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**RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

**SC Court of Appeals**

Court of Common Pleas

Honorable L. Casey Manning, Circuit Court Judge

Case No. 2016-002268

Taliah Shabazz, .....Appellant,

v.

Bertha Rodriguez, .....Respondent

**SUPPLEMENTAL RECORD ON APPEAL**

Taliah K. Shabazz  
6289 U.S Highway 321 S  
Winnsboro, South Carolina 29180  
(803) 718-6786  
Pro Se Appellant

Allyce Bailey  
R. Hawthorne Barrett  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 1473  
Columbia, SC 29202  
(803) 227-4329 (Bailey)  
(803) 227-4219 (Barrett)  
[abailey@turnerpadgett.com](mailto:abailey@turnerpadgett.com)  
[tbarrett@turnerpadgett.com](mailto:tbarrett@turnerpadgett.com)

Attorneys for the Respondent

## **INDEX**

|                                       |      |
|---------------------------------------|------|
| Index .....                           | i,ii |
| Notice of Appearance and Answers..... | 1    |

### **Transcript**

|                                             |    |
|---------------------------------------------|----|
| Court Introductions and Proceedings .....   | 6  |
| Attorney Tyler Lee Opening Remarks .....    | 9  |
| Attorney Allyce Bailey Opening Remarks..... | 13 |
| Court Addresses the Jury.....               | 16 |
| Court Adjourned/ Court Reconvened.....      | 18 |

### **Testimony**

|                                                                       |    |
|-----------------------------------------------------------------------|----|
| Attorney Tyler Lee Direct Examines Plaintiff Taliah Shabazz.....      | 19 |
| Attorney Allyce Bailey Cross Examines Plaintiff Taliah Shabazz .....  | 43 |
| Attorney Tyler Lee Redirect Examination Plaintiff Taliah Shabazz..... | 59 |
| Attorney Tyler Lee Direct Examines Witness Mini'imah Shabazz .....    | 61 |

### **Deposition of Dr. Ogburu**

|                                                                   |    |
|-------------------------------------------------------------------|----|
| Attorney Tyler Lee Examines Dr. Ogburu Ogbonnaya.....             | 63 |
| Attorney Allyce Bailey Cross Examines Dr. Ogburu Ogbonnaya .....  | 79 |
| Attorney Tyler Lee Redirect Examination Dr. Ogburu Ogbonnaya..... | 87 |
| Court Addresses the Jury .....                                    | 88 |

### **Closing Remarks**

|                                             |     |
|---------------------------------------------|-----|
| Attorney Tyler Lee Closing Remarks .....    | 92  |
| Attorney Allyce Bailey Closing Remarks..... | 104 |

|                                                |     |
|------------------------------------------------|-----|
| Jury Instructions .....                        | 108 |
| Jury Insurance Question .....                  | 118 |
| Jury Verdict.....                              | 121 |
| End of Court Proceedings.....                  | 123 |
| Certificate of Transcript Court Reporter ..... | 124 |
| Certificate of Appellant.....                  | 125 |

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF RICHLAND      | ) | Civil Action No. 2015-CP-40-02395 |
|                         | ) |                                   |
| Taliah Shabazz,         | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) | NOTICE OF APPEARANCE AND          |
| vs.                     | ) | ANSWER                            |
|                         | ) |                                   |
| Bertha Rodriguez,       | ) | (JURY TRIAL DEMANDED)             |
|                         | ) |                                   |
| Defendant.              | ) |                                   |

The undersigned, as attorney for LM General Insurance Company (also known as Liberty Mutual Insurance Company) ("Insurer"), notifies this Court, the parties, and their attorneys that he appears on behalf of Insurer as an insurance carrier alleged to provide uninsured motorist coverage to one or more parties to this lawsuit. By making this appearance, Insurer specifically reserves and does not waive any rights pursuant to its policy of insurance, including, but not limited to, the applicability of uninsured or underinsured motorist coverage to this lawsuit and whether or not underinsured motorist coverage is included as part of the policy. Insurer intends to preserve all rights pursuant to S.C. Code Ann. § 38-77-150 (1976), as amended.

Subject to the above, Insurer answers the lawsuit in the name of the defendant, and respectfully shows unto this Court:

**FOR A FIRST DEFENSE**

1. Defendant admits the allegations of Paragraph 1 of the Complaint upon information and belief.
2. Defendant admits the allegations of Paragraph 2 of the Complaint upon information and belief.
3. Defendant admits the allegations of Paragraph 3 of the Complaint upon information and belief.

4. Defendant admits the allegations of Paragraph 4 of the Complaint upon information and belief.

5. Defendant admits the allegations of Paragraph 5 of the Complaint upon information and belief.

6. Defendant admits the allegations of Paragraph 6 of the Complaint upon information and belief.

7. Defendant admits the allegations of Paragraph 7 of the Complaint upon information and belief.

8. Defendant admits the allegations of Paragraph 8 of the Complaint upon information and belief.

9. Defendant denies the allegations of Paragraph 9 of the Complaint upon information and belief and asserts that Paragraph 9 calls for a legal conclusion, in whole or in part.

10. Defendant denies the allegations of Paragraph 10 of the Complaint upon information and belief.

11. Defendant denies the allegations of Paragraph 11 of the Complaint upon information and belief.

12. Defendant denies the allegations of Paragraph 12 of the Complaint upon information and belief.

13. Defendant denies all allegations of the Complaint not specifically admitted herein and denies that Plaintiff is entitled to the relief sought in her prayer.

**AS AN ADDITIONAL DEFENSE**  
**(Comparative Negligence)**

14. Any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Because Plaintiff's negligence or willfulness may be greater than the alleged negligence or willfulness of one or more adverse parties, Plaintiff may be barred from recovery.

15. Any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

**AS AN ADDITIONAL DEFENSE**  
**(Reservation of Rights)**

16. Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit. Defendant gives notice of the intent to assert any further affirmative defenses that any investigation supports, including, but not limited to, defenses that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, Defendant reserves the right to amend this pleading to assert any such defenses.

**AS AN ADDITIONAL DEFENSE**  
**(Punitive Damages)**

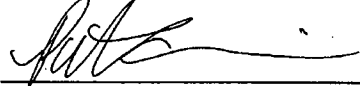
17. Any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

**AS AN ADDITIONAL DEFENSE**  
**(Bifurcation of Punitive Damages)**

18. Defendant requests trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. § 15-32-520. Further, Defendant pleads all defenses, limitations on damages, and other privileges codified at S.C. Code Ann. § 15-32-520 and § 15-32-530.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

Turner Padget Graham & Laney, P.A.



Patrick D. Quinn  
Post Office Box 1473  
Columbia, South Carolina 29202  
Direct: (803) 227-4203  
[pquinn@turnerpadget.com](mailto:pquinn@turnerpadget.com)

Columbia, South Carolina

May 21, 2015

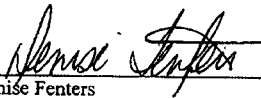
Attorneys for LM General Insurance  
Company, purported UM carrier

|                         |   |                               |
|-------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS  |
|                         | ) |                               |
| COUNTY OF RICHLAND      | ) | CASE NO. 2015-CO-40-02395     |
|                         | ) |                               |
| Taliah Shabazz,         | ) |                               |
|                         | ) |                               |
| Plaintiff,              | ) | <b>CERTIFICATE OF SERVICE</b> |
|                         | ) |                               |
| v.                      | ) |                               |
|                         | ) |                               |
| Bertha Rodriguez,       | ) |                               |
|                         | ) |                               |
| Defendant.              | ) |                               |

I, Denise Fenters, an employee of the Law Firm of Turner, Padgett, Graham & Laney, P.A., do hereby certify that the foregoing Notice of Appearance and Answer was duly served upon counsel of record by depositing a copy of same in the United States Mail at Columbia, South Carolina, on the 21<sup>st</sup> day of May, 2015, with first class postage duly affixed and addressed as follows:

*J. Tyler Lee, Esquire  
McWhirter, Bellinger & Associates, PA  
1807 Hampton Street  
Columbia, South Carolina 29201*

*Attorneys for Plaintiffs*

  
Denise Fenters

1 break?

2 THE COURT: Sure, I'm not going stop you. We'll  
3 be at ease probably about 10 minutes, so take your time.

4 (WHEREUPON, a short recess was held.)

5 (WHEREUPON, the jury returned to the  
6 courtroom at 3:46 p.m.)

7 THE BAILIFF: The jury is present, Your Honor.

8 THE COURT: Everybody's back?

9 THE BAILIFF: Yes, sir.

10 THE COURT: All right. Welcome back, members of  
11 the jury.

12 Jim, you may swear them.

13 THE CLERK: Yes, Your Honor.

14 (WHEREUPON, the jury was sworn.)

15 THE CLERK: Thank you. Please have a seat.

16 THE COURT: Now, members of the jury, before the  
17 case begins, I would like to tell you a little bit about how  
18 matters will proceed. Now, the first thing that will happen  
19 in this case is the attorney for the Plaintiff, that's  
20 Mr. Lee -- the Plaintiff is the party or person that brought  
21 this lawsuit. Mr. Lee will make an opening statement  
22 followed by a similar statement on behalf of Ms. Rodriguez,  
23 the Defendant, by Ms. Bailey.

24 Now, members of the jury, these opening statements  
25 are not arguments. The arguments will come at the

1 conclusion of this case. The purpose of opening statements  
2 is for each party to outline his or her claims and the  
3 evidence which they intend to present in support of these  
4 claims. Following the opening statements, each side will  
5 present its evidence, once again, with the Plaintiff going  
6 first.

7 Now, members of the jury, evidence may take many  
8 forms. It may be testimony, that is people who sit in that  
9 chair over there and swear to tell the truth will tell you  
10 what they remember happened, or documents or models or  
11 photographs or other similar pieces of evidence. You should  
12 pay close attention to all of the evidence which is  
13 presented by each party. You, the jury, are the sole  
14 finders of facts in this case and no one else will be  
15 permitted to weigh the evidence and to render a verdict  
16 based upon the evidence.

17 After all the evidence has been presented, the  
18 attorneys will make their closing arguments. Unlike the  
19 opening statements, these final remarks will be true  
20 arguments, that is each side will emphasize certain portions  
21 of the evidence and try to persuade you to agree with their  
22 version of the facts. After the arguments, I will explain  
23 to you the law that applies to this case. You will then  
24 retire to the jury room, consider the facts and the law.  
25 And once you've done so, you will return a verdict in favor

1 of one side or the other.

2 Now, although I am the only person that can tell  
3 you what the law is, members of the jury, you all are the  
4 only ones who can determine the facts. I do not have the  
5 right to indicate to you how I may feel about the evidence  
6 presented. Throughout this trial, my intention is to be --  
7 or to act impartially to both parties.

8 Now, from time to time, an attorney, either Mr.  
9 Lee or Ms. Bailey, will object to some bit of testimony or  
10 evidence which the other side is seeking to present. Just  
11 like in business, sports or any other structured activity,  
12 there are certain rules that both sides must obey in the  
13 presentation of evidence. These rules have a definite  
14 purpose. They ensure that the information you receive is  
15 the most trustworthy and reliable available. An objection  
16 is a procedure we use for one of the attorneys to call to my  
17 attention a possible violation of the rules of presenting  
18 evidence. And for this reason, you should not hold an  
19 objection against the lawyers nor their clients, nor should  
20 you conclude how I rule on an objection that I favor one  
21 side or the other. Ladies and gentlemen, my interest in  
22 this case is I have no interest in this case except to try  
23 to ensure that both sides receive a fair trial, which is the  
24 exact same interest that all of you jurors have.

25 Now, I would ask that you not take notes. This is

1 going to be a very short trial. It's consistent in this  
2 state that jurors don't take notes because if you do so and  
3 write down a mistake in error, it might be more detrimental  
4 rather than helpful in reaching a verdict in this case. So  
5 your responsibility is to listen carefully individually,  
6 that way collectively, you can make a very just decision and  
7 that's all anybody wants in this case.

8 Now, with that in mind, there's one little change,  
9 we're going to hear the opening statements on behalf of the  
10 parties and then we're going to conclude for the day. We'll  
11 start testimony in the morning. Is that fair enough to  
12 everybody?

13 All right, Mr. Lee, you may proceed, sir.

14 MR. LEE: Good afternoon, everybody. I'm Tyler  
15 Lee and I represent Ms. Shabazz, who is here today with her  
16 mother (indicating). And y'all are going to hear their  
17 testimony tomorrow.

18 I know that it's hard for you to be here.  
19 Everybody here is losing time from something to be here and  
20 serve on the jury, but it is extremely important that we  
21 have this court. And the only reason we have this court is  
22 because of people like y'all who are willing to take the  
23 time to be here and fulfill your duty. And this court is  
24 how we resolve disputes and how we start to make things  
25 right when one person has injured another in some kind of

1 way and this case, it's through a car wreck.

2 We've got some basic rules in society. We have  
3 laws, but each law can, basically, be broken down into a  
4 common sense rule. And one of those major rules is that no  
5 one is allowed to needlessly endanger the public, which is  
6 kind of a fancy way of saying you've got to follow the  
7 safety rules when you're doing an activity. If you're a  
8 professional, like a medical doctor, you've got to make sure  
9 you follow all the rules to treat someone safely. And even  
10 when you're doing something as simple as driving a car,  
11 there's a lot of rules that we're supposed to follow. The  
12 State puts out a booklet. You remember all those rules in  
13 driver's ed? And you follow all the rules. And if  
14 everybody follows the rules, then it's a relatively safe  
15 activity. If someone breaks those rules, then the law says  
16 that they are responsible for the harms that have been  
17 created by them breaking those rules. And it is your job as  
18 the jury in a case like this to enforce those rules.

19 What does it mean to enforce the rules? Well, it  
20 means that if someone breaks the rules that there's a  
21 consequence. And the way you enforce those rules is you  
22 give a verdict that fairly compensates Ms. Shabazz for all  
23 of the harms that were created by Ms. Rodriguez. And that's  
24 all that we're going to be asking y'all to do today and  
25 tomorrow, is to listen to the evidence and come up with a

1 figure that you think fairly represents the harms that were  
2 created. Because in this case, like Judge Manning said,  
3 Ms. Rodriguez, through her attorney, has already admitted  
4 that the wreck was her fault, so you're not going to have to  
5 even take that into consideration.

6 You're going to hear from Ms. Shabazz and from her  
7 mother, what she's been through. And you're going to hear  
8 from Dr. Ogburu through his deposition testimony a little  
9 bit more about the medical expenses -- or not expenses, but  
10 treatment that she has received.

11 And the reason that the law requires you to do  
12 this is two-fold, one is so that the Defendant will not be  
13 rewarded by getting a free pass for breaking the safety  
14 rules. There will be consequences and incentive for people  
15 to follow the rules. And the other is to make things right  
16 for Ms. Shabazz and take care of a member of our community.

17 We're going to talk more about this wreck. The  
18 evidence is going to show you this happened on May 8th,  
19 2012. Ms. Shabazz was on her way to Midlands Tech and the  
20 Defendant, Bertha Rodriguez, she was driving a big van,  
21 pulled out in front of Ms. Shabazz on 321. Ms. Shabazz was  
22 on her way, actually, to take her final exams. And the  
23 evidence will show that lady pulled out in front of her.  
24 Ms. Shabazz had no time to avoid it and there was a  
25 collision. I did not drag y'all in here for a fender

1   bender, okay. I've got photographs and stuff to show you  
2   that Ms. Shabazz's car was very seriously damaged. The  
3   airbags came out and all this other stuff. It was a major  
4   impact. And I'm also going to submit medical records and  
5   the testimony of the doctor that, unfortunately, Ms. Shabazz  
6   was very seriously injured in this wreck. And even more  
7   importantly, at age 19, her doctor opined that -- gave an  
8   opinion that she has a permanent injury. The degree of  
9   injury that's never going to 100 percent go away.

10           After the wreck, you will see the evidence that  
11   the ambulance came to get her. They took her to the  
12   emergency room. She had pain at a ten out of ten in her  
13   neck. We'll talk more about that. The pain scale, one  
14   being the least amount of pain and 10 being the worst. She  
15   was having the worst amount of pain. She had seatbelt burns  
16   on her neck and chest according to the medical records. It  
17   was so bad that a month later, she had to go see an  
18   orthopedic surgeon, Dr. Nahigian. You'll get to see those  
19   records and we'll talk about that. You'll be able to read  
20   for yourself the words that he wrote, there's a substantial  
21   high energy injury to her shoulder and her neck, a  
22   tremendous amount of muscle spasm, severe pain. That  
23   surgeon sent her to physical therapy, which she did almost  
24   constantly for about the first three months. And,  
25   eventually, Dr. Ogburu is going to testify to you that due

Attorney Tyler Lee Opening Remarks T.p 49

Ends line 15.

Attorney Allyce Bailey Opening Remarks T.p 49

Starts line 16.

49

1 to having constant pain in her neck and left shoulder when  
2 she had that high energy injury, she developed these  
3 crippling headaches, unfortunately, that she had three to  
4 five times a week. She still suffers from pain in her neck,  
5 her shoulder and still has these headaches. So, ultimately,  
6 she had to go and see an actual neurologist for that. And  
7 that's the doctor who said that she's permanently injured in  
8 her neck at age 19, unfortunately.

9 After we present all of that evidence to you, I am  
10 going to get back up here and I'm going to ask you to render  
11 us a verdict that you think is fair that takes into  
12 consideration all of the harms that she has suffered and  
13 that enforces the rule that keeps us all safe on the road  
14 and to make sure that we have consequences for not following  
15 those rules. Thank you.

16 THE COURT: Ms. Bailey.

17 MS. BAILEY: May it please the Court?

18 THE COURT: Yes, ma'am.

19 MS. BAILEY: Good afternoon, everyone. While I am  
20 well aware there are numerous people in this room that chose  
21 to be a part of the legal system, whether that be myself,  
22 the Judge, the bailiffs in this room and Plaintiff's  
23 counsel, none of you guys chose to be here. And I am  
24 confident there is somewhere else each of you want to be  
25 today other than sitting in this courtroom. So I am

1 genuinely thankful that you all have chosen to accept your  
2 service as jurors and appreciate your time and we are hoping  
3 to not keep you here too long.

