

27292

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2017-002520

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SC Court of Appeals

Maurice Dawkins Appellant,

v.

James A. Sell Respondent,

**RECORD ON APPEAL
VOLUME I of II**

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**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF HAMPTON	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
MAURICE DAWKINS,	)	CIVIL ACTION NO.: 2011-CP-25-00252
	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTIONS FOR NEW TRIAL AND
vs.	)	JUDGMENT NOTWITHSTANDING
	)	THE VERDICT
JAMES A. SELL,	)	
	)	
	)	
Defendant.	)	
	)	

The trial of the above-captioned case began on October 9, 2017, in Hampton County. At the conclusion of trial, the jury returned for a verdict for the Defendant, James A. Sell. Plaintiff then filed a Motion for Judgment Notwithstanding the Verdict, pursuant to Rule 50(b), SCRPC, for amendment pursuant to Rule 52(b), SCRPC, and Motion for New Trial pursuant to Rule 59, SCRPC.

STATEMENT OF FACTS

This matter arises from an accident that occurred August 21, 2010, on I-95 in Hampton County, South Carolina. The Defendant, James Sell, was driving a Budget Rental Truck ("Budget Truck") when he lost control and the Budget Truck rolled onto its left side. The truck blocked both south bound lanes of travel on I-95. The Defendant and his grandson then exited the vehicle with the assistance of some other drivers who stopped to render aid, including the Plaintiff, Maurice Dawkins ("the Plaintiff"). Approximately five to ten minutes later, the Budget Truck was hit by a semi-trailer truck owned by Co-Defendant Pierce National and operated by

Co-Defendant Dennis Owens.¹ The Budget Truck then struck the Defendant and the drivers who were rendering aid; thereby injuring several individuals, including the Plaintiff.

The case was tried beginning on October 9, 2017 and the jury returned a verdict for the Defendant on October 12, 2017. At the trial of this matter, the Plaintiff called as witnesses the investigating officer, Officer Rush, and two other individuals who stopped to aid the Defendant-Josh Sparkman and Kristin Starnes-Sparkman. They testified that prior to the accident with the semi-truck, other vehicles happened upon the Budget Truck in the roadway and were able to safely move around the Budget Truck. They also testified that at least one other semi-truck had also safely moved around the Budget Truck prior to the accident with Pierce National's semi-truck.

In the Defendant's case, the Defendant called Co-Defendant Dennis Owens, the driver of Pierce National's Semi-Trailer Truck, and John Pinckney, an expert in Federal Motor Carrier Safety Regulations (FMCSA) compliance and safety, to testify regarding the actions of Dennis Owens. Mr. Pinckney opined that Dennis Owens violated several FMCSA regulations and falsified his driver logs showing that he had not had the proper rest. Additionally, the evidence presented showed that Dennis Owens did not slow for the hazard of rain, was driving too fast for conditions, and overdrove his headlights. At the conclusion of trial, the jury returned a verdict for Defendant.

DISCUSSION

The motion for judgment notwithstanding the verdict "is limited to the grounds stated in the motion for a directed verdict." V.E. Amick & Assoc., LLC v. Palmetto Environmental Group, Inc., 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011). "A directed verdict or judgment

¹ Pierce National and Dennis Owens both settled with Plaintiff prior to trial.

notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. Creighton, 334 S.C. at 112 (*citing* Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). “If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury.” Creighton, 334 S.C. at 112 (*citing* Gamble v. International Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438 (1996); Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). In other words, a motion for judgment notwithstanding the verdict “may be granted only if no reasonable jury could have reached the challenged verdict.” Gause v. Smithers, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013).

Moreover, “the grant or denial of a new trial motion rests within the discretion of the trial judge.” Umhoefer v. Bollinger, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). “The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88–89; 610 S.E.2d 852, 856 (Ct. App. 2005)). The Court may grant a new trial absolute only if “the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.” Burke v. AnMed Health, 393 S.C. 48, 710 S.E.2d 84, 88 (Ct. App. 2011). Similarly, the Court may grant a new trial under the thirteenth juror doctrine if the Court determines that “the jury’s verdict is contrary to the fair preponderance of the evidence.” Id.

I. Motion for Judgment Notwithstanding the Verdict

In its motion for judgment notwithstanding the verdict, Plaintiff alleges that the Court erred in failing to direct a verdict in favor of Plaintiff on the issue of intervening and superseding

negligence, and in failing to direct a verdict in favor of Plaintiff on the issue of Defendant's negligence. Although the Defendant testified that he accepted responsibility for turning over the Budget Truck, the question of whether Defendant's conduct amounted to the breach of any duty owed to Plaintiff was properly before the jury. Likewise, the jury's determination that Defendant did not breach any duty owed to Plaintiff was reasonable in light of the evidence presented. Further, the act of Pierce National's semi-trailer truck crashing into the Budget Truck could reasonably be said to be a superseding cause of Mr. Dawkins' injuries; certainly at least to the extent that it was a proper question for the jury to determine. The evidence supported the conclusion that a "reasonable jury" could have made the same decision as the jury in the present case.

Additionally, Plaintiff alleges that the Court erred in not directing a verdict on the issue of negligence on the theory that Defendant violated S.C. Code §§ 56-5-5060, 56-5-5080, and 56-5-5090 by not putting out roadside flares. The law states that a "[c]ausative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness." Fairchild v. SCDOT, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (quoting Field v. Gregory, 230 S.C. 39, 46, 94 S.E.2d 15, 19 (1956)) (emphasis added). As mentioned, the testimony in the case reflected that five to ten minutes had elapsed after the Budget Truck flipped on its side, and that as many as twenty other vehicles, including at least one other semi-truck, passed the location before the accident in question occurred. These facts render the question of whether the violation of these statutes was "causative" of Plaintiff's injuries as one that was properly before the jury. Likewise, the jury's determination that Defendant's alleged violation of these statutes did not cause Plaintiff's injuries could properly be characterized as reasonable given the evidence presented at trial.

II. Motion for New Trial

The Plaintiff also moves for a new trial on three (3) grounds. The first ground claims that the Defendant should not have been allowed to cross examine the Plaintiff on his pleadings and discovery responses; or, in the alternative, the Plaintiff should have been allowed to disclose to the jury that there was a settlement with Co-Defendants Owens and Pierce National or to disclose to the jury the settlement amount. However, the Plaintiff cites no law to this effect. In fact, generally, the prior pleadings in an action may be received in evidence against the pleader. Young v. Martin, 254 S.C. 50, 58, 173 S.E.2d 361 (1970). This issue has been previously addressed by the Supreme Court in the case of Lucht v. Youngblood, 266 S.C. 127, 221 S.E.2d 854 (1976). In Lucht, counsel also attempted to cross examine on prior pleadings regarding settlement with a different defendant in order to impeach. Lucht, 266 S.C. at 134. The trial court in Lucht did not allow counsel to cross-examine on the prior pleadings because it was concerned with disclosure of the prior settlement. Id. On appeal, the Supreme Court set out the procedure to handle such an issue and held:

“[W]hile this is a difficult issue to handle, the trial judge should have permitted the cross examination on the pleadings. If the judge thought the release on a covenant was becoming involved, he should simultaneously charge the jury that a plaintiff may choose which defendant he wishes to sue and that if any actions against a former defendant are relevant, they would be a matter for the court and not for the jury.” Id. at 135.

Additionally, the Plaintiff claims that the defendant should not have been allowed to publish to the jury the Plaintiff's discovery responses. However, Rule 33(d) SCRCP specifically states that “the answers may be used to the extent permitted by the rules of evidence.” If the Plaintiff's complaint is with the publishing the name of an expert to the jury, there is no error in

this regard. In the case of Holmes v. Black River Elec. Co-op., Inc., 274 S.C. 252, 260–61, 262 S.E.2d 875, 879 (1980), counsel for the plaintiff referenced to the jury that there were two experts who were retained, but did not testify. The Supreme Court held that “failure to call a witness is proper argument. In the presence of the jury, attention was called to the fact that these two expert witnesses had been offered to counsel for [the Plaintiff]. Of course, the jury was permitted to draw any inferences warranted. We find no error.” Holmes 274 S.C. at 260–61 (citing State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978)). Therefore, the law is settled that pleadings and discovery materials may be properly used on cross examination of a witness.

The Plaintiff further asserts that the Court erred in allowing Defendant Sell to “exceed the bounds of the empty chair defense.” The Plaintiff claims that Defendant Sell should not be allowed to use the empty chair defense and claim a set-off for the amount paid by the settling defendant/empty chair. The Plaintiff’s argument is without merit because this specific issue is addressed in the South Carolina Contribution Among Joint Tortfeasors Act (“the Act”), S.C. Code Ann. § 15-38-15. Under subsection (D) of the Act, “a defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.” S.C. Code Ann. § 15-38-15(D). Setoff was recently addressed by the Supreme Court in Huck v. Oakland Wings, LLC, No. 2015-002025, 2017 WL 3044750, at *2 (S.C. Ct. App. July 19, 2017). In Huck, the court reaffirmed that “a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles.” Huck, 2017 WL 3044750 at *2; (citing Welch v. Epstein, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000); Powers v. Temple, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967) “The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained

which has already been paid to him.” Truesdale v. S.C. Highway Dep't, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975). “In other words, there can be only one satisfaction for an injury or wrong.” Welch, 342 S.C. at 312; Huck, 2017 WL 3044750 at *2. No applicable law supports the conclusion that the Plaintiff exceeded the bounds of the “empty chair” defense.

The Plaintiff also claims that this Court erred in charging the jury on intervening and superseding negligence. As discussed above, a Pierce National semi-truck crashed into the overturned Budget Truck. It was proper for the jury to decide whether the occurrence of this crash was an intervening and superseding cause of Plaintiff’s injuries.

CONCLUSION

This Court having considered the arguments, supporting and opposing documents, and based on the same DENIES Plaintiff’s Motions for New Trial and for Judgment Notwithstanding the Verdict.

IT IS SO ORDERED!

November 17, 2017
Charleston, South Carolina

Roger M. Young, Sr.
Presiding Judge



Hampton Common Pleas

Case Caption: Maurice Dawkins VS James A Sell , defendant, et al

Case Number: 2011CP2500252

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2017-11-17 11:31:12 page 8 of 8

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Maurice Dawkins,

Plaintiff,

v.

James A. Sell,

Defendant.

IN THE COURT OF COMMON PLEAS

2011-CP-25-00252

VERDICT FORM

FILED
9:28 AM PM

OCT 12 2017

MYLINDA D'NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

VERDICT

☐ We, the Jury, find for the **Plaintiff** against the Defendant in the amount of \$ _____ **actual** damages.

FOREPERSON

DATE

☒ We, the Jury, find for the **Defendant**.

FOREPERSON

DATE

10/12/2017

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Maurice Dawkins,

PLAINTIFFS,

v.

James A. Sell, Dennis J. Owens, and Pierce
National, Inc,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-25-00252

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
NEW TRIAL AND JNOV**

The Defendant, James A. Sell ("the Defendant" or "Defendant Sell"), hereby responds to the Plaintiff's Motions for New Trial and for Judgment Not Withstanding the Verdict as follows:

FACTS AND PROCEDURAL HISTORY

This matter arises from an accident that occurred August 21, 2010, on I-95 in Hampton County, South Carolina. The Defendant, James Sell, was driving a Budget Rental Truck ("Budget Truck") and lost control in heavy rain, and the Budget Truck rolled onto its left side. The truck blocked both south bound lanes of travel on I-95. The Defendant and his grandson then exited the vehicle with the assistance of some other drivers, including the Plaintiff, Maurice Dawkins ("the Plaintiff"), who stopped to render aid. Approximately five (5) to ten (10) minutes later, the Budget Truck was hit by a Semi- Trailer Truck owned by Co-Defendant Pierce National and operated by Co-Defendant Dennis Owens.¹ The Budget

¹ Pierce National and Dennis Owens both settled with the Plaintiff prior to trial.

Truck then struck the Defendant and the drivers who were rendering aid, thus injuring several individuals, including the Plaintiff.

The case was tried beginning on October 9, 2017 and the jury returned a verdict for the Defendant on October 12, 2017. At the trial of this matter, the Plaintiff called the investigating officer, Officer Rush, and two other individuals who stopped to aid the Defendant, Josh Sparkman and Kristin Starnes-Sparkman, as witnesses. They testified that prior to the accident with Pierce National's Semi-Trailer Truck; other vehicles happened upon the Budget Truck in the roadway and were able to safely move around the Budget Truck. They also testified that at least one tractor trailer had also safely moved around the Budget Truck prior to the accident with Pierce National's Semi-Trailer Truck. The Plaintiff also called the treating physician, Dr. Leland Stoddard, and multiple before and after witnesses. The Plaintiff also called the Defendant as an adverse witness and cross-examined him in their case.

In the Defendant's case, the Defendant called Co-Defendant Dennis Owens, the driver of Pierce National's Semi-Trailer Truck, by deposition. Additionally, the Defendant called John Pinckney, an expert in Federal Motor Carrier Safety Regulations (FMCSA) compliance and safety, to testify regarding the actions of Dennis Owens and his violations of the FMCSA regulations. Mr. Pinckney opined that Dennis Owens violated several FMCSA regulations and falsified his driver logs showing that he had not had the proper rest. Additionally, the evidence presented showed that Dennis Owens did not slow for the hazard of rain, was driving too fast for conditions, and overdrove his headlights.

STANDARD OF REVIEW

“When reviewing the denial of a motion for directed verdict or judgment notwithstanding the verdict, [the court] must consider the evidence in the light most favorable to the non-moving party.” *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 112, 512 S.E.2d 510, 518 (Ct. App. 1998) (citing *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 439 S.E.2d 266 (1993)). The motion for judgment notwithstanding the verdict “is limited to the grounds stated in the motion for a directed verdict.” *V.E. Amick & Assoc., LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011). “A directed verdict or judgment notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. *Creighton*, 334 S.C. at 112 (citing *Brady Dev. Co.*, 312 S.C. 73, 439 S.E.2d 266 (1993)). “If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury.” *Creighton*, 334 S.C. at 112 (citing *Gamble v. International Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438 (1996); *Brady Dev. Co.*, 312 S.C. 73, 439 S.E.2d 266 (1993)). In other words, a motion for judgment notwithstanding the verdict “may be granted only if no reasonable jury could have reached the challenged verdict.” *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013).

Moreover, “the grant or denial of a new trial motion rests within the discretion of the trial judge.” *Umhoefer v. Bollinger*, 298 S.C. 221, 379 S.E.2d 296 (Ct.App.1989). The Court may grant a new trial absolute only if “the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not

reflected by the evidence affected the amount awarded.” *Burke v. AnMed Health*, 393 S.C. 48, 710 S.E.2d 84, 88 (Ct. App. 2011). However, “[a] jury’s determination of damages is entitled to substantial deference.” *Id.* Similarly, the Court may grant a new trial under the thirteenth juror doctrine if the Court determines that “the jury’s verdict is contrary to the fair preponderance of the evidence.” *Id.*

ARGUMENT

I. **The Court correctly denied the Plaintiff’s Directed Verdict, and therefore should deny the Plaintiff’s Motion for JNOV, because the issue of proximate cause was properly a question for the jury.**

The Plaintiff claims that the Defendant, James Sell, was negligent as a matter of law. In his Motion for Judgment Not Withstanding the Verdict, the Plaintiff asserts that the Court erred in failing to direct a verdict in favor of the Plaintiff on the issue of intervening and superseding negligence. The Plaintiff first contends that the evidence shows only one inference; that Dennis Owen’s acts were foreseeable to Defendant Sell. As stated in *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997) (a case cited by the Plaintiff), “ordinarily, the question of proximate cause is one of fact for the jury and the trial judge’s sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” (citing *Kennedy v. Custom Ice Equip. Co.*, 271 S.C. 171, 246 S.E.2d 176 (1978); *Clark v. Ross*, 284 S.C. 543, 328 S.E.2d 91 (Ct.App.1985)); see also *Oliver v. South Carolina Dep’t of Hwys. and Pub. Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992) (legal cause component of proximate cause is ordinarily question of fact for jury); *Childers v. Gas Lines, Inc.*, 248 S.C. 316, 149 S.E.2d 761 (1966) (questions of proximate cause are normally within province of jury). The particular facts and

circumstances of each case determine whether the question of proximate cause should be decided by the court or by the jury. *Newton v. South Carolina Pub. Rys. Comm'n*, 312 S.C. 107, 439 S.E.2d 285 (Ct.App.1993), *rev'd on other grounds*, 319 S.C. 430, 462 S.E.2d 266 (1995). Only when the evidence is susceptible to only one inference does it become a matter of law for the court." *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997).

In this case, Defendant Sell was properly entitled to present testimony on the issue of proximate cause and to present evidence or argument that the actions of Dennis Owens were unforeseeable because a reasonable jury could determine, based on the testimony presented, that the acts of Dennis Owens were unforeseeable to Defendant Sell. The jury was presented with testimony that Dennis Owens's impact with the Budget Truck was at least five (5) to ten (10) minutes after the Budget Truck flipped on its side, and that as many as twenty (20) other vehicles, and at least one other Semi-Trailer Truck, passed the location of the Budget Truck before Dennis Owen's impact. The Court correctly denied the Plaintiff's Motion for Directed Verdict on the issue and held it was a question of fact for the jury.

The Plaintiff further argues that Defendant Sell is estopped from arguing proximate cause. Essentially, the Plaintiff's argument is that the Defendant took a different position at trial than that taken in his pleadings, and therefore the Defendant should be estopped from taking an inconsistent or contradictory position than he took in his pleadings. (Pl's Mot., Note 1). The Plaintiff seeks to preclude the Defendant from presenting testimony, evidence, or argument that the actions of Dennis Owens, as a driver for Pierce National, were

unforeseeable, and claims that the Defendant is taking an inconsistent position than that asserted in his cross-claim against Dennis Owens.

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or a related proceeding. *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). “The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary.” *Id.* In *Cothran*, the Supreme Court adopted the following elements necessary for the doctrine of judicial estoppel to apply:

- (1) two inconsistent positions taken by the same party or parties in privity with one another;
- (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other;
- (3) the party taking the position must have been successful in maintaining that position and have received some benefit;
- (4) the inconsistency must be part of an intentional effort to deceive the court; and
- (5) the two positions must be totally inconsistent.” *Id.*²

The positions taken by Defendant Sell; however, are not in fact inconsistent at all. In a negligence action, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the

² The Defendant is unaware of any evidence that would suggest that any inconsistency is part of an intentional effort to deceive the court, expressly denies any allegation to that effect, and therefore does not address this element for purposes of this reply to Plaintiff's Motion.

plaintiff suffered an injury or damages. *Andrade v. Johnson*, 356 S.C. 238, 245, 588 S.E.2d 588, 592 (2003). To establish proximate cause, the Plaintiff must provide proof of causation in fact, as well as legal cause. *Bray v. Marathon Corp.*, 356 S.C. 111, 116–17, 588 S.E.2d 93, 95 (2003). Causation in fact is often referred to as the ‘but for’ cause, and legal cause turns on the issue of foreseeability. An injury is foreseeable if it is “the natural and probable consequence of a breach of duty.” *Schmidt v. Courtney*, 357 S.C. 310, 326, 592 S.E.2d 326, 335 (Ct.App.2003). That said, “foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach.” *Parks v. Characters Night Club*, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001)(emphasis added).

Defendant Sell’s challenge to the element of proximate cause in this case is the assertion that the causal link between Defendant Sell’s conduct and the Plaintiff’s alleged injuries was severed by the conduct of Dennis Owens. In this case, it has always been Defendant Sell’s contention that the negligence of Dennis Owens in failing to properly observe the roadway was not foreseeable by Defendant Sell, and is, therefore, not chargeable against Defendant Sell. See *Newton v. S.C. Pub. Railways Comm’n*, 319 S.C. 430, 432, 462 S.E.2d 266, 267 (1995). In other words, Defendant Sell’s position in the defense of this case has always been that Dennis Owen’s conduct was not foreseeable by Defendant Sell, could not reasonably be foreseen by Defendant Sell, and was not a natural and probable consequence of Defendant Sell’s conduct. As a result, Defendant Sell’s conduct was not the proximate cause of the Plaintiff’s alleged injuries. Defendant Sell filed a Motion for Summary Judgment in that regard, and, in denying the Motion for Summary Judgment, Judge Goldsmith ruled that the issue of proximate cause was a question for the jury.

The Plaintiff correctly points out that Defendant Sell asserted a cross-claim, and, in that cross-claim, asserted that the conduct of Co-Defendants Pierce National and Dennis Owens was the direct and proximate cause of injuries to Defendant Sell and others. However, there is an important distinction between the Plaintiff's direct claim against Defendant Sell, and Defendant Sell's cross-claim against Dennis Owens: the purported tortfeasor's perspective at the time of the alleged breach. Defendant Sell is the defendant in the direct action asserted by the Plaintiff, and therefore foreseeability of the consequences of his conduct is determined by Defendant Sell's perspective; whereas, in the cross-claim, the Defendant is Dennis Owens, and foreseeability of the consequences of Mr. Owen's conduct is determined by Dennis Owens's perspective. Stated differently, the question in the cross-claim is whether Defendant Sell's injuries are a natural and probable consequence of Dennis Owens's conduct. In contrast, the question presented by the Plaintiff's assertions at trial was whether the Plaintiff's injuries were a natural and probable consequence of Defendant Sell's conduct. These are two different questions that require two different analyses. Defendant Sell has not been inconsistent, or contradictory, in his answers to them; therefore, the Defendant should not have been estopped from asserting intervening and superseding cause at trial. As described above, the Court properly permitted Defendant Sell to present his case for proximate cause to the jury.

II. The Court correctly denied the Plaintiff's Directed Verdict, and therefore should deny the Plaintiff's Motion for JNOV, because the issue of Defendant Sell's negligence was properly a question for the jury.

The Plaintiff additionally claims that Defendant Sell's failure to put out flares or reflective triangles entitled the Plaintiff to a directed verdict as this was an alleged violation

of a statute. However, the Court charged the jury with the applicable statutes, S.C. Code Ann. §§ 56-5-5060, 56-5-5080, and 56-5-5090. The jury apparently found that, if this statute was violated, it was not a proximate cause of the accident caused by Dennis Owens. The jury could have determined that Dennis Owens's actions were the sole cause of the accident with the Budget Truck. As discussed, *supra*, it is the Plaintiff's burden to prove that the injuries sustained by the Plaintiff were proximately caused by the Defendant's negligence. In this case, the only evidence presented to the jury was that Dennis Owens's impact with the Budget Truck was at least five (5) to ten (10) minutes after the Budget Truck flipped on its side, and that as many as twenty (20) other vehicles, and at least one other Semi-Trailer Truck, passed the location of the Budget Truck before Dennis Owen's impact. Given this testimony, the question was correctly posed for the jury, and it is a question for the jury, as to whether an alleged violation of statute was a proximate cause of the Plaintiff's injuries.

III. The Court should deny the Plaintiff's Motion for New Trial because the Court properly allowed Defendant Sell to cross examine the Plaintiff on his pleadings and written discovery.

The Plaintiff also moves for a new trial absolute on three (3) grounds. The first ground claims that the Defendant should not have been allowed to cross examine the Plaintiff on his pleadings and discovery responses. Or in the alternative, the Plaintiff should have been allowed to disclose to the jury that there was a settlement with Co-Defendants Owens and Pierce National or to disclose to the jury the settlement amount. However, the Plaintiff cites no law to this effect. In fact, generally, the prior pleadings in an action may be received in evidence against the pleader. *Young v. Martin*, 254 S.C. 50, 58, 173 S.E.2d 361 (1970). During trial, when the issue came before the Court, counsel for Defendant Sell only

sought to question whether the Plaintiff previously alleged negligence against Dennis Owens and detail the particulars of the alleged negligence. Defense counsel's intention in this line of questioning was to use the Plaintiff's prior pleadings for impeachment, but only if the Plaintiff denied the statements in his pleadings. This issue has been previously addressed by the Supreme Court in the case of *Lucht v. Youngblood*, 266 S.C. 127, 221 S.E.2d 854 (1976). In *Lucht*, counsel also attempted to cross examine on prior pleadings regarding settlement with a different defendant in order to impeach. *Lucht*, 266 S.C. at 134. The trial court in *Lucht* did not allow counsel to cross-examine on the prior pleadings because it was concerned with disclosure of the prior settlement. *Id.* On appeal, the Supreme Court set out the procedure to handle such an issue and held :

[W]hile this is a difficult issue to handle, the trial judge should have permitted the cross examination on the pleadings. If the judge thought the release on a covenant was becoming involved, he should simultaneously charge the jury that a plaintiff may choose which defendant he wishes to sue and that if any actions against a former defendant are relevant, they would be a matter for the court and not for the jury.

Id. at 135.

Additionally, the Plaintiff claims that the defendant should not have been allowed to publish to the jury the Plaintiff's discovery responses. However, Rule 33(d) SCRCF specifically states that "the answers may be used to the extent permitted by the rules of evidence." If the Plaintiff's complaint is with publishing the name of an expert to the jury, there is no error in this regard. In the case of *Holmes v. Black River Elec. Co-op., Inc.*, 274 S.C. 252, 260-61, 262 S.E.2d 875, 879 (1980), counsel for the plaintiff referenced to the jury that there were two experts who were retained, but did not testify. The Supreme Court held that "failure to call a witness is proper argument. In the presence of the jury, attention was called

to the fact that these two expert witnesses had been offered to counsel for [the Plaintiff]. Of course, the jury was permitted to draw any inferences warranted. We find no error.” *Holmes* 274 S.C. at 260–61 (citing *State v. Hammond*, 270 S.C. 347, 242 S.E.2d 411 (1978)). Therefore, the law is clearly settled that pleadings and discovery materials may be properly used on cross examination of a witness, and the Court correctly allowed counsel for Defendant Sell to do so in this matter.

IV. The Court should deny the Plaintiff's Motion for New Trial because the Court properly allowed Defendant Sell to present evidence of Co-Defendant Dennis Owen's negligence to the jury.

The Plaintiff further asserts that the Court erred in allowing Defendant Sell to “exceed the bounds of the empty chair defense.” The Plaintiff claims that Defendant Sell should not be allowed to use the empty chair defense and claim a set-off for the amount paid by the settling defendant/empty chair. The Plaintiff's argument is without merit because this specific issue is addressed in the South Carolina Contribution Among Joint Tortfeasors Act (“the Act”), S.C. Code Ann. § 15-38-15. Under subsection (D) of the Act, “a defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.” S.C. Code Ann. § 15-38-15(D). Furthermore, under subsection (E) of the Act, “notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability as determined pursuant to subsection (C).”

Setoff was recently addressed by the Supreme Court in *Huck v. Oakland Wings, LLC*, No. 2015-002025, 2017 WL 3044750, at *2 (S.C. Ct. App. July 19, 2017). In *Huck*, the court reaffirmed that “a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles.” *Huck*, 2017 WL 3044750 at *2; (citing *Welch v. Epstein*, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000); *Powers v. Temple*, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967) (“[T]he rule is almost universally followed that one [tortfeasor] is entitled to credit for the amount paid by another [tortfeasor] for a covenant not to sue.”)). “The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid to him.” *Truesdale v. S.C. Highway Dep't*, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975), *overruled on other grounds by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), *superseded by statute*. “In other words, there can be only one satisfaction for an injury or wrong.” *Welch*, 342 S.C. at 312; *Huck*, 2017 WL 3044750 at *2. The Plaintiff appears to complain that Defendant Sell was zealous in his defense, which is required by the rules of professional ethics. The Plaintiff cannot simply argue that it is only “fair” to allow the Court to ignore the well-settled law of the Contribution Among Joint Tortfeasors Act and set-off.

Finally, the last issue raised by the Plaintiff is that he is entitled to a new trial based on the Court’s submission of superseding and intervening cause to the jury, which was fully addressed, *supra*, in opposition to the Plaintiff’s Motion for a Judgment Not Withstanding the Verdict.

CONCLUSION

For the reasons stated above, the Defendant respectfully requests that the Court deny the Plaintiff's Motions for New Trial and Judgment Not Withstanding the Verdict.

GRIFFITH, FREEMAN & LIIPFERT, LLC

s/ *E. Mitchell Griffith*

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ATTORNEYS FOR DEFENDANT, JAMES A.
SELL

November 6, 2017
Beaufort, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 11-CP-25-252
	)	
MAURICE DAWKINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JAMES A. SELL,	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR JUDGMENT NOT WITHSTANDING THE VERDICT,
MOTION FOR NEW TRIAL

The Plaintiff, Maurice Dawkins, moves the Court for a judgment notwithstanding the verdict on the above-captioned case pursuant to Rule 50(b), SCRCF, for amendment pursuant to Rule 52(b), SCRCF, and for a new trial of the above-captioned case pursuant to Rule 59, SCRCF.

The ground for the motion for judgment notwithstanding the verdict motion is as follows:

1. The court erred in failing to direct a verdict in favor of Plaintiff on the issue of intervening and superseding negligence. The only testimony, even when viewed in a light most favorable to Sell, is that Dennis Owens' actions were foreseeable with both Southbound lanes of Interstate 95 blocked at night. Sell admitted Owens' actions were foreseeable when he filed a cross-claim against Owens and Pierce National for "directly and proximately" causing the injuries he sustained. (Sell Ans. and CC to 2d Amd. Compl. ¶ 41).¹ Dawkins was entitled to a directed verdict and the jury should not have been charged on the issue of intervening and superseding negligence. "A

¹ "Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions. Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) ("[T]he general rule[is] that the parties to an action are judicially concluded and bound by such unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.")" Johnson v. Alexander, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015).

third party's acts of negligence do not break the causal chain if the acts are foreseeable.” Small v. Pioneer Mach. Inc., 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997). “For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated.” Id. It is foreseeable that someone would stop and help another individual involved in an accident. See S.C. Code Ann. § 15-1-310 (Good Samaritan statute). Further, “[t]he danger of leaving a vehicle standing on the traveled portion of a highway is well known.” Gause v. Smithers, 403 S.C. 140, 150-51, 742 S.E.2d 644, 650 (2013) (quotation marks omitted) (“It [i]s reasonably foreseeable that by remaining in a lane of traffic, another car could crash into the back of the police cruiser that pulled him over. We therefore disagree with Son that Smithers’ actions broke the chain of causation . . .”). Based on the law of this State, it is foreseeable that, when someone puts a vehicle on a traveled portion of a highway, another could crash into it and that such a crash does not break the chain of causation as Sell’s attorney was incorrectly permitted to argue to the jury.

2. The court erred in failing to direct a verdict in favor of Plaintiff on the issue of Sell’s negligence. Sell testified that he accepted responsibility for turning over the Budget truck and blocking both Southbound lanes of Interstate 95. The evidence also established, when viewed in a light most favorable to Sell as the non-moving party, that he failed to put out flares or reflective triangles as required by South Carolina law. S.C. Code Ann. §§ 56-5-5060; 56-5-5080; 56-5-5090. The “[c]ausative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness.” Fairchild v. SCDOT, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (quoting Field v. Gregory, 230 S.C. 39, 46, 94 S.E.2d 15, 19 (1956)). The only evidence was that Sell was negligent in violating the applicable statutes, and the Court erred in failing to direct a verdict in favor of Dawkins.

The grounds for the motion for new trial are as follows:

1. The Court erred in allowing Sell to publish Dawkins' answers to interrogatories that identified Dave Dorrity as an expert witness to opine on the conduct of non-parties Pierce National and Owens. The Court also allowed Sell's counsel to question Dawkins about the allegations made against Owens and Pierce National in his Complaint. This resulted in the Court allowing the jury to know that Pierce National and Owens were previously defendants while, despite Dawkins request, refusing to instruct the jury that he settled with Pierce National and Owens or the amount of the settlement. The Court recognized that Pierce National and Owens are not parties because it removed them from the caption for the verdict form. Dawkins moved *in limine* regarding the lawsuit against and settlement from Pierce National and Owens. When the Court ruled against Dawkins, he requested that the Court and the parties be honest with the jury and tell them a settlement was reached and the amount of the settlement. As a result, Dawkins would have to get over that amount to get anything from Sell. By only allowing it to be disclosed that Owens and Pierce National were a defendant, the Court left the jury to conclude that Dawkins got a higher settlement from Owens and Pierce National than he actually received. Further, once Pierce National and Owens were dismissed from this case, any pleadings and discovery responses as to them are void. Otherwise, a dismissal is not given its full effect. The responses to interrogatories were void, irrelevant, and greatly prejudiced Dawkins.

2. The Court also committed reversible error in allowing Sell to exceed the bounds of the empty chair defense by trying the conduct of Owens and Pierce National. The empty chair defense is not boundless. Many of the issues regarding Pierce National and Owens were irrelevant to the only issue at the trial--Sell's negligence. Moreover, if a judgment was rendered against Sell, he wanted a set-off for the money paid by Owens and Pierce National. It is axiomatic for Sell to try the settling defendant while at the same time wanting a set-off for any money the settling defendant paid. This is a

windfall for Sell. As a result, the issues regarding Owens and Pierce National were irrelevant to the trial.

3. The Court erred in charging the jury on intervening and superseding negligence. As noted above, the Court erred in failing to grant a directed verdict on Sell's defense of intervening and superseding negligence. As a result, intervening and superseding negligence should not have been charged to the jury.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

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ATTORNEYS FOR PLAINTIFF

October 23, 2017
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Maurice Dawkins,

PLAINTIFFS,

v.

James A. Sell, Dennis J. Owens, and Pierce
National, Inc,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-25-00252

James A. Sell Answer to Second
Amended Complaint and Cross-claim

TO: R. ALEXANDER MURDAUGH AND WILLIAM F. BARNES, III,
ATTORNEYS FOR PLAINTIFF:

The Defendant, James A. Sell (hereinafter "the Defendant"), answering the Plaintiff's
Second Amended Complaint would allege and show as follows:

1. The Defendant denies each and every allegation not specifically admitted
hereinafter and demands strict proof thereof.

FOR A FIRST DEFENSE

2. Upon information and belief, the Defendant admits the allegations in
Paragraph 1.

3. The Defendant admits the allegations in Paragraph 2.

4. Upon information and belief, the Defendant admits the allegations in
Paragraphs 3, 4, and 5.

5. Paragraph 6 states a conclusion of law and, accordingly, an answer is not
required. To the extent an allegation of fact is made, the Defendant denies it.

6. The Defendant admits the allegations in Paragraph 7.

7. The Defendant admits so much of Paragraph 8 that alleges that at the same time and place Plaintiff was also operating his vehicle in a southerly direction on Interstate 95 in Hampton County, South Carolina and stopped to offer assistance, but the Defendant denies the remaining allegations of Paragraph 8.

8. The Defendant admits so much of Paragraph 9 that alleges that at the same time and place, Defendant Owens was operating a Pierce National tractor-trailer in a southerly direction on Interstate 95 in Hampton County, South Carolina when suddenly and without warning the tractor-trailer collided with the Sell vehicle, ; but the Defendant denies the remaining allegations of Paragraph 9 as they pertain to Defendant Sell.

9. Paragraph 10 states a conclusion of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, the Defendant denies it.

10. The Defendant denies the allegations as to Defendant Sell in Paragraph 11, including all subparts.

11. Paragraph 12 through 42 contain no allegations against the Defendant and therefore no answer is required. To the extent an allegation of fact is alleged, the Defendant denies same.

12. The Defendant denies the allegations in Paragraph 43, as they pertain to Defendant Sell. Further answering, the Defendant lacks information or knowledge sufficient to form a belief as to the injuries, if any, that the Plaintiff sustained as asserted in Paragraph 43 and therefore denies same.

13. The Defendant denies the allegations in Paragraph 44, as they pertain to Defendant Sell.

FOR A SECOND DEFENSE

(Failure to State a Claim)

14. The above paragraphs are re-alleged.

15. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendant, James A. Sell, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(Sole Negligence of Another)

16. The above paragraphs are re-alleged.

17. The direct and proximate cause of the Plaintiff's injuries, if any, was due to the negligence, gross negligence, wanton and reckless conduct of some other person, or corporation and they were the sole cause of this accident and, accordingly, the Defendant is not liable for any damages or injuries sustained by the Plaintiff.

FOR A FOURTH DEFENSE

(Apportionment)

18. The above paragraphs are re-alleged.

19. The Defendant would further plead that should the jury find that this Defendant was in any way a contributing proximate cause to the accident in question, which is specifically denied, then this defendant would show that his/her liability was less than Fifty Percent (50%) of the total fault and should be liable for that percentage of the indivisible damages determined by the jury or trier of fact pursuant to S.C. Code Ann. § 15-38-15.

FOR A FIFTH DEFENSE
(Intervening/Superseding Negligence)

20. The above paragraphs are re-alleged.

21. The Defendant is informed and believes that the Plaintiff's claims alleged against him are barred, or severely limited, by the concurring, contributing, intervening, superseding or insulating fault and breach by persons or entities other than this Defendant, specifically, the Defendants, Owens and Pierce National.

22. The Defendant is further informed and believes that any fault or negligence by him, the existence of such negligence having been denied, was passive and secondary in light of the primary and active fault or breach of others, specifically, the Defendants, Owens and Pierce National.

FOR A SIXTH DEFENSE AND BY WAY OF A CROSS-CLAIM

23. The above paragraphs are re-alleged.

24. The Crossclaimant, James A. Sell ("Sell"), is a citizen and resident of Bluffton, County of Beaufort, State of South Carolina.

25. Plaintiff, Maurice Dawkins ("Dawkins"), is a citizen and resident of the State of Tennessee.

26. Upon formation and belief, the Defendant, Dennis J. Owens ("Owens"), is a citizen and resident of the state of Alabama.

27. Upon information and belief, the Defendant, Pierce National, Inc. ("Pierce National"), is a corporation organized and existing under the laws of a state other than South Carolina, and operates as a long haul trucking business over the Interstate Highways and other roadways throughout the United States.

28. The events which gave rise to this action took place on Interstate 95, Hampton County, South Carolina and therefore, this Court has jurisdiction over the parties hereto and the subject matter set forth herein.

29. At all times material to this action, Defendant Owens was an employee of Defendant Pierce National, acting within the scope of his employment and subject to the control of Pierce National.

30. On August 21, 2010, Sell, was operating a Budget rental truck ("rental vehicle") on Interstate 95 ("I-95") in Hampton County, South Carolina.

31. Sell was traveling in the rental vehicle southbound on I-95 with his grandson riding in the passenger seat.

32. As Sell was driving, the right front wheel of the vehicle dropped from the right lane to an emergency lane. Sell tried to correct the unforeseen movement of the wheel by steering to the left. As a result of this attempt to correct the path of the rental vehicle, the rear end of the rental vehicle fishtailed. The rental vehicle swerved and began to turn over, coming to rest with the passenger side of the vehicle facing the right hand side of the southbound lanes of I-95.

33. After seeing the rental vehicle come to rest on its side, Dawkins stopped his automobile to offer assistance, as did other individuals.

34. After receiving assistance from Dawkins and others, Sell and his grandson exited the rental vehicle. Thereafter, Sell, his grandson, Dawkins and others walked to the inside shoulder of the highway.

35. Meanwhile, Defendant Owens was driving southbound on I-95 in Hampton County, South Carolina, toward the overturned rental vehicle. Owens was driving in an 80,000 pound 18-wheel tractor trailer rig owned, maintained and operated by Defendant Pierce National.

36. As Sell, Dawkins, and others, waited in the median of the interstate highway, for the emergency responders they had summoned to arrive, Defendant Owens, driving a high rate of speed, suddenly and without warning, violently struck the rental vehicle.

37. Defendant Owens hit the rental vehicle with tremendous force, and propelled it into Sell, Dawkins, and others, causing serious injuries and damages to Sell as hereinafter more particularly set forth.

FOR A FIRST CAUSE OF ACTION

(Negligence Per Se)

(As to Defendant Pierce National, Inc. and Defendant Dennis J. Owens)

38. The above paragraphs are re-alleged.

39. Defendants Pierce National and Owens owed a duty to Sell and others to use reasonable care in maintaining and operating the tractor trailer at issue in this case and to do so in a manner consistent with the laws of the State of South Carolina and the United States of America, including, but not limited to 49 CFR 385.5, governing safety standards.

40. Defendants Pierce National and Owens violated said laws and thereby breached that duty to Sell and others.

41. The breach of these duties was the direct and proximate cause of injuries to Sell and others.

42. Sell was damaged as a result of these breaches.

43. Sell is informed and believes he is entitled to actual, special and punitive damages in an amount to be determined by this Honorable Court.

FOR A SECOND CAUSE OF ACTION

(Negligence)

(As to Defendant Pierce National, Inc., and Defendant Dennis J. Owens)

44. The above paragraphs are re-alleged.

45. As a user of the highways of the State of South Carolina, the Defendants, Owens and Pierce National, owed a duty of ordinary care to the Sell and others using the highways.

46. That the Defendants Pierce National and Owens breached the duty of ordinary care they owed to Sell, by their negligent, grossly negligent, reckless, willful, and wanton conduct by:

- a. In driving a vehicle with defective brakes, or if the brakes were not defective, then in failing to apply them properly;
- b. Failing to keep the tractor-trailer under proper control;
- c. Driving said vehicle too fast for conditions existing at the time of the accident;
- d. Failing to keep a proper distance between said vehicle and others, and driving their vehicle in such a manner so as to cause and/or create a dangerous condition for other persons using the highway;
- e. Failing to look and observe traffic and traffic conditions on or about the roadway at the time of the accident;

f. Failing to take the proper precautions to ensure the safety of Sell, and those other persons using the highway;

g. Failing to take proper evasive action;

h. Failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances; and

i. Operating a motor vehicle with a reckless disregard for the rights and safety of others.

47. That as a direct and proximate result of the acts complained of in the Paragraph above, Sell suffered, and continues to suffer, damages, including, but not limited to the following:

a. Physical pain, suffering, mental anguish, emotional distress and discomfort;

b. Substantial medical expenses;

c. Serious personal injuries, including but not limited to, severe bruising and trauma to his head and body, a meniscus tear to his knee, resulting in arthroscopic surgery, a herniation and bulging disks to his spine, with resultant numbness and muscle spasms, which conditions have resulted in severe, disabling permanent injuries.

48. That the Sell is informed and believes he is entitled to actual, special and punitive damages in an amount to be determined by this Honorable Court.

FOR A THIRD CAUSE OF ACTION

(Negligence: Count II)

(As to Defendant Pierce National, Inc.)

49. The above paragraphs are re-alleged.

50. Defendant Pierce National owed a duty to Sell and others to use reasonable care in hiring, training, supervising and disciplining its drivers, including Defendant Owens.

51. Defendants breach said duty by:

a. failing to conduct an appropriate investigation into Defendant Owen's background and driving record prior to hiring him to drive their commercial truck;

b. failing to adequately train Defendant Owens regarding safe driving practices related to their tractor-trailer truck;

c. failing to adequately supervise Defendant Owens to ensure that he was following safe driving practices when he drove Defendant's tractor-trailer truck;

d. failing to appropriately monitor Defendant Owens' driving record, number of traffic accidents and number of moving violations;

e. failing to discipline Defendant Owens' for traffic accidents and moving violations;

f. failing to appropriately discipline Defendant Owens' failure to comply with Pierce National safety protocols, safety policies and safety procedures, if any existed;

g. failure to teach and/or monitor proper record keeping in logs intended for such purposes

h. In such other and further particulars as discovery may show and as evidence is presented at trial.

52. The breach of these duties was the direct and proximate cause of injuries to Sell injuries.

53. Sell was damaged as a result of these breaches.

54. Sell is informed and believes he is entitled to actual, special and punitive damages in an amount to be determined by this Honorable Court.

FOR A FOURTH CAUSE OF ACTION
(Negligent Retention)
(As to Defendant Pierce National, Inc.)

55. The above paragraphs are re-alleged.

56. Defendant Pierce National owed a duty to Sell and others to use reasonable care when retaining employees with a history of violations of state and federal laws and regulations concerning commercial tractor-trailer truck drivers and operation of motor vehicles.

57. Defendant Pierce National breached that duty to Sell and others.

58. The breach of these duties was the direct and proximate cause of injuries to Sell.

59. Sell was damaged as a result of these breaches.

60. Sell is informed and believes he is entitled to actual, special and punitive damages in an amount to be determined by this Honorable Court.

FOR A FIFTH CAUSE OF ACTION
(Negligent Entrustment)
(As to Pierce National, Inc.)

61. The above paragraphs are re-alleged.

62. At all times material to the issues herein, Defendant Pierce National, was the owner, lessor, controlled and was otherwise responsible for the tractor-trailer truck. Defendant Owens was driving at the time Owens collided with the rental vehicle.

63. As the owner of an 80,000 pound 18-wheel tractor trailer vehicle, Defendant Pierce National owed a duty to all of the people traveling on the highways of the State of South Carolina to be certain that any person into whose care it entrusted the operation of said tractor trailer vehicle was a competent and careful driver.

64. Defendant Owens was not a competent and careful driver, based upon:

- a. his actions which gave rise to the collision in this matter, specifically, his operating a vehicle in such a negligent manner, as set out above, for which actions he was found to be at fault in causing the collision with the rental vehicle by investigating law enforcement;
- b. his record of infractions related to competent and safe vehicle operation; and
- c. his driving a vehicle without properly functioning equipment.

65. Defendant Pierce National knew, had reason to know, and should have known of the unfitness and tendencies of Defendant Owens related to the proper operation of said tractor-trailer truck; and/or that Pierce National knew or should have known of the failure of Owens to maintain proper logs or records of his driving hours.

66. Defendant Pierce National entrusted the operation of its tractor trailer vehicle to the Defendant Owens, and allowed him to operate said tractor trailer vehicle on the

highways of the State of South Carolina without ascertaining and/or ensuring that he was a competent and careful driver.

67. Defendant Pierce National breached its duty of care to Sell and all others traveling on the highways of the State of South Carolina, when it failed to adequately investigate the driving skills and habits of Defendant Owens, before authorizing Defendant Owens to operate its tractor trailer vehicle on the highways of the State of South Carolina.

68. The negligence of Defendant Pierce National, in failing to adequately investigate the driving habits and skills of Defendant Owens, to insure that he was a competent driver before empowering Defendant Owens, to operate its tractor trailer vehicle on the highways of the State of South Carolina, was a proximate cause of the injuries sustained by Sell.

69. Sell is further informed and believes that he is entitled to a judgment against Defendant Pierce, for actual, special and punitive damages in an amount to be determined by this Honorable Court.

70. Defendant Pierce National leased, controlled and was otherwise responsible for the tractor-trailer truck Defendant Owens was driving at the time Owens collided with the rental vehicle.

71. Defendant Owens was incompetent, unfit and otherwise unskilled in the proper operation of the tractor-trailer truck.

72. Defendant Pierce National entrusted their tractor-trailer truck to Defendant Owens.

73. Defendant Pierce National's tractor-trailer truck was a dangerous instrumentality.

74. Defendant Pierce entrusting the tractor-trailer truck to Owens created an appreciable risk of harm to others, including injury to Sell.

75. Plaintiff's injuries were proximately caused by the negligence of Defendant Pierce National in entrusting such a dangerous instrumentality as the 18 wheel tractor trailer to Defendant Owens.

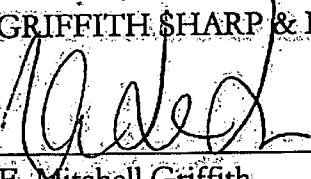
WHEREFORE, the Defendant prays for the following relief:

- a. That Plaintiff's Complaint be dismissed with prejudice as to him;
- b. That he be awarded judgment on his Cross-Claim; and
- c. That he be awarded costs and such other relief as this Court may deem

just and proper.

GRIFFITH SHARP & LIPFERT, LLC

By:


E. Mitchell Griffith

Kelly D. Dean

600 Monson Street

PO Drawer 570

Beaufort, SC 29901

843-521-4242

843-521-4247 (fax)

mgriffith@griffithsharp.com

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AND

James F. Berl

Law Offices of James F. Berl, P.C.

70 Main Street, Suite 400

PO Box 22626

Hilton Head Island, SC 29925

843-689-5771

ATTORNEYS FOR JAMES A. SELL

August 4, 2015

Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MAURICE DAWKINS,

Plaintiff,

v.

JAMES A. SELL, DENNIS J. OWENS, AND
PIERCE NATIONAL, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 11-CP-25-252

SECOND
AMENDED SUMMONS
(Jury Trial Demanded)

FILED
2015 JUN 11 AM 9:13
HON. D. HETTES
CLERK OF COURT
HAMPTON COUNTY, S.C.

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: Wil. Barnes

R. Alexander Murdaugh
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

June 8, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MAURICE DAWKINS,

Plaintiff,

v.

JAMES A. SELL, DENNIS J. OWENS,
AND PIERCE NATIONAL, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 11-CP-25-252

**SECOND
AMENDED COMPLAINT**
(Jury Trial Demanded)

FILED
2015 JUN 11 AM 9:13
MARILYN B. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

The Plaintiff alleges:

1. Plaintiff, Maurice Dawkins, is a citizen and resident of Richland County, South Carolina.
2. Defendant, James A. Sell ("Sell"), is upon information and belief a citizen and resident of Beaufort County, South Carolina.
3. Defendant, Dennis J. Owens ("Owens"), is upon information and belief a citizen and resident of the state of Alabama.
4. Defendant, Pierce National, Inc. ("Pierce National") is a corporation organized, existing, and maintains its principal place of business in a State other than South Carolina. Pierce National is an interstate common carrier operating in Hampton County, South Carolina.
5. At all times mentioned below, Owens was an agent, servant, and/or employee acting within the course and scope of his employment with Defendant Pierce National, Inc.
6. Venue is proper in Hampton County, South Carolina as it is the county where the most substantial part of act or omission giving rise to this action occurred.
7. On or about August 21, 2010, Defendant Sell was operating a Budget Rental Truck ("Sell Vehicle") in a southerly direction on Interstate 95 in Hampton County, South Carolina when the truck overturned.

8. At the same time and place Plaintiff was also operating his vehicle in a southerly direction on Interstate 95 in Hampton County, South Carolina. Plaintiff stopped his vehicle to render assistance once he saw the Sell Vehicle overturned and extending into the southbound lane of Interstate 95.

9. At the same time and place, Defendant Owens was operating a Pierce National tractor-trailer in a southerly direction on Interstate 95 in Hampton County, South Carolina when suddenly and without warning the tractor trailer collided with the overturned Sell Vehicle; driving the Sell Vehicle into several people, including the Plaintiff, who had stopped to provide assistance. Defendants conduct caused Plaintiff to suffer injuries as set forth below.

10. The Defendants each owed the Plaintiff a duty and breached that duty by virtue of their acts and omissions set forth below.

11. The injuries and damages set forth in this Complaint were due to and proximately caused by the negligent, reckless, and careless conduct of the Defendants in the following particulars:

AS TO DEFENDANT SELL

- a) In failing to keep a proper lookout;
- b) In failing to use the degree of care and caution that a reasonable prudent person would have used under the circumstances that existed;
- c) In failing to keep the vehicle under proper control;
- d) In driving too fast for conditions then and there existing; and
- e) In causing an accident that left a vehicle extending into a lane of travel, which resulted in motorists stopping to render assistance, and contributed to Plaintiff's injuries.

AS TO OWENS AND PIERCE NATIONAL

- a) In failing to keep a proper lookout;
- b) In failing to keep his vehicle within his lane of travel;
- c) In failing to apply or use the brakes;
- d) In failing to stop, slow, or turn his vehicle to avoid colliding with other vehicles which collided with Plaintiff;
- e) In traveling too fast for the conditions existing at that time;
- f) In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there existing; and
- g) In operating a vehicle in disregard for the safety of others.

FOR A SECOND CAUSE OF ACTION
(Negligence Per Se)

12. The allegations of the above are incorporated as if rewritten.

13. Defendants owed a duty to use reasonable care in maintaining and operating the tractor trailer at issue in this case and to do so in a manner consistent with the laws of the State of South Carolina and the United States of America, including, but not limited to 49 CFR 385.5, governing safety standards.

14. Defendants violated said laws and thereby breached that duty to Plaintiff and others.

15. The breach of these duties was the direct and proximate cause of injuries to Plaintiff and others.

16. Plaintiff sustained injuries as a result of these breaches.

FOR A THIRD CAUSE OF ACTION
(Negligence Supervision as to Pierce National)

17. The allegations of the above are incorporated as if rewritten.

18. Defendant Pierce National owed a duty to Plaintiff and others to use reasonable care in hiring, training, supervising and disciplining its drivers, including Defendant Owens.

19. Defendants breach these duties by:

- a. failing to conduct an appropriate investigation into Defendant Owen's background and driving record prior to hiring him to drive their commercial truck;
- b. failing to adequately train Defendant Owens regarding safe driving practices related to their tractor-trailer truck;
- c. failing to adequately supervise Defendant Owens to ensure that he was following safe driving practices when he drove Defendant's tractor-trailer truck;
- d. failing to appropriately monitor Defendant Owens' driving record, number of traffic accidents and number of moving violations;
- e. failing to discipline Defendant Owens' for traffic accidents and moving violations;
- f. failing to appropriately discipline Defendant Owens' failure to comply with Pierce National safety protocols, safety policies and safety procedures, if any existed;
- g. failure to teach and/or monitor proper record keeping in logs intended for such purposes;
- h. In such other and further particulars as discovery may show and as evidence is presented at trial.

20. The breach of these duties was the direct and proximate cause of injuries to Plaintiff's injuries.

21. The Plaintiff was damaged as a result of these breaches.

FOR A FOURTH CAUSE OF ACTION
(Negligent Retention as to Pierce National)

22. The allegations of the above are incorporated as if rewritten.

23. Defendant Pierce National owed a duty to Plaintiff and others to use reasonable care when retaining employees with a history of violations of state and federal laws and regulations concerning commercial tractor-trailer truck drivers and operation of motor vehicles.

24. Defendant Pierce National breached that duty to Plaintiff and others.

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25. The breach of these duties was the direct and proximate cause of injuries to Plaintiff.
26. The Plaintiff was damaged as a result of these breaches.

FOR A FIFTH CAUSE OF ACTION
(Negligent Entrustment as to Pierce National)

27. The allegations of the above are incorporated as if rewritten.
28. At all times material to the issues herein, Defendant Pierce National, was the owner, lessor, controlled and was otherwise responsible for the tractor-trailer truck Defendant Owens was driving at the time Owens collided with the rental vehicle.

29. As the owner of an 80,000 pound 18-wheel tractor trailer vehicle, Defendant Pierce National owed a duty to all of the people traveling on the highways of the State of South Carolina to be certain that any person into whose care it entrusted the operation of said tractor trailer vehicle was a competent and careful driver.

30. Defendant Owens was not a competent and careful driver, based upon:
 - a. His actions which gave rise to the collision in this matter, specifically, his operating a vehicle in such a negligent manner, as set out above, for which actions he was found to be at fault in causing the collision with the rental vehicle by investigating law enforcement;
 - b. His record of infractions related to competent and safe vehicle operation; and
 - c. His driving a vehicle without properly functioning equipment.

31. Defendant Pierce National knew, had reason to know, and should have known of the unfitness and tendencies of Defendant Owens related to the proper operation of said tractor trailer truck; and/or that Pierce National knew or should have known of the failure of Owens to maintain proper logs or records of his driving hours.

32. Defendant Pierce National entrusted the operation of its tractor trailer vehicle to the Defendant Owens, and allowed him to operate said tractor trailer vehicle on the highways of the State of South Carolina without ascertaining and/or ensuring that he was a competent and careful driver.

33. Defendant Pierce National breached its duty of care to Sell and all others traveling on the highways of the State of South Carolina, when it failed to adequately investigate the driving skills and habits of Defendant Owens, before authorizing Defendant Owens to operate its tractor trailer vehicle on the highways of the State of South Carolina.

34. The negligence of Defendant Pierce National, in failing to adequately investigate the driving habits and skills of Defendant Owens, to insure that he was a competent driver before empowering Defendant Owens, to operate its tractor trailer vehicle on the highways of the State of South Carolina, was a proximate cause of the injuries sustained by Plaintiff.

35. Plaintiff is further informed and believes that he is entitled to a judgment against Defendant Pierce, for actual, special and punitive damages in an amount to be determined by this Honorable Court.

36. Defendant Pierce National leased, controlled and was otherwise responsible for the tractor-trailer truck Defendant Owens was driving at the time Owens collided with the rental vehicle.

37. Defendant Owens was incompetent, unfit and otherwise unskilled in the proper operation of the tractor-trailer truck.

38. Defendant Pierce National entrusted their tractor-trailer truck to Defendant Owens.

39. Defendant Pierce National's tractor-trailer truck was a dangerous instrumentality.

40. Defendant Pierce entrusting the tractor-trailer truck to Owens created an appreciable risk of harm to others, including injury to Plaintiff.

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41. Plaintiff's injuries were proximately caused by the negligence of Defendant Pierce National in entrusting such a dangerous instrumentality as the 18 wheel tractor trailer to Defendant Owens.

42. Plaintiff is further informed and believes that he is entitled to a judgment against Defendant Pierce, for actual and special damages in an amount to be determined by this Honorable Court.

43. As a direct and proximate result of the aforementioned accident, the Plaintiff suffered severe and permanent injuries to his foot, ankle, head, limbs, and other parts of his body from which he has suffered and will continue to suffer great physical pain, mental anguish, has expended and will in the future expend monies for medical care and treatment, has suffered lost wages, and caused to lose the enjoyment of life.

44. By reason of and in consequence of the negligent, careless, reckless, willful, wanton, and grossly negligent conduct of the Defendants, the Plaintiff suffered the severe and permanent injuries and losses complained of for which Defendants are liable.

WHEREFORE, plaintiff prays for judgment against the defendant for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

[SIGNITURE TO FOLLOW ON NEXT PAGE]

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____

Wil. Barnes

R. Alexander Murdaugh
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

June 8, 2015
Hampton, South Carolina

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

MAURICE DAWKINS)

Plaintiff,)

v.)

JAMES A. SELL, DENNIS J. OWENS)
AND PIERCE NATIONAL , INC.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-25-252

ANSWER OF DEFENDANT JAMES A. SELL
TO AMENDED COMPLAINT
AND CROSSCLAIM
(JURY TRIAL DEMAND)

CLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2011 AUG -3 PM 2:15

FILED

The Defendant, James A. Sell, answering the Amended Complaint of the Plaintiff herein,
would respectfully show unto this Honorable Court as follows:

1. That each and every allegation contained in Plaintiff's Amended Complaint not hereinafter expressly admitted, qualified or explained, is deemed denied and strict proof is demanded thereof.
2. That this Defendant is without sufficient information or knowledge to form a belief as to the truthfulness of the allegations contained in Paragraphs 1, 3, 4, and 5 and therefore denies the same and demands strict proof thereof.
3. That the allegations contained in Paragraph 2, 6, 7 and 8 are admitted.
4. That upon information and belief, this Defendant would admit the allegations set forth in Paragraph 9, except to the extent that they might be construed as alleging that any conduct by this Defendant caused the Plaintiff to suffer injuries, which assertion this Defendant specifically denies and demands strict proof thereof from the Plaintiff.
5. That the allegations contained in Paragraph 10 call for a legal conclusion and

therefore require no response by this Defendant. To the extent a response is required by this Defendant, he specifically denies that he breached any duty owed the Plaintiff and demands strict proof thereof from the Plaintiff.

6. That insofar as the allegations contained in Paragraph 11 are directed to this Defendant, they are specifically denied. To the extent those allegations are directed toward the Defendants, Dennis J. Owens ("Owens") and Pierce National, Inc. ("Pierce"), this Defendant, upon information and belief, admits those allegations of Paragraphs 11.

7. That this Defendant is without sufficient information as to the allegations of Paragraph 12, and therefore denies the same and demands strict proof thereof from the Plaintiff. This Defendant specifically denies that he is liable for any of the injuries or losses claimed by the Plaintiff.

