**STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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**APPEAL FROM KERSHAW COUNTY**
**COURT OF COMMON PLEAS**

RECEIVED
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SC Court of Appeals

**THE HONORABLE DeANDREA G. BENJAMIN**
**CIRCUIT COURT JUDGE**

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

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**APPELLATE CASE NO.: 2018-001798**

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**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**

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# RECORD ON APPEAL
# VOLUME II OF II

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not was in the intersection -- in the median first?
A Yes.
Q And what facts or evidence do you rely on to come to that conclusion?
A What facts?
Q Yes.
A I mean, again, the physical layout, the human factors analysis of the circumstances of -- you know, from both driver perspectives and the various testimony.
Q So looking at Exhibit 4 -- you can hold that for me.
A Yes, sir.
Q Looking at Exhibit 4, if Ms. Bundy pulled up to the left of Mr. Jett after Mr. Jett got there, should he have been able to see her on the back driver's side?
A Not reasonably, no.
Q Why not?
A Because once this cab articulates and swings -- I mean, it's going to be adjusted to look down the side in the lane next to you as you're driving down the road, so hopefully you don't merge left into a car driving down whatever highway you're on. Once this cab turns, this mirror, instead of looking

down the side, it swings with the cab, it's fixed to it and is looking in a strip right here. And so you lose the perspective of what's coming up potentially beside you here in that situation.

Q And the flip side, if Ms. Bundy got -- pulled up to the left -- if Ms. Bundy was in the median first, should Mr. Jett have been able to see her?

A I'm sorry?

Q If Ms. Bundy got into the median first, should Mr. Jett have been able to see her?

A Yes.

Q And are any of your opinions based on whose testimony is credible or reliable?

A It's not based on that, no.

Q Okay. Now, let me shift gears to another topic, the severity of the impact. Did you investigate the severity of the impact?

A I did, yes, sir.

Q What did you do to investigate the severity of the impact?

A I reviewed the information we have, photographs, estimates -- or I'm sorry, photographs, statements, the various file materials that were provided. And, again, looking at the magnitude of the damage, so what's the width of it, what's the depth of it,

you know, what's the extent of damage? And then using physical parameters of the vehicle, published data, stiffnesses, things like that to assess the collision dynamics itself.

Q Do you have an opinion to a reasonable degree of engineering certainty regarding the severity of the impact between the trailer and the truck -- the trailer, Mr. Jett's trailer and Ms. Bundy's car?

A I do.

Q And tell us your opinion on the severity of the impact.

A Sure. So ultimately from a reconstruction of the dynamics of the vehicle contact, the acceleration experienced at roughly the driver's seat in the Mercedes would be about .8 Gs or less than 1 G of acceleration.

Q Okay. How did you come to the conclusion that the impact was less than 1 G?

A Sure. So by using conservative estimates for the magnitude of damage, we have a crease in the rear pillar, that rear brake pillar there in that exterior sheet metal panel. As you -- I guess I'll keep rolling here as you find that picture. But --

Q You're referring to this picture?

A Sure. So you've got a crease. You've got a

styling line here that's already there, but you've got a crease in the sheet metal right through here, from the tailgate up to the pillar here and just under this rear quarter panel glass, if you will. So by using a 3D model of the vehicle, assessing the distance from here to here, the depth -- the approximated depth of that damage, and using the published stiffnesses for this class vehicle, you can get the magnitude of force it takes to cause that dent from a reconstruction standpoint. Then knowing force, force is mass times acceleration, essentially you've got to move that -- figure out the acceleration specific to a point in the vehicle. By doing that, you get to a 0.8 G exposure.

And I guess just to be clear, that is both a right to left and with friction, potentially, rear to front acceleration combination, so it's two different axises of movement.

Q What exactly is a G?

A You're sitting in 1 G -- or standing in 1 G right now. I'm sitting in 1 G. So it's the rate of acceleration something falls to earth or is pulled towards earth. So my spine is under 1 G of compression right now based on the mass above my

lumbar spine.
Q And how many Gs do you believe Ms. Bundy withstood when the trailer hit the rear corner of her car?
A A driver in this situation, again, in that seat would be exposed to 0.8 G exposure.
Q Okay. And, again, how did you come up to that? You started with the damage?
A Use the damage, get to the force, use the force to figure out the acceleration. Force is mass times acceleration.
Q Last point. You're aware that Ms. Bundy is making an injury claim?
A I am, yes, sir.
Q Have you reviewed her medical records?
A Yes, sir.
Q Do you have an opinion to a reasonable degree of biomechanical certainty as to whether this .8 G impact would cause injuries to someone's neck and back under the circumstances?
A I do hold biomechanical opinions with regards to the injury potential to this exposure.
Q And what is your opinion?
A My opinion is, is that specific to those two body regions, that the kinematics, the motion that's imparted is not going to take the body outside of

normal ranges or motion and is not going to expose the cervical spine and lumbar spine to forces that are reasonable to cause injury, both from an injury threshold standpoint and just simple comparisons to activities of daily living. When I'm --

Q And --

A I'm sorry, go ahead.

Q And what's the basis -- I mean, that's your opinion, what --

A Sure.

Q What's the basis of your opinion?

A There's a number of peer reviewed articles on injury thresholds and daily exposures and things like that to compare against, but some of those exposures say that -- again, when I sit in this chair and I prop back in this chair that my head relative to my torso accelerates between 1.5 and -- I'm sorry, 1.8 to 5.3 Gs of acceleration. That's more -- the bottom end of that is more than double what the exposure of this accident is. Walking down a flight of stairs out here in front of the courtroom, 1.3 to 4.5 Gs, the head with every step is bouncing back and forth in a flexion/extension action being stabilized at 1.3 to 4.5 Gs.

So by comparing against just the most benign

daily activities, and she's testified, it sounds like, to be a very active person or had been a very active person, those exposures are going to far exceed what this accident would reasonably impart.

Q Do you have any other opinions that we haven't discussed?

A I think the only other opinion I gave in the deposition was that, you know, the kinematics, the motion to which Ms. Bundy even testified to is inconsistent with that which necessarily happens per physics. She testified that from impact -- the impact threw her forward and she struck her face on the steering wheel. Physics says the vehicle is going to be pushed right to left and front to back, if it's moved at all. If that's the case, if it did move, an object at rest, her, as she testified to, is sitting there, is going to move toward the point of impact or stay put while the vehicle gets pushed forward. So she is going to necessarily, the crash test data out there, you know, physics define, move back and to the right, not toward the steering wheel, so.

MR. GRANTLAND: Thank you. Brian, please answer any questions Mr. McDonald may have.

THE DEFENDANT: Yep. Will do.

CROSS-EXAMINATION(PROFFER)

BY MR. MCDONALD:

Q Mr. Boggess, you testified on direct that it was not a basis of your opinion wherein you weighed the credibility or the reliability of the testimony of Mr. Jett and Ms. Bundy, is that correct?

A I don't think I said it quite like that. I mean, of course I evaluate it, right. I mean, it's part of the evidence. I'm reviewing, I'm evaluating those facets, but they're not the basis of my opinion. I'm evaluating them as a piece of evidence as an option.

There is -- you start a problem. There can be multiple answers. And in a case like this, the multiple answers are Mr. Jett's testimony, Ms. Bundy's testimony, maybe a witness testimony. The question then is you're using physics to evaluate which ones are plausible, reasonable, and which ones aren't.

Q And you --

A Based on the physical evidence.

Q So you, in fact, did weigh the credibility and reliability of the testimony?

A I evaluate it. I mean, again, I'm not using the -- my opinion on the credibility to -- as the basis of

the opinion. The opinion is what necessarily happens by physics, by human factors, by the dynamics of a collision. They're going to either fall in line with someone's testimony or not. The jury assigns credibility. They decide do they believe Person A or Person B. That's their job. I'm not saying to this jury and never have said to a jury Person A is lying, Person B, they're telling the truth. It's which one fits with the evidence and which one does not.

Q So to form or base your opinion is you take the evidence and you're attempting to weigh all the evidence and then give your opinion on the evidence?

A I use the evidence and I figure out which one is consistent with the evidence and which one is not in terms of the physical evidence, the engineering facts.

Q As well as the credibility and reliability of testimony?

A I mean, you may answer questions along those lines, but it's not -- I'm not basing my opinions on the credibility or reliability. The opinions may speak to that and the jury can infer that.

Q All right, sir. Do you have a copy of your

deposition in front of you?
A I do not, sir, not with me.
MR. MCDONALD: Your Honor, may I open the original deposition transcript?
THE COURT: Yes, sir.
(Mr. McDonald opens deposition.)
MR. MCDONALD: May I approach the witness, Your Honor?
THE COURT: Yes, sir.
MR. MCDONALD: Thank you.
(Mr. McDonald approaches.)
THE WITNESS: Thank you, sir.
BY MR. MCDONALD:
Q If you would, turn to Page 39.
A I'm on 39, yes, sir.
Q I'm going to read the question at Line 18 and you read the answers going over to Page 40, okay?
Question: When you say weighing the evidence, you're relying heavily on your review of the deposition testimony of Ms. Bundy and Mr. Jett and the recorded statements, correct?
A I see that.
Q You read the answer.
A Sure. The recorded statement and then, again, just the -- again, the physical layout of how they got

together, where their visibilities are and, again, weighing those testimonies as to how they reasonably got together. And there's other facets of the testimony too, speaking of the credibility and reliability of the testimony as well.

Q Thank you. Now, with regard to your first opinion on accident reconstruction, I believe you testified on direct that the truck continued forward and then struck the vehicle, correct?

A At what time? I mean, at some point it moves forward and there's contact, yes.

Q Okay. Are you aware that Mr. Jett has testified that the truck never moved forward? Didn't move?

A Okay. I'm not sure I knew that or -- I mean, at some point, he pulls forward. And he testified in his deposition that he felt like a -- it was like a wheel chock feeling or just, it wasn't moving.

Q Have you been in this courtroom this week?

A I have not.

Q Are you aware that he testified under oath the truck never moved?

A Well, clearly it moved into the median. I don't know the exact circumstances of it. I wasn't here to hear it.

MR. GRANTLAND: Your Honor, objection. This

has nothing to do with his testimony as to whether his testimony is admissible. I mean, I think this is proper for a jury, but --

THE COURT: Yes, sir --

MR. MCDONALD: Your Honor, it absolutely has everything to do with his testimony. He testified in his deposition he created a 3D image based upon a truck moving. In the case of Clark v. Cantrell, it talks about animation, a South Carolina Supreme Court case from 2000, talks about animation. The part I would bring up is the fact that animation is inconsistent with the testimony or evidence presented by the opposing party should not necessarily lead to its exclusion provided it fairly and accurately portrays the proponent's version of events.

So you've got the gentleman who was in the truck testifying the truck never moved and a proffered expert that's saying, Well, I just disagree with that from my standpoint. I've got a whole nother scenario that I'm going to present based upon evidence that isn't in there. His evidence is the truck never moved, okay, so his entire testimony is based on that the truck was out there first and it moved. That's inconsistent with

what the testimony is, and I don't think --

THE COURT: But he's basing it on what was in the depositions -- his testimony right now, what was in the depositions, what was -- so if the Defendant came in here and testified to something different, he's not -- he was not in here, he's not privy to that. He's testifying as to -- so I have no problem with you cross-examining him on that in front of the jury as to the inconsistencies between what Mr. Jett said previously and what he based his report on. All of that would go to the weight of the evidence. But for purposes of your motion, I'm not sure -- your motion is that he cannot testify as to reliability and credibility of the witnesses in coming to his opinion?

MR. MCDONALD: Yes, ma'am. Yes, Your Honor. And in addition to that, he's now testified inconsistent with what the proponent said happened with the truck, which was it didn't move. And it was consistent with his deposition it didn't move. He's giving something, a different scenario.

THE COURT: So the deposition testimony -- I don't have the deposition in front of me, so the deposition did he testify to that the truck did not -- Mr. Jett testified that the truck did not

move in his deposition?

MR. MCDONALD: The deposition testimony was that it felt like a chock. I put Mr. Jett on the stand and asked him could -- and said did the truck move.

THE COURT: No, no, no, no, that's not my question. My question is, in the deposition testimony, which he bases his opinion on, did Mr. Jett testify that the truck did not move?

MR. MCDONALD: I believe -- I mean, that's why I followed up on it in his deposition. But the deposition itself is not evidence. What's evidence is in this case is that the truck didn't move. The deposition is not in evidence.

MR. GRANTLAND: Your Honor, Mr. Jett testified both. He said he felt -- he released his clutch and felt a catch. I mean, whether he didn't think he moved or whether he didn't feel like he moved, that all goes to weight and not admissibility, and certainly not whether Mr. Boggess's testimony complies with the Council factors and should be admissible. This is proper cross-examination for Mr. McDonald, but it certainly doesn't exclude his testimony.

MR. MCDONALD: Question on Page 59 of the

deposition. It says: So the sensation that you had was because you had been driving that truck for a long time and you had it right at the friction point. What you expected is to start rolling and you didn't start rolling?

Answer: Right.

Okay. When you didn't start rolling, what did you do next? Did you try and get it to go?

Answer: No.

What did you do?

I popped my air brakes, trailer brakes, and opened my door.

I would just submit that pursuant to Clark v. Cantrell, he can't come in here and give testimony that's inconsistent with a proponent who's giving it.

THE WITNESS: On Page 60, just to continue, you continued on with the questioning.

Hardly at all?

No, wasn't going nowhere.

Barely moved forward?

Right.

So you barely moved forward and you feel like, in fact, the truck feels bound, it's not moving forward, right, like you expected it to.

So he says he moved forward, just doesn't feel like he moved a lot, which -- and, again, I think what you mentioned earlier that I was presenting some type of animation, but I'm not. I don't know that we -- I don't have a video. I'm not presenting an animation of that either, so.

MR. MCDONALD: Your Honor, I don't think -- my objection is quite simply I don't think he can come in and give testimony based upon accident reconstruction. And I do believe he testified in his deposition that he did a 3D CAD.

Is that incorrect?

THE WITNESS: I have a 3D CAD, yes, of basic movements of the vehicles and how they could get together or not, yes.

THE COURT: All right. We've kind of gotten off track.

Are you going to continue cross-examining him and then make your motion or are we going to hear motions now? I'm a little confused.

MR. MCDONALD: I was just responding to Mr. Grantland.

THE COURT: But let's stay focused on what the actual motion is, and then you can make arguments later.

MR. MCDONALD: Thank you, Your Honor.

BY MR. MCDONALD:

Q Now, with regard to your second opinion, the second opinion is just the dynamics of the inner vehicle contact, correct?

A That's correct.

Q Okay.

A Generally speaking. I mean, it's, again, the magnitude of it, direction, things like that.

Q And the dynamics of the inner vehicle contact, once again, you have assumed that there was some acceleration of the truck, correct, movement forward?

A There has to be movement. Now -- there has to be relative movement. So either one of two things happened. The truck pulled forward and sideswiped the rear pillar, or Ms. Bundy got out inside of him, sitting inside and backed into him. Either way, there's a fixed amount of damage. The force is the same and the direction is the same, so, regardless, she's still going to move in the same direction. So which is more probable? The truck moves forward. Could she have backed into him? Sure.

Q All right. Now, with regard to your third opinion,

the question was asked whether or not if someone's neck or back could be injured in this accident, correct?

A I'm sorry?

Q The question that was asked to you is whether or not someone's neck or back could be injured as a result of your analysis, correct?

A I'm not sure exactly how he asked it. From a biomechanical standpoint, the opinion I have is that a person of similar height, weight, gender, seating position, what the exposures are reasonably or not and how the force is transferred to their neck, their back, et cetera.

Q And your testimony is not how those portions transferred to Ms. Bundy's back? You're not going to testify that she wasn't injured in this crash, correct?

A That's right.

Q You're just talking about some other hypothetical person?

A I talk about the hypothetical using for existing conditions, height, weight, all those parameters I just said. Because as I understand it, South Carolina court will not let me say Ms. Bundy was not on this day in this accident period.

Q And that's just I guess your comment on the law at this point?
A No, I'm just saying, I'm explaining that, so I don't go there. My opinion is what it is because of -- I stop there.
Q It's based upon a hypothetical person, not Ms. Bundy?
A A very specific hypothetical person.
Q Now, you did some animation pictures, correct?
A I created some layouts, yes, sir.
Q And one of those layouts that you created shows the truck and the car in the median, correct? I'll just show you this.
A Yes, sir. I have the same one.
Q You have the same one. All right.
MR. MCDONALD: Your Honor, may I approach? Just so you have this.
(Mr. McDonald approaches.)
BY MR. MCDONALD:
Q That's something you created?
A Yes, sir. My office did, yes.
Q Did you create it or did your office create it?
A I did part of it and my -- I have a graphics guy that did some of it as well.
Q Now, you also created this one here showing the

movement of the truck?
A Various sequence movements, yes.
MR. MCDONALD: May I approach, Your Honor?
THE COURT: Yes, sir.
(Mr. McDonald approaches.)
BY MR. MCDONALD:
Q With regard to the first picture, you have the vehicle located behind the truck's wheel wells, correct? The drive wheels?
A The vehicle as in the --
Q Mercedes.
A -- Mercedes? Roughly, yes.
Q In Defendant's Exhibit 5, can you see the whole vehicle or is it blocked by the wheel well?
A In that particular angle, it's partially blocked.
Q What about in Defendant's Exhibit 4?
A I can see all the drive tires.
Q And if you were on the other side of it, could you see all the drive -- could you see the entire vehicle?
A It depends on what angle. I mean, that picture you showed me before is more over on the dash, so I'm looking more at an angle. It's not a pure up and down the road. So, I mean, again, depends on what angle and what position you're at on the other

side.
Q Looking at Defendant's Exhibit 4, are you saying the vehicle was located behind the drive tires? Is that your testimony?
A I'm sorry?
Q Are you saying -- well, let me ask you this, do you know whether or not this picture was taken prior to the vehicles being moved after the wreck?
A They appear to be shortly after. They don't appear to be moved. The nose is near the back edge of the drive tire there.
Q And so you think the nose is basically level with the first drive tire, correct?
A Pretty close, yes, sir.
Q And on your animation where you show the vehicle at the point of contact is behind all the tires that are attached to the truck itself, correct?
A No, it's a very similar position. I mean, there may be a foot or so off. It's not 100 percent accurate maybe, but it's substantially similar.
Q But you're using these to show how the vehicles -- to do your accident reconstruction, correct?
A No. They're demonstratives of a truck pulling out and a car pulling up on the inside and then the truck advancing forward. That shows the trailer

actually a little further into the car, perhaps, than it actually was and maybe a foot forward more than it should. But, I mean, if you take the drive tires and square it up, the bumpers, based on the picture, the last picture you just showed me are extremely similar. Again, maybe a foot over a 53-foot trailer. For the purposes of a general demonstrative, they're pretty close.

MR. MCDONALD: That's all I have at this time, Your Honor.

THE COURT: Anything?

MR. GRANTLAND: No, Your Honor. Again, I believe Mr. Boggess is qualified. I think his opinions comply with Council -- comply with Council factors. And any criticism of him would go to the weight of his testimony, not admissibility.

MR. MCDONALD: Your Honor --

THE COURT: Yes, sir?

MR. MCDONALD: Whenever you're ready.

THE COURT: Give me a second. I'm trying to read the case you handed up.

MR. MCDONALD: Sure.

(Pause.)

THE COURT: Sir, you can step down. I'm sorry.

THE WITNESS: Oh, thank you. You want me to leave my transcripts up here?

THE COURT: You can leave them there.

(Witness steps down.)

THE COURT: I assume he's going to be your first witness?

MR. GRANTLAND: Yes.

THE COURT: All right. I'll be glad to hear from you. I guess one of the questions is in reading this case, is there a video animation that you all are planning on using?

MR. GRANTLAND: No, Your Honor.

THE COURT: What are you trying to do with the pictures?

MR. GRANTLAND: Well, the animation that he -- you mean the animation pictures or just the photos?

THE COURT: These pictures that he's --

MR. GRANTLAND: I mean, I wasn't even planning to cross-examine him on those pictures. He produced those last week and we were just kind of -- I told him we weren't focusing on the photos.

THE COURT: So you're not attempting to enter them into evidence or use them for demonstrative purposes?

MR. GRANTLAND: No. No, I'm just sticking

with his testimony based on photos that we've had to date.

THE COURT: Yes, sir.

MR. GRANTLAND: I mean, he produced those, but, you know, I certainly was not planning to use those in the trial. If Mr. McDonald wants to cross him on that, that's another matter.

THE COURT: And for the record, let's mark these as a Court's Exhibit, Court's Exhibits 2 and 3.

(WHEREUPON, Court Exhibit Nos. 2-3 were marked for identification only.)

THE COURT: Yes, sir.

MR. MCDONALD: Thank you, Your Honor. The first issue that I'd like to address is the weighing the evidence and credibility of the witnesses. The proffered testimony was exactly that. This witness purports to sit up there and say, I've weighed all the evidence and I have now found that it is more probable than not, based upon the testimony and based upon the exact -- some things that aren't in evidence, some things that are in evidence, who was out there first. I think that's an inappropriate expert opinion by weighing the credibility and the reliability of the

testimony which he testified to in his deposition. And I think that formed the basis of an opinion. Just because he now says, Well, no, that didn't form the basis of his opinion, it puts me in quite the Catch 22 because I can't cross-examine him on it without opening the door and it's inappropriate to have him talk about that in the first instance. So I don't know what to do with that from my standpoint. He said in his deposition -- he's now backed away from it, but he's clearly said on proffer, Well, he's weighed all the evidence, including the testimony. The only words he hasn't said is credibility and reliability, which, in fact, he said in his deposition. That's my first issue with the testimony on the first and third opinions that he's going to give.

The second issue that I have is the drawings that were submitted, Mr. Boggess testified -- he did it on proffer, I was trying to find it in the deposition, that he did 3D CAD animations that formed the basis of his opinion. Well, those are the only 3D CAD animations that were produced, so my guess is that's what formed the basis of his opinion. I think that the case that I referenced earlier, Clark v. Cantrell, says you can't have a

animation that is inconsistent with the proponent's version, which is exactly what he's doing. I understand Your Honor says, Well, that's something you would cross-examine him on, but I think that prevents him from going into that scenario. He's not basing it on facts at all. He's talking about something that the very individuals in the case have said -- or, excuse me, that Mr. Jett has said that his truck didn't move in both his direct examination -- when I gave him direct and when Defense counsel examined him. So that's an issue that I have with those -- with his testimony.

The last issue that I have is, I mean, we have doctors that are experts in this case talking about whether or not -- and disagreeing, mind you -- whether or not this motor vehicle accident caused the injuries that were sustained. I think it's inappropriate to have a witness say, Well, I'm not going to talk about any of that. I'm not going to talk about Ms. Bundy specifically and because I'm not a medical doctor, I'm just going to talk about a hypothetical person, whether or not they could have been injured in this case.

That's irrelevant to this case and the prejudice outweighs the probative value of someone

saying that some hypothetical computer-generated person with various inputs may or may not have been injured when the real issue in this case is whether or not Ms. Bundy was injured in this case. And I think it's irrelevant. I think it's prejudicial. It has little to no probative value. There's doctors on both sides that can talk about that. And that's with regard to the third opinion.

I also have the issue I raised in my motion in limine with regard to the third opinion, which is the issue of weighing the credibility of witnesses, which Mr. Boggess, again, testified to on the proffer.

So those would be the reasons, Your Honor, that I would suggest that now -- both the first and third opinion was my original motion, but now that he's talking about acceleration in the second opinion is inconsistent with the testimony that's in this case, I believe that it's inappropriate for him to testify. Thank you very much.

THE COURT: Yes, sir?

MR. GRANTLAND: Your Honor, I mean -- Your Honor, reviewing testimony is not weighing credibility. Mr. Boggess did exactly the same thing Mr. Poplin did. Mr. Poplin testified

yesterday that he took both sides and he said, you know, both could be right. And Mr. Boggess is -- basically, he's reviewing the testimony and comparing it with the photos and the property damage. And he did do CAD drawings of both -- or CAD models of her car and his car to come up with his opinions.

And so, I mean, all Mr. McDonald's criticism goes to the weight of his testimony, not the admissibility. And I think he certainly is not going to try to way credibility in this case and hasn't. And, you know, his biomechanical opinion is very sound. And as he explained, the .8 G impact is not out of the realm of movement. And that's really all he is saying. And I think he can explain that without giving a specific medical opinion on Ms. Bundy. He simply giving a biomechanical opinion, which he's entitled to give.

THE COURT: All right. I'll deal with the motion first, then I'll come back to 703.

Based on the testimony, it appears and sounds like he -- the testimony he has given today is that he has relied on the data -- and also in the deposition testimony, relied on the data, the accident report, the position of the cars, physics,

what the parties allege happened. He testified that he analyzed many factors. He obviously cannot sit in front of the jury and say her testimony is not credible, it's not reliable, but as an expert, he is given the latitude to rely on these things and testify as to how he came to his conclusion and came to his opinion.

For that reason, I am going to allow him to testify as to the opinion -- testify to the opinion that he gave regarding -- I think your objection is as to his conclusions one and three, and now maybe also two, as an accident reconstructionist.

As to the -- of course, he cannot testify as to whether her testimony is reliable or credible. He can testify as to what he did, how he came to his conclusion. He needs to stay away from any -- using any language as to weighing credibility and reliability because, obviously, that is an issue for the jury to decide.

As to the second issue, I believe Mr. Jett's testimony in his deposition said that he barely moved, which -- I read that Clark case. In the Clark case, the discussion there seems -- most of the discussion seems to be around whether or not you introduce the animation. They had a video

animation that they were trying to introduce before the jury. And the Court, recognizing that these video animations are becoming more and more popular and will become more and more popular, said they are admissible as long as it is consistent with the testimony and does not give the jury a false representation as to what happened according to the testimony.

Here, Mr. Jett says in his deposition that it barely moved. If he contradicted that during his testimony, all of that is proper for cross-examination.

If he, if Mr. -- my understanding is that he's going to -- the expert's going to testify as to what he used based on what Mr. Jett said in his deposition, what the Plaintiff said in her deposition as to what happened and he's going to take that and based on the science that he uses and come up -- he's going to come up with, I guess, science biomechanics use and come up with conclusion that he has come to.

So for that reason, I am going to deny the motion regarding the -- but the pictures, my understanding, are not coming in. There is no video animation. He's just saying what he did to

come to these conclusions.

MR. GRANTLAND: And he'll rely on the photos that are in evidence, Your Honor. And the layouts, the animations I produced to Mr. McDonald last week are not -- I'm not trying to get those into evidence.

THE COURT: All right. And then finally, if he's qualified as a biomechanical engineer, he can testify to what he found to a reasonable degree of a biomechanical certainty, not medical certainty, as to whether or not she was injured. So all he can testify to is based on his science, which he says has been peer reviewed and published, and he's been a part of the school, Northwestern Traffic Reconstruction Accident School, he can testify to that. He cannot testify to a medical certainty that she was not injured as a result of the accident. He can testify that based on what he and the science that he is an expert -- or qualified as an expert in, based on that, he can testify to a biomechanical degree of certainty as to whether or not a person would have been injured. That's what experts do, they give their opinions. It's for the jury -- I will instruct the jury they can give it whatever consideration they wish to give it. They

can believe it. They don't have to believe it. But I think as a biomechanical engineer, he can testify as to that.

All right. As to 703 -- and I don't think there's an objection as to him being qualified as an expert, but I'll go ahead and put it on the record. I do find that under 703, the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. I further find that the expert here is qualified based on his knowledge, skill, specialty in the areas of mechanical -- as he is a mechanical engineer. He's a licensed professional engineer in 25 states. He's a graduate of the University of Virginia, senior project manager. He has testified in federal and state court, I think he said 13 times as a biomechanical engineer and accident reconstruction. And he has written peer reviewed articles that have been published.

Based on that, I do find that he is qualified. He has the requisite knowledge and skill.

As to the reliability, once again, peer reviewed, publication, prior application to the type of evidence involved in the case and consistency of a method of recognized scientific

law and procedures, I do find that the witness has testified that the science that he is using is reliable.

And, finally, under a 403 analysis, I do find that the testimony is admissible, that the probative value is outweighed by any prejudicial effect.

So, therefore, I will allow him to testify as to and give his opinions as to one, two, and three as long as he does not get into stating that the Plaintiff's testimony is not reliable and not credible and coming to the conclusions that the jury has to ultimately come to.

MR. GRANTLAND: Yes, Your Honor.

THE COURT: All right. But your objections are noted for the record. We will take his testimony. The jurors should be back.

Does anybody need a break?

MR. GRANTLAND: Five minutes.

THE COURT: Five minutes, and we'll bring them right in.

(WHEREUPON, a short break was taken.)

THE COURT: Just for the record, the jurors asked the bailiff -- one of jurors is a teacher, and so she has to call in for a substitute, so she

was asking when are we going to finish. And so I stuck my head in and told her to get a substitute for Monday and Tuesday and we'll have a better idea on Monday afternoon. And then while I was in there, one of other jurors said just as a forewarning, her son has 102-degree temperature and she has been taking care of him. He has the flu, Type B. So if she's not here next week, we know why. But she said she felt fine right now.

THE COURT: All right. Are we ready to bring them in?

MR. GRANTLAND: Yes, Your Honor.

THE COURT: All right. Bring them in.

(WHEREUPON, the jury came into open court at 12:47 p.m.)

THE COURT: Ladies and gentlemen of the jury, I hope you had a good lunch. At this time, we are going to ask the Defendant to call his first witness.

MR. GRANTLAND: Thank you, Your Honor. May it please the Court? Your Honor, the Defense calls Brian Boggess.

(Witness approaches.)

THE CLERK: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do, yes, ma'am.

THE CLERK: Have a seat in the witness chair, and state your full name for the record.

(Witness seated.)

THE WITNESS: Brian Michael Boggess.

BRIAN MICHAEL BOGGESS,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

MR. HARRELL:

Q Brian, good afternoon.

A Good afternoon, sir.

Q First, tell the jury a little bit about yourself.

A Sure. I hail from York County, South Carolina, just up the road, and went to University of Virginia where I received degrees in mechanical engineering undergrad and mechanical and aerospace Masters.

Q Okay. And you're from York, Fort Mill?

A Fort Mill, yes, sir.

Q What high school did you go to?

A I actually grew up in Virginia, so I moved about 10, 11 years ago.
Q To Fort Mill?
A I did, yes, sir.
Q Married? Children?
A Married, yes, sir. Three kids, five, eight and 11.
Q Five, eight, and how old?
A Eleven, 11-year-old daughter.
Q And what is your current job?
A I work for a company called SEA Limited. We're a forensic services company. We have electrical engineers, metallurgical lab, mechanical engineers, like myself, biomechanical engineers, like myself, hosts of disciplines and investigate all sorts of different kind of cases, matters.
Q How long have you been with SEA?
A Little over 10 years.
Q And what are your primary responsibilities as a -- did you say you were a senior project engineer?
A I am, yeah, I'm a senior project engineer, so --
Q What are your -- what does that mean?
A Sure. Basically handle matters -- sometimes they're litigated cases, sometimes they're not -- in my area. So mechanical engineering and biomechanical engineering.

Q And do all of your cases or matters involve a lawsuit?
A No, sir.
Q What percentage of your work involves cases that are not in a lawsuit?
A You know, I guess, many of them -- you know, probably 90 percent are either in lawsuit, which is maybe half, and then have the potential to. If it's an initial accident, tell me what happened. Maybe a suit gets filed, maybe it doesn't. Other cases are matters, projects, whatever you want to call them, maybe premarket testing for a manufacturer. They have a product, they want us to do a safety evaluation on it. What are the risks of this product? How can we make it better? I've done some patent work as well. Somebody has a patent idea, they said, you know, Do the engineering, do the drawings, build me a prototype. Help me get my patent, make my fortune.
Q And where did you say you went to school?
A University of Virginia.
Q Okay. And what degrees do you have?
A Undergraduate degree in -- or Bachelor of Science in mechanical engineering, and then a Masters of Science mechanical and aerospace with a specialty

in biomechanics.

Q And what experience do you have with the University of Virginia's automotive safety lab?

A Sure. It's the -- I guess, it's the Automotive Safety Laboratory or Center of Applied Biomechanics. It was started by Department of Transportation, the National Highway Traffic Safety Administration, or NHTSA, years and years ago, early '90s, late '80s, somewhere in that timeframe, for the purpose of improving car safety. They want to understand what happened in a car crash and how it may affect passengers, how we can make better seatbelts, better airbags, and what it takes to injure the body.

So the work was -- it starts off at one level crashing cars with people. That's literally. And I said crash test dummies and human cadavers. It's a cadaver lab where we understand how the body bends and how it breaks in a car crash.

Q How long did you work there?

A That was a little over two years.

Q And are you a professional engineer?

A I am, yes, sir.

Q And how many states are you licensed?

A It's over 25. I'm not sure of the exact number.

Q Okay. And tell us about your work history once you graduated from Virginia up until the present.
A Sure. So one of the projects I was working on at UVA, backing up just a little bit, not to belabor, I was working for Honda. They contracted with the lab to do some cadaver testing for them on side airbags. Having a relationship with Honda, I took a job with Honda as a safety engineer, went up to central Ohio and basically designed and crash tested Honda and Acura vehicles for about six and a half years.
Q And so after you went to Honda, is that when you went to SEA?
A When I left Honda, yes, sir, I started with SEA at that time.
Q Now, have you had any experience in the field of traffic accident reconstruction?
A Yes, sir.
Q Tell the jury about your education, training, and work experience in the field of traffic accident reconstruction.
A Sure. So, I mean, the reconstruction is based on engineering anyway, so it kind of goes back to college. But at UVA, we were investigating real world collisions because we understand what happens

in them so we can understand how to better protect through the design of vehicles.

Once I got with SEA, though, ultimately, you know, despite my Honda time and otherwise, I attended a school, Traffic Accident Reconstruction, at Northwestern University. It was a multi-week dedicated class. I mean, we were constantly learning on the job new cases, new scenarios, applying those, but that's one example of kind of continuing education.

Q What does the term traffic accident reconstruction mean?

A It is -- you know, I think everybody knows what an accident is, cars running into things or people or other cars. It's reconstructing the pieces of it. How fast were things going, what direction were they coming from, things like that. Just putting the pieces together.

Q And are you a member of any organizations of engineers that do accident reconstruction?

A I am, yes, sir.

Q What is a Society of Automotive Engineers?

A It's more than just accident reconstruction, but there's certainly an element of that. And I attend conferences, publish papers, service technical

reviewer for papers being published through that group.

Q Do you ever teach accident reconstruction methods and principles?

A I have, yes, sir.

Q Approximately how many times have you been asked to teach?

A Over the 10 years, you know, more than 30 times, I'm sure.

Q Have you written any technical papers in the field of accident reconstruction?

A Yes, sir.

Q Have you ever been qualified by a court in South Carolina as an expert in the field of accident reconstruction?

A Numerous times, yes, sir.

Q And have you -- how many times have you testified as an accident reconstruction expert in a trial or deposition?

A I believe at trial, 13 times. Most stuff doesn't go to trial, you know, reality. Depositions, at least 50 times probably, best guess.

Q Let me shift gears and ask you about biomechanics.

A Yes, sir.

Q What is biomechanics?

A Sure. I mean, I think most people have a good idea of what mechanics are, or mechanical things are. You know, it's how structures are put together, the strength of materials, how they bend, how they break. Bio is the, you know, applying the same principles to the human body or biological system. So, you know, what's the strength of the human bone, what's the strength of tissue that connects one bone to the next, and things like that.

Q And what's the difference between biomechanics and accident reconstruction?

A Sure. You know, biomechanics is taking what happens in the accident and moving it to either the pediatrician the car hits or inside the vehicle to a person to say how do they move, what direction do they move, and with what force -- you know, what forces are applied to the body, and are we going to get hurt or not reasonably.

Q Tell the jury about your education and work experience as it relates to biomechanics.

A Sure. So, again, I started off at UVA in crash testing, body -- impact testing of the body to understand how we bend and break as people. Continue that with the Honda work as well. Again, designing the vehicle using biomechanics to limit

injury potential. And then with SEA, just analyzing matters, cases, continuing research, testing.

Q Same questions. Have you taught any classes in biomechanics?

A Yes, sir.

Q Have you authored papers in biomechanics?

A Numerous, yes, sir.

Q Have you ever been qualified by a court in South Carolina as an expert in the field of biomechanics?

A Yes, sir.

Q Have you ever testified in court or deposition as an expert in both biomechanics and accident reconstruction?

A Yes, sir, number of times.

Q Do you do any advertising?

A The firm does. I mean, I don't advertise. I'm an engineering. I'm not a sales guy. I wouldn't be very good at that. But, you know, we have business development people. They certainly are advertising for the company, and things like that.

Q How do you get clients or cases to review?

A I mean, ultimately, they get called in somehow, either through those business development people just, you know, knowing us, word of mouth, things

like that.
Q How are you at SEA compensated for your work?
A I'm a fixed salary employee, so I'm not really tied to any case project or otherwise. SEA bills my time. If I worked on Project A, I sign -- you know, I work three hours, I tell SEA I worked three hours, and they bill the client for three hours' worth of work.
Q Is that the same whether a Plaintiff hires you or Defense hires you?
A Yep. Yes, sir.
Q And do you know how much this company has billed for this case?
A Not exactly. I mean, probably around $5,000 over the year and a half or so now.
Q Have you ever testified for me or my firm before?
A Yes, sir.
Q Have you -- when you're called to testify, who calls you, the Plaintiff or the Defendant?
A Both.
Q Okay. Do you know what percentage, percentage for one side versus the other?
A It's certainly -- I think it's more Defense than Plaintiff. I mean, I think I've estimated 75/25 in the past, 80/20, just based on who's been calling.

MR. GRANTLAND: Your Honor, at this time I would offer Mr. Boggess as an expert in the field of biomechanics and accident reconstruction.

THE COURT: All right. Same objection?

MR. MCDONALD: Subject to my earlier objection, Your Honor. Thank you.

THE COURT: All right. The objection is overruled.

Ladies and gentlemen of the jury, Mr. Boggess will be qualified as an expert in the area of biomechanics and accident reconstruction to give opinion testimony in that area. You can give it whatever consideration you choose fits his testimony.

BY MR. GRANTLAND:

Q So, Brian, let's talk about this case.

A Yes, sir.

Q How did you get involved in this case?

A You or your office contacted my office, I believe in approximately November of 2016.

Q And what were you told about the case?

A I think basically that there was an accident and you wanted me to look into it.

Q What were you asked to do?

A You know, initially, just going to be review

documents you provide me, a number of documents, go through those, and then discuss what I see in those documents, and then discuss kind of next steps.

Q Were you told what opinions we wanted you to give?

A No, sir.

Q Were you told what conclusions we wanted you to come to?

A No, sir.

Q Have you ever been called by a lawyer to investigate a case and you later call them back and tell them you can't help them?

A Yes, sir, I've told your office that. I've told other offices that, yes, sir.

Q How often does that happen?

A I mean, I don't keep track, but, I mean, at least once a month, if not, once every, you know, other week. At some point -- you know, you look at a case and it's just not a good case or it's not -- the facts don't line up with -- you know, favorable for their client.

Q Once you got the case from me, what did you do?

A You know, either you sent me or I requested a number of documents, I don't remember. Ultimately, I got a bunch of documents. I would have initially sat down, reviewed, and started analyzing them.

Q Tell the jury what you read and reviewed.
A Sure. The accident report to know who and where and how, basically, from the accident report standpoint. Deposition transcripts of various parties in the case. Medical records that have been, you know, put out in this case. Number of photographs, I think you've seen, and some of them -- a lot of them are sitting right here on these boards, number of photographs.
Q Who did you talk to?
A Obviously talked to your office relaying information. I talked to Mr. Jett as well.
Q What scene investigation did you do?
A Went out to the scene and, you know, took some photographs, basic measurements, got a feel for the layout of the intersection.
Q Is there anything that you wanted to do that I wouldn't let you do?
A No.
Q Have you completed your investigation of the accident?
A I have.
Q When you're asked to do an accident reconstruction investigation, in lay terms, what are you trying to do?

A I mean, every accident is different. You know, if the question is who ran the red light, it's analyze the red light, maybe some cameras, maybe timing, things like that to figure out who ran the red light. In a case like this, it's -- obviously there's different accounts of what happens. It's what transpired to get to the point of an accident. And then with the accident itself, what actually -- you know, what were the forces at play? What were the speeds or accelerations or certain physical characteristics of the contact? And that's really the reconstruction pieces of this accident.

Q Do you have an opinion, Brian, to a reasonable degree of engineering certainty as to how this accident happened?

A I do.

Q Okay. Tell the jury how you think the accident happened and why you feel the way you do?

A Sure. In my opinion, Mr. Jett in the truck arrived at the stop sign first, pulled out in the median. And as he's waiting for traffic, the Mercedes pulled up on the inside of him. And then as Mr. Bundy started -- or, I'm sorry, excuse me -- Mr. Jett started to proceed forward, the trailer, which takes a more narrow turn, off-tracks

slightly, makes contact with that rear right corner of the Mercedes. I think you've seen pictures already. If not, I'm sure we'll look at them again in a minute. With the rear right corner. There's a little bit of inner vehicle contact, but ultimately Mr. Jett pulled out in the median first.

Q And what facts or photos do you rely on to come to that conclusion?

A Sure. I mean, it starts off -- can I jump up to the board?

Q Sure. The photos aren't organized.

(Witness steps down.)

A That's fine. I'll find them or we'll sort them out. I mean, you know, we have -- first off, here's the stop sign at Black River Road at 521.

THE COURT: Excuse me one second. Just for purposes of the court reporter, if we can identify --

THE WITNESS: I'm sorry.

BY MR. GRANTLAND:

Q And when you're speaking, will you identify the exhibit number?

A I absolutely will. So we are looking at Defendant's Exhibit 11 first there. This is -- I think you all have seen this, but you've got a stop

bar here if you're looking out here. If you're going to make a left-hand turn, there's kind of an offset between straight out and where this median is. You get a little better feel for it here.

Q What exhibit is that?

A This is Plaintiff's Exhibit 14.

Q Okay.

A So, you know, for a vehicle to pull up here, the opening is a little more offset to the southwest, if you will -- or southeast, excuse me. It's a backwards area this way a little bit. So if you're going to pull out, you're going to have a tendency to kind of hang to the right side of the intersection here. And for a truck, you're going to tend to stay to the right side anyway.

So looking at the physical layout of the intersection, and how do vehicles typically turn out? When I sat there and watched, car after car and truck after truck come out of there for my inspection, they pull out in an area typically right here, as you kind of expect them to. And then they continue on out into the, I guess, southbound, that first lane or second line, depending on what lane they turn into. So that's kind of where they tend to pull out to.

We know that ultimately the truck is sitting -- see if I can find a better picture. So if I go to Defendant's Exhibit 4, you see the truck was, again, kind of over to the right. There's a little bit of separation between him and the median behind him. There's another view on the other side that's not right at -- if I'm looking at Defendant's Exhibit 5, you know, it's not right at the median grassy area, it's even offset over to the left a decent amount with regards to the turn. But there's still enough room for that Mercedes to get up on the inside of him. I think that kind of gives a basic idea. Again, you get an appreciation of that truck, if I look at Defendant's Exhibit 3, as it pulls forward a little bit, it off-tracks in and grazes the rear right corner of the Mercedes here.

That's the -- you know, that's some of the physical layout of the intersection. Again, vehicles don't tend to come out here. They're going to be more out in this area here, in the physical layout and watching the vehicles making turns as I'm out there.

The other thing then too is, again, there's been a lot of testimony about where they pulled,

how the vehicles pulled out, and then you get into the human factors side of it, is, what is the, you know, the probabilities -- and I have to work in probabilities, not absolutes, I wasn't there, but probabilities of who could see who when and who reasonably would see and how would they react?

So, again, if -- there's testimony, I believe -- I wasn't able to watch, I've seen the transcripts. Ms. Bundy is going to say that her vehicle was here first, the truck was behind her on 521. So in this position, you would have the vehicle square in front of you, potentially following down 521. Know it's there. Once that vehicle pulls forward, potentially pull up to the stop bar. Make another decision to make a secondary movement out to pull up alongside the Mercedes here.

Is that more likely -- again, I know -- I believe Mr. Poplin testified about the possibility that there was some visibility obstruction or could be at some instant in time. That's a very small window in time in a dynamic event that has vehicles coming down to the stop bar, pulling out into here, and then making secondary decisions to move out further into the southbound lanes here.

There's also -- again, looking at -- from a human factor standpoint, we have testimony that Ms. Bundy has indicated that there is traffic, heavy traffic on both sides of the road.

Well, when the truck -- again, Plaintiff's Exhibit 14 -- pulls out and is waiting, his trailer is blocking, at least for a moment, this lane here. Heavy traffic is getting by just fine. And then when it proceeds forward and the contact occurs, there's no contact in this lane either, despite, you know, again, potentially heavy traffic.

Now, again, looking at the human factor elements of this as well, as I understand Ms. Bundy's testimony from her deposition, she's sitting here waiting on traffic to clear from her right so she can pull out. She's unaware, prior to the impact, of this truck. A truck that's loud, a truck that pulls out and around the outside of her vehicle by its cab, by the leading edge of its trailer, yet she doesn't know it's there.

Using the physical evidence of, you know, a significant portion of the truck coming around the outside of your vehicle, the sounds, all the different things going on, it's my opinion, human factors, accident reconstruction, that the truck

was there, was sitting out here, probably just short of that bar, those lines there, waiting to make that turn. This Mercedes slips out on the inside. I've done it. Probably pull out in the median, want to be a second car out there, wait until they go and then I'll go, but gets stuck. Now, this car can't see up the road and see oncoming traffic. You got a truck there. This truck off-tracks slightly over. And why wouldn't the truck necessarily see them? You've got a trailer, you've got a cab. It's now turned like this waiting to pull out. My mirror is no longer looking on the side of my car, it's looking right here. Because the truck is swiveled or pivoted about this king pin and now it's looking right here. It's unaware that this car is even there if it just looks in its basic side mirror.

So weighing the physical evidence, the layout, the geometry, the human factors element, it is my opinion that Mr. Jett got out there first.

Q Now, if Ms. Bundy -- you answered my question. I was going to ask you about whether Mr. Jett could see her with the way the tractor is turned and the position of the mirrors.

A Again, is it possible to see, you know,

potentially, if you lean forward and out and around? Sure. But it's an unexpected condition.
Q Right.
A It's reasonable to miss at that point that that car had basically snuck up on the inside of you in your blind spot.
Q And, likewise, if Ms. Bundy had pulled up first, should Mr. Jett have been able to see her?
A Reasonably, yes. I know Mr. Poplin talked about there's that sliver in time, but there's so much dynamics of pulling up to the intersection, pulling up to the stop bar, and the dynamics of the turn, that that's not reasonable that you just missed it for that entire time. A small instant in time, maybe, but all those other factors, it's not reasonable.
Q Okay. Let me shift gears and talk to you about the severity of the impact.
A Yes, sir.
Q Have you covered your opinions on how you think the accident happened?
A I believe we touched on them.
Q Okay. All right. Let me shift gears and talk to you about the severity of the impact. Did you investigate the severity of the impact between the

trailer and Ms. Bundy's car?
A I did, yes, sir.
Q Okay. What did you do to investigate the severity of the impact?
A Sure. So I looked at the damage. We have pictures of that. Let me find it quick. Defendant's Exhibit 9. We have a crease that's made by the edge of the trailer here. The trailer edge really didn't get damaged as far as we can tell in the pictures. But you have, you know, a little bit of damage here. You've got a styling line here that's part of the design of the vehicle, but you've got a crease that runs from about here, up through just under the rear glass here. By using a 3D model of the vehicle, estimating the width of that, the depth of that, and then applying, you know, kind of physical parameters of the vehicle, stiffnesses, things like that, we can calculate the force from an engineering standpoint it takes to cause that crease in the outer sheet metal panels.
Q Okay. What about the glass? Does that have anything to do with it?
A No. I mean, again, just because you flexed this structure -- that's non-laminated glass. I mean, I could go up and just -- they sell those little

tools, you know, if you get stuck in your car, you can break it with a little small hammer. Just touching it, it just bursts.

Q Okay. Do you have an opinion to a reasonable degree of engineering certainty regarding the severity of the impact between the trailer -- between Mr. Jett's trailer and Ms. Bundy's car?

A I do.

Q And what is that? What's your opinion?

A Sure. Using the force -- what I'm really interested in at the end of the day, if we're getting -- you know, aside from the first question of who got there first, if we get past that, then we know we have contact. I'm concerned about what the acceleration is at the driver's seat of this car. Someone sitting in that seat, what are they going to feel? The acceleration that's calculated, force is mass times acceleration. And you've got to move it around different points on the vehicle, feel different things. But the acceleration is -- the result is 0.8 Gs. What is a G? You're sitting in 1 G right now. My arm is being pulled at 1 G right now, wanting to fall. If I look up at the ceiling, my head, my 10-pound head wants to fall toward earth at 1 G. It's being pulled. The

stresses I feel are equivalent to 1 G.
Q What is a G?
A What is a G?
Q Yes.
A One gravitational acceleration, one gravity.
Q Okay. And so, if you don't mind, stand up in your chair.
A Sure.
Q How many Gs does it take to stand up?
A I'm -- well, I mean, again, my body is being pulled at 1 G right now. So my mass from here up is compressing my lumbar spine with 1 G of pressure, times whatever my -- I won't tell you what my body weight is this morning, but, you know. But, again, it's 1 G pulling on that weight.
Q Okay. And when you sit down, how many Gs is that?
A There are studies of activities of daily living that say when you plop in a chair, your head moves back of your shoulders at 1.8 to 5.3 Gs.
Q It depends on how --
A It depends on how aggressive you plop. I mean, if I go down gentle, maybe it's only one-and-a-half Gs. I mean, I could lower myself in more gently. But that's an example just from that. If I walk down the stairs out here leaving the courtroom

today, assuming at some point we'll all leave today, you're going to be -- I hope so -- 1.3 to 4.5 Gs. My head is moving relative to my shoulders back and forth at about 1.3 to 4.5 Gs according to peer-reviewed published literature.

Q And how many Gs did Ms. Bundy withstand when the trailer hit the rear corner of her car?

A She would be exposed to about .8 Gs. And it's direction dependent, right, so we've got to look at direction. So it's going to try to move the vehicle from right to left. You've got contact on the right side, it's trying to push it that way. And because of the friction here of one thing rubbing against each other -- again, pointing to Defendant's Exhibit 9 -- it's going to try to maybe try to slide that vehicle forward, so it's like a rear impact, if you will. It's called a side swipe because you're kind of swiping the side, but the friction wants to move the vehicle forward. So an object at rest, someone sitting in the driver's seat, is going to stay put while the vehicle gets slid that way, which means, if I'm in that seat, effectively, I go back and to the right of my seat, back to the headrest, and inboard a little bit toward the -- kind of the back right corner. You

go toward the point of impact.
Q Okay. Now, last point. Are you aware Ms. Bundy is claiming injuries?
A I am, yes, sir.
Q Have you reviewed her medical records?
A I heard testimony and medical records, all that, yes, sir.
Q Do you have an opinion to a reasonable degree of biomechanical certainty as to whether this .8 G impact would cause injuries to someone's neck or back in those circumstances?
A Sure, I do.
Q What's your opinion?
A So the biomechanicals kind of have, I guess, bear in on a couple of opinions. One, I was just talking about the direction of movement. Those movements are not going to be outside the normal range of motion. So you're not going to move, hyperextend, hyperflex anything to reasonably cause, especially in a lumbar spine that's completely supported by this nice padded seat behind you sitting in your driver's seat. It's not going to take the joints out of normal range of motion.
On the flip side, the testimony is that she

said -- she testified she was thrown forward into the steering wheel. That's counterintuitive to physics and what necessarily has to happen. But, ultimately then the force side of it, the forces are -- I mean, we've talked about some basic activities of daily living. It's well below the most benign things we do 200 times a day. And if you start running calculations on picking up things like bags of dog food or even just bending over to tie one's shoes, the lumbar feels more doing that action than this accident causes. So it's not consistent -- the forces are not consistent with causing the types of injuries that have been diagnosed in this case.

Q Let me show you a picture. Let's look at Exhibit 1.

A Yes, sir.

Q So when Ms. Bundy got out of her car, I can't tell whether she's getting out or getting in, when she got out of her car, how many Gs would she have exposed herself to?

A Okay. It depends on how quickly you lower yourself in and out, but more than a G, G and a half, 2 Gs, could be.