4 Judge Manning has already addressed one of the  
5 elephants in the room and that's there's no one sitting at  
6 the table with me. Ms. Rodriguez is not here. But if she  
7 was here, I would be standing before you admitting the exact  
8 same thing that Plaintiff's counsel and Judge Manning have  
9 already mentioned, that we admit that we are at fault for  
10 this accident. The only reason that we are here today is to  
11 talk about whether or not the injuries that Ms. Shabazz  
12 received and the treatment that she underwent, whether or  
13 not it was reasonable, whether or not her injuries were  
14 caused by our accident, and how much money, if any, she  
15 should be awarded from Ms. Rodriguez because of that  
16 accident. Ms. Rodriguez is not a doctor. She's not a  
17 lawyer. And therefore, she wouldn't really be able to add  
18 too much more to testimony today outside of admitting that  
19 she was at fault for the accident, which we have already  
20 done. So I would appreciate us all just focusing on what's  
21 important today and that's Ms. Shabazz. We are all here to  
22 focus on resolving this case for Ms. Shabazz so we can all  
23 get back to our lives.

24 This accident happened on May 8th, 2012. May 8th,  
25 2012, Ms. Shabazz went to the emergency room and she

1 complained of three symptoms. She complained of neck pain,  
2 shoulder pain and wrist pain. She treated with a physician  
3 for eight months, from May 8th, 2012, to January 9th, 2013.  
4 And every single time she went to the doctor from May 8th,  
5 2012, to January 9th, 2013, she complained of the exact same  
6 three symptoms, that neck pain, that shoulder pain and that  
7 wrist pain. On January 9, 2013, Ms. Shabazz stopped going  
8 to the doctor. She stopped going to any doctor. And four  
9 and a half months went by and she eventually went back to a  
10 physician. And at that next visit, she still complained of  
11 the same exact three symptoms, shoulder pain, neck pain and  
12 wrist pain.

13 But on that next visit, a year after the accident,  
14 on May 24th, 2013, Ms. Shabazz had a new symptom of chronic  
15 migraine headaches. An entire year went by, she went to the  
16 doctor consistently for eight months and never mentioned a  
17 chronic migraine headache. I'm not disputing that  
18 Ms. Shabazz suffers from migraines. I am not someone who  
19 suffers from those. I hear they're awful and I would not  
20 wish them on my worst enemy. I do not believe that she is  
21 lying about suffering from those headaches. I am disputing  
22 whether or not our accident is what caused those migraine  
23 headaches. Four and a half months went by between her  
24 visiting any type of doctor. A lot can happen in four and a  
25 half months and a lot can happen in a year after the

1 accident, whether that's allergy season, an old eyeglass  
2 prescription or just stress from college classes. We just  
3 aren't sure what caused those migraine headaches.

4 All I'm asking you to do today and tomorrow as you  
5 listen to the evidence is pay attention to all of the  
6 evidence that you hear and ask yourself if the Plaintiff has  
7 proven to you that these headaches were caused by our  
8 accident beyond just asking you to assume that if she didn't  
9 have the headaches before the accident, they must have been  
10 caused by our accident. Listen to the evidence, use your  
11 reasonableness and your common sense. And that's  
12 essentially all I'm asking you to do.

13 At the end of this case, I'm going to ask you to  
14 do the same thing that I'm asking you to do now and that is  
15 just be fair and reasonable. I'm not asking you to give  
16 Mr. Shabazz zero dollars. I'm asking you to be fair and  
17 reasonable based upon whether or not she has proven these  
18 headaches and the treatment she received as a result of  
19 those headaches was related to our accident.

20 Thank you very much for your attentiveness and I  
21 hope that we can get you out of here shortly.

22 THE COURT: Now, members of the jury, it's a  
23 little bit earlier than we anticipated, but it was my  
24 decision to decide to start this case, that is the evidence,  
25 the presentation of the evidence in the morning. So I'm the

1 engineer, if the train doesn't run as smooth as y'all think,  
2 hold it against me and not the lawyers or the clients.

3           So what I'll ask you to do is be back tomorrow  
4 morning ready to go, that is in the jury room and ready to  
5 go at 9:30, which means you've got to get here a little bit  
6 before 9:00 o'clock. The bailiffs will show you how to get  
7 in and out. Be sure and keep your buttons on -- not  
8 buttons, whatever it is now, it used to be buttons in the  
9 old days -- to show that you're a juror and nobody will  
10 inadvertently come up and say something to you that you  
11 shouldn't hear.

12           You must make your decision, members of the jury,  
13 on what you hear in this courtroom, no outside  
14 considerations, just what you hear in this courtroom that's  
15 presented to you as evidence. No enemies to punish, no  
16 friends to reward. This is one time in your life you have  
17 the opportunity to do exactly what you think is correct, the  
18 fair and just thing to do. That's an enviable position in  
19 this world.

20           So with that in mind, you're free to go. Be back  
21 ready to go in the jury room at 9:30 in the morning. Thank  
22 you all so very much, members of the jury.

23           (WHEREUPON, the jury left the courtroom  
24 at 4:04 p.m.)

25           THE COURT: Any exceptions or additions?

1 MS. BAILEY: None from the Defense, Your Honor.

2 THE COURT: Okay.

3 MR. LEE: No, sir.

4 THE COURT: I'm required to ask that question, so  
5 I always ask it. I'll see y'all in the morning.

6 MR. LEE: Yes, ma'am.

7 THE COURT: My suggestion, y'all get here about  
8 9:00 o'clock. See y'all then. Thank you.

9 (WHEREUPON, Court was adjourned for the  
10 day to be reconvened on Tuesday, August  
11 30, 2016.)

12 TUESDAY, AUGUST 30, 2016

13 THE COURT: Is everybody ready?

14 MR. LEE: Yes, sir.

15 THE COURT: All right. You may bring the jury in.

16 THE BAILIFF: Yes, Your Honor.

17 (WHEREUPON, the jury returned to the  
18 courtroom at 9:55 a.m.)

19 THE BAILIFF: Your Honor, the jury is present and  
20 seated.

21 THE COURT: Thank you, sir.

22 Welcome back, members of the jury. I trust and  
23 hope y'all had a pleasant and restful evening. Did you?

24 (All jurors answered in the  
25 affirmative.)

1 THE COURT: Good. This case will start with  
2 Mr. Lee calling his first witness on behalf of the  
3 Plaintiff.

4 Mr. Lee, you may proceed, sir.

5 MR. LEE: Thank you, Your Honor. If it please the  
6 Court, the Plaintiff calls Taliah Shabazz.

7 THE COURT: Ms. Shabazz, please come around.

8 TALIAH SHABAZZ, after having been duly sworn,  
9 testified as follows:

10 THE CLERK: Please have a seat there, ma'am.  
11 Speak into the microphone. State your full name for the  
12 record and please spell your first and last.

13 THE WITNESS: My name is Taliah Shabazz, that's  
14 T-A-L-I-A-H, Kareemah, K-A-R-E-E-M-A-H, Shabazz, S-H-A-B, as  
15 in boy, A, and two Z's.

16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q. Good morning.

19 A. Good morning.

20 Q. Tell me, what's your date of birth?

21 A. August 6th, 1992.

22 Q. How old does that make you today?

23 A. Twenty-four.

24 Q. You're in school full time now; is that right?

25 A. Yes, sir.

1 Q. Where do you go to school?

2 A. Savannah College of Art and Design in Savannah,  
3 Georgia.

4 Q. You live there most of the time?

5 A. Yes, sir.

6 Q. Okay. And you also have a home in Winnsboro; is that  
7 right?

8 A. Yes, sir.

9 Q. Who do you live with there?

10 A. I live with my mom.

11 Q. Have you lived there since you were a child?

12 A. Yes, sir.

13 Q. All right. Where did you grow up?

14 A. In Fairfield County, Winnsboro, South Carolina.

15 Q. Did you graduate from high school?

16 A. Yes, sir.

17 Q. Where was that?

18 A. Fairfield Central High.

19 Q. Okay. Have you ever been married?

20 A. No, sir.

21 Q. Do you have any children?

22 A. No, sir.

23 Q. Okay. Let's talk about what you were doing back in

24 2012 when this wreck happened, okay? Where were you

25 living then?

- 1 A. With my mom in Winnsboro.
- 2 Q. Okay. And what were you doing? Were you going to
- 3 school?
- 4 A. Yes, sir.
- 5 Q. Okay. Where?
- 6 A. Full time at Midlands Technical College.
- 7 Q. Midlands Technical? Is that in Columbia?
- 8 A. Yes, sir.
- 9 Q. About how many classes were you scheduled back then?
- 10 A. I recall five.
- 11 Q. Five classes, okay.
- 12 A. Uh-huh.
- 13 Q. So pretty much a full load?
- 14 A. Full schedule, yes, sir.
- 15 Q. Okay. Let's talk about this wreck, which is why
- 16 everybody is here, okay? So that happened on May the
- 17 8th of 2012?
- 18 A. Yes, sir.
- 19 Q. Okay. Do you remember what happened?
- 20 A. Yes, sir.
- 21 Q. Okay. Where were you heading that day?
- 22 A. I was headed to Columbia. I was on my way to take my
- 23 exam.
- 24 Q. Okay. And what kind of car were you driving?
- 25 A. I was driving a Suzuki Swift, 2002. It's smaller than

1 a Beetle Bug.

2 Q. Okay.

3 A. No, it's bigger than a Beetle Bug, but smaller than a  
4 PT Cruiser.

5 Q. So pretty small?

6 A. Pretty small.

7 Q. If you would, just in your own words, tell the jury how  
8 the wreck happened, okay?

9 A. Okay.

10 Q. Or you can tell me if that's easier.

11 A. I'm sorry, public speaking is not really my forte. I  
12 get a little nervous, but I'll do my best. I was on my  
13 way to class, like I said. I was in Columbia, still  
14 heading down 321. And I can't tell you the exact road  
15 and stuff, but I was driving in the right-hand lane  
16 when the Defendant pulled out in front of me, and she  
17 pulled out so fast. She waited until I got exactly  
18 right up on her before she decided to pull out. And so  
19 I tried everything I could, believe me, to try to avoid  
20 this accident. I got over into the left-hand lane and  
21 then she got over trying to make it across to the  
22 median. And when I tried to get over again to the  
23 median, that's when she got over in front of me and we  
24 ended up T-boning each other.

25 Q. What kind of vehicle was Ms. Rodriguez driving?

1 A. I think it was a white -- I know it was a white  
2 minivan, but I'm not sure what the make or the model  
3 was.

4 Q. Right. It was a van --

5 A. Yes, sir.

6 Q. -- of some kind? Okay. Were you wearing your  
7 seatbelt?

8 A. Yes, sir.

9 Q. I don't know if this is easy to put into words or not,  
10 but how hard of an impact was it?

11 A. When we collided, the seatbelt caught me across the  
12 neck real hard and it was like a -- it was kind of like  
13 bang and my car ended up -- it bounced off of it. And  
14 I remember the airbags had deployed and hit me in the  
15 face and I was just so shocked and stunned. I -- I  
16 just remember taking off my seatbelt. I don't remember  
17 anything after that. I know I crawled out of the  
18 vehicle. I don't know if I opened the door or if  
19 somebody else opened it. But I just know once I  
20 crawled out, I saw the Defendant, you know, standing  
21 there.

22 Q. Okay. Did the Defendant say anything to you?

23 A. Yes. She said that -- she was looking at my neck --

24 MS. BAILEY: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. LEE: Your Honor --

2 MS. BAILEY: She cannot testify to what the  
3 Defendant said to her. It's hearsay.

4 MR. LEE: I believe there's an objection to --

5 THE COURT: Overruled, she can say what she said.

6 BY MR. LEE:

7 Q. What did the Defendant say to you?

8 A. She was like, Oh, my God, look at your neck. I'm sorry

9 I did this. Oh, my God, I'm sorry about your neck.

10 Look at your neck.

11 Q. What was wrong with your neck?

12 A. There was a bruise across my neck.

13 Q. What happened after that, Taliah?

14 A. Well, after that, I can't -- I pretty much --

15 everything was like a blur, but I do remember the, you

16 know, ambulance showing up.

17 Q. Okay. How were you feeling when the ambulance got  
18 there?

19 A. Well, I do remember that I was still dazed and, you

20 know, still in shock.

21 Q. Where did the ambulance take you?

22 A. They took me to Richland Memorial Hospital.

23 Q. When do you remember first knowing that you were in  
24 pain and feeling the pain to your memory?

25 A. To my memory?

- 1 Q. Uh-huh.
- 2 A. To be honest, you know, everything all happened at  
3 once.
- 4 Q. Okay. Did you eventually have some pain?
- 5 A. Of course, yes. It's just the pain was so much so  
6 that, you know -- I can't -- and I was so much dazed  
7 that I can't really tell, like, how much. I just --
- 8 Q. Okay. Where were you having pain?
- 9 A. Mostly in my neck and in my shoulder.
- 10 Q. What did they do for you in the emergency room?
- 11 A. They -- I know -- I remember they, you know, checked my  
12 vitals. They gave me x-rays.
- 13 Q. Did they give you any medications or anything like  
14 that?
- 15 A. Yes, sir.
- 16 Q. Okay. The next thing that happened in your medical  
17 records, which we'll show the jury after testimony is  
18 over, was that you saw Dr. Dean Floyd?
- 19 A. Yes, sir.
- 20 Q. Okay. How long have you been seeing Dr. Floyd?
- 21 A. Ever since I turned 18, I have.
- 22 Q. Okay. And you were 19 when this happened, right?
- 23 A. Yes, sir.
- 24 Q. Okay. Was Dr. Floyd your family doctor?
- 25 A. He was my primary care.

1 Q. Okay. Why did you followup with Dr. Floyd?

2 A. Because I was still in pain, and when I went to see  
3 Dr. Floyd the first time, I remember when -- he just  
4 wanted to touch my shoulder.

5 Q. Uh-huh.

6 A. And when he would touch it, I would just, you know, try  
7 to jerk back or, you know, try to guard my left  
8 shoulder.

9 Q. How was your shoulder feeling?

10 A. At the time?

11 Q. Yeah.

12 A. It was very sore and there was still swelling there.

13 Q. Okay. Did Dr. Floyd eventually refer you to another  
14 doctor?

15 A. Yes, sir.

16 Q. Was that Dr. Nahigian?

17 A. Yes, sir.

18 Q. What kind of doctor is he?

19 A. He's a knee specialist.

20 Q. Like an orthopedic specialist?

21 A. Right.

22 Q. And what did Dr. Nahigian do for you?

23 A. He recommended that I do therapy at his facility.

24 Q. Is that physical therapy?

25 A. Yes, sir.

1 Q. Tell us a little bit about what you did at physical  
2 therapy?

3 A. At physical therapy, they normally gave me some -- a  
4 list of exercises that I could use to stretch out the  
5 muscles in my arm. And they also gave me like a heat  
6 pack and I think they did one of those ultrasound gels.

7 Q. Okay. Did those treatments help you?

8 A. For a while.

9 Q. What do you mean by that?

10 A. Well, even after I would have the treatments and  
11 whatnot, I still had to go back to school.

12 Q. Okay.

13 A. And so being in school full time did not allow me to be  
14 able to continue with those exercises like the doctor  
15 had planned.

16 Q. You mean going to physical therapy?

17 A. Correct.

18 Q. Okay. Well, from the medical records, it looks like  
19 you went pretty regularly. The wreck happened in May?

20 A. Yes, sir.

21 Q. You started physical therapy around the first of June?

22 A. Yes, sir.

23 Q. This is 2012. You went a lot from June through August?

24 A. Yes, sir.

25 Q. Okay. So what happened in August? Is that when you

1           went back to school?

2    A.    Yes, sir.

3    Q.    Okay. Even then, it appears you went back in September  
4           and October?

5    A.    Yes, sir.

6    Q.    And again in January?

7    A.    Yes, sir.

8    Q.    Were you still having pain and problems into January?

9    A.    Yes, sir.

10   Q.    Okay. If you can remember, tell us how you were  
11           feeling sort of at the end of that summer when you  
12           started back to school when you've done now three  
13           months of intensive physical therapy. How much better  
14           were you at that point? How were you feeling?

15   A.    Well, at the time, you know, my body, it was used to  
16           doing the exercises, but, you know, still it would be  
17           sore afterwards because my body had just went through  
18           so much trauma or whatever. But after I would go to my  
19           classes and stuff, by not having to do those exercises  
20           all of the time, it's like trying to get my body back  
21           into shape but it's difficult to do that because I  
22           haven't had the chance to use those muscles in a while.

23   Q.    Were you still having pain?

24   A.    Yes, sir.

25   Q.    Okay. How severe of a pain are we talking about? Are

1 we talking about, you know, like everybody has normal  
2 aches and pains? What was this pain like?

3 A. This pain -- I wish I could describe it to you, but  
4 I'll do the best that I can. For me, it -- it hurt and  
5 it was really bad, but I just -- despite it being so  
6 severe, I still tried to keep going.

7 Q. And did you go back to school full time that following  
8 fall?

9 A. Yes, sir.

10 Q. Okay. How did that go? I mean, when you went back to  
11 school, how were you doing? What do you have to do  
12 physically to go to school full time? You've got to  
13 get up and go there in the morning, right?

14 A. Yes, sir. But at the time, I was still having trouble  
15 because of my arm and shoulder and stuff, so I really  
16 needed a lot of assistance --

17 Q. Tell me what --

18 A. -- for first time. I needed somebody to take me to  
19 school for one because I couldn't do it myself. Also,  
20 like, the first couple of months or whatever, I needed  
21 somebody to help me get dressed and whatnot.

