

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
COURT OF COMMON PLEAS

THE HONORABLE DeANDREA G. BENJAMIN
CIRCUIT COURT JUDGE

CONSOLIDATED CASES
CIVIL ACTION NO. 2015-CP-28-00852
CIVIL ACTION NO. 2016-CP-28-00758

RECEIVED
AUG 12 2019
SC Court of Appeals

APPELLATE CASE NO.: 2018-001798

Heather Anne Bundy APPELLANT

v.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD.....RESPONDENTS

And

W.H. Bundy, Jr.....APPELLANT

v.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD.....RESPONDENTS

RECORD ON APPEAL
VOLUME I OF II

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Heather Anne Bundy,

☐ Plaintiff

v.

Thomas Elroy Jett and Haier America Research
& Development Co., LTD.

☒ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-28-00852

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

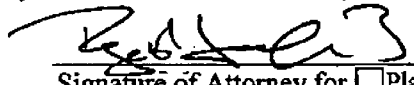
Estimated Time Needed: **Court Reporter Needed:** ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

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


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

July 13, 2017

Date Submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2015-CP-28-00852

FILED FOR RECORD
2017 JUL 20 AM 10:23
JANEI C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

W. H. Bundy, Jr.,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

IN THE COURT OF COMMON PLEAS

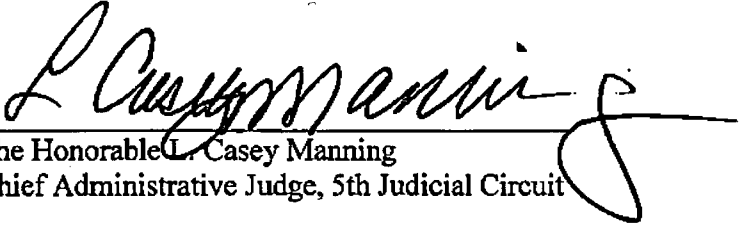
CIVIL ACTION NO: 2016-CP-28-00758

**CONSENT ORDER CONSOLIDATING
CASES FOR TRIAL**

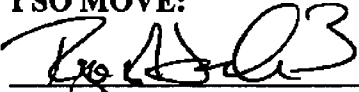
This matter comes before the Court by motion of the Defendants and with the Plaintiff's consent. The Court finds it proper and the parties agree the two above-captioned cases shall be consolidated for trial.

AND IT IS SO ORDERED.

July 10, 2017
Columbia, South Carolina


The Honorable Casey Manning
Chief Administrative Judge, 5th Judicial Circuit

I SO MOVE:



John M. Grantland, Esquire
Rogers E. Harrell, III, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendants

I SO CONSENT:

 w/permission

M. Brenda McDonald, Esquire
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559; 843-492-0221
Attorney for Plaintiff

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2800852

Heather Anne Bundy

Thomas Elroy Jett

Haier America Research
& Development Co LTD

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

Jury Verdict for the Defendant

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

1/23/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on¹, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Brent McDonald 1516 Old Trolley Road, 2Nd
Floor Summerville, SC 29485

John Martin Grantland PO Box 6648 Columbia, SC 29260
Rogers Edward Harrell III PO Box 6648 Columbia, SC
29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Janet C Hasty - Clerk of Court

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

HEATHER ANNE BUNDY)

PLAINTIFF,)

v.)

THOMAS ELROY JETT AND HAIER)

AMERICA, RESEARCH AND)

DEVELOPMENT COMPANY, LTD)

DEFENDANTS.)

W.H. BUNDY, JR.)

PLAINTIFF,)

v.)

THOMAS ELROY JETT AND HAIER)

AMERICA, RESEARCH AND)

DEVELOPMENT COMPANY, LTD)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL
CIRCUIT

C/A No. 2015-CP-28-00852

VERDICT FORM

C/A No. 2016-CP-28-00758

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2018 JAN 23 PM 12:19

FILED FOR RECORD

I. NEGLIGENCE

1. ____ We, the jury, unanimously find for the Plaintiff, Heather Anne Bundy, for the cause of action of negligence in the amount of

\$ _____ (dollars) actual
damages.

\$ _____ (dollars) punitive
damages.

% _____ (percentage) of
Plaintiffs' fault, if any.

% _____ (percentage) of
Defendants' fault.

2. ☒ We, the jury, unanimously find for the Defendants for the cause of action of negligence.

II. LOSS OF CONSORTIUM

1. _____ We, the jury, unanimously find, for the Plaintiff, W.H. Bundy, Jr. for the cause of action of loss of consortium.

\$ _____ (dollars) actual
damages.

2. ☒ We, the jury, unanimously find for the Defendants for the cause of action of loss of consortium.

Stop your deliberations.

April W. Owens
FOREPERSON

Date: January 23, 2018

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP2800852

Heather Anne Bundy
PLAINTIFF(S)

Thomas Elroy Jett et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Plaintiff's Post-Trial Motions are Denied. The Defendants are instructed to prepare a more formal order within twenty days of the entry of this order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/31/2018 .

G. Thomas Cooper, Jr.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Kershaw Common Pleas

Case Caption: Heather Anne Bundy VS Thomas Elroy Jett , defendant, et al

Case Number: 2015CP2800852

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-08-01 10:03:13 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiff,

CIVIL ACTION NO: 2015-CP-28-00852

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

W. H. Bundy, Jr.,

Plaintiff,

CIVIL ACTION NO: 2016-CP-28-00758

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

**ORDER DENYING PLAINTIFF'S
POST-TRIAL MOTIONS**

This matter came before the Court through Plaintiff's Post-Trial Motions, which were filed with the Court on February 2, 2018. Oral arguments on those motions were heard on July 26, 2018. A Form 4 Order denying the Plaintiff's Post-Trial Motions was filed on August 1, 2018, and this formal order supplements that prior Form 4 Order (attached as Exhibit A).

These cases were tried before a Kershaw County jury in a trial which began on January 16, 2018 and concluded on January 23, 2018 when the jury found in favor of the Defendants as to all causes of action (Verdict Form attached as Exhibit B).

In the present motion, the Plaintiffs move for an Order from this Court for JNOV, a new trial, and/or an Order altering and amending the Judgment entered for the Defendant on January 23, 2018, citing seven separate grounds for relief. Each of these grounds was previously ruled on by the Court during Motions in Limine or during the course of the trial. Each of the grounds raised in the Plaintiff's Motion were either properly ruled on by the Court or waived. After

Careful reconsideration of each of these grounds, thorough review of the written memoranda provided by both the Plaintiffs and Defendants, and after hearing oral arguments from both the Plaintiffs and the Defendants, the Plaintiffs' Motion for JNOV, Motion for a New Trial, and Motion to Alter or Amend the Judgment Entered in Favor of the Defendants are DENIED as to each of the following grounds:

1. Exhibit 13: Defendant Jett's diagram

The Plaintiff alleges Defendant Jett's diagram prepared by him following the motor vehicle accident which is the subject of this litigation is inadmissible hearsay and was improperly admitted into evidence. The Court disagrees. Defendant Jett's diagram, which he prepared immediately after the accident, was admissible based on Rules 701 and 803. Under Rule 701, "if the witness does not testify as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions and inferences which are: (a) rationally based on the perception of the witness." Defendant Jett testified that he drew a diagram and gave a brief statement of how the accident happened after the accident. The Court concludes that Jett's diagram and statement explaining the diagram was "rationally based on his perception as a witness to the accident" and therefore admissible under Rule 701.

The Court also finds the diagram was properly admitted under Rule 803(6) as a memorandum or record made at or near the time, by a person with knowledge, and kept in the ordinary course of business through Defendant Haier's regular practice in the investigation of the accident.

2. Failure to Grant Plaintiff's Motion for Directed Verdict on the Issue of Liability

The issue of liability was a jury question that hinged on the credibility of the Plaintiff and the Defendant. The most important issue on liability boiled down to which party was in the

median first: Mrs. Bundy or Mr. Jett. The Plaintiff claimed she was in the median first, and the Defendant claimed he was in the median first. At the directed verdict stage, the Court must view all of the evidence and testimony in the light most favorable to the non-moving party, the Defendant. Based on the testimony and evidence provided by the Plaintiffs, the Defendants, the investigating officer, and multiple experts, there was a clear question of fact for the jury to determine liability. Liability was clearly a jury issue, which was properly decided based on the testimony and evidence submitted.

3. Testimony of Expert Brian Boggess

Prior to Brian Boggess's testimony, the Court allowed a proffer of his testimony and extensive cross-examination by the Plaintiff. The Court found that Mr. Boggess's testimony complied with State v. Council, 515 S.E.2d 508 (1999). Pursuant to State v. Council, Boggess testified regarding his publications and peer review of his technique: prior application of the method to the type of evidence involved in a case; quality control procedures to ensure reliability; and consistency of his method with recognized scientific laws and procedures.

Moreover, the Court found that Mr. Boggess is a licensed professional engineer who completed Traffic Accident Reconstruction Course I and II at Northwestern University, authored 25 peer-reviewed technical papers over the last ten years, and testified approximately 7 times as an expert in accident reconstruction and biomechanics in state courts in South Carolina. The Court properly qualified Boggess as an expert in the field of accident reconstruction and biomechanics. It is clear from Boggess's testimony he was properly allowed to testify in the fields of biomechanics and accident reconstruction. Any issues the Plaintiffs raised as to his methods and opinions went to the weight of his testimony and not its admissibility, and the Plaintiffs cross-examined Boggess on those issues before the jury.

4. Plaintiff's Motion for Directed Verdict on the Issue of Damages for Medical Bills

Again, at the directed verdict stage, the Court must view all of the evidence and testimony in the light most favorable to the non-moving party, the Defendant. Based on the testimony and evidence provided by the Plaintiffs, the Defendants, the investigating officer, and multiple experts, there was a clear question of fact for the jury to determine as to causation of the Plaintiffs' alleged injuries. What damages the Plaintiff suffered, if any, was clearly a jury issue, which was properly decided based on the testimony and evidence submitted.

The jury was presented with evidence that the Plaintiff's medical bills and life care plan were not proximately caused by her accident with the Defendant. Plaintiff admitted to prior treatment for neck and back pain; her chiropractor admitted that Plaintiff had chronic and severe neck and back pain in 2008 and for years prior; expert testimony revealed Plaintiff's neck and back pain existed for 20-30 years; and Defendants' biomechanical and accident reconstruction expert testified that the nature of the impact was very minor. The Camden Police photos, admitted into evidence by consent, also showed the minor nature of the impact. All of this evidence raised a question of whether the Plaintiff's medical treatment and life care plan was proximately caused by this accident and not her prior and extensive history of neck and back pain. That question of fact was solely the province of the jury.

5. Request for Production of the Truck

The Court properly ruled that the Plaintiff's discovery request for production of the Defendant's truck was not proper evidence for the jury. Testimony was provided to the Court that the Plaintiffs sought to inspect the vehicle. After argument, the Court concluded that issue of the inspection of the truck should have been addressed by the Plaintiff in a Motion to Compel, which the Plaintiff admittedly did not file against the Defendants.

If there was a discovery dispute or scheduling problem regarding Plaintiffs' inspection of the truck, the issue was waived by the Plaintiffs by not filing a Motion to Compel. This discovery issue was not proper evidence for the jury as the Court determined.

Further, the Plaintiffs were allowed and presented to the jury, through the direct examination of his expert and on closing argument that their expert was not allowed to view the Defendant's vehicle after a request was made by the Plaintiffs to inspect that vehicle.

6. Jury Charges

The Plaintiffs submitted their jury charges to the Court without objection from the Defendants. Oral arguments on this motion confirmed the Plaintiff had no objection to the charges issued to the jury. The court finds its version of the charges, and the charges the Court selected to use based on the recommendations of counsel, were proper. Further, any objections to the Court's charges were not properly raised at trial.

7. The Jury Verdict was Contrary to the Evidence

The jury was faced with significant questions of liability and proximate cause of the Plaintiff's injuries. The main issue as to liability was who got into the median first. The jury heard a week of testimony and evidence, including photos taken immediately after the accident before the vehicles were moved from the scene. There was evidence for a jury to conclude that the Defendant's tractor trailer was in the median first based on his testimony, the testimony of both experts, and the photos of the scene and vehicles. Moreover, the jury heard testimony from the Plaintiff, her treating doctors, and the Defendant's experts which presented questions of fact as to the causation of the Plaintiff's injuries.

The Plaintiff had the burden to prove the Defendants were negligent by a preponderance of the evidence. The Plaintiff also had the burden to prove her injuries were proximately caused

by this motor vehicle accident. The jury decided these issues based on the evidence and testimony and determined the credibility of the parties. These questions were solely within the province of the jury and properly decided based on the evidence presented.

Therefore, the Plaintiffs' Motion for JNOV, Motion for a New Trial, and Motion to Alter or Amend the Judgement entered in favor of the Defendants are DENIED. It is so ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW.

Columbia, South Carolina
August __, 2018



Kershaw Common Pleas

Case Caption: Heather Anne Bundy VS Thomas Elroy Jett , defendant, et al
Case Number: 2015CP2800852
Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-09-10 10:13:55 page 7 of 7

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Heather Anne Bundy

Plaintiff(s)

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD

Defendant(s)

Submitted By: M. Brent McDonald

Address: Smith Bundy Bybee & Barnett, P.C.
P.O. Box 1542
Mt. Pleasant, SC 29465

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 28- 852

SC Bar #: 78057

Telephone #: 843-881-1623

Fax #: 843-881-4406

Other:

E-mail: bmcDonald@s3blaw.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☒ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm. (991) ☐ Other (999)
☐ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (519)		

Submitting Party Signature:

Date: September 2, 2015

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

20

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiffs,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2015- CP- 28 - 852

) **COMPLAINT**
) **(Jury Trial Demanded)**

Plaintiff Heather A. Bundy ("Heather Bundy" or "Mrs. Bundy") complaining of the
Defendants Thomas Elroy Jett (sometimes hereinafter referred to as "Defendant Jett") and Haier
America Research & Development Co., LTD (sometimes hereinafter referred to as "Defendant
Haier") herein, would allege and show as follows:

PARTIES AND JURISDICTION

1. Heather Bundy is a citizen and resident of the County of Kershaw, State of South Carolina.
2. Upon information and belief, Defendant Jett is a resident and citizen of the County of Kershaw, State of South Carolina.
3. Upon information and belief, Defendant Haier is a duly licensed corporation which is organized and existing under the laws of the State of Delaware and is authorized to and does do business in the State of South Carolina.

FACTS

I. The Crash

4. Mrs. Bundy has lived in Boykin, South Carolina for many years and has operated her automobile countless times through the intersection in which gives rise to the present claim.
5. On September 3, 2013, Mrs. Bundy dropped off her recycling at the Recycling Center located on Black River Road near Camden, South Carolina at approximately 7:30 a.m. Just East of the Recycling Center on Black River Road is the Haier facility.
6. Mrs. Bundy pulled out from the Recycling Center to return home and began to travel West on Black River Road towards the intersection with U.S. 521 (Sumter Highway).
7. At that same date, time and place, Defendant Jett was operating a Tractor-Trailer and leaving the Haier facility. He was also traveling West on Black River Road near Camden, South Carolina—only that Defendant Jett was behind Mrs. Bundy on Black River Road.
8. Defendant Jett was acting within the course and scope of his employment with Defendant Haier and was acting as the agent for Defendant Haier and was driving the Tractor-Trailer for Defendant Haier.
9. Mrs. Bundy approached the intersection of U.S. 521 and came to a complete stop. At the intersection U.S. 521 is four lanes wide, and a vehicle attempting to turn left

onto U.S. 521 from Black River Road is often required to cross over the first two lanes of traffic and then stop in the wide median to wait for an opening in the final two lanes of traffic.

10. As Mrs. Bundy had done countless times before, she came to a complete stop at the intersection. Defendant Jett was still behind Mrs. Bundy in the Haier Tractor-Trailer. She waited for the traffic heading North on US 521 to clear and crossed over the North bound lanes in order to again come to a complete stop in the median area.
11. Mrs. Bundy was completely stopped in the median waiting for the traffic heading South on U.S. 521 to clear when suddenly and without warning of any kind the Haier Tractor-Trailer being driven and operated by Defendant Jett approached from the rear of Mrs. Bundy's vehicle in an apparent attempt to occupy the median at the same time as Mrs. Bundy.
12. Defendant Jett negligently, violently, and recklessly rammed into Mrs. Bundy's vehicle causing her to be thrown about the interior of her vehicle and to suffer great bodily harm as a result thereof.
13. Defendant Jett appeared in the moment to be unaware and oblivious that he struck Mrs. Bundy's vehicle because he continued to cause his Tractor-Trailer to drive forward notwithstanding that he struck her vehicle. This caused the Tractor Trailer to hook Mrs. Bundy's vehicle and to pull it out into oncoming traffic that was heading South on US 521.
14. Prior to the crash, Mrs. Bundy was lawfully and prudently traveling through the intersection, and her vehicle had fully functioning tail lights and turn signals.

15. Mrs. Bundy was in no position to avoid the crash and, in fact, could not reasonably avoid the crash nor the calamity that followed.
16. Defendant Jett did nothing to warn Mrs. Bundy of an imminent crash nor did Defendant Jett even exit his Tractor-Trailer immediately following the crash to assist Mrs. Bundy in any way.

III. The Surgeries

17. After the crash, Mrs. Bundy experienced significant pain and injuries. Prior to and in an attempt to avoid surgery, she attempted to address the injuries with an active lifestyle, diet, massages, acupuncture, and epidural injections. Unfortunately, the pain continued to get worse and she was physically limited in her movements and activities.
18. As the pain became unbearable and the injuries continued to restrict her life more and more, Mrs. Bundy sought the advice of Dr. Andrew Cannestra—a neurosurgeon.
19. Dr. Cannestra examined Mrs. Bundy and concluded that she required at least two surgeries. The invasive surgeries involve fusing the portions of Mrs. Bundy's neck and spine together. The recovery period from the surgeries was long and painful.
20. Though the surgeries were successful in relieving some of the pain from the injuries sustained in the crash with Defendant Jett, Mrs. Bundy will require significant future medical treatment, will continue to experience pain and suffering, and has actually and medically been restricted from numerous activities and movements she enjoyed prior to the crash.

FOR A FIRST CAUSE OF ACTION
(Negligence)

21. Mrs. Bundy repeats and realleges Paragraphs 1 through 20, above, as if fully set forth herein verbatim.
22. Defendant Jett at the time and place of the crash owned a duty to Mrs. Bundy and was negligent, careless, grossly negligent, reckless, willful and wanton in breaching that duty in at least the following ways:
 - a) In failing to keep his vehicle under control;
 - b) In failing to keep proper look out;
 - c) In failing to apply his brakes if any he had;
 - d) In failing to sound his horn;
 - e) In crashing his Tractor-Trailer into the vehicle of Mrs. Bundy;
 - f) In failing to stop his Tractor Trailer after crashing into the vehicle of Mrs. Bundy;
 - g) In causing great physical and personal harm and pain to Mrs. Bundy;
 - h) In failing to simply do those things in which a reasonable person would have done under the circumstances.
23. That all of the foregoing actions and inactions of Defendant Jett are the direct and proximate cause of the Mrs. Bundy's, surgeries, medical bills, pain and suffering, injuries and damages as set forth more fully below—such acts being in violation of the laws of the State of South Carolina.
24. That as a direct and proximate result of the aforementioned actions or inactions of Defendant Jett, Mrs. Bundy has suffered and will continue to suffer great physical

pain and injury as a result of being thrown violently about the interior of the vehicle and being subjected to tremendous shock; has incurred and will continue to incur in the future substantial physical and mental pain and suffering; has lost a great amount of enjoyment of life; has sustained emotional and mental distress; has incurred and will continue to incur large amounts of medical expenses; and has suffered damage to her automobile.

25. Further, as a direct and proximate result of the aforementioned acts of Defendant Jett, Mrs. Bundy has suffered permanent physical and emotional injuries that will require treatment, rehabilitation, a material and devastating change of her previous lifestyle, and great expense in order to attempt to accommodate such permanent injuries.

FOR A SECOND CAUSE OF ACTION
(Respondeat Superior)

26. Mrs. Bundy repeats and realleges Paragraphs 1 through 25, above, as if fully set forth herein verbatim.
27. At all times relevant to the crash, Defendant Haier was the employer and in control of Defendant Jett.
28. At all times relevant to the crash, Defendant Jett was acting within the scope of his employment or agency with Defendant Haier, and, as such, Defendant Haier is responsible for the negligent acts of Defendant Jett pursuant to the doctrine of Respondeat Superior.
29. As a direct and proximate result of the aforementioned acts of Defendant Jett, Mrs. Bundy has suffered and will continue to suffer great physical pain and injury as a

result of being thrown violently about the interior of the vehicle and being subjected to tremendous shock; has incurred and will continue to incur in the future substantial physical and mental pain and suffering; has lost a great amount of enjoyment of life; has sustained emotional and mental distress; has incurred and will continue to incur large amounts of medical expenses; and has suffered damage to her automobile.

30. Further, as a direct and proximate result of the aforementioned acts of Defendant Jett, Mrs. Bundy has suffered permanent physical and emotional injuries that will require treatment, rehabilitation, a material and devastating alteration of her previous lifestyle, and great expense in order to attempt to accommodate such permanent injuries.

WHEREFORE, Mrs. Bundy prays for judgment against the Defendants for actual, special, incidental, direct, consequential, and punitive damages for an amount to be shown at trial, together with the costs and disbursements of this action, and for such other and further relief as the court deems just a proper.

SMITH, BUNDY, BYBEE & BARNETT, P. C.



M. Brent McDonald, Esquire, SC Bar # 78057

Post Office Box 1542

Mt. Pleasant, South Carolina 29465-1542

Telephone: (843) 881-1623

bmcDonald@s3blaw.com

Attorney for the Plaintiff

Mount Pleasant, South Carolina
September 2, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

CIVIL ACTION NO: 2015-CP-28-00852

Heather Anne Bundy,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

ANSWER

**TO: M. BRENT MCDONALD, ESQUIRE, ATTORNEY FOR THE PLAINTIFF, AND
TO THE PLAINTIFF ABOVE-NAMED:**

The Defendants, answering the Plaintiff's Complaint herein, would respectfully show
unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendants deny each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted.
2. Paragraphs 1 through 3 of the Plaintiff's Complaint are admitted.
3. Paragraphs 4 and 5 of the Plaintiff's Complaint are admitted.
4. As for Paragraphs 6 through 11 of the Plaintiff's Complaint, the Defendant admits that on or about September 3, 2013, he and the Plaintiff were involved in an accident on US 521 and the accident was the Plaintiff's fault. Otherwise, Paragraphs 6 through 11 are denied.
5. Paragraphs 12 through 16 of the Plaintiff's Complaint are denied.
6. As for Paragraphs 17 through 20, the allegations regarding the Plaintiff's injuries are unknown and therefore denied.

FOR A FIRST DEFENSE TO FIRST CAUSE OF ACTION

7. Paragraphs 21 through 25 of the Plaintiff's Complaint are denied.

FOR A FIRST DEFENSE TO SECOND CAUSE OF ACTION

8. Paragraphs 26 through 30 of the Plaintiff's Complaint are denied.

FOR A SECOND DEFENSE

9. The Defendants would show, upon information and belief, that the injuries sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from the Defendants.

FOR A THIRD DEFENSE

10. The Defendants would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

- a. In failing to keep a proper lookout;
- b. In failing to keep her vehicle under proper control;
- c. In attempting to make an unlawful passing maneuver around the Defendant's truck while it was stopped in the median;
- d. In failing to act as a reasonable and prudent person would have acted under the same or similar circumstances; and
- e. In other ways and particulars that may be shown through discovery and at trial

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendants plead such negligence, carelessness, recklessness and gross

negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendants and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendants, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendants, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

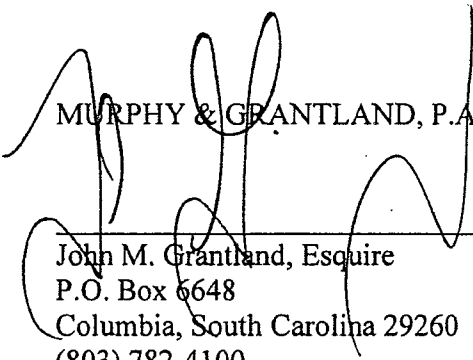
FOR A FOURTH DEFENSE

11. The Defendants would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because he Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates the Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for

punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed with costs.

The Defendants demands a jury trial.



MURPHY & GRANTLAND, P.A.

John M. Grantham, Esquire
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendants

Columbia, South Carolina
September 29, 2015

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2015-CP-28-00852

Heather Anne Bundy,

Plaintiff,

vs.

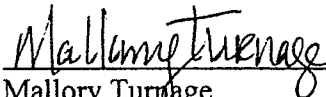
Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendants, do hereby certify that I have served a copy of the foregoing, **Answer**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

M. Brent McDonald, Esquire
Smith Bundy Bybee & Barnett, P.C.
P.O. Box 1542
Mt. Pleasant, SC 29465


Mallory Turnage

Columbia, South Carolina
September 29, 2015



MURPHY & GRANTLAND, P.A.

John M. Grantland
Direct dial 803-454-1237
jgrantland@murphygrantland.com

September 29, 2015

Honorable Joyce McDonald, Clerk
Kershaw County Clerk of Court
1121 Broad Street
P.O. Box 1557
Camden, SC 29020

Re: Heather Anne Bundy vs. Thomas Elroy Jett and Haier America Research & Development Co., LTD
Civil Action No.: 2015-CP-28-00852
Claim No.: Y16AL14155
Insured: Haier America Research & Development Co., LTD
Date of Loss: 09-03-13
Our File No.: 1350-0617

Dear Ms. McDonald:

Enclosed please find herewith for filing with the Court the original and one (1) copy of an Answer in the above-referenced matter. I would appreciate your filing the original and returning a clocked copy to me in the envelope provided.

By copy of this letter I am serving same on opposing counsel.

Yours truly,

John M. Grantland

JMG/mwt

Enclosure

cc: M. Brent McDonald, Esquire
Yulia McArthur (via e-mail)

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Harrell, III
*Member-American Board of Trial Advocates

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

W. H. Bundy, Jr.

Plaintiff(s)

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD

Defendant(s)

Submitted By: M. Brent McDonald

Address: Bundy McDonald, LLC
1516 Old Trolley Road
Summerville, SC 29485

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 28- 758

SC Bar #: 78057

Telephone #: 888-552-1559

Fax #: 888-393-6665

Other:

E-mail: brent@bundymcdonald.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☒ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)			
☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)			

Submitting Party Signature:

Date: August 24, 2016

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

W.H. Bundy, Jr.,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2016- CP- 28 - 758

SUMMONS

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

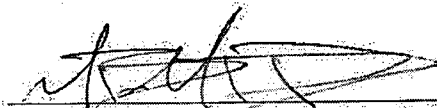
2016 AUG 26 AM 9:27

FILED FOR RECORD

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, M. Brent McDonald, Esquire, of Bundy McDonald, LLC, at 1516 Old Trolley Road, Summerville, South Carolina 29485, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Complaint.

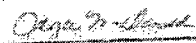
BUNDY MCDONALD, LLC



M. Brent McDonald, Esquire, SC Bar # 78057
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: 843-492-0221
brent@bundymcdonald.com
Attorney for the Plaintiff

Summerville, South Carolina
August 24, 2016

ATTEST True, Correct & Certified
Copy of Original on File in this
Court


Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

W.H. Bundy, Jr.,

Plaintiffs,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2016- CP- 28 - 758

) **COMPLAINT**
) **(Jury Trial Demanded)**

FILED FOR RECORD
2016 AUG 26 AM 9:27
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Plaintiff W. H. Bundy, Jr. (sometimes referred to hereinafter as "Plaintiff") complaining of the Defendants Thomas Elroy Jett (sometimes hereinafter referred to as "Defendant Jett") and Haier America Research & Development Co., LTD (sometimes hereinafter referred to as "Defendant Haier") herein, would allege and show as follows:

PARTIES AND JURISDICTION

1. W.H. Bundy, Jr. is a citizen and resident of the County of Kershaw, State of South Carolina.
2. Upon information and belief, Defendant Jett is a resident and citizen of the County of Kershaw, State of South Carolina.
3. Upon information and belief, Defendant Haier is a duly licensed corporation which is organized and existing under the laws of the State of Delaware and is authorized to and does do business in the State of South Carolina.
4. This Court has jurisdiction over the parties and venue is proper in this forum.

5. Plaintiff is lawfully married to Heather Ann Bundy (hereinafter referred to as "Mrs. Bundy").
6. On September 3, 2013, Defendant Jett, while acting within the course and scope of his employment with Defendant Haier negligently, tortuously, violently, and recklessly rammed into Mrs. Bundy's vehicle causing her to be thrown about the interior of her vehicle and to suffer great bodily harm as a result thereof.
7. After the crash, Mrs. Bundy experienced significant pain and injuries. As the pain became unbearable and the injuries continued to restrict her life more and more, Mrs. Bundy sought the advice of Dr. Andrew Cannestra—a neurosurgeon.
8. Dr. Cannestra examined Mrs. Bundy and concluded that she required at least two surgeries. The invasive surgeries involve fusing the portions of Mrs. Bundy's neck and spine together. The recovery period from the surgeries was long and painful.
9. Though the surgeries were successful in relieving some of the pain from the injuries sustained in the crash with Defendant Jett, Mrs. Bundy will require significant future medical treatment, will continue to experience pain and suffering, and has actually and medically been restricted from numerous activities and movements she enjoyed prior to the crash.
10. The injuries and damages Ms. Bundy suffered and continues to suffer as alleged herein were proximately caused by the negligent, reckless, willful and grossly negligent acts of the Defendants.

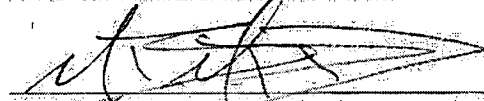
11. As a result of the injuries suffered by his spouse as a result of the Defendants' negligence as alleged hereinabove, the Plaintiff has suffered and been injured greatly.

FOR A FIRST CAUSE OF ACTION
(Loss of Consortium)

12. Mr. Bundy repeats and realleges Paragraphs 1 through 11, above, as if fully set forth herein verbatim.
13. As a direct and proximate result of the injuries sustained by his spouse, the Plaintiff suffered actual damages for loss of consortium and companionship of his spouse, for which he seeks recovery in this action pursuant to S.C. Code Ann § 15-75-20 and the South Carolina Common Law, including loss of consortium, love, affection, aid, comfort, society, companionship, services and all other elements of damages recoverable in an action for loss of consortium as provided by law.

WHEREFORE, Mr. Bundy prays for judgment against the Defendants for actual, special, incidental, direct, consequential, and punitive damages for an amount to be shown at trial, together with the costs and disbursements of this action, and for such other and further relief as the court deems just a proper.

BUNDY MCDONALD, LLC



M. Brent McDonald, Esquire, SC Bar # 78057
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
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brent@bundymcdonald.com
Attorney for the Plaintiff

Summerville, South Carolina
August 24, 2016

Common Pleas

Clerk : Joyce McDonald

1121 Broad Street

Camden, SC 29020

Phone:(803) 425-7223 Fax:(803) 425-1505

Received From: McDonald, Michael Brent
PO Box 1542
Mount Pleasant, SC 294651542

Date: 8/26/2016
Receipt #: 31411
Clerk: c28ctrues

Paying for: Bundy, W H

Transaction Type: Payment

Payment Type: Check \$150.00

Total Paid: \$150.00

Reference #: 26947

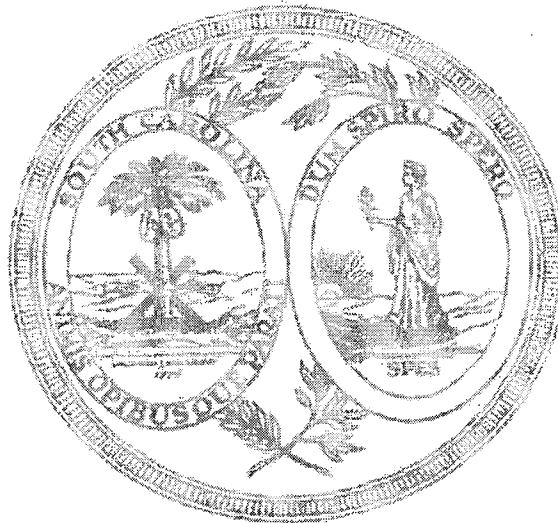
Comment:
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Total Received: \$150.00

Change Due: \$0.00

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<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP2800758	W H Bundy Jr VS Thomas Elroy Jett	\$150.00	\$150.00	\$0.00



Total Cases: 1

\$150.00

\$150.00

\$0.00



MURPHY & GRANTLAND, P.A.

John M. Grantland
Direct dial 803-454-1237
jgrantland@murphygrantland.com

October 12, 2016

Honorable Joyce McDonald, Clerk
Kershaw County Clerk of Court
1121 Broad Street
P.O. Box 1557
Camden, SC 29020

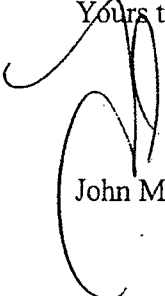
Re: W. H. Bundy, Jr. v. Thomas Elroy Jett and Haier America Research & Development Co., LTD
Civil Action No.: 2016-CP-28-00758
Claim No.: Y16AL14155
Insured: Haier America Research & Development Co., LTD
Date of Loss: 09-03-13
Our File No.: 1350-0617

Dear Ms. McDonald:

Enclosed please find herewith for filing with the Court the original and one (1) copy of an Answer in the above-referenced matter. I would appreciate your filing the original and returning a clocked copy to me in the envelope provided.

By copy of this letter I am serving same on opposing counsel.

Yours truly,


John M. Grantland

JMG/mwt

Enclosure

cc: M. Brent McDonald, Esquire
Yulia McArthur (via e-mail)
Alex Zeigler (via e-mail / HNG8973)

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure Robert M. Peele, III Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Rogers E. Harrell, III

*Member-American Board of Trial Advocates

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2016-CP-28-00758

W. H. Bundy, Jr.,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

ANSWER

**TO: M. BRENT MCDONALD, ESQUIRE, ATTORNEY FOR THE PLAINTIFF, AND
TO THE PLAINTIFF ABOVE-NAMED:**

The Defendants, answering the Plaintiff's Complaint herein, would respectfully show
unto the Court the following:

FOR A FIRST DEFENSE

1. The Defendants deny each and every allegation of the Plaintiff's Complaint not
hereinafter specifically admitted.

2. Paragraphs 1 through 5 of the Plaintiff's Complaint are admitted upon
information and belief.

3. As for Paragraph 6 of the Plaintiff's Complaint, the Defendants admit that
Defendant Jett was involved in an accident with the Plaintiff's wife, Heather Anne Bundy on
September 3, 2013. Otherwise, Paragraph 6 is denied.

4. As for Paragraphs 7 and 8 of the Plaintiff's Complaint, the Defendants admit that
Ms. Heather Anne Bundy has treated with Dr. Andrew Cannestra, a neurosurgeon in
Jacksonville, Florida. Otherwise, Paragraphs 7 and 8 are denied.

5. Paragraphs 9 through 13 of the Plaintiff's Complaint are denied.

FOR A SECOND DEFENSE

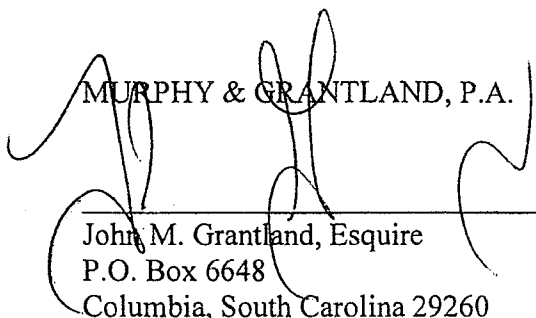
6. The Defendants would show, upon information and belief, that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Defendants would move that the Plaintiff's Complaint be dismissed for failure to state a cause of action.

FOR A THIRD DEFENSE

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

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's
Complaint be dismissed with costs.

The Defendants demands a jury trial.



MURPHY & GRANTLAND, P.A.

John M. Grantland, Esquire
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendants

Columbia, South Carolina
October 12, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

CIVIL ACTION NO: 2016-CP-28-00758

W. H. Bundy, Jr.,

Plaintiff,

vs.

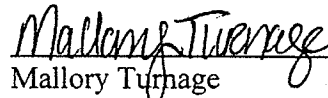
Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants,

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendants, do hereby certify that I have served a copy of the foregoing, **Answer**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

M. Brent McDonald, Esquire
W. H. Bundy, Jr., Esquire
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485


Mallory Turnage

Columbia, South Carolina
October 12, 2016

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiff

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2015- CP- 28 - 852

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

W. H. Bundy, Jr.,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2015- CP- 28 - 758

Plaintiffs' Motion in Limine on Testimony of Defendant Jett

Plaintiffs respectfully move before this Court for an Order, in Limine, limiting the testimony, and any corresponding exhibits related thereto, of Defendant Jett. In support of this Motion, the Plaintiffs state as follows:

- (1) Plaintiffs are informed and believe that Defendant T.E. Jett may attempt to testify or offer exhibits as to the actions of Plaintiff Heather Bundy prior to the impact of the automobile/tractor-trailer wreck that is the subject of this action.

- (2) Such testimony is inadmissible because Mr. Jett has no first hand knowledge of the actions of Plaintiff Heather Bundy prior to his tractor-trailer semi-truck striking Plaintiff Heather Bundy's car. Defendant Jett testified that he never saw or observed Plaintiff Heather Bundy until after the collision. Defendant Jett testified as follows:

Q. Okay. And you don't know what's going on behind you because you can't see behind you in your truck?

A. True that.

Jett Deposition, p. 57, lines 20-22.

Q. Okay. What did you do?

A. I popped my air brakes, trailer brakes, and opened my door. When I opened my door, I looked down and saw this car in my blind side on the left hand side of me.

Jett Deposition, p. 59, line 22-p. 60, line 1.

Q. Okay. So your first memory of seeing her, she was actually getting out of her car and you had just felt that bind that we had talked about just a moment ago?

A. Right. Right.

Jett Deposition, p. 62, lines 10-14.

- (3) Defendant Jett cannot provide any testimony of which he has no first hand knowledge. See Rule 602, SCRE. He has not been offered as an expert. Id. Indeed, any testimony from Defendant Jett about events he admittedly did not witness would be speculative and inadmissible.

Conclusion

For the reasons stated herein, Plaintiffs ask this Court to grant this motion in limine and preclude Defendant Jett from testifying as to the actions of Plaintiff Heather Bundy prior to his first hand observation of Plaintiff Heather Bundy.

Respectfully submitted,

s/M. Brent McDonald

M. Brent McDonald, Esquire
(S.C. Bar 78057)
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 843-492-0221
brent@bundymcdonald.com
Attorney for Plaintiff

January 10, 2018

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Case No. 2015- CP- 28 - 852

CERTIFICATE OF SERVICE

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Case No. 2015- CP- 28 - 758

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

John M. Grantland, Esquire
Rogers Harrell, III, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260
Attorneys for Thomas Elroy Jett and Haier America Research & Development Co., LTD

49

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	Case No. 2015- CP- 28 - 852
Heather Anne Bundy,	)	
	)	
Plaintiff	)	
vs.	)	
	)	
Thomas Elroy Jett and Haier America	)	
Research & Development Co., LTD,	)	
	)	
Defendants.	)	
_____	)	
	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	Case No. 2015- CP- 28 - 758
W. H. Bundy, Jr.,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
Thomas Elroy Jett and Haier America	)	
Research & Development Co., LTD,	)	
	)	
Defendants.	)	
_____	)	
	)	

Plaintiffs' Motion in Limine on Testimony of Brian Boggess

Plaintiffs respectfully move before this Court for an Order, in Limine, limiting the testimony, and any corresponding exhibits related thereto, of Defendants' proposed expert Brian Boggess. In support of this Motion, the Plaintiffs states as follows:

- (1) Upon information and belief, Defendants will attempt to introduce the expert testimony of Brian Boggess—a purported expert in the field of bio-mechanics. Excerpts from his deposition are attached hereto as Exhibit A.

- (2) In his deposition Mr. Boggess testified that he had three opinions. *See* Boggess Deposition, pp. 26-28. Mr. Boggess testified that the three areas were (1) accident reconstruction; (2) dynamics of inter-vehicle contact; and (3) biomechanics. *Id.*
- (3) With regard to the first (accident reconstruction) and third (biomechanics), Mr. Boggess testified that he forms the basis of first and third opinions by weighing the “credibility and reliability” of witness testimony. *See* Boggess Deposition, pp. 39-41 (first opinion) and Boggess Deposition, 65-66 (third opinion).
- (4) “While experts may give an opinion, they are not permitted to offer an opinion as to the credibility of others.” State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015). “The issue of credibility is for the jury alone.” Collins v. Fraiser, 378 S.C. 249, 662 S.E.2d 464, 466 (Ct.App. 2008) *citing* Parsons v. Georgetown Steel, 318 S.C. 63, 67, 456 S.E.2d 366, 368 (1995) (stating the credibility and weight of testimony is for the trier of fact).
- (5) Indeed, the jury in this case will likely be charged, in part, as follows:

“You twelve jurors are the sole judges of the facts of this case. **** In determining what the true facts are in this case, you, of necessity, must evaluate the credibility, which means believability of the witnesses who take the stand.”

Ralph King Anderson, Jr., South Carolina Request to Charge-Civil, 2009, Section 1-1.

- (6) Mr. Boggess should not be permitted to give any opinions based upon his determination of the credibility, plausibility or reliability of the witnesses. As

such, Mr. Boggess should not be permitted to testify as to his purported first and third opinions.

Conclusion

For the reasons stated herein, Plaintiffs ask this Court to grant this motion in limine and preclude Defendants' proposed expert Brian Boggess from giving any opinions that are based in whole or in part on the credibility of any witnesses.

Respectfully submitted,

s/M. Brent McDonald

M. Brent McDonald, Esquire
(S.C. Bar 78057)
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 843-492-0221
brent@bundymcdonald.com
Attorney for Plaintiff

January 10, 2018

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-28-00852

HEATHER ANNE BUNDY,

Plaintiff,

VS.

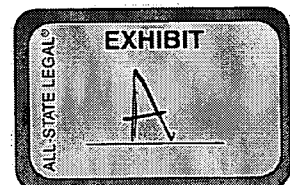
THOMAS ELROY JETT and HAIR
AMERICA RESEARCH & DEVELOPMENT
CO., LTD,

Defendants.

DEPOSITION OF BRIAN M. BOGGESS, P.E.

In Charlotte, North Carolina
Friday, May 12, 2017
Reported by Tavi L. Fraga, RPR

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070



1 cases -- like the Thrower case, for example, it
2 was clear that he was injured. There was
3 certainly biomechanical aspects where I was
4 looking at how that injury occurred, where he --
5 how he was struck, how he was positioned -- and
6 tied that to the accident. But there was no
7 question that he was actually injured in that
8 accident, so...

9 Q And I'm just focused on the instances where you've
10 testified relative to biomechanical engineering
11 for a defendant that are listed on this sheet, the
12 federal court query --

13 A Yes, sir.

14 Q -- that's a portion of your file. You've always
15 given the testimony that the -- based upon your
16 analysis, the forces in the accident could not
17 have caused the injury that the plaintiff is
18 claiming, correct?

19 A I think in general, yes, sir. Yes, sir.

20 Q Let me give this back to you so your file is
21 complete.

22 A Thank you.

23 Q You gave three essential inquiries that you
24 undertook upon being contacted by Murphy &

1 Grantland. The first one was accident
2 reconstruction, so let's talk about that first.

3 A Okay.

4 Q Have you reached any opinions to a reasonable
5 degree of certainty in any field with regard to
6 accident reconstruction in this case?

7 A Yes, sir.

8 Q Okay. And let's talk about what those opinions
9 are just with regard to accident reconstruction.

10 A Sure. Just to be sure that I'm not crossing into
11 Section 2, what do you have for Section 2? I'm
12 sure 3 is the biomechanical exposure.

13 Q Yeah. But you said accident reconstruction, you
14 said who was where, because you referenced
15 liability issue, and then you had dynamics of
16 contact, which I assume is the biomechanical
17 engineering?

18 A The dynamics -- so I guess first and foremost is
19 if we -- to simplify the three, I think would be
20 maybe first is the who was where and when and the
21 liability question on the reconstruction side.

22 Q Okay.

23 A Because obviously there's debate of who -- who was
24 there first, who moved, how did they move, who

1 could see them, that type of thing. So I have
2 opinions along those lines.

3 Q Okay.

4 A Second is, accepting that there's contact, what is
5 the dynamics of the inter-vehicle contact?

6 Q Okay.

7 A You know, what are the forces and accelerations
8 between the two vehicles essentially. And then
9 the third, in my mind, is the biomechanics. So as
10 a result of those forces, what is the induced
11 kinematics, how does someone move, and what is the
12 likelihood of injury from the movement and the
13 subsequent forces?

14 Q Okay.

15 A So...

16 Q So those are the three categories?

17 A In my mind, those are the three categories, yes,
18 sir.

19 Q So let's talk about the first one then, which is
20 who was where when. And I guess that's generally
21 referred to, I guess, as accident reconstruction?

22 A Yes, sir.

23 Q Okay. And let's start with what your opinions
24 are, and then we'll figure out how you got there.

1 He testifies that he pulls out, he's
2 waiting on a car to go, and then he's going to
3 advance out. Looking at the -- again, just
4 looking and weighing the evidence, to me, it is
5 more consistent with the latter, where he pulls
6 out, gets that angle set up, and then continues to
7 pull forward.

8 The off-tracking of the vehicle in the turn
9 is obviously going to move the trailer to the
10 inside of the turn relative to the tractor, allow
11 for the -- the exact scenario of contact to occur,
12 and kind of off-track in and increase that back
13 pillar in the rear as it did.

14 So, again, weighing the evidence, you know,
15 I believe it's more probable that Mr. Jett pulled
16 out first; Ms. Bundy pulled out second to the
17 inside.

18 Q When you say weighing the evidence, you're relying
19 heavily on your review of the deposition testimony
20 of Mrs. Bundy and Mr. Jett and the recorded
21 statements, correct?

22 A The recorded statement and then, again, just
23 the -- again, the physical layout of how they got
24 together, where their -- where their visibilities

1 are and, again, weighing those testimonies as to
2 how they reasonably got together.

3 And there's other facets of the testimony,
4 too, speaking to the credibility and reliability
5 of that testimony, as well.

6 Q Okay. And when you say that, speaking to the
7 credibility and reliability of the testimony, what
8 do you mean? Whose testimony?

9 A Well, for example, Ms. Bundy. She says that she's
10 sitting in the median for -- you know, waiting --
11 waiting to pull out. This contact occurs,
12 obviously, between the trailer rub rail, left edge
13 of the rub rail, and the right rear corner of her
14 vehicle. She says that, you know, she's looking,
15 she's waiting -- waiting to pull out, and never
16 sees this truck until contact.

17 The question -- you know, how -- one, how
18 do you never see a truck coming around the right
19 side of you? I don't -- I don't understand
20 because the tractor completely is going to clear
21 her. The front section of the trailer is going to
22 clear her.

23 So if she's looking, waiting to pull out,
24 she's going to be looking to her right trying to

1 wait on clearing traffic. But the -- before
2 contact, not only is the tractor going to kind of
3 come up alongside her, the tractor is actually
4 going to clear the front corner of her and have to
5 be out ahead of her vehicle to bring that trailer
6 into the rear corner of her vehicle.

7 So, again, her testimony does not seem
8 reasonable or plausible based on that dynamic
9 either.

10 Q Any other credibility determinations that you made
11 relative to the testimony?

12 A From the accident reconstruction, I think that
13 really sums it up.

14 Q And have we talked about all the data input that
15 you relied upon in forming that first opinion?

16 A I believe we've touched on all the areas, yes,
17 sir.

18 Q And nothing that you have looked at completely
19 rules out Ms. Bundy being out in the intersection
20 first?

21 A It doesn't rule it out, no. I mean, again, could
22 he miss her? Is it possible that he misses the
23 SUV out in front of him? Sure, it's possible.
24 But, you know, from a more probable, I believe

1 and that certain exposure and make, you know,
2 engineering assumptions in that case.

3 Q All right. And so you took your .8 g's that you
4 came up with for impact, and then did you come up
5 with a biomechanical opinion?

6 A I did.

7 Q And what is that?

8 A So there's really, I guess, three opinions within
9 there. The first is with regards to the --
10 actually, maybe four. The kinematics, which is
11 the induced motion to Ms. Bundy, are not going to
12 be beyond normal ranges of motion of the body and
13 are not consistent with causing or aggravating
14 injury as a result of such an exposure.

15 Tied to that, the kinematics characterized
16 or testified to by Ms. Bundy are inconsistent with
17 that which necessarily occurs per the laws of
18 physics and, therefore, are not plausible.

19 Q And that's another weigh-in, testimony credibility
20 issue as you talked to earlier?

21 A I guess. I mean, it's -- it's going to the --
22 again, what she says occurred. The motion of her
23 body is contrary to what has to happen per the
24 laws of physics. So it's just -- a portion of her

1 testimony is just not plausible with regards to
2 that.

3 The kinetics, which is the forces and
4 accelerations imparted to her body, are not beyond
5 reasonable injury thresholds and are well within
6 or below activities of daily living, and are,
7 therefore, not consistent with causing or
8 aggravating injury for someone such as Ms. Bundy.

9 And then, ultimately, in order to damage a
10 material, to break anything, but in this specific
11 case to injure mechanically the structure of the
12 body, you have to have both force and direction.
13 So you have to have kinematics and kinetics
14 appropriate for the specific conditions.

15 And in this case, we don't have either.
16 And so it's not reasonable that the form of the
17 alleged injuries would result from this accident.

18 Q When you say you don't have either force or
19 direction, what do you mean?

20 A So going back to the kinetics and kinematics
21 opinions, you know, I basically said that neither
22 one is reasonable to cause injury. In order to
23 cause injury, you really need both facets. I need
24 to check yes on both of those, not no on both of

1 those. I've checked the no box, essentially.

2 Q Meaning there was no g-forces?

3 A The g's, the induced forces and accelerations, are
4 insufficient to cause those types of conditions.

5 And then also the motion, the directionality of
6 things are not consistent.

7 Q Directionality meaning --

8 A The directionality in range.

9 Q -- her body?

10 A Yes. Yes, sir.

11 Q And that's based upon you plug it into a system
12 that says this -- if this is where the force
13 contact comes in and it's at this level, this is
14 the way the body is going to move?

15 A That's part of it, yes, sir.

16 Q Okay. And what's the other part of it?

17 A You know, it gets into the math calculations of
18 each individual joint's exposure, things like
19 that.

20 Q So the upshot of all this, everything that you've
21 done is that, if allowed to testify by the Judge,
22 you're going to say that Ms. Bundy just couldn't
23 have been injured in this accident?

24 A My opinion would be a little different than that.

1 I mean, it's -- I think, you know, we just walked
2 through them, but it's going to be that the
3 kinematics and kinetics that would result from a
4 collision such as this are not consistent with
5 causing injury to someone such as Ms. Bundy.

6 And then, again, going to the reliability
7 of testimony, also the kinematics are not
8 consistent with the motion that she's described in
9 her testimony, as well.

10 Q Have you ever seen someone that's involved in a
11 motor vehicle wreck inartfully or even
12 inaccurately describe what was going on during the
13 wreck?

14 A Sure.

15 Q Okay. So I know you just kind of gave your
16 explanation of your opinions, but the upshot of
17 your opinions are you don't believe Mrs. Bundy was
18 injured in this vehicle accident?

19 A I don't -- again, I don't believe that the forces
20 and kinematics are reasonably going to cause
21 injury to someone such as Ms. Bundy.

22 Q But what about Ms. Bundy? Because I don't
23 represent someone such as Ms. Bundy. I represent
24 Ms. Bundy.

1 A Sure.

2 Q And if the judge lets you testify, are you going
3 to testify to that jury that Ms. Bundy was not
4 injured in this wreck?

5 A I won't say that's -- in those terms, no.

6 Q You said you got Dr. Cannestra's records?

7 A I do.

8 Q And are you familiar with the type of surgeries
9 that Mrs. Bundy went through after this wreck?

10 A I mean, I've certainly read medical records, seen
11 the procedures before on -- I'm familiar with them
12 to that extent. I mean, obviously, I've never
13 done that procedure.

14 Q Sure. Sure. But are you familiar with those
15 procedures?

16 A Generally speaking, yes, sir.

17 Q And how did you become familiar with those
18 procedures?

19 A Biomechanical studies. Reviewing prior records.
20 Reviewing how the procedure is done. I mean, I
21 think even Dr. Cannestra, you know, gave -- even
22 in this case gave a decent explanation of what was
23 done, how it was done. You know, the magnitude of
24 the incision and how this was -- you know, what

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiff

VS.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

W. H. Bundy, Jr.,

Plaintiff,

VS.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

I, Kathy Jo Wentland, an employee of Bundy McDonald, LLC hereby certify that true and correct copies of Plaintiffs Motion in Limine on Testimony of Brian Boggess were served on all parties this 10th day of January, 2018, via E-Mail, and Electronic Service through the The South Carolina Filing System (AIS) as follows:

John M. Grantland, Esquire
Rogers Harrell, III, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260

Attorneys for Thomas Elroy Jett and Haier America Research & Development Co., LTD

s/Kathy Jo Wentland
Kathy Jo Wentland, Paralegal to
W.H. Bundy, Jr. Esquire and
M. Brent McDonald, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	Case No. 2015- CP- 28 - 852
Heather Anne Bundy,	)	
	)	
Plaintiff	)	
vs.	)	
	)	
Thomas Elroy Jett and Haier America	)	
Research & Development Co., LTD,	)	
	)	
Defendants.	)	
_____	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	Case No. 2015- CP- 28 - 758
W. H. Bundy, Jr.,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
Thomas Elroy Jett and Haier America	)	
Research & Development Co., LTD,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Heather A. Bundy and Plaintiff W.H. Bundy, Jr. Post Trial Motions

Comes now the Plaintiffs Heather Ann Bundy and W.H. Bundy Jr. moving pursuant to Rule 50(b) and 59, SCRCP for an Order of this Court for Judgment n.o.v., a new trial in the above captioned matter, and/or an Order altering and amending the Judgment entered in the above captioned case on January 23, 2018.

The grounds for this motion are as follows:

- (1) The Court erred in admitting Plaintiffs' Exhibit 13 and permitting Defendant Jett to testify about speculative events of which he had no first hand knowledge as required by Rule 602, SCRE. The Plaintiffs incorporate their Motion in Limine on this subject made and argued before the Court. The Plaintiffs were prejudiced by the admission of the evidence and testimony because without the admission of the evidence and testimony no evidence existed from which the jury could reasonably conclude that Defendant Jett was in the intersection/median prior to Plaintiff H.A. Bundy. Further, Defendants' Exhibit 13 was improperly admitted on the grounds that it was hearsay pursuant to Rule 802, SCRE not subject to any exception or there was improper foundation for any exception. As such, the Plaintiffs are entitled to a JNOV, a new trial, and/or an order amending the Judgment in favor of the Plaintiffs pursuant to Rule 59, SCRCP and this Court's authority under the Thirteenth Juror Doctrine.
- (2) The Court erred in failing to grant the Plaintiffs' motion for directed verdict on the issue of liability due and owing to the fact that without the improper admission of testimony and documentary evidence, discussed in Paragraph 1 above, the Plaintiffs were entitled to a judgment on liability as a matter of law. As such, the Plaintiffs are entitled to a JNOV, a new trial, and/or an order amending the Judgment in favor of the Plaintiffs pursuant to Rule 59, SCRCP and this Court's authority under the Thirteenth Juror Doctrine.
- (3) The Court erred in admitting the testimony of Defense witness Brian Boggess as argued in the Plaintiffs' Motion in Limine and contemporaneously objected to during the trial. The testimony was improper for at least the following reasons:

- a. Mr. Boggess' opinions were based upon weighing the credibility of the witnesses' deposition testimony in violation of S.C. Law. *See State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015).
- b. Mr. Boggess' opinions had nothing to do with actual injuries to the Plaintiff. They only related to a hypothetical "person" and the any probative value was substantially outweighed by prejudice and misleading of the jury.
- c. Mr. Boggess' opinions were wholly inconsistent with the testimony of Defendant Jett. *See Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000).
- d. Mr. Boggess improperly relied on deposition testimony not in evidence.

As such, the Plaintiffs are entitled to a JNOV, a new trial, and/or an order amending the Judgment in favor of the Plaintiffs pursuant to Rule 59, SCRCPP and this Court's authority under the Thirteenth Juror Doctrine.

- (4) The Court erred in denying the Plaintiffs' motion for directed verdict on the issue of damages for medical bills (Plaintiffs' Ex. 9) and the life care plan present day value (Plaintiffs' Ex. 8). There was no evidence from Defendants of unreasonableness of the medical bills or that the medical bills were not incurred. Likewise, there was no evidence from the Defendants' of the unreasonableness of the life care plan or that the treatments and medical care described therein would not be incurred. As such, the Plaintiffs are entitled to a JNOV, a new trial, and/or an order amending the Judgment in favor of the Plaintiffs pursuant to Rule 59, SCRCPP and this Court's authority under the Thirteenth Juror Doctrine.
- (5) The Court erred in refusing to allow Plaintiffs to publish the Rule 34, SCRCPP Request for Production of the Truck while allowing the Defendants to cross examine

Plaintiffs' expert on his failure to inspect the Truck. As such, the Plaintiffs are entitled to a JNOV, a new trial, and/or an order amending the Judgment in favor of the Plaintiffs pursuant to Rule 59, SCRPC and this Court's authority under the Thirteenth Juror Doctrine.

- (6) The Court erred in refusing to charge the Jury on all of the Plaintiffs' Requests to Charge submitted to the Court. As such, the Plaintiffs are entitled to a JNOV, a new trial, and/or an order amending the Judgment in favor of the Plaintiffs pursuant to Rule 59, SCRPC and this Court's authority under the Thirteenth Juror Doctrine.
- (7) The jury verdict was contrary to the greater weight of the evidence. As such, the Court should grant a new trial pursuant to the Thirteenth Juror Doctrine.

This Motion may be further supported by South Carolina law and a memorandum in support.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

BUNDY MCDONALD, LLC.

s/M. Brent McDonald

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Telephone: (843) 492-0221
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Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiff

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2015- CP- 28 - 852

) CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

W. H. Bundy, Jr.,

Plaintiff,

vs.

Thomas Elroy Jett and Haier America
Research & Development Co., LTD,

Defendants.

