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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 II

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1 accurately represent the way the car you were driving
2 looked after the accident and before repairs were made?

3 A (Reviewing.) It's showing the exterior damage
4 to the car. There is no picture showing the steel bike
5 rack and how it's bent from underneath and had to be
6 removed and replaced. Also the picture of the interior
7 of the car that has the -- where you could see my soccer
8 chairs in the back, they didn't remove the chairs from
9 the back to show how the whole inside lining of the car
10 was all, uh, -- I don't know -- wrinkled or -- it's not
11 showing that. They didn't take the stuff out of the back
12 of the car.

13 Also the wheel drums that cover the wheels on
14 the back -- the inside part of the car. It's not showing
15 those all had to be replaced because they were all
16 scratched and smashed. This just isn't really -- there's
17 a teensy little section that's showing a separated bumper
18 and how the bumpers roll up underneath the car. It's
19 showing some of the damage, yes.

20 Q Mrs. Bettencourt, could we also go to page 27
21 of your deposition beginning on line 16? Tell me when
22 you get there.

23 A You said 27?

24 Q Page 27, yes, ma'am.

25 A Okay.

1 Q Line 16.

2 A Okay.

3 Q On line 16, did I say okay, so it gets down
4 from my simple brain, Defendant's Exhibits 1, 2, 4, 5, 6,
5 7 and 8 are representative of the way the car looked
6 after the accident and before repairs were made. Is that
7 correct? And on line 21, did you tell me that's correct?

8 A Yes, I did.

9 Q And I'm giving you the same pictures today, am
10 I not?

11 A Yes.

12 Q On June -- I mean, October 1, 2010, you agreed
13 that these photographs represented the way your car
14 looked after this accident, is that correct?

15 A And it did look like this.

16 MR. MCGARR: At this point, Your Honor, we
17 would move to have these documents placed into
18 evidence as Defendant's Exhibits number 1, 2, -- 2,
19 sorry, 3, 4, 5, 6, 7 and 8.

20 THE COURT: Do you have any objection to
21 entering them as one bulk exhibit?

22 MR. MCGARR: Oh, no, Your Honor. None
23 whatsoever.

24 THE COURT: Let's do that. That will make it
25 easier on the Court Reporter.

1 MR. CHILDS: No objection, Your Honor.

2 THE COURT: All right. Without objection,
3 that -- those, uh, pictures are admitted as
4 Defendant's Exhibit number 2, am I correct? Okay.

5 (WHEREUPON, Defendant's Exhibit 2 is marked for
6 identification and admitted into the record.)

7 MR. McGARR: Permission to publish, Your
8 Honor.

9 THE COURT: Yes, sir.

10 (WHEREUPON, there is a pause as the exhibits are
11 published to the jury.)

12 BY MR. McGARR:

13 Q Yesterday, you told the jury essentially that
14 your yard and garden has had to take a back seat since
15 this automobile accident, is that correct?

16 A It has taken a -- it's managed with less time
17 and care than it has been in the past.

18 Q It's not as nice as it should be. There are
19 things that break that don't get fixed, is that correct?

20 A Correct.

21 MR. McGARR: Your Honor, we would like to do
22 the tape again, but we're going to need for Mrs.
23 Bettencourt to be able to see it.

24 THE COURT: Sure. We'll do the same thing
25 that we did before.

1 Mrs. Bettencourt, you can come down and sit
2 down.

3 Mr. Ray, if you want to pull that chair around
4 so she can sit in it, that will be fine.

5 MR. CHILDS: Your Honor, just for the record,
6 that's subject to my previous objection..

7 THE COURT: I understand. That's note --
8 duly noted for the record and overruled.

9 (WHEREUPON, the video is played.)

10 BY MR. MCGARR:

11 Q Mrs. Bettencourt, that reveals the way your
12 home and garden looks just a few months ago, doesn't it?

13 A The day of the garden show, yes..

14 Q And that home and garden is done by you, right?

15 A Well, to prepare for that day, my father-in-law
16 was here from California helping me and my husband was in
17 town that weekend also.

18 Q The garden is your baby, is it not?

19 A With my husband's help, yes.

20 MR. MCGARR: Your Honor?

21 THE COURT: Yes, sir.

22 MR. MCGARR: Permission to approach?

23 THE COURT: Yes, sir, you may.

24 BY MR. MCGARR:

25 Q Mrs. Bettencourt, did you speak to Amy Clark

1 who is a writer with the Greenville News?

2 A Yes, I did.

3 Q On or about April of 2011?

4 A I don't know what day it was, but before the
5 garden show.

6 Q And would you agree that the Greenville News
7 article states -- you will have to look at some of the
8 highlighted area -- "Bettencourt said when the old home
9 she and her husband brought was raised, many of the trees
10 and the plants on the right had to be removed leaving her
11 with a blank slate for planting".

12 A That's what she wrote.

13 Q Going to the next highlighted area. Would you
14 agree that it says, quoting you, " 'I just started
15 putting it in the ground. If it died, I didn't plant it
16 again,' she said with a laugh."

17 A Yes, that's what it says.

18 Q Have you ever had a head injury prior to this
19 accident?

20 A No.

21 Q Would you agree that that statement is
22 consistent with what you told me under oath, which is
23 that you could not recall having a prior problem with
24 your head?

25 A Right.

1 Q Uh, going to the second document in that set of
2 documents, would you agree that you didn't tell Mrs.
3 Benson on 9/16/08 that you ever had a prior problem with
4 your head?

5 A I'm sorry. Can you repeat the question?

6 Q Would you agree that when you went to Premier
7 Family Medicine on 9/17/08 that you didn't tell Mrs.
8 Benson about a prior problem with your head?

9 A I did not.

10 Q Would you agree that when you returned to Mrs.
11 Benson on 9/17/08 that you didn't tell her about any
12 problems with your head -- prior problems with your head
13 before the accident?

14 A I did not.

15 Q Would you agree that when you returned on
16 10/3/08 that you didn't mention any prior problems with
17 your head or head problems, migraines, anything along
18 those lines?

19 A Correct.

20 Q Would you agree with the next document that
21 when you went to the Journey Center that you made no
22 mention of prior problems with your head?

23 A Correct.

24 Q Would you agree that when you went to Neurology
25 Associates and filled out a questionnaire that you told

1 A Correct.

2 Q Yet, your mother told the jury that you were
3 migraine prone, you just didn't complain about it, you
4 just went to sleep?

5 A I don't recall ever having any migraines.

6 Q Going to the next document in that set of
7 documents, would you agree that there's a form from North
8 Point Chiropractic, chiropractor you chose to use where
9 it lists that you have four separate concussions in the
10 past?

11 A I do not. Am I just looking at the highlighted
12 things on here?

13 Q Yes, ma'am.

14 A Two of these things you have highlighted, I
15 can't -- they are illegible. What is it that you're
16 asking?

17 Q On 7/18/02 was the document from Doctor --
18 Chiropractor Shride say concussions, four times.

19 A It says something 4X. I don't know what that
20 word is before the 4X.

21 Q Mrs. Bettencourt, you heard Dr. Shride testify
22 yesterday that it says falls from horses, concussions
23 times four, did you not?

24 A I did hear him say that, yes.

25 Q Is it not true that that's what that says?

1 A It says fall from -- and then I can't read that
2 word -- then there's a slash. Then there's the word that
3 you highlighted that I can't read. It says four times.

4 Q Mrs. Bettencourt, wouldn't it make sense if he
5 was describing that as concussions times four that that's
6 what that means?

7 A If that's what he's saying it says. But I
8 haven't had four concussions, so why would he write that?

9 Q So in your opinion, Dr. Shride is a fibber?

10 A No, I'm just saying that whatever he wrote
11 here, I don't think it actually says concussions. If it
12 does, then he misunderstood what I said. I've never had
13 any concussions.

14 Q So this testimony that you've had four prior
15 concussions and you told him about that, that's a fib
16 too?

17 A I'm sorry. What was the question?

18 Q His testimony that you told him you had four
19 prior concussions, that's a fib?

20 A I don't know.

21 Q This part.

22 A I don't know. I don't know if it's -- I think
23 it's maybe just a misunderstanding. He's very reliable
24 doctor. He's always treated me with the upmost respect.
25 I've had great success going to him. He got me out of

1 pain immediately within just a few weeks of a major car
2 accident. I don't want to say that he wasn't telling the
3 truth.

4 Q And would you agree that on 7/18/02 that
5 there's a question there. It says headaches. You've
6 checked off -- it says headaches and it's checked off as
7 being there in the present form.

8 A What does that say after the headaches?

9 Q Related to painful low back.

10 A Correct.

11 Q Uh, going to the next document, would you agree
12 -- in fact, just skip the next document. Would you agree
13 though going to the next document that you actually were
14 having headaches in 2002 related to his adjustment of
15 your body?

16 A I can't read any of the -- I don't know what
17 any of this is.

18 Q Would you agree that Chiropractor Shride
19 testified that you were having headaches following
20 adjustments? And he said it just yesterday.

21 A I don't recall him saying I had headaches
22 following the adjustments. I recall him saying that my
23 lower back problems were causing headaches.

24 Q Okay. You don't recall him telling the jury
25 that you had headaches and it actually was severe enough

1 to start giving you visual changes?

2 A I don't recall that, no, sorry.

3 Q Memory issue again, is that correct?

4 A (No response.)

5 Q You agree that in your opinion you've never had
6 neck pain prior to this accident?

7 A Yes. I've never had any pain or the low back
8 problems.

9 Q And would you agree that you told me in your
10 deposition that you never had a neck problem significant
11 enough to send you to a medical provider until this
12 accident came about?

13 A I'm sorry.

14 Q Would you agree that you told me in your
15 deposition that you never had a problem in your neck
16 significant enough to send you to a medical provider
17 until the accident with Mrs. Wald?

18 A Yes, I do, sir.

19 Q Would you agree that you were conscious on
20 8/16, 8/19, 8/23, 8/28, 8/29, 9/16, 10/14, 10/17, 10/23,
21 10/30, 11/6, 11/13, 11/21, 12/2 and 12/16 of '02 when
22 your neck was being adjusted?

23 A I was conscious, I'm sure, during all those
24 dates. I have never been unconscious to my knowledge.
25 Whenever you see a chiropractor for any adjustment, even

1 your tailbone, they adjust your entire spine. I don't
2 really think, nor have I ever asked Dr. Shride to
3 formally touch the one part that was hurting. His job is
4 for overall spinal health. So when you go in for your
5 appointment, he adjusts your whole entire spine
6 regardless of whether the neck is hurting or the head is
7 hurting or whatever. He does the whole thing. It's like
8 I could pick.

9 Q Mrs. Bettencourt, going to the second page of
10 that stack of documents, would you agree that a C means
11 cervical spine. Would you agree that there are a great
12 deal of times where you are being adjusted by the
13 chiropractor and he does not, in any way, shape or form,
14 put a C down?

15 A I'm not sure where we're looking at. The thing
16 you handed me looks like a deposition.

17 MR. CHILDS: I don't think the witness is
18 capable of testifying about records, first of all,
19 not in evidence and interpretation of the
20 annotations of a chiropractor.

21 THE COURT: Okay. I respectfully overrule.
22 I'll let her respond to that question. If that's
23 the case, she can respond.

24 THE WITNESS: What was the question?

25 BY MR. MCGARR:

1 Q Mrs. Bettencourt, would you agree -- Dr. Shride
2 has told us C means cervical spine or neck. Would you
3 agree looking on the second document of that stack of
4 documents that there are numerous occasions where you
5 went to see him and he doesn't put a C anywhere in those
6 notations?

7 A I don't know what this piece of paper is with
8 all this.

9 Q That's not my question, Mrs. Bettencourt. My
10 question is when you look at that document, do you see
11 areas where there are dates of treatment and to the right
12 of it, there's no C?

13 A Yes, there are lines where he has this like
14 little codes written. But there are quite a few, I don't
15 know if they are C's or L's actually. I mean, are you
16 asking me just what you've highlighted or all the lines?

17 Q At this point, what I highlighted is the C's.
18 Are there areas that haven't been highlighted?

19 MR. CHILDS: I object. There are C's that
20 aren't highlighted on this form that he's having her
21 read.

22 THE COURT: I understand. I'm going to give
23 the witness the opportunity to look at the form and
24 answer based on what she sees on the form
25 irrespective of what may be highlighted or not.

1 **THE WITNESS:** All right. I am seeing a C on
2 nearly every single line on here, but I don't know
3 what any of them mean.

4 **BY MR. MCGARR:**

5 **Q** Do you see a C on 7/19/02?

6 **A** I think that last letter in his line is a C.

7 **Q** Ma'am, that's an L.

8 **A** Well, what is that first three letters right
9 there, is that a C? The handwriting is horrible. What
10 are you asking me. It looks like there's a C on every
11 line.

12 **Q** Mrs. Bettencourt, there were times when you
13 were treated by the chiropractor and he never touched
14 your neck, isn't that true?

15 **A** Oh, I'm sure.

16 **Q** And there were a lot of times where he adjusted
17 your neck and you were awake and aware of it, isn't that
18 also true?

19 **A** Correct.

20 **Q** In fact, if we could go to the third document
21 in that stack of documents, would you agree that on
22 7/17/08, you actually filled out a questionnaire. The
23 questionnaire, in part, says neck and base of head, right
24 side is sore.

25 **A** Correct.

1 Q And you not only did that, but did you put an X
2 on your neck, is that correct?

3 A I don't know if I put that X. But it's there
4 and it's highlighted, yes.

5 Q Yet, you told me and the jury under oath that
6 you never sought treatment until this accident for your
7 neck, is that correct?

8 A Yeah. I don't remember seeing him for this. I
9 would have seen him for anything.

10 Q Is the chiropractor fibbing about the records
11 that you've shown?

12 A No, no. This is in my handwriting. I can
13 clearly read it.

14 MR. CHILDS: Your Honor, let me interpose an
15 interjection. That's pitting one witness against
16 another. I let him kind of do that a little bit,
17 but that's clearly impermissible.

18 THE COURT: Okay. All right. I sustain the
19 objection. You may proceed.

20 BY MR. McGARR:

21 Q You signed this document?

22 A Correct.

23 Q Mrs. Bettencourt, uh, would you agree that the
24 concussion issues are still a problem in your mind?

25 A I don't know if they -- I'm still having

1 problems with my speech and organizing my thoughts and
2 ~~organizing tasks and doing multiple things at one time.~~

3 Q And would you agree that your neck is still
4 giving you trouble?

5 A Uh, no, not really. The physical therapy that
6 I received as part of this has helped me to adjust my
7 workspace and my exercise routine so that I can overcome
8 any of that pain through physical training to make the
9 muscles do different things. So I really don't have an
10 issue with the pain.

11 Q Mrs. Bettencourt, could you go to page 35 of
12 your deposition for me please? Tell me when you get
13 there?

14 A I am there.

15 Q Can you go to line 2. Did I ask you on the
16 date of your deposition October 1, 2010, how is your neck
17 doing. On line 3, did you say the same?

18 A Yes.

19 Q On line 4, did I ask you, meaning good or bad?
20 On line 5, did you say bad?

21 A Correct.

22 Q Uh, would you agree that your left shoulder is
23 giving you -- still giving you problems?

24 A Like I said, my left shoulder has been damaged.
25 They can't really fix it or do anything with it. All I

1 can do is the physical training that they've told me to
2 do in order to avoid the pain.

3 Q So would you agree that you are having head
4 issues essentially, at least you told me in your
5 deposition, neck issues and left shoulder issues?

6 A I'm sorry. What is the question?

7 Q Would you agree that you're having the head
8 issues still --

9 A Do you mean -- what do you mean by head issues,
10 the memory or the --

11 Q Yes, ma'am. I'm just going to shortcut it.

12 A Okay.

13 Q The head issues, the neck issues and the left
14 shoulder issues?

15 A The shoulder issues lead to the neck issues.
16 The neck issues do not exist unless the shoulder is not
17 probably taken care of. So yes, if I do not follow the
18 directions I've been given by the doctor, then I do still
19 have those problems. I'm not ignoring what the doctors
20 told me to do to avoid that pain.

21 Q Let's go to page 35 of your deposition.

22 A Okay.

23 Q Line 12. Did I ask you how is your left
24 shoulder doing? On line 13, did you say the same. On
25 line 14, did I say is that good or bad. And then on line

1 15, did you say bad?

2 A Correct.

3 Q So would you agree that at least on October 1,
4 2010, you had told me you are still having troubles with
5 your head?

6 A Correct.

7 Q Still having trouble with your neck and still
8 having trouble with your left shoulder?

9 A Correct.

10 Q Mrs. Bettencourt, would you agree that you went
11 to get a physical done with Premier Family Medicine on
12 3/1 of 2010?

13 A I did.

14 Q And at that point, uh, you went to the doctor
15 and the issue was the patient is a 42-year-old female who
16 presents today for a physical. The patient feels well
17 with no complaints.

18 A What was the question?

19 Q Is that what the document states?

20 A It is what the document states.

21 Q And that was done on 3/1/2010, months before
22 the deposition that I took of you on October 1, 2010, is
23 that correct?

24 A Yes, sir.

25 Q Uh, you indicated yesterday that you were

1 having trouble with sleeping, you had to go to bed much
2 earlier than you used to. Is that correct?

3 A I'm not having any trouble sleeping.

4 Q You had to go to sleep --

5 A I require more sleep.

6 Q Would you agree that it says in this one the
7 patient sleeps seven hours per night?

8 A Yes, it does.

9 Q Would you agree that your deposition of October
10 1, 2010 indicated to me that you were having all these
11 problems, yet, when you go get a physical done on
12 3/1/2010, none of those problems seem to be there?

13 A I recorded all of the problems. This gentleman
14 who did my physical worked in the same office Mrs. Benson
15 does, but Mrs. Benson was not available to do my
16 physical. So another doctor that I didn't know did my
17 physical. I told him of the ongoing treatment that I was
18 receiving for the car accident and that all of those
19 complaints still existed and there was really no change
20 in my condition. I had already been referred to a
21 neurologist and psychologist and all that. But he didn't
22 see fit to put any of that information in here.

23 Q So that's the second doctor that fibbed?

24 MR. CHILDS: Objection, Your Honor. Same
25 objection.

1 THE COURT: All right. Sustained.

2 BY MR. MCGARR:

3 Q You indicated that you felt like your
4 concussion issues came about as a result of hitting your
5 head on the headrest or the seat rest, is that correct?

6 A I assumed that my concussion happened as a
7 result of the car accident. How exactly that happened, I
8 assumed it hit the seat rest.

9 Q Can we go to page 32 of your deposition?

10 A Sure.

11 Q Line 21. Uh, did you say halfway through that
12 I have some type of concussion from hitting my head so
13 hard against the back of the seat rest. I'm assuming
14 that's where the nausea and all came from.

15 A Actually, the complete answer that's stated on
16 the deposition is I don't know. I assume my neck and my
17 shoulders are the main injury. I had some type of
18 concussion from hitting my head so hard against the back
19 of the seat rest. I assume that's where the nausea and
20 all came from.

21 Q Mrs. Bettencourt, let's do this. Let's go to
22 line 17. Would you agree that what I asked you is what
23 do you feel was injured? Let's start from the top of
24 your head and go down as a result of this accident. Your
25 answer, in context, was on line 20, I don't know. I

1 assume my neck and shoulder are the main injury. I have
2 some type of concussion from hitting my head so hard
3 against the back of the seat rest. I assume that's where
4 all the nausea and all came from. Is that what you said
5 in your deposition?

6 A Correct.

7 Q Mrs. Bettencourt, on the day of this accident,
8 going to the second -- if you could, go to the second
9 document in this list of documents. Would you agree with
10 me that on the day of this accident, 9/4/08, you went to
11 the chiropractor's office and on that date you filled out
12 a form?

13 A Correct.

14 Q And when you filled out that form, would you
15 agree that there was a question that said did any part of
16 your body strike anything in the vehicle and you checked
17 no?

18 A Correct.

19 Q So on the day of the accident, uh, you informed
20 the chiropractor that your head struck nothing, is that
21 correct?

22 A That's what the form says, correct.

23 Q Going to the third page of that document, does
24 it appear that on 10/22/08, you went to see Dr. Kistler
25 and what you told him was that you were restrained, you

1 did not strike your face but recalls hitting the back of
2 her head against the seat.

3 A Yes, that's what it says.

4 Q So it's changed a bit between the day of the
5 accident and 10/22 of '08, is that correct?

6 A Yes, I was pretty confused the day that I went
7 to the doctor's office initially.

8 Q Going to the next document that would be headed
9 psychological training services.

10 A Okay.

11 Q Does it appear that you told Dr. Brabham, and
12 I'm going to quote, in that crash, you first struck her
13 forehead on the steering wheel and then the driver's side
14 windshield and then on rebound, also struck the rear of
15 her head on the headrest?

16 A I don't remember saying that. I'm almost
17 certain that I did not strike any part of my face on
18 anything. There was lipstick and facial makeup smeared
19 on the glass window. But I do not have any bruising or
20 anything on my face from striking.

21 Q Mrs. Bettencourt, is that what this document
22 says?

23 A Yes, it does. Yes, it does.

24 Q You just disagree with that?

25 A I'm sorry?

1 Q You just disagree with that?

2 A I do?

3 Q You just told the jury you disagree with that.

4 A The document says that, but I don't believe I
5 hit my face on anything. I did not have any bruises on
6 my face at all.

7 Q Would you agree that over time, between 9/4/08
8 and 3/10/2009 that the reports of what you did with
9 regard to your head expanded dramatically?

10 A I'm sorry. What page are we on?

11 Q It's easiest to do it this way, would you agree
12 that between 9/4 of '08 and 3/10, 2009 that your, uh,
13 areas that are being reported as being struck have
14 expanded dramatically.

15 A Areas of -- I'm sorry. Can you say that one
16 more time.

17 Q For example, the day of the accident, you
18 didn't strike anything. Later on, you struck the
19 headrest. Later on, according to these records, you
20 struck the steering wheel, the windshield and the
21 headrest. Would you agree that that's how that
22 progression has gone? That's insofar as these documents
23 are concerned.

24 A As far as the documents are concerned, yes.

25 Q I understand that you don't believe you told

1 anybody this stuff.

2 A Okay.

3 Q Mrs. Bettencourt, essentially, did you do
4 whatever it took to get over this?

5 A Yes, sir.

6 Q Uh, and yet on 9/16 of 2008, you may need to go
7 to the second page of that document, you refused any
8 medications that Mrs. Benson was trying to give you, is
9 that correct?

10 A Yes.

11 Q And going to the next document on 9/17 of '08,
12 you again refused any medication that she was trying to
13 give you?

14 A Correct.

15 Q Going to the next document, 10/3/08, the second
16 page, does it appear that you finally at that point did
17 agree to take --

18 A I did.

19 Q And does it appear on the next document that
20 you went to one session with the Journey Center, which is
21 something that Mrs. Benson wanted you to do, but you
22 never came back and you never completed your sessions?

23 A I was under the impression that we had
24 determined at the first session that I didn't need any
25 further treatment.

1 Q Would you agree that this document says client
2 came for one session, assessment not completed?

3 A Yes, it does.

4 Q Would you agree on the next document that on
5 9/22 of '09, you finally decided to take some
6 medications?

7 A I did.

8 Q Yet, on the second page, you again decided to
9 refuse to taking more medications, is that correct?

10 A Yes.

11 Q Going to the next document, would you agree
12 that, uh, you had, uh, gone to physical therapy, but they
13 tried to call you on three separate occasions and you
14 wouldn't return their call to go back to see them so they
15 finally dismissed you for being noncompliant?

16 A Actually, they had helped me as much as they
17 could. I was at the end of what I could afford to do
18 there. So I just continued with the physical training at
19 home.

20 Q Help me here. Does it say no show for two
21 consecutive appointments, has not responded to three
22 messages to call or re-status? Is that what it says?

23 A Yes, it does.

24 Q And does it say you were dismissed for non-
25 compliance?

1 A Yes, it does.

2 Q Mrs. Bettencourt, would you agree that on the
3 morning of the deposition, on the morning of the day of
4 the deposition that we were going to do of you and your
5 husband, you went back to see Dr. Kistler?

6 A I did.

7 Q Would you agree that it had been a year before
8 -- a year -- you hadn't seen him for a year?

9 A Yes.

10 Q Then, all of a sudden, on the day of our
11 deposition, you reappear at his office, is that correct?

12 A Correct.

13 Q And when you reappear on the day of that
14 deposition, you told that poor man that the litigation
15 had settled, had you not?

16 A He asked me if the lawsuit was over. I said
17 that the attorneys and my husband were handling
18 everything and I just didn't know anything about it.
19 That's just what he took from it.

20 Q Poor Dr. Kistler puts down the litigation is
21 settled despite the fact that you are going to a
22 deposition that afternoon. Is that correct?

23 A Yes, it is.

24 Q It ain't settled if I'm about to put you under
25 oath and ask questions about the case, is it?

1 **A** I've never done a deposition. I actually
2 thought we were going to be in the office for about an
3 hour, which was you saw me in panic that I hadn't had
4 preparation for collecting the children that day.

5 **Q** You would assumed you would have been paid
6 something, right, cause that's what you're asking for is
7 money and you hadn't received a dime?

8 **A** Actually, I know it may seem like I'm not a
9 very smart person, but no, that's not what I thought this
10 was about. I thought this was about getting the medical
11 bills that I had incurred through the course of this
12 project reimbursed to me so that I could have some of my
13 savings back. I never thought there was going to be any
14 kind of -- you're just putting words into my mouth.
15 That's not at all what I thought was going to happen.

16 **MR. MCGARR:** Your Honor, at this point, we
17 will need to renew what I was asking about earlier.

18 **THE COURT:** All right. Ladies and Gentlemen,
19 it's probably a pretty good time to take to a break
20 in any event. So I'm going to ask you to take a
21 break. We're going to take up a matter of law.
22 Please don't discuss the case.

23 **(WHEREUPON, the jury exits at approximately**
24 **10:25 a.m.)**

25 **THE COURT:** All right, sir. All right.

1 **MR. MCGARR:** Your Honor, to give you a
2 collective, yesterday, Mrs. Bettencourt testified
3 that the Roger C. Peace, no, that the physical
4 therapy and the Roger C. Peace were very difficult
5 yet not unattainable because she didn't have the
6 funds. This morning, she said that she had to save
7 up enough money to get to Roger C. Peace.

8 Just now, she has told the jury that she
9 thought that this case was about being reimbursed
10 for the medical expenses that she has had to incur
11 so she could put it back into a savings account.
12 These medical bills have been paid by health
13 insurance and she knows it. So for that reason and
14 based upon the case law that I just handed up
15 earlier, we would move to be able to ask her about
16 the fact that these bills were paid by health
17 insurance because she's opened the door on four
18 separate occasions with this one being a violent
19 opening of the door.

20 **THE COURT:** Okay. Mr. Childs?

21 **MR. CHILDS:** First of all, Mr. McGarr is
22 attempting to open the door violently. Secondly,
23 although my client does have health insurance, it's
24 a high deductible health insurance policy. It
25 required thousands of dollars out of their pockets

1 for these medical expenses. So her testimony is
2 true and accurate in that respect. She had to save
3 up money. That would be her testimony if the issue
4 came out. She's had to save up money in order to do
5 these treatments. It's based on the high deductible
6 policy she has. It really violates the collateral
7 source rule. I don't see how that's all evidence.

8 In addition to that, uh, we, you know, if I
9 need to get in and argue that issue, I don't know
10 the exact dollar amount that they've had to pay out
11 of their pocket. What I've asked them by way of
12 bills is several outstanding balances still out
13 there. I've not submitted any medical records
14 showing outstanding balances for the main purpose of
15 that's not relevant. But I could go back and --
16 you're just opening a door to the complete violation
17 of collateral source rule. However tactfully Mr.
18 McGarr might do it, he's faced with trying to open
19 the doors for this. It's not proper impeachment of
20 her.

21 She's had to incur these expenses. She's had
22 to save up the money. But in order to start
23 testifying about that, we're going to open up a
24 whole field.

25 **THE COURT:** All right. You'd like to

1 respond?

2 **MR. MCGARR:** Just briefly, Your Honor, you
3 have to remember, yesterday, I wasn't doing any of
4 the questioning. She was the one volunteering that
5 she couldn't because she didn't have the money. She
6 couldn't because she didn't have the money. Then
7 this morning, she explains that gap because she
8 didn't have the money. I'm not putting those words
9 in her mouth. And just then, she told that jury she
10 took money, paid these bills and needs to put it
11 back into her savings account because these bills
12 came out of her savings account. And that's
13 inaccurate.

14 I understand -- I'm not asking you to allow me
15 to go into the health insurance and then say, Judge,
16 you can't give a collateral source charge to this
17 jury. You should. You have to by virtue of the
18 case law associated with this. But with regard to
19 my ability to ask, ma'am, you had health insurance,
20 she's playing for the sympathy of the jury as if she
21 didn't have the funds to pay it, when in fact, she
22 did.

23 **MR. CHILDS:** She didn't. The testimony is --

24 **THE COURT:** I think I got it. I understand
25 that it's a sensitive issue when you start talking

1 about collateral source rule. And I do recognize
2 that there are certain circumstances under which,
3 uh, the defense or the parties should have the
4 opportunity to ask questions relative to payments
5 for impeachment purposes. I think under certain
6 circumstances, it's appropriate. In this -- there's
7 no bright line test to determine when it would be or
8 when it's not. You have to look at it in the
9 context of what has been relevant in the record here
10 in court.

11 I think the comments that Mrs. Bettencourt has
12 made so far have been fairly casual. I don't think
13 she's attempted to play to the sympathies of the
14 jury by saying that. Necessarily, I think they've
15 essentially been in response to questions that have
16 been posed.

17 What I'm not going to do is allow you to go
18 into those questions with her for purposes of
19 impeachment. At this point in time, I think that
20 pursuant to Rule 403, it would be simply more
21 confusing to the jury than not. However, I will
22 give a curative charge, if you would like me to,
23 telling them that whether or not she could afford
24 payments or not is completely irrelevant to their
25 determination in this case. They are to determine

1 what damages, if any, she accrued as a result of the
2 accident.

3 MR. CHILDS: I agree with that.

4 MR. McGARR: Your Honor, would I would
5 actually ask is that you instruct the juror [sic]
6 not to keep telling the jury how poor she is and how
7 she can't pay for this.

8 THE COURT: I will do that.

9 MR. McGARR: I don't want a curative
10 instruction. I want the juror [sic] to stop doing
11 what she's doing.

12 THE COURT: I got you. That's fair. That's
13 fair. So I will not, pursuant to your, uh, request
14 and/or lack of request, I will not give a curative
15 instruction.

16 But I will, Mrs. Bettencourt, tell you, uh,
17 whether you can pay for the services or not is not
18 relevant to the jury's consideration.

19 THE WITNESS: Yes, sir.

20 THE COURT: I will tell you not to say
21 anything else about your ability to pay or not to
22 pay.

23 THE WITNESS: So when I'm asked questions
24 about the length of time in between appointments and
25 the answer is that I needed to get money, you know,

1 so that I could pay for those things --

2 THE COURT: Yes, ma'am.

3 THE WITNESS: --- am I just to say I don't
4 know to those questions?

5 THE COURT: I can't instruct you how to
6 testify.

7 THE WITNESS: Sorry.

8 THE COURT: I can not do that. That's one of
9 the things that I was telling you is very sensitive
10 is because under the law, the health insurance
11 proceeds or any collateral source of payment is not
12 admissible. If you introduce into the record a
13 collateral source of payment or you begin to put
14 into the record your ability to pay when it is a
15 fact that there was health insurance that may not
16 have paid immediately, but at some point in time,
17 then he has the right to ask you questions on cross-
18 examination relative to impeachment. All right.

19 At this point, I don't think it's appropriate.
20 Okay. You've had your opportunity to say why you
21 think that is. But going forward, because of the
22 way I have ruled on this specific motion, you can't
23 say anything more about it. But I can't tell you
24 how to respond to those questions. I'm sorry.

25 THE WITNESS: Okay.

1 THE COURT: Okay.

2 MR. CHILDS: Can he even ask those questions
3 anymore?

4 MR. McGARR: Well --

5 THE COURT: Well, I don't think he elicited
6 those responses. In defense of Mr. McGarr, I don't
7 think he elicited those responses. They were
8 offered.

9 MR. McGARR: Your Honor, this has nothing to
10 do with what we're doing now, but can the attorneys
11 have a break?

12 THE COURT: Yeah, yeah. Believe me. I
13 inherited my bladder from my father which means I'm
14 fixing to go use the restroom. Okay. So we're
15 going to take about a 10-to-15-minute break.

16 Mrs. Bettencourt, you can take a break too.
17 Don't discuss your testimony. Okay.

18 (WHEREUPON, a recess is taken.)

19 (WHEREUPON, the jury enters at approximately
20 10:49 a.m.)

21 THE COURT: Yes, sir.

22 BY MR. McGARR:

23 Q Mrs. Bettencourt, do you still have the last
24 document I gave to you dated 10/1/2010?

25 A I'm sure that I do. What is the date?

1 Q 10/1/2010.

2 A Yes.

3 Q Would you agree that you had not only going to
4 Dr. Kistler on 10/1/2010 after about a year's absence,
5 but that when you went to see him on that date, if you'll
6 go to page 2, one of your complaints was memory loss and
7 another one of our complaints was confusion?

8 A Yes, that's part of what you have highlighted
9 here.

10 Q Would you agree that your deposition commenced
11 that afternoon at 2:33 p.m.?

12 A Where does it say the time?

13 Q Yes, ma'am. Permission to approach.

14 A Uh, yes. 2:33 p.m.

15 Q And when your deposition commenced or began,
16 would you agree that you were able to show or to
17 accurately tell me every place that you lived in the
18 past?

19 A That's in here?

20 Q If you -- yes, ma'am. Go to page 6.

21 A I am there. If you would, this may speed
22 things up a bit, would you read from page 6 to page 9 and
23 tell me if you accurately were able to tell me your
24 present address, your date of birth, your Social Security
25 number, where you first lived in South Carolina, where

1 you lived before coming to South Carolina, where you
2 lived before Minneapolis, where you lived before Crystal
3 Lake, Illinois, where you lived before Albuquerque and
4 where you lived before you were in California?

5 A Yes, it appears as though I was able to say all
6 the places that we lived.

7 Q And even give the time frames for which you
8 lived there?

9 A Uh, looks like all the time frames say
10 approximately or about, but yes. I gave some estimates
11 as to the amount of time lived in each address.

12 Q Then, if we could, go to page 10 thru 13. Does
13 it appear that you were able to tell us where you have
14 worked with the last place and going backward all the way
15 to high school on page 13.

16 A It looks as though on page 13, the answers to
17 some of these questions is I have no idea.

18 Q Okay. In that case, let's do this, let's begin
19 on page 10.

20 A Okay.

21 Q Did I ask you on line 6 how long have you
22 worked with Dino's? On line 7, you said, I don't know.
23 Maybe I would be totally guessing to say about six years.

24 A Yes.

25 Q Line number 9, before Dino's where were you

1 employed? Line 10, did you say I worked for the outside
2 contractor for -- as an outside contractor for Kitchens
3 of the South?

4 A Yes.

5 Q Then, line 12, how long did you work as a
6 contractor for Kitchens of the South? Did you say I
7 started there in 2002?

8 A Line 14? Can you read the whole line instead
9 of just the part that you read?

10 Q I think I started there in 2002.

11 A I think I started there in 2002.

12 Q And line 15, continued through when? On line
13 16, did you say until they closed in July of this year?

14 A Correct.

15 Q Then, on line 17, did I say of 2010? On line
16 18, did you say Uh-huh?

17 A Yes.

18 Q Did I say yes or no -- did I say, say yes or no
19 for me? On line 20, did you say yes?

20 A Yes.

21 Q As an aside, would you agree that Kitchens of
22 the South didn't close, it actually went under?

23 A I don't really know the nature of Dave's
24 business. I assumed that they went under. I assume that
25 he wasn't able to pay his bills any longer.

1 Q Because the economy had taken a downturn and
2 the kitchen business had taken a downturn?

3 A I don't know why. I didn't ask the reasons why
4 his business went under.

5 Q But it went under?

6 A I don't know.

7 Q It went under, did it not?

8 A I don't know.

9 MR. CHILDS: He just asked that question.
10 She just answered it.

11 THE COURT: Sustained.

12 BY MR. McGARR:

13 Q Did it close?

14 A Yes, they closed up for business.

15 Q Would you agree as we go through, you not only
16 talk about working for Kitchens of the South, but before
17 that, you talk working -- on page 11, working for the
18 Great Indoors?

19 A What line on page 11 are you looking at?

20 Q Number 7.

21 A Number 7. Okay.

22 Q Line 17, you said, before the Great Indoors,
23 you were able to work -- you were working with Sportmart?

24 A Correct.

25 Q And on line 12, uh, would you agree -- on page

1 12, line 1, would you agree you were able to say you were
2 working for Warner Brothers Studio store before the prior
3 employment?

4 A Correct.

5 Q And that's before Warner Brothers Studio
6 stores, on line 9, you had worked with the Banana
7 Republic?

8 A Correct.

9 Q And then on line 12, uh, line 19, before Banana
10 Republic, you had worked with the Limited Company?

11 A Correct.

12 Q And then on page 13, line 5, would you agree
13 that you said before the Limited, I was in high school?

14 A Correct. I guess I left a bunch of things out
15 there too then. Sorry.

16 Q Mrs. Bettencourt, if we could, let's now go to
17 page 42 of your deposition. Would you agree that you
18 were able to tell me that, after looking at a W-2
19 statement, that you had made, if you go to page 43,
20 \$54,702?

21 A Yeah, on page 43.

22 Q And didn't it appear that you were able to say
23 then the next year that you were working with Sears
24 Roebuck and you made \$65,350?

25 A Wait, you asked me to go to page 42, then you

1 asked me a question about 43 that I never answered. So
2 what was the question?

3 Q I'm sorry. On page 43, you were able to tell
4 me that you made \$54,702 while working with Sears -- the
5 W-2 from Sears Roebuck.

6 MR. CHILDS: Ask her the question again.

7 THE WITNESS: What was the question?

8 BY MR. MCGARR:

9 Q The question was were you able to do that?

10 A Was I able to do what?

11 Q Were you able to look at the W-2 and be able to
12 recollect what the number was?

13 A Was I able to read the W-2? Yes. I was able
14 to read it.

15 Q Would you agree with me that you were able to
16 do that throughout the process?

17 A The process of what? Was I able to read the
18 rest of the documents that you handed me that day?

19 Q Yes, ma'am.

20 A I feel pretty confident that I could still read
21 quite well.

22 Q Going to page 50, beginning on line 22, we're
23 marking exhibits. Then, on page 51, would you agree that
24 I asked you, Mrs. Bettencourt, what I'd like for you to
25 do at this point is compare the documents we have in

1 Exhibit number 10 with this chart I've created --

2 A I don't know what you're reading from. I'm on
3 page 50, which is what you just asked me.

4 Q Go to page 51 for me, line 1. Did I ask you,
5 Mrs. Bettencourt, what I'd like for you to do at this
6 point is compare the documents that we have in
7 Defendant's Exhibit number 10 with this chart that I
8 created to make sure that the numbers on my chart are
9 accurate. What you'll see with regard to the chart is
10 that I'm putting before the W-2 which show up over here.
11 Miscellaneous or 1099 income will show up over here. And
12 this will be your total income by year. So if you could
13 just -- and we can stop for a moment -- but if you could
14 just go through those figures for me to make sure the
15 figures I put down are accurate. I then went on to say
16 what you may want to do is just go ahead and take my pen
17 and mark off that the document fits with what I have on
18 the chart. Just put a little check beside it.

19 A Yes, it does.

20 Q Going to page 52, line 3, did I ask you, I just
21 need you to confirm what I've given or what I've been
22 given fits with what's put on those documents. Did you
23 tell me on line 6, this number is not correct, this one
24 is correct?

25 A Yes, that's the answer that's on line 6.

1 Q And on line 7, I said which number was not
2 ~~correct so far. On line 8, you said the \$65,350 that you~~
3 have with W-2s of 2002, you have not transposed that
4 number correctly off of here. It's \$65,350.40 on here.
5 Is that what you said?

6 A Yes, sir.

7 Q Were you able to go through an actually catch
8 my mistakes on the day of your deposition?

9 A It appears that I have found that mistake, yes.

10 Q Let's go to page 53 beginning on line 5. I
11 said show me. On line 6, you said I don't know what I'm
12 looking at. You handed me this spreadsheet and you are
13 saying for me to compare 2007 numbers. This piece of
14 paper you handed me says 2007. It has this number
15 \$18,291.84 which you have transposed incorrectly. Is
16 that what you said?

17 A Yes.

18 Q So you caught me with another mistake. Is that
19 correct?

20 A Yes.

21 Q So you are doing better with the numbers than I
22 was.

23 MR. CHILDS: Objection. That's not a proper
24 question.

25 THE COURT: I'll sustain.

1 BY MR. MCGARR:

2 Q If we look on page 53, line 7, does it appear
3 that you caught me in another error. This is another one
4 that hasn't been transposed correctly.

5 A That's what that line says, but I don't know
6 what it's relating to.

7 Q Okay. Let's go back to line 13. Page 53, line
8 13. You can disregard this one. That's a different
9 document. That's not a W-2 or a 1099 in regards to 2008
10 though. We're back to that 1099, I believe, check that
11 one for me. Then on 17, line 17, did you say this is
12 another one that hasn't been transposed correctly?

13 A Yes, that's what the document says.

14 Q And in fact, you were so frustrated with my
15 mistakes that if we go to page 51, line 25, you told me,
16 I get \$75 an hour for secretarial work. That's what
17 you're asking me to do here.

18 A That's what it says.

19 Q Would you agree with me that in the year 2008,
20 the profit that you made from your business and
21 subcontractor with Kitchens of the South was roughly
22 \$3000. That's all you made in profit.

23 A Is there a certain page I'm supposed to be on?

24 Q I'm just asking if you agree with me.

25 A I don't know.

1 Q Go with me to page 48 of your deposition.

2 A Okay.

3 Q Line 9.

4 A Okay.

5 Q Did I say showing you an income statement for
6 the year 2008, does it, in fact, show your revenue for
7 that years was, in fact, \$11,993? On line 12, did you
8 say it does?

9 A It does.

10 Q On line 13, did I say does it show that after
11 you took your deductions that the net profit was \$3,810.
12 Did you answer on line 15 yes?

13 A I did.

14 Q Did you agree in 2008, you only made \$3,810?

15 A I don't know. I don't know. I'm assuming that
16 this was all -- was my W-2s?

17 Q These are your profit and loss statements from
18 your tax returns.

19 A So that would be for my commissions from
20 Kitchens of the South or the revenue from the --

21 Q Your revenue from both.

22 A Okay. Then I assume it came from my account
23 and it's correct.

24 Q So in reality, in the year 2008, you only made
25 \$3,810?

1 A I just answered that, right? Do you need me to
2 answer it again?

3 Q Yes, ma'am. Please.

4 A Yes, that's what we agreed on.

5 Q Would you agree that your husband's income in
6 2008 --

7 MR. CHILDS: Object to the relevancy of that,
8 Your Honor.

9 MR. MCGARR: I could explain that to you.

10 THE COURT: I'm going to overrule inasmuch as
11 he is a party to the action. I think it's
12 appropriate cross-examination.

13 BY MR. MCGARR:

14 Q That your husband's income in 2008 --

15 A What page are we on?

16 Q We're going to get there. Going to page 59 of
17 your deposition, line 21, I said in the year 2008, he,
18 meaning your husband, made roughly \$340,000. On line 23,
19 did you answer yes?

20 A I'm sorry. Tell me the lines again.

21 Q Page 59.

22 A Right.

23 Q Line 21.

24 A Okay.

25 Q Did I say and then in the year 2008, he,

1 meaning your husband, made roughly \$340,000. On line 23,
2 did you say correct?

3 A That's -- yes, I did.

4 Q So in the year 2008, your income was
5 essentially one percent of that of your husband's, is
6 that correct?

7 A I would need a calculator to answer that
8 question.

9 Q 340,000 and 3,000?

10 A Is that a question?

11 Q Yes, ma'am. His 340,000 versus your 3000, is
12 that correct?

13 A Yes, that's what you just said, right?

14 Q Yes, ma'am. Would you agree that in 2006, you
15 made no income whatsoever?

16 A What page is that on?

17 Q We're going to have to use the deposition.
18 2006, you didn't work. You were fixing your house up.

19 A Okay.

20 Q Would you agree?

21 A I don't know. I don't know what year was what.

22 I know Adam was in the second grade the year that we
23 built the house.

24 Q If we could then, let's go back to your
25 deposition. On page 46, line 1. Page 46, line 1.

1 A Okay.

2 Q So in the year 2006, you had no income, is that
3 what I asked you?

4 A Correct.

5 Q On line 2, you said correct. I was paid in
6 merchandise rather than in wages that year. On line 4,
7 did I say who would pay you, who's going to pay you to
8 renovate your own house. On line 6, you said I work for
9 a renovation company, Kitchen of the South, as a
10 cabinetry company. In lieu of my salary, they gave me
11 all the cabinets for my house that year.

12 A Correct.

13 Q So the year that you were working on your
14 house, you made nothing?

15 A Correct.

16 Q The year of this accident, you made \$3000.

17 A Okay.

18 Q Your husband made in excess of \$300,000.

19 A Okay.

20 Q You would agree that as your husband's income
21 went up, your income has been going down?

22 A I would have to see all the years to see the
23 pattern. I can't answer that question. Based on that
24 particular year, yes.

25 Q Go to page 60 of your deposition.

1 A I am there.

2 Q Line 1, do you see any correlation between your
3 husband's income and yours? I'll give you a hint, as his
4 goes up, yours goes down. On line 4, did you say okay?

5 A I did.

6 Q Line 5, I take it you would agree with that.
7 On line 6, did you say yeah?

8 A I did.

9 Q Mrs. Bettencourt, would you agree that you --
10 in 2010, you were carpooling with regard to one child?
11 Year 2008, I'm sorry. No, 2010, I'm sorry. You were
12 carpooling with one child?

13 A I don't know. 2010 or 2008?

14 Q 2010, my apologies.

15 A That would be last year.

16 Q Yes.

17 A Uh, yes.

18 Q And in the other situation, you were taking
19 your child to and from school yourself?

20 A What other situation?

21 Q Your other child. I'm sorry.

22 A Uh, yes.

23 Q Would you agree that you were volunteering in
24 2010 at Sterling at both the library and with PTA?

25 A I never been on the PTA board for Sterling

1 School, just the library volunteer.

2 Q Could you please go to page 78 of your
3 deposition? Beginning with line 4, did I ask you did you
4 volunteer at Sterling School. Did you answer yes on line
5 5?

6 A Yes.

7 Q On line 6, what do you do for the Sterling
8 School. On line 7, did you say I work at a media center
9 helping children check out what was in fine research
10 material. That's where their testing center is giving
11 tests and all. You don't really allow parents in the
12 classrooms of that school. Most of the volunteer work is
13 done either through the PTA or the media center.

14 A Correct.

15 Q Would you also agree that with regard to
16 Greenville Middle that you helped with the clubs -- this
17 would be in 2010, helped with the clubs, did chaperoning,
18 participated with the Beta club and worked on the
19 reflections contest.

