

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-000267
Op. No. 5711 (S.C. Ct. App. filed Jan. 15, 2020)

Carla Denise Garrison and Clint Garrison.....Petitioners,

v.

Target Corporation.....Respondent.

APPENDIX
VOLUME II

Joshua T. Hawkins (SC Bar #78470)
Helena LeeAnn Jedziniak
(SC Bar #100825)
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
Tel: (864) 275-8142
Fax: (864) 752-0911
josh@hjlsc.com
helena@hjlsc.com

Attorneys for Petitioners

Knox L. Haynsworth, III (SC Bar #10275)
Brown, Massey, Evans, McLeod &
Haynsworth, LLC
P.O. Box 2464
Greenville, South Carolina 29602
Tel: (864) 271-7424
Fax: (864) 242-6496

Lewis F. Powell, III (VA Bar #18266)
George P. Sibley, III (VA Bar #48773)
Hunton Andrews Kurth, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Tel: (804) 788-8200
Fax: (804) 788-8218
(Admitted Pro Hac Vice)

Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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AUG 03 2017

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellant Case No: 2017-000267

Carla Denise Garrison and Clint Garrison,

Appellants / Respondents,

v.

Target Corporation

Respondent / Appellant.

RECORD ON APPEAL
VOLUME I

Knox L. Haynsworth, III (S.C. Bar # 010275)
Brown, Massey, Evans, McLeod &
Haynsworth, LLC
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424
Attorney for the Respondent / Appellant

Joshua T. Hawkins (S.C. Bar # 78470)
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605
(864) 275-8142
Attorney for Appellants / Respondents

Lewis F. Powell, III (VA Bar # 18266)
George P. Sibley, III (VA Bar # 48773)
Kevin S. Elliker (VA Bar # 87498)
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 E. Byrd Street
Richmond, VA 23219
(804) 788-8200
(Admitted Pro Hac Vice)
Attorneys for the Respondent / Appellant

G. Todd Butler (MS Bar # 102907)
Phelps Dunbar, LLP
P.O. Box 16114
Jackson, Mississippi 39236-6114
(601) 352-2300
(Admitted Pro Hac Vice)
Attorney for Appellants / Respondents

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-04-1426

Carla Denise Garrison

Target Corporation

A TRUE COPY

PLAINTIFF(S)

DEFENDANT(S)

SEP 23 2015

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2752

Judge Code

09/16/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on the 27th day of Sept, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this, 23rd day of Sept, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

~~ATTORNEY(S) FOR THE DEFENDANT(S)~~

CLERK OF COURT

Court Reporter:

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

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

SCRCP Form 4C (03/2013)

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ANDERSON SC
2015 SEP 22 AM 11:40
COMMON PLEAS AND
GENERAL SESSIONS

Page 2

For Clerk of Court Office Use Only

This judgment was entered on
attorney's box on

9-16-16

, and a copy mailed first class or placed in the appropriate
to attorneys of record or to parties (when appearing pro se) as follows:

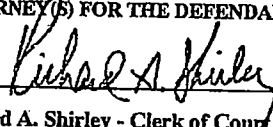
Joshua Thomas Hawkins 1225 S. Church Street Greenville,
SC 29605

Knox L. Haynsworth III PO Box 2464 Greenville, SC
29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Vivian L. Cross


Richard A. Shirley - Clerk of Court

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

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

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0402206

Carla Garrison

Clint Garrison

Target Corporation

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Docket

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);

- ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: The above captioned civil action is hereby consolidated with and shall proceed under the case caption and number Carla Denise Garrison vs. Target Corporation 2014CP0401426 for trial and disposition.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

R. Keith Kelly
Circuit Court Judge

2165

Judge Code

9/8/2016

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COMMON PLEAS AND
GENERAL SESSIONS

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ANDERSON SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Carla Denise Garrison, and	)	CASE NO. 2014-CP-04-1426
Clint Garrison	)	CASE NO. 2014-CP-04-2206
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
Target Corporation,	)	
	)	
Defendant.	)	

THIS MATTER came before the Court on hearing of the parties' post-trial motions. This case was tried before a jury beginning September 6, 2016, and concluding September 8, 2016. The jury returned a substantial verdict in favor of Plaintiffs. Following trial, Defendant timely moved for Judgment as a Matter of Law, New Trial Absolute, New Trial *Nisi Remittitur*, relief under the Thirteenth Juror Doctrine, and, alternately, reduction of the punitive damages award pursuant to the cap imposed by Section 15-32-530(A) of the South Carolina Code. Plaintiffs timely moved for costs and interest on the judgment. The motion hearing was conducted on November 3, 2016 in Spartanburg, South Carolina. Present for the Plaintiffs were Joshua Hawkins, Esquire of the Greenville bar and Todd Butler, Esquire, of the Mississippi bar, admitted *pro hac vice*. Present at the hearing for Defendant was Knox Haynsworth, Esquire of the Greenville bar, along with George Sibley, III and Kevin Elliker, both of the Virginia bar, also admitted *pro hac vice*.

Upon hearing the oral arguments of the parties and reviewing their written submissions, the Court hereby denies Defendant's motion for Judgment as a Matter of Law as to the actual damages award only, and Defendant's motions for New Trial Absolute, New Trial *Nisi Remittitur*,

and relief under the Thirteenth Juror Doctrine, along with Plaintiff's Motion for Costs. However, the Court hereby grants Defendant's motion for Judgment as a Matter of Law as to the punitive damages award and Plaintiff's Motion for interest on the judgment for the reasons stated herein.

STATEMENT OF RELEVANT FACTS

On the evening of May 21, 2014, Denise Garrison drove to a Target retail store in Anderson, South Carolina, with her daughter Kaleigh. Before entering the store, Mrs. Garrison stopped to examine her coupon book on the hood of the car. As she was doing so, Mrs. Garrison heard her daughter say, "Mommy, what is this?" She testified that she looked up to see her daughter holding a syringe with a small needle "pointing out." Rather than instructing her daughter to put the syringe down, Mrs. Garrison instinctively reacted and swatted the syringe out of her daughter's hand onto the pavement of the parking lot.

Mrs. Garrison then looked down to see "a tiny bead of blood and a puncture wound." She hurried to the restroom of the store and washed her hands repeatedly. She then called her husband, Clint Garrison, who suggested that she speak with a Target employee. Mrs. Garrison spoke with Shelby Brintnall, who was the "lead-on-duty" at the store for the evening. Ms. Brintnall followed Mrs. Garrison to the parking lot, where she photographed the syringe, which appeared "dingy, dirty, and gross." However, the needle was nowhere to be found. Ms. Brintnall collected the plastic tube of the syringe and brought it into the store.

Before she left the store that evening, Mrs. Garrison spoke with Ms. Brintnall about the incident and Ms. Brintnall completed an incident report. She wrote: "Guest's daughter picked up needle. [Mrs. Garrison's] first reaction was to smack the needle out of her hand. And when she did it stuck, it stuck her in the right hand." After Mrs. Garrison left the store that evening, Ms. Brintnall completed another report, describing the investigation and noting her impressions. In

that report, Ms. Brintnall noted that she could not locate a needle, and only the plastic tube of the syringe was recovered.

The next day, Mrs. Garrison went to the emergency room where she was treated for a needle stick. She was referred to an infectious disease specialist and was prescribed HIV medication and antibiotics. Her medication reportedly caused severe dizziness, nausea, vertigo, and extreme nightmares. Due to his wife's "zombie-like state" while on the medication, Clint Garrison had to take several days off work. As Mrs. Garrison is a stay-at-home mother, the family depends entirely on Mr. Garrison's income. Mrs. Garrison was able to change her medication after a few weeks and many of the side effects subsided, but she continued to experience nausea. To date, Mrs. Garrison has received four blood tests for HIV, but there is no evidence that she contracted any infectious disease – either HIV or otherwise – as a result of this incident.

Mrs. Garrison filed suit against Target in 2014. Mr. Garrison filed his own lawsuit shortly thereafter, and the two actions were consolidated for trial in this case. The trial was conducted from September 6 to September 8, 2016, in Anderson, South Carolina. After hearing testimony from multiple witnesses including Ms. Brintnall, Mrs. Garrison, and Mr. Garrison, the jury returned a verdict in favor of Plaintiffs, awarding Denise Garrison \$100,000 in actual damages and \$4,510,000 in punitive damages, and awarding Clint Garrison \$3,500 in lost wages and \$5,000 for loss of consortium.

DISCUSSION

As an initial matter, to the Court, the instant matter is one that has required the utmost thought and consideration. Though there is a sizeable amount of money at stake, the public goodwill and reputations of the parties and counsel involved is even more important. The sanctity of the jury is of paramount importance to the Court in this matter, but so is the proper application

of South Carolina and federal law to the facts of this case. Each of the post-trial motions made by Plaintiffs and Defendant have been addressed, in turn, below.

I. JUDGMENT AS A MATTER OF LAW

The defendant first contends it is entitled to judgment as a matter of law – also known as a judgment notwithstanding the verdict – pursuant to Rule 50 of the South Carolina Rules of Civil Procedure. Judgment as a matter of law is appropriate if the evidence as a whole is susceptible to only one reasonable inference, such that no jury issue is created. *Bloom v. Ravoir*, 339 S.C. 417 (2000), cited in *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32 (2001). When ruling on such a motion, the trial judge must view the evidence in the light most favorable to the non-moving party. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316 (2003); *Welch v. Epstein*, 342 S.C. 279 (Ct. App. 2000). Importantly, the jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. *Curcio*, 355 S.C. 316. Further, the motion should not be granted where the evidence yields more than one inference or its inference is in doubt. *Daves v. Cleary*, 355 S.C. 216 (Ct. App. 2003); *The Huffines Co., L.L.C. v. Lockhart*, 365 S.C. 178 (Ct. App. 2005).

Here, Defendant's motion for judgment as a matter of law cannot be granted regarding the award of actual damages. When viewed in the light most favorable to Plaintiffs, the evidence leads to more than one reasonable inference on the issues of constructive knowledge and proximate causation. However, finding punitive damages unconstitutional in this case, the Court finds judgment as a matter of law is appropriate as to that aspect of the award alone.

1. Constructive Knowledge

Under South Carolina law, in order to recover from a merchant following an injury in a store, a customer must prove either that (1) her injury was caused by a dangerous condition specifically created by the merchant; or (2) that the merchant "had actual or constructive

knowledge of the dangerous condition and failed to remedy it." *Wintersteen*, 344 S.C. at 35. Since there is no allegation that Target created the dangerous condition, the latter prong is the only one at issue here.

In order to prove constructive knowledge, the plaintiff must prove that the dangerous condition preexisted her injury long enough for the merchant to "have discovered and remedied it." *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77 (1971). Here, although there was no direct evidence as to the exact length of time the syringe had been in the parking lot, witnesses testified the syringe was "dingy, dirty and gross," and bore a "weathered" look similar to other items of trash in the parking lot. That testimony, when viewed in the light most favorable to Plaintiffs, leads to the reasonable inference that the syringe was in Target's parking lot long enough to impute constructive knowledge. Thus, judgment as a matter of law is not appropriate on the constructive knowledge issue.

2. Proximate Causation

South Carolina is a comparative negligence state, meaning that a plaintiff must prove her "own negligence is not greater than that of the defendant" in order to recover. *Bloom v. Ravoir*, 339 S.C. 417 (2000). A plaintiff can be comparatively negligent when she breaches a duty of care by act or omission, and her breach proximately causes her own injuries. *See id.* Comparison of the plaintiff's negligence with that of the defendant is ordinarily a question of fact for the jury to decide. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32 (1997); *cited in Bloom*, 339 S.C. at 422. In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Bloom*, 339 S.C. 422; *citing Creech*, 328 S.C. at 33. Judgment as a matter of law is generally not appropriate in a comparative

negligence case. *Id.*

In the instant matter, Mrs. Garrison saw the syringe in her daughter's hand, immediately reacted, and struck it to the ground. Though that action caused the needle stick injury, the action could reasonably be viewed as an impulse reaction motivated by a mother's instinct to protect her child. As the Supreme Court of this state held in *Bloom*, a comparative negligence determination is soundly within the purview of the jury where there is more than one reasonable inference. Therefore, judgment as a matter of law as to proximate causation is not appropriate here.

3. Punitive Damages

"[P]unitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." *Clark v. Cantrell*, 339 S.C. 369, 379 (2000). The South Carolina Supreme Court has articulated three "guideposts" to be applied in conducting a post-judgment review of punitive damages. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 52 (2010). Those guideposts are as follows: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570 (2009); cited in *Austin*, 387 S.C. at 52. These guideposts incorporate the relevant factors set forth by the United States Supreme Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and the South Carolina Supreme Court in *Gamble v. Stevenson*, 305 S.C. 104 (1991)¹ (though the

¹ The *Gamble* opinion identified eight considerations that trial courts should apply when reviewing the constitutionality of punitive damages awards: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the

Gamble factors may still be used to supplement the guideposts as needed). *Mitchell*, 385 S.C. at 585–587.

a. *Reprehensibility*

Significantly, the United States Supreme Court remarked in *Gore* that the degree of reprehensibility of a defendant's conduct is "perhaps the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 565. In a reprehensibility analysis, a court should consider factors such as whether:

The harm caused was physical opposed to economic; the tortious conduct evinced an indifference or a reckless disregard of the health or safety of others;² the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003).

Though there is evidence supporting the actual damages award in this case as discussed hereinabove, that evidence does not justify the jury's award of punitive damages. Defendant Target's conduct – albeit negligent by determination of the jury – did not involve repeated actions, and was not intentional, malicious, or deceitful. Further, Defendant's conduct does not evince a reckless disregard for the health or safety of others. The incident at issue here was an isolated incident that resulted from Defendant's failure to make the parking lot safe. There is no evidence that Defendant engaged in a pattern of reckless, willful, or wanton conduct that is sufficiently reprehensible to justify the punitive damages award here.

existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble*, 305 S.C. at 111–112.

² South Carolina law mirrors this requirement. A plaintiff seeking punitive damages in this state must present "evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221 (1996).

b. *Disparity of Harm*

The second *Mitchell* guidepost requires trial courts to weigh the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award. *Mitchell*, 385 S.C. at 585. "The ratio of actual or potential harm to the punitive damages award is 'perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award.'" *Id.* at 588; *citing Gore*, 517 U.S. at 580. Though the United States Supreme Court has consistently declined to adopt a bright line ratio or mathematical test, the Court has noted that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id. Citing Campbell*, 538 U.S. at 425. Here, the punitive damages award was \$4,510,000, and the actual damages awarded to Mrs. Garrison were in the amount of \$100,000. Thus, the ratio is in excess of 45:1. This ratio should not stand in the light of the *Campbell* decision, and cannot stand under the statutory cap placed on punitive damages by the South Carolina General Assembly in South Carolina Code Ann. § 15-32-530. However, since Defendant Target's conduct was not sufficiently reprehensibly to justify punitive damages in this case, the disparity of harm and the ratio of punitive damages to actual damages awarded need not be discussed any further.

c. *Comparable Penalties*

The third and final *Mitchell* guidepost requires the trial court to consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. "When identifying 'comparable cases' a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Mitchell*, 385 S.C. at 588-589. In the instant matter, there is no

evidence that Mrs. Garrison contracted any form of infectious disease. The actual damages awarded to Plaintiffs adequately account for Mrs. Garrison's medical bills, pain and suffering, emotional anguish, and her husband's loss of consortium and lost wages. Thus, comparable penalties need not be considered in great depth.

II. NEW TRIAL ABSOLUTE AND THIRTEENTH JUROR DOCTRINE

Defendant next contends it is entitled to a new trial absolute, or in the alternative, a new trial under the "thirteenth juror" doctrine. A new trial absolute must be granted if the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1 (1996); *Vinson v. Hartley*, 324 S.C. 389 (Ct. App. 1996). Similarly, under South Carolina's "thirteenth juror" doctrine, "a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Vinson*, 324 S.C. at 402. "The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597 (2009) (internal quotation marks omitted).

Defendant contends that the jury's award of more than \$100,000 in actual damages was "shockingly disproportionate to the harms alleged," such that a new trial absolute is necessary. The Court disagrees. It is well established in South Carolina law that a jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375 (1993). Here, though the punitive damages award violated Defendant's constitutional Due Process rights, the Court finds the actual damages award is not shocking to the conscience. Mrs. Garrison sustained several thousand dollars in medical bills as a result of this incident. Further, her husband – the

family's sole breadwinner – was forced to miss multiple days of work due to her injury. Additionally, Mrs. Garrison suffered extreme emotional anguish, coupled with weeks of nausea and horrific nightmares due to the HIV medications she was prescribed. Based on this evidence, the Court finds the jury's award of actual damages does not shock the conscience and a new trial absolute shall not be granted as a result. Further, the Court finds that the evidence justifies the verdict and actual damages award in this case, so a new trial absolute shall not be granted under the "thirteenth juror" doctrine.

III. NEW TRIAL *NISI REMITTITUR*

Defendant's final contention is that it is entitled to a new trial *nisi remittitur*. A new trial *nisi remittitur* is appropriate when the jury's verdict is excessive or "unduly liberal," but not necessarily "actuated by passion, caprice, or prejudice" sufficient to warrant a new trial absolute. *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531 (1993). Ruling on a new trial *nisi remittitur* "requires the court to consider the adequacy of the verdict in light of the evidence presented." *Waring v. Johnson*, 341 S.C. 248, 256 (Ct. App. 2000). The critical inquiry is whether the award excessively compensates the injured party. *Graham v. Whitaker*, 282 S.C. 393 (1984).

Defendant contends the actual damages award is grossly excessive and requires the grant of a new trial *nisi remittitur*. Again, the Court disagrees. "The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." *Proctor v. Dept. of Health and Environmental Control*, 268 S.C. 279, 320 (Ct. App. 2006); citing *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 89 (Ct. App. 2005). Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. *Id.* See also *Pelican Bldg. Ctrs. V. Dutton*, 311 S.C. 56, 61 (1993). Under the circumstances, the Court does not find compelling reasons to invade the province of the jury by granting a new trial *nisi* in this

matter. The Court has substantially altered the overall verdict by eliminating the punitive damages award. Under the circumstances, a new trial would amount to a sizeable waste of the resources of both South Carolina and Anderson County. Therefore, Defendant's motion for a new trial *nisi remittitur* is denied.

IV. PLAINTIFFS' MOTIONS FOR COSTS AND INTEREST

Costs may be granted to the prevailing party in a lawsuit pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure and South Carolina Code Ann. § 15-37-10. However, under the plain language of Rule 54(d), the Court has the discretion to rule otherwise. Rule 54(d) requires the prevailing party to submit an itemized affidavit of costs with its motion. Further, a party must point to a specific statute or rule of court to support each of his or her claims for costs, fees, and disbursements. *Black v. Roche Biomedical Laboratories*, 315 S.C. 223 (Ct. App. 1993). Since Plaintiffs have done neither, Plaintiff's motion as to costs is hereby denied.

Pursuant to South Carolina Code Ann. § 34-31-20, a judgment must draw interest according to law, and the legal interest rate is 8.75 percent per annum. Thus, Plaintiffs' motion for interest on the judgment is granted. Plaintiffs are entitled to interest on the actual damages award at the statutory rate of 8.75 percent, beginning the date the verdict was issued. That date is September 8, 2016.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, Defendant's Motions for Judgment as a Matter of Law as to the actual damages, New Trial Absolute, New Trial *Nisi Remittitur*, and Judgment under the Thirteenth Juror Doctrine are hereby denied. Plaintiffs' Motion to Tax Costs is also denied. However, Defendant's Motion for Judgment as a Matter of Law as to the punitive damages award is granted. Plaintiff's Motion for Interest is hereby granted as well.

AND IT IS SO ORDERED.

Electronic signature page to follow.

Page 12 of 12



Anderson Common Pleas

Case Caption: Carla Denise Garrison VS Target Corporation
Case Number: 2014CP0401426
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-01-26 13:39:22 page 13 of 13

ELECTRONICALLY FILED - 2017 Jan 26 2:07 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

STATE OF SOUTH CAROLINA	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
Carla Denise Garrison, and	)	CASE NO. 2014-CP-04-1426
Clint Garrison	)	CASE NO. 2014-CP-04-2206
Plaintiffs,	)	
v.	)	ORDER ON PLAINTIFFS' MOTION
Target Corporation,	)	TO TAX COSTS AND INTEREST
Defendant.	)	

THIS MATTER came before the Court on hearing of the parties' post-trial motions. This case was tried before a jury beginning September 6, 2016, and concluding September 8, 2016. The jury returned a substantial verdict in favor of Plaintiffs. Following trial, Plaintiffs timely moved for costs and interest on the judgment. The motion hearing was conducted on November 3, 2016 in Spartanburg, South Carolina. Present for the Plaintiffs were Joshua Hawkins, Esquire of the Greenville bar and Todd Butler, Esquire, of the Mississippi bar, admitted *pro hac vice*. Present at the hearing for Defendant was Knox Haynsworth, Esquire of the Greenville bar, along with George Sibley, III and Kevin Elliker, both of the Virginia bar, also admitted *pro hac vice*.

After the hearing, the Court in its January 26, 2017 order denied Plaintiffs' motion for costs and limited its grant of interest to post-judgment interest alone. In their January 31, 2017 motion, Plaintiffs timely moved for the Court to reconsider its decision pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The undersigned, upon review of Plaintiffs' current motion and previous filings, coupled with Defendant's response, has reconsidered its decision and hereby grants Plaintiffs' motions in full for the reasons discussed below.

STANDARD OF REVIEW

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, a party may move for the trial court to reconsider its prior decision within 10 days of the entry of the judgment. A motion under Rule 59(e) has long been viewed as a motion for reconsideration despite the absence of those words from the rule. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9 (2004). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Id.* Trial courts retain jurisdiction to alter judgments on their own initiative for ten (10) days if a Rule 59(e) motion is filed. *Ness v. Eckerd Corp.*, 350 S.C. 399 (Ct. App. 2002). However, after ten days that jurisdiction is lost. *Id.* A party may file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam*, 361 S.C. at 24. The proper procedure for correcting factual errors in an order is to file a motion to alter or amend pursuant to Rule 59(e). *Doe v. Doe*, 322 S.C. 492 (Ct. App. 1996). Further, an inaccuracy in the trial court's order must be raised to the trial court by way of a Rule 59(e) motion to alter or amend a judgment before the inaccuracy may be challenged on appeal. *Nettles v. Spartanburg School Dist. #7*, 341 S.C. 580 (Ct. App. 2000).

FACTUAL FINDINGS

Before making any conclusions of law, the Court makes the following findings of fact:

1. Plaintiffs timely filed their Motion to Tax Costs and Interest (the "Motion").
2. Plaintiffs' Motion was properly filed within the scope of Rules 54 and 68 of the South Carolina Rules of Civil Procedure, complete with the requisite supporting affidavits and list of itemized costs.
3. The Court was unaware of the Plaintiffs' written Motion at the time of the issuance of its

January 26, 2017 Order.

4. The January 26, 2017 Order was issued without knowledge of Plaintiffs' full compliance with the rules.

LEGAL ANALYSIS

Reconsideration under Rule 59(e) is appropriate where factual errors were made in the previous judgment. *See Doe*, 322 S.C. 492. Though the Court was unaware of the Plaintiffs' properly filed Motion at the time of its Order, the undersigned hereby takes notice of that fact and has reconsidered its ruling accordingly.

A. Costs

Plaintiffs have moved for costs pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure. Pursuant to the plain language of the Rule, costs are allowed as a matter of course to the prevailing party, provided the motion for costs is coupled with an affidavit of costs that are correct and were necessarily incurred in the action. Plaintiffs provided such an affidavit and an itemized list of costs incurred with their Motion, and aver that their costs are in the amount of \$1,284.99. Thus, Plaintiffs are entitled to \$1,284.99 in costs here.

B. Interest

Further, Plaintiffs have moved for pre-judgment interest pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, along with post-judgment interest under South Carolina Code Ann. § 34-31-20(b).

As to the pre-judgment interest, Plaintiff Carla Denise Garrison made an offer of judgment in the amount of \$12,000 to Defendant on February 13, 2015. Plaintiff appended a copy of the offer and proof of service to its Motion. Defendant did not file a written acceptance of that offer within twenty days as required by Rule 68(a) of the South Carolina Rules of Civil Procedure. "If

an offer is of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment." Rule 68(b), SCRCP. This Court's Order struck punitive damages, so the total amount of the verdict in favor of Mrs. Garrison is \$100,000. Thus, pursuant to Rule 68(b), Plaintiff Carla Garrison is entitled to eight percent interest computed on the verdict amount of \$100,000 from the date of the offer, which is February 13, 2015.

Plaintiff Clint Garrison moved for pre-judgment interest as well. However, Mr. Garrison is not entitled to pre-judgment interest since he did not file an offer of judgment either before or after his action was consolidated with his wife's.

Plaintiffs have also moved for post-judgment interest. Since the Order granted post-judgment interest to Plaintiffs on the whole of the remaining verdict – \$100,000 to Carla Garrison and \$8,500 to Clint Garrison – post-judgment interest need not be addressed in great detail here. Plaintiffs are entitled to post-judgment interest in the amount prescribed by law. By order of the South Carolina Supreme Court dated January 4, 2016, "for the period January 15, 2016, through January 14, 2017, the legal rate of interest for judgments and money decrees is 7.50% compounded annually." Additionally, by order of the South Carolina Supreme Court dated January 4, 2017, "for the period January 15, 2017, through January 14, 2018, the legal rate of interest for judgments and money decrees is 7.75% compounded annually." Plaintiffs are entitled to interest in accordance with those rates.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, Plaintiff's Motion to Tax Costs and Interest has been reconsidered and has been granted in full as to Plaintiff Carla Garrison. Plaintiff Clint Garrison is entitled to post-judgment interest in this matter as well.

AND IT IS SO ORDERED.

Electronic signature page to follow.



Anderson Common Pleas

Case Caption: Carla Denise Garrison VS Target Corporation

Case Number: 2014CP0401426

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-02-08 16:20:36 page 6 of 6

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Michael Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

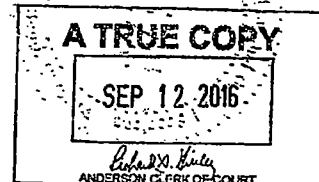
CASE NO. 2014-CP-04-1426

VERDICT

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ANDERSON SC
2016 SEP -8 PM 2:36
COMMON PLEAS AND
GENERAL SESSIONS

1. Do you, the jury, find that the Defendant, Target Corporation, was negligent and that such negligence caused the Plaintiff, Carla Denise Garrison's, injuries?
☒ YES: If you answer yes, **GO TO QUESTION 2**
☐ NO: If you answer no, **STOP AND DELIBERATE NO FURTHER**
2. Do you find that the Plaintiff, Carla Denise Garrison, was negligent and that such negligence proximately caused her injuries?
☐ YES: If you answer yes, **GO TO QUESTION 3**
☒ NO: If you answer no, **GO TO QUESTION 4**
3. If your answers to both question number 1 and question number 2 are **YES**, then answer this question.

Taking the combined negligence that proximately caused the Plaintiff, Carla Denise Garrison's, injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant, Target Corporation?



NEGLIGENCE PERCENTAGES REQUIRED TO ADD UP TO 100%

Plaintiff	_____ %
Defendant	_____ %
Total	_____ 100%

If the Plaintiff's percentage of the combined negligence is greater than 50%,
DELIBERATE NO FURTHER.

If the Plaintiff's percentage of the combined negligence is 50% or less, **GO TO QUESTION 4.**

4. Please state the total amount of actual damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Carla Denise Garrison.

\$ 100,000.00 one hundred thousand

NOTE: If your answer to question number 2 was YES, do not reduce the plaintiff's damages above by the percentage of negligence attributed to her in question number 3.

ONLY GO ON TO THE NEXT QUESTIONS IF YOU AWARDED ACTUAL DAMAGES TO THE PLAINTIFF IN QUESTION 4

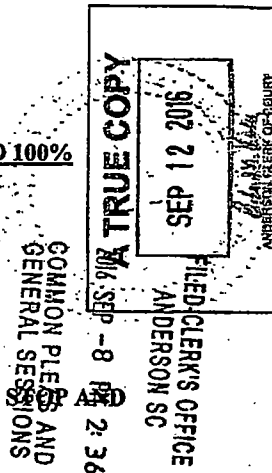
5. Do you, the jury, find by clear and convincing evidence that the Defendant, Target Corporation, acted willfully, wantonly, maliciously, or with reckless disregard of the plaintiff's rights?

☒ YES: If you answer yes, **GO TO QUESTION 6**

☐ NO: If you answer no, **GO TO QUESTION 7**

6. Please state the total amount of punitive damages, if any, that you, the jury, have found by clear and convincing evidence were sustained by the Plaintiff, Carla Denise Garrison.

~~\$ 4,510,000.00~~ (four)
\$ 4,510,000.00 4 million five hundred ten thousand
and no/100



**PLEASE ANSWER THE FOLLOWING QUESTIONS EVEN IF YOU DID NOT
AWARD PUNITIVE DAMAGES TO THE PLAINTIFF IN QUESTIONS 5 & 6**

NOTE: If you answered NO to question 1, DO NOT answer the following questions

Lost Wages:

7. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable for the lost wages of the Plaintiff, Clint Michael Garrison?
- ☒ YES: If you answer yes, **GO TO QUESTION 8**
- ☐ NO: If you answer no, **GO TO QUESTION 9**

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ANDERSON SC
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COMMON PLEAS AND
GENERAL SESSIONS

8. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of his wages.

\$3,500 three thousand five hundred

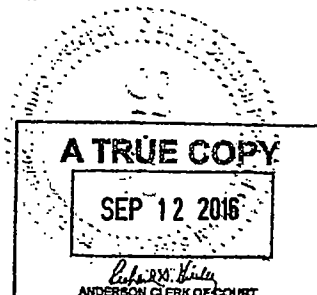
Loss of Consortium:

9. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable to the Plaintiff, Clint Michael Garrison, for loss of consortium?
- ☒ YES: If you answer yes, **GO TO QUESTION 10**
- ☐ NO: If you answer no, **STOP AND DELIBERATE NO FURTHER**

10. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of consortium in this case.

\$5000 five thousand

WHEN YOU HAVE FINISHED DELIBERATING,
PLEASE SIGN ON THE FOLLOWING PAGE

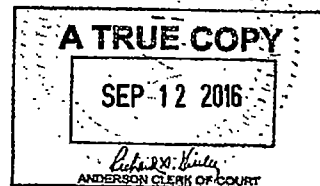


David P. Egger
FOREPERSON

September 8th, 2016
Anderson, SC

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ANDERSON SC
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COMMON PLEAS AND
GENERAL SESSIONS

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE NOTIFY THE BAILIFF



Case Manager - JCL-Pat

2014CP04014267

Carla Denise Garrison VS Target Corporation

CP/Real Prop/O Judgment Garrison, Carla Denise-Plaintiff

Case Information for SC Sta
 Actions
 Associated Cases
 Case File Location
 Case Parties
 Case Traffic
 Costs/Payments
 Disbursements
 Exhibits
 Fines/Costs
 Judgments
 Notes
 Payments
 Service/Warrant

Judgments

For	Against	Judgment	Date	Amount	Inde
Carla Denise Garrison	Target Corporation	Judgment/Judgment	9/8/2016	4618500.00	☒

For: Carla Denise Garrison
 Against: Target Corporation
 Judgment: JDM/JDM Judgment/Judgment
 Notes:

Judgment date: 9/8/2016
 Amount: 4618500.00
☒ Display on judgment index
 Disposition: *Blank
 Judgment disp date: 0/0/0000

Judgment Details

Judgment	Description	Amount	Judgment date	Judgment disp decision
Judgment		0.00	0/0/0000	*Blank

CONFIRMITY
 Common Pleas



Anderson County Tenth Judicial Circuit Public Index

[Anderson County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

Carla Denise Garrison VS Target Corporation

Case Number	2014CP0401426	Court Agency	Common Pleas	Filed Date
Case Type	Common Pleas	Case Sub Type	Real Prop/Other 499	File Type
Status	Judgment	Assigned Judge	Clerk Of Court C P, G S, And Family Court	
Disposition	Ended by Jury Trial	Disposition Date	09/08/2016	Disposition Judge
Original Source Doc		Original Case #		
Judgment Number	2014CP0401426	Court Roster	JURY SEPTEMBER 6-9, 2016 9:30 AM	

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

For:	Garrison, Carla Denise	Against:	Target Corporation	Judg. Amount:	\$4,618,500.00
Description:	Judgment/Judgment	Disposition:		Disp. Date:	
Notes:	None				
Judgment Details					
Claims Code:		Detail/Desc:			Det
None					
For:	Garrison, Clinton Michael	Against:	Target Corporation	Judg. Amount:	\$4,618,500.00
Description:	Judgment/Judgment	Disposition:		Disp. Date:	

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

Carla Denise Garrison

VS.

Target Corporation

Defendant(s)

Submitted By: Josh Hawkins

Address: 1225 South Church Street, Greenville, SC 29605

SC Bar #: 78470

Telephone #: 864-275-8142

Fax #: 864-752-0911

Other:

E-mail: josh@mbllc.com

CIVIL ACTION COVERSHEET

2014-CP-04-1426

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature: *Josh Hawkins*

Date: June 27, 2014

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

SCCA / 234 (04/2012)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

SUMMONS

A TRUE COPY

JUL - 1-2014

Debra M. Kelly
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office, 1225 South Church, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC

Joshua T. Hawkins
Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@mbllc.com

Attorney for Plaintiff

Greenville, South Carolina

6/27, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04 1426

COMPLAINT
(Jury Trial Requested)

A TRUE COPY

JUL - 1 2014

Richard H. Hines
CLERK OF COURT

COMES NOW, the plaintiff, alleging and complaining of the defendant as follows:

PARTIES, JURISDICTION AND VENUE

1. The plaintiff is a citizen and resident of Anderson County, South Carolina.
2. The defendant is a Minnesota corporation doing business in Anderson County and throughout the state of South Carolina.
3. A substantial portion of the transactions and occurrences described herein took place in Anderson County, South Carolina.
4. Jurisdiction and venue are proper in Greenville County, South Carolina for the foregoing reasons.

FACTUAL BACKGROUND

5. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
6. On May 21, 2014, the plaintiff traveled with her daughter to Target, located in Anderson, South Carolina.
7. When the plaintiff had parked and exited her vehicle with her daughter, her daughter picked up a syringe.

8. When the plaintiff saw that her daughter had picked up a syringe, the plaintiff instinctively reacted to protect her child, and swatted the syringe out of her child's hand.
9. As a result, the plaintiff was stuck by the syringe in the palm of her right hand.
10. The plaintiff then notified the defendant and the defendant assured the plaintiff that medical bills associated with the incident would be covered.
11. The plaintiff required and received medical treatment.
12. Notwithstanding its assurance that the plaintiff's medical bills would be covered, the defendant refused to cover medical bills associated with the incident described above.
13. Upon information and belief, the defendant solicits business from individuals such as the plaintiff, sells children's clothing and merchandise, and encourages mothers with children to use its parking lots and shop in its stores.
14. As a direct and proximate result of the acts and omissions of the defendant, the plaintiff has been damaged.

FOR A FIRST CAUSE OF ACTION
(Common Law Negligence and Recklessness)

15. The plaintiff incorporates the forgoing paragraphs as if repeated here, verbatim.
16. The defendant owed certain duties to the plaintiff, including but not limited to the following:
 - a. to properly maintain its premises;
 - b. to keep its premises reasonably clean;
 - c. to perform routine sweeps of its property;
 - d. to warn of unreasonably dangerous conditions;

- e. to avoid causing the plaintiff unjustified and unnecessary expenses; and
 - f. other duties as will be shown through discovery and at trial.
17. Breaches of the defendant's duties to the plaintiff constitute negligence and in some cases recklessness.
18. The defendant negligently and recklessly breached its duty to the plaintiff.
19. As a direct and proximate result of the defendant's breach, the plaintiff has been damaged.
20. The plaintiff is informed and believes she is entitled to judgment against the defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices Act Violation)

21. The plaintiff incorporates the forgoing paragraphs as if repeated here, verbatim.
22. The defendant's actions concerning the plaintiff were unfair, deceptive, adverse to public interests, and are capable of repetition.
23. As a direct and proximate result of the defendant's unfair trade practices and illegal acts, the plaintiff has been damaged as set forth above.
24. The plaintiff is entitled to relief pursuant to *South Carolina Code Ann.*, §§ 39-5-10 through 39-5-180.
25. The plaintiff therefore seeks recovery from the defendant for actual damages, punitive damages, multiple damages, costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

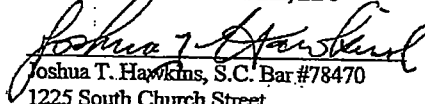
WHEREFORE, having set forth her complaint against the defendant, the plaintiff prays

for the following:

1. Treble damages and attorney's fees, pursuant to *South Carolina Code* 39-5-140;
2. Actual damages for the defendant's negligence and breach of contract;
3. Consequential damages;
4. Punitive damages for the defendant's intentional, willful, wanton and reckless conduct;
- and
5. For such other relief as this Court deems just and proper.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC


Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@mbllc.com

Attorney for Plaintiff

Greenville, South Carolina

6/27, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant, Target Corporation, answering the allegations of Plaintiff's Complaint, would allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint not hereinafter specifically admitted, qualified or explained, are denied.
2. Defendant admits the allegations of Paragraphs 1 through 4 of the Complaint.
3. Answering the allegations of Paragraph 5 of the Complaint, Defendant restates and incorporates by reference the contents of Paragraphs 1 through 2 above, as fully as if repeated herein.
4. Answering the allegations of Paragraphs 6, 7, 8 and 9 of the Complaint, Defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations, therefore, the same are denied and strict proof demanded.
5. Answering the allegations of Paragraph 10 of the Complaint, Defendant admits Plaintiff notified it of a syringe allegedly being located in its parking lot and picked up by her daughter. Further answering, Defendant specifically denies that it assured Plaintiff that it would cover or otherwise be responsible for any medical bills incurred by the Plaintiff.

6. Answering the allegations of Paragraph 11 of the Complaint, Defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations, therefore, the same are denied and strict proof demanded.
7. Answering the allegations of Paragraph 12 of the Complaint, Defendant specifically denies it assured Plaintiff that her medical bills would be covered. Further answering, Defendant admits it has not agreed to cover Plaintiff's medical bills.
8. Answering the allegations of Paragraph 13 of the Complaint, Defendant admits it solicits business from individuals and that it sells children's clothing and merchandise.
9. Defendant denies the allegations of Paragraph 14 of the Complaint.
10. Answering the allegations of Paragraph 15 of the Complaint, Defendant restates and incorporates by reference the contents of Paragraphs 1 through 9 above, as fully as if repeated herein.
11. Answering the allegations of Paragraph 16 of the Complaint, such allegations appear to be legal conclusions to which no response would be required of this Defendant.
12. Answering the allegations of Paragraph 17 of the Complaint, such allegations appear to be legal conclusions to which no response would be required of this Defendant.
13. Defendant denies the allegations of Paragraphs 18, 19 and 20 of the Complaint.
14. Answering the allegations of Paragraph 21 of the Complaint, Defendant restates and incorporates by reference the contents of Paragraphs 1 through 13 above, as fully as if repeated herein.
15. Defendant denies the allegations of Paragraphs 22, 23, 24 and 25 of the Complaint.

FOR A SECOND DEFENSE
(Comparative Negligence)

16. Defendant restates and incorporates by reference the contents of Paragraphs 1 through 15 above, as fully as if repeated herein.
17. Further answering the Complaint and as a second defense thereto, although specifically denying that it was negligent in any fashion, if this Defendant were negligent, then the Plaintiff Carla Denise Garrison was also negligent, willful, wanton, careless, reckless and grossly negligent in her acts and omissions and such negligence and gross negligence was a contributing proximate cause to the injuries to the Plaintiff and such bars any recovery by the Plaintiff against this Defendant. To the extent that the Plaintiff's own negligence and gross negligence is not a complete bar to her action against this Defendant, then such constitutes a partial bar so as to cause a reduction in the amount of any verdict that might be awarded to Plaintiff in an amount equal to the percentage of her own negligent conduct.

FOR A THIRD DEFENSE

18. Defendant restates and incorporates by reference the contents of paragraphs 1 through 17 above, as fully as if repeated herein.
19. Further answering the Complaint and as a third defense thereto, Defendant alleges that the Complaint against it fails to state facts sufficient to constitute a cause of action and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Punitive Damages)

20. Defendant restates and incorporates by reference the contents of Paragraphs 1 through 19 above, as fully as if repeated herein.
21. Further answering the Complaint and as a fourth defense thereto, this Defendant would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.
22. The Plaintiff's claims for punitive damages violate the Defendant's right of access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Defendant's exercise of that right.
23. The Plaintiff's claims for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:
 - (a) The standard for determining the requisite mental state of the Defendant for the imposition of punitive damages is void for vagueness; and
 - (b) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive

damage that may be awarded is indeterminate at the time of the
Defendant's alleged conduct.

WHEREFORE, having fully answered Plaintiff's Complaint, this Defendant prays that
the same be dismissed, that it be awarded the costs of this action and such other and further relief
as the Court may deem just and proper.

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC



Khox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorney for Defendant

Greenville, South Carolina
August 7, 2014

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

Carla Garrison and Clint Garrison

Plaintiff(s)

vs.

Target Corporation

Defendant(s)

Submitted By: Josh Hawkins

Address: 1225 South Church Street, Greenville, SC 29605

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 04

A TRUE COPY

SEP 21 2015

SC Bar #: 78470

Telephone #: 864-275-8142

Fax #: 864-752-0911

Other:

E-mail: josh@jthawkinslaw.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature:

Date: September 17, 2015

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Garrison and Clint Garrison,

Plaintiffs,

vs.

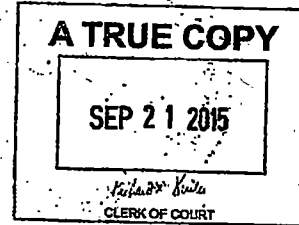
Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-04- 02206

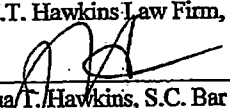
SUMMONS



YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office, 1225 South Church, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC


Joshua T. Hawkins, S.C. Bar #78470
1225 South Church Street
Greenville, SC 29605
(864) 275-8142
(864) 752-0911 (Fax)
josh@mbllc.com

Attorney for Plaintiffs

Greenville, South Carolina

9/17, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Garrison and Clint Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-04- 02206

COMPLAINT
(Jury Trial Requested)

A TRUE COPY

SEP 21 2015

K. K. K.
CLERK OF COURT

COMES NOW, the plaintiffs, alleging and complaining of the defendant as follows:

PARTIES, JURISDICTION AND VENUE

1. The plaintiffs are citizens and residents of Anderson County, South Carolina.
2. The defendant is a Minnesota corporation doing business in Anderson County and throughout the state of South Carolina.
3. A substantial portion of the transactions and occurrences described herein took place in Anderson County, South Carolina.
4. Jurisdiction and venue are proper in Anderson County, South Carolina for the foregoing reasons.

FACTUAL BACKGROUND

5. The plaintiffs incorporate the forgoing paragraphs as if repeated here, verbatim.
6. On May 21, 2014, Carla Garrison traveled with her daughter to Target, located in Anderson, South Carolina.
7. When Carla Garrison had parked and exited her vehicle with her daughter, her daughter picked up an old, dirty syringe located among other debris that appeared to have been present on Target's premises for a long period of time.
8. Clint Garrison went to Target after Carla Garrison was injured and also observed what appeared to be the accumulation of trash and debris over a long period of time. Upon information and belief, such accumulation and Target's failure to maintain clean, safe

premises was the direct and proximate cause of Carla Garrison's injury.

9. When Carla Garrison saw that her daughter had picked up a syringe, the plaintiff instinctively reacted to protect her child, and swatted the syringe out of her child's hand.
10. As a result, Carla Garrison was stuck by the syringe in the palm of her right hand. Target employees and others observed the injury.
11. When Carla Garrison notified the defendant, the defendant assured Carla Garrison that medical bills associated with the incident would be covered, and encouraged Carla Garrison to seek medical treatment.
12. Carla Garrison required and received medical treatment, and was tested for HIV and Hepatitis.
13. Carla Garrison was then instructed that she should have only limited sexual marital contact with her husband, Clint Garrison.
14. Carla Garrison and Clint Garrison had to wait for six months before resuming normal marital sexual activity without concern of Carla Garrison being infected with a disease from the syringe contained in the dangerous condition present in Target's parking lot.
15. Notwithstanding its assurance that Carla Garrison's medical bills would be covered, the defendant refused to cover medical bills associated with the incident described above.
16. Upon information and belief, the defendant solicits business from individuals such as the plaintiffs, sells children's clothing and merchandise, and encourages mothers with children to use its parking lots and shop in its stores.
17. As a direct and proximate result of the acts and omissions of the defendant, the plaintiffs have been damaged.

FOR A FIRST CAUSE OF ACTION
(Common Law Negligence and Recklessness)

18. The plaintiffs incorporate the forgoing paragraphs as if repeated here, verbatim.
19. The defendant owed certain duties to the plaintiffs, including but not limited to the following:
 - a. to properly maintain its premises;
 - b. to keep its premises reasonably clean;
 - c. to perform routine sweeps of its property;

- d. to warn of unreasonably dangerous conditions;
 - e. to avoid causing the plaintiffs unjustified and unnecessary expenses;
 - f. to avoid causing the plaintiffs stress and emotional distress;
 - g. to avoid robbing the plaintiffs of marital comfort and society; and
 - h. other duties as will be shown through discovery and at trial.
20. Breaches of the defendant's duties to the plaintiffs constitute negligence and in some cases recklessness.
21. The defendant negligently and recklessly breached its duty to the plaintiffs.
22. As a direct and proximate result of the defendant's breach, the plaintiffs have been damaged.
23. The plaintiffs are therefore informed and believe they are entitled to judgment against the defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

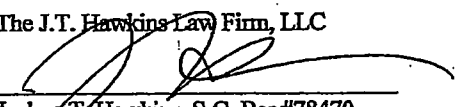
24. The plaintiffs incorporate the forgoing paragraphs as if repeated here, verbatim.
25. Each plaintiff lost the services, society, aid, conjugal fellowship, love, affection, comfort, solace, guidance, company and companionship of their spouse for an appreciable and significant period of time.
26. The loss of each plaintiff arises out of the special relationship between a husband and wife.
27. The defendant's failure to maintain its premises and failure to correct dangerous conditions of which it knew or should have known directly and proximately caused the damages, harms and losses of each plaintiff, described above.
28. Each plaintiff is informed and believes they are entitled to recover against the defendant for the damages, harms and losses described above.
29. Carla Garrison rendered several marital services, including superintending the household, training the children, assisting Clint Garrison in the management of business and affairs, and those services were impacted as a result of the defendant's acts and omissions.
30. The plaintiffs therefore seeks recovery from the defendant pursuant to S.C. Code 15-75-20.

PRAYER FOR RELIEF

WHEREFORE, having set forth the complaint against the defendant, the plaintiffs pray for a jury trial, actual damages, consequential damages, punitive damages, injunctive relief, and all appropriate damages pursuant to case law, statutes, and other applicable authority.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC



Joshua T. Hawkins, S.C. Bar #78470
1226 South Church Street
Greenville, SC 29605
(864) 275-8142
(864) 752-0911 (Fax)
josh@jthawkinslaw.com

Attorney for Plaintiffs

Greenville, South Carolina

9/17, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Garrison and Clint Garrison

Plaintiffs

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2015-CP-04-2206

**DEFENDANT'S ANSWER TO
PLAINTIFFS' COMPLAINT**

Defendant, Target Corporation, answering the allegations of Plaintiffs' Complaint, would allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint not hereinafter specifically admitted, qualified or explained, are denied.
2. Defendant admits the allegations of Paragraphs 1 through 4 of the Complaint.
3. Answering the allegations of Paragraph 5 of the Complaint, Defendant restates and incorporates by reference the contents of Paragraphs 1 through 2 above, as fully as if repeated herein.
4. Defendant admits the allegations of Paragraph 6 of the Complaint.
5. Defendant denies the allegations of Paragraph 7 of the Complaint.
6. Answering the allegations of Paragraph 8 of the Complaint, Defendants are without sufficient information with which to admit or deny that Plaintiff Clint Garrison went to Target after Carla Garrison was allegedly injured, therefore, the same are denied and strict proof demanded. Further answering, Defendant specifically denies there was any accumulation of trash and debris over a long period of time caused by any failure on

behalf of Target to maintain a clean and safe premises and further specifically deny any action on behalf of Target was a proximate cause of any alleged injuries of Carla Garrison.

7. Answering the allegations of Paragraph 9 of the Complaint, Defendant admits, upon information and belief, that Carla Garrison swatted the syringe out of her child's hand.
8. Answering the allegations of Paragraph 10 of the Complaint, Defendant is without sufficient information with which to admit or deny that Carla Garrison was stuck by any syringe in the palm of her right hand. Further answering, Defendant denies its employees observed any injury to Ms. Garrison's hand.
9. Defendant denies the allegations of Paragraph 11 of the Complaint.
10. Defendant admits, upon information and belief, the allegations of Paragraph 12 of the Complaint that Ms. Garrison received medical treatment.
11. Answering the allegations of Paragraph 13 of the Complaint, this Defendant is without sufficient information with which to admit or deny the allegation as to what Ms. Garrison was instructed relative to sexual contact with her husband, therefore, the same are denied and strict proof demanded.
12. Answering the allegations of Paragraph 14 of the Complaint, this Defendant is without sufficient information with which to admit or deny that Carla Garrison and Clint Garrison had to wait for six months before resuming normal marital sexual activity nor what concerns, if any, Carla Garrison had. Further answering, Target specifically denies any condition in its parking lot was dangerous.
13. Answering the allegation of Paragraph 15 of the Complaint, Defendant denies it or anyone on its behalf provided any assurance as to Carla Garrison regarding her medical

bills being "covered". Further answering, Defendant admits it did not "cover" Ms. Garrison's medical bills.

14. Answering the allegations of Paragraph 16 of the Complaint, Defendant admits that it solicits business from individuals and further admits that it sells children's clothing and other merchandise.
15. Defendant denies the allegations of Paragraphs 17 of the Complaint.
16. Answering the allegations of Paragraph 18 of the Complaint, Defendant restates and incorporates by reference the contents of Paragraphs 1 through 15 above, as fully as if repeated herein.
17. Answering the allegations of Paragraph 19 of the Complaint, such allegations appear to be legal conclusions to which no response would be required of this Defendant. To the extent the allegations of Paragraph 19 are factual, the same are denied including all sub-parts thereof.
18. Answering the allegations of Paragraph 20 of the Complaint, such allegations appear to be legal conclusions to which no response would be required of this Defendant. To the extent the allegations of Paragraph 20 are factual, the same are denied.
19. Defendant denies the allegations of Paragraphs 21, 22 and 23 of the Complaint.
20. Answering the allegations of Paragraph 24 of the Complaint, Defendant restates and incorporates by reference the contents of Paragraphs 1 through 19 above, as fully as if repeated herein.
21. Defendant denies the allegations of Paragraphs 25, 26, 27, 28, 29 and 30 of the Complaint.

FOR A SECOND DEFENSE
(Comparative Negligence as to Plaintiff Carla Garrison)

22. Defendant restates and incorporates by reference the contents of Paragraphs 1 through 21 above, as fully as if repeated herein.

23. Further answering the Complaint and as a second defense thereto, although specifically denying that it was negligent in any fashion, if this Defendant was negligent, then the Plaintiff Carla Denise Garrison was also negligent, willful, wanton, careless, reckless and grossly negligent in her acts and omissions and such negligence and gross negligence was a contributing proximate cause to the injuries to the Plaintiff and such bars any recovery by the Plaintiff Carla Garrison against this Defendant. To the extent that the Plaintiff's own negligence and gross negligence is not a complete bar to her action against this Defendant, then such constitutes a partial bar so as to cause a reduction in the amount of any verdict that might be awarded to Plaintiff Carla Garrison in an amount equal to the percentage of her own negligent conduct.

FOR A THIRD DEFENSE

24. Defendant restates and incorporates by reference the contents of paragraphs 1 through 23 above, as fully as if repeated herein.

25. Further answering the Complaint and as a third defense thereto, Defendant alleges that the Complaint against it fails to state facts sufficient to constitute a cause of action and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

26. Defendant restates and incorporates by reference the contents of paragraphs 1 through 25 above, as fully as if repeated herein.

27. Further answering the Complaint and as a fourth defense thereto, with regard to the allegations of Plaintiff Carla Garrison, Defendant would state that another action is pending between the same parties involving the same claims and, therefore, Plaintiff Carla Garrison's Complaint against this Defendant should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(Punitive Damages)

28. Defendant restates and incorporates by reference the contents of Paragraphs 1 through 27 above, as fully as if repeated herein.

29. Further answering the Complaint and as a fifth defense thereto, this Defendant would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the Constitution of the State of South Carolina, Article 1, Section 3.

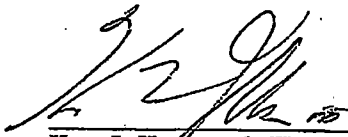
30. The Plaintiffs' claims for punitive damages violate the Defendant's right of access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Defendant's exercise of that right.

31. The Plaintiffs' claims for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:

- (a) The standard for determining the requisite mental state of the Defendant for the imposition of punitive damages is void for vagueness; and
- (b) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of the Defendant's alleged conduct.

WHEREFORE, having fully answered Plaintiffs' Complaint, this Defendant prays that the same be dismissed, that it be awarded the costs of this action and such other and further relief as the Court may deem just and proper.

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorney for Defendant

Greenville, South Carolina
November 2, 2015

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas
3
4 Carla Denise Garrison and)
5 Clint Garrison,)
6 Plaintiffs,) 2014-CP-04-01426
7 -vs-) consolidated with
8 Target Corporation,) 2015-CP-04-02206
9 Defendant.)
10 _____) Transcript of Record
11

12 B E F O R E:

13 The Honorable R. Scott Sprouse, Judge

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

15 Josh Hawkins, Esquire
16 Attorney for Plaintiffs

17 Knox L. Haynsworth, Esquire
18 Attorney for Defendant

19
20
21
22
23
24
25

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
Certified Realtime Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 2:45 p.m.)

4 THE COURT: This is Garrison versus Target
5 Corporation, 2014-CP-04-1426. This is the defendant's
6 motion for summary judgment.

7 MR. HAYNSWORTH: Yes, sir.

8 THE COURT: Mr. Haynsworth.

9 MR. HAYNSWORTH: Judge Sprouse, good afternoon.
10 I'm Knox Haynsworth here representing Target.

11 Judge, this is a premises liability case. It's a
12 little bit different than your normal premises
13 liability case. The plaintiff was injured when her
14 daughter allegedly picked up a hypodermic needle from
15 somewhere in the general vicinity of where she was
16 parked.

17 And I say general vicinity on purpose because if
18 you had a chance to review my memo, you would have seen
19 some deposition testimony from Ms. Garrison. She
20 doesn't know where her daughter got the needle from,
21 whether it was on the grass, on the curb, on the
22 asphalt. And the proximate cause of her injury is she
23 swatted the needle out of her daughter's hand and
24 supposedly stuck herself in the finger.

25 In order to meet her burden, Judge Sprouse,

1 Ms. Garrison has to prove either that Target created
2 the problem and somehow they're responsible for the
3 needle, or that they had actual or constructive
4 knowledge of it.

5 I think that the plaintiff is proceeding on the
6 constructive knowledge. I don't believe there is any
7 contention that Target actually knew of the presence of
8 the needle.

9 But, basically, Your Honor, there is simply no
10 credible evidence in the record, circumstantial or
11 otherwise, as to how the needle got there and how long
12 it had been there to suggest -- you might have seen a
13 photo of a needle. This looks like a dirty needle.
14 Frankly, I don't think it necessarily looks like a
15 dirty needle, but it proves nothing. A diabetic could
16 have dropped that needle where the little girl picked
17 that up from ten minutes before they arrived. A drug
18 addict could have been walking through the parking lot
19 ten minutes before they arrived and dropped the needle.
20 But she simply has zero evidence as to how it got
21 there. And she was very frank in her deposition. She
22 didn't know how it got there or how long it was there
23 or, in fact, was it in the parking lot when the
24 daughter picked it up. All the photograph shows, and
25 she conceded that, "That's where it landed when I

1 knocked it out of her hand, but I don't know where it
2 came from." And without some evidence of constructive
3 knowledge on Target's part, the plaintiff cannot go
4 forward.