Q And if she was sitting back down in car, how many?

A Similar.
Q Do you have any other opinions we haven't discussed, Brian?
A I think we've touched on all of them at this point.
MR. GRANTLAND: Please answer any questions Mr. McDonald has.
THE WITNESS: Thank you, sir.

CROSS-EXAMINATION

BY MR. MCDONALD:
Q Mr. Boggess, as I understand it, you're here to talk about accident reconstruction and biomechanics, is that right?
A Yes, sir, those are the two areas that we just talked about.
Q You're not a medical doctor?
A That is correct.
Q You're a biomechanic?
A Biomechanical engineer, yes, sir.
Q So the first one, accident reconstruction --
MR. MCDONALD: Your Honor, do you mind if I approach?
THE COURT: Sure.
(Mr. McDonald approaches.)
BY MR. MCDONALD:
Q I guess this is just in your head, you've

constructed it in your head, is that right?
A No. I mean, I've done layouts, I've done measurements. I have an entire analysis file.
Q Using Plaintiff's Exhibit 14, can you show me -- and here's a dry erase marker -- can show me where, according to your accident reconstruction, Mr. Jett, from Haier, pulled out into the median and stopped?
A I mean, as I don't have an exact scale for that, I can't -- I mean, again, I can point roughly. He's going to pull out, his cab is going to be in the area right here with his trailer lagging behind here.
Q Somewhere in there?
A Yes, sir.
Q Do you understand that Mr. Jett testified that, in fact, he pulled out on that day?
A Yes, sir.
Q September 3rd, 2013, into oncoming traffic, into this lane, not in the median? Did a movement that brought him all the way into this lane of travel?
A He's out close to that area, yes, sir, waiting on traffic to clear. There was a car that came up on him, as he has testified to, yes, sir.
Q No, sir, my question is, do you understand that Mr.

Jett testified that he pulled out of the median into this oncoming lane of traffic?

MR. GRANTLAND: Objection, Your Honor. That's not -- that's mischaracterizing Mr. Jett's testimony.

MR. MCDONALD: Your Honor, that is exactly what he testified to. He pulled into the lane of oncoming traffic outside of the median. I asked him several times.

THE COURT: All right. I'm going to ask you to rephrase your question and see if he can answer it. I don't think he was here. Are you asking him about the testimony given here?

MR. MCDONALD: Yes, the evidence in this trial, Your Honor, what Mr. Jett testified to.

THE COURT: All right. Rephrase the question.

BY MR. MCDONALD:

Q Do you understand -- you did an accident reconstruction, correct?

A I did.

Q And you just told the jury that Mr. Jett pulled his truck into the median, correct?

A I did.

Q Okay. Do you understand that Mr. Jett testified in this courtroom under oath that's not where he

pulled his truck, he, in fact, pulled his truck and then came into a stop in the first lane of oncoming traffic going towards Sumter?

A As I wasn't here for his testimony, no. I'm reading his deposition transcript where he says, Pulled out into the median --

MR. MCDONALD: Your Honor --

THE COURT: Hold on. Hold on. Just answer the question. Just answer the question. All right. He says he wasn't here. Go to the next question.

BY MR. MCDONALD:

Q Okay. And that's inconsistent with your accident reconstruction, correct?

A He pulled in that general area, whether his nose is out in there some or not. I mean, the pictures speak for themselves where his truck is, ultimately made contact.

Q So let's talk about the pictures that speak for themselves. Do you see on Plaintiff's Exhibit 14 these dash lines here?

A I do.

Q Do you see the dash lines on Defendant's Exhibit 4?

A I sure do, yes, sir.

Q Okay. And do you understand that Mr. Jett

testified that his vehicle never moved when he struck Ms. Bundy's vehicle?

A His deposition testimony is not that, he pulled forward. He pulled forward slightly.

MR. MCDONALD: Your Honor --

THE COURT: Let me see you one second. Let me see both of you.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

BY MR. MCDONALD:

Q Mr. Boggess?

A Sir?

Q Are you aware of whether or not Mr. Jett testified that he pulled into the lane of oncoming traffic before coming to a complete stop?

A I'm not aware of what he testified to in this courtroom, I'm only aware of his deposition testimony and what he told me in my interview.

MR. MCDONALD: Your Honor --

THE COURT: Okay, just answer the question.

BY MR. MCDONALD:

Q Are you aware of whether or not Mr. Jett testified in this courtroom that after striking the vehicle, his truck never moved?

A I wasn't here. I don't know what he testified to this jury.
Q And your accident reconstruction actually has his truck moving, correct, in order to strike the vehicle?
A There is movement between the two vehicles. I believe that he did move forward slightly to make that contact, yes. There's only two ways that the contact can happen, either he pulls forward or she backs up. And, reasonably, he pulled forward slightly.
Q So the other way in your accident reconstruction is that Ms. Bundy pulled into the intersection and then backed into Mr. Jett?
A No. As I said, I don't believe that that happened. I know that there is vehicle contact. I know what the magnitude of that contact is. Reasonably, he pulled into the median and then at some point pulled forward. That is my opinion.
Q And the photographs that you looked at, Plaintiff's -- Defendant's Exhibit 1, do you understand that that is before the vehicles were moved by the police officer?
A They're obviously still in the median. I mean, they've been moved slightly since contact, but.

Q They've been moved slightly since the contact?
A Yes, sir.
Q How slightly?
A You can see it faintly here and you can see it more so here. There's a little bit of continuation of scrape on this rub rail here, so obviously the truck had to come back slightly relative to the car. So something moved since impact for that to transpire, either rolled -- the car rolled forward, the truck backed up, something moved after initial contact.
Q I gotcha. All right. Now, you gave some opinions on Mr. Poplin's testimony about there could have been a blind spot, but it wouldn't have been a big deal, correct?
A At some instant in time, there could be a blind spot. I did say that, based on Mr. Poplin.
Q Did Haier let you use the truck, Sterling truck?
A I went to Haier to inspect the vehicle, yes.
Q So they let you see the truck?
A The subject vehicle was gone. It was on a lease and had been returned.
Q But you inspected a Sterling truck, a very similar truck?
A It was not a Sterling, no, sir. They no longer had

a Sterling available.
Q You inspected a truck that belonged to Haier?
A I looked at a Freightliner Day Cab, I believe it was.
Q They let you do that?
A Sure.
Q Now, let's go into the biomechanical, sir. You've testified for Mr. Grantland before, have you not, Mr. Grantland's firm?
A His firm, yes, I believe I have.
Q And in the instances when you testified relative to biomechanical engineering for the Defendants that are listed on your federal court sheet, you've always given the testimony that based upon your analysis, the forces in the accident could not have caused the injury that the Plaintiff has claimed, correct?
A Is that in my transcript somewhere and you'd like to point me to a section?
Q I'm just asking the question, sir.
A I'm not sure without going through the records. It's often testimony, but I'm not sure.
Q Page 26 then.
A Okay.
Q I'll read the question at Line 9 and go to Line 18,

okay?
A I'm sorry, you said Page 26?
Q Yes, sir.
A Okay.
Q And I'm just focused on the incidents where you testified relative to biomechanical engineering where a Defendant listed on this sheet, the federal court query? Read the answer.
A I'm sorry, I think I'm on the wrong page. What page are you on?
Q Twenty-six.
A Twenty-six?
Q Yes, sir.
A Line 18?
Q It starts at Line 9. We're going to go --
A Line 9, I'm sorry. Thank you.
Q The question is, I'm just focused on the incidents where you testified relative to biomechanical engineering for Defendants that are listed on this sheet, the federal court query?
A Yes, sir.
Q That's a portion of your file. You've always given the testimony that based upon your analysis, the forces in the accident could not have caused the injury that the Plaintiff is claiming, correct?

A Answer: I think in general, yes, sir, yes, sir.
Q And we've already discussed this. You're not a doctor, are you?
A I am not.
Q And you're not sitting here telling this jury that Ms. Bundy was not injured in this accident, correct?
A I'm assessing -- no. I'm assessing a person of same age, same height, same pre-existing conditions as been noted in the records, and the potential for injury from a less than a 1 G of incident.
Q You're talking about a hypothetical person, correct?
A It's more than a hypothetical. It's a very specific individual.
Q Where is that individual?
A It's height, weight, female.
Q Where? Where in this word is that individual? Does it exist?
A It's not -- as I said, I'm not talking specifically about Ms. Bundy.
Q Right.
A I'm talking about a person of exactly the same make-up, as the records allow me to do, in the same seating position, the same exposure.

Q Take a look --

MR. MCDONALD: May I approach, Your Honor?

THE COURT: Yes, sir.

(Mr. McDonald approaches.)

BY MR. MCDONALD:

Q -- at Defendant's Exhibit 5. Do you know what that debris is behind Ms. Bundy's car right there?

A A portion of the -- it looks like the rear glass of her vehicle.

THE COURT REPORTER: I'm sorry, what?

A The rear glass from her vehicle, the rear windshield.

Q And on Defendant's Exhibit 3, is that the broken glass?

A You can see it shattered on here, yes, sir, broken glass here.

Q Have you ever talked to Ms. Bundy?

A I have not.

Q Have you ever talked to Dr. Cannestra?

A No, sir.

Q Dr. Folk, you ever talk to him?

A No, sir. Read transcripts, but not talked to them directly, no.

MR. MCDONALD: That's all I have of Mr. Boggess. Thank you.

THE WITNESS: Thank you, sir.
THE COURT: Yes, sir.
MR. GRANTLAND: A couple more questions.

REDIRECT EXAMINATION

BY MR. GRANTLAND:

Q Brian, you were asked about the movement of the truck?

A Yes, sir.

Q Would the truck -- would the tractor-trailer driver feel much movement to create a .8 G impact?

A If her vehicle is only seeing a .8, given the mass differential, it would be, as he I think at least testified in his deposition transcript, feeling like a wheel chock or something, just, I mean, almost nothing there. Some interference, but not sure what it is. It's not an impact.

MR. GRANTLAND: No more questions. Thank you, Brian.

THE WITNESS: Thank you.

THE COURT: All right. You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness steps down.)

THE COURT: Any objection to this witness being excused?

MR. GRANTLAND: No objection from the Defense.

MR. MCDONALD: None from the Plaintiff.

(Witness excused.)

MR. GRANTLAND: Thank you, Your Honor.

THE COURT: Let me see you one second.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen of the jury, we were discussing testimony that's coming up next. I think I explained to you all that I have a mandatory continuing ed class that I have to attend, and so we are going to go ahead and take a break. And we will start back on Monday. We're going to start at 10:00, 10:00 o'clock on Monday morning.

If you all, before you leave, can give your cell phone number or best number to contact you if something -- just because it's a long break, I'd rather have some way to contact you all if something happens.

And, also, the clerk, do you have a number that you can give them other than the recording? Do they have a number?

THE CLERK: I can give them my cell number.

THE COURT: Well, it's up to you.

She'll give you a phone number to contact her should something happen over the weekend. Hopefully, not the flu. If something happens over the weekend so you can contact her. But we'll start back at 10:00 in the morning.

Remember, it's very important, it's a long break, do not discuss anything with anyone. Please do not do any research. No social media regarding the case during the break. No independent research. Do not discuss the case with each other. Do not go out and try to do any analysis of your own. When you leave here, think about something else that you have going on that will be exciting this weekend instead of the excitement here in the courtroom.

So have a wonderful weekend. We will see you at 10:00 o'clock on Monday morning. And should something -- some issue arise, please contact the Clerk of Court, and they will get a message to us. Also, get those cell phone numbers. They will be kept by the Clerk of Court, so you don't have to worry about anyone else having your cell phone number. Have a wonderful weekend.

Thank you.

(WHEREUPON, the jury retires to the jury

room at 1:33 p.m.)

(WHEREUPON, court adjourned for the evening at 1:33 p.m.)

**JANUARY 22, 2018**

(WHEREUPON, the proceedings resumed at 10:17 a.m.)

THE COURT: Good morning. I trust you all had a good weekend. And we are ready to get started. We'll continue with the Defendant's case. Is your next witness -- did you say your next witness was video?

MR. HARRELL: No, Your Honor, it's Officer Patton, who's here in court.

THE COURT: And then the deposition?

MR. HARRELL: Two video depositions after that, Your Honor. One of them being very short, 15, 20 minutes, I believe. The other one being roughly an hour.

THE COURT: All right. Anything we need to take up before I bring the jurors in?

MR. MCDONALD: Not at this time. We both, I believe, e-mailed proposed verdict forms, and then we have some charges that we submitted. I have some additional basic charges, ones that we've agreed on. And I assume we'll give you all that

after the close of evidence, but perhaps before closing, if that suits, Your Honor.

THE COURT: Yes.

MR. MCDONALD: Thank you.

THE COURT: You can bring them in.

(WHEREUPON, the jury came into open court at 10:19 a.m.)

THE COURT: Good morning, ladies and gentlemen of the jury. I hope that you all had a good weekend. I'm glad to see everyone has made it back. And we are now ready to continue with the case.

I am going to ask that the Defendant call their next witness.

MR. HARRELL: Thank you, Your Honor. May it please the Court? The Defense calls Officer John Patton, with the City of Camden Police Department.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE COURT: Do you swear or affirm the testimony you give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: Thank you.

JOHN PATTON,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRELL:

Q Officer Patton, good morning. Please state your full name for the record, please.

A John Houston Patton.

Q Who are you employed by, Officer Patton?

A Camden Police Department.

Q How long you been with Camden Police Department?

A Almost seven years ago.

Q What's your current rank?

A Corporal.

Q Did you have the opportunity to investigate the accident we're here about today that occurred between Ms. Bundy and Mr. Jett in September of 2013?

A Yes, sir.

Q Do you have an independent recollection of that accident?

A Nothing other than what's on the TR310.

Q Do you have a copy of TR310 report with you?

A I do.

Q And you need it to assist in your testimony here today?
A I do.
Q When was the Camden Police Department notified of this incident?
A At 7:40 that morning.
Q And when did you arrive on the scene?
A 7:43.
Q So how long after the accident did you arrive on the scene?
A Approximately three, four minutes.
Q And once you got to the accident scene, tell the jury what you observed.
A I observed an 18-wheeler and an SUV in the median on Broad Street.
Q And did you speak to the parties involved in the accident?
A I did.
Q Both Ms. Jett and Mr. -- both Mr. Jett and Ms. Bundy?
A I did.
Q And did you ask if anyone was hurt or needed medical attention?
A I did.
Q And what was their response?

A Both of them declined EMS and said they were not hurt.
Q And was EMS called to the scene?
A They were not.
Q Is that typically the first question you ask when you arrive on a scene?
A It is.
Q And if anyone had reported any injuries, you would have called an ambulance?
A I would have.
Q And, again, you did not call an ambulance that day, did you?
A Correct, I did not.
Q Did you ask each party to tell you how the accident happened?
A I did.
Q What did they tell you?
A Mr. Jett stated that he was attempting to turn out of the median to go south on Broad Street and that the other vehicle driven by Ms. Bundy drove up from behind him.

And then Ms. Bundy stated that she was attempting to turn onto the median and that the 18-wheeler struck her.

Q Did any witnesses come forward to confirm either

story?
A No, sir.
Q Any witnesses at all present?
A No, sir.
Q Could you, yourself, tell who got to the median first that day?
A I could not.
Q After you confirmed no one was injured, did you instruct Mr. Jett and Ms. Bundy to move their vehicles out of the intersection and onto a frontage road?
A I did.
Q Were both cars drivable?
A They were.
Q And did they both drive their cars onto that frontage road?
A They did.
Q Before everyone left the scene that morning, did you or someone with Camden Police Department take some photographs of the accident scene?
A Yes, sir.
Q I'm going to show you what has been marked and entered into evidence as Defendant's Exhibit 4. Is this photograph a fair and accurate depiction of the vehicles and their position in the median when

you arrived on scene that morning?
A Yes, sir.
Q And did you or someone with Camden Police Department take that photograph?
A Yes, sir.
Q Tell me, Officer Patton, was Ms. Bundy's vehicle dragged into oncoming traffic or was it still within the median?
A It was still within the median, yes.
Q This dotted line here would signify the oncoming traffic?
A Yes.

MR. HARRELL: Thank you, Officer Patton. Answer any questions the Plaintiff may have for you.

CROSS-EXAMINATION

BY MR. MCDONALD:
Q Good morning, Officer Patton. How are you?
A Good morning. How are you doing?
Q Good. You were shown one of the pictures, but the pictures that have been marked --

MR. MCDONALD: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

(Mr. McDonald approaches.)

BY MR. MCDONALD:

Q The pictures that have been marked as Defendant's Exhibit 4 that you looked at, these pictures -- this picture was taken prior to the vehicles being moved, correct?

A Correct.

Q The same is true for Defendant's Exhibit 2?

A Correct.

Q That's not on the frontage road, correct?

A It doesn't appear to be.

Q And the same is true with Defendant's Exhibit 3?

A Correct.

Q And, again, the same is true with Defendant's Exhibit 1?

A Correct.

Q And the same is true with Defendant's Exhibit 5?

A Correct.

Q And you don't actually have any independent recollection of any conversations with either of the drivers that were involved in this wreck, do you?

A I do not.

Q So it's fair to say you don't recall anything that the drivers said to you or you said to them because you don't recall any conversations, correct?

A Correct.

MR. MCDONALD: I don't have anything further. Thank you very much, Officer Patton.

MR. HARRELL: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. HARRELL:

Q Officer Patton, this accident happened in September of 2013, correct?

A Yes, sir.

Q And you made that report you have here with you today on the morning of the accident?

A Yes.

Q And that report helps you refresh your recollection as to what happened that morning?

A It does.

MR. HARRELL: Thank you. No further questions.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

THE COURT: Any objection to this witness being excused?

MR. HARRELL: Absolutely not, Your Honor.

MR. MCDONALD: None from the Plaintiff.

THE COURT: All right, sir, you can be excused.

(Witness steps down and is excused.)
THE COURT: Call your next witness.
MR. HARRELL: Your Honor, at this time, the Defense would like to present the deposition video of Dr. William Wagers, W-A-G-E-R-S.
(WHEREUPON, the video deposition of Dr. William Wagers was played for the jury.)
MR. HARRELL: May it please the Court, Your Honor?
THE COURT: Yes.
MR. HARRELL: At this time, the Defense calls Dr. Alfred Rhyne, also by video deposition, R-H-Y-N-E.
(WHEREUPON, the video deposition of Dr. Alfred Rhyne was played for the jury.)
THE COURT: Let's take about five minutes. Stretch our legs. We're having technical difficulties finding the right spot. Go ahead and take about five minutes.
(WHEREUPON, the jury retires to the jury room at 11:10 a.m.)
(WHEREUPON, the jury came into open court at 11:25 a.m.)
THE COURT: I think we've got it all set.
(WHEREUPON, the video deposition of Dr.

Alfred Rhyne was continued.)

THE COURT: All right.

MR. GRANTLAND: Your Honor, the Defense rests.

THE COURT: Does the Plaintiff have anything on reply or rebuttal?

MR. MCDONALD: No, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, there are some matters of law that I need to take up outside of the presence of the jury, so I am going to send you out. It is probably going to take a couple of minutes. But I am going to have some instructions for you shortly one way or the other. Please do not discuss the case. Thank you.

(WHEREUPON, the jury retires to the jury room at 11:38 a.m.)

THE COURT: Are all the jurors out?

THE BAILIFF: They're all out.

THE COURT: All right. I'll be glad to hear from you all regarding any motions.

Any motions from the Plaintiff?

MR. MCDONALD: Yes, Your Honor. With regard to -- we would renew at directed verdict stage our objection to the diagram that was admitted into evidence on previously stated grounds, as well as

in the Defendant's case in chief, they didn't lay any of the proper foundation for its admission, I believe it's Defendant's Exhibit 13, for its admission under the exception to hearsay, 803(6).

And in addition to that, it contained his objective opinions and judgments that would not be permitted. And if you take out that testimony based upon Mr. Jett's testimony about something he didn't see, there really is no conflicting testimony as to Ms. Bundy's story about being out there first.

I would couple that with my previous motion on the Boggess testimony, my objections to his testimony with regard to accident reconstruction. And if you take Mr. Boggess's testimony out and Mr. Jett's testimony since he didn't see Ms. Bundy, there is no dispute as to liability. And on that, we would move for directed verdict on that grounds.

There is also no disputing evidence from the Defendant on the unreasonableness of the medical bills that are in evidence as Exhibit 9. And so we would move for a directed verdict on those medical bills.

There is also, likewise, no disputed evidence as to the life care plan. There was no evidence

put forth that will not be incurred, so we would move for a directed verdict on those issues as well.

Thank you very much, Your Honor.

THE COURT: Thank you.

Yes, sir.

MR. GRANTLAND: Your Honor, the Court has already ruled on Mr. Jett's diagram, and it's certainly proper under Rule 701, as well as a court of equitable action, and I believe the Court's ruling is proper.

Regarding the directed verdict on the medical bills and life care plan, proximate cause is certainly disputed. There's no dispute Ms. Bundy incurred these medical bills. There's no dispute she hired an expert, Ms. Lustig, to prepare a life care plan, but the issue is proximate cause. Was this accident, was this minor accident the cause of her medical bills or was her pre-existing -- longstanding pre-existing condition the cause. So I believe the directed verdict on medical bills and life care plan should be denied.

THE COURT: All right. As to the first two motions, regarding the diagram that was admitted, your objection is preserved for the record.

However, I'm going to deny the motion. As to the admission of the diagram as to the dispute to liability, they are issues of fact before the jury as to liability. I'm going to respectfully deny the motion as to liability. The reasonableness of the bills and the life care plan go to, I think as he stated, proximate cause. They are not if these bills were related as to this accident. And I think the testimony regarding that, that presents an issue of fact as to proximate cause for the jurors to decide.

For those reasons, I will respectfully deny the Plaintiff's motion.

Yes, sir, any motions?

MR. GRANTLAND: Your Honor, I would like to renew my motion for directed verdict regarding punitive damages. There has been no evidence of willful, wanton, reckless conduct on the part of Mr. Jett. I mean, I think their own expert says that if you believe their expert, Mr. Jett simply didn't see Ms. Bundy. That might be evidence of negligence, lack of due care, but it certainly does not rise to the level of recklessness, certainly, no statutory violation. And I would ask the Court to direct a verdict on the claims of punitive

damages.

THE COURT: Yes, sir?

MR. MCDONALD: Yes, Your Honor. In addition to the previous arguments we made at the first directed verdict stage, there is certainly facts out there. Obviously, our position is that the -- and Mr. Jett testified that he never saw Ms. Bundy. Now, there have been -- both from Mr. Poplin and their expert, Mr. Boggess, spent a lot of time on all the ways he could have seen. And so to drive into that intersection not seeing her and then running into her, pulling in oncoming traffic, I think viewed in the light most favorable to Ms. Bundy, there's certainly evidence of recklessness.

I think our version of the accident has Mr. Jett coming through the intersection without stopping at all and running into Ms. Bundy without having ever seen her, which I think gives rise to evidences of recklessness. And I think there's more than sufficient information to give rise to reckless conduct which would entitle the Plaintiff to punitive damages.

Thank you, Your Honor.

THE COURT: All right. I do find that there

is an issue of fact regarding punitives and recklessness for the jury to decide based on the testimony that is in evidence. Therefore, the Defendant's motion for directed verdict as to punitives will be denied.

Anything else? Motions?

MR. GRANTLAND: Not from the Defendant, Your Honor.

THE COURT: So it's 11:44. We have -- we need to do, I guess, a charge conference. You all sent some proposed charges? I have not seen those.

MR. MCDONALD: Yes, I've actually added a few, Your Honor. I've got a full set right here. I've taken out what was previously submitted as Charge Number 6, which was a charge on statutory turning movement of motor vehicles. I think based on the evidence, that charge is unnecessary. So I have charges. I have a copy for Your Honor and I've already given a copy to Defense counsel. The Plaintiff's Request for Charge 1 through 23, with obviously the omission of Number 6 that I have taken out, Your Honor.

May I approach?

THE COURT: Yes, sir.

MR. MCDONALD: Just for Your Honor's benefit,

I would submit to you that each of those charges are literally copied from Judge Anderson's Request to Charge book, so there's no dispute on that. With the exception of Plaintiff's Request to Charge Number 17, which I discussed with Defense counsel. And it simply relates to the fact that there had been a stipulation that I entered on record of Mr. Jett behaving in the course and scope of employment of Defendant Haier, and therefore it just says, Due and owing the stipulation of the parties, Defendant Jett was acting in the course and scope of his employment with Defendant Haier at the time of the collision. I charge you that should you find Defendant Jett is liable for Plaintiff's damages, you must also find the Defendant Haier to be liable for the Plaintiff's damages.

And I believe that Defense counsel has agreed to that.

THE COURT: All right. I use the desk book jury charges. So I think most of these are covered in there. I will go through and see if there is anything that is not. It looks pretty much the same language that you use.

MR. MCDONALD: I would appreciate that very much because I intend to refer to it in my closing.

THE COURT: I'll give you the jury charge, but -- we'll give you all a copy of the jury charge, the language is pretty much the same. Like I said, it's just not as wordy as Judge Anderson's charge. The jury charge is from Court Administration's desk book, jury charge desk book.

What I can do is -- it all appears to be the same.

You have any objections to any of these jury charges?

MR. GRANTLAND: Your Honor, I'm not sure what the number is, but Mr. McDonald gave me these this morning. The only question I have is regarding the negligence per se charge. I'm not sure what number that is, but there's no statute alleged to have been violated to my knowledge and I don't know that that charge would be appropriate.

MR. MCDONALD: Yes, Your Honor. The statute is included in the Plaintiff's Request to Charge Number 4. It's simply the omitted acts under the motor vehicle. And then Plaintiff's Requests to Charge Number 5 related to stop signs, which states in South Carolina Code Section 56-5-2330: Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall

stop at a clearly marked stopped line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

MR. GRANTLAND: I understand, yes. I withdraw that. First, I thought he was -- the allegation was running a stop sign, there's no evidence of that, but I read the whole charge. I get it.

MR. MCDONALD: Thank you.

MR. GRANTLAND: The only thing we would ask for, Your Honor, is a comparative negligence charge.

MR. MCDONALD: May I be heard on that, Your Honor?

THE COURT: Yes.

MR. MCDONALD: I was just trying to this weekend come up with a scenario wherein comparative

negligence on these facts would be applicable. It certainly would be liability. I was having trouble coming up with one. If Defense counsel has a scenario that they can come up with, I'd just like to hear it, it may be something we can talk about. But right now, it just seems to me that the facts of the case are, you know, essentially, who was out there first. If they've got a scenario, I'll certainly take it into account.

MR. GRANTLAND: Your Honor, it would be comparative either way. Ms. Bundy testified that she was in the median first and she didn't see or hear this tractor-trailer coming. Certainly, the jury could infer that she had some negligence. Likewise, Mr. Jett says he was in the median first. And the jury certainly could -- and Ms. Bundy came up from behind him. The jury certainly could infer it was negligent for her to try to pass an 18-wheeler on the left as far as seated in the median and Mr. Jett should have seen her. So that's certainly a possible scenario. Mr. Jett may have been in the median first, but he should have seen her. Ms. Bundy was negligent for trying to pass him on the left. I mean, it's certainly questions of fact for the jury to consider.

THE COURT: Wasn't there some testimony from one of the witnesses that they -- or an expert said regarding maybe her trying to beat the truck or something? That's the only thing that I -- when you said comparative negligence.

MR. MCDONALD: Obviously, that's -- the testimony that has been offered was based upon the Defendant's Exhibit 13, which I objected to. And if that's where Your Honor's going, then I would just object on those grounds because I want to make sure I preserve my right. So I'm not waiving that objection.

MR. GRANTLAND: Again, Your Honor, the jury can infer that Mr. Jett may have been out in the median first, but -- and he should have seen her, but Ms. Bundy came around him and she should have waited until he got out of the way. So potential fault from both sides.

THE COURT: I think based on the testimony and understanding your objection, I do think there was testimony regarding what the jury could possibly find as to comparative negligence. And for that reason, I would give the comparative negligence charge.

I guess we need to look at the verdict form.

I don't do all of that, go here, go there. If we do a jury verdict form, it's going to be pretty simple. We just did one last week.

MR. MCDONALD: And I submitted one too, Your Honor. I e-mailed it to your law clerk.

MR. HARRELL: Your Honor, you should have one from both Mr. McDonald and I. And the only other issue other than comparative negligence we ask for on there would be an issue of whether the Defendant's negligence proximately caused the Plaintiff's injuries.

THE COURT: Well, proximate cause is a part of negligence, so that's automatic, but I'm not going to single it out on the jury verdict form. I mean, I'm going to read it to them. That's part -- we'll talk about negligence and the jury charge talks about proximate cause and injuries, but I'm not getting into that because that just confuses the jury when you put all that on the verdict form.

MR. MCDONALD: Maybe the best way to handle it, Your Honor, is just whatever verdict form you feel comfortable using, we can take a look at it and we might have issues.

THE COURT: I don't know if I have one yet. But let's figure out what we're going to do with

the jurors. I guess we need to send the jurors out while we work on the jury charge. I actually finished a lot earlier than I thought. We can work on the jury charge and verdict form. I can send them out and then give us an opportunity to go to lunch. And then come back and do closing arguments and charge.

MR. MCDONALD: That works for me, get straight on the jury charge.

THE COURT: What I'll do is I'll bring the jurors back in and then we'll just have them come back at 2:00 o'clock. Then we'll be ready to go forward with closing arguments and then charge them on the law.

So this is what we'll do. We will come back at 1:30, go over the jury charges. She'll have a printed copy for you all to look at and also the verdict form, take about 30 minutes and work on that. I'll have the jurors come back at 2:00 o'clock.

All right. You can bring them in.

(WHEREUPON, the jury came into open court at 11:57 a.m.)

THE COURT: All right, ladies and gentlemen of the jury, what we're going to do is, we are ready

for closing arguments and the charge on the law, but before we can do that, there is some matters that I need to take up with the lawyers. It's going to take a little bit longer, so we're going to go ahead and send you all to lunch and have you back at 2:00 o'clock. We're going to work -- instead of having you all sit back in the jury room, we're going to work and let you all go about your business and get some lunch.

Remember, do not discuss the case. You do have all of the evidence. However, you do not have the law and you have not heard the arguments of the parties. So I am going to instruct you all to please do not discuss the case, do not start any pre-deliberations. Once again, once you leave the courthouse, discuss something else other than what's going on here in the courthouse.

Thank you. Have a good lunch. See you back at 2:00 o'clock.

(WHEREUPON, the jury is excused for lunch at 11:59 a.m.)

THE COURT: Any objections or changes?

MR. MCDONALD: Yes, Your Honor. One, the jury charges I submitted, could I have those marked as a Court's Exhibit, the ones I have?

THE COURT: Sure.

MR. MCDONALD: And that would be Plaintiff's Requests for Charge 1 through --

THE COURT: What exhibit will that be?

THE COURT REPORTER: That will be 4.

MR. MCDONALD: -- 23, absent 6, which has been withdrawn. I previously handed those up, Your Honor.

(WHEREUPON, Court Exhibit No. 4 was marked for identification only.)

MR. MCDONALD: Subject to that, obviously those are the charges we submitted, so we would make that exception with regard to those charges. We went over the charges that you have given us and I believe we have agreed to a couple of changes if Your Honor is amenable.

THE COURT: Yes, sir.

MR. MCDONALD: The first is on Page 6 relative to depositions. And I think they agreed upon changes to the first sentence, Deposition testimony was presented to you via video.

THE COURT: Yes, I'll change it. That's the standard language.

MR. MCDONALD: The next, I would just reaffirm my objection -- or restate my objection to the

comparative negligence charge earlier brought up subject to Your Honor's ruling.

The next agreed upon -- that one was not agreed upon, obviously.

The next agreed upon is on Page 15, the master and servant. I think based upon the stipulation that's in the -- that's already in the charge: Due and owing the stipulation of the parties, the Defendant Jett was acting in the course and scope. I don't believe we need the master and servant charge.

THE COURT: Okay. Yes, that was one you gave and she just stuck that in.

MR. MCDONALD: Yes, she has -- based upon the stipulation, I'm not sure we need it.

THE COURT: Okay.

MR. MCDONALD: And the last one agreed upon is on Page 24. It's the last sentence of the pre-existing injury charge. We agree that that doesn't need to be in there.

THE COURT: Starting with --

MR. MCDONALD: Starting with, In addition, all the way to the word, problems.

THE COURT: Okay. Take that out.

MR. MCDONALD: And subject to my previous

admission Requests to Charge that we submitted and those changes, Your Honor. And we have a few other matters, but that's what I have on the charge itself.

THE COURT: All right. Yes, sir. Anything?

MR. GRANTLAND: No, Your Honor. Mr. McDonald and I agreed to the jury charges we just discussed.

During the break, I did inform Mr. McDonald that I plan to use portions of depositions of Ms. Bundy in my closing argument to compare her testimony with testimony of the doctors and experts. Mr. McDonald expressed to me that he would object to me --

THE COURT: Well, is it testimony in the record already?

MR. GRANTLAND: Yes, Your Honor. I mean, I crossed her on it. And basically --

THE COURT: Did you cross her on the deposition?

MR. GRANTLAND: Yes. Yes, Your Honor. Everything that I want to talk about in my closing argument, I've crossed either her or her experts on. And I believe under Rule --

THE COURT: No, no, I guess what I'm trying to figure out, is it testimony that you said, Here,

look at your Deposition Line 5, Page 4, you were asked this, your response was that?

MR. GRANTLAND: Some of it is, Your Honor, and some of it is it came out in my questions to her and her admissions. Under Rule 32, I believe I'm entitled to use the deposition of a party for any purpose. And, again, that's just part of my closing argument to point out -- is to show her testimony compared with testimony of experts for purposes of contradicting and impeaching.

MR. MCDONALD: Your Honor, that's if it's in evidence. So what we're doing now is closing argument talking about deposition testimony. Defense counsel certainly had the opportunity to read in his case in clear deposition testimony of my client. He didn't do it, and therefore it's not in evidence. I think it would be inappropriate to refer to in closing argument.

THE COURT: I agree. I think unless there's something you can say, I asked her about her deposition testimony and this is her response, I think that's in evidence. But to just go through the deposition and pull out parts that are not in evidence, I don't think that's appropriate, even under Rule 32.

MR. GRANTLAND: Your Honor, looking at Rule 32(a)(1), any deposition may be used by any parties for the purpose of contradicting and impeaching testimony of the deponent as a witness. And then (a)(2), the deposition of a party, or anyone else may be used by an adverse party for any purpose.

THE COURT: I understand it says for any purpose, but it says for impeaching the witness. She won't be on the stand to respond to --

MR. GRANTLAND: And, Your Honor, this isn't --

THE COURT: So that's not -- I don't think that's proper impeachment.

MR. GRANTLAND: But it's closing argument. I'm simply --

THE COURT: I understand. I'm going to -- I assume that's an objection by the Plaintiff. I'm trying to figure out --

MR. MCDONALD: Yes, Your Honor.

THE COURT: Objection by the Plaintiff to allow that deposition testimony to come in. Unless -- I don't -- if it's something that you impeached her on and asked her about it and you showed her the deposition and, Did you say this, and she responded to you, then I think that's

appropriate. But if it's just saying, On this date she said this, on the stand she said that, I think the proper method for that was to impeach her while she was on the stand.

So I am going to sustain the objection to that portion of closing argument.

MR. GRANTLAND: So am I allowed to publish portions of her deposition that I impeached her on?

THE COURT: Yes. If you impeached her on it, yes. If it's -- if Debbie has it typed up over there on the computer, then you can impeach her on it. I mean, you can discuss -- whatever is in evidence, you can discuss. Just I don't think you can get in and discuss everything that she said in her deposition --

MR. GRANTLAND: No, and I --

THE COURT: -- and she doesn't have an opportunity to respond.

MR. GRANTLAND: And I don't plan to do that.

MR. MCDONALD: Your Honor, the only way you get that portion of it into evidence, as Your Honor has suggested, which is if she gives a response, he then reads the question that he asked in the deposition and she reads her answer. That portion would be in evidence because she read it in open

court. It can't just be, Don't you remember when I asked you this, well, now let's go back to the deposition, I'm going to impeach her in closing argument. I think that's inappropriate.

THE COURT: I think we're all good.

MR. GRANTLAND: Yes, ma'am.

MR. MCDONALD: So the only portion of the deposition which would be in evidence is what he read on impeachment?

THE COURT: Yes. I think that's what I understand. I think he understands. And I'm sure if he says something different, you'll object.

MR. MCDONALD: If he's representing to the Court that he's only going to show portions that she read from the -- she read from the -- then I'm not going to object if that's his representation to the Court.

THE COURT: Yes. If it's anything beyond that, I'm sure you will object. But I don't think -- Mr. Grantland understands the rules.

MR. MCDONALD: And the same objection to any use of Mr. Jett's deposition. I assume that's not --

MR. GRANTLAND: I don't plan to use that.

THE COURT: The ruling would be the same.

MR. MCDONALD: The video depositions themselves are in evidence. We showed them to the jury.

MR. GRANTLAND: And I believe I would be entitled to show the transcripts of the video depositions that have been in evidence.

MR. MCDONALD: As long as they're in evidence.

THE COURT: I mean, the video depositions are in evidence. Do you want to show the video or do you want to show -- in closing, you want to show the transcript?

MR. GRANTLAND: I want to show parts of the transcript.

THE COURT: The written transcript?

MR. GRANTLAND: From the video depositions, yes.

THE COURT: All right.

MR. MCDONALD: Your Honor, the next matter that we have --

THE COURT: As long as they're clean transcripts.

MR. MCDONALD: Plaintiff's Exhibit 13, which was agreed to by consent. I think we've agreed that's the animation that I intend to refer to in closing argument. It was offered for demonstrative

purposes. That would not go back to the jury. I think Mr. McDonald has agreed to that as well. It just wouldn't go back to the jury room.

THE COURT: So it's been marked already as 13 --

MR. MCDONALD: Yes, Exhibit 13.

THE COURT: -- for demonstrative purposes? Is that correct?

MR. GRANTLAND: Yes, Your Honor.

THE COURT: Okay.

MR. MCDONALD: And then the last item I have, are we going to be able to see the verdict form prior to closing?

THE COURT: She changed it one more time. Yes, I have a copy.

MR. MCDONALD: Thank you, Your Honor. May I approach?

THE COURT: Yes.

I am going to go through the verdict form with them on comparative negligence, that's discussed in the jury charges. The percentages, I will explain to them that if they find that she is negligent that they have to put the percentage of negligence here, have to put the percentage of negligence there. And then after that, obviously if they say

51 percent or greater, then --

Yes, sir?

MR. MCDONALD: My issue is you don't have to -- if you're going to charge them that it has to add up to 100 percent and there's no --

THE COURT: I can explain that to them. I can put little lines in there if y'all want.

MR. MCDONALD: If you're going to charge them that it has to add up to 100 percent, there needs to be a percentage for the Defendant too. Otherwise they're going to say it's got to add up to 100, we only have one percentage line.

THE COURT: Well, it worked actually perfect last week when we did it. I explained to the jury -- because I'm already explaining it to them in the jury charge, then I go over the verdict form with them.

MR. MCDONALD: But I just think --

THE COURT: And I will tell them it has to come to 100 percent. We can add it in there. Percentage -- Plaintiff, if any, I'll put percentage and the Defendant's percentage. Then put a note that it must add up to 100 percent. I don't have a problem doing that. I mean, I've done it both ways.

MR. MCDONALD: And I think that's appropriate, obviously, subject to objection on the --

THE COURT: Yes, I just don't like --

MR. MCDONALD: -- comparative negligence.

THE COURT: -- one, two, three, go to four, five, six, seven, eight. It's confusing.

MR. GRANTLAND: Your Honor, if I can just delete --

MR. MCDONALD: So you're going to add a percentage for the Defendants?

THE COURT: It's going to look like the traditional way where it says, If you find -- if you find that the Plaintiff was negligent, you will assign a percentage for the Plaintiff, assign a percentage for the Defendant. It must add up to be 100 percent. She's going to type it up. I think they had a version of it in the proposed verdict form.

MR. MCDONALD: And then the next issue I have is there's no line item for damages for the loss of consortium claim.

THE COURT: You're correct.

Mr. McDonald, do you have any objection -- I think what you're asking for is the proposed verdict form the Defendant submitted?

MR. MCDONALD: With regard to comparative negligence.

THE COURT: Just using that verdict form -- because once you get into percentages, you have to go to the next line.

MR. MCDONALD: Yes. The problem with the -- I don't have a problem with the language that says using the combined negligence that proximately caused the Plaintiff's injuries as 100 percent, what percentage of that negligence -- I would put using the combined negligence, if any, that proximately caused the Plaintiff's -- using the combined negligence that proximately caused the Plaintiff's injuries as 100 percent, what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant, period. I object to the remaining. They can't put, it is not necessary for each Defendant to be assigned a percentage of negligence and it's perfectly acceptable for the Defendant to be assigned zero percentage. Well, they would have already found that the Defendants were negligent as they've already stipulated that if one is negligent, the other is negligent.

I think you could just use your verdict form,

Judge, and just where it says percentage of Plaintiff's fault, if any, then underneath that, percentage of Defendant's fault. You wouldn't need to put if any because they would have already found negligence on behalf of the Defendants in Count Number 1. They know they're negligent, they would have already found that. So it would just be your exact thing, except there would be one more line as percentage, line across, of Defendants' fault.

THE COURT: I'm going to -- I will go over the verdict form with them and explain to them that it has to come up to 100 percent. And if it's more than 51 percent, then I can deal with that after. I mean, I don't know the next line is even necessary.

MR. MCDONALD: Yeah, the next line in their proposed?

THE COURT: Yes.

MR. MCDONALD: Yeah, I don't think that's necessary. I was going from your verdict form.

THE COURT: That's fine.

MR. MCDONALD: Obviously, Judge, it's all subject to my objection on the comparative negligence charge.

THE COURT: What we may do is, she's going

to -- I'm not sure how long you all are planning to close, but we'll probably -- I can take a break, if necessary, to go ahead and get started closing. I can take a break to make those changes to the jury charge and then let you see those and have a copy of that and also the verdict form for you. I'm guessing y'all are going to probably be -- I'm not going to give you a time limit, but hopefully you won't be too long.

MR. GRANTLAND: Fifteen, 20 minutes. I mean, I'm definitely shorter now after the Court's ruling on -- no more than 15, 20 minutes.

MR. MCDONALD: I tend to go faster than I think.

THE COURT: Are y'all ready or you need a break?

MR. GRANTLAND: Your Honor, we may need like five minutes between arguments to set up my projector and Powerpoint.

THE COURT: Okay.

MR. GRANTLAND: I mean, after he does his, if I can just move the screen and get it set up.

THE COURT: Okay. Jasmine -- maybe when we take a break, she'll bring the verdict form for you to look at one more time.

(WHEREUPON, a short break was taken.)

THE COURT: Are you ready?

MR. GRANTLAND: Yes, ma'am.

THE COURT: I think we're ready.

You can bring them in.

(WHEREUPON, the jury came into open court at 2:28 p.m.)

THE COURT: Juror Number 130, is it Ms. Owens?

THE JUROR: Yes, ma'am.

THE COURT: I'm going to ask that you serve as our forelady. And I will give you instructions. We're going to have closing arguments, then I'll give you instructions regarding deliberations. So I need you and this young lady right here to switch seats. You're going to be the forelady, and I will give you some instructions later on as to what your duties are as forelady.

Thank you.

All right. Madam Forelady, and members of the jury, at this time we are ready for closing arguments, and then we'll have the charge on the law.

First you will hear from Mr. McDonald, on behalf of Heather Anne Bundy and W.H. Bundy, Jr. And then you will hear from Mr. Grantland, on

behalf of Thomas Elroy Jett and Haier America Research and Development Company, LTD.

Please pay close attention to the attorneys. And then you'll have an opportunity -- I did not say this, you'll have an opportunity -- Mr. McDonald will have an opportunity to respond or reply. So please pay close attention to the attorneys and then I will speak with you after closing arguments.

All right. Yes, sir?

MR. MCDONALD: May it please the Court?

CLOSING ARGUMENT

MR. MCDONALD: Madam Forelady, and members of the jury, the evidence in this case is that Mr. Jett never saw Ms. Bundy. The evidence in this case is that the doctor they hired never saw Ms. Bundy. Notwithstanding, he testified that in his 20 or 30 years of practice, he's never recommended surgery or not surgery, one way or the other, without seeing a patient, physically examining the patient.

There's not a single piece of evidence, and they spent a lot of time going through Ms. Bundy's medical records, that anybody suggested to her that she needed surgery prior to this wreck. There's

not a single witness that took that stand that said that surgeries weren't expensive. And not a single witness took the stand and said surgeries weren't painful. And there wasn't a single witness put up on that stand that said she wouldn't need future care as a result of having these surgeries.

Before we got started in opening statements, we talked a little bit about the difficult job that you all have, the hardest job of all. I'll tell you a little bit about my job. My job on bringing a case on behalf of the Plaintiff is to meet what's called the burden of proof. We've got the burden of proof. And the way that's going to be described to you is what the burden of proof is, is preponderance of the evidence. The judge is going to charge you that.

And I'll give you the example of the scales. When the case starts, they're even. If they're tipped ever so slightly in the favor of the Plaintiff, you must rule for the Plaintiff. If they go the other way, ever so slightly in favor of the Defendant, you must rule for the Defendant. I've got to meet that burden.

And I'm going to read to you some. Adults, typically, don't like being read to. I don't know

when we lose that, what age we lose that, but it's important because this is the law the judge is going to charge you. It's what we're doing here in this courtroom. You all are the judge of the facts applied to this law.

The judge is going to charge you preponderance of the evidence simply means the greater weight of the evidence. This can be illustrated by imagining a set of scales. When the case begins, the scales are even. After all of the evidence is presented, if the scales remain even or if they tip even slightly in favor of the Defendant, then the Plaintiffs, us, have failed to meet their burden of proof and would not be entitled to recover in the case. If, on the other hand, the scales tip even slightly in favor of the Plaintiff, then the Plaintiff has met their burden of proof and you should return a verdict in favor of the Plaintiff.

Now, what the judge isn't going to talk about in these charges, in addition to the scales, Lady Justice. She's also blindfolded. And why is that? Well, that's because, unfortunately, there's things that matter outside of these doors to this courtroom that do not matter in here, cannot matter in here. And the judge won't charge you that they

matter.

And you've heard a little bit about those things in the cross-examination of Ms. Bundy and Mr. Bundy. You've heard cross-examination of whether or not she could afford a Mercedes. You've heard cross-examination of whether or not they have a pool or a tennis court at their house, whether they can afford to travel, whether they have a big house, whether they live on property with multiple buildings. You heard all that on cross-examination. And none of it matters in this case. None of it. The judge is not going to charge you any of that matters.

The only reason they did that, they asked those questions is to prejudice you as jurors, to think about things that don't matter in this courtroom. It's the only reason those questions were asked. It's a cancer in this courtroom to think about those things, to suggest, to insinuate to you all things that don't matter to prejudice you, and that's why it was done. Make no mistake about it.

In the same vein, there's a corporation involved in this case. I didn't bring up whether it's a big, small corporation, what they got going

on because it doesn't matter. And the things that don't matter, sometimes they matter out there, but they don't matter in here. It's part of the oath you took. You focus on the things that matter.

So with regard to the burden of proof, you take in all the evidence, things you heard from the witness stand, the exhibits you've seen, the testimony you've seen via video. And you have to ask yourself, Did I prove my case? Did the Plaintiffs prove their case? Did they tip the scales slightly?

This is a negligence case. Let's talk a little bit about negligence if we can. The judge is going to charge you what negligence is. What negligence is is simply the absence of due care. Everybody has got a responsibility to behave reasonably. If you don't and you cause harm to someone, you're guilty of negligence.

The judge is going to charge you, the first question is whether the Plaintiff has proven by preponderance or greater of the evidence the Defendant breached the duty of care by negligent act or omission.

Negligence means that a person has done something that a reasonable person would not have

done or has failed to do something that a reasonable person would have done in the same situation.

The undisputed testimony in this case is that Mr. Jett never saw Ms. Bundy. The undisputed testimony in this case is that if she was out in that median first, if she was out in that median first, he should have seen her and he could have avoided the wreck.

So the first question you've got to decide as the jury, the first fact, the universal fact, Who was out there first? What do we have to figure that out? We've got testimony and we've got exhibits that come up with two stories. Let's talk about Ms. Bundy's story first.

She saw Mr. Jett behind her on Black River Road, particularly heavy traffic, and she pulled into the median on the left side.

Now, let's talk about this intersection for a second. You've heard some suggestions by Defense counsel and their witnesses that what you should really do in this intersection, Black River Road and 521, is you should pull out over here to the right, that's where you should pull your car. And she shouldn't have even been over there to the

left.

That's not how this intersection works, as Mr. Poplin testified to. Because you've got a left turn lane here back onto Black River Road. Cars making this movement, okay. If you were to pull out here and cars are making the left turn lane, that's a recipe for head-on collision. Nobody in their right mind pulls to the right side of this intersection. But they would have you believe that.

They asked questions on cross-examination of Mr. Poplin. They had their expert come up here and say what you really do is you pull to the right-hand side of that intersection. Is that believable?

Ms. Bundy testified she was waiting on the traffic to clear and make the left-hand turn going towards Sumter. She was in the median and she was struck. She jerked forward towards oncoming traffic, the back window shattered right when she was struck, and she jumped out of the car and was hysterical, mad, upset. That's her story. Never changed.

Now, let's talk about Mr. Jett's story. Once again, he never saw her. He pulled into the median

from Black River Road and, in fact, said it was heavy traffic. And he comes to a complete stop, according to his testimony, in the oncoming traffic lane, here, and waits for a single car traveling in this lane towards Sumter, in the far oncoming traffic lane, to pass. At which point, he tries to move and he doesn't move. He does not move is his testimony. And he's looking right, according to his own testimony, the entire time he makes the movements. He opens his door after striking Ms. Bundy and he sees her for the first time.

Now, what's the problem with that testimony -- the problems with that testimony? First is, glass shattered before the cars were moved. His testimony was it shattered after he moved the cars. You heard Officer Patton testify when he arrived on scene three minutes after the wreck, the cars hadn't moved, the glass is shattered. You can clearly see from that picture, Defendant's Exhibit 2, the glass behind the vehicle.

The next problem. If that were the case, if he didn't move -- he was out in the median first and he didn't move, how does Ms. Bundy's car get in that position? How do you answer that question?

Well, if you're Mr. Boggess, their expert, you

answer it, Well, maybe she backed into it. Maybe she drove out into the intersection on the left-hand side of Mr. Jett, who was already out there, though it's absolutely no advantage to do so because you can't see right to make a left-hand turn, an incredibly reckless move, which there was no evidence of reckless conduct on her behalf, and maybe she did that and upon doing that slammed into reverse and went back into his truck. Maybe that's what happened, as Boggess would suggest. Maybe that's the only explanation for these pictures. Do you believe that?

Now, let's talk a little bit about this Ms. Bundy pulling up to the left-hand side of a semi-tractor-trailer in that median, in that intersection. There's no evidence of anybody seeing her do that. The only piece of evidence they've talked about is a diagram that was written by Mr. Jett for his employer.

Now, when Mr. Jett took the stand under oath -- wasn't under oath when he wrote that diagram -- he said he never saw it. There is no evidence of that movement, which is clearly inconsistent with the pictures that are in evidence. And the only explanation you've been

given is that maybe she threw it in reverse and backed into him.

Now, you heard additional testimony, not just from Ms. Bundy or Mr. Jett, you heard from Mr. Poplin, an expert witness. You heard the judge charge you, you don't have to take -- take it for whatever it's worth. You can reject it, you can accept it, do whatever you want with it as the jury. But I ask you to ask yourself, was Mr. Poplin believable? Did he take some crazy position? When asked on cross-examination if he could figure out some extra position based on biomechanics, did he do that? No. He said, I took the evidence from the pictures, I took the testimony, and I figured what would be the simplest explanation for this. He didn't ignore evidence. He talked about how you go on the left-hand side of that intersection if you don't want to run into somebody head-on.

And the most time that was spent on his cross-examination was about, Well, you didn't get the truck. You didn't look at the truck. And what was his response? We asked for the truck. They didn't give me the truck.

Now, their expert said he looked at the truck.

He went out there and looked at the truck. Now, did he come in here having the truck and show you, Listen, I understand what Mr. Poplin's done, but I've looked at the truck and it's not four inches. And I understand he's got an envelope or some pin box and this is why it doesn't work with this truck because I had access to it. No. You didn't hear any of that.

