

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
Robert E. Hood, Circuit Court Judge

Case No. 2011-CP-23-04585
Appellate Case No. 2013-000666

James L. Dawkins and Delphine Dawkins Appellants,

v.

Troy Lee Watts, Jr.. Respondent.

RECORD ON APPEAL - VOL. II

Donald R. Moorhead
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607
(864) 242-9999

Cynthia Patterson
PO Box 6786
Columbia, SC 29260
(803) 790-2688

Attorneys for Appellants

Marcus K. McGarr
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089

Attorney for Respondent

RECEIVED

JUN 02 2014

SC Court of Appeals

TABLE OF CONTENTS

Order - Form 4 - Judgment in a Civil Case (Denying Post Trial Motions)	3
Verdict Form	6
Complaint	7
Acceptance of Service by SC Dept. of Ins. dated July 19, 2011 and August 3, 2011 ...	10
Affidavit of Service dated July 25, 2011	12
Affidavit of Service dated August 17, 2011	13
Answer	14
Requests to Produce & Defendant's Responses (Defendant's 1-6)	18
Requests to Admit	38
Supplemental Request to Produce	358
Transcript - January 22-23, 2013 (p.1-280), including Transcript of Dr. McHenry's deposition	361
Pre-trial Motions (5)	468
Opening by Mr. Moorhead (36)	499
Opening by Mr. McGarr (42)	505
Video Deposition of Timothy McHenry (51)	514
Penny Cates (Direct) (57)	520
Penny Cates (Cross) (80)	543
James Lewis Dawkins (Direct) (89)	552
James Lewis Dawkins (Cross) (101)	564
Motions (102)	565
James Lewis Dawkins (Proffered testimony - Cross)(106)	569
James Lewis Dawkins (Proffered testimony - Redirect) (114)	577
Motions (116)	579
James Lewis Dawkins (Cross) (121)	584
Motions (162)	625
James Lewis Dawkins (Proffered testimony - Cross) (165)	628
James Lewis Dawkins (Proffered testimony - Redirect) (166)	629
Motions (167)	630
James Lewis Dawkins (Cross) (170)	633
James Lewis Dawkins (Redirect) (196)	659
Delphine Dawkins (Direct) (209)	672
Delphine Dawkins (Cross) (212)	675
Delphine Dawkins (Redirect) (214)	677
Delphine Dawkins (Re-cross) (214)	677
Motions (218)	681
Troy Watts, Jr. (Direct) (221)	684
Troy Watts, Jr. (Cross) (225)	688
Closing (230)	693
Motions (248)	711
Jury Charges (252)	715
Verdict (278)	741
Motions (279)	742

Projected Cost for Surgery Summary (Plaintiff's 1)	744
Medical Expense Summary (Plaintiff's 2)	749
Steadman Hawkins bill (Plaintiff's 3)	750
Affidavit of Amanda Garland	755
Affidavit of Jill Wrenn	800
Motion for New Trial Nisi Additur or in the Alternative Motion for a New Trial as to Damages Only	882
Plaintiffs' Brief as to Motion for New Trial Nisi Additur or in the Alternative Motion for New Trial as to Damages Only	884
Defendant's Memorandum in Opposition to the Plaintiffs' Brief as to Motion for New Trial Nisi Additur, or in the Alternative, Motion for New Trial as to Damages Only	890
Plaintiffs' Reply to Defendant's Memorandum in Opposition to Plaintiffs' Brief as to Motion for New Trial Nisi Additur, or in the Alternative, Motion for New Trial as to Damages Only	895
Certificate of Counsel	898

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2011-CP-23-04585

JAMES DAWKINS AND DELPHINE
DAWKINS,

PLAINTIFFS,

vs.

TROY LEE WATTS, JR.,
DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

January 22 and 23, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL AND ROBERT E. HOOD,
JUDGES; and a jury.

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

DONALD R. MOORHEAD, ESQ.
Attorney for the Plaintiffs

MARCUS K. MCGARR, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiffs Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

Page No.

Pre-Trial Motions.....	5
Jury Qualification.....	17
Jury Selection.....	23
Introductory Remarks by the Court.....	28
Opening Statement by Mr. Moorhead.....	36
Opening Statement by Mr. McGarr.....	42
Video Deposition of Timothy McHenry.....	51

WEDNESDAY, JANUARY 23, 2013

<u>(PW) PENNY CATES:</u>	
Direct Examination by Mr. Moorhead.....	57
Cross-Examination by Mr. McGarr.....	80
<u>(PW) JAMES LEWIS DAWKINS:</u>	
Direct Examination by Mr. Moorhead.....	89
Cross-Examination by Mr. McGarr.....	101
Matters of Law.....	102
<u>(PW) JAMES LEWIS DAWKINS (IC):</u>	
Continued Cross-Examination by Mr. McGarr.....	106
Redirect Examination by Mr. Moorhead.....	114
Matters of Law.....	116
<u>(PW) JAMES LEWIS DAWKINS:</u>	
Continued Cross-Examination by Mr. McGarr.....	121
Matters of Law.....	162
<u>(PW) JAMES LEWIS DAWKINS (IC):</u>	
Continued Cross-Examination by Mr. McGarr.....	165
Redirect Examination by Mr. Moorhead.....	166
Matters of Law.....	167

INDEX (CONTINUED)

<u>(PW) JAMES LEWIS DAWKINS:</u>	
Continued Cross-Examination by Mr. McGarr.....	170
Redirect Examination by Mr. Moorhead.....	196
 <u>(PW) DELPHINE DAWKINS:</u>	
Direct Examination by Mr. Moorhead.....	209
Cross-Examination by Mr. McGarr.....	212
Redirect Examination by Mr. Moorhead.....	214
Recross-Examination by Mr. McGarr.....	214
Plaintiff Rests.....	218
Motions.....	218
 <u>(DW) TROY WATTS, JR.:</u>	
Direct Examination by Mr. McGarr.....	221
Cross-Examination by Mr. Moorhead.....	225
Closing Argument by Mr. Moorhead.....	230
Closing Argument by Mr. McGarr.....	235
Closing Argument by Mr. Moorhead.....	245
Matters of Law.....	248
Charge on the Law by the Court.....	252
Verdict.....	278
Motions.....	279
Certificate of the Court Reporter.....	281

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Plaintiffs Exhibits)			
P-1	Projected Cost for Surgery Summary.....	63.....	63
P-2	Medical Expense Summary.....	251.....	251
P-3	Steadman Hawkins Bill.....	101.....	251
P-4	Progress Notes.....	204	
(Defense Exhibits)			
D-1	Photograph.....	130.....	130
D-2	Photograph.....	130.....	130
D-3	Photograph.....	130.....	130
D-4	Photograph.....	130.....	130
D-5	Photograph.....	130.....	130
D-6	Photograph.....	130.....	130
(Court's Exhibits)			
C-1	DVD-Video Deposition of Timothy McHenry.....	51.....	51
C-2	Plaintiff's Request to Charge.....	250.....	250

All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

THE COURT: This is case #2011-CP-23-4585. This is
James L. Dawkins and Delphine Dawkins --

Am I pronouncing that correctly?

MS. DELPHINE DAWKINS: Yes, sir.

MR. MOORHEAD: Yes, sir.

THE COURT: -- v. Troy Lee Watts, Jr.

All the parties are present with their counsel.
There's a motion in limine by Mr. Moorhead.

Yes, sir, whenever you're ready.

MOTIONS

MR. MOORHEAD: All right, sir. Your Honor, I'll take
what I hope to be the easy part first. And that is that
when we took -- when I took Dr. Timothy McHenry's
deposition, on cross-examination, Mr. McGarr brought up
issues about social security disability, Medicare, that
kind of thing. There is no claim in this case for any
kind of wage or loss of earning capacity loss, none, zero.
It's not even alleged. And it's not included in the trial
brief, which I filed.

And he goes on to say in some other -- specifically,
it's Page 25, Line 4 through Page 26, Line 14 --

MR. MCGARR: I may be able to shortcut this, Your
Honor. It's my understanding that during the time frame
of this treatment that the Plaintiff was not on social

1 security disability. So there's no -- so I asked that
2 question thinking he was. I think about a week ago, we
3 got a notice from Mr. Moorhead, from the social security
4 administration saying he was not on disability during that
5 time frame. So those questions should be taken out.

6 MR. MOORHEAD: Okay. In anticipation of something
7 like that happening, I've already edited the disk to
8 correspond with those specific questions and answers.

9 THE COURT: Okay.

10 MR. MOORHEAD: All right. The issue about the ankle
11 injury, I'm not going to worry about that. It's in the
12 disk and Dr. McHenry handled that. So I don't have any
13 issue about that, you know.

14 I'm asking that there not be any reference to any
15 urological or cardiology abnormalities, or records which
16 pertain to that.

17 THE COURT: So he's agreed to that?

18 MR. MCGARR: That would not happen.

19 THE COURT: Thank you, Mr. McGarr.

20 MR. MOORHEAD: Oh, there were -- some 15 years ago,
21 Ms. Dawkins had a fraudulent check charge. It was back in
22 the '90s.

23 MR. MCGARR: I'm not going to be mentioning that,
24 Your Honor.

25 THE COURT: Okay.

1 MR. MOORHEAD: That concludes my requests.

2 THE COURT: All right. Any other matters before we
3 bring the jury panel up?

4 MR. MOORHEAD: No, sir.

5 MR. MCGARR: Your Honor, there was some mention --
6 and I don't want it coming up in the middle of the trial
7 of me not being able to use any documents because I had
8 not given those documents to anyone. That's in the motion
9 in limine and, also, in the pre-trial brief. If
10 Mr. Moorhead is still under the misapprehension that he
11 has not been given those documents or he was not given
12 them in a timely fashion, then we need to discuss that
13 now.

14 MR. MOORHEAD: What -- I made a request to produce
15 all documents which in any way pertained to any other
16 injuries either before or after this incident. And the
17 response was that they're still looking. Okay. I can
18 address that on a document by document basis when he wants
19 to talk about something, I want to look at it, I want to
20 see what it is before it goes into evidence.

21 MR. MCGARR: What he said is I did not give him those
22 documents. And if that's the case, I would like to give
23 this as a Court's Exhibit or Plaintiff's Exhibit No. 1.
24 The time line is better served with the affidavit of my
25 paralegal, who is named Jill Wren.

1 THE COURT: Okay. Y'all are going to have to help me
2 out with what exactly the issue is.

3 MR. MOORHEAD: I'm getting what my request was and
4 what their response was.

5 THE COURT: Okay.

6 MR. MCGARR: Your Honor, in a nutshell, what we did
7 is we served subpoenas. We gave notice that those
8 subpoenas had been served. And we told Mr. Moorhead that
9 we would provide him with those records, if he requested
10 them. He did ask us early on in the game to give him all
11 records that were associated with each and every defense
12 you intend to assert and try to prove. And we simply
13 said, we don't have it at this point, but we will send it
14 to you when we can.

15 We then continued to subpoena records and even
16 continued to request copies of those records. We
17 continued to send those records to him. We then requested
18 more records via subpoena. He requested copies of those
19 records. We sent those records to him.

20 We then subpoenaed more records. He requested copies
21 of those records. And we sent those records to him in a
22 very timely fashion. And when it was over, not only did
23 we do that, but we sent him a request to admit
24 authenticity, which is in the Court's file, wherein we are
25 saying here are records -- or a number of the records we

1 intend to use at trial, tell us if they're true and
2 authentic, and whether they're kept in the ordinary course
3 and scope of business.

4 So to say that we have not given him records when he
5 has every medical record that we've subpoenaed is a
6 misstatement. And I don't understand where that statement
7 came from. And so if we're going to get into objections
8 where you didn't give me those documents in front of a
9 jury when, emphatically, we did. And we gave them to him
10 as they came in and sent them to a copy service that
11 delivered to him.

12 He has all those documents and has had them for quite
13 some time. If we're going to do that, then we're heading
14 down a road where we shouldn't be headed.

15 MR. MOORHEAD: Your Honor, I received a lot of
16 documents. And -- but that's not the issue. The issue is
17 I asked, specifically, for specific documents which
18 support their allegation as to any other injury other than
19 this automobile accident. And they were not responsive to
20 that. And I've got the right under the rules to have it
21 organized more than a box full of documents that they send
22 over to my office.

23 And I'm looking for that specific request now. And
24 that's my issue. I think it can be handled, Your Honor,
25 as it comes up, but it will take some time. Because I

1 need to scrutinize the documents because that request for
2 production was not responded to.

3 So I don't have -- I can't fine tune it, except on
4 the fly. And I'm willing to do that.

5 MR. MCGARR: Your Honor, it was responded to when we
6 sent him a formal request to admit with regard to all the
7 documents associated with this gentleman's post-existing
8 and pre-existing medical conditions. And Your Honor
9 would, actually, have in the file and as part of the
10 affidavit a laundry list of the documents that were sent
11 in response to that. I believe that the number adds up to
12 91 documents. It's the --

13 THE COURT: Well, how is that responsive to his May
14 25th supplemental request for production?

15 MR. MCGARR: Because he's, basically, saying tell us
16 what documents that you have that deal with his medical
17 conditions, and we've provided it to him with request to
18 admit. We gave him a road map.

19 THE COURT: Where in the rules does it say that you
20 can answer his request for production with your request to
21 admit?

22 He's got a right to ask discovery questions that are
23 targeted, just as you do.

24 MR. MCGARR: I understand, Mr. Hill -- Judge Hill.
25 But the bottom line is those documents were given to

1 him --

2 THE COURT: But where does it say in your responses
3 that you did that, your discovery responses to his request
4 that you've done that?

5 MR. MCGARR: Here is his request, Your Honor. On
6 October 26, 2011, which was just as the case really got
7 started, he asked us to get each and every defense you
8 intend to assert and try to prove at the trial of this
9 case and all statements that say the following: Say each
10 and every basis for each defense identified by description
11 of document, custodian of document, address and telephone
12 number of the custodian of the document, each and every
13 piece of evidence which supports each and every piece of
14 defense. We did that by virtue of response to request to
15 admit where we listed who the document came from, the date
16 of the document, and attached the document to it.

17 THE COURT: But how does he know that's how you're
18 answering them?

19 MR. MCGARR: Your Honor, the bottom line is no
20 document is going to be presented in this courtroom that
21 he doesn't have access to.

22 THE COURT: How does he know that's how you're
23 answering his request for production by your request to
24 admit?

25 MR. MCGARR: Because we went further on where it

1 says, In response to interrogatory No. 6 -- or request to
2 produce No. 8, we replied to him that we didn't even have
3 records at that time, but we would provide him with those
4 records when they came in, and reserve the right to call
5 any physicians, record custodians, et cetera, so forth,
6 and so on. We then sent him documents in response to our
7 subpoena requests. Then when he sent --

8 Was there a second request to produce? I don't
9 believe there was.

10 MR. MOORHEAD: I can help in that regard, Your Honor.

11 MR. MCGARR: Please, help me.

12 MR. MOORHEAD: Well, on May the 25th -- I think
13 you've already responded to it -- or addressed it, Your
14 Honor. On May the 25th, I sent out a supplemental request
15 for production, which asks for any and all documents or
16 recordings, regardless of the date which in any way relate
17 to personal injury or injuries to Mr. Dawkins, both before
18 and after the accident, which is the subject of this
19 action. And the response was, None attached at this time.

20 And the purpose of that is if he's got some obscure
21 record in a box eight inches deep that refers,
22 specifically, to that issue, I want that targeted. I want
23 to be able to look at that so I can address it. And that
24 was my request, and that was his response.

25 MR. MCGARR: And, Your Honor, the way that we

1 targeted it so there would be no confusion is that we sent
2 a response -- I mean, a request to admit authenticity that
3 lists by chronological date the documents that we intended
4 to use and the documents that were in response to that
5 question." And it, literally, says -- and it's in your
6 packet. Operation consent form from Spartanburg Regional
7 Hospital regarding James Lewis Dawkins dated May 5, 1997.
8 So if he's wanting to know what might be out there and
9 what might be hiding, it wasn't hiding. It's now listed
10 in chronological order with the documents attached to it.

11 So you have the document's name, where it came from,
12 and its date. And then you have -- not in the stack you
13 have because I don't want to -- if we put those in, they
14 have identifying information like social security numbers
15 and so forth on them. But it has been listed.

16 There is nothing in hiding. It is listed as
17 chronologically, and as loudly, and as specifically as you
18 can possibly do.

19 THE COURT: Well, I don't know. I mean, you know,
20 needles don't hide in hay stacks, they're just real hard
21 to find. I know that's what he's worried about.

22 MR. MCGARR: Well, if these are the needles -- so if
23 there are needles, they're in this stack.

24 THE COURT: But how -- I don't understand how you --
25 what authority do you have, Mr. McGarr, that -- that's an

1 answer to his request to admit; right?

2 MR. MCGARR: No. This is my sending him the request
3 to admit authenticity.

4 THE COURT: Well, even better. How does that -- how
5 can your requests to admit be deemed an answer to his
6 request to produce? I mean, that's what you're,
7 essentially, arguing.

8 MR. MCGARR: Because he asked us to produce each and
9 every document that related to this gentleman's
10 pre-existing or post-existing medical treatment that we
11 were dealing with. And we did it by way of this request
12 to admit authenticity. It can't be done any clearer.

13 THE COURT: Well, yeah, you could just answer his
14 question.

15 MR. MCGARR: But we did.

16 THE COURT: No, you didn't. How did you answer his
17 question other than saying -- the fact when you answered
18 his question, you said we're still getting subpoenas out
19 and we'll give you the records of each subpoena. You
20 didn't tell him that you were going to answer it by
21 sending out a request to admit.

22 MR. MCGARR: We told him we were still receiving the
23 documents. And then when we responded, we did it with a
24 request to admit.

25 THE COURT: Well, maybe it won't be an issue, I hope

1 it won't be. But --

2 MR. MCGARR: Your Honor, I don't know how -- I mean,
3 you can't -- how many people give you that much detail
4 with regard to here is every document we have? That's
5 what discovery is designed to do. And that's what we did.

6 THE COURT: That's great. But you didn't answer his
7 question. That's the whole point. He asked a specific
8 question. And just because you have produced documents
9 elsewhere in your own mind and you haven't told him,
10 specifically, that you've done that in a specific response
11 to his question, I don't think, meets the rules.

12 I mean, how could that be? Otherwise, we'd have the
13 whole rules of discovery being a guessing game as to what
14 was produced in response to what.

15 MR. MCGARR: Well, Your Honor, these are the
16 documents that we would be using in response to that
17 response. So it's not as if he has a surprise. And it's
18 not as if --

19 THE COURT: That's great. That's great. But why
20 make it so complicated for him?

21 MR. MCGARR: It's, actually, not. We tried to make
22 it more simple, Your Honor.

23 THE COURT: Okay. Well, it's --

24 MR. MCGARR: If I had inserted it as an answer to a
25 request to admit, it still would be the same thing.

1 THE COURT: Well, he might have a better idea of what
2 you were doing then, wouldn't he?

3 MR. MCGARR: Your Honor, I just personally -- when he
4 asked -- when we put all the records together and we send
5 it to you in that type of package, then you have what I'm
6 going to use at trial. And you're no longer looking for a
7 needle in a haystack. It's there for you.

8 THE COURT: Well, I, certainly, will welcome you to
9 submit to me any authority that says under the South
10 Carolina Rules of Civil Procedure that you can answer a
11 request for production of documents with a request to
12 admit that includes the documents that you're contending
13 are now responsive to his requests for production, even
14 though the request to admit doesn't say that. If you have
15 some authority that says that, I would be glad to look at
16 it. I hope it's not going to be an issue. But I can
17 understand where Mr. Moorhead is having some trouble with
18 that.

19 And I'm not doubting, Mr. McGarr, that you gave him
20 everything you're going to use. I'm not doubting that at
21 all. What I'm doubting is how he knows where to find it
22 in terms of his specific questions that he has the right
23 to ask, just as much as you do. And that's my concern.
24 That's what kind of jumps out at me. But, nevertheless,
25 hopefully, it won't be an issue, but we'll see.

1 Anything else before we bring the jury in?

2 MR. MOORHEAD: No, Your Honor.

3 THE COURT: Okay. Is there any dispute about any of
4 the voir dire?

5 MR. MOORHEAD: Other than what I gave Ms. Coker about
6 the witness list, I don't have any other specific voir
7 dire.

8 THE COURT: All right.

9 (WHEREUPON, the jury panel entered the courtroom.)

10 THE COURT: Good morning, ladies and gentlemen.

11 We're going now to select the jury in the case of
12 James Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.

13 And I'm going to ask some questions to ensure that we can
14 have a jury that will be fair and impartial, and can
15 decide this case without any kind of bias or prejudice
16 whatsoever.

17 JURY QUALIFICATION

18 THE COURT: So, to that end, the first thing I want
19 to do is ask if anyone knows anything about this case.
20 And I'm going to let the lawyers explain what the case is
21 about during their opening statements. But, for our
22 purposes now, this case arose over an accident that
23 occurred on September 24th, 2008, at the intersection of
24 Wade Hampton Boulevard and Poinsett Street.

25 Does anyone know anything about this case, other than

1 what you've heard here from me this morning?

2 (WHEREUPON, there was no response.)

3 THE COURT: Okay. There's no response.

4 Is there anyone related by blood or marriage or kin
5 to in any way James Dawkins, Delphine Dawkins, or Troy Lee
6 Watts, Jr.? If so, please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Does anyone have any personal, social, or
9 business relationship with any of these parties I just
10 mentioned? If so, please, stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: The people who may testify in this case
13 include, in addition to the parties, Timothy McHenry,
14 Penny Catels, and Chad King. Those are the potential
15 witnesses.

16 MR. MOORHEAD: Your Honor, it's Penny Cates with a
17 "T."

18 THE COURT: Okay. I'm sorry. I misread that.
19 That's my fault.

20 MR. MOORHEAD: That's entirely my doing.

21 THE COURT: No. That's okay.

22 Is anyone related to by blood or marriage or kin to
23 in any way any of these potential witnesses, or does
24 anyone have any personal, social, or business relationship
25 with any of these potential witnesses? If so, please,

1 stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: All right. I'm going to ask the lawyers
4 who are going to be involved in the trial of this case to
5 introduce themselves and the people at their table.

6 And, yes, sir, Mr. Moorhead.

7 MR. MOORHEAD: I'm Don Moorhead. I practice law here
8 in Greenville, South Carolina. Cynthia Hanford is my
9 paralegal. That's Reverend Delphine Dawkins and Reverend
10 James Dawkins, my clients.

11 THE COURT: Mr. McGarr.

12 MR. MCGARR: My name is Mark McGarr. I practice in
13 Greenville with the McGarr Law Firm. Here with me is Troy
14 Lee Watts and Patricia Bailey, his mother-in-law. She's
15 not a witness. She's just here for emotional support.

16 THE COURT: All right. Thank you, gentlemen.

17 Is there anyone related by blood or marriage or kin
18 to in any way any of the lawyers or anyone they
19 introduced? If so, please, stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: Does anyone have any personal, social, or
22 business relationship with any of the lawyers or anyone
23 they introduced? If so, please, stand.

24 Yes, ma'am.

25 JUROR #136, DEDRIANE RADEMACHER: I don't know if

1 this counts, but the firm I work for has a couple of cases
2 with Mr. McGarr's office.

3 THE COURT: And your name is?

4 JUROR #136, DEDRIANE RADEMACHER: Dedriane
5 Rademacher.

6 THE COURT: Would that affect your ability to be fair
7 and impartial in this case?

8 JUROR #136, DEDRIANE RADEMACHER: No, sir.

9 THE COURT: You can decide the case solely on the
10 evidence and the law?

11 JUROR #136, DEDRIANE RADEMACHER: Yes, sir.

12 THE COURT: Thank you.

13 Is there anybody who is or who has a member of their
14 immediate family -- and by immediate family, I mean
15 spouse, parent, child, or sibling who is a member of New
16 Life International Ministry or any church in which James
17 Lewis Dawkins or Delphine Gray Dawkins, also known as
18 Delphine Gray Briscoe, was a minster or co-minister? If
19 so, please, stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: Has anyone ever been treated by Dr. Lisa
22 Farley; Dr. Sushil Mittal at North Hills Medical Center;
23 Dr. Desmond Smith; Dr. Maureen Bailey of the Smith Center;
24 Dr. Donald Vaughn of Long & Vaughn; Dr. William Cobb;
25 Dr. Anthony Mathis; Dr. Govind Rughani of Peace Internal

1 Medicine; Dr. John Walton of Blue Ridge Urology;
2 Dr. Lawrence Hartley of Gastrointestinal Associates;
3 Dr. Thomas Maskell of Exigent Wade Hampton; Dr. Stephen
4 Geary of the Steadman Hawkins Clinic of the Carolinas; or
5 Dr. Timothy McHenry? If so, please, stand.

6 MR. MCGARR: Your Honor, I didn't -- we probably
7 could cut that down to the last two doctors, because no
8 one else is testifying.

9 THE COURT: All right. So has anyone been treated by
10 or been a patient of Dr. Stephen Geary or Dr. Timothy
11 McHenry?

12 JUROR #145, JASON SCHOFIELD: Your Honor, what was
13 the Stephen Geary? Where was he practicing?

14 THE COURT: Okay, sir. That's Steadman Hawkins.

15 JUROR #145, JASON SCHOFIELD: Okay. I have.

16 THE COURT: What's your name?

17 JUROR #145, JASON SCHOFIELD: Jason Schofield.

18 THE COURT: All right. Is this gentleman a witness,
19 Mr. -- Dr. Geary?

20 MR. MCGARR: Yes, sir.

21 THE COURT: Okay. Do you believe you could fairly
22 and impartially weigh his testimony if he were to testify
23 here today?

24 JUROR #145, JASON SCHOFIELD: I believe I could.

25 THE COURT: You could put your relationship with him

1 aside and decide the case solely on the law and the
2 evidence?

3 JUROR #145, JASON SCHOFIELD: Yes, sir.

4 THE COURT: Thank you.

5 Has anyone ever filed a lawsuit or been sued
6 concerning an automobile accident or any personal injury?
7 If so, please, stand.

8 Just tell me your name.

9 JUROR #34, MARY CASTLEBERRY: Mary Castleberry.

10 THE COURT: And can you just tell me briefly -- I
11 don't need to know anything about the facts of your case.
12 I don't want to know about that at this time. But if you
13 can just tell me if you were the person that brought the
14 suit or the person that was sued, and whether it related
15 to an automobile accident or some other incident?

16 JUROR #34, MARY CASTLEBERRY: It was brought against
17 me. It was an automobile accident.

18 THE COURT: Thank you.

19 Is there any other voir dire requested by either
20 party?

21 MR. MOORHEAD: No, Your Honor.

22 MR. MCGARR: None, Your Honor.

23 THE COURT: All right. Thank you.

24 Is anyone aware of any bias or prejudice they may
25 have about anyone involved in this case or any issue in

1 this case, or are you aware of any reason why you could
2 not be fair and impartial as a juror in this case? If so,
3 please, stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: We'll proceed with the jury selection.

6 And, yes, ma'am, Ms. Coker.

7 THE CLERK: We'll strike one through 20. Four
8 strikes each. The Plaintiff begins.

9 MR. MOORHEAD: Your Honor, may I remain seated for
10 this?

11 THE COURT: Sure.

12 JURY SELECTION

13 MR. MOORHEAD: I would strike Juror #15.

14 THE CLERK: Plaintiff strikes #15.

15 MR. MCGARR: Defendant strikes #5.

16 THE CLERK: Defendant strikes #5.

17 MR. MOORHEAD: Plaintiff strikes #6.

18 THE CLERK: Plaintiff strikes #6.

19 MR. MCGARR: The Defendant strikes #7.

20 THE CLERK: The Defendant strikes #7.

21 MR. MOORHEAD: Plaintiff strikes #16.

22 THE CLERK: Plaintiff strikes #16.

23 MR. MCGARR: The Defendant strikes #12.

24 THE CLERK: The Defendant strikes #12.

25 MR. MOORHEAD: The Plaintiff strikes #9.

1 THE CLERK: The Plaintiff strikes #9.

2 MR. MCGARR: The Defendant strikes #11.

3 THE CLERK: The Defendant strikes #11.

4 Are we going to get an alternate?

5 THE COURT: One alternate, yes, ma'am.

6 THE CLERK: Your Honor, alternate will be one, and
7 come from 21 22, and 23.

8 MR. MOORHEAD: We have one alternate?

9 THE CLERK: Yes.

10 MR. MOORHEAD: The Plaintiff strikes #21.

11 THE CLERK: The Plaintiff strikes #21.

12 MR. MCGARR: The Defendant strikes #23.

13 THE CLERK: Defendant strikes #23.

14 Gentlemen, I'll call these back to you.

15 The Plaintiff strikes #6, #9, #15, #16, and #21.

16 The Defendant strikes #5, #7, #11, #12, and #23.

17 MR. MOORHEAD: That's correct.

18 MR. MCGARR: That would be correct.

19 THE CLERK: Ladies and gentlemen, when I call your
20 name, please, bring your things and have a seat in our
21 jury box.

22 Rhonda Benjamin.

23 (WHEREUPON, Juror #13, Rhonda Benjamin, a black
24 female, came forward.)

25 THE CLERK: Stephanie Burns.

1 (WHEREUPON, Juror #29, Stephanie Burns, a white
2 female, came forward.)

3 (WHEREUPON, Juror #61, Deborah Dunn, a white female,
4 came forward.)

5 THE COURT: Ma'am, what is your name?

6 JUROR #61, DEBORAH DUNN: Deborah Dunn.

7 THE COURT: I don't believe she called you.
8 Did you?

9 THE CLERK: No.

10 JUROR #61, DEBORAH DUNN: Oh, I'm sorry. I thought
11 she did.

12 THE COURT: We appreciate your enthusiasm, though.

13 THE CLERK: Erick Ottesen.

14 (WHEREUPON, Juror #129, Erick Ottesen, a white male,
15 came forward.)

16 THE CLERK: Elizabeth York.

17 (WHEREUPON, Juror #185, Elizabeth York, a white
18 female, came forward.)

19 THE CLERK: Lanna Brown.

20 (WHEREUPON, Juror #25, Lanna Brown, a white female,
21 came forward.)

22 THE CLERK: Darlene Bloomstran.

23 (WHEREUPON, Juror #18, Darlene Bloomstran, a white
24 female, came forward.)

25 THE CLERK: Daniel Vance.

1 (WHEREUPON, Juror #169, Daniel Vance, a black male,
2 came forward.)

3 THE CLERK: Deborah Dunn.

4 (WHEREUPON, Juror #61, Deborah Dunn, a white female,
5 came forward.)

6 THE CLERK: Brooke Lewis.

7 (WHEREUPON, Juror #104, Brooke Lewis, a white female,
8 came forward.)

9 THE CLERK: Sonny Cole.

10 (WHEREUPON, Juror #46, Sonny Cole, a white male, came
11 forward.)

12 THE CLERK: Paula Stout.

13 (WHEREUPON, Juror #153, Paula Stout, a white female,
14 came forward.)

15 THE CLERK: Sabrena McMillan.

16 (WHEREUPON, Juror #190, Sabrena McMillan, a white
17 female, came forward.)

18 THE CLERK: Our alternate is Robert Theis.

19 (WHEREUPON, Juror #160, Robert Theis, a white male,
20 came forward.)

21 THE COURT: All right. Is there any motion or matter
22 related to the selection process or the composition of the
23 jury from the Plaintiff?

24 MR. MOORHEAD: No, Your Honor.

25 THE COURT: From the Defense?

1 MR. MCGARR: None from the Defense.

2 THE COURT: I find the panel is qualified. And the
3 jury was selected through a process that complied with all
4 Constitutional and statutory-mandated mandates.

5 You have been selected to be the jury in the case of
6 James Dawkins and Delphine Dawkins v. Troy Watts, Jr. And
7 I'm going to ask that you go back to the jury room for
8 just a moment. And we'll begin the case in just a few
9 minutes. Don't talk about the case. And we'll have the
10 opening statements here in just a few minutes.

11 Thank you very much.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 12:04 p.m.)

14 THE COURT: Okay. For those of you who were not
15 chosen, Ms. Olson does need to speak with you downstairs.
16 So just go back down to the jury assembly room.

17 And thank you for your patience and understanding.

18 (WHEREUPON, the remaining jury panel members exited
19 the courtroom.)

20 THE COURT: Anything else before we bring the jury
21 back out?

22 MR. MOORHEAD: Not from the Plaintiff, Your Honor.

23 MR. MCGARR: Nothing from the Defendant, Your Honor.

24 THE COURT: Okay. I'll give y'all the choice. It
25 doesn't matter to me. I'm going to go ahead and give my

1 little song and dance. But if y'all want to break for
2 lunch after that -- it takes about 10 minutes.

3 MR. MCGARR: Would it be okay since I need to move my
4 car if we did yours and then ours after lunch?

5 THE COURT: That's fine.

6 (WHEREUPON, the jury came into open court at
7 approximately 12:08 p.m.)

8 INTRODUCTORY REMARKS

9 THE COURT: Ladies and gentlemen, I'm just going to
10 give you a few brief preliminary remarks. And the first
11 thing I want to do, again, is to thank you for your
12 service this week and the contributions you're making to
13 your community and your fellow citizens by being here and
14 making it possible for them to exercise their
15 Constitutionally-guaranteed right to a jury trial.

16 And you probably know that you were selected to come
17 down to the courthouse this week because you are either
18 registered to vote, or you're licensed to drive, or you
19 have an identification card issued by the Department of
20 Transportation. You might be curious as to why you were
21 selected to be a juror on this particular case. And the
22 reason is because both sides, the Dawkins and Mr. Watts,
23 believe you can be fair and impartial and you can decide
24 this case without any bias or prejudice, or any
25 preconceived notions. So that's why you were chosen.

1 Now, at this time, I'm going to ask Ms. Coker to
2 administer the oath to you to be a juror. And listen to
3 the words of that oath very carefully, because they do
4 summarize very succinctly what your role is. And I'm
5 going to expand upon it after she finishes.

6 So, yes, ma'am, Ms. Coker.

7 THE CLERK: Ladies and gentlemen, please stand and
8 raise your right hand for the oath. The response will be,
9 "I will."

10 (WHEREUPON, the jury panel was sworn at approximately
11 12:10 p.m.)

12 THE CLERK: Thank you.

13 Please be seated.

14 THE COURT: Thank you, Ms. Coker.

15 Now, ladies and gentlemen, as I mentioned earlier
16 today, any time there is a jury trial in circuit court,
17 there are two judges. There's the judges of the facts and
18 the judge of the law. I'm going to first talk about my
19 job as the judge of the law. And then I'm going to tell
20 you about your job as the judges of the facts.

21 First of all, I want to introduce myself. I'm Gary
22 Hill. I'm one of the circuit judges here in Greenville
23 and Pickens County. I'm glad to be home this week
24 serving. And with me up on the bench is Judge Robert Hood
25 from Columbia. He is here this week as well.

1 As the judge of the law, you have two distinct
2 responsibilities. The first is to rule on the
3 admissibility of evidence. Now, I know very little about
4 this trial. That's just the way the system is set up.
5 But I anticipate we will have objections to evidence. And
6 don't hold it against the lawyers for objecting. That's
7 their job and they have an ethical duty to object to
8 evidence when they think it is improper.

9 But if they object, as the judge of the law, I will
10 rule on that objection, according to the law. And if I
11 sustain the objection, that simply means the evidence is
12 improper and you can't consider it in this particular
13 trial. If I overrule the objection, that means the
14 evidence is proper and you can consider it.

15 The second duty I have as the judge of the law is to
16 tell you the law that applies to the facts of this case.
17 And I'll do that at the end of the trial. I'll tell you
18 about the principles of law that apply to the facts.

19 Now, you are the judge of the facts. And, under our
20 Constitution, you have the entire obligation, and duty,
21 and prerogative to determine what the facts are. And, as
22 the judge of the law, I'm not going to interfere with what
23 your decision is as to the facts, just as I know you won't
24 interfere with my decision as to what the law is.

25 But, as the judges of the facts, you will have to

1 determine the facts of this case, based on the evidence.
2 And evidence consists of two sources. The first is the
3 one you're probably most familiar with, and that is sworn
4 witness testimony. The second form of evidence that you
5 can consider in determining what the facts are is by way
6 of an exhibit. An exhibit is simply a physical, tangible
7 object, a photograph, or map, or something of that nature.
8 But you'll know it's an exhibit and evidence you can use
9 to determine what the facts are because it will be back in
10 the jury room with you at the end of the case. And it
11 will have exhibit number so and so written on it.

12 Now, those are the only two things you can use in
13 determining what the facts are, witness testimony and
14 exhibits. Nothing else is evidence. What the lawyers say
15 is not evidence, because they're not witnesses. Although,
16 you should pay keen attention to what they're saying
17 because they're trying to help you understand the
18 evidence. Likewise, anything you may see or hear when
19 court is not in session is not evidence, and you may not
20 use that in determining what the facts are.

21 Now, as the judge of the facts, you will have to, by
22 necessity, determine the credibility of all the evidence.
23 So that means for every witness that's called and every
24 exhibit entered, you'll have to determine whether it's
25 worthy of belief. And you are the sole judge of the

1 credibility of all the evidence.

2 Now, how many of you have served on a civil trial
3 jury before? If you could, just raise your hand.

4 (WHEREUPON, several jurors raised their hands.)

5 THE COURT: Okay. So we have some veterans. And
6 some of you may know from your own experience a little bit
7 about how civil trials unfold and what the structure of a
8 civil trial is. But let me go over that with you briefly.

9 First of all, it's important to know what the burden
10 of proof is. In a civil case, in order for a party to
11 prevail, they must convince you that what they're trying
12 to show is more likely true than not true. That is, they
13 must prove their case by the greater weight of the
14 evidence. That's the yardstick you have to use in
15 determining whether the Plaintiff is entitled to a verdict
16 in this case.

17 The second thing is, because they bear the burden of
18 proof, the Plaintiff will have to go first. So the
19 Plaintiff will give their opening statement, which we'll
20 do after lunch. At which time, he'll briefly summarize
21 what he thinks the evidence will show, and what you'll see
22 in the form of testimony and exhibits, and what the issues
23 will be in the case. Then the Defense will have the
24 opportunity, but not the obligation, to give an opening
25 statement. And then we'll have the evidence portion of

1 the trial where, again, the Plaintiff going first will
2 present his evidence first, which the Defendant may
3 confront and cross-examine the witnesses.

4 After the Plaintiff finishes his presentation of
5 evidence -- and we have two Plaintiffs in this case. But
6 after they finish their presentation, the Defense will
7 have the opportunity to present any evidence they wish to,
8 which the Plaintiff may confront. And after you've heard
9 all the evidence and after you've heard the
10 cross-examinations, I will give you the opportunity to
11 listen to the lawyers give their final arguments where
12 they tell you what they think the evidence showed and what
13 your verdict should be. Then I will give you the
14 instruction on the law that applies to the facts of this
15 case. And then the case will be in your hands for a
16 decision and a verdict.

17 Now, I understand this case will probably go into
18 tomorrow, but not past that. So it will be a relatively
19 short case. But, regardless of its length, it's an
20 important case for both sides. This is their day in
21 court. And they're relying on you for a fair, impartial,
22 and objective determination.

23 Now, ladies and gentlemen, these lawyers are fine
24 advocates for their clients, but they are advocates. They
25 are partisans for their clients' cause. You and I are not

1 advocates. We don't have any interest in the outcome of
2 this case. And our job is to be neutral and impartial.
3 So keep that in mind as we go through the evidence.

4 Let me, also, remind you that it's very important
5 that you not talk about this case or discuss it until
6 after all the evidence is in, and after you've heard the
7 law that you will apply to the facts of this case.
8 Because then and only then will you have the tools you
9 need to do your job. These cases are often like jigsaw
10 puzzles. And if you started talking about the case before
11 you had all the pieces, obviously, you wouldn't have a
12 very complete puzzle. So keep that in mind as we go
13 through this trial.

14 Now, we'll take a break about every hour and a half
15 or so. But if anyone needs a break before that time, I,
16 certainly, will accommodate you. Just let one of the
17 bailiffs know or get my attention. The same extends to
18 the lawyers and their parties.

19 I hope this will be an educational process for you,
20 as I mentioned this morning.

21 And I'm going to go ahead and appoint you, Ms. Dunn,
22 as the Foreperson of the jury.

23 And we're going to go ahead and break for lunch. And
24 don't talk about the case and keep an open mind. And
25 we'll see you back -- we're going to come back at 1:45.

1 Just be back in the jury room and we'll start the case at
2 that time.

3 Thank you very much.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 12:08 p.m.)

6 THE COURT: Anything else before we break for lunch?

7 MR. MOORHEAD: Not from the Plaintiff, Your Honor.

8 MR. MCGARR: Nothing from the Defendant, Your Honor.

9 THE COURT: All right. We'll see you back at 1:45.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: Anything before we bring the jury in?

12 MR. MOORHEAD: Not from the Plaintiff, Your Honor.

13 MR. MCGARR: Your Honor, the only thing I would ask
14 is that before the trial gets started is just to give
15 everybody an admonition that automobile insurance -- that
16 nobody should be asking questions that would require an
17 answer involving automobile insurance. And, therefore,
18 please do not throw out automobile insurance under the
19 assumption that that's a question somebody is asking you.

20 THE COURT: I'll be glad to do that, Mr. McGarr.

21 Just anyone who's planning to testify, if you mention
22 liability insurance, it could trigger a mistrial. And
23 we'd have to come up here and do this all over again,
24 which we know nobody wants to do. So don't use that word.

25 And if you have some question about whether your

1 response to the question you're asked while you're on the
2 stand brings up that issue, just avoid it at all costs.
3 And the mere mention of the word itself, insurance, could
4 cause us all kinds of problems. That's just the way the
5 rules are set up.

6 Is anybody unclear about that?

7 MR. MOORHEAD: We understand.

8 THE COURT: You can bring the jury on in.

9 (WHEREUPON, the jury came into open court at
10 approximately 1:59 p.m.)

11 THE COURT: Good afternoon.

12 I hope you all had an enjoyable lunch.

13 At this time, we'll have the opening statement by the
14 Plaintiff.

15 Mr. Moorhead.

16 OPENING STATEMENTS

17 MR. MOORHEAD: Thank you, Your Honor.

18 May it please the Court.

19 Ladies and gentlemen, again, my name is Don Moorhead.
20 And I represent Reverend Dawkins and his wife, Ms. Dawkins.
21 I'll keep this brief. The Judge has really covered most
22 of what this opening statement is about. It is not
23 evidence, but it is a brief statement of what I believe
24 the evidence will prove in this case.

25 And the burden is on us. The burden is on my client.

1 And by burden, it's just whatever amount of weight of the
2 evidence it takes to tip that scale of justice in our
3 favor, that's meeting the burden of proof. It's by a
4 preponderance of the evidence.

5 Now, one thing we don't have to prove in this case is
6 we don't have to prove negligence. They've admitted that.
7 Because they had to -- he ran a red light. The Defendant
8 ran a red light.

9 So the issue now has become narrowed to the issues
10 about the injuries and the other elements of damages that
11 are allowable by law in which the Judge, at the end of the
12 case in my judgment, will charge you are elements of
13 damages which you can award in this case. And they
14 include such things -- and this is by way of illustration,
15 as past medical bills, future medical bills, pain and
16 suffering, mental anguish associated with that, loss of
17 enjoyment of life, permanent disability, those kinds of
18 things.

19 And we intend to show through the medical evidence
20 and through the way -- the mechanism by which this
21 happened that Reverend Dawkins has significant injuries,
22 which are causally related to this particular automobile
23 collision when the Defendant ran a red light.

24 And Ms. Dawkins has what is known as a loss of
25 consortium. That's where a spouse is not hurt physically,

1 but because their spouse is hurt, they can't spend time
2 with them. They can't go for walks. If they do spend
3 time, it may not be all that pleasant, depending on what's
4 going on with their particular spouse. And so I don't
5 want to forget that.

6 But here is who you're going to hear from. You're
7 going to hear from Dr. Timothy McHenry, who's a
8 board-certified orthopedic surgeon with the Southeastern
9 Spine Institute here in Greenville, South Carolina. He is
10 the main treating physician of Mr. Dawkins and has been
11 for right at four years.

12 This accident occurred on September the 24th of 2008.
13 And since March of 2009, Dr. McHenry, the orthopedic
14 surgeon, has been the main treating physician. And
15 Dr. McHenry is of the opinion that my client needs low
16 back surgery, and that my client needs neck surgery and
17 that the immediate precipitating event for the needs of
18 those two surgeries is this automobile accident. And
19 we'll have him by way of video.

20 Now, I will tell you that Reverend Dawkins had
21 problems with his back before this automobile accident.
22 He had two or three injuries. He got hurt on the job one
23 time. Then he got hurt on the job a second time. This
24 was back in 1982, 1983. In 1985, he had back surgery.
25 And over the next few years -- I think he had a slight

1 rear-ender sometime in the spring of 1997, 16 years ago.

2 And over that period of time, from his back surgery
3 in 1985, up until the time of this wreck, he would have
4 episodic back and left leg pain. And he'd go to the
5 doctor and tell them about it. There's no question that
6 he had problems with his back and problems with his legs.
7 And we're not asking for him to be compensated for that.
8 It was preexisting. And to the extent that it existed
9 before this accident, it doesn't have anything to do with
10 this accident.

11 However, with regard to his back condition subsequent
12 to that, it made it worse. And we're asking for the
13 compensation for making it worse, not the way it was
14 before, but just the incremental worsening of his
15 condition. And the key part of the worsening of his
16 condition is that over a period of almost 30 years, 20
17 some odd years, his back wasn't bad enough to the point
18 where he had to have surgery. As a matter of fact, it
19 wasn't bad enough that he had to regularly see an
20 orthopedic surgeon up until the time of this wreck. And
21 since then, he has seen orthopedic surgeons, more than
22 one, regularly. And his main treating physician, an
23 orthopedic surgeon says he needs surgery and it's the
24 exacerbation of his symptoms that makes him need surgery
25 for his low back.

1 Now, with regard to his neck. He never had any
2 problems with his neck. And, now, he's got to have
3 surgery on his neck. And that was caused directly by the
4 accident. And he has a left shoulder injury. We don't
5 know if he's going to need surgery on that or not. But he
6 has a partial tear in one of the tendons in his left
7 shoulder because of the result of this collision. And we
8 want a fair and just compensation for Reverend Dawkins for
9 those injuries. Nothing that was going on before, just
10 for what was caused by the wreck, and that's it.

11 And, now, I don't know what the Defense may say about
12 the amount of impact. But the amount of impact in this
13 case is such that it cost a lot of money to get the car
14 repaired. Because there was injury to the door, to the
15 door jam, the front quarter panel, the wheel. The tire
16 was punctured. And the suspension on the left front side
17 was injured and either had to be replaced or repaired.
18 And so the impact was significant. We're not talking a
19 fender bender here.

20 And Reverend Dawkins had a left side collision with
21 the door and the window. That's documented in some of the
22 records that you'll see from EMS and from the emergency
23 room. He went from the wreck via ambulance with his neck
24 immobilized, back immobilized to the emergency room at
25 Greer Memorial. Then he was discharged home later that

1 evening.

2 Three days later, he goes back to St. Francis Women's
3 Hospital emergency room. And he was seen there for these
4 problems. Three days after that, he goes to North Hills
5 Medical Clinic and sees North Hills Medical Clinic a
6 couple, three times. And then he was referred to Steadman
7 Hawkins where he sees Dr. Geary. He sees Dr. Geary for
8 about four months. And then he refers him to his cohort,
9 Dr. McHenry, who's been treating him ever since, as
10 recently as last week.

11 So we want what's just and what's fair. There's a
12 lot of elements of damages. And I'll tell you, the
13 focus -- and you can award whatever damages you think are
14 appropriate. And that's all that we ask. We leave it to
15 you.

16 But what we're really, really interested in is
17 getting Reverend Dawkins compensated for the future
18 medical expenses it's going to take for him to get these
19 surgeries. That's what's most important to him. That's
20 not to say that you can make whatever decision you want to
21 make on the rest of the things. But, as far as Reverend
22 Dawkins is concerned, the most important thing is to be
23 able to pay for his surgery and for what he's already out
24 of pocket.

25 Thank you for your attention.

1 THE COURT: Thank you, Mr. Moorhead.

2 Mr. McGarr.

3 MR. MCGARR: May it please the Court.

4 THE COURT: Yes.

5 MR. MCGARR: Thank you.

6 I'm Mark McGarr. I have the pleasure of representing
7 Troy Watts in the lawsuit that's been brought against him.

8 It is correct that Mr. Watts, basically, went through
9 a yellow light. But he went through the yellow light so
10 late that, in essence, by the time he was getting into the
11 intersection, the light had turned green [sic].

12 When Mr. Watts got sued, he responded. It's called
13 an answer when you respond. And he admitted that he was
14 negligent. So the deal that you don't have to do, and as
15 Mr. Moorhead so correctly pointed out is, most of the time
16 in these types of cases, you have to determine who caused
17 the automobile accident, and then did that automobile
18 accident cause someone to have injuries. So did they
19 cause the accident? If so, did that accident cause
20 injuries?

21 In this case, because Mr. Watts has agreed from the
22 time he filed the answer through me that he was negligent,
23 you don't have to worry about that part. So the case
24 really boils down to this. It boils down to, did the
25 automobile accident that Troy -- and I will probably do

1 that throughout this trial. Troy is, actually, Mr. Watts,
2 also, known as the Defendant. So if I call him Troy or
3 Mr. Watts, that's what I'm talking about.

4 But the issue is, did the automobile accident that
5 Troy had with Reverend Dawkins cause Reverend Dawkins to
6 have injuries that were different or worse than the
7 injuries he had had for years, and years, and years prior
8 to the automobile accident with Troy? That's the decision
9 that you'll have to make.

10 Now, how do you make that decision? Well, to some
11 extent, His Honor has told you -- or taken away some of my
12 opening by telling you how evidence comes in. For
13 example, one form of evidence -- and I need to forewarn
14 you with regard to this. Troy was, at the time of this
15 automobile accident, a Greenville Tech student. So he was
16 a Greenville boy at the time. He now lives in Florida.
17 He has come up from Florida because of this trial.

18 We are hoping that he is going to be able to testify.
19 Because, by tomorrow, he has to be in a training session.
20 And if he's not in that training session with regard to a
21 new job, then he won't have that job. So we're hoping we
22 can get his testimony in today so he can talk to you.

23 But the first thing you need to know is that what you
24 will hear, at least, in testimony is that Reverend -- the
25 Reverend has told us, under oath, that this accident to

1 his car on a scale of one to 10, with a one being that he
2 heard the accident, but he couldn't feel anything, and a
3 10 being that he was involved in an accident with a
4 freight train, he rated the accident as an eight or nine.
5 That's testimonial evidence.

6 Testimonial evidence will come to you from the bench
7 with people being placed under oath. It will, also, come
8 to you through a thing called a deposition where they were
9 placed under oath in a different environment, but it's
10 still under oath like they were here. And that's how I
11 know that, because Reverend Dawkins was deposed and he
12 said this accident was, essentially, an eight or nine in
13 severity, almost the likes of which he had been hit by a
14 freight train.

15 The other form of evidence -- and I cannot show this
16 to you because His Honor is, actually, the guardian of the
17 evidence. He has to say whether it can be admitted or
18 not. But the other form of evidence you will see will be
19 photographs. We are fortunate enough to have photographs
20 of Reverend Dawkins' car. When we show you those
21 photographs, I suspect that when you see it, you're going
22 to say this automobile accident was a three, and, at best,
23 a four.

24 If Troy is able to testify, he will tell you that
25 when he got -- immediately after the accident, he got out

1 of the car and he went up to Reverend Dawkins and asked
2 Reverend Dawkins if he was okay. And, at that point,
3 Reverend Dawkins said that he was. However, by the time
4 family members got there, Reverend Dawkins was injured.
5 And he was, as Mr. Moorhead said, taken away via EMS and
6 taken to the hospital.

7 Here's where it gets interesting. You see, just
8 about every complaint that Reverend Dawkins has had since
9 this automobile accident, he has had for years, and years,
10 and years, and years, and years prior to the automobile
11 accident. By that, I don't mean a couple of years. I
12 mean years, as in 10's, and 15's, and 20's of years.
13 That's problem number one.

14 But problem number two is this. When Reverend
15 Dawkins would go to his wreck doctors, the ER immediately
16 after the accident, Steadman Hawkins, and the spine
17 people, he would be describing pain maybe in his shoulder,
18 or maybe in his neck, or maybe in his low back. But when
19 he was going to doctors that weren't wreck-related
20 doctors, those problems would disappear. And those
21 doctors would be examining him and finding that his neck
22 was fine, his shoulder was fine, and his low back was
23 fine.

24 In fact, you'll hear from a physical therapist who
25 did a test on him called a McMurray's test that,

1 essentially, says that maybe his injuries aren't injuries,
2 they're just things he thinks are hurting. For example,
3 if I'm testing his leg to see what's going on there and,
4 all of a sudden, he's screaming with regard to a shoulder,
5 which shouldn't be involved at all.