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

) Case No. 2015- CP- 28 - 758

I, Kathy Jo Wentland, an employee of Bundy McDonald, LLC hereby certify that true and correct copies of Plaintiffs Post Trial Motions were served on all parties this 2nd day of February, 2018, via US Mail, E-Mail, and Electronic Service through the South Carolina Filing System (AIS) as follows:

John M. Grantland, Esquire
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s/Kathy Jo Wentland

Kathy Jo Wentland, Paralegal to
W.H. Bundy, Jr. Esquire and
M. Brent McDonald, Esquire

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF KERSHAW)

COURT OF COMMON PLEAS

TRANSCRIPT OF RECORD

3 Heather Anne Bundy,)

4 Plaintiff,)

5 vs.)

2015-CP-28-00852

6 Thomas Elroy Jett and Haier)
7 America Research & Development)
8 Co., LTD,)

Defendants.)

9 W.H. Bundy, Jr.,)

10 Plaintiff,)

11 vs.)

2016-CP-28-00758

12 Thomas Elroy Jett and Haier)
13 America Research & Development)
14 Co., LTD,)

Defendants.)

January 16-23, 2018
Camden, South Carolina

16 B E F O R E:

17 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
18 jury.

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

20 M. BRENT MCDONALD, ESQ.
21 Attorney for the Plaintiffs

22 JOHN M. GRANTLAND, ESQ.
23 ROGERS E. HARRELL, III, ESQ.
24 Attorneys for the Defendants

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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1 JANUARY 16, 2018

2 THE COURT: All right, ladies and gentlemen of
3 the jury, we are about to begin the trial in the
4 case of State of South Carolina, County of Kershaw,
5 Heather Anne Bundy, Plaintiff, v. Thomas Elroy Jett
6 and Haier America Research and Development Company,
7 LTD.

8 Ladies and gentlemen of the jury, this is a
9 case that involves a motor vehicle collision which
10 took place on September 3rd, 2013. It involved
11 Ms. Heather Anne Bundy and Mr. Thomas Jett, who is
12 an employee of Haier America. And that is
13 H-A-I-E-R. The collision occurred at the
14 intersection of Highway 521 and Black River Road
15 here in Camden, South Carolina, Kershaw County.

16 Is there any member of the jury panel -- once
17 again, we'll do as we did earlier, if any of these
18 questions you answer in the affirmative, I'll ask
19 that you stand, state your juror number, and then I
20 will ask the next question. Is there any member of
21 the jury panel who is familiar with this case? If
22 so, please stand. If you have any knowledge
23 regarding this collision or accident, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. Ladies and gentlemen

1 of the jury, is there any member of the jury panel
2 that is related by blood or marriage to either the
3 Plaintiff in this case, Ms. Heather Anne Bundy --
4 I'll ask her to stand and face the jury panel.

5 (Ms. Bundy stands.)

6 THE COURT: Thank you, Ms. Bundy.

7 (Ms. Bundy is seated.)

8 THE COURT: All right. Or the Defendant in
9 this case, Mr. Thomas Elroy Jett?

10 (Mr. Jett stands.)

11 THE COURT: Thank you, Mr. Jett.

12 (Mr. Jett is seated.)

13 THE COURT: And also Haier America Research
14 and Development Company.

15 (Representative from Haier stands.)

16 THE COURT: And this is a representative from
17 the company?

18 MR. GRANTLAND: Yes, Your Honor.

19 THE COURT: And her name is?

20 MR. GRANTLAND: Teresa Justice.

21 THE COURT: Teresa Justice. Yes, ma'am?

22 MR. GRANTLAND: And Mr. Bundy is also a party.

23 THE COURT: Yes.

24 MR. MCDONALD: Yes, sir.

25 THE COURT: He is listed as a witness, right?

1 MR. GRANTLAND: And he is also a party.

2 THE COURT: Okay. All right.

3 Thank you, ma'am, you may be seated.

4 (Ms. Justice is seated.)

5 THE COURT: Is there any member of the -- oh,
6 Mr. Bundy is a party? Yes.

7 Also, as a Plaintiff, we have Mr. W.H. Bundy,
8 Jr., is that correct? I'll ask that he stand.

9 (Mr. Bundy stands.)

10 THE COURT: All right, thank you.

11 (Mr. Bundy is seated.)

12 THE COURT: He is the Plaintiff, along with
13 Ms. Heather Anne Bundy. And then the Defendants
14 are Thomas Elroy Jett and Haier America Research
15 and Development Company.

16 Is there any member of the jury panel related
17 by blood or marriage to either the Plaintiff or the
18 Defendant -- the Plaintiffs or the Defendants?

19 (WHEREUPON, there was no response.)

20 THE COURT: Does any member of the jury panel
21 have a close personal, social, or business
22 relationship with either the Plaintiff or the
23 Defendant?

24 THE COURT: Yes, sir, your juror number?

25 PROSPECTIVE JUROR: I'm good friends with

1 their son. I went to high school and college with
2 him. I was in the same fraternity. I don't know
3 if that matters, but.

4 THE COURT: With the Bundys' son?

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Sir, would that affect your
7 ability to be fair and impartial in this trial?

8 PROSPECTIVE JUROR: I don't guess so. I just
9 thought I would mention that.

10 THE COURT: All right. So let me -- and just
11 for everyone, there is no right answer or wrong
12 answer. The only answer that I'm looking for is a
13 yes or a no. So I need you to -- I am going to ask
14 the question. What we are trying to figure out is
15 if you can be fair and impartial.

16 So I'll ask the question again. The fact that
17 you went to school with and you know the son of the
18 Plaintiffs, would that affect your ability to be
19 fair and impartial in this trial?

20 PROSPECTIVE JUROR: No.

21 THE COURT: All right, thank you. Your number
22 again, sir?

23 PROSPECTIVE JUROR: 177.

24 THE COURT: 177.

25 All right. Anyone else?

1 (WHEREUPON, there was no response.)

2 THE COURT: All right. The following is a
3 list of potential witnesses in this case. Any of
4 the witnesses that are in the courtroom, I'll ask
5 that you stand.

6 The Plaintiffs and the Defendant, they have
7 already stood up, so they do not have to stand
8 again, but I will go down the list.

9 The first witness is:

10 Heather Anne Bundy.

11 W.H. Bundy, Jr.

12 Lesia Green.

13 (Witness stands.)

14 THE COURT: All right, thank you. You may be
15 seated.

16 (Witness seated.)

17 THE COURT: Donna Davis.

18 Dr. Cannestra. I don't have a first name.

19 MR. MCDONALD: Andrew, Your Honor.

20 THE COURT: Andrew C-A-N-N-E-S-T-R-A.

21 Dr. Folk. Jeffrey Folk.

22 Woodrow Poplin.

23 (Witness stands.)

24 THE COURT: Thank you. You may be seated.

25 (Witness seated.)

1 THE COURT: Sarah Lustig, L-U-S-T-I-G.
2 Teresa Justice. I think she has already
3 stood.

4 Corporal John Patton, with the Camden Police
5 Department.

6 Brian Boggess, B-O-G-G-E-S-S.

7 Dr. William Lee Wagers, Camden.

8 Dr. Al Rhyne, R-H-Y-N-E.

9 Is there any member of the jury panel who is
10 related by blood or marriage or has any close
11 personal, social, or business relationship with any
12 of the people that I just called? Any of those
13 names?

14 Yes, ma'am, in the back?

15 PROSPECTIVE JUROR: I work for Dr. William
16 Wagers.

17 THE COURT: For which one?

18 PROSPECTIVE JUROR: William Lee Wagers.

19 THE COURT: All right. And you work for
20 Dr. -- and he is listed as a potential witness in
21 this case. Would that affect your ability to be
22 fair and impartial in this trial?

23 PROSPECTIVE JUROR: I don't know.

24 THE COURT: Are you familiar -- who is -- I am
25 assuming she treated with Dr. Wagers?

1 MR. MCDONALD: Yes, ma'am.

2 THE COURT: All right. Are you familiar with
3 the Plaintiff in this case?

4 PROSPECTIVE JUROR: No, ma'am.

5 THE COURT: She apparently was treated I think
6 by Dr. Wagers.

7 All right, one last question. Would any of
8 that affect your ability to be fair and impartial
9 in this trial?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: All right. Thank you. Your
12 number?

13 PROSPECTIVE JUROR: Seventy-nine.

14 THE COURT: Seventy-nine.

15 Anyone else?

16 (WHEREUPON, there was no response.)

17 THE COURT: All right. At this time I am
18 going to ask the attorneys to stand and introduce
19 themselves.

20 We'll start with Mr. McDonald.

21 MR. MCDONALD: I'm Brent McDonald. I'm from
22 Summerville, South Carolina. And I represent
23 Ms. Bundy and Mr. Bundy.

24 MR. HARRELL: Rogers Harrell, from Columbia,
25 South Carolina. And I represent the Defendants

1 Haier and Mr. Jett.

2 MR. GRANTLAND: And I'm John Grantland.
3 Rogers and I are law partners. I am also a lawyer
4 in Columbia representing Thomas Jett and Haier.

5 THE COURT: And the name of that law firm is
6 Murphy and Grantland?

7 MR. GRANTLAND: Yes, ma'am.

8 THE COURT: And for the Plaintiff, the Bundys,
9 is Mr. McDonald?

10 MR. MCDONALD: Yes. In fact, I am
11 representing my law partner and his wife in this
12 case. They have already introduced themselves.

13 THE COURT: All right. Is there any member of
14 the jury panel who has been represented by any of
15 the attorneys involved in this case or by their law
16 firms? If so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Is there any member of the jury
19 panel related by blood or marriage to or have a
20 close personal or social relationship with any of
21 the attorneys involved in this case or anyone in
22 their law firm? If so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Has any member of the jury panel
25 formed or expressed an opinion about any issue or

1 matter involved in this case?

2 (WHEREUPON, there was no response.)

3 THE COURT: Is there any member of the jury
4 panel aware of any bias or prejudice towards either
5 the Plaintiffs or the Defendants in this case?

6 (WHEREUPON, there was no response.)

7 THE COURT: Has anyone here ever driven a
8 tractor-trailer truck or have a close family
9 relationship with someone who has driven a
10 tractor-trailer truck? If so, please stand.

11 And your number, sir?

12 PROSPECTIVE JUROR: 143.

13 THE COURT: 143? And, sir, is it you or a
14 family member?

15 PROSPECTIVE JUROR: It is my mother. She used
16 to drive for Mack.

17 THE COURT: All right. And, sir, as you
18 heard, this involves a tractor-trailer truck.
19 Would that affect your ability to be fair and
20 impartial in this trial?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: All right, thank you.

23 Anyone else?

24 (WHEREUPON, there was no response.)

25 THE COURT: Does anyone on the jury panel have

1 a commercial driver's license or have a close
2 family relationship with someone who has a
3 commercial driver's license?

4 PROSPECTIVE JUROR: I have a Class B
5 contractor driver's license.

6 THE COURT: What is your number again?

7 PROSPECTIVE JUROR: 138.

8 THE COURT: 138. And you said you have a
9 Class B?

10 PROSPECTIVE JUROR: Yes, Your Honor.

11 THE COURT: All right. And would that affect
12 your ability to be fair and impartial in this
13 trial?

14 PROSPECTIVE JUROR: No, Your Honor.

15 THE COURT: All right. Thank you.
16 Yes, sir?

17 PROSPECTIVE JUROR: I'm 52. Class B.

18 THE COURT: And, sir, would that affect your
19 ability to be fair and impartial in this trial?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you.

22 Has anyone here ever been employed by Haier
23 America Research and Development Company or have
24 any close family members or friends who has or is
25 currently employed with Haier? And that is

1 H-A-I-E-R.

2 PROSPECTIVE JUROR: My husband was employed
3 with Haier for several years, but that was a long
4 time ago, and he is now disabled.

5 THE COURT: All right. And, ma'am, what is
6 your number?

7 PROSPECTIVE JUROR: Fifty-six.

8 THE COURT: And, ma'am, would that affect your
9 ability to be fair and impartial in this trial?

10 PROSPECTIVE JUROR: No, ma'am, not at all.

11 THE COURT: All right. Thank you.

12 PROSPECTIVE JUROR: Yes, ma'am.

13 THE COURT: Yes, sir?

14 PROSPECTIVE JUROR: My uncle worked for Haier
15 for a couple -- a few years.

16 THE COURT: Your uncle?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: What is your number, sir?

19 PROSPECTIVE JUROR: Twenty-five.

20 THE COURT: All right. And would that affect
21 your ability to be fair and impartial in this
22 trial?

23 PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: All right. Thank you.

25 Has anyone ever had surgery on their neck?

1 All right. Yes, ma'am?

2 PROSPECTIVE JUROR: Juror 132.

3 THE COURT: 132? Would you speak a little
4 louder for me?

5 PROSPECTIVE JUROR: 132.

6 THE COURT: All right, ma'am, you have had
7 surgery on your neck before?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. And there may be some
10 testimony regarding that. Would that affect your
11 ability to be fair and impartial in this trial?

12 PROSPECTIVE JUROR: No.

13 THE COURT: All right. Thank you.
14 Yes, sir?

15 PROSPECTIVE JUROR: I have had surgery on my
16 neck.

17 THE COURT: What is your juror number?

18 PROSPECTIVE JUROR: 173.

19 THE COURT: And when was that surgery, sir?

20 PROSPECTIVE JUROR: That was June of last
21 year.

22 THE COURT: Of '17?

23 PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: And would that affect your ability
25 to be fair and impartial in this trial?

1 PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: All right. And let me ask
3 Juror -- you may be seated -- Juror Number 132,
4 when was that surgery?

5 PROSPECTIVE JUROR: 2008.

6 THE COURT: 2008. And would that affect your
7 ability to be fair and impartial in this trial?

8 PROSPECTIVE JUROR: No.

9 THE COURT: You said no? I couldn't hear you,
10 ma'am. I said would it affect your ability to be
11 fair and impartial?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Thank you.

14 Is there any member of the jury panel who has
15 ever had surgery on their back?

16 All right. Yes, ma'am, your number?

17 PROSPECTIVE JUROR: Thirty-four.

18 THE COURT: Thirty-four. And when was that
19 surgery?

20 PROSPECTIVE JUROR: 2013.

21 THE COURT: And, ma'am, would that affect your
22 ability to be fair and impartial in this trial?

23 PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: All right. Thank you.

25 Yes, sir?

1 PROSPECTIVE JUROR: Juror Number 191, ma'am.

2 THE COURT: Yes, sir?

3 PROSPECTIVE JUROR: And I had surgeries on my
4 back, multiple surgeries, in 2010 and 2014.

5 THE COURT: And, sir, would that affect your
6 ability to be fair and impartial in this trial?

7 PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: All right. Thank you.

9 Has any member of the jury panel been involved
10 in a crash with a tractor-trailer truck? If so,
11 please stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Has any member of the jury panel
14 been a Plaintiff or a Defendant in a lawsuit? If
15 so, please stand. If you have been a Plaintiff or
16 a Defendant in a lawsuit, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Has any member of the jury panel
19 been involved in a lawsuit involving a personal
20 injury? If so, please stand.

21 Yes, ma'am?

22 PROSPECTIVE JUROR: It was a workman's
23 compensation.

24 THE COURT REPORTER: I'm sorry, I couldn't
25 hear her.

1 THE COURT: What was that?

2 PROSPECTIVE JUROR: It was workman's
3 compensation.

4 THE COURT: And your number again, ma'am?

5 PROSPECTIVE JUROR: 132.

6 THE COURT: And when was that, ma'am?

7 PROSPECTIVE JUROR: It was in 2006.

8 THE COURT: And is it resolved?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right. Thank you.

11 Yes, ma'am?

12 PROSPECTIVE JUROR: My daughter, as I was
13 approaching, got hit by a car about nine years ago

14 --

15 THE COURT: What now? I can't hear you.

16 PROSPECTIVE JUROR: My daughter, she got hit
17 by a car about nine years ago, and we had a lawsuit
18 then.

19 THE COURT: All right. And what is your juror
20 number, ma'am?

21 PROSPECTIVE JUROR: 190.

22 THE COURT: 190. And it involved a car
23 accident with your daughter?

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: All right. And, ma'am, would

1 would that affect your ability to be fair and
2 impartial in this trial?

3 PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: All right. Thank you. Juror 190.
5 This case involves an accident -- yes?

6 PROSPECTIVE JUROR: If I understand your
7 previous question, I have been -- being sued by --
8 I work for the Department of Corrections, and an
9 inmate had me down as a Defendant -- a Plaintiff, I
10 guess.

11 THE COURT: Okay. All right. So you get sued
12 by the inmates at the Department of Corrections?

13 PROSPECTIVE JUROR: Yes, ma'am.

14 THE COURT: Yes. Would that affect your
15 ability to be fair and impartial in this trial?

16 PROSPECTIVE JUROR: No, ma'am.

17 THE COURT: What is your number again?

18 PROSPECTIVE JUROR: 173.

19 THE COURT: 173.

20 All right. This case involves an accident
21 between a car and a tractor-trailer truck. Has any
22 member of the jury panel or your immediate family
23 ever been involved in an accident between a car and
24 a tractor-trailer truck? If so, please stand.

25 Yes, sir?

1 PROSPECTIVE JUROR: Yes, ma'am. My sister was
2 hit by a tractor-trailer on the highway.

3 THE COURT: What is your number, sir?

4 PROSPECTIVE JUROR: Ninety-one.

5 THE COURT: And, sir, when was that accident?

6 PROSPECTIVE JUROR: The 1990s.

7 THE COURT: All right. And, sir, would that
8 affect your ability to be fair and impartial
9 during this trial?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: All right. Thank you.

12 Yes, sir?

13 PROSPECTIVE JUROR: My grandfather was
14 involved in an accident with a tractor-trailer
15 around 2000.

16 THE COURT: All right. And what is your
17 number, sir?

18 PROSPECTIVE JUROR: Forty-eight.

19 THE COURT: Forty?

20 PROSPECTIVE JUROR: Forty-eight.

21 THE COURT: And, sir, you said in 2000 your
22 grandmother --

23 PROSPECTIVE JUROR: Grandfather.

24 THE COURT: Grandfather?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Would that affect your ability to
2 be fair and impartial in this trial?

3 PROSPECTIVE JUROR: No, Your Honor.

4 THE COURT: All right. Thank you.

5 Is there any member of the jury panel who
6 would be biased against either party in a case
7 involving an accident between a driver of a car and
8 a driver of a tractor-trailer truck?

9 (WHEREUPON, there was no response.)

10 THE COURT: Could you be fair and impartial in
11 a case involving an accident between a driver of a
12 car and a driver of a tractor-trailer truck?

13 (WHEREUPON, there was no response.)

14 THE COURT: Have you or any member of your
15 immediate family ever had neck or back surgery as a
16 result of injuries sustained in a car accident?

17 (WHEREUPON, there was no response.)

18 THE COURT: Does any member of the jury panel
19 know of any reason whatsoever why he or she should
20 not serve as a juror in this case; with particular
21 emphasis being placed on your ability to be fair
22 and impartial to both the Plaintiffs and the
23 Defendant?

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. Anything else from the

1 Plaintiff?

2 MR. MCDONALD: Nothing from the Plaintiff,
3 Your Honor. Thank you.

4 THE COURT: Anything from the Defendant?

5 MR. GRANTLAND: No, Your Honor. Thank you.

6 THE COURT: All right. Ladies and gentlemen
7 of the jury, she is going to -- we used to do the
8 balls and you pull the number out, but now
9 everything is computerized, electronic. So she is
10 printing a strike sheet.

11 (Pause.)

12 THE COURT: All right. Do you know which one
13 you are striking from? One through 20, and then 21
14 through 23, and 24 through 26.

15 Thank you.

16 MR. MCDONALD: And then 24 through 26?

17 THE COURT: For the second alternate.

18 All right. Ladies and gentlemen of the jury,
19 it will be about five or ten minutes. The lawyers
20 are going to take a look at the strike sheet, and
21 then we will pick a jury. So if anyone needs to
22 take a break at this time, you can. Just return
23 back in.

24 And for those of you who I put out the last
25 time, you don't have to leave this time, you can

1 stay. All right. If you want to stay in here, you
2 can.

3 (WHEREUPON, at 12:16 p.m., a break was
4 taken.)

5 (WHEREUPON, at 12:33 p.m., the
6 proceedings resumed.)

7 THE COURT: Ladies and gentlemen, at this time
8 we will select a jury in this case.

9 Yes, ma'am, Madam Clerk. All right, we will
10 turn it over to you for selection of the jury.

11 THE CLERK: The Plaintiff's attorney will
12 strike first, using the numbers 1 through 20.

13 MR. MCDONALD: The Plaintiffs strike Number 9.

14 MR. GRANTLAND: The Defendant strikes Number
15 13.

16 MR. MCDONALD: The Plaintiffs strike Number
17 19.

18 MR. GRANTLAND: The Defendant strikes Number
19 14.

20 MR. MCDONALD: The Plaintiffs strike
21 Number 11.

22 MR. GRANTLAND: The Defendant strikes Number
23 10.

24 MR. MCDONALD: The Plaintiffs strike Number
25 16.

1 MR. GRANTLAND: The Defendant strikes Number
2 17.

3 THE CLERK: And we have two alternates, so
4 alternates 1 through 23.

5 THE COURT: 21 through 23.

6 THE CLERK: I'm sorry, I apologize.

7 MR. MCDONALD: The Plaintiffs strike for the
8 first alternate, 21.

9 MR. GRANTLAND: The Defendant strikes for the
10 first alternate, 22.

11 MR. MCDONALD: The Plaintiffs would strike for
12 the second alternate, 25.

13 MR. GRANTLAND: What are the numbers for the
14 second alternate?

15 THE COURT: 24 through 26.

16 MR. GRANTLAND: 24 through 26?

17 THE COURT: Yes, sir.

18 MR. GRANTLAND: The Defendant would strike 25.

19 THE COURT: He just struck that one.

20 MR. GRANTLAND: I'm sorry. The Defendant will
21 strike 24.

22 THE CLERK: The Plaintiffs strikes are:
23 Number 9, Number 19, Number 11, and Number 16. Is
24 that correct?

25 MR. MCDONALD: Yes, Madam Clerk.

1 THE CLERK: The Defendant's strikes are -- I'm
2 sorry, let me do the alternates. And the
3 Plaintiffs' strike for the first alternate is
4 Number 21, the next one is Number 25?

5 MR. MCDONALD: Yes, Madam Clerk.

6 THE CLERK: The Defendant's strikes are:
7 Number 13, Number 14, Number 10, and Number 17?

8 MR. GRANTLAND: Yes, ma'am.

9 THE CLERK: The first alternate is Number 22,
10 and the second alternate is Number 24?

11 MR. GRANTLAND: Yes, ma'am.

12 THE CLERK: Thank you.

13 THE COURT: All right. Yes, ma'am, Madam
14 Clerk, please seat the jurors.

15 THE CLERK: Like I told you previously, if
16 your number is called up, please bring all your
17 belongings with you. And the bailiff, Mr. Dowey,
18 will show you where to sit.

19 Juror Number 196.

20 (Juror Number 196, a white female, was
21 seated on the jury.)

22 THE CLERK: Juror 158.

23 (WHEREUPON, Juror Number 158, a white
24 female, was seated on the jury.)

25 THE CLERK: Juror Number 57.

1 (WHEREUPON, Juror Number 57, a white
2 female, was seated on the jury.)
3 THE CLERK: Juror Number 184.
4 (WHEREUPON, Juror Number 184, a white
5 female, was seated on the jury.)
6 THE CLERK: Juror Number 135.
7 (WHEREUPON, Juror Number 135, a white
8 male was seated on the jury.)
9 THE CLERK: Juror Number 130.
10 (WHEREUPON, Juror Number 130, a white
11 female, was seated on the jury.)
12 THE CLERK: Juror Number 145.
13 (WHEREUPON, Juror Number 145, a white
14 male was seated on the jury.)
15 THE CLERK: Juror Number 110.
16 (WHEREUPON, Juror Number 110, a white
17 male was seated on the jury.)
18 THE CLERK: Juror Number 70.
19 (WHEREUPON, Juror Number 70, a white
20 female, was seated on the jury.)
21 THE CLERK: Juror Number 45.
22 (WHEREUPON, Juror Number 45, a white
23 female, was seated on the jury.)
24 THE CLERK: Juror Number 88.
25 (WHEREUPON, Juror Number 88, a white

1 female, was seated on the jury.)

2 THE CLERK: And Juror Number 118.

3 (WHEREUPON, Juror Number 118, a white
4 female, was seated on the jury.)

5 THE CLERK: For the first alternate, Juror
6 Number 30.

7 (WHEREUPON, Juror Number 30, a white
8 female, was seated on the jury as the
9 first alternate.)

10 THE CLERK: And Juror Number 179.

11 (WHEREUPON, Juror Number 179, a white
12 male was seated on the jury as the
13 second alternate.)

14 THE COURT: All right. Any objections or
15 exceptions from the Plaintiff?

16 MR. MCDONALD: None from the Plaintiff, Your
17 Honor.

18 THE COURT: Any from the Defendant?

19 MR. GRANTLAND: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen
21 of the jury, for those of you who were not
22 selected, I am going to --

23 (Pause.)

24 THE COURT: All right. Ladies and gentlemen
25 of the jury, for those of you who were not

1 selected, this is the only trial that we have
2 scheduled this week, and so therefore I will excuse
3 you from service this week.

4 I do want to thank you for being here and
5 thank you for your patience here this morning as we
6 go through this process.

7 For those of you who need work excuses, you
8 can go to the Clerk's Office right out here, and
9 they will give you a work excuse to take back to
10 your employer.

11 Once again, thank you for your participation
12 this morning. You will be excused for the week, so
13 you do not have to come back, you do not have to
14 call in.

15 Have a wonderful week. Thank you.

16 (WHEREUPON, the remaining panel was
17 excused at 12:41 p.m.)

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, at this time we will go ahead -- for
20 those of you who were selected, we are going to go
21 ahead and take our lunch break. I'm going to have
22 you all come back -- there are some matters I need
23 to take up with the attorneys outside of your
24 presence, and instead of you sitting in the jury
25 room, if there is something else you need to be

1 doing, I am going to go ahead and release you for
2 lunch. We'll have -- you'll have a longer lunch
3 today. We'll have you back in the jury room at
4 2:30. The bailiff will have some instructions for
5 you.

6 I'll go ahead and tell you that other than
7 what I have already read to you regarding this
8 case, you don't know anything about the case. You
9 are not to do any independent research regarding
10 the case, or any issue that comes up with the case,
11 you cannot discuss the case with anyone. That
12 includes your fellow jurors. It is also improper
13 for you at any point in time to come to any
14 conclusion prior to deliberating in the case.
15 You'll be given an opportunity at the end of the
16 trial to deliberate. And I ask and beg of you to
17 not discuss the case before you are instructed to
18 deliberate the case.

19 You will be sworn after lunch to be fair --
20 you were sworn to be fair and impartial, and then
21 you will be sworn after lunch. But, you are to
22 consider both sides of the case. And if you start
23 deliberating earlier, that means that you are not
24 considering both sides of the case. But you are to
25 consider both sides of the case. You have to hear

1 the arguments of the attorneys, and then I have to
2 charge you as to the law.

3 So part of being fair and impartial is hearing
4 the whole case before you make any decision. No
5 discussions regarding the case.

6 Do they have a badge they are going to put on?

7 THE CLERK: No, ma'am.

8 THE COURT: If you see any of the parties --
9 and there is a possibility you may, Camden is
10 small, you may see someone at lunch -- they will
11 not -- they know not to speak with you. Please do
12 not speak with any of the parties. Please do not
13 post anything on social media regarding your
14 service on the jury this week. You can go on
15 social media, you can go on your computer, but
16 please do not do any research, any posting
17 regarding your service on jury duty this week.

18 All right. So we will see you all back at
19 2:30. And have a wonderful lunch. And I believe
20 that is everything.

21 All right. Thank you.

22 And they will show you exactly where you need
23 to go.

24 (WHEREUPON, the jury is excused for
25 lunch at 12:45 p.m.)

1 THE COURT: All right. I was thinking, it is
2 quarter to 1:00, we will go ahead and take our
3 lunch break and then start back at 2:00. You all
4 said about 30 minutes to hear the motions in
5 limine?

6 MR. GRANTLAND: Yes. Yes, Your Honor.

7 THE COURT: I didn't ask, any objection or
8 exceptions to my comments to the jury?

9 MR. MCDONALD: None from the Plaintiff, Your
10 Honor.

11 MR. GRANTLAND: No, Your Honor.

12 THE COURT: So I will see you all back at 2:00
13 o'clock.

14 MR. GRANTLAND: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 (WHEREUPON, a lunch break was taken at
17 12:46 p.m.)

18 (WHEREUPON, the proceedings resumed at
19 2:09 p.m.)

20 THE COURT: So I have the Plaintiffs' motion
21 and the Defendant's motion, motion in limine. I'll
22 be glad to hear from the Plaintiff.

23 MR. MCDONALD: Thank you very much, Your
24 Honor. May it please the Court?

25 Our first motion -- we have two motions in

1 limine. The first relates to the testimony of
2 Mr. Jett. And the second relates to the testimony
3 of the proposed expert for the Defendant,
4 Mr. Boggess. And so I'll just start with the
5 testimony of Mr. Jett first.

6 And while I believe both motions are pretty
7 straightforward, this one is straightforward as
8 well.

9 Mr. Jett has testified in deposition -- and I
10 have a copy, I trust Your Honor has a copy as well,
11 but I actually quote from the deposition in the
12 motion in limine itself -- that he did not see
13 Ms. Bundy prior to the collision itself. He opened
14 up his door, the cab of his truck, looked out, and
15 saw her.

16 And what this motion relates to is any
17 testimony about the actions of Ms. Bundy prior
18 to -- from Mr. Jett -- prior to him first seeing
19 her, because he would have no firsthand knowledge
20 of what she did, and anything he said would be
21 speculative.

22 The grounds for the motion are based on the
23 deposition testimony at Page 57, Lines 20 through
24 22; Page 59, Line 22 through Page 60, Line 1,
25 through Page 62, Lines 10 through 4, which is the

1 most straightforward.

2 Okay. So your first memory of seeing
3 her, she was actually getting out of her
4 car and you had just felt that binding
5 that we had talked about just a moment
6 ago?

7 Right. Right.

8 If he has no firsthand knowledge about the
9 accident with Mr. Bundy -- Ms. Bundy -- then he
10 can't testify as to what she did prior to him
11 seeing her. He can of course testify, you know, to
12 things that he did leading up to it, but not what
13 she did.

14 The reason it is critical is the Plaintiffs
15 are attempting -- excuse me, the Defendants are
16 attempting to admit an exhibit that has been
17 preliminarily marked, it is one of the ones we
18 didn't agree on, as Defendant's Exhibit 13. And it
19 has some language that I believe was handwritten by
20 Mr. Jett that says:

21 Car pulled in on my left side trying to
22 beat me, making a left turn.

23 Well, he doesn't have any firsthand knowledge
24 of that. Quite succinctly, he is not allowed to
25 testify as to what he doesn't have firsthand

1 knowledge of under the Rules of Evidence,
2 specifically Rule 602.

3 So that would be the basis of the grounds for
4 the first motion, Your Honor.

5 THE COURT: Yes, sir?

6 MR. GRANTLAND: May it please the Court?

7 Your Honor, the diagram -- I'm happy to show
8 the Court a copy of the diagram Mr. Jett prepared
9 after the accident. If I can approach?

10 (Mr. Grantland approaches.)

11 MR. GRANTLAND: Your Honor, after Mr. Jett --
12 after the accident happened, when Mr. Jett returned
13 back to the Haier office, he met with Ms. Justice,
14 and she asked him what happened, and she asked him
15 to prepare a little diagram to what happened, which
16 went into his personal file. I mean, basically he
17 just -- he draws a little box for his truck and for
18 the car. He says:

19 Car pulled on my left side trying to
20 beat me, making a left turn.

21 Mr. McDonald is correct that Thomas cannot
22 testify what he didn't see. I mean, this is
23 written after the accident, after he heard
24 Ms. Bundy's explanation, and talked to the police.
25 I mean, it is written based on the following facts:

1 That she wasn't there when he pulled into the
2 median. After the impact she was there. And she
3 said she was trying to make a left turn.

4 Rule 701, Your Honor, says a witness not
5 testifying as an expert -- the witness's testimony
6 in the form of an opinion or an inference is
7 limited to those opinions or inferences which are
8 rationally based on the perception of the witness.

9 And that is what this -- that is all this is.
10 I mean, Teresa asked him after the accident what
11 happened, and he wrote it down. This is -- I mean,
12 this is rationally based on his perception of the
13 witness. This is what he perceives. She wasn't
14 there, and then she was there. And the only reason
15 she would be there would be to try to turn before
16 him. And it is rationally based on his perception
17 and it should be be admissible under 701.

18 It is also admissible, Your Honor, under
19 803(6) as a record of a regularly conducted
20 business activity. Ms. Justice, his personnel
21 manager, asked him to do a little statement and a
22 little diagram. That went into his personnel file.
23 This was written in September of 2013, immediately
24 after the accident. I mean, it certainly -- for
25 that purpose, it is not being offered for its

1 truth, but it is offered to show that Haier
2 documented what happened and kept this in Thomas's
3 file.

4 I mean, so it is admissible under 701, it is
5 admissible under 803(6) as a business record, it is
6 admissible under present sense impression, 803(1).
7 I mean, this is what Thomas perceived immediately
8 after the accident. So it is -- at a minimum,
9 Mr. McDonald can certainly cross Thomas on it, but
10 I think it should be admissible.

11 MR. MCDONALD: Briefly, Your Honor?

12 THE COURT: Yes, sir.

13 MR. MCDONALD: And all of that, while I also
14 submit that it is hearsay on what he has created
15 now, of course statement after the fact, but all of
16 that is subject to perception, everything, that he
17 has to have firsthand knowledge of it, not what --
18 What Rule 701 says is based upon his perception.
19 He didn't see her. The testimony is he didn't --
20 he never saw her until he hit her. Now, we've got
21 an explanation that we're going to give potentially
22 for that, but he never saw her. So the notion that
23 he is allowed to testify as to what she did having
24 never seen it, it is not based on his perception,
25 he didn't perceive that. And it is not debated

1 that he never saw her. So the fact that he created
2 something after the fact based upon something he
3 never saw doesn't make it admissible for that
4 reason, because it is not based on firsthand
5 knowledge, which is the gatekeeper role to come in
6 and say, The first thing I have got to show is
7 based on firsthand knowledge. He is not being
8 offered as an expert, before you even get to the
9 fact that it is hearsay.

10 So for those two reasons, I don't believe that
11 Mr. Jett can testify or any exhibits related
12 thereto as to what Ms. Bundy did when he never saw
13 her.

14 THE COURT: All right. I am going to, under
15 701, am going to allow him to testify to it. The
16 Plaintiff obviously gets the right to cross-examine
17 him. And you can question him. I think it is
18 going to go to the credibility as to what he said
19 in his deposition versus what he told his
20 employer -- what he told his employer, why he told
21 his employer that.

22 But I think under 701 that he can testify to
23 inferences which are rationally based on his
24 perception. And so what his perception was at the
25 time he went back to the office and now that has

1 changed, I think all of that goes to the weight of
2 the evidence versus the admissibility. So I am
3 going to allow that testimony.

4 Also, under 803, there are several exceptions
5 to hearsay. I'm assuming this is -- you are trying
6 to get this in as a business record?

7 MR. GRANTLAND: Yes, ma'am. Yes, Your Honor.

8 THE COURT: And so under 803, under the
9 business records exception, I will allow it in for
10 that purpose.

11 All right. Your next motion is as to the
12 expert?

13 MR. MCDONALD: Yes, ma'am. And, Your Honor, I
14 would just ask at the time that it is offered, if
15 the Court is okay with it, I'll just
16 contemporaneously object.

17 THE COURT: Oh, sure.

18 MR. MCDONALD: And then incorporate my
19 argument from before.

20 THE COURT: Sure.

21 MR. MCDONALD: Thank you, Your Honor.

22 The second motion relates to testimony of
23 Mr. Boggess, who is a proposed expert, that they
24 are submitting to the Court. And Mr. Boggess has
25 testified in the deposition and essentially has

1 three opinions that he is going to try and offer.

2 The first relates to accident reconstruction.
3 The second relates to forces, the mathematical
4 forces between the two vehicles. And the third
5 opinion relates to how those forces that he has
6 calculated would be -- would subject Ms. Bundy to
7 in her car.

8 However, what Mr. Boggess testified to in his
9 deposition -- and the excerpts are attached to
10 Exhibit A of my motion, which I trust the judge
11 has -- is that the first --

12 THE COURT: I don't -- I have the first one.

13 MR. MCDONALD: I have a copy.

14 THE COURT: I don't have the second one,
15 unless they are attached. Were they attached?

16 MR. MCDONALD: Yes, ma'am, they were attached
17 to what we submitted to you -- to our letter of
18 January 10, 2018.

19 THE COURT: I have the one regarding the
20 Defendant Jett, unless it is up here. If you have
21 an extra copy.

22 MR. MCDONALD: I do, Your Honor. May I
23 approach?

24 THE COURT: Yes, sir.

25 (Mr. McDonald approaches.)

1 THE COURT: Thank you. Yes, sir?

2 MR. MCDONALD: Okay. Your Honor, and so with
3 regards to the first opinion related to accident
4 reconstruction, Mr. Boggess testified that the way
5 he formed that opinion was based upon weighing the
6 credibility of witnesses. Weighing the credibility
7 of witnesses is inappropriate for an expert to do.

8 And in our memo we cite State v. Chavis:

9 While experts may give an opinion, they
10 are not permitted to offer an opinion as
11 to the credibility of others.

12 Collins v. Frasier, 378 S.C. 249:

13 The issue of credibility is for the jury
14 alone.

15 I also have a -- interesting to that point, I
16 have a 10th Circuit case, Your Honor, related to --
17 it is situation with -- it is a criminal case. And
18 the other party didn't even object to the experts
19 weighing credibility. And the Court found plain
20 error even in the absence of an objection to allow
21 an expert to opine on credibility.

22 So for that reason, the first opinion that he
23 seeks to give and the basis of it based upon
24 credibility would be inappropriate.

25 The same is true for the third opinion that he

1 gives. He once again in his deposition talks in
2 his third opinion, and he talks about the
3 reliability, again, going to the reliability of the
4 testimony. And that is inappropriate for an expert
5 to weigh on. That is for the jury alone.

6 And, in fact, Mr. Boggess brought up the
7 credibility issue on his own in his deposition at
8 Page 39 and 40, where he says:

9 And there is other facets of the
10 testimony too, speaking to the
11 credibility and reliability of that
12 testimony as well.

13 I believe it would be inappropriate for
14 Mr. Boggess to testify as to the first and third
15 opinion that he seeks to give because he is
16 weighing the credibility of the witnesses, which
17 would be inappropriate for an expert to do.

18 THE COURT: Yes, sir?

19 MR. GRANTLAND: Thank you. May it please the
20 Court?

21 Your Honor -- and I agree with Mr. McDonald
22 that Mr. Boggess is not going to -- will not be
23 allowed to -- should not be allowed to testify
24 about credibility. That is not -- and he is an
25 accident reconstruction expert, biomechanical

1 expert. Any criticism of him, from our
2 perspective, goes to the weight of his testimony
3 and not the admissibility. The question is, Does
4 he assist the trier of fact under 702 and Council?
5 We believe he does.

6 His accident reconstruction opinion is very
7 simple, Your Honor. He -- we have, unlike a lot of
8 accident cases, we have actual photos of the
9 tractor-trailer and the car immediately after the
10 accident before they were moved. The Camden Police
11 took a whole bunch of pictures from different
12 angles. So we have two competing experts to talk
13 about how they think the accident happened based on
14 the photos of the property damage. So Boggess had
15 photos of the cars before they were separated, of
16 the trailer and the car before they were separated.
17 He took scaled measurements. He did CAD drawings.
18 He did 3D models. He placed them in different
19 positions in the median. And he relies mainly on
20 the photos of the property damage.

21 And from his perspective, based on his
22 investigation, he does not believe the trailer
23 could have hit the truck -- the trailer could have
24 hit the car the way it did unless the car came up
25 from behind the trailer -- unless the trailer was

1 there first. And that is -- his opinion is not
2 based on her credibility or his credibility. It is
3 based on the photos of the property damage and the
4 models he did, and how he placed the vehicles in
5 the median. And he will explain that. So it is
6 not about credibility.

7 I mean, Mr. Poplin is of the opinion that Mr.
8 Jett did not see Ms. Bundy because of certain
9 things in his truck. And Mr. Boggess is of the
10 opinion that Mr. Jett was in the median first based
11 on the property damage to her car and his trailer.
12 It is not about credibility at all.

13 So that is his accident reconstruction
14 opinion.

15 His biomechanical opinion, Mr. Boggess
16 calculated the dynamics of the contact between the
17 trailer and the side of the car. He used a
18 computer program called Math CAD. And he
19 basically -- his starting point was to assess the
20 damage to the vehicle to determine the G-Force to
21 the occupant. Again, this is nothing to do with
22 credibility or reliability. I mean, and he
23 concluded that there was a .8 G exposure to the
24 vehicle and Ms. Bundy.

25 And, again, he came in with his opinion by

1 looking at the magnitude of the crush or damage to
2 the car. He calculated the force. He used the CAD
3 file to come up with the width and depth of the
4 damage. And yet he can cite to multiple studies on
5 impact exposures to support his opinion. He used
6 the worst case scenario of Ms. Bundy extending and
7 bending her neck when the impact occurred. And he
8 came to the conclusion based on the property damage
9 that it was at .8 G exposure. Nothing to do with
10 her credibility at all. It is all about the math
11 and the damage to the car.

12 So I think -- I mean, Mr. McDonald can
13 certainly cross him on that, but it goes to the --
14 it can certainly go to the weight of his testimony
15 and not the admissibility.

16 THE COURT: What is your concern -- I mean, he
17 is -- of course, if he is qualified, he will be
18 qualified as?

19 MR. GRANTLAND: He has been qualified before.

20 THE COURT: Is your concern -- I thought your
21 concern earlier was that his testimony was that
22 her -- what she said is not credible.

23 MR. MCDONALD: That is -- I got one chance to
24 take his deposition. I asked him what the basis of
25 first and third opinions were.

1 And he said, Question:
2 When you say weighing the evidence, you
3 are relying heavily on your review of
4 the deposition testimony of Ms. Bundy
5 and Mr. Jett and the recorded
6 statements, correct?

7 The recorded statement is, then again, just
8 the physical layout of how they got together, where
9 their visibilities are and, again, weighing those
10 testimonies and how they reasonably go together.
11 And then there is other facets of testimony too,
12 speaking to the credibility and the reliability of
13 that testimony as well.

14 THE COURT: But they are not trying to get
15 that testimony in.

16 MR. GRANTLAND: No, I'm not. He is not -- I'm
17 not going to mention credibility.

18 MR. MCDONALD: But that is the basis of his
19 opinion. And because he can't talk about
20 credibility, I can't cross-examine him on
21 credibility, because then I'm opening the door to
22 credibility. But he is giving in his deposition:
23 This is the basis of my opinion.

24 So I don't know how --

25 THE COURT: What are you asking me to do? You

1 are asking me to exclude his entire deposition?

2 MR. MCDONALD: No, ma'am, just the first and
3 second opinions because he said:

4 In arriving at those opinions, this is
5 what I did. I considered weighing the
6 credibility of the witnesses.

7 And having -- once he did that, then it is on
8 him. And if you just carve that section out, he
9 has still got his ultimate conclusion he is going
10 to go into. And I don't get to go into the
11 credibility, that he weighed the credibility. I am
12 going to open the door. It is completely
13 inappropriate for him to weigh the credibility of
14 the witnesses.

15 And he said that was a basis -- he brought it
16 up:

17 And there is other facets of the
18 testimony too, speaking of the
19 credibility and reliability of that
20 testimony as well.

21 I asked him:

22 Any other credibility determinations
23 that you made relative to the testimony?

24 From the accident reconstruction, I think that
25 really sums it up.

1 On the third opinion:

2 And that is another way and testimony of
3 credibility issue, as you talked to
4 earlier.

5 Answer:

6 I guess. I mean, it is going to the --
7 again, what she says occurred.

8 And then he talks about at Page 68:

9 And then, again, going to the
10 reliability of the testimony. Also, the
11 kinematics that are not consistent with
12 the motion that she described in her
13 testimony as well.

14 Once he has that as a basis in his deposition
15 on those first and third opinions, that may be what
16 he did, it is just not appropriate to bring into
17 this court to give those conclusions, since that
18 is, in fact, what he did.

19 THE COURT: Yes, sir?

20 MR. GRANTLAND: I am not going to ask him any
21 questions about his credibility. He answered
22 Mr. McDonald's questions. And Mr. McDonald asked -

23 THE COURT: Is he testifying --

24 MR. GRANTLAND: Pardon me?

25 THE COURT: -- this week, or are we using the

1 deposition?

2 MR. GRANTLAND: He will be testifying. I
3 mean, and this can all be brought up.

4 THE COURT: Yes, you can ask him that, if he
5 is going to be here. I was assuming -- it sounded
6 like he --

7 MR. McDONALD: But, Your Honor, if he is going
8 to be here and he says -- I mean, he has the
9 absolute right under the rules to put him on the
10 stand, qualify him, and then ask him what his
11 conclusion is. But his conclusion is based on
12 weighing credibility, as he said in his deposition.
13 There is no way to unring that bell from him
14 saying, This is how I arrived at opinion.

15 If he has got a completely new opinion that is
16 not based on the credibility of the witnesses as to
17 his first and third opinion, well, for that reason
18 I would argue that it would be inappropriate to
19 have him testify, but he came in and said this is
20 what he did, and it is inappropriate to do that.

21 MR. GRANTLAND: Your Honor, that is -- I mean,
22 I appreciate what Mr. McDonald is saying, but as to
23 the accident reconstruction, he also testified he
24 relied specifically on the physical evidence of the
25 tractor-trailer and the vehicle and how they were

1 positioned after the accident. And he can explain
2 that. And as to the biomechanics, he can explain
3 the math he did and the studies he followed in
4 coming up with that. I mean, it is not about
5 credibility, reliability at all.

6 THE COURT: All right. Obviously, he is your
7 witness. He is not testifying today.

8 MR. GRANTLAND: Yes, ma'am.

9 THE COURT: Maybe not tomorrow.

10 MR. GRANTLAND: Possibly Thursday.

11 THE COURT: Yes, possibly Thursday. We can
12 address -- I may have to proffer his testimony and
13 hear what he has to say, but I'm not going to -- I
14 won't rule on it at this time.

15 MR. GRANTLAND: Yes, ma'am.

16 THE COURT: I will -- I mean, I think I need
17 to proffer his testimony and hear exactly what he
18 is going to say, and then we can address that issue
19 when he is here. You'll have an opportunity to
20 cross-examine him on that issue.

21 MR. MCDONALD: During the proffer, Your Honor?

22 THE COURT: Yes, during the proffer.

23 MR. MCDONALD: Okay. Thank you.

24 THE COURT: All right. Any other motions from
25 the Plaintiff?

1 MR. MCDONALD: No further motion from the
2 Plaintiff, Your Honor.

3 THE COURT: All right. Anything from the
4 Defense?

5 MR. GRANTLAND: Your Honor, I have two
6 motions. Well, one motion in limine -- they kind
7 of go hand-in-hand -- one is with Mr. Poplin, the
8 Plaintiffs' expert, and the use of the commercial
9 driver's -- commercial driver's license handbook.

10 Mr. Poplin is an accident reconstruction
11 expert, and I have a lot of respect for him.
12 However, we have a dispute about whether he is
13 qualified to give certain opinions in this case
14 based on his lack of investigation.

15 I mean, this case is all about who got into
16 the median first, whether Ms. Bundy was there first
17 or whether Mr. Jett was there first.

18 Mr. Poplin is of the opinion that the frame of
19 the windshield, A pillar of the windshield of
20 Mr. Jett's truck blocked his view of Ms. Bundy.
21 And that the side mirror and the A pillar together
22 blocked Mr. Jett's view of Ms. Bundy, and therefore
23 Ms. Bundy was probably in the median first and
24 Mr. Jett hit her because he couldn't see her. And
25 that is fine.

1 But here is the problem. Mr. Poplin, in his
2 deposition, admitted that he never inspected
3 Mr. Jett's tractor-trailer. He never did any site
4 testing with Mr. Jett's tractor-trailer. I don't
5 think he knows how tall Mr. Jett is. He never even
6 sat in the truck that Mr. Jett was driving at the
7 time.

8 What did he do? He relied on the frame of his
9 own Honda pickup truck. And he says: My Honda has
10 an A pillar, and it is similar to this
11 tractor-trailer. And based on that, if this A
12 pillar and my Honda could block my view, likewise
13 the A pillar on the tractor-trailer could block
14 Mr. Jett's view.

15 His opinions, with all due respect to
16 Mr. Poplin, we think -- I mean, that is just using
17 his own car to be critical of what this man could
18 see or not see out of his tractor-trailer.

19 THE COURT: Doesn't it all go to weight?

20 MR. GRANTLAND: Pardon me?

21 THE COURT: Wouldn't that all go to weight?

22 MR. GRANTLAND: It certainly could. But, I
23 mean, I don't think it meets the Council factors,
24 Your Honor. There is no -- certainly no peer
25 review on using this technique or prior application

1 of this method to the evidence in this case, and
2 there is certainly no quality control procedures.
3 And, I mean, I guess my point --

4 THE COURT: Is he the first witness?

5 MR. MCDONALD: No, Your Honor, he is my second
6 witness, and he will likely be today. And I can
7 respond.

8 MR. GRANTLAND: And so, I mean, that is my
9 biggest point with Mr. Poplin is that he didn't --
10 his testimony is the truck blocked -- portions of
11 the truck blocked Mr. Jett's view of the car, yet
12 he never inspected the truck.

13 The second point, I anticipate Mr. Poplin will
14 want to testify about the commercial driver's
15 handbook. Mr. McDonald wants to submit that I
16 believe into evidence, and we objected to that.

17 You know, as the Court may know, the
18 commercial driver's handbook is a training manual,
19 it is not the law. And the law is our statutes and
20 our case law.

21 And my concern is that if Mr. Poplin is
22 allowed to testify about whether Mr. Jett complied
23 with the commercial driver's manual, then the jury
24 will incorrectly think that Mr. Jett has a higher
25 standard of care than another driver like

1 Ms. Bundy. And that is not the case.

2 And this issue, the CDL, I mean, the
3 commercial driver's manual, has been addressed
4 before in the Johnson v. Horry County Waste
5 Authority case, which I can hand up a copy to the
6 Court and Mr. McDonald.

7 In that case, Your Honor, Mr. Poplin was the
8 Plaintiff's expert. And Mr. Poplin testified about
9 the CDL -- the commercial driver's manual. And the
10 Court found that was error to at least charge the
11 jury on the issue and refer to it during the course
12 of the trial.

13 And I think it would be error to cross
14 Mr. Jett on it because it would certainly give the
15 jury the impression that he has a higher standard
16 of care than a regular driver. It should not be
17 allowed to come into evidence and Mr. Poplin should
18 not be allowed to talk about it.

19 The Court found that it was error, but
20 harmless error in that case.

21 THE COURT: And is it because he charged the
22 jury as to it, or was it because he allowed him to
23 testify?

24 MR. GRANTLAND: Well, it is definitely because
25 he charged the jury, but the testimony alleged the

1 charges. And we think it should not come in at all
2 because it is not the law, it is a training manual.
3 And if the commercial driver's manual comes into
4 evidence, then I should be able to put in the
5 driver's manual into evidence. And that just --
6 that doesn't make any sense. We should keep the
7 focus on what is the law, what is their duties
8 under the law, not whether it was their duty under
9 the training manual.

10 THE COURT: All right.

11 MR. MCDONALD: Thank you, Your Honor.

12 As to the first point, Mr. Poplin's opinions
13 are based on math that he is doing, geometry.
14 Okay? And what he did was, we asked for the truck,
15 sent a request to produce: Produce the truck on
16 such and such a day. They didn't produce it.
17 Followed up with the other dates we were available.
18 They didn't do it. So we don't have the truck.
19 Their truck, they could have done it.

20 Mr. Poplin went even one step further. He
21 did -- he went out there, on the scene, used the
22 truck that he has. His testimony is going to be it
23 makes little or no difference in the opinions he is
24 giving. Okay? He then ran a 3D model using a
25 Sterling truck and using the same car that

1 Ms. Bundy was driving. He didn't disregard any
2 facts, he just ran the model. Okay? And that
3 model is going to be the basis on what he --
4 testimony he is giving is that there is a blind
5 spot on that truck, like all trucks and all cars.
6 Okay? And based upon the geometry and the math
7 that he did, he is not weighing the credibility of
8 the witnesses, it is just geometry. I have got a
9 little exhibit if Your Honor would like to see it
10 showing the calculations that he made. And that is
11 the basis of his testimony, that there is a blind
12 spot there that could have hid the presence of Ms.
13 Bundy's vehicle in the median.

14 So it is not just that he was driving out
15 there in his Honda Ridgeline truck and he looked
16 and said, Oh, it could have been blocked, it is way
17 more than that as to what he did.

18 And the notion that they are saying, Well, he
19 didn't inspect the truck, we asked for the truck to
20 be inspected, and they didn't do it. So that --
21 they shouldn't be now allowed to say, Well, you
22 should have had the truck or looked at the truck.
23 And I don't even think it matters as to what
24 testimony you are going to hear from Mr. Poplin
25 because he is going to say it doesn't, based upon

1 what he did. He also used the 3D model utilizing
2 the Sterling truck and the Mercedes.

3 Now, he looked at photos that were out there.
4 Okay? He took in -- his testimony is going to be,
5 I looked at all the facts in coming up with my
6 opinion. He didn't disregard it on the basis of
7 credibility and reliability.

8 So I think that that is completely proper to
9 be submitted to the jury, and they can
10 cross-examine however they feel best to
11 cross-examine.

12 THE COURT: All right. I am going to allow
13 him to testify, to give his opinion as to the
14 truck. And, like I stated earlier, I think all
15 that goes to the weight of the evidence.

16 Mr. Grantland, you will have an opportunity to
17 cross-examine him as much as you all would like
18 regarding why he didn't use his -- why did you use
19 this car, why didn't you use that car, and the size
20 of the cars and the make of the cars and being
21 different, whatever you want -- well, not whatever
22 you want to cross-examine on, but you will have an
23 opportunity to cross-examine him. But all that
24 goes to the weight of the evidence.

25 MR. GRANTLAND: Yes, ma'am, I understand.

1 THE COURT: And his second point as to the
2 Johnson v. Horry County.

3 MR. MCDONALD: Yes. And I was just handed
4 Johnson, and I have Your Honor's initial take,
5 because it looks like, even though it was held as
6 harmless error, that it was the charge that was --
7 that the Court had an issue with.

8 We are not asking the Court to charge the CDL
9 manual. The purpose of the CDL manual is simply --
10 they say it is a training manual. It is -- when
11 you go to the DMV, it is what you get when you go
12 to take the CDL test. And it differs from the
13 driver's test. That's why we have a different
14 license for commercial driver's license than we do
15 for a regular car driving license.

16 THE COURT: I think the Court's concern in
17 this case is just that, just from I was glancing
18 over it just as you have, and I maybe -- may have
19 missed something, but as long as it sounds like
20 there is no testimony that says that there is a
21 higher standard. That is the concern.

22 MR. MCDONALD: And I don't know that -- it is
23 not a higher standard, it is just a different
24 standard of what the things they have to take into
25 account when they are operating their vehicle.

1 They have got the same -- there is no question the
2 jury charge is going to be the same. You have got
3 a duty to keep a lookout, you have got a duty to
4 comply with the regulations of the state statutes
5 on the regulations of motor vehicles. But it is
6 just different things you have to take into
7 account. It is not a higher standard, but a
8 different standard as to things that are going on
9 when you are driving a large commercial vehicle
10 than when you are driving an automobile. And a
11 different set of skills, not necessarily executed
12 with a higher standard, just a different set of
13 skills.

14 THE COURT: All right. And, like I said, I
15 glanced. I lost my spot.

16 MR. GRANTLAND: Your Honor, I have the same.
17 Our concern is a different standard equates to a
18 higher standard. And I guarantee you if the CDL
19 manual is in evidence, they are going to argue that
20 Mr. Jett had a higher standard, a different
21 standard, higher standard, whatever they want to
22 call it, than anyone else. And that is not the
23 law. He has the same duty of care that Ms. Bundy
24 has. And the jury should be charged on -- or the
25 jury -- you know, if we are putting this in, this

1 is like putting in a statute, and we shouldn't --

2 THE COURT: Are you trying to get -- are you
3 trying to introduce the manual, or are you just
4 trying -- are you going to ask him --

5 MR. MCDONALD: I had planned to just -- I
6 mean, we have got it marked as an exhibit, but I
7 was going to ask Mr. Poplin about the fact that
8 there is a CDL manual, you have got to go down, all
9 the states adopt it, they just change the cover
10 page to the name of South Carolina, you have got to
11 go down and get that manual, this is what it is,
12 this is what it goes through in operating a
13 commercial vehicle. And that is it. I was not
14 going to argue it is a higher standard. There is
15 different things in there than there are in the
16 automobile manual.

17 THE COURT: But are you trying to introduce it
18 into evidence?

19 MR. MCDONALD: Yes, Your Honor. I mean, I
20 have got an exhibit to go through to have him talk
21 about it. I think it has got to come into evidence
22 for him to talk about it. And he can rely -- there
23 is a hearsay exception as an expert. But I don't
24 know -- in fairness to Mr. Grantland, he is not
25 making a hearsay objection.

1 THE COURT: I mean, I have some concerns about
2 putting an actual manual that would be similar to,
3 almost like a -- putting that in evidence. I'm not
4 as concerned about him testifying -- I'm just not
5 sure -- as to what he knows and how it relates to
6 this accident, but I don't know if you can put --
7 I'd have to look. Where is the manual?

8 MR. MCDONALD: May I approach, Your Honor?

9 THE COURT: It is a statutory manual that is
10 issued by the DMV, is that correct?

11 MR. MCDONALD: Well, it is not a statutory
12 manual. It is a training -- it is the manual that
13 you get that is adopted by South Carolina. It is a
14 national manual. And you get it just like you and
15 I when we took our driver's test, you go up and get
16 the manual so you know what the test is going to be
17 on so you can pass with the information that is in
18 there. I have got it right here. It is just
19 excerpts from it. I believe it is up here. We
20 didn't put it up here.

21 MR. GRANTLAND: I can hand the Court my copy.

22 MR. MCDONALD: I have got a copy.

23 (Copy given to the Court.)

24 MR. GRANTLAND: And my concern, Your Honor,
25 these are just portions in the manual relating to

1 terms. They are going to basically try to say,
2 Well, you violated the CDL manual by not following
3 the letter of this CDL manual. And that is going
4 to give the impression to the jury that he has a
5 higher standard of care, which is not the case.