Now, Mr. Boggess, who had access to the truck, he didn't even know what Mr. Jett's version was. He thought he had stopped back in the median and not driven out into oncoming traffic. And didn't -- he thought he moved, he didn't move. Is that believable? Do the pictures support the Defense's position? I submit to you they don't.

There's a philosophical maxim called Occam's Razor. And it's been around for a really long time. And basically all it means is when you're looking at a situation, the simplest explanation is usually the correct one because you have to make less assumptions. I submit to you that what Mr. Poplin did was not only the simplest version, but consistent with every piece of evidence that you've been presented.

So what is the real version of events from

everything we've seen? Well, Ms. Bundy was out in the intersection first. Mr. Jett comes out into the median. He testified there was no traffic coming towards Camden. He's looking right the whole time, as he testified, and he's timing his turn based upon the car that is coming this way. That's what he's doing. He wants to make the full movement, like every other truck driver wants to make in that intersection because they can't fit in the median. And in looking right the whole time and having that field of vision that we talked about -- it's just math from Mr. Poplin, it's just math. Having that field of vision that is obscured and the fact that he's looking right the entire time, he's going to make that movement all the way across. That's why he would strike her and be out into the lane. Not because he stopped in this lane, he's making that full turning movement. That's the simplest explanation as to what happened. That's consistent with each of the pieces of evidence that you've seen in this case.

I show you, if I may, the animation that Mr. Poplin came up with utilizing what you've seen before, utilizing what we just talked about. Pulls in the intersection, he looks right, timed his turn

with the car that's coming and never sees --

THE COURT: Hold on one second. You want to move that over so he can -- can you see that?

Thank you.

MR. MCDONALD: If you will ask them if they can see?

THE COURT: Can everyone see?

(Jury indicates yes.)

MR. MCDONALD: He never realized she was there because he never saw her. He never saw her.

Now, I submit to you that's negligence under our law. That's the law that the judge is going to charge you. The failure to use due care.

Now, you're going to get several charges on negligence. First, the operator of a motor vehicle is required to use the same care that would be used by a person of ordinary reason and prudence if that person were driving the same vehicle at the same time and place and under the same circumstances. Should have seen her and he didn't and he ran into her. He's got a duty to keep a proper lookout. This duty requires the driver to watch attentively so that the driver is able to see a person or an object in the highway. He's got a duty to keep his vehicle under control. The driver of an automobile

also has a duty to keep the automobile under proper control so that the driver is able to slow down, stop or turn the automobile to avoid colliding with other vehicles. The driver's duty is not merely to look, but to observe, to see what's there to be seen. And I would submit to you that that's negligence.

Now, you're also going to be charged on a concept called negligence per se, which, in this state, if you violate a statute, that's considered negligence. You all are to accept that as negligence. And we have various motor vehicle statutes, as I'm sure you're all aware. One of which is what's called codified at 56-5-2330. And what it says is: When you're stopped at a stop sign approaching an intersection, after having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely. A violation of that statute, not yielding to Ms. Bundy in that intersection, is negligence per se.

You're also going to get a charge on recklessness, which is a higher degree of negligence than simple negligence. And the recklessness that has come out in this case has, in

fact, come from their own expert, Mr. Boggess, who attempted to show all the times Mr. Jett could have seen Ms. Bundy had he been keeping a proper lookout. And if that is accepted as all the times he could have seen her, then it's reckless not to see her. It's reckless to look right the entire time and time your turn on that oncoming car and striking Ms. Bundy's car. And you'll be charged that if you find recklessness, you can award punitive damages in this case.

Now, when you find a Defendant negligent, the judge is going to charge you you've got to take the next step, okay, in deciding whether they're negligent, and see whether they proximately caused damages to the individual. And what is proximate causation? It's a 2-part test. The first is, but for this happening, would there have been damages sustained? And, two, is it foreseeable? Well, in this case, foreseeability is quite simple. If you're driving a tractor-trailer, cross an intersection and not paying attention, strike an automobile, it's foreseeable you're going to injure somebody out there.

So let's talk about the but for. What is this case about with regard to injuries? Well, it's

about surgeries, that's what it's about. It's about whether or not you believe that after being in the wreck with the tractor-trailer that surgery was necessary for Ms. Bundy. That's the crux of it. And you all get to decide that.

Now, you heard a lot about medical records and car crashes from 1985 and boat wrecks from 2008 and backaches and pains, you heard all that. I think Dr. Cannestra, the only doctor in addition, except for Dr. Folk, who also testified, to actually physically examine Ms. Bundy to make a determination whether or not surgery was necessary as a result of that wreck, was asked a question by Defense counsel: Dr. Cannestra, can you say with a reasonable degree of medical certainty that her complaints in 2013 of neck and back pain were all caused by the car accident we're talking about today, if knowing she had a car accident, knowing she had pain all the way back to 1985 accident?

Answer: So what I relate to the motor vehicle accident is the need for surgery. Prior to the motor vehicle accident, to my knowledge, she had never seen a surgeon, never sought surgery or would have considered surgery at that point. To the best of my knowledge, the motor vehicle accident of

September of 2013 pushed her over the edge to the extent that she went and saw a surgeon immediately. And then eventually had a surgical procedure based upon her symptoms being intractable to conservative pain management. So she failed everything else and at that point in time was having such severe pain that she actually considered surgery. I therefore relate the need for surgery to the motor vehicle accident.

At the end of the day, that's what this is about, if you believe Mr. Jett caused the accident or the surgery is required because of the motor vehicle accident.

I submit to you that the arguments that have been made from the Defense that she was in a car wreck when she was 19, some vague boating accident in 2008, five years before the wreck, neck and back pain before the wreck is all handled by our law. What our law says is, if the Defendant claims that the Plaintiff had a pre-existing injury or condition prior to the date that the Plaintiff claims that the Defendant injuries him or her, if you find that the Plaintiff received any injury, an injury as a result of the negligence of the Defendant and is entitled to recover for that

injury. The fact that the Plaintiff had a pre-existing injury or condition would not prevent the Plaintiff from recovering.

The Defendant is responsible for all ill effects, which considering the Plaintiff's condition or health when the Plaintiff was injured naturally and necessarily follow the injury. The Defendant takes the Plaintiff as the Plaintiff is found, whether the Plaintiff is in perfect health, in poor health, or somewhere in between. A Defendant's liability is in no way lessened or affected because of the fact that the injury would not have resulted or would not have been as serious or severe had the Plaintiff been in good health or that the injuries were aggravated or rendered more difficult to cure by the reason of the fact that the Plaintiff was not in good health.

You heard from Dr. Wagers in their case in chief, where he said he never discussed surgery at the time he saw her. You've been through the medical record on whether or not these surgeries would have been required beforehand. And I submit to you that the surgery was required because of the wreck, is what pushed her over the edge.

When you're back deliberating on these issues

and on the law as the judge has charged you, I ask you to take into account the witnesses that you heard. And the witness that I don't want to be lost on you is Ms. Donna Davis, who came in here, knew Ms. Bundy prior to the accident and after the wreck. And I ask you to recall that testimony, how she said it changed her and her nature, her demeanor and who she was as a person.

Now, if you find, if you conclude that the Defendants were negligent, you've got to address damages. And in this case, you're going to be provided a verdict form that asks whether or not you find the Defendant was negligent and then talks about actual damages. Actual damages are inclusive of a lot of things in South Carolina. And the judge is going to charge you each of those things that come up for actual damages.

The basic concept of actual damages is very simple. It is that you put the Plaintiff back in as good as position as they were prior to the wreck. No better, no worse. And within the concept of actual damages, the first actual damage you're going to hear about is medical bills. Now, as I open this, there's not a single piece of evidence in this case that these medical bills are

somehow unreasonable and this surgery is not expensive. There's no question the surgeries are expensive. Medical bills total $289,000 -- I apologize in advance for my handwriting -- $393.

The Court will charge you, if you find the Defendant negligent, she's entitled to her medical bills. That's the number. No competing number. The Court is also going to charge you, if you find the Defendant was negligent, the Defendants were negligent, she's entitled to future damages. Any future damages must be reasonably calculated to have resulted from the alleged injury or damage sustained in the case. Future damages must be reduced to the present cash value. Plaintiff's Exhibit 8. Future damages.

You may recall another witness in this case, Ms. Sarah Lustig, who testified $1,358,805, a lot of money. And reduced to present day value. Was Ms. Lustig believable? She was accused on cross of just coming up with some crazy number based on nothing. Was there any evidence of that? Is that something she does? There's no evidence disputing that care.

Now, why is it so expensive? Well, it's so expensive because she's got to have the surgeries

again. It's more probable than not that she has to have the surgeries again at a different location. That's what Dr. Cannestra testified to. That's why that number is so big. And there is no evidence disputed.

You're going to be charged about pain and suffering. What is pain and suffering? Well, pain is different for different people. Suffering is different for different people. We all come from our own walks of life, and the law recognizes that. That's why you all are completely in charge of pain and suffering. There was no evidence there wasn't pain experienced from these circumstances. The only evidence was what was brought to bear on them as a result, but that's what you all get to decide. I don't get to suggest a number. I don't get to go into -- that's you all's province. Pain and suffering.

What's the number? If it happened, what's the number? Pain and suffering is inclusive of mental anguish. You're going to get a charge on mental anguish. Pain and suffering compensates the Plaintiff for physical discomfort and emotional response to the sensation of pain caused by the injury itself. There is no definite standard by

which to compensate the Plaintiff for pain and suffering. You have the authority to determine the amount. Mental suffering, apprehension, shock, fright, emotional upset, humiliation, and anxiety, either present or expected in the future, can be considered as an element of damages. You all decide that.

Loss of enjoyment of life. You heard testimony about before and after. You heard testimony from both Mr. and Ms. Bundy about how it's been, what's changed, what hasn't changed. You heard it, just like I have. You decide. If you find the Defendants were negligent, you decide the value of loss of enjoyment of life. Pretty loaded phrase.

Now -- so what's the defense? What's the defense? The first defense is that Ms. Bundy backed into him. Is that believable? The next defense, according to Dr. Rhyne, their hired expert, who always works for defendants, and who would never recommend surgery or not recommend surgery without evaluating a patient, is not licensed in the State of South Carolina, he can say whatever he wants, was that she didn't need surgery, she didn't even need to have surgery.

This was elective back and neck surgery, according to that gentleman. That's where he was. That's the defense, elective back and neck surgery. Is that believable?

You know, on one hand we hear all this testimony about, Well, you did physical therapy, you didn't go see a physical therapist. What are you doing down there? And the testimony is, Well, she didn't want to do that because she was trying to deal with it on her own. So the same woman that does that just goes and has elective back and neck surgery. Is that believable?

You know, the cross-examination is, Well, you had epidurals 20 years ago. And then on the same token, Well, you did not get enough epidurals prior to going and seeing a surgeon who evaluated you and gave you a physical examination and told you the risk of having that surgery and the fact you might have to have it again in the future, in fact, more probable than not that you'll have to go through this all over again. Is that believable?

Let's talk briefly about the loss of consortium claim. A loss of consortium claim, you'll be charged by the judge as to what it is. The Plaintiff claims a loss of consortium because

of the injuries received by his spouse. We only recognize it in South Carolina by spouses. The companionship and society of a spouse are not articles of commerce which can be weighed or measured or bought or sold. No expert is competent to testify as to their value. The consideration of which they are given is not monetary, but the Plaintiff is entitled to compensation and money for their loss.

Now, on first reading you think, Well, if it's not monetary, why would you be entitled to money? That's all we got. That's our system that we live in. This is the law and that's the system. And that's what the judge will charge you. But this is one of those things you all get to decide. Loss of consortium is what you all get to decide. No one can testify as to the value because in the real world, you can't put a value on it. That's what you've been charged to do in this case. That award would be Mr. Bundy. And you heard of the difficulties they've been through. Works both ways in a marriage. You heard it like I heard it on the stand.

I'll have a chance to talk briefly with you again, but I want to talk about two things. One,

this case is about who was out there first, and this case is about whether or not you believe that the surgeries were required as a result of this car wreck. And you're going to get a verdict form. You, as the collective jury, speak with one voice, it's got to be unanimous. You're going to get a verdict form, and that verdict form is going to ask you a few questions.

First question is, are the Defendants, who have stipulated that Mr. Jett was acting within the course and scope of his employment, which means -- the judge will charge you, Due and owing the stipulation of the parties, the Defendant Jett was acting in the course and scope of his employment with the Defendant Haier at the time of the collision, I charge you that should you find the Defendant Jett is liable for the Plaintiff's damages, you must also find the Defendant Haier to be liable for the Plaintiff's damages. And it just says Defendants on the verdict form. Were they negligent? If you find they were negligent, it will have a spot for actual damages. These are all actual damages. There's one line for a total.

You'll then see a space on there talking about what's called comparative negligence in South

Carolina. What that is, is a Defendant taking the position that the Plaintiff was somehow negligent to some degree. Okay. And I don't know what the exact basis of it is, I guess it's the Boggess back reverse theory into the truck, but it's in there. And there's going to be a percentage that you assign. I would ask that you assign 100 percent for the Defendant and zero percent for Ms. Bundy based upon the facts you've heard.

But you need to understand something, if you assign 51 percent to Ms. Bundy, she gets nothing. Okay. There is no evidence other than the Boggess backup theory, which is not believable, that if Ms. Bundy was out there first, that she did anything wrong.

I told you at the start of this that you all had the hardest job in the courtroom, and that hasn't changed. The only thing that's changed is the real work for you all starts now. And unlike Mr. Jett with the $600-an-hour doctor that they hired, Ms. Bundy just asks that you see it.

Thank you very much.

THE COURT: Yes, sir.

MR. GRANTLAND: Your Honor, may we have few minutes to set up Powerpoint?

Bear with us.

(Pause.)

CLOSING ARGUMENT

MR. GRANTLAND: Good afternoon, ladies and gentlemen. Thank you for your service. I think one thing that both sides of this table agree on, we appreciate your service. This trial is just as important to Thomas and Haier as it is to Mr. and Ms. Bundy. But your job now, from our perspective, is to weigh the credibility, which means the believability of the evidence you've heard and to do your very best to find the truth. And at no time is that more important in a case like this where you've been given two completely different stories. I mean, we're like night and day about the accident, about the effects of the accident.

Think about it. She says, I'm in the median first. Thomas says, No, ma'am, I was in the median first. I looked, I pulled out and took up the whole median. I do this every day.

Ms. Bundy says, No, I'm in the median first and you come out and you slam into the side of my car, you drag my car out in oncoming traffic. Thomas says, No, I released my clutch, started to move, felt a bump. They've called this a crash,

we've called it a bump. Completely different story.

There's no dispute what happened after the accident. Ms. Bundy admits she's angry. She's still angry. She admits she cussed out Thomas. She admits she was hysterical and she's yelling at him, which makes you wonder, ladies and gentlemen, how -- with all due respect to Ms. Bundy, how injured was she if she's able to make such a scene in the middle of the road to someone she doesn't know, particularly someone who it's not even his fault? She's able to rant and rave at him is not consistent with someone who just suffered some catastrophic injury that she'd like you to believe she had. So different stories about the accident.

Different stories about the effects of the accident. I mean, Ms. Bundy says a life changing event. This accident ruined her life. Yet, she told the highway patrolmen not injured. No ambulance. No hospital. First medical treatment, eight months later to the surgeon. And I'll talk to you more about that. Eight months later, she sees a surgeon, but it's all due to Thomas in this minor accident.

Ms. Bundy says, Okay, I admit, I did have

prior neck and back problems, maybe five years. She's had prior neck and back problems for 20, 30 years, doing massages, doing epidural injections, doing acupuncture. I mean, Ms. Bundy has had a lot of needles in her neck and back, not because she enjoyed it, but because of prior neck and back problems.

Ms. Bundy says, Okay, I admit -- she also did muscle relaxers and other treatment for years before this. Ms. Bundy admits, Okay, I did go to the chiropractor. I think her testimony was, I went to the chiropractor for maintenance after throwing bales of hay and picking up dog food. But you heard the chiropractor this morning tell you, No, she was -- had chronic neck and back pain, head to toe. Significant pain past and present. Chronic neck and back pain for years from two other car accidents, one where she had her teeth knocked out.

Ms. Bundy says, Well, you know, I did have surgery. I did go to the rock star doctor in Jacksonville and I had neck and back surgery. Yet, you also heard she had a point -- the impact was a .8 G, less than -- you know, less -- Ms. Bundy's body had less of an impact going up and down the

stairs of this courthouse than she did from this minor collision. This was not the reason for her surgery. Twenty, 30 years of neck pain and back pain, that was the reason for her surgery.

Ms. Bundy also says, You know, I still have problems today. You know, I still -- I'm seeing a doctor, a pain doctor in Charleston for epidurals. But you also heard that she denied that she hurt her back in 2016 lifting up something heavy. You know, ignore that. Focus it all -- put the focus on this truck accident from 2013. Ignore anything that happened in 2016. Two completely different stories.

From our perspective, we're sorry this accident happened, but it was a very minor accident and certainly did not cause Ms. Bundy all the problems that she's claiming today. And for her to blame Thomas and this accident for all her problems is just wrong and it's not the truth. Particularly when it's not even his fault.

Now, as you weigh the credibility, ladies and gentlemen, it's important for you to remember one big difference between these two tables. And that difference is Ms. Bundy, as the Plaintiff, has the burden of proof. In our state, you can sue anyone

you want, any reason you want. Get in an accident with someone, sue them. Even if it's your word against theirs, sue them. You're a lawyer's wife from Boykin, he's a truck driver from Bethune. Sue them, you might get some money. You got prior neck and back problems, blame all that on the accident too. You might even get more money. If you saw anything in this case, ladies and gentlemen, you saw that anyone can sue anybody and claim just about anything. But there's one catch. You must prove your case. You must prove it to a jury of your peers, to you.

And because Ms. Bundy had the burden of proof, there's three ways -- I mean, because Ms. Bundy has the burden of proof, she had to prove to you two things. First, she had to prove to you this accident was Thomas's fault. And in proving her case, she had to convince you that she did not contribute to the accident. She had to prove to you that all of her medical bills and her life care plan and all of her injuries that she's claiming were all due to this minor accident. And in proving her case, she had to convince you that there weren't other reasons why Ms. Bundy had neck and back issues that have nothing to do with

Thomas.

And, again, because she had the burden of proof, there are really three ways you can look at this case.

First, you can believe Ms.Bundy and Mr. Bundy. If you believe she was in the median first and Thomas didn't see her, you believe this minor impact caused her all the medical problems that she's claiming, you believe this minor accident caused her marriage to suffer and Mr. Bundy to suffer as well, then you compensate them. That's your job under the law.

Your second choice, you can believe Thomas. I mean, the most honest, clear, sincere testimony you heard in this case came from this grandfather, this veteran, this fine man from Bethune, who I'm honored to know and humbled to defend. If you believe what Thomas said that, You know, there's no question I was in the median first, she came up from behind. Believe what Thomas says, you return a verdict for Thomas and we go home.

Believe it or not, ladies and gentlemen, you have a third choice. Some of you just may not know what to believe. This accident happened over four years ago. None of us were there. The two people

that were there have completely different stories. Your own police officer, John Patton, Camden police officer, on the scene four minutes after the accident, he doesn't know who got in the median first. He's there four minutes afterwards and he doesn't know which car got in the median first. He knows no one was hurt, but he certainly doesn't know who got in the median first. And if your own police officer of Camden Police Department did not know who got there first, how can you? And if you don't know who got there first, ladies and gentlemen, then Ms. Bundy failed to meet her burden of proof. Any benefit of the doubt goes to this side of the table, not to hers.

But from my perspective, ladies and gentlemen, I think it's pretty clear what happened and why it happened and who's at fault. I believe you heard testimony that was truthful and you also heard testimony that was an exaggeration. And that's what I want to talk to you about because I believe, with all due respect to Mr. and Ms. Bundy, her case was about exaggeration. Our case was about truth.

And I'd like to talk to you about -- I'd like for you to compare her testimony and Thomas's testimony with the photos, and you have all the

photos. Compare her testimony with just common sense. And finally compare her testimony with her own doctors.

I'll try to make this work. I mean, you've seen the pictures, so I'm not sure -- okay, what was Ms. Bundy's testimony? Her testimony was, as you recall, she's in the median, Thomas barrels out, slams into the side of her car, knocking out the window and driving her into oncoming traffic. Okay.

As you can see, at least -- and Thomas said -- Thomas' testimony was, No, I'm in the median, I released my clutch, I start to move and I felt the bump. You know, I don't know where Brent talks about Ms. Bundy backing up. No one on our side of the table has accused Ms. Bundy of backing up. There's no question Thomas started to move, it just wasn't -- he didn't feel like he moved because it wasn't much of anything. He just started to move and he felt a bump.

So Ms. Bundy is saying, He slams into me, knocks out the window, drags me -- takes out the side of my car, drags me into oncoming traffic.

You have Thomas saying, I released my clutch, started to move and felt a bump.

Whose testimony is consistent with the photos? I mean, you're going to have them. I mean, all the glass -- most of the glass is still there. Some of it knocked out, obviously, but not all of it is gone. It doesn't all go until, you know, the cars are separated.

Ms. Bundy says, He took out the side of my car and he put a dent -- the trailer put a dent right there. That's it. I mean, that's what we've been fighting about for a week, ladies and gentlemen. This dent, this .8 G impact that Ms. Bundy suffered, did this put her in the hospital eight months later? I mean, I think you know the answer. There's no question there was exaggeration on her part.

And then was she dragged into the median? Y'all remember her talking about being dragged into the median? Was she dragged? I mean, her car's in the median. Thomas is in -- you know, Thomas's -- the wheels of Thomas's truck are in the turn lane. But where is Ms. Bundy's car? It's in the median. She wasn't dragged in two lanes of traffic. That's exaggeration. And if Ms. Bundy exaggerated about being dragged into two lanes of traffic, how can you believe her when she says she was in the median

first?

Again, you know, Thomas says, I bumped her. I mean, is this a crash, ladies and gentlemen or is this a bump? I mean, I think you know the answer.

And look at this from a common sense perspective. You know, with all due respect to Mr. McDonald, he's from Charleston or Summerville, and I don't know how they drive down here, but just from a common sense perspective, when you pull out from -- this is Black River Road pulling out onto 521. And when you pull out from Black River Road onto 521, which direction do you go? I mean, I submit to you, common sense, you go straight. You go straight across.

Well, Ms. Bundy, she doesn't go straight across. She says she goes way over to the left. Why would she go way over to the left? The only reason I think Ms. Bundy went way over to the left was to get around something that was taking up the whole median. I mean, this car behind Mr. Jett is coming down the road. It's going to make -- it's going to turn -- it's going to make a left turn on Black River Road, Ms. Bundy's car is there, it's in the way. I mean, that doesn't make sense. The only way this makes sense is for her to be out

there to try to -- her being way over on that side of the median for one reason, to get around something that's blocking her view or that's blocking the whole median.

Again, you live here, the rest of us -- when you pull out from a stop sign, do you go way over to the left or do you go straight? I submit to you, you go straight because if you go over to the left, you're in the way of anyone making a left turn. And the only reason Ms. Bundy went way over to the left is to get out of the way of Thomas's truck to try to get around him.

I mean, Thomas said it best. This is what he wrote in 2013 after this accident. Car pulled in on my left side trying to beat me in making a left turn. I mean, that's -- I mean, it doesn't get any clearer than this. This is why it happened. This is how it happened.

Let's talk about the experts. Let's talk about Mr. Poplin. Mr. Poplin says that the corner of the windshield, this part right here, right there, that piece of metal blocked Thomas's view. That Thomas should have seen Ms. Bundy at the stop sign when she pulled across and when she went in the median and when he pulled across, but he was

blinded by that piece of metal on the side of his truck.

What I think is significant about Mr. Poplin's testimony more than anything else is he admits he could be wrong. He admits that he's making an assumption that she was in the median first and there's no evidence from his investigation that she was in the median first. He assumed she was in the median first, but he doesn't know. He admits that he could be wrong and that if Thomas was in the median first, none of his opinions matter. But that's this whole case, you know, the cartoon, the animation and everything is based on this piece of metal blocking Thomas's view.

Compare that with Brian Boggess. You know, Brian says, you know, when the trunk is out there -- first of all, he said, you know, Ms. Bundy, she testified she's out there first. She testified she doesn't see the truck coming and she doesn't hear the truck coming. Think about that. Ms. Bundy says she doesn't hear the truck coming. This is a truck. This is not an electric car coming, this is an 18-wheeler. How does Ms. Bundy sit out there and not hear it coming? That doesn't make sense because it didn't happen.

What also doesn't make sense is Ms. Bundy -- the impact didn't occur -- I mean, the impact occurred in the back of her car between the trailer -- yeah, between the trailer and the back of her car. The rest of the -- look how much of the truck is in front of Ms. Bundy's car. So for you to believe Ms. Bundy, then the truck just came by to her right, she didn't see it, she didn't hear it until the rear of her car is hit by the side of the trailer. That doesn't make sense. That doesn't make sense because it didn't happen that way.

What is more likely -- I mean, as Brian said, I mean, look at the -- I mean, look at the angle of the car to the trailer. If Thomas pulls out and doesn't see this car and is blinded by either not paying attention or is blinded by his A frame, he would have done a whole lot more damage than just the corner of her car. If he doesn't see her, he could have easily just run right into her and there would be damage to the front of his truck. I mean, he could just run over that car if you believe what Mr. Poplin said.

What's more likely to happen, as Brian said, is that Ms. Bundy came up from behind, she's

trapped, he starts to move -- and it doesn't feel like much of a move for Thomas because it's just a minor impact. He starts to move and feels the bump. That makes sense. That makes sense because that's how this accident happened.

Any question, ladies and gentlemen, about credibility, about exaggeration, I ask you to consider the testimony of Ms. Bundy compared with her own doctors. I mean, you heard from Dr. Wagers this morning. Again, Ms. Bundy's testimony was, I went to him for maintenance. I went to him after chucking bales of hay and picking up 50-pound dog or 50-pound dog food. I believe that's what I got her on the stand to talk about.

What did Dr. Wagers say? Accident 15 years ago, consider it a severe accident. Hit head on windshield. Accident in Florida, knocked out her teeth. More than just a minor -- this is more than maintenance. She got epidural injections and facet joint injections, which seemed to help. Most recently, she told me about a boating accident. They said, Oh, no, there was no boating accident. She told the doctor it was a boating accident. She currently takes muscle relaxers daily to help her with spasms in her muscles. If Ms. Bundy had no

pain before this accident, it was because she was taking muscle relaxers on a daily basis.

Muscle relaxers, Flexeril?

Yes, that's it.

At the time, did she tell you she had been having complaints of neck and back pain for years?

Yes.

Told you tried doctors, physical therapy, and other chiropractor care?

Yes.

You heard two different things. Ms. Bundy said, I just went to him for maintenance. I didn't have any prior problems.

Ms. Lustig admits -- you know, my beef with Ms. Lustig is that Ms. Bundy would tell her, I never had headaches, and Ms. Lustig would find that she did. And Ms. Bundy would tell her, I never had neck or back pain, but Ms. Lustig found out that she did. And it just didn't matter to Ms. Lustig. But at least the chiropractor, he told us the truth. Yes, she told me all these things.

And this was Ms. Bundy -- I think Ms. Bundy testified on the stand that before this accident, she had this pristine life, but Thomas ruined it. But on her checklist with Dr. Wagers, I mean, she

answered yes to just about everything, neck pain, past and present, back pain, middle back, past and present. These are all yes. Low back pain, shoulder pain, elbow pain.

The reason why Ms. Bundy is claiming this minor accident caused her all these problems is because she already had these problems, but she wants to blame it on Thomas for one reason, for money. The more you can ignore this and focus on what she says, the more money she gets. Upper leg pain, knee pain, joint swelling, stiffness, general fatigue, dizziness. I mean, this was Ms. Bundy before our accident.

I put this up for a reason, this is one of their exhibits, $296,000. Two things. The first medical treatment you have after our accident is with Dr. Cannestra in May 2014. That's eight months after our accident. Ms. Bundy testified she tried anything and everything not to go to the doctor. But it's not here in front of you. Ms. Bundy testified she had epidurals and had acupuncture and more epidural injections, but it's not up here.

And I submit to you, ladies and gentlemen, you know, Ms. Bundy may want you to think she tried

anything and everything, but the truth is, this is a lady who's been living with neck and back pain for so long, she said, I'm done. You know, husband says, Hey, I have a lawyer friend who has this -- recommends this surgeon down in Jacksonville, he's a rock star, let's just go do that. And that's how this went on. Then, Oh, by the way, let's tell everybody I got hit by a truck and it ruined my life. You know, the reason I'm having surgery is I got hit by a trick. You know, just ignore -- keeps the doctors and everyone in the dark about her prior condition. But, I mean, to me, that's significant.

I questioned her. I questioned Mr. Bundy. You know, Mr. Bundy said it's not about the money. We didn't put everything up here. Bologna. I mean, they're down to the penny. They got some 80 cents, five cents. I mean, it's down to the penny. It's all about the money. The life care plan, it's all about the money. So, you know, to the fact that Ms. Bundy had no other treatment until she ran to the surgeon eight months later tells you this has been a longstanding problem. This was a problem that Thomas didn't start. He just happened to be in an accident, a minor accident with her

that she's trying to blame for all of her problems. The only reason Dr. Cannestra is first is because she had no other treatment. She just basically you know, has been living with it for 20, 30 years and decided to do something about it and then decided, Oh, I'll blame Thomas while I'm at it.

This is important. Dr. Cannestra's deposition, I'm pulling it up for a reason. I hope you can see it. He testified several times -- Ms. Bundy told you that she did chiropractic treatment following the accident. So Ms. Bundy told the doctor, yes, she did prior conservative management, bed rest, traction, physical therapy, chiropractic manipulation, spinal injections, anti-inflammatory, and pain medication. That's not true. None of that is true.

I mean, you know, what do you expect Dr. Cannestra to do if she comes down to see him and says, Hey, I got hit by a truck. I've done therapy. I've done injections. I've had pain medicine. Well, naturally, the next step is to have surgery. I mean, she kept this man completely in the dark.

Did she tell you that therapy -- did she tell you when she had therapy and chiropractic

treatment?

No.

You don't know -- okay, sorry. You don't know if she had any of that after the 2013 accident before she saw you?

Without seeing the records, no.

And you didn't review any records to confirm?

No.

You just took her word for it?

Yes.

And that's the difference. You don't have to take her word. She has the burden of proof to you. Now, Dr. Cannestra, he can take her word. She says, Oh, yeah, I did therapy, I did injections, I did chiropractic. Well, naturally the only thing left is surgery, which is why he operated on her. But clearly that was not the case. And if she kept him in the dark, ladies and gentlemen, how can you believe her when she says she was in the median first?

This says, Had you known she did not attempt any therapy following the 2013 accident before seeing you, would you have recommended it?

I would have suggested it to the patient.

No joke. You know, he certainly would have,

but she kept him in the dark. And just like Cannestra was in the dark, Dr. Folk was in the dark too.

Did Ms. Bundy tell you anything about her back condition before the accident?

Not to my recall.

She's -- you know, Dr. Folk and Dr. Cannestra both only had Ms. Bundy's word and whatever records that she wanted to give them after the accident.

She related her neck and back problems all to the accident, is that your understanding?

That's my understanding.

Were you aware that she received chiropractic treatment in 2008 for chronic low back pain?

No.

Did she tell you before the accident she had epidural injections and facet joint injections?

No.

Do you do epidurals?

I do.

Do you do facet joints?

I do.

Do these relieve chronic -- are these injections for people -- for someone with chronic back pain?

You do.

Did Ms. Bundy tell you before the accident she took Flexeril and other muscle relaxers for spasms?

Not to my recall.

Is that something you prescribe for back pain?

That is, that's correct.

Now, do you know anything that happened to Ms. Bundy in 2016 to cause her this significant low back pain -- significant right low back pain?

And I'm sorry, ladies and gentlemen, I'm doing the best I can with this.

No.

You were provided with a record from December 2016 from Ms. Lyerly. Do you remember discussing that with Mr. McDonald?

In December 2016, Ms. Bundy reported to her doctor that she was doing very well and pain free, but did some overhead lifting. Do you see that?

I do.

We asked Ms. Bundy about that in front of you, ladies and gentlemen, and she denied it. She flat denied ever hurting her back in 2016. And it's right here in black and white. And that caused her to have pain on the right side.

That's what I'm seeing here, which is what she

complained of when she saw you in February of 2017, is that right?

That's correct.

Now, Doctor, can a person injure their low back if they pick up something the wrong way?

They can.

If you lift something the wrong way, can that cause sacroiliac pain?

It can.

Now, if Ms. Bundy hurt her back in December of 2016 doing some overhead lifting, can you say to a reasonable degree of medical certainty whether her condition and your treatment in 2017 was caused by a car accident in 2013?

I didn't examine her in 2013. There's no way for me to nail that down for you.

Their own doctor, their own pain doctor -- and they have lots of bills for these epidural injections in Charleston, he can't say it's related. I mean, it's right there in black and white. He cannot say his treatment of her is related to the accident or is it related to her hurting her back in 2016. If he can't say it, why are they even putting it in front of you? One reason, money.

Dr. Folk on that life care plan, big number, money. And he can't even admit -- he can't even relate his treatment -- he can't distinguish whether his treatment is related to the accident or whether it's related to her hurting her back in 2016. And if he can't, they certainly didn't prove it to you.

Could her problems you observed in 2017 have been caused or aggravated by her hurting her back lifting up something?

They could have.

We all can hurt our backs lifting up something heavy the wrong way, can't we?

Yes.

If she hurt her back lifting something in 2016 as indicated, would that be more likely to cause the pain you observed?

Well, if you're lining it up on a timeline, then certainly that has potential to be the cause.

He's just being nice. That was the reason. There's no question Ms. Bundy hurt her back in 2016. She denied it on the stand because she wants you to focus solely on Thomas. And if you can't believe her when she denies hurting her back, seeing a pain doctor, telling him only about the

trucking accident, how can you believe her when she says she was in the median first?

Which is why I hired Dr. Rhyne. Make no apologies for hiring Dr. Rhyne. When we hired Dr. Rhyne, I knew this case was going to trial. I knew we had a big dispute about who was in the median first. I knew we had a big dispute about whether this was a minor accident or a crash, as they'd like you to believe. I wanted one doctor to be able to at least review all of Ms. Bundy's medical records from before the accident and after the accident. And he's the only one that has.

Dr. Cannestra, he took her word for it. He had no records from before the accident. He thought she did chiropractic treatment and therapy after the accident, which is not true. Dr. Folk, he had no records from before the accident. He had no idea she hurt her back in 2016 because he blamed -- she blamed everything on the truck accident. So I have no -- I make no apologies for hiring Dr. Rhyne, orthopedic surgeon.

Remember, you're the judges of the credibility. You heard him this morning. And what did he say? Upon reviewing MRIs -- upon reviewing MRIs and scans performed in 2001 comparing them to

the ones in 2013, very little difference. They looked almost identical. Hard for me to conclude that if you have similar MRIs in '01, then an MRI in '13 that's basically the same, that the automobile accident could have caused any significant problems.

The most striking evidence is when you look at the MRI from 2013. There's no acute injury. There are no signs of trauma. There's no hematoma. There's no fracture. There's no acute disk herniation. As a matter of fact, there's no sign of a nerve being compressed on either cervical or lumbar spine. This means she's not injured. This means she was not injured from at least this accident. She may have been living with problems, but this accident did not cause -- I mean, these are objective findings of no injury.

I didn't see any abnormal pathology in her lumbar and certainly not anything I would have operated on.

Do you have an opinion to a reasonable degree of certainty as to what caused Ms. Bundy's complaints of neck pain, back pain, headaches, and trouble sleeping?

Well, it started in '98, been well documented.

She went through the windshield of the car. That's what she complains about. It looks pretty continually in 2001 when she had an MRI scan when she sees Dr. Wagers. It sounds like this sort of chronic longstanding problem. Dr. Cannestra, in his form, stated that the pain and discomfort began in 1985, so I don't know.

It's anywhere from 20 to 30 years of chronic pain and discomfort in her neck and a back. And that's why Ms. Bundy had surgery. It has absolutely nothing to do with this accident and everything to do with 20, 30 years of pain and discomfort in her back -- in her neck and back. And that's the truth. And for her and her husband to blame all -- ignore the 20, 30 years and blame all her problems on this accident, it's not right and it's not the truth.

And ultimately, ladies and gentlemen, that's your job. Your job is to return a verdict that speaks the truth. And I think you've heard the truth in this case today and last week and I hope you will return a verdict that speaks the truth.

When you leave this courtroom, you're going to have all the evidence. You're going to have all the photos we've been talking about, but you're

going to have a verdict form. That verdict form is the most important piece of paper you're going to have. That verdict form will ask you some questions. It will say, Do you find for the Defendant. Check the block that says, We find for the Defendant. Check that block, ladies and gentlemen, because Thomas not only did not cause this accident, he certainly did not cause Ms. Bundy 20, 30 years of neck and back pain that led to her surgery. Return a verdict for Thomas and Haier, ladies and gentlemen, because it's not only the right thing to do, it's the truth.

Thank you.

THE COURT: All right. You can turn the lights on.

CLOSING ARGUMENT

MR. MCDONALD: May it please the Court?

THE COURT: Yes.

MR. MCDONALD: The story you were just told, argued to you is that what's going on here is this woman had problems, got into a wreck that was her fault and is now utilizing that to con multiple doctors into performing surgery. I mean, that's the story you were just told. That's the argument that was just made to you. Now, it's made through

insinuations, it's made through going through medical records of 20, 30 years that everybody has without coming out and saying it. But make no mistake about it, that's what was just argued, that this is a con. And I think you should reject that out.

Defense counsel said he hired Dr. Rhyne to review all the medical records and look at everything. But what you heard in Dr. Rhyne's testimony was about a Dr. Desill, who was originally hired. Where's Dr. Desill?

You heard some argument about eight months after the accident. The first -- it was the wrong medical bill we had up there, but the first medical bill was from Dr. Cannestra in May of 2014. And there should be other medical bills on this document. You should be asking for more money. Now, what do you think happens there? You put an epidural on there. You put chiropractic care on there. Then the argument is, But you already had epidurals 20 years ago, you're not entitled to any of that. You can't win with the insinuation on here. That's what's done in every single one of these cases.

You heard from the stand from Ms. Bundy and

Mr. Bundy what they did post-accident. You heard on the stand from Mr. Bundy and Ms. Bundy about having to get an MRI. Dr. Cannestra wanted an MRI. Trying to get him to call them back. So to stand up here and to argue that eight months after the accident is this first bill is wrong because we know that she went to go see him twice before that to have the consultation and have the testing done to see if surgery is necessary. It's inaccurate to make that argument and it's inappropriate insinuation.

Now, let's talk about where they started. First of all, the .8 G -- and I'll respectfully refer to it as nonsense. It's from a man who didn't admit to it, but eventually testified when I pulled out his deposition that every time he testifies, he finds that the forces and calculations he makes can't cause injury. Every time he testifies.

The reason the truck is in front of Ms. Bundy's car is because he kept going. He didn't stop and he pushed her towards the oncoming traffic. Now, what is that sensation like? Here's the glass back here. What's the sensation like when you're driving in a vehicle, you're stopped in

the median and you get hit, pushed towards the oncoming traffic? Is it unfair for her to suggest, I got pushed out into oncoming traffic? Is that an unfair characterization when you're in that situation? If he was just letting off his clutch and he barely moved, how did the glass get back here? It's not consistent -- the story that you were just told is not consistent with the photographs you're going to have back in front of you.

Criticized the things that Mr. Poplin did. I talked about that earlier. Mr. Poplin looked at everything that he had, everything that was available to him and came up with how you miss a person in that intersection. He shouldn't have missed her, but he did. And you didn't hear anything from their expert about the use of that truck.

Now, you were given this -- this picture was pointed to a bunch during Defense counsel's closing argument. And I submit to you the reason this picture was chosen is because the door is open. And when he kept saying it's just this little piece right here, it's just this little piece right here, it's the whole door when it's closed. It's the

mirror when it's closed. That wasn't a mistake to point to that picture.

I talked just a moment ago about insinuations. You heard some more insinuations in that closing argument. More cancer. You sue them because you're a lawyer's wife is what you were told. It's got no business in this courtroom and the only reason you say things like that is to prejudice you all. He's a grandfather and a veteran, doesn't matter. Not in here. You only say it to prejudice you all.

Now, in my closing, I read you the law, what the law is. The Defendants take Plaintiffs as they find them. And the notion that has been argued to you that this is all a con, she didn't really -- she's always felt this way. She's been waiting to have that surgery. Waiting for this opportunity. Drove out, seeing an 18-wheeler out in the intersection, pulled, by their testimony, had to be either touching the car or within an inch of it, hoping to the Lord above that he wouldn't see her, that way he would bump her and then all her surgery problems would be solved. She would wait four years. That has been brought up a lot, four years. But you know what, it takes a long time to get a

trial in this state. We beg for them. I'll just do that, wait four years, get 12 people in there and I'll con them just like I'll con my doctors that I get along the way. And that's what I'll sell. That's what was just argued to you. It's not believable. It's insulting.

The argument is, We didn't do it. But if you believe we did do it, then you didn't get hurt. That's what they're telling you. There is not a single piece of evidence in this case and they have extensively gone through this woman's medical records, extensively. And those exist out in the air, okay. You go to one doctor somewhere, you may not think about that doctor for 20 years, but they've got a file somewhere on their shelf about how you felt that day. They have extensively gone through those records. And they have pushed her and pushed her on those things, but at the end of the day, it's whether or not you believe that she needed to have surgery prior to this wreck and she just waited for that opportunity. I say you reject that.

This is the hardest part for me because, as been suggested a number of times, four years, and so the work that I put into it and everything that

I've done stops quite abruptly. The judge charges you and then it's yours. You take it. And I ask a couple of things. One, just do what's right. Let your experiences guide you, do what's right. But two, I ask or I beg of you all, work as hard on it as I did. Look at everything. Try and get to the bottom of it, try and get to the truth. And at the end of the day when you get that verdict form, I ask that you conclude the Defendant was negligent.

There's one story that's believable. Are these the numbers that are not in dispute? Medical bills, which you'll have back there, future medical, pain and suffering, loss of enjoyment of life, loss of consortium. And if you believe that it's reckless to come through that intersection in the manner which he did, it will be a space for punitive damages as well. If you don't believe he was reckless, you can't award punitive damages. Can't do it. Look at all the evidence and I have every expectation you all will come to the right verdict.

Thank you very much.

THE COURT: All right, ladies and gentlemen of the jury, it is about 4:00 o'clock and we have been going for about an hour and a half. And I don't

know about you all, but I think I need a restroom break before we go into the jury charges that may take about 20, 25 minutes or so for me to get through the jury charges. So we'll take our afternoon break and we'll have you all back in about 10 minutes.

All right. Thank you. Please do not discuss the case or anything until you receive the law and instruction to begin your deliberation.

Thank you.

(WHEREUPON, the jury retires to the jury room at 3:57 p.m.)

THE COURT: She has the verdict form for you.

All right. Is the verdict form --

MR. GRANTLAND: The verdict form is fine with me, Your Honor.

THE COURT: All right. Let's take about five minutes.

MR. MCDONALD: I'm just checking one last thing, Your Honor. Sorry.

THE COURT: All right. Let's take about five minutes.

(WHEREUPON, a short break was taken.)

THE COURT: From a scheduling standpoint, it is 4:13. It is probably going to take me 30

minutes to charge them. I can do it one of two ways. Well, I have no idea. I can ask them if anyone has to leave, child care issues, at a certain time. Obviously you all don't want them rushing to beat 5:00 o'clock. Or I can let them start deliberating and have -- whatever time in mind to stop. Of course, I wouldn't tell them a time. I would tell you all a time and then we stop and then bring them back in the morning.

MR. MCDONALD: What are the options you are proposing?

MR. GRANTLAND: Our preference would be to, unless someone really needs to leave, our preference would be to start deliberating this afternoon.

THE COURT: I can charge them and let them, option one, be to charge them and let them go home and come back and deliberate in the morning or charge them and let them begin deliberations but stop deliberations and bring them back in the morning.

MR. MCDONALD: I'm concerned with that, because even though they won't know the time, if one of them says, I have an issue, then --

THE COURT: I am going to ask if someone says,

Oh, I need to get home before, we definitely would bring them back. I wouldn't put them under a time pressure.

MR. MCDONALD: Just a time pressure in general. Maybe if it is --

THE COURT: Do you want me to just charge them and charge them the law and start deliberations fresh in the morning?

MR. MCDONALD: Can we charge them in the morning so we will have the charge fresh?

THE COURT: Do we ever -- I have done it that way too. Yes, they'll have the law. My concern is if we send them home and they don't have the law. I mean, it might be better at this --

MR. GRANTLAND: I will be happy for you to ask them outside of our presence what is their preference, Your Honor.

MR. MCDONALD: They don't know, never charged the jury before. I think Your Honor absolutely correct. Charging them tonight and sending them home, they will not remember any of it. Come back and charge in the morning and then they have all morning to deliberate and no time constraints.

THE COURT: That works for me.

MR. GRANTLAND: Some of them may want to get

it over with it. I'm not trying to be argumentative with anybody. Put it to them. Ask them what their preference is.

THE COURT: The only problem is they usually don't know what their preference is until they get back there because they think -- a lot of times think we are going to deliberate, and of course I can't say it may take you -- I can't suggest to them how long it is going to take them to deliberate and so --

MR. GRANTLAND: I understand.

THE COURT: I can't say, you know, it may take you five minutes, may take five hours, may take you -- but I can't suggest that to them. And so then if I ask them, they'll say yes, they will try to do it tonight not having any idea as to the amount of work they may have or things to look at. Usually the rule is on doing arguments and charge an official rule which is 3:30 and we started at 2:00 something, so 2:30 or before that time of course arguments that is obvious arguments weren't long, but took about an hour and a half. So may be should have done better planning and send them home early. I think what I will do is just charge them in the morning. That way they won't worry either

way. We'll charge them in the morning. And then send them -- I'll order lunch for them. Madam Clerk, go ahead and I guess order lunch. 9:30. It will be 10:00 clock before they get it good. The problem with ordering lunch is we place the order for lunch from a few -- I would wait and order, but the place we order lunch from, the lady wants them to call the night before.

THE CLERK: Not night before, they want it a 8:30, 9:00 o'clock. They want it early.

THE COURT: Tonight or early in the morning?

THE CLERK: I can go somewhere else. It not is not locked in at all. I can go anywhere. But not Papa Johns anymore.

THE COURT: Let me bring them back in, because I don't want to go back there, I do want to give them strict instructions as to what they are supposed to do or not do, just because we're at this stage.

All right, yes, sir.

(WHEREUPON, the jury came into open court at 4:19 p.m.)

THE COURT: Madam Forelady, and members of the jury, it's about 4:19. As I said, it's going to take me probably 25, maybe 30 minutes to go through

the jury charges, then I also have to go through the verdict form with you, and then I would send you all back in for deliberations. It will probably be about 5:00 o'clock. I know it's Monday. I did not -- I like to tell you all if I'm going to keep you later. And so therefore I am going to charge you in the morning and then you all will begin your deliberations in the morning.

But I want you all -- I just wanted to speak with you all regarding, you do have all the evidence, you've heard the arguments, but you have to listen to the law. So you cannot make any decisions, you can't have any deliberations, you can't discuss anything, you can't do any research until you get the law from the Court and begin your deliberations.

So I'm going to have you all come back at 9:30. We will start fresh in the morning, read the jury charges to you at that time and then we will -- you'll be able to begin your deliberations.

All right. Have a wonderful evening. You'll get out of here a little bit earlier. I like to tell people if I'm going to keep them late, and I did not anticipate that, so.

All right. See you tomorrow morning.

(WHEREUPON, the jury was excused for the evening at 4:21 p.m.)

THE COURT: So we will start back at 9:30 in the morning.

You can go ahead and take their order. Take them the order forms so they can order lunch and just have it scheduled to come at 12:00. And if they come to a verdict before then, they can sit back there and wait on it or go about their business.

Have a good evening. Thank you.

(WHEREUPON, court adjourned for the evening at 4:22 p.m.)

**JANUARY 23, 2018**

(WHEREUPON, the proceedings resumed at 9:48 a.m.)

THE COURT: She told me you all added a change to Page 11 and agreed on by both sides.

MR. GRANTLAND: Yes, Your Honor.

MR. MCDONALD: Yes, Your Honor.

THE COURT: Anything else.

MR. MCDONALD: No, Your Honor.

THE COURT: Anything else?

MR. GRANTLAND: No, Your Honor.

THE COURT: You can bring them.

(WHEREUPON, the jury came into open court at 9:49 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen of the jury. At this time we are ready for the charge on the law.

I hope you all had a good evening. I will go through the charge on the law, and then at that time, just so you have an idea, then we'll send you all back in the jury room. We will go over the verdict form and send you back in the jury room, and then you should be able to begin deliberations shortly thereafter.

JURY CHARGE

THE COURT: I remind you, as I told you on last Tuesday, that during this trial you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the responsibility to rule on the admissibility of the evidence offered during this trial.

You are to consider only the evidence before you. If there was any testimony ordered stricken from the record during this trial, you must disregard that testimony.

You are to consider only the testimony which

has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. It is your duty as jurors to accept and apply the law as I now state it to you.

If you think you have any idea as to what the law is or what the law ought to be and it does not agree with what I tell you the law is, you must forget that idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge cannot comment on or make any statement about the facts in a case. Since you are the sole judges of the facts, do not think by anything that I have said during the course of this trial that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts.

Ladies and gentlemen of the jury, a stipulation is an agreement, admission, or concession made in judicial proceedings by the

parties thereto or the attorneys. Stipulations, of course, are binding upon those who make them. A stipulation is an agreement, an understanding. The Court and jury must accept stipulations as binding upon the parties.

If counsel for the parties have stipulated to any fact or any fact has been admitted by counsel, you will regard that fact as being conclusively proved as to the party or parties making the stipulations or admissions.

Due and owing to the stipulation of the parties, the Defendant Jett was acting in the course and scope of his employment with the Defendant Haier at the time of the collision.

I charge you that should you find the Defendant Jett is liable for the Plaintiff's damages, you must also find the Defendant Haier to be liable for the Plaintiff's damages.

In this case, the burden of proof is by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is the evidence which, as a whole, shows that a fact sought to be proved is more likely true than not true.

This can be illustrated by imagining a set of

scales. When the case begins, the scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the Defendant, then the Plaintiff has failed to meet the burden of proof and would not be entitled to recover in this case.

If, on the other hand, the scales tip even slightly in favor of the Plaintiffs, the Plaintiffs have met the burden of proof and you should return a verdict for the Plaintiff.

The preponderance of the evidence is not determined by the number of witnesses, instead it must be determined by the greater weight of all of the evidence.

Next we'll talk about the two types of evidence. There are two types of evidence generally presented during a trial: Direct evidence and circumstantial evidence.

Direct evidence is testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately

establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but that asserts or describes something else from which you may either reasonably infer the proof of the fact, or at least reasonably infer an increase in the probability that the fact was true.

For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead to that fact with reasonable certainty. The facts and circumstances should be considered in light of ordinary experience and common sense. The existence of a fact cannot be based on speculation, surmise, or conjecture.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

Ladies and gentlemen of the jury, deposition testimony was presented to you in the form of videos. A deposition is a document containing

sworn testimony given by a witness outside of court in the presence of lawyers for each party who may ask questions of the witness. If any objections were made at the deposition, I will rule on them when the deposition is read. The testimony is entitled to the same consideration and is to be judged as to credibility and weighed by you in the same way as if the witness were present and gave the testimony read to you from the witness stand. It is then for you, the jury, to determine the effect, value, weight, and truth of the testimony given in the deposition.

As I instructed you earlier, I think we had three or four expert witnesses qualified, and I instructed you earlier regarding expert witnesses.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become an expert in some art, science, or profession may give an opinion as to the subject the witness claims to be an expert in and may also give the reasons for the opinion.

You should consider any expert opinion given by witnesses and, like any other evidence, give it

the weight you think it deserves.

If you decide that an expert witness's opinion is not based on sufficient education and experience or if you decide that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. And you do not have to accept an expert's opinion even though it is uncontradicted.

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine which evidence convincing you it is true.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a

witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced towards either the Plaintiff or the Defendant, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand.