8. That insofar as the allegations contained in Paragraph 13 are directed to this Defendant, they are specifically denied. To the extent those allegations are directed toward the Defendants, Owens Pierce, this Defendant, upon information and belief, admits the allegations of Paragraphs 13.

FOR A FIRST AFFIRMATIVE DEFENSE
(Assumption of Risk)

9. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 8, as if set forth verbatim herein.

10. That this Defendant asserts that the Plaintiff, by and through his own actions and/or inactions assumed the risk and/or accepted the potential possibility of the personal injuries and all portions of any damages alleged by the Plaintiff, and accordingly, the Plaintiff's claims

are barred.

FOR A SECOND AFFIRMATIVE DEFENSE
(Negligence of Another)

11. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 10, as if set forth verbatim herein.

12. Defendant is informed and believes that the Plaintiff's injuries, if any, were directly and proximately caused by the negligent acts, errors and omissions of the Defendants Owens and Pierce, over whom this Defendant had no control, and that said acts, errors and/or omissions supersede any acts, errors or omissions of this Defendant (the existence of such negligent acts having been expressly denied).

13. That this Defendant is informed and believes that the Plaintiff is therefore barred from recovery against him.

FOR A THIRD AFFIRMATIVE DEFENSE
(Superseding Negligence)

14. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 13, as if set forth verbatim herein.

15. This Defendant is informed and believes that the Plaintiff's claims alleged against him are barred, or severely limited, by the concurring, contributing, intervening, superseding or insulating fault and breach by persons or entities other than this Defendant, specifically, the Defendants, Owens and Pierce.

16. This Defendant is further informed and believes that any fault or negligence by him, the existence of such negligence having been denied, was passive and secondary in light of the primary and active fault or breach of others, specifically, the Defendants, Owens and Pierce.

17. That this Defendant is informed and believes that the Plaintiff is therefore barred from recovery against him.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

18. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 17, as if set forth verbatim herein.

19. That this Defendant is informed and believes that the Plaintiff has breached his duty to mitigate his damages and therefore Plaintiff is not entitled to recover from this Defendant.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Sudden Emergency)

20. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 19, as if set forth verbatim herein.

21. That this Defendant would aver that at the time and place of the accident, he was faced with a sudden emergency and responded as any reasonable, prudent person would have, under the circumstances then and there arising, and therefore this Defendant is not liable for the injuries alleged by the Plaintiff.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

22. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 21, as if set forth verbatim herein.

23. This Defendant would aver that the Plaintiff's claims against him are barred because the Plaintiff has failed to state facts sufficient to constitute a cause of action against him,

and accordingly, the Amended Complaint must be dismissed as to this Defendant.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

24. This Defendant realleges and incorporates each and every response set forth above in Paragraphs 1 through 23, as if set forth verbatim herein.

25. This Defendant specifically reserves the right, and does not waive, any additional or further defenses as may be revealed by additional information acquired during the course of discovery, or otherwise, in this action.

FOR A EIGHTH AFFIRMATIVE DEFENSE
BY WAY OF CROSSCLAIM AGAINST
CO-DEFENDANTS OWENS AND PIERCE

26. That the Plaintiff asserts in his Amended Complaint that he stopped his automobile to render assistance to this Defendant, James A. Sell ("Sell"), following Sell's vehicle having overturned on Interstate 95 in Hampton Company, South Carolina, as a result of which countless other passers-by had stopped and avoided Sell's overturned vehicle, when the tractor trailer operated and owned by Co-Defendants, Owens and Pierce, respectively, collided with the overturned vehicle, driving it into the Plaintiff, and others, allegedly causing injuries to the Plaintiff.

27. This Defendant, Sell, has denied the material allegations against him of Plaintiff's Amended Complaint and set forth various defenses thereto.

28. That just prior to the time of the accident above described, this Defendant, Sell, had been removed from his overturned vehicle by the Plaintiff and others and was standing on the side of the roadway with the Plaintiff, and the other passers-by, who had stopped and

rendered assistance to him.

29. That suddenly, and without warning, the Defendant, Owens, drove his tractor trailer, owned by Defendant Pierce, at a great rate of speed, directly into this Defendant's overturned vehicle.

30. That as a result of the extreme force of the aforesaid collision, the Defendant Sell's overturned tractor trailer was driven into the Defendant, and several other people, including the Plaintiff, resulting in serious bodily injuries to the Defendant, Sell.

31. That as a user of the highways of the State of South Carolina, the Defendants, Owens and Pierce, owed a duty of ordinary care to the Defendant, Sell, and others using the highways.

32. That the Defendants, Owens and Pierce, breached the duty of ordinary care they owed to the Defendant, Sell, by their negligent, grossly negligent, reckless, willful, and wanton conduct by:

- a. Failing to keep their vehicle under proper control;
- b. Driving their vehicle too fast for conditions existing at the time of the accident;
- c. Failing to keep a proper distance between their vehicle and others, and driving their vehicle in such a manner so as to cause and/or create a dangerous condition for other persons using the highway;
- d. Failing to look and observe traffic and traffic conditions on or about the roadway at the time of the accident;
- e. Failing to take the proper precautions to ensure the safety of the Defendant, Sell, and those other persons using the highway;

- f. Failing to take proper evasive action;
- g. Failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances; and
- h. Operating a motor vehicle with a reckless disregard for the rights and safety of others.

33. That as a direct and proximate result of the acts complained of in Paragraph #34 above, the Defendant, Sell, suffered, and continues to suffer, damages, including, but not limited to the following:

- a. Physical pain, suffering, mental anguish, emotional distress and discomfort;
- b. Substantial medical expenses;
- c. Serious personal injuries, including but not limited to, severe bruising and trauma to his head and body, a meniscus tear to his knee, resulting in arthroscopic surgery, a bulging disk to the L5 vertebrae of his spine, with resultant numbness and muscle spasms, which conditions have resulted in severe and disabling injuries.

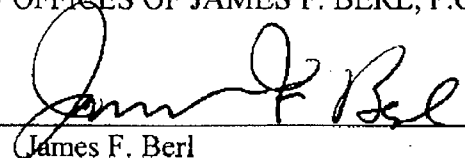
34. That the Defendant, Sell, is informed and believes he is entitled to actual, special and punitive damages in an amount to be determined by this Honorable Court.

WHEREFORE, having fully responded to the Amended Complaint of Plaintiff herein, this Defendant, James A. Sell, would respectfully request that this Honorable Court inquire into the matters set forth herein and issue its Order as follows:

- A. Denying Plaintiff any relief as to this Defendant;
- B. Protecting the rights of the Defendant, James A. Sell, to which he is entitled at law or in equity;

- C. Granting unto this Defendant, James A. Sell, actual damages on his Crossclaim against the Defendants, Dennis J. Owens and Pierce National, Inc., in an amount to be determined by this Honorable Court;
- D. Awarding unto this Defendant, James A. Sell, such punitive damages against the Defendants, Dennis J. Owens and Pierce National, Inc., as this Honorable Court determines to be appropriate; and
- E. For such other and further relief as this Honorable Court may deem just and proper.

LAW OFFICES OF JAMES F. BERL, P.C.

By: 

James F. Berl

Attorney for Defendant, James A. Sell

70 Main Street, Suite 400

P. O. Box 22626

Hilton Head Island, SC 29925

(843) 689-5771

Hilton Head Island, SC

This 1st day of July, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

MAURICE DAWKINS)

Plaintiff,)

v.)

JAMES A. SELL, DENNIS J. OWENS)
AND PIERCE NATIONAL, INC.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-25-252

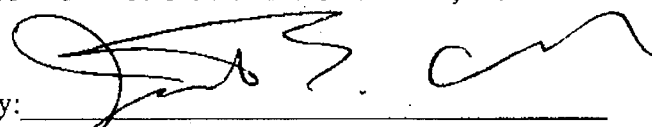
CERTIFICATE OF SERVICE

I, Judith E. Conrad, Litigation Paralegal, hereby certify that I have, on this 2nd day of August, 2011, served a copy of Answer of Defendant James A. Sell to Amended Complaint and Crossclaim, along with a copy of this Certificate of Service, to be served upon the Plaintiff by first class mail, postage prepaid, addressed to the following:

R. Alexander Murdaugh, Esquire
William F. Barnes, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick
P.O. Box 457
Hampton, SC 29924-0457

FILED
2011 AUG -3 PM 2:15
KYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

LAW OFFICES OF JAMES F. BERL, P.C.

By: 

Judith E. Conrad
Litigation Paralegal
70 Main Street Suite 400
P. O. Box 22626
Hilton Head Island, SC 29925
(843) 689-5771

Hilton Head Island, SC.
August 1, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MAURICE DAWKINS,

Plaintiff,

v.

JAMES A. SELL, DENNIS J. OWENS,
AND PIERCE NATIONAL, INC.,
Defendants.

FILED IN THE COURT OF COMMON PLEAS
JUL 1 2011
2011 JUN -1 AM 10:38 ACTION NO.: 11-CP-25-252

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

BY _____

AMENDED SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the attached complaint, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at Peters, Murdaugh, Parker, Eltzroth & Detrick, PA, at Post Office Box 457, 101 Mulberry Street East, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____



R. Alexander Murdaugh
William F. Barnes, III
Post Office Box 457
101 Mulberry Street East
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

July 1, 2011
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)
2011 JUN -1 AM 10:38 CIVIL ACTION NO.: 11-CP-25-252

MAURICE DAWKINS,)
Plaintiff,)
BY _____)
v.)
JAMES A. SELL, DENNIS J. OWENS,)
AND PIERCE NATIONAL, INC.,)
Defendants.)

AMENDED COMPLAINT
(Jury Trial Demanded)

The Plaintiff alleges:

1. Plaintiff, Maurice Dawkins, is a citizen and resident of Richland County, South Carolina.
2. Defendant, James A. Sell ("Sell"), is upon information and belief a citizen and resident of Beaufort County, South Carolina.
3. Defendant, Dennis J. Owens ("Owens"), is upon information and belief a citizen and resident of the state of Alabama.
4. Defendant, Pierce National, Inc. ("Pierce National") is a corporation organized, existing, and maintains its principal place of business in a State other than South Carolina. Pierce National is an interstate common carrier operating in Hampton County, South Carolina.
5. At all times mentioned below, Owens was an agent, servant, and/or employee acting within the course and scope of his employment with Defendant Pierce National, Inc.
6. Venue is proper in Hampton County, South Carolina as it is the county where the most substantial part of act or omission giving rise to this action occurred.
7. On or about August 21, 2010, Defendant Sell was operating a Budget Rental Truck ("Sell Vehicle") in a southerly direction on Interstate 95 in Hampton County, South Carolina when the truck overturned.

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8. At the same time and place Plaintiff was also operating his vehicle in a southerly direction on Interstate 95 in Hampton County, South Carolina. Plaintiff stopped his vehicle to render assistance once he saw the Sell Vehicle overturned and extending into the southbound lane of Interstate 95.

9. At the same time and place, Defendant Owens was operating a Pierce National tractor-trailer in a southerly direction on Interstate 95 in Hampton County, South Carolina when suddenly and without warning the tractor trailer collided with the overturned Sell Vehicle, driving the Sell Vehicle into several people, including the Plaintiff, who had stopped to provide assistance. Defendants conduct caused Plaintiff to suffer injuries as set forth below.

10. The Defendants each owed the Plaintiff a duty and breached that duty by virtue of their acts and omissions set forth below.

11. The injuries and damages set forth in this Complaint were due to and proximately caused by the negligent, reckless, and careless conduct of the Defendants in the following particulars:

AS TO DEFENDANT SELL

- a) In failing to keep a proper lookout;
- b) In failing to use the degree of care and caution that a reasonable prudent person would have used under the circumstances that existed;
- c) In failing to keep the vehicle under proper control;
- d) In driving too fast for conditions then and there existing; and
- e) In causing an accident that left a vehicle extending into a lane of travel, which resulted in motorists stopping to render assistance, and contributed to Plaintiff's injuries.

AS TO OWENS AND PIERCE NATIONAL

- a) In failing to keep a proper lookout;

- b) In failing to keep his vehicle within his lane of travel;
- c) In failing to apply or use the brakes;
- d) In failing to stop, slow, or turn his vehicle to avoid colliding with other vehicles which collided with Plaintiff;
- e) In traveling too fast for the conditions existing at that time;
- f) In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there existing; and
- g) In operating a vehicle in disregard for the safety of others.

12. As a direct and proximate result of the aforementioned accident, the Plaintiff suffered severe and permanent injuries to his foot, ankle, head, limbs, and other parts of his body from which he has suffered and will continue to suffer great physical pain, mental anguish, has expended and will in the future expend monies for medical care and treatment, has suffered lost wages, and caused to lose the enjoyment of life.

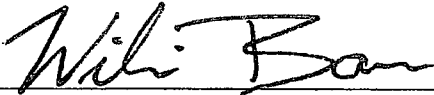
13. By reason of and in consequence of the negligent, careless, reckless, willful, wanton, and grossly negligent conduct of the Defendants, the Plaintiff suffered the severe and permanent injuries and losses complained of for which Defendants are liable.

WHEREFORE, plaintiff prays for judgment against the defendant for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

WFB
3

[SIGNATURE PAGE TO FOLLOW]

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ATTORNEYS FOR PLAINTIFF

July 1, 2011
Hampton, South Carolina

1 State of South Carolina) In the Court
2 County of Hampton) Of Common Pleas

3
4 Docket No. 2011CP2500252

5
6 Maurice Dawkins,)
7 Plaintiff,)
8 vs.) Partial
9) Transcript of Record
10 James A. Sell,)
Defendant.)

11
12 October 9-11, 2017
13 Hampton, South Carolina

14
15 B E F O R E:

16 The Honorable Roger M. Young, Sr., Judge and a jury.

17
18 A P P E A R A N C E S:

19 William F. Barnes, III, Esquire
20 R. Alexander Murdaugh, Esquire
Attorneys for the Plaintiff

21 E. Mitchell Griffith, Esquire
22 Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court Reporter
25 To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

1 MONDAY, OCTOBER 9, 2017

2 **PRETRIAL MOTIONS**

3 THE COURT: All right. We're on Dawkins versus
4 Sell and you've got some pretrial motions you want to run
5 through?

6 MR. BARNES: I do, Your Honor.

7 THE COURT: All right.

8 MR. BARNES: William Barnes here for the plaintiff,
9 Maurice Dawkins. We have a motion in limine that has
10 several components and I think there may be some that we
11 can consent to and we've previously provided the Court with
12 an explanation of the case back in chambers so I'll give
13 explanation. I also have a notebook that I'll hand up that
14 has a copy of our -- if I may I approach, Your Honor.

15 THE COURT: Okay.

16 MR. BARNES: And there should be a tab right there.

17 And the first item, Your Honor, is the lawsuit that
18 Mr. Dawkins filed against and a settlement from Pierce
19 National and Dennis Owens. We believe that that is not
20 relevant and -- also in light of the Smith versus Tiffany
21 opinion that Mr. Griffith is going to claim a setoff from
22 the previous money that that is not relevant to any issues
23 in this case and we would ask that there be preclusion of
24 any argument or testimony on that ground.

25 THE COURT: What's your position on that?

1 MR. GRIFFITH: Well, Judge, I'd -- what he stated
2 and what he wrote are a little bit different so I'll
3 address it. I agree that the --

4 THE COURT: You agree that you can't talk about it
5 during the trial. You disagree that you aren't entitled to
6 a setoff; is that right?

7 MR. GRIFFITH: I agree that I'm entitled to a
8 setoff. I agree I can't talk about it.

9 THE COURT: Okay.

10 MR. GRIFFITH: But he also says that he wants no
11 reference or suggestion that the plaintiff filed a suit
12 against Pierce National and Dennis Owens. Now, I believe
13 that I'm entitled to cross-examine him on his prior
14 complaints and his prior pleadings and going into -- you
15 made -- you said that Mr. Owens did this and you said that
16 Pierce National did this. So I believe that I am going to
17 be able to cross-examine him and intend to cross-examine
18 him on the allegations against Pierce National and against
19 Dennis Owens.

20 And for that, Your Honor, I would cite the case of
21 Lucht versus Youngblood which actually addresses that point
22 and basically in its holding says, generally prior
23 pleadings in an action may be received in evidence against
24 the pleader. The trial judge in that case refused to allow
25 the defense to cross-examine on the pleadings because he

1 was concerned about, as in this case, the covenant not to
2 sue that had been entered into.

3 THE COURT: Are you talking about prior pleadings
4 in this case or another action?

5 MR. GRIFFITH: In this case.

6 THE COURT: Okay. So when he sued originally there
7 were more than one defendant.

8 MR. GRIFFITH: Yes, sir, Your Honor.

9 THE COURT: Okay.

10 MR. GRIFFITH: He has sued and he made allegations,
11 so -- he's made statements that Pierce National did this,
12 Pierce National did that, Dennis Owens did this, Dennis
13 Owens did that. And the Supreme Court in Lucht versus
14 Youngblood said that generally you can't cross-examine on
15 prior pleadings. While it's a difficult issue, the judge
16 should have permitted the cross-examination on the
17 pleadings and if the judge thought a release of the
18 covenant would becoming involved he should have
19 simultaneously charged the plaintiff -- jury that the
20 plaintiff chose which defendant to sue and the actions
21 against the former are relevant and if they are relevant,
22 the matter would be one for the Court.

23 And again, the Court goes onto say, although the
24 defendant should have been permitted to cross-examine the
25 plaintiff on his prior inconsistent pleadings, the reversal

1 of such was -- the refusal of such was not reversible
2 error. And at that court, they found that it was not
3 reversible error because it was a personal representative
4 and the personal representative was not an eyewitness to
5 the action and as a result there was one descent which
6 basically said they would have remanded the case because of
7 the failure to allow counsel to cross on that. And I'll
8 hand the case up to the Court, if you want it.

9 (The document was handed to the Court.)

10 MR. GRIFFITH: And I did tab back there what I was
11 reading from, Judge.

12 THE COURT: Well, in the prior pleadings they --
13 did he allege that they were at fault exclusively or
14 contributed, or what exactly did the pleadings say?

15 MR. GRIFFITH: Judge, what the pleadings actually
16 said were as to Owens and Pierce National in failing to
17 keep a proper lookout, in failing to keep his vehicle in
18 the proper lane of travel, and failing to apply the breaks
19 and failing to stop, slow, turn the vehicle and avoid
20 colliding; traveling too fast for conditions; failing to
21 use of due care and caution that a prudent person would
22 have used in operating a vehicle in disregard for the
23 safety of others. So he made those specific allegations as
24 to facts in this case.

25 Now, we may get over a little bit later, but they

1 also said that Pierce National was at fault because Dennis
2 Owens was not a competent and careful driver. His actions
3 gave rise to the collision in this matter and driving in a
4 negligent matter. His record of infractions related to the
5 competent and safe operation of the vehicle and his driving
6 the vehicle without properly functioning equipment.

7 So those are generally the allegations as to Pierce
8 National. So for them to come in and say he's made these
9 statements, he's made those allegations, he's put them in
10 the Court record and now he can't be asked about them, I
11 think that's exactly what Lucht versus Youngblood is
12 addressing.

13 THE COURT: What do you envision a proper charge
14 would be to the jury as the Court -- as the Youngblood
15 case, Lucht versus Youngblood says, it might be a difficult
16 issue to handle, judge should have permitted it, but then
17 charged the jury on how to -- how to treat that.

18 MR. GRIFFITH: Well, I think the case says if the
19 judge thought the release on the covenant would be coming
20 involved. I don't intend to ask him if he settled with
21 Pierce National or Mr. Owens. I simply mean to ask him,
22 didn't you make this allegation against Mr. Owens? Didn't
23 you say that Mr. Owens was driving too fast for conditions,
24 didn't you say. And I think we just have to address it
25 when it gets there because it may not even come up, okay?

1 And if it does, then I think it probably is exactly what
2 the Court said, that ladies and gentlemen of the jury, the
3 plaintiff that has right to sue who he wishes to and if
4 you're concerned about that which the defendant has sued or
5 who he sues, if there's anything that comes up the Court
6 will take care of that. Which is basically what it
7 instructs the Court to do, the trial court.

8 THE COURT: Yes, sir?

9 MR. BARNES: Your Honor, just briefly, basically
10 what we're essentially doing is insinuating to the jury
11 that a settlement has been reached with these defendants
12 without them knowing the amount and that is extremely
13 prejudicial. And if we want to go down the road of using
14 the pleadings against Mr. Dawkins, Mr. Sell, likewise,
15 filed cross-claim against Pierce National and Owens and
16 some of those allegations closely mirror what Mr. Dawkins
17 alleges in his complaint. And so if we're going down that
18 road, we can also use that against Mr. Sell, which we
19 believe is totally irrelevant to the issues involved in
20 this case and that is whether Mr. Sell was, in fact,
21 negligent and did his negligence proximately cause
22 Mr. Dawkins's damages.

23 MR. GRIFFITH: Judge, I'm happy for them to know we
24 sued Pierce National and they paid us and we got a
25 settlement with them.

1 THE COURT: Well, I think he's entitled to use the
2 prior pleadings. Definitely can't go near conversations
3 about the settlement either on their action against the
4 other defendants or your actions against cross claims or
5 counter -- I guess cross claims. If you want to use those
6 for impeachment purposes, you can, but not that it was
7 settled for any amounts or anything like.

8 All right. What else you got?

9 MR. BARNES: Second one, Your Honor, is that the
10 actions of Dennis Owens were unforeseeable. And this ties
11 into kind of what I was just saying in kind of the pretrial
12 stuff and the request to charge, we anticipate Mr. Griffith
13 to argue for Mr. Sell that Dennis Owens and Pierce National
14 were an intervening cause that cuts off that liability. To
15 be an intervening cause, the actions have to be
16 unforeseeable. Mr. Sell, in a cross claim has asserted
17 that Owens and Pierce National proximately caused his
18 injuries and as a result Owens' actions have to be
19 foreseeable to Mr. Sell and if they're foreseeable to
20 Mr. Sell, they're foreseeable to Mr. Dawkins as well, and
21 so it's not an intervening cause.

22 And we believe that they should be judicially
23 estopped, based on their pleading that Owens and Pierce
24 National's actions were foreseeable and that they
25 proximately caused Mr. Sell's injuries from coming in now

1 as to their defense in Mr. Dawkins's case to say wait a
2 second, this is an intervening cause and we're exculpated
3 from liability. And so for that we believe there should be
4 no mention of anything or any argument that the actions of
5 Dennis Owens were unforeseeable.

6 THE COURT: You want to argue that?

7 MR. GRIFFITH: Judge, first of all, I think that
8 Judge Goldsmith may have already ruled on this motion over
9 a year ago when we were here prior for pretrial motions
10 because it came up because I had a motion for summary
11 judgment that he heard and he denied it. And like he said,
12 I think this may have come up at that time. But I'll hand
13 up the brief. I think maybe it was earlier this year,
14 because I have my brief dated January of 2017, which I
15 think may have been the last time we took a stab at trying
16 to get this case tried.

17 And what I would say, basically, my brief sets it
18 out, but what they're trying to do is challenge the element
19 of proximate cause in this case. They're looking at -- you
20 have to look at the causation from the standpoint of the
21 defendant. In this case they're saying that judicial
22 estoppel should come into play. Well, there are five
23 elements, as we set out in our brief that must be found
24 before there can be judicial estoppel and that the two
25 positions must be -- one of them being the two positions

1 must be totally inconsistency -- inconsistent and the
2 inconsistency must be part of an intentional effort to
3 deceive the Court. That's certainly not the case here,
4 judge.

5 What we've got is, you have to look at proximate
6 cause from the defendant's perspective at the time of the
7 accident. In this case, the defendant is Mr. Owens --
8 excuse me, Mr. Sell. His accident occurred and no one was
9 hurt in that incident with regards -- and I'll say
10 Mr. Dawkins because he came up upon Mr. Sell turned over,
11 came around, and came to his aid. So we have to look at it
12 from the perspective there. And as a result, what we're
13 looking at is from that perspective, Mr. Sell has always
14 said, Owens and Pierce National in their cross claim were
15 the cause of this accident. Totally not inconsistent with
16 the position we're taking today, that Owens and Pierce
17 National are the sole cause of this accident. And there
18 can be, not only a sole cause, but it can be an intervening
19 cause. And that's what we're pleading in the case.

20 And here, our position is totally consistent with
21 what we've taken since day one. So to say judicial
22 estoppel applies is totally incorrect because these
23 positions are not inconsistent at all. They're not an
24 attempt to deceive the Court, which are at least two of the
25 elements in -- in finding judicial estoppel and as a

1 result, I don't think that there's anything that would
2 prevent us from putting up the defense that we're putting
3 up. And as we state in our brief, the question in the
4 cross claim is whether Mr. Sell's injuries were the natural
5 and proximate caused -- probable consequence of Mr. Owens
6 conduct. In contrast, the question in the plaintiff's
7 claim is whether the plaintiff's injuries were the natural
8 and probable consequence of Mr. Sell's conduct. Two
9 positions that are not totally inconsistent. They have to
10 be looked at from a perspective of the defendant.

11 THE COURT: It does sound -- I don't see where the
12 inconsistency is with his position.

13 MR. BARNES: Your Honor --

14 THE COURT: You're saying somebody else caused your
15 prob -- your accident or your injuries at least and not
16 just him.

17 MR. BARNES: He has two affirmative defenses he's
18 asserting: Sole negligence of another, and intervening
19 superceding cause. And it sounds like what he's doing is,
20 he's married those two together, but in fact, they're two
21 separate and on the intervening superceding, he's basically
22 saying Owens and Pierce National's actions are
23 unforeseeable, but in fact, he's filed a pleading that says
24 they were foreseeable.

25 And so I -- I agree they may get to argue at the

1 end of the trial these actions are unforeseeable and it's
2 the sole -- or, I'm sorry. That they're solely responsible
3 for this, but as far as the intervening superceding cause,
4 we think that his pleading binds them and as a result they
5 should be barred from taking a contrary position to what
6 they have filed in court.

7 THE COURT: Yes, sir?

8 MR. GRIFFITH: You could never plead comparative
9 fault if that's the case.

10 THE COURT: I just don't see it being inconsistent
11 positions, so I have to rule against you on that one.

12 The traffic report?

13 MR. BARNES: Your Honor, what we may be able to
14 do --

15 And, Mitch, you may consent to some of these and we
16 might can plow through these kind of quickly.

17 MR. GRIFFITH: Judge, I -- after 30 years, the
18 accident report is probably not admissible.

19 THE COURT: There you go.

20 MR. GRIFFITH: But I'll -- I'll let it go this
21 time. But, yes, sir, I agree with that.

22 THE COURT: Traffic reports aren't coming in.
23 Everyone agrees.

24 MR. BARNES: Number 4, Your Honor, is traffic
25 citation issued to Dennis Owens and/or lack of citation

1 issued to Jim Sell and we set forth the reasons why
2 pursuant to 56-5-6160, and 401, 402, 403.

3 MR. GRIFFITH: And, Judge, that just says that the
4 citation can't come into evidence. It doesn't say the lack
5 of citation can't come into evidence. But as a result, I
6 don't think that's necessarily prohibited by the statute.

7 Also, I would point out that in the plaintiff's --
8 plaintiff's second amended complaint in paragraph 30(a)
9 they actually allege that Dennis Owens was not competent
10 and careful based upon the fact that his actions which gave
11 rise to the collision, specifically his operating the
12 vehicle in such negligent manner as set out before for
13 which actions he was found at fault in causing the
14 collusion with the rental vehicle by the investigating law
15 enforcement. So they've actually pled it in their
16 complaint and I think that I ought to be able to go -- at
17 least publish the pleadings to them.

18 MR. BARNES: Your Honor, we -- it's getting back to
19 the pleading. But as to any citation or lack of citation
20 is kind of like an other similar incident, there's a
21 standard of proof that you have to have and when you flip
22 that around, it -- the same level of proof is required.
23 And so we believe that any lack of citation issued would
24 violate the statute and be unfairly prejudicial and it's
25 not relevant to anything in this action.

1 THE COURT: Yeah, I don't want any mention of
2 traffic tickets or citations or convictions or lack
3 thereof.

4 MR. GRIFFITH: Judge, I think we can probably take
5 care of Number 5, 6, 7 of this. Mr. Dawkins actually
6 testified that he had no other traffic citations or
7 automobile accidents. If one of them comes up, I'm
8 certainly going to now cross -- try and impeach him on it,
9 but I know of none as I stand here. Any other legal
10 actions involving the plaintiff, including family court
11 actions.

12 Judge, that might have been talked about a little
13 bit in one of the depositions, but it might have been my
14 misunderstanding him, but I don't want to throw out -- I
15 don't even know if I put it in. But Mr. Owens, I think
16 testified at one point that he was married at the time of
17 this accident and then divorced, but I actually think he
18 was divorced about a year before the accident occurred. So
19 I think he got a little confused on when it was.

20 THE COURT: Who's Mr. Owens again?

21 MR. GRIFFITH: I'm sorry, Mr. Dawkins.

22 THE COURT: Okay.

23 MR. GRIFFITH: But, I mean it's not certainly
24 anything I intend to go into, but I think it may already be
25 out a little bit, so --

1 THE COURT: What's the relevance of him -- when he
2 got divorced.

3 MR. GRIFFITH: I don't intend to go into it.

4 THE COURT: Okay.

5 MR. GRIFFITH: I'm just saying it may have been --
6 I would ask the plaintiffs go back and look through what
7 we've published from Ms. Williams's deposition --

8 THE COURT: An inadvertent statement? I don't
9 know --

10 MR. GRIFFITH: Yes, sir, and it may be inadvertent
11 somewhere.

12 Criminal charges and arrest, I still don't -- I
13 don't have anything on him that would indicate that he has
14 been charged or arrested for anything that would be
15 impeachable. So we're through to...

16 THE COURT: Well, if you feel an overwhelming
17 desire to cross-examine him over his inadvertent prior
18 inconsistent statement about when he got a divorce, bring
19 that to my attention and we'll talk about it.

20 MR. GRIFFITH: We'll do that.

21 And collateral source payments, I think I'm fairly
22 familiar with the rule on that, that no collateral sources
23 would come into the trial.

24 I'm not real sure about what the American Civil
25 Justice System and lawyers in general is about I --

1 MR. BARNES: We took that one out.

2 MR. GRIFFITH: Oh, okay. I'm going off an old
3 sheet of music then.

4 The only thing I would say, it may be Number 9, is
5 employment of counsel and fees of counsel -- fees and date
6 counsel was retained. I certainly don't intend to go into
7 any employment of counsel. I certainly don't think fees
8 are relevant at all, their fees are relevant at all. I
9 would point out that I have seen some pictures, and we
10 didn't ask him. I think the pictures were actually taken
11 maybe day of the accident, where he's got the collar on?
12 Because I know of no other time he had a collar on, so --
13 and I don't know if counsel was obtained at that time or
14 not, the day of the accident.

15 So I don't intend to go into that, but it might
16 inadvertently come out when they show a picture.

17 Unrelated claims or injuries. I don't have any
18 cross-examination. They did talk about taxation of
19 recovery. I think that it is proper to say that recovery
20 is not taxed.

21 MR. BARNES: We took that one out too.

22 The next one that I have is the --

23 MR. GRIFFITH: Yeah, will you say what the next --

24 MR. BARNES: -- financial consequences of judgment
25 against defendant. Really what we're getting in here, Your

1 Honor, is Mr. Sell has over \$2 million in insurance
2 coverage and if Mitch comes in and says that, you know,
3 Mr. Sell shouldn't have to pay this judgment, you really --
4 he's not exactly being forthright with the jury, so we
5 believe he should be precluded about talking about any
6 impact that judgment may have, given the amount of
7 insurance coverage that Mr. Sell has.

8 THE COURT: Anything going to let you get into
9 talking about it?

10 MR. GRIFFITH: We hope.

11 THE COURT: I don't think it will. But don't
12 mention it. I mean, you're not asking for punitives, are
13 you?

14 MR. GRIFFITH: Yes, sir, they are.

15 THE COURT: I mean just from what I heard, this
16 doesn't sound like a punitive damages case.

17 MR. MURDAUGH: Your Honor, we certainly can't agree
18 that those are out at this point. We can revisit it. I
19 mean the evidence is certainly capable, potentially of --

20 THE COURT: Well, even if it were a punitive
21 damages case, I don't really think that you get to say he's
22 got \$2 million worth of coverage. I just don't know of any
23 circumstances that that comes in.

24 MR. BARNES: Yeah, we aren't saying that the jury
25 knows how much insurance coverage there is.

1 THE COURT: Or that he's got any insurance.

2 MR. BARNES: Right.

3 THE COURT: In fact, if it comes -- if there's even
4 a hint of it I tell them don't discuss it, it's not
5 relevant. It's got nothing to do with fault. Whether he's
6 got any or in what amount. Okay...

7 Just resist that urge.

8 MR. BARNES: The next one, Your Honor, is kind of
9 along the same lines, payment of judgment, and that he will
10 have to personally pay any judgment that would be entered,
11 since this action involved liability coverage.

12 MR. GRIFFITH: Are they capping their claim, Judge?

13 MR. BARNES: We are not, Judge.

14 MR. GRIFFITH: I think I'm able to talk about it,
15 Judge. If that's the case. Because we don't know what the
16 verdict's going to be. And as you said insurance is not
17 relevant. If it were \$25 thousand or in this case my
18 client was responsible enough to carry a good bit of
19 coverage. I don't know why how much insurance he has
20 should impact the tort action in this matter.

21 THE COURT: I think it's proper for you to say, you
22 know, you shouldn't -- I mean, you know, just say you --
23 the jury is going -- we're all going to operate under this
24 fiction in this case that he's going to pay this judgment
25 out of his pocket. He might if it's in excess of his

1 policy limits, but that's kind of high. But there's -- you
2 get to have -- I mean you can state this judgment is
3 against my client --

4 MR. GRIFFITH: Yes, sir.

5 THE COURT: -- the fact that he has insurance that
6 may or may not cover the extent of it is in the lines of
7 the law as far as this is concerned or the trial is
8 concerned, irrelevant. So I don't think I can stop him
9 from saying my client is going to be responsible for this.
10 He will be. His insurance might pay it on his behalf,
11 but...

12 I'm not really sure I understand what you want me
13 to say he can't say.

14 MR. BARNES: Basically, Your Honor, he can't come
15 in and talk about how he personally paid this or that -- to
16 imply or insinuate that somehow Mr. Sell's going to lose
17 his house or create a hardship or anything along those
18 lines, when, in fact, that may not be the case.

19 THE COURT: Well, it might be the case if you do a
20 really good job.

21 MR. BARNES: Well, we hope that Mr. Sell told State
22 Farm to settle and as a result State Farm may be on the
23 hook for that.

24 THE COURT: Well, I mean, I'm sure you're going to
25 be happy if you get a \$3 million verdict, right?

1 MR. BARNES: We would be.

2 THE COURT: In that case he would have to pay it
3 out of his pocket, right? So...

4 MR. MURDAUGH: Judge, all we're talking about is
5 sort of the "woe is me" defense and, ya da, ya da, ya da,
6 and, you know, a big verdict and you know, all the
7 hardships of paying it when, in fact, there is insurance.
8 If he gets to argue that then the jury -- I mean it's
9 playing off of affection. If he's going to argue or
10 insinuate all these things, and it may break my client,
11 this, that, and the other, you know, then the jury ought to
12 know there's insurance.

13 So since they can't do that, he ought not be able,
14 in fairness to make those arguments when it's a fiction, is
15 all William's saying.

16 THE COURT: Well, I think he does get to make that
17 argument. I mean it may not be fair, but that's -- it's
18 fair game as long as you're not agreeing to that or...

19 MR. MURDAUGH: You're saying I can come in here and
20 give testimony, like, Oh, this is really stressing me out
21 that I may lose my house? I mean that's an extreme
22 example, but that's sort of what we're covering here.
23 When, in fact, there is insurance coverage.

24 THE COURT: Well --

25 MR. MURDAUGH: And that's clearly prejudicial to

1 plaintiff to be able to play that fiction onto the jury.

2 THE COURT: Well, I've never had anybody actually
3 use that kind of argument. How do you -- would you give us
4 an example of how you might want to approach this subject
5 matter?

6 MR. GRIFFITH: Judge, I promise not to say ya da,
7 ya da, ya da to the jury.

8 THE COURT: Okay. We've got that covered.

9 MR. GRIFFITH: Judge, I mean, the only thing I can
10 say is, based on their requests, they're actually asking me
11 not to stand up and say my client is being sued in the
12 case.

13 MR. BARNES: We don't have a problem with that.
14 That's not what we're talking about.

15 MR. GRIFFITH: And there in lies the slippery slope
16 because -- I mean, I think their fears are probably not --

17 THE COURT: Well, this is kind of --

18 MR. GRIFFITH: -- going to be argued by me.

19 THE COURT: Yeah, this can come up in almost every
20 case and we just -- you don't talk about insurance.

21 MR. GRIFFITH: That's right.

22 THE COURT: You treat it as if he's going to have
23 to pay for it. It's that simple.

24 MR. GRIFFITH: And he is actually going to have to
25 pay for it, he just has somebody that can indemnify him for

1 a good bit of it.

2 THE COURT: There you go. So --

3 MR. BARNES: Sounds like Mr. Griffith might think
4 it's \$3 million.

5 THE COURT: Well, at any rate.

6 MR. GRIFFITH: And that's their limit.

7 THE COURT: That -- I don't see how it -- it's not
8 any different than any other wreck case we ever do, so we
9 can -- I've seen Mitch try one like this to know that he
10 might have some different way of handling it than
11 everybody, every other defense lawyer in the world, but
12 just treat it as if he's going to be paying for this and
13 the insurance -- the jury is going to be back there arguing
14 what is his insurance. But if they come back in here and
15 say anything that insinuates that they're talking about
16 insurance, I'm going to tell them that it's irrelevant,
17 they shouldn't discuss insurance.

18 MR. MURDAUGH: And, Judge, that's not what we're
19 talking about, certainly that the defendant has
20 responsibility to pay, we're talking about taking that next
21 step where you're creating a fiction. All right? Because
22 ultimately he is responsible for paying, but to --
23 responsible for it, we aren't disputing that. We're
24 talking about additional items that creates a fiction to
25 the jury. Not just where they aren't supposed to consider

1 it, but causes them to believe that there is not insurance.
2 And that's what we're talking about creating a fiction on
3 the Court, Judge.

4 THE COURT: Well, I -- let's just wait and see if
5 he comes up with something about it.

6 MR. MURDAUGH: Okay.

7 THE COURT: Different than what I've ever heard.
8 Okay. What else you got?

9 MR. BARNES: The last two, Your Honor, are very
10 short. Filing of a motion in limine and the date the
11 summons and complaint was filed. So we would just think
12 those should not be talked about or argued that they filed
13 a motion in limine to keep you from hearing such and such
14 testimony. So we would ask that there be no preclusion on
15 that.

16 MR. GRIFFITH: I would never have thought to say
17 that. After the Court has ruled me not to say something.

18 THE COURT: I got to give you credit for coming up
19 with a new one because I -- I've never had that argued.
20 But --

21 MR. GRIFFITH: And in all honesty, I don't know
22 when the complaint was filed. This thing -- I know the
23 accident's over seven years old.

24 THE COURT: Well, that's a statute of limitations
25 issue. I don't know why that would be a -- who cares about

1 when the argument --

2 MR. BARNES: Judge, in a case in Charleston, how it
3 got used against us was it was filed, let's say a month
4 before the statute of limitations ran and they used that to
5 say, Well, you didn't care very much about this case
6 because you filed this case a month before the statute ran;
7 had you cared about the case, you would have filed it
8 sooner and --

9 THE COURT: Well, you know, in -- I think I would
10 see it more of, you know, you've got -- this wreck happened
11 in 2010, but you waited three years to file this action and
12 that's usually how it comes out.

13 MR. GRIFFITH: Well, we don't have to worry about
14 that because they filed it in 2010.

15 THE COURT: It doesn't sound like Mitch is planning
16 on going there.

17 MR. MURDAUGH: Your Honor, I haven't had a chance
18 to read this case that Mitch passed over and I have since
19 read this case on this issue of cross-examining Maurice
20 Dawkins on the -- his pleadings. Your Honor, in this case,
21 we sued Pierce National and Jim Sell, alleging that both of
22 them were at fault in causing Maurice Dawkins's injuries.
23 Nothing has changed and we are not taking a contrary
24 position to that. We still contend that Jim Sell and
25 Pierce National's driver caused his injuries. In this

1 case, making these pleadings admissible, the plaintiff
2 alleged in essence the yellow mustang crossed the center
3 line. He sued two people and he said the yellow mustang
4 crossed the center line. Then he amended his complaint to
5 say the -- after he settled, the yellow mustang was in its
6 proper lane. And in that situation, they said that he
7 should be -- because of the inconsistencies, he should be
8 allowed to cross-examine him on his pleadings.

9 In this case, we aren't taking any inconsistent
10 acts or pleadings. We still intend -- I mean clearly
11 Pierce National had some fault in this. And after reading
12 this case, Your Honor, I would just ask that --

13 THE COURT: How about we do this. Because I'm --
14 it's 1:30 and I know you guys got to want to get a bite to
15 eat because we've got a jury coming at two.

16 MR. MURDAUGH: Sure.

17 THE COURT: And we're not going to call any
18 witnesses today. We're going to draw a jury, let you guys
19 do your openings and we'll call the first witness in the
20 morning.

21 MR. MURDAUGH: Okay.

22 THE COURT: I'll read this case. If you want to
23 write a little memo and send it to me and I'll read it
24 tonight because I haven't had a chance but to read the
25 highlighted portions that Mr. Griffith did. But I'll look

1 at it again tonight a little closer.

2 MR. MURDAUGH: Thank you.

3 THE COURT: All right. You guys go get something
4 to eat and the jury should be here at two and we'll do
5 that.

6 (A recess for lunch was observed.)

7 (The jury venire was qualified.)

8 **JURY VOIR DIRE**

9 THE COURT: We will now get into the case specific
10 questions that we're going to ask.

11 You have that witness list for me?

12 (The witness list was handed to the Court.)

13 THE COURT: Now, the purpose in this list is we're
14 now talking about the case that you're going to be a juror
15 for. And I'm going to introduce you to the parties, their
16 lawyers, and I'm going to read out the names of some people
17 who might be called as witnesses. Not all of these people
18 are probably going to be called as witnesses, but they
19 might be; and so out of an abundance of caution, we call
20 out the names of everybody. Some of them are doctors, so
21 really all we're trying to do -- it's not that you are not
22 eligible to serve if you know somebody because this is a
23 small community and chances are most of you are going to
24 know somebody as I call out this list. And it might be
25 that you went to the doctor as a patient. That's not a

1 with, we'll get started at ten with openings. If there's
2 any of these depositions and stuff that y'all can't work
3 out between yourselves we'll work out before we start.

4 MR. MURDAUGH: 9:45?

5 THE COURT: 9:45. See you tomorrow.

6 MR. MURDAUGH: Thank you, Judge.

7 (Court was adjourned for the day.)

8 **TUESDAY, OCTOBER 10, 2017**

9 THE COURT: We got everybody here? You ready to
10 go?

11 **PRETRIAL MOTIONS**

12 MR. MURDAUGH: Judge?

13 THE COURT: Yes, sir?

14 MR. MURDAUGH: One other thing that I want to --
15 before -- I don't know what Mitch intends to bring up in
16 opening statements, but I want to just talk about this of
17 -- the concern that I have with Mitch and the
18 cross-examining of the plaintiff on the pleadings is,
19 number one, Judge, we've never made inconsistent
20 statements. We've contended then that Mr. Sell was at
21 fault and Pierce National was at fault. We still contend
22 that. We contend both of them were at fault. The problem
23 with him doing that is the jury then -- if he questions him
24 on the allegations in the pleading, the jury then is left
25 with: Okay. They sued Pierce National, but then what

1 happened. And the jury is left -- so it creates a fiction
2 on the jury. I think that either he should not be allowed
3 to do it, or let's tell the jury everything. Let the jury
4 know we sued both parties and that he got a partial
5 settlement and tell them how much that partial settlement
6 was, or -- so that they know the truth, or they shouldn't
7 be allowed to go into something that's going to cause the
8 jury to have concerns and prejudice the plaintiff. And
9 that law, Judge, if you look at it, that case doesn't apply
10 to our case because we aren't taking inconsistent
11 positions. And that case --

12 THE COURT: Well, his position is that you are
13 taking inconsistent positions by saying you sued somebody
14 saying this guy is at fault and presumably only he's at
15 fault and over here, now you're saying, well this guy's at
16 fault and only he's at fault.

17 MR. MURDAUGH: But that's never been the case,
18 Judge. It was all in one complaint. We sued both
19 defendants saying that the defendant's proximately caused
20 the plaintiffs to be injured. So I mean, it isn't like it
21 was separate complaints that we took this position one time
22 and we're taking a different position. It's the same
23 position, Judge. I -- I don't see how it's inconsistent
24 when we're taking the same position now that we've taken
25 all along. And the case --

1 THE COURT: Well, he's saying that's an
2 inconsistent position. It doesn't matter that you've been
3 consistent about taking it, but it is an inconsistent
4 position to say two separate people are solely at fault.

5 MR. MURDAUGH: We didn't say two separate people
6 are solely at fault. We've said two separate people were
7 at fault and that they -- I mean --

8 THE COURT: Well, then that's something that you
9 can clarify.

10 MR. MURDAUGH: But, Judge, it's such an important
11 issue for the jury that it creates something -- I would ask
12 Your Honor to look at that and to rule on that and see if,
13 in fact --

14 THE COURT: Well, I reread the case last night and
15 it didn't seem to say this was something that was fair game
16 for cross-examination.

17 MR. MURDAUGH: But, Judge, look at the facts in
18 that case. In that case, the plaintiff filed a complaint
19 and in that complaint they said the yellow Volkswagen
20 crossed the center line, okay?

21 THE COURT: Uh-huh.

22 MR. MURDAUGH: Then they settled with that
23 defendant. Then they amended the complaint and they said
24 the yellow Volkswagen was properly in his lane and it's all
25 the other person's fault. So they changed their positions

1 and that's what that Court let them cross-examine them on,
2 the fact that at one -- now, they're saying he was in his
3 proper lane and before you said he crossed the center line
4 and that's what that Court let them cross-examine him on.
5 That was the inconsistency.

6 THE COURT: Okay. Mr. Griffith?

7 MR. GRIFFITH: Judge, obviously, you've read the
8 case. In this case and the case that you read, said that
9 the prior pleadings could be used for impeachment purposes.

10 THE COURT: Uh-huh.

11 MR. GRIFFITH: If Mr. Dawkins is on the stand and I
12 ask him was the Owens vehicle going too fast for conditions
13 and he yes, sir, then I can't impeach him with it. If he
14 says no, it is a prior inconsistent statement. That's how
15 you impeach somebody. If he agrees, yes, the Owens's
16 vehicle, the truck was going too fast. Yes, he was
17 disregarding his headlights; yes, he violated ten DOT's
18 Federal Safety Motor Carrier Act Regulations, then I got
19 nothing to impeach with. It's when he denies it it becomes
20 impeachable. And that's just impeachable.

21 So I think that the case is pretty much the fact
22 that there were other pleadings. In this case if he says
23 yes, Owens was, yes, Owens was, yes, Owens was, yes, Owens
24 was, then I don't even get to pull out those pleadings. If
25 he says no, they weren't, then those pleadings get to come

1 out as a prior inconsistent statement.

2 MR. MURDAUGH: Judge, that's just a sham, though,
3 because Mr. Dawkins doesn't know whether he's going too
4 fast or not. He didn't see him. I mean that's just a set
5 up, you know. I mean that's the lawyer's --

6 THE COURT: He said it in his pleadings that he
7 was. He alleged in the --

8 MR. MURDAUGH: We said that, Judge. His lawyers
9 said that in the pleadings.

10 THE COURT: Well, you know the rule as well as I do
11 and --

12 MR. MURDAUGH: Yeah, but, Judge --

13 THE COURT: The charge is the way you said it.

14 MR. MURDAUGH: The only thing -- if you've got your
15 mind made up, I'll sit down and be quiet. The only thing
16 I'm asking you to look at, Judge, is they specifically in
17 that case allowed that pleading for cross-examining based
18 on the fact that they changed their position and in this
19 case that isn't the case. And the problem is, even if it's
20 all admissible, the problem is, then the prejudice comes to
21 outweigh any probative value because then the jury isn't
22 getting the truth. So if -- the only thing I would ask, if
23 we're going to let him do that, let's tell the jury the
24 truth. Let's tell them -- let them know everything. Let
25 them know that we filed a lawsuit. We settled that case

1 and how much money we got out of it.

2 THE COURT: You want to --

3 MR. MURDAUGH: Let them know everything.

4 MR. GRIFFITH: Judge, the case is specific how to
5 handle it.

6 MR. MURDAUGH: But, Judge, that's a perfect example
7 of why he wants to do this because he wants to create this
8 fiction on the jury. That's a perfect example.

9 THE COURT: Well, I --

10 MR. GRIFFITH: Judge --

11 THE COURT: Go ahead.

12 MR. GRIFFITH: All I'm going to say is I've been in
13 numerous cases with this firm where there have been
14 settlements and the fiction or whatever you want to call
15 it, I try and play by the rules. The case tells the Court
16 what to do. I don't want to get outside the rules and try
17 and create any new law here. I think that clearly it's
18 impeachable based on that case as well as the Court has
19 instructed in that case how to handle it. And that's what
20 I want to do is continue to play by the rules.

21 THE COURT: All right. Well, I think he gets to
22 impeach if he gets a prior inconsistent answer. So that's
23 where we'll leave it.

24 All right. We ready to go?

25 MR. MURDAUGH: Yes, sir.

1 THE COURT: All right. You ready with your oath
2 Mylinda?

3 THE CLERK: Sir.

4 THE COURT: You ready with the oath?

5 THE CLERK: Yes, I'm ready.

6 THE COURT: All right.

7 (The jury entered the courtroom at 10:24 a.m.)

8 THE CLERK: Good morning. Would you stand and
9 raise your right hand, please, so I can place you under
10 oath.

11 (The jury was sworn at 10:35 a.m.)

12 THE CLERK: If you accepted the oath, have a seat.

13 (All jurors were seated.)

14 THE COURT: All right. Welcome back, folks. Did
15 y'all pick a foreperson?

16 What's your name and number?

17 THE FOREPERSON: Arthur Smith 138.

18 THE COURT: 130?

19 THE FOREPERSON: 138.

20 THE COURT: All right. Well, then you get to be a
21 foreman of the jury. You don't get any extra pay. You
22 just write the verdict on the form.

23 **OPENING REMARKS BY THE COURT**

24 THE COURT: All right. Now, we're getting ready to
25 start this trial, so I just want to go over a few things

1 with you about what we do in a trial and kind of the
2 procedures and some of the things I've told you. If you
3 haven't been a juror before, it might not make sense to
4 you, so I try to explain why we do some of the things we
5 do.

6 Well, this is a civil case. These folks have had a
7 disagreement. They couldn't resolve it. You understand
8 it's about an automobile accident. And so the plaintiff,
9 Mr. Dawkins, has sued Mr. Sell who's the defendant,
10 alleging that he was at fault -- Mr. Sell was at fault,
11 causing an automobile accident that caused Mr. Dawkins
12 injuries. That's really what it boils down to.

13 Mr. Dawkins is the person who brought the lawsuit,
14 the plaintiff. So he has the burden of proving what he
15 alleges. Mr. Sell denied it and so he doesn't have to do
16 anything other than show up for trial, and he's done that.
17 Mr. Dawkins has to prove what he alleges in his complaint.

18 Now, we have this thing called standard of proof or
19 burden of proof and that is we're looking at the burden of
20 proof means he has to prove it. The standard is, how much
21 does he have to prove it in order to convince you that
22 he's entitled to a verdict.

23 Well, we have two standards in our court system --
24 well, we have several different standards, but for trial
25 purposes, we have different standards for criminal courts

1 and civil courts. So criminal court, again we're not in
2 criminal court this week, we're in civil court, but I'm
3 going to talk about criminal court for a minute just to
4 give you an example that might help you understand the
5 difference between the two.

6 In civil court, the burden of proof is called a
7 preponderance of the evidence. Preponderance of the
8 evidence simply means the greater weight of the evidence,
9 or stated another way, is whatever the person is trying to
10 prove more likely true than not true. Okay? Sounds simple
11 enough, I spoke English, but yet, I bet a large majority of
12 you may still be going, I don't quite know what he means.
13 And that's very common and if you're like me, you're a
14 visual learner and it helps to see something in order to
15 grasp what they're saying.

16 So you've seen those -- the Lady Justice standing
17 with her arms open with the scales of justice. All right.
18 Think about those scales; and we don't use scales like that
19 much anymore, but you put a weight in one hand and they got
20 to tilt the scales to see how much something weighs. Well,
21 that's the kind of scale I want you to imagine. So you've
22 got the plaintiff on one hand, the defendant on the other
23 hand. And at the beginning of a trial like this, those
24 scales are exactly even.

25 Now, in order for the plaintiff to prevail, he has

1 got to convince you that the scales tip in his favor. Now,
2 in the civil case like this, a preponderance of the
3 evidence, or the greater weight of the evidence, simply
4 means that he has to get those scales to tip, even if it's
5 just slightly, in his favor, then he's met the burden of
6 proof.

7 On the other hand, at the end of the trial if those
8 scales are still empty, I mean even in your mind or maybe
9 even think they tip in favor of the defendant, then he's
10 not met the burden of proof and is not entitled to a
11 verdict. But if he tips those scales in his favor, then
12 he's entitled to a verdict.

13 Now, I told you about, there's a burden of proof in
14 a criminal case. Well, I'm going to give you an example of
15 a criminal case where the State has alleged that somebody
16 has committed a crime. Well, there's a much heavier burden
17 of proof in a case like that. In a case like that, a
18 criminal case, we have a standard called beyond a
19 reasonable doubt. You've probably heard that phrase either
20 in a TV show or movie or books or something.

21 Well, that's a heavier burden of proof when the
22 State comes in and says we believe that person committed a
23 crime. In those cases, you start out with the same thing,
24 the State is on one side and the defendant on the other
25 side. But to convince a jury beyond a reasonable doubt,

1 those scales have to tip quite a bit in a criminal case.

2 But this is a civil case and the plaintiff has much
3 less burden of proof. He's only got to tip those scales a
4 little bit and if so, he's entitled to a verdict. So
5 hopefully that will make that a little bit clearer for you.

6 Now, because the plaintiff has the burden of proof,
7 he'll get to put up his evidence first. You'll hear from
8 the plaintiff's side first and you'll hear the plaintiff
9 put up their evidence, their witnesses. They get to ask
10 the questions of the witnesses first. But we have this
11 process called the adversarial process and it's worked
12 really well over time and there's probably no better way of
13 presenting the evidence than through the adversarial
14 process. But you put a witness in the witness box, swear
15 them in, and then the lawyer that called them asks the
16 questions first. That's called direct examination. But
17 then the other side will get to ask questions of that
18 witness and that's called cross-examination. You've
19 probably heard that word before.

20 All right. So you have direct exam, cross-exam.
21 And then I usually let one followup round of questioning go
22 to each witness, so you will have direct, cross, redirect,
23 recross. Then we move onto the next witness. Okay?

24 So evidence will come in in one of several ways.
25 It's -- a lot of times it's a witness getting up and

1 telling you what they heard or they saw, they touched, they
2 felt, they smelled, that sort of thing. That's evidence.
3 Pictures that I let you see, those are -- that's evidence.
4 Documents, that's evidence.

5 What's not evidence is the lawyers getting up and
6 talking to you. You're going to hear from the lawyers a
7 lot. You're going to hear from the lawyers more than you
8 hear from me and witnesses. You hear it from the lawyers
9 most.

10 But what's important to remember is that they were
11 not witnesses; they weren't there; and they -- what they
12 say is not to be considered by you as evidence. In a
13 minute you're going to hear opening statements in which
14 they get up and kind of give you what I call the Reader's
15 Digest condensed version of the case. They tell you what
16 your -- this case is about, what it is that you're likely
17 to hear, what their theory of the case is, in other words.

18 None of that is to be considered by you as
19 evidence. Evidence is what the people on the witness stand
20 say, these documents, photographs, videos, or anything like
21 that. That's evidence. So when a lawyer is asking
22 questions, the question that they ask is not evidence. The
23 answer to the question is evidence. Okay? So that might
24 help you remember. What the lawyers are saying is not to
25 be considered by you as evidence.

1 Now, so when we get through the trial, we have this
2 process. We have this process of how a trial works. The
3 lawyers will have opening statements and then we'll get
4 right into the testimony and the plaintiff will put up
5 their testimony first, their evidence first. And then the
6 defense will have an opportunity to put up any if they want
7 to. And then at the end of the trial, we'll have closings
8 in which they get up and review the evidence and make
9 argument to convince -- to try to convince you to render a
10 verdict on their side's behalf.

11 I will, at that point charge you on what the law is
12 that applies to this kind of case. So you take the facts
13 as you find them, apply the law to it and that's how you
14 come up with a verdict.

15 Now, the last thing I just talked about, the facts
16 as you find them. This is where your role as a juror comes
17 in. You're considered to be a judge in this trial. I'm
18 the judge, but you're a different kind of judge. I'm what
19 they call the judge of the law. And my judge -- my role is
20 basically is two fold. It's to make sure that the rules of
21 evidence and procedure are followed. In other words, make
22 sure both sides get a fair trial. That's my interest in
23 the outcome of the lawsuit. It's not whatever you decide,
24 but whatever -- to make sure that both sides get a fair
25 trial.

1 I also, as I told you charge you on the law that
2 applies to this kind of case. That's what I did. But you
3 have a different function. As the judges of the facts,
4 you're going to hear evidence that sometimes is different
5 from what one person says to the next person. And you have
6 to decide how to resolve that. I can't tell you -- I'm not
7 permitted to have an opinion about what the evidence is.
8 And I'm sure not allowed to tell you what I think about the
9 evidence or the case for that matter.

10 So if at any reason -- any time during the trial
11 you think I have an opinion or I'm trying to signal to you
12 what to do, you are completely mistaken. You are reading
13 me wrong. I don't have an opinion about the case and I'm
14 not allowed to tell you if I had one. Okay? You alone
15 decide how to resolve factual disputes. And we're bound by
16 that. Only you twelve jurors can come up with how to
17 resolve that. All right?

18 So that's your primary function as the fact
19 finders. You take the facts as you determine what they
20 are, apply them to the law that I tell you applies and
21 that's how you come up with a verdict.

22 One last thing I want to leave you with and it
23 sounds so ridiculously simple that you'll be surprised that
24 I bring it up. But I'm telling you it's the hardest thing
25 to do. And that is, keep an open mind until you've heard

1 all of the evidence. Okay? Every single one of you is
2 over 18 years old and you make decisions, and you come
3 across things in life; well, you've probably found there's
4 usually two sides to every story and you're going to hear
5 one side first and then you're going to hear another side.
6 It's not until you've heard all of the evidence is it
7 proper for you to make a decision.

8 You may end up at the same place you started in
9 your mind. You may change your mind. You may come back
10 and forth several times throughout the trial, but we're
11 just human beings. We can only present one witness at a
12 time. Ask questions. And you'll probably think, you know,
13 it's not unusual because I've watched hundreds of trials
14 where you sit there going, Wow, that sounds pretty good,
15 you know. I don't even know why we're trying this case.
16 And then you hear the other side, and you go, oh, well, now
17 I see. I see a little bit different.

18 But then you've got more witnesses or more
19 questions and that's why every time we take a break I'll
20 tell you don't begin your deliberations or discussions yet
21 because what happens is, it's just human nature, once you
22 start making up your mind, people tend to harden their
23 position. All right? And then you want to defend your
24 position. So if you go back after you've only heard one
25 witness, five witnesses, and you start talking about it,

1 you tend to start nailing down what your thoughts are about
2 the case. That's just not the way I need you to make your
3 decision. Wait until you've heard all -- from all of the
4 witnesses, and you've heard and seen all of the evidence in
5 the trial. Then and only then do you begin your
6 deliberations about the case.

