Copies	0.75

8-3-11	Copies	1.25
8-24-11	Fax	2.00
8-24-11	Copies	0.75
9-6-11	Copies	1.50
9-8-11	Copies	1.25
9-9-11	Copies	22.75
9-12-11	Copies	1.25
9-13-11	Copies	6.50
9-14-11	Copies	4.75
12-2-10	Mickey Dawson	\$868.55
12-17-10	Gallagher Court Reporting	286.93
3-4-11	Eppes & Plumbee	87.77
4-1-11	Eppes & Plumbee	<u>568.34</u>
		\$1,927.34

TOTAL FEES AND COSTS

\$58,396.09

Further affiant sayeth not.



Robert C. Ray, #4653
Attorney for Plaintiffs
306 A Mills Ave.
Greenville, SC 29605
864-233-4555
864-232-9730 – Fax

SWORN to before me this
23 day of September, 2011.

Michelle Patterson

Notary Public for South Carolina

My Commission Expires: 12/6/20

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2010-CP-23-2204

Deena L. and Scott Bettencourt,)

Plaintiffs,)

vs.)

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S REQUEST FOR
FEES AND COSTS**

Mary R. Ward,)

Defendant.)

MEMORANDUM REGARDING ATTORNEY FEES

This matter came before the Court, initially, as a result of Deena Bettencourt claiming to have sustained a permanent head injury that would cost \$2,500,000.00 plus in damages. In the closing arguments, those numbers were reduced to approximately \$250,000.00, plus an additional award for pain, suffering, and permanent head injury.

It is also important to note that Ms. Bettencourt informed the jury that she had medical expenses of approximately \$20,000.00, which were incurred, or were to be incurred in the future.

The jury returned a verdict in the amount of \$16,500.00, which appears to be an almost exact representation of the medical expenses incurred to date. In essence, the jury awarded a verdict for bills incurred, and refused to pay for any future medical treatment, pain and suffering, loss of income, or permanent injury.

It also becomes procedurally important to note that defense counsel, prior to suit, had offered to pay the medical expenses Ms. Bettencourt had incurred up to that date (approximately \$10,000.00). In fact, defense counsel actually advanced costs so that Ms. Bettencourt could undergo a second MRI.

Defense counsel then had the opportunity to review Ms. Bettencourt's medical records, to see if there was any objective evidence of a permanent injury to Ms. Bettencourt's brain. The review of the records revealed two (2) normal MRIs, evidence that Ms. Bettencourt had suffered from four (4) prior concussions, and evidence of neuropsychological evaluations, which can be manipulated by the patient. In essence, the objective findings indicated no evidence of a head injury. Regardless, defense counsel made an Offer of Judgment for \$15,000.00, which, at the time, would have represented Ms. Bettencourt's slightly increased out-of-pocket medical expenses.

In essence, defense counsel was still willing to pay Ms. Bettencourt's medical expenses, simply due to the fact that Ms. Bettencourt was of the belief that she had a head injury. Beyond that, defense counsel had reasonable grounds to believe that Ms. Bettencourt was continuing to incur medical expenses in an attempt to prove a permanent brain injury that was not in existence.

In fact, given the totality of the circumstances, it was reasonable to believe that the jury would actually determine that Ms. Bettencourt suffered no injury, and corresponding medical expense, as a result of the automobile accident in question. As such, the denials contained in the Request to Admit are the product of an honest belief that Ms. Bettencourt felt she was injured as a result of the accident and therefore incurred medical expenses. However, the future medical expenses were being incurred in her attempt to prove that a head injury actually existed. In fact, the jury returned a verdict much closer, by far, to defense counsel's Offer of Judgment of \$15,000.00 than Ms. Bettencourt's request for \$2,500,000.00 plus, or \$250,000.00 plus. In essence, the jury's verdict sustained defense counsel's belief.

Quoting rule 37(c)(3) and (4) of the *SCRCP*, "The Court shall make (an Order, awarding attorney's fees), unless it finds a party failing to admit had a reasonable ground to believe he may prevail on the matter, or, there was other good reason for the failure to admit."

Again, in essence, based upon the totality of the circumstances, defense counsel had a

reasonable ground to believe that a jury would find that Ms. Bettencourt had not suffered from a brain injury. The jury's verdict reflects defense counsel's position and is for good reason to deny an award of attorney's fees.

MEMORANDUM REGARDING COSTS

It is also important to note that Ms. Bettencourt is attempting to retrieve \$ 17,821.21 in costs. Those costs consist of postage, copies, fees for retrieving medical records, expert fees, videographer fees, and court reporting fees.

Our Supreme Court, in the case of Black v. Roche Biomedical Laboratories, 315 S.C. 223, 433 S.E.2d 21, specifically stated that "Costs and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute (or rule)."

In the present instance, plaintiff's counsel submitted approximately twenty-five (25) pages of copies into evidence. Furthermore, the defendant did utilize copies of depositions associated with the parties and physicians. However, those costs would be as follows: Gallagher Court Report, 10/22/10, \$510.00; Gallagher Court Reporting, 12/13/10, \$286.92; Gallagher Court Reporting, 12/17/10, \$286.93; Gallagher Court Reporting, 7/13/11, \$330.55; Gallagher Court Reporting, 7/21/11, \$471.45; Gallagher Court Reporting, 8/23/11, \$255.15; which represent total copy expenses of \$2,141.00. These costs are appropriate, as they are for copies which were used in trial.

However, the remaining costs, which consist of postage, copies not used at trial, fees for retrieval of medical records, videotaping of doctors, and expert fees are costs that cannot be found through our rules or statutes, and therefore are not to be awarded.

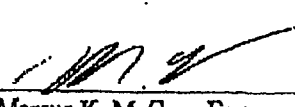
CONCLUSION

In conclusion, the jury's verdict clearly establishes that the defendant had a reasonable ground to both deny the Request to Admit and prevail on the issues associated with the Request to Admit. In fact, the jury's award is millions of dollars less than the plaintiff originally requested, and

hundreds of thousands of dollars less than the plaintiff asked the jury to pay. However, it is a mere fifteen hundred dollars greater than the defendant's Offer of Judgement. As such, the defendant has shown that she had a reasonable belief that she might prevail, as well as other good reason for failing to admit. As such, no attorney's fee should be taxed.

On the other hand, the plaintiff did prevail, and, as such, is entitled to costs that can be found in a rule or a statute. In the present instance, costs that can be found by rule or statute are costs that amount to \$2,141.00. Those costs can and should be awarded. On the other hand, the remaining costs are not reflective of anything set forth by statute or rule, and, as such, cannot be awarded.

For all of the above reasons the undersigned must oppose the plaintiff's request for attorney's fees and must also oppose the majority of her requests for costs.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, S.C. 29601
(864) 298-0089
(864) 235-0503
ATTORNEY FOR THE DEFENDANT

Greenville, South Carolina
September 28, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Deena L. and Scott Bettencourt)

v.)

Mary Ruth Wald,)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2010-CP-23-2204

MOTION FOR RECONSIDERATION
(Order of Judge Robin B. Stilwell)

Comes now the Plaintiffs, Deena L. Bettencourt and Scott Bettencourt, by and through their undersigned attorney, pursuant to Rule 52(b) and 59(c) SCRCP and hereby respectfully requests this Circuit Court to reconsider its order dated October 21, 2011, filed October 28, 2011; and received on November 1, 2011 or in the alternative, to amend this Circuit Court's findings of fact of to alter/or amend the judgment rendered based upon the following grounds:

1. The Trial Court erred in failing to set forth sufficient findings of fact and conclusions of law to ascertain the factual basis of its decision.
2. The Trial Court erred in limiting its award to "which costs and expenses were incurred as a direct consequence of the failure to admit." Rule 37(c) SCRCP provides for "the reasonable expenses incurred in making that proof..." not expenses incurred "as a direct consequence of the failure to admit."
3. The Trial Court erred in limiting its award to expenses that "would not have been incurred but for the requirement to proceed as though proof must be offered." Rule 37(c) SCRCP provides for "the reasonable expenses incurred in making that proof..." not expenses that "would not

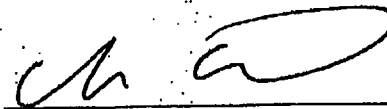
have been incurred but for the requirement to proceed as though proof must be offered."

4. The Trial Court erred in limiting its awards of costs to the costs of depositions. Rule 37(c) SCRCF is not limited to costs of depositions.
5. Having implicitly found that the Defendant did not have "reasonable ground to believe [s]he might prevail on the matter" pursuant to SCRCF Rule 37(c)(3), the Trial Court erred in failing to award \$128,725.00 in paralegal and attorneys' fees when the Defendant failed to raise any objections or grounds as to the reasonableness of those fees. Furthermore, the Defendant failed to set forth any objections or grounds that those fees were not necessary to prove the truth of the matter asserted.

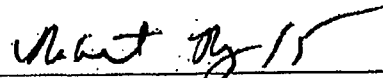
The Plaintiffs request a hearing on this matter and the right to supplement this motion with a memorandum prior to a hearing.

The Plaintiff respectfully requests this Circuit Court to undertake one or more of the following actions:

1. Reconsider or amend its order.
2. Reconsider or amend its order to award the balance of the Plaintiff's attorneys' fees and costs submitted.
3. Reconsider or amend its order to set forth sufficient findings of fact and conclusions of law to determine the basis for the Trial Court's decision.
4. Such other and further relief as the Trial Court deems just and proper.



Robert C. Childs, III, #1218
Attorney for Plaintiff
2100 Poinsett Hwy, Suite D
Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914



Robert C. Ray, #4653
Attorney for Plaintiffs
306 A Mills Ave.
Greenville, SC 29605
(864) 233-4555
Fax (864) 232-9730

Greenville, South Carolina
Date: November 4, 2011

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF GREENVILLE	) Case No(s) : 2010CP2302204
	)
Deena L. & Scott Bettencourt,	)
	)
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Mary R. Wald,	)
	)
Defendant.	)
	)

September 12 - 15, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

ROBERT C. CHILDS, III, Esquire
BOB RAY, Esquire
Attorneys for the Plaintiff

MARCUS K. MCGARR, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

I N D E X

November 12, 2012

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jury Qualification	7			
Jury Selection	16			
Court Remarks	19			

November 13, 2012

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	24			
Court Remarks to Jury	28			
Opening Statement				
by Mr. Childs	38			
by Mr. McGarr	45			
PLAINTIFF WITNESSES:				
Officer Michael Dean				
by Mr. Childs	49			
by Mr. McGarr		55		
Kim McFall				
by Mr. Childs	82			
by Mr. McGarr		93		
Dr. Michael Shride (via Video)	102			
Ashley Sharmek				
by Mr. Childs	104			
by Mr. McGarr		109		

I N D E X

November 13, 2012 (con't)

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Dr. Randall Jones				
by Mr. Childs	113			
by Mr. McGarr		146		
by Mr. Childs			148	
Dr. Kathy Benson (via Video)		151		
Dr. Kent Kistler (via Video)		154		

November 14, 2012

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Dr. Cecil Huey				
by Mr. Childs	165			
by Mr. McGarr		185		
by Mr. Childs			185	
Judith Waite				
by Mr. Childs	187			
Scott Bettencourt				
by Mr. Childs	202			
by Mr. McGarr		224		
by Mr. Childs			245	
Deena Bettencourt				
by Mr. Childs	249			

I N D E X

November 15, 2012

DIRECT CROSS REDIRECT RECROSS

Requests for Charge 327

Deena Bettencourt (con't)

by Mr. McGarr 331

by Mr. Childs 398

by Mr. McGarr 411

by Mr. Childs 412

Dr. Phillip Swicegood

by Mr. Childs 414

by Mr. McGarr 420

Requests for Interrogatories 422

Dr. Robert Brabham

by Mr. Childs 425

by Mr. McGarr 459

Motions 463

DEFENSE WITNESSES:

Ruth Wald

by Mr. McGarr 465

by Mr. Childs 468

by Mr. McGarr 477

Motion's 478

I N D E X

November 15, 2012 (con't)

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Closing Argument				
by Mr. Childs	481			
by Mr. McGarr	495			
by Mr. Childs	502			
Jury Charge	505			
Jury Deliberation	529			
Questions of the Jury	529			
Verdict	532			
Motions	534			
Certificate of Reporter	537			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
PLAINTIFF EXHIBITS			
P-1	Bills	7	103
P-2	Statement	7	140
P-3	Account Inquiry	7	151
P-4	Neurology Associates bill	7	239
P-5	Matrix Rehabilitation bill	7	239
P-6	Diagnostic Health bill	7	239
P-7	Roger C. Peace bill	7	309
P-8	Summary	312	312
DEFENSE EXHIBITS			
D-1	Interrogatory	335	335
D-2	Photos	348	348
COURT EXHIBITS			
C-1	Video		
C-2	Video		
C-3	Video		
C-4	Cooking video		
C-5	Jury Question		
C-6	Jury Question		
C-7	Jury Question		

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 12th day of September, 2011.)

(WHEREUPON, Plaintiff's Exhibits 1 through 7 are premarked for identification purposes.)

THE COURT: Y'all ready for jury? All right. Bring them in please.

Gentlemen, you prefer one alternate or two?

MR. McGARR: I would go with none. I would go with less than 12.

THE COURT: Okay. You comfortable with that, Mr. Childs?

MR. CHILDS: I'm good with one alternate.

THE COURT: Okay. One alternate. Good enough.

(WHEREUPON, the jury enters at approximately 11:28 a.m.)

THE COURT: All right. Good morning everyone. Welcome to Courtroom 6. I'm glad to have you up here with me. I'm Rob Stilwell. I'm a Circuit Court Judge. I'll be presiding over the case that we're going to call to trial.

Now, downstairs, I recognize that you went through the qualification process. You were asked a series of questions and asked to respond to the

1 same. I'm going to ask you questions here today
2 for this specific case. Downstairs, you were asked
3 questions to determine whether you were qualified
4 under the law to serve as a juror in the State of
5 South Carolina and/or the county of Greenville or
6 whether you enjoyed any particular exemption under
7 the law. The questions I'm going to ask you relate
8 to this specific case and, uh, what I'll be asking
9 you is questions to determine whether you are
10 qualified to serve as a juror in this particular
11 case or whether it's suitable and appropriate that
12 you serve as a juror in this particular case. So
13 I'll remind you before we get started, you continue
14 under the oath that you took downstairs to answer
15 truthfully any questions that may be posed. The
16 rules are the same as well. That is, when I ask a
17 question, if your answer is in the affirmative,
18 then stand up if you would please and state your
19 name and your juror number and then give me the
20 answer to the question.

21 Now, the case that we are calling to bar today
22 is the case of Deena L. and Scott Bettencourt
23 versus Mary R. Ward. That is case number 2010-CP-
24 23-2204. Now, Ladies and Gentlemen, in this case,
25 the plaintiff alleges that the defendant was

1 negligent and that as a result of the defendant's
2 negligence occurring as a result of a automobile
3 accident on Augusta Street in Greenville County on
4 September 4th, 2008, that the plaintiff did suffer
5 damages.

6 Now, Ladies and Gentlemen, I will ask you -- I
7 know I just gave you a very, very superficial
8 layout of the facts. But based on what I told you
9 about who the parties are and what the alleged
10 facts are in this case, is there anyone who has
11 any, uh, predisposition, any knowledge or any
12 opinion regarding the parties and the facts as I
13 have stated them to you? (No response.)

14 All right. Let the record reflect no
15 affirmative response.

16 MR. McGARR: Your Honor, actually, my client
17 is Mary Ruth Wald.

18 THE COURT: Wald? Okay. Gotcha. Thank you
19 for telling me that. I saw it both ways. I didn't
20 know which way. I thought it was Ward.

21 Okay. Ladies and Gentlemen, you heard that
22 correction. The defendant is Mary R. Wald. Does
23 that change your response in any way, shape or
24 form? (No response.)

25 No? Okay. Thank you.

1 **THE JUROR:** Could you repeat the names
2 again?

3 **THE COURT:** Yes, ma'am. I'm going to go
4 through them again as well. But the plaintiffs are
5 Deena L. and Scott Bettencourt versus Mary Ruth
6 Wald. Okay. All right.

7 The plaintiff in this case, Ladies and
8 Gentlemen, as I've already stated to you is Deena
9 L. and Scott Bettencourt. And their attorney is
10 Mr. Robbie Childs of the Greenville County Bar.

11 Mr. Childs, is there anyone else that you need
12 to introduce on your team?

13 **MR. CHILDS:** Mr. Robert C. Ray is co-counsel
14 with us in this case and this is Mrs. Deena
15 Bettencourt.

16 **THE COURT:** All right. Ladies and
17 Gentlemen, I'll ask you, is there anyone among you
18 who is, uh, -- who is related to or is friends with
19 or has a relationship of any sort with Mrs.
20 Bettencourt?

21 **THE JUROR:** I have a question please.

22 **THE COURT:** Yes, ma'am.

23 **THE JUROR:** Mrs. Bettencourt, do you
24 frequent a dry cleaner on Augusta Road?

25 **MR. FIELD:** Yes, I do.

1 THE JUROR: She is a customer of mine.

2 THE COURT: Okay. What's your name and juror
3 number?

4 THE JUROR: I'm Judy Williams. My number is
5 187.

6 THE COURT: You think the fact that she
7 comes in and does business with you would affect
8 your ability to be fair and impartial and render a
9 verdict in this case?

10 THE JUROR: No.

11 THE COURT: Okay. Thank you for telling me.
12 I appreciate it. All right.

13 All right. Is there anyone among you who has
14 a personal, professional or family relationship
15 with Mr. Childs or Mr. Ray? (No response.)

16 All right. Let the record reflect no
17 affirmative response.

18 Ladies and Gentlemen, is there anyone among
19 you who has a personal, professional or family
20 relationship with the defendant, Mrs. Mary R.
21 Wald? (No response.)

22 Ladies and Gentlemen, Mrs. Wald is represented
23 by Mr. Marcus McCarr -- McGarr of the Greenville
24 County Bar. I will ask you is there anyone among
25 you who has a personal, professional or family

1 relationship with Mr. McGarr? (No response.)

2 Okay. Let the record reflect no affirmative
3 response.

4 Ladies and Gentlemen, I'm going to read for
5 you a list of potential witnesses in this case.
6 Then I'm going to ask you the same question that
7 I've been asking you with respect to everyone else
8 and that is whether you know them and have a
9 relationship with them. So those potential
10 prospective witnesses are Dr. Michael Shride, Kim
11 McFall, Dr. Randel Jones, Deena Bettencourt, Ashley
12 Sharmek, Dr. Kathy Benson, Dr. Cecil Huey, Scott
13 Bettencourt, Dr. Kent Kistler, Judith Waite, Dr.
14 Phillip Swicegood, Dr. Robert Brabham, uh, Officer
15 M.C. Dean, Dr. Sheldon Herring, Ruth Wald, Allen
16 Foltz, Amy Clarke, Pam Rozelsky, Cindy Baxley.
17 Ladies and Gentlemen, anyone among you has a
18 personal, professional or family relationship with
19 any of those individuals?

20 Yes, sir.

21 **THE JUROR:** Dr. Michael Shride.

22 **THE COURT:** Okay. And what is your
23 relationship with him, sir?

24 **THE JUROR:** Uh, chiropractor.

25 **THE COURT:** Okay. And your name and juror

1 number.

2 **THE JUROR:** Travis Collins.

3 **THE COURT:** Do you --

4 **THE JUROR:** Number 36.

5 **THE COURT:** Okay. And do you think that

6 even though you know him, you could still be a fair

7 and impartial juror in the trial of this case?

8 **THE JUROR:** Yes, sir.

9 **THE COURT:** All right. Thank you.

10 Yes, ma'am.

11 **THE JUROR:** Uh, I know Mark McGarr.

12 **THE COURT:** Oh, you do? Okay.

13 **THE JUROR:** I do.

14 **THE COURT:** What's your name and juror

15 number?

16 **MR. McGARR:** I know --

17 **THE COURT:** Okay. All right. So what's

18 your juror number? Do you know?

19 **THE JUROR:** I don't know.

20 **THE COURT:** Okay. All right. Do you --

21 okay. Do you think you could still be a fair and

22 impartial juror in the trial of this case?

23 **THE JUROR:** I do. I don't know if they'd

24 want me.

25 **THE COURT:** Well, leave that up to them to

1 decide. We'll leave that up to them. You never
2 know. Stranger things have happened.

3 THE JUROR: Okay.

4 THE COURT: Okay. Anyone else?

5 Yes, sir.

6 THE JUROR: I know Kim McFall.

7 THE COURT: Okay. What's your name and
8 juror number?

9 THE JUROR: Dan Crawford, jury number, uh,
10 3.

11 THE COURT: Okay. And what's your
12 relationship with her?

13 THE JUROR: I worked with Kim in a bank
14 about 12 years ago.

15 THE COURT: You think you could still be a
16 fair and impartial juror in the trial of this case?

17 THE JUROR: Sure.

18 THE COURT: Okay. Good enough. Thank you
19 for telling me. I appreciate it. Anyone else?
20 All right. Is there anyone among you who has been
21 a litigant, a party to a lawsuit either as a
22 plaintiff or a defendant in a cause of action
23 relating to a car injury or a job injury?

24 (No response.)

25 All right. Let the record reflect no

1 affirmative response.

2 Is there anyone among you who has been treated
3 by or has had a close family member treated by Dr.
4 Michael Shride of the Carolina Rehab and Spine
5 Center or Dr. Kent Kistler of Neurology Associates
6 or Cathy Benson of Premier Family Medicine or Dr.
7 Randal R. Jones of Crescent Psychological Services?

8 Yes, sir.

9 **THE JUROR:** Dr. Michael Shride.

10 **THE COURT:** I got you. You already told us
11 that, right?

12 **THE JUROR:** Yes, sir.

13 **THE COURT:** Thank you.

14 Anyone among you who has been treated by -- or
15 a close family member been treated by Dr. Robert E.
16 Brabham or Psychological and Training Services?

17 (No response.)

18 All right. Let the record reflect no
19 affirmative response.

20 Ladies and Gentlemen, is there anyone among
21 you who believes that you could, for whatever
22 reason, could not be a fair and impartial juror in
23 the trial of this case? (No response.)

24 Okay. Let the record reflect no affirmative
25 response.

1 Now, Ladies and Gentlemen, we're going to move
2 toward jury selection. And what's going to happen
3 is we are going to pick 12 primary jurors and one
4 alternate juror. What will happen is the Clerk of
5 Court will invite the attorneys to make peremptory
6 challenges. That's -- I know you saw a video
7 downstairs about peremptory challenges. In civil
8 court, what will happen is the attorneys will make
9 strikes from a sheet. You are listed
10 chronologically, just in order at random. The
11 attorneys will strike by number. They will strike
12 1, 2, 3, 4 and so on. Now, when they make a
13 strike, the number that they strike will not
14 correspond to your juror number. Meaning, if you
15 are juror number 4 and one of the attorneys strike
16 juror number 4, that will not be you. They will be
17 striking in order listed on this strike sheet.

18 After the attorneys have exercised all their
19 peremptory challenges, which is four a piece, then
20 we will pick an alternate juror. Then, uh, you
21 will be seated and we can begin on the trial of
22 this case. All right.

23 Ms. Coker.

24 **THE CLERK:** Okay. 1 through 20.

25 **MR. CHILDS:** The plaintiff strikes 14.

1 THE CLERK: Plaintiff strikes 14.
2 MR. McGARR: The defendant strikes 16.
3 THE COURT: Defendant strikes 16.
4 MR. CHILDS: The plaintiff strikes 15.
5 THE CLERK: Plaintiff strikes 15.
6 MR. McGARR: The defendant strikes 20.
7 THE CLERK: Defendant strikes 20.
8 MR. CHILDS: The plaintiff strikes 18.
9 THE CLERK: Plaintiff strikes 18.
10 MR. McGARR: The defendant strikes 8.
11 THE CLERK: Defendant strikes 8.
12 MR. CHILDS: The plaintiff strikes 11.
13 THE CLERK: Plaintiff strikes 11.
14 MR. McGARR: The defendant strikes 9.
15 THE CLERK: Defendant strikes 9.
16 THE CLERK: Our alternate will come from 21,
17 22 and 23.
18 MR. CHILDS: The plaintiff strikes 22.
19 THE CLERK: Plaintiff strikes 22.
20 MR. McGARR: The defendant strikes, uh, 23.
21 THE CLERK: Defendant strikes 23.
22 Gentlemen, I'll call these back to you.
23 plaintiff strikes 11, 14, 15, 18 and 22. Defendant
24 strikes 8, 9, 16, 20 and 23.
25 MR. CHILDS: That's correct.

1 **MR. MCGARR:** That's correct.

2 **THE COURT:** Gentlemen, are there any issues
3 or matters of law to take up with respect to the
4 qualification and/or selection of this jury?

5 **MR. CHILDS:** None from the plaintiff, Your
6 Honor.

7 **MR. MCGARR:** None from the defendant, Your
8 Honor.

9 **THE COURT:** All right. You may seat the
10 jury.

11 **THE CLERK:** Ladies and Gentlemen, when I
12 call your name, please bring your things and have a
13 seat in our jury box. Janet Parnell, Jeffrey
14 Hinson, Pamela Robson, Daniel Henderson, Travis
15 Tarbet, Sherry Mattox, Christine Burnikel, Jamie
16 Dunn, Patrick Arnold, Darrell Knight, Sharon
17 Coulter, Harold Black, and our alternate is
18 Michelle Sarbaugh.

19 **THE COURT:** All right. Ladies and
20 Gentlemen, either congratulations or condolences
21 are in order. I don't know which one. I suppose
22 it depends on your predisposition. But y'all will
23 get another shot, I promise. So what I'm going to
24 ask you to do please is go down back downstairs to
25 the jury assembly room. Mrs. Olson will give you

1 instructions from there. Thank you for being here.

2 I'm happy to have you in the courtroom today. Hope

3 y'all have a great week.

4 (WHEREUPON, the jury panel exits at approximately

5 11:45 a.m.)

6 THE COURT: All right. Ladies and

7 Gentlemen, uh, because of other court hearings that

8 have been scheduled for this afternoon, we're not

9 actually going to start this trial until tomorrow

10 morning. So what I'm going to do after I talk to

11 you just a short second is I'm going to release you

12 and ask you to be back tomorrow morning at nine

13 o'clock. If you would be just a little bit early

14 because if y'all are all here on time, that means

15 we can start on time. It's not out of

16 consideration for me or the attorneys or the

17 parties, it is out of consideration for your fellow

18 jurors.

19 Right now, my information is that this case

20 should last about three days, uh, which should take

21 us through Thursday, perhaps into Friday. Now the

22 reason I'm equivocating just a little bit is

23 because I don't know what witnesses are going to be

24 presented and what evidence are going to be

25 presented any more than y'all do right now. I

1 haven't seen any of these witnesses and I haven't
2 looked at any of the evidence in this case. So I'm
3 not sure exactly how long it's going to last. But
4 based on representation that the attorneys have
5 made to me, I anticipate we'll be going at least
6 through Thursday on this case.

7 Please don't discuss the case yet. I
8 recognize, of course, that you don't know anything
9 about the case other than what I have told you.
10 But it's not appropriate that you begin any
11 deliberations on the case, begin discussing the
12 case with anyone until and unless you have heard
13 all the evidence in this case. Common sense will
14 tell you that you really can't start, uh,
15 deliberating on a case or analyzing a case until
16 such time as you've heard all of the evidence
17 you've heard from both sides. You can't make an
18 informed and intelligent decision based on just a
19 little bit of information. So please don't discuss
20 the case.

21 I know that you may be invited by your spouse,
22 significant other or friends to talk about the case
23 a little bit. Please resist the temptation for
24 now. At the end of the case, you'll have the
25 opportunity to discuss the same.

1 Also please don't do any self-help on the
2 case, meaning, don't go to the Clerk of Court's
3 website or to any media outlet and try to find out
4 something about this case in anticipation of
5 hearing it. The only thing that is appropriate for
6 your consideration in this case is that evidence
7 which is appropriately submitted on the stand in
8 open court. If you consider anything outside of
9 what is presented in court, then you will taint
10 your deliberations. We'll just have to try the
11 case again. So I would submit to you that your
12 time is much, much too valuable to waste it because
13 of having done something like gone outside of the
14 evidence that's presented in the courtroom.

15 So I look forward to working with y'all this
16 week. Tomorrow morning, I'm going to give you a
17 little bit more explanation of the way the trial
18 will go, what your duties are as jurors and what my
19 duty is as a judge so that hopefully, when we
20 start, y'all will kind of have the big picture of
21 the landscape of the case, the procedure and what
22 you should be looking for as the case goes forward.

23 So if y'all will please, Mrs. Simms will show
24 you where your jury room is just to kind of get you
25 oriented to space and then release you. And I will

1 see y'all tomorrow morning. I hope y'all have a
2 great evening.

3 (WHEREUPON, the jury exits at approximately
4 11:48 a.m.)

5 THE COURT: All right, gentlemen. Anything
6 we need to put on the record before we adjourn?

7 MR. CHILDS: No, sir, Your Honor.

8 MR. MCGARR: Nothing from the defense, Your
9 Honor.

10 THE COURT: All right. Gentlemen, if y'all
11 need me, I'll get here probably around 8:15. If you
12 need me for anything, just let me know. Okay.

13 MR. CHILDS: Can we have a player -- are all
14 the systems down in the courthouse at this point?
15 In other words, do you guys have a player that would
16 -- that goes to that screen?

17 THE COURT: Oh, do we have a projector?

18 MR. CHILDS: Yes, sir.

19 THE COURT: No. Now, you can check with the
20 clerk, but I don't think so.

21 (WHEREUPON, the attorneys confer.)

22 MR. CHILDS: The Clerk's office has a -- they
23 have a TV.

24 THE COURT: Yeah, there is a TV.

25 MR. CHILDS: With a DVD player?

1 THE COURT: Yeah, they'll have that.

2 MR. CHILDS: We will test it out.

3 THE COURT: Okay. All right. Good enough.

4 We'll see y'all tomorrow. Have a great evening.

5 (WHEREUPON, the Court recesses for the day.)

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 13th day of September, 2011.)

MR. MCGARR: Forgive me, Your Honor. One motion is to, uh, sequester witnesses.

THE COURT: Okay.

MR. MCGARR: And then, Mr. Plyler has a motion.

MR. PLYLER: Your Honor, as I mentioned yesterday, I'm here. I represent two insurance companies that have answered UIM complaints in this case.

THE COURT: Yes, sir.

MR. PLYLER: I'm not participating in the trial. I'm just observing. I wanted to make sure that the lawyers knew and the Court understood my role and that my name or my company's name, or my client's name should not be mentioned or referenced in any way during any statement by attorneys or by witnesses. It would be highly prejudicial to my client.

THE COURT: Okay. I don't presume, Mr. Childs, you intend to introduce Mr. Plyler or his company's name.

MR. CHILDS: I wouldn't introduce his name,

1 but I would like to mention his name just, his
2 personal name.

3 THE COURT: As a, uh, -- as a abiding
4 tortfeasor.

5 MR. CHILDS: Yeah.

6 THE COURT: Yeah. I understand.

7 MR. CHILDS: That's not a problem. As far as
8 sequestering witnesses, it's not a matter of right
9 just because the defense wants to sequester them.

10 THE COURT: Yes, sir.

11 MR. CHILDS: I will say this much, really
12 fact witnesses on this case aren't that critical as
13 far as what happened at the scene. There's summary
14 judgement on the issue of liability for that
15 respect. Uh, the only witnesses that I would expect
16 that would be in the courtroom during the trial
17 might be the next expert or, uh, -- I know that her
18 mother's here to testify about what she witnessed as
19 far as change in personality and all that after the
20 accident. I don't really think that's -- see that
21 other witnesses are going to help her. So the first
22 two witnesses basically have -- at the accident
23 scene, the investigating officer and a witness.
24 That's really it about the accident. Then the only
25 other witnesses are about, uh, you know, the ---

1 THE COURT: Experts?

2 MR. CHILDS: --- experts in the sequel of,
3 uh, --

4 THE COURT: Does your request apply to only
5 fact witnesses or any and all witnesses?

6 MR. MCGARR: I don't -- the witnesses who are
7 going to testify that she was one way before the
8 accident and she was another way after the accident,
9 which includes, I think, family members. Those I
10 don't have a problem with. But the -- I should say
11 this, we've admitted that we were negligent.

12 THE COURT: Right.

13 MR. MCGARR: We have not admitted liability.

14 THE COURT: Okay.

15 MR. MCGARR: Uh, but the fact witnesses and
16 the experts, because they build on one another, I
17 would ask that they be sequestered.

18 THE COURT: Okay. Well, it's difficult for
19 me, not knowing what's coming, who that would be and
20 who it wouldn't be. So I'm just going to apply a
21 blanket sequestration, uh, based on the motion. I
22 know it's not as of right as in federal court. But
23 my practice is that based on a request, if there's a
24 reasonable basis behind the request, I ordinarily
25 grant it just as a matter of discretion. Therefore,

1 I will impose sequestration order which applies both
2 ways obviously.

3 MR. McGARR: Yes, Your Honor.

4 MR. CHILDS: Just for clarification, we've
5 got summary judgement on negligence. I know the
6 defense throughout the case said they were going to
7 admit it, but I hadn't moved for summary judgement
8 on it.

9 THE COURT: I understand. I understand.

10 MR. McGARR: The clarification was, Your
11 Honor, that we admitted that we were negligent in
12 the answer. Then there was a motion for summary
13 judgement --

14 THE COURT: That's okay. That's okay,
15 gentlemen. It's not going to change the way I
16 conduct the case. I'm going to say they've
17 acknowledged duty and breach.

18 MR. McGARR: Yes, Your Honor.

19 THE COURT: And that -- that's exactly right.
20 That's exactly right. And it's interesting to me
21 how it got there. And it's interesting to me to
22 hear y'all argue a little bit about it, but it
23 really isn't important to me how we arrived at that
24 spot. Okay. Okay. Y'all ready for the jury?

25 MR. CHILDS: Yes.

1 **THE COURT:** Okay. Bring them in.

2 **(WHEREUPON,** the jury enters at approximately
3 9:10 a.m.)

4 **THE COURT:** All right. Ladies and Gentlemen,
5 good morning. I hope everybody's doing well today.
6 Thank you for being on time. I do appreciate that.
7 Uh, we are about to start the trial of this case.
8 And it's always helpful, it seems to me, uh, for me
9 to tell you a little bit about the way the trial
10 will proceed and to tell you what your duties are as
11 jurors in this case. So let me start by just
12 explaining to you what your duties are as jurors to
13 begin with.

14 You are the judges of the facts. You will
15 determine what the facts are in this case. That is
16 your sole and exclusive province. You will
17 determine what the facts are in this case by
18 analyzing, by weighing the evidence that is
19 presented. Evidence will be presented in this trial
20 as we go forward.

21 Evidence can take many forms. It can be
22 eyewitness testimony from a witness. It can be
23 tangible documents that are entered into evidence.
24 It can be, uh, -- it can be objects. It can be
25 audio recordings. It can be video recordings. It

1 can take many different forms. And you'll look at
2 that evidence and you'll weigh that evidence and
3 determine what is important and what is not. You'll
4 determine what weight to put on particular pieces of
5 evidence. From that, you will determine what the
6 facts are.

7 Now, know that you are the sole and exclusive
8 finders of fact in this case. Now, I, by
9 distinction, am the sole and exclusive finder of
10 law, that is, I am the judge of the law. And I tell
11 you that just to distinguish your role from my role.
12 I -- I tell you that so that you'll know that I do
13 not have an opinion about the facts in this case.
14 I'm not allowed to have an opinion about the facts
15 in this case. As we go forward, if you hear me say
16 anything that suggests to you that I have an opinion
17 one way or the other about what the facts should be,
18 then I'll tell you to disregard that. I will also
19 tell you that if you hear me say anything that gives
20 you the impression that I am partial one side or to
21 the other side, please disregard that because I
22 surely am not partial to one side or the other. My
23 only interest in this case is making sure that each
24 party gets a fair trial and, by extension, that you
25 get a fair trial. This case is important to you,

1 just as it is to the parties, because you are going
2 to invest some time and some effort into this case.
3 So I am tasked primarily with making sure that it's
4 a fair trial.

5 During the course of the trial, you're going to
6 hear the attorneys making objections or making
7 motions relative to the evidence or other issues
8 that come up in the case. When that happens, in my
9 role as objective empire, what I'm going to do is
10 make a decision. And when I make a decision, I'm
11 necessarily going to rule for one side and against
12 the other, but know that's just a clinical decision
13 based on my belief of what the law is and I'm not
14 picking sides although I may very directly rule for
15 one side and against the other. It's just as to
16 that specific legal issue, so don't think that I'm
17 partial at all. As I told you yesterday, I hadn't
18 heard any of these witnesses or any of the evidence
19 that you are about to hear either. I'm in the same
20 boat that y'all are. I'm going to hear it all for
21 the first time as well.

22 Now, the way that you are going to, uh, hear
23 the evidence is through the trial process. And it's
24 going to be helpful for y'all to know kind of what's
25 coming. So you can tell what the landscape of the

1 trial is going to be so you won't feel like you are
2 simply hostages sitting there waiting for the next
3 shoe to drop.

4 This is the way it will happen. After I give
5 -- finish giving you this short charge on the law
6 and the process, then the attorneys will have the
7 opportunities to make opening statements. Those
8 opening statements from counsel are arguments in
9 favor of their respective clients. Advocacy. Those
10 arguments are not evidence. Those arguments are
11 simply that, arguments. So don't consider those as
12 evidence in the case. Ordinarily, those opening
13 statements are going to be fairly brief. An
14 introduction of themselves, their clients and the
15 case as they see it.

16 Then, after you have heard first from the
17 plaintiff, then you will hear from the defense. The
18 plaintiff goes first because the plaintiff has the
19 burden of proof. I will explain that to you at the
20 end when I give you a charge on the law.

21 Then, after you have heard opening statements,
22 what will happen is the plaintiff will then begin to
23 call her witnesses to the stand. Witnesses will
24 come up and take an oath of the witness and testify.
25 In that process, they will be presenting the

1 evidence of testimony and then other pieces of
2 evidence may be introduced at the time as well.
3 Once those witnesses have testified, each individual
4 witness, the defense will have the opportunity to
5 cross-examine that witness. After the plaintiff has
6 had the opportunity to present all of her witnesses
7 and introduce all of the evidence that she deems
8 appropriate, then the defense will have the
9 opportunity to put witnesses on the stand and
10 introduce evidence into the record. Again, the
11 plaintiff will have the opportunity to cross-examine
12 all those witnesses.

13 After you have heard the defense's case and
14 after the defense has had the opportunity to put
15 into the record its evidence and its witnesses, then
16 under certain circumstances, the plaintiff may have
17 the opportunity to put witnesses up in reply. That
18 happens seldom. And usually, when it does happen,
19 it's fairly short. But the plaintiff does have that
20 opportunity from time to time.

21 Then, after you have heard any potential reply
22 testimony, then we will go to closing arguments.
23 Again, closing arguments from counsel. And the
24 difference in closing arguments and the opening
25 statement is the attorneys will then comment on the

1 evidence that has been presented and make arguments
2 advocating their respective client's position.

3 After you've heard closing arguments, then I
4 will give you a charge on the law. The reason I
5 wait until the end is because I need to hear the
6 evidence too and I need to know what law is
7 applicable to the evidence that was presented in
8 this case. And I will give you a charge on the law
9 then.

10 Then, what I'll ask you to do is go back to
11 your jury room. Then, when I give you the signal,
12 when I send you the word, then you can begin your
13 deliberations. And what you will do is you will
14 take the law as I have given it to you and you will
15 apply it to the facts as you determine them to be.
16 Now, don't begin any of your deliberations in this
17 case until you have heard all of the evidence, until
18 I have told you specifically and directly and
19 unequivocally to begin your deliberations. You know
20 in your own common experience, it's not appropriate,
21 it's not fair to make a decision or begin
22 deliberating until you've heard all the evidence.
23 You know that in your own common everyday experience
24 with it's dealing with children or whether it's
25 dealing with parents or siblings or whomever, you

1 know that you need to hear all of the story. Don't
2 begin deliberations, not among yourselves. If we
3 take breaks, like I told you yesterday, don't
4 discuss it with any of your significant others or
5 anyone of that sort. Don't do any independent
6 research on the case either. Begin your
7 deliberations when I tell you to. That will be the
8 point at which you heard all the testimony and all
9 of the evidence that's going to be presented and you
10 will receive the appropriate and relevant
11 instructions on the law.

12 Now, we will go each day, uh, from
13 approximately 9:00 to 5:00ish. The reason I say
14 that is it's all depending on witnesses. If we have
15 a witness who takes the stand at 4:30 and is going
16 to go an hour, then we may go to 5:30 or we may go
17 to 6:00. If we have a -- if we have a witness that
18 ends at 4:30 and the next witness is going to take
19 three hours, then we may wait until the next day.
20 It all depends on witnesses. But know that I am
21 going to attempt to maintain a normal business day.
22 That's out of consideration for y'all. I know you
23 got other things going on. That's what we're going
24 to try to do.

25 We're going to take regular breaks during the

1 day. At about mid-morning, we will probably take a
2 break. Then we will take another break for lunch at
3 about 12:30 or 1:00 depending on where we are with
4 the witnesses. Then we'll take either an hour or an
5 hour and a half for lunch depending on what
6 business, what legal business I need to take up with
7 these attorneys. There may be issues that we need
8 to take up outside of your presence. If that's the
9 case, we'll take an hour and a half. If not, we'll
10 take an hour. Then we'll come back and we'll begin
11 with the -- we'll begin with the trial and we'll
12 take another break about mid-afternoon. Then we'll
13 go to the end of the day and, as I suggested, end
14 about 5:00, 5:30, maybe as late at 6:00. If we're
15 really running long and we need to stay later, I'll
16 tell you at the -- during the morning so you'll have
17 the opportunity to make some arrangements, although
18 I don't anticipate that happening in this case. If
19 it does, I'll let you know as soon as I know.

20 Now, understand that those are the regularly
21 scheduled breaks that we'll take. But if you need
22 to take a break for some reason before that, let me
23 know. Either get the bailiff's attention, get my
24 attention and let me know. Y'all are the most
25 important people in this courtroom. Okay.

1 Everything is directed to y'all. It's important
2 that y'all are paying attention and y'all are
3 getting it because y'all are going to make the
4 ultimate decision. I would much rather have you
5 focus on what's being presented up here than
6 thinking, boy, I really need to take a break for
7 whatever reason and I just wish that they would be
8 quiet so we can get out of this courtroom. I would
9 much rather you just tell me I need to take a break,
10 take a break, come back refreshed and you can focus
11 on what's being presented into the court -- in
12 court. So don't be shy about that. Please do
13 because chances are, if you need to take a break,
14 somebody else does too.

15 Also, we may take breaks from time to time when
16 there are issues that come up that I need to hear
17 outside of your presence. I don't have any secrets
18 from you in this case, but there is a distinction to
19 be made between what's admissible evidence and
20 what's not admissible evidence. Sometimes I have to
21 take a break to kind of flush that out. If I need
22 to look at some law and I need to be a little bit
23 more deliberate about it, I might ask y'all to leave
24 the courtroom so that I can hear from the attorneys
25 or their arguments. We'll work that out. Then

1 we'll come back in and we'll begin. I hope that
2 happens, uh, not often, but it could.

3 From time to time also, if it's a smaller issue
4 that the attorneys and I can basically resolve at
5 bar, what will happen is with y'all sitting there
6 and the attorneys will come up and we may have a bar
7 conference. Ordinarily, I'll tell you, we're
8 talking about the introduction of evidence, we're
9 talking about timing, we're talking about something,
10 but I'm not going to keep any secrets from you. The
11 only thing I'm not going to tell you is inadmissible
12 evidence. That's the only secret I'm going to keep
13 from you.

14 So, uh, also those chairs are not the most
15 comfortable chairs in the world. I recognize that.
16 I've been told that a million times. I'm not in
17 charge of the chairs. Whoever designed the building
18 is in charge of putting those chairs there. If you
19 need to stand up, particularly if we're having a bar
20 conference and we're sitting here talking about
21 something, if you need to stand up and move around,
22 please stand up and move around. And if, during the
23 testimony, as long as you are not distracting
24 another juror, you are welcome to stand up and
25 stretch. You are not tethered to the chair. Okay.