Ladies and gentlemen of the jury, the Plaintiff in this case claims that the Defendant was negligent and should compensate her for the injuries she suffered as a result of the Defendant's negligence.

In order to prove that the Defendant was negligent, the Plaintiff must prove by a preponderance or greater weight of the evidence the following things: First, the Plaintiff must prove by a preponderance or greater weight of the evidence that the Defendant owed the Plaintiff a duty of care. This is a question of law which I will decide. If I find that there was a duty of care, you must then decide the remaining questions.

The first of these is whether the Plaintiff has proven by a preponderance or greater weight of

the evidence that the Defendant breached the duty of care by a negligent act or omission.

Negligence means that a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation.

The operator of a motor vehicle is required to use the same care that would be used by a person of ordinary reason and prudence if that person was driving the same vehicle at the same time and place and under the same circumstances.

The driver of an automobile has a duty to keep a proper lookout for other vehicles on the road. This duty requires the driver to watch intensively so that the driver is able to see a person or object on the highway. The driver of an automobile also has a duty to keep the automobile under proper control so that the driver is able to slow down, stop, or turn the automobile to avoid colliding with other vehicles, pedestrians, and objects lawfully in the road.

A motorist approaching a stop sign must bring the vehicle to a stop and yield the right-of-way to vehicles on the intersecting road that constitutes

an immediate hazard. The driver must not only stop, but must look for traffic approaching on the through highway. The driver's duty is not merely to look, but to observe. He or she must look in such an intelligent and careful manner as to enable them to see what a person exercising ordinary care and caution could see under the circumstances.

In this case, the Plaintiff claims that the Defendant failed to follow the following rules of the South Carolina Code annotated, Section 56-5-730. It states:

It is unlawful for any person to do any act forbidden or to fail to perform any act required under the traffic laws of the State of South Carolina.

In addition, the Plaintiff claims that the Defendant failed to follow the following rules of the South Carolina Code annotated, Section 56-5-2330. It states in pertinent part:

A preferential right-of-way may be indicated by stop signs or yield signs as authorized by the Department of Transportation or local authorities.

Subsection (B):

Except when directed to proceed by a police officer, every driver of a vehicle approaching a

stop sign shall stop at a clearly marked stop line, but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of the roadway.

The failure to follow a statutory rule is negligence as a matter of law. If you find that the Defendant failed to follow a statutory rule, you must then decide whether the failure proximately caused the Plaintiff's injuries.

The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness.

The Plaintiff must also prove by a preponderance or greater weight of the evidence that he or she suffered damages as a result of the Defendant's breach of duty.

Finally, the Plaintiff must prove by a

preponderance or greater weight of the evidence that the damages were proximately caused by the Defendant's breach of duty.

Proximate cause is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury.

To prove that the Defendant's negligence proximately caused the Plaintiff's injury, the Plaintiff must first prove causation of fact. This is proven by showing that the injury would not have occurred but for the Defendant's negligence.

The Plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the Defendant's negligence. The Plaintiff must prove that some injury from the Defendant's negligence was foreseeable, but does not have to prove that the particular injury that occurred was foreseeable.

However, the Defendant cannot be held responsible for things which could not be expected to happen. Proximate cause does not mean the only cause. The Defendant's act can be a proximate

cause of the Plaintiff's injury if it was at least one of the direct, concurring causes of the injury.

In this case, the Defendant claims that the Plaintiff's own negligence proximately caused the Plaintiff's injury. If you find that the Defendant was negligent, you must then decide whether the Plaintiff was negligent. The Defendant must prove by a preponderance or greater weight of the evidence that the Plaintiff breached a duty of care which proximately caused the Plaintiff's injuries. The same law which I have told you to use in deciding whether the Defendant was negligent should be used in deciding whether the Plaintiff was negligent.

If you find that the negligence of both the Plaintiff and the Defendant proximately caused the Plaintiff's injuries, you must then decide how much the negligence of the Plaintiff contributed to the Plaintiff's injuries and how much the Defendant's negligence contributed to the Plaintiff's injuries.

In deciding the percentages of negligence of the Plaintiff and the Defendant, you may consider, among other things, the following factors:

Number One, whether each party's conduct was only inadvertent or whether it was engaged in with

an awareness of the danger involved.

Number Two, the magnitude of the risk created by each party's conduct, including the number of persons endangered and possible severity of the injury.

Number Three, the significance of the goal that each party was trying to reach and the need to achieve the goal in that manner.

Number Four, each party's capabilities and abilities to realize and eliminate the risk involved.

And Number Five, the particular circumstances confronting each party at the time the conduct occurred, such as the existence of an emergency requiring a quick decision.

Number Six, the relative closeness of the casual relationship of the negligent conduct of the Defendant and the harm to Plaintiff.

And Number Seven, whether the conduct of either party involved a violation of a safety statute or regulation.

If the Plaintiff's negligence was greater than the Defendant's negligence, 51 percent or more, the Plaintiff would not be entitled to any damages and your verdict would be for the Defendant.

If, however, you find that the Plaintiff's negligence was equal to or less than the Defendant's negligence, you would determine the total amount of damages suffered by the Plaintiff.

The total percent of negligence must equal 100. Do not reduce the Plaintiff's total damages based on the percentage of negligence of any party. After you have answered the question, I will compute the amount of damages for which the Defendant is responsible based on the percentage of the Defendant's negligence which you have decided proximately caused the Plaintiff's injuries.

You are to determine only the total amount of Plaintiffs damages and enter that figure on the verdict form.

Assumption of risk. Assumption of risk requires an intelligent and deliberate choice to assume a known risk. The Plaintiff is said to have assumed the risk as a matter of law when it appears that the Plaintiff freely and voluntarily exposed himself or herself to a known danger and understood and appreciated the danger.

Ladies and gentlemen, in this case the Plaintiff, W.H. Bundy, Jr., claims a loss of consortium because of the injuries received by his

spouse. The companionship and society of a spouse are not articles of commerce which can be weighed or measured or bought and sold. No expert is competent to testify to their value. The consideration on which they are given is not monetary. But the Plaintiff is entitled to compensation in money for their loss. The amount of that compensation is to be determined by you, not from evidence of value, but from your own observation, experience, and knowledge conscientiously applied to the facts and circumstances of the case.

The Plaintiff is entitled to recover the value of those services of his spouse which were lost, including the loss of his spouse's society and companionship in the home: Love, companionship, affection, society, sexual relations, comfort, solace, and guidance. The Plaintiff is also entitled to recover for any expenses incurred for the care and treatment of his spouse because of illness or bodily harm suffered by the spouse and for any medical expenses which the Plaintiff has incurred. Punitive damages are not recoverable in a loss of consortium action.

Next, ladies and gentlemen, we will talk about

damages. If you decide that the Plaintiff is entitled to a verdict, your next step would be to decide how much money the Defendant should be required to pay.

Actual damages are to compensate the Plaintiff for the Plaintiff's injuries or loss and to put the Plaintiff as near as possible in the same position that the Plaintiff was in before the incident occurred.

In other words, actual damages would be the actual losses and expenses which the Plaintiff has suffered because of the Defendant's negligence.

Pain and suffering compensates the Plaintiff for physical discomfort and emotional response to sensation of pain caused by the injury itself. There is no definite standard by which to compensate the Plaintiff for pain and suffering.

You have the authority to determine the amount, if any, to be allowed for pain and suffering using calm and reasonable judgment to ensure that the damages are just and reasonable in light of the testimony and evidence presented in this case.

Loss of enjoyment of life. Loss of enjoyment of life compensates the Plaintiff for limitations

on the Plaintiff's ability to participate in and derive pleasure from the normal activities of daily life.

Personal injuries. The Plaintiff must prove that expenses caused by the injuries were necessary and reasonable.

Actual damages for a Plaintiff who has been physically injured include: Pain and suffering, both past and future, as well as mental anguish, impairment of health or physical condition, and disfigurement.

The Plaintiff also claim lost wages due to absence from work and reduced earning ability for the future.

In determining the amount of compensation for personal injuries, it is proper to consider past and present aspects of the injury. This would include physical and mental pain and suffering, expenses incurred for necessary medical treatment, loss of time and income which resulted from the impairment of the ability to work and earn a livelihood, the loss of enjoyment of life suffered as a result of the injury, and any other losses which are reflected by the character of the injury.

The injured party may recover for those future

damages that are reasonably sure to result from the injuries. The principal underlying compensation for future damages is that only one action can be brought and therefore only one recovery can be had.

It is proper to include in the estimate of future damages compensation for loss of capacity for work or attention to the Plaintiff's ordinary business, future medical expenses, and pain and suffering which will, with reasonable certainty, result.

Prospective damages. A Plaintiff is never entitled to recover conjectural or speculative damages, but if you find the Plaintiff is entitled to a verdict for actual damages, your verdict should include an amount to cover any past, present, and future damages which were proximately caused by the Defendant. Any future damages must be reasonably certain to occur in the future as a result of the Defendant's acts.

Actual damages need not be proven to a mathematical certainty or be based on evidence of the precise amount of damages the Plaintiff has suffered. Instead, the evidence must allow you to determine what amount of damages is fair, just, and reasonable.

Any future damages must be reasonably calculated to have resulted from the alleged injury or damage sustained in this case. Future damages must be reduced to their present cash value.

Mental suffering. Mental suffering, apprehension, shock, fright, emotional upset, humiliation, and anxiety, either present or expected in the future, can be properly considered as an element of damages. The amount of damages for mental suffering cannot be exactly measured.

A Plaintiff may recover for -- Next, medical bills. A Plaintiff may recover for the necessary and reasonable expenses caused by the injuries, such as amounts necessarily incurred from medicine, medical services, hospital expense and care, and nursing. A person who suffers personal injury because of the negligence of another is entitled to recover the reasonable value of medical care and expenses incurred for the treatment of the injuries to the time of trial, as well as the cost of those reasonably certain to occur in the future.

Accordingly, a Plaintiff may recover amounts incurred for past and future medical care, including hospital, physician and nursing care costs, medicine, and other out-of-pocket and

anticipated expenses such as vocational, physical, and other rehabilitation efforts.

Medical pills are not recoverable unless this is medical evidence establishing that the bills were the proximate result of the alleged wrongful conduct of the Defendant.

Ladies and gentlemen of the jury, in this case the Defendant claims that the Plaintiff had a pre-existing injury or a condition prior to that date that the Plaintiff claims that the Defendant injured her.

If you find that the Plaintiff received an injury as a result of negligence of the Defendant and is entitled to recover for that injury, the fact that the Plaintiff had a pre-existing injury or condition would not prevent the Plaintiff from recovering. The Defendant is responsible for all ill effects which considering the Plaintiff's condition of health when the Plaintiff was injured naturally and necessarily followed the injury.

The Defendant takes the Plaintiff as the Plaintiff was found, whether the Plaintiff is in perfect health, in poor health, or somewhere in between.

A Defendant's liability is in no way lessened

or affected because of the fact that the injury would not have been as serious or severe had the Plaintiff been in good health or that the injuries were aggravated and rendered more difficult to cure by reason of the fact that the Plaintiff was not in good health.

In other words, if the presence of a pre-existing injury or condition aggravates and prolongs the injury and increases the damages, the Plaintiff should be compensated for the increase or added damages.

A person with a pre-existing injury or condition is not, however, entitled to any compensation for the pre-existing injury or condition.

Next, ladies and gentlemen of the jury, we will talk about punitive damages. The Plaintiff claims that the Defendant acted with recklessness, willfulness, and wantonness, and that therefore the Plaintiff is entitled to punitive damages from the Defendant.

Recklessness means a conscious failure to use reasonable care. A person who is negligent acts carelessly. However, a person who acts recklessly, willfully, and wantonly, is not only careless, but

is also aware that he or she is being careless.

If you award actual damages, you may also consider an award of punitive damages. Punitive damages are intended to punish the Defendant for extraordinary and outrageous misconduct and to prevent the Defendant and others from committing similar acts in the future.

Punitive damages can only be awarded when the conduct of the Defendant has been something more than mere negligence. The evidence must establish that the Defendant's acts were reckless, willful, and wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.

If you find that the Defendant's conduct was willful, wanton, or reckless, you may award the Plaintiff punitive damages. To support an award of punitive damages, the Plaintiff must prove by clear and convincing evidence that the conduct complained of included a consciousness or wrongdoing at the time of the conduct.

Clear and convincing is more than just a preponderance or greater weight of evidence that we talked about earlier. It requires a preponderance

or greater weight of the evidence which requires only proof which persuades you that a party's claim is more likely true than not true.

On the other hand, clear and convincing proof is not as high a standard as the burden of proof in a criminal case, which is beyond a reasonable doubt. Clear and convincing proof leaves no substantial doubt in your mind. It means that the evidence is not ambiguous, doubtful, equivocal, or contradictory. Convincing means persuading by proof or argument causing one to believe in the truth of what is asserted. Clear and convincing proof establishes in your mind not only that the fact is probable, but that it is highly probable.

Before awarding punitive damages, you must consider and weigh four elements which may be pertinent to the facts of this case.

You must first consider the relationship between any punitive damage award and the harm caused. Any penalty imposed should take into account the reprehensibility of the conduct, the harm caused, the Defendant's awareness of the conduct and wrongfulness, the duration of the conduct, and any concealment. Thus, any penalty imposed should bear relationship to the nature and

extent of the conduct and the harm caused, including the compensatory damage award made by you.

Secondly, any penalty imposed should take into account as a mitigating factor any other penalty that may have been imposed or which may be imposed for the conduct involved, including any criminal or civil penalty or any other punitive damages award arising out of the same conduct.

Next, you should consider whether the award of and the amount of any punitive damages award may deprive the Defendant of any profits derived from the improper conduct and whether the ill-gotten profit should be properly awarded to the Plaintiff.

Finally, any award of punitive damages must be limited to punishment and thus may not affect economic bankruptcy. To this end, the Defendant's ability to pay any punitive damage award should be considered. However, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.

Ladies and gentlemen of the jury, all 12 of you must agree on a verdict. Your verdict cannot be based on sympathy, passion, prejudice, emotion, or any other consideration not in evidence in this

case.

Madam Forelady, when the jury agrees on a verdict, you will sign your name on the verdict form where it says forelady, and then you will knock on the door and inform the bailiffs that you have reached a verdict. Then we will receive you back into the courtroom to receive that verdict.

I have a verdict form. I'll walk down here so I can show you the verdict form, Madam Forelady. So the verdict form is here. It says the State of South Carolina, County of Kershaw. Heather Anne Bundy, Plaintiff, v. Thomas Elroy Jett and Haier America Research and Development Company, LTD, and here, W.H. Bundy, Jr., Plaintiff, v. Thomas Elroy Jett and Haier Research and Development Company, LTD, Defendant. Verdict form. In the Court of Common Pleas. For the Fifth Judicial Circuit. Case Number 2015-CP-852 and Case Number 2016-CP-28-758.

All right. So as to the first cause of action, negligence. Number One says: We, the jury, unanimously find for the Plaintiff, Heather Anne Bundy, for the cause of action of negligence in the amount of, and if you find -- there is a line for actual damages and a line for punitive

damages.

The next on Page 2 you'll see where there are percentage signs. Here is where we talked about if you find that the Plaintiff in this case was negligent, then you would put down what percentage of negligence you apply to the Plaintiff and what percentage you apply to the Defendants.

Number Two hear says: We, the jury, unanimously find for the Defendants for the cause of action of negligence.

Next is the loss of consortium claim. It says: We, the jury, unanimously find for the Plaintiff, W.H. Bundy, Jr., for the cause of action of loss of consortium. If you make that finding, then you will place whatever dollar amount you all decide on in that box.

Number Two says: We, the jury, unanimously find for the Defendant for the cause of action of loss of consortium.

You will stop your deliberations. You will sign this as the foreperson and date it. Then you will knock on the door and let the bailiffs know that you reached a verdict.

All right. We'll send this back with the exhibits.

All right, ladies and gentlemen of the jury, I am going to send you all back into the jury room. Do not begin your deliberations. There is a possibility that I may have to bring you back out. Do not begin your deliberations until you receive the verdict form, the exhibits, and the instructions from the bailiffs to begin your deliberations.

I'm aware that the clerk has ordered you lunch. Whenever it gets here, if you are deliberating, we will stop deliberations, you can bring the lunch back in. You can stop deliberations and eat or you can eat over deliberations, however you all decide to do it. Madam Forelady, it is up to you all. It is just that everyone has to be in the room deliberating at the time you are -- you can't have someone that is, you know, out, if you take break. If you take a break, everyone has to take a break. Everyone has to deliberate at the same time.

Remember, your verdict must be unanimous. That means all 12 of you must decide.

All right. We are going to send you back. Do not begin deliberations until Mr. Dowey explains it to you. And you can hold them here, you can hold

the alternates.

(WHEREUPON, the jury retires to the jury room at 10:30 a.m.)

THE COURT: Any objections or exceptions?

MR. McDONALD: Subject only to what was submitted as Court's Exhibits I submitted earlier.

Thank you, Your Honor.

MR. GRANTLAND: No, Your Honor.

THE COURT: All right. You all will review the exhibits. Here is the verdict form. You can look at it again.

To our alternates, Ms. Butler and Mr. Tucker, I want to thank you all for being here and being patient over the last week and a half.

As you can see, no one got the flu, no one had to be excused, and so we will no longer need your services.

I do want to thank you on behalf of the Plaintiffs and the Defendants in this case. As you can see, matters arise in this county and counties all over the state, and decisions cannot be made, and that is when we have to turn to persons like you every week. And so I do want you to know that we appreciate your service.

I understand that the clerk has ordered you

lunch. She can probably give you an idea as to what time it will be here, if you want to leave, come back, or if you just want to forego. However, if you wish to stick around to see what your fellow jurors come up with, you are more than welcome to do that also.

But at this point you are free to leave. And if you need a work excuse, she can instruct you as to where you to go get that also.

Thank you. You are free to leave and you are free to speak with anyone regarding the case.

Thank you.

THE ALTERNATES: Thank you.

(WHEREUPON, the jury was instructed to begin deliberations at 10:34 a.m.)

THE COURT: They came back and said they have a verdict, so we'll bring them back in.

(WHEREUPON, the jury came into open court at 11:27 a.m.)

THE COURT: Ladies and gentlemen of the jury, it is my understanding that you all have reached a verdict. Is that correct, Madam Forelady?

THE FORELADY: We have.

THE COURT: And is that verdict unanimous?

THE FORELADY: It is.

THE COURT: All 12 jurors agree?

THE FORELADY: Yes.

THE COURT: If you can hand that verdict to the bailiff.

(The Court views the verdict form.)

THE COURT: All right, I am going to ask the clerk to publish the verdict.

THE CLERK: State of South Carolina, County of Kershaw. Heather Anne Bundy v. Thomas Elroy Jett and Haier America Research and Development Company, LTD. In the Court of Common Pleas, Fifth Judicial Circuit. 2015-CP-28-00852. Verdict form. And W.H. Bundy, Jr., Plaintiff, v. Thomas Elroy Jett and Haier America Research and Development Company, LTD, Defendant.

Number One, negligence: We, the jury, unanimously find for the Defendant for the cause of action of negligence.

Loss of consortium: We, the jury, unanimously find for the Defendant for the cause of action of loss of consortium.

Madam Forelady, and ladies and gentlemen of the jury, if this is your verdict, please signify by raising your right hand.

(The jury complies.)

THE CLERK: Thank you.

THE COURT: Would you all like them to be individually polled?

MR. MCDONALD: Not from the Plaintiff, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, I did want to thank you all for your service here this week, and last week, for the last week and a half. I know that it is a sacrifice to leave your families and your other responsibilities to come here. I do want to thank you for being attentive and being here.

As you can see, matters arise in this county and counties all over the state that the parties cannot resolve and the Court cannot resolve, and that is when we turn to 12 persons like yourself every week in counties all across the state to assist us in making a decision. So I do want to thank you all for your service. As I think I stated on Monday, you will not have to serve in this court for another three years. I cannot protect you from magistrate's court, municipal court, or federal court, but in this court you will not have to serve for another three years. There are work excuses in the Clerk's Office for those of

you who need work excuses. For those of you who ordered lunch, it should be pulling up shortly, at 12:00 o'clock, if you wish to wait on it.

I was asking the clerk, because she ordered from a place just right across the street, she may be able to go over there with you all and help pick up the food since they are preparing it and she has already paid for it. If you want to do that or if you would like to wait here. She can discuss that with you all. If anyone wants to go over to the Camden House of Pizza and you can pick up lunch there. All right, she'll assist you in getting that.

All right. Thank you once again. Have a wonderful week. And I believe that is it.

Thank you.

(WHEREUPON, the jury is excused at 11:33 a.m.)

THE COURT: All right. The jurors have been excused. Any motions? Normally I do allow, if you want to renew your motions, I do allow ten days.

MR. MCDONALD: That is what I was going to request. I'm going to renew my directed verdict motion at the JNOV stage under Rule 50. And if I could have ten days for that and ten days for

Rule 59 motions, I would appreciate that.

THE COURT: Yes, sir. And I think -- they are electronic here. I think you have to file those electronically, but if you can e-mail my law clerk a copy, that will be great.

MR. MCDONALD: I will.

THE COURT: They are still working out the kinks.

MR. MCDONALD: Given the tight timeframe, I'm a little concerned that this case wasn't actually uploaded on the electronic filing, so we were unable -- is it now? Okay.

THE CLERK: The judge has it on e-file on a thumb drive.

MR. MCDONALD: We were unable to file motions in limine, so as long as that has been corrected.

THE COURT: And if not, just send it -- if you will send a copy to me. And if you need longer than ten days, let me know. I'm sure there is no objection.

MR. MCDONALD: I don't think I can do longer than ten days.

Thank you, Judge. I will have it to you within ten days.

THE COURT: All right. Thank you all. And

good luck to everyone.

Thank you.

MR. GRANTLAND: Thank you, Your Honor.

(WHEREUPON, the trial adjourned at 11:35 a.m.)

**(END OF TRANSCRIPT)**

## CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )
)
COUNTY OF KERSHAW )

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Kershaw County, South Carolina, on the 16th, 17th, 18th, 22nd, and 23rd days of January, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 7, 2019

s/*Deborah M. McCurdy, RPR*

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

BY MR. GRANTLAND: [21] 148/18 151/2 162/22 171/5 215/7 259/18 275/3 285/24 287/23 329/20 344/20 344/23 346/24 348/1 348/21 350/5 350/18 425/11 475/14 479/19 503/4
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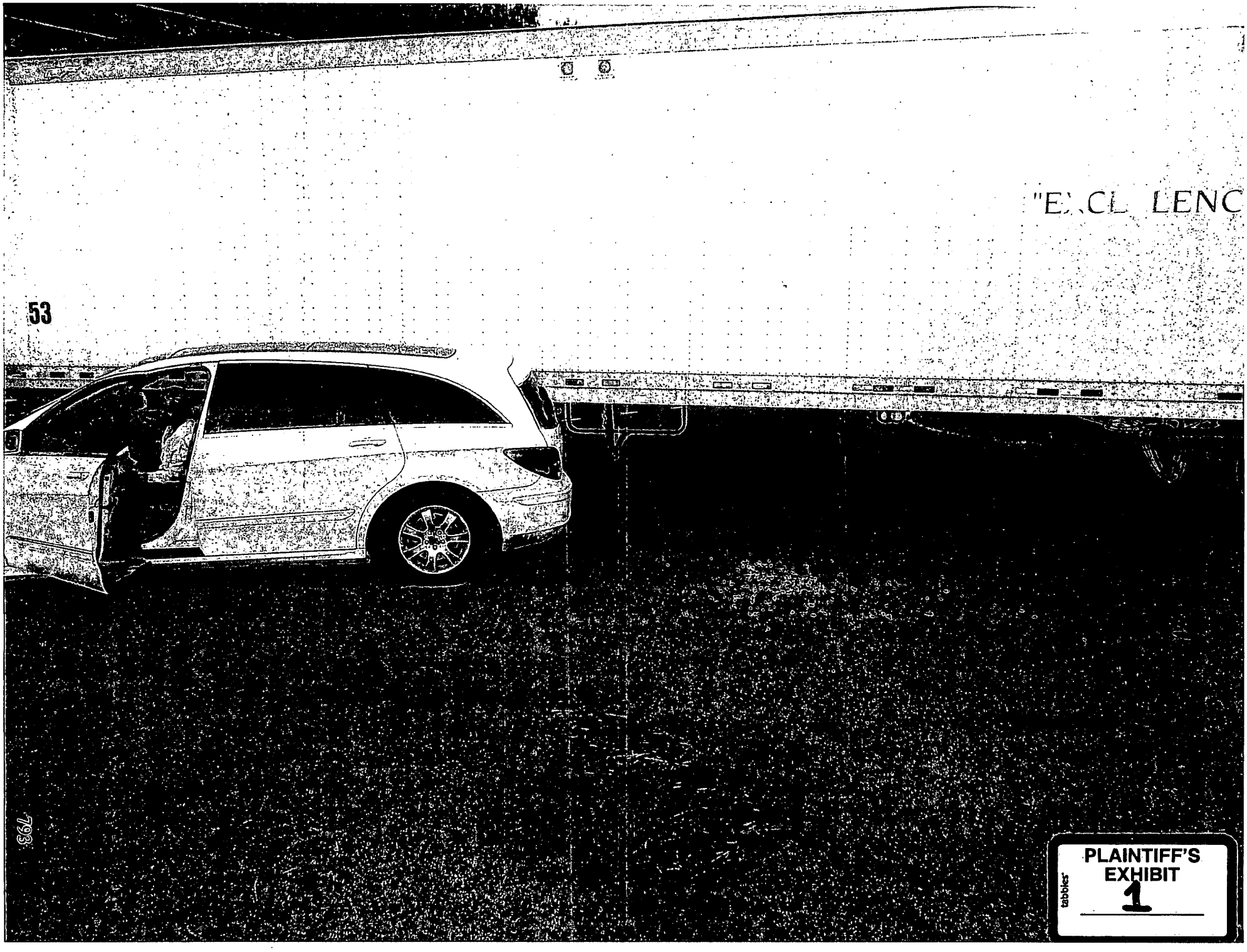
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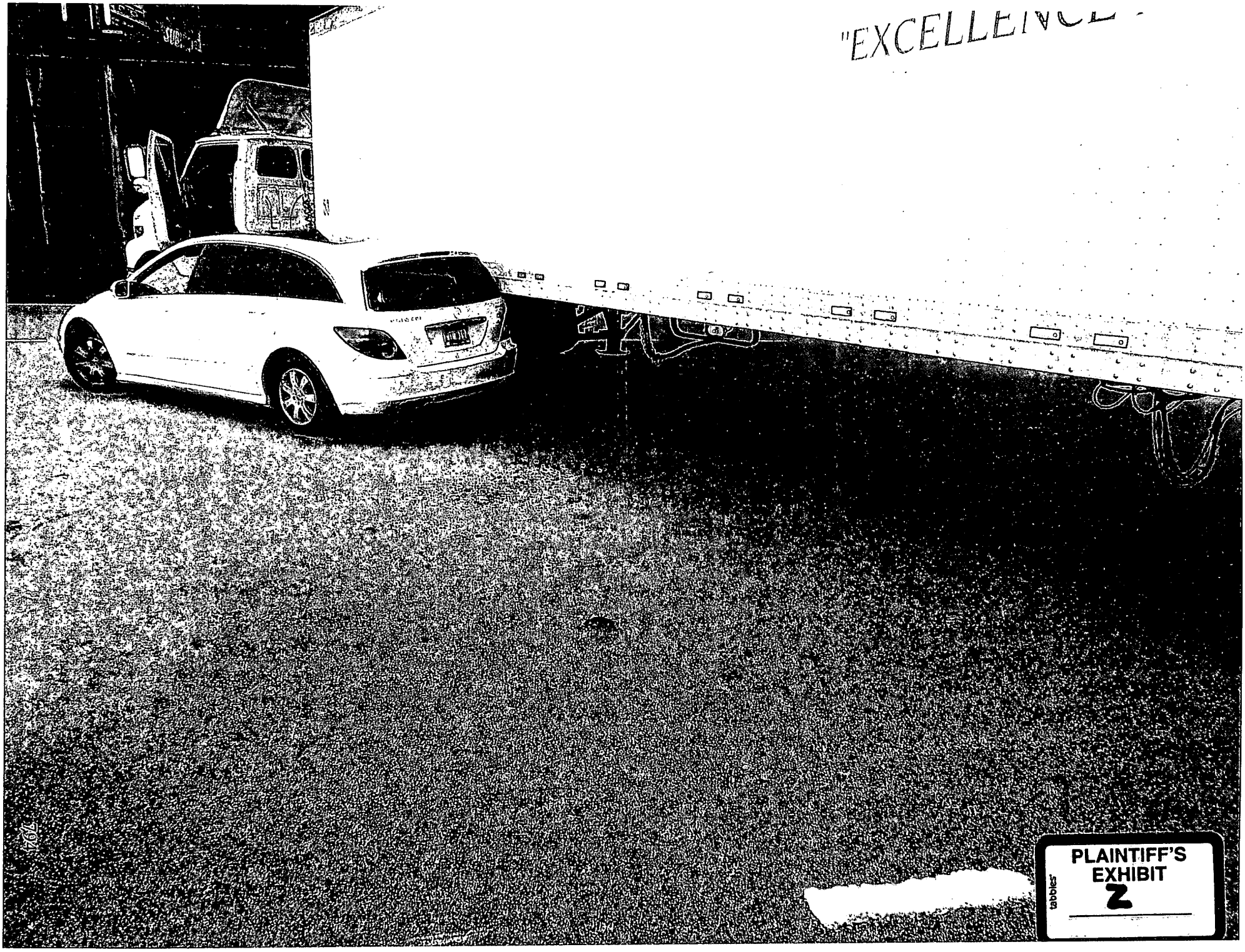
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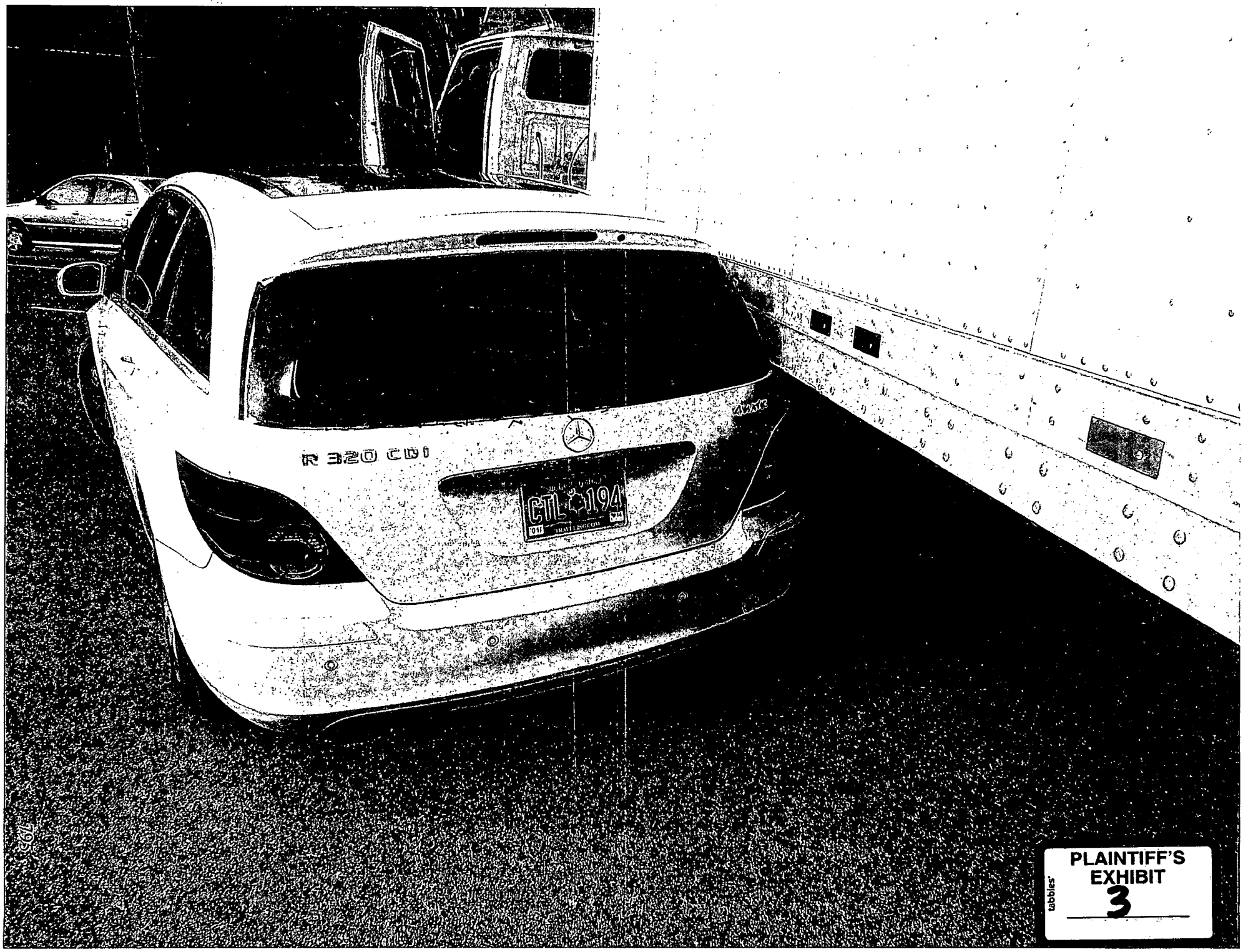
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## Present Value of Healthcare Costs

*Life Care Plan for Heather Bundy*

As of September 15, 2017

| Year | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Months in Period | | | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 9 | | |
| Inflation Factor [1] | | 6.0% | 1.000 | 1.060 | 1.124 | 1.191 | 1.262 | 1.338 | 1.419 | 1.504 | 1.594 | 1.689 | 1.791 | 1.898 | 2.012 | 2.133 | 2.261 | 2.397 | 2.540 | 2.693 | 2.854 | 3.026 | 3.207 | 3.400 | 3.604 | 3.820 | 4.049 | 4.292 | 4.549 | 4.822 | 5.112 | 5.418 | 5.743 | 6.088 | |
| **Cost Assumptions [3]** | *Freq.* | *Duration* | *Year* | *$ / Item* | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Pain Mgt Maintenance | 6.0x | Every Yr | 1 | $157 | 942 | 999 | 1,058 | 1,122 | 1,189 | 1,261 | 1,336 | 1,416 | 1,501 | 1,591 | 1,687 | 1,788 | 1,895 | 2,009 | 2,130 | 2,258 | 2,393 | 2,537 | 2,689 | 2,850 | 3,021 | 3,202 | 3,395 | 3,598 | 3,814 | 4,043 | 4,286 | 4,543 | 4,815 | 5,104 | 5,410 | 4,301 | 84,184 |
| Right SI Joint Injections | 6.0x | Every Yr | 1 | $681 | 4,086 | 4,331 | 4,591 | 4,866 | 5,158 | 5,468 | 5,796 | 6,144 | 6,512 | 6,903 | 7,317 | 7,756 | 8,222 | 8,715 | 9,238 | 9,792 | 10,380 | 11,003 | 11,663 | 12,363 | 13,104 | 13,891 | 14,724 | 15,607 | 16,544 | 17,537 | 18,589 | 19,704 | 20,886 | 22,140 | 23,468 | 18,657 | 365,157 |
| Right SI Joint Anesthesia | 6.0x | Every Yr | 1 | $87 | 522 | 553 | 587 | 622 | 659 | 699 | 740 | 785 | 832 | 882 | 935 | 991 | 1,050 | 1,113 | 1,180 | 1,251 | 1,326 | 1,406 | 1,490 | 1,579 | 1,674 | 1,775 | 1,881 | 1,994 | 2,114 | 2,240 | 2,375 | 2,517 | 2,668 | 2,828 | 2,998 | 2,383 | 46,650 |
| Cervical Fussion | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MD Fee | 1.0x | Life | 17 | $17,170 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 43,618 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 43,618 |
| Asst Surgeon | 1.0x | Life | 17 | $3,712 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 9,430 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 9,430 |
| Anesthesia Fee | 1.0x | Life | 17 | $5,048 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 12,824 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 12,824 |
| Facility Fee | 1.0x | Life | 17 | $59,267 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 150,559 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 150,559 |
| Lumbar Fussion | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| MD Fee | 1.0x | Life | 10 | $19,807 | - | - | - | - | - | - | - | - | - | 33,464 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 33,464 |
| Asst Surgeon | 1.0x | Life | 10 | $4,606 | - | - | - | - | - | - | - | - | - | 7,782 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 7,782 |
| Anesthesia Fee | 1.0x | Life | 10 | $3,820 | - | - | - | - | - | - | - | - | - | 6,454 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 6,454 |
| Facility Fee | 1.0x | Life | 10 | $100,142 | - | - | - | - | - | - | - | - | - | 169,188 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 169,188 |
| Physical Therapy | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Physical Therapy Eval. | 1.0x | Every Yr | 1 | $140 | 140 | 148 | 157 | 167 | 177 | 187 | 199 | 211 | 223 | 237 | 251 | 266 | 282 | 299 | 317 | 336 | 356 | 377 | 400 | 424 | 449 | 476 | 504 | 535 | 567 | 601 | 637 | 675 | 716 | 759 | 804 | 639 | 12,511 |
| Physical Therapy Maint. | 1.0x | Every 2yrs | 1 | $202 | 202 | - | 227 | - | 255 | - | 287 | - | 322 | - | 362 | - | 406 | - | 457 | - | 513 | - | 577 | - | 648 | - | 728 | - | 818 | - | 919 | - | 1,033 | - | 1,160 | - | 8,912 |
| Homemaking Services | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Homemaking Services [4] | 20.0x | Hrs/wk | 1 | $19 | 19,760 | 20,946 | 22,202 | 23,534 | 24,947 | 26,443 | 28,030 | 29,712 | 31,494 | 33,384 | 35,387 | 37,510 | 39,761 | 42,147 | 44,675 | 47,356 | 50,197 | 53,209 | 56,402 | 59,786 | 63,373 | 67,175 | 71,206 | 75,478 | 80,007 | 84,807 | 89,896 | 95,290 | 101,007 | 107,067 | 113,491 | 90,226 | 1,765,907 |
| Other Items | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Spinal Orthopedic Eval. | | | | $282 | - | - | - | - | - | - | - | - | - | 476 | - | - | - | - | - | - | 716 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1,193 |
| Spinal Orthopedic Maint. | | | | $157 | - | - | - | - | - | - | - | - | - | 265 | - | - | - | - | - | - | 399 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 664 |
| Physical Therapy Eval. | | | | $140 | - | - | - | - | - | - | - | - | - | 237 | - | - | - | - | - | - | 356 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 592 |
| Physical Therapy Maint. | | | | $202 | - | - | - | - | - | - | - | - | - | 341 | - | - | - | - | - | - | 513 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 854 |
| X-ray Cervical Spine | | | | $218 | - | - | - | - | - | - | - | - | - | 368 | - | - | - | - | - | - | 554 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 922 |
| X-ray Lumbar Spine | | | | $252 | - | - | - | - | - | - | - | - | - | 426 | - | - | - | - | - | - | 640 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1,066 |
| MRI Cervical Spine | | | | $2,073 | - | - | - | - | - | - | - | - | - | 3,502 | - | - | - | - | - | - | 5,266 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 8,768 |
| MRI Lumbar Spine | | | | $2,095 | - | - | - | - | - | - | - | - | - | 3,539 | - | - | - | - | - | - | 5,322 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 8,861 |
| Total Cost in Period | | | | | 25,852 | 27,160 | 28,523 | 29,966 | 31,485 | 33,083 | 34,768 | 36,544 | 38,414 | 257,417 | 44,153 | 46,312 | 48,625 | 51,103 | 53,757 | 56,598 | 139,625 | 59,589 | 62,560 | 65,801 | 69,329 | 73,160 | 77,312 | 81,813 | 86,686 | 91,956 | 97,650 | 103,800 | 110,441 | 102,611 | 117,408 | 94,226 | 2,358,605 |
| % of Cost in Period | | | | | 0.9% | 1.0% | 1.1% | 1.1% | 1.2% | 1.2% | 1.3% | 1.4% | 1.5% | 9.8% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 10.8% | 2.5% | 2.7% | 2.8% | 3.0% | 3.2% | 3.4% | 3.5% | 3.8% | 4.0% | 4.3% | 4.5% | 4.8% | 5.0% | 5.4% | 4.2% | 100.0% |
| **Discounted Cost Schedule** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Discount Period (Mid Yr Convention) | | | | | 0.5 | 1.5 | 2.5 | 3.5 | 4.5 | 5.5 | 6.5 | 7.5 | 8.5 | 9.5 | 10.5 | 11.5 | 12.5 | 13.5 | 14.5 | 15.5 | 16.5 | 17.5 | 18.5 | 19.5 | 20.5 | 21.5 | 22.5 | 23.5 | 24.5 | 25.5 | 26.5 | 27.5 | 28.5 | 29.5 | 30.5 | 31.5 | |
| Discount Factor | | 4.0% | 0.981 | 0.943 | 0.907 | 0.872 | 0.838 | 0.806 | 0.775 | 0.745 | 0.717 | 0.689 | 0.662 | 0.637 | 0.612 | 0.589 | 0.566 | 0.544 | 0.524 | 0.503 | 0.484 | 0.465 | 0.448 | 0.430 | 0.414 | 0.398 | 0.383 | 0.368 | 0.354 | 0.340 | 0.327 | 0.314 | 0.302 | 0.291 | | |
| Discounted Cost (Mid-Yr Convention) | | | | | 25,361 | 25,611 | 25,861 | 26,112 | 26,365 | 26,618 | 26,873 | 27,128 | 27,384 | 177,395 | 27,028 | 27,284 | 27,540 | 27,797 | 28,054 | 28,312 | 67,660 | 27,715 | 27,973 | 28,231 | 28,490 | 28,749 | 29,008 | 29,267 | 29,526 | 29,785 | 30,044 | 30,303 | 30,562 | 29,820 | 29,579 | 27,338 | 1,358,605 |
| % of Cost in Period | | | | | 1.9% | 1.9% | 1.9% | 1.9% | 2.0% | 2.0% | 2.1% | 2.1% | 2.2% | 13.6% | 2.2% | 2.3% | 2.3% | 2.4% | 2.4% | 2.4% | 11.4% | 2.5% | 2.6% | 2.6% | 2.7% | 2.7% | 2.8% | 2.8% | 2.9% | 3.0% | 3.0% | 3.1% | 3.2% | 3.2% | 3.3% | 2.5% | 100.0% |

**Sum of Discounted Costs** $1,358,605

1) The inflation factor above should reflect overall health care inflation costs in the United States, which historically been significantly higher than general inflation.

2) The remaining lifespan is determined by statute at 31.79 years. For the purposes of the above, this was set 31 years and 9 months (12 months x .79 slightly more than 9 months)

3) Base cost assumptions above are per the document "Life Care Plan Heather Bundy" as of 5/8/17 as provided by Lustig Consulting, LLC.

PLAINTIFF'S EXHIBIT 8

HEATHER BUNDY – MEDICAL EXPENSES

| | Date Range of Service | Provider | Service |
|---|---|---|---|
| 1. | 05.29.14 – 09.11.14 | Dr. Cannestra (Surgery 1) | 36,638.00 |
| 2. | 06.12.14 – 06.20.14 | Baptist Health (Surgery 1) | 44,032.80 |
| 3. | 06.14.14 | Florida Anesthesia Associates (Surgery 1) | 2,090.00 |
| 4. | 07.01.14 | Baptist Health - Radiology | 337.00 |
| 5. | 09.11.14 | Baptist Health - Radiology | 337.00 |
| 6. | 10.27.14 | LabCorp | 595.00 |
| 7. | 12.09.14 | Baptist Health – Radiology | 938.80 |
| 8. | 12.09.14 | Jacksonville Pathology | 166.00 |
| 9. | 12.08.14 – 12.20.14 | Dr. Cannestra (Second Surgery) | 44,490.00 |
| 10. | 12.10.14 | Baptist Health (Surgery 2) | 124,605.10 |
| 11. | 12.10.14 | Dr. Arubuola | 556.00 |
| 12. | 12.10.14 | Dr. Ellsworth | 4,894.00 |
| 13. | 12.10.14 | Florida Anesthesia | 2,470.00 |
| 14. | 12.11.14 | BREG | 387.22 |
| 15. | 12.11.14 | BREG, Inc. | 1,500.00 |
| 16. | 12.17.14 | Image Care, LLC (MRI) | 2,600.00 |
| 17 | 01.06.15 | Baptist Health Radiology | 357.00 |
| 18. | 02.17.17 – 08.02.17 | InterveneMD – Dr. Folks | 4,800.00 |
| 19. | 12.29.14 | Orthofix, Inc. | 5,344.65 |
| 20. | 12.10.14 | Neuromatrix RTM, LLC | 3,525.00 |
| 21. | 07.01.14 | Orthofix, Inc. | 5,344.55 |
| 22. | 06.16.14 | Neuromatrix RTM, LLC | 3,385.00 |
| | | | |
| | | **TOTALS** | **289,393.12** |



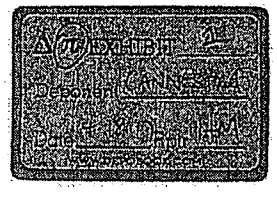
# *Designated Record Set Information*

## Medical Claims History

*Date of Service From 02/01/2014 Through 02/29/2016*

Member Name: BUNDY,HEATHER A
Medical ID: 803463009*02
Date of Birth: 02/15/1966

| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|



| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|

| | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| | RAD EXAM SPINE LUMBOSACRAL 2 OR 3 VIEWS | BAPTIST MEDICAL CENTER | 01/06/2015 | 01/06/2015 | $357.00 |
| | RAD EXAM SPINE LUMBOSACRAL 2 OR 3 VIEWS | DRS MORI BEAN & BROOKS PA | 01/06/2015 | 01/06/2015 | $43.00 |
| 1442437 | OSTEOGENESIS STIMULATOR, ELECTRICAL,NONINVASIVE,SPINAL APPLICATIONS | ORTHOFIX INC*11782 | 12/29/2014 | 12/29/2014 | $4,995.00 |
| 1442437 | SALES TAX | ORTHOFIX INC*11782 | 12/29/2014 | 12/29/2014 | $349.65 |
| | LUMBAR-SACRAL ORTHOSIS, SAGITTAL-CORONAL CONTROL, WITH RIGID ANTERIOR AND | BREG INC | 12/11/2014 | 12/11/2014 | $1,500.00 |
| 1422789 | INPAT CONSULT NEW OR EST PT MODERATE TO HIGH SEVERITY 110 MIN. | ARUBUOLA MD, OLUFISAYO*1147932 | 12/10/2014 | 12/10/2014 | $396.00 |
| 1422789 | SUBSEQ HOSP CARE E&M HIGH SEVERITY 35 MIN | ARUBUOLA MD, OLUFISAYO*1147932 | 12/11/2014 | 12/11/2014 | $160.00 |
| 1422789 | ARTHDSIS POST/POSTEROLATRL/ POSTINTERBODY LUMBAR | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,875.00 |
| 1422789 | DECOMPRESS SPINAL CORD LUMBAR | CANNESTRA MD, ANDREW F | 12/12/2014 | 12/12/2014 | $5,200.00 |
| 1422789 | POSTERIOR NON-SEGMENTAL INSTRUMENTATION | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $4,750.00 |
| 1422789 | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,420.00 |
| 1422789 | ARTHDSIS POST/POSTEROLATRL/ POSTINTERBODY LUMBAR | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,293.00 |

| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| DECOMPRESS SPINAL CORD LUMBAR | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,144.00 |
| POSTERIOR NON-SEGMENTAL INSTRUMENTATION | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,045.00 |
| APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,412.00 |
| ARTHDSIS POST/POSTEROLATRL/ POSTINTERBODY LUMBAR | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,875.00 |
| DECOMPRESS SPINAL CORD LUMBAR | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,200.00 |
| POSTERIOR NON-SEGMENTAL INSTRUMENTATION | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $4,750.00 |
| APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $6,420.00 |
| INTENSIVE CARE-INTERMEDIATE ICU | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $2,859.00 |
| PHARMACY-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $190.00 |
| PHARMACY-GENERIC DRUGS | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $871.10 |
| IV THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $350.00 |
| MED/SURG SUPPLIES & DEVICES-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $514.00 |
| MED/SURG SUPPLIES & DEVICES-NONSTERILE SUPPLY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $372.00 |
| MED/SURG SUPPLIES & DEVICES-STERILE SUPPLY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $18,992.00 |
| MED/SURG SUPPLIES & DEVICES-OTHER IMPLANTS | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $67,851.00 |
| LABORATORY-CHEMISTRY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $126.00 |
| LABORATORY/HEMOTOLOGY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $55.00 |

| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| RADIOLOGY-DIAGNOSTIC - GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $880.00 |
| OPERATING ROOM SERVICES-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $25,993.00 |
| ANESTHESIA-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $1,577.00 |
| PHYS THERAPY-EVALUATION OR REEVALUATION | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $443.00 |
| OCCUPATIONAL THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $691.00 |
| PULMONARY FUNCTION-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $530.00 |
| DRUGS REQUIR SPECIFIC IDENT-DRUGS REQUIR DETAILED CODING | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $1,060.00 |
| RECOVERY ROOM- GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $2,051.00 |
| SHORT-LATENCY SOMATOSENS EP STD UPR & LOW LIMBS | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $870.00 |

| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| ELECTROMYOGRAPHY ANAL OR URETHRAL SPHINCTER,ANY TECHNIQUE | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $285.00 |
| EEG DURING NONINTRACRANIAL SURGERY | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $250.00 |
| ELECTROMYOGRAPHY, LIMITED STUDY | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $880.00 |
| IONM REMOTE/NEARBY/MORE 1 PATIENT IN OR PER HOUR | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $2,150.00 |
| BASIC METABOLIC PANEL (CALCIUM, TOTAL) | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $78.00 |
| HEMOGLOBIN, GLYCOSYLATED | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $119.00 |
| THYROXINE, FREE | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $108.00 |
| THYROID STIMULATING HORMONE | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $166.00 |
| TRIIODOTHYRONINE T3, TOTAL | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $96.00 |
| GONADOTROPIN, CHORIONIC, QUANTITATIVE | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $165.00 |
| BLOOD COUNT, COMPLETE AUTOMATED AND DIFFERENTIAL WBC COUNT | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $55.00 |
| HYDROMORPHONE (DILAUDID), UP TO 4 MG - INJECTION | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $108.05 |
| INJECTION,FENTANYL CITRATE, 0.1 MG[SUBLIMAZE] | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $43.85 |

| | | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| RADIOLOGIC EXAMINATION, | DRS MORI BEAN & | 09/11/2014 | 09/11/2014 | $43.00 |
| OFFICE/OP VISIT E&M ESTABLISH PAT 25 MIN, MODERATE TO HIGH | CANNESTRA MD, ANDREW F | 09/11/2014 | 09/11/2014 | $250.00 |
| RADIOLOGIC EXAMINATION, SPINE, CERVICAL 2 OR 3 VIEWS | BAPTIST MEDICAL CENTER | 07/01/2014 | 07/01/2014 | $337.00 |
| OSTEOGENESIS STIMULATOR, ELECTRICAL,NONINVASIVE,SPINAL APPLICATIONS | ORTHOFIX INC*11792 | 07/01/2014 | 07/01/2014 | $4,995.00 |
| SALES TAX | ORTHOFIX INC*11792 | 07/01/2014 | 07/01/2014 | $349.65 |
| SUBSEQ HOSP CARE E&M HIGH SEVERITY 35 MIN | ARUBUOLA MD, OLUFISAYO*1147932 | 06/17/2014 | 06/17/2014 | $160.00 |
| INTENSIVE CARE-INTERMEDIATE ICU | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $2,486.00 |
| PHARMACY-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $190.00 |

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| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| PHARMACY-GENERIC DRUGS | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $588.05 |
| IV THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,106.00 |
| MED/SURG SUPPLIES & DEVICES-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $454.00 |
| MED/SURG SUPPLIES & DEVICES-STERILE SUPPLY | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,422.00 |
| MED/SURG SUPPLIES & DEVICES-PROSTHETIC/ORTHOTIC DEVICES | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $588.00 |
| MED/SURG SUPPLIES & DEVICES-OTHER IMPLANTS | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $12,762.00 |
| LABORATORY-CHEMISTRY | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $685.00 |
| LABORATORY/HEMOTOLOGY | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $55.00 |
| RADIOLOGY-DIAGNOSTIC - GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $874.00 |
| OPERATING ROOM SERVICES-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $16,806.00 |
| ANESTHESIA-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,403.00 |
| OCCUPATIONAL THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $624.00 |
| PULMONARY FUNCTION-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $375.00 |
| DRUGS REQUIR SPECIFIC IDENT-DRUGS REQUIR DETAILED CODING | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,504.75 |
| RECOVERY ROOM- GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $2,230.00 |
| INITIAL HOSP/PER DAY E&M HIGH SEVERITY/70 MIN | GEORGE MD,ANIL | 06/16/2014 | 06/16/2014 | $230.00 |
| INITIAL HOSP/PER DAY E&M HIGH SEVERITY/70 MIN | GEORGE MD,ANIL | 06/16/2014 | 06/16/2014 | $230.00 |
| ARTHRODESIS ANT INTERBODY DECOMPRESSION OF SPINAL | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/18/2014 | $1,540.00 |

| Referral Number | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| | CORD CERVICAL BELOW C2 | ELLSWORTH JR ARNP, DONALD D | | | |
| | ARTHRODESIS ANT INTERBODY DISC SPACE PREP CERVICAL BELOW C2 EA ADDL INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $649.00 |
| | ANTERIOR INSTRUMENTATION 2-3 VERT SEGMENTS | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,485.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,412.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,412.00 |
| | ARTHRODESIS ANT INTERBODY DECOMPRESSION OF SPINAL CORD CERVICAL BELOW C2 | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $7,000.00 |
| | ARTHRODESIS ANT INTERBODY DISC SPACE PREP CERVICAL BELOW C2 EA ADDL INTERSPACE | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $2,950.00 |
| | ANTERIOR INSTRUMENTATION 2-3 VERT SEGMENTS | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $6,750.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $6,420.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $6,420.00 |

| Referral Number | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| 1333094 | ANESTH EXTENSIVE SPINE AND SPINAL CORD PROC | FLORIDA ANESTHESIA ASSOCIATES PA*1099 | 06/16/2014 | 06/16/2014 | $2,090.00 |
| | SHORT-LATENCY SOMATOSENS EP STD UPR & LOW LIMBS | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $670.00 |
| | CTR MOTR EP STD TRANSCRNL MOTR STIM UPR&LOW LIMB | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $850.00 |
| | IONM REMOTE/NEARBY/MORE 1 PATIENT IN OR PER HOUR | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $1,075.00 |
| | NEUROMUSCULAR JUNCTION TEST EA,NERVE, ANY ONE METHOD | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $160.00 |
| | ELECTROMYOGRAPHY, TWO LIMBS | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $380.00 |

| Referral Number | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| | EEG DURING NONINTRACRANIAL SURGERY | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $250.00 |
| | BASIC METABOLIC PANEL (CALCIUM, TOTAL) | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $19.00 |
| | THYROXINE, FREE | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $19.00 |
| | THYROID STIMULATING HORMONE | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $35.00 |
| | TRIIODOTHYRONINE T3, TOTAL | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $30.00 |
| | GONADOTROPIN, CHORIONIC, QUANTITATIVE | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $32.00 |
| | BLOOD COUNT, COMPLETE AUTOMATED AND DIFFERENTIAL WBC COUNT | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $18.00 |
| | OFFICE/OP VISIT FOR E&M NEW PAT 45 MIN, MODERATE TO HIGH | CANNESTRA MD, ANDREW F | 05/29/2014 | 05/29/2014 | $350.00 |
| | OFFICE/OP VISIT E&M ESTABLISH PAT 25 MIN, MODERATE TO HIGH | DOCTORS CARE SC PA | 04/28/2014 | 04/28/2014 | $155.00 |

JAN 0 2 2015
BY

* ITEMIZED STATEMENT *

LYERLY BAPTIST

RE: Heather Bundy

ID: 131249

| | | | |
|---|---|---|---|
| 05/29/2014 | 99204 | New Patient Office Visit | 350.00 |
| 06/16/2014 | Surgery- Multi-Level ACDF W/ Application of Instrumentation- Autograft & Allograft- Utilizing Microsurgical Technique(22551,22552,22845, 22851,22851,20936,20930,69990) | | 29,540.00 |
| 06/16/2014 | Surgical Assist- (22551,22552,22845,22851,22851) | | 6,498.00 |
| 07/01/2014 | 99024 | Post-op Visit | .00 |
| 09/11/2014 | 99214 | Office Visit | 250.00 |
| | | Total Charges: | 36,638.00 |

Services Rendered By: Andrew Cannestra, M.D.