6 THE COURT: I almost need to proffer his
7 testimony to hear what he is going to say. I mean,
8 if he is just going to say this is what the manual
9 says you are supposed to do, I'm not sure that --
10 if that is implying that there is a higher
11 standard.

12 MR. GRANTLAND: Well, my -- I'm not so worried
13 about what Mr. Poplin has to say as putting this
14 manual into evidence.

15 MR. MCDONALD: Your Honor, if Mr. Grantland is
16 agreeable, if I can just ask Mr. Poplin about it,
17 that it exists, he can refer to it, I don't have to
18 actually have it as a physical exhibit.

19 MR. GRANTLAND: And I guess it just depends on
20 how the question is presented, Your Honor.

21 THE COURT: Yes. I mean, he is an expert. I
22 guess you can ask him as -- he can maybe use it to
23 refresh his memory, if he is familiar with it and,
24 you know, how well -- I mean, did he rely on that
25 in coming to his opinion. Is that what he is going

1 to testify?

2 MR. MCDONALD: Well, no. I mean, he is not
3 going to rely -- well, I guess in large part
4 everything that he gives testimony on he is talking
5 about with reference to his opinion. But the
6 question is going to be of Mr. Poplin is just
7 simply, There is a test that is taken, a CDL test.
8 There is a manual out there. Have you reviewed the
9 manual? Yes, I have reviewed the manual. And I am
10 going to move on from it; if Mr. Grantland is
11 agreeable with that.

12 MR. GRANTLAND: If that is it.

13 THE COURT: All right. Thank you.

14 MR. GRANTLAND: Can I have that back?

15 THE COURT: Yes.

16 (Mr. Grantland retrieves document.)

17 THE COURT: All right. Mr. Grantland, any
18 other motions?

19 MR. GRANTLAND: No, Your Honor. Thank you.

20 THE COURT: All right. Anything else before I
21 bring them in?

22 MR. MCDONALD: No, Your Honor. Maybe just a
23 moment to set up the easel.

24 THE COURT: Okay.

25 MR. MCDONALD: Oh, yes, there is. If we can

1 just put on the record what documents, what
2 exhibits have been stipulated as admissible. And
3 it is Plaintiff's Exhibits 1 through 14. And 15
4 was the CDL manual. It is not in evidence.

5 MR. GRANTLAND: No objection.

6 THE COURT: So 1 through 14, without
7 objection.

8 (WHEREUPON, Plaintiff Exhibit Nos. 1 - 6
9 were marked for identification and
10 received into evidence.)

11 (WHEREUPON, Plaintiff Exhibit No. 7 was
12 marked for identification and received
13 into evidence.)

14 (WHEREUPON, Plaintiff Exhibit No. 8 was
15 marked for identification and received
16 into evidence.)

17 (WHEREUPON, Plaintiff Exhibit No. 9 was
18 marked for identification and received
19 into evidence.)

20 (WHEREUPON, Plaintiff Exhibit Nos. 10 -
21 12 were marked for identification and
22 received into evidence.)

23 (WHEREUPON, Plaintiff Exhibit No. 13 was
24 marked for identification and received
25 into evidence.)

1 (WHEREUPON, Plaintiff Exhibit No. 14 was
2 marked for identification and received
3 into evidence.)

4 MR. GRANTLAND: I submitted Exhibits 1 through
5 13, I believe.

6 MR. MCDONALD: 1 through 12 are without
7 objection.

8 MR. GRANTLAND: And then 13 was that diagram.

9 MR. MCDONALD: That I have the objection to.

10 THE COURT: The others are without objection.
11 And then 13, over objection.

12 (WHEREUPON, Defendant Exhibit Nos. 1 -
13 12 were marked for identification and
14 received into evidence.)

15 (WHEREUPON, Defendant Exhibit No. 13 was
16 marked for identification and received
17 into evidence.)

18 THE COURT: All right. Anything else? Is
19 that all of them? All right. If you want to go
20 ahead and get set up and then we can get started.

21 (Pause.)

22 THE COURT: Are we ready to bring them in?

23 (WHEREUPON, the jury came into open
24 court at 2:55 p.m.)

25 THE COURT: All right, are we all here?

1 Ladies and gentlemen of the jury, I hope you
2 had a good lunch.

3 At this time we are ready to start the trial
4 of this case. I am going to ask our clerk -- ask
5 you to stand and raise your right hand once again,
6 and the clerk will swear you in.

7 THE CLERK: Ladies and gentlemen of the jury,
8 would you please stand and raise your right hands
9 to be sworn?

10 (Jury complies.)

11 THE CLERK: You will well and truly try, and
12 true deliverance make, of all the issues joined in
13 this case and render a verdict which is in
14 accordance with the law and the evidence, so help
15 you God?

16 Please signify by saying, I do.

17 THE JURY: I do.

18 THE CLERK: Thank you. Please be seated.

19 (Jury seated.)

20 THE COURT: All right. Ladies and gentlemen
21 of the jury, what I will now say is meant to serve
22 as an introduction to the trial of this case.
23 These remarks are not a charge on the law in this
24 case. I will charge you on the law at the end of
25 the trial before you retire to decide the case.

1 Before the trial begins, I want to explain the
2 procedure that we will follow so that you can
3 better understand what is happening.

4 You are not to take any notes during the
5 trial. You have been selected as fair and
6 impartial jurors whose purpose is to find and
7 determine the facts. You are the sole judges of
8 the facts in this case.

9 If at any time I make any comment regarding
10 the facts, you must disregard it. You are to
11 determine the facts from the testimony you hear and
12 any other evidence that is presented.

13 You should not be influenced by any opinions
14 or statements you may have heard outside of this
15 courtroom.

16 It is especially important that you perform
17 your duty of determining the facts diligently and
18 conscientiously, because ordinarily there is no way
19 to correct an erroneous determination of the facts
20 by a jury.

21 When you comply with your oath to impartially
22 determine the facts of the case, you will have
23 fulfilled your duty as jurors and no one will have
24 the right to criticize your verdict.

25 On the other hand, and with equal emphasis,

1 the same law that makes you the judges of the facts
2 makes me the judge of the law.

3 The law as given by the Court is the only law
4 you must consider. You must accept and follow it
5 even though you may disagree with it.

6 I cannot tell you what the facts are, and you
7 cannot disagree with me about what the law is or
8 what the law should be. Your job is to take the
9 law as I give it to you and apply it to the facts
10 as you find them from the testimony of the
11 witnesses and any other evidence that is presented.

12 After doing that, you will render your
13 verdict, a true and just verdict, under the solemn
14 oath that you just took as jurors.

15 Until I advise you to begin your
16 deliberations, you must not discuss this case with
17 anyone, including your fellow jurors, your friends,
18 family members, and anyone involved in the case.

19 This includes discussions face to face and
20 those by telephone, e-mail, text, blogs, or any
21 other method of communication.

22 After the case is submitted to you, you must
23 discuss it only in the jury room with your fellow
24 jurors.

25 The attorneys and the parties in this case

1 have been advised that they are not to talk to you
2 at all. So if any -- if you see anyone -- and
3 there is a possibility you may see lawyers or some
4 of the parties walking around -- if you see anyone
5 and they do not say hello or they do not speak to
6 you, it is not that they are being unfriendly, they
7 are just following my instructions.

8 During the trial, do not read, listen to, or
9 watch any news report about this case. This
10 includes anything that may be in the newspaper or
11 on the internet, the radio, or television. Please
12 do not do any independent research regarding any
13 issue in this case. You may not consider anything
14 you may have read or heard about the case outside
15 of the courtroom, whether before or during the
16 trial. It is important that you keep an open mind
17 and not decide any issue in this case until all of
18 the evidence has been presented, the parties have
19 made their closing arguments, and I charge you as
20 to the law.

21 Now, in just a moment, the attorney for the
22 Plaintiff will make what is called an opening
23 statement. The attorney will explain to you the
24 issues in this case, or at least what the attorney
25 thinks the issues are in this case.

1 The attorney for the Defendant will also make
2 an opening statement. What the attorneys tell you
3 in their opening statement is not evidence. It is
4 merely their contention as to what the issues are
5 in a case.

6 The evidence in this case will be presented to
7 you by the testimony of sworn witnesses from the
8 witness stand and/or by exhibits that may be
9 introduced into evidence.

10 From time to time during the trial you may
11 hear one of the lawyers say something like, Your
12 Honor, I believe we have a question of law or a
13 matter of law to discuss with you, or, Your Honor,
14 may we approach the bench. And sometimes I might
15 find it myself necessary to excuse you from the
16 courtroom for a short while so the attorneys and I
17 can discuss a matter of law.

18 The reason for this is because, as I told you
19 earlier, you are the judges of the facts in this
20 case. And sometimes when I am ruling on a matter
21 of law, it may be necessary for me to make a
22 comment as to the facts in a case.

23 And, remember, I am not supposed to tell you
24 what the facts are in the case, so I will excuse
25 you from the courtroom so you will not be

1 influenced by anything that I may say or do in
2 ruling on a particular issue in a case concerning
3 the facts.

4 In determining what the true facts are in this
5 case, you must decide whether or not the testimony
6 of the witnesses is believable. It will be my
7 responsibility to determine whether or not
8 testimony is admissible. But once it is admitted,
9 it is up to you to decide whether or not you
10 believe it or not.

11 In deciding whether to believe a witness, you
12 have the right to consider whether the witness has
13 an interest in the result of the trial, whether the
14 witness is prejudiced towards either the Plaintiff
15 or the Defendant, the opportunity for the witness
16 to have seen the matters and things about which the
17 witness may testify, and the way the witness acts
18 on the witness stand.

19 You have a right to consider anything that is
20 in the record that will help you evaluate the
21 testimony of the witnesses. That means that it is
22 your duty to pay close attention to these
23 witnesses, to observe the witnesses, to listen to
24 the witnesses, and pay close attention to the
25 attorneys and the Court. Please do not let your

1 thoughts wander, but pay attention to the testimony
2 so at the end of the trial you will be able to
3 determine what the true facts are to apply the law
4 to those facts, and render a true and just verdict.

5 In order to preserve everyone's rights, I will
6 give the parties an opportunity to object to
7 anything that I have said.

8 Any objections or exceptions from the
9 Plaintiff?

10 MR. MCDONALD: None from the Plaintiff, Your
11 Honor. Thank you.

12 THE COURT: Any from the Defendant?

13 MR. GRANTLAND: No, Your Honor. Thank you.

14 THE COURT: All right. Ladies and gentlemen
15 of the jury, at this time we will have opening
16 statements. First you will hear from Mr. McDonald,
17 on behalf of the Bundys. And then you will hear
18 from Mr. Grantland, on behalf of the Defendant.

19 All right. Yes, sir?

20 MR. MCDONALD: Thank you, Your Honor. May it
21 please the Court?

22 THE COURT: Yes, sir.

23 OPENING STATEMENT

24 MR. MCDONALD: I have introduced myself to
25 y'all before. My name is Brent McDonald. And I am

1 from Summerville, South Carolina. And I have the
2 awesome responsibility of representing Mr. and
3 Ms. Bundy.

4 I have worked for Mr. Bundy, and he is now my
5 law partner, and he came and asked me to represent
6 them. And that is an incredible responsibility to
7 have to be somebody's mouthpiece in a courtroom.
8 I'm the only one who gets to talk to you in this
9 setting. They get to talk to y'all from the
10 witness stand.

11 And it doesn't matter how many of these I do,
12 I get nervous sometimes. And when I'm nervous, I
13 talk fast, I wave my arms. And I just ask, don't
14 hold that against me if I do that, don't hold it
15 against my client. It is just the nature of the
16 responsibility that I have in this case.

17 That responsibility is only surpassed by the
18 oath that you all just took as a juror, and now as
19 a jury. You are a collective unit now. The judge
20 is going to ask you at the end of this case to
21 speak as one, one voice. And that is an incredible
22 responsibility. A lot of attorneys get up and they
23 thank you for your jury service, and we are
24 certainly thankful for your jury service, but it is
25 not something I think you should be thanked for, it

1 is a responsibility and it is a privilege. And
2 this is the one time these parties get to come and
3 express to you the dispute, and they put it at your
4 feet. And so that responsibility is probably the
5 greatest in this courtroom as this goes on.

6 This is a wreck case. One of the
7 responsibilities you all have is everybody has
8 their own preconceived notions about wreck cases,
9 lawsuits, whatever it may be. Leave that at the
10 door. That is the oath as you came in, to listen
11 to the evidence and decide the facts that make up
12 this dispute. It is an awesome responsibility to
13 have to do that because it is hard to leave
14 preconceived notions at the door, but that is what
15 you just swore in your oath.

16 This is a case that is a crash between a
17 tractor-trailer and a Mercedes automobile. And
18 many of you may be familiar with the intersection
19 where it took place. It is the intersection of
20 Black River Road and 521. And a lot of times
21 you'll hear north and south. I don't do terribly
22 well with north and south. But this is towards
23 Camden, and this is towards Sumter. And that is
24 going to be essentially the stage that everything
25 is considered within this case.

1 And who you are going to hear from first is
2 Ms. Bundy. And Ms. Bundy is going to take the
3 witness stand and she is going to talk about her
4 morning on September 3rd, 2013. She is going to
5 talk about what was going on in her life before
6 that, for many years before that. And she is going
7 to talk about what went on after the crash on
8 September 3rd, 2013. And you are going to hear it
9 from her. That is where you should hear it from,
10 but I'm going to give you a very brief overview.

11 Ms. Bundy lives with Mr. Bundy. They don't
12 have any children, haven't had any children.
13 Mr. Bundy has three children from a prior marriage,
14 so she has a few grandchildren now. And they live
15 about ten minutes away from this intersection.

16 And Ms. Bundy is going to tell you that on
17 that morning -- she is an early riser -- she got up
18 about 5:30, somewhere thereabouts, had some coffee,
19 and began to do some of the things she normally
20 does, one of which is -- they don't have trash
21 service at their house, so she makes runs to the
22 dump to take the trash to recycling. So she
23 collects the trash, she loads it up in her car, and
24 she drives and she realizes she is a little low on
25 gas. She stops at a gas station, puts some gas in

1 her car, and goes on her way.

2 She goes down Black River Road towards the
3 dump, pulls into the dump, and drops off the trash,
4 drops off the recycling, and is heading to go have
5 bloodwork done in Columbia. So she drives back
6 down Black River Road.

7 Now, she is going to testify that when she
8 pulled up to the intersection -- and just to orient
9 you all, I have got some -- many of you all have
10 probably been through this intersection many times,
11 but she pulls up to the intersection and there is a
12 vehicle in front of her. She waits for that
13 vehicle to make a turning movement. And if you
14 want to go towards Columbia -- if you want to go
15 towards Columbia, you make the turning movement.
16 First you have to assess the traffic here coming
17 this way. And you can either come into the median
18 as a car, or, if traffic is clear on both ways, you
19 can go all the way across. It is a difficult
20 intersection. No question about it. No lighting,
21 just a stop sign.

22 She is going to talk about how there was a
23 vehicle in front of her that was able to make the
24 whole turning movement. She pulled up to the stop
25 sign and observed a truck behind her. She pulls

1 in, waits for traffic to clear. It is a -- it is
2 trafficky in the morning, as intersections are,
3 people going to and from work. And a lot of times
4 on the way out of Camden there is a little bit more
5 traffic than on the way into Camden.

6 She is going to testify she assessed traffic
7 coming towards Camden and was going to pull out in
8 the intersection.

9 Now, a couple of things to realize about this
10 intersection for those of you who aren't familiar
11 with it. This turning lane here is a left turn
12 onto Black River Road to come into here. So it is
13 a little bit of a crisscross of a turn because
14 normally when you are driving you want to be on the
15 right-hand side unless you are in England, but here
16 you want to stay over to the left-hand side in
17 order to not to block these people that are making
18 their left turn onto Black River Road.

19 So what she will say is she saw the truck
20 behind her, she came up, stopped here, and was
21 assessing particularly heavy traffic coming out of
22 Camden and towards Sumter.

23 After sitting and waiting for traffic to pass,
24 she -- the next sensation she felt was being struck
25 by a tractor-trailer. She is going to testify she

1 had the sensation of being pulled, being struck and
2 being pulled. The back window of her car shatters.
3 There is damage along the back right-hand side and
4 right-hand side.

5 She is very upset when this happened. She
6 gets out of the car. You are going to hear
7 testimony that she was upset and she yelled. And
8 she is in that situation of shock and not knowing
9 exactly what is going on and how it is going to
10 stop. Cars are continuing to go out here and here
11 after the crash. The truck is blocking lanes here
12 and here after the crash.

13 Ms. Bundy is then going to go through that day
14 and the progression of what happened after that
15 day. And I am going to talk about that in just a
16 moment. But first I want to talk about what
17 Mr. Jett, on behalf of Haier, will testify to.

18 The law in the State of South Carolina is, if
19 you are acting within the course and scope of your
20 employment, your employer, in this case Haier, is
21 responsible for your conduct. If you injure
22 something or someone, they are responsible for it.
23 Thus is the case here.

24 Mr. Jett, a Haier employee, has testified that
25 he never saw her until after the crash. Never saw

1 her. So the issue is, if he never saw her, why?
2 If she is out in the median and he is behind her,
3 why did he never see her? And that was a question
4 that came up, have to figure out, how could that
5 happen, how could he not.

6 And we have a witness that you are going to
7 hear from. His name is Woodrow Poplin. He is a
8 navy man. And he does what is called accident
9 reconstruction. And what you are going to hear
10 from Mr. Poplin is, he was given all the facts, the
11 testimony of Ms. Bundy and the testimony of
12 Mr. Jett on behalf of Haier and accident photo
13 scenes that we will go through in a moment to come
14 up with why, why is this, why didn't he see her.

15 And Mr. Jett{sic} went out to the site, took
16 photos, took measurements. And you will hear more
17 from him. And then ran a 3D model that he does in
18 his business utilizing the vehicle that Ms. Bundy
19 was in and utilizing a model of that vehicle and a
20 model of the truck, of the Haier truck.

21 And what Mr. Poplin is going to show you --
22 these are the still photos, we have got the
23 animation to show you as well, it is already in
24 evidence -- is that there is a blind spot, like all
25 cars. They call it the A frame. It is the blind

1 spot. I didn't know that it had a name. It has
2 got a name. The A frame, blind spot in a car. And
3 in a truck, very similar.

4 A truck has an additional blind spot of the
5 mirror that comes off the A frame. And what
6 Mr. Poplin has determined, and the evidence that
7 you will hear from him, is that there could have
8 been an obstruction from Mr. Jett of Ms. Bundy's
9 car in the median. He doesn't disregard Mr. Jett's
10 testimony because Mr. Jett said he never saw her.
11 It is consistent with that. It is consistent with
12 Ms. Bundy being out there first.

13 Mr. Poplin also ran it in a couple of
14 different ways and saw that, Well, in addition,
15 there could have been a complete obstruction or
16 there could have been even just a partial
17 obstruction. And you are going to see two
18 animations, one with a partial examination, which
19 he calls looking left, and one, which is very
20 interesting, is looking left to assess this traffic
21 coming this way and then the natural human to look
22 right to assess traffic coming from that way. And
23 you will see that animation as well that he has
24 created.

25 And Mr. Poplin will show you all how it could

1 be that Mr. Jett, by failing to check around his
2 blind spot, wouldn't have seen Ms. Bundy in the
3 intersection.

4 That is the totality of the testimony, except
5 for one very important thing from Mr. Jett. He has
6 testified on behalf of Haier that when he pulled
7 into the intersection, still having never seen her,
8 he stopped. He came to a stop. He went -- waited
9 for a car to pass and let out the clutch in order
10 to go, and he was bound, didn't move, to speak of.
11 He was bound. There was something holding him
12 back. He immediately popped his air brakes, opened
13 up his door, and that is the first time he saw
14 Ms. Bundy.

15 What you will see from the photos is an
16 interesting scenario that we have here. We
17 actually have the photos of the vehicles from the
18 time where they are still stuck together prior to
19 to the parties moving the cars and the truck from
20 the crash site. And we'll talk about that with
21 Mr. Poplin and I'll talk about that with you all
22 about what these photos mean compared to what the
23 testimony is, the layout of the cars compared to
24 what the testimony is, whether Mr. Jett never moved
25 or whether he did move. And we'll go through all

1 that. That will be evidence that is already in.

2 Now, in addition to the stories that you'll
3 hear from the witness stand and the facts that
4 you'll hear from the witness stand, this is a case
5 about negligence and recklessness.

6 If you see -- if you fail to see someone that
7 you should have seen and you hurt them and you run
8 into them, under the law of South Carolina, you are
9 responsible for them.

10 Just as I instructed you earlier in this case,
11 if you are working for a corporation, the
12 corporation is responsible for your conduct in
13 hurting someone.

14 Mr. Bundy is also a Plaintiff in this case.
15 And the reason Mr. Bundy is a Plaintiff in this
16 case is because there is something called loss of
17 consortium in South Carolina. And what that is in
18 it's plainest term is, it is recognized between a
19 husband and a wife, it is a teammate concept, which
20 is a lot of times you have got a teammate that
21 helps you with things throughout the house. You
22 don't do everything on your own. It could be
23 cooking, cleaning, it could be working out in the
24 yard, like Ms. Bundy used to do. And when you lose
25 that, you lose that teammate, it makes it harder on

1 you. And there is stress associated with that. It
2 is a change in your life that you didn't ask for
3 and you have got to deal with it. And the law
4 recognizes in South Carolina a claim for loss of
5 consortium.

6 So what you are going to hear from, in
7 addition to Ms. Bundy and Mr. Bundy, is you are
8 going to hear from doctors that actually saw
9 Ms. Bundy. Okay? You are going to hear in the
10 Defense case a Dr. Wagers, chiropractor, that
11 Ms. Bundy went to in 2008. No question that in her
12 life, where she is, she has had neck and back pain,
13 like we all have, in the past. Okay? And you are
14 going to hear a lot about that and argue that it
15 couldn't be -- she couldn't have been injured
16 because of having gone to a doctor beforehand.

17 Once again, as the judge is going to charge
18 you, the law recognizes that we all, as we get
19 older, nobody becomes perfect anymore as a perfect
20 package, and the law recognizes that. If you
21 aggravate an injury or hurt something further, you
22 are still responsible for it. And you are going to
23 hear that from the judge.

24 You are going to hear from Dr. Cannestra, the
25 surgeon Ms. Bundy went to go see after trying to do

1 what she had done in the past, which is things to
2 relieve it short of surgery, and there were issues.
3 Okay? Surgery is the last resort. You are going
4 to hear that from Dr. Cannestra.

5 Dr. Cannestra actually talked to Ms. Bundy,
6 actually performed the surgery, actually physically
7 evaluated her. You are going to hear from him. He
8 is going to be on a video. We will show you a
9 video. We have a rule in South Carolina not to
10 make doctors come down to the courthouse, we get to
11 show treating physician's videos. So we are going
12 to show you his video and you'll hear his testimony
13 on the surgeries.

14 Ms. Bundy, as a result of the accident, had to
15 have two surgeries, one -- both called fusions.
16 All right? And I by no means profess to be any
17 sort of expert. I'm not using technical
18 terminology. But what it is, it is hardware put
19 in both the neck and lower back. And that hardware
20 fuses together two pieces of your spine in order to
21 relieve some of that pain. Dr. Cannestra explains
22 it very, very well. And she was forced to
23 undertake those surgeries after not getting better.

24 Now, she didn't immediately run to have
25 surgery. She didn't immediately say all these

1 things that -- I am going to do all these things
2 immediately as a result of this. She took the time
3 to attempt to address it in every way she could
4 short of surgery. And you are going to hear from
5 Cannestra about that.

6 You are going to hear from Dr. Folk. He is a
7 doctor in Charleston that is administering pain
8 shots to Ms. Bundy, and has been administering pain
9 shots to Ms. Bundy.

10 You are going to hear from Ms. Lesia Green,
11 who was hired by Mr. and Ms. Bundy after the first
12 surgery in order to perform some of the caretaking
13 services.

14 You are going to hear from Ms. Donna Davis,
15 who has known Ms. Bundy for a while. She is going
16 to talk about observing Ms. Bundy, in addition to
17 hearing from Ms. Bundy.

18 And you are going to hear from a registered
19 nurse, Nurse Lustig. Her name is Sarah Lustig.
20 And what Ms. Lustig is going to talk about is what
21 Ms. Bundy is going to need into the future. Okay?

22 And what that means is, Ms. Bundy only gets
23 one chance to come up here. She doesn't get to say
24 five years from now, I have all these additional
25 things that have happened and I need to come back

1 and we need to pick a new jury and we need to talk
2 about these new things. This is it. This is all
3 she gets.

4 And what we have done is we have come up with
5 a life care plan, and that is what Ms. Lustig is
6 going to talk about. And it has been reduced back
7 to present day value, because some of the things
8 that she is going to incur might not be incurred
9 until in the future. And what those things are is
10 somewhat unique to the surgery she had to have. In
11 large part, what happens is, when you fuse -- she
12 had a surgery in the neck and the back -- when you
13 fuse and you use that metal hardware to fuse the
14 two pieces of the spine, the portions above it or
15 below it are subjected to more stress. And after a
16 certain amount of time -- and Dr. Cannestra will
17 explain to you -- because Ms. Bundy is of the age
18 she is at, she is more likely than not going to
19 have to have the same type of surgeries again in
20 the future to address those issues. And that is
21 what the life care plan, which is already in
22 evidence, is going to show you what that is going
23 to cost back to present day value.

24 And make no mistake about it, this is a lot of
25 money. The medical bills, which are in evidence,

1 are \$289,393.12. The present day value of the life
2 care plan is \$1,358,805 brought back to present day
3 value. It is a lot of money. There is absolutely
4 no question about it.

5 And what I want you to do is to pay very, very
6 close attention, not only to what we have to say,
7 but to what they have to say, why the Defense takes
8 the position she is not entitled to this.

9 A lot of times a lawyer won't ask you to pay
10 them a lot of attention, they want you to listen to
11 their side. I want you to pay very close attention
12 to their side as well.

13 There is a few other elements of damage I need
14 to talk about with y'all with regard to
15 Dr. Cannestra's testimony.

16 As the law recognizes pain and suffering --
17 now, that is completely within you all's purview.
18 I don't get to talk about what the value of that
19 should be, and I won't talk about it. That is you
20 all's job to determine whether there was pain and
21 suffering and what the value would be. Some people
22 have a big issue with, Well, why does pain and
23 suffering -- if you get money, how is that -- it is
24 not going to alleviate any of the pain and
25 suffering. It is not going to change what she went

1 through. It is not going to change what she has to
2 go through in the future. That is all we've got.
3 That is what this system is based on, a civil suit.
4 We don't put people in jail. We don't do anything.
5 We only have money to address these issues. And
6 that is going to be you all's decision to make at
7 the end of the day.

8 The other issue is loss of enjoyment of life.
9 What were you doing that you can't do now? And
10 what is the value of that? That is you all's
11 decision, what is the value of that. And I don't
12 profess to act like it is not a hard decision to
13 make. It is a very difficult decision to make, but
14 it is you all's decision.

15 And we talked about the loss of consortium
16 earlier. That would be Mr. Bundy's claim. That
17 is, again, a value that you all have to decide.
18 There is no hard and fast rule. It is you all's
19 responsibility.

20 Now, the witnesses that you are going to hear
21 from the Defense -- and I just ask you to pay close
22 attention to them -- is Mr. Jett, who is going to
23 testify he never saw her. You may hear from a
24 representative of Haier to talk about the Haier
25 Corporation. I'm sure you will. You are going to

1 hear from a Dr. Rhyne that was hired by the
2 Defense. Dr. Rhyne is in North Carolina, not
3 licensed in South Carolina. And he never saw her,
4 never examined her, never picked up the phone to
5 talk to her.

6 Now, Dr. Rhyne, you are going to hear his
7 deposition in video as well. That is not normally
8 what he does. He doesn't decide whether someone
9 should have surgery. He doesn't evaluate patients
10 without doing a physical on them and asking them
11 questions. But in this case he was more than
12 willing to give whatever opinion he is going to
13 give. And I would ask you to keep that in mind.
14 Haier never saw her, Dr. Rhyne never saw her.

15 Now, you say, Well, maybe he is from North
16 Carolina and he couldn't see her. Well, we have a
17 rule in South Carolina, the Rules of Civil
18 Procedure, our rule book we have to play by. There
19 is a rule in South Carolina that specifically
20 says -- Rule 35 -- if they hire a doctor they can
21 come and ask that doctor to evaluate, examine, and
22 do what they would normally do on a patient. They
23 can do that. Didn't do it. He never saw her.

24 So I would ask you all to recognize the
25 awesome responsibility that you have, to listen to

1 us. At times it is not going to be exciting. It
2 is not normal to be in the setting that you are in,
3 but to listen to us with the best of your ability
4 to uphold your oath.

5 And at the end of the day, after you have
6 heard everything, just do what is right, just do
7 what you feel like is right.

8 Thank you very much.

9 THE COURT: Yes, sir?

10 MR. GRANTLAND: May it please the Court?

11 THE COURT: Yes, sir.

12 OPENING STATEMENT

13 MR. GRANTLAND: Good afternoon, ladies and
14 gentlemen. My name is John Grantland. I'm a
15 lawyer from Columbia, and this is my law partner,
16 Rogers Harrell. He and I are privileged to stand
17 before you today to represent Haier America and
18 Thomas Jett. This is Thomas over here. This is
19 Teresa Justice. I'll tell you a little bit about
20 them and why we are here.

21 Some of you may know, Haier is a refrigerator
22 manufacturing company that is based off of Highway
23 521 off Black River Road, and they came here in --
24 or they built a plant here in 2000. They build
25 refrigerators. They employ about 300 employees.

1 They send refrigerators all over the country.
2 Teresa is a personnel manager with Haier. Thomas
3 has been an employee there since 2012.

4 Thomas is from Bethune, where he was born and
5 raised. He is 65 years young. If he was on jury
6 duty, he could have gotten excused today. But he
7 is 65. He has been a truck driver most all of his
8 life. He was in the army for 12, 13 years in the
9 National Guard, then he has been a truck driver.
10 He is a grandfather and a great-grandfather. And
11 he has been with Haier since 2012 as a truck
12 driver.

13 That is who we are. So why are we here?
14 We're here, ladies and gentlemen, because Ms. Bundy
15 and Mr. Bundy have sued Haier and Thomas, but the
16 reason for their lawsuit, from our perspective, is
17 very much at issue.

18 Ms. Bundy, as you heard from Mr. McDonald,
19 Ms. Bundy and Thomas were in an accident back in
20 September of 2013, over four years ago in the
21 median in front of Black River Road on 521.

22 Ms. Bundy has alleged that she was sitting in
23 the median and that -- waiting on traffic -- and
24 Thomas pulled out for no reason, slammed into her
25 car, dragged her car into oncoming traffic, causing

1 her severe injuries for the rest of her life.

2 And with all due respect to Ms. Bundy and her
3 attorneys, and Mr. Bundy -- and Mr. Bundy has
4 alleged that the accident has injured their
5 marriage, and he is bringing a claim on behalf of
6 him as her spouse. And with all due respect to
7 Mr. and Ms. Bundy and Mr. McDonald, we don't
8 believe their allegations are true. We know they
9 are not true. And we have a dispute.

10 Ladies and gentlemen, you will learn from us
11 that this accident was not Thomas's fault. He was
12 in the median first. And Ms. Bundy, while he was
13 sitting in the median waiting for traffic, Ms.
14 Bundy tried to go around him. She stopped. She
15 was behind him far enough where he couldn't see
16 her. And when he started to move, the side of his
17 truck rubbed up against the side of her Mercedes,
18 and that was it.

19 So we have two disputes. First, we have a
20 dispute as to who was in the median first. Was
21 Ms. Bundy in the median first or was Thomas in the
22 median first? Because there is not room for both
23 to be in the median at the same time to turn left.
24 And our second dispute is about the effects of the
25 accident. Ms. Bundy has alleged that this accident

1 ruined her life, caused her neck and back pain and
2 required her to have surgery. And you are going to
3 learn, ladies and gentlemen, Ms. Bundy has been
4 living with neck and back pain for 20, 30 years,
5 and a lot of the treatment -- and the treatment she
6 had after the accident is pretty much consistent
7 with the treatment she was having before, and that
8 this accident really had no affect on her and she
9 had really no injury from this accident to her neck
10 or back.

11 So those are our issues: Who was in the
12 median first; was this a big accident that would
13 cause somebody to need neck and back surgery or was
14 it a minor accident. Your job is to hear all the
15 evidence and do your best to find the truth.

16 So what will you hear from us? Again,
17 September 2013, over four years ago, both Ms. Bundy
18 and Thomas were on Black River Road going in
19 different directions.

20 Ms. Bundy left her home in Boykin. She was
21 going to drop off trash at a dump off Black River
22 Road and go to a doctor's appointment in Columbia.

23 Thomas was delivering some racks from the
24 Haier plant to a warehouse in Anderson. He was
25 taking a route that he takes just about every day,

1 or at least a number of times throughout the week.
2 Very familiar with the area.

3 Ms. Bundy says she is at the median. I am
4 going to show you another picture. You are going
5 to have lots of pictures, ladies and gentlemen.
6 That is okay. Mr. McDonald, my friend, showed you
7 his pictures; I am going to show you some of mine.
8 Y'all can see that.

9 Ms. Bundy says she is at the stop sign, Thomas
10 was behind her, she pulled out into the median.
11 And, in fact, she says she pulled out from here
12 where this arrow is all the way over to the left
13 side of the median. She says she is sitting there
14 waiting for traffic, and all of a sudden Thomas
15 barrels out from the stop sign hitting the side of
16 her car, breaking out her back window, dragging her
17 into oncoming traffic.

18 Thomas says no, that is not what happened at
19 all. He will tell you, I was in -- I pulled up --
20 when I pulled up to the stop sign, there was no car
21 in front of me. When I looked, there was no car in
22 the median. I slowly drove my tractor-trailer
23 across those two lanes of 521 into the median. I'm
24 diagonal in the median.

25 I'll show you another picture. Mr. Thomas

1 says, I'm in the median. I'm waiting on a car.
2 I'm looking to my right. And I'm waiting on a car.
3 I'm looking this direction to the right waiting on
4 traffic. A car passes. I release my clutch, start
5 to move, I feel a catch on my left side in the
6 rear. It was almost like my -- someone had blocked
7 my tires. So he puts the break on, he can't -- he
8 can't see anything on the side mirror. And he
9 looks out, and there is a car behind him. And he
10 can't believe, you know, Ms. Bundy came up from
11 behind him to try to go around him.

12 So Thomas gets out of his truck. Ms. Bundy
13 gets out of her car. There is no dispute about
14 what happens after that.

15 Ms. Bundy I think will admit to you that she
16 was very upset with Thomas. She was hysterical.
17 She was angry. She doesn't remember everything
18 that she said, but she admits it wasn't pretty.

19 Thomas remembered what she said. Thomas will
20 tell you that she yelled at him for making her late
21 for a doctor's appointment, and then she called him
22 a stupid idiot.

23 And at that point Thomas didn't know this
24 lady. He knew he didn't do anything wrong. So he
25 walked away. He got back up in his truck. He

1 called his son, who was in law enforcement up in
2 Fayetteville, you know, just to calm down. And
3 within five or ten minutes, an officer with the
4 Camden Police Department, John Patton, was on the
5 scene.

6 Officer Patton -- Thomas saw Officer Patton.
7 He got off the phone with his son. He and
8 Ms. Bundy talked to Officer Patton.

9 Officer Patton's first priority is, Is
10 everybody okay? Does anyone need medical
11 attention? Everyone is fine. No one needs an
12 ambulance. No one -- everyone says they are fine.

13 Then he asks, What happened?

14 Ms. Bundy said, I'm in the median. This truck
15 came out and hit me.

16 Thomas said, No, I was in the median and this
17 car tried to come around me and was stopped behind
18 me.

19 Officer Patton -- there were no witnesses.
20 Officer Patton didn't know who was in the median
21 first. So he asked them both to leave or to get in
22 their cars, if they were drivable, which they were,
23 and head down to a side road where he could finish
24 his investigation, which is what he did.

25 And while he is doing that, Mr. Bundy shows

1 up. So Officer Patton finishes his investigation.
2 He sends everybody on their way. Thomas heads on
3 to Anderson to deliver his racks, and Ms. Bundy, I
4 think, heads on home, heads to her house. That is
5 the day of the accident.

6 Now, Ms. Bundy will tell you that she got
7 progressively worse and worse after this accident.
8 She will tell you that she had -- she tried
9 different things, different medical treatments to
10 get better. She will admit to you that she had
11 neck and back problems in the past. And you will
12 learn she has had neck and back problems 20, 30
13 years, and had prior accidents, and all kinds of
14 treatment on her neck and back before. But, in any
15 event, she'll tell you she tried to get better and
16 she eventually -- her husband had a friend who
17 recommended a surgeon down in Jacksonville,
18 Florida, who treated Joe Namath, or someone -- one
19 of Joe Namath's teammates and, anyway, he
20 recommended -- the friend recommended to Mr. Bundy
21 that Ms. Bundy go down to Jacksonville. So they
22 went down to see Dr. Cannestra sometime in 2014.

23 And when Ms. Bundy saw Dr. Cannestra, she -- I
24 think she admitted to him that she has had a long
25 history of neck and back pain, and he did surgery.

1 He did neck surgery in 2014, the middle of the
2 year, and then later in the year he did back
3 surgery. And I think both surgeries, according to
4 the surgeon, were a success.

5 And then I think Ms. Bundy went for a period
6 where she had no medical treatment at all, but then
7 she did something to her back in 2016 and she went
8 back to Dr. Canestra and ended up going to a pain
9 doctor in Charleston, Dr. Folk, that she started
10 seeing in 2017.

11 And Ms. Bundy claims that all of her medical
12 treatment, all of her problems all stem from this
13 accident.

14 And that is the case.

15 Now, how will the evidence be presented?
16 Well, Ms. Bundy goes first. She is first because
17 she is the Plaintiff. She has the burden of proof.
18 She must prove to you, ladies and gentlemen, first
19 and foremost, that this accident was Thomas's
20 fault, that Thomas -- that she was in the median
21 first and that Thomas just blindly went out and hit
22 her for no reason. So listen to her testimony.

23 You'll hear from her husband. He has a claim.
24 He has a claim that this accident and her injuries
25 affected their marriage and affected him. So

1 listen to his testimony.

2 As Mr. McDonald said, they have an expert,
3 Woody Poplin. Mr. Poplin will give you the opinion
4 that from his perspective Mr. Jett pulled out and
5 simply did not see Ms. Bundy. He recognizes that
6 may not -- he may not have the only opinion in the
7 case, but his opinion is basically going to be he
8 thinks that that could happen because Thomas didn't
9 see Ms. Bundy. We certainly are going to dispute
10 that with Mr. Poplin, I promise you. But that is
11 his opinion.

12 And as Mr. McDonald said, you are going to
13 hear -- they have another expert, a Sarah Lustig,
14 who is a nurse from Charleston. And Ms. Lustig
15 prepared a million dollar -- or \$1.3 million dollar
16 life care plan for all the possible medical
17 treatment that Ms. Bundy may need for the rest of
18 her life. We have a lot of disputes and a lot of
19 disagreement with that, and you'll hear about that.
20 But those are their two experts.

21 And you'll also hear from her surgeon from
22 Florida, Cannestra, and the pain doctor in
23 Charleston, Dr. Folk. And I think you'll find
24 their testimony interesting.

25 When it is our turn, you'll hear from Thomas.

1 I mean, he'll tell you about the accident from his
2 perspective, and it will be very clear. There is
3 no question in his mind she was not in front of him
4 at the stop sign, she was not in the median when he
5 pulled in. She was there only after he got
6 established in the median.

7 You'll hear -- you may hear from Teresa. She
8 interviewed Thomas afterwards, prepared a little --
9 asked Thomas to prepare a little diagram of what
10 happened.

11 And just as they have an expert, Woody Poplin,
12 we have an expert, Brian Boggess, who is from
13 Charlotte, and Brian Boggess is also an accident
14 reconstruction expert, and he will give you his
15 opinion on why he believes Mr. -- Thomas was in the
16 median first. He'll tell you based on the damage
17 to the side of her car and the side of the trailer,
18 the only way this accident happens is if Thomas is
19 already established in the median and Ms. Bundy
20 comes up from behind him.

21 He will also give you the opinion -- he is a
22 biomechanical engineer -- and he will also give you
23 opinion that this was a very minor impact to
24 Ms. Bundy, less than 1 G impact to the car and to
25 Ms. Bundy, not an impact that is severe as they are

1 claiming.

2 And that is important, because you are going
3 to hear from a chiropractor, Dr. Wagers, who is
4 here in Camden. Dr. Wagers treated Ms. Bundy
5 before this accident. And Dr. Wagers will tell
6 you, without question, Ms. Bundy had been involved
7 in a much more serious accident before this one and
8 she had significant neck and back pain, chronic
9 neck and back pain before this accident.

10 And his testimony, Dr. Wagers will be
11 consistent with Dr. Rhyne. And Mr. McDonald is
12 correct, I did hire a doctor, an orthopedic
13 surgeon, Dr. Rhyne, to review all the records. All
14 I wanted him to do is just review the records. And
15 he had the benefit of reviewing Ms. Bundy's records
16 from before the accident and after the accident.
17 He had an opportunity to review her MRIs from
18 before the accident and afterwards. And he will
19 tell you the MRI films from before the accident are
20 the same as they were -- as the MRI films taken
21 after the accident, that Ms. Bundy did not have an
22 injury, a traumatic injury from this accident, and
23 he certainly would not have done surgery on her.

24 All that is very important, but the most
25 important evidence from our perspective will be

1 these photos you have. You are going to see -- our
2 Camden police officer, John Patton, and his staff
3 took a whole bunch of pictures of the truck and the
4 car in the median immediately after the accident
5 and before they were separated. And he took some
6 pictures after they were separated.

7 And I think once you see the photos, ladies
8 and gentlemen, you'll see how this accident
9 happened and why it happened.

10 And I'll just ask you to put on your common
11 sense hats. And once you see it, I think you'll
12 figure out how this happened and why it happened.

13 The most important issue in the case will be
14 credibility. I say that, because you are going to
15 get two completely different stories, night and day
16 stories on this accident and the effects of the
17 accident.

18 But I'm confident once you hear all the
19 testimony, you'll agree this accident was not
20 Thomas's fault. And for that reason, at the end of
21 this case, I ask you to return a verdict for Thomas
22 and Haier.

23 Thank you.

24 THE COURT: All right. Call your first
25 witness.

1 MR. MCDONALD: The Plaintiffs call Ms. Heather
2 Anne Bundy.

3 (Witness approaches.)

4 THE CLERK: Place your left hand on the Bible,
5 and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you give in this case will be the truth,
9 the whole truth, and nothing but the truth, so help
10 you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness stand,
13 and state your full name for the record.

14 (Witness seated.)

15 THE WITNESS: Heather Anne Bundy.

16 HEATHER ANNE BUNDY,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCDONALD:

20 Q Ms. Bundy, I am going to stand over here. If you
21 can't hear me, let me know and I will move a little
22 closer, okay?

23 Ms. Bundy, where are you from?

24 A I was born in Honolulu, Hawaii.

25 Q Okay. How did you make your way to Camden, South

1 Carolina?

2 A My father was in the Air Force.

3 Q Okay. So you moved around a lot?

4 A I did.

5 Q And where do you live now?

6 A In Boykin, South Carolina.

7 Q Okay. And what is your address?

8 A 1768 Highway 521, Boykin.

9 Q Okay. And is that in town or out of town?

10 A It is five miles outside of town.

11 Q And who do you live with?

12 A My husband.

13 Q Do y'all have any children?

14 A No.

15 Q Do you have animals, pets, anything like that?

16 A Very large dogs.

17 Q Okay.

18 A And cats and chickens and -- roughly a tree farm
19 and farm.

20 Q Okay. So where you live is actually kind of a
21 farm, more of a farm area?

22 A Yes, sir.

23 Q And what kind of dogs are these? You said big
24 dogs.

25 A English Mastiffs, two; a Great Pyrenees; and then

1 there is a small rescue.

2 Q And how old are you, Ms. Bundy?

3 A Fifty-two.

4 Q And is your husband in the courtroom?

5 A He is.

6 Q Okay. What is his name?

7 A Walter H. Bundy, Jr.

8 Q And how long have you been married to Mr. Bundy?

9 A Sixteen years.

10 Q And how did y'all meet?

11 A Blind date.

12 Q Really? Okay. And you have been married 16 years?

13 And do you have any grands -- does Mr. Bundy have
14 any children?

15 A He does. He has three beautiful children, and we
16 have four beautiful grandchildren.

17 Q And where do they live?

18 A Hazel lives in Virginia, and the boys live on
19 Daniel Island.

20 Q And what I'd like to focus on first, if I can,
21 Ms. Bundy, is I want to talk about your life in
22 detail prior to this wreck, okay? So this section
23 of questions I want to talk about prior to the
24 wreck. Fair enough?

25 A (WHEREUPON, there was no response.)

1 Q Give me a typical day in the life -- what do you
2 do? Do you work? Do you have a job?

3 A Not per se. I actually work harder, or I did work
4 harder.

5 Q My wife would shoot me for asking that question.
6 What is a typical day in the life of Ms. Bundy?

7 A I wake up at 5:30. I feed the animals. I feed my
8 husband. I work in the garden. I work in the
9 yard. I always have projects, either painting,
10 building something. There is always something
11 going on.

12 Q Do you like to be outside?

13 A I do.

14 Q And prior to the wreck, did you travel with
15 Mr. Bundy?

16 A Very much. We were somewhat retired after both of
17 us worked for 30 plus years. We traveled quite a
18 bit.

19 Q And other than traveling or spending time with your
20 husband, what did you do?

21 A Hunting, fishing, boating, tennis. Pretty much
22 everything. I made him ski at 50.

23 Q How did he do?

24 A Huh?

25 Q How did he do?

1 A Let's not talk about it.

2 Q And what responsibilities prior to the wreck did
3 you have -- did you have around the house? Not
4 just things you liked to do, but just what
5 responsibilities did you have?

6 A Everything. All of the house cleaning, all of the
7 animals, their pens, the shopping, the cooking,
8 the -- everything.

9 Q Mow the yard?

10 A Did.

11 Q And do you all have equipment as part of your farm?

12 A Yes.

13 Q Did you have any responsibilities with that?

14 A I did.

15 Q And your husband actually works in Summerville,
16 South Carolina, is that correct?

17 A He does now.

18 Q And does he work from home a good bit too?

19 A He does.

20 Q On a weekly basis, even though he is working, he is
21 still in the house?

22 A Yes.

23 Q Do you make meals, and things like that, for him?

24 A That has been one of the problems, three meals a
25 day.

1 Q And let's talk about your history, okay, prior to
2 the wreck. You have been sitting in this courtroom
3 and you heard that issue that you had throughout
4 your life with neck and back pain. I want to talk
5 about that for a little bit.

6 A Sure.

7 Q Have you -- prior to the wreck, did you have any
8 issues with your neck and back pain?

9 A None. As a matter of fact, that day, I probably
10 could never say I was that content. Bill and I, we
11 were just planning another trip, to Argentina, as a
12 matter of fact, and we were going to play tennis in
13 the afternoon after I finished -- I mean, I was the
14 healthiest I have ever been.

15 Q And had you treated for any type of stiff neck,
16 sore neck, back stiffness?

17 A Sure.

18 Q Okay. Tell the jury a little bit about that, prior
19 to the wreck.

20 A I have always done acupuncture, kept up with
21 massages, you know, hot baths. I tried the
22 chiropractor. And I love Dr. Wagers. But after
23 his first session -- I think I went twice -- I got
24 nauseas, so I never used him again.

25 Q And you were in a car accident 20, 30 years ago,

1 something like that?

2 A Uh-huh.

3 Q Tell the jury a little bit about that.

4 A Like anything, I was pretty -- I was a lot younger.
5 I was very resilient. And I jumped back and had no
6 problems. I could run, I could, you know, play
7 tennis on a daily basis. I could pretty much do
8 anything I wanted.

9 Q Were you injured in the accident?

10 A I was. But not severely. Not to where I couldn't
11 manage it.

12 Q And what did you do to deal with those injuries?
13 How did you deal with them?

14 A Acupuncture, massage. And exercise. I used to be
15 an exercise freak. I would exercise at least three
16 or four times a week.

17 Q And prior to seeing Dr. Wagers, was there an
18 incident where a boat hit a sandbar that you were
19 on?

20 A That is why I went to him. A boat that we were on
21 hit a sandbar in Charleston. And my husband almost
22 fell off the back of the boat. He got jarred
23 probably more than I did, but I went to Dr. Wagers
24 for that actually, I believe.

25 Q And in addition to going to Dr. Wagers, what kind

1 of things did you do to deal with any issues
2 related to that?

3 A Nothing. I just exercised, stretched, the normal.

4 Q Let's talk a little bit about the wreck itself. I
5 want to take you back to the morning of September
6 3rd, 2013, and I want to go into detail. I am
7 going to walk through your morning. I want you to
8 tell the jury about your morning.

9 About what time did you wake up?

10 A I always, like clockwork, wake up at 5:30.

11 Q Okay. What do you do when you first wake up?

12 A Make coffee.

13 Q Okay. And you sit down and have a cup of coffee by
14 yourself?

15 A I do.

16 Q Okay.

17 A It is the only time I don't hear my name or have
18 pretty much any responsibilities.

19 Q And on that morning, how were you feeling?

20 A I felt great. It was a beautiful day.

21 Q And it was a Tuesday, right?

22 A It was. September 3rd, 2013.

23 Q Okay. And after you sat down and had your quiet
24 time with a cup of coffee, what did you do after
25 that?

- 1 A Feed the animals. Go out in the yard.
- 2 Q And tell me what that involved. What do you do to
- 3 feed the animals?
- 4 A Grab their dog food and feed the animals. I
- 5 mean -- and water. And water the plants and do all
- 6 those things around the house first.
- 7 Q Okay. And after you fed the animals and did the
- 8 chores around the house, what did you do after
- 9 that?
- 10 A I loaded up the garbage.
- 11 Q Okay. And what kind of garbage, household trash?
- 12 A A lot of household garbage, a lot of garbage from
- 13 the barns, and miscellaneous, and recycling, and
- 14 whatnot.
- 15 Q Okay. And when you say you loaded it up, what did
- 16 you load it up in?
- 17 A My car.
- 18 Q Okay. And so you loaded it up in your car. What
- 19 did you do after that?
- 20 A I went to run errands. I went and took a shower
- 21 and jumped in the car and ran errands.
- 22 Q Okay. When you say car, what kind of car are you
- 23 talking about?
- 24 A It was an '07 320 Mercedes.
- 25 Q Okay. Is that the one -- does it look like a

- 1 station wagon?
- 2 A Exactly. It is -- yes.
- 3 Q And so you got -- loaded up the car, took a shower,
4 and then you headed out to run errands. What
5 errands were you going to run?
- 6 A Just the dump, and I had bloodwork to do with my
7 doctor.
- 8 Q And how far is the dump away from your house?
- 9 A Five miles.
- 10 Q Okay. So when you leave your driveway, you make a
11 left or a right?
- 12 A Right.
- 13 Q Okay. And what road is that?
- 14 A That is 521.
- 15 Q Okay. So you head down 521 into town, correct?
- 16 A Yes.
- 17 Q Okay. And what was the first errand you run? What
18 was your first stop?
- 19 A I needed diesel, so I went to either -- I don't
20 know if it was the Hess station or the BP station.
- 21 Q Okay. And you filled up with some gas?
- 22 A I did.
- 23 Q Okay. And about how long were you at the gas
24 station?
- 25 A Five, ten minutes.

1 Q Okay. And what time -- about what time of morning
2 is this now?

3 A A little after 7:00.

4 Q Okay. And so you filled up at the gas station and
5 left the gas station. Do you take a right or a
6 left out of the gas station?

7 A Right.

8 Q Okay. And so you are back on 521 at that point?

9 A Yes.

10 Q Okay. And so where do you go after that?

11 A That first right is Black River Road where the dump
12 is at.

13 Q Okay. So you made a right on Black River Road?

14 A I did.

15 Q Okay. And you drove down Black River Road. Is the
16 dump on your right or your left?

17 A Left.

18 Q Okay. So you made a left into the dump?

19 A Yes.

20 Q Okay. Tell me about what you did while you were at
21 the dump.

22 A I dumped the garbage.

23 Q Okay. Did you dump the trash or recycling first?

24 A Trash.

25 Q Okay. And why did you do that?

1 A Because the bins come up first, and then I go
2 around to the recycling, and I exit.

3 Q Did you speak to anybody at the dump?

4 A I'm sure I said morning to people that were there.
5 There is usually mostly women that are there at
6 that that time of day.

7 Q All right. And once you unloaded the trash and
8 then ultimately the recycling, you pulled up to
9 leave the dump. Did you make a left or a right?

10 A A right.

11 Q Okay. And so you made a right back on Black River
12 Road?

13 A Yes.

14 Q When you made a right onto Black River Road, were
15 there any cars in front of you that you could see?

16 A I waited for, actually, because there is a lot of
17 trucks coming from Haier, as a matter of fact, and
18 so I waited for them to go by so I could exit. And
19 I went to the stop sign, which is, you know, a few
20 houses down the road.

21 Q And were there -- you waited for a truck to go by,
22 so was there a truck in front of you when you were
23 going down Black River Road?

24 A There was.

25 Q About how far in front of you?

- 1 A Good 2-, 300 feet.
- 2 Q Okay. And were there any cars behind you that you
3 noticed at the time?
- 4 A I didn't notice at the time I turned right.
- 5 Q Okay. So you are driving down Black River Road.
6 Is it heavy traffic, light traffic? What is it?
- 7 A Very heavy traffic going towards Sumter. Not -- it
8 was actually probably the heaviest traffic I have
9 seen in a long time, but typically going south to
10 Sumter that time of day it is because everybody is
11 leaving DuPont, and going into Camden, not so much.
- 12 Q So you are driving down Black River Road. And you
13 are approaching the intersection of Black River
14 Road and 521?
- 15 A Yes.
- 16 Q Okay. When you approached that intersection, are
17 there any cars or trucks ahead of you at the stop
18 sign?
- 19 A There was. There was a truck.
- 20 Q Okay. What kind of truck was it?
- 21 A It was a semi-truck.
- 22 Q Okay. There was one truck ahead of you?
- 23 A There was.
- 24 Q Okay. And so were you stopped behind that truck?
- 25 A I was.

1 Q Okay. And what did that truck do?

2 A That truck waited for traffic, and had to wait for
3 both lanes to clear, and went all the way around to
4 exit. And if you can see --

5 MR. MCDONALD: May I approach the witness,
6 Your Honor?

7 THE COURT: Yes, sir.

8 MR. MCDONALD: Thank you.

9 (Mr. McDonald complies.)

10 A And you can't -- a semi-truck cannot be in the
11 median.

12 Q Well, did you want to refer to a picture?

13 A Because it would be covering --

14 MR. GRANTLAND: Objection, Your Honor.

15 A It -- I'll show you your --

16 THE COURT: Hold on. Hold on.

17 A -- your photograph.

18 THE COURT: Hold on one second. I have to
19 rule on the objection. What is the objection?

20 MR. GRANTLAND: She is giving an opinion on
21 whether a semi-truck can be in the median or not.
22 And that is not a proper opinion.

23 MR. MCDONALD: I can rephrase, Your Honor.

24 THE COURT: All right. Please rephrase the
25 question.

1 MR. MCDONALD: Thank you.

2 BY MR. MCDONALD:

3 Q Ms. Bundy, can you see this?

4 A Yes.

5 Q So the first truck that you said was in front of
6 you, what movement did it make?

7 A It made this movement, and it had to go all the way
8 around because --

9 Q Okay. So it went all the way around and made a
10 left?

11 A Yes.

12 Q So both lanes of traffic were apparently clear for
13 it make that movement?

14 A Exactly.

15 Q All right. Now, so then did you pull up to the
16 stop sign itself?

17 A I did.

18 Q Okay. And what did you do when you pulled up to
19 the stop sign?

20 A I waited for the Camden traffic and headed towards
21 the median in the same direction that he was at
22 because I was headed to Columbia.

23 Q Okay. And when you were at the stop sign, were
24 there any vehicles behind you?

25 A Yes. The truck was pulling up at that time behind

1 me. And I just saw the cab of the truck.

2 Q In your rearview mirror?

3 A Yes, sir.

4 Q All right. So you are sitting at the stop sign
5 waiting for the traffic going into Camden to clear,
6 correct? Is that a yes or no?

7 A Yes.

8 Q I'm sorry. And was it particularly heavy traffic,
9 light traffic? What was it at that time?

10 A Going towards Camden, not so much, but headed to
11 Sumter it was a steady flow going to Sumter.

12 Q Once the traffic -- I'm sorry.

13 A Heading south.

14 Q Once the traffic cleared going towards Sumter, what
15 did you do?

16 A It wasn't clear for -- it was -- it wasn't --

17 Q Excuse me, once it cleared going towards Camden.
18 You are at the stop sign. Once it cleared going
19 towards Camden.

20 A I went to the median and I was at a stop at the
21 median waiting for the traffic to stop headed to
22 Sumter.

23 MR. MCDONALD: May I approach, Your Honor?

24 THE COURT: Yes.

25 MR. MCDONALD: Thank you.

1 (Mr. McDonald complies.)

2 BY MR. MCDONALD:

3 Q So the first truck cleared out and made a left all
4 the way, and then you came here and made -- and
5 stopped in the median to assess traffic coming
6 towards Sumter?

7 A Correct.

8 Q Okay. And about how long were you in the median
9 assessing traffic?

10 A Three to five minutes.

11 Q Okay. What happened next?

12 A My back window shattered, or I heard the large
13 noise, and I turned to my right, and I was struck,
14 and the truck was dragging me into the ongoing
15 traffic going to Sumter.

16 Q Okay. And so you were sitting in the intersection
17 and you were struck by the truck that you saw
18 behind you?

19 A I was at the stop in the median, and the truck hit
20 my right-hand side trying to get around me and
21 struck me and was dragging me with him.

22 Q Okay. So you were actually dragged at some point?

23 A Yes.

24 Q What happened next?

25 A I jumped out of the car and, I'm sorry, I did not

1 speak as nicely as he said. My words were a little
2 bit more vulgar.

3 Q You were upset?

4 A I was extremely upset.

5 Q Were you scared?

6 A I was very scared. I had no idea what just
7 happened. It was -- it was terrifying.

8 Q And in that moment, what was the first thing that
9 you did?

10 A Called 9-1-1.

11 Q Okay. And about how long was that conversation
12 with 9-1-1?

13 A Very brief, because I called my husband immediately
14 after because I was hysterical.

15 Q And how long was that conversation with your
16 husband?

17 A Ten minutes, basically telling him to get dressed
18 and come and get me.

19 Q And did you -- other than being upset and yelling
20 at Mr. Jett, did you have any conversation with
21 him?

22 A No. Never spoke to the man. And haven't seen him
23 for all this time since.

24 Q Did the police come?

25 A They did.

1 Q Okay. Were any of the police officers there to
2 witness the wreck?

3 A No, but I did ask them to see if they could get
4 footage from, I think it was a Shell station, it is
5 a Shell station there, if they could get footage
6 from them if they could see the accident.