5 THE COURT: Okay.

6 MR. HAWKINS: Good afternoon, Your Honor. I'm
7 Josh Hawkins here for Ms. Garrison.

8 Your Honor, it's the plaintiff's position that
9 summary judgment is improper for a couple of different
10 reasons.

11 As Your Honor knows and as every plaintiff's
12 lawyers says when they argue one of these motions, it
13 only takes a scintilla of evidence to make this a fact
14 question. We submitted two affidavits. We submitted a
15 picture. We submitted deposition excerpts and a
16 picture of the needle itself that shows trash and other
17 debris, cigarette butts and a piece of twine.

18 First, as an initial matter, we haven't had a
19 chance to complete discovery. We learned about one
20 person's name who was involved in the cleaning of the
21 parking lot, maintenance, through written discovery.

22 But when I was in the deposition of Ms. Brittinal,
23 the store manager on duty when this happened, I learned
24 about four -- I think about four other people who had
25 knowledge about this incident.

1 Three weeks after we took those depositions, the
2 defendant moved for summary judgment, less than a
3 month -- I had barely got the transcript. So before we
4 even get into the substance, I think the discovery is
5 not complete. We haven't had a chance -- I haven't had
6 a chance to do a 30(b)(6) deposition.

7 THE COURT: Isn't there a scheduling order?

8 MR. HAYNSWORTH: Yes, sir.

9 THE COURT: I thought I saw that in here. When is
10 discovery open until?

11 MR. HAWKINS: I think July or so.

12 THE COURT: Let me -- hold on. Let me go back and
13 find it.

14 MR. HAWKINS: I have a copy of it.

15 THE COURT: That would save me some time. Let me
16 see your copy.

17 This is an unsigned copy, Mr. Haynsworth.

18 Is there a signed copy?

19 MR. HAYNSWORTH: Yes, sir.

20 THE COURT: I'm sure it's in the file.

21 MR. HAYNSWORTH: Yes, sir. That was signed.

22 THE COURT: Discovery shall complete no later than
23 August 31st.

24 I think it's premature at this point to have a
25 summary judgment until discovery is complete. I'll

1 allow you to revisit that issue once discovery is
2 complete, after August 31st.

3 MR. HAYNSWORTH: All right, Your Honor.

4 THE COURT: We'll just -- there's no need for a
5 formal order at this point. We'll just do a Form 4.

6 And, again, you can revisit this issue once the
7 deadline had passed on discovery.

8 MR. HAYNSWORTH: And just to ask, what's the
9 mediation deadline? Because my hope was -- I might
10 have to bring somebody down here from Minneapolis -- if
11 I could get out of summary judgment, and I just don't
12 remember the lag time between finish discovery and
13 mediate.

14 THE COURT: I found it. Mediation shall be
15 completed no later than May 27, 2015.

16 MR. HAYNSWORTH: That was kind of my concern.

17 THE COURT: That would have to be submitted to
18 Judge Maddox to extend that time period.

19 Mr. Hawkins, how many more depositions do you have
20 to take?

21 MR. HAWKINS: Your Honor, I have to think about
22 that. I need to take a 30(b)(6) deposition, and I need
23 to take the deposition of either the person who's over
24 the maintenance department at Target or the company
25 that Target contracts with, one or the other or both.

1 So at least two of them, I would think.

2 Your Honor, I mean, I think, you know -- and I
3 think that the decision is correct. It is premature
4 per scheduling order. And per the fact that we've only
5 done two depositions. But, substantively, we have
6 submitted a bunch of evidence.

7 THE COURT: I've seen your affidavits. Of course,
8 that's not to say Mr. Haynsworth doesn't have a good
9 argument.

10 MR. HAYNSWORTH: The affidavits conflict with the
11 depositions.

12 MR. HAWKINS: I'll say this. Let me put this on
13 the record. Not knowing how long something has been
14 there is different from not knowing it's been there a
15 long time. It doesn't matter if that needle had been
16 there two weeks or two years, if it's been there long
17 enough for them to have constructive notice, and we
18 have presented a scintilla of evidence on that. That's
19 my argument, Your Honor.

20 THE COURT: Again, I don't know what the evidence
21 is going to show. It may be something beneficial to
22 Mr. Haynsworth, I don't know. So that's why I'm going
23 to allow you to revisit this after you have completed
24 these depositions that you state you need to do.

25 MR. HAWKINS: Yes, your Honor.

1 MR. HAYNSWORTH: Just -- again, I am the first to
2 admit I get caught. I haven't finished my discovery.
3 So I understand that Josh needs to do some more
4 discovery. That's great.

5 But just on this 30(b)(6) issue, back in November,
6 to me, interrogatory: Give the name of all persons and
7 parties who you will appoint and testify at 30(b)(6)
8 deposition. My answer: I don't know who I'm going to
9 appoint because the plaintiff hadn't told me the areas
10 they want to explore. So we were dealing with that
11 last year, and now we're saying continue this hearing
12 because I've got to do a 30(b)(6) witness.

13 I understand the court's ruling. And we'll tee it
14 back up after discovery has been completed.

15 THE COURT: Yes, sir.

16 MR. HAYNSWORTH: Thank you, Your Honor.

17 MR. HAWKINS: Thank you, Judge.

18 (WHEREUPON, proceedings concluded at 2:53 p.m.)

19 ***END OF REQUESTED TRANSCRIPT OF RECORD***
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Carla Denise Garrison and	)	
Clint Garrison,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 15-CP-04-2206
	)	
Target Corporation,	)	
	)	
Defendant.	)	

The within Jury Trial was held in the above-captioned matter September 5-8, 2016, before The Honorable R. Keith Kelley in the Circuit Court for Anderson County; attended by counsel, as follows:

APPEARANCES:

Joshua Hawkins, Esq.
 1225 South Church Street
 Greenville, South Carolina 29605
 Appearing for Plaintiff

Knox L. Haynsworth, III
 BROWN MASSEY EVANS
 P O BOX 2464
 Greenville, South Carolina 29602
 Appearing for Defendant

Transcribed for Vivian Cross, Circuit Court Reporter
 Deborah Garrison
 Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

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1
2 SEPTEMBER 6, 2016

11:30 A.M.

3 (STATUTORY QUALIFICATION JUDGE SPROUSE)

4 (JURY PANEL IN @ 11:30 A.M.)

5 THE COURT: Good morning, ladies
6 and gentlemen. I'm Keith Kelly. I'm one of
7 your Circuit Court Judges here in the State
8 of South Carolina. We travel around the
9 circuit. I'm from the Seventh Circuit, which
10 is over in Spartanburg/Cherokee County. But
11 it's good to be with you; I'm assigned here
12 this week and it's good to be with you.

13 We're usually start a little earlier
14 than this but I was required to be in
15 Greenville this morning for a meeting.
16 That's the delay in getting started. I
17 apologize for wasting some of your time. It
18 was mandatory that I be there.

19 The lawyers were here waiting on me.
20 And I was trying hard, desperately to get
21 here. So it's good to be with you.

22 Now, ladies and gentlemen, we're
23 here to try to the case of Carla Denise
24 Garrison versus Target Corporation. You are
25 here in Common Pleas Court this week. And I

1 don't know if Judge Sprouse -- did Judge
2 Sprouse qualify the jury earlier this
3 morning?

4 CLERK: Yes, sir.

5 THE COURT: All right. And I
6 don't know if Judge Sprouse explained that we
7 have both Circuit Court Common Pleas, which
8 is the civil court, and we have Circuit
9 Court, General Sessions, which is criminal
10 court. Last week I was in General Sessions
11 holding criminal court. And this week I'm
12 holding civil court.

13 So you're not here on a murder case
14 but we are here on a civil case. And we
15 thank you for being with you.

16 Now, we understand what
17 inconvenience jury service causes to you,
18 both in your personal and professional lives.
19 I assure you we'll do the very best we can to
20 minimize your time here, but we need your
21 services this morning.

22 Now, ladies and gentlemen, as I told
23 you we're here on the matter of Carla Denise
24 Garrison versus Target Corporation. And the
25 lawyers will explain more about the facts of

1 the case, what they perceive them to be
2 momentarily.

3 But this morning we need to inquire
4 as to your eligibility to serve on this
5 particular jury. You were previously sworn
6 by Judge Sprouse or the clerk and you remain
7 sworn at this time.

8 Now, ladies and gentlemen, there are
9 certain matters that I -- certain questions
10 I'm required to ask.

11 Do we have anything from the --
12 witness list and anything from the lawyers?

13 MR. HAYNSWORTH: We do, Your Honor.

14 MR. HAWKINS: Your Honor, his *voir*
15 *dire* covers mine.

16 MR. HAYNSWORTH: (Tenders *voir dire*
17 to bench).

18 THE COURT: Thank you. Okay.

19 (OFF RECORD DISCUSSION)

20 THE COURT: Ladies and gentlemen
21 of the jury panel, is there any member about
22 the panel who is related by blood or marriage
23 to Carla Denise Garrison?

24 Is there another person, other than
25 Carla Denise Garrison in this?

1 MR. HAWKINS: Your Honor, they
2 have been consolidated. Carla Denise
3 Garrison and Clint Garrison are both
4 plaintiffs.

5 THE COURT: And Clint Garrison.
6 Is any member of the jury panel who is
7 related by blood or marriage to Clint
8 Garrison or Carla Denise Garrison? If so,
9 please stand. (No response).

10 Is there any member of the jury
11 panel who's ever been related to them through
12 marriage? If so, please stand? (No
13 response).

14 Is there any member of the jury panel
15 that has a close social or personal relationship
16 with either of those individuals? If so, please
17 stand. (No response).

18 You know them from church. You know
19 them from work, social media, something of that
20 nature. If so, please stand?

21 JUROR NUMBER 118: (Stands)

22 THE COURT: I'm sorry. Yes, sir.
23 Your number, please?

24 JUROR NUMBER 118: Number 118.

25 THE COURT: 118?

1 JUROR NUMBER 118: I'm Juror 118.

2 I know Clint Garrison from work. I see him every
3 once in a while at the shop.

4 COURT REPORTER: I can't hear him,
5 Your Honor.

6 THE COURT: My court reporter is
7 having trouble hearing you. Can you speak up?

8 JUROR NUMBER 118: Juror 118. I know
9 Clint Garrison from work. I see him maybe once a
10 month at the shop where I go for material.

11 THE COURT: Would that interfere
12 with your ability to be fair to both the
13 plaintiff and the Defendant?

14 JUROR NUMBER 118: No.

15 THE COURT: Sir, you may stay.
16 Anybody else? (No response).

17 The following are some other potential
18 witnesses who might testify:

19 John Jackson

20 Clint Garrison

21 Denise Garrison

22 Margaret Ann Garrison

23 Shelby Brintnall.

24 Is any member of the jury panel related
25 by blood or marriage or ever been related by

1 blood or marriage to any of those potential
2 witnesses? If so, please stand. (No response).

3 Is there any member of the jury panel
4 who has a personal or social relationship with
5 any of those potential witnesses? If so, please
6 stand. (No response).

7 I'm going to ask the lawyers now to
8 introduce themselves to you. Plaintiff?

9 MR. HAWKINS: My name is Josh Hawkins.
10 I represent the plaintiffs, Clint Garrison and
11 Denise Garrison, Carla Denise Garrison.

12 THE COURT: Yes, sir?

13 MR. HAYNSWORTH: Ladies and
14 gentlemen, my name is Knox Haynsworth and I
15 represent Target.

16 THE COURT: Is there any member of
17 the jury panel who is related or has been related
18 by blood or marriage to any of the lawyers in
19 this case? If so, please stand. (No response).

20 Does any member of the jury panel have
21 a social or personal relationship with any of the
22 lawyers in this case? If so, please stand? (No
23 response).

24 Is there any member of the jury panel
25 who has ever been represented by either of the

1 lawyers or their law firms, please stand. They
2 did a real estate closing for you. They did a
3 Will for you, something to that nature.
4 Anything. Please stand. (No response).

5 Is there any member of the jury panel
6 who has a close friend or a family member who is
7 employed by either of the law firms? If so,
8 please stand. (No response).

9 Is there any member of the jury panel,
10 either yourself or your immediate family member
11 who has shopped at the Target store located on
12 Clemson Boulevard in Anderson, South Carolina?
13 If so, please stand.

14 (NUMBER OF JURORS STAND)

15 THE COURT: Is everybody going to
16 stand? I should have asked anybody who didn't.
17 All right. Starting on this side.

18 Sir, would that interfere with your
19 ability to be fair and impartial to both the
20 plaintiff and the defendant?

21 JUROR NUMBER 21: No, sir.

22 THE COURT: You may stay. And your
23 number, sir?

24 JUROR NUMBER 21: 21.

25 THE COURT: Yes, ma'am?

1 JUROR NUMBER 82: Juror number 82.
2 No.
3 THE COURT: It would not interfere
4 with your ability to be fair. Thank you. You
5 may stay.
6 JUROR NUMBER 79: Juror number 79.
7 THE COURT: Seventy-nine.
8 JUROR NUMBER 79: Yes.
9 THE COURT: And the answer is "no"?
10 JUROR NUMBER 79: Yes, sir.
11 JUROR NUMBER 28: Number 28, sir.
12 No, sir.
13 THE COURT: Okay. You may stay.
14 JUROR NUMBER 86: Number 86, no.
15 THE COURT: You may stay.
16 Yes, ma'am?
17 JUROR NUMBER 5: Juror number 5.
18 No, sir.
19 THE COURT: Okay. You may stay.
20 COURT REPORTER: I did not hear her
21 number.
22 THE COURT: Okay. She didn't get
23 your number.
24 JUROR NUMBER 5: Five (5).
25 THE COURT: Number 5 and it would

1 not interfere.

2 JUROR NUMBER 5: No, sir.

3 THE COURT: You may stay. Yes,
4 ma'am?

5 JUROR NUMBER 46: I'm 46, (negative
6 gesture).

7 THE COURT: It would not interfere.
8 You may stay. Yes, ma'am?

9 JUROR NUMBER 43: Juror number 43.
10 No.

11 THE COURT: It would not interfere.
12 Yes, ma'am.

13 JUROR NUMBER 57: Juror number 57.
14 No.

15 THE COURT: You may stay.

16 JUROR NUMBER 133: Juror Number 133.
17 No, sir.

18 THE COURT: You may stay?

19 COURT REPORTER: Number again?

20 THE COURT: I'm sorry. She didn't
21 get the number.

22 JUROR NUMBER 133: One thirty-three.

23 THE COURT: One-three-three.

24 JUROR NUMBER 11: Juror number 11,
25 no.

1 THE COURT: You may stay.
2 JUROR NUMBER 60: Juror number 60.
3 No.
4 THE COURT: 60. You may stay.
5 JUROR NUMBER 37: Juror number 37,
6 no.
7 THE COURT: You may stay.
8 JUROR NUMBER 94: Juror number 94.
9 No.
10 THE COURT: You may stay.
11 JUROR NUMBER 111: Juror number 111.
12 No, sir.
13 THE COURT: You may stay.
14 JUROR NUMBER 77: Juror number 77.
15 No, sir.
16 THE COURT: You may stay.
17 Yes, sir?
18 JUROR NUMBER 130: Juror number 130.
19 No.
20 THE COURT: Would it interfere with
21 your ability?
22 JUROR NUMBER 130: No, sir.
23 THE COURT: It would not. You may
24 stay.
25 JUROR NUMBER 152: Juror number 152.

1 No.

2 THE COURT: You may stay.

3 JUROR NUMBER 104: Juror number 104.

4 No.

5 THE COURT: You may stay.

6 JUROR NUMBER 91: Juror number 91,

7 no.

8 THE COURT: You may stay.

9 Yes, ma'am.

10 COURT REPORTER: Repeat the number.

11 THE COURT: Ma'am, your number

12 again?

13 JUROR NUMBER 109: Juror number 109.

14 THE COURT: Right here.

15 JUROR NUMBER 91: Juror number 91.

16 COURT REPORTER: And the number?

17 THE COURT: And 109?

18 JUROR NUMBER 109: Juror number 109.

19 THE COURT: Number 109.

20 Yes, ma'am.

21 JUROR NUMBER 122: Juror number 122.

22 No, sir.

23 THE COURT: 122. You may stay.

24 JUROR NUMBER 85: Juror number 85.

25 No, sir.

1 THE COURT: 85. You may stay.
2 Yes, sir.
3 JUROR NUMBER 126: Juror number 126.
4 No, sir.
5 THE COURT: You may stay.
6 JUROR NUMBER 42: Juror number 42.
7 No.
8 THE COURT: You may stay.
9 JUROR NUMBER 40: Juror number 40.
10 No.
11 THE COURT: Thank you. You may stay.
12 JUROR NUMBER 52: Juror number 52.
13 No.
14 THE COURT: Number 52. You may
15 stay.
16 Yes, ma'am?
17 JUROR NUMBER 68: Juror number 68.
18 No.
19 THE COURT: Number 68. You may
20 stay.
21 JUROR NUMBER 59: Juror number 59.
22 No.
23 THE COURT: You may stay.
24 JUROR NUMBER 36: Juror number 36.
25 No.

1 THE COURT: You may stay.

2 JUROR NUMBER 151: Juror number 151.

3 No.

4 THE COURT: Thank you. You may
5 stay.

6 Is there any member of the jury panel,
7 either yourself or a family member been employed
8 by Target?

9 And if so, are they still employed
10 there? Please stand?

11 Been employed by Target, that's the
12 first question.

13 JUROR NUMBER 109: (Stands)

14 THE COURT: Yes, ma'am. Your
15 number? 109?

16 JUROR NUMBER 109: Yes, sir. My
17 stepdaughter is a part-time employee there.

18 THE COURT: Would that interfere
19 with your ability to be fair and impartial to
20 both sides?

21 JUROR NUMBER 109: No, sir.

22 THE COURT: You may stay.

23 JUROR NUMBER 45: Juror number 45.

24 THE COURT: Yes, sir?

25 JUROR NUMBER 45: 45. My nephew work

1 there and no it would not ---

2 THE COURT: It would not interfere.
3 You may stay.

4 COURT REPORTER: His number, please?

5 THE COURT: It was 45?

6 JUROR NUMBER 45: (Affirmative nod).

7 THE COURT: Number 45, Madam Court
8 Reporter.

9 It's a little difficult for her to hear
10 all the way up here without a microphone.

11 Is there any member of the jury panel
12 that knows anything about this case? Heard
13 anything about it, read anything about it?

14 I don't have any reason to believe it
15 would have been in the media. But if so, does
16 anybody know anything about this case? If so,
17 please stand? (No response).

18 Is there any member of the jury panel
19 who knows of any reason why he or she should not
20 serve as a juror in this case? If so, please
21 stand? (No response).

22 Anything from the plaintiff?

23 MR. HAWKINS: (No response)

24 THE COURT: Anything from the
25 plaintiff's attorney? Mr. Hawkins?

1 MR. HAWKINS: No, sir.

2 THE COURT: Anything from the
3 defense?

4 MR. HAYNSWORTH: No, Your Honor.

5 THE COURT: Okay. Pick our jury.

6 (COURT AT-EASE)

7 THE COURT: Okay. Mr. Clerk.

8 THE CLERK: If it pleases the Court,
9 Ladies and gentlemen, what we're going to do now
10 is the attorneys are going to strike from the
11 list we've pulled. The computer has randomly
12 picked twenty-three of you for the list. The
13 attorneys are going to strike.

14 I've asked the attorneys to strike from
15 the numbers on the left-hand side, so if you hear
16 your number being struck, that's not you, okay?
17 So right now, we're going to be using numbers one
18 through twenty-three. Once we get through we
19 will go back to the numbers that you do know.
20 So right now you don't have any idea if you are
21 being chosen or not, okay? So don't be offended
22 if you hear your number struck.

23 All right. We will start with the
24 plaintiff. And as I said, please strike from
25 either from one through twenty.

1 MR. HAWKINS: Plaintiff strikes number
2 six.
3 THE CLERK: Plaintiff strikes number
4 six.
5 MR. HAYNSWORTH: Defendant strikes
6 number three.
7 THE CLERK: Defendant strikes number
8 three.
9 MR. HAWKINS: Plaintiff strikes number
10 ten.
11 MR. HAYNSWORTH: Defendant strikes
12 number eight.
13 MR. HAWKINS: Plaintiff strikes number
14 fourteen.
15 MR. HAYNSWORTH: Defendant strikes
16 twelve.
17 MR. HAWKINS: Plaintiff strikes number
18 eighteen.
19 MR. HAYNSWORTH: Defendant strikes
20 number seventeen.
21 THE CLERK: All right. Now,
22 plaintiff, for your alternate? You can strike
23 from numbers 21, 22, or 23.
24 MR. HAWKINS: Plaintiff strikes number
25 twenty-one.

1 MR. HAYNSWORTH: The defendant
2 strikes number twenty-three.

3 THE CLERK: All right. Your Honor,
4 may I proceed?

5 THE COURT: Yes, sir.

6 THE CLERK: All right. Now, ladies
7 and gentlemen, we're going back to the numbers
8 you do know. When your name is called, you'll
9 come through the gate here to Mr. Buck and he'll
10 put you in the juror box.

11 Our first juror is Number 37, Lisa R.
12 Epps.

13 (JUROR NUMBER 37 SEATED)

14 THE CLERK: Next is Number 85, Betty
15 J. McAlister.

16 (JUROR NUMBER 85 SEATED)

17 THE CLERK: Next is Number 43, Julie
18 G. Fowler.

19 (JUROR NUMBER 43 SEATED)

20 THE CLERK: Next is 126 Rodney H.
21 Smith.

22 (JUROR NUMBER 126 SEATED)

23 THE CLERK: Next is Number 11,
24 Nirmala D. Bruce.

25 JUROR NUMBER 11: Nirmala.

1 THE CLERK: Nirmala.
2 (JUROR NUMBER 11 SEATED)
3 THE CLERK: Next is Number 152,
4 Michael W. Smith.
5 (JUROR NUMBER 152 SEATED)
6 THE CLERK: Next is Number 4, Linda
7 C. Bailey.
8 (JUROR NUMBER 4 SEATED)
9 THE CLERK: Next is Number 79, Carol
10 H. Kinney.
11 (JUROR NUMBER 79 SEATED)
12 THE CLERK: Next is 94, Khamis
13 Muhammad.
14 (JUROR NUMBER 94 SEATED)
15 THE CLERK: Next is Number 5, Penny
16 M. Barclay.
17 (JUROR NUMBER 5 SEATED)
18 THE CLERK: Next is Number 65, Mark
19 P. Hiott.
20 (JUROR NUMBER 65 SEATED)
21 THE CLERK: Next is 151, Amber N.
22 Danie.
23 (JUROR NUMBER 151 SEATED)
24 THE CLERK: And our alternate is
25 Number 86, Ayshia L. McClary.

(JUROR NUMBER 86 SEATED)

THE COURT: Any matters regarding
the jury from the plaintiff?

MR. HAWKINS: None from the plaintiff,
Your Honor.

THE COURT: From the Defense?

MR. HAYNSWORTH: No, Your Honor.

THE COURT: Okay. Ladies and
gentlemen, those of you who were not selected, I
have good news and bad news for you, either which
way you want to take it. I say it's going to be
some good news. You've got another chance to
serve. We're going to have another trial after
this trial so you might get on the next trial.

I'm told by the lawyers before I came
in here that this case would take the rest of the
day and it looks like it would take all of
tomorrow as well.

But we do anticipate picking another
jury on Thursday morning. Having said that, the
next time Mister Clerk advises you to call that
magic number that you've been provided will be --
after what time -- 6:00?

THE CLERK: 6:00. Yes, sir.

THE COURT: 6:00..

1 THE CLERK: I haven't given it to
2 them yet.

3 THE COURT: You haven't given it to
4 them. Okay.

5 He's going to give you a magic number
6 to call because you never can tell what can
7 happen, okay? So we might need you tomorrow. We
8 don't anticipate needing you tomorrow but we
9 might.

10 I'm not the only Circuit Court Judge
11 here. So another Judge might need you as well.
12 So having said that, he's going to give you some
13 information here with a phone number on it. And
14 if you could just be kind enough to call that
15 number after 6:00 p.m. this evening. After 6:00
16 p.m. this evening as well.

17 (JURY PANEL EXCUSED)

18 THE COURT: All right. Ladies and
19 gentlemen of this jury, Juror Number 37, Lisa
20 Epps? Ma'am, where are you?

21 JUROR NUMBER 37: Yes, sir?

22 THE COURT: Ms. Epps at about 2:00
23 today, I'm going to appoint you the forelady of
24 the jury. It is my custom to alternate between a
25 jury foreman and a jury forelady. And it's time

1 for me to have a forelady. So since you were
2 first on the list right here, I just thought I'd
3 pick you. You've won the lottery twice today.
4 Didn't even know it. You just happened to be the
5 first name right there. I said, 'well, I'll just
6 pick this lady.' I don't know anyone on the jury
7 anyway.

8 Ms. Epps, when we return after 2:00 --
9 you're going to be released in a few minutes all
10 of you to return at 2:00 p.m. The bailiff will
11 tell you where they need you to be at 2:00.

12 We're going to continue to work here.
13 So I'm going to ask that you not come into the
14 courtroom because we're going to take up some,
15 what's called, legal matters. I'll explain a
16 little more about that later but there's certain
17 things that I have to rule on as to whether or
18 not it applies under the rules of our court. It
19 has nothing to do with the facts in the case.
20 That is totally up to you. But I have to make
21 some rulings on this case and we've already
22 discussed some of them. And it would not be
23 proper for you to be here. Otherwise, you're
24 always welcome to be in the courtroom.

25 So when we return, ma'am, if you would

1 be kind enough to sit in the seat that this lady
2 in the brown sweater is sitting in on the very
3 front row. That will be my foreperson's seat.
4 And ma'am, you're my alternate, right?

5 JUROR NUMBER 86: Yes, sir.

6 THE COURT: And you're sitting in
7 the correct seat. I do that because I want
8 everybody -- when I look up, I want to know where
9 my foreperson is and my alternate. Everybody
10 else is now hereby made an honorary Rotarian.
11 You're in the rotary club of Anderson County
12 Courthouse right now, which means you can sit to
13 the left, to the right, to the front, to the
14 back. It does not matter. You can switch seats
15 each and every time you come in the courtroom.

16 But ma'am, you two, Madam Forelady and
17 Madam Alternate, if you would be kind enough to
18 sit in assigned seats always so I know where you
19 are, okay?

20 With that, we're going to ask that the
21 bailiff to take you --

22 Where do you want them to go? To the
23 jury room or ---

24 BAILIFF: Are you excusing them
25 for lunch?

1 THE COURT: Yes, sir.

2 BAILIFF: I'll carry them around
3 the way they go out.

4 THE COURT: Okay. And then where do
5 you want them to report to?

6 BAILIFF: Back here. They'll come
7 back the same way they went out. There'll be a
8 bailiff out there to bring them to the jury room.

9 THE COURT: Okay. All right. We're
10 going to excuse you until 2:00 and we'll see you
11 at 2:00

12 (JURY OUT @ 11:59 A.M.)

13 THE COURT: Okay. Gentlemen, what
14 do we have now? I only have one file. I know
15 you talked about consolidation. Am I supposed to
16 have two?

17 MR. HAYNSWORTH: If you've only got
18 Carla versus Target, then -- I guess the clerk
19 has a second file, there's a second case number.
20 I don't know as you need anything in it, though,
21 to be honest, Judge because ---

22 THE COURT: Okay.

23 MR. HAWKINS: It rises from the same
24 occurrences.

25 MR. HAYNSWORTH: Yeah. I mean, it's

1 the same -- just add Clint to what you've got and
2 you've got the second case.

3 THE COURT: Okay.

4 MR. HAWKINS: And Your Honor, I have,
5 I think, a copy of those pleadings that kind of
6 lay out the detail, the loss of consortium and
7 the wages. If the Court wants that, I'm happy to
8 provide that at some point. I don't -- whatever
9 the Court wants.

10 THE COURT: I just wanted to make
11 sure that I have what I need. I only have one
12 file, it is the 1426?

13 MR. HAWKINS: Yes, Your Honor.

14 MR. HAYNSWORTH: Yes, sir.

15 THE COURT: All right. Okay. We
16 have some matters of law. Yes, sir?

17 MR. HAWKINS: Yes, Your Honor. Thank
18 you and may it please the Court. Some of these
19 Knox that alluded to in chambers have been dealt
20 with.

21 I think the defense has agreed not to
22 mention Clint Garrison's criminal history.

23 And the defense has agreed not to
24 reference any tattoos of any party.

25 So that leaves my Motion to exclude

1 testimony or any evidence related to Mrs.
2 Garrison's car wreck of roughly twenty years ago.

3 MR. HAYNSWORTH: That's fine. I
4 don't have any intention of getting into her car
5 wreck.

6 MR. HAWKINS: Motion to exclude any
7 claim records from third-party vendor. We've
8 asked for that stuff. I'd ask that anything that
9 hasn't been provided already be excluded. So
10 that's anything other than the two-page log that
11 Knox provided.

12 THE COURT: Is there anything else?

13 MR. HAYNSWORTH: No, sir.

14 THE COURT: Okay. All right. So
15 what was that, no third -- what?

16 MR. HAWKINS: No records being
17 introduced by the third-party vendors. We asked
18 for those and I want to talk about those in trial
19 so that won't be a surprise.

20 THE COURT: Okay.

21 MR. HAWKINS: There's a Motion and I
22 don't think it's going to be an issue. The
23 hypodermic needle that caused the injuries has
24 gone missing at Target. So I just ask if -- it
25 came up, you know, today that it be excluded;

1 because I've asked for it a long time ago,
2 subpoenaed it for trial, the first day of said
3 subpoena for today. So if they don't have it, I
4 don't want them to bring it in the morning.

5 MR. HAYNSWORTH: There will be no
6 syringe ---

7 THE COURT: No needle.

8 MR. HAYNSWORTH: Well, I hate to
9 refer to it as a needle, Your Honor.

10 THE COURT: No syringe.

11 MR. HAYNSWORTH: No syringe. Plenty
12 of pictures but no syringe.

13 THE COURT: Okay.

14 MR. HAWKINS: And that leaves the
15 two that we talked about in chambers, Your Honor.

16 The first one is Motion to exclude any
17 bill or record not related to this lawsuit. I
18 think Knox was talking about that because he
19 wanted to say 'you've got other records or other
20 bills that weren't paid that you incurred before
21 this incident happened, so we should be able to
22 talk about those.' And I don't see any reason
23 to. I don't see any relevance and I think that
24 could confuse and prejudice the jury.

25 MR. HAYNSWORTH: Your Honor, I

1 anticipate that amongst the documents that will
2 be introduced or the testimony that will be
3 elicited from the plaintiff is dunning letters
4 that they received from AnMed. And they've got
5 this unpaid obligation to AnMed. The import is
6 going to be 'we've got to get this money because
7 we've got to pay the hospital.'

8 Well, if they haven't paid the hospital
9 for prior treatments, I think that's relevant to
10 their claim about needing money to pay the
11 hospital bill.

12 THE COURT: Mr. Hawkins, why do you
13 need to put the -- why do you need to put the --
14 well, why -- is he lying to you? Are you going
15 to put in that he neglected to pay the hospital.
16 I mean, why do you need to do that?

17 MR. HAWKINS: We're going to talk
18 about the fact that a bill was incurred.

19 THE COURT: Sure.

20 MR. HAWKINS: And whether or not we'll
21 talk about, you know, 'have you paid this back',
22 probably so. I can stay away from that if it
23 solves the problem. I mean, the fact that we
24 incurred a bill is really what we need to show.

25 THE COURT: Well, that's what you

1 show and that's part of your damages?

2 MR. HAWKINS: Right.

3 THE COURT: Yeah. So he just puts
4 the number in, does that solve what you need?

5 MR. HAYNSWORTH: Your Honor, I guess
6 my thought is if there's going to be testimony
7 that we owe AnMed money. And we're here about
8 getting money to pay for a hospital bill. The
9 fact that they've got hospital bills dating back
10 years to the same hospital seems to me is
11 relevant to their claim 'give us money so we can
12 pay this hospital bill.'

13 THE COURT: What if they stop short
14 of that, if he just puts the number in for his
15 damages?

16 MR. HAYNSWORTH: That their damages
17 are ---

18 THE COURT: That the medical bills
19 are X-amount of dollars. We don't get into if
20 they're paid or not paid.

21 MR. HAWKINS: I'm fine with doing
22 that. I don't see the relevance to talk about
23 OB/GYN records from four years ago.

24 MR. HAYNSWORTH: Well, Your Honor,
25 in some sense, I guess it's a distinction without

1 a difference but we're still going to be talking
2 about.

3 THE COURT: Yeah. I do see a
4 difference there. I can see a difference in
5 that, you know, that it would be negative to your
6 client that 'we owe money, so give us some money
7 to pay a medical bill.' But he's going to stop
8 short of that. He's going to say we owe X-amount
9 of -- not even that 'we owe', just that medical
10 bills are X-amount.

11 MR. HAWKINS: Here's another bill.
12 How much is that?

13 MR. HAYNSWORTH: 'You incurred a
14 bill in the amount of X.' Period. Leave it at
15 that?

16 THE COURT: The amount of X. So
17 that way nobody knows the plaintiff owes AnMed.

18 MR. HAYNSWORTH: Speaking of --
19 well, never mind. I can bring it up when I get
20 -- somewhere.

21 THE COURT: Okay. All right. So
22 don't go there. We are not going to get into
23 whether it's paid or unpaid. Okay?

24 MR. HAWKINS: All right. Then, Your
25 Honor, the last matter that leaves is the matter

1 about the adjusting company Sedgwick. I think I
2 might have something that'll solve the problem
3 for that one too. I don't know if it will.

4 But we've got to talk about the
5 investigation. We got talk about the phone call.
6 We got to talk about the investigator. So if we
7 don't call him an adjuster, I think that may
8 solve the problem. There's no insurance at-issue
9 so we ain't going to talk about insurance. I
10 wouldn't anyway because of the collateral source
11 rule. But I'm happy to just call him an
12 investigator. I think on the letter he sent it
13 says Investigation Specialist, Target. And then
14 it has Sedgwick on there but we can redact out
15 the part that says adjuster if that'll solve the
16 problem. I don't know what the Court wants me to
17 do, but I'm happy to do it however we need to do
18 it.

19 THE COURT: Well, what is his
20 testimony? What is the subject -- where are you
21 going with his testimony?

22 MR. HAWKINS: Well, he's not going to
23 testify. I didn't bring him to testify.

24 THE COURT: Okay.

25 MR. HAWKINS: But he's the one that

1 investigated. Called her. Took the statement.
2 And then he's the one that they were both present
3 in the room. Clint saw her on the phone with the
4 adjuster and he was present for at least one of
5 the conversations.

6 And she's entitled to testify to what
7 she learned from Target by that phone call. She
8 can't say any statements or maybe that's hearsay
9 but she's entitled to talk about what she learned
10 from the phone call and what they did to
11 investigate the claim and the cleanliness of the
12 parking lot.

13 THE COURT: All right.

14 MR. HAYNSWORTH: No, Your Honor.

15 This is a conversation had with an adjuster for
16 Sedgwick. First, it was a recorded statement.
17 We've got her deposition so the recorded
18 statement is irrelevant.

19 What she wants to testify is, 'Oh,
20 yeah. When I was on the phone with the target
21 guy he said they'd pay my bill too.'

22 MR. HAWKINS: No, sir.

23 MR. HAYNSWORTH: There is no -- the
24 conversation with the guy at Sedgwick has no
25 relevance to the lawsuit. She says she got

1 stuck. She says the lady at the store said
2 'Target will pay for it.' Target denied paying
3 for it, end of story.

4 There's no conversation she had with
5 the Sedgwick adjuster that has any bearing on her
6 claims. So I don't know how we're going to get
7 into a conversation with that adjuster. He's not
8 going to be here. Her saying what he said is
9 hearsay. So how do we talk about the
10 conversation? I don't ---

11 MR. HAWKINS: Your Honor, respect-
12 fully, that's not true. We're not going to say
13 anything about Tyler Hammer said, 'yes, we'll pay
14 your medical bills.' He never said that. And
15 we're not going to say he said that, at all.
16 Because, one; it would be hearsay and, two, it
17 didn't happen.

18 But we are entitled to talk about
19 Target's investigation because they deny
20 liability based on that investigation. They
21 denied liability based on his supposingly [sic]
22 gathering evidence, whether she had a valid claim
23 or not. So she's entitled to say, 'yes, I told
24 Target.' She's in court here. 'I told Target,
25 you know, on the phone with the investigator, X Y

1 and Z.' And she's entitled to tell the jury
2 about her experience and what she told Target.
3 It's essential to the lawsuit, Your Honor. I
4 mean, we can't try the case without that part of
5 it.

6 MR. HAYNSWORTH: Your Honor, I
7 presume it's okay for her to testify what she
8 told anybody at Target, including this
9 investigator.

10 THE COURT: Sure.

11 MR. HAYNSWORTH: But that didn't
12 sound like that's why we're having the
13 discussion. I thought Josh intended to introduce
14 some sort of letter from the Sedgwick adjuster
15 saying 'we've investigated her claim and it's
16 denied.' That's a different animal than her
17 testifying what she told Target.

18 What I don't want to happen is -- and
19 what I think is going to happen is she's going to
20 say, 'I told Target' and she'll rehash her
21 version of events. And then she's -- you know,
22 and 'Did Target honor your claim?' 'No, they
23 didn't.'

24 You know, you're going to get into
25 hearsay and she's going to be relaying more than

1 'I told Target XYZ.' All she's going to say is,
2 'I told Target', either the store person or the
3 guy on the phone in Minneapolis that this, that
4 and the other thing happened, that's fine. She
5 can certainly say -- 'and did Target agree to pay
6 your bills?' Obviously 'no.'

7 But any discussion or what she learned
8 from Target during the conversation, the only
9 thing she can -- that's hearsay. What she
10 learned is her relaying what he told her and
11 that's improper.

12 MR. HAWKINS: Your Honor, first of all
13 I'll address the letter. The letter obviously
14 can come in because it's generally created in the
15 course of Target's business. I mean, they send
16 out those letters. Everybody knows Target denied
17 the claim. That's why we have the lawsuit. I
18 mean, nobody's going to say 'oh, we didn't know
19 Target denied the claim. Where did this denial
20 letter come from?' Everybody's seen the denial
21 letter. Everybody knows they denied it. It's
22 completely proper for her to tell the jury, 'Yes,
23 I got a letter that confirmed what he told me,
24 confirmed this decision Target made and here's
25 the letter.' It's generally created in Target's

1 course of business. It's not hearsay.

2 MR. HAYNSWORTH: According to what
3 witness?

4 THE COURT: According to what?

5 MR. HAYNSWORTH: According to what
6 Target witness that it's generally created in
7 Target's business? It sounds like we're
8 discussing a business record. As far as I know
9 we've got no one to introduce this letter as a
10 Target business record.

11 MR. HAWKINS: Your Honor, we don't
12 have to have a records custodian to introduce a
13 letter that's generally created in Target's
14 course of business. I mean, it says right on
15 there what that guy's office is and what his
16 position is. He works for Target.

17 THE COURT: He works for Sedgwick.

18 MR. HAWKINS: No, it says Target on
19 there too. It says Sedgwick at the top and it
20 says Target Investigator on the bottom, because
21 he denies claims for Target.

22 THE COURT: How about pointing me to
23 which rule you're talking about?

24 MR. HAWKINS: Your Honor, I assume you
25 mean which rule excludes it?

1 THE COURT: Yeah. Are you talking
2 about Rule 803(6), regularly conducted activity?

3 MR. HAWKINS: If that's the exception
4 to the hearsay rule, Your Honor, for regularly
5 kept business records.

6 MR. HAYNSWORTH: (Reading): "All as
7 shown by the testimony of the custodian or other
8 qualified ..." ---

9 COURT REPORTER: Speak up, please.

10 MR. HAYNSWORTH: I'm sorry. I was
11 reading from 803(6) where it's discussing records
12 of regularly conducted activity. And it says,
13 (reading): "All are shown by the testimony of
14 the custodian or other qualified witness."

15 The regularly kept record is the litany
16 of the four questions: was it made at or about
17 the time; is it maintained in the normal course
18 of your business; -- and two other magic words.
19 But that requires record custodian testimony to
20 introduce it.

21 MR. HAWKINS: Your Honor, I disagree.
22 I mean, I think the spirit of that rule applies
23 to medical records and documents and things like
24 that. I don't think it applies where you have a
25 claim, somebody says 'we are going to deny your

1 claim', then send you a letter. Target has
2 witnesses here. We've got the letter. She
3 received the letter. I don't see the problem
4 with the introduction of the letter.

5 THE COURT: Well, I think first of
6 all that business records of regularly conducted
7 activity -- you know, a random report or other
8 record, data compilation in any form, opinions,
9 diagnoses made at or near the time or from
10 information by a person of knowledge if kept in
11 the course of regularly conducted business
12 activity and is a regular practice of that
13 business and activity.

14 Certainly I think that your client can
15 certainly testify that Target denied liability.
16 She can certainly say that.

17 But to introduce the letter itself --
18 otherwise, if anybody from Target sent me a
19 letter of any kind, I could introduce it against
20 Target or any other business just because they
21 sent me a letter?

22 MR. HAWKINS: I see the Court's point,
23 Your Honor. I disagree with Mr. Haynsworth but
24 we'll just punt on that.

25 THE COURT: Okay. Certainly the

1 lady can testify and maybe her husband, too, that
2 Target denied the claim. I think you can even
3 ask her that.

4 Depending on who is going to testify
5 for the defense, I think they're going to say
6 that. If you ask them, I think they are going to
7 say that Target denied the claim.

8 But as far as what -- whoever authored
9 that letter is not here. Right?

10 MR. HAYNSWORTH: Correct.

11 THE COURT: Okay.

12 MR. HAWKINS: Correct, Your Honor.

13 THE COURT: That's 803(6).

14 MR. HAWKINS: And, Your Honor, that's
15 all of our Motions. I think Mr. Haynsworth has
16 some Motions *in limine*.

17 THE COURT: Okay.

18 MR. HAYNSWORTH: I do, Your Honor.

19 Can I hand up a case? This is, I guess, a
20 supplemental case. One of my Motions, Judge,
21 relates to what I call fear damages -- (tendering
22 document to bench).

23 THE COURT: Thank you.

24 MR. HAYNSWORTH: This case has sort
25 of been built upon supposition, upon speculation

1 upon speculation.

2 There's a photograph taken the night of
3 that shows no needle in this syringe. There's
4 going to be testimony from Shelby Brintnall, I
5 think from the plaintiff, that there was no
6 needle when they went out and saw it in the
7 parking lot. I think the plaintiff's going to
8 tell you, 'well, the needle must have been
9 knocked off when I hit it.'

10 One of the things that all three
11 plaintiff's witnesses, I believe, once testified
12 about is the fear that they had. She believed
13 she was stuck by a needle. She went to AnMed.
14 She was given antivirals to include medications
15 for HIV and hepatitis. She wants to testify
16 about the fear she had:

17 *Would she live to see her children grow up?*

18 *Would she be able to have sexual relations*
19 *with her husband?*

20 *Would her husband see her?*

21 There's going to be a lot of testimony
22 about the angst of 'oh, my God, did I catch
23 something from that needle?'

24 Well, Your Honor, I've given you some
25 cases from other jurisdictions that's in my

1 Motion *in limine* in the file, but this District
2 Court case that Judge Anderson decided is the
3 only South Carolina case that I could find was
4 even close, but it's actually very much spot on,
5 Judge. It deals with exactly what we're talking
6 about. And I've highlighted all three of our
7 copies identically; at least what I thought was
8 the important stuff.

9 In this case, Your Honor, the court
10 declined to allow, and I'm reading now from page
11 four of seven down at the very bottom where I've
12 got it highlighted. (Reading): "The Court
13 excluded evidence of plaintiff's fear of future
14 disease once the plaintiffs represented that they
15 would not offer expert testimony quantifying in
16 any way their risk of disease."

17 If you flip over, (reading): "This
18 ruling is in complete harmony with the law of
19 South Carolina regarding fear of disease. In
20 South Carolina courts allow the recovery for
21 mental anguish and emotional distress in only
22 three situations: severe extreme distress caused
23 by outrageous conduct; bystander who witnesses a
24 traumatic event, i.e., I saw my child get hit by
25 the car; or for pain and suffering attendant to

1 some physical injury when the fear and condition
2 is reasonably certain to occur."

3 If you refer, Your Honor, I've high-
4 lighted some quotes from the Karpinski case,
5 which simply deals with the necessity before a
6 court is going to allow a plaintiff to say, 'I
7 was fearful I had this or I might catch this or
8 this might happen.' There has to be testimony,
9 competent expert testimony that it was reasonably
10 certain the thing you're fearful of is going to
11 happen.

12 If they had a doctor who was going to
13 say, 'I tested that syringe and based on my test
14 you have an X-percent of chance of contracting
15 some disease', that would be one thing. If they
16 had a doctor to say, 'I didn't test it but I can
17 tell you statistically the chances of getting HIV
18 or AIDS from a syringe is X.'

19 But what they want to do is just plant
20 the seed. I mean, if I got up and testified how
21 fearful I was of catching AIDS, that'd be
22 powerful testimony if I were a juror. I don't
23 think they can present that type of testimony
24 though based on -- the law in lots of other
25 states, and I cited in my memo, and this case in

1 particular, because they haven't established
2 there is any possibility much less a, uh, -- that
3 it is reasonably certain that what they fear they
4 could get from what she was exposed to. And I
5 don't think she ought to be allowed to get on the
6 witness stand and give us some emotional
7 dissertation about all the fear and mental angst
8 for catching AIDS or hepatitis or any other
9 disease. I don't think that the law allows her
10 to do that. I would ask that that sort of
11 testimony be excluded, unless they're going to
12 put up some medical evidence about the chances of
13 it having Hep-C or AIDS or tetanus or whatever
14 else it may have.

15 THE COURT: Yes, sir.

16 MR. HAWKINS: Thank you, Your Honor.
17 Very creative way to attack this, 'did they test
18 that.' But this is what the case is about, this
19 is what her damages are. She's a four thousand
20 dollar medical bill but the case is about the
21 impact it had on her family because she was
22 exposed to a needle. It could have had HIV,
23 Hepatitis A, B, or C. And she still has some
24 chance of testing positive for that in the
25 future. She was treated for that. That's what

1 the medical records say.

2 She was given HIV medication. The HIV
3 medication, because of the nature of the
4 medication is what caused her to be sick for a
5 period of time even when she talked to the
6 investigator. And part of her testimony is
7 'look, I cooperated. I did everything they asked
8 me to do even while I was sick from the HIV
9 medication.' We don't need an expert to show
10 that you have a risk of HIV with a needle stick
11 injury. I mean, the Court can take judicial
12 notice of that. That's something that's common
13 sense. You get stuck with a dirty hypodermic
14 needle. You don't know the origin of the needle.
15 There's a risk of all kinds of stuff.

16 And she's completely entitled to
17 testify, 'Yes, I was scared that I might catch
18 HIV. I was scared I might catch Hepatitis C.
19 I'm scared I might still have it. I can still
20 test positive.' She's entitled to testify what
21 her feelings and mental impressions are -- fears
22 and mental impressions are.

23 This is not like a cancer case where --
24 if the illness in this case was cancer, when you
25 -- when doctors miss certain diagnoses or

1 something like that, there's not the same risk
2 and there's not the same scenario involved as in
3 when you get stuck with a dirty hypodermic
4 needle. You don't know if it came from an
5 intravenous drug user or a diabetic.

6 And, so, one, I don't think the law
7 excludes it. Two, I think if that testimony is
8 excluded we -- I mean, that's our damage. That
9 six-month period that you go from, 'All right,
10 you've got to have blood work done every three
11 months for this period of time. And after six
12 months your chances are a lot better. Your
13 chances are very low of testing positive for HIV
14 in the future, in a year even more so. But
15 there's still some chance out there.'

16 And I understand why Target wants to do
17 this. I mean, they want to say, 'Oh, she said
18 she got stuck and she's got a four thousand
19 dollar E.R. bill. We don't even know if she got
20 stuck because we don't have a needle.' All this
21 kind of stuff. That's fine. They're entitled to
22 do that.

23 But to take away the crux of her case,
24 to take away the meat of the whole thing is -- I
25 mean, it prejudices our case from right out of --

1 you know, of even being a case, Your Honor.

2 And they survived summary judgment
3 because we showed evidence that everything, you
4 know, we've put forth has seemed true, uh,
5 there's constructive notice. We survived that.
6 And I understand they have to try this stuff at
7 this stage because they don't want a jury to hear
8 that. But that's the point. You know, that's
9 why they're willing to go through two years of
10 litigation to get to a jury so that they could
11 tell their side of the story, tell what they were
12 scared of and tell what happened.

13 They've told me. I've met with them
14 both several times. They've told me how hard
15 this was on their family in numerous different
16 ways. Her crying because the doctor told her,
17 'Look, there's the risk of HIV.' Clint crying
18 because his wife is down and out from this
19 medication and him trying to hold the family
20 together while he's working ten hours a day and
21 then coming home and her being sick, all because
22 of the HIV medication. If you cut that part out,
23 you're cutting out the whole case. And it just
24 would be a wild and gross prejudice to our side.

25 MR. HAYNSWORTH: Your Honor, with

1 respect to something that he just said about what
2 the doctor told her. We'd be having a different
3 discussion if the doctor was going to get up here
4 and offer testimony about this. It is not proper
5 for the plaintiff to get up and start talking
6 about 'I was afraid I was going to get AIDS. I
7 was afraid I was going to get HIV.'

8 It is hotly disputed that she even
9 stuck herself, Your Honor.. So -- but more to the
10 point and, you know, the crux of their case,
11 however Mr. Hawkins wants to spin it, the fact of
12 the matter is it's improper testimony out of
13 these folks' mouths. If there was a physician,
14 then we could be arguing over possibility versus
15 probability. Obviously a doctor could talk about
16 the medication that was prescribed to her and why
17 he prescribed it. But what can't happen is she
18 can't get up on the stand and say -- well, he
19 just said there's a chance she may still have it.
20 Where's that testimony coming from?

21 None of the Garrisons know that she may
22 still have a possibility of HIV, other than
23 that's what some doctor may have told her.

24 Well, we're not going to have the
25 doctor here to testify. It's improper for these

1 lay people to offer that testimony.

2 The cancer case, I will confess -- I'm
3 not sure if the Rabb case was cancer or not, Your
4 Honor. I've got plenty of HIV needle stick cases
5 from other jurisdictions that I put in my Motion
6 in *limine* on this issue.

7 And when Josh, you know, gave me a
8 little ribbing about, you know, what they do in
9 other states, I felt compelled to find and did
10 find a South Carolina case on this issue. And I
11 think under *Rabb*, Judge, under South Carolina
12 law, they cannot offer testimony about their fear
13 of contracting some loathsome disease unless and
14 until there's some expert testimony establishing
15 that it is likely to -- excuse me -- that if she
16 was stuck, it is likely that she may contract one
17 of those loathsome diseases. Anything else is
18 just gross speculation. It has no more
19 foundation than to say, 'well, I might catch
20 herpes from that needle.' Or I might catch any
21 other harm. And I don't think it's proper under
22 the law.

23 MR. HAWKINS: Your Honor, I respond by
24 saying the herpes thing is not analogous. The
25 cancer thing is not analogous. HIV is a very

1 specific disease that people of scared of getting
2 from needle stick injuries.

3 And we don't need a doctor in here to
4 tell the jury, *'I got stuck with a needle. These*
5 *are the things I'm scared of.'* That's why we
6 have juries is to weigh credibility and
7 reasonableness of witnesses and to see if what
8 they're telling them is reasonable and see if
9 they believe these people.

10 I mean, the jury doesn't need a doctor
11 up there testifying. They don't need a doctor to
12 tell them that she was treated by HIV. She can
13 testify about the kind of medication she took.
14 We've got her files here. She can testify about
15 the impact that medication had on her. We don't
16 need an expert to do all of that stuff.

17 It makes reference to HIV and needle
18 sticks in the medical records. She can testify
19 about her own medical records. And I think it's
20 improper to throw away her whole damage and her
21 whole case by comparing it to things that really
22 aren't analogous.

23 Because if we were up here asking,
24 'well what is the probability, you know, what's
25 the probability that you're going to have HIV?'

1 Okay. We need an expert for that. But that's
2 not what we're doing. We're saying, *'I got stuck*
3 *by a needle, I could have caught anything. It*
4 *really scared me and I had to go get treated for*
5 *these things.'* She's entitled to tell the jury
6 that. In fact, that's why we have the right to
7 say it in court.

8 THE COURT: Okay. That one's under
9 advisement. I'll do some reading here
10 momentarily. Anything else?

11 MR. HAYNSWORTH: Yes, sir, Your
12 Honor. Along the same lines there are medical --
13 and obviously she can testify about the
14 medication she took. The medical bills, medical
15 records, have a whole bunch of stuff in them
16 dealing with this same issue we're talking about.
17 It's got stuff in it about HIV. It's got stuff
18 in it about Hep C. It's got some statistical
19 analysis about needle sticks in general. And the
20 import of it, if you read the document is, this
21 lady was at risk for HIV. This lady was at risk
22 for hepatitis. *'Look here. This document says*
23 *there's this much percent chance if you're stuck*
24 *with a needle you may get HIV.'* It can't come
25 in. It's hearsay.

1 There's no doctor who's going to be
2 offering testimony about the chances of HIV or
3 those sort of things.

4 If she wants to get in a bill, that's
5 fine. But any document, bill or otherwise that
6 makes reference to -- I mean, she went and told
7 them she got stuck with a needle. The husband
8 testified that the hospital took pictures of the
9 puncture wound but we won't see any pictures with
10 a puncture wound because we don't think it
11 happened. But there are records saying she got
12 stuck with a needle because that's what she told
13 the doctor. And to introduce a hospital document
14 that starts talking about HIV and needle sticks
15 and percent of chances is impermissible testimony
16 coming in through that medical record.

17 So if Mr. Hawkins is going to introduce
18 those sort of records, then they either need to
19 be redacted or not introduced. I can give you,
20 if you'll bear with me a minute, ---

21 THE COURT: Yes, sir.

22 MR. HAYNSWORTH: --- a copy of just
23 the bill I'm alluding to and it may make it
24 clearer.

25 (Reviewing file) -- the theory was I

1 was going to find it super quickly, Judge. I'm
2 sorry, Judge.

3 THE COURT: That's okay.

4 MR. HAYNSWORTH: Judge, if I could
5 hand these up, (tendering). And it's really not
6 in the first page. It's several down into it.

7 THE COURT: (Upon review), it's on
8 the second page when they talk about the HIV and
9 the transmissions?

10 MR. HAYNSWORTH: Yes, sir. And I
11 think the third page and the fourth page. And it
12 goes into substantive information. You know, if
13 -- that's the document's talking about HIV and
14 hepatitis statistics and needle sticks. And, you
15 know, again if the issue is she has a bill for X
16 dollars, that's fine. But those records get into
17 -- I don't want to say diagnosis because I don't
18 know that that's really a diagnosis. But it's
19 substantive medical information and I don't think
20 it's proper absent, again, some sort of expert
21 testimony.

22 MR. HAWKINS: Your Honor, I think a
23 lot of that -- the fact that there are statistics
24 on there goes to show that you could look up a
25 lot of those statistics in, you know, any

1 website. If you can Google what are the odds of
2 getting an HIV infection from a needle stick,
3 you're going to see some of those same numbers.
4 So that information is out there. It's not --
5 that's not offered by -- the part he's talking
6 about is not offered by a certain doctor offering
7 hearsay.

8 And secondly I understand why they
9 don't want it in there, again. But you can't --
10 you don't get to just go in and cut out evidence
11 that's bad for your case. I mean, the fact is
12 she was stuck by a needle in the parking lot and
13 she was put at risk for HIV. That's what the
14 doctors treated her for and that's why we're
15 here. And that's why we're having the trial,
16 Your Honor. So I mean to cut that part out and
17 not let the jury see that evidence is just
18 whittling down the case to nothing and whittling
19 it down to something that it's not about. It's
20 about a needle stick injury. It's about a
21 potential HIV infection. It's about her
22 continued risk of HIV and how it impacted her and
23 her husband, Clint.