22 Q. Who would do that?

23 A. My mother.

24 Q. Why did you need help getting dressed?

25 A. Because I was still having trouble with my arm and

1           sometimes I didn't want to do anything with it, like  
2           lift it up or anything. Like I said, I would always  
3           guard it. And even when somebody said, you know, hi,  
4           how are you, you know, they try to reach over to touch,  
5           I was like, don't touch me. And I wasn't trying to be  
6           mean or rude or facetious, it just -- it hurt and I  
7           just didn't want anybody to touch it at all.

8    Q.    You mentioned that somebody had to take you to school?

9    A.    Uh-huh.

10   Q.    Why was that?

11   A.    Because I couldn't drive myself.

12   Q.    Why not?

13   A.    Because of my arm.

14   Q.    What kind of problem would that present when you were  
15           driving? I know it sounds obvious, but we have to kind  
16           of break it down?

17   A.    I --

18   Q.    Did you try to drive at all?

19   A.    No. And here's why, even though my arm, you know, was  
20           still hurting, I was very scared of driving, in fact,  
21           very terrified. And when the person who was driving  
22           me, which either was my mom or my aunt, they would  
23           drive, and you know how when people are switching lanes  
24           and stuff --

25   Q.    Uh-huh.

1 A. -- and if a person cuts in front of you, I would  
2 literally brace my hand on the door and start  
3 hyperventilating and whatnot.

4 Q. How about when you would get to school, did you have to  
5 carry books and materials and stuff?

6 A. Yes, sir.

7 Q. How did that work out?

8 A. Well, I remember the bag that I had, I wouldn't put it  
9 on my back. I would just sort of try to carry it in my  
10 hand and favoring my right arm mostly.

11 Q. Okay. Did that cause you any difficulty?

12 A. It's hard lifting, you know, a backpack with just one  
13 hand, especially if I wasn't trying to use my left hand  
14 at the time.

15 Q. And how long were these days at school? You know,  
16 about how many hours a day would you be at school?

17 A. From 8:00 o'clock to, I think my last class was at  
18 4:00.

19 Q. Okay. Would you be feeling any different at the end of  
20 a day at school carrying those books around than you  
21 would at the beginning of the day?

22 A. To be honest, I just -- I was in pain mostly all the  
23 time. I just kept pushing myself through. So if  
24 you're asking me what was the difference, I can't tell  
25 you.

1 Q. Okay. So you went to physical therapy a few more times

2 --

3 A. Uh-huh.

4 Q. -- during that fall? Okay. And then in May of 2013,

5 just about a year after the wreck, you went back to

6 Dr. Nahigian?

7 A. Yes, sir.

8 Q. Okay. Why did you go back to Dr. Nahigian in May?

9 A. Because I was still having problems and he also wanted

10 to see how I was fairing so far.

11 Q. Okay. Now, when you went to see Dr. Nahigian this time

12 in May, you were telling him about some headaches that

13 you had been having?

14 A. Uh-huh.

15 Q. When did those -- when did you start having these

16 headaches?

17 A. Well, at first, I didn't -- at first, I was worried

18 about, basically, like the soreness in my shoulder and,

19 you know, my neck and my arms. And I didn't really

20 think about it because it was just -- I thought it was

21 just a simple headache, but when I started getting them

22 more frequently, I'm like this isn't normal for me.

23 Because I've never had migraine headaches where they

24 would be so severe and I would have to literally try to

25 turn off the lights when I get home and try to get some

1 sleep and just try to sleep for, like, three or four  
2 hours. Or, basically, you know, I would start out  
3 taking a Tylenol and I realized that wasn't helpful and  
4 that wasn't strong enough, so I'm taking, like,  
5 ibuprofen, not one or two, but four, 800 milligrams of  
6 ibuprofen. And this isn't normal for me.

7 Q. Had you ever had a headache like that before this  
8 wreck?

9 A. No, sir.

10 Q. Okay. How often were you gettings these headaches?

11 A. At first, it would be like maybe once or twice, but  
12 then it started getting more severe as the years  
13 progressed.

14 Q. Okay. Well, when you went and saw Dr. Nahigian in May  
15 and you told him about the headaches and stuff, what  
16 did he recommend that you do? Did he refer you to  
17 another doctor?

18 A. He recommended that -- he recommended that I see a  
19 neurologist about it, but it was my doctor who had  
20 referred me to Dr. Ogburu.

21 Q. Okay. So Dr. Floyd is who actually helped you get the  
22 appointment?

23 A. Correct.

24 Q. But it was Dr. Nahigian who recommended you see a  
25 neurologist?

1 A. Correct.

2 Q. Okay. And you went to Dr. Ogburu that same month, May  
3 of 2013?

4 A. Yes, sir.

5 Q. What did Dr. Ogburu do to try to help you?

6 A. At first, he did some treatments where, I guess, gave  
7 me -- he sent me to get an MRI done.

8 Q. Okay.

9 A. And also some other med -- he gave me a lot of  
10 medications. And they -- the medications that he gave  
11 me had strong side effects and by me being in school, I  
12 ,wouldn't be able to take those because of that.

13 Q. All right. And in June of that year, you actually had  
14 to go to the hospital one time, didn't you?

15 A. Yes, sir.

16 Q. What happened in June after you started taking those  
17 medications?

18 A. I started feeling light-headed and dizzy when I took it  
19 and I was thinking to myself, you know, this isn't  
20 normal. And, you know, my momma was worried and she  
21 took me to Fairfield Memorial Hospital.

22 Q. Anything like that ever happen before?

23 A. No, sir.

24 Q. And you ended up treating and seeing Dr. Ogburu for a  
25 long time after that, right?

1 A. Yes, sir.

2 Q. Up until to 2015?

3 A. Yes, sir.

4 Q. Yep. And, you know, we're going to have his testimony

5 --

6 A. Uh-huh.

7 Q. -- in little while so the jury can hear that. Let's  
8 talk about how you're doing now, okay?

9 A. Okay.

10 Q. You're still in school?

11 A. Yes, sir.

12 Q. You ended up transferring from Midlands Tech to  
13 Savannah College of Art and Design?

14 A. Yes, sir.

15 Q. Okay. Just tell us briefly what kind of school that  
16 is.

17 A. Savannah College of Art and Design is a school for the  
18 arts, of course. It has -- it has a ton of art  
19 programs, but I won't bore you with the rest of it.  
20 I'm an interior design major. And I started going to  
21 SCAD in January 2016. And I was very fortunate because  
22 that's the number one school for interior design.

23 And interior design is not to be confused with  
24 interior decorating. I get that a lot. It's more --  
25 it's, basically, more of architecture. And we do a lot

1           -- we learn a lot about how to create floor plans, how  
2           to hand sketch and draw and not only that, draw on  
3           computers. And also, we also make models. And quite  
4           recently, this summer, my professor, who's an  
5           architect, his students in the fall are going to be  
6           designing the Kate Spade Outlet in Jacksonville,  
7           Florida.

8    Q.    So is it fair to say that back when you were at  
9           Midlands Tech that it would sort of be a dream to go to  
10          a school like that, wouldn't it?

11   A.    Oh, yes. And I definitely had to work to get there,  
12          yeah.

13   Q.    Well, now that you're there, how are you feeling now?

14   A.    Well, now that I'm there, it's, basically, been a  
15          struggle, especially --

16   Q.    Well, let me back up a little bit. This is mid-2016,  
17          so it's about four years after the wreck?

18   A.    Uh-huh. Yes, sir.

19   Q.    Are you still having any problems physically that you  
20          attribute -- that are the same problems that you've  
21          been having?

22   A.    Yes, sir. I have these tense knots in my shoulder and  
23          my shoulder blade and I still have a hump on my  
24          shoulder on both sides from the accident. And  
25          sometimes I still -- I don't mean to do it, but I still

1 guard my shoulder even now. Not so much as before, but  
2 like I said, if a person goes like hey, how you doing?

3 Q. Not as much as before?

4 A. Not with guarding-wise.

5 Q. Okay.

6 A. But it's a struggle because even at Midlands Tech, I  
7 would have to carry an art bag, which is 18 by 24 with  
8 all my art supplies in it. Now, I still have to do the  
9 same thing, but it's not just the 18 by 24 bag, I have  
10 to use a long tube for my drafting plans. I have to  
11 carry all of my -- I have to carry my T-square, which  
12 is about this big in the bag (indicating). I have to  
13 carry all my books. I have to carry all of my pencils.  
14 And you really, really need to carry a bag of pencils  
15 because in art classes, we do a lot of drawing.

16 Q. Are you still having any pain?

17 A. Yes.

18 Q. In your shoulder?

19 A. Yes, sir.

20 Q. Tell us about that.

21 A. Okay.

22 Q. Like sort of where does it hurt?

23 A. Well, as I mentioned before, the stuff that I have to  
24 carry, that puts a lot on my shoulder and my back. And  
25 because Savannah College of Art and Design, also, known

1 as SCAD, also known as sweet comes after death, the  
2 campus is like USC, it's spread out. So either I catch  
3 the bus or I have to walk everywhere. Everything is  
4 not within distance. I do a lot of walking and that's  
5 a lot of strain on my back.

6 Q. Okay. How about your neck, are you still having any  
7 pain in your neck?

8 A. Well, the neck is connected to my shoulder. And to  
9 answer your question, yes, I do. So if I'm -- if I  
10 have problems here, then yes, it's --

11 Q. It's all kind of one thing?

12 A. Yeah, generally, my neck.

13 Q. Do you have pain in that area everyday?

14 A. It's -- how I can explain it is if it's not one thing,  
15 it's the other. And so, yeah, if -- okay, so let's say  
16 my neck, you know, isn't hurting, but then my back  
17 hurts or, you know, my shoulder is still sore up in  
18 here (indicating), then that hurts.

19 Q. Okay.

20 A. So that -- generally, when that happens, you know,  
21 that -- that usually -- it interferes with my day, but  
22 I try not to let it. I try to push on, push through.

23 Q. Okay. Are you still having headaches?

24 A. Yes, sir.

25 Q. And how often are you having those?

1 A. Not as much as I was having them frequently, but I do  
2 still have them. And I can tell you, they still do  
3 last more than an hour or two. And I -- and when I  
4 have to go to these classes, my studios are five and a  
5 half hours long. And then after that, I go to another  
6 class, which is either two hours or three hours long,  
7 depending on which day it is. And so after, you know,  
8 the stress from having to carry my bags and get home  
9 and everything, you know, my migraine headache is just  
10 there and it's very intense. And the only thing I want  
11 to do is just lay down and just go to sleep. But even  
12 then, you know, I try not to take that much medication  
13 because, like I said, I'm in school and the medications  
14 are -- they make you drowsy and for me, it makes me  
15 weak and less motivated to do what I need to do.

16 Q. So sometime you have to take the pain instead then?

17 A. Exactly.

18 Q. Are you able to get a good night's sleep on a regular  
19 basis?

20 A. Not really.

21 Q. What kind of issues do you have when you try to sleep  
22 sometime?

23 A. Well, like I said, if I'm coming home and I'm -- you  
24 know, like I said, I carry this stuff around. Like, at  
25 the end of the day, if I don't feel it then, I feel it

1           when I go to bed because my shoulders are all tense and  
2           sore. And then when I try to lay down and rest, the  
3           school's mattresses are very thin and you can actually  
4           feel the springs and stuff, so that's not really good  
5           for a person who has back injuries already.

6    Q.   When is the last time you got any kind of treatment for  
7           these problems?

8    A.   Last treatment I received was when I came home the  
9           first time this summer.

10   Q.   Uh-huh.

11   A.   I've had treatments before, but you asked like  
12           recently.

13   Q.   Yes, just recently. As recently as this summer?

14   A.   As recently as this summer, yes.

15   Q.   What kind of treatment was that?

16   A.   I started going to a massage therapist. And this was  
17           actually back in 2015 when I was trying to get back  
18           into doing my exercises on a regular basis and I  
19           realized that my muscles weren't responding like they  
20           used to. Since I haven't been stretching like I  
21           should, they were all tight and knotted up. So when I  
22           tried to do my exercises, my muscles wasn't responding  
23           to anything that I did. So I decided, you know, I'm  
24           tired of this, I want something done. At least, I'm  
25           going to see if I can go to a massage therapist.

1           And when I went to the massage therapist and  
2           stuff, when she was massaging my back -- this wasn't  
3           just a regular massages that you get that make you feel  
4           good, this was actually what she called a -- I hope I'm  
5           pronouncing this right, neuromuscular massage, where  
6           she uses her knuckles and her elbows and she's actually  
7           digging into my skin. And that's very uncomfortable  
8           for me and I'm pretty sure would be very uncomfortable  
9           for anyone. But the first time she did it, I can  
10          remember, I literally almost hopped up off of table  
11          because, you know, I just couldn't take it. But, you  
12          know, after a while, I would start going to massage  
13          therapy and I would try to get maybe an hour or maybe  
14          two in.

15   Q.    Okay.

16   A.    Not all at once.

17   Q.    Right.

18   A.    Not all at once. And not only that, she suggested that  
19          I go see a chiropractor. And so I also went to see a  
20          chiropractor up until it was time for me to go back to  
21          school and start January 2016.

22   Q.    Did these recent treatments make your problem go away  
23          completely?

24   A.    No, sir. I still have problems. And the thing about  
25          it, they wanted to continue treatments, but since I had

1 classes, I had to stop again.

2 Q. Okay. Well, Ms. Shabazz, Taliah, everybody in the  
3 world gets aches and pains. And I'm sure everybody on  
4 the jury and everybody in this room, you know,  
5 understands normal aches and pains and even headaches  
6 and things like that. What -- how do you know that  
7 what you're talking about is not just normal aches and  
8 pains?

9 A. Well, Mr. Lee, I've been dealing with this, what, five  
10 and a half years?

11 Q. Four years.

12 A. Four, thank you. I don't know what normal is.

13 Q. Did you have any of these problems before Bertha  
14 Rodriguez pulled out in front of you?

15 A. No, sir.

16 Q. Have you heard anything from Bertha Rodriguez since the  
17 day this happened?

18 A. No, sir. And from my understanding, I was told --

19 Q. Well, you haven't heard from her, right?

20 A. Right.

21 Q. Okay.

22 MR. LEE: Those are all the questions I have.

23 Thank you, Your Honor.

24 THE COURT: All right.

25 Cross-examination?

1 MS. BAILEY: May it please the Court?

2 THE COURT: Yes, ma'am.

3 CROSS-EXAMINATION

4 BY MS. BAILEY:

5 Q. Good morning, Taliah. How are you?

6 A. I'm well.

7 Q. Nice to see you again. As I said before, I wish it  
8 were under better circumstances, but it is nice to see  
9 you again. Taliah, those three-to-five-hour classes  
10 that you were mentioning to Mr. Lee, do you use a  
11 computer at all during those classes?

12 A. I didn't -- I didn't use the computer until my  
13 electronic design class this summer. Are you referring  
14 to January 2016 or --

15 Q. In general, in any of your classes, do you ever use a  
16 computer?

17 A. Yes, ma'am.

18 Q. How long would you say that you use a computer during  
19 your art classes?

20 A. My art classes?

21 Q. In any of your classes, how often would you say that  
22 you use a computer?

23 A. Three hours.

24 Q. So there's periods of time where you're staring at a  
25 computer for about three hours during a class?

1 A. Not during the class, but if I have to type up a paper,  
2 then yes. But in my art classes, we normally don't use  
3 computers unless drawing a house or something. And  
4 like I said, I started that this summer.

5 Q. I understand. So throughout your studies, there are  
6 periods of time where you use a computer for several  
7 hours at a time, correct?

8 A. Correct.

9 Q. Thank you. And so you went to the emergency room after  
10 this accident, correct?

11 A. Yes, ma'am.

12 Q. And you complained to them of left shoulder pain, neck  
13 pain and back pain, correct?

14 A. Correct.

15 Q. And you didn't tell the ER physician that your head was  
16 hurting, correct?

17 A. Correct.

18 Q. And you didn't tell any other doctor that you saw,  
19 either the EMS or at the ER that your head was hurting  
20 that day, correct?

21 A. As far as I know, I don't believe --

22 Q. Okay. I didn't mean to cut you off, I'm sorry. Were  
23 you finished?

24 A. I don't believe so. I'm not sure.

25 Q. Okay.

1 MS. BAILEY: May I approach the witness?

2 THE COURT: Sure. With what, though?

3 MS. BAILEY: These are actually Plaintiff's  
4 exhibits, but I can certainly --

5 THE COURT: That's fine. I just wanted to know  
6 what they are.

7 Any objection?

8 MR. LEE: No, Your Honor.

9 MS. BAILEY: We stipulated to these prior.

10 THE COURT: You may proceed.

11 MS. BAILEY: Thank you, Your Honor.

12 BY MS. BAILEY:

13 Q. Ms. Shabazz, I am going to walk over to you with what  
14 has previously been marked as Plaintiff's Exhibit 1.  
15 This is your EMS record, okay?

16 A. Okay.

17 Q. That is the record that the paramedic that picked you  
18 up after the accident, that is what he filled out,  
19 okay?

20 A. Okay.

21 Q. Would you mind reading the section that says history of  
22 present illness for the jury, please?

23 A. Sure. No problem. It says -- and forgive me because I  
24 don't know all these symbols. AOS 19-year-old female  
25 CC of left shoulder pain and also pain where the

1 seatbelt was overlaying. PT, ambulatory on scene after  
2 two-car MVA with airbag deployment and major damage.  
3 PT denies any loss of consciousness or neck or back  
4 pain. PT transferred to stretcher to truck. Vitals  
5 taken. PT states pain is nine out of 10. PT taken to  
6 Richland ER with report given in route. PT care left  
7 with ER nurse.

8 Q. Is there any mention of any headaches there,  
9 Ms. Shabazz?

10 A. No, Ms. Bailey.

11 Q. Thank you. But you were suffering, as you claim, from  
12 a 10 out of 10 headache at this time, but you didn't  
13 mention that to anyone, correct?

14 A. Can you say that again?

15 MR. LEE: Your Honor --

16 THE COURT: Do you have an objection? I don't  
17 believe the witness testified along those line, but you can  
18 back up and you can read the testimony.