6 Here's the last thing, you're going to be asked to
7 have this side of the table pay when it's over, not
8 \$1,000, or \$10,000, or \$20,000, or \$50,000, or \$100,000.
9 You're going to be asked that this side of the table pay
10 hundreds of thousands of dollars for future surgeries that
11 Reverend Dawkins thinks that he needs.

12 However, Reverend Dawkins, as early as 2009 -- and
13 this is now 2013 -- was cleared to have surgery with
14 regard to his neck and his low back. And he chose not to
15 have that surgery. In 2010, he chose not to have those
16 surgeries. In 2011, he chose not to have those surgeries.
17 And, in 2012, he chose not to have those surgeries. But
18 you're going to be asked to pay for his surgeries that he
19 has refused to have through all these years sometime in
20 the future to the tune of hundreds of thousands of
21 dollars.

22 So you'll have to ask yourself throughout this
23 process, how do the injuries appear when you're at your
24 wreck doctor, but disappear when you're at your regular
25 doctor, or when you're at the hospital because something

1 else happened, or you're at another doctor's office for a
2 different reason, or you're at the physical therapist's
3 office, who can't find things wrong? And then you're
4 going to have to ask yourself, is there really any
5 justifiable reason to think hundreds of thousands of
6 dollars that you will be asked to make this team pay is
7 ever really going to happen?

8 And then you're going to have to ask yourself, how
9 can a body change based upon who they're seeing, unless
10 the issues maybe aren't there to begin with and the
11 surgeries are never going to take place? It's just a
12 method of moving a mountain of money from one table to the
13 other.

14 In the end -- and I'm a lawyer, but I can't speak
15 English. So I don't know, I think it's Reverends plural,
16 but I may be wrong. And I don't mean any offense by that.
17 But the Reverends, because they both brought suit, this is
18 their day in court, and their only day in court. They
19 can't come back next week and sue Troy again.

20 And so when you're listening to the evidence coming
21 from the witness stand and when you're comparing that
22 evidence to photographs, and when you're comparing what
23 you're hearing with documents that are being read, and
24 they don't mix, then something is wrong. I suspect we'll
25 be able to show you that they don't mix at all.

1 Regardless of that, it is the Reverends day in court.
2 And you have to be fair to them. And the way that you are
3 fair to them is to listen to that evidence, read those
4 documents -- or hear what those documents say, and look at
5 those photographs.

6 Then because it is Troy's day in court and his only
7 day in court, he won't be back again, you'll have to do
8 the same thing for him. And, in the end, you'll have to
9 determine, are we dealing with an issue that truly means
10 that we need to be paid hundreds and hundreds of thousands
11 for future surgery down the road, or whether these
12 problems that pop up and go away, and pop up and go away,
13 and have been there forever are just that, they're things
14 that were already there and they pop up and go away? But
15 it is kind of interesting that they pop up every time
16 we're in front of the wreck doctors.

17 Ultimately, if you will do that, you will come back
18 with a verdict that is fair for the Plaintiffs -- that's
19 what they're called -- and for the Defendant. And when
20 you do that, no one, but no one is going to complain,
21 because you will have done your job.

22 Thank you.

23 THE COURT: Thank you, Mr. McGarr.

24 Mr. Moorhead, you may call your first witness.

25 MR. MOORHEAD: I'm going call Dr. Timothy McHenry by

1 video, please, sir.

2 THE COURT: Okay.

3 MR. MOORHEAD: And, Your Honor, there will be one
4 disk and then there will be a much shorter disk of some 15
5 minutes.

6 MR. MCGARR: And we are using the disk that was
7 corrected; am I correct?

8 MR. MOORHEAD: Yeah.

9 MR. MCGARR: Meaning correction that the portion that
10 was inadvertently taken out was fixed?

11 MR. MOORHEAD: Yes.

12 Your Honor, can I make a confession that I didn't hit
13 the little boys room before we got here. Can we take a
14 small break for me to do that and maybe we can get this
15 done at the same time?

16 THE COURT: That's fine.

17 We'll take a short recess and let everybody have a
18 break.

19 MR. MOORHEAD: I think what I may --

20 THE COURT: Yes, sir.

21 MR. MOORHEAD: I was going to talk about the volume
22 and maybe get some speakers in here and put another piece
23 of evidence up in lieu of that.

24 THE COURT: Well, the bailiffs will help.

25 We'll take a short recess. Don't talk about the

1 case.

2 Thank you.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 2:25 p.m.)

5 THE COURT: We'll take a short break.

6 Thank you.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Are we ready to roll?

9 MR. MOORHEAD: Yes, sir.

10 Judge Hill, how late do you estimate us going today,
11 if you can guesstimate that?

12 THE COURT: I try not to go later than 5:30.

13 MR. MOORHEAD: Okay. We've got this ready to go.
14 I've got an expert that I'll put up immediately
15 thereafter. And if we can't get done today, she'll be
16 here in the morning.

17 THE COURT: What's your -- is your client still not
18 going to be here tomorrow?

19 MR. MCGARR: Your Honor, he really has got to -- I
20 mean, if he does not go to -- it's not a training session,
21 it's the initial thing, whatever you do, then his job --
22 he does not get that job.

23 THE COURT: What is it, sir?

24 MR. TROY WATTS: It's a temp agency. And they just
25 called me. I was laid off from my previous job.

1 THE COURT: Right.

2 MR. TROY WATTS: And they just hired me on for
3 another job. I have to be there tomorrow morning at 7:30
4 a.m. in order to get the job. If not, then I get
5 replaced. It's a temporary job.

6 MR. MCGARR: And if he doesn't appear for the
7 orientation, he's toast.

8 THE COURT: This thing last two hours?

9 MR. MOORHEAD: It's about an hour and 45.

10 THE COURT: All right. Well, let's just get it
11 rolling and see where we are..

12 Bring the jury in.

13 (WHEREUPON, the jury came into open court at
14 approximately 2:41 p.m.)

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification and admitted into evidence.)

17 THE COURT: Yes, sir, Mr. Moorhead.

18 MR. MOORHEAD: Yes, sir.

19 We are ready to continue with Dr. McHenry's
20 testimony.

21 THE COURT: Okay.

22 (WHEREUPON, Court's Exhibit No. 1 was played in open
23 court.)

24 MR. MCGARR: Your Honor, can we pause for a minute?

25 THE COURT: Okay.

1 (WHEREUPON, a bench conference was held.)

2 (WHEREUPON, Court's Exhibit No. 1 resumed being
3 played in open court.)

4 MR. MOORHEAD: The second disk is about 20 minutes
5 long.

6 THE COURT: Does anybody need a break at this time,
7 or do you want to go ahead and watch the whole thing?

8 (WHEREUPON, the jurors indicated in the affirmative.)

9 THE COURT: Let's keep going.

10 (WHEREUPON, Court's Exhibit No. 1 was played in open
11 court.)

12 THE COURT: All right. We'll take a short recess,
13 about 10 minutes. Don't talk about the case. And
14 continue to keep an open mind.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 4:34 p.m.)

17 THE COURT: We'll take about a 10-minute break and
18 come right back.

19 (WHEREUPON, a break was taken.)

20 THE COURT: Anything before we bring the jury back
21 in?

22 MR. MCGARR: Your Honor, because of the problems we
23 were having, my client informed the temporary agency that
24 he was in court in Greenville, South Carolina.

25 THE COURT: Yes, sir.

1 MR. MCGARR: And he was going to have to drive all
2 night, and he said, can we do something about this?

3 And my understanding is that they will allow him to
4 do it next Monday?

5 MR. TROY WATTS: Yeah.

6 MR. MCGARR: So that's off the table.

7 THE COURT: Well, good. I'm glad that worked out.

8 MR. MOORHEAD: Your Honor, my next witness would
9 be -- I can either -- I can put in some medical documents,
10 or I can call Ms. Cates. But, you know, it's 10 of 5:00.
11 You like to wind it up at 5:30. I don't see how we can
12 get Ms. Cates in by that time. But I'll go with your
13 judgment. It depends, basically, on cross-examination.
14 And I just don't know what they'll do.

15 THE COURT: Well, do you all think if we start in the
16 morning at 9:00, we'll be done by -- have all the evidence
17 in by noon?

18 MR. MCGARR: I think unequivocally, Your Honor.

19 MR. MOORHEAD: Yes, sir.

20 THE COURT: Okay. So do you just want to break now?

21 MR. MCGARR: I think it would be probably a good time
22 to do it.

23 MR. MOORHEAD: Whatever you think, Judge. I'm
24 willing to try to get Ms. Cates in, if we can do that, or
25 we can break now, just whatever you think.

1 THE COURT: Is she the physical therapist?

2 MR. MOORHEAD: She is the life care medical --

3 THE COURT: Oh, life care. Well, I mean, we could do
4 her direct and just come back.

5 MR. MOORHEAD: Well, if she has to come back, she's
6 got to come back. I mean, she lives in North Carolina up
7 in the Raleigh-Durham area. So either way, she'll have to
8 spend another night here.

9 THE COURT: It's colder up there.

10 MR. MOORHEAD: Yeah, it is.

11 Would you prefer just to break now then?

12 THE COURT: I'll do whatever y'all want to do.

13 MR. MOORHEAD: What do you want to do?

14 MR. MCGARR: I think it's probably a good time to
15 break.

16 THE COURT: Yes. They're probably worn out and they
17 will be fresh in the morning. So that will probably be
18 best for everyone.

19 So let's just bring the jury back in, and we'll
20 dismiss them.

21 (WHEREUPON, the jury came into open court at
22 approximately 4:50 p.m.)

23 THE COURT: Okay. During the break, we had a chance
24 to confer about some logistics for the case. What we're
25 going to do is go ahead and break now for the day.

1 And just don't talk about the case. Continue to keep
2 an open mind. Don't do any kind of outside investigation.
3 You have to make your decision based on the record, which
4 consists only of the evidence and the exhibits, as I've
5 already explained to you.

6 I know it's tempting sometimes to go out and
7 investigate on your own. Curiosity sometimes gets the
8 better of us, but, please, don't do that. And continue to
9 keep an open mind. And we'll see you back at 9:00 in the
10 morning. We're still anticipating having the case to you
11 by midday. So we appreciate your patience. And have a
12 good evening.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 4:52 p.m.)

15 THE COURT: We'll see you at 9:00.

16 Thank you all.

17 (WHEREUPON, the proceedings were concluded at
18 approximately 4:53 p.m., to be reconvened on
19 Wednesday, January 23, 2013.)
20
21
22
23
24
25

1 WEDNESDAY, JANUARY 23, 2013

2 THE COURT: Anything before we bring the jury in?

3 MR. MOORHEAD: No, Your Honor, not from the
4 Plaintiff.

5 THE COURT: Okay. You can bring the jury on in.
6 Thank you.

7 (WHEREUPON, the jury came into open court at
8 approximately 9:12 a.m.)

9 THE COURT: Good morning, ladies and gentlemen.
10 We're going to resume with the testimony at this
11 time.

12 Mr. Moorhead, you may call your next witness, sir.

13 MR. MOORHEAD: Thank you, Your Honor.

14 Your Honor, I would call Ms. Penny Cates.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand.

17 MS. PENNY CATES: Can I affirm?

18 THE CLERK: Yes.

19 THE BAILIFF: Step up right here.

20 WHEREUPON,

21 PENNY CATES,

22 after first having been duly affirmed, testified as follows:

23 THE CLERK: State your name, please.

24 THE WITNESS: Penny Cates.

25 THE CLERK: Thank you.

1 Please be seated.

2 DIRECT EXAMINATION

3 BY MR. MOORHEAD:

4 Q Ms. Cates, I believe you're a resident of the State
5 of North Carolina?

6 A I am.

7 Q I'd like for you to speak up just a little bit to
8 make sure everybody hears you.

9 A Okay.

10 Q And what is your profession?

11 A I'm a nurse life care planner.

12 Q And what was your training -- your education?

13 A As far as a nurse or life care?

14 Q Both, starting with nurse.

15 A Nursing, I went to community college and got an
16 Associates Degree in Nursing from 1991 to 1993, and then
17 started practicing as a nurse. And then I went back and
18 earned a Bachelor's Degree in Nursing from UNC-G.

19 Q Now, UNC-G, that's the University of North Carolina
20 at Greensboro?

21 A It is.

22 Q And how long have you been practicing nursing as an
23 RN?

24 A 20 years.

25 Q And do you still do that?

1 A I'm still licensed as a registered nurse, yes.

2 Q Now, tell us a little bit about the life care
3 planning part of your profession.

4 A As a nurse life care planner, I still assess clients,
5 just in a different way. As a regular -- I don't want to
6 say a regular practicing nurse, because we're all nurses.
7 There's many different ways to practice nursing. But as
8 a -- as people normally think of nursing, bedside nursing,
9 there's all different kinds of practicing nurses.

10 And the way I practice nursing is by assessing a
11 client in a different manner. I assess clients by
12 reviewing records and by assessing them -- their needs on
13 a different level, assessing their projected medical
14 needs.

15 Q Before you became a life care planner and you were
16 working as an RN, did you work with hospitals and doctors?

17 A I did.

18 Q And how -- for how many years did you do that?

19 A I worked with hospitals and doctors for 17, 18 years
20 before going into nurse life care planning.

21 Q Do you have any certification as a life care planner?

22 A I do.

23 Q And did you have to take a test to do that?

24 A I did.

25 Q And is that an industry standard and it's recognized

1 as a profession, a life care planner nurse?

2 A It is.

3 Q And did you have to take extra training aside from
4 your training and experience as an RN to obtain your
5 certification as a life care planner?

6 A I did take an extra course, yes.

7 Q And does life care planning, also, encompass the area
8 of medical projection costs?

9 A It does, yes.

10 Q And how many, roughly, have you performed by -- in
11 the form of life care plans and medical projection
12 costs -- medical costs projection?

13 A Roughly between 150 to 175.

14 MR. MOORHEAD: I would offer Ms. Cates, at this time,
15 as an expert in medical projection costs analysis.

16 MR. MCGARR: Without objection, Your Honor.

17 THE COURT: All right. She's qualified.

18 MR. MOORHEAD: Thank you.

19 BY MR. MOORHEAD:

20 Q Tell us -- did you prepare a medical projection cost
21 for Mr. Dawkins in this case?

22 A I did.

23 Q And you did that at my request?

24 A I did.

25 Q And tell me -- or tell the jury, rather, what

1 methodology do you use as a life care planner, medical
2 cost projectionist to determine how to make a medical cost
3 projection?

4 A Much like the same as a nursing process, which is
5 that we -- that I've used all my career. I assess the
6 client. And by assessing the client, I review the medical
7 records. And I talk with physicians and providers.

8 In this case, I talked to Dr. McHenry and his staff.
9 And I talked with Reverend Dawkins on the telephone on a
10 couple of occasions. I made a problem list and came up
11 with treatment recommendations, based on those interviews
12 with Reverend Dawkins and from speaking with Dr. McHenry
13 and his staff. And I researched the cost associated with
14 those recommendations. And then I developed a plan of the
15 medical cost projection that you'll see today.

16 Q Okay. Did you -- when you say you researched the
17 costs of those services, what sources did you use for the
18 purposes of your research?

19 A The source that I used was a Physicians Fee
20 Reference.

21 Q And tell the jury what that is.

22 A The Physicians Fee Reference is a book that is -- a
23 resource that is widely used by the healthcare industry
24 for costs associated with physician's office visits, as
25 well as other providers, such as X-rays, and therapies,

1 and the like to come up with the usual and customary
2 costs.

3 Q Is that an authoritative text in your industry?

4 A It is. It is very widely used.

5 Q All right. And tell -- is it profession, custom, and
6 standard to use that reference?

7 A It is.

8 Q What else did you use?

9 A I used the HCUP data base.

10 Q And what is that?

11 A That is a governmental data base that is used for
12 hospital facility fees that -- basically, what goes into
13 that data base is community hospital facility fees that
14 are pulled from community hospitals across the nation to
15 come up with facility fees that researchers use. It's a
16 governmental data base.

17 Q It's a U.S. federal government data base?

18 A Yes.

19 Q That's where the numbers come from?

20 A Yes, from the U.S. Department in Health and Human
21 Resources.

22 Q And is that reference authoritative?

23 A It is.

24 Q Is it what everybody uses in your profession?

25 A It is, as well as researchers.

1 Q And is that broken down by sections of the country?

2 A It is.

3 Q And does that include the southeast?

4 A It does.

5 Q And did you use the references for the southeast in
6 coming up with your figures?

7 A I did.

8 Q And informing the life -- the medical costs
9 projection, did you, also, utilize your training and
10 experience as an RN?

11 A I did.

12 Q And in regard to your experience, have you had
13 experience in the area of orthopedics?

14 A I have, yes.

15 Q And does that include spine patients?

16 A Yes.

17 Q And do you have any idea how many of those you've
18 been involved with their treatment?

19 A In the past 20 years, I can't tell you how many I've
20 been involved in. It's more than I can count.

21 Q Okay. Did you come -- did you make a projection of
22 medical costs for Reverend Dawkins with regard to his
23 cervical spine surgery?

24 A I did.

25 Q Did you do the same with regard to his lumbar spine

1 surgery?

2 A Yes.

3 Q And do you have -- is this your outline of your plan,
4 based on Dr. McHenry and the other things upon which you
5 relied and have testified about?

6 A Yes, it is.

7 MR. MOORHEAD: I'd like to enter this as Plaintiff's
8 Exhibit No. 1.

9 MR. MCGARR: Without objection, Your Honor.

10 THE COURT: All right. It's in evidence.

11 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 BY MR. MOORHEAD:

14 Q I'd like to go over this briefly with you, Penny.
15 Now, let's take the cervical spine first. And the first
16 category is visits, orthopedic spine specialist,
17 Dr. Timothy McHenry. And under the frequency, you have
18 allowed six, one pre-op, five post-op?

19 A Yes.

20 Q Can you explain that, please?

21 A The one pre-op visit is usually customary. They come
22 in. Dr. McHenry, the orthopedic surgeon usually doing an
23 X-ray to make sure that what he anticipated was there.
24 Usually, since he's seen the patient, to make sure what he
25 sees as anticipated is the same.

1 He goes over with Reverend Dawkins what the surgery
2 is going to entail. He usually will look at the X-rays
3 with him and say, this is what's going to happen with your
4 surgery. And he'll do any preliminary -- order any
5 preliminary lab -- not lab work, because he sends him to
6 the hospital for that, but go ahead and write out any
7 orders to send to the hospital with him, and go over
8 preliminary things with him.

9 Q And that frequency -- I mean, the number there allows
10 six visits, pre-op and post-op. Where did you get that
11 number?

12 A I got the five post-op from the deposition and the
13 pre-operative visits. I just know that from my 20 years
14 of experience knowing that's what's going to happen.

15 Q And where did you come up with the cost?

16 A The cost came from the Physicians Fee Reference that
17 we've already discussed.

18 Q All right. The authoritative text?

19 A Yes.

20 Q Governmental data base?

21 A Yes.

22 Q Let me ask you a question. Is that projector light
23 bothering you?

24 A A little bit, yeah. Well, wait a minute.

25 Is this okay if I move over here?

1 Q As long as they can hear you.

2 A Can you guys hear me?

3 Q I'm sure they can.

4 Now, the next category, the cervical discectomies,
5 posterior laminopathy?

6 A Laminoplasty?

7 Q Yeah, that one.

8 A Yes, sir.

9 Q And that was Dr. -- is that based on what Dr. McHenry
10 testified to?

11 A It is.

12 Q All right. And there will be one of those surgeries?

13 A Yes, sir.

14 Q And what is the cost that you came up with?

15 A The cost for Dr. McHenry's professional fee for the
16 posterior laminoplasty was \$12,024.

17 Q And you got that from the same Physicians Fee
18 Reference?

19 A Yes, sir.

20 Q And then let's take the next category, visits, daily
21 visits, is that while Reverend Dawkins is in the hospital?

22 A Yes, sir.

23 Q And the number that you came up with was three?

24 A Yes, sir. That's for the length of stay, the daily
25 visits.

1 Q And where did you come up with that number?

2 A From the Physicians Fee Reference.

3 Q Okay.

4 A Oh, the actual date -- from the deposition.

5 Q From the deposition of Dr. McHenry?

6 A Yes.

7 Q And the PFR, that's the Physicians Fee Reference?

8 A Yes.

9 Q Is that where you got the cost?

10 A Yes, sir.

11 Q Now, does -- that total of \$460, does it represent
12 all three inpatient visits by Dr. McHenry?

13 A It does.

14 Q All right. And then the next category is anesthesia
15 professional fee. Is that for the anesthesiologist?

16 A Yes.

17 Q And that would be a one-time cost?

18 A Yes.

19 Q And that would cost \$4,900?

20 A Yes.

21 Q And where did you come up with that number?

22 A I called Greenville Anesthesiology.

23 Q That's the anesthesiology group here in Greenville,
24 South Carolina?

25 A Yes.

1 MR. MOORHEAD: Can you roll it down?

2 BY MR. MOORHEAD:

3 Q All right. Now, the next category is hospital
4 facility fee?

5 A Yes.

6 Q Is that for his hospital costs while he's in the
7 hospital having his next surgery?

8 A It is.

9 Q And so that's a one-time charge?

10 A It is.

11 Q And where did you come up with the figure of \$80,000?

12 A That's for the -- a figure from the Governmental
13 database I spoke to for a posterior -- for the posterior
14 approach for the cervical spine surgery.

15 Q Okay. So that's the U.S. federal government's
16 database on the particular type of neck surgery
17 Dr. McHenry recommended for Reverend Dawkins?

18 A It is, from the deposition.

19 Q And then the next category is the chest X-ray?

20 A It is.

21 Q And there will be one of those?

22 A Yes..

23 Q And you came up with that figure from the Physicians
24 Fee Reference.

25 A I did.

1 Q All right. And then the EKG, there will be one of
2 those. Is that preoperative?

3 A Yes.

4 Q Why did you put that in there?

5 A The chest X-ray and EKG are things that -- from my
6 experience, I know those things are done preoperatively.
7 Dr. McHenry and surgeons like him will, typically, send
8 patients like Reverend Dawkins to the hospital to get
9 their preoperative clearance done. And the hospital puts
10 them through that clearance study for X-rays and lab work.
11 And those are studies everybody gets done before surgery.

12 Q And the cervical spine, the cervical is the area in
13 the neck?

14 A It is.

15 Q And the cervical spine X-ray, that's -- how did you
16 come up with a number of allowing for six?

17 A One preoperatively. And then five postoperatively.

18 Q And that number comes from where?

19 A From the deposition.

20 Q Okay. Dr. McHenry's deposition?

21 A Yes, sir.

22 Q And the cost came from where?

23 A From the Physicians Fee Reference.

24 MR. MOORHEAD: Would you go to the next line, please,
25 ma'am?

1 BY MR. MOORHEAD:

2 Q Penny, now, I'm on Page 2 of the cervical -- surgical
3 spine surgery. Are you with me?

4 A I am.

5 Q Okay. The pre-postop lab work, tell us about that.

6 A One set preoperative and one set postoperative.

7 Again, this is lab work that everyone gets done every time
8 they have surgery. Again, any surgeon, Dr. McHenry, in
9 this case, would send Reverend Dawkins to the hospital to
10 preoperatively have clearance for surgery. And everyone
11 gets the same set of lab work, in my experience as I've
12 seen in my 20 years, to get clearance for lab work as a
13 base line. And this just always happens.

14 Q All right. And then postoperatively to make sure
15 nothing went awry?

16 A Right.

17 Q And the source for that, again, is the PFR, that is
18 the Physicians Fee Reference?

19 A Yes, sir.

20 Q And that's the authoritative text that's used by life
21 care planners?

22 A Yes, sir.

23 Q And that cost reflects the cost for both the pre-op
24 and the post-op?

25 A Yes.

1 Q And the next category, physical occupational therapy
2 evaluation, one time for \$184. Where does that come from?

3 A That comes from the deposition of Dr. McHenry. He
4 said that postoperatively that it's more likely than not
5 that Reverend Dawkins would need physical or
6 occupational -- physical therapy. And, usually, what
7 happens is a physician will -- the way he orders it will
8 be evaluate and treat from a therapist. And this is the
9 evaluation portion of that. And it's a different code.

10 So a physical therapist or an occupational therapist
11 would evaluate Reverend Dawkins. And then the treatment
12 portion would be the sections that follow the next line
13 item.

14 Q And that's -- pardon me. I hit the wrong button.
15 That's this item here, the physical occupational therapy
16 sessions?

17 A Yes. The evaluation part of that order would be
18 physical therapy evaluation is one time only. So the
19 order would be written to evaluate/treat. And then the
20 treatment session would be the following line.

21 Q And you allowed 10 physical therapy sessions?

22 A Yes.

23 Q And where did that number come from?

24 A From the deposition.

25 Q And the cost for all 10 is the \$2,445 figure?

1 A It is.

2 Q And that, again, came from the Physicians Fee
3 Reference?

4 A It did.

5 Q But I'm not -- but that's the same text you've been
6 using throughout?

7 A Yes.

8 Q And is that pretty much the same text that everyone
9 in your profession uses?

10 A It is widely used, yes.

11 Q And then the next category is analgesics. Is that
12 painkillers?

13 A It is.

14 Q And how did you come up with \$23?

15 A The Oxycodone and the Lortab were the drugs that
16 Dr. McHenry referenced in the deposition. And the \$23 is
17 the figure I came up with from the resource that I use,
18 which is goodrx.com. And that resource is a database that
19 you can, actually, go to the geographic location of the
20 client that I'm referencing in this case, Reverend
21 Dawkins, and I can plug in, actually, Greenville, South
22 Carolina, and the name of the drug. And it can give me
23 pricing for that area.

24 So, in this case, it can give me pricing for K-Mart,
25 Publix, Rite Aid, Memorial Pharmacy, Parker Road

1 Drugstore, and give me the least amount of cost for that
2 area. In this case, an allowance of \$23.

3 Q And that's when you say once -- that's one
4 prescription?

5 A Yes.

6 Q And that's the number -- with the number of pills, so
7 to speak, that Dr. McHenry referred to?

8 A Right. This is the total amount it will cost for the
9 prescriptions that he suggested for...

10 Q All right. Go to the next line.

11 MR. MOORHEAD: Go to the next line, please, ma'am --
12 or wait a minute. You need to scroll it down.

13 BY MR. MOORHEAD:

14 Q Now, the next category is the medical mileage. What
15 is \$50?

16 A That is an allowance for the medical mileage for how
17 much it would cost for the mileage amount for
18 Dr. McHenry -- excuse me, I'm getting my doctors and
19 Reverends mixed up -- for Reverend Dawkins to drive back
20 and forth to the physician and the hospital for the cost
21 of mileage.

22 Q All right. And that's using the IRS allowance amount
23 per mile?

24 A Yes.

25 Q And the total for all of that is \$50?

1 A Yes.

2 Q And then the cervical collar is the final category
3 there. The cervical collar, tell the jury what that is.

4 A A cervical collar is a collar that goes around the
5 neck, usually after any kind of neck surgery to stabilize
6 the neck. I'm sure lots of people have seen them on
7 people in public.

8 And what happens after a neck surgery, if you recall
9 from yesterday from Dr. McHenry's deposition, is he
10 described the reasoning for the neck X-rays -- five neck
11 X-rays after surgery is to make sure the neck stayed in
12 alignment. Well, the same reason for the neck collar, to
13 have the neck collar afterwards is to keep that neck in
14 alignment.

15 So the neck collar is to help keep that neck in
16 alignment after surgery until it gets healed.

17 Q All right. And that charge was \$350?

18 A It is.

19 Q And, there again, your source was HCPCS. What is
20 that?

21 A HCPCS is what we call it in the industry, but it's
22 the Healthcare Common Procedure Coding System. And
23 that's -- you can see why we call it HCPCS. And it is CPT
24 codes used for supplies, DME, orthotics, prosthetics,
25 medical and surgical supplies. It's a reference we use in

1 the medical healthcare industry that gives us pricing and
2 coding for custom equipment like this neck orthotic I'm
3 describing.

4 Q So for the cervical spine surgery total, including
5 the hospital costs, the physical therapy, surgical fees,
6 medications, the works, so to speak, it amounts to what?

7 A \$104,213.

8 MR. MOORHEAD: Let's go to the next slide, please.

9 BY MR. MOORHEAD:

10 Q This is in regard to the lumbar spine surgeries. I'm
11 going to speed this process up a little bit. I'm not
12 going to ask you a second time about where you came up
13 with the five post-op and that sort of thing. That
14 information came, basically, from Dr. Timothy McHenry's
15 deposition?

16 A It did.

17 Q And the cost came from the PFR?

18 A It did.

19 Q All right. And that's how you arrived at the
20 \$100,040 figure?

21 A Yes.

22 Q And then the next category is lumbar surgery L5-S1
23 decompression fusion. Where did that particular operative
24 procedure come from?

25 A The deposition.

1 Q Of Dr. McHenry?

2 A Yes.

3 Q All right. And L5 refers to the fifth lumbar
4 vertebra in the low back?

5 A Yes.

6 Q And S1 is the first sacral vertebra?

7 A It is.

8 Q And, there again, you got that from the PFR?

9 A I did..

10 Q And the cost of that was what?

11 A \$23,905.

12 Q All right. And then the inpatient orthopedic visits,
13 that would be when Dr. McHenry makes his daily rounds and
14 would see Reverend Dawkins?

15 A Yes. It's easy to do, isn't it?

16 Q It is. And that would be one time for four days?

17 A Yes.

18 Q For four consecutive days?

19 A Yes.

20 Q And the pricing for that came out of the PFR?

21 A It did.

22 Q And the amount was what?

23 A \$571.

24 Q All right. And then the next thing is the
25 anesthesia. That's the cost to pay the anesthesiologist,

1 the doctor who puts you to sleep?

2 A It is.

3 Q And that was \$4,500?

4 A Yes.

5 Q And where did you get that information?

6 A Greenville Anesthesiology.

7 Q Did you contact them personally yourself?

8 A I did.

9 MR. MOORHEAD: Roll it down, please, ma'am.

10 BY MR. MOORHEAD:

11 Q Continuing with the lumbar spine surgery. I think
12 we're on the hospital facility fee. And the length of the
13 stay for that is four days?

14 A Yes.

15 Q All right. And the cost for that was what?

16 A \$82,440.

17 Q And, there again, the pricing for the Greenville
18 Hospital System fee or whatever hospital it is comes from
19 the government figures on that?

20 A Yes.

21 Q And then the chest X-ray. You got that at the same
22 place you got for the neck X-ray?

23 A I did.

24 Q And the EKG, the same situation?

25 A Yes.

1 Q All right. And the lumbar spine X-ray, same thing,
2 everybody gets one?

3 A Deposition.

4 Q In the deposition?

5 A Yes.

6 Q And that's -- okay. And that's the number of times
7 per Dr. McHenry. And that's the cost pursuant to the PFR?

8 A Yes.

9 Q We're now on Page 2 of the lumbar surgery. And the
10 first category is the pre/postop lab work. Is that the --
11 is the need for that the same as it is in the cervical
12 spine surgery?

13 A It is.

14 Q And the source of the cost came from the same
15 authoritative text that you and others like you use?

16 A Yes.

17 Q And the physical therapy evaluation, is that the
18 evaluation -- well, just tell me -- tell the jury what
19 that is.

20 A The evaluation and the sessions are the ones
21 recommended by Dr. McHenry in his deposition. And,
22 usually, the way that's ordered is physical therapy,
23 evaluate, and treat. And what that means is the physician
24 is giving the therapist the authority to evaluate the
25 patient to see what they need and then treat them as

1 they -- as the therapist deems necessary. In other words,
2 you evaluate the patient to see what their functional
3 status is, to see what their needs are, and then treat
4 them accordingly.

5 So the evaluation is the first line item for the
6 \$184. And then the treatment session is the next line
7 item following that.

8 Q And you allow how many sessions for physical therapy?

9 A 15.

10 Q And where did that number come from?

11 A The deposition.

12 Q And where did the source of the cost come from?

13 A The Physicians Fee Reference.

14 Q And that \$3,688 is the total for all 15 visits?

15 A Yes.

16 Q And then the analgesics, there again, that's the pain
17 medication, a one-time prescription?

18 A It is.

19 Q And you got that from the same place?

20 A I did.

21 Q And then the mileage is based on the IRS allowance?

22 A It is.

23 Q And tell us about the thoracic lumbar orthosis brace.

24 A That is coming from the same description as with the
25 cervical spine. It's the -- it's a brace used for the

1 lumbar spine to help keep the alignment and help give
2 support to the lower back after surgery.

3 Q And the cost is \$250?

4 A It is.

5 Q And what was the source of that figure?

6 A The HCPCS book.

7 Q That's the governmental database?

8 A It's a book similar to the PFR, Physicians Fee
9 Reference.

10 MR. MOORHEAD: If you would, please, ma'am, could you
11 scroll it down a little bit?

12 BY MR. MOORHEAD:

13 Q So for the surgical spine surgery, including
14 everything that goes with it that we have discussed item
15 by item by item, the total cost is \$104,213 --

16 A For the lumbar spine, it's \$119,203.

17 Q And the cervical spine is --

18 A Yes, sir, \$104,213.

19 Q For a total of --

20 A \$223,416.00.

21 Q And that's for both surgeries that Dr. McHenry says
22 Reverend Dawkins needs?

23 A It is.

24 Q And is that in present-day dollars?

25 A It is.

1 MR. MOORHEAD: Thank you.

2 Please answer any questions that Mr. McGarr may have
3 for you.

4 THE COURT: Cross-examination.

5 MR. MCGARR: May we approach?

6 THE COURT: Sure.

7 (WHEREUPON, a bench conference was held.)

8 MR. MOORHEAD: Please answer any questions that
9 Mr. McGarr may have for you.

10 CROSS-EXAMINATION

11 BY MR. MCGARR:

12 Q Ms. Cates, you've talked to Reverend Dawkins on a
13 number of occasions; am I correct?

14 A Yes.

15 Q You've gone through his medical records?

16 A Yes.

17 Q You've talked to Dr. McHenry?

18 A Yes.

19 Q And, actually, you saw Dr. McHenry's deposition being
20 played to this jury yesterday; is that correct?

21 A I did.

22 Q So you're aware that Reverend Dawkins was cleared for
23 surgery back in 2009, are you not?

24 A I am.

25 Q And that he chose not to go through with that surgery

1 in 2009; is that correct?

2 A I'm aware of that.

3 Q And you're aware that he hasn't had surgery, or
4 planned surgery in 2010?

5 A I'm aware of that.

6 Q He hasn't planned or had surgery in 2011?

7 A I'm aware of that.

8 Q He hasn't planned and hasn't had surgery in 2012?

9 A I'm aware of that.

10 Q He hasn't planned and hasn't had surgery in 2013?

11 A I don't -- I'm not aware of whether he has or has not
12 scheduled surgery for 2013.

13 Q Have you talked to him?

14 A I've talked to him, but I haven't asked him whether
15 he's scheduled surgery.

16 Q And when the doctor's deposition was taken -- and it
17 was taken just a few months ago, on September 26, 2012.
18 At that point, there were no plans for surgery in 2013,
19 were there?

20 MR. MOORHEAD: Objection, Your Honor. The deposition
21 speaks for itself. So I don't see why Mr. McGarr would
22 pit Ms. Cates against Dr. McHenry's deposition, which is
23 the testimony that he gave.

24 THE COURT: Overruled.

25 BY MR. MCGARR:

1 Q The deposition was taken in September of 2012, and
2 there was no plan, at that point, for this gentleman to
3 have surgery on his neck or his low back, was there?

4 A (There was no response.)

5 Q Was there?

6 A As far as the deposition said, I --

7 Q In that deposition, there was no mention of him
8 having surgery in the year 2012, or 2013, was there?

9 A According to what Dr. McHenry said, he said that
10 there wasn't. So I'm assuming there wasn't.

11 Q So every dollar of this \$200,000 plus projection that
12 you've created is based on the assumption that this
13 gentleman is going to have surgery; is that correct?

14 A It's not my place to assume whether he will or he
15 won't.

16 Q That's not my question. My question is, all of these
17 numbers, the \$200,000 plus in numbers that will be given
18 to this jury as an exhibit and that they've seen on this
19 video; that's based upon him, actually, having surgery to
20 his neck and his low back, is it not?

21 A (There was no response.)

22 Q Ms. Cates, this is a simple question. All of these
23 records are related to him having surgery to his neck and
24 his low back; is that correct?

25 A Those numbers are to come up with a projection for

1 future surgeries. So that's what I did.

2 Q And that's not my question. My question is, these
3 documents that are going to this jury are based upon him
4 having surgery and incurring those costs; am I correct?
5 That's your job?

6 A My job is to take -- is to take a proposed surgery
7 and come up with medical costs for it. And that's what I
8 did.

9 Q And these costs are based upon him having surgery to
10 his neck and his low back; is that correct?

11 A Yes.

12 Q Thank you.

13 And, yet, he hasn't done it in 2008, declined it in
14 2009, hasn't done it in 2010, hasn't done it in 2011,
15 hasn't done it in 2012, and hasn't prepared to do it in
16 2013; is that correct?

17 A To date, he has not had surgery.

18 Q And he has declined to have that surgery?

19 A I don't know the answer to that.

20 Q You don't? You didn't hear the doctor yesterday say
21 he was scheduled to have surgery and declined to do so?

22 A (There was no response.)

23 Q And you have this gentleman's medical records and you
24 don't know that?

25 A Decline is a --

1 Q Was he scheduled to have surgery and chose not to do
2 it?

3 A I don't recall if he was scheduled to have surgery or
4 not. All I know is he has not had surgery.

5 Q Let me show you two documents. Does it appear that
6 on 5/26/09, Mr. Dawkins had been cleared for neck and back
7 surgery?

8 A Could you repeat your question?

9 Q Does it appear that on 5/26/09, Mr. Dawkins was
10 cleared to have neck and back surgery?

11 A By what you have highlighted?

12 Q Does that -- well, go down a little bit further and
13 you'll see where it says, Assessment plan, the second
14 sentence.

15 A Sir, you're asking me to make an assumption based on
16 medicine. And I'm not -- that's not my area.

17 Q Ma'am, you just told this jury you've worked with
18 nurses, doctors, hospitals for 19, 20 years; is that
19 correct?

20 A But you're asking me to make a physician's medical
21 assumption, and that's not my area.

22 Q I'm asking you to tell me what that document said.
23 Because you told us in coming up with those numbers that
24 you reviewed these documents. Does that document say he
25 was cleared for surgery in 2009?

1 A I can read to you what this document says. And it
2 says he will be cleared for surgery. However, it carries
3 a significant risk. But as far as --

4 Q Thank you.

5 A -- describing to you why, where, and what, I can't.

6 Q Okay. But he was cleared for surgery in 2009, based
7 on this document?

8 A Based on this document, it appears to be so.

9 Q And then going to the next document, does it appear
10 that his date of surgery was supposed to be 6/12/2009?

11 A Could you repeat the question?

12 Q The date of that surgery was supposed to take place
13 on 6/12 of 2009?

14 A Yes.

15 Q And that surgery, as you know, never transpired; is
16 that correct?

17 A Yes.

18 Q So if this gentleman never has surgery, the numbers
19 you gave means nothing; is that correct?

20 A No. That's not correct.

21 Q Let me put it to you this way. In the end, this is
22 going to be given to the jury. And you were here during
23 the opening. And they're going to ask this jury to pay
24 this \$200,000 plus; is that correct?

25 A (There was no response.)

1 Q You do this for a living?

2 A I don't know what they'll be asked to do.

3 Q So you're so naive, you just believe that you create
4 these numbers just for fun?

5 A I don't know how much they'll be asked to pay. But
6 for the surgeries, yes, that's what they'll be asked to
7 pay.

8 Q Okay. So you're not that naive. And you recognize
9 that in the end, Mr. Moorhead is going to ask this jury to
10 pay -- to have my client pay \$200,000 plus for these
11 futures surgeries; is that correct?

12 A For future surgeries, yes.

13 Q And if those future surgeries don't take place, just
14 like they haven't taken place in 2008, 2009, 2010, 2011,
15 2012, and, to our knowledge, 2013, if they never take
16 place, these numbers will never come into play. They
17 won't be paid if he doesn't have the surgery.

18 A Is that a question?

19 Q Yeah. That's a question.

20 A What was the question?

21 Q The question is, these numbers don't mean anything if
22 he doesn't have the surgery, because the money won't be
23 paid because the surgeries don't take place?

24 A It doesn't mean that he doesn't still need the
25 surgery.

1 Q I'm not asking you that question. I am saying if
2 those surgeries never transpire, the money to pay for them
3 will never come out of anyone's pocket; isn't that
4 correct?

5 A (There was no response.)

6 Q These aren't hard questions Ms. Cates.

7 A The way you're wording it, I'm having difficulty
8 understanding the question.

9 Q I'll make it as simple as possible. If this
10 gentleman doesn't have these surgeries, these expenses
11 aren't incurred, are they?

12 A (There was no response.)

13 Q Ms. Tate?

14 A Ms. Who?

15 Q Ms. Cates, I'm sorry. You're an RN?

16 A I am.

17 Q You have a Bachelor's Degree?

18 A (There was no response.)

19 Q Is that correct?

20 A I do.

21 Q Thank you.

22 You testify as an expert?

23 A I do.

24 Q You testify in this field and this is your specialty?

25 A Yes.

1 Q And you can't answer a question as simple as this.
2 If this gentleman doesn't have these surgeries, these
3 costs aren't incurred? And you can't even understand that
4 question?

5 A He has to have the surgery in order to spend the
6 money.

7 Q And if he doesn't have the surgery, the money isn't
8 spent, is it?

9 A I guess that would be true.

10 MR. MCGARR: No further questions.

11 MR. MOORHEAD: I have no redirect, Your Honor.

12 And I would respectfully request that Ms. Cates be
13 allowed to go back to North Carolina.

14 THE COURT: Any objection?

15 MR. MCGARR: No objection.

16 THE COURT: All right. Thank you, Ms. Cates.

17 You're excused, ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: You may call your next witness.

20 MR. MOORHEAD: I would call Reverend Dawkins.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 JAMES LEWIS DAWKINS,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: State your name, please.

2 THE WITNESS: James Lewis Dawkins.

3 THE CLERK: Thank you.

4 Please be seated.

5 DIRECT EXAMINATION

6 BY MR. MOORHEAD:

7 Q Mr. Dawkins, where do you live?

8 A I live in Taylors.

9 Q And have you lived in Greenville all your life?

10 A I have, sir.

11 Q And your family comes from here?

12 A Yes, sir.

13 Q All right. Do you have brothers and sisters here?

14 A Yes, sir.

15 Q Children here?

16 A Yes, sir.

17 Q And are you married?

18 A I am, sir.

19 Q And what is your calling in life?

20 A I'm the senior pastor of New Life Church in Taylors.

21 Q And how long have you been in the ministry?

22 A About 20 years.

23 Q And do you have any children -- are you married?

24 A I am.

25 Q Do you have any children at home?

1 A I do.

2 Q Do you have any children who are not -- who no longer
3 live in the home?

4 A Yes.

5 Q All right. And where is that child?

6 A She has an apartment here in Taylors.

7 Q All right. And when were you born?

8 A I was born in 1950 in Taylors.

9 Q All right.

10 A South Carolina.

11 Q And your birth date is July 11?

12 A Yes, sir.

13 Q And you formerly -- well, you formerly worked for
14 companies like General Electric, and that kind of thing
15 before you were called to the ministry?

16 A Yes, sir.

17 Q And your education, you went to high school here in
18 Greenville?

19 A I did, sir.

20 Q And did you go to some kind of college for the
21 ministry?

22 A I did, sir.

23 Q And did you complete that?

24 A No, sir.

25 Q And you have been -- but you've been preaching for 20

1 years?

2 A Yes, sir.

3 Q Now, you had an automobile collision on September the
4 24th, 2008?

5 A I did, sir.

6 Q And where was that located?

7 A It was in Greer on Poinsett -- Wade Hampton
8 Boulevard.

9 Q At the intersection of Poinsett Street?

10 A Yes.

11 Q Tell the jury what happened.

12 A Well, I was waiting at the red light, and the light
13 turned green. And I pulled out on Wade Hampton Boulevard.
14 And I was hit on the left side.

15 Q All right.

16 A From the vehicle that was coming to the right.

17 Q All right. And you were, actually, stopped for a red
18 traffic light?

19 A I was stopped for a red light. And when the light
20 turned green, I pulled out in the intersection. And I was
21 hit.

22 Q All right. And the -- and it was the Defendant's
23 vehicle who hit you?

24 A Yes, sir.

25 Q And what portion of your vehicle was struck?

1 A The door panel, the door, the spin on the tire that
2 holds the tire, and the tires, and the front bumper. And
3 it was another part that was damaged, but I can't think of
4 what the name of it is right now. But that part was hit.

5 Q All right, sir. Do you know how much damage was done
6 to your vehicle in dollar terms?

7 A I'm thinking about close to \$4,000, sir.

8 Q All right, sir. Let me -- let me hand you a document
9 and see if that refreshes your memory as to what total
10 amount of damage was done to your vehicle.

11 A Yes, sir. This is the total damage that was done to
12 the car, sir.

13 Q And what is that figure?

14 A It's \$3,893.49.

15 Q Thank you.

16 What happened to you when you -- when the Defendant
17 ran the red light and hit you?

18 A My back and neck -- lower back and shoulders was
19 hurting real bad. That's what happened with me. I began
20 to hurt real bad. So I was just kind of hollering
21 because, you know, I was hit. That's what happened, sir.

22 Q And did you go to the hospital?

23 A Yes, sir, I did.

24 Q And how did you get to the hospital?

25 A By EMS.

1 Q And did they put you on a stretcher?

2 A Yes, they did.

3 Q What else did they do?

4 A They put a neck brace on my neck, and strapped me
5 down so I would not move.

6 Q Okay. And you went to which emergency room?

7 A I went to Greer Memorial in Greer.

8 Q And how long were you there altogether, roughly?

9 A I'm not sure how long I was there, sir.

10 Q All right. Did you -- after going to Greer Memorial
11 emergency room, where was the next place you went for
12 medical treatment?

13 A The next place I went to was St. Francis Emergency
14 Hospital in Greenville.

15 Q All right, sir. Is that the women's hospital?

16 A It's the women's hospital.

17 Q All right, sir. And, subsequent to that, did you get
18 treatment anywhere else?

19 A I went -- yes. I went to my family doctor.

20 Q And what is that?

21 A It's North Hills Medical Center.

22 Q And after going to North Hills Medical Center, were
23 you referred to any other doctor?

24 A I was, sir.

25 Q And who was that?

1 A One of them was Dr. McHenry. I can't remember the
2 other doctor's name. But I went to two doctors
3 afterwards, sir.

4 Q All right. I'll represent to you that the first
5 doctor's name was Dr. Steven Geary.

6 A Yes, sir.

7 Q Does that sound familiar?

8 A Yes, sir.

9 Q And did you treat with Dr. Geary for a number of
10 months?

11 A I did, sir.

12 Q And did Dr. Geary send you to physical therapy?

13 A He did, sir.

14 Q And did Dr. Geary, ultimately, turn your care over to
15 Dr. Timothy McHenry?

16 A He did, sir.

17 Q And have you been treating with Dr. McHenry ever
18 since?

19 A Yes, sir.

20 Q And when was the last time you saw Dr. McHenry?

21 A It was last week. I saw him last week.

22 Q All right. Now, have you and Dr. McHenry talked
23 about you having surgeries?

24 A Yes, sir.

25 Q And what surgeries have you all discussed?

1 A We've discussed neck surgery and lower back surgery.

2 Q Now, have you had the ability to pay for any such
3 surgeries?

4 A No, sir.

5 Q If you had the ability to pay for your neck and back
6 surgeries, what would you do?

7 A I would have the surgery, sir.

8 Q Describe the difficulties that you have currently
9 with your neck.

10 A I have pain in my neck. I can't sleep on my left
11 side because of my neck and my left shoulder. And I have
12 lower back pain to where I can't get comfortable whenever
13 I'm sleeping, sir. I'm having severe pain at times in my
14 neck, back, and left shoulder.

15 Q All right. How, if at all, do the difficulties with
16 your back limit your ability to do things?

17 A I can't sit very long, or ride a long way. My wife
18 and I walked a great deal. I can't walk or do some other
19 activities. I played tennis. And I can't play that much,
20 because I can't run. So I'm just limited to doing things
21 I'm used to doing, sir. And I can't sit, not very long,
22 sir.

23 Q All right, sir. And what are -- how does your
24 shoulder limit you, if at all?

25 A My shoulder pains me whenever -- sometimes, I have

1 sharp pains down my shoulder and I -- when I move or just
2 sit a long time, just being numb or can't raise it like I
3 used to. And I have severe pain at times, sir.

4 Q Do you have any difficulty with your right arm?

5 A I do sometimes, sir.

6 Q And would you tell the jury what that involves.

7 A I have tingling in my shoulder that goes down in my
8 fingers. I have it in both. But, sometimes, I have it in
9 my left and right. But, at times, it varies with tingling
10 in both. But it gets worse sometimes where I can't use it
11 as much, sir.

12 Q Okay. Prior to this motor vehicle accident, do you
13 ever recall having symptoms with either your neck, or left
14 shoulder, or right arm?

15 A No, sir.

16 Q Now, you have had problems with your low back before?

17 A I have, sir.

18 Q All right, sir. And tell the jury about that, if you
19 would.

20 A I was injured on the job with my low back. And I had
21 surgery on my back. So I did, at times, have pain that
22 flared up every once in a while. And, sometimes, it would
23 be severe, but not as severe as it is right now, sir.

24 Q And how long ago did you injure your back and have
25 surgery?

1 A It was around 1983 or 1984, about that time, sir.

2 Q Is that the injury -- or the surgery?

3 A The surgery was in 1985, back then. I injured it
4 first -- I injured it in 1982. And I continued to work.
5 And I injured it again in 1983. And that's when I had to
6 have surgery.

7 Q All right, sir. And did you have another injury 16,
8 17 years ago in an automobile collision?

9 A I was hit in the back. I did, but -- yes, sir.

10 Q All right, sir. Now, since this automobile collision
11 of September 24th of 2008, has there been a difference in
12 your symptoms with respect to your low back and your legs?

13 A Yes, sir.

14 Q Tell us what the difference is.

15 A The difference is I have continuous pain at times.
16 And, sometimes, the pain escalates to where I can't do
17 anything. I just have to sit down or don't go anywhere.
18 Before I could -- I had pain, but not like I do now.

19 Q Let me show you some medical bills. Is this a
20 medical bill for your EMS?

21 A Yes, sir.

22 Q For this automobile accident?

23 A Yes, sir.

24 Q And is this a medical bill from Greer Memorial
25 Hospital on the day of the accident?

1 A It is, sir.

2 Q And is this a Greenville Radiology bill that's
3 related to this accident?

4 A Yes, sir.

5 Q And a St. Francis emergency room visit on September
6 the 27th?

7 A Yes, sir.

8 Q And a bill at North Hills Medical Clinic for
9 September the 30th, 2008?

10 A Yes, sir.

11 Q And a bill at North Hills Medical Clinic for an MRI
12 of your left shoulder?

13 A Yes, sir.

14 Q And a bill for another MRI ordered by Dr. Geary?

15 A Yes, sir.

16 Q And a bill from Carolina Center for Advanced
17 Management of Pain for January the 12th of 2009?

18 A Yes, sir.

19 Q What did they do for you at the Carolina Center for
20 Advanced Management of Pain?

21 A They gave me some shots in my back, sir.

22 Q All right.

23 A Yes, sir.

24 Q And when -- was it your low back that they did that?

25 A Yes, sir.

561

1 Q Anywhere else?

2 A They gave me, I think, some shots in my neck and my
3 lower back. I'm not sure, sir.

4 Q Okay. And Greer Memorial -- Greenville Hospital
5 System for an MRI ordered by Dr. McHenry?

6 A Yes, sir.

7 Q And a bill from Steadman Hawkins?

8 A Yes, sir.

9 Q That's who Dr. Geary is with; is that right?

10 A Yes, sir.

11 Q And this is Proaxis Physical Therapy?

12 A Yes, sir.

13 Q And that's for a period, really, from November the
14 19th of 2008, through December?

15 A Yes, sir.

16 Q And who sent you to Proaxis Physical Therapy?

17 A Dr. McHenry sent me -- or Dr. Geary.

18 Q Dr. Geary?

19 A Yes.

20 Q Okay. And I think this is Dr. McHenry's bill from
21 Southeastern Neurosurgical and Spine. You first saw
22 Dr. McHenry beginning in March of 2009?

23 A Yes, sir.

24 Q And is this a summary of all the bills I just went
25 over?

1 A Yes, sir.

2 Q By listing, it is Greenville County EMS, Greer
3 Memorial Hospital, Greenville Radiology, St. Francis,
4 North Hills, Greenville Memorial, Carolina Center for
5 Advanced Management of Pain, Steadman Hawkins, Proaxis,
6 and Southeastern Neurosurgical?

7 A It is, sir.

8 MR. MOORHEAD: I'd move to have each of these entered
9 into evidence.

10 MR. MCGARR: I'd love to see a copy before you do
11 that.

12 MR. MOORHEAD: I'm sorry.

13 MR. MCGARR: I'd loved to have had a copy while you
14 were going through them.

15 MR. MOORHEAD: I'm sorry.

16 (Pause.)