Surgical Assist: Donald Dean Ellsworth, ARNP

DX: 7210,7234,72210




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: I - INPATIENT
Service Type: MED - MED SURG
Date of Service: 06/16/2014 thru 06/17/2014
Physician: ARUBUOLA, OLUFISAYO E

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| | Total for Revenue Code | | 44032.80- | |
| 206 | R&B PROGRESSIVE CARE | 06/16/14 | 1 | 2486.00 |
| | Total for Revenue Code POST ICU | | 2486.00 | |
| 250 | ANES DRUGS NON AGENT | 06/16/14 | 1 | 190.00 |
| | Total for Revenue Code PHARMACY | | 190.00 | |
| 251 | BUPIVACAINE-EPI EPID 0.25 | 06/16/14 | 1 | .05 |
| 251 | LIDOCAINE-EPI MDV 1% 50ML | 06/16/14 | 1 | .05 |
| 251 | PROPOFOL INJ 200MG | 06/16/14 | 2 | 200.30 |
| 251 | OXYCODONE-ACETAMIN TAB 7. | 06/16/14 | 2 | 10.40 |
| 251 | OXYCODONE-ACETAMIN TAB 7. | 06/17/14 | 2 | 10.40 |
| 251 | ACETAMINOPHEN 1000MG,INJ | 06/16/14 | 1 | 103.00 |
| 251 | DEXTROMETHORPHAN 60MG SUS | 06/16/14 | 1 | .05 |
| 251 | CELECOXIB CAP 200 MG | 06/16/14 | 6 | 47.10 |
| 251 | CELECOXIB CAP 200 MG | 06/17/14 | 1 | 7.85 |
| 251 | PANTOPRAZOLE TAB 40MG | 06/17/14 | 1 | 11.70 |
| 251 | THROMBIN KIT 5000 UNITS | 06/16/14 | 1 | 14.35 |
| 251 | KETAMINE INJ 100MG/ML 5ML | 06/16/14 | 1 | 80.65 |
| 251 | BACITRACIN INJ 50000 UNI | 06/16/14 | 1 | 67.65 |
| 251 | DOCUSATE SOD-SENNA 50/8.6 | 06/16/14 | 3 | .15 |
| 251 | METHOCARBAMOL TAB 750MG | 06/16/14 | 2 | 5.30 |
| 251 | METHOCARBAMOL TAB 750MG | 06/17/14 | 1 | 2.65 |
| 251 | MULTIVIT (THERAGRAN) TAB | 06/17/14 | 1 | .05 |
| 251 | RANITIDINE GELCAP 150MG | 06/16/14 | 1 | 5.20 |
| 251 | THYROID TAB 60MG | 06/16/14 | 1 | 2.65 |
| 251 | DIAZEPAM TAB 5MG | 06/16/14 | 2 | 5.30 |
| 251 | DIAZEPAM TAB 5MG | 06/17/14 | 1 | 2.65 |
| 251 | OXYCODONE TAB 5MG | 06/16/14 | 1 | 2.65 |
| 251 | ROCURONIUM INJ 10MG | 06/16/14 | 1 | 107.90 |
| | Total for Revenue Code DRUGS/GENERIC | | 688.05 | |
| 260 | DSU IV PUSH INJECTION | 06/16/14 | 1 | 158.00 |
| 260 | IV PUSH INJECTION | 06/16/14 | 6 | 948.00 |
| | Total for Revenue Code IV THERAPY | | 1106.00 | |
| 270 | ANES MASS/SPEC. MONITOR | 06/16/14 | 1 | 83.00 |
| 270 | ANES ADULT ENDO-TRACH TU | 06/16/14 | 1 | 89.00 |

BAPTIST HEALTH

Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: I - INPATIENT
Service Type: MED - MED SURG
Date of Service: 06/16/2014 thru 06/17/2014
Physician: ARUBUOLA, OLUFISAYO E

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| 270 | ANES NON-CON CIRCUITS | 06/16/14 | 1 | 61.00 |
| 270 | ANES HUMID-VENT | 06/16/14 | 1 | 33.00 |
| 270 | ANES DISPOSABLE YANKEUR | 06/16/14 | 1 | 20.00 |
| 270 | ANES BREATHING MASK DISP | 06/16/14 | 1 | 20.00 |
| 270 | PROBE OXIMETRY SENSOR | 06/16/14 | 1 | 114.00 |
| 270 | ANES PUMP TUBING | 06/16/14 | 1 | 34.00 |
| | Total for Revenue Code MED-SUR SUPPLIES | | 454.00 | |
| 272 | SUSTAINED MAX INSPIR DEVI | 06/16/14 | 1 | 26.00 |
| 272 | SUTURE VCL+ 3-0 CP-2 18IN CR B | 06/16/14 | 1 | 43.00 |
| 272 | DERMABOND HVD MINI/DHVM12 | 06/16/14 | 4 | 617.00 |
| 272 | BURR 3MM FLUTED BALL 840069204 | 06/16/14 | 1 | 438.00 |
| 272 | PIN DISTRACTION 12MM 840045876 | 06/16/14 | 2 | 298.00 |
| | Total for Revenue Code STERILE SUPPLY | | 1422.00 | |
| 274 | COLLAR ASPEN CERVICAL | 06/16/14 | 1 | 588.00 |
| | Total for Revenue Code PROSTH/ORTH DEV | | 588.00 | |
| 278 | PLATE UNI SELFDRLLING SCW,12MM | 06/16/14 | 4 | 5382.00 |
| 278 | CAGE SPNL 5MM SM CNTR/6850105 | 06/16/14 | 2 | 6000.00 |
| 278 | KIT OSTEOCEL PLUS 1ML | 06/16/14 | 1 | 1380.00 |
| | Total for Revenue Code SUPPLY/IMPLANTS | | 12762.00 | |
| 301 | PACU WCH URINE HCG | 06/16/14 | 1 | 52.00 |
| 301 | BASIC METABOLIC PROF 2000 | 06/09/14 | 1 | 78.00 |
| 301 | T-3 TOTAL BLOOD | 06/09/14 | 1 | 96.00 |
| 301 | BETA HCG QT | 06/09/14 | 1 | 165.00 |
| 301 | FREE THYROXINE | 06/09/14 | 1 | 108.00 |
| 301 | TSH3 ULTRASENSITIVE | 06/09/14 | 1 | 166.00 |
| | Total for Revenue Code LAB/CHEMISTRY | | 665.00 | |
| 305 | CBC AUTOMATED DIFFERENTIA | 06/09/14 | 1 | 55.00 |
| | Total for Revenue Code LAB/HEMATOLOGY | | 55.00 | |
| 320 | XR SPINE CERVICALAP & LAT | 06/16/14 | 2 | 674.00 |
| | Total for Revenue Code DX X-RAY | | 674.00 | |
| 360 | DSU PRE SURG | 06/16/14 | 1 | 361.00 |
| 360 | OR ACUITY 5 1ST 30 MIN | 06/16/14 | 1 | 3921.00 |
| 360 | OR ACUITY 5 EA ADDL MIN | 06/16/14 | 101 | 12524.00 |
| | Total for Revenue Code OR SERVICES | | 16806.00 | |




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: I – INPATIENT
Service Type: MED – MED SURG
Date of Service: 06/16/2014 thru 06/17/2014
Physician: ARUBUOLA, OLUFISAYO E

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| 370 | ANES GEN 1ST 30 MIN | 06/16/14 | 1 | 1100.00 |
| 370 | ANES GEN EA ADDL MIN | 06/16/14 | 101 | 303.00 |
| | **Total for Revenue Code ANESTHESIA** | | **1403.00** | |
| 430 | OT SELF CARE/HOME MGT TRA | 06/17/14 | 1 | 234.00 |
| 430 | OT EVALUATION | 06/17/14 | 1 | 390.00 |
| | **Total for Revenue Code OCCUPATION THERP** | | **624.00** | |
| 460 | SUSTAINED MAXIMAL INSPIRA | 06/16/14 | 1 | 60.00 |
| 460 | PULSE OXIMETER SINGLE DET | 06/16/14 | 2 | 210.00 |
| 460 | PULSE OXIMETER SINGLE DET | 06/17/14 | 1 | 105.00 |
| | **Total for Revenue Code PULMONARY FUNC** | | **375.00** | |
| 636 | METHOCARBAMOL 1GM V B/1GM | 06/16/14 | 1 | 70.40 |
| 636 | 0.9% NS 250ML BAG B/250ML | 06/16/14 | 1 | .05 |
| 636 | 0.9% NS 1L BAG B/1L | 06/16/14 | 1 | .05 |
| 636 | HYDROMORPHONE INJ 0.5MG B | 06/16/14 | 3 | 324.15 |
| 636 | VERSED 2MG V B/1MG | 06/16/14 | 2 | 43.00 |
| 636 | VERSED 2MG V B/1MG | 06/17/14 | 2 | 43.00 |
| 636 | DILAUDID 1MG S B/4MG | 06/17/14 | 1 | 108.05 |
| 636 | VANCOMYCIN 1000MG V B/50 | 06/16/14 | 4 | 164.80 |
| 636 | VANCOMYCIN 1000MG V B/50 | 06/17/14 | 2 | 82.40 |
| 636 | CEFAZOLIN 1GM V B/500MG | 06/16/14 | 2 | 62.10 |
| 636 | DEXAMETHA 20MG V B/1MG | 06/16/14 | 20 | 147.00 |
| 636 | HEPARIN 5000UNIT V B/1000 | 06/17/14 | 5 | 65.75 |
| 636 | HYDRALAZINE 20MG AMP B/2 | 06/16/14 | 1 | 82.15 |
| 636 | LIDOCAINE AMP 1% (PF) 5ML | 06/16/14 | 1 | 68.90 |
| 636 | ZOFRAN 4MG V B/1MG | 06/16/14 | 4 | 111.40 |
| 636 | FENTANYL 0.25MG AMP B/0.1 | 06/17/14 | 3 | 131.55 |
| | **Total for Revenue Code DRUGS/DETAIL CODE** | | **1504.75** | |
| 710 | PACU ADULT 1ST 30 MIN | 06/16/14 | 1 | 904.00 |
| 710 | PACU ADULT AVG ADDL MIN | 06/16/14 | 102 | 1326.00 |
| | **Total for Revenue Code RECOVERY SERVICES** | | **2230.00** | |
| | **Total Charges.....: 44032.80** | | | |

# STATEMENT OF ACCOUNT

Statement Date: 07/03/14
Account No: JAS90843
Patient Name: HEATHER A BUNDY
Account Balance: 2,090.00

Due From Patient Now: 0.00

Florida Anesthesia Associates, P.A.
P O BOX 5278
Jacksonville, FL 32247-5278

0000082163 **AUTO**MIXED AADC 350
HEATHER A BUNDY
PO BOX 1559
CAMDEN SC 29021-8559

Florida Anesthesia Associates, P.A.
P O BOX 5278
Jacksonville, FL 32247-5278

Please use my credit card for the above charges: ☐ VISA ☐ MasterCard

Card No. _____ Exp. Date _____

Signature _____

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

| PATIENT NAME | ACCOUNT # | LAST DATE OF SERVICE | LAST INSURANCE PAYMENT | LAST PATIENT PAYMENT | STATEMENT DATE |
|---|---|---|---|---|---|
| HEATHER A BUNDY | JAS90843 | 06/16/14 | | | 07/03/14 |

| DATE | DESCRIPTION | | | DEBITS | CREDITS | BALANCE |
|---|---|---|---|---|---|---|
| 06/16/14 | Anesthesia Req'd by DR CANNESTRA | UN | 356487PP | 2,090.00 | | 2,090.00 |

Florida Anesthesia Associates, P.A.
PHONE: 904-398-3356 FAX: 904-398-5397

We accept Visa, Mastercard, Discover and American Express.

Any amount not received from insurance within 45 days may become your responsibility

0.00

AMOUNT DUE NOW

07/03/14 05:42:22 3308 04753308.7

BAPTIST MEDICAL CENTER
PO BOX 3495
TOLEDO, OH 43607

14940-K610

RETURN SERVICE REQUESTED

003145
0101

00223333113000337003

CHECK CARD USING FOR PAYMENT

MC ☐ DISCOVER ☐ VISA ☐ AMEX ☐ BANK DEBIT* (Fastcheck)

| CARD NUMBER | SIGNATURE CODE |
|---|---|
| SIGNATURE | EXP DATE |

| PATIENT NAME | STATEMENT DATE | DATE DUE |
|---|---|---|
| HEATHER A BUNDY | 01/15/2015 | 01/27/2015 |

| ACCOUNT NUMBER | AMOUNT DUE | AMOUNT PAYING |
|---|---|---|
| | $337.00 | $ |

65224

HEATHER A BUNDY
P O BOX 1559
CAMDEN, SC 29021-8559

BAPTIST MEDICAL CENTER
P.O. BOX 45094
JACKSONVILLE, FL 32232-5094

14940-K610*T9C0KXAB3001224

Patient Financial Services: (904) 202-2092
P2 S

PAGE: 1 of 1

## Account Summary

| | |
|---|---|
| Guarantor's Name | HEATHER A BUNDY |
| Patient Name | HEATHER A BUNDY |
| Service Type | OUTPATIENT |
| Account Number | 223333113 |
| Admit Date | July 1, 2014 |
| Disch Date | July 1, 2014 |

## Summary of Charges

| Description | What We Billed |
|---|---|
| 320 DX X-RAY | 337.00 |
| TOTAL | $337.00 |

V-2747000000

| | |
|---|---|
| Total Patient Payments | $0.00 |
| Last Payment Date | 07/29/2014 |
| Account Balance | $337.00 |
| Payment Arrangement (monthly) | $0.00 |
| Amount Due Now | $337.00 |

PAY YOUR BILLS ONLINE 24 HOURS A DAY, 7 DAYS A WEEK! VISIT OUR WEBSITE AND ENROLL AT: www.e-baptisthealth.com/mybill

Thank you for selecting BBaptist Medical Center Jacksonville for your healthcare needs. According to our records, there is still an amount due on your account. Please remit payment for full Amount Due by the Date Due listed on this statement. If you have any questions or would like to discuss other payment options, contact Customer Service at (904)202-2092. If payment has been submitted or payment arrangements made, please disregard this statement.

*BANK DEBIT (FAST CHECK) INFORMATION: If you wish to use bank debit as a payment option, please provide the required information listed on the back of this form or call (904)202-2092, to speak with a Customer Service Representative. Thank You.

14940-K610*T9C0KXAB3001224

Bundy-Surgery1-BaptistHealth 000034

BAPTIST HEALTH

Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: O – OUTPATIENT (NOT IN A B
Service Type: RAD – RADIOLOGY
Date of Service: 07/01/2014 thru 07/01/2014
Physician: CANNESTRA, ANDREW F

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| | Total for Revenue Code | | .00 | |
| 320 | XR SPINE CERVICALAP & LAT | 07/01/14 | 1 | 337.00 |
| | Total for Revenue Code DX X-RAY | | 337.00 | |

Total Charges.....: 337.00

Total Account Balance...: 337.00

If you have any questions concerning this itemized bill or if you wish to make payment arrangements, please contact ot Customer Service Department at (904)202-2092 or email us at ptaccounting@bmcjax.com

BAPTIST MEDICAL CENTER
PO BOX 3495
TOLEDO, OH 43607

14940-K610

RETURN SERVICE REQUESTED

000249
0101

00223718263000337001

CHECK CARD USING FOR PAYMENT

M/C DISCOVER VISA VISA AMEX BANK DEBIT (Fastcheck)

| CARD NUMBER | SIGNATURE CODE |
|---|---|
| SIGNATURE | EXP. DATE |

| PATIENT NAME | STATEMENT DATE | DATE DUE |
|---|---|---|
| HEATHER A BUNDY | 01/15/2015 | 02/04/2015 |

| ACCOUNT NUMBER | AMOUNT DUE | AMOUNT PAYING |
|---|---|---|
| | $337.00 | $ |

6527

HEATHER A BUNDY
P O BOX 1559
CAMDEN, SC 29021-8559

BAPTIST MEDICAL CENTER
P.O. BOX 45094
JACKSONVILLE, FL 32232-5094

14940-K610*T9C07HIW9001179

Patient Financial Services: (904) 202-2092
P1 S



## Account Summary

| | |
|---|---|
| Guarantor's Name | HEATHER A BUNDY |
| Patient Name | HEATHER A BUNDY |
| Service Type | OUTPATIENT |
| Account Number | |
| Admit Date | September 11, 2014 |
| Disch Date | September 11, 2014 |

## Summary of Charges

| Description | What We Billed |
|---|---|
| 320 DX X-RAY | 337.00 |
| TOTAL | $337.00 |

| | |
|---|---|
| Total Patient Payments | $0.00 |
| Last Payment Date | 09/30/2014 |
| Account Balance | $337.00 |
| Payment Arrangement (monthly) | $0.00 |
| Amount Due Now | $337.00 |

PAY YOUR BILLS ONLINE 24 HOURS A DAY, 7 DAYS A WEEK! VISIT OUR WEBSITE AND ENROLL AT: www.e-baptisthealth.com/mybill
Thank you for selecting Baptist Medical Center Jacksonville for your healthcare needs. The Amount Due is your responsibility. Please remit payment by the Date Due listed on this statement. If you have any questions or would like to discuss other payment options, contact Customer Service at (904)202-2092. If payment has been submitted or payment arrangements made, please disregard this statement.

*BANK DEBIT (FAST CHECK) INFORMATION: If you wish to use bank debit as a payment option, please provide the required information listed on the back of this form or call (904)202-2092, to speak with a Customer Service Representative. Thank You.

14940-K610*T9C07HIW9001179

Bundy-Surgery1-BaptistHealth 000036




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: O - OUTPATIENT (NOT IN A B
Service Type: RAD - RADIOLOGY
Date of Service: 09/11/2014 thru 09/11/2014
Physician: CANNESTRA, ANDREW F

Guarantor Name: BUNDY, HEATHER A.
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| | Total for Revenue Code | | .00 | |
| 320 | XR SPINE CERVICALAP & LAT | 09/11/14 | 1 | 337.00 |
| | Total for Revenue Code DX X-RAY | | 337.00 | |
| | Total Charges.....: 337.00 | | | |

Total Account Balance...: 337.00

If you have any questions concerning this itemized bill or if you wish to make payment arrangements, please contact our Customer Service Department at (904)202-2092 or email us at ptaccounting@bmcjax.com

LabCorp
Laboratory Corporation of America

# BALANCE NOW DUE

Payments made via an online banking service must include this invoice #

**Invoice/Factura: 87497975**

**Amount Due: $595.00**

TAX ID# : 13-3757370

HEATHER BUNDY
PO BOX 1559
CAMDEN, SC 29021-8559

Patient Name: HEATHER A BUNDY
Invoice Date: 11/06/14 430007834620

**Important Notice**

Test requested by:
ASSOC IN INTERNAL MEDICINE LLC
2701 MIDDLEBURG DRIVE
COLUMBIA, SC 29204

## Summary of Activity

| Date of Service | Description | Charges | Adjustments | Medicare/ Medicaid Paid | Insurance Paid | Patient Paid | You Pay |
|---|---|---|---|---|---|---|---|
| 10/27/14 | CMP14+LP+CBC/D/Plt | 132.00 | | | | | 132.00 |
| 10/27/14 | TSH+Free T4 | 195.00 | | | | | 195.00 |
| 10/27/14 | Urinalysis, Complete | 36.00 | | | | | 36.00 |
| 10/27/14 | Vitamin D, 25-Hydroxy | 232.00 | | | | | 232.00 |
| *IMPORTANTE: Tenemos agentes bilingues disponibles para asistirle. Llamenos ahora para resolver su situation.* | | 595.00 | | | | | $595.00 |

*LabCorp reserves the right to refuse laboratory services for failure to pay for past services. Only your doctor can answer questions regarding testing, diagnosis and results.*

TEST PERFORMED BY: LABCORP BURLINGTON 1447 YORK COURT BURLINGTON, NC 27215

We accept the following credit cards: DISCOVER VISA

Payment arrangements can be made with no additional fee by calling 1-800-845-6167 from 8am - 5pm, Monday - Friday, or visit labcorp.com/billing.

---

*Return this portion with payment*

DO NOT SEND CASH
Make check or money order payable to:

**Laboratory Corporation of America Holdings**
**P.O. Box 2240**
**Burlington, North Carolina 27216-2240**

**Invoice/Factura: 87497975**

**Amount Due: $595.00**

www.labcorp.com/billing

FAX: 1-866-227-2939

HEATHER A BUNDY
PO BOX 1559
CAMDEN, SC 29021-8559

Payments made via an online banking service must include
Invoice # 87497975

YDNUB*EHTAEH**** 43000783 4620**** 1 0595005

Bundy-LabCorp 000001



Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: O – OUTPATIENT (NOT IN A B
Service Type: RAD – RADIOLOGY
Date of Service: 12/09/2014 thru 12/09/2014
Physician: CANNESTRA, ANDREW F

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| 301 | BASIC METABOLIC PROF 2000 | 12/09/14 | 1 | 78.00 |
| 301 | T-3 TOTAL BLOOD | 12/09/14 | 1 | 96.00 |
| 301 | BETA HCG QT | 12/09/14 | 1 | 165.00 |
| 301 | FREE THYROXINE | 12/09/14 | 1 | 108.00 |
| 301 | GLYCATED HGB | 12/09/14 | 1 | 119.00 |
| 301 | TSH3 ULTRASENSITIVE | 12/09/14 | 1 | 166.00 |
| | Total for Revenue Code LAB/CHEMISTRY | | 732.00 | |
| 305 | CBC AUTOMATED DIFFERENTIA | 12/09/14 | 1 | 55.00 |
| | Total for Revenue Code LAB/HEMATOLOGY | | 55.00 | |
| 636 | DILAUDID 1MG S B/4MG | 12/09/14 | 1 | 108.05 |
| 636 | FENTANYL 0.1MG AMP B/0.1M | 12/09/14 | 1 | 43.85 |
| | Total for Revenue Code DRUGS/DETAIL CODE | | 151.90 | |

Total Charges.....: 938.90

Total Adjustments.....: .00

Total Patient Payments..: .00

Total Account Balance...: 938.90

If you have any questions concerning this itemized bill or if you wish to make payment arrangements, please contact our Customer Service Department at (904)202-2092 or email us at ptaccounting@bmcjax.com

| ACCOUNT NUMBER | DATE OF STATEMENT | BALANCE | AMOUNT DUE |
|---|---|---|---|
| | 12/24/2014 | PAYMENTS AFTER THIS DATE WILL APPEAR ON YOUR NEXT STATEMENT | $166.00 |

PATIENT NAME

HEATHER BUNDY

PLEASE SEND PAYMENT FOR THE AMOUNT DUE INDICATED. IF YOU HAVE AN QUESTIONS, PLEASE CALL OUR OFFICE. THANK YOU.

This bill is for the professional services of the pathologists who provided laboratory and pathology services which you received during your visit/stay at the hospital, surgery center and or doctor's office. You may receive a separate bill(s) from the hospital for the technical services. The customer service center billing number is 866/759-4528.

Place of Service: BAPTIST MED-DOWNTWN OP/CF
Referring Doctor: KENNETH V ADAMS MD

MAKE CHECKS PAYABLE TO:

JACKSONVILLE PATHOLOGY CONSULTANT, PA
PO BOX 8989
JACKSONVILLE FL 32239-0989
866/759-4528

SEE REVERSE SIDE FOR IMPORTANT BILLING INFORMATION



| Date | Doctor | Qty | Code | Description | Amount |
|---|---|---|---|---|---|
| 12/09/2014 | | 1 | 80048 | BASIC METABOLIC PROF 2000 | 19.00 |
| 12/09/2014 | | 1 | 85025 | CBC AUTOMATED DIFFERENTIAL | 16.00 |
| 12/09/2014 | | 1 | 84480 | T-3 TOTAL BLOOD | 30.00 |
| 12/09/2014 | | 1 | 84702 | BETA HCG QT | 32.00 |
| 12/09/2014 | | 1 | 84439 | FREE THYROXINE | 19.00 |
| 12/09/2014 | | 1 | 83036 | HEMOGLOBIN GLYCOSYLATED (A1C) | 15.00 |
| 12/09/2014 | | 1 | 84443 | TSH3 ULTRASENSITIVE | 35.00 |
| VISIT # 1 | | TOTAL ---------- | | 166.00 | |

Pay or Access account at http://www.PerYourHealth.com ID: 4352-10224194746 Access Key: 3AZDNQ

For questions call, 866/759-4528 and when prompted enter your identification number as follows 4352*10224194746
OPERATOR AVAILABLE 8:30AM - 6:00PM EST

PLEASE DETACH AND RETURN THE BOTTOM PORTION WITH PAYMENT

JACKSONVILLE PATHOLOGY CONSULTANT, PA
8085 RIVERS AVE #100
N CHARLESTON SC 29406

Temp-Return Service Requested

JAXP*95*10224194746

4352

MED50E.A40JA0004982.J0I2AN.011237 011191

HEATHER BUNDY
PO BOX 1559
CAMDEN SC 29021-8559

| ACCOUNT NUMBER | PATIENT NAME |
|---|---|
| | HEATHER BUNDY |

| STATEMENT DATE | AMOUNT DUE | AMOUNT ENCLOSED |
|---|---|---|
| 12/24/2014 | $166.00 | |

To make credit card payments:
www.peryourhealth.com (see statement detail for account number and password) or call 866/759-4528

MAKE CHECKS PAYABLE AND REMIT TO:

JACKSONVILLE PATHOLOGY CONSULTANT, PA
PO BOX 8989
JACKSONVILLE FL 32239-0989




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: I - INPATIENT
Service Type: MED - MED SURG
Date of Service: 12/10/2014 thru 12/11/2014
Physician: ARUBUOLA, OLUFISAYO E

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| | Total for Revenue Code | | 15925.00- | |
| 206 | R&B PROGRESSIVE CARE | 12/10/14 | 1 | 2859.00 |
| | Total for Revenue Code POST ICU | | 2859.00 | |
| 250 | ANES DRUGS NON AGENT | 12/10/14 | 1 | 190.00 |
| | Total for Revenue Code PHARMACY | | 190.00 | |
| 251 | BUPIVACAINE-EPI EPID 0.25 | 12/10/14 | 1 | .10 |
| 251 | LIDOCAINE-EPI MDV 1% 50ML | 12/10/14 | 1 | .10 |
| 251 | PROPOFOL INJ 200MG | 12/10/14 | 1 | 100.15 |
| 251 | DEXT 5% SOD CL 0.45% KCL 20MEQ | 12/10/14 | 1 | 146.90 |
| 251 | DEXT 5% SOD CL 0.45% KCL 20MEQ | 12/11/14 | 1 | 146.90 |
| 251 | DEXTROMETHORPHAN 60MG SUS | 12/10/14 | 1 | .10 |
| 251 | CELECOXIB CAP 200 MG | 12/10/14 | 5 | 39.25 |
| 251 | CELECOXIB CAP 200 MG | 12/11/14 | 1 | 7.85 |
| 251 | POLYETHYENE GLYCOL 17G | 12/11/14 | 1 | 7.85 |
| 251 | PANTOPRAZOLE TAB 40MG | 12/11/14 | 1 | 11.70 |
| 251 | BACITRACIN INJ 50000 UNI | 12/10/14 | 1 | 67.65 |
| 251 | BACLOFEN TAB 10MG | 12/10/14 | 2 | 5.30 |
| 251 | DOCUSATE SOD-SENNA 50/8.6 | 12/11/14 | 3 | .30 |
| 251 | METHOCARBAMOL TAB 750MG | 12/10/14 | 3 | 7.95 |
| 251 | RANITIDINE GELCAP 150MG | 12/10/14 | 1 | 5.20 |
| 251 | THYROID TAB 60MG | 12/10/14 | 1 | 2.65 |
| 251 | OXYCODONE TAB 5MG | 12/10/14 | 4 | 10.60 |
| 251 | OXYCODONE TAB 5MG | 12/11/14 | 1 | 2.65 |
| 251 | ROCURONIUM INJ 10MG | 12/10/14 | 1 | 107.90 |
| | Total for Revenue Code DRUGS/GENERIC | | 671.10 | |
| 260 | DSU IV PUSH INJECTION | 12/10/14 | 1 | 175.00 |
| 260 | IV PUSH INJECTION | 12/10/14 | 1 | 175.00 |
| | Total for Revenue Code IV THERAPY | | 350.00 | |
| 270 | ANES MASS/SPEC. MONITOR | 12/10/14 | 1 | 83.00 |
| 270 | ANES DISPOSABLE PRESSURE | 12/10/14 | 1 | 101.00 |
| 270 | ANES NON-CON CIRCUITS | 12/10/14 | 1 | 61.00 |
| 270 | ANES HUMID-VENT | 12/10/14 | 1 | 33.00 |
| 270 | ANES DISPOSABLE YANKEUR | 12/10/14 | 1 | 20.00 |
| 270 | ANES SPIRAL ET TUBE | 12/10/14 | 1 | 162.00 |
| 270 | ANES BREATHING MASK DISP | 12/10/14 | 1 | 20.00 |
| 270 | ANES PUMP TUBING | 12/10/14 | 1 | 34.00 |




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: I - INPATIENT
Service Type: MED - MED SURG
Date of Service: 12/10/2014 thru 12/11/2014
Physician: ARUBUOLA, OLUFISAYO E

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| | Total for Revenue Code MED-SUR SUPPLIES | | 514.00 | |
| 271 | POLARCARE COOLING SYSTEM | 12/10/14 | 1 | 372.00 |
| | Total for Revenue Code NON-STER SUPPLY | | 372.00 | |
| 272 | VIEW CUSHION | 12/10/14 | 1 | 58.00 |
| 272 | ANES ARTERIAL MONITORING | 12/10/14 | 1 | 428.00 |
| 272 | ANES RADIAL ARTERY GUIDE | 12/10/14 | 1 | 82.00 |
| 272 | SUTURE VCL+ 3-0 CP-2 18IN CR B | 12/10/14 | 4 | 168.00 |
| 272 | TRAY CATH BDX IC 16FR 350ML FL | 12/10/14 | 13 | 13841.00 |
| 272 | WIRE Y 1.45X559 LNG PK/4/FC-14 | 12/10/14 | 1 | 450.00 |
| 272 | BURR SRG 11CM 5MM MCMX FLUT BA | 12/10/14 | 4 | 1617.00 |
| 272 | BLADE ESURG 6.5IN 3/32IN 90- D | 12/10/14 | 3 | 2348.00 |
| | Total for Revenue Code STERILE SUPPLY | | 18992.00 | |
| 278 | OSTEOCEL BONE MATRIX 10CC/5016 | 12/10/14 | 1 | 17055.00 |
| 278 | ADHESIVE SKN CLSR 2-OCTYLCYANO | 12/10/14 | 1 | 34.00 |
| 278 | WIRE K W/STOP 2.5X120/KIT0145- | 12/10/14 | 2 | 450.00 |
| 278 | SCREW SCHANZ 4.0/KIT0284-03 | 12/10/14 | 10 | 16416.00 |
| 278 | NUVASIVE GSB ROD 35MM/11155035 | 12/10/14 | 3 | 25200.00 |
| 278 | PATCH CYGNUS SOLO AMNION 2X2CM | 12/10/14 | 2 | 8496.00 |
| | Total for Revenue Code SUPPLY/IMPLANTS | | 67651.00 | |
| 301 | COMP METABOLIC PANEL 2000 | 12/11/14 | 1 | 126.00 |
| | Total for Revenue Code LAB/CHEMISTRY | | 126.00 | |
| 305 | CBC AUTOMATED DIFFERENTIA | 12/11/14 | 1 | 55.00 |
| | Total for Revenue Code LAB/HEMATOLOGY | | 55.00 | |
| 320 | FLUOROSCOPY (MORE THAN 1 | 12/10/14 | 1 | 523.00 |
| 320 | XR SPINE-L AP & LATERAL | 12/10/14 | 1 | 357.00 |
| | Total for Revenue Code DX X-RAY | | 880.00 | |
| 360 | DSU PRE SURG | 12/10/14 | 1 | 400.00 |
| 360 | OR ACUITY 4 1ST 30 MIN | 12/10/14 | 1 | 3887.00 |
| 360 | OR ACUITY 4 EA ADDL MIN | 12/10/14 | 159 | 21306.00 |
| | Total for Revenue Code OR SERVICES | | 25593.00 | |
| 370 | ANES GEN 1ST 30 MIN | 12/10/14 | 1 | 1100.00 |
| 370 | ANES GEN EA ADDL MIN | 12/10/14 | 159 | 477.00 |
| | Total for Revenue Code ANESTHESIA | | 1577.00 | |




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: I - INPATIENT
Service Type: MED - MED SURG
Date of Service: 12/10/2014 thru 12/11/2014
Physician: ARUBUOLA, OLUFISAYO E

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| 420 | PT EVALUATION | 12/11/14 | 1 | 443.00 |
| | Total for Revenue Code PHYSICAL THERP | | 443.00 | |
| 430 | OT SELF CARE/HOME MGT TRA | 12/11/14 | 1 | 259.00 |
| 430 | OT EVALUATION | 12/11/14 | 1 | 432.00 |
| | Total for Revenue Code OCCUPATION THERP | | 691.00 | |
| 460 | SUSTAINED MAXIMAL INSPIRA | 12/10/14 | 1 | 66.00 |
| 460 | PULSE OXIMETER SINGLE DET | 12/10/14 | 3 | 348.00 |
| 460 | PULSE OXIMETER SINGLE DET | 12/11/14 | 1 | 116.00 |
| | Total for Revenue Code PULMONARY FUNC | | 530.00 | |
| 636 | RINGERS LACTATE 1L BAG B/1L | 12/10/14 | 1 | .10 |
| 636 | RINGERS LACTATE 1L BAG B/ | 12/11/14 | 1 | .10 |
| 636 | HYDROMORPHONE PCA 10MG B | 12/10/14 | 3 | 324.15 |
| 636 | VERSED 2MG V B/1MG | 12/10/14 | 2 | 48.00 |
| 636 | HEPARIN 1000U PM BAG B/10 | 12/10/14 | 1 | 13.15 |
| 636 | DILAUDID 1MG S B/4MG | 12/10/14 | 1 | 108.05 |
| 636 | VANCOMYCIN 1000MG V B/50 | 12/10/14 | 6 | 247.20 |
| 636 | DEXAMETHA 20MG V B/1MG | 12/10/14 | 20 | 147.00 |
| 636 | HEPARIN 5000UNIT V B/1000 | 12/11/14 | 5 | 65.75 |
| 636 | LIDOCAINE AMP 1% (PF) 5ML | 12/10/14 | 1 | .10 |
| 636 | ZOFRAN 4MG V B/1MG | 12/10/14 | 4 | 111.40 |
| | Total for Revenue Code DRUGS/DETAIL CODE | | 1060.00 | |
| 710 | PACU ADULT 1ST 30 MIN | 12/10/14 | 1 | 1001.00 |
| 710 | PACU ADULT AVG ADDL MIN | 12/10/14 | 75 | 1050.00 |
| | Total for Revenue Code RECOVERY SERVICES | | 2051.00 | |
| | Total Charges.....: 124605.10 | | | |

If you have any questions concerning this itemized bill or if you wish to make payment arrangements, please contact our Customer Service Department at (904)202-2092 or email us at ptaccounting@bmcjax.com

STATEMENT DATE: 1/23/2015 BUNHE000

Olufisayo Arubuola, M.D., P.A.
P O BOX 16574
JACKSONVILLE, FL 32245-6574
(904)221-2535

Heather A. Bundy
P O Box 1559

Camden, SC 29021

PAY BY CREDIT CARD: (904) 738-7812 OR (904) 221-2535 GRACE
or FILL OUT, FAX TO (888) 228-5536 or EMAIL TO XMEDBILL@AOL.COM

☐ MASTERCARD ☐ VISA ☐ DISCOVER

CARD NUMBER : _____

AMOUNT: $ _____ EXP. DATE _____

SIGNATURE: _____

MAKE CHECK PAYABLE TO: BALANCE DUE

Olufisayo Arubuola, M.D., P.A.
P O Box 16574
Jacksonville, FL 32245-6574

CHECK # _____ DATE: _____ $ _____

Patient: Heather A. Bundy Chart Number: BUNHE000

Place of service: Baptist Hospital 12-10-2014

| Dates | Procedure | Procedure | Charge | Paid By Guarantor | Adjustments |
|---|---|---|---|---|---|
| 12/10/14 | 99255 | Inpatient consultation | 396.00 | | 0.00 |
| 12/11/14 | 99233 | Subsequent hospital care | 160.00 | | 0.00 |

Balance Due

Florida Anesthesia Associates, P.A.
P O BOX 5278
Jacksonville, FL 32247-5278

Account No: LMFX119335
Patient Name: HEATHER A BUNDY
Account Balance: 2,470.00
Est. Due From Insurance: 0.00
Due From Patient Now: 2,470.00

000008 1614 **AUTO**MIXED AADC 350
HEATHER A BUNDY
PO BOX 1559
CAMDEN SC 29021-8559

Florida Anesthesia Associates, P.A.
P O BOX 5278
Jacksonville, FL 32247-5278

Please use my credit card for the above charges: ☐ VISA ☐

Card No. _____ Exp. Date _____

Signature _____

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

| PATIENT NAME | ACCOUNT # | LAST DATE OF SERVICE | LAST INSURANCE PAYMENT | LAST PATIENT PAYMENT | STATEMENT DATE |
|---|---|---|---|---|---|
| HEATHER A BUNDY | LMFX119335 | 12/10/14 | | | 01/05/15 |

| DATE | DESCRIPTION | DEBITS | CREDITS | BALANCE |
|---|---|---|---|---|
| 12/10/14 | Anesthesia Req'd by DR CANNESTRA | 2,470.00 | | 2,470.00 |

Florida Anesthesia Associates, P.A.
PHONE: 904-398-3356 FAX: 904-398-5397

Any amount not received from insurance within 45 days may become your responsibility

2,470.00
AMOUNT DUE NOW

Bundy-Surgery2-BaptistHealth 000008

Breg, Inc
Returned Mail Only - No Correspondence
PO Box 13150
Overland Park, KS 66282-3150

Send Payments to:

Breg, Inc
PO Box 844628
Dallas, TX 75284-4628

10144-19037

HEATHER BUNDY
PO BOX 1559
CAMDEN, SC 29021-8559

Account Number
264501
Patient Name
HEATHER BUNDY

Pay Online:
Breg.hmebillpay.com

**BILLING QUESTIONS**
(800) 264-0072
Monday - Friday
8:30 am - 8:00 pm ES

**IMPORTANT MESSAGES**
Any insurance provided has been applied, please reference your EOB.

The balance shown is your responsibility.

A processing fee may apply if payments are late.

**INVOICE: 549988**

| SERVICE DATE | DESCRIPTION | AMOUNT |
|---|---|---|
| 12/11/2014 | 1.000 - CONTOUR COMPLETE BLK M | $387.22 |

PATIENT OWES THIS AMOUNT

DUE: 02/09/2015
$387.22

PLEASE DETACH HERE AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

Pay Online: Breg.hmebillpay.com

☐ VISA ☐ MasterCard ☐ American Express ☐ Discover

CARD NUMBER EXPIRATION DATE

CCV/CVN SECURITY CODE BILLING ZIP

CARDHOLDER NAME SIGNATURE

Patient: HEATHER BUNDY
Account: 264501
Invoice: 549988-12/11/2014

PLEASE PAY THIS AMOUNT $387.22

AMOUNT ENCLOSED: _____

LATE AFTER 02/09/2015

Mail Payment to:
Breg, Inc
PO Box 844628
Dallas, TX 75284-4628

1 of 1

Bundy-Surgery2-BaptistHealth 000005

10144-19037




Baptist Medical Center Jacksonville
PO Box 45094
Jacksonville, FL 32232-5094
Phone: 904-202-2092
Fax: 904-376-4174
A Not For Profit Hospital

Date of Itemized Bill: 1/23/15
Account Number:
Patient Name: BUNDY, HEATHER A
Patient Type: O - OUTPATIENT (NOT IN A B
Service Type: RAD - RADIOLOGY
Date of Service: 01/06/2015 thru 01/06/2015
Physician: CANNESTRA, ANDREW F

Guarantor Name: BUNDY, HEATHER A
Guarantor Address: P O BOX 1559
City, State Zip: CAMDEN SC 29021

| Rev Code | Item Description | Date | Quantity | Total Charges |
|---|---|---|---|---|
| | Total for Revenue Code | | 71.40- | |
| 320 | XR SPINE-L AP & LATERAL | 01/06/15 | 1 | 357.00 |
| | Total for Revenue Code DX X-RAY | | 357.00 | |
| | Total Charges.....: 357.00 | | | |

If you have any questions concerning this itemized bill or if you wish to make payment arrangements, please contact our Customer Service Department at (904)202-2092 or email us at ptaccounting@bmcjax.com

Anesthesia Assoc of Charleston
125 Doughty St. Ste 420
Charleston, SC 29403

# ACCOUNT ACTIVITY STATEMENT

| Account No | Date | Page |
|---|---|---|
| | 08/08/2017 | Page 1 of 3 |
| Direct Telephone Inquiries to: | (843) 723-3441 | |

Heather Bundy
PO Box 1559
Camden, SC 29021

**PLEASE KEEP THIS STATEMENT FOR YOUR RECORDS**

Patient Name Bundy, Heather

Dx 1 M46.1 Sacroiliitis, Not Elsewhere Classified  Dx 2

Dx 3  Dx 4

| Date | Code | Activity Description | Physician | Referring | Amount |
|---|---|---|---|---|---|
| 02/17/17 | 27096 | Inject Sacroiliac Joint | Folk, Jeffrey | Folk, Jeffrey | 700.00 |
| 02/17/17 | 99202 25 | New Patient Office Visit | Folk, Jeffrey | Folk, Jeffrey | 300.00 |
| 02/17/17 | A4550 | Nerve/Joint Inj. Kit | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 02/17/17 | J1040 | Methylprednisolone | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 02/17/17 | VISITPQRI | G8427-Meds Docd/Reviewed | Folk, Jeffrey | | 0.00 |
| 02/17/17 | VISITPQRI | G8730-Pain Assess Pos w/Plan | Folk, Jeffrey | | 0.00 |
| 02/17/17 | VISITPQRI | 4004F-PT Tobacco Screen RCVD | Folk, Jeffrey | | 0.00 |
| 03/07/17 | 27096 | Inject Sacroiliac Joint | Folk, Jeffrey | Folk, Jeffrey | 700.00 |
| 03/07/17 | A4550 | Nerve/Joint Inj. Kit | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 03/07/17 | J1040 | Methylprednisolone | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 04/04/17 | 27096 | Inject Sacroiliac Joint | Folk, Jeffrey | Folk, Jeffrey | 700.00 |
| 04/04/17 | A4550 | Nerve/Joint Inj. Kit | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 04/04/17 | J1040 | Methylprednisolone | Folk, Jeffrey | Folk, Jeffrey | 100.00 |

**THIS IS AN ITEMIZED STATEMENT OF ACTIVITY ON YOUR ACCOUNT AND ONLY REFLECTS ACTIVITY FOR THE DATES SHOWN**

Anesthesia Assoc of Charleston
125 Doughty St. Ste 420
Charleston, SC 29403

# ACCOUNT ACTIVITY STATEMENT

| Account No | Date | Page |
|---|---|---|
| | 08/08/2017 | Page 2 of 3 |
| Direct Telephone Inquiries To: | (843) 723-3441 | |

Heather Bundy
PO Box 1559
Camden, SC 29021

PLEASE KEEP THIS STATEMENT FOR YOUR RECORDS

Patient Name Bundy, Heather

Dx 1 Dx 2
Dx 3 Dx 4

| Date | Code | Activity Description | Physician | Referring | Amount |
|---|---|---|---|---|---|
| 06/13/17 | 27096 | Inject Sacroiliac Joint | Folk, Jeffrey | Folk, Jeffrey | 700.00 |
| 06/13/17 | A4550 | Nerve/Joint Inj. Kit | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 06/13/17 | J1040 | Methylprednisolone | Folk, Jeffrey | Folk, Jeffrey | 100.00 |

THIS IS AN ITEMIZED STATEMENT OF ACTIVITY ON YOUR ACCOUNT
AND ONLY REFLECTS ACTIVITY FOR THE DATES SHOWN

Anesthesia Assoc of Charleston
125 Doughty St. Ste 420
Charleston, SC 29403

# ACCOUNT ACTIVITY STATEMENT

| Account No | Date | Page |
|---|---|---|
| | 08/08/2017 | Page 3 of 3 |
| Direct Telephone Inquiries To: | (843) 723-3441 | |

Heather Bundy
PO Box 1559
Camden, SC 29021

PLEASE KEEP THIS STATEMENT FOR YOUR RECORDS

Patient Name Bundy, Heather

Dx 1 Dx 2
Dx 3 Dx 4

| Date | Code | Activity Description | Physician | Referring | Amount |
|---|---|---|---|---|---|
| 07/25/17 | 27096 | Inject Sacroiliac Joint | Folk, Jeffrey | Folk, Jeffrey | 700.00 |
| 07/25/17 | A4550 | Nerve/Joint Inj. Kit | Folk, Jeffrey | Folk, Jeffrey | 100.00 |
| 07/26/17 | J1030 | Injection, Methylprednisolone 40 mg | Folk, Jeffrey | Folk, Jeffrey | 100.00 |

| | | | | |
|---|---|---|---|---|
| 12/17/13 | 72148 | MRI SPI CANAL&CNTS | $1,300.00 | $1,300.0 |

Location: IMAGECARE LLC NORTHEAST

PLEASE CONTACT YOUR INSURANCE WITH THE INFORMATION THEY HAVE REQUESTED FROM YOU.

| | | | | |
|---|---|---|---|---|
| 12/17/13 | 72141 | MRI SPI CANAL&CNTS | $1,300.00 | $1,300.0 |

Location: IMAGECARE LLC NORTHEAST

PLEASE CONTACT YOUR INSURANCE WITH THE INFORMATION THEY HAVE REQUESTED FROM YOU.