7 Q Did the police take photographs when they came
8 there?

9 A Not that I was aware of, but obviously they did.

10 MR. MCDONALD: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 (Mr. McDonald complies.)

13 BY MR. MCDONALD:

14 Q This is Defendant's -- Plaintiff's Exhibit 7. Have
15 you seen those photographs before?

16 A I believe you -- well -- Brent, I have seen the
17 other ones, yes.

18 Q Plaintiff's Exhibit 7 is just --

19 A I have not seen these.

20 Q -- Plaintiff's Exhibit 1 through 6 just on the big
21 board. And you can work through 1 through 6. And
22 you can sit down and work through 1 through 6. The
23 same pictures. Let me know when you have had a
24 chance to look at them.

25 A This one is more accurate because it shows how it

1 is dragged.

2 Q Well, we are going to go through them. When you
3 have a chance to orient yourself, just let me know
4 and we'll go through them. I'll ask you some
5 questions.

6 A Okay.

7 Q Are you there?

8 A Okay.

9 Q All right. Take a look at Plaintiff's Exhibit 1.

10 A Yes.

11 Q And Plaintiff's Exhibit 1 is in the top right-hand
12 corner of Plaintiff's Exhibit 7, correct?

13 A Okay. This is actually a better likeness.

14 Q And is that picture taken after the crash but
15 before you all moved your cars? Before you moved
16 your car and --

17 A Before we moved our cars. Wait -- yep.

18 Q And behind your car a little ways, there is some
19 debris. What is that?

20 A That is the glass of my back window.

21 Q That is the glass you testified, the glass
22 shattered upon impact and it is back behind you?

23 A That is what started me to turn right.

24 Q Look at Plaintiff's Exhibit 2.

25 A Yes.

1 Q Are you there?

2 A Yes, I'm there.

3 Q And can you see that debris as well?

4 A I can.

5 Q Okay. And is that the glass from your back
6 windshield?

7 A It is.

8 Q Okay. And is it behind your car to some degree?

9 A Two, three, or four feet, yes.

10 Q Okay. Take a look at Plaintiff's Exhibit 3.

11 A Actually, this photograph explains exactly what I
12 was saying earlier, that he hit me on the
13 right-hand side. And one is on either side of the
14 highway. There is a car passing going southbound
15 on the only lane that he could get around by.

16 Q That is Plaintiff's Exhibit 3?

17 A Yes, sir.

18 Q All right. And Plaintiff's Exhibit 3 also -- what
19 is depicted of the condition of your back
20 windshield?

21 A That it is out, and the right side of my car is
22 under his trailer.

23 Q Okay. And have you --

24 A At an angle, as a matter of fact. Okay.

25 Q Have the cars been -- has your vehicle and the

1 tractor-trailer been moved at this point?

2 A No.

3 Q Take a look at Plaintiff's Exhibit 4.

4 A That explains better how he hit the right-hand side
5 and was trying to go around me and where I was
6 located.

7 Q Okay.

8 MR. MCDONALD: May I approach the witness,
9 Your Honor?

10 THE COURT: Yes.

11 MR. MCDONALD: Thank you.

12 (Mr. McDonald complies.)

13 BY MR. MCDONALD:

14 Q Is this Plaintiff's Exhibit 4 here?

15 A Yes.

16 Q And what is that dotted line right there?

17 A That is the two lanes. That is in between the two
18 lanes.

19 Q Is that this dotted line right here?

20 A Yes.

21 Q So what the dotted line represents is, on this side
22 of it is the median, on the other side of it is the
23 road itself?

24 A Yes.

25 Q All right. Take a look at Plaintiff's Exhibit 5.

1 A Okay.

2 Q And is that depicted here on Exhibit 7, top
3 left-hand side?

4 A Yes.

5 Q Okay. And does that depict a portion of the
6 tractor-trailer or the entire tractor-trailer cab
7 on the other side of that dotted line?

8 A It does. It shows both sides actually.

9 Q And can you see your entire car under that
10 tractor-trailer?

11 A No.

12 Q Or is some of it blocked by the wheels?

13 A You can only see -- you cannot see the front
14 wheels. You can only see the back door and not the
15 passenger door.

16 Q Okay all right. Plaintiff's Exhibit 6 is a
17 picture of your -- of the damage to your car, is
18 that right?

19 A Yes.

20 Q So you called your husband after the wreck. Did
21 Mr. Bundy show up to the site?

22 A He did.

23 Q Okay. And what did you do then?

24 A I let him take over, and he put me in the truck to
25 calm down, and I believe he spoke to the police.

- 1 Q Okay. Put you in his truck?
- 2 A Yes.
- 3 Q Not the tractor-trailer?
- 4 A No.
- 5 Q Okay. And he -- and at that point he kind of took
- 6 over?
- 7 A Yes.
- 8 Q Okay. And what did you do after you left the
- 9 scene?
- 10 A We went home.
- 11 Q You didn't go to your doctor's appointment?
- 12 A No.
- 13 Q And what happened with the car?
- 14 A No, excuse me, eventually, later on, I had to get
- 15 the bloodwork done.
- 16 Q But not at that time?
- 17 A No.
- 18 Q Okay. And what happened to the car?
- 19 A The car was towed.
- 20 Q And what did you do upon getting home?
- 21 A Tried to calm down, but went to bed. Laid down.
- 22 Q Still pretty upset?
- 23 A Yes.
- 24 Q Now, tell the jury a little bit about the first few
- 25 weeks after the car wreck.

1 A Well, I attempted to do my normal routines, and
2 whatnot, but it got more and more difficult. My
3 head started feeling like two bowling balls on top
4 of my shoulders. I called a massage therapist to
5 come out. That wasn't helping. I called numerous
6 people on what to do and where to go.

7 Q All right. And did you have any -- other than the
8 pressure on you, was that soreness and stiffness
9 associated with it?

10 A More like excruciating pain and sharp pain.

11 Q Okay.

12 A Which I haven't experienced before.

13 Q And did you do anything over the weeks or months
14 after the accident in order to address those
15 issues?

16 A I did. I saw I believe Dr. Ezra in Columbia a
17 couple of times. Had a couple of epidurals in my
18 neck. Acupuncture, massage, once again. And
19 attempted to -- and it wasn't helping. Nothing was
20 helping.

21 Q And how long a period are we talking about here?

22 A Quite a few months, actually. The epidurals lasted
23 a while, but the next one didn't last as long.
24 They got shorter in timeframe to relieve the pain.

25 Q Did you early-on, right after the wreck, did you

1 immediately consider going to get back and neck
2 surgery?

3 A No. That would be the --

4 Q Why not?

5 A That would be the last thing I would do. I have
6 heard nightmares. I have had friends of mine go
7 through it and never recover from it.

8 Q Now, do you have a kind of home gym area at your
9 house?

10 A I do.

11 Q Okay. Did you attempt to do physical therapy in
12 that?

13 A I did.

14 Q And why didn't you try to go see an actual physical
15 therapist? Why did you just choose to do it at
16 home?

17 A It defeats the purpose.

18 Q Why?

19 A One, I cannot find one in Camden. And I'm sure
20 there are quite a few now. But they were
21 suggesting that I went to Columbia. Columbia is an
22 hour away. Charleston is two hours away. That is
23 the only place I know people, for the most part.

24 Q So you chose to do physical therapy at your home?

25 A I couldn't drive.

1 Q How did you hear about Dr. Cannestra?

2 A Through a friend of my husband's.

3 Q And he is in Jacksonville, Florida?

4 A He is. His name is Bob Parrish.

5 Q And Dr. Cannestra is in Jacksonville too?

6 A He is.

7 Q And did you end up going to see him?

8 A I did, eventually. I did ask around Charleston and
9 Columbia and had a few people with suggestions, and
10 whatnot. But looking at his -- the reason why I
11 chose Cannestra is because of, one, our friend that
12 had surgery from Dr. Cannestra, and Dr. Cannestra
13 fixed years of supposedly football surgeries that
14 he had when he played football.

15 Q Okay. And so you asked around and ended up going
16 to see Dr. Cannestra. What was the first visit you
17 went down there -- what was it for?

18 A It was just a consultation.

19 Q And at that time, did you have your mind made up --

20 A No.

21 Q -- I'm going to get surgery?

22 A No.

23 Q Okay. Why not?

24 A Quite the contrary. I was hoping he would give me
25 good news and say, you know, You are still young,

1 you can, you know, we can fix this some other way,
2 and have some other suggestion for me.

3 Q So did you actually drive down to Jacksonville?

4 A We did.

5 Q Okay. And who went with you?

6 A My husband drove. I couldn't drive.

7 Q And so you drove down to Jacksonville. And did you
8 actually physically meet with Dr. Cannestra?

9 A Yes.

10 Q Okay. And what did you do? How did that go?

11 A He is an amazing man. He had a great demeanor, a
12 great ethic in the suggestions he made. For one, a
13 lot of testing before even considering certain
14 things, but these are my options. And at that
15 point I didn't have another option other than
16 surgery.

17 Q Okay. What were your options? What were the
18 options that he gave you?

19 A Surgery.

20 Q And if you didn't have surgery, what did he tell
21 you would happen?

22 A I would be having it somewhere.

23 Q Did he actually talk to you and ask you questions
24 about your history, about the car wreck?

25 A Very much so. Very much so.

1 Q And did he write down everything you said? Did he
2 transcribe everything you told him?

3 A No. The first time was more of a friendly -- it
4 was just a comfortable, friendly visit, and we
5 spoke about everything.

6 Q And did he physically examine your body by doing a
7 neurological test, or anything like that?

8 A He did a few, you know, test the knees, and those
9 type of things, but then suggested -- I'm not sure
10 what type of scan it was, but that was after.

11 Q Okay. So on the first visit, Dr. Cannestra hadn't
12 made up his mind whether or not he was going to do
13 surgery on you, he needed another visit and more
14 tests?

15 A Yes.

16 Q Did you in fact go back to see him again for a
17 second time?

18 A Yes.

19 Q Okay. And about how long after the first time was
20 the second visit?

21 A I have no idea.

22 Q And what happened on the second visit?

23 A He reviewed both -- a couple of MRIs, one I had
24 previously and the newest MRI, and suggested that I
25 have it.

1 Q Okay. And so was a recommendation made to have
2 surgery?

3 A Yes.

4 Q What was the surgery that was recommended?

5 A To fuse 5, 6, and 7, and S1 and L5.

6 Q Okay. And so that is a section of the neck and a
7 section of the back?

8 A Uh-huh.

9 Q And was that going to be all one surgery, two
10 different surgeries? What was it going to be?

11 A No, he suggested breaking it up at least six
12 months.

13 Q And why? Do you know why he suggested breaking it
14 up six months?

15 A For one to heal. One takes care of the other if he
16 did one before the other. I think he can explain
17 it better than I can.

18 Q Sure. And were you warned about any of the issues
19 of the surgery about what could happen?

20 A Obviously not all of them, but, yes.

21 Q So he sat down with you and went over, Listen,
22 these are the potential problems that could result
23 as a result of this surgery?

24 A He basically told me --

25 MR. GRANTLAND: Objection. We are getting

1 into hearsay, Your Honor. They are both asking
2 what Dr. Cannestra said.

3 THE COURT: All right. Objection is
4 sustained. Rephrase the question. You can ask her
5 what he did.

6 MR. MCDONALD: Sure.

7 BY MR. MCDONALD:

8 Q Were you aware that there were issues, potential
9 issues with surgery after your visit with Dr.
10 Cannestra?

11 A Yes.

12 Q Were you aware of things associated with once you
13 had the surgery you might not be able to do in the
14 future?

15 A I cannot play tennis, I cannot pick up my
16 grandchildren, I cannot run the beach with my dogs,
17 I can never go skiing again, or I will ultimately
18 injure myself once again.

19 Q So you understood that if you decided to have the
20 surgery to get rid of the pain that you would be
21 limiting yourself in the future?

22 A I didn't know it beforehand, I knew it after.

23 Q Now, the first surgery was in June of 2014,
24 correct?

25 A Yes.

- 1 Q And was that the neck or the back surgery?
- 2 A The neck.
- 3 Q And did you drive down to Jacksonville to have it?
- 4 A My husband did, yes.
- 5 Q Drove you down there?
- 6 A Yes.
- 7 Q And I want to spend some time on that. Were you
- 8 admitted into the hospital prior to surgery?
- 9 A No. As a matter of fact, I believe it was that
- 10 night and recovery was that morning. I believe so.
- 11 Q Okay. And what do you remember leading up to --
- 12 obviously it stops when they give you the
- 13 anesthesia, but what do you remember leading up to
- 14 that?
- 15 A Just a very sterile, scary, very scary place.
- 16 Q All right. And so you had the surgery, first the
- 17 neck surgery. Tell the jury a little bit about
- 18 what it was like to wake up and the first week
- 19 after the surgery.
- 20 A A lot of relief, as a matter of fact. I felt a lot
- 21 of relief. If it wasn't for Dr. Canestra, I
- 22 probably wouldn't be walking or talking. That is
- 23 how much pain I was in.
- 24 Q And the pain after the surgery -- was there a
- 25 recovery period?

1 A Very much so. It is all ups and downs, and I'll
2 have two good days and three bad days. It is just
3 this vicious cycle. But it was six months before I
4 had my other surgery.

5 Q And after the first surgery, were there sutures and
6 things on your back that had to be changed?

7 A The first surgery was the neck, Brent.

8 Q On the neck. Were there sutures and things that
9 had to be changed?

10 A Yes, that go through the front of your throat and
11 they go this way and you have to wear a neck brace
12 and change the bandage constantly.

13 Q And did you do that yourself or did you have help
14 with that?

15 A I had help with that.

16 Q And who was that?

17 A At first my husband, and then Ms. Lesia.

18 Q Okay. And during this time -- and I know this is a
19 personal question, but I need to go through it.
20 During this time were there any issues related to
21 your marriage that this was causing?

22 A Nobody likes living with an invalid. And my
23 husband is very particular. And I knew -- I knew
24 at some point he would break, because he was taking
25 care of me, good care of me at first. He moved out

1 and filed for divorce.

2 Q And did you have somebody else come in and help you
3 when he moved out?

4 A Ms. Lesia came in.

5 Q Is she in the courtroom?

6 A She is.

7 Q Okay. Did she do some of the things that your
8 husband had been doing up until that point?

9 A She had to bathe me, feed me, feed the animals, did
10 the laundry. It wasn't much laundry. I stayed in
11 flannels about four years.

12 Q And did you and your husband ultimately end up
13 getting a divorce?

14 A No. We reconciled almost right before the back
15 surgery.

16 Q Okay. And when you say reconciled, did you have to
17 work on that, both of you?

18 A Excuse me?

19 Q And when you say reconciled, both of you are going
20 to have to work on that?

21 A We are still working on it. It is not back to
22 where it was. But he moved everything out. Rented
23 an apartment. He wouldn't talk to me. And at that
24 point I was alone, I wasn't with -- I didn't have
25 Lesia. And Donna Dixon came and drove me and

1 helped me out then.

2 Q And eventually, prior to the second surgery, the
3 reconciliation process started between the two of
4 you?

5 A We started talking anyway.

6 Q And the second surgery was the back surgery with
7 Dr. Cannestra?

8 A Yes.

9 Q And what was your level of recovery from the first
10 surgery at the time you had the second surgery?

11 A Excuse me?

12 Q What was your level of recovery? From the time you
13 left the hospital after the first surgery, where
14 were you at prior to having the second surgery?
15 How were you doing at that point?

16 A I was doing great.

17 Q So you drove down to Jacksonville again?

18 A We did.

19 Q And tell the jury a little bit about how that
20 process worked as far as -- was it the same
21 hospital?

22 A You have got to understand too, after the first
23 surgery when I say great, it was just because it
24 was such -- the pressure was off and the relief of
25 the bowling balls. I wasn't a hundred percent yet.

1 But, yes, he drove down to Jacksonville once again.

2 Q There is no question you had some relief from the
3 first surgery to where you were prior?

4 A Yes. Huge. Yes.

5 Q And on the second surgery, you went down -- went to
6 the same hospital?

7 A Yes.

8 Q Same surgeon, Dr. Cannestra?

9 A Yes.

10 Q Did he evaluate again before the second surgery?

11 A Oh, sure.

12 Q Did he actually talk to you, sit down and ask you
13 questions?

14 A Yes.

15 Q And did he actually do a physical examination of
16 you in the room and do other tests, whatever
17 doctors do?

18 A I believe his partner did.

19 Q And you once again went under and had the second
20 surgery on your back, correct?

21 A Yes.

22 Q And tell the jury a little bit about the recovery
23 from that surgery, after the back surgery.

24 A A little more intensive. I even had to watch DVDs
25 on making a bed or how to make a bed, how to squat,

1 not to pick up anything more than five pounds, how
2 to move. It was a lot more intensive.

3 Q And you brought a box of things with you, have you
4 not?

5 A Ms. Lesia did.

6 Q I am going to ask you a few questions about these.
7 What is this?

8 A That is my back brace that I had to wear for two
9 months.

10 Q And did you own this prior to the wreck or the
11 surgeries?

12 A No.

13 Q What is this?

14 A That is clean, by the way.

15 Q I hope so.

16 A That is something that a friend gave me because I
17 was having trouble -- I have the bars to get down.
18 I couldn't bend to get to the toilet.

19 Q And did you own this prior to the wreck?

20 A No.

21 Q What is this?

22 A That is a back vibrator that is supposed to
23 stimulate the fusion.

24 Q Did you own this prior --

25 A For better recovery. That I wore after the larger

1 brace.

2 Q Did you own this prior to the wreck or the surgery?

3 A No.

4 Q What is this here?

5 A That was for my neck.

6 Q This is for your neck?

7 A It is. You put it around your neck.

8 Q Did you own this prior to the wreck or surgery?

9 A No.

10 Q What is this?

11 A Those are just more back braces for after I went
12 through the other back braces.

13 Q And did you own any of this prior to the wreck or
14 the surgeries?

15 A No.

16 Q What is this stuff?

17 A That was the neck brace.

18 Q And this?

19 A That was for the breathing during -- when I had the
20 neck brace on.

21 Q Okay. Tell the jury a little bit about what you
22 have to do with this.

23 A It is just to make sure you stimulate and be able
24 to -- it is supposed to go up and down and help you
25 breathe better.

1 Q Did you have any of this stuff prior to the wreck?

2 A No.

3 Q Or the surgery?

4 A No.

5 Q What is this?

6 A That was -- it is basically -- it is real
7 interesting. It is a cooler that you put under
8 either your neck or back to relieve the swelling.

9 Q From the surgery?

10 A Yes.

11 Q And did you own this prior to that wreck --

12 A No.

13 Q -- or surgery? How was -- what was the -- you said
14 the recovery period was a little bit harder after
15 the back surgery. Did it last longer? Did you
16 feel relief sooner? What was it?

17 A It is still lasting. It is a lot longer. I was
18 told that you are supposed to expect some swelling,
19 or you can if you overdo it, and whatnot, some
20 numbness in legs and hands. And I'm still somewhat
21 going through. Once again, good days and bad days.

22 Q Did the surgery cure you of your injuries?

23 A No.

24 Q What are some of the things you can't do now today
25 as you sit here in this courtroom?

1 A I can't even get on a stepladder and change a
2 lightbulb.

3 Q Can you play tennis?

4 A No.

5 Q Did you enjoy that?

6 A I did it three or four times a week.

7 Q Can you go boating?

8 A No. Or I'm down for two days. It depends on what
9 kind of boat.

10 Q Can you run or jog?

11 A I cannot run. It is too much pressure on my back.

12 Q And not to get too personal, but it is something we
13 have to ask about. What -- can you be intimate
14 with your husband all the times you want to?

15 A No.

16 Q Can you pick up your grandchildren?

17 A No.

18 Q Can you move the dog food?

19 A No.

20 Q And if you do do something that you are not
21 supposed to do, what happens?

22 A I'm down for at least two or three days. And it is
23 just not pretty. I have basically no freedom. I
24 have a really hard time driving still. Lesia
25 drives me quite a bit. He just took away my

1 freedom, and a charmed life, frankly.

2 Q Do you still try and travel sometimes?

3 A I do. Last week we were invited to go skiing with
4 friends of ours.

5 Q You can't go?

6 A No. This -- this is the worst position actually
7 for me ever is to sit in a chair for this length of
8 time. I don't schedule flights for more than three
9 hours. There is just certain rules I give myself
10 now because my body just can't take it. I'm weak.
11 I don't exercise as much. I try.

12 Q Did you go back to Dr. Cannestra after the two
13 surgeries to see him?

14 A I did, for the swelling. I thought I might have --
15 because at one point you feel good and you overdo
16 it, and I had a little knot and swelling on my
17 back, and I was afraid that I did something to his
18 surgery.

19 Q And when you went to see him, what did -- what was
20 the understanding you had? What did he recommend
21 you do?

22 A He recommended Cortisone shots just to take down
23 the swelling, and of course, you know, the usual
24 ice packs and stretching, and whatnot.

25 Q And did you understand from Dr. Cannestra that when

1 you have these surgeries that it might be that you
2 have to have them again in the future based upon
3 your age?

4 A If I were to even attempt to play tennis, I'd be
5 having them sooner than later, yes.

6 Q So you recommended for some pain shots. Did you,
7 in fact, go get these?

8 A I did.

9 Q Who did you go see?

10 A Dr. Folk in Charleston.

11 Q And have they helped?

12 A Very much.

13 Q Ms. Bundy, I ask you to take a look at Plaintiff's
14 Exhibit 9, which is already in evidence.

15 MR. MCDONALD: May I approach the witness,
16 Your Honor?

17 THE COURT: Yes, sir.

18 (Mr. McDonald complies.)

19 BY MR. MCDONALD:

20 Q Is that an overview of your medical bills
21 associated with the wreck and your surgeries?

22 A I believe there is more, actually, but, yes.

23 Q Ms. Bundy, I'm going to hand you -- and what is the
24 total on that?

25 A \$289,393.12.

1 Q I am going to hand you what has been marked as
2 Exhibit 8. And that is already in evidence. Do
3 you understand that to be the present day value of
4 the life care plan?

5 A I was not aware of this, but --

6 MR. GRANTLAND: Objection, Your Honor. Mr. --
7 I mean, this is a -- I recognize we admitted the
8 life care plan into evidence, but that is something
9 for Ms. Lustig to testify about, not Ms. Bundy.
10 She can certainly testify as to her --

11 A I have no problem with it. I have never seen it.

12 THE COURT: Hold on.

13 MR. GRANTLAND: She just said she has never
14 seen it, so, I mean, it should be admitted
15 through --

16 MR. MCDONALD: It is in evidence. It is
17 already in evidence.

18 THE COURT: All right.

19 MR. MCDONALD: I'll withdraw the question.

20 THE COURT: I think you have still got to lay
21 the foundation, although you all have stipulated.
22 She said just now she --

23 MR. MCDONALD: I'll lay the foundation through
24 Ms. Lustig.

25 BY MR. MCDONALD:

1 Q Ms. Bundy, prior to having the surgeries after this
2 wreck, had you ever contemplated having back and
3 neck surgery?

4 A No. Nor would I.

5 Q Have any other doctors that you had seen prior to
6 this wreck, did they tell you you needed to have
7 back surgery?

8 A No.

9 Q That's all I have, Ms. Bundy. Please answer any
10 questions opposing counsel may have.

11 THE COURT: All right. Ladies and gentlemen
12 of the jury, we have been going about an hour and a
13 half. Does anyone need to take a restroom break?
14 You need to use the restroom? We'll take about
15 five or ten minutes for you all to take a restroom
16 break.

17 (WHEREUPON, the jury retires to the jury
18 room at 4:32 p.m.)

19 THE COURT: All right. We'll take about five
20 or ten minutes.

21 MR. MCDONALD: How late does Your Honor plan
22 on going?

23 THE COURT: I try not to go late the first
24 night because I don't know what they have planned.
25 I try to give them a heads up. But we can try to

1 finish with this witness right here. So I'm not
2 sure if we will be able to get to --

3 MR. MCDONALD: He has a deposition tomorrow.
4 They canceled it. So we're good.

5 THE COURT: Yes, because I'm imagining her
6 cross-examination is going to probably take --

7 MR. GRANTLAND: I'd say roughly as long as the
8 direct.

9 THE COURT: And that has been about an hour?

10 MR. GRANTLAND: Maybe a little less than that.

11 THE COURT: All right. So let's take about a
12 five or ten minute break.

13 (WHEREUPON, a break was taken.)

14 THE COURT: All right, we can bring them back
15 in.

16 (WHEREUPON, the jury came into open
17 court at 4:47 p.m.)

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, at this time we will continue with
20 cross-examination by Mr. Grantland.

21 Let me ask, does anyone -- I'm not sure -- I
22 don't want to hold you to a time, but this may take
23 about 45 minutes or so. Does anyone have to be out
24 before 6:00 o'clock? Any child care issues? That
25 is usually what it is.

1 THE JUROR: Do pets count?

2 THE COURT: They count, but --

3 THE JUROR: My puppy has been in the kennel
4 since 8:00 o'clock this morning.

5 THE COURT: You have got to pick -- what time?

6 THE JUROR: Since 8:00 this morning.

7 THE COURT: What time do you have to -- oh,
8 kennel at home. I thought you meant --

9 THE JUROR: I worked the night shift last
10 night. I have been up since 8:00 o'clock
11 yesterday.

12 THE COURT: All right. So we are going to
13 finish with this witness, and then hopefully -- and
14 then we'll -- and I have to let my dog out too.

15 All right. Yes, sir?

16 MR. GRANTLAND: Thank you. I will do my best
17 to go fast.

18 CROSS-EXAMINATION

19 BY MR. GRANTLAND:

20 Q Good afternoon, Ms. Bundy. Ms. Bundy, I first want
21 to ask you about your prior problems you might have
22 had with your neck or back. I took your
23 deposition. Do you remember that?

24 A (Nods affirmatively.)

25 Q And you admitted that before the accident with Mr.

1 Jett you were living with some aches and pains in
2 your back and neck, is that correct?

3 A My name is not Mr. Jett.

4 Q I said before your accident with Mr. Jett.

5 A Oh, I'm sorry.

6 Q I know your name is Ms. Bundy. I'll start over.

7 You admit before your accident with Mr. Jett, you
8 were living with some aches and pains in your back
9 and neck?

10 A Yes.

11 Q You also said that you had neck pain more than five
12 years before the accident?

13 A Yes.

14 Q You said you did acupuncture, massage, and exercise
15 to treat your neck pain?

16 A Always, yes.

17 Q Acupuncture, that is where are you let someone put
18 needles in your skin?

19 A Yes.

20 Q And you did that in your neck and in your back?

21 A Yes.

22 Q Before the accident with Mr. Jett?

23 A Yes.

24 Q You said numerous people gave you massages for your
25 neck pain?

1 A Yes.

2 Q And you, again, you also admit that you had some
3 back problems before the accident?

4 A Yes.

5 Q And you said acupuncture, massage, and exercise for
6 your back?

7 A Yes.

8 Q And before the accident you also treated with
9 Dr. Wagers here in Camden for chiropractic
10 maintenance?

11 A Yes.

12 Q I believe you said you went to see him after you
13 were chucking bales of hay or picking up a 50-pound
14 dog. Do you remember that?

15 A No.

16 Q Would you like your deposition to refresh your
17 recollection?

18 A No.

19 Q Do you remember telling me, Is that your
20 explanation for why you went to see Dr. Wagers?

21 A If you say so. I don't recall.

22 Q Let me -- may I open her original deposition, Your
23 Honor?

24 THE COURT: Yes.

25 (Mr. Grantland complies.)

1 MR. GRANTLAND: May I approach the witness?

2 (Mr. Grantland complies.)

3 BY MR. GRANTLAND:

4 Q Ms. Bundy, I am handing you your original
5 deposition. And I'll ask you to turn to Page 13.
6 Just tell me when you get there.

7 A Okay.

8 Q And we will start with the question on Line 12,
9 then I'll ask you to read the answer, and then I
10 will read the question on Line 14, and ask you to
11 read the answer on 16.

12 Okay. Question: What did you see Dr. Wagers
13 for?

14 A Once again, just maintenance.

15 Q Question: Okay. Did you have an injury or
16 anything like that that prompted you to go see
17 Dr. Wagers?

18 A No. It stemmed from chucking bales of hay and
19 picking up 50-pound dog food.

20 Q Okay. So that is your explanation of why you went
21 to see Dr. Wagers?

22 A All of my injuries with getting acupuncture and
23 massages on a regular basis is muscle.

24 Q But chucking bales of hay and picking up a 50-pound
25 dog wasn't the only reason you saw Dr. Wagers, was

1 it?

2 A That was 50-pound dog food. It was a mistype.

3 Q Okay. You also saw Dr. Wagers about a car accident
4 where you hit your head on the windshield and
5 knocked your teeth out. Do you remember telling
6 him that?

7 A No.

8 Q Did that not ever -- did you have a car accident
9 where you hit your head on the windshield and had
10 your teeth knocked out?

11 A I did.

12 Q And that was about 15 years ago?

13 A A little over that, almost 20 some-odd years ago.

14 Q Okay. And I assume that accident caused you neck
15 and back problems?

16 A Yes.

17 Q Okay. And you also told Dr. Wagers that you had
18 been in a boating accident that caused you to be
19 injured?

20 A That was the -- where we hit a sandbar.

21 Q And did you --

22 A And I was not injured.

23 Q If you weren't injured, why would you bring it up
24 to the chiropractor?

25 A Because I needed an adjustment.

1 Q Okay. I asked you if you were on any prescriptions
2 before the accident. Do you remember that? And
3 you said you didn't take prescriptions.

4 A I don't.

5 Q Okay. But isn't it true that before our accident
6 you received epidural and facet joint injections
7 for your neck and back pain?

8 A Yes.

9 Q Okay. That is not something you get over the
10 counter, is it?

11 A No.

12 Q Had you forgotten about that?

13 A Actually, yes.

14 Q Okay.

15 A Once again, it was quite some time ago.

16 Q Do you remember telling Dr. Wagers you had received
17 epidural and facet joint injections for neck and
18 back pain?

19 A I'm sure I did.

20 Q How many times did you get an epidural injection or
21 a facet joint injection for your neck and back pain
22 before this accident with Mr. Jett?

23 A Once again, it was over 20 years ago. And probably
24 four or five times.

25 Q Now, when you had epidural injections, I mean, how

1 big are -- these needles are bigger than
2 acupuncture needles, aren't they?

3 A I don't know. I'm laying down.

4 Q Okay. How about facet joint injections?

5 A I have no idea. I'm laying down.

6 Q You had them both in your neck and back?

7 A No, the neck was after Mr. Jett.

8 Q Okay. The back --

9 A It was just the back.

10 Q Okay. And you -- but -- so you received epidural
11 injections and facet joint injections just for your
12 back, not your neck?

13 A Yes.

14 Q Okay. And although you didn't -- although you say
15 you didn't take prescriptions, weren't you taking
16 muscle relaxers on a daily basis for your neck and
17 back pain?

18 A No.

19 Q Do you remember telling Dr. Wagers that you took
20 muscle relaxers like Flexeril?

21 A I told him I had a prescription for them. As a
22 matter of fact, I have most of those pills still.

23 Q So you had a prescription for Flexeril, which is a
24 muscle relaxer --

25 A It is.

1 Q -- but you don't take it?

2 A I do not.

3 Q Okay.

4 A That is why I take massages, go to the
5 chiropractor, and have acupuncture.

6 Q But the truth is, before the accident with Thomas,
7 you had been in at least one bad accident and a
8 boating accident, is that correct?

9 A Over 20 years ago.

10 Q And before the accident with Thomas, you tried
11 acupuncture, massage, injections, and prescriptions
12 for your neck and back pain?

13 A I don't try it. I believe in it for regular
14 maintenance.

15 Q Okay. All before the accident with Thomas?

16 A Always.

17 Q Okay. I mean, you had more than just some aches
18 and pains, didn't you, Ms. Bundy?

19 A Not when Mr. Jett hit me, no. As a matter of fact,
20 I was the healthiest I have ever been.

21 Q Okay. Let me ask you about the circumstances of
22 the accident. Before the accident you left your
23 home in Boykin, dropped off trash, went down Black
24 River Road?

25 A Yes.

1 Q You were on your way to a doctor's appointment in
2 Columbia?

3 A Yes.

4 Q And that doctor's appointment had nothing to do
5 with neck or back issues?

6 A No.

7 Q And the accident happened approximately 7:30 in the
8 morning?

9 A Yes.

10 Q What time was your appointment?

11 A Whenever I get there.

12 Q So the doctor will see you whenever you got there?

13 A Yes.

14 Q Were you in a hurry for this doctor's appointment?

15 A No.

16 Q You came to the stop sign at Black River and 521?

17 A Yes.

18 Q You say Thomas's truck was behind you at the stop
19 sign?

20 A Yes.

21 Q You said traffic was heavy on 521?

22 A Going southbound.

23 Q Okay. And you -- didn't you cross two lanes and
24 stop in the median?

25 A Yes.

1 Q And because of the heavy traffic, did you have to
2 go quickly across the road?

3 A No.

4 Q Okay.

5 A That is why I waited for the traffic, and that is
6 when I got hit.

7 Q And you say you were in the median first?

8 A Yes.

9 Q Before Thomas got there? Now, can anyone else
10 verify that you were the first car in the median?

11 A Nobody stopped.

12 Q So it is your word against Thomas's, is that
13 correct?

14 A Looks that way.

15 Q Okay. And you want the jury to take your word for
16 it?

17 A The evidence shows it.

18 Q Just like you want the jury to take your word that
19 you really didn't have any neck or back issues
20 before this accident?

21 A Yes.

22 Q Now, let me show you this photo, Exhibit 12,
23 Ms. Bundy. This was -- we -- I showed you this
24 during your deposition. I show it to you again so
25 the jury can see. Do you recognize that picture?

1 A I do.

2 Q Okay. And this is a fair and accurate depiction of
3 521 and the median, is that right?

4 A Yes.

5 Q And when we looked at this picture in your
6 deposition, you said you didn't want to look at
7 Mr. Jett. Do you remember telling me that?

8 A I still feel that way.

9 Q So you are still mad at him?

10 A Yes. I'm angry. Wouldn't you be?

11 Q Well, let's look at it anyway, Ms. Bundy, okay?
12 Let's look at the picture anyway. You say you were
13 right there when you drew that box, is that
14 correct?

15 A What?

16 Q You drew this -- I'll put my hand over --

17 A No, no, no.

18 Q You said you were right here, is that correct?

19 THE COURT: Ma'am, you can stand up if you
20 would like.

21 A Thank you.

22 (Witness stands.)

23 A I'm right here.

24 Q Well, you drew that box where you said you were, is
25 that correct?

1 A This is where I drew this as well. It is a curve
2 for people -- for other cars to go in to Black
3 River. That is why you park here to go southbound.

4 Q Yes, ma'am.

5 A There is no way that he could have been in the
6 median here ever because there is full traffic here
7 and there was a car pulling out here, and I was
8 right here. One, the semi-truck will not fit here.

9 Q Ms. Bundy, you are not answering my question. My
10 question is very simple. Did you write in your
11 deposition that that blue box is approximately
12 where you were?

13 A The blue box right here?

14 Q Yes.

15 A Yes.

16 Q I mean, that -- were you --

17 A It is not in the middle, it is here.

18 Q I know. It is next to the yellow line, is that
19 correct? You drew that?

20 A Yes, I believe so.

21 Q Okay.

22 (Witness returns to witness stand.)

23 Q All right. And you said that while you are sitting
24 there where that blue box is, waiting for traffic,
25 Thomas pulled out, sideswiped you, dragged you into

- 1 oncoming traffic?
- 2 A Yes.
- 3 Q And you said you were there for -- in the median
- 4 for a few minutes before he hit you?
- 5 A Yes.
- 6 Q And you claim that you are sitting there and he
- 7 just barrels out and hits you for no reason?
- 8 A I obviously wasn't moving fast enough.
- 9 Q And you say he dragged you into oncoming traffic?
- 10 A Yes.
- 11 Q Okay. I show you Exhibit 4. I'll show you
- 12 another --
- 13 A Where he is trying to go around me.
- 14 Q Ms. Bundy, are you still -- my question is, aren't
- 15 you still in the median in that picture?
- 16 A Yes. I was at a stop when he hit me. That was my
- 17 whole point. I was waiting for traffic. He
- 18 literally tried to get around me because I wasn't
- 19 going fast enough, or I have no idea.
- 20 Q You said he dragged your car into two lanes of
- 21 traffic?
- 22 A No, I said he dragged my car.
- 23 Q No.
- 24 A Into ongoing traffic, is what I said.
- 25 Q Okay.

1 A To ongoing traffic.

2 Q Do me a favor. Turn to Page 33 of your deposition.
3 Okay. I'm going to read Line 6, and you can read
4 Line 10 to refresh your memory.

5 So the first time you saw the truck was when
6 you were on Black River Road. And you were stopped
7 when he pulled out. The next time you saw it after
8 he hit you, sideswiped you?

9 And what was your answer?

10 A When I turned and took out -- wait, when I turned
11 and he took out my rear window and he was coming
12 around me at the time and dragging my car onto the
13 other two lanes of traffic.

14 That is the ongoing traffic, the other two
15 lanes, not both. I didn't say -- anyway.

16 Q Well, the truth is, you were not dragged into the
17 other two lanes of traffic, were you?

18 A I was -- he was dragging me onto the other lanes.

19 Q But your car remained in the median, is that
20 correct?

21 A Yes.

22 Q Okay. And you said, from your perspective, Thomas
23 almost killed you and ruined your life?

24 A Yes.

25 Q I believe you said, Thomas ruined your pristine

1 life, is that right?

2 A Yes.

3 Q Now, let me ask you this, Ms. Bundy. Since you say
4 you are in the median first, while you are sitting
5 in the median for a few minutes waiting for
6 traffic, did you ever see Thomas pull out from the
7 stop sign?

8 A No. I was looking at the traffic coming to my
9 right.

10 Q You have --

11 A And waiting for the traffic.

12 Q Do you have rearview mirrors --

13 A I'm not looking in the rearview mirror, I'm looking
14 to go forward.

15 MR. MCDONALD: Your Honor --

16 THE COURT: Hold on one second. Let her
17 answer the question, and then ask a question.

18 MR. GRANTLAND: Yes, ma'am. And I'm trying
19 just to move --

20 THE COURT: I understand. The court reporter
21 can't get an accurate record if you talk over each
22 other, so ask and let her answer.

23 BY MR. GRANTLAND:

24 Q So you didn't see him coming?

25 A No.

1 Q Okay. He is in a tractor-trailer. They are loud,
2 aren't they? Did you hear him coming?

3 A No.

4 Q And you agree there is not room in that median for
5 your car and a tractor-trailer to both turn left at
6 the same time?

7 A There is not room enough for a tractor-trailer,
8 period.

9 Q Okay.

10 A Period.

11 Q Here is a question. Go back to Exhibit 12.

12 Ms. Bundy, you drew that blue box there. When you
13 pulled out, why are you way over to the left in
14 this median?

15 A That is where you go to the left to go southbound.
16 There was another car coming in going this way to
17 go to wait for traffic to go to Black River Road.
18 And when you gave me that picture, I was still so
19 upset at this man that did ruin my life that I
20 didn't want to look at it, and then I pushed -- I
21 scribbled and pushed it away to you. How is that?

22 Q So this picture isn't accurate because you are
23 still upset at Thomas, is that what you are telling
24 me?

25 A No. You are trying to say that because of my

1 little scribbles here I wasn't where I was.

2 Q No, I'm --

3 A But I'm telling you where I was. And I was right
4 here in the median.

5 Q Okay. Well, here is a question. I'm going to show
6 you Exhibit 11. Now, according to you, when you
7 pulled out, you went way over here to the left.

8 A Yes.

9 Q Now --

10 A Well, these signs weren't there. They were put up
11 shortly after the accident.

12 Q Okay.

13 A Two, this right here is the ongoing lane where
14 other cars come and they go here. That is why
15 going southbound you go -- you sit here because
16 there is other cars coming here.

17 Q Well, Ms. Bundy, here is my question. I mean, this
18 is -- the median is right in front. Why -- when
19 you pulled out, if there was no one -- if there was
20 no one else in the median in your way, why wouldn't
21 you just go straight into the median?

22 A Because I'm not going to Camden, I'm going to
23 Columbia for, one. Two, there is another car right
24 here pulling in to go to Black River.

25 Q So you say it makes to go all the way over to the

1 left?

2 A All the way.

3 Q Are you sure the reason you didn't go all the way
4 over to the left was to get around Thomas's truck?

5 A Oh, to hide from him and mess with a semi-truck on
6 521?

7 Q Well, I'll move on. After the accident, you jumped
8 out of your car?

9 A No. After he started dragging me in my car, I
10 jumped out of the car.

11 Q Okay. You jumped out of your car. You admit you
12 were acting hysterically?

13 A Yes. And I did not say he was an idiot, I said
14 something more vulgar.

15 Q Okay, well --

16 A Just for --

17 Q Well, we will get there, Ms. Bundy. Believe me,
18 I'll ask you. You were yelling and screaming to
19 Thomas?

20 A Absolutely.

21 Q Thomas was the reason you were yelling and
22 screaming?

23 A Yes.

24 Q He was getting the brunt of your anger? And you
25 are still angry?

1 A Yes.

2 Q Now, if you were so injured from this accident, Ms.
3 Bundy, how did you have the energy to get out and
4 yell and scream in the middle of the highway at
5 this man you don't know?

6 A Because your adrenaline is running, and the way
7 that he hit me and -- adrenaline, I'm assuming.

8 Q Okay. You said you didn't think Thomas recognized
9 that he even hit you?

10 A I don't know. I don't know what he thought.

11 Q Okay. All right. Well, let me show you some more
12 pictures. You admit this is -- I show you 3 and 9.
13 And this is a picture of the trailer connected to
14 your car before they separated, is that right?

15 A Yes.

16 Q And at least part of the glass is still there,
17 isn't it?

18 A Yes.

19 Q Okay. And when you separated -- when you separated
20 from Thomas, when y'all separated from each other,
21 that is when the rest of the glass broke out, is
22 that correct?

23 A I don't know.

24 Q Okay. And this is the -- and that -- the dent
25 right there --

1 A And there were scrapes along the side as well.

2 Q Okay. But that picture shows the damage to your --
3 to the side of your car from the trailer, is that
4 right?

5 A The right-hand side.

6 Q Okay. So you admit you yelled at Thomas?

7 A Yes.

8 Q I mean, this was almost -- this was over four years
9 ago. And you --

10 A It was almost five.

11 Q Okay. And you called him stupid, you called him an
12 idiot.

13 A I did not call him stupid or idiot.

14 Q But you used vulgar words towards him?

15 A I was not a happy camper.

16 Q The truth is, you don't -- you admit, you don't
17 recall everything you said to Thomas?

18 A I do not.

19 Q So you could have called him stupid and idiot?

20 A Those are not my words I use. I don't call anybody
21 stupid or an idiot. I don't.

22 Q But you used words that were worse?

23 A I'm sure I did.

24 Q You cussed him out?

25 A I did.

1 Q And did you tell him you made -- that he made you
2 late for your doctor's appointment?

3 A No.

4 Q Okay. You admit you were angry and you thought he
5 had ruined your life and tried to kill you, is that
6 right?

7 A That day?

8 Q Yes.

9 A No. No, I told you that.

10 Q Okay.

11 A I told you that in the deposition. I never told --
12 I never talked to the man.

13 Q Okay.

14 A And he never talked to me.

15 Q The bottom line is, you admit you don't remember
16 everything you said to him, but you know it wasn't
17 pretty?

18 A Yes.

19 Q And those are your words, is that right?

20 A Yes.

21 Q Okay. Ms. Bundy, you were pretty mean to Thomas?
22 I mean, do you regret being so mean to him?

23 A No.

24 Q Do you remember anything he said to you?

25 A He never said a word to me.

- 1 Q He walked away from you, didn't he?
- 2 A He never said a word to me.
- 3 Q He walked away from you because you were insulting
- 4 him or cussing him out, isn't that right?
- 5 A I never called him an idiot or stupid.
- 6 Q But you cussed him out?
- 7 A I did.
- 8 Q Do you remember any specifics you said?
- 9 A I'm sure I couldn't say them in court.
- 10 Q Well, you can -- as long as it is the truth, you
- 11 can say it.
- 12 A I'm not sure. But I know it wasn't those words and
- 13 I know certainly that I didn't tell him I was late
- 14 for an appointment.
- 15 Q Okay. You were still hysterical when the police
- 16 officer arrived?
- 17 A I was angry and upset.
- 18 Q And were you able to get in and out of your car
- 19 after the accident?
- 20 A I was. If I was able to jump out of it I'm sure --
- 21 Q Yes. And here is a picture, Exhibit 1. Is this
- 22 you in Exhibit 1?
- 23 A I believe I was grabbing my phone.
- 24 Q Okay. And so you -- but that is you getting in or
- 25 getting out of your car?

- 1 A Yes.
- 2 Q Okay. And, in fact, you drove your car from the
3 scene to a side road, is that right?
- 4 A No. I believe one of the officers did. I do not
5 remember doing that.
- 6 Q Okay. But the car was drivable?
- 7 A Somebody drove it, yes.
- 8 Q Okay. Let me ask you about your medical treatment
9 after the accident. Were you treated by EMS?
- 10 A No.
- 11 Q Did you tell the officer that you did not need to
12 go to the hospital?
- 13 A I wasn't going to the hospital.
- 14 Q Why weren't you going to the hospital?
- 15 A I hate hospitals.
- 16 Q Okay. So no emergency room, no hospital for you?
- 17 A No.
- 18 Q You say you had acupuncture after the accident?
- 19 A Later, yes.
- 20 Q Who did you treat with?
- 21 A I believe Dr. Skelton in Columbia.
- 22 Q And you said you called a massage therapist?
- 23 A I did.
- 24 Q Who did you call?
- 25 A Peggy Lane, I believe.

1 Q Okay. Now, looking at Exhibit 9, if I can just
2 hand -- I will hand it all to you..

3 MR. GRANTLAND: May I approach?

4 THE COURT: Yes, sir.

5 (Mr. Grantland complies.)

6 BY MR. GRANTLAND:

7 Q Where is your bill for acupuncture or massage? It
8 wasn't free, was it?

9 A Of course not.

10 Q Are you claiming you had acupuncture and massage
11 after this accident?

12 A I don't have to claim it. You can find out by
13 yourself.

14 Q Is it on your list?

15 A No. I don't know why it is not, but, no.

16 Q Did you ever go back to Dr. Wagers since he treated
17 you before?

18 A No.

19 Q And when I asked you in your deposition about
20 acupuncture, you said you had numerous epidurals in
21 your neck after the accident?

22 A Yes.

23 Q You said you tried everything to not have surgery?

24 A Yes.

25 Q Now, from looking at your expenses in an exhibit

1 for this trial, it looks like the earliest date is
2 May 29, 2014?

3 A Yes.

4 Q I mean, that is when you saw Cannestra for the
5 first time?

6 A Yes.

7 Q And then two weeks later you had surgery?

8 A Yes.

9 Q So --

10 A Because I tried everything beforehand.

11 Q But everything is not on that list there, is it?

12 A Do I have to tell you when I exercise?

13 Q No, ma'am.

14 A I exercised.

15 Q You said you had acupuncture and massage?

16 A I did everything I could. Yes.

17 Q Okay. At some point you made your way down to
18 Jacksonville to see Dr. Cannestra, is that right?

19 A Yes.

20 Q Your husband found him through another lawyer while
21 he was duck hunting in Argentina, is that right?

22 A Yes.

23 Q Now, did you go with Mr. Bundy to Argentina?

24 A No.

25 Q Either way, when you saw Dr. Cannestra, did you

1 tell him that you did therapy and other
2 conservative measures?

3 A Yes.

4 Q But there is no therapy or conservative treatment
5 on your list, is there?

6 A I haven't gone through the whole thing. I don't
7 want to relive it, frankly.

8 Q Okay. So you said prior to having neck surgery
9 with Dr. Cannestra, you tried absolutely everything
10 to relieve your pain and nothing worked, right?

11 A Nothing worked.

12 Q But there is nothing on your list before you saw
13 Dr. Cannestra, isn't that correct?

14 A I believe you have asked that already.

15 Q All right. And let's make sure we're clear. The
16 first date of treatment is May 29, 2014, is that
17 right?

18 A I believe so.

19 Q Okay. Here is the question, Ms. Bundy. I think
20 you may have covered it. I want to cover it again.
21 You didn't -- you deny -- even though you said you
22 tried anything and everything, you never tried
23 physical therapy?

24 A Oh, I did.

25 Q Okay. Well, with who?

1 A I have had actually two come out to the house.

2 Q Okay. I mean, you have your own gym?

3 A I do.

4 Q And are those therapists on your list there?

5 A I don't believe so. They are friends.

6 Q Okay. I mean, you have -- and is your massage
7 therapist a friend as well?

8 A Actually, most of them are.

9 Q Okay. And you are not submitting bills for
10 therapists or massage or any of those people, is
11 that correct?

12 A I paid them in cash.

13 Q Okay.

14 A They prefer that.

15 Q But just looking at your list that you are
16 submitting to this jury, the first bill you relate
17 to this accident is eight months after the fact
18 when you saw Dr. Cannestra, is that correct?

19 A Yes. We have established that.

20 Q That was on May 29th. You saw him once. And then
21 two weeks later you have surgery on June 12th, is
22 that correct?

23 A I believe I saw him before that.

24 Q Is it on your list?

25 A I don't know. I don't look at it. I don't deal

1 with it. I have already gone through it.

2 Q Okay. And your second surgery was at the end of
3 2014. You saw -- I think you -- and I would ask
4 you to look at it since you are submitting this to
5 the jury. You went back to Dr. Cannestra on 12/8
6 and he does surgery on December 10, is that
7 correct?

8 A I believe it was 12/9 that I went in, and he did it
9 on 12/10.

10 Q Okay. And you say that today your back is worse
11 than your neck, is that correct?

12 A Nothing is worse than when your client hit me.

13 Q I thought you testified in your deposition that
14 your back is worse today than your neck. Are they
15 both the same?

16 A Pretty much.

17 Q Okay. All right. Turn to Page 56.

18 A No.

19 Q Huh?

20 A Why?

21 THE COURT: All right, ma'am, you have to turn
22 and answer the question.

23 A You know, one, they are all connected.

24 THE COURT: All right, wait for her to turn to
25 the page, and then you can answer the question.

1 THE WITNESS: He doesn't have a 56.

2 A Would you like to show me?

3 Q No, I'm looking at your deposition, Ms. Bundy.

4 A Oh, that's why. Okay.

5 Q Just tell me when you turn to Page 56.

6 A I'm on it.

7 Q I will read Question 6, and you read Answer 9.

8 QUESTION: Everything?

9 Everything.

10 Is one body part worse than the other, like is
11 your neck worse than your back, or are they both
12 about the same?

13 A The back is the worst.

14 That was -- this deposition was done three
15 years -- well, in '16.

16 Q So did you tell me the truth in the deposition?

17 A Yes.

18 Q Okay.

19 A This deposition was in 2016.

20 Q And you told me the truth then?

21 A Yes.

22 Q Okay. So, well, let me ask you this. This is what
23 I'm getting at. Do you remember going down to see
24 Dr. Cannestra in December 2016?

25 A Actually, no.

1 Q Do you remember telling Dr. Cannestra that you were
2 pain free until you did some overhead lifting?

3 A No, I do not recall that.

4 Q Do you remember what kind of overhead lifting you
5 did that caused you this back pain?

6 A No.

7 Q What --

8 A I don't believe that is true.

9 Q Okay. All right. You deny going to see
10 Dr. Cannestra and you deny doing any lifting?

11 A I do not recall that date, no, sir, or saying that,
12 no.

13 Q So to this jury you are denying that you ever
14 told --

15 A I'm not denying it. I don't recall it.

16 Q Okay.

17 A And I --

18 Q Okay. And you don't recall doing any lifting that
19 hurt your back?

20 A I'm sure I could have. Or if I lift the wrong way
21 still to this day, I could hurt my back.

22 Q Do you remember what you were lifting or how much
23 it weighed, or anything like that?

24 A No.

25 Q Okay. And, either way -- first -- after doing

1 this, after seeing Dr. Cannestra and hurting your
2 back, you went down to see Dr. Folk in 2017. Do
3 you remember seeing Dr. Folk?

4 A Of course I do.

5 Q Okay. And you told him about the car accident with
6 Thomas in 2013. Did you tell him about hurting
7 your back in 2016?

8 A Dr. Folk?

9 Q Yes?

10 A I went to Dr. Folk for the swelling.

11 Q Right.

12 A That occurred.

13 Q And did you tell him whether you hurt your back in
14 2016 doing some lifting?

15 A I don't -- I don't believe so. I don't know. I
16 don't recall.

17 Q Did you tell Dr. Folk about your neck and back
18 condition before your accident with Thomas?

19 A Yes.

20 Q Did you tell him how you treated with Dr. Wagers
21 and had different injections and had muscle
22 relaxers?

23 A No. It didn't matter.

24 Q You didn't tell him any of that?

25 A Those were done over 20 years ago. No.

1 Q You saw Dr. Folk in March of 2017, is that correct?

2 A Yes.

3 Q And did you tell him you had been very active and
4 you were doing a lot of exercising at home?

5 A Yes.

6 Q What kind of exercising were you doing last year?

7 A Mostly treadmill, yoga.

8 Q Do you walk on the treadmill or run?

9 A Yes. I can't run.

10 Q Okay. You said you saw Dr. Folk in April last year
11 and you told him a plane trip aggravated your neck.
12 Do remember telling him that?

13 A It did.

14 Q Where did go on your trip?

15 A I believe -- I'm not quite sure.

16 Q Did you fly first class?

17 A No.

18 Q Did you go on any trips last year?

19 A I'm sure. My husband has to travel quite a bit.

20 Q Did you go with him?

21 A Sometimes. Not as much.

22 Q Despite being able to -- despite exercising and
23 going on trips, you say you can't do things around
24 your house like sweeping or vacuuming or picking up
25 a grandchild?

1 A It is the movement. The grandchildren, one, are
2 four, two, one, and eight months. And children are
3 big these days. I still can't lift more than ten
4 pounds. And these are big boys. I can't swing
5 them around and do airplane with them or --

6 Q You also have big dogs, don't you?

7 A I do.

8 Q I mean, your dogs are with you more than your
9 grandchildren, right?

10 A No. They are more with Lesia.

11 Q Okay. But, I mean, you have -- what kind of dogs
12 do you have?

13 A Mastiffs.

14 Q Mastiffs. And they weigh how much?

15 A 180 pounds.

16 Q 180 pounds. And do you play with these dogs or
17 walk these dogs?

18 A No. That is the problem, sir. I can't.

19 Q You don't do anything with them?

20 A Nope.

21 Q But they live at your house?

22 A They do.

23 Q Okay. Last point. I'll talk to you about your
24 husband's consortium claim. Your accident with
25 Thomas was in September 2013. You told me in your

1 deposition that Mr. Bundy left you sometime after
2 the accident, is that right?

3 A No.

4 Q Well, he left you -- when did he leave you?

5 A He left me after the first surgery.

6 Q Okay. He left you in 2014?

7 A Yes.

8 Q Okay. Which is after the accident. And did he or
9 did you file for divorce?

10 A He did.

11 Q How long were y'all separated?

12 A Months.

13 Q Months?

14 A (Nods affirmatively.)

15 Q Six months? Nine months?

16 A Let's see. The surgery was done August, September,
17 October, November.

18 Q Okay. So the fall of 2014?

19 A The end of summer and beginning of fall.

20 Q And you got back together sometime in 2014?

21 A Yes.

22 Q Do you remember talking to your life care planner,
23 Sarah Lustig?

24 A I do.

25 Q Have you ever met her?

- 1 A No.
- 2 Q Okay. You talked to her over the phone?
- 3 A I have met her numerous -- I talked to her numerous
4 times.
- 5 Q And you talked to her over the phone in 2016 for
6 her interview, is that correct?
- 7 A Yes.
- 8 Q And I guess you talked to her in 2016 after you and
9 your husband were back together?
- 10 A Yes.
- 11 Q Do you remember telling Ms. Lustig in 2016 that
12 your marriage was gone?
- 13 A It is.
- 14 Q It is still gone?
- 15 A I can't make love to the man. Does that help you
16 out?
- 17 Q Yes, ma'am.
- 18 A Anything else?
- 19 Q So you also told Ms. Lustig that your husband was
20 gone a lot and that you have to take care of the
21 house and animals all by yourself. Do you remember
22 telling her that?
- 23 A No. I told her Ms. Lesia takes care of it, but I'm
24 there alone a lot, is what I said.
- 25 Q Because your husband is gone a lot?

1 A Yes.

2 Q And despite the fact your husband is gone a lot,
3 you want the jury to believe that all -- any of
4 your marital problems are all due to this accident?

5 A When you can't cook and clean and make love to a
6 man, especially my husband, yes.

7 MR. GRANTLAND: No further questions, Your
8 Honor.

9 THE COURT: All right. Yes, sir? Any
10 redirect?

11 MR. MCDONALD: Very few follow-up, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MCDONALD:

14 Q Ms. Bundy, you were asked questions about your
15 deposition. Will you -- on the front of it there
16 should be a date.

17 A June 22nd, 2016.

18 Q June 22nd, 2016?

19 A Yes, sir.

20 Q So 18 months ago, something like that?

21 A Yes.

22 Q And on any given day or any given week, is the pain
23 the same? Is the ability to do things the same?

24 A It is just a vicious cycle. It just -- one day is,
25 you know, sometimes better than the next. It is

1 just what I -- if I do something incorrectly, I
2 mean, it could be the slightest of things, I'm down
3 again.

4 Q Now, you were asked some questions about whether
5 you recall seeing Dr. Cannestra in 2016. Do you
6 remember that on cross-examination?

7 A Yes.

8 Q Do you recall the question on direct examination
9 about going to see Dr. Cannestra, and you said
10 because of swelling in your back?

11 A Yes.

12 Q Was that in 2016?

13 A I don't believe so. I don't recall. I don't
14 believe so.

15 MR. MCDONALD: May I approach the witness,
16 Your Honor?

17 THE COURT: Yes, sir.

18 (Mr. McDonald complies.)