20 A What line is that?

21 Q I'm asking you.

22 A I'm sorry. I was looking for what you were
23 saying as you were reading.

24 Q Would you agree in 2010, that your projects at
25 Greenville Middle school were that you helped with the

1 clubs, you did chaperoning, you worked with the Beta club
2 and you worked with the Reflections outfit?

3 A What year?

4 Q 2010.

5 A I did Reflections in 2010. I went on one field
6 trip with the Beta club. I think that's it for that
7 year.

8 Q Were you under oath on 10/1/2010 when you gave
9 your deposition?

10 A Yes, sir.

11 Q Let's go to page 79 of your deposition. No,
12 let's don't do that. Let's do this first. On page 4 of
13 your deposition, line 25.

14 A Okay. Go ahead.

15 Q Did I ask you the other thing is depositions
16 were not to be taken at a snail's pace. This is going to
17 page 5. Nor do they be taken at a rabbit's pace. It
18 will be taken at your pace. So if we need to speed it
19 up, slow it down, take a break, let me know so that you
20 remain comfortable. Is that okay. Did you answer on
21 page 5, line 6, yes?

22 A Yes.

23 Q Then I went on to say on line 7, page 5, the
24 last thing I have is if I ask you a question and you
25 remotely think you do not understand it, do not answer

1 the question. It's perfectly appropriate for you to say,
2 McGarr, what are you talking about or, McGarr, that's the
3 dumbest question I've ever heard or excuse me or forgive
4 me, but don't answer the question. Just prompt me to
5 give you a proper question that you understand. Is that
6 okay. And on line 16, did you say yes?

7 A I did.

8 Q Then on line 17, did I say finally, if I do ask
9 you a question and you haven't asked me to make you more
10 comfortable and you haven't asked me to clarify the
11 question in some way, then I'm going to assume you
12 understood my question and comfortably answered the same.
13 is that okay? On line 23, did you say yes?

14 A I did.

15 Q Now, let's go to page 79 of your deposition so
16 we can discuss your volunteer work with Greenville
17 Middle. Page 79, line 9, did I ask you after giving you
18 those instructions, did I ask you on line 9, I know
19 middle schools are traditionally the ones that need
20 parents to volunteer. Do you do any volunteering at
21 Greenville Middle, on line 12, would you answer yes?

22 A I did.

23 Q 79, page 13, what do you do at Greenville
24 Middle? On line 14, did you answer chaperone the field
25 and if they have any kind of -- mostly I volunteer to

1 help with the clubs, the activities, the Beta club and
2 the orchestra and things like that, just whatever the
3 teachers have -- need pretty much, is that what you said?

4 A Yes.

5 Q Would you also agree that if we keep going
6 down, it says do you play any instruments. On line 20,
7 you said my children do. On line 21, you said what do
8 they play. You said the cello and the viola. Then next
9 question is, 23, anything else you can think of that
10 you've done volunteerwise for Greenville Middle. And you
11 said I run the Reflections contest for their school
12 through the PTA. Is that what you said?

13 A Correct.

14 Q Would you also agree that you are the team
15 manager for your children's soccer teams?

16 A Uh, this year or last year?

17 Q Last year.

18 A Last year, I was team manager for Ana's soccer
19 team.

20 Q Were you aware that Mrs. Wald didn't hire a
21 person to take these pictures of you, that I did?

22 A I was unaware that that person was even there.

23 MR. MCGARR: No further questions.

24 THE COURT: Redirect, sir?

25 MR. CHILDS: Can I have a moment to check

1 with Mr. McGarr on something?

2 THE COURT: Yes, sir.

3 (WHEREUPON, there is a pause.)

4 REDIRECT EXAMINATION

5 BY MR. CHILDS:

6 Q You were asked a lot of questions about, uh,
7 economic issues, as far as economic damages are
8 concerned?

9 A Yes, sir.

10 Q Do you know what the economist in your case
11 says about the economic value of your loss?

12 A No.

13 Q Okay. You were asked questions about your
14 deposition here. And I would like to direct you to page
15 19 of your deposition and direct you to line 17. Excuse
16 me. Line 18. Sorry. I can't keep track. Line 8. You
17 were asked a question by Mr. McGarr. Did you ultimately
18 pull your car out of the intersection and drive it off of
19 Augusta Road. Was your answer after I was hit, I was
20 stunned? I guess is the only word I could think of. I
21 realize at that point traffic was moving in both
22 directions. So I took my foot off the brake to see if my
23 car would go and it went. I continued out the
24 intersection onto the side of the road and called 911.
25 Was that your answer?

1 A Yes, sir.

2 Q The next question of Mr. McGarr is okay, when --
3 you felt you were preventing traffic from traveling in
4 both directions, what do you mean by that? Do you mean
5 couldn't go from the side and couldn't go from behind you
6 and was your answer at this point she had hit me in her
7 car. And my car went in the center lane headed into
8 downtown in that direction. We weren't preventing any
9 traffic from coming in the other direction, but we were
10 sitting in the middle of the intersection. Was that your
11 answer?

12 A Yes, sir.

13 Q The next question he asked you, so you were
14 stopping cars from being able to travel behind you. Was
15 your answer correct?

16 A Yes, sir.

17 Q The next question was were you stopping cars
18 from being able to travel perpendicular to you and was
19 your answer correct and there were cars in the
20 intersection in all directions waiting to use the
21 intersection and we were in the middle of it?

22 A Yes.

23 Q And did he ask you did you do that relatively
24 quickly after the accident and was your answer I wouldn't
25 know?

1 A Yes.

2 Q And he asked you roughly how long do you think
3 you sat in the intersection before and was your answer I
4 have no idea?

5 A Yes.

6 Q And then he asked you did you ultimately get
7 out of your car after you pulled it off. Was your answer
8 I never recalled getting out of my car?

9 A Yes.

10 Q Let me direct your attention to page 26 of your
11 deposition. You were asked questions by Mr. McGarr about
12 the pictures. Line 2, uh, let me go back to page 25.
13 Question, line 24 from Mr. McGarr, maybe a closer up view
14 will show it from the Defendant's Exhibit number 5. Page
15 26, was your answer can I see these pictures? Then your
16 answer was none of these pictures are showing it. One of
17 these fenders had a separation, the gap between this door
18 and this fender were not the same all the way down after
19 the accident. This part of the fender, the bumper was
20 separated. Here in this picture, Exhibit 5, you see
21 where it shows that a fender was separated away from the
22 vehicle there. Was that your answer?

23 A Yes.

24 Q Now, you were asked questions about various
25 documents by Mr. McGarr, do you have any control over

1 what the doctor may write in his reports?

2 A No.

3 Q You were asked questions about medication, can
4 you tell the jury about what your concerns were about
5 taking some of the medications some of the doctors
6 prescribed?

7 A Many of the medications made you sleepy, some
8 of them were narcotics. I mean, I have to take care of
9 the kids. I just can't take them all. That's not
10 appropriate.

11 MR. CHILDS: May I approach?

12 THE COURT: Yes, sir.

13 BY MR. CHILDS:

14 Q Mr. McGarr showed you this document from
15 physical therapy. He asked you to read certain
16 highlighted portions of it, I believe about the bottom.
17 What does that report say in the middle part about
18 objective rapport and present functional deficiencies?

19 A It's objective report, present functional
20 deficits, fair, PT compliance, good, I think that's HEP,
21 good HEP compliance.

22 Q I know you don't know what that means, but
23 that's in the report as well, is that correct?

24 A Yes, it is.

25 Q Now, you were asked questions about your

1 ability to recall your history. I'm going to refer you
2 to page 7 of your deposition, line 19. Line 19, did Mr.
3 McGarr ask you before Minneapolis Minnesota, where did
4 you live? And was your answer Crystal Lake, Illinois?

5 A It was.

6 Q And did he ask you then did you know the name
7 -- do you know the street address. Was your name, no, I
8 can't remember?

9 A It was.

10 Q Page 11, Mr. McGarr read you sections about
11 line 16, about were you employed with Great Indoors and
12 Sportsmart. Line 23, he asked you what years did you
13 work with Sportsmart. Was your answer not it's getting
14 too late for me to remember. I only worked there about
15 two years.

16 A It was.

17 Q Let me direct your attention to page 53 of your
18 deposition. Mr. McGarr was asking you about the
19 spreadsheet. I'm going to direct you to line 19, where I
20 said she's not to check them if they're incorrect. Mr.
21 McGarr said she's not, she can go ahead and flip. On
22 line 24, you said this one also is not included on your
23 spreadsheet. The question of Mr. McGarr was it wouldn't
24 be -- it's a different type of document. Your answer was
25 okay, is that correct?

1 A Yes.

2 Q Then he asked you then that would be included,
3 but it's a profit and loss form. Your answer was okay,
4 well, I've got them half right. Is that correct?

5 A It is.

6 Q Mr. McGarr asked you about your husband's
7 income in 2008. Uh, was anything unusual about 2008 as
8 it relates to your husband's income?

9 A My husband was, uh, laid off from his job in
10 November of 2007. Part of his layoff was that they paid
11 him a severance so that he wouldn't work for another
12 company competing with them since he knew all their
13 secrets. So they basically paid him a salary to leave.
14 Then he went out and got another job right away. He
15 essentially had the severance and his regular salary
16 together in that one year making that year look like he
17 earned a lot of money.

18 Q You were asked a question by Mr. McGarr in your
19 deposition on page 59, uh, line, uh, 9. Does it appear
20 that in 2002, based on my representation, that he made
21 roughly \$113,000. And your answer was correct.

22 A What line are you on?

23 Q Page 59, line 9 through 11.

24 A Uh, yes.

25 Q Is your husband hard working?

1 A Yes.

2 Q Is he here today?

3 A No.

4 Q Why is he not here today?

5 A Cause he's working.

6 Q Where is he at today?

7 A Baltimore.

8 Q What time did he leave this morning?

9 A 4:30.

10 Q When do you expect him back?

11 A Uh, Friday night.

12 Q Okay. You were asked questions about your

13 involvement in school activities. Uh, you were -- you

14 talked about some of the projects you were involved in.

15 A Yes.

16 Q You need to take a break?

17 A No.

18 Q Were you able to sustain those projects?

19 A No, both of the projects that I had --

20 Q No, I'm talking about school.

21 A Oh, school. Anything you do for the PTA, so

22 the Reflections, you commit to that the year before the

23 year that you're in. So I mean, I don't know. For

24 example, if you're going to do something in 2012, they

25 would ask you around January or February of 2011 if they

1 can count on you to do this for the upcoming school year.
2 The person who ever did that job before you essentially
3 gives you all their stuff, all the things they submitted
4 to the principal, newsletter or flyers or whatever, the
5 stuff that goes with your job that you're saying you'll
6 do. So yeah, if I had already committed to something
7 prior to the accident, then you kind of have to take it
8 because they've been counting on you for six months. So
9 yes.

10 Q You were also asked questions about your
11 activity with the, I believe, the media center at
12 Sterling school?

13 A Correct.

14 Q Let me direct your attention to page 48 of your
15 deposition. Mr. McGarr, on line 25 -- did I say 78?

16 A 48.

17 Q I meant 78.

18 A I'm there.

19 Q Line 25, Mr. McGarr asked you how time
20 intensive is that. On page 79 was your answer. Well, I
21 don't do it except for if they have a need, you know. If
22 I get an email saying does anyone have any time this week
23 or next week.. Can you give us an hour, our books are
24 really building up? Can anyone come an hour early before
25 you pick your kids up, you know, things like that. But I

1 don't have a set day that I go. I only go if I have, you
2 know, have the time. Was that your answer?

3 A Yes.

4 Q You were asked questions about the -- about
5 your vehicle and the damage that it sustained. Was the
6 frame on your vehicle bent from the accident?

7 A The frame on the vehicle has clamp marks on it.
8 The vehicle history report of the vehicle apparently
9 shows that it's been in a major collision. They had to
10 unweld the steel towing thing off cause it had gotten
11 bent in the accident. I'm assuming that's what the
12 clamping --

13 Q You didn't take pictures of your car, did you?

14 A No, I did not.

15 Q Pictures of your car would have helped you in
16 this litigation, you realize that?

17 A I do now.

18 Q Well, were you thinking about litigation when
19 pictures of your car were taken?

20 A No.

21 Q You talked about the bike rack that was
22 attached to the vehicle. Could you describe that for the
23 jury please?

24 A You can see a little tip of it in the pictures,
25 but essentially it's like any three-or-four-inch square

1 steel tubing or pipe that's welded in kind of like an A-
2 shape. I think somehow it welds or something onto the
3 frame of the car underneath. But then when the point of
4 A comes together, it has like this square metal thing
5 that comes out. That's like a female receptor for, I
6 don't know, like a ball thing that you hook the trailer
7 onto. I also have a bike rack that's made out of that
8 same kind of pipe that goes inside there. Then you can
9 put a pin in it and you can hook your bicycles onto it
10 where there's this little metal rack thing. If you had
11 to get mulch from Home Depot or something, you could
12 slide that into the hole and put the pin in and stack
13 your stuff so it didn't get the inside of the car all
14 messy.

15 Q Can you install that rack yourself? How heavy
16 is it?

17 A You mean the rack that goes into the trailer
18 hitch?

19 Q Uh-huh.

20 A No. My son and I do it together. Or if
21 Scott's home, Scott and my son do it.

22 Q Okay. So it's so heavy that you can't do it
23 yourself?

24 A Correct.

25 Q So what happened to the rack in the accident?

1 A Well the -- the whole trailer hitch is what
2 prevented the car -- that's what she hit was that steel
3 bar.

4 Q Okay.

5 A That got bent and it had to all be replaced.
6 The bicycle rack and the pickup that holds the mulch and
7 stuff, it wouldn't go in the hole anymore. It was bent
8 and it was all scratched up.

9 Q All right. And so it was capable of supporting
10 the bike right and after the accident, it was all bent?

11 A Right.

12 Q Mrs. Bettencourt, if you're as active as Mr.
13 McGarr contends, would it be something that anybody could
14 surveil if they observed your house?

15 A I'm not sure what you're saying.

16 Q Do you know any times they sent private
17 investigators out to your house to watch you?

18 A I don't.

19 Q Would there be anything to see?

20 A Watch me with the leaves or sweep the porch or
21 something, walk the dog.

22 Q Can he watch you play solitaire in your closet?

23 A Well, you can't see that cause that's inside
24 the house. I don't think they were inside the house.

25 Q Uh, the video that Mr. McGarr showed you of

1 your house, uh, did it take a lot of work to get the
2 house in good shape for this tour to happen?

3 A Yes. My father-in-law was there and so he
4 power washed all the walkways for me. You can see I
5 didn't quite get the fence painted. I ran out of time.
6 That's why it's all those different colors right there.
7 I didn't have time to finish that. He was working on it.

8 Q I noticed the half painted fence. Also did you
9 notice when you observed the video, to the right as it's
10 going out toward the pool, it looks a little bit trashy.

11 A Uh, that's kind of the area that we were
12 painting. There's also like you see there's two dead
13 trees there. There were some trees that I'd planted that
14 had died. I didn't have time to replace those. Scott
15 usually rents an auger from Home Depot cause the soil is
16 all clay. He has to auger those. I didn't have time to
17 do that before the show. There's a few things.

18 Q That certainly -- you observed the videotape.
19 Was that a huge garden you had out there?

20 A Well, if you consider all 30 of the homes
21 around there that had been gardened, or the urban farm
22 tour, it's actually one of the smaller ones. But for the
23 amount of space that I have, I pack a lot of stuff in
24 there. I think Scott plants the rows together a little
25 closer than he should.

1 Q Well, I noticed -- did you observe on the video
2 there was a bank there that had -- I don't know, was it
3 onions or what was it on the bank?

4 A Oh, it's garlic.

5 Q Next to the garlic on the bank, did you observe
6 something to the right of it?

7 A Right by the stairs?

8 Q Yes.

9 A There's ground cover that's planted among the
10 stairs. But that's not something we planted.

11 Q How well maintained is that ground cover?

12 A We don't have to do anything with it. That's
13 why I put it there. It's kind of there to hold the dirt
14 in so the dirt doesn't wash all off to those stairs and
15 wash those stones away.

16 Q You can plant more plants there and flowers and
17 all kinds of stuff.

18 A Well, you could. But I mean, if you plant a
19 lot of flowers and things like that, then that's just
20 more stuff you have to weed around, the more open grass
21 or open space. Scott on the weekends can hoe that area
22 easier if there's not a lot of stuff there.

23 Q Okay. Uh, are you claiming to this jury that
24 you are an invalid?

25 A No, sir.

1 Q Are you, in fact, able to do a significant
2 amount of things today despite your impairment?

3 A I am.

4 Q That's all the questions I have.

5 THE COURT: Recross, sir?

6 MR. McGARR: Please, Your Honor.

7 THE COURT: Yes, sir.

8 **RECROSS-EXAMINATION**

9 **BY MR. McGARR:**

10 Q Mrs. Bettencourt, uh, it looks like we're going
11 to have to go through your husband's income a little more
12 closer. Can you go to page 59 of your deposition for me?

13 A I'm there.

14 Q Line 7, does it appear that he made \$177,000 in
15 the year 2001?

16 A It does.

17 Q Does it appear on line 10, 9 and 10 that he
18 made \$113,000 in 2002?

19 A It does.

20 Q Does it appear on line 12 that he made \$151,000
21 in 2004?

22 A It does.

23 Q Does it appear that he made \$204,000 in 2005?

24 A It does.

25 Q Does it appear that he made \$183,000 in 2006?

1 **A** It does.

2 **Q** Does it appear that he made \$181,000 in 2007?

3 **A** It does.

4 **Q** Does it appear that he then made \$340,000 the
5 year that the economy collapsed in 2008?

6 **A** Repeat the question.

7 **Q** Does it appear that he made \$340,000 in 2008
8 the year the economy collapsed?

9 **A** In 2008. It says on line 21, then in the year
10 2008, he made roughly \$340,000, correct?

11 **Q** No further questions.

12 **MR. CHILDS:** Brief redirect.

13 **THE COURT:** All right.

14 **REDIRECT EXAMINATION**

15 **BY MR. CHILDS:**

16 **Q** Page 55 of your deposition, line 5, would it
17 indicate that with that correction that in 2002, you made
18 \$65,890.40.

19 **A** It does.

20 **MR. CHILDS:** That's all the questions I have.

21 **THE COURT:** All right. Mrs. Bettencourt, you
22 can step down. Thank you. We appreciate it.

23 All right. Mr. Childs, you got an additional
24 witness?

25 **MR. CHILDS:** I do. Let me check and see if I

1 have one witness out there which I prefer to take
2 first. (Pause.)

3 I would call Dr. James Brabham, unless y'all
4 need a break.

5 **THE COURT:** Anybody -- y'all need to take a
6 break? We can take a real short break before we
7 start the next. Does anybody want to? No. You do?
8 Okay. Let's do. Let's take about five minutes,
9 then we'll come back in.

10 (WHEREUPON, the jury exits at approximately
11 11:42 a.m.)

12 (WHEREUPON, a recess is taken.)

13 **THE COURT:** All right.

14 (WHEREUPON, the jury enters at approximately
15 12:10 p.m.)

16 **THE COURT:** All right. Mr. Childs?

17 **MR. CHILDS:** I would call Dr. Phillip
18 Swicegood.

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

21 **PHILLIP SWICEGOOD**

22 having first been sworn, testifies as follows:

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

24 **THE WITNESS:** Phillip Swicegood.

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

DIRECT EXAMINATION

BY MR. CHILDS:

Q Dr. Swicegood, how are you employed?

A I'm a Finance Professor at Wofford College.

Q All right. And as a -- what kind of finance professor?

A A PhD at Florida State University. I worked for a few years with the U.S. Treasury Department. Did an MBA at the University of Texas in Austin. Before that, an undergrad in finance at Liberty University.

Q How long you been a professor at Wofford College?

A It's my 7th year.

Q How do they play the football team so well?

A Uh, tenacity, I guess.

Q Okay. Uh, have you been, uh, previously qualified as an expert by the economic analysis of an injured person's loss?

A Yes, I've done some work on some similar cases like this.

MR. CHILDS: And have you, uh, -- I submit he's capable of testifying about the economic analysis of Deena Bettencourt's financial loss.

MR. MCGARR: We would just --

THE COURT: Okay. You can stipulate -- do

1 you accept the stipulation, sir?

2 **MR. MCGARR:** Excuse me?

3 **THE COURT:** I think what -- Mr. McGarr
4 stipulates as to his credentials. Is that correct,
5 sir?

6 **MR. CHILDS:** That he is qualified as an
7 expert, he can testify about the economic analysis
8 of her financial lost.

9 **THE COURT:** Okay. You accept the
10 stipulation?

11 **MR. MCGARR:** Yes.

12 **THE COURT:** Okay. All right. Ladies and
13 Gentlemen, they stipulated as to the doctor's
14 credentials. Therefore, he is admitted as an expert
15 witness in this case. Go ahead.

16 **BY MR. CHILDS:**

17 **Q** Dr. Swicegood, at the request of Mrs.
18 Bettencourt's attorney, did you perform a financial
19 analysis of Mrs. Bettencourt and Scott Bettencourt's
20 financial losses as it relates to the injuries she
21 sustained in an accident on September the 4th?

22 **A** Yes, I did.

23 **Q** Tell the jury about what process you went
24 through in making that analysis.

25 **A** Looked at -- I was asked to evaluate on two

1 levels, first is looking at the effect of -- effect of
2 loss wages. So what I did was looked at her most recent
3 year's income. Then I used some fairly commonly used
4 assumptions about what that income would have looked like
5 if it had grown in a normal way. So I used a standard
6 inflation of growth and wages, a fairly conservative
7 assumption which is a fairly reputable financial in the
8 economic company. We use a two and a half percent growth
9 rate assuming, for instance, that her wages would have
10 grown on average about two and a half percent per year.

11 Q And did you just use her 2008 wages?

12 A I used the most recent that we had, which was
13 the 2007 wages.

14 Q Okay..

15 A That was -- I think those were \$18,219.

16 Q Do you didn't go back to her Sears employment
17 where she was making \$58,000 a year?

18 A No, I did not. I went with the most recent.

19 Q So you used the previous income of \$18,000 a
20 year?

21 A Correct. That was my base. Then I was asking
22 the question, okay, if she had been fully employed based
23 on that assumption of the 2007 numbers, what would her
24 income likely have looked at through her working life. I
25 calculated those growing numbers up through the end of

1 her, what I consider roughly her -- the end of her
2 working life through about age 67. I discounted all of
3 those numbers back to find a present value, what it all
4 looks like right now in a single amount, single lump
5 some. Since I'd been given a report from a physician
6 that they were looking at a 20 percent impairment. I
7 took 20 percent of that number. That collectively added
8 up to \$89,139.

9 Q Okay. So the figure for loss income in the
10 future, based on 20 percent loss of earning capacity?

11 A Correct.

12 Q Not based on 100 percent or anything like that.
13 And then using her conservative figures for 2007, which
14 you say was \$18,000?

15 A Correct.

16 Q You ran those figures out with a natural growth
17 of wages and inflation during that time period?

18 A Yes.

19 Q What is that called? Discount rate or
20 something?

21 A I was looking at inflation rate, inflation of
22 typical wages.

23 Q Okay.

24 A That's the growing of --

25 Q And that was what percent?

1 A Two and a half percent.

2 Q Okay. And then you've got a total figure.
3 Then you made it present dollars. How do you do that?

4 A Use a discounting process which says what would
5 it be worth in today's bases if I'm having to wait til 20
6 or 30 years down the road, what is it worth in today's?
7 So you discount it back at an interest rate. In common
8 standard practices, we use something like treasures. I
9 used the long-term treasure since this was a long time
10 frame. I used the longer term treasury rate at the time
11 about three and a half percent.

12 Q Okay. And so what was your figure for the
13 future loss of income?

14 A Uh, the \$89,139.

15 Q 139?

16 A Yes.

17 Q Okay. Now, did you do an additional analysis
18 related to her loss?

19 A I did one other. I was asked to consider what
20 might be the economic impact if they were to have to hire
21 some additional help around the house because of her
22 impairment. I looked -- I called around to some places
23 like Merry Maids and some others and ask them, okay, if I
24 were to hire you today, what's your rate, what's your
25 charge. Numbers ran everywhere from \$10 an hour, the

1 highest I got was -- I was kind of shocked -- \$76 an hour
2 for doing cleaning. I went with the most conservative
3 reasonable number on that at \$10 a hour.

4 Q Are you trying to calculate her hiring somebody
5 to do these services or are you trying to calculate the
6 value of the services that she could?

7 A In this case, I was saying if she had to hire
8 somebody to go out and do services that she was no longer
9 capable of doing.

10 Q Okay.

11 A What would that cost be to her and her family.

12 Q What were your calculations in respect to that?

13 A So, uh, then I took that -- I was assuming
14 again \$10 an hour since we had about a 20 percent
15 impairment. I worked off an assumption of about 10 hours
16 a week off of that. Looked at that for -- I did an
17 estimation based on the actuarial tables here in South
18 Carolina of her lifetime for the rest of her life, what
19 that would look like. I found the dollar figures of
20 those. Again, discounted it back at that same three and
21 a half percent interest rate. The total for that was
22 \$164,189.

23 Q So that's your calculation for the loss of
24 household services?

25 A Correct.

1 Q And again, that's based on the impairment
2 rating of 20 percent permanent impairment that the
3 doctor's testified?

4 A That's true.

5 Q So that's not saying that she can't do any
6 services around the house. That's saying that she can do
7 80 percent of them?

8 A Correct. That's my understanding.

9 MR. CHILDS: One moment, Your Honor.
10 (Pause.)

11 Please answer any questions Mr. McGarr might
12 have.

13 **CROSS-EXAMINATION**

14 BY MR. MCGARR:

15 Q Doctor, your calculations -- pardon me. I'm
16 Mark McGarr. Forgive me. Your calculations are based
17 upon the fact that Mrs. Bettencourt is actually impaired
18 by 20 percent. Is that correct?

19 A That was my assumption, yes.

20 Q And if she's not impaired by 20 percent, your
21 calculations would essentially be irrelevant.

22 A No, they wouldn't be irrelevant. They would be
23 based on whatever that percent number is. They should be
24 directly scalable to the percent.

25 Q Yes, sir. Bad question. What I should have

1 said is if she's zero percent impaired, then her losses
2 would be zero?

3 A Correct.

4 Q And were you paid to do those calculations?

5 A Yes.

6 Q And were you paid to come here today?

7 A Yes.

8 Q And did Mr. Ray hire you quite some time ago to
9 do this?

10 A Yes, he did.

11 MR. McGARR: No further questions.

12 THE COURT: Any redirect, sir?

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

14 THE COURT: All right. Thank you, doctor.
15 Appreciate you being here, sir.

16 MR. CHILDS: Your Honor, at this time, I want
17 to introduce into the record the defendant's
18 responses to Plaintiff's request for admissions.

19 THE COURT: Objection, sir.

20 MR. McGARR: Let me see them.

21 MR. CHILDS: Sure.

22 (WHEREUPON, there is a pause.)

23 THE COURT: All right, sir. Do you intend to
24 publish them to the jury by way of Mr. Ray?

25 MR. CHILDS: I do, Your Honor.

1 **THE COURT:** Okay. Ladies and Gentlemen, this
2 is a discovery document during the course of the
3 lawsuit. The parties are allowed to engage in
4 what's called discovery, that is, the exchange of
5 documents and to pose questions. The depositions
6 are part of that discovery process, but there are
7 also written questions that are asked. I believe
8 these are -- and correct me if I'm wrong, Mr. Childs
9 -- requests for admissions that were posed from the
10 plaintiff to the defendant.

11 **MR. CHILDS:** Correct, Your Honor.

12 **THE COURT:** Okay.

13 **MR. CHILDS:** Uh, I would like to read Request
14 to Admit number 1 from the first set of Plaintiff's
15 Request to admit to Defendant. Mr. Ray will read
16 the answer as reflected in that document. Plaintiff
17 Request, admit that the Plaintiff Deena L.
18 Bettencourt sustained a physical injury as a direct
19 and proximate result of the collision between the
20 vehicle that Mrs. Bettencourt and the defendant on
21 September the 4th, 2008.

22 **MR. RAY:** Response, denied.

23 **MR. CHILDS:** Admit that the Plaintiff Deena
24 L. Bettencourt experienced pain and suffering as a
25 result of the collision between the vehicle of Mrs.

1 Bettencourt and the defendant on September the 4th
2 of 2008.

3 MR. RAY: Response, denied.

4 MR. CHILDS: Admit the Plaintiff's incurred
5 medical expenses for the treatment of injuries
6 sustained as a result of the collision between the
7 vehicle, Mrs. Bettencourt, and the defendant on
8 September 4th, 2008.

9 MR. RAY: Response, denied.

10 MR. CHILDS: Number 6, admit that the
11 Plaintiff Deena L. Bettencourt suffered a traumatic
12 brain injury as a result of a collision between the
13 vehicle Mrs. Bettencourt and the defendant on
14 September 4th, 2008.

15 MR. RAY: Response, denied.

16 MR. CHILDS: Admit that the Plaintiff Deena
17 L. Bettencourt sustained no less than \$13,000 in
18 medical expenses to date as a result of a collision
19 between the vehicle of Mrs. Bettencourt and the
20 defendant on September 4th, 2008.

21 MR. RAY: Response, denied.

22 MR. CHILDS: Plaintiff's second set.

23 (Pause.)

24 Plaintiff's second set in the Request to Admit
25 to the Defendant, number 8, admit that on September

1 4th, 2008, the defendant was admitted to the
2 Greenville Memorial Medical Center Emergency room
3 for neck pain, forearm and knee abrasions, left knee
4 pain, painful walking, ecchymosis, swelling and
5 tenderness of the left knee, mandibular tenderness
6 of the ecchymosis, paraspinal muscular tenderness,
7 ecchymosis and swelling of the left forearm,
8 multiple contusions and acute cervical strain as a
9 result of the accident subject to this lawsuit.

10 MR. RAY: Response, it is admitted that Mrs.
11 Wald went to the hospital and walked into the
12 examination room without difficulty. While there,
13 she was noted to be in no apparent distress.
14 However, she state her air bag deployed, which
15 caused her to have some neck pain as well as some
16 left forearm bruising and knee pain. She also
17 stated she was having a headache. Upon examination,
18 she was found to have a tender jawbone with some
19 scratching, tenderness in her neck and scratches and
20 swelling on her left forearm and her knee. As a
21 result, she was checked and released from the
22 hospital and walked out without any assistance.

23 MR. CHILDS: Number 9, admit that on
24 September 4th, 2008, the defendant informed Dr.
25 Edward Anderson at the Greenville Memorial Medical

1 Center emergency room that her speed at the time of
2 the accident was 25 to 35 miles per hour.

3 MR. RAY: Response, it is admitted that Mrs.
4 Wald informed the hospital that she estimated that
5 her speed was somewhere in between 25 and 35 miles
6 per hour at the time of the accident.

7 MR. CHILDS: That's all I have.

8 The next witness will be Dr. Brabham. He's
9 outside.

10 THE CLERK: Place your left hand on the Bible
11 and raise your right hand.

12 ROBERT BRABHAM

13 having first been sworn, testifies as follows:

14 THE CLERK: State your name please.

15 THE WITNESS: Robert E. Brabham.

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

18 DIRECT EXAMINATION

19 BY MR. CHILDS:

20 Q Mr. Brabham, how are employed?

21 A I'm self-employed private practice of
22 psychology and vocational evaluations.

23 Q Okay.

24 A I have been self-employed for a number of
25 years. I retired from Medical School at USC in 1996.

1 Q Could you tell the jury some about your
2 educational background?

3 A Yes, sir. I'm a native of South Carolina. I
4 grew up in Columbia, one of the few people that seemed to
5 have done that. I have my Bachelors Degree from South
6 Carolina in Psychology. I have a Masters Degree in rehab
7 counseling from Virginia Commonwealth and I have a PhD in
8 Psychology from the University of Missouri.

9 Q All right. And what have you done since you
10 graduated with a PhD in Psychology from the University of
11 Missouri?

12 A I was a Professor of Vocation Evaluation at
13 Albany University for two years and was then asked to
14 come back to native Columbia. I was Assistant
15 Commissioner and Chief Psychologist for the
16 Rehabilitation Department here in South Carolina for
17 almost 20 years. I was then recruited to become the
18 Director of the National Rehabilitation Association and
19 moved to Washington, D.C. for a couple of years. I
20 joined that group. It's a lovely place to visit, but you
21 wouldn't want to live there. So I came back to South
22 Carolina. I was then professor -- I was asked to be the
23 first Director in the Brain Injury Division for the state
24 of South Carolina. This was back in the 90's when they
25 were restructuring. They created the Department of

1 Disabilities. By law, there had to be a brain injury
2 division. I was the first director.

3 Then a professor, left the medical school.
4 Moved to across the street in the middle of the year.
5 And having been a professor before, I went across the
6 street and practiced in the School of Medicine in the
7 Rehabilitation Counseling program. I did that for
8 several years. I retired on Friday. My family threw a
9 big party. I was working on Monday. They wanted their
10 dinner back. But that's another story, sir.

11 Then I have been in private practice doing an
12 evaluation assessment. I'm also the hearing --
13 Conference Hearing Officer, Your Honor, is the term we
14 use for state retirement individuals who are alleging
15 that they can not work and have been denied. I'm one of
16 two of those individuals.

17 I have worked with the Department of Veteran's
18 Affairs for the last 15 years doing vocational
19 assessments, in particular, related to PTSD and brain
20 injuries in the military. I am the senior. That is not
21 a title. It's a -- I'm a senior vocational expert --
22 that's their term, not mine -- vocational expert for
23 Social Security Administration. I am the consultant with
24 the Administrative Law judges. I do Columbia,
25 Charleston.

1 Q What kind of involvement with traumatic brain
2 injuries have you had over the years?

3 A As I said, I was the first director for the
4 State of South Carolina when they mandated there shall be
5 services for people with brain injury. I was honored to
6 be the first director of that. We also were creating a
7 building when I retired from the brain injury
8 associations. I was the first director of that. That
9 was a position more of love than income. Because we were
10 getting things started, growing organizations. We have
11 since come up with a number of support groups and that
12 sort of thing.

13 So I have literally been involved in growing,
14 developing brain injury services both for the state,
15 Medicaid reimbursements and for, uh, evaluations and
16 assessments. I would add, with your permission, I am
17 very pleased that my request for evaluations are
18 amazingly 50/50, plaintiff and defendant. I take great
19 pride in that. I certainly do not want to be proceeding
20 over the world where I don't want to be a hired gun one
21 way or the other. So I'm grateful that it has continued
22 to be that way.

23 Q So you not only do, uh, traumatic brain injury
24 evaluations for Plaintiff's attorneys, but you also do
25 traumatic brain injuries for attorneys like Mr. McGarr?

1 A Yes, sir. State Accident Fund and insurance
2 companies and various carriers, yes, sir.

3 Q Now, are you part of any organizations about
4 the issue of brain injuries and associations related to
5 that?

6 A As former director, I know a number of brain
7 injury association. I'm very involved with the national
8 brain injury associations. The national director and I
9 were keynote speakers at a conference together a few
10 months go. I have continued to be involved with plenty
11 of the associations, both the state and national.

12 Q I'm trying to get it out of you. Have you
13 recently received an award for your involvement with
14 brain injury?

15 A Yes, sir. I don't do that very well. I've
16 actually been honored -- and honored is the right term --
17 I've been honored three times over the last 15 years by
18 the brain injury associations for my services to that
19 organization, growing support through some developing
20 training manuals and helping families to learn the ropes
21 and the tricks of the trade of adjustment and coding
22 skills and support groups. But yes, sir. I was just
23 named the Ally of the year. They were going to call it
24 the Associate of the year, but they said that sounded too
25 much like Wal-Mart, so they made it the Ally of the year.

1 So yes, sir. I was very proud of it. I'm not alluding
2 it, but I just don't talk about that very much.

3 Q Okay. Now, going back to your word for both
4 plaintiffs and defendants in injury cases, do you
5 frequently have the occasion to examine a plaintiff on
6 behalf of defendants in lawsuits?

7 A Yes, sir.

8 Q Is that, uh, --

9 MR. CHILDS: I would submit that he is an
10 expert qualified to testify about the diagnosis and
11 treatment of traumatic brain injury.

12 THE COURT: Any objections or voir dire, sir?

13 MR. McGARR: None, Your Honor.

14 THE COURT: So admitted. You may proceed.

15 BY MR. CHILDS:

16 Q Dr. Brabham, were you asked to evaluate, uh,
17 Mrs. Deena Bettencourt for any possible traumatic brain
18 injury and also evaluate any prognosis for her future?

19 A Yes, sir. I was. I described that in my
20 report. I was asked to provide an independent
21 psychological vocational and brain injury assessment
22 regarding limitations that resulted from a motor vehicle
23 crash in 2008.

24 Q Now, when you say independent, what do you mean
25 by that?

1 A Some of what you were establishing, I'm not
2 always Plaintiff, always defendant, I'm not working for
3 some particular insurance company, that sort of thing. I
4 took as a complement I was an equal opportunity. You
5 kind of caught me a little bit off guard. Approximately,
6 my findings are equal one side or the other.

7 Q So when you were retained, you had to be
8 retained by one side or the other to do an independent
9 medical evaluation, is that correct?

10 A Yes, sir. Of course.

11 Q In this case, you were retained by Mr. Ray,
12 Mrs. Bettencourt's attorney?

13 A That's correct.

14 Q Does it matter to you who retained you?

15 A Absolutely not. I said before records are
16 records, facts are facts. I cite and I put into a file
17 whatever I was given that in the event it doesn't happen,
18 but in the event something was left out, all sides know
19 it. If there's a pertinent piece of information he had
20 not been provided, it would be very obvious. I try quite
21 hard to make sure everyone knows where it came from, what
22 I had at the time and who said what. I'm very careful
23 about quotes and who said and when they said it.

24 Q Okay. All right. Describe to the jury how you
25 did your evaluation of Mrs. Bettencourt.

1 A The important being -- in brain injury
2 evaluations, the important thing is a level of
3 consistency that describes -- first of all, consistency
4 on my part. I call it my pilot checklist. I want to
5 make sure I ask. I have my standard questions. They
6 include all the requirement, diagnostic requirements for
7 the diagnoses of various conditions. In this case, brain
8 injuries. But it could be, uh, military, may be PTSD, it
9 may be depression, anxiety, whatever.

10 Then the procedure is -- I'm giving a short
11 version. I want to make people comfortable. I'll tell
12 them up front, by the way, today, I'm the bad guy. I was
13 hired by the other side. Their attorney had to agree. I
14 don't try to trick people and gloss over that. Sometime
15 I say I think I'm here for your side. And a couple of
16 times, I have not been able to know which it was. It was
17 kind of embarrassing, but I want to make them know up
18 front. No sneaking. No surprises.

19 I want to know in your own terms tell me why we
20 are here. What happened. People seem -- that kind of
21 makes them comfortable. Things like I was injured at
22 such and such or this happened to me or that happened to
23 me. I'm interested in their description. I put that in
24 the early parts of my report. They said so and so. They
25 indicated so and so. I've already read big old stacks.

1 I've had big old folders full of medical information.

2 I've read that before I get there. I'm not naive. I'm
3 interested in their telling me what went on.

4 Then we start down that process. Tell me what
5 happened. Tell me were you able to continue working.
6 Did you go back to work? Medical records. That sort of
7 thing.

8 Q Let me ask you something in that respect. When
9 you're talking about your asking questions of people that
10 are potentially brain injured, do you rely necessarily
11 upon their answers or what weight do you give those
12 questions?

13 A Good point, sir. Rely upon, no, but pay
14 attention to and give weight to. We have people, for
15 example, they can tell me -- they can ramble on about
16 what they did in high school and could not tell me what
17 they had for breakfast. They describe what they did and
18 their titles and they are goofing up dates and times and
19 places. Then, of course, the question arises, is it
20 deliberate. Is somebody trying to pull my leg? I'm
21 interested in the ability to recall.

22 After following injuries, brain injuries, or
23 sometimes, that's not very good. They mix up dates or
24 they mix up times and years and places. So I'm not
25 necessarily jumping on, oh, you said 2006 and it was

1 really 2005. I'll go back and ask the question later.
2 Sometimes I get the different answers. Sometimes I get
3 it right. Sometimes I have it in front of me and I know
4 they got it wrong. But yes, the clarity of their
5 responses and the consistency of those responses is one
6 of the indicators that's important for brain injuries.
7 Things like memory loss and confusion and getting
8 sidetracked.

9 I will deliberately interrupt them sometimes on
10 purpose. Just change the subject. I go back. What were
11 you saying? I have no idea. Where was I? I know where
12 they were. My point is it appears to be easygoing, not
13 confrontational. I'm interested in things like recall,
14 ability to stay on line, ability to stay focused. I'm
15 obviously paying attention to word usage, word choices,
16 affect, emotional tears, crying, losing control,
17 whatever. I'm deliberately from the get-go paying
18 attention to the individuals sitting across from us.

19 Q Now, you indicated that you do analysis for
20 Social Security and the State Retirement System or you
21 have done those and the military Posttraumatic Stress
22 Syndrome and those kind of things. Do people in those
23 proceedings exaggerate or fabricate their injuries?

24 A Absolutely. They are telling me one thing and
25 I read the record and they said something totally

1 different to their family doctor three weeks ago.
2 Absolutely. So I'm looking for consistency. I want to
3 be consistent in my question, but I'm also looking for
4 consistency in records. They said one thing one place.
5 They described a set of symptoms or they denied some
6 symptoms. Not in this case.

7 But particular things like alcohol or drug
8 histories, legal or criminal histories. No, sir. I've
9 never used any drugs. You tested positive three days
10 ago. I know that. I'm reading. So I let them kind of
11 hang themselves. Then I call it my Columbo routine. I
12 say I'm just really confused. I'm sure it's me, but you
13 just told me you didn't use any drugs, yet, you tested
14 positive three nights ago when you went to the emergency
15 room. I'm just real confused. I'm looking for
16 consistency, yes, sir.

17 But it's important -- this is also another
18 consideration. This is important too. Sometimes
19 inconsistencies are not fabrications. Sometimes
20 inconsistencies are not lies. They are not malingering.
21 It's confusion. Oh, I meant 20 years. I should have
22 said 30 or I've got -- my children are such and such ages
23 and they are not right. They are not making that up.
24 They get confused. Or dates of employment. And that is
25 particularly true with psychiatric issues and it's

1 particularly true with brain injuries. Sometimes
2 mistakes or errors or wrong answers do not represent
3 malingered or lying. It's part of the problem. It's
4 the confusion and inability to keep all those things
5 going simultaneously. That's important for me to try to
6 sort out.

7 Q So actually, some confusion is indicated to
8 that that the person is suffering some difficulty in
9 their mental acuity?

10 A Absolutely.

11 Q All right. With respect to Mrs. Bettencourt,
12 did you meet her in her lawyer's office?

13 A I did, sir. I was in the Greenville area. It
14 was obviously easier for them, families making
15 transportation arrangements that I come out of Columbia.
16 I saw her here in Greenville, yes, sir.

17 Q You were here in Greenville on some other
18 business?

19 A Yes, sir.

20 Q So you didn't just drive up here to meet with
21 her?

22 A That particular day, I think I happened to
23 drive for her. I thought I was going to be doing
24 something else as well.

25 Q What day was that that you saw her?

1 A I saw her on March the 10th of 2009,
2 approximately six months after her accident.

3 Q So you talked about your interview. I want to
4 find out what happened and then gauge their consistencies
5 about things. What then do you do?

6 A Well, I'm very interested in daily activities.
7 I'm particularly looking for the before and after. I had
8 great fancy terms. I said, tell me some things you used
9 to do that you don't do anymore, particularly orthopedic
10 injuries and back injuries or whatever. By definition,
11 people don't know what they don't know. They can't
12 remember what they can't remember.

13 I remember a time when a guy said tell me
14 something -- give me an example of something you can't
15 remember. I thought what kind of a stupid question is
16 that. I don't say that one. But I say tell me some
17 things that, uh, you're doing, just kind of go through a
18 typical day. And we start with when you get up, what do
19 you do? Do you have trouble getting dressed? Do you put
20 on the right stuff? The day's routines, are you going
21 off to work? Are you staying home? That kind of stuff.
22 So I go through the typical day. I talk about physical
23 events, dressing and making choices and decisions and
24 taking people to school or whatever. So activities of
25 daily living are a very important part. Also I do ask,

1 uh, have any difficulties doing that, either physical or
2 cognitively. People are -- they'll sometimes describe
3 things to me. Particularly, that's important with
4 individuals with brain injuries forgetting and making
5 mistakes. It can be embarrassing or they can be life-
6 threatening.

7 Driving, for example, tell me about your
8 driving. Do you drive? Well, yeah, I drive some. Make
9 any mistakes? Well, yeah. Well, what does that mean?
10 Well, I get in the wrong lane and I have to turn right.
11 No big deal. But I also ran three cars off the road
12 would be a big deal or pull in front of a school bus or
13 whatever. So I'm interested in mistakes.

14 How about doing things? Make mistakes doing
15 stuff around this house. This does apply to this lady.
16 Left two gas burners on the stove. We teach, for
17 example, most of our -- we don't be doing a lot of
18 cooking. If you leave the stove on, can lead to kitchen
19 fires or even cause house fires. House fires are serious
20 obviously. We talked about that. She has done that.
21 She left two burners going one time, gas burners and
22 didn't even realize it. Fortunately, didn't have any
23 tragedy so we talked about forgetting and making
24 mistakes.

25 We have folks ending up in the wrong

1 destinations. Say I'm going to Wal-Mart and end up in
2 Home Depot and don't remember why I'm here. All that
3 kind of stuff. So I'm interested in that.

4 I'm also interested in, okay, we're kind of on
5 through the day and now we're up to the evening, what do
6 you do at night. What's your bedtime routine at night?
7 We talk about that a little bit. Then I'm interested,
8 have you always had trouble sleeping too much or you
9 always had trouble not sleeping? No, no. We talk about
10 that a little bit. I'm taking notes, of course. Then I
11 want to know, well, if I've been listening correctly, you
12 described this, this and this. It sounds to me like
13 you're not doing as much as you used to do. You staying
14 at home or you're doing more or whatever. We try to make
15 sure we're on the right track.

16 Then, I'm obviously -- education. Educational
17 histories as opposed to educational achievements are a
18 bit different. She had been evaluated at other places for
19 that. I was interested to hear how far did you go and
20 how did you do? Any problems back then? Failing grades,
21 repeat any grades, Department of Juvenile Justice. Any
22 problems. We want to blame it on this or whatever. We
23 go through that.

24 Then, obviously, for adults, work history is
25 important. Tell me about your work history. When you

1 were hurt? What were you doing? What was the job
2 called? What did you really do? How did you really
3 perform it? And I'm interested in did you have
4 relatively long, good, stable work history or is this the
5 first time you ever had a job or would this be a chance
6 to, you know, do something you never done before or all
7 that kind of stuff? I'm interested in work histories.