17 MR. MCGARR: You need to do a little redaction on
18 that one.

19 (Pause.)

20 MR. MCGARR: Your Honor, with just a slight
21 redaction, without objection. A redaction on just one.

22 THE COURT: Okay.

23 MR. MOORHEAD: Okay. So you just want me to take the
24 diagnoses out?

25 MR. MCGARR: Yes.

1 MR. MOORHEAD: Is that all?

2 MR. MCGARR: That's all it is.

3 MR. MOORHEAD: Just take those diagnoses out, just
4 black them out.

5 MR. MCGARR: Your Honor, did I say they were without
6 objection, or did I forget to say that?

7 THE COURT: Okay. They're in evidence.

8 MR. MCGARR: We can put that in for ID and then
9 redact it later.

10 THE COURT: Okay.

11 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked for
12 identification only.)

13 MR. MCGARR: Well, since I don't have any copies,
14 with regard to --

15 MR. MOORHEAD: Well, here, now you do.

16 That's all the questions I have for now, Your Honor.

17 THE COURT: Thank you, Mr. Moorhead.

18 Yes, sir, Mr. McGarr, cross-examination.

19 MR. MCGARR: Your Honor, I'm going to ask a question
20 and, quite frankly -- no, it will be all right.

21 CROSS-EXAMINATION

22 BY MR. MCGARR:

23 Q Reverend Dawkins --

24 A Yes, sir.

25 Q -- you're a Reverend? You're a minister?

1 A Yes, sir.

2 Q And you placed your hand and were put under oath on
3 that Bible and said you would tell the truth. And you
4 said you would do it under oath; is that correct?

5 A Yes, sir.

6 Q And one of the first things you told the jury is that
7 you would love to have surgery to your neck and back, but
8 you don't have the money to pay for it; is that correct?

9 A Yes, sir.

10 Q And nothing could be further from the truth, because
11 you have a Cadillac plan of health insurance with Blue
12 Cross Blue Shield --

13 MR. MOORHEAD: Objection, Your Honor.

14 BY MR. MCGARR:

15 Q -- and you paid thousands of dollars in 2009, did you
16 not?

17 MR. MOORHEAD: Objection, Your Honor.

18 THE COURT: Ladies and gentlemen, we're going to take
19 a short recess. Don't talk about the case. Keep an open
20 mind.

21 Thank you very much.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 10:26 a.m.)

24 THE COURT: Yes, sir, Mr. Moorhead.

25 MR. MOORHEAD: Your Honor, he brought up insurance.

1 And I object to him doing that or proceeding with that
2 questioning in -- if he's allowed to do that, then I think
3 we need to bring up all of the insurance. And we can take
4 that matter up maybe a little later.

5 But, you know, Mr. McGarr was the one that mentioned
6 at the beginning to admonish anybody from bringing up
7 insurance. And, now, he's put us in a situation where we
8 may have a mistrial. And I'm sure that was by design.
9 But I object to that. And I need to think about whether I
10 want to move for a mistrial or not.

11 THE COURT: Yes, sir, Mr. McGarr.

12 MR. MCGARR: I don't think it will be necessary. For
13 the first time today, we're being told by this gentleman
14 that he couldn't pay for these procedures. I'm not asking
15 Your Honor to take my word for it. And the reason I was
16 asking for a slight break was because I have asked
17 Ms. Wren at my office to -- when I heard what he said,
18 gather the documents --

19 And this is yours. I do give copies.

20 Gather the documents that would show that this
21 gentleman had, basically, completely told a bald face lie
22 under oath. And that's how strong I feel about it. This
23 is not me discussing it. When a Plaintiff does what
24 Mr. Dawkins just did, which is to say I can't pay for it
25 because I didn't have the money, then it is unequivocally

1 clear that I have the right to say, yes, you do have the
2 money. You had health insurance and you had access to
3 cash. And then Your Honor cures it, not through a
4 mistrial -- this is not the first time this has ever
5 happened in a courtroom -- but by virtue of dealing with
6 it in your closing instructions to the jury, the
7 collateral source issue.

8 But this man cannot get on the witness stand and
9 knowingly tell this jury that he would have surgery but
10 for the fact that he doesn't have money when he has had
11 health insurance throughout the entire process, in fact, a
12 Cadillac plan, and cash on top to boot. And then be able
13 to be allowed to get away with it.

14 MR. MOORHEAD: Are you through?

15 MR. MCGARR: I would like for His Honor to have the
16 opportunity --

17 MR. MOORHEAD: Well, I've got something to say.

18 THE COURT: Go ahead, Mr. Moorhead.

19 MR. MCGARR: Go ahead. I'm sorry.

20 MR. MOORHEAD: Your Honor, at sometime during this
21 process, the Reverend did have a Blue Cross Blue Shield
22 policy, which was cancelled because he had renal surgery
23 that was related to some carcinoma. He has no way -- and
24 he testified in the present tense. He has no health
25 insurance. He has no way of paying for these surgeries,

1 except out of his own pocket. And he -- and some of those
2 health issues delayed -- his insurance was cancelled by
3 the time he could have the surgery. And, now, he has no
4 way of getting it.

5 And Mr. McGarr knew that. This is not a surprise to
6 him. He knew that, because it came up in Dr. McHenry's
7 deposition. And it came up because that's the -- that's
8 the part we have redacted in the DVD. And the whole thing
9 was staged to get, in my opinion -- and this is just one
10 man's opinion, the whole thing has been staged and set up
11 to put this case in a position for a mistrial. That's the
12 sole purpose for it.

13 MR. MCGARR: Your Honor, in response to that -- and I
14 have not had the chance to -- this has been done by
15 Ms. Wren. So I'll have to simultaneously walk through
16 these documents with you together.

17 THE COURT: Well, here is what we're going to do --

18 MR. MCGARR: But this gentleman had insurance --

19 THE COURT: Excuse me. I wasn't through.

20 You can ask him right now out of the presence of the
21 jury about the insurance issue. And let's just see what
22 he says so we don't have to speculate about what he's
23 going to say.

24 MR. MCGARR: Yes, sir.

25 THE COURT: Go ahead.

1 MR. MCGARR: And that may be better. But I'll need
2 those documents to do it.

3 THE COURT: Sure. Yes, sir.

4 CONTINUED CROSS-EXAMINATION

5 BY MR. MCGARR:

6 Q Reverend Dawkins, I'm showing you the first document
7 in that set of documents. Would you agree that you were
8 cleared to have surgery done back in the fifth month, the
9 26th day of 2009?

10 A Yes.

11 Q Going to the second document in that set of
12 documents. Is that a copy of your Blue Cross Blue Shield
13 card with an effective date of 1/1 of 2008?

14 A Yes.

15 Q Going to the next document in that set of documents.
16 Does it appear that you signed a document with GHS
17 University Medical Group where you listed as your primary
18 insurance information Blue Cross?

19 A I did.

20 May I say something, sir?

21 Q Bear with me a second --

22 THE COURT: You may explain your answer, sir.

23 THE WITNESS: When I went to the doctor and they gave
24 me the -- and I gave them the card, they said that I
25 didn't have any insurance. And I gave them the card

1 because they asked for an insurance card. And I said --
2 they said, well, sir, you have no insurance.

3 So I gave them some money. And they said, we can't
4 see you if you don't give us something. That's why I gave
5 them the card. I had the card, but the card was not in
6 effect, as far as I knew.

7 BY MR. MCGARR:

8 Q Okay. You can say that. But did you list the card
9 as being the same card and the same ID number on this
10 document on November 12th, 2008? Does it say that the ID
11 number is GEN808825695?

12 A I don't know. I don't have it. I threw the card
13 away.

14 Q You have a copy of the card right here, do you not?
15 You've got one yourself. I need to keep one for me.

16 A Okay. To answer that, I called --

17 Q That's not the question. The question was, are the
18 numbers the same?

19 A I don't know, sir. I don't remember the numbers.

20 Q The number is here, Reverend, and here. Are they
21 identical?

22 A Yes, they're the same.

23 Q Okay. Thank you.

24 Going to the next document in that set of documents.
25 Are you still listing your insurance when you're with the

1 radiology group as Blue Cross Blue Shield, BCBS?

2 A When -- what year is this, sir?

3 Q It's highlighted for you. 12/22 of 2008. When you
4 were doing an MRI, did you list your insurance as BCBS,
5 Blue Cross Blue Shield?

6 A I did.

7 Q Going to the next document. When you were scheduled
8 to have surgery and they were giving you the preclearance,
9 did you list your insurance again -- and this would be in
10 2009 -- as Blue Cross Blue Shield PPO?

11 A They asked -- can I explain?

12 Q First answer, and then you can explain.

13 A Yes.

14 Q So did you list Blue Cross Blue Shield PPO?

15 A I did, sir.

16 Q And did the group number -- when you get to the
17 policy number, is it identical to the insurance card you
18 have shown here?

19 A It is.

20 Q Okay. Going to the next document in that set of
21 documents. Does it appear that -- going to the second
22 page first, that's on 6/8 of 2009 -- you have to go to the
23 second page to see the dates that I'm talking about.

24 You're filling out saying that you have insurance on
25 6/8 of 2009. And when you go to the front page of that

1 document, would you agree that you're listing that
2 insurance as being Blue Cross Blue Shield PPO, Preferred
3 Blue?

4 A Yes.

5 Q And the certificate number is identical to the card
6 we saw earlier?

7 A Yes.

8 Q And then --

9 A May I answer?

10 Q Oh, certainly.

11 A They asked me if I had an insurance card. And I told
12 them, yes. But, at first, I knew I didn't have any
13 insurance, but they asked for it.

14 Q So you keep presenting to these people and they keep
15 accepting. And they're, also, expecting payment from Blue
16 Cross Blue Shield from 2008 through 2009 for insurance
17 that's not in existence. Is that what you're telling us?

18 A I'm telling you I had a card, sir.

19 Q And that you keep using that card and affirming that
20 you have insurance -- if we go to the next document, yet
21 again, you've affirmed that you have insurance on 7/7 of
22 2009, have you not?

23 A Yes. I showed them the card. They asked me for the
24 card, sir.

25 Q And you affirmed you had insurance and you would pay

1 the difference between what the insurance paid and what
2 the remaining balance was to you?

3 A So --

4 Q Is that what you signed?

5 A Yes.

6 Q And would you agree -- going to the last document --
7 that in late December of 2009, you had access to \$25,000
8 in cash, which would easily pay those differences between
9 what the insurance would pay and what you would have to
10 pay?

11 MR. MOORHEAD: What was that question?

12 BY MR. MCGARR:

13 Q That in late 2002 -- in late 2009 -- I'm sorry -- you
14 were given access to \$25,000?

15 A (There was no response.)

16 Q Please read the document. This is not being made up.

17 A May I explain what -- why?

18 Q If you'll answer.

19 A Yes, yes, yes.

20 Q Ane then you may explain.

21 A It was from an accident from what we're dealing with
22 right now as far as I know, sir. From the man that hit
23 me, his insurance, sir.

24 Q I'm not asking you where it came from. I'm asking
25 you did you have access to it?

1 A I did, sir.

2 Q So, in essence, not only did you have insurance and
3 not only are you affirming that you had insurance, but you
4 had money in excess of that insurance to pay for the
5 surgeries at the time they were coming up; is that
6 correct?

7 A That's correct. But may I further answer?

8 Q Yes. But you just told us it was correct.

9 MR. MOORHEAD: Can he explain his answer?

10 THE COURT: Yes, sir.

11 You have a right to explain any answer you give.

12 THE WITNESS: Out of the settlement, it was \$25,000.

13 What happened was the attorney got his part and paid part
14 of the bills. And the part that was left, I got -- or we
15 got. So that's what that were [sic], sir.

16 BY MR. MCGARR

17 Q Yes, sir.

18 But the bottom line is, you, contrary to what you
19 told this jury, had health insurance. You kept affirming
20 that you had health insurance, and you kept affirming that
21 you would pay the difference. And you, actually, had
22 enough money -- you had money left over after paying
23 attorney's fees and some medical expenses to pay towards
24 your deductibles, did you not.

25 A Now, explain what you're saying, sir.

1 Q You had health insurance, you kept affirming that you
2 had health insurance as late as 2009, and you had access
3 to cash in late 2009, did you not?

4 A I did -- I didn't -- can I explain?

5 Q Yes or no first.

6 A Yes.

7 Q Thank you.

8 Then you can explain.

9 A I had insurance at one time and I was paying. But I
10 stopped paying because I couldn't pay for insurance
11 anymore. That's what I did. And when I used the card, I
12 did not have insurance. Because I called the company and
13 asked them did I have insurance. And they said, no.

14 Q And, yet, you kept using the card for more than a
15 year that was no longer in existence. You kept saying
16 here, I've got insurance, I've got insurance when you knew
17 you didn't have it?

18 A And they said, no, we can't do that. I had to pay
19 something in order to get seen. They asked for a card.
20 And I said, well, sir, the card I have is not in effect,
21 but you can check it.

22 Q And, yet, you affirmed, absolutely affirmed that I
23 have insurance in late 2009?

24 A I'm not sure when that was, sir.

25 Q Well, let's look at it again. It says, The patient

1 information listed above is correct, to the best of my
2 knowledge. I will be responsible for any amount not
3 covered by insurance. I authorize the department to
4 provide medical evaluation, treatment, and release
5 information for insurance medical purposes concerning my
6 illness and treatment. And you signed that one on 6/8 of
7 2009, did you not?

8 A Yes, sir.

9 Q And then you signed another one on 7/7/2009 saying
10 exactly the same thing; is that correct?

11 A Yes, sir.

12 Q So you had insurance at that point. And that would
13 be during the time frame that you were scheduled to have
14 surgery; is that correct?

15 A No, sir, not that I know of.

16 Q At least, the documents say that you had insurance at
17 the time of that accident; is that not correct?

18 A That's what the documents said, sir.

19 Q Okay. And so you say you didn't, but your documents
20 say you did; is that correct?

21 A That's what the documents said, sir.

22 MR. MCGARR: Your Honor, those would be my questions
23 on that issue.

24 THE COURT: Okay.

25 MR. MOORHEAD: May I ask one or two?

1 THE COURT: Yes, sure.

2 REDIRECT EXAMINATION

3 BY MR. MOORHEAD:

4 Q Reverend Dawkins, when was your kidney surgery?

5 A My kidney surgery was in 2008.

6 Q And was your kidney surgery before this automobile
7 collision of September 24th?

8 A It was, sir.

9 Q All right. And did you have Blue Cross Blue Shield
10 insurance when you had your kidney surgery?

11 A I did, sir.

12 Q And after your kidney surgery, was your Blue Cross
13 Blue Shield insurance terminated?

14 MR. MCGARR: Objection to leading.

15 MR. MOORHEAD: I think Your Honor can deal with a
16 leading question.

17 BY MR. MOORHEAD:

18 Q After the kidney surgery, did Blue Cross Blue Shield
19 terminate your insurance?

20 A Yes, sir.

21 Q And when was that, roughly?

22 A It wasn't long after I had the surgery. So I'm not
23 really sure, sir.

24 Q Was it before you saw Dr. McHenry in March of 2009?

25 A It may have been, sir. I'm not sure.

1 Q Was it very shortly after?

2 A Yes, sir.

3 Q After your kidney surgery?

4 A Yes, sir.

5 Q And was that kidney surgery in May of 2008, or
6 somewhere around there? When was it? Or the summer of
7 2008?

8 A Somewhere around there, sir. I'm not sure.

9 Q Okay. But, anyway, after they got a -- after Blue
10 Cross Blue Shield had to pay for your kidney surgery, they
11 cancelled your insurance?

12 A Yes, sir.

13 Q And have you had any insurance from any source of any
14 kind at all since then?

15 A No, sir.

16 Q And out of the \$25,000 that Mr. McGarr refers to,
17 that was from Mr. Watts automobile liability insurance
18 company, wasn't it?

19 A Yes, sir.

20 Q And that was for you and your wife?

21 A Yes, sir.

22 Q And you had another attorney other than me who
23 represented you on that?

24 A Yes, sir.

25 Q And that attorney charged a fee out of that \$25,000,

1 didn't he?

2 A Yes, sir.

3 Q And how much did he charge?

4 A I'm not sure. My wife and I only got \$10,000 out of
5 it.

6 Q For everything?

7 A Yes, sir.

8 Q After the bills were paid, the lawyer was paid, the
9 expenses were paid --

10 A Yes, sir.

11 Q -- you got \$10,000?

12 A Yes, sir.

13 MR. MOORHEAD: That's all I have, Your Honor.

14 MR. MCGARR: Your Honor, as a matter of law, a health
15 insurance company, as you well know, cannot cancel you
16 simply because you happen to utilize it for a procedure.
17 More importantly, he has unequivocally said that -- he has
18 documents that unequivocally say exactly the opposite of
19 what he's testifying to under oath.

20 So I think this is a subject that the law, obviously,
21 allows me to go into, I and have to go into since he's
22 told the jury that he can't pay for this surgery and
23 that's why he needs it -- and that's why he hasn't done it
24 so far.

25 So I would suggest that after you've heard what

1 you've heard that I be allowed to go into it. It then
2 becomes an issue for the jury to decide whether he,
3 actually, had that insurance, or whether an insurance
4 company did something that's completely illegal, which is
5 to cancel his coverage just because he used the policy, or
6 whether the documents where he is affirming he has
7 insurance are true.

8 We've got, essentially, three different stories now.
9 Let the jury decide which one is true. But the one thing
10 that is certain, he has told them he did not have
11 insurance and he had no ability to pay when we know for
12 sure he had \$10,000 in cash. And at the time that he was
13 supposed to have the surgery, he's affirming and giving
14 Blue Cross Blue Shield as his insurance.

15 THE COURT: All right. Thank you.

16 I'll allow you to question him about the status of
17 his health insurance. I don't think that's prohibited by
18 Rule 411. It's not liability insurance. It's his own
19 health insurance. Even if it were under Rule 411, it goes
20 to credibility. And I think it's proper
21 cross-examination, based on the record as it now stands.

22 As to whether -- why his insurance was cancelled or
23 terminated, there's nothing in the record about that,
24 other than the Reverend's testimony. And I don't think it
25 would be proper to make arguments outside the record as to

1 the legality of an insurer's actions. And so that would
2 not be proper argument. It won't be allowed.

3 MR. MOORHEAD: May I have a clarification on that,
4 Your Honor?

5 THE COURT: Sure.

6 MR. MOORHEAD: I want to make sure I understand what
7 you're saying.

8 THE COURT: Sure.

9 MR. MOORHEAD: I don't want to get in the business of
10 going against what your ruling is. Did I hear you that I
11 can't ask him about whether his insurance was cancelled?

12 THE COURT: No. I'm saying you can ask him.

13 But Mr. McGarr has been talking about how it would be
14 illegal for an insurance company to cancel. And there's
15 nothing in the record about that. So it would not be
16 proper to make that argument.

17 MR. MOORHEAD: All right.

18 THE COURT: But you can ask him if he has insurance
19 now.

20 MR. MOORHEAD: All right, sir.

21 THE COURT: So that's fair game, I think.

22 MR. MOORHEAD: All right.

23 THE COURT: As to the testimony about the settlement,
24 about how much another lawyer got, and what the
25 Defendant's insurance company paid, I think that's

1 something that should be limited just to the fact that he
2 got a \$10,000 settlement. And we don't need to get into
3 the way that was disbursed, or where that money came from.

4 MR. MCGARR: I understand your ruling.

5 Your Honor, before we -- I'm asking a huge favor, but
6 we were caught a little off guard with this. Can you give
7 me a short break before we bring the jury back?

8 THE COURT: Yes. I was going to do that.

9 MR. MOORHEAD: I've got one other thing to say.

10 THE COURT: Yes, sir.

11 MR. MOORHEAD: Your Honor, I was going to bring this
12 up at some point in time. But if we're going to get into
13 the liability -- that there was a liability settlement,
14 then I ought to be able to bring up the fact that this,
15 basically, is an underinsured motorist carrier case and
16 Mr. McGarr does not represent Mr. Watts, that Mr. McGarr
17 represents State Farm Mutual automobile insurance company.
18 And that, in essence, is my client's own insurance company
19 that doesn't want to pay him.

20 Now, if we get into the liability aspect, I would
21 respectfully request that I be able to get into it and lay
22 all the cards on the table about the UIM and the
23 liability.

24 THE COURT: Well, I'll be glad to consider any
25 authority that you have about that, but what I was,

1 hopefully --

2 MR. MCGARR: I understood your ruling, Your Honor,
3 10,000 and only 10,000.

4 THE COURT: The ruling was he got -- the Plaintiff
5 received a \$10,000 settlement. And there wouldn't be any
6 discussion or any evidence elicited about where that money
7 came from, so we avoid all of that.

8 MR. MCGARR: And, Your Honor, I wouldn't even say a
9 \$10,000 settlement. I would say you had access to
10 \$10,000. I understood your ruling.

11 THE COURT: Well, that's fine, too.

12 But I don't -- I understand your argument,
13 Mr. Moorhead. And if you have authority or you want to
14 develop that further, I'll be glad to listen to it. But I
15 don't think, at this stage, I would be inclined to grant
16 your motion to allow that type of testimony in or argument
17 in. But I'm open to further discussion about it.

18 All right. Let's just take about a 10-minute break.

19 Thank you.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Anything before we bring the jury back
22 in?

23 (WHEREUPON, there was no response.)

24 THE COURT: Are you all ready for the jury?

25 MR. MOORHEAD: Yes, Your Honor. I'm sorry.

1 THE COURT: Reverend, you want to come back up and
2 sit down. That will save us a little bit of time.

3 THE WITNESS: Yes, sir.

4 Thank you, sir.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:13 a.m.)

7 THE COURT: Yes, sir, Mr. Moorhead -- or, actually,
8 Mr. McGarr, you were on cross-examination. Pardon me.

9 MR. MCGARR: Do you still have the documents we were
10 discussing earlier?

11 MR. MOORHEAD: I don't know which documents you're
12 referring to when you say "we were discussing earlier."

13 (Pause.)

14 MR. MOORHEAD: This is all I've got.

15 MR. MCGARR: What did you do with the others?

16 (Pause.)

17 MR. MCGARR: For the sake of time, Your Honor, I had
18 earlier given Mr. Moorhead a copy of the documents that
19 I'm going to be dealing with now. And I don't have a
20 spare to give him a second copy.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. MCGARR:

23 Q Reverend Dawkins, before we took that break, you told
24 the jury, under oath, that you would have had the surgery
25 when it was scheduled, but for the fact that you didn't

1 have the ability to pay for it; is that correct?

2 MR. MOORHEAD: Objection. That was not his
3 testimony.

4 THE COURT: Well --

5 MR. MOORHEAD: He was asked, Your Honor, if he would
6 have the surgery now if he could afford it. That was my
7 exact question.

8 THE COURT: Just rephrase your question.

9 BY MR. MCGARR:

10 Q Would you agree you told the jury that you would have
11 the surgery if you had the ability to pay for it?

12 A Yes.

13 Q And would you agree that you were cleared for
14 surgery -- looking at that first document, that you were
15 cleared for surgery as far back as 5/26 of 2009?

16 A Yes.

17 Q And would you agree, looking at that second document
18 in that set of documents -- and you don't have to keep
19 them together. I mean, you can take them apart and then
20 flip them over, if you'd like to. Oh, they are out of
21 order.

22 Would you agree that you had a health insurance plan
23 and, this is a copy of your health insurance card and its
24 effective date was 1/1 of 2008?

25 A (There was no response.)

1 Q It would be your second document.

2 A Yes.

3 Q And your group number was GEN808825695?

4 A Yes.

5 Q Going to the next document in that set of documents,
6 looking at the bottom of the page of that document, does
7 it appear that you were telling Dr. Geary of the GHS
8 University Medical Group on 11/12 of 2008, that you had
9 Blue Cross insurance and the ID number was GEN808825695?

10 A Yes.

11 Q And would you agree that the date of our accident was
12 9/24/08?

13 A I'm not sure of the date, sir.

14 Q Look at the top of this document. Does it say, Date
15 of accident 9/24/08?

16 A Yes.

17 Q So, after the accident, you're still giving -- you're
18 still telling your doctors that you have insurance with
19 Blue Cross Blue Shield; is that correct?

20 A Yes.

21 Q Going to the next document in that set of documents.
22 When it came time to do an MRI, did you, again, list on
23 December 22nd of 2008, that you had insurance through Blue
24 Cross.Blue Shield?

25 A (There was no response.)

1 Q Let me make sure you're on the same document with me.
2 Yes, sir -- no, sir, this document. I've got to stay with
3 you.

4 A Yes.

5 Q Going to the next document. Does it appear that you
6 had a date of surgery scheduled for 6/12 of 2009?

7 A Yes.

8 Q And does it appear that that was going to be through
9 Dr. McHenry?

10 A Yes.

11 Q And does it appear that, at that point, you listed
12 your insurance carrier as Blue Cross Blue Shield PPO?

13 A Yes.

14 Q You gave the insurance companies phone number?

15 A No. I didn't know the number.

16 Q Does it say 800-855-5392?

17 A Yes.

18 Q And does it list that the insured was James L.
19 Dawkins?

20 A Yes.

21 Q And then the policy number, is that still
22 GEN808825695?

23 A Yes.

24 Q So throughout this process, would you agree that
25 you're representing or telling people that you have

1 insurance through Blue Cross Blue Shield, and it's the
2 same number throughout?

3 A Yes.

4 Q Going to the next document. And we'll have to start
5 on the second page of that document. Does it appear that
6 you signed an acknowledgement that you had insurance, and
7 you would pay for the difference between what insurance
8 wouldn't pay, and that you signed that acknowledgement on
9 6/8 of 2009?

10 A Yes.

11 Q And your surgery was supposed to take place on 6/12
12 of 2009; is that correct?

13 A (There was no response.)

14 Q I'll help you. Your surgery was supposed to take
15 place on 6/12 of 2009?

16 A Yes.

17 Q So, roughly, four days before that surgery, you're
18 representing you had insurance with Blue Cross Blue Shield
19 and you would pay the difference between what they
20 wouldn't pay; is that correct?

21 A Yes.

22 Q Then going to the next document in that set of
23 documents -- oh, no. Go back. My apologies. Go back.

24 And when you're making reference to that insurance,
25 you're making reference to the insurance company's name is

1 Blue Cross Blue Shield?

2 A Yes.

3 Q PPO, Preferred Blue?

4 A Yes.

5 Q The guarantor's name it says, If not patient, becomes
6 the insurance company, does it not? Just above it, two
7 above it.

8 A (There was no response.)

9 Q Right here, guarantor's name, If not the patient's.

10 A Yes.

11 Q And then it says, Relationship to the patient, self.
12 And the guarantor is the insurance company, Blue Cross
13 Blue Shield; is that not correct?

14 MR. MOORHEAD: Objection, Your Honor. That's not
15 what the document says.

16 BY MR. MCGARR:

17 Q Okay. Let's do it this way. Read to the jury what
18 it says beginning with guarantor's name.

19 A Right here?

20 Q Yes. I don't want the jury to take my word for it.
21 Tell me what that document says.

22 A It says, If not --

23 Q Start off with guarantor's name, please.

24 A Guarantor's name, if not -- and then it's got PT.

25 Q Yes, sir. Next line.

1 A Referring to patient.

2 Q No. It says, Relationship.

3 A Relationship to patient, insurance company name.

4 Q Keep reading.

5 A It's got BCBS PPC.

6 Q Read on.

7 A Preferred Blue Cross.

8 Q And in the certificate number -- and the certificate
9 number is, again, GEN 80825695; is that correct?

10 A I don't see that -- yeah, I see it, sir.

11 Q And the effective date of that insurance policy was
12 still 1/1/08; is that correct?

13 A Yes.

14 Q And if you go onto the second page of that document,
15 that is, again, where you're guaranteeing that what they
16 don't pay, you will?

17 A Yes.

18 Q And that's just before your surgery; is that correct?

19 A That's correct.

20 Q Going to the next document in that set of documents.
21 And to make it brief, would you agree that you're listing
22 the same insurance information that you had listed before?

23 A Yes.

24 Q And would you agree that you're signing on 7/7/09,
25 second page, that you'll pay what the insurance company

1 doesn't?

2 A Yes.

3 Q And that would be before and after you're filling out
4 these documents on the date that you were supposed to have
5 these surgeries; is that correct?

6 A That's correct, sir.

7 Q And then would you agree that in 2009, you had access
8 to \$10,000?

9 A Yes.

10 Q So what you told this jury earlier that you couldn't
11 pay for the surgery because you didn't have the funds
12 isn't accurate. You had insurance company availability
13 and you had cash to pay anything they couldn't pay?

14 A I had explained what you're trying to say, sir.

15 Q Reverend Dawkins, you previously were asked to
16 describe the impact associated with this automobile
17 accident. And you were asked to describe that impact on a
18 scale of one to 10, with one being that you heard it, but
19 you didn't feel anything, and 10 being that you were
20 involved in an accident with a freight train. And would
21 you agree that you described this accident as being the
22 equivalent of an eight or nine?

23 A I did.

24 MR. MOORHEAD: Are you putting in all of them?

25 MR. MCGARR: In a moment.

1 BY MR. MCGARR:

2 Q Reverend Dawkins, if you would, look at what was
3 previously marked as Defendant's Exhibit Nos. 1, 2, 3, 4,
4 5, and 6 for me.

5 A (Witness complied.)

6 Q Do those documents accurately reflect the way your
7 car looked after the accident and before any repairs were
8 made?

9 A Yes.

10 Q Let me show you six photographs that are bigger
11 printed and colored, and ask you to compare those
12 photographs to what was previously marked as Defendant's
13 Exhibit Nos. 1 through 6, and ask if these photographs are
14 identical to those, except for the fact that they're in
15 color and larger?

16 A They look the same, sir.

17 Q I want you to look through and make sure that they
18 are the same.

19 A (Witness complied.)

20 Q Reverend, you're being sweet, but you don't have to
21 keep them -- you can flip, and flip, and flip.

22 A (Witness complied.)

23 Q Are the color photographs identical to the
24 photographs you previously identified as being the way
25 your car looked after the accident?

1 A They look the same, sir, that way, sir.

2 Q I'm -- so these six pictures accurately represent the
3 way your car looked after the accident before repairs were
4 made; is that correct?

5 A They look very similar, sir.

6 Q They either are or they are not?

7 A They look the same, sir.

8 Q Okay. That's my question. So they are the same?

9 A Yes.

10 Q And they accurately represent the way your car looked
11 after the accident and before repairs were made; is that
12 correct?

13 A As far as I can see, sir.

14 MR. MCGARR: We would ask that these six documents be
15 marked as Defendant's Exhibit No. 1, Your Honor.

16 (WHEREUPON, Defendant's Exhibit Nos. 1, 2, 3, 4, 5, and
17 6 were marked for identification and admitted into
18 evidence.)

19 MR. MCGARR: Your Honor, permission to publish
20 Defendant's Exhibit Nos. 1 through 6.

21 THE COURT: Yes, sir.

22 MR. MCGARR: Your Honor, because I have a fair amount
23 of exhibits, I have not been asking for permission to
24 approach.

25 THE COURT: You don't have to.

1 MR. MOORHEAD: I'm sorry. I didn't hear any of that
2 exchange.

3 THE COURT: He just asked if he needed permission to
4 approach, and I said no.

5 MR. MOORHEAD: Okay.

6 BY MR. MCGARR:

7 Q Again, Reverend Dawkins, you described to the jury
8 that the accident you were in, in your opinion, was just
9 about the equivalent of being hit by a freight train, did
10 you not?

11 A Yes.

12 Q Would you agree that you previously told me that you
13 had gone to your doctor's office after this accident
14 because you were complaining of right shoulder pain, left
15 shoulder pain, right arm pain, tingling in all your
16 fingers, as well as low back pain?

17 MR. MOORHEAD: I don't think he set the foundation
18 for whatever question he's asking.

19 MR. MCGARR: Okay. Let me do this.

20 BY MR. MCGARR:

21 Q When you went to your family physician's office after
22 this accident, were you complaining of right
23 shoulder pain, left shoulder pain, right arm pain,
24 tingling in all your fingers, as well as low back pain?

25 A And neck pain, sir.

1 Q And neck pain?

2 A Yes, sir.

3 Q Reverend, if I could, you have a copy of it before
4 you, your family physician's office, at that point, was at
5 North Hills, was it not?

6 A Yes, sir.

7 Q And does it appear that the date of service would
8 have been 9/30 of 2008?

9 A Yes.

10 Q And that was shortly after the accident with my
11 client; is that correct?

12 A That's correct.

13 Q And does it say as chief complaint, Car accident one
14 week ago, right arm pain?

15 A Yes.

16 Q And then it says, Patient was involved in an MVA six
17 days ago; is that correct?

18 A Yes.

19 Q When he was hit from the left side?

20 A Yes.

21 Q He -- and then it goes on to say, he says the pain is
22 localized in the top of his left shoulder. He denies
23 numbness or tingling of the left hand. Is that what the
24 document says?

25 MR. MOORHEAD: Your Honor, I'm going to object on the

1 basis of hearsay. This is not in evidence. And he's
2 objecting -- I mean, he's asking my client to agree to
3 something somebody said who's not in the courtroom and
4 won't be.

5 MR. MCGARR: Your Honor, as you know, it's a well
6 established exception to the hearsay rule that statements
7 given for the purposes of diagnosis and treatment are
8 admissible.

9 THE COURT: You can ask him. Go ahead.

10 MR. MCGARR: You don't need the case?

11 THE COURT: No.

12 MR. MCGARR: Thank you.

13 BY MR. MCGARR:

14 Q Going back to this document, when you were telling
15 the doctor what was wrong, what you said was the pain was
16 localized at the top of the left shoulder and you,
17 specifically, denied numbness or tingling of the left
18 hand; is that correct?

19 A I'm not -- I don't know whether I'm sure or not, sir.

20 Q Does this document -- and I've highlighted it for
21 you, Reverend. Does this document say what I just quoted?

22 A Yes.

23 Q So would you agree that, according to your doctor's
24 records, at least, there's no mention of right shoulder
25 pain when you went to see him?

1 A No.

2 Q According to these records?

3 A No.

4 Q There's no mention of right arm pain; is that
5 correct?

6 A No.

7 Q I'm sorry -- I take that back. Let's go back up to
8 the chief complaint. It says, Car accident one week ago,
9 right arm pain. Do you see the top?

10 A Yes.

11 Q Let's take that back. There is a mention of right
12 arm pain, is there not?

13 A That's what it says here.

14 Q But there's no mention of a right shoulder problem,
15 is there?

16 A No.

17 Q And there's no mention of tingling in all your
18 fingers?

19 A No.

20 Q In fact, you, specifically, denied tingling in your
21 left hand; is that correct?

22 A I don't know whether I did or not, sir.

23 Q Does the document say, He denies numbness or tingling
24 of the left hand?

25 A Yes.

1 Q Okay. So you, specifically, denied, according to
2 this document, having tingling in your fingers or your
3 left hand?

4 A That's what it says.

5 Q Okay. And there's no mention whatsoever of low back
6 pain, is there?

7 A No.

8 Q And there's no mention whatsoever of neck pain, is
9 there?

10 A No.

11 Q So --

12 MR. MOORHEAD: Which record is this, please,
13 Mr. McGarr?

14 MR. MCGARR: It's the one I just gave you,
15 Mr. Moorhead. And if you keep intentionally losing them,
16 it's of no value to anyone.

17 THE COURT: Hold on just a second.

18 Let me talk to you all up here real quick.

19 (WHEREUPON, a bench conference was held.)

20 MR. MCGARR: Mr. Moorhead, it would be the document I
21 just gave you right before I started this portion of the
22 examination.

23 BY MR. MCGARR:

24 Q Going back. You would agree that you just told the
25 jury that when you went to see your medical provider or

1 your family doctor that you were complaining of left
2 shoulder pain -- I mean, of right shoulder pain, tingling
3 in your fingers, low back pain, and neck pain. And, yet,
4 in reality, that's not showing up in this record, is it?

5 A No.

6 MR. MCGARR: Mr. Moorhead, I'm, specifically, giving
7 you this document.

8 BY MR. MCGARR:

9 Q Reverend Dawkins, had you ever had problems with your
10 right shoulder prior to the accident with my client?

11 A I'm not sure, sir.

12 Q If we could --

13 MR. MCGARR: Your Honor, may I present with an
14 original deposition?

15 THE COURT: Yes, sir.

16 You can open it up.

17 MR. MCGARR: That would be my next question.

18 Your Honor, I would request an instruction to the
19 jury with regard to what a deposition, actually, is.

20 THE COURT: Okay. Ladies and gentlemen, a deposition
21 is simply an occasion where, before a trial, the parties
22 get together and, in this particular instance, the witness
23 was asked questions. And there's a court reporter present
24 at the deposition. They, typically, take place at one of
25 the lawyers offices. And the witness is sworn and under

1 oath and answers questions that are asked by the lawyers.
2 And they are admissible in evidence during this trial.

3 So, yes, sir.

4 BY MR. MCGARR:

5 Q And, Reverend, as His Honor has described, did I take
6 your deposition?

7 A Yes.

8 Q And looking at the front page of that deposition, was
9 your deposition taken on January 24th of 2012?

10 A Yes.

11 Q And were you placed under oath, as His Honor
12 described?

13 A Yes.

14 Q Let me show you how these work. What we'll do is if
15 I refer to a page, it would be up on this upper right-hand
16 corner. And if I refer to a line, it will be on the
17 left-hand side. Okay.

18 A Okay.

19 Q Let's go to Page 38 of your deposition. And you can
20 tell me when you get there.

21 A I'm there.

22 Q Okay. Let's go to Line 25. Did I ask you in your
23 deposition while you were under oath, Have you ever had a
24 problem with your right shoulder -- going to Page 39 --
25 significant enough to send you to a medical provider

600

1 before the accident with my client?

2 And on Line 4, did you say under oath, No?

3 A What page are you on, sir?

4 Q Let's start off on Page 38.

5 A All right.

6 Q Beginning on Line 25, does it say on Line 25, Had you
7 ever had a problem with your right?

8 A I said, No, but I can't remember.

9 Q That's not my question.

10 A All right, sir.

11 Q Is that what Line 25 says? On Page 38, Line 25?

12 A Okay.

13 Q Does it say, Had you ever had a problem with your
14 right?

15 A Yes.

16 Q And then going to Page 39, we continue, does it say,
17 Shoulder significant enough to send you to a medical
18 provider before the accident with my client? Is that what
19 it says?

20 A Yeah.

21 Q And on Line 4, was your answer, No?

22 A It was.

23 Q Okay. Now, looking at the document that I just
24 presented to you, does it appear that on 3/7/2008, you
25 were at your family doctor's office?

1 A Yes.

2 Q And when you were there, you told them James Dawkins
3 is a 56-year-old black male complaining of right shoulder
4 pain. He says the pain started several years ago when he
5 worked with General Electric and carried a pipe on his
6 right shoulder; is that correct?

7 A That's what it says. But I don't remember saying it,
8 sir.

9 Q I understand. But that's what the document says?

10 A That's what it says.

11 Q And you worked for GE 15, 20 years ago now?

12 A Yeah.

13 Q So, in reality, you told me at your deposition that
14 you had never been to a medical provider with regard to
15 right shoulder problems prior to the accident with my
16 client when, in reality, you had been there a few
17 months -- well, a year before the accident with my client;
18 isn't that correct?

19 A Explain what you're trying to say, sir.

20 Q You told me in your deposition, I've never been to
21 see a medical provider with regard to right shoulder
22 problems until the 2008 accident with my client; is that
23 correct? Is that what you told me? Is that what you told
24 me in your deposition?

25 A Yes.

1 Q Okay. And does it appear that that answer was
2 incorrect, because you were seeing a medical provider on
3 3/7 of 2007 with regard to right shoulder problems?

4 A Would you say that again, sir, please?

5 Q Would it appear that your answer was incorrect that
6 you gave me under oath? Because the records unequivocally
7 state that you were seeing your family doctor for right
8 shoulder problems as late as 3/7/07.

9 A Yes.

10 Q Okay. And would it, also, be correct that you were
11 telling them that you had had those right shoulder
12 problems, based upon when you were working with GE for, at
13 least, 15 years prior to this visit?

14 MR. MOORHEAD: Objection. That's not the way the
15 record reads.

16 THE COURT: Sustained.

17 MR. MOORHEAD: That is the way --

18 THE COURT: Sustained.

19 THE WITNESS: May I answer that, sir?

20 BY MR. MCGARR:

21 Q You may. Go ahead.

22 A I just -- no, sir.

23 Q Would you agree that you said your right shoulder
24 pain started when you were working with General Electric
25 carrying a pipe over your right shoulder?

1 A Yes.

2 Q And General Electric would have been -- when you were
3 working for them, you went out with that back problem.
4 But that would have been, at least, 15 years prior to this
5 visit; is that correct?

6 A Yes.

7 Q So you've had right shoulder problems for, at least,
8 15 years prior to this visit; is that correct, based upon
9 what this document says?

10 A I -- the reason I went to the doctor is because I had
11 gout in my right shoulder.

12 Q Did you tell them that you had been having problems
13 with your right shoulder since carrying a pipe at GE? Is
14 that what the document says?

15 A I may have, yes, sir.

16 Q And GE would have been a problem that would have been
17 in existence, at least, 15 years prior to that visit;
18 isn't that correct?

19 A Yes, sir.

20 Q And that problem had been in existence from that
21 point until you saw them; is that correct?

22 A Yes.

23 Q Here is a new document --

24 (WHEREUPON, there was a brief disruption in the
25 courtroom.)

1 MR. MCGARR: May we --

2 THE COURT: All right. Ladies and gentlemen, we'll
3 take a short recess. Don't talk about the case. Keep an
4 open mind.

5 Thank you.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 11:47 a.m.)

8 THE COURT: I just heard somebody express something
9 very loudly. It was completely inappropriate in front of
10 the jury. And I'm not sure exactly who did it. But if
11 you're not able to control yourself to the point where
12 you're going to be uttering things out loud that other
13 people can hear in the courtroom, then this is the time to
14 leave the courtroom. Because I'm not going to tolerate it
15 any further. And I don't want to be in a position where I
16 have to handle it.

17 So if anybody has a problem with being able to
18 control themselves in front of the jury, this would be the
19 time to exit the courtroom and not return until you can
20 control yourself.

21 Does anybody have any questions about that?

22 (WHEREUPON, there was no response.)

23 MR. MOORHEAD: I understand that, Your Honor. And I
24 will reaffirm that with everybody on my side.

25 THE COURT: All right. Mr. McGarr, did you want to

605

1 say something, sir?

2 MR. MCGARR: You addressed what I was --

3 THE COURT: Let's just take about a five-minute
4 break. And we'll continue with the cross-examination.

5 Do you want to step down, sir?

6 THE WITNESS: Yes, sir.

7 THE COURT: Now, remember, you can't talk about your
8 testimony just like any other witness.

9 THE WITNESS: Yes, sir.

10 (WHEREUPON, a break was taken.)

11 THE COURT: We can bring the jury back in.

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

14 THE COURT: Yes, sir, Mr. McGarr.

15 MR. MCGARR: May it please the Court.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. MCGARR:

18 Q Reverend Dawkins, would you tell a medical provider
19 the truth with regard to when your right shoulder problems
20 first began?

21 A (There was no response.)

22 Q If you went to see a doctor after the accident, would
23 you tell a doctor the truth with regard to when your right
24 shoulder problems first began?

25 A Yeah.

606

1 Q Looking at the document that I've given you, does it
2 appear that you went to see Dr. Gary -- or Geary on 11/12
3 of 2008?

4 A Yes.

5 Q And that the reason you went to see him was because
6 of a left shoulder problem, or, at least, one of the
7 reasons you went to see him was because of a left shoulder
8 problem?

9 A. (There was no response.)

10 Q It should be highlighted for you on the first page.

11 A Yes.

12 Q When it said, When did it begin, you said 09/24/08.
13 And when they asked how, you said MVA; is that correct?

14 A Yes.

15 Q And then further down when it was discussed when your
16 problems first began, they said his shoulder symptoms
17 began after an MVA on 09/24/08; is that correct?

18 A Yes.

19 Q And, in reality, your shoulder problems began 15, 20
20 years prior while working at GE; isn't that correct?

21 A Explain that to me, sir. What -- yes.

22 Q And, again, Reverend, you don't have to keep these
23 together. They can be taken apart and done with any way
24 you want to. I'm just going to move this out of your way
25 for the time being.

1 Earlier, when you were telling the jury about your
2 problems at the scene of the accident, did you tell the
3 jury that you were, essentially, having problems just
4 throughout your body, your shoulder was giving you
5 trouble, your other shoulder was giving you trouble, your
6 neck was giving you trouble, your back was giving you
7 trouble; is that correct?

8 A Yes.

9 Q And would you agree that if you went to see a medical
10 provider between the time of the accident and now, you
11 would tell them, hey, I'm having these neck troubles?

12 A Yeah.

13 Q And you would have, certainly, told EMS, I'm having
14 neck troubles because that's one of the troubles you told
15 the jury you were having at the scene of the accident?

16 A That's correct.

17 Q If we could, let's go to that set of documents. Does
18 it appear that we have a copy of the EMS report? And it's
19 dated September 24th, 2008, which is the date of our
20 accident; is that correct?

21 A Which page?

22 Q The very front page. We always do front, second,
23 third, fourth, fifth.

24 A Okay.

25 Q Can you see where I've highlighted for you EMS,

1 Greenville County EMS, September 24th, 2008?

2 A Yes.

3 Q And the patient's name is Dawkins, first name is
4 James?

5 A Yes.

6 Q And when it's saying what happened, it's saying,
7 Patient had a chief complaint of pain to his left
8 shoulder. Patient was restrained driver in a MVA. Damage
9 to the front left quarter panel of his vehicle. No airbag
10 deployment. Patient, also, complained of pain to his left
11 arm. Is that what it says?

12 A That's what it says.

13 Q So while with EMS, would you agree, that you're not
14 telling them of the neck pain, the back pain, the right
15 shoulder pain, all you're saying is my left shoulder and
16 left arm is giving me trouble?

17 A That's what it says here.

18 Q And that's, basically, the same complaint you had
19 when you went to see your family physician, left shoulder,
20 left arm, from the documents we talked about previously?

21 A Yeah.

22 Q So you didn't mention a neck problem while with EMS,
23 did you?

24 A I'm not sure what I mentioned to them. I just told
25 them I was in pain, sir. The paper says this.

609

1 Q And let's go to the next document. Does it appear
2 that you went to North Hills on 10/23 of 2009, and, at
3 that point, you told them that you were feeling much
4 better?

5 MR. MOORHEAD: Objection on the grounds of relevancy,
6 Your Honor. Those -- that visit was for hypertension. It
7 was for a urological problem. It was for kidney
8 impairment --

9 THE COURT: Okay.

10 MR. MOORHEAD: -- and elevated blood sugar.

11 THE COURT: Thank you.

12 I overrule the objection.

13 Go ahead.

14 MR. MCGARR: I could do it this way.

15 BY MR. MCGARR:

16 Q Does it start off, James Dawkins presents today for
17 followup for his numerous medical problems?

18 A Yes.

19 Q And, at that point, this is 2009. You've told the
20 jury you were having constant problems with your neck,
21 your right shoulder, and your low back; is that correct?

22 A That's correct.

23 Q And, yet, on October 23rd of 2009, when you're seeing
24 them, it says, James Dawkins presents today for followup
25 of his numerous medical problems. He is feeling much

1 better today. Is that what this document says?

2 A That's what it says.

3 Q There's no mention of a neck problem at that point,
4 is there?

5 A No.

6 Q Going to the next document. This is a multiple-page
7 document. Does it appear you were at the Greenville
8 Hospital on September 23rd of 2010?

9 A (There was no response.)

10 Q If you'll look at the top, it says, James L. Dawkins.
11 It should be highlighted for you.

12 A I see it, yes, sir.

13 Q And, at that point, your complaint was elbow, extreme
14 pain, you can't move it?

15 A Yes, sir.

16 Q And the history of your present complaint says,
17 Patient says pain started in his right elbow this a.m.
18 with swelling. Patient states that he was diagnosed with
19 gout in his elbow three or four weeks ago. Is that what
20 it says?

21 A Yes.

22 Q So you're, actually, going to the ER for gout; is
23 that correct?

24 A Correct.

25 Q Go to Page 2 of that document. Would you agree that

611

1 you told them on that date that you were suffering from no
2 neck pain?

3 A I don't remember telling them that, sir.

4 Q Does the document say that you gave them a history of
5 no neck pain on that date?

6 A That's what it says.

7 Q Does the document, also, state shortly thereafter no
8 back pain?

9 A Yes.

10 Q Go to Page 3 of that document.

11 A Okay.

12 Q We don't need to go to Page 3 of that document. That
13 would be completely hearsay. Let's just put that document
14 aside.

15 But you would agree, on this date, that you're
16 telling the ER I'm not having problems with my neck, and
17 I'm not having problems with my low back?

18 MR. MOORHEAD: Which document is that, please, sir?

19 MR. MCGARR: That would be the September 23rd, 2010,
20 document.

21 MR. MOORHEAD: Yes.

22 Would you tell me who the provider was?

23 MR. MCGARR: It's the one we just did.

24 MR. MOORHEAD: Okay. Are you talking about North
25 Hills?

1 MR. MCGARR: No. It's the Greenville Hospital.

2 MR. MOORHEAD: Okay.

3 BY MR. MCGARR:

4 Q Would you agree with me that on September 23, 2010,
5 you're at the Greenville Hospital System and you're
6 denying neck and low back pain? This is the document we
7 just discussed.

8 A I'm not denying it. I just -- that might not be the
9 reason I went there for that, sir.

10 Q I understand. But would you agree that the document
11 says that you told them you weren't having neck or low
12 back pain? Look at Page 2 again for me.

13 A Yes.

14 Q Thank you.

15 Going to the next document in this set of documents.
16 This would be a document, also, from the hospital. Let's
17 make sure everybody is with me, October 16th of 2010. Are
18 you with me on that document?

19 A I see it, sir.

20 Q And you were at the hospital on that date. And your
21 chief complaint was pain in the ankle; is that correct?

22 A That's correct.

23 Q Going to Page 2. Was your upper extremity fine?

24 A It says it on here, sir.

25 Q And that would be on October 16th of 2010; is that

1 correct? It's on the front page.

2 A It says October 16?

3 Q Yes, sir.

4 A Yes.

5 Q Okay. Let's go to the next document. This would be
6 with your -- when you're with Dr. McHenry on 6/21 of 2011.

7 A Yes.

8 Q And, at that point, would you agree that you said
9 that last week you fell and twisted your ankle, as well as
10 had pain and swelling in the left ankle area?

11 A Yes.

12 Q And on Page 2, would you agree that you're not
13 complaining of muscle aches, you're not complaining of
14 joint pain, and you're not complaining of pain in multiple
15 joints?

16 MR. MOORHEAD: Would you point that out to me,
17 please, so I can follow where you're talking about, or is
18 that just your interpretation?

19 MR. MCGARR: All of these documents for everybody are
20 highlighted.

21 BY MR. MCGARR:

22 Q Would you agree in the highlighted portion under
23 musculoskeletal, joint swelling or stiffness, no; muscle
24 aches, no; joint pain, no; pain in multiple joints, no;
25 weakness, no?

614

1 A (There was no response.)

2 Q Is that what it says?

3 A Yes.

4 Q And that would be going to the front page,
5 06/21/2011?

6 A Yes.

7 Q Then go to the last page of that document.

8 A (Witness complied.)

9 Q Did you, specifically, tell Dr. McHenry that you were
10 not having significant neck pain at that time? And it
11 should be highlighted for you.

12 A (There was no response.)

13 Q The fourth page of that document.

14 A Of this one?

15 Q Yes, sir.

16 A That's what it says, sir.

17 Q So what it says on that page is he is not having
18 significant neck pain at that time; is that correct?

19 A That's correct.

20 Q And going to the front page, that would, again, be
21 statements that you were making on 6/21 of 2011; is that
22 correct?

23 A (There was no response.)

24 Q The front page that's highlighted.

25 A Yes.

615

1 Q Let's go to the next document. This would be a
2 document and it should be highlighted, also, where you're
3 at the hospital, yet again, on 6/22 of 2011.

4 A Uh-huh.

5 Q And, at that point, you were complaining of problems
6 with your knee; is that correct?

7 A That's correct.

8 Q And go to Page 3 of that document. And, again, this
9 should be highlighted.

10 A (Witness complied.)

11 Q Your neck was normal. You're not complaining of neck
12 problems on that date?

13 A No.

14 Q And your upper extremity, being your arms and
15 shoulders, you're not complaining of problems on those
16 dates, and you have a normal range of motion; is that
17 correct?

18 A That's what it says, sir.

19 Q So would it be correct to say that when I asked you
20 if you would tell medical providers of your neck pain,
21 because you had described it as constant, if you went to
22 see one that we have a number of occasions, including the
23 day of the accident and then your doctor's visit for a
24 follow-up after the accident, and then a number of visits
25 thereafter where you're not only complaining of neck pain,

b1b

1 but in some instances your neck had been examined and it
2 has come back totally normal? Would that be correct?

3 MR. MOORHEAD: I object to the form of the question.
4 It is, basically, a hypothetical question that doesn't
5 have all the elements in it.