19 A I really don't recall. I have seen so many
20 doctors.

21 Q Can you see this photo? This is Defendant's
22 Exhibit 1.

23 A Uh-huh.

24 Q Do you see the debris behind your car?

25 A I do.

1 Q Okay. What is that?

2 A It is the glass.

3 Q Okay. And was the glass shattered at impact?

4 A I heard it. I heard shatter, anyway.

5 Q Now, if -- is there -- if you take -- it is not in
6 the picture, but if you take it off of it, are
7 there lanes of traffic here? I can show you --

8 A Yes. The other one is better.

9 Q This is Plaintiff's Exhibit 14. Can you see that,
10 Ms. Bundy?

11 A Uh-huh.

12 Q Okay. And when you were being pulled, in what
13 direction were you being pulled?

14 A Towards the southbound lane.

15 Q Okay. And which direction was traffic going in?

16 A That way.

17 Q Okay. So that would be oncoming to your car?

18 A Yes.

19 MR. MCDONALD: Beg the Court's indulgence.

20 (Pause.)

21 MR. MCDONALD: That's all. I have nothing
22 further. Thank you.

23 THE COURT: All right. Ma'am, you may step
24 down.

25 (Witness steps down.)

1 THE COURT: All right, ladies and gentlemen of
2 the jury, it is 5:25. We finished about five
3 minutes earlier than I thought. We will go ahead
4 and take our evening break.

5 The plan is to start at 9:30 in the morning.
6 I am sure you all have heard that there is a
7 possibility that we may have bad weather.

8 Madam Clerk, have you received anything?

9 THE CLERK: I have been checking the emergency
10 site, and they have that posted if we are going to
11 be delayed.

12 THE COURT: What we talked about doing earlier
13 is we are going to start at 9:30. If court --
14 obviously -- we follow -- the court system follows
15 whatever the county does. And so you'll need to
16 just follow, if it says Kershaw County two hour
17 delay, then we'll see you at 11:30. If it says
18 Kershaw County canceled, then we will see you on
19 Thursday. I do know they are starting to cancel --
20 I just got an e-mail that my daughter's -- kids'
21 school is canceled tomorrow. So, there is a
22 possibility -- and that is Richland County -- but
23 there is a possibility that court may be delayed or
24 canceled in the morning.

25 MR. GRANTLAND: And we have heard Kershaw

1 County school is canceled tomorrow.

2 THE COURT: Okay. So of course we go by the
3 county and not the school district, so I'm guessing
4 the county will probably be not long behind in
5 terms of cancellations. If that is the case, then
6 we will see you at 9:30 on Thursday morning.

7 And, also, our clerk has the ability to update
8 I think the phone message to you. Do you all still
9 have the card with that number on it? So she'll
10 try to update that also when she receives an
11 e-mail. She will probably receive an e-mail from
12 the county administrator.

13 So, with all of that being said, I will either
14 see you tomorrow or Thursday. Remember, do not
15 discuss the case. Do not do any independent
16 research regarding the case. Do not do any -- put
17 anything on social media regarding the case. You
18 have only heard one witness, and we have quite a
19 few witnesses left. So I ask that you not discuss
20 the case.

21 Have a wonderful evening. And be careful and
22 stay warm.

23 All right. Thank you.

24 (WHEREUPON, the jury is excused at
25 5:27 p.m.)

1 (WHEREUPON, court adjourned for the
2 evening at 5:27 p.m.)

3 JANUARY 17, 2018

4 (WHEREUPON, the proceedings resumed at
5 9:49 a.m.)

6 THE COURT: Anything we need to take up before
7 we bring in the jury?

8 MR. MCDONALD: Nothing from the Plaintiff.

9 MR. GRANTLAND: No, Your Honor.

10 Your Honor, if Mr. Poplin is testifying next,
11 I would just renew my motion in limine for the
12 record.

13 THE COURT: And that was your motion to?

14 MR. GRANTLAND: Exclude his testimony.

15 THE COURT: All right. And --

16 MR. GRANTLAND: You denied it, and I respect
17 that, I just want to make sure I put it on the
18 record.

19 THE COURT: I believe the finding was that it
20 was a matter of -- that the issue would go to
21 weight as opposed to admissibility.

22 MR. GRANTLAND: Yes, ma'am.

23 (Pause.)

24 THE COURT: All right. They're going to try
25 to see if they can locate her. I hate to use --

1 because we're going into next week, I'm a little
2 concerned about using an alternate until we have
3 some answers. But if we have to, we will.

4 We'll just wait until we hear something.

5 (Pause.)

6 THE COURT: She is here. She said she was
7 confused. The school district was closed, so she
8 thought we were closed. We're ready to get
9 started.

10 Bring them in.

11 I'm trying to figure out ordering something
12 for them to eat so we don't have to take a lunch
13 break.

14 (WHEREUPON, the jury came into open
15 court at 10:51 a.m.)

16 THE COURT: Good morning, ladies and gentlemen
17 of the jury. At this time -- I hope you had a
18 restful evening. We are monitoring the weather
19 with the county administration and we will -- you
20 know, if they cancel court, we'll cancel if
21 administration says we have to close. We will
22 continue to monitor, but we're going to go ahead
23 and continue with the case.

24 And I would ask the Plaintiff to call their
25 next witness.

1 MR. MCDONALD: Thank you, Your Honor. May it
2 please the Court? The Plaintiffs call Mr. Woodrow
3 M. Poplin.

4 (Witness approaches.)

5 THE CLERK: Place your left hand on the Bible,
6 and raise your right hand, please.

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm the
9 testimony you give in this case will be the truth,
10 the whole truth, and nothing but the truth, so help
11 you God?

12 THE WITNESS: Yes, I do.

13 THE CLERK: Take the stand and please give
14 them your full name.

15 THE WITNESS: My name is Woodrow M. Poplin.

16 WOODROW M. POPLIN,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCDONALD:

20 Q Mr. Poplin, what do you do? What is your
21 profession?

22 A I'm a consulting engineer. I specialize in the
23 evaluation of transportation accidents.

24 Q Where are you from?

25 A I'm out of Charleston County.

1 Q Okay. And do you practice engineering all over the
2 state, or what do you do?

3 A Yes.

4 Q And did you graduate college, Mr. Poplin?

5 A I did.

6 Q Where did you graduate college from?

7 A University of South Carolina.

8 Q Okay. Did you get a degree?

9 A Actually, I have three degrees.

10 Q What are those degrees?

11 A I have a Bachelor of Science in mechanical
12 engineering, a Master of Science in mechanical
13 engineering and a Master of Engineering in civil
14 engineering.

15 Q Okay. And prior to or during while you were
16 getting those degrees, were you in the Navy?

17 A Prior to and afterwards.

18 Q Okay. And were you active in the Navy?

19 A Yes.

20 Q What rank did you achieve?

21 A I came off of active duty as a lieutenant, but I
22 retired out of reserves as a commander.

23 Q Okay. And other than the degrees in civil
24 engineering, mechanical engineering, which are the
25 two Masters Degrees and the Bachelor of Science in

1 mechanical engineering, do you have any other
2 degrees?

3 A No.

4 Q Are you a licensed engineer in the State of South
5 Carolina?

6 A I am.

7 Q Okay. What does that entail?

8 A You have to have an engineering degree and practice
9 engineering for a minimum of four years and then
10 sit for an exam. If you pass the exam, you're a
11 licensed engineer.

12 Q In South Carolina, are there different types of
13 engineering licenses or is there just one
14 professional engineering license?

15 A There's one professional engineering license. You
16 may take the exam in different areas.

17 Q All right. And what do you do now, Mr. Poplin?
18 Where do you work now?

19 A Where do I?

20 Q Work now?

21 A I work with W. Poplin Engineering, my firm.

22 Q What is the primary business of W. Poplin
23 Engineering?

24 A I investigate accidents. Primarily, vehicle
25 accidents.

1 Q And would you refer to yourself as an accident
2 reconstructionist?

3 A Yes.

4 Q As well as being an engineer?

5 A Yes.

6 Q And what does an accident reconstructionist do?

7 A I am looking at the physical aspect of an accident
8 and the circumstances of an accident and trying to
9 evaluate, basically, who, what, when, where, answer
10 whatever technical questions there are about the
11 accident.

12 Q Okay. And is a subset of accident reconstruction
13 that you work in vehicle accident simulation?

14 A Yes.

15 Q Is a subset of accident reconstruction that you
16 work in measurements of accident sites to evaluate
17 vehicle mechanics, visibility and timing?

18 A Yes.

19 Q Have you ever been qualified as an expert in a
20 court of law to give expert testimony?

21 A Yes, sir.

22 Q About how many times?

23 A More than 100.

24 Q Do you work for both Plaintiffs and Defendants?

25 A I do.

1 Q Have you ever worked for Defense counsel before?

2 A Yes.

3 Q Have you ever taught courses and seminars in
4 accident reconstruction?

5 A I have certainly taught seminars.

6 Q And did you, in fact, teach a seminar in 2001
7 called accident reconstruction?

8 A Yes.

9 Q Okay. And in 2002, did you teach a seminar called
10 Accident Analysis and Evaluation presented to
11 American Society of Mechanical Engineers in
12 Tennessee?

13 A Yes.

14 Q In 2003, did you teach a seminar called Evaluation
15 of Vehicle Accident -- Evaluation of a Vehicle
16 Accident?

17 A Yes.

18 Q And in 2008, did you teach a seminar on accident
19 reconstruction involving tractor-trailers and heavy
20 trucks?

21 A Yes.

22 Q In 2009, did you teach a seminar, Accident
23 Reconstruction, Tractor-Trailers and Heavy Trucks,
24 related to DOT regulations in South Carolina?

25 A Yes.

1 Q And you've taught seminars in 2011 up until
2 present, correct?

3 A Correct.

4 Q Are you a member of any professional organizations?

5 A Yes.

6 Q What are those?

7 A Predominantly, the Society of Accident
8 Reconstruction Specialists, American Society of
9 Mechanical Engineers, the Society of Automotive
10 Engineers.

11 Q Have you ever been published or authored
12 publications?

13 A Yes.

14 Q And are some of those Accident Analysis and
15 Engineering?

16 A Yes.

17 Q Accident Reconstruction?

18 A Yes.

19 Q Acceleration of Heavy Trucks?

20 A Yes.

21 Q Accident Reconstruction for Tractor-Trailers and
22 Heavy Trucks?

23 A Yes.

24 Q Do you have to do continuing education as part of
25 your professional engineering license?

1 A I do.

2 Q How does that work?

3 A You attend seminars or give talks or do something
4 to earn the education credentials.

5 Q And in doing accident reconstruction and coming
6 upon a conclusion or attempting to come to a
7 conclusion, what are some of the things you look
8 at? What do you do, just generally?

9 A In general, I am looking at vehicles, accessing
10 damage, dimensions, different parameters on the
11 vehicle. Sometimes I may be trying to establish
12 whether there's some kind of problem with the
13 vehicle, a braking problem, a steering problem,
14 suspension problem. Or I may be looking at the
15 dimensions of the vehicle to try to establish where
16 it was when it made certain marks in the roadway,
17 may be looking at it from the standpoint of how
18 much room does this vehicle take up in this
19 particular situation, how is it oriented. I'm
20 going to look at an accident site to determine, you
21 know, is there evidence of the accident at the
22 site, skid marks, gouges, debris, what have you.

23 I look at an accident site for the geometry of
24 the accident site. How does the geometry of the
25 accident site affect the situation? What are the

1 site lines? What are the controlling signs?
2 What's the terrain? Is it level? Is it going to
3 collect water? You know, whatever may be of
4 interest to that particular accident.

5 Q Do you look at photographs from the accident scene
6 if they're available?

7 A Yes.

8 Q And you said you go out to the site and take
9 measurements?

10 A I do.

11 Q And do you consider the vehicles that were involved
12 in the accident as well?

13 A Yes.

14 Q And the physical characteristics of those vehicles?

15 A Yes.

16 MR. MCDONALD: Your Honor, at this time, I
17 would offer Mr. Poplin as an expert in engineering,
18 an expert in accident reconstruction, and accident
19 reconstruction related to heavy trucks and
20 tractor-trailers.

21 THE COURT: Engineering, accident
22 reconstruction?

23 MR. MCDONALD: And accident reconstruction
24 related to heavy trucks and tractor-trailers.

25 THE COURT: Any voir dire?

1 MR. GRANTLAND: Your Honor, I would just ask
2 the objections made yesterday be preserved for the
3 record.

4 THE COURT: The objections are -- your
5 objection is preserved for the record.

6 All right. Based on the testimony, I do find
7 that the witness is qualified pursuant to 703 to
8 testify as to engineering, accident reconstruction,
9 accident reconstruction as it relates to heavy
10 trucks and tractor-trailers. When we take a break,
11 I'll put on the record -- go through the checklist
12 of everything. I do find that the evidence under
13 403 is also admissible as to probative value.

14 All right, ladies and gentlemen of the jury,
15 normally a person cannot give opinion testimony.
16 Normally when a person testifies, they must testify
17 as to what they either saw, heard, or sensed by
18 smell, or something of that nature. However,
19 there's an exception when someone is qualified
20 because of education or experience. They're
21 permitted to give their opinion in certain areas if
22 the Court qualifies them that way.

23 The witness will be qualified in the area of
24 accident reconstruction, accident reconstruction as
25 it relates to heavy trucks and tractor-trailers,

1 and then also in the area of engineering to give
2 opinion testimony in that area. That does not mean
3 that you have to accept the opinion, but it is
4 evidence for you to use in any way you see fit.

5 Yes, sir, you may continue.

6 MR. MCDONALD: Thank you very much, Your
7 Honor.

8 BY MR. MCDONALD:

9 Q Mr. Poplin, what were you asked to do in this
10 matter?

11 A Well, I was presented with an accident, which I was
12 told there were two competing versions of the
13 accident and both could not be true. And I was
14 asked to try to evaluate the accident with respect
15 to that concept.

16 Q Okay. And what were some of the things that you
17 initially took to look at? What did you look at in
18 order to undertake your analysis of it?

19 A I looked at photographs taken at the accident scene
20 while the vehicles were still in position. I
21 looked at photographs taken after the vehicles were
22 moved. I had an accident report. I had a
23 statement of Ms. Bundy, I had a statement from
24 Mr. Jett, and I had a deposition from Mr. Jett.

25 Q And did you -- so you looked at the photos and you

1 looked at the statements and deposition from the
2 parties, correct?

3 A Yes.

4 Q And you -- did you do anything else? Did you go
5 out to the site?

6 A Not initially.

7 Q Okay.

8 A I went later on, but not initially.

9 Q Okay. And did you make any initial conclusions
10 based upon the things that you reviewed?

11 A Yes. The reason I didn't go to the site initially
12 is because we now have Google Earth, or satellite
13 photographs of the area. And I use those
14 extensively because I can get a view of this
15 intersection that is pretty much what I would draw
16 up if I were to draw it up. It's going to be color
17 and it will give me a starting point to work
18 through the accident. So I used that in this case
19 for the initial assessment and then later on, I
20 went to the site.

21 Q Okay. So initially you came up with some
22 preliminary opinions using Google Earth and the
23 things we talked about, photographs and essentially
24 the stories of the drivers?

25 A Correct.

1 Q And what were your -- based upon just that limited
2 information at that time, what were your initial
3 conclusions?

4 A Well, my initial conclusion was there's an obvious
5 reason why both of these versions of the accident
6 could be fact or true.

7 Q And what is that obvious reason?

8 A The obvious reason is that when the tractor-trailer
9 comes up to the stop sign at this intersection --
10 the intersection is skewed, so that instead of
11 intersecting perpendicular, it intersects a little
12 bit skewed to the right. So what that does is it
13 places the stopped driver in a position so that --

14 Q Does that orient you, sir?

15 A Yes.

16 Q Okay.

17 A May I stand?

18 Q Go ahead.

19 A When a tractor-trailer comes up to this
20 intersection and stops, if you make a turn in a
21 tractor-trailer, the trailer cheats on you. It
22 wants to walk over to the left relative to where
23 the tractor turns. So a driver has to swing to the
24 right a little bit so that his trailer wheels will
25 clear this island here. In doing so, he's going to

1 orient the cab so that from his seated position,
2 he's looking across the left front roof support.
3 It's called the A pillar.

4 In automotive terminology, the forward roof
5 supports are the A pillars, as in a column. The
6 middle ones between the doors are the B pillars.
7 The one behind the rear door is the C pillar. And
8 if you've got an extended vehicle or something, you
9 may have a D pillar.

10 So that A pillar is between his position
11 seated in the driver's seat and this location in
12 the intersection. And that location in the
13 intersection is where Ms. Bundy's vehicle was when
14 it was struck.

15 Well, you don't tend to think of the A pillar
16 as being very big. In actuality, they try to keep
17 them small. But they're constrained by the roof
18 crush requirements and by the protection
19 requirements for the padding inside your vehicle.
20 So as a result, most of your A pillars are four to
21 six inches wide or diameter, they're kind of
22 circular. And when you're up close to that, it
23 will obstruct your vision beyond that.

24 Q Obstruct your vision. Is the common term for that a
25 blind spot?

1 A Yes.

2 Q Are there blind spots in trucks, tractor-trailers?

3 A There are blind spots in almost all vehicles.

4 Q That was going to be my next question. There's
5 blind spots in every vehicle, right?

6 A Yes, sir.

7 Q Go ahead. I'm sorry.

8 A And you can establish through geometry how much of
9 a blind spot this is. I've got an illustration
10 here, it might help.

11 MR. MCDONALD: May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. MCDONALD: Let me get some clips here and
14 put it on the board.

15 (Mr. McDonald approaches.)

16 BY MR. MCDONALD:

17 Q Go ahead, Mr. Poplin.

18 A All right. So what I'm trying to depict in this
19 layout is a triangle. We've got a viewing position
20 back here in the driver's seat, which is about,
21 typically two to three feet away from that A
22 pillar. It, typically slopes inward toward the
23 top, towards you, so that's closer, the bottom part
24 is little farther away, but in most vehicles, you
25 can reach out and touch that. So that's roughly

1 three feet away.

2 If we take an A pillar that's four inches wide
3 and look at the sight line on either side of that
4 4-inch wide pillar from a distance of three feet,
5 we can draw a triangle out to any distance we want
6 and evaluate how much of an obstruction that's
7 going to be.

8 Well, about 60 feet out in front of the stop
9 area is where Ms. Bundy's vehicle was at the time
10 of collision. So if we look at what kind of
11 obstruction we have out at 60 feet from a 4-inch A
12 pillar, it's a width of about 6.7 feet. A vehicle
13 like Ms. Bundy's is six and a half feet wide. If
14 we use a 6-inch A pillar, that distance is little
15 bit over 10 feet. So when you get out to some
16 distance, it obscures quite a bit.

17 Now, we're not generally concerned with those
18 because when we come up with a perpendicular
19 intersection, those A pillars are generally pointed
20 off in directions where there's no traffic. You
21 may be concerned about a pedestrian on the sidewalk
22 or bicyclist or something like that, but generally
23 it's not a problem. But when you come up to a
24 skewed intersection like this, it can be in the
25 area of concern. And if you skew the other way,

1 then you're concerned with the right side A pillar.
2 Or if it's skewed a lot, you may even be concerned
3 with a B pillar.

4 Q How do you see around these blind spots? What are
5 you supposed to do?

6 A Well, one, you look more than once and you look
7 from more than one position. So if you look to the
8 left in this position, and then to the right, when
9 you look back to the left, if you change positions
10 somewhat, move forward or move back, then you'll
11 clear that driver's side A pillar.

12 Q And is that similar to if you're in your automobile
13 vehicle and you're trying to merge into a left lane
14 that you can lean forward and look in the mirror,
15 you can turn around to look and try to evaluate
16 that blind spot, is that similar movements that you
17 would do for any blind spot?

18 A Yes.

19 Q All right. So this preliminary opinion, did you
20 prepare some still photos evidencing the blind spot
21 that you're speaking of, the A pillar?

22 A Well, what I did is I put it into a CAD program,
23 brought in a model, a 3-dimensional model of a
24 Sterling truck --

25 Q Let me stop you there, sir. What's a CAD program?

1 A A computer-aided design, a drawing program.

2 Q Go ahead.

3 A An engineering modeling program. And also brought
4 in a 3-dimensional model of the automobile. I put
5 them out in their respective positions and
6 demonstrated that the blind spot would obscure or
7 could obscure this automobile.

8 Q Okay. And when you say Sterling truck, why did you
9 use a Sterling truck model?

10 A The truck involved was a Sterling and I happened to
11 have one, so I used it. It really doesn't matter,
12 particularly. All vehicles have this problem. If
13 you've got a roof, you've got this problem. A
14 motorcycle doesn't have it, but just about
15 everything else does.

16 MR. MCDONALD: May I approach the witness,
17 Your Honor?

18 THE COURT: Yes.

19 (Mr. McDonald approaches.)

20 BY MR. MCDONALD:

21 Q This is Plaintiff's Exhibit 10. Is this something
22 you created?

23 A Yes.

24 Q What does that depict?

25 A That depicts a truck coming up to the stop sign,

1 moved over to the right to get a little clearance
2 for this island. And it depicts a support utility
3 vehicle, white in color, out stopped at the
4 intersection. I put the automobile over to the
5 left because that's what the photograph showed it
6 was. You have a dedicated left turn lane here for
7 traffic turning into there, so in order to avoid
8 that dedicated turn lane and allow traffic to
9 continue turning behind you, it would be reasonable
10 to pull out to this position. Putting the
11 automobile in that position, you can look back, a
12 straight line to the truck and the driver's
13 position is across the A pillar.

14 A truck also has another major blind spot on
15 it, that is the left mirror. On your automobile,
16 it's generally below the height of objects you're
17 looking at, but on a truck, it's not. A truck will
18 have a vertical mirror. It's typically going to be
19 six to eight inches wide and probably about yay
20 long. They -- if you jockey the truck a little bit
21 further to the right, then that mirror comes into
22 play. That mirror is actually a larger obstruction
23 than the A pillar.

24 Q And did you also create Plaintiff's Exhibit 12,
25 which is in evidence, sir?

1 A Yes.

2 Q What does that depict?

3 A I used another program. It's another type of CAD
4 program, but it's designed for accident
5 reconstructionists as opposed to engineers. And
6 one of the things it does is it will animate an
7 accident using model vehicles. So this is an
8 animated -- or a still shot from an animated
9 version of the accident.

10 Q And did you also create, sir -- and does that
11 depict the blind spot of both the mirror and the A
12 pillar?

13 A Yes, it does.

14 Q Did you also create, sir, Plaintiff's --

15 A You've got a little bit of support for the mirror,
16 but it's much smaller.

17 Q Plaintiff's Exhibit 11, which is in evidence?

18 A Yes.

19 Q What does that depict?

20 A This depicts the effect of the blind spot with a
21 little bit of the automobile sticking out. I could
22 actually move that a little bit to the right and
23 you don't see any of the automobile. But here,
24 I've got it so a little bit is shown so that you
25 can see it obscures most of it.

1 Q All right, sir. And those come from the two
2 programs you ran, the CAD program and the 3D
3 accident reconstruction program, correct?

4 A Yes.

5 Q Did you also create some animations?

6 A I did.

7 Q Can you see that from where you are, Mr. Poplin?

8 A Yes.

9 Q And the first animation I'm going to show you is AP
10 Auto, sir. And what was the purpose of that
11 animation, sir?

12 A The purpose of that animation is to show you when
13 you start out that vehicle is not visible. And as
14 it goes through the motions, if you continue to
15 look at that spot, you can see the automobile come
16 into view. The second one shows you a situation --

17 Q Well, let's watch the first one again so you
18 explain it, sir.

19 A There's a little bit of jerking, but that's just a
20 function of the software.

21 Q So, the first animation shows that the vehicle was
22 obscured at the point that the tractor-trailer
23 moves forward, correct?

24 A Correct.

25 Q Now, did you do a second animation?

1 THE COURT: One second.

2 Can you all see?

3 THE JURY: Yes.

4 THE COURT: Can everyone see?

5 THE JURY: Yes.

6 MR. MCDONALD: Thank you, Your Honor.

7 BY MR. MCDONALD:

8 Q Did you do a second animation, sir?

9 A I did.

10 Q And what does that animation depict?

11 A That is the same animation, except it's having the
12 focus of the camera in a different area. So
13 instead of focusing on the automobile where you see
14 the automobile eventually, as it comes into view,
15 it pans left, it pans right, and then it looks
16 right as the vehicle moves forward into the median.

17 Q Why would you have it look right as the vehicle
18 moves forward in the median?

19 A Because a driver making that maneuver is going to
20 want to be looking towards the traffic he is now
21 concerned about, which is coming from his right.

22 Q The traffic on the other side of the median?

23 A Correct. Southbound traffic.

24 Q Yes, sir. All right, sir. And so you came up with
25 these. What additional things did you do after you

1 came up with the animations and the measurements
2 from Google Earth?

3 A Well, at that point, I wrote you a letter or short
4 report type deal summarizing what I saw. And then
5 I eventually made a trip to the accident site to
6 lay out the area where the automobile was and view
7 it coming up to the stop. I used my vehicle. The
8 A pillar -- in a typical stop, normal stop, the A
9 pillar was right in line with where that automobile
10 would have been.

11 Q So you went out to the crash site, correct?

12 A Correct.

13 Q Okay. And did you take photographs?

14 A I did.

15 Q Did you take measurements?

16 A I did.

17 Q Did you make any markings on the intersection
18 itself?

19 A Yes.

20 Q And you made observations using your own vehicle as
21 the A pillar, correct?

22 A Correct.

23 Q And I understand that you used -- in your 3D
24 program, you used a Sterling truck. Did it matter
25 that you didn't have the actual Sterling truck out

1 there?

2 A Well, it didn't really matter to me because I know
3 it's an obstruction in all vehicles. At one point,
4 we discussed getting the truck out there and made
5 an effort to get the truck, the actual truck there.
6 For whatever reason, that did not work out.

7 Q Do you know what that effort was to try to get the
8 truck there?

9 MR. GRANTLAND: Objection, Your Honor. We're
10 getting into -- this is not evidence, this is --
11 this testimony is not appropriate for the jury.
12 This is about scheduling his inspection, which is
13 certainly not evidence in this case.

14 THE COURT: What's the question again?

15 MR. MCDONALD: Does he know what the effort
16 was to get the truck out there.

17 THE COURT: Sustained.

18 BY MR. MCDONALD:

19 Q All right, sir. And some of the pictures that you
20 utilized were of the vehicles as were taken of the
21 crash site itself, correct?

22 A Correct.

23 Q Okay. And if you would, I've got a few questions.
24 Do you know -- on Plaintiff's Exhibit 7, bottom
25 left-hand corner, do you know what this debris is

1 behind Ms. Bundy's vehicle?

2 A Yes.

3 Q What is that?

4 A That's tempered glass.

5 Q And where is that from?

6 A From the back window.

7 Q Okay. And is the back window broken in this
8 picture?

9 A Yes.

10 Q And on the top left-hand side, is Ms. Bundy's
11 vehicle obscured by the tires, by the drive tires
12 of the truck, the tractor-trailer itself?

13 A On the front of it.

14 Q And also in that picture, can you tell whether or
15 not the tractor-trailer is actually out in oncoming
16 traffic, the front cab of it?

17 A Basically, from the right side fuel tank forward is
18 in the southbound travel.

19 Q Okay. And we've got a blow-up here of the picture
20 in the middle. And I'd like to ask you a couple of
21 questions about that. This is Defendant's
22 Exhibit 4. Have you reviewed that picture before?

23 A Yes.

24 Q Okay. And are these the dotted lines that
25 differentiate the median from oncoming traffic?

- 1 A Yes.
- 2 Q Okay. So the truck is out in oncoming traffic at
3 this location?
- 4 A The nose of it is.
- 5 Q Now, can you tell which way this front driver's
6 side wheel is turned?
- 7 A It's turned to the right.
- 8 Q Turned to the right?
- 9 A Yes.
- 10 Q And if a truck was making a left-hand turn, would
11 there be any reason to have the wheel turned to the
12 right?
- 13 A Not that I'm aware of.
- 14 Q Also, Defendant's Exhibit 1, this is a blow-up. Is
15 that the debris we discussed earlier?
- 16 A Yes.
- 17 Q Five, four, five, six feet or so behind the car?
- 18 A Yes.
- 19 Q Now, if the driver of the Sterling truck had made
20 appropriate movement inside the cab, could he have
21 observed Ms. Bundy out of the median?
- 22 A If he cleared his A pillar and made an attempt to
23 look around it, he would be able to see that spot,
24 yes.
- 25 Q Okay. And if that had been done, could the

1 collision have been avoided?

2 A Assuming she's out there, yes.

3 MR. MCDONALD: That's all I have, Mr. Poplin.

4 Thank you very much.

5 MR. GRANTLAND: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. GRANTLAND:

9 Q Good morning, Mr. Poplin.

10 A Good morning.

11 Q You were hired by Mr. McDonald's firm in 2016 to be
12 their expert witness, is that correct?

13 A That's my understanding, yes.

14 Q And you're being paid \$250 an hour to be their
15 expert?

16 A Yes.

17 Q When you were sitting here yesterday during the
18 opening of the case and Ms. Bundy's testimony, you
19 were being paid \$250 an hour?

20 A Yes, sir.

21 Q How much have you been paid to date?

22 A I don't know exactly, but I would suspect it's
23 somewhere in the neighborhood of \$5- or \$6,000.

24 Q The main question in this case, Mr. Poplin, as you
25 know, is who got to the median first, Ms. Bundy or

1 Mr. Jett. Can you say to a reasonable degree of
2 engineering certainty whose car or truck got to the
3 median first?

4 A I can't say who got there first. I can say there's
5 a reason for the descriptions we had.

6 Q You can't Ms. Bundy got to the median first and you
7 can't say Mr. Jett got to median first, can you?

8 A Not from the physical evidence.

9 Q There's no physical -- as you said, there's no
10 physical evidence that one person was there before
11 the other?

12 A Correct.

13 Q But you have to admit that it's certainly possible
14 that Mr. Jett pulled into the median before
15 Ms. Bundy?

16 A That's possible, yes.

17 Q And even though you can't say with certainty who
18 got to the median first, your opinions for this
19 jury assume that Ms. Bundy got there first?

20 A The descriptions I have given would be under the
21 assumption she is there first.

22 Q I mean, you're her expert and --

23 A As I said, I can't tell you who got there first. I
24 can tell you there's a blind spot.

25 Q And you admit your assumption may be incorrect?

1 A That is a possibility, yes.

2 Q You do have some opinions about the truck and
3 Mr. Jett, and I want to talk to you about that.
4 When we took your deposition, you said you looked
5 at the deposition of Mr. Jett?

6 A Yes.

7 Q Did you read Ms. Bundy's deposition?

8 A Yes.

9 Q Okay. When I took your deposition -- when we took
10 your deposition, you had not read her deposition
11 yet?

12 A I didn't have it at that point.

13 Q Do you have it now?

14 A I have it now.

15 Q Did you ever interview Ms. Bundy?

16 A No.

17 Q So you were here all day yesterday and you never
18 talked to Ms. Bundy?

19 A No.

20 Q Let's look at Exhibit 14. I want to ask you some
21 questions about that. It's the blow-up of the
22 median you did. I'll ask you some questions about
23 this.

24 A Sure.

25 Q All right. Now, this is your Google Earth blow-up

1 of the median?

2 A Yes.

3 Q And you say Ms. Bundy, when she pulled out, she
4 would be way over here?

5 A Yes.

6 Q Now, Mr. Poplin, why -- I mean, I'm confused by
7 that because if she's way over on the left,
8 wouldn't she block traffic that's making a left
9 turn onto black River Road?

10 A No. It would be just the opposite. If she pulls
11 out in the middle, she blocks left-turning traffic.

12 Q When she pulls out, wouldn't it make more -- when
13 she pulls out from here, wouldn't it make more
14 sense for her to go straight into the median and
15 let the left-turning traffic have that side of the
16 median?

17 A No.

18 Q That doesn't make sense to you?

19 A No. That's not what I would do.

20 Q You would pull over here?

21 A I would pull exactly where this automobile was.

22 Q Now, there's another reason she could be way over
23 here, she could be trying to get around something
24 that's in her way, isn't that correct?

25 A I -- it's certainly a possibility.

1 Q Okay. And you're also of the opinion that if
2 Ms. Bundy got to the median first, Mr. Jett's view
3 of her was blocked by the side window or the A
4 pillar of his front windshield, is that right?

5 A Well, what I'm saying is, there is an obstruction.

6 Q Okay.

7 A There's no doubt about that.

8 Q Okay. You did not inspect Mr. Jett's truck. Did
9 you inspect a similar truck?

10 A I have inspected a lot of similar trucks. I have
11 looked at probably a thousand tractor-trailers.

12 Q Did you put a tractor-trailer -- one of the
13 thousands that you've inspected, did you put a
14 tractor-trailer at the stop sign to see what you
15 could see or not see from the median?

16 A No. I did make the request that we attempt to get
17 this particular truck out at the accident site.

18 Q Okay. You say --

19 A Because I thought it would be helpful in convincing
20 y'all that it's a problem.

21 Q You said the A pillar could have blocked his view?

22 A Yes.

23 Q That's your word, could have. And the length and
24 the width of the A pillar, you say, is about four
25 to six inches?

- 1 A Four to six inches is typical.
- 2 Q Okay.
- 3 A I just wanted to have an example of something.
- 4 This is just under four inches wide. And if you
- 5 hold it out like -- you know, about where an A
- 6 pillar would be, it basically blocks not quite all
- 7 of those doors over there.
- 8 Q What's that, a tie box you have there?
- 9 A It's actually a ruler box.
- 10 Q Okay, a ruler box, okay.
- 11 A You can do the same thing with an envelope, just a
- 12 standard envelope.
- 13 Q Now, did you --
- 14 A This is four inches wide.
- 15 Q Did you measure the A pillar of any Sterling truck?
- 16 A I can't say I specifically measured a Sterling
- 17 truck. I've measured a lot of A pillars.
- 18 Q Okay.
- 19 A My particular A pillar is a little wider than this.
- 20 Q The A pillar on your truck --
- 21 A On my pickup.
- 22 Q -- or on a pickup truck? You have a Honda pickup
- 23 truck?
- 24 A I do.
- 25 Q You still have the Honda pickup truck?

1 A I do.

2 Q And your A pillar is about four inches wide?

3 A It's a little wider than this, so it's probably
4 closer to five inches wide.

5 Q And that's part of your opinion, you looked at the
6 A pillar on your Honda pickup truck to come up with
7 the opinion that an A pillar, in general, can block
8 someone's view?

9 A I did that as a demonstration and I took
10 photographs of the area that I marked out in the
11 intersection that would be covered by the
12 automobile. But I could do that with any vehicle.

13 Q Can you say with certainty that the A pillar on
14 your pickup -- Honda pickup truck is the same size
15 and width and length as the A pillar on the
16 Sterling tractor-trailer truck?

17 A I'm absolutely 100 percent positive it's not
18 identical.

19 Q Okay.

20 A But it's similar.

21 Q And Thomas also would have been seated up higher in
22 his tractor-trailer than you would be in your Honda
23 pickup truck, wouldn't he?

24 A That's true, but it's still there as an
25 obstruction.

1 Q And sitting up higher, his visibility would be
2 different than yours would be sitting in your
3 pickup truck, wouldn't it? His visibility of the
4 scene sitting up high would be a lot different than
5 yours in the pickup truck, wouldn't it?

6 A It is different. It's not a lot different.

7 Q Right.

8 A Not with respect to what we're talking about.

9 Q Okay. Again, you want the jury to assume two
10 things. Number one, you want them to assume
11 Ms. Bundy was in the median first, and if she was
12 in the median first, then it's possible the A
13 pillar or the mirror of the truck you didn't
14 inspect could have blocked her view, is that
15 correct?

16 A That's not quite correct. I'm not saying she was
17 there first. She's saying she was there first.

18 Q Right.

19 A I'm saying Mr. Jett did not see her automobile at
20 any point. He didn't see it when he pulled in the
21 intersection. He didn't see it as he starts up.
22 He's got a spot mirror on the left. If he clears
23 his left side as he's starting his left turn, he
24 didn't see it then.

25 Q And you're not --

1 MR. MCDONALD: Your Honor --

2 Q You're not --

3 MR. MCDONALD: Your Honor, can he please
4 finish his answer before he's interrupted?

5 THE COURT: Yes, let him finish his answer.

6 THE WITNESS: I'm saying there is a physical
7 obstruction from the stopped area out to this
8 position of the median.

9 Q A 4- to 6-inch object would be that obstruction?

10 A Yes.

11 Q But what about his whole windshield? How big is a
12 windshield on a Sterling?

13 A It's roughly six feet wide, three feet high.

14 Q It's bigger than your pickup truck windshield,
15 isn't it?

16 A Yes.

17 Q So, I mean, he has that whole -- are there any
18 obstructions in the windshield to keep him from
19 seeing what's in front of him?

20 A Yes. There's a left side A pillar, a right side A
21 pillar, a rearview mirror.

22 Q But, I mean, there's a whole lot of that windshield
23 that you can see -- the purpose of the windshield
24 is to be able to see out of it, isn't it?

25 A Yes.

1 Q So he had that windshield to view Ms. Bundy in
2 the -- if she was in the median first, he had that
3 whole windshield to see her too, didn't he?

4 A Well, from the normal position, that windshield is
5 to the right of the area we're concerned with.

6 Q Now, you're not saying you're a better truck
7 driver?

8 A No.

9 Q Okay. And you don't have any experience as a
10 commercial truck driver?

11 A That's correct.

12 Q Now, for you to be correct, Mr. Poplin, Thomas had
13 a lot of opportunities to see Ms. Bundy, but he
14 didn't, is that right?

15 A Correct.

16 Q So he should have seen her at the stop sign when
17 she was allegedly in front of him, isn't that
18 right?

19 A Yes.

20 Q Now, is that on your animation when -- again, if
21 Ms. Bundy's right and she's in front of -- her
22 Mercedes is in front of his truck at the stop sign
23 and they're both waiting for traffic, is that on
24 your animation?

25 A No.

1 Q Okay. You didn't put that on -- why didn't you put
2 that on your animation?

3 A Well, I think the description is she was there
4 first and she proceeded into the median and then he
5 comes up, so.

6 Q No, that's not -- she said he was behind her,
7 that's what she said yesterday. Did you hear that
8 testimony?

9 A Well, behind you doesn't necessarily mean stopped
10 behind you.

11 Q Well, I'm not going to mince words with you, but if
12 Thomas was -- if what she says is true and Thomas
13 was behind her at the stop sign, he should have
14 seen her, isn't that right?

15 A Yes.

16 Q I mean, that's where it all started. If she was in
17 front of him, he should have seen her when they're
18 both stopped at the stop sign?

19 A Yes.

20 Q But that's not on your animation?

21 A That's correct. And my animation starts up with
22 him stopped at the stop sign.

23 Q How about when she -- if he's behind her and she
24 pulled across two lanes of travel, he should have
25 seen her then, shouldn't he?

1 A Yes.

2 Q Okay. And is that on your animation?

3 A No.

4 Q You left that off your animation too, didn't you?

5 A Well, I left everything prior to him being at the
6 stop sign off the animation, yes. And I left
7 everything after that off.

8 Q And he should have seen her when he pulled across
9 two lanes of the highway, isn't that right?

10 A If he's not looking in that direction, he's not
11 going to see her.

12 Q But if he is looking in that direction, he would
13 see her?

14 A If he's looking in that direction as he pulls off,
15 he should see an automobile out there.

16 Q And, likewise, he should have seen her when he
17 pulled into the median, isn't that correct?

18 A Again, he's got to look in that direction to do
19 that.

20 Q Okay. I mean, but it all starts -- if what she
21 says is true, it all started with him being behind
22 her at the stop sign where he would have had a
23 perfect view of her car pulling out into the
24 median, isn't that right?

25 A That's correct.

1 Q If what she says is true. Okay. Let me shift
2 gears. I will show you another photo that I want
3 to ask you some questions about. You've seen this
4 photo?

5 A Yes.

6 Q It's taken -- I guess we can't tell whether the car
7 is separated from the tractor-trailer or not, the
8 rear of the car is separated or not, but --

9 A Well, we have another photo which basically shows
10 it's not.

11 Q Well, is his tire in the turn lane or is it in the
12 lane of travel?

13 A Which one?

14 Q The front -- driver's side front tire.

15 A The driver's side front tire is in the southbound
16 travel lane.

17 Q Okay. How far is the tractor part ahead of
18 Ms. Bundy's car in the median? How many feet? I
19 mean, estimate. You don't have --

20 A I would say 15.

21 Q Fifteen feet. You think --

22 A Ten or 15 feet. You -- basically, you've got the
23 cab structure ahead of the trailer.

24 THE COURT REPORTER: I'm sorry, I didn't hear
25 that.

1 THE WITNESS: You have got the cab structure
2 ahead of the trailer.

3 Q So for you to be right, Mr. Poplin, Thomas had to
4 drive past her about 15 feet and still not notice
5 her until the trailer hit the side of her car?

6 A Yes. That's pretty easy to do if you're looking
7 right.

8 Q Okay. Now, did you -- you didn't talk to
9 Ms. Bundy, but you read her deposition?

10 A I did.

11 Q Are you aware that your client, Ms. Bundy,
12 testified that she didn't see Thomas until after
13 the -- after her rear window broke?

14 A Yes.

15 Q So, but the tractor-trailer is 15 feet ahead of
16 her?

17 A Yes.

18 Q So where was Ms. Bundy looking?

19 A She can't be looking right.

20 Q Yeah, she can't, because if she was looking right,
21 she'd see a truck, wouldn't she?

22 A Yes.

23 Q And I'm not trying to be rude, Mr. Poplin, but I
24 mean, basically, you're -- are you being paid to
25 assume that Mr. Jett can drive out of a median

1 into -- out of a stop sign into the median and not
2 see anything in front of him and that Ms. Bundy can
3 have a truck drive by her 15 feet and not see that
4 until she's hit, is that essentially your
5 testimony?

6 A Yes. I look at accidents where people don't see
7 things.

8 Q Okay. Mr. Jett can just drive from the stop sign
9 into the median without seeing anything and she can
10 have a truck drive 15 feet in front of her and not
11 see it?

12 A Yes.

13 Q Again, for your theory to be right, Mr. Jett had at
14 least four opportunities or more to see Ms. Bundy:
15 At the stop sign, when she crossed the road, when
16 he crossed the road, and when he drove past her
17 stopped car? Isn't that right?

18 A That is absolutely correct.

19 Q Okay. But despite these opportunities, he either
20 didn't look at her or a piece of metal blocked his
21 view?

22 A No. If you stop and think about it a minute, do
23 you remember the last vehicle ahead of you at a
24 stop sign? Probably not. So, you know, once that
25 vehicle moves on, if you don't see it at that

1 point, the fact that you saw it 30 seconds ago
2 doesn't mean anything to you.

3 Q Well, there's one other theory, isn't there,
4 Mr. Poplin? I mean, the other theory is you could
5 be wrong, isn't that right?

6 A I can't be wrong with what I said.

7 Q I mean, you could be wrong --

8 A I said there was a blind spot.

9 Q I mean, if Officer Patton, who got there five, ten
10 minutes after the accident, didn't know who got in
11 the median first, there's no way for you to know,
12 is there?

13 A I'm not telling you who got in the median first.

14 Q Okay.

15 A I'm telling you why both drivers could be telling
16 absolutely the truth.

17 Q And if Mr. Jett was in the median first, then your
18 theories are not correct? The rest of your case is
19 not correct?

20 A If he was there first, then the blind spot has
21 nothing to do with anything.

22 Q Exactly. And there's no physical evidence saying
23 her car was in the median before Mr. Jett?

24 A There's no physical evidence. I mean, we have
25 circumstantial evidence. Why would you pull left

1 of a trailer you can't see to the right of?

2 Q I'm not asking you to -- you don't need to take the
3 role of the jury. The question is, there was no
4 physical evidence that Ms. Bundy's car was in the
5 median before Mr. Jett, was there?

6 A There's no physical evidence.

7 MR. GRANTLAND: Thank you. No further
8 questions.

9 MR. MCDONALD: Your Honor, may we approach?

10 THE COURT: Yes, sir.

11 (WHEREUPON, a bench conference was held
12 in the presence of the jury but out of
13 the hearing of the jury.)

14 THE COURT: Ladies and gentlemen of the jury,
15 I am going to send you all out for a brief moment
16 while I take up a matter of law. Please do not
17 discuss the case.

18 Thank you.

19 (WHEREUPON, the jury retires to the jury
20 room at 11:44 a.m.)

21 MR. MCDONALD: Yes, Your Honor, my point is
22 simply, I understand your ruling from earlier when
23 I asked about the efforts that were made and
24 Mr. Grantland objected that's not in evidence.
25 And -- but then on cross-examination, he spent a

1 significant amount of time talking about, Well, you
2 just used your Honda truck and didn't use a
3 Sterling truck. We sent a request to produce the
4 Sterling truck. They didn't do it. They said they
5 had something else going on, give them further
6 dates. We gave them further dates, didn't hear
7 from them again.

8 So I don't think they should be able to not
9 properly respond to requests for production and
10 then take advantage of it on cross-examination and
11 not allow me to have this witness, who it's his
12 file, he's privy to it, I was coordinating with him
13 the whole time so could be present for it, to say
14 we sent a request for production, asked for the
15 truck and it wasn't produced. That's the only
16 thing I want to go into. And based on that
17 cross-examination, I think he's opened the door.

18 MR. GRANTLAND: Your Honor, this was a past
19 discovery dispute. We had scheduling issues. He
20 gave us dates, we gave him dates. It didn't get
21 scheduled. Mr. McDonald never filed a motion to
22 compel or anything like that against us. And it
23 was just a matter of trading e-mails with each
24 other regarding dates. We never purposely withheld
25 the tractor-trailer from Mr. Poplin or

1 Mr. McDonald. It didn't get -- it just didn't get
2 scheduled. He sent us dates, we sent him dates,
3 and that was it.

4 And I don't think I opened any doors. I tried
5 to -- I mean, my point was he -- I think he said
6 very clearly he's inspected thousands of Sterling
7 trucks. So I don't see how I opened the door to
8 anything. This was a scheduling between the two of
9 us. There were no motions to compel because it
10 never got that far. He asked to come, we gave him
11 dates, he had conflicts. We had other dates, but
12 we didn't get it done.

13 MR. MCDONALD: In my last communication, Your
14 Honor, I sent a request to produce -- we sent a
15 letter saying, Hey, we're going to be out there on
16 May 22nd, haven't heard from back from you. We get
17 an e-mail saying, We're busy, we're in mediations,
18 can you get some more dates. We sent them more
19 dates, June 2nd, 6th, 7th, or 8th, and never heard
20 back. I mean, I think I'm entitled --

21 THE COURT: Well, I guess -- I mean, he makes
22 a point. We understand what the rules say. If he
23 doesn't produce -- I don't want to get into a
24 discovery dispute here, but was there any motions
25 to compel filed?

1 MR. MCDONALD: Well, there was not a motion to
2 compel filed, but I don't think I'm required in
3 order to publish the discovery request to file a
4 motion to compel. This discovery request was
5 properly served. It was received by them. And I
6 just want to publish that to the jury to say this
7 is what was said, have it there on such and such a
8 day. And Mr. Poplin was scheduled to be there that
9 day, and they didn't do it.

10 THE COURT: What is the question that you want
11 to ask?

12 MR. MCDONALD: I want to -- and it doesn't
13 even have to be a question, if I can at least
14 publish the discovery requests that I have here to
15 them.

16 Pursuant to Rule 34, Plaintiff, Heather
17 A. Bundy, hereby served this request for
18 the production and inspection of the
19 Sterling tractor involved in the motor
20 vehicle wreck, which is the subject of
21 the action. The time and place for the
22 production of inspection shall be
23 May 22nd, 2017, at 10:00 a.m., at the
24 intersection of US 521 Broad Street and
25 Black River Road, Camden, South

1 Carolina.

2 And then I can ask Mr. Poplin, Were you
3 scheduled to be there that day? And, Did it ever
4 happen? No. And there was no objection that was
5 filed to it.

6 MR. GRANTLAND: We certainly didn't object. I
7 mean, this was about scheduling, Your Honor. If I
8 need to go back and find e-mails and phone calls
9 between his assistant and mine about setting up a
10 --

11 THE COURT: My concern is, I don't want to get
12 into a discovery dispute in front of the jury. You
13 can ask him -- I'm just trying to think if there's
14 some way to craft the question where you can ask
15 him, Did we request to see the truck? And, Did
16 that ever happen?

17 MR. GRANTLAND: And I don't object to that. I
18 think he's already said that.

19 THE COURT: But as far as getting into, We
20 said on this date, that's not proper before the
21 jury.

22 MR. MCDONALD: Well, I think it is.

23 THE COURT: That's an issue you take up on a
24 motion to compel.

25 MR. MCDONALD: No, I --

1 THE COURT: If they did not do something that
2 they were supposed to do -- we listen to motions to
3 compel all the time.

4 MR. MCDONALD: But there are no objections to
5 this, so I would just submit I can --

6 THE COURT: It doesn't have to -- if he didn't
7 produce it then, that means you file a motion to
8 compel.

9 MR. MCDONALD: Yes, but it still doesn't get
10 rid of the fact that I sent them this request.

11 THE COURT: I understand that.

12 MR. MCDONALD: And I think I can publish the
13 request to the jury.

14 THE COURT: I'm saying that this is not the
15 venue to dispute him not giving you -- or allowing
16 you to see the truck. There was -- I mean, you all
17 said this has been scheduled four times. You know
18 it's going to trial and they have not -- I mean, if
19 they didn't produce it, then you file a motion to
20 compel to make them do it.

21 MR. MCDONALD: But now he's using it to our
22 prejudice, the fact that they didn't do it to our
23 prejudice.

24 THE COURT: I understand. And I'm going to
25 allow you to ask the question, Are you aware if it

1 was requested to see the truck? Did you have an
2 opportunity to review -- but I don't think we need
3 to get into the dates and the times and, I sent an
4 e-mail and they didn't respond back. That -- now,
5 you're putting yourself as a witness in the case,
6 and you cannot do that.

7 MR. MCDONALD: I understand that completely,
8 Your Honor, and I wasn't going to go into any of
9 that. I simply wanted to say, Do you know whether
10 a request was made, okay, to have the truck
11 available for your inspection? He does. Yes, I do
12 know that. Okay. Did they produce the truck for
13 your inspection at any time after that request?
14 No.

15 MR. GRANTLAND: And he's already said that.

16 THE COURT: All right. And I think that's the
17 question I said earlier, and he said he was fine
18 with that.

19 MR. MCDONALD: No, no, no, that was the
20 question I was asking that he objected to and said
21 this is not evidence. I asked a question, I said,
22 Do you know what effort was made? The question
23 was, We asked for the truck. He hadn't said that.

24 What his testimony was, I know there was
25 something -- an effort undertaken to try and get

1 it. We never got to the point where we got to say
2 we asked them for the truck.

3 THE COURT: Okay. Proffer the question. Ask
4 the question, let him answer it, and then we'll go
5 from there.

6 MR. MCDONALD: Thank you very much, Your
7 Honor.

8 BY MR. MCDONALD:

9 Q Mr. Poplin, do you know whether or not
10 representatives of Ms. Bundy asked the Defendants
11 to produce the truck at this intersection for your
12 review?

13 A Yes.

14 Q Did they or didn't they?

15 A They did not.

16 MR. MCDONALD: Okay. Thank you.

17 MR. GRANTLAND: Your Honor, that gets into --
18 I mean, that's different from what he said on his
19 direct of Mr. Poplin. I'm okay with that, but then
20 that -- I mean, I don't want to --

21 THE COURT: And then let's move on.

22 MR. GRANTLAND: Yes, let's move on.

23 THE COURT: You can't get into, We sent
24 e-mails and --

25 MR. MCDONALD: I'm not going to get in any of

1 that.

2 THE COURT: All right. Bring them back in.

3 (WHEREUPON, the jury came into open

4 court at 11:51 a.m.)

5 THE COURT: All right. Yes, sir, you may

6 continue.

7 MR. MCDONALD: Thank you. Very briefly, Your

8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. MCDONALD:

11 Q Mr. Poplin, do you know whether or not
12 representatives of Ms. Bundy asked the Defendants
13 to produce the Sterling truck at the intersection
14 that is subject here today?

15 A Yes.

16 Q And do you know whether or not the Defendants
17 actually produced that truck?

18 A It was not produced.

19 Q Now, you were asked some questions about
20 Defendant's Exhibit --

21 MR. MCDONALD: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 (Mr. McDonald approaches.)

25

1 BY MR. MCDONALD:

2 Q Four. And you were asked some questions about this
3 tractor-trailer being in front of Ms. Bundy's
4 vehicle, correct?

5 A Correct.

6 Q Okay. And it's not depicted on this picture, but
7 based upon the location of the glass, okay, where
8 the vehicles came to rest was not the initial point
9 of impact, correct?

10 A Correct.

11 Q So this picture that you were asked all those
12 questions about, Defendant's Exhibit 4, is not
13 where they first came in contact with one another,
14 correct?

15 A Correct. The truck has moved forward and the
16 automobile has moved forward. And the automobile
17 wheels are turned left, so as it moves forward,
18 it's going to rotate to the left.

19 Q Now, you were asked a number of questions about
20 whether or not there was any physical evidence that
21 Ms. Bundy was in the median first. Do you recall
22 those questions?

23 A Yes.

24 Q Was there anything physical evidence Mr. Jett was
25 in the median first?

1 A No.

2 Q And the opinions that you gave, did you disregard
3 any of the testimony of the Defendants or the
4 Plaintiff, or did you take into account everything
5 that was given to you?

6 A I looked at what was said about the accident and
7 there is a scenario consistent with that.

8 Q And the opinions that you've given here today are
9 to a reasonable degree of engineering certainty?

10 A Yes.

11 MR. MCDONALD: Thank you very much,
12 Mr. Poplin.

13 THE COURT: All right, you may step down, sir.

14 THE WITNESS: Thank you.

15 THE COURT: Any objection to this witness
16 being excused?

17 MR. MCDONALD: None from the Plaintiff.

18 MR. GRANTLAND: No objection, Your Honor.

19 THE COURT: All right. thank you.

20 (Witness steps down and is excused.)

21 MR. MCDONALD: Your Honor, the next -- I
22 realize the jury just went out. I really
23 apologize. The next witness is via video, it might
24 take two minutes to set up because I've got to
25 switch out the thumb drive on it.

1. THE COURT: You can go ahead and do that.
2 They're probably fine sitting and waiting.

3 (Pause.)

4 MR. MCDONALD: Your Honor, at this time, the
5 Plaintiff would call Dr. Andrew Cannestra.

6 THE COURT: Ladies and gentlemen of the jury,
7 testimony is now going to be presented to you by a
8 video deposition.

9 A deposition is a document containing sworn
10 testimony given by a witness outside of court in
11 the presence of lawyers for each party who may ask
12 questions of the witness. If any objection is
13 made, I will rule on the objection when the
14 deposition is read.

15 This testimony is entitled to the same
16 consideration and is to be judged as to credibility
17 and weighed by you in the same way as if the
18 witness was present and gave the testimony about to
19 be read to you from the witness stand. It is then
20 for you to decide and determine the effect, value,
21 weight, and truth of the testimony given in the
22 deposition.

23 Thank you.

24 MR. MCDONALD: Do you mind asking the jury if
25 they can see that?

1 THE COURT: Can you all see? Everyone can see
2 and hear?

3 THE JUROR: It's really loud.

4 THE COURT: It's really loud? So you're good?
5 Okay.

6 (WHEREUPON, the deposition of Dr. Andrew
7 Cannestra was played for the jury.)

8 THE COURT: All right, ladies and gentlemen of
9 the jury, we will take a break. She is checking on
10 something for me real quick. You have another
11 witness lined up ready to go?

12 MR. MCDONALD: I do. I think she might be out
13 in the hall. I sent a message earlier and she was
14 here.

15 THE COURT: Let me see you all one second.

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: What we were conferring about, I
20 ordered lunch so you all would not have to go out.
21 And so they told us it would be delivered at 1:00
22 o'clock, and it is 12:54. I'm trying to decide if
23 we would call another witness while we wait. The
24 lunch is not here yet. It should be in here around
25 1:00 or a little after. Does anyone need to use

1 the restroom right now?

2 THE JUROR: So you're saying we can't leave?

3 THE COURT: We're going to eat lunch here,
4 yes.

5 THE JUROR: So we can't smoke a cigarette
6 outside?

7 THE COURT: They'll let you smoke your
8 cigarette, but because it's raining and we got
9 started late, I don't know if they're going to
10 do -- what they're going to do -- what the weather
11 is doing outside. I just ordered lunch thinking it
12 would be easier to eat and keep moving. We'll go
13 ahead and get started and when it gets here, we'll
14 just take a break and start back up.

15 Are you ready to call your next witness?

16 MR. MCDONALD: I am. The Plaintiffs call
17 Ms. Sarah Lustig.

18 (Witness approaches.)

19 THE CLERK: If you would raise your right
20 hand, please, and place your left hand on the
21 Bible.

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm to tell the
24 truth, the whole truth, and nothing but the truth,
25 so help you God?

1 THE WITNESS: Yes.

2 THE CLERK: Thank you. You may have a seat.

3 THE WITNESS: Thank you.

4 (Witness seated.)

5 SARAH LUSTIG,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCDONALD:

9 Q Ready, Ms. Lustig?

10 A Yes.

11 Q Ms. Lustig, what is your profession? What do you
12 do?

13 A Well, first of all, I'd like to apologize for the
14 way I sound. I have a cold and sometimes my voice
15 will not work today, so I apologize for that.

16 Q No need to apologize for it. If you can't hear me,
17 I'm standing back here, just let me know and I'll
18 move up closer.

19 A Okay. Thank you. I'm a registered nurse licensed
20 in the State of South Carolina and I have
21 certifications in life care planning. And those
22 are voluntary certifications.

23 Q We'll go through that in a second. Where are you
24 from?

25 A Charleston, South Carolina.

1 Q And do you work just in Charleston or do you work
2 all over the state?

3 A All over the state.

4 Q Did you go to college?

5 A Yes.

6 Q Where did you go to college?

7 A Clemson University.

8 Q And did you graduate?

9 A Yes, from the school of nursing with a Bachelor of
10 Science.

11 Q Bachelor of Science in nursing?

12 A Correct.

13 Q Do you have any other degrees?

14 A No, I don't.

15 Q After you graduated with a Bachelor of Science in
16 nursing, what did you do?

17 A I began working as a registered nurse on the floor,
18 multiple floors in Roper Hospital in Charleston,
19 South Carolina.

20 Q And what kind of duties and responsibilities did a
21 registered nurse have at Roper Hospital at the
22 time?

23 A As a registered nurse, I was trained, certified,
24 and licensed to assess the human response to
25 illness or injury and take care of patients at the

1 bedside, formulating care plans to aid the patient
2 in returning home.