24 MR. HAYNSWORTH: That's the second
25 time I've heard "her continued risk of HIV." It

1 just -- I'm getting ahead of myself but it begs
2 the question of where is that testimony going to
3 come from?

4 THE COURT: I don't know. I don't
5 know who all is going to testify.

6 MR. HAYNSWORTH: Certainly not a
7 doctor.

8 MR. HAWKINS: Well, Your Honor, if she
9 testified that the sky is blue, she doesn't need
10 an expert to tell the jury that. These
11 statistics are everywhere. I mean, everybody's
12 aware of these kind of statistics. This is not
13 something specific like 'this doctor's going to
14 offer testimony about the correlation between
15 aluminum consumption and Alzheimer's.' This is
16 something that you can Google anywhere and find.
17 And jurors, I'm sure, have seen information like
18 this for themselves. We all have. I mean, it
19 doesn't take a rocket scientists to say 'here's a
20 dirty hypodermic needle, I got stuck with it. I
21 might get HIV. I need to go get, you know, an
22 HIV test, get some blood work done.'

23 THE COURT: Okay. It's under
24 advisement. What else?

25 MR. HAYNSWORTH: Your Honor, I think

1 the final one, and Mr. Hawkins will tell you
2 that's what his whole case is about and it's
3 cutting the guts out of it, there are literally
4 fifty photographs, and testimony to go along with
5 it, of what Target's lot looked like at various
6 points in time after the night this incident took
7 place. They range from, I think, a few months
8 after the incident up until probably within the
9 last week.

10 Mr. Hawkins intends to introduce a
11 number of pictures showing different areas of
12 Target's parking lot and the grass surrounding
13 the building with various items of trash.

14 Mr. Garrison, Clint Garrison, intends
15 to offer testimony about 'well, I was out in the
16 parking lot for this period of time after this
17 happened and the parking lot had cigarette butts
18 in it and litter.' I believe he wants to offer
19 testimony 'there was a rusty screwdriver I saw in
20 Target's parking lot and I drove back once a week
21 for three weeks and nobody cleaned up this rusty
22 screwdriver and here it is. I brought it with me
23 to court.' That's all correct.

24 But what Target's parking lot looked
25 like at any point after this happened is

1 absolutely irrelevant to any issues in this case.
2 If we were haggling over what it looked like
3 before it happened, well, that may speak to the
4 parking lot leading up to the incident. But it
5 is highly prejudicial to introduce photographs.

6 What the plaintiff's want to do is,
7 'Well, hey I'm suing you over running a red light
8 and here are four pictures of you over the next
9 two years. I've got you running a red light four
10 more times. Therefore, you're a red light runner
11 so you must have run it in our case.' It's the
12 same thing.

13 They want to try and establish, 'Well,
14 look, here's trash in Target's parking lot.
15 Therefore, that must mean Target doesn't clean
16 its parking lot often enough. Therefore, that
17 must mean Target had constructive notice the
18 night I say I was stuck."

19 Post-incident photographs have no
20 bearing or relevance on any issues as to Target's
21 notice or lack therefore or anything that
22 happened the night Mrs. Garrison got stuck. I
23 don't think it's proper for those pictures or
24 testimony about the condition of the parking lot
25 afterwards to come into this trial. It's not

1 relevant.

2 THE COURT: Yes, sir?

3 MR. HAWKINS: Thank you, Your Honor.

4 Your Honor, for lots of reasons I disagree with
5 Knox.

6 Photographs can be admitted if they're
7 properly authenticated they generally depict the
8 area where she got stuck. He's entitled to say
9 this was taken a year after or whatever he's to
10 say. We're not going to, you know, mislead the
11 jury into 'this is what the parking lot looked
12 like where she was stuck.' I'm not going to do
13 that.

14 I mean, you know, Clint took a lot of
15 the pictures. I'm probably going to authenticate
16 a lot of them with him. And I'll ask him, 'When
17 did you take this picture?' Okay.. 'So a long
18 time after she was stuck in the parking lot?'

19 Everything's going to be transparent,
20 straightforward for the jury. They do need to
21 see the area where the injury occurred and it was
22 along -- if you look at Target head-on and to the
23 left, there's some additional parking on Anderson
24 [sic] Boulevard. That's where the injury took
25 place. And so we've got some different angles

1 and things like that of the general area where
2 the injury took place. And after she was injured
3 he went back and took some pictures. That's the
4 first reason they come in. It's just because it
5 admissible evidence.

6 The second reason is if you know some
7 activity is going on, if you should know some
8 activity is going on, then that increases your
9 duty to the public and we've got pictures of a
10 path worn in that area. You can tell the path
11 has been there for longer than a year or however
12 long it was when she got stuck. So one time
13 we'll show the jury, 'Hey, look, Target knows
14 this is a high traffic area. There's a path
15 worn.' And if he was to cross-examine her say
16 well, you really don't know when that path was
17 worn do you? This picture was taken way after.
18 He's entitled to do that too.

19 Another reason, Your Honor, these
20 pictures are admissible is we're going to use
21 them for impeachment purposes. You know, we've
22 got Target with a whole bunch of money on one
23 side. And we've got a one-income household on
24 the other side. They can keep records and gather
25 evidence and do whatever they need to do with all

1 their money. But we can't introduce the evidence
2 until we hear testimony. So all his testimony,
3 Mr. Jackson's, about cleaning, cleaning
4 frequency, how clean they keep it, we can't
5 introduce our own evidence to rebut that until we
6 hear his testimony in his deposition. So after
7 his deposition, we started going and saying, 'Do
8 they do everything he said they do? Is all this
9 stuff true?' And we're entitled to introduce
10 evidence to support our claim because we don't
11 know what we're going to have to rebut until we
12 hear it. So once we hear the person most
13 knowledgeable about cleaning and maintenance in
14 the parking lot, then we're entitled to go and
15 say all right. 'Is this stuff true? Is his
16 testimony accurate?'

17 We're entitled to show that to a jury
18 and let them make their own assessment of his
19 testimony and the pictures. And, again, during
20 that conversation we say, all right. This was
21 taken after, you know, and then give an
22 explanation. Okay. Well, we changed cleaning
23 companies. Okay. Well, there was a natural
24 disaster this week or whatever. But we're
25 entitled to go take pictures of the area for that

1 purpose along with the other reasons we're
2 entitled to take pictures, to show that evidence
3 to the jury so they can make their own judgment
4 assessment of this testimony.

5 THE COURT: How about these
6 pictures, Mr. Haynsworth?

7 MR. HAYNSWORTH: Well, Your Honor,
8 as far as I know, Mr. Jackson is only going to
9 discuss -- at the time, it was a different man--,
10 -- at the time her injury took place what
11 Target's policy was as far as cleaning that
12 parking lot goes. So, again, particularly given
13 that it's different now, what are pictures now or
14 last week or last month or two months ago, what
15 bearing do they have on the issues in this case?
16 None.

17 If Mr. Hawkins is genuine in telling
18 you, 'I just want to introduce the photos to get
19 the lay of the land as far as where the injury
20 happened', I think that's fair game. But I've
21 seen fifty photos with comments about the trash
22 in them and -- obviously it's your call. If
23 we're dealing with pictures to show the lay of
24 the land, I would suggest, Your Honor, that the
25 three of us get together in chambers and figure

1 out what pictures those are going to be so we
2 don't get in a dust-up over this issue in front
3 of the jury and you have to send them out.

4 I don't think I've got an argument that
5 he can't present pictures that show the area of
6 the store where her daughter claims they picked
7 them up, but that's only one, two, three, four
8 pictures, not the fifty or so of all these other
9 areas.

10 As to the path thing, I'm not sure
11 where that's going. How a path has a bearing on
12 this.

13 I believe, and unless it's changed
14 since her deposition, Mrs. Garrison actually
15 doesn't know where the needle was when her
16 daughter picked it up. She was looking in her
17 coupon book, wasn't looking at her daughter. All
18 she knows 'is somewhere in the general vicinity
19 of my car is where my daughter got it from.' So
20 anything beyond -- and I will tell you that her
21 car was parked near the cart rack. So there's a
22 pretty limited view of where this occurred.

23 I think that the point of the pictures
24 -- and the point of the testimony, again, Mr.
25 Garrison testified in his deposition about how

1 messy Target's parking lot was. And I didn't
2 make up the screwdriver thing, that's what he
3 said. I don't think that testimony can come out.
4 It has no bearing on Target's parking lot the
5 night of or leading up to.

6 And the only issue about the parking
7 lot is 'Target knew or should have known that
8 there was a hazard and didn't do anything to take
9 care of it.'

10 What they've done in the two years
11 since then, again, has no relevance and it's
12 prejudicial. Because if he's allowed to
13 introduce a bunch of photographs, perhaps each
14 one was taken the day before the weekly sweeper
15 comes to sweep the parking lot. So they're by
16 definition all going to be pretty trashy. And
17 that's prejudicial. Its prejudicial effect
18 outweighs any probative value that it might have
19 as far as what went on the night of or before the
20 incident.

21 MR. HAWKINS: Your Honor, I'll start
22 off by saying all evidence is prejudicial. I
23 mean, that's why it's evidence. And the question
24 is not is it prejudicial. It is it more
25 probative or more prejudicial? And I can't see a

1 whole lot of prejudice in these pictures. The
2 pictures of the side of Target, pictures of the
3 parking lot. And, yes, some of the pictures have
4 trash in them.

5 But one, like I said before, they
6 generally depict the area where she was when she
7 got stuck with the needle. And secondly, as far
8 as the impeachment goes, he's going to imply, in
9 his testimony in his deposition, the cleaning
10 truck never misses a Thursday night. If he's
11 going to imply that, then we're entitled to go
12 back and say all right. He said it never misses.
13 There's evidence that it misses. I mean, he
14 can't say that and stick by it and us not be able
15 to rebut it.

16 If he's going to say, you know, an ice
17 pick shouldn't lay on the parking lot for two
18 weeks. Then we go take a picture of an icepick.
19 We go back two weeks later and take a picture of
20 an icepick; we're entitled to say you said this
21 doesn't happen but here's evidence that it
22 happens. And he's entitled to say but that
23 happened way after Denise was stuck.

24 I mean, that's what a trial is. You
25 know, examination and cross-examination about

1 testimony, the veracity thereof and what's
2 involved. In a premises liability case, Your
3 Honor, we have to talk about the mechanism(s) in
4 place for cleaning, routine safety sweeps. We
5 have to talk about whether or not they routinely
6 maintain and check for hazards. That's why we're
7 here, Your Honor.

8 MR. HAYNSWORTH: I don't disagree
9 with him but only up until this thing happened.
10 The testimony from Mr. Jackson about sweeping and
11 Target policy is going to be up to and including
12 the night of. Not what that -- I will represent
13 to the Court as a fact, it is different. I'm not
14 going to talk about cleaning or inspections or
15 policies dealing with that sort thing afterwards.
16 The plaintiff shouldn't either.

17 MR. HAWKINS: Your Honor, I'll respond
18 to that and say again, we can't do anything until
19 we hear his testimony. The fact that it's
20 different now, -- he can tell me that. When I
21 say this picture looks like what you say, that
22 it's clean and safe, that's because it's
23 different now. But I can't go and gather any
24 evidence until hear his testimony. I can't rebut
25 his testimony until I hear it.

1 So the jury should be the judge of
2 that. I mean, that's part of the facts. That's
3 what the jury determines is the fact and the
4 veracity of the testimony.

5 And so he still works at Target. He's
6 got on a Target shirt. He can explain whatever
7 he wants to. And I'm not going to act like it's
8 a murder case. We'll ask what happened, he'll
9 explain it and the jury will hear it.

10 THE COURT: Okay. Anything else?
11 Anything else from the plaintiff, sir?

12 MR. HAWKINS: I don't think there's
13 anything, any other matters from us, Your Honor.

14 THE COURT: Anything further from
15 the defense?

16 MR. HAYNSWORTH: (No verbal
17 response).

18 THE COURT: Let's see the lawyers in
19 the hallway just for second.

20 (IN CHAMBERS CONFERENCE)

21 THE COURT: Okay. Gentlemen, I'm
22 going to take this under advisement if there's
23 nothing else. Be back here at 2:00.

24 MR. HAYNSWORTH: Your Honor, before
25 we recess, if I could hand up -- and I'll give

1 counsel a copy as well, (tendering).

2 THE COURT: Thank you.

3 MR. HAWKINS: Your Honor, I just want
4 to let the Court know a lot of issues raised in
5 the brief were raised -- I just resubmitted my
6 response to the summary judgment Motion that was
7 previously filed. That was denied by Judge
8 Sprouse and I resubmitted that Motion, the case
9 law that cite and the evidence we relied on. I
10 think there were three affidavits and maybe some
11 deposition excerpts in my response the first
12 time. So I think that would reply to a lot of --
13 would respond to a lot of issues that are set
14 forth in the trial brief.

15 THE COURT: Okay. Okay. Thank you.
16 Anything further?

17 MR. HAYNSWORTH: No, Your Honor. I
18 agree with Josh there's actually some identical
19 cutting and pasting in this from my -- but that's
20 on the issue of notice.

21 THE COURT: All right. Let's all be
22 back at 2:00. Does that suit everybody? Madam
23 Court Reporter?

24 COURT REPORTER: Yes, sir.

25 THE COURT: Okay. We'll see

1 everybody at 2:00.

2 (LUNCH RECESS)

3 THE COURT: I'm told we have one
4 more matter.

5 MR. HAYNSWORTH: Your Honor, it was
6 part of the file -- part of one of my Motions in
7 limine. I just frankly forgot about it and got
8 asked about it. That was, Your Honor, one of the
9 causes of action is breach of contract -- excuse
10 me. -- that's unfair trade practices. Ms.
11 Brintnall who's seated to my right offered to pay
12 the plaintiff's medical bills when she came
13 forward. Told her, 'Go get treated. We'll
14 handle it. We'll cover it.' The claim is that
15 Target offered to play the plaintiff's medical
16 bills.

17 That is something that is specifically
18 excluded by Rule 409 of the Rules of Evidence,
19 Your Honor. So we would seek a pretrial order
20 that there cannot be any testimony that the
21 defendant offered to pay for the plaintiff's
22 medical bills.

23 THE COURT: Yes, sir?

24 MR. HAWKINS: Thank you, Judge. We
25 feel that testimony referenced by opposing

1 counsel is relevant and admissible. I've got a
2 case and I'll hand it up. It's an older case
3 1973 that cites an even older case. But as far
4 as I know it's still good law -- (tendering) --
5 and I hope that the Court will excuse my writing
6 on the front page.

7 THE COURT: Thank you.

8 MR. HAWKINS: What that case says is
9 acknowledging dicta that the Rule prohibiting
10 what Mr. Haynsworth seeks to exclude is not
11 absolute and accordingly says. In that
12 particular case, they were seeking to introduce
13 something that was excluded. But they said,
14 'we're not taking the position that an offer to
15 pay medical bills is never admissible.' So that
16 case tells us that there are instances like the
17 example cited in the case where it's -- the offer
18 is accompanied by what could be construed as an
19 admission.

20 And this is disputed but my girl's
21 going to say, 'She told me, 'oh, we're so sorry.
22 Please don't worry about that. Make sure you go
23 get medical treatment and bring it back to us.'
24 So the first reason we think it's admissible is
25 it's accompanied by what could be construed as an

1 admission itself.

2 And the second reason is, Your Honor,
3 it shows Mrs. Garrison's reliance and
4 cooperation. She relied on her instruction. She
5 cooperated and it fits into the bigger picture of
6 staying on the phone with the investigator,
7 answering all his questions even though she was
8 sick. Making sure she did exactly what Target
9 told her to do. Because up until she got the
10 phone call she was under the impression 'just go
11 to the emergency room, bring back the bill and
12 they were going to pay for it.' She was never
13 seeking any money or anything up until that
14 point. So for lots of different reasons it's
15 pretty central. And for two different reasons
16 it's admissible, Your Honor.

17 THE COURT: Yes, sir?

18 MR. HAYNSWORTH: Your Honor, the
19 Rule says what it says, (reading): "*Evidence*
20 *of furnishing or offering or promising to pay*
21 *medical...*" ---

22 COURT REPORTER: I'm sorry!?

23 MR. HAYNSWORTH: I'm sorry.

24 (Reading): "*Evidence of furnishing or offering*
25 *or promising to pay medical, hospital or similar*

1 *expenses occasioned by an injury is not*
2 *admissible to prove liability for injury."*

3 Well, there's no other reason it's
4 going to be offered, Judge, other than Target
5 agreed to pay for it; therefore, they're liable.
6 And the Rule does not allow ---

7 MR. HAWKINS: Your Honor, I'll respond
8 by saying the most important part of that rule is
9 to show liability. That's not what we're doing.
10 We're not showing that they're liable or that
11 that proves they failed to maintain the parking
12 lot. We're showing one it was accompanied by an
13 admission, which it what's taking about in that
14 case.

15 And two, it shows her cooperation and
16 her reliance. And he's entitled to ask for an
17 instruction to the jury that says that in and of
18 itself does not prove liability. He's entitled
19 to do whatever he needs to do on cross.

20 But because it's accompanied by what
21 can be construed as an admission, 'I'm so sorry.
22 Please don't worry about that. Bring the medical
23 bill back to us.'

24 And there's also going to be testimony
25 that she called the Target store the next day and

1 verified this is what I need to do. And again
2 they said, 'no, just go wherever you need to go.
3 We don't have a certain doctor. Bring the bill
4 back to us.' And all the people involved in this
5 conversation are here in court, Your Honor.

6 THE COURT: Is the substance of the
7 -- tell me again what she's going to testify to?

8 MR. HAWKINS: Your Honor she's going
9 to say when she went and talked with Ms.
10 Brintnall who was on duty at the time, told her
11 what happened. Ms. Brintnall dealt with --
12 went out and looked at the needle, all that kind
13 of stuff. She said during that interaction, 'I'm
14 so sorry. Please don't worry. Please go get
15 checked. Bring the bill back to us. That'll be
16 taken care of.'

17 And then again she called back to make
18 sure she was doing the right thing the next day.
19 And she says again -- she was actually asking,
20 'Is there a certain doctor I need to go to? I
21 want to make sure I'm doing the right thing
22 here.'

23 She says again, 'No, go anywhere you
24 want. Just bring the documentation back to us.'

25 And that's -- Your Honor, it shows her

1 cooperation, her reliance. It shows that it
2 could be construed by the finders of fact as an
3 admission, and that's up to them to determine if
4 that's an admission or not an admission or how
5 much weight to put on it.

6 The actual promise to pay itself
7 doesn't prove the liability. But if it's
8 accompanied by something that could be an
9 admission, it's admissible, Your Honor. And I
10 don't have the capability of Shepardization with
11 *Google Scholar* but as far as I know that case is
12 still good and says that.

13 THE COURT: Well, I call your
14 attention to *Crosby v Southeast Zayre, Inc.* and
15 that would be found at 274 S.C. 519. The
16 parallel cite is 265 S.E. 2d 517, 1980, where the
17 court said that it would be not admissible if the
18 circumstances surrounding the payment indicate an
19 admission of liability rather than an act of
20 benevolence.

21 I had my law clerk pull that case here
22 and the colloquy went something like this:

23 After the store manager testified,
24 'yeah, was your leg bleeding?'

25 'Yeah, it was bleeding.'

1 'And he told me...' -- talking about the
2 manager -- 'so I went to the officer manager and
3 the manager admitted it was their fault and told
4 me that the cart shouldn't be there in the first
5 place..

6 What did he tell you to do as a result
7 of that?

8 He told me to go to a doctor.

9 Did he tell you they'd pay for it or
10 not?

11 Well, he said they'd pay for it.'

12 So that case, which is the exception to
13 the rule, as to Rule 409, there is this coupled
14 with an admission of liability. Such is not the
15 case of what you just told me. So under 409 that
16 would not be admissible.

17 MR. HAWKINS: Your Honor, if she said,
18 you know, 'I'm sorry. Please go get checked.'
19 Would not "I'm sorry" be something that could be
20 construed as an admission?

21 THE COURT: No, sir. No, I'm not
22 going that far. In this particular case, which
23 it's in the record. It's right here, which is
24 why I had Jonathan pull it. It says it should
25 not have been there in the first place.

1 MR. HAWKINS: Okay.

2 THE COURT: Okay.

3 MR. HAWKINS: Your Honor, for
4 clarification, I want to make sure I don't get
5 too close to violating what the ruling is.

6 Are we still entitled to, as we would
7 be in any other case, to say 'this was my
8 impression' or 'yes, she told me to bring the
9 bill back.' We won't say that it'll be taken
10 care because that's a promise to pay, if that's
11 the court's ruling; but following instructions as
12 far as her cooperating with what Target told her
13 to do.

14 MR. HAYNSWORTH: Your Honor, that's
15 sort of like 'I'm just a little bit pregnant.'

16 THE COURT: Yeah, that's being a
17 little bit pregnant.

18 MR. HAWKINS: Your Honor, I mean,
19 where does it stop? He doesn't want the
20 admission. That's fine, that's the Court's
21 ruling and we're going to obey that.

22 THE COURT: Yes, sir.

23 MR. HAWKINS: But I don't think it's
24 proper to say, 'All right. Here's the cancerous
25 piece. We're going to cut out six feet on each

1 side.' I mean, she can say she did what Target
2 told her to do. She can say, 'yeah, I called to
3 make sure I followed instructions.'

4 THE COURT: She can say that I
5 cooperated and did everything they asked me to
6 do. But the Rule does not allow this and that's
7 what you just handed up. The Court, in 1973, has
8 said we are not holding that payment of medical
9 expenses is never admissible. They do conclude
10 that the evidence was not present, they did not
11 present a proper case to the exception of the
12 general rule.

13 MR. HAWKINS: Yes, Your Honor.

14 THE COURT: Even in the case you
15 handed up and I agree with it. And that's what
16 the Crosby case says.

17 So the manager, while she said "I'm
18 sorry", as any person may have when another
19 person is injured does not admit liability.

20 MR. HAWKINS: And so we cut out the
21 "that'll be taken care" and we don't talk about
22 that.

23 THE COURT: Correct. Well, I think
24 she can say that the lady said, "I'm sorry."

25 MR. HAWKINS: Right. Okay.

1 THE COURT: I'll let her say that.
2 But, I mean, I would say I'm sorry. I'm sure Mr.
3 -- is Jackson -- Mr. Jackson would say I'm sorry.

4 MR. HAWKINS: Yeah. I just wanted to
5 make sure I understood the Court's ruling so we
6 don't tread into something we're not supposed to.

7 THE COURT: Yeah. You're not to
8 tread into that they offered to pay to get an
9 admission of liability.

10 MR. HAWKINS: Thank you.

11 THE COURT: Okay.

12 MR. HAYNSWORTH: Your Honor, I guess
13 that -- and we won't have to decide until she
14 gets on the stand. But, you know, you've got
15 under advisement a "biggie", which is the fear
16 damages.

17 THE COURT: No, we don't have to
18 decide but I am prepared to talk about that.
19 First of all, as to the medical records --
20 because we actually talked at lunch, we had
21 working lunch. But as to the matter of the bills
22 here, I'm comfortable allowing medical bills.
23 I'm not going to allow -- they must be redacted.
24 I'm not going to allow any of this percentage of
25 HIV and AIDS and whatever all this other stuff is

1 that's in here. We all know -- and it can
2 certainly be made a part of the record. We all
3 know that when you go to any emergency room and
4 you're discharged, they give you a litany of
5 things that could happen. And I say that that's
6 lawyers in the ER is what that is. And I have
7 dealt with them for a long time, so I can say
8 this. But that's what that is, so it's not --
9 anybody can get a percentage. As you correctly
10 said, anybody can Google that. We understand all
11 of that but that's not going to be part of the
12 record, all of that.

13 MR. HAWKINS: So, Your Honor, again
14 for clarification, no records but the bills come
15 in?

16 THE COURT: Bills come in.

17 MR. HAWKINS: Or redacted records?

18 THE COURT: You can put the record
19 in that shows she had a diagnosis or a treatment,
20 whatever that -- I mean, that she was there for
21 treatment. That can come in, if you need it. I
22 don't know that you're going to need it.

23 MR. HAWKINS: Well, I think we would
24 offer maybe -- I think the last page is the only
25 thing at-issue where it says, you know, what the

1 statistics are. So if we take that off, will
2 that cure the problem?

3 THE COURT: A couple of things,
4 actually, a page and a half, certainly page two
5 and one page that's un-numbered. It talks about
6 Hepatitis B, Hepatitis C, HIV ---

7 MR. HAYNSWORTH: Your Honor, if
8 it'll help I'll stipulate that she incurred a
9 medical bill from AnMed in the amount of thirty-
10 seven hundred dollars, whatever the figure is.

11 THE COURT: Is that it?

12 MR. HAWKINS: No, Your Honor, I do
13 what to get in what the Court will let me. And I
14 -- if -- I'm looking on this first page for any
15 kind of statistics.

16 MR. HAYNSWORTH: Well, you've got a
17 needle stick on there.

18 THE COURT: Yeah.

19 MR. HAWKINS: Yeah, the problem with
20 that -- that's the point. That's the part that
21 we know, she was treated. You don't want the
22 statistics in about HIV; right?

23 MR. HAYNSWORTH: I don't want the
24 needle stick in, Josh. The only person who said
25 she got stuck by a needle is her. And they

1 report on that form what she says she's there to
2 be treated for. But if the jury sees that form
3 they're going to say, 'Oh, this lady got stuck by
4 a needle. It says it right here on the form.'

5 MR. HAWKINS: No, no, no. They make
6 these notes based on her, if she says that she
7 got stuck by a need. If they don't see a needle
8 stick injury, they're not going to -- they're not
9 going to write that she got her hand cut off if
10 she's got both hands, Your Honor. I mean, this
11 is ---

12 MR. HAYNSWORTH: No, absolutely not.
13 Now he's trying to say he gets to establish there
14 was actually a stick because that thing says
15 needle stick.

16 MR. HAWKINS: Well, they are entitled
17 to look at the record. I mean, it's her medical
18 record.

19 MR. HAYNSWORTH: It's her bill,
20 Josh.

21 MR. HAWKINS: They're entitled to look
22 at this piece of paper. It has nothing about any
23 statistics that -- it doesn't even say ---

24 MR. HAYNSWORTH: I think that's got
25 to be redacted.

1 THE COURT: I don't know that
2 there's hardly anything on here. I mean, really
3 all this is -- either it came from her or; and
4 she didn't write any of this and we don't know
5 who wrote any of this on here.

6 MR. HAYNSWORTH: Correct.

7 MR. HAWKINS: The first page?

8 THE COURT: Yes, sir. Any of it, to
9 tell you the truth. I mean, she can testify ---

10 MR. HAWKINS: But ---

11 THE COURT: Yeah. She can testify
12 either that she got stuck or he can ask her did
13 she get stuck or not.

14 MR. HAYNSWORTH: You're right.

15 THE COURT: You're right, that's a
16 jury question as to whether or not there was a
17 needle. It's a jury question of whether she got
18 stuck. But the whole document here is a hearsay
19 document.

20 MR. HAWKINS: Well, what part would
21 need to be redacted, Your Honor? I mean, I want
22 to make sure we redacted that out. Where is
23 that?

24 THE COURT: What part? It's a
25 hearsay document.

1 MR. HAWKINS: Okay. All right.

2 We'll just ---

3 THE COURT: Is there something you
4 don't ---

5 MR. HAYNSWORTH: No, sir. You hit
6 the proverbial nail on the head.

7 Again, I offered to stipulate so we
8 don't have to get bogged down with the document.
9 I will stipulate she incurred three thousand
10 seven hundred or three thousand nine hundred --
11 it's slightly less than four thousand dollars in
12 medical bills at the AnMed ER where she went and
13 got treated because, she told them, she 'got
14 stuck by a needle.'

15 MR. HAWKINS: And what I don't want to
16 happen, Your Honor, and what I have had happen at
17 trial before is "we don't want that in, you know,
18 that they shouldn't be able to show this to the
19 jury."

20 And then when he's on cross he gets up
21 and says, 'Well, you don't have any medical
22 records that say you've got...' -- well, that's not
23 fair. I mean, he can't say 'I don't want the
24 document in' and then act like it doesn't exist
25 at trial.

1 THE COURT: Well, he's not going to
2 say that. He's saying he's willing to stipulate.

3 MR. HAYNSWORTH: I'll stipulate as
4 to the medical bills.

5 You know, in fairness, I'm going to
6 ask, 'Well, is a doctor going to come here and
7 discuss this?'

8 I'm going to ask because there's been
9 testimony that the doctors took photographs of
10 the needle stick. I'm certain going to ask her
11 about that.

12 MR. HAWKINS: That's fine if he asks
13 her about that. I mean as long as he's not going
14 to say 'but you don't have any records to show
15 you were stuck with a needle.' Well, that's not
16 true because she does. So I just don't want him
17 to say that. If he says 'you don't have a doctor
18 here', fine. We'll deal with it.

19 THE COURT: But if he asks her if
20 she -- about doesn't have a piece of paper, then
21 I may reconsider. But we are limited at this
22 point anyway. So, you know, if you stay away
23 from, it's out.

24 MR. HAWKINS: Okay.

25 THE COURT: But if he doesn't, then

1 I'll reconsider.

2 MR. HAWKINS: Thank you, Your Honor.

3 THE COURT: Okay. As to the future
4 damages, the possibility -- I think the case law
5 is clear, you know. I'm looking at a District
6 Court decision here, Judge Anderson. And he goes
7 through, looking on the side of caution,
8 (reading): *"Recovery of damages based on future
9 consequence of injury may be had only if such
10 consequences are reasonably probable or
11 reasonably certain. Such damage cannot be
12 recovered if future consequences are mere
13 possibilities. A probability exists when there
14 is more evidence in favor of a proposition than
15 against a greater than fifty percent chance that
16 a future occurrence will occur. Mere possibility
17 exists when the evidence is anything less."*

18 And he goes -- he's talking about *Logan*
19 *v. Pittsburgh Cornea Corporation*, which is a 1986
20 case out of the Fourth Circuit.

21 I mean, that's my understanding of the
22 law. Damages must be based on future
23 consequences of an injury only if reasonably
24 probable or certain, which is fifty percent or
25 greater. That's my understanding of that also.

1 I don't know what the testimony is
2 going to be at this point in time, but I don't
3 think that she's going to be able to say I'm at
4 greater risk than I was previously -- three
5 percent, nine percent, twelve percent. It may be
6 in the common knowledge, I don't know. If it is,
7 then it is already within the common knowledge of
8 the jury, but I don't think she can testify to
9 that.

10 MR. HAWKINS: Well, Your Honor, we
11 wouldn't offer anything a doctor's told her about
12 a percentage chance or anything like that.

13 Certainly she can say, 'I was scared I
14 could have caught something', whatever that might
15 be. But we don't intend to say 'now I have this
16 much chance of having HIV.'

17 THE COURT: Okay. She absolutely
18 cannot do that. Yes, sir?

19 MR. HAYNSWORTH: Your Honor, I don't
20 think she can say 'I was fearful I was going to
21 get AIDS.'

22 I mean, I think that's the whole point
23 of cases is that without some medical testimony
24 showing the probability you might get whatever
25 the disease may be, you can't testify 'I was

1 fearful.' I mean, just imagine. HIV and AIDS is
2 a scary thing to throw out there.

3 THE COURT: I know. I know. I
4 think she can testify, though -- and I'm going to
5 let her testify that she was scared, and she had
6 a course of treatment.

7 Now, I don't want to get into
8 specifics, but she did follow the advice of a
9 doctor and she had a course of treatment. She
10 took some medications and she was sick. I think
11 the testimony might be that she got sick for a
12 period of months or weeks from taking the
13 medication. That certainly goes to her -- her
14 being sick.

15 MR. HAYNSWORTH: Sure. I have no
16 argument that she can say 'the medication made me
17 sick.' But I just want -- kind of like Josh, I
18 don't want to screw things up once we get going.
19 I understand the case law to say she cannot
20 testify about her "fear of." Because in order to
21 say I'm fearful of AIDS you've got to have,
22 you've got to establish a more than fifty percent
23 probability that AIDS might be what she would get
24 from that needle. So she can't say, 'I was
25 terrified I was going to get AIDS.' Because the

1 only way she'd ever testify to that was if she
2 had medical testimony establishing that AIDS was
3 more than fifty percent a possibility from that
4 needle stick. Absent from some expert, -- I
5 think that District Court case I handed up to the
6 Court, Your Honor, it seems to me it clearly says
7 you just can't say, 'Oh, God, I was afraid I was
8 going to get Hepatitis and I was worried. I was
9 afraid I was going to get AIDS and I was
10 worried.'

11 The only way you can discuss your fear,
12 your emotional angst, is if you can somehow
13 establish that what got you has got a probability
14 of giving you the thing you say you're fearful
15 of.

16 Because again -- I mean, say it was a
17 rusty nail. I think we would all agree rusty
18 nails don't have AIDS but the like would be the
19 same. 'Hey, I stepped on a rusty nail. I
20 genuinely thought I was going to catch AIDS,
21 therefore I want to testify about it.'

22 I don't think the law allows that
23 unless she can bring some medical testimony to
24 bear that she was at reasonable risk of catching
25 AIDS from her exposure to this needle.

1 MR. HAWKINS: And, Your Honor, I think
2 the Court made a pretty good point earlier. I
3 mean, she can testify what her damage is. She
4 can testify, 'I had to have HIV medication and it
5 made me sick.' I mean, that's her damage.

6 Her damage is going to get blood work
7 and then going back to get more blood work, but
8 because it had to be testified for HIV, that's
9 her treatment.

10 And, you know, she's not going to offer
11 any expert testimony; she's not an expert. But
12 -- and no disrespect, I mean, that's ridiculous.
13 She can't say the word "HIV"? I mean, that's
14 crazy. The whole case is about her -- what
15 happened to her, you know. The whole case is
16 about treatment for HIV, the damage caused by
17 Target and how she got sick from the medication.

18 I mean, she's a stay-at-home mom and
19 she's got four kids, she's going all the time.
20 He had to take off work during that time because
21 she couldn't even get out of bed. We have to be
22 able to tell the jury why she couldn't get out of
23 bed and how the medication made her sick. She's
24 entitled to tell them that.

25 And that's why we have cross-

1 examination. If he wants to get up and cross-
2 examine her, 'well, you're not a doctor are you?'
3 No. Fine. But she can say, 'yeah, I was taking
4 HIV medication and that made me sick.'

5 That's why we're here, Your Honor.

6 MR. HAYNSWORTH: We're arguing over
7 two completely different things, Judge.

8 MR. HAWKINS: I agree.

9 MR. HAYNSWORTH: I agree I can't
10 keep her from saying 'I took medication and it
11 made me throw up or made me nauseous or it made
12 me have vivid nightmares.' He's right. I'm not
13 arguing we can't get into that.

14 Where he's wrong is she can't get up
15 and testify, nor can her husband, nor can her
16 mother-in-law and talk about how fearful she was
17 about what might happen to her, what she might
18 get.

19 THE COURT: That's true. There's
20 two different -- you're both right, you know?

21 He's going to go in her course of
22 treatment, what medication she took, and it made
23 her sick.

24 But nobody can testify, unless they've
25 got a doctor coming or an expert coming, she

1 can't testify that I have a thirty percent chance
2 of getting AIDS the future.

3 MR. HAYNSWORTH: Or that, 'I fear...'
4 ---

5 MR. HAWKINS: No, that's where you're
6 wrong.

7 MR. HAYNSWORTH: No, that's where
8 I'm right.

9 MR. HAWKINS: She can't testify 'I've
10 got this much potential exposure or I have this
11 percentage chance.' She can testify whatever
12 she's scared of and the jury makes the
13 determination is that reasonable or not, and he
14 can cross-examine her on that..

15 MR. HAYNSWORTH: That's not what ---

16 MR. HAWKINS: He can't stop her from
17 saying, Judge, 'look, all this stuff went through
18 my mind.' I mean, that happened. She's
19 testified about it.

20 He don't want it in because he knows
21 what they did and I understand that. But he's
22 trying to keep out what the case is about, Judge.

23 MR. HAYNSWORTH: I'm trying to keep
24 out what this court kept out, Your Honor, is the
25 testimony that is improper because they can't

1 establish what they need to establish to allow
2 her to talk about her fear.

3 MR. HAWKINS: She can testify what her
4 mental impressions are and what her fears are and
5 what went through her mind, Your Honor. That's
6 what we do every day in courts all across the
7 country.

8 She can't offer expert testimony.
9 She's not going to.

10 But Knox is wrong. She can tell the
11 jury what went through her mind. I mean, that's
12 what the whole case is about.

13 And then they can weight credibility --
14 they can weigh the reasonableness of that. He
15 can cross-examine her.

16 THE COURT: Listen, (reading):
17 *"The trial court refused to allow any substantial*
18 *references to cancer based on the fact that the*
19 *risk of the future injury, being cancer, failed*
20 *to meet the reasonably probable or reasonably*
21 *certain standard. In reviewing the trial court's*
22 *action, the appeals court stated that the*
23 *District judge did an commendable job in*
24 *preventing the asbestos case from being*
25 *overshadowed by the dreaded specter of cancer."*

1 That's what opposing counsel is saying.
2 Unless she has somebody that's going to testify
3 about -- unless she can meet the reasonably
4 probable or reasonably certain standard, she
5 cannot testify about those fears for future
6 either from HIV or cancer or diabetes or anything
7 else. No, she can't do that.

8 MR. HAWKINS: Your Honor, whatever the
9 Court rules is what we're going to do and I
10 appreciate the Court's position on that.

11 For the record, I reiterate she can
12 testify to what went through her mind when she
13 got stuck. And asbestos is not the same as a
14 needle stick. Exposure to asbestos sometimes
15 people develop cancer, sometimes they don't.
16 You're exposed to a needle stick, that is one of
17 the few ways that HIV can be transmitted and
18 that's common knowledge. It's not like asbestos.

19 THE COURT: It's common knowledge
20 that asbestos -- some people get cancer from
21 asbestos, some don't. Some people get HIV from
22 being needle stick, some don't.

23 Anyway, that's the ruling of the Court.
24 She can talk about the course of treatment she
25 took. She going to be mentioning she took the

1 medication for HIV. That's what happened.

2 That's what she can testify to. But ---

3 MR. HAWKINS: Okay. Thank you, Your
4 Honor.

5 THE COURT: All right. Is that
6 everything I had under advisement to take up?

7 I got the medical bills.

8 I had the fear.

9 The photos, we talked about in the
10 hallway. It's not on the record. At this point,
11 they're not in. But if they -- they may become
12 relevant and admissible for impeachment purposes.

13 MR. HAWKINS: And, Your Honor, just so
14 the record will reflect it, photographs that
15 generally depict the area where she's in?

16 THE COURT: That's in by agreement.

17 MR. HAWKINS: Okay. All right.

18 THE COURT: The parties have that
19 agreement. Yes, sir. That the different angles
20 of the area, that's admissible.

21 MR. HAYNSWORTH: If you want to go
22 over the photos now, we can -- there are so many
23 photographs of so many different areas with so
24 much stuff in them. I don't know what photos
25 were of the particular area. I can give you two

1 and say this is exactly where she was parked.
2 But he can give you ten and say this is the
3 general area.

4 THE COURT: Y'all want to talk about
5 it real quick?

6 MR. HAWKINS: Well, Your Honor ---

7 MR. HAYNSWORTH: If he knows what
8 photos, we can tee them up.

9 MR. HAWKINS: I don't know which ones
10 I'm going to use yet. It depends on how the
11 testimony goes. I've got a bunch tabbed, but I
12 don't know which ones I'm going to put in
13 evidence because I don't know what everybody's
14 going to say and how we're going to get to
15 whatever photos we use.

16 I will say this, one of their positions
17 is 'you don't know where the need came from, do
18 you?' That's one of their positions.

19 So different angles will show different
20 parking spots around where she was parked as
21 relevant, Your Honor.

22 THE COURT: Well, I tell you what.
23 Let's hassle about everything, we can take them
24 up one at a time.

25 MR. HAWKINS: All right.

1 THE COURT: Anybody got anything
2 else?
3 MR. HAYNSWORTH: At the risk of
4 forgetting something, I think that covers it all,
5 Your Honor.
6 MR. HAWKINS: I don't have anything.
7 THE COURT: All right. Ready for
8 the jury?
9 MR. HAWKINS: I'm ready, Your Honor.
10 THE COURT: I'm going to swear them
11 as soon as they come in, you ready to go?
12 MR. HAWKINS: Yes, sir.
13 THE COURT: Okay. Well, have our --
14 Mister Bailiff, you got our jury?
15 BAILIFF: Yes, sir. Are you ready for
16 them?
17 THE COURT: Yes, sir.
18 (JURY IN @ 2:45 P.M.)
19 THE COURT: Let's swear the jury and
20 try this case.
21 (WHEREUPON JURY SWORN)
22 THE COURT: Thank you. Juror Number
23 37, Lisa Epps. Ms. Epps, you're hereby the
24 Forelady of this jury. I will talk with you more
25 about that at the close of the trial. But at

1 this point you become the spokesperson for the
2 jury.

3 It is usually my custom when you first
4 come in and sit down, I would be looking to you
5 and will ask you if there are any matters that
6 the jury needs addressed before we begin.

7 Ladies and gentlemen, we are here about
8 the matter of Denise Garrison and Clint Garrison
9 versus Target Corporation, who is the defendant
10 in this matter.

11 Before we begin this trial, I want to
12 tell you that this trial will be different from
13 what you have come to expect from watching TV,
14 movies or reading books. Many people do not have
15 an opportunity to sit in on a trial or
16 participate in a trial as you are doing now. And
17 many believe from watching TV or actually just
18 looking at a short list from the entertainment
19 industry, that all trials are full of high
20 action, intense action and riveting
21 circumstances. But sometimes while that may be
22 true, it's not true in every case nor is it
23 intended to be.

24 Today we're here in the courtroom and
25 today is a fundamental part of our democracy.

1 A trial before the jury is a fundamental part of
2 our democracy. It is a search for the truth in
3 an effort to make sure that justice is done
4 between the parties. I tell you that searching
5 for the truth and ensuring justice is done many
6 times is slow, deliberated and repetitive; just
7 the opposite of what we have come to expect from
8 the entertainment industry.

9 Ladies and gentlemen, this courtroom is
10 a place of honor and dedicated to the protections
11 and preservations of citizens' rights through
12 what many have called the greatest justice system
13 ever created.

14 I tell you that the lawyers appearing
15 before you are advocates for the parties they
16 represent, but first and foremost they are
17 Officers of the Court sworn to uphold the
18 integrity and the fairness of our judicial
19 system.

20 We again thank you for serving and
21 exercising your duty and obligation to serve as
22 jurors, helping us this week.

23 Now, what I tell you is intended to
24 serve as an introduction to the trial of this
25 case. My remarks are not a charge on the law.

1 I will instruct you on the law at the close of
2 this case before you retire to consider your
3 verdict. My remarks are merely an explanation of
4 the procedure that we follow in the trial of a
5 case so that you may better understand what's
6 happening.

7 Ladies and gentlemen, I am asked this
8 often and I will tell you now that you are not
9 allowed to take notes at any time during the
10 trial of this case. You twelve have been
11 selected -- or the thirteen of you at this point
12 -- have been selected as fair and impartial
13 jurors whose purpose is to find and determine the
14 facts.

15 You, the jury, are the sole judge of
16 the facts. If at any time I make a comment
17 regarding a fact, you must disregard it. You are
18 to determine the facts from the testimony you
19 hear and any evidence that is presented before
20 you. You should not be influenced by opinions or
21 statements that you have heard outside this
22 courtroom. It is especially important that you
23 perform your duty of determining the facts
24 diligently and conscientiously because ordinarily
25 there is no way to correct an erroneous

1 determination of facts by a jury.

2 Now, ladies and gentlemen, with equal
3 emphasis the same law that makes you the judge of
4 the facts in every case makes me the judge of the
5 law. The law as I give it to you is the only law
6 that you may consider. You must accept it and
7 follow it even if you disagree with it. I cannot
8 tell you what the facts are and you cannot
9 disagree with me about what the law is or ought
10 to be or should be.

11 Your job will be take the law as I give
12 it to you, apply it to the facts as you find them
13 to be from the testimony of the witnesses and the
14 other evidence presented. After doing so, render
15 a verdict, a true and just verdict under the oath
16 that you took as jurors.

17 But until I advise you to begin your
18 deliberations, ladies and gentlemen, you must not
19 discuss this case with anyone including fellow
20 jurors, friends, family members or anyone
21 involved in the case. This includes face-to-face
22 discussions or by telephone, e-mail, text
23 message, blog or any other manner of
24 communication.

25 Please do not try to learn information

1 from any source outside of this courtroom. You
2 must not look at dictionaries or other reference
3 materials, search the internet, websites or blogs
4 or use any tool with electronic capability to get
5 information about a case or help you decide.

6 You may not use computers, telephones,
7 cellphones, smart phones, tablets, the internet
8 or other tools of technology with communication
9 capability at any time while you are in the
10 courtroom or during your deliberation. During
11 breaks for meals and overnight you may use those
12 devices, but you may not use them for the purpose
13 of sending or receiving information about the
14 case.

15 Now, ladies and gentlemen, in our
16 judicial system it is important that you are not
17 influenced by anything or anyone outside this
18 courtroom. If you become aware of a fellow
19 juror's violation of my instructions, please
20 inform me immediately.

21 It is important that you keep an open
22 mind and not decide any issue until all the
23 evidence has been presented, the parties have
24 made closing statements and I have instructed you
25 on the law of the case.

1 After the case is submitted to you, you
2 must discuss it only in the jury room with your
3 fellow jurors.

4 The lawyers and the parties and the
5 parties themselves, the lawyers in the case and
6 the parties in the case have been advised that
7 they are not to speak to you. So I tell you
8 ladies and gentlemen, if you happen to see one of
9 them in the hallway or on the street or in a
10 restaurant of some sort, they will not speak to
11 you. They are not being rude. They're merely
12 following my instructions.

13 Now, ladies and gentlemen, in just a
14 few moments the attorney for the plaintiff will
15 make what's called an opening statement. He will
16 explain to you the issues in the case or at least
17 what he believes the issues to be. The attorney
18 for the defendant will also make an opening
19 statement.

20 What the lawyers tell you during their
21 statements is not evidence. It is only their
22 contention as to what the issues are. All the
23 evidence in this case will be presented to you by
24 the testimony of the sworn witnesses and/or by
25 any exhibits that they may introduce into

1 evidence.

2 Now, from time to time, you may hear
3 one of the lawyers say, 'Your Honor, I have a
4 question of law. I have a matter of law.' Or I
5 may think that I have a matter of law to deal
6 with the lawyers. In that event, I may excuse
7 you Madam Forelady and ladies and gentlemen. I
8 may excuse you from the courtroom for a short
9 period of time. The reason for that it is, it
10 may be necessary to make a comment on a fact as
11 to whether or not a particular rule, a court rule
12 or law applies. In that event I will excuse you
13 so that you would not hear me say anything about
14 the facts on the case. Remember, you, the twelve
15 jurors, are the judge of the facts.

16 Now, ladies and gentlemen, in deciding
17 whether to believe a witness you have to consider
18 whether that witness has an interest in the
19 result of the trial or whether the witness is
20 prejudiced toward either the plaintiff or the
21 defendant.

22 You may consider the opportunity the
23 witness has to see the matters about which they
24 testify or have heard, seen, smelled or sensed.

25 You have the right to consider anything

1 in the record that will help you evaluate
2 the testimony of witnesses. And that necessarily
3 means that it is your duty to pay close attention
4 to the witnesses and do not let your thoughts
5 wander.

6 Madam Forelady, as I said, you are
7 hereby appointed the spokesperson. And I've
8 asked you and Madam Alternate all to sit in
9 assigned seats. And once again everybody is
10 welcome to move around within the jury box.

11 Are we ready?

12 MR. HAWKINS: The plaintiff is ready,
13 Your Honor.

14 THE COURT: All right. The defense
15 ready?

16 MR. HAYNSWORTH: Yes, sir, Your
17 Honor.

18 THE COURT: Okay. Give your
19 attention to the lawyers, please.

20 MR. HAWKINS: Thank you, Your Honor,
21 and may it please this Court.

22 OPENING STATEMENT

23 BY MR. HAWKINS:

24 Jury duty; where everybody wants to
25 spend the Tuesday after Labor Day, come here and

1 hear a case. In all honesty, everybody in here
2 appreciates what you're doing. That sound
3 cliché, sounds like something a lawyer would say.
4 But the Court and both sides appreciate what
5 you're doing very, very much.

6 It's a very raw, awesome power that you
7 have as jurors. It's the most powerful group of
8 people any one person can belong to. That's why
9 most countries don't have them. We have a very
10 special kind of justice system here in the United
11 States.

12 What juries do is they level the
13 playing field. A big corporation with a lot of
14 money is on the same playing field as an average
15 Joe, working-class family. They can settle
16 disputes on an even playing field because of
17 juries. Normally, the person with more money and
18 power has more leverage but not with a jury.
19 They even the playing field. So what you're
20 doing is very important. We appreciate it.

21 And I'll try to present the evidence in
22 a clear and concise way, but I'm not the most
23 eloquent, people. So if I mess up from time to
24 time, just excuse me. I'll try to clarify.

25 Every business, every shop, every store

1 that owns property owes a duty to the community
2 to keep its premises reasonably safe. All right?
3 Every shop, every store, every big corporation
4 that owns property and invites the public, in
5 this case, the Anderson County community into its
6 store to spend its money, has a duty to keep it
7 clean and reasonably safe. They have to do
8 routine safety sweeps and routine safety scans
9 and check for dangers that might hurt children or
10 mothers or anybody that comes to the store.

11 The duty owed to the public is
12 commensurate with the people the shop knows will
13 come there to buy things. So if the store sells
14 children's clothing, it knows children will come
15 with their mamas to the store. It has to keep
16 the premises safe for children and mamas and
17 daddies and whoever comes there.

18 When safety rules aren't followed,
19 people get hurt. It's dangerous to the
20 community. If a store in Anderson doesn't follow
21 basic safety rules to do routine safety sweeps
22 and routine safety scans, then the Anderson
23 County community is in danger of something bad
24 happening when they go to that store.

25 With that in mind, I'm going to tell a

1 story of what happened and it starts back in
2 2005. About October 2005, Target, here in
3 Anderson on Clemson Boulevard, Target hires
4 what's called a property maintenance technician.
5 And that person's job is, as that implies, to
6 maintain the property, keep it safe, free of
7 debris, make sure there aren't unreasonable risks
8 to customers or anybody else that might go onto
9 the property.

10 That person is supposed to make sure
11 safety rules are followed. They're supposed to
12 do whatever they need to do to make sure the
13 parking lot got clean, routine safety sweeps are
14 done. If there's a bottle, or a nail that could
15 puncture somebody's tire or somebody's flip-flop,
16 they need to remove it. And they need to check
17 for it every so often. I would submit probably
18 about once an hour for a store like Target, with
19 as many employees as they have, is not
20 unreasonable. So they have a duty to do that.
21 And that's what that person was hired in part to
22 do.

23 So you fast-forward to between 2008 and
24 about 2012, and I'm not exactly sure on the
25 dates, but Target underwent some changes. Some

1 of those changes involved different CEOs. One
2 CEO, as you probably read in the news was let go
3 because Target exposed millions of peoples'
4 credit card information and put lots of peoples'
5 credit card accounts at risk. So one CEO left
6 because of that. I don't know if you saw that
7 news story or not.

8 But some of the changes that happened
9 at Target in the way they run their store
10 affected safety rules, and we're going to show
11 you evidence related to that. And it showed how
12 they follow safety rules. And we're going to
13 show you that some of the changes directly
14 impacted whether or not certain safety rules were
15 followed. Since safety rules directly impact the
16 safety of the public and Anderson County
17 community, there's a greater level of danger in
18 some cases where safety rules are changed. So
19 keep that in mind.

20 At this point in the story, I have to
21 introduce to you the people involved. Because
22 going forward you are going to need to know who
23 those people are.

24 Obviously, I'm Josh Hawkins, you heard
25 earlier. I represent Clint Garrison and his

1 wife, Denise. All right. These people are from
2 right here in Anderson. They're part of the
3 Anderson community and I've gotten to know them
4 pretty well over the past couple of years. This
5 litigation has been dragging on since 2014, I
6 think.

7 Clint works at Hill Electric. He works
8 about forty to seventy hours a week so Denise can
9 stay home with their four children. At this
10 point I've met all of the children. It's a good
11 family, good decent, blue-collar folks. I like
12 them a lot.

13 The defendant is Target. Target is
14 represented by Knox Haynsworth. Target cannot
15 come here and physically sit in the witness stand
16 because Target is a big, multibillion-dollar
17 corporation. So, you know, it can't sit down
18 like my clients can. They have to pick whoever
19 they think needs to tell you their side of the
20 story and have them come here and testify for
21 Target. So whoever makes those decisions up in
22 Minneapolis where Target's based, they figure out
23 'well, we need this person, this person and this
24 person, whoever to come testify and tell our side
25 of the story.'

1 So the people that Target has picked to
2 come and tell you Target's side is Shelby
3 Brintnall, she's a manager for Target. She
4 interacted with Denise after she was injured.

5 John Jackson, he's the property
6 maintenance technician I told you about earlier.

7 So those are the people involved. And
8 those -- you're going to hear from all of these
9 people and you're going to hear from Clint's
10 mother in just a little bit too.

11 So fast-forward to May 21st, 2014.
12 Denise is trying to stretch a dollar like
13 everybody else. They're trying to save money so
14 she clips coupons and she uses those at different
15 stores here in Anderson. Some of the coupons she
16 had were for Target. So on that particular
17 evening about seven o'clock in the evening she
18 told her family 'I need to go to Target to get
19 some things.' She has a little girl named
20 Kaileigh, who was eight years old at the time.
21 Kaileigh says, 'Mama, I want to go with you.
22 Okay, baby, come on. Let's get in the car and go
23 to Target.'

24 So they go to Target and you've all
25 probably been there. I've been there. They go

1 to Target and you pull in and you see the big
2 Target and the bull's eye and, too, I think
3 there's a Lowe's over here. But to the left side
4 is a strip of grass and there's some buggies and
5 some buggy returns. So Denise goes and she pulls
6 in and parks near the buggy returns. She gets
7 out.

8 She and her daughter come around the
9 car and meet sort of at the front so they're out
10 of any traffic. They are over here next to the
11 curb. Denise gets out her coupon book.
12 Kaileigh's next to her. So when she does that
13 Kaileigh says, 'Mommy, what's this?' Holds it up
14 and then Denise sees something that absolutely
15 terrifies her. It's not a gun. It's not a
16 switchblade, it's a dirty, used hypodermic
17 needle.

18 So mothers have this way about them
19 that I can't really ever understand. I remember
20 my mom when I was going up. But it's a level of
21 protection that I've not seen anywhere else in
22 nature, is a human mother. She reacts
23 immediately, knocks it out of her daughter's hand
24 and it's laying on the ground. And so for a
25 brief moment she's relieved. You know, the

1 threat's neutralized. But that doesn't last very
2 long because she looks at her hand and she sees a
3 puncture wound and she sees a well of blood
4 beading up around the puncture wound. So the
5 gravity of the situation starts to sink in.

6 'Come on, baby. Mama's got to go wash her hands
7 right now.'

8 As she starts to realize how serious
9 this is, she starts crying. She's washing her
10 hands in Target over and over. Her little girl
11 sees her mama crying and she starts crying. So
12 you've got the mama and the little girl washing
13 -- the mama washing her hands. And she's trying
14 to call Clint. He's at work. She can't get
15 ahold of him. She finally gets ahold of Clint
16 and he says, 'All right, calm down.' Obviously,
17 she's upset. 'Calm down. You need to go tell
18 them what happened. You need to make sure you do
19 whatever they need you to do and you need to make
20 sure they go get it so somebody else doesn't get
21 stuck with that needle from their parking lot.'

22 So she gets herself together as much as
23 she can. She goes to talk to Shelby Brintnall.
24 Shelby Brintnall is apologetic. 'I'm sorry.'
25 Let's -- you know, they go back out to the

1 parking lot. They look at the needle. Denise
2 does have the wherewithal to take a picture of
3 the needle and we'll show you that in a little
4 bit. And you can tell the needle's been laying
5 on the ground, it's not something somebody just
6 dropped. It's been there. It's been there long
7 enough to find with a routine safety sweep. It's
8 kind of broken. And actually, when they went out
9 the needle part of the syringe was either broken
10 off or snapped off either from her swatting it or
11 hitting the ground. It looks like most of the
12 needle's gone from the syringe. You'll see that
13 from the picture. So they take pictures of it,
14 Denise does. And then Target does too.