1 So be comfortable to the extent that you are able to
2 be comfortable.

3 Also, when you take breaks, ask the bailiff for
4 any snacks, drinks, anything that you may need. The
5 bailiffs are here to make sure that y'all are
6 comfortable. So, with that having been said, let's
7 get started. Okay.

8 Oh, swear the jury.

9 **THE CLERK:** Ladies and Gentlemen, please
10 stand and raise your right hand for the oath. The
11 response will be "I will". You shall well and truly
12 try case number 2010-CP-23-2204, Deena L. and Scott
13 Bettencourt versus Mary Ruth Wald and a true verdict
14 render according the law and the evidence so help
15 you God?

16 (WHEREUPON, each juror responds.)

17 **THE CLERK:** Thank you. Please be seated.

18 **THE COURT:** Mr. Childs.

19 **MR. CHILDS:** May it please the Court.

20 Mr. McGarr.

21 Ladies and Gentlemen of the jury, my name is
22 Robbie Childs. I'm an attorney that practices here
23 in Greenville. Born and raised in Greenville
24 county. And, uh, I'm not your commercial television
25 lawyer. I help people with a variety of, uh,

1 difficulties in varieties of litigation.

2 First of all, before we get started, I know
3 you've had a lot of discussion already about your
4 service as a jury. I want thank each of you serving
5 on jury duty. It's often been said that jury
6 service is the highest form of service you can
7 perform for your country aside from serving in the
8 military. And that is true. In this great nation,
9 the government doesn't decide or impose an opinion
10 about the guilt or innocence of its citizens. If
11 you have served on a criminal case, you wouldn't --
12 the government doesn't decide those issues. And you
13 also, in civil cases, decide the issue of
14 responsibility or liability.

15 As few other governments in this world do, our
16 average citizens or private individuals determine
17 these things. The government doesn't get to say we
18 think you owe this much money or you are responsible
19 for this or that you are guilty of a crime. In our
20 country, your service as jurors is the finest point
21 of protection. It's the finest protection provided
22 by our Constitution. It's a great thing that you're
23 doing that you are serving here today. It's an
24 awesome responsibility. And I'm proud of your
25 service. So thank you in advance.

1 I'm also proud of Scott Bettencourt and Deena
2 Bettencourt. Now, Scott's been called out of town
3 on some urgent business. He will be here later in
4 this week. Deena Bettencourt is my client seated
5 right over here. She's right next to Mr. Ray.

6 Uh, Mrs. Bettencourt is a 42-year-old mother of
7 two children. You will hear testimony and evidence
8 presented here today that she was a working mother.
9 We will show you that she was active and was engaged
10 in her children's school and responsible for a lot
11 of things related to their care as all mothers are.

12 We will show her long history of employment,
13 gainful and fruitful employment prior to September
14 the 4th of 2008. You will hear how she became a
15 kitchen designer and a multitasker, supreme
16 multitasker prior to September 4th of 2008. You will
17 also hear about how Scott and Deena Bettencourt's
18 dreams were ended on September the 4th of 2008.

19 This is an automobile accident case. It
20 happened here on Augusta Road. You will hear
21 testimony that it happened on September the 4th of
22 2008. You will hear that the defendant caused this
23 accident and that she has caused traumatic brain
24 injury to Mrs. Bettencourt. You will also hear
25 other injuries to Mrs. Bettencourt, other painful

1 injuries. You will also hear from her husband about
2 what he has loss, the care comfort and companionship
3 of his wife. You will hear about how this accident
4 has affected the family and the children.

5 You will also hear, more than likely, a direct
6 attack on Mrs. Bettencourt's honesty, truthfulness,
7 uh, and integrity. That is a difficult thing for us
8 to bear up to and hear but we expect that the
9 defense will present issues related to that. We
10 will show you that those things are not true. We
11 will show you that these people sustained
12 substantial painful, permanent and life-changing
13 injuries as a result of this accident.

14 Although this case is brought by Scott and
15 Deena Bettencourt, it is not truly about them
16 however. It is about responsibility. Merriam
17 Webster Dictionary defines responsibility as the
18 quality or state of being responsible as a moral,
19 legal and mental accountability. Black's Law
20 Dictionary -- that's a dictionary that lawyer's use
21 a lot -- says responsibility is the obligation to
22 answer for an act done and to repair or otherwise
23 make restitution for any injuries it may have
24 caused.

25 We will show you that operating a motor vehicle

1 is a serious responsibility. It has been said that
2 since a motor vehicle is capable of causing
3 extensive property damages, injury and death, it
4 should be handled with caution. You will handle it
5 with the caution you would handle a gun.

6 As a result of that, we have various
7 restrictions in this state and in this country about
8 people operating motor vehicles. We require
9 driver's tests. We require beginner's permits or
10 restricted licenses, uh, learner's permits. We have
11 to conform to the requirements of the law not to
12 consume alcoholic beverages or drugs that would
13 impair your ability to operate a vehicle. You have
14 to wear seatbelts. You have to, uh, in some places,
15 restrict the use of cell phones and, uh, text
16 messaging. Those things are important because of
17 the dangerousness of motor vehicles.

18 In South Carolina, the law requires every
19 driver to keep a proper lookout for other vehicles
20 on the road. This duty requires the driver to watch
21 attentively so that the driver is able to see a
22 person or object on the road. You have to keep a
23 good lookout while you're driving a car. It makes
24 sense. This is what the law requires.

25 The law also requires for people to keep their

1 car under proper control so that they are able to
2 slow down, stop or turn the vehicle to avoid
3 colliding with other vehicles. In other words, not
4 driving too fast for the conditions that you are
5 involved in, paying attention to where you are on
6 the road or where the other's car's at. South
7 Carolina law imposes duties to keep a sharp lookout
8 to discovery the presence of dangers on the highway.
9 It also requires that a person be able to avert
10 injury when operating a motor vehicle. And if a
11 person fails to fulfill those duties, it also
12 imposes a responsibility for the cause of the
13 injury.

14 The law requires that you discover or observe
15 carefully to appreciate peril in the operation of a
16 motor vehicle. The law provides a driver, uh, to
17 not merely look, but seek what's on the highway.
18 The law requires that a person use the roadways on
19 the state with exercise of reasonable care at all
20 times. Failure to follow a statutory rule is
21 negligence as a matter of law.

22 In this case, the Court has already determined
23 that the defendant caused this accident. That will
24 not be your responsibility in this case. It has
25 already been determined that she violated the

1 responsibility imposed on our citizens to protect
2 each and every one from death or injury on the
3 highway. Had she not struck a substantial vehicle,
4 such as the Bettencourts, had she struck a child,
5 pedestrian or a Prius, it would be even more tragic.
6 I fully expect that what she will say is although I
7 violated the law that protects society from the
8 negligent operation of motor vehicles and I didn't
9 safely operate my vehicle, my weapon, my gun, I
10 don't have responsibility for the injury it caused.

11 Let me characterize it differently. You may
12 hear basically the defense that I shot the gun, but
13 the bullet should have only grazed Mrs. Bettencourt
14 or I shot the gun and the bullet injured a prior
15 wound on Mrs. Bettencourt. That's not taking
16 responsibility. That's not the law. A defendant
17 takes a plaintiff as she comes and is responsible
18 for the natural consequences of their actions.

19 So I contend that this case is not merely about
20 Scott Bettencourt or Deena Bettencourt or Ruth Wald.
21 This case is about avoiding responsibility to a
22 person for an injury that the person sustained as a
23 result of the careless operation of a motor vehicle.
24 This is one of the two invaluable protections
25 afforded to us under the law intending to protect

1 our citizens from the operation of motor vehicles.

2 On one hand, there's criminal responsibility.
3 That's not your determination here today. On the
4 other hand, there's civil responsibility. On the
5 civil side, you must determine monetary damages to
6 impose upon the irresponsible person. In the award
7 of actual damages, it is not a basis of financial
8 need or lack of need or resource. It is a question
9 of what is the person responsible for. This is
10 about what any person is responsible for or anybody
11 for their irresponsible actions. This is the
12 responsibility side to ensure the safe operation of
13 a motor vehicle by making that person that chooses
14 to be irresponsible, responsible for their
15 consequences.

16 So I want you to listen carefully to the
17 witnesses. Use your common sense. Listen to the
18 judge. Then it will be your duty to determine the
19 responsibility of this case.

20 THE COURT: Mr. McGarr.

21 MR. McGARR: May it please the Court?

22 THE COURT: Yes, sir, absolutely.

23 MR. McGARR: Hi, guys. I'm Mark McGarr. You
24 met me earlier, but what you didn't meet is my
25 lovely client named Mary Ruth Wald. Uh, let me tell

1 you that Mary Ruth Wald -- I will call her Mrs. Wald
2 -- is 79 years of age. Let me also tell you that
3 she is scared to death. And let me tell you that
4 the scared she becomes, the more admirable she
5 becomes. You will see that and we're going to prove
6 that to you today or some time during this week.
7 That's the first thing.

8 Here's the second thing. What we have is an
9 automobile accident that took place on Augusta Road.
10 The road that doesn't give you time to get very much
11 speed to begin with. Mrs. Wald hit the rear of Mrs.
12 Bettencourt. It caused Mrs. Wald's air bag to
13 deploy. I will ultimately, once they are admitted
14 into evidence, show you pictures of Mrs.
15 Bettencourt's car. You will see a very minor amount
16 of damage done to her vehicle.

17 The accident was Mrs. Wald's fault. She
18 admitted it and took responsibility when the police
19 officer was there. She admitted it when she had to
20 respond to the lawsuit that's called an answer. We
21 said that she was negligent. We actually entered
22 into a consent order saying we agree that we caused
23 this accident and that we are responsible for this
24 accident. So you don't have to make that decision.
25 It's been made for you.

1 The issue that you have to deal with is this,
2 Mr. and Mrs. Bettencourt, and the numbers go back
3 and forth, have a lawsuit against Mrs. Wald for at
4 least \$2.5 million. I didn't say two and a half
5 dollars. \$2.5 million. You have to remember when
6 this accident was over, Mrs. Wald drove her car
7 away. So did Mrs. Bettencourt, and she picked her
8 children up from school. Why the \$2.5 million? It
9 comes in through various and sundry ways. Mrs.
10 Bettencourt says that she has a permanent
11 debilitating, completely nonfunctional brain injury
12 that is going to require and should have already
13 required the need for a nanny, a chauffeur, a
14 gardener, a maid and a cook. Here's the problem.
15 You've got to remember, we don't have the burden of
16 proof, but I'm going to prove it to you anyway.
17 Mrs. Bettencourt takes her children to school
18 just like she did before the accident. She
19 volunteers at PTA school functions. She is a team
20 mother for soccer teams. She cooks. She does
21 formal cooking shows. She does everything that you
22 would expect a lady of good means to do while
23 raising children. We commend her on her motherhood.
24 But the bottom line is she doesn't need, and we will
25 prove, a chauffeur. She drives in carpools. Takes

1 one child to and from school and takes him to soccer
2 games. She doesn't need a cook. She does cooking
3 shows. She doesn't need a gardener, because she has
4 actually been a master gardener since this accident.
5 And she does it great.

6 She's also saying that she lost income from
7 this accident which gets you to the rest of that
8 \$2.5 million. You see, she was in the construction
9 business at the time of this accident. She designed
10 and sold kitchens. You've got to understand that
11 the accident was in 2008. She primarily worked for
12 a company called Kitchens of the South. I don't
13 need to prove to you, but we will prove that the
14 great financial collapse and the housing market
15 destruction that we're still in took place in the
16 early part of 2008. Kitchens of the South has
17 suffered so that it doesn't exist anymore.

18 We will also show you this. The Bettencourts
19 have been extraordinary fortunate because you see
20 the year that Mrs. Bettencourt said she couldn't
21 work anymore as a result of this accident, even
22 though there was no work to be had in the
23 construction field and the housing field, was the
24 same year that her husband was fortunate enough to
25 make over \$100,000 a year. We're going to show you

1 an inverse relationship between when Mr. Bettencourt
2 was making more money and Mrs. Bettencourt made
3 less. Finally, we're going to show you witness after
4 witness after witness that is so striving to prove
5 that the head injury that they actually tell you
6 ball-faced different.

7 Then we're going to ask you to come back with a
8 verdict that is fair with regard to Mrs. Wald. She
9 caused this accident and actually got checked out at
10 the hospital afterwards and fared for Mr. and Mrs.
11 Bettencourt with regard to any injuries she may have
12 legitimately suffered. When you do that, we will
13 thank you for your fairness. Thank you.

14 **THE COURT:** All right. Mr. Childs, your
15 first witness, sir.

16 **MR. CHILDS:** Thank you, Your Honor. We call
17 Michael Dean.

18 **THE CLERK:** Place your left hand on the Bible
19 and raise your right hand.

20 **MICHAEL DEAN**
21 having first been sworn, testifies as follows:

22 **THE CLERK:** State your name please.

23 **THE WITNESS:** It's Michael Charles Dean.

24 **THE CLERK:** Thank you. Please be seated.

25 **DIRECT EXAMINATION**

1 BY MR. CHILDS:

2 Q Mr. Dean, how are you employed?

3 A Excuse me?

4 Q How are you employed?

5 A I work with Greenville City Police Department.

6 Q All right. And what's your position with

7 Greenville City Police Department?

8 A Detective ---

9 Q All right.

10 A --- with Property Crimes.

11 Q How long have you been with Greenville City

12 Police Department?

13 A Since October of 2006.

14 Q All right. Back in September of 2008, what
15 were your duties with the Greenville Police Department?

16 A I was assigned to the traffic platoon on
17 patrol.

18 Q All right. Did you have an occasion to respond
19 to a traffic accident on September the 4th of 2008?

20 A Yes, sir. I did.

21 Q Could you tell the jury about what time you
22 were notified of that accident?

23 A Approximately 14:15 in the afternoon, which
24 would be 2:15 in the afternoon.

25 Q All right. And where did you respond to?

1 A The intersection of Augusta Street and Augusta
2 Place.

3 Q Could you tell the jury where that is?

4 A Uh, it's on Augusta Street going outbound right
5 place the Methodist church at Augusta Place -- East
6 Augusta Place and West Augusta Place on Augusta Street.

7 Q And is that located within the city of
8 Greenville?

9 A Yes, sir.

10 Q What did you discover when you responded to
11 that accident?

12 A Uh, traffic collision involving a Jeep and a
13 Toyota SUV.

14 Q What kind of jeep was involved in the accident?

15 A Uh, I just have that it was a Jeep SUV. I
16 believe it was a Cherokee model.

17 Q Okay. And, uh, did you determine who was
18 operating that vehicle?

19 A Uh, Mary Ward.

20 Q I believe that's a typo. It's Mary Wald.

21 A Wald.

22 Q Yes. And that's the reason sometimes we might
23 say Mrs. Ward as opposed to Mrs. Wald. Uh, what did you
24 observe when you arrived at the location?

25 A Mrs. Wald -- she was listed as Unit number 1 --

1 her vehicle struck the rear of Mrs. Bettencourt's
2 vehicle, the Toyota SUV.

3 Q And did you investigate the accident?

4 A Yes, sir.

5 Q And what did you -- did you talk with Mrs.
6 Wald?

7 A Yes, sir.

8 Q What did Mrs. Wald tell you about the accident?

9 A She stated that she was traveling behind the
10 Toyota, which is Mrs. Bettencourt's vehicle. She stated
11 that she looked at a sign and when she looked back in
12 front of her, the other vehicle had actually come to a
13 stop to turn left onto Augusta Place.

14 Q Okay. And did you, uh, observe damages on the
15 vehicles?

16 A Uh, yes, sir.

17 Q Did you estimate how much damage you observed?

18 A Damage to Unit 1 --

19 THE COURT: Hold on a minute, sir.

20 Yes, sir.

21 MR. MCGARR: Let me interject an objection to
22 that unless he's got experience with body work.

23 THE COURT: I'm going to let him -- I'll let
24 him testify as to observations that he made.
25 Quantify of damages may be a different matter. But

1 the observations that he made is okay. So with
2 respect, -- in light of what I just said, I'll both
3 sustain and overrule. Go ahead.

4 BY MR. CHILDS:

5 Q Did you observe damage to the vehicles?

6 A Yes.

7 Q And where did you observe damage at?

8 A Damage to Unit 1's vehicle, which would be Ms.
9 Wald's was on the front of her vehicle and damage to Mrs.
10 Bettencourt's vehicle was at the rear.

11 Q Now this area of the accident, is it a four-
12 lane highway?

13 A Yes, sir.

14 Q And in what lane of the highway did you observe
15 the vehicles to be in?

16 A It occurred in Lane 1 traveling northbound on
17 Augusta.

18 Q Where did you observe Mrs. Bettencourt's
19 vehicle to be in respect to the intersection?

20 A It was actually -- she stated she attempted to
21 turn, she was a little bit past the stop light at the
22 point of impact.

23 Q What did you observe when you got there?

24 A I do not recall if they were still in that same
25 position or one vehicle had actually turned off onto

1 Augusta Place at the time.

2 Q Now, uh, I thought we heard earlier that Mrs.
3 Wald drove her vehicle from the scene. Did Mrs. Wald
4 drive her vehicle from the scene?

5 A I have listed on my collision report that it
6 was towed by Willimon's at the time of the collision.

7 Q All right. What's the speed limit in the area?

8 A The speed limit on Augusta Street at that
9 particular location is 30 miles an hour.

10 Q And did you observe any skid marks or any other
11 marks along the highway after?

12 A No, sir.

13 Q Did you observe any indication that there was
14 any braking efforts on behalf of Mrs. Wald's vehicle in
15 respect to Mrs. Bettencourt's vehicle?

16 A Uh, just based off what she had told me.

17 Q Okay. You observed no physical evidence that
18 she slowed or hit her brakes?

19 A No, sir.

20 Q You noted here that both parties refused EMS?

21 A Yes, sir.

22 Q All right. Do you recall if you encouraged
23 both parties to go to the hospital?

24 A Uh, whenever I investigate a collision, I never
25 imply that somebody needs to go or does not need to go.

1 I just advise them that if they want to go, they can go.
2 I do not, uh, ask somebody that they need to go or tell
3 somebody that they need to go.

4 Q All right. So you didn't tell Mrs. Wald that
5 she needed to go to the hospital because of her heart
6 condition or something?

7 A No, sir.

8 Q Please answer any questions that Mr. McGarr
9 might have.

10 **CROSS-EXAMINATION**

11 **BY MR. McGARR:**

12 Q Did Mrs. Wald give you an estimated speed at
13 roughly the point of impact?

14 A When I asked her what her speed, approximate
15 speed was, she stated 15 miles an hour.

16 Q And did either party, uh, have enough of an
17 injury for you to even note an injury?

18 A I'm not certified to, you know, state whether
19 somebody does or does not have an injury unless I see
20 physical manifestation. I just go by what the parties
21 say in the collision, if they are hurting, whether it be
22 lower back, neck. If they indicate that that's what it
23 is and they need EMS, then I contact EMS.

24 MR. McGARR: Permission to approach, Your
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. MCGARR:

3 Q But you didn't report either party as having an
4 injury at the scene, did you?

5 A No, sir.

6 Q Thank you very much.

7 THE COURT: Any redirect, sir?

8 MR. CHILDS: No, sir. That's all the
9 questions I have of this witness. Can he be
10 excused?

11 THE COURT: Yes, sir. Any objections to
12 that, Mr. McGarr?

13 MR. MCGARR: None, Your Honor.

14 THE COURT: Thanks for being here today. I
15 appreciate it. I hope you have a great day.

16 MR. CHILDS: Your Honor, at this juncture,
17 I'd like to introduce excerpts of Mary Ruth Wald's
18 deposition pursuant to Rule 11 -- 106. I'm sorry.
19 Rule 3285.

20 THE COURT: Any objection to that?

21 MR. MCGARR: None, Your Honor.

22 THE COURT: All right. You may do so, sir.

23 MR. CHILDS: If I can have Mr. Ray step up.

24 THE COURT: All right, sir.

25 All right, Ladies and Gentlemen. While Mr. Ray

1 is stepping up to the stand, I just want to explain
2 to you what is happening. Mr. Childs is going to
3 introduce excerpts from a deposition. Now, a
4 deposition is an out-of-court statement taken under
5 oath for purposes of litigation. What ordinarily
6 happens is that in anticipation of a trial, one or
7 both of the attorneys will notice an individual for
8 a deposition. That individual will show up at a
9 prescribed date and time and swear in just like a
10 witness swears in in this courtroom. A court
11 reporter will take down everything that is said in
12 that proceeding. As I've indicated to you, usually
13 that's done in anticipation of trial.

14 Now, when deposition transcripts or deposition
15 testimony is read into the record, it is evidence
16 just like any other piece of evidence. You receive
17 it and you decide how important it is. You decide
18 what weight to put on it just like any other piece
19 of evidence that you may receive in this trial.

20 In this case, Mr. Childs is going to ask the
21 question as though he were himself at the
22 deposition. Mr. Ray is going to respond to those
23 questions as though he were the witness who I
24 believe is Mrs. Wald.

25 Is that correct?

1 MR. CHILDS: That is correct, Your Honor.

2 THE COURT: All right, sir. You may proceed.

3 MARY WALD

4 (WHEREUPON, the following deposition excerpts of
5 MARY WALD were read into the record:)

6 MR. CHILDS: Mr. Ray, let me direct your
7 attention to page 26, line 17 of Mrs. Wald's
8 deposition.

9 MR. RAY: Okay.

10 BY MR. CHILDS:

11 Q And, uh, the question I asked was, was your
12 vehicle operating in good condition at the time of the
13 accident.

14 A Yes.

15 Q Now, was your vehicle damaged in this accident?

16 A Yes.

17 Q Would you tell me what kind of damage was
18 caused to your vehicle.

19 A The front right headlight and the fender --
20 right fender and on the bumper and the radiator.

21 MR. CHILDS: All right. Let me direct your
22 attention to page 29 of Mrs. Wald's deposition, line
23 4.

24 MR. RAY: Okay.

25 BY MR. CHILDS:

1 Q Okay. That's very good. What time of day was
2 the accident?

3 MR. RAY: Page what?

4 MR. CHILDS: I missed that here. Hang on a
5 second. Page 29. I'm sorry.

6 MR. RAY: Okay. Line?

7 MR. CHILDS: Line 4.

8 MR. RAY: Okay.

9 BY MR. CHILDS:

10 Q So what time did you leave your house on
11 September the 4th?

12 A Let's see. My appointment was at three o'clock
13 I believe. And I left about a quarter til 2:00 because
14 I wanted to make sure. I usually get there and just sit
15 and look at magazines at the doctor's office any where
16 I'm going to.

17 Q All right. So what route did you take from
18 your house in Mauldin to go towards the doctor's office?

19 A I came up Mauldin Road and got on Augusta.

20 Q Crossed over I-85?

21 A Yes.

22 Q To Mauldin Road?

23 A Uh-huh.

24 Q Now, is that route -- is that a route you take
25 frequently?

1 A Yes.

2 Q How frequently do you travel that road?

3 A I don't know. It's busy. I don't like to
4 drive on it because the road is too busy.

5 Q Do you sometimes take other routes to avoid
6 Augusta Road?

7 A I do.

8 Q What other routes would you take?

9 A I'd go up Laurens Road and cross and go down by
10 JL Mann High School and cross 291 and come up through
11 there and hit Faris.

12 Q So you took Mauldin Road up to Augusta?

13 A Yes.

14 Q And were you going to go straight up Augusta
15 and cross, I guess, up here at Church Street were you
16 going across this intersection?

17 A I was going up Augusta and turned left at the
18 fire department on Faris and go around that way and go up
19 by the hospital and into the Diagnostic Center.

20 Q Okay. And so do you remember how the traffic
21 was?

22 A Heavy.

23 Q So was there anything in particular going on in
24 that area?

25 A No.

1 Q So tell me in your own words what happened.

2 A I was coming up through there. I was just
3 thinking about the traffic that was on the road. And
4 then, the signs were saying 30 and 35 and all that. I
5 thought, well, you couldn't drive any faster because the
6 traffic is too heavy.

7 Q So how fast were you driving?

8 A I was doing about 30. Then I came up and I
9 began to slow down because I saw the caution light was
10 red.

11 Q Where was that at?

12 A Up where Augusta -- I don't know. I don't know
13 what that road crosses right there at the Presbyterian
14 church. So then I began to break and slow down and going
15 up there through there. Then I hit her car.

16 Q So did you see her vehicle before you hit it?

17 A Yes, I saw it. But I was doing probably about
18 maybe 10 when I came up on it.

19 Q Okay. So how far away from her vehicle were
20 you when you saw her vehicle?

21 A Maybe 10, 15 feet.

22 Q And that was the first time you saw it?

23 A Uh-huh.

24 Q Were you distracted?

25 A No.

1 Q Were you looking at something else?

2 A No.

3 Q So how could you explain not seeing her vehicle
4 until you were 10, 15 feet from it?

5 A I don't know.

6 Q Do you recall telling the police officer that
7 you were looking at a sign?

8 A I have looked at those signs coming up through
9 there, but I wasn't looking at it then.

10 Q Okay. So what signs had you been looking at?

11 A The speed sign.

12 Q So you were looking at the speed sign?

13 A Uh-huh.

14 Q And when you told the officer that you were
15 looking at a sign, that's what you were referring to?

16 A Yes.

17 Q So when you saw her vehicle, where her vehicle
18 as it relates to the intersection -- excuse me. Let me
19 restate that. When you saw her vehicle, where was her
20 vehicle as it relates to the intersection?

21 A She was there at the light sitting at the
22 light.

23 Q Now, is that four lanes?

24 A Yes.

25 Q So was she in the inside lane or the fast lane?

1 A Inside lane.

2 Q Did you see her turn signal on?

3 A No.

4 Q Did you see the light, whether or not it was
5 green, yellow or red?

6 A It was red.

7 Q So the light was red?

8 A Uh-huh.

9 Q So was it red when you approached the
10 intersection?

11 A Yes.

12 Q So you recall seeing the lights being red when
13 you approached the intersection.

14 Q So according to your recollection of what
15 happened, she was -- was her vehicle the last vehicle at
16 the intersection? In other words, was she stopped for
17 the red light?

18 A No, there were some cars in front of her.

19 Q There were cars in front of her and they were
20 stopped and she was stopped?

21 A Uh-huh.

22 Q And you were traveling down Augusta from the
23 south?

24 A Uh-huh.

25 Q Heading up this way towards Church Street?

1 A Yeah.

2 Q And you were also in the fast lane, the inside
3 lane?

4 A Yes.

5 Q How far could you see that intersection in
6 advance of it? I mean, isn't that a straight road
7 through there?

8 A You mean coming from Mauldin that way?

9 Q Yes.

10 A It's pretty straight.

11 Q You don't recall seeing her car at all until
12 you were 10 or 15 feet away?

13 A Well, I really wasn't looking for it. I mean,
14 I was just looking for the light.

15 Q Well, the light was red.

16 A Yes.

17 Q So you were going ahead and slowing down for
18 the red light?

19 A Yes.

20 Q And you didn't realize there were cars that had
21 already stopped there in front of you?

22 A Oh, yeah. I knew there were cars there.

23 Q Okay. You just didn't realize it was her car?

24 A Now what? I didn't understand that.

25 Q You said you realized there were cars there

1 stopped at the intersection?

2 A Yes, sir.

3 Q How far away from the intersection were you
4 when you realized that?

5 A Probably 10 feet to 15 feet. I don't know.

6 Q So you were maybe 10 to 15 feet from the
7 intersection ---

8 A Yeah.

9 Q --- when you realized the cars were stopped
10 there?

11 A Uh-huh.

12 Q Had you seen the light change from green to
13 yellow before you got to the intersection or from yellow
14 to red?

15 A No, I just saw red.

16 Q You just saw the red when you see the red 10 to
17 15 feet away from the intersection?

18 A It might have been something like that and it
19 might not have been that far. I'm not sure. I have to
20 go back to where I saw it and all that.

21 Q All right. Is there anything in particular
22 dangerous about that section of the road?

23 A I don't reckon. I don't know.

24 Q What do you estimate your speed to be when you
25 first saw the red light?

1 A I was driving about 30 miles per hour coming up
2 through there thinking about all the heavy traffic and
3 thinking about people couldn't drive any faster than
4 that.

5 Q It's hard to drive slower than that too, isn't
6 it?

7 A Yes.

8 Q Because of the way the traffic is?

9 A Yes.

10 Q Is there anybody behind you that was tailgating
11 you or that bothered you as you traveled down the road?

12 A No.

13 Q Was anybody to your right that blocked you off
14 or caused any distractions to you?

15 A No.

16 Q When you saw the read light 10 to 15 feet in
17 front you and you saw Mrs. Bettencourt's car, what did
18 you do?

19 MR. McGARR: Let me interpose an objection.
20 She's told you she basically doesn't know distance.

21 BY MR. CHILDS:

22 Q Right. What did you do when you saw her car?

23 A When I saw her car?

24 Q Yes, ma'am.

25 A When I saw the light was red, I began slowing

1 down. I don't know what -- I don't know. I don't know
2 what you mean.

3 Q Well, did you swerve to avoid her vehicle? Did
4 you steer to the left or the right?

5 A I tried to go to the right, but there were cars
6 over there. I couldn't.

7 Q That's what I was getting at. Did you apply
8 your brakes?

9 A Yes.

10 Q Did you slide? Did you slam your brakes to
11 keep from hitting her?

12 A I don't know.

13 Q You remember how you pressed down your brakes
14 when you saw her?

15 A Yes, I pressed hard.

16 Q Okay. So you were making an emergency stop at
17 that point?

18 A Yes, I guess you can call it that.

19 Q Not the kind of braking you would normally do
20 just stopping for a stop sign?

21 A Yes.

22 Q Do you recall if your car slide or shook or
23 anything like that?

24 A I don't remember that. I don't know.

25 Q Did it appear that your brakes worked properly?

1 A Yes.

2 Q When you put them on, tell me what happened
3 after you applied your brakes.

4 A I bumped the back of her car.

5 Q So you applied your brakes and bumped the back
6 of her car?

7 A Yes.

8 Q Can you describe to me how you bumped the back
9 of her car?

10 A I shut my eyes after I bumped it. I don't
11 know. I was just too scared to think.

12 Q You said you thought about swerving to the
13 right to avoid her car but couldn't because there was a
14 vehicle there..

15 A There was cars coming up beside me.

16 Q Were there cars stopped to the side of you?

17 A Some were. But the others were on up. That
18 one, I mean, some of them was coming on up to meet the
19 other ones that had already stopped at the light.

20 Q And you say you bumped her car?

21 A Yes.

22 Q What do you mean by bumped?

23 A I hit it.

24 Q Do you mean by bump, a light hit?

25 A I don't think it was that hard.

1 Q Did your air bag deflate?

2 A Yes. It did.

3 Q Do you know that you happened to be going about
4 30 miles an hour to get that to happen?

5 MR. McGARR: Objection. That's not true.

6 MR. CHILDS: I can ask her that.

7 MR. McGARR: No, you can't ask to state --

8 BY MR. CHILDS:

9 Q Do you know what it takes to activate your air
10 bag?

11 A My son was telling me, but I don't remember
12 what he told me.

13 Q So was it significant enough to activate your
14 air bag?

15 A What?

16 Q The impact. Was it significant enough to
17 activate your air bag?

18 A Yeah, I guess so.

19 Q Did it cause anything in your vehicle to fly
20 around?

21 A No.

22 Q Were you hurt as a result of contact with Mrs.
23 Bettencourt's vehicle?

24 A My arm was hurt.

25 Q How was your arm hurt?

1 A It was just skinned and swelling.

2 Q What was it skinned and swelling on? Did you
3 hit in the car -- what did you hit in the car?

4 A I don't know. The steering wheel, I guess.

5 Q All right. Page 43, line 1. So describe to me
6 what happened there. What did you say?

7 A I just said are you all right? And she said my
8 neck kind of hurts right here and my head. I said I'm
9 sorry. I told her I was sorry about hitting her car.
10 And then --

11 Q Why were you sorry about hitting her car?

12 A I was just sorry.

13 Q Do you think it was your fault?

14 A I thought any time you hit somebody in the
15 back, it was your fault.

16 Q Why do you think it was your fault?

17 A Cause I hit her in the back.

18 Q What could you have done to avoid the accident?

19 A Nothing.

20 Q There is nothing you could have done to keep
21 from hitting her?

22 A No.

23 Q Could you have been paying better attention?

24 A I was paying attention.

25 Q And so you think you didn't do anything wrong

1 in the accident?

2 A Not to my knowledge.

3 Q 48, line 6. You indicated to me that your
4 neck, your arm and your knees were hurt some in the
5 accident.

6 A My arm and my knee, yeah, and my neck right in
7 here.

8 Q And did you get any medical treatment for those
9 injuries?

10 A Yes.

11 Q Who treated you for those injuries?

12 A I went to the hospital. The officer told me
13 that I needed to go over there since I had heart surgery
14 and get checked.

15 Q What hospital did you go to?

16 A Greenville.

17 Q Greenville Memorial?

18 A Yes.

19 Q What did they do to you when you got there?

20 A They did x-rays and just checked me.

21 Q Page 49, line 10. How long was your neck sore
22 after this accident?

23 A Not too long. It cleared up.

24 Q A couple of days, a couple of weeks, how long
25 was it?

1 A Maybe a week or so.

2 Q How long was your arm sore as a result of this
3 accident?

4 A It was sore a good while.

5 Q Could you give me an estimate?

6 A Let's see. It was real swollen. It took time
7 for all that swelling to get out of it. Then the
8 arteries and things were real big. Maybe about three
9 weeks.

10 Q You said the arteries were real big in your
11 arm?

12 A Uh-huh.

13 Q Page 50, line 21. What did you -- what did
14 they have to do to your vehicle to repair it?

15 A The radiator and the front bumper and the
16 fender.

17 Q So you had to replace those parts?

18 A Uh-huh.

19 Q Anything else done to your car?

20 A The light.

21 Q The headlight?

22 A Headlight.

23 Q Page 52, line 15. Aside from the conversation
24 you had with Mrs. Bettencourt, where you asked her if she
25 was hurt and she said that her neck and head hurt?

1 A Her neck here and her neck back in here.

2 Q I think you misquoted that.

3 A Her neck here and her head -- I'm sorry -- her
4 head back in here. Sorry.

5 Q Okay. Did you have any other conversations
6 with Mrs. Bettencourt?

7 A No.

8 Q Page 54, line 1. Did you get injured by the
9 air bag going off?

10 A No, I don't reckon.

11 Q Did you get powder all over you?

12 A Yeah, I got some.

13 Q Did you have to replace your air bag?

14 A I haven't yet.

15 Q Was the collision hard enough to cause you a
16 physical injury?

17 A Caused me a physical injury?

18 Q Yes, ma'am.

19 A No, sir.

20 Q You said no to that question?

21 A No.

22 Q Didn't you suffer a physical injury in the
23 accident?

24 A Not real bad compared to what I already had
25 from the surgeries.

1 Q Okay. But didn't you describe to me a sore
2 neck and a hurt arm and knees?

3 A Yes.

4 Q Wasn't the collision strong enough to cause you
5 a physical injury?

6 A I guess they wasn't that bad.

7 Q Okay. But you got hurt?

8 A I would have to say really bad to be -- I would
9 have to say really bad to be hurt.

10 Q Does that mean a broken bone or something?

11 A Yes.

12 Q Page 57. So it's your testimony that the
13 police officer didn't write you a ticket for traveling
14 too fast for conditions?

15 A No.

16 Q So the City of Greenville just sent you a
17 letter and asked you to come to traffic court?

18 A Just gave me an appointment to come and I went.

19 Q Page 59. This report says that Mrs.
20 Bettencourt says she was stopped to turn left and she was
21 waiting for oncoming traffic to clear which means that
22 she was saying that she was out in the intersection
23 waiting to turn left. Do you recall if she was -- but
24 you recall that she was stopped behind several other
25 vehicles waiting for the red light. Is that true?

1 A Yes.

2 Q So where you told the police that she was
3 waiting to turn left at the intersection, it would be
4 your testimony that she was stopped at the intersection
5 for a red light?

6 A She was up to the intersection because there's
7 more cars and the light was red.

8 Q Okay. So it's stated her also that Unit 2
9 states -- Unit 1 states -- that's you -- that she was
10 traveling behind Unit 2 when she looked at a sign. When
11 she looked back in front of her, Unit 1 tried to stop
12 before striking Unit 2 but could not do so.

13 A I didn't look at a sign there.

14 Q So you didn't look back from looking at a sign
15 right before a collision?

16 A No.

17 Q I'm just wondered what kept you from seeing her
18 stopped vehicle until you were just 10 to 15 feet behind
19 her.

20 MR. MCGARR: Objection to the form. She told
21 you she wasn't sure how far she was.

22 MR. CHILDS: Didn't we ban speaking
23 objections a long time ago.

24 MR. MCGARR: Well, I forgot what objection to
25 the form was.

1 BY MR. CHILDS:

2 Q Do you know of anything that interfered with
3 your ability to observe Mrs. Bettencourt's vehicle well
4 down the roadway when you were more than 10 to 15 feet
5 away?

6 A I don't know what you mean.

7 Q I'm just trying to understand your testimony.
8 You observed her vehicle -- and correct me if I'm wrong
9 because your attorney keeps stating that I'm misstating
10 this -- but how far away from her vehicle were you when
11 you first saw her vehicle?

12 A When I saw her, I might have been 10 or -- 10
13 feet or maybe 15 from her.

14 Q So you were a car-length?

15 A I not only seen her, I saw all the cars stop
16 for the light.

17 Q So you observed all the vehicles that stopped.

18 A And slowing down and then when I got up -- I'm
19 sorry. And then when I got on up there, I just kept
20 slowing down. That's why I was going at such a slow
21 speed when I hit her.

22 Q Well, you were 10 to 15 feet away when you
23 observed her vehicle and the other vehicles were stopped?

24 A Yeah.

25 Q What did you observe before that? Did you see

1 the vehicle slowing down ahead of you?

2 A Yeah. They were. There wasn't any ahead of
3 me. She was there. I was coming up. They -- she was
4 already sitting up there at the light.

5 Q Well, how far when you first saw her? 10 or 15
6 feet, right?

7 A Something like that.

8 Q So how come you didn't see her sooner?

9 A She was already way up ahead of me. I didn't
10 see her. She was up there sitting there and I came up.

11 Q I know that, but how come you didn't see her 30
12 feet away?

13 A I don't know.

14 Q Could you have seen her 30 feet away?

15 A Yeah. I could have seen her if I had been
16 looking for her or something.

17 Q Could you have seen her 100 feet away?

18 A I guess I could. I can see a long way.

19 Q So isn't the reason that you hit her because
20 you weren't paying attention?

21 A I was paying attention.

22 Q You were paying attention?

23 A I was.

24 Q But you didn't see her car when you were 100
25 feet away?

1 A I wasn't looking for it.

2 Q What were you looking for?

3 A There was a curve right there and I came
4 around. I came up on the road. I always watch when I'm
5 driving.

6 Q You watched the red light?

7 A I watch lights and I watch the road.

8 Q So --

9 A And the traffic.

10 Q So when you were 100 feet away, was the light
11 still red?

12 A No.

13 Q Was it green then?

14 A I didn't look at the light then.

15 Q What were you looking at?

16 A I guess I was just driving, not looking at the
17 light.

18 Q So when you observed her 10 to 15 feet away,
19 was that when you started to slow down?

20 A Yes.

21 Q So when you were 10 to 15 feet away, you were
22 doing approximately 30 miles an hour?

23 A Yes.

24 Q And you were able to stop your vehicle
25 sufficiently at 10 to 15 feet just to bump her vehicle?

1 A I guess I did. I bumped it.

2 Q You don't recall hearing any skidding when you
3 were stopping?

4 A I might have. I don't know.

5 Q You just don't remember that?

6 A No.

7 Q Were you able to change direction at all before
8 the impact?

9 A You mean from one lane to the other?

10 Q Yes. Or direction. One direction to the
11 other.

12 A No.

13 Q When you were 10 to 15 feet, can you compare
14 that to a car-length?

15 A I think a car is a little bit longer than 10
16 feet, I mean, shorter than 10 feet.

17 Q Okay. So you think a car is a little bit
18 shorter than 10 feet?

19 Witness nodding head.

20 How about two cars? Do you think that distance
21 would be?

22 A I don't know. I don't believe -- let's see. I
23 don't know.

24 Q If you were able to esti -- if you were to
25 estimate how long a car was, how long would you say it

1 is?

2 A A car?

3 Q Yes.

4 A I'd say maybe -- I don't know. Nine feet.

5 Q Okay. Nine feet?

6 A Nine feet.

7 Q So were you approximately two car-lengths
8 behind her when you saw her? When you say 10 to 15 feet,
9 I'm trying to get a feel about the car-lengths when you
10 saw her, would it have been one or two car-lengths?

11 A I don't know. I wasn't looking for her. I
12 just saw her when I was coming up. Then I mashed my
13 brakes. I had been slowing down, but I saw the light was
14 red and I was getting ready to stop.

15 Q When you saw her, was there a distance
16 sufficient to fit one or two cars between you and her?

17 A I guess. Probably. Maybe. I don't know.

18 Q Do you know how far behind a vehicle you're
19 supposed to follow it?

20 A I don't know, but I'd say about 10 feet, 8 feet
21 or 10 feet.

22 Q Do you know there's a certain -- there's
23 certain highway rules about how far behind a vehicle
24 you're supposed to travel?

25 A Uh-huh.

1 Q Do you know what that is?

2 A No.

3 Q Do you know there's a rule about how far you
4 are supposed to?

5 A Oh, yeah. I used to know those rules better
6 than I do now.

7 Q You don't know what it is?

8 A Say that again.

9 Q But you don't know what it is?

10 A What it was?

11 Q What it was. Sorry.

12 A No.

13 Q Do you know if you're traveling -- you know if
14 it has anything to do with the speed you are traveling
15 and the distance you should stay behind a vehicle?

16 A Yes.

17 Q Do you -- but you don't know what that safe
18 distance is supposed to be?

19 A No.

20 MR. CHILDS: That's all from the transcript.

21 THE COURT: All right. Mr. McGarr, you have
22 questions that you were going to ask, sir, from the
23 transcript?

24 MR. MCGARR: No, Your Honor.

25 THE COURT: Okay. Good enough. All right.

1 Thank you, Mr. Ray.

2 MR. CHILDS: Hang on just a second, Your
3 Honor.

4 THE COURT: All right, sir.

5 (WHEREUPON, there is a pause.)

6 MR. CHILDS: Mrs. McFall.

7 THE CLERK: Place your left hand on the Bible
8 and raise your right hand.

9 KIM McFALL

10 having first been sworn, testifies as follows:

11 THE CLERK: State your name please.

12 THE WITNESS: Kim McFall.

13 THE CLERK: Thank you. Please be seated.

14 DIRECT EXAMINATION

15 BY MR. CHILDS:

16 Q Mrs. McFall, my name is Robbie Childs. How are
17 you doing?

18 A Fine. Thank you very much.

19 Q Uh, Ms. McFall, could you tell the jury a
20 little about you. I hate to ask questions like this, but
21 how old are you?

22 A I am 44.

23 Q All right. And, uh, are you married?

24 A Yes, two children.

25 Q And how old are your children?

1 A They are 11 and 9.

2 Q How are you employed?

3 A I work part-time for a public accounting firm.

4 Q Okay. And what kind of education do you have?

5 A I have a BS in Accounting.

6 Q All right. Mrs. McFall, let me direct your
7 attention to September 4th, 2008 at about 2:10 in the
8 afternoon. Do you recall where you were at that time?

9 A Yes.

10 Q Can you tell the jury about that please?

11 A I was preparing to pick up my children from
12 dismissal at school.

13 Q What school was that?

14 A Augusta Circle Elementary.

15 Q Okay.

16 A And we typically would walk home from school at
17 that time. So I'd walk to a meeting place to meet them
18 and then walk them home. I was preparing to go to the
19 meeting place.

20 Q Okay. So were you at an intersection?

21 A I was at the intersection of Westminster Church
22 and Westminster Retirement Home, Augusta Street and
23 Augusta Court.

24 Q Okay. So what happened, if anything, at that
25 intersection?

1 A I pressed the button to get a cross signal. I
2 was waiting to walk. And, uh, as I stood there watching
3 traffic, I saw Mrs. Bettencourt's car stopped, yielding
4 to oncoming traffic trying to make a lefthand turn.