7 That's also why I tell you don't talk to the other
8 people about the case because what they say is not supposed
9 to enter into your consideration. You're here and only
10 hearing what we present in this courtroom and under the
11 oath that you just took, you promised that's the only thing
12 that's going to influence you is what you hear in this
13 courtroom. Okay?

14 So there's a reason why we have all these different
15 instructions. That's kind of like why I wanted to go over
16 with you a few minutes so you can see why we do what we do.
17 There's a method to this and it's time proven. It's the
18 best way to try a case is to do it this way. So I'm going
19 to turn it over now to the lawyers so that they can make
20 their opening statements. Opening statements are what I
21 just call the Reader's Digest condensed version of the
22 case. They're just telling you a little bit of an
23 overview, again, what their theory is, what it is that
24 you're likely to hear, but it's not evidence. All right?

25 Soon enough after both sides make their opening

1 statements, you'll hear from the first witness and that's
2 considered to be evidence. Okay?

3 So, Mr. Murdaugh?

4 **OPENING STATEMENTS**

5 MR. MURDAUGH: Your Honor, please, Foreman Smith,
6 ladies and gentlemen, good morning. Thank you y'all for
7 being here. I just love this courthouse, this courtroom.
8 And I'm going to tell you real quick, when -- in the old
9 courtroom, I used to come up here and I'd be the jury boy
10 when I was -- when my granddaddy was solicitor. I'd be the
11 jury boy in middle school, you know, 4th, 5th, 6th grade.
12 And I used to sit up here, Judge Peeples was the judge,
13 Annette Mole was the court reporter and she had a daughter
14 Missy Mole and many of you know Missy. And the judge would
15 sit up there and make me go get orangeade's from Stanley's
16 Drugstore and tell everybody on the jury she's my
17 girlfriend and make me turn red. So I have wonderful
18 memories of this courtroom.

19 But this courtroom is a special place, not just for
20 me, it is a special place because it is the most level
21 playing field in the world. The smallest person in the
22 world can take on the biggest corporation. The most
23 insignificant citizen can take on the government of the
24 United States. The oppressed can take on their oppressors.
25 So it is a special place.

1 And your service is special. Jury service is what
2 enables our country to be special and to be free. It's how
3 -- in other countries when they have disputes, you go out
4 in the streets, shoot each other, bombs, whatever. We get
5 to come to the courtroom and pick twelve citizens, peers,
6 to determine who's right, who's wrong based on the
7 evidence. Okay? Based on the evidence.

8 The evidence is important because that's what
9 you're going to decide on. Not things that are thrown out
10 there, not theories that somebody says is wrong, the
11 evidence. The evidence, the medical evidence that's going
12 to come from the doctors we're going to call. Mr. Griffith
13 may call some doctors to say something different, but look
14 at the evidence and it's importance.

15 So I know all of you would probably rather be
16 somewhere else, but please understand how important this
17 jury service is and thank you.

18 I want to talk to you just a little bit about --
19 introduce you to Maurice Dawkins. Maurice Dawkins is from
20 Columbia. And I also want to introduce you to William
21 Barnes and Megan Davis, we'll be working together in this
22 case. They work with us over at the law firm.

23 So back to Maurice Dawkins. Maurice Dawkins is a
24 -- he's born and raised in Jamaica. He grew up in Jamaica,
25 became a police officer, served as a policeman in Jamaica;

1 came to the States to visit, loved the States. Anyway, he
2 came on and has lived in the States since -- 1989? 1989.
3 Just like us he pays taxes. You know, he does everything
4 just like we do. He lives here in America. He opened --
5 an American dream, he opened a landscaping business, had
6 his own business in Columbia, South Carolina. So you'll
7 get to know Maurice more as this case goes along.

8 This is Mr. Sell over here. He's the defendant.
9 So what we're going to be talking about is his conduct in
10 this case. Mr. Sell on -- what this case is about, cutting
11 straight to it; while people don't like to talk about it,
12 but I don't have a problem. This case is about money.
13 Okay? Mr. Dawkins has been injured and as great as the
14 jury system is, you can't snap your fingers and make that
15 injury go away. So it can't be done. So the next best
16 thing that can happen is that a jury decides when someone
17 is injured at the hands of another, if they should be
18 compensated and how much. Okay? So that's what this case
19 is about.

20 And we're going to prove to you in this case how
21 Mr. Dawkins was injured, how badly he was injured, and what
22 his problems are. All right? And we're going to bring
23 this evidence to you.

24 On August 21st, 2010, Maurice Dawkins left
25 Columbia, South Carolina to go and visit a friend and her

1 husband in Miami, Florida. He was going to do some yard
2 work, landscaping work, and some handyman work down there.
3 Little did he know that he was going to -- because that's
4 an eight- to ten-hour drive, he was going to go in the late
5 hours of the morning just like many other people travel.

6 So he left his house in Columbia at one o'clock or
7 so in the morning, just like some of the witnesses, the
8 Sparkman's, you're going to hear from them in this case.
9 They were going on vacation in Tennessee. They left in the
10 wee hours of the morning to be traveling when there's no
11 traffic out on I-95.

12 So, on April -- on August 21st, 2010, Mr. Jim Sell
13 leaves -- he's in Columbus, Ohio. He wakes up in Columbus,
14 Ohio around eight o'clock in the morning. He's helping his
15 son move down to Savannah. So they get up and they do
16 their morning ritual and they start packing and they pack
17 the truck. They depart Columbus, Ohio sometime around
18 eleven o'clock in the morning, August 21st, 2010. Some 19
19 hours after he had gotten up that morning, some 16 hours
20 after he started driving, Mr. Sell was traveling -- let me
21 show you -- on I-95 -- a stretch of I-95 in Hampton County.
22 Many of you have been right there many times.

23 This is Exhibit 3.

24 As Mr. Dawkins was, everybody -- the witnesses that
25 night were southbound on I-95.

1 Am I blocking y'all? Would y'all rather look at
2 that one or this one? I'll stand over here. I'm blocking
3 you, I'll stand down here.

4 So this is just south of Yemasee, South Carolina.
5 If you go down and you get on Exit 38 like you're headed to
6 Coosawhatchi or Points South, stretch of roadway,
7 southbound around the 36 mile marker, somewhere. Somewhere
8 between -- right between Yemasee and Point South. All
9 right?

10 And we just have several other -- several other
11 pictures of the roadway. Go to the next one. It's just a
12 standard part of the interstate, two lanes southbound, two
13 lanes northbound, with a small little place on the left and
14 a little emergency lane on the right.

15 Now, Mr. Sell was driving a 24-foot --

16 Go to Exhibit 52.

17 -- was driving a 24-foot Budget Truck that was
18 loaded and was full of his son's belongings where they were
19 moving. It's pouring down rain. It's 16 or so hours into
20 his driving, 19 hours after he'd been up, at around 3:50 in
21 the morning.

22 Go to Exhibit 1, I think, is the scene.

23 Mr. Sell loses control of his Budget Truck and
24 overturned in I-95. Both lanes of I-95 are blocked. Along
25 comes a tractor trailer in the pouring down rain and plows

1 into that tractor trailer.

2 Now, Mr. Dawkins is going down the road following
3 Mr. Sell in the Budget Truck. Okay? He observes him lose
4 control and flip over. So Mr. Dawkins sees that.
5 Mr. Dawkins's despite the fact that it's pouring down rain
6 and despite the fact that he's more than two hours from
7 home and despite the fact that he has six -- eight -- six
8 or seven hours more to go, Mr. Dawkins does what we hope
9 everyone would do. And that is he is a good samaritan and
10 he stops to give aid, at 3:30, four o'clock in the morning
11 on I-95.

12 He stops by himself, he stops to give aid. When he
13 does that, he pulls past the Budget Truck. It's pouring
14 down rain, dark. He goes back to help Mr. Sell. As he
15 gets back to the car, Mr. Sell is -- has gotten out of his
16 car. The other witnesses that I talked about, the
17 Sparkman's -- and you'll hear their deposition testimony.
18 They stopped as well and stopped to give aid.

19 While they were stopped, Mr. Sell was out of his
20 car. Mr. Dawkins was concerned about him. He was standing
21 with him and low and behold, a tractor trailer comes along
22 and plows into the Budget Rental Truck and Mr. Dawkins is
23 injured. Mr. Dawkins's truck -- Mr. Dawkins wasn't in his
24 truck.

25 Show 21 and 22.

1 Just to give y'all an example, these are just some
2 photos that Trooper Rush, who'll be a witness, is seated
3 out here, will be a witness in this case and tell you what
4 he saw when he got there, pictures that he took at the
5 scene that night.

6 23 and 41.

7 Now, Mr. Dawkins, as I said, had pulled past this
8 truck, pulled past the Budget Truck and parked and he had
9 gone back to the thing, back to the wreck -- where the
10 wreck had occurred. So his truck was parked further up and
11 he wasn't in his truck, but his truck was injured also,
12 which is a damage of his.

13 Now, Mr. Dawkins and Mr. Sell were standing. The
14 testimony is going to be that the Budget Truck was rolled
15 over in the roadway. The cab was facing -- if you were
16 going southbound, okay? If you were going southbound, you
17 would be looking at the bottom of the truck. So the truck
18 was facing back north. The cab of the truck was facing to
19 the right or what would be west and the back of the truck
20 was facing east, okay? So -- and you're going to hear --
21 you'll hear the deposition testimony of Mr. Owens who was
22 driving a Pierce National truck and the thing -- that is
23 the tractor trailer, what he observed, what he saw before
24 he hit Mr. Sell's truck on I-95.

25 Now, as a result of the collision, Maurice Dawkins

1 was injured. The next thing Mr. Dawkins knew -- one minute
2 he was helping Mr. Sell out in the middle of the night in
3 the pouring down rain and the next thing he is in the
4 hospital. And Jasper County EMS picked him up at the scene
5 and took him to Hampton Regional Hospital where they
6 treated Mr. Dawkins.

7 1.2.

8 Mr. Dawkins had injuries to both of his feet. He
9 had other injuries, you know. And you'll hear from him.
10 He'll tell you about them. He had -- his shoulder hurt,
11 his head hurt. He had -- his back hurt some, but he
12 also --

13 Go to 1.16.

14 -- his main injuries at the time he would come to
15 learn were to both of his heels. Okay? And he wakes up
16 and he's got both of his heels bandaged. And I don't think
17 that it's a fact that he woke up, the trauma and his head,
18 he got hit. But that's the first thing he remembers is
19 being in the hospital and being bandaged up.

20 So Mr. Dawkins has himself treated. He's
21 discharged from the hospital that day. He goes back to
22 Columbia. He's having problems. A good friend of his took
23 him to the doctor the next day. They checked him out.
24 Went to the doctor the next day -- and you'll hear all this
25 in detail when Mr. Dawkins is talking about exactly what

1 doctors he went to and when, but he got an infection in his
2 left foot. So to begin with, the biggest problem he was
3 having was with his left foot. It was getting infected and
4 it's hurt and just having problems. He ended up getting to
5 a doctor, a wound doctor and got his left foot straightened
6 out and he got that infection cleared out and about a month
7 or so later, well, his right foot is just progressively
8 getting worse. He's having swelling. He's having all kind
9 of problems.

10 Show them 1.22 -- or 1.19. This is his left heel
11 that happened in the wreck. He had that hit and that ended
12 up getting infected.

13 1.22.

14 This is his left heel again. And -- anyway -- he
15 got that cleared up. His right foot begins giving him
16 problems. So he's going to doctors -- or begins giving him
17 more problems. So he's going to doctors about that.
18 They're treating him, they're giving him therapy, they're
19 doing everything that they can do. He's not getting any
20 relief. He sees doctor after doctor. He's not getting
21 relief. He ends up traveling to -- and Ms. Moses, who is a
22 client of Mr. Dawkins, and a friend, drove him to Florida
23 to the University of Florida in Jacksonville. And
24 Ms. Moses, unfortunately, has passed away and she's not
25 here, but her husband, Mr. Moses, who is also a friend and

1 a client will be here to testify. And he's a lawyer up in
2 Columbia. He's taking the time to come down here to tell
3 you what he knows about Maurice Dawkins. And he'll tell
4 you what he knows in this case.

5 Anyway, Mr. Dawkins ultimately had surgery on his
6 right foot, okay? And post surgery, he does what the
7 doctors tell him to do. He does everything he's supposed
8 to do, he has the therapy. He's not getting relief. He's
9 still having problems. He continues being treated. He
10 goes to other doctors. He does other things. He can't get
11 that right foot better. It's swelling on him, he can't be
12 on it for any period of time. And this is a landscaper.
13 And you're going to hear testimony -- we're bringing in
14 some of the people that Mr. Dawkins worked with, people he
15 goes to church with. You're going to hear testimony that
16 this is the hardest working man that they know. Hardest
17 working man that they know.

18 Now, all of the sudden, after this wreck, you got a
19 man that can't stand on his foot for extended periods of
20 time for the pain and for the swelling and his foot's
21 swelling up. So his life is altered. He struggles to pay
22 his bills. He struggles getting food. He can't work as
23 much as he has worked. And we're going to present all this
24 evidence to you. You're going to see Mr. Dawkins's tax
25 returns and you're going to decide what income he lost and

1 we'll go over that; and it's -- Mr. Dawkins will go over
2 that in detail with you.

3 Ultimately, Mr. Dawkins was having so much problems
4 that he got to -- we were able to get him -- to get a
5 doctor to see him and treat him, Dr. Stoddard down in
6 Beaufort, y'all may know him; very reputable doctor. And
7 Dr. Stoddard saw him, thought that he could solve the
8 problem and he did another surgery on him. Dr. Stoddard is
9 going to come here live and tell you what his diagnosis is,
10 why Mr. Dawkins is having the problems that he's having.
11 He's going to tell you how Mr. Dawkins can't be on his foot
12 for more than, I think it's an hour or two at a time
13 without having to spend six or eight with his leg propped
14 up and on ice. And how that is going to be Maurice
15 Dawkins's life from here on out. There really isn't
16 anything more medically that can be done.

17 And so his landscaping days are basically done.
18 His daily activities are limited. So -- and again, you're
19 going to hear from Dr. Stoddard and the details on all of
20 that, but the bottom line is that Maurice Dawkins's life
21 has changed because of what happened August 21st, 2010.
22 Because he stopped to help. And when he stopped to help,
23 he was hurt.

24 So a couple of things I want to point out to you in
25 this case. We have the burden of proof -- we have the

1 burden of proof, which we accept. As His Honor hold you,
2 scales of justice, preponderance of the evidence in a civil
3 case. We think it's going to be substantially more than
4 that, but under the law, that's what we have to do. We
5 contend that -- and I believe that you're going to see
6 easily that it's clear that there were two people at fault
7 in this wreck, the guy driving the tractor trailer and
8 Mr. Sell for turning over his truck in the roadway. If
9 Mr. Sell doesn't turn over his truck in the roadway, none
10 of this ever happened.

11 Now, Mr. Sell and his lawyer contend that --

12 MR. GRIFFITH: Your Honor --

13 MR. MURDAUGH: -- it's all the tractor trailer --

14 MR. GRIFFITH: Your Honor, I'm going to object.

15 This isn't the argument now. This is like a closing. He's
16 just supposed to say what the evidence he believes will be
17 presented.

18 MR. MURDAUGH: I'll move along.

19 THE COURT: Let's get it wrapped up.

20 MR. MURDAUGH: I believe that in this case you're
21 going to hear that the tractor trailer is who's at fault in
22 this case.

23 Now, what we have to prove to you in this case is
24 not that Mr. Sell is the only cause of this wreck, but that
25 Mr. Sell is a -- a, one, a probable cause of Mr. Dawkins's

1 injuries, that Mr. Sell's actions contributed and were part
2 of why Mr. Dawkins was hurt. Not that the truck, the
3 tractor trailer didn't have anything to do with it. And
4 that's an important fact in this case, ladies and
5 gentlemen. It's our duty to prove to you that Mr. Sell was
6 a proximate cause of Mr. Dawkins's injuries. And I think
7 when you listen to the evidence and you go back in your
8 jury room, you'll be convinced of that as well.

9 Well, thank you again, ladies and gentlemen. We're
10 going to try to move through this case quickly. We have
11 witnesses that are lined up so that -- I know everybody's
12 got things that they want to do. We're going to try to
13 move through this very important case as quickly as
14 possible. We're going to try to give you everything that
15 we can give you to help you decide -- remember this, ladies
16 and gentlemen, the evidence, the evidence -- evidence is
17 what you're going to base your decision on. Thank y'all so
18 much for being here.

19 THE COURT: Mr. Griffith?

20 MR. GRIFFITH: May it please the Court.

21 Mr. Murdaugh, Mr. Barnes, Mr. Foreman, members of
22 the jury, my name the Mitch Griffith and I represent Jim
23 Sell. He's the defendant in this action. I'm going to
24 start by telling you I like to read. And one of the people
25 I like the read about is Will Rogers who was a noted

1 humorist. And Will Rogers once said a jury should decide a
2 case the moment they are shown it, before the lawyers have
3 a chance to confuse them. Ladies and gentlemen, this is a
4 fairly simple case that we're going to be talking about. I
5 don't want you to be confused by it. I don't want you to
6 be stirred up by the emotion.

7 As the judge told you, you will listen to the
8 evidence and you will find your verdict based on the
9 evidence in this case.

10 Now, what I think you're going to hear is -- from
11 the emotional talk that we just heard, there's not going to
12 be a lot of argument about what the facts are in this case.
13 The facts are very simple. I want to tell you that I
14 represent Jim. His wife Diana who is actually a nurse, she
15 can't be here because she's working, lives down in
16 Bluffton. Jim's been down here for a number of years.
17 He's originally from Ohio. He came down here through
18 business and then back in August, 2010, he was helping his
19 son move down here to South Carolina when this accident
20 occurred.

21 Now, the judge has already told you a little bit
22 about what you should expect in this case. Now, in this
23 case, the plaintiff has made an allegation against Jim and
24 as the judge told you, I think Jim just has to show up. He
25 doesn't have any burdens here. But the plaintiff has to

1 show at least three things in this case. That's
2 negligence, proximate cause, and damages. Those are the
3 elements that he must prove in this case.

4 Negligence is -- basically is a word we spend in
5 law school for a long time talking about, it's basically
6 fault. Fault in this case.

7 Proximate cause is another word that we talk about
8 and you heard it just a minute ago, but proximate cause is
9 the direct cause, the most efficient cause. Proximate
10 cause, the direct cause or the most efficient cause.

11 And the damages, or the injuries that a party
12 claims that he sustained.

13 These are a elements that the plaintiff must prove.
14 And as the judge told you, the plaintiff must prove it by a
15 preponderance of the evidence, which means he just can't
16 come in here, show up, and say we got -- we were in an
17 accident, we got hurt. He has a burden. It's called the
18 burden of proof. So he must bring evidence to you.

19 And ladies and gentlemen, when I say that, the
20 judge uses the scales of justice and sometimes what I do --
21 because you just can't come in here and say I'm entitled to
22 money. I say it's sort of like a football game. We're in
23 football season and I know most of my friends here and
24 everybody talks about football. It's like if you put
25 somebody at the goal line, they don't have to score a

1 touchdown, which is a little unusual, but they've got to
2 get the ball past the 50 yard line. That means that
3 they've overcome their burden. And ladies and gentlemen,
4 in this case, it's a substantial burden.

5 I also know that the judge told you a minute ago
6 that you are judges. You're the judges of the facts, he's
7 the judge of the law. We spend time outside your presence
8 talking about the law, but when we're in front of you,
9 we're talking about the evidence. And when you sit there,
10 you go, well, the judge told me I'm a judge, how do I be a
11 judge?

12 Ladies and gentlemen, you're a judge every day
13 whether you think about it or not. You meet somebody, you
14 talk about, well is that person biased against me? Does
15 that person have some prejudice? Do they have some
16 interest in the outcome? When you meet somebody on the
17 street, you basically use your common sense. And ladies
18 and gentlemen, I think that's pretty much what Will Roger
19 was talking about. Don't let the lawyers confuse them
20 because you use your common sense in this case.

21 Now, the judge also mentioned one other thing, and
22 he's looking for a fair and impartial trial. Ladies and
23 gentlemen, we heard about the Mr. Dawkins. You're all
24 sympathetic to anybody that's injured. We've heard about
25 the misery that people are suffering throughout the United

1 States between natural disasters, hurricanes that have come
2 through here. We all know somebody that's had a problem.
3 Fires that just swept through California.

4 But, ladies and gentlemen, you have to be fair and
5 impartial. We're all sympathetic to those people. But
6 sympathy doesn't play in your verdict. The case is not
7 tried on sympathy. And that's why the judge asked you
8 could you be fair and impartial. If you can be fair and
9 impartial, you can be a good juror.

10 Ladies and gentlemen, I also heard a little comment
11 about when I was a young boy I came up here and I did this,
12 that, and this other. I don't have a picture of my
13 grandfather in this courtroom. I've been told since I've
14 been practicing law, you don't try cases in Hampton County.
15 It's a close knit community. But today, you have to be
16 fair and impartial. Set that aside. Do what the evidence
17 tells you. You took that oath.

18 This accident, as I told you is fairly simple. The
19 accident happened, as Mr. Murdaugh told you in the early
20 morning hours of August 21st, 2010. Jim Sell, just like
21 everyone else wanted to try and beat the traffic. They
22 talk about how he came from Ohio, but you'll hear Jim.
23 They came across, they went to West Virginia. His truck,
24 his son, who he was bringing down, was in another car. He
25 had some car trouble. They stopped in West Virginia for a

1 period of time. He stopped a couple more times to rest.
2 He's coming down, he's going to Savannah hoping to get
3 home.

4 The Sparkman's are going down on a cruise. They
5 left -- I say Kingsport, Tennessee because it's the biggest
6 town that is around where the Sparkman's are. It's just
7 north of Asheville. They got a early morning start. They
8 were coming down. Mr. Owens was trying to get a jump on
9 the night so he could beat the traffic. He was the tractor
10 trailer truck involved in this accident. Mr. Dawkins was
11 trying to get a jump on the traffic. Everybody was
12 traveling in the early morning hours.

13 It was a rainy night that night. I think you'll
14 hear that testimony. Jim Sell is driving down the road.
15 He's got his grandson with him, wants to be careful,
16 driving a Budget Truck. The Budget Truck slips over to the
17 side. As he comes back, it starts spinning and the Budget
18 Truck tips over and it crosses the road. Now, behind him
19 is Mr. Dawkins. Mr. Dawkins says that he sees that truck
20 tip over. He slows down and he's able to get around him on
21 the right-hand side. The Sparkmans also see him. They
22 slow down. They're able to come around on the right-hand
23 side and they get to the south of Mr. Sell's truck.

24 Then you're going to hear about Joshua Sparkman who
25 jumped out and ran back. Helped out Mr. Sell and his

1 grandson pulls the door open because the truck was over on
2 its side, helped them to get out. Mr. Dawkins, who came
3 back to help, to render aid in a time of emergency.

4 Ladies and gentlemen, at that point in time, the
5 cars start backing up on the side. They're starting to go
6 around. They get them out. Jim and his grandson get out.
7 Mr. Dawkins is walking back with Jim toward his truck and
8 what you're going to hear, because nobody's watching their
9 watch at this point in time, so there's going to be sort of
10 a range of time. You may hear anywhere from three to ten
11 minutes, all this going on, coming around, stopping,
12 getting out, going back to render aid. Traffic starting
13 backing up. You're also going to hear evidence from just
14 about everybody that a tractor trailer truck, at least one
15 pulled up, came around on the right-hand side. Two
16 witnesses are going to say that that tractor trailer truck,
17 they don't know who he is, said, does anybody need any
18 help? No, we're fine. And he takes off.

19 And then out of nowhere (sound) Mr. Owens comes
20 down the road and he hits the Budget Truck that's in the
21 road.

22 Mylinda, can we get Number 1 over there turned on?
23 Defendant's 1?

24 This truck went from being in one side of the road,
25 and as Mr. Murdaugh described it, it was a collision. It

1 was a wreck. It was a crash. Mr. Owens was not paying
2 attention as he was going down the road. He hits that
3 truck so hard it clears the road, basically. Because now
4 you can see that the truck has basically cleared the
5 highway except for a portion of the lane over there.

6 Ladies and gentlemen, today the plaintiff says this
7 was Jim Sell's fault. I think the evidence shows and the
8 evidence will show that this accident was caused by Pierce
9 National. You're going to hear Mr. Owens, Pierce National,
10 Mr. Owens; you're going to hear, he's a professional
11 driver. He has a CDL which is a special license. You
12 heard other -- about another truck driver who was able to
13 slow down and go around. Mr. Owens didn't.

14 When Mr. Dawkins helped Mr. Sell out of his car,
15 out of the truck, took him over toward his truck,
16 Mr. Dawkins was 100 percent okay. He was injured when
17 Mr. Owens, driving down the road, and I think you'll hear
18 it said that he wasn't keeping a proper lookout, which the
19 judge will charge you, he didn't have his vehicle under
20 proper control. He didn't use his brakes. He didn't slow
21 down. He was driving too fast for the conditions. It was
22 raining that night.

23 And even Mr. Owens will say, you got to slow down
24 when you're a professional driver driving at night because
25 you've got 80,000 pounds you're pulling.

1 Ladies and gentlemen, the evidence will show that
2 Mr. Dennis Owens was the reason Mr. Dawkins was injured.

3 Now, I also want to talk about the injuries a
4 little bit because you don't want to sit here and just
5 discard them 100 percent. But if there's one word in the
6 law that sums up the law, it's reasonable. What is
7 reasonable? We have a disagreement as to what
8 Mr. Dawkins's injuries are. But you're going to be the
9 judge of that. What are his injuries in the case? You're
10 going to hear testimony about the medical issues that he
11 has. You heard Mr. Murdaugh talk about all to treatment he
12 got. Ladies and gentlemen, sometimes the best evidence is
13 the evidence that's not presented. Because I think, ladies
14 and gentlemen, out of all of the people Mr. Dawkins saw for
15 medical treatment, you're only going to hear from one of
16 them and that's going to be Dr. Stoddard down in Beaufort.
17 And I want you to listen how Mr. Dawkins got to Dr.
18 Stoddard because he got to Dr. Stoddard on what's called a
19 medical examination. He got there based on referral from
20 his lawyers.

21 And then a year goes by and he goes back and gets
22 treatment from Dr. Stoddard. So for almost five years,
23 four-and-a-half years, Mr. Dawkins has treatment from about
24 six -- five or six doctors.

25 We want you to hear, listen, see if you hear any

1 testimony from those five or six doctors. And if through
2 those five or six doctors he has treatment -- and I think
3 the medical expenses will show about \$30,000. Then after
4 he goes to Beaufort, those expenses double to about
5 \$65,000. And as you heard, there's probably not much more
6 that can be done, so there's not going to be a lot of
7 medical expenses in the future that you're going to hear
8 about. So ladies and gentlemen, you have to decide -- I
9 don't think you get there, but if you do, you have to
10 decide what's fair and reasonable compensation and, again,
11 the word reasonable.

12 Ladies and gentlemen, you also heard about what
13 Mr. Dawkins can't do and heard about his work.
14 Mr. Murdaugh says you're going to see the tax returns and I
15 want you to look at them. Because one of the things that
16 the tax returns is going to show is the year after this
17 accident was the year he made the most money he ever made.
18 They say the numbers don't lie, but they tell you that he
19 had some lost wages. I'm sure there were. But you're
20 going to see that his business, apparently, from the tax
21 returns, got better the year after.

22 Ladies and gentlemen, you are the judges in this
23 case. This is a simple case. This is a case where the
24 facts clearly show Mr. Owens, the tractor trailer truck
25 caused this accident. And ladies and gentlemen, he caused

1 the injuries in this case.

2 I ask you, ladies and gentlemen to listen to the
3 evidence that's presented; to listen and then give the
4 judge your time listening to his charge. And when you
5 apply the facts as you find them to the evidence in the
6 case, you will find for the defendant, Jim Sell. Thank
7 you.

8 THE COURT: All right. Folks, let's take a ten
9 minute restroom break and we'll have the first witness
10 testify here in a view minutes and that will give you an
11 opportunity to stretch your legs, use the restroom, and
12 then we'll have the first witness when you come back.
13 Again, don't begin deliberations or discussions, see you
14 back in about ten minutes.

15 (The jury left the courtroom at 11:25 a.m.)

16 THE COURT: All right. You ready?

17 MR. MURDAUGH: Yes, sir.

18 THE COURT: Bring the jury back -- oh, let me ask
19 you this: Those of you that are out there, I understand
20 some of you may be acquainted with members of the jury,
21 giving rides back and forth. Perfectly fine. Not doing
22 anything wrong. But I'm instructing these folks that
23 they're not to talk to anybody about the trial. So if you
24 are giving transportation to somebody, please, I'm putting
25 you on the honor system, as well as them, do not have

Derrick Rush - Direct Examination by Mr. Murdaugh

1 discussions about the case. It's entirely possible that
2 you're going to hear things as an observer, outside of
3 their presence, which, of course, would be entirely
4 improper to talk to jurors about, not only at all, but
5 especially about things that they're not getting to hear.
6 So you're welcome to stay. I understand you might be
7 giving transportation back and forth to court, but I'm
8 instructing you that you are, as well, not to discuss the
9 case with any potential jurors and that is -- would be a
10 violation of the Court order to discuss the case with a
11 juror outside of -- until the trial is over with. All
12 right?

13 Bring them back.

14 (The jury entered the courtroom at 11:40 a.m.)

15 THE COURT: All right. We will resume now with the
16 plaintiff calling the first witness.

17 MR. MURDAUGH: I'm sorry, Judge. Call Trooper
18 Derrick Rush. Come forward and be sworn, Trooper Rush.

19 DERRICK RUSH,

20 having been duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. MURDAUGH:

23 Q State your full name for the record, please, sir.

24 A Paul Derrick Rush.

25 Q And where are you from, Mr. Rush?

Derrick Rush - Direct Examination by Mr. Murdaugh

1 scene in so far as the destructiveness of all the debris?

2 A Well, it looked pretty bad. I mean it -- it looked
3 like a bomb went off.

4 Q Stuff everywhere?

5 A Oh, yes, sir.

6 Q And is that part of what -- is that part of what
7 you try to capture with your photographs?

8 A Basically when you photograph a scene, you try to
9 get pretty much a depiction of the scene from different
10 angles and, you know, so -- so that when a case like this
11 when it comes up later on, it's pretty obvious as to what
12 you were looking at when you got on the scene, you know.

13 MR. MURDAUGH: Go to 2.37, please, ma'am.

14 BY MR. MURDAUGH:

15 Q I'll give you the actual exhibit. And what we have
16 here, is a typical interstate roadway; is that correct?

17 A Yes, sir.

18 Q How many lanes going southbound?

19 A Two.

20 Q And how many lanes going northbound?

21 A Two.

22 Q And what, if anything, separates those two lanes?

23 A You've got a median and a cable barrier.

24 Q All right. And is there an emergency lane on the
25 outside of the roadway?

Derrick Rush - Direct Examination by Mr. Murdaugh

1 A To the right of lane two?

2 Q Yes, sir.

3 A Yes, sir.

4 Q Just so we're clear, in looking at this picture,

5 lane one would be which lane?

6 A Lane one would be the left lane and lane two is

7 your right lane.

8 Q And so lane one would be to the left, lane two

9 would be to the right. And then what do you call that -- I

10 call it the emergency lane outside of lane two; is that

11 correct?

12 A That's correct.

13 Q All right. Just trying to keep these in order.

14 All right. Trooper Rush, former Trooper Rush, what

15 is the minimum speed allowed on an interstate?

16 A 45, I believe.

17 Q Okay. So at no point in time is a vehicle allowed

18 to travel below 45?

19 MR. GRIFFITH: Your Honor, I'm going to object to

20 the leading. I --

21 MR. MURDAUGH: I'll -- I'll --

22 THE COURT: Go ahead.

23 MR. MURDAUGH: -- trying to speed it up. I'll ask

24 it another way.

25 BY MR. MURDAUGH:

Derrick Rush - Direct Examination by Mr. Murdaugh

1 Q Are vehicles allowed to legally travel under 45
2 miles on the roadway, interstate?

3 A No.

4 Q Are vehicles allowed to stop on an interstate in
5 nonemergency situations, legally?

6 A No.

7 Q Okay. And what is the purpose for -- for
8 maintaining a certain speed and not allowing vehicles to
9 stop on an interstate?

10 A Basically just to keep traffic moving. You know,
11 interstates are designed with limited access, higher rate
12 of speed than a normal roadway in one direction, so you
13 slow down or something moving too slow or stopped in the
14 roadway pretty much just causes a -- more hazard than is
15 already out there.

16 MR. MURDAUGH: And, Your Honor, at this time, I
17 forgot to do this, we would move Exhibit -- proposed
18 Exhibit 2.1 to 2.55 which are Trooper Rush's photos into
19 evidence.

20 THE COURT: Any objection?

21 MR. GRIFFITH: No, sir.

22 THE COURT: Admitted.

23 (Plaintiff's Exhibit Numbers 2.1 through 2.55 were
24 entered into evidence.)

25 MR. MURDAUGH: They've been premarked. I'll just

Derrick Rush - Direct Examination by Mr. Murdaugh

1 pass those for y'all to look at.

2 What exhibit is that? Bring 2.35 up, please ma'am.

3 THE COURT: Is that already in? Let's admit them
4 before we publish them.

5 MR. MURDAUGH: Okay.

6 THE COURT: Okay. Are those -- it's one of those
7 that just got admitted?

8 MR. MURDAUGH: Yes, sir.

9 THE COURT: Okay.

10 MR. MURDAUGH: I thought we did admit these, but --

11 THE COURT: We just did, but from now on let's wait
12 until we get them into evidence before we put them up on
13 the board.

14 MR. MURDAUGH: So 2.35 is in evidence, Your Honor.

15 THE COURT: Okay.

16 BY MR. MURDAUGH:

17 Q I'll point to the doorway on this. And what
18 information is on the Budget Truck's doorway?

19 A DOT numbers.

20 Q Okay. And when a vehicle has DOT certification,
21 are there different requirements for those vehicles?

22 A Yes, sir.

23 Q Okay. Are those vehicles required to carry safety
24 devices and warning devices for when they are stopped?

25 A Yes, sir.

Derrick Rush - Direct Examination by Mr. Murdaugh

1 Q And that would be flares, triangles?

2 A Yes, sir.

3 Q Reflective triangles?

4 A Yes, sir.

5 Q All right. And, now, at the scene of this wreck,
6 do you know if you talked to Mr. Maurice Dawkins?

7 A Do I know --

8 Q Do you recognize Mr. Maurice Dawkins?

9 A No, sir.

10 Q But you remember from your paperwork that there was
11 a Maurice Dawkins?

12 A Yes, sir.

13 Q And you remember there was a Jim Sell?

14 A Yes, sir.

15 Q Along with others?

16 A Yes, sir.

17 Q And do you -- did you talk to Mr. Dawkins?

18 A No, sir.

19 Q He wasn't one of the drivers that was involved in
20 the wreck, was he?

21 A No, sir.

22 Q And so do you know if you talked to Mr. Owens, who
23 was the driver of the tractor trailer?

24 A I don't believe so.

25 Q Did you talk to Mr. Sell who's seated here, who was

Derrick Rush - Direct Examination by Mr. Murdaugh

1 the driver of the Budget truck?

2 A Yes, sir.

3 Q All right. And where -- where did you talk to him?

4 A Colleton Medical.

5 Q Okay. Is that normal for you to -- people that are
6 involved in collisions to meet them at the hospital?

7 A Yes, sir.

8 Q Routine?

9 A Yes, sir.

10 Q So if they aren't at the scene when you get
11 there --

12 A Policy.

13 Q -- you speak to them later?

14 A Yes, sir.

15 Q What did you say? Policies?

16 A Yes, sir.

17 Q All right. And did you, in fact, speak with
18 Mr. Sell?

19 A Yes, sir.

20 Q And tell me -- tell the jury what you and Mr. Sell
21 discussed.

22 A I honestly -- I don't have a -- I don't really
23 recall details, but pretty much whenever I talk with
24 anybody that's at a hospital after a collision, it's
25 routine, what happened, you know, injuries, the details to

Derrick Rush - Direct Examination by Mr. Murdaugh

1 put on the record. You know, just basic run-of-the-mill
2 stuff and I can kind of tell you around about.

3 Q What was the gist of what Mr. Sell told you?

4 A Basically he's been on the road a long time; come
5 from Ohio and tired; and that he lost control of the truck
6 and that's about all I can remember. I don't recall a lot
7 of details other than that.

8 Q Did he indicate to you at any point in time whether
9 or not he felt like he should have been driving at that
10 point in time?

11 A No, sir. I don't think he -- I do -- I don't think
12 that he indicated he shouldn't have been driving. I think
13 he indicated he was tired.

14 Q Okay. Did he indicate to you whether or not he had
15 had any trouble controlling that vehicle in those
16 conditions?

17 A Yes, sir.

18 Q And had he had trouble controlling that vehicle?

19 A Obviously.

20 Q Prior to wreck, did he indicate whether --

21 A Oh.

22 Q -- he'd had trouble leading up to the collision?
23 In other words, back up the road. If you remember?

24 A I don't remember.

25 Q Okay. Please answer any questions Mr. Griffith

Derrick Rush - Redirect Examination by Mr. Murdaugh

1 Q I believe Mr. Sell was moving his son down from
2 Ohio. Looked like personal belongings all over the
3 interstate?

4 A (Witness nodded head.)

5 Q Now, you said that you did followup and I
6 understand that Mr. Owens, the driver of the tractor
7 trailer truck, I believe he may have gone to Colleton
8 Regional also. Did you speak with Mr. Owens?

9 A I don't recall speaking to him.

10 Q Okay. I think that's all the questions I have.
11 Thank you.

12 THE COURT: Redirect?

13 MR. MURDAUGH: Just a few in followup.

14 **REDIRECT EXAMINATION**

15 BY MR. MURDAUGH:

16 Q Mr. Griffith's asked you about the tractor trailer
17 driver and how he has to operate. But in traveling from
18 Ohio to Savannah, and going to -- I wrote these down. Does
19 Mr. Sell have a duty to keep a proper lookout when he's
20 operating that Budget truck?

21 A Yes.

22 Q Does he have a duty to keep that Budget truck under
23 control?

24 A Yes, sir.

25 Q Does he have a duty to utilize braking at the

Derrick Rush - Recross-Examination by Mr. Griffith

1 appropriate times in those conditions?

2 A Yes.

3 Q Does he have a duty not to operate his Budget truck
4 in a speed that is too fast for the conditions then and
5 there existing?

6 A Yes.

7 Q And in the rain, does Mr. Sell need to slow down
8 the Budget truck?

9 A Yes.

10 Q Okay. And lastly, Mr. Sell needs to keep his
11 Budget Truck under control when he's operating on I-95?

12 A Yes, sir.

13 Q Okay. And, likewise, a driver utilizing the
14 interstate highways in South Carolina has a duty not to
15 impede other traffic that may be utilizing that roadway;
16 isn't that true?

17 A Yes, sir.

18 Q And does a driver that impedes a roadway and blocks
19 both lanes of traffic, does that driver create a hazard for
20 other drivers?

21 A Yes, sir.

22 Q Okay. Please answer any questions Mr. Griffith may
23 have in followup.

24 **RECROSS-EXAMINATION**

25 **BY MR. GRIFFITH:**

Deposition of Joshua Sparkman

1 lawyers had. So just to give you something to hear other
2 than a single voice all the time. So even though a lawyer
3 will only be asking -- one lawyer will be asking the
4 questions, he's reading the questions that both lawyers
5 asked. Okay?

6 She's going to be reading the witness's answers for
7 both. It's only going to be one witness at a time,
8 obviously, so the first one is going to be the deposition
9 of Mr. Joshua Sparkman. All right.

10 MR. BARNES: I opened up the original transcript of
11 Joshua Sparkman and Kristen Starnes.

12 Joshua Sparkman being first duly sworn by the court
13 reporter as hereinafter certified testified as follows.

14 **DEPOSITION OF JOSHUA SPARKMAN**

15 Q Good, I have your date of birth as April 10th,
16 1987.

17 A Yeah.

18 Q Is that correct?

19 A Yeah.

20 Q Okay. I just learned that you have married
21 recently?

22 A Yeah.

23 Q Is that right?

24 A Yeah.

25 Q And you're going to be a father?

Deposition of Joshua Sparkman

1 A Yeah.

2 Q Good. Congratulations. Okay. And do you live in
3 Johnson City, Tennessee?

4 A Yeah.

5 Q How far is that from Kingsport?

6 A Probably 30 minutes, I guess. 35, something like
7 that.

8 Q Okay. And you work at Koyo?

9 A Uh-huh.

10 Q Is that a yes?

11 A Yes.

12 Q And that's a bearing facility?

13 A Yeah, we make ball bearings for the automotive
14 industry.

15 Q And what did you do for Koyo at the ball bearing
16 facility?

17 A Machine operator.

18 Q Okay. What's your educational background,
19 Mr. Sparkman?

20 A I just graduated high school, I didn't go to
21 college.

22 Q What year did you finish high school?

23 A 2005.

24 Q What high school?

25 A Rye Cove High School, Rye Cove.

Deposition of Joshua Sparkman

- 1 Q Spell that for me.
- 2 A R-Y-E then C-O-V-E.
- 3 Q How long have you worked at Koyo?
- 4 A Right now, six months.
- 5 Q And what did you do before that?
- 6 A I worked with mentally handicapped people. I would
- 7 sit with them and --
- 8 Q How long did you do that?
- 9 A I want to say about eight months, probably, I want
- 10 the think. I'm not exactly sure.
- 11 Q Did you do anything other than just sit with them?
- 12 A No, I -- I would just -- other than I'd mow a yard
- 13 every now and then when I could if I --
- 14 Q Okay.
- 15 A -- but other than that, no.
- 16 Q All right. What did you do before you sat with
- 17 mentally handicapped teem?
- 18 A I worked at a plasma -- as a plasma tech at a
- 19 plasma center.
- 20 Q All right. Blood plasma?
- 21 A Yeah.
- 22 Q How long did you do that?
- 23 A I think I worked up there for a year before the
- 24 accident.
- 25 Q Okay. Were y'all going -- where were y'all going

Deposition of Joshua Sparkman

1 when this accident happened?

2 A We was going to Florida. We was going to go on
3 vacation with a cruise.

4 Q Oh, you were going on a cruise?

5 A Yeah.

6 Q Okay. What city or port were y'all leaving out of?

7 A Fort Lauderdale.

8 Q Did y'all actually take the cruise?

9 A Yeah.

10 Q Okay. How long were you on the cruise?

11 A A week. It was a five-day cruise.

12 Q Okay. Where did you go on the cruise?

13 A To the Baja ma's and Coco Cay, I believe is the
14 name of that island.

15 Q All right. When did -- when were y'all supposed to
16 leave on the boat? I guess they call those things ships?

17 A Monday morning, we had to be there.

18 Q Okay. And this accident happened on Saturday
19 morning?

20 A Yeah, Saturday morning.

21 Q All right. Accident -- the police report says that
22 the accident occurred around 2:30 in the morning. I mean,
23 I'm sorry 3:50 in the morning; 3:50 a.m., does that sound
24 right?

25 A Yeah.

Deposition of Joshua Sparkman

1 Q It was on Interstate 95?

2 A Yeah.

3 Q What were the weather conditions like?

4 A It -- it was raining.

5 Q Hard, misty, or what?

6 A I would say steady.

7 Q Steady?

8 A Yeah.

9 Q And was it dark where this accident happened?

10 A Yeah.

11 Q The fact that it was raining, did it have it even

12 darker?

13 A No.

14 Q Was it pitch black dark?

15 A Yeah, I guess.

16 Q Okay. Why were y'all traveling at 3:50 in the

17 morning?

18 A We was trying to miss some of the heavy traffic.

19 Q Okay. All right. When did you know that something

20 was up or something was out of the ordinary?

21 A I -- the way I was sitting in my, the back seat, I

22 had my mp3 player on, so I was looking down and out of the

23 corner of my eye, I caught my dad kind of flinch a little

24 bit and then I felt mom just kind of going to the other

25 side of the road and at the same time I kind of looked out

Deposition of Joshua Sparkman

1 my window and I could see the Budget truck and then that's
2 -- but when dad flinched is when I realized what was going
3 on.

4 Q Okay. About how far were you from the Budget truck
5 when your mom -- when your dad flinched?

6 A I don't -- I -- I couldn't tell you. I don't know,
7 because I wasn't looking in front of us.

8 Q Okay. Did your mom have to get on the brakes?

9 A Yeah, a little bit.

10 Q Okay. Well, did your mom come close to hitting the
11 Budget truck?

12 A Not that I realized, no.

13 Q Okay. Did the tires slide?

14 A Huh-huh, no.

15 Q Okay. Could you feel the car -- could you feel the
16 car decelerating quickly?

17 A Yeah, I could feel she let off the throttle.

18 Q Okay. Did you feel that she got on the brake?

19 A Oh, yeah, I could feel her hitting the brakes, but
20 it wasn't like a slamming-on-the-brakes type deal.

21 Q Okay. But was -- how would you describe her stop
22 or her deceleration? Was it a rapid deceleration?

23 A It was after we got passed it because I told her I
24 could see the boy, so I told her stop, stop, so...

25 Q Were there any other cars stopped there at that

Deposition of Joshua Sparkman

1 time?

2 A When we got to the truck, when we was going around
3 it, I could see the little boy through the window. That's
4 all I was focused on. So -- but when I got to the truck,
5 there was some people there to help me get them out the
6 truck.

7 Q Okay.

8 A But now, I wasn't looking around. I mean I didn't
9 -- wasn't paying a whole lot of attention. All I -- I
10 could just see the little boy through the windshield of the
11 truck.

12 Q Okay. So y'all pull up, you don't know whether
13 y'all were the first vehicle there or not?

14 A No.

15 Q No? Okay.

16 You get out of your -- your mom stops the car?

17 A Uh-huh.

18 Q Correct?

19 A Yeah.

20 Q You're in the back seat, correct?

21 A Yeah.

22 Q This is a two, two-door car?

23 A No, it's a four door.

24 Q Four-door car?

25 A Uh-huh.

Deposition of Joshua Sparkman

1 Q So you open your own door and get out.

2 A Yeah.

3 Q And -- okay. And once you get out of your car, how
4 far is the car from the front end of the Budget truck?

5 A It was a good ways, I had to run. I sprinted back
6 to the truck, so I -- I would say probably 150 feet, 100
7 feet, I'm guessing.

8 Q Okay. Between 100 to 150 feet from the truck?

9 A Yeah, because I had to run to get back to the
10 truck.

11 Q Okay. Did anybody in your car go back to the truck
12 with you?

13 A My wife and my dad.

14 Q Okay. Once you got up to the truck, what did you
15 do?

16 A I opened the door and I had to kind of hold it like
17 above my head and I asked the little boy if he was all
18 right and was he hurting. And he said, Yeah, I'm fine. So
19 I just kind of rushed in and grabbed him and pulled him out
20 and told him, I said, if you asked him if he was hurt and
21 he said no and I said well use me as a ladder and he
22 climbed down off the top of the truck.

23 Q Okay. What about Mr. Sell? Where was he?

24 A He was still in the truck.

25 Q Okay.

Deposition of Joshua Sparkman

1 A And then by the time the -- I got -- the boy got
2 out, that's when everybody kind of got there and we all got
3 him out of the truck.

4 Q Him, the boy?

5 A The --

6 Q Or Mr. Sell?

7 A No, well, Mr. Sell, the --

8 Q Okay. When you say other people got there, how
9 many people were there?

10 A I remember Maurice -- well, I just remember him
11 actually being there. There was some other guys there, but
12 they left quick after we got him down and then that was --
13 then that was about -- about all that was standing there.
14 Everybody else, the other ones had left. I'm not sure who
15 they was or nothing.

16 Q Okay. Do you know when these other people arrived?

17 A No, I don't even know where they came from.

18 Q Okay.

19 A I remember after we stopped and we -- I sprinted up
20 there and got the little boy out and then that's when they
21 started coming in. So I don't know if they was just behind
22 us or what.

23 Q Okay. Well, at any time that night did you see
24 anybody?

25 A Well, after I ran back up to the truck, there was

Deposition of Joshua Sparkman

1 like -- there was starting to be some traffic backing up
2 and wanting to come around and an 18 wheeler had stopped
3 and asked if we needed any help and we told him no. And at
4 that time I could see some debris lying there. Well, I
5 walked over to kick that debris under the truck and when I
6 did, I just happened to notice traffic backing up.

7 Q Okay.

8 A And then -- but then that was for that side.

9 Q Okay. How many vehicles do you think came around
10 the front of the truck, the box truck that was turned over
11 in the roadway?

12 A I don't know, I have no idea.

13 Q Okay.

14 A I wasn't paying much attention.

15 Q Okay. Was it more than five?

16 A Oh, yeah.

17 Q More than ten?

18 A Probably, yeah.

19 Q Okay. More than twenty?

20 A I know that -- I don't know.

21 Q Okay.

22 A I don't.

23 Q What about tractor trailers? Do you know how many
24 tractor trailers came around him?

25 A At least three.

Deposition of Joshua Sparkman

- 1 Q Okay.
- 2 A That I just happened to catch because I know the
3 one stopped and asked us.
- 4 Q Okay. How long had it been since the last one had
5 gone around before Mr. Owens hit him?
- 6 A It couldn't have been long at all because I had
7 just talked to that one guy because he asked us if we
8 needed any help when I kicked that debris. And then -- and
9 that's when I turned to walk back across.
- 10 Q Was there any other vehicles struck other than
11 Ms. --
- 12 A Maurice's was hit.
- 13 Q Other than those?
- 14 A Not that I know -- I'm aware of.
- 15 Q Tell me about Mr. Sell's condition. What did he
16 look like?
- 17 A He was scared. He was bleeding. I just remember
18 him bleeding. He just seemed like, to me, he was going to
19 pass out.
- 20 Q Was there anything warning that Mr. Sell's box
21 truck was flipped over two lanes of traffic?
- 22 A When I got there, no.
- 23 Q Okay. Was the front of the box truck facing toward
24 the right-hand side of the road?
- 25 A Yeah.

Deposition of Joshua Sparkman

1 Q Okay. And the back was facing toward the median?

2 A Yeah.

3 Q Okay. And were any lights on the truck?

4 A Not that I remember.

5 Q Okay. And the truck was on the -- the box truck
6 was on the driver's side?

7 A Yeah.

8 Q Okay. And it was blocking both lanes of 95?

9 A Yeah.

10 Q Okay. And if you wanted to get around it, you had
11 to go in the emergency lane?

12 A Uh-huh, yeah.

13 MR. BARNES: Page 41. You there.

14 MS. DAVIS: Yeah.

15 MR. BARNES: Okay.

16 Q Now, let's back up to the night of the accident
17 real quick. I just want to make sure I understand that.
18 Had y'all driven through the night?

19 A No, we'd only been on the road since, I think 12,
20 maybe.

21 Q Okay. So y'all left about midnight?

22 A Yeah, it was about midnight.

23 Q And it was the plan to go on -- drive on through
24 the night and --

25 A Yeah.

Deposition of Joshua Sparkman

1 Q -- get on down? And you said the accident happened
2 around 3:50 or almost 4 o'clock, right?

3 A Yeah.

4 Q And it -- you didn't feel like when you came upon
5 the box truck or the Budget truck that your mama almost hit
6 it? She had the car under control; is that correct?

7 A Yeah. I -- I never felt like we was wrecking or
8 nothing. I just felt -- I could just feel her letting off
9 the throttle.

10 Q So she just started slowing down?

11 A Yeah.

12 Q To go around and y'all were the first ones there?

13 A That I seen? Yeah. But I mean, I -- if they --

14 Q And -- and -- go ahead. I'm sorry.

15 A When I got out to go -- to get to the truck, that's
16 when people starting getting there. I wasn't really
17 looking.

18 Q All right. You mentioned Maurice Dawkins?

19 A Yeah.

20 Q Do you know if he was there about the same time you
21 were?

22 A Yeah, he was. He -- because after I got the boy,
23 the grandson out, and was started getting him was when he
24 walked up to the truck with us, with me.

25 Q While you were there do you know about how long

Deposition of Joshua Sparkman

1 y'all were at the scene of the accident before the --

2 A I -- I really don't know. I -- I couldn't tell
3 you.

4 Q But you said there were a number of cars that went
5 around?

6 A Yeah.

7 Q And at least three tractor trailers went around?

8 A Yeah.

9 Q Did you say at least three tractor trailers --

10 A Yeah.

11 Q -- trucks went around? Okay. And one of the
12 tractor trailers actually -- truckers actually stopped and
13 talked to you?

14 A Yeah, he asked if we needed any help or any
15 assistance with anything.

16 Q And did -- okay. And did -- did he come to a stop?

17 A Yeah.

18 Q When he came to a stop, where was that? Was that
19 on the, the emergency lane?

20 A Yeah, he was -- all the traffic was in -- had to go
21 to that side, the emergency lane.

22 Q So he came to the emergency lane and he stopped
23 there; is that correct?

24 A Yeah.

25 Q And did all the traffic behind him have to stop too

Deposition of Joshua Sparkman

1 then?

2 A Yeah.

3 Q All right. Not exactly, you don't have to be exact
4 on this, approximately how many cars did you see backed up
5 as you started to walk behind the truck?

6 A Oh, gosh, I have no idea. I just remember kicking
7 the debris and looking and I could see headlights just as
8 far as I could see back through there. I just turned
9 around and started back.

10 Q I -- I -- have followup too. Mr. Sparkman, did you
11 have reason to believe you were in danger when you were
12 helping these people or did you feel that there was
13 adequate warning for people to avoid a collision?

14 A If -- if I felt -- I felt safe and fine because all
15 the traffic was backed up. I've been a volunteer with the
16 fire department. And, you know, I -- they trained me to
17 recognize situations like that. And with the traffic that
18 was backed up, I never thought somebody was going to hit
19 me.

20 MR. BARNES: Your Honor, that's it for Mr.
21 Sparkman.

22 THE COURT: Okay. Now we will move to the
23 deposition of Ms. Kristen Starnes Sparkman. And again, the
24 same instructions that I gave you apply. Mr. Griffith's
25 going to read the questions and she's going to read the

Deposition of Kristen Starnes Sparkman

1 answers for Ms. Sparkman.

2 MR. GRIFFITH: Kristen Starnes Sparkman being duly
3 sworn by the court reporter is hereinafter certified
4 testifies as follows:

5 **DEPOSITION OF KRISTEN STARNES SPARKMAN**

6 Q Ms. Starnes.

7 A Yes.

8 Q I have your date of birth as September 16, 1985; is
9 that correct?

10 A Yes.

11 Q And what is your address?

12 A 1100 Skyline Drive, Jonesborough, Tennessee 37659.

13 Q Now, has your last name changed?

14 A Yes, it has.

15 Q What's your last name?

16 A Sparkman.

17 Q Okay. And I'm assuming you got married?

18 A Yes.

19 Q And what's the date of that marriage?

20 A May 28th, 2011.

21 Q And let me guess, your good husband would be Joshua
22 Sparkman?

23 A Yes, sir.

24 Q Okay. What's your educational background,
25 Ms. Sparkman?

Deposition of Kristen Starnes Sparkman

1 A I completed 12th grade high school and four years
2 of college.

3 Q Okay.

4 A And I have my associate's degree in respiratory
5 therapy.

6 Q From what college?

7 A Mountain Empire Community College.

8 Q I'm sorry?

9 A Mountain Empire Community College.

10 Q And are you presently employed?

11 A Yes.

12 Q And where do you work?

13 A Johnson City Medical Center.

14 Q And is that as a respiratory therapist?

15 A Yes.

16 Q And where does Mr. Sparkman work?

17 A Koyo is the name of the plant.

18 Q And what do y'all -- what do they do?

19 A They make ball bearings.

20 Q Okay. And you were involved in an accident on
21 August 21st of 2010?

22 A Yes.

23 Q And the accident happened on Interstate 95?

24 A Yes.

25 Q And the police report says it occurred about 3:50

Deposition of Kristen Starnes Sparkman

1 a.m.; is that correct?

2 A As far as I can remember. I don't know the exact
3 time.

4 Q And what were the weather conditions like?

5 A It was raining.

6 Q Okay. And was it dark?

7 A It was.

8 Q And did the rain, the rainy weather have it
9 overcast so it was even darker than dark?

10 A It was very hard to see.

11 Q Very hard to see.

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes.

15 Q And you were traveling with Joshua?

16 A Yes.

17 Q Correct. And his family?

18 A Yes.

19 Q Okay. Where were y'all headed -- excuse me. Y'all
20 were headed to Disney?

21 A We were headed to Florida.

22 Q You were headed to Florida?

23 A Uh-huh.

24 Q I think that you actually got some medical
25 treatment while you were in Florida at Cape Canaveral

Deposition of Kristen Starnes Sparkman

1 Hospital?

2 A Yes.

3 Q And was that where y'all were going, Cape
4 Canaveral?

5 A Yes.

6 Q All right. And y'all had come from Johnson City,
7 Tennessee?

8 A Yes.

9 Q How long had y'all been on the road?

10 A I couldn't say for sure. I would say probably four
11 hours to five hours.

12 Q And y'all had driven all the way through?

13 A Yes.

14 Q From Johnson City?

15 A Yes.

16 Q And when's the last time y'all had stopped?

17 A We had stopped just right before we seen the box
18 truck. It was probably about 15 minutes before.

19 Q Okay. So you stopped at a truck stop or something?

20 A We stopped at a gas station just to stretch our
21 legs and get some water.

22 Q Okay. And y'all were traveling through the night?

23 A Just -- just less traffic.

24 Q Okay. Who was driving?

25 A Della, Joshua's mom.

Deposition of Kristen Starnes Sparkman

1 Q And where were you positioned in the car?

2 A I was behind the driver's seat in the -- in the
3 back seat.

4 Q Okay.

5 A No, actually, I was on the passenger seat, I'm
6 sorry, I'm sorry. I was -- I was thinking wrong.

7 Q You were in the back seat on --

8 A I was in the back seat on the passenger side, I'm
9 sorry.

10 Q Okay. Not a problem. Where was Joshua?

11 A He was beside -- he was beside of me.

12 Q Okay. So he was in the back seat on the driver's
13 side?

14 A Yes, yes.

15 Q And were y'all awake -- were you awake as y'all --

16 A I was..

17 Q Was Joshua awake?

18 A I think he was dozing in and out. He wasn't -- I
19 think he was dozing in and out. I'm not --

20 Q Okay.

21 A I'm not positive.

22 Q And Joshua's mom's name is Della?

23 A Uh-huh.

24 Q Okay.

25 A Yes.

Deposition of Kristen Starnes Sparkman

1 Q Who else was in the car?

2 A Ted, his dad.

3 Q And Della was driving?

4 A Yes.

5 Q Did you see the box turn over -- box truck turn
6 over on the roadway?

7 A No.

8 Q Had it already turned over?

9 A Yes.

10 Q Okay. Did -- what -- what first drew your
11 attention to the fact that the box truck was on -- box
12 truck was turned over?

13 A We had come up on it and it was just like a brick
14 wall and we hit -- we were -- got right on top of it and
15 seen that we couldn't -- you know, we had to get around it.
16 We were the first ones on the scene.