15 Denise stays, does everything they need
16 her to do. She fills out, you know, the -- she
17 tells Shelby what information she needs to fill
18 out the paperwork and then Denise signs it. And
19 so Shelby says, *'All right. Just make sure you*
20 *go to the doctor, bring us back the documenta-*
21 *tion, you know, and bring us the bill.'*

22 So she goes home. By that time it's
23 late. By that time Clint and his mama knows
24 what's going on and so they come over -- Clint's
25 mama lives a few hundred yards from them. So she

1 comes over to the house. Obviously, this is a
2 bad situation. Denise has all kinds of stuff
3 going through her mind. They say, 'All right.
4 Well, let's get Kaileigh calmed down. Let's get
5 her to bed. We'll go to the doctor, get the
6 blood work done. Find out what we need to do in
7 the morning.' So that's what they do.

8 So Clint, I think, took off work the
9 next day. He'll tell you all about that when he
10 gives his testimony.

11 They get up the next day. They get the
12 kids to school. She calls back to Target says
13 'Hey, I just want to make sure I'm doing every-
14 thing I need to do on my end. Is there a certain
15 doctor I need to go to? I want to make sure I'm
16 doing everything right.'

17 'No, it doesn't matter. Go to whatever
18 doctor you want, just bring us back the docu-
19 mentation.'

20 So they end up -- she calls the health
21 department to see what they are going to tell her
22 to do. They say, 'No, you have to go somewhere
23 else.' They end up going to AnMed. So they go
24 to AnMed and they incur a bill of about four
25 thousand dollars.

1 So obviously she's still dealing with
2 the injury but she doesn't have the weight of
3 having to pay for it on her mind yet. So she
4 goes and they tell her, 'You've got to take this
5 HIV medication in case you're infected. You've
6 got to do all these different things.' And so
7 she does that.

8 Some of the medication, you're going to
9 hear, make her sick as a dog. She's got four
10 kids. Like I said, normally she's going all the
11 time. But this medication has such an impact on
12 her that Clint had to take off work, something he
13 never does, because his family depends heavily on
14 overtime when he works. He never takes off. He
15 had to take off of work and help tend to her.
16 His mom helped. One of the oldest children
17 helped as well. She couldn't get off the couch
18 and she had to be helped to the bathroom because
19 of this HIV medication.

20 Well, during that sickness Target's
21 investigator calls. He says he's doing an
22 investigation and he takes a statement. And
23 you'll hear about the statement. She says to the
24 investigator, 'I'm sorry, this medication's got
25 me sick' or whatever. But she stays on the phone

1 as long as she needs to, to make sure she answers
2 all his questions and cooperate however she can.

3 He said, 'Well you know, do you feel
4 like Target's responsible?'

5 She said, 'Well, yeah, you know they're
6 supposed to clean up. You're supposed to take
7 care of the parking lot obviously.'

8 He says, 'All right. Well, I've got
9 your statement.'

10 She continues to be sick. They
11 continue to deal with this awful event and then
12 Tyler Hammer, the investigator, he calls back.

13 He says, 'Sorry, ma'am. Target's not
14 responsible. We're not going to do anything.'

15 So at that time Clint was actually
16 present and he sees her deflate. He sees her
17 mood go down, she was holding the phone. He's
18 like you know, well, 'what's wrong?' She says,
19 'Target's not going to do anything. They're not
20 going to pay for it.'

21 If there's one thing I've learned about
22 Clint over the past two years, he doesn't say
23 much. He's low-key, but if you mess his wife or
24 his kids, he becomes extremely determined. So he
25 made it his mission to do whatever they had to do

1 to come here and tell you what happened and tell
2 you what Target did. And more importantly,
3 didn't do. He made it his mission to come here
4 and tell you about the rule violations, the
5 safety rule violations that caused his family to
6 have to go through this.

7 They didn't want to be here today. They
8 didn't want to have to go through litigation.
9 They didn't want to have to go to a jury trial.
10 But when he said 'we're not going to do anything
11 about it', they had no other options. He looked
12 at his wife and he said, 'Well, I guess we get a
13 lawyer.' Here we are.

14 So Clint has worked really hard to
15 gather as much evidence as he can to show you
16 today and we're going to show you a bunch of it.
17 Of Target's safety rule violations, evidence that
18 Target doesn't put customer safety first.
19 Evidence that the community is still in danger.
20 People that go to Target right now are in danger.
21 He's going to show you evidence of that. People
22 that are in Target today while we're in court are
23 in a certain level of danger by being there.

24 At the end of trial, you're going to be
25 asked to make a decision, okay? And probably

1 what the Judge will tell you is that you have to
2 imagine two scales, plaintiff and the defendant.
3 And after you've heard all the evidence, if the
4 scale tips ever so slightly, even if it's almost
5 imperceptible, if it tips at all to one side,
6 then you must find Target responsible for her
7 injuries, her harms and losses and damages.
8 That's what the law says.

9 It's not like beyond all reasonable
10 doubt or anything like that. You can have doubt.
11 You can have forty-nine percent doubt as long as
12 the scales tip ever so slightly to show you that
13 that needle had been on the ground long enough
14 that it should have been discovered and removed.
15 Long enough that Target would discover it through
16 reasonable care, routine safety sweep. We're
17 going to show you evidence that they didn't.
18 We're going to show you enough evidence that I
19 don't think there's going to be any doubt in
20 anybody's mind of what happened and what Target
21 didn't do.

22 Now, the defense is also going to give
23 you their evidence and I've heard them say a
24 whole bunch of different stuff. They're going to
25 say she doesn't know where the needle came from.

1 Well, as you're going to hear, it doesn't matter
2 where the needle came from. She's not an
3 intravenous drug user. Of course she doesn't know
4 where the needle came from. The only thing that
5 matters is, is it more likely than not that that
6 needle laid on the ground long enough to be
7 discovered and removed by reasonable care so it
8 didn't injure a member of the community.

9 You're going to hear stuff like there's
10 not even a needle in the syringe, it's snapped
11 off or broken. How can we be sure there was ever
12 a needle stick injury at all? Well, she went to
13 AnMed and told them look I'm not trying to sue
14 y'all or anything, just pay for my medical bills.
15 She told them that. So their theory I guess is
16 she went to AnMed, inconvenienced herself and her
17 family, pretending she had a needle stick injury
18 and then came back and said, 'I don't want any
19 money, just pay for the medical bills.' It
20 doesn't make any sense.

21 Listen to all the evidence and keep in
22 mind throughout each opening and each closing and
23 all the evidence, it's never okay for a big
24 corporation to make excuses for violating safety
25 rules and harming the public.

1 It's never okay for any property owner
2 to allow trash and debris that is dangerous to
3 remain on the ground long enough injure a mother
4 and her children. It's never okay.

5 No matter what Target says, remember
6 that. They don't get to make excuses. They
7 don't get to blame the needle for what reasonable
8 care would have prevented. They don't get to
9 blame whoever dropped it. They don't get to
10 blame anybody. They use a third-party vendor,
11 we're going to show you evidence about that; they
12 don't get to blame them. It's their property.
13 They're responsible.

14 When you invite people in to spend
15 their money, their hard-earned money, actually
16 trying to save money, encouraging them to come
17 there with coupons and you don't keep your
18 property clean, you don't get to have something
19 like a needle stick injury and everything that
20 comes along with that happen and say, 'ahh,
21 that's not our fault.'

22 Please listen to any remarks that Mr.
23 Haynsworth has. Thank you.

24 THE COURT: Mr. Haynsworth.

25 MR. HAYNSWORTH: May it please the

1 Court?

2 THE COURT: Yes, sir.

3 OPENING STATEMENT

4 BY MR. HAYNSWORTH:

5 Ladies and gentlemen, when y'all were
6 being qualified, I mentioned my name. I'll
7 mention it again, it's Knox Haynsworth. I
8 represent Target.

9 Typically, the lawyers suing and the
10 lawyers defending being sued don't agree on much.
11 Mr. Hawkins and I don't agree on much. But I'll
12 tell you one thing we do agree with. His
13 comments to y'all about your jury service was
14 spot on. It's aggravating for people to do but
15 it means more than you can imagine to the
16 litigants, to the people that are here, to have
17 y'all decide the facts of their case and render a
18 verdict that will be just and true based on the
19 law the Judge gives y'all.

20 Something else Mr. Hawkins said is
21 correct. You level the playing field and that
22 cuts both ways. I heard him mention Target, a
23 multibillion-dollar corporation. Target, you
24 know, let loose a bunch of credit card
25 information. Well, that doesn't have anything to

1 do with the case you're going to hear today.
2 That's designed to make you think 'oh, they're a
3 big, giant company. Yeah, they should -- they've
4 got plenty of money. Why shouldn't they part
5 with some of their money?'

6 Well, it levels the playing field.
7 Target or any other corporation, as His Honor
8 will charge you at the end of this case, is to be
9 treated no differently than any person. In the
10 eyes of the law, everyone is equal here.

11 Now, let me tell you a little bit about
12 what this case is about. It does involve a
13 syringe in a parking lot. Carla Garrison was at
14 the Target here in Anderson back in May of 2014.
15 And she, as Mr. Hawkins told you, and we believe
16 they'll present evidence that she was there with
17 her daughter and she was couponing. She's got
18 her coupon book laid on the front of her car.
19 Her daughter's somewhere close by, not in her
20 immediate eyesight. And the daughter says, you
21 know, 'Mommy what's this? Mommy, look what I've
22 got.' And Mrs. Garrison says it was a hypodermic
23 and she went and hit it out of her daughter's
24 hand.

25 Now, we do have pictures of it. She

1 went in, washed her hands, came back with her
2 cell phone, took pictures. Shelby Brintnall, who
3 was working that night at the Anderson Target,
4 that gal sitting right to my right, she took
5 pictures with her cellphone. We will show you
6 those pictures.

7 Here's where the stories get a little
8 different. And what y'all have to do to decide
9 the facts as the finder of facts. You've got to
10 decide, did he prove his case or did I prove
11 mine? Did neither of us prove either position we
12 had?

13 But let me tell you what I believe the
14 evidence in this trial will show. You will see a
15 syringe that has got the part that you push down
16 that would be on your thumb broken off and it has
17 no needle in it. It was presumably somewhere in
18 Target's parking lot because there's no -- we
19 have no dispute that when they walked out and
20 everyone took pictures, it's laying there against
21 the curb. No one knows exactly where Mrs.
22 Garrison's daughter picked it up from, but what
23 we do know is this. There is no needle on this
24 syringe in the parking lot. Mrs. Garrison will
25 tell you that, 'oh, well, I must have knocked the

1 *needle off when I hit it.'*

2 Well, I submit to you, ladies and
3 gentlemen that to hit a needle on a hypodermic
4 hard enough to knock it off the syringe, it'd go
5 through your hand. I believe the evidence will
6 show you ladies and gentlemen that a syringe was
7 in the parking -- how long it had been there, no
8 one knows. One thing you'll have to decide and
9 you'll have to apply the law that the Judge will
10 give you is, was it there for a sufficient length
11 of time that Target should have known it was
12 there and done something about it?

13 The Judge will tell you at the
14 conclusion of the evidence part of this case,
15 he'll charge you the law that you have to apply
16 to the facts that you've heard. The law he will
17 tell you is that a merchant is not an insurer of
18 their customer's safety. A merchant, a property
19 owner, Target, this courthouse, any property
20 owner, has to take reasonable steps to protect
21 its patrons. Well, I submit to you that the
22 syringe that we'll see pictures of laying in the
23 parking lot, could have been dropped out of
24 somebody's car five minutes before Mrs. Garrison
25 pulled up. It could have been there an hour. It

1 could have blown across from the Lowe's next
2 door. Nobody knows. Not the Garrisons, not me,
3 no one knows how it got there or how long it had
4 been there.

5 The Judge will tell you that legally it
6 is the plaintiff's burden to establish either
7 that Target knew it was there or it had been
8 there long enough where they should have known it
9 was there and should have done something about
10 it.

11 But getting back a second on her
12 injury. Mr. Hawkins told you that this isn't
13 about money. Well, with respect, that's exactly
14 what this is about. He is here and his client's
15 here asking you to give them money from Target.
16 They want money for bills she incurred going to
17 AnMed.

18 Now, I don't mean to suggest that she
19 went to AnMed and just made up a tall tale out of
20 nothing. I think she, in fact, did swat a
21 syringe from her daughter's hand. And I think
22 that she was so upset with the event that she
23 thought she probably did get stuck. But what
24 you'll hear, ladies and gentlemen, evidence-wise
25 is this. Shelby Brintnall who she came to in the

1 Target right after it happened, didn't see any
2 blood. Didn't see any needle stick. You'll hear
3 testimony that AnMed took photographs that showed
4 an actual puncture wound. You won't see any
5 photographs of a puncture wound. The only people
6 that will tell you that there was actually a
7 needle stick will be Mrs. Garrison, her husband
8 Clint, and his mama; no one else, none of the
9 Target personnel, there'll be no photographs of
10 it. No evidence beyond the people who are here
11 asking you to give them money.

12 Now, I don't think this case will take a
13 long time. We're starting so late it will roll
14 over into tomorrow, without a doubt. But it
15 won't go a long time. There are not a whole lot
16 of witnesses. I think five in total.

17 But let me echo again from Target's
18 perspective what Mr. Hawkins said from the
19 Garrisons' perspective. We appreciate the
20 service y'all are providing today. And as he
21 talked about balancing the scales, at the
22 conclusion of this case you will be asked to
23 weigh the evidence and you'll be asked to apply
24 that evidence to the law the Judge has given you
25 to apply. And when you do that, we believe that

1 you will return a verdict in Target's favor.
2 Because based on the law and the facts as you
3 will have heard them, that would be a just and
4 true verdict. Thank you very much.

5 THE COURT: Thank you.

6 MR. HAWKINS: Your Honor, the
7 plaintiff would call Shelby Brintnall.

8 THE COURT: All right.

9 (WITNESS TAKES STAND)

10 SHELBY BRINTNALL, having been duly sworn
11 to tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HAWKINS:

15 Q. Ms. Brintnall, how are you?

16 A. Hi. I'm doing good.

17 Q. We met a while back at your deposition.
18 Do you recall that?

19 A. Yes, sir.

20 Q. Okay. I'm going to do the same thing
21 here. I'm just going to ask you a few questions,
22 okay? How long have you worked for Target or do
23 you still work for Target?

24 A. I do still work for Target; yes, sir.

25 Q. How long have you worked there?

1 A. I've worked for Target a little bit
2 over two and a half years.

3 Q. Are you still in a managerial position,
4 an HR Position?

5 A. Yes, sir.

6 Q. From time to time do you still work
7 what is called lead-on-duty?

8 A. Yes, sir.

9 Q. When you're lead-on-duty, does that
10 mean that you are the person in charge, the
11 person leading at that store when you're the LOD?

12 A. Yes, sir.

13 Q. Okay. So you're familiar with Target's
14 responsibility to keep its premises reasonably
15 clean?

16 A. Yes, sir.

17 Q. It's important to Target to keep its
18 premises clean?

19 A. Yes, sir.

20 Q. Okay. Why is that?

21 A. That's part of our brand. When you
22 come to Target you expect to have a good shopping
23 experience. You like it to be clean. It's just
24 part of our brand.

25 Q. And as I believe you testified before

1 that safety was one of the reasons. Is that one
2 of the reasons it's important to keep your store
3 clean?

4 A. Yes, sir.

5 Q. Okay. Is it important for the safety
6 of children to make sure the parking lot is clean
7 and debris removed from it?

8 A. Yes, sir.

9 Q. Can we agree that if debris, needles,
10 pins, anything's left in the parking lot for an
11 unreasonably long period of time, that that puts
12 the community in danger?

13 A. Yes. If it was there for an
14 unreasonably long time.

15 Q. Is it important to keep good records
16 relating to cleaning safety?

17 A. Yes, (affirmative nod).

18 Q. Is it important for Target to regularly
19 review those records and make sure that the place
20 is clean and safe?

21 A. Yes, sir, (affirmative nod).

22 THE COURT: Hang on a second.

23 Ma'am, I'm going to ask you -- you're nodding a
24 lot.

25 WITNESS: Sorry.

1 THE COURT: My court reporter has to
2 have an affirmative -- she's recording ---

3 WITNESS: Okay.

4 THE COURT: And she can't pick up a
5 nod. If you would ---

6 WITNESS: So, okay. "Yes, sir."

7 THE COURT: Okay. Thank you.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. HAWKINS:

10 Q. All right. Can we agree that all these
11 rules are very important for customer safety,
12 community safety?

13 A. Yes.

14 Q. Okay. Now, the people that remove the
15 carts from the parking lot, from the buggy
16 returns and ---

17 A. (Affirmative nod).

18 Q. --- take them back in, can we just call
19 those cart attendants?

20 A. Cart attendants, (affirmative nod).

21 Q. I don't know what the term of art is,
22 but I'll call them cart attendants.

23 A. That's exactly what they are.

24 Q. All right, good deal. We're on the
25 same page. Is it important make sure the cart

1 attendants are on the lookout for dangers when
2 they go to get the carts and bring them back in?

3 A. Yes.

4 Q. Is it important to make sure they're
5 alerted and they're on the lookout and they're
6 scanning for items when they retrieve the parts?

7 A. Yes.

8 Q. Okay. Is it important that those cart
9 attendants do routine safety sweeps and scan the
10 lot?

11 A. As they walk out and get carts they are
12 told to look for any major debris or anything
13 like that, that would be in the way of the guest.

14 Q. Okay. And they should do that on a
15 regular basis, shouldn't they?

16 A. Yeah, when we have to get the carts in.
17 Yes, sir.

18 Q. Would it be accepted as someone who is
19 in a managerial position, would it be acceptable
20 for a cart attendant to go out, later return, see
21 a hazard, ignore it and bring the carts back in.
22 Would that be acceptable?

23 A. No. We would expect to be told.

24 Q. Okay. And if it were a bolt or a nail
25 that could injure someone; is that right?

1 A. Yes. If it was something that may
2 cause harm, they should tell us.

3 Q. How often does Target actually check
4 the parking lot for dangers?

5 A. Well, as all of our team members when
6 they walk in and out of the store, as leaders as
7 well, if they see anything that would raise
8 suspicion, they will tell a leader. And when our
9 cart attendants go out to get carts, they keep an
10 eyeball out for, you know, those sort of things
11 as well.

12 Q. Okay. So is that every hour?

13 A. It's throughout the day.

14 Q. Okay. So is it safe to say that
15 happens once an hour?

16 A. I would say that we have somebody out-
17 side at least an hour, every two hours, depending
18 on our business.

19 Q. Okay. Does security walk the parking
20 lot on an hourly basis?

21 A. No, sir, not on an hourly basis.

22 Q. Okay. How often do they walk the
23 parking lot?

24 A. I don't know if we have a specific time
25 that we require them to be out in the parking

1 lot. But when necessary for them to go outside,
2 they do.

3 Q. All right. Now, the cart attendants
4 that are supposed to be checking for hazards,
5 checking things, to scan the parking lot, where
6 is the chart where that's kept track of? How do
7 you keep track and make sure that's done every
8 done every day?

9 A. There's no way to track. They just --
10 their main job is to get the carts out of the
11 parking lot. So as they get the carts out of the
12 parking lot if they see something they would tell
13 us. There's no -- at this hour it was free. At
14 this hour -- there's no track of that.

15 Q. Now, y'all don't keep a chart or keep
16 any kind of track to make sure of dangers?

17 A. No, sir. Nothing officially on paper
18 besides our routinely sweeps and cleans and
19 whatnot, but not with our cart attendants.

20 Q. Okay. Yeah. But the reason I've asked
21 I've seen maybe at a Wendy's or something like
22 that, you'll see on the back of the door there'll
23 be initials, times ---

24 A. Yes, sir. In our restrooms we do
25 something like that but not for outside.

1 Q. Nothing in the parking lot where the
2 trash and debris would be?

3 A. No, sir. Not from a cart attendant's
4 stance.

5 Q. Okay. Is it safe to say that the --
6 well, let me back up for a minute. You work at
7 a different store now, I think; right?

8 A. Yes, sir.

9 Q. Okay. How long did you work for the
10 Anderson store on Clemson Boulevard?

11 A. It was right at two years.

12 Q. Okay. Did you work there up until --
13 well, when did you leave, just an estimate?

14 A. It was maybe March of this year.

15 Q. All right. Is it safe to say that the
16 store remains in reasonably clean condition?

17 A. Yes, sir. That is our duty to keep it
18 clean.

19 Q. Okay. And it would be important to
20 remove -- if there were big amounts of trash or
21 large amount of debris, it would be important to
22 remove it?

23 A. As long as we were notified of them in
24 a certain manner.

25 Q. Okay. I'm going to show you a photo-

1 graph.

2 A. Okay.

3 Q. I want you to tell me if that appears
4 to be outside the Target store in Anderson?

5 A. From what I can tell, yes, sir, that's
6 outside our store.

7 Q. Okay. Does that reasonably depict the
8 area outside the store when you walk out to the
9 right where the buggy return is?

10 A. That is to the right. Yes, sir.

11 MR. HAWKINS: Your Honor, I move to
12 have this admitted.

13 MR. HAYNSWORTH: May we approach,
14 Judge.

15 THE COURT: Yes.

16 (OFF RECORD BENCH CONFERENCE)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. HAWKINS:

19 Q. Ms. Brintnall, this picture was taken
20 by my client outside the Anderson store.

21 MR. HAYNSWORTH: Objection, Your
22 Honor.

23 (OFF RECORD BENCH CONFERENCE)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. HAWKINS:

1 Q. Ms. Brintnall, we're going to wait and
2 bring this picture in later, okay?

3 A. Okay.

4 Q. Ms. Brintnall, how often is the parking
5 lot cleaned thoroughly? How often does someone
6 come in and clean the parking lot?

7 A. Once a week.

8 Q. Okay. When I asked in your deposition,
9 you weren't sure about that.

10 A. No, sir, I was not a hundred percent
11 sure.

12 Q. When did you learn that information?

13 A. After discussing with John, you know,
14 our routinely cleaning of our parking lot, I was
15 told that it comes in once a week to sweep the
16 parking lot.

17 Q. And I took your deposition a good while
18 after the lawsuit was filed?

19 A. Yes, sir.

20 Q. And so you knew you were coming to
21 testify about what happened; right?

22 A. Yes.

23 Q. Okay. So did no one in Target or John
24 or someone say, 'hey, we need to talk to you
25 about safety.' Did nobody try to make sure you

1 were knowledgeable about that before you
2 testified?

3 A. No. I was told to come talk about what
4 happened and be honest and that's what we talked
5 about.

6 Q. All right. So nobody prepared you or
7 went over any cleaning records or anything like
8 that?

9 A. Not before my deposition. No, sir.

10 Q. All right. Do you remember May 21st of
11 2014?

12 A. Yes. Parts of it. Yes, sir.

13 Q. Okay. Who made sure the parking lot
14 was cleaned or swept before Denise was injured?

15 A. So the responsibility of -- I guess it
16 falls on the shoulders of our PMT to make sure
17 that they do get those routine sweeps in. But it
18 also falls on us as leaders, you know. That if I
19 was notified of a needle in the parking lot that
20 it would be my duty to pick that up. So there's
21 multiple people that would be responsible for
22 keeping our store brand.

23 Q. Okay. Is there a record anywhere of
24 any kind that someone did a routine safety sweep
25 within an hour of Denise being injured?

1 A. Within an hour? No, sir.

2 Q. Two hours?

3 A. No. There is no record. Like I said,
4 there's no record where we go outside and walk
5 the parking lot. We don't sign off. There's no
6 record of that.

7 Q. Three hours?

8 A. No, sir. There's no record probably of
9 that day, besides where John might have done the
10 brand walk that morning. You know, but not
11 within the last three, four or five hours of my
12 closing shift.

13 Q. And this happened about 7:30; is that
14 right?

15 A. It was dark.

16 Q. Okay. Does John leave at 2:30 every
17 day?

18 A. He works the morning shift; yes, sir.

19 Q. So at the very latest is there -- you
20 say a five-hour gap between the time anyone would
21 have created a record of a safety sweep and when
22 Denise got in?

23 A. Yes. There would be maybe a record but
24 there'd still be people outside walking the
25 parking lot potentially.

1 Q. No cart attendants did any safety
2 sweeps or anything like that in a five-hour
3 period?

4 A. There's no such thing as a safety
5 sweep. They walk outside, they get carts. If
6 they see something, they let us know, pick it up,
7 clean up the trash, whatever it may be. But
8 there's no quote, unquote, "safety sweep" that
9 they do where they walk through the parking lot
10 in depth every hour.

11 Q. Target doesn't make them do that?

12 A. No, sir.

13 Q. Now, you talked about this a little
14 before. Are there any logs? You said there are
15 no routine safety sweeps that people initial. Do
16 you make the cart attendants enter anything into
17 a computer or in any way ---

18 A. No, sir.

19 Q. --- to try to make sure the parking lot
20 is safe?

21 A. No, sir. They enter nothing -- no sort
22 of logs for them.

23 Q. How do y'all keep up with it if
24 nobody's writing that down or entering anything
25 into a system?

1 A. We walk in and out of that building
2 every single day. So we see -- you know, we
3 would see if there was anything majorly that
4 needed to be done.

5 And as part of John's duties, he walks the
6 exterior building as well. I'm not a hundred
7 percent sure of how often he is supposed to do
8 that, but it is something that John does.

9 Q. Okay. Do you recall in your deposition
10 I asked do you think it's -- I think you said
11 "...if somebody were to walk past it, I believe
12 they would have pointed it out and gotten it up."
13 Do you recall that?

14 A. I don't recall saying that but I still
15 stand by that. If somebody would have let us
16 know, we could have gotten it up.

17 Q. So if somebody would have walked by the
18 needle and seen it, it could have prevented the
19 danger; that's what I'm asking.

20 A. Correct.

21 Q. Okay. How many times at the point
22 where I took your deposition, January of 2015,
23 I think, at that point you had been working for
24 Target about a year?

25 A. Yes, sir.

1 Q. Okay. In that first year how many
2 times did you actually see a truck come and clean
3 the parking lot?

4 A. I'd only seen it maybe once because --
5 I'm pretty sure they come Thursdays and
6 Thursdays, which is not my closing night. So I
7 would not have seen it.

8 Q. Okay. Do you recall testifying that
9 you can't verify anything you don't have video
10 evidence of?

11 A. I'm sorry. Can you repeat that?

12 Q. Yeah. Do you recall on page thirty-
13 five of your deposition that you can't verify
14 anything you don't see or have video evidence of?

15 A. I can't personally testify for
16 something that I don't see or have evidence of.

17 Q. Right. And so do you watch any or roll
18 back any surveillance footage to make sure the
19 cleaning truck came?

20 A. No, sir.

21 Q. How do you know it comes each week if
22 you don't see it normally and you don't play any
23 footage?

24 A. Because after you walk into Target for
25 a certain amount of times you can see the, you

1 know, the debris that collect. And then you come
2 in and they're gone. So, you know, I can --
3 it's a pattern that you see.

4 Q. Okay. Do you have any idea how much or
5 what percentage of debris that truck picks up?
6 Do you know?

7 A. No, sir.

8 Q. As someone that's often in a managerial
9 position and somewhat in charge of the store for
10 hours at a time, wouldn't it be important for
11 Target to make sure you know how much trash is
12 removed when the cleaning truck comes?

13 A. I don't think that would be considered
14 my responsibility to know what percentage of the
15 trash that the truck picks up. No, sir.

16 Q. Whose responsibility would that be?

17 A. Potentially -- I do not know. I do not
18 know whose responsibility that would be. But
19 it's not put on mine; on my responsibility.

20 Q. And again, it's not -- I know you're
21 not a defendant. Target's a defendant and you're
22 the only one, you and Mr. Jackson I can ask
23 questions of.

24 A. Yeah.

25 Q. That's the reason I'm asking these?

1 A. No, that's fine.

2 Q. I'm not trying to put you in a --
3 (pause). And I think you testified before you
4 don't review any cleaning records. You don't do
5 anything with paper to make sure the cleaning is
6 done; right?

7 A. No, sir. It does not fall under my job
8 duties.

9 Q. Did a guy named Tyler Hammer call you
10 about this?

11 A. No, sir. I do not believe so.

12 Q. Do you know who Tyler Hammer is?

13 A. I do not know a Tyler Hammer.

14 Q. Okay. He ended up calling asking you
15 questions about what happened or if the parking
16 lot was clean or anything like that? If the
17 answer is no, that's fine.

18 A. Yeah. I can't recall a Tyler Hammer.
19 I don't know who that is.

20 Q. Good enough. Now, we would agree that
21 -- we agree that Target sells merchandise
22 intended for children and mothers?

23 A. Yes, sir.

24 Q. All right. Is it fair to say that
25 hundreds if not thousands of mothers come to

1 Target each day?

2 A. Yes, sir.

3 MR. HAWKINS: May we approach, Your
4 Honor?

5 THE COURT: Yes, sir.

6 (OFF RECORD BENCH CONFERENCE)

7 MR. HAWKINS: Do you want me to admit
8 this now, Judge or go ahead?

9 THE COURT: Either way.

10 MR. HAWKINS: I just need it marked.

11 (SO MARKED AS PLAINTIFF'S EXHIBIT 1)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HAWKINS:

14 Q. I'm going to show you something that we
15 printed off, I think yesterday. Have you ever
16 seen this?

17 A. I have not but it looks like a Target
18 webpage.

19 Q. Okay. All right. Is it fair to say
20 that -- and I'm just going to use this as an
21 example?

22 A. Okay.

23 Q. Is it fair to say that Target regularly
24 advertises and encourages mothers to come to the
25 store?

1 A. Absolutely.

2 Q. And Target understands that mothers, to
3 buy things like this baby seat would bring their
4 children with them?

5 A. Yes, sir.

6 Q. And Target understands that because
7 children can be coming to the store with their
8 mother, they should keep debris and dangerous
9 trash off the parking lot. We agreed on that
10 earlier; right?

11 A. Yes.

12 Q. Okay. All right. I want to talk to
13 you about another document that I don't think
14 anybody's going to have an issue with, a Guest
15 Incident Report?

16 A. Yes, sir.

17 THE COURT: Let it be clear where we
18 are on the record here. Did you put that in?

19 MR. HAWKINS: I'm about to, Your
20 Honor.

21 (SO MARKED AS PLAINTIFF'S EXHIBIT 2)

22 MR. HAWKINS: Any objection?

23 MR. HAYNSWORTH: Guest incident
24 report, no.

25 MR. HAWKINS: If we could have this

1 admitted and marked?

2 THE COURT: Okay. But did you put
3 the Target ad in, is what I'm asking?

4 MR. HAWKINS: Yes, Your Honor. It's
5 marked.

6 THE COURT: Okay.

7 MR. HAYNSWORTH: I don't know if he
8 introduced it. It's without objection.

9 THE COURT: Okay. It's without
10 objection.

11 (SO ENTERED AS PLAINTIFF'S EXHIBIT 1)

12 THE COURT: Okay. You're putting in
13 Number 2?

14 MR. HAWKINS: Yes, Your Honor.

15 THE COURT: Any objection to Number
16 2?

17 MR. HAYNSWORTH: No, sir, Your
18 Honor.

19 THE COURT: Okay.

20 (SO ENTERED AS PLAINTIFF'S EXHIBIT 2)

21 DIRECT EXAMINATION CONTINUED

22 BY MR. HAWKINS:

23 Q. Ms. Brintnall, this guest incident
24 report, can you tell the jury what this is, why
25 it's generated?

1 A. Yeah. So when I'm the leader on duty
2 if an incident was to happen in our store,
3 whether you dropped a can of tomatoes on your toe
4 or, you know, something like that happens, we
5 would fill out a guest incident report so that we
6 have a record of it as well as the guest that,
7 whatever happened to them has record of it as
8 well. There's different questions that they ask
9 me to fill out: name, address and then kind of
10 describe what happened.

11 Q. Good. And on this handwriting, is this
12 your handwriting with Denise's signature?

13 A. I think I did fill out the whole thing.

14 Q. Here, (tendering). I'll let you look
15 at it and you tell me.

16 A. (Upon review), yes, sir. Except for
17 her signature, of course.

18 Q. Now, one of the notes on the guest
19 incident report it says was the floor or ground
20 clean and you marked "no." Is that right?

21 A. Yes, sir.

22 Q. And I'll show you another picture.
23 You've seen this before your deposition. This
24 was taken by Denise. Do you recognize this
25 picture?

1 A. Yes, sir.

2 Q. And is that the syringe from the May
3 21st, 2014, the alleged injury?

4 A. Yes.

5 Q. And is that your curb at Target?

6 A. Yes.

7 Q. Okay. You've seen the picture.

8 MR. HAWKINS: Any objection?

9 MR. HAYNSWORTH: No, sir.

10 THE COURT: Without objection.

11 (SO MARKED AS PLAINTIFF'S EXHIBIT 3)

12 (SO ENTERED AS PLAINTIFF'S EXHIBIT 3)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. HAWKINS:

15 Q. Again, as is the ground clean and you
16 marked no. And would that be consistent with
17 this needle and the other trash and debris in the
18 photograph?

19 A. Correct. I would not consider that
20 clean at that moment.

21 Q. Okay. Do you see this discoloration on
22 the twine right here?

23 A. Yes.

24 Q. Well, do you see where it's white here?

25 A. Yes.

1 Q. And it's black here?

2 A. Yes.

3 Q. Okay. Do you know, do you have any
4 idea if maybe that'd been run over or something?

5 A. I couldn't tell you. I'm not sure.

6 Q. Okay. And it looks like -- do you see
7 right here where the plunger -- it looks like
8 that end is broken off a little bit?

9 A. Yes, sir. I see that.

10 Q. Do you see the pings here from laying
11 on the asphalt?

12 A. Pings?

13 Q. Yeah. Yeah. The little divots right
14 there and right there, and then some grime right
15 here. Do you see that?

16 A. (Affirmative nod).

17 Q. I think Knox has got a bigger picture.
18 We'll look at that in a minute. But do you see
19 what I'm talking about?

20 A. Yes. I fairly remember the state of
21 the needle.

22 Q. Okay. Okay. And to use your words
23 when you saw the needle it was "dirty, dingy, and
24 gross"; is that right? In your deposition.

25 A. It was dirty and dingy. Yes, sir.

1 Q. All right. And so you could tell that
2 nobody had dropped it out a package five minutes
3 ago; right?

4 A. I can't say for sure whether it has
5 been dropped out. I don't know when it was
6 dropped, unfortunately.

7 Q. Well, does it look like something that
8 just came out of a package?

9 A. No.

10 Q. Looks like something that's been laying
11 on the ground a while?

12 A. It looks like it's hard some wear on
13 it.

14 Q. Okay. We go down -- we see the
15 incident happened -- it's marked 7:58, so I'm
16 guessing the incident happened some time before
17 that?

18 A. Yes, sir.

19 Q. Okay. And location of the incident you
20 have "parking lot, right side." So I guess if
21 you were coming out of Target, you would go that
22 way?

23 A. Yes, sir.

24 Q. Because if you're looking at Target ---

25 A. At Target, it would be left, yes.

1 Q. And I'm going to read, and you tell me
2 if this is wrong. This is your comments here.
3 It says, (reading): "Guest's daughter picked up
4 needle. Carla's first reaction was to smack the
5 needle out of her hand. And when she did it
6 stuck, it stuck her in the right hand." Did you
7 write that?

8 A. Yes, sir.

9 Q. Okay.

10 A. My word for needle should have been
11 hypodermic due to the fact there was no needle,
12 but ---

13 Q. But it says needle, right?

14 A. Yes. But if you keep going, I let you
15 know that there was no needle actually on the
16 hypo.

17 Q. Yes. Down here it says -- actually,
18 you know what? I think it may say that on the
19 LOD report because I don't see it on here.

20 A. Okay. Yeah, that might have been the
21 LOD investigation.

22 Q. Okay. Fine. I wanted to make sure I
23 wasn't putting words in your mouth.

24 A. Yeah.

25 Q. Okay. Is it important -- I think you

1 said in your deposition you asked lots of
2 questions?

3 A. Yes, sir.

4 Q. Is it fair to say that you wrote down
5 all the pertinent and important information?

6 A. Between the two reports.

7 Q. At that time?

8 A. Yes.

9 Q. So you wrote that on the report at that
10 time when you took that?

11 A. Yes.

12 Q. Is there any indication on here that
13 you doubted anything Denise said?

14 A. On my LOD investigation report I say
15 that I did not physically see any needle. So
16 that was me, you know, stating -- I can't say for
17 sure she got stuck. I did not see a needle.

18 Q. Right.

19 A. I write down what the guest tells me
20 happened. So if you ask what did the guest say
21 or something like that, I write down what the
22 guest reported happened. And then I do my LOD
23 investigation where I follow up and I, you know,
24 I look and see what happened and insert in my
25 comments.

1 Q. Right. Okay. And we're going to talk
2 about the LOD in just a second.

3 A. Okay.

4 Q. We'll talk about that in detail.

5 A. Yes, sir.

6 Q. I want to make sure we cover this so we
7 can put it down and not have to fool with it.

8 A. Yes, sir.

9 Q. It says the needle was on the ground.
10 Is that in your handwriting?

11 A. Yes, sir.

12 Q. "Was an object involved? Yes."
13 And then you say, yes, described the item in
14 detail. It says "a needle"?

15 A. Yes.

16 Q. It doesn't say a hypodermic missing the
17 syringe or anything like that?

18 A. No, it does not.

19 Q. Okay. And for what happened where it
20 says, 'Were you injured?' You're filling it out
21 for her?

22 A. Correct.

23 Q. And it's really third person. It says
24 "needle stuck Carla in right hand." Because you
25 wrote this, is there any note on here or anything

1 that I'm missing that says 'I don't think she
2 really got stuck or I didn't see a puncture
3 wound' or anything like that?

4 A. On that document?

5 Q. Yes?

6 A. No, sir. Because that's coming from
7 exactly what she tells me happened.

8 Q. Okay. And, in fact, all it says on
9 this incident is -- tell me if you agree with
10 this -- she got stuck in the parking lot by a
11 needle in the parking lot, stuck in the right
12 hand. Does that pretty much sum up this
13 document?

14 A. Yes.

15 Q. Is this the LOD report you generated?

16 A. Yes, sir.

17 Q. Okay. Is that your signature down at
18 the bottom?

19 A. It is.

20 THE COURT: Let me see the lawyers,
21 please?

22 (OFF RECORD BENCH CONFERENCE)

23 THE COURT: Madam Forelady and
24 ladies and gentlemen of the jury, I've conferred
25 with the lawyers. I understand that he's going

1 to have a series of questions on this document
2 before he proceeds to other places. You've been
3 sitting for some period of time now, so we're
4 going to take a break. We're going to take a
5 good fifteen minute break or so, so you can
6 refresh yourselves, get some water, get some
7 coffee, whatever you might need to do and stretch
8 your legs.

9 I forgot to tell you earlier that I
10 stand a lot and if you are on the jury and you
11 would like to stand some during this trial, you
12 may do so. Please sit on the very back row,
13 though. Don't block a fellow juror.

14 I stand a lot just simply because I
15 don't like to sit in that chair. That's just me,
16 I can't be still.

17 But anyway, having said that, Madam
18 Forelady, ladies and gentlemen, do not talk about
19 the case. It's certainly not at an end. It's
20 just getting started. Don't discuss the case --
21 besides you're here at work and you don't want to
22 talk about work on your break.

23 So Madam Forelady if you'd take your
24 jury out. Be back in here, we're going to be
25 back at about ten after the hour.

1 (JURY OUT @ 3:49 P.M.)

2 THE COURT: Ma'am, you may leave the
3 witness stand. You can't talk to anyone about
4 your case but use the facilities, get a drink of
5 water, get some coffee if you'd like. And about
6 eight minutes after the hour if you'd have a seat
7 right there we'll start at ten after.

8 WITNESS: Yes, sir.

9 THE COURT: Thank you. Let's be in
10 recess until about ten after.

11 (WITNESS STEPS DOWN)

12 (BRIEF RECESS)

13 (WITNESS BRITNALL RESUMES WITNESS STAND)

14 (JURY IN @ 4:09 P.M.)

15 THE COURT: Madam Forelady, any
16 matters for the jury?

17 FORELADY: No, sir.

18 THE COURT: Everybody's good?

19 MADAM FORELADY: Yes, sir.

20 THE COURT: All right. Yes, sir?

21 MR.. HAWKINS: Thank you, Your Honor.

22 DIRECT EXAMINATION RESUMED

23 BY MR. HAWKINS:

24 Q. Ms. Brintnall, I showed you a picture a
25 minute ago that one of the plaintiffs, Denise

1 took that picture on May 21st 2014. You remember
2 her doing that because you were with her when she
3 took the picture?

4 A. I remember taking the picture myself.
5 I don't remember her taking a picture.

6 Q. Okay.

7 A. But I remember I took a picture myself.

8 Q. Okay.

9 A. That looked just like that.

10 Q. Okay. Where are those pictures?

11 A. I have -- I sent the one picture
12 through to corporate, that Knox had as well.

13 Q. Okay. Well, maybe there's some
14 confusion here because the pictures we have all
15 came from Denise's cell phone and I thought we
16 never got any pictures that Target took. So are
17 you telling me the picture I showed you was the
18 one that you took?

19 A. Yes. I took a picture on -- there was
20 a picture taken by -- to be honest, I'm not a
21 hundred percent sure. But I don't remember her
22 taking one. This is what I don't remember.

23 Q. Okay. All right. Well, I want to show
24 you a picture that I know one of the plaintiffs
25 took on 4/29.

1 MR. HAWKINS: And, Your Honor, I
2 actually don't think this is going to draw an
3 objection.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. HAWKINS:

6 Q. But I want you to tell me does this
7 depict the general area where the injury took
8 place. It's the middle buggy rack, I believe,
9 outside of the Anderson store, your description,
10 the right-hand side?

11 A. On the right-hand side, not the first
12 buggy rack, but the next buggy rack?

13 Q. Sure. Right. Exactly.

14 A. Yes.

15 Q. Okay.

16 A. But I feel like it happened further up
17 this way.

18 Q. Maybe in one of these parking spots?

19 A. Up to the left of that photo.

20 Q. Okay. All right. Is this the general
21 area of the parking lot? I mean, is this the
22 parking lot?

23 A. It's the right -- left-hand side, yes.

24 MR. HAWKINS: Your Honor, I'd move to
25 have this admitted. It's nothing. I don't think

1 it's ---

2 MR. HAYNSWORTH: Can we approach,
3 Your Honor?

4 THE COURT: Yes.

5 (OFF RECORD BENCH CONFERENCE)

6 MR. HAWKINS: Your Honor, I move to
7 have this admitted into evidence.

8 MR. HAYNSWORTH: No objection, Your
9 Honor.

10 THE COURT: It's admitted without
11 objection.

12 (SO ENTERED AS PLAINTIFF'S EXHIBIT 4)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. HAWKINS:

15 Q. Ms. Brintnall, for the jury, point to
16 me if you could to where you -- and I know it was
17 two years ago, two and a half almost, the parking
18 spot here and every so often until the other
19 buggy return, where do you remember it being
20 close -- was it on this side of the buggy rack or
21 on that side of the buggy rack?

22 A. From what I remember it was on the left
23 side of the buggy rack, close to the door near
24 like the side and stuff.

25 Q. Okay. So we can agree that from your

1 recollection it was between -- and we've got
2 pictures of the other buggy rack.

3 A. Okay.

4 Q. It was between this buggy rack and the
5 one over here closer to the entrance?

6 A. Yes, sir.

7 Q. Okay. All right. I've got a couple of
8 other things I want to show you. And this one
9 actually shows more of the area, a little closer
10 up. Does that look like -- it's kind of fallen
11 off right here. But is that in the same area,
12 the same buggy rack?

13 A. That's hard to tell because I don't
14 have much wider of a ---

15 Q. Right. Well, I've got a bunch of them.
16 I can ---

17 A. So -- but that was not the same one as
18 you just showed me?

19 Q. Yeah. That's the middle buggy rack.
20 It's a different angle. And here you see the
21 grass in the foreground?

22 A. Yes.

23 Q. Okay. So that's the middle buggy rack
24 from a different angle outside of target?

25 A. I can't say it for sure because it's so

1 zoomed in. I don't know a hundred percent. I
2 can't remember in Anderson if there's any other
3 buggy racks with grass.

4 Q. Okay. Okay. And I can wait on that
5 one if I need to.

6 A. Okay.

7 Q. This one's zoomed out so can you tell
8 that is ---

9 A. Yes. That one I can.

10 Q. You can tell that's on the side ---

11 A. That's on the side of our building.
12 Yes, sir.

13 Q. Okay. All right.

14 MR. HAWKINS: Your Honor, I move to
15 admit this one and I'll wait on this one.

16 MR. HAYNSWORTH: That's without
17 objection.

18 (SO MARKED AS PLAINTIFF'S EXHIBIT 5)

19 MR. HAYNSWORTH: No objection, Your
20 Honor.

21 THE COURT: Okay. You moving that
22 into evidence? Are you moving that into
23 evidence?

24 MR. HAWKINS: Yes, Your Honor. I move
25 to have this admitted as 5.

1 THE COURT: It's without objection.
2 (SO ENTERED AS PLAINTIFF'S EXHIBIT 5)
3 MR. HAYNSWORTH: Is that 5?
4 MR. HAWKINS: I think so.
5 COURT REPORTER: Plaintiff's Exhibit
6 5, Your Honor.
7 THE COURT: Number 5.
8 DIRECT EXAMINATION CONTINUED
9 BY MR. HAWKINS:
10 Q. All right. Back to the LOD?
11 A. Okay.
12 Q. I'm jumping around a little bit.
13 A. That's okay.
14 Q. We went over this a little bit. But
15 you said this is all your writing and these are
16 all your Xs and marks?
17 A. Yes, sir.
18 Q. Anybody else contribute to this
19 document, other than you?
20 A. No, sir.
21 Q. I said that poorly. Did anybody else
22 help fill out this document except you?
23 A. No. I was LOD, so it's my
24 responsibility to fill that out.
25 Q. All right. So 7:58 was the time of the

1 guest incident report; right?

2 A. Yes, sir.

3 Q. And the time that was completed was
4 9:40. Does that sound right?

5 A. Yes, if that's what time I dated it.

6 Q. So is this -- I want to make sure I
7 understand the chronology of how this works.
8 There's an incident. Somebody's injured, a
9 customer's injured and reports it to you, or
10 someone at the store. You fill out the document,
11 the guest incident report with them sitting right
12 there?

13 A. With the guest. Yes, sir.

14 Q. They leave and then in your office
15 probably you fill this document out?

16 A. Yes.

17 Q. Okay. Denise is gone by this point?

18 A. Yes.

19 Q. Okay. And so it seems a little bit
20 redundant. Why is there a need for two different
21 documents on this, one while the guest is there
22 and then one when the injured customer leaves?

23 A. So Target wants us to do some further
24 investigation. And then also if we do not, you
25 know, necessarily agree or if something else

1 happened, we don't want to do that in front of
2 the guest.

3 Q. Okay. All right. So if the guest says
4 something and you disagree with it you put it on
5 this while they are there.

6 A. That's my opportunity to dispute it.

7 Q. Right. And if you doubted something
8 the guest said you would put it in here?

9 A. Yes, sir.

10 Q. Anywhere on this document, I'll hand it
11 to you, does it say, 'I don't think the guest was
12 punctured' or 'I didn't see a puncture wound' or
13 anything like that?

14 A. No, sir. The only thing I wrote is
15 that I did not see the needle. It was missing
16 the actual needle.

17 Q. Okay. And if you doubted something the
18 injured customer said, if you thought that it was
19 not a puncture wound, that would be pretty
20 important information, wouldn't it?

21 A. Yes.

22 Q. Okay. So if you doubted what she said
23 you would write that on here, wouldn't you?

24 A. I would.

25 Q. Okay. And you didn't write on here

1 anything indicating you doubted she had a
2 puncture wound?

3 A. Well, I said that there was no needle.

4 Q. Right.

5 A. I did not include in that paper that I
6 doubted she got stuck.

7 Q. Okay. And I asked you in your
8 deposition do you have any reason to doubt what
9 Denise told you. Do you remember your answer?

10 A. I probably said no. I don't have any
11 reason to doubt it.

12 Q. Right. Right.

13 A. Yeah.

14 Q. Okay. So I just want to nail down that
15 everybody's on the same page, that there's no
16 dispute as to whether she suffered a needle stick
17 injury.

18 A. I did not see a needle stick. I saw no
19 blood. I can't ---

20 Q. Right.

21 A. --- say for sure if she got stuck by a
22 needle. I wrote down what she told me she had,
23 because I didn't have any reason to believe that
24 she was lying to me.

25 Q. Right.

1 A. So that is what I wrote down but I
2 can't physically say that I saw something that I
3 didn't see.

4 Q. I understand. I understand. You wrote
5 down here "guest seemed worried." Is that right?
6 Is that accurate?

7 A. Yes, sir. She was.

8 Q. So your overall observations were, "I
9 spoke with a guest and she said she was in the
10 parking lot and her daughter picked up the needle
11 out of the parking lot. She smacked it out of
12 her hand and then it stuck. We got the needle
13 out of the parking lot, it was missing the actual
14 needle." Is that the point you're talking about
15 where there was no needle?

16 A. Correct.

17 Q. Who is Nick Brooks?

18 A. He was the cart attendant that evening.

19 Q. And it looks like from this document,
20 and you can tell me if I'm wrong, it says --
21 lists team members that were assigned to perform
22 the duties to this department. And that's Nick
23 Brooks. Is it fair and accurate to say Nick
24 Brooks was the cart attendant responsible for
25 that area?

1 A. Yes. He's responsible for the entire
2 parking lot, to get the carts inside.

3 Q. Okay. And did Target bring him to
4 testify today or to explain why a needle was in
5 the parking lot?

6 A. They did not.

7 Q. Okay. Do you know where he is now or
8 why Target didn't bring him here?

9 A. I do not know.

10 Q. Is there any note on this document or
11 on the guest incident report that a routine
12 safety sweep was completed before Denise was
13 hurt?

14 A. No.

15 Q. Okay. That would be important
16 information to put on these documents if it
17 happened; wouldn't it?

18 A. Correct.

19 Q. And it says that if any member, in this
20 case, Nick Brooks, had been in that area for the
21 past thirty minutes -- let me make sure I'm right
22 -- past half hour, they would fill out a report.
23 They would fill out a witness statement; is that
24 right?

25 A. I think so. I'm not a hundred percent

1 sure what the wording is.

2 Q. That one right there?

3 A. (Upon review), it's marked. Yes.

4 Q. Okay. Okay. So we agree that Nick
5 wasn't in the area for at least thirty minutes
6 prior?

7 A. Correct.

8 Q. Okay. Was he still at work at this
9 time?

10 A. I'm not sure. I don't remember.

11 Q. Was he cut early? Did y'all let him go
12 home early before 7:30 when she was hurt?

13 A. I don't remember. I don't remember his
14 schedule for the day.

15 Q. Okay. Did Target bring any records or
16 anything to verify that he was still there to do
17 routine safety sweeps?

18 A. No, sir.

19 Q. And it says -- I don't mean to invade
20 your personal space, but while I'm up here I'll
21 go through these boxes.

22 A. You're fine.

23 Q. It says a team member who cleaned the
24 floor or ground. I guess it's asking had a team
25 member cleaned that area; right?

- 1 A. It's asking if the team member was the
2 first one to respond, did they clean the ground.
- 3 Q. Okay.
- 4 A. So that's the team member in that area?
- 5 Q. Okay. And that's marked no?
- 6 A. Correct.
- 7 Q. Okay. So the ground wasn't cleaned?
- 8 A. But that would have been if they would
9 have cleaned up this incident. That's not just
10 in general.
- 11 Q. Like a spill?
- 12 A. Correct.
- 13 Q. Got you.
- 14 A. Like a spill.
- 15 Q. Okay. And it says here needle was
16 found in the parking lot. No other notes or
17 anything to go along with that; right?
- 18 A. Correct.
- 19 Q. Okay. And it says she was -- I think I
20 had mentioned this before, said she was worried?
- 21 A. Yes.
- 22 Q. Okay. So the only indications on here
23 are that there was a needle in the parking lot
24 that injured a customer and that she was worried?
- 25 A. Correct.

1 Q. And even after she left, even after she
2 was gone, you didn't write any notes down about
3 doubting anything she said, or 'I didn't see a
4 puncture wound' or anything like that that led
5 you to believe she was fabricating something.
6 You didn't put any notes about that?

7 A. No. The only thing I mentioned was the
8 lack of the actual needle.

9 Q. Okay.

10 MR. HAWKINS: And I move to have this
11 admitted.

12 MR. HAYNSWORTH: No objection.

13 THE COURT: Without objection.

14 (SO ENTERED AS PLAINTIFF'S EXHIBIT 6)

15 COURT REPORTER: Plaintiff's 6, Your
16 Honor.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. HAWKINS:

20 Q. And again I just want to make sure I'm
21 clear.

22 A. Yes, sir.

23 Q. There's no -- I think I know your
24 answer from your earlier testimony. There's no
25 log, no chart, no initials anywhere that show

1 that Nick Brooks did any safety sweeps?

2 A. No, sir.

3 Q. And there's no record that he was still
4 at work?

5 A. There is -- we have timekeeping records
6 but I don't think we have anything with us today.

7 Q. Okay. So as far as this court's
8 concerned, there's no record?

9 A. No, sir.

10 Q. And you don't know where he was when
11 the incident took place, I don't guess. Do you?

12 A. I don't remember.

13 Q. Did you ever think to roll back any
14 video surveillance footage and make sure a
15 safety sweep was completed?

16 A. No, sir. Because this was also found
17 in between a curb and a car. I can't expect my
18 team members to walk between every curb and car
19 every hour.

20 Q. And my question is, and maybe I asked
21 it poorly, did you roll back footage to make sure
22 a safety sweep was completed since a customer was
23 involved in a serious injury?

24 A. I personally did not look at any video
25 or footage of it.

1 Q. Okay. But it's important to make sure
2 those safety sweeps are completed so they don't
3 injure customers; correct?

4 A. Well, there's no such thing as a safety
5 sweep. So our team members get carts out of the
6 parking lot. When they do that, they look for
7 debris or whatnot. We do not have a certain
8 safety sweep. That's not such a thing.

9 Q. Is it your testimony, Ms. Brintnall,
10 that as a Target employee someone in charge of
11 making sure safety sweeps are completed, you
12 don't know what a safety sweep is?

13 A. I don't think I ever use the word
14 safety sweep.

15 Q. Y'all don't use words like routine
16 maintenance and ---

17 A. Yes, correct. Yes, yeah. When they
18 walk through the parking lot they pick up trash,
19 but he's not the team member assigned for a
20 safety sweep every hour. That's not such a
21 thing.

22 Q. Well, what should we call it so I don't
23 ask poor questions?

24 A. There are team members that go outside
25 and retrieve buggies from the parking lot. When

1 they retrieve these buggies they look at the
2 general area and if they see anything that needs
3 to be noted, they would tell us. They would pick
4 up any large debris, anything like that. There's
5 not, unfortunately a short term for it. When
6 they're getting carts maybe.

7 Q. Okay. All right. For however long
8 that happens to be. Well, let me give you a
9 hypothetical to say that they only need to get
10 carts once every five hours. Who's doing -- I
11 going to call it a routine safety sweep.

12 A. Okay.

13 Q. Who's doing that in that five-hour
14 period to make sure customers aren't hurt.

15 A. Well, there is no -- we don't have a
16 set time that we go out and walk the parking lot.
17 We just -- I don't have ---

18 Q. Nor do you have a policy in place for
19 that?

20 A. Correct, not to walk out there every
21 hour. But we do have measures in place to make
22 sure our parking lot are -- you know, when John
23 walks the building in the morning. And, you
24 know, our cart attendants go out there every so
25 often. But no, not every living moment we're

1 open do we walk the parking lot.

2 Q. Well, just every hour does someone go
3 into the parking lot?

4 A. No.

5 Q. How much time elapsed between -- I call
6 it a routine safety sweep. How much time elapsed
7 between when someone checked the boundary of the
8 parking lot and the needle was actually cleaned
9 up? So that would be up to the time Mrs.
10 Garrison was injured, the time it laid out and
11 the time y'all walked back out there. How much
12 time elapsed?

