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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2019-001943
Case No.: 2018-CP-10-00666

Therese Hood .....Appellant,

v.

United Services Automobile Association .....Respondent.

RECORD ON APPEAL – VOLUME 1

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V. OTHER

USAA Policy 3181-3192

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-00666

Therese Hood
PLAINTIFF(S)

United Services Automobile Association GIC, et al.
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment DENIED without prejudice, with leave to renew at a later time.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

JMcCoy

Circuit Court Judge | 2764 **Judge Code** | 6/20/18 **Date**

SCRCP Form 4C (02/2017)

ELECTRONICALLY FILED - 2019 Nov 01 11:48 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000666

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	**ORDER GRANTING USAA'S MOTION FOR JNOV AND DENYING BOTH PARTIES' OTHER POST-TRIAL MOTIONS**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

Before the Court are the Defendant's Motions for Judgment Notwithstanding the Verdict, New Trial Absolute, New Trial Nisi Remittitur, and New Trial under the Thirteenth Juror Doctrine, and the Plaintiff's Motion for New Trial Nisi Additur, for Attorney Fees, and Motion on her Offer of Judgment. Having fully considered all of the parties' arguments raised in their respective motions, memoranda, and at the post-trial motions hearing, as well as the applicable case law, the Court grants the Defendant's Motion for Judgment Notwithstanding the Verdict and denies the remaining motions.

Therese Hood alleged that USAA was liable to her for taking disparate factual positions under liability coverage and underinsured motorist coverage within an automobile insurance policy issued to Hood by USAA. Hood sued USAA for bad faith and negligence.[1] After a trial, the jury found that USAA did not breach the duty of good faith and fair dealing, but did find USAA liable to Hood for negligence. USAA argues that judgment notwithstanding the verdict should be granted

[1] Hood also alleged causes of action for breach of contract, barratry, intentional infliction of emotional distress, and negligence per se. The court granted USAA's motion for summary judgment as to these causes of action before trial.

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because the duty in tort arising from the contract of insurance is the duty of good faith and fair dealing, and no separate cause of action for negligence exists under these facts.[2]

The Court agrees. Under South Carolina law, although parties to a contract generally have no duty in tort to one another, an exception to this rule exists where there is a "special relationship" between the parties. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc*., 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995). South Carolina has recognized such a special relationship in the insurance context arising from the duty of good faith and fair dealing implied in the contract of insurance. *See, e.g., Tadlock Painting Co. v. Maryland Cas. Co.,* 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996). Here, Hood's allegations concerned actions of the defendant arising from the insurance contract and the duty of good faith and fair dealing. Accordingly, the plaintiff stated a cause of action for breach of the duty of good faith and fair dealing. The Court finds, however, that no duty independent of the duty of good faith and fair dealing exists under these facts.

Several federal cases examining this issue under South Carolina law have ruled similarly and dismissed stand-alone negligence causes of action in suits concerning the breach of the duty of good faith and fair dealing. In *Skinner v. Horace Mann Ins. Co*., 369 F. Supp. 3d 649 (D.S.C. 2019), the Insured sued for breach of contract, bad faith, and for negligence. The *Skinner* court upheld the causes of action for bad faith and breach of contract, but dismissed the negligence causes of action, stating, "The negligence/gross negligence claim is duplicative of the bad faith claim, and as other judges in this District have recognized, a freestanding claim of negligence is improper under these specific circumstances." Id. at 654. See also: *Maranto v. State Farm Mutual Automobile Insurance Co*., No. 2:98-3131-23-PMD, at 1 (D.S.C. Aug. 11, 1999) (an insurer's

[2] Defendant made this argument in a pre-trial motion for summary judgment, in a motion for directed verdict at the close of the Plaintiff's case, and again in renewing its motion for a directed verdict at the end of the trial.

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negligence can be considered in a bad faith claim, but "no authority support[s] the existence of a separate, freestanding claim of negligence in such circumstances"); *Kraemer v. Massachusetts Mut. Life Ins. Co*., No. CV 2:15-04571-CWH, 2017 WL 5635469, at *6 (D.S.C. Apr. 28, 2017), *aff'd*, 701 F. App'x 268 (4th Cir. 2017)("Based on the South Carolina elements of bad faith and *Maranto*, it appears that [Plaintiff's] negligence claim is better suited as a bad faith claim.").

Plaintiff argues that, even though the jury found on a special verdict form that USAA did not breach its duty of good faith and fair dealing to Plaintiff, the jury could still have found that USAA breached a separate duty to act reasonably which would support a negligence cause of action. Plaintiff points to language in the case law that states, "If an insured can demonstrate bad faith *or unreasonable action* by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action." Plaintiff argues that the "bad faith" *or* "unreasonable action" language indicates two separate and distinct duties on the part of the insurer, and that breach of this duty to act "reasonably" will support a cause of action for negligence, separate and apart from a cause of action for bad faith. The court disagrees.