17 Q You were the first ones on the scene?

18 A We were.

19 Q Okay. So you didn't see the truck turn over, it
20 had already turned over when you got there?

21 A Yes.

22 Q Did y'all almost hit it?

23 A Yes.

24 Q Did your -- did you have to slide your tires to
25 keep from hitting it?

Deposition of Kristen Starnes Sparkman

1 A No.

2 Q Okay. Was the box truck blocking the whole road?

3 A Most of it, not all. But you could get around it
4 on the right side.

5 Q In the emergency lane?

6 A Yes.

7 Q Was it blocking the two main travel paths?

8 A Yes.

9 Q And y'all were in the first vehicle there?

10 A Yes.

11 Q What did y'all do?

12 A We got around the -- around the box truck. We
13 pulled up and then we -- we noticed that nobody was out of
14 the truck, so we got out of the vehicle and noticed that
15 they were inside the -- trapped inside the -- they couldn't
16 get out. And so we went and helped them out. There were
17 some other -- after we stopped there were some other people
18 that stopped and helped us get the man out of the truck and
19 his -- and his grandson.

20 Q Okay. Now, your mother-in-law's vehicle, the one
21 that she was driving, now, Interstate 95, for all practical
22 purposes runs north and south. Y'all were on -- did y'all
23 park your vehicle on the south side of the box truck which
24 would be the Florida side?

25 A Yes.

Deposition of Kristen Starnes Sparkman

1 Q Okay. And what kind of vehicle were y'all riding
2 in?

3 A A Dodge Charger.

4 Q Was it a passenger car?

5 A Yes.

6 Q Okay. Now, did y'all get on the -- did y'all get
7 up on the box truck and help them out?

8 A My husband did.

9 Q Okay. So Joshua got up on the box truck?

10 A Yes.

11 Q Now, did you see that gentleman that just left
12 here, Mr. Dawkins, was he at the scene?

13 A Maurice?

14 Q Yeah.

15 A I remember him being there, yes.

16 Q Did he arrive after y'all?

17 A Yes.

18 Q Okay. How long were y'all at the scene from the
19 time y'all arrived until the time Mr. Owens couldn't -- hit
20 the truck?

21 A I would have to estimate probably 10 minutes.

22 Q Okay. In that 10 minutes, did any other cars pass
23 around the box truck?

24 A Yes.

25 Q How many cars would you estimate passed around the

Deposition of Kristen Starnes Sparkman

1 box truck?

2 A Probably -- I would probably estimate 20 to -- 20
3 cars probably.

4 Q Okay. Did any tractor trailers pass?

5 A Yes.

6 Q How many could you -- how many would you estimate?

7 A One that I know of for sure.

8 Q Did they pass on the right or the left side?

9 A The right.

10 Q Do you remember -- do you remember when he hit the
11 box truck?

12 MR. GRIFFITH: I think it's page 21.

13 THE WITNESS: Yes, I do.

14 Q How long had it been since the car had passed the
15 box truck before Mr. Owens hit it?

16 A Just seconds.

17 Q Okay. And what happened to you? Tell me
18 everything you remember -- and I know -- you can take your
19 time, we're in no hurry. I don't want to upset you.

20 A Right.

21 Q Just tell me what you remember best you can and
22 then if you have questions, I may ask a few followup, but
23 if you'd take your time, okay?

24 A Okay. I just -- I remember getting -- I'm not sure
25 of the names but the man that was driving the box truck and

Deposition of Kristen Starnes Sparkman

1 his grandson out of the truck, getting them over kind of
2 toward the median. He was upset. He was trying to make a
3 phone call and Ted, which is Joshua's dad, and Maurice were
4 trying to get him calmed down. I was standing with his
5 grandson. His grandson had asked me if I could possibly
6 get his phone, cell phone out of the cab of the truck, so I
7 had walked up to see if the window was busted out of the
8 cab of the truck to see if I could reach in there and maybe
9 get his phone. But the windows were in -- you know, were
10 in tact, so I couldn't get in there.

11 My husband and I were kind of up towards the front
12 of the truck and there was a semi that had passed by and he
13 kind of slowed down and asked if we needed any help. And
14 -- and we said no, you know, we were waiting on the police
15 to get there. And my husband had kicked a -- a piece of
16 debris out of the way and we were kind of looking back at
17 him. He looked like he was about to pass out.

18 Q Mr. Sell?

19 A Yes, yes.

20 Q Okay.

21 A And we were -- when we -- as we were walking back
22 towards them, that's when -- I just remember getting hit.
23 I don't know what I got hit by, I just remember going
24 forward and getting hit by something metal.

25 Q Okay. And Joshua, your husband, was with you?

Deposition of Kristen Starnes Sparkman

- 1 A Yes.
- 2 Q And your -- he was your boyfriend at the time, I
3 guess?
- 4 A He was.
- 5 Q Okay. What's your next recollection after being
6 struck from the rear?
- 7 A I remember getting up. I don't know where I came
8 from. But I was in the median afterwards. I remember
9 going around the front of the truck after I had -- and
10 going to find -- try to find Joshua.
- 11 Q Okay.
- 12 A And I -- I got to him in the median. He was lying
13 in the median.
- 14 Q Okay. So you were lying in the median, or you
15 found your husband lying in the median?
- 16 A Yes.
- 17 Q When you -- when you were knocked -- rendered
18 unconscious -- were you knocked unconscious or rendered
19 unconscious that you're aware of?
- 20 A No.
- 21 Q And so you --
- 22 A Not that I'm aware of.
- 23 Q You were -- to the best of your knowledge you were
24 conscious at all times?
- 25 A Yes.

Deposition of Kristen Starnes Sparkman

1 Q But you were knocked down?

2 A Yes.

3 Q From the point that you got where you were knocked
4 down to the point that you located Joshua when he -- where
5 he was, how far apart?

6 A I'm not good with distance, but probably a good
7 ways apart. I'm not good with distance. I don't --

8 Q Well, this room I would say is what 20 feet or
9 thereabouts.

10 A I would -- it was probably about that far.

11 Q About 20 feet?

12 A Yeah.

13 Q Thereabouts, okay. All right. And when y'all --
14 your last recollection before getting hit, how close were
15 you together?

16 A As close as me and him.

17 Q Now, where was the box truck after you got hit?

18 A In the median.

19 Q Okay. What condition was Mr. Sell in?

20 A He was very torn up. He was just -- he -- he
21 looked like he was about to pass out.

22 Q What about the young man that was with him?

23 A He wasn't bleeding. He had some seatbelt burns.

24 Q Okay. Was the -- he was talking to you?

25 A He was.

Deposition of Kristen Starnes Sparkman

- 1 Q Was he upset?
- 2 A He was.
- 3 Q Was he phys -- did he physically appear to be fine?
- 4 A Yes.
- 5 Q Okay. Were there any lights in the truck that
- 6 could have been visible for oncoming traffic to see?
- 7 A Not that I know of.
- 8 Q Now, we talked earlier in the deposition that Della
- 9 almost hit the truck?
- 10 A Yes.
- 11 Q Tell me a little bit more detail what you mean by
- 12 the fact that Della almost hit the truck. Did she have to
- 13 get down hard on the brakes?
- 14 A Quite -- quite a bit, but she was able to get
- 15 around the truck.
- 16 Q I understand, but did she have to -- okay.
- 17 A We didn't slide.
- 18 Q You didn't slide?
- 19 A No.
- 20 Q Okay. But she had -- you -- you could tell that
- 21 you were braking?
- 22 A Yes.
- 23 Q And y'all -- okay. Y'all braking quickly?
- 24 A Yes.
- 25 Q Did the front end of the car go down some?

Deposition of Kristen Starnes Sparkman

1 A I don't know.

2 Q But it was a fairly abrupt stop?

3 A Yes.

4 Q But you're confident y'all were the first vehicle
5 there?

6 A Yes.

7 Q Then Maurice came second?

8 A Yes.

9 Q Did Maurice get up and help Mr. Sell out of the
10 truck or was that Joshua?

11 A I think he did.

12 Q Did you ever hear Mr. Sell say anything about
13 putting out any flares or triangles that may have been in
14 the Budget Rental Truck?

15 A No.

16 MR. GRIFFITH: Page 46.

17 THE WITNESS: Yes, sir.

18 Q Did that box truck completely obstruct the
19 Interstate 95?

20 MR. GRIFFITH: Page 46, line 23.

21 THE WITNESS: Yes.

22 MR. GRIFFITH: Page 52, line 7.

23 THE WITNESS: Yes, sir.

24 Q All right. Did Della -- and Della, you said that
25 she had to brake because of the truck?

Deposition of Kristen Starnes Sparkman

1 A Yes.

2 Q But she didn't have to skid?

3 A No.

4 Q Was she able to safely go around it?

5 A Yes.

6 Q Did she say -- did she -- I'm sorry.

7 And she had her lights on, I take it?

8 A Yes.

9 Q And she was able to see it at a safe distance and
10 slow down without hitting it?

11 A Yes.

12 Q Okay. And you said there was another truck that
13 had come by?

14 A Yes.

15 Q And he mentioned y'all all right or -- he mentioned
16 y'all all right or y'all need help or something?

17 A Yes.

18 Q And did y'all say y'all thought y'all had it?

19 A Yes.

20 Q And how long after that was it that this second
21 accident occurred?

22 A Within minutes. I mean just a few minutes.

23 Q Okay. You said between the time you came to a stop
24 and the time the accident occurred, you thought it was
25 around 10 minutes?

Deposition of Kristen Starnes Sparkman

- 1 A Yes.
- 2 Q All right. Now, you said you didn't know what was
- 3 on the north side of the truck at the point where
- 4 Mr. Owens's struck it, but did you say a vehicle came
- 5 around the truck seconds before the impact?
- 6 A Yes.
- 7 Q Is that correct?
- 8 A Yes.
- 9 Q Did that vehicle have his lights on?
- 10 A Yes.
- 11 Q Did you -- when you said your mother-in-law braked,
- 12 she didn't -- she didn't scream, did she?
- 13 A No, she didn't. She just, you know, was like, Oh,
- 14 oh gosh, I mean, she didn't scream.
- 15 Q So she obviously saw this vehicle in enough time to
- 16 apply brakes and come around the vehicle?
- 17 A Yes.
- 18 Q And from what you said, 20 or so other vehicles did
- 19 the same thing?
- 20 A Yes.
- 21 Q Okay. No other vehicles hit the truck?
- 22 A No.
- 23 MR. GRIFFITH: That's it, Your Honor.
- 24 THE COURT: Okay.
- 25 All right. Well, folks, that's what we'll do for

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1 MR. BARNES: Not right now.

2 MR. GRIFFITH: No, sir.

3 THE COURT: All right. See you at 2:30.

4 (A recess for lunch was observed.)

5 THE COURT: All right. All the jurors are here.

6 Y'all ready?

7 MR. BARNES: Yes, Your Honor.

8 THE COURT: Bring them in.

9 (The jury entered the courtroom at 2:38 p.m.)

10 THE COURT: All right, folks. Welcome back. We're
11 going to get started this afternoon with the plaintiff
12 calling the next witness.

13 MR. BARNES: Thank you, Your Honor. May it please
14 the Court. At this time we'd call Dr. Leland Stoddard.

15 LELAND STODDARD,

16 having been duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. BARNES:

19 Q Please tell us your full name for the record?

20 A My name is Leland C. Stoddard, Jr.

21 Q Dr. Stoddard, where do you live?

22 A I live in Beaufort, South Carolina.

23 Q And how long have you lived in Beaufort?

24 A I've lived there about 32 years.

25 Q And are you a doctor?

Leland Stoddard - Direct Examination by Mr. Barnes

- 1 A Yes, I am.
- 2 Q And what type of doctor are you?
- 3 A I'm an orthopedic surgeon.
- 4 Q And where do you practice?
- 5 A I practice in Beaufort.
- 6 Q All right. With a medical group or a hospital?
- 7 A I'm a hospital employee now. So with the hospital.
- 8 Q Is that Beaufort Memorial?
- 9 A Yes, I am.
- 10 Q And what type of conditions and injuries do you
- 11 treat as an orthopedic doctor?
- 12 A We see injuries to the muscular skeletal systems,
- 13 the bones, and the joints, tendons, and nerves.
- 14 Q And starting with college, walk us through your
- 15 educational background.
- 16 A I went to Clemson University and finished in 1975;
- 17 Medical University of South Carolina in Charleston and
- 18 finished as an M.D. in 1979; did a year's internship and
- 19 four-year residency at the Shriner's Hospital in Greenville
- 20 Hospital System in Greenville, South Carolina, finished in
- 21 1984; then went back to the Medical University and did a
- 22 hand in microvascular fellowship and finished in 1985.
- 23 Q And have you been in Beaufort practicing since
- 24 1985?
- 25 A Yes, I have.

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1 Q And are you board certified?

2 A Yes, I am.

3 Q And explain to us what it means to be board
4 certified.

5 A Well, you have to complete an approved residency,
6 which I did. Then you have to take an oral and written
7 examination. Then every ten years, we have to recertify
8 with another examination.

9 Q Are you currently board certified.

10 A Yes, I am.

11 Q And in addition to practicing in Beaufort, I
12 believe you also practice here in Hampton a little bit?

13 A I did for many years. I came here once a week to
14 see patients.

15 Q And in addition to seeing patients, previously were
16 you a team physician for the Beaufort High School football
17 team?

18 A I was, yes.

19 Q Are you involved with any organizations or medical
20 societies?

21 A Well, I'm in the AMA, I'm in the South Carolina
22 Medical Association, the American Academy of Orthopedic
23 Surgeons, and the South Carolina Orthopedic Association.

24 Q Have you been qualified in court before as an -- in
25 the field of orthopedic medicine?

Leland Stoddard - Direct Examination by Mr. Barnes

1 A Yes, I have.

2 MR. BARNES: And at this time, Your Honor, we would
3 move to have Dr. Stoddard admitted as an expert in the
4 field of orthopedic medicine.

5 MR. GRIFFITH: No objection.

6 THE COURT: Okay. Folks, remember when we were
7 talking earlier today, I told you that when a witness
8 testifies, they normally get up and they tell you what they
9 heard, they saw, they touched, they felt, they smelled. We
10 don't normally let witnesses tell us their opinions about
11 evidence, what they think about it. The law says, that,
12 that in some cases, where somebody because of education or
13 training, specialization in some field, if they rise to the
14 level of expertise, we'll let them testify, not only in the
15 form of their observations, but they can give us their
16 opinion about the facts that they're testifying about.

17 This witness has now been qualified as an expert in
18 the field of orthopedic medicine and he'll be allowed, not
19 only to tell you what he saw and -- but he'll also be able
20 to tell you what he thinks about it, give you his opinion
21 about it.

22 Now, any time somebody testifies as an expert,
23 you're not bound to accept that opinion simply because
24 they're an expert. You decide how much testimony -- how
25 much weight to give every witness's testimony, including

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1 expert's testimony. You're not bound to give it any weight
2 that you don't feel like it deserves based on all the other
3 evidence that you hear in the trial. In other words,
4 you're not required to blindly accept any witness's
5 testimony, including an expert. You alone decide how much
6 weight to give this testimony based on all the evidence
7 that you hear throughout the trial.

8 Okay. You may resume.

9 MR. BARNES: Thank you, Your Honor.

10 BY MR. BARNES:

11 Q Dr. Stoddard, did you provide treatment to Maurice
12 Dawkins?

13 A Yes, I did.

14 Q And was Mr. Dawkins a patient of yours?

15 A Yes, he was.

16 Q I want to -- and Mr. -- did Mr. Dawkins sustain an
17 injury to his ankle?

18 A Yes, he did.

19 Q And did he sustain, from your review of his medical
20 records, any other injuries?

21 A Well, the injury was to the right foot and it
22 involved more than just the ankle, but that was pretty much
23 the extent of the injuries that I saw him for. Now, I have
24 -- in reading his medical reports, he had had, I think,
25 some head injury of some kind, but I'm not sure of the

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1 extent of that.

2 Q And what about a laceration to his left heel as
3 well?

4 A I believe he had, yes.

5 Q And so is what we're looking at here on this
6 demonstrative exhibit a -- a right foot?

7 A Yes, it is.

8 Q And if you will, just kind of walk us through to
9 educate us on the right foot. What the purpose of -- how
10 the foot works and what the tendons that are identified on
11 here -- why they're important.

12 A You want me to go down there?

13 Q Sure.

14 (The witness stepped down.)

15 THE WITNESS: So this is a picture of the foot and
16 the tendons in the foot. This would be the outside or the
17 lateral side of the foot. It's the outer part of the
18 ankle. Here's the heel core, or the Achilles tendon.
19 Here's the heel bone. And, of course, you can see the
20 Achilles tendon attaches to the heel bone, kind of with a
21 wide broad attachment here. There's usually a little hump
22 here in the heel bone that doesn't show on this picture
23 that well. These tendons, and there are three of them, run
24 through a little sheathe behind the ankle.

25 Want to give them one more -- to the next one? The

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1 one with the nerves.

2 THE COURT: Can y'all hear him?

3 THE FOREPERSON: Yes, sir.

4 THE COURT: Okay. Well we can give him a
5 microphone, if we can't.

6 THE COURT REPORTER: As long as he don't turn his
7 heed to the picture. He needs to the talk this way.

8 THE COURT: Okay. If you can't hear him or you
9 need, we can give him a microphone.

10 THE COURT REPORTER: This will be fine.

11 THE WITNESS: Yeah, I wanted him to show you this
12 one. These are the nerves on the outside of the ankle.
13 This nerve specifically is the -- is the sural nerve. And
14 again, it's right on the outside part of that bony portion
15 is on your ankle.

16 BY MR. BARNES:

17 Q And what is the purpose of the sural nerve? What
18 does it do?

19 A It gives you the feeling on the outer border of
20 your foot.

21 Q If the sural never is damaged, what is the impact?

22 A You're likely to get numbness on the outer part of
23 your foot and it, in this case it can cause pain from
24 damage to the nerve.

25 Q And how does the Achilles tendon work?

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1 A Well, the Achilles is your heel core, it's the
2 largest tendon in the leg. And this is what makes you push
3 off when you walk or run. That's what pushes your foot
4 down, what lets you step on the gas as it were.

5 Q Thank you.

6 (The witness returned to the stand.)

7 BY MR. BARNES:

8 Q And when was the first time that you treated
9 Maurice Dawkins?

10 A I saw him January 13th, 2014.

11 Q And how did you come to be treating Maurice
12 Dawkins?

13 A Well, Mr. Murdaugh actually called me and asked if
14 I would see him.

15 Q And in your practice is that something that's
16 typical?

17 A Yes, it's not infrequent, yes, that an attorney
18 will refer a patient to me.

19 Q Is -- does that occur because some doctors only
20 treat patients that have ongoing litigation?

21 MR. GRIFFITH: Your Honor, I object. I don't know
22 if he knows why other doctors might not treat. But in this
23 case, there's been a lot of doctors that treated him. I
24 don't think that's proper. That's not an opinion that's
25 within his expertise.

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1 THE COURT: So if you can lay a foundation for it.

2 BY MR. BARNES:

3 Q Dr. Stoddard, have you had patients come into your
4 care that other doctors would not treat them because they
5 had ongoing litigation?

6 A Yes, I have.

7 Q And how often would you say that happens?

8 A I don't think it happens that often, but
9 occasionally.

10 Q And do you also treat patients because they may
11 have an inability to pay and another doctor will only
12 accept patients unless they pay up front?

13 MR. GRIFFITH: Your Honor.

14 THE COURT: I don't really see the relevance of
15 this line of questioning. So I will sustain the objection.

16 BY MR. BARNES:

17 Q On your January 13th, 2014 visit, walk us through
18 your exam of Maurice and what you found.

19 A Well, he had some discoloration, kind of black
20 coloring along the back and side of his leg that went
21 halfway up his leg. He had what looked to be a surgical
22 incision right over the middle of the end of his Achilles
23 tendon or heel tendon. He was tender all in this area.
24 The -- particularly along the end of the heel part and up
25 under the heel. He had tenderness along that lateral part

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1 of that ankle along with lateral malleolus and did have
2 numbness in the lateral part of the foot.

3 Q And the next time you treated Mr. Dawkins was when?

4 A Looks like the next time was 1/27/15.

5 Q And --

6 A Almost a year later.

7 Q And walk us through that exam if you will, please.

8 A Well, we had -- we had run some tests on him that
9 he had not visited me to go over. We had discussed the
10 possibility of doing surgery. He came down on this date
11 and said that he was more interested in doing more surgery
12 on the foot to see if we could get it better. Exam was
13 pretty much the same. Still very tender all along the heel
14 core and the lateral aspect of the foot.

15 Q What about was he still suffering from swelling?

16 A Yes, he was.

17 Q And you also continued to see the discoloration in
18 his lower leg?

19 A Yes, nothing had changed in that aspect.

20 Q And did you, in fact, operate on Mr. Dawkins?

21 A Yes, I did.

22 Q In April of 2015?

23 A Yes, I did.

24 Q And walk us through what you did in that surgery?

25 A Well, we opened up the heel core, the Achilles

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1 tendon again. I believe we used his old incision.
2 Basically scraped scar tissue from around the end of the
3 tendon, took out some suture material and foreign material
4 that was around it. I went ahead and opened up and
5 explored that sural nerve, but I thought there might be
6 actually a break or a cut in the nerve, something we call a
7 neuroma. We did not find a neuroma, but we found a lot of
8 scar tissue around the nerve and we excised that.

9 So we basically cleaned up the heel core, removed
10 the old sutures and released the peroneal nerve. I looked
11 into those tendons behind the ankle and did not find any
12 damage there.

13 Q And what is the importance of the scar tissue
14 around the sural nerve?

15 A Well, it pinches the nerve and traps the nerve,
16 doesn't let it move the way it should and causes pain in
17 the distribution of the nerve.

18 Q Would the entrapment of the sural nerve also result
19 in swelling?

20 A It could. When you have a nerve injury, you can
21 get swelling in the area, yes.

22 Q And following that surgery, what was Mr. Dawkins's
23 prognosis? How was he when he was discharged from the
24 hospital?

25 A Well, he went home in a cast. We actually had to

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1 take the heel core down off of the bone and scraped bone,
2 got rid of bone spurs and scar tissue, so we had to protect
3 it in a cast. And he spent four to six weeks in the cast.

4 Q And describe the cast for us. Is this something
5 that he can walk on? Is it nonweightbearing? Or --

6 A He can walk on it. It actually put your foot down
7 into a little bit of a high heel position or what we call
8 equinus. It's got a little heel on it. It went from the
9 knee to the end of the toes, like a boot.

10 Q And you next saw him on April 23rd of 2015?

11 A Yes, I did. That was after the surgery.

12 Q And I think on that the cast was a window?

13 A That's correct.

14 Q And explain to us what that means.

15 A We cut a hole in the cast large enough to look at
16 the scar and make sure it's healing adequately.

17 Q And I think the cast was ultimately removed on
18 April 30th 2015?

19 A Yes, it was.

20 Q And were the sutures removed?

21 A Yes, they were.

22 Q And sutures is just another word for a stitch?

23 A Stitches, yes.

24 Q Okay. And then you recast the ankle?

25 A Yes, we did. We took him out of the high heel

Leland Stoddard - Direct Examination by Mr. Barnes

1 position and brought it up to the flipping flat and put a
2 new cast on.

3 Q And was he ultimately placed into a cam walker?

4 A Yes, he is.

5 Q And explain to us what a cam walker is?

6 A A cam walker is like the cast. It's a boot that
7 goes from the knee to the toes, but it's something you can
8 get on and off with Velcro straps.

9 Q And in addition to your treatment, you also
10 prescribed physical therapy for Mr. Dawkins?

11 A Yes, I did.

12 Q And what type of therapy would be done for that
13 type of surgery?

14 A Well, once the surgery is healed, we like the
15 patient to start moving the ankle to get the stiffness out,
16 doing resistant exercises to get some strength back in the
17 muscle that's attached to the heel cord.

18 Q And --

19 A So basically stiffness and strength.

20 Q And Mr. Dawkins underwent that physical therapy in
21 Columbia?

22 A Yes, he did.

23 Q And have you reviewed any of the records related to
24 that physical therapy?

25 A Some. Yes.

Leland Stoddard - Direct Examination by Mr. Barnes

1 Q Do you get those records as a result of prescribing
2 the physical therapy?

3 A Most of the time, yes.

4 Q From your review of his records, was he working
5 hard and compliant with that therapy?

6 A Yes, he was.

7 Q And the surgery that you performed on Mr. Dawkins,
8 that was not his first surgery that he had done?

9 A It was not.

10 Q How many surgeries did Mr. Dawkins have?

11 A I believe mine was his third surgery.

12 Q And tell us about those other two surgeries?

13 A Well, the first surgery actually had an open wound
14 that cut through the heel cord. I believe it probably cut
15 down into the bone based on what we saw on the x-ray. So
16 the first doctor took him and just repaired that damage.

17 Later on, I'm not sure how much later, he had
18 someone go and do similar to what I did. They took out of
19 scar tissue, they stitched the tendon down to the bone
20 using suture hangers which are little plastic screws that
21 go into the bone with stitches on them, again trying to
22 relieve the pain. And then mine was the third.

23 Q And were both of those surgeries in addition to
24 yours medically necessary?

25 A Yes, they were.

Leland Stoddard - Direct Examination by Mr. Barnes

1 Q And I should have asked you this earlier. If I ask
2 you a question that calls for an opinion today or what I've
3 already asked you, would that opinion be to a reasonable
4 degree of medical certainty or more likely than not?

5 A Yes, it is.

6 Q Is the injury that Mr. Dawkins has, is that a
7 permanent injury?

8 A Yes, it is.

9 Q Does he have scarring as a result of those
10 surgeries?

11 A Yes, he does.

12 Q And is that scarring permanent?

13 A Yes, it is.

14 Q Is the swelling that Mr. Dawkins still experiences
15 to this day, is that a permanent injury?

16 A Yes, it is.

17 Q And is that something that Mr. Dawkins is going to
18 endure the rest of his life?

19 A Yes, it is.

20 Q Will that swelling in his foot, as you noticed when
21 you treated him, will that impact him such that he can only
22 be on his foot for so long?

23 A I believe it will, yes.

24 Q And in your opinion how long will Mr. Dawkins be
25 able to be on his foot before the pain is such that he has

Leland Stoddard - Direct Examination by Mr. Barnes

1 to get off of it?

2 A Well, in discussing it with him, he's able to stand
3 for about an hour before the foot swells to the point that
4 it causes pain and requires him or he can relieve that by
5 getting off of his foot. So about one hour.

6 Q And will that be permanent?

7 A Yes, it will.

8 Q So for the rest of Mr. Dawkins's life, he'll only
9 be able to stand on his foot for about an hour before the
10 swelling is such that he has to be nonweightbearing on it?

11 A Yes, it will.

12 Q Is it your opinion that Mr. Dawkins sustained nerve
13 damage on his right ankle and heel area?

14 A Yes, it is.

15 Q And in what -- explain to us how he had permanent
16 nerve damage as a result of this laceration?

17 A Well, I believe he didn't cut the nerve, but he had
18 a blunt blow to the nerve. He bruised the nerve badly
19 enough to damage the little tiny neurons inside the nerve.
20 The nerves have like an electric cord and has a bunch of
21 tiny little wires on the inside. I believe some of those
22 wires died and they caused the nerve not the function
23 properly.

24 Q Mr. Dawkins has some discoloration --

25 MR. BARNES: Mr. Dawkins, if you would, step out

Leland Stoddard - Direct Examination by Mr. Barnes

1 here and lift up your right pants leg. All right. Turn
2 the other way.

3 (Mr. Dawkins was showing his leg to the jury.)

4 BY MR. BARNES:

5 Q So Mr. Dawkins has some discoloration near the
6 ankle and lower leg. Is that a result of the injury he
7 sustained in the accident of August 21st of 2010?

8 A Yes, it is.

9 Q And have -- and how is that related to the August
10 21st 2010 accident?

11 A I think that the blunt trauma to that part of the
12 leg damaged the veins of the lymphatic system enough that
13 he lost some of the -- the venous and lymphatic
14 circulation to that foot. In other words, the blood's
15 getting into the foot, but not enough is coming out of the
16 foot, causing it to swell like that and become discolored
17 like that.

18 Q And what is that diagnosis?

19 A That's called venous stasis.

20 Q And is it your opinion that Mr. Dawkins has that
21 diagnosis?

22 A Yes, it is.

23 Q And that is a permanent injury that he has as a
24 result of the August 21st, 2010 events that we're here
25 about?

Leland Stoddard - Direct Examination by Mr. Barnes

1 A Yes, it is.

2 Q Does that, that discoloration of his lower leg,
3 does that get any better?

4 A No, it will not.

5 Q Will the discoloration of his lower leg get any
6 worse in your opinion?

7 A Probably not at this point. I think we're enough
8 years from the injury that it's static.

9 Q As far as how Mr. Dawkins is doing today, in your
10 opinion is there any medical treatment that can be done to
11 improve Mr. Dawkins's condition?

12 A No, there's not.

13 Q Is Mr. Dawkins how he will be for the rest of his
14 life?

15 A I believe that he is, yes.

16 Q And do you believe that the laceration to his right
17 foot that resulted in your treatment and the other
18 treatment that you reviewed in those records; is that
19 related to the August 21st, 2010 collision we're here
20 about?

21 A Yes, it is.

22 Q Have all of your opinions been to a reasonable
23 degree of medical certainty?

24 A Yes, they have.

25 Q More likely than not the standard?

Leland Stoddard - Cross-Examination by Mr. Griffith

1 A That's correct.

2 Q All of the records that you've reviewed which is
3 Mr. Dawkins's treatment, is it your opinion that all of
4 that treatment was medically necessary as a result of the
5 events of August 21st, 2010?

6 A Yes, it is.

7 Q And that's to a reasonable degree of medical
8 certainty?

9 A Yes, it is.

10 MR. BARNES: Thank you, Your Honor.

11 Please answer any questions Mr. Griffith may have
12 for you.

13 **CROSS-EXAMINATION**

14 **BY MR. GRIFFITH:**

15 Q Dr. Stoddard, you talked about the swelling that
16 Mr. Dawkins had and the discoloration.

17 A Uh-huh.

18 Q Right?

19 A (Witness nodded head.)

20 Q And since you reviewed the medical records, what
21 kind of swelling and discoloration did he have before this
22 accident?

23 A To my knowledge he didn't have any substantial
24 swelling or discoloration.

25 Q Well, it was noted in Dr. Patel's record, wasn't

Albert Moses - Direct Examination by Mr. Murdaugh

1 BY MR. MURDAUGH:

2 Q You are Mr. Al Moses?

3 A Yes.

4 Q All right. And Mr. Moses, where are you from, sir?

5 A Columbia, South Carolina.

6 Q How long have you lived in Columbia?

7 A All my life, 77 years.

8 Q How are you employed?

9 A Well, I'm retired right now.

10 Q How were you employed?

11 A I was a lawyer for 41 years.

12 Q And I was reading some bar literature and read
13 where, I believe, you just received an honor from the South
14 Carolina Bar Association?

15 A Yes.

16 Q Is that correct? What -- what award were you
17 honored with?

18 A Well, my practice was probate and estate planning
19 and trusts.

20 Q Yes, sir.

21 A And this was an award for lawyers who practice in
22 that field.

23 Q And that award had a special meaning for you
24 because it was somebody you'd worked with?

25 A Well, it was the Robert P. Wilkins award and he was

Albert Moses - Direct Examination by Mr. Murdaugh

1 my partner for more than a decade and a lifelong friend and
2 mentor.

3 Q Well, congratulations on that honor.

4 A Thank you.

5 Q Do you know Maurice Dawkins?

6 A I'm sorry?

7 Q Do you know Maurice Dawkins?

8 A Yes, I do.

9 Q How did you come to know Maurice Dawkins, sir?

10 A Well, Maurice was a lawn specialist and he did some
11 work with my church. And my wife was so impressed with it,
12 she asked if he could work for us. And so he came and
13 started handling our lawn, I guess, probably about 10 years
14 ago?

15 Q All right, sir. And over the years did you and
16 Maurice build a pretty close relationship?

17 A Yes.

18 Q And in particular did Ms. Moses and Maurice have a
19 close relationship?

20 A I would say yes. Yes.

21 Q Okay. And Ms. Moses's name has come up in this
22 case already several times as doing things with
23 Mr. Dawkins. Unfortunately, the former Ms. Moses is no
24 longer with us?

25 A Yes.

Albert Moses - Direct Examination by Mr. Murdaugh

1 Q Is that correct?

2 A Yes.

3 Q And we're sorry for that. I just wanted to make
4 sure the jury understood that.

5 With that being said, tell me what kind of worker
6 Maurice Dawkins was.

7 A Well, I think first of all, he had some of the best
8 lawn care skills I've ever seen and was really good at
9 that. He was a very hard worker. He would come and work
10 all afternoon and as long as it took he would be there. It
11 would be midsummer and he'd be covered with perspiration,
12 but he didn't quit until he finished.

13 Q Did you know Maurice Dawkins both before the wreck
14 on August 21, 2010 and after the wreck?

15 A Yes.

16 Q And is Maurice's work ethic in the time or the
17 amount of time that he puts in now the same as it was
18 before the wreck?

19 A No, not on a -- certainly not on a daily basis. He
20 can't work as long. And on some occasions, he would have
21 to quit and come back the next day and finish up and on
22 other occasions, he'd have to bring somebody to help him.

23 Q Did Maurice Dawkins do more for you than just
24 landscaping?

25 A Yeah, he did. He did a lot of handyman work. He

Albert Moses - Direct Examination by Mr. Murdaugh

1 used to get up on our roof and clean the gutters and sweep
2 the roof off and some other things like that.

3 Q And prior to this wreck, did you know anybody that
4 was a harder worker than Maurice Dawkins?

5 A No.

6 Q Had you ever seen anybody that was a harder worker
7 than Maurice Dawkins?

8 A No.

9 Q And since this wreck, since he was injured in this
10 wreck in 2010 -- I want to back up to one more thing. Were
11 you seeing Maurice in the years leading up to 2010 and the
12 years since 2010 -- really before 2010, were you seeing him
13 pretty well on a weekly basis?

14 A Yeah.

15 Q Week in and week out, you would see Maurice
16 Dawkins?

17 A He came about every two weeks.

18 Q Okay. And since he was injured in 2010, have you
19 ever seen Maurice, since 2010, be able to work more than a
20 couple of hours at the time?

21 A No.

22 Q When he works for a couple of hours -- did Maurice
23 ever have to take more than one day to do a job before he
24 was injured?

25 A No.

Albert Moses - Direct Examination by Mr. Murdaugh

1 Q Since he's been injured has he had to take -- has
2 he had to come back the next day?

3 A From time to time.

4 Q So in the time that he could be on his feet he
5 wasn't able to complete the job?

6 A No.

7 Q Have you observed him bring people to do the work
8 at your yard?

9 A To help him, yes.

10 Q And there would be periods where he would have to
11 sit down?

12 A I'm sure there were. I was not -- you know, I -- I
13 stay inside in the air-conditioned comfort while Maurice
14 was out there working, so I wasn't watching him the whole
15 time, but...

16 Q Did it ever take Maurice having help prior to his
17 injuries in 2010?

18 A I do not recall any time when that might have
19 happened.

20 Q Okay. And Mr. Moses, Maurice has done things
21 inside your house, you were talking about earlier?

22 A Yeah.

23 Q Have there been occasions where you and Ms. Moses
24 were away that you would entrust him with a key to the
25 house?

Albert Moses - Direct Examination by Mr. Murdaugh

1 A Yes.

2 Q So is it fair to say Maurice is a very trustworthy
3 person?

4 A Absolutely.

5 Q Now, Ms. Moses -- did Miss Moses help Maurice find
6 doctors and took him to doctors?

7 A Oh, she did a lot of transportation for him.

8 Q In fact, did Ms. Moses help Maurice -- Ms. Moses
9 and your daughter, did they help Maurice get to Florida to
10 the doctors?

11 A Yes.

12 Q Did they help him get to other doctors?

13 A I don't remember exactly, but -- but she suggested
14 some to him and he may well have taken those suggestions.

15 Q Okay. And so she would suggest doctors to him to
16 help him?

17 A Yes.

18 Q And why was she doing that? Was Maurice having
19 trouble getting relief over the years for his foot?

20 A Yeah. He was having lots of trouble with it.

21 Q And just so I'm clear and the jury understands,
22 Ms. Moses would help recommend new doctors to him to go
23 check out?

24 A Yes.

25 Q Was Maurice's work hours -- with Maurice not able

Albert Moses - Cross-Examination by Mr. Griffith

1 to work as much after the wreck as before the wreck, did
2 you have personal knowledge of his coming on hard times
3 financially?

4 A Absolutely.

5 Q And as a result of that, did you and Ms. Moses help
6 him financially by loaning him money?

7 A Yes, we did.

8 Q How did Maurice -- what was Maurice's reaction when
9 you did that?

10 A Well, I think he was pretty reluctant to ask for
11 help. But I don't know that he had a lot of choice.

12 Q Would you talk to him on these occasions out in the
13 yard?

14 A We did some talking. He talked more to my wife,
15 Betty, than he did to me. She was a maternal type.

16 Q By chance, did you ever personally observe the
17 swelling on his foot?

18 A Yes, he would show me from time to time.

19 Q And what was your impression? Did you see
20 swelling?

21 A Yes, I did. And it looked pretty painful to me.

22 Q I don't have any further questions. Thank you.

23 **CROSS-EXAMINATION**

24 **BY MR. GRIFFITH:**

25 Q Mr. Moses, I have just a few. It just sounds like

Albert Moses - Redirect Examination by Mr. Murdaugh

1 A He does.

2 Q Okay. And with that, you became such good friends
3 that y'all have loaned Mr. Dawkins money; is that correct?

4 A Yes.

5 Q All right. And did you do this prior to his
6 accident in 2010?

7 A No.

8 Q All right. Well, you talked about maybe there was
9 money problems. You're a lawyer, did you ever go online
10 and look to see if Mr. Dawkins had any evictions prior to
11 2010?

12 A No.

13 Q And that would indicate money problems prior to, if
14 he did have some, correct?

15 A I guess so.

16 Q That's all the questions. Thank you.

17 **REDIRECT EXAMINATION**

18 **BY MR. MURDAUGH:**

19 Q Real quick, Mr. Moses. Is Maurice Dawkins the same
20 man today as he was prior to his injuries in 2010
21 physically?

22 A Physically, no.

23 Q Is he close?

24 A No.

25 Q Okay. Thank you, sir, Mr. Moses?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 MAURICE DAWKINS,
2 having been duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 BY MR. MURDAUGH:

5 Q State your full name for the record, please, sir?

6 A My name is Maurice Dawkins, M-A-U-R-I-C-E,
7 D-A-W-K-I-N-S.

8 Q All right. Mr. Dawkins, I'm going to share with
9 the jury, you and I joke with each other about whose accent
10 is heavier, so, you know, we want to make sure you speak
11 clearly to the jury. And I'll ask the jury if they have
12 any trouble understanding you to let us know here today.
13 Okay?

14 Where do you live Mr. Dawkins?

15 A I live in 235 Gayle Pond Trace, Columbia, South
16 Carolina.

17 Q All right. And where were you born and raised,
18 Mr. Dawkins?

19 A Kingston, Jamaica.

20 Q Kingston, Jamaica?

21 A Yes.

22 Q And for the record, please, what is your date of
23 birth?

24 A 11/17/62.

25 Q In '62. So as we're here today that makes you 55

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 years old?

2 A Not yet. 54.

3 Q 54. So you'll be 55 on your next birthday.

4 Let's talk a little bit about your history, please.

5 Growing up in Jamaica, what kind of schools did you attend?

6 A I attend what you call primary school, then high
7 school then I go into law enforcement.

8 Q Is the school system in Jamaica very similar to the
9 school system, to the public school system here, in the
10 United States?

11 A Similar..

12 Q Okay. And do you basically have primary school, a
13 middle school, and then a high school, so to speak, even if
14 you don't call it that?

15 A Primary and high.

16 Q Okay. And what are your grades in Jamaica called?

17 A In primary school they are called grades and in
18 high school they're called form.

19 Q Okay. And how many grades are there in primary
20 school?

21 A Nine.

22 Q And how many forms are there in high school?

23 A Six.

24 Q Okay. And so -- but there is no kindergarten, so
25 you start earlier in Jamaica than you start here?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

- 1 A Yes, sir.
- 2 Q And so counting -- primary school, the first part
3 of primary school would be the same as kindergarten here?
- 4 A Yes, sir.
- 5 Q And you go through basically 15 forms, but it's
6 basically the same amount of time as you what you go
7 through in the United States?
- 8 A Yes, sir.
- 9 Q All right, sir. And as you went -- as you got
10 older in high school, what were -- what did you want to do?
11 What were your goals to be professionally?
- 12 A I wanted to be in law enforcement.
- 13 Q And did you reach that goal?
- 14 A Yes, sir.
- 15 Q Tell us what you had to do in Jamaica to become a
16 police officer.
- 17 A You have to go to the academy, train for nine
18 months.
- 19 Q Okay. And at the police academy, tell us what
20 happened. Did you receive various training? I just want
21 the jury to get a basic understanding here. You go through
22 training at the police academy?
- 23 A Yes, sir. Get training in law enforcement, basic
24 law, psychology, sociology, firearm and weapon training,
25 first aid.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q All right. And do you recognize this?

2 A Yes, sir.

3 Q And is that the certificate that you get for
4 becoming certified to be in law enforcement?

5 A Yes, sir.

6 MR. MURDAUGH: I'll mark this as -- we got this
7 premarked -- I'll come up with a number in just a minute,
8 okay?

9 THE COURT REPORTER: Okay.

10 MR. MURDAUGH: We didn't pre-mark that.

11 And, Your Honor, I would ask at this time that his
12 completion certificate be moved into evidence.

13 THE COURT: Without objection, Mr. Griffith?

14 MR. GRIFFITH: No, no objection.

15 (Plaintiff's Exhibit Number 9 was entered into
16 evidence.)

17 BY MR. MURDAUGH:

18 Q How many years did you serve as a police officer in
19 jamb?

20 A Six years and nine months.

21 Q And approximately what age was that?

22 A 17 to 22.

23 Q When was the very first time you ever came to
24 Jamaica -- I mean to the United States -- from Jamaica to
25 the United States?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A 1983.

2 Q And did you like it?

3 A Yes, sir.

4 Q All right. And ultimately did you decide that you

5 wanted your home to be in the United States?

6 A Yes, sir.

7 Q All right. Now, Mr. Dawkins, when did you move to

8 the United States?

9 A 1989.

10 Q And have you completed the requirements that the

11 federal government makes you go through to gain citizenship

12 as a United States citizen?

13 A Yes, sir.

14 Q And as we sit here today, are you a citizen of the

15 United States?

16 A Yes, sir.

17 Q All right. And are you bound by the same laws,

18 same requirements, same payment testimony as every other

19 system in the United States?

20 A Yes, sir.

21 Q So your citizenship is no different from mine?

22 A No, sir. Except I can't be president.

23 Q Okay. What did you do when you first came to --

24 where did you go when you first came to the United States?

25 A New Jersey.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q And let's back up a minute. When you resigned as a
2 police officer in Jamaica, what did you do -- did you do
3 other jobs in Jamaica or did you come straight to the
4 States?

5 A I did other jobs in Jamaica. I was a -- I was a
6 businessman, owned a transportation business.

7 Q So you opened your own business in Jamaica?

8 A Yes, sir.

9 Q Doing what.

10 A Transportation.

11 Q Driving people around Jamaica?

12 A Yes, sir.

13 Q And when you came to America in 1989, what was your
14 job?

15 A I was in assistant law enforcement here.

16 Q What else -- what else did you -- what was your
17 primary job?

18 A I was a store manager.

19 Q All right. And did you go into driving here some
20 to, as well?

21 A Limousine.

22 Q And who did you drive for in Boston?

23 A Boston Coach.

24 Q Okay. And now, when did you move to South
25 Carolina, Mr. Dawkins?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A I think it's 2003.

2 Q And what did you do when you came to South
3 Carolina?

4 A Landscaping.

5 Q Did you open your own business right away?

6 A My own business, yes, sir.

7 Q Did you own -- did you start your own business
8 right then or did you work for somebody else in
9 landscaping?

10 A I started my own business.

11 Q And over the years, did your -- did you do other
12 things in addition to just landscaping, handyman?

13 A I do all these things.

14 Q And I got ahead of myself a minute ago and skipped
15 ahead. You worked in limo stuff. When you were in Jamaica
16 did you build relationships with federal agencies in law
17 enforcement?

18 A Yes, sir.

19 Q All right. And they were doing drug work in
20 Jamaica?

21 A Yes, sir.

22 Q When you came to the United States, did you reach
23 out to some of the contacts you made?

24 A Yes, sir.

25 Q Did you do some part-time law enforcement work

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 while you were engaged in other jobs?

2 A Yes, sir.

3 Q And where did you do that?

4 A Boston, Massachusetts.

5 Q And what kind of work did you do for the law
6 enforcement here?

7 A Undercover.

8 Q Just a little more detail. Go in undercover and do
9 what?

10 A Undercover for -- to infiltrate gangs and drug
11 dealers.

12 Q And did you make cases with the federal government?

13 A Yes, sir.

14 Q Maurice, is that law enforcement in your blood? Do
15 you love doing it?

16 A Yes, sir.

17 Q All right. Eventually, you retired from that.
18 You're not in law enforcement anymore?

19 A No, sir.

20 Q Okay. All you do is your landscaping business?

21 A Yes, sir.

22 Q Okay. I want to talk a little bit about -- do you
23 have children?

24 A Yes, sir.

25 Q All right. Tell the jury about your children?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

- 1 A I got six children; five girls, one boy.
- 2 Q Okay.
- 3 A I lost two girls.
- 4 Q Yes, sir. And I'm sorry about that. I know it's
- 5 hard, but I want the jury to understand your history. So
- 6 you had six children total, Mr. Dawkins?
- 7 A Yes.
- 8 Q And how many children are alive?
- 9 A Four.
- 10 Q All right, sir. And tell us the children that are
- 11 still with us.
- 12 A Kiesha, lives in Florida; Maurice is living in New
- 13 York; and Kadeem, living in New York; and Kershawn, living
- 14 in Jamaica.
- 15 Q Okay. All right. And Mr. Dawkins, are you
- 16 currently married?
- 17 A No, sir.
- 18 Q Okay. Have you been married?
- 19 A Yes, sir.
- 20 Q And how many times have you been married?
- 21 A Three times.
- 22 Q All right. And you've been divorced three times?
- 23 A Yes, sir.
- 24 Q All right, sir. And not currently married?
- 25 A No, sir.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q All right, sir. And Mr. Dawkins, just so the jury
2 understands a little bit about it, how did you, you know,
3 real briefly, how did you lose your first daughter?

4 A She was killed by a jealous -- her mother's
5 boyfriend for jealousy.

6 Q All right. And where did this take place?

7 A California.

8 Q In Los Angeles?

9 A Los Angeles, yes, sir.

10 Q And she was out there with her mother?

11 A Mother, yes, sir.

12 Q And her mother -- did her mother have a boyfriend?

13 A Yes, sir.

14 Q And what did the boyfriend do to your ex -- or to
15 your daughter?

16 A Killed both of them.

17 Q All right, sir. Now, how did you lose your --

18 MR. GRIFFITH: I just think we're getting a little
19 far off the issues here, but --

20 THE COURT: All right. Move through it quickly.

21 MR. MURDAUGH: I am, I just want the jury to
22 understand his history.

23 BY MR. MURDAUGH:

24 Q How did you lose your other daughter?

25 A She died of an aneurism.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q And where was that?

2 A Jamaica.

3 Q And what year was that?

4 A 2009.

5 Q The first one was in --

6 A That's 2007. The second one was in 2009.

7 Q When you had to go to -- all right. Let's see
8 here.

9 All right, Maurice. Let's move forward -- let's
10 move forward to this case. Tell us about the work,
11 landscaping work. Do you enjoy that kind of work?

12 A Yes, sir.

13 Q What's pleasurable about it?

14 A I love when after I finish my customers feel happy?

15 Q And do you get to see the improvement you make
16 immediately when you're doing landscaping?

17 A Yes, sir.

18 Q Is that gratifying?

19 A Yes, sir.

20 Q Okay. Typically prior to being injured in 2010,
21 tell us about your workday as when you would start,
22 basically, and when you would finish.

23 A Most days I'd start about 7:30, 8 o'clock.

24 Q And --

25 A And I finish about nine in the night.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Okay. And that would be in the summer months?

2 A Yes, sir.

3 Q So in the winter months?

4 A Winter months normally between 8 and 6.

5 Q So you basically work from early in the morning
6 until when it gets dark?

7 A Yes, sir.

8 Q Maurice, do you do a lot of work landscaping and
9 handyman work where you don't charge?

10 A Yes, sir.

11 Q And what do you do that for?

12 A Mostly churches, my church.

13 Q Do a lot of work with your church?

14 A Yes, sir.

15 Q Prior to being injured?

16 A Yes, sir.

17 Q And now, on August the 21st, 2010, where were you
18 headed?

19 A I was heading to Miami, Florida.

20 Q For what?

21 A I was going to help a friend and her husband.

22 Q When you say help them, you mean do some work for
23 them?

24 A Yeah, I was going to do some landscape work and fix
25 their car.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Okay. And what time did you decide to head down
2 there, approximately?

3 A Somewhere -- somewhere about 2 o'clock I left my
4 house in Columbia.

5 Q So early morning -- why were you traveling at that
6 time of night?

7 A Trying to beat traffic before I get there early.

8 Q Not a lot of traffic on the roadway that time of
9 night?

10 A No, sir.

11 Q And tell us what the weather conditions were like?

12 A When I left Columbia, it was dry. When I reached
13 down on 26, it started raining. A lot of rain.

14 Q Okay. And what route did you take? I-26 to 95?

15 A 26 to 95.

16 Q And when -- did -- at some point in time did you
17 observe the Budget truck driven by Jim Sell?

18 A Yes, sir.

19 Q Tell us what it was doing?

20 A I was behind it and it was driving and suddenly I
21 see swerve, swerve back and then flip over.

22 Q And was it raining then?

23 A Yes, sir.

24 Q What did you do?

25 A I slowed down and then I went around the front of

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 it and go down on the left side of the road in the soft
2 shoulder in the grass and park; put on my hazard lights.
3 And I ran back up there.

4 Q Having previously been in law enforcement, are you
5 aware of how dangerous I-95 is?

6 A Yes, sir.

7 Q And so why did you choose to stop?

8 A Make sure somebody's okay. I was trying to help
9 somebody.

10 Q Did it look like a bad wreck to you?

11 A Yes, sir.

12 Q And what did you do?

13 A I ran up there, saw Mr. Sell standing.

14 Q Were you the first person there?

15 A No, sir. I don't think I was the first.

16 Q Who else was there?

17 A I know there was a lady standing beside me and then
18 there was another lady in her car..

19 Q All right. Now, you drove past the truck?

20 A Yes, sir.

21 Q Was it --

22 A On the right side.

23 Q Was the Budget truck blocking both regular travel
24 lanes of I-95?

25 A Yes, sir.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Was it blocking the emergency lane?

2 A No, sir.

3 Q So the emergency lane was still --

4 A Was clear.

5 Q So that would be as you're traveling southbound,
6 the emergency lane would be on the right?

7 A Yes, that's --

8 MR. MURDAUGH: Let's bring up a scene picture just
9 so we know what all what we're talking about. 2 -- just
10 plain on 2.1, I think.

11 BY MR. MURDAUGH:

12 Q You recognize this picture, Mr. Dawkins?

13 A Yes, sir.

14 Q Does this appear to be the interstate, the area
15 where -- what the interstate looked like where the wreck
16 occurred?

17 A Yes, sir.

18 Q Now, just to make clear, was it daytime or
19 nighttime when this occurred?

20 A Nighttime.

21 Q All right. And as we've discussed, the box -- the
22 Budget truck was blocking both of the paved, the gray
23 lanes?

24 A Yes, sir.

25 Q If you were coming, approaching the Budget truck,

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 would you -- with it turned on its side, would you be
2 looking at the undercarriage or would you be looking at the
3 top of it?

4 A I'd be looking at the top of it.

5 Q The way you were coming back to it?

6 A Yes, sir.

7 Q So you drove past it and walked back. So you were
8 headed north?

9 A Yes, sir.

10 Q All right. And going north, you came to the top of
11 the truck first?

12 A Yes, sir.

13 MR. GRIFFITH: Your Honor, if he can just let
14 Mr. Dawkins testify instead of leading him.

15 THE COURT: All right. Don't lead.

16 BY MR. MURDAUGH:

17 Q Which way -- what would traffic traveling south
18 observe if they pulled up on the truck?

19 A The traffic was going south --

20 Q Right.

21 A They would have seen the bottom of the truck.

22 Q Okay.

23 A If you're coming from the -- from south to north,
24 you'd see the top of the truck.

25 Q And which way was the cab?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A The cab was closer to the wire rails that are in
2 the center of the road and the front of the truck was to
3 the right.

4 Q Okay. So -- was the back end closer to the --

5 A To the wires.

6 Q The cable barriers in the median?

7 A Yes, sir.

8 Q And the cab was the other way?

9 A Yeah, I call it -- cab, the body. I mean the front
10 of the truck or what you call a cab was to the front -- to
11 the right. And the body of the truck was to the left.

12 Q To the right for southbound traffic?

13 A Yes.

14 Q So southbound traffic approaching would see the
15 bottom of the truck and the cab is to the right?

16 A Yes, sir.

17 Q Now, did you help Mr. Sell?

18 A Yes, sir.

19 Q Did you talk with Mr. Sell?

20 A Yes, sir.

21 Q And tell us what happened. Tell us -- I mean, tell
22 us what you were talking about, what you observed, and what
23 happened next?

24 A I observed Mr. Sell was in a, like a daze. He was
25 bleeding. So I tried to calm him down. And I -- I was

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 asking the lady, was shouting across the street said she
2 was calling the ambulance so I told him the ambulance would
3 be here. That was the last thing I remember.

4 Q What's the next thing you remember?

5 A I was in the hospital. In the morning.

6 Q All right. And tell us the condition you were in.
7 You remember being in the hospital?

8 A I remember being in the hospital.

9 Q Did you learn later how you got there?

10 A Yes, sir.

11 Q And how was that?

12 A I heard it was an ambulance that took me.

13 Q What hospital did they take you to?

14 A Hampton -- I think it's called Hampton Regional.

15 Q And did they treat you in Hampton?

16 A Yes, sir.

17 Q Okay.

18 MR. MURDAUGH: Bring up 4.1.

19 BY MR. MURDAUGH:

20 Q Do you recognize what's shown in exhibit 4.1, 4.2,
21 and 4.3?

22 A I recognize that was the truck I was driving.

23 Q Did you own it?

24 A Yes, sir.

25 MR. MURDAUGH: Show 4.2 and 4.3 just different

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 angles.

2 THE WITNESS: That's the same vehicle that I was
3 driving.

4 BY MR. MURDAUGH:

5 Q And how did the damage that's shown in these
6 pictures occur?

7 A I understand it was from a truck that hit it.

8 Q Okay. And that truck would be a Pierce National
9 truck driven by Dennis Owens?

10 A That's what I understand, sir.

11 Q Okay. And so was your truck totaled?

12 A Yes, sir.

13 Q And you had -- have you been able to fix this
14 vehicle?

15 A No, sir.

16 Q Did you have equipment in the back of it that you
17 lost as well?

18 A Yes, sir.

19 Q What equipment did you have in the back of it that
20 you lost?

21 A I had some landscaping equipment, air pump and
22 different tools like that that I use.

23 Q We'll come to that in just a minute. Mr. Dawkins,
24 in the hospital, what was -- immediately after the wreck,
25 how did you feel when you were in the hospital?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A I was in a lot of pain and I could hardly move.
2 They had me keep me immobilized in the hospital for a
3 while.

4 Q And where -- how long did you stay in the hospital?

5 A Just a few hours. I'd say for the day. I left
6 there the same day.

7 Q Discharged the same day?

8 A Yes, sir.

9 Q And tell us what your -- was there any treatment
10 done to both of your heels?

11 MR. MURDAUGH: Let's go to 1.1.

12 THE WITNESS: My heels -- both heels and my toe.

13 MR. MURDAUGH: While we're doing this, Your Honor.

14 We would ask to move 4.1, 2, 3 into evidence.

15 THE COURT: Without objection, they're admitted.

16 (Plaintiff's Exhibit Numbers 4.1, 4.2, and 4.3 were
17 entered into evidence.)

18 THE WITNESS: Those are my feet.

19 BY MR. MURDAUGH:

20 Q Maurice, I'm going to hand you a series of
21 pictures?

22 A Yes, sir.

23 Q And I'm going to ask you if you recognize all of
24 these pictures, which are pictures of you in various levels
25 of your treatment?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A Yes, sir.

2 Q Do you recognize all of those?

3 MR. MURDAUGH: Mitch, you got a copy of all of
4 those.

5 MR. GRIFFITH: Yeah, I'm pretty sure I do.

6 MR. MURDAUGH: All right. We'll go through them
7 one by one, but I want to put them in evidence too, then.
8 We would move these.

9 BY MR. MURDAUGH:

10 Q Do these photographs depict that in -- Exhibit 1.1
11 through 1.28 accurately depict you in various levels of
12 your treatment?

13 A Yes.

14 Q All right.

15 MR. MURDAUGH: So we would move those into
16 evidence, Your Honor.

17 MR. GRIFFITH: Could you just show them --
18 (Looking through the photographs.)

19 MR. GRIFFITH: No problem. No objection.

20 MR. MURDAUGH: There's 4.1, 4.2, and 4.3. Didn't
21 we move these in? 4.1, 4.2 and 4.3, Madam Court Reporter?

22 THE COURT: No.

23 MR. MURDAUGH: Well then we move them in at this
24 time. And 1.1 through 1.28. Okay.

25 (Plaintiff's Exhibit Numbers 1.1 through 1.28 were

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 entered into evidence.)

2 BY MR. MURDAUGH:

3 Q All right. Now, Mr. Dawkins, I'm going to point
4 you to 1 --

5 THE COURT: Hold on hold on. Did you have any
6 objection to the ones he -- that he hadn't already
7 admitted? I think it was only one.

8 MR. MURDAUGH: It's three.

9 MR. GRIFFITH: No objection.

10 THE COURT: All right. They're all admitted.

11 MR. MURDAUGH: All right. 1.16, please.

12 BY MR. MURDAUGH:

13 Q All right. Mr. Dawkins, is -- what is this a
14 picture of?

15 A That's --

16 Q I'm going to show you where you can see without
17 having to --

18 A Yeah, I was at the hospital.

19 Q And this was right after the wreck?

20 A Yes, sir.

21 Q Both feet --

22 A Yes, sir.

23 Q Are both feet wrapped up?

24 A Yes, sir.

25 Q Or both heels?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

- 1 A Yes, sir.
- 2 Q Okay. How did you get home that the day? Were you
3 able to drive?
- 4 A No, sir.
- 5 Q How did you get home?
- 6 A A friend of mine named Dwight Hylton picked me up.
- 7 Q Where's he from?
- 8 A Columbia, South Carolina.
- 9 Q And where did he take you?
- 10 A Repeat that, sir?
- 11 Q Where did he take you?
- 12 A He took me to my house where I was living at the
13 time 935 -- I don't remember the name of the street.
- 14 Q All right. So that was on a Saturday afternoon you
15 got out of the hospital?
- 16 A Yes, sir.
- 17 Q How were you doing?
- 18 A I was very, very pain -- having pain up all over.
- 19 Q Basically all over you were hurting?
- 20 A Yes, sir.
- 21 Q Where else other than your feet were you hurting?
- 22 A My back, my head, my shoulder.
- 23 Q Okay. Just so the jury understands, over time and
24 not talking about your feet, over time, did the other
25 injuries resolve themselves?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A Yes, sir.