8 Q What does a long, stable work history tell you?

9 A Well, I'm interested in the fact that people
10 have been able to work. I'm interested in both the
11 ability to do it, they were motivated to do it, they did
12 so for a number of years. Obviously, with my little bias
13 to war veterans, I was interested in three years in Navy
14 reserves. You don't do that if you've got all kinds of
15 health problems or whatever. The work history --

16 Q In Mrs. Bettencourt --

17 A Yeah, in her case, she had three years in the
18 Navy reserves. Tells me -- first of all, there are
19 physical fitness requirements. You don't get to stay in
20 the military in any capacity with serious mental
21 impairments or mental impairments. You also don't get to
22 do that with huge drug histories, legal histories,
23 criminal problems. So I'm interested in that. Uh, what
24 did you do? How long did you do it? How much you're
25 being paid? This one is always problematic, people

1 either don't know or they misrepresent -- and I don't
2 think it's -- in some cases, well, I haven't worked at
3 all. Therefore, we just print out -- in Social Security,
4 they just printed out your record. You were working last
5 year.

6 I'm interested in work and work histories and
7 your jobs and what did you do. In this case, this is an
8 individual who has an interesting work history from Sears
9 in Chicago and all kind of retail places. And I use this
10 term very kindly. A lot of it was kind of yucky stuff.
11 She only drinks real organic wines. I say that very
12 lovingly. She would like my wife, for example.

13 But the fact is, this was a relatively
14 straightforward positive work history doing a variety of
15 tasks and a variety of settings and as they moved and
16 went places, she continued to work. That's an important
17 factor, not only from the work history but part of the
18 mental status. Were you able to do that? Did you have
19 any trouble working for A, B, or C? Did you ever get
20 fired because you were making mental mistakes? You ever
21 have any cognitive problems where you're coming in drunk
22 or coming late night? None of that applies to her. I'm
23 interested in what did you do and how well did you do it
24 and why are you not still doing it.

25 In this case, very good explanations,

1 geographic moves, growing businesses, working with
2 clients. But it was also important the nature of her
3 work required by definition a lot of multitasking.
4 You've got a client who's calling up and wanting to know,
5 do you think such and such a scheme for colors would
6 match and you've got to remember what in the world do we
7 do in your kitchen or what did we just pick out last
8 week. We talked about that. So the ability to jolt
9 multitask -- I kind of hate that term. It's so overly
10 used. But it's a good term. We've got the phone to
11 ring. A client is here. You've got an appointment
12 yonder and there's an auction to go to this antique mall.
13 There's just a lot of things to do. She did them well,
14 relatively well by definition in that she continued to do
15 it. She worked for these people. She was building her
16 own business. That sort of thing.

17 So then I'm interested in confirmation. By
18 this point, I've kind of got my picture together. Then
19 I'm going through the medical records and saying, Am I
20 the only person who ever saw something? Am I the only
21 person who thought they had it? I'm not the renaissance
22 man. It would make me very uncomfortable, to be quite
23 honest. If nobody else had ever seen it, I would worry
24 me. So I'm looking through medical records.

25 In this case, there is -- there are two.

1 They're very clear. Dr. Jones talked about her brain
2 injuries in very clear straightforward language. Dr.
3 Herring here. Roger Peace said so in very
4 straightforward language. And Brabham said so as well.
5 So it was not like I'm on some limb and I'm the only one
6 who ever saw it. We've got a very consistent pattern,
7 three different psychologists, three different times,
8 three different ways of approaching it who would come to
9 that conclusion.

10 Then I'm describing why I come to that again.
11 I give examples and I give evidence. Here is why I came
12 to the diagnoses I have come to, whether it be pain or
13 anxiety, in this case, brain injuries, here is where it
14 comes from. I kind of lay it out. I don't want anybody
15 to wonder. I don't want to deprive anybody, good or bad.
16 I explain where it come from, what the evidence is and
17 then I reach my opinions and my diagnoses. This case
18 just does not present any reasonable professional doubt.
19 We have three different psychologists three different
20 times saying yeah, she sustained a brain injury.

21 Is she tube fed, ventilated? Of course not.
22 You asked the question earlier, are you an invalid? Of
23 course not. But do you have some significant cognitive
24 issues, absolutely. That's pretty obvious in three
25 different settings and three different reports. That is

1 my conclusion.

2 Q All right. And in your evaluation of her, you
3 reviewed Roger C. Peace, uh, rehabilitation hospital, a
4 report by Dr. Herring, am I correct?

5 A Yes, sir.

6 Q Dr. Herring had been referred by Dr. Kistler?

7 A Yes, sir.

8 Q And, uh, Dr. Herring's report is March 9 of
9 2011?

10 A That's correct, sir.

11 Q And you also reviewed the report of Dr. Randel
12 Jones?

13 A Yes, sir.

14 Q And his report and evaluation was earlier?

15 A That's correct, sir.

16 Q And, uh, you also, uh, talked about taking a
17 work history and educational background and about the
18 motor vehicle accident. Aside from Dr. Herring's report
19 from Roger C. Peace in March and also Dr. Jones' report
20 from 2009. What significance in those reports that you
21 find to confirm your belief that she has traumatic brain
22 injuries?

23 A Very specifically. And it's in my report, Dr.
24 Jones' report has some important -- clinically important
25 language. He said she has sustained a head injury based

1 on her difficulty with attention to details, difficulty
2 ignoring distracting stimuli, confusion, distractibility,
3 difficulty maintaining concentrations, staying focused,
4 post-concussion syndrome, history is consistent with
5 closed head injury, indicated by -- and then he goes
6 through some other symptoms, smell, word usage,
7 difficulty managing multiple tasks, decreased emotional
8 control, emotional lability, difficulty maintaining
9 focus and several problems suggest a head injury.

10 These problems are mild, but considering the
11 context of her history, they -- it signal a cognitive
12 problem. That was his language if you read in Dr.
13 Herring's report here at Roger Peace. His bottom line,
14 confirm that she has incurred a mild brain injury.

15 If I might interject a clinical lesson real
16 quickly, the problem with -- the diagnosis of brain
17 injury, the classifications, the literature in the brain
18 injury association, we probably have created some of our
19 own dilemmas because it's catastrophic injuries and
20 somebody, oh, it's a mild injury and it's severe or it's,
21 you know, god awful, mediocre. The terms are very, very
22 poorly defined.

23 The bottom line is diagnostic requirements for
24 a brain injury exists. That requires clear impairments
25 in terms of functioning. It is a brain injury. Any

1 adjectives that go in front of that seem to be a little
2 bit misleading at times. And unfortunately, we confused
3 the literature. We've also confused it with post head
4 injury. We say postconcussion. So all the terms, they
5 mean the same thing. It's a brain injury. The degrees
6 are obviously, as I said, not mentally dependent, not
7 being tube fed, unconscious for months at a time. That
8 happens too.

9 I want to suggest the term "mild" is a bit
10 misleading. It's not just in her case. We wish we
11 probably had had something better. But unfortunately,
12 you can't get a quart's worth. You don't get a gallon
13 worth. You can't see it on this picture. It's just hard
14 to define. It's hard to show it. Once you see it and
15 you start describing the implications of it, it becomes
16 more obvious.

17 A colleague of mine used this description. And
18 I'm not being cutesy. He said being -- having a brain
19 injury, in what degree, it's a little bit like being
20 pregnant. You are or you're not. You're brain-injured.
21 Whether it's mild or it's -- still, you're pregnant. So
22 let's not kind of start splitting hairs about is it a
23 little bit or a bunch or mild or whatever. The fact is
24 if indeed the diagnosis of brain injury exist, it
25 requires significant cognitive definitions be met in

1 order to sign that document in the first place. I'd just
2 add some of my colleagues get a little bit sidetracked
3 with that term.

4 Q During the course of your evaluation with Mrs.
5 Bettencourt, did you evaluate her credibility or her --
6 or whether or not she's prone to exaggerate her symptoms
7 or her functioning or what we call malingering?

8 A Absolutely. I have to confess. My wife says
9 the devil makes me do it. I kind of like catching people
10 in that. I admit. I do my Columbo routine about that.
11 But in Mrs. Bettencourt's case, she was exceptionally
12 straightforward, very candid. And putting together all
13 the pieces that I described, working at this place and
14 that place and moved here and lived in Chicago, we come
15 to Greenville. She's worked. The credibility is going
16 to continue working, yes. I did not see any reason to
17 believe and I do inquire and I look and compare pages and
18 pages and pages. I do not believe that she is a
19 malingerer, nor do I believe she's a good enough actress
20 to fake all these things. I really don't. There's no
21 insult about that. The sorts of things that she
22 describes, not just me, but in other places, most people
23 wouldn't put all that together.

24 If I'm going to fake or make up some symptoms,
25 most people wouldn't know exactly which ones to come up

1 with. Brain injuries have such a wide encompassing array
2 of symptoms of smell and ringing of the ears or memory
3 things or very -- easily irritated, emotional and cry at
4 the drop of a hat and all those things that we've been
5 talking about in these records for months and months and
6 months. I look for malingering. I look for fainting and
7 faking. I do not believe it is here. I said that two
8 times in my report. I do look. I do call it out when I
9 see it.

10 Q And so is it your opinion with a high degree of
11 professional certainty that Mrs. Bettencourt is not
12 malingering or exaggerating her illness?

13 A Absolutely. Like I say, I really do look for
14 that. I do not believe so. The things that make a
15 difference, what's the daily activities and the things
16 with family and the things with your kids and all that
17 sort of stuff. No, sir. I found her quite credible. I
18 do not believe she is malingering. I don't think she is
19 making it up or faking. I think it's extremely
20 distressing, very painful to her. I believe it to be
21 true.

22 Q Now, I want to ask you about the subtle things
23 as it relates to this type of brain injury. One of the
24 things I understand that brain injuries relate to is what
25 part of the brain's affected by a particular trauma. In

1 other words, is it correct -- am I correct in my belief
2 that if you get hit on the side of the head and suffer a
3 brain injury, then you may have different symptoms than
4 if you get hit in the front of the head or the back of
5 the head?

6 A Absolutely. Absolutely. And several of these
7 other records talk about the frontal -- someone has said
8 it's the frontal part of the brain that kind of separates
9 humans from our apes and chimpanzee cousins perhaps. The
10 frontal kinds of injuries, hitting your head or bumping
11 your head or whatever, uh, that's the so-called executive
12 areas. It's where you make plans and we get things
13 organized and we decide we need these parts and these
14 tools and we're going to do this project. We've got to
15 go to Home Depot and get this and this. We complain.

16 People who have had brain injuries, we're not
17 talking about inability to walk and wheelchairs. That's
18 another part of the brain. But the notion of confusion
19 and concentration and planning and carrying it out and
20 then the ability to sustain it. We have lots of folks
21 with brain injuries who have great ideas and actually for
22 a moment there, quite reasonable. But then let's put it
23 into play and carry it out so it don't get so far down
24 that road. But the ability to plan it, sustain it, carry
25 it out, get it to closure, get it to completion is sorely

1 missing in this case.

2 Q You mentioned something about the lost of
3 smell. What's so significant about that?

4 A Well, most people don't think that has anything
5 to do with their brain injury. Taste and smell are kind
6 of subtle things. Most people don't think about it, but
7 I ask are there any changes. I don't know. I used to
8 like collard greens. Now, they are just horrible.
9 Change in taste is -- it's all regulated up here. The
10 same thing goes with smell. I used to love the way
11 gardenias smell. These are real examples that I've
12 heard. I used to love my gardenias. Those things stink.
13 I can't stand it.

14 Changes in smell, changes in taste, changes in
15 tactile function, for example. I have people who, you
16 know, they walk and talk and chew gum, but they can't
17 pick a dime up off my conference table. They can pick up
18 a big old phone, but they -- she has those examples
19 again. So little subtle changes. Most people wouldn't
20 particularly associate if you are making it up. I don't
21 think you'd be making those up.

22 Q So you talk -- so the smell and the taste, is
23 that interconnected?

24 A Yes, to some degree, but not necessarily. They
25 usually are, yes, sir.

1 Q All right. Going through the subtle things
2 that, uh, that, uh, that the brain-injured person
3 exhibits, have you observed those things by Ms.
4 Bettencourt on more than one occasion?

5 A Yes. Another example that is pretty obvious
6 with -- this a lady who had been to several colleges,
7 universities, she graduated from high school, she's
8 attended several universities, got a couple of years
9 worth of college. You would expect very good verbal
10 skills and vocabulary skills. A number of times in just
11 the few hours that we were together the word choice was
12 not there. The word would escape her. It just goes dull
13 and she just stops. She can't get the words. Dr. Jones
14 talked about that. So did Dr. Herring.

15 The word choice, the word of usage, maintaining
16 a verbal thought process, she starts down some roads and
17 kind of just dead ends. Didn't finish. Just stopped.
18 So the vocabulary and communication skills are important
19 and they are proficient in this instance. That has some
20 vocational implications, of course.

21 Q Now, did you also observe a surveillance video
22 of Mrs. Bettencourt?

23 A Yes, sir. I did. I did.

24 Q Can you tell the jury about your observations
25 in view of that surveillance video?

1 A I confuse -- I smile a little because I watch
2 surveillance videos all the time. I seen some funny
3 things. I've seen people who hobbled into my office and
4 barely could walk. Then they'd show me a video where
5 they were literally jumping up on the back of a horse or
6 something like that. So yeah, I see both ways. But this
7 particular video that I saw did not change anything from
8 a significant vocational point of view. Uh, standing in
9 her own comfortable environment, this is not on a TV
10 stage or not at a TV station. It was not somewhere else.

11 In the relative comfort of her home -- and I'm
12 simplifying a little bit -- she put a tomato in hot
13 water. Well, duh. That just does not -- if I was doing
14 -- and I do job descriptions, about hundreds over the
15 years. But the ability to put a tomato in hot water,
16 that is not a very high level skill. So that did not
17 impress me very much.

18 I also paid attention to the amount of time
19 involved. From start to finish, we're talking about a
20 few minutes. This was not an eight-hour all day and come
21 back again and do it again tomorrow activity. It was a
22 few minutes. It was a tomato.

23 She also said she was going to peel the paper
24 off that tomato which was another one of those word
25 choices, not what she meant to say obviously. But I'm --

1 I saw it. I paid attention to it. It did not, from a
2 vocational point of view, nor from a cognitive point of
3 view. If anything, it just reinforced my opinions of the
4 ability to start things is fine, verbal mistakes, the
5 inability to make these things go for eight hours a day
6 as is required in gainful employment. This is not
7 demonstrated.

8 Q Now, uh, we've heard some testimony about the
9 nature of her injury being characterized as a coup contre
10 coup injury. Can you explain what that term means?

11 A Yes. Very simply, if you sort of think about
12 the head being in a shell and you go forward, you bump
13 the front part of your head and the front of the shell.
14 Then, by definition, you are kind of whipping back and
15 you hit the back side. By definition, in whiplash types
16 of things or being thrown around in military vehicles or
17 whatever, to go forward, you hit the front of the head.
18 If you go swinging back, you hit the back of the head.
19 Coup contre coup. In describing, basically, you hit the
20 frontal part of the head, which we've already talked
21 about and the back as well, but you swear some of those
22 other physical things come.

23 Q So is it basically the sloshing of the brain
24 and the fluids surrounding the skull?

25 A Brain cells are really very small and delicate.

1 We have millions of them. But still, you can not bang
2 your head up against a relatively rigid surface, such as
3 the skull. And the skull is not nearly as smooth as we
4 think about it being. Our baldheaded colleagues down the
5 road look like they got nice smooth heads, but they're
6 not that smooth.

7 You can not hit the head, front and back,
8 without doing any damages, by definition. You are
9 sheering off little parts and pieces of your brain. And
10 yeah, we have millions of them. But if you start
11 slamming your head around inside the shell and inside the
12 container, you're going to create problems.

13 In this case, these problems have now gone on
14 since 2008. I saw her six months after the injuries and
15 followed up these other people months later, years later,
16 and then here we are in 2011. There's just no question
17 in my mind that these things have happened. The cause
18 would have been, appears to have been this crash. I
19 don't know of anything else that intervened. I don't
20 know any drugs or those kind of things that mess up
21 people's brains. Of course, that's not present in this
22 case. Nobody suggested that.

23 The only thing that I know that happened was
24 something 2008 was before she was very successful and
25 very busy and after is still trying. You get an A for

1 trying. You get an A for effort. But the final product
2 is simply not what it was before. I have to say, and I
3 say this rather sadly, after a couple of years have
4 passed, a few months, maybe not, but a couple of years
5 have passed. We're having sort of again to assume this
6 is about as good as it's going to get.

7 There's no cure for brain injuries. There's no
8 cure. You don't understand it. You don't put it back.
9 You can teach coping skills. You can teach adjustment
10 skills. You can teach ways to deal with things. But
11 there is no cure. That has continued to be true ever
12 since. I'm sorry to say that in front of her. But
13 that's just a fact.

14 Q Do you have an opinion within a high degree of
15 scientific certainty whether or not Deena Bettencourt
16 sustained a brain injury as a result of this September 4,
17 2008 accident?

18 A That is very strongly my opinion and it's
19 shared by others. But it's my opinion absolutely, sir.

20 Q Were you able to, in review of the doctor's
21 notes and records, uh, and you also were talking about
22 the Roger C. Peace most recently, is there some
23 additional treatment or therapy that might help her cope
24 better with her injury?

25 A Absolutely. There's no cure. We offer

1 interventions. We teach coping skills and we teach all
2 sorts of things. The difficulties with language that we
3 talked about, I would think that she would certainly
4 benefit from the speech and language therapy that is
5 available. I'm not talking institutionalized. I'm
6 talking about elevation stuff. But yes, I think she
7 would definitely benefit from some of those kinds of
8 services. Obviously, the emotional liabilities and the
9 tears at the drop of a hat and that sort of thing, I
10 would suggest probably that she might benefit from
11 psychological services as well. Those things need to be
12 there.

13 Then she talked about trying to do the things
14 she was taught in physical therapy. I would think
15 occupational therapy would also teach a lot of good
16 coping skills, physical skills, movements and things to
17 do, things not to do. I think there are a host of
18 outpatient services that would certainly be beneficial.
19 I would not want to suggest otherwise.

20 Q Now, we have speech therapy evaluation \$350,
21 psychological evaluation \$299.10, speech therapy,
22 continuing care, \$300 times 10, 10 visits, \$3000,
23 psychological continuing care, \$250 a visit, 10 visits,
24 \$2500 for a total of \$6149.10. Is that a fair and
25 reasonable amount of medical expenses that would help her

1 develop an ability to cope with her brain injury?

2 A Yes, sir. I think they are very conservative.
3 Ten psychological visits is not very many. Yes, I think
4 those outpatient services would be minimal. I think they
5 would be helpful. I would certainly hope that they would
6 be received.

7 Q Now, uh, you have an opinion within a high
8 degree of professional certainty as to whether -- I think
9 you already said this but I have to go through certain
10 legal terms -- high degree of professional certainty as
11 to whether or not her injuries are permanent?

12 A Permanent?

13 Q Permanent.

14 A Yes, fortunately, as I said, at this point,
15 2008, a couple of months later, I think it would have
16 been very premature to come to these kinds of
17 conclusions. But I think what is still present, we're
18 coming up on years afterward. This level of functioning
19 represents a permanent impairment. The level of
20 functioning that we're looking at after two and a half
21 years, there's very little in the literature to say that
22 she will not have these symptoms. We teach some coping
23 skills and that sort of thing. I'm sad to say --
24 saddened to say, after two and a half years, I think we
25 are where we are likely to remain.

1 Q You have an opinion as to what percentage of
2 permanent impairment Mrs. Bettencourt may have as a
3 result of this accident?

4 A Yes, sir. I an opinion on that as well. If
5 you look in a variety of documents in terms of the, uh,
6 classifications of impairments and so forth, Dr. Jones
7 used a percentage of about 20 percent. I don't know how
8 -- is it 20 or is it 19. There's another category that
9 somewhere in that range of 15 to 29 percent is the
10 category. So I highlight categories and you take
11 midrange to that, that would be about 22 percent. In
12 that range of 20, 22, 25 percent, I think is a very
13 conservative and reasonable and well defended suggestion
14 for impairment limitations.

15 Q Now, there are certain guidelines you follow in
16 determining this impairment?

17 A Oh, absolutely. Absolutely.

18 Q What are those?

19 A Uh, using the -- it's the Guide to the
20 Evaluation of Permanent Impairment, American Medical
21 Association, chapter 13, Central and Peripheral Nervous
22 System. She meets the combination of conditions.
23 Forgetfulness, oriented, of course, some impairment
24 problems, obviously, remains capable of self-care. Of
25 course, putting all that together, she is functioning at

1 what is defined as a Class 2 clinical rating scale, 15 to
2 29 percent impairment of the whole person directing some
3 resuscitating -- some directive activities to complete
4 tasks that she begins. I think that's a textbook classic
5 example. I believe that to be true to a very high degree
6 of professional certainty, sir.

7 Q Now, Dr. Brabham, uh, would your opinion be any
8 different if Mr. McGarr had hired you to evaluate Mrs.
9 Bettencourt?

10 A Absolutely not, sir. I look forward to working
11 on his side of the aisle next years, sir.

12 MR. CHILDS: Just one minute, Your Honor.

13 (Pause.)

14 I think I would say after the break, please
15 answer any questions Mr. McGarr might have.

16 THE COURT: How long do you anticipate your
17 cross-examination will be?

18 MR. MCGARR: Three minutes. Three minutes,
19 Your Honor.

20 THE COURT: Three minutes? Let's do it. Go
21 ahead. You may --

22 MR. MCGARR: Please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. MCGARR:

1 Q Doctor, you weren't hi -- you weren't retained
2 through another doctor, were you? You were retained
3 through Mr. Ray?

4 A That is correct.

5 Q Mrs. Bettencourt's attorney?

6 A Yes, sir.

7 Q And not only were you retained by her attorney,
8 you actually interviewed her in his law firm office?

9 A As an accommodation under the American
10 Disabilities Act, which I helped write, yes. You are
11 absolutely -- you are perfectly correct.

12 Q As an accommodation to the ADA meaning?

13 A Traveling difficulty. It -- it's always easy
14 for me and I'm happy to do that, sir. I leaned over
15 backwards to do that. I also do it for plaintiffs as
16 well as defendants.

17 Q I understand, but you also have done that
18 evaluation and been even more kind to her in her home.
19 Instead, you did it at her lawyer's office, is that
20 correct?

21 A I have gone to people's homes when they were,
22 in fact --

23 Q Doctor, that's not my question.

24 A Yeah, you're right.

25 Q You could have done it at her home, is that

1 correct?

2 A Yes, sir.

3 Q Instead, you did it at a lawyer's office.

4 A Yes, sir. Her husband was not home and I don't
5 go to ladies' homes without somebody being there. That's
6 just a prudent thing for a psychologist to do.

7 Q And you were paid \$1000 for that?

8 A Yes, sir. Five hours of my time driving to and
9 from Columbia, yes, sir.

10 Q Uh, Doctor, you were already in Colum -- you
11 were already in Greenville on other business according to
12 what you just --

13 A I drove from Columbia to see two people and I
14 was here. The charges is basically based on about five
15 hours of time. That's what has been -- that rule of
16 thumb has been approved by the Worker's Compensation
17 Commission. They approved that in the past. This guide
18 for \$1000 has been approved by several jurisdictions.

19 Q And you've been paid to come here today?

20 A No, sir. I hope to be. Plan to be.

21 Q And do you plan to be paid, uh, well, like the
22 previous doctor testified?

23 A I don't know what he testified to, but I do
24 expect to be paid well, yes, sir.

25 Q Thank you.

1 **A** It took up a day of my time, yes, sir.
2 **THE COURT:** Any redirect, sir?
3 **MR. CHILDS:** No, sir, Your Honor.
4 **THE COURT:** All right. Doctor, thank you for
5 being here.
6 **THE WITNESS:** Thank you very much.
7 **THE COURT:** I appreciate it.
8 **THE WITNESS:** Nice to meet you, sir.
9 **MR. CHILDS:** And the plaintiff rests, Your
10 Honor.
11 **THE COURT:** All right.
12 **THE WITNESS:** I have your permission to
13 leave?
14 **THE COURT:** Yes, sir. Absolutely. Have a
15 great day and a safe trip.
16 **THE WITNESS:** Thank you, sir.
17 **THE COURT:** Okay. Mr. McGarr, you have one
18 witness, am I correct, sir?
19 **MR. MCGARR:** Yes, Your Honor.
20 **THE COURT:** Okay. All right. Ladies and
21 Gentlemen, we're going to take a break for lunch.
22 Uh, we're going to break for an hour and a half.
23 I'll ask you to be back -- well, a little bit less
24 than an hour and a half, at 2:30. At 2:30. Then,
25 we'll begin with the defendant's case. We have a

1 little legal business to take up but we'll try to
2 start as promptly as we can.

3 And just so you know, I want to argue and
4 charge today. That's my intent. I don't know how
5 long this last witness is going to last. We're
6 about an hour and a half beyond where I thought we'd
7 be right now. Cardinal rule of charging is don't
8 charge after three o'clock because when we start
9 arguing and charging, that's going to take some
10 time, which means you won't have the case until
11 after 4:00, which means you can deliberate as long
12 as you want, so we may be here as late as twelve
13 o'clock. I don't know. So ordinarily, I don't
14 charge you after three o'clock.

15 We're in that, uh, period of time right now
16 where I don't know whether we're going to argue and
17 charge today or tomorrow. I'm going to try to do it
18 today so y'all don't have to come back tomorrow, but
19 it all depends on time. All right. Please don't
20 discuss the case.

21 (WHEREUPON, the jury exits at approximately
22 1:10 p.m.)

23 THE COURT: Okay. Motions?

24 MR. McGARR: Your Honor, we would make a
25 motion for directed verdict based upon the fact

1 that, uh, there is no evidence, uh, that hasn't been
2 severely impeached that would indicate that Mrs.
3 Bettencourt has a brain injury.

4 **THE COURT:** Okay, sir.

5 **MR. McGARR:** We understand your ruling.

6 **THE COURT:** Yes, sir. Well, obviously, I'm
7 compelled under the law to view the motion in the
8 light most favorable to the nonmoving party. I'm
9 not in a position to weigh the evidence, only to
10 determine whether, in fact, there is evidence
11 presented into the record which supports the
12 plaintiff's case. Based on that standard, I
13 respectfully deny your motion.

14 I, uh, know that you've given me request for
15 charge and you're not giving any. Do y'all want to
16 have a short, just a very brief charge conference in
17 my chambers now?

18 **MR. McGARR:** That will be fine.

19 **THE COURT:** All right. Y'all take a break.
20 I know you need to take a break. Five or ten
21 minutes, y'all come on back, okay? I'll tell you,
22 anybody who's getting a Rule 403, if you want to
23 come back in chambers and be there for the charge
24 conference, you're welcome to come back.

25 **MR. CHILDS:** The inner sanctum.

1 THE COURT: Huh?

2 MR. CHILDS: The inner sanctum.

3 THE COURT: The inner sanctum.

4 MR. MCGARR: Are we coming -- the jury's
5 coming back at 2:30?

6 THE COURT: 2:30, yes, sir.

7 (WHEREUPON, a lunch recess is taken.)

8 (WHEREUPON, the jury enters at approximately
9 2:32 p.m.)

10 THE CLERK: Place your left hand on the Bible
11 and raise your right hand. Left hand.

12 MARY WALD

13 having first been sworn, testifies as follows:

14 THE CLERK: State your name please.

15 THE WITNESS: Mary Ruth Wald.

16 THE CLERK: Thank you. Please be seated.

17 DIRECT EXAMINATION

18 BY MR. MCGARR:

19 Q Mrs. Wald, let's do a test drive. Can you tell
20 the jury your name?

21 A I'm sorry. I didn't hear you.

22 Q Let's do a test drive. Can you tell the jury
23 your name so that we can see if they can hear you?

24 A Mary Ruth Wald.

25 Q Mrs. Wald, where do you live?

1 A I live in Mauldin.

2 Q Are you now retired?

3 A Yes, I am.

4 Q Where did you use to work?

5 A I, uh, had my beauty shop, my own beauty shop.

6 Q And how long did you have that beauty shop?

7 A I had it probably 34 years, 35 years.

8 Something like that.

9 Q And how old are you now?

10 A 79.

11 Q I'm going to take you back in time. Can you

12 tell the jury why you were on Augusta Road on the day of

13 this accident?

14 A I was going to have a mammogram made at the

15 diagnostic center.

16 Q Were you involved in an accident with Mrs.

17 Bettencourt?

18 A Yes, I was.

19 Q Whose fault was that accident?

20 A It was mine.

21 Q Did you talk to Mrs. Bettencourt after the

22 accident took place?

23 A Yes, I did.

24 Q And what did you talk to her about?

25 A I asked her, uh, if she was hurt. She said no,

1 not bad but my neck and my head hurts, my neck right
2 here.

3 Q Uh, where were you talking to Mrs. Wald when
4 this was taking place?

5 A At the --

6 Q I mean, Mrs. Bettencourt when this was taking
7 place.

8 A At the back of her car.

9 Q Uh, was your car towed from the scene?

10 A Yes, it was.

11 Q Did I make a mistake when I told the jury it
12 wasn't towed?

13 MR. CHILDS: Objection, leading the witness.

14 THE WITNESS: Yes.

15 THE COURT: All right. Hold on.

16 I'm going to overrule your objection. I'm
17 going to give him a little bit of leeway in that
18 regard.

19 BY MR. McGARR:

20 Q Did you ultimately go to the emergency room?

21 A I'm sorry.

22 Q Did you go to the emergency room after?

23 A Yes.

24 Q Uh, why?

25 A The air bag deployed and scratched me on the

1 arm and chest.

2 Q Did it get you in the face too?

3 A Yes.

4 Q After the emergency room, did you seek any
5 additional medical treatment?

6 A No, I didn't.

7 Q How do you feel with regard to responsibility
8 toward Mrs. Bettencourt's neck complaints?

9 A I feel that I'm responsible for it, but not the
10 head because of the video.

11 Q Tell me again why you don't feel responsible
12 for the concussion.

13 A I saw the video. I don't feel that I'm
14 responsible for it.

15 Q Uh, when you say "the video", the tape of her?

16 A Yeah.

17 Q Uh, I have no further questions, Your Honor.

18 THE COURT: Any questions?

19 MR. CHILDS: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. CHILDS:

22 Q Mrs. Wald, can you hear me okay?

23 A Yes.

24 Q All right. So you testified just now that you
25 feel you are responsible for her neck injury?

1 A Right.

2 Q So you feel like you are responsible for \$1812,
3 is that right?

4 A I guess so.

5 Q You feel like -- are you responsible or feel
6 like you are responsible for her going to her family
7 doctor?

8 A For neck injuries?

9 Q Yes.

10 A Yes.

11 Q And, uh, you don't feel like you are
12 responsible for her concussion?

13 A No.

14 Q And that's based on what you saw on the video?

15 A Right.

16 Q What did you see on the video?

17 A Well, I just could hear it. I'm nervous and
18 scared. I'm 79 years old. I can't remember everything.

19 Q You can't remember what you saw on the video
20 that makes you think you're not responsible for her brain
21 injury?

22 A Yes.

23 Q Okay. Now, do you remember when I took your
24 deposition?

25 A Yes, I do.

1 Q Was I nice to you then?

2 A Yes.

3 Q Okay. I'm just going to ask you a few
4 questions about your deposition here. You feel like
5 you're responsible -- now you feel like you are
6 responsible for the accident?

7 A Yes, I was.

8 MR. MCGARR: Let me interject an objection.

9 THE COURT: Yes, sir.

10 MR. MCGARR: In her deposition, she felt that
11 she caused the accident.

12 MR. CHILDS: Well, I'm going to ask her that.

13 THE COURT: Okay. All right.

14 BY MR. CHILDS:

15 Q You feel like you're responsible now?

16 A Yes, I was responsible.

17 Q Okay. Let me show you your deposition. Can
18 you read okay?

19 A Yes.

20 Q I just asked because I have bifocals in my
21 lenses too. I may have to do like this sometimes. All
22 right. I'm going to give you the page number and these
23 are the lines over here. Okay.

24 A Uh-huh.

25 Q I'm going to direct your attention to page 43,

1 line 14, where I ask a question, okay?

2 A Yeah.

3 Q I ask you what could you have done to avoid the

4 accident. Line 15, what was your answer?

5 A Nothing.

6 Q And then I asked you is there nothing you could

7 have done to keep from hitting her. In line 18, you

8 said?

9 A No.

10 Q Line 19, I ask you could you have been paying

11 better attention. And your answer was?

12 A I was paying attention.

13 Q Line 21, I asked you so you think you didn't do

14 anything wrong in the accident, what was your answer?

15 A Not to my knowledge.

16 Q You understand that you were under oath when I

17 took your deposition, didn't you?

18 A Yes.

19 Q And you understand you are under oath today?

20 A Yes.

21 Q Were you telling me a fib back when I took your

22 deposition?

23 A Do what?

24 Q Were you telling me a fib?

25 A No.

1 Q So what's changed your mind about being
2 responsible for this accident?

3 A I was responsible --

4 MR. McGARR: Excuse me, I want to interject
5 an objection, Your Honor, because you need to
6 understand that on page 43 of that same deposition,
7 she was asked if she thought the accident was her
8 fault and she said it was.

9 THE COURT: Okay. I'll let you ask her in
10 that in cross -- excuse me -- redirect examination,
11 that is, if you think you hadn't already gotten it
12 out to the jury.

13 BY MR. CHILDS:

14 Q Uh, in your deposition, you said that you felt
15 you were at fault because you hit her in the back, isn't
16 that right?

17 A Yes.

18 Q That's the only reason you could give for why
19 you thought you were at fault?

20 A No, I knew I was at fault when I hit her.

21 Q Okay. But you were paying careful attention.
22 You told us in your deposition that the light was red.

23 A Yes, it was red.

24 Q And you told us in your deposition that there
25 were several cars in front of her, didn't you?

1 A Yes.

2 Q Have you changed that part of your testimony?

3 A No.

4 Q In your deposition, you said the traffic was
5 heavy.

6 A It was.

7 Q Okay. And in your deposition, you told us that
8 you thought you were going about 10 to 15 miles per hour?

9 A Yes.

10 Q When you hit Mrs. Bettencourt?

11 A Yes.

12 Q Okay. Now, you did go to the emergency room
13 right after you left the scene, didn't you?

14 A No, whenever I was there, they was towing my
15 car.

16 Q After they towed your car away, you went
17 straight to the hospital?

18 A Yeah. Uh-huh.

19 Q You weren't treated there just for scrapes and
20 abrasions, were you?

21 A Yes.

22 Q Is that your testimony?

23 A Well, my knee was injured and they x-rayed it.

24 Q And your neck was hurt too.

25 A But not -- it was hurt some, but not really.

1 Q Your arm was hurt too.

2 A Yeah.

3 Q Your arm -- you told me in your deposition that
4 your arm swoll up real big and hurt for like three weeks.
5 Is that right?

6 A Yes, I believe.

7 Q And so when you were discharged to the
8 hospital, did you know that your diagnosis was acute
9 cervical strain? .

10 MR. McGARR: Objection. May we approach?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference is held off the
13 record.)

14 BY MR. CHILDS:

15 Q When you were discharged from the hospital, did
16 your neck hurt real bad?

17 A No.

18 Q Did anybody tell you to put ice on it every two
19 hours while awake for two or three days?

20 A I don't remember.

21 Q Okay. You remember telling the people at the
22 hospital that you were going 30 miles per hour at the
23 time of the impact?

24 A I don't remember, but I might have. I don't
25 remember that.

1 Q Do you deny telling them that?

2 A (No response.)

3 Q Would you deny telling them that?

4 A No, I didn't deny it. I don't remember it.

5 Q So you could have told them you were going 30

6 miles per hour?

7 A I could have.

8 Q Were you a little bit dazed as a result of the

9 accident? Were you shook up?

10 A No, not that much. I was just kind of scared.

11 Q Did you tell the doctor at the hospital that

12 the speed of your vehicle was 35 to 45 miles per hour?

13 A I don't think so.

14 Q Did you also have extensive swelling of your

15 knee?

16 A No.

17 Q They didn't x-ray your left knee?

18 A Yes, they did.

19 Q And you didn't have any swelling of it?

20 A No.

21 Q You don't remember that?

22 A No, I don't.

23 Q So you deny having neck pain?

24 A No, I don't deny it.

25 Q Okay. Do you deny having a sore jaw?

1 A I don't remember having a sore jaw.

2 MR. MCGARR: Your Honor, we'll stipulate. We
3 don't have a copy of the record. We'll stipulate
4 she said her jaw was sore.

5 THE COURT: You accept the stipulation, ---

6 MR. CHILDS: Yes, sir.

7 THE COURT: --- Mr. Childs?

8 All right. Ladies and Gentlemen, a stipulation
9 is an agreement among the parties as to certain
10 facts. If the parties stipulate as to a fact, then
11 you can accept that fact as established. Go ahead.

12 BY MR. CHILDS:

13 Q Did you have contusions as a result of this
14 accident?

15 A I don't know.

16 Q Not bruising, not swelling?

17 A On my arm, I did have some.

18 Q Okay. You still drive?

19 A Yes.

20 Q Do you remember telling the police officer that
21 you were looking at a sign right before the accident?

22 A No, I don't.

23 Q Were you looking at a sign right before the
24 accident?

25 A No, I don't remember it. I don't remember it.

1 I was looking at signs coming up the road.

2 Q Right.

3 A But I don't remember looking at one right at
4 the accident.

5 Q Do you remember the time of the collision?

6 A Yeah.

7 Q Uh, do you remember that a lady had to come
8 over and help you get out of the car?

9 A Yes.

10 Q And you remember going over to speak to Mrs.
11 Bettencourt and she said her neck and head hurt?

12 A Yes.

13 MR. CHILDS: Just one minute, Your Honor.

14 THE COURT: Yes, sir.

15 MR. CHILDS: That's all the questions I have.

16 THE COURT: Any redirect, sir?

17 MR. McGARR: Just one question.

18 REDIRECT EXAMINATION

19 BY MR. McGARR:

20 Q Mrs. Wald -- oh, you got one. I'm going to do
21 the same for you ask I've done with everybody else. When
22 I tell you to go to a page of your deposition, it will be
23 up there on the far right hand corner. When I tell you
24 to go to a line, it will be on this side, okay?

25 A Uh-huh.

1 Q Can you do me a favor and go to page 43 of your
2 deposition? On line 9, did Mr. Child's ask you do you
3 think it was on your fault? And on line 10, did you say
4 I thought any time you hit somebody in the back it was
5 your fault? And on line 12, did he ask you why did you
6 think it was your fault? And on line 13, did you say
7 because I hit her in the back? Did you say that?

8 A Yeah.

9 MR. McGARR: No further questions.

10 THE COURT: Any recross?

11 MR. CHILDS: No, sir.

12 THE COURT: All right. Thank you, Mrs. Wald.
13 You may step down.

14 All right. Anything further from the defense?

15 MR. McGARR: That's the defense's case, Your
16 Honor.

17 THE COURT: Do you need to renew your motions
18 at this time and do you need to be heard on any
19 arguments, sir?

20 MR. McGARR: To save a little time, ---

21 THE COURT: Yes, sir.

22 MR. McGARR: --- the prior motion that I made
23 be essentially made now and your ruling made again?

24 THE COURT: Yes, sir. Protecting you on the
25 record at the close of your case, you've renewed

1 your mo -- your dispositive motions that you made at
2 the close of Plaintiff's testimony. I'll rule in
3 the same fashion and deny the same.

4 All right. Uh, any reason we need to take a
5 break before we roll into closing arguments?

6 MR. CHILDS: I would assume if I were to
7 enter motions at this stage, I would have the same
8 response?

9 THE COURT: Your assumption is fairly
10 accurate, I believe. Fairly accurate. You'd have
11 to be a very convincing attorney. Not that you're
12 not.

13 MR. CHILDS: I would say for a portion of the
14 allegations, I would move for one.

15 THE COURT: Okay. All right. I respectfully
16 deny the same.

17 MR. CHILDS: All right.

18 THE COURT: Uh, Ladies and Gentlemen, you may
19 think that we're talking gobbledygook. Actually,
20 there are certain motions under the rules that are
21 required to be made at the close of the testimony.
22 If you don't make those motions, then they are not
23 preserved. Those are the motions that we're talking
24 about. So there are no secrets. I denied any
25 dispositive motions in this case because I think

1 and proximate result of a collision between the
2 vehicle, Mrs. Bettencourt and the defendant on
3 September 4th, 2008. Their response was denied.

4 Uh, and we asked them to admit that Mrs.
5 Bettencourt experienced pain and suffering as a
6 result of the accident. Their response was it was
7 denied. We asked them to admit that she incurred
8 medical expenses. Didn't say how much, just said
9 some medical expenses. Her response was denied.

10 That's why I said, when I started out this
11 case, this case isn't about the litigants. It isn't
12 about Scott and Deena Bettencourt. It isn't about
13 Mrs. Wald. She's a nice lady. Maybe she shouldn't
14 be driving, but she's a nice lady. It's about
15 responsibility. It's about responsibility to
16 society. It's about responsibility to pay for
17 injuries that anybody might inflict as a result of
18 an automobile accident.

19 These statutes and laws that we have are
20 intended to protect the public. Too many people
21 have died or get hurt on the highway. It is a high
22 burden that the State imposes on people on the
23 things we take for granted. As you've seen in this
24 case and you've seen on the news, you know, people
25 are killed all the time. It's a tragic thing. But

1 this case is indeed about responsibility. And Mrs.
2 Wald -- God bless her -- uh, doesn't feel like she
3 is responsible for all the damage that is incurred
4 by Mrs. Bettencourt. It's interesting how our
5 system works.

6 You've heard this from Dr. Brabham, but you
7 know, when you dispute medical testimony and the
8 doctors and what they say, you can have Mrs.
9 Bettencourt examined all day long by whoever you
10 want. That wasn't done in this case. They didn't
11 do an individual medical examination of Mrs.
12 Bettencourt because they knew what the result would
13 be. You've got three doctors, three neurological
14 psychologists that says unequivocally that she has
15 brain injury.

16 We're not coming in here and saying she's an
17 invalid. And she's obviously not. She's not on a
18 ventilator. She's not able -- unable to remember
19 her childhood. This has had a significant impact on
20 her life. This would have a significant impact on
21 anybody's life.

22 You take a person as they come. It might be to
23 some people that this was not a major collision,
24 that spun cars through the intersection and turned
25 them on their head and put a metal rod through Mrs.

1 Bettencourt's head. She suffered those injuries as
2 a result of that accident. There is not a question
3 about it.

4 What are all these questions about a
5 chiropractor's note that said she had four prior
6 somethings. You don't get through college. You
7 don't get through Sears. You don't do the things
8 that Deena Bettencourt did if you have even slight
9 brain impairment. I think her history speaks for
10 herself. I think that that's a defense to her brain
11 injury. It's grasping at straws. It's looking for
12 a way to find a defense.

13 You're not going to find anybody's medical
14 records anywhere that are completely perfect.
15 Doctors are good people. Nurses are good people.
16 But they are human beings and they make entries that
17 don't make sense sometimes. That is entirely
18 possible and entirely practical.

19 But what did all the doctors say? Of course,
20 Dr. Herring didn't have to come here. Dr. Brabham
21 reviewed his report from Roger C. Peace Hospital.
22 She is still undergoing treatment for this injury.
23 It's an injury that one hoped would go away, but it
24 didn't. This lady is not something that's going to
25 sit back and say I just want to not contribute to my

1 house in hopes of getting some jury award. This
2 lady has run her life for 42 years and showed you
3 the productiveness in her professional life and in
4 her family life and in her community involvements
5 and her children's involvements to fake an injury.
6 And that's what they're saying.

7 In this case, if you rule for the defense, what
8 they're asking you to do is say you're right.
9 That's the whole case. I think you can look at
10 somebody's history and know. You can look at
11 somebody's life and know. People that exaggerate
12 and fabricate and malinger don't aspire to living a
13 good life. They don't do well in their employment.
14 They don't become solid citizens.

15 She manages her family -- managed her family
16 with the ultimate degree of multitasking like most
17 moms do. Like most moms do. It's not easy. Moms
18 know it's not easy. With two children or more
19 children, it's not easy. And if you lose that
20 ability, just imagine how devastating that would be.
21 Imagine the devastation to Scott Bettencourt, a man
22 earning a good, a very good living for his family.
23 You have to commend him for that. But his partner
24 is half gone. He loves her. It's tragic.

25 You have to believe that this lady wanted to

1 impose this tragedy on her family. This lady wanted
2 to be where she is in order to believe the defense.
3 In order to believe in defiance of all the experts,
4 pretty much, the defense is going to have to try to
5 turn it around like they tried on Dr. Kistler.

6 That's the whole thing.

7 Well, she has put a concussion on a
8 chiropractor's intake sheet from 2002. Wouldn't
9 that cause you to question her? Sure it would.
10 Where's the records of that? Where's the evidence
11 of that? You don't go through the Navy with brain
12 damage. What they're telling you is she went
13 through the Navy with brain damage. You don't do
14 that. You don't become hired by the Great Outdoors
15 -- I can't remember all the stuff that she did
16 during the course of her career. You don't do that.
17 You don't, uh, produce the life that she did with
18 that kind of injury.

19 The doctors unequivocally and even Dr.
20 Kistler's unequivocal that she's got an impairment.
21 You can't take the impairment. The only concern to
22 some degree was the fact that he didn't have a
23 record that she had a prior, four prior concussions.
24 Only thing he was presented with was something from
25 Dr. Shride that said he wrote down something that

1 looks like concussion. You heard her mother testify
2 that she -- you know, she's not had a prior
3 concussion. You've had her testify she's not had a
4 prior concussion. So that issue is simply a method
5 by which to cause doubt and for you to question her
6 veracity and basically call her a liar.

7 This lady is not a liar. We know who liars
8 are. We can tell. Doctors can tell. They have
9 dealt with many, hundreds of thousands of people
10 over the years in their profession, people that want
11 to malingering, people that want to hide things. I
12 think the best testimony was Dr. Brabham.

13 You know, somebody's got to get a witness here.
14 Somebody's got to pay a doctor to be here. The
15 doctor's not going to cancel all his appointments
16 and show up in court. Somebody's got to do an
17 independent medical examination. That's what we
18 have Dr. Brabham for. He testified and testified
19 truthfully. He would have said she doesn't have an
20 impairment. It didn't matter who paid him if he
21 thought she didn't. He was not only above what Dr.
22 Jones testified, he was highly certain, highly
23 certain of her impairment. I don't think there's
24 any question about if this lady sustained 20 percent
25 impairment to her person as a result of this

1 accident.

2 It's kind of freakish and unusual that a person
3 would suffer these kinds of injuries from this. But
4 it's perfectly accepted -- it's perfectly, uh,
5 foreseeable that people will be injured when you
6 rear-end them doing 35 miles an hour. It's
7 perfectly foreseeable that 60 g's is going to throw
8 somebody's head around. It's perfectly foreseeable
9 and believable that 130 pounds to Mrs. Bettencourt's
10 head is going to hurt her head. It's perfectly
11 foreseeable that the brain sloshed back and forward.

12 There are things that she couldn't hide.
13 There's things that she couldn't hold. We noticed
14 that. And particularly, the loss of sense of smell.
15 I think that's significant because it just coincides
16 with the area of the head that got the brain
17 sloshed. I don't mean to belittle it, but I call it
18 a brain slosh. I don't know any other way to
19 characterize it.