6 THE COURT: I'm going to sustain the objection.

7 MR. MCGARR: Let me do it this way, and just be a
8 little slower.

9 BY MR. MCGARR:

10 Q Would you agree with me that you told me under oath
11 that you would tell people of these neck problems if you
12 went to see --

13 A Yes.

14 Q And would you agree that you didn't tell EMS, at
15 least, according to their records of neck problems?

16 A Yes, sir. I --

17 Q According to their records?

18 A According to their records, that's what they said.

19 Q And when you went to your family physician after the
20 accident, you didn't tell him of neck problems, according
21 to his records?

22 A No.

23 Q You went to the hospital on a number of occasions and
24 you didn't tell them of neck problems; is that correct?

25 A No.

1 Q And you were at the hospital on a number of occasions
2 and they, actually, found your neck and shoulders to be
3 normal; is that correct?

4 A That's correct.

5 Q So you didn't tell a medical provider every time you
6 went to see one of this constant neck pain, did you?

7 A The answer to that, sir, is to say if I went to the
8 doctor for one thing, my focus may not have been on my
9 neck or that, sir, it may have been on the pain that I was
10 having at that time that was greater.

11 Q But you'll agree that you're, actually, being
12 examined for your neck and your shoulders on a number of
13 occasions, and you're saying everything is fine?

14 A I don't know, sir.

15 Q Would you tell your medical providers the truth with
16 regard to when your low back problems first began?

17 A As far as I know, I would, sir.

18 Q I'm --

19 MR. MOORHEAD: Excuse me, Mr. McGarr. This is the
20 same packet you gave me the last time, at least, the first
21 page is. I mean, is this a different set of documents,
22 because Page 1 on this one and Page 1 on this one are
23 identical?

24 MR. MCGARR: They may be identical, but I'll get to
25 it in a moment. I'm just giving you the same documents I

1 gave him so everybody is on the same page.

2 BY MR. MCGARR:

3 Q Your answer, again, please, before the interruption
4 was what?

5 A Would you ask me the question again, please?

6 Q Would you tell a medical provider the truth with
7 regard to when your low back problems first began?

8 A Yeah.

9 Q Let's go to the first document in this set of
10 documents that I've given you.

11 A Yes.

12 Q On that occasion, does it appear that you went to the
13 University Medical Group? I think this is Dr. -- and I
14 think I keep mispronouncing his name, but Dr. Geary; is
15 that right?

16 A Yes.

17 Q And you went to see him on 11/12 of 2008 for the
18 first time?

19 A Yes.

20 Q And without berating the point, your history of
21 present illness was left shoulder, lower back, and leg
22 pain; is that correct?

23 A Yes.

24 Q And when it began was as of the 9/24/08 accident,
25 which would be the accident with my client; is that

1 correct?

2 A What page are you on, sir?

3 Q I'm still on the first page.

4 A Okay.

5 Q It's all highlighted for you.

6 A That's what it says, sir.

7 Q Okay. And then the next highlighted portion on the
8 first page says, Shoulder symptoms began after a MVA on
9 09/24/08, as did his low back symptoms. And, now, he has
10 pain with overhead things. Is that what you told -- is
11 that what this record says?

12 A That's what it says.

13 Q So what you're saying is that your low back pain
14 began as a result of the accident with Troy; is that
15 correct?

16 A (There was no response.)

17 Q Is that what you're telling this doctor -- or is that
18 what the record says you told the doctor?

19 A That's what the record says right here.

20 Q Yes, sir. Going to the next document, this would be
21 on 3/11/09. I believe this is when we're dealing with
22 Dr. McHenry. When you went to see him the first time, did
23 they ask you to fill out a pain and problem questionnaire?

24 A Yes.

25 Q And when you filled out the pain and problem

1 questionnaire -- and this is highlighted just below the
2 date -- does it say, Back pain and leg pain?

3 A Yes.

4 Q It says, How long has this problem been present? And
5 did you put, Six months?

6 A That's what it says, sir.

7 Q And it says, Where is the location of your pain or
8 problem? Back and legs; is that correct?

9 A Yes.

10 Q So with regard to Dr. Geary and with regard to
11 Dr. McHenry's office, when you're first seeing them,
12 you're placing the time of your low back problems as being
13 the time of the accident with my client; is that correct?

14 A Yes.

15 Q Going to the next document in that set of documents.
16 Does it appear that on 3/11 of 2009 when you're, actually,
17 with Dr. McHenry that you told him that you were a
18 58-year-old patient who was in a motor vehicle collision
19 on September of 2009?

20 And we've heard the doctor and everyone else correct
21 that, it should have been September of 2008. He had onset
22 of back pain and less lateral radicular left pain at that
23 time. Is that what you told him -- or is this what the
24 document says you told him?

25 A That's what the document says, sir.

1 Q So does it appear that on three different occasions
2 you had an opportunity to tell people when your low back
3 problems began, and on all three of those occasions,
4 you're telling the medical providers that the problems
5 began when you encountered Troy on 9/24 of '08? Is that
6 what the documents are showing?

7 A That's what the document says, sir.

8 Q Reverend Dawkins, I'm now going to give you -- or I
9 already have given you another round of documents. Does
10 it appear that you have been to Eastside Cardiology on
11 March 1 of 2000?

12 A Yes, I guess so.

13 Q And, at that point, when they asked you about your
14 past medical history, did you tell them that you had had
15 back surgery in 1985?

16 A (There was no response.)

17 Q It should be highlighted?

18 A It says that I did, sir.

19 Q I'm sorry.

20 A It says that I did, sir.

21 Q So back before this accident when they're asking you
22 about your preexisting conditions, you told them, I had
23 back surgery back in 1985; is that correct?

24 A I'm not sure, sir, but that's what it says.

25 Q That's what the document says?

1 A Yes.

2 Q You didn't tell those medical providers that you went
3 to see after the accident with my client that you had had
4 back problems that, ultimately, resulted in back surgery
5 as far back as 1985, did you? You said my back problems
6 began when Troy hit my car?

7 A I'm not sure what I said, sir. But if that's what it
8 says --

9 Q But what the record reflects --

10 MR. MOORHEAD: Can he finish his answer, Your Honor?

11 THE COURT: Were you through, sir?

12 THE WITNESS: Yes, sir.

13 BY MR. MCGARR:

14 Q But the records reflect that the back problems began
15 when Troy hit your car? That's what the record reflects?

16 A That's what the record reflects. Sir, I --
17 May I say something?

18 THE COURT: Yes, sir.

19 THE WITNESS: I realize that I had back problems.
20 But after the accident, I had, you know, some greater
21 things happening with my back, sir. But that's what I
22 said, sir.

23 BY MR. MCGARR:

24 Q Yes, sir.

25 Would it appear you're, actually, using another

1 doctor out of Spartanburg and had had a steroid injection
2 in your back -- going to the next document -- on 5/5 of
3 '97?

4 A Yes.

5 Q So even though you had surgery in 1985, we're still
6 dealing with your back in 1997. And you were given
7 steroid injections from some doctor in Spartanburg; is
8 that correct?

9 A That's what it says, sir.

10 Q And going to the next document. Does it appear that
11 on 5/5 of 1997, you're, actually, at Spartanburg Regional
12 Hospital? You had been referred by a Dr. McCorkle for a
13 consultation and consideration for lumbar epidural steroid
14 injections at L5-S1; is that correct?

15 A Yes.

16 Q And that was because you had been hit in the back by
17 another automobile accident?

18 A Yes.

19 MR. MOORHEAD: Your Honor, may we approach at this
20 point?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was held.)

23 THE COURT: Ladies and gentlemen, what we're going to
24 do now is take a lunch break. And we will come back at
25 1:30. Don't talk about the case and keep an open mind.

1 Thank you very much.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 12:24 p.m.)

4 THE COURT: Okay. Yes, sir, Mr. Moorhead.

5 MR. MOORHEAD: Your Honor, the very next page, I
6 object to any reference to that. Because, number one,
7 Reverend Dawkins has freely admitted that he had back
8 problems before this automobile collision, and that he, in
9 fact, had surgery. And he's indicated that he had hurt it
10 on three different occasions before this automobile
11 accident. So there's no impeachment here. Okay. I mean,
12 that's all out in the open.

13 But more specifically and more importantly, I would
14 submit, is that Mr. McGarr in his next document is going
15 to give the inference that he's on disability. Well, I
16 have provided Mr. McGarr weeks and weeks ago a statement
17 from social security indicating he's not on disability.

18 But what happens is -- and I'm sure this isn't lost
19 on Your Honor and it's, certainly, not lost on Mr. McGarr,
20 but they hear, oh, he's on disability, he's got Medicare,
21 and he wants us -- he's double dipping. It just highly
22 prejudices the case, number one.

23 And, number two, I don't care what kind of cloak you
24 put on it, what's going to stick is disability Medicare.
25 And he's not on disability. And it's just highly

1 prejudicial.

2 MR. MCGARR: Your Honor, that's why if you'll
3 recognize at the time that we had taken the deposition of
4 the doctor -- and I thought Reverend Dawkins was still on
5 disability. And he was not at the time of the accident
6 with my client, at least, according to the letter that got
7 sent to me not weeks ago, but about a week ago that came
8 from Mr. Moorhead.

9 THE COURT: Yes, sir.

10 MR. MCGARR: And that's why, if you will remember,
11 when the motion in limine was made, I said take that out
12 because, in fact, it was inaccurate. Because what I was
13 telling the doctor is, yes, he can pay for it, he's on
14 disability.

15 Now, what I'm dealing with is a gentleman who has
16 told us -- and just a few seconds ago said, I've had back
17 problems, they just weren't as bad as they were after this
18 accident. Well, I'm now going to be talking about
19 disability being that he was, not at the time of this
20 accident, and I'll make that abundantly clear. But that
21 he was on disability back in 2000, which is long before
22 our automobile accident.

23 Remember, our accident is 2008. But it goes to the
24 degree of the prior problems he's had with his back versus
25 what he's telling us he's had with regard to his low back.

1 And that's why it becomes relevant, not that he's on
2 Medicare or Medicaid. I will even cover that, that at the
3 time of this accident, you weren't on Medicare or Medicaid
4 and you weren't even on disability, but you were, at one
5 point, so bad with this low back that you were on
6 disability. That's the reason it's coming up.

7 And I -- if you make a ruling, it is so important
8 that I do need to go ahead while we're on the break and
9 just go ahead and proffer.

10 THE COURT: All right. Mr. Moorhead.

11 MR. MOORHEAD: Are you looking at me, Your Honor?

12 THE COURT: Yes, sir.

13 MR. MOORHEAD: Well, in fact, according to the Social
14 Security Administration, he wasn't even on disability at
15 the time of this note in 2000. But whether he was or
16 whether he wasn't is really not -- doesn't outweigh the
17 prejudicial effect of this jury thinking that he is on
18 disability, or that disability Medicare will pay for
19 everything.

20 I mean, I've seen it happen in other cases. And it's
21 just so highly prejudicial that while I don't think his
22 position has any merit at all, let's assume it does have
23 some merit. It, certainly, doesn't outweigh the prejudice
24 that's going to be imparted to this jury. And they're
25 going to take it back in the jury room and they're going

1 to banter around, and it's going to delay an adjudication.
2 At the very best, it's going to result in a less than full
3 and fair verdict. And it very well may ditiate [phonetic]
4 any recovery.

5 MR. MCGARR: In all fairness, Your Honor, how does it
6 confuse a jury that he was on disability in 2000 when our
7 automobile accident took place in 2008. And he, clearly,
8 had not been on disability for a number of years prior to
9 that.

10 THE COURT: Well, Mr. McGarr, why don't you go ahead
11 and ask the questions, and let's see what we're dealing
12 with in terms of the evidence.

13 CONTINUED CROSS-EXAMINATION

14 BY MR. MCGARR:

15 Q Reverend Dawkins, you indicated you had had back
16 problems in the past. Just a moment ago, you said, I had
17 back problems, but they just weren't as bad as they were
18 after this accident; is that correct?

19 A That's correct.

20 Q But would you agree that you, actually, had severe
21 enough back problems where at one point in time, not at
22 the time of the accident with my client, but for a period
23 of time, you were considered completely and totally
24 disabled by the Social Security Administration because of
25 your low back issues? Would you agree that that's the

1 case?

2 A I was on disability. It was a while back.

3 Q And it was for your low back?

4 A Yes.

5 Q And they said you can't work at any capacity, so
6 we're going to place you on social security disability; is
7 that correct?

8 A Correct.

9 Q For your low back?

10 A Yes.

11 Q Now, that didn't stay in effect forever, and it
12 wasn't in effect at the time of this accident. But it was
13 severe enough, at one point, that you couldn't work in any
14 capacity; is that correct?

15 A That's correct.

16 MR. MCGARR: No further questions.

17 THE COURT: Mr. Moorhead.

18 REDIRECT EXAMINATION

19 BY MR. MOORHEAD:

20 Q Did your back, actually, improve to the point where
21 you could go back to work after you had been on
22 disability?

23 A Yes.

24 MR. MOORHEAD: That's really all I have, Your Honor.
25 I reiterate my other arguments.

1 THE COURT: Well, I don't -- I'm open to further
2 argument about it. But I don't know of any reason why
3 Mr. McGarr couldn't ask him about it.

4 I misunderstood when you were up on the bench that
5 he, actually was on disability. I know there was some
6 confusion at the beginning of the trial as to whether he
7 was now. But if he was on disability at a certain time
8 due to his low back, why wouldn't that be relevant?

9 And what -- and if you're able to clear it up on
10 redirect, or y'all can agree to some stipulation that he's
11 not on disability and wasn't on disability at the time of
12 this accident, why doesn't that cure it at all?

13 MR. MOORHEAD: Well, it's one of those the cat is out
14 of the bag type of situations. And you can't cure it. I
15 can talk until I'm blue in the face. But I'm not going to
16 convince all 12 of those jurors that there isn't some
17 Medicare out there. And that's why it's so prejudicial.
18 I mean, I can't overcome that.

19 THE COURT: Right.

20 MR. MOORHEAD: Or, perhaps, I can, but the chances
21 are slim. And it's so highly prejudicial, and it
22 outweighs the probative value of such evidence. Because
23 we've admitted that he had back problems, and that he had
24 surgery, and all of those things. He doesn't need that to
25 show he had significant back problems before this injury.

1 THE COURT: All right.

2 MR. MOORHEAD: We've pretty much stipulated to that.

3 THE COURT: Okay. Well, let's go ahead and break for
4 lunch. But while we're talking about that, let me ask you
5 about the charge.

6 Is there going to be any need to charge the life
7 expectancy table?

8 MR. MOORHEAD: Yeah -- the mortality table?

9 THE COURT: Yes.

10 MR. MOORHEAD: I think so.

11 THE COURT: What about mitigation?

12 MR. MCGARR: Yes, sir.

13 THE COURT: And preexisting injury?

14 MR. MCGARR: Yes.

15 THE COURT: All right.

16 MR. MCGARR: That one doctor said that his problems
17 were permanent, so the mortality table comes in.

18 THE COURT: And maybe it's too early to ask you this,
19 but are you still seeking punitive damages in this case?

20 MR. MOORHEAD: No, no, I'm not.

21 THE COURT: All right.

22 MR. MOORHEAD: But I do want something on collateral
23 source.

24 MR. MCGARR: I think by the very nature of the prior
25 court rulings, you'd have to, Judge.

1 THE COURT: Yes. That's fine.

2 MR. MOORHEAD: Okay.

3 MR. MCGARR: Did you guys read that?

4 THE COURT: Yes.

5 MR. MCGARR: Thank you.

6 THE COURT: We'll start back at 1:30.

7 (WHEREUPON, a lunch break was taken.)

8 THE COURT: Okay. Is everybody ready?

9 MR. MOORHEAD: Yes, sir.

10 THE COURT: Okay. You can bring the jury in.

11 MR. MOORHEAD: I think he's going into this next
12 thing that we discussed at the sidebar before we broke,
13 and you were going to think about it.

14 THE COURT: You're right.

15 Hold them out there just one second, Mr. Lynch.

16 I think it would be admissible. And I based on the
17 proffer, Mr. Moorhead, certainly, has a right to redirect
18 on it, or I'll be glad to provide the jury a stipulation
19 about the current status of his disability and the status
20 of it at the time of the wreck, which I understand he
21 wasn't on at either point, or you can do it by redirect,
22 whatever suits you.

23 MR. MOORHEAD: I'll do it by way of redirect.

24 (WHEREUPON, the jury came into open court at
25 approximately 1:45 p.m.)

1 THE COURT: Yes, sir, Mr. McGarr.

2 MR. MCGARR: May it please the Court.

3 Permission to approach, Your Honor?

4 THE COURT: Sure.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. MCGARR:

7 Q Reverend Dawkins, we were previously talking. Would
8 you agree that on 5/5 of 1997, you were working with a
9 doctor named Dr. McCorkle, and he had sent you out for
10 a lumbar epidural steroid injection at Spartanburg
11 Regional?

12 A Yes.

13 Q And that incident was related to, yet, another
14 automobile accident, was it not?

15 A I'm not sure, sir.

16 Q Can you look at the third line of the highlighted
17 portion of that document and see if it says, Patient was
18 hit in back in MVA?

19 A Yes.

20 Q And, at that point, would you agree that you were
21 having increased chronic left hip pain, and you were
22 having pain in both legs going into your feet?

23 A Yes.

24 Q And no medications, at that point, had helped your
25 back permanently?

1 A (There was no response.)

2 Q Last line, is that what the doctor says?

3 A Say that again, sir, please.

4 Q I'm sorry. The last line says that none of your
5 medications have helped you permanently. In other words,
6 none of them were helping alleviate your problem; is that
7 correct?

8 MR. MOORHEAD: Objection. He's asking two questions,
9 one is it didn't relieve them permanently, and one, it
10 didn't help your problem.

11 THE COURT: Sustained.

12 BY MR. MCGARR:

13 Q Does the document say that no meds have helped
14 permanently?

15 A At that time, sir.

16 Q So would you agree that we are now dealing with a
17 history of low back problems that date back to -- that
18 dates back prior to 1985, and is continuing to give you
19 problems even up through 1997?

20 A Yes, but not like it is now, sir.

21 Q But you've had epidural steroid injections since this
22 automobile accident, have you not?

23 A I don't really know, sir.

24 Q When they're shooting things in your back --

25 A I'm --

1 Q You just don't know?

2 A (There was no response.)

3 Q And would you agree that for a period of time -- even
4 though you've described your problems as being not very
5 severe until the accident with my client, for a period of
6 time, you were deemed totally and permanently disabled
7 from any sort of employment as a result of that low
8 back --

9 A Yes.

10 Q And to make it clear, you were no longer on total and
11 permanent disability at the time of the accident with my
12 client; is that correct?

13 A No.

14 Q But, at one point, your back was in such bad shape
15 that you were incapable of working in any capacity; is
16 that correct?

17 A Say that again, sir.

18 Q At one point, your back was in such bad shape that
19 you were incapable of working in any capacity?

20 A Yeah.

21 Q Going to the next -- one more document, I believe.
22 One more after that.

23 Does it appear on 6/30 of '03 that you were still
24 having problems with chronic low back pain?

25 A Yes.

1 Q And that being chronic long-standing. You've had low
2 back pain that's made you incapable to work, caused you to
3 have injections, medications didn't work. You've had
4 chronic issues with your low back?

5 A I've had some great pains with it, sir.

6 Q Going to the next document. Does it appear you're
7 back at the doctor's office on 11/14 of '03, and, at that
8 point, you had long-time back problems and your back
9 problems got worse with cold weather?

10 A Yeah, at times, sir. But --

11 Q Is that what the document says?

12 A That's what the document says, sir.

13 Q Going to the next document in that set of documents.
14 Does it appear you're back at your doctor's office on
15 November 17th of 2003, and, at that point, you were having
16 complaints of pain in your low back and groin area, states
17 that this happens since you hurt your back about 20 years
18 ago? Is that what the document says?

19 A That's what the document says.

20 Q And it says, Patient, also, stated after hurting his
21 back, the pain started in his lower back down into his
22 legs and his groin area. He, also, stated that when the
23 weather changes, his problems with his back -- he has
24 problems with his back. Is that what it says?

25 A Yes.

1 Q So, essentially, by 2003, we're talking about chronic
2 problems with your low back that had been in existence for
3 20 years; is that correct?

4 A That's correct, sir.

5 Q Going to the next document. Does it appear that you
6 returned to a doctor on 1/8 of '04?

7 A Yes.

8 Q And they're saying you're there with low back pain?

9 A Yes.

10 Q Going to the next document. Does it appear that
11 you're back at your doctor's office on 3/31 of '04, about
12 two months later; is that correct?

13 A I see it, sir.

14 Q And does it say, Patient feels his blood pressure is
15 up because his back has been hurting a lot with the
16 changes in the weather?

17 A That's what it says, sir.

18 Q Going to the next document. Does it appear that
19 you're back at your doctor's office again, roughly, two
20 months later, on 5/6 of '04, and you're still having low
21 back troubles?

22 A Yes.

23 Q Going to the next document. Does it appear that
24 approximately a month and a few weeks after the last
25 visit, you're back at your doctor's office, and you're

637

1 still having trouble with your low back pain?

2 A Yes.

3 Q Going to the next document. Does it appear that
4 about three months thereafter, you're back at your
5 doctor's office? And, at that point, this would be
6 9/15/04. It says, Patient is here today complaining of
7 lower back pain. Patient is requesting pain medications
8 for his low back pain. He states that Lortab does nothing
9 for him. Is that what that document says?

10 A That's what it says.

11 Q Going to the next document. Does it appear that
12 about a month after that last visit that you're back at
13 the doctor's office continuing to have problems with low
14 back troubles? That would be 10/4/04.

15 A Yeah.

16 Q Does it appear you're back at your doctor's office on
17 11/15/04, about a month after the last visit?

18 A That's what it says, sir.

19 Q And, on Page 2, are you still having trouble with low
20 back problems?

21 A Yes.

22 Q And the next document. Does it appear about a month
23 after that, you returned to your doctor's office on
24 12/14/04, and you're still having back troubles?

25 A Yes.

638

1 Q About a month after that on 1/14/04, if you look at
2 Page 2, you're still having low back troubles?

3 A Yes.

4 Q And then on 1/18 of '05, a few days after that last
5 visit, does it appear that you're at a different doctor's
6 office where you're saying that you're having hip and leg
7 pain?

8 A Yeah.

9 Q Then does it appear that about a month after that,
10 you're back at your doctor's office and you're still
11 having low back troubles on 2/28 of 2005?

12 A Yes.

13 Q And the next document. Does it appear that about two
14 months after the last visit, you're back at your doctor's
15 office? And on Page 2, you're still having trouble with
16 your low back?

17 A Yes.

18 Q And then the next document. About two months
19 thereafter, on 6/2/05, you're back at your doctor's
20 continuing to have problems with your low back?

21 A Which number, sir?

22 Q It would be the one dated 6/2/05.

23 A Uh-huh. Yes.

24 Q And then the next one that's dated 11/2/05, does it
25 appear you're back at your doctor's office -- you have to

1 go to Page 2 -- and were continuing to have low back
2 troubles?

3 A Yes.

4 Q Then a couple months after that on 1/31/06, you're
5 back at your doctor's office continuing to have low back
6 trouble?

7 MR. MOORHEAD: The document doesn't read, "low back
8 trouble." It reads, "low back pain." It reads it the
9 same way every time.

10 THE COURT: All right.

11 MR. MCGARR: My apologies. Low back pain, low back
12 trouble. Six of one, half a dozen of the other, but I'll
13 use "low back pain."

14 BY MR. MCGARR:

15 Q Going to the next document. On 4/21/06, does it
16 appear that about three months after your last visit,
17 you're back at the doctor's office? And, at that point,
18 you told them that you had had back surgery in '85, you
19 were recently cutting some wood with a chain saw about
20 five days ago, and started developing low back, hip, and
21 leg pain yesterday. His left leg seems to be bothering
22 him more than the right. And he is only bothered in his
23 right leg occasionally. He, also, has problems with
24 sciatica on his left side, mostly in the past.

25 MR. MOORHEAD: Is that a question?

640

1 BY MR. MCGARR:

2 Q Is that what the document says?

3 A That's what the document says. But may I say this?

4 A lot of times that I went to Dr. Smith, I went to
5 him for more than just back pain. And it seems that all
6 of these are saying back pain, but I went to see him more
7 than that.

8 Q Oh, yes, sir. But if -- we'll waste a bunch of time
9 if we talk about coughs and colds.

10 A All right, sir.

11 Q So I'm limited to things that are relevant in this
12 case.

13 A All right, sir.

14 Q So, at this point, would you agree you're having
15 problems going into your legs, yet again, and that's one
16 of the issues that you say my client caused as a result of
17 the automobile accident he had with you?

18 A Yes. That's one of the issues I said, sir.

19 Q And, yet, those issues have been around in excess of
20 20 years before Troy met you?

21 A Sir, they've been -- they was around. I don't deny
22 that. But since the accident, I've had worse pains.
23 That's simply what I'm just simply saying. I did have
24 some pain there. I don't deny that. But I'm simply
25 saying that the pain gets greater.

1 Q Okay. In that case, let's skip the next document.
2 And other than on 6/22/06 that you're complaining of low
3 back problems, would you agree your complaints were
4 continuing in '06?

5 A Yes, sir.

6 Q And the next document. Does it appear that you were
7 at North Hills and, again, you're having pain that's
8 radiating into your thighs and your buttocks?

9 A Yes. What number is that?

10 Q It's 6/28/07 -- dated 06/28/07.

11 A Okay, sir.

12 Q And, at that point, you were having a recurrence of
13 your low back problems. And it was radiating into your
14 buttocks and thighs, and you had had back problems before
15 and you had, actually, been evaluated by a neurosurgeon in
16 the past.

17 A Yes.

18 Q And this pain, at that point, wasn't constant, but it
19 did occur one to two times every several weeks.

20 A Yes.

21 Q Okay. Does it appear that you had an MRI done --
22 next document -- of your low back on July 12th, 2007,
23 because the issues were becoming worse?

24 A Yeah.

25 Q Does it appear on the next document on 8/20 of '07,

642

1 you're back at your medical doctor because you were still
2 having pain radiating from your low back into your groin?

3 A That's what the document says, sir.

4 Q Yes, ma'am -- yes, sir. And the next document. 9/13
5 of '07, you were still having problems with pain that was
6 radiating, and the problem had been going on for several
7 months.

8 A Yes.

9 Q And by the -- the next document. On 9/26/07, you
10 were still having problems with your low back.

11 A Yes.

12 Q And things that made the problems worse, at that
13 point, was that sitting for a long period of time caused
14 problems.

15 A That's what it says, sir.

16 Q And when asking you if it interfered with your normal
17 functions, did you say that it interfered with intimacy,
18 as well as any function that required you to have
19 excessive sitting?

20 A Yes, sir. But it, also, says on here high blood
21 pressure, also, on one of the things, sir. Yes, it says
22 that, sir.

23 Q Yes, sir. But I'm not trying to go --

24 A Yes, sir.

25 Q The bottom line is that, at this point, on 09/12 of

1 '07, your back problems were giving you so much trouble
2 that just sitting for extended periods of time were giving
3 you issues, intimacy was giving you issues, and trying to
4 go to functions that required any sort of sitting was
5 giving you issues; is that correct?

6 A Yes.

7 Q The next document. Would you agree that on 1/14 of
8 2008, you were at a different doctor's office? And, at
9 that point, you're still having mid and low back problems.

10 A (There was no response.)

11 Q That's 1/14/08.

12 A Yeah.

13 Q And then on the next document, on 1/28 of '08, you're
14 still having mid and low back problems.

15 A Yes.

16 Q On 3/10 of 2008, you're back at a doctor with mid and
17 low back problems?

18 A Three what, sir?

19 Q I'm sorry.

20 A 3/10?

21 Q 3/10 of 2008, yes, sir.

22 A That's what it says, sir.

23 Q And on 8/26 of '08, you're on Celebrex.

24 A (There was no response.)

25 Q Next document.

644

1 A Yes.

2 Q And our accident took place on 9/24 of '08; is that
3 correct?

4 A Yeah, I guess so, sir.

5 Q Would you agree with me that there is a significant
6 discrepancy between the condition that you told this jury
7 your back was in prior to the accident with my client and
8 what these records have revealed?

9 A Explain what you're trying to say, sir.

10 Q In other words, you said, I had some low back
11 problems prior to the accident with Troy -- or Mr. Watts,
12 but they were much worse after the accident; is that
13 correct?

14 A That's what I said, sir.

15 Q This is not some low back problems, these are 20-plus
16 years of chronic back problems, problems that radiated to
17 your legs, problems that sent you to a neurosurgeon in
18 Spartanburg --

19 THE COURT: Mr. McGarr --

20 MR. MOORHEAD: Is there a question in here, or is
21 this just testimony by Mr. McGarr?

22 BY MR. MCGARR:

23 Q Would you agree that there's a big discrepancy with
24 what you described to this jury with regard to the
25 condition of your low back prior to the accident with Troy

645

1 Watts and what these records, actually, have revealed?

2 A I will say I realize that I had back problems. I
3 know that, sir. That's what I'm saying. I'm aware of
4 that. That's what -- I agree with that part.

5 Q If you went to a medical provider between the time of
6 the accident and the time of our deposition, would your
7 low back problems be significant enough for you to bring
8 that to their attention?

9 In other words, would you tell a medical provider,
10 hey, buddy, I'm still having low back troubles as a result
11 of what Troy did to me?

12 A It depends on what I'm going to the doctor for, sir.

13 Q Okay. In that case, let me refer you to your
14 deposition again. The same thing applies.

15 A I -- okay.

16 Q We'll go upper right for page, and then left inside
17 for the line. Let's go to Page 34 of your deposition.
18 Beginning on Line 14 -- and you need to tell me when you
19 get there.

20 A 34, you said?

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

22 A 34?

23 Q Yes, sir. Page 34.

24 A Uh-huh.

25 Q Beginning on Line 14.

646

1 A Yeah, I see 14.

2 Q Okay. Did I ask you, If you went to a medical
3 provider between the time of the accident and now, would
4 you tell them of your ongoing low back troubles? And on
5 Line 17, did you answer, I would?

6 A That's what the answer said, but can I -- go ahead.

7 Q Yes, sir. You always have the right to explain.

8 A What I want to explain, if I went, it would depend
9 what my focus was on when I went there, sir. That's what
10 I'm saying. It's not that my focus was not on lower back
11 pain. It's just -- I said what was on there.

12 Q Okay. Let's do this. Let's go to your deposition
13 beginning on Line 5.

14 A Yes.

15 MR. MOORHEAD: Which page, please?

16 MR. MCGARR: Page 5. I'm sorry if I said Line 5. I
17 meant Page 5. My apologies.

18 BY MR. MCGARR:

19 Q At that point, I was giving you instructions on how
20 to do a deposition. And on Page 5, Line 23, did I say
21 this, The other thing about a deposition is they're not to
22 be taken at a snail's pace, nor are they to be taken at a
23 rabbit's pace. They are to be taken at -- then go to Page
24 6. They're to be taken at your pace. So if we need to
25 speed it up, or slow it down, or take a break so that you

1 remain comfortable, let me know, because we will take care
2 of that.

3 And on Line 5, did you answer, Yes, sir?

4 A Yes.

5 Q And then did I go on to say, My depositions are
6 notoriously short, so that shouldn't be too much of a
7 problem anyway. But the other thing we need to do, to
8 deal with is this, if I ask you a question and you
9 remotely think you don't understand it, it's not only
10 appropriate, it is vital that you tell me you don't
11 understand it. You can say that's the dumbest question
12 I've ever heard, excuse me, what in the world are you
13 talking about, or can you rephrase that. I don't care.
14 It won't hurt my feelings?

15 And did you kind of interrupt a little bit and say,
16 Okay?

17 A That's what it says, sir.

18 Q And did I go further and say, Really, McGarr, that's
19 the dumbest question I've ever heard? And did you answer
20 on Line 20, All right?

21 A Yes.

22 Q And then did I go on to say, But don't answer the
23 question until you're sure you understand what I'm asking?
24 And on Line 23, did you say, All right?

25 A Yes.

1 Q Then going to Page 7. Did I ask you on Line 1, Last
2 is this, if I ask you a question and you haven't asked me
3 to make you more comfortable and you haven't asked me to
4 clarify the question, then I'm going to assume that you
5 understood my question and comfortably answer the same.
6 Is that okay?

7 And did you answer on Line 7, That's okay?

8 A That's what it says, sir.

9 Q Okay. Let's go back to Page 34 of your deposition
10 beginning on Line 14. Those instructions have been given.
11 And on Page 34, Line 14, I asked you -- and tell me if I'm
12 wrong -- If you went to a medical provider between the
13 time of the accident and now, would you tell them of your
14 ongoing low back troubles?

15 And on Line 17, did you say, I would?

16 A Yes.

17 Q You didn't say I might, but if I was going for
18 another reason, I probably wouldn't. What you said was, I
19 would; is that correct?

20 A That's what's on the thing, sir.

21 Q And that was after being given instructions that
22 don't answer it if you don't understand it, and don't
23 answer it unless you're comfortable; is that correct?

24 A That's what was said, sir.

25 Q We could probably move a little bit faster, because

1 some of these documents we've covered before. But looking
2 at the first document, would you agree with me that when
3 EMS came on the scene, there's no mention whatsoever in
4 their records of you complaining of low back problems
5 whatsoever, is there?

6 A Sir, I was in pain. I told them I was hurting. And
7 I said my neck, and my back, and my left shoulder.

8 Q Yes, sir. But when we look at the document itself,
9 it makes no mention of you mentioning a problem of your
10 neck or your low back, does it?

11 A It makes no mention of it. But I told them that it
12 was my neck, lower back, and left shoulder.

13 Q But these people who are professionals didn't list
14 those complaints, did they?

15 A No.

16 Q Going to the next document, which is your family
17 physician that you've used for years. And when you went
18 to see him on 3/1 of 2010, did you tell him that you were
19 complaining of a knee problem, and that you were having
20 gout attacks?

21 A Yes.

22 Q And on Page 2, did he find your low back to be,
23 essentially, normal?

24 MR. MOORHEAD: Objection, Your Honor. There are
25 medical terms that -- and this doctor, of course, has not

650

1 been called as a witness, nor will be --

2 THE COURT: Let's --

3 MR. MOORHEAD: But --

4 THE COURT: Let's come up here and discuss this.

5 MR. MCGARR: I think I can back off.

6 THE COURT: Come up here.

7 (WHEREUPON, a bench conference was held.)

8 BY MR. MCGARR:

9 Q I want you to go back to that last document for me,
10 Reverend Dawkins. It's dated, March 1, 2010. And I may
11 have to help you, because we got sort of started and then
12 we kind of got stopped.

13 There you are.

14 Okay. Page 2, on that date, we're dealing with your
15 spine. And would you agree there's no tenderness?

16 A That's what it says, sir.

17 Q And you've got full range of motion?

18 A That's what it says.

19 Q Full rotation?

20 A (There was no response.)

21 Q Normal rotation. My apologies.

22 A That's what it says.

23 Q And no instability?

24 A That's what it says, sir.

25 Q Going to the next document, which is back at your

1 family doctor's office. Does that appear to be that you
2 went on 9/8 of 2010? .

3 A That's what it says.

4 Q And, again, you're going there with a right knee
5 issue, but you don't in any way, shape, or form mention
6 your low back, do you?

7 A No, I don't.

8 Q Going to the next document, which is dated September
9 23rd, 2010. You go to the emergency room. And, on Page
10 2, would you agree that you, specifically, told them you
11 had no back pain?

12 A Which one is this, sir?

13 Q This one would be the September 23rd, 2010, record.
14 And it's on Page 2.

15 A That's what it says.

16 Q And then the next document, you're back at the
17 hospital on October 16th of 2010; is that correct?

18 A Yes.

19 Q And, again, going to Page 2, would you agree that you
20 told them that you had no back pain?

21 A (There was no response.)

22 Q It's in the middle of the page.

23 A That's what it says.

24 Q Going to the next document, which would be 3/23/11.

25 MR. MOORHEAD: What date is that?

652

1 MR. MCGARR: 3/23/11. This is at North Hills.

2 BY MR. MCGARR:

3 Q You, specifically, denied any acute back
4 exacerbations; is that correct?

5 A That's what it says. But I don't -- that's what it
6 says, sir.

7 Q And then the next document, which is when you were
8 with Dr. McHenry, dated 6/21/11, you didn't say anything
9 about having a back problem on that date, did you?

10 A No.

11 Q So you told us, under oath, that if you went to a
12 medical provider between the time of the -- our
13 deposition -- I mean, the time of the accident of
14 September 24th, 2008, and the time of our deposition,
15 which was January 24th of 2012, if you went to a medical
16 provider, you would tell them of your ongoing medical back
17 troubles? That's what you told us in your deposition; is
18 that correct?

19 A That's what it said, sir.

20 Q And, yet, we have record after record after record
21 where you're not talking about your low back and, in many
22 instances, your low back is being checked out and coming
23 back totally normal.

24 MR. MOORHEAD: I'm going to object to -- he can ask
25 him about the records, but he can't ask him about

653

1 Mr. McGarr's interpretation of the records. That's for
2 the jury.

3 THE COURT: Sustained.

4 MR. MCGARR: I'm just trying to move this.

5 BY MR. MCGARR:

6 Q On many occasions -- would you agree on many
7 occasions, you never even mentioned having a problem with
8 your back in these records?

9 A No.

10 Q Okay.

11 A If you go to the doctor, sometimes whatever the
12 greatest pain is, that's the one you mention and focus on
13 sometimes. And if you have other pains, it does not mean
14 you're not having them, it simply means that you are there
15 for one particular thing. And your focus is on whatever
16 you're there for.

17 Q Reverend Dawkins, on a number of occasions, you've
18 gone to these medical providers and you never mentioned
19 your low back at all; is that correct?

20 A That's correct.

21 Q And would you, also, agree on a number of occasions,
22 you've gone to these medical providers and you,
23 specifically, told them, I'm not having problems with my
24 low back?

25 A That's what it says, sir.

1 Q And on a number of occasions, you've gone to these
2 medical providers -- and this is all after the accident
3 with Troy, and you've got normal rotation, normal flexion
4 and extension, and you're saying I don't even have any
5 tenderness in my low back. Would you agree that's what
6 those records reveal?

7 A That's what the records say, sir. But --

8 Q And all --

9 MR. MOORHEAD: Can he finish his answer, please?

10 THE COURT: Yes.

11 THE WITNESS: Simply what you're saying is if I go to
12 the doctor for some other reason, my focus may not be on
13 that at that time. It does not mean I'm not hurting. I
14 heard what you said. I know what I said. It just means
15 my focus was not...

16 BY MR. MCGARR:

17 Q You have and your doctor has described your problems
18 as so chronic and severe everyday that you need low back
19 surgery; is that correct?

20 A Yes, sir.

21 Q And, yet, on numerous occasions between the accident
22 with Troy and the date of our deposition, you went to
23 medical providers with regard to that low back and told
24 them it's not even giving me any trouble?

25 A I didn't tell them -- well, sir --

655

1 Q The records state that.

2 A Whatever the records say, sir.

3 Q You've gone on many occasions and when they're
4 checking your low back, you're coming back, essentially,
5 normal; is that correct?

6 MR. MOORHEAD: That's -- he --

7 MR. MCGARR: I will do it this way, Your Honor.

8 THE COURT: I'll do it this way, Mr. McGarr. Move on
9 to another subject.

10 BY MR. MCGARR:

11 Q These records do not reveal a chronic everyday low
12 back problem, do they?

13 THE COURT: All right. Ladies and gentlemen --

14 MR. MOORHEAD: I object --

15 THE COURT: -- I'm just going to ask you to go to the
16 jury room. Don't talk about the case. And keep an open
17 mind.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 2:22 p.m.)

20 THE COURT: He objected. I sustained the objection.
21 You asked the same question three or four times. Let's
22 move on to another subject.

23 MR. MCGARR: Do you mean get off of low back
24 completely?

25 THE COURT: Right, records.

656

1 Anything else right now?

2 MR. MCGARR: No.

3 You're just saying get off low back?

4 THE COURT: I think we've covered it.

5 MR. MCGARR: And I'm fine. I'm not trying to
6 proffer, or do anything else.

7 THE COURT: All right. Well, let's just take about a
8 five-minute break while we've got the jury out.

9 Thank you.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Okay. You can bring the jury on in.

12 MR. MCGARR: Your Honor, from a timing perspective,
13 I'm probably going to be about three more minutes and I'm
14 done.

15 THE COURT: Okay. Sounds good.

16 (WHEREUPON, the jury came into open court at
17 approximately 2:32 p.m.)

18 THE COURT: Yes, sir, Mr. McGarr. You may continue.

19 MR. MCGARR: May it please the Court.

20 CONTINUED CROSS-EXAMINATION

21 BY MR. MCGARR:

22 Q Mr. Dawkins -- Reverend Dawkins. My apologies.
23 Would you follow your doctors or your medical providers
24 instructions with regard to trying to make your neck, your
25 shoulder, your right arm, your right finger, your low

1 back, and left leg better? If they asked you to do
2 something to try to make it better, would you follow their
3 instructions?

4 A I would try my best if I could, sir.

5 Q Would you agree that you were prescribed physical
6 therapy to try to fix some of your problems?

7 A Yes.

8 Q And would you agree that on November 21, 2008, you
9 cancelled your appointment with physical therapy?

10 A Yeah.

11 Q Because of a work conflict?

12 A Yes.

13 Q And that on December 3rd, 2008, you didn't show up
14 for the appointment, and you just didn't show up and there
15 was no reason?

16 A That's what it says, but I did call them.

17 Q But it says, No show; is that correct?

18 A Yes.

19 Q Okay. The next document dated December 10, 2008,
20 does it indicate that you've not -- that you -- your
21 compliance with your home exercise program, you were
22 unable to perform due to time constraints? Is that what
23 it says?

24 A That's what it says.

25 Q And then on December 16th, 2008, you cancelled an

658

1 appointment again, and that was because of a death in the
2 family?

3 A Yes.

4 Q And then on January 20th of 2009, they, finally, just
5 kicked you out of physical therapy because you weren't
6 coming enough; is that correct?

7 A That's what it says, sir.

8 MR. MCGARR: Reverend Dawkins, I have no further
9 questions.

10 REDIRECT EXAMINATION

11 BY MR. MOORHEAD:

12 Q Reverend Dawkins --

13 MR. MCGARR: Just one second. Let me clean up my
14 mess.

15 MR. MOORHEAD: He's going to need his copy.

16 MR. MCGARR: I'll give it back to you.

17 And, Reverend Dawkins, thank you for your time.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you, Mr. McGarr.

20 Yes, sir, Mr. Moorhead.

21 BY MR. MOORHEAD:

22 Q Let's try to go in reverse order. And I'm not going
23 to go over every document, but I want to ask you about,
24 particularly, this Proaxis therapy document he gave you.

25 A Yes, sir.

659

1 Q Now, you missed three appointments.

2 A Yes, sir.

3 Q And on one of those appointments, you had a work
4 conflict; is that correct?

5 A Yes, sir.

6 Q And on one of those appointments, you had a death in
7 the family?

8 A Yes.

9 Q And on the third one, tell me what -- tell the jury
10 what transpired on that day.

11 A On the third one, I didn't go because I was in pain.
12 So I called them and told them I can't come because I'm
13 hurting real bad. But I did call them and tell them I was
14 in pain and I could not come to do it that day.

15 Q And you made a return appointment and you went,
16 didn't you?

17 A Yes.

18 Q And that's when they said for you to not come back
19 any more?

20 A Yes.

21 Q Now, North Hills Medical, which Mr. McGarr quoted
22 many times about low back problems, low back problems, low
23 back problems, or, you know, low back problems. What do
24 you see North Hills for?

25 A I see them for blood pressure regulation, because I

660

1 take high blood pressure medication. And I have flare-ups
2 of gout that comes on me quite frequency [sic]. I don't
3 know why, but they just comes [sic] on me. And I go there
4 for that purpose, and for pain in my back and neck
5 sometimes. That's what I go there for.

6 Q All right, sir. Let's look at -- we're going to take
7 it in reverse order, if I can find -- if I can sort these
8 out.

9 Well, let me do it this way. Mr. McGarr pulled out
10 records from Upstate Urology Associates; is that correct?

11 A Yes.

12 Q Did they ever treat you for your back, for your
13 spine, for your low back, or your neck?

14 A Yes.

15 Q They did treat you for that?

16 A I'm not sure, sir.

17 Q Do you know what urology is?

18 A (There was no response.)

19 Q Bladder, genitalia, that kind of thing.

20 A No. I didn't know what it was.

21 Q And North Hills, you've already testified -- they've
22 got on here gout, depressive disorder, hemorrhage,
23 hypertension, that kind of thing; is that right?

24 A Yes, sir.

25 Q And on this one where Mr. McGarr highlighted some

661

1 reference to the lumbar sacral spine, read under there to
2 the jury where it says, Chief complaint. And what's the
3 answer?

4 A It says, Chief complaint, lumbar.

5 Q No, no. Chief complaint, right there.

6 A It has FU LABS.

7 Q As in follow-up labs?

8 A Yes.

9 Q And here is another one. And does that say FU?

10 A Yes, sir.

11 Q And that would have been for follow-up on gout;
12 right?

13 A Yes, sir.

14 Q Now, the Smith Center for Cardiology, what did you
15 see them for?

16 A For high blood pressure, back pain, and gout, a
17 number of things.

18 Q Okay. But you never -- they didn't treat you for
19 your back, or send you for an MRI for your back, or
20 anything like that, did they?

21 A Not that I know of, sir.

22 Q Same thing for your neck?

23 A Not that I know of, sir.

24 Q In actuality, from the time you got hurt in this
25 automobile accident up until last week, you've only been

662

1 seen and treated for your back, your neck, and your left
2 shoulder either by Dr. Geary or Dr. McHenry; isn't that
3 correct?

4 A That's correct, sir.

5 Q As orthopedic surgeons. I believe you went to North
6 Hills twice before you got to them.

7 A Yes, sir.

8 Q And the ER.

9 A Yes.

10 Q So the point that you were trying to make is you
11 wouldn't go for spine treatment to a cardiologist, would
12 you?

13 A No, sir.

14 Q It would be kind of like going to a plumber to fix
15 your transmission.

16 A Something like that, sir.

17 Q Now, do you have any insurance?

18 A Not that I know of, sir.

19 Q All right, sir. Well, you would know it if you did;
20 right?

21 A Yes, sir.

22 Q And when you did have insurance, you had to pay a
23 premium, didn't you?

24 A No, sir.

25 Q Did your wife pay all the checks?

1 A She handles the money, yes, sir.

2 Q Okay. And Mr. McGarr mentioned something about
3 disability. You went off of disability and went back to
4 work in 1997, did you not?

5 A Somewhere around there, sir.

6 Q And you're not on disability now?

7 A No, sir.

8 Q And you haven't been on disability since 1997?

9 A No, sir.

10 Q And you're gainfully employed?

11 A Yes, sir.

12 Q Now, Mr. McGarr asked you about your -- about
13 reporting to a doctor something in March of 2007;
14 correct?

15 A (There was no response.)

16 Q And then he mentioned in your deposition that you
17 said something different?

18 A Yes, sir.

19 Q Do you remember him doing that?

20 A Yes, sir.

21 Q Were you trying to mislead the jury?

22 A No, sir.

23 Q Well, your deposition was taken -- you read it for
24 the jury. When was your deposition taken?

25 A It was taken on January 12th, 2024 [sic].

1 Q January 24th, 2012?

2 A Yes, sir.

3 Q All right, sir. And the record that Mr. McGarr
4 referred to was dated March of 2007, some five years ago;
5 is that correct?

6 A Yes, sir.

7 Q Do you remember everything that you tell every doctor
8 over a period of five, 10, or 15 years?

9 A No, sir.

10 Q Were you trying to mislead the jury at all with
11 regard to that, or Mr. McGarr for that matter?

12 A No, sir. I wouldn't do that, sir.

13 Q Now, Mr. McGarr went through Dr. Geary's notes and
14 implied that you never told Dr. Geary that you had
15 had surgery in 1985. Did you ever try to mislead
16 Dr. Geary?

17 MR. MCGARR: Your Honor --

18 THE WITNESS: No, sir --

19 THE COURT: Hold on just a second.

20 Mr. McGarr.

21 MR. MCGARR: Given the fact that this is redirect --
22 I didn't mind leading when we were doing direct, because I
23 wanted to move on. But I would like a little less
24 questions that suggest the answer on redirect.

25 THE COURT: Okay. Thank you.

1 BY MR. MOORHEAD:

2 Q All right. Well, let me just show you, the first
3 time you saw Dr. McHenry was in March of 2009. Do you
4 remember that?

5 A Yes, sir.

6 Q All right. Read the highlighted portions of that
7 document. It's his office note from March 11.

8 A It says, Lower back pain, one, has --

9 Q Just the highlighted part.

10 A Okay. He has postsurgical change of the left side
11 with a -- I don't know what that is.

12 Q Okay. Postsurgical changes of the left side.

13 A Yes, sir.

14 Q So on the first time that Dr. McHenry saw you
15 in March of 2009, he knew you had had previous
16 surgery.

17 A Yes, sir.

18 Q But you told him that, too.

19 A Yes, sir.

20 Q And, here again, he mentions it again on July the
21 6th; is that correct?

22 A Yes, sir.

23 Q And that's 2009.

24 A Yes, sir.

25 Q Now, let me ask you this. When Mr. McGarr pointed

666

1 out back in June of 2009 when you had your surgery
2 scheduled and then you didn't go through with it, do you
3 remember that discussion that y'all had?

4 A Yes, sir.

5 Q Did you discuss with your oncologist back during that
6 time about following up with him?

7 A Yes.

8 Q Okay. And this is -- let me show you Dr. McHenry's
9 note of June the 8th, 2009. It's the same date that
10 Mr. McGarr mentioned. Would you read that for me, please,
11 and for the jury?

12 A I can't read that. I can't read it that well. I
13 just know the first couple of words.

14 MR. MOORHEAD: I'd like to enter this as an exhibit.

15 MR. MCGARR: I'd have to object, Your Honor. You
16 know the rules.

17 THE COURT: Sustained.

18 MR. MOORHEAD: Does this go into evidence?

19 THE COURT: I sustained his objection.

20 MR. MOORHEAD: I didn't understand the basis for the
21 objection, because he didn't state it.

22 THE COURT: Y'all come up here.

23 (WHEREUPON, a bench conference was held.)

24 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked for
25 identification only.)

1 BY MR. MOORHEAD:

2 Q I'm going to -- since you're having trouble
3 reading --

4 A Yes, sir.

5 Q -- I'm going to read it for you with the Court's
6 permission.

7 A Yes, sir.

8 Q And this is reading from the progress note of
9 Dr. McHenry, June the 8th of 2009. And it says, We
10 discussed options going forward at this point, including
11 proceeding with the surgery as scheduled versus deferring
12 this because he is concerned about arranging for his
13 follow-up with his oncologist next week. He would like to
14 defer the surgery at this time and proceed with further
15 evaluation by his oncologist.

16 MR. MOORHEAD: Your Honor, we may -- I want to
17 proceed with some additional medical records on some of
18 the issues that Mr. McGarr raised. But we're not going to
19 be able to agree, so we might ought to have a sidebar.

20 THE COURT: Okay. Sure.

21 MR. MCGARR: Can you give me just a moment?

22 THE COURT: Sure.

23 MR. MCGARR: I have not seen these records before.
24 So it might be helpful for me to get a quick --

25 MR. MOORHEAD: You have copies of all these records.

668

1 I just gave you a condensed replication.

2 MR. MCGARR: I have all of these records. I'm just
3 having to go through these, specifically. Just bear with
4 me for just a moment.

5 (Pause.)

6 MR. MOORHEAD: I'm going to -- with permission of
7 counsel and the Judge, I'm going to publish to try to
8 shortcut --

9 MR. MCGARR: No, no --

10 THE COURT: Hold on, Mr. Moorhead.

11 I guess let me talk to y'all up here real quick.

12 (WHEREUPON, a bench conference was held.)

13 BY MR. MOORHEAD:

14 Q Reverend Dawkins, this is an EMS report. What is the
15 date in the upper right-hand corner?

16 MR. MCGARR: No, no --

17 MR. MOORHEAD: I just want to get a time frame so --
18 just the date.

19 MR. MCGARR: What I was going to say is you don't
20 have to do that, if you don't want to.

21 MR. MOORHEAD: In other words, I can just read it to
22 the jury?

23 THE COURT: Yes. That's fine.

24 MR. MCGARR: Yes.

25 MR. MOORHEAD: I just want to get that corner. This

1 is an EMS report from the scene of the accident dated
2 September the 24th, 2008. The second page of it, Patient
3 immobile, stabilized with LBB and collar. Patient laid on
4 LBB and secured with spine straps, head with head blocks
5 and tape. History of present complaint.

6 And this is the emergency room record on the same
7 date as the automobile collision. Patient was restrained
8 driver in MVA, motor vehicle accident. When the light
9 turned green, patient advanced into intersection.
10 Opposing car ran red light and hit patient's car.