*To pay this statement electronically*
*Go to www.ePayitOnline.com*
CodeID: MSN00001 Access#: 3608024-1-2943

SCAN FOR MOBILE PAYMENT

***** You are responsible for payment in full within 20 days. *****

***** Visit our Patient Portal @ www.msnllc.net *****

Total Balance: $2,600.0

**AMOUNT DUE NOW: $2,600.0**

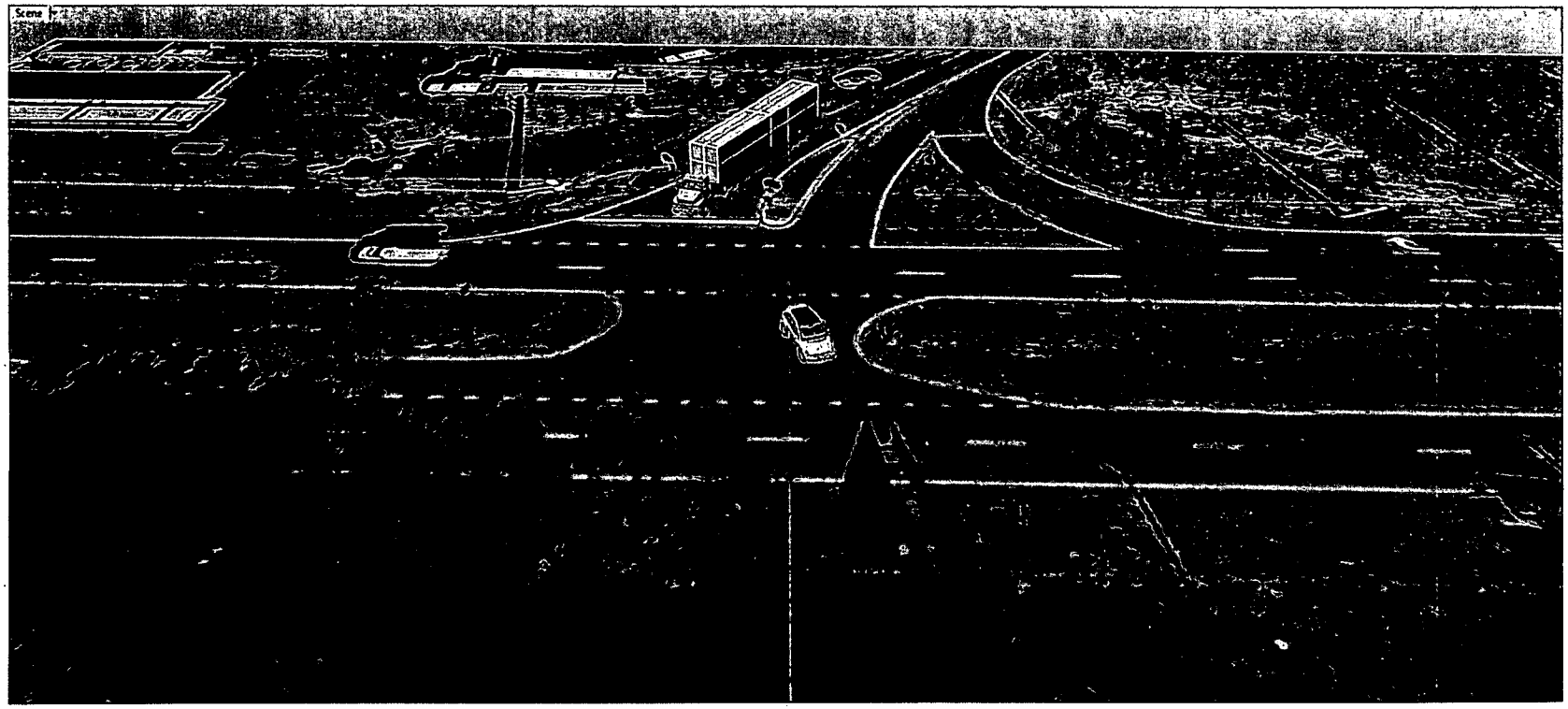
Patient: HEATHER BUNDY | Account Number: 129754 | Statement Date: 12/31/201

**Imagecare, LLC**
PO Box 1247
Covington GA 30015

**Toll Free: (800) 841-4236**

MSN00001-0370159-0007058-3608024-001-002943-#008402-0001

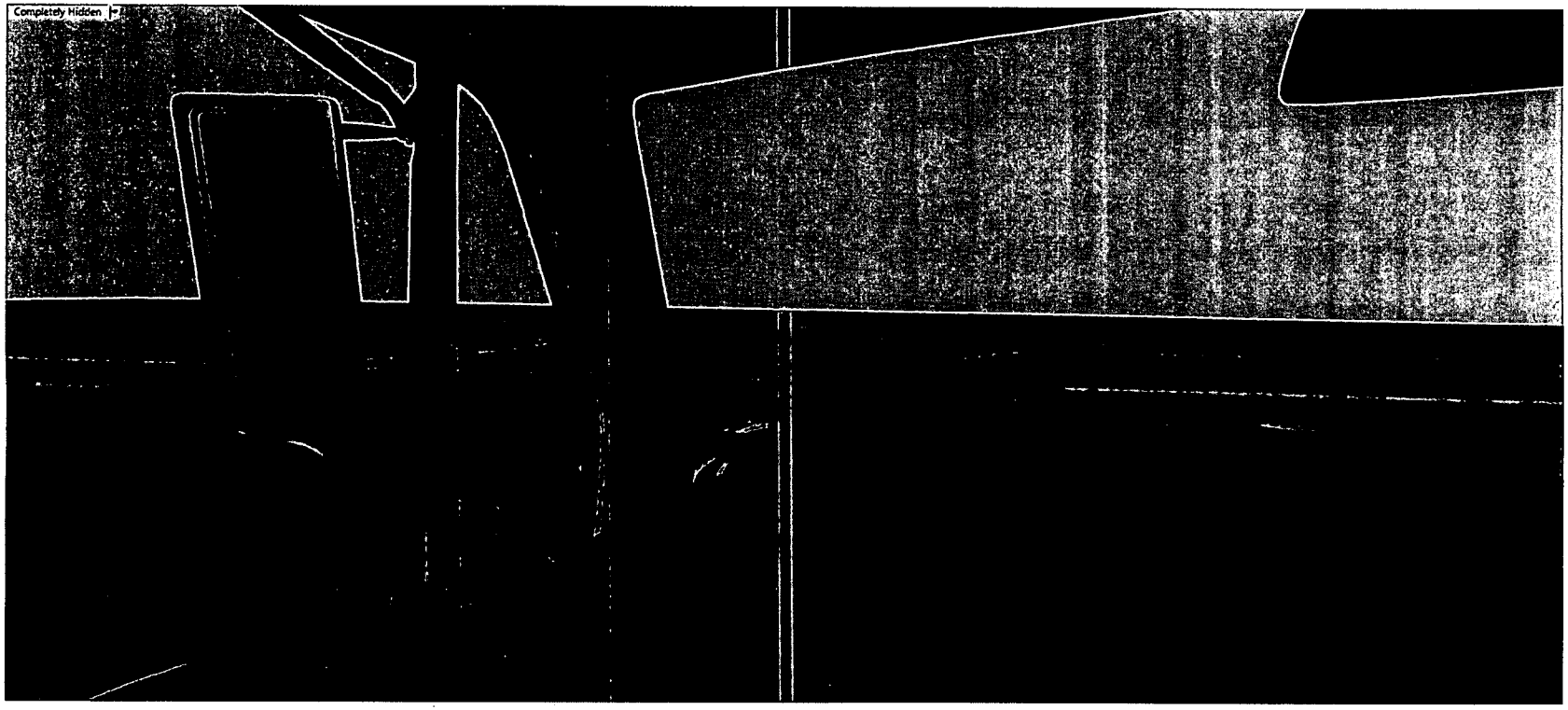
Bundy-ImageCare 000001




PLAINTIFF'S
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PLAINTIFF'S EXHIBIT 12
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**BUNDY MCDONALD, LLC**
ATTORNEYS AT LAW
1516 OLD TROLLEY ROAD, 2ND FLOOR
SUMMERVILLE, SC 29485

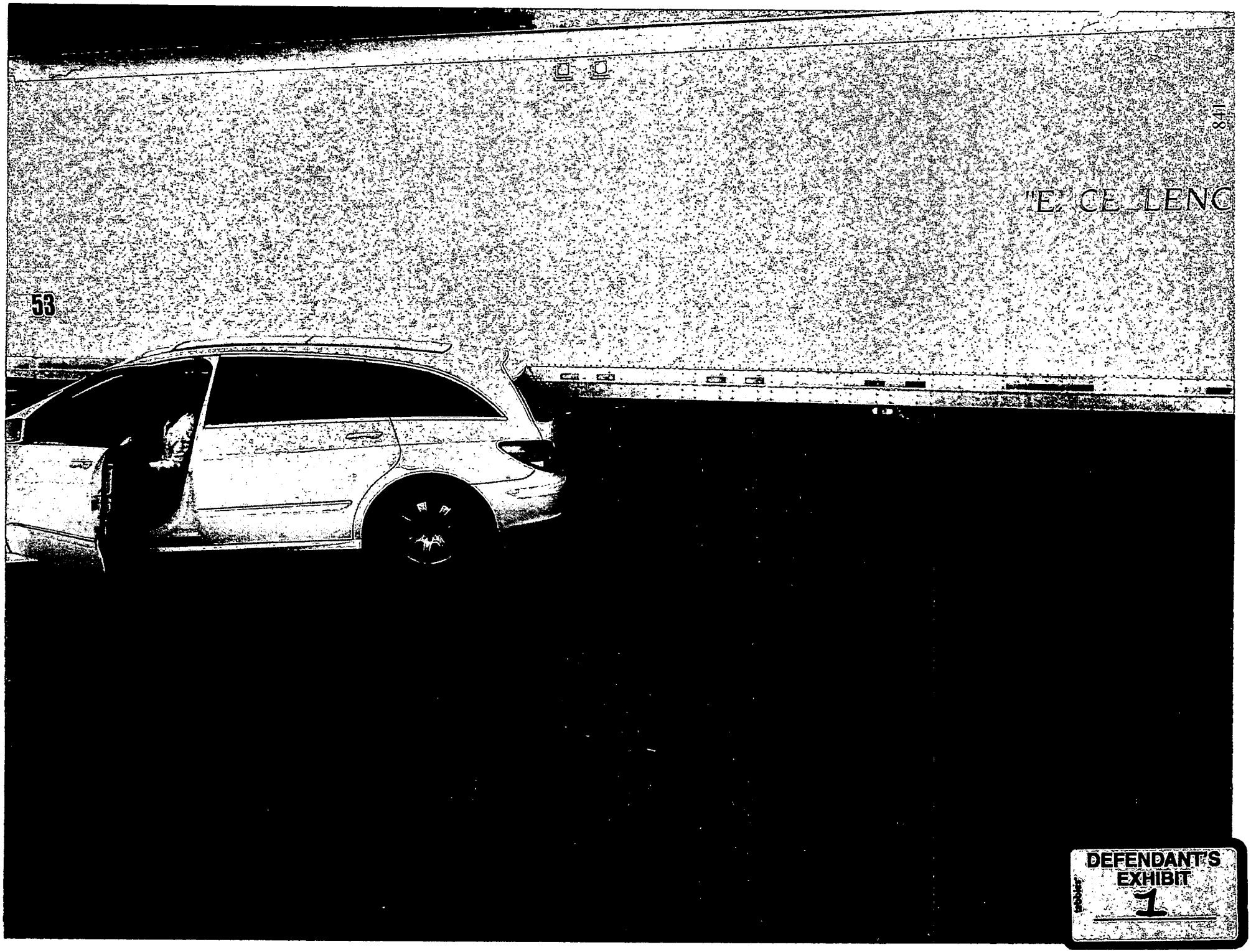


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PLAINTIFF'S EXHIBIT 13

PLAINTIFF – EXHIBIT 14 (Large Exhibit)

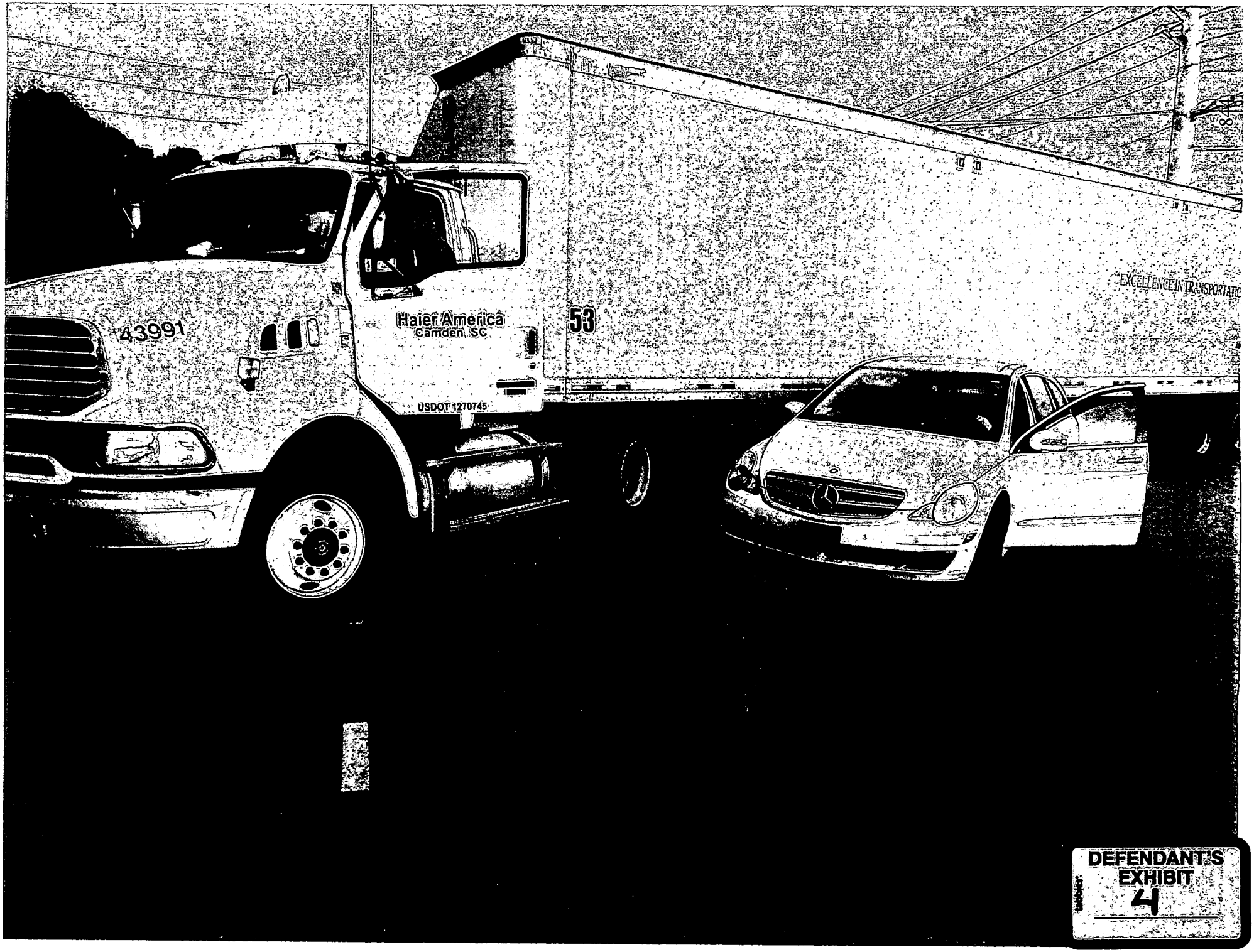
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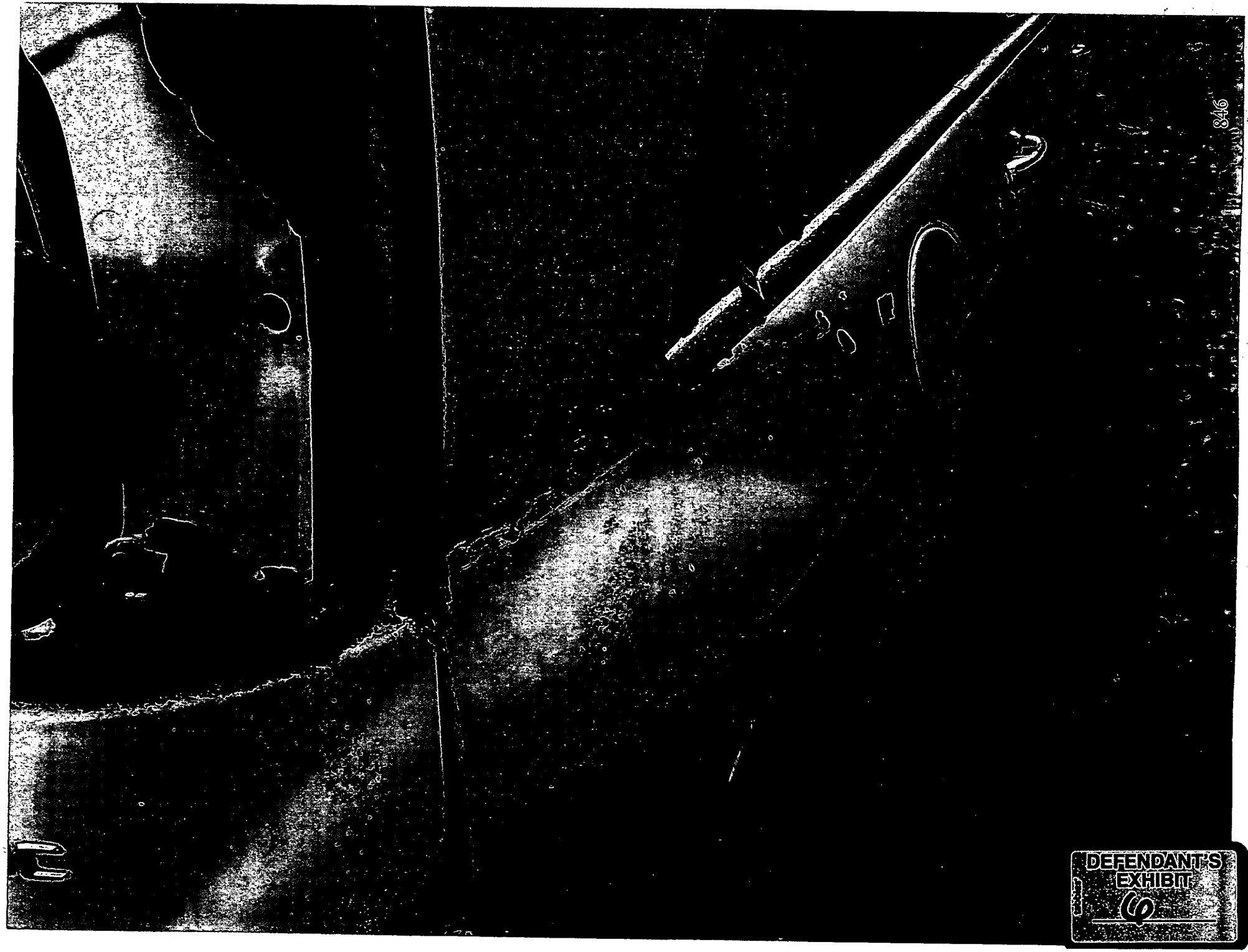
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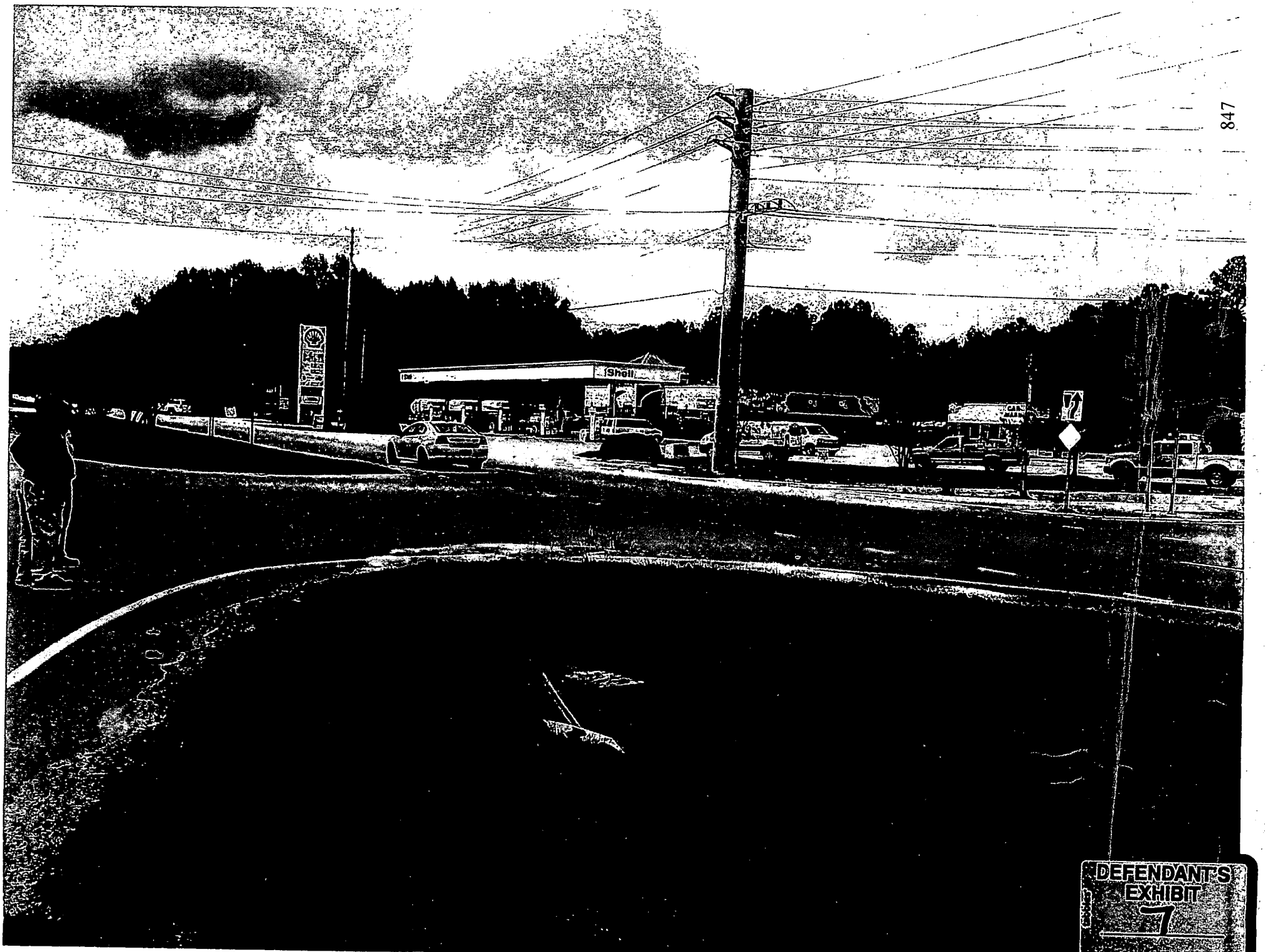
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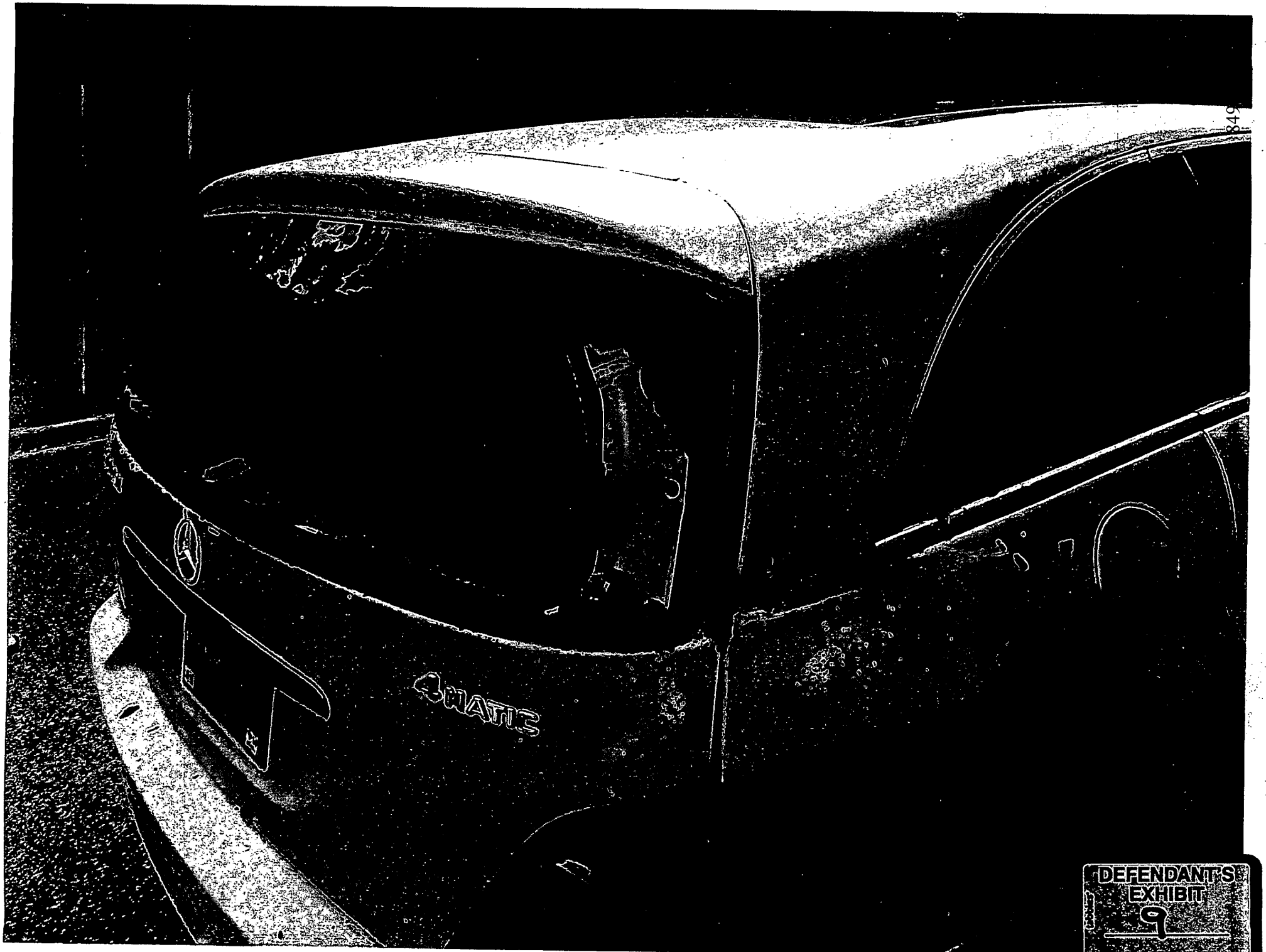
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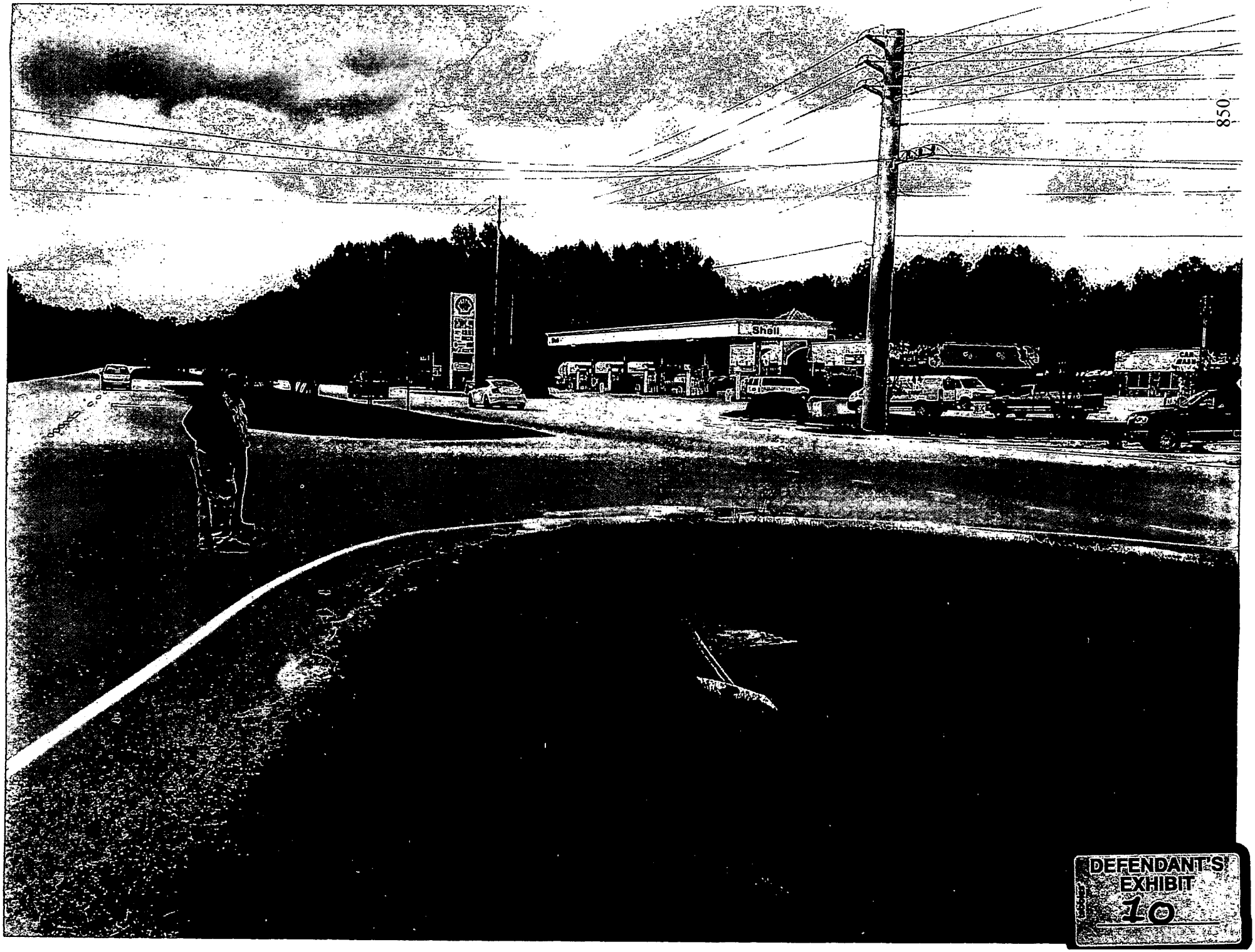

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DEFENDANT'S EXHIBIT 8


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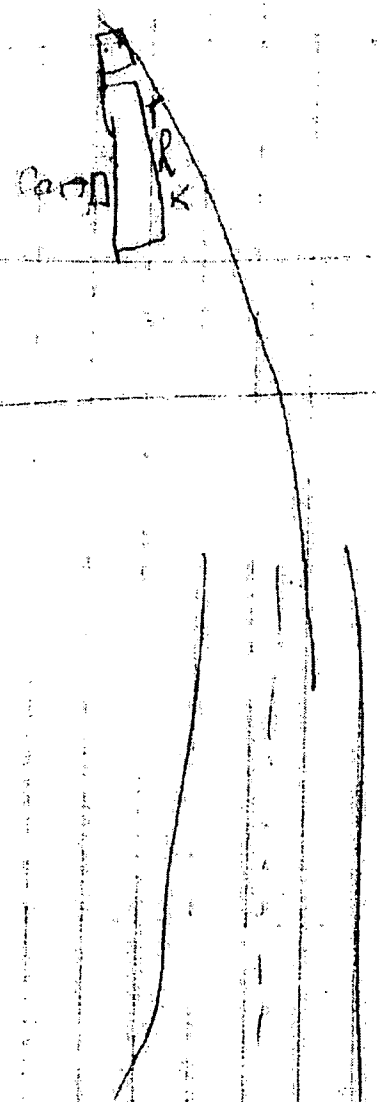



DEFENDANT'S EXHIBIT 10


STOP
DEFENDANT'S
EXHIBIT
17


Shell
DEFENDANT'S EXHIBIT 12
DEFENDANT'S EXHIBIT #1 BUNDY

Car pull in on my left side trying to Beat me making a left turn




521

Black River Rd

853

DEFENDANT'S EXHIBIT 13

**BUNDYMCDONALD, LLC**
ATTORNEYS AT LAW
1516 OLD TROLLEY ROAD, 2ND FLOOR
SUMMERVILLE, SC 29485
TELEPHONE: 888-552-1559

W.H. BUNDY, JR.
M. BRENT MCDONALD

Sarah Foster Rock, Paralegal
Direct: 843-492-4134
sarah@bundymcdonald.com

April 21, 2017

VIA U.S. MAIL AND E.MAIL

John M. Grantland, Esquire
Rogers Harrell, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260
jgrantland@murphygrantland.com
rharrell@murphygrantland.com

Re: Heather Anne Bundy, vs. Thomas Elroy Jett and Haier America Research & Development Co., LTD; Case No.: 2015-CP-28-852
File No.: 15-021

Dear Counsel:

Please find enclosed for service upon you Plaintiff's First Supplemental Requests for Production to Defendants Thomas Elroy Jett and Haier America Research & Development Co., LTD in the above referenced matter.

Sincerely yours,

Sarah Foster Rock
Paralegal to M. Brent McDonald, Esquire

/sfr
Enclosure / Attachment

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
| | ) | **FOR THE FIFTH JUDICIAL CIRCUIT** |
| **COUNTY OF KERSHAW** | ) | |
| | ) | **Case No. 2015- CP- 28 – 00852** |
| Heather Anne Bundy, | ) | |
| | ) | |
| Plaintiffs, | ) | **PLAINTIFF'S FIRST SUPPLEMENTAL REQUESTS FOR PRODUCTION TO DEFENDANTS THOMAS ELROY JETT AND HAIER AMERICA RESEARCH & DEVELOPMENT CO., LTD** |
| vs. | ) | |
| Thomas Elroy Jett and Haier America Research & Development Co., LTD, | ) | |
| Defendants. | ) | |

**TO: JOHN M. GRANTLAND, ESQUIRE, ATTORNEY FOR THOMAS ELROY JETT AND HAIER AMERICA RESEARCH & DEVELOPMENT CO., LTD**

Pursuant to Rule 34, SCRCP, Plaintiff Heather A. Bundy hereby serves this Request for the production and inspection of the Sterling Tractor involved in the motor vehicle wreck which is the subject of this action. The time and place for the production and inspection shall be May 22, 2017, at 10:00 am at the intersection of US 521/Broad Street and Black River Road, Camden, South Carolina.

BUNDY MCDONALD, LLC

M. Brent McDonald, Esquire
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Telephone: (888) 552-1559
**Attorney for Heather Anne Bundy**

Summerville, South Carolina
April 21, 2017

## CERTIFICATE OF SERVICE

I, Sarah Foster Rock, the undersigned employee of Bundy McDonald, LLC, attorneys for Plaintiff Heather Anne Bundy do hereby certify that on April 20, 2017, I served all counsel in this action with a copy of Plaintiff's First Supplemental Requests for Production to Defendants Thomas Elroy Jett and Haier America Research & Development Co., LTD by US Mail and E-Mail, to the following address(es):

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

Sarah Rock

Sarah Foster Rock

ELECTRONICALLY FILED - 2018 Feb 09 8:56 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF KERSHAW | IN THE COURT OF COMMON PLEAS |
| Heather Anne Bundy,<br>Plaintiff,<br>vs.<br>Thomas Elroy Jett and Haier America Research & Development Co., LTD,<br>Defendants, | CIVIL ACTION NO: 2015-CP-28-00852 |
| W. H. Bundy, Jr.,<br>Plaintiff,<br>vs.<br>Thomas Elroy Jett and Haier America Research & Development Co., LTD,<br>Defendants, | CIVIL ACTION NO: 2016-CP-28-00758<br>**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT N.O.V. OR NEW TRIAL** |

In Plaintiffs' Motion, they have offered no new grounds for a New Trial or Judgment NOV that were not previously ruled on by the Court during Motions in Limine or during the course of the trial. Each of the Plaintiffs' grounds raised in their Motion were either properly ruled on by the court or waived. Therefore, the Defendants respectfully request that the Plaintiffs' Motion be denied. The following are the Defendants' Responses to the seven grounds raised in Plaintiff's Motion for Judgement NOV or New Trial.

1. **Exhibit 13: Defendant Jett's diagram**

The Court correctly ruled that 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

ELECTRONICALLY FILED - 2018 Feb 09 8:56 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

accident happened after the accident. The Court concluded that Jett's diagram and brief 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 found additional grounds for the admissibility of the diagram. Under Rule 803(5), Defendant Jett's statement written in September 2013 was his recorded recollection of the accident. The diagram would therefore fall under the hearsay exception as a recorded recollection. Also, Defendant Jett testified that his statement was placed in his personnel file and kept in the course of a regularly conducted business activity of Defendant Haier. Therefore, it would also be considered a hearsay exception under records of a regularly conducted business activity pursuant to Rule 803(6).

**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. 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 correctly 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.

ELECTRONICALLY FILED - 2018 Feb 09 8:56 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

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.

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

The jury was presented with an overwhelming amount of evidence that the Plaintiff's medical bills and life care plan were not proximately caused by her accident with the Defendant. Plaintiff admitted to over five years of treatment for neck and back pain; her chiropractor admitted that Plaintiff had chronic and severe neck and back pain in 2008; expert testimony revealed Plaintiff's neck and back pain has existed for 20-30 years; Defendants' expert testified that the nature of the impact to the Plaintiff was very minor and less than 1G force. The Camden Police photos, admitted into evidence by consent, also showed the minor nature of the impact. All of this evidence raised the 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.

**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. 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.

ELECTRONICALLY FILED - 2018 Feb 09 8:56 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

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.

**6. Jury Charges**

The Plaintiffs submitted their jury charges to the Court without objection from the Defendants. The Defendants were not aware of any jury charges not allowed by the Court that would have had an impact on the jury's decision. Upon information and belief, the Defendants presumed that that there no objections to the charges or any objections were resolved by the parties and the Court.

**7. The Jury Verdict was Contrary to the Evidence**

The main issue in this case was who got into the median first. The jury heard a week of testimony and evidence, including photos of the vehicles taken immediately after the accident before the vehicles were moved from the scene. There was a substantial amount of evidence for a jury to conclude that the Defendant's tractor trailer was in the median first based on his own testimony, the testimony of both experts and the photos of the scene and vehicles. Moreover, the most important issue was the credibility of the parties, which was solely within the province of the jury and properly decided based on the evidence presented.

Therefore, the Defendants respectfully request that the Plaintiffs' Motion for Judgment NOV and/or New Trial be denied.

MURPHY & GRANTLAND, P.A.

*s/John M. Grantland*
John M. Grantland, Bar #64158
Rogers E. Harrell, III, Bar #101532
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100

*Attorneys for Defendants*

Columbia, South Carolina
February 9, 2018

ELECTRONICALLY FILED - 2018 Feb 09 8:56 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOR THE FIFTH JUDICIAL |
| COUNTY OF KERSHAW | ) | CIRCUIT |
| | ) | |
| Heather Anne Bundy, | ) | Case No.: 2015-CP-28-00852 |
| | ) | |
| Plaintiff, | ) | |
| | ) | CERTIFIED COPY |
| vs. | ) | |
| | ) | |
| Thomas Elroy Jett and Haier America Research & Development Co., LTD, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

VIDEO DEPOSITION OF
ANDREW CANNESTRA, M.D., Ph.D.

TAKEN ON BEHALF OF THE PLAINTIFF

DATE TAKEN: TUESDAY, APRIL 18, 2017

TIME: 4:25 p.m. to 6:16 p.m.

PLACE: Lyerly Neurosurgery
11 Tower B
800 Prudential Drive
Jacksonville, Florida 32207

EXAMINATION OF THE WITNESS TAKEN BEFORE:

HEATHER MANAZIR, RPR, FPR
INFINITY REPORTING COMPANY, LLC
915 DOYLE ROAD, SUITE 303 #302
DELTONA, FLORIDA, 32725
(386) 675-4045

APPEARANCES:

M. BRENT McDONALD, ESQUIRE
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
(888) 552-1559
brent@bundymcdonald.com

Attorney for the Plaintiff

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4406-B Forest Drive
Columbia, South Carolina 29206
(803) 782-4100
rharrell@murphygrantland.com

Attorney for the Defendants

ALSO PRESENT:

DANE UNKELBACHT, Videographer
Advantage Video Production, Inc.
9951 Atlantic Boulevard, Suite 101
Jacksonville, Florida 32225
(904) 724-9006
dane@advantagevideo.com

I N D E X

TESTIMONY OF ANDREW CANNESTRA, M.D., Ph.D.

Direct Examination by Mr. McDonald 5
Cross-Examination by Mr. Harrell 39

CERTIFICATE OF OATH 54

CERTIFICATE OF REPORTER 55

- - - - -

E X H I B I T S

PLAINTIFF'S EXHIBIT 1 36
(Compilation of Bills)
PLAINTIFF'S EXHIBIT 2 38
(Operative Report - First Surgery)
PLAINTIFF'S EXHIBIT 3 (retained by counsel) 39
(Operative Report - Second Surgery)

- - - - -

S T I P U L A T I O N

It is hereby stipulated and agreed by and between counsel present at this deposition and by the Deponent, that the witness review of this deposition was not reserved.

P R O C E E D I N G S

(Off the video record.)

(Andrew Cannestra, M.D., Ph.D., not present.)

MR. McDONALD: This is just before we get started, Mr. Harrell and I.

There's some records that we don't have from Dr. Cannestra that'll be coming in that -- that he's obviously going to have the opportunity to review.

We have a overview of the costs associated with the first and second surgeries that has the billing amounts. We're going to agree that -- to reserve that we can put in, at the trial of the case, the actual invoices associated with those. But for the purposes today, we're just going to use the overview that has the amounts detailed out. Fair enough?

MR. HARRELL: So agreed.

MR. McDONALD: And we were going to agree that we're going to reserve objections until trial.

MR. HARRELL: Agreed.

MR. McDONALD: That's it. Thank you very much.

(Off the record.)

(Andrew Cannestra, M.D., Ph.D., present.)

THE VIDEOGRAPHER: This is the videotaped deposition of Andrew Cannestra, M.D., taken on behalf of the plaintiff, Heather Anne Bundy v.

Thomas Elroy Jett, et al., Case Number 2015-CP-28-00852, being heard in the Court of Common Pleas for the Fifth Judicial Circuit, State of South Carolina, County of Kershaw.

The deposition is being taken at Lyerly Neurosurgery on April 18th, 2017, at 5:24 p.m. My name is Dane Unkelbacht with Advantage Video. The court reporter is Heather Manazir with Infinity Reporting.

Counsel, will you please introduce yourselves, and the witness will be sworn.

MR. McDONALD: Yes. I'm Brent McDonald, and I represent Mrs. Bundy.

MR. HARRELL: And I'm Rogers Harrell. I represent Haier America and Thomas Jett.

THE COURT REPORTER: Doctor, would you raise your right hand, please?

Do you swear or affirm that the testimony you are about to give will be the truth?

THE WITNESS: Yes.

THE COURT REPORTER: Thank you.

- - -

ANDREW CANNESTRA, M.D., Ph.D., having been produced and first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. McDONALD:

Q Dr. Cannestra, my name is Brent McDonald, and we've met briefly in the past and again day. And I understand we're later in the day, and I appreciate you being here. Okay?

A My pleasure.

Q Sir, where I would like to start is, you understand that we're taking your deposition via video here today, correct?

A Yes.

Q And I just want to make sure you understand that, in -- in taking this deposition via video, we're actually going to play this to the jury during the trial in this case. Okay?

A Yes.

Q And the reason we do that as a legal profession is we recognize that you all are very busy, and we don't want to have to have you come all the way to -- to court in Kershaw County and testify there. And this makes it easier when we just play the video for the jury.

But you understand that, correct?

A Yes.

Q Okay. Thank you. All right, sir.

And your practice is Lyerly Neurosurgery,

correct?

A Yes.

Q And it's located in Jacksonville, Florida?

A It is.

Q Okay. And are you from Jacksonville?

A No.

Q Okay. Where are you from?

A I was born in Chicago.

Q Okay. And, if you don't mind, I'd like to just have you tell the jury a little bit about yourself.

And I'd like you to start, just generally, where you are now with Lyerly Neurosurgery and what your role is there, and we'll just kind of work backwards into your education, if that's fair enough.

A Sure. I'm a neurologic surgeon. I'm in practice with Lyerly-Baptist Neurosurgery, is the name of the corporation, but Lyerly Neurosurgery. I've been a neurosurgeon here for 11 years. I am a spine-fellowship-trained neurosurgeon. I only do spinal surgery.

Looking at my education, we'll just start with my fellowship was done at the University of Miami.

Q And what is a fellowship, if you don't mind, Doctor?

A So a fellowship is training that you do in

addition to your residency.

Q Okay.

A So you go to medical school, then you go to residency, and then you go out and practice at that point, or you can become subspecialized and do additional training. And that's what a fellowship is.

Q Okay. Great.

A So my fellowship was done at the University of Miami. That was in spine surgery. It was at the -- done -- done at the Miami Project to Cure Paralysis down at the University of Miami.

Prior to that, my residency was done at UCLA.

Prior to that, I did my general internship, and that was also at UCLA.

Q And what is entailed during the residency period of your career?

A So after you graduate medical school, then you'll typically do an internship, and then you'll do a residency, and the residency is where you specialize.

So, for example, you graduate medical school, then you -- you start with a general surgery internship where you do general surgery, and then after that, you do neurologic surgery. And that was six years after, six years training after general surgery internship.

Q So after you got through with medical school,

and we'll get there in a second, you made a decision, in your own mind, Dr. Cannestra, I'd like to be a surgeon, so I need to go down this path, residency, fellowship, to learn how to be a surgeon, essentially?

A Correct. Those decisions are made, generally, in your third year of medical school. You have to apply and so forth. And so in my third year of medical school, then I was accepted into a program to become a neurosurgeon and neurology surgeon.

Q And where did you attend med school, Doctor?

A I also attended medical school at UCLA.

Q Okay. And medical school is four years?

A Yes. I did an M.D.-Ph.D. I have both my M.D. and my Ph.D., so that was done between 1993 and 1999.

Q Okay. And where did you go to undergrad?

A I did my undergraduate degree at UC San Diego in biomedical engineer [sic].

Q And prior to coming on with Lyerly Neurosurgery, where were you employed prior to that?

A I -- I came straight out of my training to Lyerly Neurosurgery.

Q Gotcha. So you've been here pretty much your whole career?

A Yes.

Q And when you say Lyerly Neurosurgery, we're

next to Baptist Health which is a hospital, correct?

A Yes.

Q Okay. And is that where you actually perform the surgeries, at the hospital?

A Yes.

Q Okay. And do you -- so you have hospital privileges there? Is that what it's called?

A Yes.

Q Okay. And do you have any children, Doctor?

A Yes, I do.

Q How many children do you have?

A I have two children.

Q Two children. I've got two children, as well.

And have you testified before in a legal action such as this?

A Yes.

Q Okay. And about how many times?

A I -- I don't recall. We can certainly get you a list. We keep track of it.

Q Okay. Well -- and that's not necessary -- 10 times, 30 times, something in that neighborhood?

A Yes, somewhere in that range, five, eight times a year maybe.

Q Okay. And are you required as a neurosurgeon to do any continuing education?

A Yes.

Q And how does that process work?

A So you're required to do -- it depends on the state, but somewhere between 25 and 30 hours a year of continuing medical education.

Q Okay. And that continuing medical education is relevant to your neurosurgeon practice?

A Yes.

Q Okay. And do you ever have an occasion to do teaching efforts?

A Yes.

Q And would you explain to the jury those?

A So just this last week I was at the International Society for Spinal Surgery, and I gave two lectures at that society.

I also have a clinical professorship at the University of Hawaii in Honolulu, and I fly there about every two months, and I teach there, as well.

I also teach industry techniques, cadaver labs, et cetera.

MR. McDONALD: And at this time, I'm going to offer Dr. Cannestra as an expert in neurosurgery, spinal neurosurgery, and spinal injuries.

MR. HARRELL: Without objection.

BY MR. McDONALD:

Q All right. Sir, you understand that what brings us here today is a motor vehicle wreck that your patient, Ms. Heather Bundy, was in on September 3rd, 2013, correct?

A Yes.

Q Okay. And you understand that I represent Ms. Bundy, correct?

A Yes.

Q Okay. And can you tell the jury -- the motor vehicle wreck was on September 3rd, 2013. Can you tell the jury when Ms. Bundy first came to see you?

A She saw me first on May 29th, 2014.

Q Okay. And that's about a lag of seven months, something like that, correct?

A Eight months, yes.

Q Eight months. Okay.

And prior to coming to see you, do you know if Ms. Bundy tried other forms of treatment other than surgery after the wreck?

A Yes. The patient had stated that she had attempted bedrest, physical therapy, chiropractic manipulation, spinal injections, anti-inflammatory medications, and pain medication.

Q And is that -- in your experience, is that rare that one of your patients would -- prior to jumping into

surgery, would try and find other things that may address the problem or alleviate pain?

A No, that's quite typical. Most people want to avoid surgery, so they try alternative methods.

Q Surgery being, essentially, a, you know, last scenario for it?

A Correct.

Q Okay. And tell the jury, if you would, what conservative pain management is.

A So conservative pain management, at least the term when I -- when I use conservative management, I'm referring to nonoperative management. And so when you talk about pain management in the realm of -- of conservative care, you're talking about epidural steroid injections or facet injections.

There's other procedures, radiofrequency lesioning, et cetera, but procedures, basically, that are done with a needle, trying to avoid surgery.

Q And when a patient comes to you who has attempted conservative pain management, do you always recommend surgery out of the box?

A No.

Q Okay. And how do you go about making a determination?

A patient walks into your office, walks through

the doors, and what -- what is your evaluation process, just generally speaking, first, to make a determination whether or not that can -- that patient is a candidate for surgery?

A So a patient has to come in with a problem that's fixable. So what I look for are signs and symptoms of what a patient has. I look at the films to see if the symptoms they're describing are explained by the MRI or CT or whatever -- whatever film I have.

And, obviously, I examine the patient, looking for the signs and symptoms associated with that process.

If it's a fixable problem, then surgery -- surgery is a possibility. We then want to manage them conservatively and try injections, physical therapy, et cetera, to see if they need to have surgery or not. If then surgery becomes the last resort, then I'll go ahead and offer surgery at that point.

The caveat to that is that if there's something that's dangerous, then, obviously, I -- I need to recommend surgery earlier.

Q Sure. And you mentioned that you'll examine them. Is that a physical examination?

A It is.

Q Okay. And tell the jury a little bit about how you evaluate a patient. There's a physical examination,

and, I guess, you also rely upon question and answer that you -- you ask the patient, correct?

A Correct.

Q Okay. And can you explain that process a little bit?

A So first, you take a history from the patient. You want to find out what happened, how long it's been going on, what the nature of their pain or weakness or symptoms are.

Once you have that information, then you go ahead and do a physical examination. And that can vary based upon what -- what we're looking at.

But, in general, we check strength and sensation and coordination, check reflexes. You check their balance and how they're walking, for example.

Q Okay. And that would be both the -- the question-and-answer scenario with your patient and your actual examination of the patient, correct?

A Yes.

Q Okay. Now, when a patient generally -- I'm just generally speaking now -- comes in, and you get to the point where you think surgery is an option, do you go over the risks of that surgery with the patient?

A I do.

Q And how important is that in your business to

go over those risks?

A Well, it's very important. That's part of what we call informed consent. So the patient needs to know what they're getting into, that there are risks associated with doing the procedure.

And that's covered at the moment we talk about surgery. We talk about the risks. We talk about benefits. And we talk about, you know, certainly, catastrophic things that can happen and, also, about expectations, and what -- what kind of resolution to their symptoms to expect, as well as what to expect in recovery.

Q Okay. And now you testified earlier -- going more specific to Ms. Bundy, you testified earlier that she first came to see you in May of 2014?

A Yes.

Q Okay. And how did she present at that time?

What -- what was your understanding of her -- her issue at that time?

A So my understanding is that she was involved in this motor vehicle accident. She had been managing herself conservatively with all the treatments that we discussed earlier.

She was talking about pain and stabbing at the base of her neck with aching down the lateral aspect of

the arms, so that's really kind of this part of the arm into the forearm. We call that a C6-type distribution because it corresponds to the C6 nerve.

She was having headaches, period. She noted that with two epidural injections, she -- she had improvement. It -- it didn't last long, unfortunately.

She also talked about having low back pain with stabbing in the low back, without radiation to her legs.

She felt that she was getting worse, and -- and that, at this point in time, she would consider surgery.

Q Okay. And did you perform the evaluation that we talked about?

The question-and-answer and the physical examination, did you perform that with Mrs. Bundy?

A I did.

Q Okay. And after you performed that physical examination and question-and-answer session -- session, did you have an opportunity to either recommend or not recommend surgery?

A I did.

Q Okay. And what was the upshot of that recommendation?

A So at that point, I -- I discussed the possibility of working on her neck first, and we talked about doing a C5-6 and C6-7 anterior discectomy and

fusion.

Q Okay. And -- and at that time, did you go over the risks of that particular surgery --

A I did.

Q -- with her?

And what are those risks?

A So those risks are bleeding; infection; pain; scar; leak of the spinal fluid; weakness; failure to relieve symptoms; need for additional procedures, including issues associated with swallowing, such as a feeding tube or tracheostomy; weakness; paralysis; detritus range of motion; damage to the esophagus; hoarseness of voice; difficulty swallowing; damage to the carotid artery, the jugular vein; failure to -- to fuse; having a nerve-root palsy; incontinence; heart attach; stroke; death.

We discussed that I can't guarantee any outcome, that there's other unforeseen surgical risks, as well.

We talked about other issues, such as the hardware placement, as well, as well as using things like stem cells.

Q And so at that time, after you made the recommendation as to surgery, and you went over the risks of surgery, what did Mrs. Bundy elect to do?

A She wanted to proceed with surgery.

Q Okay. And there was -- there's actually two surgeries that you performed on Mrs. Bundy, correct?

A There is.

Q Okay. So I'd like to talk about just the first one right now.

And would you -- and we have what you brought -- kindly brought from your office, a spinal model here. And would you explain to the jury what this surgery is? And then we'll talk about how you actually do it.

A So the first surgery I recommended and the first surgery I performed was -- was coming in the front of the neck and taking the disks out and doing a fusion across two segments, and that's at C5-6 and C6-7.