19 MR. LEE: I don't remember her saying --

20 THE COURT: Beg your pardon?

21 MR. LEE: I don't remember her testifying --

22 THE COURT: I don't either. This is  
23 cross-examination, but I don't remember the witness giving  
24 that specific answer.

25 BY MS. BAILEY:

1 Q. It's in her deposition testimony. I can certainly pull  
2 that out, but it's fine. It's unnecessary. Did you  
3 mention that you were suffering from a headache to  
4 anyone at the emergency room?

5 A. I don't recall.

6 Q. Okay.

7 MS. BAILEY: At this time, I would like to open up  
8 the deposition testimony --

9 THE COURT: Sure.

10 MS. BAILEY: -- of Ms. Shabazz. I beg the Court's  
11 indulgence.

12 THE COURT: That's fine.

13 Members of the jury, of course, some of you may  
14 already know, a deposition is an out-of-court examination of  
15 a witness generally for purposes of trial. And you must  
16 give the same weight or value to deposition testimony as you  
17 would from the witness testifying live on the stand. That's  
18 generally how it's defined.

19 Any exceptions or additions to that?

20 MR. LEE: None from the Plaintiff, Your Honor.

21 MS. BAILEY: No, sir.

22 May I hand this up?

23 THE COURT: Sure.

24 MS. BAILEY: Thank you, Your Honor.

25 THE COURT: All right.

1                   And both sides were present, too, the Plaintiff  
2   and the Defendant.

3                   Ready, Ms. Bailey?

4                   Does she have a copy of her deposition?

5                   MS. BAILEY: I have one in my hand here. We may  
6   need to hand her that one.

7                   THE COURT: Please hand this to the witness.

8   BY MS. BAILEY:

9   Q.   Ms. Shabazz, would you please turn to Page 27 of your  
10       deposition transcript?

11   A.   Yes, ma'am.

12   Q.   When you're there, let me know.

13   A.   Page 27.

14   Q.   Would you please read line number 10, that is where I  
15       asked you a question regarding your headaches?

16   A.   Okay.

17   Q.   Would you please read it aloud?

18                   MR. LEE: Your Honor, with all due respect.

19                   THE COURT: Will y'all approach, please, for a  
20   moment. The lawyers can scoot up here to the side. Thank  
21   you.

22                   (Whereupon, a bench conference was held  
23                   off the record, in the presence of the  
24                   jury, but out of the hearing of the  
25                   jury.)

1 THE COURT: I'm going to give y'all a little  
2 break, ladies and gentlemen. This might take a little bit  
3 longer.

4 Remember don't talk about this case. I'll give  
5 you an opportunity to refresh yourselves. I'll bring you  
6 back in shortly. I needed a break anyway. This is a good  
7 time for a break.

8 (Laughter.)

9 (Whereupon, the jury left the courtroom  
10 at 10:39 a.m.)

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

12 MR. LEE: Sorry, Your Honor --

13 THE COURT: You need to speak up. I have trouble  
14 hearing.

15 MR. LEE: I should have just asked to approach at  
16 the beginning. She talks about headaches later, but this  
17 Page 27 is talking about her neck --

18 THE COURT: As I understand the opening statements  
19 and everything so far, the headaches didn't occur until a  
20 year after the accident. Am I right so far?

21 MR. LEE: Yes.

22 THE COURT: All right. So what's your point?

23 MR. LEE: Well, just that on the page that she's  
24 referring to in the deposition --

25 THE COURT: It just seems like the headaches

1     sprung up all of a sudden --

2                 MR. LEE: No, this particular page she's referring  
3     to doesn't talk about headaches.

4                 MS. BAILEY: It's just a general question about  
5     her pain in general.

6                 MR. LEE: No, you said she said she had 10 out of  
7     10 headaches.

8                 MS. BAILEY: And when she reads it --

9                 THE COURT: I'm going to take a break. Y'all can  
10    go over that. If y'all can't work it out, I will make a  
11    decision when I get back.

12                MR. LEE: Yes, sir.

13                (Whereupon, a short recess was held.)

14                THE COURT: Okay. The reason I stopped you, you  
15    can object. It's a little bit confusing. It's sort of  
16    foundational. You need to put it in historical context,  
17    especially when y'all have been saying she didn't complain  
18    until a year later. Y'all got it straight?

19                MS. BAILEY: We got it, yes, sir.

20                MR. LEE: Yes, sir.

21                THE COURT: Okay. That's fine.

22                Bring them back.

23                (Whereupon, the jury returned to the  
24    courtroom at 11:00 a.m.)

25                THE BAILIFF: The jury is present.

1 THE COURT: Welcome back, members of the jury.

2 I guess they're all here? They are all here,  
3 right?

4 THE BAILIFF: Yes.

5 THE COURT: Okay. Thank you.

6 THE BAILIFF: They are all here.

7 THE COURT: And from time to time, we'll have to  
8 stop to resolve some issue or I'll just need a break and  
9 I'll send you out. I'll tell you about the same thing,  
10 don't talk about the case. But we're back on the same page  
11 now.

12 Ms. Bailey, you may continue.

13 MS. BAILEY: Thank you, Your Honor.

14 BY MS. BAILEY:

15 Q. Taliah, to make this easier for both of us and so the  
16 jury can understand, I'm going to tell you what line  
17 I'm on and we are going to read this like a script of a  
18 play. I will read my question and you just read your  
19 answer, okay?

20 A. Okay.

21 Q. So we are on Page 27?

22 A. Yes, ma'am.

23 Q. We are going to start at Line 10, which begins with my  
24 question to you, is that okay?

25 A. Yes, ma'am.

1 Q. Okay. So my question begins, On a scale of one to 10,  
2 with one being very minimal and 10 being very  
3 significant or severe, what would you rate the level of  
4 pain you were in when you were arrived at the ER?

5 A. It was just starting to kick in.

6 Q. So if you could give me a number on a scale of one to  
7 10?

8 A. It was a 10.

9 Q. And we are going the flip over the Page 29. And we are  
10 going to scroll down to Line number 10, which also  
11 begins with a question of mine. Are you there?

12 A. Are there any notes that are mentioned --

13 Q. Well --

14 A. -- that you have any headaches in that note.

15 Q. That was actually my question, but that is fine. So  
16 let me read it just to make it clear for them, okay?

17 A. Okay.

18 Q. So it's, Are there any notes there mentioning that you  
19 have any headaches in that note?

20 A. No.

21 Q. I'm sorry, I couldn't hear you.

22 A. I said no.

23 Q. Okay. Did you mention you were having any headaches to  
24 the EMS worker?

25 A. No.

1 Q. Okay. That's all we need to get from the deposition  
2 transcript, so you can slide that over to the side.  
3 Hopefully, we don't need it again. I am not going to  
4 approach you with Plaintiff's Exhibit 2. May I  
5 approach?

6 A. Yes, ma'am.

7 Q. And would you please read the history of present  
8 illness section on your ER record? That is the record  
9 the doctor that saw you at the emergency room drafted.  
10 The history of present illness section, would you  
11 please read that aloud to the jury?

12 A. I'll do my best because it's kind of -- the patient is  
13 a 19-year-old African-American female presenting to the  
14 emergency department via EMS after being involved in a  
15 motor vehicle crash this morning. She was the  
16 restrained driver of her vehicle when she ran into  
17 another vehicle that ran a red light. After T-boning  
18 this vehicle, the airbags did deploy. She is now  
19 complaining of the left side 10 out of 10 burning in  
20 her neck, nonradiating with stiffness that is quickly  
21 increasing. She also is complaining of a one out of 10  
22 soreness sensation in her --

23 Q. Do the best you can. I probably wouldn't do much  
24 better than you could.

25 A. Right wrist. She denies any numbness or tingling, no

- 1        bowel or bladder incon --
- 2    Q.    Incontinence.
- 3    A.    Incontinence. Okay. It's kind of blurry on here.
- 4    Q.    If you would just do the best that you can and
- 5        continue, I'd appreciate it.
- 6    A.    Or any previous history of problems with her neck. She
- 7        is currently not complaining of any back pain or a
- 8        headache. The patient is also complaining -- I'm
- 9        sorry, these words -- it's kind of hard the way it's
- 10       printed out.
- 11   Q.    I understand. I understand.
- 12   A.    The patient is also complaining of an eight out of 10
- 13        sharp pain in her anterior medial clavicle area with a
- 14        burning sensation of the overlaying skin. Her shoulder
- 15        is also sore with movement radiating into her anterior
- 16        upper chest area.
- 17   Q.    Can you read the date at the top of that record,
- 18        please?
- 19   A.    May 8, 2012.
- 20   Q.    And that's the date of the accident, correct?
- 21   A.    The date of the accident, yes, ma'am.
- 22   Q.    And the records specifically state that you told them
- 23        that you were not complaining of a headache that day,
- 24        correct?
- 25   A.    Correct.

- 1 Q. I am going to approach you with what has been  
2 previously marked as Plaintiff's Exhibit No. 3. And  
3 this is your medical record from Waverly Family  
4 Practice from May 16, 2012. Would you read the date at  
5 top of that medical record, please?
- 6 A. Yes, ma'am. May I ask you which date you would like me  
7 to read?
- 8 Q. It should be bolded up at the top near where the -- I  
9 don't want to instruct you too much, but it is the date  
10 at the top.
- 11 A. This one or this one?
- 12 Q. The one under the line.
- 13 A. The one under the name?
- 14 Q. Yes, ma'am.
- 15 A. Okay.
- 16 Q. Would you read the date on the medical record, please?
- 17 A. Yes, ma'am. It says May 16, 2012.
- 18 Q. And that would have been eight days after the accident,  
19 correct?
- 20 A. Correct.
- 21 Q. Okay. Would you please read the chief complaint  
22 section on that medical record?
- 23 A. Yes, ma'am. The history --
- 24 Q. The chief complaint section.
- 25 A. Chief complaint. The chief complaint is car accident

1 on May 8th, 2012, left shoulder, neck, back pain and  
2 right arm as well.

3 Q. And there's no mention of headaches in that chief  
4 complaint, correct?

5 A. No, ma'am.

6 Q. All right. I'm going to hand to you Plaintiff's  
7 Exhibit No. 4, which is your medical record from  
8 June 19th, 2012, from Carolina Shoulder and Knee?

9 A. Uh-huh.

10 Q. Would you please read the date at the top of that  
11 medical record? The date is? It's DOV, it stands for  
12 date of visit.

13 A. Oh, date of visit is June 19, 2012.

14 Q. That would be have been 42 days after the accident,  
15 correct?

16 A. Correct.

17 Q. And can you please read the history of present illness  
18 section on that record?

19 A. Yes, ma'am. Patient is a 19-year-old female -- patient  
20 is a 19-year-old female who presents with pain in the  
21 left anterior posterior shoulder, which resulted from  
22 MVA, driver restrained T-boned another vehicle. No  
23 loss of conscious, no extraction needed. Immediate  
24 shoulder pain and occurred May 8, 2012. Her frequency  
25 is described as unpredictable. It is aggravated by use

1 of arm and relieved by medication and rest. Associated  
2 signs and symptoms are stiffness, increased range of  
3 motion, decreased strength. Comments, x-rays.

4 Q. Thank you. We're going to skip ahead and I'm going to  
5 approach you with one last medical record. This is  
6 from May 6, 2013. Would you just confirm for the jury  
7 that is what the date says at the top?

8 A. May 6, 2013.

9 Q. And that's 363 days after the accident, correct?

10 A. Yes, ma'am.

11 Q. Okay. And would you please read the history of present  
12 illness section?

13 A. The patient is being seen for followup of shoulder  
14 problem. Symptoms, stiffness, shoulder pain. Symptoms  
15 are located in left shoulder which resulted from MVA,  
16 driver restrained T-boned another vehicle, no loss of  
17 consciousness, onset was immediately after the injury  
18 in May 8, 2012. I hope I'm not reading this too fast.  
19 I can slow down if you like.

20 Q. You're fine. You're fine.

21 A. Relieving back stretching and exercise. Patient  
22 complains of knots in chest and back along with  
23 frequent headaches.

24 Q. So according to your medical records that your attorney  
25 allowed us to put into evidence, May 6, 2013, is the

1 first time that you mentioned your headaches to a  
2 physician, correct?

3 A. That's what it says on the paper.

4 Q. So a year after the accident is the first time that you  
5 mentioned having headaches to a physician, correct?

6 A. From what I read on this paper.

7 Q. Okay. And you're not sure when your headaches started,  
8 correct?

9 A. I can't give you an exact date.

10 Q. So you don't know when your headaches started?

11 A. I can't recall, as I said.

12 MS. BAILEY: Beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 BY MS. BAILEY:

15 Q. And so, Ms. Shabazz, you went to physical therapy  
16 treatment up until January 9th, 2013, correct?

17 A. Yes.

18 Q. And you didn't return until May 24, 2013, correct?

19 A. Yep.

20 Q. And you went back after you were out of school,  
21 correct?

22 A. Yeah.

23 Q. So you went back to physical therapy treatment when it  
24 was convenient for you, correct?

25 A. Well, not when it was, I don't want to say convenient,

1           because I can't just up and go to these appointments if  
2           I'm in school.

3    Q.   And you were in pain during that period of time between  
4           January 9 and February 24?

5    A.   Yes, ma'am.

6    Q.   But you didn't go to any treatment during that time  
7           period, correct?

8    A.   Correct.

9           MS. BAILEY: That's all the questions I have.

10   Thank you.

11           THE COURT: All right. Mr. Lee, redirect?

12           MR. LEE: Yes, sir.

13                           REDIRECT EXAMINATION

14   BY MR. LEE:

15   Q.   In these medical records, it looks like you didn't  
16           mention a headache to a doctor until May of 2013 when  
17           you went back to see Dr. Nahigian?

18   A.   Uh-huh.

19           THE COURT: Mr. Lee, I'm going to ask you to speak  
20   up.

21           MR. LEE: Sorry, yes, sir.

22   BY MR. LEE:

23   Q.   It looks like you didn't mention having headaches to a  
24           doctor until May of 2013, almost a year later, when you  
25           went back to Dr. Nahigian. And was May of 2013 the

1 first time you had one of these headaches?

2 A. No, sir.

3 Q. Okay. Do you -- can you just approximately tell us --  
4 I mean, how did these headaches start? Did you have  
5 like -- like one day had an awful headache or did  
6 they -- you had headaches that got worse? Tell us a  
7 little bit about that.

8 A. Like I said, when all this was happening to me, it went  
9 from if it wasn't one thing, it was another. And then  
10 when I noticed that the headaches were getting worse  
11 and worse, I was thinking to myself this is not normal.  
12 I have never had a severe migraine before this  
13 accident. I told you when you asked me about the motor  
14 vehicle, I explained that my face hit the airbag and  
15 this was major damage, of course. I don't recall going  
16 to doctors before this accident about headaches.

17 Q. Okay.

18 A. But I do know that after my accident, I realized that  
19 headaches that I had were not normal headaches.

20 Q. Okay. So it's fair to say that for some period of time  
21 before May of 2013 you were having headaches; is that  
22 right?

23 A. Yes, sir.

24 Q. Okay. And what were you doing to try to deal with  
25 those headaches?

1 A. Like I said, I started out taking Tylenol -- I started  
2 out taking Tylenol and then after that, I started with  
3 ibuprofen.

4 Q. Did those make your headaches go away?

5 A. The ibuprofen, I felt relief after a while, however, I  
6 also felt like I was physically drained afterwards  
7 because of the medication.

8 Q. Okay. And then you went back to see Dr. Nahigian about  
9 that stuff, right?

10 A. Yes, sir.

11 MR. LEE: Thank you. That's all the questions I  
12 have.

13 THE COURT: Anything on recross?

14 MS. BAILEY: No, Your Honor.

15 THE COURT: All right. You may step down, Ms.  
16 Shabazz.

17 Call your next witness.

18 MR. LEE: The Plaintiff calls Miniimah Shabazz.

19 THEREUPON,

20 MINIIMAH SHABAZZ,

21 after having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat there, ma'am.

23 State your full name for the record. Please spell your  
24 first and last name.

25 THE WITNESS: My name is Miniimah Shabazz, that's

1 finished, right?

2 MR. LEE: Yes, sir..

3 THE COURT: All right.

4 (Whereupon, a short recess was held.)

5 THE COURT: Are we all ready then?

6 MS. BAILEY: Yes, sir.

7 THE COURT: You may invite the jury to come back  
8 in.

9 THE BAILIFF: Yes, Your Honor.

10 THE COURT: All right.

11 (Whereupon, the jury returned to the  
12 courtroom at 11:56 a.m.)

13 THE BAILIFF: Your Honor, the jury is present and  
14 seated.

15 THE COURT: All right. Welcome back, members of  
16 the jury. I thank you on behalf of everybody involved in  
17 this case for your patience. I told you yesterday it's  
18 going to be a relatively short trial. We have one other  
19 witness that we'll hear from and that's by way of  
20 deposition, Dr -- I won't try to pronounce his name anymore,  
21 but they will tell you who he is.

22 Ms --

23 MS. PITTMAN: Ms. Pittman.

24 THE COURT: Yeah, Ms. Pittman, she's going to play  
25 the doctor, okay. She's going to read the deposition.

1                   And you're going to go and then you're going to  
2   go?

3                   MS. BAILEY: Yes, Your Honor.

4                   THE COURT: Okay. So he'll start off, Mr. Lee,  
5   playing Mr. Lee --

6                   I guess you did the deposition?

7                   MR. LEE: I did, Your Honor.

8                   THE COURT: Then she's going to play her role.

9                   You did the deposition?

10                  MS. BAILEY: Yes, sir.

11                  THE COURT: So I invite you to come around and  
12   take the stand.

13                  The doctor would have been sworn by this time. I  
14   don't think we need to explain that again.

15                  MR. LEE: No, sir.

16                  THE COURT: If you'll just set up date and time  
17   and all of that.

18                  MR. LEE: Oh, yes, sir.

19                  THE COURT: Are we all on the same page, members  
20   of the jury?

21                  (All jurors indicated in the  
22   affirmative.)