20 The only thing that a civil jury can do -- you
21 can't raise a wand and you can't put a person back
22 the way they were before the accident. The only
23 thing you can do is come up with a monetary amount
24 to try to pay for the damage. You can't put her --
25 you will -- you will -- \$50 million doesn't put her

1 back where she was before. Okay. We're not asking
2 for \$50 million, let me clear that up.

3 What we want you to do is decide what is an
4 appropriate amount of monetary damages to award that
5 would compensate her for -- that would try to put
6 her in the place you would have been, but for the
7 accident, to restore her back. I don't know how we
8 do that. I don't know how y'all are going to do
9 that. That's going to be difficult.

10 All I've got is medical bills. I've got
11 doctors and economics to say 20 percent impairment.
12 What would pay that person to restore that 30
13 percent? You can't. That's what your job is in
14 this case. Your job has been refined down a bit
15 during the course of this trial.

16 There's a number of damages that she's entitled
17 to be compensated for. I think it sounded like the
18 defendant admitted that they are responsible for the
19 North Point Chiropractic treatment. That's
20 interesting because I heard a lot of questions about
21 North Point Chiropractic treatment that really
22 didn't have a lot to do with anything but to try to
23 say that she had a prior neck injury. They even
24 attacked that, even though she said she's
25 responsible for the neck.

1 Premier Family Practice, I think anybody who
2 sustained an injury in this accident would have gone
3 to their family doctor several times. The MRI, I
4 think that's something that is unquestionably
5 something that should have been done in this case.
6 That's an appropriate amount.

7 Physical Therapy, \$2164. I like the fact that
8 she had nine visits there and she was approved for
9 ten and allegedly didn't go back because she felt
10 she had the exercises and all down that would help
11 her.

12 Urology Associates of Greenville, Dr. Kistler,
13 uh, consultation, office visit, office visit, office
14 visit, office visit. What does Dr. Kistler do? He
15 sends her to Roger C. Peace to go through the brain
16 trauma center. Why does he do that? Because
17 everything she has told him and everything that he
18 sees, even the test that Dr. Jones gave her and you
19 remember all those tests, dexterity, finger
20 recognition of objects, impairment, bilateral
21 impairment. In other words, you've got a difference
22 in how one hand handles things as opposed to the
23 other. Dr. Jones, \$2170 -- 110.

24 Roger C. Peace, \$4290. Uh, do you think that
25 she could ever progress past \$4290 of examination

1 without one doctor saying she's malingering? Did
2 you hear a doctor ever say that? Future medical
3 expenses, speech therapy, psychological evaluation,
4 speech therapy, \$6149. So her -- what I come up
5 with dollarwise is \$20,436.

6 Then you heard from Dr. Swicegood that says he
7 wants to take a conservatory approach to all this.
8 He used her income from 2007 which was really
9 probably one of the lower years of her earnings
10 where she was earning about \$18,000 that year where
11 she used to earn about 50 or 60 when she wanted to
12 be employed. She was employed in Chicago. She made
13 \$82,000 the year before the accident. She was
14 giving a business card and working for Kitchens of
15 the South. His future loss, based on 20 percent
16 impairment that all the doctors essentially agreed
17 upon is \$89,139.

18 The loss of household services is \$164,189.
19 Remember at the opening of this case, the allegation
20 was that she wants nannies, gardeners and maids.
21 That was the defense you heard. Uh, what he's
22 calculated is the loss of household services that
23 she could do before the accident that she can't do
24 now. Twenty percent, the same rate that Dr. Jones
25 gave and Dr. Brabham gave concurred to by Roger C.

1 Peace. Lost of household services. I think if you
2 total all that, it's that.

3 That doesn't include pain and suffering. That
4 doesn't include loss of consortium. That doesn't
5 include mental anguish. That doesn't even cover her
6 losses economically. That's a large figure, but she
7 suffered more damages than that.

8 You have to decide if she's lost consortium of
9 her husband and what value that is. You have to
10 decide what value the loss of pain and suffering to
11 her -- that her pain and suffering was. We're not
12 asking for a figure. We're not saying to you we
13 want \$2.5 million or \$50 million. You know, it's
14 not right to ask those questions. That's your job.
15 That's your job.

16 But the law says that what your reward is
17 intended to do is to restore her to the position she
18 was like prior to this accident and compensate her
19 for the pain she's been through, for the anguish
20 she's been through, the mental suffering she's been
21 through and to compensate her for future losses and
22 to compensate her husband for what he's lost. He's
23 lost half his partner.

24 I think I should be out of time here
25 momentarily. I ask you at the start of this case if

1 it was -- if they wanted you to do a couple of
2 things. One is listen carefully to the witnesses.
3 The second part is use your common sense. When you
4 use your common sense, you will know that Deena
5 Bettencourt is not driving around Greenville county
6 looking to get in a car accident so she can claim
7 some type of injury and to not be able to do the
8 things she can't do since that time in hopes of
9 getting some kind of wonderful reward for that..

10 There's no reward. You will never put her back
11 in the place she was before. No one ever will.
12 This is a resolution of the system in civil court.
13 Your job is to award monetary damages. I wish you
14 could just take her back and put her back to where
15 she was before. That's not possible. You are
16 necessary because, until up here today, Mrs. Wald
17 said I'm not responsible.

18 I don't think she's suffered any injury in the
19 accident. I don't think she got hurt at all. Did
20 you hear that? In their responses to our questions,
21 they said, no, she's not hurt at all. So it is
22 about responsibility. That's why you are here.
23 They said no.

24 Your job is to decide what's appropriate. We
25 trust you to do that. You listen to the judge as he

1 Now, at some point in time -- even if they go late
2 into the night, at some point in time, I'm going to
3 release you. Okay. Uh, but once we get past about
4 an hour and a half or an hour, then I probably will
5 release you, but I can't do it yet. Okay. I hope
6 you understand.

7 THE JUROR: Yes, sir.

8 THE COURT: All right. All right. I'll let
9 you know, uh, where we stand. All right.

10 THE JUROR: Do I --

11 THE COURT: Well, what I'm going to get you
12 to do, the bailiff is going to take you to one of
13 these other jury rooms. You just make yourself
14 comfortable. If you need to go outside and smoke
15 and all that, but the same rules apply. The same
16 rules apply. You can't discuss the case. Okay.
17 And you can't -- you know, you can make a phone call
18 if you need to, but not about the case. Okay. All
19 right. Thank you.

20 (WHEREUPON, the alternate juror exits the courtroom
21 at approximately 4:22 p.m.)

22 THE COURT: All right, Ladies and Gentlemen.
23 Thank you very much. I appreciate y'all having
24 tried an excellent case. I don't know what the
25 verdict's going to be. I don't have any stake in

1. it. But I will say that I was impressed by the
2. attorneys and I'm also impressed by the parties to
3. this action, both of you. I'm sorry this happened
4. to you. I really am. I wish we had not found
5. ourselves here this week. But whatever happens in
6. the future, I wish you luck.

7. (WHEREUPON, deliberation of the jury begins at
8. approximately 4:25 p.m.)

9. THE COURT: Keep your seats please.

10. THE BAILIFF: You ready for them, Judge?

11. THE COURT: Yes, ma'am. You can bring them
12. in.

13. (WHEREUPON, the jury enters at approximately
14. 5:04 p.m.)

15. THE COURT: All right, Ladies and Gentlemen.
16. I got your note. It is my intent to fully arm you
17. with the law and give you all the resources that you
18. need to make an informed and intelligent decision in
19. this case. But I want you to know that the jury
20. charge that I give you is much more art than it is
21. science. Uh, I can not give you my charge. My
22. charge is in my head except for these documents and
23. the notes that you see that populate in all of the
24. margins. So what I told you in the charge may not
25. marry up exactly to what all of these documents say.

1 I can't give you those documents that I have
2 written in the margins on because, first of all, you
3 are not going to be able to read what I wrote and,
4 second of all, you may take away from something that
5 I have written something which I did not intend. So
6 you need to tell me very exactly what it is that you
7 need. If you need to know the definition of
8 negligence, I can give you that. If you want to
9 know proximate cause, I can give you that. If you
10 want to know the definition of actual damages, I can
11 give you that. But you need to tell me what it is
12 because what I'm going to have to do is go back and
13 I'm going to have to create a clean document to give
14 you. And I'm going to have to get the attorneys to
15 look at it and make sure that I'm not giving you
16 something that is different in some meaningful and
17 substantial way from what I told you on the record.
18 Okay.

19 So y'all decide what it is specifically that
20 you need from me. Negligence, proximate cause,
21 damages, pain and suffering, whatever it is, let me
22 know, okay, and I can clean it up and give it to
23 you. Understand it's going to take me some time,
24 but I can do it, okay. And the only way I can give
25 you the charge specifically and exactly the way I

1 gave it to you the first time is to wait about three
2 weeks until the Court Reporter can produce a
3 transcript for us. And I don't think y'all want to
4 do that. Okay.

5 So if y'all -- if you want more of the law,
6 write down specifically what it is. Send me a note
7 and we'll get it together and send it back to you
8 when I can. Okay. All right. Thank you. You may
9 resume your deliberations.

10 (WHEREUPON, the jury exits at approximately
11 5:06 p.m.)

12 THE COURT: Okay. Just for the record, I've
13 made this Court's Exhibit number 7, the note that
14 they sent me. All right, Gentlemen. We'll be in
15 recess.

16 (WHEREUPON, deliberation of the jury resumes.)

17 THE COURT: Y'all ready? Okay. Gentlemen,
18 we ready for the jury?

19 MR. CHILDS: Yes, sir.

20 THE COURT: Okay.

21 MR. McGARR: Yes, Your Honor.

22 THE COURT: Okay.

23 (WHEREUPON, the jury enters at approximately
24 6:30 p.m.)

25 THE COURT: All right. Mr. Black, has the

1 jury reached a unanimous verdict, sir? Yes? Would
2 you hand the verdict form to the bailiff please?

3 (WHEREUPON, the verdict form is passed up.)

4 THE COURT: All right. You may publish the
5 verdict.

6 THE CLERK: Your Honor, this is case number
7 2010-CP-23-2204, Deena L. and Scott Bettencourt
8 versus Ruth -- Mary Ruth Wald. We, the jury find
9 for the plaintiff against the defendant in the
10 amount of \$16,500 actual damages. Signed Harold
11 Black, September 15th, 2011. This is your verdict,
12 so say you all? Please signify by raising your
13 right hand if so.

14 (WHEREUPON, each juror responds.)

15 THE CLERK: Thank you.

16 THE COURT: All right. Gentlemen, anything
17 further for this jury?

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

19 MR. McGARR: None, Your Honor.

20 THE COURT: All right. Ladies and Gentlemen,
21 ordinarily, I'd come back and I'd talk to you in the
22 jury room and thank you for your service and ask you
23 if you have any questions. But I know it's late. I
24 know y'all don't want to spend any more time up here
25 than you want to -- excuse me -- anymore time than

1 you absolutely have to.

2 I will tell you this. I will come back for
3 those of you who want to stay and ask me any
4 questions about the case. That's entirely up to
5 you. I do want to thank you for your service on
6 jury duty this week. Won't have any
7 responsibilities for you tomorrow. You are
8 released.

9 Uh, I've told you over and over, please don't
10 discuss the case. But now you can. You can discuss
11 it with whomever you like and in as much detail as
12 you like. And understand that even though you have
13 that right, you also have the right to say that you
14 don't want to talk about it. If anyone were to
15 approach you and to attempt to engage you in
16 conversation about it and you don't want to talk
17 about it, then you just tell them I don't want to
18 talk about it. If they prevail and persist in
19 talking to you, you just get their name and you let
20 me know.

21 For those of you who, uh, may need to get out
22 of here and you don't want to stick around and ask
23 me any questions but something may occur to you in
24 the next couple of days, you are welcome to call my
25 office. My number's in the book and on the

1 internet. You can call me and I'd be more than
2 happy to talk to you and answer any questions that
3 you may have about jury service in general or about
4 this particular case. So thank you for your
5 service. I hope y'all have a great weekend and a
6 great evening. All right.

7 (WHEREUPON, the jury exits at approximately
8 6:35 p.m.)

9 THE COURT: All right. Gentlemen, any motions
10 that we need to put on the record?

11 MR. CHILDS: Your Honor, I would move for a
12 new trial based on the introduction of the videotape
13 which reflects the home of Scott and Deena
14 Bettencourt based on previous objections that have
15 been placed on the record in respect to that, the
16 issue with respect to Mr. Bettencourt's income. I
17 would also make a motion for a new trial based upon
18 the insufficiency of the jury verdict. Obviously,
19 they did, uh, adequately consider all the damages
20 associated with her injuries. They obviously
21 awarded an amount insufficient to, uh, to properly
22 compensate for the -- excuse me -- the plaintiff for
23 her injuries.

24 In addition to that, I have a motion for fees
25 and costs associated with the denial of a request to

1 admission that was proposed to the defendant in this
2 case. I would ask the Court to consider that motion
3 at a later date since we do not have the exact costs
4 and expenses associated. As you heard those
5 admissions, we do have some issues related to that.
6 So I think it would be appropriate to retain
7 jurisdiction over determination of that. If we wish
8 to proceed --

9 THE COURT: I understand.

10 MR. CHILDS: I'm making that motion now
11 because I'm afraid I might lose it later.

12 THE COURT: I understand.

13 MR. CHILDS: Those are my motions.

14 THE COURT: Okay. I respectfully deny your
15 motion for a new trial with a nisi additur. I
16 recognize that this is a disappointing verdict for
17 you. I recognize it. But it is a very unusual
18 circumstance that the Court would change a jury
19 verdict absent something that is very, very glaring.
20 I don't see it in this case. Uh, while I do
21 recognize at this point, with respect to your motion
22 for cost incident to the request to admit, uh, I
23 will give you ten days to make that motion in
24 writing and, uh, give the defense five days
25 thereafter to respond to the same. I will rule on

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-23-2204

Deena L. and Scott
Bettencourt,
Plaintiffs,

ORIGINAL

vs.

Mary Ruth Wald,
Defendant.

VIDEOTAPED DEPOSITION
OF KATHY BENSON, F.N.P.

DATE TAKEN: August 3, 2011
TIME BEGAN: 5:45 p.m.
TIME ENDED: 6:32 p.m.
LOCATION: Premier Family Medicine
304 Ashby Park Lane
Greenville, South Carolina

REPORTED BY: Brandie Williams
Gallagher Court Reporting
864-234-5744

VIDEOGRAPHER: Cliff Williams, CLVS
Argyle Multimedia, LLC

APPEARANCES:

ROBERT C. CHILDS, III, ESQUIRE
Childs Law Firm, LLC
2100 Poinsett Highway, Suite D
Greenville, SC 29609

.....On behalf of the Plaintiffs

ROBERT C. RAY, ESQUIRE
Robert C. Ray and Associates
306-A Mills Avenue
Greenville, SC 29605

.....On behalf of the Plaintiffs

MARCUS K. MCGARR, ESQUIRE
Marcus K. McGarr, PA
108 Whitsett Street
Greenville, SC 29601

.....On behalf of the Defendant

ROSS B. PLYLER, ESQUIRE
Collins and Lacy, PC
P.O. Box 5819
Greenville, SC 29606

.....On behalf of the Defendant

ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

NONWAIVER: Examination and reading of the deposition are not waived by the witness and by the parties.

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1 VIDEOGRAPHER:

2 We're on the video record at camera time 17:45.
3 This is the video deposition of Kathy Benson taken
4 by the plaintiffs in the matter of Deena L. and
5 Scott Bettencourt, the plaintiffs, versus Mary
6 Ruth Wald, the defendant. The case number is 20-
7 10-CP-232204, in the Court of Common Pleas,
8 Thirteenth Judicial Circuit, Greenville County,
9 South Carolina. Today is Wednesday, August 3,
10 2011. We are, again, in Greenville, South
11 Carolina. The court reporter is Brandie Williams
12 from the firm Gallagher Court Reporting. The
13 videographer is Cliff Williams from the firm
14 Argyle Multimedia, LLC. Will counsel present
15 please introduce themselves for the record?

16 MR. CHILDS:

17 My name is Robbie Childs. I represent Scott and
18 Deena Bettencourt.

19 MR. MCGARR:

20 My name is Marc McGarr and I represent Ms. Wald.

21 MR. PLYLER:

22 Ross Plyler for the defense.

23 VIDEOGRAPHER:

24 Will the court reporter please swear in the
25 witness?

1 KATHY BENSON, F.N.P, being duly sworn, testified as
2 follows:

3 EXAMINATION BY MR. CHILDS:

4 Q. Ms. Benson, could you tell the jury what your full
5 name is?

6 A. It's Kathryn Kelly Benson.

7 Q. How are you employed?

8 A. I'm a family nurse practitioner with Premier
9 Family Medicine.

10 Q. What is a family nurse practitioner?

11 A. I do the same thing that a family doctor does with
12 a very few exceptions. I see patients. I take
13 care of whatever comes through and write
14 prescriptions, order tests, whatever needs to be
15 done.

16 Q. Could you tell the jury a little bit about your
17 educational background?

18 A. I went to the University of Rochester for
19 undergrad, and I got my bachelor's in nursing
20 there, and I graduated from there in 1982. And
21 then I got my first master's degree at Georgetown
22 in nursing administration health services;
23 finished that one in 1987. And then I got my
24 second master's degree at the University of
25 Alabama Birmingham; and that was finished in 1997.

1 And that was when I got my family nurse
2 practitioner certification also.

3 Q. Could you tell the jury basically what process you
4 go through to be authorized to diagnose and treat
5 medical problems as a nurse practitioner?

6 A. Well, we had to go on, we had to get the graduate
7 degree. And we go through the same type of
8 rotations that the doctors do, we just do a
9 shorter amount of time for the rotations. We have
10 a longer period, it's kind of like an internship.
11 We don't have to do a residency. And then we're
12 licensed through a national board, and then we're
13 also licensed through the nursing boards in the
14 state.

15 Q. Do you have written protocols that you go through
16 with a doctor, so to speak?

17 A. We -- no, we do but they're not called protocols.
18 But what it is, we have, we're affiliated with a
19 doctor, it's like a collegial relationship. So
20 like they have to be within 45 minutes of me. So
21 I can be practicing in a building by myself as
22 long as I can get to them within 45 minutes, or I
23 can get a phone call to them. And there are, you
24 know, protocols that we call. But what we do is
25 we put the books that we use for references and

1 then they just sign that, yeah, they're okay with
2 those books too; and that's all we do. Because
3 you can't do, you can't lay out, well, for this
4 we're going to do this, this, this, and this, you
5 know, because it depends on the patient. So it's
6 just not practical.

7 Q. Are you authorized pursuant to South Carolina law
8 and pursuant to your protocols with, I guess, Dr.
9 Edwards?

10 A. Well, actually all three: Edwards, Brannon, and
11 now Lindsey Cecil, too.

12 Q. To diagnose and treat medical illnesses?

13 A. Yes.

14 Q. Are some of those things that you diagnose and
15 treat related to physical injuries associated with
16 automobile accidents and other things?

17 A. Yes.

18 Q. Have you previously testified as an expert in
19 court concerning the medical condition, treatment,
20 diagnosis of injured persons?

21 A. Actually, I did one time, but it was not from an
22 injury, it was a workmans' comp case. I had taken
23 care of somebody a long time ago.

24 MR. CHILDS:

25 I would submit that she's qualified to testify as

1 an expert in the diagnosis and treatment of
2 injuries sustained in an automobile accident.

3 MR. MCGARR:

4 without objection.

5 EXAMINATION RESUMED BY MR. CHILDS:

6 Q. And I'm probably going to end up calling you
7 doctor halfway through this.

8 A. Everybody does. I got tired of saying no a long
9 time ago.

10 Q. But, Nurse Practitioner, it's Family Nurse
11 Practitioner Benson?

12 A. Yeah, uh-huh.

13 Q. Did you have the occasion to treat Deena Waite-
14 Bettencourt?

15 A. Yes.

16 Q. Was she an established patient with you?

17 A. I believe she was when she came in for this. She
18 came to our practice in -- the first time she was
19 seen, actually, no, the first time she was seen
20 here was for a concussion October 2008.

21 Q. I have a September 16th visit in 2008.

22 A. Wait a minute, no, I'm wrong. Yeah, she was seen
23 by, she was seen by Sandra McKinney, Dr. McKinney,
24 when she was here. The first time was in February
25 of 2003. And then she didn't come back again

1 until March of '04. And then April of '04. April
2 of '05. And then the next one was September of
3 '08.

4 Q. Were those previous visits routine type visits
5 just for various problems?

6 A. Yeah, yeah, bronchitis basically, yeah.

7 Q. Did you see her on September 16, 2008?

8 A. Yes.

9 Q. Could you tell the jury basically what you
10 received by way of history when you saw Ms.
11 Bettencourt on September 16, 2008?

12 A. She came in and she told me that she had been in a
13 car accident the 4th of September 2008. And what
14 I wrote was that she was the restrained driver of
15 a car that was rear-ended at a high rate of speed
16 and she sustained a coup-counter-coup head injury.

17 Q. What does that mean?

18 A. That means that when she got hit, she went forward
19 like this (indicating), and then she went back
20 like that. That's called coup-counter-coup
21 because the brain is in a cushion of fluid, and
22 when she went forward, the brain hit the front of
23 the skull, and when she went back, the brain hit
24 the back of the skull. And also the brain
25 sometimes gets stretched a little bit in that,

1 too.

2 Q. So what else did she say?

3 A. Let's see, she said she's not felt right since the
4 MVA, motor vehicle accident, on 9/4/08. She's
5 been seeing a chiropractor daily since the MVA for
6 neck and upper back injuries, which are improving.
7 She feels nauseous. Has buzzing in her ears.
8 Overwhelmingly tired all the time, which is not
9 like her at all, I wrote. And foggy in her head,
10 like she can't think clearly. And she says it's
11 been going on for two weeks. Constant altered
12 mental status was preceded by the head injury.
13 Symptoms have been associated with memory
14 impairment. Not been associated with alcoholism,
15 ataxia. But she said she felt clumsy even though,
16 you know, everything was moving right. And she
17 wasn't having any problem with, you know, urine or
18 fever, you know, anything like that.

19 Q. What's the significance of nausea, buzzing of the
20 ears, and overwhelming tiredness?

21 A. Well, when you have a head injury, your brain
22 swells within the skull, and there's no way -- the
23 skull doesn't expand. So when your brain is
24 swollen, it puts pressure and it makes you feel
25 nauseous and definitely can give you fatigue for a

1 while.

2 Q. And as a result of the history she gave you, did
3 you perform an examination of her?

4 A. Yes.

5 Q. Could you tell the jury about that examination?

6 A. Mental status: alert. General appearance:
7 anxious; cooperative. I put sickly, and then I
8 put worn out and scared. Because it wasn't really
9 that she was sick; it was, you could tell she
10 didn't feel well, and it wasn't like because she
11 was sick, sick. Not depressed or in acute stress.
12 Oriented times four. Well nourished. Well
13 developed. Normal posture. Normal gait. Well
14 hydrated. Her voice was normal. Skin was normal.
15 Eyes, ears, nose, and throat, there was no --
16 everything was normal. Neck was supple, meaning
17 it wasn't, she wasn't stiff or anything like that.
18 Her thyroid was normal. Breathing was easy;
19 respirations and her breath sounds were normal;
20 clear. Heart rate was regular, normal heart
21 sounds. She had normal pulses in her arms and her
22 legs. And, let's see, I wrote that her effect:
23 She was anxious, sad, and stable, not angry,
24 agitated, apathetic, or depressed.
25 Q. So what does that mean?

1 A. That means that she was basically just, you know,
2 she didn't like the situation at all. She doesn't
3 like things to be out of sorts. You know what I
4 mean?

5 Q. And you say not apathetic, not depressed; what
6 does that mean?

7 A. Well, apathetic is just like, you know, they'll
8 come in and they'll just sit there like they
9 really they could care less. Their voice is real
10 flat, you know. They're just, you can just tell
11 that really -- you could say the sky's blue and
12 they'd say, oh. Or you could say, we're having a
13 thunderstorm, oh, you know; I mean, just nothing.
14 That's apathetic. And then as far as depressed,
15 you know, sometimes they're tearful, sometimes
16 they're just flat, you know. They're just, we can
17 just tell that really not much is getting through.

18 Q. I think earlier on in your records you talk about
19 the review of her systems and from a neurological
20 perspective.

21 A. Uh-huh.

22 Q. And from a musculoskeletal perspective.

23 A. Uh-huh.

24 Q. Could you go over that with the jury?

25 A. Yeah. In musculoskeletal, I put that she had

1 myalgia, which is pain in the muscles, and that
2 was in her neck. And I said that she didn't have
3 any decreased range of motion, or joint pain,
4 joint stiffness, swelling, and her muscles weren't
5 weak. And then the neurological part, I put that
6 she had decreased memory, dizziness, headaches,
7 unusual sensation; and I put in parenthesis, in
8 her head, and then I said --

9 Q. What does that mean?

10 A. She must have told me something, she must have
11 told me -- because people do that, they'll say
12 that, you know, their skull feels tingly or, you
13 know, they'll say something like that. So that's
14 why I put unusual sensation, and I put where that
15 she said she had it. It wouldn't surprise me if
16 it was something like that.

17 Q. Did you also do a psychiatric review?

18 A. Yeah. I put that she was like distractibility,
19 meaning that she, it was hard for her to stay
20 focused on what she was, you know, doing. And
21 even in questioning, I put that she probably was,
22 I was probably having to redirect her a little
23 bit. And then excessive worry, irritability,
24 tearfulness, anxiety, inability to concentrate.
25 said she felt safe at home but she was crying a

1 lot.

2 Q. why is it significant if a person feels safe at
3 home or not?

4 A. That's part of our things that we have to chart
5 about, you know, domestic violence, stuff like
6 that. So we always have to put something in there
7 about that.

8 Q. You also did a mental status effect from a
9 neurological cognitive function on her.

10 A. Uh-huh.

11 Q. Could you explain to the jury what you did there?

12 A. Which one do you mean, review the systems, or
13 which one?

14 Q. The next section.

15 A. Oh, this part over here, okay, yeah. Where it
16 says "thought content," and all that normal.
17 Basically what I'm saying is she's not psychotic.
18 She's not having hallucinations. She's not
19 having, you know, hearing, you know, voices or
20 anything like that. So that's what that means.
21 The cognitive functions says, appropriate fund of
22 knowledge, attention impaired, concentration
23 impaired, problem solving impaired, short-term
24 memory impaired. I put that she was anxious, sad,
25 stable, not angry, agitated. Not apathetic. Not

1 depressed. And I put her speech was normal.

2 Q. As a result of your evaluation of her, did you
3 reach an assessment as far as what her condition
4 was?

5 A. Yeah. My assessment was concussion with no loss
6 of consciousness.

7 Q. What does that mean?

8 A. Basically it means she got a bruised brain from
9 the wreck and she was having some side effects of
10 that.

11 Q. Did you do anything as a result of your diagnosis
12 of concussion with no loss of consciousness?

13 A. Yeah. We ordered an MRI of her brain with and
14 without contrast.

15 Q. What was that for?

16 A. I needed to make sure that she didn't have any
17 bleeding, you know; like she didn't tear any
18 arteries. She didn't, you know, she didn't have
19 so much swelling that she was, you know, putting
20 pressure on the ventricles; that she wasn't going
21 to herniate, things like that. I just needed to
22 make sure that there wasn't an injury that --
23 sometimes you can have a slow bleed, things like
24 that. So I just needed to make sure nothing like
25 that was going on.

1 Q. So nothing worse than what you diagnosed, that was
2 what you were concerned about?

3 A. Right, exactly, uh-huh.

4 Q. Did she return to you on October 3, 2008?

5 A. Let me look, October. Yes, it was October 3rd,
6 yeah.

7 Q. Could you tell the jury about the history that she
8 gave you on October 3, 2008?

9 A. Let's see, 40-year-old female presents with
10 follow-up for headaches. Doesn't feel well.
11 Decreased energy. Sleeping okay but felt like she
12 was getting worse. She, I put that she's being
13 compliant because she was getting chiropractic
14 care five days a week. She's not taking any meds
15 for pain, even though I recommended them. But
16 Deena doesn't do that, Deena doesn't take
17 medicine; so that's not surprising with her.
18 States that she can hardly hold her head up by
19 three p.m. in the afternoon. And that is when the
20 neck and headache pain get real, real bad was
21 three in the afternoon. She's unable to function
22 pretty much she said after that. She said she has
23 to go lie down for a couple hours or she'll start
24 to vomit due to the pain.

25 Q. Did you on October 3, 2008, review her systems

1 with her again?

2 A. Yeah. She complained of fatigue. Skin was fine.
3 She had a headache and tinnitus, which is ringing
4 in the ear. Some people say tinnitus. What else?
5 Basically no eye pain, eye redness. No visual
6 problems. She didn't have any decreased hearing.
7 She didn't have any sinus congestion. No sore
8 throat. She did have neck pain, but I wrote that
9 it was improving with chiropractic care that she
10 gets daily since the MVA, the motor vehicle
11 accident. She is now pain free in the mornings,
12 but by three p.m. she can hardly hold her head up.
13 And she had severe headache and neck pain. No
14 mass in her neck and no stiffness and no swollen
15 glands. No cough or any breathing problems. No
16 chest pain. She did have nausea but no abdominal
17 pain or, you know diarrhea, anything like that.
18 No discharge or any problems with urination. She
19 still had muscle pain in her neck but she didn't
20 have any decreased range of motion. No joint
21 pain. She still was complaining of decreased
22 memory, dizziness, headaches, that unusual
23 sensation in her head. Didn't lose consciousness.
24 No paresthesia, meaning numbness or tingling. She
25 hadn't fainted. And she didn't have weakness in

1 any of her extremities. Psych wise, she was still
2 having problems with being distractible, easily
3 distracted, excessive worry, irritability,
4 tearfulness, anxiety, inability to concentrate.
5 still feeling safe at home. still frequently
6 crying. No appetite changes. No heat or cold
7 intolerance. No anemia. No easy bruising. No
8 enlarged lymph nodes.

9 Q. As a result of your examination of her on October
10 the 8th, what kind of assessment did you --

11 A. You mean October 3rd?

12 Q. October 3rd, yes.

13 A. I said that she was extremely anxious. She was
14 alert, cooperative, well groomed, not depressed.
15 Again, I wrote sickly, but I put in parenthesis,
16 she does appear to be exhausted. She was alert and
17 oriented times four. She was well nourished, well
18 developed. Normal posture. Normal gait. well
19 hydrated. And her voice was normal. Skin was
20 normal. Head, ears -- well, ears, nose, throat,
21 the skin inside her mouth, that was all normal.
22 Neck was tender at the upper part of her C-spine,
23 but she had full range of motion and it was
24 supple, meaning it wasn't stiff. And she had
25 normal respirations, normal lung sounds, normal

1 heart sounds. Normal pulses in her extremities.
2 Again, I wrote that she was anxious and not angry,
3 not agitated, not apathetic, not depressed.
4 Thought content perception was normal, you know,
5 no hallucinations or anything like that. She had
6 appropriate fund of knowledge. Attention was
7 impaired. Concentration impaired. Problem
8 solving impaired. Short-term memory impaired.
9 And then otherwise her neuro exam was normal. As
10 far as musculoskeletal, full range of motion in
11 all joints. And I put, no localized muscle
12 tenderness at the time, I put, at this point in
13 time; meaning at the time of the exhibit, I didn't
14 find any place that was tender. And then for her
15 C-spine, which is your neck spine, I didn't find
16 any deformities. She had no pain and she had full
17 range of motion, but she was tender in the upper
18 C-spine when I palpated that. She didn't have any
19 redness, warmth, or crepitus; is just like the
20 arthritis, like the creaking, she didn't have
21 that.

22 Q. So what was your assessment at that time?

23 A. Still had the concussion with no loss of
24 consciousness, and under that I wrote about how
25 she'd been rear-ended and what happened. I still

1 reassured her that she should fully recover. And
2 the MRI, I wrote in there that it was done with
3 and without contrast and it was normal. And then
4 I wrote that she at least agreed to take Naproxen
5 today. But she wouldn't take the steroids, and
6 she wouldn't take the muscle relaxers or the
7 narcotic pain meds, because she's very sensitive
8 to meds. And she only -- she's the only one here
9 taking care of eight- and ten-year-old sons
10 because her husband was working in Arizona through
11 the week and he's only home on weekends. So I
12 gave her a prescription for Naproxen. Then I put
13 symptoms, the next diagnosis was headache. And I
14 wrote, she states she wakes up pain free now, but
15 by mid-afternoon she has severe occipital headache
16 pain. Which is in the back of the head, and it
17 goes around to her temples, which are right here
18 (indicating). And she gets nauseous and very ill
19 if she doesn't go lie down in a dark room for a
20 couple hours. And I wrote that she has an
21 appointment with a neurologist in two weeks. So I
22 must have done a --

23 Q. Dr. Kistler?

24 A. Yeah. I must have done a referral for her. And
25 then the next one was cervicalgia, which is

1 basically neck pain. And I put by mid-afternoon,
2 she has severe pain in her upper C-spine. It
3 feels like she can't even hold her head up. She
4 has no pain when she wakes up. She's continuing
5 to see her chiropractor. She'll follow up with
6 the neurologist in two weeks. And then I also
7 added post traumatic stress disorder. She's still
8 extremely anxious when she's driving since the MVA
9 on 9/4/08. The anxiety's causing her to tense her
10 muscles in her neck, which may be contributing to
11 her pain. She does not want to take any meds.
12 Counseling ordered. So then I did a referral to a
13 psychologist for some counseling.

14 Q. So, first, the MRI referral, then the neurologist
15 referral; and I think you referred her to a
16 psychologist, which was the Journey Center?

17 A. Right. Yeah, counselor, I did.

18 Q. Were those referrals necessary as a result of this
19 accident?

20 A. Yes.

21 Q. When did you see her again?

22 A. It's all the way into September of '09. Let's
23 see, it was September 22, 2009.

24 Q. Tell the jury about what her illness was at that
25 time.

1 A. okay, that one when she came in she was
2 complaining of shoulder pain. Onset of the
3 shoulder pain has been sudden following an
4 incident not at work. This is how our program is.
5 so in parenthesis I wrote, she's had pain that
6 radiates from her left neck across her left
7 shoulder down her left upper extremity since she
8 was involved in a MVA in September of '08. She
9 believes this pain was caused by the seat belt.
10 And has been occurring in a persistent pattern for
11 one year. This course has been worsening. The
12 shoulder pain is severe. The shoulder pain is
13 characterized as burning sensation, shoulder pain
14 was described as being located in left shoulder.
15 This is very cumbersome. The shoulder pain is
16 aggravated by physical activity, overhead
17 activity, lifting. There are no relieving
18 factors. Associated features include muscle
19 cramps, muscle weakness in her left upper
20 extremity, I put that in parenthesis. She has
21 painful range of motion. Burning sensation.
22 Difficulty with overhead activities. Difficulty
23 dressing one's self. Difficulty combing her hair.
24 And difficulty lifting, but there's no swelling in
25 the joint and there's no instability either

1 anterior or posterior. And she can move it
2 everywhere, there's no decreased range of motion
3 or, you know, the popping and creaking. There's
4 no warmth, erythema, which is redness. Fever,
5 chills, or other joint complaints. The shoulder
6 pain was preceded by trauma. Previous diagnostic
7 tests include plain radiographs, means X-rays, of
8 her neck. There have been no previous evaluations
9 on her shoulder. And no previous, you know, like
10 physical therapy or surgeries on her shoulder. No
11 assistive devices like a sling. Previous
12 medication use has been Relafen, Hydrocodone, and
13 Prednisone. But I'm assuming I got that from some
14 other records because she didn't get it from me.
15 But when I charted, I probably went through --

16 Q. The neurologist?

17 A. Yeah, the neurology notes and all that.

18 Q. What did your review of her systems show at that
19 time?

20 A. She had fatigue. Her skin was fine. She had a
21 headache. I put that she had no neck mass, no
22 neck pain or stiffness and no swollen glands. No
23 cough. No chest pain. Palpitation. She did have
24 nausea, but she didn't have any kind of
25 constipation, diarrhea, heart burn, anything like

1 that. No pelvic problems. She had joint pain in
2 her left shoulder. Myalgia from the left neck
3 across the shoulder and into her left upper
4 extremity, but she didn't have any decreased range
5 of motion or joint swelling. For the
6 neurological, I put decreased memory, headaches,
7 paresthesia. Her left third, fourth, and fifth
8 fingers were numb, I wrote. And weakness in the
9 left upper extremity due to pain. She didn't have
10 dizziness or loss of consciousness or she didn't
11 faint or pass out. She still had the
12 distractibility, excessive worry, irritability,
13 tearfulness, anxiety, inability to concentrate.
14 Still felt safe at home. Still had frequent
15 crying. No appetite changes. No anemia or
16 bruising, anything like that.

17 Q. So it's basically still the same mentally?

18 A. Yeah.

19 Q. Now, further on you do your assessment and plan.

20 A. Uh-huh.

21 Q. Could you tell the jury what you assessed at that
22 time and what your plan was? Let me skip back a
23 little bit. On the musculoskeletal examination.

24 A. Uh-huh.

25 Q. Did you see anything particular there on the

1 shoulder?

2 A. I put -- well, in the shoulder, let's see,
3 movements were painful and abduction was painful.
4 That means when you take the arm away from the
5 body, that was painful to her. She could move it
6 every which way. Let's see, no deformities. It
7 wasn't tender. It wasn't red or anything like
8 that. She didn't have any swelling.

9 Q. Oh, I thought swelling, left localized swelling?

10 A. Oh, yeah, it did say localized swelling, yeah,
11 okay.

12 Q. That would be something you palpitate?

13 A. Right, yeah.

14 Q. What was your assessment at that time?

15 A. Let's see, you mean at the end here?

16 Q. Yeah.

17 A. Okay. Mononeuritis, which is it's a nerve issue.
18 You know, she must have -- for me it means burning
19 pain, and it means it's like a tooth ache in your
20 arm. So I put mononeuritis upper limb and left
21 upper extremity. There was numbness and tingling
22 in the third, fourth, and fifth fingers at times,
23 and weakness in the left upper extremity due to
24 pain that radiates from the left neck across the
25 left shoulder since the MVA in 9/08. Will get MRI

1 of her C-spine. She does not want meds. MRI
2 needs to be before noon. And then I still had the
3 post concussion syndrome; well, you had that
4 because that's what the neurologist said. And I
5 said she will continue to follow up with her
6 neurologist for this problem. She has complained
7 of not being able to multitask like she used to
8 before the MVA. Also believes that she's become
9 anxious very easily now.

10 Q. So the mononeuritis upper limb and the post
11 concussion syndrome, is it your opinion within a
12 reasonable degree of medical certainty that it's
13 more likely than not that the automobile accident
14 caused those problems?

15 A. With what I know, yeah; with what I know.

16 Q. And I think the next note I have really is where
17 you saw the C-spine in October of '09.

18 A. Where the patient message, referral to PT; is that
19 the one you're talking about?

20 Q. No. What do you have there?

21 A. That's from October 6 '09. It says, Please let
22 her know that her MRI of her C-spine was normal
23 except for a benign cyst which needs no treatment.
24 That means that PT would be the best treatment for
25 her left neck and shoulder and upper extremity

1 pain. And I said, "Ask her if it's okay for us to
2 go ahead and refer her to PT." And that was on
3 October, it looks like that was about October 1st
4 that I wrote that to Amber.

5 Q. When you say "PT," is that physical therapy?

6 A. Physical therapy, yeah.

7 Q. I've got a note here that she was referred to
8 Vaughan, Buchanan, Shelly and Associates.

9 A. Correct.

10 Q. Was that necessary in your opinion based upon the
11 injuries she sustained in the automobile accident?

12 A. Yeah, it was necessary in my opinion to help get
13 the pain to go away, yes.

14 Q. And also this MRI of the C-spine that you ordered,
15 was that a necessary procedure?

16 A. Yes.

17 Q. To diagnose and treat her condition from the
18 automobile accident?

19 A. Yes.

20 Q. I'd like to show you Exhibit Number One, which is
21 a printout from your office. See if you can
22 identify that.

23 (PLAINTIFF'S EXHIBIT NO. 1 MARKED; ATTACHED.)

24 A. It looks like one of our bills.

25 Q. Does that bill reflect the charges that Ms.

1 Bettencourt incurred for her treatment and
2 diagnosis at your office?

3 A. Yes.

4 Q. Were those expenses reasonable and necessary in
5 your opinion as a result of the injuries you
6 believe she sustained as a result of the
7 automobile accident in September of 2008?

8 A. Yes.

9 MR. CHILDS:

10 I'd like to move this in, or I will move this in.
11 at trial.

12 EXAMINATION RESUMED BY MR. CHILDS:

13 Q. So, Dr. Benson -- I knew I'd do that eventually.

14 A. Everybody does.

15 Q. Nurse Practitioner Benson, I believe she had last
16 time you saw her a continuing diagnosis with the
17 post concussion syndrome and also with the --

18 A. Mononeuritis.

19 Q. The mononeuritis. I think you already stated
20 this, but is it your opinion that those conditions
21 were the direct and proximate result of the
22 automobile accident that she described to you
23 occurring in September of 2008?

24 A. Yes.

25 Q. Please answer any questions that Mr. McGarr or Mr.

1 Plyler may have.

2 EXAMINATION BY MR. MCGARR:

3 Q. We met earlier, I'm Mark McGarr. This should be
4 pretty quick. When Ms. Bettencourt came to see
5 you on 9/16/2008, would you agree that you
6 attempted to prescribe medications to her and she
7 refused those medications?

8 A. Yes.

9 Q. And would you agree that on that date you
10 reassured her that she would fully recover with
11 time?

12 A. Yes.

13 Q. Did you as a result of that visit though schedule
14 her to have an MRI done of her brain?

15 A. Yes.

16 Q. And that would have been done with and without
17 contrast?

18 A. Yes.

19 Q. Was that MRI done? It's the second document.

20 A. Yes, it was.

21 Q. Was it done on 9/17 of '08?

22 A. Yes, it was.

23 Q. And when it's done without contrast, that means
24 they're essentially not dying the brain? But when
25 they're doing it with contrast they're

1 essentially, for lay people purposes, dying the
2 brain so they can see things in it better?

3 A. Uh-huh.

4 Q. And that MRI of her brain came back totally
5 normal?

6 A. Yes, it did.

7 Q. Didn't indicate any swelling of the brain?

8 A. Correct.

9 Q. Didn't indicate that there was any even a remote
10 amount of bruising on the brain?

11 A. Yes, that's true.

12 Q. Didn't indicate any problems with the arteries or
13 veins?

14 A. Correct.

15 Q. Essentially it was a brain that's as normal as
16 yours. I don't have a normal brain. But as
17 normal as yours?

18 A. I don't know if you want to say that; but yes, it
19 was normal.

20 Q. No indication whatsoever of any injury to that
21 brain, was there?

22 A. Not in this MRI.

23 Q. Would you agree that she came back, or at least
24 you did another note dated 9/17 of 2008?

25 A. Yes.

1 Q. And on that note, would you agree that you had
2 offered medications yet again? It would be on
3 page two. And she refused those medications?

4 A. Yes.

5 Q. Does it appear on the next document that she came
6 back again on 10/3 of 2008?

7 A. Yes.

8 Q. And at that point did you decide that you needed
9 to refer her to a psychologist?

10 A. Yes.

11 Q. Does it appear that she actually did not comply
12 with the psychologist treatment and they could not
13 assess her because she wouldn't return?

14 A. Yeah, I think I remember that she didn't go to the
15 appointment that we made for her, I think. Is
16 that what this is?

17 Q. Yes, ma'am. Looking at this document, does that
18 appear that it says client came for first session,
19 assessment not completed?

20 A. Yeah, that's what it says.

21 Q. So does it appear that she was noncompliant with
22 the psychologist and did not follow through with
23 the treatment that you were asking her to go
24 through?

25 A. She didn't follow through.

1 Q. Let me show you another document, which you would
2 not have been aware of. But this is a document
3 from her chiropractor. If you could look at the
4 second page first. Does it appear that on January
5 15, 2009, he was asked a series of questions and
6 one of the questions was, and this will be on page
7 one: Does the patient presently have an
8 impairment? And did he put down no?

9 A. Yes, he put down no.

10 Q. And on page two, is further treatment necessary,
11 did he put down no?

12 A. He put down no.

13 Q. And he would have been treating her for those neck
14 and shoulder problems during that initial period;
15 is that correct?

16 A. He was, that's what I wrote in my note that he
17 was.

18 Q. Does it appear that looking at the next document
19 that eight months after he said no further
20 treatment was needed, she then appears in your
21 office with this shoulder complaint?

22 A. Uh-huh.

23 Q. Would you agree that even though she's complaining
24 of a shoulder problem, she refused medication yet
25 again?

1 A. Let me see, I wrote, she does not want meds.

2 Q. Would you agree that as a result of this 9/22/09
3 visit, that you actually asked her to go to
4 physical therapy?

5 A. Am I on the same visit here? Let's see, 9/22/09,
6 that was what I did in that note, right?

7 Q. Yes, ma'am.

8 A. The 9/22/09?

9 Q. Yes, ma'am.

10 A. When I got the results of the test that I ordered,
11 right?

12 Q. Yes, ma'am.

13 A. Okay, so let me make sure. Yeah, that was the
14 note that I started to Amber and that I asked
15 Amber to order the physical therapy; yeah, that's
16 correct.

17 Q. Does it appear if you look at that document, the
18 next document in the stack, that she got kicked
19 out of physical therapy for not being compliant?

20 A. It says recommended discharge, noncompliance with
21 PT.

22 Q. So would that indicate she was basically
23 discharged or tossed out of physical therapy?

24 A. Yeah. They don't come and they don't do, then
25 that's what PT does.

1 Q. So at this point would you agree that she's not
2 agreeing to take the medications that you're
3 offering? She didn't follow through with the
4 psychological treatment that you had offered? And
5 she didn't follow through with the physical
6 therapy that you had offered?

7 A. True.

8 Q. This will be the next: Did she in fact have an
9 MRI done of her neck or her cervical spine?

10 A. Yeah, she had an MRI of her C-spine on the 29th of
11 September, 2009.

12 Q. And essentially with exception of a cyst that
13 doesn't make a hill of beans worth of difference,
14 that neck came back perfectly normal?

15 A. Right. It says small cyst doubtful clinical
16 significance, otherwise normal appearing MRI of
17 the C-spine.

18 Q. That would mean the bones are aligned like they're
19 supposed to be?

20 A. Yeah, yeah.

21 Q. And the discs are aligned like they're supposed to
22 be, if it's normal?

23 A. According to this, yeah. You always have to look
24 in the body of this thing.

25 Q. And the muscles connecting to the bone are not

1 showing any areas of trouble?

2 A. Not in areas that an MRI would pick up.

3 Q. And the discs themselves aren't showing any
4 indication that any nerves are being pinched?

5 A. Right. They say that no nerves are being pinched.

6 Q. So essentially she is normal in every way with
7 regard to her neck with exception of a cyst?

8 A. Correct, according to the MRI.

9 Q. And the cyst is not caused by an automobile
10 accident?

11 A. Correct.

12 Q. Does it appear that on October 1, 2010, Ms.
13 Bettencourt had a deposition taken?

14 A. Yes.

15 Q. Does it appear on page 33 of that deposition, she
16 was asked, How are your concussion syndrome or
17 symptoms doing now? And she said, They're the
18 same. And she was then asked, Still a problem?
19 And she answered, correct.