5 Q Okay. Let me stop you there. How did you know
6 Mrs. Bettencourt's car?

7 A I didn't. So I should say I saw a car ---

8 Q Okay.

9 A --- that was subsequently identified as hers---

10 Q Okay.

11 A --- uh, waiting, yielding to traffic to make a
12 lefthand turn.

13 Q Okay. So where was her vehicle? Was it
14 stopped at the stop light or was it inside the
15 intersection?

16 A It was stopped at the stop light.

17 Q Okay. And was the light -- from what you
18 observed at that time, was traffic flowing both ways?

19 A Yes.

20 Q So was there any other vehicles in front of her
21 vehicle at that intersection?

22 A No.

23 Q And, uh, so what happened when you observed
24 that?

25 A As I stood and glanced to my left at oncoming

1 traffic, I saw a car approaching the rear of hers. It
2 did not look, as it came closer, like there would be any
3 ability for the car to stop. And that resulted in a
4 rear-end accident.

5 Q All right. So you observe her vehicle making
6 this left turn?

7 A Trying. Yes. Yielding to traffic to make a
8 lefthand turn.

9 Q And was that to go into the elementary school
10 that you were going to?

11 A Yes.

12 Q How far away from the vehicle that you later
13 identified as Mrs. Bettencourt was this other vehicle
14 when you first observed it?

15 A Oh, okay. When I first glanced to the left,
16 there is a corner, uh, probably -- it's just an estimate
17 -- but probably a block away is the corner that traffic
18 rounds around. I was looking at that corner studying
19 traffic. So that's when I saw her approaching the
20 intersection.

21 Q When you say her, who were you referring to?

22 A Well, the car that rear-ended Mrs.
23 Bettencourt's car.

24 Q So how far would that be away from Mrs.
25 Bettencourt's when you saw the other vehicle?

1 A A block preceding the collision.

2 Q And I know you are not an expert on speed or
3 estimating the speed of a car, could you characterize the
4 speed of that vehicle as you observed it move fast,
5 slowly and --

6 A Well, the car was not going faster than other
7 cars, but it became apparent that the car was not going
8 to stop.

9 Q Okay. And what made that apparent to you?

10 A Because as it drew closer and closer, the car
11 was going at a normal rate of speed, were there were no
12 obstructions in front of it, would have been probably a
13 fine speed had there been no obstructions in front of it,
14 but seeing that there was an obstruction in front of it
15 and it going at a rate of speed consistent with no
16 obstruction in front of it made me realize ---

17 Q That there was a collision.

18 A --- that there was a collision that was going
19 to happen.

20 Q And what happened? Did you see the collision?

21 A I did.

22 Q Did the vehicle that hit Mrs. Bettencourt's
23 vehicle slow down prior to the collision?

24 A It would be too difficult for me to say if the
25 vehicle was able to slow down significantly prior to the

1 collision. I don't recall screeching of brakes leading
2 up to that. I don't know.

3 Q Okay. And what did you observe in the
4 collision?

5 A The car that rear-ended the car that Mrs.
6 Bettencourt happened to be in, hit it. Impacted the back
7 of it pushing Mrs. Bettencourt's car forward. The car
8 that hit Mrs. Bettencourt's car stopped.

9 Q How far did it push Mrs. Bettencourt's vehicle
10 forward?

11 A Into the middle of the intersection.

12 Q Would you be able to estimate that in number of
13 feet or --

14 A Car lengths maybe. Probably one and a half car
15 lengths into the intersection.

16 Q And so what did you see then?

17 A I saw both cars stopped, but traffic on Augusta
18 Road continued at the rate of speed it normally would,
19 even though there were further obstacles. And I saw Ms.
20 Waldrop thinking about or moving as if she was going to
21 get out of the car.

22 Q Mrs. Wald?

23 A The, uh, --

24 Q The lady in the vehicle that hit Mrs.
25 Bettencourt?

1 A Exactly. I saw the cars around them not
2 hesitating any. So I felt like if she opened her car
3 door, another driver was going to do her bodily harm.

4 Q Okay.

5 A So I raised my hands and stopped traffic and
6 walked out to her and held traffic trying to get her out
7 of the car seat.

8 Q Mrs. Wald?

9 A Right.

10 Q This lady seated over here?

11 A Right.

12 Q How did she appear when you went to her?

13 A She appeared confused. She appeared distracted
14 in that she was trying to comprehend what had happened.

15 Q All right. Did she appear to be injured?

16 A Uh, it would be too hard for me to say whether
17 or not she -- she had no outward, obvious signs of injury
18 like blood or bones that a lay person could see.

19 Q What did you do then when you helped Mrs. Wald
20 out of her car?

21 A I communicated with her and asked her if she
22 felt okay. I asked her, because I did not have cell
23 phone on me, if she had one. She had a cell phone. We
24 called to cancel her doctor's appointment. I believe we
25 also called 911. I can't remember who made the 911 call.

1 I just remember checking it off mentally that 911 was
2 called.

3 Q Okay.

4 A And I established that she was okay and she was
5 going to stay put on the lawn of Westminster Church.

6 Q Okay. Did you have her sit down or was she
7 standing?

8 A There was no place to sit except for the
9 ground.

10 Q What did you do then?

11 A I looked over at the car that had been struck,
12 which was Mrs. Bettencourt's. At that time, it had moved
13 from where it was sitting after being struck to the, uh,
14 street that Westminster Church is on, the side street,
15 Augusta Court.

16 Q Let me ask you this, you indicated earlier that
17 as a result of a collision, her vehicle had been
18 propelled forward into the intersection. Was it
19 affecting the oncoming traffic?

20 A It was. One lane of oncoming traffic was
21 affected.

22 Q So her vehicle didn't go --

23 A It didn't go straight. It had vectored to the
24 left a little bit.

25 Q And affected the inside lane of traffic?

1 A Yes.

2 Q So while you were attending to Mrs. Wald, the
3 vehicle had moved out of the intersection to the area
4 adjacent?

5 A To the closest area, it seemed to me, adjacent
6 there.

7 Q So what did you do then?

8 A I went over and she was sitting in her driver's
9 seat. I came up to the driver's window and asked if she
10 was okay, did she need to call the school and figure
11 something out with her kids. Uh, I told her that 911 was
12 on the way.

13 Q So approximately how long after the impact were
14 you able to get to Mrs. Bettencourt?

15 A I would say five minutes.

16 Q Okay. How did Mrs. Bettencourt respond to your
17 inquiries? How did she appear?

18 A She was processing slowly.

19 Q What do you mean by that?

20 A She was trying to put together in her mind what
21 had happened, how it had happened and what it all meant
22 for her.

23 Q Okay. Did you -- what did you do as a result
24 of that? Did you explain to her what you saw?

25 A Oh, I explained to her that I saw you get hit

1 and the car behind you is the one that hit you as you
2 were yielding for a lefthand turn.

3 Q Okay. And is there any question in your mind
4 that prior to the accident that Mrs. Bettencourt was
5 facing a green light, not a red light?

6 A No.

7 Q Why is that?

8 A Because I also was watching the light at the
9 same time waiting for the light to turn.

10 Q So the light was not red?

11 A Definitely not.

12 Q Okay. Now, uh, why did you need to explain to
13 Mrs. Bettencourt what happened?

14 A As I said, she appeared to be processing
15 slowly. The events of that tragic occurrence were not
16 all assembled in a meaningful fashion to her.

17 Q Okay. Did she indicate to you any recollection
18 of what had just happened?

19 A No.

20 Q Did she appear to be dazed or confused?

21 A It's really hard for me, not having any medical
22 background. I would just say, in my own words, she was
23 processing very slowly.

24 Q Did she appear fully alert?

25 A In a delayed manner.

1 Q Okay. What did you do, uh, after you, uh,
2 attended to Mrs. Bettencourt?

3 A I went back to Mrs. Waldrop. By that time, I
4 could hear the police coming. I knew appropriate
5 authorities were on the way.

6 Q Okay. So what did you do then?

7 A When I saw the arrival of authorities, I
8 released the scene over to them and tended to my more
9 domestic duties.

10 Q Okay. Which was?

11 A Picking up my children.

12 Q Okay. Did you offer to pick up Mrs.
13 Bettencourt's children from the school?

14 A Well, I was not in a car. It was just me. Had
15 I had a car, that probably would have been the case. But
16 that's one of the reasons I didn't stay is because my
17 kids were walkers and I didn't want them left there with
18 nobody to greet them, wondering what they should do next.

19 Q So despite all the accident that you observed,
20 your next objection -- uh, objective was your children?

21 A Right.

22 Q And uh, did you know Mrs. Bettencourt on a
23 friendly basis prior to this accident?

24 A No.

25 Q Were you involved with her in some peripheral

1 manner, through the PTA or the programs that you --

2 **A** I knew her name, but I didn't know that the
3 name was her.

4 **Q** And you now have some kind of friendly
5 relationship or anything like that?

6 **A** I know her as a professional kitchen designer.

7 **Q** Is that it?

8 **A** That's it.

9 **Q** Okay. Was Mrs. Wald's vehicle driven away from
10 the scene or do you know?

11 **A** When I was there, it was still, I believe, on
12 the street. When I was there, nobody drove it away. It
13 might have been subsequently driven away, but I did not
14 observe that.

15 **Q** Please answer any questions Mr. McGarr might
16 have.

17 **MR. McGARR:** May it please the Court?

18 **THE COURT:** Yes, sir.

19 **CROSS-EXAMINATION**

20 **BY MR. McGARR:**

21 **Q** My name is Mark McGarr. I represent Mrs. Wald.
22 I just have a very few questions.

23 **MR. McGARR:** Your Honor, do you want copies
24 of the exhibits?

25 **THE COURT:** Uh, it might be helpful.

1 MR. MCGARR: Permission to approach, Your
2 Honor.

3 THE COURT: Yes, sir.

4 BY MR. MCGARR:

5 Q Mrs. McFall, would you agree that you have
6 given on two separate occasions, one on March 12th of
7 2009 and another on April 21st of 2009, affidavits to
8 Mrs. Bettencourt's attorney?

9 A Yes.

10 Q And would you agree that in your first
11 affidavit that you said -- and tell me if I'm misquoting
12 this -- approximately five minutes passed before I could
13 get to Mrs. Bettencourt's vehicle, Mrs. Bettencourt was
14 just coming to.

15 A She was just coming to process the events of
16 what had occurred.

17 Q Let me first ask you this. Does this statement
18 state -- tell me if I'm misquoting it -- approximately
19 five minutes passed before I could get to the Bettencourt
20 vehicle. Mrs. Bettencourt was just coming to. Is that
21 what it says?

22 A That is what it says.

23 Q So that would indicate that she had been passed
24 out prior to that time, is that correct?

25 A That was not my intention.

1 Q But that's what it appears to be, doesn't it?

2 A To you, perhaps.

3 Q Let's go to your second affidavit. On, uh,
4 section 11, does it say approximately five minutes had
5 passed before I could get to the Bettencourt vehicle?

6 A Right.

7 Q Now, section number 12, does it say that Mrs.
8 Bettencourt was just coming to?

9 A And I would add to that she was just coming to
10 process what had occurred. I could not say whether she
11 was passed out or whether she was passed out or whether
12 she was not passed out.

13 Q And that is because you are aware that Mrs.
14 Bettencourt has said she wasn't even knocked out as a
15 result of this accident. That's the change, isn't it?

16 A No, that's not the change.

17 Q Okay. Let's do it this way. Go back to
18 Affidavit number 1.

19 A Okay.

20 Q Does it say -- let's read it in full now.
21 Approximately five minutes passed before I could get to
22 the Bettencourt vehicle. Mrs. Bettencourt was just
23 coming to and appeared to be very dazed and disoriented
24 and confused.

25 A Correct.

1 Q Just earlier, you said you couldn't even say if
2 she was dazed, disoriented or confused. Isn't that what
3 you told the jury?

4 A Again --

5 Q Let me do it this way. Answer me yes or no.

6 A Yes.

7 Q That's what you told the jury just a few
8 moments ago.

9 A I don't want to get pinned into say she was
10 unconscious. Those are medical terms to me. I don't
11 have any medical background. I could tell she was
12 processing very slowly, piece by piece and a very delayed
13 manner.

14 Q Yes, ma'am. But that wasn't my question. My
15 question was earlier, you said you would not be able to
16 say that she was dazed or confused. That's what you told
17 the jury just about three minutes ago. Is that correct?

18 A Well, yes. However, I would say that that's
19 splitting hairs. Was she disoriented? Yes, she was.
20 Was she confused? Yes, she was.

21 Q Could it be that you are now aware that Mrs.
22 Bettencourt has admitted that she was not unconscious at
23 the scene or was she dazed and confused?

24 A I have no knowledge of what Mrs. Bettencourt
25 has admitted to or not admitted to.

1 Q But you would agree that affidavit number 1,
2 you were saying she was just coming to and you were
3 saying she's very dazed and confused and disoriented.

4 A And let me again say that just coming to does
5 not mean a state of consciousness, it means a state of
6 awareness of what had transpired. It might have been a
7 state of unconsciousness. I was not there to observe
8 that. But I was there to observe her come to a state of
9 or arrive at a state or attempt to arrive at a state of
10 what had happened to her.

11 Q Yes, Mrs. McFall. But what you actually said
12 was Mrs. Bettencourt was just coming to and appeared to
13 be very dazed, disoriented and confused, is that correct?

14 A That is correct.

15 Q Then when we go to your second affidavit that
16 you gave, would you agree, going to line 12, that you
17 said Mrs. Bettencourt was just coming to and appeared to
18 be very dazed, disoriented and confused?

19 A Yes, and I would add that she was just coming
20 to an awareness of what had happened to her.

21 Q But you didn't say that in this affidavit. You
22 left a distinct impression that she was just coming to as
23 if just coming awake, isn't that correct?

24 A I would disagree with that, because it was not
25 my intent to leave an impression of just coming to

1 cognizance or consciousness. But it was my intent to say
2 she was just coming to an awareness of what happened to
3 her.

4 Q Uh, going to your second affidavit, am I
5 correct that you actually stated under oath that Mrs.
6 Bettencourt's car was pushed forward and to the left in
7 the lane of oncoming traffic?

8 A Yes.

9 Q Are you aware that that's untrue?

10 A No. I wasn't aware of that. I did see cars
11 attempting to go around her car into the lane of traffic.
12 Them making those attempts is what worried me about the
13 victim behind her. If they were trying swerve around her
14 so cavalierly, I worried when she opened her car door,
15 she would get struck.

16 Q But nonetheless, your second affidavit states
17 that the Bettencourt vehicle was not only not forward, it
18 was not left into the oncoming lane of Augusta Road
19 traffic?

20 A Part of her car, I recall, was obstructing
21 oncoming traffic.

22 Q Yes, ma'am. But your statement is what I'm
23 saying.

24 A Okay. Tell me again about the statement.

25 Q Your statement says Mrs. Bettencourt's car was

1 pushed forward and left into oncoming traffic. Is that
2 what your statement says?

3 **A** Yes, but I'm not sure that I agree that's
4 inaccurate. She was pushed forward from behind the line
5 to in front of the line and she was pushed to the left so
6 much so that cars could not freely get around that
7 traffic lane anymore.

8 **Q** Thank you.

9 **THE COURT:** Any redirect, sir?

10 **MR. CHILDS:** Yes, sir, Your Honor. That's
11 all the questions I have. I ask that she be
12 excused.

13 **THE COURT:** Yes, ma'am. Thank you, Mrs.
14 McFall. Appreciate you being here, ma'am.

15 **MR. CHILDS:** Your Honor, at this point, I'm
16 going to play the de bene esse deposition of Dr.
17 Stride.

18 **THE COURT:** Okay.

19 **MR. CHILDS:** So I just need a minute to set
20 it up. Might be a good time to set it up.

21 **THE COURT:** Good enough. Let's do that. How
22 long do you anticipate the video would last?

23 **MR. CHILDS:** Uh, I've got the times. Dr.
24 Stride's deposition is one hour and ten minutes.

25 **THE COURT:** Okay. Good enough. All right.

1 Ladies and Gentlemen, let's take a brief break.
2 We'll come back on the record at about ten til or
3 five til. Please don't discuss the case.

4 (WHEREUPON, the jury exits at approximately
5 10:29 a.m.)

6 THE COURT: All right. We'll be in recess.

7 (WHEREUPON, a recess is taken.)

8 THE COURT: All right.

9 MR. CHILDS: Judge, can I have a little
10 scheduling guidance from you?

11 THE COURT: Yes, sir.

12 MR. CHILDS: Dr. Stride is an hour and ten
13 minutes. We have Dr. Randall Jones coming,
14 scheduled for 2:00.

15 THE COURT: Two o'clock?

16 MR. CHILDS: Two o'clock.

17 THE COURT: Okay.

18 MR. CHILDS: I'm just wondering if I need to
19 call another witness to come up.

20 THE COURT: You know, I would prefer to have
21 a short witness in that space of time if you got
22 one. That would be my preference just so we don't
23 take a -- almost a two-hour lunch.

24 MR. CHILDS: Right. I'll try to get one.

25 THE COURT: Okay. Good enough. Good enough.

1 All right. With respect to this video, y'all have
2 already reviewed it and y'all don't have any
3 objections to place on the record during the playing
4 of the video?

5 MR. CHILDS: We do have some objections.

6 MR. MCGARR: We may have some objections, but
7 we -- we looked over it last week, so I don't
8 remember it --

9 THE COURT: I understand.

10 MR. MCGARR: They must not have been too
11 significant enough.

12 THE COURT: All right. All right.

13 MR. CHILDS: That's true. They are not that
14 significant. We can just let them go.

15 THE COURT: Well, it's just like the
16 deposition where y'all read objections into it and I
17 kind of got a kick. It was a little bit surreal.

18 MR. CHILDS: It was good, wasn't it?

19 THE COURT: Yeah. It really was. Okay.

20 Let's bring them in.

21 (WHEREUPON, the jury enters at approximately
22 11:00 a.m.)

23 THE COURT: All right. Ladies and Gentlemen,
24 we are going to watch a video. It's going to take
25 about an hour and ten minutes. Then we're either

1 going to break for lunch and come back and hear a
2 witness or hear a witness and break for lunch
3 depending on whether Mr. Childs can get him or her
4 up here. Okay.

5 MR. CHILDS: I'd like to introduce, at this
6 time, the de bene esse deposition of Michael C.
7 Stride.

8 THE COURT: All right, sir. Without
9 objections or subject to objections made in the
10 conduct of the deposition?

11 MR. MCGARR: Without objection. If they're
12 in there, we don't care.

13 THE COURT: Okay. Good enough. Good enough.
14 Thank you.

15 MR. CHILDS: Let me know if you can't hear
16 for some reason. I'll turn the volume up.

17 (WHEREUPON, the video deposition testimony of DR.
18 MICHAEL STROUD is played in entirety.)

19 THE COURT: All right. Ladies and Gentlemen,
20 uh, you heard that the last witness was offered as
21 an expert witness. So I should probably tell you
22 what an expert witness is and why a party may want
23 to introduce a witness as an expert witness. An
24 expert witness is someone who because of his
25 education and/or experience has a special expertise

1 in a field. His testimony is introduced to help and
2 assist the jury in analyzing the evidence that you
3 received. The reason a party may want to introduce
4 a witness as an expert witness is because an expert
5 can offer opinion testimony that a lay witness can't
6 always offer.

7 But understand that an expert witness'
8 testimony is of the same value of any other piece of
9 evidence that you receive in this case, meaning, you
10 place whatever weight on that expert witness' that
11 you deem appropriate in your deliberations. There
12 is no preference under the law between the testimony
13 from an expert witness or a lay witness or any other
14 piece of evidence that you receive. You decide what
15 weight to put on that testimony. All right.

16 MR. CHILDS: I would move into evidence
17 Exhibit number 1 from Dr. Stride's deposition which
18 is the itemized statement of medical expenses of Ms.
19 Deena Bettencourt.

20 THE COURT: Any objection to that, sir?

21 MR. MCGARR: None, Your Honor.

22 THE COURT: All right. Without objection,
23 the same is admitted into evidence.

24 (WHEREUPON, Plaintiff's Exhibit 1 is marked and
25 admitted into the record.)

1 **MR. CHILDS:** My next witness is --

2 **THE COURT:** Hold on -- Hold on for a second.

3 She's still taking it down. Okay. (Pause.)

4 Go ahead, Mr. Childs.

5 **MR. CHILDS:** I believe my next witness is
6 Ashley Sharmek.

7 **THE COURT:** Okay.

8 **THE CLERK:** Place your left hand on the Bible
9 and raise your right hand.

10 **ASHLEY SHARMEK**

11 having first been sworn, testifies as follows:

12 **THE CLERK:** State your name please.

13 **THE WITNESS:** Ashley Sharmek.

14 **THE CLERK:** Thank you. Please be seated.

15 **DIRECT EXAMINATION**

16 **BY MR. CHILDS:**

17 **Q** Mrs. Sharmek, is that correct?

18 **A** Yes, sir.

19 **Q** All right. Uh, could you tell the jury how old
20 you are?

21 **A** Excuse me?

22 **Q** Could you tell the jury how old you are?

23 **A** 43.

24 **Q** How are you employed?

25 **A** Uh, housewife.

- 1 Q That's a hard job, I know.
- 2 A Uh-huh.
- 3 Q Are you married?
- 4 A Yes, sir.
- 5 Q And who are you married to?
- 6 A I'm married to Dr. Jeffrey Sharmek. He is a
7 radiologist.
- 8 Q All right. How long have you been married?
- 9 A Five years.
- 10 Q You have any children?
- 11 A Yes, we do. Three children. Two from a
12 previous marriage. 16, 12 and then one stepchild between
13 the two of us. She's 14.
- 14 Q Okay. Are you from Greenville originally?
- 15 A Yes, sir.
- 16 Q What was your maiden name?
- 17 A Uh, Cuttington.
- 18 Q Do you know the plaintiff in this case, Deena
19 Bettencourt?
- 20 A Yes, sir.
- 21 Q How do you know her?
- 22 A Actually, we met through my husband. She was
23 the interior designer for his place of residence.
- 24 Q Okay. And do you know about when you met her?
- 25 A Approximately five or six years ago. Six years

1 ago.

2 Q And, uh, did you become friends with her?

3 A Yes, instantly.

4 Q And so how often would you see -- prior to
5 that, September 4th of 2008, how often did you see her?

6 A Uh, well, she worked for my husband as an
7 interior designer for him. Then she -- we employed her
8 -- well, I knew her through that. I became friends with
9 her instantly. So probably on a weekly basis. And then
10 we employed her to help us on our home. So I saw her on
11 a daily basis.

12 Q Were you friends with her?

13 A Yes, friends, yes.

14 Q So you were able to see how she operated as far
15 as an interior designer?

16 A Yes, sir.

17 Q Could you describe her to the jury, the Deena
18 Bettencourt that you knew prior to September 4th of 2008?

19 A Uh, basically, she was sort of like the project
20 manager of our home. She was extremely well with
21 multitasking, extremely organized basically just was my,
22 you know, right-hand man and did an excellent job.

23 Q What did she do as far as being a right-hand
24 man?

25 A Just -- everything with me. Walking through

1 the whole process was very organized. Kept very
2 organized files. Corresponded with our contractor on a
3 daily basis when I couldn't be there. Very good in
4 decision-making, making recommendations, knew lots of
5 people in the industry.

6 Q Now, uh, are you familiar with the day that she
7 was in her automobile accident on September the 4th of
8 2008?

9 A Yes, sir. That was actually my birthday. I
10 turned 40 that day. We had just been together at a
11 luncheon my mom gave me and I believe she was leaving the
12 luncheon on her way home to pick up her children when it
13 happened.

14 Q Okay. And you didn't see the accident and you
15 don't -- you didn't observe that at all?

16 A No, sir.

17 Q What's the next contact after the accident that
18 you had with Mrs. Bettencourt?

19 A Probably like, you know, a couple of weeks
20 later when things calmed down and she could talk about it
21 and was a little more available to speak.

22 Q And describe to the jury how she was after the
23 accident.

24 A Just sort of foggy, a little bit disoriented,
25 uh, just a little bit sad. Things like that. Shocked a

1 little.

2 Q Was she able to continue to assist you in the
3 remodeling of your house?

4 A At that point, it was finished. We were doing
5 a little bit on the side. She was able to, but I would
6 say that she changed a little bit.

7 Q How is that?

8 A Just maybe not quite as, you know, a little bit
9 -- her mind just wasn't as sharp as it was. It was
10 indicated to me. I could tell from her personality. It
11 changed a little bit.

12 Q And have you continued to be in contact with
13 her since that time?

14 A Yes, we see each other, talk to each other
15 weekly.

16 Q So could you describe to the jury the way she
17 is now as compared to how she was on September 3rd, 2010?

18 A Well, I still consider her a very, very bright
19 person and a very great person, great personality, very
20 smart. It just seems to me like she's just changed. A
21 little more quiet. Maybe not quite as able to multitask
22 like she was when she was superwoman, you know, and still
23 is in my opinion. A great person. Just maybe just not
24 quite as sharp as she was.

25 Q Okay. Uh, how did you find out about her

1 interior design business?

2 **A** I believe my husband walked into Kitchens of
3 the South and just sort of, you know, she was there. He
4 instantly took a liking to her and then proceeded after
5 that with her. And then I met her through him. He and I
6 were dating at the time and engaged. She and I sort of
7 took over the project. It was instant that we were going
8 to be working together after that.

9 **Q** Please answer any questions Mr. McGarr may
10 have.

11 **A** Okay.

12 **THE COURT:** Mr. McGarr, you quietly
13 contemplating something or you lost?

14 **MR. McGARR:** Just contemplating.

15 **THE COURT:** Okay. All right. I understand.

16 **CROSS-EXAMINATION**

17 **BY MR. McGARR:**

18 **Q** Is her situation so dire that she would need a
19 nanny to take care of her children?

20 **A** You mean currently or...

21 **Q** Throughout the process.

22 **A** Uh, I'm not sure about that. I can't really
23 attest to how someone needs help with their children or
24 not.

25 **Q** Her situation's so dire that she can't drive?

1 A I'm not really sure about that either. I can't
2 answer that question.

3 Q Well, you talk to her once a week.

4 A I wasn't aware that -- I'm not really sure
5 about the driving. I mean, I can't really answer that
6 honestly.

7 Q One of your best friends.

8 A Yeah, but I never like drove her anywhere. I
9 wasn't sure -- I'm not completely aware that she wasn't
10 driving constantly.

11 Q Is her situation so dire that, uh, she would
12 need someone to do her housework for her?

13 A I'm not sure dire is the word, but I can see
14 how her faculties have diminished and she would need
15 extra help.

16 Q All right. And is her situation so dire that
17 she would need a gardener?

18 A Uh, she has one of the best gardens I've seen
19 in my life. And yes, I could see why she would want that
20 because that's a passion of hers as it is mine.

21 Q And she has one of the best gardens that you've
22 ever seen in your life?

23 A Yeah, just because of me. I admire it.

24 Q That garden happened to be put together post
25 this accident in large part, was it not?

1 A I think with the help of her husband.

2 Q But nonetheless, put together post this
3 accident.

4 A It was after the accident, yes.

5 Q So you don't know if she would need a driver.
6 You don't know if she would need a nanny. You think that
7 she might need help with housekeeping, is that correct?

8 A I know I do.

9 Q But you don't have any problems with your mind,
10 do you?

11 A I don't know. You might have to ask my
12 husband. No. I'm fine.

13 Q It's nice to have help ---

14 A Yes.

15 Q --- and to be in that position. But mentally,
16 you don't need help with regard to cleaning your home?

17 A I guess not. Personally, I don't.

18 Q But it's a nice luxury?

19 A Yes, sir.

20 Q That a lot of people would like to have?

21 A Yes, sir.

22 Q No further questions.

23 THE COURT: Any redirect, sir?

24 MR. CHILDS: No redirect.

25 THE COURT: All right.

1 **MR. CHILDS:** May this witness be excused?

2 **THE COURT:** Yes, ma'am.

3 She may be excused. Have a good day.

4 **MR. CHILDS:** You too.

5 **THE COURT:** All right. Anything further
6 before we break for lunch?

7 **MR. CHILDS:** No, sir.

8 **THE COURT:** All right. Ladies and Gentlemen,
9 we're going to take a break for lunch. Uh, 20
10 minutes after the hour. Let's come back on the
11 record at two o'clock. Excuse me. Not two o'clock,
12 at 2:30. 2:30. That's an hour and ten minutes,
13 right? No, 1:30. I was an English major, Ladies
14 and Gentlemen. Math's not my strong suit. Okay.

15 **MR. CHILDS:** Two o'clock?

16 **THE COURT:** We'll come back at 1:30. An hour
17 and ten minutes, right? Oh, your witness is going
18 to be here at 2:00, is that correct?

19 **MR. CHILDS:** Correct.

20 **THE COURT:** All right. Let's do that. Let's
21 do that. Mr. Childs' next witness, he noticed to be
22 here at two o'clock just trying to anticipate the
23 pace of the trial. He'll be here at two o'clock.
24 He doesn't have anybody to call before then. We'll
25 come back at two o'clock.

1 Please don't discuss the case. Y'all have a
2 great lunch. I'll see you then.

3 (WHEREUPON, the jury exits at approximately
4 12:22 p.m.)

5 THE COURT: All right. We'll be in recess
6 until two o'clock. See y'all then.

7 (WHEREUPON, a lunch recess is taken.)

8 THE COURT: All right. I'm informed we have
9 all the jurors. Y'all ready to proceed?

10 MR. CHILDS: Yes, sir.

11 THE COURT: Okay. Bring the jury in please.

12 (WHEREUPON, the jury enters at approximately
13 2:02 p.m.)

14 THE COURT: All right. Mr. Childs, your
15 case, sir.

16 MR. CHILDS: Dr. Randel R. Jones.

17 THE CLERK: Place your left hand on the Bible
18 and raise your right hand.

19 **RANDEL JONES**
20 having first been sworn, testifies as follows:

21 THE CLERK: State your name please.

22 THE WITNESS: Randel Royce Jones.

23 THE CLERK: Thank you. Please be seated.

24 **DIRECT EXAMINATION**

25 BY MR. CHILDS:

1 Q Dr. Jones, could you tell the jury please how
2 you are employed?

3 A I'm a clinical psychologist and I own Crescent
4 Psychological Services.

5 Q Okay. And, uh, could you tell the jury about
6 your educational background?

7 A I have a Bachelor and Masters Degree from North
8 Texas State University. I have a PhD from Texas Tech
9 University. Did my clinical internship at Oklahoma State
10 or Oklahoma Medical School.

11 Q Okay. And how long have you been a practicing
12 clinical psychologist?

13 A Including the time that I was in the Navy from
14 1966 to current. And while I was in doctoral studies at
15 Texas Tech by virtue of my naval experience working with
16 combatants and with the naval personnel, they have me on
17 staff for providing mental health services to the
18 students on campus.

19 Q So how long have you been practicing clinical
20 psychology?

21 A 45 years.

22 Q Okay. What is a clinical psychologist?

23 A Psychology is the scientific study of human
24 behavior. The clinical part of it is scientific study of
25 human behavior that is, in essence, abnormal or

1 problematic or pathologic behavior.

2 Q Okay. And, uh, what is neuropsychology?

3 A That is a branch of psychology that focuses
4 principally on understanding, evaluating, assisting,
5 developing, correcting problems and behavior that are
6 associated with brain injury.

7 Q What kind of experience do you have in
8 neuropsychology?

9 A Uh, I was originally introduced to the field in
10 1967 while I was then stationed at Oakland Naval Hospital
11 by my commanding officer which was Lieutenant Lauren
12 Haycourt who had studied with Ralph Reitan at the time.
13 I began my studies --

14 Q Who is Ralph Reitan?

15 A He's one of the kingpins in the field. He
16 developed one of the major batteries that we -- standard
17 batteries that we use. When I went, uh, to doctoral
18 studies, there wasn't anybody on campus that knew
19 anything about it. Then when I -- the reason I chose
20 Oklahoma Medical School is that Alice Parsons was there,
21 who is a neuropsychologist and was doing a lot of work
22 and cognitive difficulty stemming from alcohol abuse.
23 But he ran their program there and spent a year studying
24 with him.

25 Came to Greenville then in '72 and brought the

1 neuropsychological assessment process with me to
2 Greenville and set up a lab at Marshall Pickens Hospital
3 in '73 which is basically emerged as their
4 neuropsychological assessment process now which Sheldon
5 Herring is the director.

6 While we were there, we had the privilege and a
7 lot of extra money so we hooked up with Ralph Reitan and
8 had him on retainer fee so that every time we did a
9 neuropsychological assessment, we hooked up with Ralph
10 Reitan and he reviewed the case and gave feedback and
11 critiqued in terms of our assessment interpretations.

12 Q What is a neuropsychological assessment?

13 A Neuropsychological assessment is a battery of
14 tests that's been standardized on normal behavior and is
15 set up for detecting changes in behavior associated with
16 brain injury. The instruments that we use have been
17 related to injury to various areas and regions of the
18 brain. The original idea behind it was -- and this was
19 just before the CAT scan came out. That tells you
20 something about the field.

21 Ralph Reitan brought the assessment into the
22 public sector in the late '60s. In the early '70s, we
23 emerged with the CAT scan. The purpose of the battery is
24 to help determine where problems existed so that we may
25 not have to use a pneumoencephalogram or angiogram, which

1 has a lethality factor to it, in order to determine what
2 was going on with the brain.

3 Q What are those tests that you just said?

4 A Uh, pneumoencephalogram is the way of assessing
5 the brain where you take spinal fluid out of the brain
6 and then you look at the shape of the ventricles and so
7 forth and how they may have been changed as a result of a
8 tumor or something of that nature. The angiogram is used
9 where you inject a dye into the system and you look at
10 changes in the blood vessels to determine whether or not
11 there is a lesion or something going on. The problem
12 with that procedure was that the dye has a high kind of
13 allergic reaction potential for it. People could get
14 into a lot of trouble as a result of the dye.

15 Well, this instrument came on board as a
16 refinement in the standard neurological assessment
17 process. About the time that we finished all the
18 standardization, we were ready to go. Low and behold,
19 technology brings out the CAT scan. That gave us a much
20 clearer picture of what was going on than what we could get
21 with our numbers from the test. We then on the heels of
22 that came out with the MRI. Now, we've got a clear
23 picture of all the tissue in the brain and changes and
24 density and so forth. The procedure itself ultimately
25 emerged as a very, very good instrument for determining

1 changes in skill and behavior secondary to injury rather
2 than being the primary diagnostic instrument for which we
3 originally intended. In that respect, it is very good.
4 It is super sensitive to a lot of different functions.

5 Q Okay. Now, have you been qualified as an
6 expert in neuropsychology?

7 A I've been qualified to give -- yeah. Expert.

8 Q Okay.

9 A Now, that is a sub-specialty rather than
10 primary specialty for me.

11 MR. CHILDS: Your Honor, I would submit that
12 he's an expert capable of testifying about the
13 neuropsychological evaluation of brain injury
14 patients and to render an opinion as to the
15 proximate cause of injuries based on his
16 examination.

17 THE COURT: Any objection or voir dire?

18 MR. McGARR: Without objection. No voir
19 dire.

20 THE COURT: Okay. All right. He is so
21 admitted as an expert in the stated field.

22 BY MR. CHILDS:

23 Q Now, uh, Dr. Jones, did you have an occasion to
24 evaluate Deena Bettencourt?

25 A Yes, sir. I did.

1 Q How did you have -- how did you have that
2 occasion to examine her? Was she referred to you by
3 someone?

4 A She was referred to me by Dr. Kent Kistler who
5 is a neurologist in the area.

6 Q When did you first see her?

7 A February 10, 2009.

8 Q Tell the jury what you did with her with you
9 saw her?

10 A The first interview -- and our process is to go
11 through an interview and review materials regarding what
12 problems she's having why we are doing the evaluation,
13 what are the symptoms she may be experiencing. Basically
14 get an overview of what we're going to have to do or need
15 to do in terms of the evaluation. We've got to
16 anticipate what you're going to need prior because the
17 evaluation itself is about a six-to-eight-hour procedure.

18 Q Now, and you were doing this evaluation at the
19 request of the neurologist Dr. Kistler?

20 A That's correct. That's correct. It came from
21 him wanting to know had anything changed.

22 Q Why do you get these referrals from
23 neurologists for the evaluation?

24 A The neurologist may do the evaluation and find
25 some things that he is suspicious of, but not quite sure.

1 He may actually do his evaluation and finds nothing in
2 his evaluation but the clinical presentation, which is
3 what people are telling him about the symptoms and so
4 forth indicating something might be awry. He then goes
5 for the more extensive neurological evaluation. Now, you
6 look at the neurological evaluation carefully, which you
7 realize it is a neurological evaluation except it goes
8 into much more detail. We're doing procedures that you
9 can quantify where in the neurological examination, most
10 of the procedures are a quality based examination. In
11 essence, he's drawing clinical opinion on subtle
12 differences that he sees but can't actually put numbers
13 to it.

14 Q Now, when you first saw Mrs. Bettencourt, you
15 gave her a battery of test.

16 A No, sir.

17 Q You also reviewed her medical records?

18 A First saw her and reviewed, uh, her
19 difficulties and the problems she was running into. I
20 got a basic history about the past issues. At that time,
21 we determined we needed some additional information to
22 help us understand how well she's performing. We then
23 set up the evaluation after we did that initial
24 interview.

25 Q Okay.

1 A And that evaluation occurred on -- pardon me
2 just a second. The actual evaluation where we checked for
3 a particular data came in February 23, 24.

4 Q Okay. Tell the jury about how you did that.

5 A How we did the evaluation?

6 Q Yes, sir.

7 A We have a battery of tests, an extensive
8 battery of tests that we conduct. These are not unlike
9 what you might experience in quality. But if you were to
10 go into a classroom and watch a kid going through several
11 different assessments or if you ever watched an
12 intelligence test, uh, there are procedures that are very
13 similar to that although much more extensive and cover a
14 broader range of skills. They are basically tests that
15 you are doing on a one-to-one basis where you are
16 providing the client with tasks to be performed. They
17 perform the tasks, in essence. And in doing so, we
18 evaluate how well they do compared to the normal
19 population and what we expect based on their age and
20 their education and previous experiences and so forth.

21 Q Did you also review the medical record as far
22 as, uh, -- I believe she had an MRI before she came to
23 see you?

24 A I do not recall reviewing the MRI. Now, I may
25 have. But I don't recall that as being of the items I --

1 now, I do have. Let me take that back. I do have Dr.
2 Kistler's medical records. Yes, I have an MRI that was
3 sent over to me. I have an MRI that was sent to me.

4 Q Okay.

5 A And that MRI gave a normal examination.

6 Q All right. And what does that mean, uh, from
7 your perspective as far as that's concerned?

8 A Means that there were no indications of major
9 change in tissue density. MRI is reading tissue density.

10 Q Right.

11 A It develops its images based on changes in
12 tissue density because different structures of the brain
13 have different density of cells. Therefore, you get
14 changes in the signal in it. From that, you can create
15 an image. That examination did not see any major changes
16 in tissue density.

17 Q Okay. And what does that mean as it relates to
18 a traumatic brain injury?

19 A Well, if you had a traumatic brain injury where
20 you had bleeding, it would show the blood into the free
21 material or into the free brain -- free blood in the
22 brain. If you had tissue that had been fractured or
23 sheered or torn, it would show the tear. If you had
24 tissue that had been substantially bruised and had
25 necrosed or had atrophy, which is shrunk in, you would

1 see that. It didn't show any of those types of changes.

2 Q Would that concern you in your diagnosis?

3 A No.

4 Q Why not?

5 A It would tell me that, uh, from the first
6 perspective, we don't have severe tissue damage. But the
7 brain is made up of billions of little cells that have
8 these tiny little filaments that connect one cell to
9 another. To see those filaments and whether or not
10 damage occurred at this very, very microscopic level
11 would have to have a electronic microscope to really see
12 it. So you can have damage to those small structures
13 which in turn will impair the brain's ability to
14 function, but it will not show on the grosser MRI
15 imaging.

16 Q Okay. Now, you talked about a battery of tests
17 that you administered. I'd like to go through those.
18 I'm looking your report, so I'm going to ask you about
19 those. The Halstead-Reitan --

20 A Reitan.

21 Q Reitan.

22 A Neuropsychological battery.

23 Q That's the individual you mentioned earlier?

24 A Right.

25 Q Neuropsychological battery. What is that?

1 A That is a collection of tests that in Halstead
2 and Reitan's research were found to have predicted
3 validity in terms of where the brain was disfunctioning,
4 whether it was on the right side or left side, whether it
5 is in the front part of the brain or the back part of the
6 brain, whether it's in the areas of the brain that pick
7 up hearing or the areas of the brain that pick up vision
8 or the areas of the brain that have the motor function or
9 areas of brain that involve the executive reasoning or
10 thinking process.

11 Q Okay.

12 A Now, we, in our experience, have added to that
13 battery. In fact, most neuropsychologists now have done
14 this, have added additional procedures to that core
15 battery which were not highly developed at the time that
16 they put the instrument together. Principally, the
17 battery is weak in terms of its assessment of memory.
18 The battery can be made stronger in its assessment of how
19 well we think and reason and plan and organize. The
20 battery can be improved by further exploring issues of
21 speech and how the language is being used. There's
22 another instrument that we have installed that was
23 developed by a partner of mine which is what I call a
24 maze tracing test which involves not only fine motor
25 coordination, but gross motor coordination. Dr. Brown

1 devised it as an instrument for textiles where people are
2 having to move cloth under a sewing machine.

3 Q And another test you performed is a Wechsler
4 Memory scale.

5 A Yes, sir.

6 Q What is that?

7 A That is a battery of tests standardized on
8 memory function specifically. And it's designed to
9 assess memory and word depth.

10 Q Another testimony you performed is a Rey
11 Complex Figure Test and Recognition Trial. What is that?

12 A That is a figure that -- it's an instrument
13 that was originally designed to pick up what we call
14 construction dyspraxia. Difficulty seeing and
15 reproducing geometric forms. It's a figure called a Rey-
16 Osterrieth figure. That figure was ultimately developed
17 as a memory assessment procedure by Syd Dimmin
18 [phonetically] who was in Columbia at the time that I
19 came to the Greenville area. But it's a system that can
20 be carefully evaluated -- quantified, I guess is a better
21 word to say -- for a person's ability to recall spatial
22 information. It's a very complex type of drawing that
23 has a lot of little details in it. You can quantify how
24 many of those details were installed and whether or not
25 they were placed in the right place or not.

1 Q You also did a Stroop Neuropsychological
2 Screening Test.

3 A Yes, that was an instrument that was originally
4 designed as a screening instrument, as the title
5 indicates, for addressing whether or not
6 neuropsychological damage had occurred. It deals with
7 the Stroop effect which involves a tendency to call a
8 color against a word. You have words, first off, that
9 are -- let's say, you have words -- you have colors,
10 green, red, blue. Then you have a word that will say
11 green, but it's written in red. Sometimes you have to
12 call the word. Sometimes you have to call the letter.
13 Well, there's a tendency to force one on the other. It's
14 a test of distraction. That particular affect has been
15 found significant in terms of identifying whether or not
16 a person can ignore distraction in order to perform a
17 particular task.

18 Q And, uh, you also did a verbal fluency test.
19 What is that?

20 A That's a test of how fast you can pull off
21 language from various categories. It's a test of a
22 person's efficiency in using language. We'll ask them to
23 do different categories of words. Then we look at how
24 fast they can pull those categories up. That speaks to
25 how fast you can pull up words whenever you're trying to

1 talk or present an idea.

2 Q You also did a Boston Navy test.

3 A That is a test of dysnomia or inability to
4 name. It's a series of pictures where a person has to
5 name what these pictures are. It's an additive to the
6 aphasia screening test which is part of the
7 neuropsychological battery, the Halstead-Reitan
8 neuropsychological batter, picking up whether a person is
9 able to pull up the words they need for identifying a
10 particular item.

11 Q You also did an executive functioning system,
12 the tower test, the object sort test.

13 A Right. The -- you see the evolution of
14 psychology. The executive functioning system is built on
15 -- it has two instruments in it. One is a sorting test
16 which comes from Goldstein-Sheer system that was produced
17 much younger, much earlier, uh, as a test for frontal
18 lobe functioning. The tower test involves a series of
19 where you're moving items across three pegs and you are
20 trying to produce a certain configuration in the least
21 number of moves possible. So it's assessing your ability
22 to plan and organize and anticipate before you execute an
23 action. Both of those are related to frontal lobe --
24 front of the brain function.