2 Q Okay. And so basically other than your feet, after
3 a period of time, those injuries were gone?

4 A Yes, sir.

5 Q When you got home on Saturday when was your next
6 treatment?

7 A It was a Monday. I took sick.

8 Q All right. And who did you go see at that point?

9 A I think it was Dr. Patel I went to see.

10 Q And why did you go see Dr. Patel on Monday after
11 you'd just gotten out of the hospital on Saturday?

12 A Because I was bleeding and I knew him so I went to
13 him. He was a client of mine.

14 Q So you did work for him?

15 A Yes, sir.

16 Q Okay. Were you able to get in with him right
17 away --

18 A Yes, sir.

19 Q -- at that point in time?

20 A Yes, sir.

21 Q Okay. And which foot was it that was bleeding?

22 A My left foot.

23 Q All right. And just so the jury understands what
24 had been done -- did you have lacerations to both feet?

25 A Yes, sir. There was a hole in the left foot.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q All right. And we'll show a picture of that.
2 MR. MURDAUGH: 1.22, 1.19.
3 BY MR. MURDAUGH:
4 Q Now, Mr. Dawkins, do you recognize what's shown in
5 1.19?
6 A Yes, sir.
7 Q And what is that?
8 A That's one of the wounds that I had on my left
9 feet.
10 Q All right. Now, was there any cuts or lacerations
11 or holes or anything on your foot prior to August?
12 A No, sir.
13 Q The 21st, 2010?
14 A No, sir.
15 Q Okay. And this is your left foot?
16 A Yes, sir.
17 Q And how long -- tell us what -- did -- at the
18 beginning was your left foot more of a problem than your
19 right foot?
20 A It was more of the problem, yes, sir, because it
21 was bleeding. I was bleeding and pain.
22 Q Were they both hurting?
23 A Yes, sir.
24 Q So you went to Dr. Patel on Monday. What did he
25 do?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A He redressed the foot and all that and give me some
2 new antibiotics.

3 Q All right. So on Monday, he gave you new
4 antibiotics. Did you have to get additional treatment on
5 Tuesday?

6 A Yes, sir.

7 Q Who did you call?

8 A I called EMS.

9 Q Why did you call EMS?

10 A I was in so much pain and my foot was bleeding,
11 like nonstop.

12 Q And was there other drainage coming from your foot
13 on that Tuesday?

14 A Yes, sir, it was just looking terrible.

15 Q And did you -- where did EMS take you?

16 A Richland.

17 Q And did they --

18 A I believe it's Richland Palmetto is what they call
19 it.

20 Q Palmetto Richland.

21 A Yes.

22 Q Did Palmetto Richland treat you?

23 A Yes, sir.

24 Q After that, did you have to get additional
25 treatment to your left foot?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A Yes, sir. It was not healing properly. So I went
2 back to Dr. Patel again.

3 Q Did you have any skin breaking down -- ultimately
4 over the next couple of weeks, did the skin around the sore
5 -- the injury on your left foot break down?

6 A It was breaking down, like what you see there, sir.
7 That's when I went to the -- the last I went to Dr. Patel.

8 Q And did you learn that the foot had become
9 infected?

10 A Yes, sir.

11 Q Okay. What other treatment did you get?

12 A I went -- that's when I went to -- Dr. Patel
13 recommended I go the Dr. Davis.

14 Q Okay.

15 A And Dr. Davis do a --

16 Q What kind of doctor is Dr. Davis?

17 A He's a wound doctor.

18 Q A wound doctor?

19 A Yes.

20 Q And where is he?

21 A Providence.

22 Q Okay. And what did Dr. Davis do for you?

23 A He did -- sort of clean up that wound.

24 Q Did you have to impression that Dr. Davis could
25 help you with that wound?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

- 1 A Yeah, based on what Dr. Patel told me.
- 2 Q And did he help you?
- 3 A Yes, sir.
- 4 Q All right. And after you had that wound excised
- 5 and cleaned, did it begin to heal?
- 6 A Yes, sir.
- 7 Q What was it like getting it excised and cleaned and
- 8 debrided?
- 9 A It was painful, but it was worth it.
- 10 Q Worth it. Okay.
- 11 Now, as the left foot healed, then the --
- 12 A The right started worse.
- 13 Q I'm sorry, it started --
- 14 A The right started getting worse.
- 15 Q Okay. And who did you -- was Dr. Patel treating
- 16 you for your right ankle?
- 17 A Yes, sir.
- 18 Q Your right foot?
- 19 A Yes, sir.
- 20 Q Were you getting better?
- 21 A No, sir. It was getting worse.
- 22 Q Did Dr. -- at that point in time, I can't remember,
- 23 did -- over the course of years, you've had a lot of
- 24 therapy?
- 25 A I had a lot of therapy.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Did Dr. Patel send you for therapy eventually?

2 A Yes, sir.

3 Q Okay. And did you do the therapy?

4 A Yes, sir.

5 Q And were you compliant with the therapy?

6 A Yes, sir.

7 Q Did you do exactly what they said?

8 A Yes, sir.

9 Q Did you work hard?

10 A Yes, sir.

11 Q All right. Over time were you able to tolerate the
12 therapy on your right foot?

13 A No, sir.

14 Q What would happen when you would be on your right
15 foot for periods of times and exertion?

16 A I been on my right foot and it just go black and
17 blue on me. Just swell and then it turned a lot all the
18 time, but the swelling is always up and down. If I raise
19 it, it stay, stay with it for a little bit, it go down and
20 come back again.

21 Q Now, when the right foot wasn't getting any better,
22 did you go to Ms. Moses for a reference or a referral?

23 A Well, I didn't go to her because we always talk and
24 she said -- she recommended I go to -- she recommended I
25 went -- go to -- over to Moore Clinic, Dr. Smith.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Fair to say you and Ms. Moses were really close
2 friends?

3 A Yes, sir.

4 Q Fair to say that, obviously, she --

5 A She did everything for me.

6 Q She would help you?

7 A Yes, sir.

8 Q And I'm sure you miss her?

9 A Yes, sir.

10 Q At Ms. Moses's recommendation, did you get a -- did
11 you go to another doctor?

12 A Yes, sir.

13 Q And who was that?

14 A Dr. Smith, I think it was.

15 Q And where was he?

16 A He was at Moore Clinic.

17 Q And what was the purpose in going to another doctor
18 at that point?

19 A Because I wasn't getting -- I wasn't healing. I
20 was pain -- I was in so much pain and swelling. I just
21 couldn't walk.

22 Q Now, what about Dr. Patel? You had known Dr. Patel
23 before he treated you?

24 A Yes. But Dr. Patel, he's -- he's -- they want --
25 everybody want money up front, right away and things like

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 that. And I didn't have it at the time.

2 Q Well, obviously --

3 A And he wasn't giving me what I feel that was right.

4 Q And you're talking about down the road a little
5 bit?

6 A Yes, sir.

7 Q Obviously, you went to Patel at the beginning so
8 you were able to pay him at the beginning?

9 A Yes, sir.

10 Q Now, after -- what did Dr. Smith do? More of the
11 same?

12 A More of the same, sir. And I went to Moore Clinic.
13 I was doing therapy at the Moore Clinic just across from
14 Dr. Smith's office.

15 Q And did -- did you feel like Dr. Smith really took
16 time and was interested in getting you better and?

17 A No, sir, there wasn't -- they wasn't explaining
18 anything to me. I was getting frustrated.

19 Q Okay. So --

20 A So I -- I don't remember who recommended Dr.
21 McCain, so I went to Dr. McCain.

22 Q Okay. Tell us about Dr. McCain.

23 A Dr. McCain, he tell me and explain some of the
24 things to me and recommended therapy again. And I went and
25 do therapy and over a period of time when I'm doing

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 therapy, the foot is getting worse and worse and worse and
2 I was just getting annoyed.

3 Q Maurice, over time -- so when you saw Dr. McCain,
4 the records indicate that it would have been in February of
5 2011, does that sound right?

6 A About right, sir.

7 Q So --

8 A I was seeing --

9 Q Four or five months after the wreck and you're not
10 getting better?

11 A Right.

12 Q And so was it beginning to frustrate you?

13 A Really frustrating.

14 Q Maurice, was it limiting your ability to work the
15 way you were used to working?

16 A Yes, sir.

17 Q Was it affecting your sleep at night?

18 A Yes, sir.

19 Q Was it -- did it have any affect on your moods and
20 your demeanor?

21 A Yes, sir.

22 Q The way you interacted with people?

23 A Yes, sir.

24 Q And what was it primarily that caused these things?

25 A A lot of -- the pain and the swelling. I couldn't

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 walk. That was my problem. I couldn't just walk.

2 Q All right. And ultimately, how did you end up
3 going to Dr. Harris in Florida?

4 A I was speaking to a friend of mine and she did
5 surgery with Dr. Harris and she recommended that I do the
6 same thing. Go to Dr. Harris and let him look at it.

7 Q Had she had good results with Dr. Harris?

8 A She had good results.

9 Q How did you get to see Dr. Harris?

10 A Ms. Moses drove me there.

11 Q Okay. And so you went down to Dr. Harris and tell
12 us what you went --

13 A When I went down he consulted with me and he looked
14 at it and he go over some things with me and then I went
15 back again the following week. We -- I was staying down
16 there for a few days and he did some -- run some tests and
17 everything. And then I -- he talk about surgery and all
18 that. But I thought about it for a month then I decided to
19 go ahead and let him do it.

20 Q You decided to go do the surgery?

21 A Yes, sir.

22 Q And did you ultimately have the surgery?

23 A Yes, sir.

24 Q Now, Maurice, the records indicate that you had
25 surgery in May of 2011?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A Yes, sir.

2 Q Did you follow up with Dr. Harris?

3 A Yes, sir.

4 Q All right. Were you -- what were your expectations
5 as to having surgery?

6 A I thought I was going to be much better.

7 Q Did you get better after that surgery?

8 A No, sir.

9 Q All right. I'm going to show you Exhibit,
10 Plaintiff's Exhibit 1.3.

11 A Okay.

12 Q And identify this, if you will?

13 A That -- that was the surgery that Dr. Harris did,
14 put staples in my foot.

15 Q All right. And let's go to Exhibit 1.1. Did
16 Dr. Harris put you in a cast?

17 A Yes, sir.

18 Q Is -- what -- is this a picture right after Dr.
19 Harris's surgery?

20 A Yes, sir.

21 Q Dr. Harris put you in that blue cast?

22 A Yes, sir.

23 Q Let's go to 1.2. And there's just more of the
24 same. Were you required to be on crutches, Mr. Dawkins?

25 A Yes, sir.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q And just so we know, this is in a hotel before you
2 came home?

3 A Yes, sir.

4 Q Let's go to 1.3. That's another. Okay.

5 Now, Maurice, were you allowed -- after surgery
6 with Dr. Harris, were you allowed to put weight on your
7 foot for a period of time?

8 A No, sir.

9 Q Any weight whatsoever?

10 A No, sir.

11 Q Were you compliant and did you listen to Dr.
12 Harris's rules?

13 A Yes, sir.

14 Q And what did Dr. Harris do for you next? Did he
15 order therapy?

16 A Yes, sir.

17 Q Did you --

18 A Sent me to progressive therapy in Columbia.

19 Q And did you do -- did you do that there?

20 A All the therapy they give me, sir.

21 Q Were you compliant?

22 A Yes, sir.

23 Q Did you do everything they asked you to do?

24 A Yes, sir.

25 Q Could you tolerate the therapy?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A I tolerated, but a lot of pain and swelling.

2 Q Maurice, what would happen every time you would do
3 exertion or therapy?

4 A Just pain and swelling. I couldn't hardly walk.

5 Q Pain and swelling.

6 A Yes.

7 Q And what would you do to relieve the swelling?

8 A I took some -- they give me pain medicines and I
9 didn't want to get addicted to it, so I took as much as I
10 could.

11 Q Maurice, do you drink alcohol?

12 A No, sir.

13 Q Do you smoke?

14 A No, sir.

15 Q Have you ever drank alcohol in your life?

16 A Yes, sir, prior -- 20 years.

17 Q In recent years, have you drank alcohol?

18 A No, sir.

19 Q Have you smoked in recent years?

20 A No, sir.

21 Q Do you like taking pain medicine?

22 A No, sir.

23 Q Okay. Was pain medicine to relieve the pain a
24 suitable -- a suitable treatment for you?

25 A Not to me, sir.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Okay. After Dr. Harris's surgery, did you improve
2 after the therapy?

3 A No, sir. It seems like it was getting worse.

4 Q And what did you do then, Maurice? Did you go back
5 to him?

6 A I went back to him and he started getting -- wanted
7 more money, more money, and I just didn't have it to give
8 to him, so I --

9 Q Did you understand why he wanted money?

10 A Yeah. He just want paid. He want to live. So I
11 told him I didn't have it at the time.

12 Q And -- any way, Maurice, ultimately could Dr.
13 Harris continue to treat you?

14 A He treat me a little bit after that and then he
15 just stopped. Telling me plain he has to get some money.

16 Q And the amount he wanted you to pay, were you able
17 to pay?

18 A No, sir.

19 Q All right. And then, Maurice, over the next -- so
20 getting into the months and years that follow your
21 finishing with Dr. Harris, who was the next doctor that you
22 saw?

23 A I went to Dr. Ray.

24 Q How many times did you see Dr. Ray?

25 A Once.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Did Dr. Ray help?

2 A No, no, not at all.

3 Q Who did you see next?

4 A You. I came down to you frustrated one day. Mad.
5 Said I need to see a doctor. I'm in too much pain. I
6 can't walk. I need to do something, can you recommend
7 somebody that I can see. And that's when you recommended
8 Dr. Stoddard.

9 Q And did it take us some time to get that arranged?

10 A Yes, sir.

11 Q And when you first met Dr. Stoddard, did he examine
12 you?

13 A Yes, sir.

14 Q Was his examination different than the other
15 doctors examinations were?

16 A Yes, sir. He was -- he was more attentive to me.
17 He explained things to me; showed me different things that
18 I had never seen before. He was the one showing me the
19 difference and compassion.

20 Q Did he talk to you and communicate with you in a
21 different manner than the other doctors had?

22 A Yes, sir.

23 Q And explain to us what you mean by that?

24 A He was more like, compassionate to me more than
25 anything else. Explained things to me that I can

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 understand the advantages and disadvantages of everything.

2 So I was very learning things at the time he was telling
3 me.

4 Q Was he the first doctor that really you felt like
5 took that time with you?

6 A Yes, sir.

7 Q And based on your meeting with Dr. Stoddard, were
8 you optimistic?

9 A I was, but I was still thinking about such -- I had
10 to think about it first before I make the decision.

11 Q And what options did Dr. Stoddard give you?

12 A He -- the options he give me was either come do
13 therapy and live with it or could try surgery and see what
14 can be done, see if it would work. And as anything you do,
15 you just try.

16 Q And did you have that surgery?

17 A Yes, sir.

18 Q And as a result of that surgery, were you in a
19 cast?

20 A Yes, sir.

21 Q And were you allowed to be weightbearing for a
22 period?

23 A I wasn't supposed to be on my foot for a period.

24 Q Go to 1.4.

25 What is this a picture of, Maurice?

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 A That's after Dr. Stoddard removed my cast from my
2 right foot.

3 Q 1.6, 1.7, 1.8. So is this the first time your leg
4 had been in the open after -- just when the stitches came
5 out or not?

6 A Yes, sir, after the stitches came out originally.

7 Q Okay. And so you didn't get a cast put back on
8 you?

9 A No, sir.

10 Q Maurice, is the size of your foot there -- I mean
11 -- show 1.6. Is that the normal -- is that what your foot
12 looked like before you were injured in 2010?

13 A No, sir.

14 Q Maurice, did you get relief from Dr. Stoddard's
15 surgery?

16 A Just minor relief. It's like deteriorating worse
17 now.

18 Q Did that relief last?

19 A No, sir.

20 Q And as we're here today, do you have any relief
21 now, today, as compared with before the surgery?

22 A No, sir, deterioration.

23 Q Maurice, did your -- do you have any issues with
24 swelling in your leg?

25 A No, sir, different from what I had.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 working before being injured -- I want the jury to
2 understand exactly where we are on this. You contend that
3 you lost wages as a result of your injury in 2010; is that
4 correct?

5 A Yes, sir.

6 Q Do you know how much --

7 MR. GRIFFITH: Judge --

8 THE COURT: Hold on.

9 MR. MURDAUGH: Wages you lost?

10 MR. GRIFFITH: If he could just let Mr. Dawkins
11 testify again. He's starting to lead him through this and
12 I've let it go on and on, but --

13 THE COURT: All right. Rephrase your question.

14 BY MR. MURDAUGH:

15 Q Do you -- I'll start over from the beginning.

16 Maurice, do you know -- do you believe that you
17 suffered lost wages as a result of your injury in 2010?

18 A Yes, sir.

19 Q Do you know exactly what those lost wages are?

20 A No, sir.

21 Q All right. And do you defer to the jury to
22 determine that issue?

23 A Yes, sir.

24 Q Whatever is fair. Do you -- do you have the
25 financial stability now that you had prior to August 21st

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 2010?

2 A No, sir.

3 Q Okay. Now, Maurice, there were, in addition to you
4 and the Sparkmans, there were two vehicles involved in the
5 wreck August 21st, 2010?

6 A Yes, sir.

7 Q All right. As we sit here today, do you contend
8 that the only person at fault in this wreck is Mr. Sell?

9 A No, sir.

10 Q All right. Do you believe that the other tractor
11 trailer was at fault as well?

12 A Yes, sir.

13 Q You believe they're both at fault?

14 A Yes, sir.

15 Q Did you ever have -- tell us what you had -- you
16 said in your deposition, and you pointed to your feet and
17 said you had some things going on prior to the wreck in
18 2010?

19 A Yes, sir.

20 Q What exactly did you have in your right leg prior
21 to 2000 -- prior to the injuries in August 21st, 2010?

22 A Just my calf, I had the varicose vein.

23 Q Okay. And, Maurice, did you have that
24 discoloration beforehand?

25 A No, sir.

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Before being injured August 21st, 2010, is there a
2 picture of you anywhere or did you ever have that
3 discoloration like you do now?

4 A No, sir, no, sir.

5 MR. MURDAUGH: And I want to -- if everybody saw
6 his foot, then I won't do it.

7 MR. GRIFFITH: Judge, maybe we couldn't have
8 conversation with the jury I don't think that's proper.

9 THE COURT: That's true. Just put up a picture if
10 you want to show them a picture.

11 MR. MURDAUGH: I guess we'll just take the time and
12 let Mr. Dawkins come down here and do it. I was just
13 trying to save time, Judge.

14 MR. GRIFFITH: Judge --

15 MR. MURDAUGH: Come on Mr. Dawkins.

16 MR. GRIFFITH: -- we're here to find fairness but
17 him making comments on me making an objection --

18 THE COURT: I understand.

19 MR. GRIFFITH: -- is improper and I think maybe he
20 ought to be advised of that.

21 THE COURT: Well, you can't just ask the jury if
22 they've seen something.

23 MR. MURDAUGH: Absolutely, Judge. I apologize to
24 you and to the jury.

25 BY MR. MURDAUGH:

Maurice Dawkins - Direct Examination by Mr. Murdaugh

1 Q Come on, Maurice take your foot out of your right
2 shoe.

3 (Showing the jury Mr. Dawkins's foot?)

4 BY MR. MURDAUGH:

5 Q Maurice, did you have any of those issues before
6 being injured August 21st, 2010?

7 A No, sir.

8 Q All right. And this way. How about all of that?

9 A No, sir.

10 Q All right. You got a varicose vein right there?

11 A Right here.

12 Q And that's it?

13 A Yes.

14 Q Did it cause you any problems?

15 A No, sir.

16 Q Okay. You can put you're shoe back on. Sit right
17 here and do it if you need to.

18 Are you in pain right now, Mr. Dawkins?

19 A Yes, sir.

20 Q Prior to August the 21st, 2010, did it hurt to sit
21 somewhere?

22 A No, sir.

23 Q Did you observe Mr. Sell put out any cones or
24 reflective devices prior to everything happening?

25 A No, sir.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 can plan to agree on that.

2 MR. GRIFFITH: On what?

3 MR. MURDAUGH: That we'll use these first three
4 pages.

5 MR. GRIFFITH: That's fine. I can see the first
6 three pages, it was the others I had not seen before.
7 We're fine.

8 (Plaintiff's Exhibit Number 7 was entered into
9 evidence.)

10 THE COURT: That it?

11 MR. GRIFFITH: Yes, sir.

12 THE COURT: See you in the morning.

13 (Court was in recess for the day.)

14 **WEDNESDAY, OCTOBER 11, 2017**

15 THE COURT: Okay. Folks welcome back. We're going
16 the resume this morning with cross-examination of
17 Mr. Dawkins.

18 Mr. Dawkins, if you would come on back up to the
19 witness stand. And I'll just remind you, you're still
20 under oath.

21 All right. Mr. Griffith, whenever you're ready.

22 MR. GRIFFITH: Thank you, Your Honor. May it
23 please the Court.

24 **CROSS-EXAMINATION**

25 BY MR. GRIFFITH:

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q Mr. Dawkins, let's just start, yesterday, you told
2 the jury that you believed that Mr. Sell and Mr. Owens were
3 at fault in this accident; is that correct?

4 A That's my belief, yes, sir.

5 Q And do you remember giving sworn testimony in your
6 deposition?

7 A Yes, sir.

8 Q All right. And do you remember that you were asked
9 the question, do you know why you sued Mr. Sell? Do you
10 remember what your answer was?

11 A I don't recall, sir.

12 Q Okay.

13 MR. GRIFFITH: Judge, I think they have the
14 original transcript.

15 THE COURT: Okay.

16 MR. MURDAUGH: What page are you reading on,
17 Mr. Griffith?

18 MR. GRIFFITH: I'm going to go to page 55.

19 BY MR. GRIFFITH:

20 Q My question to you, Mr. Dawkins is, do you remember
21 saying in response to the question, Do you know why you
22 sued Mr. Sell. Your answer was, I don't know.

23 A I said I don't recall.

24 Q Well, your testimony says, I don't know, sir.

25 A I don't recall the answer I gave.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q Okay. Well, let's get your testimony, then.

2 MR. GRIFFITH: May I Your Honor.

3 THE COURT: You may.

4 (The original deposition was open.)

5 BY MR. GRIFFITH:

6 Q All right. Mr. Dawkins, I'm going to flip over to
7 page 55. And do you remember that when we took your
8 deposition you were under oath just like here today in the
9 courtroom?

10 A Yes, sir.

11 Q And you were sworn to tell the truth, correct?

12 A Yes, sir.

13 Q The whole truth and nothing but the truth?

14 A Yes.

15 Q All right. And at line 14 on page 55, the question
16 was asked, Do you know why you sued Mr. Sell.

17 A Yes, sir.

18 Q And your answer was, My lawyers are dealing with my
19 case. I don't know, sir.

20 A Yes, sir.

21 Q And then it was repeated, That's not my question.
22 My question is do you know why you sued Mr. -- and your
23 answer again was?

24 A I don't know.

25 Q Okay. And you were under oath at that time?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A Yes, sir.

2 Q Okay. So at that time, you didn't know why you
3 sued Mr. Sell. You did not know why you sued Mr. Sell,
4 correct?

5 A Because my lawyer was dealing with my case.

6 Q All right. Okay. Now, let's just start off this
7 whole thing. I want to make a few things clear. August
8 21st, 2010, you're driving down I-95 headed for Miami; is
9 that correct?

10 A Yes, sir.

11 Q It's about 3:30, between 3 and 4 -- 3:30 and 4 in
12 the morning, correct?

13 A Yes, sir.

14 Q All right. You see the Budget truck. At the time,
15 you didn't know Mr. Sell driving, but you see this truck
16 driving down the road, correct?

17 A Yes, sir.

18 Q And then I believe your words in your deposition
19 were that it swerved and tipped over?

20 A Yes, sir.

21 Q You were able to come to a stop, correct?

22 A Yes, sir.

23 Q Got around the truck?

24 A Yes, sir.

25 Q And then also you know that another car came around

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 the truck, correct? The Sparkmans and the Starnes?

2 A Well, I saw them park on the side of the road.

3 Q Okay. And thankfully you came out and you went to
4 help Mr. Sell; is that correct?

5 A Yes, sir.

6 Q Okay. And I believe we heard Joshua Sparkman
7 testify yesterday by deposition that he also came out and
8 he got on top of the budget that this truck, the cab and
9 opened up the door, right?

10 A That's what I heard yesterday.

11 Q Okay. And that he helped Mr. Sell's grandson out
12 of the truck?

13 A That's what I heard yesterday.

14 Q And Mr. Sell also got out too, correct?

15 A Yes, he was standing there.

16 Q Excuse me?

17 A Mr. Sell was standing there, sir.

18 Q Okay. And you helped Mr. Sell and you were walking
19 him away back toward your truck; is that correct?

20 A Not back to my truck, but on the grass.

21 Q Up on the -- over toward the median side?

22 A Yes, sir.

23 Q In any event, you were assisting him, correct?

24 A That's correct.

25 Q All right. And at that time you had no injury to

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 yourself; is that correct?

2 A No, I had no injuries.

3 Q All right. And only when the Pierce National truck
4 came down the interstate, slammed into the Budget truck and
5 as the officer said, looked like a bomb exploded, that's
6 when your injuries occurred, correct?

7 A I only assume, that's what I heard.

8 Q Okay. Because I believe you said that what you
9 remembered was waking up the next day or waking up in the
10 hospital, coming to in the hospital I believe, correct?

11 A That's correct.

12 Q But as a result of the accident that you witnessed
13 with Mr. Sell, you were not injured, correct?

14 A No, sir.

15 Q All right. Now, I want to jump just a little bit.
16 Do you remember what happened to the Pierce National truck?
17 Did you ever see it?

18 A No, sir.

19 Q All right. And you never saw the impact that the
20 Pierce National or Mr. Owens had with the Budget truck; is
21 that correct?

22 A No, sir.

23 Q Okay. And you woke up in the Hampton Regional
24 Hospital, correct?

25 A That's correct.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q And that was your first medical treatment as a
2 result of this accident?

3 A Yes, sir.

4 Q All right. We saw some pictures of you. I think
5 that was the picture that you had your neck brace on?

6 A Yes, sir.

7 Q And you had some pictures of your left foot at that
8 time; is that correct?

9 A Both feet.

10 Q Both feet. The left foot, though, had sort of an
11 open wound, correct? That's the one that we kept seeing
12 that had the open wound on the side of it?

13 A Both of them had open wounds.

14 Q Okay. And I believe you testified also earlier in
15 your deposition that you were released from Hampton
16 Regional Medical Center that day, correct?

17 A That's correct.

18 Q You weren't very pleased with their treatment, as I
19 understand, correct? Or you were not satisfied --

20 A Not satisfied.

21 Q Not satisfied with it. Okay. And then you went
22 back to Columbia, a friend came and picked you up and took
23 you back to Columbia, correct?

24 A That's correct.

25 Q And then on that following Monday, you saw a Dr.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Patel, correct?

2 A That's correct.

3 Q Orthopedic surgeon.

4 A Correct.

5 Q You did work for him?

6 A That's correct.

7 Q So he was able to get you in --

8 A That's correct.

9 Q -- pretty quick.

10 Now, when you went to Dr. Patel, we heard Dr.

11 Stoddard talk about giving a history, he asked you what
12 happened, correct?

13 A That's correct.

14 Q And you told him that you parked your truck and
15 somehow or another you were knocked down by somebody in an
16 accident?

17 A That's correct.

18 Q That would have been the Pierce National truck
19 driven by Mr. Owens, correct?

20 A I don't know.

21 Q Well, that's who you sued also, correct? Pierce
22 National?

23 A My lawyer is dealing with it.

24 Q All right. Well, let me ask you, you would agree
25 with me that Pierce National, or Mr. Owens, he was not

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 keeping a proper lookout; is that correct?

2 A Would I agree with you?

3 Q Yes, sir.

4 A Based on what I hear, I would say that.

5 Q Okay. And that he didn't keep his vehicle under
6 control, correct?

7 A Based on what I heard.

8 Q All right. Apparently he didn't use his brakes
9 either, correct?

10 A I don't know, sir, I only can assume.

11 Q All right. But you've made that statement before?

12 A No, sir.

13 Q You made a filing, as I understand it and I want to
14 show you a copy of that.

15 (The witness was handed a document.)

16 BY MR. GRIFFITH:

17 Q These are the things you said or at least you said
18 through your lawyer that Pierce National or Mr. Owens did,
19 he was driving too fast for conditions and I think I've
20 highlighted them there for you. This is what you said
21 Pierce National did wrong.

22 A I said that?

23 Q Yes, sir. Through your lawyer.

24 A No, my lawyer said that.

25 Q Your lawyer speaks for you, you're bound by what

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 your lawyer says.

2 A Well, I do what my lawyer says because they do the
3 investigation.

4 Q Got you. But in any event, it talks here about
5 Mr. Owens didn't keep a proper lookout, correct?

6 A That's correct.

7 Q Didn't keep the vehicle within the right lane of
8 travel, correct?

9 A That's correct.

10 Q Failed to use or apply brakes, correct?

11 A That's correct.

12 Q Didn't stop, slow, or turn his vehicle?

13 A That's -- that's what it says.

14 Q All right. Driving too fast for the conditions
15 that were present?

16 A That's what it says.

17 Q All right. And operating with an utter disregard
18 -- no it doesn't say that. And operating in disregard for
19 the safety of others?

20 A That's what it says.

21 Q All right. And that's what Mr. Owens was doing,
22 wasn't it?

23 A Repeat that?

24 Q Sir?

25 A What did you say?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q That was what Mr. Owens was doing, correct?

2 A That's what your paper says.

3 Q Okay. And that's what you said through your
4 lawyers, correct?

5 A That's what my lawyers said, sir.

6 Q Now, when you first saw Dr. Patel, you gave him a
7 history of your feet swelling. Do you remember telling him
8 that?

9 A I gave him a history of my feet swelling, yes, sir.

10 Q You had had some swelling of your feet in the past,
11 correct?

12 A Since the accident.

13 Q Before the accident?

14 A No, sir.

15 Q Well, did you have a past history of hypertension?

16 A No, sir.

17 Q And you didn't tell Dr. Patel that you had a past
18 history of hypertension --

19 A No, sir.

20 Q -- and mild swelling of the feet?

21 A No, sir.

22 Q You did not mention that to him at all?

23 A No, sir.

24 Q And when we took your deposition, we asked you to
25 show us what was wrong with your foot, didn't we?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A That's correct.

2 Q And you remember telling us that there was some
3 discoloration that was not a result of this accident?

4 A That's what I was talking about varicose veins.

5 Q Varicose -- okay. And that's what you were talking
6 about was your circulation problem?

7 A That's what I was talking about.

8 Q And that was a discoloration at that time, correct?

9 A The vein, sir.

10 Q The veins, okay.

11 And I believe you indicated you -- you didn't call
12 it varicose veins in your deposition, you said you just
13 didn't know what it was, right?

14 A The vein, I pointed on the vein.

15 Q Okay.

16 A I pointed out the vein.

17 Q But you never had it checked before, correct?

18 A No, sir.

19 Q All right. Now, when you went to Palmetto Health,
20 I guess, the next -- that would have been Tuesday you went
21 there, correct?

22 A That's correct.

23 Q And that's the hospital?

24 A Yes, sir.

25 Q EMS came and picked you up because you said you

Maurice Dawkins - Cross-Examination by Mr. Griffith

1. were in so much pain?

2. A Yes, sir.

3. Q And you went there and again, like we said, gave a
4. history. They asked you why you here, right?

5. A Yes, sir.

6. Q And you told them you were helping somebody on the
7. side of the highway when an 18 wheeler lost control, struck
8. your vehicle that ultimately -- striking a vehicle that
9. ultimately struck you?

10. A Yes, sir.

11. Q And that was true, correct?

12. A From what I understand, yes, sir.

13. Q So the 18 wheeler had lost control of his vehicle
14. as you said earlier; is that correct?

15. A That's my understanding, sir.

16. Q All right. You saw Dr. Patel, as I understand it
17. for about five visits, is what I'm looking at, the medical
18. records that they -- that you have put into evidence here.
19. And I counted them up differently, but Dr. Patel was about
20. five visits?

21. A About that, sir.

22. Q He sent you over to a Dr. Davis, correct?

23. A That's correct.

24. Q And Dr. Davis is, I think a plastic surgeon? You
25. said maybe a --

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A A wound doctor.

2 Q -- a wound doctor?

3 A Yes.

4 Q Okay. Dr. Davis cleared up or helped clear up your
5 left foot, correct?

6 A That's correct.

7 Q You're not having any problems with your left foot
8 now, correct?

9 A No, sir.

10 Q All right. What we're really dealing with now
11 after you see Dr. Davis and he helps you is your right
12 foot?

13 A That's correct.

14 Q Now, you went to see, as I saw, Dr. Davis about
15 three visits, correct?

16 A That's correct. About that.

17 Q And then from Dr. Davis, you said you were having
18 trouble with Dr. Patel, I believe, yesterday you testified
19 Dr. Patel was not giving you what you felt was right, I
20 believe is what my notes mention. Does that sound about
21 right?

22 A Well, I was concerned as I wasn't satisfied with
23 the healing process of my foot.

24 Q Okay. So you looked for another doctor?

25 A Yes, sir.

Maurice Dawkins - Cross-Examination by Mr. Griffith

- 1 Q And that would have been Dr. Smith?
- 2 A Dr. Smith, yes, sir.
- 3 Q Bret Smith.
- 4 A Bret Smith, yes, sir.
- 5 Q Right. And he's with the Moore Clinic?
- 6 A Yes, sir.
- 7 Q And he came recommended to you very highly; is that
- 8 correct?
- 9 A He was what, sir?
- 10 Q He came recommended to you highly?
- 11 A Well, he was recommended.
- 12 Q Was this one of the doctors that Ms. Moses set you
- 13 up with?
- 14 A I think that's -- I think that's what Dr. Smith
- 15 was.
- 16 Q Okay. And you said you saw Dr. Smith for about two
- 17 times, I believe, correct?
- 18 A I think it was about two times, yes.
- 19 Q Okay. And as I understand, Dr. Smith also wanted
- 20 you to do some physical therapy and I see some bills in
- 21 here for the --
- 22 A That's correct.
- 23 Q -- physical therapy, right.
- 24 You did that, you followed that physical therapy,
- 25 correct?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A That's correct.

2 Q And then you went back to him and he saw you a
3 second time?

4 A That's correct.

5 Q After that second visit, Dr. Smith, I believe,
6 indicated that it would take a while to heal up that it was
7 bruised badly, correct?

8 A Yes, sir.

9 Q And as a result, you then went, it looks like
10 within about a month, you changed doctors again, correct?

11 A About that.

12 Q And that's when you went to see Dr. McCain?

13 A That's correct.

14 Q Dr. McCain's, I guess, the third orthopedic surgeon
15 you've seen; is that correct?

16 A That's correct.

17 Q Dr. Patel, Smith, McCain?

18 A Yes, sir, that's correct.

19 Q And Dr. Davis, the wound doctor?

20 A Yes, sir.

21 Q And when you went to Dr. McCain, of course, just
22 like all the other doctors, he asked what happened,
23 correct?

24 A That's correct.

25 Q And again, you told him you had foot pain that

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 occurred in Hampton County when you were hit by a tractor
2 trailer truck, with lacerations to both heels, correct?

3 A That's correct.

4 Q So you told him it was the tractor trailer truck,
5 correct?

6 A That's correct.

7 Q You didn't mention Mr. Sell at that time, correct?

8 A I didn't mention anybody's name.

9 Q Well, you didn't mention the Budget truck, you
10 mentioned the tractor trailer truck?

11 A I said an accident.

12 Q I'm sorry. Did you not say that you were struck by
13 a truck and had pain in your feet?

14 A I used the term truck, yes, sir.

15 Q Okay. And then as I understand it, you saw Dr.
16 McCain, I guess, two times, correct?

17 A About two times, yes, sir.

18 Q All right. And after that you then went down to
19 University of Florida, John Harris on the Eighth Street
20 Foot and Ankle, is that the name of his practice?

21 A That's after he went to -- he was at the University
22 of Florida first.

23 Q Okay. And that's what I -- I can't ever figure
24 that out. It looked like he was at the University of
25 Florida and then -- and then a private practice?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A Right.

2 Q So you started at the University of Florida; is
3 that correct?

4 A That's correct.

5 Q And you went there, looks like, about seven visits,
6 correct?

7 A About that.

8 Q And I believe he is a podiatrist, correct?

9 A That's correct.

10 Q That's a foot doctor?

11 A That's correct.

12 Q And a podiatrist works normally, generally with the
13 foot, feet?

14 A That's correct.

15 Q And so when you went there, he, I believe, did your
16 first surgery on your right foot, correct?

17 A That's correct.

18 Q Now, in those seven visits it looks like that you
19 had the surgery, you went back and you followed up and
20 maybe a total of about nine visits to him, two at his
21 private practice?

22 A Yes, sir.

23 Q All right. And that took you up to about 2012,
24 correct?

25 A That's correct.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q All right. After that period of time, I don't see
2 in the medical bills that you went to a doctor in 2013 at
3 all. Right?

4 A 2013?

5 Q Yes, sir. Your last visit with Dr. Harris looks
6 like it was September of 2012?

7 A And no visit in 2013?

8 Q I don't see anything in here with 2013 and this is
9 your Exhibit Number 7 and I'm just looking at those dates
10 right there. Nothing for the entire year?

11 A It would be because I was trying to heal.

12 Q Okay.

13 A You know.

14 Q Well, isn't that what Dr. Smith wanted you to do so
15 start with, to heal? But you chose to change doctors?

16 A Because I was in so much pain.

17 Q And after that it looks like about no visits in
18 2013. I then went to see Dr. Stoddard; is that correct?

19 A Yes, sir.

20 Q And that was in 2014, correct?

21 A That's correct.

22 Q And you were sent there by Mr. Murdaugh?

23 A Yes, sir.

24 Q You didn't followup with him again for almost an
25 entire year; is that correct?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A With Dr. Stoddard?

2 Q Yes, sir.

3 A No, I did.

4 Q Well, Dr. Stoddard testified that you saw him first
5 on January 13th of 2014, a visit that Mr. Murdaugh sent you
6 over there. And then the next visit he said was January
7 27th, 2015 was the next visit, an entire year later?

8 A No, I think he -- I think that was a mistake he
9 made.

10 Q All right. You think that was a mistake Dr.
11 Stoddard made?

12 A Yeah, it was not a whole year. Because I was on
13 therapy for a while.

14 Q Okay. I'm showing you, Dr. Stoddard was -- at that
15 time he was with Low Country Medical Group, right?

16 A Right, sir.

17 Q It looks like January 13th, 2014 is the first bill
18 when Mr. Murdaugh sent you over there and it was \$963 for
19 that visit, right?

20 A Yes, sir.

21 Q And then the next visit with low country medical
22 group was 1/27/15, a year later when you saw him for a
23 charge of \$138.

24 A No, something wrong with those dates because I -- I
25 can assure you the first time I visited him, I went back

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 shortly after. That's when we started discussing the
2 surgery. There's some discrepancy with the dates.

3 Q Sure.

4 A That's not a fault of mine.

5 Q All right. So if Dr. Stoddard said it was an
6 entire year, which I believe was his testimony, he was
7 mistaken about that?

8 A Was his testimony what?

9 Q Dr. Stoddard testified that it was an entire year
10 between the first and the second visit. He was mistaken,
11 correct?

12 A I don't know who's mistaken, but I don't remember
13 spending a whole year before I see Dr. Stoddard again.

14 Q Okay. But these are your exhibits, your medical
15 bills that you've put in, that's what we've got to go by,
16 right?

17 A Okay. Yes, sir.

18 Q All right. So between the time you last saw Dr.
19 Harris and you saw Dr. Stoddard for any treatment was
20 almost two years, correct?

21 A That's correct.

22 Q And then you had your surgery in 2015, if I'm not
23 mistaken, correct?

24 A That's correct.

25 Q Again, Dr. Stoddard, like the other doctors, took a

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 history from you, correct?

2 A That's correct.

3 Q You told him you were helping a motorist in di
4 stress who's been in an accident when apparently you were
5 struck by a truck?

6 A By a truck, that's correct.

7 Q And the truck you were talking about was Mr. Owens?

8 A No, sir. I said a truck.

9 Q Well, as you said, Mr. Owens struck the truck, the
10 Budget truck that ended up causing the accident that hurt
11 you, correct?

12 A I don't know which one of the trucks, but one of
13 the trucks hit me.

14 Q Well, let's jump back real quick.

15 A Yes, sir.

16 Q When you got Mr. Sell out of the Budget truck, you
17 were not injured at all, correct?

18 A No, sir.

19 Q And you were walking away, helping Mr. Sell?

20 A That's correct.

21 Q As your lawyer said and Mr. Sell appreciates you
22 being a good samaritan and rendering aid to him, correct?

23 A My lawyer said what?

24 Q Your lawyer called it a good samaritan.

25 A I don't know what my lawyer called it, or me.

Maurice Dawkins - Cross-Examination by Mr. Griffith

- 1 Q Called you.
- 2 A Oh, called me.
- 3 Q Yes.
- 4 A A good samaritan --
- 5 Q Good samaritan out of the Bible?
- 6 A Yes, sir.
- 7 Q You were rendering aid. You were helping out
- 8 Mr. Sell?
- 9 A That's correct.
- 10 Q And when you were helping him out you weren't hurt
- 11 at all?
- 12 A No, sir.
- 13 Q Then, as I understand Dr. Stoddard did this surgery
- 14 that he talked about yesterday, correct?
- 15 A That's correct.
- 16 Q Prior to seeing Dr. Stoddard -- or you were
- 17 referred to Dr. Stoddard by your lawyer?
- 18 A Yes, sir.
- 19 Q But before that, I looked at those medical bills
- 20 I've had a chance to look at before. Before that referral
- 21 by your lawyer, you had about \$31,000 in bills?
- 22 A Yes, sir.
- 23 Q And as a result of seeing Dr. Stoddard, that amount
- 24 doubled; is that correct? Let me just show you what I'm
- 25 doing. You show a total down here of \$65,000 in bills?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A That's correct.

2 Q And for the first four years, you had about \$31,000
3 and if we --

4 A That's correct.

5 Q If we total up what Dr. Stoddard did and the
6 physical therapy from his surgery, those bills doubled,
7 they're twice as much now, correct?

8 A You talking about including the physical therapy,
9 right.

10 Q Sure.

11 A Yes, sir.

12 Q Yes, sir.

13 A Yes, sir.

14 Q Everything doubled?

15 A Yes, sir.

16 Q And since that time, you had, I believe Dr.
17 Stoddard said he has not seen you since about 2015,
18 correct?

19 A That's correct.

20 Q All right. And I looked on the bills when they put
21 them in as an exhibit and the bills I'd seen before.
22 You've not had any treatments in about the past two years;
23 is that correct?

24 A That's correct.

25 Q Since 2015?

Maurice Dawkins - Cross-Examination by Mr. Griffith

- 1 A Yes.
- 2 Q Right. Actually June 29th, 2015?
- 3 A Yes, sir.
- 4 Q The last visit with Dr. Stoddard. And so you've
- 5 not had any ongoing treatment for this, correct?
- 6 A No, sir.
- 7 Q All right. Now, I want to talk just very briefly
- 8 about your income also. You talked about your income
- 9 yesterday and you went through and you said, I had some
- 10 losses, correct?
- 11 A I had some losses?
- 12 Q Income.
- 13 A Yes.
- 14 Q Money.
- 15 A Yes, sir.
- 16 Q However, when you were describing that, you went
- 17 through it and we heard about you had some problems, some
- 18 family issues with your daughter a year or two before the
- 19 accident, correct?
- 20 A Yes, sir.
- 21 Q So your income had gone down?
- 22 A Yes, sir.
- 23 Q You were trying to build it back up and then you
- 24 had another issue, I think a family member passed?
- 25 A Yes, sir.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q Income came down and then the accident:

2 A Yes, sir.

3 Q And you said you really couldn't tell how much you
4 lost as a result of this, correct?

5 A That's correct.

6 Q All right. So I believe the question asked of you
7 was, you just want somebody to be fair with you about your
8 loss of income, correct?

9 A Yes, sir.

10 Q All right. But in order to make that calculation,
11 it would just be some guess work on somebody's part,
12 correct? Because you can't even figure out what it is?

13 A Nobody could ever figure out what it is.

14 Q So it's just speculation then to say what is this
15 number?

16 A In depends on your past history of hard work.

17 Q Well, and I looked at those income numbers that
18 were put up there. It looked like the year of the accident
19 in 2010, you made, or at least what I looked at, and I look
20 at the net number because the net number is what you take
21 home, isn't it?

22 A Yes, normally the net number.

23 Q All right. Because you've got a gross number. You
24 got to pay expenses?

25 A Yes, sir.

Maurice Dawkins - Cross-Examination by Mr. Griffith

- 1 Q And then what I take home?
- 2 A Yes, sir.
- 3 Q And they were showing the gross number and the net
- 4 number. In 2007 --
- 5 A Yes, sir.
- 6 Q -- your net number was \$1,282, wasn't it?
- 7 A Yes, sir.
- 8 Q And then in 2008, based on your tax returns -- and
- 9 I believe you said that was the year that you lost a
- 10 daughter or something?
- 11 A No, actually she went missing in 2007.
- 12 Q Oh, okay. And that year, you made according to
- 13 your tax returns, it looks like about \$800. Bad year.
- 14 A Yeah.
- 15 Q Money-wise?
- 16 A Yes, sir.
- 17 Q And then the year of the accident, which was 2010,
- 18 the accident happened in August, so we're 8 months into the
- 19 accident, right?
- 20 A Right.
- 21 Q Before the accident happens?
- 22 A Right.
- 23 Q You made in 2010, \$5,130 according to your tax
- 24 returns?
- 25 A Right.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q And you said that it put you out of work for a
2 period of time, correct?

3 A Yes, sir.

4 Q Sure.

5 A Yes, sir.

6 Q I mean without a doubt there was some loss there.

7 A Yes.

8 Q But actually, the next year was probably the best
9 year you had had in five years, correct? Because you made
10 about \$12,000 in 2011?

11 A I'm sure I explained that I sold my equipment.

12 Q Okay...

13 A That's what I claimed.

14 Q When the tax returns that were produced to me, I
15 don't know that I had a Schedule C. Do you know what a
16 Schedule C is?

17 A I kind of have a slight idea.

18 Q That's sort of your business income as opposed to
19 if you get paid by somebody with a W-2?

20 A Right. It's different.

21 Q It's different. So if you've got your own business
22 like you did --

23 A Right.

24 Q -- you put -- you do a Schedule C?

25 A Right.

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 Q And in your Schedule C for the year after the
2 accident, although I didn't see a Schedule C, it's \$12,013?

3 A Okay.

4 Q And that was actually more money than you had made
5 the year before according to your Schedule C; is that
6 correct?

7 A And if you calculating from the amount I said, I
8 sold my equipment that would cover it.

9 Q I don't know that I got that. Maybe it's in the
10 documents that they're showing, but I'm just looking at
11 your front page of your W -- or 1040.

12 A 1040, yeah.

13 Q And the year of the accident, you made 5,130?

14 A That's what it's saying.

15 Q Year after the accident, made 12,000?

16 A Right.

17 Q So you actually doubled your income that year.

18 A Not double my income. It is showing double because
19 as I explained was because of my equipment sold.

20 Q Okay. And as a result, that's another reason it's
21 just almost impossible to calculate the loss, correct?

22 A Yes. Not impossible.

23 Q Well, you've had seven years and you couldn't come
24 up with a number, right?

25 A Because I couldn't figure growth. Because I don't

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 know what my growth would be like.

2 Q Now -- and again, Mr. Sell thanks you for coming to
3 his aid, but I want to make sure that we focus in on the
4 accident itself. Going to Maine, correct?

5 A Going to where?

6 Q Going to Miami?

7 A Yes, sir.

8 Q I had you going in the wrong direction there for a
9 minute, didn't I?

10 A Yeah.

11 Q Sorry about that. Traveling 26, 95?

12 A That's correct, sir.

13 Q Probably the quickest way to get there, correct?

14 A That's the only way.

15 Q The only way, okay. And it was raining that night?

16 A That's correct, sir.

17 Q And as a result you were behind Mr. Sell, saw his
18 truck tip over?

19 A Yes, sir.

20 Q And then you put on brakes, get around him on the
21 right side, correct?

22 A That's correct.

23 Q And then you pulled over to the right and then went
24 back toward --

25 A I pulled over to the left.

Maurice Dawkins - Cross-Examination by Mr. Griffith

- 1 Q To the left -- the median part, right?
- 2 A Yes, sir.
- 3 Q The Starnes and the Sparkmans were on the right
- 4 side, correct?
- 5 A Yeah, they were on the right side.
- 6 Q Okay. All y'all went to the Budget truck, got
- 7 Mr. Sell's grandson and Mr. Sell out of the truck.
- 8 A Yes, sir.
- 9 Q I think the Sparkman's were tending to the
- 10 grandson, you were walking with Mr. Sell?
- 11 A That's correct.
- 12 Q Toward the median area.
- 13 A We were in the grass, yes.
- 14 Q In the grass. And that's when the impact occurred?
- 15 A I assume that's when.
- 16 Q You passed Mr. Sell with no problems, correct?
- 17 A Passed Mr. Sell?
- 18 Q On the right-hand side?
- 19 A Oh, yes, sir.
- 20 Q No problems getting around him, correct?
- 21 A No, sir.
- 22 Q And you know that another lady had stopped,
- 23 correct?
- 24 A Yes, sir.
- 25 Q And you had put on your emergency flashers,

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 correct?

2 A That's correct, sir.

3 Q And I believe you said that the lady on the other
4 side had her emergency flashers on, correct?

5 A I don't recall, sir.

6 Q Okay. Just one second, Mr. Dawkins.

7 A No problem, sir.

8 (There was a pause in the proceedings.)

9 BY MR. GRIFFITH:

10 Q And when you pulled over on the side and went back
11 to Mr. Sell, you don't know how much time elapsed between
12 getting around him, stopping, going back to help him, and
13 walking away before the second?

14 A No, sir.

15 Q Don't have any knowledge about that?

16 A No, sir.

17 Q And when you went back, it never occurred to you
18 that somebody might be coming down 95 and hitting the
19 Budget truck, correct? Because there was traffic coming
20 around?

21 A Well, I was consumed with Mr. Sell's injury at the
22 time, sir.

23 Q Okay. Well, you also said, you indicated that you
24 weren't concerned about that because traffic was coming
25 around, correct?

Maurice Dawkins - Cross-Examination by Mr. Griffith

1 A I don't remember indicating that. I was not
2 concerned?

3 Q Okay. Let's -- maybe we can clear this up. You
4 remember your deposition.

5 A Right.

6 Q If you'd just flip to page 54.

7 A Yes, sir.

8 Q All right. Can you see the line numbers down
9 there, about line number 20?

10 A Yes, sir.

11 Q The question was asked of you, did you ever
12 contemplate that somebody else may be coming down that
13 interstate and not be able to see that truck blocking the
14 roadway. And your answer was?

15 A No, sir.

16 Q All right. And at that point in night did you ever
17 contemplate that there's oncoming traffic and this road's
18 -- and your answer was at line 3 page 55 was what?

19 A No, because everybody was going around.

20 Q All right. So there were other trucks -- other
21 cars and vehicles that were going around?

22 A Vehicles were going around, yes, sir.

23 Q And again, as we talked in there earlier, in your
24 deposition, you said you didn't know why you sued Mr. Sell,
25 correct?

Maurice Dawkins - Redirect Examination by Mr. Murdaugh

1 A I don't know why now.

2 Q In your deposition --

3 A In my deposition I didn't know why.

4 Q Okay. And that was given in 2012, almost two years
5 after the accident you did not know?

6 A That's correct.

7 Q That's all the questions I have. Thank you,
8 Mr. Dawkins.

9 A Thank you, Mr. Griffith.

10 THE COURT: Redirect?

11 MR. MURDAUGH: Just a few, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MS. MURDAUGH:

14 Q Mr. Dawkins, that case has been going on seven
15 years. You've talked about all the doctors and you've
16 given deposition. You've answered questions from lawyers
17 under oath, there's been subpoenas to doctors, there's
18 records requested, have you ever had any medical treatment
19 to your feet prior to being injured August 21st, 2010?

20 MR. GRIFFITH: Your Honor --

21 THE WITNESS: No, sir.

22 THE COURT: Hold on.

23 MR. GRIFFITH: I'm going to object to the, I guess
24 statement prior to the question. It's not proper. He just
25 needs to ask the question.

Maurice Dawkins - Recross-Examination by Mr. Griffith

1 A That's correct, sir.

2 Q And since being injured and not being able to be on
3 your foot but so long, are you able to live financially the
4 way you were before August 21st, 2010?

5 A No, sir.

6 Q All right. No further questions. Thank you.

7 THE COURT: Recross?

8 **RECROSS EXAMINATION**

9 BY MR. GRIFFITH:

10 Q Mr. Dawkins, I heard what you said about Mr. Sell.
11 You said that was filed by your lawyers, right?

12 A That's correct.

13 Q But when you were asked in 2012 why you sued him,
14 you honestly said, I don't know?

15 A And I just said that too to my lawyer.

16 Q Well, he read --

17 A I hire him to do the job.

18 Q Sure. You hired him to do the job?

19 A That's correct.

20 Q All right. And in those allegations, you made some
21 broad allegations against Mr. Owens and Pierce National; is
22 that correct?

23 A Against both drivers.

24 Q Against Mr. Owens and Pierce National, his owner;
25 is that correct?

Maurice Dawkins - Recross-Examination by Mr. Griffith

1 A Against both drivers my lawyer told me.

2 Q Okay. Well, did you know that you sued Mr. Owens's
3 owner, the owner of the truck that he was driving?

4 A I just know he sued the trucking company and
5 Mr. Sell.

6 Q Trucking company and the driver of the truck that
7 owned the trucking company, correct?

8 A That's correct.

9 Q And so you turned over who to sue to your lawyers,
10 correct?

11 A Repeat that.

12 Q Who to sue was left to your lawyers. You didn't
13 even know why you sued Mr. Sell personally?

14 A Who was left up to my lawyers, sir.

15 Q All right. And then the lawyer -- the only doctor
16 we've heard testify was the one your lawyer sent you to,
17 right?

18 A That's correct.

19 Q All right. So this is a lawyer made case? You had
20 some injuries, there's no doubt about that. But the only
21 people we're hearing from --

22 MR. MURDAUGH: Your Honor, I object to this
23 question. Given the seriousness of this case and the
24 injuries that Mr. Dawkins --

25 THE COURT: It's cross-examination. I'll give him

Maurice Dawkins - Recross-Examination by Mr. Griffith

1 some leeway.

2 MR. MURDAUGH: All right, sir.

3 BY MR. GRIFFITH:

4 Q You had some problems with your foot. We
5 understand that. The doctor that came and testified is the
6 one that your lawyer sent you to, right?

7 A That's correct.

8 Q And the allegations that we've read about and heard
9 about against everybody, you don't know why you sued
10 anybody, correct?

11 A That's correct.

12 Q But Mr. Sell is the one here in the courtroom
13 today, right?

14 A Mr. Sell is in the courtroom today.

15 Q Right. And the one that you didn't know why you
16 sued, in 2012?

17 A Both lawyers -- the lawyers sued both people.

18 Q Thank you. No further questions.

19 THE COURT: You may step down.

20 THE WITNESS: Thanks.

21 THE COURT: You got another witness?

22 MR. BARNES: We do Your Honor, at this time we'd
23 call Vinci Layton.

24 VINCI LAYTON,

25 having been duly sworn, testified as follows:

Vinci Layton - Direct Examination by Mr. Barnes

DIRECT EXAMINATION

BY MR. BARNES:

Q Please tell us your full name.

A Vinci Anthony Layton Layton.

Q And Mr. Layton, where do you live?

A I live in Columbia, South Carolina.

Q Tell us a little bit yourself.

A I'm a hard worker. But I work for Estes Express Lines and I'm a dock supervisor of the second shift. I've been there for 20 -- going on 24 years.

Q And is Estes the, I believe the yellow and black trucks?

A Yes, with the big E in the middle.

Q And as dock supervisor, you make sure trucks get loaded properly?

A Yes.

Q And hopefully going to where they need to go?

A Yes.

Q Where are you originally from?

A I'm originally from Philadelphia, Pennsylvania.

Q And you ever served in the military?

A Yes.

Q And what branch?

A Army.

Q And were you honorably discharged?

Vinci Layton - Direct Examination by Mr. Barnes

- 1 A Yes.
- 2 Q Are you married?
- 3 A Yes.
- 4 Q And how did you come to know Maurice Dawkins?
- 5 A We first met, our daughters played basketball for
- 6 A.C. Flora High School in Columbia.
- 7 Q And about what time period was that?
- 8 A My daughter's 23 now. That was -- I mean, that was
- 9 years ago.
- 10 Q And so what daughter of Maurice's was --
- 11 A Kiesha Dawkins.
- 12 Q Did you know Maurice prior to August 21th 2010?
- 13 A Yes.
- 14 Q And how many years, approximately, would you
- 15 estimate that you knew him prior to that?
- 16 A Probably, I guess, six or seven because our
- 17 daughters were in school, Caughman Road, I believe.
- 18 Q And did you come to learn about Maurice's
- 19 landscaping business?
- 20 A Yes.
- 21 Q And how would -- did you have an opportunity to see
- 22 Maurice's work?
- 23 A Yes.
- 24 Q And describe for us his work as a landscaper prior
- 25 to August 21st, 2010?

Vinci Layton - Direct Examination by Mr. Barnes

1 A Beautiful. I mean the work that he does is just
2 topnotch. You know, it's a difference in people's job
3 skills and what they do. Some people just do a job just to
4 be doing it. Some people do a job and put their heart into
5 it. And with him, that's what makes a difference.

6 Q And I believe around that time, prior to 2010, you
7 also had landscaping that you did on the side as well?

8 A Yes.

9 Q And that's how you came to know and would y'all --

10 A Even more, even more, yes.

11 Q Would y'all exchange ideas in the landscaping
12 world?

13 A Yes.

14 Q Let's move after August 21st, 2010. From your
15 vantage point, how did the events of August 21st, 2010
16 impact Maurice?

17 A I had needed some information and like always, I
18 would either call him, find out where he was at or go by
19 his house. I went to Maurice's house and I had knew he was
20 in an accident. I never asked any questions why or
21 anything like that, but when I got there, there was a
22 specific job that I was working on and I needed his advice.
23 And when I got there he was laid up and he was in, you
24 know, so much pain that he could talk, but he couldn't
25 talk. So me being who I was, I didn't go into detail with

Vinci Layton - Direct Examination by Mr. Barnes

1 it or anything. I just told him I'll call him later.

2 Q And when you went that day, did Mr. Dawkins have
3 his foot propped up?

4 A Yes, he had it elevated up on -- on the bed.

5 Q And was his right foot swollen?

6 A Yes.

7 Q And did you not want to look at it because it was
8 so swollen?

9 A Well -- well, you -- you know, it was funny because
10 I'd never seen anything like that. His foot was black and
11 I tried to pay attention to him, more his face than his
12 foot because I didn't want -- you know, I didn't want to
13 feel like that was more important than what I actually came
14 there for which was to talk to him. And then after seeing
15 it, was to console him and, you know, things would be
16 better, you know. So I didn't keep my eyes on it like
17 that, focused on it.

18 Q Did you notice a change in his emotional outlook on
19 life as a result of these events?

20 A Yes.

21 Q And describe that for us.

22 A Well, you know, it's funny how when somebody's a
23 proud person and they're just so used to going and always
24 on the go all the time and when you then when you get to an
25 instant where you just can't do it anymore, you know,

Vinci Layton - Direct Examination by Mr. Barnes

1 talking to him and everything, it was like, where he was
2 always gung ho and now all of a sudden it's like he done
3 got depressed, you know. So I -- it just came from not
4 being able to get up and do or do the things that he
5 actually needed to do to survive, which -- that was
6 something he was able to do every day until then.