So when you look at a spinal model, this is the front of the spine, as I'm standing here or sitting here. What we do is we take the disks out, and we replace them with a spacer.

And so there's a lot of things in here, but if we just focus on that upper one here, this just shows that disk that was here was removed and it's -- it's replaced with this little black spacer in there and then a little plate and screw on the front of it. That's what a one-level fusion looks like.

For her, I did two, and so the plate ends up

being longer, so that's what you see down here, the -- the plate is longer. These two disks would have those spacers placed in.

Q Okay. And so the -- there would actually be -- it looks like three screws into the -- into the spine, itself, the bone portion of the spine, itself?

A Correct.

Q And what -- and I know you utilized some terms, C5, C6 and, I guess, C7. Can you point to the jury where those are?

A Sure. So the bones are numbered C1 to C7 in your neck, so 1, 2, 3, 4, 5, 6, 7. And so it'd be between C5 and C6 and C6 and C7.

Q Okay. And explain to the jury, if you would, just briefly, how you go about -- I know you said you come in through the front of the neck, but just how that surgery goes, from your standpoint, from beginning to end, so to speak.

A Sure. So we come in the front of the neck. I'll make a small incision about this big. I'll typically hide it where the neck folds, where you have a neck crease.

I'll go on down there. There's a little muscle in there that we split, and then we follow this muscle down. This is the sternocleidomastoid. And then we

push the throat out of the way. So we scoot the throat over, and your spine is right back behind your throat.

The carotid's there, also, as well as the jugular is there, so you have to be on the -- the -- what we call the medial side or the inside of those. And that's actually where the -- the spine is, right there.

There's two other muscles we have to elevate. Those are called the longus coli. Then we go ahead and put a retractor in there to hold things out of the way, and that exposed where the -- the spine is.

We shoot some x-rays to make sure we're at the right levels, and we count down and make sure we're at the right disk levels. There's some distraction pins that we put in the spine to hold it open, and then we go ahead and clean out the disk material.

So the disk material's cleaned out. You then bring in a microscope and do the fine work right on top of the spinal cord and the nerves with microscopic instruments and pull that material out.

Once the decompression or the disk removal is complete, you shave the bone, all right, try to roughen it up a little bit to promote bone growth. You then take that spacer and put it back between the bones to hold the bones open.

Inside that spacer, we pack stem cells, and we -- we pack the bone shavings that we collected during the drilling process to promote the bone growth.

We go ahead and repeat that at the next level, then once that's complete, we go ahead and put the plate and screw across the front of the spine to hold it all together.

Q Okay. And then, I assume, you sew them back up --

A Yes.

Q -- on the front of the neck?

A We go ahead and close, yes.

Q Now, is the purpose of this surgery to alleviate pain? Is that why people undertake this surgery?

A Yes.

Q Okay. And did you make a determination based upon your examination of Ms. Bundy, based upon your experience, and based upon actually having done the surgery -- did you make a determination to a reasonable degree of medical certainty that it was more probable than not, greater than 50 percent, that the surgery was necessitated because of the September 3rd, 2013 motor vehicle wreck?

A Yes.

Q Okay. Now, once you perform the surgery, what is the recovery process?

A So the patient is placed in a neck brace or a collar for a six-week period. After those six weeks, we then get them out of the collar, and we start them in physical therapy.

We follow the patients at 2 weeks, 6 weeks, and 12 weeks. When they come back for the 12-week visit, depending on how they're doing, we can either discharge them, if they're doing well, or continue physical therapy, if they need some additional therapy for their neck.

Q Okay. And in addition to that recovery, is there pain associated with that recovery time?

A Yes.

Q Okay.

A It -- it's surgery. It -- it hurts.

Q Okay. And -- and that pain, is that pain -- do you all try to manage that with -- with prescriptions and things like that in order to --

A Yes.

Q -- minimize the pain?

A We prescribe pain medication as well as muscle relaxants during that time.

Q Okay. And tell us, in addition, after the

recovery period -- let's assume that the surgery went as planned. Well, let's not.

Did the surgery with Mrs. Bundy go as planned as far as you are concerned, the first surgery that you did on the neck?

A Yes.

Q Okay. And if the surgery goes as planned, are there prohibitions -- after an individual has these screws put in their spine, on this particular surgery, are there prohibitions that they have moving forward?

A Yes. So the short term, obviously, during recovery, we have very strict restrictions on the patient. But after, approximately, six months, my long-term restrictions are the patients are never to lift more than 50 pounds and not to do any overhead lifting.

Q Okay. Okay.

And are -- is -- is the term impact activities a term of art in your business?

A Yes.

Q And can you explain that to the jury, what an impact-type activity is?

A So we ask our patients not to do impact activities. So those are things like running and jogging, anything, basically, where you're -- you're

pounding the pavement, so to speak.

So the -- the issue is really that -- that when you do impact act- -- activities, you know, a lot of people think about their -- their hips, their knees, their joints. But your spine does that, too, and -- and you pound those disks. So we ask the patients to really avoid those type of activities, as well.

Q And is that forever, no impact --

A That is forever, yeah.

Q Okay. And what about tennis? Do you recommend tennis to a -- to a patient that's had this type of surgery?

A I do not. That -- tennis, certainly, is an impact exercise, and we recommend that they stay away from that.

Q And does it also have components of -- I don't play tennis, but does it also have components of overhead actions?

A The overhead actions aren't so much of an issue. The issue is lifting overhead. Okay? That's the restriction that I like to have the patients on after cervical surgery.

Q Now, let's talk -- talk about spondylosis. What is spondylosis, Doctor?

A Spondylosis is spurring.

Q Okay. And spurring in bone, I guess?
A Yes. The bones --
Q Okay.
A -- they're bone spurs.
Q Okay. And can -- in -- in your opinion, can a patient or an individual that has any signs of spondylosis -- can they get injured in a motor vehicle accident with an 18-wheeler? Can that -- can that happen?
A Yes.
Q Okay. So it would -- it would be incorrect to suggest, you believe, that if a patient had spondylosis, they just couldn't get injured in a -- in a motor vehicle accident with an 18-wheeler?
A That'd be incorrect.
Q Now, can you -- if a patient had spondylosis or bone spurring or any -- any type of issue that they had been managing in the past, is there something called aggravating an injury in your business?
A Yes.
Q And can you explain that to the jury?
A So you can have prior changes in your spine, such as bone spurring, and you can be asymptomatic. And then you can suffer a trauma and have an aggravating of that prior issue, so that, in essence, you have no

symptoms before, but you have symptoms after.

If you were to do a scan when a patient doesn't have any symptoms, you would see the spurring. But the patient has -- has no symptoms before the event, so that's not really an active process.

You then have that additional trauma or that additional event or whatever it might be. Their symptoms begin, and they may be unrelenting after that. So that's an aggravation of a pre-existing system.

Q So do you ever see where a patient is potentially performing -- successfully performing, what we talked about earlier, maybe some conservative pain management that's working, you have that event, to use your word, and then there's a necessity for surgery thereafter?

A Yes.

Q Okay. And do you see that pretty routinely in your business?

A It's quite common.

Q Okay. Now, let's talk about, if we can, Doctor, the second surgery.

Did Mrs. Bundy come to you in order to perform a second surgery?

A She did. We discussed it on the initial visit. Shé returned three months after her original surgery

doing very well from her neck and wanted to proceed with the low back surgery.

Q Why didn't -- if you discussed it during the initial consultation, why didn't you just do both of them at the same time?

A I won't operate on someone's neck and low back at the same time. That, I think, is not appropriate. That's a large recovery. Medically speaking, you run the risk of having an infection at one or both levels, and then infections can spread through the bloodstream. And then that's not really appropriate.

Q Okay.

A So . . .

Q So from your standpoint, that's just too risky?

A Correct.

Q Okay. So the second surgery, you said she came back to you three months later in order to perform the second surgery that you all actually discussed during first consultation, correct?

A Yes. She returned back to my office on September 11th, 2014. At that point, I wanted to see how she was doing from her neck surgery. She was doing very well. And at that point, she wanted to address her low back.

Q Okay. And would you explain to the jury, if

you would, Doctor, how the lower back surgery worked?

A So for the low back, once again, I performed a fusion. And it's done very similar -- similar concept. It's just done from the back.

So with -- with low back surgery -- it's very easy to come in from the front of the neck because the -- the axis is right there. Coming from -- for the low back, coming in from the front, all your abdominal organs are there, so we try to actually come in from the back in that regard.

So that surgery is done -- and this model is a little complex because there's a lot of stuff in here. But, basically, what we want to do, once again, is we want to take the disk out. So in this case we're talking lower disk. But this is an example where the disk has been removed, and, again, those wedges or those spacers are placed where the disk was.

And how that's done is you come on down -- and ignore the screws for a second. What we do is we -- we create a small incision, again, about this big, on either side of the spine. And it's done minimally invasive with a small retractor.

We go on in there, and we remove a section of bone in order to get around the nerves. We then take the disk out, and then we drive the spacers where the

disk was, again, trying to elevate the bone and trying to provide some height back to the disk space. We then put in the screws afterward. Okay?

For her, she only has four screws back there, so it's really -- you have to ignore the -- how long the rod is -- again, this is kind of a general model -- but two screws connected by a rod in between.

Q On each side of the spine?

A On each side, so, yes, on both sides, kind of like that.

Q Now, the spacers that you talked about earlier, looks like there's a -- there's a metal spacer, and then it looks the other ones were more a rubber material. Is it a different spacer in the lower back there?

A So the spacer that she has is a metal spacer --

Q Okay.

A -- that she has.

Q And on the second surgery, Mrs. Bundy undertook -- you undertook to perform that surgery on her, correct?

A Yes.

Q And are there -- you said you insert the screws after -- in this as it differs from the -- from the neck surgery.

When you say you insert the screws after, what

do you mean?

A So it's a little more complex than that. So there's four sets of screws, and the screws are placed under -- under robotic guidance. Okay? I'll just verify that we actually -- oh, so in her case we didn't use the robotic guidance. They're placed under fluoroscopic guidance, so they're put in, minimally invasive, under two x-ray machines.

So we put wires in place where -- to kind of hold the track where we want the screw to go. And when we're doing the decompression, when we're taking out the disk, we put in one set of screws to hold it open, and then at the end of the procedure, we put in -- after the -- the wedges are in place, we put in a second set of screws. And then we kind of manipulate both screws to -- to realign the patient and get a good lordosis to their spine.

Q And then you close them back up?

A Then we close the incisions.

Q Okay.

A Yes.

Q Close the incisions. Okay.

And the recovery time associated with that surgery, what -- what are we looking at in time?

A So it ends up being about twice as long as --

as for a neck surgery, so --

Q And why is that? Why is it twice as long?

A It just happens to be more painful.

So the patient wears a back brace, again, for six weeks. We then typically start pool-based therapy or real gentle physical therapy for four to six weeks. Then we start regular, gym-based therapy for another six weeks.

And the -- the back just has very different forces and loads on it than the neck. For example, there's only ten pounds sitting on your head, where your whole body weight sits on your -- sits on your spine, so it just takes a lot longer to recover from that procedure than the neck.

Q And after having examined Ms. Bundy, giving her your recommendations, and performing the surgery on her, did you make a determination that it was more probable than not, to a reasonable degree of medical certainty, that it was the motor vehicle accident that necessitated this second surgery?

A Yes.

Q Now, let's talk about these two surgeries. And I'm just -- I know they have actual, special names, but I'm just going to refer to it as the neck and back surgery, if that's fair enough with you, Doctor?

A Sure.

Q Okay. The -- is there a probability -- once you have that neck surgery, is there a likelihood that, in the future, you're going to have to have another neck surgery?

A Yes.

Q And -- and will you explain that to the jury, how it works?

A So once -- once you do a fusion in either part of the spine, what happens, that -- that level doesn't move anymore, and so the stress that is normally across that level for motion is transferred to the level above and below. Those tend to, therefore, wear out over time.

The rate that it wears out in the neck is 2.9 percent per year. It's a very well-known number, actually. That actually is a rate for needing additional surgery. So it's an annualized rate.

So the -- if you take, for example, we'll -- we'll call it 3 percent. If you take 100 percent -- a hundred people, three people will have to have surgery that following year. And it's cumulative, so that the next year, then six people have had that surgery, nine year, nine, et cetera, every year that goes on.

So it's a 3 -- 2.9 percent per year. So at ten

years, 29 percent of the people have already had surgery. All right? Now, whether there's a fusion or a disk replacement, it's really about tracking surgeries over time.

In the low back, it's the same concept, except for, again, as I just mentioned, the loads are different in the low back, so the rate's higher. It's about 5 percent per year. So at ten years, 50 percent of people have already had surgery.

Q So at -- so on the neck surgery at -- and you'll have to forgive my math, Doctor. But at the neck surgery after, say, 20 years, roughly in the neighborhood, 60 percent of the people will have to have that surgery, again?

A Correct. Normally, what we do is we counsel patients that, at 17 years in the neck, likely, you'll have another surgery because 17 times 3 is 51 percent.

Q Okay. Okay.

A Okay? And for the low back we say 10 years because 10 times 5 is 50 percent.

So when people ask us how long it's -- how long it'll last, we say, well, you know, the average is 17 years for the neck.

I always say someone has to be the unlucky 3 percent the first year. Someone else gets to make it 34

years, okay, but that's just the average; and the same thing with the low back, that the average is 10 years. Someone has to be the unlucky 5 percent the first year, and someone else gets to make it 20 years.

Q Okay. And prior to having these two surgeries, did you explain that to Mrs. Bundy?

A I did.

Q Okay. And that was part of the consultation process, what you called the informed consent process, correct?

A Correct.

Q Have you had an occasion to recently see Mrs. Bundy?

A She was last seen in my office on December 13th, 2016.

Q Okay. And do you -- what was the purpose of that visit?

A She was still having some low back pain, worse on the right than on the left.

Q Okay. And after, did you perform the -- what we talked about earlier, the question and answer and the physical examination?

A I did.

Q Okay. And what was the diagnosis as a result of that?

A Well, she had returned back to my office. She was actually pain free until relatively recently. She did some lifting, and she was having pain, really, over the low back and over the right side of the sacroiliac joint.

So right where the pelvis meets the spine is the SI joint. You can feel it in yourself, kind of that bony prominence over where the pelvis meet the spine. And that's where she was having pain.

At that point I wanted to get a CT of the back to examine the fusion construct, but I wanted her to proceed with some conservative management in the right-side SI joint, which would include some injections.

Q Okay. And that's not something you do; you would refer that to a diff- -- another doctor, correct?

A Correct. I don't do injections.

Q Okay. And you have not seen Mrs. Bundy since then?

A No.

(Plaintiff's Exhibit 1 was marked for identification.)

BY MR. McDONALD:

Q Okay. I'm going to hand you what I'm going to mark as Exhibit 1, sir. And I'll represent to you this

is a compilation of the bills associated with the first and second surgery, and ask you if you're able to look at that and make a determination that those are reasonable medical costs for these surgeries from Lyerly Neurosurgery and Baptist Health?

A So I'm certainly not a hospital representative, so it's hard for me to comment on the hospital side and the charges.

With respect to me, provided that this is the summary of my office charges, then I'll just glance through those real quick.

Sure. Once again, with respect to my charges and -- and my nurse practitioner and my office, they look reasonable and customary.

Q And those are the charges you would expect to see with these two types of surgeries?

A Yes.

Q And I neglected et to ask you something, Doctor. You'll have to forgive me.

But can you explain to me, after a patient that has had both the neck and the back surgery, what type of limitations they have that are, you know, forever, as far as -- as long as they live?

A So they're -- they're similar. I lower the weight when you have a low back surgery, so I -- I ask

patients not to lift more than 40 pounds --

Q Okay.

A -- with respect to low back. But it's the same, no overhead lifting and avoiding impact exercises.

Q Did you say 40 pounds?

A 40 pounds, yes.

Q Have you ever seen Mrs. Bundy's grandson?

A No.

(Plaintiff's Exhibit 2 was marked for identification.)

BY MR. McDONALD:

Q I'm going to hand you, Doctor, just for purposes of identification, what I will mark as Exhibit 2, and ask if you recognize that document?

A This is my operative report from the first surgery.

Q Okay. And what is an operative report, Doctor?

A So after I finish a procedure, I dictate the operative report, which is basically what I did during surgery.

Q Okay. And is -- do you have -- that you brought with you today, do you have a copy of the operative report of the second surgery?

A Yes.

Q And if I -- I don't want to mess up your file,

but --

MR. McDONALD: -- Mr. Harrell, I'd like to mark that as Exhibit 3, and I assume we can just do that after the --

MR. HARRELL: Yes.

MR. McDONALD: Thank you.

(Plaintiff's Exhibit 3 was marked for identification.)

MR. McDONALD: Thank you very much, Doctor. That's all I have.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MR. HARRELL:

Q Dr. Cannestra, again, my name is Rogers Harrell, and I represent Haier America and Thomas Jett of Camden, South Carolina, in this lawsuit filed by Ms. Bundy. I do have some follow-up questions for you.

You spoke a great deal about the procedures you performed, and -- and you related both of those to these Sep- -- this September 2013 motor vehicle accident.

Can you tell me whether there was any evidence of injury that you can say with certainty was caused by this September 2013 motor vehicle accident, or was it more a -- an aggravation of pre-existing conditions?

A So to my knowledge, the patient didn't have

significant enough pain prior to presentation in my office where she had seen a surgeon in the past. And so from her history, she had been managing herself conservatively.

And it's only when she became refractory to conservative management, she presented to my office; in other words, she tried everything she could until she had no other options, she presented to my office.

So by history, when I -- when I -- when I take the history from the patient, I'm looking for if she was symptomatic from pre-existing conditions. Was it bad enough where she would have ever seen a surgeon or had prior MRIs, for example?

And to my knowledge, she hadn't had -- seen a surgeon prior to the motor vehicle accident.

As far as objective findings, she certainly had -- at L5-S1 on her MRI, she had an -- an annular tear on the MRI, and that is an objective finding of injury.

With respect to the MRI of her cervical spine, she did have the spondylosis there.

During surgery -- can I see the operative report? It's probably easier than me flipping through this, the chart.

During surgery, I didn't find any other unusual

findings for the cervical spine. For the lumbar spine, I didn't find any other unusual findings.

Q And, excuse me, you conducted that MRI in 2013 after she came to see you; is that correct?

A I didn't see the patient until 2014.

Q I'm sorry. 2014, correct.

A So I don't think I ordered an MRI on this patient, just the ones she presented to my office with.

Q And do you know what -- when those MRIs were taken?

A You'll have to bear with me --

Q Sure.

A -- as I look through my chart.

So I have a MRI of the cervical spine dated 12/17/13, and also MRI of the lumbar spine on the same date, 12/17/13.

Q All right. And did you view any other MRIs that were taken before the September 2013 accident?

A Not to my knowledge.

Q So you spoke about an annular tear you saw on that December 2013 MRI; is that correct?

A Yes.

Q And do you know if that annular tear existed before the September 2013 accident?

A Having not seen any prior MRIs, I cannot make a

comment, if it was there or not.

Q And, similar, the spondylosis that you noticed on the December 2013 MRI, you wouldn't know whether that existed before the accident either, would you?

A Spondylosis takes time to develop. The general thought is six months or longer. So her accident was September of 2013; is that correct?

Q That's correct.

A And so the -- the -- the spondylosis would, certainly, be present prior to the motor vehicle accident since that was just three months prior to the MRI.

Q Thank you. And you first saw Ms. Bundy in May of 2014, about eight months after the accident, correct?

A Correct.

Q How much do you know about Ms. Bundy's spinal condition of her neck and back before this September 2013 accident?

A The only information I have is that she was involved in a motor vehicle accident in 1985, and that's about the only other contributory history I obtained from the patient.

Q Did she tell you she had had neck and back pain since at least 2001?

A Only her relation to the beginning, in 1985.

Q And she told you neck pain actually started in 1985 after that car accident?

A To the best of my recollection, yes.

Q Were you aware she actually had an MRI of her neck in 2001?

A As I said, I hadn't seen any prior MRIs, so it's hard for me to comment that there are any prior MRIs prior to the December of 2013 ones that I reviewed.

Q So she didn't tell you in 2001 she was diagnosed with spondylosis and disk osteophyte complex in her cervical spine?

A Correct. But, once again, as I testified earlier, the condition of the spondylosis in her cervical spine that I viewed in December was obviously present prior to the motor vehicle accident.

Q And does that condition cause neck pain?

A It may or may not.

Q Did she tell you that in 2001 she was also diagnosed with mild to moderate left neural foraminal narrowing of her cervical spine?

A No.

Q What does that mean, to have foraminal narrowing of your cervical spine?

Am I saying that right?

A It's close, yeah.

So foraminal narrowing is narrowing of where the nerve exits.

Q And that's not a condition caused by trauma, is it?

A It can be. If you have a herniated disk, then you can have foraminal narrowing. If you have spondylosis or spurring, the spur can cause foraminal narrowing. It -- it just means that where the exit -- where the nerve exits, that it's not as wide as we would expect.

Q And that condition can also cause someone to have pain in their cervical spine, can't it?

A More commonly, with foraminal narrowing, it actually impinges the nerve, and so you'd end up having pain shooting down the arm.

Q And because you haven't reviewed any prior MRIs that were taken before 2013, you can't say the same -- you can't say whether her 2013 MRI looks the same as previous MRIs, can you?

A Once again, I can't comment because I haven't seen the prior MRIs.

Q And so she told you about her 1985 car accident, correct?

A Yes.

Q Did she tell you she was ejected from her car

in that 1985 accident?

A No.

Q And she obviously told you about this September 2013 accident we're here about today, correct?

A Yes.

Q Did she also tell you about another accident that -- in Florida where she hit her head on the dash and lost consciousness?

A No.

Q Did she tell you about a boating accident she was in?

A No.

Q Did Ms. Bundy tell you she had treated with a chiropractor in 2008 from -- for neck and back pain?

A Not to my knowledge.

Q And did she tell you she was diagnosed with chronic neck and back pain in 2008?

A She had mentioned that she had neck and back issues since the motor vehicle accident of 1985. Now --

Q Did she -- I'm sorry.

A -- I -- I want to clarify my answer about chiropractic care. The patient did note that she had chiropractic care. She just didn't mention on her questionnaire the timing of it.

Q Okay. Did she tell you she had had trouble

sleeping since as far back as 2008 because of that neck and back pain?

A She also mentioned that she was having trouble sleeping, but, again, when -- the timing is not on here other than her relaying the first episode of pain, back -- being in 1985.

Q Okay. But she didn't mention that trouble sleep- -- sleeping went all the way back to 2008?

A Well, so that's a little hard for me to interpret. When she writes on her questionnaire that her first episode of pain is 1985, and then writes that she's been not sleeping, et cetera, that can relate -- without being more specific or me asking additional questions about that, it could relate all the way back to 1985.

Q Were you aware that in 2010 she told her doctor she only was able to sleep six hours a night because of her neck and back pain?

A No.

Q And trouble sleeping is consistent with someone who has discomfort from chronic neck and back pain, right?

A Yes.

Q Dr. Cannestra, can you say with a reasonable degree of medical certainty that her complaints in 2013

of neck and back pain were all caused by the car accident we're talking about today, if -- knowing she had car accident -- knowing she had pain all the way back to a 1985 accident?

A So what I relate to the motor vehicle accident is her need for surgery. Prior to the motor vehicle accident, to my knowledge, she had never seen a surgeon and never sought surgical care or would have considered surgery at that point.

To the best of my knowledge, the motor vehicle accident in September of 2013 pushed her over to the edge to the extent that she went and saw a surgeon, me, and then eventually had a surgical procedure based upon her symptoms being intractable to conservative management.

So she failed everything else, and at that point in time was having such severe pain where she actually considered surgery. I, therefore, relate the need for surgery to the motor vehicle accident.

Q And to make that determination, you -- you relied solely on what Ms. Bundy told you?

A Well, that, and the fact that she's never seen a surgeon.

Q You also observed Ms. Bundy had mild central stenosis at C5-C6 and C6-C7, correct?

A Correct.

Q And that's not a condition that's caused by injury, is it?

A So stenosis or spondylosis, it depends on what the cause, underlying cause is. If you herniate a disk, you get stenosis. Stenosis just means narrowing.

If you have an injury, you develop bone spurs, then those bone -- bone spurs can cause stenosis, as well. So we knew she had stenosis. We knew that it pre-existed the motor vehicle accident, so she has stenosis from the spondylosis, from the spurs, prior to the motor vehicle accident.

Q In her 2013 lumbar MRI, you noticed diffused bulges in her lower back; is that correct?

A Yes.

Q And that's not a condition uncommon for an active 48-year-old, is it?

A Correct.

Q Someone who engages regular in what you call high-impact exercises?

A Correct.

Q Did Ms. Bundy tell you she'd also been complaining about lower back pain since at least 2008?

A Yes. Since 1985.

Q You've testified several times today that

Ms. Bundy told you that she did therapy and chiropractic treatment following this 2013 accident; is that correct?

A Her prior methods or her prior conservative management were bedrest, traction -- I'm sorry -- bedrest, physical therapy, chiropractic manipulation, spinal injections, anti-inflammatory medication, and pain medications.

Q And did she tell you when she did that therapy and chiropractic treatment?

A No.

Q Okay. So you don't know if she did any of that after this 2013 accident, before she first saw you?

A Without seeing records, no.

Q And you didn't review any records of that treatment to confirm, did you?

A Not to my knowledge.

Q You just took her word for it?

A Yes.

Q Had you known that -- or if you had known she did not attempt any physical therapy following this September 2013 accident before seeing you, would you have recommended it?

A I would have suggested it to the patient, yes.

Q And you diagnosed Mrs. Bundy with cervical spondylosis and lumbar spondylosis, correct?

A In my initial office visit, I diagnosed her with cervical spondylosis with radiculopathy and headaches, and number two was lumbar spondylosis with lumbago.

Q And I believe you said earlier spondylosis is another word for spurring?

A Yes.

Q And that condition's caused the arthritis, correct?

A No. That's -- that's not entirely accurate. The -- the spurring that you get in the spine is not necessarily arthritis.

Q The spurring you observed in the spine and lumbar, is that consistent with someone who's been complaining of neck and back pain since 1985?

A Yes.

Q You described earlier, I believe you said -- based on her history, when you decided to operate, I believe you said she was asymptomatic before this accident; is that correct?

A So we'll have to look back to my testimony if I said asymptomatic or not, but the patient's symptoms became intractable with the motor vehicle accident.

Q Tell me what you mean by intractable.

A Her pain became so severe that she would seek

out a surgical opinion and consider at that point; unresponsive to conservative management.

Q You would agree she wasn't asymptomatic before this September 2013 accident?

A Yes. She's -- has said that she had pain since 1985.

Q As far as any decreased range of motion, are you aware of whether or not she had any decreased range of motion before the September 2013 accident?

A I am not aware of that.

Q Okay. And there's no way you can relate any decreased range of motion to this September 13th -- September 2013 accident, can you?

A Well, certainly, now after she's had a fusion, given my relation of the need for surgery to the accident, then yes. But in the absence of that, no.

Q So prior to your surgeries, there's no way for you to tell whether any of her decreased range of motion was related to this 2013 accident, correct?

A Correct, not without seeing a prior physical examination on the patient.

Q And just to be sure, you weren't provided a copy of her 2001 MRI, were you?

A Not to my knowledge.

Q And during her first visit to you in -- in May,

you scheduled her for surgery, correct?

A Yes.

Q And I believe you said earlier, but just to confirm, that cervical fusion was a success?

A Yes.

Q And then she came back and wanted to have back surgery, correct?

A Correct.

Q And that back surgery was a success, as well?

A Yes.

MR. HARRELL: Thank you, Dr. Cannestra. No more -- more questions at this time.

THE WITNESS: Thank you.

THE COURT REPORTER: Read or waive?

THE VIDEOGRAPHER: End of deposition at 6:17.

THE WITNESS: Waive, please.

THE COURT REPORTER: Thank you.

THE WITNESS: Thank you.

(Discussion off the record.)

MR. McDONALD: Can we just go back on the record, so I don't have to chop up his file, I'm sure you're okay with it, we'll just make Exhibit 3 the -- we've got it.

MR. HARRELL: Yes.

MR. McDONALD: We'll just make Exhibit 3 the

operative report for the second surgery.

MR. HARRELL: Yes. And just to put on the record, too, I don't have records from the most recent December 2016 visit.

MR. McDONALD: '16, yep, and we'll get those to you.

(Discussion off the record.)

THE COURT REPORTER: Will you need the transcript?

MR. McDONALD: Is that -- is that okay?

THE COURT REPORTER: Yeah, two weeks?

MR. McDONALD: Yeah.

THE COURT REPORTER: Oh, absolutely.

MR. McDONALD: Okay.

THE COURT REPORTER: Copy?

MR. HARRELL: Yes, ma'am.

THE COURT REPORTER: Thank you.

(Witness excused.)

(The proceeding concluded at 6:16 p.m.)

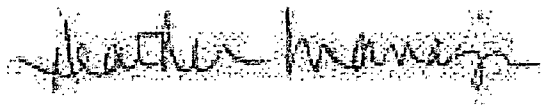
- - -

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL )

I, Heather Manazir, Registered Professional Reporter, Florida Professional Reporter, and Notary Public in the State of Florida, certify that ANDREW CANNESTRA, M.D., Ph.D., personally appeared before me on the 18th day of April, 2017, and was duly sworn.

WITNESS my hand and official seal this 27th day of April, 2017.



Heather Manazir, RPR, FPR
Notary Public - State of Florida
My Commission No.: FF 129393
My Commission expires: 8/14/2018

Digital Signature authenticated by VeriSign

CERTIFICATE OF REPORTER

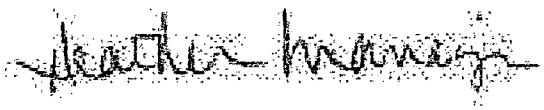
STATE OF FLORIDA)

COUNTY OF CLAY )

I, Heather Manazir, Registered Professional Reporter, Florida Professional Reporter, certify that I was authorized to and did stenographically report the deposition of ANDREW CANNESTRA, M.D., Ph.D.; that a review of the transcript was not requested; and that the foregoing transcript, pages 5 through 53, is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 18th day of April, 2017.



Heather Manazir, RPR, FPR
Court Reporter
Digital Signature authenticated
by VeriSign

# *Designated Record Set Information*

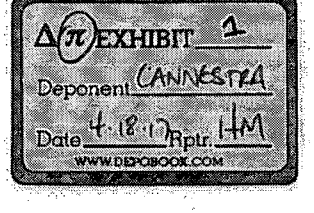
## Medical Claims History

*Date of Service From 02/01/2014 Through 02/29/2016*

Member Name: BUNDY,HEATHER A
Medical ID: 803463009*02
Date of Birth: 02/15/1966

| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|





| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|

| | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| | RAD EXAM SPINE LUMBOSACRAL 2 OR 3 VIEWS | BAPTIST MEDICAL CENTER | 01/06/2015 | 01/06/2015 | $357.00 |
| | RAD EXAM SPINE LUMBOSACRAL 2 OR 3 VIEWS | DRS MORI BEAN & BROOKS PA | 01/06/2015 | 01/06/2015 | $43.00 |
| 1442437 | OSTEOGENESIS STIMULATOR, ELECTRICAL,NONINVASIVE,SPINAL APPLICATIONS | ORTHOFIX INC*11792 | 12/29/2014 | 12/29/2014 | $4,995.00 |
| 1442437 | SALES TAX | ORTHOFIX INC*11792 | 12/29/2014 | 12/29/2014 | $349.65 |
| | LUMBAR-SACRAL ORTHOSIS, SAGITTAL-CORONAL CONTROL, WITH RIGID ANTERIOR AND | BREG INC | 12/11/2014 | 12/11/2014 | $1,500.00 |
| 1422789 | INPAT CONSULT NEW OR EST PT MODERATE TO HIGH SEVERITY 110 MIN. | ARUBUOLA MD, OLUFISAYO*1147932 | 12/10/2014 | 12/10/2014 | $396.00 |
| 1422789 | SUBSEQ HOSP CARE E&M HIGH SEVERITY 35 MIN | ARUBUOLA MD, OLUFISAYO*1147932 | 12/11/2014 | 12/11/2014 | $160.00 |
| 1422789 | ARTHDSIS POST/POSTEROLATRL/ POSTINTERBODY LUMBAR | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,875.00 |
| 1422789 | DECOMPRESS SPINAL CORD LUMBAR | CANNESTRA MD, ANDREW F | 12/12/2014 | 12/12/2014 | $5,200.00 |
| 1422789 | POSTERIOR NON-SEGMENTAL INSTRUMENTATION | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $4,750.00 |
| 1422789 | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $6,420.00 |
| 1422789 | ARTHDSIS POST/POSTEROLATRL/ POSTINTERBODY LUMBAR | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,293.00 |

| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| DECOMPRESS SPINAL CORD LUMBAR | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,144.00 |
| POSTERIOR NON-SEGMENTAL INSTRUMENTATION | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,045.00 |
| APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 12/10/2014 | 12/10/2014 | $1,412.00 |
| ARTHDSIS POST/POSTEROLATRL/ POSTINTERBODY LUMBAR | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,875.00 |
| DECOMPRESS SPINAL CORD LUMBAR | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $5,200.00 |
| POSTERIOR NON-SEGMENTAL INSTRUMENTATION | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $4,750.00 |
| APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 12/10/2014 | 12/10/2014 | $8,420.00 |
| INTENSIVE CARE-INTERMEDIATE ICU | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $2,859.00 |
| PHARMACY-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $190.00 |
| PHARMACY-GENERIC DRUGS | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $871.10 |
| IV THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $350.00 |
| MED/SURG SUPPLIES & DEVICES-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $514.00 |
| MED/SURG SUPPLIES & DEVICES-NONSTERILE SUPPLY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $372.00 |
| MED/SURG SUPPLIES & DEVICES-STERILE SUPPLY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $18,992.00 |
| MED/SURG SUPPLIES & DEVICES-OTHER IMPLANTS | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $87,651.00 |
| LABORATORY-CHEMISTRY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $126.00 |
| LABORATORY/HEMOTOLOGY | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $55.00 |

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| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| RADIOLOGY-DIAGNOSTIC - GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $880.00 |
| OPERATING ROOM SERVICES-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $25,593.00 |
| ANESTHESIA-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $1,577.00 |
| PHYS THERAPY-EVALUATION OR REEVALUATION | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $443.00 |
| OCCUPATIONAL THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $691.00 |
| PULMONARY FUNCTION-GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $530.00 |
| DRUGS REQUIR SPECIFIC IDENT-DRUGS REQUIR DETAILED CODING | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $1,060.00 |
| RECOVERY ROOM- GENERAL | BAPTIST MEDICAL CENTER | 12/10/2014 | 12/11/2014 | $2,051.00 |
| SHORT-LATENCY SOMATOSENS EP STD UPR & LOW LIMBS | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $670.00 |

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| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| ELECTROMYOGRAPHY ANAL OR URETHRAL SPHINCTER,ANY TECHNIQUE | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $265.00 |
| EEG DURING NONINTRACRANIAL SURGERY | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $250.00 |
| ELECTROMYOGRAPHY, LIMITED STUDY | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $860.00 |
| IONM REMOTE/NEARBY/MORE 1 PATIENT IN OR PER HOUR | NEUROMATRIX RTM LLC | 12/10/2014 | 12/10/2014 | $2,150.00 |
| BASIC METABOLIC PANEL (CALCIUM, TOTAL) | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $78.00 |
| HEMOGLOBIN, GLYCOSYLATED | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $119.00 |
| THYROXINE, FREE | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $108.00 |
| THYROID STIMULATING HORMONE | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $166.00 |
| TRIIODOTHYRONINE T3, TOTAL | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $96.00 |
| GONADOTROPIN, CHORIONIC, QUANTITATIVE | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $185.00 |
| BLOOD COUNT, COMPLETE AUTOMATED AND DIFFERENTIAL WBC COUNT | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $55.00 |
| HYDROMORPHONE [DILAUDID], UP TO 4 MG - INJECTION | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $108.05 |
| INJECTION,FENTANYL CITRATE, 0.1 MG[SUBLIMAZE] | BAPTIST MEDICAL CENTER | 12/09/2014 | 12/09/2014 | $43.85 |

| | | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| RADIOLOGIC EXAMINATION, | DRS MORI BEAN & | 09/11/2014 | 09/11/2014 | $43.00 |
| OFFICE/OP VISIT E&M ESTABLISH PAT 25 MIN, MODERATE TO HIGH | CANNESTRA MD, ANDREW F | 09/11/2014 | 09/11/2014 | $250.00 |
| RADIOLOGIC EXAMINATION, SPINE, CERVICAL 2 OR 3 VIEWS | BAPTIST MEDICAL CENTER | 07/01/2014 | 07/01/2014 | $337.00 |
| OSTEOGENESIS STIMULATOR, ELECTRICAL,NONINVASIVE,SPINAL APPLICATIONS | ORTHOFIX INC*11792 | 07/01/2014 | 07/01/2014 | $4,995.00 |
| SALES TAX | ORTHOFIX INC*11792 | 07/01/2014 | 07/01/2014 | $349.65 |
| SUBSEQ HOSP CARE E&M HIGH SEVERITY 35 MIN | ARUBUOLA MD, OLUFISAYO*1147932 | 06/17/2014 | 06/17/2014 | $160.00 |
| INTENSIVE CARE-INTERMEDIATE ICU | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $2,466.00 |
| PHARMACY-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $190.00 |

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| Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|
| PHARMACY-GENERIC DRUGS | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $688.05 |
| IV THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,106.00 |
| MED/SURG SUPPLIES & DEVICES-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $454.00 |
| MED/SURG SUPPLIES & DEVICES-STERILE SUPPLY | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,422.00 |
| MED/SURG SUPPLIES & DEVICES-PROSTHETIC/ORTHOTIC DEVICES | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $588.00 |
| MED/SURG SUPPLIES & DEVICES-OTHER IMPLANTS | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $12,762.00 |
| LABORATORY-CHEMISTRY | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $865.00 |
| LABORATORY/HEMOTOLOGY | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $55.00 |
| RADIOLOGY-DIAGNOSTIC - GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $674.00 |
| OPERATING ROOM SERVICES-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $16,806.00 |
| ANESTHESIA-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,403.00 |
| OCCUPATIONAL THERAPY-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $624.00 |
| PULMONARY FUNCTION-GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $375.00 |
| DRUGS REQUIR SPECIFIC IDENT-DRUGS REQUIR DETAILED CODING | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $1,504.75 |
| RECOVERY ROOM- GENERAL | BAPTIST MEDICAL CENTER | 06/16/2014 | 06/17/2014 | $2,230.00 |
| INITIAL HOSP/PER DAY E&M HIGH SEVERITY/70 MIN | GEORGE MD,ANIL | 06/16/2014 | 06/16/2014 | $230.00 |
| INITIAL HOSP/PER DAY E&M HIGH SEVERITY/70 MIN | GEORGE MD,ANIL | 06/16/2014 | 06/16/2014 | $230.00 |
| ARTHRODESIS ANT INTERBODY DECOMPRESSION OF SPINAL | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,540.00 |

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| Referral Number | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| | CORD CERVICAL BELOW C2 | ELLSWORTH JR ARNP, DONALD D | | | |
| | ARTHRODESIS ANT INTERBODY DISC SPACE PREP CERVICAL BELOW C2 EA ADDL INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $649.00 |
| | ANTERIOR INSTRUMENTATION 2-3 VERT SEGMENTS | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,485.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,412.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | ELLSWORTH JR ARNP, DONALD D | 06/16/2014 | 06/16/2014 | $1,412.00 |
| | ARTHRODESIS ANT INTERBODY DECOMPRESSION OF SPINAL CORD CERVICAL BELOW C2 | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $7,000.00 |
| | ARTHRODESIS ANT INTERBODY DISC SPACE PREP CERVICAL BELOW C2 EA ADDL INTERSPACE | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $2,950.00 |
| | ANTERIOR INSTRUMENTATION 2-3 VERT SEGMENTS | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $6,750.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $6,420.00 |
| | APPL INTERVERTEBRAL BIOMECH DEV TO VERTEBRAL DEFECT/ INTERSPACE | CANNESTRA MD, ANDREW F | 06/16/2014 | 06/16/2014 | $6,420.00 |

| Referral Number | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| 1333094 | ANESTH EXTENSIVE SPINE AND SPINAL CORD PROC | FLORIDA ANESTHESIA ASSOCIATES PA*1099 | 06/16/2014 | 06/16/2014 | $2,090.00 |
| | SHORT-LATENCY SOMATOSENS EP STD UPR & LOW LIMBS | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $670.00 |
| | CTR MOTR EP STD TRANSCRNL MOTR STIM UPR&LOW LIMB | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $850.00 |
| | IONM REMOTE/NEARBY/MORE 1 PATIENT IN OR PER HOUR | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $1,075.00 |
| | NEUROMUSCULAR JUNCTION TEST EA,NERVE, ANY ONE METHOD | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $160.00 |
| | ELECTROMYOGRAPHY, TWO LIMBS | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $380.00 |

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| Referral Number | Procedure Description | Provider Name | Service From | Service To | Billed Amt |
|---|---|---|---|---|---|
| | EEG DURING NONINTRACRANIAL SURGERY | NEUROMATRIX RTM LLC | 06/16/2014 | 06/16/2014 | $250.00 |
| | BASIC METABOLIC PANEL (CALCIUM, TOTAL) | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $19.00 |
| | THYROXINE, FREE | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $19.00 |
| | THYROID STIMULATING HORMONE | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $35.00 |
| | TRIIODOTHYRONINE T3, TOTAL | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $30.00 |
| | GONADOTROPIN, CHORIONIC, QUANTITATIVE | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $32.00 |
| | BLOOD COUNT, COMPLETE AUTOMATED AND DIFFERENTIAL WBC COUNT | JACKSONVILLE PATH CONSULTANT | 06/09/2014 | 06/09/2014 | $16.00 |
| | OFFICE/OP VISIT FOR E&M NEW PAT 45 MIN, MODERATE TO HIGH | CANNESTRA MD, ANDREW F | 05/29/2014 | 05/29/2014 | $350.00 |
| | OFFICE/OP VISIT E&M ESTABLISH PAT 25 MIN, MODERATE TO HIGH | DOCTORS CARE SC PA | 04/28/2014 | 04/28/2014 | $155.00 |



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* Final Report *

| | |
|---|---|
| Result Type: | Operative Procedure |
| Result Date: | 16 June 2014 23:15 |
| Result Status: | Auth (Verified) |
| Result Title: | Neurosurgery |
| Performed By: | Cannestra , Andrew F MD on 16 June 2014 23:15 |
| Verified By: | Cannestra , Andrew F MD on 14 July 2014 12:19 |
| Encounter info: | 601813140, BMC-D, Inpatient, 6/16/2014 - 6/17/2014 |
| Contributor system: | STATCONN |

## * Final Report *

**Neurosurgery**

BAPTIST HEALTH

Baptist Medical Center Downtown
Jacksonville, Florida

NEUROSURGERY OPERATIVE/PROCEDURE REPORT

DATE OF OPERATION/PROCEDURE: 06/16/2014

PREOPERATIVE DIAGNOSIS
Cervical spondylosis with radiculopathy.

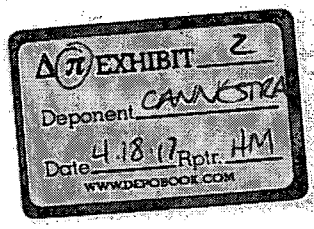
POSTOPERATIVE DIAGNOSIS
Cervical spondylosis with radiculopathy.

OPERATION/PROCEDURE PERFORMED
1. C5-6 anterior cervical diskectomy, decompression, and arthrodesis.
2. Placement of interbody device at C5-6.
3. C6-7 anterior cervical diskectomy, decompression, and arthrodesis.
4. Placement of interbody device at C6-7.
5. Use of anterior cervical plate from C5-C7.
6. Use of allograft.
7. Use of autograft.
8. Use of intraoperative fluoroscopy.
9. Use of operating microscope.
10. Intraoperative somatosensory-evoked potential, electromyelogram motor-evoked potential, and electroencephalogram monitoring during the procedure. Dr. Soriano was the reading neurologist with audio connection and screen sharing.

SURGEON
Andrew Cannestra, MD

ASSISTANT
Donald Ellsworth, ARNP

ANESTHESIA
General.



ANESTHESIOLOGIST
Dr. Sutter

OPERATIVE INDICATIONS
The patient is a 48-year-old female who presented to my office with cervicalgia, radiculopathy, and cervical spondylosis.

OPERATIVE FINDINGS
Cervical spondylosis.

OPERATIVE PROCEDURE IN DETAIL
After intubation, the patient was positioned supine. The patient underwent intraoperative SSEP, EMG, motor-evoked potential, and EEG monitoring during the procedure with audio connection and screen sharing. The patient's anterior neck was prepped and draped in the usual sterile fashion. I then infused the skin with 1% lidocaine with epinephrine. I opened the incision using #10 blade scalpel. I then dissected down through the soft tissues using monopolar electrocautery until I encountered the platysma. The platysma was then sharply divided. I then followed the medial border of the sternocleidomastoid in a blunt dissection fashion until I encountered the carotid sheath. I then used Kittner dissection along the medial border of the carotid sheath until I encountered the prevertebral space. I then identified the C5-6 and C6-7 and I then elevated the longus colli bilaterally, and subsequently I placed the Caspar retractors and subsequently the Caspar pins.

I began at C5-6. I used a #11 blade scalpel to perform annulotomy and then removed the disk material in standard fashion using curettes and rongeurs. As I approached the posterior aspect of the disk space, the microscope was brought in. Using microscopic dissection technique, I used the nerve hook, angled curette, and #1 Kerrison to remove the posterior aspect of the disk and ligament. Once I was satisfied with the decompression, I then used the high-speed drill to shave the endplates and performed anterior arthrodesis. I subsequently placed a 5-mm PEEK lordotic cage by NuVasive. The cage was packed using allograft and autograft. The autograft was collected during the arthrodesis process.

My attention then turned to C6-7. I removed the Caspar pins to cross the C6-7 level. Once again I used a #11 blade scalpel to perform an annulotomy and once again I removed the disk material in standard fashion using curettes and rongeurs. As I approached the posterior aspect of the disk space, the microscope was brought in. I removed the last of the disk material and ligament using nerve hook and micropituitary as well as #1 Kerrison. Once I was satisfied with the decompression, I then used the high-speed drill to shave the endplates to perform anterior arthrodesis. The bone dust was collected and used for autograft. I then placed a 6-mm PEEK lordotic cage by NuVasive. The cage was packed using allograft and autograft and malleted into place.

I then placed the Uniplate from DePuy Spine from C5 to C7. I used 15-mm self-drilling and self-tapping screws. I used larger diameter self-tapping screws at C6 and C7. I then locked the locking nuts accordingly. I copiously

irrigated the wound with bacitracin irrigation. I placed a Hemovac drain. I removed the retractor system. I examined the medial soft tissue structures and verified there were no soft tissue violations. I then closed the wound in a multilayer fashion using Vicryl sutures. Finally, the wound edges were approximated using skin adhesives.

There were no complications. Estimated blood loss was less than 50 mL. The patient was taken to the recovery room in stable condition, moving all extremities well.

SPECIMENS SUBMITTED
None.

ESTIMATED BLOOD LOSS
See above.

CONDITION/DISPOSITION UPON COMPLETION
See above.

REPORT IS PRELIMINARY UNLESS SIGNED

Andrew Cannestra, MD Date/Time
Neurosurgery

AC/an D: 06/16/2014 23:15 T: 06/17/2014 06:06 Job#: 696896

**Signature Line**
Electronically Signed By: Cannestra , Andrew F MD, MD
Signed Date and Time: 07/14/2014 12:19 PM

**Completed Action List:**
* Perform by Cannestra , Andrew F MD on 16 June 2014 23:15
* Sign by Cannestra , Andrew F MD on 14 July 2014 12:19 Requested on 17 June 2014 6:20
* VERIFY by Cannestra , Andrew F MD on 14 July 2014 12:19

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

---

**Heather Anne Bundy and W.H. Bundy, Jr.....APPELLANTS**

**v.**

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

---

# NOTICE OF APPEAL

---

Plaintiffs Heather Anne Bundy and W.H. Bundy, Jr. ("Appellants") appeal the order of the Honorable DeAndrea G. Benjamin denying post-trial motions dated and filed September 10, 2018. (attached hereto as Exhibit A). Appellants received written electronic notice of the entry of this order on September 10, 2018. Appellants also appeal the Form 4 Judgment and verdict dated January 23, 2018 (attached hereto as Exhibit B).

**[Signature Page Follows]**



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 Appellants

October 3, 2018

Other Counsel of Record:

John M. Grantland, Esquire
Rogers Harrell, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Attorneys for Respondents

# EXHIBIT A

ELECTRONICALLY FILED - 2018 Sep 10 10:20 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF KERSHAW | IN THE COURT OF COMMON PLEAS |
| Heather Anne Bundy,<br>Plaintiff,<br>vs.<br>Thomas Elroy Jett and Haier America Research & Development Co., LTD,<br>Defendants, | CIVIL ACTION NO: 2015-CP-28-00852 |
| W. H. Bundy, Jr.,<br>Plaintiff,<br>vs.<br>Thomas Elroy Jett and Haier America Research & Development Co., LTD,<br>Defendants, | CIVIL ACTION NO: 2016-CP-28-00758<br>**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

ELECTRONICALLY FILED - 2018 Sep 10 10:20 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

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

ELECTRONICALLY FILED - 2018 Sep 10 10:20 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

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.

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**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.

ELECTRONICALLY FILED - 2018 Sep 10 10:20 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

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

ELECTRONICALLY FILED - 2018 Sep 10 10:20 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

ELECTRONICALLY FILED - 2018 Sep 10 10:20 AM - KERSHAW - COMMON PLEAS - CASE#2015CP2800852

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

# EXHIBIT B

**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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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.

FILED FOR RECORD
2018 JAN 23 PM 12:18
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

**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 | 2161 Judge Code | 1/23/2018 Date |
|---|---|---|

**For Clerk of Court Office Use Only**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , 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<br><br>COUNTY OF KERSHAW<br><br>**HEATHER ANNE BUNDY**<br><br>PLAINTIFF,<br>v.<br><br>**THOMAS ELROY JETT AND HAIER AMERICA, RESEARCH AND DEVELOPMENT COMPANY, LTD**<br><br>DEFENDANTS. | IN THE COURT OF COMMON PLEAS<br>FOR THE FIFTH JUDICIAL<br>CIRCUIT<br><br>**C/A No. 2015-CP-28-00852**<br><br>**VERDICT FORM** |
| **W.H. BUNDY, JR.**<br><br>PLAINTIFF,<br>v.<br><br>**THOMAS ELROY JETT AND HAIER AMERICA, RESEARCH AND DEVELOPMENT COMPANY, LTD**<br><br>DEFENDANTS. | **C/A No. 2016-CP-28-00758** |

FILED FOR RECORD
2018 JAN 23 PM 12:19
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

**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

**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**

---

**Heather Anne Bundy and W.H. Bundy, Jr.....APPELLANTS**

**v.**

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

---

**PROOF OF SERVICE**

---

I, the undersigned Paralegal at the law offices of Bundy McDonald, LLC, attorneys for Appellants Heather Anne Bundy and W.H. Bundy, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Notice of Appeal

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

(803) 782-4100

Attorneys for Respondents

Kathy J. Wentland

October 3, 2018

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW — CASE NO. 2015-CP-28-00852

HEATHER ANNE BUNDY,

Plaintiff,

vs.

THOMAS ELROY JETT and HAIER 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

APPEARANCES

For the Plaintiff:

M. Brent McDonald, Esq.
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485

For the Defendants:

Rogers E. Harrell, III, Esq.
Murphy & Grantland, PA
4406-B Forest Drive
Columbia, South Carolina 29206



EXAMINATION INDEX


| Examination | By Whom | Page Number |
|---|---|---|
| Direct | Mr. McDonald | 6 |


EXHIBIT INDEX


| Exhibit Number | Description | Page Marked |
|---|---|---|
| Plaintiff's 1 | 1/2/17 Letter from Mr. Harrell to Mr. McDonald Attaching Defendants' Second Supplemental Answers to Plaintiff's First Set of Interrogatories | 12 |




STIPULATIONS

It is hereby stipulated and agreed between the parties to this action, through their respective counsel of record:

(1) That the deposition of Brian M. Boggess, P.E., may be taken on Friday, May 12, 2017, beginning at 10:00 a.m., at the offices of ExecuBusiness Centers, 10130 Mallard Creek Road, Suite 300, Charlotte, North Carolina, before Tavi L. Fraga, a Court Reporter and Notary Public.