20 A. Yes.

21 Q. And then on page 35 of that deposition, was she
22 asked, How is your neck doing? And she said, the
23 same. And the question then was, meaning good or
24 bad? And she said, bad. The question was then,
25 so it's still a problem? And the answer was yes.

1 A. Yes.

2 Q. And then the next line of questioning is, How is
3 your left shoulder doing? And she said, the same.
4 And then said, Is that good or bad? And she said
5 bad.

6 A. Yes, that's what it says.

7 Q. So does it appear that on October 1, 2010, she was
8 saying she was still having concussion problems,
9 neck problems, and right shoulder problems?

10 A. Correct.

11 Q. Does it appear that she came back to your office
12 on March 1, 2010, which would have been before she
13 did this deposition in October of 2010?

14 A. Yes.

15 Q. And when she came on 3/1/2010, would you agree
16 that she came in for a complete physical?

17 A. Yes.

18 Q. And at that point she came in, and it states this,
19 "The patient feels well with no complaints"?

20 A. Can we take a break?

21 Q. Sure.

22 VIDEOGRAPHER:

23 We're going off the record at camera time 18:22.

24 (DISCUSSION HELD OFF THE RECORD.)

25 VIDEOGRAPHER:

1 We're going back on the record at camera time
2 18:24.

3 EXAMINATION RESUMED BY MR. MCGARR:

4 Q. Again, does it appear that she came back to your
5 office on 3/1 of 2010?

6 A. Yes, she did.

7 Q. And at that point it was to have a physical done?

8 A. Correct.

9 Q. The doctor at that point noted that she felt well
10 with no complaints?

11 A. That's what it says on the paper.

12 Q. That the patient exercises three to four times a
13 week?

14 A. Yes.

15 Q. Patient sleeps seven hours per night?

16 A. Yes.

17 Q. Patient feels pretty good?

18 A. Generally feels good. But has not had a physical
19 or mammogram since then. Has had a breast
20 augmentation with no problems. Never had abnormal
21 paps, normal cycles, all that.

22 Q. That's okay. But basically generally feels good?

23 A. Yes.

24 Q. And when he was looking at her general appearance,
25 she didn't have fatigue?

- 1 A. Correct.
- 2 Q. He then noted that she didn't have headaches?
- 3 A. Correct.
- 4 Q. Didn't have visual disturbances?
- 5 A. Correct.
- 6 Q. Didn't have visual loss?
- 7 A. Correct.
- 8 Q. Didn't have decreased hearing?
- 9 A. Correct.
- 10 Q. Noticed that she had no neck pain or stiffness?
- 11 A. Correct.
- 12 Q. Noticed that she had good range of motion?
- 13 A. Correct.
- 14 Q. No joint pain?
- 15 A. Correct.
- 16 Q. No joint stiffness?
- 17 A. Correct.
- 18 Q. No joint swelling?
- 19 A. Right.
- 20 Q. No muscle weakness?
- 21 A. Yes.
- 22 Q. And no myalgia?
- 23 A. Correct.
- 24 Q. He then checked her out neurologically and found
- 25 her to be normal with no headaches?

- 1 A. Correct.
- 2 Q. She had no anxiety, depression, or insomnia?
- 3 A. Correct.
- 4 Q. Her general mental status was alert?
- 5 A. Yes.
- 6 Q. Her neck was supple?
- 7 A. Yes.
- 8 Q. And on page two, when he was checking her
- 9 neurologic status, he found it to be normal?
- 10 A. Correct.
- 11 Q. Muscle strength was normal?
- 12 A. Correct.
- 13 Q. In all muscles?
- 14 A. Correct.
- 15 Q. Her dermatomes or reflexes were normal?
- 16 A. Correct.
- 17 Q. Coordination was normal?
- 18 A. Correct.
- 19 Q. Her gait was normal?
- 20 A. Correct.
- 21 Q. She had full range of motion in all her joints?
- 22 A. Correct.
- 23 Q. And no muscle tenderness?
- 24 A. Correct.
- 25 Q. And in the end, when he did a full physical of

1 her, he found her to be a healthy female?

2 A. Correct.

3 Q. Does it appear that Ms. Bettencourt on or about
4 October 22, 2009, was trying to tie that cyst into
5 this automobile accident?

6 A. Let's see, she's trying to have Dr. Brannon fill
7 this out?

8 Q. Yes, ma'am.

9 A. Okay, so Brannon is the one that did this. So I
10 guess, I would guess yes, because that's what
11 they're asking questions about.

12 Q. Does it appear that she was trying to relate that
13 cyst, which has nothing to do with an automobile
14 accident, to the automobile accident?

15 MR. CHILDS:

16 I object. The document that you're showing her is
17 a question about whether or not it was related to
18 the accident; not a question of is it related. I
19 mean, it's an open question, did or did it not
20 have anything to do with the accident.

21 EXAMINATION RESUMED BY MR. MCGARR:

22 Q. Was the question asked: Is this cyst related to
23 the accident, essentially?

24 A. Yes.

25 Q. Did the doctor say, it's only an incidental

1 finding, not related or exacerbated by the
2 accident?

3 A. Yes, the doctor said that.

4 Q. And the doctor said the lesion is not related at
5 all?

6 A. Correct.

7 Q. I have no further questions.

8 REEXAMINATION BY MR. CHILDS:

9 Q. A couple of follow-up questions for you.

10 A. Uh-huh.

11 Q. Ms. Benson, the Vaughan, Buchanan, and Shelly
12 discharge summary that you were shown by Mr.
13 McGarr, does that indicate to you that Ms.
14 Bettencourt had ten total visits?

15 A. Are you talking about with us?

16 Q. With Vaughan, Buchanan, and Shelly?

17 A. Oh, oh, VBS, okay. I never call them -- let's
18 see, where are you getting ten total?

19 Q. It says right there, total visits ten.

20 A. Oh, that's probably what she's approved for.
21 Because over here, she's not been seen since
22 11/6/09. No show for two consecutive
23 appointments. Has not responded to three
24 messages. A lot of times they get approved for a
25 certain number of visits. And so that to me, you

1 know, I don't know, but to me that's what that
2 means is that she was approved for ten visits, you
3 know.

4 Q. Well, I was going to ask you: Further down it
5 says that they had fair patient compliance?

6 A. Correct.

7 Q. And good, what's that say?

8 A. HEP is home exercise program. So it says good
9 home exercise program compliance.

10 Q. So that obviously indicates she'd gone to a number
11 of visits, hadn't she?

12 A. Yes.

13 Q. And that's kind of policy, if you miss your
14 appointments then they're not going to keep
15 calling you?

16 A. Right.

17 Q. And having you come in?

18 A. Right.

19 Q. Now, this medical report of Dr. Keiser that you
20 were shown by Mr. McGarr, do you have any
21 confidence in that report?

22 A. Well, I wasn't there that day so I really can't
23 comment on that; because, you know, I didn't see
24 her that day. And, you know, he was the one that
25 wrote it.

1 Q. well, I believe off the record you'd indicated to
2 us that you didn't have really much confidence in
3 what Dr. Keiser may have written down.

4 A. He wasn't known to individualize his notes very
5 well. Because we do templates, and a lot of times
6 there are people that don't individualize their
7 notes very well to match the patient; so that it
8 just doesn't say the same thing for everybody's
9 physical.

10 Q. Is Dr. Keiser still with your practice?

11 A. No.

12 Q. What type of meds did you actually prescribe for
13 Ms. Bettencourt during the course of your
14 treatment for her?

15 A. I think the only thing she took from me was
16 Naproxen, which is a nonsteroidal, anti-
17 inflammatory.

18 Q. Mr. McGarr was asking you about her not taking
19 certain medications. Could you tell the jury what
20 medications that he was referring to?

21 A. The ones that I wanted to give her?

22 Q. Uh-huh.

23 A. I didn't write them in here because I didn't
24 prescribe them. But normally when someone comes
25 in with things like this, I do Prednisone. I do

1 muscle relaxer. I do an anti-inflammatory. And
2 if they need it, I'll give them something like
3 Lortab.

4 Q. So Lortab is a pain medication?

5 A. Right.

6 Q. Prednisone is a steroid?

7 A. Right.

8 Q. Doesn't Prednisone have some pretty severe side
9 effects for some people?

10 A. For some people.

11 Q. One of the side effects is weight gain and things
12 like that?

13 A. For some people.

14 Q. So a lot of people don't like to take Prednisone;
15 is that true?

16 A. True.

17 Q. The anti-inflammatory?

18 A. Right. That would be like the Naproxen, which is
19 basically the prescription strength of Aleve.

20 Q. Were those the medications you were referring to
21 that she refused?

22 A. Yeah, normally that's what I do when someone comes
23 in with a concussion, I do that routine.

24 Q. Was her shoulder pain anything to do with her not
25 taking medication; did that have anything to do

1 with her not taking medication?

2 A. I don't think it had anything to do with not
3 taking medicine, no.

4 Q. I believe that's all the questions I have.

5 REEXAMINATION BY MR. MCGARR:

6 Q. Would you agree that Ms. Bettencourt essentially
7 wouldn't take the medications you were trying to
8 prescribe? Didn't follow through with the
9 psychological counseling you were trying to give
10 her? And didn't follow through with the physical
11 therapy as you had tried to give it to her?

12 A. Correct.

13 Q. No further questions.

14 VIDEOGRAPHER:

15 This concludes the deposition of Kathy Benson.

16 We're going off the record at camera time 18:32.

17 (DEPOSITION CONCLUDED AT 6:32 P.M.)

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CERTIFICATE

I, the undersigned, Brandie Williams, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of Kathy Benson, F.N.P, was taken on August 3, 2011;

That the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal.



Brandie Williams

Notary Public for South Carolina

My Commission Expires: 3/14/17

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-23-2204

Deena L. and Scott
Bettencourt,
Plaintiffs,

vs.

Mary Ruth Wald,
Defendant.

ORIGINAL

VIDEOTAPED DEPOSITION
OF KENT H. KISTLER, M.D.

DATE TAKEN: June 16, 2011
TIME BEGAN: 4:34 p.m.
TIME ENDED: 6:32 p.m.
LOCATION: Neurology Associates
1130 Grove Road
Greenville, South Carolina

REPORTED BY: Brandie Williams
Gallagher Court Reporting
864-234-5744

VIDEOGRAPHER: cliff williams, CLVS
Argyle Multimedia, LLC

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ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

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1 VIDEOGRAPHER:

2 We're going on the video record at camera time
3 16:34. This is the videotaped deposition of Dr.
4 Kent Kistler taken by the plaintiffs in the matter
5 of Deena L. and Scott Bettencourt, the plaintiffs,
6 versus Mary Ruth Wald, the defendant. The case
7 number is 2010-C P-23-2204 in the Court of Common
8 Pleas, the Thirteenth Judicial Circuit, in
9 Greenville County, South Carolina. Today is
10 Thursday, June 16, 2011. We are in Greenville,
11 South Carolina. The court reporter is Brandie
12 Williams from the firm of Gallagher Court
13 Reporting. The videographer is Cliff Williams
14 from the firm of Argyle Multimedia, LLC. Will all
15 counsel present please introduce themselves for
16 the record?

17 MR. CHILDS:

18 My name is Robbie Childs. I represent Deena and
19 Scott Bettencourt.

20 MR. MCGARR:

21 Mark McGarr for Ms. Wald.

22 MR. RAY:

23 Bob Ray representing Deena and Scott Bettencourt.

24 MR. PLYLER:

25 Ross Plyler for the defense.

1 KENT H. KISTLER, M.D., being duly sworn, testified as
2 follows:

3 EXAMINATION BY MR. CHILDS:

4 Q. Dr. Kistler, as I mentioned earlier, I represent
5 Deena Bettencourt. I believe she was a patient of
6 yours.

7 A. That's correct.

8 Q. For the edification of the jury, Dr. Kistler,
9 could you tell the jury what profession you're in?

10 A. I'm a neurologist.

11 Q. What kind of educational background do you have?

12 A. Undergraduate degree from North Carolina State.
13 Medical degree from Duke. Internship at
14 Washington University in Saint Louis and neurology
15 residency at Vanderbilt.

16 Q. How long have you been a practicing neurologist?

17 A. Since 1984.

18 Q. For the understanding of the jury, what does a
19 neurologist do?

20 A. We look, diagnose, and treat neurologic illnesses.
21 Some of that is assessing symptoms referable to
22 the nervous system: brain, spinal cord disease
23 and injuries, peripheral nerve injuries.
24 Sometimes it's assessing symptoms to see if
25 there's damage to those.

1 Q. Are you board certified as a neurologist?

2 A. I am.

3 Q. How long have you been board certified as a
4 neurologist?

5 A. 25 years.

6 Q. Have you ever offered your testimony as a witness
7 as a neurologist?

8 A. I have.

9 Q. How many cases have you done?

10 A. 25.

11 MR. CHILDS:

12 I would submit that he's qualified to testify as
13 an expert in neurology.

14 MR. MCGARR:

15 Without objection.

16 EXAMINATION RESUMED BY MR. CHILDS:

17 Q. Dr. Kistler, you mentioned earlier that you had an
18 occasion to treat Deena Bettencourt. Could you
19 tell the jury about how you came to see her? I
20 think your first visit was October 22, 2008.

21 A. I can, if you'll give me a second, because this
22 is, you know, electronic or computer, and so it's
23 difficult. Her first evaluation in this office
24 was October 1, 2010 -- no, that's her last, excuse
25 me. These things are in backwards order. Okay,

1 October 22, 2008, is when I first saw her.

2 Q. Could you tell the jury about what you did when
3 you first saw Ms. Bettencourt?

4 A. She was referred by her primary care physician
5 with complaints of pain in the neck and head and
6 trouble with memory loss.

7 Q. Did you get a history of her illness at that time?

8 A. I did.

9 Q. What did that history provide?

10 A. Would you like me to read it or just summarize it?

11 Q. You could summarize it, if you'd like.

12 A. She related that she was rear-ended while driving
13 a car on the preceding month, the 4th of
14 September. Hitting the back of her head against
15 the car seat, and then developed neck discomfort.
16 Initially saw a chiropractor. And then developed
17 symptoms of headaches, nausea, felt cognitively
18 disorganized, and then went to her primary doctor.
19 The primary doctor obtained a brain scan, MRI, and
20 referred her for counseling and testing, and then
21 referred her here for further assessment.

22 Q. What type of assessment did you do with her?

23 A. We take a history, review her records including
24 the MRI and the physical exam, general physical
25 exam; which was unremarkable. And then the

1 neurologic examination of the cranial nerves,
2 which are mainly your head and face; the motor
3 strength, tone, reflexes, sensation, balance,
4 coordination, that sort of thing. As far as
5 screening for memory, general bedside screening
6 tests.

7 Q. And as a result of your examination of her and
8 performing those tests on her, did you reach an
9 impression as to what her difficulties were?

10 A. Neurologic exam was unremarkable. Her symptoms I
11 felt were compatible with a postconcussive
12 syndrome, which is a conciliation of symptoms that
13 follow a head injury or concussion.

14 Q. Could you explain that to the jury as what a
15 postconcussive syndrome is?

16 A. A concussion with an acute injury to the brain
17 with alterations in function. Postconcussive
18 symptoms are sometimes delayed and may include
19 depression, headaches, dizziness, concentration
20 difficulties, cognitive sort of issues like that.

21 Q. What causes that, what causes those things to
22 occur from I guess a mechanical perspective of the
23 brain?

24 A. It's not known but ultimately a concussion, it's
25 not really known what happens during a concussion

1 other than it's thought to be possibly called
2 shears of the brain. The brain floats, and so
3 when it's suddenly moving and stops, it will
4 boing, boing within the skull. And it's thought
5 that that may create a shearing effect; that
6 microscopic fibers can cause little hemorrhages.
7 But more commonly you don't see them. It's
8 thought that that may be the pathology of it, but
9 it's really not known.

10 Q. She had an MRI done that was unremarkable. Is
11 that unusual for postconcussive syndrome to find -
12 -

13 A. A concussion doesn't effect MRI typically.

14 Q. So the belief about the microscopic shearing the
15 fibers in the brain, it wouldn't be something an
16 MRI could pick up?

17 A. Correct.

18 Q. What did you recommend at that time when you saw
19 her on October 22, 2008?

20 A. The usual treatment for those symptoms besides
21 time is if it persists usually around six weeks
22 most of these things have improved a point, don't
23 need to intervene. After that, symptomatic
24 treatment. So for sleep, irritability, headache,
25 usually use some medicine called Nortriptyline,

1 which is what I gave her, which is a prescription
2 medication.

3 Q. And Nortriptyline, how does it alleviate the
4 difficulty?

5 A. Well, it's a symptomatic thing. It tends to make
6 you drowsy. It tends to relax muscles and
7 diminish pain. So we use it for lots of things.

8 Q. So it doesn't necessarily fix the injury, it just
9 helps with the symptoms of the injury?

10 A. Correct.

11 Q. I believe the next thing I have is a January 19,
12 2009, call where she apparently called your
13 office.

14 A. That was a phone call, would be in a different
15 area, so let me see if I can find that. Okay, the
16 initial one was January 19 was the next record I
17 see, which was a phone call from the patient
18 requesting a follow-up appointment.

19 Q. And what was the basis of that request?

20 A. Patient said she was having trouble multitasking,
21 unable to focus on things, was not in pain,
22 frustrated, and felt like it had quote, "slowed
23 her life down."

24 Q. Is this your response here in the records?

25 A. You probably have the same sheet I'm looking at.

1 It says "response," which is my response was
2 wanted her to have neuropsychological testing done
3 and recommended referring to a psychologist who
4 does that for testing.

5 Q. Was that Dr. Randel Jones?

6 A. That's who the referral was recommended to, him,
7 yes.

8 Q. The next visit I have is a call from March of
9 2009, which is another telephone call.

10 A. That's a phone call, appointments are in a
11 different thing, so let me just make sure I'm in
12 the right order. That appears to be the next
13 contact was March 31st, yes.

14 Q. And so in that contact did she schedule another
15 appointment to follow up with you?

16 A. The request was the patient complained of pain and
17 headache caused by tension, muscles in neck get
18 hard, goes down neck to arms. Taking Advil daily.
19 Stopped seeing a chiropractor. Asking for help.
20 Okay to set another appointment, I said yes, go
21 ahead and set up appointment.

22 Q. Did you see her back after that on April 3, 2009?

23 A. Yes.

24 Q. So that was your next basic physical appointment
25 with her after your initial evaluation; is that

1 correct?

2 A. Correct.

3 Q. What was her complaints that time?

4 A. Complaint was tension in neck, numbness and
5 tingling in left upper extremity.

6 Q. What kind of history did she provide at that time?

7 A. She was continuing to complain of cervical
8 discomfort, treated with chiropractor, a tight
9 pain worsening with posture, relieved by rest,
10 without radicular symptoms, which are nerve
11 symptoms going down the arm. Complained of
12 feeling slow cognitively. She'd had neuropsych
13 testing done which suggested anxiety and
14 depression; she denied those.

15 Q. What did you do as a result of that visit to your
16 office?

17 A. Again, I examined her again, didn't find anything
18 on her office exam and recommended treatment with
19 medications for presumptive muscle strain. At
20 that time the Nortriptyline was actually, that may
21 have been the first time she took the
22 Nortriptyline. We had talked about it before
23 perhaps. And Tizanidine, which is a muscle
24 relaxant, and told her to take those and that we
25 would reassess that following that.

1 Q. It mentions in that note that she was still
2 feeling slow cognitively, and it suggests there
3 was, what is comorbid anxiety?

4 A. Accompanying.

5 Q. And depression, which she denies. You're
6 referring to a neuropsych testing. Would that be
7 Dr. Jones' testing?

8 A. Uh-huh.

9 Q. Obviously you had a copy of that report at the
10 time you saw her back on April 3, 2009. Do you
11 still have a copy of that?

12 A. I should; let's see, from Dr. Jones from February
13 2009.

14 Q. Can you tell from the report what Dr. Jones'
15 assessment of her was?

16 A. Yeah. There's two, one was pretty much to
17 describe her symptoms; the other is the actual
18 testing. Testing is fairly extensive, a number of
19 battery of tests were given. Sort of a punch line
20 on that was history consistent with mild closed-
21 head injury, indicated by reduction sense of
22 smell, problems repeating words, difficulty
23 managing multi tasks, decreased emotional control,
24 difficulty maintaining cognitive focus and being
25 attentive. Report difficulty would mean

1 suggestive of a head injury. Neuropsychological
2 assessment indicates several subtle problems that
3 could suggest mild head injury. It goes on to say
4 she manifest average intelligence. Could be
5 overtly distractable. Decidedly mild, but
6 signaled the possibility of a mild cognitive
7 problem.

8 Q. What does a mild cognitive problem mean?

9 A. A little bit of trouble thinking.

10 Q. Did you follow up with Ms. Bettencourt in June of
11 2009?

12 A. Try to keep all this in order here. Here it is,
13 June 9th of '09, I saw her back for follow up of
14 neck pain particularly.

15 Q. Now, were you also still following her as far as
16 her postconcussive syndrome; or do you know?

17 A. It's all part of the same issue in my mind.

18 Q. So how's that all part of the same issue?

19 A. Pain, whether it's in the neck, head, headaches,
20 neck pain are together in mind in that sort of
21 injury.

22 Q. What was your evaluation of her on June 9, 2009?

23 A. A neurologic exam; again, unremarkable. Her
24 symptoms since unchanged. Subjective difficulty
25 with concentration. Pain relief with muscle

1 relaxant but avoided it because of drowsiness.

2 Tolerated Nortriptyline. Pain made her anxious.

3 Denied any mood disturbance. So we lowered the

4 dose of medication and I wanted her to have

5 supportive counseling with a psychologist.

6 Q. Did you ask her to schedule a follow-up

7 appointment with you from the June 9, 2009 visit?

8 A. Correct.

9 Q. When did you ask her to return?

10 A. It says, "Instructed patient to return in three
11 months."

12 Q. Did she return to you in three months? I have
13 October 29th of '09.

14 A. She returned in October.

15 Q. Was the chief complaint at that time still the
16 follow up for the postconcussive syndrome?

17 A. I got a page out of order. When she returned on
18 the 29th, which would have been the next one,
19 follow up on postconcussive symptoms, yes.

20 Q. What kind of a history did she provide to you at
21 that time about her symptoms as they relate to her
22 injury? Just give us the history of the present
23 illness from that report.

24 A. Okay, she complained of loss of smell. Felt that
25 concentration was still diminished. Some shoulder

1 pain, which I think was a new thing. In the
2 interim had had the neuropsych testing done by Dr.
3 Jones. Had had another MRI done of the brain and
4 the spinal cord.

5 Q. It indicates here that Dr. Jones had reviewed and
6 showed deficits in concentration, organization,
7 and a 20 percent impairment rating, which he
8 offered. A second psychological opinion was
9 obtained, which concurred with this.
10 Did you review both Dr. Jones and the second
11 psychological opinion?

12 A. I don't recall, but I probably did if I had it;
13 I'd have to look and see. Another psychological
14 test, which must be that one. It's a different
15 one there.

16 Q. It says, "a second opinion." would that be Dr.
17 Brabham's evaluation?

18 A. I don't know. If it's Dr. Brabham's, I would
19 have. All right, there's a copy of Dr. Brabham's
20 report. That not sure how she ended up with Dr.
21 Brabham, but yes, I have a second report, from Dr.
22 Brabham, done from March 17, 2009.

23 Q. Your report talks about a neuropsych evaluation by
24 Dr. Jones and also a second opinion about that.
25 What is a neuropsych evaluation; what does that

1 involve?

2 A. Typically involves formal testing and generally a
3 battery of tests selected by the psychologist and
4 then reviewing the results of the tests and then
5 an opinion regarding the implications and kind of
6 putting the picture together.

7 Q. Did the neuropsych evaluations test the ability of
8 the person to think and respond to stimuli and
9 those kind of things?

10 A. Well, it's not a particular test, so it wouldn't
11 include like an IQ test like you would have had in
12 school; but it may include other more specific
13 language tests, maybe organizational picture
14 drawing tests, and maybe tests to assess mood, for
15 example. So there are a whole battery of things.

16 Q. And I know you don't do impairment ratings, but I
17 know that your report indicates that Dr. Jones
18 gave her a 20 percent impairment rating. What
19 does an impairment rating mean?

20 A. I think that's a medical-legal term used for
21 Social Security or medical-legal things to imply
22 what sort of impairment one might have in terms
23 of, can you do everything you used to do or
24 whatever. It doesn't really have a medical term
25 per se.

1 Q. It's just kind of a quantification?

2 A. Of the severity of deficit, yes.

3 Q. What was your assessment of Ms. Bettencourt, your
4 impression of her, on October 29, 2009, after your
5 evaluation of her?

6 A. At that point I thought that she seemed improved
7 and that I thought her prognosis was good for
8 continued improvement in thinking, concentration,
9 emotion; that sense of smell was less likely to
10 improve.

11 Q. What's the significance of the sense of smell
12 problem that she's having?

13 A. The significance in terms of --

14 Q. From a medical perspective why would a person have
15 a loss of sense of smell as a result of
16 postconcussive?

17 A. I see what you're saying. The brain has sort of
18 like steps in it. So the frontal lobes sit on a
19 boney thing, and then right beneath them your
20 nasal passages, the little tiny nerve endings that
21 penetrate through the bone. So it's sort of
22 tethered, if you will. So, you know, back and
23 forth they can be torn, if you will. So that can
24 happen with head injuries.

25 Loss of smell is a common thing, and the nerves

1 don't grow back typically. So loss of smell can
2 be a permanent thing with head injury, for
3 example.

4 Q. So that's why you said the prognosis for her
5 recovering her loss of smell was not as good as
6 the other prognosis of improving in concentration
7 and things like that?

8 A. Correct. There's no exercise or medications or
9 things she can do for that. And typically
10 improving in that would be spontaneous, and it
11 would have occurred within, you know, a year or
12 something like that.

13 Q. So after a year after this accident, it's probably
14 not likely she would get back all her sense of
15 smell that she had before?

16 A. Correct.

17 Q. But you had some good prognosis for improvement in
18 the cognition and the concentration and emotion.
19 Is this just something that takes time to recover,
20 or are there things or are there testaments that
21 can speed that process along?

22 A. Well, the people who do counseling, so forth,
23 whether that speeds it, or whether it's watching
24 mother nature work, I'm not sure. In my
25 experience I think most of it is time.

1 But in terms of dealing with deficits or
2 strategies, I think they can be very helpful in
3 terms of organizational strategies and things like
4 that.

5 Q. I believe you saw her again in October of 2010.

6 A. She returned, that's correct, about a year later,
7 October of the next year, which was last October.

8 Q. What was that for?

9 A. The patient initiated that for follow up of
10 postconcussive syndrome.

11 Q. Could you tell the jury about the present history
12 of the illness at that time.

13 A. Well, over the last year she had continued
14 working, functioning as a housewife and mother,
15 but states that she's unable to manage multiple
16 tasks with increasing frustration due to this.
17 This produced some family discord. No work
18 problems. Litigation had been settled. She
19 denied any health changes or pain.

20 Q. What did you recommend at that point based upon
21 your evaluation of her?

22 A. As I recall, she came requesting a referral for
23 what's called functional MRI, which is a
24 radiographic study that's not something we
25 currently do typically. So I think we discussed

1 that. I recommended she consider neuropsych
2 testing to see if there was any change. Told her
3 that there wasn't any particular treatment, that
4 the best place probably for counseling
5 intervention would be to consider going to Roger
6 Peace, which is a closed-head injury program they
7 have.

8 Q. And your impression at that time was cognitive
9 changes. What does SP mean?

10 A. After, status post.

11 Q. After closed-head injury?

12 A. Uh-huh.

13 Q. Did she in fact go to Roger C. Peace and get
14 evaluated?

15 A. I believe she did, yes.

16 Q. Did they provide that to you as well?

17 A. I have a copy of it here.

18 Q. Could you tell us what the Roger C. Peace
19 evaluation of her was?

20 A. Similar to the previous one, they did a battery of
21 tests. I think they had her previous test for
22 comparison. And then they put their summary and
23 recommendations on that.

24 Q. What was the summary of their evaluation of her?

25 A. "Presents with a neuropsychological profile

1 characterized by average general intellectual
2 skills accommodated by well above average higher
3 level reasoning and problem solving. Most aspects
4 are complex visual and verbal memory are also
5 quite functioning ranging from average to
6 superior. A number of isolated deficits mild to
7 moderate impairment in complex auditory and
8 complex visual attention. Moderate decrease in
9 verbal fluency. Isolated proactive interference
10 on list learning." I'm not sure what that means.
11 "Analysis of this pattern was taken into
12 consideration both current level of performance as
13 well as comparison between current evaluation and
14 neuropsychological testing conducted in 2009 by
15 Dr. Jones. The two evaluations overlap on several
16 important points and general pattern improvement
17 in scores across the two tests is noted. The most
18 dramatic was a very significant improvement on the
19 category test with scores improving from mildly
20 impaired to now superior. There's also been
21 improvement in finger tapping speed and some of
22 the sensory deficits have resolved. Parallel
23 improvements were noted on the select subtests
24 assessing visual reasoning. Other areas that
25 change has been less dramatic with performance on

1 the Stroop test." It's a test they do, I'm not
2 sure what that is. "Improving from mildly impaired
3 to borderline. The only exception to this general
4 pattern of improvement was some decline in tactile
5 form recognition speed. This may be attributable
6 to peripheral factors related to the patient's
7 shoulder pain. Current pattern and change in
8 scores compared to Dr. Jones' evaluation confirm
9 that the patient had incurred a mild brain injury
10 and Dr. Jones' scores were reflective of that
11 injury. Since that time Ms. Bettencourt has made
12 significant additional improvement. Her current
13 pattern would be considered mild and isolated
14 cognitive deficits. This is accompanied by
15 adjustment issues related to patient's self
16 perception, tending to overestimate deficits.
17 This pattern has been noted in literature as the
18 shaken sense of self. Given the patient's family
19 history there will be a tendency of the shaken
20 sense of self to result in underestimating her
21 current abilities. I recommend the patient be
22 considered for outpatient therapy to address the
23 issues for the tension and ongoing adjustment
24 issues. I recommend outpatient speech therapy to
25 address cognitive issues and neuropsychological

1 based counseling to address the shaken sense of
2 self. Ms. Bettencourt concurs with these
3 recommendations and we will try to enroll her in
4 outpatient brain injury program as soon as
5 possible. Prognosis for improvement is
6 favorable."

7 Q. That report indicated that they diagnosed her with
8 a mild brain injury. Would that be your diagnosis
9 of her through your treatment as well?

10 A. I think that would be, yes.

11 Q. Based upon your treatment of Ms. Bettencourt and
12 your evaluations of her, plus these other
13 evaluations, the neuropsychological evaluations,
14 would you have an opinion as to whether or not
15 this accident that occurred to her more likely
16 than not caused her to have a mild brain injury?

17 A. I would think that's more likely, most likely,
18 yes.

19 Q. Now, you certainly charge for services in your
20 practice, and I have here Plaintiff's Exhibit
21 Number One. I'd like to show you that. Which has
22 a total of \$656 in medical expenses that Ms.
23 Bettencourt incurred through your treatment.
24 Would you say that's a fair and reasonable amount
25 of expenses to incur for the treatment you

1 provided?

2 (PLAINTIFF'S EXHIBIT NO. 1 MARKED; ATTACHED.)

3 A. Yes.

4 Q. Would your opinion be that you provided this
5 treatment as a result of this accident she was
6 involved in?

7 A. Yes.

8 Q. Would you concur with the Roger C. Peace
9 evaluation that some additional therapy would be
10 helpful to improve her cognitive levels in an
11 effort to get back to a condition more closely
12 related to her before the accident?

13 A. I would defer that to them, but I would see no
14 problem with that.

15 Q. I would move that your medical bill into evidence
16 at the trial, of course.

17 MR. CHILDS:

18 And I assume without objection?

19 MR. MCGARR:

20 Even without, you can move it in now if you want.

21 MR. CHILDS:

22 I'll move it in now. Please answer any questions
23 that Mr. McGarr might have of you, and thank you
24 for your time. I may have some follow-up
25 questions, depending on what he asks you.

1 EXAMINATION BY MR. MCGARR:

2 Q. Dr. Kistler, we were introduced earlier, but just
3 very briefly, my name is Mark McGarr, and I
4 represent Ms. Wald, who's the lady that Ms.
5 Bettencourt's brought suit against.
6 What I'm about to do is give you documents. The
7 overwhelming majority you've never had access to
8 and wouldn't have been able to get access to
9 without some help from me. I understand the
10 opinions you've given so far are based upon the
11 information you've had to date. What I may give
12 you today may change some of those opinions, and
13 it's not because somebody's got you; it's because
14 you've been given more information. So please
15 don't take offense at me giving you new
16 information with regard to Ms. Bettencourt.
17 Let me begin by this: Would you agree that Ms.
18 Bettencourt had an MRI done of her brain on the
19 9th month, 17th day, of 2008?

20 A. I would.

21 Q. And that MRI was done with and without contrast;
22 is that correct?

23 A. Yes.

24 Q. And with contrast means from a perspective of a
25 lay person is that we essentially put some dye in

1 the person's brain so that you can see the brain
2 better when the MRI is looking at it; is that
3 correct?

4 A. The dye is put into the bloodstream in your arm.

5 Q. But it ultimately gets into your brain?

6 A. It goes through the blood vessels and hopefully
7 doesn't get in your brain in a normal state, yes.
8 But it perfuses the blood vessels, yes.

9 Q. And so it gives you more access to what's where
10 and what's going on within that brain; is that
11 correct?

12 A. It gives you more information regarding the brain
13 tissue, that's correct.

14 Q. And an MRI is probably, there's some dispute, but
15 an MRI is probably the best way to look at
16 someone's brain without actually cutting their
17 head open and looking inside; is that correct?

18 A. It's probably the best structural image that you
19 can obtain, that's correct.

20 Q. And you can look at little tiny, teeny-tiny slices
21 of the brain as if somebody's cutting your brain
22 from the top of your head to your chin; is that
23 correct?

24 A. The information they can look as if you were
25 slicing a cake this way, this way, this way,

1 pretty much any way, it can be manipulated, yes.

2 Q. So you can see that brain from all kinds of angles
3 using an MRI?

4 A. That's correct.

5 Q. So essentially you can see that brain, as odd as
6 that sounds, without having to actually go in and
7 look at it?

8 A. Correct.

9 Q. In this case the MRI was done and it looked at her
10 brain on 9/17 of 2008. And when it was over and
11 done, that MRI came back, basically said her brain
12 was normal?

13 A. That the MRI was normal, that's correct.

14 Q. And the MRI would have been of her brain; is that
15 correct?

16 A. That's correct.

17 Q. Would you agree, looking at that next document,
18 that she also did another MRI at a different
19 outfit, it would be Innervision MRI and Imaging,
20 and that that MRI took place on 9/29/2009, roughly
21 a year later?

22 A. That's correct.

23 Q. And, again, it was done with and without contrast?

24 A. Yes.

25 Q. And it came back essentially normal, that her

1 brain was essentially normal?

2 A. Correct.

3 Q. So insofar as a quote, "brain injury" is
4 concerned, these MRI's did not reveal or detect a
5 brain injury?

6 A. The terminology brain injury depends, I guess
7 without nit picking, visibly the brain looks
8 normal.

9 Q. That's what I mean. If you looked at that brain,
10 if you're just looking at it, it looks like every
11 other normal person's brain?

12 A. Correct.

13 Q. From looking at it, it's not showing any evidence
14 of an injury from what the MRI can do?

15 A. Correct. The caveat to that is structural, it's a
16 structural thing, not a functional thing.

17 Q. I understand. But from a structure, it would look
18 like every other normal person's brain if they had
19 a normal brain?

20 A. Yes.

21 Q. When you're faced with an MRI of that sort and
22 it's not showing, let's say that you've got blood
23 in some area of the brain, and it's not showing a
24 tearing in the brain or a shearing of let's say
25 the brainstem, it's just coming back normal, your

1 fallback with regard to whether there's an injury
2 to the brain -- because there's no way to see an
3 injury once we get down to that level -- is
4 basically based upon what the patient tells you?

5 A. To some degree what they tell you, to some degree
6 what you see in observation or examination, yes.

7 Q. And in this case when you were examining her
8 throughout this process, all of her neurologic
9 tests were coming back essentially normal?

10 A. That's correct.

11 Q. So then you have to fall back, once you've got
12 normal MRI's and normal testing that you can
13 observe, you have to fall back on what the patient
14 is telling you is different; is that correct?

15 A. Correct.

16 Q. And in doing that is it important to know what the
17 patient's prior medical history has been?
18 Meaning, what was she like before the accident
19 that they are relating as being causing the
20 problem versus what she's like after the accident.

21 A. Yes, I mean, I think I follow what you're saying.
22 If the patient says, I can't do something I used
23 to be able to do, you'd want to know what they
24 used to be able to do.

25 Q. Right. So it's vitally important to know, okay,

1 What was your issue before. I was fine. Okay,
2 what's your issue now. I can't smell. My
3 memory's not as good. I don't sleep as well. I'm
4 irritable. Those are things that nobody can
5 actually measure. Headaches nobody can measure?

6 A. Correct.

7 Q. And so you have to trust when they're telling you,
8 I'm having these deficits that they, A, exist and,
9 B, that they're different from what existed prior
10 to the accident in question; is that correct?

11 A. That's true.

12 Q. And so you're basically relying on the honesty of
13 the client or the patient; is that correct?

14 A. That's right.

15 Q. And, again, Doctor, I am certain we are about to
16 show you a lot of records that you have not had
17 access to prior to today.

18 Does it appear that Ms. Bettencourt was deposed,
19 just like you're being deposed today, on October
20 1, 2010?

21 A. Yes. This is a copy of a deposition from October
22 1, 2010.

23 Q. Does it appear that Ms. Bettencourt was placed
24 under oath, just like you were today, if you look
25 at the second page?

1 A. Yes.

2 Q. And on the third page, does it appear that I asked
3 her, "Have you ever had a problem with your head
4 prior to this accident?" And she answered, "Not
5 that I recall."

6 A. Yes.

7 Q. Going to the next document, does it appear that
8 she went to her family physician on 9/16/2008,
9 which would be roughly 12 days after this
10 automobile accident, and they were also curious
11 about her past medical history? And by the time
12 that they had printed this they had determined
13 that she had a normal MRI that had been done on
14 9/17/08?

15 MR. CHILDS:

16 It couldn't be because this visit is 9/16/08.

17 EXAMINATION RESUMED BY MR. MCGARR:

18 Q. By the time they printed it they had entered the
19 9/17/08 MRI being normal.

20 A. Is this all the same? We've got two things
21 stapled differently.

22 Q. My apologies. The misprint is that the visit was
23 actually 9/17/08 at 8:32 that I'm discussing,
24 which would be 13 days after the accident. Do you
25 see what I'm talking about? Right here.

1 A. Okay, this is the person who logged it,
2 presumably.

3 Q. Is Kathryn Benson.

4 A. I assume that she did it at the end of the day at
5 8:32 p.m.

6 Q. And so she's logging that in on 9/17/2008 at 8:32
7 p.m. The visit actually took place on 9/16/2008
8 at 3:13 p.m. Does that make sense?

9 A. That's what it looks like to me.

10 Q. And by the time she did the log in, she had gotten
11 the results of the MRI, which revealed that the
12 9/17/08 MRI of the brain was normal; is that
13 correct?

14 A. I don't see it in that one.

15 Q. It would be this one.

16 A. That's the MRI report. Her record here says,
17 "past medical MRI normal," which, yes, uh-huh.

18 Q. And then the remaining portion of Ms.
19 Bettencourt's past medical history, and Ms.
20 Bettencourt would be the one relating this, would
21 be that she had had a past history of allergies
22 and pneumonia times one; is that correct?

23 A. That's correct.

24 Q. No mention whatsoever of having any past history
25 of a concussion or blows to the head at that

1 point; is that correct?

2 A. That's correct.

3 Q. Let's go to, actually we can skip the next
4 document, which would be --

5 A. 10/3/08.

6 Q. We should be at 10/3/08, yes, sir. On 10/3/08,
7 did she return to Premier Family Medicine, her
8 family physician?

9 A. Yes.

10 Q. And at that point was the past medical history
11 essentially the same, that she had had an MRI done
12 on 9/17/08 of her brain, which came back normal?
13 Her only other past medical history had been that
14 of allergies and pneumonia times one time?

15 A. Yes.

16 Q. So does it appear that on her second visit post
17 accident to Premier Family Medicine she makes no
18 mention of having any prior concussions or
19 problems with her brain?

20 A. That's correct.

21 Q. Going to the next document in that set of
22 documents, which would be from the Journey Center,
23 does it appear that Ms. Bettencourt went to the
24 Journey Center on 10/3/2008?

25 A. I don't know what the Journey Center is, but this

1 is an intake form, it says the Journey Center. It
2 looks like it would be from her.

3 Q. It's an outfit that does psychological work.

4 A. Okay. There's a note here, it looks like intake
5 sheet, says "The Journey Center, Adult," yes.

6 Q. Does it appear that they're also interested in her
7 prior history? Because they ask her specifically
8 if she had a history of injuries, and she said,
9 "yes." And it said, "if yes, explain." And she
10 said, "car accident, 9/4/08, coup-counter-coup,
11 and concussion."

12 A. Yes, uh-huh.

13 Q. Did she make any mention of any problems with her
14 head prior to the 9/4/08 automobile accident when
15 she filled out this history questionnaire?

16 A. I do not see any.

17 Q. So does it appear at this point that she's told
18 her family doctor on two occasions that she's not
19 had a prior brain problem until this accident, and
20 she's also telling the Journey Center that she's
21 not had a prior problem with a brain injury?

22 A. That's correct.

23 Q. Can we go to the next document in that set of
24 documents? This appears to be a document, and you
25 tell me if I'm wrong, from you. It looks like

1 your firm gave her a document to fill out on
2 10/22/2008, which also is looking for her history;
3 is that correct?

4 A. Correct.

5 Q. And, again, it's because that history is so
6 important in properly being able to diagnose the
7 patient, particularly a patient who has symptoms
8 that only they can tell you if they have them or
9 not?

10 A. Correct.

11 Q. In this case, did you ask her or did the form that
12 you gave the patient, did it ask, Have you ever
13 had problems with any of the following, and the
14 one we care about is concussion or loss of
15 consciousness? And in that form, did she tell you
16 "no"?

17 A. She did.

18 Q. So does it appear that she's told her family
19 physician on at least two occasions, the Journey
20 Center on one occasion, and you on this occasion
21 that she'd never had any prior concussions to her
22 head or injuries to her head?

23 A. That appears to be the case.

24 Q. Then when she was talking to you in the next
25 document, when you first saw her on 10/22/08,

1 would you agree that her only past medical history
2 that she had given you was that of anxiety and
3 depression?

4 A. Yes.

5 Q. So anxiety and depression appears to have existed
6 prior to this automobile accident, and yet those
7 were some of the things that she was complaining
8 of after the accident?

9 A. Yeah. To be honest with you, I can't tell from my
10 note the onset of that. On her intake form, she
11 said, "referral to Journey Center," which was in
12 the interim before I saw her first. I don't know
13 the timing of that, but prior to 10/22/08
14 certainly.

15 Q. And she again makes no mention to you of having
16 any prior concussions or injuries to her head; is
17 that correct?

18 A. That's correct.

19 Q. So at this point she's done an intake sheet.
20 She's spoken to you. She's gone to the Journey
21 Center. She's been to her family physician on two
22 separate occasions. And on none of these
23 occasions has she mentioned having any problems
24 with a prior head injury or prior concussions?

25 A. Correct.

1 Q. Going to the next document in that set of
2 documents. And this one you've seen a bit of,
3 it's Crescent Psychological Services.

4 A. Uh-huh.

5 Q. Does it appear that she went to Crescent
6 Psychological Services on February 10, 2009?

7 A. Yes.

8 Q. And they too were interested in her past medical
9 history for reasons that we've discussed. And at
10 that point they say, "Ms. Bettencourt denies the
11 presence of significant physical difficulty other
12 than that associated with the accident;" is that
13 correct?

14 A. That's correct.

15 Q. So she's essentially saying that she was very
16 healthy and had never had any problems with
17 concussions or head problems until the time of the
18 automobile accident that we're discussing today;
19 is that correct?

20 A. That's correct.

21 Q. So she's gone to Crescent. She's been to you.
22 She's done an intake sheet with you. She's been
23 to the Journey Center. And she's been to her
24 family physician on at least two occasions between
25 the time of the accident and this particular

1 document, and not once has she told anyone about
2 having problems with prior concussions or
3 concussions prior to the 9/4/08 accident; is that
4 correct?

5 A. That's correct.

6 Q. Does it appear that she also went to see a Mr.
7 Brabham, or actually that Mr. Brabham came to see
8 her at her attorney's office on or about 3/10 of
9 2009? That would be the next document, marked
10 "Psychological and Training Services."

11 A. That's correct.

12 Q. And when he was seeing her at her attorney's
13 office, would that have been on 3/10/2009?

14 A. That's correct.

15 Q. And if you could go with me to page five. Did he,
16 like everyone else, appear to be very interested
17 in her prior medical history to see what might
18 have existed prior to this automobile accident?

19 A. His general medical history section in his report,
20 yes.

21 Q. And essentially she described a quite remarkably
22 healthy preinjury state of health?

23 A. Correct.

24 Q. No mention of any prior concussions or head
25 injuries is mentioned in this document; is that

1 correct?

2 A. That's correct.

3 Q. So she's been to the Brabham gentleman, or the
4 Brabham gentleman's been to see her at her
5 attorney's office. Crescent Psychological
6 Services has done a past history on her. You did
7 a past history on her. You had her fill out a
8 past history questionnaire. The Journey Center
9 had her fill out a past history questionnaire.
10 She was questioned about her past history on at
11 least two occasions while with her family
12 physician. And she never once mentioned problems
13 with a prior concussion before the 9/4/08
14 accident; is that correct?

15 A. That's correct.

16 Q. Could we go to the next document? Does it appear
17 that on 10/8/09 she went to Vaughn, Buchanan, and
18 Shelley?

19 A. I don't have that. My next one is --

20 Q. That's Vaughn Buchanan.

21 A. This is?

22 Q. Yes, sir. See the VBS at the very top, the
23 facility?

24 A. Oh, okay. Excuse me, yes, I've got it.

25 Q. Does it appear that she went to Vaughn, Buchanan

1 on or about 10/8/2009?

2 A. Let's see where that date is here. Yes, 10/8/09.

3 Q. Does it appear that they too were interested in
4 her prior medical history? Because they ask her,
5 "prior level of function slash work, explain any
6 limitations." And the quote was, "zero deficits
7 prior to the MVA, or motor vehicle accident"; is
8 that correct?