7 Q Did you ever feel that Maurice was close to giving
8 up?

9 A Yeah. Because he asked me if I would help him to
10 save face with some of his customers. And I did that.

11 Q And how many customers did you help Maurice with?

12 A Probably about four or five.

13 Q And would you give whatever money that you did for
14 the -- Maurice's client to Maurice and --

15 A Yes. And I would let -- he -- I would let him give
16 me what he wanted to give me if -- you know, because it was
17 only right, you know. I was there to help.

18 Q And have you personally observed Maurice trying to
19 work after August 21st, 2010?

20 A Trying but not being able. He -- trying but not
21 being able to successful do it, let's put it like that.
22 And that's where -- I mean, he couldn't, so I stepped up
23 for him.

24 Q Thank you, Mr. Layton, I appreciate you being here
25 today. Answer any questions Mr. Griffith may have for you.

Dwight Hylton - Direct Examination by Mr. Barnes

1 year or so working with him?

2 A No, no.

3 Q So you haven't seen the jobs he's been doing --

4 A Not within the last year.

5 Q Okay.

6 MR. GRIFFITH: That's all. No further questions.

7 THE COURT: Redirect?

8 MR. BARNES: I don't have any, Your Honor.

9 THE COURT: You can step down, thank you.

10 THE WITNESS: Thank you.

11 MR. BARNES: Your Honor, may Mr. Layton be excused
12 from his subpoena?

13 THE COURT: You're free to go.

14 Next witness.

15 MR. BARNES: Your Honor, at this time we'd call
16 Dwight Hylton.

17 DWIGHT HYLTON,

18 having been duly sworn, testified as follows:

19 THE CLERK: Have a seat.

20 **DIRECT EXAMINATION**

21 **BY MR. BARNES:**

22 Q Please tell us your full name.

23 A Dwight Hylton.

24 Q All right. Mr. Hylton, where do you live?

25 A Columbia, South Carolina.

Dwight Hylton - Direct Examination by Mr. Barnes

1 Q And where are you originally from?

2 A Jamaica.

3 Q And are you married?

4 A Yes, sir. Two kids.

5 Q Okay.

6 A One 3 and 11.

7 Q And prior to living here in the United States, what
8 did you do?

9 A I used to work on a cruise ship throughout the
10 Caribbean, 15 years.

11 Q And how did y'all come to the United States?

12 A Well, my wife got a job as a teacher here and
13 because I was going back and forth from Jamaica to, you
14 know, on the cruise ship, she was saying we're leaving, I
15 was gone too long. So she wants us to all stay together so
16 she got a job here and in 2003 we all moved here.

17 Q And is she currently a teacher today?

18 A Yes, sir.

19 Q And where does she teach?

20 A -- right now.

21 Q All right. And that's a school in Columbia?

22 A Yes, sir.

23 Q And what do you currently do?

24 A Well, I'm in car sales.

25 Q And how long have you known Mr. Dawkins?

Dwight Hylton - Direct Examination by Mr. Barnes

1 A I known him since 2005.

2 Q And how did y'all come to know each other?

3 A To be honest with you, there was this lady that
4 lives in the development where I live and she was from
5 Jamaica too. And he was always with her and that's --
6 that's how it started.

7 Q And prior to August 21st, 2010, did you have the
8 occasion to help Mr. Dawkins with his landscaping business?

9 A Oh, he's the one who taught me how to do it.

10 Q And --

11 A When I moved from Charleston, I -- I was doing car
12 sales in Charleston and I moved on up here an decided I
13 wanted to do something else. And he said he had his own
14 landscaping business and I tell him, I mean, I'll try it
15 out. And I did try it.

16 Q And how would you describe his work prior to August
17 21st, 2010?

18 A He's a workaholic, let's put it that way. Nonstop.
19 Always out on jobs.

20 Q And did he ever give you a hard time for not
21 working hard enough?

22 A Oh, yes. Oh, yeah. Every time -- every time --
23 every time we get a job to do even if the job takes two or
24 three days, he want us to do it in one day.

25 Q And on August 21st, 2010, did you come pick

Dwight Hylton - Direct Examination by Mr. Barnes

1 Mr. Dawkins up from the hospital?

2 A Yes. I -- I was in bed. It was about 2 or 3
3 o'clock in the morning and all I could hear was sirens and
4 just people talking. You could hear, Are you okay? Can
5 you talk? Can you move. And I said where you at. He told
6 me he was in an accident and then, it was a Sunday I think
7 it was -- this was a Sunday -- I picked him up from the
8 hospital. I think it was Sunday morning.

9 Q And how did he appear?

10 A Oh, in pain, lots of pain. When I went there he
11 was in bed. He was laying down sleeping because the nurse
12 -- I told them who I was there to pick up and they bring me
13 to where he was and then they wake him up. And he was just
14 groaning. He -- even when I try to talk to him, we
15 couldn't get the conversation going because of the pain.

16 Q And did you have to lift him out of the
17 wheelchair --

18 A Oh, yes.

19 Q -- and put him in the car?

20 A When they brought him downstairs, I had to lift him
21 out and put him in my truck.

22 Q After August 21st, 2010, let's kind of fast forward
23 a little bit. Did Mr. Dawkins try to keep -- try to keep
24 his clients and keep working?

25 A Yeah, but -- yes. I'm the one who had to do all

Dwight Hylton - Cross-Examination by Mr. Griffith

1 the work. He couldn't do it. He was bedridden all the
2 time.

3 Q Was Mr. Dawkins -- did he have to turn down work
4 from clients because of his inability to do the job?

5 A Yes.

6 Q After August 21st, 2010, have you ever seen Maurice
7 when he was not limping?

8 A No.

9 Q Prior to August 21st, 2010, did he walk with a
10 limp?

11 A No.

12 Q Have you seen occasions where Mr. Dawkins's foot
13 swells?

14 A Yes. When -- when I go to his house and he was in
15 that cast or whatever, I mean you could see it. And it was
16 discolored too, dark black big bruise.

17 Q And it's the right foot swelling and the left foot
18 not swollen?

19 A Correct.

20 Q Thank you, Mr. Hylton, for being here today.
21 Answer any questions Mr. Griffith may have.

22 **CROSS-EXAMINATION**

23 **BY MR. GRIFFITH:**

24 Q Mr. Hylton, you work with Mr. Dawkins, right?

25 A Yes, sir.

Cameron Jordan - Direct Examination by Mr. Barnes

1 A Yes, sir.

2 Q And while he says he can't do as much, he is
3 working, correct?

4 A Yeah, he said he's doing a little bit now and then,
5 yeah.

6 Q That's all the questions I have. Thank you.

7 THE COURT: Redirect?

8 MR. BARNES: Nothing further, Your Honor.

9 THE COURT: You may step down.

10 Next witness.

11 MR. BARNES: Your Honor, at this time, we'd call
12 Cameron Jordan.

13 CAMERON JORDAN,

14 having been duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 BY MR. BARNES:

17 Q Please tell us your full name.

18 A Cameron Jordan, Jr.

19 Q Mr. Jordan, where do you live?

20 A Irmo, South Carolina.

21 Q And where are you originally from?

22 A Barbados.

23 Q And how long have you been in Columbia?

24 A Since 1998.

25 Q And tell us about what you've done in Columbia.

Cameron Jordan - Direct Examination by Mr. Barnes

1 A Came to Columbia from New York as an executive chef
2 working at the Townhouse Hotel on Gervais Street in New
3 York -- I mean in Columbia. I worked with Embassy Suites
4 as a sue chef. Had my own restaurant, a couple of
5 restaurant for a couple of years and closed them in 1988
6 and started working for Golden Corral on Forest Drive and
7 that's where I met Maurice.

8 Q And tell us about meeting Maurice.

9 A I was the kitchen manager at Golden Corral and I
10 saw Maurice in line one day. He was talking with a guy he
11 was with and I heard his accent, and well I lived in
12 Jamaica and I kind of introduced myself and we've been
13 tight ever since.

14 Q And did you then learn about Maurice having his
15 landscaping business?

16 A Oh, yes.

17 Q And tell us about the work Maurice would do?

18 A Well, he's personally done work for me as a matter
19 of fact. He's -- I had a replacement -- replaced a knee
20 and I couldn't do the work around the yard, so Maurice used
21 to help me out. He still does. He occasionally comes by
22 and help me out.

23 Q Did Maurice ever insist on getting paid?

24 A Not really insist, but we had an agreement. You
25 know, being friends, I would always take care of him.

Cameron Jordan - Direct Examination by Mr. Barnes

1 Q Tell us about Maurice's relationship with his
2 family from your perspective.

3 A Well, I've met his -- I guess it's his, a couple of
4 daughters, but I don't know the family like closely, but I
5 know he's always very, you know, very, very concerned about
6 his kids and he's got a couple of kids and he's always
7 talking about them. And he goes all the way out of his way
8 all the time to make sure his kids are fine. He's got a
9 daughter that plays basketball back and forth, so I know
10 he's really close to his kids.

11 Q After August 21st of 2010, how did you observe
12 Maurice change as a result?

13 A Well, it was a while before -- I lost track of him.
14 I think it was probably around 2010 because I met him in
15 2009. And I didn't know what was wrong. I haven't seen
16 him, so -- but I did get ahold of him. He told me he had
17 the accident and then I saw it and it was like -- it was
18 very gross.

19 Q Did you ever provide any type of charity or
20 assistance for Mr. Dawkins?

21 A There was one time he lost his lights. And it was
22 during the winter and it was kind of cold and I took care
23 of -- put him in a hotel room for a couple of nights so he
24 could get some heat and take a shower, things like that.

25 Q How did that impact Maurice? I mean, did he --

Cameron Jordan - Cross-Examination by Mr. Griffith

1 A Maurice is a proud guy. He really didn't want me
2 to do it, but you know, I'm a man too and I know, I'm human
3 being. I understood he was hurting that night, so I took
4 care of him. And he comes to the restaurant, you know, we
5 sit and talk. We have a meal together and he wasn't
6 working for -- he wasn't doing a lot of work. He was just
7 doing piece stuff and I spoke to my boss at the time and
8 got him to do some maintenance work for us part time so he
9 could get some money. I mean repairing faucets, things
10 like that, so he could -- but he's been having a tough
11 time.

12 Q Prior to August 21st, 2010, were you ever aware of
13 his inability to pay his light bill?

14 A No. As a matter of fact, I knew he was quite busy.

15 Q Thank you. I appreciate you being here today.

16 Please answer any questions Mr. Griffith may have.

17 **CROSS-EXAMINATION**

18 BY MR. GRIFFITH:

19 Q I just checked on the Richland County website.
20 Were you ever aware that prior to August 21st, 2010 --

21 A Pardon me?

22 Q Were you ever aware prior to August 21st, 2010,
23 that Mr. Dawkins had had one of his landlords try and evict
24 him?

25 A No, I didn't know that.

Ray Burns - Direct Examination by Mr. Murdaugh

1 THE CLERK: Have a seat.

2 DIRECT EXAMINATION

3 BY MR. MURDAUGH:

4 Q Tell us your full name, please, sir.

5 A Walter Ray Burns.

6 Q Where are you from, Mr. Burns?

7 A I'm from Columbia, South Carolina.

8 Q Tell us a little bit about yourself and what do you
9 do in Columbia?

10 A I was trained as a pharmacist. I work for the
11 Department of Mental Health. I manage medical practices.
12 I retired about six years ago and I work with the church.
13 I work with young people. I do a lot of charity work.

14 Q Have a family?

15 A I do. I have four children. One of them lives in
16 London, one of them lives in Seattle, Washington, one of
17 them lives in San Diego and one of them in D.C.

18 Q Obviously, you know Maurice Dawkins, sir?

19 A I do know Maurice Dawkins.

20 Q How did you come to know Maurice Dawkins?

21 A I started the Church of the Cross in 2003 and
22 Maurice was one of the first people that I met. He was
23 kind, a big bear of a man. I couldn't forget him.

24 Q Have you personally observed -- so just to make
25 clear. You've known Maurice Dawkins since approximately

Ray Burns - Direct Examination by Mr. Murdaugh

1 2003?

2 A That's correct.

3 Q Okay, sir. And have you, over the course of your
4 knowing him for some 14 years, have you personally observed
5 him working?

6 A Oh, yes, I have.

7 Q And do you have a role, a leadership role within
8 your church?

9 A I do, for many years I was a senior warden.

10 Q And as part of -- in that role, Mr. Burns is part
11 of your job dealing with the grounds and the construction
12 on premises?

13 A Everything that happens at the church. And we --
14 at one point in time, we had a building, the original part
15 of the church was a Quonset Hut and then a smaller church
16 was built in, I guess 1962. And then the larger portion
17 was built in, I guess, 1967, if I recall. And so the
18 building in the back was not being used and we needed it.
19 We were growing. We had children. So we established a
20 priority of restoring that building. And Maurice stepped
21 up and volunteered to help.

22 Q And how involved of a job was that? I mean is that
23 a week job or is that something that went on for weeks and
24 months?

25 A Oh, no, it went on for months. It needed -- it

Ray Burns - Direct Examination by Mr. Murdaugh

1 needed restoration from bottom to top.

2 Q Mr. Burns, describe Maurice's work ethic as you
3 observed it?

4 A Maurice Dawkins is -- worked harder than any three
5 people I know. He -- we had volunteers coming from other
6 churches to help us and we put the siding on the church and
7 Maurice said, Mr. Burns -- I've always disagreed with
8 Maurice, so -- for one reason and that is he always called
9 me Mr. Burns. I said, Maurice, call me Ray. I go by Ray.
10 Mr. Burns died a long time ago. And he said, no, sir. I
11 was raised to be polite and that's important to me. I'm
12 going to call you Mr. Burns.

13 So Maurice said, Mr. Burns, I know how to put
14 siding up. If I had somebody to help me with it, I could
15 get that stuff up pretty quickly. Well, I volunteered to
16 help him. I couldn't keep up with him.

17 Q Now, aside from the church and what you observed
18 him working on the church, did Maurice Dawkins do work for
19 you in your private residence?

20 A Absolutely. He -- yeah, a number of times.

21 Q Was that landscaping work?

22 A Landscaping work, cut down a big tree for me.

23 Q And tell me what was the -- what type of standard
24 Maurice's work was when he did landscaping work?

25 A It was exceptional. In fact, it was so good that I

Ray Burns - Direct Examination by Mr. Murdaugh

1 called and talked to other friends and asked them if they
2 needed any landscape work, I had just the person to do it.

3 Q And you recommended him to other people?

4 A Often.

5 Q All right. And over the course of working with
6 him, did you have the opportunity to observe how Maurice's
7 rapport with other people is?

8 A Oh, yes, sir.

9 Q And what did you observe, sir.

10 A Well, there was a time, I think it was in 2010 that
11 Maurice seemed to change. Up until that time, he was --
12 was friendly, everybody knew him. As I say, he was a big
13 teddy bear. He was there to help everybody. And there was
14 one lady that needed to move from one place to another and
15 I was asking around if there's -- if we at the church could
16 do something to help. Maurice said, We got to help her.
17 Let's go. He was just like that, let's go. Let's go help
18 her. And he did.

19 Q All right. And Mr. Burns, have you ever had anyone
20 work for you that worked harder than Maurice?

21 A No, sir.

22 Q Have you ever had anyone work for you that took
23 more pride in their job than Maurice did?

24 A No, sir.

25 Q Okay. What is your impression as to whether or not

Ray Burns - Direct Examination by Mr. Murdaugh

1 Maurice is a successful or was a successful landscaper?

2 A Oh, I knew him to be a successful landscaper.

3 Q And in working with you, did you have knowledge
4 about his loss of a child and having to go to Jamaica in
5 2009?

6 A I did.

7 Q And are you aware that he was in Jamaica for an
8 extended period, including into 2010?

9 A Yes, sir.

10 Q And when he returned from Jamaica in 2010, is that
11 when the lengthy construction project went on with the
12 church?

13 A Yes, sir.

14 Q And do you recall -- was Maurice working from
15 morning to night on the church?

16 A Amazingly so.

17 Q Was he charging the church?

18 A No, sir.

19 Q And was he -- did you wonder where he was working
20 for himself during that time period?

21 A I did wonder. I did wonder, how is Maurice making
22 -- how can he find the time to do this. It was just -- he
23 was devoted to the church and the people that went there.

24 Q Now, Mr. Dawkins, are you aware when Mr. Dawkins
25 was injured in August of 2010?

Ray Burns - Direct Examination by Mr. Murdaugh

1 A Yes, sir. I heard about that like the following
2 morning. I was -- I was called by somebody from the church
3 and did you hear that Maurice was involved in an accident
4 and I was so concerned. I tried to get to the bottom of it
5 quickly.

6 Q And Maurice was -- y'all were church mates at that
7 time?

8 A Yes, sir.

9 Q And over the years after he was injured, were there
10 occasions where as a church member you had to help provide
11 for him in the form of meals or help him with bills?

12 A Absolutely.

13 Q And tell me what you observed as to how that -- how
14 accepting that help affected Maurice?

15 A Maurice is -- I talked to him many times about
16 asking for what he wants and what he needs. I -- we can't
17 guess. He is a proud man. He's private and, yeah, my
18 guess is he went hungry without my knowing about it.

19 Q Now, you still know Maurice today?

20 A Absolutely.

21 Q And are you aware that even though he can only be
22 on his foot for a couple of hours, that he's still working?

23 A I do know that. Maurice is a shell of the man that
24 he was before and -- and people that he was working for
25 come to understand that.

Ray Burns - Cross-Examination by Mr. Griffith

1 Q Thank you, Mr. Burns. Please answer any questions
2 Mr. Griffith has.

3 **CROSS-EXAMINATION**

4 BY MR. GRIFFITH:

5 Q Mr. Burns I just have a few questions.

6 A Yes, sir.

7 Q You seem to be very close with Maurice. He seems
8 to be a nice guy. You've described him as a big --

9 A He is a nice guy, yes.

10 Q And I've found him to be the same type of teddy
11 bear. He's always been very kind and courteous to me.
12 That's just his nature; is that correct?

13 A Yes, sir.

14 Q Nobody's saying Mr. Dawkins is not a good man and
15 you've come here and testified he is a good man, correct?

16 A He is a good man, yes.

17 Q All this time you've talked to him, you understand
18 he stopped to help somebody that night he was in the
19 accident?

20 A Oh, yes, sir.

21 Q And that he actually went over to the gentleman,
22 helped him out of the truck, and they were walking away
23 together?

24 A That's the story that I understand, yes.

25 Q And he wasn't hurt because of the man in the truck

James Sell - Direct Examination by Mr. Barnes

1 THE COURT: All right. So you'll be ready this
2 afternoon?

3 MR. GRIFFITH: Yes.

4 THE COURT: Okay. How many you going to have?

5 MR. GRIFFITH: About three.

6 THE COURT: We'll probably charge in the -- argue
7 in the morning then?

8 MR. GRIFFITH: Right.

9 THE COURT: All right. You ready then?

10 MR. MURDAUGH: Yes, sir.

11 THE COURT: Bring the jury back in.

12 (The jury entered the courtroom at 1:07 p.m.)

13 THE COURT: All right. Call your next witness.

14 MR. BARNES: Thank you, Your Honor. At this time
15 we'd call James Sell as an adverse witness, Your Honor.

16 JAMES SELL,

17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat.

19 **DIRECT EXAMINATION**

20 BY MR. BARNES:

21 Q Please tell us your full name.

22 A James A. Sell.

23 Q And Mr. Sell, you now live in the Bluffton, Hilton
24 Head area?

25 A Correct.

James Sell - Direct Examination by Mr. Barnes

1 Q On August 21st, 2010, you lived in Savannah; is
2 that correct?

3 A That's correct.

4 Q I think you've lived in Savannah since 1991?

5 A That's correct, yes.

6 Q You're originally from Mansfield, Ohio?

7 A Born and raised in that area, yes.

8 Q And around August 17th or 18th, you flew to
9 Columbus, Ohio to help your son move, correct?

10 A Yes, sir.

11 Q And I believe your son is Eric?

12 A Yes, sir.

13 Q And Eric's married and has four children?

14 A There's actually five, but -- him and his -- there
15 was one that was a stepchild. She had one and then they
16 have four.

17 Q And your wife's name is Diana?

18 A Diana, yes.

19 Q And did Diana go with you to Columbus?

20 A No, she did not.

21 Q And you flew to Columbus and you rented a Budget
22 truck to help your son move, correct?

23 A Yes, sir.

24 Q That Budget truck was rented on August 18th,
25 correct?

James Sell - Direct Examination by Mr. Barnes

- 1 A That sounds about right, yes.
- 2 Q That truck was rented in your name?
- 3 A Correct.
- 4 Q When you got the truck, it had a tendency to want
- 5 the wander, correct?
- 6 A I noticed that to some degree, yes.
- 7 Q And you noticed there was some play in the steering
- 8 wheel, correct?
- 9 A Correct.
- 10 Q You had never driven or even rented a truck that
- 11 big, had you?
- 12 A I don't know if they were that big or not. I had
- 13 rented, you know, a UHaul truck on a few occasions in my
- 14 life. I've rented a truck, but I'm not -- I don't think
- 15 anything may have been that big, but I'm not 100 percent
- 16 sure. I don't know what size they've been.
- 17 Q But you -- and had you ever driven a truck that
- 18 big?
- 19 A Not that I recall, no.
- 20 Q You just thought the ability of the truck to want
- 21 to wander was normal, correct?
- 22 A Yes, sir.
- 23 Q And you just thought that you needed to be careful
- 24 with the truck, correct?
- 25 A Absolutely.

James Sell - Direct Examination by Mr. Barnes

1 Q You did not go back and notify the folks at budget
2 that this truck had ability to wander and you thought it
3 was an issue for you, correct?

4 A Can you restate, re-ask that? I'm not sure.

5 Q At the time you rented the truck from budget on
6 August 18th and you drove it away and you noticed that it
7 had the ability to wander, you did not go back and notify
8 anyone at Budget that this truck presented a hazard to you
9 or your family?

10 A That's correct.

11 Q Because you just realized you needed to be careful
12 with the truck?

13 A Correct.

14 Q In August of 2010, had your health condition
15 changed any in the previous two years?

16 A At that time I believe about the only thing that I
17 was dealing with were some issues with my feet.

18 Q And were you on the same medications you were on as
19 the previous six or eight months prior to August of 2010?

20 A Yes.

21 Q In your -- in fact, you had had some pretty serious
22 health issues prior to 2010, hadn't you?

23 A I'm not sure what you categorize as serious.

24 Q You told a doctor that on July 7th, 2009, that you
25 could only walk about one to three blocks without feeling

James Sell - Direct Examination by Mr. Barnes

1 tired, correct?

2 A Without feeling pain in my feet I believe would be
3 more accurate.

4 Q But did you tell Melissa Nix that you could -- had
5 problems walking more than one to three blocks without
6 feeling tired?

7 A I'm not sure who Melissa Nix is; and I don't recall
8 characterizing it as being tired. I remember it being very
9 painful.

10 Q And Melissa Nix is with Dr. Roy Bowie?

11 A I'm not familiar with that name either.

12 Q All right. In March of 2009, you were taking
13 Neurontin for your nerve problems?

14 A For the -- for the pain in my feet, yes.

15 Q You were taking Tramadol?

16 A Yes, sir.

17 Q You were taking Vicodin?

18 A No, sir.

19 Q In March of 2000 -- what about the date of the
20 accident, were you on Tramadol?

21 A Yes, I probably would have taken some that morning.

22 Q Cymbalta?

23 A Yes, sir.

24 Q Voltaren?

25 A Yes, sir.

James Sell - Direct Examination by Mr. Barnes

1 Q And Lidoderm patches?

2 A Yes, sir.

3 Q You also had some sleep issues in the -- prior to
4 August of 2010, didn't you?

5 A If you go back a few years, yes. From about '05
6 until '07 I had some sleep issues, yes.

7 Q Did you have any sleep issues after the time period
8 you just specified?

9 A Like between '07 and 2010.

10 Q Or up to the present?

11 A No, no.

12 Q No sleep issues prior to -- after 2007?

13 A No.

14 Q You had a sleep report done from Dr. Hemphill,
15 correct?

16 A A sleep report from him?

17 Q Correct.

18 A Not that I recall, no. That's not -- I know that
19 doctor, but that's not why I was to see him.

20 Q And you were having excessive leg movement from
21 involuntary muscle contractions, correct?

22 A That's why I went to see Dr. Hemphill, yes.

23 Q These medications resulted in your inability to
24 focus, correct?

25 A I would characterize it as having some effect at

James Sell - Direct Examination by Mr. Barnes

1 sometimes. Sometimes.

2 Q You had a functional capacity exam on July 30th, of
3 2009, a little over a year before this accident, correct?

4 A Sounds about right, yes.

5 Q In that functional capacity exam, you reported a
6 history of falling two times in the last six months and had
7 a decreased ability to focus as a result of your medication
8 affects, correct?

9 A I don't recall, I don't recall all -- that time
10 period. I've not reviewed those records, but if that's in
11 the record, I'm not going to dispute it.

12 Q And the medication also resulted in you having poor
13 cognition or the ability to think as a result, correct?

14 A Not that I recall, no.

15 Q All right. At that point in time in the functional
16 capacity exam, a long period of time in any single position
17 caused pain?

18 A Okay.

19 Q And you were told that the longest you could sit
20 for any eight hour day was four hours.

21 A Okay.

22 Q Correct?

23 A I admit, okay. Yes, I won't dispute that. I don't
24 recall exactly, but I don't dispute it.

25 Q So on Thursday, prior to August 21st, 2010, you

James Sell - Direct Examination by Mr. Barnes

1 help your son load the Budget truck?

2 A A little bit, yes. But because of my, primarily my
3 foot issues, and my physical limitations, I didn't do a
4 lot. I supervised much more than I helped.

5 Q Who all -- Eric's wife was there to help?

6 A Yes.

7 Q Did Eric have any children old enough to help?

8 A To some extent. The oldest child, the stepchild
9 would have been, I believe, about 15 then. And then the
10 next son was 12 and so they -- they could help to some
11 degree. He also had friends come over who also helped load
12 the truck.

13 Q And did your son pay you to help him move?

14 A No.

15 Q And you paid for the Budget truck?

16 A Correct.

17 Q And there were some heavy items on that truck. I
18 think y'all loaded a piano?

19 A Yes, sir.

20 Q Y'all loaded a washing machine and a drier?

21 A Yes, sir.

22 Q And y'all also loaded boxes?

23 A Yes, sir.

24 Q On Thursday, what time did you stop loading the
25 truck?

James Sell - Direct Examination by Mr. Barnes

1 A Well, we would have stopped, I guess, I -- we, but
2 everyone who was helping out, because as I said, I wasn't
3 doing that much because of my limitations. But when it got
4 dark, I would say maybe 7, 8 o'clock in the evening.

5 Q And what time did you go the bed that Thursday
6 night?

7 A The best I can recall it was not significantly
8 late, maybe 9:30, 10 o'clock, something like that.

9 Q And did you have any issues sleeping that night?

10 A Not that I recall, no.

11 Q You woke up Friday morning around -- between 7:30
12 and 8 o'clock in Columbus?

13 A Well, I was not staying in Columbus, just to kind
14 of clear things up. But I woke up around 7:30 or 8
15 o'clock, yes.

16 Q Well --

17 A I was actually staying, at my mother-in-law's is
18 where I was staying. Because she just lived a few miles
19 from where my son was moving from.

20 Q And where were you -- where did you spend Thursday
21 night?

22 A Thursday night at my mother-in-law's.

23 Q And where is that located in Ohio?

24 A Ontario, Ohio, which is right next to Mansfield,
25 Ohio.

James Sell - Direct Examination by Mr. Barnes

1 Q And how far is that from Columbus?

2 A Approximately 60 miles.

3 Q Is -- what direction to Columbus?

4 A North, north of Columbus.

5 Q So it would have taken you approximately an hour to
6 get from Ontario to Columbus, to your son's house?

7 A Our son lived in Crestline, Ohio, which was only
8 about six or eight miles from Ontario, Ohio, to the west of
9 Ontario.

10 Q So that --

11 A If it helps to clear up anything, I flew into
12 Columbus, Ohio, okay? And I actually met an old friend
13 there and had lunch with -- I had lunch with. He took me
14 to pick up the Budget truck in Columbus. Then I drove to
15 Columbus -- drove the Budget truck up to Mansfield,
16 Ontario, Crestline area, which is about -- that whole area
17 is about 60 miles north of Columbus. And -- I stayed up
18 there. I stayed at my mother-in-law's house and so we were
19 up in that area during that time.

20 Q So you woke up that morning between 7:30 and 8 and
21 then you finished packing the truck, correct?

22 A Yeah.

23 Q You left your son's house between 11:30 and 12
24 o'clock?

25 A I believe that's about right, yes, sir.

James Sell - Direct Examination by Mr. Barnes

- 1 Q On Friday?
- 2 A Yes, sir.
- 3 Q You drove south and I believe your son's vehicle
- 4 had an issue in Charleston, West Virginia?
- 5 A Correct, uh-huh.
- 6 Q And I looked it up, it's roughly about three hours
- 7 from Columbus to Charleston, so I'm guessing you're an hour
- 8 north, so it's going to take you what, four hours to get to
- 9 Charleston, West Virginia?
- 10 A That sounds about right.
- 11 Q And your son's alternator went out?
- 12 A Yes.
- 13 Q And y'all were in Charleston, West Virginia for
- 14 about two hours?
- 15 A About that, yes, sir.
- 16 Q Your son did most of the work, but you helped?
- 17 A Yes, sir.
- 18 Q And you bent over the hood to look under it to try
- 19 to figure out what was the issue?
- 20 A Again, he's pretty good at that stuff and I didn't
- 21 -- I mostly supervised, but if he needed a hand with
- 22 something, I would try -- I tried to help him.
- 23 Q How many vehicles did y'all have in your group?
- 24 A Three.
- 25 Q And who was driving those vehicles?

James Sell - Direct Examination by Mr. Barnes

1 A Okay. The vehicle that the alternator went out was
2 an older pick-up truck. My son was driving that. I
3 believe he had one of his children in that vehicle with
4 him, one of the five, okay? Or at least part of the way.
5 His wife was driving a minivan and had other children in
6 there. And I was driving the tractor trailer the Budget
7 Rental Truck and the 12 year old grandson had asked if he
8 could ride with me so he was with me.

9 Q So y'all left Charleston after the alternator was
10 replaced?

11 A Correct.

12 Q And so if it's taking four hours, y'all would have
13 gotten to Charleston, West Virginia about 3:30, 4 o'clock
14 in the afternoon?

15 A That sounds about right, yes, sir.

16 Q And you would have been there for approximately two
17 hours?

18 A Yes, sir.

19 Q So y'all would have left Charleston, West Virginia
20 about 5:30, 4 o'clock that night?

21 A That sounds about right, yes, sir.

22 Q And even though there were three cars and y'all
23 were traveling together, y'all didn't stay together?

24 A No, we started out trying to stay together and
25 quickly realized that really wasn't practical, so we just

James Sell - Direct Examination by Mr. Barnes

1 -- we would go and each one would stop when they needed to
2 either for fuel or restroom or a bite to eat or to rest or
3 whatever we needed to do.

4 Q And other than stopping for fuel or go to the
5 bathroom, you drove continuously with the exception of
6 stopping twice for two 30 -- 20 to 30 rest breaks?

7 A Yes, that's correct. I did stop twice for rest
8 breaks.

9 Q And your two other vehicles that were with you,
10 they were behind you?

11 A At the time that we had the accident, they were
12 behind me, yes. I'm not sure if they were the entire time
13 or not, but they were behind me at that point.

14 Q Mr. Sell, what's a berm to you?

15 A A what?

16 Q A berm.

17 A Berm?

18 Q B-E-R-M?

19 A Oh, oh, on the -- okay. That would be like an
20 emergency lane, it's just -- if you're driving down the
21 highway and you have a solid white line on the side, the
22 next part of the pavement would be what I would call a
23 berm.

24 Q So it would be the actually emergency lane and not
25 the grass?

James Sell - Direct Examination by Mr. Barnes

1 A Yes.

2 Q It was your intent in driving to reach Savannah
3 that night?

4 A Well, it would be early Saturday morning, but yes.

5 Q It would still be dark out?

6 A Probably, yes.

7 Q You never once contemplated stopping, pulling over
8 to spend the night and actually sleep for longer than 20 or
9 30 minutes?

10 A No, not really.

11 Q When you got south of Yemasee, what lane were you
12 in?

13 A Well, I guess I would have been in the -- south of
14 Yemasee, I guess I would have been in the right lane.

15 Q And your 12-year-old grandson was in the passenger
16 seat?

17 A Yes, sir.

18 Q He was asleep at the time?

19 A Yes, sir.

20 Q And it was raining?

21 A Yes, sir.

22 Q It was raining pretty hard, wasn't it?

23 A Moderately so, yes, sir.

24 Q And as you were driving south, your right front
25 tire dropped into the emergency lane?

James Sell - Direct Examination by Mr. Barnes

1 A That is correct. That's what I recall.

2 Q And those are your words, it dropped into the
3 emergency lane?

4 A Yes, sir.

5 Q And you lost control of the truck?

6 A Yes, sir.

7 Q You tried to get it back on. You felt the truck
8 was not responding the way it should, correct?

9 A Yes, sir. I recall that, yes.

10 Q It fishtailed and it overturned?

11 A That's correct.

12 Q The truck came to rest on its driver's side?

13 A That's correct.

14 Q So as -- if you were going southbound, you would
15 first see the bottom or undercarriage of the truck?

16 A Correct.

17 Q The truck was blocking both southbound lanes of
18 I-95?

19 A Correct.

20 Q The lights were pointing to the right shoulder?
21 The headlights?

22 A Yes, sir.

23 Q Taillights were pointing to the median?

24 A Yes, sir.

25 Q Correct?

James Sell - Direct Examination by Mr. Barnes

1 A Yes, sir.

2 Q After that you and your grandson got out or were
3 helped out?

4 A We were helped out, yes.

5 Q By -- the Sparkman's have stopped and also Maurice
6 Dawkins?

7 A At the time I didn't know who helped, but later on
8 I know the Sparkman's help. I believe Mr. Dawkins said he
9 didn't actually help us out of the truck, but he was there
10 when we got -- when we got down on the ground.

11 Q And you were fatigued and tired when you overturned
12 this truck, weren't you?

13 A Well, I mean it had been a long day, but I have
14 also -- my judgment at the time was -- in business I have
15 been -- there's been times I was on the road a lot. I know
16 when I get tired and I know when I need to stop. And that
17 was the reason why I stopped -- we'd had the two stops,
18 even told my grandson, we're going to stop for a few
19 minutes. I need to take a break. I need to rest for a
20 little bit and then we'll go a little further. And the
21 last stop that we made was approximately 20 to 30 minutes
22 before the -- I lost control of the truck.

23 Q But you admit you were fatigued?

24 A To some degree, yes.

25 Q You had been up, other than those two 20 to 30

James Sell - Direct Examination by Mr. Barnes

1 minute rest breaks, for going on close to 20 hours,
2 correct?

3 A Yeah, I guess that's about the way it works out.

4 Q And you were 61 years old at the time of these
5 events?

6 A That's correct.

7 Q And we've already talked about your health
8 condition, correct?

9 A Uh-huh.

10 Q After you got out, you felt fine, correct?

11 A After I got out of the truck?

12 Q Yeah.

13 A Yes, I felt okay. I had injured my elbow, but then
14 there's been reference to me bleeding and it was my left
15 elbow that was -- that was scraped up and was bleeding.
16 But, otherwise, I believed I felt okay, yes.

17 Q Your words were you scraped your elbow?

18 A A bit, yes.

19 Q And is that right?

20 A I believe so, that would be accurate.

21 Q You wouldn't -- you didn't call the overturning of
22 the truck as violent?

23 A I guess -- it's tough for me to answer that because
24 that's a relative term. I don't recall it violent because
25 my grandson was not injured when that occurred and the only

James Sell - Direct Examination by Mr. Barnes

1 injury to me at that point was the scraping of my elbow.
2 Had it been -- had I received more serious injuries from
3 turning the truck over I probably would have considered it
4 violent.

5 Q So your grandson didn't get injured in that initial
6 collision?

7 A No, he did not.

8 Q But your grandson made a claim against you, didn't
9 he?

10 A Yes, sir, yes.

11 Q And why would he be making a claim against you if
12 he was not injured in the accident?

13 A Later on he thought that he might have twisted his
14 neck a little bit or done something like that and he sought
15 help from the chiropractor. And because he -- yes, because
16 he was with me, then he made the claim.

17 Q And you accepted responsibility for overturning the
18 truck, correct?

19 A Yes, I did.

20 Q And as we sit here today, you accept responsibility
21 for overturning the truck and blocking both southbound
22 lanes of 95, correct?

23 A I don't have a whole lot of choice, sir. Yes, I do
24 and I have to because there was no other vehicle or no
25 other driver involved.

James Sell - Direct Examination by Mr. Barnes

1 Q And you acknowledge had you not been up for almost
2 20 hours and had you not lost control of the truck that we
3 wouldn't be here today, correct?

4 A There's too many things in that statement for me to
5 agree with all that.

6 Q Okay. You agree you were up for 20 hours?

7 A With the exception of the rest periods, yes.

8 Q You agree you blocked both southbound lanes of 95?

9 A When I lost control of the truck, yes, sir.

10 Q And had you not overturned and blocked both
11 southbound lanes, Maurice Dawkins and the Sparkmans would
12 not have stopped to help, correct?

13 A Well, I guess not.

14 Q And as a result --

15 A If there was nothing -- if nothing had happened
16 they would have no reason to stop.

17 Q And as you result, we wouldn't be here today,
18 correct?

19 A You know, we can play an if game in a lot of
20 different ways. And I'm sorry, but I don't appreciate your
21 line of questioning.

22 Q I'm just --

23 A I -- I accept responsibility for turning the truck
24 over.

25 Q Okay.

James Sell - Direct Examination by Mr. Barnes

1 A And believe me, if there was anything that I
2 thought would endanger or could have possibly happened, I
3 would have taken other measures because I had my
4 12-year-old grandson with me. And when the truck turned
5 over, the very first thought in my mind was my grandson.
6 And when we got out of the truck and we were alongside of
7 the road, we'd gotten out of the truck, gone to the side
8 and several minutes later got hit by the semi-truck driver.
9 The first thought when I came to in the median strip was my
10 grandson. And I thank God that he was not injured in that
11 -- in that collision. But if -- I can assure you if there
12 was anything that I thought was going to jeopardize or be
13 dangerous or risky or anything, I would not have done it
14 because my 12-year-old grandson was with me.

15 Q After the accident you didn't put out any flares or
16 reflective signs to warn on coming --

17 A No, I did not.

18 Q -- traffic?

19 A No, I did not.

20 Q And there were flares and warning signs in the
21 truck, wasn't there?

22 A I don't know.

23 Q Are you aware whether a truck of that size is
24 required to have flares or reflective signs?

25 A I don't know. I don't have a CDL.

James Sell - Direct Examination by Mr. Barnes

1 Q You never went on the north side of the truck, did
2 you?

3 A Not that I recall, no.

4 Q After the accident instead of putting out flares or
5 reflective triangles, you called your son?

6 A Yes. Once we got out of the truck and were walked
7 over to the side of the road, then I called my son, yes.

8 Q And your son, you talked to him, and I believe at
9 the time the truck driven by Mr. Owens came through you
10 were trying to dial your wife?

11 A Yes.

12 Q And then Mr. Owens came through and by that point
13 in time, you estimate that was between five to ten minutes
14 between when you overturned and lost control of the truck
15 and when Mr. Owens came through, correct?

16 A Yes, that was my -- my estimate, yes.

17 Q And in those five to ten minutes, your son and the
18 other vehicles had not reached the scene to where you
19 overturned the truck?

20 A That's correct. He was not there yet.

21 Q So it's fair to say if we're traveling at
22 interstate speeds, they were more than ten miles behind
23 you, correct?

24 A We could probably draw that conclusion, yes.

25 Q You never saw Mr. Owens's truck, did you?

James Sell - Direct Examination by Mr. Barnes

1 A Prior to the accident, him hitting it, you mean?

2 Q Correct.

3 A No, I did not.

4 Q You thought after the accident that it may have
5 been some issue with the truck that caused you to lose
6 control of it and overturn, correct?

7 A I mentioned that as a possibility, yes, sir.

8 Q But you never said anything to Budget to advise
9 them about any truck issues, correct?

10 A That's correct.

11 Q And after Mr. Owens came through you were lying in
12 the grass?

13 A Yes, sir.

14 Q And there were two other people lying in the grass
15 with you?

16 A I recall, yes, two other people.

17 Q And you remember at least one person lying there
18 saying they were hurting and they had a lot of pain?

19 A Yes, I do.

20 Q And --

21 A That would be one other besides me. I was also
22 hurting and in a lot of pain.

23 Q And I think those individuals were about 5 to 10
24 feet from you?

25 A As best I can recall, yes, sir.

James Sell - Direct Examination by Mr. Barnes

1 Q You acknowledge that if you block both southbound
2 lanes at night in the rain that it's foreseeable that
3 somebody may come along and hit the truck, correct?

4 A I can't speculate on that. I don't know.

5 Q Well, you acknowledged in this case, haven't you,
6 Mr. Sell, that it's foreseeable?

7 A With hindsight, we can look back and say that, yes.
8 I'm not quite sure what you're -- what you're asking me.

9 Q I'm just asking you, it's not out of the realm of
10 possibility for -- it's actually -- you were in the
11 courtroom yesterday when Trooper Rush testified, correct.

12 A Yes, sir.

13 Q And you heard him testify about why blocking lanes
14 of interstate traffic is dangerous?

15 A Yes, sir.

16 Q And why it's against the law?

17 A Yes, sir.

18 Q And you agree with that, don't you?

19 MR. GRIFFITH: Your Honor, I object. I mean he's
20 got some questions, but you're pitting one witness against
21 another right now. Which is not proper.

22 THE COURT: Sustained.

23 BY MR. BARNES:

24 Q You reported to EMS that you were on Tramadol at
25 the time of the accident, correct?

James Sell - Cross-Examination by Mr. Griffith

1 A If they asked me -- or yes, I probably did.

2 Q And you were also on nerve medication, correct?

3 A Yes, sir.

4 MR. BARNES: Your Honor, may I beg the Court's
5 indulgence.

6 (There was a pause in the proceedings.)

7 BY MR. BARNES:

8 Q Mr. Sell, you mentioned earlier about the grandson
9 making the claim against you, right?

10 A Yes, sir.

11 Q You settled that claim, didn't you?

12 A Yes, sir.

13 Q And you acknowledge responsibility, correct?

14 A Yes, sir.

15 Q Thank you. I don't have any further questions.
16 Please answer any questions Mr. Griffith has.

17 **CROSS-EXAMINATION**

18 BY MR. GRIFFITH:

19 Q Your grandson wasn't hurt when the tractor trailer
20 came down the street, down the interstate and hit the
21 Budget truck, was he?

22 A No, he was not.

23 Q You told Mr. Barnes you acknowledge responsibility
24 for flipping the Budget truck, right?

25 A Yes, sir.

James Sell - Cross-Examination by Mr. Griffith

- 1 Q And Mr. Sell, let me make sure, at the time of the
2 -- 2010, how old were you?
- 3 A 61 years old.
- 4 Q All right. And we've heard a lot about everybody's
5 background. They went into your health background --
- 6 A Uh-huh.
- 7 Q -- prior to this incident.
- 8 A Yes, sir.
- 9 Q I understand in the past seven years you had some
10 other health issues; is that correct?
- 11 A Yes, I have.
- 12 Q You're a cancer survivor as I understand?
- 13 A Yes, I am.
- 14 Q And --
- 15 A So far.
- 16 Q So far. Well, so far.
- 17 A Yes, sir.
- 18 Q You were married to Diana; is that correct?
- 19 A Yes, sir.
- 20 Q And how long have you and Diana been married?
- 21 A I'm proud to say 45 years to the same person.
- 22 Q She lives on -- with you in Bluffton; is that
23 correct?
- 24 A Yes, sir.
- 25 Q And I understand she works as a nurse; is that

James Sell - Cross-Examination by Mr. Griffith

1 correct?

2 A Yes, sir.

3 Q And you said you have two children?

4 A Yes, sir.

5 Q And Eric was the son that you were helping in 2010?

6 A That's right, yes, sir.

7 Q So Mr. Barnes went through and talked about going
8 up on the 18th, getting the Budget truck, loading it, I
9 guess on the 19th?

10 A Yes.

11 Q And then, I don't guess it would be practical to
12 stay in the house where you moved all the furniture out, so
13 is that why you were staying with your mother-in-law?

14 A Well, even without moving the furniture out, there
15 was not room for me to stay with a husband, wife, and five
16 kids. So the arrangement was that she was there by and she
17 had a guest room that I would be staying over there. So I
18 stayed there Wednesday and Thursday night.

19 Q Now, you left you said about 7 o'clock in the
20 morning; is that correct?

21 A Left where?

22 Q Left the house to go get with your son to start
23 your trip down to South Carolina -- or actually Georgia,
24 I'm sorry.

25 A It -- no, it wasn't quite that early because

James Sell - Cross-Examination by Mr. Griffith

1 actually that -- on Thursday night, which would be the 19th
2 I believe. Okay. He actually went back with me. She went
3 to her mother's house with the kids and spent that night
4 because there was no place to sleep in the house and my son
5 went with me to my mother-in-law's house on Thursday night
6 and it was 7:30 or 8 until we got out of bed on Friday
7 morning.

8 Q Okay. And so y'all were packed up. And did you
9 start your trip then?

10 A We -- about 95 percent packed up. There was a
11 couple of things we put in the truck Friday morning.

12 Q Okay.

13 A Otherwise, yes.

14 Q You headed out?

15 A Yes, sir.

16 Q You said y'all were -- sounded like sort of a
17 caravan to start with, but that wasn't real practical?

18 A Yes, sir.

19 Q You headed over toward the West Virginia state
20 line?

21 A Yes, sir.

22 Q And then when you got to Charleston, you said there
23 was an issue there with the truck you said your son was
24 driving?

25 A Yes, sir.

James Sell - Cross-Examination by Mr. Griffith

1 Q Tell the jury what problem that was?

2 A He had -- like I said, it was an older pick-up
3 truck. I don't recall the exact year, but the alternator
4 went out on that and he was getting some kind of -- he was
5 getting some indication and apparently the battery was
6 running -- something was going on. And so we stopped in
7 Charleston, West Virginia, took a look at it and he
8 determined -- he or we determined that the alternator was
9 bad. And so we got an alternator there in Charleston and
10 he put it in the truck and then we continued on. That
11 whole process took somewhere around two hours.

12 Q And so then from Charleston you would have come
13 down what, 77 to --

14 A Yes, sir.

15 Q -- Charlotte?

16 A Yes, sir.

17 Q Charlotte to Columbia?

18 A Uh-huh, yes, sir.

19 Q And then looks like 26 to 95?

20 A Yes, sir.

21 Q Okay. You said during the course, y'all had
22 planned on driving straight through; is that correct?

23 A Yes, sir.

24 Q You stopped you said, a couple of times, I guess?

25 A Yes, sir.

James Sell - Cross-Examination by Mr. Griffith

1 Q The purposes of your stops were for what?

2 A Well, to rest. To rest.

3 Q And you were asked about how much -- I think were
4 asked whether you were fatigued. Had it been a long day?

5 A Well, yes it had been a long day, yes.

6 Q Did you feel it was unsafe for you to be driving at
7 that time?

8 A No, I did not.

9 Q And would you driven with your grandson in the
10 truck if you felt unsafe?

11 A Absolutely not.

12 Q Had you -- you indicated earlier that during your
13 work that you traveled a lot; is that correct?

14 A I had -- yes, I had previously. Yes.

15 Q All right. And so you sort of knew the feelings of
16 when you needed to stop?

17 A Yes, I did.

18 Q And had you stopped a couple of times? I think two
19 times you said for breaks?

20 A Yes.

21 Q You were asked about the steering being loose. Was
22 the steering, other than just being a little bit loose, in
23 your opinion a problem?

24 A I didn't have anything to compare it to to know
25 whether it should be a problem or not. I knew it seemed to

James Sell - Cross-Examination by Mr. Griffith

1 be a little bit loose, which made the truck tend to sway a
2 little bit, but I just figured that meant I had to be more
3 careful and I drove slower. I -- in fact, I drove
4 considerably slower than I normally do in a car on the
5 interstate.

6 Q So you got that and you were asked about Yemasee.
7 Did you really know where Yemasee was before?

8 A No, sir.

9 Q The accident happened about the 36 mile marker, I
10 believe?

11 A Yes, sir, uh-huh.

12 Q And you told Mr. Barnes that you felt the truck
13 sort of drop off onto the berm, which I think you said was
14 the emergency lane?

15 A Yes, sir.

16 Q And then you pulled back to get it back up on --

17 A Yes, I was driving -- as I recall I was driving
18 around maybe 60 miles per hour was all because it was
19 raining and -- and guiding the truck and trying to maintain
20 control and safely, the right front wheel, what I call
21 dropped off onto what we're calling the emergency lane and
22 as I tried to steer back on, it didn't seem to respond as
23 quickly as I thought. So I steered a little bit more. And
24 the truck began to fish tail. The back went to the right
25 so I steered into the fish tail to try to correct it. Then

James Sell - Cross-Examination by Mr. Griffith

1 it came around to the left and with enough momentum that it
2 went on its left side.

3 Q You said when it went on its left side, what was
4 your thought?

5 A You know, even though it was seven years ago,
6 there's certain things you can remember like they were
7 yesterday. And I recall thinking, once I realized it was
8 going over, my first thought was dear God, please, protect
9 my grandson. Don't let anything happen to him.

10 Q And the truck turned over. You checked on your
11 grandson.

12 A Yes.

13 Q And you noticed that someone was trying to pull
14 open the door.

15 A Yes, we both had seat belts on and so, of course,
16 the tipping over woke him up and I asked him if he was
17 okay. He said yes. I said, can you move okay? Do you
18 feel okay? Are you hurt? And he said, no, I think I'm
19 okay. And I said okay. We have to get out of here but be
20 careful, don't unfasten your seat belt until you're ready
21 to do something because otherwise you're going to fall on
22 me. You're going to fall to the side.

23 And I also realized that the door was going to be
24 heavy because he were going to be pushing up on it. And so
25 I reached over and I said let's see how heavy the door is.

James Sell - Cross-Examination by Mr. Griffith

1 And about the time we unlatched the door, I saw hands reach
2 around the door to help open it. And I just was so
3 grateful at that moment that there was some kind of help
4 versus --

5 Q And did that person help you out of the truck? You
6 and your grandson?

7 A Yes, they held the door open. There were -- the
8 best I can recall, a couple of people had climbed up on the
9 truck. They helped my grandson out, helped lower him down
10 to the ground. They helped me out. I was asked can you
11 jump to the ground and I said I'd rather not if you can
12 help me because of my feet. And so they made like a step
13 with their hands and they helped lower me down to the
14 ground.

15 Q You were able to get down and -- you may not have
16 known him at the time, but do you understand that
17 Mr. Dawkins was one of the people that came there?

18 A He was there. I -- it's -- I can't put exact faces
19 to who did what at the time. I knew there were people
20 helping and I know I ended up standing beside Mr. Dawkins
21 and he was trying to comfort me. I, of course, appreciated
22 more than I can say the help of everybody, including
23 Mr. Dawkins. The fact that there's still good people that
24 will stop and help was phenomenal.

25 Q Comforting?

James Sell - Cross-Examination by Mr. Griffith

1 A I'm sorry, I get emotional.

2 Q You got to a stop, but you wanted to make a call?

3 A I'm sorry.

4 Q Did you want to make a call?

5 A You say did I?

6 Q Did you try to make a call?

7 A Oh, yes. Once I got to the side of the road and
8 I've heard it referred to that I seemed as though I was
9 dazed. I don't believe I was dazed as much as I was in
10 disbelief. When something like that happens so
11 unexpectedly, the first few moments was like, I can't
12 believe this really happened. And I was so glad my
13 grandson was standing there and I was so glad he was okay.
14 And at that point, the fact that my elbow was bleeding was
15 minor to me. It just didn't make that much difference.

16 Q Did you think of your son?

17 A I called my son, told him what had happened.

18 Q You let him know about his son?

19 A Yes. Assured him he was okay. Yes.

20 Q And then did -- were you going to make another
21 call?

22 A I was going to call my wife next because I knew she
23 was keeping up on our progress even though it was 3:30 or 4
24 in the morning. I knew she was going to keep up with our
25 progress and we weren't going to be there for a while. And

James Sell - Cross-Examination by Mr. Griffith

1 I recall --

2 (The clerk gave the witness a drink.)

3 THE WITNESS: Thank you.

4 I was about to press the button on my cell phone
5 and I recall hearing a loud noise for just an instant and
6 the next thing I knew I was lying in the grass, wet grass
7 down in the median strip. When I first came to, my first
8 thought was am I alive or dead.

9 Q And were you concerned about your grandson?

10 A Absolutely. And within a couple of seconds, I
11 tried to move or do something and I felt excruciating pain,
12 so I figured I'm alive. The next thing was, where's my
13 grandson.

14 Q Were you beside Mr. Dawkins when that happened?
15 When you were knocked down?

16 A Yes, yes, sir..

17 Q And he was with you?

18 A Yes, sir.

19 Q Trying to comfort you and check on you?

20 A Yes, sir.

21 Q And you said you appreciate his attention?

22 A Absolutely, yes, sir.

23 Q While you were there had you noticed other traffic
24 coming around --

25 A Yes, sir.

James Sell - Cross-Examination by Mr. Griffith

1 Q -- the truck?

2 A Yes, sir.

3 Q Were there other vehicles that were getting around
4 then?

5 A There was a steady stream of vehicles coming around
6 the vehicle -- around the overturned Budget truck, yes.

7 Q All right. And you had been in the wreck. You
8 were asked about cones, flares, triangles, putting out.
9 Was that something that came -- raced through your mind?

10 A No, sir, it was not.

11 Q And you said that when you saw that steady stream
12 of traffic, you called your son --

13 A Uh-huh.

14 Q -- to let him know what he was going to come up on?

15 A Yes, sir.

16 Q And apparently, he was probably going to see a good
17 bit of his personal belongings in the interstate now?

18 A Well, when I called him, everything was still
19 contained in the Budget truck. When it flipped over,
20 everything was still inside.

21 Q Oh, okay.

22 A So there was nothing -- nothing strewn, scattered,
23 scattered on the road. Okay. And so, you know, things may
24 have gotten damaged, but I didn't know what or how much at
25 that point; but everything was contained in the truck.

James Sell - Redirect Examination by Mr. Barnes

1 Q And then, I believe, that you said you were getting
2 ready to make the second call to your wife. That's when
3 the Pierce National truck crashed into the Budget truck?

4 A Yes.

5 Q Throwing it in y'all's direction?

6 A Yes.

7 Q The next thing you remember is waking up in the
8 median, or in the grass?

9 A Yes.

10 Q And I believe you went to the hospital that night?

11 A Yes.

12 Q You appreciate what Mr. Dawkins did for you,
13 Mr. Sell?

14 A Definitely. Absolutely. Yes, sir.

15 Q I have no further questions. Thank you.

16 THE COURT: Redirect?

17 MR. BARNES: Your Honor, may I approach?

18 THE COURT: You may.

19 **REDIRECT EXAMINATION**

20 BY MR. BARNES:

21 Q Mr. Sell, I'm going to hand you what I've marked as
22 plaintiff's exhibit 5.1 through 5.22 and ask you to take a
23 look at those. I want to ask you does that appear to be a
24 Budget truck you were driving along with your son's
25 possessions in the back?

James Sell - Redirect Examination by Mr. Barnes

1 A Yes, it does.

2 Q And do those fairly and accurately depict the
3 condition of the truck and the possessions following the
4 events of August 21st, 2010?

5 A After the semi truck driven by Mr. Owens hit it,
6 yes.

7 MR. BARNES: Your Honor, at this time, we would
8 move into evidence Exhibits 5.1 through 5.22.

9 MR. GRIFFITH: No objection.

10 THE COURT: It's admitted.

11 (Plaintiff's Exhibit Numbers 5.1 through 5.22 were
12 admitted into evidence.)

13 BY MR. BARNES:

14 Q Mr. Sell, you've testified when Mr. Griffith was
15 asking questions that you drove considerably slower because
16 of this Budget truck to sway or wander, correct?

17 A Yes, sir.

18 Q But you continued driving from an hour north of
19 Columbus, Ohio all the way to Yemasee, South Carolina,
20 correct?

21 A Yes, sir.

22 Q And you were more than ten miles ahead of your son
23 and the other vehicle and they were in a passenger vehicle,
24 correct?

25 A He was in an old pick-up truck that he wasn't

James Sell - Redirect Examination by Mr. Barnes

1 driving very fast either. Because of its condition.

2 Q And what about the other vehicle? What kind of
3 vehicle was that?

4 A The other vehicle was a Chrysler van. I'm not sure
5 of the make. They had two or three minivans. I'm not sure
6 which one it was. So I'm not sure of the make of it right
7 now, of that one. But his wife was driving a minivan with
8 at least three children in it and consequently, they were
9 making numerous stops.

10 Q You testified that you wouldn't have driven that
11 night had you felt that it was unsafe to you or your
12 grandson, correct?

13 A Yes, sir.

14 Q But in hindsight, it was unsafe for you --

15 MR. GRIFFITH: Your Honor, I'm going to object.
16 Hindsight is not the purpose of this trial.

17 THE COURT: Sustained.

18 BY MR. BARNES:

19 Q In that five to ten minutes after you overturned
20 the Budget truck, you had time to put out flares and
21 reflective signs, correct?

22 A I guess I would have had time to, but since we're
23 all -- since we're also looking back, had I taken this time
24 to go get them out of the truck and put them out, okay, I
25 probably would have been pinned between the semi truck and

James Sell - Redirect Examination by Mr. Barnes

1 the Budget truck and I wouldn't be here today.

2 Q And in that five to ten minutes, between the time
3 that you overturned the truck and when Mr. Owens came
4 through?

5 A Well, first of all, I would have had to think about
6 that and since I don't normally drive trucks, I didn't
7 think about it. Then I would have had to go back and get
8 help climbing up on the truck to get back into the truck,
9 find them, get back out of the truck and climb down. And
10 then go around to the north side of the truck and put them
11 out. And that's probably about the time he came down the
12 highway with his semi not under control and probably would
13 have hit me and the Budget truck and as I said I wouldn't
14 be here today. That would be my best speculation.

15 Q But those flares or reflective triangles, they
16 would have been there to warn oncoming motorists if there
17 wasn't any cars that were stopping or slowing down to go
18 by, correct?

19 A Well, if I had gotten them put out, yes; except no
20 one had any problem with that except Mr. Owens.

21 Q You testified earlier your grandson wasn't injured
22 when you overturned the Budget truck, correct?

23 A He told me he was okay. And he appeared to be
24 okay. Later he had somewhat of a stiff neck and that's
25 when they took him to a chiropractor for some treatment.

James Sell - Redirect Examination by Mr. Barnes

1 Q And you settled that claim, correct?

2 MR. GRIFFITH: Your Honor, this question's been
3 asked and answered and it's not really relevant to this
4 case.

5 THE COURT: Sustained.

6 BY MR. BARNES:

7 Q Did you see to it that your grandson's claim was
8 resolved?

9 MR. GRIFFITH: Again, Your Honor, this is not
10 relevant.

11 THE COURT: Sustained.

12 BY MR. BARNES:

13 Q Mr. Sell, you got emotional earlier talking about
14 Mr. Dawkins and your appreciativeness for him stopping to
15 help you that night.