11 And then on the next page, surgical history.
12 Laminectomy over 15 to 20 years ago. Chief complaint,
13 involved in a motor vehicle crash. Occurred onset
14 symptoms reported as -- well, it says -- pardon me.
15 Immobilization in place. Patient arrived on backboard.
16 Occurred onset of symptoms reported as sudden just prior
17 to the presentation location neck pain moderate, back pain
18 moderate, extremity injury shoulder.

19 And then this is the St. Francis note from the ER.
20 Presents today complaining of pain to left shoulder and
21 left side of neck. Physical examination, severely
22 restricted ROM, range of motion, of left shoulder.

23 MR. MCGARR: 1/12/2009.

24 MR. MOORHEAD: 11/12/2009. These are Dr. Geary's
25 notes from various dates and times Dr. McHenry treated

1 him. And here is -- well, here is one from the Carolina
2 Center of Advanced Pain, office procedure, nerve root
3 block January 12, 2009.

4 This is Dr. Geary's note from December 18th of 2008,
5 left shoulder injury, low back pain.

6 February 18, 2009, back and shoulder pain. And a
7 referral to Dr. McHenry, follow-up with Dr. McHenry.

8 That's all I have, Your Honor.

9 THE COURT: Thank you.

10 Recross.

11 MR. MCGARR: None, Your Honor.

12 THE COURT: All right. Thank you.

13 Sir, you may step down.

14 THE WITNESS: Thank you, sir.

15 THE COURT: You may call your next witness,
16 Mr. Moorhead.

17 MR. MOORHEAD: I would call Delphine Dawkins.

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

20 WHEREUPON,

21 DELPHINE DAWKINS,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: State your name, please.

24 THE WITNESS: Delphine Dawkins.

25 THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. MOORHEAD:

Q You are the wife of Reverend Dawkins?

A Yes, sir.

Q And you are, in fact, also, a Reverend in that church?

A Yes, sir.

Q And you live with Reverend Dawkins?

A Yes, sir.

Q You see him every day?

A Every day.

Q Let me start out on this insurance issue. Do y'all have any health insurance?

A No, sir, not unless it's free.

Q Did you have it last year?

A No, sir.

Q Did you have it the year before?

A No, sir.

Q Did you have it in 2010?

A No, sir.

Q And do you know why it was discontinued?

A Absolutely.

Q Would you tell the jury?

A It was too expensive. We was paying almost \$700 dollars a month for the insurance. We couldn't afford it.

672

1 Q Now, just starting with the neck and just from what
2 you observed as a layperson, not a doctor. Because we
3 know you're not a medical doctor.

4 Tell the jury what you've observed about your
5 husband's condition with regard to his neck now as
6 compared to what it was before this automobile collision.

7 A Well, before the collision, he had -- he didn't have
8 any neck issues. But since the accident, he have [sic]
9 issues. He's waking up in the night. He's holding his
10 neck. He's talking about how painful it is. He's having
11 problems sleeping on one side because of it. And it has
12 increased even from the day of the accident, even since
13 then, it's been more severe. Not because I feel it
14 physically, but because I see the facial expressions. I
15 sleep with him. I'm with him every day.

16 Q And tell us about the left shoulder.

17 A He can't sleep facing me any more in the bed because
18 of his left shoulder. He may sleep five minutes or a few
19 minutes. And then he has to turn over because the pain is
20 too severe. And, as I said before, he don't [sic] even
21 know he's groaning in the night. I hear it because I'm
22 there with him.

23 Q And tell us about the low back. I want you to tell
24 the jury about the low back before the automobile
25 collision. We all know he had low back problems.

1 A Right.

2 Q And surgery beforehand. Tell the jury what about
3 that you've observed now --

4 A Okay.

5 Q -- in his condition now, as compared to the way it
6 was before this automobile collision.

7 A Okay. My husband was very active, playing tennis,
8 basketball. He was just into all the sports. I'm not
9 into any of them, but he was. He played tennis regularly.
10 I didn't play because I couldn't beat him.

11 But since he's had the accident, he doesn't play at
12 all. He had back issues before. He hasn't denied that,
13 not one time. He had back surgery before a long time ago.
14 He hasn't denied that, not one time. So I don't know why
15 that's a big deal.

16 But the problem is the issues he have [sic] now is
17 nothing like he had before. When we at church, he has to
18 leave sometimes because his back is hurting. If he's
19 sitting, he has to get somebody to take him home. He's
20 had to have people walk him out laterally on their arms.
21 He's had problems, like I said, sleeping on one side.
22 He's had problems sometimes when he -- we used to walk
23 together every morning at 6:00 a.m. If he didn't want to
24 walk, we walked anyway. But, now, he can't walk.

25 So I know the pain has intensified to a degree that I

1 can't even imagine. I wouldn't want to imagine. The only
2 thing I know is the pain is so great that we don't walk
3 anymore. He doesn't play tennis anymore. The closest he
4 gets to tennis is watching Serena and whatever her name is
5 on TV. He doesn't play basketball anymore. He doesn't do
6 hardly anything. So a lot of stuff that I do, I do by
7 myself now.

8 Q So you don't -- y'all don't walk anymore?

9 A No, sir.

10 Q And that's one of the things that you used to like to
11 do?

12 A I'm sorry. Yes, sir.

13 MR. MOORHEAD: That's all I have.

14 THE COURT: Cross-examination, Mr. McGarr.

15 CROSS-EXAMINATION

16 BY MR. MCGARR:

17 Q Reverend Dawkins, would you agree that your husband
18 filled out a document on 11/12 of '08, where he's listing
19 you as his immediate family?

20 A That's right.

21 Q But he's, also, indicating that you guys weren't
22 living together at the time?

23 A And your point?

24 Q Is that what the document says, ma'am?

25 A What is your point?

675

1 Q Ma'am, this is not --

2 A I don't see where --

3 Q The question is, did he list on 11/12/08 that you
4 weren't even living with him at the time?

5 A I see 758 Cool Creek Drive.

6 And what's your point?

7 Q Okay. We can do that -- go in that direction, if you
8 want to.

9 A No problem. I can see --

10 Q And you're a minister?

11 A Yes, sir.

12 And your point?

13 Q Looking at this document, did your husband sign on
14 11/12 of 2008, that the immediate family member was his
15 spouse, Delphine Dawkins, that's you; is that correct?

16 A That is me.

17 Q And he said with regards to lives with me, he circled
18 no; is that correct?

19 A Okay. Yes.

20 And what was the date on that?

21 Q 11/12/08.

22 A Okay.

23 Q Is that correct?

24 A Yes.

25 MR. MCGARR: No further questions.

676

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MR. MOORHEAD:

4 Q Do you want to explain that?

5 A Yes, sir, I do.

6 Q Okay.

7 A When me and my husband got married in April, we
8 didn't have enough money to move into the same house. So
9 we got married and we stayed in separate residences. So I
10 don't understand what that have [sic] to do with anything.

11 Q Did you stay under the same roof?

12 A We stayed under the same roof at night --

13 Q Okay.

14 A -- sometimes. And sometimes I go back home.

15 Q All right. And when did that situation change?

16 A I can't remember. We may have stayed separate for
17 about a year.

18 MR. MOORHEAD: All right. Thank you.

19 THE WITNESS: Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. MCGARR:

22 Q I apologize. You said that you had separate
23 residences and it was because of what?

24 A Were you not listening, sir?

25 Q I'm half deaf. Ma'am, this is not rude time, this is

1 question time.

2 A Exactly.

3 Q Okay. And my question was, what was the reason for
4 the two different --

5 A Because we were living in two separate households,
6 sir.

7 Q I know you were. But why was that?

8 A Because that's what happened at the time.

9 Q No. But you told Mr. Moorhead --

10 A Yeah. But I'm not talking to Mr. Moorhead.

11 MR. MCGARR: Because I don't know what she said and
12 she's not going to answer my question, could the court
13 reporter, please, tell me what her response was?

14 THE COURT: Why don't you just ask your question
15 again, and maybe I can turn the microphone up and that
16 will help.

17 BY MR. MCGARR:

18 Q Now, I -- my understanding is that you told
19 Mr. Moorhead -- and I heard you tell Mr. Moorhead we were
20 living in separate places at the time. I could not hear
21 what you said when you said the reason we were was because
22 of?

23 A Because my address was 758 Cool Creek Drive and his
24 address was not.

25 Q That doesn't explain why you were living in a

1 separate address. You told him something else that had
2 nothing to do with two different addresses.

3 A But that's my answer.

4 MR. MCGARR: Your Honor, may we have the jury -- I
5 can't -- I did not hear her and she's not going to answer
6 my question.

7 THE WITNESS: I did answer your question, sir.

8 THE COURT: I don't --

9 MR. MCGARR: I'll try it one more time.

10 BY MR. MCGARR:

11 Q I understand you had two different addresses.

12 A Okay.

13 Q I understand you had two different places.

14 A Okay.

15 Q I understand you were living in two different places.

16 A Okay.

17 Q I did not hear why you were living in those two
18 different places. Could you, please, tell me what that
19 was?

20 A Are you married, sir?

21 THE COURT: No, ma'am. Ma'am, you need to answer his
22 questions.

23 THE WITNESS: Yes, sir.

24 I was living at Cool Creek Drive, because that was my
25 residence.

679

1 BY MR. MCGARR:

2 Q Okay. And he had a separate residence?

3 A Yes. I told you that.

4 Q But what was the reason that you guys lived in the
5 two separate residences?

6 MR. MOORHEAD: I object to relevance. I mean, they
7 were living separate. It doesn't matter why they were
8 doing it.

9 THE COURT: Overruled.

10 THE WITNESS: Why we were living separate?

11 BY MR. MCGARR:

12 Q Yes, ma'am.

13 A Because we were recently married, and we were already
14 living those places.

15 Q Did you say something about not having enough money
16 to do something?

17 A I may have. I don't remember.

18 Q So you did say you didn't have enough money to move
19 to combine households; is that correct?

20 A I may have.

21 Q So that's what she said?

22 A I may have.

23 MR. MCGARR: No further questions.

24 MR. MOORHEAD: I have nothing further.

25 THE COURT: Okay, ma'am. Thank you.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Mr. Moorhead, you may call your next
3 witness.

4 MR. MOORHEAD: Your Honor, I do not have any more
5 witnesses.

6 THE COURT: The Plaintiff has completed their
7 presentation of evidence. We're going to take a short
8 recess and then we'll continue with the case. Don't talk
9 about the case. And continue to keep an open mind.

10 Thank you.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 3:19 p.m.)

13 MOTIONS

14 THE COURT: Any motions or matters at this time?

15 MR. MCGARR: I make a motion for a directed verdict
16 based upon the fact that there is no possible way for any
17 juror to conclude that the complaints this gentleman had
18 prior to the automobile accident versus the complaints
19 this gentleman had post to this automobile accident are in
20 any way, shape, or form different, or that this accident
21 caused any of these injuries.

22 I would, also, make a motion for summary judgment,
23 based upon the fact that the -- no, I don't need to do it
24 any further than that.

25 THE COURT: Okay. Thank you.

1 I respectfully deny the motion. I think it's a
2 matter of credibility. And I, certainly, can't weigh the
3 credibility. But I think there's sufficient evidence in
4 the record to survive a directed verdict motion.

5 Anything further before we bring in the jury?

6 MR. MCGARR: Your Honor, I'm going to put my witness
7 up. And he's going to take approximately five minutes.

8 THE COURT: Okay.

9 MR. MCGARR: And then, at that point, what -- and I'm
10 not going to put -- I've got another person that I could
11 put on the witness stand, but he's by videotape. I'm not
12 even going to do that, because I don't need to.

13 THE COURT: Okay.

14 MR. MCGARR: So that's going to be the conclusion of
15 our case.

16 Tell us what you would like to do.

17 THE COURT: All right. Well, I don't know. Assuming
18 the cross-examination doesn't take too long with your
19 client, we'll just go right into the closing arguments.

20 MR. MCGARR: In that case, could we take about a
21 10-minute break?

22 THE COURT: Sure.

23 MR. MCGARR: And that way we can just roll and we'll
24 go my client, closing arguments, and get it to the jury.

25 THE COURT: Do you all want to look at the verdict

1 form?

2 MR. MCGARR: I've seen so many of yours, I don't need
3 to. I know I won't object -- oh, verdict form. You said
4 verdict form?

5 THE COURT: Yes.

6 MR. MCGARR: I thought you said jury charge.

7 THE COURT: It's the verdict form.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Anything else before we bring the jury
10 back in?

11 (WHEREUPON, there was no response.)

12 THE COURT: Okay. You can bring them on in.
13 Thank you.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:38 p.m.)

16 THE COURT: Ladies and gentlemen, you've heard all
17 the evidence the Plaintiff is going to produce and present
18 at this time. And, now, it is the opportunity for the
19 Defendant to introduce any evidence he wishes to.

20 So, yes, sir, Mr. McGarr.

21 MR. MCGARR: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. MCGARR: May it please the Court.

24 We call Troy Dawkins, Jr. -- I mean Troy Watts, Jr.

25 THE CLERK: Place your left hand on the Bible and

683

1 raise your right hand.

2 WHEREUPON,

3 TROY WATTS, JR.,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: State your name, please.

6 THE WITNESS: Troy Watts.

7 THE CLERK: Thank you.

8 Please be seated.

9 DIRECT EXAMINATION

10 BY MR. MCGARR:

11 Q Troy, technically -- and just to make sure the jury
12 can hear you. Technically, you need to give the Clerk
13 your full name, please.

14 A Troy Watts, Jr.

15 Q Okay. You don't have to talk quite that loud, but
16 that's good.

17 Tell the jury, first and foremost, why you have,
18 essentially, the same clothing on today that you had on
19 yesterday.

20 A Because I was supposed to go home yesterday, but I --
21 because I had a job I was supposed to attend. But the
22 temporary agency called me and told me I wasn't needed.
23 So I stayed for the case today.

24 Q When will you go back to do that orientation session?

25 A Sometime next week.

1 Q So why are you wearing the same clothes?

2 A (There was no response.)

3 Q In other words, did you expect that you would only be
4 here one day?

5 A Yes.

6 Q I'm going to take you back in time for a little bit.
7 Okay. At the time of this accident, were you living in
8 this area?

9 A Yes.

10 Q And what were you doing in this area?

11 A I was attending school.

12 Q Which one?

13 A Greenville Tech.

14 Q And since that time, have you gone -- have you moved
15 to some other place?

16 A Yes. I stay in Florida now.

17 Q Where in Florida?

18 A Daytona Beach.

19 Q And are you down there with your wife?

20 A Yes, my girlfriend.

21 Q I mean girlfriend. And is this her mom?

22 A Yes.

23 Q Just to clear something up. Did you cause this
24 accident?

25 A Yes.

1 Q What happened as this accident took place? When you
2 were coming through the intersection, what color was your
3 light?

4 A It was yellow.

5 Q And when -- before you cleared the intersection, did
6 it appear as your light had probably turned red?

7 A Yes.

8 Q And would you agree since we've discussed this that
9 if your light turned red and Reverend Dawkins's light
10 turned green, he had the right to come out into that
11 intersection?

12 A Yes.

13 Q And so whose fault was this accident?

14 A Mine.

15 Q And have we conceded that from the moment you got
16 sued and we had to file our response?

17 A Yes.

18 Q After this accident took place, did you get out of
19 your car and have any discussions with Reverend Dawkins?

20 A Yes.

21 Q Tell the jury what happened.

22 A When it first happened, I had me and another young
23 lady in the car with me. She was the one -- well, at
24 first, I got out of the car -- before I checked on her, I
25 got out of the car to check on him. And when I spoke with

1 him, he said everything was fine. And he said he was
2 okay.

3 Then I ran back over to check on her. Well, she
4 like -- she wasn't moving at the time. Her head was still
5 on the dashboard. So I focused all my attention upon her.
6 And when I looked over there at him, he was on the phone.
7 He was calling someone, one of his family members.

8 And then every -- I guess I didn't think nothing of
9 it. But then as the police and everyone started showing
10 up, one of his family members was there with him, if I
11 remember correctly. And that's when I think he couldn't
12 talk anymore. And I think he was just holding his -- he
13 may have been holding his back or his ribs. And he just
14 couldn't move.

15 Q But before that family member conversation and he was
16 talking to you, what did he tell you about his physical
17 condition?

18 A He told me he was fine.

19 Q Were you injured as a result of this accident?

20 A No, sir.

21 Q And, again, you're not arguing about who caused this
22 accident?

23 A No, sir.

24 Q Particularly since you and I have discussed that you
25 can't go through a yellow light late enough for it to turn

1 red?

2 A Yes, sir.

3 Q Your argument is whether this gentleman was injured
4 as a result of this accident?

5 A Yes, sir.

6 MR. MCGARR: No further questions.

7 CROSS-EXAMINATION

8 BY MR. MOORHEAD:

9 Q What kind of car were you driving?

10 A A Buick.

11 Q What year?

12 A I don't remember.

13 Q What color?

14 A It was like a turquoise blue.

15 Q Do you remember when I took your deposition on the
16 19th day of March of last year?

17 A Yes, sir.

18 Q You couldn't remember the color then, could you?

19 A No, sir.

20 Q All right, sir. But it's come to you since then?

21 A Yes.

22 Q Okay. Do you remember who you bought it from?

23 A No, sir.

24 Q Do you remember who you sold it to?

25 A No, sir -- well, yes, sir, I do. I bought it from a

1 guy in Easley, I want to say.

2 Q What's his name?

3 A And I never sold it to him.

4 Q What's his name?

5 A I don't remember.

6 Q And did you live in Easley?

7 A No, sir.

8 Q How much damage -- was damage was done to your car?

9 A My car was totalled.

10 Q So it was a pretty good impact?

11 A From my car. I had an old car. He was driving a new
12 car.

13 Q But, I mean, in terms of the force of the impact, it
14 was pretty good?

15 A Well, I'm not going to say it was totalled. The hood
16 was messed up and the bumper was messed up.

17 Q Okay. Now, did you tell the officer anything?

18 A (Witness shook head.)

19 Q Is that a "no"?

20 A No, sir, I didn't.

21 Q Okay. Did you have the opportunity to tell the
22 officer anything you wanted to?

23 A Yes, sir.

24 Q And you just didn't speak to him?

25 A No. I felt there was no need.

689

1 Q You what?

2 A I said I felt there was no need.

3 Q Okay. Did the officer give you an opportunity to
4 talk to him?

5 A Yes, sir.

6 Q Okay. And I want to recap this. Do you remember
7 telling me you lived in Easley for a while?

8 A Yes, sir.

9 Q Okay. And how long did you live in Easley?

10 A I don't remember.

11 Q How long did you live in Greenville?

12 A Like three to four years.

13 Q And where did you live before that?

14 A In Easley.

15 Q Where did you live before Easley?

16 A I'm thinking Greenville.

17 Q Greenville. All right.

18 A Well, I was living with someone before then. I
19 didn't have my own place.

20 Q Well, let me recap this. You don't know -- other
21 than the fact that you were driving a Buick, you don't
22 remember anything about the car, what color it was?

23 A No. I said I think it was turquoise.

24 Q What year it was?

25 A Yeah.

690

1 Q You don't know how long you lived in Easley, but you
2 lived in Easley?

3 A Yeah.

4 Q And you didn't tell the police officer anything at
5 all?

6 A No. I don't remember speaking with the police
7 officer.

8 Q All right. And there are a lot of things you don't
9 remember about the accident; is that a fair statement?

10 A Yeah. I didn't take the accident serious.

11 Q All right. Well, you can't remember what car you
12 were driving, and you can't remember these other things,
13 but you can remember a specific conversation with Reverend
14 Dawkins?

15 A That's dealing with someone's health, I took that
16 serious.

17 Q Excuse me.

18 A That's dealing with someone's life. I took that
19 serious. The accident, I didn't even have a chance to
20 talk to Mr. McGarr before I got papers in the mail.

21 Q All right. Did you -- but you don't have any medical
22 training?

23 A No.

24 Q All right. Now, at the beginning of this case,
25 Mr. McGarr said that this was Troy's day in court, is

1 that -- was he referring to you?

2 A Yes, sir.

3 Q And he referred to you as his client?

4 A Yes, sir.

5 MR. MCGARR: Let me approach, Your Honor.

6 THE COURT: You all just come on up here.

7 (WHEREUPON, a bench conference was held.)

8 MR. MOORHEAD: I think we better chat one more time.

9 THE COURT: Yes, sir. No problem.

10 (WHEREUPON, a bench conference was held.)

11 MR. MOORHEAD: That's all I have.

12 THE COURT: Redirect?

13 MR. MCGARR: None, Your Honor.

14 THE COURT: All right. Thank you, sir.

15 You may step down.

16 You may call your next witness.

17 MR. MCGARR: Your Honor, in the interest of time,
18 we're not going to call anymore. So that would be the
19 Defendant's case.

20 THE COURT: Are you prepared to go into closing
21 arguments?

22 MR. MCGARR: The Defendant is, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MOORHEAD: Do you want me to go ahead?

25 THE COURT: Yes. You can go ahead and open.

692

CLOSING ARGUMENTS

1
2 MR. MOORHEAD: All right. Ladies and gentlemen of
3 the jury, I appreciate your attention for these two long
4 days, and the time that you've put in doing your duty as
5 jurors.

6 Remember at the beginning of the case, the Judge said
7 that what the lawyer says is not evidence in the case.
8 And that's true with me. It's, also, true with
9 Mr. McGarr. Mr. McGarr chose not to call a single doctor
10 who's created these records and ask them a question about
11 what kind of presentation there was, what was the duration
12 of the pain, how frequently was the pain, were these
13 specific diagnoses put in the electronic database, and
14 just repeated, and repeated, and repeated, and repeated,
15 and repeated because nobody took them out.

16 And that's particularly true of the people that were
17 treating Reverend Dawkins for hypertension, high blood
18 pressure, and gout. They get in there and they just never
19 come out. It doesn't mean that Reverend Dawkins went to
20 them every time that he went for gout in the knee, or the
21 ankle, or for hypertension and say, oh, by the way, my
22 back is hurting.

23 He was seeing Dr. McHenry the entire time during that
24 period of time. He wasn't seeing a urologist for his
25 spine problem. He wasn't seeing a cardiologist for his

693

1 spine problem. He was not seeing a family practitioner
2 for his spine problem, or his left shoulder, for that
3 matter. He was seeing Dr. McHenry. And before that,
4 Dr. Geary, who are both orthopedic surgeons, doctors of
5 the muscles, bones and joints, not a urologist, who
6 handles urinary tract infections, and may handle erectile
7 dysfunction, or something similar. They don't treat
8 spines. You're not going to go to somebody with a problem
9 like that and say, oh, by the way, I want you to check my
10 back out.

11 And there wasn't a single statement about any real
12 examination of his back by anybody, or his neck, or his
13 shoulder by anybody, other than Dr. Geary or Dr. McHenry,
14 the bone specialists. And, you know, Mr. McGarr's
15 interpretation of the medical records and his repeating it
16 over, and over, and over, and over, sometimes the same
17 document three and four times, you know, that's kind of
18 like the -- what I call the pasta defense. If you throw
19 enough pasta up on the wall, some of it is going to stick.
20 And that's what he wants you to do.

21 Now, we have admitted from the get-go of this case
22 that Reverend Dawkins had back problems that were serious
23 enough that he had to have surgery 30 years ago. And he
24 did have surgery. And he admitted the problems he had
25 with the case.

1 Now, he injured his back in this automobile accident.
2 It's clear from the very beginning when he got to the ER,
3 he was having neck problems, low back problems, and left
4 shoulder problems. I read that just moments ago. And I
5 ask you to consider that because this just didn't all
6 develop.

7 And you're not going to fool an orthopedic surgeon
8 who sees you time, and time, and time again. And the only
9 doctor to testify in this case is somebody that's been
10 seeing the Reverend for going on four years now. And not
11 a single other doctor was called, not the urologist, not
12 the cardiologist, not the family practitioner, not even
13 the physical therapy fellow, who's not a doctor, but
14 another healthcare provider.

15 So I ask that when you go back to the jury room and
16 think about that, the only doctor to testify in this case
17 said, yes, we knew about his previous back surgery. And
18 the records show that they knew about it from the first
19 time they saw him. And, yes, he had problems with that,
20 but he does need back surgery. He's had one back surgery.

21 And it's interesting. Because all that time from the
22 time he was released from the orthopedic surgeon back in
23 the mid '80s, until he was seen by Dr. Geary, which would
24 have been 23 years later, not one time was any record
25 produced where he ever went to an orthopedic surgeon. He

695

1 just dealt with his pain until he really needed to go.
2 And not one time up until the time he had this automobile
3 accident did anybody suggest that he needed to have back
4 surgery.

5 Now, he had back problems and he went on going. And
6 they would come and they would go. And he would get an
7 injection and get his back looked at before he had this
8 wreck. But after this wreck, it made it worse.
9 Dr. McHenry said that. And that's true not only in the
10 symptomology that Dr. McHenry talked about, but Reverend
11 Dawkins's wife. And the fact that after 20 years, he
12 never had to have surgery until this automobile
13 accident -- automobile collision.

14 In regard to the neck, there was never any indication
15 with problems with the neck. Now, he has a herniated disk
16 and he needs to have surgery. That's Dr. McHenry saying
17 that. That's not Don Moorhead saying that. He was up on
18 the screen. He was sworn under oath to testify. I'm not
19 reading a record and interpreting it for you folks.
20 That's Dr. McHenry. And I ask that you, please, consider
21 that. Please consider that he was not the only doctor to
22 testify but, also, he interpreted his records. He
23 interpreted with his experience and his training what was
24 going on with Reverend Dawkins, and what he needed within
25 a reasonable degree of medical certainty.

1 You know, I don't know about this thing about
2 insurance. There is no health insurance. And if there
3 were health insurance and they would have paid anything,
4 they get their money back. And there is no -- the issue
5 about insurance or the reluctance -- alleged reluctance to
6 get the surgery, Reverend Dawkins put off the surgery, the
7 only one that was scheduled.

8 And all those records that Mr. McGarr mentioned about
9 June of 2009, well, he was -- he had been seeing an
10 oncologist and he needed to go back to him, so he didn't
11 do that. And he hasn't had any insurance much since then
12 at all. He didn't have it last year. He doesn't have it
13 now. He didn't have it in 2011. He didn't have it in
14 2010.

15 So we're just asking -- we really and truly are just
16 asking for the medical treatment expense that this
17 gentleman needs. And those numbers are up there. It's
18 what he spent, which is \$21,000, and what it's going to
19 cost to get the two surgeries, which is about 223. He's
20 had a lot of pain because of this. And he's going to have
21 a lot more. But between his faith and his family, he can
22 deal with that.

23 Now, you can award that if you want to. But I'm here
24 to tell you that we're just really looking for his medical
25 bills. If you feel it's appropriate to award anything for

1 pain and suffering, that's within your purview. If you
2 feel it's worth rewarding money for loss of enjoyment of
3 life for both of these people, you know, that's up to you.
4 But what we're really asking for is just the hard number
5 medical bill expenses, what's been spent so far, over
6 \$21,000, and what he needs now -- what his doctor says he
7 needs now. And that's all we're asking.

8 Thank you very much for your attention.

9 And all we want is a true and fair verdict.

10 Thank you.

11 THE COURT: Thank you, Mr. Moorhead.

12 Yes, sir, Mr. McGarr.

13 MR. MCGARR: This is going to be super short. And
14 I'm, actually, going to deal with the witnesses going
15 backwards.

16 Let's begin with Troy. Troy comes in the courtroom
17 facing hundreds and hundreds of thousands of dollars of
18 potential problems. Yesterday, he was freaking out
19 wondering if he's going to not have a job, and still in
20 the same clothes.

21 He tells you that he caused the accident and he
22 doesn't need to talk to the police officer. He caused the
23 accident. He caused the accident. He doesn't know the
24 year of his car, or who he bought it from. If I bought a
25 car from somebody and -- I recently bought a car. And I

1 can't tell you the name of the dealership I bought it
2 from, because it is irrelevant. What is relevant is what
3 Troy told you. The accident was an accident and, in his
4 mind, not a significant issue. And it was his fault. So
5 that's not a significant issue. Someone's life, on the
6 other hand, is.

7 And so what he does remember or what he cares about,
8 not whether he lived in Easley when he was in college one
9 year, or whether he live in Greenville when he was in
10 college one year, was how are you doing, Reverend Dawkins.
11 Because that's something we all care about. And Reverend
12 Dawkins said he was just fine, until he got on the phone
13 with family members. And then he was no longer fine. And
14 the ball started rolling.

15 Next, I'm going to call her Ms. Reverend Dawkins.
16 She has sued Troy for loss of consortium, meaning I've
17 lost all these things I could do with my spouse -- that I
18 could do with my spouse before. And she gets on the
19 witness stand and -- well, before even that, she tells you
20 that she knows all these things about her spouse. And,
21 yet, for months, and months, and months after this
22 automobile accident, they were living in separate places.

23 And then she has the audacity to tell you, as a
24 Reverend, that the reason -- and she wouldn't answer my
25 question. But I got it confirmed that she said the reason

1 they lived in separate residences was because it was
2 cheaper to do so. I don't know about you guys, but it's a
3 whole lot cheaper to split rent in one place than it is to
4 pay for two. Do I need to bring in experts and pay money
5 to offend your intelligence so you can understand
6 something that simple? No. I would have offended you if
7 I had, and the case would have gone along. If you're
8 living in two separate residences, you're not observing
9 what she said she observed.

10 Her losses were so severe that she started crying
11 while discussing them. A few boys among us try not to
12 cry, but you don't start crying and shut it off that fast.
13 And the ladies among us that cry don't shut them off that
14 fast. Within a matter of no more than three seconds, we
15 go from someone who is crying in front of you to simply
16 being someone who is a Reverend, who was the rudest, most
17 difficult witness I've encountered in my, unfortunately,
18 now long career. We're not here for a show. This is not
19 Broadway. This is a place to discover the truth. And you
20 won't even answer my questions. And when you did, you
21 went from crying to simply one of the most hateful souls
22 I've ever encountered on the witness stand.

23 So what I just said is absolutely ugly. Because I
24 just said that Reverend Dawkins -- or Ms. Reverend Dawkins
25 gave you crocodile tears, didn't I? Well, let me give you

1 more evidence as to why that's probably the case. You
2 see, she said that her husband could play basketball and
3 tennis. Remember the records a few months earlier where
4 he said in his own words, I have trouble sitting for any
5 length of time. I have trouble with intimate
6 relationships, and I can't really go to events to speak
7 of. How can somebody in that situation play basketball or
8 tennis? This is not Broadway. This is a courtroom where
9 you're supposed to bring truth here.

10 Cases are in part what you see, but they're, also,
11 what you cannot see. What you heard is that the reason
12 that he couldn't have surgery was because they didn't have
13 the money to accomplish the goal. You heard it under oath
14 from the Reverend. Then you find out that he has Blue
15 Cross Blue Shield insurance and \$10,000 available for that
16 surgery.

17 Here is where it becomes interesting. If he did not
18 have health insurance -- they're not denying he had the
19 10K. But if he had not had health insurance and
20 you're coming in this courtroom and you're coming in
21 saying I'm having all this distress and so forth. And
22 you'll hear an element of damages is emotional distress.

23 Then what you should see given the fact that he is
24 constantly -- not just before the accident, but after the
25 accident at some doctor's office, at least, with regard to

1 the bills after the accident, you should see creditor
2 letters in evidence and as exhibits this tall. They're
3 easy, free, and cheap. And they come to you by regular
4 mail. I have a case where that's exactly what I'm going
5 to be doing. Because my client's credit is ruined because
6 we can't get the bills paid. And I'm going to have them
7 stacked up that tall --

8 MR. MOORHEAD: Your Honor, this case is about this
9 case. It's not about whatever other cases he may have.

10 THE COURT: Sustained.

11 Stay within the record, please.

12 MR. MCGARR: The record will not show you one past
13 due bill. Why? They've been paid, because he had
14 insurance and he had 10K to pay anything that didn't cover
15 it. It's what you bring in court and what you don't bring
16 in court.

17 As I told you to begin with, think about the money
18 they've spent on their expert witnesses. And they bring
19 an expert witness out of North Carolina to tell you that
20 this couple is going to need about a quarter of a million
21 dollars to pay for surgery that didn't take place because
22 they didn't have health insurance, but needs to take place
23 sometime in the future.

24 It didn't take place when they had the health
25 insurance in 2008. It didn't take place when they must

1 have had health insurance in 2009. It hasn't taken place
2 in 2010. It hasn't taken place in 2011. It hasn't taken
3 place in 2012, and no plans for 2013. That surgery will
4 never take place. And it's what I told you when the case
5 began. You just want 200 and, roughly, 50K or a quarter
6 million dollars because, folks, if you give me a quarter
7 of a million dollars, my life is a whole lot easier. If
8 you are in such excruciating pain and your spouse is
9 crying because of it, you would have that surgery.

10 Ms. Cates, I believe it was, has an Associate's
11 Degree, and then a BA degree, and then is an expert in the
12 field of doing what she did. And when I asked her the
13 simple question, which is, wasn't this all designed to go
14 to the jury and ask the jury to make Troy pay it? I don't
15 understand your question. I don't understand your
16 question. I don't understand your question. A sixth
17 grader would know what this is designed for.

18 Did you notice that when there was mention of
19 deferring the surgery because of an oncology issue, did
20 they ever mention only deferring it because there's not
21 enough money and we can't pay for it? Nope. Did you ever
22 notice that even with the oncology issue when they were
23 doing the records and he had to go get that pre-clearance
24 that the lady was talking about, they had cleared him for
25 the surgeries, fully and completely cleared him for the

1 surgeries? And he did not have it.

2 Now, if you're capable of doing this -- and telling
3 you, under oath, we couldn't because we didn't have the
4 funds or the ability, why would you not be capable of
5 running up these for problems that you had always had so
6 that you can get another 21,000 bucks? The ball started
7 rolling when this became almost the equivalent of a train
8 wreck. Does that look like a train wreck to you?

9 But the best is this -- and we'll never know. But
10 how about his doctor, Dr. McHenry? He can't pay for
11 surgery. Because that fellow I could have brought in and
12 it would have cost a fortune. And why did I need to? You
13 people have common sense.

14 In fact, why did I need to bring in anybody that cost
15 a fortune when most of the words that were coming out of
16 people's mouths were coming from the Plaintiffs? My back
17 doesn't hurt. My neck doesn't hurt. My back has hurt
18 forever. I've had this, that, and so forth. I don't need
19 to go hire people to bring them in to do that. The rules
20 allow me to do it the way I did. And do we look like the
21 Rockefellers? But they hired one.

22 And I could have brought in records from the
23 president of the emergency room society, the orthopedic
24 doctor's society, the neurosurgical society, the physical
25 therapy society, and general practitioner's society. And

1 they could have said, hey, on this particular date,
2 Reverend Dawkins didn't complain of neck problems or low
3 back problems. Or, on this particular date, Reverend
4 Dawkins was checked with regard to his neck and his low
5 back, and it was fine. Or, on this particular date, we
6 were checking him and it, actually, appeared if he was
7 faking.

8 And that doctor could have said, excuse me, but, no
9 offense, I'm the genius here and that fool doesn't know
10 what he's talking about. Because he was paid to say,
11 regardless of what happens, this gentleman needs the
12 surgery and the accident caused it. How do we know that?
13 Because he started his deposition late. I didn't schedule
14 it. He's not my client -- he's not my witness. And he's
15 getting frustrated that this little short guy is giving
16 him records of his colleagues that contradict what he's
17 been paid to testify to.

18 So he tells you, I've got patients out there and this
19 was supposed to last X, Y, Z amount of time. What he's
20 really saying is, Mr. McGarr, shut up and don't give me
21 another document, because it's making it difficult for me
22 to pull this off. He was ugly, too, wasn't he?

23 Why do we know that he, basically, went right off the
24 range? Folks, if me falling on my bottom cannot hurt a
25 back that is already in trouble -- and that's what he

1 said, nope, a twisted ankle like that, that's not going to
2 cause a problem -- do I need to bring in an expert for you
3 guys to recognize that that is bunk? You're directly
4 landing on your back, and body, and somewhere.

5 You, just like I, can vote for politicians and pray
6 they'll do the right thing. Most of the time, it doesn't
7 work. But, today, you are the politician, and the judge,
8 and the individuals that will decide what will be allowed
9 in the community that we live in, at least, which I found
10 out is a battle I'm trying to control. You can't really
11 do that. It can control me. But you are the judges of
12 the believability and credibility of the witnesses.

13 Now, I suspect some of you are going, McGarr kept
14 going through records, and records, and records, and
15 records, and records. Yes. Do you know why? Because my
16 job is to give you the ability to see what these people
17 have to say and how they have to say it. Because if I
18 didn't do that job, how are you going to do yours to
19 determine the credibility and believability of those
20 particular witnesses?

21 It's not spaghetti on the wall. It's me giving you
22 the ability to do the job you're sworn to do. Do you
23 think I really thought I would go to law school to have to
24 deal with the things I've seen today? No. It's not fun.
25 I hate it when I have to do it. And if you'll notice,

1 there were occasions when I was frustrated. But, at
2 least, you have the knowledge and the information to make
3 your decisions today.

4 You have to be fair to Reverend Dawkins. You were
5 sworn to do that. And you have to be fair to Troy Watts,
6 because you were sworn to do that. And you have to be
7 fair to your community, because that's who you can
8 control. Do you want a community where this turns into
9 multi hundreds of thousands of dollars in claims?

10 Your verdict, whatever it may be, will be heard
11 throughout the county within no less than two weeks. It
12 won't be the first newspaper report. But it's out there.
13 And you need to decide what sort of community you live in.
14 And do we reward this, or do we punish it?

15 You will receive a verdict form. And had I not heard
16 from Troy from day one -- and you've got to remember, Troy
17 couldn't get to me until he was sued -- or we didn't
18 discuss it until he was sued. But, initially, everybody
19 was fine. But after a telephone call, everybody was bad.
20 Then we hear, essentially, a quarter million dollars of
21 money in the future to pay for surgery because we didn't
22 have insurance and money, when we did.

23 Then, under those circumstances, you can conclude
24 that a fair verdict is this was just made up. And if you
25 do so, it is perfectly fair to all parties to say we, the

1 jury, with regard to Reverend Dawkins find for the
2 Defendant. And it would still be fair to all parties
3 under the circumstances of this case to say we, the jury,
4 find for the Defendant with regard to Ms. Dawkins. And
5 maybe, just maybe you'll see less of us up here in the
6 future.

7 I thank you.

8 THE COURT: Mr. Moorhead.

9 MR. MOORHEAD: Ladies and gentlemen of the jury,
10 Mr. McGarr has stood up here and said that everybody
11 involved in this case on the Plaintiffs side is dishonest,
12 everyone one of them, me included, I guess. Ms. Cates was
13 dishonest, according to Mr. McGarr, that Dr. McHenry was
14 dishonest, and that he was mean because he didn't --
15 because he was tired of putting up with repeatedly hearing
16 the same thing two and three times with Mr. McGarr.
17 That's just the way it was in this courtroom for the last
18 two days. Reverend Dawkins is dishonest, and his wife is
19 dishonest. Everybody on this side is dishonest.

20 But somebody who couldn't remember what kind of car
21 he was in, who claims that the officer never spoke to him,
22 and he never spoke to the officer at a wreck
23 scene, who doesn't know when he lived where, but he
24 remembers that conversation that he had with Reverend
25 Dawkins, who was just fine.

1 Well, you are the judges of the evidence. And I'm --
2 and the Court is going to leave it with you to make the
3 determinations. You make the determinations whether
4 Dr. McHenry was a liar, whether I'm a liar, the Dawkins
5 are liars, and Penny Cates is a liar. I submit to you
6 that's not the case. Mr. Dawkins would have you believe
7 that this is all contrived. Well, you know, when a
8 gentleman has no preexisting -- let's just take the neck,
9 no preexisting neck problems. He's never been seen for
10 that. And a board-certified orthopedic surgeon diagnoses
11 him and documents the herniated disc and documents the
12 knee for the surgery, that's not contrived.

13 One thing I would -- well, now, in -- as part of, I
14 guess, Ms. Broadway [sic] has been here because part of
15 Mr. McGarr's theatrics, he indicated that they have
16 collection bills stacked up like that. That's what he
17 said. And, you know, he could have subpoenaed the billing
18 records and the billing records clerk, who knows about who
19 paid what, had he wanted to do that. And he didn't do
20 that.

21 He could have subpoenaed the Blue Cross Blue Shield
22 records to establish when it started and when it stopped,
23 but he didn't do that. And the reason that he didn't do
24 that is because he didn't want you to know. He wanted to
25 sow this seed and let it grow back there in the jury room.

1 And I submit to you it's as simple as typing out a
2 piece of paper and putting a 46-cent stamp on it and
3 dropping it in the mailbox. That's how simple it is to
4 get all the records either from the insurance company,
5 Blue Cross Blue Shield, or the doctors offices. He didn't
6 spend 46 cents and five minutes to have the subpoena typed
7 out and put that information in front of you. Because he
8 didn't want you to know.

9 He only wants you to know what his interpretation of
10 the evidence is. And he only wants you to think that
11 everybody on this side of the table is totally dishonest.
12 That's what he wants you to think. Well, I leave that to
13 you. Y'all have been sitting here for two days listening
14 to the witnesses and listening to the presentations. I
15 leave it with you. And all we want is something that's
16 fair.

17 Now, Mr. McGarr disparaged my bringing in an expert.
18 Well, it's the ethical and legal obligation of any lawyer
19 where something is at issue to make it understandable to
20 the jury what the issues are and how we arrived at it.
21 Otherwise, you're just plucking something out of the air.
22 I had the obligation to get an expert to make it
23 understandable and comprehensive, if I'm representing my
24 client. There's nothing contrived about that. Mr. McGarr
25 could have done the same thing, but he chose not to. And,

1 perhaps, that's because he doesn't want you to know.

2 On my final note, Mr. McGarr talked about your
3 verdict is going to resonate through the county. And he
4 submitted that as a way of convincing you to award less
5 money. Well, the kind of county that I live in, we all
6 live in is the kind of county where what's just and fair
7 is what ought to be done. Don't not worry about some --
8 if there is a number that, oh, what are they going to
9 think about us? What kind of signal is that going to
10 send? What is just and fair is what's just and fair. And
11 that is all we have wanted from the time we set foot in
12 this courtroom. And with that, I will leave it with you.

13 And thank you again.

14 THE COURT: All right. Thank you, Mr. Moorhead.

15 We're going to take about a five-minute break. And
16 then we'll have the instruction on the law. We'll let
17 everybody stretch their legs. Don't talk about the case.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 4:33 p.m.)

20 THE COURT: All right. Judge Hood is, actually,
21 going to deliver the charge. If there are any specific
22 instructions y'all want, you can take it up with him and
23 I'm going to --

24 MR. MOORHEAD: Yes, sir, I do.

25 We've already discussed the collateral source issue.

1 And we've already discussed the actuary -- the mortality
2 table. I had a couple other things, you know, aggravation
3 of a preexisting condition, obviously, comes up with the
4 low back.

5 And I have a couple of other damages charges, which
6 come out of Judge Anderson's book, which I'm -- but what I
7 did was since we have no claim for economic -- wage loss
8 or loss of earning capacity, I want to be sure that that's
9 not included in the charge. Because I don't want -- you
10 know, we're not claiming that and never have claimed that.

11 There you go, Judge.

12 THE COURT: Are you all right?

13 MR. MOORHEAD: Yeah.

14 I've got a bad ankle and every once in a while, it
15 gets me.

16 THE COURT: I think the substance of everything you
17 submitted, Mr. Moorhead, is already in the charge. It may
18 not be word for word. But I'll be glad to make these an
19 exhibit, if you want to.

20 MR. MOORHEAD: All right, sir. I guess I'm supposed
21 to make on the record my motions to protect for a directed
22 verdict.

23 THE COURT: Yes, sir.

24 MR. MOORHEAD: I want that noted on the record.

25 THE COURT: Yes, sir.

1 Motions were made at the appropriate time and
2 respectfully denied.

3 And we'll make your charges a Court's exhibit, but I
4 think they're already covered. If you -- of course, if
5 you, after the charge is delivered, have objections, you
6 can do whatever you need to do at that point.

7 MR. MOORHEAD: Okay.

8 (WHEREUPON, Court's Exhibit No. 2 was marked for
9 identification and admitted into evidence.)

10 THE COURT: Do you have anything you want,
11 specifically, Mr. McGarr?

12 MR. MCGARR: I have an objection to a Richland County
13 judge giving a -- no, Your Honor, I don't have any
14 objection to that.

15 (WHEREUPON, a break was taken.)

16 (WHEREUPON, the following proceedings were held
17 before the Honorable Robert E. Hood.)

18 THE COURT: So we're back on the record. And it's my
19 understanding, gentleman, that Plaintiff's Exhibit No. 3
20 has been redacted and it's admitted without objection.

21 Is that correct?

22 MR. MCGARR: That would be correct, Your Honor.

23 THE COURT: Is that your understanding, Mr. Moorhead?

24 MR. MOORHEAD: It is.

25 THE COURT: Wonderful.

1 (WHEREUPON, Plaintiff's Exhibit No. 3 was admitted into
2 evidence.)

3 THE COURT: Let's be in recess for about four or five
4 minutes.

5 If you gentlemen will make sure all the exhibits are
6 together and in order so they can go back to the jury,
7 that would be great.

8 MR. MCGARR: Now, Defendant's Exhibit No. 4 does not
9 go in evidence?

10 THE COURT: Defendant's Exhibit No. 4 is not in?

11 MR. MCGARR: Am I correct?

12 I mean, Plaintiff's Exhibit No. 4 does not go into
13 evidence?

14 THE COURT: Correct.

15 Plaintiff's Exhibit Nos. 1 through 3, and Defendant's
16 Exhibit Nos. 1 through 6 is what my records show.

17 MR. MCGARR: I've reviewed them and they appear to be
18 fine.

19 THE COURT: Is that your understanding, Mr. Moorhead?

20 MR. MOORHEAD: It is.

21 THE COURT: Great. Thank you.

22 We will stand in recess for about four or five
23 minutes.

24 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
25 identification and admitted into evidence.)

1 (WHEREUPON, a break was taken.)

2 THE COURT: Is everybody ready to bring the jury in?

3 (WHEREUPON, there was no response.)

4 (WHEREUPON, the jury came into open court at
5 approximately 4:48 p.m.)

6 CHARGE ON THE LAW

7 THE COURT: Good afternoon. I know it's the end of
8 the day, and I know the hour is approaching 5:00. This
9 case is very important, though. And I want to take some
10 time to instruct you on the law. It's going to take me a
11 while. So I want to say thank you in advance for your
12 attention to this. Sometimes, going through jury
13 instructions can be rather lengthy and rather tedious, but
14 it's important that you know and understand the law in
15 this case.

16 Members of the jury, now that you've heard all the
17 evidence and the arguments of the lawyers, it is my duty
18 to instruct you on the law as it applies to this case.
19 These instructions will be in three parts. First, the
20 instructions on general rules that define and control the
21 jury's duties. Second, the instructions that state the
22 rules of law you must follow. For example, what the
23 Plaintiff must prove to make his or her case. And, third,
24 some rules for your deliberations.

25 It is your duty to find the facts from all the

1 evidence in this case. To those facts, you must apply the
2 law as I give it to you. You must follow the law as I
3 give it to you. You shall not be concerned with what the
4 law should be, but what the law is. And you must not be
5 influenced by any personal likes or dislikes, opinions,
6 prejudices, or undue sympathy. That means that you must
7 decide the case solely on the evidence before you and
8 according to the law. You will recall that you took an
9 oath promising to do just that at the beginning of this
10 trial.

11 In following my instructions, you must follow all of
12 them and not single out some and ignore others. They are
13 all equally important. And you must not read into these
14 instructions or anything I may have said or done any
15 suggestion as to what verdict you should return. That is
16 a matter entirely for you to decide. Because under our
17 Constitution, I'm not allowed to have an opinion as to the
18 facts of this case. You and you alone are the judges of
19 what the facts are. You decide what the facts are by
20 evaluating or weighing the evidence you have heard during
21 this trial.

22 Now, there is no way for you to weigh evidence in the
23 literal sense. I can't give you a set of scales. It is
24 entirely a mental process. And you weigh and evaluate the
25 evidence by simply using your good common sense and sound

1 judgment.

2 The burden of proof. At the beginning of this case,
3 I told you that the Plaintiff has the burden of proving
4 his or her case by the greater weight of the evidence.
5 That means that the Plaintiff must produce evidence which,
6 when considered in light of all the facts, leads you to
7 believe that what he or she claims is more likely true
8 than not. To put it differently, if you were to put each
9 Plaintiffs and Defendant's evidence on opposite sides of
10 the scales, the Plaintiff would have to make the scales
11 tip slightly on his or her side.

12 In order to receive a verdict, the greater weight of
13 the evidence must be on the Plaintiffs side. If a
14 Plaintiff fails to meet this burden, the burden must be
15 for the Defendant. What you must do is mentally weigh the
16 evidence and mentally place it on the scales and see which
17 side's evidence has the greater weight in your mind.

18 Those of you who have sat on a criminal case will
19 have heard the term proof beyond a reasonable doubt. This
20 is a stricter standard, meaning it requires more proof
21 than the greater weight of the evidence. The reasonable
22 doubt standard does not apply to a civil case, and you
23 should put it out of your mind.

24 The evidence. The evidence from which you are to
25 decide what the facts are consists of the sworn testimony

1 of the witnesses both on direct and cross-examination,
2 regardless of who called the witness, and the exhibits
3 that have been received into evidence and any facts to
4 which all the lawyers have agreed or stipulated, or that I
5 instruct you to find.

6 What is not evidence? Certain things are not
7 evidence and you may not consider them in deciding what
8 the facts are. Number one, arguments and statements by
9 lawyers are not evidence. The lawyers are not witnesses.
10 What they have said in their opening statements, closing
11 arguments, and at other times is intended to help you
12 interpret the evidence, but it is not evidence.

13 If the facts as you remember them differ from the way
14 the lawyers have stated them, your memory controls.
15 Questions and objections by lawyers are not evidence.
16 Attorneys have a duty to their clients to object when they
17 believe a question is improper under the rules of
18 evidence. You should not be influenced by the objection
19 or by the Court's ruling on that objection.

20 Testimony that has been excluded or stricken, or that
21 you have been instructed to disregard is not evidence and
22 must not be considered. In addition, if testimony or
23 exhibits have been received for a limited purpose, you
24 must follow the limited instructions that I have given.
25 Anything you may have seen or heard when the Court was not

1 in session is not evidence. You are to decide the case
2 solely on the evidence received during the trial.

3 There are two types of evidence which are, generally,
4 presented during a trial, direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who asserts or claims to have actual and
7 direct knowledge of a fact, such as an eyewitness.

8 Circumstantial evidence is indirect evidence, or put
9 another way, circumstantial evidence is proof of a chain
10 of facts and circumstances from which you could find
11 another fact exists, even though it has not been proven
12 directly.

13 The law makes absolutely no distinction between the
14 weight or value to be given to either direct or
15 circumstantial evidence. You are entitled to consider
16 both kinds of evidence. Nor is a greater degree of
17 certainty required of circumstantial evidence that you
18 have heard in the case in the light of reason, common
19 sense, and experience. It is for you to decide whether a
20 fact has been proven by direct or circumstantial evidence.
21 In making that decision, you must consider all the
22 evidence in light of reason, common sense, and experience.

23 In deciding what the facts are, you must consider all
24 the evidence. In doing this, you must decide which
25 testimony to believe and which testimony not to believe.

1 You may disbelieve all or part of any witnesses testimony.
2 You may believe all of it in making that decision. You
3 may take into account a number of factors, including the
4 following: Was the witness able to see, or hear, or know
5 the things about which the witness testified? How well
6 was the witness able to recall and describe those things?
7 What was the witnesses manner while testifying? Is there
8 some reason a witness would want to give testimony that
9 would help or hurt one side or the other? Did the witness
10 have an interest in the outcome of this case or any bias
11 or prejudice concerning any party or any matter involved
12 in the case? How reasonable was the witnesses testimony
13 considered in light of all the evidence in the case? Was
14 the witnesses testimony contradicted by what the
15 witness -- by what that witness had said or done at
16 another time, or by the testimony of other witnesses, or
17 by other evidence? These are some factors that you may
18 consider in deciding whether to believe testimony.

19 And, of course, you did not check your common sense
20 at the door of the courthouse when you reported for jury
21 duty. So you can and you should, also, take into account
22 the things that in your day-to-day experiences you find
23 indicative of truthfulness.

24 In deciding credibility or believability, you may
25 believe as much or as little of each witnesses testimony

1 as you think proper. You may believe all, or part, or
2 none of a witnesses testimony. Or you may believe one
3 witness over several, or several over one. Most
4 certainly, though, you do not determine this matter of
5 credibility by counting up the number of witnesses who may
6 have testified on behalf of the parties in this case.
7 Because your sole objective is to find the truth. And it
8 does not matter to you whether that truth comes from a
9 witness for the Plaintiff or a witness for the Defendant.

10 You have, also, heard testimony from persons
11 described as experts. Persons who by education and
12 experience have become an expert in some field, they may
13 state their opinion on matters in that field and may,
14 also, state their reasons for that opinion. Expert
15 testimony should be judged just as other testimony. You
16 may accept it or reject it, and give it as much weight as
17 you think it deserves considering the witnesses education
18 and experience, the reasoning given for the opinion, and
19 all other evidence in the case.