23                  THE COURT: Go ahead, Mr. Lee.

24                  MR. LEE: Thank you, Your Honor.

25                  The date and time of this deposition is May the

1 10th of 2016 at 5:10 p.m. in the office of Dr. Ogburu.

2 We're going to start on Page 5 at Line 14.

3 (WHEREUPON, portions of the deposition

4 of Dr. Ogburu was read into the record

5 by Mr. Lee, Ms. Bailey and Ms. Pittman.)

6 Q. Do you specialize in a particular field of medicine?

7 A. Yes. I have three areas of interest I work in, one is  
8 neurology, and the other one is pain management, and  
9 the other one is addiction medicine.

10 Q. And what does a neurologist do?

11 A. Neurologists basically specializes in disease of the  
12 brain and of the spinal cord or the peripheral nerve.  
13 Basically, just of the central nervous system and  
14 peripheral nervous system.

15 Q. And what is the peripheral nervous system?

16 A. The peripheral nervous system is the nerve that are  
17 exiting or that are outside the spinal card.

18 Q. Thank you. Are you Board certified as a neurologist?

19 A. No.

20 Q. And how many years have you been practicing medicine?

21 A. I've been practicing medicine for about 20 -- about 22  
22 years, I believe.

23 Q. Have you ever given a deposition or testified in court  
24 before?

25 A. Yes.

1 Q. How many times have you ever done that?

2 A. In the court?

3 Q. Yes.

4 A. One time, I believe.

5 Q. And how many times do you think you've given a  
6 deposition?

7 A. Almost every three months, four months for the last --  
8 since 1996 I've been here.

9 Q. So almost 20 years three to four times a year?

10 A. Yes.

11 Q. All right. And are you licensed to practice medicine  
12 in South Carolina?

13 A. Yes.

14 Q. How often do you have to renew that license?

15 A. I think it's every two years, I think.

16 Q. All right.

17 A. They keep track of it.

18 Q. And where did you do your residency in neurology?

19 A. Howard University Hospital in Washington, D.C.

20 Q. All right. Thank you.

21 At this time, we would offer Dr. Ogburu as an  
22 expert in the field of neurology.

23 THE COURT: I assume admitted without any  
24 objection; is that correct?

25 MS. BAILEY: Yes, Your Honor.

1 THE COURT: You may continue, sir.

2 MR. LEE: Thank you, Your Honor.

3 Q. Now, Dr. Ogburu, have you treated Taliah Shabazz?

4 A. Yes.

5 Q. Okay. I'm going to show you some of her medical  
6 records documenting her treatment after her wreck on  
7 May 8th of 2012, and leading up to when you first saw  
8 her --

9 A. Okay.

10 Q. -- so that we'll all have a little bit of background  
11 information to discuss your medical records?

12 A. Okay.

13 Q. The first thing I'm going to show you is the emergency  
14 department record from Palmetto Health Richland from  
15 the date of the wreck, May the 8th, 2012. And I'm just  
16 going to ask you to read -- and I apologize, this is  
17 not the best copy, the history of present illness.

18 A. All right. It says, Patient is 19 years old,  
19 African-American female, presented to the emergency  
20 department through EMS after being involved in a motor  
21 vehicle crash this morning. She was restrained driver  
22 of the vehicle when she ran into another vehicle that  
23 ran a red light after --

24 Q. I believe it's T-boning.

25 A. Yes, T-boning this vehicle. The airbag did deploy.

1           She is now complaining of left-sided 10 out of 10  
2           burning in her -- this is head, I guess, nonradiating  
3           with a stiffness that is quickly increasing. She is  
4           also complaining of one out of 10 sore sensation in her  
5           proximal right wrist. She denies any numbness or  
6           tingling, any bowel, bladder, incontinence or any  
7           previous sore problems with her neck. She is also  
8           currently not complaining of any back pain or headache.  
9           The pain is -- the patient is also complaining of eight  
10          out of 10 sharp pain in her anterior medial clavicle  
11          area and a burning sensation of the underlying skin.  
12          Her shoulder is also sore with movement, radiating into  
13          her anterior upper chest area.

14    Q.    Okay. Now, when they're talking about this 10 over 10  
15          or eight over 10 or one over 10, what is that referring  
16          to?

17    A.    It's an attempt to quantitate a symptom in terms of  
18          severity of that particular symptom. It's called the  
19          fifth vital sign?

20    Q.    And would a 10 over 10 be the highest level of pain?

21    A.    Most people in using the zero to 10, 10 would be the  
22          highest, yeah?

23    Q.    Thank you. Next, we're going to look at the followup  
24          visit with her family doctor at Waverly Family  
25          Practice. This is on May 16th of 2012, which is about

1 a week later. And I would ask you to read the history  
2 of present illness for this one.

3 A. Taliah Shabazz is a 19-year-old female. Source of  
4 patient information was patient. 19-year-old black  
5 lady who was involved in a motor vehicle accident on  
6 May the 8th, 2012. The patient was forced to hit a  
7 van. She went to Richland Memorial Hospital ER via  
8 EMS. She had an x-ray of the left clavicle, right and  
9 left leg and shoulder areas. She's still sore, I guess  
10 a little better. She was given prescription for  
11 Flexeril and naproxen. The Flexeril made her real  
12 sleepy and naproxen made her stomach hurt.

13 Q. And looking down here in his examination, did he note  
14 any physical marks on her body?

15 A. The skin area, she -- there was a seatbelt burn along  
16 the left anterior, the left leg and chest area. The  
17 areas were tender.

18 Q. Thank you. Oh -- and finally --

19 A. Sure.

20 Q. What was Dr. Floyd's assessment of her condition?

21 A. Shoulder sprain and neck sprain.

22 Q. Thank you. Now, in your practice, do you ever  
23 prescribe Flexeril and naproxen?

24 A. Yes.

25 Q. And what are those medications used for?

1 A. The Flexeril is antispasmodic agent for spasm and  
2 naproxen is a NSAID for no specific type pain.

3 Q. So the Flexeril treats muscle spasms?

4 A. Yes.

5 Q. And the naproxen treats pain?

6 A. Yes, like Aleve. The naproxen is the same as Aleve.

7 Q. Okay. Now, I'm going to skip ahead in her medical  
8 records to the visits with Dr. Kevin Nahigian of  
9 Carolina Shoulder and Knee Specialists.

10 A. Sure.

11 Q. And the date of this record is June 16th of 2012, a  
12 little over a month later. And I would like to show  
13 you -- I would like for you to read for the jury the  
14 section marked plan from her visit there.

15 A. Taliah Shabazz has a substantial high level energy  
16 injury to her shoulder and neck. I would like to place  
17 her in organized physical therapy and try some topical  
18 modalities, cervical traction, topical massage,  
19 parascapular strengthening. We will place her on  
20 antiinflammatory medication. We will see how she does  
21 over the next three to four weeks. If she fails to  
22 improve, we will consider getting another MRI. This  
23 time we will contrast, which will be more helpful to  
24 rule out slight tear. She has a tremendous amount of  
25 spasm over the supraspinatus and supraspinous fascia.

1 She may have a hematoma in this area, which is further  
2 adding to the discomfort level. Upon return in four  
3 weeks, an extra series of the shoulder should be taken  
4 prior to being seen by physician to check for any  
5 heterotopic bone formation.

6 Q. Thank you. Now, I'm going to skip ahead to May the 6th  
7 of 2013, when she followed up with Dr. Nahigian. Okay,  
8 I'm going to ask you to read just a couple of things  
9 here, the history and present illness.

10 A. Shoulder problem, the patient is being seen for  
11 followup for shoulder problem symptoms, stiffness,  
12 shoulder pain. Symptoms are located in the left  
13 shoulder and -- which result from the motor vehicle  
14 driver struck restrained T-boned another vehicle. No  
15 loss of consciousness. Also, immediately after the  
16 injury in 05/08/12 relieving for stretching and  
17 exercise. Patient complains of knots in the chest and  
18 back along with frequent headaches.

19 Q. If you would, read the section marked physical exam.

20 A. Physical exam, exam of the left shoulder finds much  
21 global improvement with strengthening range of motion  
22 and scapula tracking. She continues to have  
23 parascapular discomfort of muscles, muscular spasm. We  
24 did a cough strength test back to her baseline. She  
25 has no other upper extremity muscle deficiency. Her

1 arm is without swelling. Her hand is neurovascular  
2 intact. She does complain of frontal facial headache.  
3 Impression, one year status post MVA, post motor  
4 vehicle accident with shoulder and head complaints.

5 Q. And what was his plan there?

6 A. The patient was sent to a neurologist to assess her  
7 headache complaints. I have no doubt that with time  
8 her muscular and facial inflammation will improve with  
9 time, stretching and continued strengthening. An  
10 antiinflammatory medication was sent to the pharmacy  
11 today. She will take this medication of -- of the back  
12 several weeks to help calm her inflammatory symptoms.  
13 Notice scheduled followup will be necessary at this  
14 time.

15 Q. Okay. That's fine. And do you ever prescribe Relafen  
16 in your practice?

17 A. Yeah.

18 Q. What is that medication for?

19 A. It's also an NSAID, anti-inflammation.

20 Q. All right. So it appears that he referred her to a  
21 neurologist for her headaches and other complaints,  
22 right?

23 A. Yeah.

24 Q. Okay. So now, I'm looking at your medical records with  
25 regard to Ms. Shabazz, which appear to begin on

1 May 24th of 2013, about two, two and a half weeks after  
2 Dr. Nahigian referred her to a neurologist. So I would  
3 like you to tell us, are you able to access that  
4 record?

5 A. Yeah, 5/24, right?

6 Q. Yes, sir.

7 A. Okay.

8 Q. Did Ms. Shabazz come and see you on that date?

9 A. Yeah, 5/24/2013, yes.

10 Q. All right. What did you discover from your examination  
11 and her history?

12 A. When she got here, she was complaining of three major  
13 problems, headaches, lower back and shoulder pain that  
14 she had noted had occurred after a motor vehicle  
15 accident on 5/8/2012. Patient was referred by Dr. Dean  
16 Floyd and she did note that she was having chronic left  
17 shoulder pain, headache and lower back. She did inform  
18 that she was the driver. She had a seatbelt on.

19 Q. Did she report headaches?

20 A. Yes.

21 Q. What did she tell you about the headaches?

22 A. She said headache was mostly over the left temporal  
23 area.

24 Q. What is the left temporal area?

25 A. Right. The left temporal area right over here

1 (indicating).

2 Q. Would that commonly be referred to as the temple?

3 A. Yes.

4 Q. Okay. And did she say how often she was having  
5 headaches?

6 A. She said she was having more than five headaches per  
7 month and that the headache was lasting between three  
8 to five hours before she began to feel any form of  
9 relief.

10 Q. What other kinds of problems was she having?

11 A. She also did report tenderness on her neck, a weakness  
12 and shoulder pain, left more than right, after the  
13 accident. That often extends into the upper extremity  
14 and suprascapula area and collarbone area.

15 Q. What is the suprascapula area?

16 A. Right over there.

17 Q. Is that commonly referred to as the shoulder blade?

18 A. Well, shoulder blade is the whole area. The upper part  
19 of the area is the suprascapula. The in between is the  
20 interscapular.

21 Q. So it would be above the shoulder blade?

22 A. Yeah. At least, the same shoulder blade, you know,  
23 anatomically, just try to define it -- define it region  
24 by region because sometimes she had interscapular  
25 problem basic to something else.

1 Q. Okay.

2 A. It's around the shoulder blader, but mostly, the upper  
3 part of it.

4 Q. So what was your plan for treating her symptoms in  
5 addressing the problems?

6 A. When we saw her, because symptoms were not chronic, we  
7 wanted to take a look at MRI of her brain and bone scan  
8 and nerve test of her extremity, and also MRI of her  
9 C-spine. Because the headaches had been going on for a  
10 long period of time, we wanted to consider process  
11 to -- go about the process using likely Botox occipital  
12 block.

13 Q. Okay.

14 A. And trigger point injections, especially over the  
15 suprascapula regions and may consider cortisone  
16 injection in the shoulder since we're not getting any  
17 adequate response.

18 Q. And she came back to followup, I believe, June the  
19 10th?

20 A. Yes.

21 Q. And I'm going to go ahead and skip over that one and  
22 move ahead to the July 17th visit. If you will tell us  
23 -- well, bear with me just one moment. Let me look at  
24 something. Yes, July 17th. If you would, tell us how  
25 she was doing on that visit.

1 A. Okay.

2 Q. I've got the paper copy if you like.

3 A. She came in with the same complaint, nothing changed,  
4 headache, neck, left shoulder blader pain.

5 Q. All right. What was your plan to continue with her  
6 care?

7 A. The same thing, muscle relaxant. This time, I wanted  
8 to use Baclofen, an NSAID, Mobic and a fish oil. It  
9 says that will also provide some anti-inflammation  
10 properties.

11 Q. And you assigned an impairment rating at this visit; is  
12 that correct?

13 A. Yes. Because this has been going on for a while. I  
14 thought in my opinion, she's not making much progress.  
15 She's reached MMI.

16 Q. And what does MMI mean?

17 A. Maximum medical improvement.

18 Q. Now, when someone reaches MMI, does that mean they no  
19 longer require any medical treatment at all?

20 A. No, it means that the treatment is going to be really  
21 conservative. You know, it's not -- not the aggressive  
22 that she -- she's not a surgical candidate. It's  
23 nothing aggressive to do to change anything. She's  
24 probably going to have some headaches and then, you  
25 know, soft tissue problems now and then because it's

1           gone on for more than a year.

2    Q.   And what is an impairment rating?

3    A.   Impairment rating is assessment of patient's long term  
4           procedural disability, something like that, you know,  
5           that whatever it's like from their normal state as to  
6           being a problem.

7    Q.   When you assign someone an impairment rating, is that  
8           the same as saying that they have a permanent injury?

9    A.   Most likely it suggest they have a permanent injury.

10   Q.   And in this case, it looks like you assigned class one,  
11          grade B. What is that referring to?

12   A.   This is all from the Sixth Edition of the Disability  
13          and Impairment Rating Book. I think this more or less  
14          talk about whatever the book says about a class one.

15   Q.   And what book are we talking about?

16   A.   The Sixth Edition of the Disability Rating book.

17   Q.   And who publishes the Disability Rating Book?

18   A.   I think it's the AMA.

19   Q.   Is that the American Medical Association?

20   A.   Yes.

21   Q.   Is that a book that doctors use to help them say what  
22          someone's permanent injury is?

23   A.   Yes.

24   Q.   And it looks like you assigned UEI?

25   A.   Upper extremity.

- 1 Q. All right. And converts to one percent WPI?
- 2 A. Whole body.
- 3 Q. Okay.
- 4 A. Whole body impairment rating.
- 5 Q. Thank you. Now, if we can move ahead to our next visit
- 6 a month later on 8/15/2013?
- 7 A. Okay.
- 8 Q. How was she doing on that visit?
- 9 A. The same thing, headache, neck pain and shoulder --
- 10 shoulder pain.
- 11 Q. Do you have the history of present illness?
- 12 A. Yes. A 21-year-old female present today for scheduled
- 13 followup visit with complaint of migraine and neck
- 14 pain. She describes the pain as aching, shooting,
- 15 sharp, throbbing. Pain is constant -- level is fair.
- 16 Pain level is six over 10. Patient has a history of
- 17 left shoulder blade pain, was involved in MVA in 2012.
- 18 Having about four headaches per week. Headache lasting
- 19 up to three hours before feeling any type of relief.
- 20 Note tightness and spasm to the center of the scapula
- 21 area. She notes taking Soma for relief. Notes
- 22 interest in cortisone injections. No seizure, no loss
- 23 of consciousness or any hospitalization.
- 24 Q. So you say notes taking Soma for relief, what is Soma?
- 25 A. Soma is a antispasmodic, a muscle relaxer.

1 Q. Muscle relaxer?

2 A. Yeah.

3 Q. And it says she's interested in a cortisone injection.  
4 What is that talking about?

5 A. For the shoulder or for the muscle area that is tender,  
6 that she was considering doing the trigger point or  
7 cortisone injection into those joints to see if that's  
8 going to help.

9 Q. And what is cortisone?

10 A. It's also an anti-inflammation medication that's used  
11 in the joints to relieve inflammation.

12 Q. So you're talking about injecting that into her body?

13 A. Yeah, into either the shoulder or into the, you know,  
14 the suprascapula area that is still a little tender.

15 Q. So would you inject that just anywhere in her body or  
16 directly into the painful areas?

17 A. Mostly into the painful areas.

18 Q. And then I'm going to skip ahead to the final medical  
19 record we have from your treatment with her. She  
20 followed up several more times. And it looks like the  
21 last record we have here is from January 8th of 2015.  
22 And if you would, please tell us how she was when she  
23 came to see you on that day?

24 A. She still was complaining of neck, and lower back  
25 pain -- level is seven and pain is still constant,

Attorney Tyler Lee Examines Dr. Ogburu Ogbonnaya T.p 126  
End line 19.

126

Attorney Allyce Bailey Cross Examines Dr. Ogburu T.p 126  
Starts line 22.

1 sharp, throbbing. No problems sleeping at night. No  
2 side effect on medication. I note she needs no refill  
3 today and she is not taking the medication due to  
4 concern for side effects.

5 Q. Thank you. So to a reasonable degree of medical  
6 certainty, which means more likely than not, would you  
7 relate all of her complaints she presented to you as  
8 being caused by the motor vehicle accident on May the  
9 8th of 2012?

10 A. More likely if her premorbid condition was, you know,  
11 without any of the symptoms. However, since these  
12 symptoms started after the accident, more likely, they  
13 would have been a result of the car accident.

14 Q. If that's the case to a reasonable degree all medical  
15 certainty, all of her medical treatment would be a  
16 result of this wreck?