25 Q And the personality assessment.

1 A That's an assessment of the standard things you
2 think in terms of psychology, whether or not you have
3 anxiety, depression, whether you have paranoia,
4 schizophrenia, manic depression, those types of things.
5 They collecting for patterns of behavior that would
6 reflect one of those problems. The reason we use it in
7 this particular battery, even though that's not what
8 we're looking for, is that if you are depressed, it's
9 very easy to suppress these scores as a result of the
10 depression and then give a false reading of a
11 neurological problem when in fact you're looking at a
12 depressive problem.

13 Q All right. Is it possible to suppress these
14 scores by faking an injury or obscuring --

15 A Yes, it's possible.

16 Q Are there built in mechanisms to detect that?

17 A Uh, yes.

18 Q What are they?

19 A They are not -- we use formal tests. But in
20 most cases, they train neuropsychologists just so they
21 have to use those. One of the ways we can do it is we
22 gave her on the personality assessment, there's one scale
23 in there that looks at whether or not she's exaggerating
24 or minimizing problem areas. Her scale basically
25 indicated she was a person who did not complain. She is

1 more likely to say nothing is wrong when her leg is
2 broken. She's going to hide issues rather than promote
3 issues. The second thing that we found which is much
4 more telling than that particular scale on that
5 instrument is that multiple tests were done in a superior
6 or high average range. If a person is trying to present
7 themselves as pathological, they are not likely to turn
8 around and perform at superior levels.

9 Q Okay. Uh, any of your testing detect any of
10 those? Any malingering or exaggerating symptoms or those
11 type things?

12 A I do not recall whether we gave a test for
13 memory malingering. It's not in our procedures that we
14 reported administering. Uh, given the circumstances of
15 that we got the referral from Dr. Kent Kistler, there was
16 really no need to do that assessment. Now, if she were
17 the first referral -- my referral to me -- first referral
18 came out of an attorney's office, the first thing I would
19 do is test for memory malinger to see whether or not she
20 was trying to promote difficulty. There's no need to do
21 it whenever you got somebody sending to you for clinical
22 -- for medical information.

23 Q Now, tell the jury about your psychological
24 intake. We talked about the exams that you administered.
25 What were the presenting concerns that she had?

1 A All right. When I saw her, she noted that she
2 had begun to have difficulty organizing her work. She
3 was prone to crying with minimal stress or problems. She
4 had lost her ability to do multiple tasks at the same
5 time. She could do one task but when she started to do
6 multiple tasks, she became confused.

7 Her family had noted that she had started
8 overseasoning food. Now, she reports that she's a good
9 cook and she's trained as a cook through the military.
10 All of a sudden, she's putting too much spice in her food
11 where before nobody had any complaints. She was unaware
12 that when she was doing this her food was too spicy or
13 overly spicy.

14 Q Why is that important?

15 A Pardon?

16 Q Why is that important?

17 A The injury was one in which she was struck in
18 her head, was reported to violently be shaking backwards
19 and forward. When you have a forward shaking of the
20 brain, the head moves forward. The brain is moving
21 inside the brain case. The head stops. The brain does
22 not. It keeps moving and will strike the frontal area of
23 the skull. Then comes back and then you can have an
24 injury in the back side of the brain as a result of the
25 head coming back and being struck back here.

1 What makes this important is that right
2 underneath the frontal lobe, if you think about the brain
3 being up over the head here and the olfactory bulb is
4 right underneath there, well, there's a bunch of little
5 fine nerves that come down to that bulb. The head comes
6 forward. That area of the brain is squished. Well, when
7 that area of the brain is squished, your ability to smell
8 is lost.

9 Q Had she lost her ability to smell?

10 A Huh?

11 Q Had she lost her ability to smell?

12 A It had been diminished.

13 Q Okay.

14 A I didn't actually test smelling. There are
15 some tests that you can use to test smelling. I didn't
16 test that. But when she told me she had trouble smelling
17 or had trouble with seasoning food, that was my response.

18 Q Okay.

19 A That certainly sends up a red flag that, okay,
20 something has happened in terms of the frontal region to
21 the brain.

22 Q That isn't a symptom that a normal lay person
23 wouldn't correlate to a brain injury.

24 A Most physicians wouldn't correlate it either.

25 Q Okay. And so that was significant to you.

1 A It signaled that we may have had some frontal
2 injury, yes, sir.

3 Q All right. What else were her presenting
4 concerns?

5 A What were the other?

6 Q Yes.

7 A Her family had begun to say that she seemed
8 that she was inattentive, that she wasn't listening to
9 them, weren't focusing on them. She had had some
10 difficulty retrieving words when she needed to express
11 herself, which could either reflect a problem with a
12 memory problem, which is the retrieval process. There
13 had been an increase in anxiety with grinding of her
14 teeth at night when she was asleep. This could reflect
15 some dysregulation of the emotion.

16 Uh, her experience was that these problems were
17 not present prior to the accident but it began following
18 the accident. Those are the main things that she
19 indicated to me when I did the history that I picked up
20 were the first indicators that we may have something
21 wrong.

22 Q All right. She indicated to you -- you
23 mentioned that she indicated to you about her head being
24 thrown violently forward and backwards.

25 A Yeah.

1 Q Did she?

2 A Yeah. Her notes were that her head was
3 violently thrown forward and backwards.

4 Q Did she relate to you a recollection of that
5 immediately following the accident?

6 A Yeah. She recalls hearing a loud noise,
7 feeling the impact, her head being thrown and then she's
8 sitting in the middle of the road following the accident.
9 She believes, but she wasn't certain that she had moved
10 the car to clear traffic. At the same time, she also
11 reported feeling dazed. Those are all signals that when
12 you have those occur, that daze, sensation and the lack
13 of clarity and memory are indications that could have
14 sustained a concussion.

15 Q Okay. Did you also review her, uh, her medical
16 history and also her educational history?

17 A Yes, sir. She did not report the presence of
18 any major physical difficulty other than that reported
19 with the accident. From her educational side, she had
20 completed 14 years of education. She had also been
21 certified in kitchen and bathroom design, bath design.
22 And she had a driver's license.

23 Q Did you ask for those records to review?

24 A Yes, I got a copy of the educational record,
25 yes, sir.

1 Q And it also indicates she served in the United
2 States Navy?

3 A Yeah, for two years as a cook with the United
4 States Navy. I can tell you from my experience, I was a
5 naval officer. The cook is one of the central
6 ingredients for the morale of the unit. If the cook
7 doesn't do a good job, the unit goes to pots. If the
8 cook does a good job, you can blow the ship out of the
9 water but as long as they got a good steak at the end of
10 the day, they will keep putting up fire. So those
11 individuals are usually very competent and very effective
12 individuals. They have to prepare a thousand meals and
13 they've got a kitchen that's maybe the size of the jury
14 box there.

15 Q Did you also review her medical, military
16 records?

17 A Did not review her military records.

18 Q Did you get an occupational history?

19 A Yes, sir. I did.

20 Q What was that?

21 A She worked in -- well, she was in the Navy for
22 two years. Then she was in retail sales for seven years.
23 She worked with the headquarters unit of a retail sales
24 company for three years. She had been in store design
25 and kitchen and bath design for seven years. She also

1 owned her own company.

2 Q And did you also get a marital history?

3 A Right. She had been married at the age of 23.
4 Reported the marriage was stable. She has two children,
5 9 and 11, at that time. The children had also reported
6 to be doing well.

7 Q So based upon your initial intake of her that
8 you did these psychological evaluations, can you tell the
9 jury about your objective findings of these evaluations?

10 A Uh, based on that initial history, we have an
11 individual who has done well educationally, who did not
12 appear to have a preexisting learning disability, who had
13 performed at a competent level, who was maintaining a
14 marriage and maintaining a relationship with children
15 without difficulty. She had a stable lifestyle. No
16 evidence of any significant emotional difficulty or
17 cognitive difficulty prior to the accident.

18 Q Okay.

19 A And based on the presentation of the data and
20 the symptoms that she reported, my initial assumption was
21 that she had most probably sustained a concussion. And
22 the concussion that involved the frontal region of the
23 brain resolves the question with the difficulty
24 retrieving words and whether or not we may have some
25 involvement close into the language areas of the brain.

1 Q Okay. So is it, in your opinion, within a
2 reasonable degree of scientific certainty that Mrs.
3 Bettencourt suffered a brain injury in this accident?

4 A Yes, it is.

5 Q Uh, did you develop a prognosis for her?

6 A Yes, I did.

7 Q And what was that? Could you tell the jury
8 about it?

9 A The history was consistent with a mild close
10 injury involving the frontal regions. The overall
11 performance, aside from the weakness that we noted, the
12 difficulties were subtle and suggestive of a mild head
13 injury. The fact that the injury was mild and the
14 strengths noted within the examination in terms of other
15 skills, the prognosis was that there would be continued
16 improvement in the future. Now, I could not say whether
17 or not all symptoms would be resolved in a year or two
18 years. But certainly, the data indicates an individual
19 who is intellectually strong will either get good
20 resolution of the symptoms or be able to make effective
21 compensations for the difficulties.

22 Q Now, you, uh, mentioned a reduction in your
23 sense of smell, problems retrieving words, difficult
24 managing multiple tasks at the same time.

25 A Uh-huh.

1 Q You also talked about decreased emotional
2 control. What do you mean by that?

3 A Pardon?

4 Q You also talked about decreased emotional
5 control.

6 A Yes, sir.

7 Q What do you mean by that?

8 A That's when she reported that she would cry
9 with minimal provocation, minimal frustration. Now that
10 is a common feature in individuals who have sustained
11 some type of cerebral injury, regardless of the cost.
12 They would report -- you see this all the times in people
13 my age who, uh, prior to whatever injury or insult that
14 they had, they were doing just fine. Then after the
15 injury, they looked like they were doing fine. But the
16 grandkids would come running through the house and what
17 they would want to do is reach out and just snap one's
18 head off. They react much more intensity to provocation,
19 to frustration than they did before.

20 Now, that is a function of what we would say
21 disregulation of emotions. When the emotional charge
22 comes up, it's more difficult for the person to say, wait
23 a minute, they are just kids. That's the way the kids
24 do. Turn a deaf ear and forget it or call their mother
25 and say, yeah, slow these kids down a little bit. It's a

1 little more difficult to do that. You are much more
2 likely just to react on your emotions at the moment.

3 Q Now, uh, your impression of her is a
4 Posttraumatic Stress Disorder and Post Concussion
5 Syndrome?

6 A Right. The first one is Posttraumatic Stress
7 Disorder versus Adjustment Disorder.

8 Q Right.

9 A We picked that up on some subtle indications on
10 personality assessment. We mentioned the personality
11 assessment inventory. The second one was the post
12 concussion syndrome, mild, which stemmed from the minor
13 difficulties we encountered in the neuropsychological
14 assessment combined with the information I derived from
15 the history.

16 Q Now, uh, the function of this report was that
17 you eventually provided those facts to the neurologist,
18 Dr. Kistler?

19 A This report was to aid Dr. Kistler in his
20 treatment of her condition.

21 Q Did you also provide some further treatment for
22 her?

23 A No, my job was to help him evaluate and then
24 make determinations -- help him make determinations of
25 what he was going to do.

1 Q The records indicate you gave her some
2 individual psychotherapy in March of 2009?

3 A (Reviewing.) What was the date on that?

4 Q March 11th.

5 A March 11th?

6 Q 2009.

7 A Was it psychotherapy or was that the feedback
8 from test results?

9 Q Well, I'll show you what's marked as
10 Plaintiff's Exhibit number 2 ---

11 A Okay.

12 Q --- and see if you can identify that.

13 A That is the code that -- the code that we used
14 for reviewing the test results.

15 Q Okay.

16 A We did not actually do psychotherapy. That was
17 the day we went over the results. I gave her feedback in
18 terms of strengths and weaknesses, what we basically
19 found in terms of the assessment.

20 Q Now, is this a statement from your office?

21 A That's correct. That's her billing statement.

22 Q Uh, the billing statement for \$2110, is that
23 correct?

24 A Correct.

25 Q And were those, in your opinion, expenses

1 reasonable and necessary as a result of her brain injury?
2 Were those injuries -- those expenses reasonable and
3 necessary in order to evaluate her brain injury?

4 **A** Yes, sir. Now, was it basically -- she went
5 through a standard, a full standard neuropsychological
6 assessment of her cognitive skills.

7 **MR. CHILDS:** I'd like to move into evidence
8 Plaintiff's Exhibit number 2.

9 **THE COURT:** Objections?

10 **MR. MCGARR:** Without objection, Your Honor.

11 **THE COURT:** All right. Without objection,
12 the same is admitted into evidence.

13 **(WHEREUPON, Plaintiff's Exhibit 2 is admitted into**
14 **the record.)**

15 **BY MR. CHILDS:**

16 **Q** Now, Mr. Jones, did you also evaluate her for
17 any kind of permanent impairment?

18 **A** We did a permanent impairment assessment --
19 well, let me rephrase that. We did an assessment of
20 impairment at the time that we did the evaluation. That
21 assessment would not be considered permanent based on the
22 fact that we did not have two years post injury. We have
23 to have two years post injury before we determine that
24 nothing else is going to change. At the time we did the
25 evaluation, the impairment rating basically indicated 20

1 percent impairment to the whole person.

2 Q Okay. 20 percent?

3 A Yes, sir.

4 Q And, uh, that seems like a lot for a mild brain
5 injury.

6 A Well, it's a -- you have rules for accumulating
7 the percentages. For example, there was a minor problem
8 with sensory function with figure agnosia. I gave her a
9 three percent impairment with that. There was a mild --
10 a graphthesic problem where you have trouble interpreting
11 number or letters written to the fingerprints.

12 Q Okay.

13 A I gave her two percent for that. There was a
14 mild articulation problem on the aphasia screen test. I
15 gave her a two percent impairment on that. The
16 impairment to smell was a three percent. The
17 distractibility that we picked up on the
18 neuropsychological assessment procedure, gave her a ten
19 percent. Uh, there was a mild decrease in the perceptual
20 processes on the electrode intelligence scale. It was
21 three percent for that. There was a mild reduction in
22 the motor function of the right side. We gave her a two
23 percent reduction on that. Now, when you go through and
24 add those up based on the accumulation rules for the
25 medical guides for making medical impairment. The sum

1 total of that comes up to 20 percent.

2 Q To the whole person?

3 A Pardon?

4 Q To the whole person?

5 A To the whole person.

6 Q Uh, it seems to me like any lost of motor
7 function to any part of your body is pretty serious to
8 the person involved. You characterized some of these
9 losses as mild. Could you explain that?

10 A I think this will give a good example. Let me
11 get my numbers up. The finger isolation rate on the
12 dominant right hand was 43.2 taps per 10-second period.

13 Q Okay.

14 A The finger isolation rate for the non-dominant
15 hand was 43.8 taps per second.

16 Q Okay.

17 A That's only .6 taps -- a little more than half
18 a tap per second. But the dominant right hand is
19 supposed to be approximately 15 to 20 percent better than
20 the non-dominant hand. The right hand has been
21 suppressed. If both hands are working with relative
22 efficiency, you are not likely to even notice that until
23 we actually get into these five assessments. That's
24 reason the neurologist sends her to me.

25 The neurologist says do this with your right

1 hand, do this with your other hand. Then he looks to see
2 if there's any great differences. When I put her on the
3 finger tapper then, all of a sudden, I can measure two or
4 three taps difference between one or the other and we
5 know that they are significant. Then it starts becoming
6 much more prominent.

7 Q Okay.

8 A Those subtleties are the types of things that
9 the design -- the whole system was designed to detect.
10 We couldn't detect it with the standard medical
11 procedures.

12 Q Okay. Now, there's been some testimony already
13 earlier about prior concussions that Mrs. Bettencourt may
14 or may not have had back when she was in high school.
15 Would your analysis of her history and records show if
16 she had any permanent or lasting problems because of
17 that?

18 A I didn't pick up anything that had been changed
19 or altered or damaged as a result of that. We asked her
20 about prior injury. She didn't seem to think there was
21 anything that significant. She didn't tell me she had
22 had four concussions, but that may have been simply at
23 the time of the examination. She didn't think they were
24 significant because no change had occurred.

25 Q Okay.

1 A Uh, if -- the history that I had said that
2 everything was going well, the difficulties that she was
3 telling me about and that we ultimately assessed did not
4 occur until after the injury, the last injury.

5 Q Okay.

6 A That time line and the emergence of those
7 symptoms would suggest that they were more acute rather
8 than longstanding which would have occurred back in early
9 high school years.

10 Q Now, you talk about post concussion syndrome.
11 What is that?

12 A Whenever the brain is injured but is in what we
13 call a concussive or mild form, you can show subtle
14 symptoms. That tends to make up what we call
15 postconcussive syndrome. But you don't have any severe
16 indications of altercations but, nonetheless, the person
17 is a little off-centered. That is identified with the
18 time that the person was injured or follows immediately
19 after that.

20 The literature has, over the last 15 years, has
21 begun to show a pattern of minor problem of memory, minor
22 problems with emotional control, all being very, very
23 subtle indications, but they occur following the
24 concussions. They do not exist prior to that, nor do we
25 have history to indicate there is emotional problems

1 because the person has major conflicts or major issues
2 going on in her life. In Mrs. Bettencourt's case, the
3 review of her history did not indicate any major
4 stressors in her life that would be promoting her
5 symptoms.

6 Q Now, when you talk about a concussion, is a
7 concussion -- does it require blacking out or total loss
8 of consciousness?

9 A You do not have to have total loss of
10 consciousness. You do not have to have loss of memory.
11 Those are frequent phenomena, but they are not
12 prerequisites for making the diagnosis.

13 Q Okay.

14 A In some cases, a person can have a mild
15 concussion and not even realize that they had brain
16 injury other than afterward, they begin to have certain
17 difficulties following the injury. So while those are
18 often associated with concussions, they are not primary.
19 When we talk about a mild injury, we talk about mental
20 changes in, uh, consciousness and alertness. And, uh, we
21 were talking about unconsciousness that lasts for less
22 than, in some studies, 20 seconds, some 20 minutes, some
23 less than 15 minutes. But you don't have to have that.

24 Now, as you progress forward in the research
25 literature, most of those things clear within three

1 months, maximum of six months. When you begin to
2 encounter difficulty further out than that, then the odds
3 of clearing or the odds of having some lasting effect go
4 up. But the anticipated course of action is that things
5 will be recovered within three to six months.

6 Q Uh, so it's your opinion that Mrs. Bettencourt
7 suffered a brain injury as a result of the accident in
8 September of 2009?

9 A That's correct.

10 Q And that your medical expenses were necessary
11 in the diagnosis and evaluation of that treatment?

12 A That's right. That's the reason I got the case
13 was to assist Dr. Kistler. Dr. Kistler is the one, by
14 the way, who winds up making the final determinations.

15 Q And at the time you evaluated her, she had a 20
16 percent loss or impairment to the whole person?

17 A To the whole person, at that point in time.

18 Q Just one minute, Doctor. (Pause.)

19 Dr. Jones, please answer any questions Mr.
20 McGarr might have of you.

21 A Thank you.

22 MR. MCGARR: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. MCGARR:

1 Q Dr. Jones, my name is Mark McGarr. Uh, your
2 initial interview with Mrs. Bettencourt took place on
3 February 10th of 2009, is that correct?

4 A Let me get my records. I believe you are
5 correct, if you are reading from my report.

6 Q It may be easier to do it this way.

7 A Let me -- let me -- I got things changed
8 around.

9 Q Your bill may help you a bit.

10 A Yeah, yeah, yeah, yeah.

11 Q So, --

12 A We first saw her on the 10th. We did the
13 evaluation on the 23rd and the 24th.

14 Q So on 2/10/2009, uh, you first saw her, is that
15 correct?

16 A Correct.

17 Q And would you agree that by 2/13/2009, her
18 attorney, Mr. Ray, was requesting your records already?

19 A You have a photocopy of his letter?

20 Q Sir?

21 A You have a copy of his letter?

22 Q Yes, sir. It should be in your file. I could
23 show it to you --

24 A You want me to dig through this thing. Uh,
25 February 13th, 2009 was request for records. Yes, sir.

1 Q So the timeline would be that she comes to see
2 you on 2/10 of 2009, and three days later, you're getting
3 communication from Mr. Ray about getting your records, is
4 that correct?

5 A That's correct.

6 Q And then when you did your testing of her, it
7 would have been on 2/23 of '09, is that correct?

8 A That's correct.

9 Q But you didn't do that malingering test at that
10 point, did you?

11 A No, sir.

12 Q And you were paid \$2110 for the testing of Mrs.
13 Bettencourt, is that correct?

14 A That's correct.

15 Q And you being paid to be here today?

16 A Pardon?

17 Q You're being paid to be here today?

18 A Very nicely.

19 Q Are you being paid to be here today?

20 A Very nicely, yes, sir.

21 MR. McGARR: No further questions.

22 THE COURT: Redirect, sir?

23 REDIRECT EXAMINATION

24 BY MR. CHILDS:

25 Q Dr. Jones, is it unusual for lawyers to request

1 records of their clients?

2 A No, sir. It's not.

3 Q Did Mr. Ray ask you to render any particular
4 diagnosis of her or is your evaluation of her what you
5 did in the normal course of Dr. Kistler's referral?

6 A No, the evaluation was in conjunction with Dr.
7 Kistler's referral. Now, where Mr. Ray comes into that
8 sequence or into that process, I don't know.

9 Q It doesn't matter to you.

10 A It doesn't matter. Kent sent him -- sent her
11 over. And he said I need some help in understanding
12 what's going on. That's where we proceeded.

13 Q And the patient's who is responsible for the
14 \$2110?

15 A That's right.

16 Q And, uh, but you expect to be compensated for
17 your time and having to come to court and cancel your
18 patients for this afternoon?

19 A I got up this morning at 5:30 and started
20 reviewing this case, reviewed it after -- during lunch,
21 I'm sitting in here. I'm closing the office down. Yes,
22 sir. I expect to be compensated. I've got mouths of
23 feed. A bunch of them.

24 Q Thank you, Dr. Jones.

25 A Thank you.

1 THE COURT: Any recross?

2 MR. McGARR: None, Your Honor.

3 THE COURT: All right. Thank you, Dr. Jones.
4 Appreciate you being here, sir. You may be excused.
5 Yes, sir. Just leave it right there. That's fine.
6 You can just leave it.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you.

9 MR. CHILDS: At this time, I'll introduce the
10 de bene esse deposition of Dr. Kathy Benson.

11 THE COURT: Okay. And that's going to last
12 50 minutes?

13 MR. CHILDS: That's correct.

14 THE COURT: All right. We'll sit down and
15 watch this for 50 minutes. Does anybody need to
16 take a very brief break before we start watching
17 this? You do? All right. Okay. All right. Let's
18 take a break for about five or ten minutes and come
19 back in. Please don't discuss the case.

20 (WHEREUPON, the jury exits at approximately
21 2:52 p.m.)

22 (WHEREUPON, a recess is taken.)

23 THE COURT: Okay. We ready for the jury,
24 gentlemen?

25 All right. Will you bring them in please?

1 (WHEREUPON, the jury enters at approximately
2 3:02 p.m.)

3 THE COURT: All right. Mr. Childs, you can
4 tee it up, sir.

5 MR. CHILDS: All right. I'd like to, at this
6 time, introduce the de bene esse video deposition of
7 Katherine Benson.

8 THE COURT: All right. Any objection, Mr.
9 McGarr?

10 MR. MCGARR: No, Your Honor.

11 THE COURT: Okay. Good enough.

12 (WHEREUPON, the video deposition testimony of DR.
13 KATHERINE BENSON is played.)

14 MR. CHILDS: Your Honor, at this time, I
15 would introduce Exhibit number 3, which is the
16 medical bills of Katherine Benson.

17 THE COURT: Any objection?

18 MR. MCGARR: Without objection.

19 THE COURT: All right. Without objection,
20 the same is introduced as Plaintiff's Exhibit number
21 3.

22 (WHEREUPON, Plaintiff's Exhibit 3 is admitted into
23 the record.)

24 MR. CHILDS: I might just ask for the Court's
25 indulgence.

1 MR. McGARR: Without objection, Your Honor.

2 MR. CHILDS: Okay. Let me find that. I'll

3 put it in when I get to it.

4 THE COURT: Okay. Good enough. Good enough.

5 Do you have an additional witness that you intend to

6 call, sir?

7 MR. CHILDS: Uh, I do have Dr. Kistler which

8 is an hour and 45 minutes, then I have the

9 Plaintiff, Mrs. Bettencourt.

10 THE COURT: Okay. Those are the remaining

11 two?

12 MR. CHILDS: The remaining two that are here.

13 THE COURT: Okay. All right. Good enough.

14 Uh, is the direct exam -- how long does the direct

15 examination of Dr. Kistler last?

16 MR. CHILDS: Uh, I would say that would be

17 less than an hour.

18 THE COURT: Okay. And it's an hour and 45.

19 Okay. Let's do this. Let's begin the deposition,

20 the video deposition of Dr. Kistler ---

21 MR. CHILDS: Right.

22 THE COURT: --- and, uh, we'll run at least

23 through that direct examination and see when that

24 ends. Looking to adjourn today somewhere around

25 5:00. Then we can pick it back up tomorrow on his

1 cross-examination..

2 MR. CHILDS: Okay.

3 THE COURT: Unless it only takes 20 minutes.

4 Is there anyone among you who needs to take a
5 short break before we start that? I think when we
6 start that, it's probably going to be about an hour
7 that we're watching the video. Okay. I'll tell you
8 what, I'm going to go ahead and just say let's take
9 a break. I know everybody's been watching a video
10 for 50 minutes. We're fixing to watch another one.
11 Let's just take a break and refresh for a little
12 bit. Okay. Please don't discuss the case.

13 (WHEREUPON, the jury exits at approximately
14 3:52 p.m.)

15 THE COURT: And Mr. Childs, you can find
16 those documents. And when we come back in on the
17 record, you can introduce those into the record,
18 sir.

19 (WHEREUPON, a recess is taken.)

20 THE COURT: All right. Y'all ready for the
21 jury?

22 MR. McGARR: Yes, Your Honor.

23 MR. CHILDS: Yes, sir.

24 THE COURT: Okay. All right.

25 MR. CHILDS: Can somebody remind us to put

1 these exhibits in tomorrow?

2 **THE COURT:** Are those the, uh, --

3 **MR. CHILDS:** Yes, sir. But they are black --

4 **THE COURT:** Y'all got to redact a --

5 **MR. CHILDS:** I thought I had a redacted copy.

6 I'm not locating them right now. My apologies.

7 **THE COURT:** Okay. Don't count on me to

8 remind you. When y'all come in tomorrow, just

9 remember to put them into the record.

10 **THE BAILIFF:** Your Honor, are you ready?

11 **THE COURT:** Yes, sir.

12 (WHEREUPON, the jury enters at approximately

13 4:07 p.m.)

14 **THE COURT:** All right. Mr. Childs?

15 **MR. CHILDS:** At this time, I would introduce

16 the testimony of Dr. Kent Kisler.

17 **THE COURT:** Okay. Any objection?

18 **MR. McGARR:** No, Your Honor.

19 **THE COURT:** Okay. Without objection, you may

20 play the same, sir.

21 (WHEREUPON, the video deposition of the direct

22 testimony of **DR. KENT KISTLER** is played.)

23 **THE COURT:** All right. Based on the time

24 that you gave me, Mr. Childs, there's about an hour

25 left on that video, is that correct?

1 MR. CHILDS: Uh, should be.

2 THE COURT: Then tomorrow, you're going to

3 call Mrs. Bettencourt to the stand, is that correct?

4 MR. CHILDS: I believe so.

5 THE COURT: And Mr. Bettencourt?

6 MR. CHILDS: Yes.

7 THE COURT: Are those the only two remaining

8 witnesses? Do you have additional after that?

9 MR. CHILDS: No, I have Dr. Cecil Huey, I

10 have Dr. Brabham and Dr. Swicegood.

11 THE COURT: Okay. Good enough. That should

12 take us through the end of the day, I suspect.

13 MR. CHILDS: I suspect so. I also have Mrs.

14 Bettencourt's mother.

15 THE COURT: Okay. And are you still

16 anticipating four or five witnesses, Mr. McGarr?

17 MR. McGARR: Your Honor, if there are, it's

18 going to be basically record custodians.

19 THE COURT: Yes, sir.

20 MR. McGARR: So they will be very short.

21 THE COURT: Okay. All right. I'm just

22 trying to get a feel for them so I can tell the jury

23 where we stand insofar as timing is concerned. I

24 think we are about where we discussed before where

25 we probably go through tomorrow and go into

1 Thursday. Then, maybe we'll be able to argue and
2 charge on Thursday afternoon. We just have to keep
3 having to feel it out a little bit.

4 Ladies and Gentlemen, I'm going to release you.
5 Please don't discuss the case this evening. I'll
6 see you back tomorrow morning at nine o'clock and
7 we'll begin again. Thank you.

8 (WHEREUPON, the jury exits at approximately
9 4:45 p.m.)

10 THE COURT: All right. Gentlemen, anything
11 additional we need to put on the record before we
12 adjourn for the evening?

13 MR. CHILDS: No, sir.

14 THE COURT: Okay. Good enough. Y'all have a
15 great evening.

16 That was perfect, Ladies and Gentlemen,
17 perfect. Thank you. Y'all have a great evening
18 too.

19 (WHEREUPON, the Court recesses for the day.)
20
21

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 14th day of September, 2011.)

THE COURT: Hope everybody's doing well. All right. We ready for the jury?

MR. CHILDS: Judge, just to let you know, my next witness is going to be Judy Waite. Although you've sequestered the witnesses, I didn't see any -- Mark -- Mr. McGarr doesn't disagree. They just have her in here so I can call her next.

THE COURT: Okay. Okay. That's fine.

MR. McGARR: She's the Plaintiff's mom.

THE COURT: Okay. Good enough. You don't think she's going to deduce anything from Dr. Kistler's testimony?

MR. CHILDS: Nobody can.

MR. McGARR: One other thing, which is basically an apology to the Court. When you told the jury to take a break --

THE COURT: Yes, sir.

MR. McGARR: --- I actually bolted out the door ---

THE COURT: Oh, you did.

MR. McGARR: --- and everyone followed me.

THE COURT: Okay. All right.

1 **MR. McGARR:** I'm the one that knows the rules
2 and then they assumed that I knew the rules. It
3 wasn't them. It was me. I apologize and I'm sorry
4 that I put them in that --

5 **THE COURT:** Okay. Well, then I'm going to
6 sanction you \$10 but I'll suspend that based on your
7 continuing good conduct during the course of this
8 trial.

9 **MR. McGARR:** Thank you, Your Honor.

10 **THE COURT:** Good enough.

11 **MR. CHILDS:** I got McGarr sanctioned during
12 the trial. I'm going to make it a record.

13 **THE COURT:** All right. Send the jury back.
14 He has been sanctioned.

15 **THE BAILIFF:** Your Honor, are you ready?

16 **THE COURT:** Yes, sir.

17 (WHEREUPON, the jury enters at approximately
18 9:10 a.m.)

19 **THE COURT:** All right. Ladies and Gentlemen,
20 good morning. I know you're anxious to get started
21 again, so we will.

22 Mr. Childs?

23 **MR. CHILDS:** All right. Thank you, Your
24 Honor. We will continue with the video deposition
25 cross-examination portion of Dr. Kistler.

1 THE COURT: Okay. (Pause.)

2 Hold on just a second. We need to take a
3 break?

4 THE BAILIFF: Yes. Yes, sir.

5 THE COURT: All right. (Pause.)

6 (WHEREUPON, a bench conference is held with the
7 Court and the bailiff.)

8 THE COURT: All right. Ladies and Gentlemen,
9 if you will return to your jury room, we'll start
10 back in just a few minutes. Okay.

11 (WHEREUPON, the jury exits at approximately
12 9:15 a.m.)

13 THE COURT: All right. We'll be in recess.
14 We'll go off the record.

15 (WHEREUPON, there is a recess.)

16 THE COURT: Okay. I think we have averted a
17 situation. The computer was found. All right.
18 Bring them in.

19 THE BAILIFF: Your Honor?

20 THE COURT: Yes, sir. Yeah, bring them in.

21 (WHEREUPON, the jury enters at approximately
22 9:24 a.m.)

23 THE COURT: All right, Ladies and Gentlemen.
24 I'm happy to hear, Mrs. Coulter, you averted a minor
25 tragedy. I won't tell. I promise.

1 THE JUROR: Don't.

2 THE COURT: Okay. All right. You may begin.

3 (WHEREUPON, the video deposition of DR. KENT KISTLER
4 is resumed.)

5 MR. CHILDS: Your Honor, can we approach?

6 THE COURT: Yeah. Come on into my corner of
7 the courtroom.

8 (WHEREUPON, a bench conference is held off the
9 record.)

10 THE COURT: Uh, Ladies and Gentlemen, we're
11 discussing right now how much more of this
12 deposition is necessary to be played. It may be all
13 of the rest of it, which is about 20 pages worth,
14 which is not a whole, whole heck of a lot more or
15 whether it should just be ended. It's going to be a
16 decision that ultimately is going to be made by the
17 attorneys.

18 But in the meantime, why don't we just take a
19 quick break, let them look at that and make a
20 determination as to whether they want to play
21 anymore of it. If so, how much. Then we'll come
22 back on the record and we'll either go back into the
23 deposition or we'll go to the next witness. Okay.
24 Please don't discuss the case.

25 (WHEREUPON, the jury exits at approximately

1 10:38 a.m.)

2 THE COURT: All right. Counsel, y'all can
3 make that determination. Just tell me what you want
4 to do. I'm comfortable either way you want to go,
5 but we'll be in recess for about the next five or
6 ten minutes.

7 MR. CHILDS: Can we give me a cigarette break
8 and a bathroom break?

9 THE COURT: Yeah, yeah, yeah. Just suck it
10 hard. That's all I've got to say.

11 (WHEREUPON, a recess is taken.)

12 THE COURT: Okay. We ready for the jury?

13 MR. CHILDS: Yes, sir. Mr. Bettencourt's
14 here now. He was out of town. Just wanted to
15 mention that to you.

16 THE COURT: Okay.

17 MR. CHILDS: And, uh, -- and, uh, we've
18 agreed just to play another page of the deposition,
19 so it will be very short.

20 THE COURT: Okay. Good enough.

21 MR. McGARR: Your Honor, do you want us to
22 bring up an issue with regards to my witnesses or
23 should we do that at a later time?

24 THE COURT: We'll just do it, uh, when we
25 break for lunch if you want to do that.

1 **MR. CHILDS:** Yeah, we've got -- I can shorten
2 some of his up. I've just really got a relevancy
3 issues on those witnesses and relevancy issues on
4 part of the video that he has. You can just deal
5 with that. And we probably won't even have to have
6 the custodian from those two.

7 **THE COURT:** Okay. All right. Good enough.
8 Bring them in.

9 **THE BAILIFF:** Your Honor, are we ready?

10 **THE COURT:** Yes, sir. Bring them in.

11 (WHEREUPON, the jury enters at approximately
12 10:57 a.m.)

13 **THE COURT:** All right. Ladies and Gentlemen,
14 after consultation, the attorneys have elected to
15 cut out a substantial portion of the remainder of
16 that video, as a matter of fact, the majority of the
17 remainder of it. So we're just going to listen to a
18 few more questions and responses, then Mr. Childs is
19 going to move to his next witness.

20 **MR. CHILDS:** Your Honor, I wanted to
21 introduce Scott Bettencourt. He's now here with us
22 from being out of town.

23 **THE COURT:** Okay. Thank you, Mr. Childs.

24 (Pause.)

25 If you want to, you are welcome to read into

1 the record the questions and the responses to the
2 point that you want to stop.

3 MR. CHILDS: That will be fine.

4 THE COURT: Let's do that. We'll turn that
5 off and back it out of the way. We'll just read the
6 remainder of it.

7 MR. CHILDS: All right. This the reduction
8 of the examination of Dr. Kistler, page 86, line 15.

9 (WHEREUPON, the following deposition testimony
10 excerpts are read into the record.)

11 BY MR. CHILDS:

12 Q So Dr. Kistler, you were also referred
13 basically to the neuropsychologist on a lot of the issues
14 about the cognitive impairments of Mrs. Bettencourt and
15 issues relating to whether or not she's embellishing her
16 injury and that kind of thing.

17 A Yes.

18 Q Please answer any questions Mr. McGarr might
19 have.

20 BY MR. MCGARR:

21 Q All right. The one thing that she has
22 convinced you of is that she probably would not regain a
23 sense of smell, is that correct?

24 A The assumption is if you've had structural
25 injury --

1 Q Oh, I understand.

2 A It's persistent, that it would not improve.

3 Q Oh, Doctor, if I've got a head injury and, all
4 of a sudden, I've lost my sense of smell and it doesn't
5 come back in a year, I know it's gone.

6 MR. CHILDS: Objection. That was not a
7 question.

8 BY MR. McGARR:

9 Q Am I correct from the literature I have read
10 that if I've got a head injury and I lose my sense of
11 smell and it doesn't come back within a year, that
12 nerve's gone and I won't get it back?

13 A I think that's likely.

14 Q It's the most likely result -- it's a more
15 likely result than me getting something back?

16 A Correct.

17 Q And she, by virtue of telling you that she had
18 lost her sense of smell, I mean, usual type of complaint,
19 made you think that she had a head injury, is that
20 correct?

21 A It would be compatible with that.

22 Q It would be compatible?

23 A Yes.

24 MR. McGARR: That concludes the deposition.

25 THE COURT: Thank you, Mr. Ray. I appreciate

1 that. Okay.

2 All right. You read to call your next witness?

3 **MR. CHILDS:** Dr. Cecil Huey.

4 **THE CLERK:** Place your left hand on the Bible
5 and raise your right hand.

6 **CECIL HUEY**

7 having first been sworn, testifies as follows:

8 **THE CLERK:** State your name please.

9 **THE WITNESS:** Cecil Huey, Jr.

10 **THE CLERK:** Thank you. Please be seated.

11 **DIRECT EXAMINATION**

12 **BY MR. CHILDS:**

13 **Q** Dr. Huey, how are you employed?

14 **A** Uh, I'm currently officially retired, but I
15 continue to teach some at Clemson University.

16 **Q** In what capacity?

17 **A** Uh, in the Department of Mechanical
18 Engineering.

19 **Q** Okay. And are you a professor there?

20 **A** Yes, I was for over 30 years. Now, I'm
21 Professor Emeritus. As I said, I'm continuing to teach
22 classes.

23 **Q** Okay. And, uh, is part of your profession
24 being a mechanical engineer?

25 **A** Yes, sir.

1 Q And can you explain to the jury what a
2 mechanical engineer is?

3 A Well, mechanical engineer is one of the broader
4 engineering disciplines. It incorporates things from
5 simple machines and mechanisms to energy and large scale
6 energy systems and so forth. And my particular area had
7 to do with machines and mechanisms, dynamic systems.

8 Q Okay. And what?

9 A That's all.

10 Q Tell the jury some about your educational
11 background.

12 A Well, I got my Bachelors degree from Clemson in
13 1965 and then continued from there. Got a Masters
14 degree. And then I went to work for a while and then
15 returned to the instructor in engine -- engineering
16 graphics and got my doctorate and was gone for a couple
17 of years and then returned to the faculty.

18 Q So your Doctorate is in mechanical engineering?

19 A Yes, yes.

20 Q And your Masters degree also is in mechanical
21 engineering?

22 A Yes.

23 Q And you have any -- did you have any department
24 position within the engineering department at Clemson
25 University?

1 A Yes, I was a faculty member. Then I later was
2 coordinator of undergraduate studies, which involved
3 everything from class scheduling to advising students
4 that were having particular troubles and things of that
5 sort.

6 Q Is that like the Dean of undergraduate studies?

7 A Well, it would be at a departmental level.

8 Q Okay.

9 A You know, we have Dean in the college that has
10 a responsibility for all the ---

11 Q Right.

12 A --- curricula. But I was the local guy, so to
13 speak.

14 Q And what kind of a -- do you still teach?

15 A Yes.

16 Q What kind of classes do you teach?

17 A This fall, I'm teaching two sections of a
18 sophomore mechanical systems course that deals with just
19 mechanical things, machines and machine elements. Now,
20 I'm teaching a graduate course over at ICAR for to
21 automotive engineering graduate students.

22 Q Have you been heavily involved with ICAR?

23 A Well, it originally was organized within our
24 department, the mechanical engineering part. So it was
25 pretty heavy involved as that evolved. Now it's a

1 separate unit. But some of their students take
2 mechanical engineering courses and some mechanical
3 engineering students take automotive engineering courses.
4 So there's still a close relationship. I'm actually
5 teaching there this term.

6 Q All right. Have you been previously involved
7 as an expert witness concerning automobile accident
8 reconstruction?

9 A Uh, no.

10 Q Have you been involved with expert witnesses
11 about issues relating to the dynamics of auto collisions?

12 A No, not auto collisions.

13 Q Have you been qualified as an expert in the
14 engineering field?

15 A Yes. Yes.

16 Q How many occasions?

17 A Well, several. I've given testimony in three
18 or four instances. In others, I've written reports and
19 things of that sort.

20 MR. CHILDS: All right. And, uh, I submit
21 that he's competent to testify as an expert in
22 mechanical engineering.

23 THE COURT: Any objections or voir dire, sir?

24 MR. MCGARR: In mechanical engineering?

25 THE COURT: That's what he's offered as.

1 **MR. McGARR:** Uh, we'll need to, uh, approach.

2 **THE COURT:** All right. Come on up.

3 (WHEREUPON, a bench conference is held off the
4 record.)

5 **BY MR. CHILDS:**

6 **Q** Dr. Huey, have you had a lot of experience in
7 the issue of mechanics, physical principles of moving
8 objects and collisions of objects conservation and in
9 momentum energy and those types of issues as they would
10 relate to automobile accidents?

11 **A** Yes, I -- well, I've taught a number of --
12 excuse me, a number of courses in dynam -- statics and
13 dynamics, which is essentially physics in an engineering
14 context that does involve, uh, impacts, accelerations,
15 energy concepts and things of that sort. I've taught
16 those basic mechanics courses and then I've also taught a
17 mechanisms course to where we apply that a great deal in
18 determining the velocities or the motions of components
19 of machines and so forth. So dynamic analysis of
20 machines where those things are applied.

21 **MR. CHILDS:** Okay. Your Honor, I would
22 submit that he's competent to testify about the
23 analysis of the dynamic conditions resulting from
24 the collisions of automobiles.

25 **THE COURT:** Any objections or voir dire, sir?

1 **MR. MCGARR:** I think we got that one right,
2 so we're fine.

3 **THE COURT:** Okay. Good enough. All right.
4 So qualified. You may resume your examinations.

5 **BY MR. CHILDS:**

6 **Q** Uh, Dr. Huey, were you asked to do an analysis
7 of the dynamic conditions resulting from the collision of
8 the vehicles involved in this case?

9 **A** Yes.

10 **Q** Can you tell the jury about that?

11 **A** Well, I was asked to investigate those
12 conditions with the aim of trying to find the force that
13 was actually imparted to the head of the occupant --
14 occupant of the vehicle when this collision occurred. So
15 the force was the focus of it.

16 **Q** All right. So what did you do with respect to
17 that analysis?

18 **A** Well, I collected all the information that was
19 available at the time that would provide the velocities
20 of the vehicles. And knowing the vehicles, I was able to
21 determine their weights and all kind of basic data like
22 that. And, uh, so --

23 **Q** Let me ask you about the basic data.

24 **A** Okay.

25 **Q** The 2007 Toyota Highlander Hybrid, known as the

1 Bettencourt vehicle, were you able to determine what its
2 current weight was based on its description?

3 A Yeah. Excuse me. I had the VIN number. So I
4 was able to use that in an online resource and find the
5 listed weight for both of the vehicles.

6 Q Okay. What did you find as the listed rate for
7 both vehicles?

8 A Well, I can't recall the number right now. I
9 don't have the report here.

10 Q Okay.

11 A But I cited those numbers in my report.
12 (Reviewing.)

13 Okay. I found that the current weight for the
14 Highlander Hybrid was 4070 pounds and for the Jeep
15 Cherokee was 2905 pounds.