13 A. I'm sorry. From the time that we saw
14 it and the time we walked back out there?

15 Q. No. Just how much time elapsed between
16 the last time somebody checked the boundaries,
17 okay? Checked for debris and the time the needle
18 was actually cleaned up?

19 A. I can't say. I'm not a hundred percent
20 sure. I can't say.

21 Q. But it is a policy that was done
22 routinely and often; isn't it?

23 A. Yes.

24 Q. Okay. Do you know how long it took to
25 -- well, let's just start at the thirty-minute

1 period before the injury occurred.

2 A. Okay.

3 Q. We know that Nick Brooks wasn't in the
4 area for at least thirty minutes, right?

5 A. Yeah.

6 Q. If he was at the store, he wasn't in
7 that area for thirty minutes?

8 A. Correct.

9 Q. Okay. So thirty minutes go by at a
10 minimum. Injury happens. How long did the
11 needle lay out there before y'all went back out
12 there to get it and took pictures of it before
13 somebody picked it up?

14 A. To be honest, I can't remember if me
15 and her sat down and then we went, or if we
16 immediate went back out. I'm not -- I can't --
17 I don't a hundred percent remember what we did.

18 Q. Okay. Was the needle still there when
19 you went back outside?

20 A. Yes.

21 Q. Okay. So at least thirty minutes at a
22 minimum from the time she comes in and talks to
23 you; right?

24 A. Yes.

25 Q. The time it takes to go back out,

1 right?

2 A. Correct.

3 Q. The time y'all were out there taking
4 pictures?

5 A. Yes.

6 Q. And then finally you pick it up?

7 A. Correct.

8 Q. Any evidence of anybody checking for
9 hazards or doing a routine safety scan or sweep
10 during that whole time?

11 A. No. Because I was made aware. I'm the
12 only one -- the only one that can actually get
13 that sort of stuff up. So I was taking care of
14 it.

15 Q. Okay. Are you provided with training
16 on how to deal with biohazards?

17 A. Yes, sir.

18 Q. And you put that in like a hazard box?

19 A. Yes.

20 Q. Okay. So did you put that needle in a
21 hazard box?

22 A. I honestly can't remember what we did
23 with it that night. I know where we ended up
24 finding it. I can't remember where I put it that
25 night, to be honest.

1 Q. Well, now, I submit to you, and I'll go
2 back and find the exact place if you want me to.
3 But I'll submit to you in your deposition you
4 said you put it in a bag and wrote "Do Not Touch"
5 on it.

6 A. Okay.

7 Q. Okay. Does that sound ---

8 A. That sounds reasonable that I would do
9 that.

10 Q. Okay. Why didn't you put it in a
11 hazard box, just a bag?

12 A. I guess I just didn't think of it that
13 way. I didn't want to get it misplaced while --
14 I don't know what to say.

15 Q. How long did it lay in your office
16 before somebody did something with it?

17 A. I don't recall the series with the
18 needle after -- or with the hypo after I spoke
19 with her. That part is fuzzy, as it was two
20 years ago.

21 Q. Yeah. I understand. The reason I'm
22 asking is because the only thing the jury has to
23 go off of is what you tell us.

24 A. Yeah.

25 Q. And it's a dirty needle?

1 A. Correct.

2 Q. It caused a customer injury.

3 A. (No verbal response).

4 Q. So it's important to see what Target
5 did with it to see if they take the injury
6 seriously?

7 A. Yes, sir.

8 Q. But what I want to know is do you have
9 any idea why it didn't go into a hazard box or
10 why somebody didn't ask you 'why isn't this in a
11 hazard box?' Have you got any idea about any of
12 that?

13 A. No, sir. I mean, I don't have a reason
14 why we didn't automatically put it in there. I
15 know that's where it did end up. I can't
16 remember if I was the one that put in there or --
17 I can't remember that.

18 Q. Okay. And is it Michelle Carroll?

19 A. Yes, sir.

20 Q. Did she do something with the needle at
21 some point?

22 A. I don't know. I can't say for sure she
23 did. I can't say she didn't. I don't remember.

24 Q. Right. In your deposition you said
25 that she took it and threw it in the compactor

1 and it's gone. Do you recall that?

2 A. Yeah. And I was wrong. I said I don't
3 remember. For some reason I felt like that was
4 maybe what we did with it. This was also a year
5 later at that point.

6 Q. I understand.

7 A. I couldn't -- we ended up finding it
8 since then, so obviously I was wrong.

9 Q. It's just -- you can understand how
10 important it is Denise ---

11 A. Correct.

12 Q. --- after what happened to her?

13 A. Correct. I can.

14 Q. Why did you write Do Not Touch on the
15 bag?

16 A. It's a hypodermic syringe. I wouldn't
17 want to touch it myself, so ---

18 Q. Is it because it was dangerous?

19 A. It could be if there was a needle on it
20 or it could -- just, it's germs. Germs are
21 dangerous.

22 Q. But if it wasn't a needle on it you
23 wouldn't have had to write Do Not Touch; right?

24 A. Well, I still wouldn't want somebody to
25 touch, you know -- I wouldn't want somebody to

1 touch a cigarette butt or anything out of the
2 parking lot.

3 Q. Well, we all agree that most of the
4 needle appears to be missing when the picture was
5 taken?

6 A. Yes, sir.

7 Q. Do you recall if it was broken up next
8 to the shaft? Do you recall where it was broken
9 or if the whole needle was pulled out or ---

10 A. I don't recall. It's not like it was
11 snapped off or anything. It was pretty much in,
12 you know, intact. But I couldn't see any needle.

13 Q. It was pretty much intact?

14 A. The syringe was.

15 Q. Do you see where the end of the plunger
16 is broken off?

17 A. Yes. But all of this is intact. It's
18 not like it was smashed or anything.

19 Q. Right. Can we agree that that part's
20 broken?

21 A. Yes. The pusher.

22 Q. And you testified earlier that you
23 could tell it had dings in it where it had been
24 run over and all that sort of stuff?

25 A. I don't know if it was run over. I

1 figured it would be smashed if it was run over.

2 But it's dingy.

3 Q. Okay. Yeah. I'm sorry?

4 A. Yes.

5 Q. It had some wear on it?

6 A. Yes.

7 Q. Other than having wear on it, being
8 broken on end, and having dings in it, did it
9 appear to be intact?

10 A. Yes.

11 Q. How did that confusion -- how was there
12 any confusion borne out of what happened with the
13 needle. How did it come to be that you thought
14 it was thrown in the compactor and you found out
15 later it wasn't thrown in the compactor. Was she
16 mistaken? What happened?

17 A.. No. A long period of time passed
18 before we were asked anything with the needle
19 again. And I thought we just disposed of it.
20 But to be honest it is cloudy how we got from the
21 needle in my office to the needle in the sharps
22 container.

23 Q. Okay. Did Target bring Michelle
24 Carroll here to tell the jury why that confusion
25 existed or why she thought she threw it in the

1 compactor?

2 A. Well, Michelle did not think that she
3 threw it away. That was purely confusion on my
4 part.

5 Q. So when you said -- when I said why do
6 you think it was in the compactor, you said
7 because that's what she told me. You were saying
8 you were just mistaken about how you remembered
9 it?

10 A. Yes. I think.

11 Q. Okay.

12 A. I don't remember how it got into the
13 sharps container or what happened after I dealt
14 with Mrs. Garrison.

15 Q. And the reason I keep asking questions
16 about it is because, you know, in your sworn
17 deposition ---

18 A. Yes, sir.

19 Q. --- under oath you said Michelle
20 Carroll told us she threw it in the compactor and
21 it was gone. If that's not true, I just want to
22 nail down for the jury what happened.

23 A. Correct. At the time that was the best
24 memory of what happened to it. Because during
25 that time, I thought that it was gone.

1 Q. Okay. All right. So can we agree that
2 that's the central piece of evidence in this
3 case?

4 A. I guess. Yes.

5 Q. All right. As you know by now -- or
6 I'll just ask you about it. Did the needle turn
7 back up at some point?

8 A. Yes. So we have the needle.

9 Q. We asked for it?

10 A. Yes. And your associate came and took
11 some photos of it.

12 Q. No, back up a second. We asked for the
13 needle ---

14 THE COURT: Wait a minute now. Wait
15 a minute. She's answering the question. She
16 gets to finish the answer.

17 MR. HAWKINS: Yes, sir. Fair enough.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. HAWKINS:

20 Q. Please?

21 A. About maybe six months after my
22 deposition I was told to get the needle back out.
23 And an associate that works for you came and took
24 pictures of it. We got the needle out for her.
25 She took photos of it since the only photo we had

1 was a blurry cell phone picture. And then from
2 there we put the needle back up and we weren't
3 asked to provide it again.

4 Q. Okay. Let me back up to your
5 deposition again?

6 A. Okay.

7 Q. We had asked for the needle. You
8 indicated you didn't have it in your deposition;
9 right?

10 A. I think at that point I still thought
11 it was gone.

12 Q. Okay. So can we agree at that point,
13 Target lost the needle?

14 A. Yes. Temporarily.

15 Q. Okay. That's fine.

16 A. It turned back up.

17 Q. Okay. All right. And then like you
18 said there was a girl working a summer job in the
19 office and -- while I was out of town. 'Go take
20 pictures of that needle because apparently it's
21 turned back up.' Do you remember that?

22 A. Correct.

23 Q. All right. Let me ask you this first.
24 How did it turn back up? People don't just say
25 'hey, we didn't lose the needle. We actually

1 have it.' When did that ---

2 A. It was at my store. I can't remember
3 who showed it to me, but as soon as I found it, I
4 let Knox know because that's what I should do.

5 Q. Okay. So now we're at the point where
6 Knox says, 'That's wrong, we do have it. And so
7 you can take pictures of it if you want to.'

8 A. Correct.

9 Q. Okay. So we sent that summer -- I
10 guess runner, whatever you want to call her ---

11 A. Girl.

12 Q. We sent a summer runner down there.
13 She takes pictures. And then are you aware that
14 we couldn't get those pictures off her cell
15 phone?

16 A. I know that you don't have the pictures
17 now. So I don't know what happened to them.

18 Q. Okay. And so are you aware that I told
19 Target -- I called Knox and said, 'Hey, I hate to
20 use y'all's cell phone but I'm going to have to
21 come take pictures of them.' Are you aware of
22 that?

23 A. No. I did not know that you tried to
24 come photograph more pictures because since then,
25 I'm not there.

1 Q. Right. And so you don't have any
2 knowledge about us coming a second time to try
3 the pictures?

4 A. No, sir. I do not know about that.

5 Q. Where is the needle now?

6 A. That's the great mystery right now.

7 Q. It is a great mystery.

8 A. Yes.

9 Q. Does anybody know where the needle is?

10 A. Not to my knowledge.

11 Q. Well, we sent a subpoena for it hoping
12 that maybe Target could find it a third time. I
13 guess. I don't know. But we sent a subpoena for
14 it. Target's supposed to bring it but it's not
15 here. Are you aware of that?

16 A. I know that's it not here. Yes, sir.

17 Q. Okay. What happened to it the second
18 time Target lost it?

19 A. I couldn't tell you. I don't know. I
20 truly don't know.

21 Q. Do you think Target took this injury
22 seriously?

23 A. We take all of our guests' incidents
24 seriously.

25 Q. Why do you think Target didn't keep

1 track of the needle? It's an essential piece of
2 evidence.

3 A. Well, we never looked at it as
4 evidence. Of course, we didn't know all of this
5 was going to happen. So once we -- you know,
6 once -- I don't -- there's no good answer.

7 Q. Right. I understand. But I want to
8 make sure I understand you. You said "we didn't
9 consider it evidence." Is that what you said?

10 A. Well, I didn't look at it as evidence.
11 I saw that it was something that was involved in,
12 you know, a guest incidence. Would I believe it
13 was evidence? No.

14 Q. Did Target look at it as evidence the
15 second time they found it and lost it?

16 A. I guess you would have considered that,
17 yes.

18 Q. Okay. Do you think Mrs. Garrison acted
19 reasonably after she was stuck in seeking medical
20 treatment?

21 A. Yes. I think that's reasonable if she
22 believed that she was stuck.

23 Q. Do you recall me asking you do you
24 think you would have, in the same situation? Do
25 you recall me asking that in your deposition?

1 A. No. But if I was stuck, I would have
2 probably gone the same course.

3 Q. Okay. So we agree it was reasonable?

4 A. Yes.

5 Q. And I asked before could you tell the
6 needle had been lying on the ground. Could you
7 tell the needle had been lying on the ground?

8 A. Yes.

9 Q. And just to reiterate you used the
10 words "dingy, dirty and gross"?

11 A. Yes, sir.

12 Q. Does Target have a -- I asked you about
13 the hazard box. Does Target have a protocol that
14 says if you find a biohazard, a biohazard that
15 injures a customer, this is the procedure? This
16 is the protocol. Does Target have that in place?

17 A. I don't -- to be honest I don't know
18 about for biohazards. I'm sure I could -- I
19 could look it up and find exactly what I needed
20 to do with something of that sort. So I'm sure
21 there is a -- yes, something in place by Target.

22 Q. Okay. But you don't know what -- could
23 you go right now and pick it up and ---

24 A. I could. I could -- well, I could
25 print it off, you know.

1 Q. Right. Right. And so are you saying
2 you have to research ---

3 A. Probably something I would have to
4 access or there may be even something in what we
5 have in what we call an emergency flip chart.

6 Q. Okay. After this incident took place,
7 was there any kind of safety meeting or any kind
8 of meeting that says 'hey, the incident with a
9 customer injury, this is what happens if we find
10 a dirty hypodermic needle.' Was there anything
11 like that in its place?

12 A. No, sir.

13 Q. Okay. Did John Stanley ever get with
14 you about this incident?

15 A. John Stanley?

16 Q. The store manager of Target at that
17 time?

18 A. There wasn't a -- Scott Stanley.

19 Q. Is it Scott Stanley?

20 A. Scott Stanley, (affirmative nod).

21 Q. Did he ever talk to you about this
22 incident?

23 A. We spoke about it but that was me
24 letting him know that 'hey, this happened.'

25 Q. Okay. Did Scott Stanley offer to go

1 over any cleaning records with you, make sure the
2 parking lot had been swept and cleaned?

3 A. No, sir.

4 Q. Okay. Did Mr. Stanley -- Scott not
5 John.

6 A. Scott, yes, sir.

7 Q. Scott Stanley.

8 A. Yes, Scott.

9 Q. Did Scott Stanley say, 'All right.
10 Let's run back the footage.' Did he offer to
11 look at footage with you and make sure the
12 cleaning truck came?

13 A. No, sir. The only time we talked about
14 it was before -- when he let me know that I was
15 depositioned [sic] to come.

16 Q. Did Scott Stanley do anything at all
17 to make sure the parking lot had been kept
18 reasonably safe?

19 A. Well, he does his part following up
20 with John. I don't necessarily know how Scott
21 follows up with John because I'm not John's boss.

22 Q. And I'm going to ask him about that.

23 A. Yeah.

24 Q. I'm asking, did he follow up with you
25 since you were the lead-on-duty when the injury

1 happened? Did he follow up with you to make sure
2 the parking lot was reasonably kept clean and
3 routine safety sweeps had been completed?

4 A. No. Nothing outside of normal. Was
5 anything out of order? Was anything out of
6 place?

7 Q. So, no.

8 A. No.

9 Q. Did he ever offer to play back any
10 footage and watch to make sure the cleaning truck
11 came Thursday night/Friday?

12 A. No, sir.

13 Q. And you said a guy named Tyler Hammer
14 never called you?

15 A. I don't recall that name.

16 Q. Michelle Carroll -- if I get any
17 peoples' names wrong, correct me.

18 A. Yes, sir.

19 Q. Michelle Carroll, who you thought threw
20 it in the compactor but didn't, she never
21 addressed this issue with you or offered to go
22 over any records with you?

23 A. Me and her talked about it.

24 Q. Okay.

25 A. But we did not look at any footage or

1 -- I typically know that that side of the
2 building is a little -- we don't have great video
3 coverage of it. So ---

4 Q. Let's talk about video coverage. How
5 many cameras does Target have, inside and out?

6 A. That, I don't know.

7 Q. Okay. I think the number's something
8 like -- I want to say some stores have a hundred
9 and nine. Is it fair to say there are lots of
10 cameras in Target?

11 A. There are lots of cameras in Target,
12 yes.

13 Q. Does each camera dome have a camera in
14 it?

15 A. I don't know if that's something I want
16 to disclose as a Target employee.

17 Q. All right. Well, I'll submit to you
18 that it's relevant to this case. It's relevant
19 to the injury. And respectfully, I would ask you
20 to tell me if every camera dome has a camera in
21 it?

22 A. No, sir. I do not believe they all do.

23 Q. Do you have any idea what percentage of
24 camera domes have cameras in them?

25 A. I do not.

1 Q. Okay. But it is true though that every
2 camera over the cash registers, every camera dome
3 has a camera in it over the cash registers; don't
4 they?

5 A. To my best knowledge, yes. They all
6 should have camera footage on a register.

7 Q. And is it fair to say then Target makes
8 sure, keeps its eyes on its money and not
9 necessarily on other parts of the store?

10 A. We keep a track of what, you know, what
11 goes into the till, make sure nothing like that
12 happens, you know, anything strange happens when
13 a guest is checking out.

14 Q. Is that a yes?

15 A. That's a yes.

16 Q. And so if we had video footage of the
17 incident or of her interaction or the cleaning
18 truck, certainly that would be helpful in this
19 case; right?

20 A. Oh, if there was video, yes, that would
21 be helpful.

22 Q. Okay. Did Target bring any video
23 footage of any kind to court today?

24 A. I do not think so. I don't have any.

25 Q. Okay. Well, I don't think so either.

1 A. Yeah.

2 Q. We subpoenaed all of the relevant video
3 footage. We don't have any it. So I just wanted
4 to make sure there was not something I'm missing,
5 okay?

6 A. No, sir.

7 Q. So Target wants to make sure nothing
8 happens with the till in the cash registers;
9 right?

10 A. Correct.

11 Q. But if a customer gets stuck with a
12 dirty hypodermic needle, they're just going to
13 have to figure it out without the benefit of
14 video.

15 A. We have -- if it would have happened in
16 the front of the building or it -- just
17 circumstantial where it happened, there was no
18 video coverage. There's more cameras than at our
19 tills, though.

20 Q. And I don't believe that -- yeah, and I
21 think you said not all of them are empty?

22 A. Yes.

23 Q. I just wanted to establish that the
24 ones over the registers are never empty.

25 A. Correct.

1 Q. Let me just ask you. In your
2 managerial training, is it -- what's more
3 important to Target, profit and money or customer
4 safety?

5 A. We can't have profit without guests.
6 So our guests are the absolute most important
7 thing to us. What can we do to protect our
8 guests and have the guests spend their money at
9 Target.

10 Q. Okay. Where is the biohazard box?

11 A. There are multiple ones in the store.
12 There's one at what we call our team member
13 service center, which is kind of -- like the
14 middle of wherever our team members come in and
15 clock in and whatnot.

16 Q. Do you have to punch a card?

17 A. We type in numbers -- no, not punch a
18 card.

19 Q. I'm showing my age.

20 A. Uh-huh. A little bit.

21 Q. When I was sixteen I had to punch it
22 physically.

23 A. Yes.

24 Q. All right. So when the customers (sic)
25 come to type in their ---

1 A. Team members?

2 Q. Yeah. When the team members come to
3 type in their ID code or whatever to clock in,
4 there's a biohazard box there with dangerous
5 items in it?

6 A. It's probably for where they clock in
7 to where you are as far away as it is. It's not
8 where they clock in but it is in the general
9 area.

10 Q. Did any of the employees ever say, you
11 know, whether they were on the way to clock in or
12 whatever, did they ever say 'hey, we need to take
13 that dirty needle into the hazard box.' Anybody
14 suggest that that worked for Target?

15 A. No, sir, because it would be behind my
16 closed door.

17 Q. Are you aware that Target has forensic
18 labs in Minneapolis and Las Vegas?

19 A. I did not know that, no, sir.

20 MR. HAWKINS: Your Honor, can we
21 approach?

22 THE COURT: sure.

23 (OFF RECORD BENCH CONFERENCE)

24 THE COURT: Madam Forelady, and
25 ladies and gentlemen, I was asking the lawyers

1 here about how much longer it's going to be. And
2 I understand that they -- and he's certainly
3 entitled to ask as many questions as he wants to.
4 That's what he supposed to do. That is entirely
5 proper. But he's going to be a little while
6 longer. I try not to break up testimony if I can
7 prevent from doing that. In other words, if he
8 was going to be through in two or three more
9 questions, we would continue with that. But I am
10 told that he is not.

11 So, therefore, having said that, it is
12 very close to 5:00 p.m. When we got here today
13 you didn't know that I routinely run until a
14 little after 5:00, from 5:30 to thereabouts. And
15 so it's probably a good time because there is a
16 matter I do need to take up with them. It has to
17 do with some nuts and bolts of the case. And so
18 I'm going to do that anyway here just when we
19 adjourn. So we're going to continue to work for
20 a little bit on some nuts and bolts stuff. So
21 about, for instance, when the witness will be
22 here and so forth.

23 So having said that, we're going to let
24 you go for the evening with the instructions that
25 the case is certainly not ended. Please do not

1 talk about the case with anyone, not even your
2 spouse.

3 I don't see media here. I have no
4 reason to believe there will be anything in the
5 newspaper about this case. But if there is,
6 please fold that up and just set it aside and you
7 can read it later when the case is at its
8 conclusion. Again, I don't think it would be any
9 reason for it to be on TV, but if it is, please
10 turn the channel and don't pay any attention to
11 that.

12 So with that, don't deliberate about
13 the case. Don't talk about it, not even with
14 your spouse at home. No matter how much trust
15 and love him or her, please don't do it. It's
16 not proper. And don't even deliberate within
17 your own mind. Again, you are at work here. And
18 the last thing that I want to do when I go home
19 and take off this suit and tie and put on my flip
20 flops is talk about what happened in court today.
21 I don't do it, okay? And my wife is in the
22 financial industry. And when she puts on her
23 flip-flops, she doesn't want to talk about what
24 happened in the market today either because
25 sometimes it's good and sometimes it's not.

1 So having said that, we're going to let
2 you go for the evening. Now, I need you here
3 tomorrow morning ready to go at 9:00 a.m., which
4 means we're all big boys and girls. So I'm not
5 going to tell you to be here at 8:45 or 8:50.
6 But I'm going to tell you that I will be here at
7 8:00 a.m. in the morning. And the lawyers will
8 be here about 8:00 a.m. in the morning. So we'll
9 be ready to go at 9:00. My office is on the
10 third floor where they let me hang out
11 temporarily. And so I'm going to catch the
12 elevator up here. It's not a long commute and
13 I'll be ready to go at 9:00, okay?

14 Madam Forelady, if you'd take your jury
15 out and be excused by the bailiff.

16 (JURY OUT AT 4:55 P.M.)

17 THE COURT: Ma'am, you're going to
18 have to sit there all night and wait until in the
19 morning.

20 WITNESS: That's all right. I'll be
21 here.

22 THE COURT: You may leave the
23 witness stand. Ma'am, again, you cannot talk
24 with anyone about your testimony whatsoever.
25 So with that, have a good evening. You're free

1 to go have a seat at counsel table or whatever
2 Mr. Haynsworth wants you to go.

3 WITNESS: Thank you, sir.

4 THE COURT: But you can't discuss
5 your testimony.

6 WITNESS: Yes, sir.

7 (WITNESS STEPS DOWN)

8 MR. HAWKINS: Your Honor, I would ask
9 if we're going to talk about some of the issues
10 we were discussing, I ask we be able to do that
11 outside the presence of the witness.

12 THE COURT: Sure. Yeah. We can do
13 it. In fact, we can do that in chambers if you'd
14 like. There's no reason for the things we want
15 to talk about -- there are just some nuts and
16 bolts housekeeping stuff. There's nothing we're
17 going to be talking about, you know, trying this
18 case and it's nothing about any defense. So if
19 you lawyers want to do it in chambers, we could
20 actually do that.

21 All right. We're going to be in
22 recess. Madam Court Reporter, everybody, we'll
23 be at recess until 9:00 tomorrow morning.

24 (COURT IN RECESS)

25 (TRANSCRIPT CONTINUED NEXT PAGE)

1 SEPTEMBER 7, 2016 9:00 A.M.

2

3 THE COURT: Bring in our jury.

4 (JURY IN AT 9:09 A.M.)

5 THE COURT: Yes, sir. Do you have
6 anything before we ---

7 MR. HAWKINS: We don't, Your Honor.

8 MR. HAYNSWORTH: We don't.

9 THE COURT: Are we ready for our
10 jury?

11 MR. HAWKINS: Yes, Your Honor.

12 THE COURT: Okay.

13 BAILIFF: Are you ready?

14 THE COURT: Yes, sir. Ma'am, if
15 you'll come back up to the stand.

16 (WITNESS RESUMES STAND)

17 THE COURT: We're ready for them.
18 You remain under oath.

19 WITNESS: Yes, sir.

20 (JURY IN AT 9:09 A.M.)

21 THE COURT: Madam Forelady, any
22 matters for the jury?

23 MADAM FORELADY: No, sir.

24 THE COURT: Everybody's good?

25 MADAM FORELADY: We're good.

1 THE COURT: All right. Yes, sir?

2 MR. HAWKINS: Thank you, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, sir.

5 SHELBY BRINTNALL, having been previously
6 sworn, testified as follows:

7 DIRECT EXAMINATION CONTINUED

8 BY MR. HAWKINS:

9 Q. Ms. Brintnall, welcome back.

10 A. Good morning.

11 Q. I think we're almost done so you won't
12 be in the hot seat too much longer.

13 A. Okay.

14 Q. Well, not any longer than your lawyer
15 should be. Ms. Brintnall, I'm going to show you
16 another picture from a little bit different angle
17 of the general area of the parking lot. And I
18 think this is the middle buggy rack and it's
19 zoomed out more. Is that the middle buggy rack?

20 A. (Reviewing photograph).

21 Q. Because if it were the other one,
22 wouldn't it have a curb right here?

23 A. Yes.

24 Q. Okay. So can you say that fairly and
25 accurately depicts the middle buggy rack, that

1 general area?

2 A.. Yes.

3 Q. Okay.

4 MR. HAWKINS: Your Honor, I move to
5 have this admitted.

6 MR. HAYNSWORTH: May we approach,
7 Your Honor.

8 (OFF RECORD BENCH CONFERENCE)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. HAWKINS:

11 Q. Ms. Brintnall, Were going to have to
12 wait on this one for a little while. So let me
13 ask you about a couple of impressions about the
14 statement that you gave you gave me back in 2015.

15 A. Yes, sir.

16 Q. Do you recall me asking did you
17 actually see the puncture wound on her hand or
18 finger when she came to tell you about it? Do
19 you recall me asking that?

20 A. I don't know if I a hundred percent
21 remember, but I know we talked about her puncture
22 wound.

23 Q. Okay. I'll hand you this page from
24 your deposition transcript and I'll let you read
25 that, refresh your memory.

1 A. (Upon review), I do not. I can't
2 remember. I can't remember. I believe she
3 showed me where it happened. But I can't
4 remember what I saw.

5 Q. Okay. All right. So, and I ask you
6 again did Denise show you where the puncture
7 wound was?

8 A. Yes. She showed me her hand, the hand
9 that got stuck.

10 Q. Okay. But you said you can't remember
11 what you saw?

12 A. No. I can't remember if I actually saw
13 a puncture wound.

14 Q. Okay. Fair enough. I just wanted to
15 make sure we establish she showed it to you.

16 A. Correct. I had to fill out which hand
17 it was, you know, in reference in my file too.

18 Q. And you would have been, I guess --
19 would you have been in close proximity to her
20 when she showed you her hand?

21 A. Yeah. We were sitting right next to
22 each other.

23 Q. So there wouldn't have been anything
24 keeping you from seeing her hand?

25 A. No, sir.

1 Q. Okay. Do you recall me asking do you
2 think Target should pay for my client's medical
3 bills?

4 A. I do recall you asking.

5 Q. Do you recall what your initial
6 response was?

7 A. I do not exactly remember what I said.

8 Q. Okay. Yeah, this is Page 25 of your
9 sworn testimony.

10 A. Yes, sir.

11 Q. And I'll let you read that. And you
12 can take enough time to read the whole page if
13 you'd like. There's no rush.

14 A. (Upon review), yeah. Okay.

15 Q. All right. When I asked you that
16 question ---

17 A. Yes, sir.

18 Q. I'm going to read your response and you
19 tell me if it's accurate, okay?

20 A. Yes, sir.

21 Q. (Reading): "I don't know if I want to
22 disclose my opinion on that. I work for Target
23 and I'm obviously employed by Target." Do you
24 recall saying that?

25 A. Yes, sir. But I also said that it's

1 not my decision to make.

2 Q. Right. Because you're not the CEO,
3 you're not on the Board of Directors?

4 A. No, sir.

5 Q. I understand. Trying to making a
6 living like everybody else?

7 A. Yes, sir.

8 Q. And so it's fair to say you don't
9 necessarily want to throw Target under the bus?

10 A. It's not my place to make a decision
11 one way or the other. I was just there and
12 reported what I saw.

13 Q. Okay. Ms. Brintnall, I don't have any
14 more questions for you right now. Please answer
15 any questions that your lawyer may have.

16 A. Yes, sir.

17 MR. HAYNSWORTH: May it please the
18 Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. HAYNSWORTH:

22 Q. Shelby, good morning.

23 A. Good morning.

24 Q. Let's go back to the night that you
25 first met Mrs. Garrison. As I understand it from

1 the questions her lawyer asked you, she came
2 in and reported to you that she had stuck herself
3 on a hypodermic syringe in y'all's parking lot; is
4 that right?

5 A. Correct. She came in and let me know
6 what happened.

7 Q. Okay. And you just talked about y'all
8 sitting down and you had a note in your report. I
9 think you said it was her right hand so she had
10 to show you which hand she said she got stuck.

11 A. Right.

12 Q. When y'all were sitting down and you
13 were filling out the paperwork with her sitting
14 next to you, was that before or after y'all had
15 both walked out into the parking lot to see the
16 syringe laying there next to the curb? If you
17 remember.

18 A. To be honest, I can't remember if we
19 immediately went out or if we filled out the
20 paperwork and then went out. I don't remember
21 which order we did it.

22 Q. Okay. All right. Whenever y'all were
23 sitting down ---

24 A. Yes.

25 Q. --- before y'all went out and took

1 pictures. Do y'all have first aid kits there at
2 the Target?

3 A. We do.

4 Q. Does it have Band-Aids in it?

5 A. It does.

6 Q. Does it have Neosporin or something
7 like an antibiotic cream?

8 A. Yes, sir.

9 Q. Okay. Did Mrs. Garrison ask you for a
10 Band-Aid?

11 A. I don't recall if she asked me, but I
12 don't think we provided any sort of first aid
13 stuff at that time.

14 Q. Did she show you any blood that she
15 needed a Band-Aid to cover or ---

16 A. I didn't see any blood.

17 Q. Okay. When y'all went out to the
18 parking lot, it would have been her and her
19 daughter, Kaileigh, and you?

20 A. Correct.

21 Q. And did she take you to where this
22 hypodermic was?

23 A. Yes, sir. She had to lead me to where
24 it happened.

25 Q. Okay. And you took pictures with your

1 cell phone?

2 A. Like I said, I can't remember if I took
3 the photos or if another one of my team members
4 took the photo. I can't remember exactly where
5 the photo came from.

6 Q. Well, let me show you a photo. I think
7 we've got one in evidence. And I'm going to show
8 you a slightly different one. I'm going to hand
9 you, Ms. Brintnall, what's been marked as
10 Plaintiff's Exhibit 3.

11 A. Okay.

12 Q. Does that appear to be a blow up of
13 Plaintiff's Exhibit 3?

14 A. Yes, sir. It appears to be the exact
15 same photo.

16 Q. All right. Could you come -- if you
17 wouldn't mind stepping down here, I just want you
18 to illustrate on this picture what you saw and
19 didn't see that night. And bear with me. I'll
20 stick it up here on this

21 A. (Complies)

22 Q. Now, try and orient me if you can, Ms.
23 Brintnall. You've got the asphalt and black top
24 and then you've got sort of concrete cover right
25 by a curb. Is that the area we're looking at?

1 A. Yes, sir.

2 Q. This is right up against the curb. Is
3 that correct?

4 A. There'd be a place where cars could
5 park, right down this way.

6 Q. Okay. Now, I think this is called the
7 barrel and this is called the plunger. And the
8 little thing -- your thumb would be there. When
9 you went out and saw this that night, right after
10 Mrs. Garrison told you, did you see any needle
11 anywhere in the area?

12 A. No, sir. I did not.

13 Q. Did Mrs. Garrison ever point out to you
14 any needle anywhere in the area?

15 A. No, sir.

16 Q. Did Mrs. Garrison tell you that night
17 that she hit the needle and it broke off the
18 syringe?

19 A. No. She just told me she smacked it
20 out of her child's hand. That was it.

21 Q. Okay. Did Mrs. Garrison -- when y'all
22 went back out and she was showing the needle, did
23 she ever ask y'all to help her look around for an
24 actual needle?

25 A. Again, I believe that we tried to

1 search for an actual needle.

2 Q. Okay. All right. You were asked some
3 questions by Mr. Hawkins of something about
4 pitting from being on the asphalt?

5 A. Yes.

6 Q. I was a little unclear on that. You
7 know, I see the syringe. I wasn't sure where
8 this pitting was that he was talking about, if
9 you know?

10 A. As I was there, I do remember the
11 needle being dirty. So, you know, and it did
12 also have some, you know, little divots in it, it
13 was not a perfect syringe straight out of the
14 package.

15 Q. Okay. All right. And this was in
16 y'all's parking lot where obviously cars drive and
17 cars park?

18 A. Correct.

19 Q. So y'all come in or -- excuse me. Mrs.
20 Garrison comes in, tells you she was stuck.
21 Y'all walk back out. You're standing outside.
22 Photos are taken of this and then this needle, I
23 think you testified, you brought it back into
24 your store?

25 A. Yes, sir.

1 Q. And I'm finished going over the
2 picture. You can sit back down.

3 A. (Witness resumes witness stand).

4 Q. And this happened May 21st of '14; is
5 that right?

6 A. Correct.

7 Q. From May 21st, '14 forward when is the
8 next time Mrs. Garrison or anyone on her behalf
9 ever contacted you or your store about wanting to
10 inspect, examine or look at that hypodermic?

11 A. I didn't get any further questions
12 about it until I found out that we were, you
13 know, going to move forward with this.

14 And during the -- well, I don't even think
15 we brought it up to bring to the deposition. So
16 I think the next time that I was requested to
17 provide the needle was when you came to my store
18 with an associate of Mr. Hawkins.

19 Q. And did me and the gal from his office
20 come to your store June 6th of 15?

21 A. Yes.

22 Q. Okay. So between May of '14 to June of
23 '15, am I correct that Mrs. Garrison nor anyone
24 on her behalf ever asked you or Target to provide
25 that hypodermic to take photos, to inspect,

1 examine, anything of that nature?

2 A. No. They never asked me.

3 Q. And to your knowledge, never asked me?

4 A. No, not to my knowledge.

5 Q. Okay. Now, when the associate from Mr.
6 Hawkins' office came here to Anderson and met
7 with you and me at the Anderson Store, if you
8 would, tell the ladies and gentlemen of the jury
9 what she wanted and what she did?

10 A. Yeah. So I was instructed to provide
11 the needle for her so she could take some clear
12 pictures because we only have this one cell phone
13 picture. I provided the needle where we had it
14 locked up. We laid it out. She took, you know,
15 a handful of pictures. We put it back and she
16 left.

17 Q. Okay. After June 6 of '15, when the
18 person from Mr. Hawkins' office came down and
19 took these photos with her camera, did she tell
20 you after that point in time, 'Hey, you need to
21 hang onto this. We need it to take more
22 pictures. Don't dispose of it. We'd like to
23 send it off' or anything of that nature?

24 A. I don't believe she gave me any further
25 instructions of what to do with it.

1 Q. Did you have any reason to assume they
2 needed it any further after she came and took
3 more pictures?

4 A. No, sir.

5 Q. The document you filled out, the LOD
6 investigative report and the guest incident
7 report that Mr. Hawkins asked you about. Those
8 are, for lack of a better word, sort of generic
9 Target store forms; if something happens that's
10 what you fill out?

11 A. Correct.

12 Q. After there's been a guest incident,
13 whatever that incident may be, and y'all fill out
14 that paperwork, are you still involved in what
15 happens next?

16 A. Typically, what happens is I fill out
17 the paperwork. I have to then submit it on mine.
18 And then usually from there, it's out of my
19 hands. Sometimes they'll call, a representative
20 from Target will call and ask if I have any
21 further video coverage or if I have any pictures
22 or anything else that they, you know, might find
23 important from the case. But typically, once I
24 submit it through and send the paperwork off to
25 Minneapolis, it's out of our hands at the store.

1 Q. Do you have any idea how that
2 hypodermic wound up in Target's parking lot?

3 A. No, sir.

4 Q. Do you have any idea how long that
5 hypodermic had been in y'all's parking lot before
6 Mrs. Garrison said she saw it?

7 A. No, sir.

8 Q. You were also asked some questions
9 about Nick. And I'll confess I don't remember if
10 he's a cart ---

11 A. Attendant.

12 Q. Cart attendant?

13 A. Yes.

14 Q. And Nick was on one of the documents
15 you filled out. Why is Nick's name mentioned?

16 A. It asks if any team members are
17 performing duties in that area. I think
18 throughout the whole day, I think is even what it
19 asks. And he was our cart attendant for that day
20 so I felt like I should put his name on there.

21 Q. And you talked to Nick, I assume?

22 A. Yeah. He was one of our go-to members,
23 but I don't -- I'm trying to think about it. I
24 don't even think he was there, you know, during
25 the time that we filled this out. But I don't a

1 hundred percent remember if he was still there or
2 not there.

3 Q. And under Target's policy, if Nick had
4 been there and knew anything about this, would he
5 not have filled out a team member witness
6 statement?

7 A. He would have had a statement. Yes,
8 sir.

9 Q. Okay. And since he didn't fill it out
10 can we assume, other than he's the cart guy and
11 he doesn't know anything about that hypodermic or
12 Mrs. Garrison's being stuck with the needle?

13 A. Correct.

14 Q. Mr. Hawkins appeared to make a big deal
15 about whether I was going to have Nick here today
16 to tell these ladies and gentlemen he doesn't
17 know anything. I took it to suggest that there's
18 something wrong with Nick not being here. How is
19 it that you are actually here today? What
20 brought you to court yesterday, initially?

21 A. I believe that I was subpoenaed to be
22 here.

23 Q. Okay. And you were subpoenaed by whom?

24 A. I think Mr. Hawkins.

25 Q. Okay. Do you know if John Jackson

1 who's seated over there with us was also
2 subpoenaed by Mr. Hawkins?

3 A. I think I did see his name underneath
4 mine.

5 Q. Okay. To your knowledge, did Mr.
6 Hawkins subpoena Nick, the cart guy?

7 A. Not to my knowledge. I didn't see it
8 on the document.

9 Q. Does Nick still work in your store?

10 A. (No verbal response).

11 Q. Excuse me. Does Nick still work at the
12 Anderson store? You're now at Simpsonville.

13 A. When I left, he was not there.

14 Q. The area of the parking lot where y'all
15 went out and took the photos, if I'm looking at
16 the store. I'm pulling off. This is Clemson
17 Boulevard. And I'm starting to drive towards
18 this store. The store's in front of me. And the
19 cart rack, that would be on the left-hand side of
20 the store; is that correct?

21 A. Correct, past the grassy knoll area.

22 Q. If I go further to the left, am I still
23 in y'all's parking lot?

24 A. If you keep going further, you get into
25 Lowe's.

1 Q. So does the Target parking lot and
2 Lowe's parking lot, is it separated in any
3 fashion; because Lowe's is the next store over?

4 A. I do not believe there is any sort of
5 separation. The parking lots flow right into
6 each other.

7 Q. You were asked a lot of questions about
8 your store and the cleaning of the parking lot
9 and cleaning the grounds and what y'all do. And
10 you mentioned that brand is important as far as
11 ---

12 A. Yes.

13 Q. I think you said you want to have a
14 clean store so people will have a good
15 experience?

16 A. Correct.

17 Q. Does y'all's parking lot ever get dirty?

18 A. Of course, I mean, it's -- we -- it's
19 outside. There's, you know, factors in the
20 environment that blow things into our parking lot
21 and people drop things when they get out of their
22 cars so, yes, it does get dirty.

23 Q. Do y'all have routine sweepers in place
24 to clean the parking lot?

25 A. Yes, sir.

1 Q. Are there other people -- well, let me
2 back up. The cleaning of the parking lot, what
3 sort of cleaning does it get, if you know?

4 A. I know that we have the truck that
5 comes through and sweeps the parking lot once a
6 week. And then we also, I believe, the store's
7 PMT duties they walk around the exterior of the
8 building, make sure there's nothing, you know,
9 major -- boxes or anything like that -- out in
10 the parking lot. And, you know, it's also our
11 duty as leaders that if we see something, you
12 know, we should pick it up, clean it up, whatever
13 we need to do.

14 Q. Okay. If you had seen that laying in
15 the parking lot before Mrs. Garrison came and
16 pointed it out to you, would you have picked it
17 up?

18 A. Absolutely.

19 Q. Based on the training that y'all
20 receive, do you believe any of the other team
21 members at Target would have done the same thing
22 if they knew?

23 A. If it was my team members, I believe
24 they would have come and told me about it.

25 Q. All right. Ms. Brintnall, thanks.

1 That's all the questions I have.

2 A. Thank you.

3 THE COURT: All right. Anything?

4 MR. HAWKINS: Yes, Your Honor. A
5 brief redirect.

6 THE COURT: Okay.

7 MR. HAWKINS: If it pleases the Court.

8 REDIRECT EXAMINATION

9 BY MR. HAWKINS:

10 Q. Ms. Brintnall, you just talked about
11 some of the procedures in place for cleaning the
12 parking lot?

13 A. Yes, sir.

14 Q. So you know a little bit about the
15 cleaning procedures now, today?

16 A. I know a little bit, yeah.

17 Q. Okay. Well, before your deposition
18 I asked you what did you do to prepare for this
19 deposition. Do you recall your answer?

20 A. I said not much.

21 Q. You said "nothing"?

22 A. Yeah.

23 Q. Did you review any documents or
24 anything like that?

25 A. No, sir.

1 Q. So now that we're actually at trial you
2 know a little bit more about cleaning; is that
3 right?

4 A. Correct. A little bit more.

5 Q. Why is that?

6 A. Because we've -- well, this has been
7 going on now for two years, so I know a little bit
8 more about how often we sweep the parking lot.
9 But my knowledge doesn't get much further than
10 that.

11 Q. Before you came to testify at your
12 deposition, that was after the suit was filed,
13 obviously?

14 A. Yes, sir.

15 Q. Target never offered to go over any
16 cleaning records with you?

17 A. No, sir.

18 Q. Target never asked for any verification
19 that the parking lot was cleaned?

20 A. No, sir. Not to my knowledge.

21 Q. Target never offered anything to you
22 about the incident?

23 A. No, sir.

24 Q. Target ever express any concern that a
25 customer was stuck with a dirty hypodermic needle

1 that you could tell had been laying in the
2 parking lot?

3 A. I wasn't contacted by anybody to
4 prepare for the deposition.

5 Q. Was Mrs. Garrison crying when she came
6 to you?

7 A. I don't know if I remember her crying.
8 Like I said, she seemed worried, but I don't
9 remember her physically crying.

10 Q. All right. Had she just washed her
11 hands several times?

12 A. That, I don't know.

13 Q. She didn't tell you she'd just been in
14 the bathroom or anything like that?

15 A. I don't remember if she told me.

16 Q. Knox said something that was a little
17 bit misleading, so I want to clarify something.
18 At your deposition ---

19 A. Yes, sir.

20 Q. At the deposition ---

21 A. Yes, sir.

22 Q. --- I asked you where the needle was;
23 right?

24 A. Yes, sir.

25 Q. Okay. Okay. So it wasn't until

1 somebody came to the store that we asked for the
2 needle. We asked for it at the deposition;
3 didn't we?

4 A. I don't know if you asked me to bring
5 it. I think you asked where it was.

6 Q. No. No. And what was your answer
7 again?

8 A. I thought that it was in the -- I
9 thought it was gone.

10 Q. Let me ask you, do you know how it
11 turned back up or it turned out that Michelle
12 Carroll didn't put it in the compactor?

13 A. No.

14 Q. So revealing that when we asked for it
15 was at the deposition?

16 A. Correct.

17 Q. Not six months later?

18 A. Correct.

19 Q. And as far as the pictures go, are you
20 aware that after we were unable to retrieve the
21 pictures from that phone, we actually offered to
22 come back a second time and take more pictures.
23 Are you aware of that?

24 A. That, I'm not aware of.

25 Q. Are you aware that at that point the

1 needle was gone again?

2 A. I do not know when you guys reached
3 back out to my store or to Knox or whatever to
4 take more photos. That, I wasn't aware of.

5 Q. And regardless of who has pictures of
6 what or when they were taken, the most helpful
7 thing would be if the jury could see the needle?

8 A. It probably would help.

9 Q. And so there was a question about did
10 anybody ask you to preserve the needle? Well,
11 let me ask it this way. Target is the third
12 largest retailer in the country. Does Target
13 need somebody to tell them not to throw away the
14 central piece of evidence in a customer injury
15 case?

16 A. I mean, I think if we potentially would
17 have known hey, we're definitely going to need
18 this again in six months, you know, potentially
19 it might not have gone missing. But I, you know,
20 to my best my knowledge I have no idea how after
21 that day in June to here right now what happened
22 in between.

23 Q. Okay. Was Target more careful not to
24 lose or destroy the needle after it turned back
25 up and they had a chance to preserve it a second

1 time?

2 A. We did preserve it. You know, until
3 that time when you were in the store. Well, not
4 you but -- until it somehow did not show back up.

5 Q. Let's talk about the subpoena and the
6 absence of Nick Brooks. Are you aware that your
7 lawyer had identified you and John Jackson as
8 witnesses before we sent any subpoena?

9 A. To be honest, I don't know exactly how
10 these things work but I was one of the only ones
11 that dealt with it, so I would imagine I'd be
12 involved.

13 Q. I understand. And we thought that we
14 needed to tell our side of the story. We brought
15 those people here. Do you have any idea why
16 Target didn't bring all these other people? And
17 when I say all these other people I mean Nick
18 Brooks, Michelle Carroll, Wes Zitnay, and Scott
19 Stanley to share with us how it happened?

20 A. So Nick Brooks, I don't think had
21 anything to do with it.

22 Michelle, it was my misunderstanding that
23 that's what I thought she did with it. So I
24 don't think there would be any reason for her to
25 be here.

1 Scott was just my boss and he didn't have
2 much else to do with this.

3 And I don't know why Wes would have any part
4 of this either.

5 Q. Okay. Well, let's walk through them
6 one by one.

7 A. Okay.

8 Q. Is Wes Zitnay the property management
9 technician's boss?

10 A. Correct.

11 Q. The person in charge of managing the
12 property?

13 A. Yes. He's John's boss.

14 Q. Okay. You don't even know who Tyler
15 Hammer is, though; right?

16 A. I have no idea who this person is.

17 Q. We're going to find out here in just a
18 little bit.

19 A. Okay.

20 Q. Scott Stanley is the store manager;
21 isn't he?

22 A. He was.

23 Q. Okay. He's the manager of the store on
24 Clemson Boulevard?

25 A. Yes. Not anymore, but he was.

1 Q. Okay. And he was responsible for
2 keeping that in a reasonably safe condition for
3 customers?

4 A. Yes.

5 Q. Okay. Michelle Carroll, you said that
6 she told you that she threw it in the compactor?

7 A. (No verbal response).

8 Q. That's what you said in your
9 deposition.

10 A. In my deposition yes, but I was wrong.
11 I -- yes.

12 Q. Did she ever have any interaction with
13 the needle at all?

14 A. Before that time in June, we stored it
15 in an evidence case. That way, no one could mess
16 with it. So, yes, it was stored in a secure
17 place provided by her. But other than that, no,
18 she had nothing to do with it.

19 Q. Let's talk about Nick Brooks.

20 A. Okay.

21 Q. You said he had nothing to do with it.

22 A. No, sir.

23 Q. Did you write his name on the
24 documents?

25 A. Yeah, as I was required to because he

1 was in that area some time during that day.

2 Q. Was he responsible for keeping a
3 lookout for danger in that area?

4 A. In the whole parking lot. Yes, sir.

5 Q. And he didn't fill out a witness
6 statement?

7 A. No, sir. Because he wasn't there
8 within the last thirty minutes.

9 Q. And he didn't fill out anything to
10 verify that he had removed dangers or kept a
11 lookout?

12 A. No, sir.

13 Q. He didn't fill out anything on that
14 document or anywhere else that said, 'I did
15 routine safety sweeps. I went out to the parking
16 lot and checked it out.'

17 A. No, sir.

18 THE COURT: Anything else?

19 MR. HAYNSWORTH: No, sir, Your Honor.

20 THE COURT: Thank you. Ma'am, you
21 may step down. Please be careful.

22 WITNESS: Thank you.

23 (WITNESS STEPS DOWN)

24 MR. HAWKINS: Your Honor, the
25 plaintiff would like to call John Jackson to the

1 stand.

2 (WITNESS TAKES STAND)

3 JONATHAN JACKSON, having been duly
4 sworn to tell the truth, and nothing but the
5 truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HAWKINS:

8 Q. Mr. Jackson, how are you?

9 A. Good.

10 Q. Good to see you again.

11 A. You too, sir. Thank you.

12 Q. I'm going to ask you to start with some
13 of the same questions about safety rules that I
14 asked Ms. Brintnall yesterday, okay?

15 A. Okay.

16 Q. Do you agree with her testimony that
17 it's important to do routine scans, routine
18 checks of the parking lot?

19 A. Yes.

20 Q. Do you agree with that for customer
21 safety and for the sake of the public it's
22 important to follow basic safety rules?

23 A. Yes.

24 Q. Do you agree that it's important to
25 monitor cleaning for the safety of the public?

1 A. Yes.

2 Q. Okay. Do you agree that it's important
3 to keep good records about cleaning safety?

4 A. Yes.

5 Q. Do you agree it's important to monitor
6 and review those records regularly to make sure
7 the parking lot's safe?

8 A. Yes.

9 Q. Do you agree that if there's a
10 dangerous condition in the parking lot, it should
11 be removed the first time a team member sees it?

12 A. Yes.

13 Q. Do you agree that dangerous conditions,
14 such as an icepick or switchblade or broken
15 bottle should be cleaned up the first time a team
16 member sees it?

17 A. If it's safe for the team member to
18 take care of it.

19 Q. Well, if it's not safe for the team
20 member, should that team member alert someone?

21 A. They should alert the LOD.

22 Q. The first time they see it?

23 A. Yes.

24 Q. Do you agree that it's unacceptable and
25 unsafe for the public to allow a dangerous

1 condition to lie in the parking lot for longer
2 than two days?

3 A. Yes.

4 Q. Within two days' time, someone should
5 have found it, right?

6 A. Yes.

7 Q. Do you agree with Ms. Brintnall's
8 testimony that you have someone in the parking
9 lot about once an hour checking for dangers?

10 A. However long the cart attendant,
11 whenever they send the cart attendant out.

12 Q. Well, do you think it's acceptable to
13 let more than an hour pass without somebody
14 checking for dangers?

15 A. It depends on business traffic flowing
16 through the parking lot, how many people are in
17 and out.

18 Q. All right. Well, let's nail down
19 what's acceptable to you as the -- is it property
20 maintenance or property management team?

21 A. Property management team, yes, sir.

22 Q. Okay. So let's nail down what's
23 acceptable to you as the person monitoring the
24 property and safety of the property.

25 A. When I come in in the mornings by 9:00

1 or 8:00, I kind of look out through the property.
2 Anything, any big, large debris, trip hazards
3 such as that, we take care of it right then on
4 the spot.

5 Q. Okay. So is it your opinion as the
6 property management technician that a dangerous
7 item should not lie in the parking lot longer
8 than one day?

9 A. It shouldn't.

10 Q. A half a day?

11 A. It shouldn't.

12 Q. Okay. Every two hours?

13 A. It shouldn't.

14 Q. Okay. So then we can agree that every
15 two hours someone should be checking, scanning,
16 checking for unsafe conditions?

17 A. Should be. You know, however long the
18 cart attendant goes out.

19 Q. Got it. Okay. And even if it's slow
20 and cart attendants don't have a need to go out
21 there until six hours later, they should still
22 look in the parking lot for things like broken
23 bottles, syringes, knives; right?

24 A. I don't think they're trained to look
25 for syringes and broken bottles. If they see

1 large debris, that's what they look for.

2 Q. Okay.

3 A. Any kind of large debris. They're not
4 out there looking for so-called safety sweeps.
5 There's no such thing. They're out there looking
6 for large debris, large boxes such as that.

7 Q. You said there's no such thing as a
8 safety sweep at Target?

9 A. May be.

10 Q. Do you think that -- well, let me ask
11 you this. Does the cart attendant or anybody
12 need any special training to know to pick up the
13 syringe or to alert somebody that a syringe is in
14 the parking lot?

15 A. I think it's in their training any kind
16 of biohazard or such as that, they would alert
17 somebody that was trained.

18 Q. Right. Okay. All right. There's a
19 cleaning truck that comes. Do you know who owned
20 the truck or who the vendor is that Target says
21 come clean our parking lot?

22 A. I don't recall at that time.

23 Q. Okay. Did you recall in your
24 deposition?

25 A. Maybe. I'm not sure. It may be

1 Greenville Maintenance. I'm not sure.

2 Q. Well, at that time it was -- I think
3 you pronounce it Ferrandino & Sons?

4 A. Yeah, yeah, yeah.

5 Q. Out of New York

6 A. Yeah.

7 Q. A Minneapolis company hired a New York
8 company to clean a parking lot here in Anderson?

9 A. That's the way kind of national
10 contractors, subcontract out, that's kind of the
11 way the business works.

12 Q. Right. You agree with me that whoever
13 cleans the parking lot, that Target is
14 responsible to keep it clean?

15 A. Yes.

16 Q. Okay. The name of that company is
17 something that you couldn't recall right offhand
18 during your deposition or today. Shouldn't that
19 be something that you know right offhand as the
20 property management technician?

21 A. It changes from time to time. We
22 change vendors, change companies.

23 Q. But you've been there since October
24 2005?

25 A. I believe so, 2004, 2005, something

1 like that.

2 Q. Okay. So you agreed with me a minute
3 ago it's important to review cleaning and safety
4 rules?

5 A. Yes.

6 Q. Okay. So if that's important then why
7 wouldn't you know that off the top of your head
8 without looking at anything?

9 A. I record weekly for the lot sweeping
10 truck and enter it into a system at 9:00. I
11 don't visually see the truck sweeping the parking
12 lot. They usually do that in the middle of the
13 night ---

14 Q. Right.

15 A. --- as they do at any other business.

16 Q. Right. And you don't review any
17 physical records from the company who cleans?

18 A. No.

19 Q. You don't look at checklists to make
20 sure they came and cleaned the parking lot?

21 A. Not their checklist.

22 Q. You don't look at any piece of paper
23 and make sure they cleaned the parking lot, do
24 you?

25 A. Just from my training, from Target,

1 from my walk the property, and I think we talked
2 about that.

3 Q. Right. And what I'm asking is do you
4 ever -- the cleaning truck comes on Thursday
5 nights; correct?

6 A. Uh-huh.

7 Q. Do you ever, Friday morning or any
8 other time, look at a chart, look at some piece
9 of paper to verify the cleaning and that it was
10 done thoroughly?

11 A. Yes, the walk the vibe. It's
12 electronic.

13 Q. Right. But walk the vibe is like an
14 action at Target; right?

15 A. Yeah. We walk it and make sure the
16 truck got up all of the large debris, sweep, blew
17 off the sidewalks and the parking lot is
18 presentable for the guests to come in.

19 Q. Well, let me ask the question a
20 different way. To verify the truck comes, you
21 walk the vibe. You walk and look. Do you look
22 at the chart, the piece of paper that proves the
23 truck came?