17 A. Yes.

18 MR. LEE: Thank you. That's all the questions I  
19 have.

20 MS. BAILEY: And we're skipping to Page 30, Line  
21 number four. All right.

22 Q. Did you review anything prior to the deposition to  
23 prepare for the deposition at all?

24 A. No.

25 Q. Just a few questions about Ms. Shabazz's treatment,

1           very general questions. Ms. Shabazz listed on one of  
2           her medical records that she suffered from a pollen  
3           allergy or that she would at least be affected by  
4           pollen during the pollen season. Would you say that  
5           issues with allergies in general can cause headaches?

6    A.    Yes.

7    Q.    Okay. Are you aware this accident occurred on May 8th,  
8           May 8th, 2012, and that was over a year before the  
9           first visit she visited to your facility?

10   A.    That's what she told us, that it was over a year, yeah.

11   Q.    Okay. And are you aware that she never -- her first  
12           mention of having any headaches was at the visit to  
13           your office, her very first visit to your office was  
14           when she mentioned she suffered from headaches?

15           MR. LEE: And at this point, we had a discussion  
16   off the record.

17   Q.    Okay. So this date is the first date she mentioned  
18           having any headaches. The accident was on May 8, 2012,  
19           that's a year time span. It is plausible that someone  
20           would have the type of headaches that she was  
21           complaining of for an entire year without mentioning  
22           them?

23   A.    It's unlikely after a whole year, you know, being  
24           headache free for you just to develop a headache due to  
25           an event that happened a year ago. It's unlikely.

1 Q. It's unlikely. Okay. And if Ms. Shabazz had been  
2 suffering from headaches of this magnitude that  
3 eventually caused her to come to see you, isn't it  
4 likely that she would have mentioned that to some  
5 physician a year prior to visiting your office?

6 A. More than likely, she would have mentioned it because  
7 she did complain about it when she came here.

8 Q. Okay. This is one of your records from January 10th,  
9 2014. You marked on there that her chronic headaches,  
10 the onset date was January 10th, 2014. If that date --  
11 if her onset date of her headaches had been different,  
12 would there be a different date there?

13 A. Yes, there would be a different date there. The  
14 problem about this system, whenever you -- you enter  
15 is -- you know, the problem is it's generated based on  
16 whatever is entered, it queues it up, you know. That's  
17 part of the electronic medical problem. You know, like  
18 if you go and enter it under the ICD code, enter a  
19 diagnosis today, than automatically, it takes and puts  
20 it in and clocks it in that day.

21 Q. So would there have been a way for you to go in the  
22 system -- if she had said her headaches started on a  
23 different day, would there have even been a way for you  
24 to go in there and change the date?

25 A. Yes. If I see it and -- it's interesting, when you

1           print it and when you type it in, it looks totally  
2           different. If I see before then, I can go back in  
3           there and then correct the exact date based on what the  
4           patient says is the beginning date.

5   Q.   So if she had told you that her headaches started  
6           before January 10th, 2014, would you have put a  
7           different date down there?

8   A.   Yeah, I would have put a different date. So I think  
9           that information would probably appear in the history  
10          of present illness.

11   Q.   This is another one of your records from May 9th, 2014.  
12          You noted there that she was having headaches and  
13          blurry vision there. Again, just a simple general  
14          question, would you say that an outdated glasses  
15          prescription could potential cause headaches?

16   A.   Yes.

17   Q.   My final question for you, Doctor, is that now that  
18          you're aware that Ms. Shabazz did not complain of these  
19          headaches for a year, do you still believe that to a  
20          reasonable degree of medical certainty that the  
21          accident that she was involved in caused these  
22          headaches?

23   A.   All you can say probably is that it did contribute  
24          somehow because she still has some kind of neck and  
25          shoulder pain. So those things, the cervical strain.

1 and cervical spasms can still give you a reflex  
2 headache, but it may not. It depends on the  
3 individual. It may be bad to the point that it may go  
4 on for a while. As far as the neck and shoulder  
5 problem, you can have a reflex headache which continues  
6 for a long period of time.

7 Q. Would you consider a reflex headache and a migraine the  
8 same thing?

9 A. You have to understand, you know, when on the present  
10 illness, you go by whatever the patient says. So if  
11 the patient says, you know, I'm having a headache or a  
12 migraine, then that's what you type in. Do you  
13 understand? Even though you evaluate the patient and  
14 you may now think it meets the criteria for a classic  
15 migraine or a complex headache because most people when  
16 you talk about a headache, they just, you know, if it  
17 goes on for long time, they call it a migraine even  
18 though it may not by our definition meet that criteria.

19 Q. So it's your understanding if a -- what you're saying  
20 is that if a client came into your office and stated  
21 they had a migraine, that's what you would have written  
22 down in your notes?

23 A. No. No. On the history of present illness, when  
24 you're gathering -- history of present is provided by  
25 the patient. So, basically, you're writing down what

1 the patient says. Under treatment plan, you know,  
2 that's when -- you know, and your own assessment,  
3 that's when you began to make clarification as to what  
4 kind of headache does the patient have.

5 Q. So what kind of headaches did Ms. Shabazz have?

6 A. I think she may have had musculoskeletal-type headache  
7 proximate to cervical spasm. I know there's an  
8 prescription that may have worsened the problem. If it  
9 was severe muscle spasm or neck pain, it is more likely  
10 some people would have headaches from that.

11 Q. Do you think that it's likely that someone with the  
12 type of headache of the severity that Ms. Shabazz  
13 complained of would be able to suffer through that type  
14 of pain without mentioning it to any physician for a  
15 year?

16 A. I don't think so. I don't think so unless you have  
17 neck pain that's so severe that she's only paying  
18 attention to that. When she's -- neck is feeling a  
19 little better, then maybe she be aware of the headache  
20 or something else made her become aware of the  
21 headache. But most likely, I think she would have  
22 mentioned something about, you know, prior to that  
23 date.

24 MS. BAILEY: Can you just read that again? You  
25 said -- just reread it again and be very close to -- just

1 read it very closely.

2 MS. PITTMAN: Okay.

3 I don't think so. I don't think so. Unless you  
4 have neck pain that's so severe that she's only paying  
5 attention to that. When she's -- neck is feeling a little  
6 better, then maybe she became aware of the headache or  
7 something else made her become aware of the headache. But  
8 most likely, I think she would have mentioned something  
9 about it, you know, prior to that date.

10 MS. BAILEY: You said it again. I don't want to  
11 say it.

12 Can I approach?

13 THE COURT: Sure.

14 Mr. Lee, you want to come on up here?

15 MR. LEE: Sure.

16 (Whereupon, a bench conference was held  
17 off the record, in the presence of the  
18 jury, but out of the hearing of the  
19 jury.)

20 THE COURT: You can back up a little bit if you  
21 need to clarify something.

22 MS. BAILEY: Just to be totally clear, I'm going  
23 to read the question again and you read the answer again.

24 Q. Do you think that it's likely that someone with the  
25 type of headaches of the severity Ms. Shabazz

1           complained of would be able to suffer through that type  
2           of pain without mentioning it to a physician for a  
3           year?

4    A.   I don't think so. I don't think so. Unless you have  
5           neck pain that's so severe that she's only paying  
6           attention to that. When she's -- neck is feeling a  
7           little better, then maybe she became aware of the  
8           headache or something else made her become aware of the  
9           headache. But most likely, I think she should have  
10          mentioned something about it, you know, prior to that  
11          date.

12   Q.   So you think that Ms. Shabazz should have mentioned her  
13          headaches prior to the year after the accident?

14   A.   Yeah, I think she should have said something about it.  
15          Also, there's another thing about patients in general  
16          sometimes. Depending on the specialty they're seeking,  
17          they feel like, you know, all they're supposed to talk  
18          about is -- I don't know if that's the situation here  
19          or not, you know, all they need to talk about it  
20          something related to, you know, what you specialize in.  
21          Say if I'm seeing an orthopedic surgeon, I just want to  
22          talk about the knee, even though, you know, some  
23          patients do that. I don't really know whether that was  
24          the situation in her case, but I believe since this is  
25          a symptom that is very discomforting, she should have

Attorney Allyce Bailey Cross Examines Dr. Ogburu  
Ogbonnaya T.p 134.End line 4  
Attorney Tyler Lee Redirect Examine Dr. Ogburu  
Ogbonnaya T.p 134 Starts line 6.

134

1 at least mentioned it to somebody, but somehow that's  
2 how she got that.

3 MS. BAILEY: It's back to you.

4 THE PLAINTIFF: Okay.

5 REDIRECT EXAMINATION

6 BY MR. LEE:

7 Q. Dr. Ogburu, you treated her for symptoms other than  
8 just headache, right?

9 A. Yes. I got into what she was complaining about, yes.

10 Q. And that would be pain in the shoulder blade or  
11 suprascapula area?

12 A. Uh-huh, and the neck.

13 Q. And the neck?

14 A. Yes.

15 Q. All right. Are those problems that you addressed with  
16 her on every visit?

17 A. Yes.

18 Q. All right. So even if her headaches were not related,  
19 you would agree that the treatment she had with you  
20 was; is that correct?

21 A. Yes.

22 Q. All right. And just to clear something up, my  
23 colleague, Ms. Bailey, pointed out your note on January  
24 10th, 2014, where it appears that the onset date of all  
25 her problems was January 10th of 2014. She, of course,

1           had seen you several times prior to January 10, 2014;  
2           is that right?

3    A.    Yeah. We upgraded to the electronic medical system, so  
4           I think probably by now I'm getting used to it, you  
5           know. The problem is every time you enter it in, it  
6           logs it there and unless somebody is aware and goes  
7           back and put the right date, it locks it. If I go  
8           there and put some, you know, it locks it. If I've  
9           seen someone for 20 years about neck pain and I said  
10          something about it and it locks it -- or excuse me,  
11          then it locks it.

12   Q.    So we believe that this is a computer error?

13   A.    Yeah, that's computer error, yes.

14   Q.    All right. I don't have any more questions. Thank  
15          you.

16               THE COURT: Anything further from this witness?

17               MS. BAILEY: No, Your Honor..

18               THE COURT: All right. You may step down, Doctor.  
19               Anything further from the Plaintiff?

20               And it's all wrapped up in one ball, right?

21               MS. BAILEY: Yes.

22               THE COURT: Members of the jury, I think you've  
23   heard all the evidence you shall receive in this case. We  
24   sort of combined it all in one, both the Plaintiff's and the  
25   Defendant's case through cross-examination. That makes

1 sense to you, doesn't it?

2 (The jurors nodded heads.)

3 THE COURT: All right. Now, your food should be  
4 here by now. It's supposed to be here around 12:30. It  
5 might be a minute or so off. I'll ask you to go to the jury  
6 room, be patient for a minute. I have some legal issues I  
7 need to resolve. I'm thinking -- and I'll let y'all discuss  
8 it among yourselves what you want, but I think the food  
9 should be here by now. Even if it's not, it's going to be  
10 here in a few minutes. It's 12:30. I'm going to say we'll  
11 resume at 2:00 o'clock. There's some things I need to talk  
12 to the lawyers about. So you can eat your sandwich, you can  
13 walk outside and do what you want. If that's too much time,  
14 I'll cut it to like 15 minutes. Okay.

15 (Laughter.)

16 THE COURT: But I think an hour and a half will be  
17 the limit. So regardless of what happens between now and  
18 the next couple of minutes, the matters I need to resolve,  
19 we're going to resume at 2:00 o'clock where you will hear  
20 the arguments, final arguments and I'll tell you what the  
21 law is, then you'll get the case to resolve. That gives you  
22 a pretty good outline of what to expect.

23 Go to the jury room, once again, don't talk about  
24 this case in any way, shape or form. And soon as the food  
25 gets here, I'll come in and talk to you and say you can stay

1 if you want, you can leave if you want, but we're going to  
2 start back at 2:00 o'clock whether you're here or not. Is  
3 that fair enough? Just don't talk about the case and I'll  
4 chat with y'all in just a minute. Thank you all so very  
5 much.

6 (WHEREUPON, the jury left the courtroom  
7 at 12:29 p.m.)

8 THE COURT: All right. Any motions at all?  
9 Anything that needs to be put on the record at this time?

10 MR. LEE: Nothing from the Plaintiff, Your Honor.

11 MS. BAILEY: Does the Plaintiff need to formally  
12 admit all of the exhibits that we stipulated to in evidence  
13 just for the record?

14 THE COURT: I heard you, but I didn't understand  
15 you, I'm sorry. I have difficulty hearing.

16 MR. LEE: I'm submitting without objection by  
17 stipulation the Plaintiff's medical records.

18 THE COURT: Okay. So what exhibits do we have,  
19 Exhibits 1 through what?

20 MS. BAILEY: I believe it's eight.

21 THE COURT: So let me get this out of the way.  
22 There's no motions?

23 MR. LEE: Correct.

24 MS. BAILEY: That's right.

25 THE COURT: Y'all take a look at it. These are

1 the exhibits that y'all premarked?

2 MS. BAILEY: Premarked.

3 THE COURT: As long as y'all are happy, I'm happy.

4 (WHEREUPON, Plaintiff's Exhibit Nos. 1  
5 through 13 were admitted into evidence.)

6 (Whereupon, a short recess was held.)

7 THE COURT: Okay. You may invite the jury to come  
8 back.

9 THE BAILIFF: Your Honor, the jury is present and  
10 seated.

11 THE COURT: Thank you, sir.

12 Welcome back, Mr. Foreman, members of the jury, we  
13 are now at the stage of this trial where you will hear final  
14 arguments on behalf of the parties. Under our system, since  
15 the Plaintiff has the burden of proof -- and I'll explain  
16 all of that momentarily -- we will first hear from Mr. Lee,  
17 followed by Ms. Bailey. And since the Plaintiff does have  
18 the burden of proof under our system, Mr. Lee will have an  
19 opportunity to respond or to reply to Ms. Bailey's argument.

20 I mentioned it briefly at the outset that  
21 negligence has been admitted by Ms. Rodriguez and the  
22 Plaintiff is entitled to a verdict. I can't suggest in what  
23 amount one way or the other to you, but you can use the  
24 arguments to help you have a view of the facts that's been  
25 admitted into evidence and that's what you should base your

1 decision on.

2 I think with that in mind, unless I need to ask  
3 something else, I would invite your keen and close attention  
4 to the final arguments, first, from Mr. Lee, followed by Ms.  
5 Bailey, then Mr. Lee will have an opportunity to respond.

6 Mr. Lee, you may proceed, sir.

7 MR. LEE: Thank you, Your Honor. May it please  
8 the Court.

9 I appreciate y'all being here and staying the  
10 whole time and listening to all of the evidence. I saw that  
11 y'all were all paying attention and listening to Ms. Shabazz  
12 and her mother and the doctor. And we just appreciate your  
13 time again. Without y'all and people like you, we don't  
14 have a court where we can come and get decisions made where  
15 people can't agree among themselves. Y'all are the final  
16 word on that and we really appreciate you being here.

17 Like I said at the beginning, the rule is no one  
18 is allowed to needlessly endanger the public. That's a  
19 fancy way of saying every person who drives on our roads has  
20 a duty to everybody else that they're going to follow all  
21 the rules of safe driving. They're going to make sure that  
22 it's clear to go before they go. If there's a stop sign,  
23 they're going to stop. In this case, what Ms. Rodriguez  
24 failed to do was make sure it was safe for her to go and she  
25 pulled out right in front of Ms. Shabazz. And she broke the

1 rules, there's no question about that. They've admitted  
2 that. When they say liability is admitted, that's what  
3 they're talking about.

4 As a followup to that rule, if somebody breaks  
5 those rules, what is the consequence? The consequence is  
6 that they're responsible for all of the harms they created  
7 by breaking that rule. What are the harms? Well, the law  
8 really gives you one way and only one way to say what those  
9 harms are and that's putting a dollar amount on the harms  
10 that were caused by Ms. Rodriguez to Ms. Shabazz. By doing  
11 that, you're going to be enforcing the rules of safe driving  
12 in our community.

13 It's not perfect. It's not a perfect system. You  
14 don't have the power to take away the pain that she  
15 suffered. We can't go back in time and make this not  
16 happen, no amount of money can do that. No amount of money  
17 can heal her permanent injury she's going to have for the  
18 rest of her life or give her her time back. All those trips  
19 to the doctor, physical therapy, an even, lately, massage  
20 therapy, all those things, that's all the time she's not  
21 going to get back. It's not going to give her back, you  
22 know, the hours she's had to spend with those headaches and  
23 not enjoy her life and do the things she wanted to do, and  
24 the neck pain and the shoulder pain. If you had the power  
25 to do that, we'd be asking you to do that instead of come up

1 with a verdict, but we don't have that power. All you can  
2 do is what the law ask you to do, which is to make it right  
3 by coming up with what you think is a fair verdict. And  
4 whatever that verdict is, as long as you give it your full  
5 consideration and take it seriously, we'll be satisfied with  
6 that as long as it speaks to all of the harm she's suffered.  
7 I'm going to break that down a little bit in this argument  
8 to you.

9 I want to clarify a couple of things. One of the  
10 issues we have in this case is Ms. Shabazz's headaches and  
11 whether they're related to the car wreck. We say they are,  
12 the Defense says they're not, so y'all are going to have to  
13 make the decision as to whether you think the headaches are  
14 related and what difference that makes, also. It is true  
15 that there are -- and you're going to have -- let me also  
16 tell you this, you're going to have all the medical records  
17 and the bills. They're in a stack right there. You'll have  
18 them with you in the jury room. You take a look at all of  
19 those things and see what you think about them.

20 But it is true that there's nothing in those  
21 medical records that say the word headache until May 6th of  
22 2013, which is two days short of a year after the wreck  
23 happened. And the Defense's position is, you know, that's  
24 because she wasn't having headaches and things that come up  
25 a year later are not to be related to the case. Our

1 position is and what she testified to is she started having  
2 those headaches a lot sooner than that and they got worse  
3 and worse until finally she went back to the doctor.