16 Q So the weight of Mrs. Wald's car was 2905
17 pounds?

18 A Yes, sir.

19 Q All right. And then you did an analysis on the
20 estimated speeds. Could you tell the jury about that?

21 A Well, I had the estimates that were provided
22 through your office. Two were from a person who examined
23 the damage to the vehicles, one from an eyewitness and
24 one was, uh, from the police report of the accident. One
25 of the -- one of the sources estimated that the velocity

1 was over 35 miles per hour. Upon further consideration
2 of that, up there to 40 to 50 miles per hour. There was
3 an eyewitness who estimated the speed to be 35 to 40
4 miles per hour. The officer indicated 15 miles per hour
5 on his accident report.

6 So I took a simple average of those numbers
7 using the low range where the, uh, estimate had covered a
8 range. I used the lower limit and got an average. But I
9 wanted to explore a little bit the reason for one of the
10 estimates being substantially lower. I found the
11 document that's the guidelines for filling out the
12 accident reports by our state highway department. There
13 really wasn't much guidance there.

14 I went to the website of the national highway
15 and traffic safety administration trying to find out what
16 I could about the speeds that result in air bag
17 deployment, because I knew the air bags had deployed in
18 the rear vehicle. I determined, although the control
19 logic that determines whether those bags are deployed or
20 not is kind of complicated for the particular case of a
21 rear-end collision with one stopped vehicle. The
22 National Highway Traffic Safety Administration reports
23 that that would occur at about 28 miles per hour, which
24 was a little lower than my overall average. So I based
25 my analysis on that lower value of 28 miles per hour and

1 assuming it to be still conservative, not completely
2 discounting the one estimate that was pretty far off from
3 the average.

4 Q So you determine that Mrs. Wald's 1996 Jeep
5 Cherokee had an air deployment -- had a deployment speed
6 of its air bag of 28 miles per hour in this type of
7 impact?

8 A Right. Yes, sir.

9 Q And your estimate, based on the eyewitnesses
10 varied based on who it was and what they saw?

11 A Yes.

12 Q But you had an estimate average of 31 miles per
13 hour?

14 A Right. There was an average.

15 Q So from that basis, you used lower figures?

16 A Yes, yes.

17 Q All right. What did you do as a further
18 analysis of reaching that figure, 28 miles per hour, at
19 the time of impact?

20 A Okay. Well, I had to consider the dynamics of
21 that event. The vehicles crashed together. And I
22 assumed, uh, -- throughout, I tried to be as conservative
23 as I could in my analysis so as not to overestimate
24 anything. I assumed the most benign condition and that
25 would be the one where the vehicles collide and then

1 continue as one mass rather than the case where they
2 bounce apart. In terms of dynamics, we call it
3 coefficient restitution. I assume the coefficient
4 restitution is zero. These things would bang together.
5 The maximum amount of energy would have been dissipated
6 and then they would continue at --

7 Q You're saying you figured it based on the
8 vehicles basically staying together?

9 A Yes, staying together and continuing.

10 Q And then deploy?

11 A Yeah.

12 Q Is that normal as far as automobile accidents?

13 A Well, I think a variety of things could happen.
14 It would depend upon the structures involved and how
15 effective they are in dissipating energy. I think that
16 normally, there would be some rebound unless there was
17 some sort of mechanical latching together. This is
18 assuming a sort of benign circumstance.

19 Q So the most conservative approach is to assume
20 that they stayed together?

21 A Yes.

22 Q As opposed to the normal bounce that --

23 A Right.

24 Q Okay. You can continue on.

25 A Well, with that and knowing the masses and

1 having an estimate of the velocities, I could figure out
2 the velocity just using a conservation after the impact
3 occurred. And that's a relative and quite, very
4 straightforward sort of thing. I think I found that to
5 be about 17 miles an hour, I believe. I can't quite
6 recall. Almost 12 miles an hour, about 17 feet per
7 second after they came together.

8 Q So for the jury to understand, you're saying
9 that after the collision of the two vehicles, they would
10 have continued forward how much?

11 A At about 12 miles an hour.

12 Q Okay.

13 A And then they would have skidded to a stop due
14 to friction with the pavement. But immediately after the
15 contact with the vehicles and before any other forces
16 came to bear, then they would have come to this terminal
17 velocity, so to speak, of about 12 miles an hour, 17 feet
18 per second.

19 Q So if Mrs. Bettencourt's vehicle was sitting
20 still and hit by Mrs. Wald, Mrs. Bettencourt's car
21 propelled forward at least 17 feet per second?

22 A Right.

23 Q Okay. Continue on.

24 A So that -- we're talking about here the masses
25 of the vehicles. My goal is to try to determine the

1 forces that could have been imparted to the head of the
2 occupant of the Bettencourt vehicle. So that occupant is
3 within this vehicle. So you have to determine how
4 contact with the vehicle affects the person and
5 accomplishes this acceleration.

6 So if you think about the events as they
7 occurred to the Bettencourt vehicle was stationary, then
8 suddenly, it was accelerated. Then, within the vehicle
9 is an occupant who has accelerated the same time, but
10 they are not rigidly connected so there are events that
11 have to occur for an occupant to come to speed. So it is
12 necessary to think about a person's head, where the
13 headrest might be, where the mechanism would be to
14 accelerate the occupant's body forward.

15 Q All right.

16 A So again, I made conservative assumptions. I
17 found the source -- was trying to explore the
18 relationship, how spatial relationships within the
19 vehicle affected the outcome. So the optimum location of
20 a person's head would be about two inches in front of the
21 headrest. And so also would have to assume that, just
22 recognize that as the vehicle accelerates and the
23 person's head come into contact with the restraint.
24 There's going to be some deformations occurring. But
25 these deformations can't be too great, otherwise, a

1 person's head is going to be carried back over the seat
2 or would come into contact with some of the internal
3 structural components of the headrest. So the relative
4 motion of the head and the vehicle just can't be too
5 great.

6 Okay. So looking at the geometry and
7 considering this optimum spacing, I would assume that
8 would occur about six inches of travel, vehicle travel.
9 And that, uh, the dynamic conditions that result from
10 that analysis would have been worse had we assumed a
11 greater distance between the vehicle.

12 Q You mean between the head and the ---

13 A Between the head and the ---

14 Q --- headrest?

15 A --- and the headrest.

16 Q You assumed two inches?

17 A Which I found to be assumed as the optimum in
18 some technical literature that I consulted.

19 Q It could be up to six inches?

20 A It could have been. And so, now, the -- there
21 had been quite a number of studies using crash dummies
22 and also low speed collisions with volunteers who are
23 great folks. And it's recognized that in the case of a
24 rear-end collision like this, as the person's body is
25 accelerated forward, the head tends to remain stationary

1 for a short period of time. And it's sort of stationary
2 until you close that distance with the headrest. Then
3 the headrest begins to accelerate the person's head.

4 Q You mean the head and space stays where it
5 is ---

6 A Right.

7 Q --- but the headrest is moving forward?

8 A Right. The head is, of course, the top of the
9 neck and shoulders. The torso is driven forward and the
10 head tends to remain stationery until something happens
11 to accelerate it. It could be accelerated by the neck
12 which we typically call whiplash when it accelerates the
13 head. So given an estimated speed, given what I felt for
14 the good, uh, notion of what this distance would have
15 been, I was able to figure out how quickly the person's
16 head would have been accelerated to this 17 feet per
17 second.

18 Q Okay.

19 A I did actually account for reduced speed, for
20 friction with the, uh, tires and the pavement which would
21 bring it not quite to 17 but one foot per second, but not
22 much. It happened so quickly, it was not much time for
23 that to have happened.

24 Q So you factored in the fact that initially it
25 propelled forward to 17 feet per second ---

1 A Right.

2 Q --- but it started to slow down because of the
3 friction ---

4 A Yeah. . .

5 Q Because of the tires --

6 A Yeah. And, uh, again, uh, I could then
7 determine by being able to determine based on these
8 geometric details how in the velocity of the vehicles how
9 long it would take for this acceleration to occur. From
10 that, I could figure out what the force would have to be
11 to accomplish that acceleration.

12 Q Okay.

13 A A couple of other things needed in that. One
14 in particular was the weight of the head, the mass of the
15 head. It might seem that that's an easy bit of data to
16 find, but it turns out it's not. I found numerous
17 mentions of the human head weighing eight to ten pounds.
18 But I ultimately found paper where some folks had
19 consolidated data from researches all around the world
20 actually. Even those data were a little bit confusing
21 because they had data that the head that -- perhaps were
22 not separated from the bodies at the same place, heads of
23 individuals who had been embalmed and heads of people who
24 still wasn't -- it was an elusive number. It would seem
25 that that number was somewhere from eight to ten pounds.

1 So I used eight pounds in my initial analysis. And then
2 I did another analysis with nine pounds.

3 Q So the eight pounds and the nine pounds, you
4 used that again as conservative figure ---

5 A Yeah.

6 Q --- cause there was a range of head weights?

7 A Yes. So I found it for these dynamic
8 conditions to occur, as I believe they did, that we had a
9 force of about a little over 16 times the weight of the
10 head. So the force would depend upon the head.

11 Q Right.

12 A So perhaps little more familiar terms, that
13 would be about 16 g's, acceleration of 16 g's.

14 Q What -- let me ask you about g's, what are
15 they?

16 A That's the acceleration that you experience
17 from the force of gravity.

18 Q Okay.

19 A So if you fell, your acceleration would be 1 g.

20 Q Now, I understand in respect to g's, there are
21 jet pilots and things like that canvassing a certain
22 number of g's or they'll pass out or things like that?

23 A Yeah.

24 Q What do those mean?

25 A Well, I'm not sure what those limits are, but

1 they do experience a lot of accelerations. I wanted to
2 confirm that as best I could. So I found data on
3 crashes, uh, test crashes and found four cases in
4 particular where there was a rear-end collision, very
5 much like this one involving speeds, very close to the
6 speeds here. The vehicle very much like the vehicles
7 here. There have been many, many tests, but I was only
8 able to find these four that were very, very close to
9 what we had. And they would -- those tests would
10 indicate that acceleration of the vehicle were about 6
11 g's.

12 I also found a source that had analyzed this
13 with some additional tests and determined that the head
14 of the occupant would be from two to four times the
15 acceleration of the vehicle. That would put the range
16 somewhere -- if the average was six, that would be the
17 range some where in 12 to 24 g's. So my estimate of 16
18 is kind of on the low end of that range. So I felt
19 comfortable that that was confirmation that my judgements
20 about the geometry and that sort of thing were close.

21 Q So, uh, basically, your analysis of this
22 accident of the vehicles and friction, I'm sure there's
23 some complicated formulas you use for all that?

24 A Well, the formulas are not too complicated
25 actually. Really, the dynamic analysis here was pretty

1 basic. It's an application of conservation of energy,
2 understanding the physical formula and how it might
3 affect the scenario would be a necessary part of it.

4 Q All right. Uh, and so your determination, and
5 if you would, state it for the jury, as far as the force
6 applied to Mrs. Bettencourt's head as a result of this
7 accident?

8 A Right. I believe that the force would be a
9 little over 130 pounds required to accelerate the head
10 until it matches the velocity of the vehicle. And if
11 Mrs. Bettencourt's head is -- weighs more than this
12 minimum, then that force would be proportionately great.
13 If we were to change, we would assume the coefficient
14 restitution would be a little different. That is, if the
15 vehicles bounced apart, but didn't bounce apart too
16 aggressively and then reassume the lower coefficient
17 friction in a nine-pound head, the estimate grows to 190
18 pounds or so. So all that convinces me that my estimate
19 is a conservative, low estimate.

20 Q Okay. So when you say 180 pounds of force
21 applied to her head, what do you mean?

22 A Well, if we think about it perhaps in real
23 simple terms, if the head is stationary and the seat back
24 contacts the head and, in this very short interval of
25 time, the head is brought to the speed of the vehicle,

1 then the force that's necessary to do that would be about
2 130 pounds. Now, that's imposed for a very short period
3 of time, but it all happened in a very short period of
4 time.

5 Q Now, based on your analysis, the vehicle was,
6 uh, -- there was some statement that her vehicle, that
7 she was -- I think from her deposition testimony, she was
8 traveling 10 to 15 miles per hour. Is that possible?

9 A Well, I'm not sure that the officer's report
10 listed the 15. It also reported that the driver of the
11 rear vehicle had said that they attempted to stop but was
12 unable to stop. The fact that the 28 miles per hour is
13 sort of the threshold based on the National Highway
14 Safety Traffic Administration, uh, data for air bag
15 deploying, I don't really think that it's likely to have
16 been much below the 28 miles per hour at the time of
17 impact.

18 Q So Mrs. Wald's vehicle, in your opinion, was
19 traveling at 28 miles per hour at the time of impact?

20 A I believe so. I believe so.

21 Q And the force that was applied to Mrs.
22 Bettencourt's head was 180 pounds as a result of --

23 MR. McGARR: Objection. He's saying 180 when
24 the doctor says 130.

25 THE COURT: Okay.

1 **THE WITNESS:** 130 is my conservative estimate
2 and if I look at the effect of slightly different
3 values for these varying perimeters, then it grows.
4 It doesn't go down. It goes up.

5 **BY MR. CHILDS:**

6 **Q** And is that then like, uh, walking up to her
7 and hitting her with a 130-pound object?

8 **A** Well, I'm exactly -- it would depend on how
9 fast a 130-pound object is traveling. She was actually
10 hit by an object that weighed several thousand pounds if
11 you want to look at it that way.

12 **Q** Right.

13 **A** It's the -- it's just, uh, kind of simple point
14 of view based on the dynamics of these bodies. We have a
15 person's head that is essentially stationary. A very
16 short period later, it's moving. So in order to get it
17 moving to this velocity that I think we can estimate
18 pretty well requires some sort of force over a short
19 period of time.

20 Now, the shorter the period of time, the
21 greater the force required. The longer the period of
22 time, the force would accomplish it over that time. So
23 it's, uh, -- it's probably pretty easy, I believe, to
24 understand that if you were hit, when you hit a baseball
25 with a baseball bat, the contact forces there are

1 substantially higher than the weight of the bat.

2 Q Right. Okay. One second. (Pause.)

3 Please answer any questions Mr. McGarr has.

4 CROSS-EXAMINATION

5 BY MR. MCGARR:

6 Q Would you agree that air bags can go off at as
7 low of speed as 15 miles per hour?

8 A Well, --

9 Q Do me a favor. Answer me with a yes or no,
10 then you can explain to the jury. Do you agree that air
11 bags can go off as low -- with impact as low as 15 miles
12 per hour?

13 A Uh, I would -- I believe it's possible.

14 MR. MCGARR: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. CHILDS:

17 Q Is it likely for an air bag of a Jeep Cherokee
18 to go off at 15 miles per hour?

19 A Well, not under the circumstances.

20 Q Why is it -- is it a good thing or a bad thing
21 that air bags go off at the speed they are set at? In
22 other words, is it good that they go off earlier or is it
23 good that they go off later?

24 A Well, the air bag itself is mildly hazardous.
25 Folks who have air bags go off can have broken noses and

1 break their glasses and various other injuries. So the
2 strategy, the logic that's built into the control system
3 of an automobile tries to assess the likelihood of an
4 injury occurring. So therefore, if the vehicle is struck
5 from the rear, there is no reason to deploy the front air
6 bags. But that determination is not based strictly on
7 speed, it's based on accelerations that occur.

8 So the question was do I believe it's possible.
9 Well, I'm assuming that that's possible. But I haven't
10 looked at how these dynamic effects would change if the
11 vehicle crashed into a rigid wall as opposed to a
12 vehicle. It's more complicated than just velocity.

13 Q I mean, if the air bags go off if you hit just
14 a bump, is that dangerous?

15 A Yeah, that would be dangerous. Or if you were
16 to break very -- if we were to just jam on the breaks, we
17 certainly don't want the air bags to deploy. So jam on
18 the breaks at 15 miles per hour. But it's not the same
19 as you bang into a wall at 15 miles per hour.

20 Q Okay. Thank you.

21 THE COURT: Any additional recross, sir?

22 MR. McGARR: None, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. CHILDS: May this witness be excused?

25 THE COURT: Yes, sir.

1 Thank you for being here, sir. Have a great
2 day.

3 **THE WITNESS:** Okay.

4 **THE COURT:** All right. Mr. Childs, you may
5 call your next witness.

6 **MR. CHILDS:** Judith Waite.

7 **THE CLERK:** Place your left hand on the Bible
8 and raise your right hand.

9 **JUDITH WAITE**

10 having first been sworn, testifies as follows:

11 **THE CLERK:** State your name please.

12 **THE WITNESS:** Judith Waite.

13 **THE CLERK:** Thank you. Please be seated.

14 **DIRECT EXAMINATION**

15 **BY MR. CHILDS:**

16 **Q** It seems that the older you are, the more
17 credibility you have. How old are you?

18 **A** 64.

19 **Q** All right. Uh, you have any children?

20 **A** Yes, I do.

21 **Q** And how many children do you have?

22 **A** Two.

23 **Q** Who are they?

24 **A** Deena's my oldest daughter and I have a
25 daughter Diane that's in Fresno.

1 Q And, uh, so you would be, uh, familiar with
2 your daughter's upbringing? You had custody of her
3 throughout her upbringing, who she married, Mr.
4 Bettencourt?

5 A Yes.

6 Q Uh, you were also aware of her medical history
7 from that perspective during the time she was growing up?

8 A Yes.

9 Q So tell the jury what you know about her
10 history as far as injuries or things like that that she
11 may have sustained during the course of her life.

12 A Uh, --

13 MR. McGARR: We need to approach.

14 MR. CHILDS: I'm not asking from a medical --
15 I'm asking if she fell or hurt herself or anything
16 she knew of.

17 MR. McGARR: That's -- we need to approach.

18 THE COURT: Okay.

19 (WHEREUPON, a bench conference is held off the
20 record.)

21 BY MR. CHILDS:

22 Q So tell me about your child, her growing up and
23 her general physical health?

24 A Very healthy. A little bit of an issue with
25 intolerance to dairy.

1 Q Okay.

2 A And basically a non-injury -- none until she
3 got into horses.

4 Q And how old was she when she got into horses?

5 A 11.

6 Q Okay. And how long was she in horses?

7 A Uh, I would say until 14ish.

8 Q Did she ever fall off the horses?

9 A Yes.

10 Q Did she ever suffer any kind of brain injury
11 from the horses?

12 A No.

13 Q Tell the jury about her progression as a
14 person. You dealt with her, did she graduate from high
15 school?

16 A Yes.

17 Q Okay. And what did she do after that?

18 A Well, uh, she had jobs that she, uh, did, uh,
19 retail. She started out in an ice cream store. No, she
20 started out at a drive-thru dairy when she was very young
21 before she was driving, in fact, because I had to take
22 her. Uh, then she went into an ice cream store job. And
23 this was all after school, of course. From there, she
24 went into clothing retail. She stayed in that field up
25 until she was a young adult.

1 Q Okay. And, uh, after she was -- did she go to
2 beauty college?

3 A Yes.

4 Q Did she go to the Navy reserves?

5 A Yes.

6 Q Did she have to go through basic training for
7 the Navy?

8 A Yes.

9 Q Did she complete basic training with the Navy?

10 A Yes.

11 Q Uh, after that, you remember when her and Scott
12 got married?

13 A Pardon me?

14 Q You remember when her and Scott got married?

15 A Uh, yeah.

16 Q When was that? I know it's not your
17 anniversary or anything.

18 A 1990.

19 Q And did they stay in California or did they
20 move?

21 A Uh, briefly.

22 Q Did you stay in contact with them after the
23 marriage?

24 A Yes.

25 Q Did you basically follow your contact with them

1 through various states until they ended up in South
2 Carolina?

3 A Yes.

4 Q Where all did they go to, do you recall?

5 A Uh, when they got married, they were living in
6 Salinas. Then Scott was promoted and they moved to
7 Albuquerque, New Mexico. Then he got promoted again and
8 they moved to a suburb of Chicago, Crystal Lake,
9 Illinois. And from there, they went to Minnesota for a
10 short while. And from there, they went to Greenville.

11 Q Okay. What was your daughter doing during
12 those moves?

13 A Some of the -- some of the early years were
14 still in retail. She was in clothing. Then she went
15 into sporting goods. At that time, she got pregnant with
16 her first child and went on maternity leave, went back
17 into the field and then switched to Sears as a -- I
18 believe it was -- I'm not positive about this, but I
19 think it was a jewelry buyer.

20 Q And, uh, how did she progress from there?

21 A Uh, Sears expanded their, uh, job description
22 so to speak, I guess, and opened some home goods types
23 stores. I can't right now recall the name of it. She
24 helped set up a lot of the new stores and designed the
25 vanities for the bathroom fixtures and tile.

1 Q And did you visit her frequently during these
2 times?

3 A About -- I was working at the time. So, uh, I
4 tried to make a trip every Christmas. And if time
5 allowed or money -- my budget allowed, I tried to go
6 another time during the year. Most often, just at
7 Christmas.

8 Q You know what brought them to Greenville?

9 A Scott's job.

10 Q And what did your daughter do here?

11 A Uh, let me see. She worked in a cabinet shop.

12 Q Was that Kitchens of the South?

13 A Uh, yes.

14 Q Okay. What did she do in respect to her
15 designing work that she had started back in Chicago?

16 A She kind of combined her knowledge from that
17 job and put it together with what she was learning at the
18 cabinet shop.

19 Q Okay. Did she open her own business?

20 A Yes.

21 Q Did you visit South Carolina more frequently
22 when they moved down here? Did you start visiting them
23 more frequently?

24 A Uh, yes. That's when I had built up my
25 vacation time at my job to where I could leave and come

1 twice a year.

2 Q All right. And how would you characterize your
3 daughter's daily activities prior to September the 4th of
4 2008 as it relates to her functioning around family and
5 handling her duties and also in respect to her
6 employment?

7 A The best word I could call is multitask, I
8 mean, beyond anything I've ever accomplished in my life.

9 Q Would you explain that?

10 A Uh, making sure, of course, that everybody's
11 got good, healthy food to eat, making sure that the kids
12 are well taken care of, she's always researching their
13 education and their healthy habits and involved in
14 schools, whether it be bake sales or volunteering time at
15 school to read or whatever, plus holding down a job.

16 Q You recall when she was involved in her
17 accident on September the 4th of 2008?

18 A Somewhat. It's not real clear because I wasn't
19 here at that time. I could remember a little of this.
20 Yeah.

21 Q Did you do anything as a result of her
22 involvement in that accident?

23 A Mostly, it was just talking on the phone and
24 kind of, uh, giving her a pep talk and telling her to
25 hang in there and slow down and take it easy and not to

1 worry about all the things she had to do. Taking care of
2 herself is the most important part right now.

3 Q Okay. Did you come down to Greenville soon
4 after the accident?

5 A I believe I did. But I can't remember exactly
6 when it was.

7 Q Okay. What did you do when you came down to
8 Greenville after the accident?

9 A I helped with the kids and, uh, you know, ran
10 errands and regular grandma stuff.

11 Q What did you notice about your daughter --
12 notice, if anything, about your daughter when you came
13 down after the accident?

14 A I think one of the things that is noticeable is
15 how she can start a sentence and forget the rest of what
16 her thought was and that she no -- at that point in time,
17 she wasn't able to do a lot, if anything, at one time.
18 If you asked her a question, when she was doing a chore,
19 she either had to stop the chore and answer the question
20 or keep the chore going and tell you to wait a minute
21 until she got done with what she was doing.

22 Q Did you notice anything about the -- her
23 stopping in mid-sentence and discussing things, how about
24 her memory of things. Did you notice any change in that?

25 A Uh, I think trying to -- no, I can't recall.

1 Q Okay. Let me ask you about her prior to the
2 accident. Did your daughter ever suffer a loss of smell
3 to your knowledge prior to this accident?

4 A No.

5 Q Did your daughter ever have any indication of
6 loss of memory prior to this accident?

7 A No.

8 Q Did your daughter have any indication of
9 inability to manage multiple tasks before this accident?

10 A No.

11 Q Did she have any difficulty retrieving words
12 before this accident?

13 A No.

14 Q Did she have difficulty retrieving words after
15 this accident?

16 A Somewhat, yes.

17 Q Did she have any difficulty in processing
18 information before this accident?

19 A No.

20 Q Did she have any difficulty in processing
21 information after the accident?

22 A Somewhat.

23 Q Did she have headaches before this accident?

24 A No.

25 Q Did she have headaches after this accident?

1 A Yes.

2 Q How frequent were those headaches?

3 A Often. Constant right at first.

4 Q Okay. Uh, based on your observations of her,
5 how did she handle this, uh, -- describe her on a daily
6 basis when you came down to help after the accident.

7 A Frustrated.

8 Q Okay. Explain that to the jury.

9 A I would say because she's used to just stepping
10 into any situation. No matter how busy she was,
11 something out of the blood would come and she would
12 handle it. She just wanted everything to stop right then
13 and there if another thing was added on.

14 Q You mean after the accident?

15 A Uh-huh.

16 Q Uh, were you familiar with her sleep patterns
17 before the accident?

18 A Not particularly.

19 Q Okay. Uh, did your daughter suffer any kind of
20 short-term memory loss before this accident that you know
21 of?

22 A No.

23 Q Did she suffer this after the accident?

24 A Yes.

25 Q Could you describe that to the jury please?

1 A I don't -- not specifically, no.

2 Q Just a little incident that you could detect?

3 A Huh-uh.

4 Q How about a lack of, uh, ability -- control
5 overemotional issues. Did she have an ability over her
6 emotional controls before the accident?

7 A Yes.

8 Q Okay. Did she have -- how was her emotional
9 abilities after the accident?

10 A Uh, --

11 Q Let me rephrase. I'm typically asking
12 questions that lawyers ask and not really questions that
13 humans ask. But your daughter have good emotional
14 control before this accident? In other words, did she
15 fly off the handle and cry or get angry and things like
16 that? Did that happen after the accident?

17 A The tears, yes.

18 Q Okay. And about her daily routine, you been
19 down here this week.

20 A Uh-huh.

21 Q What's her routine like now compared to how it
22 was before this accident?

23 A It was a whole half of her day that's gone,
24 that wasn't -- that used to be there.

25 Q Now, explain that to this jury.

1 A My daughter used to take the kids to school,
2 then stop by the office and get whatever stuff going with
3 her jobs that she needed to do. I been in the car,
4 followed her to places that she was doing business with.
5 Then she would look at her schedule and she'd see that
6 one of the kids would have to go to be picked up at
7 school to go to the dentist. We'd go back to the
8 dentist. We'd take care of that. She'd take them back
9 to school and we would, uh, go to another job that she
10 had to look at to see how far the contractor was or the
11 tile setter or whatever. We'd do that. There would be
12 some times in the day, between shuffling kids around or
13 soccer, there would be jobs in between all these slots
14 where kids were taken care of that she could go and find
15 out if the paint came or go to the paint store and pick
16 out paint chips or go to the, uh, -- what is it, fabric
17 store for curtain material, whatever. She would fit all
18 those things in between the kids' activities.

19 Q And now how is it?

20 A Just the kids' activities.

21 Q So that's where you say that she lost 50
22 percent of her day. What does she do during those times
23 that normally she would be -- she used to run all those
24 different tasks?

25 A Everything that she does now is related to what

1 is going to benefit the kids. The pauses are -- I would
2 say the pauses are for rest because there are pauses
3 during the day where she actually takes a lunch, actually
4 sits down and drinks an ice tea whereas before it was on
5 the fly, everything was on the fly.

6 Q Is that something that you're -- is that the
7 kind of character your daughter exhibited prior to this
8 accident?

9 A Oh, yeah.

10 Q What do you mean "oh, yeah"?

11 A She's the type of toddler that had to have a
12 harness on her because she was so busy wanting to be
13 here, there and everywhere. If you were walking on the
14 beach, she was the one that was 100 miles away looking at
15 everything there was to look at. She was busy, busy,
16 busy. Always been that way.

17 Q How much of your daughter did -- have you lost
18 since this accident?

19 A A third.

20 Q What would you -- how would you say a third?

21 A Uh, I would just say I don't -- I don't think
22 we are able to have one-on-one time as much as we used
23 to. It's like she's not all emotionally available to be
24 there for it.

25 Q Did your daughter have any kind of history of

1 exaggeration or embellishment of things in her history?

2 A As far as the embellishing and all that, it's
3 just the drama of being a little kid. But as far as, no.
4 That's just -- just the little kid stuff.

5 Q As an adult?

6 A Not really. No. No, in fact, I'd have to tell
7 you about both of my kids, quite frankly, are down
8 players of anything serious.

9 Q What do you mean by that?

10 A Uh, I would say it would be like, uh, if she --
11 if one of them had a migraine, they could just maybe go
12 lay down and not say anything rather than just come out
13 and say I am just so sick, I need someone to take care of
14 me or I, you know, make a big announcement about it.
15 It's always been downplayed. It's kind of the way they
16 were raised. If you dwell on sickness, you're going to
17 be sick. So you don't dwell on sickness and you will be
18 well.

19 Q You came down -- you can't recall exactly when,
20 but a while, a short while after the accident, at that
21 time, was your daughter trying to continue on with her
22 business and things like that?

23 A She was trying, yes.

24 Q Can you describe to the jury how she was able
25 to do that or if she was able to do it.

1 **A** Well, she had to write herself a lot of notes
2 so that she could stay focused on the tasks that she had
3 to do. I've always thought she kept good records and
4 stuff, but a lot of it was just mental records. Whereas,
5 now she had a laundry list. If she didn't have her
6 notepad with her, she'd be lost as to what was going to
7 happen next in her time schedule.

8 **Q** Is she trying to do some work and do things
9 with the design?

10 **A** Minimal. Very minimal. In fact, we were just
11 talking about the other day. She has turned down jobs
12 because of the, the, the children. She doesn't want it
13 to affect -- she has to let other people raise her kids
14 if she's going to do the work. So she turned down a job.

15 **Q** Please answer any questions Mr. McGarr might
16 have.

17 **MR. MCGARR:** No questions whatsoever.

18 **THE COURT:** Okay. Thank you, Mrs. Waite. I
19 appreciate you being here, ma'am. You may step
20 down.

21 All right. Mr. Childs, you can call your
22 next --

23 **MR. CHILDS:** Our next witness will be Scott
24 Bettencourt.

25 **THE CLERK:** Place your left hand on the Bible

1 and raise your right hand.

2 SCOTT BETTENCOURT

3 having first been sworn, testifies as follows:

4 THE CLERK: State your name please.

5 THE WITNESS: Scott Bettencourt.

6 THE CLERK: Thank you. Please be seated.

7 DIRECT EXAMINATION

8 BY MR. CHILDS:

9 Q Mr. Bettencourt, how old are you?

10 A 46.

11 Q And where are you from originally?

12 A Fresno, California.

13 Q All right. And how are you presently employed?

14 A By Guardmen [phonetically].

15 Q By who?

16 A Guardmen [phonetically].

17 Q What kind of company is that?

18 A They make, uh, trinkets for outdoor gardens and
19 bird care accessories for the yard.

20 Q Okay. Now, have you been out of town until
21 today?

22 A Yes.

23 Q Can you explain to the jury why you weren't
24 able to be here the first couple of days.

25 A I was at meetings with our biggest customers.

1 This is our largest selling week of the year.

2 Q Okay. A great time for the trial, I suppose.

3 Did you just fly in this morning?

4 A Yes.

5 Q Are you tired?

6 A A little.

7 Q Okay. All right. There is water there next to

8 you. Any time you want to take a drink, please do that.

9 If you need breaks, let me know. I'll be glad to do

10 that. Did you go to high school in Fresno?

11 A Yes.

12 Q Where did you graduate?

13 A From Hooper High School.

14 Q And what did you do after you graduated from

15 high school?

16 A I went on to a university.

17 Q What university was that?

18 A Fresno State.

19 Q All right. And how far did you go in Fresno

20 State?

21 A I finished with a Bachelors degree.

22 Q When did you graduate from Fresno State with a

23 Bachelor's degree?

24 A 1988.

25 Q And, uh, when did you meet your wife, Deena?

1 A In 1987.

2 Q And when did y'all start dating?

3 A It was probably right at the end of '87.

4 Q And you started dating Deena back in 1987, was

5 she suffering at that time from any kind of post-

6 concussive syndrome? Did she seem to have any kind of

7 mental impairments at all?

8 A No.

9 Q Why do you say that so strongly?

10 A There was nothing wrong with Deena. That's why

11 I started dating her. She put up with me.

12 Q Describe her for the jury when you first met

13 her.

14 A She was working three jobs and going to school

15 at the time. And one of the jobs was restaurant. She

16 was a waitress. The other was clothing. Then she was

17 teaching aerobics and going to school.

18 Q So how long did y'all date before you got

19 married?

20 A I made her move around a couple of times. We

21 were almost a year in Fresno. Then we moved to Los

22 Angeles for a little over a year. Then we moved to near

23 the bay area, Salinas California for about a year. At

24 the end of our stay there, that's when we got married.

25 Q Now, you sure you didn't marry her because she

1 had been a Navy cook?

2 A Uh, no. I, uh, actually did part of the
3 cooking back then. I'd like to get some credit for that.

4 Q Okay. Uh, did she -- you described her as
5 carrying on three jobs at the time that you met her. Did
6 she continue to do that during these moves you had
7 initially in your relationship?

8 A No, uh, she ended up moving just to one job and
9 just taking full-time employment. The three jobs were
10 part-time, all of them. So when we moved, she started
11 taking full-time jobs.

12 Q What kind of jobs did she take then?

13 A Uh, she was in retail.

14 Q Could she multitask then?

15 A She did a lot of things once. Her head was
16 really into working. She got promoted a couple of times.
17 She was a store manager within the first year we were in
18 Los Angeles. After that, every time we move, the
19 companies would take care of her and get her a job the
20 next place we moved.

21 Q Okay. What were you doing during this -- what
22 kind of employment did you have?

23 A I went to work for Sears, the retail store, and
24 went into their training program in Los Angeles.

25 Q And when did y'all get married?

1 A December 29th, 1990.

2 Q All right. And what did y'all do after you got
3 married?

4 A We went to Mexico for a week.

5 Q Was she -- nah, I'm not going to ask. What did
6 you do after you got back from Mexico? Did you move
7 somewhere?

8 A I was already temporarily living in New Mexico,
9 in Albuquerque, so she came along.

10 Q All right. And what kind of employment did she
11 get in Albuquerque?

12 A She went to work for the same company she was
13 working for in Salinas in retail.

14 Q And how long did y'all stay in Albuquerque?

15 A A little over four years.

16 Q And where did y'all go to from there?

17 A Crystal Lake, Illinois.

18 Q And where is Crystal Lake, Illinois?

19 A It's outside of Chicago.

20 Q And why did you move there?

21 A That's where Sears headquarters is. I got
22 promoted to a headquarters job there.

23 Q And did she follow along with you?

24 A Oh, yeah.

25 Q What did she do about employment when you got

1 to the Chicago area?

2 A She was a store manager at the Limited
3 companies. After that, she went to work for Banana
4 Republic, which was another retail company. They moved
5 her to their flagship store in Santa Fe. She drove back
6 and forth there and operated their newest best store.

7 Q And in Chicago or Crystal Lake, did y'all kind
8 of settle in there?

9 A Yeah.

10 Q What did y'all do there?

11 A We put together a house and remodeled it
12 together and did most of that work ourselves. A new
13 couple, we built a home and we worked and had friends.

14 Q Okay. Is that when your first child was born?

15 A Yes.

16 Q Who was that?

17 A Adam.

18 Q What year was that?

19 A '97.

20 Q Tell the jury about your employment and her
21 employment after the birth of Adam.

22 A After Adam, she was still in retail. I was in
23 probably my third job already at Sears home office. She,
24 soon after that, came to Sears headquarters and got a job
25 there also, which was a big deal because it moved her

1 from working weekends and nights to Monday through Friday
2 in an office environment.

3 Q Okay. And she had a young child -- y'all had a
4 young child?

5 A Yes.

6 Q So how did she do with Sears?

7 A Uh, she was doing really well. She was, uh,
8 working in their jewelry department as a re-buyer. Then
9 she got promoted to a job where she was a buyer for hard
10 surfaces in the house. So, like, countertops, floors,
11 tile and that kind of stuff..

12 Q And was she also taking care of your child in
13 the evenings and coordinating all that?

14 A Yeah. Everything including -- uh, we switched
15 off some, but there was mostly days when she would take
16 the kids to daycare and pick them up. Her job wasn't
17 quite as demanding as mine at the time.

18 Q And how did her employment with Sears progress
19 from there?

20 A Well, at that point in time, she started -- got
21 promoted again in that department. They promoted her to
22 where she was the designer for the new stores that were
23 rolling out. She designed the kitchens in those stores.
24 They liked her so much they started putting her through
25 school so that she could be a kitchen and bath designer,

1 certified, with all the letters behind her name.

2 Q All right. And how did she progress from
3 there?

4 A Really well. Right in the middle of that, I
5 decided to leave Sears and went to work for Best Buy in
6 Minneapolis. They liked her so much they begged her stay
7 on even if she moved. They didn't care if she worked at
8 home just as long as she'd stay with them.

9 Q What were her earnings? Are you familiar with
10 what her earnings were when she was working for Sears?

11 A Not to the penny. It was probably \$60,000 a
12 year.

13 Q All right. And so you moved to Minnesota and
14 she followed you there?

15 A Yes.

16 Q You still had the one child Adam or did you
17 have your second child?

18 A Ana was born that year in between.

19 Q What did she do when you moved to Minnesota?

20 A She stayed with the Great Indoors.

21 Q Okay. And how long did y'all stay in
22 Minnesota?

23 A One winter.

24 Q I understand that. Where did you move to from
25 there?

1 A South Carolina, to Greenville.

2 Q Okay. And so why did you come to Greenville?

3 A For a company, Techtronic Industries. They are

4 in Anderson. I went to work there for probably nine

5 years, eight years, something like that. I was working

6 selling power tools for them.

7 Q Okay. And what did your wife do when you moved

8 here to Greenville?

9 A The Great Indoors agreed to keep her on. She

10 was still working for them, the Sears company, when we

11 got here. But they encouraged her as part of her

12 education to also go get a real job designing cabinets

13 and work for a cabinet company downtown. So she took on

14 a second job at the request of her employer just so she

15 could get real world experience taking care of customers

16 who wanted their kitchens and bathrooms remodeled. So

17 two jobs, plus raising the kids at that point in time.

18 Q How did that go?

19 A It seems to go fantastic. She was learning and

20 excited everyday and had two great kids.

21 Q Well, tell the jury about her routine day back

22 when you were working at Techtronics and she was working

23 at the Great Outdoors and also, I believe, Kitchens of

24 the South.

25 A Yeah, that lasted for, I don't know, maybe a

1 year or two while we were here. Then they decided that
2 they were going to close down that division or shrink it
3 down. So they offered her a job to buy our house and
4 move us back to Chicago. We declined that.

5 Q You had been following her this time.

6 A Yeah. We'd always had an agreement that we
7 would follow the money. There were many times in those
8 years where we moved around. As soon as I get a raise
9 and move to a place, she'd get a better job and get a
10 raise above me. I'm like okay, wonder where we're going
11 to go and then I'd get promoted. That all worked out
12 until this time. I was fortunately making more money
13 than that. We were happier. We wanted to stay here.

14 Her routine was just absolutely packed full
15 during those days. She was starting to take on customers
16 that were one-on-one customers and this huge goliath of a
17 company, Sears, that was driving her workload and two
18 little kids and a husband.

19 Q So how did that go?

20 A It went great. You would have to ask her. I
21 thought it went great.

22 Q So was she happy? Was she ---

23 A Oh, yeah.

24 Q --- active? How active was she in your
25 children's lives?

1 A Oh, completely. I mean, that's -- that's what
2 makes you get up in the morning, her too.

3 Q You can explain what when you say completely
4 active with her children, with your children.

5 A Everything from getting them up, getting them
6 dressed, taking them to wherever they are going for the
7 day. If they are going to daycare, taking them to
8 daycare. Picking them up at the end of the day. Making
9 sure they are clean and fed and put to bed, taught
10 something, read, whatever it was. I participated in as
11 much of that as I could too. I mean, we are a family.

12 Q She was the driver of the whole situation?

13 A In a lot of cases, yes.

14 Q How about her involvement with her children's
15 schools and those kind of things?

16 A That was a few years later. That started. And
17 outside of preschool where they kind of let moms and dads
18 in a little bit, but not a whole bunch, she was working,
19 as soon as school started. She was a great volunteer.
20 She's always been in the classroom and help there. Done
21 as many drives as she could to help the school get money.
22 I think she did some PTA work without telling me about
23 it. It was always like, just calm down a little and she
24 couldn't help it. She was volunteering.

25 Q All right. And did your employment change at

1 some point?

2 A At Techtronic, I had a couple of different
3 jobs. Then, in 2007, the end of 2007, they had layoffs
4 so I got laid off.

5 Q What was your wife doing at the time when you
6 got laid off?

7 A She was running her own business designing
8 kitchens and bathrooms and running project management.

9 Q Can you describe for the jury what that was?

10 A Uh, she would get -- she would be the person in
11 between a contractor and the customer. The customer and
12 contractor, and she would be here. She, for the most
13 part, worked with the customer to translate everything
14 they wanted in their house and help them design it and
15 the colors and the shapes and the products that were in
16 it all the way down to exactly how many inches a light
17 fixture ought to be off the ceiling or floor or where the
18 plumbing ought to be exactly located. Because by that
19 point in time, she had things memorized that I can't even
20 tell you. The whole Kohler book of every Kohler fixture
21 there is and model numbers and every other fixture and
22 every other toilet there is in the world. She's got
23 appliances in her brain.

24 She was doing this project management and then
25 helping the customer shop for those goods based on

1 companies she's dealt with when she was with Sears and
2 with the cabinet company. She'd basically charge the
3 customer, but then shop for them and save them more money
4 then she charged them. She'd translate what they wanted
5 and be on the job with the contractor so the contractor
6 never had a change order the whole time they were either
7 building or remodeling their house.

8 Q Anything happen with your employment and after
9 you were laid off did you get a subsequent job?

10 A Yes.

11 Q What did that job involve?

12 A I went to work for a company called Greenburg
13 and they make irrigation and sprinkler systems. I was in
14 charge of North American sales for their retail division.

15 Q Did you get to stay in town?

16 A I continued to live here, but their
17 headquarters are in two places. They are in Tucson,
18 Arizona and Los Angeles, California. So I would make
19 trips out there.

20 Q Back in September of 2008, what was your
21 routine as far as your employment?

22 A I would go out there probably once every three
23 weeks or so.

24 Q How long would you stay?

25 A I would stay for four days.

1 Q And, uh, what was your wife's routine back in
2 September of 2008?

3 A She was working in this project management
4 kitchen and bathhouse remodel job that was hers and
5 selling cabinets for the Great Indoors and selling
6 appliances for an appliance company in town and selling
7 countertops for another and then helping the customers do
8 their stuff, then taking care of our kids and
9 volunteering at the schools.

10 Q Uh, so her days are pretty full?

11 A Yeah.

12 Q But your days were too. Would she be there for
13 you when you came back from out of town?

14 A Sure. There were a lot of weeks where I wasn't
15 out of town. I was here.

16 Q Right.

17 A I would go to Charlotte for a day and meet my
18 employees and go to Lowes. They were one of our bigger
19 customers. I would go to Atlanta for the day and meet
20 with the Home Depot with one of my employees there. Then
21 I would maybe go to Chicago or somewhere like that where
22 the other big retailers are for a day and meet one of my
23 other employees there. But most of the nights, I was at
24 home.

25 Q Okay.

1 A Or working out of the house.

2 Q And would she have supper there for you when
3 you got home?

4 A Yeah. I was lucky.

5 Q Tell the jury about September the 4th of 2008.
6 When did you become aware of this automobile accident?

7 A She called me while she was sitting on the curb
8 after the accident.

9 Q Tell the jury how'd that phone conversation go.

10 A Well, that's the phone conversation I guess you
11 hope you never get. I was in Arizona. And she called
12 me. And the stress that came over the line was just
13 unbelievable. She sounded like she wanted me to come
14 help pick up the kids. Scott, I need your help. I need
15 you to help me right now. Just the frantic confusion
16 that was on the line. She had no idea. Then I -- honey,
17 I can't come. You need to see somebody or something.
18 She said, well, there's police here. I said, okay, work
19 with the police. I said I hope you're going to be okay.
20 Do whatever you need to do to be okay. But I don't -- I
21 couldn't help her.