9 A. That's correct.

10 Q. So does it appear that she's been to Vaughn,
11 Buchanan, and Shelley, never mentions a prior
12 concussion until the automobile accident?
13 Psychological Training and Services has been to
14 her attorney's office, and she's not mentioned any
15 prior concussions until the accident? She's been
16 to Crescent Psychological Services and doesn't
17 mention any prior concussions prior to the
18 accident? She's been to you and told you no prior
19 concussions? She filled out an accident
20 questionnaire with regard to you and said no prior
21 concussions? She filled out a form with the
22 Journey Center saying no problems until the
23 automobile accident? And she's been to her family
24 physician on two occasions saying no problems
25 until this automobile accident?

1 A. That's correct.

2 Q. And so everybody's interested obviously because of
3 the mildness of the injury to determine if what
4 her history is to see what may be out there; is
5 that correct?

6 A. Yes.

7 Q. And even we were interested in her prior history
8 and asked her under oath if she'd had a problem
9 with her head prior to the accident; and she had
10 essentially told us no, or that she couldn't
11 recall.

12 A. Correct.

13 Q. Going to the next document in that set of
14 documents, this would be the Northpointe
15 Chiropractic Center. Does it appear that she went
16 to the Northpointe Chiropractic Center on
17 7/18/2002 and informed him that after several
18 falls from horses she had incurred four separate
19 concussions?

20 A. Let's see, "previous trauma: several falls from
21 horses; concussions four times; fractured jaw."
22 And I can't read, something other bones, I can't
23 read the handwriting.

24 Q. The one that we care about at this point, because
25 she's been to you for a head injury, is does she

1 basically tell him on 7/18/2002 that she's had
2 several falls from horses, had concussions four
3 times?

4 A. Yes.

5 Q. Did she tell her family physician that she had had
6 four concussions prior to the accident with my
7 client?

8 A. No.

9 Q. Did she tell the Journey Center that she had had
10 four concussions prior to the accident with my
11 client?

12 A. No.

13 Q. Did she tell you when she filled out the medical
14 history form that she had had four concussions
15 prior to the accident with my client?

16 A. No.

17 Q. Did she tell you when she was talking to you that
18 she had had four concussions prior to the accident
19 with my client?

20 A. No.

21 Q. Did she tell Crescent Psychological Services that
22 she had had four concussions prior to the accident
23 with my client?

24 A. No.

25 Q. Did she tell Psychological and Training Services

1 that she had had four concussions prior to the
2 accident with my client?

3 A. No.

4 Q. Did she tell Vaughn, Buchanan, and Shelley that
5 she had had four concussions prior to the accident
6 with my client?

7 A. No.

8 Q. Did she tell me while she was under oath that she
9 had had four concussions prior to the accident
10 with my client?

11 A. No.

12 Q. If someone has had four concussions, and you
13 haven't had the opportunity to examine them after
14 those concussions, is there any way for you or for
15 that matter any other medical provider to
16 determine that these mild deficits: the lack of
17 sleep, the irritability, the dizziness, the
18 depression, the slight loss in memory, the
19 headaches, is there any way to connect those
20 complaints to the automobile accident of 9/4/08?

21

22 Because she could have suffered these problems
23 after concussion number one; is that correct?

24 A. Yes.

25 Q. She could have suffered the problems that you were

1 finding, or maybe more important she was telling
2 you about, she could have suffered the problems
3 she was telling you about as a result of
4 concussion number two?

5 A. Well, yes, the symptoms of a concussion typically
6 would have occurred, and as I said before,
7 typically they would resolve. So with each
8 concussion it could recur. I guess the question
9 of could it occur and be consistent or persistent
10 would be totally dependent on history, or you'd
11 have to have these tests done before we do the
12 tests.

13 Q. I understand. My point being that if these
14 problems were persistent, what she was telling you
15 her problems were could have been as a result of
16 concussion number one; is that correct?

17 A. Yeah. I think I understand what you're saying,
18 could have been there and she just didn't relate.

19 Q. She just didn't tell us about it?

20 A. That's possible.

21 Q. Could have been as a result of concussion number
22 two, and she didn't tell us about it?

23 A. That's possible.

24 Q. It could have been as a result of concussion
25 number three, and she didn't tell us about it?

1 A. That's also possible.

2 Q. It could be as a result of concussion number four,
3 and she didn't tell us about it?

4 A. It's also possible.

5 Q. And there's no way unless she's forthright, A,
6 about the prior concussions, and B, forthright
7 about her prior symptoms to connect it to
8 concussion one, two, three, four, or this
9 accident?

10 A. One could only infer, I think.

11 Q. But there's no way to be medically honest about it
12 to connect it, because there's no test after
13 concussion one. There's no testing after
14 concussion two, at least that anybody's given us.
15 No testing after concussion number three. No
16 testing after concussion number four. And then
17 we're dealing with someone who says, I've got a
18 problem after an automobile accident.

19 A. I understand your point. What I would say to that
20 is one can't be absolutely certain. The only way
21 to test that if you don't have a baseline, which
22 would be based on history, and the history is from
23 the patient as you pointed out, that the formal
24 testing should stand on its own.
25 So having had two tests sometime apart with scores

1 changing, one would not think it would be like
2 this from 2002 to 2008 and then 2009, and then a
3 year later be markedly better. That would be the
4 only thing. Which the neuropsychologist perhaps
5 could say their opinion. But that would be my
6 medical opinion is that I'm not sure that
7 improvement, how you would explain that
8 improvement from a remote injury.

9 But whether her premorbid, before this last
10 function, what it was, I would agree, there's no
11 way to know from what she tells me.

12 Q. And if she's not even going to tell you about the
13 prior concussions, it's very difficult to be able
14 to get a good history on what her prior symptoms
15 may have been?

16 A. It's all based on what she tells you, that's
17 absolutely true.

18 Q. And if she's not telling you the truth, then the
19 diagnosis is not honest?

20 A. It would be difficult.

21 Q. If she's not telling you the truth, the diagnosis
22 is by its very nature going to be incorrect?

23 A. It could be incorrect, that's right.

24 Q. I'm going to show you another set of documents,
25 which, again, you would have no access to until

1 today.

2 Doctor, I'll represent to you that the accident
3 that brings us here today took place on 9/4/08.
4 I'll also represent to you that we deposed the
5 gentleman that actually created this vehicle
6 Accident Information Form. And he has told us
7 that this is a form that he prints and then the
8 patient fills out.

9 Does it appear that Ms. Bettencourt was at a
10 Chiropractor Shride's office on 9/4/08, the day of
11 this accident? And I'll represent to you that
12 that's where this form came from is Chiropractor
13 Shride.

14 A. This vehicle accident information you're saying
15 comes from a chiropractor's office?

16 Q. Yes, from Chiropractor Shride's office.

17 A. It doesn't say where it came from on --

18 Q. I understand. You'll just have to take my word
19 for it, that's where it came from. Does it appear
20 that she was actually at his office, if I'm being
21 forthright about it being from Dr. Shride's
22 office, on 9/4/08?

23 A. This is an intake form, and it looks like the same
24 handwriting as hers, yes.

25 Q. Does the date on that say "9/4/08"?

1 A. It does.

2 Q. Does it appear that Dr. Shride is even curious
3 about one's history, in specific one's history
4 about what happened to them as a result of the
5 automobile accident? For example, if you go to
6 page two, does his question say, "Were you
7 unconscious immediately after the accident?" And
8 does it appear that Ms. Bettencourt stated on the
9 day of the accident that she was in fact not
10 unconscious? The very first sheet.

11 A. She does, yes.

12 Q. So the question was: Were you unconscious
13 immediately after the accident, and she checked
14 off "no"; is that correct?

15 A. That's correct.

16 Q. She could have checked off yes. And then the next
17 question would have been, "if yes, how long." And
18 instead that was left blank; is that correct?

19 A. That's correct.

20 Q. So does it appear that Ms. Bettencourt went to the
21 chiropractor the day of the accident and
22 specifically told him or wrote out to him that she
23 suffered no loss of consciousness as a result of
24 this accident?

25 A. That's correct.

1 Q. Going to the next document in that package of
2 documents. Does it appear that she then went to
3 Premier Family Medicine on 9/16/08, and that would
4 be 12 days after the accident. And at that point
5 she stated that the onset of the altered mental
6 status had been acute, meaning immediate; is that
7 correct? It's not over time?

8 A. Yes.

9 Q. She was a restrained driver of her car that was
10 rear-ended at a high rate of speed and she
11 sustained a coup-counter-coup head injury. She
12 has not felt quote, "right," end quote since the
13 MVA of 9/4/08. Is that what she said?

14 A. That's correct.

15 Q. Roughly 12 days after the accident?

16 A. Yes.

17 Q. So when she's giving information to the
18 chiropractor the day of the accident, she's
19 basically saying, I didn't suffer from a loss of
20 consciousness? And she's not described this acute
21 onset of a problem, has she?

22 A. Well, I assume it's acute. I don't know what time
23 of this form, but time of accident was 2:15, I
24 assume in the afternoon. And I would guess this
25 is sometime between 2:15 in the afternoon and five

1 p.m. or something, office hours.

2 Q. It had to be.

3 A. So my assumption of that would be that it's
4 related to the 2:15 accident or acute.

5 Q. But what I'm saying is she's not describing a loss
6 of consciousness during that time frame, is she?

7 A. Correct, at no time am I aware of that she had
8 loss of consciousness.

9 Q. Does it appear if we go to the next document in
10 that set of documents, which would be the
11 Psychological and Training Services, that by the
12 time that Mr. Brabham met her at her attorney's
13 office on 3/10/2009 what she actually said was
14 that she was dazed by the crash. And a witness
15 described her as quote, "coming to" afterwards,
16 suggesting a loss of consciousness?

17 Does there appear to be a rather significant
18 difference between what she's described to the
19 chiropractor on the day of the accident and what
20 she's describing to this gentleman while in her
21 attorney's office?

22 A. Yes.

23 Q. And to make matters even more complicated, does it
24 go on to say that she does not recall many of the
25 details of the crash or the time immediately

1 thereafter?

2 A. Yes.

3 Q. Going to the next document in that stack of
4 documents, which is the Vehicle Accident
5 Information Form.

6 A. Uh-huh.

7 Q. Does it appear that on the day of the accident
8 she's actually filling out this form, and she's
9 saying that the accident took place on Augusta
10 Road?

11 A. Yes.

12 Q. She's saying the accident took place in
13 Greenville, South Carolina?

14 A. Yes.

15 Q. The accident took place at the intersection of
16 West Augusta Place and Augusta?

17 A. Yes.

18 Q. Driving conditions were dry?

19 A. Yes.

20 Q. That she was headed west?

21 A. Yes.

22 Q. That she was stopped?

23 A. Yes.

24 Q. That she was wearing a seat belt?

25 A. Yes, it does.

- 1 Q. That she was wearing a lap and shoulder belt?
- 2 A. It does.
- 3 Q. That her vehicle was equipped with air bags?
- 4 A. Yes.
- 5 Q. But they didn't inflate?
- 6 A. Correct.
- 7 Q. She said she had a head rest down?
- 8 A. Yes.
- 9 Q. And that it was in the mid position?
- 10 A. Uh-huh.
- 11 Q. Said the other car was a Jeep Cherokee?
- 12 A. Yes.
- 13 Q. Which was also headed west?
- 14 A. Yes.
- 15 Q. It asked if her car had impacted with another
- 16 vehicle and she said, "no"?
- 17 A. Correct.
- 18 Q. Asked if the car had impacted with another
- 19 structure and she said, "no"?
- 20 A. Correct.
- 21 Q. Asked if any part of her body struck anything in
- 22 the vehicle and she said, "no"?
- 23 A. Correct.
- 24 Q. At the time of the impact she said she was looking
- 25 straight ahead?

1 A. That's correct.

2 Q. Had both hands on the steering wheel?

3 A. Yes.

4 Q. Foot was on the brake?

5 A. Yeah.

6 Q. And she was surprised by the impact?

7 A. Yes.

8 Q. Indicated that the police came to the scene?

9 A. Yes.

10 Q. That there were witnesses?

11 A. Yes.

12 Q. A police report was filed?

13 A. Yes.

14 Q. So does it appear that she has made contradictory
15 statements about the degree of consciousness or
16 lack thereof that she suffered as a result of this
17 accident and that she's also made contradictory
18 statements about what she could remember or recall
19 about this accident?

20 Because immediately after the accident she has
21 rather significant recollection of what took
22 place, even the direction she was traveling. Yet
23 when she's at Dr. Brabham's office or at the
24 attorney's office with this Brabham gentleman, she
25 said she basically couldn't remember many details

1 of the automobile accident?

2 A. Yes. It seems that the second, or not second, the
3 one with Dr. Brabham is a somewhat different
4 description.

5 Q. So at this point would you agree that we have a
6 lady who has not been accurate with regard to her
7 prior medical history, particularly with regard to
8 prior medical history associated with head
9 injuries?

10 A. Correct.

11 Q. Would you agree that we have a lady who's not been
12 consistent with regard to what happened in this
13 accident insofar as whether she lost consciousness
14 or not and also insofar as whether she could
15 remember the accident or not?

16 A. Correct.

17 Q. And we have two normal MRI's which don't tell us
18 that there's anything structurally wrong with that
19 brain; is that correct?

20 A. That's correct.

21 Q. And if we're having to rely on her memory and/or
22 forthrightness with regard to the deficits or
23 things that she can't do, given these
24 discrepancies, and given the fact that we can't
25 fall back on an MRI, all of those things become

1 suspect?

2 A. I would agree with that.

3 Q. Doctor, I'm now going to show you another stack of
4 documents. And again, please recognize that you
5 have not been given access to these documents
6 prior to your previous testimony and wouldn't have
7 had access to those documents. But does it
8 appear, and we're going back to the chiropractor's
9 documents the date of the accident, that he was
10 keenly interested in wanting to know if any part
11 of her body had struck anything in the vehicle?

12

13 And on 9/4/08, Ms. Bettencourt had said, "no, my
14 body struck nothing inside that vehicle?"

15 A. That's correct.

16 Q. And going to the second page of that document.
17 When she comes to see you on 10/22/08, would you
18 agree that the story had changed a bit? She said
19 she was restrained, did not strike her face but
20 recalls hitting the back of her head against the
21 seat?

22 A. That's correct.

23 Q. Would you agree that there's a difference between
24 nothing striking anything in the vehicle and her
25 now telling you that her head hit against the back

1 of the seat?

2 A. Yes.

3 Q. Because in one case it's no striking and in the
4 other case it's head striking the back of the
5 seat?

6 A. Well, I guess what I was wondering, she'd be the
7 only one, or he could answer that, the steering
8 wheel is clearly a discrepancy; where she told Dr.
9 Brabham she hit the steering wheel.

10 Q. We haven't even gotten to that one. I know, that
11 gets to be a massive discrepancy, I recognize
12 that.

13 MR. CHILDS:

14 Objection. Move to strike. That wasn't a
15 question, and that was not a proper comment.

16 EXAMINATION RESUMED BY MR. MCGARR:

17 Q. Let me do this: To tie that question in, does
18 there appear to be a discrepancy between not
19 hitting anything on 9/4/08 and telling you she hit
20 the back of her head on 10/22/08? A slight
21 discrepancy?

22 A. I would view that as a slight discrepancy.
23 Because I'm not sure if I was filling out the
24 form, I mean --

25 Q. I understand.

1 A. You're obviously touching the seat when you're
2 sitting in it. So striking it, I'm not sure.

3 Q. However, by the time we get to March 10, 2009, and
4 she's seeing Dr. Brabham, or actually he's seeing
5 her at her attorney's office, would you agree that
6 the story had now changed to say this: "In that
7 crash she first struck her forehead on the
8 steering wheel and the driver side windshield and
9 then on rebound also struck the rear of her head
10 on the headrest."

11 Does there appear to be a striking dissimilarity
12 between what she told the chiropractor the day of
13 the accident and what she's telling this Mr.
14 Brabham while in her attorney's office?

15 A. Yes, there is.

16 Q. Is that also a disparity the likes of which we've
17 seen with regard to her loss of consciousness as
18 well as her ability to recall, that we discussed
19 earlier?

20 A. Yes.

21 Q. Is that also a disparity between her having four
22 concussion and her never telling anyone of those
23 four concussions?

24 A. Yes.

25 Q. When you take into account all those disparities,

1 does it make it even that much more difficult to
2 tie an injury to this 9/4/08 automobile accident
3 as opposed to going, We just don't know what we
4 think anymore? Because we're basically having to
5 take her word for what the disparities are.

6 MR. CHILDS:

7 Object to the form of the question.

8 EXAMINATION RESUMED BY MR. MCGARR:

9 Q. At this stage, given the fact that the MRI's are
10 clean, given the fact that your neurologic testing
11 comes back clean, we're forced to rely on her
12 being forthright about her deficits. And so far,
13 we've seen a lot of discrepancies with regard to
14 that ability to be forthright.

15 MR. CHILDS:

16 Objection, that's not a question; that was a
17 statement.

18 EXAMINATION RESUMED BY MR. MCGARR:

19 Q. Would you agree that's what we're seeing?

20 A. The discrepancies, the fact that it has become
21 bigger, more severe in her descriptions, which
22 suggest a potential for embellishment. The
23 neuropsychological testing is totally dependent on
24 the assumption the patient's giving full effort
25 and reliability. So the interpretation by the

1 psychologist, if I could speak for them, but I
2 think is totally flavored. So if I ask you a
3 question in school and you say, I don't know; we
4 assume you don't know. If you didn't want to tell
5 us the answer, you'd still go, I don't know.
6 That's the caveat in psychological testing is the
7 assumption is that it's a full and legitimate
8 effort. The psychologists try and sort that out
9 with various techniques.

10 But the assumption in all that is that the history
11 and effort is accurate and legitimate. The
12 question of whether that's the case, that would
13 suggest potential for embellishment which would
14 then make the interpretation of that more
15 difficult for the psychologist I would think.

16 Q. And more difficult for you?

17 A. Well, I'm basing it on the psychologist, so yes.

18 Q. So for you to be able to come up with a yes, this
19 accident caused a problem, given this type of
20 embellishment, becomes virtually impossible:

21 First, because of the four prior concussions, and
22 second, because of the embellishment?

23 A. Much more subjective.

24 Q. And if we go to another issue, the concept of
25 secondary gain. Mommy, my throat hurts. It

1 really doesn't, and I learned this early. Mommy,
2 my throat hurts because I don't want to go to
3 school. You guys learned that in school. Because
4 if a kid comes to you with a throat problem, you
5 might want to check into why that person is
6 claiming that problem; is that correct?

7 A. Yes.

8 Q. And that's, at least in my terms, that's called
9 secondary gain. Secondary gain becomes a big
10 player when litigation is involved; is that
11 correct?

12 A. Yes.

13 Q. And if you have a situation where the secondary
14 gain could be the receipt of money, then you could
15 get people embellishing their symptoms in the
16 hopes of receiving money; is that correct?

17 A. Secondary gain could be monetary, it could be
18 attention, it could be --

19 Q. Don't want to go to school? Want money? Want
20 attention? But all of those things come into
21 play; is that correct?

22 A. Yes.

23 Q. In this case would you agree that the last time
24 that Ms. Bettencourt came to see you in the year
25 2009 was October 29, 2009?

1 A. I believe that's correct.

2 Q. The next time she came to see you would have been
3 October 1, 2010; is that correct? In fact, that
4 was her last visit to you?

5 A. I believe that's correct.

6 Q. And on October 1, 2010, she was telling you she
7 was having difficulty with balance, frequent and
8 recurring headaches, she was having confusion and
9 loss of memory; is that correct? Second page.

10 A. Yes.

11 Q. Again, those are things that you have to take her
12 word for; is that correct?

13 A. That's correct.

14 Q. Because, again, you'd been faced with two normal
15 MRI's? And even on this 10/1/2010 report, her
16 neurologic exam came back perfectly normal?

17 A. That's correct.

18 Q. So she comes to see you on 10/1/2010 telling you
19 that she's having memory deficits and confusion
20 deficits; is that correct?

21 A. Yes.

22 Q. And, again, that's something she's having to tell
23 you, and you're having to take her for her word;
24 is that correct?

25 A. Yes.

1 Q. Hadn't seen you for roughly a year prior to that
2 time; is that also correct?

3 A. Correct.

4 Q. Does it strike you as odd that someone who's
5 coming to see you on October 1, 2010, in the
6 morning, if you'll go to the next page, would then
7 engage in a deposition where we're going through
8 all this paperwork and shifting back and forth at
9 2:30 p.m. on the same day?

10 A. Yes.

11 Q. And yet she comes to see you in the morning. And
12 actually that was the reason, because of her
13 subjective complaints. I've still got these
14 problems, Doc. That's why you referred her out to
15 Roger Peace; is that correct?

16 A. Yes.

17 Q. And yet she comes to see me after she comes to see
18 you and goes through a deposition that begins at
19 2:33 and ends at 4:39. Does that strike you as
20 extremely odd?

21 A. Quite unusual.

22 Q. Would it strike you as extremely odd that she's
23 done as well or better in her deposition than
24 you've done in yours only because she's had to do
25 a lot of adding and subtracting in her deposition

1 when she was doing hers?

2 MR. CHILDS:

3 Objection to the foundation of the question and
4 relevancy of that question.

5 MR. MCGARR:

6 We'll let the jury review her deposition as
7 opposed to have the Doctor read it.

8 EXAMINATION RESUMED BY MR. MCGARR:

9 Q. But let me tell you that she did as well as you've
10 done in the deposition, and maybe better.

11 MR. CHILDS:

12 Objection. That is calling for speculation and it
13 has no relevancy to these proceedings. That's a
14 question of you stating your opinion about how a
15 person did on a deposition.

16 EXAMINATION RESUMED BY MR. MCGARR:

17 Q. Let me withdraw that. Doctor, if it turns out
18 when the jury sees her deposition that she's done
19 as well as you trying to handle all these
20 documents, trying to talk with a court reporter,
21 trying to talk with this strange lawyer, and
22 having to add and subtract from various documents,
23 and look at photographs and figure out what's pre
24 and what's post, if that proves accurate, would it
25 strike you as extremely strange that her

1 presentation to you in the morning was one thing
2 and her presentation in that deposition was
3 another?

4 A. Yes.

5 Q. Would it strike you --

6 A. I'm wondering, are you saying I'm doing badly?

7 Q. No, no.

8 A. You're hurting my feelings somewhat.

9 Q. What I mean, Doctor --

10 A. I thought I was doing okay, but.

11 Q. You're doing wonderful. But I gave her,
12 unfortunately, very awkward exhibits that were
13 very big; and then she was having to transfer
14 numbers from one place to the other.

15 MR. CHILDS:

16 Your exhibits are highlighted.

17 EXAMINATION RESUMED BY MR. MCGARR:

18 Q. Your exhibits are all the same size. So your
19 deposition is a good deposition, but it's not as
20 hard as the other.

21 A. I appreciate you helping me, yes. I'll take all
22 the help I can get.

23 Q. Well, that's what I mean by that. But my point
24 being, not only would that be surprising, would
25 that be evidence that maybe the deficits she's

1 given you and these other people are being given
2 because of the potential for secondary gain?
3 could that be one of the things that's taking
4 place that makes this feel so odd?

5 A. Could be.

6 Q. Doctor, you've had access to this, but I don't
7 know exactly how I got access to it. But does it
8 appear that on April 9, 2009, that it was
9 represented to you that Ms. Bettencourt was
10 knocked out? And this will be in the first
11 paragraph last sentence. That Ms. Bettencourt was
12 knocked out --

13 MR. CHILDS:

14 I'd object to that document. It hasn't been
15 disclosed in discovery.

16 MR. MCGARR:

17 You gave it to me. This document is from Robert
18 Ray, her attorney.

19 MR. CHILDS:

20 I understand that. It's attorney-client privilege
21 as well.

22 MR. MCGARR:

23 Okay, the privilege was lost when he mailed the
24 letter to Dr. Kistler, the privilege was further
25 lost when the records came from Dr. Kistler's

1 office to me. Those records were then forwarded
2 to you.

3 MR. CHILDS:

4 I understand that, but I'll object to the document
5 based on attorney-client privilege and also on the
6 fact it has not been disclosed in discovery. Did
7 you give it to me?

8 MR. MCGARR:

9 Yes.

10 MR. CHILDS:

11 I haven't seen it.

12 MR. MCGARR:

13 It's sitting in his records.

14 MR. CHILDS:

15 Did you give it to me?

16 MR. MCGARR:

17 Yes, when you got the medical records, you got the
18 same records I got.

19 MR. CHILDS:

20 Okay. I still object.

21 EXAMINATION RESUMED BY MR. MCGARR:

22 Q. Nonetheless, Doctor, does it appear that she was
23 described to you on April 9, 2009, as being
24 knocked out for approximately four to five
25 minutes?

1 A. That's what this states, yes.

2 Q. Does it appear that in the third paragraph that
3 immediately after the accident her neck was
4 swollen to almost three times its normal size? Or
5 at least was that what was represented to you?

6 A. It's what this states, yes.

7 Q. Does it appear that her counsel sent her to
8 Premier Family Practice, that first visit we
9 discussed earlier?

10 A. Yes.

11 Q. And does it appear that then her counsel sent her
12 to Dr. Brabham?

13 MR. CHILDS:

14 That's not what the letter says.

15 MR. MCGARR:

16 Okay, let me read it.

17 MR. CHILDS:

18 well, I'm going to object to that, and I'm going
19 to object to you misrepresenting what the letter
20 says, in particular saying her counsel sent her to
21 Premier Family Practice.

22 MR. MCGARR:

23 okay, then I'm going to read it so that no one can
24 be --

25 MR. CHILDS:

1 But without waiving my objection --

2 MR. MCGARR:

3 I'll just read it word for word, because I don't
4 want anybody to get confused.

5 EXAMINATION RESUMED BY MR. MCGARR:

6 Q. Was the letter sent to you and did it say:
7 "Immediately after the automobile accident her
8 neck was swollen to almost three times its normal
9 size. I had her see her family practice, Premier
10 Family Practice, where she was diagnosed with a
11 coup-counter-coup. For the following three months
12 Ms. Bettencourt did a very good job of covering up
13 the extent of her brain injury. When I realized
14 the extent of the injury, I had her see Dr.
15 Brabham, who had access to Dr. Jones' report." Is
16 that what was represented to you?

17 A. It's what it states, yes.

18 Q. And just to make sure we're clear, does it also
19 state in that first paragraph the witness stated
20 that Ms. Bettencourt came to approximately four to
21 five minutes after the collision?

22 A. It states that.

23 Q. So was it represented to you that she was knocked
24 out for four to five minutes?

25 A. That's how I would take that, yes.

1 Q. Was it represented to you that her neck was three
2 times its normal size after the accident?

3 A. It's what it states.

4 Q. Does it represent to you that she was sent to
5 Premier Family Practice by her counsel?

6 A. It does.

7 Q. Does it represent to you that she was sent to Dr.
8 Brabham by her counsel?

9 A. It does.

10 Q. Does it represent to you that prior to the
11 accident Ms. Bettencourt was the ultimate
12 multitasking quote, "soccer mom"?

13 A. It does.

14 Q. So your state of mind when you've been given this
15 prior testimony was that Ms. Bettencourt was in a
16 severe automobile accident that made her neck
17 swell up to three times its normal size and
18 knocked her out for four minutes; is that correct?

19 A. Well, when I was seeing her initially I didn't
20 have this letter, so that was not my assumption.

21 Q. But by now you've obviously had the letter; is
22 that correct?

23 A. I have.

24 Q. And you've had it since December of '09; is that
25 correct?

1 A. April.

2 Q. April of '09. So in part when you were giving
3 your opinions as to whether she had any problems
4 to begin with and what may have caused them, this
5 would have been something else that you would have
6 been taking into consideration on some level?

7 A. That's likely.

8 Q. At this point, Doctor, given what you now know,
9 can you state to a reasonable degree of medical
10 certainty that the mild deficits that she's
11 reporting were to a reasonable degree of medical
12 certainty related to this automobile accident as
13 opposed to being related to either prior
14 concussions or secondary gain?

15 A. I wouldn't be able to differentiate those
16 possibilities, no.

17 Q. Thank you, Doctor.

18 REEXAMINATION BY MR. CHILDS:

19 Q. Dr. Kistler, you were asked a number of questions
20 about documents that were related to her medical
21 history. One of which is the most important one,
22 which I have seen, and that is a reference to the
23 Northpointe Chiropractic Center records of July
24 18, 2002. Which is the only reference I've ever
25 seen in her medical records of any indications of

1 any prior concussions.

2 MR. MCGARR:

3 Let me first object to the question only insofar
4 as you had a copy of that handed to you at the
5 deposition of Dr. Shride, which was a week ago.

6 MR. CHILDS:

7 Right. It's the only record I've seen in her
8 medical records in reference to any discussion.

9 MR. MCGARR:

10 Oh, okay, I thought you'd said you'd never seen
11 it, okay.

12 EXAMINATION RESUMED BY MR. CHILDS:

13 Q. And you're certainly aware of the fact that in
14 discovery, both sides get to request medical
15 records of all the doctors that have ever treated
16 a person who's been injured in an accident?
17 You're familiar with that? You've received a
18 number of subpoenas and been questioned a lot over
19 the years?

20 A. I don't know the legal aspect, but I think that
21 sounds correct.

22 Q. Understanding that, and of course understanding
23 the fact that they got to question Ms. Bettencourt
24 at length about her medical history, about her
25 prior doctors and prior treatment that she's ever

1 had in her life, would the fact that there is no
2 medical records known to God that indicate that
3 she was ever treated for anything like a
4 concussion, would that affect your response to Mr.
5 McGarr's questions about the previous alleged
6 history of concussions?

7 A. Well, I'm not sure I quite understand. This
8 record from Northpointe Chiropractic doesn't look
9 like her handwriting.

10 Q. Right.

11 A. I don't know the source of that information. It
12 would raise the question in my mind, is that true,
13 not true; where did the information come from.
14 And I can't answer that from that form.

15 Q. And of course the other side to this case has a
16 right to question her about who's ever treated her
17 in her life; and can certainly ask for those
18 records anytime they would like.

19 And nobody has seen any records where she's been
20 treated for a broken jaw or concussions or
21 anything of that nature. Would that affect your
22 response to his questions as far as an alleged
23 prior four concussions?

24 A. Again, what I would say to that is I would want to
25 know if that's true or not true.

1 Q. This indicates that her last treatment was 18
2 years ago. And she was 34 when this form was
3 filled out (indicating).

4 A. 2002 would be -- how many years ago?

5 Q. It'd be nine years ago I think.

6 A. To 2008 would be six years.

7 Q. Six years. And then down here, it says, "last
8 adjustment 18 years in Fresno, California." He
9 didn't highlight that on the sheet he gave you,
10 did he?

11 A. I'm not sure where you're talking about. Last
12 adjustment, that would be a chiropractor, right?

13 Q. Right.

14 A. Last chiropractic treatment she had was in Fresno.

15 Q. 18 years.

16 A. This is something I can't -- all right.

17 Q. So he didn't highlight that on the sheet that he
18 handed you earlier, did he?

19 A. No.

20 Q. And the whole assumption of these questions he's
21 raised about her supposedly having prior
22 concussions is that there's something else out
23 there that indicates what Chiropractor Shride
24 wrote is actually correct, isn't it? Wouldn't you
25 expect there to be some medical records somewhere

1 out there known to God that indicates that she'd
2 had a prior concussion?

3 A. I would assume that somebody, the word
4 "concussion" came from somewhere, either from the
5 patient or the patient had been told; that would
6 be my assumption. Whether it was a doctor or
7 next-door neighbor or riding instructor, I would
8 have no idea from that. I guess my question would
9 be where did the information come from. And the
10 patient or the chiropractor would be the source.
11 If there's a medical record pertinent to that, I
12 don't know.

13 Q. It looks like a broken jaw. And if I represent to
14 you that there's no medical records indicating
15 that she's ever had a broken jaw, would that cause
16 you to question what this chiropractor wrote on
17 this sheet?

18 A. Question the same thing. If she told him that,
19 then of course why did she tell him that. I can't
20 make a judgement about why he would -- I assume,
21 it would be hard for me to imagine that he would
22 just come up with fractured jaw out of the blue;
23 but I suppose that's possible.

24 Q. We don't know. So if your opinion were to be
25 affected by these questions Mr. McGarr has posed,

1 wouldn't you expect to have something more
2 substantial than a Patient Consultation Sheet of a
3 chiropractor to cause you to question Ms.
4 Bettencourt?

5 A. Of the information I've heard, the chiropractor
6 note from Northpointe would be the least concern.
7 The fact that the history is significantly
8 different from what she told me and what she
9 related subsequently and what's related I mean
10 after the accident, that would concern me.

11 Q. Let's talk about that. Ms. Bettencourt was seen
12 by the chiropractor on the day of the accident.

13 A. I believe that's right.

14 Q. Is it quite typical of a postconcussive syndrome
15 that a person not have a full grasp of their
16 faculties after a concussion?

17 A. Well, a person can be quite confused following a
18 concussion, that would be an acute concussion,
19 that's correct.

20 Q. So typical of a concussion would be some confusion
21 about what's going on, the environment around you,
22 and actually what happened in the accident?

23 A. One could certainly be confused immediately
24 afterwards.

25 Q. And matter of fact, isn't it quite typical of

1 postconcussive syndrome that your recollection of
2 the actual accident itself may not be so clear for
3 a period of time after the accident?

4 A. Typically recollection, if you have amnesia,
5 before the accident it doesn't necessarily recur
6 or fill in. I guess, if I'm understanding your
7 question. But that's not the discrepancy that
8 worries me. The fact that one's confused,
9 typically you would not fill in details to the
10 extent of traveling west bound and so forth. And
11 then the time interval from that report to when I
12 saw her was a significant period of time. So
13 whatever improvement one had and then to have a
14 completely different story a year later, I find
15 that --

16 Q. You mean by the striking the head?

17 A. Striking the head and the loss of consciousness.
18 Because I distinctly asked her did she strike
19 anything, and her answer to me, you know, after
20 that, was no. And that's --

21 Q. Do you have any indication that she's ever told
22 anybody she lost consciousness, from these records
23 that Mr. McGarr showed you?

24 A. Well --

25 Q. If you look at the highlighted letter that he

1 tried to bring out to you, the little highlighted
2 section he has got there says, "The witness stated
3 Ms. Bettencourt came to approximately four to five
4 minutes after the collision." It doesn't indicate
5 that Ms. Bettencourt is relaying that information.

6 A. Well, Dr. Brabham's note indicates that the
7 information it says is from the witness. Now, my
8 assumption is the witness was not here; so I don't
9 know where he got that information.

10 Q. We have an affidavit from a witness that was at
11 the scene.

12 A. I don't have access to that. So it's from that,
13 not from --

14 Q. Yes, from that, not from Ms. Bettencourt.

15 A. Okay. Again, that would be important information
16 in my mind.

17 Q. Right. But that's not an indication Ms.
18 Bettencourt was embellishing the accident, that's
19 an indication that another witness observed it
20 differently; isn't that correct?

21 A. A loss of consciousness, you're not a good
22 observer while you're unconscious. So if somebody
23 noticed that the confusion. Now, if you were
24 unconscious, you might not have recollection of
25 the impact or details. I will say within my

1 experience it'd be unusual to have great detail as
2 to type of vehicle people are driving, the
3 direction they're driving, and the wherewithal to
4 go immediately thereafter for an appointment is
5 not common in my experience.

6 Q. Right. But you don't know who took her there and
7 who helped her fill out the form?

8 A. My recollection she drove herself there I believe
9 is what I was told, but I could be wrong.

10 Q. So who told you that?

11 A. I believe she did.

12 Q. To the chiropractor?

13 A. That was my understanding.

14 Q. Could that information that was provided on the
15 chiropractor form had been provided to her by
16 somebody else?

17 A. Could it have been?

18 Q. Yes.

19 A. Sure, could have been.

20 Q. The providing details about where she was coming
21 to and things like that certainly could have been
22 provided by someone else as far as what direction
23 she was traveling and things like that?

24 A. Could have been.

25 Q. It would be fairly obvious to her after the

1 accident which direction she was going because she
2 left the scene and I think took her children,
3 picked her children up from school, took them
4 somewhere?

5 A. I believe that's what I was told, yes.

6 Q. So the actual question about the witness, about
7 her trying to allegedly embellish the fact of
8 whether or not she'd lost consciousness, there's
9 no indication from any of these records that she
10 has told anybody that she lost consciousness?

11 A. Well, I don't know specifically where that
12 information, whether it was from a witness or from
13 Ms. Bettencourt; I'm somewhat confused on where
14 that history came from. But I assume it's in
15 conjunction with the history of striking her head
16 on the windshield and the steering wheel, which
17 the witness would not be a source of that.

18 Q. Right.

19 A. That would have to come from the person in the
20 car, I would think. So my assumption was that
21 those historical facts were somehow from the same
22 source; but I could be making that assumption
23 incorrectly. But that's the other information
24 that seems different from what I have seen.

25 Q. Right. And of course the purpose of that cross

1 examination is to make you question your opinion
2 as to whether or not Ms. Bettencourt suffered
3 these injuries in this accident. And there's
4 always some discrepancies in medical records for
5 patients who have been treated by a number of
6 different doctors; isn't that true?

7 A. Discrepancy in?

8 Q. Some doctors may not ask all the questions that
9 you ask. And some may not have a history of prior
10 medical difficulties the same as another doctor.
11 All this is an effort to collect information. It
12 is not a perfect system. It's based upon asking
13 questions and getting answers. If you don't ask
14 the question, you don't get the answer.

15 A. To some degree that's true. There's some details
16 that would probably be irrelevant, and if somebody
17 omitted I wouldn't consider that. The details
18 that are strictly related to the injury or disease
19 would be --

20 Q. And then you have patients who fill out
21 questionnaires when they come to the office, and
22 they fill those out right before they go and see
23 the doctor. And you expect them to fill those out
24 as best they can when they come in to see you.
25 But some of that information may be different than

1 they give another doctor just for the reason they
2 didn't recall to put it down at the time.

3 A. That can happen.

4 Q. If you had a number of witnesses who would come
5 forth and testify about Ms. Bettencourt being the
6 ultimate multitasking soccer mom before this
7 accident, running a home design company, and being
8 precipitously changed following the day of this
9 accident as far as her cognitive abilities, her
10 abilities to multitask, would that reinforce your
11 opinion stated previously that those problems were
12 caused by this accident?

13 A. Again, that would, the baseline prior to the
14 accident, that would suggest that she was
15 functioning at a high level. The most telling
16 thing in all this, because her neurologic exams
17 have been fairly unremarkable, imaging studies are
18 unremarkable, she's had three different
19 neuropsychological tests that are somewhat
20 variable in improving, suggesting improvement for
21 whatever reason. The question of the abnormal
22 one, was it abnormal because of embellishment or
23 injury would be flavored by, again, you know, the
24 question of is that a full honest effort. And
25 that would be something that I guess the

1 information that the psychologist who interprets
2 it based on information, if that information's not
3 correct it changes the interpretation.

4 The question that seems to be raised is this
5 information correct, incorrect. If it's
6 incorrect, was it just an oversight, or was it
7 intentional? And I'm not sure I can answer that.

8

9 I do find it unusual for a patient to sit here
10 discussing a medical-legal case and not tell me
11 they have a deposition scheduled several hours
12 later. That reeks of, what's the word?

13 Incomplete disclosure.

14 Q. Why would it be important to know that they're
15 having a deposition?

16 A. Well, then my question would be why after a year
17 you show up on my doorstep; that's unusual. I
18 don't schedule people for a year follow-up for
19 postconcussive things. So for somebody to show up
20 on my doorstep a year later with a deposition
21 several hours later, then my question would be why
22 are you here; To what purpose is this. And I
23 still have an uneasy feeling about that fact.

24 Q. But, I mean, what would that have to do with
25 anything, really? She could have seen you a week

1 before or a week after. What would that matter?

2 A. It'd be the same question: Are you here to
3 embellish a case, or are you here for some
4 question. Because that's not -- like I said, I
5 would think in a medical-legal case, which this
6 obviously is, it's a little different. I'm not
7 treating her, mind you. I haven't treated her for
8 two years.

9 So then the question's, why are you here. Same
10 thing with getting a third neuropsychological test
11 that I didn't order. I'm the treating doctor. It
12 was ordered for medical-legal purposes, not for
13 medical purposes.

14 Q. You ordered the Roger C. Peace evaluation?

15 A. Right. Dr. Brabham examination I didn't order.

16 Q. Right. You ordered the Dr. Jones and the Roger C.
17 Peace evaluation after you saw her in 2010?

18 A. I ordered Dr. Jones I think prior to that.

19 Q. That's correct.

20 A. Correct. So all that makes me a little leery of,
21 you know, what's the underlying thing here.

22 Having said that, I have no reason to think that
23 she's telling me, when she tells me something,
24 yes, I go based on that.

25 Q. And you found her to be credible and believable

1 with you?

2 A. Yes.

3 Q. No indications of malingering or embellishment of
4 her symptoms to you based on your examination?

5 A. Not prior to. Like I said, this information about
6 the deposition, so forth, I find that disturbing.

7 Q. But there's certain things that you look for in
8 patients relative to this particular syndrome that
9 a patient doesn't know you're looking for?

10 A. I'm not sure I understand that.

11 Q. You know, the neuropsychological evaluations asks
12 questions to detect whether people are
13 embellishing things.

14 A. Correct.

15 Q. And there's certain symptoms that people don't
16 know about when you examine them that you look
17 for?

18 A. Yes, I think that's probably true.

19 Q. And most particularly really is that loss of smell
20 issue; that she suffered a loss of smell. And
21 that's a consistent issue with postconcussive
22 syndrome; isn't that correct?

23 A. Also smell, as I said before, could be from a head
24 injury.

25 Q. Right. And although that's a subjective

1 complaint, it's not a kind of a common sense
2 complaint that people would have about a head
3 injury? If they were embellishing it, they
4 wouldn't say, I lost smell? They'd say, My head
5 hurts?

6 A. That's true, the average person would not.

7 VIDEOGRAPHER:

8 I need to go off the record a second to change
9 tapes. We're going off the record at camera time
10 18:19.

11 VIDEOGRAPHER:

12 We're going back on the record at camera time
13 18:20.

14 EXAMINATION RESUMED BY MR. CHILDS:

15 Q. So, Dr. Kistler, you would also refer basically to
16 the neuropsychologist on a lot of the issues about
17 the cognitive impairments of Ms. Bettencourt and
18 issues related to whether or not she's
19 embellishing her injury and that kind of thing?

20 A. Yes.

21 Q. Please answer any more questions Mr. McGarr might
22 have.

23 REEXAMINATION BY MR. MCGARR:

24 Q. The one thing that she had convinced you of was
25 that she probably would not regain a sense of

1 smell; is that correct?

2 A. The assumption is if you've had structural injury

3 --

4 Q. Oh, I understand.

5 A. -- and it's persistent, that it would not improve.

6 Q. Oh, Doctor, if I've got a head injury and all the
7 sudden I lost my sense of smell, and it doesn't
8 come back in a year, I know it's gone.

9 MR. CHILDS:

10 Objection. That was not a question.

11 EXAMINATION RESUMED BY MR. MCGARR:

12 Q. Am I correct from the literature I've read that if
13 I've got a head injury and I lose my sense of
14 smell, and it doesn't come back within a year,
15 that nerve's gone and I won't get it back?

16 A. I think that's likely.

17 Q. It's the more likely result than me getting
18 something back?

19 A. Correct.

20 Q. And she by virtue of telling you that she had lost
21 a sense of smell, an unusual type of complaint,
22 made you think she had had a head injury; is that
23 correct?

24 A. It would be compatible with that.

25 Q. It would be compatible?

1 A. Yes.

2 Q. Let me show you her actual deposition. I ask her
3 on page 33, and just follow me, this is 33 and
4 these will be the lines. I ask her on page 33
5 line 6, "How are your concussion syndrome or
6 symptoms doing now?" And her answer on line 8 was,
7 "they're the same." And I asked on line nine,
8 "Still a problem?" On line ten she answered,
9 "correct." On line 11, I said "Tell me what those
10 concussion symptoms are." Her response beginning
11 on line 12 was, "Just inability to focus. I can't
12 multitask at all. I can really only just focus on
13 one simple thing. If I'm bombarded with multiple
14 things like phone calls and people talking to me,
15 I get very confused and stressed out and I can't
16 complete sentences. Words are constantly missing
17 that were on the tip of my tongue, as they say."

18

19 And I asked her, "Can you think of anything else
20 that those symptoms create?" She answered, "I
21 don't know what your question means." I then
22 reasked, I said, "I mean, I understand the
23 concussion has created an inability to focus, your
24 inability to multitask, confusion, stress, and an
25 inability to complete sentences. Can you think of

1 anything else?" And on page 34 line one, she said,
2 "I cannot."

3 My question after hearing that, Doctor, is this:
4 If someone has lost something as important as the
5 sense of smell, and they're honest about that
6 loss, wouldn't you think it would appear in the
7 deposition that took place just a few hours after
8 you last saw her?

9 A. Sense of smell is not something that people
10 complain about a lot, but people do complain of
11 it. I would have to go back and see if it was a
12 big complaint or just an adjunct complaint. I'm
13 not sure I would make too much out of that
14 omission, personally, if it's in the context she's
15 got lots of things bother her.
16 I think one would probably relate the thing that
17 bothers you the most. When she saw me, she said
18 the thing that was bothering her the most was her
19 sense of smell, but I don't know that that was
20 when I saw her earlier that day.

21 Q. What I'm saying is, if you'll go back to the
22 10/29/09 visit that you had with her.

23 A. Uh-huh, yes.

24 Q. Would you agree at that point she was still
25 telling you that, "I don't have a sense of smell,

1 I've lost one of my five senses"?

2 A. Correct.

3 Q. And you had determined at that point that that
4 sense of smell is not going to come back?

5 A. Correct.

6 Q. Wouldn't you think if you're in litigation and
7 you're talking to me and you've lost one of your
8 five senses of smell, and she is a cook and she
9 prides herself on cooking, that that would be
10 something she would have told me if that sense of
11 smell was truly lost?

12 A. I don't have a medical opinion on that.

13 Q. Would you agree that chiropractors should not be
14 treating people for concussions?

15 A. Correct.

16 Q. So when I didn't highlight the fact --

17 MR. CHILDS:

18 That's not proper recross.

19 MR. MCGARR:

20 Watch this.

21 EXAMINATION RESUMED BY MR. MCGARR:

22 Q. When I didn't highlight the fact that she'd been
23 adjusted by a chiropractor 18 years prior to
24 seeing the chiropractor in Greenville, that has no
25 relevance, and does not in any way, shape or form

1 tie in when she had those four prior concussions,
2 does it?

3 A. I don't think it has anything to do with it, no.

4 Q. No. And if I told you that Dr. Shride under oath
5 a week ago or less told us that Ms. Bettencourt
6 unequivocally said to him that she had had four
7 prior concussions, would that be important to your
8 discussion?

9 My point being, you're going, where did that
10 information come from. It came from chiropractor
11 Shride who said unequivocally, Deena Bettencourt
12 told me the first time I met her that she had
13 already suffered from four prior concussions.

14 MR. CHILDS:

15 I object because I don't think that was his
16 testimony. And I think your characterization of
17 it is improper. I move to strike the question.