4 But how can you know for sure? How can you know  
5 for sure that these headaches were caused by the wreck or,  
6 you know, the shoulder pain and neck pain aggravating her  
7 until she built up these headaches? You cannot know for a  
8 hundred percent certain. I can't know for a hundred percent  
9 certain and I'm her lawyer. The doctor doesn't know for a  
10 hundred percent certain. There really isn't any way to know  
11 that with a hundred percent certainty unless you are Taliah  
12 Shabazz and you were there.

13 But the Judge is going to instruct you on the  
14 burden of proof. How certain do you have to be before  
15 Taliah has made her case to you. And the rule is it's a  
16 preponderance of the evidence. And if you look at a set of  
17 scales, a preponderance of the evidence means the scales tip  
18 ever so slightly, at least, in Taliah's favor. If you think  
19 probably the headaches are related to the wreck, then she's  
20 met her burden of proof at that point.

21 Dr. Ogburu, the neurologist who treated her, said  
22 they are probably rebound headaches caused by the pain in  
23 her neck and her shoulder, meaning that the headaches --  
24 excuse me, the neck pain and the shoulder pain and the  
25 muscle spasms over time caused her to develop these

1    headaches. There's no medical records from before this  
2    wreck showing she had any sort of problem with any of this.  
3    And I can guarantee that -- you know, one of the things that  
4    we have when we file a lawsuit is called the right of  
5    discovery. And I have the power to issue a subpoena and get  
6    any kind of records or documents of things that I think are  
7    relevant to the case. The Defense also has that power, so  
8    they have the right to order Ms. Shabazz's medical records  
9    when she was a child, for example. And if there -- there  
10   aren't any, but if there were any medical records that shows  
11   she had neck pain, shoulder pain or headaches, they would be  
12   presented to you by Ms. Bailey, who is very competent.

13                So we know she didn't have the headaches before  
14   the wreck. We know the doctor has told us that he thinks  
15   they are caused her wreck and her injuries subsequent to  
16   that wreck. And I would argue to you that that more than  
17   makes the scales tip slightly in her favor. There's really  
18   no evidence to the contrary except speculating that maybe  
19   they're not. But all of the evidence you've heard says that  
20   they are.

21                That's the legal argument, but, also, y'all are  
22   here just for the basic issue of right and wrong. Who  
23   should get the benefit of the doubt here? I mean, should it  
24   be Ms. Rodriguez that y'all give the benefit of the doubt  
25   to? She caused this wreck. We've never even seen her. You

1 know, she's never even apologized. Why should we give her  
2 the benefit of the doubt? I would ask you to give Taliah  
3 the benefit of the doubt. She's come here before you and  
4 told you about all of this stuff and submitted all of this  
5 stuff to you. I don't think it's fair that you give  
6 Ms. Rodriguez the benefit of the doubt.

7 Another thing, if you're not convinced about the  
8 headaches, Dr. Ogburu said in his deposition, which you'll  
9 also be able to look at in the jury room, that her treatment  
10 with him was also for the shoulder and neck on all of those  
11 visits and all of those things he recommended for her  
12 treated her shoulder and neck. So even if she didn't have  
13 the headaches, she would have had the same treatment. So  
14 all the medical bills and stuff that we submitted to you  
15 from Dr. Ogburu, I would argue, even if you decide the  
16 headaches weren't related, you'd have to agree that they --  
17 that he treated her for the shoulder and neck. And nobody's  
18 arguing that's not related to the wreck.

19 So what is a fair verdict? Ultimately, it's going  
20 to be whatever y'all say, okay. No one else on this earth  
21 has the power to change it. Whatever y'all say the verdict  
22 is, that's what it's going to be. You're going to put the  
23 price tag on it.

24 This is her one chance to do it. She doesn't get  
25 to come back in 20 years if the pain gets worse or something

1 like that, this is it. For her life, y'all are going to say  
2 what's fair in this case. I can give you some ideas about  
3 what might be fair, but, ultimately, y'all do whatever you  
4 want do and, again, we appreciate y'all doing that.

5 We've submitted the medical bills into evidence  
6 and they total a little over \$17,000. That is what the  
7 doctor's care was for what happened to Taliah. If you award  
8 a \$17,000 verdict and all those medical bills are related,  
9 then she doesn't get anything. Her portion of this starts  
10 at \$17,000 and goes up. So I'm going to ask you to put a  
11 price tag on what you think that the pain caused by  
12 Ms. Rodriguez should be worth, which -- and there's no book  
13 that we can look in and say a day of pain is worth X amount  
14 of dollars or two years of pain or a lifelong injury. It's  
15 going to have to be whatever y'all think is fair. I have  
16 some suggestions, but it's going to be up to you.

17 In some cases, juries award hundreds of thousands  
18 of dollars for pain and suffering, or even millions of  
19 dollars. I'm not asking y'all for that, okay, I'm just  
20 telling you that's one way -- that's a place to start. I  
21 mean, that would be a case where somebody is in horrible,  
22 unrelenting pain that never goes away and they never have  
23 any relief whatsoever. I do lot of worker's comp law and  
24 see people who have failed back surgeries and multiple  
25 surgeries and they can't get any relief at all. They can't

1 sit. They can't stand. Unfortunately, some of them have to  
2 go to pain doctors to get, you know, basically, morphine  
3 injections. In a case like that, you know, to balance that  
4 out, you're going to have to give them hundreds of thousands  
5 or millions of dollars, depending on how hurt they are.

6 In other cases, it might be kind of a minimal  
7 pain, you know, a nagging pain or an occasional ache. You  
8 can't even really tell for sure it's not something they  
9 would have had anyway. And that might be worth, like, a  
10 couple thousand dollars, okay. So it's going to be in your  
11 judgment to decide where on that scale does Taliah's case  
12 fall. I would submit to you that we're not talking about  
13 minimal pain. We're not talking about occasional pain.  
14 But then, she was in 10 out of 10 pain at the hospital.  
15 You're going to get to see the pictures of her vehicle and  
16 see just how damaged it was. She got hit by the airbag. It  
17 was a hard enough impact to burn her skin with the seatbelt.  
18 And later, with treatment, her pain went down a little bit,  
19 but it was still bad enough that she had to go to an  
20 orthopedic surgeon. I mean, that's not something you just  
21 happen to walk into. She was having terrible pain. Her  
22 family doctor, you will see in the records, he saw her  
23 twice. He saw her once and then on the second visit, he  
24 sent her to a surgeon to get checked out because she was  
25 having so much pain and problems in her shoulder and neck.

1 She went to physical therapy pretty much constantly all  
2 summer. And, know, that requires a lot of effort. You've  
3 got to go to physical therapy and do physical therapy, I  
4 guess, for an hour or so and drive home. You've got to wait  
5 when you get there. It's not something somebody's going to  
6 do if they're not in a lot of pain. That wouldn't make any  
7 sense.

8 And a year after that, a year after that, she's  
9 still having so much pain, she goes back to the orthopedic  
10 surgeon and tells them about her problems and now he thinks  
11 he's got to send her to a neurologist because she's having  
12 so much pain and trouble. And she's got to take all these  
13 medications. She's got to go to a chiropractor and massage  
14 therapy she told you about. It's one thing after another.  
15 And as lately as this summer, she's had to go and get  
16 treatments and such like that. This is not a just a nagging  
17 pain. This is really a serious problem. Again, you can't  
18 know for certain how bad her pain is without being her, but  
19 the legal standard is, again, it has to tip in her favor.

20 This is a person with pain that disrupts her life.  
21 It intrudes on the things that she does. It hurts her when  
22 she's working hard at school. It keeps her up at night.  
23 She's got knots in her shoulder blades. She's got these  
24 crippling headaches. And the doctor ultimately said she has  
25 a permanent injury. That means it's not going to go away.

1 She's 24 years old now. She's been suffering with this  
2 since she was 19 and the doctor says that it's permanent.  
3 And again, that's his opinion, okay. He looks in the book  
4 and he says okay, I believe she has a permanent injury and  
5 that gives me this two percent, one percent. It doesn't  
6 mean this it's impossible that she could get better as time  
7 goes by, she could get better. It's also possible that she  
8 could get worse. Which of those things is going to happen,  
9 we don't know. Y'all couldn't know and there's no way you  
10 can know for sure, but we have to look at the evidence. We  
11 have a neurologist who's been practicing 20 or 22 years who  
12 says in his opinion it's probably not going to get better.  
13 And I would suggest that that should be good enough for  
14 y'all to award her part of her verdict based on that.

15 What we do know for sure, again, is that this is  
16 her one chance to have justice, for this to be made right  
17 for her. And again, I would just ask you if there's any  
18 question about anything, ask yourself who should bear the  
19 risk here of uncertainty, should it be Taliah or should it  
20 be Ms. Rodriguez?

21 So in this case, you know, in my argument to you,  
22 it's not just a minimal ache and pain and it's not a  
23 lifelong crippling pain where she can't do anything, it's  
24 somewhere in the middle. And I would submit to you that in  
25 this case, her pain and suffering is worth, at least, as

1 much or more than the medical bills. That's what the  
2 doctors are going to get. To make up for the pain that  
3 she's suffered, I have to ask you for a verdict in the tens  
4 of thousands of dollars, wherever you think it should fall.  
5 That's from age 19 to now. We're also talking about  
6 somebody who's supposed to live 50 or 60 more years. I'd  
7 ask you to give her the benefit of the doubt and give her  
8 something to make up for that pain she's going to have the  
9 rest of her life. She does not get to come back. This is  
10 it. This is your one chance to make this situation right.

11 The law, the Judge will also tell you, requires  
12 you to consider emotional distress or mental anguish. That  
13 is compensation for the effects of the injury and pain she's  
14 suffering on her life, the frustration that she's got to  
15 feel when she feels this pain again at the end of a long  
16 day. Having another headache coming on, more neck and  
17 shoulder pain. I would just add, if I knew I had a  
18 permanent injury that the doctor said is not likely to get  
19 better, I would be angry that this Defendant doesn't seem to  
20 care even enough to be here today. That would make me very  
21 emotionally distressed.

22 And loss of enjoyment of life is another thing the  
23 Judge will tell you about. This is supposed to be the best  
24 time of her life. She's made it to the school she's always  
25 wanted to go to. It's one of the best ones in the country

1 for what she wants to do. She's meeting friends, hopefully,  
2 she will be friends with for the rest of her life. She's  
3 learning her profession. But clearly, her enjoyment of time  
4 is not what it could be or not what it should be. It's not  
5 what it would have been if Ms. Rodriguez had watched where  
6 she was going and not pulled out right in front of her and  
7 caused this wreck.

8           You know, the Defense mentioned at some point it  
9 looks Taliah only went to the doctor when it was convenient.  
10 I mean, based on what she's saying and what these medical  
11 records say she's in pain all the time. If she went to the  
12 doctor every time she had pain, she would never have  
13 accomplished anything. She wouldn't have graduated from  
14 Midlands Tech. She wouldn't have made it into this school.  
15 She dealt with it the best she could do, got to the doctor  
16 when she could. And, you know, she's a bright young person  
17 and made it to one of the best schools in the country. And  
18 it's sad that her enjoyment of this has to be diminished  
19 when she comes home everyday and is having all this pain.

20           I would ask you whatever you decide for the pain  
21 and suffering that you add the same amount again for the  
22 mental anguish and loss of enjoyment of life. But whatever  
23 you decide is fair, as long as you take all of the evidence  
24 in consideration, that will be a fair verdict. When you do  
25 that, you're going to be sending a couple of messages. One,

1     you send a message in our community that people don't get a  
2     free pass for breaking the safety rules. If they break the  
3     safety rules and hurt somebody, they to have pay for the  
4     harms that were created. All of those harms that I told you  
5     about that the law requires. And you tell our community  
6     that when someone has something like this happen to them  
7     that they can get justice by going to court and putting  
8     their care in front of a jury. Thank you.

9             THE COURT: Ms. Bailey.

10            MS. BAILEY: May it please the Court?

11            THE COURT: Yes, ma'am.

12            MS. BAILEY: Beg the Court's indulgence for just a  
13     moment.

14            (Pause.)

15            MS. BAILEY: Well, ladies and gentlemen,  
16     congratulations. You guys made it to the end of this trial  
17     and, hopefully, you all will be out of here shortly. This  
18     is my last opportunity to speak with you and I just want to  
19     go over a couple of things that you heard throughout this  
20     trial. At the beginning of this trial, I admitted to you  
21     that Ms. Rodriguez caused this accident. So we have taken  
22     that burden off of your shoulders to determine who's at  
23     fault in this accident.

24            Plaintiff's counsel said that Ms. Rodriguez isn't  
25     here because she's not sorry. There's no requirement that

1 she be here and just because she's not here that does not  
2 mean that she's not sorry. She's very sorry for this  
3 accident and I'm here on her behalf today to admit that and  
4 apologize for having caused this accident.

5           So let's get back to focusing on Ms. Shabazz and  
6 her treatment and getting this resolved for her. Let's  
7 discuss what you did not hear throughout this trial. Ms.  
8 Shabazz didn't break any bones. She didn't have any  
9 surgeries. She's not going to need any surgeries in the  
10 future. The permanent injury that her neurologist mentioned  
11 in the deposition is that she's going to have aches and pain  
12 from now -- you know, now and then. She's going to have  
13 headaches every now and then. And he gave her an impairment  
14 rating. I'm not going to bore you, but I do want to explain  
15 these things to you so you have this information when you  
16 get back there to deliberate. He gave her an impairment  
17 rating for her entire body and one for her upper extremity.

18           And so to explain that, the American Medical  
19 Association defines impairment in relevant part as a loss of  
20 body function in an individual with a health condition,  
21 disorder or disease. Her neurologist defined impairment as  
22 a patient's long term procedural disability. Essentially,  
23 how the person is affected on the scale of one percent to  
24 100 percent. Dr. Ogburu, the Plaintiff's neurologist, gave  
25 her a one percent impairment rating for her entire body, one

1 percent on a scale of one to 100. For her upper extremity,  
2 he gave her an impairment rating of two percent, two percent  
3 on the scale of one to 100. You didn't hear any evidence  
4 from her doctors stating that anything would have caused her  
5 headaches to be onset later or to not appear further down  
6 the line. Keep that in mind.

7 I also want to point this out, you may not even be  
8 thinking about this, but this is my last chance to talk to  
9 you. When we were reading the deposition of the doctor, he  
10 was reading some of the records that are going to be in that  
11 stack right there, and he misread one of the records. It's  
12 printed very, very, very lightly and it's kind of not the  
13 best, so he says somewhere -- in reading one of the records,  
14 he says something to the effect of, I guess this says head.  
15 And, in fact, the record actually says it was her neck. So  
16 I just wanted to throw it out there so you understand that  
17 she did not actually complain of having head pain during the  
18 EMS or during the ER record. You will have those records  
19 with you and I just wanted to point that out to you. You  
20 heard her physician also say that it's not likely that  
21 someone that was headache free for a year would suddenly  
22 develop these headaches. And that if she was experiencing  
23 these headaches for the entire year, she probably should  
24 have said something sooner. Just things I want you to keep  
25 in mind.

1           You have an important job to do today and here in  
2   the State of South Carolina, you're to award Ms. Shabazz  
3   money if you believe that the injuries she sustained were  
4   caused by this accident. And if you do believe that, the  
5   money that you are to award her is to put her in the same  
6   position that she was in prior to this accident. We  
7   understand that she had to experience some inconveniences,  
8   but this is not an opportunity for Ms. Shabazz to get rich.  
9   She should be placed back in the same place that she was in  
10   prior to this accident. And that is all that I'm asking you  
11   to do.

12           I want to show you something. These are all of  
13   the Plaintiff's medical records. This list was given to me  
14   by Plaintiff's counsel. You have all of the medical records  
15   in that stack. You have every provider that she went to and  
16   you have the amount of money that each of those bills were.  
17   I want you to stop at January 9th, 2013, that's a year after  
18   the accident when she began complaining about those chronic  
19   migraine headaches. That is all of the treatment after that  
20   period. This, I want you to pay for. I think that she  
21   deserves to be paid for all of this medical treatment for  
22   injuries she sustained as a result of our accident. If  
23   that's what she claims, I want you to pay her every cent of  
24   this and award a verdict in the amount of \$8,851.14.

25           Your verdict needs to be to put Ms. Shabazz back

1 in the situation that she was in prior to this accident, not  
2 to punishment Ms. Rodriguez. She's already very sorry for  
3 this accident. All I'm asking you to do is be reasonable  
4 and fair as you're deliberating back there and just keep in  
5 mind whether or not the Plaintiff actually proved to you  
6 that these headaches were actually caused by this accident.  
7 She doesn't even know herself when the headaches actually  
8 started and she testified that today. Once you come to the  
9 conclusion that these headaches weren't caused by the  
10 accident, I'd ask that you keep that figure in mind and  
11 award a verdict of \$8,851.14. Thank you very much.

12 THE COURT: Mr. Lee.

13 MR. LEE: I believe they've heard everything from  
14 me.

15 THE COURT: Beg your pardon?

16 MR. LEE: They've heard everything from me.

17 THE COURT: Very well.

18 Do you mind moving that?

19 MS. BAILEY: Sure.

20 THE COURT: Now, Mr. Foreman, members of the jury,  
21 you have heard the evidence and the arguments of both  
22 parties. I will now explain to you the law that applies to  
23 this action. Ms. Shabazz, the Plaintiff, claims that she  
24 was injured, and, in fact, she was, by the negligence of  
25 Ms. Rodriguez. Now, in bringing this lawsuit, the Plaintiff

1     claims that the Defendant, Ms. Rodriguez, will compensate  
2     her for her injuries.

3             Now, members of the jury, under the constitution  
4     and code of laws, only you can make the findings of fact in  
5     this case. I am not permitted to indicate to you how I may  
6     feel about the testimony and the evidence which has been  
7     presented and throughout this trial. I've intended to be  
8     fair and impartial to each of the parties involved.