22 Q Cause you were in Tucson?

23 A I was in Tucson. So she hung up the phone.
24 That was where I got left out of the whole deal until
25 later that night.

1 Q So you talked to her later that night?

2 A Yeah.

3 Q How was she then?

4 A About the same except for she was not as

5 frantic. She found a way to take care of the kids.

6 Q When did you get home?

7 A I think it was a day later.

8 Q Did you notice anything different about her?

9 A Oh, yeah. She was in physical pain.

10 Q And so how did that progress?

11 A The pain in her back and soreness in her body

12 lasted -- I'm looking back now -- it was at least a month

13 from the physical pain there. And then the crying or

14 loss of -- I don't want to say competency, but the

15 confusion in her day, being able to talk to me during

16 that first -- it kept going. It was a lot longer than

17 physical pain. I don't even want to put a time limit on

18 it. It kept going. It was probably a couple of months

19 heavy duty.

20 Q What do you mean heavy duty?

21 A She just couldn't concentrate on anything

22 without having to go sit down, lay down. She was seeing

23 lots of doctors. There was just not the ability to do

24 anything except for concentrate on pain.

25 Q How about her, uh, mental status? How did she

1 interact?

2 **A** It was less. That was about the time that she
3 really just started concentrating on the kids. I'm gone
4 sometimes. She just concentrated on I've got to take
5 them to school. I got to pick them up. I got to take
6 them to soccer or whatever it is. That is the most of
7 it. We'd have conversations, but it was almost to taxing
8 on her to go down the path of -- to me, it's like
9 senseless conversation at that point. If she can't pay
10 attention to it, why are we doing this. Just let her
11 rest.

12 **Q** Has she improved since then?

13 **A** Uh, yeah. There's no more pain. Like I said,
14 the physical pain went away. She has a lot of good hours
15 in the day now. I don't see her like have to go into the
16 bedroom or to the office and sit as often anymore.

17 **Q** What do you mean by that?

18 **A** She's just go in there just to rest and relax
19 and just sit during those days, especially, a lot. She
20 does that now, but it's not every day for hours. So I
21 would say that she's doing it every day, but it's not all
22 -- it's not all-encompassing. She's still -- she's
23 taking care of the kids, although she forgets to pick
24 them up sometimes. You said has she improved, I can say
25 yes, but has she gotten to where she was, no.

1 Q Uh, you said she's forgotten to pick up the
2 kids?

3 A Yeah.

4 Q Is that anything that's ever happened prior to
5 September the 4th of 2008?

6 A No.

7 Q So describe her as she is now. What her day
8 consists of, what are her abilities now?

9 A Uh, her day consists around -- a lot around
10 taking care of the kids, getting them up and making sure
11 they make it to school on time and that they did their
12 homework the night before. Then, uh, during the middle
13 of the day, a lot of that, I don't see. I'm not here. I
14 can't really tell you. I know that she tries to do some
15 jobs still. They take her a lot longer than they used to
16 do. I think that her clients are still pretty happy, but
17 I think they probably thinks she's slow. She fills the
18 day. She does some stuff around the house.

19 Q How was the house before this accident? How
20 was the house kept and cleaned?

21 A It was perfect. She built that house, for the
22 most part, by herself. The core building of that house,
23 that house was built in six months. During the last
24 three months, I went to China, I think, four times for
25 between a week and ten days each time. While I was in

1 China, she ran the whole project to build the house.
2 That kind of day never shows up anymore where she can do
3 that.

4 Q Prior to September 4, 2008, did your wife have
5 any difficulty with her memory?

6 A No.

7 Q Does she now?

8 A Yeah.

9 Q Describe that for the jury.

10 A Well, until last week, or those -- two weeks
11 ago was the last week I was gone, the week before that,
12 I came in. She was sitting in her office. It's a little
13 room. Most people call it a closet. But she was in
14 there. She was trying to type a letter, an introduction
15 letter that you would put a resume with that says here,
16 I'm looking for this job, I saw it advertised. She had
17 been sitting there 15 or 20 minutes. She couldn't
18 remember how to start the letter like Dear, that part of
19 the letter. So I helped her with the letter, but it's
20 just she gets just stuck sometimes. She's just stuck.
21 It's just not there.

22 Q Prior to this accident, did your wife have any
23 difficulty managing multiple tasks?

24 A No.

25 Q Does she now have difficulty managing multiple

1 tasks?

2 A Yeah.

3 Q Can you describe that for the jury?

4 A Multitasking sounds like this fantasy thing in
5 books. I just think that it's something simple. To be
6 able to help the kids with their homework kind of while
7 they're sitting at the dinner table area and still be
8 cooking. There's a lot of times she really struggles to
9 do that. She just tells them just wait, let me finish
10 cooking, I'll come back and, you know, we'll do the
11 homework or try and do it yourself or ask your dad. Go
12 find him. She wouldn't have ever done that. To me, I
13 don't know that that's multitasking like the clinical
14 term. She could do a couple of things at a time.

15 Q Uh, did your wife have any difficulty
16 retrieving words prior to this accident?

17 A Not that I know of.

18 Q Does she now?

19 A She has pauses in her conversation with me. I
20 don't know how much of that is that she's looking for a
21 word or that she's forgot what she's talking about
22 sometimes. There's a little mix.

23 Q Uh, prior to this accident, your wife, was she
24 slow in her ability to process information?

25 A No.

1 Q Is she now?

2 A It depends on what it is. But there's -- I
3 mean, there's not that ability to configure a whole job
4 that she used to do, to remember the numbers that were in
5 the magazine that she put into this thing. She'll have
6 to just stop and slow down and just concentrate on that
7 one thing and do it and then maybe look it up on a book
8 or website. If that's what that is.

9 Q Uh, has, uh, -- prior to this accident, did
10 your wife have any difficulty with her sense of smell?

11 A No.

12 Q Does she now?

13 A Not that I know of.

14 Q How could you tell?

15 A I mean, it's never come up.

16 Q She doesn't tell you that?

17 A Not me. I don't know. We'd never had that
18 conversation.

19 Q Prior to this accident, has she fatigued
20 easily?

21 A No.

22 Q Does she now?

23 A Very easily.

24 Q Uh, prior to this accident, had she had any
25 difficulty with time management?

1 A No, I would say she's a professional time
2 manager.

3 Q Does she now?

4 A I think that she just manages a lot less to
5 make it happen.

6 Q Mr. Bettencourt, you have, also, you are a
7 plaintiff in this case. You have raised a cause of
8 action which you would call in a legal term, loss of
9 consortium, which is the care, comfort, companionship of
10 your wife. I want you to describe to the jury the care,
11 comfort and companionship you had of your wife before
12 this accident and the care, comfort and companionship you
13 have with your wife now.

14 A Before, even if she was mad at me for something
15 I did stupid or went out with friends and didn't get home
16 until too late, it was always hey, how you doing, she was
17 mad at me for a little bit and everything was back to
18 normal. We got along perfect. I've been very lucky. I
19 married the perfect girl. I don't know how to do any
20 deeper than that.

21 Q So what have you lost?

22 A All those things we just talked about. When
23 you get married, it's for better or worse, right?
24 There's certainly been a lot of better. But not having
25 her around to talk to all day and worrying about your

1 kids getting picked up, that's worse. I lost that.

2 Q How is the situation with your children?

3 A They are such good kids that I'd like to say
4 that maybe they don't even know. But they know mom
5 doesn't do as many things anymore. Sometimes she pushes
6 them away. But I'd like to think they don't notice. I
7 don't know if they do, but...

8 Q How much of Deena have you lost?

9 A Not enough to get rid of her.

10 Q Has, uh, this been a difficult time on you as
11 well?

12 A Yeah.

13 Q Explain that to the jury please.

14 A It's just a constant concern. I hope she'll
15 get better. I hope nothing bad happens in the meantime.
16 There's just a lot of concern everyday, especially if you
17 travel.

18 Q Please answer any questions Mr. McGarr might
19 have.

20 **CROSS-EXAMINATION**

21 **BY MR. MCGARR:**

22 Q Mr. Bettencourt, these problems of her
23 inability to do anything other than one thing at a time,
24 they are still going on?

25 A What's that?

1 Q Are they still going on?

2 A Yeah.

3 Q And her having to tell the kids, hold off, I
4 can't do this homework because I'm trying to cook, that's
5 still going on?

6 A It's not just the kids. It's with me too.

7 MR. MCGARR: Uh, Your Honor, at this point,
8 we're going to need to take a brief, uh, recess.

9 THE COURT: Okay. All right. Why don't we
10 just go ahead and break for lunch then. It's about
11 20 minutes to the hour. We can break now. Let's
12 come back on the record at 1:30. My math's better
13 today than it was yesterday. Let's come back at,
14 uh, -- well, let's come back at 1:45. If you will
15 be back then, I will appreciate it. Please don't
16 discuss the case while we're gone.

17 MR. MCGARR: There's going to be some lengthy
18 argument.

19 THE COURT: There is? Okay. Why don't y'all
20 come back at 2:00 instead. Okay: Apparently
21 there's going to be some issues that we need to take
22 up outside of your presence. Come back at 2:00.

23 (WHEREUPON, the jury exits at approximately
24 12:42 p.m.)

25 THE COURT: All right. Before you get

1 started, Mr. McGarr.

2 Mr. Bettencourt, you're going to take a break
3 as well obviously. We'll probably end up going to
4 lunch. I just want to remind you that you continue
5 under oath as a witness which means you can't
6 discuss the content of your testimony with anyone,
7 the lawyers or your wife or anyone else because you
8 remain under oath. You are welcome to go to lunch
9 with everyone certainly. Just don't discuss your
10 testimony.

11 **THE WITNESS:** Okay.

12 **THE COURT:** Okay. Mr. McGarr, I'll be happy
13 to hear from you, sir.

14 **MR. MCGARR:** Your Honor, we have a video of
15 Mrs. Bettencourt that was done on May 7th, 2011.
16 And it essentially shows her at a cooking show where
17 she is not only cooking, but she is presenting, uh,
18 her cooking -- she is cooking while talking to an
19 audience. And not only is she cooking while she's
20 talking to an audience, but she's showing how she
21 canned and she's doing exactly what Mr. Bettencourt
22 just said she was incapable of doing.

23 So, uh, there was an objection to its
24 relevance. I didn't want to put it into play until
25 that was first heard and then we also have some

1 objections to some relevance of things that I would
2 bring up in a moment. But that would be the first
3 issue we have to deal with.

4 THE COURT: Okay.

5 MR. CHILDS: In respect to the video, I don't
6 think that's in response to the question of Mr.
7 Bettencourt. He talked about pushing the children
8 away. I don't know if that had anything to do with
9 cooking. What the video does show is there was a
10 Greenville Organic Farmers Tour of Greenville. And
11 one of those homes they toured was Mrs.
12 Bettencourt's home. There is a video there of
13 showing her -- she talks about how to blanch
14 tomatoes and cook a pepper. I don't think that's
15 relevant, not even based on the question he just
16 asked. We don't pretend she's not capable of
17 blanching a tomato or cooking a pepper.

18 What's more troubling about the video is it
19 kind of doesn't stop there. It's kind of she wants
20 to show that they live in a nice house and they have
21 a swimming pool and they have nice pertinences to
22 their house. The other side of that video is its
23 kind of saying the Bettencourts are successful
24 people and don't need any money from a jury for this
25 accident. So I don't think -- I can understand the

1 possible relevancy section where she's talking
2 about, talking to these people who came and visited
3 and showed them how to blanch a tomato and show them
4 how to do the peppers, but I don't really think that
5 the rest of the video is it shows their yard and
6 things like that is relevant at all.

7 THE COURT: All right. Mr. McGarr, what
8 about the rest of it?

9 MR. McGARR: Your Honor, the rest of it is
10 relevant because of this. You've already heard one
11 witness say that -- and this leads into the other
12 documents we have -- one witness say that Mrs.
13 Bettencourt does have a garden, but that her husband
14 has helped her with it. We have evidence that she's
15 done the garden on her own and she actually shows
16 the garden and it is extensive on this video.

17 MR. CHILDS: She doesn't show the garden on
18 the video. The video shows the garden.

19 MR. McGARR: Forgive me. The video shows the
20 garden. And the only way to show the garden is to
21 show the home. It is an extensive, extensive
22 garden. I'm not intending to play that portion with
23 regard to Mr. Bettencourt. But he specifically --
24 it will come in later or I intend to bring it in
25 later, but with regard to him sitting here and

1 telling this jury that his wife, even as we speak,
2 can not help the children with homework while she's
3 cooking, while she's talking to an audience and
4 cooking and telling them how to do these things, how
5 to grow them, how to prepare them, how to get them
6 ready and then turning around -- and then doing it
7 at the same time, it couldn't be more relevant.

8 **THE COURT:** Okay. For purposes of the cross-
9 examination, I think that that portion that you just
10 referred to is relevant. Now, what additionally may
11 be relevant with respect to this cross-examination,
12 I don't know, because I hadn't seen it.

13 **MR. MCGARR:** We'll stop. That's all I'm
14 going to do with that.

15 **THE COURT:** Okay. Well, I'll respectfully
16 overrule the objection. I'll allow you to ask
17 questions relative to that portion of the video.

18 **MR. MCGARR:** Your Honor, the next thing we're
19 going to have to do -- and I only have one copy, but
20 this is a matter of whether we call witnesses or
21 not. Mrs. Bettencourt -- and they are tabbed. Mr.
22 Childs has a copy but I'm going to have to go little
23 bit blind. Uh, no, no. That's fine. I can just do
24 it blind.

25 You're going to see on Tab 1 that this is a

1 newsletter from the Augusta Circle PTA dated
2 September 12th, 2008 ---

3 THE COURT: Uh-huh.

4 MR. MCGARR: --- which is shortly after the
5 automobile accident. You will see on Tab 2 that
6 Mrs. Bettencourt is actively involved in, uh, PTA
7 activities even though she had just been in an
8 automobile accident that -- it has been alleged --
9 has incapacitated her. The same is true when you go
10 to Tab 3. It will show you that on October 16th,
11 2008, Augusta Circle's PTA produced another
12 newsletter that showed that she's actively involved,
13 uh, in activities even though it's been testified to
14 that she can't do those activities.

15 We then get to, uh, Tab 5 and 6. Tab 5 shows
16 that on May 2010, the first round is immediately
17 after the accident. On May 10, 2010, you have
18 evidence that she's working with the Greenville
19 Middle School. That will show up on Tab 6 what she
20 was actually doing. Then on Tab --

21 THE COURT: I see that it's been redesignated
22 Greenville Middle Academy since I finished going
23 there in 1970-something.

24 MR. MCGARR: Things have gotten much fancier.
25 It will continue, Your Honor, and be named in your

1 honor.

2 THE COURT: Go ahead.

3 MR. MCGARR: In Tab 7 is the August, uh, 2010
4 newsletter. On Tab 8, it will show you that again
5 she's involved in certain activities at the school
6 despite what you've heard not only from Mr.
7 Bettencourt but from the medical providers who said
8 she couldn't do these things. Uh, that, we believe,
9 is relevant. The next issue is this. And I don't
10 -- does it have a tab on it?

11 THE COURT: I stop at 8.

12 MR. MCGARR: Can I bum it for one moment?

13 THE COURT: Sure.

14 (WHEREUPON, there is a pause.)

15 MR. MCGARR: Newspaper article. We have the
16 writer of this article under subpoena. But we don't
17 feel the necessity to bring the writer of that
18 article. I think Mr. Childs is in agreement that we
19 would not bring the writer of that article. But he
20 says it is irrelevant.

21 The reason that we say it is relevant is
22 because if you read that article, Your Honor, Mrs.
23 Bettencourt is telling the Court Reporter -- not the
24 Court Reporter, uh -- the newspaper reporter that,
25 uh, not only is she -- had she become a gardener,

1 but she has created this magnificent garden. And if
2 you look at it, she's referring it to as I have
3 done, I have done, I have done throughout the
4 process. Not my husband has done, but I have done
5 it. That leads -- it comes in -- we think it's
6 relevant for two reasons. I can't remember the
7 lady's name, but the lady who was her friend who was
8 saying her husband was helping her, uh, with the
9 gardening and, uh, now, with Mr. Bettencourt saying
10 my wife can't do these things, that everything's had
11 to fall on the wayside and yet, she's actively doing
12 what that article describes. So we see immense
13 relevance to it because of the I, I, I and the
14 amount of activity that has been -- that she's
15 engaged in with regard to that.

16 Look at the thought process. We could go to
17 Lowes, although they say that's a difficulty, but
18 when I got there, I learned and decided, no, this
19 plant won't work for me. We need this plant. We
20 need sustainable this or we need sustainable that.
21 That is evidence of someone who has a very, very
22 good mind. So we would say that is relevant also.
23 We could either do it through the magazine article,
24 the newspaper article, or I can actually bring the
25 reporter who will testify that not only did she say

1 these things to her but she was cogent and, uh,
2 articulate and multitasking during --

3 **THE COURT:** Do you intend to offer it through
4 cross-examination of Mrs. Bettencourt?

5 **MR. McGARR:** Cross-examination of Mrs.
6 Bettencourt and, quite frankly, Mr. Bettencourt.

7 **THE COURT:** All right.

8 **MR. CHILDS:** What I see is a newsletter from
9 Augusta Circle where Mrs. Bettencourt is listed as
10 the contact person for the reflections program. I
11 don't know frequently that is repeated in every
12 newsletter that they have. But I can tell you from
13 my experience just reading those newsletters, they
14 don't change it a lot as far as the programs that
15 are going on. I don't know that that's relevant at
16 all the fact that she was listed as a contact person
17 for a program that is ongoing at the school.

18 **THE COURT:** I'm guessing she would testify
19 that was already in the till as it were.

20 **MR. CHILDS:** Well, I'm sure she will. But
21 then again, it's not really relevant to the issue of
22 what testimony we've heard through the medical
23 perspective. She can isolate herself on a solitary
24 issue. It's just the difficulty of the
25 multitasking. It's rather therapeutic that she

1 attempt to try to do these things which really I
2 think might be a reverse argument of him. I'd kind
3 of would like to have it in.

4 THE COURT: Sounds like a good jury argument.

5 MR. CHILDS: I don't want to see it mucked up
6 too much. So I think the little -- and I told Mr.
7 McGarr, I said, look, you don't need to bring a
8 custodian in here. I just don't know the context,
9 the relevancy of that little advertisement in a
10 newsletter, you know, from the school. It doesn't
11 seem to import any important evidence to the jury
12 other than her name is listed on a school brochure.
13 I don't think -- unless she denies in her testimony
14 that she's -- unless she says in her testimony I
15 have done nothing with the school since then, she's
16 not going to say that. She's not saying that she's
17 a total invalid. I think in respect to the
18 gardening issue as well, that it's not like we got a
19 back injury case or, you know, a permanent
20 impairment to the back where someone is alleging
21 they are physically disabled. This is more of a,
22 kind of a Steller situation. It really -- these
23 little brochures don't provide any probative value
24 to the jury.

25 MR. McGARR: Your Honor, quite frankly, we

1 may be better off bringing the, uh, people with the
2 PTA. They will also testify that not only was she on
3 the list and in the till, but she was cogent and
4 coherent. Mr. Childs may have to help me there.

5 On its face, maybe she wasn't so cogent and
6 coherent. I was doing it from a timeline that it
7 continued from 2008 to 2010 at the very least.
8 Maybe I need to bring those record custodians to
9 determine its true relevance. That may be helpful.

10 However, on the issue of the newspaper article,
11 that goes to the fact that they've asked for \$2.5
12 million with part of that being that they do need
13 someone to garden. So that's going to come up and
14 it has already come up. You've got an interrogatory
15 of theirs that shows, I think about \$400,000, I'm
16 told, in economic losses associated with someone
17 helping with the gardening, the cooking, the
18 cleaning and so forth because she can't do those
19 things. She can't multitask anymore.

20 **THE COURT:** Okay. All right. In looking at
21 all of these documents, it would appear that they
22 are all relevant. Uh, to what extent the jury may
23 find that they are important or put weight on them,
24 that's a determination from them to make. The only
25 other question I would ask is under 403 whether it

1 would be unduly prejudicial. I don't think it would
2 be. I think that there -- of -- I don't know that
3 they're as significantly prejudicial at all as a
4 matter of fact. They are of some probative value
5 for those reasons that Mr. McGarr states. So the
6 only thing lacking, of course, is whether the
7 appropriate foundation is laid for the documents.
8 You can make objections contemporaneously with
9 offering the same.

10 **MR. CHILDS:** I don't have any objections to
11 the foundations on the documents. We have agreed --
12 I've agreed that that's what was published in the
13 paper and that's what's in the newsletter. So the
14 only issue is relevance.

15 **THE COURT:** Okay. And I do think they are
16 relevant. And I will tell you this, gentlemen, just
17 as an overarching principle that I have with respect
18 to the conduct of trial, I like to let parties try
19 their cases. I'm an advocate of more is more when
20 it comes to evidence unless it is just unduly
21 prejudicial or it is clearly contrary to the stated
22 rules of evidence.

23 In this case, I can see certainly why the
24 defendant -- excuse me -- why the plaintiff wouldn't
25 want this to come in. But its relevant. And I

1 think it's appropriate questions to be asked
2 especially giving the issues that have arisen in
3 this case. I'm certain that Mrs. Bettencourt can
4 answer to these and that you've had the opportunity
5 to look at them and analyze what important they have
6 to your case.

7 MR. CHILDS: Let me just correct on the
8 record.

9 THE COURT: Yes.

10 MR. CHILDS: I'm not arguing with Your Honor
11 about this, but Mr. McGarr keeps stating that we've
12 alleging damages for hiring a gardener, housekeeper.
13 Dr. Swicegood testified about the loss of household
14 services of my client, not the cost of hiring a
15 gardener, nanny or anybody else. Don't misinterpret
16 that. That is a calculation of the loss of my
17 client's household services.

18 THE COURT: Okay. And before you go -- I
19 don't know whether you have or not. I think that's
20 going to be an issue that y'all are going to argue
21 to the jury and y'all may argue that to them, you
22 know, whether that claim has been made or not. I
23 think the issue with respect to the garden, if I'm
24 not mistaken, is the defendant's suggestion that
25 actually she does have the capacity to manage a

1 fairly large project. The garden would be an
2 example of a fairly large project. I'm not saying
3 that that will prove that. I'm saying that that's
4 the purpose for which you would offer the garden.
5 Am I right?

6 **MR. MCGARR:** Yes, sir, Your Honor.

7 **THE COURT:** Okay. And in that regard, I
8 think it's relevant and the jury will just have to
9 determine whether it's credible and whether it has
10 any weight. Okay.

11 **MR. MCGARR:** Your Honor, I fear you think
12 this is going to evolve into a repeat of last week
13 where all of a sudden the rest of the case is going
14 to be objections over evidence, this is our only
15 evidentiary issue.

16 **THE COURT:** Okay. Well good. I didn't fear
17 that. As a matter of fact, I was getting kind of
18 lonely up here cause y'all weren't making any
19 objections.

20 (WHEREUPON, a lunch recess is taken.)

21 **THE COURT:** All right. Are we ready for the
22 jury?

23 **MR. CHILDS:** Yes. One little housekeeping
24 matter.

25 **THE COURT:** Yes, sir.

1 **MR. CHILDS:** I forgot to introduce the
2 doctor's bills 4 through 6 at the close of the
3 deposition. I'll do that right after they come in.

4 **THE COURT:** You want to wait until they get
5 in here to do it? You can do it right now if you
6 want to.

7 **MR. CHILDS:** I'll do it right now.

8 **THE COURT:** Okay. Without any objection?

9 **MR. MCGARR:** Oh, no, sir. These are part of
10 them that was supposed to have been put in before.

11 **THE COURT:** All right.. Without objection.
12 Those are exhibits -- what are they? Plaintiffs --

13 **MR. CHILDS:** 4 through 6.

14 **THE COURT:** --- 4 through 6 are admitted into
15 evidence.

16 (WHEREUPON, Plaintiff's Exhibits 4 through 6 are
17 admitted into the record.)

18 **THE COURT:** All right. You can bring them
19 in.

20 Mr. Bettencourt, you can come on back up and
21 take the stand, sir.

22 **MR. CHILDS:** Your Honor, in order for the
23 jury to see and him to see, we were proposing --
24 where do you want him?

25 **THE COURT:** When they come back in, I want to

1 have him postured in the same way that -- the manner
2 he was in when they went out. You can ask him, Mr.
3 Bettencourt, I would like for you to step down.
4 Then he can step down at that point.

5 MR. CHILDS: Would you be okay if he sat in
6 that chair?

7 THE COURT: I'm perfectly comfortable with
8 that. I'm perfectly comfortable with that. However
9 y'all want to do it is fine with me.

10 THE BAILIFF: Your Honor?

11 THE COURT: Yes, sir.

12 (WHEREUPON, the jury enters at approximately
13 2:04 p.m.)

14 THE COURT: All right. Ladies and Gentlemen,
15 hope you had a good lunch. We're ready to proceed
16 with the trial.

17 Mr. McGarr, I believe it's your witness, sir.

18 MR. McGARR: May it please the Court.

19 THE COURT: Yes, sir.

20 BY MR. McGARR:

21 Q Mr. Bettencourt, based upon your last series of
22 answers, if it please the Court, we would like to put you
23 actually maybe -- we'd like to seat you here. I want to
24 show you a videotape of your wife that was taken on May
25 17th, 2011.

1 A Now?

2 THE COURT: Yeah, you can step down, Mr.
3 Bettencourt.

4 (WHEREUPON, a video is played.)

5 BY MR. MCGARR:

6 Q Mr. Bettencourt, would you agree that we just
7 watched a video of your wife cooking?

8 A Yes.

9 Q Would you agree that you just watched a video
10 of not only your wife cooking, but her instructing the
11 audience?

12 A Yeah, or talking while she was doing it if
13 that's what you meant.

14 Q Giving them instructions on how to do things?

15 A Yes.

16 Q Would you agree that she was interacting with
17 that audience and answering their spontaneous questions?

18 A I did hear one question.

19 Q One?

20 A Yeah.

21 Q Would you agree that she could remember the
22 dates when things were harvested?

23 A No.

24 Q You didn't hear that?

25 A I think she read it off of the bag.

1 Q Do you agree that she could remember the amount
2 that things cost when she was purchasing them from Wal-
3 Mart?

4 A If that was accurate, then she said it, I
5 think.

6 Q Do you agree she could even tell those people
7 where items were located on the shelves in Wal-Mart?

8 A She sounded like she could. I don't know if
9 that was really where it was or if she was --

10 Q She was doing it while she was cooking, is that
11 correct?

12 A Uh, no.

13 Q Would you agree that remembered the
14 ingredients?

15 A Yes.

16 Q That she could remember how to change
17 ingredients to change flavors?

18 A Yes.

19 Q And she was at no lost for words?

20 A I heard her stop a couple of times, but no, not
21 that.

22 Q Never searched for words?

23 A I didn't watch for that.

24 Q And was doing it with an audience that was
25 talking?

1 A They talked a lot.

2 Q And doing it with infants screaming?

3 A No.

4 Q Crying?

5 A No.

6 Q Told them she could get on the internet and

7 find recipes?

8 A I know she talked about the internet and

9 getting recipes.

10 Q Told them that kids are over at the house all

11 the time?

12 A Yes.

13 Q And people allow those children to come to the

14 house all the time despite the fact that she forgets to

15 pick up her own children from school?

16 A It didn't come up in the movie.

17 Q Did you just tell this jury she forgets to pick

18 her own children up from school?

19 A Yes, she left my kids twice at the YMCA.

20 Q Yet, you allow and she allow children to come

21 over despite the fact that she is so forgetful that she

22 leaves children at the YMCA?

23 A I'm not tying it together with this movie. Can

24 you start over? Sorry.

25 Q That's okay. Cause the end result is this --

1 Permission to approach.

2 **THE COURT:** Yes, sir.

3 **BY MR. McGARR:**

4 **Q** Before the break, you sat there and looked at
5 this jury while you were under oath and --

6 **MR. CHILDS:** Your Honor, I don't really think
7 that's an appropriate question. I appreciate the
8 acting job of Mr. McGarr, but I don't think it's
9 appropriate for an attorney to have a seat in the
10 courtroom during the course of trial.

11 **THE COURT:** I sustain your objection.

12 You can move on. You can pose your question
13 though, Mr. McGarr. I think you can still do that,
14 sir.

15 **BY MR. McGARR:**

16 **Q** My question is this, before the break, you
17 cried in front of this jury because you told the jury
18 essentially she could none of the things that show up on
19 this tape. Did you not?

20 **A** I did not. I did not say she could do none of
21 it. I said she has moments where she can't do those
22 things. I specifically said homework where they are
23 wanting her to help with homework, if that's what you're
24 meaning, while she's cooking.

25 **Q** Can't remember how to start a letter because

1 she didn't know how to say the word or put down the word
2 "dear". Is that what you said?

3 A Yes, I did.

4 Q You said can't help the children with homework
5 because she can't multitask. She can't cook and help
6 with homework at the same time. Is that what you said?

7 A That does happen sometimes.

8 Q Said can only concentrate on one thing at a
9 time. Is that what you said?

10 A That does happen a lot too.

11 Q And then you cried because she couldn't do
12 those things that she could do before. That's what you
13 told this jury. Is that correct?

14 A I cried because it hurts to think about.

15 MR. MCGARR: No further questions. No
16 further questions, Your Honor.

17 THE COURT: All right, sir.

18 Any redirect?

19 MR. CHILDS: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. CHILDS:

22 Q Did you, uh, know that Mrs. Wald sent a private
23 investigator to your house on May the 7th of 2011?

24 A No. We knew that there was a person obviously
25 there with a video camera. But we were told or inferred

1 or something by somebody that they were with the
 2 Greenville Organic people, the people who saw our house
 3 and wanted to have people come over and look at it.
 4 Q Okay. Can you describe the event that was
 5 going on there on May 7th?
 6 A Yes. I think it's Greenville Organic. They
 7 have homes. They call it an Urban Garden Tour. They
 8 pick 20 homes that have, uh, vegetable gardens or
 9 something. Then they sell tickets. They let you invite
 10 them into your yard and walk them around and talk about
 11 the bushes. In this case, they asked Deena if she would
 12 show them how to put up tomatoes and peppers.
 13 Q Is she still able to put up tomatoes and
 14 peppers?
 15 A Yeah.
 16 Q Has she been able to do that since the
 17 accident?
 18 A That was after the accident.
 19 Q Right. Is that anything that you complained
 20 about, her ability to put up tomatoes and peppers?
 21 A No, she cooks.
 22 Q Okay. I noticed on the video that a lady asked
 23 her at 3:52:52 if she had a food vacuum. Then she said
 24 no. Then she described a food vac and then said yes.
 25 Did you see that?

1 **A** Uh-huh. Yes.

2 **Q** Is that the kind of difficulty finding words
3 that your wife has?

4 **A** That was more of an association deal where I
5 don't know if she didn't understand that lady or if she
6 didn't have the word. I wasn't there.

7 **Q** Okay. Obviously, you do have a food vac?

8 **A** Yes.

9 **Q** And it was given to her by her mother?

10 **A** Yes.

11 **Q** Then I then she described what a food vac --
12 she said no, we don't have a food vac, then she described
13 what it does, then she said yes, we do. And I'm
14 paraphrasing cause I couldn't write it all down.

15 **A** That's what I saw.

16 **MR. MCGARR:** On redirect, we ask that we not
17 lead.

18 **THE COURT:** Okay.

19 **MR. CHILDS:** I'm sorry.

20 **THE COURT:** I'll sustain the objection.

21 **MR. CHILDS:** Uh, just one minute, Your Honor.

22 **THE COURT:** Yes, sir.

23 **BY MR. CHILDS:**

24 **Q** Do you like idea that your wife grows these
25 vegetables?

1 **A** Yes, I help a lot.

2 **Q** Does it help her a lot to do it?

3 **A** I think that anything that you can do outside
4 that's natural is good for everybody, her included.

5 **Q** Do you consider it somewhat as therapy for her?

6 **MR. MCGARR:** Your Honor, again, I would ask
7 that we not lead to suggest the answer.

8 **THE COURT:** Okay. With respect to that
9 question, I find that it's not a leading question.
10 I'll let you ask that question. I respectfully
11 overrule.

12 **THE WITNESS:** I think that gardening, like
13 playing Solitaire, for her, those two examples, uh,
14 are kind of a solitude. So yeah, I guess therapy is
15 a good word. I never would think about it like
16 that. I mean, I go out and do gardening too.

17 **MR. CHILDS:** Thank you.

18 **THE COURT:** Any recross, sir?

19 **MR. MCGARR:** Not at this time, Your Honor.
20 We may recall him.

21 **THE COURT:** Thank you. Mr. Bettencourt,
22 thank you. We appreciate it, sir. You may step
23 down.

24 **THE WITNESS:** Thank you.

25 **MR. CHILDS:** The next witness will be Deena

1 Bettencourt.

2 THE CLERK: Place your left hand on the Bible
3 and raise your right hand.

4 DEENA BETTENCOURT

5 having first been sworn, testifies as follows:

6 THE CLERK: State your name please.

7 THE WITNESS: Deena Bettencourt.

8 THE CLERK: Thank you. Please be seated.

9 DIRECT EXAMINATION

10 BY MR. CHILDS:

11 Q Mrs. Bettencourt, how old are you?

12 A 43.

13 Q And, uh, how many children do you have?

14 A Two.

15 Q What are their names?

16 A Adam and Ana.

17 Q Okay. Where do they go to school?

18 A Adam goes to Greenville Middle Academy and Ana
19 goes to the Charlestown Center.

20 Q How long have you been married?

21 A 20 years.

22 Q Okay. Uh, how have you been employed during
23 the course of your marriage?

24 A I'm sorry?

25 Q How have you been employed during the course of

1 your marriage?

2 A Uh, I have had lots and lots of jobs because
3 we've moved quite a few times. I spent the majority of
4 my married life fully -- full-time employment, either in
5 retail -- well, in all different types of retail. Most
6 of it in clothing retail and the second half of it in
7 home goods.

8 Q Uh, when were you employed at the Sears?

9 A Uh, just after Adam was born. He was about
10 three months old.

11 Q Okay. What kind of job was that?

12 A I was hired to work for the fine jewelry
13 department and an office job, 8:00 to 5:00, Monday
14 through Friday, which was great for me as a new mother.

15 Q All right. And how did that job progress?

16 A Well, fine jewelry was not originally my
17 intention for going to work. They had just opened a new
18 division called the Great Indoors, which was all home
19 goods. That was something I was very interested in being
20 a part of, uh, but they didn't have any openings at that
21 time so I took a position in fine jewelry with the hopes
22 of getting a position with them once one did open up.
23 Shortly after I came, a position did open and I
24 interviewed with 20 people for the job and had gotten it.

25 Q And how was that job? What did it involve?

1 A I was hired for the positions of hard surfaces.
2 So my job was to essentially sort the merchandise, just
3 like you'd see at a Home Depot or a Lowes. The Great
4 Indoors was a home goods store that carries everything
5 from appliances to big screen TVs or whatever. So my job
6 was just that department that had the hard surfaces. I
7 found tile that I thought would sell and hardwood floors
8 that I thought would sell, those sorts of things.
9 Created display spaces within the store and made sure the
10 pricing was correct and the importing was done on a
11 timely fashion and that all the stores had enough
12 supplies to sell.

13 Q How long did you hold that job?

14 A I worked there until Adam was about halfway
15 through kindergarten. So I guess he would have been five
16 and a half or six by then.

17 Q Okay. And so what happened with that job?

18 A Uh, the -- I was primarily in the division that
19 we opened new stores. So I designed the store spaces and
20 got in an airplane every Monday morning and flew to
21 whatever city we were building a store in and then
22 assisted in implementing my design work into the store
23 before its grand opening. At the time we slowed down and
24 weren't building eight, ten stores a year, I was
25 transferred to a marketing position. That position -- I

1 was ready to be promoted to the next level and that would
2 have required me to move back to Chicago. But my husband
3 was here, my children were here. We fell in love with
4 Greenville and we didn't really want to go back and get a
5 snow blower out every morning or any of that stuff. So
6 we decided to turn down the opportunity to go back to
7 Chicago. My business with the great -- with, uh,
8 Kitchens of the South had, you know, gotten so big that I
9 just decided to go for it.

10 Q Now, when you were working for Sears, what kind
11 of earnings did you have for them on an annual basis?

12 A \$60,000 a year, 65 or something like that.

13 Q So you moved to Greenville and decided to stay
14 here rather than transfer to Chicago. What did you do at
15 Kitchens of the South and that you started your own
16 business?

17 A Well, I started out with Kitchens of the South
18 on a part-time basis. The vice president of store design
19 had encouraged me to try and find a local cabinet shop in
20 Greenville that I could go to -- we were struggling as a
21 large company -- to figure out how to sell cabinets. We
22 weren't doing a very good job. And they wanted to know
23 how local people were doing it. How does it work? We
24 needed to understand that business. So I went to work
25 for Kitchens of the South and in an attempt to try to

1 figure out how these small, you know, people within a
2 market were doing so well selling cabinets when, as a
3 huge, big retailer, we were failing miserably. So Dave
4 taught me everything about, you know, meeting a client,
5 creating a profile, designing the kitchen, selling a
6 kitchen, all that. I didn't really have any sales
7 experience for selling big things like that, so he taught
8 me all those things.

9 In turn, I was able to take that information
10 back to the large retailer that I worked for and share
11 with them what the trials and tribulations were of the
12 small business owner who was in that industry and where
13 we could see some success or use some of their best
14 practices to make our business a little bit better. At
15 the same time, I was learning, you know, how to sell
16 kitchens.

17 Q And did you open up your own business?

18 A Yes. After I had been with Kitchens of the
19 South full-time for probably about a year and a half, I
20 realize that we were missing a major thing. Kitchens of
21 the South sells kitchens and designs kitchens and baths,
22 I guess, anything you need cabinets for. But like if a
23 client came in and said I'm thinking of taking my kitchen
24 and my den and taking the wall out and making the whole
25 thing a giant kitchen like this one is, you know,

1 Architectural Digest or something like that.

2 Kitchens of the South didn't really do that
3 part. They could design the cabinetry but they wouldn't
4 pick the tile. They wouldn't help pick the countertops.
5 They didn't pick the wall colors. They didn't design the
6 window treatments. They didn't select any kind of home
7 fixtures. They didn't really work with the contractor to
8 give him a heads up about where the plumbing needed to be
9 coming out of the wall where the electrical outlets
10 should be located for the new kitchen. They just pretty
11 much handed over a drawing that showed the cabinets and
12 what the price of those cabinets is going to be.

13 So Dave encouraged me to open an LLC. And with
14 Scott's help -- he helped me go online and figure out how
15 to do that and I basically would take a client from just
16 designing a cabinet where normally that client would come
17 into the showroom and we would turn them away like you
18 need to hire an architect or something of that nature.
19 Instead, I would take on those clients and help them get
20 their budget together, hire their subcontractors, figure
21 out what everything is going to cost and make sure we had
22 exact drawings of everything they were going to implement
23 and knew what it was going to cost ahead of time so that
24 they had a full idea of what the project was going to
25 cost before they spent any money getting started.

1 Q So you remember about what time, what year you
2 started that?

3 A I want to say Adam was like in the second
4 grade. It was probably about two years after I started
5 at Kitchens of the South. About 2004 maybe. 2003.
6 Something like that.

7 Q Now, let me go back to something. You
8 graduated high school in Fresno.

9 A Uh-huh.

10 Q Were you also in the Navy?

11 A Yes.

12 Q Went through basic training and all that with
13 the Navy?

14 A Yes, sir.

15 Q You were a cook?

16 A Yes.

17 Q And you been married to Scott for 20 years?

18 A Yes.

19 Q And, uh, now, let me kind of -- describe what
20 kind of projects you were involved with as it relates to,
21 uh, your kitchen design business. What kind of projects
22 would you do?

23 A Well, like for example, Mrs. Sharmek who was
24 here earlier, her husband came to Kitchens of the South
25 one day and said I have this house and it's a disaster.

1 Can you come out and look at it. So I said I would and I
2 came out and looked at it. It was a total disaster. I
3 think there were like two forks in the drawer. I don't
4 know if he was really living there.

5 And we started from scratch. We designed a
6 kitchen that was simply in the same space the kitchen was
7 in before but just increased the amount of storage and
8 made the house more sellable. Then I went with my
9 company -- and Kitchens of the South did that project.
10 Then with my company, I went on to have the whole entire
11 house redone so that it could be put on the market and
12 sold. We finished all the floors. We put in all the
13 draperies. We purchased furniture.

14 That was not only going to suit that house so
15 that it would show well and sell well, but we were
16 purchasing pieces with the new house that they were going
17 to be living in once that house sold so that we weren't
18 wasting our money and buying things that couldn't be
19 reused in a new house. So there's a lot of measuring and
20 figuring out this looks good here, but is it really going
21 to fit over there and that kind of stuff going on trying
22 not to spend too much money on that house because we knew
23 we just wanted to sell it.

24 And when that was done, the new house that they
25 purchased in Parkins Mill, again from scratch, we tore it

1 completely to the ground as far as all the inside things.
2 We hired a contractor and removed walls and replaced
3 every light fixture, every piece of tile, every fixture,
4 everything in the whole house.

5 Q So prior to September the 4th of 2008, what was
6 your typical day, your typical workday and school day be?

7 A I mean, I would get up at 6:00. Take a shower.
8 Get ready. Get the kids up by 7:00. Have to be at
9 school at 7:45. So I cooked them breakfast. Make their
10 sack lunches and put them in the car. Drop them off at
11 carpool. My kids haven't really ever gone to the same
12 school, so I usually have two drop off points.

13 And then I would begin to work my jobs.
14 Usually, I'd start at Kitchens of the South in the
15 morning. The installers come very early in the morning
16 to pick up the cabinets that are in the area where the
17 trucks are delivered. You might have to tell them here's
18 the drawings for today. This is what you're installing.
19 Make sure you have boxes 1 through 34 from jobs X, Y, Z
20 and you would make sure that they have everything they
21 need and answer as many questions for them as they can so
22 that you are not getting 9 zillion phone calls all day
23 long from them asking where this goes, where that goes.
24 They have everything.

25 Then I would pick up samples, door styles, tile

1 pieces, carpet samples, drapery samples, whatever I
2 needed for the rest of my appointments for the day. I
3 would put those on the car. If I had an appointment
4 right then, I would go.

5 But most of the time, it was a series of
6 errands. Clients who had called and left me messages
7 over the night or sent me an email over the night saying
8 anything from the spring on the automatic trash can
9 opening has popped off and I needed somebody to come fix
10 that. The hardware finish on this knob is coming off.
11 Can I get a new knob. Those kinds of things, those are
12 errands, I guess, or list items. I would try and execute
13 those in between seeing clients that I had meetings with.

14 A lot of times, I would just meet a client at
15 the fabric store cause I would have all the drawings of
16 what window treatments were supposed to look like plus
17 the measurements of the windows so that we could get
18 accurate estimates from fabric needs and labor needs and
19 all that stuff. Then I would go get the kids from
20 school. That starts at about 2:15ish because they get
21 out at 2:30 so you'd have to get in line at the carpool
22 and whatever and get them.

23 Then, uh, I have always tried not to take a lot
24 of night appointments. But if I do have clients that are
25 on the other side of town, like Spalding Farms or

1 Cobblestone or any of those things that are over on the
2 other side of town, then when the kids are at soccer
3 practice, which is way on the other side of town, then
4 while they're practicing, I could run and drop off fabric
5 samples or tile samples or whatever to a client's house
6 because the kids are at practice with their coaches.

7 Q Then you'd have to pick them up, wouldn't you?

8 A Yeah. Go back and get them and then we would
9 come home. Usually, I did all the cooking for us on
10 Sundays so when we get home, dinner would already be
11 ready. On Sunday, I would have one 13-by-9 with, say, a
12 casserole in it, another thing in a crock pot. So
13 whatever I threw in the oven that morning on a timer
14 would be ready when we got home.