18 WITNESS:

19 I don't know who Dr. Shride is. There's two
20 chiropractic reports.

21 EXAMINATION RESUMED BY MR. MCGARR:

22 Q. This is Dr. Shride.

23 A. Both of those are from the same office?

24 Q. Yes, sir.

25 A. So Northpointe Chiropractic and this other one

1 that was the day of the accident are from the same
2 office; is that correct?

3 Q. Same chiropractor.

4 A. Okay, I didn't know that.

5 Q. Let me do it again, and the objection can be
6 noted, and the jury can hear what the chiropractor
7 had to say. The chiropractor said that Ms.
8 Bettencourt was the one that told him that she had
9 suffered from four separate and distinct
10 concussions; and he told us that under oath.

11 MR. CHILDS:

12 Objection. Because, again, that's not what he
13 said.

14 EXAMINATION RESUMED BY MR. MCGARR:

15 Q. So does that clarify where that came from?

16 A. This looks like somebody else's handwriting,
17 either the chiropractor's or assistant. And if he
18 said that's where it came from, then I would --

19 Q. And the chiropractor actually told us --

20 A. -- have no reason to believe otherwise.

21 Q. And the chiropractor actually told us under oath
22 that that was his handwriting; that he wrote down
23 she had four concussions in his own handwriting
24 because she had told it to him.

25 A. I'll accept that as truthful unless I had some

1 reason to think otherwise.

2 Q. So in that case does it appear that your patient
3 herself informed her medical provider of the fact
4 that she'd had four prior concussions?

5 A. If he said it came from her I would assume it came
6 from her.

7 Q. I mean, if I walk in your office, and I'm coming
8 in with a neurologic problem, what's the chance of
9 me fibbing to you about talking about ingrown
10 toenails?

11 MR. CHILDS:

12 Object to the form and relevancy of the question.

13 MR. MCGARR:

14 Well, because this is a chiropractor and she's
15 telling him about concussions.

16 MR. CHILDS:

17 I don't even think that's even --

18 MR. MCGARR:

19 Thank you for your objection.

20 EXAMINATION RESUMED BY MR. MCGARR:

21 Q. Doctor, you can answer.

22 A. Restate the question, if you will.

23 Q. The question is simple: There's no reason for him
24 to just make up the fact that a patient is talking
25 about prior concussions, is there?

1 MR. CHILDS:

2 Objection. You're asking him to speculate about
3 why he --

4 EXAMINATION RESUMED BY MR. MCGARR:

5 Q. I'll withdraw the question. Do you just lie about
6 what your patients tell you, Doc? I mean, do you
7 just make up stories about their history?

8 A. No.

9 Q. Have you ever thought about doing so?

10 A. No.

11 Q. Because there's no benefit to you, is there?

12 A. No.

13 Q. Would you agree that one of the other problems
14 that you've had is by implication Ms. Bettencourt
15 saying she can't remember anything about the
16 accident because she was knocked out as a result?

17 A. Was that a question?

18 Q. Yes, sir. That was one of the problems that
19 you're having with whether this accident caused
20 her problem?

21 A. Well, the discrepancy that I can't quite put
22 together is was she knocked out or wasn't she;
23 where did that information come from? Because
24 I've got two different stories there. If she was
25 knocked out, then what would we expect versus --

1 because that's a more severe head injury in terms
2 of behavior, intake forms, etcetera, etcetera.
3 And the subsequent expected course, which could be
4 unusual to go a year and then suddenly have this
5 recall change. That's not what I would expect,
6 no.

7 Q. And you wouldn't expect if someone was suffering
8 from an injury to their head for them to be able
9 to recollect details that only they could know?

10 MR. CHILDS:

11 Objection. That's not proper recross.

12 MR. MCGARR:

13 Thank you, but it's exactly recross.

14 EXAMINATION RESUMED BY MR. MCGARR:

15 Q. And here is why, Doctor, and you'll just have to
16 work with me because it's the only copy I have at
17 this point.

18 A. This is Dr. Shride, is it?

19 Q. Shride. This is what she's filling out.

20 A. Right.

21 Q. No third party can tell her about the seat belt
22 she was wearing, the type of seat belt she was
23 wearing, whether she had a head rest on, where it
24 was situated?

25 MR. CHILDS:

1 That's why it's not proper recross, I didn't ask
2 him anything about that on redirect.

3 EXAMINATION RESUMED BY MR. MCGARR:

4 Q. At the time of the impact, where she was looking,
5 where her hands were on the wheel, where her foot
6 was on the brake. Those things had to come from
7 her, didn't they?

8 A. Well, my assumption is they came from her.
9 Somebody could have been telling her that. My
10 understanding was she was driving her car by
11 herself to the chiropractor. This looks like her
12 handwriting. My experience, if you're confused,
13 and somebody else was seeing you, that typically
14 they would have filled it out themselves. But
15 that's my assumption, I don't know. That would be
16 a question you'd have to ask her or somebody who's
17 given you this information.

18 Q. But quickly, she was in a car by herself, were you
19 aware of that, when the accident took place?

20 A. Yes.

21 Q. She went to the chiropractor on her own; were you
22 aware of that?

23 A. That was my understanding.

24 Q. And if that's the case, this detail had to come
25 from her?

1 MR. CHILDS:

2 Objection. You are covering the same issues you
3 covered on cross examination again on recross,
4 which are not responsive to any question I asked
5 on redirect.

6 EXAMINATION RESUMED BY MR. MCGARR:

7 Q. Okay, with that objection stated, this would have
8 to come from her?

9 A. That would be my assumption.

10 Q. And if that's the case, that's not indicative of a
11 concussion, nor is it indicative of someone being
12 knocked out?

13 MR. CHILDS:

14 Question's been asked and answered and is, again,
15 not proper recross.

16 EXAMINATION RESUMED BY MR. MCGARR:

17 Q. That was my last question. It wouldn't be
18 indicative of either of those things, would it?

19 A. It would be unusual.

20 Q. Thank you, Doctor.

21 MR. CHILDS:

22 That's all the questions I have.

23 VIDEOGRAPHER:

24 This concludes the deposition of Dr. Kent Kistler.
25 We're going off the record at camera time 18:32.

1 (DEPOSITION CONCLUDED AT 6:36 P.M.)

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CERTIFICATE

I, the undersigned, Brandie Williams, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of Kent H. Kistler, M.D., was taken on June 16, 2011;

That the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal.



Brandie Williams

Notary Public for South Carolina

My Commission Expires: 3/14/17

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 2010-CP-23-2204

Deena L. and Scott
Bettencourt,
 Plaintiffs,

vs.

Mary R. Wald,
 Defendant.

ORIGINAL

VIDEOTAPE AND STENOGRAPHIC DEPOSITION
OF MICHAEL C. SHRIDE, D.C.

DATE TAKEN: June 7, 2011
TIME BEGAN: 9:00 A.M.
TIME ENDED: 10:10 A.M.
LOCATION: Childs Law Firm
 2100 Poinsett Highway, Suite D
 Greenville, South Carolina

REPORTED BY: Sheila B. Smith, CVR-CM
 GALLAGHER COURT REPORTING
 864-234-5744

VIDEOGRAPHER: Michael Arrison

APPEARANCES:

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.....On behalf of National Union Fire Insurance
Company

ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to
the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are
waived by the witness and by the parties.

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(Note: Defendant's Exhibit Numbers 1-11 were marked during a break and if referred to, are referred to on the page indicated.)

1 (PLAINTIFFS' EXHIBIT NUMBER 1 MARKED; ATTACHED)

2 MICHAEL C. SHRIDE, D.C., being duly sworn, testified as
3 follows:

4 EXAMINATION BY MR. CHILDS:

5 Q. Could you please state your full name for the
6 record?

7 A. Michael Curtis Shride.

8 Q. My name is Robbie Childs. I think we introduced
9 ourselves earlier, and I want to ask you some
10 questions. First of all, what is your profession?

11 A. Doctor of Chiropractic.

12 Q. And how long have you been a Doctor of
13 Chiropractic?

14 A. Since 1991.

15 Q. Okay. Could you tell the jury about what a Doctor
16 of Chiropractic is?

17 A. A Doctor of Chiropractic is one of the --
18 chiropractic is one of the medical sciences that
19 is -- primarily takes care of musculoskeletal
20 problems.

21 Q. And how does it take care of musculoskeletal
22 problems?

23 A. By primarily taking care of conditions of the
24 spine, something called a vertebral subluxation
25 complex, which is an alignment problem in the

1 spine that can create movement problems in the
2 spine and other issues.

3 Q. And as a chiropractor, as you considered to be a
4 doctor for that purpose, a doctor-chiropractor?

5 A. Yes, sir.

6 Q. Okay. Is it appropriate for me to call you Dr.
7 Shride then?

8 A. Yes, sir.

9 Q. All right. Now, Doctor, you spoke briefly about
10 what your employment is. Could you tell me about
11 what your educational background is?

12 A. Of course graduated from high school. I've got
13 three and a half years of undergraduate work at
14 Marshall University. Then I went to Palmer
15 College of Chiropractic in Davenport, Iowa;
16 started there in 1987, finished in 1991.

17 Q. Okay. And what kind of training did you receive
18 in Davenport, Iowa as far as the chiropractic
19 training?

20 A. The first probably two to three years is standard,
21 very similar to medical school, same thing as --
22 anatomy, physiology, diagnosis, those type of
23 things. And then in the third and fourth years
24 you go into more of the chiropractic treatment
25 part of things. And then the final year you spend

1 in the outpatient clinic taking care of patients.

2 Q. Okay. And do you receive a certificate or a
3 diploma or what from that university?

4 A. Yeah. Yes, as a Doctor of Chiropractic degree.

5 Q. Okay. And then -- and you need to actually look
6 at the camera --

7 A. I'm sorry.

8 Q. -- because it's kind of difficult because we're
9 doing this videotaped.

10 A. Okay. Sorry.

11 Q. But you'll find yourself looking at me when I ask
12 questions.

13 A. Okay.

14 Q. And normally in court, I'm going to be standing
15 over near the jury. But in this case, the jury
16 basically is there for the camera.

17 A. Okay.

18 Q. So a little more detail about this chiropractic
19 science that you practice; what do you initially
20 do in chiropractic in relation to, say, an injured
21 person?

22 A. Well, the first thing we always do is take a
23 history from the patient or get information from
24 the patient. We have forms they fill out,
25 different things. Then we sit down with a patient

1 and do a consultation where we sit down and ask
2 the patient questions about their injury, about
3 their medical history. We get a complete medical
4 history, family history, social history, those
5 type things. And then we -- if we think it's
6 something that we can -- that's appropriate to be
7 taken care of with chiropractic, then we will
8 proceed with an examination of the patient. If
9 we think at that point we can still help the
10 patient, then we might do some special study x-
11 rays, our primary tool, diagnostic tool we use in
12 our office. If at that time we feel there would
13 be a referral, we make that. If not, then we
14 begin treatment with the patient.

15 Q. Okay. Now, are you licensed to practice in the
16 State of South Carolina?

17 A. Yes, sir, I am.

18 Q. And how long have you been licensed to practice in
19 the State of South Carolina?

20 A. Since 1992 I believe.

21 Q. Now -- and in respect to that, have you treated a
22 number of patients in the State of South Carolina?

23 A. Yes, sir.

24 Q. How many patients have you treated?

25 A. Somewhere between 4,500 and 5,000 I believe.

1 Q. Okay. Now, do you receive referrals also from
2 medical doctors, from family physicians --

3 A. Yes, sir.

4 Q. -- and that kind of thing?

5 A. Yes, sir.

6 Q. And do you also refer patients to specialists,
7 medical specialists like neurologists,
8 orthopedists, and those kind of --

9 A. Yes, sir. From time to time, yes.

10 Q. Now, in respect to your licensing through the
11 state of South Carolina, what kind of diagnostic
12 procedures are you allowed to do as far as
13 diagnosing the injury of a particular person --
14 or the problem of a particular person?

15 A. We're -- well, our treatment is confined to
16 treating conditions of the spine, subluxation
17 like we talked about. From a diagnosis
18 standpoint, we can diagnose things related to
19 that. Obviously we're trained to identify, and
20 responsible for identifying any condition. And
21 then of course if you have to make a proper
22 referral, we would do it at that time.

23 Q. All right. And so you deal primarily with the
24 spinal column of individuals that you deal with?

25 A. Correct.

1 Q. And what kind of treatment do you provide to
2 persons that you diagnose with spinal problems?

3 A. Well, chiropractic manipulative therapy, or
4 chiropractic adjustments. We also do -- we have
5 interferential muscle stim, some physical therapy
6 type of modalities, heat, ice. We have -- in my
7 office I have what's called spinal decompression
8 therapy that we use when appropriate. We also
9 have -- we used to have intersegmental traction.
10 I don't have that at this time, but we used to.
11 Massage therapy is also something that we use from
12 time to time.

13 Q. Okay. Now, you talked about subluxation earlier.

14 A. Yes, sir.

15 Q. What is that?

16 A. A subluxation consists of five different
17 components in the spine; begins with misalignment
18 of the spine. And that can lead to movement
19 problems in the spine, which can also cause some
20 type -- or can lead to interference, or pressure
21 on the nervous system; changes in the muscles and
22 how they function; muscle spasms; swelling, or
23 inflammation is one component. And if those exist
24 for a long enough period of time, that can lead to
25 degenerative changes in the spine, osteoarthritis,

1 degenerative disc disease, those type things.

2 Q. Okay. Now, have you been previously qualified as
3 an expert and qualified to testify about the
4 extent of injuries to portions of the human body
5 which your profession relates to, the spine?

6 A. Yes, sir.

7 Q. How many times have you been qualified as an
8 expert?

9 A. Probably five or six.

10 Q. Okay.

11 MR. CHILDS:

12 Gentlemen, I would submit that Dr. Shride is
13 qualified to express his opinion as to the nature
14 and extent of injuries to the portions of the
15 human body to which the chiropractic segment of
16 the medical science relates to, and to also
17 testify about the probable cause of an injury to
18 a person, probable effects, and medical
19 requirements of an injured person.

20 MR. MCGARR:

21 Without objection.

22 EXAMINATION RESUMED BY MR. CHILDS:

23 Q. All right. Doctor, Shride, could you tell us
24 whether or not you've ever treated Deena
25 Bettencourt?

1 A. Yes, sir.

2 Q. Okay. Did you treat Deena Bettencourt as a result
3 of an accident on September 4, 2008?

4 A. Yes, sir.

5 Q. Could you please tell the jury about your initial
6 evaluation of her? First of all, tell us about
7 what circumstances she described to you.

8 A. As far -- as far as the accident goes?

9 Q. Yes, sir.

10 A. She stated that she was on Augusta Road. She was
11 stopped to make a left-hand turn and was hit from
12 behind by a second vehicle. She was seat-belted
13 at the time that she was hit. She said that her
14 head was thrown forward and back, and that she had
15 not been to the emergency room or any other
16 medical providers.

17 Q. Okay. So what day was that that you saw her?

18 A. That was on September 4, 2008.

19 Q. So that was the day of the accident she described?

20 A. Correct.

21 Q. And what did you do? After she described her
22 accident, what kind of evaluation of her did you
23 perform?

24 A. We provided a orthopaedic/neurologic/chiropractic
25 examination of her cervical spine.

1 Q. And what did you find on evaluation of her
2 cervical spine?

3 A. Well, we check active range of motion, which is
4 how far she can move her neck, which seemed to be
5 within normal limits. We also did some
6 orthopaedic tests. We did cervical compression,
7 which was positive on the right-hand side. We did
8 maximum cervical compression, which was positive
9 on both sides.

10 Q. Let me stop you there --

11 A. Yes.

12 Q. -- and ask you to explain that. What are you
13 talking about?

14 A. Basically with cervical compression, we have the
15 patient turn their head to the right and then to
16 the left. We apply pressure down on the top of
17 the head, and if that elicits pain or radicular
18 pain, that is a positive finding for that test,
19 which would indicate -- it can indicate soft
20 tissue injury or involvement, as well as nerve
21 root compression or tension.

22 Q. All right. And what else did you find?

23 A. Maximum cervical compression was positive on both
24 sides. That exam is done with the patient's head
25 turned to the right but also tipped back and down,

1 and apply pressure to the top of the head. And
2 that would indicate some of the same type of
3 injuries.

4 Q. And so is that what you initially diagnosed from
5 your examination?

6 A. Yes. We -- one other test I did was something
7 called Soto-Hall test, which is basically the
8 patient tucks the chin to the chest. And if that
9 elicits pain, that can indicate problems along
10 the posterior part of the spine, the soft tissues,
11 which was positive with her as well.

12 Q. Okay. And so based upon your examination of her,
13 what was your diagnosis?

14 A. The diagnosis that we had with her was
15 subluxation, cervical subluxation, the
16 strain/sprain of the cervical spine, the muscles
17 in the cervical spine, as well as headaches and
18 then the -- what we call an E-code, which is an E-
19 812, which means she was involved in an automobile
20 accident.

21 Q. Okay. Now, when you say cervical subluxation --

22 A. Yes, sir.

23 Q. -- could you describe -- first of all, what do you
24 mean by cervical?

25 A. The neck.

1 Q. Okay. And subluxation again is what?

2 A. A misalignment of the spine which can create
3 movement problems in the spine, muscle changes,
4 swelling, those type things.

5 Q. Okay. And what was the -- and you mentioned
6 headaches in your examination of her?

7 A. Correct.

8 Q. What's the significance of headaches?

9 A. She had -- when she originally came in, when we
10 did her consultation on September 4th, she
11 complained of headaches, what she called frontal
12 headaches, or headaches in the front part of the
13 head.

14 Q. Okay. Is that significant as far as the spine is
15 concerned?

16 A. It can be, yes. Problems with the neck,
17 subluxation to the neck can definitely cause
18 problems with headaches.

19 Q. Okay. And why is that?

20 A. Muscle changes, nerve interference, different --
21 varying degrees, depending on the person. But
22 those injury to the muscles in the neck can
23 definitely trigger headaches.

24 Q. Okay. And what kind of treatment did you provide
25 for Ms. Bettencourt as a result of your diagnosis?

1 A. We did -- in her case we did chiropractic
2 adjustments and initially did some -- what we call
3 interferential muscle stim, which is a type of
4 electric modality where we put four pads on the
5 patient's spine, depending on -- or the muscles
6 around the spine, depending on where we want to
7 apply the therapy. And it causes, or creates a
8 change in the muscles by causing muscle relaxation
9 and a decrease in swelling. It just helps kind of
10 speed the healing process along.

11 Q. All right. And so how many occasions did you
12 treat Ms. Bettencourt?

13 A. A total of 29 times.

14 Q. And are those treatment dates reflected on your
15 bill?

16 A. Yes, sir.

17 Q. Okay. And ultimately, could you describe to the
18 jury what kind of result your treatment generated
19 for her?

20 A. Well, we -- at her last examination in my office,
21 which was on 1/5 of '09, we released her at
22 maximum chiropractic improvement. And she stated
23 that she was basically symptom free at that point.

24 Q. Okay. As far as what symptoms related to what
25 part of the body?

1 A. I'm sorry. The neck pain and the headaches.

2 Q. Okay. Now, when you say maximum chiropractic
3 improvement, what do you mean?

4 A. That just means that I felt like she had reached
5 the maximum therapeutic benefit that we could
6 provide in terms of chiropractic.

7 Q. Okay. Is that a way of saying you couldn't do
8 anything more to help her?

9 A. That's correct.

10 Q. Okay. Now, based on your examination and
11 treatment of Ms. Bettencourt, do you have an
12 opinion, within a reasonable degree of
13 chiropractic medical certainty, as to whether or
14 not the injuries you diagnosed were caused by the
15 accident she described?

16 A. Yes.

17 Q. Okay. Was the treatment that you provided
18 reasonable and necessary to treat the injuries
19 that she sustained in this accident?

20 A. Yes, sir.

21 Q. And I'd like to show you Exhibit Number 1, which
22 is your bill for services rendered to Ms.
23 Bettencourt. Can you identify that?

24 A. Yes, sir. That's a -- the -- that's a itemized
25 statement from my office.

1 Q. Okay. And the total that she incurred through
2 your treatment was \$1,812; is that correct?

3 A. Yes, sir, that's correct.

4 Q. And are those expenses that Ms. Bettencourt
5 incurred fair and reasonable charges for the type
6 of diagnosis and treatment you provided?

7 A. Absolutely.

8 Q. Were they incurred as a result -- in your opinion,
9 as a result of this automobile accident?

10 A. Correct, yes, sir.

11 Q. Now, you had known Ms. Bettencourt prior to this
12 accident; had you not?

13 A. Yes, sir.

14 Q. And had she also been a patient with you over the
15 years?

16 A. Yes, sir.

17 Q. And what kind of treatments did you provide over
18 the years for her?

19 A. She was -- prior to this, she was under my care
20 mainly for lower back issues, so similar type of
21 treatments, chiropractic adjustments.

22 Q. Okay. Did she come time to time and see you when
23 she had flare-ups with her lower back?

24 A. Yes, sir.

25 Q. All right. And without rendering an opinion as to

1 possible causes of other changes unrelated to her
2 back, did you notice, as a lay person, a change in
3 her personality or her alertness or behavior after
4 this accident?

5 A. Yes, sir.

6 Q. Could you describe that? And again, as a lay
7 person, could you describe that, what you
8 observed?

9 A. Oh, well, when I'd seen her in the past, she was
10 a very -- I would describe her as very type A,
11 very driven, very organized, very focused, a go-
12 getter, somebody who -- with all respect to Ms.
13 Bettencourt, you wouldn't want to get in her way I
14 don't think. I wouldn't have wanted to. She was
15 -- she's a great lady, a nice person, but she was
16 very focused, very driven. And after the -- she
17 started treatment with me in September, she had
18 related to me that she felt just kind of foggy,
19 confused, these type of things, which might be
20 normal for a day or two after an accident. We
21 see that with patients sometimes, but with her it
22 seemed to be extended, or prolonged, protracted
23 after the initial visit. One day just kind of
24 sticks out in my mind. She had a cell phone, or
25 a -- some type of a electronic device that she

1 kept her schedule on, that type of thing. And
2 she was -- I -- she just seemed to be fumbling
3 with it, just having a hard time and just -- it
4 just kind of stuck in my mind. That one
5 particular time sticks in my mind, that she was
6 having kind of a hard time just keeping track of
7 what she was doing that day with -- maybe with her
8 kids or her schedule or something.

9 Q. Okay. And was that unusual as far as you knew her
10 from before?

11 A. Oh, yeah, absolutely. Absolutely.

12 Q. Please answer any questions Mr. McGarr might have
13 for you.

14 A. Yes, sir.

15 EXAMINATION BY MR. MCGARR:

16 Q. Doctor, I don't think we've actually formally met.
17 But my name is Mark McGarr.

18 A. It's nice to meet you.

19 Q. Nice to meet you.

20 A. Thank you.

21 Q. Let me show -- I'm going to give you a stack of
22 documents that we will ultimately have marked.

23 A. Yes, sir.

24 Q. The first document, would you agree that when you
25 last treated Ms. Bettencourt, which would have

1 been January 5, 2009, that she told you she was
2 symptom free, she was suffering from no more neck
3 problems, and she was suffering from no more
4 headaches?

5 A. Yes, sir.

6 Q. And would you also agree that you did an exam of
7 her on 1/5/08 and when you had her neck go
8 backward and forward, it was -- her neck on the
9 left and the right came back normal?

10 A. I would not agree with that, only -- you said
11 1/5/08. Did you --

12 Q. I'm sorry; 1/5/09. I was wrong about that.

13 A. Okay. I just wanted to make sure that -- I would
14 -- yes, I would agree with that on 1/5/09 that
15 that was the case, yes.

16 Q. And would you agree that when you rotated her neck
17 side to side, it came back within normal limits?

18 A. Correct.

19 Q. And when you compressed her neck, like you had
20 done when she first came in, it came back within
21 normal limits?

22 A. Correct.

23 Q. And when you did a shoulder depression, it came
24 back within normal limits?

25 A. Correct.

1 Q. And when you did that Soto-Hall test on 1/5/09,
2 it came back within normal limits?

3 A. Correct.

4 Q. And her reflexes came back within normal limits?

5 A. Correct.

6 Q. On both sides?

7 A. Yes, sir.

8 Q. And a pinwheel test came back within normal
9 limits?

10 A. Yes, sir.

11 Q. So essentially she told you she was pain free, and
12 your tests on 1/5/09 indicated she was pain free;
13 is that correct?

14 A. Yes, sir.

15 Q. Going back a little further, did you also do an
16 exam of her on 11/14/08?

17 A. Yes, sir.

18 Q. And when you did that examination, would you agree
19 that the flexion/extension where she's having her
20 head go back and forward, came back within normal
21 limits?

22 A. Correct.

23 Q. That when you turned her head sideways, that it
24 came back within normal limits?

25 A. Yes, sir.

1 Q. When you were trying to compress her neck to see
2 if there was a problem, it came back within normal
3 limits?

4 A. Correct.

5 Q. When you checked her shoulders, they came back
6 within normal limits?

7 A. Correct.

8 Q. When you did the Soto-Hall test, it came back
9 within normal limits?

10 A. Correct.

11 Q. When you did reflexes, it came back within normal
12 limits?

13 A. Yes, sir.

14 Q. And when you did the pinwheel test, it comes back
15 within normal limits?

16 A. Yes, sir.

17 Q. So as far back as 11/14 of '08, she was coming in
18 with essentially a totally normal exam on every
19 test that you ran on her; would that be correct?

20 A. A normal orthopaedic test, yes, sir, and
21 neurologic test, yes, sir.

22 Q. Going to the second page of that document, does it
23 appear that on 1/5/2009, you did, in fact, release
24 her from your care?

25 A. Correct.

1 Q. And that was after you had done a test of her --
2 or a number of tests on her neck and after she had
3 told you that she was perfectly -- feeling
4 perfectly healthy as far as her neck and head were
5 concerned?

6 A. Yes, sir.

7 Q. Would you agree, going to the third document in
8 that stack of documents, that about ten days
9 after that last visit, her attorney sent you --
10 or faxed you a notice to -- where he asked, "Does
11 the patient presently have an impairment?" And on
12 that same date, January 15, 2009, did you mark no?

13 A. Correct.

14 Q. Go to the second page of that document. It says,
15 "Is further treatment necessary?" And did you
16 mark, "No," on that again?

17 A. Yes, sir.

18 Q. So would you agree that not only did she tell you
19 she was fine with regard to her neck and her head
20 on 1/5/09, but your tests revealed she was fine
21 with regard to her head and neck on 1/5/09, and
22 you actually said that because she was feeling
23 fine and all her tests were normal, that she was
24 no longer -- she didn't have an impairment and she
25 no longer needed any treatment?

1 A. Yes, sir, based on my treatment and what we found,
2 yes, sir.

3 Q. If I could, can I have those back?

4 A. Yes, sir.

5 Q. Because we're going to be marking all of those in
6 a moment. Let me pass you another package.

7 A. Yes, sir.

8 Q. When you first were talking with Mr. Childs, you
9 told him that part of an examination of the
10 patient is to talk to them and see what they said
11 their problem was and take a history of where that
12 problem came from?

13 A. Correct.

14 Q. And would you agree that they have to give you a
15 forthright and honest history for you to be able
16 to give a forthright and honest examination and
17 prognosis on what that client -- or that patient's
18 going to do?

19 A. Yes, sir.

20 Q. And would you agree that you also basically had
21 memorialized that in a document that we subpoenaed
22 from you where you're saying that, "Here are what
23 my notes may say," and a lot of that comes from --
24 and I'll just read it. "There is a column with
25 the heading, quote, 'P' located on the left side

1 of the treatment notes." "The," quote, 'P,' end
2 quote, "Stands for progress and is filled in with
3 a number that corresponds to the legend in the
4 lower left-hand corner. This number is filled in
5 when the patient relates a significant change in
6 symptomatology from one visit to the other. The
7 actual words the patient uses may also be written
8 down." Is that basically your office policy?

9 A. Correct, yes, sir.

10 Q. And so for you to properly diagnose and treat and
11 determine what was the cause of a problem, your
12 patient, in this case, Ms. Bettencourt, has to be
13 forthright with you with regard to where that
14 problem came from?

15 A. Correct.

16 Q. And you don't place your clients under oath -- or
17 your patients under oath when you're asking them
18 about their history and what happened, do you?

19 A. No, sir.

20 Q. Well, we actually did.

21 A. Okay.

22 Q. If you can go to the second -- I think the second
23 document. It'll be a three-page document.

24 A. Uh-huh.

25 Q. Does it appear that we did a deposition of Deena

1 Lynn Waite Bettencourt on October 1, 2010.

2 A. Yes, sir.

3 Q. And does it appear on the second page of that
4 document that she was sworn before she started
5 testifying?

6 A. Yes, sir.

7 Q. And on the third page of that document, does it
8 appear that she was asked, "Have you ever had a
9 problem with your neck significant enough to send
10 you to a medical provider before this accident?"
11 And did she answer at that point, on line 20,
12 "No"?

13 A. Yes, sir.

14 Q. So while under oath, does it appear that she told
15 us that she had never had any treatment for neck
16 problems prior to the accident which was dated
17 9/4/08? In other words --

18 A. I mean -- I'm sorry; repeat the question.

19 Q. Okay. The -- let me tell you, I think you've been
20 -- you know the accident that we're dealing with
21 today is -- was an accident dated 9/4/08.

22 A. Yes, sir.

23 Q. And does it appear that she told us she had never
24 sought any treatment for neck problems prior to
25 that 9/4/08 accident?

1 A. Yes, sir. That -- it appears that way, yes.

2 Q. If we can go to the next document in that stack of
3 documents.

4 A. Uh-huh.

5 Q. I'm now showing you a document that's dated
6 7/7/08.

7 A. Yes, sir.

8 Q. Is this a Return Patient Update Sheet that is
9 created by your office?

10 A. Yes, sir.

11 Q. And then when a patient comes in, do they fill in
12 these documents?

13 A. Yes, sir. They -- yes.

14 Q. And in this case, did Ms. Bettencourt come to see
15 you on 7/17/08 with one of her complaints being
16 that she was having, "Neck at base of head, right
17 side is sore"?

18 A. Yes, sir.

19 Q. And when -- do you also have a diagram of a body
20 that lets them put where their problems might be?

21 A. Yes, sir.

22 Q. And on that diagram, did she check an X where her
23 neck was?

24 A. Yes, sir.

25 Q. And then did she sign it?

1 A. Yes, sir, she did.

2 Q. So on 7/17/08, shortly before our automobile
3 accident, would you agree that she actually came
4 to you with a complaint of neck pain?

5 A. Yes, sir.

6 Q. Let's go to the next document in that stack of
7 documents. Is this a document of yours that tells
8 what areas of your body you're treating a patient
9 for?

10 A. Yes, sir.

11 Q. And is this document related to Deena Bettencourt?

12 A. Yes, sir.

13 Q. Does it appear that on 8/16/2002 you were treating
14 her neck?

15 A. On 8/16, yes, sir.

16 Q. Does it appear on 8/19/2002 you were treating her
17 neck?

18 A. Yes, sir.

19 Q. Does it appear on 8/23/2002 you were treating her
20 neck?

21 A. Yes, sir.

22 Q. Does it appear on 8/28/2002 you were treating her
23 neck?

24 A. Yes, sir.

25 Q. Does it appear on 8/29/2002 you were treating her

1 neck?

2 A. Yes, sir.

3 Q. Does it appear on 9/16/2002 you were treating her
4 neck?

5 A. Yes, sir.

6 Q. Does it appear that on 10/14/2002 you were
7 treating her neck?

8 A. Yes, sir.

9 Q. Does it appear that you were also treating her
10 neck on 10/17/2002 you were treating her neck?

11 A. Yes, sir.

12 Q. And then you treated her neck yet again on
13 10/23/2002?

14 A. Yes, sir.

15 Q. Treated her neck another time on 10/30/2002?

16 A. Yes, sir.

17 Q. Treated her neck yet again on 11/6/2002?

18 A. Yes, sir.

19 Q. Treated her neck yet again on 11/13/2002?

20 A. Yes, sir.

21 Q. Treated her neck yet another time on 11 -- I'm
22 sorry; 12/2/2002?

23 A. Yes, sir.

24 Q. Treated her neck yet another time on 12/9/2002?

25 A. Yes, sir.

- 1 Q. Treated her neck yet again on 12/16/2002?
- 2 A. Yes, sir.
- 3 Q. Treated her neck yet again on 1/13/2003?
- 4 A. Yes, sir.
- 5 Q. Treated her neck yet again on 1/27/2003?
- 6 A. Yes, sir.
- 7 Q. Treated her neck yet again on 2/10/2003?
- 8 A. Yes, sir.
- 9 Q. Treated her neck another time on 2/24/2003?
- 10 A. Yes, sir.
- 11 Q. Treated her neck yet another time on 3/12/2003?
- 12 A. Yes, sir.
- 13 Q. Treated her neck even another time on 4/9/2003?
- 14 A. Yes, sir.
- 15 Q. Treated her neck yet again on 12/4/2006?
- 16 A. No, sir.
- 17 Q. I'm sorry; on 12/6/2006?
- 18 A. Yes, sir.
- 19 Q. Treated her neck yet again on 12/8/2006?
- 20 A. Yes, sir.
- 21 Q. Treated her neck yet again on 12/13/2006?
- 22 A. Yes, sir.
- 23 Q. Treated her neck yet again on 12/15/2006?
- 24 A. Yes, sir.
- 25 Q. Treated her neck yet again on 12/10/2007?

1 A. Yes, sir.

2 Q. Treated her neck yet again on 12/12/2007?

3 A. Yes, sir.

4 Q. Treated her neck yet again on 12/18/2007?

5 A. Yes, sir.

6 Q. Treated her neck yet again on 7/17/2008?

7 A. Yes, sir.

8 Q. And treated her neck yet again on 7/21/2008?

9 A. Yes, sir.

10 Q. would you agree that it appears that the statement
11 that Ms. Bettencourt told me while she was under
12 oath about not having a neck problem significant
13 enough to see a medical provider prior to the
14 9/4/08 accident is an incorrect statement?

15 A. When she began treatment on --

16 Q. Doctor, here's my question.

17 A. Yes, sir.

18 Q. Does it appear that the statement she gave me
19 while under oath that she had not sought treatment
20 for her neck prior to the accident dated 9/4/08 --
21 does it appear that that statement that she gave
22 me was false?

23 A. No. Well, she initially -- I mean we -- we did
24 adjustments with her neck, or did treatments with
25 her neck on those dates that you just went over

1 with me. However, her initial complaint, or her
2 -- the reason that she initially sought care with
3 me was because of her lower back, not because of
4 her neck.

5 Q. Wasn't my question.

6 A. Okay.

7 Q. We've gone through years of you manipulating her
8 neck; is that correct?

9 A. Correct, yes, sir.

10 Q. And we've got specific complaints of neck problems
11 that she's actually written in her own
12 handwriting; is that correct?

13 A. On 7 -- was it 7/17? Yes, sir.

14 Q. So would you agree that she has been having
15 treatments done on her neck for years prior to
16 this accident and just a couple weeks before this
17 accident?

18 A. That I would agree with, yes, sir.

19 Q. And would you agree that her statement that she
20 gave us about not having treatment with regard to
21 her neck prior to the 9/4/08 accident is
22 incorrect?

23 MR. CHILDS:

24 That's not what her deposition says, and that's
25 not what your question was. You didn't ask her if

1 she had treatment on her neck.

2 EXAMINATION RESUMED BY MR. MCGARR:

3 Q. Would you agree that what we asked her was this:

4 "Have you ever had a problem with your neck
5 significant enough to send you to a medical
6 provider before this accident"? And on line 20,
7 she said, "No"?

8 A. I would agree that -- yes, sir, that that's
9 correct.

10 Q. And would you agree that that statement appears to
11 be incorrect, Chiropractor Shride?

12 A. I mean she had treatment to her neck, but that was
13 not her complaint when she started to see me back
14 in '02.

15 Q. Nobody has --

16 A. There was a finding --

17 Q. I haven't asked you what she came to see you for
18 in 2002.

19 A. I understand.

20 Q. I asked you if you treated her neck.

21 A. Yes, sir, I did.

22 Q. And you started treating her neck as far back as
23 2002 and continued treating her neck as -- up to
24 2008; is that correct?

25 A. That's correct, yes, sir.

1 Q. And so she sought treatment from you with regard
2 to her neck for approximately six years?

3 A. She sought treatment for her -- for pain in her
4 lower back. And so as a part of taking care of
5 her entire spine, we treated her neck. And --

6 Q. Doctor --

7 MR. CHILDS:

8 Don't cut the witness off. Let him finish his
9 answer.

10 WITNESS CONTINUES:

11 A. No. I just --

12 EXAMINATION RESUMED BY MR. MCGARR:

13 Q. Doctor?

14 A. Yes, sir.

15 Q. Did she give you a document which was a Return
16 Patient Update --

17 A. Yes, sir.

18 Q. -- on 7/17/08?

19 A. Yes, sir.

20 Q. Where she specifically was complaining of neck
21 pain?

22 A. Yes, sir.

23 Q. Had you treated her for neck pain prior to that
24 problem and had you manipulated her neck?

25 A. I had manipulated her neck prior to that.

1 Q. So again, does it appear that the statement that
2 she had not had a neck problem significant enough
3 to seek medical treatment prior to the accident of
4 9/4/08 is incorrect?

5 A. Based on her 7/17 update form, yes, sir.

6 Q. And so would you agree that if she's not giving
7 us a proper history while under oath, it throws
8 into question the history she's giving you?

9 A. Yeah, I suppose that that could be the case.

10 Q. Again, going to the -- going back to that stack of
11 documents I gave you --

12 A. Yes, sir.

13 Q. -- if we could -- trying to put these documents
14 together can be confusing. Can I bother it from
15 you -- can I bother it for just one moment?

16 A. Absolutely.

17 Q. You don't have to keep them put together. Once we
18 go to one, you can flip them because we'll be --
19 we won't be -- we shouldn't typically go back.

20 A. Okay.

21 Q. Now we're back up to speed. Again, does it appear
22 that we took Ms. Bettencourt's deposition on
23 October 1 -- or I took Ms. Bettencourt's
24 deposition on October 1, 2010?

25 A. Yes, sir.

1 Q. And does it appear that, again, she was sworn at
2 that time?

3 A. Yes, sir.

4 Q. And does it appear on the third page of that
5 document that I asked her, "Have you ever had a
6 problem with your head prior to this accident?"

7 MR. CHILDS:

8 What page is that?

9 MR. MCGARR:

10 That's on page --

11 WITNESS:

12 Thirty-seven.

13 MR. MCGARR:

14 -- three, or 37.

15 EXAMINATION RESUMED BY MR. MCGARR:

16 Q. I asked her, "Have you ever had a problem with
17 your head prior to this accident?" And her answer
18 on line 16 was, "Not that I recall."

19 A. Yes, sir.

20 Q. The next document in that stack of documents,
21 would you agree that when she came to see you on
22 7/18/2002, she actually told you that she had had
23 four concussions in the past?

24 A. Yes, sir.

25 Q. And would you agree at that point she was stating

1 she was having headaches?

2 A. Yes, sir.

3 Q. Going to the next document in that stack of
4 documents, does it appear on 10/23/2002 that she
5 had headaches following the last two adjustments?

6 A. Yes, sir.

7 Q. And does it appear on 12/9/2002 that she was
8 having visual symptoms -- or migraine symptoms
9 that were causing visual deficits, meaning it was
10 changing the way she was seeing?

11 A. Visual changes, yes, sir.

12 Q. And so would you agree that it appears as if she
13 has had prior -- I'm sorry; that sometime prior to
14 the accident dated -- our accident dated 9/4 of
15 '08 that she had had four concussions?

16 A. Yes, sir. Oh, I'm sorry. Yes, sir.

17 Q. And that she came to you in 2002 specifically with
18 head problems?

19 A. Correct.

20 Q. In 2002 with headaches?

21 A. Yes, sir. Uh-huh.

22 Q. That she came to see you again on 10/23/2002 where
23 she said she had had headaches following the last
24 two treatments?

25 A. Yes, sir.

1 Q. And then she was having some sort of head issue on
2 12/9/2002 significant enough to change her
3 eyesight?

4 A. Yes, sir.

5 Q. Does it appear, going to the next document --

6 A. Yes, sir.

7 Q. Again, this is her deposition.

8 A. Uh-huh.

9 Q. Does it appear that she failed to recall these
10 years and years of head problems that existed
11 prior to the 9/4/08 accident?

12 A. Yes, sir. Sorry.

13 Q. I'm Mark. I'm not a sir.

14 A. My mother wouldn't appreciate me not throwing that
15 in there.

16 Q. Yeah. But you're trying to make me old.

17 A. She'd be disappointed in me.

18 Q. Would you agree that it appears that yet again,
19 Ms. Bettencourt has given us a bad history while
20 under oath with regard to her prior head issues?

21 A. It would appear that, yes, she left it out.

22 Q. Can I borrow your -- that package again?

23 A. Absolutely.

24 Q. And again, you can unbutton -- just -- you may
25 lose a few, but we'll put them back together.

1 Let me show you the first document in this stack
2 of documents. Is this a form that you create that
3 your office has that you give to patients are
4 coming to see you after they've been in automobile
5 accidents?

6 A. Yes, sir.

7 Q. And did Ms. Bettencourt -- was this document given
8 to Ms. Bettencourt on 9/4/08, the date of the
9 accident?

10 A. Yes, sir.

11 Q. And did she fill this out?

12 A. Yes, sir.

13 Q. And when she filled it out, was she specifically
14 asked, "Did any part of your body strike anything
15 in the vehicle?" And was her answer, or did she
16 check off, "No"?

17 A. Yes, sir, she did.

18 Q. Then on the second page, was she specifically
19 asked, "Were you unconscious immediately after
20 the accident?" And did she check off, again,
21 "No"?

22 A. Yes, sir.

23 Q. And then did she sign it?

24 A. Yes, sir.

25 Q. Would you agree that this document is a relatively

1 detailed document where it talks about where the
2 accident took place, what happened in the impact,
3 what vehicle she was in, what sort of things she
4 had, safety equipment, whether police were called,
5 that sort of stuff?

6 A. Yes, sir.

7 Q. And did she appear to be able to fill this out and
8 do a good job with it?

9 A. She seems to have filled it out completely, yes,
10 sir.

11 Q. Let me show you the next document in that stack of
12 documents. When she first came to see you on 17
13 -- 7/18/2002, did you give her a two-page document
14 to fill out because it was essentially a new
15 patient questionnaire?

16 A. Yes, sir. This would be the new patient -- what
17 a new patient would fill out in our office.

18 Q. And at that point, did she tell you that she had
19 had -- well, first off, when she filled out, did
20 she tell you that her emergency contact person was
21 going to be someone whose name I will never be
22 able to pronounce, but whose relationship to her
23 was her nanny?

24 A. Yes, sir.

25 Q. And then when it goes back to the past health

1 history, did she say -- "Major accidents or"
2 falls," and did she say, "Horseback riding
3 injuries"?

4 A. Yes, sir.

5 Q. And does it turn out that it was the horseback
6 riding incidents that had caused those four
7 concussions?

8 A. I believe that's -- yes. I believe that's where
9 we got that question from as we went over her
10 consultation.

11 Q. And does it appear that she had sought
12 chiropractic treatment in the past?

13 A. It does.

14 Q. And that she had actually sought chiropractic
15 treatment and he kept -- he did a lot of
16 maintenance on her over the years?

17 A. Yes, sir.

18 Q. And she was able to fill this document out on
19 7/18/02, as well as she was able to fill out the
20 document dated 9/4/08?

21 A. Seems to be, yes.

22 Q. The next document I have, we can skip that one
23 there.

24 A. Okay.

25 Q. Does she appear to have come to back to see you on

1 -- or come back and filled out another document
2 for you on 12/10/2007?

3 A. Yes, sir.

4 Q. And at that point, did she fill out a one-page
5 document?

6 A. Yes, sir. That's a one-page document.

7 Q. And would it be a less intense -- or less detailed
8 document than the document that you call a vehicle
9 Accident Information questionnaire?

10 A. Is it -- yes. I would consider it less -- yes,
11 less detailed.

12 Q. And yet does it appear that she was fine when she
13 was filling that document out? She filled it out
14 appropriately?

15 A. Yes, sir.

16 Q. And she filled out the vehicle Accident
17 Information questionnaire document on 9/4/08 after
18 this accident quite appropriately, too, did she
19 not?

20 A. Yes, sir.

21 Q. And it would be even more detailed of these
22 documents?

23 A. I would -- yes, I would consider that --

24 Q. And did she also see you on 7/17/08 and do another
25 Return Patient Update questionnaire?

1 A. Yes, sir.

2 Q. And did she do a good job of filling that out?

3 A. Yes, sir.

4 Q. And again, that document would be less intense
5 than the document she filled out the day of this
6 accident, 9/4/08?

7 A. Yes. It's the same document as the 12/10/07
8 document, so yes.

9 Q. And both of those documents would be much less
10 intense than the 9/4/08 document?

11 A. Yes, sir.

12 Q. And yet it looks like she was able to do quite a
13 fine job filling out the 9/4/08 document; is that
14 correct?

15 A. Yes, sir.

16 Q. I mean she was even actually able to tell you
17 which direction she was headed, meaning west; is
18 that correct?

19 A. Yes, sir. Well, let me look and make sure. Yes.

20 Q. So after the accident with my client, it appears
21 that her ability to recall and recollect and put
22 information down that was helpful to you was very
23 much intact; is that correct?

24 A. Seems to be, yes, sir.

25 Q. Last document in that stack of documents, does it

1 look as it as far back as October 8, 2002, that
2 Ms. Bettencourt was already having trouble keeping
3 appointments with your office?

4 A. Let's see. Yes. In -- yes, from September, she
5 was -- she had gotten off track with her treatment
6 schedule and returned back on October 14th and got
7 back on track.

8 Q. And did you actually write her a letter, the
9 first sentence being, "I notice you've been
10 having trouble keeping your appointments and the
11 commitment you made when you began care in our
12 office"?

13 A. Yes, sir, I did.

14 Q. So does it appear that she may have had some
15 confusion about when she was supposed to get to
16 the office as far back as 2002?

17 A. I don't know if it was confusion. She just did
18 not -- she did not -- she got off of her treatment
19 plan. And so we send this letter out to our
20 patients to get them back on their treatment
21 plan.

22 Q. Can I bum that package of documents back from you?
23 I'll try to put them back in order.

24 A. It's yours. I think they should be in order.

25 Q. Doctor, what we're going to do at this point is I

1 am going to get the court reporter to mark these
2 documents as exhibits.

3 MR. CHILDS:

4 You want to go off the record on that? Because
5 you've got some duplicates going on.

6 MR. MCGARR:

7 we probably could.

8 (OFF THE RECORD)

9 (DEFENDANT'S EXHIBIT NUMBERS 1-11 MARKED; ATTACHED)

10 EXAMINATION RESUMED BY MR. MCGARR:

11 Q. Doctor, I'm going to show you what's been marked
12 as Defendant's Exhibit Number 1 -- I mean
13 Defendant's Exhibit Number 2. Is that document a
14 document that is -- the form, is that your
15 practice's form?

16 A. Yes, sir.

17 Q. And then the notations that are put in those
18 forms, are those notations that you do --

19 A. Yes, sir.

20 Q. -- when the patient comes in?

21 A. Yes, sir.

22 Q. And then do you maintain those records as part of
23 your business?

24 A. Yes, sir.

25 Q. And do you still have copies of those -- or the

1 originals of those records today?