3 Q How long -- so essentially working with a patient
4 for medical care in the future to get to a point
5 where they can go back home?

6 A That's correct. Our goal as nurses in the hospital
7 is to get you back home.

8 Q And what did you do after you -- how long did you
9 work at Roper on the floor?

10 A For eight years.

11 Q Eight years?

12 A And I'm still currently a volunteer registered
13 nurse through the Medical University of South
14 Carolina.

15 Q What did you do after you left Roper?

16 A I had been starting my business as an expert in
17 life care planning. And so as I finished my
18 nursing career at Roper Hospital, I began full-time
19 as an expert in life care planning for attorneys in
20 that type of field.

21 Q And I notice -- you mentioned this briefly earlier,
22 do you have any certifications in South Carolina?

23 A Yes. I have three certifications that I have
24 acquired voluntarily through three associations.
25 Two are life care planning. One is nursing based,

1 one is rehab rehabilitation based, and the third
2 certification is brain injury. Also, I have
3 maintained my nursing license as well.

4 Q And are you a member of any professional
5 organizations associated with your work?

6 A Yes. A member of many nursing associations through
7 South Carolina and American -- ANA, which is the
8 American Nursing Association, life care planning
9 associations and organizations, such as the
10 International Commission of Healthcare
11 Certification, American Association of Nurse Life
12 Care Planners, the International Association of
13 Rehabilitation Professionals, the Life Care Planner
14 Network. So, various associations and
15 organizations that support my nursing career and
16 life care planning career.

17 Q Have you ever been published before?

18 A Through the Standards of Practice for the Academy
19 of Life Care Planning.

20 Q And do you have to do any continuing education for
21 your profession?

22 A Yes. So holding three certifications requires me
23 to keep them up through continuing education
24 contact hours. So for my three certifications,
25 two, I have to collect 80 hours every two years --

1 excuse me, every five years. One certification for
2 brain injury is I believe 30 hours, 20 to 30 hours
3 every year. My nursing license is 30 contact hours
4 every two years. So just reading articles, reading
5 books, attending conferences, continuing my
6 education through various forms, I collect hours to
7 keep certifications up.

8 Q Okay. And have you ever been qualified to give
9 expert testimony in a court of law before?

10 A Yes. In many states in many courts, state and
11 federal court, yes.

12 MR. MCDONALD: Your Honor, at this time, I
13 would offer Ms. Lustig as an expert in life care
14 planning and nurse life care planning.

15 MR. GRANTLAND: No objection.

16 THE COURT: All right. Ladies and gentlemen
17 of the jury, this witness will be qualified as an
18 expert in -- you said as an RN and life care
19 planning?

20 MR. MCDONALD: Registered nurse, life care
21 planner, and nurse life care planner.

22 THE COURT: Registered nurse, life care
23 planner --

24 MR. MCDONALD: And nurse life --

25 THE COURT: -- and nurse life care planner.

1 MR. MCDONALD: Yes.

2 THE COURT: -- to give opinion testimony in
3 that area. You may gave it whatever consideration
4 you choose to. Thank you.

5 BY MR. MCDONALD:

6 Q All right. Ms. Lustig, what were you asked to do
7 in the present case that brings us here today?

8 A I was asked to review medical records that pertain
9 to a motor vehicle crash and to ascertain future
10 medical care needs in relation to those injuries
11 sustained during that crash.

12 Q Did you come up with -- based upon the information
13 that was provided to you, did you come up with a
14 life care plan?

15 A Yes.

16 Q And did you review the deposition of Dr. Cannestra?

17 A Yes, both of them.

18 Q And did you talk to Dr. Folk?

19 A Yes, one time.

20 Q And do you have an opinion to a reasonable degree
21 of nursing certainty that Ms. Bundy will incur
22 future medical needs with associated costs in
23 relation to this injury as forecasted by Dr. Folk
24 and Dr. Cannestra consistent with your life care
25 planning process?

1 A Yes.

2 Q Let's go through that. Do you have copy of your
3 life care plan?

4 A Yes.

5 Q Tell the jury a little bit about a life care plan,
6 what it is.

7 A A life care plan is a tool, it's a document,
8 usually in paper form, that jurors use to review
9 and analyze to help make a judgment regarding
10 future medical care needs and costs in relation to
11 a crash with injuries that were related to that
12 crash and any other personal injury for that
13 matter. So it's a tool, it's a document, and it's
14 a document that I use in this format.

15 Q And do you have a copy of it in front of you?

16 A Yes.

17 Q And what is the date of that document?

18 A 5/8/17.

19 Q And prior to preparing this document, did you talk
20 with Ms. Bundy?

21 A Yes.

22 Q And you did your consultation with Ms. Bundy over
23 the phone, correct?

24 A Correct.

25 Q Was it necessary for you to see her in person?

1 A No.

2 Q Why not?

3 A Because she is mobile, alert and oriented times
4 three, communicative, answers her own questions
5 appropriately. There was no need for me to see her
6 in person.

7 Q Okay. And the conclusion of what you came up with,
8 I just want to walk through it briefly. And I'm on
9 the chart, Page 105. Let me know when you're
10 there.

11 A Okay.

12 Q Okay. And the first item for service is a pain
13 management maintenance. Do you see that?

14 A I do.

15 Q Will you explain to the jury what that is?

16 A This is office visits that she will incur over the
17 foreseeable future for pain management. It's a --
18 basically, it's a physician, a pain specialist.

19 Q And what is a right SI joint injection MDV?

20 A This is a physician's fee for going through a
21 procedure, which involves a metal tray, needles,
22 medications, X-ray guidance, medical suite to
23 provide a procedure, which in this case is a right
24 SI joint injection where the sacrum leads to the
25 vertebra.

1 Q And then you've got -- in addition to that on the
2 first page, then you've got the right SI joint
3 injection anesthesia fee. What is that?

4 A That is your mild to moderate sedation for having
5 this type of injection.

6 Q And for each of those, you have -- the next column
7 is frequency --

8 A Yes, sir.

9 Q -- or replacement, correct? And you assign how
10 often that needs to take place, correct?

11 A Correct.

12 Q What is that based on?

13 A Dr. Folk.

14 Q Then you come up with a cost for each of those
15 items, correct?

16 A Correct.

17 Q What is that cost based on?

18 A Standard -- usual customary charges for standard
19 procedures that are conducted in a physician's
20 office, pain specialist.

21 Q And the next page, Page 2 of 5. Are you there?

22 A Yes.

23 Q You have adjacent level cervical fusion MD fee.
24 Do you see that?

25 A Yes.

1 Q What is that?

2 A That would be a fusion above or below the original
3 site of surgery to the neck.

4 Q Okay. And is that related to do Dr. Cannestra's
5 testimony on that if you have this surgery, after
6 so many years, more likely than not, you're going
7 to have to have an adjacent --

8 A Yes.

9 Q -- similar surgery?

10 A He goes into detail about all that in his
11 deposition.

12 Q And what is the adjacent level cervical fusion
13 assistant surgeon fee?

14 A I'm sorry, could you repeat that?

15 Q Sure. Do you need some water?

16 A No.

17 Q An adjacent cervical fusion assistant surgeon fee?

18 A Yes.

19 Q That's associated with the same thing?

20 A Yes.

21 Q And then you've got an adjacent level cervical
22 fusion anesthesia fee and a facility fee, correct?

23 A Correct.

24 Q Okay. Then you've got the frequency and the cost
25 for that, correct?

1 A That is correct.

2 Q Did you arrive at the frequency based upon
3 deposition testimony -- based upon the testimony of
4 Dr. Cannestra?

5 A Correct.

6 Q How did you come up with the cost?

7 A Again, using a standardized coding system that's
8 accepted nationwide in the industry of life care
9 planning. It's used -- utilized in hospitals,
10 physician offices. You can order books online.
11 And that is how we come up with these charges.

12 Q And let's look at Page 3 of 5. Let me know when
13 you're there?

14 A Okay, I'm there.

15 Q And there's an adjacent level lumbar fusion MPV.
16 Do you see that?

17 A Yes.

18 Q What is that related to?

19 A That is the physician's fee for actually conducting
20 surgery.

21 Q And that would be the -- based upon Cannestra's
22 testimony that after every 10 years, it's more
23 likely than not that you're going to have to have
24 the adjacent surgery in the back that's
25 differentiated to the neck, correct?

1 A That is correct.

2 Q And the items of adjacent level lumbar assistant
3 surgeon fee, lumbar fusion anesthesia fee and
4 lumbar fusion facility fee, once again, you came up
5 with a frequency based upon Dr. Canestra, correct?

6 A That's correct.

7 Q And then you came up with a price in the same
8 manner you had before, correct?

9 A That's right, using standardized coding and
10 pricing.

11 Q Then on Page 4 of 5, you have physical therapy
12 evaluation?

13 A Correct.

14 Q What is that?

15 A This would be the evaluation for physical therapy
16 to assess need for strengthening exercises, helping
17 with muscle spasms, tightness, pain, discomfort.

18 Q And you've got frequency and cost for that as well,
19 correct?

20 A Yes.

21 Q Then physical therapy maintenance. You see that?

22 A Right. So after evaluation, the physical therapist
23 will set up so many sessions per week for so many
24 weeks and then they basically plan out what they're
25 going to do and what modalities can be utilized.

1 Then the physical therapist will follow through
2 with the plan for physical therapy sessions,
3 usually, you know, about 12 sessions within the
4 course of therapy.

5 Q Okay. And then you have homemaking services. Do
6 you see that?

7 A Yes.

8 Q What do those entail?

9 A This would be an assistant for personal -- lots of
10 personal services, home -- household chores,
11 household management, anything that would require
12 heavy lifting, repetitive lifting, bending,
13 stooping, crawling, that kind of thing. This would
14 be just a helper.

15 Q Go to Page 5 of 5, bottom of the page, please.

16 A Okay.

17 Q And you have spinal orthopedic evaluation. What is
18 that?

19 A So this would be for a neurosurgeon to conduct an
20 evaluation of the spine before, like a surgery.

21 Q And is the same true for the orthopedic
22 maintenance?

23 A Yes, this would be more follow-up following
24 surgery.

25 Q And then physical therapy evaluation. Do you see

1 that?

2 A That would be the same thing we discussed earlier.

3 And the next one, the maintenance.

4 Q Then the X-ray -- cervical spine X-ray lumbar
5 spine, what are those?

6 A So when you have damage to the cervical and/or
7 lumbar spine, physicians will, at times, based on
8 changes of condition, exacerbations of condition,
9 new changes in condition, disproportionate pain to
10 an event, they will look at the spine
11 diagnostically through an X-ray or CT scan.

12 Q And is the same true for the MRI cervical spine,
13 MRI lumbar spine?

14 A Correct.

15 Q Is this life care plan that you developed, was it
16 developed to a reasonable degree of nursing
17 certainty?

18 A Yes.

19 MR. MCDONALD: May I approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 (Mr. McDonald approaches.)

23 BY MR. MCDONALD:

24 Q Ma'am, I'm going to hand you what's been marked as
25 Exhibit 8, which is in evidence, present value of

1 healthcare costs.

2 A You want me to touch that?

3 Q Oh, yeah -- well, sure. We've got hand sanitizer.

4 At least you didn't say you had the flu.

5 A No, sir, it's not the flu.

6 Q And I ask you, ma'am, if the items that are listed
7 on the left-hand side of that document, are those
8 the items that were contained in your life care
9 plan?

10 A Yes.

11 Q Okay. And what is the sum of discounted cost total
12 on that?

13 A \$1,358,805.

14 MR. MCDONALD: Thank you very much, Ms.
15 Lustig.

16 THE WITNESS: Thank you.

17 MR. GRANTLAND: May it please the Court?

18 CROSS-EXAMINATION

19 BY MR. GRANTLAND:

20 Q Good afternoon, Ms. Lustig.

21 A Good afternoon.

22 Q I'm sorry you feel bad.

23 A Thank you.

24 Q You dropped a cough drop.

25 A I'm sorry?

1 Q You dropped a cough drop over here.

2 A Oh, I did. I had it hidden in my chart. Thank
3 you, I appreciate that.

4 Q Anyway, Ms. Lustig, you were hired by Mr. McDonald
5 in August of 2016?

6 A Yes.

7 Q And you're paid \$250 an hour to prepare a life care
8 plan and litigation consulting for Ms. Bundy?

9 A Yes.

10 Q And how much has Ms. Bundy or her lawyers paid you
11 to date for your work on the case?

12 A I don't know, probably 30 or 40 hours.

13 Q You've spent about 30 or 40 hours of work on this
14 case to date?

15 A I think so.

16 Q And your work, Ms. Lustig, is 100 percent
17 litigation consulting, is that correct?

18 A Yes, for both Plaintiff and Defense attorneys.

19 Q I mean, this is your business, doing life care
20 plans?

21 A Yes, I started my own business, small business. It
22 was just me and my dining room table, my child in
23 diapers, and now I have six employees.

24 Q Did you go to college to be a life care planner or
25 is this something you trained online to become

1 certified?

2 A So in life care planning, you train online. There
3 is continuing education. I took courses, an
4 academic course that you can take online. It's not
5 a degree. And you, once you pass the course, you
6 have to take a national exam to become certified
7 and you have to keep your certification up. So
8 it's continuing -- more continuing education.

9 Q This is not a college degree in life care planning?
10 This is something different?

11 A Oh, no, my college degree is Bachelor of Science in
12 nursing from Clemson University.

13 Q And most all of your work is for Plaintiffs, people
14 like Ms. Bundy who are suing someone else, is that
15 right?

16 A The split is 30 percent defense attorneys hire me,
17 and then the rest are Plaintiff attorneys that hire
18 me.

19 Q Now, you gave me a list of your cases, your expert
20 cases, I guess, since 2012. Do you have that with
21 you?

22 A I do.

23 Q And I'm looking at it. I think I went up against
24 you in July 2012 in another case where you were the
25 Plaintiff's expert. I don't know if you remember

1 that or not?

2 A You do look familiar, yes.

3 Q You look familiar too.

4 A Thank you.

5 Q And according to your list and counting this case,
6 and I'm just looking at the list you provided me,
7 it looks like you've given testimony in at least
8 108 cases since 2012, does that sound right?

9 A It's a lot more than that, sir.

10 Q Okay. Well, I'm looking at your list.

11 A Okay.

12 Q The list you provided me, it's about 108 cases, is
13 that correct?

14 A From that date, yes. What I do is I keep a list of
15 all of my cases where I've been deposed or gone to
16 court and I always update it. The federal court
17 system has me collected over a 5-year span, which I
18 update every time I get deposed or go to trial.

19 Q In the 108 cases on this list, Ms. Lustig, how many
20 did you testify on behalf of the Defense?

21 A Very few, but that is not reflective of the Defense
22 attorneys that hire me to review cases for damages.

23 Q So if I told you on your list of 108 cases, you
24 only testified three times for the Defense, would
25 you disagree with me?

1 A Oh, no, I would totally agree with you. That's a
2 fact.

3 Q So that means 105 out of 108 times when you gave
4 testimony on your list here, you were working for
5 someone like Ms. Bundy who is suing someone for an
6 injury?

7 A Right. Of the cases that I had during that
8 timeframe, those are the cases that actually went
9 to deposition or trial, that's correct.

10 Q Right. And, again, 105 out of 108 are for people
11 like Ms. Bundy suing somebody, is that correct?

12 A Yes, but at the same time, 30 percent of those
13 cases collectively over that time span were for the
14 Defense, 70 percent were for the Plaintiff, that's
15 correct.

16 Q And three out of the 108 on this list are -- you
17 actually testified for Defendants, is that correct?

18 A Right, of the cases that I had during that time
19 period that went to deposition or trial.

20 Q As I think you said, you're a registered nurse by
21 training. The last time you had a paid -- the last
22 time you had a job as a paid registered nurse was
23 about eight or nine years ago, is that correct?

24 A 2008 is when I collected my last paycheck as a
25 registered nurse at the bedside. Now, I do it

1 voluntary and I don't get paid for it.

2 Q Now, your job is preparing life care plans for --
3 mostly for people like Ms. Bundy who claim to be
4 injured by someone else, is that correct?

5 A So, a hundred percent of what I do and how I get
6 paid and how I pay my employees for my business is
7 through litigation work, for both Plaintiff and
8 Defense attorneys. As I said before, I volunteer
9 as a registered nurse, but I do not get paid for
10 that. So, yes.

11 Q I want to ask you about what you know about
12 Ms. Bundy and how she was doing before the
13 accident, Ms. Lustig. You were hired in August of
14 2016 by Mr. McDonald?

15 A That is correct.

16 Q And when did you first meet Ms. Bundy?

17 A I have not met Ms. Bundy. As we said earlier, I
18 talked to her on the phone.

19 Q You've talked to her on the phone, but is this the
20 first time -- is this the first time you've seen
21 Ms. Bundy?

22 A Yes. Because I have not met with her, I talked to
23 her on the phone.

24 Q You talked to her in 2016 and then again in 2017,
25 is that correct?

1 A Correct.

2 Q I think the dates are you talked to her on the
3 phone September of 2016 and then again April 2017,
4 does that sound right?

5 A That's correct.

6 Q I'm looking at your report of September 2016, under
7 prior medical history -- and if you need a copy of
8 your report, I can provide it to you.

9 A I have all my work here with me.

10 Q If you can turn to your report of September 2016.
11 Just tell me when you're ready.

12 A Okay. September 27, 2016?

13 Q Yes. Okay. Under your prior medical history,
14 Ms. Bundy told you that she had been involved in
15 prior accidents, but she was fine, is that correct?

16 A Correct.

17 Q What did she tell you about Mr. Jett?

18 A You want me to read this quote?

19 Q Correct me if I'm wrong, she said it upset her that
20 he took me out and that her language was terrible?

21 A Yes.

22 Q Is that what she told you?

23 A You want me to read it?

24 Q Sure.

25 A Okay. It upsets me that he literally took me out

1 and he says I was not complacent and that my
2 language was terrible.

3 Q What did she mean by that?

4 A I don't know.

5 Q Did she tell you that she cussed out Mr. Jett at
6 the scene?

7 A No.

8 Q She also thinks that he, Mr. Jett, ruined her life.
9 Do you remember her saying that to you?

10 A Yes.

11 Q She also said that she can't pick up a plate, her
12 marriage is gone, everything is gone because she
13 can't function like she used to. Is that in your
14 report?

15 A Yes, I remember that.

16 Q This is all in September of 2016?

17 A Correct.

18 Q So she told you September 2016 that her marriage
19 was gone?

20 A Yes.

21 Q And she also told you that her husband is gone a
22 lot?

23 A Yes.

24 Q Where did she say her husband was when he was gone
25 a lot?

1 A I don't know.

2 Q Was that more of a comment on their marital
3 relationship or how she was doing physically?

4 A I don't know. I mean, it may be a combination of
5 both.

6 Q She also told you that she had never had migraines
7 in her life and now she has them?

8 A Yes.

9 Q She also said that she has to be in bed for three
10 days if she picks up a plate the wrong way or if
11 she takes care of her dogs who weigh 150 pounds
12 each?

13 A Correct.

14 Q How many dogs does she have?

15 A Several.

16 Q She told you they weigh 150 pounds?

17 A A couple of them do. And I think she also has a
18 Dachshund. But I don't think the Dachshund would
19 weigh 150 pounds.

20 Q No, I would agree with that. You talked to
21 Ms. Bundy again in April 2017?

22 A Yes.

23 Q And at that time you had medical records from
24 before her 2013 accident?

25 A Yes, that's correct.

1 Q I want to talk to you about your report of
2 April 2017. You read records that went back, at
3 least 10 years ago, is that correct?

4 A When you say report, you're talking about my client
5 interview, correct?

6 Q Yes, I'm talking about what -- it says GVR?

7 A That was from 2016.

8 Q Yeah, I'm sorry, I'm talking about the --

9 A Client interview?

10 Q Yes.

11 A Okay.

12 Q Client interview, that's right.

13 A I'm with you.

14 Q 4/27/17. You read records that went back 10 years?

15 A I believe to 2001, yes.

16 Q You learned that Ms. Bundy had been involved in two
17 other accidents -- you good?

18 A Uh-huh.

19 Q You learned that Ms. Bundy had been involved in two
20 other car accidents and had a boating accident?

21 A Yes.

22 Q And she got her teeth knocked out in one of those
23 accidents, is that correct?

24 A Yes.

25 Q So these weren't minor accidents she was involved

1 in?

2 A I mean, I would call it -- I don't know what -- how
3 you would describe it if you lose a tooth or teeth
4 in a car accident, but, yes, she did lose -- the
5 impact was hard enough for her to lose teeth.

6 Q And knocked unconscious in two accidents, is that
7 correct?

8 A Yes. I know -- yes, right, that's correct.

9 Q Two prior car accidents she was knocked
10 unconscious?

11 A I believe one, for sure.

12 Q Can you look at your -- I think accident times two
13 where patient reported plus LOC at both?

14 A Knocked out in the second.

15 Q And you also learned that before her accident,
16 Ms. Bundy had done physical therapy, chiropractic
17 treatment, epidurals, facet joint injections, and
18 took muscle relaxers on a daily basis?

19 A Well, not all of that on a daily basis, but, yes,
20 that's correct.

21 Q This was all before 2013?

22 A Way before 2013, right.

23 Q Right. Your note says multiple epidural and facet
24 joint injections before the accident, is that
25 correct?

- 1 A Yes.
- 2 Q Epidural and facet joint injections, those involve
3 treatment from a doctor, don't they?
- 4 A Correct. Pain specialists, normally like an
5 anesthesiologist.
- 6 Q A pain specialist?
- 7 A Correct.
- 8 Q What kind of needle is used in an epidural
9 injection, do you know?
- 10 A Yes.
- 11 Q Is it a big needle, a small needle?
- 12 A It depends, but, yes, pretty long.
- 13 Q And this goes in the neck or the back?
- 14 A Yes.
- 15 Q And it's designed to relieve neck or back pain?
- 16 A Correct.
- 17 Q And the same question with facet joint injections,
18 is that a small needle, like an acupuncture, or is
19 that also a pretty big needle?
- 20 A I mean, I'm not really sure what you mean by --
21 they're needles and the facet joints are another
22 area where you can inject medication. It's two
23 separate areas that you will be injected, but, yes,
24 and two different modalities of medication and
25 administration.

1 Q And this is also to relieve neck and back pain?

2 A Depending on what kind of pain you have. If it's
3 axial, middle part or radiculopathy, traveling down
4 nerves to your extremities, yes.

5 Q And your report also says she took muscle relaxers
6 on a daily basis before the accident?

7 A Yes.

8 Q And muscle relaxers like Flexeril involve
9 prescriptions from a doctor, don't they?

10 A Yes.

11 Q This is all before 2013, is that correct?

12 A Correct.

13 Q Your report also says something about pre-DOI pain.
14 What does that mean?

15 A Pre-date of injury pain.

16 Q So pre-DOI means pain before the 2013 accident?

17 A Yes.

18 Q So according to your report, before her accident,
19 Ms. Bundy was treated for frequent severe
20 headaches, is that correct?

21 A Correct. This is what the records reflected.

22 Q But she told you she never had headaches, is that
23 right?

24 A Correct.

25 Q She also treated for occasional moderately severe

1 pain in her left and right neck area radiating down
2 to her shoulders?

3 A Correct.

4 Q And constant paresthesia in both hands, the right
5 more severe?

6 A Correct.

7 Q What does it mean to have paresthesia in the hands?

8 A Numbness, tingling. It can come and go or can be
9 chronic.

10 Q So when Dr. Cannestra talked about C6 radiating
11 pain into the hands, is that the same thing we're
12 talking about here?

13 A I don't know if it's the same.

14 Q Okay. But this is called --

15 A I don't know if it's the same etiology, but, yes,
16 it's a similar response, I guess, to -- whether
17 it's an injury or chronic condition, you can have
18 similar paresthesias.

19 Q So her neck condition was causing numbness in her
20 hands before the accident?

21 A Before the accident?

22 Q Yes.

23 A I don't know.

24 Q Okay.

25 A I wouldn't be able to diagnose that. I would defer

1 to Cannestra.

2 Q But she certainly had, according to the records you
3 reviewed, occasional moderately severe pain in the
4 left and right side of her neck radiating down?

5 A Yes. She was forthcoming about that and so were
6 her records.

7 Q But Ms. Bundy told you that she did not have neck
8 pain before this accident, is that right?

9 A Right. The same kind of pain.

10 Q Did she admit to having numbness in her hands?

11 A Right. We just went over that.

12 Q So -- well, she told you she didn't have neck pain,
13 but you read in the record that she did. So who do
14 you believe, Ms. Lustig, do you believe your client
15 or do you believe the medical records?

16 A I believe both.

17 Q Okay. Before this accident, Ms. Bundy also treated
18 for constant severe pain bilaterally in her low
19 back area, is that right?

20 A Yes.

21 Q Bilaterally means both sides?

22 A Correct.

23 Q Her pain, her back pain hindered her ability to
24 sleep?

25 A Yes.

1 Q But she told you that she did not have back pain
2 before the accident, is that correct?

3 A The same back pain, correct.

4 Q And according to the records you reviewed, she also
5 had an irregular gait, is that right?

6 A Yes.

7 Q What does that mean?

8 A Just that you have like a shuffled gait or
9 imbalanced gait, just means that your gait is off.
10 It's not a normal walking rhythm.

11 Q Is that caused by back pain?

12 A It can be.

13 Q So despite her history of severe neck and back
14 pain, numbness in her hands, inability to sleep,
15 irregular gait, she basically told you she was fine
16 before this accident?

17 A Right. Many years before this accident, she was
18 fine --

19 Q And --

20 A -- stabilized --

21 MR. MCDONALD: Your Honor --

22 MR. GRANTLAND: I'm sorry, I'm just trying to
23 move it along.

24 MR. MCDONALD: Let her finish her answer.

25 MR. GRANTLAND: Yeah, I'm sorry.

1 THE COURT: Let her finish.

2 MR. GRANTLAND: I know everyone is hungry for
3 lunch.

4 BY MR. GRANTLAND:

5 Q I mean, you believed her?

6 A Of course I did.

7 Q You believed her, I mean, you're preparing a life
8 care plan for her. So let's talk about your life
9 care plan. You think Ms. Bundy will need pain
10 management once every two to three months for the
11 rest of her life?

12 A Yes, I do.

13 Q But wasn't she doing that already before the
14 accident?

15 A No.

16 Q Well, your report says she took -- she had multiple
17 epidural injections before the accident, isn't that
18 right?

19 A I took a lot of information from my client
20 interview and also from reading the medical records
21 and gathering information, so I took a lot of
22 information.

23 Q And your report says she had multiple epidural
24 injections before her accident, is that right?

25 A Many, many years before, five years prior. There's

1 no case of any injections five years prior to the
2 injury.

3 Q And that's pain management, isn't it?

4 A Correct.

5 Q Your report says she had facet joint injections
6 before her accident, and that's pain management,
7 isn't it?

8 A Yes. Usually by an anesthesiologist or pain
9 specialist.

10 Q I'm sorry, I can't -- I'm not trying to be rude, I
11 just can't always hear you when you answer. Your
12 report also says she was taking muscle relaxers on
13 a daily basis. That's pain management, isn't it?

14 A Yes.

15 Q And Ms. Bundy had other accidents before ours,
16 didn't she?

17 A Yes, she's had --

18 Q According to your --

19 A Yes.

20 Q According to your report, she had in both -- and
21 I'm quoting from your report, in both of her
22 accidents before her 2013 accident, she reported
23 loss of consciousness?

24 A Right.

25 Q Okay. One accident, she had her teeth knocked out,

1 isn't that right?

2 A Yes, she hit her face on the steering wheel.

3 Q And in our accident, I don't know if you knew this,
4 but she did not even go to the emergency room to
5 get checked out?

6 A Correct.

7 Q So I need you to be fair, Ms. Lustig.

8 A Okay.

9 Q Can you separate whether the pain management
10 Ms. Bundy needs in the future is related to our
11 accident or whether it's related to her other
12 accidents that she had in the past, which were much
13 worse?

14 A It's related to your accident.

15 Q It's not related to the accidents that she had that
16 were far worse?

17 A No. Those were treated. She was stabilized.
18 There is no indication that she was treating with a
19 pain specialist on a chronic basis many, many years
20 before this. And nothing in her history led her to
21 require two spine surgeries and be followed by pain
22 specialists. So there's nothing in the past, based
23 on my due diligence in reviewing the medical
24 records, interviewing the client, who is obviously
25 very anxious about damages. And I also have based

1 this on my nursing education, skill, experience,
2 training, and knowledge of gathering information as
3 nurses do. So I absolutely do believe all of this
4 is related to this crash that we're here talking
5 about today. Because before this, there's nothing
6 in the medical records that I have to rely on that
7 would have made me want to produce a life care plan
8 like this.

9 Q You recommend that she needs pain management now?

10 A Yes. Every two to three months.

11 Q Do you know whether she's getting pain management
12 once every two to three months like you suggest?

13 A No. I'll tell you why I think that's the case.
14 This is a woman who lives out in the country and
15 this is very inconvenient for her to have to go
16 through this much medical care, so she tries to
17 deal with it on her own. I don't think she's
18 managing it as well as she probably can. And I
19 really do think she needs to follow-up routinely
20 with these physicians and follow this life care
21 plan to not only help control her pain, but to
22 improve her quality of life and to return to as
23 close to her baseline as she was before this.

24 Q You also thinks she needs three to six injections a
25 year for the rest of her life?

1 A That's standard procedure to have injections for SI
2 joint chronic pain, which she has. So absolutely,
3 yes.

4 Q How many injections was Ms. Bundy getting before
5 the accident?

6 A I believe she had injections before surgery, and
7 then following she's had at least one SI joint
8 injection with Dr. Folk that relieved her pain.

9 Q I'm talking about before the accident, how many
10 injections did Ms. Bundy have before 2013?

11 A So there's a medical record that talked about when
12 she had injections and she had a course of
13 injections over two years following one of her
14 injuries back in, it was 1985 or early 2000s. But
15 there is a record that indicates when she had that
16 treatment, and then she also went through some more
17 conservative pain management and stabilized. All
18 of this is documented before, well before this
19 injury.

20 Q An epidural injection, the purpose of that is to
21 help with neck or back pain, is that correct?

22 A Right. Again, it depends on where the pain is
23 coming from, the etiology of the pain, was it acute
24 or was it chronic. A lot of times people can have
25 one injection and be fine. I mean, it depends on

1 the etiology. So you're asking me about something
2 that happened 20 years ago.

3 Q In your doing your due diligence, can you tell me
4 how many epidural injections Ms. Bundy had before
5 the 2013 accident?

6 A There's only one record that indicates she treated
7 with that type of therapy for two years and that
8 was within many years prior to this crash.

9 Q Did you ask Ms. Bundy about it?

10 A She doesn't recall even having that many
11 injections, but she did report to me that at some
12 point following the boating accident that it
13 included multiple epidural and multiple facet joint
14 injections, but then she stabilized.

15 Q And multiple, that could be three, that could be
16 six, that could be 12. I mean, do you know how
17 many multiple injections she took before this
18 accident?

19 A So I would say it's at least a series of three.
20 Usually multiple in my industry, that means a
21 series of three injections, which is typically
22 standard for treating acute pain like that. Also,
23 I've been doing this for 15 years. And if someone
24 has a history of getting injections every three
25 months for the last 20 years, they say that. So

1 that's not what was discussed. It was, I had an
2 accident 20 years ago. I treated with injections
3 and my pain went away and I was happy and playing
4 tennis and running. She was very active prior to
5 this crash.

6 Q You rely on Dr. Folk's recommendations and he
7 started treating Ms. Bundy in 2017, is that
8 correct?

9 A Right. Dr. Folk came in under the direction and
10 guidance of neurosurgeon, Dr. Cannestra, who said
11 you need follow-up with Dr. Folk following any
12 surgery to get injections and CT scan for chronic
13 pain.

14 Q Don't testify as to what someone else said. You
15 stick to what you know, okay?

16 A That's just fine with me, but, I mean, he was
17 brought in in 2017, or whenever he was, because of
18 Dr. Cannestra.

19 Q You talked to Dr. Folk 15 minutes?

20 A Gosh, I don't remember. Yes.

21 Q A 15-minute phone conversation with this doctor?

22 A That's correct.

23 Q So you and I talked longer than you and Dr. Folk
24 talked?

25 A Okay.

1 Q And you're on the same team with Ms. Bundy. And
2 when you talked to Dr. Folk, were you aware that
3 Ms. Bundy hurt her back again in December of 2016?

4 A First of all, I'm not on anybody's team. So I
5 never ever said that. I really don't even know
6 what that means. And I forgot your question.

7 Q My question is when you talked to Dr. Folk, were
8 you aware Ms. Bundy hurt her back again in December
9 of 2016 before she saw him?

10 A Yes, I believe that she tried to return to some
11 type of activity and then she wrenched her back,
12 right. So that may have been why Cannestra said
13 you need to go see Dr. Folk.

14 Q Ms. Bundy gave you Dr. Cannestra's records. Did
15 you review them?

16 A I'm sorry, who gave me the records?

17 Q Well, Mr. McDonald or Ms. Bundy, somebody gave you
18 Dr. Cannestra's records?

19 A Ms. Bundy has never given me any records. I get
20 the records from the --

21 Q From the lawyer?

22 A From the referring attorney, in this case,
23 Mr. McDonald.

24 Q Somebody gave you Dr. Cannestra's records, is that
25 correct?

1 A Correct.

2 Q Okay. And did Mr. McDonald give you
3 Dr. Cannestra's record from December 2016?

4 A I don't have that record with me, no.

5 Q Did you know that Ms. Bundy reported to Dr.
6 Cannestra that she was doing very well and pain
7 free before December 2016?

8 A If you're quoting something from a record that I
9 just said I didn't have, I don't know what it says
10 in the record. So I don't know.

11 Q So you do not know. I mean, you talked to
12 Ms. Bundy, you're here on the stand, you don't have
13 all Dr. Cannestra's records. Were you aware that
14 Ms. Bundy did some overhead lifting and hurt her
15 back in December 2016?

16 A Unless it's reported in another office note or I
17 read it in Dr. Cannestra's deposition. I don't
18 have the office note you're referring to.

19 Q Her low back was the only complaint she had when
20 she saw Dr. Folk in 2017, is that correct?

21 A My first record with Folk begin February of 2017
22 where he mentioned the back and the neck.

23 Q Okay. Well, let me just focus on the back. If
24 Ms. Bundy hurt her back in December of 2016 doing
25 some overhead lifting, then had treatment with

1 Dr. Folk for back pain in 2017, how much of your
2 life care planning can you relate to our 2013
3 accident versus another accident that happened in
4 2016?

5 A Because I read Dr. Cannestra's deposition and
6 Dr. Folk's deposition.

7 Q You read Dr. Folk's deposition?

8 A Yes.

9 Q I mean, you're a nurse. Can a person injure their
10 low back if they lift something the wrong way?

11 A You can sneeze and injure your back.

12 Q And if you lift something the wrong way, that could
13 cause low back pain, can't it?

14 A Sure.

15 Q If Ms. Bundy hurt her back in December of 2016
16 doing some lifting, can you say to a reasonable
17 degree of certainty that her condition and
18 treatment in 2017 was all caused by this car
19 accident?

20 A That's what is indicated in the medical records,
21 yes.

22 Q Now, you also think Ms. Bundy may need another
23 cervical fusion surgery. Is that --

24 A I'm not the physician, I'm not the neurosurgeon.
25 This is Cannestra's opinion. Yes, Cannestra

1 believes she is going to need two more surgeries.

2 Q You put that in your life care plan. Now, what if
3 her neck is doing well?

4 A I am not a neurosurgeon, I am a registered nurse.
5 And we went through this a lot in my deposition.
6 This is Cannestra's opinion, not mine.

7 Q Did you talk to Dr. Cannestra to find out why
8 Ms. Bundy might need another surgery?

9 A No. I was not able to get him on the phone. He
10 would not talk to me, so I had to read his
11 deposition to ascertain his opinion.

12 Q The doctor who did surgery would never talk to you?

13 A That is correct.

14 Q Did you read where he said the neck surgery
15 averages about 17 years?

16 A He explained his opinion and his foundation for his
17 opinion for repeating surgeries and he talked about
18 that in his deposition.

19 Q So that means she may need surgery again --
20 Ms. Bundy may need surgery again when she's 67 or
21 69 years old, is that correct?

22 MR. MCDONALD: Objection, Your Honor.

23 Mischaracterizing the testimony of Dr. Cannestra.

24 THE COURT: Sustained.

25 BY MR. GRANTLAND:

1 Q Do you know -- you don't personally know whether
2 Ms. Bundy is ever going to have another surgery
3 again, do you?

4 A I do based on the life care plan.

5 Q I mean, you personally don't know whether she will
6 or won't have surgery. I mean, just because it's
7 in your life care plan doesn't mean she has to have
8 it, isn't that --

9 A I mean as long as she's able to make her own
10 decisions, based on the life care plan, she is
11 going to have to have one.

12 Q I mean, I think we asked you this in your
13 deposition, you yourself don't have any knowledge
14 as to whether she will actually need surgery, do
15 you?

16 A Right. As I just said, it is Dr. Cannestra's
17 opinion.

18 Q Okay.

19 A And that's his opinion, that she will need surgery.

20 Q And you also recommended physical therapy one to
21 three years for the rest of her life?

22 A That's correct.

23 Q You read all Ms. Bundy's medical records they
24 provided you?

25 A Yes.

1 Q Can you find one time in that ever-how-many years
2 of records you reviewed that Ms. Bundy went to a
3 physical therapist?

4 A No, she chose chiropractic modalities and
5 acupuncture modalities and home exercise program.
6 She has a gym at her house.

7 Q But you put that price in your report just in case
8 she decides to go to physical therapy?

9 A Not just in case. I think she needs professional
10 help, professional physical therapy and therapists
11 who can really push her to go forward with the
12 proper range of motion and to help control her
13 discomfort. I mean, this is all about getting her
14 to be as active as possible without wrenching her
15 back.

16 Q Ms. Bundy told you she did therapy in the past, and
17 I guess you believed her, but did you see any
18 records 10 to 15 years --

19 MR. McDONALD: Your Honor, is that a question?
20 I object to the leading if he doesn't ask a
21 question.

22 THE COURT: Sustained -- well, he's on cross,
23 so he can lead. But please rephrase.

24 BY MR. GRANTLAND:

25 Q Ms. Lustig, did you ever see any records where

1 Ms. Bundy went to a physical therapist 10, 15 years
2 ago before this accident?

3 A No.

4 Q I mean, Ms. Bundy told you a lot of things and the
5 records showed you something different, didn't
6 they?

7 A No, actually everything she told me is validated in
8 the medical records.

9 Q She denied having headaches before our accident,
10 but you read where she had frequent severe
11 headaches, isn't that correct?

12 A There were records that predated this crash where
13 she had headaches, but there were also a lot of
14 other things going on with her that day in her
15 office visit. You have to read the whole note.
16 This was not a lady that had the same type of
17 cephalalgic head pain that she was getting from the
18 cervical spine, so a little bit different. But,
19 yes, she did complain of migraines when she spoke
20 to me. She was very anxious and upset about her
21 injuries and she said, I have never had migraines
22 before.

23 Q She denied having neck and back pain before our
24 accident, but you read where she had severe neck
25 and back pain before this accident, isn't that

1 correct?

2 A On two separate occasions when I spoke to her, one
3 occasion she was very general and said, I didn't
4 have this before. The second interview, she was
5 very forthcoming. So everything that she was able
6 to tell me, I was able to validate with the medical
7 reports I received.

8 Q Basically, your plan, Ms. Lustig, with all due
9 respect, is to give the most expensive medical
10 treatment for Ms. Bundy for the rest of her life
11 regardless of how she was doing before 2013, isn't
12 that correct?

13 A No, that is absolutely wrong, false. That is not
14 what I do for a living. And if I did that for a
15 living, I would not have a job.

16 Q And it doesn't matter whether she hurt herself
17 after the fact, your plan is just all the possible
18 medical treatment she could need for the rest of
19 her life, that's essentially what that is?

20 A No, it's not that. It's -- we take into
21 consideration all the goods and services that we
22 believe she would need from a nursing standpoint,
23 from a neurosurgeon standpoint, from a pain
24 specialist standpoint. We put items that we
25 believe she may have needed anyway. For example,

1 certain medications are not found in this life care
2 plan because she led a very active life and she had
3 aches, you know, body aches and pain like we all do
4 if we are active. I'm not very active, so I don't
5 take that much medicine. However, that medication
6 is not found in this life care plan. So I did not
7 just sit down and try to build the biggest, baddest
8 life care plan with every service known to man.
9 This is a very well thought-out tool.

10 Q And you get \$250 an hour to prepare that tool, is
11 that correct?

12 A I own a small business. I charge for my time. I
13 have six employees to pay. I rent a very large
14 office. This is industry standard fees. And I
15 make the same amount of money as I did as a
16 registered nurse at Roper Hospital.

17 MR. GRANTLAND: No further questions, Your
18 Honor.

19 Thank you, Ms. Lustig.

20 THE WITNESS: And I have to pay for my --

21 MR. MCDONALD: Nothing from me, Your Honor.

22 THE COURT: All right, ma'am, you may step
23 down.

24 THE WITNESS: Thank you.

25 THE COURT: Any objection to this witness

1 being excused?

2 MR. GRANTLAND: No objection.

3 MR. MCDONALD: No objection from the
4 Plaintiff.

5 (Witness steps down and excused.)

6 THE COURT: They told us that the lunch would
7 be here at 1:00 o'clock. It's not here. It's
8 1:50, as you all, I'm sure, have observed. We're
9 going to go ahead and take our lunch break, let you
10 all refresh yourselves, use the restroom. If the
11 gentleman or anyone else needs to go smoke, we'll
12 have one of the deputies or bailiffs escort you out
13 to go do that. And then hopefully, by the time you
14 all do that, take that break, the food should be
15 here. They told me -- now, they're saying 2:00
16 o'clock?

17 THE JUROR: I sure hope you didn't have to pay
18 for it.

19 THE COURT: All right. So we'll go ahead and
20 take a break. What we'll do is -- remember, do not
21 discuss the case. And when you all finish eating,
22 you just knock on the door and let us know and we
23 will start back.

24 All right, thank you. They're saying about 15
25 minutes, so that takes us to about 2:05.

1 (WHEREUPON, the jury retires to the jury
2 room at 1:49 p.m.)

3 MR. MCDONALD: Can we take some time, Your
4 Honor?

5 THE COURT: Yes. It's probably going to be
6 about an hour.

7 MR. MCDONALD: You want us to come back at a
8 particular time, Your Honor?

9 THE COURT: Maybe come back about quarter till
10 3:00.

11 MR. MCDONALD: Quarter till 3:00. Thank you.

12 THE COURT: That's what I would think. She's
13 not even back. It's probably going to be about 20
14 minutes before she even gets back with the food.

15 (WHEREUPON, a lunch break was taken.)

16 (WHEREUPON, the proceedings resumed at
17 2:47 p.m.)

18 MR. MCDONALD: Just a couple quick matters.

19 THE COURT: Okay.

20 MR. MCDONALD: The first is, just as far as
21 scheduling goes, I don't know if I will get through
22 the witnesses that I have left remaining this
23 afternoon. Do you have any idea what time you want
24 to stop?

25 THE COURT: Probably around 5:00.

1 MR. MCDONALD: I thought you may want to stop
2 a little earlier because the weather is turning
3 little bit --

4 THE COURT: Well, how many witnesses do you
5 have -- how many witnesses do you have left?

6 MR. MCDONALD: I think I'm going to have
7 probably --

8 THE COURT: I'm not going to hold you to it.

9 MR. MCDONALD: -- five. Five witnesses left,
10 Your Honor, one of which is a video that I know is
11 45 minutes. I might could end with that this
12 afternoon. I have a live witness that's next, just
13 to give you a heads-up.

14 THE COURT: It's just rain. I don't know
15 if -- it is going to get nasty later, but we can
16 stop -- we'll see, we'll see where we are.

17 MR. MCDONALD: The second issue is, I just
18 renew my request to produce -- to publish to the
19 jury my request for production on the truck, not
20 the e-mails that Your Honor discussed earlier, just
21 to publish the request itself that was sent. And I
22 don't believe I need to do that through a witness,
23 I can just publish it to the jury, read it to the
24 jury and leave it at that.

25 THE COURT: Your objection is noted for the

1 record. I'm not -- the Court rules that we're not
2 going to allow the interrogatories to be admitted
3 in evidence.

4 I think I ruled on that earlier, but he's just
5 renewing his objection, I guess, for the record.

6 MR. MCDONALD: Yes. And may I mark this as a
7 Court Exhibit, Your Honor?

8 THE COURT: Yes, as a Court Exhibit.

9 (WHEREUPON, Court Exhibit No. 1 was
10 marked for identification only.)

11 THE COURT: You all objected to Woodrow Poplin
12 as an expert, didn't you?

13 MR. GRANTLAND: Yes, Your Honor, based on our
14 motion in limine.

15 THE COURT: You want to put that objection on
16 the record? Then I need to -- then I'll make sure
17 we cover everything.

18 MR. GRANTLAND: Your Honor, I renew my
19 objection to Mr. Poplin's testimony based on his
20 lack of investigation of the vehicle involved -- of
21 the truck involved in the accident. And you said
22 it went to weight and not admissibility.

23 THE COURT: Actually, your objection is as to
24 his testimony not as to him as an expert?

25 MR. GRANTLAND: That's correct. My objections

1 were not to his qualifications, just as to his
2 testimony.

3 THE COURT: Okay. That's good. I just wanted
4 to make sure of that. It was to the content. And
5 I wanted to put on the record that I did find him
6 to be qualified to be an expert, that based on his
7 testimony and his knowledge and his experience, he
8 was qualified to testify in the area of
9 engineering, accident reconstruction, and accident
10 reconstruction of heavy trucks and
11 tractor-trailers. He testified -- the testimony
12 that he gave, I do find is reliable. He testified
13 that he has taught seminars, he's had publications,
14 published accident analysis, also a publication
15 entitled Acceleration of Heavy Trucks. I do find
16 that the probative value outweighs any prejudicial
17 effect of testimony. And also, specifically, the
18 issue regarding his examination goes to weight and
19 not admissibility.

20 Yes, sir?

21 MR. MCDONALD: Yes, Your Honor, it occurs to
22 me that I may have said something with regard to
23 the Rule 34 production request at the bench
24 conference that may have not been on the record.
25 And I just want to make sure I put on the record

1 that I took the position that the Defense counsel
2 opened the door to the introduction of that. I
3 just wanted to make sure --

4 THE COURT: And that objection was overruled,
5 but I did allow you to -- actually, the objection
6 was overruled, but I did allow you to question him
7 regarding why he did not examine the truck.

8 MR. MCDONALD: The objection was sustained.
9 It was Mr. Grantland's objection to my introduction
10 of it.

11 THE COURT: It was his objection?

12 MR. MCDONALD: Yes, ma'am.

13 MR. GRANTLAND: We consented to the questions.

14 MR. MCDONALD: No, to the discovery requests.

15 MR. GRANTLAND: Yes.

16 THE COURT: His objection was to admitting the
17 discovery request?

18 MR. MCDONALD: Yes, Your Honor.

19 THE COURT: And that objection was sustained?

20 MR. MCDONALD: Yes.

21 THE COURT: However, he consented to you
22 questioning the witness regarding the discovery?

23 MR. MCDONALD: Yes, he did.

24 THE COURT: All right. Make sure we have an
25 accurate record.

1 All right. We're ready to bring them in.

2 (WHEREUPON, the jury came into open
3 court at 2:53 p.m.)

4 THE COURT: All right. I hope you had a good
5 lunch. We'll continue with our testimony.

6 Call your next witness.

7 MR. MCDONALD: Thank you, Your Honor. May it
8 please the Court? The Plaintiffs call Ms. Donna
9 Dixon Davis to the stand.

10 (Witness approaches.)

11 THE CLERK: Place your left hand on the Bible,
12 and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the
15 testimony you give in this case will be the truth,
16 the whole truth, and nothing but the truth, so help
17 you God?

18 THE WITNESS: Yes.

19 THE CLERK: Have a seat and state your full
20 name for the record.

21 (Witness seated.)

22 THE WITNESS: My name is Donna Davis.

23 DONNA DAVIS,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MCDONALD:

2 Q Ms. Davis, we briefly met. My name is Brent
3 McDonald. Would you tell the jury where you live?

4 A I live on 230 Sycamore Road here in Camden.

5 Q How long have you lived there?

6 A Since 1985.

7 Q And if you can't hear me, I'll move closer and I'll
8 speak up, just let me know. And so you've lived in
9 Camden since 1985?

10 A Yes.

11 Q And what brought you to Camden?

12 A I had a Thoroughbred operation.

13 Q What do you do for a living, Ms. Davis?

14 A I'm self-employed.

15 Q And what are you self-employed doing?

16 A Bonding.

17 Q What is bonding?

18 A Bail bonding.

19 Q How long have you done that?

20 A About 23 years.

21 Q Walk me through -- if you can, walk the jury
22 through just a typical day in your life,
23 professional life, what you do.

24 A Regarding my life or just the business side?

25 Q Let's start with the business side.

1 A Business side, it's a daily operation --

2 THE COURT: Can you all hear?

3 Speak up a little bit.

4 THE WITNESS: -- where I bond people out of
5 jail and responsible for their court dates.

6 BY MR. MCDONALD:

7 Q If they don't show up, what happens then?

8 A Then we have to go pick them up.

9 Q Is that something -- I'm sorry.

10 A You know, have to be present for court.

11 Q Is that something you're presently involved in?

12 A Yes.

13 Q And is it just you at your business or other people
14 work there?

15 A No, I have men licensed to work.

16 Q How many people work in your office?

17 A They don't work in the office. I just work the
18 office, but I have like, I believe, four men
19 licensed.

20 Q Licensed to do what?

21 A To pick the people up.

22 Q And walk me through, if you would, just a typical
23 day in your life outside of your business. What
24 are some things you like to do?

25 A My life is all the business and husband, who's not

1 well. That's my life.

2 Q You take care of your husband as well?

3 A Yes.

4 Q Now, Ms. Davis, do you know Ms. Bundy?

5 A Ms. Bundy?

6 Q Yes.

7 A Yes.

8 Q How did you come to know Ms. Bundy?

9 A I met Ms. Bundy through a mutual friend, a gracious
10 old lady.

11 Q Who was that?

12 A Ms. Alice Boykin.

13 Q About when did you meet Ms. Bundy?

14 A Oh, goodness, that must have been 10, 15 years ago.

15 Q And upon meeting her, did you form a friendship or
16 anything like that with her?

17 A A friendship, yes, you know, telephone friendship.

18 If I was in the area, I'd stop by her house. We'd
19 meet at Alice's sometime. But I just don't have
20 time for a social life.

21 Q And the wreck that brings us here today was on
22 September 3rd of 2013. Are you aware of that
23 general timeframe?

24 A Oh, yes.

25 Q So you knew Ms. Bundy prior to the wreck?

1 A Yes.

2 Q Can you tell the jury a little bit about what you
3 knew of Ms. Bundy, what she liked to do, how your
4 interactions were with her, please?

5 A Ms. Bundy was very vibrant. She was very fun,
6 active. And I never played tennis with her, but I
7 understood she enjoyed playing tennis. And just a
8 jolly person.

9 Q You enjoyed being around her?

10 A Totally. She's very optimistic, intelligent. She
11 was gracious, a gracious woman. I know when we'd
12 get together with Ms. Boykin, it was fun. You
13 know, we'd go to the house because Ms. Boykin was
14 elderly and she wasn't well. It was just fun.

15 Q Just fun spending time with her?

16 A Exactly, uh-huh.

17 Q And were you aware that she was involved in a wreck
18 with an 18-wheeler in September of 2013?

19 A I was aware of it, not through her. Ms. Boykin had
20 told me about it. And I didn't go to the house at
21 all to see her afterwards. I'm not very good in
22 situations like that. And when I really became
23 aware of the situation, she had called me one day
24 because she was alone and one of the dogs needed
25 help. And I said, I'll be right over. And I

1 hadn't seen her since the accident or the surgery.

2 And when she came out of the house, I mean, I
3 was just devastated. This was not the woman I had
4 known. And she was -- I remember her trying to
5 walk down the steps. I said, Don't do that, I'm
6 coming to you, I'm coming to you. And when we got
7 inside, I said -- and I felt terrible because if I
8 knew it was that severe, I would have made it a
9 point to go see her. And that was my initial
10 awareness of what had taken place with her.

11 Q Did you have occasion to see Ms. Bundy on occasions
12 after that first time? Did you see her --

13 A Yes.

14 Q What was your general observance of her at that
15 time?

16 A I guess the difference in her was some of her joy
17 was taken. The pain was there. It's obvious to
18 the ones who know her. But it is what it is.

19 Q Would you say Ms. Bundy is a tough woman?

20 A Not physically tough. I'd say mentally, she's very
21 strong, very strong.

22 Q And did you have an opportunity to help her in her
23 life after the accident, help her do things around
24 the house?

25 A No. No.

1 Q Did you ever drive her anywhere and help her?

2 A I believe that day -- I can't recall, but I think I
3 ended up taking the dog to the vet. I was so
4 concerned, I mean, that when I got back there, I
5 was calling locksmiths to change all the locks on
6 the house, everything. I said, You cannot be here
7 alone like this. I mean, she was totally
8 defenseless.

9 Q When was the last time you talked to Ms. Bundy?

10 A Probably last week. What is today, Wednesday?

11 Q Thursday -- no, Wednesday.

12 A I think I tried calling her, I mean, about this.

13 Q Would you say that since the first time you saw her
14 that she's gotten a little bit better?

15 A I think she's learned to live with it.

16 MR. MCDONALD: That's all the questions I
17 have, Ms. Davis. Thank you very much.

18 THE WITNESS: Thank you.

19 MR. HARRELL: May it please the Court, Your
20 Honor?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. HARRELL:

24 Q Briefly, Ms. Davis. My name is Rogers Harrell, and
25 I represent the Defendants Haier and Mr. Thomas

1 Jett. Thank you for being here with us today.

2 A Yes, sir.

3 Q You stated a moment ago you and Ms. Bundy are
4 friends, correct?

5 A Right.

6 Q And you've been friends for 10 to 15 years, I
7 believe you said?

8 A I think so.

9 Q How well do you know Mr. Bundy?

10 A Her husband?

11 Q Yes.

12 A I know Bill, not as well as I know Heather. I just
13 know he's a gentleman.

14 Q Are you aware he brought a loss of consortium claim
15 related to this accident as well?

16 A No.

17 Q Where was he when you first visited Ms. Bundy after
18 her surgery?

19 A I have no idea. I didn't ask.

20 Q Were you aware they were separated at any time?

21 A No.

22 Q You want to help Ms. Bundy in any way you can here
23 today, don't you?

24 A Of course.

25 Q And you didn't witness the car accident we're here

1 about today, did you?

2 A Oh, no.

3 Q Wouldn't have any idea how that accident
4 happened --

5 A No.

6 Q -- other than what Ms. Bundy told you? And are you
7 aware of any other car accident Ms. Bundy's been
8 involved in before this accident we're here about
9 today?

10 A No.

11 Q Are you aware of a boating accident Ms. Bundy was
12 injured in at any time?

13 A No.

14 Q Are you aware Ms. Bundy had MRIs of the neck and
15 back in 2001?

16 A No.

17 Q And, likewise, you're not a doctor --

18 A No.

19 Q -- and no testimony about what could have caused
20 her pain, correct?

21 A Correct.

22 Q Did you know -- were you aware she reported to her
23 surgeon, Dr. Cannestra, in December of 2016 that
24 she was doing fairly well and was pain free?

25 A I don't know about that now.

1 Q Are you aware she injured her back in December of
2 2016 while lifting objects overhead?

3 A No.

4 MR. HARRELL: Thank you. No further
5 questions.

6 THE WITNESS: You're welcome.

7 REDIRECT EXAMINATION

8 BY MR. MCDONALD:

9 Q Ms. Davis, you just knew Ms. Bundy prior to the
10 wreck and after the wreck, correct?

11 A Correct.

12 Q And did you observe a change in her?

13 A Oh, there was a definite change.

14 MR. MCDONALD: Thank you, ma'am.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Any objection to this witness
18 being excused?

19 MR. MCDONALD: None from the Plaintiff, Your
20 Honor.

21 THE COURT: You're free to leave.

22 THE WITNESS: Thank you.

23 (Witness steps down and excused.)

24 THE COURT: Call your next witness.

25 MR. MCDONALD: Your Honor, at this time, we

1 have a video deposition of a doctor to present. If
2 I may approach?

3 THE COURT: Yes, sir.

4 MR. MCDONALD: Your Honor, at this time, the
5 Plaintiff would call Dr. Jeffrey Folk.

6 THE COURT: By deposition. You can turn the
7 lights down a little bit.

8 (WHEREUPON, the video deposition of Dr.
9 Jeffrey Folk was played for the jury.)

10 THE COURT: Are you ready to call your next
11 witness?

12 MR. MCDONALD: I am. The Plaintiff calls Ms.
13 Lesia Greene.

14 (Witness approaches.)

15 THE CLERK: Place your left hand on the Bible,
16 and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm the
19 testimony you give in this case will be the truth,
20 the whole truth, and nothing but the truth, so help
21 you God?

22 THE WITNESS: Yes.

23 THE CLERK: Have a seat in the witness chair
24 and state your full name for the record.

25 LESIA GREEN,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 Q Ms. Green, where are you from?

4 A Rembert.

5 Q And how long have you lived in Rembert?

6 A All my life.

7 Q And do you have any siblings, any children?

8 A Three kids.

9 Q Three kids. Okay. How old are they?

10 A Forty-two, 45, and 39.

11 Q And you said you lived in Rembert your whole life.

12 Does your family live there too?

13 A Uh-huh, yes, sir.

14 Q Your children live there?

15 A Yes, sir.

16 Q And, Ms. Green, what do you do for a living? How
17 do you take care of yourself?

18 A I work for Heather.

19 Q And when did you start working for Heather Bundy?

20 A Sometime in 2014.

21 Q Okay. And how did you come to work for her?

22 A I met Ms. Alice Boykin one day at the post office,
23 and me and her start talking, because I knew her
24 for a long period of time because we worked on her
25 place, picked cotton, chopped cotton, and stuff.

1 And she was telling me, you know, Come go with
2 me --

3 MR. HARRELL: Object, Your Honor. Hearsay.

4 THE COURT: Sustained.

5 BY MR. MCDONALD:

6 Q Don't tell me exactly what she told you, but after
7 that conversation, what did you understand you were
8 going to do?