20 During the trial, testimony was presented to you
21 through a deposition. A deposition is the sworn recorded
22 answers to questions asked of a witness in advance of the
23 trial. Under some circumstances, if a witness cannot be
24 present to testify from the witness stand, that witnesses
25 testimony may be presented under oath in the form of a

1 deposition. Deposition testimony is entitled to the same
2 consideration, and is to be weighed and otherwise
3 considered by you insofar as possible in the same way as
4 if the witness had been present and had testified from the
5 witness stand in court.

6 I will now turn to the second part of my instructions
7 and explain to you how the rules of law apply in this
8 case. The Plaintiff claims that the Defendant was
9 negligent and should suffer -- and should compensate the
10 Plaintiff for the injuries the Plaintiff has suffered as a
11 result of the Defendant's negligence.

12 To prove that the Defendant was negligent, the
13 Plaintiff, typically, must prove by the greater weight of
14 the evidence three things. First, the Plaintiff must
15 prove that the Defendant breached a duty of care to the
16 Plaintiff by a negligent act or omission. Second, the
17 Plaintiff must prove that he was injured or damaged.
18 Third and finally, the Plaintiff must prove that the
19 injuries or damages were proximately caused by the
20 Defendant's breach of duty. I will define the term
21 proximate cause to you more fully in just a moment. But
22 those are the three elements of negligence.

23 In this case, the parties agree that as to the first
24 element, whether Mr. Watts breached a duty of care owed to
25 the Plaintiffs by committing a negligent act has been

1 established. So you, the jury, only need to decide
2 whether, number one, the Plaintiffs have proven they were
3 injured and, number two, whether there were injuries --
4 whether their injuries were proximately caused by the
5 Defendant Watts' negligence. As I have said, the
6 Plaintiff has the burden of proving her [sic] case by the
7 greater weight of the evidence.

8 So what do we mean when we say the greater weight of
9 the evidence? It is evidence that as a whole shows that
10 the fact sought to be proved is more likely true than not
11 true. Proximate cause is defined by the law as something
12 that produces a natural chain of events that in the end
13 brings about the injury. It is the direct cause of the
14 injury. To prove that the Defendant's negligence
15 proximately caused the Plaintiff's injury, the Plaintiff
16 must first prove causation in fact. This is proven by
17 showing that the injury would not have occurred but for
18 the Defendant's negligence.

19 The Plaintiff must, also, prove something called
20 legal cause. Legal cause is proven by showing that the
21 injury was foreseeable. This means that the injury
22 occurred as a natural and probable consequence of the
23 Defendant's negligence.

24 The Plaintiff must prove that some injury from the
25 Defendant's negligence was foreseeable, but does not have

1 to prove that the particular injury that occurred was
2 foreseeable. As I have said, the Defendant may be held
3 liable for anything that appears to have been a natural
4 and probable consequence of his negligence. However, the
5 Defendant cannot be held responsible for things which
6 could not be reasonably expected to happen.

7 Now, where the cause of a Plaintiff's injury can
8 reasonably be attributed to an act for which the Defendant
9 is not responsible -- to an act she is responsible, then
10 the Plaintiff has failed to carry his or her burden of
11 establishing that his or her injuries were the proximate
12 result of the Defendant's negligence. However, proximate
13 cause does not mean the sole or only cause. A Defendant's
14 act can be the proximate cause of the Plaintiff's injury
15 if it was, at least, one of the direct concurring causes
16 of the injury.

17 Actual damages. If you decide that the Plaintiffs
18 are entitled to a verdict, your next step would be to
19 decide how much money the Defendant should be required to
20 pay. When one person is injured by the negligent acts of
21 another, the injured person is entitled to be fully
22 compensated for all injuries directly or proximately
23 resulting from any negligent acts or omissions by the
24 Defendant.

25 The purpose of actual damages is to compensate the

1 Plaintiff for the Plaintiff's injuries or loss, and to put
2 the Plaintiff as near as possible in the same position
3 that the Plaintiff was in before the incident occurred.
4 In other words, actual damages would be the actual losses
5 and expenses which the Plaintiff has suffered because of
6 the Defendant's negligence.

7 Actual damages for a Plaintiff who has been
8 physically injured include reasonable and necessary
9 medical expenses, pain and suffering, mental anguish, and
10 loss of enjoyment of life. In determining the amount of
11 compensation for personal injuries, it is proper to
12 consider past, present, and future aspects of the injury.
13 The injured party may recover for those future damages
14 that are reasonably sure to result from the injuries.

15 The principle underlying compensation for future
16 damages is that only one action can be brought. And,
17 therefore, only one recovery had. It is proper to include
18 in the estimate of future damages future medical expenses
19 and pain and suffering, which will with reasonable
20 certainty result. Future damages must be reduced to their
21 present cash value.

22 Reasonable medical expenses. The general rule is
23 that the Plaintiff may recover for the necessary and
24 reasonable expenses caused by the injury, such as amounts
25 necessarily incurred, medicine, medical services, hospital

1 expense and care, and nursing. A person who suffers
2 personal injuries because of the negligence of another is
3 entitled to recover the reasonable value of medical care
4 and expenses incurred for the treatment of the injuries
5 until the time of trial, as well as the cost of those
6 reasonably certain to be incurred in the future.

7 Accordingly, a Plaintiff may recover amounts incurred
8 for past and future medical care, including hospital,
9 physician, nursing care costs, medicine, and other
10 out-of-pocket and anticipated expenses such as vocational,
11 physical, and other rehabilitation efforts. Recovery for
12 medical expenses is controlled by what services rendered
13 were reasonably worth and not by what was, actually, paid
14 or contracted to be paid. The Plaintiff must prove that
15 the expenses caused by the injury were necessary and
16 reasonable.

17 Pain and suffering. Pain and suffering compensates
18 the Plaintiff for physical discomfort and emotional
19 response to the sensation of pain caused by the injury
20 itself.

21 Mental suffering. Mental suffering, apprehension,
22 shock, fright, emotional upset, humiliation, and anxiety
23 either present or expected in the future can be properly
24 considered as an element of damages. Mental suffering
25 covers not only the pain associated with the injury, but,

1 also, the mental reaction to that pain and to the possible
2 consequences of the injury.

3 Loss of enjoyment of life. Loss of the capacity to
4 enjoy life resulting from a personal injury is a proper
5 element of damages. If you find evidence of loss of
6 enjoyment of life, you may award damages for this loss.

7 Damages for loss of enjoyment of life compensate for
8 the limitations resulting from the Defendant's negligence
9 on the injured person's ability to participate in and
10 derive pleasure from the normal activities of daily life,
11 or for the individual's inability to pursue his talents,
12 recreational interests, hobbies, or vocations --
13 advocations, excuse me. Loss of enjoyment of life damages
14 compensate for the subjective knowledge that no one can no
15 longer enjoy all of life's pursuits, but, also, for the
16 objective loss of the ability to engage in these
17 activities.

18 Now, these elements of damages that the law
19 recognizes, pain and suffering, mental anguish, and loss
20 of enjoyment of life, they don't have a price tag attached
21 to them. They have no market price. They are not capable
22 of exact measurement, and there is no yardstick or precise
23 standard whereby damages for them can be measured.

24 The amount of damages to be awarded for these forms
25 of damages, if any, is left to the judgment of you, the

1 jury. You must apply the cardinal principle of evidence
2 that says the compensation must be equal to the loss or
3 the injury. And you must decide what amount is just and
4 reasonable, according to your view of the evidence, should
5 you decide that the Plaintiff has proven he is entitled to
6 damages.

7 Life expectancy table. Permanent injury. If you
8 find that the Plaintiff was permanently injured as a
9 result of the Defendant's actions, you must then decide
10 how, if at all, that injury will affect the rest of the
11 Plaintiff's life.

12 A person's life expectancy is determined by a life
13 expectancy table, which is part of the laws of this state.
14 The life expectancy table is only an estimate of the
15 probable average remaining length of life of all persons
16 in our state at a given age. The Plaintiff is a
17 62-year-old male with a life expectancy, according to the
18 life expectancy table, of 19.06 years. This fact is to be
19 considered by you, along with any other facts and
20 circumstances in evidence, bearing on the Plaintiff's life
21 expectancy, including occupation, habits, and health at
22 the time of the injury in deciding the amount of damages
23 to be awarded to the Plaintiff.

24 Preexisting injury. The Defendant claims that the
25 Plaintiff had a preexisting injury or condition prior to

1 the date that the Plaintiff claims that the Defendant
2 injured him. If you find that the Plaintiff received an
3 injury as a result of the negligence of the Defendant, and
4 is entitled to recover for that injury, the fact that the
5 Plaintiff had a preexisting injury or condition would not
6 prevent the Plaintiff from recovering.

7 The Defendant is responsible for all ill effects,
8 which considering the Plaintiff's condition of health when
9 the Plaintiff was injured naturally and necessarily follow
10 the injury. The Defendant takes the Plaintiff as the
11 Plaintiff is found, whether the Plaintiff is in perfect
12 health, in poor health, or somewhere in between.

13 A Defendant's liability is in no way lessened or
14 affected because of the fact that the injury would not
15 have resulted or would not have been as serious or severe
16 had the Plaintiff been in good health, or that the
17 injuries were aggravated and rendered more difficult by
18 reason of the fact that the Plaintiff was in good health.
19 In other words, if the presence of a preexisting injury or
20 condition aggravates or prolongs the injury and increases
21 the damages, the Plaintiff should be compensated for the
22 increased or added damages.

23 A person with a preexisting injury or condition is
24 not, however, entitled to any compensation for the
25 preexisting injury or condition. In addition, if the

1 problems are the result of the natural progression of the
2 worsening of a preexisting injury or condition, then the
3 Plaintiff would not be entitled to be compensated for
4 those problems.

5 Duty to mitigate damages. A party who has suffered
6 injury or damage from the actionable conduct of another is
7 under a duty to make all reasonable efforts to minimize
8 the damages incurred. When the Plaintiff is injured or
9 damaged by the wrongful act of another person, it is the
10 duty of the Plaintiff to make reasonable efforts to try to
11 minimize and lessen the damages. To the extent that he
12 reasonably could have so minimized those damages and
13 failed to do so, he is not entitled to recover from the
14 other party.

15 In other words, one cannot recover any damages that
16 might have been avoided by the use of reasonable care and
17 due diligence. The efforts required by the Plaintiff to
18 minimize his damages must be determined by the rules of
19 common sense and fair dealing, and what a person of
20 ordinary reason and prudence would do under the same
21 circumstances.

22 The Plaintiff is not required to use unreasonable
23 efforts or great expense to avoid and lessen damages. The
24 Defendant has the burden of proving a failure to lessen
25 damages on the part of the Plaintiff by the greater weight

1 of the evidence. If you find that the Plaintiff failed to
2 do this, the Plaintiff may recover damages for the
3 injuries themselves, but not damages for the aggravation
4 of the vires.

5 The Plaintiff bears the burden of proving by the
6 greater weight of the evidence that he is entitled to
7 compensatory damages. The existence, causation, or amount
8 of damages cannot be left to guesswork or speculation.
9 However, proof of the amount of loss with absolute or
10 mathematical certainty is not required. Damages must be
11 proven with a reasonable degree of certainty. The
12 evidence presented by the Plaintiff must enable you, the
13 jury, to determine what amount is fair, just, and
14 reasonable.

15 Loss of consortium. The Plaintiff claims a loss of
16 consortium because of the injuries received by her spouse.
17 The companionship and society of a spouse are not articles
18 of commerce which can be weighed and measured or bought or
19 sold. No expert is competent to testify to their value.
20 The consideration on which they are given is not monetary.
21 But the Plaintiff is entitled to compensation and money
22 for their loss.

23 The amount of that compensation is to be determined
24 by you, not from evidence of value, but from your own
25 observation, experience, and knowledge conscientiously

1 applied to facts and circumstances of the case. The
2 Plaintiff is entitled to recover the value of those
3 services of her spouse which were lost, including the loss
4 of her spouse's society and companionship in the home.
5 The Plaintiff is, also, entitled to recover for any
6 expenses incurred for the care and treatment of her spouse
7 because of an illness or bodily harm suffered by the
8 spouse, and for any medical expense which the Plaintiff
9 has incurred.

10 The collateral source rule. Under the collateral
11 source rule, if an injured Plaintiff receives compensation
12 for his injuries from a source wholly independent of the
13 Defendant, the payment should not be deducted from the
14 damages which he would otherwise collect from the
15 Defendant. A Defendant is not entitled to have the
16 damages for which the Defendant is liable reduced by
17 proving the Plaintiff has received or will receive
18 compensation for the loss from a collateral source wholly
19 independent of the Defendant.

20 A Defendant may not benefit from the fact that the
21 Plaintiff has received money from other sources as a
22 result of the Defendant's wrongful conduct. The law does
23 not allow a wrongdoer to receive the benefit of such a
24 windfall.

25 The only requirement for qualification as a

1 collateral source is that the source be wholly independent
2 of the wrongdoer. A source is wholly independent of the
3 wrongdoer when the wrongdoer has not contributed to it,
4 and when the payments to the injured party were not made
5 on behalf of the wrongdoer. A Defendant cannot take
6 advantage of payments or services rendered by a collateral
7 source for the Plaintiff's benefit irrespective of whether
8 the source is an insurance company, an employer, a family
9 member, or other source.

10 A negligent Defendant is not entitled to enjoy the
11 fruits of fortuitous circumstances, employer generosity,
12 or diligent effort on the part of the injured Plaintiff.
13 The fact that a Plaintiff received proceeds from insurance
14 policies or welfare and pension benefits will not be taken
15 into account in computing damages. So if you find that
16 payments were made by a collateral source, you may not use
17 these payments to reduce or limit the damages to the
18 Plaintiff.

19 The third and final part of the jury charge. These
20 are some instructions for your deliberations. You don't
21 serve as jurors to be partisans or advocates for either
22 side. You were chosen because both sides believed you
23 could be fair and impartial and decide the case solely on
24 the evidence without bias or prejudice.

25 That means you are supposed to use your experiences

1 in life, your good common sense, and your sense of logic
2 and reason. You bring those to bear on what you have
3 heard in this courtroom. And once you do that, you will
4 be able to determine the truth of this case. Once you
5 have decided the truth, you take it and apply the law that
6 I have just given to you. And when you have done that,
7 you will be able to reach a verdict that speaks the truth
8 about this case.

9 Let me say something about your deliberations.
10 Deliberation is defined as careful consideration weighing
11 up with a view to a decision. The genius of our jury
12 system is that it allows 12 good men and women from 12
13 different backgrounds, life experiences, and experience to
14 consider the evidence, talk about it, and, ultimately,
15 reach a verdict. We call them deliberations for a reason.
16 You are to consider the evidence in this case carefully
17 and deliberately, and discuss it in a calm, thorough, and
18 courteous manner.

19 Remember, you are not partisans or advocates for
20 either side favoring one side over the other. You are
21 judges, judges of the facts. Your sole interest is to
22 find the truth from the evidence you have heard in this
23 courtroom. Listen to the views of all of your fellow
24 jurors. Consider other people's points and points of
25 view, and talk through and discuss the evidence. And,

1 publish the verdict.

2 VERDICT

3 THE CLERK: Your Honor, this is case number
4 2011-CP-23-4585, James L. Dawkins and Delphine Dawkins v.
5 Troy Lee Watts, Jr. Number one, we, the jury, by
6 unanimous consent find for the Defendant, Troy Lee Watts,
7 Jr. Number two, we, the jury, by unanimous consent find
8 zero dollars actual damages for Defendant, Troy Lee Watts,
9 Jr., signed Deborah Dunn, Foreperson, January 23, 2013.

10 If this is your verdict, so say you all, please,
11 signify by raising your right hand.

12 (WHEREUPON, all jurors raised their right hand.)

13 THE CLERK: Thank you.

14 THE COURT: Any motions from the attorneys before I
15 release the jurors?

16 MR. MOORHEAD: Any motions?

17 THE COURT: Yes, sir.

18 Do you want me to hold the jurors for your motions?

19 MR. MOORHEAD: I don't think that's necessary, Your
20 Honor, but that's your discretion.

21 THE COURT: Okay. Mr. McGarr, do you need me to hold
22 the jurors for any reason?

23 MR. MCGARR: I think we do.

24 THE COURT: Madam Forelady, and, ladies and
25 gentlemen, if you'll return to the jury room for just a

1 that.

2 MR. MOORHEAD: All right.

3 THE COURT: You can submit it to Judge Hill.

4 MR. MOORHEAD: Okay.

5 THE COURT: He was here throughout the entire thing.

6 And we can, of course, be in correspondence with each
7 other. I would submit it to Judge Hill's law clerk. And
8 if you want to CC my law clerk, that's just fine.

9 MR. MOORHEAD: Thank you so much.

10 THE COURT: Mr. McGarr.

11 MR. MCGARR: None, Your Honor.

12 THE COURT: Great.

13 Does anybody have anything further we need to
14 discuss?

15 MR. MOORHEAD: No. Thank you.

16 THE COURT: Thank you.

17 *****END OF TRANSCRIPT OF RECORD*****

18

19

20

21

22

23

24

25

Cervical Spine Surgery

<u>RECOMMENDATIONS</u>	<u>DURATION</u>	<u>FREQUENCY</u>	<u>CODE</u>	<u>PFR Total ZCM (90%ile)</u>	<u>FREQ</u>	<u>TOTAL</u>	<u>COST REFERENCE</u>
Visits, Orthopedic Spine Specialist Dr. Timothy McHenry	2013-2014	Allow 6 (one pre-op, 5 post-op)	99214	\$173.32	6	\$1,040	Physicians' Fee Reference (PFR)
Cervical discectomies /posterior laminoplasty Dr. McHenry - professional fee	2013-2014	Once	22100 63051	\$12,024.00	1	\$12,024	PFR
Visits, Orthopedic inpatient daily, Dr. Timothy McHenry	2013-2014	Allow 3	99218 99231 99217	\$459.89	1	\$460	PFR
Anesthesia Professional fee	2013-2014	Once	22100 63051	\$4,900.00	1	\$4,900	Greenville Anesthesiology, P.A.
Hospital facility fee	2013-2014	Once		\$80,273	1	\$80,273	AHRQ - HCUP
X-ray, Chest (pre-op clearance)	2013-2014	Once	71020	\$179.32	1	\$179	PFR
EKG, 12 Lead (pre-op clearance)	2013-2014	Once	93000	\$93.52	1	\$94	PFR
X-ray, Cervical spine	2013-2014	Allow 6, (one pre-op, 5 post-op)	72040	\$175.03	6	\$1,050	PFR

HHL
744

<u>RECOMMENDATIONS</u>	<u>DURATION</u>	<u>FREQUENCY</u>	<u>CODE</u>	<u>PFR Total ZCM (90%ile)</u>	<u>FREQ</u>	<u>TOTAL</u>	<u>COST REFERENCE</u>
Pre/Post-op labwork	2013-2014	One set pre-op, One set post-op	36415 85025 80053 81000 85210 85730 85652	\$1,141.14	1	\$1,141	PFR
Physical/occupational therapy evaluation	2013-2014	Once	97001 97003	\$184.47	1	\$184	PFR
Physical/occupational therapy sessions	2013-2014	Allow 10 sessions	97010 97110 x 2 97035	\$244.53	1	\$2,445	PFR
Analgesic (Oxycodone & Lortab)	2013-2014	Once		\$23.00	1	\$23	GoodRx.com
Medical mileage (0.235/mile)	2013-2014	Allowance		\$50.00	1	\$50	IRS.gov
Cervical collar customized	2013-2014	Allowance		\$350.00	1	\$350	HCPCS
Cervical Spine Surgery Total						\$104,213	

Mr. James Dawkins

745

Lumbar Spine Surgery

<u>RECOMMENDATIONS</u>	<u>DURATION</u>	<u>FREQUENCY</u>	<u>CODE</u>	<u>PFR Total ZCM (90%ile)</u>	<u>FREQ</u>	<u>TOTAL</u>	<u>COST REFERENCE</u>
Visits, Orthopedic spine specialist Dr. Timothy McHenry	2013-2033	Allow 6 (1 pre-op, 5 post-op)	99214	\$173.32	6	\$1,040	Physicians' Fee Reference (PFR)
Lumbar Surgery L5-S1 Decompression & Fusion	2013-2033	Once	63047 22633 22840	\$23,904.74	1	\$23,905	PFR
Visits, Orthopedic inpatient daily, Dr. Timothy McHenry	2013-2033	4 Day stay	99218 99231 x 2 99217	\$571.43	1	\$571	PFR
Anesthesia Professional fee	2013-2033	Once	63047 22633 22840	\$4,500.00	1	\$4,500	Greenville Anesthesiology, P.A.
Hospital facility fee	2013-2033	4 Day Length of stay		\$82,440	1	\$82,440	AHRQ - HCUP
X-ray, Chest (pre-op clearance)	2013-2033	Once	71020	\$179.32	1	\$179	PFR
EKG, 12 Lead (pre-op clearance)	2013-2033	Once	93000	\$93.52	1	\$94	PFR
X-ray, Lumbar spine	2013-2033	Allow 6, (1 pre-op, 5 post-op)	72100	\$193.05	6	\$1,158	PFR

Mr. James Dawkins

746

<u>RECOMMENDATIONS</u>	<u>DURATION</u>	<u>FREQUENCY</u>	<u>CODE</u>	<u>PFR Total ZCM (90%ile)</u>	<u>FREQ</u>	<u>TOTAL</u>	<u>COST REFERENCE</u>
Pre/Post-op labwork	2013-2033	1 set pre-op, 1 set post-op	36415 85025 80053 81000 85210 85730 85652	\$1,141.14	1	\$1,141	PFR
Physical/Occupational Therapy Evaluation	2013-2033	Once	97001 97003	\$184.47	1	\$184	PFR
Physical/Occupational Therapy sessions	2013-2033	Allow 15 sessions	97010 97110 x 2 97035	\$244.53	15	\$3,668	PFR
Analgesic (Oxycodone & Lortab)	2013-2033	Once		\$23.00	1	\$23	GoodRx.com
Medical mileage (0.235/mile)	2013-2033	Allowance		\$50.00	1	\$50	IRS.gov
Thoracic lumbar sacral orthosis brace (TLSO) brace	2013-2033	Allowance		\$250.00	1	\$250	HCPCS
Lumbar Spine Surgery Total						\$119,203	

Cervical Spine Surgery: \$104,213
Lumbar Spine Surgery: \$119,203
\$223,416

Mr. Dawkins sustained spine injuries in 2008 during a motor vehicle accident. Dr. McHenry has recommended surgery to address pain/loss of function. These costs include physician/anesthesia/hospital charges as well as associated costs. Associated costs will likely include preoperative clearance (appointment, lab work, diagnostic studies), physician follow-up, postoperative diagnostic studies, postoperative lab work, medications, medical supplies for dressing changes, occupational therapy, physical therapy, and mileage reimbursement.)

Mr. James Dawkins

LH2

MEDICAL EXPENSE SUMMARY

- PAST MEDICAL EXPENSES \$21,680.61
- FUTURE MEDICAL EXPENSES \$223,416.00
 - Cervical Spine Surgery \$104,213
 - Lumbar Spine Surgery \$119,203
- TOTAL MEDICAL EXPENSES \$245,096.61

871
748

**MEDICAL EXPENSE SUMMARY
OF
JAMES L. DAWKINS**

9/24/08	Greenville County EMS		\$ 474.21
9/24/08	Greer Memorial Hospital		1,855.50
9/24/08 - 3/13/09	Greenville Radiology	Read X-Rays	852.00
9/27/08	St. Francis Women's Hospital		1,755.50
9/30/08 - 11/22/11	North Hills Medical Center		453.00
10/22/08	North Hills Medical Center	MRI-Shoulder	1,155.00
12/22/08	Greer Memorial Hospital	Radiology	4,160.00
1/12/09	Carolinas Center for Advanced Management of Pain	Nerve Root Block	1,270.00
3/13/09	Greer Memorial Hospital	MRI - C-Spine	4,484.40
11/12/08 - 9/9/09	Steadman Hawkins		1,964.00
11/19/08	Greenville Proaxis Therapy		1,398.00
3/11/09 - 1/15/13	Southeastern Neurosurgical		1,859.00

MEDICAL EXPENSES: \$ 21,680.61

TOTAL EXPENSES: **\$21,680.61**

749 bHL



7-GHS-UNIVERSITY MEDICAL GROUP
Ledgers

PAGE: 1

PRINTED: 09/14/2009 02:20PM

DAWKINS, JAMES LEWIS

M/R #227200

DOB: [REDACTED]

SEN: [REDACTED]

Registered on: 02/03/1997 By: DEYO

Last Updated: 03/13/2009 By: KSP02A

Current Statement balance: 66.14

Last Statement Run # 121 Balance: 34.61 Date: 08/17/2009 Run Level: 3 Cycle: 2

Account Status: STANDARD Date: 08/15/2005 Initials: IDX Statement Run #: 73

Open Cases: 0 Closed Cases: 0 Archived Cases: 1

Invoice	ADM/Via	Disch	Patient	MD	Loc	Hos	BA	Charges	FSC	Balance
8741505	11/12/2008		JAMES LEW S	GEA	SHC			SHCC 417.00	PPC	0.00
8814744	12/18/2008		JAMES LEW S	GEA	SHC			SHCC 212.00	PPC	0.00
8887832	01/07/2009		JAMES LEW S	GEA	SHC			SHCC 104.00	TAX	77.47
9017272	02/18/2009		JAMES LEW S	GEA	SHC			SHCC 262.00	TAX	87.31
9065953	03/11/2009		JAMES LEW T	MCH	SHC			SHCC 127.00	TAX	45.40
9101329	03/23/2009		JAMES LEW T	MCH	SHC			SHCC 104.00	NMR	15.49
9340066	06/08/2009		JAMES LEW T	MCH	SHC			SHCC 212.00	SAI	34.61
9467289	07/06/2009		JAMES LEW T	MCH	SHC			SHCC 222.00	SAI	31.53
9635962	09/09/2009		JAMES LEW T	MCH	SHC			SHCC 104.00	PPC	104.00
Total:								1964.00		395.81

Invoice	ADM/Via	Disch	Patient	MD	Loc	Hos	BA	Balance
8741505	11/12/2008		JAMES LEWIS S	GEARY	SHC		SHCC	0.00

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1)	11/21/2008	11/12/2008	99243 OFFICE CONSULT 40 MIN[25]	(1) RVU: 3.24	259.00	PPC	385785
Red Book [REDACTED]							
2)	11/21/2008	11/12/2008	20610 ARTHROCENTS ASPIR&/NJX MAJOR JT/BURSA[LT]	(1) RVU: 1.8	146.00	PPC	385785
3)	11/21/2008	11/12/2008	J1030 METHYLPREDNISOLONE 40 MG INJ	(1) RVU: 0	12.00	PPC	385785

715.11 OSTEOARTHRITIS LOCAL PRIM SHOULDER
 726.19 OTHER ROTATOR CUFF SYNDROMES
 724.2 LUMBAGO

Division: SPORTS MEDICINE

Ref Phys: 2661

Invoice FSC List: 73.1

750



7-GHG-UNIVERSITY MEDICAL GROUP

Ledgers

PAGE: 2

PRINTED: 09/14/2009 02:20PM

>> Invoice	ADM/Vis	Disch	Patient	MD	Loc	Hos	BA	Balance
8814744	12/18/2008		JAMES LEWIS GEARY	SHC			SHCC	0.00

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch	
1)	12/18/2008	12/18/2008	99213 OFFICE OUTPT EST15 MIN (1) RVU: 1.62		104.00	PPC	390828	
73								
2)	12/18/2008	12/18/2008	72100 RADEXSPI LUMBOSAC 2/3 VIEWS (1) RVU: 0.97		108.00	PPC	390828	
73								
3)	12/18/2008							
4)	01/0							
PAY LINES : 1-2 DGRB+543+9794515 304164.83								393453

715.11 OSTEOARTHRITIS LOCAL PRIM SHOULDER
 726.19 OTHER ROTATOR CUFF SYNDROMES
 724.2 LUMBAGO
 724.4 UNS THORACIC/LUMB NEURITIS/RADICUL.

Division: SPORTS MEDICINE

Invoice FSC List: 73,1

>> Invoice	ADM/Vis	Disch	Patient	MD	Loc	Hos	BA	Balance
8887832	01/07/2009		JAMES LEWIS GEARY	SHC			SHCC	

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1)	01/14/2009	01/07/2009	99213 OFFICE OUTPT EST15 MIN (1) RVU: 1.62		104.00	TAXP	395616
73	02/03/2009	77.47	0.00	26.53	77.47	0.00	

Di
To

751

7-CHS-UNIVERSITY MEDICAL GROUP

Ledgers

PAGE: 3

PRINTED: 09/14/2009 02:20PM

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1) 02/24/2009	02/18/2009	99213 OFFICE OUTPT EST15 MIN(25)	(1) RVU: 1.62		104.00	TAXP	405032
2) 02/24/2009	02/18/2009	20610 ARTHROCENTS ASPIR&NIX MAJOR JT/BURSA[RT]	(1) RVU: 1.8		146.00	TAXP	405032
3) 02/24/2009	02/18/2009	J1030 METHYLPREDNISOLONE 40 MG INJ	(1) RVU: 0		12.00	TAXP	405032

715.11 OSTEOARTHRISIS LOCAL PRIM SHOULDER

726.19 OTHER ROTATOR CUFF SYNDROMES

724.2 LUMBAGO

724.4 UNS THORACIC/LUMB NEURITIS/RADICUL

Division: SPORTS MEDICINE

Invoice FSC List: 73.1

Invoice	ADM/Vis	Disch	Patient	MD	Loc	Hos	BA	Balance
9065953	03/11/2009		JAMES LEWIS T	MCHENR	SHC		SHCC	

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1) 03/11/2009	03/11/2009	99213 OFFICE OUTPT EST15 MIN (1)	RVU: 1.62		104.00	TAXP	408436
2) 03/11/2009	03/11/2009	72040 RADEXSPI CRV 2/3 VIEWS (1)	RVU: 0.92		118.00	TAXP	408436
3) 03/11/2009	03/11/2009	73510 RADEXHIP UNI COMPL MINIMUM 2 VIEWS (1)	RVU: 0.92		105.00	TAXP	408436

752

7-GHS-UNIVERSITY MEDICAL GROUP
LedgersPAGE: 4
PRINTED: 09/14/2009 02:20PM9) 08/09/2009 08/07/200970 CHANGE FSC (INVOICE) FROM NMRS To TAXP CLM:N
tax p cwl1

445054

722.52 DEGENER LUMBAR/LUMBOSACRAL IV DISC

722.0 DISPLACED CERVICAL INTERVERT DISC

723.1 CERVICALGIA

Division: SPORTS MEDICINE

Invoice FSC List: 73,1

Invoice	ADM/Via	Disch	Patient	MD	Loc	Res	BA	Balance
9101328	03/23/2009		JAMES LEWI T	MCHENR	SHC		SHCC	

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1)	03/23/2009	03/23/2009	99213 OFFICE OUTPT EST15 MIN (1)	RVU: 1.62	104.00	NMRS	411097

Invoice	ADM/Via	Disch	Patient	MD	Loc	Res	BA	Balance
9340066	06/08/2009		JAMES LEWI T	MCHENR	SHC		SHCC	

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1)	06/08/2009	06/08/2009	99213 OFFICE OUTPT EST15 MIN (1)	RVU: 1.62	104.00	SAI	431319
2)	06/08/2009	06/08/2009	72100 RADEXSPI LUMBOSAC 2/3 VIEWS (1)	RVU: 0.97	105.00	SAI	431319

724.02 EPINAL STENOSIS LUMBAR REGION
Division: SPORTS MEDICINE
Invoice FSC List: 73,1

Invoice	ADM/Via	Disch	Patient	MD	Loc	Res	BA	Balance
9467282	07/06/2009		JAMES LEWI T	MCHENR	SHC		SHCC	

753

7-GHS-UNIVERSITY MEDICAL GROUP
Ledgers

PAGE: 5
PRINTED: 09/14/2009 02:20PM

Posted	Service	Description	Payments	Adjust	Charges	FSC	Batch
1) 07/21/2009	07/06/2009	72040 RADEXSPI CRV 2/3 VIEWS (1) RVU: 0.92			118.00	SAI	440805
73	08/07/2009	0.00 0.00 0.00 0.00	118.00	BC924			
73	09/02/2009	72.38 57.90 45.62 14.48	0.00				
2) 07/21/2009	07/06/2009	99213 OFFICE OUTPT EST15 MIN (1) RVU: 1.62			104.00	SAI	440805
		Pcd Post Dt Approved Pay/Adj C/A DedCoicOp PatR Rej					
73	08/07/2009	85.25 68.20 18.75 17.05	0.00				
3) 07/21/2009		516 EDI 837 PROF ALL PAYERS PRIMARY					
		1,2 ON TAPE RUN: 17					
4) 08/07/2009	08/05/2009	73 PPC PLUS PAYMENT	68.20	18.75			
		PAY LINES :1-2 DK/209/10117572/428132.39					444981
Rejection Codes: BC924							
5) 08/07/2009	08/05/2009	70 CHANGE FSC (INVOICE) From PPC To INS CLM:N					444981
		DK/209/10117572/428132.39					
6) 08/27/2009	70	CHANGE FSC (INVOICE) From INS To PPC CLM:N					449362
7) 09/02/2009	73	PPC PLUS PAYMENT	57.90	45.62			
		PAY LINES :1 LB/CORRECTION					451065
8) 09/03/2009	70	CHANGE FSC (INVOICE) From PPC To SAI CLM:N					451170
		RJG/MA EOB'S					

723.0 SPINAL STENOSIS IN CERVICAL REGION

Division: SPORTS MEDICINE

Invoice FSC List: 73,1

Rejection Codes: BC924

>> Invoice	ADM/Viz	Disch	Patient	MD	Loc	Mod	HA	Balance
9635962	09/09/2009		JAMES LEWIS T MCHEENR	SHC			SHCC	

1) 09/09/2009	09/09/2009	99213 OFFICE OUTPT EST15 MIN (1) RVU: 1.62			104.00	PPC	452367
2							

723.0 SPINAL STENOSIS IN CERVICAL REGION

Division: SPORTS MEDICINE

Invoice FSC List: 73,1

754

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

AFFIDAVIT OF AMANDA GARLAND

The undersigned, after first being duly sworn and deposed, states the following:

- 1) I am Amanda Garland. I am employed with Marcus K. McGarr, P.A.
- 2) On July 8, 2011, Donald R. Moorhead, Esq. served Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents. Please see the attached copies of Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents.
- 3) On October 26, 2011, I sent Defendant's Answers to Plaintiff's Interrogatories and Responses to Plaintiff's Request to Produce. The pertinent portions of those documents are Interrogatory #6, wherein Counsel for Plaintiff requested that our office state:

each and every defense which you intend to assert and try to prove at the trial of this case and also state the following:

- a. State each and every basis for each defense.
- b. Identify by description of document, custodian of document, address and phone number of the custodian of document, each and every

piece of evidence which supports each and every defense.

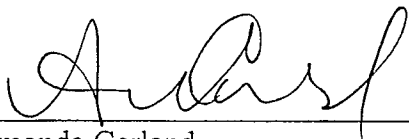
- c. Identify by name, address, business address, residence phone number, and business phone number each and every witness which supports each and every defense and give a summary of which defense the witness will support and a summary of the testimony which will be offered.

and Request to Produce # 8, wherein Counsel for Plaintiff requested that our office produce "any information relied upon by any expert of the Defendants in forming any opinions reached by said expert." In response to Interrogatory # 6, we directed Mr. Moorhead to review our Answer to this lawsuit. In response to Request to Produce # 8, our office replied that we had no information at this time, but any additional information would be shown to Counsel for Plaintiff prior to trial. Furthermore, Counsel for Defendant reserved the right to call all of plaintiffs' physicians or their medical records custodians as expert witnesses at the trial of this case. Please see the attached copies of those documents, as well as a Certificate of Service that I signed.

- 4) On May 25, 2012, Donald R. Moorhead, Esq. served Plaintiff's Supplemental Request for Production of Documents, wherein he requested "any and all documents...which in any way relate to personal injury or injuries to James L. Dawkins both before and after the date of the motor vehicle collision which is the subject of this action." Please see the attached copy of this document.
- 5) On June 26, 2012, I sent Defendant's Responses to Plaintiff's Supplemental Request to Produce, wherein we stated that our office was still in the process of

subpoenaing records, that counsel for plaintiff would be notified and copied on each subpoena, and that counsel for plaintiff was welcome to request copies at his expense. Furthermore, we stated that the records could be made available for inspection. Please see the attached copy of that document, as well as a Certificate of Service signed by me.

- 6) On September 26, 2012, our office served a Request to Admit and Request to Admit Authenticity of Documents and Other Papers. Please see the attached copy of that Request to Admit Authenticity of Documents and Other Papers, as well as a Certificate of Service signed by Melissa Mason.
- 7) On December 5, 2012, our office filed Plaintiffs' Deemed Responses to the Defendant's Request to Admit, Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers with the Greenville County Clerk of Court. Furthermore, on December 5, 2012, we sent a copy of Plaintiffs' Deemed Responses to the Defendant's Request to Admit, Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers to Donald R. Moorhead, Esq., as well as a copy of our transmittal letter to the Greenville County Clerk of Court. Please see the attached copies of Plaintiffs' Deemed Responses to the Defendant's Request to Admit, Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers to Donald R. Moorhead, Esq., a Certificate of Service signed by me, a transmittal letter to the Greenville County Clerk of Court, and a transmittal letter to Donald R. Moorhead, Esq.


Amanda Garland

SWORN TO and subscribed before me
this 21st day of January, 2013.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/10/18

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)
Defendant.)

PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT

TO: TROY LEE WATTS, JR:

YOU WILL PLEASE TAKE NOTICE that you are hereby required to answer in writing and under oath the following Interrogatories pursuant to Rule 33(b), South Carolina Rules of Civil Procedure:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies with liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

BOBBY J. JENNINGS
CLERK

RECEIVED
JUL 2 2 1

5. For each person known to the parties or counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

6. State each and every defense which you intend to assert and try to prove at the trial of this case and also state the following:

- a. State each and every basis for each defense.
- b. Identify by description of document, custodian of document, address and phone number of the custodian of document, each and every piece of evidence which supports each and every defense.
- c. Identify by name, address, business address, residence phone number, and business phone number each and every witness which supports each and every defense and give a summary of which defense the witness will support and a summary of the testimony which will be offered.

7. If you contend that some person or entity other than the named Defendant did anything or failed to do anything which caused or contributed to the injury of the Plaintiff state:

- a. The name of such person or entity;
- b. The address of such person or entity;
- c. The phone number of such entity;
- d. State with specificity each act or omission by such person or entity which you contend caused or contributed to the injury of the Plaintiff;
- e. Explain in detail how and why said act or omission caused or contributed to the injury of the Plaintiff.

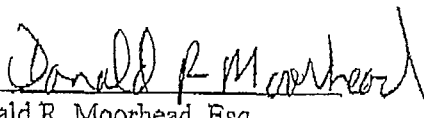
8. Identify each and every statement of any witness or potential witness or person, which was taken by Defendant.

BOBBY SASSONS,
CLAIMS ATTORNEY

JUL 22 2011

RECEIVED

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead, Esq.

SC Bar No. 4071

880 S. Pleasantburg Drive, 3-A

Greenville, SC 29607

(864) 242-9999 - Telephone

(864) 232-9169 - Facsimile

Attorney for Plaintiffs

Greenville, South Carolina

July 8, 2011

RECEIVED
JUL 22 2011
BOBBY SESSUM
CLAIMS ATTORNEY

761

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)
Defendant.)

PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: TROY LEE WATTS, JR:

YOU ARE HEREBY NOTIFIED that the above-named Plaintiff pursuant to Rule 34, South Carolina Rules of Civil Procedure, are requested to produce and permit the inspection of the following photographs and documents at the office of the Plaintiff's attorney located at 880 South Pleasantburg Drive, Suite 3-A, Greenville, South Carolina, 29607, on the thirtieth (30th) day after the service hereof at 10:00 a.m. or at some other mutually-agreeable time and date the following records and documents:

1. Any and all photographs, video tapes and/or video film, plats, sketches, statements, estimates of repair.
2. Any and all insurance policies together with the declaration page which is applicable to this case.
3. Any and all written or recorded statements of Plaintiff.
4. Any and all written or recorded statements of Defendants (except those taken by Defendant's lawyer).
5. Any written or recorded statements of any witnesses or potential witnesses in this case (except those taken by Defendant's lawyer).

RECEIVED
JUL 22
BOBBY S. BOYD
CLAIMS ATTORNEY

6. Any and all photographs, videos, computer animations, accident reconstruction documents, films, things.

7. Reports of any experts.

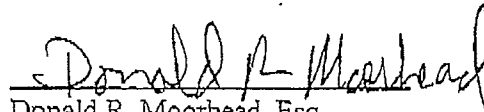
8. Any information relied upon by any expert of the Defendants in forming any of the opinions reached by said expert.

9. Records of measurement of the vehicles, scene, skid marks and anything relevant to this accident.

10. A *curriculum vitae* on every expert retained or consulted with in regard to this case.

11. The entire investigative file of any and all experts engaged by the defendants with regard to this case.

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead, Esq.

SC Bar No. 4071

880 S. Pleasantburg Drive 3-A

Greenville, SC 29607

(864) 242-9999 - Telephone

(864) 232-9169 - Facsimile

Attorney for Plaintiffs

Greenville, South Carolina

July 8, 2011

RECEIVED
JUL 12 2011
BOBBY SESSUM
CLAIMS ATTORNEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

DEFENDANT'S ANSWERS TO
PLAINTIFF'S INTERROGATORIES

The Defendant, by and through his undersigned attorney, hereby submits the following answers to the Plaintiff's Interrogatories:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: a. James L. Dawkins
115 Kennedy Road
Taylors, SC 29687

It is anticipated that Mr. Dawkins will testify as to his version of this accident, and as to his alleged damages and/or injuries. Counsel for defendant is not in possession of any written or recorded statements from Mr. Dawkins.

b. Delphine G. Dawkins
115 Kennedy Road
Taylors, SC 29687

It is anticipated that Ms. Dawkins will testify as to her alleged damages and/or injuries. Counsel for defendant is not in possession of any written or records statements from Ms. Dawkins at this time.

c. Troy Lee Watts, Jr.
34 East Broadleaf Drive
Hendersonville, NC 28739

It is anticipated that Mr. Watts will testify as to his version of this accident. Counsel for defendant is not in possession of any written or recorded statements from Mr. Watts at this time.

d. Officer Higgins
4 McGee Street
Greenville, SC 29601

It is anticipated that Officer Higgins will testify as to his investigation of this accident. Counsel for defendant is in possession of a South Carolina Traffic Collision Report Form prepared by Officer Higgins.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Counsel for defendant is in possession of an accident report and nine (9) black and white photographs of the vehicle the plaintiff was operating at the time of the accident. An additional scene diagram may be prepared and scene photographs taken may be taken for use at the trial of this case. Depositions of parties, officers, employment or medical personnel, and/or witnesses may be used at the trial of this case.

3. Set forth the names and addresses of all insurance companies with liability insurance coverage relating to the claim and set forth the number or numbers of policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: State Farm Automobile Insurance Company, Post Office Box 106145, Atlanta, GA 30348. 0782-026-40D. 50/100/50.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: Counsel for defendant may call all plaintiff's physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, and family doctors, or their medical records custodians as expert witnesses at the trial of this case.

5. For each person known to the parties or counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements from such witnesses.

ANSWER: Please see answer to Interrogatory number one (1).

6. State each and every defense which you intend to assert and try to prove at the trial of this case and also state the following:

- a. State each and every basis for each defense.
- b. Identify by description of document, custodian of document, address and phone number of the custodian of document, each and every piece of evidence which supports each and every defense.
- c. Identify by name, address, business address, residence phone number, and business phone number each and every witness which supports each and every defense and give a summary of which defense the witness will support and a summary of the testimony which will be offered.

ANSWER: Please refer to the defendant's Answer.

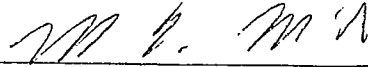
7. If you contend that some person or entity other than the named Defendant did anything or failed to do anything which caused or contributed to the injury of the Plaintiff state:

- a. The name of such person or entity;
- b. The address of such person or entity;
- c. The phone number of such entity;
- d. State with specificity each act or omission by such person or entity which you contend caused or contributed to the injury of the Plaintiff; and,
- e. Explain in detail how and why said act or omission caused or contributed to the injury of the Plaintiff.

ANSWER: Not applicable.

8. Identify each and every statement of any witness or potential witness or person, which was taken by Defendant.

ANSWER: Counsel for defendant is in possession of a South Carolina Traffic Collision Report Form, prepared by Officer Higgins.



Marcus K. McGarr, Esq.

MARCUS K. MCGARR, P.A.

S.C. Bar No.: 011885

108 Whitsett Street

Greenville, S.C. 29601

(864) 298-0089

(864) 235-0503

ATTORNEY FOR THE DEFENDANT

Greenville, South Carolina

October 26, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

vs.)

DEFENDANT'S RESPONSES TO
PLAINTIFF'S REQUEST TO PRODUCE

Troy Lee Watts, Jr.,)

Defendant.)

The Defendant, Troy Lee Watts, Jr., by and through his undersigned attorney, hereby submits the following responses to the Plaintiffs' Request to Produce:

1. Any and all photographs, video tapes and/or video film, plats, sketches, statements, estimates of repair.

RESPONSE: Please see attached the following: nine (9) black and white copies of photographs of the vehicle plaintiff was driving at the time of the accident; a South Carolina Traffic Collision Report prepared by Officer Higgins; and, a damage estimate with regard to Mr. Dawkins's vehicle. Please be advised that an additional scene diagram may be prepared and scene photographs may be taken for use at the trial of this case. Depositions of parties, officer, employment or medical personnel, and/or witnesses may also be used at the trial of this case.

2. Any and all insurance policies together with the declaration page which is applicable to this case.

RESPONSE: Not attached.

3. Any and all written or recorded statements of Plaintiff.

RESPONSE: Counsel for defendant is not in possession of any written or recorded statements from the plaintiffs at this time.

4. Any and all written or recorded statements of Defendants (except those taken by Defendant's

lawyer).

RESPONSE: Counsel for defendant is not in possession of any written or recorded statements from the plaintiff at this time.

5. Any written or recorded statements of any witnesses or potential witnesses in this case (except those taken by Defendant's lawyer).

RESPONSE: Please see the attached copy of the South Carolina Traffic Collision Report form prepared by Officer Higgins. Furthermore, counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.

6. Any and all photographs, videos, computer animations, accident reconstruction documents, films, things.

RESPONSE: Please see answer to Request to Produce number one (1). If additional documentation is obtained for use at the trial of this case, it will be shown to plaintiff's counsel prior to the same.

7. Reports of any experts.

RESPONSE: Not applicable. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.

8. Any information relied upon by any expert of the Defendants in forming any of the opinions reached by said expert.

RESPONSE: None at this time. If additional documentation is obtained for use at the trial of this case, it will be shown to plaintiff's counsel prior to trial. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of

this case.

9. Records of measurement of the vehicles, scene, skid marks and anything relevant to this accident.

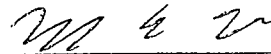
RESPONSE: None at this time. If additional documentation is obtained for use at the trial of this case, it will be shown to plaintiff's counsel prior to the same.

10. A *curriculum vitae* on every expert retained or consulted with in regard to this case.

RESPONSE: Not applicable. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.

11. The entire investigative file of any and all experts engaged by the Defendants with regard to this case.

RESPONSE: Not applicable. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.



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

Greenville, South Carolina
October 26, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)

and Delphine Dawkins,)

Plaintiffs,)

vs.)

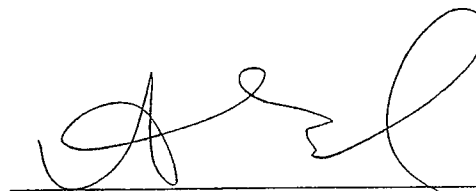
CERTIFICATE OF SERVICE

Troy Lee Watts, Jr.,)

Defendant.)

The undersigned hereby certifies that on the October 26, 2011, she served the defendant's answers to the plaintiffs' Interrogatories, responses to plaintiffs' Request to Produce, and corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Amanda Garland, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
October 26, 2011

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)
Defendant.)

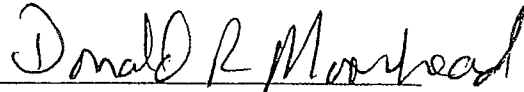
PLAINTIFF'S SUPPLEMENTAL REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: TROY LEE WATTS, JR, AND HIS ATTORNEY, MARCUS K. McGARR:

YOU ARE HEREBY NOTIFIED that the above-named Plaintiff pursuant to Rule 34, South Carolina Rules of Civil Procedure, are requested to produce and permit the inspection of the following photographs and documents at the office of the Plaintiff's attorney located at 880 South Pleasantburg Drive, Suite 3-A, Greenville, South Carolina, 29607, on the thirtieth (30th) day after the service hereof at 10:00 a.m. or at some other mutually-agreeable time and date the following records and documents:

1. Any and all documents or recordings regardless of media, medical records, medical bills, regardless of date, which in any way relate to personal injury or injuries to James L. Dawkins both before and after the date of the motor vehicle collision which is the subject of this action, i.e. the motor vehicle collision which occurred on September 24, 2008.

DONALD R. MOORHEAD, P.A.

A handwritten signature in cursive script that reads "Donald R. Moorhead". The signature is written in dark ink and is positioned above a horizontal line.

Donald R. Moorhead, Esq.

SC Bar No. 4071

880 S. Pleasantburg Drive 3-A

Greenville, SC 29607

(864) 242-9999 - Telephone

(864) 232-9169 - Facsimile

Attorney for Plaintiffs

Greenville, South Carolina

May 25, 2012

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
)
Plaintiffs,)

vs.)

CERTIFICATE OF MAILING

Troy Lee Watts, Jr.,)
)
Defendant.)

I hereby certify that I am employee of the law firm of DONALD R. MOORHEAD, P.A.,
counsel for the Plaintiffs, and I have, this 25th day of May, 2012 served the within *Plaintiffs'*
Supplemental Request for Production of Documents upon counsel for the Defendant, by depositing
a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

Marcus K. McGarr, Esq.
MARCUS K. McGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601

Cynthia S. Handford
Cynthia S. Handford
Paralegal to Donald R. Moorhead

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

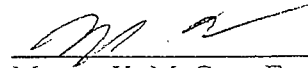
C.A. NO.: 2011-CP-23-4585

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
SUPPLEMENTAL REQUEST TO PRODUCE**

The Defendant, by and through his undersigned attorney, hereby submits the following answers to the Plaintiff's Interrogatories:

1. Any and all documents or recordings regardless of media, medical records, medical bills, regardless of date, which in any way relate to personal injury or injuries to James L. Dawkins both before and after the date of the motor vehicle collision which is the subject of this action, i.e. the motor vehicle collision which occurred on September 24, 2008.

ANSWER: None attached at this time. Please note that counsel for defendant is in the process of subpoenaing medical records with regard to Mr. Dawkins. Furthermore, counsel plaintiff will be copied on each such subpoena, and is welcome to request copies of such records at his expense. In the alternative, the records will be made available for inspection at a time mutually convenient between the parties.



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

Greenville, South Carolina
June 26, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

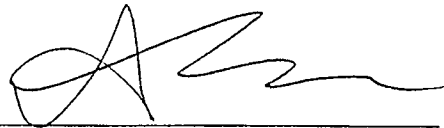
IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of June, 2012, she served the defendant's response to the plaintiffs' Supplemental Request for Production and a corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Amanda Garland, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
(864) 298-0089
(864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
June 27, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)

and Delphine Dawkins,)

Plaintiffs,)

vs.)

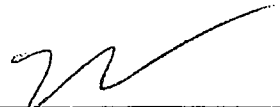
REQUEST TO ADMIT

Troy Lee Watts, Jr.,)

Defendant.)