24 A. No. I walk it.

25 Q. Okay.

1 A. Personally walk it.

2 Q. Okay. And I think you testified in
3 your deposition you don't ever remove any
4 physical records?

5 A. No.

6 Q. We've asked for in discovery when
7 lawyers ask each other stuff, we asked for all
8 the records for Ferrandino, which is a third-
9 party vendor, to make sure they cleaned the
10 parking lot. Do you know where those records
11 are?

12 A. I don't know if Ferrandino & Sons
13 carries records. I have no idea.

14 Q. Okay. I don't either because we never
15 got it.

16 A. (No verbal response).

17 Q. But do you know if there's ever been a
18 piece of paper somewhere that says 'yes, we
19 cleaned the parking lot. Yes, we cleaned on this
20 day.' A chart, an invoice showing they cleaned
21 the parking lot? Anything? Any proof that they
22 cleaned the parking lot?

23 A. Nope.

24 Q. Okay. Well, if the truck does come on
25 Thursday nights ---

1 A. Uh-huh.

2 Q. Does it pick up everything or does it
3 leave some items behind?

4 A. Possibly it could leave items behind.

5 Q. Okay. And I think you testified that
6 it leaves items behind smaller than a golf ball;
7 is that right?

8 A. That's incorrect.

9 Q. Is it?

10 A. Yes. Housekeeping picks up during the
11 week and they don't pick up nothing smaller than
12 a golf ball. You must have got that mixed up.

13 Q. I must have. I'm checking it right now
14 to make sure I'm not saying something wrong.
15 Following up with that, do you know what
16 percentage of the trash the truck picks up?

17 A. No, sir.

18 Q. If I asked you to testify, you don't
19 have any idea; right?

20 A. Uh-uh.

21 COURT REPORTER: Is that a yes or a
22 no, please?

23 WITNESS: No, no. Sorry.

24 THE COURT: Sir, I'm going to remind
25 you. She's recording. She needs a yes or a no.

1 WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HAWKINS:

5 Q. Okay. I'm going to read the exact
6 testimony. You tell me if any part of this wrong
7 or you can correct me, okay?

8 A. Okay.

9 THE COURT: Let me see the lawyers
10 just a minute.

11 (OFF RECORD BENCH CONFERENCE)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HAWKINS:

14 Q. Okay. I think I may have found where
15 the confusion lies. Well, I'm just going to tell
16 you, read Lines 6 through 22 there.

17 A. *How often is Target's parking lot*
18 *cleaned?*

19 *Every -- early Friday morning late Thursday*
20 *night there's a full cleaning. And then four*
21 *times a week during the day, housekeeping will*
22 *come through and pick up trash, large debris.*

23 *Are you involved in the daytime cleanings or*
24 *are you just involved in those Thursday evening*
25 *cleanings?*

1 Both. I kind of monitor it.

2 What do you do during the daytime cleanings?

3 After they are cleaned, I will walk and make
4 sure there's nothing left. All they pick up is
5 anything larger than a golf ball.

6 So they leave items smaller than a golf
7 ball?

8 Yeah, like cigarette butts and stuff like
9 that.

10 Have you ever seen the parking lot with
11 large amount of debris and trash in it?

12 Yes, sir.

13 When?

14 After a large event, holiday times, busy
15 weekends."

16 Q. Okay. When you said they pick up
17 anything smaller than a golf ball, you're talking
18 about housekeeping?

19 A. I'm talking about housekeeping.

20 Q. Okay. Does the truck pick up
21 everything then?

22 A. Probably not. I mean, it's a
23 mechanical machine. I mean, it's a vacuum.

24 Q. Okay.

25 A. Will it leave a cigarette butt?

1 Probably.

2 Q. A syringe?

3 A. I have no idea.

4 Q. You're the property management
5 technician?

6 A. Yes.

7 Q. In charge of monitoring and cleaning?

8 A. Yes.

9 Q. So you don't have the records from
10 Ferrandino & Sons. What about housekeeping, did
11 y'all bring any housekeeping records today to
12 show where they did things?

13 A. I do not believe. Maybe Knox may have
14 some. I'm not sure.

15 Q. You're under oath right now. I know
16 it's confusing but you just have to answer
17 questions without ---

18 A. Yes.

19 Q. Okay.

20 A. It's our walk the vibe. It's located
21 in there.

22 Q. I've got there here. I'm going to talk
23 to you about it.

24 A. That's our records.

25 Q. Right. This is what you entered into

1 the system?

2 A. Yes.

3 Q. I'm asking you where are the
4 housekeeping's records that they cleaned the
5 parking lot, that you look at before you fill
6 this out?

7 A. They don't have a record.

8 Q. That's what I was trying to determine.

9 A. Yes.

10 Q. I'm going to hand you this. Are you
11 aware that we asked for all records and documents
12 related to cleaning?

13 A. From what you said in here.

14 Q. Okay. Do you know what was produced in
15 response to that request?

16 A. No.

17 Q. These two pieces of paper. I'm going
18 to hand you this and I'm going to let you look at
19 it. Do you need time to familiarize yourself?

20 A. No. I know what it is.

21 Q. Well, just hang on with that.

22 A. All right.

23 Q. And I'm going to ask you some questions
24 about it. Is there any signature on any one of
25 those pieces of paper?

1 A. The only signature on these papers is
2 mine and it's electronic.

3 Q. Okay. Nothing written?

4 A. Nothing written.

5 Q. Is there a time stamp on any of those
6 documents?

7 A. No, sir.

8 Q. Okay. Is there any proof of when that
9 document was created?

10 A. There's a date.

11 Q. Would you agree that's kind of like a
12 spreadsheet?

13 A. Yes.

14 Q. So that document could be created
15 anytime you wanted to, couldn't it?

16 A. When I enter it in, it's automatically
17 generated.

18 Q. Okay. Well, if you look at the list of
19 dates there ---

20 A. Uh-huh.

21 Q. --- what's the start date and what's
22 the end date?

23 A. 4/15/2014 and 6/30/2014.

24 Q. Correct. Is there any -- are there any
25 days that match up on that document where a walk

1 the vibe was done twice in one day?

2 A. I am not sure.

3 Q. Well, look at the day of the incident,
4 May 21st, 2014.

5 A. Yes, that day it was.

6 Q. Okay. Is there any other day in that
7 whole -- what is it, three months?

8 A. Uh-huh.

9 Q. That whole three-month span, is there
10 any other day that it says walk the vibe twice in
11 one day?

12 A. Nope.

13 Q. So a year after the incident happens,
14 we get a document with no date on it. And the
15 only date it says something was done twice is the
16 day of the incident?

17 A. That's what it says.

18 Q. John, is it fair to say -- well, let me
19 ask you this. You've been working at Target
20 since 2004, 2005?

21 A. Uh-huh.

22 COURT REPORTER: Is that a yes or a
23 no, please?

24 WITNESS: Yes, sir.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. HAWKINS:

2 Q. Is it fair to say that they don't like
3 paper trails?

4 A. They're going paperless and going to
5 electronic files.

6 Q. Okay. So of all the electronic files
7 and all the paper that we have to look at from
8 this injury, the cleaning happened before this
9 injury, this is what the jury has to go off of?

10 A. Yes, sir. I guess.

11 Q. I mean, unless -- is there anything
12 else you know about?

13 A. No, sir.

14 Q. Did you ever -- and again, this goes
15 back to some of the same questions I asked Ms.
16 Brintnall. Did you ever roll back any footage to
17 make sure the truck came before my client was
18 injured?

19 A. No, sir.

20 Q. Did you ever roll back the footage to
21 make sure of a routine safety sweep?

22 A. No, sir.

23 Q. Did you ever roll back any footage to
24 make sure cart attendants were doing what they're
25 supposed to do?

1 A. No, sir.

2 Q. What's the policy for cart attendants
3 on their cell phones outside the Target while
4 they're supposed to be on the lookout for
5 dangers?

6 A. I'm not sure, but I don't think they
7 should be on their cell phones.

8 Q. What should they be doing?

9 A. Getting carts.

10 Q. Getting carts, should that be getting
11 carts and on their cell phone or should they be
12 getting carts and looking for hazards?

13 A. Getting carts and looking for debris.

14 Q. Is this the area outside of the Target
15 store on Clemson Boulevard with Lowe's in the
16 background?

17 A. Yes, sir.

18 Q. Okay. Is this a Target employee?

19 A. Yes, sir.

20 Q. Okay. Is that a Target buggy rack?

21 A. Yes, sir.

22 Q. Does he appear to be going to retrieve
23 carts?

24 A. That's what it appears.

25 Q. Can you tell what he's doing?

1 A. He's doing something.

2 Q. Can you tell what he's looking at in
3 his hand?

4 A. It's blurry, but he's looking at
5 something.

6 Q. Okay.

7 MR. HAWKINS: Your Honor, may I have
8 this admitted?

9 MR. HAYNSWORTH: May we approach,
10 Your Honor.

11 (OFF RECORD BENCH CONFERENCE)

12 THE COURT: Hang on. Hang on. Hang
13 on gentlemen. Hang on.

14 Madam Forelady, ladies and gentlemen, I
15 think we're going to have a matter to discuss.
16 It'd be time for you to take a break for about
17 fifteen minutes. Don't talk about the case while
18 you're out because it's not over yet.

19 (JURY OUT AT 9:59 A.M.)

20 THE COURT: All right. Let's go
21 back to your tables so everybody can be heard
22 from where you are. I've got the picture.

23 WITNESS: Me too?

24 THE COURT: No, you stay right
25 there.

1 Okay. All right. The objection, Mr.
2 Haynsworth?

3 MR. HAYNSWORTH: Yes, sir, Your
4 Honor. AS you know, Judge, it is my belief that
5 Mr. Hawkins intends to put a bunch of pictures
6 into evidence under the theory of this depicts
7 the area, but the purpose is to show trash and
8 debris, or in that picture as an example, a
9 Target employee talking on their cell phone
10 suggest that he is not paying attention. The
11 issue in this case is what happened and the
12 condition of that parking lot at the time she was
13 injured or arguably before she was injured, since
14 the import is the hypodermic had been there a
15 long period of time before she encountered it.

16 Mr. Hawkins has got a bunch of pictures
17 that who knows who took them and when they took
18 them, that he wants to try to get into evidence
19 through people that didn't take the picture and
20 don't know what the picture is, other than he's
21 testified as he asks them a question. 'Isn't
22 this a picture of your cart attendant over by
23 Lowe's?' He's testifying by his question trying
24 to tell the witness what the picture is that the
25 witness didn't take.

1 If he wants to introduce a photograph,
2 just like if he was introducing a business record
3 from the hospital. You introduce that record
4 through the custodian of the hospital records,
5 not through the Target lead-on-duty. Same thing.
6 If he wants to introduce photos that are
7 irrelevant and that depict the area, then he can
8 do that through a witness who knows this is the
9 area where this lady got hurt, if they know.

10 John Jackson didn't go outside to have
11 this lady point out where it happened. She did.
12 The only other person who knows where it happened
13 is the plaintiff. If the plaintiff wants to
14 testify that these pictures -- that's where this
15 -- that's the broader picture where that syringe
16 was and she's familiar and that picture depicts
17 that, that's fine. But it is improper to try and
18 introduce pictures through witness that don't
19 know what they're looking at, other than what
20 they were told.

21 And beyond that, Your Honor, as you
22 well know, my position is that the pictures
23 showing anything other than the area as it looked
24 at the time of the incident are not admissible.
25 That's the only relevant picture. And to

1 introduce pictures of even the area showing a
2 bunch of trash from last week has no probative
3 value as to what the area looked like two years
4 ago. And if it did have any probative value it
5 is substantially outweighed by the prejudice that
6 all the trash -- I mean, he ain't got a clean
7 photo where we can see.

8 All of these pictures were taken for
9 the specific reason to try and show that there's
10 trash in it, to plant the seed in this jury's
11 mind. 'We're suing her for running a red light.
12 Here are three pictures three years later running
13 red lights. Therefore, the Defendant is a red-
14 light runner and most likely ran the red light
15 that my client's complaining of.' You can't
16 introduce evidence that isn't relevant to the
17 state of affairs that day. And none of these
18 pictures are relevant, other than they generally
19 show the area.

20 And I will concede, Your Honor, I don't
21 think it's proper but if he has no pictures that
22 show the area, other than the ones that have some
23 trash in it, I'm fine with those pictures. But
24 as I've been fussing about since yesterday, you
25 know, Mr. Hawkins continues to try and get

1 pictures showing something other than the area
2 where this hypodermic was to try and show Target
3 keeps a trashy parking lot. And you can't use
4 evidence of what it may look like two years hence
5 to show that's what it most probably looked like
6 back when this lady got hurt.

7 She can testify to what it looked like
8 that night. If she's going to get up and say it
9 was full of trash and there was a cart rack, cart
10 -- whatever they put the carts in?

11 THE COURT: It's a cart corral.

12 MR. HAYNSWORTH: A cart corral.

13 THE COURT: I learned that in
14 another case. It's called a cart corral.

15 MR. HAYNSWORTH: If she wants to say
16 and there is a cart corral about two feet to the
17 left of where that needle was, that's fine. She
18 knows what it looked like that night.

19 If he wants to ask any of these people
20 what it looked like that night, that's fine.
21 That's the relevant issue.

22 But it is very prejudicial to get in
23 all these pictures taken by somebody at some time
24 after the fact to try to establish what the
25 parking lot looked like the night of the event.

1 THE COURT: Mr. Hawkins?

2 MR. HAWKINS: Your Honor, I know he's
3 got to do a job for his client, but you don't
4 have to take the picture in order to be asked
5 questions about it. He's saying they should be
6 looking at the ground, they should be checking
7 for hazards. They shouldn't be on the cell
8 phone. I've got a picture of a cart attendant on
9 a cell phone that shows what they're doing, that
10 they shouldn't be doing.

11 It doesn't have to have happen before.
12 It doesn't matter when it was taken. I was
13 showing the picture. I don't expect him to go
14 take pictures of people on their cell phones at
15 Target and bring them to trial. The only way
16 we're going to get those pictures is if we go
17 take them.

18 And, you know, I'm happy to put Clint
19 up there later to say did you take this picture?

20 What did you observe?

21 Did you hear his testimony about
22 they're supposed to be looking at the ground.

23 Did you observe this that day?

24 What did this picture show?

25 I'm happy to do that but I don't think

1 it's necessary when he told us where -- what the
2 picture was and, you know, Knox 's position well,
3 you told him in your question. You can see
4 Lowe's right there. I mean, you can clearly see
5 it's a Target employee. He's worked there since
6 2004, 2005. He knows what the area looks like
7 better than probably anyone in here right now,
8 besides Shelby, but she doesn't even work at that
9 Target anymore.

10 He can say 'yeah, that's the area.' He
11 can say 'yeah, that's a cart attendant.' He can
12 say all that stuff. We can get the picture in
13 like that. He doesn't have to take the picture.

14 THE COURT: Okay. Well, we're going
15 to take a break and it's under advisement. We'll
16 be back in about fifteen minutes. Let's take our
17 break while we're breaking already. Let's be
18 back at twenty after.

19 MR. HAWKINS: Thank you, Judge.

20 MR. HAYNSWORTH: Judge, it's okay
21 for the witness ---

22 THE COURT: I'm sorry. I'm sorry.
23 Yes, sir. It's okay for you to -- sir, don't
24 talk to anybody about your case. I'm sorry.
25 Thank you.

1 (BRIEF RECESS)

2 THE COURT: Okay. I'm going to read
3 from some of the research we found, (reading):

4 "Courts have admitted photographs in
5 two separate ways, testimony from the operator of
6 the camera and testimony from a witness who was
7 the scene or who can testify as to whether the
8 photograph accurately represents the scene as it
9 was at the relevant time.

10 There are two common techniques for
11 verifying photographs to admit them into
12 evidence. The pictorial testimony method and the
13 silent witness method.

14 The most readily used method is the
15 pictorial testimony method, which requires
16 through a line of questioning, a witnesses
17 testimony having to follow the foundational
18 elements:

19 One, familiarity with the scene or
20 object;

21 Two, an explanation for the basis of
22 that familiarity;

23 Three, recognition of the scene or
24 object depicted in the photographs; and

25 Four, testimony indicating the

1 *photograph was a fair and accurate depiction of*
2 *the scene or object at the relevant time."*

3 It also goes into the silent witness
4 which is not what's before us today. That would
5 be an aerial photograph or an ATM. The article
6 goes on to explain aerial photograph, ATM
7 photograph, something of that sort.

8 Okay. The photograph that's here, Mr.
9 Hawkins, we don't know when it was taken. We
10 don't know where it was taken. We don't know how
11 it was taken from the testimony of the witness
12 that is on the witness stand. So at this point,
13 which I'm not reaching relevancy at this point,
14 but at this point -- at this point, the objection
15 is sustained because proper foundation has not
16 been laid.

17 MR. HAYNSWORTH: Thank you, Your
18 Honor.

19 THE COURT: Anything further?

20 MR. HAWKINS: No, Your Honor.

21 THE COURT: Let's have our jury.

22 MR. HAYNSWORTH: You need to go back
23 up there.

24 THE COURT: Yes.

25 (WITNESS TAKES STAND)

1 (JURY IN AT 10:34 A.M.)

2 THE COURT: Madam Forelady, any
3 matters for the jury?

4 MADAM FORELADY: No, sir.

5 THE COURT: All right. Thank you.
6 Give your attention to the lawyers.

7 MR. HAWKINS: May it please the Court.
8 Thank you.

9 DIRECT EXAMINATION RESUMED

10 BY MR. HAWKINS:

11 Q. Mr. Jackson, can we agree that if cart
12 attendants are outside collecting carts, they
13 should not be on their cell phone?

14 A. Yes.

15 Q. What can danger can result if a cart
16 attendant is not paying attention while they're
17 outside of Target?

18 A. You're in a parking lot. There's
19 moving cars, traffic. I've seen cars hit, you
20 know, the cart machine, the cart pusher.

21 Q. Would that pose any problems with being
22 able to see dangers on the ground if you're on
23 your cell phone?

24 A. Yeah. I would guess.

25 Q. When you say you've seen cars hit the

1 cart rack?

2 A. The cart pusher. The ---

3 Q. Oh, the cart that the ---

4 A. Uh-huh.

5 Q. --- he's pushing along is to collect
6 the carts?

7 A. Uh-huh. Yes, sir. Yes, sir.

8 THE COURT: Say "yes."

9 WITNESS: Yes, sir.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. HAWKINS:

13 Q. Did you ever talk to Ms. Brintnall
14 about this injury in the parking lot?

15 A. No, sir.

16 Q. Okay. Do you have any idea why this
17 issue wasn't discussed with the property
18 management technician?

19 A. No, sir.

20 Q. Did y'all ever have a safety meeting
21 about it?

22 A. No, sir.

23 Q. Did you have a safety meeting about how
24 to prevent similar injuries or causing harms in
25 the future?

1 A. No, sir.

2 Q. Did you ever suggest to Ms. Brintnall
3 that she collect the video so that y'all could
4 play it back and check for routine safety
5 solutions to see if the cleaning truck came?

6 A. No, sir.

7 Q. Who is Wes Zitnay or Zitnay?

8 A. He is our logistics manager.

9 Q. Okay. Is that your boss?

10 A. Yes, sir.

11 Q. Okay. Did he ever ask about this
12 incident?

13 A. No, sir.

14 Q. Did he ever have a meeting with you
15 about this incident?

16 A. No, sir.

17 Q. Did he ever ask for any documentation
18 if the parking lot had been cleaned before the
19 injury?

20 A. No, sir. I'm not sure he was my boss
21 at that time. I'm not a hundred percent sure.

22 Q. Okay. I don't know if this helps, but
23 I think at your time of your deposition he was.

24 A. Yeah.

25 THE COURT: Sir, ask him a question.

1 He'll give you an answer. If it differs from
2 what you know, give him the deposition.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HAWKINS:

5 Q. Do you recall giving a deposition at my
6 office?

7 A. Yes, sir.

8 Q. Was Wes Zitnay your boss then?

9 A. Yes, sir.

10 Q. Okay. Does that refresh your
11 recollection of whether He was your boss when the
12 incident took place?

13 A. I'm not sure.

14 Q. Okay. Well, whoever your boss was, did
15 that person ever ask to have a safety meeting to
16 talk about this?

17 A. No, sir.

18 Q. Did Tyler Hammer ever call you?

19 A. No, sir.

20 Q. Do you know who Tyler Hammer is?

21 A. No, sir.

22 Q. No one named Tyler Hammer ever asked
23 about the incident or the needle or anything like
24 that?

25 A. I've never heard of Tyler Hammer.

1 Q. Have you ever seen the needle that
2 caused the injury?

3 A. No, sir.

4 Q. Anybody at the Target ever ask that you
5 look at it or ask that you need -- you both look
6 at it or anything like that?

7 A. No, sir.

8 Q. What day of the week did the incident
9 take place; do you know?

10 A. The 21st is all I know from the
11 documents.

12 Q. I think the day of the week is on here.
13 Let's look at that.

14 A. Wednesday.

15 Q. Okay. All right. While I'm up here
16 with the document, I'm going to ask you one more
17 question. Do you see right here 4/28 and 4/29?

18 A. Yes, sir.

19 Q. What day of the week is 4/28?

20 A. Monday.

21 Q. What day of the week is 4/29?

22 A. Monday.

23 Q. Okay. If -- did you say this was
24 automatically generated?

25 A. Yes, sir.

1 Q. Okay. Do you have any idea how Monday
2 got marked twice for the 29th?

3 A. No, sir.

4 Q. Was any of this information entered in
5 after the walk the vibe it describes was actually
6 done?

7 A. No, sir.

8 Q. Okay. So where it says Tuesday for
9 4:15, does that mean information was entered on
10 Tuesday?

11 A. Yeah. If it says Tuesday it was
12 entered Tuesday, I guess.

13 Q. Okay. Well, my question about 4/29 and
14 4/28 because both of them cannot be Monday. We
15 agree about that?

16 A. Yes, sir.

17 Q. Was the machine's fault or was that
18 someone who entered it in wrong?

19 A. I am not sure.

20 Q. Okay. Back to the day of the week that
21 the incident took place. I think we agreed it
22 was on a Wednesday?

23 A. Yes, sir.

24 Q. All right. And the cleaning truck
25 comes on Thursday nights after -- what time?

1 A. It's usually after the store closes.

2 It's some time during the night.

3 Q. Am I right on Thursday night?

4 A. Yes, sir.

5 Q. So let's assume for a minute that --
6 you said that the cleaning truck, you don't know
7 what percentage of trash it cleans up; right?

8 A. No, sir. I don't.

9 Q. Okay. Well, if the cleaning truck had
10 picked up the needle or if it had come and the
11 needle was dropped after that, can we agree that
12 that Friday would have had to transpire,
13 Saturday, Sunday, Monday, Tuesday, and all day
14 Wednesday before my client was there?

15 A. Yes, sir.

16 Q. Okay, sir. And that's six days; right?

17 A. Uh-huh. Yes, sir.

18 Q. Okay. Other than piece of paper that
19 says you walked the vibe, are you aware of any
20 evidence at all -- I think I asked you this
21 before. Are you aware of any evidence at all
22 that any cleaning or any routine maintenance took
23 place before my client was injured?

24 A. No, sir.

25 Q. Let me ask you a little bit more about

1 this document. What does that mean? What does
2 all that stuff mean right there? Just if you
3 would, start on this part of the grid and just
4 work your way over and tell me what each thing
5 means.

6 A. This is walk the vibe daily/
7 housekeeping area and brand. It's different
8 parts of the store, interior and exterior that I
9 would walk and check. I would follow-up behind
10 housekeeping and, you know, just kind of guide
11 them on what they need to do, kind of manage that
12 process.

13 Q. Okay. And just so it's clear for the
14 jury, there aren't any notes about what was done
15 to clean or what was done to remove dangers?

16 A. No.

17 Q. Okay. Thank you. How long had Target
18 used the vendor that was supposed to come, the
19 cleaning truck before the injury took place?

20 A. I am not sure.

21 Q. Do they still use that vendor?

22 A. I am not sure.

23 Q. When's the last time you looked at any
24 records from the third-party vendor to make sure
25 the parking lot was maintained?

1 A. I do not receive records from a third-
2 party vendor.

3 Q. When's the last time you called a
4 third-party vendor to make sure the parking lot
5 was cleaned?

6 A. I do not call unless it was a miss.

7 Q. When's the last time you watched video
8 footage that contained a cleaning truck to prove
9 that the cleaning truck actually came?

10 A. I do not watch video footage.

11 Q. What steps did Target take to make sure
12 the vendor was thorough and kind of fitted the
13 bill for what they needed? What steps did they
14 make before they hired a third-party vendor; do
15 you know?

16 A. I do not know.

17 Q. Do you know if they took any steps to
18 make sure they were thorough and a good cleaning
19 truck company?

20 A. That's all handled at the corporate
21 level.

22 Q. Anybody from corporate here to testify?

23 A. Not that I know of.

24 Q. Were the people that cleaned, the
25 people that run the cleaning truck, are they

1 supposed to get out of the truck and remove small
2 items that the truck doesn't pick up?

3 A. They will get out of the truck and blow
4 out the cart corrals with a blower and blow off
5 the sidewalks. And then they'll sweep with the
6 truck.

7 Q. Do the trucks leave items behind that
8 are larger than like a large box?

9 A. Usually, no. They'll get out and pick
10 up the large debris and stuff like that.

11 Q. And I'll ask you this. Do you have any
12 idea if the truck gets items as small as a
13 hypodermic needle?

14 A. I have no idea.

15 Q. Can we agree that for customer safety
16 it's important to remove dangers as small as a
17 hypodermic needle?

18 A. Yes, sir.

19 Q. Have you ever seen the parking lot with
20 large amounts of debris and trash?

21 A. Yes, sir.

22 Q. What's the longest amount of time
23 you've ever seen it, an amount of large -- a
24 large amount of debris and trash?

25 A. Could you repeat that?

1 Q. Yeah. What's the longest amount of
2 time any large amount of debris or trash laid in
3 the parking lot?

4 A. If there's a large amount of debris or
5 trash when I come in in the mornings, it's up
6 before the store opens.

7 Q. Okay. Did you testify at some point
8 that it's possible it could lay there for the
9 day?

10 A. It's possible.

11 Q. And dangers that may be trash and
12 debris, they should be spotted -- they should be
13 cleaned up as soon as they're spotted; right?

14 A. Should be.

15 Q. I had a chance to speak with someone
16 who worked with Target for a number of years.
17 And I want to ask you a couple of questions about
18 your experience before 2008; okay?

19 A. Okay.

20 Q. You've been with the company, you said,
21 since '04 or '05?

22 A. Uh-huh.

23 Q. In 2008 did you -- was there a CEO
24 change?

25 A. There were a CEO change. I'm not sure

1 of the date.

2 Q. Okay. There have been a few since
3 2008?

4 A. Maybe.

5 Q. Okay. All right. Did you notice some
6 changes in the way Target did things after the
7 2008 CEO change?

8 A. Since the date I started Target, Target
9 changes year after year. There's always changes.

10 Q. Okay. After 2008 did you notice that
11 more people were cut early or allowed to go home
12 early to save payroll?

13 A. That's always been a part of retail
14 since I've been there.

15 Q. Okay.

16 A. So that hasn't changed.

17 Q. When you say that's always been a part
18 of retail, you mean ---

19 A. You have a slow season. You have a
20 busy season. The slow seasons we have to cut to
21 save payroll. The busy seasons is where we spend
22 our payroll.

23 Q. All right. Generally, if you're going
24 to cut somebody and let them go home early, the
25 first people to get cut are cart attendants;

1 right?

2 A. I don't know. I don't make them
3 decisions.

4 Q. Okay. Because you're salaried?

5 A. No. I'm hourly.

6 Q. You are hourly?

7 A. Yeah. I'm not in management. That's
8 just a title.

9 Q. And you're gone at what time every day?

10 A. 2:30.

11 Q. Okay. Is it fair to say you'd be gone
12 every day before they start cutting people?

13 A. Yes.

14 Q. Okay. All right. The people who check
15 for hazards -- well, let me ask you this way.
16 After 2:30, after you leave, which employees
17 would be checking for hazards the most, would it
18 be cashiers or would it be cart attendants?

19 A. Cart attendants and sometimes cashiers
20 are cart attendants too, also.

21 Q. Okay. Are you aware the time of day
22 this took place?

23 A. I'm not a hundred percent sure.

24 Q. Okay. Did you -- if I told you it was
25 8:00, about 7:30, would you have any reason to

1 disagree with that?

2 A. No, sir.

3 Q. Okay. You said you get off at 2:30?

4 A. Yes, sir.

5 Q. What's the purpose of cutting cart
6 attendants or allowing cart attendants to go home
7 again?

8 A. I guess it would be to save payroll.

9 Q. Is it to make the store's numbers
10 better?

11 A. I'm not sure.

12 Q. Is it fair to say that the more cart
13 attendants that are on the clock, the more people
14 are available to check the dangers?

15 A. I guess that would be fair to say.

16 Q. Tell me what security does in the
17 Target. Or tell me how many people are involved
18 in that process, security?

19 A. I'm not sure.

20 Q. Do you ever see them?

21 A. Yes.

22 Q. In fact, are they supposed to do an
23 hourly walk of the parking lot?

24 A. I don't know.

25 Q. Do you remember if they were supposed

1 to do an hourly walk of the parking lot before
2 the 2008 CEO change?

3 A. I have no idea.

4 Q. Do you know what the protocol is when
5 exposed to an extremely dangerous item such as a
6 hypodermic needle?

7 A. I guess you would put it in a sharps
8 container.

9 Q. Do you have any idea why the needle in
10 this case wasn't placed into a sharps container?

11 A. I have no idea.

12 Q. Do you have any idea why the needle in
13 this case wasn't preserved?

14 A. I have no idea.

15 Q. Anybody ever ask you about why the
16 needle was preserved or not preserved or anything
17 like that?

18 A. No, sir.

19 MR. HAWKINS: Your Honor, can we
20 approach?

21 THE COURT: Sure.

22 (OFF RECORD BENCH CONFERENCE)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. HAWKINS:

25 Q. Mr. Jackson have you ever sent

1 anything, any biohazard, any dangerous item,
2 anything to the forensics lab owned by Target in
3 Nevada or in Minneapolis?

4 A. No, sir. I never heard of it.

5 Q. Thank you. When did you first see a
6 needle box or biohazard box at Target?

7 A. Since the day I started there's always
8 been one.

9 Q. Okay. Ms. Brintnall testified about
10 that a little bit. Tell us again where's it
11 located?

12 A. At TSC or team member service center.
13 It's back on the counter by -- the timeclock's
14 here. The desk is over here, so over on the desk.

15 Q. Okay. Is there more than one?

16 A. Yes.

17 Q. Okay.

18 A. There's one in the housekeeping closet
19 they use to dispose of razor blades just for
20 safety purposes.

21 Q. So there's two total in the store?

22 A. That I know of.

23 Q. Have you ever heard of security
24 checklists?

25 A. No, sir.

1 Q. You've never heard of that? Have you
2 ever heard of anything, any term similar to that,
3 security checklist, security maintenance log or
4 anything like that? Have you ever heard of
5 anything like that?

6 A. No, sir.

7 Q. Not before 2008 or after?

8 A. No, sir.

9 Q. Do you know how many cameras Target
10 has?

11 A. No, sir.

12 Q. Do you know if it's more than a
13 hundred?

14 A. No, sir.

15 Q. I'll ask you one of the same questions
16 I asked Ms. Brintnall. Are you aware of any
17 footage, not just of the cleaning truck, but any
18 footage related to this incident at all?

19 A. No, sir.

20 Q. We asked for any related footage. So
21 are you aware of any footage that contains the
22 injury, anything?

23 A. No, sir.

24 Q. You've never seen anything like that?

25 A. No, sir.

1 Q. I think you said after the incident you
2 never spoke with Scott Stanley about this; is
3 that right or did you, in fact, speak with Mr.
4 Stanley?

5 A. I don't think so.

6 Q. Did you ever think about doing that?
7 Did you ever consider expressing some concern to
8 him?

9 A. No, sir.

10 Q. Has Target increased the frequency of
11 its cleaning since this incident?

12 A. No, sir.

13 Q. Has Target done anything to improve
14 its safety scans and its cleaning methods since
15 this incident?

16 A. We're doing everything the same.

17 Q. That's all the questions I have. Thank
18 you.

19 THE COURT: Yes, sir.

20 MR. HAYNSWORTH: May it please the
21 Court.

22 THE COURT: Yes, sir.

23 MR. HAYNSWORTH: Madam Court
24 Reporter, was the walk the vibe sheet marked as
25 an exhibit?

1 COURT REPORTER: No.

2 CROSS-EXAMINATION

3 BY MR. HAYNSWORTH:

4 Q. The document he asked you so many
5 questions about walk the vibe, is this what he
6 was showing you?

7 A. Yes, sir.

8 Q. Okay.

9 MR. HAYNSWORTH: Your Honor, I'd ask
10 that this be marked as Defendant's 1.

11 MR. HAWKINS: No objection.

12 THE COURT: All right. So marked.

13 (SO MARKED AS DEFENDANT'S EXHIBIT 1)

14 MR. HAYNSWORTH: And that it be
15 admitted.

16 THE COURT: Any objection to its
17 admission?

18 MR. HAWKINS: No objection, Your
19 Honor.

20 THE COURT: It's admitted without
21 objection.

22 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

23 CROSS-EXAMINATION CONTINUED

24 BY MR. HAYNSWORTH:

25 Q. All right. John, let me show you this

1 document that you were asked so many questions
2 about. Now, you're the, for lack of a better
3 term, are you sort of a hands-on head maintenance
4 guy at the Target here in Anderson?

5 A. Yes, sir.

6 Q. And sort of generally speaking, what
7 sort of maintenance things do you do? Walk me
8 through like a typical day that you would have at
9 Target.

10 A. I oversee all the vendors that come
11 through Target, whether they be housekeeping,
12 landscaping, electrical, plumbing, roofing, and
13 whatever minor fixes throughout the building that
14 I can take care of myself.

15 Q. Okay. The curb right when you pull up
16 in front is painted yellow; isn't it?

17 A. Yes, sir.

18 Q. Who painted that?

19 A. I did at one time.

20 Q. So assuming it's within your skill set,
21 pretty much anything that might come up
22 maintenance-wise is something you may handle?

23 A. Yes, sir.

24 Q. All right. Are you married, John?

25 A. Yes, sir.

1 Q. Have you got any kids?

2 A. Yes, sir.

3 Q. How many kids you got?

4 A. I have seven.

5 Q. Are they range -- a big range in age?

6 Are they all grown or what?

7 A. They range from eight to twenty-three.

8 Q. Does your wife work?

9 A. Yes, sir.

10 Q. What does she do?

11 A. She is a nurse practitioner.

12 Q. And y'all live here in Anderson?

13 A. Yes, sir.

14 Q. You were asked a whole bunch of
15 questions about if there was any video showing
16 the sweeper truck or the cleaning truck. And I
17 wanted to make sure I got in my mind what sort of
18 truck we're talking about. Is this the truck,
19 the Ferrandino & Son's truck. Is that like what
20 you might see sweeping along the edge of city
21 streets where it's got the big mechanical brooms.

22 A. And a vacuum.

23 Q. And a vacuum truck?

24 A. Yes, sir.

25 Q. I mean, that's the kind we're taking?

1 A. Yes, sir.

2 Q. All right. And are the video cameras
3 on in the middle of the night where they would --
4 if you went back and looked, you wanted to see
5 who was driving through the parking lot in the
6 middle of the night, is that something that it
7 would show?

8 A. I'm not sure.

9 Q. Okay. And what is it that you do to
10 make sure that the truck came the Thursday night
11 and the Friday morning like it's supposed to?

12 A. That Friday morning before the store
13 opens I'll walk the parking lot to Clemson
14 Boulevard to the back of the store. And check
15 landscaping, parking lot, and all of that stuff.
16 Look for large debris and -- you can pretty much
17 tell, you know, just taking a visual look of what
18 actually -- if it happened or not, because if it
19 didn't happen, there would be trash everywhere.

20 Q. Well, that's kind of what I was going
21 to ask you. I mean, you wouldn't need a video to
22 know when you went the morning after, that the
23 truck had been there or not; right?

24 A. Right.

25 Q. Okay. And the walk the vibe, the

1 computerized form that we've got printed out,
2 that's two months before and one month after Mrs.
3 Garrison says this incident took place. If you
4 had gone and inspected -- when you get to work
5 that Friday morning, if the truck hadn't come,
6 would you have indicated that in the computer
7 system?

8 A. Yes, sir.

9 Q. Okay. And, in fact, are you
10 comfortable that the truck did, in fact, come the
11 Thursday night/Friday morning of the week we're
12 talking about?

13 A. Yes, sir.

14 Q. All right. And in addition to checking
15 to make -- to looking in the parking lot and
16 making sure the truck was there -- let me ask you
17 this. You know, if the truck was there and you
18 saw something like this syringe laying there in
19 the curb, what would you have done?

20 A. I would have picked it up.

21 Q. Okay. Is that part of the training
22 Target did?

23 A. Yeah. I've had that training.

24 Q. Is that in some sense common sense
25 since you've worked there at that store?

1 A. Yes, sir.

2 Q. All right. The training you received,
3 would that apply to the other employees of the
4 Target store here in Anderson?

5 A. Not all.

6 Q. Okay. Are all of them, whether it's
7 cart attendants or cashiers or security or the
8 food court and whatever the different Target
9 employees might be, is part of all employees'
10 training Target wants to maintain a clean, well-
11 lit, safe store so you can get lots of customers

12 ---

13 A. Yes, sir.

14 Q. --- and all hopefully get raises at
15 Christmastime?

16 A. Yes, sir.

17 Q. Do you believe, knowing what you know
18 of the folks you work with, that if that syringe
19 had been out there for any length of time before
20 Mrs. Garrison says she encountered it, that it
21 would have been picked up and taken care of?

22 A. If it would have been seen, I believe
23 that they would have notified the LOD or taken
24 care of it themselves.

25 Q. You've been asked a lot of questions --

1 or excuse me. You've been told by Mr. Hawkins
2 that in 2008 Target had some sort of change with
3 the chief executive officer of the whole company.
4 Other than him telling you that, do you know
5 whether or not there was a new CEO change in
6 2008?

7 A. I know there was a CEO change but I
8 don't know when. That's way above my level.

9 Q. Above your paygrade?

10 A. Yes. Yes, sir.

11 Q. In addition to checking after to make
12 sure that the parking lot's been swept by the
13 sweeper truck, are there other people that you
14 check behind who are responsible for cleaning
15 things or putting parts up or, you know, having
16 the rugs straight when you walk in? Beyond the
17 sweeper truck, do you check behind the others to
18 make sure they've done what they're supposed to
19 do?

20 A. Yes, sir.

21 Q. Okay. And in the same walk the vibe
22 computer system that you enter in information
23 about the sweeper truck, do you enter information
24 as to whether those people have or have not done
25 their job?

1 A. Yes, sir.

2 Q. Okay. And isn't it true that y'all's
3 system has sort of green and red. Red is it
4 didn't pass muster and green is, it did pass?

5 A. Yes, sir.

6 Q. During the weeks surrounding May of '14
7 when you checked behind to make sure things were
8 done as they're supposed to be done, did you use
9 any red marks?

10 A. No, sir.

11 Q. And not getting a red mark means things
12 ran like they were supposed to; is that right?

13 A. Yes, sir.

14 Q. You were asked a lot of questions about
15 the area where this happened and this side of the
16 building where Lowe's is. To make sure I kind of
17 understand that night. Mrs. Garrison never came
18 and talked to you because you wouldn't have been
19 there. You left at 2:30; is that correct?

20 A. Correct.

21 Q. And Mrs. Garrison nor Mr. Garrison or
22 anyone on their behalf ever came to the store the
23 next day, the day after that, to talk to you or
24 ask you any questions?

25 A. No, sir.

1 Q. And is it fair to say that the first
2 time you found out about any issue involving Mrs.
3 Garrison in the parking lot and the hypodermic, a
4 syringe in y'all's parking lot is when the
5 Garrisons sued Target?

6 A. My deposition, I believe, when I found
7 out about that.

8 Q. And your deposition was sometime after
9 they had sued Target?

10 A. Yes, sir.

11 Q. You've worked there eleven ---

12 A. Eleven years.

13 Q. Eleven years? Do you believe from your
14 experience -- the whole eleven years have been at
15 this store here in Anderson; right?

16 A. Yes, sir.

17 Q. Do you believe -- well, let me ask you
18 personally. Do you take seriously keeping that
19 store and the surrounding area safe for your
20 fellow employees and guests that may come shop in
21 the store?

22 A. Yes, sir. I take my job very
23 seriously. I have seven kids to take care of.

24 Q. And do you believe that Target or any
25 of its employees did anything wrong or didn't

1 exhibit due care or have any responsibility

2 for what Mrs. Garrison said happened to her?

3 A. No, sir.

4 Q. Thank you, John. That's all the
5 questions I have.

6 THE COURT: Anything?

7 MR. HAWKINS: Brief redirect, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR HAWKINS:

11 Q. Mr. Jackson, you were asked a question
12 about whether the cameras run at night?

13 Remember, Knox just asked you?

14 A. Yes, sir.

15 Q. Do you know the answer to that
16 question?

17 A. No, sir.

18 Q. Do you think if somebody had broke in
19 to get Target's money they'd be able to play the
20 footage back at nighttime?

21 A. I would imagine.

22 Q. I would imagine too. Now, we're
23 talking about the importance of keeping records;
24 right?

25 A. Yes, sir.

1 Q. Would you agree with me that you told
2 me that y'all didn't locate any physical records
3 from housekeeping, cleaning truck or anybody like
4 that? Physical records?

5 A. Yes, sir.

6 Q. Do you think Target needs to do
7 something to improve its recordkeeping and its
8 proper maintenance?

9 A. Well, housekeeping does have a
10 checklist they fill out now.

11 Q. Okay.

12 A. A daily checklist on what their routine
13 should be. But as far as lot sweeping, no.

14 Q. Do you think it would be helpful if
15 that system had been in place before this injury
16 to make sure that housekeeping had done its job?

17 A. I don't think it would have made a
18 difference.

19 Q. You don't think it would make a
20 difference to be able to review the record and
21 make sure everything was done?

22 A. There's always been some kind of walk
23 or some kind of check to check behind
24 housekeeping.

25 Q. You testified a few minutes ago that if

1 somebody had seen this needle they would have
2 gotten it up, they would have cleaned it up or
3 notified somebody?

4 A. Yes, sir.

5 Q. Would it make it more or less difficult
6 for somebody to see the needle if they're holding
7 a cell phone?

8 A. Yes, sir.

9 Q. Would it?

10 A. I would imagine.

11 Q. You think that might prevent somebody
12 from seeing the danger?

13 A. Yes, sir.

14 Q. You testified that you didn't -- well,
15 I don't want to put words in your mouth so I'll
16 ask you about when you found out about this
17 incident. Did you find out about the incident
18 when you were asked to give a deposition?

19 A. I believe so.

20 Q. Okay.

21 A. I'm not a hundred percent positive
22 because that's been a long time ago.

23 Q. I understand. Do you remember when
24 your deposition was given?

25 A. I'm not a hundred percent sure.

1 Q. Yeah. I don't remember the date
2 either. Let me check on it. Okay. So that was
3 -- let's see. August 19th; does that sound right?

4 A. I guess.

5 Q. Okay. And you understand that the --
6 when the injury took place, May 21, 2014?

7 A. Yes.

8 Q. So that's a little more than a year
9 between -- about a year and three months I guess
10 between the injury and when you found out; is
11 that fair to say?

12 A. Yes, sir.

13 Q. Is it fair to say that Target didn't
14 tell you about an injury -- estimating -- that
15 happened in the parking lot for a year and three
16 months?

17 A. Yes, sir.

18 Q. Have you seen the pictures of the
19 needle?

20 A. Yes, sir.

21 MR. HAYNSWORTH: Your Honor, I think
22 we're going way beyond redirect.

23 THE COURT: I'm going to give you a
24 little bit of leeway. How far are we going?

25 MR. HAWKINS: Just one question.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION CONTINUED

3 BY MR. HAWKINS:

4 Q. Is that something you would want one of
5 your seven children to pick up?

6 A. No, sir.

7 Q. Thank you, Mr. Jackson.

8 THE COURT: Anything?

9 MR. HAYNSWORTH: No, sir.

10 THE COURT: Sir, you may step down.
11 Please be careful.

12 (WITNESS STEPS DOWN)

13 THE COURT: Next witness.

14 MR. HAWKINS: Your Honor, the plaintiff
15 would call Clint Garrison to the stand.

16 THE COURT: Okay.

17 (WITNESS TAKES STAND)

18 CLINT MICHAEL GARRISON, having been
19 sworn to tell the truth, and nothing but the
20 truth, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HAWKINS:

23 Q. Clint, before we start, would you tell
24 the jury a little bit about yourself? Tell the
25 jury where you live and where you work.

1 A. I live here in Anderson County. I've
2 lived here all my life. Been married for eleven
3 years. Got four wonderful children. I work at
4 Hill Electric, electrician.

5 Q. What do you do as an electrician for
6 Hill Electric?

7 A. We go into a lot of factories and
8 install new machinery. That's the basic.

9 Q. What is your -- how many levels have
10 you moved up since you started working there?
11 Have you ever been promoted?

12 A. Yeah. You usually start out as a
13 helper, move up to top helped. Then you become
14 an electrician, top electrician. Then you move
15 on up to foreman, so on. I'm just now moved into
16 a foreman position.

17 Q. When did you start there?

18 A. May of 2012.

19 Q. So since 2012 you've had how many
20 promotions? You listed three, or four?

21 A. I think it's four.

22 Q. Are you a hourly employee?

23 A. Yes.

24 Q. Do you work overtime?

25 A. Oh, yeah, a lot.

1 Q. How often do you work overtime?

2 A. Just about every week.

3 Q. Why do you work so much overtime?

4 A. Provide for my family. I'm the only
5 one that works.

6 Q. Your wife stays home?

7 A. Yeah. It wouldn't benefit us to -- for
8 our kids to be in any kind of childcare or
9 anything like that. It'd be way too expensive.

10 Q. Okay. All right. Let's talk about the
11 actual incident.

12 A. All right.

13 Q. Let's go back to May 21st, 2014. Okay?

14 A. Okay.

15 Q. I want you to tell the jury how you
16 found out about the incident, from the first
17 phone call that you got all the way through.
18 Everything that you want to tell the jury. Okay?

19 A. My wife went shopping. I stayed at
20 home with the kids, with three of our kids. She
21 took our oldest daughter with her. I was sitting
22 around the house, got a phone call. She told me
23 that Kaileigh had picked up a needle ---

24 Q. Clint, let me interrupt you. Lean a
25 little bit closer to that microphone. I want to

1 make sure that the jury can hear and that court
2 reporter can get the record.

3 A. Okay.

4 Q. I see Knox straining, so I want to make
5 sure that everybody can hear you.

6 A. My wife give me a call, let me know
7 that Kaileigh had picked up a needle. In the
8 process of getting it away from her, she got
9 stuck.

10 Q. Let me ask you a question about that.
11 I may interrupt you from time to time. That's
12 just for the jury's clarification.

13 A. (Affirmative nod).

14 Q. Knox was up here during his opening and
15 he's done this a couple of times, (gesture), like
16 he is backhanding a needle. From what you know
17 about your wife, have you seen problems with that
18 description?

19 A. Yeah, I couldn't imagine her doing like
20 a backhand motion. It was more of a swat. I
21 don't know if it was a backhand swat or forward
22 swat, but just instinct, I guess; getting it away
23 from her.

24 Q. Did you see the hole in her hand, the
25 puncture wound?

1 A. Yes, I did.

2 Q. Okay. Where was it? Point to your
3 right hand where it was?

4 A. It was right around in there where the
5 chunky part of your hand is, the meaty part.

6 Q. So was it on the hand of her hand?

7 A. No, it wasn't the back side.

8 Q. Now that we've got that clear, go back
9 to the phone call that you got.

10 A. She called me and she told me that.
11 She was pretty upset. I had to calm her down on
12 the phone, it was tough to understand what she
13 was saying.

14 Q. Was she crying?

15 A. Yes. She, uh -- I asked her what all
16 had she done, had she washed her hands. She
17 said, 'yeah, I went in and washed my hands.'

18 Q. Speak up a little bit.

19 A. Sorry.

20 Q. It's all right.

21 A. She told me she went in, washed her
22 hands. I asked her had she told anybody. She
23 said, 'no, what am I...' -- you know, I said go
24 inside and at least tell somebody that there is a
25 needle in the parking lot. She -- I can't

1 remember if I told her to take a picture or she
2 says, 'I took a picture.' But she took a
3 picture. I asked her to send it to me so that I
4 could see what she got stuck with. She sent it
5 to me and -- (emotional) -- I'm sorry.

6 She, uh, -- the next time that I talked to
7 her was when she come to the house --
8 (emotional). The next time I saw her, when she'd
9 came home -- (emotional).

10 The reason I'm getting so -- (emotional) --
11 (deep breath). The reason I am getting so upset
12 is just not because -- (emotional/crying) -- is
13 my daughter had -- (pause). The condition my
14 daughter was in tore me up. She thought that she
15 had harmed her mom. She thought that she had
16 harmed her mama. Trying to calm them down was
17 just -- (emotional) -- it was awful. I'm sorry.
18 I'm sorry. They were both so upset and, uh, -- I
19 don't know what else to say. They were just
20 terrified. They were -- (pause) -- I forgot.

21 My daughter, I would do anything to protect
22 her. To see her in that -- to see her in that
23 state was just -- (negative gesture).

24 Q. When you say in "that state", do you
25 mean that your daughter was crying along with

1 Denise?

2 A. Yeah, it was just -- it was just --
3 trying to get her to calm down, trying to get her
4 and Denise to calm down was, was, uh, it took a
5 while. It was -- (pause).

6 Q. Has that had any impact on your
7 daughter, going forward?

8 A. She, uh, -- (pause). Every time she
9 hears us talk about it or every time she hears us
10 talk about ---

11 MR. HAYNSWORTH: Your Honor, I'd
12 like to enter an objection as to hearsay, as to
13 what the daughter said.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. HAWKINS:

16 Q. Clint, if you would, don't tell me any
17 statements that your daughter made.

18 A. Okay.

19 Q. Just tell me what you've observed about
20 your daughter?

21 A. She still gets upset.

22 Q. Does she get upset when she hears you
23 mention the incident?

24 A. Yeah.

25 Q. Does she get upset when she hears you

1 mention going to your lawyer's office?

2 A. Yes.

3 Q. Does she get upset when she hears you
4 mention having to go to court?

5 A. Yes.

6 Q. Is she upset about you being here
7 today?

8 A. Yes.

9 Q. Does she remember the event or does she
10 seem to indicate that she remembers the event?

11 A. Yes.

12 Q. How old was Kaileigh?

13 A. She was eight.

14 Q. Have you explained to Kaileigh that she
15 didn't hurt her mama, that her mama was just
16 trying to make sure that she was safe? Have you
17 explained that to her?

18 A. Of course, (affirmative nod).

19 Q. Has it done any good or is Kaileigh
20 still scared, does she still get upset?

21 A. I mean, (affirmative nod), she still
22 gets upset.

23 Q. What do you do to comfort her when she
24 is upset?

25 A. Just tell her that it wasn't her fault

1 and just hold her.

2 Q. Does anybody else try to comfort her
3 besides you?

4 A. Yeah.

5 Q. Who else tries to comfort her?

6 A. My wife, my mom, all of us.

7 Q. After you got -- what time was it when
8 Denise got home?

9 A. They got home, it was fairly late.
10 Probably 9:15, 9:30, somewhere after 9:00,
11 getting close to 10:00.

12 Q. Did you finally get Kaileigh calm
13 enough to put her to bed?

14 A. We finally did, yeah..

15 Q. What did you and Denise decide to do
16 after you got Kaileigh in bed?

17 A. It was already too late. We had four
18 children, three of them were in school at the
19 time. We have -- our youngest son, he was two at
20 the time and it was just -- we decided to wait
21 until the next morning after we took the kids to
22 school to go the emergency room -- yeah, to go to
23 the emergency room.

24 Q. Where did you go to the emergency room?

25 A. Well, the next morning we woke up, got

1 the three kids dressed and took them to school.
2 We came back to the house and Denise called
3 Shelby to ask if there was anywhere specific that
4 Shelby wanted her to go to. She said no, just to
5 go ---

6 MR. HAYNSWORTH: Objection, Your
7 Honor. Hearsay.

8 MR. HAWKINS: Your Honor, he can
9 testify as to ---

10 WITNESS: I was there.

11 MR. HAYNSWORTH: He was starting to
12 testify about what Shelby told his wife.

13 THE COURT: Don't tell us what she
14 told your wife. What did they do as a result of
15 that?

16 DIRECT EXAMINATION CONTINUED

17 BY MR. HAWKINS:

18 Q. Again, Clint, sort of lawyer stuff but
19 try to stay away from telling me any statement(s)
20 that she made. She's going to get a chance to do
21 that. Just tell me what you learned as a result
22 of the conversation with Shelby.

23 A. We ended up --- we could go anywhere we
24 wanted to, to get medical treatment. So my wife
25 called the Health Department. They said we had

1 to go to the emergency room.

2 MR. HAYNSWORTH: Objection. We are
3 now getting into hearsay.

4 WITNESS: How am I supposed to ---

5 THE COURT: Don't tell them what
6 they said. As a result of that, what did you do?

7 DIRECT EXAMINATION CONTINUED

8 BY MR. HAWKINS:

9 Q. What did you do?

10 A. We ended up going to the emergency
11 room.

12 Q. Okay. Did you as a couple contact the
13 Health Department first?

14 A. Yes.

15 Q. After you as a couple contacted the
16 Health Department, what did you learn from the
17 communication with the Health Department?

18 A. That we had to go to the emergency
19 room.

20 Q. When you went to the emergency room,
21 tell me about -- tell the jury, rather, about
22 that?

23 A. She ended up going back and I stayed in
24 the waiting room with our two-year-old son.

25 Q. Okay.

1 A. She came out. She had a piece of paper
2 with a name and a phone number on it for Dr.
3 Potts. He was -- I guess he was a volunteer at
4 the free healthy clinic.

5 Q. Okay.

6 A. He was a volunteer at the free health
7 clinic. We called him and went and seen him as
8 soon as we left the emergency room, to get the
9 medication that she needed to be treated with for
10 HIV, you know, hepatitis, whatever.

11 Q. I asked you about the health department
12 and the free clinic. At this point in time what
13 was your impression of who was going to pay for
14 this medicine?

15 A. I was under the impression that Target
16 was going to pay for it.

17 Q. Okay. Notwithstanding that, did you
18 still try to keep costs down, by calling the
19 Health Department?

20 A. Of course, (affirmative nod). The --
21 not only the call to the Health Department but
22 the antiviral medication is outrageous, the
23 price. There's no way that I could afford it.
24 So that was -- like I said, I couldn't afford it
25 plus we were trying to keep costs down.

1 Q. Okay. And is why you also went to the
2 free clinic, or was that because that was where
3 Dr. Potts was?

4 A Well, Dr. Potts, the nurse had told us
5 that ---

6 MR. HAYNSWORTH: Your Honor, with
7 respect, we keep talking about conversations with
8 other people that I don't think are going to be
9 brought to court.

10 WITNESS: No.

11 THE COURT: Are --

12 MR. HAWKINS: Your Honor, I am not
13 offering any testimony about what Dr. Potts said.
14 I'm asking about him going there.

15 THE COURT: I know but I think he
16 was about to go into an area that would be
17 hearsay in nature.

18 MR. HAWKINS: Okay.

19 THE COURT: Just answer his
20 questions. He will ask them just right for you.

21 WITNESS: Okay.

22 THE COURT: Go ahead.

23 WITNESS: Can I say something?

24 THE COURT: Answer his questions.

25 WITNESS: All right.

1 MR. HAWKINS: Thank you.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. HAWKINS:

4 Q. How long did y'all stay with Dr. Potts?

5 A. A couple hours.

6 Q. Did you learn that you needed to do
7 anything before meeting with Dr. Potts?

8 A. The very first blood work that you have
9 done, they said that ---

10 MR. HAYNSWORTH: Your Honor, he is
11 going into hearsay. I object.

12 WITNESS: I mean, this is us
13 talking to the -- I'm sorry.

14 THE COURT: Let him ask you the
15 questions.

16 WITNESS: This is us talking to
17 the doctor. I mean, the doctor is talking to us.
18 We are sitting there side by side, having a
19 conversation with the doctor.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. HAWKINS:

22 Q. After going ---

23 A. We knowed that we needed to go get
24 blood work done.

25 Q. Okay.

1 A. And it's not -- you have to go get
2 blood work done. There's no way around it.
3 There's no other way to find out if you have
4 anything or not. You have to go back. So every
5 three months we go back and get blood work done,
6 every three months.