9 A Take care of Ms. Bundy.

10 Q And when was the first time you met Ms. Bundy? Do
11 you recall? When in 2014? Was it early, late?

12 A It was in the summertime.

13 Q Okay. And at the time you met Ms. Bundy, had she
14 underwent any surgeries at that point?

15 A You saying did she went under surgery?

16 Q Yeah, had she already had surgery?

17 A She had one surgery.

18 Q She had had the first surgery, the neck surgery?

19 A Yeah.

20 Q Do you remember the first day you met her?

21 A Not really. I know it was in the summertime.

22 Q Okay. And do you remember anything about the first
23 time you saw her, laid eyes on her? Not the exact
24 date, just what you observed when you saw her?

25 A Yes, she was in the bed.

1 Q And what did she look like?

2 A She had -- she was just laying there. And I went
3 there, me and Ms. Alice went there together.

4 Q And what did you understand you were going to do
5 for Ms. Bundy in going to work for her?

6 A Take care of her, drive her where she need to go
7 at, take care of the dogs, take care of the garden,
8 take care of the chickens, clean the house, wash
9 the clothes, iron, go shopping, and take her where
10 she need to go.

11 Q Did you have any understanding who did that before
12 you began working for her?

13 A Mr. Bundy. That's what she told me.

14 Q And you had -- when you say Mr. Bundy, you mean
15 after the first surgery before you got there --

16 A Yes, sir.

17 Q -- doing those things? And before the surgery that
18 she had, did you have any understanding as to who
19 did the things you were going to do, take care of
20 the dogs, take care of the chickens, take care of
21 the garden, all those things, do you know who did
22 that?

23 A Yes.

24 Q Who did that?

25 A That's her.

1 Q Who is that that performed those before the
2 surgery? Do you any idea?

3 A Heather, I guess. And Mr. Bundy.

4 Q And when you saw Ms. Bundy after the first surgery,
5 did you have to do anything in addition to what I
6 would call household chores, and things like that?
7 Did you have to do anything with her or for her
8 personally?

9 A Yes.

10 Q And what was that?

11 A I had to help her get in the bathtub, take a bath,
12 change her dressing and do most -- all the stuff
13 around the house, I had to do.

14 Q And what kind of dressing did you change?

15 A She had a dressing on her back, you know, and I had
16 had to clean it up for her, and then I put it back
17 on there.

18 Q And you had to help her with bathing?

19 A Bathing.

20 Q And did you help her out around the house, help her
21 get around the house?

22 A Yeah, I had to help her get around the house too.

23 Q Did you understand that she was recovering from a
24 surgery? That's what you were essentially helping
25 her do?

1 MR. HARRELL: Objection. Speculation and
2 leading the witness.

3 THE COURT: Sustained.

4 BY MR. MCDONALD:

5 Q What did you understand you were helping her with
6 during that time?

7 A She had had an accident and she had had surgery and
8 I needed to help her around the house.

9 Q Were you still helping her around the house -- did
10 you understand she had a second surgery?

11 A Say it again.

12 Q A second surgery?

13 A Yes.

14 Q Okay. And was that after you started working for
15 her?

16 A Yes. She had it after I started working for her.

17 Q And what type of things did you do after the second
18 surgery?

19 A Most of the same thing. I help her get in the tub,
20 take a bath, cook, clean, take care of the dogs,
21 the garden. She loved -- she had a flower garden,
22 and I had to take care of that.

23 Q Did you ever observe Ms. Bundy in pain? Did you
24 ever see her in pain?

25 MR. HARRELL: Objection, Your Honor. Calls

1 for speculation.

2 MR. MCDONALD: Your Honor, I think she's
3 entitled to say what she observed.

4 THE COURT: Overruled.

5 BY MR. MCDONALD:

6 Q Go ahead.

7 A Yes, I seen her in pain, and she still in pain.

8 Q Ms. Green, we went through -- you've been in this
9 courtroom during the trial, have you not?

10 A Say it again.

11 Q You've been in the courtroom during this trial,
12 have you not?

13 A Yes.

14 Q Okay. And we went through some of the items that
15 Ms. Bundy had after the surgery. Are these some of
16 the items that you helped her with?

17 A Yes, sir.

18 Q Okay. And did you help her put these on?

19 A Yes, sir.

20 Q And what else did you do in addition to helping --
21 in putting them on, did you do anything else
22 helping her with these contraptions?

23 A Yeah, help her, you know, like take them off too.
24 And help her get -- you know, sometimes she
25 couldn't hardly walk, so I had to help her, you

1 know, get to the chair, wherever she want to sit.
 2 I lay down -- I have to help her lay down, pick her
 3 up, put her in the bed and lay her down.

4 Q And are some days better than others for her?

5 A Yes.

6 Q And do you know -- when you show up for work in the
 7 mornings, do you know whether it's going to be a
 8 good day or a bad day?

9 A I don't know if it's going to be a good day or a
 10 bad day.

11 MR. MCDONALD: Thank you very much, Ms. Green.
 12 That's all I have.

13 CROSS-EXAMINATION

14 BY MR. HARRELL:

15 Q Ms. Green?

16 A Hey. How are you?

17 Q Good afternoon. I'm doing quite well, thank you.
 18 My name is Rogers Harrell, and I represent the
 19 Defendants in this matter, Haier and Mr. Jett.

20 You told Mr. McDonald a moment ago you began
 21 working and taking care of Ms. Bundy in 2014, is
 22 that correct?

23 A Yes, sir.

24 Q So you don't have any knowledge of her situation
 25 prior to 2014, do you?

- 1 A No, sir.
- 2 Q What are your typical hours as their employee?
- 3 What time do you get to their house every morning?
- 4 A 8:30 to whatever time. I don't pick a time limit.
- 5 Q Do you come every day of the week, five days a
- 6 week?
- 7 A Yes.
- 8 Q Every day?
- 9 A Yes.
- 10 Q So -- and you've been in the courtroom all day
- 11 yesterday and all day today, correct?
- 12 A Yes, sir.
- 13 Q And those are during your normal working hours?
- 14 A Yes, sir.
- 15 Q Are they paying you to be here today?
- 16 A I'm assuming she are going to pay me.
- 17 Q How much do you earn per hour?
- 18 A She don't -- it varies.
- 19 Q And I believe you said, correct me if I'm wrong,
- 20 you're still working for them currently, correct?
- 21 A Yes.
- 22 Q And you want to continue working for the Bundys,
- 23 don't you?
- 24 A Yes.
- 25 Q You want to help them in any way you can, don't

1 you?

2 A Yes.

3 Q You didn't witness the car accident we're here
4 about today, did you?

5 A No, sir.

6 Q And other than anything you heard from Ms. Bundy,
7 don't know anything about how that accident
8 occurred, do you?

9 A No, sir.

10 Q And I believe you mentioned earlier you're not
11 aware of her condition before 2014, are you?

12 A No, sir.

13 Q As far as her relationship with Mr. Bundy, when you
14 first started working with her, was Mr. Bundy
15 living at home?

16 A I think that Mr. Bundy had -- that's the reason why
17 I was there because Mr. Bundy had leave. I think
18 he was -- he was not there, but later on, like
19 later on in the month, he came back.

20 Q And the work that you were hired to do, before you
21 were hired to do it, did you ever witness Mr. Bundy
22 doing any of that work himself, working in the
23 yard, flower garden, anything like that?

24 A He does it now.

25 Q You see him do it now?

1 A Yes.

2 Q Well, if he does it now, why are you still
3 employed?

4 A Because he -- he don't assume me to do all the
5 work. He does work around the house himself.

6 Q Does Mr. Bundy travel often?

7 A He goes out of town sometimes.

8 MR. HARRELL: Thank you, Ms. Green. Thank you
9 for being here today. That's all I have.

10 THE COURT: One second, ma'am.

11 MR. MCDONALD: Nothing.

12 THE COURT: You may step down.

13 (Witness steps down.)

14 THE COURT: Call your next witness.

15 MR. MCDONALD: The Plaintiffs call Mr. Thomas
16 Jett.

17 (Witness approaches.)

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

20 (Witness complies.)

21 THE CLERK: Do you swear or affirm the
22 testimony you give in this case will be the truth,
23 the whole truth, and nothing but the truth, so help
24 you God?

25 THE WITNESS: Yes.

1 THE CLERK: Have a seat in the witness chair
2 and state your full name for the record.

3 (Witness seated.)

4 THE WITNESS: My name is Thomas Elroy Jett.

5 THOMAS ELROY JETT,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCDONALD:

9 Q Mr. Jett, I'm Brent McDonald. We previously had
10 the opportunity to take your deposition. Do you
11 remember that?

12 A Yes, sir.

13 Q And you, sir, at the time of this accident on
14 September 3rd of 2013, were an employee of Haier,
15 correct?

16 A Yes, sir.

17 Q Okay. And you were driving that truck in the
18 ordinary course of your duties as an employee of
19 Haier, correct?

20 A Yes, sir.

21 Q And on that morning, the first time that you ever
22 saw Ms. Bundy was after the collision, correct?

23 A That's correct.

24 Q Okay. You don't have any testimony, memory of
25 anything of seeing her prior to the collision,

1 correct?

2 A No, sir.

3 Q And, in fact, the first time you saw her is when
4 you opened your door after the collision, that's
5 the first time you ever laid eyes on her, correct?

6 A Yes, sir.

7 Q Okay. Now, on that day, the traffic on 521, was it
8 heavy or was it light?

9 A Normal in the morning at that time. It's people
10 going to work.

11 Q So you would say it was heavy that day?

12 A Pretty much.

13 Q Pretty heavy traffic?

14 A Yes.

15 Q Now, do you recall, sir, in your -- do you recall
16 giving a deposition in this case?

17 A Yes.

18 Q And you were at your lawyer's office, correct?

19 A Yes.

20 MR. MCDONALD: And with the Court's
21 permission, I would ask to open the sealed
22 deposition transcript.

23 THE COURT: Yes, sir.

24 MR. MCDONALD: Thank you.

25 (Mr. McDonald opens deposition.)

1 MR. MCDONALD: May I approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 (Mr. McDonald approaches.)

5 BY MR. MCDONALD:

6 Q I ask you to turn to Page 51, sir. Let me know
7 when you're there.

8 A I got it.

9 Q Okay. And do you see the lines -- the numbers on
10 the left-hand side that indicate the line number?

11 A I see the questions.

12 Q Yes.

13 A Yes.

14 Q Starting at Line 1, I'm going to read the questions
15 and you read the answers, okay?

16 A Okay.

17 Q All right. Question: Okay. So because there
18 was -- I would assume that you would agree with me
19 that that intersection can get fairly traffic -- it
20 can get pretty heavy traffic through there?

21 A Give or take a little, yes.

22 Q Question: But on this morning, it wasn't that bad
23 because?

24 A That's right.

25 Q You just pulled right up?

1 A To the -- well, when I came down to the
2 interstate -- intersection, I stopped.

3 Q Sir, if you'll just read the answer there at Line
4 9.

5 A Exactly.

6 Q At Line 9, Question: You just pulled right up?

7 A It says, Yes.

8 Q It says right, correct?

9 A Right.

10 Q So here today you testified that it was pretty
11 heavy traffic and in your deposition you testified
12 it wasn't that bad?

13 A Well, it was normal, you know, a normal morning,
14 it's give or take a little, all depending on --

15 Q All right, sir. And when you -- you testified in
16 your deposition that when you struck Ms. Bundy's
17 car that the glass on the back rear windshield
18 didn't shatter, correct?

19 A It didn't shatter until we backed up. When the
20 officer got me to back up off the car, it shattered
21 all out then.

22 Q All right. And I'd ask you to take a look at --

23 MR. MCDONALD: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Mr. McDonald approaches.)

1 BY MR. MCDONALD:

2 Q Take a look at Defendant's Exhibit 3. Is that --
3 do you know whether that picture was taken before
4 or after you backed your truck up?

5 A It would have to be after because this glass --
6 whole glass was shattered. And you can see some of
7 it.

8 Q So it's your testimony that this picture here,
9 Defendant's Exhibit 3, is after you backed your
10 truck up off Ms. Bundy's vehicle?

11 A Yes.

12 THE COURT REPORTER: I'm sorry, I couldn't
13 hear you.

14 THE WITNESS: Yes.

15 Q Can you tell whether or not your truck is still
16 touching Ms. Bundy's vehicle?

17 A Yes, it's still touching.

18 Q Okay. And can you see yourself in the picture?

19 A Right here.

20 Q And you're not operating your vehicle or standing
21 on the footrest, are you?

22 A No.

23 Q Now, your testimony in this case has been,
24 essentially you pulled out into the median,
25 correct, and there were no cars in the median,

1 correct?

2 A When I stopped on the Black River Road side in the
3 median, there wasn't no car there.

4 Q And what you did is you pulled out into that
5 median, correct?

6 A After the traffic was going towards Camden, clear
7 from towards Fatz Cafe, I pulled up over in the
8 median.

9 Q So it's your testimony there was traffic going
10 towards Camden, you waited, and after that cleared,
11 you went out in the median?

12 A Yes.

13 Q Turn again, if you would, to Page 51 of your
14 deposition, sir.

15 A I have it.

16 Q I'm going to read the question on Line 10, and you
17 read the answer on Line 11, okay?

18 There wasn't any cars coming from the left.

19 What was your answer?

20 A Exactly.

21 Q So in your deposition you testified there weren't
22 any cars coming from the left, but today there were
23 some cars coming from the left?

24 A Okay, what I'm saying was, the way I was sitting,
25 the car -- there wasn't any car coming from the

1 left because I was cleared when I went over.

2 Q All right.

3 A Okay. And when I got to the intersection, I was
4 waiting on a car coming -- going south. I would
5 say that would be right.

6 Q And we'll talk about that in a second.

7 A Uh-huh.

8 Q So you pulled out into the median, correct?

9 A Yes, right.

10 Q And was your truck -- when pulling out in the
11 median, was your truck going to stick out into the
12 traffic that was going towards Camden?

13 A Pretty much.

14 Q Because you can't fit in that median, can you?

15 A The truck will fit, but the back of it -- you know,
16 when I was getting ready to make the left turn, it
17 was a car coming -- going south, so, but nothing
18 wasn't coming from towards -- coming into Camden.
19 I was okay.

20 Q But the back end of your trailer was sticking into
21 that traffic, correct, going towards Camden?

22 A Not all the way, but pretty much in the lane.

23 Q All right. And it's your testimony that you pulled
24 into the median and came to a stop, correct?

25 A Correct.

1 Q Okay. And that then what you did was you were
2 waiting on a car that was going towards Sumter to
3 pass, and then once that car passed, you let your
4 foot off the clutch just a little bit in order to
5 go forward and what you felt was just a sensation
6 of being bound, like you had chocks on your wheels?

7 A Yes, sir.

8 Q You didn't move anywhere, just kind of the truck
9 wouldn't go forward?

10 A Yeah, it was like (indicating).

11 Q And you didn't move at all?

12 A No.

13 Q When you were waiting on the car to pass that was
14 going towards Sumter, were you stuck out into
15 oncoming traffic or were you in the median, the
16 trailer -- the truck part in the median?

17 A The truck, the front part of the truck was kind of
18 like taking up, not the full lane that was coming
19 down because the truck -- the car was coming down,
20 it was coming in the first lane.

21 Q When you say the first lane, let me get this and
22 make sure I understand this.

23 A It's another picture that show clearly where the
24 truck was at.

25 Q Sure. It's your testimony that when you pulled

1 into the median to the -- to go down towards
2 Sumter, the back end of your truck was sticking out
3 in the lane going towards Camden, correct?

4 A It was somewhere like that. The front of the truck
5 was like right here.

6 Q So when you stopped -- when you were assessing
7 oncoming traffic and coming to a complete stop, you
8 actually pulled into oncoming traffic before you
9 came to a stop?

10 A No, sir, I was right in here waiting on this car to
11 come here.

12 Q So is that typically what you do, you pull into
13 oncoming traffic and then stop to let the traffic
14 come by?

15 A No. When I got here, I was waiting on the car to
16 come here. You can see the front of the truck
17 right here. There wasn't nothing in this lane
18 right here coming. What the traffic was, it was in
19 this lane right here, one car.

20 Q And the reason you felt comfortable coming to a
21 stop with your truck in the oncoming traffic is
22 because you're looking right to make the decision
23 that there's no cars coming, correct?

24 A Yes.

25 Q So you were looking right to assess the traffic

1 that was going towards Sumter, correct?

2 A Yes.

3 Q And when you're about to make your left-hand turn
4 to go towards Sumter, your wheels are turned to the
5 left because that's the direction you're going in,
6 correct?

7 A When I came up, I was going to do the left turn,
8 but I had my wheels kind of cut to the right a
9 little so I could see the traffic to my right.

10 Q So you actually turned the truck part of it towards
11 the traffic to your right so you could get a better
12 view of the traffic coming?

13 A Yeah, because you get -- right there where that
14 turn at, if you go ahead and turn like that, you
15 have to hold your head over in the truck to see to
16 your right. So I kind of turned my wheels to the
17 right a little bit and looking to my right.

18 Q And so you're focused on the right because that's
19 the way traffic is coming in, correct?

20 A Yes.

21 Q Now, do you have any explanation, sir, as to --

22 MR. MCDONALD: May I approach the witness,
23 Your Honor?

24 THE COURT: Yes, sir.

25 (Mr. McDonald approaches.)

1 BY MR. MCDONALD:

2 Q -- as to how glass from Ms. Bundy's car is
3 five feet or so behind the car if you all never
4 moved?

5 A They was taking pictures all different ways and
6 angles of the car. When her car was sitting --
7 actually, the way her car was sitting was somewhere
8 in here because I don't know -- it was different
9 pictures was taken that I didn't even know the
10 position that they was at. It couldn't have popped
11 all the way out here.

12 Q Do you know if the point of contact actually
13 happened back here and pushed her this far?

14 A No.

15 Q That didn't happen?

16 A No. No, because I didn't -- I didn't drag her like
17 it was said. The only time -- when I was sitting
18 where I was, I seen where I had the traffic coming
19 from my right cleared, I got the friction part of
20 the clutch up and that's when I felt the sensation
21 of the car and that's when I stopped and got out.

22 Q And it's your testimony you didn't move at all?

23 A No, not until the police got there.

24 Q No, no, you didn't move -- after striking the car,
25 your --

1 A No.

2 Q Your truck didn't move at all?

3 A No. Not until the police told me to move.

4 Q No, I want to be clear about this.

5 A Yes.

6 Q When you went forward -- when you tried to go

7 forward, your truck didn't move at all?

8 A No, just a bump.

9 Q Did you call 9-1-1?

10 A No, sir.

11 Q And it's your testimony that the glass shattered

12 after you moved the car at the direction of the

13 police officer?

14 A It's got to be because that's the only time the car

15 was moved, when they asked me to move.

16 MR. MCDONALD: That's all I have. Thank you

17 very much.

18 THE COURT: Yes, sir?

19 MR. GRANTLAND: May it please the Court?

20 CROSS-EXAMINATION

21 BY MR. GRANTLAND:

22 Q Good afternoon, Mr. Jett.

23 A Yes, sir.

24 Q You doing okay?

25 A Yes, good, sir.

1 Q I'll stand over here. I'll just kind of start at
2 the beginning if that's all right with you. Can
3 you hear me okay?

4 A I hear you good, sir.

5 Q Okay. First, I want you to tell the jury a little
6 bit about yourself and then we'll talk about the
7 accident.

8 A Okay.

9 Q Where are you from?

10 A I'm from Bethune.

11 Q And how long have you lived there?

12 A All my life.

13 Q Okay. And what family do you have in Bethune?

14 A All the Jetts, the Huffs.

15 Q So all the Jetts landed in Bethune?

16 A Yes, sir.

17 Q And what is your wife's name?

18 A Mable Jett.

19 Q And how long y'all been married?

20 A Forty-three years, or 44. Forty-four years.

21 Q She's not here to check?

22 A No, sir.

23 Q How many children do you have?

24 A Two boys. Well, I got a lot of brothers and
25 sisters, but my immediate family, I got a son and a

1 daughter.

2 Q Do have any grandchildren?

3 A Two great grands.

4 Q Two great grandchildren?

5 A And three grands.

6 Q Do they all live in Bethune as well?

7 A Fayetteville and Bethune and Camden.

8 Q And how old are you, sir?

9 A Me?

10 Q Yes.

11 A I'm 65. I'll be 66 in March.

12 Q Okay. Tell the jury about your work history.

13 A Actually, when I came -- I went in the service
14 during the year of '69. I left Bethune High and
15 joined the draft of the Army. I went in the Army

16 --

17 Q Were you drafted?

18 A I volunteered for the draft.

19 Q Okay.

20 A And served at Fort Jackson, that's where I took my
21 training for tractor-trailer. Left -- left Fort
22 Jackson in '69, went to Germany, and stayed over
23 there until '71 or '72.

24 Q Okay. And how long did you serve in the Army?

25 A I did two years in the Army and 18 years in the

1 National Guard.

2 Q So you retired from there?

3 A Well, actually, not retired. I just -- you know,
4 it got to the point where when we was going to
5 summer camp every year, the type of work that we
6 was doing, it was aggravating my body, you know,
7 because we stayed out in the woods for 13 or 14
8 days. And they didn't want you to take a bath, and
9 that wasn't my nature. And when I came back from
10 out of the woods for those 14 or 15 days, I mean,
11 it was just like I just lost that whole 15 days
12 because I had to go to the doctor and for another
13 15 days I had to just have cream on me, couldn't
14 even put clothes on.

15 Q So after 18 years in the National Guard, you had
16 enough. So you got out. What rank did you have?

17 A I was a SPEC-4.

18 Q SPEC-4?

19 A Yes, sir.

20 Q Thank you for your service, Mr. Jett.

21 A Yes, sir.

22 Q Now, after you got out of the National Guard, tell
23 the jury about your experience as a commercial
24 truck driver.

25 A Well, during the time when I was in the National

1 Guard, I was working at a place in Bethune called
2 Kendall -- well, it was Kendall, Colgate, we kept
3 changing names and buying everything. And I stayed
4 at Colgate, Kendall, Palmolive, BBA for 37 years.

5 Q And what was your job with these different
6 companies?

7 A I was -- I worked from the front to the back.

8 Q Okay.

9 A I was -- first, I was a fork truck operator, and
10 then I went to machine operator. From a machine
11 operator, I went to the warehouse as a receiving
12 clerk. And when I was in the warehouse, a lot of
13 them in the plant told me, said, you at the door
14 now, because you are going to be able to get on out
15 because that's where they throw you out at, at the
16 warehouse.

17 So at that particular time, I started doing
18 the switch tractor operating job, driving a
19 tractor-trailer, switching trailers and going to
20 Florence and different places for them.

21 Q So how long have you been a -- how long have you
22 been driving tractor-trailers?

23 A Roughly 25, 30 years.

24 Q And do you have a CDL license?

25 A Yes, sir. I got a CDL and got the pass

1 endorsement. I got the double, triple. Had
2 Hazmat, but when I left Kendall, we didn't no
3 longer needed Hazmat.

4 Q What other certifications do you have?

5 A Talking about as far as driving trucks?

6 Q Yes, sir.

7 A I had a certification when I was in Europe, I had a
8 million miles driving with no accident.

9 Q And what is a TWIC?

10 A Oh, I had a TWIC card.

11 Q TWIC?

12 A A TWIC card is -- well, I got that when I started
13 at Haier.

14 Q Right.

15 A A TWIC card is when you can -- okay, you can be a
16 tractor-trailer driver and you can't go into the --
17 in Charleston at the port. So I'm certified as
18 being a TWIC driver. And everybody can't get a
19 TWIC card because, you know, your background got to
20 be clean, you know, no criminal records, and stuff
21 of that sort. And that's how --

22 Q So you're able to pick up containers from --

23 A Sure, I picked up containers for Haier.

24 Q Okay. And are you a member of a church?

25 A Yes, I'm an active member of my church.

1 Q What church do you attend?

2 A Catoe's Chapel Church of God in Christ.

3 Q Okay. And when did you go to work for Haier?

4 A I think 2012.

5 Q How long had you been working for Haier when this
6 accident happened?

7 A Probably about a good year.

8 Q Okay. Now, Thomas, do you remember the accident
9 with Ms. Bundy?

10 A Yes.

11 Q Okay. Where were you going on the day of the
12 accident?

13 A I was on my way to Anderson.

14 Q And how often did you drive to Anderson?

15 A Well, some of us, we go about once a week, once
16 every other day because we rotated.

17 Q Okay. And you were driving an 18-wheeler with a
18 trailer?

19 A Yes, sir.

20 Q And what was in your trailer?

21 A I had empty racks because what we do, we go up and
22 pick up the gaskets up there. And we'll say
23 gaskets and you probably won't -- or either the
24 jury won't know what we talking about. But the
25 gasket is nothing but the seals inside of the

1 refrigerators. You open your refrigerator, that's
2 a seal.

3 Q Right.

4 A We -- they put them on a rack, and that's how we
5 bring them back.

6 Q So how heavy or light was your trailer?

7 A I was light.

8 Q So you left the Haier plant, went down what road?

9 A Went down Black River Road.

10 Q And how often do you drive down Black River Road?

11 A Every day.

12 Q Okay. And how far do you drive from Black River
13 Road or from the Haier plant to Highway 521?

14 A It's got to be about two miles or mile and a half,
15 give or take a little.

16 Q Did you have your phone on?

17 A Not at that particular time, no.

18 Q How do you know you didn't have your phone on?

19 A I know I didn't have it on.

20 Q All right. Fair enough. Now, let's just look at
21 some pictures here. I guess this is a good one to
22 start. What is this a picture of, Thomas?

23 A That's the intersection of 521.

24 Q Okay. Do you remember pulling up to that stop
25 sign?

- 1 A Yes, sir.
- 2 Q Okay. Did you come to a complete stop?
- 3 A Yes, sir.
- 4 Q Was there any cars in front of you?
- 5 A No, sir.
- 6 Q Are you sure?
- 7 A I'm positive, 100 percent.
- 8 Q So after you stopped, what did you do?
- 9 A After I stopped, I waited for the traffic coming
10 from towards Sumter going towards Camden. And
11 after everything was clear going towards Camden, I
12 pulled on out over here waiting for the car to come
13 from Camden towards Sumter.
- 14 Q Now, when you pulled into the median, were there
15 any cars there?
- 16 A No.
- 17 Q Are you sure Ms. Bundy's car wasn't in the median
18 when you pulled in?
- 19 A No -- to be real sure about it, no car wasn't
20 there. A truck and a car is not going to be able
21 to be in that -- I say median, you could call it an
22 isle at the same time. No, it would be poor
23 judgment of a person even with a car coming up
24 there behind another car.
- 25 Q Right.

1 A Yes.

2 Q What would you have done if there was a car in the
3 median?

4 A I would have let that car went on through.

5 Q Right.

6 A Yeah, because it wasn't no way that I would have
7 been able to come through that intersection and she
8 sitting there.

9 Q What about your A frame of your windshield, did
10 that block your view of anything out in the median?

11 A No.

12 Q Okay. Were you in any hurry?

13 A No, sir.

14 Q How fast did you drive from that stop sign out into
15 the median?

16 A You know, the truck ain't going to -- I wouldn't
17 even say you get over five miles an hour out
18 through there because you was in first gear.

19 Q Okay.

20 A And, see, that's a lot of problem with people
21 trying to take advantage of a tractor-trailer, we
22 move slow.

23 Q Right.

24 A And you just -- people can't wait. Because if you
25 sit down there in the morning time and see cars

1 coming up through there, you'll see what I'm
2 talking about. Because right here where the
3 traffic coming up there, if you going towards
4 Camden from here, they'll go through the Shell
5 station to try to beat you out, beat you around
6 over there.

7 Q Well, let's just focus on this morning.

8 A Okay.

9 Q So you eased out into the highway, correct, into in
10 median?

11 A Yes.

12 Q Once you got to the median, what did you do?

13 A Once I got to the median here?

14 Q Yes.

15 A I waited for that car that was coming this way to
16 come on out so I could come on and make my left
17 turn.

18 Q Okay. So let's look at this picture. This might
19 help better. Is this -- Exhibit 12, does this show
20 the median from a different angle?

21 A Yes. And Ms. Bundy, when she was up, she said that
22 she didn't never see this stop sign right here, but
23 what happened was, here it go right here, somebody
24 knocked it down. And also right here is a little
25 ditch.

1 Q Okay. So when you went into the median, where did
2 you go?

3 A I went to the median, I went right here.

4 Q Okay. Can your truck stop in the median without
5 blocking the travel lanes on 521?

6 A Well, the traffic going here, it would be close,
7 but, see, by nothing come from towards Camden,
8 going up towards Camden, it was clear a good piece
9 back.

10 Q Okay.

11 A So, but now, I'm going to tell you something, if a
12 car would have been coming right in here, I
13 wouldn't have pulled -- even pulled out because --

14 Q You would have waited?

15 A Yes, I would wait because the truck -- you're
16 going -- a little bit of it's going to be right in
17 here in that lane.

18 Q Okay. How about the lane coming toward --

19 A Right here? Okay, right here is a turning lane.

20 Q Okay.

21 A And you got two more lanes right here, so you got a
22 good -- this car right here is going to do a left
23 turn right in here. So, actually, you got a good
24 piece. And one of those diagrams shows where my
25 truck, the tires was --

1 Q Is this the photo or?

2 A No, that's not the one.

3 Q You have got a lot of pictures, Thomas?

4 A Yes, sir.

5 Q Is this the photo?

6 A That's it.

7 Q What does this picture show?

8 A It shows right where I had got to the lane, the
9 coming lane, because the other lane over here, the
10 truck lane. And that's what I mean waiting on this
11 car -- this is where I had got partially in that
12 lane.

13 Q In the turn lane?

14 A Yes, sir. Because the traffic that was coming this
15 way was in the other lane.

16 Q Okay. So how many cars did you have to wait for?

17 A One.

18 Q Okay. And they were heading towards I-20, that
19 car?

20 A They was heading towards Camden..

21 Q Camden, I'm sorry. And once that car passed, what
22 did you do?

23 A Got ready to pull off, but I couldn't go nowhere
24 because I felt just a bump. And that's when I got
25 out the truck and looked to see what was -- had me

1 in a bind.

2 Q So you started to move and you felt a bump?

3 A Yes, sir.

4 Q And then I guess you put your brake on?

5 A Yes, sir.

6 Q And then you got out of the truck and looked
7 outside?

8 A Yes, sir. Well, when I got -- yes, I opened the
9 door and got out the truck and got right here and
10 (indicates sound).

11 Q And that's when you first saw Ms. Bundy?

12 A Yes.

13 Q And where was her car located?

14 A Back under the trailer.

15 Q Was it further back from that picture?

16 A It looked like it was further back. Right here is
17 when I first come out the door. So I was saying,
18 they was taking several photos that the officers
19 was taking.

20 Q Right. Were you expecting a car to be on your
21 left?

22 A No, sir.

23 Q Is there room for --

24 A No, sir.

25 Q For two cars -- for a car and truck to turn left?

1 A No, sir. And this is an area, just like if I had
2 been doing a left or right turn at 521. And, you
3 know, you see on the back of our trucks say that
4 this vehicle make wide turns. Okay. And for me to
5 be expecting for a car to be here, that was just
6 like me jumping out an airplane.

7 Q Have you ever done that before?

8 A No.

9 Q Was she visible to you in your side mirror?

10 A No -- well, actually, when I looked here -- no,
11 because I didn't -- I couldn't see what was -- I
12 couldn't see what was here.

13 Q Okay.

14 A I didn't know what had happened, that's why I got
15 out and opened the door.

16 Q So what happened when you got out of your truck?

17 A When I got out the door, that's when I seen
18 Ms. Bundy.

19 Q And tell me about what happened between you and
20 Ms. Bundy.

21 A Well, nothing didn't happen. Actually, she -- when
22 I opened the door, she was just standing -- she had
23 opened her door and she said, You stupid idiot, you
24 going to make me late for my appointment. And at
25 that time -- you know, I'm glad I was raised by a

1 good mother because, you know, my mama always
2 taught me not to confront with women, don't hit a
3 woman. And, you know, she already had thrown a
4 punch when she called me a stupid idiot because she
5 didn't know me, you know.

6 Q Yes, sir.

7 A And I think that was really bad on her behalf
8 because if it had been somebody that, you know,
9 couldn't even take that, or whatever, it would have
10 been more trouble.

11 Q So she says -- she calls you a stupid idiot, she
12 says, You are making me late for my appointment?

13 A You are going to make me late for my appointment.

14 Q What did you do after she said that?

15 A I turned around and I got in my truck and I called
16 my son.

17 Q Why didn't you call 9-1-1?

18 A Well, if you see the George Sink commercial, some
19 of them will tell you to call --

20 MR. MCDONALD: Your Honor, object.

21 BY MR. GRANTLAND:

22 Q You don't need to go into George Sink commercials.

23 THE COURT: Sustained.

24 BY MR. GRANTLAND:

25 Q So why did you call your son instead of 9-1-1?

1 A I called my son, I reckon at the time I was upset.

2 Q Okay. Upset at what had happened?

3 A Yes, sir.

4 Q Okay. And what does your son do?

5 A He told me, he said, Daddy --

6 Q No, don't tell me what he said. What does your son
7 do? What's his job?

8 A Oh, he's a deputy sheriff.

9 Q Okay.

10 A State of Fayetteville.

11 Q And how long after you got -- talked to your son --
12 he's a deputy sheriff up in North Carolina, is that
13 right?

14 A Yes, sir.

15 Q And you can sit back down, Thomas, if you want.
16 How long after you got on the phone with your son
17 did the police arrive?

18 A It was right -- immediately right after. Well, I
19 didn't even finish talking to him because I told
20 him, I said, The police is coming.

21 Q Okay. All right. And you were asked by
22 Mr. McDonald about the glass. Let's make sure
23 we're clear. This picture here has all the glass
24 out, is that right?

25 A Yes, sir.

1 Q When was that picture taken?

2 A It had to be taken when I backed up -- when the
3 police told me to back up off the car.

4 Q After y'all were separated?

5 A Yes, sir.

6 Q And then right here, that's Exhibit 9, this is
7 Exhibit 3. Right here, it looks like there's a
8 hole here, but there's also some glass, is that
9 correct?

10 A Yes, sir.

11 Q And you're still touching her, is that correct?

12 A Right.

13 Q So some glass did fall out, but not all of it?

14 A Right.

15 Q So the policeman got there. Tell me -- tell the
16 jury what happened when the police arrived.

17 A Okay. When the police arrived, I stayed in my car.

18 Q All right.

19 A And they was talking to Ms. Bundy, and her husband
20 had got there, and the two policemen was talking to
21 them. And when he got through talking to them, he
22 came over and he asked me was I all right.

23 MR. MCDONALD: Your Honor, objection to
24 hearsay.

25 BY MR. GRANTLAND:

1 Q Yeah, I don't want you to say what the police
2 officer said.

3 A Okay.

4 Q You talked to the police officer?

5 A Right.

6 Q Were you injured?

7 A No.

8 Q Did an ambulance come to the scene?

9 A No, sir.

10 Q Okay. So after the police talked to you, what did
11 y'all do?

12 A We left that scene and we went on a side road down
13 there next to Fatz Cafe.

14 Q Who drove Ms. Bundy's car?

15 A I don't know.

16 Q Okay.

17 A But I know her husband had went down the road or
18 somewhere in it.

19 Q In the car?

20 A Yes.

21 Q Okay. So after the police let you leave, did you
22 head on to Anderson?

23 A Yes. Well, I called my supervisor at the time.

24 Q Okay.

25 A And I told her, you know, that --

1 MR. MCDONALD: Your Honor, hearsay.

2 BY MR. GRANTLAND:

3 Q I don't want you to say anything your supervisor
4 said.

5 A No, I won't. I just called her.

6 Q You reported the accident to your supervisor?

7 A And then I was instructed to go on to Anderson.

8 Q Okay. Did you ever draw a diagram or write
9 something down about the accident?

10 MR. MCDONALD: Your Honor, objection. Same
11 basis as lodged before. The diagram includes
12 information of Ms. Bundy prior to the wreck. He's
13 testified on both direct and to his own attorney
14 that he never saw Ms. Bundy at any point prior to
15 opening the door of his truck.

16 THE COURT: All right. Objection is
17 sustained.

18 MR. GRANTLAND: May I approach the witness,
19 Your Honor?

20 THE COURT: Yes.

21 (Mr. Grantland approaches.)

22 BY MR. GRANTLAND:

23 Q I hand you Defendant's Exhibit 13.

24 A Yes.

25 Q Is that a diagram you made after the accident?

1 A Yes, this is a diagram I turned in when I got back.

2 Q And what did you write on the diagram?

3 A I wrote exactly what happened, that I pulled out
4 over to Black River Road, and it's showing where I
5 was in the median like the picture is showing. And
6 I was getting ready to make a left turn and the car
7 pulled over on the side of me.

8 Q What did you write -- is that your words on the
9 diagram?

10 A Yes, sir.

11 Q What did you write, Thomas?

12 A I pulled on into the left lane, side of the lane
13 trying to make a left turn.

14 Q Okay. And you wrote -- and that went in your
15 personnel file?

16 A Yes, sir.

17 Q Okay. And, Thomas, how --

18 MR. GRANTLAND: And, Your Honor, I'd admit
19 this into evidence as per our motion in limine on
20 that issue.

21 MR. MCDONALD: And I just have the same
22 objection I voiced in the past, Your Honor.

23 THE COURT: It will be entered as Defendant's

24 --

25 MR. GRANTLAND: I think it's 12 -- 13, I'm

1 sorry.

2 THE COURT: Thirteen is entered over the
3 objection of Plaintiff.

4 MR. GRANTLAND: May I publish?

5 THE COURT: Yes.

6 BY MR. GRANTLAND:

7 Q Thomas, how often do you pull into this median in
8 front of Black River Road?

9 A If I'm going towards Sumter, I would say three to
10 four times a week or better.

11 Q Has anything like this ever happened to you before?

12 A No, sir.

13 Q Thomas, how do you feel about this accident with
14 Ms. Bundy?

15 A I hate it. It been a pressure because it been so
16 long and then -- actually, when -- the way the
17 accident were, it was a no fault.

18 MR. MCDONALD: Your Honor --

19 BY MR. GRANTLAND:

20 Q Don't go into any of that.

21 A Okay.

22 Q Last question, Thomas. Do you know of anything you
23 did to cause this accident?

24 A No, sir, nothing I did. And nothing that I could
25 correct from.

1 MR. GRANTLAND: Thank you. Please answer any
2 others questions Mr. McDonald may have.

3 REDIRECT EXAMINATION

4 BY MR. MCDONALD:

5 Q Mr. Jett, on testimony to your lawyer, have you now
6 decided that the glass shattered when you struck
7 Ms. Bundy's car?

8 A No, sir. It couldn't have shattered when I struck
9 it. It wasn't that hard of a bump, sir.

10 Q And I believe it's your testimony you didn't move
11 at all, correct?

12 A Not till the police came.

13 Q No, no, no, when you struck the vehicle, your truck
14 didn't even move at all?

15 A No.

16 Q There was no movement?

17 A No. Because I was kind of bind the way her car was
18 sitting.

19 Q And there wasn't even really a collision, you were
20 just bound up against her car?

21 A Just like you would hit a chock.

22 Q Now, the diagram that -- Defendant's Exhibit 13
23 that you were shown, it doesn't say anything about
24 what you did, does it?

25 A It was showing where I was out in -- came out in

1 the median.

2 MR. MCDONALD: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 (Mr. McDonald approaches.)

5 BY MR. MCDONALD:

6 Q The language you were asked about doesn't say
7 anything about what you did, correct?

8 A It just show -- the diagram here is just showing
9 where I was out here making my left turn.

10 Q No, the language that you wrote on there, did you
11 write that?

12 A I probably wrote this, but, you know.

13 Q And it doesn't say anything about what actions you
14 took, right? Can you read it to the jury?

15 A It don't make sense.

16 Q Can you read it to the -- whether it makes sense or
17 not, can you read it to the jury?

18 A Can you pull in on my left side trying to beat me
19 making a left turn.

20 Q And that's what you gave your -- that's what you
21 gave Haier, correct?

22 A Yes.

23 Q And your testimony here under oath today is you
24 never saw Ms. Bundy, correct?

25 A I didn't see her then.

1 Q So you don't know what she did?

2 A I -- from -- based on what the pictures showed and
3 when I got out the car, yes, she came up on my left
4 side.

5 Q You just didn't see her do that, right?

6 A No, I didn't see her do it. But that's what
7 happened.

8 Q And that's what you wrote on your diagram?

9 A I didn't write that on there.

10 Q How often, sir, when you're pulling into the
11 median -- you say you go through this median every
12 day?

13 A I go through the median only when I'm going towards
14 Anderson or going to the Pilot or places like that,
15 you know, maybe two or three times a week. Or
16 going the other way, it would be every day.

17 Q And how often do you actually pull -- as you
18 testified here today, do you pull into the oncoming
19 traffic lane rather than stopping in the median
20 itself?

21 A You can't -- if traffic coming from towards Camden,
22 you have to wait before you pull into the median.
23 You just can't pull across there.

24 Q No, sir, let me ask it again. How often -- you
25 testified that what you did since you didn't go

1 anywhere -- since you didn't go anywhere, how often
2 do you pull into the oncoming traffic to wait for
3 the other car to come?

4 A Okay, I had the traffic coming from towards Sumter.
5 The traffic here was over almost where you at. And
6 it was almost coming through there -- you don't do
7 it -- sometime you catch it both ways --

8 Q Sure.

9 A -- where you don't have to wait on a car. You
10 know, and it's not often that you do this.

11 Q But how often do you pull into the median, make a
12 complete stop into the oncoming traffic? How often
13 do you do that maneuver? This is the dotted line,
14 correct?

15 A Right.

16 Q And that's that dotted line, correct?

17 A Right.

18 Q So how often do you -- when you make this turn to
19 turn to go towards Sumter, how often do you pull
20 into oncoming traffic and actually stop your truck
21 in oncoming traffic?

22 A I had to stop that particular day because a car had
23 start coming, so not every day it happens like
24 that.

25 Q Okay. But is that a normal maneuver that you make,

1 you pull into the median, you pull into oncoming
2 traffic here in order to wait for a car to go in
3 that other lane?

4 A No, because it could have been -- sometimes when
5 I'm coming from here, got traffic this way and that
6 way, so I just come on in here, just come on.

7 Q Sure. But I'm asking, your testimony is that your
8 movement on that day was to pull into the median,
9 but actually park your -- stop your tractor-trailer
10 in oncoming traffic, correct?

11 A When I --

12 Q Is that correct?

13 A Yes, sir.

14 MR. MCDONALD: Your Honor, if I can just get
15 an answer to that question.

16 A Yes.

17 Q How often do you do that? Is that a normal
18 maneuver you make?

19 A No. No.

20 Q Now, it's your testimony that when you pulled into
21 the median you were going really slow, you were
22 just in first gear, correct?

23 A Right.

24 Q And the reason you could have your trailer blocking
25 the lane going towards Camden is because there

1 weren't any cars coming that way, correct?

2 A Right.

3 Q And the only car that was coming from -- going
4 towards Sumter was a single car that you were
5 waiting on?

6 A Right.

7 Q And you didn't move?

8 A No, sir.

9 MR. MCDONALD: That's all the questions I
10 have. Thank you.

11 MR. GRANTLAND: No questions, Your Honor.

12 THE COURT: All right, sir, you may step down.
13 (Witness steps down.)

14 MR. MCDONALD: May we approach, Your Honor?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference was held
17 in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: Ladies and gentlemen of the jury,
20 as you can imagine, we were just discussing the
21 schedule. It appears the next witness may take
22 some time, which would put us well past 5:00
23 o'clock. So I'm going to go ahead and take our
24 evening break. The clerk said it was snowing
25 outside, I'm not sure if it still is, but we'll go

1 ahead and let you all get out of here so you can
2 get home, or wherever it is you may have to go.

3 Remember do not discuss the case. Do not do
4 any independent research. It's also improper for
5 you to discuss it with each other or anyone outside
6 of the courtroom and also improper for you to form
7 any opinion in your minds until you have received
8 all the evidence, the arguments of the parties, and
9 the charge on the law from the Court.

10 Have a wonderful evening. And we will --
11 actually, we have some matters we need to take up
12 outside your presence, so I'm just going to have
13 you all come at 10:00 in the morning. If for some
14 reason they start canceling -- I mean, have
15 cancellations, I think someone said earlier there
16 was some concern about freezing, if that is the
17 case, look at the Kershaw County Government site.
18 Don't -- we don't do what the schools do. We do
19 what the Government, County Government site is what
20 you need to refer to. Also, the clerk will place
21 any messages regarding the weather on the phone
22 like she did this morning.

23 All right. Thank you. Please be on time.

24 (WHEREUPON, the jury retires to the jury
25 room at 4:39 p.m.)

1 THE COURT: All right. So we'll start about
2 9:15, 9:30, at the latest. Of course, same thing
3 on the weather as last night.

4 And we're going to proffer your guy's
5 testimony out of order and then we'll allow you --
6 once the jury gets here, we'll go ahead and call
7 your client.

8 MR. GRANTLAND: Thank you, Your Honor.

9 MR. MCDONALD: You'll send us an email or
10 Jasmine will send us an email if something changes?

11 THE COURT: Yes. All right. See you all
12 around 9:15, 9:30.

13 4(WHEREUPON, court adjourned for the
14 evening at 4:40 p.m.)

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16 (WHEREUPON, the proceedings resumed at
17 10:20 a.m.)

18 THE COURT: All right. All the jurors are
19 here. We will go straight into it, and then once
20 we break -- we'll just take a break and come back
21 to proffer that testimony. I apologize, but my --
22 everything in Richland County is on a 2-hour delay,
23 including schools. We will go ahead and get
24 started.

25 MR. MCDONALD: Your Honor, we just have a

1 stipulation that we've agreed upon. If I could
2 hand that up.

3 THE COURT: Okay, sure. Are you going to read
4 it?

5 MR. MCDONALD: I can read it if you like,
6 sure. Thank you.

7 THE COURT: You can bring them in.
8 Anything else?

9 MR. MCDONALD: No, ma'am.

10 MR. GRANTLAND: No.

11 (WHEREUPON, the jury came into open
12 court at 10:21 a.m.)

13 THE COURT: Good morning, ladies and gentlemen
14 of the jury. At this time, we are ready to
15 continue with the Plaintiff's case.

16 I'll ask Mr. McDonald to call his next
17 witness.

18 MR. MCDONALD: Yes, Your Honor. If I may in
19 advance to that, if I may publish a stipulation --

20 THE COURT: Yes, sir.

21 MR. MCDONALD: -- to the jury and have you
22 charge the jury on what that is.

23 The stipulation that the parties have agreed
24 on is that the Defendant Jett was at the time of
25 the collision an employee of the Defendant Haier

1 America and was acting in the course and scope of
2 his employment.

3 THE COURT: All right. Thank you.

4 Yes, sir, call your next witness.

5 MR. MCDONALD: The Plaintiffs call Mr. W.H.
6 Bundy, Jr.

7 (Witness approaches.)

8 THE CLERK: Place your left hand on the Bible,
9 and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you give in this case will be the truth,
13 the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated, and state your
17 name for the record.

18 (Witness seated.)

19 THE WITNESS: My name is Walter Henry Bundy,
20 Jr.

21 WALTER HENRY BUNDY, JR.,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MCDONALD:

25 Q Mr. Bundy, where are you from?

1 A I'm originally from Clio, South Carolina.

2 Q And that's in Marlboro County?

3 A Yes, sir.

4 Q And where do you live now?

5 A Where do I live now?

6 Q Yes, sir.

7 A My hearing. I live in Boykin.

8 Q Boykin. Okay, Mr. Bundy. And you and I actually
9 practice law together, correct?

10 A Correct.

11 Q And where do you practice law?

12 A Currently, we practice law in Summerville, South
13 Carolina.

14 Q Okay. And do you drive into Summerville every day,
15 or do you work from home some, or how does that
16 work?

17 A No, sir. I live in Boykin, and it's about
18 100 miles to Summerville. And so I go about once a
19 week, spend the night, and that sort of thing, or
20 maybe go once every other week. But with the
21 internet and e-mail and all the rest of it, and now
22 we have got a phone -- I mean, you know, when they
23 call the office in Summerville, I've got a little
24 office in my house, and I can pick up the phone and
25 people, they don't know where I am.

1 Q And how long have you been practicing law?

2 A Since 1978. This is my 40th year.

3 Q And where did you graduate from college?

4 A University of South Carolina.

5 Q And where did you graduate from law school?

6 A I graduated from law school in 1978. I took a
7 couple of years off after college. I was a
8 carpenter and a boat builder, and all that kind of
9 stuff, did a little travel.

10 Q Sir, how did you meet Ms. Bundy? How did you meet
11 Ms. Bundy?

12 A We had a mutual friend who knew me and knew her.
13 She was living in Florida at the time, I didn't
14 know her. But after, you know, I don't know, one
15 time I was -- she was dating a friend of mine or
16 friend of a friend and she said, I know some lady
17 that I think you'd get along with. And so she --
18 Heather was coming up to Charleston to see her, so
19 we met.

20 Q About how long ago was that?

21 A Roughly 2001, 16, 17 years ago.

22 Q And you all were eventually married?

23 A Yes.

24 Q And when was that?

25 A Married on Thanksgiving Day 2001, November 23rd.

1 That was Thanksgiving Day that year.

2 Q And when you all were married, did you take up
3 residence somewhere? Where did y'all live?

4 A Boykin.

5 Q So, since being married, y'all have lived in Boykin
6 your entire marriage?

7 A Yes, sir.

8 Q Tell the jury a little bit about Ms. Bundy at the
9 time y'all got married. What kind of -- what did
10 she like to do? How was she? What were your
11 observations of her?

12 A Well, Heather is 15 years younger than me. She was
13 born in 1966. And so, being a lot younger than me,
14 you know, she's a lot more active, or whatever.
15 So, anyway, when we met, she was, you know, in very
16 good shape, very athletic. We used to do a lot of
17 things together.

18 Q What kind of things did you do together?

19 A Well, when you live in the country, you have to
20 learn to take care of yourself. I mean, ain't
21 nobody going to take care of you. You've got to
22 drive in to get your groceries. We'd drive to
23 Charleston and fill up a car at Costco because it
24 was cheaper, and all that kind of stuff. And
25 you've got animals to feed and, you know, things to

1 take care of, all that kind of stuff. I mean,
2 we've got a wood stove, and so -- she didn't chop
3 wood, but she could pick wood up. You know, we
4 lived in the country. I grew up in the country.
5 That's what I enjoyed. I mean, you've got to put
6 on a suit and tie to go down there to be a lawyer
7 in Charleston, but after a couple days of lawyers,
8 I've had enough of lawyers, I want to get back to
9 the country, so.

10 And she was a very good tennis player. And I
11 played tennis. I guess you could say I played
12 tennis. I'm a very bad tennis player, but I enjoy
13 it. So we had a tennis court because with my first
14 wife, who I was married to for 20 years, we had
15 three children, and I moved them out of Charleston
16 in 1988 and still continued to practice law there
17 because I could sort of see in 1988 where
18 Charleston was going, which is a tourist town like
19 New York now. I mean, I wouldn't live there if you
20 gave it to me. I mean, you can't get around. I
21 used to be able to walk to the office, you know,
22 and the traffic was -- you can't even drive into
23 Charleston anymore. I mean, you and I moved to
24 Summerville because now -- it used to take me an
25 hour -- it used to take me two hours to drive from

1 Boykin to downtown Charleston where I had an office
2 in the 1970s, '80s. Now it takes an hour and 40
3 minutes to get to Summerville, and some days two to
4 three hours to get from Summerville to Charleston.
5 If there's a wreck, I mean, you're done.

6 But at any rate, I'm not sure where I'm going
7 with all this, but, you know, so we lived in
8 Boykin. So I had this tennis court -- I know where
9 I was. So I had these small children, I had to
10 give them something to do, so I built them a tennis
11 court. The tennis court was there when Heather and
12 I got married. And so we would play tennis, you
13 know, two, three, four times a week. And then she
14 was also in a tennis group here with some ladies in
15 Camden, and so she played tennis with them.

16 Q What other things did y'all do? Do you have any
17 children with Ms. Bundy?

18 A No, do not.

19 Q And so in addition to playing tennis and spending
20 time around the house and the jobs required around
21 your house living in the country, what other things
22 did you do for enjoyment?

23 A You know, we used to enjoy -- you know, since you
24 don't -- if you don't have any kids, any children
25 anymore, you can, you know, decide let's go to --

1 let's drive to Newberry, you know, look at
2 something. Let's take a little weekend trip, you
3 know, let's see if there's a cheap plane ticket
4 somewhere and go somewhere for the weekend, you
5 know. So it was a very -- it was a good life.

6 Q You've been in this courtroom, have you not?

7 A Yes, sir.

8 Q And you've heard a lot of testimony about a wreck
9 that Ms. Bundy was in around 1985. Do you remember
10 that testimony?

11 A Yes, sir.

12 Q And how old was she in 1985?

13 A Well, Heather was born on Valentine's Day in 1966,
14 so she was 19 years old in 1985. Just to put it in
15 context, when I was 17 years old in 1966, I got in
16 a wreck and got thrown out of a car. Okay? And if
17 I was in that same wreck today and got -- the same
18 thing happened, I'd be in a wheelchair if I lived.
19 But I was 19 -- 17 at the time. Your bones, your
20 muscles, you get over it when you're a teenager,
21 thank goodness. I mean, that's the way the Lord
22 built us, you know, we can get over that stuff.

23 So, at any rate, my point is is that I never
24 even heard of this 1985 wreck until this -- all
25 this started. That's not something Heather and I

1 had ever discussed. She may not even -- this may
2 be the first time she's heard about me being in a
3 wreck when I was 17, I have no idea. But from 1985
4 until 2013 is over a quarter of a century. It's 28
5 years. So this is 28 years after an event in which
6 she was a passenger. I mean, she was a passenger
7 in a car at 19, got in a wreck, and now 28 years
8 later she gets in a wreck and, hey, you know, sorry
9 you were in a wreck when you were a teenager, you
10 were hurt then, you're done. I don't know, doesn't
11 make sense to me.

12 Q Tell the jury a little bit about Ms. Bundy. You've
13 been married to her now 16, 17 years.

14 A Seventeen years.

15 Q Possibly the person that knows her the best. Tell
16 the jury a little bit about Ms. Bundy.

17 A Well, she's a -- when I married her, she's a feisty
18 little fireball is what she is. I mean, she don't
19 put up with nothing. She's tough. She's very
20 athletic. She's wonderful. I love her. I don't
21 know what to tell you, I mean, she's my wife.

22 Q Now, did Ms. Bundy ever complain to you about back,
23 neck pain, soreness anything like that prior to
24 this wreck? Is that something that happened a lot
25 with you?

1 A Well, I mean, you know, with all due respect, she's
2 a woman, of course, she had some complaints during
3 the marriage. But not of the type that has been
4 suggested. I mean, you know, it -- no. I mean,
5 we -- no. It's incomprehensible to me. That's not
6 what I saw for the first 13 years of our marriage.
7 It's not the woman I lived with, the woman that is
8 ostensibly being described here. It's just not
9 who -- it's not what I saw.

10 Q Now, do you remember the day of the accident?

11 A Yes. I mean, you know -- yes, I do, I guess. I
12 remember parts of it. I mean, it's odd, I remember
13 that morning was a pretty typical morning. You
14 know, we got up, she fed the dogs, whatever she
15 does. She's always -- she gets up at 5:30 every
16 morning. I mean, I like to stay in bed. I mean,
17 I'd stay in bed all day if I could. I think I'm
18 lazy, basically.

19 But, anyway, I got up. She made coffee,
20 whatever. I kissed her goodbye. She was going to
21 the dump. She went to the dump two or three times
22 a week. Had this lady that worked at the dump and
23 they were big buddies and she was always telling me
24 a story about the lady at the dump and some
25 conversation they had.

1 And she said, I'm going go to Columbia. I'll
2 be back this afternoon and we'll play tennis. And
3 I vague -- I remember her saying something like, I
4 really feel good. I'm really -- sort of like it's
5 a beautiful day, yada, yada.

6 So she leaves. And then a couple of hours
7 later, hour or two, whatever it was, she calls me
8 upset, Come get me.

9 Q Do you remember that phone conversation?

10 A Yeah, yeah.

11 Q Did she seem upset?

12 A Oh, yeah. She was almost hysterical. I mean, you
13 know, she said, I was just sitting in the thing and
14 this truck grabbed me and pulled me out into the
15 thing. You know, I was getting ready -- sort of
16 like out of nowhere. I mean, you know, literally
17 out of nowhere, I'm sitting in the median and the
18 next thing I know I'm being drug out in the roadway
19 and he won't stop.

20 Q Okay. And when you got that call, what did you do?

21 A Got in my truck, drove down to where she was,
22 because I knew where it was. It was just right
23 down the road.

24 Q And when you arrived on scene, where was the
25 tractor-trailer and Ms. Bundy's vehicle?

1 A The tractor-trailer -- there's a -- off of 521,
2 there's a Frontage Road behind there. There are
3 apartments over there and a gas station, and all
4 that sort of stuff. At any rate, if you turn in, I
5 think Black River, whatever, and turn back to the
6 right, there's a little Frontage Road. So the
7 truck was over here and --

8 Q On the Frontage Road?

9 A -- the driver was sitting in the truck. Heather
10 was -- Heather's car was somewhere right around
11 there. And the policemen were over here.

12 Q And so at the time you arrived --

13 MR. MCDONALD: May I approach the witness,
14 Your Honor?

15 THE COURT: Yes, sir.

16 (Mr. McDonald approaches.)

17 BY MR. MCDONALD:

18 Q At the time you arrived on the scene, the vehicles
19 were not still in the median like they're depicted
20 in this picture?

21 A No, sir, I don't know anything about -- I wasn't --
22 none of that -- that would have all been moved as
23 far as I know.

24 Q Okay. And the vehicles were not in contact with
25 one another because they were over on the Frontage

1 Road, correct?

2 A Right, yes, sir. They were no longer out in 521.

3 Q So they had been moved?

4 A (Nods affirmatively.)

5 Q And what did you observe when you first -- other
6 than where the vehicles were, who did you first
7 encounter when you arrived on scene?

8 A Heather.

9 Q And where was she? Was she standing beside her
10 car?

11 A (Nods affirmatively.) Yes, sir.

12 Q And what did you do upon encountering her?

13 A I went over and consoled her and said, you know,
14 Just chill out, take it easy, you know, are you all
15 right? You know, do you want to go to the
16 hospital, or whatever you want to do. She was
17 still very, I guess, angry, or anxious is probably
18 the better definition of her emotions. Mostly just
19 being upset and angry about having been just out of
20 nowhere blindsided.

21 I mean, in a way, it would be like an emotion
22 you would get if you were sort of walking down the
23 street and all of a sudden out of nowhere somebody
24 to your left you didn't see hit you, so you just,
25 What's going on? So she was angry.