16 A Yes, sir.

17 Q The tractor trailer was not the sole cause of his
18 injuries, was it?

19 A Yes, it was.

20 Q Had you not overturned the truck, Mr. Dawkins would
21 not have stopped and helped, correct?

22 A You know, in hindsight we can say had this not
23 happened it wouldn't have happened. Had 50 things not
24 happened, it wouldn't have happened. But, yes, I consider
25 Mr. Owens hitting the Budget truck as the sole purpose --

James Sell - Redirect Examination by Mr. Barnes

1 cause of Mr. Dawkins's injuries. After I turned the --
2 tipped the truck over and he was there comforting me and
3 other people were going around the truck, nothing at all --
4 nothing at all happened until Mr. Owens had a semi out of
5 control, hit the Budget truck, caused injuries to myself,
6 Mr. Dawkins, and to the -- the couple of other people that
7 had stopped. No one was harmed prior to that happening.

8 Q So according to you --

9 A So I do not accept responsibility for Mr. Dawkins's
10 injuries.

11 Q So according to you, you were not responsible for
12 Mr. Dawkins's injuries?

13 A That is correct.

14 Q You admit you were responsible for Mr. Dawkins
15 being there that night?

16 A No, I wasn't. I didn't ask him -- I appreciate
17 him. Don't get me wrong, I appreciate the fact that he
18 stopped along with some other people. I very much do. But
19 I didn't ask him to stop. I didn't tell him to stay. I
20 didn't instruct him on anything to do. He stopped of his
21 own -- you know because he's a good samaritan and he's a
22 great guy. We've heard plenty of testimony to that and I
23 don't disagree with any of that from what I know of him.
24 But I didn't ask him to stop or stay or do anything.

25 Q Thank you, Mr. Sell, I appreciate your time.

James Sell - Recross-Examination by Mr. Griffith

1 THE COURT: Recross?

2 MR. GRIFFITH: Just one thing.

3 RECROSS EXAMINATION

4 BY MR. GRIFFITH:

5 Q And I want to make sure we're clear on it. You
6 were asked about being at least ten miles ahead of your son
7 and daughter-in-law?

8 A Yes, sir.

9 Q Y'all had quit caravanning together, right?

10 A Yes.

11 Q They might have stopped somewhere else for a break
12 or a bathroom and you wouldn't know about it; is that
13 right?

14 A That's correct.

15 Q So over the course of the trip there, you might
16 have flip-flopped who was in the lead and who was behind,
17 correct?

18 A Yes. Yes, sir.

19 Q But, obviously, I'm getting old because I forget
20 about these things. Everybody had a cell phone, you could
21 communicate with each other?

22 A Yes, yes, sir.

23 Q No further questions.

24 THE COURT: All right. You can step down.

25 All right. You have that phone call lady available

1 MR. GRIFFITH: I think I'm down to two witnesses.

2 THE COURT: Well, let's see where we're at then, we
3 might very well charge and argue this afternoon. So we'll
4 give you a copy of that and see where we go.

5 (A recess for lunch was observed.)

6 THE COURT: All right. What's the -- on Owens --
7 what is this Owens, Dennis Owens.

8 MR. BARNES: That's correct, Your Honor.

9 THE COURT: What's the ones that are objectionable?

10 MR. BARNES: So out of the designations, we've
11 counter-designated some testimony and we object to page 95,
12 lines 11 and 19.

13 THE COURT: 95, 11 and 19.

14 Okay. This must not add up to what -- I've got
15 Dennis Owens page 95, 11 and 19. It says I'm going to hand
16 you what I marked as Exhibit Number 1 and ask you if you
17 can identify it? That can't be what you objected to.

18 MR. BARNES: That's correct, Your Honor. And what
19 this relates to and this kind of ties into some of the
20 testimony that I think Mitch is trying to go elicit through
21 Mr. Pinckney is the days preceding August 21st of 2010 from
22 Mr. Owens to establish his conduct and allegedly violating
23 acts of the Federal Motor Carrier Safety Act and we believe
24 that that is not relevant to any issue in this case. He's
25 not a party. The issues here are Mr. Sell's negligence.

1 We've counter-designated some of the testimony of
2 Mr. Owens to establish what he saw, what he observed in
3 going down the road that night, where he had left from that
4 night, but we think anything that predates August 21st of
5 2010 is really irrelevant and furthermore under Rule 403
6 would confuse the issues as to someone that's not a party
7 and we're talking about their conduct in the days leading
8 up to the date of the accident.

9 THE COURT: What is it that he did or didn't do?
10 What kind of conduct are we talking about?

11 MR. GRIFFITH: Judge, he violated the Federal Motor
12 Safety -- Federal Motor Carrier Safety Regulations in at
13 least two ways. One, he was driving over his hours, which
14 would make him a fatigued driver because the Federal Motor
15 Carrier Reg -- Safety Regulations indicate that you have to
16 have at least 10 hours worth of rest in a 24 hour period;
17 that you've got to be in your sleeper berth during that
18 period of time. There's evidence that he at least in the
19 two days leading up to this accident that he violated that
20 10-hour rule on both occasions the day before and the day
21 preceding that. That -- it's also going to show that based
22 upon his logbook that he submitted as saying what his
23 travel time was that he falsified his logbook by saying he
24 was in the sleeper berth when he, in fact, was not in the
25 sleeper berth, which goes basically to the fact that he was

1 tired or impaired at the time of the accident because he
2 had violated these rules because that's what the -- that's
3 what the rules are for.

4 He also was driving in a hazard, which he admits
5 was a hazard in his deposition, which would require him to
6 slow his vehicle to a point that he could keep his vehicle
7 under control in this hazard, which was rain and he did not
8 according to his testimony slow his vehicle to the point
9 that it would not be a hazard. Those are two of the
10 Federal Motor Carrier Safety Act violations that he
11 committed.

12 THE COURT: Well, I can see how the second one's
13 relevant, but I don't understand why the first one is. I
14 mean you've -- we've got a five to ten minute gap. The
15 whole question really is, is that contemporaneous so that
16 it gets them past directed verdict or is it so distant in
17 time that it can't be considered for proximate cause.

18 So we've got -- clearly driving too fast, ignoring,
19 you know, hitting somebody in a hazardous situation is a
20 bad thing, it's wrong, but driving with too many hours, I
21 -- you're not asking for punitive damages against him. I
22 know you're going to point to an empty chair and that's
23 certainly fair game. But I don't really see the relevance
24 of spending a lot of time on his misconduct other than he
25 shouldn't have been driving too fast when there was a wreck

1 up ahead.

2 MR. GRIFFITH: The reason for the regulations,
3 Judge, are for the safety of the public and the safety of
4 the driver. The regulation requires you to take this rest
5 so that you're not fatigued when you're driving. If the
6 driver is fatigued, then he has a tendency to make
7 mistakes. If he's fatigued and makes that mistake, which
8 he did on this occasion because he violated these
9 regulations, I think it goes to his condition. I think
10 it's clearly relevant as to whether the fatigue caused the
11 condition.

12 THE COURT: Yeah, but there's not any question that
13 he was wrong and at fault. The question is did it break
14 the chain between your client's wreck and that subsequent
15 wreck. And I -- the fatigue factor is a little harder for
16 me to get my head around seeing the relevance of it. It's
17 kind of like -- it's -- well, but for the fatigue, the
18 wreck wouldn't happen. I don't know about that. It's more
19 of a driving too fast is really more of a concern.

20 MR. GRIFFITH: I think it's three things --

21 THE COURT: It gets you there. I mean there was a
22 wreck. He was going -- he shouldn't have been driving as
23 fast as he was.

24 MR. GRIFFITH: The plaintiff has already put in
25 fatigue as trying to be a factor for Mr. Sell by talking

1 about how long he drove.

2 THE COURT: Yeah, but there's nobody here that's
3 arguing that Mr. Owens wasn't at fault. The only question
4 is was he the only one at fault.

5 MR. GRIFFITH: That's right. And if you look at
6 the four points, the four -- I think that you're probably
7 going to hear four things: Is that Mr. Owens was driving
8 while impaired. That don't mean he was drunk. He was
9 impaired because he was not rested as required by the
10 Federal Motor Carrier Safety Act. He was driving in a
11 hazardous condition, so he should have decreased his speed.
12 He failed to keep a proper lookout because when you're
13 driving an 80,000 pound truck, you have different
14 obligations as a professional driver. And then he drove
15 beyond his headlights. And those four factors together
16 combine to be that it is the sole cause of this accident.

17 It's our position, and I think that we ought to be
18 able to proffer -- or at least put up testimony as to the
19 fact that he was driving impaired and we believe he was
20 driving impaired because he didn't have the rest that was
21 required under the Federal Motor Carrier Safety Act. And
22 we can prove that he didn't have the rest because he
23 falsified his logs.

24 THE COURT: Well -- well, I can see where there's a
25 difference in saying that he was at fault and he was the

1 sole at fault and there's no question that he was at fault.
2 More of the issue is whether he's solely at fault. But
3 since you are undertaking the defense of he was solely at
4 fault or -- I guess it's fair for you to be able to kind of
5 assume that burden. So I'll let you go with it.

6 MR. BARNES: Judge, just so I understand the
7 Court's ruling on this, I think that is somewhat of a
8 slippery slope for Mr. Griffith to go down to say Mr. Owens
9 was driving while impaired at the same time the vehicle
10 that Mr. Sell was driving, has he been conducting business,
11 that vehicle would have been required to keep logs and he
12 would have, himself, been in violation of those same
13 regulations that Mr. Griffith wants to say makes Mr. Owens
14 an impaired driver.

15 THE COURT: Well, there's been no evidence that
16 there was a requirement that somebody goes and rents a
17 Budget rent-a-car type vehicle has any obligation.

18 MR. BARNES: But specifically -- I want to make
19 sure I understand the Court's ruling here. What we believe
20 is not relevant is the conduct in the days leading up to
21 August 21st. Clearly he can argue and publish testimony of
22 what took place on August 21st, his condition at that time.
23 What we have a problem with and what we believe confuses
24 the issues for the jury is what took place in the two,
25 three, four days prior that is really not relevant to these

1 issues. Clearly what's relevant is August 21st of 2010.

2 THE COURT: Well, I understand what your argument
3 is. But I ruled against you.

4 MR. BARNES: Okay.

5 THE COURT: Okay. So are all of your objections
6 along these veins? That same argument?

7 MR. BARNES: The next one, Your Honor, is page 95,
8 line 24.

9 THE COURT: Is this all the same kind of argument?

10 MR. BARNES: It is.

11 THE COURT: All right. Well, then just put in what
12 your objections are for the record.

13 MR. BARNES: Basically, Your Honor, and I think it
14 already established it relates to his conduct in the days
15 leading up to this. It's totally irrelevant. It doesn't
16 go to any issues.

17 THE COURT: Just for the record, put the page and
18 lines in that you object because I don't think it's in the
19 record.

20 MR. BARNES: How about I just hand up our
21 counter-designations.

22 THE COURT: That will work. You can just have it
23 marked and we'll make it an exhibit and it doesn't go back
24 to the jury.

25 (Court's Exhibit Number 4 was marked for the

1 record.)

2 MR. BARNES: Judge, I would also like to make a
3 Court's Exhibit, our exhibit list, pretrial brief, witness
4 list, all of that.

5 THE COURT: If you want.

6 (Court's Exhibit Number 5 was marked for the
7 record.)

8 THE COURT: Okay. So what we have decided is that
9 you are basically resting because you can't get ahold of
10 that lady, correct?

11 MR. MURDAUGH: Yes, sir.

12 THE COURT: Okay.

13 MR. MURDAUGH: Well, because we're going to enter
14 into a stipulation. I'm going to try to get it --

15 THE COURT: All right. You've got a stipulation
16 written out?

17 MR. MURDAUGH: I will, Your Honor.

18 MR. BARNES: Judge, while Alex is doing that, I'd
19 like to bring up since some of the issues that have arisen
20 as it relates to flares and reflective triangles, and given
21 Mr. Sell's testimony on the condition of the vehicle that
22 that may have been an issue, we believe that there's some
23 additional statutes that we did not submit to the Court to
24 be charged that we believe the evidence may show that
25 Mr. Sell violated, so I would just like to hand those up.

1 THE COURT: What are they?

2 MR. BARNES: They are 56-5-4410, 56-5-5310,
3 56-5-5060, 56-5-5080, and 56-5-5090 and I can hand these up
4 to the Court.

5 THE COURT: I'll take a look at them.

6 (The documents handed to the Court.)

7 THE COURT: All right. Well, look, why don't we go
8 ahead and before we bring the jury in, let's just go -- if
9 he's resting, we'll have them stand up and rest in front of
10 the jury and we'll move to your -- but we'll go ahead and
11 argue your directed verdict motion now.

12 **DIRECTED VERDICT MOTIONS**

13 MR. GRIFFITH: Yes, sir. Your Honor, at this time
14 we'd move for directed verdict on the grounds that the
15 evidence taken in the light most favorable to plaintiff in
16 this case fails to show any negligence on behalf of
17 Mr. Sell as a matter of law. The evidence shows that
18 Mr. Sell was involved in an incident on I-95 driving a
19 Budget truck, that at least -- the only testimony is five
20 or ten minutes passed prior to the accident and then they
21 were hit or then the Budget truck, after he had exited, was
22 hit by a tractor trailer truck coming down I-95 after other
23 traffic had stopped and started to go around it.

24 As such, we think that it is a matter of law that
25 this is basically an intervening act of negligence or

1 actually no negligence on the part of Mr. Sell and an
2 intervening act of negligence as a matter of law.

3 I think we had previously moved for summary
4 judgment. Basically, I think it's the case of Gibson
5 versus Gross and I would point out that there are very
6 similar factual patterns happened where the plaintiff was
7 stopped and they said that he was stopped on the wrong side
8 of the road because an altercation had occurred between two
9 other people and then a car came along and hit the car that
10 -- Mr. Gross's car that was stopped and I believe that was
11 basically found to be as a matter of law in the intervening
12 act of negligence. And as such we would move for a
13 directed verdict on those grounds.

14 THE COURT: You want to be heard?

15 MR. BARNES: Yes, Your Honor, I'll try to keep it
16 brief. Basically the evidence is that Mr. Sell overturned
17 this truck, violated numerous statutes, two of which are
18 already charges, we've handed up some more. We believe
19 that there's plenty of -- or the evidence viewed in the
20 light most favorable to Mr. Dawkins, that Mr. Sell was
21 negligent.

22 As to the argument of the intervening negligence as
23 we've previously talked about in our motion in limine,
24 Mr. Sell filed a cross claim against Pierce National and
25 Dennis Owens alleging that their negligence proximately

1 caused his injuries. So based on his pleadings in this
2 case it's clearly foreseeable that one who blocks the
3 southbound lanes of I-95 may result in a collision. That's
4 why Trooper Rush testified how he did. We would also like
5 to rely on the case of Matthews v. Porter that we have in
6 the Court's notebook that talks about very similar facts.
7 Porter caused an accident with another individual, Matthews
8 stopped the vehicle that her husband was driving. She got
9 out of the vehicle to help a physician and then another
10 individual came down the road and caused a collision. And
11 Porter wants to contend, Hey, even though I caused the
12 first accident, the chain of causation is broken such that
13 I'm not liable for an intervening negligence.

14 In that case, the Court denied the motion on the
15 basis of intervening negligence and the issue was submitted
16 to the jury. So we believe that Mr. Sell's motion should
17 be denied.

18 THE COURT: You feel like you want to respond?

19 MR. GRIFFITH: No, sir, that's fine.

20 THE COURT: Okay.

21 MR. GRIFFITH: I just have another brief motion
22 now.

23 THE COURT: All right. Well, you know, the whole
24 issue is, it boils down to proximate cause. I think
25 clearly there's sufficient evidence in the record that --

1 you could argue that Mr. Sell was negligent in losing
2 control of his vehicle, that caused his vehicle to turn
3 over on the interstate. The real question is proximate
4 cause and, you know, usually you get a case where there's
5 just a pile up, it all happens one right after the other.
6 Here there's, sounds like anywhere from two to three to ten
7 minutes between the time that Mr. Sell wrecked and the time
8 the other truck, Mr. Owens's truck came along and ran into
9 his truck. You know, the evidence -- I think there's no
10 clear cut -- cut off on how much time and how little time
11 causes it to be contemporaneous, which I think is the terms
12 the law speaks in.

13 Frankly, I think it's -- since I can't say as a
14 matter of law that it was not contemporaneous, then it's up
15 to the jury to determine whether or not it was and if it
16 breaks the chain of causation for proximate cause. So I
17 deny your motion.

18 MR. GRIFFITH: Judge, at this time I would move for
19 a directed verdict on the grounds that the evidence taken
20 in the light most favorable to the plaintiff failed to show
21 at least on the issue of economic loss under -- of a wage
22 loss on the grounds that the only testimony from the
23 plaintiff is mere speculation. He says he had some wage
24 loss. He can't give the jury any idea of how to calculate
25 that wage loss. He had so many things going on in his life

Deposition of Dennis Owens

1 MR. GRIFFITH: Yes, sir. At this time we'd call
2 Dennis Owens. This will be by deposition.

3 THE COURT: All right. So we're going to have the
4 next witness testifying in the form of the deposition just
5 like you heard yesterday. Ms. Davis is going to read the
6 answers of the witness, Mr. Owens. Same instructions I
7 gave you yesterday apply to this witness. It was
8 out-of-court testimony taken under oath. Both parties
9 represented by counsel who had the opportunity to ask
10 questions. Mr. Griffith is going to read the questions of
11 the lawyers and she is going to read the answers of
12 Mr. Owens.

13 You don't give this testimony any greater weight or
14 any less weight because it's presented to you in this
15 format and you determine how much weight the testimony
16 deserves based on all of the testimony and evidence that
17 you've heard throughout the trial.

18 Go ahead.

19 MR. GRIFFITH: Dennis J. Owens being first duly
20 sworn by the court reporter is here now certified,
21 testified as follows.

22 DEPOSITION OF DENNIS OWENS

23 Q First of all, I'd like you to state your full name,
24 please.

25 A Dennis Jones Owens.

Deposition of Dennis Owens

1 Q Well, the only reason figured that out is because
2 I'm about the same age, I guess. You were born in '54,
3 that means you're 58; is that right? Page 6.

4 A Yes, sir.

5 Q Okay. And the only reason I figured out that is
6 because I'm about the same age. How long have you been
7 driving a truck?

8 A I've been driving a truck with -- with Pierce
9 National like 12 years.

10 Q The --

11 A The reason I -- well, I drive for three years
12 before I drove for them.

13 Q So you've been with Pierce National for 12 years?

14 A About 12 years, yes, sir.

15 Q How far did you go in school?

16 A 12th.

17 Q All right.

18 A Although I went to trade school a little bit for
19 auto mechanic, you know, but I didn't go long.

20 Q First let me start, do you have a commercial
21 driver's license?

22 A Yes, sir.

23 Q And how long have you had a CDL?

24 A Let's see, I've had them about 15 years.

25 Q All right. Tell me about the National Guard. What

Deposition of Dennis Owens

1 kind of unit were you in?

2 A I'm on the transportation unit.

3 Q What did you drive for them?

4 A Everything; big trucks, small trucks.

5 Q And where was that guard unit based?

6 A Brantley, Alabama.

7 Q Are you still in the Guard?

8 A No, I got out July of last year.

9 Q How many years were you in it?

10 A 32.

11 Q Well, let me ask you this: This accident happened
12 that we're talking about around four in the morning, right?

13 A Yes, sir.

14 Q Where were you -- where had you been?

15 A I had been over there around a little place that
16 called what -- I was coming out from Summerville, that way.

17 Q Okay. And what's the town in Alabama that Pierce
18 National is in?

19 A It's Andalusia, Alabama and then we've got an
20 office in Red Level, Alabama.

21 Q Okay. Which one do you run out of?

22 A Red level.

23 Q Okay. Were you on your way home then?

24 A Yes, sir, yes, sir.

25 Q Page 19.

Deposition of Dennis Owens

1 Okay. So you said you left Summerville sometime
2 around midnight?

3 A Around midnight, yes.

4 Q How would -- did you plan on going home?

5 A Well, I came through 17 off 95. Well, see, by it
6 being dark and really don't know that road that good, being
7 that, you know, you always like to stay on the big road,
8 you know, around the interstate, so what I figured I'd come
9 out to interstate and stay on the big road and then go back
10 on 16 to Macon.

11 Q So your plan was to go 26, 95, 16?

12 A Yes, sir.

13 Q And then once you got to Macon, you were going to
14 take off, what across 75?

15 A 75? Yes, sir.

16 Q And head back to Alabama?

17 A Yes, sir.

18 Q Were you going to South Alabama then?

19 A Yes, sir, South Alabama.

20 Q Because I thought to go somewhere like Birmingham,
21 you have to go through -- gone up to Atlanta?

22 A No, no, sir. I was going the cut across and go up
23 75.

24 Q All right. So around 12:30, you were -- you were
25 rolling?

Deposition of Dennis Owens

1 A Yeah. About 12:30, I was rolling.

2 Q All right. And then you came up 26, caught 95, and
3 then headed south?

4 A Yes, sir.

5 Q Okay. Did you slow down any?

6 A Yeah, that slows you down.

7 Q How fast did you go when it was raining hard like
8 that?

9 A Probably around about maybe 60 or 65.

10 Q Okay. And you say that your truck is governed
11 at --

12 A Well --

13 Q 80 -- I mean 68 miles an hour?

14 A 68 miles an hour, but the one I'm running now
15 governed at 68.

16 Q So you couldn't run above 68 if you wanted to?

17 A No, sir.

18 Q Okay. All right. Well, tell me what happened as
19 you were coming down 95?

20 A Well, I was coming down 95. I turned and I had my
21 lights on dim, like I said. Now it was really dark. I was
22 riding, you know, just like looking at the lines of the
23 highway because, like I say, I wasn't driving that fast.
24 You can't drive fast when you can't hardly see too good,
25 okay. As I approached there, I got down there by where the

Deposition of Dennis Owens

1 accident, all of the sudden, I'm looking down at the line
2 and bringing my line on up, there was a wall like, like the
3 highway has disappeared when I got to wondering, you
4 driving a load, loaded 18 wheeler. You got to start
5 thinking a million times what you need to do, you know,
6 because if you make any little twist or wrong with that
7 truck, it's go -- you going to flip it. So that's what I
8 started doing when I seen that wall. What did I got to do,
9 well I was -- I was really close up on it before I even get
10 to know what was going on. I'm trying to figure out what's
11 going on, you see. The line disappeared, then my lights as
12 they come on up, there was a wall block.

13 Q Okay. So about 45 feet?

14 A Yeah.

15 Q Okay. So about 45 feet, you saw the line
16 disappear?

17 A Yeah. As I'm looking down, you know, you see the
18 line disappear.

19 Q Okay. And you never saw anything before that?

20 A No, sir. No.

21 Q Did you see any other traffic on the road?

22 A No, sir. Nothing up ahead of me.

23 Q Nothing ahead of you?

24 A Nothing up ahead of me.

25 Q Did you -- you got a radio?

Deposition of Dennis Owens

- 1 A Yes, sir.
- 2 Q Do truckers still use that?
- 3 A That's right.
- 4 Q CB's and talk to each other?
- 5 A Yes, sir.
- 6 Q All right. Did anybody -- did -- where were you --
7 where well, you had the radio on?
- 8 A Yes, sir.
- 9 Q Did you hear anybody at all call up and say they've
10 got a problem on 95?
- 11 A I ain't heard a word.
- 12 Q Okay. But you had the radio on?
- 13 A Oh yes, sir.
- 14 Q Okay.
- 15 A Yes, when it moves, it's on.
- 16 Q So you leave it on when you're rolling?
- 17 A Yes, sir.
- 18 Q We talked about rain. Were your windshield wipers
19 on?
- 20 A Yes, sir.
- 21 Q And you were rolling down the road with your
22 windshield wipers on, dark as it could be. Did you slow
23 down because of the weather?
- 24 A Yes, sir.
- 25 Q Now, how fast were you going on 95?

Deposition of Dennis Owens

1 A I imagine then I run about -- well, I got straight
2 about 65, about 65 or 7 -- or 67, something like that right
3 there.

4 Q Do the ones you drive also have governors on them?

5 A Yes, sir.

6 Q Can you ever get them over 70 miles an hour?

7 A Not that I know of.

8 Q Okay. Now, we were talking back about the weather
9 -- whether you heard the radio, anything about this. You
10 didn't hear anything on the radio?

11 A Didn't hear nothing.

12 Q Okay. And you say that you didn't see any traffic
13 any other traffic on the road whatsoever?

14 A Not ahead of me it wasn't.

15 Q Okay. Now, if you -- if you -- if they drive --
16 excuse me. If they -- if they had been in front of you
17 that'd had red lights?

18 A Yes, sir, yes, sir.

19 Q And if they had been slowing down their brake
20 lights would have come on?

21 A Yes, sir.

22 Q And made it brighter?

23 A That's right.

24 Q And you didn't see the brake lights.

25 A I ain't seen the first brake light.

Deposition of Dennis Owens

1 Q Okay. How far are your headlights supposed to
2 shine?

3 A I don't really know, but it -- it's with different
4 trucks. Now Volvo, they just don't shine out there.
5 They've got that big globe in front.

6 Q All right.

7 A They just don't shine out like other trucks.

8 Q Were you driving a Volvo that day?

9 A I was. I was driving a Volvo then, already one.

10 Q All right. And you had them on dim?

11 A Yes, sir.

12 Q So they don't just shine very good?

13 A They don't shine that bright out. You know,
14 everything because I'm driving international now and
15 they've got better lights, you know.

16 Q Well, if you've got nothing in front of you,
17 nothing coming at you, why didn't you turn your bright
18 lights on? Can't you see further?

19 A Well, yeah. That's a habit, you know, just a
20 habit. You just don't put them on bright because you --
21 the folks from the other lane going to be grumbling about
22 you got your lights on bright.

23 Q Okay. When you hit -- when you told me a minute
24 ago that that line just ran out --

25 A Yes, sir.

Deposition of Dennis Owens

1 Q -- you said that you've got a million things to
2 think about?

3 A Yeah.

4 Q What did you do then?

5 A Well, I was then, you know, looking on the right,
6 looking on the left out like that because of what I need to
7 do. What you going to -- would I avoid this situation.
8 Well, see, on the side I don't know if it was a gully here
9 or either on the other side, you know, anything. I'm
10 loaded with 80 -- a load of 80,000 and if you twitch a
11 little bit with that truck, you going to flip it.

12 Q Okay. When did you realize there was something in
13 the road?

14 A After I seen the wall after the -- started on
15 looking on up at it and the light got brighter to it and on
16 -- on there you could see it. That's when I realized and
17 that was -- then I was right up on it.

18 Q Well, now, you told me a minute ago that you were
19 about 45 feet away when you realized that the line ran out?

20 A Yeah.

21 Q How much closer were you when you realized there
22 was something in the road?

23 A I imagine about the length of this room here then
24 because I getting -- I was just getting close. I was still
25 braking, trying to see what was going on.

Deposition of Dennis Owens

1 Q So that's about 30 feet, then?

2 A Yes, sir, uh-huh.

3 Q That's what we said a minute ago, right?

4 Up -- go ahead and read it, it's just yes, sir.

5 A Yes, sir.

6 Q All right. Did you start braking then?

7 A Yes, sir, yes, sir. I was slowing down then after

8 that started happening because like I say I didn't know

9 what was going on.

10 Q When did you hit the brakes to start with?

11 A When I were -- like I said about what we say about

12 45?

13 Q Right.

14 A Yes, sir.

15 Q So --

16 A And then --

17 Q -- immediately when you saw the line ran out, did

18 you start braking?

19 A Yes, sir, yes, sir.

20 Q So you immediately put your foot on the brake?

21 A Yes, sir.

22 Q Started looking right and left?

23 A Yes, sir.

24 Q And when you looked to the right, you saw -- you

25 know there's an emergency lane?

Deposition of Dennis Owens

1 A That's right.

2 Q Was anything in this emergency lane?

3 A No, wasn't nothing in the emergency lane.

4 Q All right. What was your speed at impact?

5 A Oh, I imagine probably around about 65, 60,
6 something along in there.

7 Q Okay. When you hit the brakes, you were able to
8 slow down to 65 miles on hour?

9 A Yes, sir.

10 Q Okay. Then at the impact, you were going 65 miles
11 an hour? -- I'm sorry.

12 A Yeah.

13 Q All right. Do you know if you hit the cab of the
14 truck or -- or the back of the box truck?

15 A I couldn't really tell which one. All I could see
16 were the wheel.

17 Q Okay. So it ended up in the median?

18 A It end up in the median.

19 Q All right.

20 A That's right.

21 Q Where did you end up?

22 A In the median where -- there with it.

23 Q Okay. But you were further south than the Budget
24 truck, right?

25 A Yes, sir.

Deposition of Dennis Owens

1 Q You were pulling -- it was -- you were pulling a
2 container or were you pulling a trailer?

3 A A -- a trailer, a dry box.

4 Q A dry box?

5 A Yes, sir.

6 Q And the dry box, was it loaded?

7 A Yeah, I was loaded.

8 Q How much weight?

9 A I was pushing like, what, 45. I had -- I had like
10 -- it wasn't cotton. It's sort of like some kind of
11 synthetic fabric. It's heavy stuff I was grossing almost
12 about 80,000 with everything.

13 Q What's that about 40 tons that would have been --
14 no, that's a --

15 A No, I don't think it was quite that much.

16 Q 80,000 pounds is what you were grossing, right?

17 A Yeah, the truck -- with truck, trailer, and
18 everything.

19 Q All right. I believe we're on page 67.

20 A Yes, sir.

21 Q Okay. Was this a straight stretch of road?

22 A Now, it was dark now. As far as remembering what
23 was out there, just like that, or either on the side of it
24 or nothing, now I don't remember that.

25 Q Is that a straight stretch of road?

Deposition of Dennis Owens

1 A Well, yeah. The way it looks it is. But now, it
2 got a little dip in it right there because I remember my
3 son-in-law told us, said there's a little dip in it. It's
4 got a little dip there, you know.

5 Q On past where the accident happened is straight for
6 a good stretch?

7 A Yes, sir, yes, sir, uh-huh.

8 Q Yeah, with this being a straight stretch of road,
9 it reasons then that there were no other cars that you
10 could see?

11 A That's right.

12 Q Now, you said that you got --

13 I think the next one is 84.

14 A Yes, sir.

15 Q All right. Now, you said you got a CB radio in the
16 truck; is that right?

17 A Yes, sir, yes, sir.

18 Q You're going down, you're a professional truck
19 driver?

20 A Yes, sir.

21 Q Right? And you're going down the road, right?

22 A Yes, sir.

23 Q You see an accident?

24 A Yes, sir.

25 Q What do you do?

Deposition of Dennis Owens

1 A Well, you holler off and tell the drivers when you
2 see an accident and where it's at. Try to get a mile
3 marker, how many miles it is as you get on down the road
4 from it. You know, where they'll be looking out that --
5 what's going on.

6 Q So when you see an accident, you get on the CB?

7 A Yeah.

8 Q And you say something like accident, mile marker
9 65?

10 A Yeah.

11 Q Or something like that?

12 A Yeah. If you don't see none, you probably give
13 them like how many miles it may be, you estimate where it's
14 at and everything.

15 Q But you blasted that out, right?

16 A Yeah, yeah.

17 Q And that's --

18 A You get on --

19 Q -- because you want them to know A safety?

20 A Yeah.

21 Q B, maybe go around it, right?

22 A Right, right. Well, you do the same thing, you
23 know, we'll be trying to --

24 Q Who does the same thing?

25 A The drivers, other drivers will, you know, be

Deposition of Dennis Owens

1 courteous and do the same thing.

2 Q Y'all generally --

3 A You know, like that.

4 Q Do that to each other?

5 A Yes, sir, yes, sir, uh-huh.

6 Q And at no point did you hear anything blasted over
7 the CB?

8 A No, I didn't hear nothing.

9 Q The next page is 93?

10 A Yes, sir.

11 Q Mr. Owens, you mentioned something earlier, you
12 consider yourself a professional driver?

13 A Yeah.

14 Q And you got a special license?

15 A No, I ain't got no special license now.

16 Q Well, CDL is a special license?

17 A Well, you consider this thing, but I just try, you
18 know, just practice safety best as I can. You know, that's
19 the reason I said a professional, you know, for it, it's
20 what it is. It's just safety.

21 Q Safety's important?

22 A Yes, sir.

23 Q And there -- there's a lot of rules and a lot of
24 regulations?

25 A That's right.

Deposition of Dennis Owens

- 1 Q You got to follow as a --
- 2 A Yes, sir.
- 3 Q -- professional driver?
- 4 A Yeah.
- 5 Q Right. And -- and part of that is your logbook?
- 6 A Yes, sir.
- 7 Q The logbook is important, isn't it?
- 8 A Yes, sir.
- 9 Q And that's because you've got an 80,000 pound piece
- 10 of equipment traveling the highway?
- 11 A That's, that's right.
- 12 Q And it can seriously injure or kill people --
- 13 A Yes, sir.
- 14 Q -- if you're over your hours?
- 15 A That's right.
- 16 Q You don't want tired truck drivers on the road, do
- 17 you?
- 18 A No.
- 19 Q And if we flip over -- let's flip over on August
- 20 21st. And this is -- this is an accurate reflection of
- 21 your log?
- 22 A Yes.
- 23 Q And it appears that you had your safety check until
- 24 one or 1:30?
- 25 A Yeah.

Deposition of Dennis Owens

1 Q And then you left. You might have picked that
2 stuff up around Moncks Corner?

3 A Yes, sir, yeah that's what it -- Moncks Corner,
4 right.

5 Q And then you started driving according to this at
6 1:15?

7 A Yeah.

8 Q And you drive continuously until 3:30?

9 A Yes, sir. About the time of the wreck, uh-huh.
10 What you had to record about when the accident happened and
11 I put it all right there.

12 Q How many hours did -- had you slept the day before?

13 A I don't really know. I don't really know.

14 Q Well, is it -- is that -- that's what I'm asking.
15 If you flip over on the back of the previous page, you're
16 in a sleeper berth from 10:30 until one o'clock in the
17 morning.

18 A Yeah.

19 Q Were you asleep this whole time?

20 A No. You don't just be sleeping there.

21 Q Yeah, but --

22 A Really don't never sleep no ten hours. This is,
23 you know --

24 Q Well, it's important to -- and this is why I'm
25 asking you the question.

Deposition of Dennis Owens

1 A Yeah, I know what you mean.

2 Q It's really -- it's important to accurately
3 document --

4 A Uh-huh.

5 Q -- your hours?

6 A Yeah.

7 Q And that's why the regulations are in place?

8 A That's right. You're right.

9 Q And the law requires you to sleep so many hours?

10 A Yes, sir, yes, sir.

11 Q How many hours?

12 A Ten hours.

13 Q You can be found in violation of this and receive a
14 ticket, correct?

15 A That's right. That's right.

16 Q All right. Going back to the day of the wreck and
17 the day before, like I asked you earlier, from 10:30 in the
18 morning on the 20th, until one in the morning on the 21st,
19 you -- it's noted here sleeper berth.

20 A Yeah.

21 Q And there -- was there a time during these hours
22 when you were not in the sleeper berth?

23 A Yeah. Yeah, I got up. You know, I would get up
24 and everything, you know, it wasn't -- I was at the truck
25 stop. Go in the truck stop and I get me something there to

Deposition of Dennis Owens

1 eat and come back, you know.

2 Q So how long were you at the truck stop?

3 A I was there the whole evening. I was at the truck
4 stop the whole evening until that -- until I got ready to
5 leave that morning.

6 Q So what time -- what time did you arrive at the
7 truck stop?

8 A Early that morning. I had -- because I had went
9 and delivered that load. When I come back, it was early
10 that morning. I came back there. I wasn't going to pick
11 up my load up until later on that night.

12 Q Okay.

13 A Uh-huh.

14 Q So did you -- you're saying you got there in the
15 morning, but you -- it shows you in the sleeper berth at
16 10:30 on the 20th, right?

17 A Yeah.

18 Q Between 10:30 and -- between 10:30 on the 20th and
19 1 on the 21st, what -- when did you arrive at the truck
20 stop?

21 A Well, like right down here it said, what? 9?
22 Georgetown on back to Summerville. Okay. I -- this what I
23 -- okay. I emptied out in Georgetown, South Carolina. I
24 came up from Georgetown, South Carolina. I came back up to
25 Summerville to the truck stop, Exit 199, right there. And

Deposition of Dennis Owens

1 that's where -- I stayed there that evening. I went and
2 picked my load up, yeah.

3 Q Between 10:30 and -- on the 20th and one in the
4 morning on the 1st, how much of that time was spent in the
5 sleeper berth resting?

6 A Well, almost practically all day. All day cuz like
7 I say, I was in my truck, you know what I mean, just --
8 that's -- that's -- we in the truck. You don't move the
9 truck, you in the truck. And that's the way I was trained.

10 Q How many of those hours were you technically
11 asleep?

12 A I imagine around about a good eight of them. Yeah,
13 about eight.

14 Q Is that from your memory?

15 A Yeah.

16 Q And -- but you can't -- can you say exactly?

17 A No. I can't say exactly. I can't say exactly.

18 Q And that's why it's important to have this
19 documented in the logs, correct?

20 A Yes, sir, yes, sir.

21 THE COURT: Okay. Next witness.

22 MR. GRIFFITH: Yes, sir, Your Honor. At this time,
23 we would call John Pinckney.

24 JOHN PINCKNEY,

25 having been duly sworn, testified as follows:

John Pinckney - Direct Examination by Mr. Griffith

1 THE CLERK: Have a seat.

2 DIRECT EXAMINATION

3 BY MR. GRIFFITH:

4 Q Mr. Pinckney, you been sworn?

5 A I have.

6 Q Okay. State your full name for us, please.

7 A John Wallace Pinckney.

8 Q Mr. Pinckney, where do you live?

9 A I live in Muncie, Indiana.

10 Q Could you tell the jury a little bit about your
11 educational background?

12 A Graduated from high school in Cedar Rapids, Iowa,
13 John F. Kennedy High School; went to the local college
14 called Coke College and then while working at Burlington
15 Motor Carriers, went back to school at night and got MBA.

16 Q All right. And you got your MBA in what year?

17 A I believe it was '95.

18 Q And that was from Ball State in Muncie?

19 A Yes, sir.

20 Q All right. And after you went to college, I
21 believe, it would have been -- after you got your
22 Bachelor's of Arts, what did you do? Give me a little --
23 tell the jury a little bit about your work background?

24 A I went to work for my dad driving a truck.

25 Q And your dad owned a trucking company or owned some

John Pinckney - Direct Examination by Mr. Griffith

1 trucks?

2 A He did. It was a produce brokerage and
3 distributorship. So even throughout high school and then
4 college and then after college, if you weren't in school
5 activity then you were either in a straight truck or you
6 were loading, unloading trucks or you were picked up and
7 delivering freight.

8 Q Okay. How long did you work for your father's
9 company?

10 A I worked for my dad right off the top of my head
11 I'm going to say somewhere around '83. We didn't make it
12 through the first OPEC crisis. The price of diesel fuel
13 jumped dramatically and we just weren't on top of it, so --
14 then I went to work for a company called CRST.

15 Q All right. And what was -- what is CRST?

16 A CRST is a trucking company. It is an over-the-road
17 irregular route intrastate motor carrier. And when you
18 here motor carrier, that's a trucking company. And at
19 CRST, we had somewhere around 2100 drivers that drove 48
20 states.

21 Q And were you responsible for the risk analysis
22 there at CRST?

23 A I was. I started out of as a dispatcher and then
24 as a dispatcher they moved me into a terminal manager
25 position and after having moved around the country a while,

John Pinckney - Direct Examination by Mr. Griffith

1 I decided to get a job back at corporate headquarters,
2 working in training, driver training. And then from driver
3 training, I went to work in the safety and compliance.

4 Q And would that be the regulatory compliance part of
5 it?

6 A Yes, sir.

7 Q And how long were you at CRST?

8 A I want to say total, it was about 1990 and while I
9 was at CRST, I was involved in, not just regulatory
10 compliance, but if there were serious crashes, I was the
11 company representative that had to do the critical analysis
12 to try and understand critical parts, contributing factors
13 to crashes that resulted in either a fatality or a
14 significant injury.

15 Q And what did you do after you left CRST?

16 A I was given an opportunity to be director of safety
17 for a company in Daleville, Indiana called Burlington Motor
18 Carriers and when I went to work for Burlington, I started
19 off as a director of safety for the scoops division at
20 Burlington Motor Carriers. At that time Burlington had
21 more than 6,000 trucks and I was responsible for the scoops
22 division.

23 Q All right. Did you also work with the Federal
24 Motor Carrier Safety Regulations?

25 A I worked with the Federal Motor Carrier Safety

John Pinckney - Direct Examination by Mr. Griffith

1 Regulations, was still involved in crash analysis, looking
2 for root cause, allowing me the opportunity to develop
3 training programs that I could implement for my drivers to
4 keep them safe and the motoring public safe.

5 Q All right. And how long were you there at
6 Burlington?

7 A I want to say --

8 Q Six years?

9 A Six years, yeah. Around six, seven years. I don't
10 remember if it was '96 or whenever. Somewhere in that
11 area. And that was my second company. When you think
12 about challenges in life, not only did that business come
13 across hard times, but Burlington filed for bankruptcy and
14 that was the reason I had to leave Burlington.

15 Q And then where did you go after you left
16 Burlington?

17 A I was given an opportunity to work for the division
18 of Knight Transportation and they had a new office that
19 just opened up in Indianapolis, Indiana. I was hired as a
20 customer service rep. I was responsible for taking a look
21 at the logistics of freight coming up to the East Coast,
22 matching up freights for the driver, taking a look at their
23 hours, knowing what they could or couldn't handle, working
24 with my drivers to get them in the right place. And then
25 work to get the trucks back into the Midwest where they

John Pinckney - Direct Examination by Mr. Griffith

1 were reloaded to come back out to the East Coast.

2 Q Did you also work with the, again, Federal Motor
3 Carrier Safety Regulations?

4 A I did. As we grew in Indianapolis, the president
5 came down and wanted me to move into HR safety and
6 compliance. So then I went from customer service to
7 running the HR Department Safety and Compliance Training,
8 kind of the whole HR sphere.

9 Q Okay. We're going to get into this a little bit
10 more, but the term Federal Motor Carrier Safety Regulations
11 have come up. What are the Federal Motor Safety
12 Regulations?

13 A Great question. When you hear Federal Motor
14 Carrier Safety Regulations, I like to tell people just
15 break it up. When you hear federal, that means there's
16 more than one state involved.

17 Motor carrier is the fancy term for trucking
18 company; regulations are the regulations and laws that
19 govern the trucking companies that run interstate.

20 Q And you were responsible -- and obviously if there
21 are regulations that truckers have to -- truckers and the
22 companies have to abide by those regulations, correct?

23 A That is correct.

24 Q And they're federally mandated?

25 A They are. When you take a look at what trucking

John Pinckney - Direct Examination by Mr. Griffith

1 companies do, the Federal Motor Carrier Safety
2 administration has agents that will come into the motor
3 carrier and audit for safety compliance. If the auditor
4 finds that any of the six or seven areas are out of
5 control, then what happens are several things. One, the
6 company could lose its safety rating, which a trucking
7 company has three different levels of safety rating and if
8 it's not satisfactory then it can impact the company.

9 The other thing that can happen is that it can
10 cause the company to be fined. It can also cause a driver
11 to be fined for noncompliance with those regulations.

12 Q And it looks like you left Knight Transportation
13 about 2001. Where did you go after that?

14 A I started doing some work for Joe Morrison at
15 National Transportation Consultants. I started up a little
16 company after I did some work with Jack Morlan and
17 Mr. Morlan is a person who taught defensive driving to
18 truck drivers. I started teaching defensive driving
19 courses from the National Safety Council and from the Smith
20 System while I was at Burlington Motor Carriers in 1993; so
21 I was working with the instructors as well as the drivers
22 while at Jack Morlan and then given the opportunity to work
23 with not only the trucking companies, but the motorists of
24 Indiana when I was teaching under CJ International Training
25 the defensive driving courses for the State of Indiana.

John Pinckney - Direct Examination by Mr. Griffith

1 Q Okay. Now, are you currently with CJ International
2 Training?

3 A CJ International Training is still in business. It
4 is one of those that is a very part time. My job at
5 National Transportation Consultants has changed. I was a
6 senior consultant that would travel around to the different
7 trucking companies to work with them on identifying at-risk
8 behaviors, changes, training. And in October of 2015, I
9 was asked to come on board, work full time. They dubbed me
10 the title of Vice President of Operations.

11 I have approximately a staff of ten persons that we
12 work very closely with today's technology and we are
13 responsible for about 200 companies and more than 5,000
14 drivers as it relates to motor carrier safety and
15 compliance.

16 Q So your company works with other trucking companies
17 to insure that they are in compliance with these
18 regulations?

19 A Yes, sir.

20 Q All right. And do you ever in your job conduct
21 audits of these other companies?

22 A Yes. That is a common request from companies that
23 they want to know how they're doing as it relates to DOT
24 regulations, so we call it a mock audit. It's not uncommon
25 for us to do that.

John Pinckney - Direct Examination by Mr. Griffith

1 Q And you also do safety reviews with them?

2 A We do safety reviews as it relates to training and
3 other areas, even recruiting because while I was at
4 Burlington Motor Carriers, I not only was given the
5 responsibility of the scoops division, but then they
6 promoted me to being in charge of all recruiting for
7 Burlington Motor Carriers. So it's a wide range that we
8 offer our clients.

9 Q All right. And so do you give advice to other
10 companies -- you don't just testify for a litigant; is that
11 correct?

12 A No, I don't. This is a small percent of what I do.

13 Q All right. And so you actually go out and deal
14 with these trucking companies themselves?

15 A Yes, sir.

16 Q And you train them on the safety regulations?

17 A When we go into a company, it depends on what the
18 company or the trucking company is wanting us to do. If it
19 is a mock audit, the first thing we'll do is sit down with
20 the people that brought us in to talk to them. And then
21 we'll sit down and go through the different areas of an
22 audit that they would be subject to, looking for
23 noncompliance, whether it be with hours of service, driver
24 qualification files, insurance, accidents. There's
25 actually six or seven areas depending upon whether they

John Pinckney - Direct Examination by Mr. Griffith

1 transport hazardous materials or not.

2 Q All right. Do you have any special training in
3 this area?

4 A The special training I have received is the school
5 of hard knocks and the American Trucking Association and
6 the Indiana and Highway Motor Trucking Association when it
7 comes to organizations. They provide a variety of training
8 courses that you can take. There are -- I'm not aware of
9 any college that offers you a degree as a motor carrier
10 compliance person. There are courses out there offered by
11 different colleges, but it's not like you're going to go to
12 college to be a safety director.

13 Q Are you certified to train professional drivers?

14 A I am. When it comes to my work with the National
15 Safety Council, I am one of the eight persons in the United
16 States that is a master instructor that if the National
17 Safety Council has a need for a defensive driving course
18 anywhere in the world, I'm one of the eight that would be
19 called.

20 Q Do you have any memberships, are you a member of
21 any committees or -- that deal with the trucking industry?

22 A Currently we're a member of a Indiana Motor
23 Trucking Association. In my life, I've been involved with
24 different HR groups, the Iowa Motor Truck Association. I
25 was a member of the Safety Management Council with American

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1 Trucking Association while I was working at CRST. One of
2 the things that we did is we evaluated the notice of
3 proposed rule makings by the Federal Motor Carrier Safety
4 Administration and the two that we were very closely
5 involved in that are quite common now is: One, the CDL and
6 two, the controlled substance and alcohol testing that is a
7 part of interstate trucking.

8 Q All right. Have you received any awards?

9 A I was honored by the National Safety Council in, I
10 believe it was 2006 as being their defensive driving
11 instructor of the year. I wasn't just for the professional
12 driver, of course. As a master instructor, we have eight
13 different defensive driving courses and each one has
14 instructors that are nominated were instructor of a year
15 and that year I just happened to be very fortunate.

16 Q So you got both the driving -- professional truck
17 driver instructor of the year and the defensive driving
18 instructor of the year?

19 A Yes, sir.

20 Q Have you ever testified in court before?

21 A Yes, sir.

22 Q On more than one occasion?

23 A Yes, sir. My first testimony was working at CRST
24 back in the 80's. When a horrible tragedy would occur, I
25 was the one who was involved, representing the company, the

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1 depositions, going to trial and that continued outside of
2 Knight Transportation then I started working for National
3 Transportation as a consultant.

4 Q Have you also testified in federal court?

5 A I have testified in federal court.

6 Q And have you been qualified to give opinions to
7 motor carrier safety and compliance?

8 A Yes, sir.

9 Q Is that basically what you do for a living?

10 A That's what I do.

11 MR. GRIFFITH: Your Honor, I would offer
12 Mr. Pinckney as an expert in the area of motor carrier
13 safety and compliance.

14 THE COURT: Motor what?

15 MR. GRIFFITH: Motor carrier safety and compliance.

16 THE COURT: Any objection or do you wish to voir
17 dire the witness?

18 MR. MURDAUGH: No, sir, no objections to his
19 qualification as motor carrier and safety expert.

20 THE COURT: All right. Well, folks, I told you
21 yesterday that we don't normally let people talk and give
22 their opinion about evidence, but we do make exceptions for
23 experts who have been, because of training or education,
24 experience in some field, risen to the level of expertise.
25 We'll allow them to be qualified as experts. This witness

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1 is now been qualified as an expert in the field of motor
2 carrier safety and compliance. He will be allowed to give
3 his testimony in the form of an opinion as well as give the
4 basis for his opinion for that testimony. As I instructed
5 you yesterday, just because a witness is qualified as an
6 expert does not mean that you have to blindly accept
7 whatever they say. You determine how much weight to give
8 their testimony based on all of the evidence that you hear
9 throughout the trial.

10 All right. You may continue.

11 BY MR. GRIFFITH:

12 Q Mr. Pinckney, we may have gone through this, but
13 let's briefly just one more time for at least -- tell the
14 jury what a safety consultant does.

15 A In the trucking industry, we research a company to
16 look at the areas, for example my team has a computer
17 system that allows them to see in realtime the six areas of
18 safety and compliance. They can look at the files that the
19 company has given us to put together for compliance with
20 39-19 of the regulations. We look at the hours of service
21 regulations and with today's electronic log data, we are
22 currently up letting the log data.

23 We are tracking drivers that will have expired
24 licenses, physicals, or annual reviews. And with the
25 technology, we can send them an e-mail, or we can send them

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1 a text and we can send out a report to the company to let
2 them know that this person has a physical that's about due.

3 We look at equipment and maintenance. When it
4 comes to 396 of the regulations, there are things that are
5 required or would get them in trouble. One of them would
6 be if there is a roadside inspection where a piece of
7 equipment had a violation and there's no supporting
8 documentation that that defect had been repaired. So we
9 take a look at everything. When it comes to crashes, we
10 also look at the frequency because a company that has too
11 high a frequency per million miles is going to be
12 unacceptable in the eyes of the regulators, so we take a
13 look at the whole thing, kind of take a look at those areas
14 that are the greatest risk, work with the company to
15 develop a plan and then work with them as they execute the
16 plan so it works with that company and the people they have
17 at that company.

18 Q So trucking is a regulated industry?

19 A The trucking industry is regulated.

20 Q And we've talked about the Federal Motor Safety
21 Regulations. They are and you've called out 392, I believe
22 or 396, is this where they're found in the Code of Federal
23 Regulations?

24 A You'll find them in 49 code of Federal Regulations
25 and the parts go from 300 to 399 and the transports

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1 hazardous material with trucks, it will be 171 and 177 of
2 the regulations.

3 Q And what's the purposes of the Federal Motor
4 Carrier Safety Regulations?

5 A To protect us.

6 Q Protect who?

7 A Protect us when we're out there on the road.
8 Protect us from unsafe acts. Protect us from hazardous
9 material spills. Protect us from being exposed to at risk
10 behaviors; that you and I and our family as well as the
11 drivers of the trucks get home every night without a ticket
12 and without a crash.

13 Q So they're also for the protection of the drivers
14 themselves?

15 A Yes.

16 Q Anybody using the highways?

17 A Correct.

18 Q And who does -- who do these regulations apply to?
19 You said trucking companies.

20 A I did. It also applies to passenger buses. When
21 you take a look at a trucking company, there are some
22 trucking companies that only stay within a particular
23 state. Each state has adopted the Federal Motor Carrier
24 Safety Regulations. They may have made some modification,
25 but one truck that crosses a state line, that trucking

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1 company now becomes an interstate trucking company where
2 the interstate regulations apply.

3 Q And does that have to be for commerce?

4 A Yes, for commerce. And that's really important.
5 In particular in this case, because when it came to
6 Mr. Owens, Mr. Owens was driving for a living with a
7 trucking company that was in the business of making money
8 hauling freight. As it relates to Mr. Sell, Mr. Sell was
9 volunteering his time to help his family. He was not
10 moving his son in commerce. He was moving his son to help
11 him out.

12 Q Were you contacted by Mr. Sell's attorney to review
13 certain information in regards to this case?

14 A I was.

15 Q All right. And did you -- as a result of the
16 information you obtained, did you form any opinions in that
17 regard.

18 A I formulated a variety of opinions that I put into
19 a report. There were many testimonies. There were a lot
20 of documentation. One of the areas that I focused upon was
21 395, hours of service, because in my life of evaluating
22 crashes, one of this things that really had me perplexed is
23 why was Mr. Owens only looking at the white line in front
24 of him. Why wasn't he scanning down the road looking for
25 hazards up ahead. That had me concerned.

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1 One of the things that I have bumped into in my
2 life as a safety director and somebody who evaluates
3 crashes was that when that person is looking just at the
4 line in front, there may be a degree of impairment as it
5 relates to fatigue that is affecting that judgment.

6 THE COURT: Why don't you hold on there a second.
7 Let her catch her breath and come back.

8 THE JUROR: I'm sorry.

9 THE COURT: It's okay. Normally when Mr. Griffith
10 goes on too long we fall asleep.

11 (A juror left the courtroom to take care of her
12 cough.)

13 THE COURT: You ready?

14 THE JUROR: Yes, sir.

15 THE COURT: Okay. Go ahead.

16 BY MR. GRIFFITH:

17 Q Mr. Pinckney, I asked you did you form any opinions
18 with regards to this case. What opinions did you form with
19 regards to the conduct of Mr. Owens, the driver of the
20 truck, the tractor trailer truck in this accident?

21 A When it comes to this particular case, there were
22 four areas that I really formulated my opinions on. One
23 came into the fatigued driver. And I looked at the logs
24 and documents that didn't match up against the log. I
25 looked at the failure to properly lookout where he didn't

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1 see the overturned Budget truck until he was within 45 feet
2 of the overturned Budget truck when other vehicles safely
3 got around it, including several other trucks. I also
4 evaluated the perspective of too fast for conditions. We
5 have a person who's driving at night in a rain storm,
6 running close to maximum speed and one of the things I did
7 look at was a log where on July 13th, on his log, he wrote
8 down that the right light was not working properly, which
9 in my opinion affected the ability of the lights to
10 forecast forward; and because of that, then I also felt
11 that for the speed he was traveling under those conditions
12 with the equipment that he was traveling way too fast was
13 once a hazard appears -- and that's part of being a
14 professional truck driver, hazards happen.

15 It's paying attention, keeping a proper lookout,
16 being alert, identifying it early so that the hazard does
17 not become an emergency is critical.

18 THE COURT: Might this be a good time to take a
19 break? Yeah, let's go ahead and take a break.

20 (The jury left the courtroom at 3:11 p.m.)

21 THE COURT: If you need to go the restroom you can.
22 You can't talk to anybody during that break, okay?

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: One of the bailiffs can show you where
25 to go, I guess.

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1 (A brief recess was observed.)

2 (The jury entered the courtroom at 3:11 p.m.)

3 THE COURT: Okay. You ready? All right. We'll
4 resume. Go ahead.

5 BY MR. GRIFFITH:

6 Q Mr. Pinckney, you were telling us about the four
7 opinions that you came up with. One of them, I think you
8 said was about a fatigued operator; is that addressed in
9 the Federal Motor Carrier Safety Regulations?

10 A Yes. It's addressed in part 392, the ill or
11 fatigued driver. We also find it in part 395 in the hours
12 of service. And when my drivers are cited for an hours of
13 service violation, it's considered a fatigued driver
14 violation.

15 Q Okay. When you talk about hours of service, is
16 there a certain amount of time that professional drivers
17 can operate?

18 A There is. And the best way I can describe it is a
19 driver has to have ten consecutive hours away from work,
20 resting. Whether it be at home, in a hotel, or in a
21 sleeper berth, but ten consecutive hours or more away from
22 work. Then once they come back to work, which might be a
23 pretrip inspection, which might be going into the shipper
24 and getting paper -- I call it a 14-hour sand dial. You
25 flip that sand dial upside down and they've got 14 hours.

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1 And in that 14-hour period, the most they can drive is 11.

2 And add the end of that 14 hours, they've got the take at
3 least another ten consecutive hours or more away from work.

4 Q All right. And is the purpose of that to keep
5 drivers alert when they're driving?

6 A Yes. The thing that I learned when I started
7 driving for my dad is, unloading a truck, you get
8 physically tired. Driving a truck, you get mentally tired
9 because you are constantly looking for other hazards on the
10 roadway. You're paying attention to where you are. You've
11 got a variety of things. Driving a truck is different, but
12 if you put in long hours of driving, it is mentally
13 draining so that ten or more consecutive hours, it's really
14 important to let the driver get refreshed, ready to go back
15 to driving.

16 Q And I wanted to jump back just a little bit because
17 I forgot to ask you something. We've heard the term CDL
18 and commercial driver's license, what is a CDL or a
19 commercial driver's license?

20 A When a person is going to drive a truck, there are
21 two different types of trucks. You have smaller trucks and
22 you've got the bigger trucks. The smaller trucks the way
23 the regulators identify it is that they have a weight
24 rating below 26,000. But the bigger trucks that Mr. Owens
25 was driving that have a weight rating more than 26 when

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1 they're hauling a trailer, you have to have a special
2 license. You have to go through special training. Some of
3 that training, you have to have a permit. So to get the
4 permit, you have to study the manual. Every state has a
5 CDL manual. Basically it is the same manual from state to
6 state, but the drivers have to study that manual in order
7 to get their commercial permit license.

8 Once they get the commercial permit license, unless
9 they were grandfathered in, they then have to learn how to
10 operate that truck whether it be backing the truck, turning
11 the truck, getting the truck around different obstacles,
12 driving on the street, driving on the highway, driving on
13 the interstate. And then they have to pass certain skills:
14 The road test skill; the yard skill, where they have to be
15 able to parallel park with some states, with a tractor
16 semitrailer. And they also have to go through and pass a
17 -- they call it the pretrip inspection, but they have to
18 memorize and know each of the different areas of that
19 tractor trailer that they are looking at so that when they
20 find a broken spring, when they find a air light that is
21 bad or leak of oil, they know what to do in order to keep
22 that truck safe on the roadway.

23 Q Okay. So an owner of a CDL, he's basically a
24 professional driver; is that correct?

25 A Yes, that's my opinion.

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1 Q You mentioned a minute ago before we took our
2 break, about some logs you talked about, I guess the
3 10-hour rule; and with the 10-hour rule, I think you said,
4 you got to have -- in a 24-hour period, you've got to have
5 10 hours of rest, and then the next 14 hours, you've got 11
6 hours of driving time and then 3 hours where you can be
7 working, but not driving?

8 A Yes, sir. And one of the things that I look at is
9 I go beyond just what they did from midnight to midnight.
10 I refer to it as, when I would audit driver logs, is you
11 take a look at the grid that is a driver log. You have
12 four different lines. You have off duty, sleeper berth,
13 drive time, on-duty-not-driving time. And I would tell my
14 drivers, I want you to think about it being on a roll of
15 paper, like a roll of toilet paper that you just keep
16 pulling off of that spool because once you take 10 or more
17 consecutive hours, you may go from one day into the next,
18 but if you don't have 10 consecutive hours then you better
19 not be doing any driving because you've got to get that 10
20 consecutive hours in. And there may be times when a
21 professional driver goes from one day into the next, but
22 the idea is, I've got to get that 10 consecutive hours or
23 more away from work.