7 Q. Okay. That first time that you went to
8 get -- that she had to get blood work done, the
9 HIV test and all that, did you go with her?

10 A. Yes, I did.

11 Q. Did you take off work to do that?

12 A. Yes, I did.

13 Q. Did you miss wages as a result of that?

14 A. Yes, I did.

15 Q. Are you missing wages today?

16 A. Yes, sir.

17 Q. Did you miss wages when you went with
18 Denise to the E.R. the first time, AnMed?

19 A. Yes, sir.

20 Q. How much do you make per hour? I know
21 that it may be different because you've been
22 dealing with this for two years. But tell the
23 jury how much you made per hour before your last
24 raise, and how much you make per hour after your
25 last raise?

1 A. Before my last raise, I was making
2 \$16.80 an hour. I just got a dollar, so I'm up
3 to \$17.80 an hour now.

4 Q. Do you have an idea of how much wages
5 you've lost as a result of going to doctor with
6 Denise?

7 A. I know that I was -- we was working in
8 a new factory when my wife got stuck. We was
9 working sixty-four hours a week. That was -- we
10 was working five tens, eight hours on Saturday.
11 Since I was lead-on-duty, I'd get ride time back
12 and forth to work because I take care of safe
13 work permits in the morning, I get paid an extra
14 thirty minutes before anybody else gets there. I
15 get paid an extra thirty minutes after everybody
16 else leaves. So I would get paid sixty-four
17 hours a week.

18 The week of when she got stuck, I lost
19 twenty-one hours.

20 The week after she got stuck, I lost
21 eighteen hours.

22 Then the week after that, I lost twenty-four
23 and a half hours.

24 This was all overtime hours.

25 Q. That first week -- well, first let me

1 ask you this. How much of those overtime hours
2 have you missed from work?

3 A. I think the first week was -- it was
4 over three hundred dollars (\$300), it was time-
5 and-a-half.

6 Q. This was the \$17-some-odd-change.

7 A. It was \$16 plus time-and-a-half, so
8 what is that? So twenty-four, ---

9 Q. Twenty-four.

10 A. --- something like that.

11 Q. Do you have any idea of the total
12 amount of wages that you've lost between going to
13 the doctor with her the next day, staying out of
14 work to help with the kids, dealing with court
15 proceedings, hearings, depositions, stuff like
16 that?

17 A. The first three weeks plus, I had to
18 take off for her deposition because, like I said,
19 we had a two-year-old that we didn't have anybody
20 to watch him at the time. So while she was
21 giving her deposition, I was in the lobby with
22 our two-year-old. Then I had to take off for my
23 deposition. So just the first three weeks after
24 she was stuck, the two depositions -- you know,
25 it's already up, it's over two thousand dollars.

1 Q. About two thousand dollars in lost
2 wages?

3 A. Yeah. That was just within the first
4 year. Here we are almost two -- almost two and a
5 half years later, and there's more.

6 Q. Okay. Did you come to John Jackson's
7 deposition?

8 A. Yes, sir, I did.

9 Q. Did you listen as Mr. Jackson testified
10 in that deposition?

11 A. Yes, sir.

12 Q. Did that prompt you to do anything, to
13 go back to the area or anything like that?

14 A. I remember him saying that the cleaning
15 truck come on Thursday night and Friday mornings.
16 Also Mr. Haynsworth asked me had I ever been in a
17 Target parking lot after midnight. I remember
18 telling him no, but I -- I got to thinking and I
19 said, 'Well, if a cleaning truck comes after
20 midnight, I want to know if it is getting done or
21 night.' So I went up there and sat in the Target
22 parking lot one night. Well, I didn't sit in the
23 Target parking lot. I sat in the hibachi steak
24 -- the little, I guess, Chinese restaurant, the
25 hibachi steak restaurant. I sat in their parking

1 lot and watched to see if a cleaning truck, to
2 see if a cleaning truck showed up or not.

3 Q. That was after your deposition?

4 A. Yes.

5 Q. Okay. That was after Mr. Jackson's
6 deposition?

7 A. Yes. His was before mine.

8 Q. The same day?

9 A. Yeah, same day.

10 Q. Yeah. Okay. So Mr. Jackson testifies
11 that the truck comes on Thursday night and you
12 say 'I want to see it for myself.'

13 A. Yeah.

14 Q. Okay. Was it in fact a Thursday night
15 when you went over to Target and watched for the
16 cleaning truck?

17 A. Yes. I got off work, went home, ate
18 supper, hung out with the kids for a little bit,
19 went and got me a couple of Energy drinks, went
20 up there and sit in the parking lot. I know it
21 sounds crazy but -- (pause).

22 Q. And did you position yourself so that
23 you could see that side where Denise had been
24 injured?

25 A. Yeah, I wanted to see if a cleaning

1 truck did come did they just focus on the front
2 parking lot or if they actually done the front
3 parking lot and down the side of the building.

4 Q. Okay. Did you ever see a cleaning
5 truck go down that left-hand side of the building
6 where Denise had been injured?

7 A. I never seen a cleaning truck in the
8 parking lot, period.

9 Q. Okay. That was on a Thursday night?

10 A. That was on a Thursday night, early
11 Friday morning.

12 Q. What time did you arrive at the parking
13 lot on that Thursday?

14 A. It was about 11:45.

15 Q. Okay. What time did you leave the
16 parking lot?

17 A. It was early. It was 5:30, 5:30 in the
18 morning or something like that.

19 Q. Did you work -- did you work both --
20 did you work that Thursday before you went?

21 A. Yeah.

22 Q. How many hours had you worked?

23 A. We was working ten hours a day.

24 Q. Did you ever fall asleep in the parking
25 lot on Thursday night with the Energy drinks?

- 1 A. (Negative gesture), uh, no.
- 2 Q. At 5:30 when you left, what did you do
- 3 next?
- 4 A. Went and got breakfast and ---
- 5 Q. Where did you eat breakfast?
- 6 A. At Bojangles on 28 ByPass.
- 7 Q. After you went to Bojangles, what did
- 8 you do?
- 9 A. Went to work.
- 10 Q. How long did you work the next day?
- 11 A. Ten hours.
- 12 Q. So you'd worked ten hours, came home
- 13 and ate supper, went to the parking lot with some
- 14 Energy drinks, stayed all night, then you left
- 15 and went back for another ten hours?
- 16 A. That's correct.
- 17 Q. Why did you do that?
- 18 A. I had to know. I'd do anything.
- 19 Q. Shortly after Denise was injured, did
- 20 you go back up to Target to see the area?
- 21 A. Yeah, I did. Before the depositions, I
- 22 went back up there once.
- 23 Q. I am going to hand you a picture,
- 24 (tendering). I want you to tell me if you took
- 25 this picture?

1 A. (Upon review), yes, sir.

2 Q. From your knowledge about the case,
3 from going back up there after Denise was
4 injured, does that fairly and accurately depict
5 the area where you understand that she was
6 injured?

7 A. Yes, sir.

8 Q. After it happened?

9 A. Do what now?

10 Q. Does that photograph fairly and
11 accurately depict the area, the general area,
12 where Denise was injured?

13 A. Oh, yeah. Yeah.

14 Q Does that fairly and accurately
15 depict the area outside Target where the
16 injury took place?

17 A. Yes, sir.

18 Q. Does that fairly and accurately
19 depict the general area around the two buggy
20 racks where the needle was found, to your
21 understanding?

22 A. Yes, sir.

23 MR. HAWKINS: Your Honor, I'd move
24 to have this admitted.

25 THE COURT: Any objection?

1 MR. HAYNSWORTH: Mostly likely not,
2 but may we approach?

3 THE COURT: Sure.

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: Okay, ask him a few
6 questions, Mr. Hawkins.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. HAWKINS:

9 Q. Knox, -- sorry. I was just talking
10 to Knox so long up there.

11 A. How dare you?

12 Q. Clint, how many times have you been
13 back to Target to take pictures?

14 A. Numerous times.

15 Q. Why did you do that?

16 A. One that sticks out in my mind is
17 April the 29th, the day before mine and my
18 wife's wedding anniversary. It was on a
19 Friday. And this goes back to John Jackson
20 saying that the cleaning truck comes Thursday
21 night, early Friday mornings. So Friday,
22 which was April 29th, I went up there. I was
23 in the area. I pulled in the parking lot to
24 see if anything had been done about cleaning
25 any, you know, keeping the parking lot clean.

1 Q. Okay.

2 A. And there hadn't been. I mean,
3 there was trash everywhere. That was the day
4 that I took most of my pictures.

5 Q. Did you take this picture on 4/29?

6 A. (Upon review), yep.

7 Q. Notice anything laying on the ground
8 in front of the buggy rack?

9 A. Yep, that was -- I didn't notice the
10 bolt laying in the grass to start with. I
11 noticed that it was missing out of the buggy
12 rack. That's why I took the picture.

13 Q. Now, it's laying in the grass. I
14 want you to take that Sharpie and just put a
15 small circle right around where the bolt is.

16 A. Around it?

17 Q. Yeah.

18 A. (Complies).

19 Q. Okay. When was the last time you
20 took a picture of that bolt?

21 A. August 29th, this past month.

22 Q. So this picture was taken on 4/29?

23 MR. HAYNSWORTH: Your Honor, with
24 all due respect, I object. He's holding it
25 up, showing it to the jury.

1 MR. HAWKINS: It's in evidence
2 already.

3 MR. HAYNSWORTH: It is not in
4 evidence.

5 MR. HAWKINS: It is in evidence.
6 It's marked -- right here (indicating).
7 Do you want to see it?

8 MR. HAYNSWORTH: (Upon review),
9 well, son of a gun, it is. I apologize.
10 We've had so much dust I couldn't ---

11 THE COURT: I love trying a case.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HAWKINS:

14 Q. When was the last time that you took
15 a picture of this bolt? Say it one more time
16 for the jury.

17 A. It was last month, August 29th.

18 Q. And this is dated, what?

19 A. 4/29.

20 Q. 4/29, 5/29, six, seven -- what's
21 that? Four months?

22 A. Yes, sir.

23 Q. Did you hear Mr. Jackson testify
24 earlier that it's unacceptable to leave a
25 hazard on the ground in excess of two hours?

1 A. Yes, I did hear that.

2 COURT REPORTER: Your Honor, may I
3 ask what exhibit was referenced?

4 THE COURT: Yes. What exhibit
5 number?

6 MR. HAWKINS: That was number four.

7 (SO ENTERED AS PLAINTIFF'S EXHIBIT 4)

8 MR. HAWKINS: Can we approach one
9 more time?

10 THE COURT: Okay.

11 (OFF RECORD BENCH CONFERENCE)

12 MR. HAWKINS: I'd like to have this
13 marked, on the record.

14 THE COURT: Is there an objection?

15 MR. HAYNSWORTH: No, Your Honor. Is
16 that Exhibit 5?

17 MR. HAWKINS: I don't know.

18 COURT REPORTER: It will be Exhibit 7,
19 Your Honor.

20 THE COURT: Seven.

21 MR. HAWKINS: Seven.

22 (SO ENTERED AS PLAINTIFF'S EXHIBIT 7)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. HAWKINS:

25 Q. This is 8/29?

1 A. Yeah.

2 Q. A few days ago, last week?

3 A. Yeah.

4 Q. I want you to circle the bolt in
5 this picture.

6 A. (Complies).

7 Q. Does anything else get your
8 attention in this picture?

9 A. That the other bolt had done fell
10 out of the cart corral and the whole thing
11 looked like it was going to fall down. Looks
12 like it's fixing to fall down.

13 Q. So we can see that this side of the
14 cart corral is down?

15 A. Yeah.

16 Q. I saw you another picture. This
17 picture was also taken on 8/29.

18 A. Yes, sir.

19 Q. Same day. Is the cart corral broken
20 in this picture, too?

21 A. Yes, sir.

22 Q. What is that cart attendant doing?

23 A. When I pulled up, he was getting the
24 carts out of the corral and when I took that
25 picture he was walking away from it.

1 Q. Did you see him notify anybody that
2 the edge of the cart corral was about to fall
3 completely off?

4 A. No.

5 Q. Did he go get anybody and bring them
6 back while you were there?

7 A. No, sir.

8 Q. Did anybody come out to fix the cart
9 corral?

10 A. No, sir.

11 Q. Did you see Target's employee do
12 anything to address the broken cart corral?

13 A. No, sir.

14 Q. Did you see the cart attendant to do
15 anything to address the bolt?

16 A. No, sir.

17 Q. Did he pull the buggies out of the
18 cart corral?

19 A. Yeah.

20 Q. So did he pull them right over the
21 bolt?

22 A. Yeah.

23 Q. And he didn't do anything about the
24 bolt?

25 A. Didn't do anything about it.

1 Q. Did that cause you any concern as a
2 father?

3 A. Yes, it did.

4 Q. Did you take some pictures on 5/17?

5 A. No, you took pictures on 5/17.

6 Q. That's right, I took those.

7 A. (Affirmative nod).

8 Q. Do you recognize this as the same
9 area as where you'd taken some photographs?

10 A. Yes.

11 Q. Does that appear to be the same cart
12 corral?

13 A. Yes.

14 Q. Does that appear to be the same
15 bolt?

16 A. Yes.

17 Q. Circle that for me.

18 A. All right, (complies).

19 MR. HAWKINS: Your Honor, move to
20 have this admitted.

21 (SO MARKED AS PLAINTIFF EXHIBIT 8 FOR ID)

22 MR. HAYNSWORTH: Your Honor, as I
23 understand, this is now a picture that Mr.
24 Hawkins took?

25 MR. HAWKINS: He just identified ---

1 MR. HAYNSWORTH: Isn't that what we
2 just established.

3 MR. HAWKINS: And he just identifi-
4 ed for impeachment purposes that it appears
5 to be the same bolt.

6 MR. GARRISON: You were
7 there, Knox.

8 MRS. GARRISON: Yes, you were.

9 (OFF RECORD BENCH CONFERENCE)

10 MR. HAWKINS: If I could have this
11 stuff marked as Plaintiff's 8.

12 COURT REPORTER: Marked as Plaintiff's 8,
13 Your Honor.

14 MR. HAYNSWORTH: Your Honor, some-
15 thing just -- may we approach for a second?
16 Something just struck me that we might ought
17 to address with you.

18 (OFF RECORD BENCH CONFERENCE)

19 THE COURT: Madam Forelady, ladies and
20 gentlemen of the jury, we're going to go to
21 lunch and they're going to argue a little
22 more about something. At any rate, it's
23 almost 12:00 Noon. I'm going to let them
24 argue about that but I'm not going to keep
25 you back there in the room while we talk

1 about it. I say that in a little jest but it
2 -- this is serious business and I'm not
3 making light of it at all. I'm not making
4 light of it. I'm just not one of those
5 people that comes to work every day with
6 gloom-and-doom, you know. You've just got to
7 smile a little bit as you go along. We're
8 not here for entertainment purposes. It's
9 serious business that we've here for, real
10 people.

11 Don't talk about the case
12 whatsoever. Don't deliberate it whatsoever
13 in your own minds. We'd just ask that you go
14 to lunch and be back at 2:00 o'clock --
15 gentlemen? Back at 2:00? 1:30?

16 MR. HAWKINS: 1:30 is fine, Your
17 Honor.

18 THE COURT: Be back at 2:00. I've
19 got to talk to Judge Sprouse about something,
20 who is on another floor doing another case.
21 Be back at 2:00 o'clock. Be ready to resume
22 at 2:00 o'clock. Have a good lunch.

23 (JURY OUT @ 11:54 A.M.)

24 THE COURT: Mr. Garrison, you may
25 step down. You can't talk to anyone about

1 your case, not even your wife, your lawyer or
2 anyone else about your testimony. Okay?

3 WITNESS: Yes, sir.

4 THE COURT: With that, just follow
5 the instructions of your lawyer. Be back
6 when he asks you to be back, but no later
7 than 2:00 o'clock. If you would kind enough
8 to sit right there, we will get started.

9 (WITNESS STEPS DOWN)

10 THE COURT: Mr. Haynsworth, you've
11 got a matter?

12 MR. HAYNSWORTH: Potentially, Your
13 Honor. It strikes me that in order to cross-
14 examine about these photos, you've got to
15 talk to the man who took the photos. The
16 photos just introduced in evidence by the
17 attorney, the plaintiff's attorney took them.

18 I don't dispute that his client
19 agrees with them, said 'yeah, that is the
20 same cart corral; yeah, that's the same bolt
21 that's in the photo that I took.'

22 The fact of the matter is that I
23 can't cross-examine Clint Garrison about the
24 photos that Clint Garrison's lawyer took. I
25 don't know quite how one handles a case in

1 which the lawyer becomes a witness.

2 THE COURT: Well, uh, do you -- at
3 this -- you may not know but at this point do
4 you anticipate calling opposing counsel as a
5 witness?

6 MR. HAYNSWORTH: I'm giving it some
7 serious thought, Judge. Again, I don't know
8 how to ask Mr. Garrison about photos that Mr.
9 Hawkins took.

10 THE COURT: Mr. Hawkins?

11 MR. HAYNSWORTH: I don't know how
12 it works. It's never come up.

13 MR. HAWKINS: Your Honor, I've
14 never heard anybody make the assertion that a
15 lawyer takes pictures to use at trial that
16 then the lawyer is a witness. I've never ben
17 -- that's creative, I give Knox that. But I
18 don't think it's a thing, I don't think it's
19 ever been addressed because nobody has ever
20 tried to do it. Lawyers routinely take
21 pictures and use them at trial.

22 The guy who taught me how to
23 practice law, Jim Mooneyham, I know has gone
24 during a trial, taken pictures and gotten
25 them admitted at trial. He was in the middle

1 of trial.

2 I don't see any problem for him to
3 say 'this look like the same bolt.' I mean,
4 he can say it's the same area as where he
5 took the first picture. He certainly can
6 identify it as looking -- an, Your Honor, we
7 have plenty of pictures that he did take of
8 the bolt. You know, we can go through the
9 different days.

10 The reason that I took those
11 pictures is so that we'd have them for this
12 case. I mean, me and Knox both were in the
13 Target parking lot at the same time.

14 THE COURT: Well, that's not the
15 point here. The point is that you are
16 potentially a witness in this case at this
17 point in time. You would be -- you would be
18 required to withdraw representation if he
19 calls you as a witness. I'm not saying that
20 you can't go take a picture, a lawyer can
21 certainly do that. I don't know if counsel
22 intends to call you but -- at this point, I
23 can do a little reading on it and I guess we
24 will see what happens. If he calls you as a
25 witness, you would have to withdraw from

1 counsel.

2 MR. HAWKINS: That would just cause
3 us to have to try the case again.

4 THE COURT: I can't -- I mean, I
5 can't help that. Understand? I didn't make
6 the evidence rules and I'm not making the
7 ethical rules, because there's a specific
8 provision in the ethical rules about that,
9 too; lawyers as witness.

10 It may. I'm here to preside, Mr.
11 Hawkins. I don't pick which picture you are
12 going to put in, who took it, who is going to
13 testify to it. Nor do I for Mr. Haynsworth.
14 I don't pick that, you know? I used to --
15 for twenty-five years, I did, but I don't
16 now. So if it comes up, I'll have to rule on
17 it at that time. I'll be ready to go on that
18 if it comes up.

19 All right. Anything further? Well,
20 we are going to break for lunch a little bit
21 earlier here, and for a little longer. Judge
22 Sprouse came by this morning and -- so I'm
23 going to check with him for a few minutes on
24 something. Thank you. We'll be in recess
25 until 2:00 o'clock.

1 MR. HAYNSWORTH: Thank you, Judge.

2 COURT REPORTER: Your Honor, he
3 hasn't actually asked to admit that yet. He
4 asked to have it marked but he never has
5 asked to admit it.

6 THE COURT: Good. That's a
7 problem.

8 (LUNCH RECESS)

9 MR. HAYNSWORTH: We have a way
10 forward here, Your Honor.

11 MR. HAWKINS: That may solve the
12 problem. Madam Court Reporter tells me that
13 it was never asked to be admitted. Never
14 admitted.

15 THE COURT: Okay.

16 MR. HAWKINS: So would that solve
17 the problem? I mean, if it were not in
18 evidence, would there be cross-examination?

19 MR. HAYNSWORTH: Judge, if it is
20 not in evidence, I do not feel compelled to
21 have to cross exam the photographer about
22 photographs.

23 THE COURT: Well, that resolves it
24 then. Unless he is going to call you -- it
25 was a -- it is a potential conflict under our

1 Rules of Ethics. Rule 406(3).7

2 MR. HAWKINS: I think -- obviously
3 if I did, then I guess obviously I would,
4 like Your Honor said, I would have to
5 withdraw. I guess that would mean a
6 mistrial. They don't want to try the case
7 twice, neither do we. So I think we are all
8 on the same page.

9 THE COURT: If he's not going to
10 call you and if it is not introduced, then he
11 not going to call you and there is no issue.

12 MR. HAYNSWORTH: I'm not trying to
13 get Josh -- but does it have to stay as an
14 exhibit? I know that they've heard about it.

15 COURT REPORTER: It won't go to the
16 jury.

17 THE COURT: It doesn't go to the
18 jury, no.

19 MR. HAYNSWORTH: Can we -- so that
20 I don't have to renege on what I just said,
21 can we assume that that picture at least is
22 not going to be asked question about any
23 more?

24 COURT REPORTER: I marked that as
25 ID only and we put it aside.

1 THE COURT: Yeah, it ---

2 MR. HAYNSWORTH: For instance, if
3 you're going to ask Carla about your picture,
4 I may rethink it. If that picture just came
5 out and we are only here about that specific
6 one, ---

7 MR. HAWKINS: We are not going to
8 hear about this anymore.

9 MR. HAYNSWORTH: Then we're fine.

10 THE COURT: Just lay it aside.
11 We're done.

12 MR. HAWKINS: Okay.

13 THE COURT: All right.

14 MR. HAWKINS: Now, I do have, in
15 all candor, -- and I don't want to get into
16 his testimony -- other pictures that the
17 witness took, not that I took, and ---

18 THE COURT: We will address them.
19 one at a time. Are we ready for the jury?

20 MR. HAYNSWORTH: Yes, sir.

21 THE COURT: Have the jury in.

22 (JURY IN @ 2:04 P.M.)

23 THE COURT: Madam Forelady, any
24 matters from the jury?

25 FORELADY: We do. Is there any

1 way that we can turn the volume up here?

2 THE COURT: Mister Clerk can take care
3 of that for us.

4 (WITNESS RESUMES STAND)

5 DIRECT EXAMINATION CONTINUED

6 BY MR. HAWKINS:

7 Q. Clint, I am going to show you
8 another picture, let you look at it.

9 A. (Reviewing).

10 Q. Do you recognize that picture?

11 A. Yes.

12 Q. Is that a picture that you took?

13 A. Yes.

14 Q. When did you take that picture?

15 A. 5/12.

16 Q. This year?

17 A. Yes.

18 Q. Does that fairly and accurately
19 depict the area that we've been talking
20 about, where the needle stick injury
21 occurred?

22 A. Yes, sir.

23 Q. And why did you take that picture?

24 A. The bolt is still on the ground.

25 Q. Okay.

1 A. That's been done to -- I'm sorry.
2 Nothing has been done to repair the cart
3 return, the bolt hasn't been picked up,
4 nothing. Nothing has been done in this
5 parking lot.

6 MR. HAWKINS: Your Honor, I move for
7 that to be admitted.

8 MR. HAYNSWORTH: May we approach?

9 THE COURT: Yes.

10 (OFF RECORD BENCH CONFERENCE)

11 DIRECT EXAMINATION CONTINUED

12 BY MR. HAWKINS:

13 Q. When you took this picture, Clint,
14 can you tell the jury what you took the
15 picture of?

16 A. That particular picture?

17 Q. Right.

18 A. That the bolt was still in the
19 parking lot. They were -- it'd been there,
20 at that point, two weeks already.

21 Q. Okay. Did you ever have a chance to
22 go back to that area and take a picture of
23 that bolt?

24 A. Since then?

25 Q. Since 5/12? When did you go back

1 again, I guess should be my question, to take
2 another picture of that bolt?

3 A. It was July 15th of this year.

4 Q. Did it appear to be same bolt on the
5 ground?

6 A. Yes.

7 Q. Same place?

8 A. Same exact place.

9 Q. After July 15th, did you have an
10 occasion to back again and take a picture of
11 the bolt?

12 A. I think that it was August 12th.

13 Q. Did it appear to be the same bolt?

14 A. Yes, sir.

15 Q. Now, on August 12th, did you notice
16 any difference in the other bolts in the
17 photograph?

18 A. Yes, they were starting to work
19 themselves out, too. In the same buggy
20 rack? The same buggy rack, yeah. The other
21 bolts were working loose, they were just
22 coming apart and it looked unsafe. It looked
23 like it was fixing to -- that if you bumped
24 it that it would fall apart.

25 Q. Can you show the jury with your

1 fingers an estimate of how long the bolt was?

2 A. (Gesturing), probably about that
3 long. I guess five inches, six inches.

4 Q. Okay. After 8/12, did you have
5 occasion to go back and take a picture of the
6 bolt again?

7 A. Yes, sir, on August 29th.

8 Q. Is this a picture of the bolt that
9 you originally saw on 4/29 that was laying on
10 the ground?

11 A. Yes, sir.

12 Q. And what day did you take that
13 picture again?

14 A. August 29th.

15 Q. And what is different about the
16 buggy rack in this picture?

17 A. The other bolt had done fell out,
18 and it was completely falling apart.

19 Q. Okay. On 8/12 when you took a --
20 well, on 8/12 when you noticed that the buggy
21 rack was starting to work loose, how many
22 days would have gone by until you went back
23 and saw that the buggy rack had actually come
24 loose?

25 A. However many from the 12th to the

1 29th.

2 Q. Any indication that between the 12th
3 and the 29th -- okay, my apologies to Madam
4 Court Reporter. I am referring to Exhibit 7.
5 That's the 8/29 photograph of the bolt.
6 Between 8/12 when you first saw the buggy
7 rack, cart corral, start to work loose, do
8 you know of any -- see any indication or did
9 you ever see a cart attendant or anybody else
10 bring somebody to address the buggy rack
11 starting to work loose?

12 A. No, sir.

13 Q. At any of the times, either on 8/12
14 when you were there or on 8/29 when you were
15 there, did you see anybody do anything to
16 address the cart corral or the bolt laying on
17 the ground?

18 A. No, sir.

19 Q. During any of your trips, did you
20 have occasion to see anything that you
21 thought was dangerous and you picked those
22 items up?

23 A. Yes. On 4/29, I noticed that there
24 was a spring and a rod that looked like it
25 came off of a small engine. It was laying in

1 the grass on the curb right beside where my
2 wife was stuck at.

3 Q. All right. So you saw -- what date
4 was that, again, when you first saw the
5 spring and rod?

6 A. That was April 29th.

7 Q. When was the next time that you saw
8 the spring and rod?

9 A. It was May 5th.

10 Q. Did you ever see the spring and rod
11 after that?

12 A. Yes. I went back on May 12th and
13 picked it up.

14 MR. HAWKINS: Can we approach?

15 THE COURT: Sure.

16 (OFF RECORD BENCH CONFERENCE)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. HAWKINS:

19 Q. Mr. Garrison, let's back up a
20 minute. You said that you did the puncture
21 wound the day that Denise got stuck?

22 A. Yes, I did.

23 Q. Can you point where it was?

24 A. (Indicating), in the meaty part
25 right there.

1 Q. Okay. How long did it take to heal
2 up? Do you remember?

3 A. A couple days. Just like, you know,
4 you go to the doctor and get a shot. You
5 know, the actual needle stick don't stay
6 there long.

7 Q. Okay. Now, during one of these
8 trips to the doctor -- I think you went with
9 her on most of them?

10 A. Yes.

11 Q. Did she -- did the doctor prescribe
12 her some medication?

13 A. Yes, they did.

14 Q. Did that medication have a -- did
15 you notice some changes in her?

16 A. Yes, the side effects were very
17 noticeable.

18 Q. Did it make Denise lethargic, the
19 medication?

20 A. Yes, it did. It made her dizzy,
21 upset stomach, pretty much bedridden. She
22 couldn't even get out of bed. She couldn't
23 go to the bathroom by herself. I had to --
24 it was pretty bad.

25 Q. Was that embarrassing for her? Did

1 she appear to be embarrassed when you had to
2 do this for her?

3 A. I am pretty sure she was, but it --
4 I'm her husband, it wouldn't bother me.

5 Q. Did the HIV medication affect your
6 martial relationship at all?

7 A. A little bit, yeah.

8 Q. Okay, tell the jury about that.

9 A. Just -- (pause) -- just a -- I'm
10 sorry. The condition that she was in, it was
11 -- she was just out of it all the time. Her
12 mind was -- other than -- I don't know. It
13 was like -- (pause) -- she was in just a
14 zombie-like state.

15 Q. You said a zombie-like state?

16 A. Yeah.

17 Q. Is it fair to say that she is
18 normally fairly active with the children?

19 A. Oh, yeah. Yeah. For somebody who
20 is normally up in the morning to make sure
21 our kids are, you know, have breakfast and
22 their lunches done, hair combed, teeth
23 brushed, shirt on inside out, shoes on the
24 right foot. She was not able to do those
25 things.

1 Q. Did you have to do some of those
2 things with the children when she was in the
3 zombie-like state that you talked about?

4 A. Yes, sir.

5 Q. How long did that last, how long did
6 the side effects from the HIV medication
7 last?

8 A. The first medication that they put
9 her on was, she stayed on them for a week.
10 After a week we was looking to see if there
11 was any kind of alternative. There was. Dr.
12 Potts found -- they say -- it's a whole lot
13 harder to get the second medication than it
14 was the first medication but she did find
15 what she needed. I know what the medication
16 is, I just can't pronounce half the stuff on
17 them bottles. But the alternate medication
18 had the exact same side effects except for it
19 added lower back pain. But luckily it didn't
20 have -- it was still the same: dizziness,
21 you know, nausea, whatever, but it wasn't as
22 bad as the first two medications that she was
23 on. So that was ---

24 Q During that week or so period that
25 she was on the first medication, did she have

1 trouble keeping her balance?

2 A. Yes.

3 Q. Did her condition upset the kids,
4 that you know about?

5 A. Yeah.

6 Q. Did it upset Kaileigh?

7 A. (Emotional) -- every time I --
8 that's one thing that gets me. Having to
9 explain to her that it's not her fault her
10 mom is in that condition.

11 Q. Is it fair to say, Clint, that this
12 event has had a severe impact on your family?

13 A. Yes, sir. Yes, sir.

14 Q. When Denise was in the zombie-like
15 state, were there times that you couldn't --
16 well, let me ask you this. You testified
17 earlier that you had to do some of the things
18 with the children that Denise couldn't do
19 during that time period. Is that correct?

20 A. That's correct.

21 Q. Is it fair to say that this event
22 detracted from the amount of time that y'all
23 spent together?

24 A. Yeah, you could say that.

25 Q. When she was in a zombie-like state,

1 as you said, was it a little more difficult
2 to have intimate and close conversations with
3 each other?

4 A. Yeah.

5 Q. And I have to ask this question
6 because of the case.

7 A. I understand.

8 Q. Did it affect the physical martial
9 relationships between you and your wife?

10 A. I believe it did. Yeah. I mean, it
11 was -- somebody that's been married, you
12 know, nine or ten years at the time. We had
13 to, uh, start having, you know, protected --
14 somebody that' has had four kids, we had to
15 start wearing protection from HIV.

16 Had to start being more careful, if as
17 she is cooking dinner and she accidentally
18 cuts herself -- you know, what to do, just
19 taking precautions. There was a lot of
20 differences. A lot of things changed.

21 Q. Why is this case important to you?

22 A. If they are going to put somebody in
23 a position, like a lead-on-duty or a
24 maintenance person, whatever, they need to
25 put the proper training. They need to take

1 the time to teach people to be in that
2 position. If they don't have the proper
3 training, they don't need to be in that
4 position.

5 Q. Okay. If Target had paid the ER
6 bill, ---

7 A. No.

8 Q. --- would there have been a lawsuit?

9 A. No. No, sir.

10 Q. Would you and your wife every
11 considered legal action before that denial by
12 Target?

13 A. No, sir.

14 Q. Do you know if your wife received
15 any phone calls from a person named Tyler
16 Hammer?

17 A. Yes, sir, I do.

18 MR. HAYNSWORTH: Your Honor, I'd
19 object to ---

20 MR. HAWKINS: I am not going to ask
21 him ---

22 MR. HAYNSWORTH: --- conversations
23 with ---

24 MR. HAWKINS: --- what he said. I
25 am just going to ask him if he knows they had

1 conversations.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. HAWKINS:

4 Q. How many occasions were you present
5 when Tyler Hammer called your wife? Don't
6 tell me what he said, just tell me how many
7 times you were present when he called your
8 wife.

9 A. One that I know of.

10 Q. How many conversations between Tyler
11 Hammer and your wife were there, if you know?

12 A. Two, I believe.

13 Q. Are you aware of -- are you aware of
14 any documents Tyler Hammer created as a
15 result of this investigation?

16 A. Just the ---

17 Q. Don't tell me about anything that he
18 e-mailed us. We've addressed that. Did he
19 create any documents anywhere about what
20 happened?

21 A. No. I ain't seen anything like
22 that, no.

23 Q. Did he ever call you about his
24 investigation?

25 A. No, sir.

1 Q. Do you know if he ever called
2 anybody except your wife?

3 A. No, sir. You'd think as an
4 investigator that he would have contacted
5 more people, but he didn't.

6 Q. Is there anything else important
7 that you want to tell the jury?

8 A. We did everything that we could to
9 keep costs down because we didn't want to run
10 up -- you know, we didn't -- I mean, the HIV
11 medications costs thousands and thousands of
12 dollars. We did everything, but -- going to
13 the free clinic.

14 Q. You said the free clinic?

15 A. Yeah, free clinic. I don't know how
16 they do it but they get the medication and
17 give it to you for free. That's for people
18 that can't afford high dollar medications.
19 And, uh, we got the medication for free. We
20 did everything that we could to keep the
21 costs down. All we wanted was the -- was for
22 them to do what they said that they was going
23 to do in the first place. They didn't do it,
24 they backed out.

25 MR. HAWKINS: No further questions.

1 MR. HAYNSWORTH: May it please the
2 court, ---

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. HAYNSWORTH:

6 Q. Mr. Garrison, good afternoon.

7 A. How you doing?

8 Q. I am well. Were you sent any
9 photographs the night that your wife said
10 that she stuck herself with a needle in the
11 Target parking lot?

12 A. She sent me a picture, yes.

13 Q. Did you yourself take any pictures
14 of the hypodermic needle at all?

15 A. No, sir.

16 Q. Did you see any pictures of the
17 hypodermic needle taken by anyone other than
18 your wife?

19 A. No, sir.

20 Q. Is that a copy, a blow-up of the
21 picture that your wife sent you?

22 A. It looks like it. Yes, sir.

23 Q. If you don't mind, could I get you
24 to step down just a moment, Mr. Garrison, to
25 be sure that we are all looking at the same

1 picture.

2 A. (Complies).

3 Q. Just to satisfy yourself, Mr.

4 Garrison, take a look at what your lawyer

5 introduced as Plaintiff's Exhibit 3. Is this

6 a bigger version of that?

7 A. (Affirmative nod), looks like it.

8 Q. I'll set that back over here. Now,

9 have you gone to -- have you ever had shots?

10 Vaccinations? Given blood or anything like

11 that?

12 A. Yes, sir.

13 COURT REPORTER: Speak up.

14 WITNESS: "Yes, sir."

15 CROSS EXAMINATION CONTINUED

16 BY MR. HAYNSWORTH:

17 Q. The part that the needle actually
18 protrudes from, in your experience of having
19 seen hypodermic needles, are you familiar
20 with the tapered part that is typically a
21 color: orange, yellow, light blue?

22 A. I've seen a couple of different
23 ones.

24 Q. Do you know what I am talking about
25 when I say the colored part of the needle?

1 A. (No verbal response).

2 Q. It would be the part that would
3 attach to the end down here. Do you know
4 what I am talking about?

5 A. Not really.

6 COURT REPORTER: Speak up, please.

7 WITNESS: No, not really.

8 CROSS EXAMINATION CONTINUED

9 BY MR. HAYNSWORTH:

10 Q. Is this the only picture that your
11 wife took?

12 A. I am pretty sure it is.

13 Q. Mr. Hawkins has brought a lot up
14 about the Target folks. I took your
15 deposition. Do you remember that?

16 A. Yes, sir.

17 Q. Did you tell me in your deposition,
18 Mr. Garrison, that your wife had actually
19 taken a photo that showed a needle in the
20 hypodermic?

21 A. The picture that I saw you could
22 barely see the tip.

23 COURT REPORTER: Speak up, please.

24 What was your last answer? I couldn't hear
25 you.

1 WITNESS: I said that you could
2 barely see a tip of a needle sticking out.

3 CROSS EXAMINATION CONTINUED

4 BY MR. HAYNSWORTH:

5 Q. If we need to take a break, we can.
6 Can you please show us that picture that you
7 say that you wife took and that you saw, that
8 had a needle on this hypodermic?

9 A. I don't have it anymore.

10 Q. You don't have it?

11 A. No, I don't.

12 Q. Sir, you can sit back down.

13 A. (Resumes witness stand).

14 Q. That's actually not what you told me
15 in your deposition.

16 A. I told you that the original picture
17 that I saw, it looked like there was a piece
18 of a needle.

19 MR. HAYNSWORTH: Your Honor, I am
20 going to hand up the sealed original for the
21 court.

22 (SO ENTERED AS COURT'S EXHIBIT 1)

23 CROSS EXAMINATION CONTINUED

24 BY MR. HAYNSWORTH:

25 Q. And, if don't mind, Mr. Garrison, I

1 hate to invade your space but this -- this is
2 the other copy of your deposition. If we
3 could just go over it together. Let me find
4 the right page for us.

5 This is in your deposition when you, I
6 and your lawyer got together on August 19th,
7 2015.

8 A. All right.

9 Q. All right. This question, I asked
10 you, (reading): "Do you recall from the
11 picture she took of the hypodermic if there
12 was..." ---

13 Then if you'll read your answer that you
14 gave me back on August 15th.

15 A. (Reading): "I think in the picture
16 that I could see the needle, yes, the picture
17 that I got."

18 Q. My next question was, "Do you know
19 if you still have the picture that she sent
20 you?" What was your answer?

21 A. (Reading): "Yeah."

22 Q. Then my question was, "You got the
23 same phone. I know with smartphones that you
24 can load the whole stuff on a new one."

25 Would you read the answer that you gave me

1 back then?

2 A. (Reading): "I still have the
3 picture."

4 Q. All right. Where is that picture
5 now that we're in court, Mr. Garrison,
6 showing that there was a needle in this
7 hypodermic?

8 A. The memory card that I had in my
9 phone got corrupt somehow, I lost pictures,
10 I lost video of kids getting awards at
11 school, I lost video of my kids at
12 gymnastics. I lost everything.

13 Q. Yes, sir. That was the memory card
14 in your cell phone, which is where she
15 forwarded the picture that she took; correct?

16 A. That is correct.

17 Q. All right. Where is the picture
18 from her phone, sir? That you say that she
19 took and that you saw, showing a hypodermic
20 needle? Where is the picture from her phone?
21 If your memory card is gone, we've got that.
22 Where is the copy from her phone?

23 A. She hasn't had the cell phone in a
24 long time.

25 Q. Mr. Garrison, do you mean to tell me

1 and these ladies and gentlemen of the jury,
2 that you are going up to Target and you're
3 camping out overnight, drinking Energy drinks
4 to try and tell us that they don't have
5 anyone to clean their parking lot, and y'all
6 are doing all these elaborate things for this
7 case of y'all's and neither one of y'all
8 bothered to keep safe the picture of the
9 needle that your wife said was in the
10 hypodermic needle at Target?

11 A. The first picture that we printed
12 off was the one that I thought that you could
13 see the needle sticking out of the end of it.

14 Q. Come down here and -- if it exists,
15 I'd like to see it.

16 A. It's not -- I'm telling you what I
17 saw.

18 Q. Do you have the picture that you say
19 you saw here today?

20 A. Do you have the needle? I would
21 much rather have the needle here.

22 Q. Well, why is that, Mr. Garrison?

23 A. I don't know. The ---

24 Q. Would the needle show us something
25 different than this photo that your wife took

1 of the needle minutes after she said that she
2 got stuck?

3 A. It'd show that it shouldn't have
4 been in the dadgum parking lot and it
5 shouldn't have stuck my wife.

6 Q. Well, now let's talk about the
7 sticking of your wife. Do you remember in
8 your deposition when I asked you about
9 photographs that had been taken of an actual
10 puncture wound in your wife's hand?

11 A. That is correct. Yes.

12 Q. Is it not true -- and we can go over
13 it if we need to -- that you told me in your
14 deposition back in August 2015 that the ER at
15 AnMed had taken pictures showing an actual
16 puncture wound in her hand where this needle
17 that you say was there stuck your wife?

18 A. I told you that I was pretty sure
19 that they took pictures at AnMed.

20 Q. In fact, Mr. Garrison, there are no
21 pictures taken by AnMed or anyone ever
22 showing any puncture wound from any needle in
23 your wife's hand; isn't that correct, sir?

24 A. Did you subpoena ---

25 THE COURT: Sir, I'm sorry. You

1 have to answer his questions. You can't ask
2 questions. Answer his questions.

3 WITNESS: Do what, now? What
4 was the question?

5 CROSS EXAMINATION CONTINUED

6 BY MR. HAYNSWORTH:

7 Q. I think the question was, sir, there
8 is not a picture from any source -- from the
9 people at the hospital, from you, from your
10 wife, from your mother, from anybody -- ever
11 showing any puncture wound that a needle put
12 in your wife's hand. There is no picture of
13 that, is there, sir?

14 A. I don't know.

15 Q. You don't know?

16 A. No, I don't know. I mean, I don't
17 know if they took pictures at the hospital or
18 not. I was in the waiting room.

19 Q. Well, you seemed to think that they
20 might have. Did you ever -- it's been two
21 years. Did you ever go to AnMed and say,
22 'I'd like to see those pictures that y'all
23 took of the needle.'

24 A. I can't go get her medical records.

25 Q. Sir, did you go there to see if they

1 had any pictures?

2 A. No, I didn't go there.

3 Q. Did your lawyer send a subpoena to
4 AnMed to get the pictures that you think that
5 they might have?

6 A. I don't know that.

7 Q. What we do know is that we're not
8 going to see any pictures of the needle here
9 today, are we?

10 A. Probably not. No, sir.

11 Q. I want to make sure that I
12 understand. Is the picture that you say that
13 you saw of a needle a picture of this syringe
14 but with the needle off, or is some other --
15 is the needle laying separately?

16 A. No, it looks like the needle is
17 still in it.

18 Q. You talked about or alluded to with
19 your lawyer about conversation that your wife
20 had with some fellow named Tyler Hammer.

21 A. Yes, sir.

22 Q. You never had a conversation with
23 anyone named Tyler Hammer, did you?

24 A. No, sir.

25 Q. If your wife was on the phone with

1 someone named Tyler Hammer, you were not on
2 the phone with her; were you?

3 A. No, sir.

4 Q. So if you're telling us about a
5 conversation that your wife had with someone
6 named Tyler Hammer, is that based on what
7 your wife said Mr. Hammer said, since you
8 weren't listening in on what they were
9 saying?

10 A. I was listening. I was sitting right
11 beside her.

12 Q. Were you sitting close enough that
13 you could hear what Mr. Hammer was saying?
14 Were you leaning in on the phone?

15 A. No, sir, but I could see her -- I
16 guess you'd say demeanor.

17 Q. Let me ask you this, you heard
18 discussions or questions with Ms. Brintnall
19 about making that hypodermic, that syringe
20 available to one of your lawyer's employees
21 so that that employee could take additional
22 photographs with her camera. That happened
23 July 6th of 2015. Were you aware of that
24 happening, generally?

25 A. I wasn't aware of it at the time.

1 Q. Are you now aware that someone from
2 Mr. Hawkins' office went to the Target in
3 Anderson, had them bring that hypodermic out
4 and she took pictures of it?

5 A. Yes, sir.

6 Q. Where are those pictures?

7 A. I have no idea.

8 Q. Did you ever see them?

9 A. No, sir.

10 Q. These other pictures that your
11 lawyer has been asking you about, had you
12 seen those pictures before here today?

13 A. What other pictures?

14 Q. He's asked you about a number of
15 pictures and you've told me that you've never
16 seen the pictures that the person from his
17 office took down at the Anderson store.

18 A. Yeah, I didn't see those.

19 MR. HAWKINS: Your Honor, may we
20 approach?

21 THE COURT: Yeah, sure.

22 (OFF RECORD BENCH CONFERENCE)

23 CROSS EXAMINATION CONTINUED

24 BY MR. HAYNSWORTH:

25 Q. Mr. Garrison, you have told us that

1 you went out to the Target parking lot and
2 you talked a lot about some cart rack and
3 some bolts coming out of it, that the cart
4 rack look like it may fall down at any point
5 in time. I think -- and I don't want to
6 mistake what you said but I think you said
7 that that bolt that you say was laying on the
8 ground could be dangerous, could be
9 hazardous. Is that what you said?

10 A. I would think so. Yes, sir.

11 Q. Did you ever go into Target and tell
12 them, 'Hey, y'all got a dangerous thing out
13 here in the parking lot. You might want to
14 come' ---

15 A. I didn't want to go in Target, no.

16 Q. And you went back to Target a number
17 of times, and you say that every time that
18 you went back to Target and took a photograph
19 that this bolt happened to be in the same
20 spot?

21 A. Yeah. It might have been six inches
22 this way, six inches this way, but it was in
23 the same spot.

24 Q. And did you take these pictures with
25 a cell phone or a camera?

1 A. Cell phone.

2 Q. Does your cell phone record on the
3 photograph when it was taken?

4 A. Yes, and I recorded it when I
5 printed it off.

6 Q. And where is the date recorded? Is
7 it up in the top left or the top right or
8 somewhere?

9 A. No, if I can get my cell phone and
10 click a picture, it'll have the date right
11 beside it.

12 Q. So the date doesn't show up in the
13 photo?

14 A. Evidentially not. When you print if
15 off, the date don't print on the picture.

16 Q. Did anyone go with you when you were
17 going back out to Target, taking pictures?

18 A. One time I think my son was with me,
19 my oldest son.

20 Q. As we sit here today, Mr. Garrison,
21 can you tell us of your own knowledge how
22 this syringe happened to be in the Target
23 parking lot the night that your wife was in
24 the Target parking lot. Do you know how it
25 got there?

1 A. (No verbal response).

2 Q. I don't want you to guess, I don't
3 want you speculating. If you know, tell me.
4 If you don't know, tell me.

5 A. No, I do not know how it got there.

6 Q. And, again, I am not asking what you
7 think, I am asking what you know. Do you
8 know how long it had been there before your
9 daughter picked it up and held it up to your
10 wife?

11 A. It had been there awhile.

12 Q. And you know that, how, sir?

13 A. The trash surrounding it.

14 Q. So this cigarette butt and this
15 twine tells you that's been there for some
16 length of time?

17 A. Yeah. Look the twine, it's
18 discolored, it's been ran over. The
19 cigarette butt is weathered. Everything in
20 that pictures is weathered.

21 Q. Well, I'm correct, aren't I, that
22 this photo is actually where the needle wound
23 up? It's not where it was picked up, because
24 your wife told you that she swatted it out of
25 your daughter's hand?

1 A. That's correct. But it all happened
2 in the same area.

3 Q. How far to the left or the right in
4 this photo was it in the parking lot when
5 your daughter picked it up?

6 A. I don't know, I wasn't there.

7 Q. Sorry?

8 A. I don't know. I wasn't there.

9 Q. So as a factual matter you don't
10 know how ---

11 A. From the evidence. Look at the
12 picture.

13 Q. I see the picture, Mr. Garrison.
14 There's a cigarette butt, a piece of twine,
15 the hypodermic housing that your wife said
16 that she hit out of your daughter's hand.
17 But you don't know. You can't tell these
18 ladies and gentlemen of the jury if that had
19 been there an hour, been there two hours. It
20 could have fallen out of someone's car and
21 been run over five minutes before your wife
22 came to Target and it'd look just like that,
23 wouldn't it?

24 A. I don't think it would, no.

25 Q. But you don't know?

1 A. I think I do know.

2 Q. How ---

3 A. I think I think I know.

4 Q. You think. Because where it wound
5 up there was trash and you believe that tells
6 us that it had been there for x-hours, for x-
7 period of time.

8 A. That's what I get from that picture.

9 Q. And would we get anything different
10 if we could see the picture that you say was
11 taken showing the needle.

12 A. Possibly.

13 Q. Thank you, Mr. Garrison. I don't
14 have any further questions.

15 THE COURT: Anything?

16 MR. HAWKINS: Just a few.

17 REDIRECT EXAMINATION

18 BY MR. HAWKINS:

19 Q. After the employee that took the
20 pictures, from our office, what is your
21 understanding of what happened to that
22 needle?

23 A. After she ---

24 Q. After we went to Target and took
25 pictures, what is your understanding of what

1 happened to the needle?

2 A. I guess they either lost it,
3 discarded it, didn't think they needed it
4 anymore. I don't know. I know it's not
5 here.

6 Q. Mr. Haynsworth asked you some
7 questions about why you thought the needle
8 had been on the ground for a while. I want
9 to ask you, did you hear Shelby Brintnall say
10 yesterday that the needed appeared "dingy,
11 dirty, and gross"?

12 A. Yes, that's correct.

13 Q. Did you hear her say that it had
14 some wear on it?

15 A. Yes, sir.

16 Q. Do you think more likely than not
17 that that needle had been on the ground more
18 than two hours?

19 A. I would think so, yes.

20 Q. Do you think more likely than not
21 that that needle could have been on the
22 ground longer than two days?

23 A. I would think so, yes.

24 Q. From looking at the photograph that
25 Mr. Haynsworth showed you, has blown up, do

1 you think it more likely than not that
2 that needle had been there for more than two
3 weeks?

4 A. Yeah.

5 Q. How long did the bolt lay there,
6 again?

7 A. Almost four months. Four months.

8 MR. HAWKINS: That's all that I
9 have.

10 THE COURT: Anything?

11 MR. HAYNSWORTH: No, sir, Your
12 Honor.

13 THE COURT: Thank you, sir, you may
14 step down. Please be careful.

15 (WITNESS STEPS DOWN)

16 MR. HAWKINS: Your Honor, we would call
17 Denise Garrison to the stand.

18 (WITNESS TAKES STAND)

19 THE COURT: Mrs. Garrison, I am going
20 to ask you -- you have a very soft voice.
21 You sit close now, you hear?

22 WITNESS: Yes, sir.

23 CARLA DENISE GARRISON, having been
24 sworn to tell the truth, and nothing but the
25 truth, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. HAWKINS:

3 Q. Denise, I know that you're nervous.
4 I'm going to try to warm you up with some
5 soft balls. Okay?

6 A. (Affirmative nod).

7 Q. Tell the jury where you are from and
8 how long you have lived in Anderson.

9 A. I've been here my whole life.

10 Q. How old are you?

11 A. Thirty-seven.

12 Q. Thirty-seven years of age?

13 A. Yes.

14 Q. I want you to tell the jury, if you
15 would, what happened on May 21st, 2014.

16 A. Okay. Like you've heard, I think a
17 bunch of time, it was a trip to go with my
18 daughter -- well, she asked if she could go.
19 And I was, like, 'yeah, of course.'

20 So we drive into Target's parking lot
21 and, uh, -- I don't know if you're familiar
22 with it but they've got the front part and
23 then they've got the side with Lowe's and
24 Target it where you can park.

25 So I park over there because I knew the

1 grass was there and I didn't have to worry
2 about Kaileigh getting in the parking lot.

3 When I got my coupon book out of my car,
4 I put it on the hood of my car. It was --
5 she just, 'Mommy, what is this?' I looked up
6 and seen that she had the needle pointing at
7 me. The hypodermic needle was pointing out
8 like this, you know.

9 I immediately reacted and swatted it like
10 that (indicating). I was going into, you
11 know, 'Oh, my god, Kaileigh, baby, please
12 don't pick nothing like that up.' You know,
13 was telling her how dangerous it was --
14 anything a mama would tell your kid. You
15 know, 'don't ever pick anything like that up,
16 that's dirty, that's nasty.' You know.

17 I don't know what else to say. Sorry.

18 Q. That's all right. Did you rear back
19 like this, like Knox was doing in opening?

20 A. No.

21 Q. Okay. So if I understand your
22 testimony, you were both at the hood of the
23 car?

24 A. Yes. Yes.

25 Q. How far away from you was she?

1 A. My arm -- not even -- yeah, my arm.

2 Q. Okay.

3 A. She was where the curb was and I was
4 where the front passenger tire was, so
5 whatever distance that would be.

6 Q. Okay. Now, this needle, when she
7 held it -- that split second before you
8 reacted, did you see a needle on the end of
9 it?

10 A. Yeah. Of course I did.

11 Q. And when you went back out, was the
12 needle there?

13 A. I didn't pay it -- at that time I
14 really didn't look.

15 Q. Okay. Do you know if your hand
16 knocked the needle out or if the needle broke
17 off? Do you know what may have happened to
18 the needle?

19 A. I could only speculate what
20 happened. Or it could have happened, because
21 it was old. It had been there -- I could
22 tell, obviously it had been there a long
23 time.

24 Q. Okay.

25 A. And when I hit it, it got knocked to

1 the concrete and -- yeah, the driveway --
2 what is it called, the concrete?

3 Q. Yeah.

4 A. That's how the needle broke off of
5 it.

6 Q. Was it a big needle or was it a
7 little needle?

8 A. It was tiny. It was sticking out
9 about like that (gesture). It wasn't one of
10 those long, super -- (pause).

11 Q. If it was two or three inches long
12 or something like that -- is three inches a
13 good estimate?

14 A. What? How long the needle was?

15 Q. The needle.

16 A. No, it was ---

17 Q. I mean the whole thing?

18 A. Oh, yeah. Yeah, the whole thing.
19 Three inches, I'd say. Three inches,
20 (affirmative nod).

21 Q. So how much trash in the parking lot
22 does this picture show, do you think? Would
23 you say maybe ten or twelve inches in the
24 whole picture?

25 A. (No verbal response).

1 Q. From what you saw, do you know?

2 A. I don't know. I mean, it was --
3 there was a lot there. I don't know.

4 Q. Was there other trash outside this
5 trash and needle that we see in the picture?

6 A. Yeah, the whole walk, the curb was
7 full of cigarette butts and leaves and stuff
8 like that.

9 Q. Did it appear that the cleaning
10 truck had come or anything like that?

11 A. No, I didn't -- (pause).

12 Q. Did it appear that anybody had been
13 out there cleaning up the parking lot in any
14 recent time?

15 A. No.

16 Q. What did you do after you got stuck
17 with the hypodermic needle?

18 A. We rushed to the bathroom and I
19 proceeded to wash my hands, probably four,
20 maybe five times. Then I called Clint and
21 told him what happened and I sent him the
22 picture. He said to go let a Target person
23 know so that they could go get it up. I said
24 okay.

25 Q. What do you have to say about Knox

1 acting like you didn't get stuck with a
2 needle?

3 A. I don't know how to answer that. I
4 don't.

5 Q. Is there any doubt that you got
6 stuck in your hand with a needle?

7 A. No, (emotional). No, (negative
8 gesture).

9 Q. That's all right.

10 A. No. I'm sorry.

11 Q. That's all right. We got all day.

12 A. No. I would not fabricate.

13 Q. Does it make you angry to hear that?

14 A. Yeah, of course it does but I can't,
15 you know, act it -- I have to be cool. I'm
16 going to be cool.

17 Q. Was there blood on your hand?

18 A. Yeah, it was like a little bead.
19 You know, it wasn't pouring blood. I didn't
20 get my hand chopped off or anything like
21 that. There was a tiny bead of blood and a
22 puncture wound.