1 Q And what did you do after consoling her? What did
2 you do next on the scene?

3 A I sort of tried to walk over to the policeman to
4 see what was going on and I was basically told to
5 get away.

6 Q Did you talk to Mr. Jett?

7 A No.

8 Q Did you talk to any representatives from Haier?

9 A No.

10 Q And how long were you on scene?

11 A Probably no more than 15 minutes, maybe. Maybe
12 even less. Somewhere between 10 and 20 minutes.

13 Q Okay. And was Ms. Bundy's car towed from the
14 scene?

15 A Yeah.

16 Q And did you drive home with her in your truck?

17 A Yes.

18 Q Okay. Tell the jury a little bit about the drive
19 home and what happened the remainder of that day.
20 What did y'all do?

21 A Well, drove her home. She was still upset. And
22 sort of, the day was over. I mean, the day was
23 sort of ruined. I don't know. We didn't play
24 tennis, I mean, none of that happened, okay. And
25 she may have laid down. You know, I don't know. I

1 mean, I was just glad that she wasn't cut up or,
2 you know, anything like that, you know what I'm
3 saying? So from my perspective, it could have been
4 a lot worse, at least from what I could see, so I
5 was not -- you know, I wasn't as freaked -- I mean,
6 I didn't say, We've got to get you to the emergency
7 room or Medivac you out someplace. And clearly
8 she's not going to the hospital. I mean, if she
9 was bleeding, it would be hard to get her to go to
10 the hospital.

11 But, at any rate, so after that, progressively
12 over the next three or four days -- like the next
13 day, she sort of didn't get up at 5:30, you know,
14 she was starting to feel sore, you know. And then
15 over time, you know, like she said, she said her
16 head felt like a bowling ball, like she was holding
17 up a bowling ball. And sometimes you could hear it
18 snap. And it would just send chills up your spine.

19 So, anyway, so that sort of, you know,
20 continued. And then we sort of -- you know, we
21 slept in the same bed. And then it got to be where
22 we couldn't sleep together because either if I
23 would move, it would wake her up and she would be
24 in pain, or in the middle of the night she would
25 just squeal, because if she was moving all of a

1 sudden she would squeal and it would wake me up,
2 okay.

3 So then that was sort of a progressive, sort
4 of things got worse. And then, you know, then
5 she'd try to do something like pick something up.
6 The next thing I know she's in bed for a day or
7 two. So it was just -- and then she started trying
8 to figure out what to do about it.

9 Q And what was that, go somewhere --

10 A She got a massage. And then she started using this
11 Icy Hot stuff, this liniment stuff. And she'd put
12 it all over. And God that stuff stinks. I mean,
13 it just stinks. And, I mean, literally, you know,
14 almost put it -- I remember about two or three
15 years ago and I saw -- I believe it's longer than
16 that, I was watching some TV show and some girl
17 died from that stuff. Because it can -- if you put
18 too much of you on it, your skin can't breathe. I
19 said, you know, you got -- we got to figure
20 something else out here, okay. Because she's
21 tough.

22 I mean, you could -- I know her now so well,
23 particularly after this event, whatever you want to
24 call it, I can look at her and you would think that
25 she was fine. I can look in her eyes and it looks

1 like they're bleeding because she's in so much
2 name. But she don't squeal, she's tough. Tougher
3 than I am, I can tell you that.

4 Q So after the wreck and the ensuing period of her
5 trying to deal with the pain that she was in,
6 eventually did you have an opportunity to talk to
7 one of your friends about a surgeon in
8 Jacksonville?

9 A Well, what happened -- the sort of chronology there
10 is, if it's worth hearing, it's a little bit of a
11 story, but in 2012 I was inducted as a fellow in
12 the American College of Trial Lawyers, which is a
13 big deal in my profession, at least to some of us.
14 And at that meeting I met a lawyer from Florida
15 late at night and he said -- he asked me, he said,
16 Do you duck hunt?

17 MR. GRANTLAND: Objection, Your Honor. I'd
18 ask Mr. Bundy not to get into hearsay.

19 THE WITNESS: I'll stop.

20 A At any rate, I met a gentleman as a result of that.
21 And by virtue of that meeting, he was -- I had just
22 met him and, as men will do, we talked and he told
23 me a story. And in that story, he mentioned that
24 there was a doctor who had fixed his back, okay. I
25 didn't think about it, I just heard, listened to

1 the story and I told him a story. Okay, men sort
2 of telling each other stories.

3 Q And that doctor was Dr. Cannestra?

4 A It turned out to be that's who it was, I didn't
5 have any idea who he was talking about. So,
6 anyway, after the -- and that happened -- and that
7 story occurred before this wreck, okay.

8 So after the wreck, months later, maybe even
9 in November or something, Heather and I are on the
10 porch, and she's in so much pain and she's tried
11 all these things, I said, well -- and I remembered
12 that story, okay.

13 So I called this guy and I said -- and I
14 thought he told me the guy lived in Philadelphia
15 because I've got a daughter who was in Philadelphia
16 and I thought maybe -- she's a midwife. And I
17 thought maybe we could go see the doctor and get to
18 see my daughter at the same time. Turned out he
19 was in Jacksonville. So, anyway, that's how we got
20 to Dr. Cannestra.

21 Q And eventually was there a time period for
22 scheduling an appointment with Dr. Cannestra?

23 A Yes. We -- I contacted Cannestra's office I think
24 in November. We were appraised -- we had to get a
25 recent MRI because he wasn't interested in old

1 MRIs. And getting an MRI is not easy. Just to get
2 out of the blue and try to get an MRI is not an
3 easy thing to do. You've got to get doctors and
4 deal with all this red tape. So we finally got it
5 done.

6 So I got the MRI and I sent it down to
7 Florida. Just -- it sort of just disappeared. I
8 mean, we never heard back from them. So I
9 looked -- last night, I got on my computer and
10 looked up just old e-mails to see if I could
11 remember something. And what happened eventually
12 was, in April, I called Bob and I said, Bob, this
13 guy, I can't get anything from him. So I got an
14 e-mail two days later that said, You've got an
15 appointment day after tomorrow. It turns out they
16 play golf together. So the only way to get to this
17 guy is through somebody that knows him. So we
18 finally got into him in April. So that was a lucky
19 thing.

20 Q And did you and Ms. Bundy actually drive down to
21 Jacksonville together?

22 A Yes, we did.

23 Q How was that drive down? Tell the jury a little
24 bit about that.

25 A Well, it was like -- it was unlike drives we used

1 to have before September of 2013. Subsequent to
2 September of 2013, you have to stop every hour so
3 she can get out and walk around, okay. And she's
4 also terrified of driving, I mean.

5 Q Was there a hope or expectation at that point in
6 time driving down to Dr. Cannestra that first time
7 that she would not have to have surgery?

8 A Yes. I mean, my hope was he was going to go, No,
9 lady, you don't need surgery, you just need this
10 blue pill over here, you know, and it'll be fine.
11 Take one of those and everything will be fine.

12 Q And when you got down to Jacksonville, you actually
13 met with Dr. Cannestra, correct? And you were in
14 the room, correct?

15 A Pardon me?

16 Q You were in the room --

17 A Oh, yeah.

18 Q -- when she met with Dr. Cannestra?

19 A Yes.

20 Q And what did Dr. Cannestra do while you were in the
21 room?

22 A Well, you know, he comes in and he takes a history,
23 talks to you. And Heather told him a long -- you
24 know, a story. She answered all of his questions.
25 And then he did a physical exam, you know, the knee

1 thing with the thing. And walk -- and he watched
2 the way she walked, asked her where her pain was,
3 and sort of the typical stuff.

4 Q Did he transcribe everything that was said in that
5 room?

6 A No. That's not my experience. Like anybody taking
7 notes, it's not a verbatim transcript. It's not
8 like this lady here, you know.

9 Q And what was the upshot of that first meeting with
10 Cannestra?

11 A Well, the upshot of the first meeting was is that
12 you have -- in effect, this is where all roads
13 lead, ultimately, if you've got this problem, okay.
14 This is your last choice. Ain't no more choices,
15 okay.

16 Q What was last choice?

17 A Surgery.

18 Q And at that first meeting, was it discussed surgery
19 on both the neck and the back?

20 A Yes.

21 Q And the surgery at that first appointment -- he
22 obviously didn't perform the surgery at that first
23 appointment? He obviously did not perform the
24 surgery at that first appointment?

25 A Oh, no, no, no, we had to schedule it. It takes --

1 you know, all that takes time. So that was -- I
2 think that wasn't until June maybe.

3 Q And did you -- so ultimately you took Heather back
4 to Dr. Cannestra to perform the first surgery,
5 correct?

6 A Yes, in June.

7 Q Tell the jury a little bit about that trip down.

8 A Well, the trip down was, of course, full of
9 anxiety, and all the rest of it, but some hope, you
10 know, at least we're going to do something. The
11 surgery, of course -- I mean, it was like surgery,
12 it's scary. You know, I'm with her the whole time,
13 but back surgery is -- some lady came in with
14 computer stuff and they -- this place, they hook
15 up -- when you're -- when she was in the operating
16 room, there's a person there on a computer who's
17 got -- and she came in and told Heather about this,
18 who's got things stuck to all of her nerves in her
19 spine so that when the doctor is doing this
20 microscopic stuff, they know exactly where
21 everything is, okay. I mean, it's a very -- it's
22 dangerous, I mean, it's dangerous. So, anyway --
23 Q Let me stop you there. Prior to this surgery, had
24 you and Ms. Bundy ever discussed neck or back
25 surgery that she was going to undertake?

1 A Prior to the accident?

2 Q Prior to the accident and this surgery, yes, sir.

3 A The first time -- the first time -- you know, I
4 mean, there would have been no need to discuss it
5 prior to the accident. I mean, not back surgery,
6 for God's sake.

7 Q So the first surgery, you went down. Did you --
8 what did you do while she was undergoing surgery?

9 A Paced around the hospital.

10 Q Do you recall being let in to see her after the
11 surgery? Do you recall being let in to see her
12 after the surgery?

13 A Yes.

14 Q Okay. Tell the jury about your recollection of
15 that.

16 A You know, just your wife is in -- you know, she had
17 bags and all this stuff and is catheterized and
18 neck is in this thing. And she looks coming out
19 of -- you know, being any time you go under general
20 anesthesia, you're essentially as close to dead as
21 you're ever going to be. So she's coming back from
22 that. She was in a lot of pain.

23 Q And eventually was she discharged from the
24 hospital?

25 A Yes, a couple of days later.

1 Q And did you drive her home?

2 A Yes.

3 Q Tell the jury a little bit about the drive home.

4 A That's the worst drive I've ever made in my life.
5 I was scared to death.

6 Q Why?

7 A Well, because she just had back -- neck surgery.
8 And basically what he tells you when you walk out
9 of there about the next 24 hours, you know, like
10 don't -- you know, don't fall down, don't do this,
11 don't do that. So I'm riding down 95 and all
12 these -- all this stuff going on. And I'm -- you
13 know, it's just scary. Somebody pull out in front
14 of you and, you know, does this, I mean. So,
15 anyway, it was scary. I had to get her home and
16 it's no less safe than flying in an airplane. She
17 couldn't sit in an airplane.

18 Q And did you eventually get her home?

19 A Oh, yeah. And nothing happened.

20 Q And how were your -- what was your role when you
21 got her home? What were you --

22 A Well, my role should have been caregiver, but I'm a
23 crappy caregiver. I wouldn't -- I couldn't -- it
24 was a lot worse than I thought it would be, a lot
25 worse. I mean, she was in a lot of pain, you know.

1 And it required -- I just wasn't emotionally or,
2 you know, equipped to take care of her.

3 Q Okay. And as a result of that struggle in caring
4 for her, did you all have an issue in your
5 marriage?

6 A Yes. I moved out in August.

7 Q Why did you move out?

8 A I can't say. Because I'm a jerk, I guess. I mean,
9 because I couldn't take it. I mean, there's no
10 excuse for it. I wasn't able to man up to it.

11 Q About how long did you move out for?

12 A Well, my daughter and -- my daughter-in-law and my
13 son live on Daniel Island, so I moved down there to
14 be -- I was only -- and I only went a hundred and
15 something miles away. So I went down there and got
16 an apartment near them. I went to a shrink for a
17 couple of months and sort of got over my man
18 nervous breakdown and came back home.

19 Q Came back home a couple of months later?

20 A Yes.

21 Q And was that before the second surgery?

22 A Yes.

23 Q And at the time you came back home, did you already
24 know that based upon your first meeting with
25 Dr. Cannestra that there was going to be a second

1 surgery?

2 A Yes, and I knew it was going to be worse. At least
3 that's what he told me.

4 Q And when you got back home, your role as caregiver,
5 did you still have to perform some portion of that
6 role? Did you jump back in and try and do what you
7 could?

8 A Did I?

9 Q Yes, sir.

10 A Yes, I tried. But, luckily, at that time, you
11 show, she had found Lesia and her son, Anthony, to
12 help us. And, you know, if there's any -- that's
13 the only good that's come out of all of this,
14 that's it, finding Lesia and Anthony has been
15 wonderful.

16 Q And how did she look -- when you moved back home,
17 how did she look? Did she appear --

18 A How did she look?

19 Q -- to have recovered some from the first surgery?

20 A Well, actually, you know, she -- in the sense that
21 the neck surgery, her head quit feeling like a
22 bowling ball, so she was, you know, really excited
23 about that. Her neck didn't snap anymore. And so
24 there was, you know, that great benefit from the
25 neck surgery.

1 The -- sort of the other side of the coin is,
2 is that if you hurt here, here, and here or here
3 and then your back, okay, and then the neck pain
4 goes away, then all you're left with is the back
5 pain and now it was more intense because there was
6 nothing -- there was no distraction from the back
7 pain. Now it was just all back pain. So to the
8 extent that her neck was much better, she was
9 better, but she was in at least as much pain, and,
10 in some ways more, because it was now all focused
11 in her very last disk in her back. I mean, that's
12 the one that holds all the weight of your whole
13 body, as I understand it. I'm not a
14 doctor, obviously.

15 Q And did you go with her to the second surgery?

16 A Yes, sir.

17 Q Tell the jury about the drive down for that.

18 A Well, the second surgery was a horror show
19 because -- and the second surgery was a success,
20 according to Dr. Cannestra, but just in terms of
21 the care that she received at the hospital, it was
22 a horror show. They operated on her and left her
23 in the hall for almost six or eight hours and just
24 ignored her. So when I finally saw her, I mean,
25 she was -- I mean, you know, her bag was full. I

1 mean, it was horrible. So -- I mean, she didn't
2 get very -- it's a good hospital, but something
3 went awry the second time with the nurse or the
4 staff or something. And so the experience was
5 very -- and she was in a tremendous amount of pain.

6 To answer your question, the ride home was at
7 least as bad, if not worse, than the previous one
8 because we had the bad experience in the hospital,
9 and it's more surgery. I mean, there is more metal
10 in her back. It's just much more painful. I
11 would -- just from my observations, I would think
12 the back surgery was twice as painful as the neck
13 surgery, just based on how -- what I saw. I
14 mean --

15 Q Tell the jury --

16 A -- I didn't feel any of this pain.

17 Q Tell the jury a little bit about the first two to
18 three months after the back surgery, what Heather
19 was like.

20 A Just -- it was just -- it was the same drill, just
21 worse. I mean, I couldn't sleep in the same bed.
22 I mean, you know, and she would stay in bed. It
23 was just terrible. And, you know -- and, you know,
24 having your back and all that is way different from
25 the neck. I mean, it's just a different -- it was

1 always just different. It's worse.

2 Q And did the recovery period of the back, did she
3 have some success from that surgery?

4 A Oh, yeah. It took longer for the wound to heal.
5 She had to wear all these devices longer. I mean,
6 she was -- you know, all that.

7 Q And --

8 A It was a longer period of time, but at least this
9 time I stayed for it.

10 Q Did you ultimately observe her to be -- after the
11 recovery period that the back surgery helped?

12 A The back surgery did a good -- relieved the pain.
13 I mean, she's not -- at the end of the back
14 surgery, I mean, she's in less pain that she was
15 before it. I mean, I don't -- I mean, I regret
16 that she had to have it, I don't regret she had the
17 surgery because it has had a positive effect. I
18 don't know what would have done if she hadn't had
19 this surgery. I don't know where she'd be.

20 Q And tell the jury a little bit about how it's
21 different now. We talked about you and Ms. Bundy's
22 relationship prior to the wreck. Tell the jury a
23 little bit about how it's different now after the
24 wreck and the surgery.

25 A Well, before this wreck, I was married to a

1 different woman and had a different marriage.
2 After this wreck -- and I love both of the women
3 that I was married to, the one before the wreck and
4 the one after the wreck. And I'm lucky to have the
5 life I have now. Okay. I enjoyed the life more I
6 had before. So it's just night and day.

7 We can't -- you know, if we want to go
8 somewhere, I mean, it's -- if you get there, you
9 know, she -- I don't know, you just can't -- I just
10 can't do stuff. Sometimes, she has to stay in bed
11 for a day or two. She can't do what she used to
12 could do. We can't play tennis. You know, we just
13 can't do any of that stuff. And she's a beautiful
14 woman. You know, she likes to dress up and she
15 can't wear high heels anymore, which is a big deal.
16 Okay. I mean, she's got a cane now. She has to
17 walk with a cane at the house.

18 Q Are there good days and bad days?

19 A Pardon me?

20 Q Are there good days and bad days?

21 A Well, sure, yeah. I mean, you know, if she lays in
22 bed for a couple of days or gets -- you know, then
23 she'll feel better. And then typical Heather,
24 she'll get all excited and go out and do too much
25 and then we get back into that -- I mean, she's

1 tough. I mean, it's hard for her to accept where
2 she is. I think it's hard emotionally for somebody
3 to just accept it, you know, and to deal with it.
4 Particularly if you feel better some days and worse
5 the next. I mean, you forget.

6 Q Do you all ever have arguments about you feeling
7 like that she's doing too much at a point?

8 A Well, we had a friend one time who said we're very
9 passionate people. Yes, we are. I'm bullheaded.

10 Q And what type of position does that put you in when
11 you have to intervene and say, Heather, I think
12 you're doing too much right now?

13 A That's all I can do. You know, I'm now giving free
14 medical advice and I'm not a lawyer -- I mean, I'm
15 not a doctor. You know, ultimately it's her --
16 it's her choice. But, I mean, you know, but I have
17 to say what I have to say. And then we -- we're
18 getting better. We're getting better. Things
19 ain't going to get worse, they're going to get
20 better.

21 Q And I know this is really personal, but I have to
22 ask you about it. How is your physical
23 relationship impacted?

24 A Well, let me see if I can put this in an
25 appropriate way. I love my wife. We used to sleep

1 in the same small bed together. Okay. And since
2 this, at least up until recently, we couldn't even
3 sleep in the same bed. And now we can sleep in the
4 same bed, but I had to go buy a great big bed so
5 that we can stay far enough apart from each other
6 so that, you know, when I move it doesn't -- so we
7 used to sleep in a small bed, now we sleep in a big
8 bed. That's as much as I'd like to say about it.

9 Q I understand.

10 MR. MCDONALD: That's all I have, Mr. Bundy.
11 Thank you very much.

12 MR. GRANTLAND: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 MR. HARRELL:

16 Q Good morning, Mr. Bundy.

17 A Good morning.

18 Q Mr. Bundy, you've been a lawyer for 40 years?

19 A Yes, sir.

20 Q And Mr. McDonald is your law partner?

21 A Yes, sir.

22 Q And y'all have a firm in Summerville?

23 A Yes, sir.

24 Q And I think y'all do a lot of construction
25 litigation cases, is that right?

1 A Yes, sir.

2 Q I mean, you're involved representing Plaintiffs,
3 suing businesses or construction companies, is that
4 correct?

5 A Yes, sir, Defendants and, you know.

6 Q And let me ask you about this accident. You were
7 not a witness to the accident?

8 A No.

9 Q Ms. Bundy called you after it happened?

10 A Correct.

11 Q You went to the scene and picked her up?

12 A Yes, sir.

13 Q She -- her car had already been moved when you got
14 there?

15 A Yes, sir.

16 Q Do you know if she had moved her car?

17 A Pardon me?

18 Q Do you know if she had moved her car, if your wife
19 had moved her car?

20 A No, my wife didn't move the car.

21 Q Someone else moved her car for her?

22 A Yes.

23 Q And you said you can't remember if you -- if she
24 drove back to Boykin or if you drove her home, is
25 that correct?

- 1 A No, I drove her home.
- 2 Q Okay. All right. Ms. Bundy did not want to go to
- 3 the emergency room to be checked out?
- 4 A Never came up.
- 5 Q Pardon me?
- 6 A Never came up.
- 7 Q Okay. So did y'all go to the hospital?
- 8 A No.
- 9 Q She did not want to go to the hospital, did she?
- 10 A It never came up.
- 11 Q Okay. Did it not come up because she was not --
- 12 she didn't feel like she needed medical treatment?
- 13 A I don't know why it didn't come up. It didn't come
- 14 up.
- 15 Q Did you suggest taking her to the hospital to be
- 16 checked out?
- 17 A It would have -- like I told you, if my wife was
- 18 bleeding, okay, and I said let's go to the
- 19 hospital, she would say no.
- 20 Q All right. Now, let me ask you about her health
- 21 before the accident. You said Ms. Bundy would get
- 22 a massage once a week at your house before the
- 23 accident, is that right?
- 24 A Did I say -- when?
- 25 Q In your deposition?

1 A Oh, in my deposition.

2 Q Yes, sir. And I'm happy to show it to you if you
3 want me --

4 A No, why don't ask me a question and then I'll
5 answer it. And if it's different in deposition, we
6 can do it that way.

7 Q You have said that Ms. Bundy would get a massage
8 once a week at your house before the accident, is
9 that correct?

10 A That's correct, once a week, yeah. And so would I.

11 Q And was this to help her with her neck and back
12 pain?

13 A Well, we both got massages. We were fortunate to
14 have a lady that would come out and give us
15 massages, okay. It helped my neck and back. I
16 assume it would help your neck and back. It's a
17 massage. It relaxes you. But I'm sure it helped
18 her neck and back. It helped mine.

19 Q You and Ms. Bundy were married in 2001?

20 A Yes, sir.

21 Q And were you aware of any of her prior car
22 accidents before this 2013 accident?

23 A Prior car accidents. You know, not -- I mean,
24 vaguely, I guess. I mean, it's not something we
25 talked about.

1 Q Yes, sir. Were you aware of her prior boating
2 accident before this 2013 accident?

3 A Yeah, I was in the boat.

4 Q Okay. You were in the boat?

5 A Yes, sir.

6 Q Where you hurt in that accident too?

7 A Sir?

8 Q Were you injured in that accident?

9 A Yeah, you if want to call it an accident, yeah.

10 Q Okay. And did Ms. Bundy hurt her neck and back in
11 that accident?

12 A Well, what happened was, is that we were in a
13 little patrol boat going from the Isle of Palms
14 Marina to Dewees Island because the ferry was not
15 working. And the person driving the boat, the boat
16 captain guy was sort of a temporary policeman. And
17 so when we got close to Dewees, when you hit the
18 inlet, you turn left, he turned too early and ran
19 into a sandbar at about, I don't know, four or five
20 knots, okay, and we all jerked, okay. That's the
21 boating accident.

22 Q That was the boating accident?

23 A That's the boating --

24 Q Do y'all have a house or condo on Dewees?

25 A We own a house with three other families from

1 Columbia in Dewees, yes.

2 Q And do you know anything about Ms. Bundy taking
3 epidural injections or facet joint injections for
4 her neck and back pain before this accident?

5 A No, sir.

6 Q Do you remember telling me in your deposition that
7 you think she may have had injections, but you just
8 weren't sure?

9 A That could be, yes.

10 Q Do you know anything about her taking muscle
11 relaxers for her neck and back pain before the
12 accident?

13 A Oh, yeah. She had muscle relaxers, sure.

14 Q Okay. Did you take -- and did she take them on a
15 regular basis?

16 A She doesn't really like to take pills on a regular
17 basis. I mean, I know she had some because I would
18 take them every now and then.

19 Q Okay.

20 A Because, you know, part of being old is you hurt.

21 Q Yes, sir. I understand that. Do you remember when
22 Ms. -- when your wife went to Dr. Wagers for neck
23 and back pain?

24 A Pardon me?

25 Q Do you remember when your wife went to the

1 chiropractor here in Camden, Dr. Wagers, for her
2 neck and back pain?

3 A Well, I go to Wagers. I've been to Wagers probably
4 25, 30 times because I have a back -- every now and
5 then, my back will get out of whack.

6 Q Yes, sir.

7 A But --

8 Q He's a good chiropractor.

9 A -- I know she went to Wagers. I think she went to
10 Dr. Wagers one, maybe two times.

11 Q Do you know anything about what her complaints were
12 when she saw Dr. Wagers?

13 A Well, I wasn't in the room. I assume since she
14 went to a chiropractor, she would have not been
15 complaining about her feet. I assume it was her
16 back or her neck or something.

17 Q Yes, sir. Let's talk -- let me ask you now about
18 your wife's treatment after the accident. You said
19 after the accident, your wife got progressively
20 worse?

21 A Correct.

22 Q You said she used a lot of liniment, smelled like
23 liniment all the time?

24 A Correct.

25 Q You said you went through various chiropractors and

1 a masseuse?

2 A I don't know if I said -- I don't know if I said
3 various chiropractors and masseuses on direct. If
4 in the deposition, you want to get it and we'll see
5 what I said. I mean, I --

6 MR. GRANTLAND: May I get his original
7 deposition?

8 THE COURT: Yes.

9 MR. GRANTLAND: May I open the deposition,
10 Your Honor?

11 THE COURT: Sure.

12 (Mr. Grantland opens deposition.)

13 MR. GRANTLAND: May I approach the witness?

14 THE COURT: Yes, sir.

15 (Mr. Grantland approaches.)

16 MR. HARRELL:

17 Q Here you go, Mr. Bundy.

18 A Thank you, sir.

19 Q Mr. Bundy, I was questioning you based on an answer
20 on Line -- on Page 24. When you turn to Page 24,
21 let me know.

22 A Yes, sir, I got it.

23 Q Okay. And, anyway, you can just -- you can start
24 on --

25 A Oh, I see it. Okay, it's Line 22.

1 Q Yes, sir, you can start on Line 19 with, So,
2 anyways.

3 A Sure. So, anyways, that kept getting progressively
4 worse and she would just cover herself with
5 liniment and smell like liniment all the time. At
6 any rate, we went through various chiropractors and
7 we had a masseuse.

8 Q Okay. So --

9 A I said various chiropractors. The only one I can
10 tell you here as I sit here today is Dr. Wagers.
11 And I guess if your law partner had followed up and
12 said what various chiropractors, I would have had
13 to admit that, no, it was just Wagers. I don't
14 know of any other chiropractors.

15 Q Well, did you take her to any appointments to
16 chiropractors after this accident?

17 A I didn't take her to any. I mean, she may have
18 gone to some. I mean, I'm not saying that she
19 didn't. All I'm telling you is what I know, okay.

20 Q Well, do you know if she got a bill from a
21 chiropractor after this accident?

22 A She may have, I don't know. She's got her own
23 money.

24 Q What massage therapist did Ms. Bundy see?

25 A Pardon me?

1 Q What massage therapist did Ms. Bundy see?

2 A Well, I can't -- there was one lady named Jennifer.
3 There was one lady who had a massage business,
4 she's now doing it in Kiawah. I've forgotten her
5 name. There was another lady who was a masseuse
6 who would come after her regular job. She worked
7 over in that Urban Nirvana place over in Columbia.
8 She would come. So it was three or four different
9 people because they would come and they'd stay for
10 a while and then they didn't want to drive out to
11 the house, and all that stuff, so.

12 Q So these massage therapists would come to your
13 house?

14 A Yes.

15 Q Okay. Did y'all get bills from these massage
16 therapists?

17 A Paid them in cash. I mean, that's why they would
18 come.

19 Q Now, you said -- you also said Ms. Bundy tried
20 acupuncture after the accident?

21 A Yes.

22 Q Who did she see?

23 A There's a lady in -- there's a lady in Camden,
24 whose place is in Dusty Bend right up here back in
25 a little building.

1 Q Yes, sir.

2 A And in fact, she did me too, because I was -- I had
3 an elbow problem.

4 Q Did you take her -- did you take your wife to these
5 appointments or did she go on her own?

6 A I think I found out about the lady through Heather.
7 So Heather would have gone, said she was --
8 helped -- that she maybe helped her, didn't help
9 her, whatever and, you know.

10 Q And do you know if Heather got a bill from this
11 acupuncture?

12 A I doubt the lady did it for free.

13 Q You think the lady did it for free?

14 A I said I doubt the lady did it for free.

15 Q Oh, you doubt. And that's what I'm getting at. I
16 mean, if your wife saw a chiropractor after the
17 accident or a massage therapist after the accident
18 and did acupuncture after the accident, she didn't
19 see any of these people for free. She would have
20 been billed, is that correct?

21 A Correct.

22 Q Okay. And I think you also testified that
23 Ms. Bundy had epidural injections after the
24 accident?

25 A Yes, she had epidural injections after the accident

1 in Columbia. We found -- I think the doctor's name
2 was Grice, or something like that. And his office
3 is off of I-26. It's in an odd little area. It's
4 a big building. There's a women's center there.
5 And we went there. And I drove.

6 Q You took her to that?

7 A And she went more than once as I recall.

8 Q And as we discussed, you're not sure if she had
9 epidurals before this accident or not, is that
10 correct?

11 A That's correct.

12 Q And are the epidurals on your list of medical
13 expenses?

14 A No, I don't -- I don't think. I don't know. I
15 mean, I haven't looked at the medical expenses.

16 Q Have you looked at Plaintiff's Exhibit 9 that's
17 been submitted?

18 A I haven't studied it, I know it exists. I mean,
19 I'm glad to look at it now. But, I mean, if you
20 tell me as a lawyer that it's not on there, then I
21 trust you.

22 Q Yes, sir.

23 A Because it's your professional responsibility.

24 Q My question -- I mean, you're a lawyer, you've
25 handled personal injury cases before, haven't you?

1 A Well, I've handled one or two. I don't have a
2 taste for them. I don't like them.

3 Q Yes, sir. But, I mean, if your wife had this
4 treatment, acupuncture, massage, epidurals after
5 the accident, why is none of it on your list of
6 bills?

7 A Because this case isn't about money.

8 Q Okay.

9 A I don't care if I left off a 20-dollar bill or a
10 400-dollar bill.

11 Q Okay.

12 A I'm not here collecting money, okay. You got me,
13 we forgot to present a bill. I apologize.

14 Q Are you sure she had all that treatment?

15 A Pardon me?

16 Q Are you sure your wife had all this treatment,
17 acupuncture, massage, chiropractors?

18 A Didn't I tell you I was there?

19 Q Yes, sir.

20 A You are going -- you are going to ask me that
21 again? I told you I took her to Columbia for an
22 epidural, and you're going to ask me again did that
23 happen?

24 Q I'll move on, Mr. Bundy. But then I think you said
25 in your deposition, while you were duck hunting in

1 Argentina, a friend of yours referred you to Dr.
2 Cannestra, is that right?

3 A No. When I was in Argentina, I was in a duck blind
4 with Bob --

5 Q Parrish?

6 A Parrish. I had never met the man before.

7 Q Yes, sir.

8 A As old men do, we were talking in a duck blind.

9 Q Yes, sir.

10 A And I commented on what a good shot he was. And
11 just like any arrogant guy who used to play
12 football, he said, Well, I used to be a whole lot
13 better, but then because of my football injuries, I
14 couldn't do it, but I went to this doctor who's a
15 rock star back surgeon who did whatever, okay.

16 Q And that's Dr. Cannestra?

17 A Well, if you let me finish, I'll explain it to you.

18 Q Okay.

19 A That was the end of that conversation. I went to a
20 rock star doctor and now I'm a better shot than you
21 are, because that's really all it was about, is who
22 was the best duck shot, okay. And I had made a
23 good shot. He missed his and he had to have an
24 explanation.

25 Q Yes, sir.

1 A So like bragging lawyers do, he had to go back and
2 tell me he was a bigshot, had a bigshot doctor.
3 But he's a nice guy, that's just the way men are,
4 okay. That's what happened.

5 Q Yes, sir.

6 A Then when Heather gets hurt or gets in this wreck
7 and we're sitting on the porch two or three months
8 later and my wife is getting worse and worse, I
9 remember. Okay, so I call Bob up. Bob, what is
10 this guy's name, where is he? He's in
11 Philadelphia, right? No, he's not in Philadelphia,
12 he's in Jacksonville.

13 Q Yes, sir.

14 A What's his name? So he sent me an e-mail and gave
15 me his name. So that's how that happened.

16 Q Now, did Ms. Bundy go on this trip to Argentina
17 with you?

18 A No.

19 Q Why not?

20 A Pardon me?

21 Q Why not?

22 A Why didn't she go duck hunting with me in Argentina
23 with a bunch of men I didn't know? That question
24 answers itself.

25 Q Okay. Now, your first -- again, the first medical

1 treatment you list on your list of expenses is with
2 Dr. Cannestra, May 29th, 2014, does that sound
3 right?

4 A Yes.

5 Q And then two weeks later, she has surgery,
6 June 12th?

7 A Right.

8 Q And then y'all went down in December and she did
9 back surgery the next day?

10 A Right.

11 Q Okay. Now, at some point between the two
12 surgeries, you filed for divorce?

13 A Correct.

14 Q I mean, you moved out -- you not only moved out,
15 but you also filed for divorce?

16 A Correct.

17 Q You say you filed for divorce sometime in
18 August 2014?

19 A Correct.

20 Q And I think you said that you filed for divorce
21 because she could no longer take care of you?

22 A Pardon me?

23 Q You said that Heather could no longer take care of
24 you?

25 A Is that what I said in my deposition?

- 1 Q You can turn to Page 26 and 27.
- 2 A No, I'll take your word for it. That would sound
3 like something I would say, sure.
- 4 Q You also said it was frustrating to you because you
5 need a lot of care?
- 6 A That's what I said, yeah.
- 7 Q And you also said you admit you're self-centered.
8 It's unfortunate, but you live with it?
- 9 A Hey, I'm a jerk. I'm under oath, I'll admit it,
10 I'm a jerk. I'm not proud of that. I'm
11 embarrassed by it. Okay. I didn't do the right
12 thing.
- 13 Q Yes, sir.
- 14 A And I'm sorry, Heather.
- 15 Q But then you moved back in?
- 16 A Yes, sir.
- 17 Q And so y'all were probably separated 60, 90 days?
- 18 A Yes.
- 19 Q And y'all -- you and Ms. Bundy live in Boykin?
- 20 A Yes, sir.
- 21 Q And your law firm is in Summerville?
- 22 A Yes, sir.
- 23 Q Now, do you also have an apartment or condo in
24 Charleston or Summerville?
- 25 A I have a place in my office I could sleep.

1 Q Okay. And so when you work in Summerville and you
2 have to stay over, you stay there?

3 A Yes, but I don't typically -- I mean, you know, I
4 try not to go. I try to go as little as possible.
5 I try to go every other week.

6 Q You leave Brent down there?

7 A Well, he's young. It's his turn, let him work.

8 Q Yes, sir. Now, your house in Boykin is on the
9 National Register of Historic Houses, is that
10 correct?

11 A It is now.

12 Q And you have barns and other buildings on the
13 property, is that right?

14 A Yes, sir.

15 Q How many structures do you have on the property?

16 A Let's see. I got a house. I got a barn. I got a
17 saw mill. I like to saw lumber. That's what
18 Dr. Wagers and I have in common. That's mostly
19 what we talk about when I go to him as a
20 chiropractor is sawing lumber. I got a room that
21 Heather has some exercise equipment in so she can
22 exercise and get massages.

23 Q Is that her gym that she has?

24 A Well, it's not really a gym. It's just a little
25 building that's got some exercise equipment in it

1 and a massage table so when these masseuses comes
2 out -- plus, it's her private space. I mean, she's
3 got a little desk in there and I've got a little
4 office.

5 Q How many acres do y'all have?

6 A It's 30.

7 Q How many?

8 A Thirty.

9 Q And you also have four dogs?

10 A One, two, three, four now, yeah.

11 Q Two Mastiffs and a Great Pyrenees and --

12 A There's two Mastiffs, one Great Pyrenees left
13 because the other got run over by somebody in my
14 own yard. He's lucky to be alive. And a little
15 small white dog, Muppet, that belongs to Heather.

16 Q Three of them are real big dogs?

17 A Well, the two Mastiffs are pretty big. They're
18 about 180 pounds each, yeah.

19 Q And does Ms. Bundy do anything in taking care of
20 the dogs?

21 A Yeah. I mean, I guess she feeds them, sure.

22 Q Does she walk them, play them -- play with them?

23 A No, no, you don't walk and play with Mastiffs. Not
24 but one time.

25 Q Y'all also have a pool and tennis court on the

1 property?

2 A Yes, we do.

3 Q And is Ms. Bundy able to play tennis at all?

4 A No. She's been told by her doctor she could not
5 play tennis. And, in fact, you brought up the
6 pool, before this happened, you know, our typical
7 day was we'd worked, do this, do that, and we'd
8 really enjoy going in the swimming pool and playing
9 tennis. So now she can't play tennis anymore.

10 Q Is she able to swim in her pool?

11 A Now basically it's just a big hot tub when it's hot
12 enough to go out in it. And if it's cold, you
13 can't go in it. So we don't enjoy the pool like we
14 used to, but I ain't complaining.

15 Q Are you able to go on trips together with your
16 wife?

17 A It's a much more difficult proposition.

18 Q Yes, sir.

19 A The places we can go are very much restricted. The
20 way we get there is a lot more expensive.

21 Q Yes, sir.

22 A I mean, used to be we could fly -- or she could fly
23 in coach, which is the way we always flew. Now,
24 because of her condition, she can't sit in that
25 position on an airplane, she just can't do it. And

1 so we have to figure out ways to either fly, and we
2 have to sit in the front where it's very expensive
3 unnecessarily, but it's expensive, but in addition
4 to that, we have to pick flights that are short,
5 okay, so it takes longer and it's more expensive to
6 get someplace. So as a result of things being what
7 they are, we don't travel as much.

8 Q You said you flew to California October of 2016?

9 A Yes, sir.

10 Q Napa Valley?

11 A Uh-huh.

12 Q And y'all flew first class?

13 A That's right.

14 Q Because it was more comfortable for her?

15 A Yes.

16 Q Did y'all take any trips together last year, in
17 2017?

18 A I honestly don't recall, I mean, I really don't.

19 Q From your perspective, you thought your wife's neck
20 surgery was a success, is that correct?

21 A Yes, to the extent that her neck doesn't hurt as
22 much as it did, yes, sir.

23 Q But she still has problems with her back?

24 A Yes, sir.

25 Q Do you remember Ms. Bundy going to see Dr.

1 Cannestra in December of 2016?

2 A Yes, sir.

3 Q Did you take her or did she go on her own?

4 A Every time she's been, I've taken her.

5 Q Do you remember your wife telling Dr. Cannestra
6 that she was pain free until she did some overhead
7 lifting?

8 A I don't remember those exact words, no.

9 Q Do you know what kind of lifting your wife did to
10 hurt her back?

11 A It could have been a bag of dog food. It could
12 have been a vacuum cleaner. It could have been
13 anything, I have no idea.

14 Q Where were you when she was doing this lifting?

15 A I'm not -- I don't have specific awareness of the
16 particular lift, so I don't know where I was when
17 it occurred.

18 Q Mr. Bundy, do you help your wife with chores around
19 the house?

20 A Yes.

21 Q You help with cooking and cleaning and lifting up
22 heavy stuff?

23 A No, sir, I don't. Well, I help with lifting heavy
24 stuff when I'm asked to help and when I know it
25 needs to be done. But in terms of cleaning, no.

1 When I'm talking about helping around the house,
2 I'm talking about doing plumbing, electrical,
3 chopping wood, cutting grass, trimming trees and
4 the stuff that -- outside, okay, that she obviously
5 can't do. Although before this happened, she had
6 her own little lawn mower and she really enjoyed
7 mowing the grass, but she can't do that anymore.

8 Q Yes, sir. Cooking, cleaning, anything inside, you
9 don't have anything to do with that?

10 A I'm sort of old school. I'm old.

11 Q Yes, sir, I understand.

12 MR. GRANTLAND: No further questions. Thank
13 you, Mr. Bundy.

14 MR. MCDONALD: Nothing from me, Your Honor.

15 THE COURT: All right, sir. You may step
16 down.

17 (Witness steps down.)

18 THE COURT: Call your next witness.

19 MR. MCKENZIE: No further witnesses, Your
20 Honor.

21 THE COURT: All right, ladies and gentlemen of
22 the jury, the Plaintiff has rested. At this time
23 there are some matters of law that I need to take
24 up outside of your presence, so I am going to send
25 you all out. This is a good time for your morning

1 break. So we will receive you back in shortly.

2 So, remember, do not discuss the case. Do not
3 discuss any of the testimony. Talk about something
4 else, like how cold it is outside.

5 All right. Thank you.

6 (WHEREUPON, the jury retires to the jury
7 room at 11:21 a.m.)

8 THE COURT: Any motions?

9 MR. GRANTLAND: Your Honor, I would only make
10 a motion for directed verdict on the issue of
11 punitive damages. You know, the Plaintiff's case
12 has been presented. There's certainly a
13 question -- a dispute about who was in the median
14 first, who hit who first, but there's been no
15 evidence of any gross negligence or any willful,
16 wanton, reckless conduct on the part of Mr. Jett or
17 any statutory violations. And for that reason, I
18 think punitive damages would be inappropriate in
19 this case and would ask that be stricken.

20 THE COURT: Yes, sir?

21 MR. McDONALD: Well, I think there's certainly
22 evidence of recklessness that's been presented.
23 And that evidence being, in the light most
24 favorable to Ms. Bundy, taking a left at a point
25 and pulling through the intersection into oncoming

1 traffic. I understand there's a dispute as to who
2 was there first, but as Mr. Poplin testified to she
3 should have been seen. Mr. Grantland asked a bunch
4 of questions about whether or not he should have
5 seen her and he didn't see ever. There's certainly
6 been testimony that he didn't see her and he should
7 have seen her. And I think it gives rise to
8 recklessness.

9 THE COURT: All right. I do find there's a
10 question of fact regarding the issue of punitive
11 damages and recklessness based on the testimony of
12 the Plaintiff and also the expert Poplin as to
13 whether or not the Defendant was reckless. And for
14 that reason, I am going to respectfully deny the
15 motion for directed verdict as to punitive.

16 Any other motions?

17 MR. GRANTLAND: None from the Defendant, Your
18 Honor.

19 THE COURT: Anything from the Plaintiff?

20 MR. MCDONALD: None from the Plaintiff, Your
21 Honor.

22 THE COURT: All right. Do you want -- well,
23 we've all been going for a minute, let's take about
24 a 10-minute break. And then we'll come back and
25 proffer the testimony of your --

1 MR. GRANTLAND: Expert.

2 THE COURT: -- expert, and hopefully get that
3 testimony. How long is his testimony?

4 MR. GRANTLAND: Between my direct and his --
5 and whatever objections or proffer, I would say
6 maybe an hour.

7 THE COURT: Including the proffer?

8 MR. GRANTLAND: Yes.

9 MR. MCDONALD: Your Honor, after the proffer,
10 I think there may be some time we need to set aside
11 so I can -- depending on how it goes to renew my
12 objection and explain what my arguments are on it.
13 So that would I think -- I don't know how long he's
14 got on direct just specific to proffer, but my
15 guess, that will take about -- the proffer itself
16 will take about 45 minutes with the argument
17 afterwards.

18 MR. GRANTLAND: Forty-five to an hour. I'll
19 move as quickly --

20 THE COURT: On the proffer?

21 MR. GRANTLAND: Yes, Your Honor. I mean, I'll
22 move as quickly as I can.

23 THE COURT: Well, I was trying to get the
24 testimony in today so you wouldn't have to bring
25 the expert back. Maybe I can send -- you all think

1 it's going to take about an hour. I can send the
2 jurors out at 12:30. Then his testimony is going
3 to take about an hour?

4 MR. GRANTLAND: I think between the direct and
5 cross, yes, ma'am.

6 MR. MCDONALD: I know -- just a suggestion
7 because I know we're on time constraints. I know
8 that the police officer would be a shorter witness
9 that we could get in today after the proffer of the
10 expert. I mean, I don't think that would take more
11 than 20 minutes.

12 MR. GRANTLAND: I know, but I'm trying to
13 avoid --

14 MR. MCDONALD: Oh, sure. I understand.

15 MR. GRANTLAND: But we'll do whatever the
16 Court wants.

17 THE COURT: If it's going to take about an
18 hour, there's no need in them sitting back there
19 for an hour. We'll send them out -- even though,
20 they just got here, I'll send them out to lunch and
21 tell them to be back at 12:30, and then we can call
22 whatever witness you wish to call. Yeah, we'll do
23 that.

24 MR. GRANTLAND: Thank you, Your Honor.

25 THE COURT: The rest of us, we'll get lunch

1 later.

2 MR. GRANTLAND: Can I go ahead and call -- or
3 do you want to talk to the jury?

4 THE COURT: I need to release them and take a
5 quick bathroom break.

6 MR. GRANTLAND: Yes, Your Honor.

7 MR. MCDONALD: Take about 10 minutes, Your
8 Honor?

9 THE COURT: Well, let's say five.

10 (WHEREUPON, the jury was released for an
11 hour.)

12 (Pause.)

13 THE COURT: You may be seated.

14 MR. GRANTLAND: Your Honor, the Defense calls
15 Brian Boggess for proffer regarding his expert
16 testimony.

17 (Witness approaches.)

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

20 (Witness complies.)

21 THE CLERK: Do you swear or affirm the
22 testimony you give in this case will be the truth,
23 the whole truth, and nothing but the truth, so help
24 you God?

25 THE WITNESS: I do, yes, ma'am.

1 THE CLERK: Have a seat in the witness chair
2 and state your full name for the record.

3 (Witness seated.)

4 THE WITNESS: Yes, ma'am. My name is Brian
5 Michael Boggess, B-O-G-G-E-S-S.

6 BRIAN MICHAEL BOGGESS,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION(PROFFER)

9 BY MR. HARRELL:

10 Q Brian, you can direct most of your -- the jury's
11 not here, so we're just talking, you know, to the
12 Court. And so first tell the judge a little bit
13 about yourself.

14 A Sure. Mechanical engineer, undergraduate degree in
15 mechanical engineering. Masters degree in
16 mechanical and aerospace engineering from the
17 University of Virginia, where I studied and
18 specialized in biomechanics and automotive safety.

19 Q What is your current job?

20 A I work as a senior project engineer for SEA
21 Limited, which is a forensic services company.

22 Q And what are your primary responsibilities as a
23 senior project engineer?

24 A Handle cases, matters, projects, whatever you want
25 to call them, assigned that come in in my

1 discipline, so mechanical engineering, vehicle
2 accidents, biomechanical analyses, human factor
3 analyses, things like that.

4 Q Do all your cases involve some type of lawsuit?

5 A No, sir.

6 Q And what experience do you have at the University
7 of Virginia -- you went to UVA?

8 A I did, yes, sir.

9 Q Did you work in the automotive safety lab?

10 A I did. That was my graduate program. I was a
11 research assistant in that program.

12 Q Okay. And what did y'all do in that -- what kind
13 of -- did you analyze accidents?

14 A We did some real world accidents and then we were
15 doing testing, repeat testing of car crashes and
16 studying how the body bends, breaks, or potentially
17 does in accidents, what is the injury threshold of
18 the human body by using dummies and human cadavers.

19 Q Are you a licensed professional engineer?

20 A I sure am, yes, sir.

21 Q How many states are you licensed?

22 A I believe it's over 25 now. I don't remember the
23 exact number, but approximately 25.

24 Q Tell the judge about your work history after you
25 graduated from UVA.

1 A Sure. While at UVA, actually I was working on
2 contracts for Honda, Research and Development
3 Americas was one of the projects I was working on.
4 Having a relationship with Honda, not wanting to
5 move to Detroit, I went to work at Honda in central
6 Ohio in their R & D Center designing and crash
7 testing vehicles for -- you know, from a design
8 standpoint and from a safety standpoint.

9 Q How long did you work for Honda?

10 A About six and a half years.

11 Q Have you had any experience in the field of traffic
12 accident reconstruction?

13 A Absolutely.

14 Q Tell the judge about your education, training, and
15 work experience in the field of traffic accident
16 reconstruction.

17 A Sure. I mean, again, I started off at UVA, we were
18 analyzing real world crashes to analyze how
19 injuries can or can't happen from certain types of
20 crashes. That carried on through Honda, through
21 training and experience there. And then once at
22 SEA, continued to develop that experience, review
23 of literature, attending conferences, and also
24 taking the Northwestern Traffic Accident
25 Reconstruction School.

1 Q Tell the judge about the Northwestern Traffic
2 Accident Reconstruction School. What's that?

3 A Sure. It's a multi-week course dedicated to
4 traffic accident reconstruction, analyzing
5 collision dynamics, and things like that. It's
6 just -- it's -- you know, we learn along the way
7 anyway, you learn more specifics day-in and day-out
8 with every case and with research and new studies,
9 doing testing, but it was just an intensive
10 multi-week course dedicated to it.

11 Q Are you a member of any organizations of engineers
12 who do accident reconstruction?

13 A Yes, sir.

14 Q What organizations?

15 A Society of Automotive Engineers, Association for
16 the Advancement of Automotive Medicine, the --
17 there's a couple others that escape me at the
18 moment.

19 Q That's okay. Do you ever teach accident
20 reconstruction methods and principles?

21 A I've given multiple lectures on that, yes, sir.

22 Q Have you ever written any technical papers in the
23 field of accident reconstruction?

24 A Yes, numerous.

25 Q Have you ever been qualified in the courts of South

1 Carolina as an expert in the field of accident
2 reconstruction?

3 A Yes, sir, I believe about 13 times.

4 Q And how about depositions, how often have you been
5 deposed?

6 A A lot more. Maybe 50 times, maybe more, at least,
7 in the State of South Carolina.

8 Q Let me shift gears and ask you about biomechanics.
9 What is biomechanics?

10 A Sure. I think we all have a good idea of what
11 mechanics is, you know, mechanical things, the
12 design of mechanical things, how things works. Bio
13 is just, you know, the mechanics of a biological
14 system of the human body. So, how is the body
15 built structurally, how does it bend, and how do
16 you fail it, meaning, how do you cause injury, what
17 forces, what directions, things like that to tear,
18 break tissue.

19 Q And tell the judge about your education and work
20 experience as it relates to biomechanics.

21 A Sure. Mechanical engineering gives me a good
22 baseline of mechanics in general to any system.
23 The biomechanics, my work was centered and applied
24 by mechanics at UVA where, again, we tested and
25 evaluated the material properties of the human

1 body. We had human cadavers. We instrumented
2 them. We tested them to failure to develop injury
3 thresholds, failure thresholds for human tissue,
4 bones, neck tissue, spinal tissue, all the way down
5 to brain tissue, or otherwise.

6 Q Have you -- how long -- well, how long have you
7 been working in the field of biomechanics?

8 A Since graduate school.

9 Q Have you ever taught any classes in biomechanics?

10 A Yes, sir.

11 Q Authored papers in the field of biomechanics?

12 A Yes, sir.

13 Q You ever been qualified by the courts in South
14 Carolina in the field of biomechanics?

15 A Yes, numerous times, state and federal.

16 Q How many times have you been qualified as an expert
17 in both the field of accident reconstruction and
18 biomechanics?

19 A Again, I think when I looked it up, it was 13
20 trials total. All of them I think have some
21 element of accident reconstruction, most have
22 biomechanics.

23 Q When you've been called to testify, who called you,
24 the Plaintiff or the Defendant?

25 A Both. If it's a litigated case, I've been called

1 by both.

2 MR. GRANTLAND: At this time, Your Honor, I
3 would offer him as an expert in the field of both
4 biomechanics and accident reconstruction. And I'd
5 like to go ahead and go into his opinions in this
6 case as part of this proffer.

7 MR. HARRELL:

8 Q How did you get involved --

9 THE COURT: Hold on.

10 Yes, sir? Any objection?

11 MR. MCDONALD: I mean, the objection that I
12 voiced before, so.

13 THE COURT: Regarding his actual
14 qualifications as an expert in biomechanics and
15 accident reconstruction?

16 MR. MCDONALD: I have no objection to his
17 designation as an expert in traffic accident
18 reconstruction or biomechanics. I have the
19 objections to the type of opinions he's going to
20 give or he's attempting to give subject to that.
21 So I don't want to waive my ability to object to
22 those opinions by saying I agree that he's an
23 expert in that. I have a problem with the opinions
24 that he's giving and that that's not the proper
25 subject for expert testimony.

1 THE COURT: All right. So do you have any
2 questions that you would like to ask him on
3 cross-examination regarding his qualifications? I
4 will give you an opportunity to cross-examine him
5 at the appropriate time.

6 MR. MCDONALD: At this time, I have no
7 questions to ask him on cross-examination regarding
8 the testimony he's giving on qualification.

9 THE COURT: All right.

10 MR. GRANTLAND: So I'll move on into his
11 opinions, Your Honor.

12 BY MR. GRANTLAND:

13 Q How did you get involved in this case, Brian?

14 A Your office contacted my office, I believe it was
15 late 2016, somewhere around maybe November.

16 Q And what were you told about the case?

17 A That there was an accident and you were interested
18 in me investigating the circumstances of it and
19 exposures within it.

20 Q What were you asked to do?

21 A Initially, review a lot of file materials, see
22 what -- review materials that had already been
23 generated in this case. Again, being involved in
24 2016, this was three years after the fact, so.

25 Q Were you told what opinions we wanted you to give?

- 1 A No.
- 2 Q Or what conclusions we wanted you to come to?
- 3 A No.
- 4 Q Once you got the file from me, what did you do?
- 5 A I mean, I would have reviewed the materials you
- 6 provided, which, again, at least, either initially
- 7 over the course, things like the accident reports,
- 8 testimony, photographs, medical records, discovery
- 9 documents.
- 10 Q And that was my next question. What did you read
- 11 and review?
- 12 A Sure. All that.
- 13 Q Okay. Who did you talk to?
- 14 A Over the course of this, I mean obviously I've
- 15 talked to you and your office. I've talked to
- 16 Mr. Jett.
- 17 Q Okay. What scene investigation did you do?
- 18 A I've been out to the scene. Photographed the
- 19 scene, you know, took some basic measurements, got
- 20 a feel for the intersection and the site of the
- 21 accident.
- 22 Q Is there anything you wanted to do that we wouldn't
- 23 let you do?
- 24 A No.
- 25 Q Have you completed your investigation of the

1 accident?

2 A Yes, sir.

3 Q When you're asked to do an accident reconstruction
4 investigation, in lay terms, what are you trying to
5 do?

6 A I mean, with an accident you're trying to
7 reconstruct certain elements. I mean, each
8 accident is different, maybe what you're
9 investigating. If there's a question of a red
10 traffic signal, it's who ran the red light
11 potentially. In a case like this, it's how did the
12 vehicles get together. You know, how did they
13 move? What more reasonably happened than not to
14 cause them to get together in a certain manner?
15 Obviously, there's a debate there. And then
16 ultimately knowing that they got together, there
17 was contact between them, what were the certain
18 collision dynamics? How much acceleration or force
19 was imparted between one vehicle to another?

20 Q Do you have an opinion to a reasonable degree of
21 engineering certainty as to how the accident
22 happened?

23 A Yes.

24 Q And do your opinions have anything to do with
25 credibility or the testimony of the parties?

1 A They're not based on the credibility, no. I mean,
2 obviously there's two very different accounts of
3 how this accident, you know, supposedly happened.
4 My opinion, so -- you know, speaks to, you know,
5 the -- you know, falls more in line with one versus
6 the other, but it's not based on the credibility.
7 I'm assessing the evidence at hand, just like in
8 any case, I mean, whether I was doing 45 miles an
9 hour and you opine that, no, clearly, you're doing
10 70 miles an hour based on the physical evidence.

11 Q Okay.

12 A So.

13 Q Tell the judge how you think the accident happened
14 and why you feel that way.

15 A Sure. Essentially, it's my opinion that the truck
16 of Mr. Jett pulled out in the median first and that
17 at some point then, based on his articulation of
18 his truck, his mirror is kind of turned -- or the
19 cab turns to the left, so the mirrors, instead of
20 looking down the side of the truck, he's looking
21 more at the front right -- or front left corner of
22 the trailer. Not going to have a view of anybody
23 coming up beside him. And at some point, the
24 Mercedes would have pulled out to the side. And
25 then as he continued forward, the trailer

1 off-tracked and made contact. That's the events.

2 Now, the basis of that is several things. The
3 positioning of the vehicles, how they're positioned
4 out in the intersection, how the vehicles typically
5 make that turn. The Mercedes is much farther over
6 to the left than one would expect and the cars, for
7 the -- you know, the hour or so I was out at the
8 intersection, where they went to and how they
9 positioned themselves in the median, but for
10 another vehicle sitting there obstructing that.

11 The assessment from a human factor standpoint
12 of what is more likely to have a truck essentially
13 pull up behind a Mercedes at the stop sign, the
14 Mercedes proceed out in the median and then somehow
15 the truck doesn't see it coming down Black River
16 Road, forgets that this car was ever there ahead of
17 him, pulls out -- and I know Mr. Poplin talked
18 about at some instant in time, there may be a
19 visibility possibility that could exist from a
20 mirror at some point, but there's a lot of other
21 time sequences leading up to that. And during the
22 turn maneuver, that vehicle is completely visible
23 directly ahead.

24 On the flip side, evaluating from a human
25 factor standpoint, you've got a Mercedes and a

1 driver of a Mercedes testifying and saying that
2 they pulled out in the median. They were sitting
3 there waiting because of heavy traffic on both
4 sides, but yet a truck is able to pull out and
5 cross over the traffic on one side without any
6 problem or hit anybody and starts to pull out into
7 the -- from right to left traffic around them
8 without contact with any other vehicles. And that
9 car, the Mercedes is out there, the testimony is --
10 at least in deposition was, no prior awareness
11 whatsoever of this truck. Didn't hear it. Didn't
12 see it. Yet, the entire cab and a good significant
13 portion of the trailer pulled out and around the
14 side right at the corner where, if I'm sitting in
15 the median, I'm looking for traffic to come from.

16 So, again, it's an assessment of, you know,
17 again, human factors, dynamics, movements, which is
18 more probable, not what is possible. Is it
19 possible the car hid in the corner and forgot?
20 It's possible. What is more probable based on all
21 the factors from all the testimony, all the
22 evidence in this case coming together to say how
23 Vehicle 1 and Vehicle 2 got together in that
24 intersection.

25 Q So it's your opinion that Mr. Jett more likely than