2 A. Yes, sir.

3 Q. And is that document a true and accurate copy of
4 the original that you have in your file?

5 A. Yes, sir.

6 Q. Let me show you what's been marked as Defendant's
7 Exhibit Number 1. I apologize; I got them a
8 little bit backward. Same questions with regard
9 to that document. Is that a document that's a
10 form from your practice?

11 A. Yes, sir.

12 Q. And is it also stuff -- is what's filled out in
13 that document, is that stuff that you fill out
14 when the patient comes to see you?

15 A. Yes, sir.

16 Q. And then after you do that, do you store those
17 documents so that you can treat the patient in the
18 future?

19 A. Yes, sir.

20 Q. And then have you kept an original of that copy --
21 that document?

22 A. Yes, sir.

23 Q. And is -- Defendant's Exhibit Number 1, is that a
24 true and accurate copy of that original?

25 A. Yes, sir.

1 MR. CHILDS:

2 I've reviewed all those exhibits with the
3 exception of the questionnaire that was sent by
4 Mr. Ray. I would stipulate that his answer's the
5 same for all those other documents, and I would
6 also say that he's kept that questionnaire in the
7 normal course of his business as well.

8 EXAMINATION RESUMED BY MR. MCGARR:

9 Q. With regard to the questionnaire -- in that case,
10 I won't have to keep asking these questions.

11 A. That's fine.

12 Q. There was a reason for having to do this boredom.

13 A. Yes, sir.

14 Q. With regard to Exhibit Number 3, that is not a
15 document that comes from your office, is it?

16 A. No, sir.

17 Q. That document was created by Ms. Bettencourt's
18 attorney, Mr. Ray at the time; is that correct?

19 A. I would assume. I don't recall.

20 Q. But Mr. Ray faxed it to you ten days after you
21 last saw her; is that correct?

22 A. Yes, sir.

23 Q. But would you agree that the handwritten portion
24 of that document is -- the things that are filled
25 in that aren't typed, that that -- those are

1 things that you filled in?

2 A. Yes, sir.

3 Q. And then the last page of that document, you
4 actually signed it?

5 A. Yes, sir.

6 Q. So you're not sure where the document itself came
7 from or how it was created, but in the end, the
8 answers to that document were done by you?

9 A. Yes, sir.

10 Q. And, in fact, that document was faxed to your
11 practice ten days after she last saw you?

12 A. Yes, sir.

13 MR. CHILDS:

14 I'll stipulate to the admission of that document.

15 MR. MCGARR:

16 we quite frankly have no further questions. Thank
17 you.

18 WITNESS:

19 Yes, sir. Thank you.

20 REEXAMINATION BY MR. CHILDS:

21 Q. I have some follow-up questions I'd like to go
22 over with you. And I want you to go through these
23 exhibits that we had from Mr. McGarr.

24 A. Yes, sir.

25 Q. First refer to Exhibit Number 5, which is the

1 7/17/08 Patient Update.

2 A. Yes, sir.

3 Q. Now, you were asked a number of questions about
4 whether or not Ms. Bettencourt had prior head
5 problems.

6 A. Uh-huh.

7 Q. What was the primary reason for her visit on
8 7/17/08?

9 A. Her primary complaint was low back pain when she
10 stepped on -- when she took a step and stepped
11 onto her left foot. That would be her primary
12 complaint.

13 Q. Now, was that a complaint as a result of some type
14 of injury she sustained in an accident or was that
15 a complaint just a normal course of moving and
16 walking around of a human being?

17 A. No. She had a -- she was moving her residence, I
18 assume, and she just said it was moving over the
19 past couple weeks. I assume that was her
20 residence. And she said she bent over to pick up
21 a piece of glass and felt kind of a snap in her
22 lower back.

23 Q. And there's notations on here that are written.
24 I can tell her writing is rather neat and then
25 there's some other writing on there. Is that your

1 writing below her writing --

2 A. Yes, sir.

3 Q. -- on the Explain Problem section?

4 A. Yes, sir.

5 Q. What did you say there?

6 A. "Bent over to pick up a piece of glass which
7 equaled -- or resulted in a snap in her lower
8 back, which equaled lower back pain." And it was
9 made worse when she steps onto her left foot. The
10 pain was in the left lumbosacral portion of her
11 spine, and occasionally she felt some pain into
12 her left leg. We asked her what it was on a scale
13 of one to ten, with ten being the worst. She said
14 it was a seven, and that there were no changes in
15 her medical history.

16 Q. What's the other notation you have there on the --
17 "If this is the same problem when did it flare
18 up?" It says, "Lifting," and then there's
19 something past that.

20 A. "Moving the past couple weeks."

21 Q. Okay. Now -- so did Ms. Bettencourt come to you
22 simply complaining that she had a problem with her
23 head?

24 A. No.

25 Q. What was the primary complaint?

1 A. Low back pain.

2 Q. And here there is a reference to, "If seated for
3 long" -- it says, "Mid back sore if seated for
4 long, neck at base of head right side sore."

5 A. Correct.

6 Q. And so the neck at the base of head, is that
7 something that was typical of a low back problem
8 generating up into the head or could you relate
9 that problem at all to the low back?

10 A. No, sir, I don't think I could.

11 Q. Okay. So is it correct to say that she was
12 essentially complaining that she got a sore neck
13 when she sat for a long time?

14 A. I don't know about sitting for a long time, but
15 that was where the mid back pain seemed to
16 originate from was when she sat for a long period
17 of time.

18 Q. All right. So it's hard to tell if she's saying,
19 "My mid back got sore if seated for a long time,"
20 or "If seated for a long time, neck at base of
21 head right side sore"?

22 A. Yeah. I would agree that's, yeah, difficult to --
23 my understanding would be that it was the middle
24 back was when she was seated for a long time.

25 Q. Okay. But the primary problem that she had was

1 lower back and not anything to do with her head?

2 A. Correct.

3 Q. But you did do some -- the next exhibit is Number
4 6.

5 A. Yes, sir.

6 Q. You did some manipulation of her neck. And why do
7 you do that?

8 A. Well, as part of her initial complaint back in
9 '02 was -- she came to see me for lower back pain.
10 As we analyzed her spine, we found some issues in
11 other parts of her spine that were asymptomatic.
12 And so we corrected those problems as well so that
13 she doesn't become symptomatic in those areas, or
14 try to avoid them.

15 Q. So she had asymptomatic problems with her neck
16 that she didn't know about?

17 A. Correct.

18 Q. Okay. And as a result of your spinal
19 manipulation, you treated those -- all the
20 conditions that you found within the spine?

21 A. Correct. All the -- the areas of subluxation we
22 located in her spine, yes, we took care of those.

23 Q. Now, the next Exhibit, which is Number 7 --

24 A. Yes, sir.

25 Q. -- this is the patient questionnaire that Mr.

1 McGarr showed to you. And I want to go over to
2 the next section here on the back.

3 A. Uh-huh.

4 Q. Which it says, "Symptoms of the injury." And
5 obviously this was on the day of the accident, but
6 did she fill out a section describing the symptoms
7 since her injury?

8 A. Yes, sir.

9 Q. And could you tell the jury about what those were?

10 A. She checked off ear buzzing, fatigue, headaches,
11 irritability, nausea, neck pain, neck stiffness,
12 and tension.

13 Q. And are those symptoms that you had not previously
14 diagnosed her having?

15 A. That's correct.

16 Q. Some of those?

17 A. Some of those, correct.

18 Q. I think that anybody's ever had a headache in
19 their life.

20 A. Correct.

21 Q. So that's something that somebody's going to
22 complain about sooner or later. But had you had
23 previous treatments or examinations of her for ear
24 buzzing?

25 A. No, sir.

1 Q. Fatigue?

2 A. No, sir.

3 Q. Irritability?

4 A. No, sir.

5 Q. Nausea?

6 A. No, sir. I don't --

7 Q. Why is nausea a question?

8 A. Sometimes that goes along with headaches. And I
9 just -- I mean people have headaches, they get a
10 little nauseous feeling.

11 Q. Now, you talked about the base of the head
12 soreness that she had at one point. But did she
13 ever complain of neck stiffness?

14 A. No, sir.

15 Q. Okay. Now, going back to the next Exhibit, which
16 is Number 8 that Mr. McGarr showed you, that's
17 your examination on 7/18 of '02 as far as she
18 filled out a update?

19 A. It's not my examination.

20 Q. Okay. That's not yours?

21 A. This is -- no. This is her new patient paperwork.
22 That's what she fills out.

23 Q. Okay. And so this is her filling this out and
24 this is what you kept in your records; is that
25 right?

1 A. Yes, sir, correct.

2 Q. So back in 2002, she came to you for lower back
3 pain?

4 A. Yes, sir, correct.

5 Q. And did she indicate there on the first page of
6 Exhibit Number 8 if she had seen a doctor about
7 that condition, current health condition?

8 A. Yeah. She indicated that she had not.

9 Q. Okay. And did she indicate when that lower back
10 pain condition began?

11 A. Approximately three weeks prior to her seeing me.

12 Q. All right. And did she indicate as to whether or
13 not that condition had occurred before?

14 A. Yes, she did. And the answer -- her answer was
15 no.

16 Q. Okay. Now, the Past Medical History section here
17 that she has, you were asked questions about the
18 fact that she had previously seen a doctor, or a
19 chiropractor before.

20 A. Yes, sir.

21 Q. And does at the bottom of this indicate that she
22 saw a Dave Barber in Fresno, California in 1986?

23 A. Yes, sir. 1986 I believe, if she -- if she
24 understood the question, would be the date of her
25 last visit.

1 Q. Okay. And so 1986 to 2002, how many years is
2 that? I can't do that either.

3 A. Sixteen, roughly 16.

4 Q. All right. The next page that she filled out for
5 you, she checked certain questions here on the
6 Musculoskeletal code.

7 A. Yes, sir.

8 Q. And one of those was low back pain. And did she
9 check pain between the shoulders?

10 A. No, sir.

11 Q. Did she check neck pain?

12 A. No, sir.

13 Q. Arm pain?

14 A. No, sir.

15 Q. Joint pain, stiffness?

16 A. No, sir.

17 Q. General stiffness?

18 A. No, sir.

19 Q. Did she put anything in there in the Nervous Code
20 system back in 19 -- in 2002 about numbness,
21 paralysis, dizziness, forgetfulness, confusion,
22 depression, fainting, convulsions, anything like
23 that under the Nervous Code section?

24 A. No, sir.

25 Q. The General Code section, did she put anything in

1 there about headaches, fatigue, anything of that
2 nature?

3 A. No, sir.

4 Q. Okay. Now, going on to the next exhibit that Mr.
5 McGarr showed you, which is Exhibit Number 9 --

6 A. Correct.

7 Q. And that's a Patient History Consultation from
8 2002; is that correct?

9 A. Yes -- no -- yes, sir.

10 Q. Okay. And that is your handwriting, or somebody's
11 handwriting other than Ms. Bettencourt's; is that
12 correct?

13 A. It's my handwriting, yes, sir.

14 Q. Okay. And at that time it appears that Ms.
15 Bettencourt, in 2002, was 34 years old?

16 A. Correct.

17 Q. And this is where you're asking her questions and
18 writing down basically her answers; is that
19 correct?

20 A. Yes, sir.

21 Q. And here you say, "The chief complaint" -- could
22 you read that for me? Tell us what that says,
23 because I can't hardly read it.

24 A. I understand. It's lower back pain. Again, the
25 lumbosacral part of her spine. It was --

1 occasionally it would radiate into both --
2 posterior, or the back of both thighs. Sitting
3 seemed to make it worse, and she said, "Feels like
4 the lower back is on the edge of serious pain and
5 problems."

6 Q. Okay. And further on in that consultation, did
7 you ask her when her last chiropractic adjustment
8 was?

9 A. Yes, sir.

10 Q. And what did she -- what's her answer?

11 A. She said that it was at 18 years of age and it was
12 by a chiropractor in Fresno, California.

13 Q. Okay. And she was 34 years old when you saw her?

14 A. Correct.

15 Q. And also you asked, "Previous trauma," and she
16 indicates that she had fallen from horses and
17 about the previous concussions times four?

18 A. Correct.

19 Q. Now, do you know whether or not she actually told
20 to you that she had previous diagnosed concussions
21 or how did you make that notation?

22 A. That would have been based on -- we just ask,
23 "Have you had any traumas in the past?" And she
24 would have just said, "I had several falls from
25 horses," and she would have said, "I had

1 concussions four times." and we just write down
2 what she says.

3 Q. Okay. I mean do you say, "You ever get knocked
4 out from the falls," or -- I mean how did you --
5 did she -- would she have used the word,
6 "concussions"?

7 A. Probably, yes.

8 Q. Okay. And you asked about the past and present
9 medical conditions?

10 A. Uh-huh.

11 Q. And in this list here you have headaches?

12 A. Correct.

13 Q. And in the headache section, it says, "Presently
14 headaches." And then what does it say after that?

15 A. "Related to pain in lower back."

16 Q. Okay. Does it indicate past headaches back in
17 2002?

18 A. No, sir.

19 Q. All right. Go on to the next exhibit, Number 10.
20 When Ms. Bettencourt came to see you on December
21 10, 2007, this form that you identified, did she
22 come to see you about a lower back problem?

23 A. Yes, sir.

24 Q. Okay. And was -- the next section down below that
25 says, "LBP."

1 A. Oh.

2 Q. Could you tell the jury what that means?

3 A. That means low back pain.

4 Q. Okay. And what's the rest of your notations
5 there?

6 A. That, "Left flexion with lifting aggravates the
7 pain." So if she bends to the left and lifts, that
8 aggravates the pain. And, "It started Saturday
9 with lifting flooring," and there were no changes
10 in her medical history.

11 Q. Okay. And you asked down here, "Have you received
12 treatment for this problem by another doctor since
13 your last visit to the office," and the answer was
14 no?

15 A. Correct.

16 Q. Okay. Go on to Exhibit Number 11. This is going
17 back to 7/17/08. This is the same problem where
18 she -- "Low back pinched when stepping with left
19 foot." I think we've already discussed that. She
20 was bending over to pick a piece of glass up?

21 A. Yes, sir.

22 Q. Any indication of a neck injury when she picked up
23 the glass?

24 A. No, sir.

25 Q. Now, so based on your knowledge of her medical

1 history and the medical records that you reviewed
2 that Mr. McGarr showed you, those were your
3 records as well, has Ms. Bettencourt had a
4 previous neck injury as far as you know?

5 A. No.

6 Q. Aside from the mention to -- about the pain in the
7 back of the head, are you capable of diagnosing
8 conditions relative to the brain?

9 A. No, sir.

10 Q. And who would you recommend to diagnose conditions
11 relative to the brain?

12 A. A neurologist.

13 Q. Okay. Now, did you ever test her for any
14 neurological functions as far as the brain is
15 concerned?

16 A. Not as far as the brain, no, sir.

17 Q. So you deal primarily with the spine and its
18 problems that stem from the spine?

19 A. Correct.

20 Q. Which would be like a herniated -- a compressed
21 nerve or something that radiates --

22 A. Correct.

23 Q. -- into other parts of the body?

24 A. Correct.

25 Q. Based on your review of these medical records and

1 even having Mr. McGarr show you the transcript of
2 her deposition, did you find her -- do you still
3 find her to be a credible and reliable patient?

4 A. Yes, sir.

5 Q. Did any of those questions that he posed to you
6 affect your opinion about the fact that she
7 sustained the injuries you treated her for on
8 September 4, 2008?

9 A. No, sir.

10 Q. Did any of those questions affect your opinion
11 about the need for treatment that you provided
12 being the result of the accident on September 4,
13 2008?

14 A. No, sir.

15 MR. CHILDS:

16 Did I move into evidence the bill?

17 MR. MCGARR:

18 We can do that at trial, but you might want to put
19 an exhibit number on it.

20 MR. CHILDS:

21 We did have Exhibit Number 1.

22 WITNESS:

23 Yes, sir.

24 MR. CHILDS:

25 But as far as the trial is concerned, I would move

1 into evidence that bill that I showed you earlier
2 as Exhibit Number 1. And it may be floating
3 around here somewhere, and I'll look for it when
4 we're done.

5 REEXAMINATION RESUMED BY MR. CHILDS:

6 Q. But that exhibit I showed you initially, are those
7 the bills that she incurred as a direct and
8 proximate result of this accident?

9 A. Yes, sir.

10 Q. Okay. That's all the questions I have.

11 REEXAMINATION BY MR. MCGARR:

12 Q. Doctor?

13 A. Yes, sir.

14 Q. Shortly before this accident, she specifically
15 came to your office. And one of the complaints
16 she had was that her neck was sore; is that
17 correct?

18 A. Correct.

19 Q. And when you are manipulating your patients, by
20 that, you're actually putting your hands on -- if
21 you're doing something with their neck, you're
22 putting your hands on their neck; is that correct?

23 A. Correct.

24 Q. And you're moving the bone in their neck -- or
25 bones of their neck?

1 A. Correct, yes, sir.

2 Q. And you don't put your patients to sleep before
3 you do that, do you?

4 A. No, sir.

5 Q. And so they're awake when that's happening?

6 A. Yes, sir.

7 Q. So Ms. Bettencourt would have been aware of the
8 fact that you were adjusting her neck on 8/16/02;
9 8/19/02; 8/23/02; 8/24/02; 8/29/02; 9/16/02;
10 10/14/02; 10/17/02; 10/30/02; 11/6/02; 11/13/02;
11 11/22/02; 12/2/02; 12/16/02; 1/13/03; 1/27/03;
12 2/10/03; 2/24/03; 3/21/03; 4/9/03; 12/6/06;
13 12/8/06; 12/13/06; 12/15/06; 12/10/07; 12/12/07;
14 12/18/07; 7/17/08; and 7/21/08; is that correct?

15 A. With the exception of 12/4, yes, sir.

16 Q. So she would have known that you had been
17 manipulating and working on her neck for years and
18 years and years prior to this automobile accident,
19 wouldn't she?

20 A. Correct.

21 Q. And she specifically came to you shortly before
22 this accident saying, "My neck is sore." The
23 question that was posed to you earlier was, "Did
24 she have an injury to her neck?"

25 A. Correct.

1 Q. But we're not asking if she had an injury. We're
2 saying did she come to you shortly before this
3 accident and say, "My neck is sore"?

4 A. She said, "Neck at base of head right side sore."

5 Q. And there had been enough of a problem with her
6 neck from 2002 up through that time for you to be
7 treating her pretty frequently; is that correct?

8 A. There was subluxation -- findings of subluxation
9 in her neck. There was not -- she did not
10 complain of neck pain in 2002, but we were taking
11 care of her neck, yes, sir.

12 Q. And yet she told us in her deposition that she had
13 not sought treatment for a neck problem prior to
14 our accident; isn't that correct?

15 A. That is what she stated, yes, sir.

16 Q. Nothing could be further from the truth.

17 MR. CHILDS:

18 I move to strike. That's not a question, that's a
19 statement.

20 REEXAMINATION RESUMED BY MR. MCGARR:

21 Q. Could anything be further from the truth?

22 A. We're -- you're back to the question you asked me
23 a while ago, which she came to see me for her low
24 back pain, not for the neck pain. But we took
25 care of a problem that she had with her neck that

1 was not symptomatic.

2 Q. That she had to be aware of because she's feeling
3 you move -- do that?

4 A. She's aware of me -- of the treatment, yes, sir.

5 Q. And just shortly before this accident, it was
6 symptomatic because it was sore?

7 A. That's -- I believe that's what she stated, yes.

8 Q. No further questions.

9 MR. CHILDS:

10 That's all the questions I have. Thank you.

11 WITNESS:

12 Yes, sir. Thank you.

13 (DEPOSITION CONCLUDED AT 10:10 A.M.)

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CERTIFICATE

I, the undersigned, Sheila B. Smith, CVR-CM,
Notary Public in and for the State of South Carolina,
do hereby certify that the foregoing deposition of
Michael C. Shride, D.C. was taken on June 7, 2011;

That the within deponent was sworn to tell the
truth, and that the foregoing is an accurate
transcription of the testimony taken under oath;

That all exhibits entered herein are attached
hereto (if requested by counsel) and made a part of
this deposition.

I further certify that I am neither counsel nor
solicitor to any of the parties in said suit, nor
interested in the event of the cause.

In witness whereof, I have hereunto set an my hand
and seal this 12th day of June, 2011.



Sheila B. Smith, CVR-CM

Notary Public for South Carolina

My Commission Expires: 3/9/2014

CHARGES/PAYMENTS

ITEMIZED STATEMENT

CLAIM:

DATE: 06/06/2011

PATIENT: DEENA BETENCOURT 113718

EMPLOYER:

TO: PERSONAL INJURY CASES

NORTHPOINTE CHIROPRACTIC CENTRE
1318 HAYWOOD ROAD
GREENVILLE SC 29615
864/268-3400 Fax:864/268-4526

DIAGNOSIS:

L4.1

M47.0

M4.0

M41.2

IC: PER-INJURY

DATE OF LAST BILL: 04/26/2010



DATE	CPT	DESCRIPTION	*	POS	TOS	#	AMOUNT
01/01/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
12/05/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
12/08/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
12/12/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
12/15/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
01/05/2009	99213	RE-EXAM	11	1	1	1	45.00
03/04/2008	99204	EXTENDED EXAM	11	1	1	1	65.00
03/04/2008	72010	FULL SPINE SERIES	11	1	1	1	140.00
03/04/2008	72040	CERVICAL FLEX/EXT	11	5	1	1	110.00
03/04/2008	97014	INTERFERENTIAL MUSCLE STIM	11	5	1	1	40.00
03/05/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/05/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/08/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/08/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/10/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/10/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/12/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/12/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/16/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/16/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/24/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/24/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/26/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/26/2008	97014	INTERFERENTIAL MUSCLE STIM	11	1	1	1	45.00
03/29/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	20.00
03/29/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
03/29/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
03/29/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
03/29/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00
03/29/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	1	45.00

CONTINUED

SUBTOTAL:

1,190.00

CHARGES/PAYMENTS

ITEMIZED STATEMENT

PATIENT:

DATE: 06/06/2011

PATIENT: DEENA BETTENCOURT 113718

EMPLOYER:

NO: PERSONAL INJURY CASES

NORTHPOINTE CHIROPRACTIC CENTRE
1318 HAYWOOD ROAD
GREENVILLE SC 29615
864/268-3400 Fax: 864/268-4526

DIAGNOSIS:

L39.1

847.0

734.0

L81.2

IC: PER-INJURY

DATE OF LAST BILL: 04/26/2010 PR

DATE	CPT	DESCRIPTION	* POS	TOS	#	AMOUNT
10/10/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
10/13/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
10/17/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
10/20/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
10/23/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
10/27/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
10/31/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
11/03/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
11/07/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
11/10/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
11/14/2008	98940	SPINAL ADJUSTMENT 1-2 REGIONS	11	1	1	45.00
11/14/2008	99213 -	RE-EXAM	11	1	1	65.00
11/14/2008	72020	FULL SPINE	11	5	1	62.00

04/22/2010 CREDIT CR CORR- SERVICES 9/4/08-1/5

-1,502.00

PROVIDER: MICHAEL SHRIDE DC

BALANCE 06/06/2011: \$

TOTAL: \$

310.00

Page 2

PA/PK/CC/IN=Csh/Check/CC/Ins. payment; CR/DE=Cr

RECORD ON APPEAL PAGE 786

1,812.00

Crescent Psychological Services
 Randel R. Jones, Ph. D.
 3-C Cleveland Ct.
 Greenville, SC 29607
 864-232-6216

Statement

DATE
3/18/2010

TO:
Deena I Bettencourt
[REDACTED]

		AMOUNT DUE		
		\$40.00		
DATE	TRANSACTION	AMOUNT		
02/10/2009	Psychological Diagnostic Interview	175.00		
02/23/2009	Neuropsychological	1,800.00		
02/24/2009	Finish testing	0.00		
03/11/2009	Individual Psychotherapy 45-60 minutes	135.00		
Total Charges:		\$2,110.00		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE
40.00	0.00	0.00	0.00	0.00



Premier Family Medicine

304 Ashby Park Lane Greenville SC 29607-6902
Tel: (864) 286-9050 Fax: (864) 286-6885

ACCOUNT INQUIRY

Account# [REDACTED]

Guarantor Information:

Scott L. Bettencourt

Patient Information:
Patient# [REDACTED]

Deena L. Waite Bettencourt

Home Tel#: [REDACTED]
Work Tel#: [REDACTED]

Home Tel#: [REDACTED]
Work Tel#: [REDACTED]

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance				Age	Patient
09/16/2008	275759	KKB	\$111.00	\$111.00	\$0.00					
										09/16/2008 Deena L. Waite Bettencourt

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payer	Coverage Type	Billed Date	Age	Patient
10/03/2008	286230	KKB	\$111.00	\$111.00	\$0.00		Medical	10/07/2008		
										Deena L. Waite Bettencourt

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance				Age	Patient
09/22/2009	520110	KKB	\$111.00	\$111.00	\$0.00					
										Deena L. Waite Bettencourt

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance				Age	Patient
10/07/2009	533450	KKB	\$75.00	\$75.00	\$0.00					
										Deena L. Waite Bettencourt

Total: \$408.00





NEUROLOGY ASSOCIATES OF GREENVILLE, P.A.
1730 GROVE ROAD
GREENVILLE, SC 29605-4620
864 232 9644

[COFMAIN] Inquiry
Date 10/04/2010
Time 2:05p
User mrs001
Page 1

Patient
Bill To
DOB:
Age:
SSN:
H/Ph #:
H/Ph #:



Patient Name: DEENA WAITE-BETTENCOUR
Resp Party: DEENA WAITE-BETTENCOUR
Dr #: 3 KENT H KISTLER
RDX #: 1722 TONYA D EDWARDS
Patient Type: 27 BCBS PPC/PPO
Bill Cycle: 2 M-2
Credit Status: 0
Date Registered: 09/23/2008

Patient E-mail:
Responsible Party E-mail:

Responsible Party Address:



Patient Address:



Location: 1 NA GROVE
Diagnosis: 854.00 CLOSED HEAD INJ
Billing History: 01/08/2010 12/04/2009
06/05/2009 05/08/2009

NEUROLOGY ASSOCIATES, P.A.
1133 GROVE ROAD
GREENVILLE, SOUTH CAROLINA 29605
TELEPHONE 864-232-9644

LOCATION: NEUROLOGY ASSOCIATES GROV PT-0027

PAGE: 1

DEENA WAITE-BETTENCOUR

AMOUNT DUE : 0.00

BILL TO: WAITE-BETTENCOUR DEENA

CHART #: [REDACTED]

DATE	POS PROC	DESCRIPTION	CHARGES	CREDITS	BALANCE
10/22/08	99244 DX:	CONSULTATION-LEVEL 4 310.2	262.00		262.00
11/03/09	99214	OFFICE VISIT-LEVEL 4	117.00		397.00
12/02/09	99213 DX:	OFFICE VISIT-LEVEL 3 847.0	80.00		459.00

NEUROLOGY ASSOCIATES, P.A.
1130 GROVE ROAD
GREENVILLE, SOUTH CAROLINA 29605
TELEPHONE 864-232-9644

LOCATION: NEUROLOGY ASSOCIATES GROV PT-0027

PAGE: 2

DEENA WAITE-BETTENCOUR

AMOUNT DUE : 0.00

BILL TO: WAITE-BETTENCOUR DEENA

CHART #: [REDACTED]

DATE	POS	PROC	DESCRIPTION	CHARGES	CREDITS	BALANCE
10/29/09	99213		OFFICE VISIT-LEVEL 3			
	DX:		310.2	80.00		539.00
10/01/10	99214		OFFICE VISIT-LEVEL 4			
	DX:		854.0	117.00		656.00

NEUROLOGY ASSOCIATES OF GREENV
1130 GROVE ROAD
GREENVILLE SC 29605-4620

LOCATION : NEUROLOGY ASSOCI

PHONE : 864 232 9644

REFERRING DOCTOR : EDWARDS

MATRIX REHABILITATION SOUTH CAROLINA INC
PO BOX 11407 DRWR 1029
BIRMINGHAM AL 35246-1029
DETAIL 5/25/09 - 12/31/78

888 247 2256

PRINTED 5/20/10 9:41 BY CW003

0- 30 days
31- 60 days 0.00
61- 90 days 0.00
91-120 days 0.00
121-150 days 0.00
150+ days 0.00
Posted
Unposted 0.00
Total bal
-
- 0.00

DEENA W BETTENCOURT

Home
Work
PT-0008 BC-0001
CS-0000 DR-1707

DEENA W BETTENCOURT F-02/24/68- 42-A0043364
Next app't

Last chg 121109 213.00 022210
SSN: Last per pay 110409
Diag: 840.9 SPRAIN STRAIN SHOULDER ARM NO
Reg date 100709 PATIENT HAS NOTES

Last aging 05/01/10

TB PR
IY-04

Tick# 462896 U 1703	DEENA	BETTENCOURT	Total:	247.00
10/08/09 1707-JOHNSON PT	BENSON		MILLS AVENUE	
100809-100809 97001	-	98-PHYSICAL TH 840.9	-SPRAIN STRA	1.00 140.00
100809-100809 NP	-	-NEW PATIENT 840.9	-SPRAIN STRA	1.00 0.00
100809-100809 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	1.00 50.00
100809-100809 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00 57.00
Tick# 463062 U 1703	DEENA	BETTENCOURT	Total:	213.00
10/09/09 1707-JOHNSON PT	BENSON		MILLS AVENUE	
100909-100909 97110	-	98-THERAPEUTIC 719.41	-PAIN IN JOI	2.00 100.00
100909-100909 97140	-	98-MANUAL THER 719.41	-PAIN IN JOI	1.00 57.00
100909-100909 97010	-	98-HOT OR COLD 719.41	-PAIN IN JOI	1.00 23.00
100909-100909 97014	-	98-ELECTRICAL 719.41	-PAIN IN JOI	1.00 33.00
Tick# 463063 U 1703	DEENA	BETTENCOURT	Total:	.00
10/12/09 9900-NON VISIT	BENSON		MILLS AVENUE	
101209-101209 1000	-	-PATIENT NO 719.41	-PAIN IN JOI	1.00 0.00
Tick# 463064 U 1703	DEENA	BETTENCOURT	Total:	213.00
10/14/09 1707-JOHNSON PT	BENSON		MILLS AVENUE	
101409-101409 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00 100.00
101409-101409 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00 57.00
101409-101409 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00 23.00
101409-101409 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00 33.00
Tick# 463065 U 1703	DEENA	BETTENCOURT	Total:	.00
10/15/09 9900-NON VISIT	BENSON		MILLS AVENUE	
101509-101509 1000	-	-PATIENT NO 840.9	-SPRAIN STRA	1.00 0.00
Tick# 464343 U 1703	DEENA	BETTENCOURT	Total:	213.00
0/16/09 1707-JOHNSON PT	BENSON		MILLS AVENUE	



101609-101609 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
101609-101609 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
101609-101609 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00
101609-101609 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00	33.00

Tick# 464490 U 1703	DEENA	BETTENCOURT	Total:	213.00	
10/19/09 1707-JOHNSON PT	BENSON		MILLS AVENUE		
101909-101909 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
101909-101909 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
101909-101909 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00
101909-101909 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00	33.00

Tick# 464491 U 1700	DEENA	BETTENCOURT	Total:	213.00	
10/21/09 1707-JOHNSON PT	BENSON		MILLS AVENUE		
102109-102109 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
102109-102109 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
102109-102109 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00
102109-102109 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00	33.00

Tick# 464497 U 1703	DEENA	BETTENCOURT	Total:	.00	
10/22/09 9900-NON VISIT	BENSON		MILLS AVENUE		
102209-102209 1000	-	-PATIENT NO 840.9	-SPRAIN STRA	1.00	0.00

Tick# 465797 U 1703	DEENA	BETTENCOURT	Total:	213.00	
10/26/09 1707-JOHNSON PT	BENSON		MILLS AVENUE		
102609-102609 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
102609-102609 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
102609-102609 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00
102609-102609 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00	33.00

Tick# 465798 U 1703	DEENA	BETTENCOURT	Total:	213.00	
10/28/09 1707-JOHNSON PT	BENSON		MILLS AVENUE		
102809-102809 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
102809-102809 97140	-	98-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
102809-102809 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00
102809-102809 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00	33.00

Tick# 465799 U 1703	DEENA	BETTENCOURT	Total:	.00	
10/30/09 9900-NON VISIT	BENSON		MILLS AVENUE		
103009-103009 1001	-	-PATIENT CAN 840.9	-SPRAIN STRA	1.00	0.00

Tick# 468379 U 1703	DEENA	BETTENCOURT	Total:	.00	
11/09/09 9900-NON VISIT	BENSON		MILLS AVENUE		
110909-110909 1000	-	-PATIENT NO 840.9	-SPRAIN STRA	1.00	0.00

Tick# 468380 U 1703	DEENA	BETTENCOURT	Total:	.00	
11/11/09 9900-NON VISIT	BENSON		MILLS AVENUE		
111109-111109 1000	-	-PATIENT NO 840.9	-SPRAIN STRA	1.00	0.00

Tick# 473822 U 0826	DEENA	BETTENCOURT	Total:	213.00	
12/11/09 1701-BUCHANAN PT	BENSON		MILLS AVENUE		
110409-110409 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
110409-110409 97140	-	59-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
110409-110409 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00
110409-110409 97014	-	98-ELECTRICAL 840.9	-SPRAIN STRA	1.00	33.00

Tick# 473824 U 0826	DEENA	BETTENCOURT	Total:	213.00	
12/11/09 1701-BUCHANAN PT	BENSON		MILLS AVENUE		
110609-110609 97110	-	98-THERAPEUTIC 840.9	-SPRAIN STRA	2.00	100.00
110609-110609 97140	-	59-MANUAL THER 840.9	-SPRAIN STRA	1.00	57.00
110609-110609 97010	-	98-HOT OR COLD 840.9	-SPRAIN STRA	1.00	23.00

110609-110609 97014	- 98-ELECTRICAL 84019	-SPRAIN STRA	1.00	33.00
TOTAL OF PRINTED CHARGES				2,164.00

DIAGNOSTIC HEALTH CORPORATION
4100 INTERNATIONAL PLAZA SUITE 240
FORT WORTH TX 76109
(866) 683-5001

Patient:

Acct #

WAITE-BETTENCOURT, DEENA L

Responsible party:

WAITE-BETTENCOURT, DEENA L

Svc. Date	CPT	Proc. Description	Charge	Balance	Physician
09/17/2008	70553	MRI BRAIN INCLUDING BRAT	\$2,800.00	\$0.00	ALLEN JR MD, LEIGHTON CHASE

Payment Information

Insurance Payment: 09/24/2008 of \$0.00 Adjustment: \$2,140.00
Insurance Payment: 09/24/2008 of \$660.00 Adjustment: \$0

09/17/2008	A9579	INJECTION GADOLINIUM BAS	\$47.85	\$0.00	ALLEN JR MD, LEIGHTON CHASE

Payment Information

Insurance Payment: 09/24/2008 of \$0.00 Adjustment: \$9.60
Insurance Payment: 09/24/2008 of \$3.35 Adjustment: \$0
Patient Payment: 09/17/2008 of \$35.00 Adjustment: \$0

TOTAL BALANCE: \$0.00
Print Date: 04/22/2010



03/25/11 10:57

GHS PATIENT BILLING SYSTEM

BI0101P1

AF4 CHARGES IN REVENUE CODE AND SERVICE DATE (REGULAR) ORDER

OPT: DT ACCOUNT: [REDACTED] NAME: WAITE-BETTENCOURT, DEENA SSN: [REDACTED]

REV	DEPT	SERVICE DATE	PROC. NBR	DESCRIPTION	COUNT	EXTENDED AMOUNT	POST DATE
				ADMIT DISCHARGE FC SPEC TOTAL CHARGES			
				11/29/10 03/10/11 0001 544 \$4,290.00			
0918	7378	11/29/10	507524	EXM NEUROBHVR	1	375.00	112910
0918	7378	02/14/11	507502	TEST NEUROPSYCH	7	2415.00	021411
0918	7378	03/02/11	507499	TEST NEUROPSYCH	1	375.00	030211
0918	7378	03/09/11	507499	TEST NEUROPSYCH	3	1125.00	030911

PF: 1=HELP

4=SSN

5=TOP

6=BOT

7=BACKWD

8=FORWD

12=RETURN





Medical Expenses of Deena L. Waite Bettencourt

NorthPointe Chiropractic Center

▪ 09/04/2008 Extended Exam.....	\$140.00
▪ 09/04/2008 Full Spine Series.....	\$110.00
▪ 09/04/2008 Cervical Flex/Ext.....	\$40.00
▪ 09/04/2008- 09/26/2008 Interferential Muscle Stim (x8).....	\$20.00(\$160.00)
▪ 09/05/2008 -12/15/2008 Final Adjustment 1-2 Regions(x26)...	\$45.00(\$1,170.00)
▪ 11/14/2008 Re Exam.....	\$65.00
▪ 11/14/2008 Full Spine.....	\$62.00
▪ 01/05/2009 Re-Exam.....	\$65.00
<u>Total.....</u>	<u>\$1,812.00</u>

Premier Family Medicine

▪ 09/16/2008.....	\$111.00
▪ 10/03/2008.....	\$111.00
▪ 09/22/2009.....	\$111.00
▪ 10/07/2009.....	\$75.00
<u>Total.....</u>	<u>\$408.00</u>

Diagnostic Health Corporation

▪ 09/17/2008 MRI of the Brain.....	\$2,800.00
▪ 09/17/2008 Injection of Gadolinium.....	\$47.85
<u>Total.....</u>	<u>\$2,847.85</u>

VBS Physical Therapy

▪ 10/08/2009 Physical Therapy.....	\$140.00
▪ 10/08/2009 Therapeutic.....	\$50.00
10/08/2009-12/11/2009 Manual Therapy(x10).....	\$57.00(\$570.00)
▪ 10/09/2009-12/11/2009 Therapeutic(x9).....	\$100.00(\$900.00)
▪ 10/09/2009-12/11/2009 Hot or Cold(x9).....	\$23.00(\$207.00)
▪ 10/09/2009-12/11/2009 Electrical(x9).....	\$33.00(\$297.00)
<u>Total.....</u>	<u>\$2,164.00</u>

Neurology Associates of Greenville

▪ 10/22/2008 Consultation-Level 4.....	\$262.00
▪ 04/03/2009 Office Visit-Level 4.....	\$117.00
▪ 06/09/2009 Office Visit-Level 3.....	\$80.00
▪ 10/29/2009 Office Visit-Level 3.....	\$80.00
▪ 10/01/2010 Office Visit-Level 4.....	\$117.00
<u>Total.....</u>	<u>\$656.00</u>

Crescent Psychological Services

▪ 02/10/2009 Psychological Diagnostic Interview.....	\$175.00
▪ 02/23/2009 Neuropsychological.....	\$1,800.00
▪ 03/11/2009 Individual Psychotherapy 45-60 minutes.....	\$135.00
<u>Total.....</u>	<u>\$2,110.00</u>

Roger C. Peace Rehabilitation Hospital

▪ 11/29/2010 Neurobehavioral Exam.....	\$375.00
▪ 02/14/2011 Neuropsychological Test.....	\$2,415.00
▪ 03/02/2011 Neuropsychological Test.....	\$375.00
▪ 03/09/2011 Neuropsychological Test.....	\$1,125.00
<u>Total.....</u>	<u>\$4,290.00</u>

Future Medical Expenses of Deena L. Waite Bettencourt

Roger C. Peace Rehabilitation Treatment

▪ Speech Therapy Evaluation.....	\$350.00
▪ Psychological Evaluation.....	\$299.10
▪ Speech Therapy Continuing Care(\$300 x 10 units).....	\$3,000.00
▪ Psychological Continuing Care(\$250 x 10 units).....	\$2,500.00
<u>Total.....</u>	<u>\$6,149.10</u>

Complete Total: **\$20,436.95**

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

PLAINTIFFS' FIRST SUPPLEMENTAL
ANSWERS TO INTERROGATORIES

TO: DEFENDANT MARY R. WARD AND HER ATTORNEY MARCUS K. MCGARRY

5. Set forth the names and addresses of all physicians and chiropractors who have treated the party for any problem (physical or mental) in the past fifteen (15) years.

Answer: See list attached to Plaintiff's First Supplemental Responses to Request to Produce.

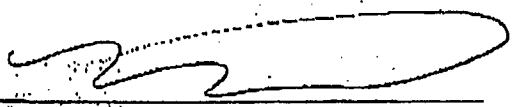
7. Set forth here a statement of all other damages claimed to have been sustained by the party including, without limitation, all lost wages. Please attach any and all documentation supporting the party's claim of lost wages including all copies of the party's federal income tax returns for the past three (3) years, inclusive of the year of the accident.

Answer:	Total medical treatments and mileage costs to date	\$ 13,395.27
	Present economic loss (20%)	\$ 164,189.60
	Future economic loss	\$ 820,948.00
	Present loss of household services	\$ 89,139.24
	Future loss of household services	\$ 445,000.00
	Future companion care expenses	\$ 724,880.00

Future companion care rehabilitative costs

\$ 341,120.00

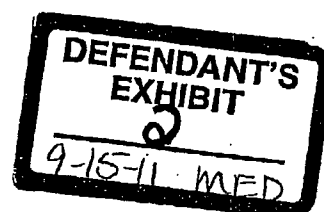
See supporting documents attached to Plaintiff's First Supplemental Responses to
Request to Produce.


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: 07-27-10

Total
\$ 2,598,672.10





Δ π EXHIBIT <u>2</u>	
Deponent _____	
Date _____	Rptr. _____
WWW.DEPOBOOK.COM	

RECORD ON APPEAL PAGE 783



$\Delta \pi$ EXHIBIT <u>4</u>	
Deponent _____	
Date _____	Rptr. _____
WWW.DEPOBOOK.COM	

RECORD ON APPEAL PAGE 784



$\Delta \pi$ EXHIBIT <u>5</u>	
Deponent _____	
Date _____	Rptr. _____
WWW.DEPOBOOK.COM	

RECORD ON APPEAL PAGE 785



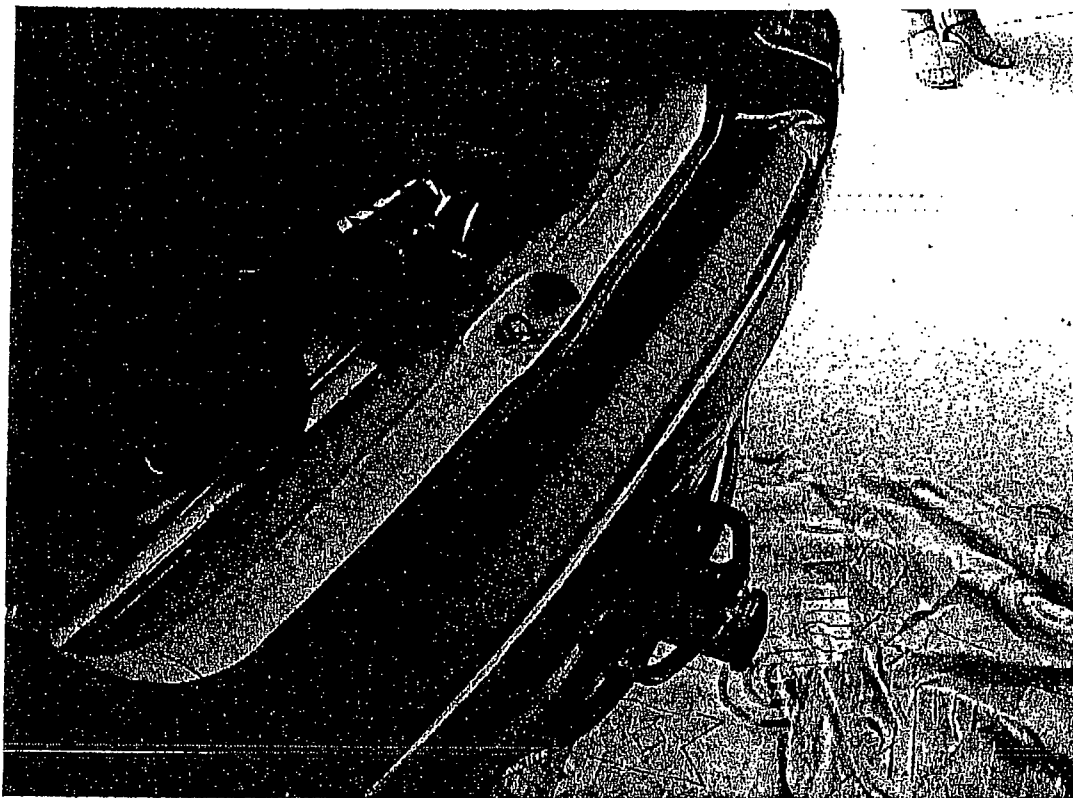
$\Delta \pi$ EXHIBIT 6
Deponent _____
Date _____ Rptr. _____
WWW.DEPOBOOK.COM

RECORD ON APPEAL PAGE 786



Δ π EXHIBIT <u>7</u>	
Deponent _____	
Date _____	Rptr. _____
www.deposoek.com	

RECORD ON APPEAL PAGE 787



Δ π EXHIBIT 8

Deponent _____

Date _____ Rptr. _____

WWW.DEPOBOOK.COM

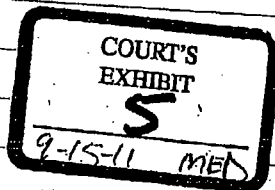
RECORD ON APPEAL PAGE 788

DID
~~DOES~~ AUTO
INSURANCE
COVER ANY
EXPENSES?

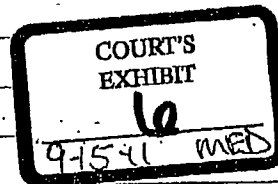
IS THIS RELEVANT

THANKS

Shetty



Can we have A copy of the
law?



JSB
9/15/01

THAT IS EASIER SAID
THAN DONE. CAN YOU
TELL ME SPECIFICALLY
WHAT PART OF THE
LAW / CHARGE YOU NEED?

SPECIFICALLY WE WOULD LIKE
THE LAW / CHARGE READ AS IT
APPLIES TO THIS CASE?



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

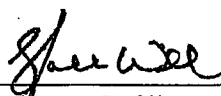
Case No. 2011-CP-23-4086
Appellate Case No. 2011-204086

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

CERTIFICATION

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court's Interim Order dated August 13th, 2007.



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
Counsel for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

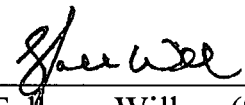
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Counsel for Appellant

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JUL 10 2013

SC Court of Appeals

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-23-4086
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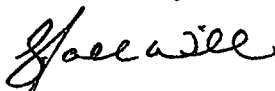
Deena L. Bettencourt and Scott Bettencourt, ... Appellants,
v.
Mary Wald, ... Respondent.

CERTIFICATE

I certify that on the 8th day of July, 2013, I served the Record on
Appeal on the Respondent by hand delivering a copy of same to counsel of
record as indicated below:

Marcus K. McGarr
108 Whitsett Street
Greenville, SC 29601
Counsel for Respondent

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellant

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JUL 10 2013

SC Court of Appeals