TO: Donald R. Moorhead, Esq., as attorney for Plaintiffs:

The Defendant, by and through his undersigned counsel, and pursuant to Rule 36 of the *SCRCP*, requests that you admit or deny that the documents submitted in Defendant's Request to Admit Authenticity of Documents and Other Papers, dated September 26, 2012 were kept in the ordinary course and scope of the respective business, entities, or persons who created such documents.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for Defendant

Greenville, South Carolina
September 26, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
)
vs.)
)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

**REQUEST TO ADMIT AUTHENTICITY
OF DOCUMENTS AND OTHER PAPERS**

TO: Donald R. Moorhead, Esq., as attorney for Plaintiffs:

The Defendant, by and through his undersigned counsel, and pursuant to Rule 36 of the *SCRCP*, requests that you admit or deny the genuineness of the following attached documents:

1. Three page operation consent form from Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated May 5, 1997;
2. Two page gastroenterology consultation form from Specialty Group, Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated January 17, 2000;
3. Two page physician's note from EastSide Cardiology, regarding James Lewis Dawkins, dated February 1, 2000;
4. Twenty-one page pharmaceutical record from CVS Pharmacy, regarding James Lewis Dawkins, dated from April 1, 2000 through March 20, 2012;
5. One physician's note from Blue Ridge Urology, regarding James Lewis Dawkins, dated from June 16, 2003 through July 14, 2003;
6. One page physician's note from Blue Ridge Urology, regarding James Lewis

Dawkins, dated November 14, 2003;

7. One page visit note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 17, 2003;
8. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 8, 2004;
9. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 10, 2004;
10. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2004;
11. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 6, 2004;
12. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 17, 2004;
13. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 20, 2004;
14. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;
15. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;
16. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated October 4, 2004;
17. Two page physician's note from the Smith Center for Cardiovascular Wellness,

- regarding James Lewis Dawkins, dated November 15, 2004;
18. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated December 14, 2004;
 19. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 14, 2005;
 20. One page testosterone shot log from Blue Ridge Urology, regarding James Lewis Dawkins, dated from August 13, 2004 through May 19, 2005;
 21. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 28, 2005;
 22. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 8, 2005;
 23. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated April 25, 2005;
 24. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 2, 2005;
 25. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 2, 2005;
 26. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 31, 2006;
 27. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 14, 2006;
 28. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2006;

29. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated April 21, 2006;
30. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 8, 2006;
31. One page HIPAA compliance form from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
32. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
33. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
34. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
35. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 13, 2006;
36. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 21, 2006;
37. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated March 7, 2007;
38. One page x-ray report from North Hills Medical Center, regarding James Lewis Dawkins, dated March 7, 2007;
39. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated June 28, 2007;
40. One page result text form from Greenville Radiology, regarding James Lewis

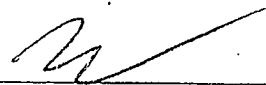
- Dawkins, dated July 12, 2007;
41. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated August 20, 2007;
 42. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
 43. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
 44. Two page patient history form from Upstate Urology, regarding James Lewis Dawkins, dated September 26, 2007;
 45. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 14, 2008;
 46. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 28, 2008;
 47. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated March 10, 2008;
 48. Two page letter to Lawrence Hill, MD from Richard Mamrick, MD, regarding James Lewis Dawkins, dated April 25, 2008;
 49. One page admission information form from Upstate Urology Associates, regarding James Lewis Dawkins, dated August 26, 2008;
 50. Two page run note from the Greenville EMS, regarding James Lewis Dawkins, dated September 24, 2008;
 51. One page patient data sheet from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;

52. Four page emergency record from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
53. Two page radiology report form from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
54. Five page physician's note from Bon Secours Health System, St. Francis Hospital Eastside, regarding James Lewis Dawkins, dated September 27, 2008;
55. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2008;
56. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated October 22, 2008;
57. Two page patient information form from the Greenville Hospital System, regarding James Lewis Dawkins, dated November 12, 2008;
58. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated November 12, 2008;
59. Seven page initial evaluation form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 19, 2008;
60. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated November 20, 2008;
61. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 21, 2008;
62. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 3, 2008;

63. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins, dated December 5, 2008;
64. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins, dated December 10, 2008;
65. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 16, 2008;
66. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 18, 2008;
67. One page patient information form from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 19, 2008;
68. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 22, 2008;
69. Four page discharge summary from Proaxis Therapy, regarding James Lewis Dawkins, dated January 20, 2009;
70. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated February 18, 2009;
71. One page public index document from the South Carolina Judicial Department website, regarding James Lewis Dawkins, dated March 12, 2009;
72. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 13, 2009;
73. Four page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 23, 2009;
74. Two page physician's note from the University Medical Group, Steadman

- Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 8, 2009;
75. Three page physician's note from the University Medical Group, Steadman
Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 6, 2009;
76. Three page physician's note from the University Medical Group, Steadman
Hawkins-Hillcrest, regarding James Lewis Dawkins, dated September 9, 2009;
77. One page physician's note from the North Hills Medical Center, regarding James
Lewis Dawkins, dated September 30, 2009;
78. One page physician's note from the North Hills Medical Center, regarding James
Lewis Dawkins, dated October 23, 2009;
79. One page physician's note from the North Hills Medical Center, regarding James
Lewis Dawkins, dated December 14, 2009;
80. Two page physician's note from the North Hills Medical Center, regarding James
Lewis Dawkins, dated March 1, 2010;
81. Two page triage record from the Greenville Hospital System, regarding James
Lewis Dawkins, dated July 26, 2010;
82. Five page ER patient record from the Greenville Hospital System, regarding James
Lewis Dawkins, dated July 26, 2010;
83. One page physician's note from the North Hills Medical Center, regarding James
Lewis Dawkins, dated September 8, 2010;
84. Six page ER patient record from the Greenville Hospital System, regarding James
Lewis Dawkins, dated September 24, 2010;
85. Five page ER patient record from the Greenville Hospital System, regarding James
Lewis Dawkins, dated October 16, 2010;

86. Two page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated October 21, 2010;
87. One page medical report from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 23, 2011;
88. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated April 2, 2011;
89. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 21, 2011;
90. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated June 22, 2011; and,
91. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 5, 2011.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for Defendant

Greenville, South Carolina
September 26, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)

and Delphine Dawkins,)

Plaintiffs,)

.vs.)

Troy Lee Watts, Jr.,)

Defendant.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of September, 2012, she served the Defendant's Request to Admit, Request to Admit Authenticity of Documents and Other Papers, and a corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Melissa Mason, Legal Assistant

Marcus K. McGarr, Esq.

MARCUS K. MCGARR, P.A.

108 Whitsett Street

Greenville, South Carolina 29601

T: (864) 298-0089

F: (864) 235-0503

Attorney for the Defendant

Greenville, South Carolina
September 26, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)

Defendant.)
_____)

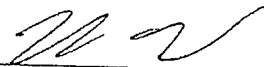
FILED-CLERK OF COURT
IN THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

C.A. NO.: 2011-CP-23-4585

2012 DEC - 7 A 9:35

THE PLAINTIFFS' DEEMED RESPONSES TO
THE DEFENDANT'S REQUEST TO ADMIT

The Defendant, by and through his undersigned counsel, hereby submits the following responses are deemed admitted.



Marcus K. McGarr, Esq.

MARCUS K. MCGARR, P.A.

S.C. Bar No.: 011885

108 Whitsett Street

Greenville, South Carolina 29601

Telephone (864) 298-0089

Facsimile (864) 235-0503

Attorney for Defendant

Greenville, South Carolina
December 5, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

2012 DEC -7 A 9:35

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

THE PLAINTIFFS' DEEMED RESPONSES
TO THE DEFENDANT'S REQUEST TO
ADMIT AUTHENTICITY OF DOCUMENTS
AND OTHER PAPERS

vs.)

Troy Lee Watts, Jr.,)

Defendant.)

The Plaintiff has deemed the following documents are genuine:

1. Three page operation consent form from Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated May 5, 1997;
2. Two page gastroenterology consultation form from Specialty Group, Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated January 17, 2000;
3. Two page physician's note from EastSide Cardiology, regarding James Lewis Dawkins, dated February 1, 2000;
4. Twenty-one page pharmaceutical record from CVS Pharmacy, regarding James Lewis Dawkins, dated from April 1, 2000 through March 20, 2012;
5. One physician's note from Blue Ridge Urology, regarding James Lewis Dawkins, dated from June 16, 2003 through July 14, 2003;
6. One page physician's note from Blue Ridge Urology, regarding James Lewis Dawkins, dated November 14, 2003;

7. One page visit note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 17, 2003;
8. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 8, 2004;
9. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 10, 2004;
10. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2004;
11. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 6, 2004;
12. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 17, 2004;
13. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 20, 2004;
14. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;

15. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;
16. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated October 4, 2004;
17. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 15, 2004;

18. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated December 14, 2004;
 19. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 14, 2005;
 20. One page testosterone shot log from Blue Ridge Urology, regarding James Lewis Dawkins, dated from August 13, 2004 through May 19, 2005;
 21. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 28, 2005;
 22. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 8, 2005;
 23. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated April 25, 2005;
 24. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 2, 2005;
 25. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 2, 2005;
-
26. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 31, 2006;
 27. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 14, 2006;
 28. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2006;
 29. Three page physician's note from the Smith Center for Cardiovascular Wellness,

- regarding James Lewis Dawkins, dated April 21, 2006;
30. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 8, 2006;
 31. One page HIPAA compliance form from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
 32. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
 33. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
 34. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
 35. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 13, 2006;
 36. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 21, 2006;
 37. ~~One page physician's note from North Hills Medical Center, regarding James~~
Lewis Dawkins, dated March 7, 2007;
 38. One page x-ray report from North Hills Medical Center, regarding James Lewis Dawkins, dated March 7, 2007;
 39. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated June 28, 2007;
 40. ~~One page result text form from Greenville Radiology, regarding James Lewis~~
Dawkins, dated July 12, 2007;

41. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated August 20, 2007;
 42. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
 43. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
 44. Two page patient history form from Upstate Urology, regarding James Lewis Dawkins, dated September 26, 2007;
 45. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 14, 2008;
 46. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 28, 2008;
 47. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated March 10, 2008;
 48. Two page letter to Lawrence Hill, MD from Richard Mamrick, MD, regarding James Lewis Dawkins, dated April 25, 2008;
-
49. One page admission information form from Upstate Urology Associates, regarding James Lewis Dawkins, dated August 26, 2008;
 50. Two page run note from the Greenville EMS, regarding James Lewis Dawkins, dated September 24, 2008;
 51. One page patient data sheet from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
 52. Four page emergency record from the Greenville Hospital System, regarding

- James Lewis Dawkins, dated September 24, 2008;
53. Two page radiology report form from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
 54. Five page physician's note from Bon Secours Health System, St. Francis Hospital Eastside, regarding James Lewis Dawkins, dated September 27, 2008;
 55. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2008;
 56. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated October 22, 2008;
 57. Two page patient information form from the Greenville Hospital System, regarding James Lewis Dawkins, dated November 12, 2008;
 58. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated November 12, 2008;
 59. Seven page initial evaluation form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 19, 2008;
 - ~~60. One page physician's note from North Hills Medical Center, regarding James~~
Lewis Dawkins, dated November 20, 2008;
 61. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 21, 2008;
 62. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 3, 2008;
 63. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins,

- dated December 5, 2008;
64. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins, dated December 10, 2008;
65. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 16, 2008;
66. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 18, 2008;
67. One page patient information form from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 19, 2008;
68. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 22, 2008;
69. Four page discharge summary from Proaxis Therapy, regarding James Lewis Dawkins, dated January 20, 2009;
70. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated February 18, 2009;
- ~~71. One page public index document from the South Carolina Judicial Department~~
website, regarding James Lewis Dawkins, dated March 12, 2009;
72. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 13, 2009;
73. Four page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 23, 2009;
74. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 8, 2009;

75. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 6, 2009;
 76. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated September 9, 2009;
 77. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2009;
 78. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated October 23, 2009;
 79. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated December 14, 2009;
 80. Two page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 1, 2010;
 81. Two page triage record from the Greenville Hospital System, regarding James Lewis Dawkins, dated July 26, 2010;
 82. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated July 26, 2010;
-
83. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated September 8, 2010;
 84. Six page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2010;
 85. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated October 16, 2010;
 86. Two page physician's note from the North Hills Medical Center, regarding James

- Lewis Dawkins, dated October 21, 2010;
87. One page medical report from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 23, 2011;
88. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated April 2, 2011;
89. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 21, 2011;
90. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated June 22, 2011; and,
91. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 5, 2011.



Marcus K. McGarr, Esq.

MARCUS K. MCGARR, P.A.

S.C. Bar No.: 011885

108 Whitsett Street

Greenville, South Carolina 29601

Telephone (864) 298-0089

Facsimile (864) 235-0503

Attorney for Defendant

Greenville, South Carolina
December 5, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)

Defendant.)

IN THE COURT OF COMMON PLEAS S.C.
GREENVILLE
PAUL B. WICKENSIMMER

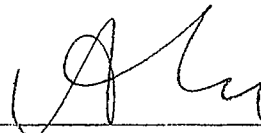
C.A. NO.: 2011-CP-23-4585

2012 DEC -7 A 9:36

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of December, 2012, she served the Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers, Plaintiffs' Deemed Responses to the Defendant's Request to Admit, and a corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Amanda Garland, Paralegal
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
December 5, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585

AFFIDAVIT OF JILL WRENN

The undersigned, after first being duly sworn and deposed, states the following:

- 1) I am Jill Wrenn. I am employed with Marcus K. McGarr, P.A,
- 2) On July 8, 2011, Donald R. Moorhead, Esq. served Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents. Please see the attached copies of Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents.
- 3) On August 16, 2011, I served subpoenas for medical records on the entities listed on an Exhibit A: August 16, 2011. Furthermore, I sent copies of that Exhibit A: August 16, 2011 and copies of the subpoenas to Donald R. Moorhead, Esq., along with a letter stating that our office would provide copies of any records we received in response to those subpoenas upon Mr. Moorhead's request. Please see the attached copies of my transmittal letter to Mr. Moorhead and Exhibit A: August 16, 2011.
- 4) On August 31, 2011, Donald R. Moorhead, Esq. sent our office a letter requesting copies of medical records received from the providers listed in the Exhibit A:

August 16, 2011. Please see the attached copy of Mr. Moorhead's letter.

- 5) On October 26, 2011, our office sent Defendant's Answers to Plaintiff's Interrogatories and Responses to Plaintiff's Request to Produce. The pertinent portions of those documents are Interrogatory #6, wherein Counsel for Plaintiff requested that our office state:

each and every defense which you intend to assert and try to prove at the trial of this case and also state the following:

- a. State each and every basis for each defense.
- b. Identify by description of document, custodian of document, address and phone number of the custodian of document, each and every piece of evidence which supports each and every defense.
- c. Identify by name, address, business address, residence phone number, and business phone number each and every witness which supports each and every defense and give a summary of which defense the witness will support and a summary of the testimony which will be offered.

and Request to Produce # 8, wherein Counsel for Plaintiff requested that our office produce "any information relied upon by any expert of the Defendants in forming any opinions reached by said expert." In response to Interrogatory # 6, we directed Mr. Moorhead to review our Answer to this lawsuit. In response to Request to Produce # 8, our office replied that we had no information at this time, but any additional information would be shown to Counsel for Plaintiff prior to trial. Furthermore, Counsel for Defendant reserved the right to call all of

plaintiffs' physicians or their medical records custodians as expert witnesses at the trial of this case. Please see the attached copies of those documents, as well as a Certificate of Service signed by Amanda Garland.

- 6) On December 28, 2011, while scheduling the depositions of the plaintiffs, I spoke with Cynthia Handford, paralegal to Donald R. Moorhead, Esq., regarding sending copies of the medical records we had received regarding Mr. Dawkins. I advised her that I had approximately 848 pages, and I asked her which copy service she would like to use for copying these records. She requested that I use Legal Eagle, and I advised her that I would have the records picked up for copying.
- 7) Shortly after the above-referenced telephone conversation, Donald R. Moorhead, Esq. sent a letter reminding our office that he still wanted copies of any documents we received in response to our Exhibit A: August 6, 2011. Please see the attached a copy of that letter.
- 8) On January 3, 2012, our office arranged for Legal Eagle to pick up 921 pages of medical records, copy them, and then deliver them to Donald R. Moorhead, P.A.
- 9) On January 5, 2012, those records were delivered to Donald R. Moorhead, P.A. and Carol Kirby signed for the records. Please see the attached copy of Legal Eagle's courier log with Ms. Kirby's signature. Furthermore, Donald R. Moorhead, P.A. paid for 921 pages of medical records regarding James Dawkins. Please see the attached copy of that invoice that has been stamped paid.
- 10) On January 30, 2012, I served subpoenas for medical records on the entities listed on an Exhibit A: January 30, 2012. Furthermore, I sent copies of that Exhibit A

and copies of the subpoenas to Donald R. Moorhead, Esq., along with a letter stating that our office would provide copies upon his request. Please the attached copies of the letter to Mr. Moorhead and Exhibit A: January 30, 2012.

- 11) Thereafter, on February 7, 2012, Cynthia S. Hanford, paralegal to Donald R. Moorhead, Esq., sent our office a letter, requesting copies of medical records from the providers listed in the Exhibit A: January 30, 2012. Please see the attached copy of Ms. Handsford's letter.
- 12) On March 8, 2012, I served subpoenas for medical records on the entities listed on an Exhibit A: March 8, 2012. Furthermore, I sent copies of that Exhibit A and copies of the subpoenas to Donald R. Moorhead, Esq., along with a letter stating that our office would provide copies upon his request. Please the attached copies of the letter to Mr. Moorhead and Exhibit A: March 8, 2012.
- 13) Thereafter, on March 19, 2012, Cynthia S. Hanford, paralegal to Donald R. Moorhead, Esq., sent our office a letter, requesting copies of the providers listed in the Exhibit A: March 8, 2012. Please see the attached copy of Ms. Handford's letter.
- 14) On March 21, 2012, I served subpoenas for medical records on the entities listed on an Exhibit A: March 21, 2012. Furthermore, I sent copies of that Exhibit A and copies of the subpoenas to Donald R. Moorhead, Esq., along with a letter stating that our office would provide copies upon his request. Please the attached copies of the letter to Mr. Moorhead and Exhibit A: March 21, 2012.
- 15) Thereafter, on March 22, 2012, Cynthia S. Hanford, paralegal to Donald R. Moorhead, Esq., sent our office a letter, requesting copies of the providers listed

in the Exhibit A: March 21, 2012. Please see the attached copy of Ms. Handford's letter.

- 16) On April 24, 2012, I sent Cynthia Handford an email to advise that I would be sending Mr. Dawkins's records out for copying and requesting that she advise as to which copy service their office would like to use. Please see the attached copy of my email to Ms. Handford.
- 17) Thereafter, on April 24, 2012, Cynthia Handford replied to my email regarding copies of Mr. Dawkins's records. She requested that I use Legal Eagle and stated that they should still have her office's information from the last set of records I had sent. She also requested that I send those records as quickly as possible. Please see the attached copy of Ms. Handford's email.
- 18) On April 24, 2012, I replied to Cynthia Handford's email stating that I would have the records picked up for copying immediately. Furthermore, I advised her that some of the entities subpoenaed stated they had no records. Please see the attached copy of my email to Ms. Handford.
- 19) On April 24, 2012, our office arranged for Legal Eagle to pick up 440 pages of medical records, copy them, and then deliver them to Donald R. Moorhead, P.A.
- 20) On April 26, 2012, those records were delivered to Donald R. Moorhead, P.A. and Joye Jokes signed for the records. Please see the attached copy of Legal Eagle's courier log with Ms. Jokes's signature. Furthermore, Donald R. Moorhead, P.A. paid for 440 pages of records. Please see the attached copy of that invoice that has been stamped paid
- 21) On May 25, 2012, Donald R. Moorhead, Esq. served Plaintiff's Supplemental

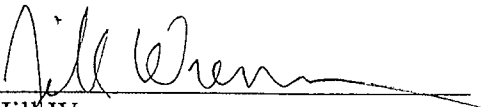
Request for Production of Documents, wherein he requested “any and all documents...which in any way relate to personal injury or injuries to James L. Dawkins both before and after the date of the motor vehicle collision which is the subject of this action.” Please see the attached copy of this document.

- 22) On June 5, 2012, I served subpoenas for medical records on the entities listed on an Exhibit A: June 5, 2012. Furthermore, I sent copies of that Exhibit A and copies of the subpoenas to Donald R. Moorhead, Esq., along with a letter stating that our office would provide copies upon his request. Please see the attached copies of the letter to Mr. Moorhead and Exhibit A: June 5, 2012.
- 23) Thereafter, on June 7, 2012, Cynthia S. Handford, paralegal to Donald R. Moorhead, Esq., sent our office a letter requesting copies of the providers listed in the Exhibit A: June 5, 2012. Please see the attached copy of Ms. Handford’s letter.
- 24) On June 26, 2012, our office sent Defendant’s Responses to Plaintiff’s Supplemental Request to Produce, wherein we stated that our office was still in the process of subpoenaing records, that counsel for plaintiff would be notified and copied on each subpoena, and that counsel for plaintiff was welcome to request copies at his expense. Furthermore, we stated that the records could be made available for inspection. Please see the attached copy of that document, as well as a Certificate of Service signed by Amanda Garland.
- 25) On July 24, 2012, our office arranged for Legal Eagle to pick up 99 pages of medical records, copy them, and then deliver them to Donald R. Moorhead, P.A.
- 26) On July 25, 2012, those records were delivered to Donald R. Moorhead, P.A. and Carol Kirby signed for the records. Please see the attached copy of Legal Eagle’s

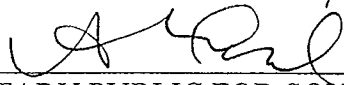
courier log with Ms. Kirby's signature. Furthermore, Donald R. Moorhead, P.A. paid for 99 pages of medical records regarding Mr. Dawkins. Please see the attached copy of that invoice that has been stamped paid.

- 27) On September 26, 2012, our office served a Request to Admit and Request to Admit Authenticity of Documents and Other Papers. Please see the attached copy of that Request to Admit Authenticity of Documents and Other Papers, as well as a Certificate of Service signed by Melissa Mason.
- 28) On October 4, 2012, I received a phone call from Cynthia Handford, wherein she requested that I send her copies of any records our office received from Peace Medical Center. In response to that phone call, I checked our files and saw that Peace Medical Center had sent us a letter stating they had no records. As such, I emailed Ms. Handford a copy of that letter. Please see the attached copy of that email and the letter from Peace Medical Center. Furthermore, please see Ms. Handford's reply, also dated October 4, 2012, indicating that she received my email and attachment.
- 29) On December 5, 2012, our office filed Plaintiffs' Deemed Responses to the Defendant's Request to Admit, Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers with the Greenville County Clerk of Court. Furthermore, on December 5, 2012, we sent a copy of Plaintiffs' Deemed Responses to the Defendant's Request to Admit, Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers to Donald R. Moorhead, Esq., as well as a copy of our transmittal letter to the Greenville County Clerk of Court. Please see the

attached copies of Plaintiffs' Deemed Responses to the Defendant's Request to Admit, Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers to Donald R. Moorhead, Esq., a Certificate of Service signed by Amanda Garland, a transmittal letter to the Greenville County Clerk of Court, and a transmittal letter to Donald R. Moorhead, Esq.


Jill Wrenn

SWORN TO and subscribed before me
this 21st day of January, 2013.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/29/21

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)
Defendant.)

PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT

TO: TROY LEE WATTS, JR:

YOU WILL PLEASE TAKE NOTICE that you are hereby required to answer in writing and under oath the following Interrogatories pursuant to Rule 33(b), South Carolina Rules of Civil Procedure:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies with liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RECEIVED

JUL 2 2 1
BOBBY J. JAMES
CLERK

5. For each person known to the parties or counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

6. State each and every defense which you intend to assert and try to prove at the trial of this case and also state the following:

- a. State each and every basis for each defense.
- b. Identify by description of document, custodian of document, address and phone number of the custodian of document, each and every piece of evidence which supports each and every defense.
- c. Identify by name, address, business address, residence phone number, and business phone number each and every witness which supports each and every defense and give a summary of which defense the witness will support and a summary of the testimony which will be offered.

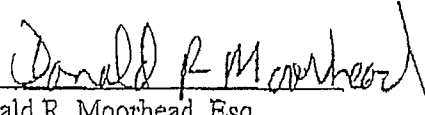
7. If you contend that some person or entity other than the named Defendant did anything or failed to do anything which caused or contributed to the injury of the Plaintiff state:

- a. The name of such person or entity;
- b. The address of such person or entity;
- c. The phone number of such entity;
- d. State with specificity each act or omission by such person or entity which you contend caused or contributed to the injury of the Plaintiff;
- e. Explain in detail how and why said act or omission caused or contributed to the injury of the Plaintiff.

8. Identify each and every statement of any witness or potential witness or person, which was taken by Defendant.

RECEIVED
JUL 22 2011
BOBBY SESSIONS,
CLAIMS ATTORNEY

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead, Esq.

SC Bar No. 4071

880 S. Pleasantburg Drive, 3-A

Greenville, SC 29607

(864) 242-9999 - Telephone

(864) 232-9169 - Facsimile

Attorney for Plaintiffs

Greenville, South Carolina

July 8, 2011

RECEIVED
JUL 22 2011
BOBBY SESSUM
CLAIMS ATTORNEY

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)
Defendant.)

PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: TROY LEE WATTS, JR:

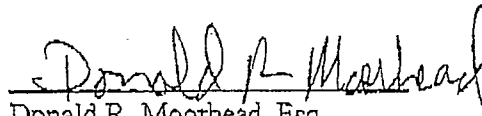
YOU ARE HEREBY NOTIFIED that the above-named Plaintiff pursuant to Rule 34, South Carolina Rules of Civil Procedure, are requested to produce and permit the inspection of the following photographs and documents at the office of the Plaintiff's attorney located at 880 South Pleasantburg Drive, Suite 3-A, Greenville, South Carolina, 29607, on the thirtieth (30th) day after the service hereof at 10:00 a.m. or at some other mutually-agreeable time and date the following records and documents:

1. Any and all photographs, video tapes and/or video film, plats, sketches, statements, estimates of repair.
2. Any and all insurance policies together with the declaration page which is applicable to this case.
3. Any and all written or recorded statements of Plaintiff.
4. Any and all written or recorded statements of Defendants (except those taken by Defendant's lawyer).
5. Any written or recorded statements of any witnesses or potential witnesses in this case (except those taken by Defendant's lawyer).

RECEIVED
JUL 22
BOBBY SIBBON
CLAIMS ATTORNEY

6. Any and all photographs, videos, computer animations, accident reconstruction documents, films, things.
7. Reports of any experts.
8. Any information relied upon by any expert of the Defendants in forming any of the opinions reached by said expert.
9. Records of measurement of the vehicles, scene, skid marks and anything relevant to this accident.
10. A *curriculum vitae* on every expert retained or consulted with in regard to this case.
11. The entire investigative file of any and all experts engaged by the defendants with regard to this case.

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead, Esq.

SC Bar No. 4071

880 S. Pleasantburg Drive 3-A

Greenville, SC 29607

(864) 242-9999 - Telephone

(864) 232-9169 - Facsimile

Attorney for Plaintiffs

Greenville, South Carolina

July 8, 2011

RECEIVED
JUL 7 2011
BOBBY S. S. S. S.
CLAIMS ATTORNEY

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

August 16, 2011

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585
Claim # 40-8412-459
MKM File # 200.1046

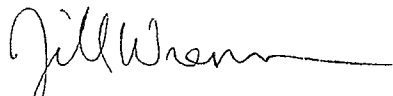
Dear Mr. Moorhead:

Please find enclosed a document entitled *Exhibit A: August 16, 2011*, which lists a number of entities from whom we have requested your client's medical records. Also enclosed are copies of the request letters and subpoenas that were sent.

You are welcome to request copies of any records that we receive pursuant to these subpoenas.

Sincerely,

MARCUS K. MCGARR, P.A.



Jill Wrenn, Paralegal to
Marcus K. McGarr

Enclosures

Exhibit A: August 16, 2011

James L. Dawkins

Greenville Memorial Hospital System
Attn: Medical Records Custodian
701 Grove Road
Greenville, SC 29605

St. Francis Hospital
Attn: Medical Records Custodian
1 St. Francis Drive
Greenville, SC 29601

St. Francis Eastside
Attn: Medical Records Custodian
125 Commonwealth Drive
Greenville, SC 29615

GHS Partners in Health d/b/a
Greenville Radiology
Attn: Records Custodian
1210 West Faris Road
Greenville, SC 29605

North Hills Medical Center
Attn: Records Custodian
800 Pelham Rd
Greenville, SC 29615

Steadman Hawkins-Greenville
Attn: Medical Records Custodian
200 Patewood Drive, Ste. C100
Greenville, SC 29615

Steadman Hawkins-Hillcrest
Attn: Medical Records Custodian
727 S.E. Main Street
Simpsonville, SC 29681

Greenville ProAxis Therapy
Attn: Medical Records Custodian
315 Medical Parkway, Ste. 150
Greer, SC 29650

Carolinas Center for Advanced Management of Pain
Attn: Medical Records Custodian
220 Roper Mountain Road Extension
Greenville, SC 29615

814

DONALD R. MOORHEAD, P.A.

ATTORNEY AT LAW

880 S. PLEASANTBURG DRIVE, 3-A
GREENVILLE, SOUTH CAROLINA 29607

DONALD R. MOORHEAD
MEMBER OF SC AND GA BARS

TELEPHONE: (864) 242-9999
TELECOPIER: (864) 232-9169
E-MAIL: DMoorhead@moorheadlaw.com
WEB SITE: www.moorheadlaw.com

August 31, 2011

Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601

RE: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
C.A. No.: 2011-CP-23-4585

Dear Mr. McGarr:

We are in receipt of your recent correspondence advising of subpoenas issued in this matter. Please forward to our office copies of any and all documents received in response to subpoenas issued to the following providers:

- Greenville Memorial Hospital
- St. Francis Hospital
- St. Francis Eastside
- GHS Partners in Health d/b/a Greenville Radiology
- North Hills Medical Center
- Steadman-Hawkins-Greenville
- Steadman-Hawkins-Hillcrest
- Greenville ProAxis Therapy
- Carolinas Center for the Advanced Management of Pain

Sincerely,

Cynthia S. Handford

Cynthia S. Handford
Paralegal to Donald R. Moorhead

/csh

815

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2011-CP-23-4585
	)	
James Dawkins	)	
and Delphine Dawkins,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>DEFENDANT'S ANSWERS TO</u>
	)	<u>PLAINTIFF'S INTERROGATORIES</u>
	)	
	)	
Troy Lee Watts, Jr.,	)	
	)	
Defendant.	)	
	)	

The Defendant, by and through his undersigned attorney, hereby submits the following answers to the Plaintiff's Interrogatories:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: a. James L. Dawkins
115 Kennedy Road
Taylors, SC 29687

It is anticipated that Mr. Dawkins will testify as to his version of this accident, and as to his alleged damages and/or injuries. Counsel for defendant is not in possession of any written or recorded statements from Mr. Dawkins.

b. Delphine G. Dawkins
115 Kennedy Road
Taylors, SC 29687

It is anticipated that Ms. Dawkins will testify as to her alleged damages and/or injuries. Counsel for defendant is not in possession of any written or records statements from Ms. Dawkins at this time.

c. Troy Lee Watts, Jr.
34 East Broadleaf Drive
Hendersonville, NC 28739

It is anticipated that Mr. Watts will testify as to his version of this accident. Counsel for defendant is not in possession of any written or recorded statements from Mr. Watts at this time.

d. Officer Higgins
4 McGee Street
Greenville, SC 29601

It is anticipated that Officer Higgins will testify as to his investigation of this accident. Counsel for defendant is in possession of a South Carolina Traffic Collision Report Form prepared by Officer Higgins.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Counsel for defendant is in possession of an accident report and nine (9) black and white photographs of the vehicle the plaintiff was operating at the time of the accident. An additional scene diagram may be prepared and scene photographs taken may be taken for use at the trial of this case. Depositions of parties, officers, employment or medical personnel, and/or witnesses may be used at the trial of this case.

3. Set forth the names and addresses of all insurance companies with liability insurance coverage relating to the claim and set forth the number or numbers of policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: State Farm Automobile Insurance Company, Post Office Box 106145, Atlanta, GA 30348. 0782-026-40D. 50/100/50.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: Counsel for defendant may call all plaintiff's physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, and family doctors, or their medical records custodians as expert witnesses at the trial of this case.

5. For each person known to the parties or counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements from such witnesses.

ANSWER: Please see answer to Interrogatory number one (1).

6. State each and every defense which you intend to assert and try to prove at the trial of this case and also state the following:

- a. State each and every basis for each defense.
- b. Identify by description of document, custodian of document, address and phone number of the custodian of document, each and every piece of evidence which supports each and every defense.
- c. Identify by name, address, business address, residence phone number, and business phone number each and every witness which supports each and every defense and give a summary of which defense the witness will support and a summary of the testimony which will be offered.

ANSWER: Please refer to the defendant's Answer.

7. If you contend that some person or entity other than the named Defendant did anything or failed to do anything which caused or contributed to the injury of the Plaintiff state:

- a. The name of such person or entity;
- b. The address of such person or entity;
- c. The phone number of such entity;
- d. State with specificity each act or omission by such person or entity which you contend caused or contributed to the injury of the Plaintiff; and,
- e. Explain in detail how and why said act or omission caused or contributed to the injury of the Plaintiff.

ANSWER: Not applicable.

8. Identify each and every statement of any witness or potential witness or person, which was taken by Defendant.

ANSWER: Counsel for defendant is in possession of a South Carolina Traffic Collision Report Form, prepared by Officer Higgins.



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

Greenville, South Carolina
October 26, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

vs.)

DEFENDANT'S RESPONSES TO
PLAINTIFF'S REQUEST TO PRODUCE

Troy Lee Watts, Jr.,)

Defendant.)

The Defendant, Troy Lee Watts, Jr., by and through his undersigned attorney, hereby submits the following responses to the Plaintiffs' Request to Produce:

1. Any and all photographs, video tapes and/or video film, plats, sketches, statements, estimates of repair.

RESPONSE: Please see attached the following: nine (9) black and white copies of photographs of the vehicle plaintiff was driving at the time of the accident; a South Carolina Traffic Collision Report prepared by Officer Higgins; and, a damage estimate with regard to Mr. Dawkins's vehicle. Please be advised that an additional scene diagram may be prepared and scene photographs may be taken for use at the trial of this case. Depositions of parties, officer, employment or medical personnel, and/or witnesses may also be used at the trial of this case.

2. Any and all insurance policies together with the declaration page which is applicable to this case.

RESPONSE: Not attached.

3. Any and all written or recorded statements of Plaintiff.

RESPONSE: Counsel for defendant is not in possession of any written or recorded statements from the plaintiffs at this time.

4. Any and all written or recorded statements of Defendants (except those taken by Defendant's

lawyer).

RESPONSE: Counsel for defendant is not in possession of any written or recorded statements from the plaintiff at this time.

5. Any written or recorded statements of any witnesses or potential witnesses in this case (except those taken by Defendant's lawyer).

RESPONSE: Please see the attached copy of the South Carolina Traffic Collision Report form prepared by Officer Higgins. Furthermore, counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.

6. Any and all photographs, videos, computer animations, accident reconstruction documents, films, things.

RESPONSE: Please see answer to Request to Produce number one (1). If additional documentation is obtained for use at the trial of this case, it will be shown to plaintiff's counsel prior to the same.

7. Reports of any experts.

RESPONSE: Not applicable. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.

8. Any information relied upon by any expert of the Defendants in forming any of the opinions reached by said expert.

RESPONSE: None at this time. If additional documentation is obtained for use at the trial of this case, it will be shown to plaintiff's counsel prior to trial. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of

this case.

9. Records of measurement of the vehicles, scene, skid marks and anything relevant to this accident.

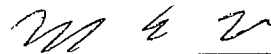
RESPONSE: None at this time. If additional documentation is obtained for use at the trial of this case, it will be shown to plaintiff's counsel prior to the same.

10. A *curriculum vitae* on every expert retained or consulted with in regard to this case.

RESPONSE: Not applicable. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.

11. The entire investigative file of any and all experts engaged by the Defendants with regard to this case.

RESPONSE: Not applicable. Counsel for defendant may call all of plaintiff's or plaintiffs' physicians, including, but not limited to, paramedics, emergency room physicians/nurses, radiologists, family doctors, or their medical records custodians as expert witnesses at the trial of this case.



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

Greenville, South Carolina
October 26, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)

and Delphine Dawkins,)

Plaintiffs,)

vs.)

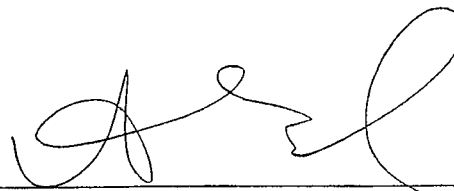
CERTIFICATE OF SERVICE

Troy Lee Watts, Jr.,)

Defendant.)

The undersigned hereby certifies that on the October 26, 2011, she served the defendant's answers to the plaintiffs' Interrogatories, responses to plaintiffs' Request to Produce, and corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Amanda Garland, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
October 26, 2011

DONALD R. MOORHEAD, P.A.

ATTORNEY AT LAW

880 S. PLEASANTBURG DRIVE, 3-A
GREENVILLE, SOUTH CAROLINA 29607

DONALD R. MOORHEAD
MEMBER OF SC AND GA BARS

TELEPHONE: (864) 242-9999
TELECOPIER: (864) 232-9169
E-MAIL: DMoorhead@moorheadlaw.com
WEB SITE: www.moorheadlaw.com

December 28, 2011

Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601

RE: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
C.A. No.: 2011-CP-23-4585

Dear Mr. McGarr:

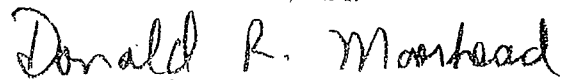
On August 31, 2011 I wrote to you requesting copies of any and all documents you received pursuant to the subpoenas that were issued to the following providers.

- Greenville Memorial Hospital
- St. Francis Hospital
- St. Francis Eastside
- GHS Partners in Health d/b/a Greenville Radiology
- North Hills Medical Center
- Steadman-Hawkins-Greenville
- Steadman-Hawkins-Hillcrest
- Greenville ProAxis Therapy
- Carolinas Center for the Advanced Management of Pain

To date I have not received those documents. I will have to have these records to go forward with the depositions scheduled for Tuesday, January 24, 2012.

Sincerely,

DONALD R. Moorhead, P.A.



Donald R. Moorhead

DRM:csh

824

1.5.12 gmb

RECEIVED IN GOOD ORDER BY:

#OF PACKAGES

CASE# / FILE #

NAME OF FIRM

1

2

3

Carol Kirby

1/E

11-5059

12:16
Moorhead & Moorhead

4

5

~~Waters~~

1/E

Dawkins v Watts
Originals

11:50
Full of M'Graw 12:50

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20



825

68042

1/5/12

Donald A. Moorhead
Moorhead, Donald R
880 S Pleasantburg Drive # 3A
Greenville, SC 29607

Donald A. Moorhead

1/3/12

2/4/12

Net 30 Days

Quantity

50 Minutes; Processing Legal Evidence

921

B&W 8 1/2 X 11 ROUTINE LEGAL EVIDENCE - GVL

0.160

\$147.36

Client Matter # 11-5059 (Dawkins); dkp

PAID

CK. NO.

DATE

~~1/5/12~~ 1/5/12

\$147.36

8.84

LEGAL EAGLE'S FED ID #: 57-1010612

SEE REVERSE SIDE FOR LEGAL EAGLE'S
TERMS AND CONDITIONS

\$156.20

2/4/12

826

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

January 30, 2012

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585
Claim # 40-8412-459
MKM File # 200.1046

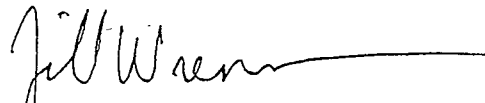
Dear Mr. Moorhead:

Please find enclosed a document entitled *Exhibit A: January 30, 2012*, which lists a number of entities from whom we have requested your client's records. Also enclosed are copies of the request letters and subpoenas that were sent.

You are welcome to request copies of any records that we receive pursuant to these subpoenas.

Sincerely,

MARCUS K. MCGARR, P.A.


Jill Wrenn, Paralegal to
Marcus K. McGarr

Enclosures

Exhibit A: January 30, 2012

James L. Dawkins

Upstate Urology
Attn: Medical Records Custodian
8 Memorial Medical Drive
Greenville, SC 29605

Smith Neurological Clinic
Attn: Medical Records Custodian
103 Clair Drive, Ste. D
Piedmont, SC 29673

Gurpreet Maur, M.D.
Attn: Medical Records Custodian
501 Memorial Drive Ext
Greer, SC 29651

North Hills Medical Center
Attn: Medical Records Custodian
319 S. Buncombe Road
Greer, SC 29650

Doctors Family Medicine
Attn: Medical Records Custodian
3115 Brushy Creek Road
Greer, SC 29650

Desmond Smith, M.D.
Attn: Medical Records Custodian
45 Creekview Court
Greenville, SC 29615

GE Energy
Attn: Personnel Records Custodian
300 Garlington Road
Greenville, SC 29615

Spartanburg Regional Medical Center
Attn: Records Custodian
101 East Wood Street
Spartanburg, SC 29303

Mary Black Hospital
Attn: Records Custodian
1700 Skylyn Drive
Spartanburg, SC 29303

DONALD R. MOORHEAD, P.A.

ATTORNEY AT LAW

880 S. PLEASANTBURG DRIVE, 3-A
GREENVILLE, SOUTH CAROLINA 29607

DONALD R. MOORHEAD
MEMBER OF SC AND GA BARS

TELEPHONE: (864) 242-9999
TELECOPIER: (864) 232-9169
E-MAIL: DMoorhead@moorheadlaw.com
WEB SITE: www.moorheadlaw.com

February 7, 2012

Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601

RE: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
C.A. No.: 2011-CP-23-4585

Dear Mr. McGarr:

We are in receipt of your recent correspondence advising of subpoenas issued in this matter. Please forward to our office copies of any and all documents received in response to subpoenas issued to the following providers:

- Upstate Urology
- Smith Neurological Clinic
- Gurpreet Maur, M.D.
- North Hills Medical Center
- Doctors Family Medicine
- Desmond Smith, M.D.
- Spartanburg Regional Medical Center
- Mark Black Hospital
- GE Energy

Sincerely,

Cynthia S. Handford

Cynthia S. Handford
Paralegal to Donald R. Moorhead

/csh

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association.
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

March 8, 2012

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585
Claim # 40-8412-459
MKM File # 200.1046

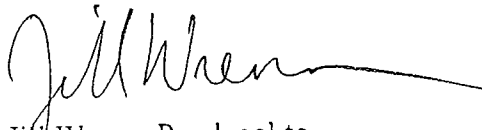
Dear Mr. Moorhead:

Please find enclosed a document entitled *Exhibit A: March 8, 2012*, which lists a number of entities from whom we have requested your client's records. Also enclosed are copies of the request letters and subpoenas that were sent.

You are welcome to request copies of any records that we receive pursuant to these subpoenas.

Sincerely,

MARCUS K. MCGARR, P.A.



Jill Wrenn, Paralegal to
Marcus K. McGarr

Enclosures

830

Exhibit A: March 8, 2012

James L. Dawkins

Long & Vaughn, P.A.
Attn: Medical Records Custodian
18 Memorial Medical Drive
Greenville, SC 29605

Spartanburg Neurosurgical
Attn: Records Custodian
1075 Boiling Springs Road
Spartanburg, SC 29303

CVS Pharmacy
Attn: Records Custodian
Privacy Office
1 CVS Drive
Woonsocket, RI 02895

DONALD R. MOORHEAD, P.A.

ATTORNEY AT LAW

880 S. PLEASANTBURG DRIVE, 3-A
GREENVILLE, SOUTH CAROLINA 29607

DONALD R. MOORHEAD
MEMBER OF SC AND GA BARS

TELEPHONE: (864) 242-9999
TELECOPIER: (864) 232-9169
E-MAIL: DMoorhead@moorheadlaw.com
WEB SITE: www.moorheadlaw.com

March 19, 2012

Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601

RE: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
C.A. No.: 2011-CP-23-4585

Dear Mr. McGarr:

We are in receipt of your recent correspondence advising of subpoenas issued in this matter. Please forward to our office copies of any and all documents received in response to subpoenas issued to the following providers:

- Long & Vaughn, P.A.
- Spartanburg Neurosurgical
- CVS Pharmacy
-

Sincerely,

Cynthia S. Handford

Cynthia S. Handford
Paralegal to Donald R. Moorhead

/csh

832

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

March 21, 2012

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585
Claim # 40-8412-459
MKM File # 200.1046

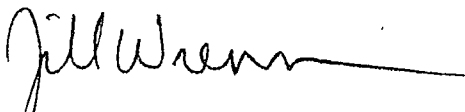
Dear Mr. Moorhead:

Please find enclosed a document entitled *Exhibit A: March 21, 2012*, which lists a number of entities from whom we have requested your client's records. Also enclosed are copies of the request letters and subpoenas that were sent.

You are welcome to request copies of any records that we receive pursuant to these subpoenas.

Sincerely,

MARCUS K. MCGARR, P.A.



Jill Wrenn, Paralegal to
Marcus K. McGarr

Enclosures

Exhibit A: March 21, 2012
James L. Dawkins

UMG-Dept. of Surgery
Attn: Records Custodian
2104 Woodruff Road
Greenville, SC 29607

Palmetto Pulmonary and Critical
Care Associates, P.A.
Attn: Records Custodian
3 St. Francis Drive, Ste. 300
Greenville, SC 29601

Innervision f/k/a Diagnostic Health
Attn: Records Custodian
One Cannon Drive
Greenville, SC 29605

DONALD R. MOORHEAD, P.A.

ATTORNEY AT LAW

880 S. PLEASANTBURG DRIVE, 3-A
GREENVILLE, SOUTH CAROLINA 29607

DONALD R. MOORHEAD
MEMBER OF SC AND GA BARS

TELEPHONE: (864) 242-9999
TELECOPIER: (864) 232-9169
E-MAIL: DMoorhead@moorheadlaw.com
WEB SITE: www.moorheadlaw.com

March 22, 2012

Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601

RE: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
C.A. No.: 2011-CP-23-4585

Dear Mr. McGarr:

We are in receipt of your recent correspondence advising of subpoenas issued in this matter. Please forward to our office copies of any and all documents received in response to subpoenas issued to the following providers:

- UMG - Department of Surgery
- Palmetto Pulmonary & Critical Care Associates, P.A
- Innervision f/k/a Diagnostic Health
-

Sincerely,

Cynthia S. Handford

Cynthia S. Handford
Paralegal to Donald R. Moorhead

/csh

835



Office Outlook Web Access

Type here to search

This Folder



Address Book



Options



Log Off



Mail



Calendar



Contacts



Deleted Items



Drafts



Inbox



Junk E-Mail



Sent Items

Click to view all folders



Dawkins v. Watts



Gaines v. Campbell



Green v. Mann (1)



Latham v. Mason & Jones



Lewis v. Powell



Roper v. Leonard (1)



Sparks v. Everett



Tenorio v. Russell



Tucker v. Davis



Washington v. Barnes



Manage Folders...

**RE: Dawkins v. Watts**

Jill Wrenn

Sent: Tuesday, April 24, 2012 11:02 AM

To: Cynthia Handford [Cynthia@moorheadlaw.com]

My adjuster is available on May 9th, so let's set this at 10:00 a.m. on Wednesday, May 9, 2012 at The Mediation Center of Love, Thornton, Arnold & Thomason.

Lynn will be requesting an ADR extension since we will be a few days past the deadline.

I will be arranging to send Mr. Dawkins's records out for copying in the next day or so. I have 432 pages of records. Which copy service would you like to use?

Jill Wrenn, Paralegal to

Marcus K. McGarr, Esq.

Marcus K. McGarr, P.A.

108 Whitsett Street

Greenville, SC 29601

(864) 298-0089

Fax (864) 235-0503

jill@mcgarrrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]

Sent: Friday, April 20, 2012 12:09 PM

To: Jill Wrenn

Subject: RE: Dawkins v. Watts

May 9th is fine. Please send us the confirming paperwork.

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrrlaw.net]

Sent: Friday, April 20, 2012 9:50 AM

To: Cynthia Handford

Subject: RE: Dawkins v. Watts

Are Mr. Moorhead and your client available on May 9?

Theron's office is available on that date, and Lynn is holding the date for us.

Let me know, and I will finalize the rescheduling of this matter.

Jill Wrenn, Paralegal to

Marcus K. McGarr, Esq.

Marcus K. McGarr, P.A.

108 Whitsett Street

Greenville, SC 29601

(864) 298-0089

Fax (864) 235-0503

jill@mcgarrrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]

Sent: Friday, April 20, 2012 9:04 AM

To: Jill Wrenn

Cc: Donald Moorhead; Donald Moorhead

Subject: RE: Dawkins v. Watts

Mr. Moorhead would be agreeable to Theron Cochran

836

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrlaw.net]
Sent: Wednesday, April 18, 2012 9:33 AM
To: Cynthia Handford
Subject: RE: Dawkins v. Watts

Cynthia:

I have spoken with Tori in Tom Stephenson's office, and Mr. Stephenson does not have any dates available until June.

Is there another mediator that Mr. Moorhead will agree to use?

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Fax (864) 235-0503
jill@mcgarrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
Sent: Monday, April 16, 2012 9:14 AM
To: Jill Wrenn
Cc: Donald Moorhead; Donald Moorhead
Subject: Dawkins v. Watts

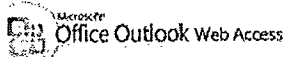
Jill:

I have spoken with Mr. Moorhead and advised him that Mr. McGarr has been called to trial.

Mr. Moorhead will not agree to the mediation being held over until June. He will agree to the mediation being rescheduled within the next 30 days.

Please advise of a date within the next 30 days when Mr. McGarr is available.

Cynthia S. Handford - Paralegal
DONALD R. MOORHEAD, P.A.
880 S. Pleasantburg Drive - Suite 3-A
Greenville, South Carolina 29607
Telephone: (864) 242-9999
Facsimile: (864) 232-9169
Email: cynthia@moorheadlaw.com<mailto:cynthia@moorheadlaw.com>



Type here to search

This Folder



Address Book



Options



Log Off

Mail

Calendar

Contacts

Deleted Items
Drafts
Inbox (1)
Junk E-Mail
Sent Items

Dawkins v. Watts

Dawkins v. Watts
Gaines v. Campbell
Green v. Mann (1)
Latham v. Mason & Jones
Lewis v. Powell
Roper v. Leonard (1)
Sparks v. Everett
Tenorio v. Russell
Tucker v. Davis
Washington v. Barnes

Manage Folders...

Reply

Reply to All

Forward

Move

Delete

Close

RE: Dawkins v. Watts

Cynthia Handford [Cynthia@moorheadlaw.com]

This message was sent with High importance.
You replied on 4/24/2012 12:11 PM.

Sent: Tuesday, April 24, 2012 11:51 AM

To: Jill Wrenn

Jill:

Please use Legal Eagle. They should have our information from the last set of documents sent over. We would like to get those as quickly as possible.

Thank you.

Cynthia

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrlaw.net]

Sent: Tuesday, April 24, 2012 11:03 AM

To: Cynthia Handford

Subject: RE: Dawkins v. Watts

My adjuster is available on May 9th, so let's set this at 10:00 a.m. on Wednesday, May 9, 2012 at The Mediation Center of Love, Thornton, Arnold & Thomason.

Lynn will be requesting an ADR extension since we will be a few days past the deadline.

I will be arranging to send Mr. Dawkins's records out for copying in the next day or so. I have 432 pages of records. Which copy service would you like to use?

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Fax (864) 235-0503
jill@mcgarrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]

Sent: Friday, April 20, 2012 12:09 PM

To: Jill Wrenn

Subject: RE: Dawkins v. Watts

May 9th is fine. Please send us the confirming paperwork.

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrlaw.net]

Sent: Friday, April 20, 2012 9:50 AM

To: Cynthia Handford

Subject: RE: Dawkins v. Watts

Are Mr. Moorhead and your client available on May 9?

Theron's office is available on that date, and Lynn is holding the date for us.

Let me know, and I will finalize the rescheduling of this matter.

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.

838

MARCUS K. MCGARR, Esq.
 Marcus K. McGarr, P.A.
 108 Whitsett Street
 Greenville, SC 29601
 (864) 298-0089
 Fax (864) 235-0503
 jill@mcgarrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
 Sent: Friday, April 20, 2012 9:04 AM
 To: Jill Wrenn
 Cc: Donald Moorhead; Donald Moorhead
 Subject: RE: Dawkins v. Watts

Mr. Moorhead would be agreeable to Theron Cochran

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrlaw.net]
 Sent: Wednesday, April 18, 2012 9:33 AM
 To: Cynthia Handford
 Subject: RE: Dawkins v. Watts

Cynthia:

I have spoken with Tori in Tom Stephenson's office, and Mr. Stephenson does not have any dates available until June.

Is there another mediator that Mr. Moorhead will agree to use?

Jill Wrenn, Paralegal to
 Marcus K. McGarr, Esq.
 Marcus K. McGarr, P.A.
 108 Whitsett Street
 Greenville, SC 29601
 (864) 298-0089
 Fax (864) 235-0503
 jill@mcgarrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
 Sent: Monday, April 16, 2012 9:14 AM
 To: Jill Wrenn
 Cc: Donald Moorhead; Donald Moorhead
 Subject: Dawkins v. Watts

Jill:

I have spoken with Mr. Moorhead and advised him that Mr. McGarr has been called to trial.

Mr. Moorhead will not agree to the mediation being held over until June. He will agree to the mediation being rescheduled within the next 30 days.

Please advise of a date within the next 30 days when Mr. McGarr is available.