(2) That the deposition shall be taken and used as permitted by the applicable South Carolina Rules of Civil Procedure.

(3) That any objections of any party hereto as to notice of the taking of said deposition or as to the time or place thereof, or as to the competency of the person before whom the same shall be taken, are deemed to have been met.

(4) Objections to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before any judge of competent jurisdiction for the purpose of ruling thereon, or at any other



hearing of said case at which said deposition might be used, except that an objection as to the form of a question must be made at the time such question is asked, or objection is waived as to the form of the question.

(5) That the sealed original transcript of this deposition shall be mailed first-class postage or hand-delivered to the party taking the deposition for preservation and delivery to the Court, if and when necessary.

(6) That the witness reserves the right to read and sign the deposition prior to filing.

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Whereupon,
Brian M. Boggess, P.E.,
having been first duly sworn,
was examined and testified
as follows:

DIRECT EXAMINATION BY MR. MCDONALD:

Q. Mr. Boggess, am I saying that correctly?
A. You are. Yes, sir.
Q. Mr. Boggess, my name is Brent McDonald. We just briefly met.
Would you state your full name for the record, please.
A. Sure. Brian Michael Boggess.
Q. And, Mr. Boggess, I assume you have had your deposition taken before?
A. Yes.
Q. And I assume you have had your deposition taken before in the state of South Carolina?
A. I have.
Q. And I'm required, as you know, to go over a few things with you. The first is, if you don't understand something that I ask, will you just let

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me know and I'll reask it? Fair enough?
A. Yes, sir.
Q. The purpose is not to trick you. It's not to get you to say something you don't mean. It's for me to ask a clear question that you understand so I can get a full and complete answer. Fair enough?
A. Okay. Yes, sir.
Q. All right. And you're doing a good job of it. You need to give oral responses for the benefit of the court reporter. If you need to take a break at any time, let me know. Okay?
A. Yes, sir.
Q. And now that your deposition has begun, I don't anticipate it taking too very long, but you're not to talk to anybody about the substance of your deposition testimony while it's ongoing. Fair enough?
A. Understood. Yes, sir.
Q. What did you do to prepare for your deposition today?
A. You know, at some point, I worked up the file analysis on a given, you know, verbal update to -- to the client, Mr. Harrell here. But, I mean, specifically for, you know, the last few days in

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terms of just really reviewed the file materials that have been provided to me, reviewed my analysis to -- to ready myself for today.
Q. Okay. And when you say -- who is your client in this case?
A. I understand -- I guess I report to Murphy & Grantland, the law firm.
Q. That's Mr. Harrell's law firm?
A. Mr. Harrell, yes.
Q. And you said you reviewed your file. Did you bring your file with you today?
A. I did. Yes, sir.
Q. And do you have that with you?
A. I do. Yes, sir.
Q. And let's just generally go through it -- and you can keep it in front of you --
A. Sure.
Q. -- so I understand what it is that you have in the file. And then as we go through your deposition, if you need to reference anything, you can.
A. Okay.
Q. But if you would, just in a general overview, can you go through what it is you have in your file?
A. Sure. I have two -- two project folders. And

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that would be my left tab folder here.
This is just basically our matter sheet that would say, you know, who the parties are, date of loss, things like that when we take in an assignment. I don't believe there's really anything else in that folder.
There's kind of a middle tab behind that, which is a separate project number that's been generated for purposes of really billing for the deposition today. Client of record essentially for that.
It's got a copy of my CV, testimony list, things like that in there, as well, for today's deposition. Everything middle tab is file materials that have been provided to me by counsel. Everything right tab is materials I've generated.
So in terms -- do you want me to run through like what's in here?
Q. Please do.
A. Sure.
Q. And at the end of this -- not to cut you off -- I'm going to ask -- obviously at our expense, I'm going to ask for a copy of your file.

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A Sure.
Q I don't know if you have a copy service you can send it out to that would be easier and then they can just send me the bill and I'll pay it directly.
A Okay. That's fair enough.
So I have -- in terms of what's been provided to me, I have the accident report. I have recorded statements. I have medical records and summaries. I have what's been labeled "DOT files." Copies of photographs. File materials of Woody Poplin. And I have deposition transcripts. Those would include Heather Bundy, Asa Cooper, A-s-a, Teresa Justice, Andrew Cannestra, and Thomas Jett.
In terms of materials that I have generated, I have an investigation notes folder, which includes CAD layouts.
Q CAD layouts of what?
A Of the scene with vehicles placed on them.
Q Okay.
A I have what I'll call my investigation packet of materials, as well, which includes calculations pursuant to the accident reconstruction. And then

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biomechanical calculations, as well, to look at certain body regions, certain exposures as a result of the accident.
I have a folder of vehicle specifications, VIN, which would be -- VIN reports or vehicle identification number reports. And Expert AutoStats in there. It is, you know, for vehicle dimensions, things like that. I think Mr. Poplin even has a similar program, similar output in his file.
I have deposition summaries prepared by my office and I have a medical summary prepared by my office, as well, and that should -- I think I hit every folder in there.
Q Okay. And do you take the position anything in this file that you brought with you here today is privileged?
A Not to my knowledge, no, sir.
Q Okay. So my request --
MR. MCDONALD: And if you wouldn't mind noting this on the record.
Q (Mr. McDonald) My request is that you'll send out your entire file without anything withheld. And then you just give -- whatever copy service you

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use, you can give them my information. I'll give you a card before you leave here today and we'll pay them directly.
A Okay. Fair enough.
Q All right. Let's talk about a few things that are in there. First you mentioned what's been labeled the "DOT file." What is that?
A The provided material, I believe it's just based on the DOT number for the trucking company. There's some download information on inspections, any violation histories, crash histories, things like that for -- under that DOT number that the -- for the truck company.
Q Did you find any violation history or crash history?
A This was all provided to me. The crash is -- there is nothing in the crash tables that I see.
Q Okay.
A There is some inspection records, histories included, and that's about it.
(PLAINTIFF'S EXHIBIT NUMBER 1 MARKED FOR IDENTIFICATION)
Q (Mr. McDonald) Mr. Boggess, I'll hand you what's been marked as Exhibit 1. That is a supplemental

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interrogatory response from the defendants wherein you, sir, are named as a testifying expert in this case.
A Yes, sir.
Q Have you seen that document before?
A I'm not sure if I've seen this or not.
Q Okay. And when were you first contacted about the case that brings us here today?
A According to my file, this project was assigned November 10th of 2016 to me.
Q And when you say "assigned," what does that mean?
A Case came in, basically cleared conflict check, and a matter number was assigned.
Q And how many folks are in your -- your office? Let me put it this way. How many folks are in your office that do what you do?
A With -- including the biomechanics aspect, none. I'm the only one.
Q And when you were -- when you or your firm was first contacted about this case, what were you asked to do?
A Essentially to review the provided materials pursuant to the car accident. And, you know, analyze the dynamics of the collision, you know,

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the circumstances of the collision, and then the biomechanical aspects. Whether or not -- you know, what -- what the forces were, what the injury potentials there are from such an exposure.

Q And have you ever done work for the law firm of Murphy & Grantland before?

A I have, yes, sir.

Q And about how many times have you worked for them?

A I don't really keep track. I mean, certainly a handful over the -- over the ten years I have been with SEA or thereabouts. But, again, certainly a handful, but I don't know an exact number.

Q And how many -- in your practice, I assume some portion of it is dedicated to something like this, providing litigation support, expert testimony; is that right?

A I do, yes, sir.

Q And how much of your business is unrelated to that?

A I would say, you know, as a best estimate, you know -- again, I don't really keep track of specific numbers or hour breakdowns or anything like that. You know, I'd say around 50 percent is certainly litigation matters that I -- that I work

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on.

Q And what is the other 50 percent?

A A lot of it, you know, the early investigation stuff that maybe is, you know, a good chunk of pre-suit, certainly, you know, accident happened yesterday, you know, obviously has the potential to go to litigation if parties don't work stuff out. But it may be just data collection.

I've worked on a handful of matters just doing some research testing for some manufacturers, such as chainsaws, for example, or different vehicles type systems.

I've also done a couple patent cases, for example. They wanted a -- some drawings produced, some prototypes built, so I have assisted some people in that, as well.

Q And the research testing and the patent work that you do is unrelated to lawsuits?

A Yes, sir.

Q Of the research testing and patent work that you do, what percentage of your, you know, year is spent on that?

A I mean, it's a small percentage. It's probably less -- less than 10 percent. Again, I don't know

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the exact number.

Q So mostly what you do is litigation support, whether it's pre-suit or after-suit?

A Again, litigation -- litigation support or the potential for litigation. Sure.

Q And that's somewhere in excess of 80 percent of what you do?

A I would estimate that's a reasonable number for that combined group, yes, sir.

Q And about how many depositions do you give a year?

A Best guess, between 20 and 30.

Q And how many times do you, on average, testify at trial?

A A few. Obviously, you know, most don't -- don't go to trial. But, you know, certainly a few.

Q Two or three times a year? Something like that?

A It could be more. It could be more than that, you know. It just depends on the -- you know, at this point in my career -- you know, a few years ago, it might have been once in a year. It seems to be certainly, you know, a handful now.

Q And in your materials, you referenced a CV. Is that CV up-to-date?

A It is, yes, sir.

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Q So when you -- and that CV includes testimony that you have given in the past or at least a case reference?

A I have a separate case list separate from the CV, yes, sir.

Q And is that up-to-date?

A It is, yes, sir.

Q And about how much of the work that you do is for defendants compared to plaintiffs?

A Again, don't keep the hard numbers. But I've estimated at prior depositions maybe a 75/25 defense to plaintiff, maybe 80/20 breakdown.

Q Okay.

A So...

Q All right. And when you were first contacted, you said you were asked to review the provided materials.

Were you asked specifically what areas of inquiry you were going to make, meaning were you asked, okay, we're going to need you to provide some bioengineering here, we're going to need you to provide accident reconstruction or we're going to need you to provide something else? Were you given any type of parameters other than just

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review what we sent up to you?
A You know, I think it was the intent to review with -- you know, within the purview of my expertise. So accident reconstruction, dynamics of the collision, you know, who -- who reasonably was where. And there's questions on fault in this particular one, obviously.
So, you know, do I have opinions along those lines? And then with regards to the -- okay, the contact does occur. What is the dynamics of that? I think that was the expectation.
I don't know that we necessarily got into all those details. It was more of, you know, expected. And then the -- as you've touched on, the biomechanical aspect, as well. What are the exposures? What are the injury potentials as a result of those types of forces?
Q And as you said, you didn't generally have to have that express conversation -- I assume it was Mr. Grantland that contacted you?
A I believe it was Mr. Grantland that --
Q You didn't have --
A -- would have --

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Q Sorry. I didn't mean to interrupt you.
You didn't have to have those express conversations because you had worked with him in the past and he knew what you did?
A He knew -- he knew what I did, yes. And, yeah, I think it was somewhat of an understanding.
Q And are the lists -- on your prior testimony list, do you have which law firm it was you were working for on there?
A I do not, no, sir.
Q So you can't look at it and tell which ones were for which law firm?
A I mean, I may remember on a few -- on some of them, certainly. But I -- it's not listed on that list, no, sir. It's, you know, kind of a case number, date, case caption, and the venue, I believe.
Q Do you have a copy of that?
A I do, yes, sir. That's the CV and the testimony list. A copy for you. And I have a second copy for Mr. Harrell here.
Q And then you have a copy that you're going to leave in your file when you produce it?
A You -- if you want to -- one of you want to give

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it to the court reporter. I don't have a third. I can print the same thing off. I mean, it's on my server, so I can add that back to that stack when it gets produced if you'd like.
Q After we go through this and -- you know, briefly after we go through it, I'll just give it back to you so your file still --
A Fair enough. Thank you.
Q Are you a licensed PE in the state of South Carolina?
A I am, yes, sir.
Q And was that by -- did you actually sit for the test, or was that by reciprocity?
A I sat for the test in Ohio, which, I mean, it's a national test promulgated through NCEES, or N-C-E-E-S, and then I got it by committee in South Carolina.
Q Do you recall the case Albertha Holmes v. Greg Lindway?
A Yes, I do.
Q And were you working for the plaintiff or the defendant?
A The defense in that case, sir.
Q And was that a personal injury case?

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A It involved injuries. It was a two-vehicle accident with biomechanical aspects, as well.
Q And what was the upshot of your opinions in that case?
A The -- again, it delved into the accident reconstruction, so the relative speeds of the vehicles, the direction of impact. And then got into the kinematics and kinetics of exposure to Ms. Holmes as a result and whether or not that's reasonable or not to cause injury.
Q And did you conclude whether it was reasonable or not to cause injury?
A The specific ones claimed, no, it was my opinion that the alleged injuries did not result from the subject accident.
Q Okay. And on these -- are there any that are not personal injury actions?
A Yes, sir.
Q Do they make up a large majority, or is it mostly personal injury actions?
A I guess let me clarify. What do you mean by -- are you lump -- only automotive accidents, are you lumping -- how are you relating -- I mean, some of them are, you know, fatal collisions. There's

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obviously no question that someone was hurt. It's maybe the question of fault or manufacturing things with a certain type of vehicle.

So I'm not sure how you're -- I want to make sure I understand how you're breaking that down.

Q Sure. Sure. I appreciate that. And I guess I'm a lot simpler.

You only get involved in actions where there's an injury, whether it be death or injury otherwise? That's what you do?

A Some of them may be a property damage only.

Q Okay.

A There may be -- I think there's even a couple construction cases in here mixed in where there's something mechanical related to them. Maybe a flooding of a building because of a water leak.

Q Okay.

A Things like that. Most of them are some type -- someone was hurt or injured in some manner, though, I would say the majority of them.

Q I gotcha.

A There may not be a question whether they were injured, and it may just be a pure vehicle

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accident or a premises-type case.

Q Gotcha. And in each one of these, you actually gave testimony -- that's the point of this list -- either at a deposition or in trial?

A That's correct, yeah. This is a -- I've testified in some capacity.

Q Okay. Can you just point briefly to the first one that you see on this document where you testified on behalf of the plaintiff.

A Sure. Let me run down and see what I can --

Q Sure.

A -- which ones I can recall and --

Q And I understand this is going back some time. I'm just trying to get a general idea.

A Sure.

Q Well, it's only going back four years.

A On page 3, Richard Thrower.

Q I'm there.

A 12/9/2015. That was a plaintiff --

Q Okay.

A -- trial. There would be a deposition somewhere on the list, as well, for that.

Q Okay.

A Actually, on page 4, that's the deposition for

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that case.

Q Okay.

A At the bottom of page 5, Justin Smith, 10/24/2014, that was a plaintiff case.

Q Okay.

A The next line, Carol Smith, another deposition, another plaintiff case there.

Q Okay.

A Top of page 5, Christopher Pracht. That -- technically, as captioned, I was the defense in that one, although it was both -- both parties sued each other and, actually, Mr. Herrera, the defendant in that version of it, was actually struck in the rear by another vehicle and had a separate suit.

But it was -- you know, so it's kind of almost a 50/50 split on that one, if you will. As captioned, it was the defendant, though.

Q Okay.

A And there was a trial for that one, as well. Those are the ones that jump out that I can remember as being plaintiff.

Q Okay.

A There may be a couple more.

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Q Okay. And in the instances in these cases where you gave deposition testimony or trial testimony in the field of biomechanics or biomechanical engineering on behalf of a defendant, did you ever testify that the -- that it was your opinion to a reasonable degree of certainty that the forces in the motor vehicle accident could have caused the injuries?

A I mean, I think in the case of the defendants, if I'm test -- typically testifying in the realm of biomechanics, it is the opposite of that. It's saying that it's not reasonable because I'm obviously representing a defendant in those cases and asked to testify.

I don't think they'd call me if I didn't have that opinion. I mean, you know, I've told clients, that I can't testify because I can't help them in a particular case.

For the cases -- there are certainly cases in here where, you know, I had the opinion that maybe certain injuries could have been caused and either I just wasn't asked that and we just -- you know, it was a pure reconstruction case.

You know, for example, the plaintiff

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

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

A Yes, sir.

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

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

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

A Thank you.

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

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

A Okay.

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

A Yes, sir.

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

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

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

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

Q Okay.

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

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

Q Okay.

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

Q Okay.

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

Q Okay.

A So...

Q So those are the three categories?

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

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

A Yes, sir.

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

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A Sure. So my opinion is, based on the evidence, it is more probable that the tractor-trailer being operated by Mr. Jett would have been ahead of the Mercedes, pulled out into the median first, and then Ms. Jett would have pulled under -- I'm sorry -- Ms. Bundy would have pulled to the inside of the curve alongside his vehicle is the more likely or more probable scenario.

Q And as to who was where when, are there any more general opinions that you have, or is that the upshot of the conclusion?

A I think that's the upshot. Obviously there's a lot of details behind that.

Q And so let's talk about those details that are behind it. How did you arrive at that opinion? What was the first thing that you did?

A Sure. I looked at how the vehicles were positioned in the intersection. How they necessarily are going to make that turn.

Q And where was that data from?

A We have photographs post-accident of where they ended up.

Q And where are those photographs from?

A They were taken -- I mean, where are they from? I

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mean, they are taken post-accident and were provided.
Q And who took them?
A I have multiple packs. I believe I have four photographs which were labeled as being taken by Mr. Jett. I have another packet of photographs, unlabeled as to who took them. A couple of people are standing in some of the photographs looking at the intersection. I have a packet of photographs labeled "Photos taken by REH 9/30/2015."
Q By who?
A REH.
Q Do you know who that is?
A Mr. Harrell. There you go.
Q Okay.
A And then I have another packet labeled "Pictures of plaintiff's vehicle."
Q Okay.
A Again, looking at more of the damage. They are not from the accident scene.
Q And are you able to make a determination -- excuse me. Are those all the photographs you looked at?
A I believe there's a couple additional views in Mr. Poplin's report, as well --

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Q Okay.
A -- that I did not previously have.
Q Okay. And did you -- in forming this opinion, did you rely on any of these photographs? And you can keep those photographs out in front of you.
A Yes, sir.
Q Did you rely on any of the photographs that Mr. Poplin had in his file?
A I did.
Q And of the photographs that you have in your file, are you able to identify which ones were taken at the scene of the accident prior to any of the vehicles being moved?
A I guess tying it to the testimony, I do not believe that the Mercedes had moved post-contact at all. It's my understanding that -- from the testimony again, that Mr. Jett backed the truck up slightly after contact, kind of moving off the vehicle.

And obviously the vehicles are not in contact in these photographs, so obviously he had to have moved. And you can also see his steer tires turned -- instead of to the left as if moving to the lane, turned to the right, so that

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in a backing maneuver, it would relieve the -- you know, the contact between the trailer and the Mercedes. So I -- you know, I do believe his truck had to have moved --
Q Okay.
A -- and backed up slightly. Just enough to kind of separate the two vehicles.
Q And my question is a lot simpler than that.

Are you able to tell me today, based upon the photographs that you have, which of those photographs were taken prior to the vehicles being moved after the collision?
A I don't believe any of them were taken before at least one of the two vehicles, the truck, was adjusted slightly.
Q Okay. And ideally, in your world, you'd like to have photographs of the vehicles as they existed without people moving them around, right?
A That would be preferred. I mean, I believe they're close, but I do believe they have moved slightly.
Q And in any of your opinions, did you take that into account, that the vehicles in the photographs that you reviewed had, in fact, moved?

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A Yes, sir.
Q All right. So you looked at how the vehicles were positioned in the photographs?
A Yes.
Q All right. And what did you do next?
A I used --
Q Let me ask you this. Sorry to cut you off.
A Sure.
Q After looking at how the vehicles were positioned in the photographs, were you able to come to your opinion that you gave earlier, or did you have to do additional analysis?
A I did additional analysis.
Q So the first point of data were the photographs that we discussed that you just listed that are in your file, correct?
A Yes, sir.
Q All right. What did you do after that?
A That goes into the review of the materials. I mean, I really, initially before reaching any opinions, reviewed all the file materials. So I reviewed the deposition transcripts, the statements, the transcribed recorded statements of both drivers. I looked at aerial imagery of the

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scene.
Q Okay.
A You know, took some measurements on Google Earth, if you will.
Q Were those scaled measurements?
A They would -- I mean, they are scaled imagery, so yeah, you can take reasonably close measurements.
Q And did you actually scale your measurements?
A The measurement tool is -- I mean, it's already scaled to the photographs. I mean, they're scaled, so they give you those dimensions.
Q Okay.
A I pulled those images down and used the scaling to aid with the background of the CAD drawings, and I did CAD drawings.
Q Okay.
A And some layouts.
Q And what did you use to input for your CAD drawings?
A I mean, I used the scaled drawing background of the scene.
Q From Google Earth?
A Yes, sir.
Q Okay.

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A And then I placed in that scaled image a -- essentially a 3D model top view of a Mercedes SUV such as plaintiff's.
Q And where did you place it?
A At various locations before pulling out underneath the truck. Just looking at various potential positions. And then same thing for the truck. The truck at the stop bar, entering the median, pulling forward to contact.
Q Any other data that you analyzed in coming up with this first opinion?
A As I mentioned, I mean, I pulled vehicle specs for the vehicles so that I had some published data for the dimensions of the vehicles. I also had a 3D model of the Mercedes, so verified their match. But I think that's generally what I would have done to support and build up to the first opinions.
Q And what was it in that data that led you to come to your first conclusion that you gave earlier?
A Sure. There is obviously a debate between the two drivers as to who pulled into the median first, who came around. If the truck pulls out from the -- Mr. Jett testified -- Mr. Poplin, I think,

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agrees in his deposition -- or not in his deposition. In his report, he says Mr. Jett never saw the Mercedes ahead of the collision.

So the question then becomes is why would he not see a Mercedes SUV sitting out in the median? Mr. Poplin says that it's possible that in -- you know, in one -- basically one very tight, neat position, the A pillar, separate -- the pillar between the -- kind of the windshield and side -- side panel or the side glass, depending on the position, you might be able to hide a Mercedes out in that position, in that little bit of a V that's created, that little blind spot.

But that, again, depends on a very simple static position. The likelihood of a truck driver who is scanning, moving, and also steering a vehicle out to place it out there, that obscured position is going to dynamically change a lot, so the potential of missing a vehicle is highly unlikely.

Especially, you know, one that just pulled out -- reasonably would have pulled out ahead of him into the median, he would have advanced

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forward and seen that vehicle. So, you know, it seems very unlikely to start with.
Q Not to cut you off. So it's your -- it's your position that Mr. Jett should have -- if the Mercedes was out there first, Mr. Jett should have seen it?
A Should and reasonably would, yes.
Q Okay.
A Now, secondarily, the -- you know, I considered, okay, well, if he pulls out first and the Mercedes follows, you know, what are some potential reasons? Is it reasonable that they -- you know, the Mercedes could pull out behind him?

And looking at the likelihood of the testimony of Ms. Bundy -- so I'm weighing both sides, right? I'm looking at the testimonies. I'm analyzing both conditions, which -- what's the more likely?

You know, for Ms. -- once the truck goes out, Ms. Bundy has the opportunity and the dimensions available to pull to the inside of the truck. If she does that, then the question becomes, you know, what does she do? Once she's out to the inside of the curve, does she -- again,

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you see drivers do it all the time. You know, see the median, maybe pull out a second vehicle out in the median, because from the left, it's clear. Go ahead and get out in the median and then wait to make the left.

If she does that, she's going to be in a position where she cannot see through the truck reasonably for oncoming vehicles from her right. So she has to wait on the truck to go.

The other thing, too, is once she pulls to the inside, because of the articulation of the truck to the left, the -- from being able to see even in the side mirror out the left side of the vehicle, because the trailer and the tractor articulate, the side mirror view for Mr. Jett is going to shift to be into the side of his cab or into the front edge of the trailer and is not necessarily going to even have a view back to see a car pulling up into his inside.

So he very well could have the potential to never see that car pull up to the inside of him because of the change in angle of his truck and trailer as he pulls in and starts to kind of wait to make that turn.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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it's what I just testified to.
Q Okay. All right. And then your second opinion was what were the dynamics of the inter-vehicle contact, correct?
A Yes, sir.
Q All right. And what, if any, opinions did you reach there?
A Sure. So I calculated, through the vehicle interaction, the magnitude of the damage to her vehicle.
Q Are those calculations in your report?
A They are.
Q Did you utilize a computer program?
A I did.
Q What computer program did you utilize?
A I used Mathcad.
Q Okay.
A So the -- I guess the -- for the dynamics of the collision, my focus is to, okay, let's put aside that first opinion, who caused it, who was there first at that point.

You know, next step is don't really care. We know -- now accepting there's contact, what is the acceleration imparted to the vehicle as a

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result of this magnitude of contact? So resultant from that, I calculated that the resultant acceleration imparted to the Mercedes as a result of that rear right contact is approximately .8 g's or less. So less than a 1 g exposure to the overall vehicle.

And that is going to be a combination of longitudinal acceleration, so because the Mercedes is stopped and the vehicle is moving, there's going to be frictional interaction in that back that is going to tend to pull the vehicle along with it slightly. And that component is less than half a g. I believe about .3 g's. And there is a lateral component pushing it from right to left of about .8 g's.

So those were the two, you know, pushing it to the right, so inducing a clockwise rotation about the front axle, as a result of that lateral pressure. Those are the accelerations. That acceleration is right around the saturation point of the -- of the tires, meaning their available friction to the roadway.

So based on that, it's -- it would be at or near the point of you start to slide the vehicle

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or could move the vehicle, but not necessarily.
Q And do you have an opinion as to whether or not the vehicle moved, or you just don't know?
A It's -- it could. It may not. It's certainly going to rock it on its suspension. So the vehicle relative to the tires is going to rock, certainly, from the pressure.
Q My question is a lot simpler. Do you have an opinion as to whether or not the contact caused the vehicle to move, or is it you just don't know?
A I don't have an opinion. Within the photographs, there does not appear to be drag marks, skid marks in those photographs.

I've kind of accepted either way. I don't have an opinion to say it absolutely didn't move, and I don't have an opinion that says it absolutely did move the tires. You're on that threshold. It may have; it may not.
Q So if you're called upon to testify at this trial, one of the things you're not going to tell the jury is give them an opinion that the vehicle either moved as a result of the impact or didn't move as a result of the impact because you don't know?

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A I would -- from a conservative standpoint, I would err and say that it did move and then consider that from a biomechanics standpoint. I'm not going to tell them it absolutely didn't move or it absolutely did, but I'm going to accept and march forward with the biomechanical analysis that the vehicle was shifted on its, you know, tire-to-roadway contact points for further analysis purposes.
Q And did you utilize the vehicle data that you talked about earlier in coming up with your g-force analysis?
A I did, yes, sir.
Q And did you utilize any data from the accident site for that?
A I mean, I utilized the pictures that we were talking about, the -- looking at the ground, whether it looks like there's shift of the vehicle. But, really, the dynamics comes down to the magnitude of the damage or lack thereof and then what forces and resultant accelerations are tied to that.
Q Did you take into account Mrs. Bundy's testimony that her vehicle, in fact, moved as a result --

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A I did. I considered that. Yes, sir.
Q -- of the impact and was, in fact, dragged some portion?
A Yes, sir.
Q And did you discredit that? Did you take that into account? What did you do?
A It seems from the testimony she's a little stronger or acting as if it's moving a lot more than it seems to have moved. But, again, I'm not going to sit there and tell the jury that it absolutely didn't move.

It's -- from the pictures, it does not appear that it was drug out into the travel lanes of 521. Did it shift slightly in the median as a result of the contact? It's possible, yes.
Q Okay. So you came up with your opinion relative to the g-forces that you believe were created as a result of this impact, and then the next analysis would be to weigh the effect of those g-forces on the plaintiff, correct?
A Yes, sir. Or someone equivalent, yes, sir.
Q Okay. And did you weigh the effect of the g-force conclusions that you made on Mrs. Bundy, or did you use someone -- data that you determined to be

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equivalent?
A So I -- you know, again, I didn't examine her. You know, I've reviewed her medical records. I've reviewed her medical findings and accept those, that that's her condition.

From a biomechanical standpoint, the question becomes, you know, what is -- what's reasonable to someone equivalent to her? So of similar age, similar preexisting conditions, similar activities of daily living.

So the studies -- the biomechanical studies have a range of people. They have young. They have old. They have male. They have female. They have, you know, with and without significant preexisting. So it's kind of a wide-cast net, if you will, of data. So I compared against a range of studies.

I also compared against simple activities of daily living that she reasonably would be exposed to and kind of made comparisons to say is this accident any more or is it actually significantly less than simple activities of daily living that I would expect her to do and that she testified to having been doing.

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Q So what did you utilize? You said there were general categories in the -- essentially the comparable person that you utilized for what you do.

What category of person did you utilize?
A I mean, I used the whole range, but the -- some of -- the way some of the data is presented, it's the worst case or the most conservative for everybody.

So, in effect, I've used people -- a female older than her with preexisting conditions as the -- as kind of the minimum comparison.
Q Okay. And does that have a way to identify that? Is that a particular button that you click on your software?
A No, sir.
Q Okay.
A No, sir.
Q So where do you get that data?
A So, for example, the Society of Automotive Engineers J885 standard relies on a number of studies. And what they published, for example, for the net criteria or the net threshold exposure is the weakest person in the study. You know, the

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minimum threshold that the first person complains of even pain. Not injury, but pain. And kind of taps out of the test, if you will, or further exposure.

So I'd have to go to those particular studies, but those studies would include older females than Ms. Bundy. You know, potentially more preexisting conditions. I've also compared against --
Q Well, let me stop you there.
A Go ahead.
Q You say "potentially more preexisting conditions." What does that mean?
A I believe for the J885, the particular studies in that, the -- there are certainly older females. They don't necessarily quantify the -- in that study give all the details of the preexisting conditions, if you will. So it's -- from that particular study, I can't determine the exact magnitude of preexisting conditions from those individuals in that one study.
Q And is that the only study you utilized, the J885?
A No, sir, not at all.
Q All right.

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A So there's another study. For example, there's an author, Szabo, S-z-a-b-o, that I would compare against. That particular study, they did acceleration, impact exposures, higher magnitude. I believe the exposures are at least two to three times this, and they're using persons older. And they, in fact, did MRI studies, for example, on these people and found significant preexisting conditions in the lumbar and cervical spines in both people -- or in the studies -- all the people in that study.

So that would be another comparison under a worst-case scenario or worst exposure with, you know, no injuries and exposure significantly higher.

Q Any other studies that you utilized in putting in data to come up with this particular conclusion?

A Yeah. I mean, again, the opinions that I reach are based upon not just one study or two. I mean, it's -- you know, I've reviewed 50-100 studies on minor-impact exposures, the forces, complaints of injury or not. Things like that from, you know, years of testing. So, I mean, some of it is based on a general knowledge of all those studies.

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The only other -- there's a couple other specific studies, I guess, that have been included in this analysis file, one of which is the -- it's a study by an author, Allen, that looks at activities of daily living exposures. They measure the accelerations in plopping in a chair, walking down a flight of stairs, or stepping off a step.

They look at the -- again, they directly measure acceleration of the head relative to the torso. By comparing that and those activities, we find that that acceleration exposure is actually higher than this accident.

So that goes to the -- more the activity of daily living comparative that says that it's not reasonable that getting in her car she's going -- she got hurt, or getting out of her car she got hurt.

So when that exposure is significantly higher than the subject accident, then you -- and then I go to the -- you know, further support for the opinion that it's not reasonable that this particular vehicle contact would cause an injury as alleged.

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Q Okay. But before you get to that opinion, correct, you've got to have data from this particular wreck --

A Sure.

Q -- available to you, correct?

A And that goes back to the reconstruction, yes.

Q Okay. No, no, no, no, no. Oh, okay.

A So...

Q Do you know how Mrs. Bundy was positioned in the vehicle at the time of impact?

A I mean, from her testimony, she talks generally how she was positioned. I mean, again, was it -- I can't tell you to millimeter accuracy, but I can tell you, reasonably seated as a driver, belted driver in the driver's seat, you know, and whatever she's specifically testified to. That's my limitation.

Q Do you know which way her head was turned, if any?

A I'd have to go back to her testimony. I'm not sure she was asked that specific question. I have considered everything from looking forward to turned to the right looking for traffic.

And I've considered essentially when you look at the neck, for example, the neck is going

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to be the most vulnerable. The lumbar is going to be very well supported by the seat back, but the -- in this particular contact, the neck is going to be the most vulnerable because potentially her head is not sitting against the headrest initially and the vehicle is being pushed kind of forward and to the right. So she is effectively going to lean back and to her right.

I have looked at -- the data, for example, presents forward flexion, rearward extension, lateral bending, and then combinations of those. So I've considered really all axes as potentials and the worst-case axis as the most conservative.

So, you know, if it's lateral bending, it may be, you know, it's one number, but if it's lateral with extension, that may be more vulnerable, per the data. So I have used the worst case of each one of those because, again, I don't know exactly where she was, so instead I took the minimum force or the minimum threshold when I make a comparison for her because of that.

Q Are all these considerations or different iterations you just went through reflected in your file?

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A They are, yes, sir.
Q All right. Do you know the location of where her seat was at the time of the accident?
A Not exactly, no. I mean, you know, I've considered ranges, but --
Q What about the headrest?
A As far as how far up or down, no. I mean, I assumed it's somewhere behind her head.
Q And do you know -- with regards to Mrs. Bundy's preexisting conditions, what data have you been provided for that, if any?
A There's questions in her deposition that have been answered and I have her -- I have a number of medical records for her, as well, to review, films to review, radiology reports, complaints, etc.
Q And are you qualified to review radiology reports and films?
A Not as a radiologist. I'm not going to ever review them and render a diagnosis and report that as a medical diagnosis. I've been trained by -- for example, in graduate school by radiologists, by orthopedic surgeons, things to look for. So I do review them and look at them.
But I look at -- you know, I'm not going to

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sit here and argue with a radiologist that something in their report is inaccurate. I may look for more detail sometimes that maybe they didn't write in their radiology report, but I'm certainly not going to contest a radiology report and say, Doctor, sir, you're wrong or, Ma'am, you're wrong.
Q And you're not qualified if you were given a film -- MRI, x-ray, otherwise -- to identify a preexisting condition, correct?
A No, I'm not going to look -- I mean, I may look for them, but I'm not going to offer an opinion, Oh, that's a preexisting condition and identify it. I may look at it, but --
Q So the third aspect of your opinions after you came up with your 1 g to .8 g's for impacts would be how those -- how those g-forces were applied to Mrs. Bundy based upon the general data in those studies that we talked about, correct?
A Some of those studies and then just the forces. So just to clarify, it's -- I calculated .8 g's, so 1 would be greater, so, you know, that was the maximum.
Q Okay.

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A I think maybe started off saying less than 1. Actually, .8.
Q Okay.
A Part of the biomechanical then is to look at, okay, if you're a seated driver, there's contact to where it is. And there's an application of .8 g's or, you know, thereabouts. What happens to someone, where do they move, how do they move, and the biomechanical studies and just basic physics tells us where things are going to move and how aggressively they're going to move.
And then -- and then separately within the biomechanical analysis, I apply that .8 g to the vehicle to understand then what happens to the body, joint segment by joint segment, cervical specifically and lumbar specifically, to say what happens to those areas.
Q And was the .8 g's, was that an average that you utilized? Is that what your calculations spit out?
A That's the resultant accelerations. So I think we were saying there's two vectors. There's a longitudinal and a lateral component. And it's the resultant of those two.

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Q Okay. But at any given point of those two vectors, it would essentially be a curve of impact, correct, not a linear line?
A It's not a -- it's not linear. That's correct.
Q Did you depict it as linear in your calculations in order to come up with .8 g's? Otherwise you would have a range of g's for each one of them, correct?
A So the -- that would be the peak resultant of those two. So, you know, if the lateral is only .2, but the -- at the same time, the lateral is .8, it's going to result in a .8 result. Worst case, .8 result.
So that's the -- that's the upper end result and that's assuming the peak longitudinal and the peak lateral are happening at the same time to result into that.
Q But depicted linearly rather than on a curve?
A I'm not sure I'm following you.
Q Meaning the way you came up with the .8 g's, essentially you had to average what -- did you take the peak amount of contact or did you average over the exposure to those g-forces?
A So the -- maybe I -- in the reconstruction -- I'll

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try to back up a couple steps just to explain it.
The acceleration, it starts off by looking at the magnitude of the crush or the magnitude of the damage to the vehicle. I calculate a force. How much force does it take to cause that magnitude of damage? So I calculate that kind of maximum force based on the numbers. And then from that maximum force, it then comes down to a function of the mass of the vehicle and then the -- you know, force is mass times acceleration.
So you're basically resolving the equate -- the acceleration out of the worst-case force, the maximum force that it took to cause that. So that's -- there's a ramp-up to that. But, you know, that's kind of you hit your peak then.
Q And the starting point for you in that analysis was the crush, the -- i.e., looking at the damage to the vehicle?
A It speaks to the magnitude of the damage and then stiffness parameters for the vehicle, yes.
Q And does the magnitude of damage always depict or evidence, in your opinion, the level of g-forces that would be applied to an individual in the car?
A Not exactly.

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Q Meaning -- and I'll give you an example. If a car drove by with a hook on the side of it -- and I don't mean to be ridiculous --
A Sure.
Q -- but just to make it simple. Drove by with a hook on it and snatched something on your vehicle and jerked you out, there may not be much damage to the vehicle, but there would certainly be a lot of g-forces applied to the individual in that vehicle, correct?
A You're saying the hook grabs the person, not the vehicle?
Q No, the vehicle itself.
A Okay.
Q Snaps it. Okay? Let's say it snaps it at the axle or something.
A Okay.
Q There's not a lot of resulting damage to the vehicle itself, but the g-forces applied to that individual vehicle may be exponentially above what the damage would show, correct?
A No. If I'm understanding your question, I mean, the hook, if you're hooking the vehicle and snagging the vehicle, it takes -- you know, the

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force has to be -- the forces to get to the person comes through the vehicle, so the forces that are being applied to the vehicle are going to show up as damage to the vehicle in some form.
So you're going to look at -- you know, if the hook digs into the sheet metal and tears all the way up the vehicle, you've got to calculate how much force it takes to drag and snap a hook through the side of the vehicle.
Q So your testimony or your opinion or whatever it is you do is based -- the starting point is assessing the damage to the vehicle in order to determine g-forces to the occupant of the vehicle?
A Sure.
Q Okay.
A Yes, sir.
Q And do you have an opinion one way or the other as to whether or not g-forces can be applied to an individual in excess of the damage shown, or is that always your starting point?
A I mean, it's a closed system, so there's a vehicle. She's in the vehicle. The forces are coming from outside. You're not magically creating forces from some other avenue. So those

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are the forces coming in. They're transferred to the body. Now, on a joint-by-joint basis, it may not be .8 g's in a certain joint because of certain things.
There may be, you know, amplification factors and other things to consider. There may be dampening, as well. You know, by the time it gets to, you know, a certain joint, it may be half that, or it may be higher than that. And that -- that's part of the biomechanical analysis as to how that acceleration affects each individual joint.
Q But your starting point is -- you, Mr. Boggess -- looking at the damage to the vehicle? That's where you start off, correct?
A I mean -- well, after you get through the review of all the other stuff we were talking about -- review of the materials, review of the evidence, review of the vehicle specifications -- yeah, I mean, that's the next step. And then that carries into the biomechanical is the force applied to the vehicle.
Q And that damage that you -- that you're evaluating as a starting point, is there a mathematical

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calculation that says, okay -- I mean, do you go out there with a ruler or a compass or something to determine how big the damage is in order to input that data into your calculation?

A You can. You know, in this case, I didn't have the vehicle to go put my hands on with that damage, so I'm going off of photographs, I'm going off the CAD file for the vehicle to get certain dimensions, and making certain conservative approximations to the damage.

Q Okay. And those certain conservative approximations, that's the input, not of the computer system you have or anything else, that's the input of Mr. Boggess, right? That's your --

A Based upon the review of that information and review of, again, the CAD data and certain dimensions, known dimensions -- you know, again, I can -- from the CAD data, I can look, what is the dimension between the rear edge of the glass, side glass and, you know, wrapped around that rear pillar. What is that dimension? And then what is, you know, what approximately is the depth of that? You know, those are your two parameters: What's the width, what's the depth of that damage?

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Q Can somebody get, in your -- in your past experience or your testimony here today, can someone get injured in a crash that has no resulting damage to the vehicle they're in?

A I mean, it depends on the circumstances. I mean, there's always some scenario, some possibility that you could, you know, hypothetically come up with.

Q But if your starting point is damage to the vehicle, how would you ever get there?

A I get -- I get more specific in each individual case. It's -- I have a -- it's not just any person. It's the person involved in this case or equivalent. How they're positioned reasonably in the vehicle. What's the forces? What is the -- you know, what is the scenario we're dealing with in this case?

Q How do you measure forces if there's no damage to the vehicle?

A I mean, there is a zero point. There is a -- in the bumper test, for example, from the Federal Motor Vehicle Safety Standards, Part 581, there is no damage allowed in certain test modes, 1 1/2- and 2 1/2-mile-an-hour contacts.

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Now, those are direct to the bumper system. They have to basically be resilient. So if -- you know, if I have a zero damage state, I may -- I would, you know, conservatively assume it's at least 2 1/2 miles an hour, for example. Maybe 3 just to be sure. They didn't know -- you know, 3 or 3 1/2. It depends on the circumstance, but, you know, kind of go above and beyond there.

Because it does take force. I'm not going to -- in that case, I'm never going to assume it's only one. You know, I would assume it's at least the minimum requirements, if not a little -- you know, some margin to that. I may use a test that does it at 5 and say, well, in 5, I would expect to definitely get damaged. In this much, I definitely don't have that. At 2 1/2, I need to take -- it should be a no damage state. And so it's somewhere in between. So for various reasons on a certain matter, I would go somewhere in between.

Q So in that instance, you would just make assumptions based upon the vehicle specs that you have?

A Yeah. Again, I would get specific to that case

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

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

A I did.

Q And what is that?

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

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

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

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

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testimony is just not plausible with regards to that.

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

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

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

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

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

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

Q Meaning there was no g-forces?

A The g's, the induced forces and accelerations, are insufficient to cause those types of conditions. And then also the motion, the directionality of things are not consistent.

Q Directionality meaning --

A The directionality in range.

Q -- her body?

A Yes. Yes, sir.

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

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

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

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

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

A My opinion would be a little different than that.

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

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

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

A Sure.

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

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

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

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A Sure.

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

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

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

A I do.

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

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

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

A Generally speaking, yes, sir.

Q And how did you become familiar with those procedures?

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

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specifically was done.
Q If somebody came to you and said, Okay, I was in a motor vehicle wreck -- all right? -- and I'm in pain --
A Yes, sir.
Q -- and here's the pictures of the accident and here's the type of car that I was driving, are you qualified to say one way or the other, I've now looked at all this and I don't know why you're in pain, but it's not from that wreck?
A I mean, from a biomechanical standpoint, with sufficient information, depending on what they brought me and what I could analyze, I may -- you know, I may have an opinion that, similar to this, it's not reasonable that this accident caused that. It depends.
Q So you think you're qualified, if given the information, pictures from the accident, and the specs of the vehicle, to make a determination as to whether or not somebody was injured in a particular wreck?
A With just those limitations of what I'm being provided, I may not -- I may not have enough information. I mean, it depends on the

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circumstances of what they are handing me.
You know, again, it may be reviewing, you know, need testimony, need repair estimates, need -- you know, need certain other facets of information. I mean, if they -- if they tell me where they were seated and how they were seated and, you know, different variables like that, maybe we're there. If it's a simple, Here's a photograph, you know, again, that may be pretty limiting.
Q Let me ask you this way. Where is your office? Is it in Charlotte?
A It is Charlotte, yes, sir.
Q And let's say there's a wreck out front of your office. All right? And the person that's involved just got hit by, let's say, a tractor-trailer. Walked straight from the accident into your office and says, I'm in pain. I wasn't in pain before.
A Sure.
Q And I need you to make a determination right now as to whether or not that wreck caused the injury.
Would you go ahead and do that analysis, or would you say, Go see a doctor?

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A If they are in pain, I'm going to say, Go see a doctor and figure out what -- you know, If you have pain, go see a doctor and let -- again, they -- they diagnose what the source of your pain is. They don't diagnose what caused it.
In the sense of was it a motor vehicle accident 30 miles an hour and is it reasonable to cause a condition, they are going to look at radiology films, do manipulation tests, palpate, do things like that to determine why are you in pain in this particular location and what can I do to fix you.
Q Did we go through all your opinions on the biomechanical side?
A I think we touched on all the opinions, yes, sir.
Q So what we talked about was your -- the overview of your opinions were who was where when. And we've talked about all your opinions there, right?
A I believe so, yes, sir.
Q And then the next analysis was, of your opinions what were the forces that were caused as a result of the impact that occurred?
A We talked about that, yes, sir.
Q And have we talked about all your opinions

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relative to that?
A I believe so, yes, sir.
Q And then the last category that you gave me was your biomechanical opinions which related to the kinetics and kinematics, correct?
A Yes, sir.
Q And have we talked about all your opinions related to that?
A Yeah. I mean, I believe we've touched on all the opinions. Obviously, I don't know what you or defense counsel might ask. I mean, I think we've touched on all the areas I anticipate touching on. There are little details within those that we may not have gotten into, but those are certainly the areas, I believe.
Q But you haven't been asked to do anything other than in those areas?
A Not to my knowledge. Not that I recall, no, sir.
Q And just to -- I'm wrapping up with you, but just to -- you're going to copy that file. I'll give you a card so they can bill me directly.
A Okay.
MR. MCDONALD: That's all I have.
THE WITNESS: Thank you, sir.

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MR. HARRELL: No follow-up for me. Thank you.

(WITNESS EXCUSED)

(WHEREUPON, THE DEPOSITION WAS CONCLUDED AT 11:18 A.M.)

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STATE OF NORTH CAROLINA )
)
COUNTY OF MECKLENBURG )

CERTIFICATE OF REPORTER

I, Tavi L. Fraga, Registered Professional Reporter and Notary Public in and for the aforesaid county and state, do hereby certify that on May 12, 2017, Brian M. Boggess, P.E., being by me personally duly sworn to tell the truth, thereupon testified as above set forth as found in the preceding pages, this examination being reported by me verbatim and then reduced to typewritten form under my direct supervision; that the foregoing is a true and correct transcript of said proceedings to the best of my ability and understanding; that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action.

IN WITNESS WHEREOF, I have hereto set my hand this 25th day of May, 2017.

_____
Tavi L. Fraga
Registered Professional Reporter
Notary Public #201229000172

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW CASE NO. 2015-CP-28-00852

HEATHER ANNE BUNDY, )
)
Plaintiff, )
)
vs. )
)
THOMAS ELROY JETT and HAIER )
AMERICA RESEARCH & DEVELOPMENT )
CO., LTD, )
)
Defendants. )

DEPOSITION OF BRIAN M. BOGGESS, P.E.
CERTIFICATE OF DEPONENT

I, Brian M. Boggess, P.E., hereby certify that I was first duly sworn prior to the commencement of my deposition, which was given before Tavi L. Fraga, on May 12, 2017, in Charlotte, North Carolina, and that review, examination and signing of the deposition was reserved. The foregoing constitutes a true and accurate transcript of said deposition, and (CIRCLE ONE):

(a) no changes are necessary, OR
(b) I desire that the changes attached hereto on the errata sheet be incorporated into said deposition.

_____
Brian M. Boggess, P.E.

Witness, my hand and seal, on this, the ____ day of _____, 2017.

_____
Notary Public
My Commission Expires: _____

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW CASE NO. 2015-CP-28-00852

HEATHER ANNE BUNDY, )
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Plaintiff, )
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)
Defendants. )

DEPOSITION OF BRIAN M. BOGGESS, P.E.
ERRATA SHEET

| PAGE | LINE | SHOULD READ | REASON FOR CHANGE |
|---|---|---|---|

Signed this the ____ day of _____, 2017.

_____
Brian M. Boggess, P.E.

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M&G
MURPHY & GRANTLAND, P.A.

Rogers E. Harrell, III
Direct dial 803-454-1241
rharrell@murphygrantland.com

January 2, 2017

M. Brent McDonald, Esquire
*Bundy McDonald, LLC*
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485

**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** |

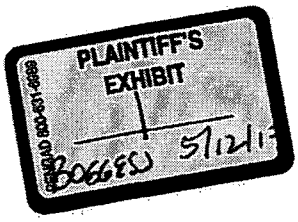
Dear Brent:

Enclosed please find ***Defendants' Second Supplemental Answers to Plaintiff's First Set of Interrogatories***, which I hereby serve upon you. Also enclosed please find our Certificate of Service.

Yours truly,

Rogers E. Harrell, III

REGIII/mnw
Enclosure
cc: Yulia McArthur (*via e-mail*)
Alex Zeigler (*via e-mail / HNG8973*)



| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| COUNTY OF KERSHAW | CIVIL ACTION NO: 2015-CP-28-00852 |
| Heather Anne Bundy,<br>Plaintiff,<br>vs.<br>Thomas Elroy Jett and Haier America Research & Development Co., LTD,<br>Defendants, | **DEFENDANTS' SECOND SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** |

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

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute the Defendant's Supplemental Answers to Interrogatories propounded by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as obtained.

## GENERAL OBJECTIONS

1. Defendants object to these Interrogatories to the extent that they seek documents or other materials protected by the attorney-client privilege or the Work Product Doctrine. If any document or other material protected by either of these doctrines is inadvertently produced, that is not to be deemed a waiver of the protection afforded to those documents, and Defendants request that Plaintiff return such document and all copies thereof upon request to the undersigned.

2. Defendants object to these Interrogatories to the extent that they seek documents and things that are not relevant to the issues in this litigation; are not reasonably calculated to lead to discovery of relevant or admissible evidence; or seek information related to matters beyond the scope of the issue raised by this action.

3. Defendants object to these Interrogatories to the extent that they are overly broad and/or unduly burdensome and to the extent that they seek information not within their possession or control.

4. Defendants object to these Interrogatories to the extent that they contain vague and undefined terms that render them unsuitable for response.

5. These responses are made solely for the purpose of responding to discovery requests promulgated in this action and should not be construed as an admission of relevancy, materiality, or admissibility. Defendants reserve the right to seek exclusion of any response (or any document produced in connection with any such response) at trial and preserve all evidentiary objections, including but not limited to, objections as to confidence, relevance, materiality, and admissibility and preserves any other objections to exclude any statement contained in a document produced in response to these requests as if such statement had been made by a witness present and testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

6. The responses set forth herein are based upon information that has been collected and/or reviewed for the purpose of responding to these requests. Defendants reserve the right to supplement their responses in the event that they obtain additional information that has been requested.

7. Each of the above general objections is incorporated into all of the responses set forth below and no response is to be deemed a waiver of any of the above general objections whether or not specifically set forth in the response.

**DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

5. List the names and addresses of any expert witnesses whom the Defendants propose to use as witnesses at the trial of this case.

**ANSWER: At this time, Defendants have not identified an expert witness for the purpose of testifying at the trial in this case, but reserve the right to supplements their Answer to this Interrogatory if and when an expert is retained. Defendants will comply with any Scheduling Order or other order of the court with respect to identification of testifying experts.**

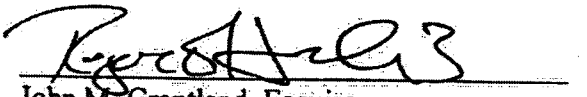
**SUPPLEMENTAL ANSWER:**

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**SECOND SUPPLEMENTAL ANSWER:**

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***Attorney for Defendants***

Columbia, South Carolina
January 2, 2017

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,

**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, ***Defendants' Second Supplemental Answers to Plaintiff's First Set of Interrogatories***, 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, South Carolina 29485

Marla N. Watkins, Paralegal

Columbia, South Carolina
January 3, 2017

**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**

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SC Court of Appeals

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

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**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**

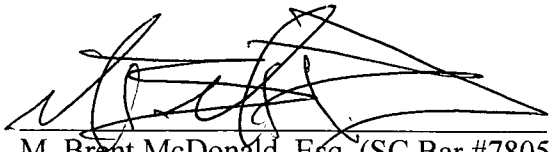
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## CERTIFICATE OF COUNSEL

---

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Signature Page to Follow



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July 30, 2019
Summerville, SC