23 Q. So you go in, you wash your hands
24 three or four times.

25 A. (Affirmative nod).

1 Q. And you called Clint?

2 A. Yeah, I called him. I texted him
3 and I called him.

4 Q. What did Clint tell you?

5 A. To go talk to whoever was in charge.
6 He just said whoever's in charge and tell
7 them 'you need to take care of that outside',
8 you know, the hypodermic needle.

9 Q. Did you cooperate with Ms.
10 Brintnall?

11 A. Yes, sir, I did. Everything.

12 Q. Did she apologize to you for what
13 happened?

14 A. Yes, she did.

15 Q. Okay. What instructions did she
16 give you?

17 A. She just said -- of course, to go to
18 a doctor, of course. And "bring us the
19 bill." That was exactly the conversation.

20 Q. Did she fill out a piece of paper
21 while you were there with her?

22 A. Uh-huh, she did.

23 Q. Did you see her write down anything
24 like 'guest appears to be fabricating' or 'I
25 didn't see a puncture wound.'

1 A. No. No, quite -- no, she was very
2 nice and genuine. She was concerned,
3 whatever.

4 Q. Was there anything to prevent her
5 from seeing that puncture wound on your hand?

6 A. No. Nothing.

7 Q. And when I asked her earlier, and
8 you were in, 'do you think Target should pay
9 for Denise's medical bills', do you recall
10 her saying, "I don't know if I want to
11 express my opinion on that, because I work
12 for Target." Did you hear her say that?

13 A. Yeah, I did.

14 Q. Tell me about when you -- tell me
15 about when you got home that night. Tell me
16 what the environment was like and what the
17 interaction was you and Clint and the kids
18 and Clint's mom?

19 A. It was -- I don't know what I can
20 say and what I can't say. We were all torn
21 up. I don't know what words I can use when
22 I can't use the words -- I don't know what I
23 can say. Worried?

24 MR. HAWKINS: Your Honor, can we
25 approach?

1 THE COURT: Yeah, sure.

2 (OFF RECORD BENCH CONFERENCE)

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HAWKINS:

5 Q. Going back to when you got home and
6 saw Clint, is it fair to say you were upset?

7 A. Yes, I was.

8 Q. Were you crying?

9 A. Yes.

10 Q. Did you -- were you able to finally
11 get Kaileigh calmed down?

12 A. Yeah, it took a little time but we
13 did get her calmed down.

14 Q. Did Clint's mama come over?

15 A. Uh-huh, she did.

16 Q. Did she try to comfort you?

17 A. Yeah, you know, we talked a little
18 bit about -- what we could talk about in
19 front of the kids and stuff.

20 Q. Did you talk to her about -- did you
21 talk to her about your being upset, concerned
22 and all that kind of thing?

23 A. Yes, I did.

24 Q. Did you show her your puncture
25 wound?

1 A. Yeah. Yes, I did. That was the
2 first -- of course the first thing when she
3 walked in the door. You know, she wanted to
4 see it and I showed it to her.

5 Q. Did you go to the doctor the next
6 day?

7 A. Yeah, I did. I called Shelby and
8 talked to her and -- because she told me that
9 night before I left that she had early -- we
10 was just talking and she said, 'Yeah, I got
11 to close tonight but I've got to come back in
12 the morning, too, so I'll be here. So call
13 me if you need to.' I said okay, and so I
14 called her and asked her was there a certain
15 network, like a doctor that they go to,
16 that's in their network. She said 'no, just
17 go wherever you need to.'

18 I hung up with her, called the Health
19 Department and talked to them. Asked could I
20 go there and they said no, that was a matter
21 for the ER. I say thank you.

22 Then I think I texted Clint and told him
23 that the Health Department couldn't see me,
24 that I'd have to go to the ER.

25 Q. Okay. What were you treated for at

1 the ER?

2 A. A needle prick/stick.

3 Q. Did they prescribe you some
4 medicine?

5 A. They didn't, no. There was nothing
6 that they could do. I had to go see an
7 infectious disease doctor.

8 Q. Dr. Potts.

9 A. Dr. Potts, yeah.

10 Q. So did you -- after you went to the
11 ER, did you then go to Dr. Potts?

12 A. Yeah. As soon as we stepped out,
13 the wonderful nurse there, she was so
14 wonderful -- she gave me Dr. Potts number,
15 his cell phone number, and I called him.

16 Q. At some point did you get a bill
17 from AnMed?

18 A. Yeah, we did.

19 Q. Did you get a bill both from the ER
20 and a bill from the specialist?

21 A. (No verbal response).

22 Q. Did you get bills for two different
23 amounts?

24 A. Yeah, I think so.

25 Q. The Specialty Clinic. That's what I

1 was trying to ---

2 A. Yeah.

3 Q. Did you get one from The Specialty
4 Clinic and one from the emergency room?

5 A. Yeah.

6 Q. Did you get one from The Specialty
7 clinic and one from the emergency room?

8 A. Yeah, the emergency room and I think
9 the lab. They send you to a separate -- to
10 get labwork done, they send you a bill and
11 then they send you an ER bill, too. They
12 break it down a lot.

13 Q. I am going to hand you a bill from
14 The Speciality Clinic. Okay?

15 A. Okay.

16 Q. What amount is that bill for?

17 A. It's \$280. Do you want me to keep
18 it?

19 Q. I'll take it.

20 A. (Tenders).

21 Q. Tell me what this bill is for -- I
22 think that's from the emergency room, tell me
23 what that amount is for?

24 A. This is the AnMed Health. It's
25 \$3,710, three thousand seven hundred and ten

1 dollars.

2 Q. Is that \$3,990 altogether?

3 A. Yeah, give or take.

4 Q. Okay.

5 MR. HAWKINS: Your Honor, I move
6 to have these admitted.

7 MR. HAYNSWORTH: No objection, Your
8 Honor.

9 THE COURT: Okay, they are
10 admitted without objection.

11 MR. HAWKINS: Admit them all as one
12 exhibit, Your Honor?

13 THE COURT: Okay.

14 MR. HAWKINS: Whatever number that
15 we are up to.

16 COURT REPORTER: Marked and
17 admitted as (Plaintiffs') Exhibit 9, Your
18 Honor.

19 THE COURT: Number nine.

20 (SO ENTERED AS PLAINITFF'S EXHIBIT 9)

21 DIRECT EXAMINATION CONTINUED

22 BY MR. HAWKINS:

23 Q. Denise, do you think these doctors
24 and nurses would have treated you for a
25 needle stick injury if you didn't have a

1 needle stick?

2 A. No, I don't think anybody would
3 believe that. Why would they treat me for
4 something that I didn't have, that they
5 didn't physically see with their own eyes?

6 Q. Do you think that they would have
7 charged you four thousand dollars for
8 treatment for something that wasn't there?

9 A. (Negative gesture), right. No, I
10 don't think that would.

11 Q. Okay. Did Dr. Potts prescribe you
12 some medication?

13 A. Yes, lots of medication.

14 Q. I am going to hand you these bottles
15 one by one and I want you to tell me what
16 each one of them is for. Okay?

17 A. Okay.

18 Q. Lots like you have done some self-
19 re-dacting. Can you tell the jury why you've
20 marked on that with a black marker?

21 A. Yeah, because I -- honestly, because
22 I have kids and stuff and I didn't want them
23 getting ahold to them, reading them, messing
24 with them or anything. So I kept them put up
25 and blacked stuff out.

1 Q. What was that medication there for?

2 A. That is an HIV antiviral.

3 Q. Are any of these the medication(s)
4 that caused the vertigo, the dizziness and
5 the loss of balance?

6 A. Yes, this one and that one.

7 Q. I am not going to ask you to
8 pronounce these names?

9 A. Yeah, right, that'd be good because
10 I don't know how to say it.

11 Q. Did you tell me that one caused some
12 of the side effects?

13 A. Yeah, because you have to take these
14 two together.

15 Q. Okay.

16 A. You have to, for thirty days.

17 Q. Okay. But you didn't take it for
18 thirty days, did you?

19 A. No, I couldn't Uh-uh, (negative
20 gesture).

21 Q. Why did you stop taking them before
22 that time?

23 A. It was -- oh, lord, I don't even
24 know how to begin.

25 Q. Did you have nightmares?

1 A. I won't even -- I can't even tell
2 you. They were just crazy, horrible.

3 Q. When you say "they", do you mean the
4 nightmares?

5 A. Yeah, they were like vivid, like
6 night terrors. Every time you closed your
7 eyes it just started right back over again.
8 I don't know if anybody has ever had a dream
9 like that, where you wake up but then the
10 dream starts back where you left off at.
11 That's what it would do. It was just real,
12 like super real. It was crazy. I don't --
13 I've never in my life experienced anything
14 like that before.

15 Q. Did Clint have to comfort you from
16 time to time when you'd wake up in the night?

17 A. Yeah, I didn't sleep much because it
18 was just unbearable to sleep because of the
19 dreams, the nightmares. And he told me
20 whenever I got them to be prepared, be
21 prepared. That's what he said, 'because they
22 are bad.'

23 Q. The zombie-like state, is that a
24 fair description of your state while you were
25 under the influence of these medications?

1 A. Yes.

2 Q. What is this one here for?

3 A. It's the same thing. I mean, once
4 -- whenever I, uh, for a week I took these
5 two. Then I called Dr. Potts and I told him
6 that I couldn't do it no more. He said to
7 please come back to my office and we're going
8 to try our best to get you a better,
9 something with less side effects.

10 So afterhours -- Clint got off work and
11 it was about 5:30, I'm assuming, and he
12 stayed open just so that they could find me
13 these right here. It took her -- it took
14 hours and hours for her to track me down
15 these right here. Then I started taking
16 these right here, the Truviola (phonetic),
17 Truvada. I can't pronounce it very well.

18 Q. Did that work out for you better
19 than this?

20 A. Yeah, it did. It stopped the vivid
21 nightmares and stuff like that.

22 Q. Okay.

23 A. Of course I did had nausea, upset
24 stomach and, you know, things like that.

25 Q. So we can limit the severe

1 nightmares and the vertigo and the dizziness
2 and all that, can we limit that to maybe a
3 week or ten days?

4 A. Yeah. I'd say a week, eight days,
5 nine days, seven days. Yeah.

6 Q. What is this medication here?

7 A. It's antibiotics for the needle
8 stick.

9 Q. And ---

10 A. A different kind of antibiotics.

11 Q. Do you think any doctor would
12 prescribe all these medications for somebody
13 without the injury described?

14 A. No, I wouldn't -- even if they
15 wouldn't have, I wouldn't have -- no.

16 Q. Were there times when -- I'm just
17 going to keep using the term "zombie-like
18 state."

19 A. Okay.

20 Q. Were there times when you were in
21 the zombie-like state that Clint had to take
22 off work to help take care of you and the
23 kids?

24 A. Yeah, there was a few days. It --
25 whenever -- that first week, I was so out of

1 it that the days didn't -- basically they
2 didn't even exist. Days, nights. I was --
3 honestly, like, I was there but I wasn't
4 there. It was like a shell of me was there.
5 I guess that's how you'd put it. A lot of
6 stuff that first week is a blur, a real blur.

7 Q. How many times did you have to get
8 tested for HIV?

9 A. Four. Yeah, four.

10 Q. Is that once every three months for
11 a year?

12 A. Yeah. And then the first ER.

13 Q. Did you ever go to Labtech
14 Diagnostics for any of that blood work?

15 A. Yeah, we did. We didn't know where
16 else to go.

17 Q. Did -- I'm sorry, finish your
18 thought.

19 A. We didn't know where else to go.
20 Having to go every three months, I definitely
21 didn't want to go back to the ER because it
22 would have been thousands and thousands of
23 dollars. We called around and found Labtech
24 where they do all in one. You just go in and
25 pay a certain amount and they test for like

1 this, this and this. I think they do like
2 DNA testing and stuff like that.

3 Q. Is that one of your bills?

4 A. Yes, sir.

5 Q. And there were four of these?

6 A. Three or four, (affirmative nod).

7 I can't remember exactly, I think it was
8 three or four.

9 Q. Okay. How much is that for?

10 A. \$130, one hundred and thirty
11 dollars.

12 Q. So three or four times \$130 for
13 blood work?

14 A. Right.

15 MR. HAWKINS: Your Honor, may we
16 have this admitted?

17 MR. HAYNSWORTH: No objection.

18 THE COURT: So admitted.

19 (SO ENTERED AS PLAINTIFF'S EXHIBIT 10)

20 DIRECT EXAMINATION CONTINUED

21 BY MR. HAWKINS:

22 Q. Knox pointed out something that I
23 need to clarify for the jury. This is
24 actually a receipt for payment with a card.
25 Right?

1 A. Yeah. Yes. Exactly.

2 Q. So you paid cash and they gave you
3 this printout?

4 A. Yeah. Right, they do.

5 Q. Denise, I am going to hand you a
6 document from AnMed, outline some of what
7 that bill is for.

8 A. Okay.

9 Q. And I made three -- have you seen
10 this before?

11 A. No.

12 Q. Okay. This is an itemization.

13 A. Okay

14 Q. Of that bill that ---

15 MR. HAYNSWORTH: Let me object.

16 If the witness has never seen the document
17 before, I don't know if she is competent to
18 testify to it.

19 THE COURT: Well, let her look at
20 it and see what it is.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. HAWKINS:

23 Q. Look at that and see if it looks
24 like an itemization of your AnMed bill.

25 A. (Upon review), yeah, that's what it

1 is.

2 Q. Okay. Does the total at the bottom
3 match the total on the AnMed bill?

4 A. (Upon review), yeah, it does.

5 Q. What is that amount, just the AnMed
6 bill? Not The Speciality Clinic, just AnMed.
7 What is that amount?

8 A. It's \$3,710.

9 Q. Just put two or three blue dots
10 here, here and here and I want you to read
11 the words beside each of the blue dots.

12 A. It's the hepatitis panel, the HIV-1
13 and -2 antibody and the HIV-antigen.

14 Q. Antigen?

15 A. I think so.

16 MR. HAWKINS: Your Honor, may we
17 have these admitted?

18 MR. HAYNSWORTH: ((Upon review), no
19 objection, Your Honor.

20 THE COURT: Without objection.

21 (SO ENTERED AS PLAINTIFF'S EXHIBIT 11)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. HAWKINS:

24 Q. I asked your husband a question and
25 I'll ask you the same one, was this an event

1 -- were these things that we've been talking
2 about hard on your family?

3 A. Yes, of course. Extremely.
4 Extremely hard.

5 Q. If AnMed had been paid, had Target
6 paid that ER bill, would you have ever filed
7 a lawsuit?

8 A. No, sir. No. Not at all. Of
9 course not. We are not like that at all, no.

10 Q. Okay. Were you nervous about filing
11 a lawsuit?

12 A. Yeah, of course I was.

13 Q. Would you have sought recovery of
14 damages for Clint's lost wages, for blood
15 work or for that year, for anything, if
16 Target had just paid for the medical ---

17 A. No, I wouldn't have.

18 Q. Before you got that call from Tyler
19 Hammer, had you ever considered legal action?

20 A. No, I did the opposite. I tried
21 everything to keep costs down. I tried the
22 Health Department first. Everybody knows
23 that you don't pay to go there. I called to
24 see if they could do anything.

25 Then when I had to go to the ER, I went

1 to the free clinic to get free antivirals.
2 Which you can look up, they're thousands and
3 thousands of dollars just for a month's
4 supply. A thirty-day supply is like three
5 thousand one hundred dollars (\$3,100), I
6 think.

7 Why would I -- I did -- I went above and
8 beyond to cooperate with what they needed,
9 what they asked me to do.

10 Q. The first time Tyler Hammer called
11 you, did he take a statement?

12 A. He did, yeah. It was a telephone
13 call, yeah.

14 Q. Did you cooperate and answer all of
15 his questions?

16 A. I did.

17 Q. Were you sick at the time?

18 A. I was. I was on my antivirals, the
19 first week ones, the ones that made me super
20 sick.

21 Q. And did you tell Tyler Hammer that
22 you were sick?

23 A. I did.

24 Q. You stayed on the phone?

25 A. I did.

1 Q. Did you tell Mr. Hammer that the
2 needle came from the parking lot?

3 A. Uh-huh, (affirmative nod).

4 Q. Did you tell him that there was a
5 lot of trashy stuff on the ground?

6 A. Yes, sir, I did.

7 Q. Did you make sure that -- well,
8 honestly, I don't know that I asked you but
9 did you tell him that you were sick from the
10 antivirals or did you just tell him that you
11 were sick?

12 A. I think I did. I am more than sure
13 I did. I think I said the medicine has got
14 me sick. I don't remember exactly how I
15 worded it, but -- yeah.

16 Q. Okay. And do you recall Mr. Hammer
17 asking you if you felt Target was
18 responsible?

19 A. Yes.

20 Q. And do you recall telling him,
21 before you even thought about a lawsuit, that
22 they're supposed to take care of the parking
23 lot?

24 A. Yes.

25 Q. And in fact, at this point before

1 you even considered legal action, did you
2 tell Mr. Hammer, 'I am not trying to do
3 anything to your store. I don't want no
4 money, I just want my medical bills paid.'

5 A. Right, that's exactly what I said.
6 I said, 'I'm not trying to get no -- I don't
7 want no money. I just want my medical bills,
8 lab work bills paid.' That is exactly what I
9 said to him on the phone.

10 Q. So at that point Target knew that
11 you just wanted the medical bills paid?

12 A. Correct.

13 Q. Do you know if Tyler Hammer called
14 anybody else during his investigation?

15 A. To my knowledge, no. From everyone
16 so far -- I mean, everybody has said no, that
17 they have not heard of Tyler Hammer or spoken
18 to him.

19 Q. Do you know if Tyler Hammer ever
20 called the store manager?

21 A. No, not to my knowledge. No.

22 Q. Do you know if Tyler Hammer ever
23 called Wes Zitnay, John Jackson, Shelby
24 Brintnall, or anybody else?

25 A. I couldn't -- they said they haven't

1 talked to him, so I'm guessing that's a no.

2 Q. Do you know if Tyler Hammer tried to
3 call Nick Brooks to make sure he cleaned the
4 parking lot for them?

5 A. I haven't heard that he tried to
6 contact anybody at all.

7 Q. Denise, I'm just about done. Tell
8 the jury why this case is important to you.

9 A. Because I think that -- I'm sure
10 that everybody has been to Target. I'm sure
11 that you've taken your kids to Target. And
12 when I went there that night, I felt just
13 like y'all did -- like y'all would everyday,
14 'nothing is going to happen, nothing to going
15 to hurt us, anything like that.' Two and a
16 half years again when my daughter picked that
17 up, that hypodermic needle up, it has changed
18 -- something that is so -- one second, one
19 alternating moment in time. You know, when
20 something happens it is a split second.
21 That's what it was. It was just a split
22 second of me protecting my daughter and --
23 (emotional) -- hold on. And I'd do it again
24 to protect her from getting stuck --
25 (crying). Just a millisecond and I -- I just

1 -- if you take anything out of today, I just
2 hope that maybe they will see what they are
3 doing wrong and that they will see that they
4 need to start maybe -- start writing stuff
5 down, maybe, and have a better plan on
6 keeping things picked up and cleaned. Maybe
7 better records of it, even. You know what I
8 mean?

9 Q. You knocked that needle out of
10 Kaileigh's hand and you saw it laying there
11 among the trash and debris, -- I know it's a
12 moment in time. You weren't out there long?

13 A. No, we wasn't out there but just a
14 second.

15 Q. When you looked down and you went
16 back out and you saw that, did you think they
17 could have cleaned that area in the past
18 hour?

19 A. No, uh-uh, (negative gesture).

20 Q. Did you think more likely than not
21 they'd cleaned that area in the past day?

22 A. No.

23 Q. Do you think more likely than not
24 that they'd cleaned that area in the past
25 week?

1 A. I don't -- I can't -- more likely
2 than not, no. Not that I -- not from what
3 I've seen so far, no, from pictures that I've
4 seen.

5 Q. Before I sit down, I know how meek
6 and nonconfrontational that you are, so I
7 want to ask you about your deposition. Were
8 you nervous when Knox took your deposition?

9 A. Yeah, I'd never -- of course I'd
10 never been through anything like that.

11 Q. Were you overwhelmed?

12 A. Yeah, and -- I don't know. Yeah, it
13 was a lot to take in. You know, a lot of
14 questions at the time.

15 Q. He's going to ask you a lot of
16 questions, I predict, in just a minute.

17 A. I know.

18 THE COURT: Madam Forelady, ladies
19 and gentlemen, you've been sitting for about
20 for right at about an hour and a half. We
21 are going to take' out afternoon break. It's
22 about 3:30, so this will be a good fifteen-
23 minute or eighteen-minute break. Let's be
24 back about twenty minutes of the hour. Don't
25 begin to discuss the case. That would be

1 improper, so don't be doing that. Enjoy your
2 break.

3 (JURY OUT @ 3:23 P.M.)

4 THE COURT: You may step down but not
5 talk to anybody about your case.

6 (BRIEF RECESS)

7 MR. HAWKINS: I'm done with my
8 direct.

9 THE COURT: Let me see the lawyers
10 a little bit.

11 (OFF RECORD BENCH CONFERENCE)

12 THE COURT: Ready for our jury?

13 MR. HAYNSWORTH: Yes, sir, Your
14 Honor.

15 MR. HAWKINS: Yes, sir.

16 THE COURT: Bring in the jury.

17 (JURY IN @ 3:42 P.M.)

18 THE COURT:

19 (WITNESS RESUMES STAND)

20 MR. HAYNSWORTH: May it please the
21 court?

22 THE COURT: Yes, sir. We're
23 ready to go.

24 CROSS EXAMINATION

25 BY MR. HAYNSWORTH:

1 Q. Mrs. Garrison, I was distressed to
2 hear that you were distressed when I took
3 your deposition. I hope I wasn't
4 intimidating. I was just trying to ask you
5 some questions.

6 A. (No verbal response).

7 Q. When I took your deposition, would
8 it be consistent with your recollection that
9 that was January 12th, 2015?

10 A. You'll have to show me. I don't
11 recall.

12 Q. All right.

13 A. Thank you. I don't want to say
14 yeah.

15 Q. (Displaying).

16 A. Yeah, that's it.

17 Q. All right. Would it be fair that
18 the year closer to when all this happened
19 that your recollection of things would have
20 been a little better, a year closer to the
21 events of May 2014 that we're here talking
22 about?

23 A. (No verbal response).

24 Q. Was that a bad question?

25 A. Yeah. A year closer?

1 Q. The deposition was taken much closer
2 to the night that we're talking about.

3 A. Right, than it is today.

4 Q. My question was, would it be fair
5 that you would remember things more clearly a
6 year ago, which was closer in time to that
7 night than you may remember here today in
8 court?

9 A. Yeah, I -- I mean, I can remember
10 some things more.

11 Q. Is there anything that you recall --
12 and, again, I apologize if I was intimidate-
13 ing. That wasn't my intent. If there
14 anything that because you were worried,
15 concerned or nervous that -- was there
16 anything that you said in your deposition
17 that you want to change now?

18 A. I mean, I think you pointed out that
19 I accidentally said my left hand. I did
20 correct that. And I think at one time I said
21 WalMart by mistake, and I corrected that too.

22 Q. Okay. But to the best of your
23 recollection everything that you told me
24 under oath back in January of 2015 you still
25 stand by?

1 A. Yeah. I mean, there were a lot of
2 things that you would lead into -- like you'd
3 say, 'Right?' or one minute and I'd -- you
4 know, you would say things to make me think
5 that -- you would say 'right' a lot. I mean,
6 I -- I guess. I don't know.

7 Q. I may say right a couple of times
8 today.

9 A. Yeah, just ---

10 Q. All right. Well, let me ask you
11 this.

12 A. --- confuses people.

13 Q. You just told Mr. Hawkins when he
14 was asking you about Target and your thoughts
15 on what Target should do, I think you said
16 that you believe that because of this that
17 Target should write things down, keep better
18 records. Is that what you said?

19 A. Yeah, that's what I just said.

20 Q. Well, let me talk about keeping
21 better records for a moment with you. Do you
22 remember telling me in your deposition that
23 you took a photograph of the needle?

24 A. Yeah. I thought -- I thought that
25 it was the one that was blown up, but y'all

1 said that it was Shelby's -- you said that
2 one was Shelby's. We can go ---

3 Q. What I am getting at, ---

4 A. Yeah, -- I don't know. I'm trying
5 to understand what y'all were saying, because
6 y'all said that one was Shelby's picture.

7 Q. You tell me. I thought that this
8 was a blow up of -- the picture that you took
9 or that Shelby took, the pictures are
10 virtually indistinguishable. You were both
11 standing there at the same time, right.

12 A. No.

13 Q. Well, let me ---

14 A. See, you're the one that is getting
15 confused.

16 Q. I'm sorry.

17 A. I don't know. Y'all said at the
18 beginning that was Shelby's picture.

19 Q. Mrs. Garrison, ---

20 A. That's what y'all said.

21 Q. Could you come down and get from
22 your lawyer or from your husband the picture
23 that you took that shows the needle?

24 MR. HAWKINS: Objection, Your Honor.

25 All photographs are ---

1 MR. HAYNSWORTH: Your Honor, the
2 witness is telling me that this is Shelby's
3 photograph, not the one that she took.

4 MRS. GARRISON: Y'all said that.

5 MR. HAYNSWORTH: Not the one that
6 she took. That she took one showing the
7 needle and I've never seen it. I'm just
8 asking her if she took ---

9 MRS. GARRISON: Y'all said that.
10 Okay, all right. Then that's my picture if
11 that's how y'all want -- I mean.

12 MR. HAYNSWORTH: Ma'am, ---

13 MRS. GARRISON: I am just telling
14 you what you said when you entered it into
15 evidence, you said that was the picture that
16 Shelby took. I'm just telling you what you
17 said. I'm sorry.

18 CROSS EXAMINATION CONTINUED

19 BY MR. HAYNSWORTH:

20 Q. Mrs. Garrison, your recollection
21 about what I said is better than mine. That
22 is the picture that your lawyer introduced.

23 A. Okay. I'm just telling you ---

24 Q. Is that picture ---

25 A. --- that picture right there is not

1 mine.

2 Q. Is that the picture that you took?

3 A. Yeah. There you go then. We will
4 do that.

5 Q. Okay, could you please step down
6 here, since you say that this is not the
7 picture that you took, could you show me the
8 difference in your picture and the picture
9 that I blew up? I thought that I blew up ---

10 A. I'm not saying that there's a
11 difference. I am just clarifying that ain't
12 the picture I took. This is. So ---

13 Q. So, ma'am, I'm not trying to argue
14 with you, I'm really not. I took a picture
15 and I blew it up real big.

16 A. Okay.

17 Q. I think that's the picture that I
18 blew up.

19 A. Okay.

20 Q. Could you -- if that's the picture
21 that you took, you compare it. If you're
22 saying this is a different picture, that's
23 fine. I won't talk about this picture.

24 A. Okay.

25 Q. Would you agree with me ---

1 A. Yeah, they're the same.

2 Q. That this is simply a bigger version
3 of the same picture?

4 A. Yes.

5 Q. Where is the needle in this photo-
6 graph?

7 A. There's no needle there.

8 COURT REPORTER: I can't hear her.

9 THE COURT: You've got to speak
10 up.

11 WITNESS: Okay.

12 CROSS EXAMINATION CONTINUED

13 BY MR. HAYNSWORTH:

14 Q. You took a picture showing the
15 needle?

16 A. No. Yeah, I did. No. I don't
17 know. I don't think I did. I don't
18 remember. I really, honestly, did not make
19 sure that the needle was there in the
20 photograph.

21 Q. Mrs. Garrison, if you wouldn't mind
22 stepping back up to the witness stand.

23 A. (Complies).

24 Q. I'm going to hand you a copy of your
25 deposition.

1 A. Thank you, (resumes witness stand).

2 MR. HAYNSWORTH: Your Honor, do you
3 need the original, Judge?

4 THE COURT: If you've got it,
5 yeah.

6 MR. HAYNSWORTH: I do. I just
7 grabbed the wrong one... I was trying to give
8 you Clint's mother's deposition.

9 Oh, I know why -- I'm sorry, Judge.
10 The original of Denise Garrison's
11 (deposition) has already been filed with the
12 Court. It's already in your file.

13 (SO ENTERED AS COURT'S EXHIBIT 2)

14 CROSS EXAMINATION CONTINUED

15 BY MR. HAYNSWORTH:

16 Q. Mrs. Garrison, if you don't mind,
17 I'm going to have to follow along in your
18 deposition with you.

19 A. I don't mind.

20 Q. Let's give the judge a second to get
21 your sealed original.

22 THE COURT: January 12th, 2015.

23 CROSS EXAMINATION CONTINUED

24 BY MR. HAYNSWORTH:

25 Q. January 12th, 2015. Now, Mrs.

1 Garrison, back in January of 2015 do you see
2 here on Line 22 where I said, "Do you recall
3 if you took a photograph of the needle at any
4 point?"

5 Can you read for the ladies and gentlemen
6 of the jury what your answer was to that
7 question, when you were sworn to tell the
8 truth back in January?

9 A. Yeah, I said "Yes, I did." I took
10 a picture since you said that's my picture.

11 Q. Ma'am, ---

12 A. That's the one that I took.

13 Q. --- do you recall if you took a
14 photograph of the needle at any point? I'd
15 like to see the photograph that you took of
16 the needle that your husband testified about,
17 said you'd sent it to him, ---

18 A. We all ---

19 Q. --- but he lost it?

20 A. You're turning it. No. You're
21 turning it around, because we've all called
22 it a needle since ---

23 Q. Mrs. Garrison, were you sitting here
24 when Clint said that you sent him a photo
25 that showed him the actual needle but that

1 the reason he doesn't have it is because the
2 memory card in his phone was corrupted and he
3 lost pictures of the needle you sent and a
4 whole bunch of other stuff?

5 A. Right. Right. Okay. Yes.

6 Q. So as you sit here today, you do not
7 have ---

8 A. No.

9 Q. --- any photograph showing a needle,
10 do you, ma'am?

11 A. No, I don't.

12 Q. Okay. And as we sit here today,
13 ma'am, you don't have any photograph showing
14 any puncture wound in your hand; do you?

15 A. I didn't feel, I didn't think that I
16 needed to. I showed Shelby, I showed my
17 husband, I showed my mother-in-law, I showed
18 the people at the ER, I showed Dr. Potts. I
19 mean, it was a needle prick. I didn't cut my
20 hand off. I mean, I didn't -- it was not
21 pouring blood. It was a needle prick, you
22 know. I showed the appropriate people. I
23 showed Shelby, I showed my husband, I showed
24 Clint's mama, I showed the nurses and the
25 doctors at the ER, ---

1 Q. And according to your husband, the
2 doctors at the ER took pictures of it.

3 A. He said -- okay, if that's how
4 you're taking that. Okay.

5 Q. No, ma'am. I'm reading his sworn
6 testimony under oath.

7 A. He said that they might have.

8 THE COURT: Hang on. Ma'am, my
9 court reporter is really good but she can
10 only get one person at a time. But she's
11 excellent. But if you'll let him finish his
12 answer (sic), I'll get him to stop while you
13 talk.

14 MRS. GARRISON: Sorry. Yes, sir.

15 CROSS EXAMINATION CONTINUED

16 BY MR. HAYNSWORTH:

17 Q. Did you hear your husband testify
18 that pictures of a puncture wound on your
19 hand were taken at the emergency room?

20 A. I think he said that they might
21 have, that he was in the waiting room.

22 Q. So of all these pictures that y'all
23 have talked about showing the cart rack at
24 Target, the bolt falling out and stuff, we
25 don't have any needle that stuck you nor any

1 pictures showing any puncture wound in your
2 hand? Is that right, Mrs. Garrison?

3 A. Yeah.

4 Q. Now, I didn't mean in my opening
5 argument -- and Mr. Hawkins seems to have
6 made something of it. I think I did a
7 swatting motion because you told me that you
8 swatted it out of your daughter's hand?

9 A. Yeah.

10 Q. He's corrected me, at least with you
11 and your husband, that it wasn't a motion
12 like this (gesturing) but -- kind of describe
13 to me what you did. You say that you were
14 there with your coupon book on the hood of
15 your car. Right?

16 A. Yeah, I had just opened it up.

17 Q. And your daughter, Kaileigh, is to
18 your -- right? Left?

19 A. I hate to say. Front tire and the
20 curb. I was at the front tire, she was at
21 the curb. Would that be right?

22 Q. I don't know.

23 A. I think so.

24 Q. So she was ---

25 A. She was right beside me.

1 Q. And the right hand is the hand that.
2 you say got stuck?

3 A. Yes.

4 Q. All right.

5 A. Yes.

6 Q. And, so, go through the motions that
7 you say that you went through when you say
8 that you hit this syringe out of your
9 daughter's hand and stuck yourself with a
10 needle that you saw was on that syringe.
11 Just show me kind of what you did?

12 A. I don't know how to do that. I just
13 batted, you know, did like that. Not big --
14 not -- like you would knock -- did something
15 like that (demonstrating) and knocked it out
16 of her hand.

17 Q. And you say that the needle stuck in
18 the meaty part of your hand here; is that
19 right?

20 A. Yeah. My palm.

21 Q. When you say ---

22 A. The palm. Whatever. There
23 (indicating).

24 Q. And did I hear you say that the
25 needle came out of the syringe by your act of

1 hitting?

2 A. No, I didn't say it. I said it
3 could have broken by the act of me hitting
4 it. The needle itself was extremely small.
5 It wasn't long. It was one of the ones that
6 barely stick out. When I batted it, it
7 knocked it whatever to the concrete whatever
8 and that's when -- you know, it's not
9 anything very strong, it was a little tiny
10 needle. Whenever I hit it -- I mean, I can
11 speculate how I think it broke out, but I'm
12 pretty sure that when I hit it -- that when
13 it hit the concrete that it made it break
14 off.

15 Q. Ma'am, we ---

16 A. Or whatever it hit -- or whenever I
17 hit it, it broke off. Because, I mean, I
18 didn't like hit it hard hard but I popped it
19 out of her hand with a little strength to it,
20 not much.

21 Q. How far did it fly through the air
22 when you hit it?

23 A. Two feet maybe. A foot? A foot and
24 a half? You know, just enough to -- I mean.

25 Q. You have four children. I assume

1 you may have given blood at some point in
2 your life.

3 A. (No verbal response).

4 Q. Are you familiar with hypodermic?

5 A. No.

6 Q. Had you had shots before for any
7 reason?

8 A. No, I ain't never had shots before.
9 I've had like my hemoglobin and stuff like
10 that taken. My HCG levels and stuff like
11 that.

12 Q. Let me ask a better question.

13 A. Okay.

14 Q. Had you ever seen a syringe with the
15 actual needle attached?

16 A. Yeah, I've seen a bunch of different
17 ones.

18 Q. All right. And the bunch of
19 different ones, the cone-shaped part that
20 attaches to the tip of the syringe that the
21 needle comes out of, have you noticed that
22 those have different colors?

23 A. No, I think they have -- I've seen
24 where they have caps, like orange, like the
25 safety caps that you put on the needles.

1 That's the only thing that I have ever known.

2 Q. So you aren't aware that the color
3 is different depending on how big around the
4 needle is?

5 A. No, I didn't know that. I know that
6 they have caps, like safety caps, but that's
7 it.

8 Q. But you don't recall ever seeing the
9 part that fits on the end of the syringe out
10 of which the needle comes. You don't recall
11 seeing that having some sort of color?

12 A. No, I don't.

13 Q. When is the last time you've been to
14 see a doctor about this needle stick that you
15 say you've gotten?

16 A. Uh, about a year ago, I think.

17 Q. About a year ago?

18 A. Yeah, something like that. I think.
19 I don't -- I'd have to look.

20 Q. I know your lawyer introduced some
21 bills.

22 A. Right. I think I need to go --
23 you'd have to look at the last one. Okay.
24 Because I am not exactly sure.

25 Q. The cell phone that you took this

1 photo with, was this the only photo that you
2 took that night?

3 A. Yeah, I think so. I don't know.

4 Q. You don't know.

5 A. I really don't remember. I mean, it
6 was so -- (pause). It might have been -- I
7 don't know, it was so quick and we weren't
8 out there that long. Like I said, I went and
9 got Shelby and I think she said that she took
10 some pictures too. I don't know. I really
11 don't. I'm sorry.

12 Q. All we know is that you took this
13 one photo that I've blown up?

14 A. Yeah.

15 Q. And you might have taken more, might
16 not have taken more, you just don't remember.

17 A. Right.

18 Q. You kept this photo because it's
19 here two and a half years later?

20 A. Right.

21 Q. What about the other photos that you
22 took, are they still ---

23 A. Liked I said, I can't remember if I
24 took any more or not. You can't -- I had my
25 daughter who was upset with me, too. I was

1 just trying to hurry and get in. I don't
2 know if I took one or two. I really don't
3 remember. I honestly don't.

4 Q. Mrs. Garrison, I want you and I to
5 be straight, I am not taking issue with you
6 being nervous and all. I am just asking if
7 you remember from the night that it happened
8 how many photos you took. I'm assuming that
9 since you sued Target and we've been going
10 through this lawsuit for a little while,
11 leading up to when we started the other day.
12 If you knew since then forward whether you
13 took any more than this one picture and if
14 you did, where are those pictures?

15 A. I don't know. I didn't get -- once
16 they got the syringe up and all that, I
17 didn't get it. I didn't go back up there and
18 ask to take pictures of it.

19 Q. No, ma'am, I ----

20 A. I wouldn't -- I don't know what
21 you're saying.

22 Q. That's my fault. I'm asking bad
23 questions. Sorry. Have you ever gone back
24 since the night of May 21st, 2014, to see if
25 you took more than this photograph right

1 here?

2 A. So when I left that night, are you
3 asking did we ride back up there and take
4 more pictures?

5 Q. No, ma'am.

6 A. Okay. See, I don't know what you're
7 saying.

8 Q. I'm trying to figure out whether
9 when you took this picture, ---

10 A. Right.

11 Q. --- you took more than that one
12 picture?

13 A. I don't you I don't remember.

14 Q. That's all that I am asking.

15 A. I honestly don't remember.

16 Q. Have you ---

17 A. It was so traumatic.

18 Q. --- gone to look, to see ---

19 A. To see where? See what?

20 Q. --- if they're on your phone?

21 A. I've got a totally different phone
22 now. I don't know.

23 Q. Well, how did this picture get off
24 the phone that you no longer have?

25 A. Because that picture was given like

1 a year ago. I don't know what you're talking
2 about.

3 Q. Ma'am, ---

4 A. What are you talking about?

5 Q. --- I ---

6 A. I am so confused.

7 Q. I don't mean to confuse you.

8 A. Well, you are because I don't know
9 what you're saying.

10 Q. I'm sorry. Let me say it slow,
11 okay? You took this photo that night with
12 your cell phone?

13 A. Correct. Not the cell phone that I
14 have right now.

15 Q. The cell phone that you had back in
16 2014?

17 A. Yeah, two and a half years ago.

18 Q. We know that you took that one photo
19 because we are here looking at it.

20 A. Yes, we are.

21 Q. You don't remember if you took more
22 than that one?

23 A. Right.

24 Q. My question is, did you ever go back
25 and look on your phone ---

- 1 A. I don't have the phone!
- 2 Q. I know that you don't have it today,
- 3 Mrs. Garrison. You had it long enough to
- 4 pull this photo off ---
- 5 A. Right.
- 6 Q. --- before you got rid of that
- 7 phone?
- 8 A. Right.
- 9 Q. This photo was copied ---
- 10 A. You don't -- when I took the
- 11 picture, I only sent the picture through a
- 12 text message. So that was it.
- 13 Q. Yes, ma'am.
- 14 A. That was it.
- 15 Q. So we don't know if you took other
- 16 pictures beyond this one that night.
- 17 A. Right, I don't remember.
- 18 Q. One way or the other?
- 19 A. I don't remember.
- 20 Q. And we don't have the picture that
- 21 Clint said that you sent him showing the
- 22 actual needle.
- 23 A. Okay.
- 24 Q. Correct?
- 25 A. I am going to have to say correct,

1 then. I mean, ---

2 Q. You heard what Clint said?

3 A. Yeah.

4 Q. Do you disagree with what he said?

5 A. No.

6 Q. Do you still have that picture?

7 A. No, I don't. I told you that I
8 don't. I don't remember. I could have taken
9 -- I don't remember.

10 Q. Well, ma'am, you said what you want
11 out of this is for Target to keep better
12 records. It sounds to me like there should
13 be some better recordkeeping to go around.

14 A. Okay.

15 Q. Y'all told me that you've got
16 pictures but I've never seen them, and I'm
17 just trying to understand why I'm never seen
18 them.

19 A. Okay.

20 Q. Is there any reason, ma'am?

21 A. Why would there be any reason?

22 Q. I don't know.

23 A. I mean, if I had a picture -- don't
24 you -- no, okay. No, there's no reason.

25 Q. And whatever pictures that might

1 have been available are not here with us
2 today and we're not seeing them, are we?

3 A. No.

4 Q. Mrs. Garrison, thank you. That's
5 all the questions that I have of you.

6 A. You're welcome.

7 THE COURT: Anything?

8 MR. HAWKINS: Briefly some follow
9 up to try to solve the mystery.

10 REDIRECT EXAMINATION

11 BY MR. HAWKINS:

12 Q. Denise, is this a picture of the
13 needle that injured you?

14 A. Yes.

15 Q. Does that fairly and accurately
16 depict the area you were in when you got
17 injured?

18 A. Yes..

19 Q. Does that fairly and accurately
20 depict the needle that injured you?

21 A. Yes.

22 Q. Did you take a picture in addition
23 to Shelby taking pictures?

24 A. Yes, I did.

25 Q. Are these two pictures identical?

1 A. No.

2 MR. HAWKINS: Your Honor, move to
3 have this admitted.

4 MR. HAYNSWORTH: (Upon review), no
5 objection.

6 THE COURT: Without objection.

7 (SO ENTERED AS PLAINTIFF'S EXHIBIT 12)

8 REDIRECT EXAMINATION CONTINUED

9 BY MR. HAWKINS:

10 Q. Does that clear up some of the
11 confusion about the pictures?

12 A. Um-humm, (affirmative nod).

13 Q. Denise, does this picture fairly and
14 accurately depict the general area of where
15 you were when you got injured?

16 A. Yes, I was I think two parking
17 spaces -- I don't know if that one is the
18 middle. The first one or the second one.

19 Q. Is that part of the general area on
20 the side?

21 A. Yes, it is.

22 Q And is this beside Target?

23 A. Yes.

24 MR. HAWKINS: Your Honor, move to
25 have this admitted.

1 MR. HAYNSWORTH: (Upon review),
2 could we approach, Your Honor?

3 THE COURT: Yes, sir.

4 (OFF RECORD BENCH CONFERENCE)

5 REDIRECT EXAMINATION CONTINUED

6 BY MR. HAWKINS:

7 Q. Denise, I am going to show you
8 another picture, more zoomed out. Does that
9 fairly and accurately depict the area outside
10 Target where you got hurt as it appeared the
11 night you got hurt?

12 A. Yes.

13 MR. HAWKINS: Move to have this
14 admitted.

15 MR. HAYNSWORTH: (Moves to bench).

16 (OFF RECORD BENCH CONFERENCE)

17 REDIRECT EXAMINATION CONTINUED

18 BY MR. HAWKINS:

19 Q. Denise, do you have any idea of how
20 many pictures that Clint sent me?

21 A. Uh, -- more than thirty? I don't
22 know. Thirty or more.

23 Q. You think that it might have been as
24 many as fifty?

25 A. Yeah, it could possibly be. I'm

1 sorry. I asked you a question. I'm sorry.

2 Q. Do you know why he would have took
3 the pictures?

4 A. Yeah.

5 Q. Okay, what is your understanding of
6 why Clint took all of those pictures?

7 A. I think because he went to John
8 Jackson's deposition and he stayed and
9 listened to everything that John was saying
10 and that got his attention and got his gears
11 going, you know, wanting to see if everything
12 John has been saying about the truck and the
13 people walking the parking lot, the cart guys
14 walking and -- you know, like that. You
15 know.

16 Q. Okay. On this picture here of the
17 needle, would you say -- let me ask you
18 first. Did you say that the needle when
19 Kaileigh had it in her hand, it was very,
20 very small?

21 A. Yeah, it was.

22 Q. And when you went back out there and
23 saw the syringe again, the needle wasn't on
24 the shaft?

25 A. No, I didn't notice that until we'd

1 looked at the picture. We didn't stay
2 outside in the parking lot at all. Whenever
3 we walked out there, it was me, Shelby a cart
4 guy and another -- I don't know what they
5 call them, whatever Shelby and them calls
6 them. I think they're like what Shelby was,
7 what she does. There was another woman. We
8 all walked out there, there was three of us
9 out there. He put a plastic bag like you'd
10 put a plastic bag on your hand -- he put the
11 bag on his hand, then he picked it up and
12 turned it like that. That was it.

13 Q. All right.

14 A. It was real quick.

15 Q. Okay.

16 A. But, no, none of us stopped to shift
17 through and look for the needle.

18 Q. Is it fair to say that you don't
19 know if it's broke off, snapped off?

20 A. Right. Of course nobody can say.

21 All I can testify here right now is that I'm
22 one million percent positive that there was a
23 needle, I seen it, I swatted it. Then after
24 that, I went in. I left. I didn't even know
25 that there wasn't a needle on there until

1 that picture. So.

2 Q. Is it possible that maybe the
3 needle is pushed back up in here?

4 A. Anything's possible. I mean, could
5 be.

6 Q. Could we better be able to get a
7 feel for that if we had the actual needle?

8 A. I am pretty sure -- I believe so,
9 yeah.

10 Q. To show the jury?

11 A. Yeah. I think they would like that.

12 Q. What happened to the needle?

13 A. I don't know. All I know is that
14 when me and Shelby and that other lady -- I'm
15 sorry, I don't know her name. Maybe Shelby
16 knows her name. She -- I just recall what
17 she looks like. Then I recall a young cart
18 guy. She said that whenever -- whenever he
19 picked it up, she said 'be sure you put it in
20 the lipid (phonetic) compactor.' That's what
21 she told him. That's all. Then me and
22 Shelby walked in. That was all.

23 Q. Well, unless Mr. Haynsworth has more
24 questions, your time on the hot seat is over.

25 MR. HAYNSWORTH: I actually do one

1 additional question, Your Honor.

2 THE COURT: Yes, sir.

3 RECROSS EXAMINATION

4 BY MR. HAYNSWORTH:

5 Q. Mrs. Garrison, what happened to the
6 photos that the person from your lawyer's
7 office went down to Anderson in July 2014
8 (sic) and took of this hypodermic needle?

9 A. (No verbal response).

10 Q. What happened to those?

11 A. I don't know if she had them or if
12 -- but ---

13 Q. They are not here, are they, ma'am?

14 A. No, but I think Josh went to get her
15 deposition and with that storm coming that he
16 couldn't go down there because something was
17 closed, to get her deposition about 'yeah,
18 she took the pictures.

19 Q. You're aware that he sent somebody
20 to Anderson to meet with Shelby Brintnall
21 July 6th, 2015, to take these pictures; right?

22 A. Okay. He did.

23 Q. Have you ever seen the pictures
24 since they were taken in July '15?

25 A. No.

1 Q. Do you have them here today?

2 A. No, of course not.

3 Q. Thank you.

4 A. You're welcome.

5 THE COURT: Thank you, ma'am. You
6 may step down. Please be careful.

7 (WITNESS STEPS DOWN)

8 MR. HAWKINS: Your Honor, the
9 plaintiff calls Martha Ann Garrison to the
10 stand.

11 (WITNESS TAKES STAND)

12 MARTHA ANN GARRISON, having been
13 sworn to tell the truth, and nothing but the
14 truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HAWKINS:

17 Q. Mrs. Garrison, what do you do here
18 in Anderson?

19 A. I work at a plant on -- well, it's
20 TTI. It is One World Technologies, but it's
21 called TTI. I am a supervisor there.

22 Q. How long have you worked for that
23 company?

24 A. Twenty-eight years.

25 Q. Have you ever been reprimanded for

1 anything with that company?

2 A. No, sir.

3 Q. Have you ever been arrested?

4 A. No, sir.

5 Q. Have you ever been in any trouble of
6 any kind?

7 A. No.

8 Q. Is your reputation important to you?

9 A. Yes, it is.

10 Q. The reason I am asking you these
11 questions is because there's been some
12 dispute about some factual issues. Before I
13 ask you about those factual issues, I want to
14 ask you in front of this jury, would you ever
15 risk committing the crime of perjury?

16 A. No, sir.

17 Q. Now, having said that, did you see
18 the puncture wound in Denise's hand?

19 A. Yes, I did.

20 Q. Did you see it with your own two
21 eyes?

22 A. Yes, I did.

23 Q. Is there any doubt that it was a
24 puncture wound?

25 A. No doubt.

1 Q. Now that we've got that out of the
2 way, tell the jury what happened on May 21st,
3 2014.

4 A. I was at home. We don't live far
5 from each other, my son and I. He called me
6 upset. He said that Kaileigh had picked up a
7 needle, Denise ---

8 MR. HAYNSWORTH: Your Honor, I
9 would object to her relying hearsay
10 conversation.

11 THE COURT: Isn't it what the
12 party said?

13 MR. HAYNSWORTH: Clint is a party.
14 I'm sorry. My apologies.

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. HAWKINS:

18 Q. Go ahead.

19 A. He was upset, so I went to their
20 house. I walked up there just to make sure
21 that everybody was okay. So what I observed
22 was that Kaileigh was very distraught.
23 Denise was very distraught. Clint was trying
24 to clam all the children down. I was trying
25 to help them get the children calmed down,

1 because it was a school night.

2 Trying to talk with them with the
3 children present and them not getting upset
4 was very hard. So I had to wait until we
5 could calm down a little bit to see what we
6 could do with Denise's injury.

7 Q. Was Kaileigh crying and hanging onto
8 her mama?

9 A. Oh, yeah.

10 Q. Have you ever held Kaileigh, to try
11 to comfort her?

12 A. Oh, yes, but it's not the same as a
13 mom, when her mom holds her.

14 Q. Have you observed Kaileigh upset
15 since this incident happened?

16 A. Yes, I have.

17 Q. About this incident?

18 A. Yes.

19 Q. How do you know it was about the
20 incident when you saw her upset between the
21 incident and now?

22 A. I made the mistake of saying
23 something on front of her about the court
24 date, whatever, she started busting out
25 crying and went and hugged her mama.

1 Q. Did you ever help Clint and Denise
2 while Denise was sick?

3 A. Yes, I did.

4 Q. Did you ever have to go back -- how
5 far do you live with Clint and Denise?

6 A. Probably a little bit more than a
7 football field. I can see their house.

8 Q. Did you have to go over there more
9 during that time to help the children?

10 A. Yes, and the children came to my
11 house.

12 Q. Do you know if Clint missed time off
13 work to help care for Denise?

14 A. I do. I'd observe his vehicle
15 there.

16 Q. Other than this time that we are
17 talking about, does Clint normally work a
18 lot?

19 A. Yes, he does.

20 Q. Have you observed from knowing him
21 as good as anybody, along with Denise, have
22 you observed that he works overtime as much
23 as he an get the opportunity?

24 A. Yes, he does.

25 Q. What did the puncture wound look

1 like, Mrs. Garrison?

2 A. Well, it was like a little pin stick
3 or a needle stick with red around it, kinda
4 puffy but no bleeding.

5 Q. Were you surprised when you learned
6 that Target called back -- that a Target
7 investigator called back and said that Target
8 was actually going to deny her claim?

9 MR. HAYNSWORTH: Your Honor, I
10 objection. The lawyer is now testifying
11 about what somebody told her.

12 MR. HAWKINS: She can say if she
13 was surprised when she learned that.

14 THE COURT: You don't know what --
15 I don't know that she knows.

16 MR. HAWKINS: Okay.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. HAWKINS:

19 Q. Do you know whether Target denied
20 Denise's claim?

21 A. Just from what they've told me.

22 Q. Okay. Was Denise upset after
23 conversations took place with Denise and the
24 investigator, was she upset after that?

25 A. She seemed visibly upset.

1 Q. I want to ask you about the
2 medication impact that the medication had on
3 Denise. Before Denise had to start taking
4 HIV5 antivirals, was she normally active with
5 the children and busy most of the day?

6 A. Oh, yes.

7 Q. Can you give us some examples of
8 things that she does to take care of the
9 house while Clint's at work? You know,
10 before the injury?

11 A. Oh, yeah. There was four children,
12 so she had to get -- at that time, she had to
13 get three of them ready for school. That
14 means making lunches, getting hair and teeth
15 brushed, everything ready so that they look
16 presentable at school.

17 Taking care of the little one while he is
18 at home, getting him lunch.

19 Going back and getting them from school.

20 Having supper ready when Clint gets home.

21 In the evenings, sometimes we all get
22 together and play or just do whatever we need
23 to do.

24 Q. Did this medication appear to
25 physically slow her down?

1 A. Yes.

2 Q. Did you ever see physically unable
3 to get off the couch or get out of the bed?

4 A. Yes.

5 Q. Did Clint have to take time to kind
6 of pick up some of the things that she would
7 normally do?

8 A. Oh, yes. I mean, when you have four
9 kids there are clothes to be washed, dishes
10 to be done. That put a burden on him along
11 with having to help her.

12 Q. At the time, I think the oldest
13 son's name is Ethan; is that right?

14 A. Yes.

15 Q. At the time, was he ten?

16 A. Ten, (affirmative nod).

17 Q. Did Ethan, when he was ten years
18 old, ever have to help out with the other
19 children because of his mom's and dad's
20 situation?

21 A. Yes.

22 Q. Is that something that he normally
23 had to do?

24 A. Not normally.

25 Q. Did he do it happily, though?

1 A. He did.

2 Q. Have you been back to Target since
3 this injury occurred on May 21st, 2014?

4 A. Probably once or twice. That's it.

5 Q. Have you noticed any trash or debris
6 in the parking lot?

7 A. Yes.

8 Q. Okay. Do you look out for it more
9 now?

10 A. I do look out for it more, in more
11 stores than just Target that I attend. I
12 don't do a lot of shopping but I do do a lot
13 of grocery shopping at Bi-Lo's and places,
14 and I always look for trash.

15 Q. After hearing all this evidence and
16 after being there when Denise got home that
17 night, seeing what happened, you know, the
18 aftermath, is there any doubt in your mind
19 about who should cover these medical bills?

20 A. There is no doubt in my mind.

21 Q. Who do you think should cover these
22 medical bills?

23 A. I think Target should. I think
24 Target should have the responsibility of
25 keeping the community safe for the children,

1 for the parents, the grandparents, for
2 whoever visits there.

3 Q. Did Denise or Clint -- they are both
4 parties -- at any point before Target denied
5 their claim did they ever say, 'we are going
6 to file a lawsuit' or 'we are going to take
7 legal action.' Anything like that? Before
8 the claim was denied?

9 A. No, sir.

10 Q. Do you think they would ever have
11 filed a claim if Target had paid for the
12 bills?

13 A. I don't think they would have taken
14 it, no, any further.

15 Q. Do you know if Clint's family
16 depends heavily on Clint's overtime?

17 A. Yes, they do.

18 Q. And you testified just a minute ago
19 but I'll ask you again just to be sure I
20 haven't missed anything. Clint works
21 overtime, did Clint miss some overtime
22 because of this?

23 A. Yes.

24 Q. Did that seem to stretch things
25 pretty thin for them?

1 A. Yes, it did.

2 Q. Did he ever have to borrow money
3 from you to pay for school lunches?

4 A. Yes, he did.

5 Q. Has he since paid you back?

6 A. Yes, he did.

7 Q. Does he always pay you back?

8 A. He always pays me back.

9 Q. Has he ever borrowed money from you
10 unless he absolutely had to?

11 A. No, not unless he has to, not unless
12 he is in a bind.

13 Q. That's all I have on direct. Please
14 answer any questions that Mr. Haynsworth has.

15 A. Okay.

16 MR. HAYNSWORTH: Mr. Haynsworth has
17 no questions.

18 THE COURT: Ma'am, you may step
19 down. Please be careful.

20 (WITNESS STEPS DOWN)

21 THE COURT: Yes, sir?

22 MR. HAWKINS: Your Honor, the
23 plaintiffs have no more witnesses. I'd like
24 to make a Motion ---

25 THE COURT: Well, is the