Cynthia S. Handford - Paralegal
 DONALD R. MOORHEAD, P.A.
 880 S. Pleasantburg Drive - Suite 3-A
 Greenville, South Carolina 29607
 Telephone: (864) 242-9999
 Facsimile: (864) 232-9169
 Email: cynthia@moorheadlaw.com<mailto:cynthia@moorheadlaw.com>

839

Microsoft Office Outlook Web Access

Type here to search This Folder

Address Book Options Log Off

Mail Calendar Contacts Deleted Items Drafts Inbox Junk E-Mail Sent Items

Click to view all folders

- Dawkins v. Watts
- Gaines v. Campbell
- Green v. Mann (1)**
- Latham v. Mason & Jones
- Lewis v. Powell
- Roper v. Leonard (1)**
- Sparks v. Everett
- Tenorio v. Russell
- Tucker v. Davis
- Washington v. Barnes

Manage Folders...

Reply Reply to All Forward Move Delete Close

RE: Dawkins v. Watts

Jill Wrenn

Sent: Tuesday, April 24, 2012 12:08 PM

To: Cynthia Handford [Cynthia@moorheadlaw.com]

Cynthia:

Legal Eagle will be picking up the records for copying today. I have written their contact information on the work order sheet, and they will be calling you for instructions.

Please note that the following entities stated they had no records: Smith Neurological Clinic; Gurpreet Maur, M.D.; Doctors Family Medicine; Mary Black Hospital; Spartanburg Neurosurgical; and Innervision.

Jill Wrenn, Paralegal to
 Marcus K. McGarr, Esq.
 Marcus K. McGarr, P.A.
 108 Whitsett Street
 Greenville, SC 29601
 (864) 298-0089
 Fax (864) 235-0503
 jill@mcgarrrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
 Sent: Tuesday, April 24, 2012 11:51 AM
 To: Jill Wrenn
 Subject: RE: Dawkins v. Watts

Jill:

Please use Legal Eagle. They should have our information from the last set of documents sent over. We would like to get those as quickly as possible.

Thank you.

Cynthia

-----Original Message-----
 From: Jill Wrenn [mailto:jill@mcgarrrlaw.net]
 Sent: Tuesday, April 24, 2012 11:03 AM
 To: Cynthia Handford
 Subject: RE: Dawkins v. Watts

My adjuster is available on May 9th, so let's set this at 10:00 a.m. on Wednesday, May 9, 2012 at The Mediation Center of Love, Thornton, Arnold & Thomason.

Lynn will be requesting an ADR extension since we will be a few days past the deadline.

I will be arranging to send Mr. Dawkins's records out for copying in the next day or so. I have 432 pages of records. Which copy service would you like to use?

Jill Wrenn, Paralegal to
 Marcus K. McGarr, Esq.
 Marcus K. McGarr, P.A.
 108 Whitsett Street
 Greenville, SC 29601

840

(864) 298-0089
Fax (864) 235-0503
jill@mcgarrrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
Sent: Friday, April 20, 2012 12:09 PM
To: Jill Wrenn
Subject: RE: Dawkins v. Watts

May 9th is fine. Please send us the confirming paperwork.

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrrlaw.net]
Sent: Friday, April 20, 2012 9:50 AM
To: Cynthia Handford
Subject: RE: Dawkins v. Watts

Are Mr. Moorhead and your client available on May 9?

Theron's office is available on that date, and Lynn is holding the date for us.

Let me know, and I will finalize the rescheduling of this matter.

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Fax (864) 235-0503
jill@mcgarrrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
Sent: Friday, April 20, 2012 9:04 AM
To: Jill Wrenn
Cc: Donald Moorhead; Donald Moorhead
Subject: RE: Dawkins v. Watts

Mr. Moorhead would be agreeable to Theron Cochran

-----Original Message-----

From: Jill Wrenn [mailto:jill@mcgarrrlaw.net]
Sent: Wednesday, April 18, 2012 9:33 AM
To: Cynthia Handford
Subject: RE: Dawkins v. Watts

Cynthia:

I have spoken with Tori in Tom Stephenson's office, and Mr. Stephenson does not have any dates available until June.

Is there another mediator that Mr. Moorhead will agree to use?

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Fax (864) 235-0503
jill@mcgarrrlaw.net

From: Cynthia Handford [Cynthia@moorheadlaw.com]
Sent: Monday, April 16, 2012 9:14 AM
To: Jill Wrenn

841

CC: Donald Moorhead; Donald Moorhead
Subject: Dawkins v. Watts

Jill:

I have spoken with Mr. Moorhead and advised him that Mr. McGarr has been called to trial.

Mr. Moorhead will not agree to the mediation being held over until June. He will agree to the mediation being rescheduled within the next 30 days.

Please advise of a date within the next 30 days when Mr. McGarr is available.

Cynthia S. Handford - Paralegal
DONALD R. MOORHEAD, P.A.
880 S. Pleasantburg Drive - Suite 3-A
Greenville, South Carolina 29607
Telephone: (864) 242-9999
Facsimile: (864) 232-9169
Email: cynthia@moorheadlaw.com<<mailto:cynthia@moorheadlaw.com>>

 Connected to Microsoft Exchange

842

4/26/12

51692 782

RECEIVED IN GOOD ORDER BY:

OF PACKAGES

CASE# / FILE #

NAME OF FIRM

1

2

3

J. Wren
C. Handford

1/E

1/E

DAWKINS V
WATTS

11-5059

J. WREN@MLF

C. HANDFORD@DM

9:35

10:05

9

10

11

12

13

14

15

16

17

18

19

20



843

68537

4/26/12

Cynthia Handford
Moorhead, Donald R
880 S Pleasantburg Drive # 3A
Greenville, SC 29607

Cynthia Handford

4/24/12

5/26/12

Net 30 Days

Quantity

30 Minutes; Processing Legal Evidence

440

B&W 8 1/2 X 11 ROUTINE LEGAL EVIDENCE - GVL

0.160

\$70.40

Client Matter # 11-5059; dkp

PAID

CK. NO.

DATE

5/30/12

\$70.40

4.22

LEGAL EAGLE'S FED ID #: 57-1010612

SEE REVERSE SIDE FOR LEGAL EAGLE'S
TERMS AND CONDITIONS

\$74.62

5/26/12

844

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)
Defendant.)

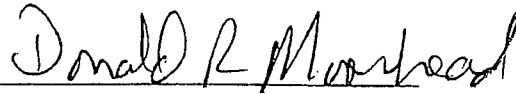
PLAINTIFF'S SUPPLEMENTAL REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: TROY LEE WATTS, JR, AND HIS ATTORNEY, MARCUS K. McGARR:

YOU ARE HEREBY NOTIFIED that the above-named Plaintiff pursuant to Rule 34, South Carolina Rules of Civil Procedure, are requested to produce and permit the inspection of the following photographs and documents at the office of the Plaintiff's attorney located at 880 South Pleasantburg Drive, Suite 3-A, Greenville, South Carolina, 29607, on the thirtieth (30th) day after the service hereof at 10:00 a.m. or at some other mutually-agreeable time and date the following records and documents:

1. Any and all documents or recordings regardless of media, medical records, medical bills, regardless of date, which in any way relate to personal injury or injuries to James L. Dawkins both before and after the date of the motor vehicle collision which is the subject of this action, i.e. the motor vehicle collision which occurred on September 24, 2008.

DONALD R. MOORHEAD, P.A.

A handwritten signature in black ink that reads "Donald R. Moorhead". The signature is written in a cursive style with a horizontal line underneath the name.

Donald R. Moorhead, Esq.

SC Bar No. 4071

880 S. Pleasantburg Drive 3-A

Greenville, SC 29607

(864) 242-9999 - Telephone

(864) 232-9169 - Facsimile

Attorney for Plaintiffs

Greenville, South Carolina

May 25, 2012

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
)
Plaintiffs,)

vs.)

CERTIFICATE OF MAILING

Troy Lee Watts, Jr.,)
)
Defendant.)

I hereby certify that I am employee of the law firm of DONALD R. MOORHEAD, P.A., counsel for the Plaintiffs, and I have, this 25th day of May, 2012 served the within *Plaintiffs' Supplemental Request for Production of Documents* upon counsel for the Defendant, by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

Marcus K. McGarr, Esq.
MARCUS K. McGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601

Cynthia S. Handford
Cynthia S. Handford
Paralegal to Donald R. Moorhead

Greenville, South Carolina

847

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

June 5, 2012

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585
Claim # 40-8412-459
MKM File # 200.1046

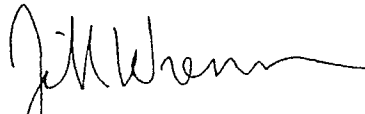
Dear Mr. Moorhead:

Please find enclosed a document entitled *Exhibit A: June 5, 2012*, which lists a number of entities from whom we have requested your client's records. Also enclosed are copies of the request letters and subpoenas that were sent.

You are welcome to request copies of any records that we receive pursuant to these subpoenas.

Sincerely,

MARCUS K. MCGARR, P.A.


Jill Wrenn, Paralegal to
Marcus K. McGarr

Enclosures

DONALD R. MOORHEAD, P.A.

ATTORNEY AT LAW

880 S. PLEASANTBURG DRIVE, 3-A
GREENVILLE, SOUTH CAROLINA 29607

DONALD R. MOORHEAD
MEMBER OF SC AND GA BARS

TELEPHONE: (864) 242-9999
TELECOPIER: (864) 232-9169
E-MAIL: DMoorhead@moorheadlaw.com
WEB SITE: www.moorheadlaw.com

June 7, 2012

Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601

RE: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
C.A. No.: 2011-CP-23-4585

Dear Mr. McGarr:

We are in receipt of your recent correspondence advising of subpoenas issued in this matter. Please forward to our office copies of any and all documents received in response to subpoenas issued to the following providers:

- Peace Internal Medicine
- Blue Ridge Urology
- Anthony L. Mathis, DPM
- Gastroenterology Associates
- Exigent Wade Hampton
-

Sincerely,

Cynthia S. Handford

Cynthia S. Handford
Paralegal to Donald R. Moorhead

/csh

849

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

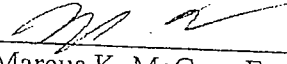
C.A. NO.: 2011-CP-23-4585

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
SUPPLEMENTAL REQUEST TO PRODUCE**

The Defendant, by and through his undersigned attorney, hereby submits the following answers to the Plaintiff's Interrogatories:

1. Any and all documents or recordings regardless of media, medical records, medical bills, regardless of date, which in any way relate to personal injury or injuries to James L. Dawkins both before and after the date of the motor vehicle collision which is the subject of this action, i.e. the motor vehicle collision which occurred on September 24, 2008.

ANSWER: None attached at this time. Please note that counsel for defendant is in the process of subpoenaing medical records with regard to Mr. Dawkins. Furthermore, counsel plaintiff will be copied on each such subpoena, and is welcome to request copies of such records at his expense. In the alternative, the records will be made available for inspection at a time mutually convenient between the parties.



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

Greenville, South Carolina
June 26, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
vs.)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of June, 2012, she served the defendant's response to the plaintiffs' Supplemental Request for Production and a corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Amanda Garland, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
(864) 298-0089
(864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
June 27, 2012

7/25/12
Stacy
Davis

RECEIVED IN GOOD ORDER BY:

#OF PACKAGES

CASE# / FILE #

NAME OF FIRM

✓ 10:49	3	<u>[Signature]</u>	<u>1</u>	<u>Dawkins V. Watts McGarr - Jill Wrenn</u>
✓ 11:22	4	<u>George Kirby</u>	<u>1</u>	<u>11-5059 Dawkins Moorehead - Cynthia Handford</u>

8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				



853

68900

7/25/12

Cynthia Handford
Moorhead, Donald R
880 S Pleasantburg Drive # 3A
Greenville, SC 29607

Cynthia Handford

7/24/12

8/24/12

Net 30 Days

Quantity

10 Minutes; Processing Legal Evidence

99

B&W 8 1/2 X 11 ROUTINE LEGAL EVIDENCE - GVL 0.160

\$15.84

Client Matter # 11-5059 Dawkins; rjc

PAID

CK. NO.

DATE 8/1/12

\$15.84

0.95

LEGAL EAGLE'S FED ID #: 57-1010612

SEE REVERSE SIDE FOR LEGAL EAGLE'S
TERMS AND CONDITIONS

\$16.79

8/24/12

854

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

James Dawkins)
and Delphine Dawkins,)
Plaintiffs,)

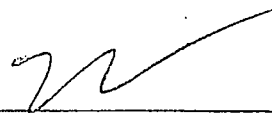
vs.)

REQUEST TO ADMIT

Troy Lee Watts, Jr.,)
Defendant.)

TO: Donald R. Moorhead, Esq., as attorney for Plaintiffs:

The Defendant, by and through his undersigned counsel, and pursuant to Rule 36 of the *SCRCP*, requests that you admit or deny that the documents submitted in Defendant's Request to Admit Authenticity of Documents and Other Papers, dated September 26, 2012 were kept in the ordinary course and scope of the respective business, entities, or persons who created such documents.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for Defendant

Greenville, South Carolina
September 26, 2012

855

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
)
vs.)
)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

REQUEST TO ADMIT AUTHENTICITY
OF DOCUMENTS AND OTHER PAPERS

TO: Donald R. Moorhead, Esq., as attorney for Plaintiffs:

The Defendant, by and through his undersigned counsel, and pursuant to Rule 36 of the *SCRCP*, requests that you admit or deny the genuineness of the following attached documents:

1. Three page operation consent form from Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated May 5, 1997;
2. Two page gastroenterology consultation form from Specialty Group, Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated January 17, 2000;
3. Two page physician's note from EastSide Cardiology, regarding James Lewis Dawkins, dated February 1, 2000;
4. Twenty-one page pharmaceutical record from CVS Pharmacy, regarding James Lewis Dawkins, dated from April 1, 2000 through March 20, 2012;
5. One physician's note from Blue Ridge Urology, regarding James Lewis Dawkins, dated from June 16, 2003 through July 14, 2003;
6. One page physician's note from Blue Ridge Urology, regarding James Lewis

- Dawkins, dated November 14, 2003;
7. One page visit note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 17, 2003;
 8. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 8, 2004;
 9. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 10, 2004;
 10. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2004;
 11. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 6, 2004;
 12. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 17, 2004;
 13. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 20, 2004;
 14. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;
 15. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;
 16. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated October 4, 2004;
 17. Two page physician's note from the Smith Center for Cardiovascular Wellness,

- regarding James Lewis Dawkins, dated November 15, 2004;
18. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated December 14, 2004;
 19. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 14, 2005;
 20. One page testosterone shot log from Blue Ridge Urology, regarding James Lewis Dawkins, dated from August 13, 2004 through May 19, 2005;
 21. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 28, 2005;
 22. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 8, 2005;
 23. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated April 25, 2005;
 24. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 2, 2005;
 25. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 2, 2005;
 26. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 31, 2006;
 27. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 14, 2006;
 28. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2006;

29. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated April 21, 2006;
30. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 8, 2006;
31. One page HIPAA compliance form from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
32. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
33. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
34. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
35. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 13, 2006;
36. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 21, 2006;
37. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated March 7, 2007;
38. One page x-ray report from North Hills Medical Center, regarding James Lewis Dawkins, dated March 7, 2007;
39. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated June 28, 2007;
40. One page result text form from Greenville Radiology, regarding James Lewis

Dawkins, dated July 12, 2007;

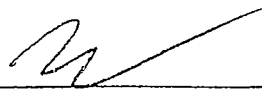
41. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated August 20, 2007;
42. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
43. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
44. Two page patient history form from Upstate Urology, regarding James Lewis Dawkins, dated September 26, 2007;
45. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 14, 2008;
46. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 28, 2008;
47. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated March 10, 2008;
48. Two page letter to Lawrence Hill, MD from Richard Manrick, MD, regarding James Lewis Dawkins, dated April 25, 2008;
49. One page admission information form from Upstate Urology Associates, regarding James Lewis Dawkins, dated August 26, 2008;
50. Two page run note from the Greenville EMS, regarding James Lewis Dawkins, dated September 24, 2008;
51. One page patient data sheet from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;

52. Four page emergency record from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
53. Two page radiology report form from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
54. Five page physician's note from Bon Secours Health System, St. Francis Hospital Eastside, regarding James Lewis Dawkins, dated September 27, 2008;
55. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2008;
56. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated October 22, 2008;
57. Two page patient information form from the Greenville Hospital System, regarding James Lewis Dawkins, dated November 12, 2008;
58. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated November 12, 2008;
59. Seven page initial evaluation form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 19, 2008;
60. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated November 20, 2008;
61. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 21, 2008;
62. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 3, 2008;

63. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins, dated December 5, 2008;
64. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins, dated December 10, 2008;
65. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 16, 2008;
66. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 18, 2008;
67. One page patient information form from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 19, 2008;
68. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 22, 2008;
69. Four page discharge summary from Proaxis Therapy, regarding James Lewis Dawkins, dated January 20, 2009;
70. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated February 18, 2009;
71. One page public index document from the South Carolina Judicial Department website, regarding James Lewis Dawkins, dated March 12, 2009;
72. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 13, 2009;
73. Four page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 23, 2009;
74. Two page physician's note from the University Medical Group, Steadman

- Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 8, 2009;
75. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 6, 2009;
76. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated September 9, 2009;
77. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2009;
78. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated October 23, 2009;
79. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated December 14, 2009;
80. Two page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 1, 2010;
81. Two page triage record from the Greenville Hospital System, regarding James Lewis Dawkins, dated July 26, 2010;
82. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated July 26, 2010;
83. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated September 8, 2010;
84. Six page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2010;
85. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated October 16, 2010;

86. Two page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated October 21, 2010;
87. One page medical report from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 23, 2011;
88. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated April 2, 2011;
89. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 21, 2011;
90. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated June 22, 2011; and,
91. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 5, 2011.



Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for Defendant

Greenville, South Carolina
September 26, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
.vs.)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2011-CP-23-4585

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of September, 2012, she served the Defendant's Request to Admit, Request to Admit Authenticity of Documents and Other Papers, and a corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607



Melissa Mason, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
T: (864) 298-0089
F: (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
September 26, 2012

865

Microsoft Office Outlook Web Access

Type here to search This Folder Address Book Options Log Off

Mail Calendar Contacts

Deleted Items Drafts **Inbox (1)** Junk E-Mail Sent Items

Dawkins v. Watts

Dawkins v. Watts
Gaines v. Campbell
Green v. Mann (1)
Latham v. Mason & Jones
Lewis v. Powell
Roper v. Leonard (1)
Sparks v. Everett
Tenorio v. Russell
Tucker v. Davis
Washington v. Barnes

Manage Folders...

Letter from Peace

Jill Wrenn

Sent: Thursday, October 04, 2012 11:50 AM
To: cynthia@moorheadlaw.com
Attachments: [peace.pdf \(10 KB\)](#) [Open as Web Page]

Cynthia,

Please find attached a letter sent by Peace Medical Center stating that they have no records on James Dawkins.

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Fax (864)235-0503
jill@mccgarrlaw.net

866

Connected to Microsoft Exchange

June 22, 2012

Peace Medical Center

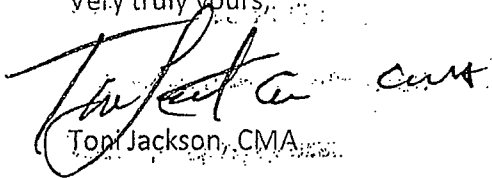
401 Guess Street Suite #100

Greenville, SC 29605

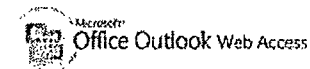
To whom it may concern:

James Lewis Dawkins has never been seen at this practice.

Very truly yours,


Toni Jackson, CMA

867



Type here to search

This Folder

Address Book

Options

Log Off

Mail

Calendar

Contacts

Deleted Items

Drafts

Inbox (1)

Junk E-Mail

Sent Items

Dawkins v. Watts

Dawkins v. Watts

Gaines v. Campbell

Green v. Mann (1)

Latham v. Mason & Jones

Lewis v. Powell

Roper v. Leonard (1)

Sparks v. Everett

Tenorio v. Russell

Tucker v. Davis

Washington v. Barnes

Manage Folders...

Reply

Reply to All

Forward

Move

Delete

Close

RE: Letter from Peace

Cynthia Handford [Cynthia@moorheadlaw.com]

Sent: Thursday, October 04, 2012 11:54 AM

To: Jill Wrenn

Thank you.

From: Jill Wrenn [mailto:jill@mcgarraw.net]

Sent: Thursday, October 04, 2012 11:50 AM

To: Cynthia Handford

Subject: Letter from Peace

Cynthia,

Please find attached a letter sent by Peace Medical Center stating that they have no records on James Dawkins.

Jill Wrenn, Paralegal to
Marcus K. McGarr, Esq.
Marcus K. McGarr, P.A.
108 Whitsett Street
Greenville, SC 29601
(864) 298-0089
Fax (864) 235-0503
jill@mcgarraw.net

868

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

James Dawkins)

and Delphine Dawkins,)

Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)

Defendant.)

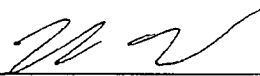
FILED-CLERK OF COURT
JOSEPH LEE CO. S.C.
PAUL B. WICKENSIMR

C.A. NO.: 2011-CP-23-4585

2012 DEC -7 A 9:35

THE PLAINTIFFS' DEEMED RESPONSES TO
THE DEFENDANT'S REQUEST TO ADMIT

The Defendant, by and through his undersigned counsel, hereby submits the following responses are deemed admitted.



Marcus K. McGarr, Esq.

MARCUS K. MCGARR, P.A.

S.C. Bar No.: 011885

108 Whitsett Street

Greenville, South Carolina 29601

Telephone (864) 298-0089

Facsimile (864) 235-0503

Attorney for Defendant

Greenville, South Carolina

December 5, 2012

869

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Dawkins)
and Delphine Dawkins,)
)
Plaintiffs,)
)
)
)
)
vs.)
)
)
Troy Lee Watts, Jr.,)
)
Defendant.)
_____)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKERSIMER
IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585
2012 DEC -7 A 9:35

**THE PLAINTIFFS' DEEMED RESPONSES
TO THE DEFENDANT'S REQUEST TO
ADMIT AUTHENTICITY OF DOCUMENTS
AND OTHER PAPERS**

The Plaintiff has deemed the following documents are genuine:

1. Three page operation consent form from Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated May 5, 1997;
2. Two page gastroenterology consultation form from Specialty Group, Spartanburg Regional Hospital, regarding James Lewis Dawkins, dated January 17, 2000;
3. ~~Two page physician's note from EastSide Cardiology, regarding James Lewis~~
Dawkins, dated February 1, 2000;
4. Twenty-one page pharmaceutical record from CVS Pharmacy, regarding James Lewis Dawkins, dated from April 1, 2000 through March 20, 2012;
5. One physician's note from Blue Ridge Urology, regarding James Lewis Dawkins, dated from June 16, 2003 through July 14, 2003;
6. One page physician's note from Blue Ridge Urology, regarding James Lewis Dawkins, dated November 14, 2003;

7. One page visit note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 17, 2003;
8. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 8, 2004;
9. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 10, 2004;
10. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2004;
11. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 6, 2004;
12. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 17, 2004;
13. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 20, 2004;
14. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;

15. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 15, 2004;
16. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated October 4, 2004;
17. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 15, 2004;

18. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated December 14, 2004;
19. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 14, 2005;
20. One page testosterone shot log from Blue Ridge Urology, regarding James Lewis Dawkins, dated from August 13, 2004 through May 19, 2005;
21. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 28, 2005;
22. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 8, 2005;
23. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated April 25, 2005;
24. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 2, 2005;
25. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated November 2, 2005;

26. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated January 31, 2006;
27. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated February 14, 2006;
28. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated March 31, 2006;
29. Three page physician's note from the Smith Center for Cardiovascular Wellness,

- regarding James Lewis Dawkins, dated April 21, 2006;
30. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated May 8, 2006;
 31. One page HIPAA compliance form from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
 32. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 20, 2006;
 33. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
 34. One page x-ray examination request from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated June 22, 2006;
 35. Three page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated July 13, 2006;
 36. Two page physician's note from the Smith Center for Cardiovascular Wellness, regarding James Lewis Dawkins, dated September 21, 2006;
 37. ~~One page physician's note from North Hills Medical Center, regarding James~~
Lewis Dawkins, dated March 7, 2007;
 38. One page x-ray report from North Hills Medical Center, regarding James Lewis Dawkins, dated March 7, 2007;
 39. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated June 28, 2007;
 40. One page result text form from Greenville Radiology, regarding James Lewis Dawkins, dated July 12, 2007;

41. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated August 20, 2007;
 42. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
 43. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 13, 2007;
 44. Two page patient history form from Upstate Urology, regarding James Lewis Dawkins, dated September 26, 2007;
 45. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 14, 2008;
 46. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated January 28, 2008;
 47. One page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated March 10, 2008;
 48. Two page letter to Lawrence Hill, MD from Richard Mamrick, MD, regarding James Lewis Dawkins, dated April 25, 2008;
-
49. One page admission information form from Upstate Urology Associates, regarding James Lewis Dawkins, dated August 26, 2008;
 50. Two page run note from the Greenville EMS, regarding James Lewis Dawkins, dated September 24, 2008;
 51. One page patient data sheet from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
 52. Four page emergency record from the Greenville Hospital System, regarding

- James Lewis Dawkins, dated September 24, 2008;
53. Two page radiology report form from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2008;
 54. Five page physician's note from Bon Secours Health System, St. Francis Hospital Eastside, regarding James Lewis Dawkins, dated September 27, 2008;
 55. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2008;
 56. Two page physician's note from North Hills Medical Center, regarding James Lewis Dawkins, dated October 22, 2008;
 57. Two page patient information form from the Greenville Hospital System, regarding James Lewis Dawkins, dated November 12, 2008;
 58. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated November 12, 2008;
 59. Seven page initial evaluation form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 19, 2008;
 - ~~60. One page physician's note from North Hills Medical Center, regarding James~~
Lewis Dawkins, dated November 20, 2008;
 61. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated November 21, 2008;
 62. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 3, 2008;
 63. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins,

- dated December 5, 2008;
64. Four page daily note from Proaxis Therapy, regarding James Lewis Dawkins, dated December 10, 2008;
 65. One page cancel/no show form from Proaxis Therapy, regarding James Lewis Dawkins, dated December 16, 2008;
 66. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 18, 2008;
 67. One page patient information form from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 19, 2008;
 68. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated December 22, 2008;
 69. Four page discharge summary from Proaxis Therapy, regarding James Lewis Dawkins, dated January 20, 2009;
 70. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated February 18, 2009;
 - ~~71. One page public index document from the South Carolina Judicial Department~~
website, regarding James Lewis Dawkins, dated March 12, 2009;
 72. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 13, 2009;
 73. Four page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated March 23, 2009;
 74. Two page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 8, 2009;

75. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 6, 2009;
 76. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated September 9, 2009;
 77. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated September 30, 2009;
 78. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated October 23, 2009;
 79. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated December 14, 2009;
 80. Two page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 1, 2010;
 81. Two page triage record from the Greenville Hospital System, regarding James Lewis Dawkins, dated July 26, 2010;
 82. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated July 26, 2010;
-
83. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated September 8, 2010;
 84. Six page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated September 24, 2010;
 85. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated October 16, 2010;
 86. Two page physician's note from the North Hills Medical Center, regarding James

- Lewis Dawkins, dated October 21, 2010;
87. One page medical report from the North Hills Medical Center, regarding James Lewis Dawkins, dated March 23, 2011;
88. One page physician's note from the North Hills Medical Center, regarding James Lewis Dawkins, dated April 2, 2011;
89. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated June 21, 2011;
90. Five page ER patient record from the Greenville Hospital System, regarding James Lewis Dawkins, dated June 22, 2011; and,
91. Three page physician's note from the University Medical Group, Steadman Hawkins-Hillcrest, regarding James Lewis Dawkins, dated July 5, 2011.



Marcus K. McGarr, Esq.

MARCUS K. MCGARR, P.A.

S.C. Bar No.: 011885

108 Whitsett Street

Greenville, South Carolina 29601

Telephone (864) 298-0089

Facsimile (864) 235-0503

Attorney for Defendant

Greenville, South Carolina
December 5, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

vs.)

Troy Lee Watts, Jr.,)

Defendant.)

IN THE COURT OF COMMON PLEAS)

C.A. NO.: 2011-CP-23-4585)

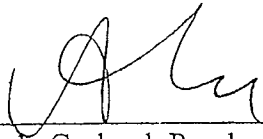
FILED - CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMMER

2012 DEC -7 A 9:36

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of December, 2012, she served the Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers, Plaintiffs' Deemed Responses to the Defendant's Request to Admit, and a corresponding Certificate of Service upon the individual/entity named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607


Amanda Garland, Paralegal
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
December 5, 2012

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Paralegal

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

December 5, 2012

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
Greenville County Courthouse
305 East North Street
Greenville, SC 29601

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585.
Claim # 40-8412-459
MKM File # 200.1046

Dear Mr. Wickensimer:

Please find enclosed an original and one copy of the Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers, Plaintiffs' Deemed Responses to the Defendant's Request to Admit, and a corresponding Certificate of Service regarding the above-referenced action.

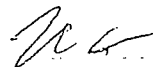
I would appreciate your filing the originals, clocking the copies and returning the same to me in the enclosed, stamped, self-addressed envelope provided for your convenience.

Also, please note, that by copy of this letter we are placing counsel for Plaintiff on notice that the originals of these documents have been filed with your Court.

As always, I thank you and your staff for all of the help and assistance that you repeatedly provide with regard to these matters.

Sincerely,

MARCUS K. MCGARR, P.A.



Marcus K. McGarr

MKM/ajg
Enclosures

cc: Donald Moorhead, Esq.

880

MARCUS K. MCGARR, P.A.

Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Jill Wrenn, Paralegal
Amanda Garland, Paralegal

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

December 5, 2012

Donald R. Moorhead, Esq.
Donald R. Moorhead, P.A.
880 S. Pleasantburg Drive, 3-A
Greenville, SC 29607

RE: Case Name: James L. Dawkins and Delphine Dawkins v. Troy Lee Watts, Jr.
Case # 2011-CP-23-4585
Claim # 40-8412-459
MKM File # 200.1046

Dear Mr. Moorhead:

Please find enclosed herewith and served upon you the Plaintiffs' Deemed Responses to the Defendant's Request to Admit Authenticity of Documents and Other Papers, Plaintiffs' Deemed Responses to the Defendant's Request to Admit, and a corresponding Certificate of Service.

Also, please find enclosed a copy of our transmittal letter to the clerk indicating that the originals of these documents have been filed with the Court.

Sincerely,

MARCUS K. MCGARR, P.A.



Marcus K. McGarr

MKM/ajg
Enclosures

881

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)
vs.)
Troy Lee Watts, Jr.,)
Defendant.)

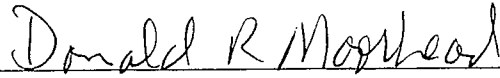
MOTION FOR NEW TRIAL
NISI ADDITUR OR IN THE
ALTERNATIVE MOTION
FOR NEW TRIAL AS TO
DAMAGES ONLY

COMES NOW, the Plaintiffs by and through their undersigned counsel, and move the Court for an Order vacating the judgment of the jury and making a substantial additur to the zero dollars award of the jury or in the alternative granting Plaintiffs a new trial as to damages only.

This Motion is based upon several errors that occurred during the trial of the case, including but not limited to: 1) allowing defense counsel to introduce hearsay evidence; 2) in allowing defense counsel to introduce evidence that Plaintiff was on disability; 3) in allowing defense counsel to introduce evidence that Plaintiff had Blue Cross Blue Shield health insurance coverage in June of 2009; 4) in allowing defense counsel to repeatedly refer to Troy Lee Watts as his client who will receive his only day in Court during the trial of the case and that the jury had to be fair to Troy Lee Watts; 5) in allowing irrelevant and prejudicial evidence into the record and Plaintiff was unfairly surprised and greatly prejudiced by the introduction of the evidence; 6) the verdict of the jury was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive.

Respectfully Submitted,

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead

S.C. Bar # 4071

Attorney for Plaintiffs

880 S. Pleasantburg Drive, 3-A

Greenville, South Carolina 29607

(864) 242-9999

Greenville, South Carolina

February 1 , 2013

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-23-4585

James L. Dawkins and Delphine Dawkins,)
Plaintiffs,)
vs.)
Troy Lee Watts, Jr.,)
Defendant.)

PLAINTIFFS' BRIEF AS TO
MOTION FOR NEW TRIAL
NISI ADDITUR OR IN THE
ALTERNATIVE MOTION
FOR NEW TRIAL AS TO
DAMAGES ONLY

STATEMENT OF THE CASE

This is an admitted case of negligence wherein Troy Lee Watts, Defendant, caused a motor vehicle collision between his vehicle and the vehicle owned and operated by James L. Dawkins, Plaintiff. In that collision, Mr. Dawkins sustained \$3,893.49 physical damage to his vehicle, and the Defendant's vehicle was a total loss.

Mr. Dawkins was transported by ambulance from the scene of the accident, and his spine was immobilized by backboards and neck blocks. He was treated at the Greer Memorial Emergency Room and released. Subsequently, on September 27, 2008, Reverend Dawkins was treated at St. Francis Women's Hospital Emergency Room. Subsequent to that he was treated on two or three occasions at North Hills Medical Clinic and ultimately was cared for by Dr. Stephen Geary at Steadman Hawkins Orthopaedic group. Subsequent to that, he was treated for his neck and his low back by Dr. Timothy McHenry.

Dr. McHenry testified by way of video deposition that the injuries to Reverend Dawkins' cervical spine and low back problems were the direct and proximate result of the automobile collision of September 24, 2008. Dr. McHenry also testified that as a result of the automobile

collision of September 24, 2008, Reverend Dawkins needed cervical and lumbar surgeries. He specified the type of surgery, the medications, the physical therapy visits, radiographic studies and other ancillary services which would be necessary for the surgeries. Reverend Dawkins' past medical bills amounted to the sum of \$ 21,680.61, and the future costs of his surgeries amounts to the sum of \$223,416.00.

Penny Cates, a certified life care and medical cost projection expert testified that the cervical surgery, including the ancillary services would cost \$104,213.00 in present day dollars. Ms. Cates further testified that the lumbar surgery would amount to the sum of \$ 119,203.00, including ancillary services.

In the pleadings and at the trial of the case, defense counsel admitted liability. Defense counsel was defending State Farm Mutual Automobile Insurance Company, Reverend Dawkins' automobile liability carrier. Troy Lee Watts had been released on a Covenant Not To Execute, and the liability carrier for Mr. Watts paid its policy limit of \$25,000.00.

In his Motion in Limine, Reverend Dawkins requested that any reference, arguments, statements or evidence relating to Reverend Dawkins being on disability or being entitled to Medicare or Medicaid be prohibited. That Motion was consented to by defense counsel and granted by Court. At the trial of the case, defense counsel repeatedly referred to Troy Lee Watts as his client who deserved a fair day in Court, which would be his only day in Court. Plaintiffs' counsel moved the Court to be allowed to bring into evidence that such references were misrepresentations and Plaintiffs' counsel further requested that he be allowed to question Troy Lee Watts as to what, if anything, did he have at stake in the trial of the case. Plaintiffs' counsel requested that the true nature of the release and the cause of action, including the fact that State Farm Mutual Automobile Insurance Company was the true Defendant. Plaintiffs' argument was

that defense counsel opened the door, so to speak, when he argued that Troy Lee Watts was his client. The Court denied that Motion.

Also, during the trial of the case and in violation of the Motion in Limine and contrary to representations made by defense counsel to the Court, defense counsel brought into evidence that Reverend Dawkins was at one time on Social Security Disability. Plaintiffs sought to exclude the evidence, and the Court over-ruled Plaintiffs' counsel's objection.

Reverend Dawkins, at the trial of the case, had no health care insurance or any other source of payment for the surgeries that Dr. McHenry testified the Plaintiff needed as a direct and proximate result of the motor vehicle collision which was the subject of this action. The Court allowed defense counsel to introduce evidence that Reverend Dawkins had health care insurance coverage three years and seven months prior to the trial of the case, i.e., June of 2009.

After deliberating for forty minutes, the jury returned a verdict of zero dollars for Reverend Dawkins and found for the Defendant in Reverend Dawkins' case. The jury also returned a verdict of zero dollars and found for the Defendant in the consortium cause of action.

ARGUMENT

ISSUE # 1

Was it error to permit defense counsel to repeatedly refer to Troy Lee Watts as his client who deserves his one and only fair day in Court and to deny Plaintiffs the ability to correct this gross misrepresentation? Yes.

Defense counsel's statement was a misrepresentation of the facts. Defense counsel does not nor has he ever represented Troy Lee Watts who is released from any liability on a Covenant Not To Execute in return for his liability insurance company (which is not State Farm) paying the policy limits of \$25,000.00.

Defense counsel opened the door to having the true parties be disclosed to the jury when he attempted to curry favor for Troy Lee Watts in order to reduce the exposure of his client, State Farm. The jury should have been able to hear that Troy Lee Watts was not the client of defense counsel and to hear that State Farm is the client of defense counsel.

ISSUE # 2

Was it error to allow defense counsel to present evidence that Reverend Dawkins was on disability at one point in time? Yes.

Such evidence was of great surprise to the Plaintiff who did not have the ability to adequately address to the jury evidence to contradict or clarify the evidence introduced by the defense counsel. Plaintiffs' counsel had made a Motion in Limine to prevent such evidence be introduced or any attempt to introduce such evidence be prohibited. The Motion in Limine was granted, but defense counsel cross-examined Reverend Dawkins on that very issue, and the Court over-ruled Plaintiffs' counsel's objection. Such evidence was highly prejudicial and irrelevant because Reverend Dawkins was not on disability at the time of the trial and, in fact, had not been on disability since 1997, some eleven years prior to this automobile collision. As Plaintiffs' counsel argued to the Court, the reference to disability and reference to evidence as to Reverend Dawkins being on disability at some point in time was irrelevant and highly prejudicial. It raises the specter of entitlement to Medicare or Medicaid, which is also irrelevant and highly prejudicial. Plaintiffs' counsel argued that there was no way he would overcome that prejudicial evidence with each of the twelve jurors. The Court over-ruled Plaintiffs' objection, and the evidence came in. Moreover, even if there had been disability and therefore Medicare coverage, it would have been a collateral source, and by Federal statute, Medicare would be entitled to recovery any monies it paid for medical bills arising out of the automobile collision.

Moreover, any probative value which such evidence may have had (and Plaintiff doesn't admit that it had any) was outweighed by the highly prejudicial nature of said evidence.

ISSUE # 3

Was it error to allow evidence that in June of 2009, Reverend Dawkins may have had health insurance coverage with Blue Cross Blue Shield? Yes.

First of all, such benefits are a collateral source and totally irrelevant to damages which should be considered by the jury. Plaintiff was surprised and highly prejudiced by the introduction of such evidence. Moreover, Plaintiff was denied an opportunity to rebut such evidence with a showing that any monies paid by Blue Cross Blue Shield for injuries sustained in the automobile collision would be recouped by Blue Cross Blue Shield in all probability.

Second, the question posed by Plaintiffs' counsel at the trial of the case was whether he has the ability (present tense) to pay for the surgeries which he requires. The evidence introduced by defense counsel pertained to coverage which may have been in effect in June of 2009, over three years and seven months from the date of the trial.

Moreover, any probative value which such evidence may have had (and Plaintiff doesn't admit that it has any) was outweighed by the highly prejudicial nature of said evidence.

The Trial Court must grant a new trial if the amount of the verdict is so grossly inadequate or excessive so as to shock the conscience of the Court and clearly indicates the figure was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive. Sullivan v. Davis, 317 S.C. 462, 454 S.E.2d 907 (Ct. App. 1997); Dillon v. Frazer, 383 S.C. 9, 678 S.E.2d 251 (S.C. 2009).

Because of the evidentiary errors made in this case, and the irrelevant and highly prejudicial nature of said evidence, it is clear that the verdict of the jury was based upon passion,

caprice, prejudice or some other improper motive. It is clear that the irrelevant and highly prejudicial evidence regarding disability and Blue Cross Blue Shield coverage at a very remote point in time, and the misrepresentation of defense counsel that Troy Lee Watts was his client, resulted in the grossly inadequate verdict of the jury.

CONCLUSION

Plaintiffs respectfully submit that this Court should bring a new trial *nisi additur* of a substantial sum, equal to at least the costs of the Plaintiff's medical care, or, in the alternative, grant the Plaintiffs a new trial as to damages only.

Respectfully Submitted,

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead
S.C. Bar No. 4071
880 S. Pleasantburg Drive, 3-A
Greenville, South Carolina 29607
(864) 242-9999

Greenville, South Carolina

February ____ / ____, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2011-CP-23-4585

James Dawkins)
and Delphine Dawkins,)

Plaintiffs,)

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO THE PLAINTIFFS'
BRIEF AS TO MOTION FOR NEW
TRIAL NISI ADDITUR, OR IN THE
ALTERNATIVE, MOTION FOR NEW
TRIAL AS TO DAMAGES ONLY**

vs.)

Troy Lee Watts, Jr.,)

Defendant.)

STATEMENT OF THE CASE

This is, in fact, an admitted case of negligence wherein Troy Lee Watts, Defendant, caused an automobile accident between his vehicle and a vehicle owned and operated by James L. Dawkins, Plaintiff. It is further admitted that Mr. Dawkins sustained \$3,893.49 in physical damage to his vehicle, and that Mr. Watts's vehicle was a total loss. However, one must recognize that this accident was an extremely insignificant automobile accident and that just about any damage to the side of Mr. Dawkins's vehicle would have resulted in substantial repair costs. Furthermore, the "total loss" of the old vehicle with high mileage that Mr. Watts was driving simply means that the car was worth virtually nothing.

Furthermore, it is true that James L. Dawkins claimed various and sundry ailments as a result of the accident. However, those ailments were preexisting in nature. Just as important, after the accident, Mr. Dawkins's ailments would appear and disappear based upon the healthcare

provider he was seeing. Indeed, one physical therapist, who treated Mr. Dawkins after the accident felt that he was actually faking *his injuries* as he was being examined. Of equal importance is the fact that, despite the above, a doctor did suggest surgery. Furthermore, James L. Dawkins was cleared for that surgery. At or about that time, there was plenty of evidence that James L. Dawkins had a valid Blue Cross Blue Shield health insurance card, and had \$10,000.00 available so as to pay for the surgery, if one were actually necessary.

Troy Lee Watts's primary carrier did, in fact, pay Mr. Dawkins \$25,000.00 in exchange for a covenant not to execute. Thereafter, suit was brought, and the undersigned proceeded to represent Mr. Watts, in his individual capacity, and State Farm Mutual Automobile Insurance Company, the underinsured carrier, which elected to defend the case in the name of Troy Lee Watts, Jr. This was done pursuant to South Carolina's code with regard to underinsured motorist coverage pleadings.

Prior to trial, plaintiffs' counsel did, in fact, make a motion in limine asking that defense counsel not bring up the fact that Mr. Dawkins was on disability at the time of the accident, and/or that he would have been on Medicare or Medicaid at the time of the accident. As it turns out, Mr. Dawkins was not on disability, Medicare, or Medicaid at the time of the accident. As such, defense counsel agreed to that motion in limine. Furthermore, defense counsel specifically asked the Court to instruct all individuals who were going to testify to specifically not make any reference to automobile insurance, being paid or otherwise, in their responses to questions. The Court agreed and instructed all parties to comply with its order.

The trial then began, and defense counsel, pursuant to the underinsured statute, continued to defend State Farm Mutual Automobile Insurance Company, in the name of Troy Lee Watts, Jr.

The statute was created and gives an underinsured carrier the option to defend in the name of the

named defendant or to defend in its own name. Again, defense counsel had chosen to defend in Mr. Watts's name, and as a result, referred to Mr. Watts as the defendant during the trial. Furthermore, there was nothing improper in so doing.

It is equally important to note that Mr. Dawkins repeatedly attempted to downplay or deny the nature and extent of his preexisting conditions. This problem became so severe that it became apparent that it was necessary for defense counsel to show to the jury that Mr. Dawkins had previously been on social security disability (i.e. incapable of working at any job) at a point prior to the accident, with such disability arising as a result of his preexisting issues. Please recognize that defense counsel had pled "preexisting condition," in his answer, thereby making it abundantly clear that he was going to be discussing Mr. Dawkins's preexisting conditions. The nature and extent of those preexisting conditions is obviously evidence that should be presented to a jury.

Thereafter, Mr. Dawkins and his wife repeatedly testified as to the disparity between Mr. Dawkins health before the accident as opposed to after the accident, with his post-accident health being almost totally debilitated. These statements were made so as to make the jury believe that Mr. Dawkins would have to have surgery at some point in the future. However, it was abundantly clear from the evidence that Mr. Dawkins had been scheduled for surgery, whether or not the same was needed being open for debate, years prior to the date of trial. Plaintiffs' counsel then asked Mr. Dawkins about the delay, and Mr. Dawkins told the jury that he was cleared for surgery but simply did not have the funds to pay for the same. As such, defense counsel discussed the fact that Mr. Dawkins had been cleared for surgery but refused to go through with the same. In fact, defense counsel had Mr. Dawkins concede that he had not had surgery despite

the fact that the accident took place on September 24, 2008 and the case was being tried in

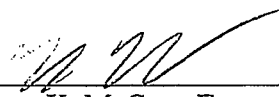
January of 2013. Mr. Dawkins continued to explain that he could not have surgery because he did not have the funds to pay for the same. This turned out to be untrue, as Mr. Dawkins clearly had Blue Cross Blue Shield at the time of the accident and at the time that the surgery was scheduled. Just as important, he had \$10,000.00 available to him, so as to apply to any deductibles that might have existed. In essence, Mr. Dawkins had insurance, combined with \$10,000.00 in cash that was available and could have been utilized for surgery, if surgery were ever going to take place. In essence, the plaintiff opened the door to these collateral sources, and the Court correctly ruled that those collateral sources were allowed to be brought into evidence. Those rulings were based upon Bonaparte v. Floyd, 291 S.C. 421, 554 S.E.2d 40 (1987); Holliday v. Cooley, S.C. Ct. App. Op. No. 2001-UP-534, filed Dec.10, 2001 (unpublished opinion); Powers v. Temple, 250 S.C. 149, 156 S.E.2d 759 (1967); and Campbell v. Bi-Lo, Inc, 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990).

In essence, Mr. Dawkins and his wife seriously understated the length, degree, and nature of Mr. Dawkins's preexisting conditions. They then continued to seriously overstate the length, nature, and extent of Mr. Dawkins's post-accident problems. They then went on to say that Mr. Dawkins would have had surgery had funds been available. All of these statements were incorrect and severely hurt their credibility, as well as the credibility of the case. Furthermore, the Court properly ruled on the admission of the evidence, which was highly probative to the case, and contained no information that would have resulted in a jury deciding the case based upon passion, caprice, prejudice, partiality, corruption, or some other improper motive. Indeed, the Court followed our Appellate Court's instructions when charging the jury with regard to the collateral source rule.

In conclusion, the jury, after hearing the evidence as a whole, had every right to believe

that Mr. and Ms. Dawkins seriously understated Mr. Dawkins's preexisting conditions and seriously overstated Mr. Dawkins's post-existing conditions in the hopes of convincing the jury to pay for Mr. Dawkins's "future" surgery. As a result, the jury had every right to believe that all of Mr. Dawkins's post-existing conditions would have existed, accident or not. As such, they properly returned a verdict against both Mr. and Ms. Dawkins. Furthermore, this verdict gives the Court no grounds to grant an additur or a new trial.

Respectfully submitted,



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

Greenville, South Carolina
February 5, 2013

IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2011 CP-23-4585

James L. Dawkins and Delphine Dawkins,

Plaintiffs,

vs.

Troy Lee Watts, Jr.,

Defendant.

PLAINTIFFS' REPLY TO
DEFENDANT'S MEMORANDUM
IN OPPOSITION TO PLAINTIFFS'
BRIEF AS TO MOTION FOR NEW
TRIAL *NISI ADDITUR*, OR IN THE
ALTERNATIVE, MOTION FOR NEW
TRIAL AS TO DAMAGES ONLY

STATEMENT OF THE CASE

First, my opponent at the top of Page 2 of his Brief states that "one physical therapist, who treated Mr. Dawkins after the accident felt he was actually faking his injuries". Such a statement is a gross misrepresentation of the evidence in this case. There is absolutely no evidence by anyone including the physical therapist that anyone felt Mr. Dawkins was faking his injuries. That is a mere fabrication by Mr. McGarr.

Second, my opponent argues that there was valid Blue Cross Blue Shield health insurance coverage. That may have been the case three years and seven months prior to the trial, but at the time of the trial Mr. Dawkins was and is uninsured and has no way to pay for the surgery. In that regard, the question posed to Mr. Dawkins was whether or not he could presently afford to pay for the surgery which Dr. McHenry said was needed and was directly caused by the motor vehicle accident. That question was in the present, the question was not whether he had ever had healthcare insurance. The question was whether he could afford to pay for the surgery at the present time. It was error for evidence that Mr. Dawkins had Blue Cross Blue Shield insurance

coverage be heard by the jury because it was highly prejudicial and irrelevant.

Third, it was error for the jury to hear that Mr. Dawkins was or had been on disability because, as Plaintiffs' counsel argued, the possibility for availability of Medicare would certainly be part of the jury deliberations, and there was no way that Plaintiffs' counsel could overcome the prejudice or poisoning the minds of the jurors. It is clear that the combination of bringing before the jury the fact that years before the trial Mr. Dawkins had had Blue Cross Blue Shield insurance and the specter of Medicare, resulted in a zero dollars verdict. Moreover, defense counsel inflamed the jury over the Blue Cross Blue Shield issue by labeling Mr. Dawkins as a perjurer. Those inflammatory and prejudicial comments together with bringing before the jury that Mr. Dawkins had health insurance coverage years before the trial resulted in a verdict based on passion, caprice, prejudice, partiality, corruption, or some other improper motive.

All of the medical evidence clearly establishes that Mr. Dawkins injured not only his neck, back, but also his left shoulder in the collision which occurred in this accident. There is no evidence to refute that. Medical other otherwise. It was admitted by Mr. Dawkins that he had previous low back problems and had surgery for that, but in the twenty-five years since he had reached maximum medical healing with regard to that injury, he had neither seen an orthopaedic surgeon nor required surgery, until this motor vehicle collision. Uncontradicted testimony of the treating orthopaedic surgeon was that Mr. Dawkins needed an additional low back surgery as a direct and proximate result of the motor vehicle collision.

Furthermore, there was no evidence of previous injuries or maladies to Mr. Dawkins' cervical spine. All of the medical evidence establishes that in this automobile collision Mr. Dawkins injured his spine and that he needs surgery as a result thereof. This evidence is

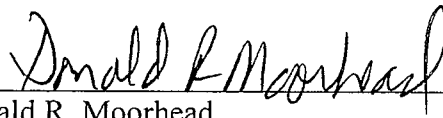
uncontradicted. The cost of the cervical spinal surgery alone and ancillary services as established by the testimony of Penny Cates, certified life care planner and medical cost projector is \$104,213. In addition to the cost of the surgery there are significant general damages in the form of pain and suffering and mental anguish which undoubtedly are associated with surgery and recovery time. Moreover, there are the general damages which Mr. Dawkins has suffered in the four and a half years since this accident.

CONCLUSION

It is clear that the jury's verdict was not based on the evidence of the case and it was the result of passion, caprice, prejudice, partiality, corruption or some other motive. The judgment should be set aside and a substantial additur should be made in favor of the Plaintiff. In the alternative, Plaintiffs should be granted a new trial as to damages only.

Respectfully Submitted,

DONALD R. MOORHEAD, P.A.



Donald R. Moorhead
S.C. Bar No. 4071
880 S. Pleasantburg Drive, 3-A
Greenville, South Carolina 29607
(864) 242-9999

Greenville, South Carolina

February 15, 2013

I certify this Record on Appeal contains all material proposed to be included by the parties and not any other material. I further certify that I have redacted personal data identifiers and other sensitive information from the record as is required by the August 13, 2007 Order of the South Carolina Supreme Court.

June 2, 2014

C. B. Patterson

C. B. Patterson

Cynthia B. Patterson

PO Box 6786

Columbia, SC 29260

(803) 790-2688

Attorney for Appellant

RECEIVED

JUN 02 2014

SC Court of Appeals

898

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas**

**D. Garrison Hill, Circuit Court Judge
Robert E. Hood, Circuit Court Judge**

**Case No. 2011-CP-23-04585
Appellate Case No. 2013-000666**

James L. Dawkins and Delphine Dawkins Appellants,

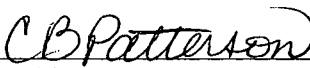
v.

Troy Lee Watts, Jr.. Respondent.

PROOF OF SERVICE

I certify that a copy of the Record on Appeal was served on opposing counsel by depositing it in the United States Postal Service, first class, address to Respondent's counsel of record: Marcus K. McGarr, PA, 108 Whitsett St., Greenville, SC 29601.

June 2, 2014


Cynthia B. Patterson
PO Box 6786
Columbia, SC 29260
(803) 790-2688

Attorney for Appellants

RECEIVED

JUN 02 2014

SC Court of Appeals