15 Q So what kind of projects were you involved in
16 on September 4th of 2008?

17 A I was working on the Teague's Renovation and
18 that was on Riverside Drive facing the country club,
19 Greenville Country Club. It's a beautiful home that they
20 had purchased. But the folks who had lived in the home
21 before had teenage children who had grown and gone away
22 to college, the people who were moving in had two-year-
23 old twins and a five-year-old boy. A lot of upstairs
24 changes to the bedrooms and a lot of decorating changes.
25 The house needed to be made a little less formal. It was

1 a full kitchen renovation. All hardwood floors were
2 refinished. All lighting fixtures were replaced. All
3 draperies were replaced. There were minor
4 reconfiguration of the walls and structural system in
5 order to get the master bath and bedroom a little bit
6 more, uh, aesthetically pleasing.

7 Q Okay. Is that the only project?

8 A I was also bidding on a job in Cleveland
9 Forest. I had just finished all the drawings. We had
10 met with the initial contractors to start getting
11 contractor bids for that job. That was a wine cellar
12 addition as well as sort of mud room/game room addition
13 that was coming onto the side of the house.

14 Q Okay. So tell the jury about the day of this
15 accident. What was involved in your day on September
16 4th?

17 A Got up. Made the kids breakfast and lunch.
18 Dropped them off at school. I went to the office and
19 picked up some supplies that I needed for Mrs. Teague.
20 She had several pieces of fabric. She needed a tile
21 sample and some things. I had all that stuff in the car.
22 Dropped those off for her. Then I met with -- at the new
23 house. I met with the drapery people about taking some
24 measurements of some windows that needed to be covered
25 before they moved in.

1 Then I had a lunch appointment that day. Mrs.
2 Sharmek, who was a past client of mine, mother had
3 informed me that it was her 40th birthday and they were
4 having a luncheon. So I drove to the other side of town,
5 to Thornblade and had lunch with several of her high
6 school friends and her mother. Then I left there early
7 from the luncheon so I could be to the school in time.

8 Q Okay. About what time was that?

9 A I'm always shooting for something around 2:00
10 or 2:15. So I imagine it was around 2:00 or 2:15.

11 Q Okay. What route did you take to pick the
12 children up?

13 A 85 to Mauldin, Pleasantburg exit. And then
14 Mauldin turns into Augusta. So I was coming up Augusta
15 to the school.

16 Q Tell the jury what happened.

17 A I was coming up Augusta. A lot of traffic
18 coming out of downtown. I was going toward downtown.

19 Q So that was the traffic going toward downtown?

20 A I didn't really see -- there's not much that
21 time of day. It's mostly the opposite. Then, about five
22 o'clock in the evening, it kind of goes the other way.
23 People are going downtown to eat, I guess, or something.
24 I don't know. But that time of day, it was not really
25 that much in-going. It was all out-going traffic.

1 Q So the traffic going the opposite direction of
2 where you was heading --

3 A Yes.

4 Q --- your traffic was -- how would you
5 characterize it?

6 A I would say medium. I wasn't the only car in
7 the road. But it wasn't like I couldn't change things or
8 anything like that.

9 Q And so what happened?

10 A I stopped at the intersection in front of
11 Westminster Pres. and was turning left.

12 Q Is there a red light there or a green light?

13 A There's a light. But the light was green at
14 the time that I stopped at the intersection. I had to
15 stop anyway because there was so much oncoming traffic.
16 I was waiting for it to clear. By the time the light
17 turned yellow or whatever, I would have the opportunity
18 to go.

19 Q Did the light ever turn red on you while you
20 were there?

21 A No, that light takes forever because nobody
22 uses that street, so I just sat there.

23 Q All right. What happened as you sat there?

24 A I was hit from behind.

25 Q Did you ever see the vehicle behind you?

1 A Never.

2 Q Did you look for vehicles behind you when you
3 pulled over to make the turn?

4 A I -- I always look behind me when you turn a
5 turn signal on on Augusta Road because there are no turn
6 lights. So you want to make sure you are not kind of
7 messing somebody else up by not giving them enough notice
8 to change lanes or get out of the way. I always look. I
9 didn't see a single car on the whole road behind me when
10 I stopped. So I went ahead and turned my turn signal on.
11 I sat there for a long time all by myself waiting for the
12 traffic to clear. It wasn't like I stopped and then I
13 was hit. I stopped and I sat there. Must have been 15,
14 20 cars went by before I got hit.

15 Q What happened when you got hit? Tell the jury
16 what happened when you got hit?

17 A I got hit. The next thing I remember was I was
18 sitting in the middle of the intersection and, literally,
19 people were, like, trying to drive around me. I was
20 blocking the oncoming traffic that was coming. Not both
21 lanes, but just that center lane, the middle lane. They
22 couldn't get -- they had to get -- they had to crowd the
23 people in the next slow lane over in order to get around
24 me. I was basically in the middle of the intersection
25 plus when the light did actually change from, I guess

1 it's Augusta Place right there. Those people couldn't go
2 at all in either direction. I was in the middle of the
3 intersection at that point.

4 Q So you have a recollection of actually the
5 impact or after the impact?

6 A I could really only remember I'm blocking
7 traffic, oh, God, I'm blocking traffic.

8 Q So what happened then?

9 A The next thing I remember after that was, uh, I
10 remember Mrs. Wald coming to the car and asking me if I
11 was alright. I don't remember if I was in the
12 intersection then or if I was on the side by the church.

13 Q Did you tell her that my neck and head hurt?

14 A I don't remember. I just remember she said are
15 you okay. I said I -- I don't know what I said.

16 Q So after that, what happened?

17 A Uh, I remember another lady came to the car and
18 said that she had seen the accident, she was walking to
19 the school to pick her kids up. She asked me if she
20 needed to notify the school that I wasn't going to be
21 there to meet my children. Were they walkers or -- she
22 was asking me were they walkers. I said yes, they were
23 going to be back walkers. I needed for the school not to
24 release them. They won't have anyone to meet them. She
25 said that she would call or tell someone or whatever.

1 Q Was that Mrs. McFall or do you know?

2 A I don't know who it was. I didn't know the
3 person.

4 Q All right. At that time, you were still
5 sitting in the intersection or --

6 A When I was talking to the person who was asking
7 about my children, I was definitely on the side of the
8 street where the church is at.

9 Q How did you get there?

10 A I don't know. I had to have driven the car out
11 of the intersection.

12 Q After you spoke with that person, what did you
13 do?

14 A She said that the police are coming and I just
15 sat there waiting for the police.

16 Q You remember calling your husband on the phone?

17 A No.

18 Q You don't have any recollection of calling your
19 husband?

20 A No.

21 Q All right. So what happened then after the
22 police got there?

23 A The officer asked me if I could get out of the
24 car. I opened the door and tried to get out of the car.
25 I swung my legs around, but my legs were shaking. I

1 said, no, I don't think I can.

2 Q What did you do then?

3 A He told me to sit there and he just walked
4 away. So I just sat there. Then the next thing, I heard
5 the ambulance or whatever, the people who are called that
6 come, they came. And the guy came to the window and
7 asked me a bunch of questions. I just kept telling him
8 over and over I have to get my kids. I have to get my
9 kids. They are at the school. Assuming by this time,
10 school was out. So my kids were literally sitting in the
11 office of the school.

12 Q Did you have to wait for the officer to finish
13 some paperwork and forms?

14 A I don't remember.

15 Q You remember receiving a form from the officer?

16 A Yes, it was a yellow piece of paper that had
17 some kind of picture in one corner. I used that piece of
18 paper to fill out -- there was a whole bunch of questions
19 at the doctor's office when I got there about what
20 happened. I used all that information from that piece of
21 paper he gave me.

22 Q Did that piece of paper given to you describe
23 the location of the accident?

24 A Yeah, it told the street names and all that.
25 Most people where I live, they don't say Augusta Place.

1 They say, you know, at Westminster, because everybody
2 knows everything down there by what's on the corner of
3 this, that or the other thing. I wouldn't have known the
4 name of that street. I would have said where Westminster
5 is. That piece of paper had the names of all the streets
6 and everything on it.

7 Q Okay. So did you proceed on to pick your
8 children up?

9 A Yes. Uh-huh.

10 Q How were you feeling at that time?

11 A When I got to Adam's school, I had to get my
12 cell phone out of my purse to call the nurse -- to call
13 the office to tell them to release him to the park. I
14 couldn't walk from the car to the school to get him from
15 the office. So then he came out to the car with the
16 school secretary and they put him in the car with his
17 friend.

18 Q Okay. And then what did you do from there?

19 A Then I drove to CTC and picked up Ana from the
20 school.

21 Q Did you go in and get her?

22 A No, Adam went in and got her.

23 Q Where did you go to from there?

24 A The doctor's office.

25 Q Was that Dr. Shride?

1 A Yes, sir.

2 Q Okay. Now, you had previously been treated at
3 Dr. Shride's office.

4 A Yes.

5 Q You see any reason why you were treated at a
6 chiropractor's as opposed to a family doctor?

7 A I just grew up in a family where we, uh, -- I
8 don't know. We just aren't really supposed to be
9 complaining about stuff. My parents always took a
10 holistic approach to health care and, you know, spinal
11 health has always been a big part of how you stay
12 healthy. So I just have always seen a chiropractor as a
13 child. It's something I'm very comfortable with. Of
14 course, if I had a sore throat, I wouldn't go there. But
15 I didn't. I had a sore neck and a headache. So it just
16 seemed like the logical thing to do.

17 Plus, I knew that he had an x-ray machine and
18 would x-ray right away. So if anything was broken, he
19 would just send me right to the hospital right then. So
20 I just knew I could get the fastest health and service
21 while going there.

22 Q Tell the jury how you were feeling at that
23 time.

24 A I just --

25 Q What were your symptoms?

1 A I just remember feeling like I couldn't move.
2 If I turned left, right, anything, it was just going to
3 -- it felt like I was just on the brink of something
4 really bad happening. It was so sore. I couldn't really
5 move left to right with my head. Uh, it was just very,
6 very, very painful.

7 Q Now, in your prior treatment with Dr. Shride,
8 could you explain that to the jury?

9 A I -- we moved to Greenville. I hadn't seen a
10 chiropractor since I was in high school. But we moved to
11 Greenville and I bent over to pick something up off the
12 floor in the children's bedroom. I don't know if I kind
13 of was twisting at the same time I was doing it or what,
14 but I just heard this loud popping noise way down almost
15 to my tail bone. It just hurt like crazy to put any
16 weight on my left leg. So I took some Advil. I didn't
17 really -- I thought it would work itself out after I
18 slept on it or whatever, but it just got progressively
19 worse and worse. Every time I'd step down on that foot,
20 it would hurt. Finally, I made an appointment. I just
21 picked him out of the phone book.

22 Q That's how you got to see him initially. You
23 got good results for that?

24 A Yes, he's very nice.

25 Q Uh, so there's a form from 2002 that Dr. Shride

1 filled out. I'm sure you heard some testimony about
2 that. Did you ever tell him that you had four prior
3 concussions?

4 A No. I had fallen off my horse quite a few
5 times between the age of 11 and 14. I'd only ever been
6 to the doctor one time which was for some stitches, you
7 know, contusions that were on my neck. There is probably
8 four, five, six different places where I had to have
9 stitches and Neosporin and big huge band-aids and all
10 that stuff because I had all these abrasions all over my
11 shoulder and the side of my face.

12 Q To your knowledge, you ever had any prior
13 problems with your head?

14 A Never.

15 Q You have any explanation for how that got on
16 his report?

17 A I have no idea. The only thing I could ever
18 think was that he must have understood contusions for
19 concussions. I have no idea. I never had any kind of
20 head injury. There were many times that I fell off and
21 my mom would be like waking me up every hour and looking
22 in my eyes and things like that because she was looking
23 for the symptoms of head injury so she would know to take
24 me to the doctor. There never were any of those
25 symptoms.

1 Q Okay. Uh, so, uh, when you went to Dr. Shride,
2 what did he do for you there?

3 A The day of the accident?

4 Q Yes.

5 A He did -- I mean, I was very sore. I was
6 totally on edge. I did -- usually, when you go for an
7 adjustment, they are like cracking your back and making
8 all of these -- with your shoulder and all this stuff.
9 I, like, literally did not want to be touched. But I
10 knew that if he didn't do something, I was not going to
11 be able to move when I woke up the next morning.
12 He did some very minor adjustments. But he
13 also has these things that are like these really cold pad
14 things that they put on your muscles. Then you have to
15 just lay there face down on this table thing. It tingles
16 like an electrical kind of current. It supposedly
17 relaxes the muscles so that you don't get that real stiff
18 thing going on. I had to sit and do that for, I don't
19 know how long.

20 Q Was your neck swollen three times its normal
21 size?

22 A I don't remember it ever being swollen three
23 times it's normal size. It was very tender to the touch.
24 But I'm sure that Dr. Shride would have indicated on --
25 you know, he would have sent me to the emergency room if

-1 I had any swelling or anything like that.

2 Q So how were you -- at the time that Dr. Shride
3 addressed your neck, how was your brain working at that
4 point? I mean, I know you can't -- how are you, uh, --
5 how was your mind working?

6 A I don't remember that much about being there
7 except that I was very worried, I mean, I was in the
8 doctor's office with three kids. It's just not a
9 fabulous scenario. These kids were not very old. Adam's
10 only in the fifth grade. Ana was in the third grade.
11 So, you know, it's only about 10 minutes before they
12 start being a pain in the tail.

13 Q You had somebody else's child with you too?

14 A Yes, Justin McFalls was with us that day. At
15 some point when I got to the doctor's office, I do
16 remember talking to school and talking to Mrs. McFalls
17 who was away at a funeral, which was the reason that I
18 had her son.

19 Q That's a different McFall than Kim McFall?

20 A Yes, McFalls with an "s".

21 Q Okay.

22 A Linda McFalls. She was out of town at a
23 funeral. That's why I had her son.

24 Q Okay.

25 A And so she was en route, of course, from a

1 funeral shortly after to take over the care of the
2 children, I'm assuming.

3 Q Well, how was your head feeling?

4 A Well, I had a horrible headache. My neck was
5 killing me. I felt bad. All I wanted to do was go home
6 and go to sleep and take some Advil.

7 Q Were you having any other symptoms, like nausea
8 or sweating?

9 A I had told Dr. Shride I didn't feel good. Felt
10 sick to my stomach. I just figured I was stressed out.

11 Q So how did that progress from there?

12 A Well, he has like a treatment plan. When he
13 sees you, he figures out what it's going to take to -- he
14 estimates what it's going to take to get it right. So
15 then, he told me come back tomorrow. I basically came
16 back every day for, I don't know, a few weeks, three
17 weeks, something like that. He saw me every day. He
18 even came in on Saturdays and, uh, there was no clients.
19 The office wasn't open. But he came in to do my
20 adjustments and to put the little -- to try and get the
21 muscles to relax.

22 Q Did that help you?

23 A Yes. Uh-huh.

24 Q Uh, did you continue to have any problems with
25 your head?

1 A You know. I had told him at the time that the
2 pain was not so substantial. I got to where I'd wake up
3 in the morning and feel kind of good. And then about
4 2:00, 3:00 in the afternoon, it would start to, you know,
5 be really heavy to hold it up, very sore again. That's
6 when I started talking with him about the fact of the
7 fogginess and all this was going on.

8 Q So in the accident, you don't recall your head
9 striking anything?

10 A I don't. After I -- after Scott was home and I
11 had a chance to go outside and I'd look at the car and
12 all that, you'd see on the glass window of the passenger
13 side of the window, I was coming from a luncheon. There
14 was like eyeshadow and lipstick all smeared on the --
15 facial grease or whatever you call it all smeared on the
16 driver's side glass.

17 Q The window?

18 A Yeah, the window. So I assumed that somehow, I
19 must have -- it smeared like I just went forward into the
20 intersection. When I realized I was in the middle of the
21 intersection, it literally looked like I had turned
22 although I was blocking oncoming traffic. I must have
23 kind of gone to the side. The stuff on the glass is what
24 has sort of indicated to me. I'm assuming that. I don't
25 really know.

1 Q You noticed anything on the steering wheel?

2 A No.

3 Q I guess you didn't notice anything on the
4 headrest because that would normally be where your head
5 is. Uh, so you went to Dr. Shride. How are you doing
6 with your work, the Teagues and making your bids on the
7 project?

8 A Well, the Teagues were an extremely, extremely
9 high maintenance client. She needed multiple times a day
10 assistance. She did not go anywhere and pick anything
11 out without me being with her to pick things out. It
12 became pretty evident right away that even though we were
13 about 75 percent of the way, maybe less than that through
14 that total project that, uh, she told me after only three
15 or four days after the accident that she was going to
16 need to hire somebody else.

17 She needed to move into the house and she
18 wanted to keep up with the same pace that we had always
19 kept up and I obviously needed to take a little time off
20 to see the chiropractor every day and to lay down and all
21 that kind of stuff. So she hired someone else to finish
22 the project.

23 And the Lokeys were also in quite a hurry to
24 complete their project and get it started. So they let
25 me know that they -- and they paid me for the work that I

1 had done thus far, but proceeded to hire someone --
2 actually one of the contractors that I brought to the
3 job. Hired him. And they proceeded to get a different
4 decorator and finish the project.

5 Q Now, did your chiropractor center treatment,
6 uh, I think from -- it's kind of backwards, but from
7 September of '08 to, uh, I guess January, uh, the 5th of
8 '09?

9 A Yes.

10 Q And so in the meantime, I think you went to Dr.
11 Benson-Lark, the nurse practitioner -- I'm not sure how
12 that works.

13 A Right.

14 Q That's with the Premier Family Medicine.

15 A Correct. Premier Family Medicine was my
16 regular place that I would go to have physicals and what
17 have you. So when I told Dr. Shride about the foggiess
18 and the not -- I didn't know what to call it. Just
19 didn't feel like it was clicking for me. I couldn't
20 quite get up to speed. He said that that really wasn't
21 his thing and I needed to probably go and check in with
22 my doctor. That was maybe only a week after the accident
23 or a week after that or something like that. So, I had
24 all the confidence that Dr. Shride was going to be able
25 to fix whatever was wrong and that be the end of it. So

1 he sent -- well, he didn't send me. He just said that he
2 didn't take care of that. I didn't know where else to
3 start. I was going to the place I had always gone and
4 had my physicals. So I went there.

5 Q Okay. And, uh, what kind of symptoms were you
6 having when you went to see Mrs. Benson?

7 A Just, uh, very -- just was really hard for me
8 to do the exact same things I was always doing. It's
9 really not uncommon for me to get a phone call while I'm
10 at my kid's soccer practice for the evening from a client
11 saying, you know, one of the kids bumped the kitchen
12 chair into the wall and there's a big scratch. What
13 color did we paint the kitchen. And I could just say
14 Sherman Williams SW5470 and it's sky blue, whatever. I
15 could remember these things. Now, I'm digging through
16 files to look for something that I just painted a week
17 ago cause I can't remember what color we put on the wall
18 or, you know, whatever.

19 Q So it was Dr. Shride's idea that you go to see
20 your family physician?

21 A Right.

22 Q And, uh, so what did you do from there after
23 seeing her?

24 A I think she said she needed to cover her basis.
25 She ordered an MRI which, you know, was that whole

1 injection thing with all the ink. And I was not super
2 excited about that. But she said it was necessary in
3 order to see if there was any tearing or anything like
4 that. So I went and did that. And --

5 Q So that's, uh, September 17th?

6 A Yes.

7 Q All right. And then did you go back to Doctor,
8 uh, -- Nurse Practitioner Benson?

9 A Yes.

10 Q All right. And where did you go from there?

11 A She also referred me to -- because she knew
12 that I was not -- I was not going to take any kind of
13 narcotics, not while I was driving my children. She also
14 prescribed for me to go to some counseling place to talk
15 about depression or stress management or something of
16 that nature. So I went to that appointment as well. I
17 think that was the same week as the MRI or somewhere
18 right around the neighborhood. She prescribed both of
19 those things.

20 Q The Journey Center thing?

21 A Yes.

22 Q She mentioned that in her deposition.

23 A Uh-huh.

24 Q Well, so did you ever have any problems with
25 depression before?

1 A Never. Nor was I having any at that time.

2 Q Okay.

3 A I was, you know, I guess pissed off is a fair
4 word. I was mad. Something wasn't connecting and wasn't
5 working. I couldn't get it to work. It was frustrating.
6 It was making me angry. I wasn't like, you know, sitting
7 around suicidal over the issue. I was mad and I wanted
8 someone to fix it.

9 I didn't want them to give me a bunch of drugs
10 that made me more, you know, out of it. The whole point
11 was that I was out of it. I couldn't make the
12 connections. There are just all these narcotics that
13 make you more relaxed and fall asleep and gain weight. I
14 really wasn't seeing how that was fixing the situation.
15 She couldn't tell me that it would fix the situation.
16 Just that it would calm me down a little bit until I
17 could -- you could be calmed down.

18 Q And so, uh, you, uh, treated with Dr. Benson
19 and then, uh, you, uh, went to Dr. Kistler. How did you
20 get to see Dr. Kistler?

21 A Dr. Benson, I believe, decided that she wanted
22 him to look at the MRI as well. I don't remember why she
23 wanted me to see him. I guess because I was still having
24 -- when I came to the followup appointment with her, I
25 was still having those problems. So she sent me to him

1 to -- I -- he doesn't really examine you. It's like he
2 doesn't take your blood pressure or check your heart or
3 any of that. He really just talks to you about what your
4 problems are. He looked at the MRI. He just said that,
5 oh, these kind of -- you have a concussion or a coup
6 contre coup and they heal themselves so don't worry about
7 it. Go home and relationships. Then he gave me more
8 narcotics and muscle relaxers and antidepressants and a
9 whole slew of other crude and said to go home and take
10 all these drugs and you'll get better.

11 Q You also went to Vaughn, Buchanan and Shelley
12 Physical Therapy. Could you tell the jury what that was
13 about?

14 A That was the shoulder. Any time I would be
15 typing, holding my arms aloft for any period of time, the
16 shoulder that had the seatbelt on it is very sore right
17 here where the muscle connects itself to the neck. And
18 so they sent me there. That was very helpful, very
19 expensive, but very helpful. They did all these rubber
20 band exercises and stuff.

21 They basically just told me that I had learned
22 to compensate for that injury and they had to unteach me
23 how to stop compensating. I was -- so they did all these
24 exercises with me for several weeks. They readjusted the
25 height of my chair, the height of my work station and all

1 that stuff so that I was in a more comfortable position
2 for using, uh, the typewriter or the computer.

3 Q Who sent you to Vaughn, Buchannan and Shelley?

4 A Mrs. Benson.

5 Q Okay. Now, uh, records indicate that you had
6 ten visits with them.

7 A Uh-huh.

8 Q But there also was some question about you
9 being discharged or not showing up. Could you explain
10 that to the jury?

11 A After I had been to the ten visits, we had
12 basically assumed that I could keep the pain at bay
13 through certain at-home exercises. And we had basically
14 used up all of the -- you have to go to physical therapy
15 three times a week. At this point, I'm paying cash for
16 all of these visits out of my own pocket. I mean, it's
17 expensive. I just used as much of it as I could afford
18 to do.

19 And they gave me a strategy for how to go
20 forward and keep the pain at bay by doing these certain
21 exercises and having my work station set up a certain way
22 as far as driving, which was the other exercise where I
23 have to kind of keep my arms aloft. I mean, I just --
24 going out of town, of course, Scott would drive long
25 distances. If we have to go to a soccer tournament and

1 he's not going, then I'll partner with another mom and
2 split the gas with her and she'll drive.

3 Q Why didn't you go to Dr. Shride about your
4 shoulder as opposed to Dr. Benson?

5 A Cause it's not really a bone thing. It's the
6 muscle itself and he doesn't do that. He just does the
7 bones, the spine.

8 Q And was that beneficial to you though, the
9 treatment you received from --

10 A Uh-huh. Yes, very. I would say out of
11 everything that's happened, the journeys -- the physical
12 therapy has been the most helpful of anything that anyone
13 has done in this whole process.

14 Q So how are you doing -- by the time you're done
15 with physical therapy, how are you doing mentally?

16 A Uh, it's really gotten quite a bit better than
17 it was the week of the accident. But that last part,
18 it's not fixed. It's frustrating. I have taken this
19 sort of home improvement approach to my healthcare. It's
20 like a broken garbage disposal. I'm on the internet
21 researching how to fix this problem. I'm talking to
22 doctors. Every time I came up with something -- I think
23 Dr. Kistler had to see me several different times because
24 of something I found on the internet that he had
25 mentioned to me and I wondered what about this, have you

1 read this article, do you think we could try this. And I
2 was looking for something other than just drugs as a
3 band-aid for fixing the problems.

4 I was looking for somewhere I could go that I
5 could really figure out why I couldn't find a word to
6 finish the sentence and why I was just melting down if
7 somebody tried to ask me a question while I was doing
8 something else and what all these tears were about. I'm
9 not a complainer. I never been a complainer. I don't
10 know where all that was coming from. So it's
11 frustrating. You're getting mad at yourself all the
12 time.

13 Q So did you go back to Dr. Kent Kistler?

14 A Yes. I went back because I had read an article
15 about this thing that they were doing at Duke, which was
16 an MRI. They'd go ahead and put the dye in. Then they
17 ask you questions. You're in that tunnel and you're not
18 supposed to move. This is kind of the opposite. They
19 are asking you questions while you're in there. You are
20 to respond. They can see the brain activity while you're
21 doing that. But he didn't think that was a (inaudible)

22 Q So, uh, what did you -- I mean, what did you do
23 about this. You wanted it fixed.

24 A After that, when I took him that thing from the
25 internet that I had found about the talking and asking

1 questions while you're under the MRI, he then at the end
2 of that appointment sent me to Roger C. Peace, which I
3 didn't really know that much about at that time. He's
4 the one that told me that they -- that's what they do.
5 It's physical therapy and rehabilitation of brain injury.
6 So, then I went, of course, and made my appointment to go
7 there and found out the cost of all of that.

8 Q Well, so you initially saw Dr. Kistler in
9 October of '08. Went back in April of '09 and then June
10 of '09 and then October of '09 and then October of 2010.
11 So, uh, in the interim, you went to see Dr. Jones?

12 A Dr. Kistler sent me to do Dr. Jones.

13 Q And that was the gentleman that testified
14 yesterday?

15 A Correct.

16 Q And what did you do -- when you went to see Dr.
17 Jones, what did you do for him. What was the process you
18 went through?

19 A The first day I went, he just asked me a whole
20 bunch of questions about my past and my education and all
21 that kind of stuff and then decided based on the file
22 that Dr. Kistler and Dr. Benson had sent to him that he
23 was going to do some tests, but that they were going to
24 take all day long. It was like an 8:00 to 5:00 sort of
25 thing. So he had to schedule that and I had to come in

1 and take that test.

2 Q So what were those tests?

3 A It was everything from little blocks that you
4 had to put in these squares in a certain amount of time.
5 They would give you like a half a drawing. You had to
6 finish the drawing. They would show you the drawing and
7 take it away from you. You had to draw it. They gave
8 you verbal math questions that you had to answer. They,
9 uh, -- there was all this tapping on little instruments
10 to see how fast you could tap stuff. There was patterns,
11 listening to patterns and then repeating the pattern. It
12 went on all day long for eight hours. I think I was able
13 to bring my lunch to the appointment. I had to go sit in
14 their office in their kitchen area and eat a bag lunch
15 and then I had to go back in and finish the rest of the
16 test.

17 Q And then you went back to see Dr. Kistler after
18 that?

19 A Yes, to -- because I don't -- no, I do think
20 Dr. Jones' office called me back to share sort of the
21 results. I'm not really sure what that meeting was
22 about. Then I went back to Dr. Kistler because I needed
23 to know if he -- you know, if the test showed him
24 anything that was going to help, you know, fix it.

25 Q And was there anything to help fix it?

1 A No. He didn't say that there was at that time.
2 He told me that I was slow to recover from very typical
3 symptoms of a concussion and that he felt that over the
4 course of the next year that it should be fine, but it
5 could take up to two years for the recovery.

6 Q Now, when you went back to Dr. Jones about --
7 to find out if you failed the finger tapping test?

8 A He really never used the word fail. Uh, in
9 fact, uh, I don't really remember him sharing much of
10 anything of results with me other than he kind of said
11 the same thing which was that there was some damage or
12 impairment or whatever word they used. They felt that it
13 would be something that would resolve itself in a matter
14 of -- as much as two years but within two years time.

15 Q Tell the jury about this thing, about the loss
16 of smell.

17 A Well, you know, I cook. That's my thing. So
18 the kids started complaining that stuff was spicy and
19 stuff was salty or whatever. I was -- you know, most of
20 my kids complain about the broccoli. I wasn't noticing
21 any of these things. So, you know, I don't know what to
22 say about that. It exists. I try to be conscious of it.
23 I don't use a lot of salt. I try to take it easy when it
24 comes to things like the chili and things like that
25 because I know a lot of people are sensitive to the

1 spice. But my husband enjoys spicy food so I just sort
2 of make do with it.

3 Q When did you notice the loss of smell?

4 A When all the complaining started. The kids are
5 just always complaining about everything. I would taste
6 it and I'm like I don't see what you're talking about.
7 And I -- now, even now there's just things that I used to
8 just love. They don't taste the same. I can't quite be
9 using the same recipe I've used forever. But I have to
10 just completely drown something in black pepper or salt
11 or whatever just to get the flavor going for me.

12 Q So you weren't getting much progress through
13 the neurology evaluation. You got evaluated by Dr.
14 Jones. How did your symptoms persist, say, in 2009?
15 Were you improving?

16 A No, after the first two or three weeks, that
17 was the improvement period. The pain had, you know, in
18 that first initial period where I was seeing Dr. Shride,
19 I was mostly just focused on the pain and getting rid of
20 that and the neck problem and the stiffness and all those
21 things. Once that was gone and the shoulder issues got
22 taken care of or was manageable, I should say, through
23 the physical therapy stuff that I learned, then I was
24 really just sort of annoyed with the fact that I wasn't
25 able to finish these sentences, my ability to multitask.

1 It was just really -- it was an issue. It was painful
2 for me to fix something and it's just not fixed and
3 you're just mad about it all the time.

4 So I kept going back to Dr. Kistler and say you
5 said it would be gone in two years and it's still not
6 gone. It's still doing this, this is still happening and
7 that's still happening. He just kept saying that, you
8 know -- then I'd bring in these articles. I kind of felt
9 stupid like one of those crazy people that brings in all
10 this stuff. I was looking for an answer, a way to fix it
11 instead of just --

12 Q Let me ask you something. There was a thing
13 about your deposition, Mr. McGarr's taking of your
14 deposition on a particular day and your visit to Dr.
15 Kistler's office. How long in advance would you have to
16 schedule an appointment with the neurologist?

17 A Dr. Kistler, if you need to see him right away,
18 it's three months to get in. If it's not right away,
19 it's six months.

20 Q So that appointment that you had coincided with
21 your deposition, you saw Dr. Kistler, that appointment
22 had been set for how long?

23 A At least three months.

24 Q And, uh, so that wasn't something that you had
25 planned?

1 A No. I might have, you know, if somebody else
2 tried to schedule an appointment, I might have said I
3 can't come in the morning because I have to see Dr.
4 Kistler that day. It might have been that the deposition
5 had to get pushed back to the afternoon because of the
6 appointment. But the appointment wasn't scheduled
7 because of the deposition, which is two things I had to
8 do in one day which probably completely stressed me out.

9 Q Uh, let's go back to 2009. Can you tell the
10 jury how you were functioning in 2009 as a result of this
11 September the 4th, 2008 accident?

12 A I, uh, used to contribute. And, uh, that's not
13 super easy.

14 Q You used to contribute?

15 A Yes.

16 Q What do you mean by that?

17 A Just, uh, well, I'm used to contributing
18 financially every financial need that my children have
19 had as far as clothes and shoes and soccer coaches.

20 Q Soccer coaches?

21 A Oh, yes.

22 Q You used to contribute to the soccer coaches?

23 A Yes, my children play on a travel league. They
24 are not recreational leagues.

25 Q Okay.

1 **A** Music lessons, instruments, all of the things
2 that the public schools maybe don't provide that I
3 believe include -- need to be included in a well-rounded
4 education. All those things are things I personally have
5 always paid for. Also household projects. If I wanted
6 to say bring in three new fruit trees this year, I would
7 be the one that would be able to pay for those trees and
8 buy them and call Bob Jones and place an ad for a couple
9 of guys to come that weekend and help me dig some holes
10 and put them in the ground and have a truck of mulch
11 delivered and those kinds of things.

12 And I am not contributing anything to our
13 household in the financial respects anymore. My
14 husband's job have taken over paying for all of those
15 things. There are quite a few things that we had to
16 forego doing and maintaining because I am not
17 contributing anything.

18 **Q** Why are you not contributing financially?

19 **A** The primary way that I get business in
20 Greenville is through word of mouth. So, of course, when
21 you lose of all your clients in the matter of a week's
22 time because you can't finish the job and you kind of
23 leave them hanging with a half constructed house, that
24 doesn't bode very well for your organizational skills
25 regardless of what the circumstances might be. So I'm

1 sure that it's, in part, some of the reason why I don't
2 get as many calls, but also I can not do multiple jobs at
3 one time. I can really only handle one client just
4 because my first priority needs to be to the children and
5 to Scott to make sure I don't forget to pick them up or
6 don't leave the crock pot to fry everything that it does
7 and ruin the food or whatever. I have responsibilities
8 to make sure that, you know, the laundry is done.

9 Q Have you done that? Left the stove on?

10 A Yes.

11 Q How often?

12 A I ruined an indestructible pot because I walked
13 away from it while it was steaming something. It just
14 completely burned up on the burner, you know, things like
15 that happened. I tried -- I have tried to compensate for
16 those things by just really being more attentive. I try
17 not to let myself get distracted. I don't use my cell
18 phone while I'm in the house because I know that I -- if
19 I start talking on the phone while I'm cooking dinner,
20 I'm going to forget that I'm cooking dinner or I'm
21 supposed to be adding something, I'm going to miss
22 something that I'm doing. So I shut the phone off or I
23 put it away.

24 Whether the mail comes and I'm in the middle
25 of, you know, doing the laundry or cleaning, I don't

1 switch immediately over to doing the mail or assorting
2 the mail because then I'll forget all about the laundry
3 and then I've got a whole load of stuff that was wrinkled
4 that I have. And it all has to be ironed or whatever
5 because I didn't get it hung in time. Things like that.

6 I just have to stay on my game and just do one
7 thing at a time. There's a lot of times I have to tell
8 my husband and my kids that I'll get to it later or I'll
9 get to it in a minute or you have to do it yourself
10 because I just can't do it all.

11 Q Why not?

12 A I don't know. At first, when the accident
13 first happened, I was tired. A lot of my design work, I
14 used to do at night. While the kids were playing soccer,
15 I would sit with my laptop in the car and design
16 someone's kitchen or get changes to the design ready for
17 the next working so I could give them to contractors. I
18 started needing that time just to zone out, just to rest.
19 I was tired.

20 As time has progressed, uh, I've taking to
21 using that time for walking and just, you know, getting
22 some fresh air. I really enjoy lots of tasks that do not
23 involve interaction. It's just cause I'm self-conscious
24 about the speak issue, the forgetting of the words and
25 forgetting of details and not knowing the same things

1 that I used to know. It's embarrassing.

2 Q What does your typical day involve now?

3 A I get up and I wake the kids up and get them to
4 school. Ana has taken to eating lunch at school now
5 instead of taking her lunch. I drop them -- they -- make
6 their breakfast. Then they go to school. Then I pretty
7 much come home and spend the rest of the day in laundry,
8 yardwork, housework. If I get a call from a client
9 asking for drawings or, you know, things like that, help
10 with a project, then I will certainly go and try and
11 schedule that during the time that the kids are in school
12 so I can go and maybe measure that job. It's pretty
13 obvious when I have a client because then I'd been
14 working on a client and the yard's not mowed and the
15 laundry's not done and everybody's eating frozen food.

16 Q So you've got to either sacrifice a client or
17 sacrifice your house?

18 A And, you know, you feel -- I don't like to tell
19 a client I'll take the job because I certainly know the
20 amount of detail that's involved in having it go
21 smoothly. A lot of times, with a renovation job, this is
22 the client's savings, I mean, this is their money. You
23 have to be very careful with it. You can't just guess
24 how much the tiles going to cost or what the labor might
25 be. You have to really do your homework and make sure

1 that you're accurate. I feel very responsible for that
2 person if I accept the job and make sure that they don't
3 overspend what they were planning to or end up with
4 somebody working in their house that's not going to show
5 up or do a terrible job or doesn't have the references or
6 licensing in order. Those are all things that I need to
7 take care of.

8 I need to be very careful that I take jobs that
9 I can manage. Things that won't go on for eight or nine
10 or ten months at a time like I used to because I can't
11 have my house and my meals and all those things go on
12 standby for eight or ten months at a time. So I do
13 smaller projects now. You know, I do drawings for people
14 and then turn them over to contractors to finish and
15 those kinds of things.

16 Q Uh, so when you don't have a project that you
17 are working on, you can basically stay around the house?

18 A Yeah.

19 Q You know, you got to pick up your kids, right?

20 A Yes.

21 Q You let other people pick your kids up?

22 A Sometimes. This year is the first year that
23 Adam has been being dropped off and collected two nights
24 a week by other folks in parking for soccer practice. I
25 still take and pick him up from school every day although

1 I have put into place on emergency backup another parent
2 who also goes to the same school that my kids do so that,
3 you know, the accident just taught me that you need to
4 have a backup plan because I didn't that day. I need to
5 have something in place that I can get them in something.

6 Q Why don't you let other people drop them off
7 and pick them up?

8 A I just have always done all of my own stuff
9 after I -- I don't need to be failing in that department
10 too.

11 Q Uh, you talked about seeing Dr. Jones. Did you
12 provide any particular information to him?

13 A Yes. He asked me for, uh, all of my college
14 transcripts and my military records and my high school
15 transcripts and my resume. I think I had to provide a
16 list of references, you know, my bosses' names and email
17 addresses to him.

18 Q Okay. Uh, --

19 A And then, of course, you know, the regular
20 stuff.

21 Q Regular stuff?

22 A You know, like when you go see a doctor.

23 Q Medical records?

24 A Yeah, are you allergic to anything, all that
25 stuff.

1 Q So, uh, you got all those together for him or
2 did you have to get Mr. Ray to help you.

3 A Uh, Mr. Ray was hired by my husband to help me
4 with that kind of stuff. Scott didn't feel like I was on
5 top of understanding all these big stacks of papers that
6 were coming. We were having Thanksgiving in our house
7 one day and people were over. And some people came to
8 the door and delivered a humongous stack of papers that
9 was all about legal stuff. So that's not stuff I can
10 understand what's going on with that stuff. That's why
11 Mr. Ray was sort of helping me to sort through all of
12 that.

13 Q Now, uh, so your Navy records or your high
14 school records or your college records would indicate
15 whether or not you had prior brain damage?

16 A Uh, yes, I guess they would show that. I don't
17 think the Navy would have taken me if I had prior brain
18 damage.

19 MR. CHILDS: Uh, is this a good time for a
20 break, Judge?

21 THE COURT: Yeah, I was thinking the same
22 thing. Somebody need to take a break anyone? Yeah,
23 I see some head nods. Let's take a break. Please
24 don't discuss the case.

25 (WHEREUPON, the jury exits at approximately

1 3:49 p.m.)

2 THE COURT: All right. Mrs. Bettencourt, you
3 are welcome to take a break too.

4 THE WITNESS: Thank you.

5 THE COURT: But you can't discuss your
6 testimony with anyone, okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Good enough. We'll
9 be in recess.

10 MR. MCGARR: Judge, approximately how long?

11 THE COURT: 10 or 15 minutes. I kind of
12 gauge it on the jury. When the bailiffs tell me
13 that they're done using the restroom and they are
14 ready to go, we'll come back in. So 10 or 15.

15 (WHEREUPON, a recess is taken.)

16 THE COURT: Okay. Y'all ready for the jury?

17 MR. CHILDS: Yes, sir.

18 THE COURT: Bring them in please.

19 (WHEREUPON, there is a pause.)

20 THE BAILIFF: Your Honor, you ready?

21 THE COURT: Yes, sir.

22 (WHEREUPON, the jury enters at approximately

23 4:09 p.m.)

24 THE COURT: All right. Mr. Childs, your
25 witness, sir.

1 BY MR. CHILDS:

2 Q Mrs. Bettencourt, uh, we were talking some
3 about how things are now as far as how you handle things
4 with respect to clients and those kind of things. Let me
5 ask you about your household duties, your cooking, your
6 laundering, your shopping, transporting the children. We
7 talked about your transporting the children. And that
8 has stayed about the same since the accident, since
9 before the accident?

10 A Yes.

11 Q So you are able to drive a car and all that
12 stuff?

13 A Yes.

14 Q Except you -- the occasions we've already heard
15 about where you forgot to pick up the children?

16 A Yes. I have a boy and a girl. So, of course,
17 they don't have any of the same friends. They don't play
18 at any of the same places or the same stops. I have to
19 drop them off at two separate places. Sometimes I get a
20 little preoccupied and somebody -- when dropping the
21 second one off -- starts talking to me about something
22 and then I lose track of time and I have left Adam a time
23 or two at the gym longer than he would have liked to have
24 been there.

25 Q Okay. As far as cooking, we've seen a video

1 today of your cooking.

2 A I wouldn't exactly call that cooking. That was
3 putting up. But okay.

4 Q How do you -- how is your cooking now for the
5 family as opposed to before the accident?

6 A Well, before the accident, I had a system in
7 place from my years of working in corporate America where
8 I couldn't be home every night of the week. I would
9 essentially prepare everything on Sunday. I'd go to the
10 market on Saturday, get all this stuff and lay everything
11 out on Sunday and that's where I make everything.

12 I try and do one thing in a 13-by-9, one thing
13 in a crock pot, one thing in a ziplock bag that's
14 marinating and can go straight to the grill. I mean, I
15 kind of have a system. It might not be the same thing
16 grilled every week. One week, it might be chicken. One
17 week, it might be steak, you know, whatever. Crock pot
18 might have chili one week and the next week, it might
19 have a homemade soup or something.

20 But essentially, that allows Scott to come home
21 from work or the kids to come home from school and their
22 dinner is essentially already made for the week. It's
23 just in the refrigerator marked with how long it needs to
24 cook. All of those things. That is not something that I
25 do anymore.

1 Q Why not?

2 A Well, usually I'm behind on my housework. If I
3 had a client that week or if the kids had something they
4 needed me to voluntarily do at the school, then Sunday
5 becomes the day that I'm playing catch up with the
6 yardwork, the housework, all of that stuff.

7 Q Okay. And so how much cooking duties have you
8 reduced since the accident? What percentage of your
9 normal?

10 A Well, now, if we eat a sit down meal, where
11 we're all eating the same thing, it's something that I
12 prepared that day because I had the time to make
13 something right then. They are not what I would call
14 slow cook things. They are like things I can make real
15 fast, you know, like a pesto or something really easy
16 that takes ten minutes to put together as opposed to
17 roasting something in the oven or whatever, which would
18 be what I used to cook. I probably am only having enough
19 time to do that maybe twice a week. The rest of the
20 time, we pretty much eat veggie burgers or frozen ravioli
21 or something of that nature.

22 Q Did you eat any of that before the accident?

23 A I really never let my kids have, uh, any kind
24 of prepared foods prior to the accident.

25 Q Now, what percentage of foods are you serving

1 prepared?

2 A Well, I mean, now, they are taking in their
3 lunch pail. If they take a lunch, they are taking things
4 like chips that come in a bag and, of course, they will
5 take a sandwich that has lunch meat in it instead of the
6 leftover roast or pork or leftover roasted chicken for a
7 sandwich because there are no leftovers. Those kinds of
8 changes. Then dinnerwise, at least four nights a week,
9 they are eating either a frozen veggie burger or frozen
10 raviolis or something like that.

11 Q So what percentage would you say of your
12 overall, your cooking was 100 percent before the
13 accident, how much is it now?

14 A 30 or 40 percent.

15 Q Laundry, is that something?

16 A Well, I used to do everyone's laundry. Now, I
17 just do my own and Scott's laundry. The children have to
18 do their own laundry.

19 Q How old are they?

20 A 11 and 13.

21 Q You can get a 13-year-old to do laundry?

22 A There are many days that he comes down for
23 breakfast wearing extremely wrinkled clothes because when
24 you are 13, taking it out of the dryer while it's warm
25 and putting it on a hanger is not actually considered

1 laundry. Laundry is just pressing the start button on
2 the dryer after you've run it through the washer. Then
3 it's considered done. His version of done my laundry is
4 a little different than mine, but we just have to let
5 that be the way it is.