24 Q Now Mr. Owens, you heard his deposition just a
25 minute ago. Did you have that available to you to read?

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1 A Yes, sir.

2 Q All right. And in his deposition, he referenced
3 various logs. Did you have those logs available to you.

4 A I did.

5 Q All right. Are these copies of the logs that came
6 from Pierce National that were provided to you through what
7 we got through discovery process?

8 A Yes, they are.

9 Q And what are those, if you could just identify
10 them.

11 A What you're looking at --

12 Q Wait a minute. Before you show them to the jury,
13 can you identify those as the logs that you got from --
14 through the discovery process?

15 A They are.

16 Q All right.

17 MR. GRIFFITH: And with that, I would like to move
18 these into evidence as Defendant's 1 and 2.

19 (Defendant's Exhibit Number 1 and 2 were marked for
20 identification.)

21 THE COURT: Objections?

22 MR. MURDAUGH: No objection.

23 THE COURT: You may continue.

24 (Defendant's Exhibit Numbers 1 and 2 were entered
25 into evidence.)

John Pinckney - Direct Examination by Mr. Griffith

1 BY MR. GRIFFITH:

2 Q I'm going to do something, Mr. Pinckney. I'm going
3 to put this up here. Mylinda's going to help me out, I
4 think.

5 (Putting the document up for the jury to see.)

6 BY MR. GRIFFITH:

7 Q All right. There we go.

8 All right. Mr. Pinckney, this has been marked as
9 Exhibit Number 1, Defendant's Exhibit Number 1. Is this
10 basically what a log is?

11 A Yes.

12 Q All right. And you said logbook so they actually
13 have a book they keep from day-to-day; is that correct?

14 A That is correct.

15 Q All right. And what I want to do is, let's just
16 sort of go through so that the jury understands what the
17 logbook does. This was not why I put this up here, but up
18 here does that tell you what day?

19 A Yes, sir, it tells me that log represents August
20 20th.

21 Q All right. And this is August 20th. This is the
22 day before the accident on I-95; is that correct?

23 A Yes.

24 Q All right. And here we've then got -- you said the
25 four little grids right here. Off duty, sleeper berth,

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1 driver on duty?

2 A Yes.

3 Q All right. And when you're off duty, is that what
4 you were describing just a minute ago that you're at home
5 or away from your truck?

6 A Yes. In a hotel, at home.

7 Q All right. And then, I'm going to jump down to
8 Number 3 to the driving. That is actually when you're
9 driving a truck?

10 A With the tractor semitrailers -- here's how we
11 define driving because they have air brakes, you have
12 emergency and you have the trailer brake. The driver
13 releases the brakes, at that point he or she is in control
14 of the vehicle that is driving time. Even though they're
15 not driving up and down the highway. When they're pulling
16 through the truck stop, they're in control of that vehicle
17 and it is driving time.

18 Q All right. And then on duty, not driving would be
19 when they were sitting at somewhere getting a load,
20 somebody else was loading them or if they were doing
21 something else?

22 A When they would go in to talk to the shipping
23 department to let them know that they are there; when the
24 load has already been loaded; when they go in and sign the
25 paperwork; these are all work-related responsibilities.

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1 That would be part of line 4, on duty not driving.

2 Q All right. And then each day does the driver keep
3 one of these logs?

4 A Yes, the driver is keeping the log for each day.

5 Q And then does he sign the logs to certify that that
6 was his day at work?

7 A They certify -- when they sign the log, they
8 certify that the entries are true and correct.

9 Q And so when you were talking about the 14 hours a
10 day, the 11 hours of driving and the 10 hours of drive
11 time, that is how you keep up with this right here,
12 correct?

13 A Correct.

14 Q You heard Mr. Owens testify earlier he talked about
15 how that was important because that's a safety issue?

16 A It is, yes.

17 Q All right. And you agree that that is the purpose
18 of these documents or the logbooks. Part of -- one of the
19 purposes of the logbooks?

20 A Yes, I agree.

21 Q All right. Now, according to Exhibit Number 1
22 that's up on the board right there, or up on the projector,
23 it appears as though Mr. Owens spent a good bit of time in
24 his sleeper berth the day before this accident. I'm going
25 to show you Exhibit Number 2. Did that -- it looks like --

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1 and we talked about it in his deposition whether you can
2 get it clear or not. It looks like -- according to his
3 logbook, he went into the sleeper berth about 10:30 in the
4 morning; is that correct?

5 A That is correct. That's what it reflects.

6 Q Then if he was in the sleeper berth from 10 in the
7 morning or 10:30 in the morning until midnight over to 1
8 o'clock on the day of the accident, he would have been in
9 compliance; is that correct?

10 A That is correct.

11 Q All right. When you do these audits, do you look
12 at other documents, Mr. Pinckney?

13 A We do. There is a section that the federal
14 auditors, the agents from the feds would come in and they
15 would want date, time documents to match up to the driver
16 log to make certain that the driver is where he or she says
17 they are because if they're not, it's a significant
18 violation in the eyes of the DOT because the driver's not
19 accurately reflecting what he or she is doing in that day's
20 activity.

21 Q One of those documents that you look for, do you
22 also look for the bill of lading from a certain company?

23 A Yes, bills of lading are fair game in a DOT audit
24 and as part of our audit when we look at 395 compliance
25 with our companies.

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1 Q All right. The document I showed you, is that
2 basically a bill of lading that came through the discovery
3 that was produced to you in this matter?

4 A Yes, it is.

5 Q All right.

6 MR. MURDAUGH: No objection.

7 (Defendant's Exhibit Number 3 was marked and
8 entered into evidence.)

9 BY MR. GRIFFITH:

10 Q I'm going to show you now Exhibit Number 3 up here
11 on the projector. And that is a bill of lading. What is a
12 bill of lading?

13 A When a driver goes in to pick up a load such as
14 Mr. Owens, there is documentation that indicates who is the
15 shipper, who is the buyer. It kind of goes beyond
16 trucking. Sometimes it reflects what business pays for,
17 any sort of highway damage, whether it's the shipper or the
18 receiver. As it relates to the trucking company, this is
19 the document that validates that the driver has a load
20 that's been assigned to him or her; how much they have;
21 whether it's hazardous or not; and it also indicates how
22 much weight or how much cargo is going to be transported by
23 the driver.

24 Q Does it also indicate or have other information on
25 it about when the driver picked it up? Because when he

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1 picks up, then he's responsible, isn't he?

2 A That is correct. There are some bills of lading
3 that do not have dates and times. What I found to be
4 significant with this bill of lading is the time Mr. Owens
5 arrived, the time that the load was to be ready and the
6 time that Mr. Owens was loaded, in that he signed for it
7 and he had opportunity to make any corrections to it, so
8 because there were no corrections to it, my opinion was
9 that's a valid date and time as to when he arrived and what
10 time the load was loaded.

11 Q What I'd like for you to do is come down here and
12 circle on this -- which is basically a blowup of what we're
13 looking up there because I don't want to write on the
14 exhibits.

15 (The witness steps down from the stand.)

16 BY MR. GRIFFITH:

17 Q What are you talking about?

18 A Here you've got the name of the driver, but this
19 time right here --

20 Q Is that written in military time?

21 A It is, 1730 is the time that he arrived. Now, this
22 is going to be East Coast time. And that's important
23 because when you look at his log, you'll see that the
24 company's based out of Alabama. A driver is to log his
25 home terminal time. If his home terminal is in Alabama,

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1 it's central time, then he reflects that on his logs. So
2 what I look at here, was that he arrived at 5:30 eastern
3 time or 4:30 on his logbook for central time. And here it
4 says departure was at 2055 or 8:55 in the evening eastern
5 time, almost 8 o'clock in the evening central time. And
6 then it's got his name and then it's got his signature
7 right here.

8 Q So he signed that that was when he picked it up?

9 A And he signed that he has inspected and is
10 responsible for the arrangements of the load and it's
11 suitability for safe transportation.

12 Q All right. Now, I'm going to show you what was
13 marked as Exhibit Number 1. And had he kept the proper
14 logbook, would you mark on the logbook what should have
15 shown there?

16 A Right here is when he drove in and arrived at the
17 shipper. That's 4:30 central time.

18 Q And you know that by Exhibit Number 3, the bill of
19 lading?

20 A That is correct.

21 Q Okay.

22 A And when he was loaded and left mock central was
23 8:55, which would be 7:55 which would be 7:55, which would
24 be somewhere around 8 o'clock in the evening right here.

25 Q So for this period of time -- for that

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1 four-and-a-half hours because he we've got a bill of
2 lading, how could he be in the sleeper berth as he shows?

3 A That's where I formulated the opinion that he
4 falsified his log. During this period, he may have gone
5 into the sleeper berth for a little bit of time, but
6 there's some driving time to put the truck in the dock.
7 There's some on-duty-not-driving time to check in. There's
8 on-duty-not-driving time to sign for the bill of lading, to
9 check and make certain that the load is properly secured as
10 he signed for; that it's properly braced before he heads
11 out; and that he closes the door, secures it, get ready for
12 the transportation. So this area right here is what I
13 found to be in violation of that 11 hour, 10 hour
14 consecutive off duty time.

15 Q And that's what I wanted to ask you about. His log
16 shows that he was in compliance, correct?

17 A His logs before matching up with the bill of
18 lading --

19 Q The bill of lading --

20 A -- showed that he was in compliance and he
21 certified that the entry was true and correct, but when you
22 match it up to a document with a valid date and time, you
23 find out that it wasn't truthful.

24 Q And is that a violation of the Federal Motor
25 Carrier Safety Regulations?

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1 A Yes, sir.

2 Q Now, this 10 hour rule, we talked about that. That
3 is in order to have a -- 11 hours driving -- or the 10 hour
4 rule, that's to keep someone from getting too tired, a
5 professional driver?

6 A It is a fatigue factor. Now, you get your 10 hours
7 of consecutive hours of rest for a reason. You need the
8 break away from driving and the responsibilities that go
9 with it as a driver.

10 Q All right. And if he was working on duty at 8 p.m.
11 and got in the truck at 1 p.m., that doesn't -- that gives
12 him 5 hours, not 10 hours; is that -- is my math right on
13 that?

14 A Correct.

15 Q All right. You can have a seat.

16 (The witness returned to the stand.)

17 BY MR. GRIFFITH:

18 Q Now, you talked about that as a result, is it your
19 opinion that he was fatigued then before he started on this
20 trip that's from Summerville or Moncks Corner to I-95?

21 A That's the opinion I formulated, yes.

22 Q You also talked about hazardous conditions. Do
23 drivers have obligations to do certain things in hazardous
24 conditions?

25 A They have an obligation in the regulations and

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1 outside of the regulations to drive in a manner that the
2 vehicle is under control under all situations. In the
3 regulations it talks about the driver controlling the speed
4 of the vehicle so that they maintain control of that
5 vehicle regardless of whether it's rain, snow, sleet, ice,
6 or pavement. The conditions that affect those choices are
7 not just the weather. It could be traffic. It could be
8 the road condition. Certainly in a construction zone it
9 presents different conditions than if they're driving on
10 the interstate.

11 Q Is rain identified as a hazardous condition in the
12 Federal Motor Carrier Safety Regulations?

13 A It's identified as a hazardous in a couple of
14 areas. One is in the federal regulations. And when I
15 spoke earlier about the CDL manual, it is there that talks
16 about reducing your speed when you're traveling in a
17 rainstorm.

18 Q And not to state the obvious, but when it's
19 raining, why is it necessary to be -- slow down?

20 A There are two hazards in a rainstorm. We all have
21 it. One, is vision; two traffic. Traction. There's a
22 term we use as hydroplaning, where the tread of the tires
23 cannot keep up with the water because the speed of the
24 vehicle is so fast it lies up on that layer of water. You
25 combine speed with the reduction of visibility that can be

John Pinckney - Direct Examination by Mr. Griffith

1 caused by rain, especially at night, and you have two
2 variables that scream, slow down.

3 Q All right. You were in here when we read
4 Mr. Owens's deposition and you've read the deposition
5 before today. Did he acknowledge that there was an
6 obligation to slow down in a hazard such as rain?

7 A Yes, he did.

8 Q All right. Did he say how fast his truck would go?

9 A When I read his deposition and I looked at what he
10 had been testifying to, within three miles an hour, maximum
11 speed of what the truck is set to do in a rainstorm, at
12 night, with a light that wasn't working, with not having
13 proper rest, that just all spelled trouble.

14 Q So the information you saw, he acknowledged the
15 obligation to do that?

16 A Yes.

17 Q Did he do it in your opinion?

18 A No. See when it comes to driving, we all have
19 choices. As a professional driver, the professional driver
20 has to consider not just himself/herself, they have to
21 consider entire environment. We use public roads to make a
22 living and because we use public roads to make a living, we
23 have an obligation to drive safely.

24 Q You mentioned the driver's manual. Is this
25 addressed in the training manual?

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1 A It's addressed in the CDL manual when a driver goes
2 to get their licenses I was talking about earlier. They
3 have so study a CDL manual in order to pass the written
4 test or the knowledge test to get their permit. Every
5 state has a CDL manual. It's basically the same from state
6 to state with some minor exceptions.

7 Q Did you look at the Alabama manual, the one that
8 Mr. Owens would have received prior to studying for his
9 CDL?

10 A I did look at the Alabama CDL manual.

11 Q Did the Alabama CDL manual address that?

12 A It does. When you are driving in rain, you're to
13 reduce the speed and I believe in the manual, it says by a
14 third. One of the things I also found to be very
15 interesting when you think about the training a truck
16 driver has is that they have a training segment that the
17 identified hazards, hazards that could result in an
18 emergency. And as a professional driver, they have an
19 obligation and a duty to be looking for hazards so it
20 doesn't result in an emergency such as a crash.

21 Q All right. And when you said they have an
22 obligation to slow down if it gets, for example, like from
23 55 to -- you said by a third?

24 A I believe that's what it said in the CDL manual.

25 Q So a speed limit of 65 and 70 miles an hour, what

John Pinckney - Direct Examination by Mr. Griffith

1 would have been the speed necessary to be in compliance?

2 A I think it's 3 calculated, it would be somewhere in
3 the range of 35 to 45 miles on hour.

4 Q Did Mr. Owens testify that he slowed to 35 or 45
5 miles per hour?

6 A He testified that he was doing 65.

7 Q Now, he also talked about various proper lookouts?

8 A Yes.

9 Q You got the keep a lookout and that's the truth for
10 everybody; is that correct?

11 A That's true. And when you look at the manual and
12 what we teach in defensive driving -- in the CDL manual, it
13 talks about the driver looking 12 to 15 seconds ahead.
14 What are they doing? They're looking for potential hazards
15 long before it creates an emergency. When we're teaching
16 defensive driving, we should all be looking to the next
17 hill or curve so that when we find that there is a
18 situation developing up ahead of time we have time to
19 gradually reduce our speed or reduce our speed under
20 control so that we don't result in having a crash.

21 Q So you've got to keep a proper lookout, see what's
22 there to be seen ahead of you; is that required as a
23 professional driver?

24 A It is required as a professional driver.

25 Q Which leads into the last opinion that I think you

John Pinckney - Direct Examination by Mr. Griffith

1 talked about was your headlights?

2 A Correct.

3 Q If you're driving at night, how far -- how fast
4 should you be going with relation to your headlights?

5 A One of the areas we talk about is not overdriving
6 your headlights. And as I've looked at the material over
7 the time because I've had this case for a number of years.
8 One of the things I thought was interesting was that with a
9 light that was out, he didn't have the same forward vision
10 that he would have if all lights were working. And so when
11 it comes to driving, we teach that you're to drive within
12 stopping distance of what you can see with your headlights.
13 If you can't stop within the distance of your headlights,
14 we call it overdriving the headlights, or by the time the
15 item gets into additional range, it is too late and the
16 crash is about to occur.

17 Q And I believe Mr. Owens, the testimony was that he
18 saw there was something ahead of him at about how far?

19 A 45 feet.

20 Q If he couldn't see for than 45 feet, or if his
21 headlight is only reaching 4 feet, how fast could he have
22 been going? 10 or 15 miles an hour?

23 A A crawl.

24 Q All right. So if -- if you're driving at 65 miles
25 an hour, you got to be able -- what you said is you've got

John Pinckney - Direct Examination by Mr. Griffith

1 the be able to see, or stop within the distance that your
2 headlights will extend? So if you can see for -- if you're
3 headlights go 300 feet, you got to be able the stop within
4 that 300 feet, you've got to be able to stop within 30
5 feet?

6 A Correct.

7 Q Okay. So you've got to be able to have your
8 vehicle under control; is that correct?

9 A That's the bottom line, that you're alert, that
10 you're driving, looking for hazards, and that you keep the
11 vehicle under control at all times and all situations.

12 Q All right. Mr. Pinckney, based on the information
13 that you received, is it your opinion to a reasonable
14 degree of certainty that Mr. Owens complied with the
15 Federal Motor Carrier Safety Regulations?

16 A That he complied with?

17 Q Did he comply with them to a reasonable degree of
18 certainty?

19 A He did not comply with them.

20 Q All right. And did he fail or was he a fatigued
21 driver?

22 A In my opinion, yes.

23 Q Did that contribute to this accident?

24 A Yes. And I correlated not only what I saw with the
25 logs and the bill of lading, but his testimony about only

John Pinckney - Direct Examination by Mr. Griffith

1 looking at the right line right in front of him.

2 Q Okay. Was Mr. Owens driving in a hazardous
3 condition, that being rain that night?

4 A Rain, and night, yes.

5 Q Did Mr. Owens have an obligation to slow his
6 vehicle based on that condition?

7 A Yes.

8 Q Based on the information you had, did Mr. Owens
9 slow his vehicle?

10 A He did not.

11 Q -- in an appropriate manner?

12 A He did not.

13 Q All right. And based on the information that you
14 received, did Mr. Owens to a reasonable degree of certainty
15 keep a proper lookout?

16 A He did not.

17 Q And did that contribute to this accident?

18 A Yes, it did.

19 Q Based on the information you received and you
20 reviewed, do you have an opinion as to whether Mr. Owens,
21 to a reasonable degree of certainty, Mr. Owens overdrove
22 his headlights?

23 A When he said that he saw within 45 feet, it was too
24 close for him to do anything but strike the vehicle, yes.

25 Q And do you have an opinion that if Mr. Owens had

John Pinckney - Direct Examination by Mr. Griffith

1 complied as a professional driver with the Federal Motor
2 Carrier Safety Regulations, would this incident have
3 occurred --

4 MR. MURDAUGH: Your Honor, I --

5 MR. GRIFFITH: -- would the accident have occurred?

6 MR. MURDAUGH: Your Honor, I'm going to object to
7 this. He's qualified only as a safety analyst, not a
8 reconstruction expert as to reconstruction as to causes of
9 the wreck.

10 THE COURT: Okay. Sustained.

11 BY MR. GRIFFITH:

12 Q Do you have an opinion that these four -- four
13 opinions you've given contributed to the accident that
14 Mr. Owens was in?

15 A Yes.

16 Q Was he fatigued?

17 A My opinion, yes.

18 Q Was he driving in a hazard cautiously?

19 A He was driving in a hazardous situation, not
20 cautiously.

21 Q And did he keep a proper lookout?

22 A He did not keep a proper lookout.

23 Q And you talked about overdriving the headlights.

24 Did he overdrive his headlights?

25 A In my opinion, yes.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q And by that, you mean that as you see something
2 within your headlights, you've got to be able to stop
3 before you get there?

4 A Correct.

5 Q Did he stop before he got to the Budget truck that
6 was in the middle of the road?

7 A No, sir.

8 Q As a professional driver, do CDL drivers,
9 professional drivers, have an obligation to be aware of
10 hazards in the road?

11 A Yes.

12 Q And do they have an obligation to avoid those
13 hazards?

14 A They have an obligation to see them soon enough so
15 that they can safely avoid that hazard from becoming a
16 crash.

17 Q Did Mr. Owens do that?

18 A He did not.

19 MR. GRIFFITH: No further questions.

20 THE COURT: Cross?

21 **CROSS-EXAMINATION**

22 **BY MR. MURDAUGH:**

23 Q Good morning, Mr. Pinckney, or good afternoon, Mr.
24 Pinckney. I'm Al Murdaugh, here in Hampton, South
25 Carolina. How are you?

John Pinckney - Cross-Examination by Mr. Murdaugh

1 A Good afternoon.

2 Q Welcome to Hampton. Have you ever been here
3 before?

4 A This is my first trip to Hampton.

5 Q Good deal. Well, welcome.

6 A Thank you.

7 Q All right. I represent Mr. Dawkins, who was
8 involved in this wreck. A couple of things that I want to
9 go over. You are an expert witness and you are paid to
10 give opinions?

11 A Yes, sir.

12 Q All right. And in this case how much are you being
13 paid for your trial testimony here today?

14 A What I'd like you to know is I get paid a salary.
15 So --

16 MR. MURDAUGH: Excuse me, Your Honor, I just want
17 him to answer my questions, then he can talk about his
18 salary.

19 BY MR. MURDAUGH:

20 Q How much are you being paid for your trial
21 testimony, here today?

22 MR. GRIFFITH: He's answering the question, Judge.

23 THE COURT: Let him answer.

24 THE WITNESS: If you're asking what the company
25 charges on an hourly basis, that's one question. If you're

John Pinckney - Cross-Examination by Mr. Murdaugh

1 asking how much I make, that's different.

2 BY MR. MURDAUGH:

3 Q How much is being paid for your testimony per hour
4 here today?

5 A The company charges \$400 an hour.

6 Q \$400 an hour, you're coming here testifying, giving
7 your opinion. How much are you paid with the investigative
8 work you do? Or how much is charged for the investigative
9 work that you do looking into a case?

10 A Sure. We do about \$300 an hour.

11 Q So \$300 per hour while you're working up these
12 formulas that when you come and testify about them it's
13 \$400 an hour?

14 A Yes, sir --

15 Q Correct?

16 A -- you are correct.

17 Q All right. And how many hours -- I believe at the
18 time you gave a deposition you had some 35 hours in this
19 case?

20 A That is correct.

21 Q And so that would be at \$300 an hour. So about
22 \$10,000, approximately, being paid for your opinions in
23 this case, at that time?

24 A That would be reasonable.

25 Q And that was a couple of years ago, so it's

John Pinckney - Cross-Examination by Mr. Murdaugh

1 increased significantly since that time?

2 A No. Pretty much my opinions haven't changed that
3 much as it relates to extra time. I didn't put in a whole
4 lot of extra time.

5 Q All right. How much were you paid per hour for
6 flying on the airplane down here?

7 A \$200 an hour.

8 Q Okay. And how much were you paid per hour driving
9 from the airport to come here to give your opinions?

10 A I don't know. I'd have to look. Somewhere between
11 2 and \$400.

12 Q Okay. So for every hour that you put in this case,
13 you've been paid somewhere between 200 and \$400 to come and
14 testify about these opinions today?

15 A The company has, yes, sir.

16 Q Yes, sir. And your a company man?

17 A I am.

18 Q All right. Now, a couple of things. We heard
19 testimony from -- I'm going to ask you this: You agree
20 that it's against the law to drive below a certain speed on
21 an interstate highway?

22 A There are some states that have minimum speeds.
23 There are some states where it depends upon the condition.
24 There are certain conditions where the traffic is safest at
25 a slower speed than at a higher speed. For example in a

John Pinckney - Cross-Examination by Mr. Murdaugh

1 heavy rainstorm.

2 Q And you agree with me that South Carolina has law
3 that is control -- and many other states, whether you can
4 drive -- and just talking about under normal conditions, a
5 minimum speed?

6 A Okay. Yes.

7 Q You agree with that, right?

8 A I agree.

9 Q And you agree with that all 50 states it's under
10 normal circumstances, it's illegal to stop your vehicle on
11 an interstate highway?

12 A As it relates to the interstate on the shoulder?
13 Or the interstate on the travel portion of the roadway? As
14 in, we're going to be parked? Or as a result of a
15 situation? Help me understand.

16 Q Well, you're not supposed to stop on an interstate
17 highway under any circumstances except for an emergency,
18 are you?

19 A That makes sense, yes.

20 Q I mean, that's the law?

21 A Yes.

22 Q All right. And it makes sense in that -- and
23 there's a -- you studied regulations and laws and you're an
24 expert and you know that there are reasons and there are
25 bases and why laws and regulations are passed?

John Pinckney - Cross-Examination by Mr. Murdaugh

1 A Yes.

2 Q Okay. And the main reason that we have these laws
3 and these regulations is safety?

4 A I would agree.

5 Q You agree with that, don't you?

6 And the reason why it's a law that you can't stop
7 on the interstate, or you have minimum speeds under normal
8 circumstances is because those passing laws know that that
9 creates a hazard?

10 A And if a person was traveling below that speed then
11 they shouldn't be driving.

12 Q Well -- but let's talk about my question first.
13 You agree with that assertion?

14 A Sure.

15 Q That the reason why you don't drive -- you aren't
16 allowed to drive slow or stop on an interstate highway is
17 because it creates a hazard?

18 A Yes.

19 Q Okay. And so in passing these laws and these
20 regulations, the experts that -- that pass these and
21 experts like you testify, the reason why those are passed
22 is for safety?

23 A Yes.

24 Q All right, sir. And the reason that it's not safe
25 to stop on an interstate highway is because it's

John Pinckney - Cross-Examination by Mr. Murdaugh

1 foreseeable that someone would come along and hit you. You
2 agree with that as a safety expert, don't you?

3 A That would be -- that would be one of the
4 possibilities.

5 Q Well, I know it's a possibility. I know you --
6 words for the jury here, but I mean answer the question.
7 It's likely you can't stop on an interstate because it's
8 likely somebody's going to come along and hit you?

9 MR. GRIFFITH: Judge, I'm going to --

10 MR. MURDAUGH: You don't disagree with that?

11 MR. GRIFFITH: If he wants him to give that opinion
12 then, I just -- other opinions that have been --

13 THE COURT: It's cross-examination. I'll allow it
14 a little bit.

15 BY MR. GRIFFITH:

16 Q I mean are you going to tell the jury that's not
17 accurate?

18 A Would you repeat the question?

19 Q Yes, sir. I'm saying that the reason that you
20 can't stop on an interstate highway is because it's
21 absolutely foreseeable and likely that somebody come along
22 and run into you. It's a risk, it's a hazard. You dispute
23 that?

24 A That's a really good point that it is a risk and
25 it's one of the hazards that I talked about that the

John Pinckney - Cross-Examination by Mr. Murdaugh

1 professional driver has to keep looking for.

2 Q Well, sure. But it isn't just the professional
3 driver that's got to be on the lookout for hazards. I mean
4 regular drivers got to be on the lookout too, don't they?

5 A And it seems like in this case the regular drivers
6 got around the overturned Budget truck.

7 Q All right. You got to answer my question, though.
8 And then you can -- then you can say that. But you agree
9 with me that a regular driver has to be on the lookout for
10 hazards too, don't they?

11 A In your hypothetical, not related to this case,
12 yes.

13 Q I'm not giving a hypothetical. I'm stating as a
14 matter of safety?

15 A As a matter of safety, there are a number of
16 private motorists that got around the overturned Budget
17 truck safely.

18 Q All right. Now -- all right. Just so you and I
19 are on the same page, though -- I think we understand that.

20 All right. I want to give you -- I'm going give
21 you a blank log. And as a safety expert --

22 A Thank you.

23 Q Yes, sir. -- I want you to take this and a driver
24 -- okay, I want you to fill this log out for me.

25 A driver comes on duty at 8 o'clock and begins

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Loading up.

2 A And what status was he prior to 8 o'clock?

3 Q He got out of the bed. He'd been sleeping and he
4 got out of the bed?

5 A Okay.

6 Q In the morning, sir.

7 A Okay.

8 Q At -- and he goes on duty and he's doing things,
9 loading for -- until approximately 11 o'clock.

10 A Okay.

11 Q Then he gets on the road driving. So he's on duty
12 at 8 o'clock working, but he's not driving until 11. And
13 at 11 o'clock, he starts driving. And he drives and he
14 drives and he drives. And he takes a 20 to 30 minute
15 break. So let's say four hours later. All right. And he
16 stops for 20 to 30 minutes. Let's say 30 minutes to give
17 this driver the benefit of the doubt.

18 A And when he stops, does he -- what does he do --

19 Q Let's give him the benefit of the doubt and let's
20 assume that he closes his eyes and he is dead asleep in one
21 minute and he sleeps soundly for 30 minutes.

22 A Okay. So he's in the sleeper berth or is he in a
23 hotel? Where is he?

24 Q It doesn't matter to me. Let's assume that he's in
25 a hotel.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 A Okay.

2 Q He's on duty. You know what, let's put him in --
3 let me ask you this, as a safety expert, would you rather
4 the driver that we're starting out right now, we're talking
5 about right now, it's your job to coach this guy, okay?
6 And he does what I've told you up to this day. He takes
7 that first break for 20 or 30 minutes. Would you rather
8 him be in a sleeper berth or would you rather him go to a
9 hotel?

10 A With all due respect, having driven, having worked
11 with tens of thousands of drivers --

12 Q Yes, sir.

13 A -- I'd leave it up to my driver. Because they know
14 what's going to be best for him or her.

15 Q For safety purposes, does it matter to you whether
16 he's sleeping in a hotel or sleeping in a sleeper berth?

17 A At this point, I'm of the belief he's looking at
18 his own or her own best interest.

19 Q Okay. But for you as a safety expert trying to
20 make him the safest we can possibly be, does it matter to
21 you whether he's in a hotel or sleeper berth?

22 A As long as he gets -- he's taking a half hour break
23 from driving, I don't care where he's taking the break as
24 long as he's legal.

25 Q Okay. Then it doesn't matter. You mark it down

John Pinckney - Cross-Examination by Mr. Murdaugh

1 either one.

2 A Okay.

3 Q All right. And so 30 minutes of sleep.

4 A Okay.

5 Q And he gets back on the road and he drives until he
6 has a little bit of car trouble.

7 A Car trouble? Or are we talking about a truck
8 driver? Because if it's a car --

9 Q Engine trouble.

10 A Because if it's a car, this wouldn't apply.

11 Q Okay. Well, a truck.

12 A A commercial motor vehicle truck.

13 Q Truck. Commercial truck. And he pulls over
14 because he has some engine trouble. And he's there; he's
15 stopped for two hours.

16 A Where is he?

17 Q But he doesn't sleep and he's just there for two
18 hours. So what -- you're asking what, now?

19 A Well, when he stops for two hours to make the
20 repair, is he at a truck stop? Is he on the shoulder of
21 the road? Where is he?

22 Q Does it matter for safety purposes?

23 A Sure. Because we're trying to fill it out
24 accurately for the commercial motor vehicle driver, the
25 professional.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q I mean, how on there does it make a difference? I
2 mean, let's say he's stopped at a diner for a couple of
3 hours. I mean, is there somewhere you're going to notate
4 on there?

5 A That's why we have a remarks section down below.

6 Q Okay. So let's just say he stops at a diner and
7 he's relaxing for a couple of hours.

8 A Okay. So is this in addition to the 30 minutes
9 from 3 to 3:30? Or is this with the mechanical break down
10 that --

11 Q It's in addition. He got a 30 minute nap, then he
12 drove some more and he stopped.

13 A Okay.

14 Q Or for practical purposes, it could be reversed.
15 He stopped and -- and had a truck -- and then he drove.
16 All right. Getting -- so the stopping for two hours put
17 him back on the road. He's driving again.

18 A Okay. Bear with me. I'm at 3:30 in the afternoon
19 after he took a half hour break.

20 Q Okay. And then he drives for a little while and
21 has a two hour stop. Put him back on the road for an
22 hour --

23 A An hour.

24 Q -- and then stop --

25 A Okay.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q -- for two hours.

2 Okay. This is the one I just corrected. The first
3 break he stopped for two hours. Let me give you a clean
4 sheet. He stopped for two hours.

5 A All right. Let's -- may I look at that --
6 accurately transpose and can we get --

7 Q Yes, sir. And my apologies. My apologies.

8 A So we've got 8 o'clock.

9 Q Started at 8 o'clock, he's on duty, but he starts
10 driving at 11.

11 A Okay. And the reason I asked about sleeper berth
12 is because in order to be in the sleeper berth, they have
13 to have a piece of equipment that meets the requirements of
14 a sleeper berth. So we're talking about a tractor
15 semitrailer or some other truck that has a sleeper berth?
16 Not a car?

17 Q No sleeper berth.

18 A Okay. So we don't have a sleeper berth?

19 Q No, sir.

20 A Okay. So we can't log sleeper berth then.

21 Q Did you log sleeper berth on the other one?

22 A Yes, I thought he was sleeping we were talking
23 about -- you mentioned a car --

24 Q Giving the benefit of the doubt, we'll put him --
25 he's in a sleeper berth. We'll put a sleeper berth in this

John Pinckney - Cross-Examination by Mr. Murdaugh

1 truck.

2 A Okay.

3 Q All right. So he's on at 8, takes to driving at
4 11. And he stops at one for two hours to replace, say an
5 alternator.

6 A Okay. We're at 1 o'clock where he's replacing an
7 alternator.

8 Q And he's down for two hours.

9 A Okay. Is he at a truck stop or is he on a shoulder
10 of the road.

11 Q No, he's at a -- he's at a diner that has a truck
12 repair in it.

13 A Okay. And he is hauling freight in commerce? He's
14 not moving personal belongings for a friend or a family
15 relative? This is --

16 Q For purposes of this exercise, just assume that you
17 don't know.

18 A Well, it affects the validity of the log, then.

19 Q How does it affect the validity of entering time?

20 A Because when it comes to any sort of comparative
21 analysis by a driver logbook, commercial motor vehicle
22 versus not a commercial motor vehicle doesn't apply.

23 Q Well, no, it's a commercial driver?

24 A So --

25 Q That's --

John Pinckney - Cross-Examination by Mr. Murdaugh

1 A -- by commercial driver you're saying that the
2 regulations apply that it is a truck in commerce?

3 Q Sure. Yes.

4 A Okay.

5 Q Absolutely. And I understand that -- I understand
6 what you're trying to do is not apply the hours to Mr. Sell
7 and his thing, but I just want you to follow those times,
8 assume that it's a commercial truck driver and put down the
9 hours as we say.

10 A Okay. And assume it's Mr. Owens?

11 Q No, no need to assume anything. That is irrelevant
12 here. You're wanting to assume -- I believe you're wanting
13 to assume it's Mr. Sell, but for purposes of this exercise,
14 just -- let's put down these entries.

15 A Yes, sir.

16 Q So he's back on the road after a two hour break.

17 A Okay. So at 1 o'clock he took a two hour break?

18 Q Correct.

19 A And the whole time of the two hours, was he
20 repairing the alternator? Or did he repair it for a little
21 bit and then went in the restaurant and got something to
22 eat?

23 Q Sure. He's hanging around talking to the people in
24 this diner while the mechanics fix his alternator. Give
25 him credit for sleeping an hour. Let's do that if you want

John Pinckney - Cross-Examination by Mr. Murdaugh

1 to. That would make him safer, wouldn't it?

2 A Okay. So this is the truck that's got a sleeper
3 berth?

4 Q Sure.

5 A Okay. So we are 11 to 1 driving. Then for two
6 hours, I put him down from 1 to 2 on line four and then
7 from 2 to 3 in the sleeper berth.

8 Q Okay. And from -- how long in the sleeper berth?

9 A I got him down for one hour in the sleeper berth
10 from 2 to 3.

11 Q All right. And then -- but he stopped for two
12 hours. Now, so how do you have that other hour accounted
13 for?

14 A On line four.

15 Q Perfect. I just wanted to make sure we had that.
16 So that would be categorized somehow as on duty, but not
17 driving?

18 A Yes.

19 Q Fair enough. All right. Now, let's go back on the
20 road, driving. And let's drive for -- what time are we
21 getting back on the road?

22 A It's 3 o'clock in the afternoon.

23 Q Okay. Let's drive for four hours. Drive until say
24 7. Then let's take a 30 minute sleep. Good?

25 A (Witness nodded head.)

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q All right. So that takes us to what time, sir?

2 A I show 7:30.

3 Q All right. And let's get back on the road after
4 that 30 minute sleep. So we get back on the road at 7:30
5 and let's drive until 11, somewhere in there, a couple of
6 hours. And let's take another 30 minute break. And let's
7 get back on the road and let's drive until approximately
8 3:50.

9 A So then I use the log that I was using to
10 reflect --

11 Q No -- let me get you a clean one so that we don't
12 have any -- this is the one -- give you a new page. This
13 is the one we -- or I messed up for you.

14 A We drive until when?

15 Q All right. What time are we getting back on the
16 road?

17 A It's 11:30.

18 Q Let's drive until 3:50.

19 A Mind if I put 3:45?

20 Q 3:45 is fine if that makes it easier. No problem.

21 A Well, it's broken out into 15 minute increments.

22 Q I understand.

23 A All right.

24 Q So -- and at 3:45 this person is in a wreck. All
25 right? And you are brought -- so let me make sure I can

John Pinckney - Cross-Examination by Mr. Murdaugh

1 read these logs. So we start out at 8 o'clock, we wake up.
2 We're on duty, not driving. At 11 o'clock, we start moving
3 things, putting them on the truck -- until 11 we start
4 moving things, putting them on a truck and then at 11 we
5 start driving. We are down for two hours fixing an
6 alternator, but we get an hour rest, sound asleep while
7 we're getting that alternator fixed. We go back on the
8 road for a while, take a 30 minute rest. Go back on the
9 road for a while and take a 30 minute rest, and get in a
10 wreck at 3:50, correct?

11 A That's the example you gave me.

12 Q That's the example I gave you. Now, I hired you
13 and I pay you \$400 an hour to -- to critique this driver's
14 performance as they apply to the logs and to assess his
15 fatigue.

16 A Okay.

17 Q Is this driver compliant with the Federal Motor
18 Carrier Regulations?

19 A Let me see that one more time.

20 Q Well, you know that you get --

21 A 14 hours.

22 Q -- 14 hours to drive and you can drive 11 in that
23 time, right?

24 A So after 10 o'clock this person would be in
25 violation of the 14 hour drive time.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q So after --

2 A If -- and that is if they had 10 consecutive hours
3 that ended at 8 o'clock in the morning from the previous
4 day.

5 Q Right. I mean, to even start all this, the person
6 -- this driver has to have gotten 10 consecutive hours of
7 sleep before even coming on duty at 8 o'clock?

8 A That CDL driver had to have that break.

9 Q Sure. And then -- and the reason why, we talked
10 about this earlier, the reason why the federal government
11 implements these Federal Motor Carrier Regulations is
12 because they have data and they know how the body stands up
13 and works and they know when a driver becomes fatigued.
14 They know how long a person can drive before they get
15 fatigued; isn't that correct?

16 A They do fatigue analysis, yes.

17 Q And, I mean, these aren't arbitrary numbers. These
18 are numbers that are based on science and medicine and
19 sleep specialists to know how long a person can be awake
20 before becoming fatigued.

21 A Well, that's kind of interesting. Yes, they do get
22 sleep specialists, but what's interesting was some of the
23 proposals, what they failed to take into consideration is
24 that the regulations were going to put truck drivers in the
25 busiest traffic hours of the day where the law of average

John Pinckney - Cross-Examination by Mr. Murdaugh

1 is by just being out in heavy traffic increases the
2 likelihood of a crash.

3 Q All right. And you said at -- but back to my
4 question that I want to make sure that we answered, these
5 regulations are set on science and medicine. They aren't
6 arbitrary?

7 A Correct.

8 Q Okay. It's when a normal person would become
9 fatigued is how they set up those hours?

10 A No, it wasn't a normal person. It was studying
11 truck drivers, sir.

12 Q Sure. Well, truck drivers and truck drivers have
13 more stamina than regular people, don't they?

14 A That may be your opinion, but I can assure you that
15 isn't necessarily true.

16 Q All right. What time did you say this person
17 became in violation?

18 A That CDL truck driver violated the 14 hour rule at
19 10 o'clock in the evening.

20 Q So 10 o'clock this driver would have been so
21 fatigued that they should have been off the road?

22 A They were a risk factor of fatigue. It is fatigue
23 related for driving beyond that.

24 Q So I bring this to you and I pay you \$400 an hour
25 to give me an opinion. Give me a grade, A to F on this

John Pinckney - Cross-Examination by Mr. Murdaugh

1 driver's performance.

2 A I would say he --

3 Q Safety performance. Safety.

4 A He failed.

5 Q How safe is this person? A being it is the safest

6 in the world; F being this person is a hazard. A to F?

7 A When it comes to an evaluation of the driver --

8 Q Sure.

9 A We can say that he was in a fatigued related

10 violation.

11 Q Yes, sir.

12 A But from the example given, he could be really

13 fatigued before 10 o'clock in the evening.

14 Q I understand he could have been tired earlier, but

15 certainly under these regulations -- and do -- he's

16 dangerous no, no later than 10 o'clock?

17 A If we're evaluating only one day instead of the

18 days leading up to that --

19 Q It's okay, though.

20 A -- it's -- if you're going -- as far as a rating, I

21 can't give you one.

22 Q But what's his grade? What's this guy's grade, A

23 to F?

24 A You know, I -- I've never given a truck driver a

25 grade.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q I know, but you're an expert and I'm hiring you and
2 I'm paying you \$400 an hour to give me a grade on this
3 trucker's performance?

4 A I'd say he violated 395 of the regulations.

5 Q Go ahead. Let's tell it, it's an F, isn't it?

6 A He's in violation of the regulations. It's a
7 fatigue related violation.

8 Q What's the grade?

9 A I never give --

10 MR. GRIFFITH: Your Honor --

11 THE WITNESS: -- a grade.

12 MR. GRIFFITH: I'm going to object. He's asked the
13 question several times. The witness says there is no
14 answer.

15 MR. MURDAUGH: Judge, I'm asking. He's an expert
16 and I can ask him to give me a grade on this person as a
17 safety expert analysis. He does teaching. He trains other
18 people.

19 THE COURT: I don't know what you mean by grade.

20 MR. MURDAUGH: I want him to give me an A to F, A
21 being the safest, F being the least, unsafe. I want him to
22 grade this driver's performance.

23 THE COURT: Well, I don't know that they do that in
24 that profession. That's not a grading scale. And I don't
25 think there's been any evidence that applies.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 MR. MURDAUGH: All right. So I can't get a grade?

2 THE COURT: Not in elementary school.

3 MR. MURDAUGH: All right. That's a deal. All
4 right.

5 BY MR. MURDAUGH:

6 Q How bad -- how big of a hazard in this driver?

7 A That's when you take a look at other logs leading
8 up to that situation and the out of control frequency of
9 violations that would be affected. If we're only looking
10 at one log and we're going to evaluate the whole livelihood
11 of that person on that one log, I think from an HR
12 perspective, that's not just.

13 Q All right. We're going to make this an exhibit.
14 Highlight at the latest point in time -- I'm just going the
15 make sure we're on the same page. I'm just going to put a
16 mark here at 10 o'clock as to when you said that driver
17 would --

18 A Violated the 14 hour --

19 Q -- be in violation of the law and that would be
20 one, two, three, four hours and 45 minutes longer that
21 person drove. Actually, we got one thing wrong. And I may
22 not have spoken clearly. I -- 3:45, 3:50, and I think we
23 did it at 2:50.

24 A All right.

25 Q Okay. And a line where that driver minimally

John Pinckney - Cross-Examination by Mr. Murdaugh

1 becomes hazardous to other motorists is at 10 o'clock.

2 MR. MURDAUGH: And this would be exhibit whatever
3 it is.

4 (Plaintiff's Exhibit Number 10 was marked for
5 identification.)

6 MR. MURDAUGH: All right. And Your Honor, at this
7 time, we'd move Exhibit 10 into evidence.

8 You need to see it?

9 MR. GRIFFITH: No, but I just don't think that's
10 evidence, Judge. That's just a demonstration. It's not
11 evidence in this case.

12 THE COURT: It's not, it was just demonstrative.

13 MR. MURDAUGH: This's fine.

14 BY MR. GRIFFITH:

15 Q All right. Now, talking earlier about -- did you
16 testify in the case of Zack versus J.B. Hunt?

17 A I believe I did.

18 Q All right.

19 A I don't remember when that was.

20 Q But you gave deposition testimony in that case?

21 A Yes.

22 Q All right. And you gave that testimony under oath?

23 A Yes.

24 Q And under normal circumstances, Mr. Pinckney, isn't
25 the safest thing to do when there is a wreck on the highway

John Pinckney - Cross-Examination by Mr. Murdaugh

1 is to make sure that you warn other motorists?

2 A In the Zack versus J.B. Hunt case, I believe it
3 involved --

4 Q Hold on one --

5 A -- an --

6 Q Hang on one second. I'm talking about -- that's
7 not the question. I'm talking about generally speaking --
8 we'll come to Zack in a minute. Just general safety, as a
9 motorist that has, for some reason, obstructed a roadway,
10 isn't the safest thing to try to warn other motorists?

11 A In general, yes. For a professional driver,
12 absolutely.

13 Q Okay. All right. And even for a regular person, I
14 mean, you know, the fact of whether you're a commercial
15 driver or a regular driver, I mean what's safe is still
16 safe.

17 A When I look at --

18 Q You agree with that?

19 A When I -- in answering your question, safe is safe,
20 but when you look at the equipment that truck drivers use
21 to warn other motorists about a hazard, I have rarely had a
22 person who drives a car tell me that they carry the
23 reflective triangles or flares with them every day. I
24 wouldn't be surprised if most of the people in this room
25 don't have reflective triangles or flares in their cars.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 So as it relates to warning other motorists, yes.

2 But when it comes to reflective triangles, it's required of
3 the truck drivers. I'm not surprised most people don't
4 have them in their trunk.

5 Q Now, in this case, are you aware that the vehicle
6 that Mr. Sell was driving is required under South Carolina
7 law to have flares and/or -- or triangle safety --
8 reflective triangles?

9 A Then I would say that would be an issue to take up
10 with Budget.

11 Q Are you aware of that?

12 A If I -- if it's over 10,001 pounds, it's a
13 commercial motor vehicle --

14 Q I'm just asking you as an expert in this case being
15 paid \$400 an hour, are you aware of that requirement for
16 that truck?

17 MR. GRIFFITH: Judge, if he could finish his answer
18 before Mr. Murdaugh interrupts him.

19 MR. MURDAUGH: Okay.

20 THE COURT: Go ahead and answer the question.

21 THE WITNESS: As it relates to rental trucks that
22 are used by trucking companies as well as by private
23 motorists who volunteer their time to help family, it's not
24 uncommon that the truck would be held against the trucking
25 company if it did not have the reflective triangles or the

John Pinckney - Cross-Examination by Mr. Murdaugh

1 flares, not the private motorist. So if that truck is used
2 by both trucking companies and the private motorist, then
3 the truck should have reflective triangles.

4 BY MR. MURDAUGH:

5 Q All I'm wanting to know is are you aware in this
6 particular case the Budget truck that Mr. Sell was driving,
7 under South Carolina law, was required to have reflective
8 flares -- I mean reflective triangles and flares? That's
9 all I want to know.

10 A In that because there was a U.S. DOT number on the
11 side of that Budget truck, yes.

12 Q Okay. So you were aware of that?

13 A Yes.

14 Q Okay. All right. And if those flares and
15 reflective devices are in a truck, shouldn't a motorist try
16 to use them in the circumstances that they obstruct two
17 lanes of traffic?

18 A That's a very good question. And one when I said I
19 defer to Budget because an average person off the street
20 doesn't know what's required to be in a commercial motor
21 vehicle. My opinion is that it should have been Budget
22 that took Mr. Sell around the truck doing an inspection,
23 showing him where the flares, where the reflective
24 triangles are, what they're to be used for. But in this
25 case, I didn't read where it happened.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q But shouldn't Mr. Sell also know what's in --
2 what's in the requirements of the law before he gets on the
3 roadway?

4 A My answer is no, he's not a truck driver.

5 Q But to be safe as a driver, I know you want the
6 keep talking about a truck driver, I'm talking about safe
7 -- you're a safety person. As a regular driver, just being
8 routinely safe on the road, shouldn't you know what's
9 required? I mean when you leave here today, if you rent a
10 car, shouldn't you know what's required of that car?

11 A Not with a truck. If you're an average -- if
12 you're just a private motorist and you've never driven a
13 truck, it's unreasonable to expect that you would know all
14 the safety requirements of that truck.

15 Q Now, all the conditions that you've testified that
16 Mr. Sell -- Mr. Owens was driving -- and Mr. Sell was
17 driving in those conditions too, wasn't he?

18 A Yes, sir.

19 Q And Mr. Sell, as a driver, when it got in rainy
20 weather should have slowed down?

21 A He was traveling at a reduced speed. He testified
22 that he was not comfortable with the truck and that he was
23 traveling 60 miles an hour.

24 Q And as a safety expert, you're good with that
25 speed?

John Pinckney - Cross-Examination by Mr. Murdaugh

1 A As a safety expert of trucking companies, not the
2 private person. I don't think Mr. Sell knew what would be
3 appropriate. I think in his own mind he was driving at a
4 safe speed, but he's not a truck driver.

5 Q Was Mr. Sell negligent in overturning that truck?

6 A He took responsibility for overturning the truck.
7 He testified to that, yes.

8 Q I'm asking you. Do you think he was negligent when
9 he turned over that truck?

10 A In so far as negligence, that is a legal term that
11 I'm not aware, but he testified that he took responsibility
12 for overturning the truck.

13 Q Was Mr. Owens negligent in operation of his motor
14 carrier vehicle that night?

15 A Again, I'm not a lawyer as it relates to the term
16 negligence, but Mr. Owens was driving in an unsafe manner
17 that resulted in an emergency, what resulted in us being
18 here today.

19 Q Let me ask you -- okay. And I understand. Now, a
20 trucking company, should they have been training their
21 truck drivers on these things?

22 A As far as Pierce National or just all trucking
23 companies?

24 Q Pierce National.

25 A They should have, yes.

John Pinckney - Cross-Examination by Mr. Murdaugh

1 Q They should have been doing safety training and all
2 of that?

3 A Yes, sir.

4 Q I mean it should have been detailed, should have
5 been training them on the logs?

6 A Yes, sir.

7 Q Now, have you read Johnny Grey Beckworth's
8 deposition?

9 A I did. It's been a while.

10 Q Does the fact that in his testimony that they are
11 losing \$190,000 a year absolve them of doing training?

12 A I don't remember reading that, but just because a
13 company's losing money does not absolve the factor of being
14 safe and protecting the motoring public. They should still
15 be training.

16 Q Okay. I just wanted to make sure. And how about
17 the fact that -- I mean, they don't have money and their
18 net worth as he testified in his deposition is negative
19 hundred thousand dollars. Does that absolve them of having
20 to train?

21 A They're a trucking company. They're still required
22 to train.

23 Q All right. Do you know whether that company's
24 still in business?

25 A I don't know.

John Pinckney - Redirect Examination by Mr. Griffith

1 Q So you don't know if they're out of business?

2 A I don't know.

3 Q Belly up today?

4 A I didn't research it before coming?

5 Q All right. Thank you, sir. I appreciate you
6 answering my questions.

7 A Thank you.

8 THE COURT: Redirect?

9 **REDIRECT EXAMINATION**

10 BY MR. GRIFFITH:

11 Q Mr. Pinckney.

12 A Yes, sir.

13 Q Was Mr. Sell subject to the Federal Motor Carrier
14 Safety Regulations?

15 A No, sir.

16 Q And was Mr. Owens subject to the Federal Motor
17 Carrier Safety Regulations?

18 A Yes, sir.

19 Q And you came in here and testified on Federal Motor
20 Safety Regulations safety and compliance; is that correct?

21 A Yes, sir.

22 Q All right. You talked about the Budget truck and
23 the Budget truck had a DOT number on it?

24 A Yes, sir.

25 Q Does that mean that Mr. Sell has to comply with the

John Pinckney - Redirect Examination by Mr. Griffith

1 med motor safety regulations?

2 A No, sir, not at all.

3 Q All right. And A, at least Mr. Owens or a
4 professional driver, we talked about taking a CDL test; is
5 that correct?

6 A Correct.

7 Q You study for that?

8 A Yes.

9 Q You have manuals that you read?

10 A Yes.

11 Q You have people such as yourself that actually will
12 train; is that correct?

13 A That is correct.

14 Q And then they test?

15 A Yes.

16 Q And as Mr. Owens testified he had an 80,000 -- was
17 that an 80,000 pound vehicle, loaded driving down the
18 highway that night?

19 A Yeah. When it comes to the weight of the vehicle,
20 we don't realize the amount of force involved in a crash
21 with 80,000 in it: That's why the regulations are there.
22 Just to do a comparative analysis on some of the crashes
23 that -- causes that I work with: If you were to hold a
24 pencil out on -- over your arm, whoop, drop pencil and the
25 eraser hits your baby toe, it's not going to do a whole lot

John Pinckney - Recross-Examination by Mr. Murdaugh

1 of damage. But if you take a 15 pound hammer and you drop
2 that on your toe, it's going to do a lot of damage. 40
3 tons at 65 miles an hour, that's a lot of damage.

4 Q And you were asked about professional drivers and
5 keeping the logs. You made mention about over a period of
6 time. We talked just about the day before and the day of
7 this accident with Mr. Owens. Did you have other logbooks?

8 A Yes, sir, I went back to May.

9 Q Was Mr. Owens in compliance with those logbooks?

10 A There was a pattern of noncompliance behavior with
11 Mr. Owens.

12 Q And if there's a pattern of noncompliance, does
13 that mean that the person is fatigued?

14 A It puts him in a greater risk to fatigue and
15 getting into an emergency.

16 Q And driving an 80,000 pound missile down the
17 interstate on a rainy night, is that safe?

18 A No.

19 MR. GRIFFITH: No further questions.

20 MR. MURDAUGH: I just have a couple.

21 **RECROSS EXAMINATION**

22 BY MR. MURDAUGH:

23 Q Now, I just want to make clear one thing, the
24 regulations don't quit applying to -- they don't stop
25 applying if the trucks unloaded, do they? It's not just

John Pinckney - Recross-Examination by Mr. Murdaugh

1 A It is an opinion that I made based on the lack of
2 evidence that it had been repaired.

3 Q And based on \$400 per hour?

4 A Well, I didn't base my opinions on the rate, but
5 that's the rate we charge.

6 Q How much are you going to get paid to drive to the
7 airport when you leave here?

8 A \$200.

9 Q How much you going to get paid to fly home?

10 A \$200.

11 Q An hour?

12 A Yes, sir.

13 MR. MURDAUGH: I don't have any further questions.

14 THE COURT: All right. You can step down.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: All right. Mr. Griffith, are you going
17 the have any other witnesses?

18 MR. GRIFFITH: Judge, I just want to publish some
19 answers to interrogatories from the plaintiff.

20 THE COURT: All right. Go ahead.

21 MR. MURDAUGH: Hang on. I need -- can I see what
22 these are before you publish them?

23 (There was a pause in the proceedings.)

24 MR. MURDAUGH: May I approach, Your Honor?

25 (There was a bench conference out of the hearing of

1 the jury and the Court Reporter.)

2 MR. GRIFFITH: Judge, do you want to explain what
3 an interrogatory is.

4 THE COURT: Interrogatories is our big fancy word
5 for a question. All right. During the pretrial portion
6 before we get to trial, the parties go through discovery
7 where they exchange information, names of witnesses, take
8 depositions, things like that. One of the things that they
9 do is they get to ask for documents and they get to ask
10 questions. We call those questions interrogatories and
11 they're usually given from one set of lawyers to the other
12 set of lawyers and then that's -- the lawyers send their
13 responses with their answers to interrogatories. He is now
14 going to publish a question that he asked to the other side
15 and the other sides response to that question.

16 All right. Go ahead.

17 MR. GRIFFITH: Question: List the name and
18 addresses of any expert witness whom the party proposes to
19 use as a witness at the trial of this case.

20 Answer: Plaintiff will identify expert witnesses,
21 if any, as discovery proceeds in accordance with the
22 scheduling order as agreed by counsel. Supplemental
23 answer, February 11, 2016: David L D-A-U-G-H-T-E-R-Y,
24 transportation resources, 2 Meeting Place, Greenville,
25 South Carolina. Mr. Daughtery is the transportation safety

1 expert. He is expected to testify as to his investigation
2 into the defendant's operation of the vehicle, compliance
3 with the Federal Motor Vehicle Safety Act in hiring and
4 retention of the defendant by the -- retention of the
5 defendant driver by the defendant employer. A copy of
6 Mr. Daughtery's C V is attached.

7 THE COURT: All right. You have any other
8 witnesses? Or anything else you --

9 MR. GRIFFITH: Your Honor, the defendant rests.

10 THE COURT: All right. Plaintiff going to have
11 anything in reply?

12 MR. MURDAUGH: No, sir.

13 THE COURT: Okay. All right, folks. Well, you've
14 now heard all the evidence that you're going to hear in the
15 trial and what we'll do is break for the day here and we'll
16 come back tomorrow morning and have the closing arguments
17 and then I'll instruct you on the law, go over the verdict
18 form with you, and then you will retire to consider what
19 your verdict will be.

20 Now, you've heard all the evidence that you're
21 going to hear, but it's still improper for you to begin
22 your deliberations or discussions about the case. So don't
23 talk to anybody, including other members of the jury about
24 the case. I haven't told you what the law is, so you can't
25 begin deliberations. You don't know what the law is in

1 this area. So go home, have a good night sleep, good
2 night's rest. If you would be back in the jury room a
3 little bit before 9:30 and hopefully we'll get started
4 right at about 9:30 to begin the final phase of the trial.

5 So -- also don't put anything on social media or
6 try to find anything on the internet about the case.

7 All right. We'll see you in the morning.

8 (The jury left the courtroom at 4:47 p.m.)

9 THE COURT: Okay. We gave you jury charges to look
10 at. I know you haven't had a chance to look at them. You
11 didn't get them until the end of lunch basically, so take
12 them home, look at them. I think you got what you asked
13 for plus what we had, so if you get eat up with something
14 else that you want to add to them, e-mail him tonight and
15 he'll -- we'll talk about it at 9:15 in the morning.

16 All right. We'll listen to Mitch renew his motions
17 and any that you have as well.

18 MR. MURDAUGH: Well, Judge, the only thing -- I
19 just have one more concern over -- and I understand your
20 ruling. I just want to put on the record again, this whole
21 thing now -- I mean we kept this out about the defendant
22 that's the only reason Mitch wanted to publish that, is he
23 now has in before the jury about a defendant that's not in
24 this case now and, you know, I've said all along --

25 THE COURT: He's always going to be able to argue

1 about an empty chair.

2 MR. MURDAUGH: Yes, sir. An empty chair, Judge,
3 because the difference in an empty chair and a defendant,
4 you know, the defendant implies -- okay. Where is the
5 defendant. Did they settle? Which is why I propose again
6 and in light of this evidence that's come out, I will ask
7 the Court to let's be straight with the jury to let them
8 know we sued them and we settled with them and how much
9 they got. How much we got is the only fair way to keep
10 that from being an issue with the jury. Especially after
11 that.

12 THE COURT: All right. Well, I'm going to be
13 consistent and rule against you again. I'm either
14 consistently right or consistently wrong, but that's the
15 way it is.

16 MR. MURDAUGH: Sure. I just wanted to be on the
17 record. Thank you, sir.

18 THE COURT: You are. All right. We'll see you
19 tomorrow, 9:15 tomorrow morning.

20 * * * * *END OF THIS PORTION OF THE TRANSCRIPT* * * * *

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1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

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5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 9th through the 11th
13 days of October, 2017.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 15th day of May, 2018.

18
19
20
21
22 Brenda J. Sigwald

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020