9             Now, to determine the facts of this case, you will  
10    have to evaluate the credibility, which means the  
11    believability of each witness. Now, some of the things you  
12    may consider as you decide whether or not to believe a  
13    witness's testimony about a particular matter include what  
14    was the manner and appearance of the witness who testified?  
15    Was he or she straightforward or hesitant in answering? Was  
16    the testimony of a witness consistent or inconsistent? How  
17    did the witness come to know the facts that he or she  
18    testified to or what was his or her ability to know these  
19    facts? Is there some reason a witness would want to give  
20    testimony which would help or hurt one side or the other?  
21    In other words, was the witness bias or prejudice? And was  
22    the testimony of a witness strengthened or weakened by other  
23    testimony or evidence?

24             Now, members of the jury, you can believe as much  
25    or as little of each witness's testimony as you think

1 proper. You may believe the testimony of a single witness  
2 against that of many witnesses or just the opposite. Of  
3 course, you do not determine the credibility by counting the  
4 number of witnesses presented by each side. Throughout this  
5 process, you have but one objective, to seek the truth  
6 regardless of its source.

7 Now, the same constitution and laws which  
8 designate and make you the finders of the facts as I've  
9 explained also make me the instructor of the law and you  
10 must accept the law as I give it to you. If I'm wrong,  
11 there's another time and place for that error to be  
12 corrected, but for this case, you must apply the laws as I  
13 give it to you. And this means that you should not be  
14 concerned with what you may think the law should be, but  
15 only with what the law is as I tell it to you.

16 Now, Mr. Foreman, members of the jury, the  
17 Plaintiff has the burden of proving her claims in this case.  
18 She must meet this burden by proving her claims by the  
19 greater weight or the preponderance of the evidence. Now,  
20 what we mean by the greater weight of the evidence can be  
21 illustrated by imagining a traditional set of scales. When  
22 the case begins, the scales are even. After all of the  
23 testimony has been presented, if the scales should remain  
24 even or if they should tip even slightly in favor of the  
25 Defendant, then the Plaintiff would have failed to meet her

1 burden of proof and your verdict would be for the Defendant..

2 Let me explain that a little bit. We know she's  
3 entitled to a verdict, but this goes to the amount of the  
4 verdict. Does that make sense to you?

5 (All jurors nodded.)

6 THE COURT: Okay. Now, on the other hand, if the  
7 scales should tip even slightly in favor of the Plaintiff,  
8 then she would have met her burden of proof and your verdict  
9 would be for the Plaintiff. Of course, there's no way to  
10 weigh evidence except through the exercise of your good  
11 common sense and judgment. It is entirely a mental process  
12 and the evidence you should give the most weight to is that  
13 which convinces you of its truth, regardless of from whom or  
14 what source it may come.

15 Now, in this particular case, ladies and  
16 gentlemen, we are concerned with what we refer to as actual  
17 damages. Now, actual damages are to compensate the  
18 Plaintiff for the Plaintiff's injuries or loss and to put  
19 the Plaintiff as near as possible in the same position that  
20 the Plaintiff was in before the incident occurred. In other  
21 words, actual damages would be the actual losses and  
22 expenses which the Plaintiff has suffered because of the  
23 Defendant's negligence.

24 Now, what are some of the elements of damages?  
25 Pain and suffering. Pain and suffering compensates the

1 Plaintiff for physical discomfort and emotional response to  
2 the sensation of pain caused by the injury itself. There is  
3 no definite standard by which to compensate the Plaintiff  
4 for pain and suffering. You have the authority to determine  
5 the amount, if any, to be allowed for pain and suffering  
6 using calm and reasonable judgment to ensure that the  
7 damages are just and reasonable in light of the testimony  
8 and the evidence presented in this case.

9           Loss of enjoyment of life. Loss of enjoyment of  
10 life compensates the Plaintiff for limitations on the  
11 Plaintiff's ability to participate in and derive pleasure  
12 from the normal activities of daily life. The Plaintiff  
13 must prove that expenses caused by the injury were necessary  
14 and reasonable. Actual damages for Plaintiff -- for a  
15 Plaintiff who has been physically injured include pain and  
16 suffering, both past and future, as well mental anguish,  
17 impairment of health or physical condition, and  
18 disfigurement, if applicable.

19           In determining the amount of compensation for  
20 personal injuries, it is proper to consider past and present  
21 aspects of the injury. This would include physical and  
22 mental pain and suffering, expenses incurred for necessary  
23 medical treatment, the loss of enjoyment of life suffered as  
24 a result of the injury, and any other losses which are  
25 reflected by the character of the injury.

1           The injured party may recover for those future  
2 damages that are reasonably sure to result from the  
3 injuries. The principle underlying compensation for future  
4 damages is that only one action can be brought and,  
5 therefore, only one recovery had. It is proper to include  
6 in the estimate of future damages compensation for future  
7 medical expenses, pain and suffering which will reasonable  
8 certain result in the future. A plaintiff is never entitled  
9 to recover conjectural or speculative damages, but if you  
10 find that the Plaintiff is entitled to a verdict for actual  
11 damages, and she is, your verdict should include an amount  
12 to cover any past, present and future damages which were  
13 proximately caused by the Defendant. Any future damages  
14 must be reasonably certain to occur in the future as a  
15 result of the Defendant's negligence or act. Actual damages  
16 need not be proven to a mathematical certainty or be based  
17 on evidence of the precise amount of damages the Plaintiff  
18 is suffering. Instead, the evidence must allow you to  
19 determine what amount of damages is fair, just and  
20 reasonable. Any future damages must be reasonable  
21 calculated to have resulted from the alleged injury or  
22 damages sustained in this case. Future damages must be  
23 reduced to their present day value.

24           Mental suffering is another aspect of damages you  
25 may consider -- or should consider, members of the jury.

1 Mental suffering, apprehension, shock, fright, emotional  
2 upset, humiliation and anxiety, either present or expected  
3 in the future, can be properly considered as an element of  
4 damages. The amount of damages for mental suffering cannot  
5 be exactly measured.

6 Now, if you find that the Plaintiff has -- if you  
7 find that the Plaintiff was permanently injured as a result  
8 of the Defendant's actions, you must then decide how, if at  
9 all, that injury will affect the rest of the Plaintiff's  
10 life. A person's life expectancy is determined by a life  
11 expectancy table, which is a part of the laws of this state.  
12 The life expectancy table is only an estimate of the  
13 probable average remaining length of the life of the  
14 person -- of a person in our state of a given age.

15 The Plaintiff, Ms. Shabazz, is 24 years of age.  
16 Now, according to the life expectancy table, she has an  
17 additional 53.28 years to live. This factor is to be  
18 considered by you along with any other facts and  
19 circumstances in evidence bearing on the Plaintiff's life  
20 expectancy, including occupation, habits and health at the  
21 time of the injury in deciding the amount of damages to be  
22 awarded to the Plaintiff.

23 Now, I need to tell you about expert witnesses,  
24 the doctor, whose deposition was read to you. The rules of  
25 evidence ordinarily do not permit witnesses to testify to

1 opinions or conclusions. An exception to this rule exist  
2 for witnesses we call expert witnesses. A witness who by  
3 education and experience has become expert in some art,  
4 science or profession may give an opinion as to the subject  
5 the witness claims to be an expert in and may also give the  
6 reasons for the opinion. You should consider any expert  
7 opinion given by a witness and, like any other evidence,  
8 give it the weight you think it deserves. If you decide  
9 that an expert witness's opinion is not based on sufficient  
10 education and experience, if you decide that the reasons  
11 given in support of the opinion are not sound, or that the  
12 opinion is outweighed by other evidence, you may disregard  
13 the opinion entirely. And expert's opinion is to be given  
14 no greater weight than that of any other witness simply  
15 because the witness is an expert. And you do not have to  
16 accept an expert opinion even though it is uncontradicted.

17           The testimony of the expert was by deposition,  
18 okay. Testimony in this case was presented to you by  
19 deposition. A deposition is a document containing sworn  
20 testimony given by a witness outside of the court in the  
21 presence of lawyers for each party who may ask questions of  
22 the witness. This testimony is entitled to the same  
23 consideration and to be judged as to credibility and weighed  
24 by you in the same way as if the witness were present and  
25 gave the testimony to you from the witness stand. It is

1 then for you, the jury, to decide or to determine the  
2 effect, value, weight and truth of the testimony given in  
3 the deposition.

4 I charge you, Mr. Foreman, members of the jury, a  
5 verdict in this case cannot be based upon sympathy, passion,  
6 prejudice or emotion or some other consideration not found  
7 in the evidence.

8 Now, Mr. Foreman, members of the jury, whatever  
9 your verdict, it must be unanimous, that means all 12 of you  
10 have to agree. And to this end, Mr. Foreman, I have  
11 prepared what we commonly refer to as a verdict form. I  
12 will read it to you real quick. It says the State of South  
13 Carolina, County of Richland, Taliah Shabazz, Plaintiff, vs.  
14 Bertha Rodriguez, Defendant, verdict form of the court of  
15 common pleas. And it says we, the jury, by unanimous  
16 consent find for the Plaintiff in the amount of blank actual  
17 damages.

18 And there's a line above the word foreperson, you  
19 will see your name above that, Mr. Foreperson, you will  
20 date it and that should conclude your services on this case.

21 No enemies to punish, no friends to reward. It's  
22 one of the few times in your life you have an opportunity to  
23 do what you really feel by way of your conscience and based  
24 on the evidence and the record, the arguments of the lawyers  
25 to do what you think is the right thing to do. And I'm sure

1 you will do that.

2 In the meantime, I need to ask you to go to the  
3 jury room. Don't start discussing this case until you  
4 receive the signal to do so and that will be when the  
5 bailiff shows up with this verdict form along with all of  
6 the exhibits that have been introduced into evidence.  
7 That's your signal to begin your deliberations. Until  
8 then, once again, I've got to ask you not to start talking  
9 about this case. Thank you all so very much. Go to the  
10 jury room. Once again, until you get the verdict form along  
11 with the exhibits, don't start talking about the case.  
12 Thank you all so very much.

13 (WHEREUPON, the jury left the courtroom  
14 at 2:44 p.m.)

15 THE COURT: All right. Any exceptions or  
16 additions from the Plaintiff?

17 MR. LEE: No, Your Honor.

18 THE COURT: From the Defense?

19 MS. BAILEY: None from the Defense, Your Honor.

20 THE COURT: All right. What y'all need to do is  
21 double check one more time all of the exhibits, take a look  
22 at the verdict form one more time. And if everything is in  
23 order and looks fine to y'all, go ahead.

24 Bring me the alternate -- don't bring him out yet.

25 (WHEREUPON, a short recess was held.)

1           THE COURT: Has the cost of the first year's  
2 appointments before the neurology appointments began already  
3 been covered by Ms. Rodriguez's insurance? That's the  
4 question.

5           Make copies for everybody and we'll mark it.

6           (WHEREUPON, Court's Exhibit No. 1 was  
7 marked for identification.)

8           THE COURT: I'm inclined to say, ladies and  
9 gentlemen, you've got to make your decision based on the law  
10 and the evidence presented, nothing else and let it go. But  
11 y'all talk about what y'all want.

12           Y'all thought about it?

13           MS. BAILEY: I would be fine with you bringing  
14 them back in and simply charging them what you said you  
15 would say.

16           THE COURT: All right. Good. I'll bring them  
17 back out and we can all eyeball them a little bit better.  
18 Bring the jury back in.

19           THE BAILIFF: Yes, Your Honor.

20           (WHEREUPON, the jury returned to the  
21 courtroom at 3:04 p.m.)

22           THE BAILIFF: Your Honor, the jury is present and  
23 seated.

24           THE COURT: Welcome back, Mr. Foreman, members of  
25 the jury. I thought I'd bring you back so there would be no

1   misunderstanding if I sent you a written note. I will  
2   repeat the question for the record, Has the cost of the  
3   first year's appointments before the neurology appointments  
4   began already been covered by Ms. Rodriguez's insurance?

5               Now, the last thing I said to you was your  
6   decision cannot be based on passion, prejudice, emotion or  
7   something not found in the evidence. Not found in the  
8   evidence. Nothing outside of this courtroom you can  
9   consider. If it's not in the evidence, you can't consider  
10  it. This question you can't consider. You need to wipe it  
11  out of your mind and begin over as if you never asked me  
12  this question because it's not in the evidence.

13              I'm not upset, but this is the rules that we all  
14  have to play by. And in order to be fair to both sides, you  
15  have to dissuade yourself of this question, start as if you  
16  never asked me the question, blank sheet of paper, began  
17  again with that in mind. Only what's from this witness  
18  stand, the exhibits, the arguments of the lawyers and the  
19  charge I gave to you on the law. You can't consider  
20  anything else at all. It will be unfair to the Plaintiff,  
21  unfair to Ms. Rodriguez and everybody else involved. Those  
22  are the rules and I don't make them up. And I'm not yelling  
23  at you, but it's important enough to explain. Wipe that out  
24  and out of your mind and begin over.

25              If you can't wipe it out of your mind and begin

1 over, Mr. Foreman, it's your duty to let me know, okay?

2 MR. FOREMAN: Yes, Your Honor.

3 THE COURT: Thank you all so very much. Go back,  
4 but don't resume your deliberations until the bailiff tells  
5 you to do so. Thank you.

6 (WHEREUPON, the jury left the courtroom  
7 at 3:07 p.m.)

8 THE COURT: Any exceptions or additions from the  
9 Plaintiff?

10 MR. LEE: No, Your Honor.

11 MS. BAILEY: None from the Defense, Your Honor.

12 THE COURT: All right. Let's keep our fingers  
13 crossed. I hope they can wipe -- it's kind of hard, but I  
14 hope they do that. I think they're honest. I don't think  
15 they meant any harm, so I hope I didn't yell at them too  
16 much. If I did, it's too late now.

17 (Laughter.)

18 THE COURT: We'll be at ease.

19 (WHEREUPON, a short recess was held.)

20 THE COURT: I understand we have a verdict, ladies  
21 and gentlemen.

22 You may invite them to come back.

23 THE BAILIFF: Yes, Your Honor.

24 (WHEREUPON, the jury returned to the  
25 courtroom at 3:21 p.m.)

1 THE BAILIFF: Your Honor, the jury is present.

2 THE COURT: All right. Welcome back, members of  
3 the jury.

4 THE CLERK: Mr. Foreman, if the jury has reached a  
5 verdict, would you hand it to me, please?

6 MR. FOREMAN: Sure.

7 THE CLERK: Thank you, sir.

8 THE COURT: All right. You may publish it.

9 THE CLERK: The State of South Carolina, County of  
10 Richland in the Court of Common Pleas, case number  
11 2015-CP-40-2395, Taliah K. Shabazz, Plaintiff vs. Bertha  
12 Rodriguez, Defendant, the verdict is we, the jury, by  
13 unanimous consent find for the Plaintiff in the amount of  
14 \$12,500 actual damages, signed by the foreperson, Joshua  
15 Bixler on this August 30th, 2016.

16 Mr. Foreman, is this your verdict and the verdict  
17 of the entire jury?

18 MR. FOREMAN: That's correct. That is my verdict  
19 and the verdict of the entire jury.

20 THE CLERK: Thank you, sir.

21 THE COURT: All right. Anything further from this  
22 jury on behalf of the Plaintiff?

23 THE PLAINTIFF: No, Your Honor.

24 THE COURT: The Defense?

25 MS. BAILEY: No, Your Honor.

1           THE COURT: All right. Mr. Foreman, members of  
2 the jury, I was telling the lawyers, I actually served on a  
3 jury so many years ago. It's not easy sitting in judgment  
4 of your fellow citizens, but I know y'all listened  
5 attentively and carefully and you did what you thought was  
6 the right thing to do, so nobody can complain about your  
7 result. I take this opportunity to thank each and every one  
8 of you for your patriotic service. And I've got good news  
9 and bad news for you, which would you like to hear first?

10           MR. FOREMAN: Either or.

11           THE COURT: Okay. I think you've got to go back  
12 downstairs.

13           THE CLERK: Judge, I'm going to release this panel  
14 for the week.

15           THE COURT: You can thank Mr. Truitt, he's going  
16 to let you go home for the rest of the week. Don't thank  
17 him too much.

18           (Laughter.)

19           THE COURT: But I do thank each and every one of  
20 you. If in the future we should meet again at the Publix or  
21 Wal-Mart or something like that, y'all see me and recognize  
22 me, don't stop and say hello, just keep going and leave me  
23 alone.

24           (Laughter.)

25           THE COURT: At any rate, you need to go to the

1 jury room. Mr. Truitt has some information to give you to  
2 verify that you were here for the last two days. That might  
3 help some of you with your spouses or significant others,  
4 I'm not really sure. But thank you all so much for your  
5 patriotic service. Good luck to each and every one of you.

6 (WHEREUPON, the jury left the courtroom  
7 at 3:25 p.m.)

8 THE COURT: Thank you so very much. I'll give you  
9 10 days to file any posttrial motions. Enjoyed meeting  
10 everybody. Good job.

11 MS. BAILEY: Thank you, Your Honor.

12 End of proceedings  
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1 COUNTY OF RICHLAND )

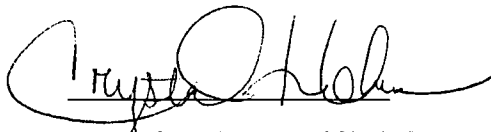
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported  
4 the preceding case entitled Taliah K. Shabazz Vs. Bertha  
5 Rodriguez, Case No. 2015-CP-40-2395, at the Richland County  
6 Courthouse, August 29 and 30, 2016.

7 I FURTHER CERTIFY that the foregoing pages 1  
8 through 171 constitute a true, accurate and full transcript  
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of  
11 the parties hereto and I have no financial interest in the  
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand  
14 and seal at Richland County on this 9th day of January,  
15 2017.

16   
17 Crystal Holmes, Official Court Reporter

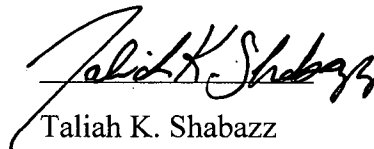
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Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 5, 2018

  
Taliah K. Shabazz

6289 U.S Highway 321 S.

Winnsboro, South Carolina 29180

(803) 718-6786

Pro Se Appellant

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