6 Q So my question was how do you get him to do it?

7 A I said that you're going to be wearing dirty
8 clothes if you don't do your own laundry. I say, no, you
9 can't go to the football game on Friday unless your room
10 is clean and part of that means your laundry.

11 Q As far as shopping is concerned, before the
12 accident, how much shopping did you do for the family?

13 A I did all of our shopping.

14 Q And how much do you do now?

15 A Uh, maybe half.

16 Q Why not? Why can't you do all the shopping?

17 A Take -- the way that I would shop when I did
18 all that cooking on Sunday was planning out every single
19 meal for the whole set of days as well as all the lunches
20 and the breakfast. I would make these detailed lists.
21 Then I would cross-reference the list with the things we
22 currently have in stock. And then go to the market and
23 get those things.

24 Now, I don't have the time to do that because
25 that takes two hours or so to get all that stuff planned

1 out and go through all the recipe books and figure out
2 what all the ingredients are that I'm going to need. See
3 what I have and what I don't have. So now, Scott, when
4 he's home, on the weekends or on Friday afternoon, he
5 will go to the market and get basically everything that
6 the kids are going to need for breakfast and they pack
7 their lunches. Then he fills the freezer with frozen
8 dinners and boxes of veggie burgers and things like that.

9 Q There were some questions raised earlier about
10 your garden. Can you talk about your garden?

11 A Uh, we have -- the whole property is a garden.
12 It was essentially decided when we had to tear the house
13 down that we brought. The foundation was all cracked and
14 ruined. When we built the new house, there were these
15 big huge trees that had to be torn down. So the yard
16 that was there was ruined. So we -- I just started
17 thinking about all this money or these magnolia trees and
18 all this stuff that the gardener, you know, the landscape
19 people were proposing. And so Scott and I started
20 talking about having grown up in Fresno where most of the
21 farming is going on and how much we love to have fresh
22 produce and all that and wouldn't it be great that
23 instead of spending all this money on these trees that
24 just look good, we just planted trees that produced
25 something instead. I mean, they looked the same. They

1 are just trees. So the whole yard was landscaped with
2 fruits, fruit trees, all the bushes are blueberry bushes,
3 all the vines are kiwis or figs or blueberries or
4 raspberries or whatever.

5 Then after we lived in the house for about two
6 or three years, we started kind of gardening this unused
7 piece of property that's on the side of the house that
8 actually belongs to the city because it's like their
9 easement or whatever you call that between the road and
10 like where our real property line is but they don't mow
11 it or anything. It was all nasty.

12 So I just started composing all of our leftover
13 rock, vegetables, banana peels and all that stuff and our
14 leaves and our grass clippings. I started putting it in
15 that spot so it would improve the soil quality. Went to
16 Home Depot. Bought some seeds. That's where the garden
17 came from, my vegetable garden but, of course, that's
18 just during the summer.

19 Q So in September of -- September 4th, 2008, you
20 had a garden?

21 A Uh-huh.

22 Q And how active were you in that garden before
23 this accident?

24 A Uh, you know, the -- my thing is really the
25 overall big plan, like where things are going to get

1 planted. I have always -- you know, I'll plant stuff.
2 Call Bob Jones and get two or three guys to come and help
3 me spread the mulch that weekend and lift all the bags
4 and cut things open and I'll be out there and do that,
5 especially if Scott's out of town working. A lot of
6 times, he has to be in China or something for the
7 weekend. Since we're not going to have any family time,
8 that's a great time for me to get some students to come
9 to the house and help me get all the yard work done.

10 Q Well, I was asking you about before the
11 accident.

12 A We would do that before the accident. I would
13 have people come and help me or Scott would come home and
14 help me.

15 Q And after the accident, how involved are you in
16 gardening?

17 A Well, now Scott pretty much picks what the
18 crops are going to be. He tells me what things he wants
19 to plan and I execute what he wants. He will go with me
20 on Sundays to the -- Saturday to the Farmers Market and
21 pick out -- we'll buy most of our local plants that we
22 put in the ground. And he picks those out. As far as
23 harvesting goes, he does most of the harvesting. When
24 he's taking conference calls and stuff, he will be
25 talking on the phone and killing the weeds and spraying

1 with Roundup and those kinds of things. I try to either
2 have my son Adam or myself to mow the lawn so he doesn't
3 have to do that. But he pretty much does all the rest of
4 the yardwork. I just put up everything that we grow.

5 Q So you saw the video of the, uh, -- what was
6 the event that that video was about?

7 A Greenville Organic Foods Organization contacted
8 me last year because they knew about our yard and the
9 concept of not planting any flowers or whatever and it
10 was all food. They wanted to know what I -- let our
11 house be on tour. There's like 30 hours of organic or
12 urban farms, like regular houses that are landscaped with
13 food. I said they could if they wanted. They brought
14 over some signs and then a bunch of people started
15 showing up that Saturday. I had never done anything like
16 that before. I wasn't exactly sure what to expect. So
17 people just came all day.

18 She asked me, Vivian Trama, the lady who runs
19 Greenville Organic Foods Organization asked me if I would
20 teach people how to put things up. I think a lot of
21 people came expecting to learn how to can. I don't
22 really put up my stuff with canning. It takes a long
23 time. It's a hassle.

24 Q Okay. Uh, so did you know that Mrs. Wald had a
25 private investigator there for that?

1 A I did not.

2 Q Uh, did, uh, -- you talked on the video about
3 the tomatoes.

4 A Yes, sir.

5 Q Do tomatoes have skin on them?

6 A Yes, they have kind of this papery, like, uh,
7 -- I mean, it's just like paper. It's like rice paper or
8 tissue paper, kind of, skin that's on the outside of
9 them. Otherwise, they look like a little tiny green
10 tomato that hadn't gotten ripe yet. It kind of has this
11 papery skin.

12 Q So you talked about peeling the paper off the
13 tomatoes, you meant the skin?

14 A Yes.

15 Q Now, uh, some lady on the video asked you about
16 a food vac. You said you didn't have one. Do you have a
17 food vac?

18 A We do. It's a machine that you put the food
19 into the bag and then you stick the other end that's open
20 into this machine and you press down on it and it takes
21 all the air out of the bag so that your meat doesn't get
22 freezer burned or whatever. It's one of those.

23 Q Okay.

24 A And yes, she asked me if I had one. I guess I
25 just didn't -- couldn't think of the name of the thing.

1 So then I stood there and I explained what I did have
2 that I used mostly for meats. She said that was the same
3 thing. But that happens to me all the time.

4 Q Explain that to the jury.

5 A Well, there's just -- like someone will say --
6 I'll be talking about something and then I'll get to it
7 and I'll know the word that goes right there is tomato,
8 but I can't of the word. You know the red fruit. You
9 put it on your salad. I'm explaining like the most
10 remedial stupid things because for the life of me, I can
11 not think of the word "tomato". Then two seconds after
12 I'm done, it's right there. I just -- it won't come.

13 Q Okay. And, uh, has that gotten better?

14 A It's pretty much stayed the same.

15 Q Okay. Now, you, uh, went back to Dr. Kistler
16 back, uh, in October of 2010. And, uh, I believe you
17 talked about the referral to Roger C. Peace.

18 A Yes. He had referred me there because he knew
19 I was looking for something to fix the problem as opposed
20 to the medication method. So he told me about them, that
21 they did therapy there for a brain injury. So I said
22 that I was very interested in that and would you please
23 refer me to them.

24 Q Okay. And so did you go to Roger C. Peace on
25 November the 29th of 2010?

1 A I did.

2 Q And, uh, I think you had some followup
3 appointments in February and March of 2011?

4 A Correct.

5 MR. CHILDS: Uh, I'd like to enter the Roger
6 C. Peace --

7 THE COURT: Any objection?

8 MR. McGARR: No objection.

9 THE COURT: All right. Without objection,
10 the same is introduced as Plaintiff's Exhibit number
11 -- is it 7?

12 MR. CHILDS: It is number 7.

13 THE COURT: All right. Good enough.

14 (WHEREUPON, Plaintiff's Exhibit 7 is admitted into
15 the record.)

16 BY MR. CHILDS:

17 Q What did you have to do to go through your
18 evaluation at Roger C. Peace?

19 A I'm sorry?

20 Q What did you do in your evaluation at Roger C.
21 Peace?

22 A The exact same thing I had done at Dr. Jones'
23 office.

24 Q And so was that a daylong thing and then you
25 went back several times after that?

1 A Correct.

2 Q As a result of those visits to Roger C. Peace,
3 are you presently involved in any programs over there?

4 A Yes.

5 Q What are those?

6 A Speech therapy and psychological therapy.

7 Q Okay. And, uh, you have an evaluation over
8 there at Roger C. Peace and another evaluation, speech
9 and psychological evaluation. Then you are going back
10 for speech therapy and psychological continuing care?

11 A Correct.

12 Q Now, uh, these expenses here are what you
13 understand to be the future expenses are going to be at
14 Roger C. Peace?

15 A Actually, I don't know that yet. You have
16 times? I can't really see that far.

17 Q Okay.

18 A The times where you are saying how many times I
19 have to go back, that's still unknown.

20 Q Still unknown?

21 A They haven't told me how many appointments I
22 would need to complete the therapy.

23 Q So what kind of therapy is that? What are you
24 doing when you go over there?

25 A The speech therapist is working on two things,

1 the lost of the words that are missing and then also this
2 other thing that has been explained to me as if someone
3 has a brain injury, they assume some knowledge of that
4 injury. It may not be a correct assumption.

5 I may be viewing what's wrong with me -- I may
6 be saying that I'm perfectly capable of driving a jet, I
7 should go to jet school when in reality, I'm probably not
8 capable of doing that. It's an unrealistic view of what
9 your true capabilities are. That's another thing that
10 the speech therapist is working on is viewing the
11 capabilities that you really have, whether you overview
12 or under view those capabilities and how to use your lack
13 of capability to sort of overcome the lack of that
14 capability and that situation. Does that make sense?

15 Q Yeah, kind of.

16 A Okay.

17 Q Is that what Dr. Jones' described as shaken
18 self?

19 A Yes, but the shaken self is really more the
20 therapy person is dealing with that. That's where
21 they're trying to get you so you have a little more
22 confidence and that you can kind of overcome how hard you
23 are being on yourself about -- like I was talking about
24 being angry at myself all the time for not being able to
25 do this, say this, think this, whatever, get it

1 organized, get it together, that's what that lady is
2 helping with, that stuff.

3 MR. CHILDS: All right. At this time, I want
4 to introduce a summary of those medical expenses.

5 THE COURT: Any objection, sir?

6 MR. MCGARR: Without objection, Your Honor.

7 THE COURT: All right. It's going to be
8 admitted as Plaintiff's Exhibit number 8.

9 (WHEREUPON, Plaintiff's Exhibit 8 is marked for
10 identification and admitted into the record.)

11 MR. CHILDS: Just for the court's
12 information, that is the same ---

13 THE COURT: Yes, sir.

14 MR. CHILDS: --- thing that's on the board up
15 there.

16 BY MR. CHILDS:

17 Q How much of this psychological therapy have you
18 had?

19 A I've just had the eval, the full evaluation and
20 then the initial appointment with each one of the two
21 therapists.

22 Q Are you missing therapy today?

23 A Uh, tomorrow.

24 Q How often are you going?

25 A Twice a week.

1 Q Has that helped you so far?

2 A Well, they haven't really started the therapies
3 yet. They've only done the evaluation and the initial
4 gathering of data and telling me what they are going to
5 do.

6 Q That seems like an awfully long time to get to
7 the step of getting something you can do to improve.

8 A Yes, it's been a long road.

9 Q Uh, tell the jury how you are now.

10 A Really unchanged situation. Mental --
11 physically, I feel much better. Through the physical
12 therapy, I have been able to manage the pain completely
13 without any real issues. I do have to rest some times.
14 There's certain exercises I have to do in order to keep
15 the muscles strong in my shoulder and make that work.
16 But otherwise, that seems to be managing fine. It's just
17 this last bit of mental stuff that's just not coming
18 together. Supposedly these therapies, uh, are going to
19 help that.

20 Q What's your daily routine like now?

21 A I get the kids up and get them off to school
22 and try and manage our household affairs during the day
23 while they are at school. Pretty much from 3:00 to 9:00,
24 it's all about them, their homework, their schoolwork,
25 their meals.

1 Q Now, prior to the accident, were you involved
2 in school activities and things like PTA and things such
3 as that?

4 A Yes, I've always done a job for the PTA for
5 both schools. That's called the Reflections contest.
6 It's not a mandatory thing that all students have to do.
7 It's just a contest that kids can enter in for visual
8 arts, creative writing, photography. There's some other
9 categories. But essentially, each school has to collect
10 their entries every year and one person is in charge of
11 collecting those entries and submitting them to the
12 judges. I've always done that. It's a fairly easy job.
13 It takes about three days a year to do -- to actually do
14 the work. All of the -- the person who did it the year
15 before you did it gives you all their stuff. So you
16 don't have to do anything except do the same thing that
17 they did and turn in the stuff to the judges. Then
18 you're done.

19 Q So in September and October of 2008, you would
20 have been still involved in the collections program?

21 A Correct.

22 Q For what school?

23 A 2008, I would have been doing Augusta Circle.
24 I did that until Adam finished the fifth grade. Now, I
25 do it for his school, Greenville -- not now, not this

1 year, but last year, I did it for his middle school, for
2 Greenville Middle.

3 Q Uh, back to, uh, your husband with respect to
4 what -- you certainly heard your husband's testimony. So
5 what kind of thing -- I'm not trying to be intimate about
6 this. I'm not asking you intimate questions. What kind
7 of things are you not able to do for him now that you
8 used to do? I'm not asking intimate questions at all.

9 A Well --

10 Q You know, little things like helping him with
11 his trips and things like that.

12 A We have always been, you know, just equal
13 partners. I think he does a lot more care giving and
14 given me breaks. That is time that we used to spend
15 together. You know, after the kids went to bed, that was
16 our time to, you know, stay up late and watch our
17 favorite shows or, you know, do some sketches of what we
18 might want to do with this section of the backyard that
19 looks all crappy or, you know, whatever.

20 Now, I'm usually in bed before the kids are. I
21 mean, there's a lot of times that I go to bed especially
22 if he's home, I'd go to bed and just say make sure that
23 they do not stay up after 10:00. Then I just leave him
24 to entertain and close down the fort for the night.

25 Q Your husband travels a lot?

1 A Yes.

2 Q And so what do you do to help him with that?
3 What did you used to do?

4 A Well, I used to do, you know, shopping for his
5 clothes and making sure that there was always a meal on
6 the table when he got home every night and giving him the
7 sense of comfort that everything was okay and that I had
8 it under control and that I didn't need his help so that
9 he could just work on doing what he does. And, uh, I do
10 need to call him often now and say this came in the mail.
11 I don't know what to do with this. This is going on and
12 I've got a conflict in schedule, I can't handle all this.
13 Is there any way that you can be home on that day to help
14 me with this kid being out of town and this one needing
15 supervision at this event and that kind of stuff. Not
16 being able to get it all together.

17 Q Did you used to pack for him or lay his clothes
18 out for his trips?

19 A Well, I used to help him figure out whether it
20 was a brown trip or a black trip, getting all of the
21 right color clothes in the suitcase. And he pretty much
22 handles all that on his own, purchases all his clothes.

23 Q Does he still match?

24 A Sure. Uh-huh.

25 Q Uh, so I'm interested about this. You used to

1 stay up until 10:00 or 11 o'clock at night. And then
2 after this accident, you go to bed before the kids do.
3 Why is that?

4 A Just tired. Just exhausted. I don't know why.
5 I'm doing probably half as much stuff as I used to do.
6 I'm just exhausted. There's also another -- when I get
7 too many things on my plate to manage them all. I need
8 solitary activities where I don't have to, you know, what
9 is, uh, interaction. Where I don't have to have
10 interaction. So I'll do things like pulling weeds or
11 playing solitary in my little closet with my laptop or
12 something where I just know that I'm not going to have to
13 think for a while and I can just kind of decompress.

14 Q Your little closet?

15 A Yes.

16 Q What kind of closet?

17 A Well, there's two walk-in closets in close
18 proximity to where our bedroom is at. Of course, we
19 don't need two. So one of them is used as my office. It
20 really just has -- it's really just a storage closet, but
21 I have a little table in there where I have my laptop and
22 a lamp.

23 Q So how much time do you spend in the closet
24 with your laptop and lamp?

25 A On a weekday when the kids are at school,

1 probably two or three hours in the course of the day.

2 You know, it's where I sit and pay the bills. It's where
3 I stack all of my stuff that I'm going to go through
4 later, magazines I'm going to read later or newspapers.

5 Q Before this accident when you used to rely upon
6 your memory, what have you done to compensate for that?

7 A Well, the closet used to actually be a storage
8 closet back then. You couldn't hardly open the door.
9 There was just stuff in there. We had it turned into a
10 closet where you could sit down and have a desk and
11 stuff. Now, I keep these kind of accordion files or, if
12 it's a smaller job, I'll keep a binder with those plastic
13 pages in there where you could take stuff in and out of.

14 Q Dividers?

15 A No, you know the -- it's like a sleeve that you
16 can slide a piece of paper down inside of so you can
17 still see both sides. I can slide tile samples or fabric
18 samples into those sleeves so that I could keep track of
19 what I had picked to use for that bedroom or that
20 bathroom. A binder might have different tabs on it
21 showing the different rooms of the house.

22 You could just turn to the baby's room and see
23 the baby's room fabric for the window. The baby's room
24 color for the wall, the pictures and furniture that are
25 going to be ordered. You know, that kind of stuff will

1 be in the binder instead of in my mind.

2 Q Uh, do you retreat to other rooms in the house
3 when you are being distracted?

4 A Well, if my phone rings and I'm at liberty to
5 take that phone call, I always go into the closet to take
6 the phone call cause I can't -- I have a hard time paying
7 attention to what the person's saying if anyone else in
8 the room is watching TV or listening to the radio or
9 talking on the phone. Any other kind of incoming
10 information. I just can't listen to two things at one
11 time.

12 Q Okay.

13 A So I have to go into the other room.

14 Q Prior to the accident, did you used to pay the
15 household bills?

16 A Yes. Uh-huh.

17 Q You still do that?

18 A Yes. I used to do a much better job
19 forecasting future needs and setting aside money for
20 saving up for large things, when tuitions for soccer were
21 due or new cleats were going to be needed or viola
22 strings were going to need to be changed, those kind of
23 things that are larger expenditures in our budget. I
24 used to keep a very detailed calendar of what I had spent
25 the year before so I knew what was going to be coming up.

1 that year. I just did a better job of setting aside.

2 Q Prior to this accident, did you have occasions
3 of loss of memory?

4 A No.

5 Q Do you have those now?

6 A Yes.

7 Q Describe those for the jury.

8 A Something that just happened, I can't really
9 recall all the details. I feel kind of stupid saying I
10 don't know. Somebody will say you were there, didn't you
11 go to the meeting. If I haven't taken notes, I just
12 really won't remember any of the details, especially
13 anything that had anything to do with numbers, any kind
14 of meeting with a client. We're talked about budgetary
15 numbers for the tile setter or bids to somebody. I
16 absolutely can not.

17 If a contractor calls me now and says I went
18 out and looked at the job, it's going to cost your client
19 \$3300 to have the wallpaper removed and the room painted
20 and the walls textured or whatever. I have to write them
21 and say that's fabulous. Thank you for your estimate.
22 Please send me an email with that information. If I don't
23 have it in writing, I absolutely can not remember it.
24 Before, people used to call me all the time with
25 information and I used to just later when I park the car

1 and sitting in the carpool or something, I might whip out
2 a binder and write it all down what they just said so
3 that I could put a formal proposal together for the
4 client. Then they would know how much something was
5 going to cost or what the next steps were or whatever. I
6 can't take verbal information anymore.

7 Q And you talked about the distractibility where
8 you can't talk and --

9 A Right.

10 Q You talked about your inability to multitask.
11 You talked about your difficulty retrieving words, the
12 ability to process information. Was that a problem
13 before this accident?

14 A No.

15 Q Your ability changed since the accident to
16 process information?

17 A I'm processing information much slower. An
18 example would be like when I go to meeting, you know a
19 contractor might say to me I'm going to do X, Y and Z.
20 And for me, it's almost like a first time homeowner. I
21 have to go back and say what exactly -- what day are you
22 going to be there, what time? On the first day, you're
23 going to do what? On the second day, then what? And I'm
24 making this and the guy's looking at me like I remodeled
25 four houses with you. Why are you acting like you never

1 had your drywall done before?

2 I'm just having a really hard time
3 understanding when they say it's going to be three days.
4 In my mind, I'm not seeing the steps. They are just not
5 there. I'm having them retell, which I know is annoying
6 for them. But essentially, it is their job to, you know,
7 explain, you know, even though they are looking at me
8 like I'm crazy. I need them to tell me that. I'm having
9 a hard time visualizing how it all goes down in three
10 days.

11 Q Headaches, did you have headaches a lot before
12 them?

13 A No.

14 Q How about now?

15 A I get a headache every time I do not properly
16 care for the shoulder with the things that I've learned
17 in physical training, the rubber band exercises and any
18 time I take the laptop and try and, like, work from the
19 car or do a lot of typing where I don't have the exact
20 right setup with the height and all that stuff. If I
21 don't do the things that I learned in physical therapy to
22 manage the pain, then it will go all the way up the
23 shoulder into the back of my neck and it's going to
24 result in a headache that will not go away unless I lay
25 down.

1 Q Did you have balance problems before this
2 accident?

3 A No.

4 Q You have some now?

5 A You know, I wouldn't say that they are very
6 significant. I trip and fall or whatever occasionally.
7 But I don't know that it's a hindrance to my day. It's
8 not often I'm afraid to walk.

9 Q You talked about your (inaudible).

10 A I don't have any.

11 Q Before the accident?

12 A I have always stayed up late and gone to bed --
13 you know, and got up early. Now, I'm going to bed a lot
14 earlier, getting more hours of sleep. But as
15 interruptions in my sleep, I don't have any.

16 Q Uh, mood swings?

17 A I have never so much as shed a tear in public,
18 I don't think, my whole life. Now, I feel like I'm, you
19 know, crying all the time. That's really the only real
20 mood swing that I would say. In fact, I might even be a
21 little bit of a nicer person now. Before I had a very
22 rigid set of standards by which I operated in order to
23 get all this stuff done. Now, I'm kind of like, I just
24 let it -- if it happens, it happens. I can only do so
25 much.

1 Q Easy fatigue, we've already talked about. Word
2 choice and use we've talked about. Time management, we
3 talked about. Impairment in solving problems, we've
4 talked about. Uh, life at home. General life at your
5 house. How has life at home changed?

6 A Uh, I think that my children are allowed quite
7 a bit more latitude both with their behavior and with
8 their habits. I don't have the wherewithal to make them
9 do it the way that I want it done or the way that it used
10 to be done. Certainly, the upkeep of the house, as far
11 as cleanliness and the organization of the yard you know,
12 those things must be done. Our neighbors drove over our
13 sprinkler three days ago. That's something that I would
14 not have let set for more than an hour. Now, for three
15 days, I've had the sprinkler shut off because I've got to
16 find the tools and I've got to get somebody out there to
17 take the thing out. It's a lot of what I would call lack
18 of maintenance going on.

19 Q So have you lied to your doctors?

20 A No.

21 Q So do you lie a lot?

22 A No.

23 Q Well, we've seen these depositions of your
24 doctors. So the issue is really that you are a liar.
25 You understand that?

1 A Yes.

2 Q That's what the defense says about you. Have
3 you been truthful with your doctor?

4 A Yes, sir.

5 Q Have you exaggerated your symptoms?

6 A No.

7 Q Have you faked bilateral impairment? You don't
8 even know what that means.

9 A I don't even know what that means. I really
10 don't. If anything, I have not complained about the
11 things that are wrong. I don't like to be a complainer.
12 I don't like to be around complainers. You know, they
13 said that it would fix itself in two years time. So I
14 kind of thought maybe I just wasn't being patient enough.
15 But you can't help but read something on the internet or
16 your girlfriend sends you something saying hey, did you
17 hear about this, did you hear about that. You can't help
18 but call your doctor and say, hey, can you see me. I'm
19 interested in knowing if you know anything about this. I
20 mean, you're desperate. You're looking for an answer.

21 Q Would you take \$2.5 million to be in your
22 position there?

23 A No.

24 Q Would you take \$50 million?

25 A I don't want to be in this position. It's not

1 about the money. It's just about getting it fixed.

2 Q Please answer any questions Mr. McGarr may
3 have.

4 THE COURT: Mr. McGarr, you anticipate a
5 lengthy cross-examination, sir?

6 MR. MCGARR: Quite.

7 THE COURT: And Mr. Childs, how many more
8 witnesses do you anticipate?

9 MR. CHILDS: Two more.

10 THE COURT: Two witnesses?

11 MR. CHILDS: Yes.

12 THE COURT: And with respect to some of your
13 witnesses, has that been whittled down at all or you
14 still have four witnesses, sir?

15 MR. MCGARR: Your Honor, we're down to one.

16 THE COURT: One? Okay.

17 All right. Okay. All right, Ladies and
18 Gentlemen. Obviously, you know I'm asking questions
19 to see exactly where we stand. You heard the
20 responses that I've heard. We're going to take a
21 break now because I anticipate Mr. McGarr may take
22 some time at cross-examination. We'd probably be
23 here past 6:00 if we were to do that this afternoon.
24 So we're going to wait until tomorrow morning.
25 Please be back before 9:00. We'll start as promptly

1 at 9:00 as we possibly can. Please don't discuss
2 the case. I hope you have a great evening.

3 (WHEREUPON, the jury exits at approximately
4 4:52 p.m.)

5 THE COURT: Do y'all have any requests for
6 charge yet?

7 MR. CHILDS: I do, Your Honor.

8 MR. McGARR: Your Honor, I will not have any.

9 THE COURT: Okay.

10 MR. McGARR: I'd rely on the standards.

11 MR. CHILDS: Mine are pretty standard too,
12 judge. It's just a way for me to collate in my mind
13 what I wanted to charge.

14 THE COURT: Okay.

15 MR. CHILDS: I think it would be essentially
16 the same as the bench book.

17 THE COURT: Yes, sir. Okay.

18 MR. CHILDS: Uh, yesterday, I spoke to Mr.
19 McGarr about Mr. Bettencourt who has a 6 a.m. flight
20 out of Greenville. He's been kind enough to allow
21 him to be released for that. I appreciate that. I
22 want to thank him for that. We'll see you in the
23 morning.

24 THE COURT: All right. We will -- what we'll
25 do is we'll come in. I'll take a look at these.

1 Then we'll just have a short charge conference in
2 chambers. Probably the best time to do it is
3 probably when the plaintiff rests.

4 You can't hear me, Mr. McGarr?

5 MR. MCGARR: I could not.

6 THE COURT: I just dismissed your defense.
7 Yeah. We'll have a charge conference probably when
8 the plaintiff rests just when I get a chance to look
9 at these. Okay?

10 MR. MCGARR: Yes, sir.

11 THE COURT: Okay. Before we adjourn, Mrs.
12 Bettencourt, you are under oath. I know you are
13 going to go home tonight and you're going to spend
14 time with your husband. But you can't discuss your
15 testimony okay. You can't discuss it with your
16 attorneys or anyone else. Okay? All right. Good
17 enough.

18 We'll see y'all tomorrow morning.

19 (WHEREUPON, the Court recesses for the day.)
20

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 15th day of November, 2011.)

THE COURT: All right. Y'all, I had anticipated talking to them about notes in any event. You want me to go ahead and ask them, pose those questions to them now? It's as good a time as any to do it. You starting out fresh in the morning, that's usually the appropriate time to do it. When I've done that in the past, I've found that's probably the best time to do it. I'll just ask them this morning. Okay?

MR. CHILDS: All right.

THE COURT: All right. Would you bring the jury in please.

(WHEREUPON, the jury enters at approximately 9:10 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. I hope everybody had a good evening. Let me pose a couple of questions to you first and tell you something before we get started here this morning. You remember I have continually said to you throughout the trial please don't discuss the case or talk about the case to any other person. Don't begin any deliberations. I'll ask you now,

1 - pose the question to you, is there anyone among you
2 who has discussed this case with anyone or begun any
3 deliberations on this case? (No response.)

4 Okay. Let the record reflect no affirmative
5 response.

6 Ladies and Gentlemen, I ask you as well, I
7 advised you that you should not do any independent
8 research. You should not go out into the media in
9 any way and search out any information relative to
10 this case. The only information that is relevant
11 and appropriate for your consideration is what you
12 hear admitted on the stand in this courtroom. I ask
13 you, has anyone gone out and sought any information
14 regarding this case outside of this courtroom?

15 (No response.)

16 Okay. Let the record reflect no affirmative
17 response.

18 Now, it's been brought to my attention -- and I
19 hadn't noticed it -- but some of you may be taking
20 notes. And that's okay. If you want to take notes,
21 that's okay. But I would caution you. If you
22 decide to take notes, know that while you're looking
23 down, you may be missing something. You may be
24 missing body language of a witness, you may be
25 missing facial expressions. You may be missing what

1 someone said because you're concentrating on what
2 was just said and writing it down. So understand
3 that you can potentially -- and not everyone.
4 Everyone's mind works differently -- but you can
5 miss something if you're taking notes. Also, I
6 caution you that when you go back and you begin your
7 deliberations, if one of you may have some notes,
8 then you shouldn't prefer those notes over someone
9 else's individual recollections. Notes are no
10 better than anyone's recollection. You should not
11 default to those notes simply because they are
12 written down and they are on paper. You should all
13 recall the testimony and have the opportunity to
14 present your recollection of the testimony and
15 discuss it openly without any preference or
16 defaulting to notes that one of you may have taken.
17 All right.

18 That having been said, Mr. McGarr, I think it
19 is your witness.

20 MR. MCGARR: May it please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MCGARR:

24 Q Mrs. Bettencourt, logistically, I have to stay
25 where I am.

1 **MR. McGARR:** Your Honor, would you still like
2 for me to give you some of the documents we're
3 dealing with?

4 **THE COURT:** Uh, you can. You can. I prefer
5 not to have that paperclip you're carrying around in
6 your mouth though.

7 **MR. McGARR:** I realize that. May I approach
8 the witness, Your Honor?

9 **THE COURT:** Yes.

10 **BY MR. McGARR:**

11 **Q** Mrs. Bettencourt, uh, would you agree that --
12 and it may help to go to the second page of that
13 particular document -- that at least at the time of your
14 deposition, which was October 1 of 2010, uh, you were
15 asking, uh, for expenses in the amount of \$2,598 --
16 2.598-round-about million dollars in damages?

17 **A** I'm sorry. Repeat the question.

18 **Q** The question is, on the last -- on the last
19 page of this particular document, do you recollect that
20 you added this up and came to the conclusion that you
21 were asking for \$2,598,672.10?

22 **A** I recollect that you handed me a whole bunch of
23 numbers and asked me to add them on a calculator on the
24 deposition and that I wrote this total here. I don't
25 know what these numbers are.

1 Q Would you agree going to the front of that
2 document that this would be what we would call an
3 interrogatory and the question was set forth here in a
4 statement of all of the damages claimed to have been
5 sustained by the party including, without limitation, all
6 lost wages. Please attach any and all documentation
7 supporting the party's claim of loss wages including all
8 copies of the party's federal income tax -- federal tax
9 returns for the last three years inclusive of the year of
10 the accident. Was that the question?

11 A Well, I don't actually know what an
12 interrogatory is. So I'm not exactly sure what you're
13 asking me. These numbers are not -- I never seen them.
14 I don't know where they came from.

15 Q They came from your attorney.

16 A Okay.

17 Q Would you agree that that was the question that
18 was asked at the time?

19 A What question?

20 Q Number 7, the question that I just read to you.

21 A Yes, I suppose -- that's the question you asked
22 me in the deposition?

23 Q No, is that the question that was asked in this
24 document?

25 A I don't see a question mark anywhere in the --

1 I see that there's all this language that you just read
2 to me. But you're asking me if there's a question on
3 this piece of paper. I don't see a question mark asking
4 a question. So I'm not sure.

5 Q Does it ask that you list the damages that you
6 are claiming?

7 A (Reading.) Yeah, I guess that's what it's
8 saying. This is the loss that the party's claiming.

9 Q And when we added up all those losses or you
10 added up all those losses, did you come up with a figure
11 of \$2,598,672.10?

12 A When you asked me to add all these numbers,
13 yes, that's the figure I came up with.

14 Q Would you agree that part of those losses would
15 be present loss of household services, meaning, the
16 ability to garden, cook?

17 A I can't answer that. I don't know where these
18 numbers came from.

19 Q They came from your attorney, Mrs. Bettencourt.

20 A I don't know how they derived them. I don't
21 have any idea.

22 MR. McGARR: Your Honor, at this point, we
23 would simply like to introduce this document as
24 Defendant's Exhibit number 1.

25 THE COURT: Any objection, sir?

1 MR. CHILDS: No, sir.

2 THE COURT: All right. Without objection,
3 the same is introduced as Defendant's Exhibit number
4 1.

5 (WHEREUPON, Defendant's Exhibit 1 is marked for
6 identification and admitted into the record.)

7 BY MR. MCGARR:

8 Q Mrs. Bettencourt --

9 MR. MCGARR: Permission to approach again,
10 Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. MCGARR:

13 Q Mrs. Bettencourt, you would agree that we have
14 highlighted even present loss of household services.
15 That number would be \$89,000 and some change?

16 A Yes, you have highlighted that.

17 Q And future loss of household services would be
18 \$445,000 and some change?

19 A Yes, you have highlighted that also.

20 MR. MCGARR: Permission to publish that.

21 THE COURT: Yes, sir, you may.

22 BY MR. MCGARR:

23 Q Mrs. Bettencourt, uh, yesterday, you were asked
24 is this -- is it worth \$2.5 million, is that correct?

25 A Yes.

1 Q You said nothing's worth this, is that correct?

2 A Correct.

3 Q So contrary to what you just told us, you know
4 that you're suing for \$2.5 million, isn't that correct?

5 A I found that out yesterday in court, yes.

6 Q Mrs. Bettencourt, yesterday, you told the jury
7 on two separate occasions that this automobile accident
8 knocked you into -- left into the oncoming lane of
9 traffic on Augusta Road, is that correct?

10 A It knocked me forward into the intersection.
11 Therefore, I was blocking the left lane of oncoming
12 traffic. I don't know that the car actually turned left
13 or was thrown left. I don't know that.

14 Q Did you tell the jury yesterday that your car
15 was knocked to the point that it was blocking traffic in
16 the left lane?

17 A Yes, I did.

18 Q You said that twice, did you not?

19 A I don't recall.

20 Q And would you agree that that's basically the
21 same statement that Mrs. McFall said in her affidavit and
22 on the witness stand?

23 A I never seen her affidavit nor do I remember
24 what she said.

25 Q So your memory is faulty here again today, is

1 that correct?

2 **A** I don't know well enough to quote exactly what
3 she said, nor do I feel comfortable confirming what you
4 heard. I'm sorry.

5 **Q** But nonetheless, you told the jury you were
6 knocked in the oncoming lane of traffic on two occasions,
7 is that correct?

8 **MR. CHILDS:** That questions been asked and
9 answered, Your Honor. It's been asked twice.

10 **THE COURT:** Okay. I'll allow you to --

11 **MR. CHILDS:** This is the third time.

12 **THE COURT:** I'll allow you to ask it one more
13 time.

14 **THE WITNESS:** I'm sorry.

15 **BY MR. McGARR:**

16 **Q** But nonetheless, you told this jury you were
17 knocked into that left lane of traffic on two occasions
18 yesterday, is that correct?

19 **A** Correct.

20 **MR. McGARR:** Your Honor, at this point, we
21 would ask if you would unseal or give permission.

22 **THE COURT:** You may do so, sir. If you
23 would, let Mr. Childs confirm that, in fact, it is
24 the original and he has no objections to the same.

25 **MR. CHILDS:** No.

1 **THE COURT:** Okay. You may open it, sir.

2 **MR. McGARR:** Your Honor, we would also ask
3 for an instruction to the jury as to what a
4 deposition is.

5 **THE COURT:** Okay. You recall, Ladies and
6 Gentlemen, that I told you what a deposition is on
7 Tuesday, that is, that it is an out-of-court
8 statement taken under oath in anticipation of trial.
9 Deposition testimony is considered just like any
10 other piece of evidence. You put whatever weight on
11 it you deem appropriate. All right. Thank you.

12 **BY MR. McGARR:**

13 **Q** Mrs. Bettencourt, to show you how this works,
14 if I make reference to a page, it will be on the right-
15 hand top corner. The line would be over here. For
16 example, line 21. Mrs. Bettencourt, did we take -- this
17 will be on the front page. Did we take your deposition
18 on October 1, 2010?

19 **A** Yes, sir.

20 **Q** And at that time, were you placed under oath?

21 **A** Yes, sir.

22 **Q** If you could, go with me to page 18 of your
23 deposition.

24 **A** I am there.

25 **Q** If you could, go with me to line 10 of your

1 deposition.

2 A I am there.

3 Q Actually go to line 9. Uh, did I ask you on --
4 to make it more clear, let's go to line 4 just so nobody
5 gets confused. On line 4, did I ask you what happened --
6 on line 5, did you say I was hit in behind?

7 A Correct.

8 Q On line 6, I said, when you were hit from
9 behind, did your car move or did it stay steady? On line
10 8, you said my car was pushed out into the intersection.

11 A Correct.

12 Q And on line 9, did I say I thought you were
13 already in the intersection? On line 10, did you say I
14 was preparing to turn on Augusta Road. It's best if you
15 don't pull clear into an intersection. So I was -- maybe
16 the front two tires were past the line. By the time she
17 hit me, I was completely through the intersection. I was
18 lucky I had not turned the wheel or I would have been in
19 oncoming traffic. Is that what you told me at the time?

20 A Yes, that's what's on here.

21 Q Continuing, did I ask you, line 17, how far do
22 you think you were knocked feet-wise? On line 18, did
23 you say I'm sorry, you'll have to repeat that question?
24 On line 19, did I say how far were you pushed feet-wise
25 or car-lengthwise? On line 21, did you say, I would say

1 at least a full car length?

2 A Yes, that's what it says.

3 Q Then on line 22, did I ask you were you not
4 correctly forward, in other words, you didn't turn left.
5 You went straightforward. On line 25, did you answer
6 correct?

7 A I did.

8 Q So on October 1, 2010, your story was that you
9 were knocked straightforward, not that you were knocked
10 left into oncoming traffic, is that correct?

11 A Correct.

12 Q Would you agree yesterday that you told the
13 jury that you have no recollection yesterday whatsoever
14 of how you got from Augusta Road itself to the side of
15 the road?

16 A Yes, I heard a lot of other people testifying
17 to how that all happened. It's hard to tell at this
18 point what I remember and what actually happened. As I
19 recall, I can not remember driving, nor do I remember a
20 tow truck of any kind getting me from the intersection to
21 the side of the road.

22 Q Could you go with me to page 19 of your
23 deposition?

24 A Yes.

25 Q Beginning on line 5. I'm sorry. Beginning on

1 line 8. Did I ask you did you ultimately pull your car
2 out of the intersection and drive it off of Augusta Road?
3 And on line 10, did you answer after I was hit, I was
4 stunned, I guess, is the only word I could think of. I
5 realized at that point that I was preventing traffic from
6 moving in both directions. So I put my -- took my foot
7 off the break to see if my car would go and it went. I
8 continued out of the intersection onto the side of the
9 road and called 911?

10 A Yes, that's what it says.

11 Q So on October 1, 2010, your recollection was
12 real clear as to how you got to the side of the road, is
13 that correct?

14 A Yes.

15 Q Mrs. Bettencourt, yesterday, did you tell the
16 jury that you had scheduled the doctor's visit with Dr.
17 Kistler on the same day of your deposition and, in part,
18 that's because it took three to six months to get in to
19 see Dr. Kistler?

20 A Yes. Most of Dr. Kistler's patients, you have
21 to call and speak with an appointment clerk. You ask for
22 an appointment. They have something that's quite far
23 out. The first time I called, I recall it taking nearly
24 six months before I could get in to see him. Most of the
25 time, if you are an existing patient, he can see you

1 within three months of the time. I think there was one
2 time that I don't call -- I don't remember which one of
3 the appointments it was that they got me in -- because
4 they had had a cancellation.

5 Q Uh, would you go with me to the front page of
6 the exhibit that you have in your hand?

7 A Uh-huh.

8 Q Would you agree with me, looking in the Premier
9 Family Medicine portion, that you went to see Premier
10 Family Medicine on 9/16 of 2008?

11 A Yes.

12 Q Then they scheduled you to see Doctor -- they
13 then said we're going to send you to Dr. Kistler, is that
14 correct?

15 A Uh, no. Uh, I don't remember at which time
16 that I saw them that they referred me to their
17 neurologist. I'm not sure if it was after the 9/16 or
18 after the 10/3. It seems like it was the second or third
19 time I had been to Premier that that was the referral.
20 You have to check the records.

21 Q So it was either 9/16 or 10/3 that they
22 referred you, is that correct?

23 A I don't know.

24 Q It's one or the other. Am I right?

25 A I don't know.

1 Q But it wouldn't have been the second, the next
2 visit, cause that would be 9/22/09, wouldn't it?

3 A I don't know. The medical records have been
4 admitted, haven't they?

5 Q Mrs. Bettencourt ---

6 A I don't know.

7 Q --- go to the second page of that document in
8 front of you.

9 A Okay.

10 Q Does it appear that your first visit to
11 Neurology Associates was on October 22, 2008?

12 A Correct.

13 Q They couldn't have referred you on 9/22 of '09
14 because that's long after the first visit with Dr.
15 Kistler, isn't it?

16 A Yes.

17 Q So either you got to Dr. Kistler in less than a
18 month if they referred you on 9/16/08 or you got to Dr.
19 Kistler in, uh, a matter of days if they referred you on
20 10/3/08 because you got to Dr. Kistler's office on 10/22
21 of '08, is that correct?

22 A It shows on here that I saw Dr. Kistler on
23 10/22. But again, I don't know when the referral was
24 made. Is that what you're asking me?

25 Q That's not -- but that's not three months, is

1 it?

2 A No.

3 Q It's not six months, is it?

4 A No.

5 Q It's less than a month, isn't it?

6 A I guess. Maybe the referral was faster than
7 when I made the appointment myself. I don't know how
8 that works. I just know when I made the appointment, it
9 took a long time to see him.

10 Q Would you agree, let's go to the second page of
11 that Exhibit, that Dr. Kistler referred you on 10/01/2010
12 to Roger C. Peace?

13 A 10/1, it says on here that he referred me?

14 Q No, would you agree that your last visit with
15 Dr. Kistler was 10/1, 2010, the day of your deposition?

16 A Yes.

17 Q And would you agree at that point, he had
18 referred you to Roger C. Peace?

19 A Yes.

20 Q And would you agree that you actually went to
21 Roger C. Peace, if you go to the third page of that
22 Exhibit, on 11/29/2010?

23 A Correct.

24 Q And then you did some followup testing on
25 2/14/2010?

1 A Correct.

2 Q 3/2 -- 2/14/2011, 3/2/2011 and 3/9/2011?

3 A Correct.

4 Q And would you agree with me that you didn't do
5 any more followup treatment with Roger C. Peace until you
6 had notice that this trial was about to take place?

7 A My followup appointments with Roger C. Peace
8 was when I could afford to pay for them.

9 Q Your Roger C. Peace appointments started just a
10 few weeks ago, didn't they?

11 A Because I had saved up enough money to pay for
12 them, yes.

13 MR. MCGARR: Your Honor, we're going to need
14 to ask the jury to take a slight recess.

15 THE COURT: Okay. All right. Hold on just a
16 second. Y'all want to approach real quick?

17 (WHEREUPON, a bench conference is held off the
18 record.)

19 BY MR. MCGARR:

20 Q Mrs. Bettencourt, I'm going to show you what's
21 previously been marked as Defendant's Exhibits number 1,
22 2, 4, 5, 6, 7 and 8 and ask if you please would look at
23 all of those.

24 A (Reviewing.)

25 Q Would you agree that these photographs