The case law is clear that there is only one duty – the duty of good faith and fair dealing. Breach of the implied covenant of good faith and fair dealing can be proven by showing either bad faith or unreasonable action on the part of the insurer. South Carolina courts have consistently expressed the elements of a bad faith cause of action as: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's *bad faith or unreasonable action* in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damages to the insured. (emphasis added). *Cock-N-Bull Steak House v. Generali Ins.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *Howard v. State Farm Mut. Auto Ins.*, 316 S.C. 445, 450 S.E.2d 582

(1994); *Crossley v. State Farm Mut. Auto. Ins.*, 307 S.C. 354, 415 S.E.2d 393 (1992); *Varnadore v. Nationwide Mut. Ins.*, 289 S.C. 155, 345 S.E.2d 711 (1986); *Mixson, Inc. v. American Loyalty Ins.*, 349 S.C. 394, 562 S.E.2d 659 (Ct. App. 2002). Bad faith on the part of the insurer can be proven by unreasonable action, but it is not a separate duty from the duty of good faith and fair dealing.

Accordingly, USAA is entitled to judgment as a matter of law with respect to the plaintiff's cause of action for negligence. Because the jury found in USAA's favor on the only remaining cause of action, the Court **GRANTS** USAA's Motion for JNOV and directs that judgment for USAA should be entered. The parties' other motions, listed above, are denied as moot.

IT IS SO ORDERED.

_____
Kristi F. Curtis, Circuit Court Judge

Sumter, SC
October 30, 2019

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Charleston Common Pleas

Case Caption: Therese Hood VS United Services Automobile Association GIC , defendant, et al

Case Number: 2018CP1000666

Type: Order/JNOV

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1000666

Therese Hood
PLAINTIFF(S)

United Services Automobile Association et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Plaintiff's Motion to Alter and/or Amend pursuant to SCRCP 59 the Court's Order Granting USAA's Motion for JNOV and Denying Both Parties' Other Post-Trial Motions entered on November 1, 2019 is hereby denied.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/20/2019 .

USAA

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Nov 21 1:20 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000666

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Nov 21 1:20 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000666

ELECTRONICALLY FILED - 2019 Nov 21 1:20 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000666

Charleston Common Pleas

Case Caption: Therese Hood VS United Services Automobile Association GIC , defendant, et al

Case Number: 2018CP1000666

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-0666

Therese Hood
PLAINTIFF(S)

USAA ET AL
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

X **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☒ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

JULIE J. ARMSTRONG CLERK OF COURT

2019 JUL -1 PM 1:09

FILED

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

This order X ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
Therese Hood	USAA	$ 299,052.20

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

Kristi Curtis
Circuit Court Judge

2134
Judge Code

6-28-19
Date

SCRCP Form 4C (02/2017)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-10-666

THERESE HOOD,

Plaintiff(s),

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA),

Defendant(s).

VERDICT FORM

1. Do you find by a preponderance of the evidence that the Defendant USAA breached its duty of good faith and fair dealing to Therese Hood?

   _____ Yes _X_ No

2. Do you find by a preponderance of the evidence that the Defendant USAA individually or through its agents was negligent?

   _X_ Yes _____ No

IF YES TO EITHER 1 or 2 or BOTH GO TO QUESTION 3.

3. If the answer to number 1 or 2 is YES, the amount of Actual Damages, if any, caused by Defendant's conduct: $ 49,652.20

4. Did the Plaintiff prove by clear and convincing evidence that USAA's bad faith was intentional, reckless, willful, wanton, or malicious?

   _X_ YES: If you answer yes, **GO TO QUESTION 5**

   _____ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

5. If the answer to question 4 is YES, state the amount of punitive damages to be awarded against USAA:

   Punitive Damages: $ 250,000

Foreperson 6/28/2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

THERESE HOOD,)
Plaintiff,)

vs.)

UNITED SERVICES AUTOMOBILE ASSOCIATION,)
Defendant.)

CIVIL ACTION COVERSHEET

2017-CP-27-00073

(Please Print)
Submitted By: Eric M, Poulin and Roy T. Willey, IV
Address: 62 Columbus Street
Charleston, SC 29403

SC Bar #: 100209 and 101010
Telephone #: (843)614-8888
Fax #: (843)853-2291
Other:
E-mail: eric@akimlawfirm.com; roy@akimlawfirm.com

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

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☒ Other (399) **Bad Faith/Negligence**

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: */s/ Eric S. Poulin* **Date: 3/23/2017**

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

ELECTRONICALLY FILED - 2017 Mar 23 5:50 PM - JASPER - COMMON PLEAS - CASE#2017CP2700073

FOR MANDATED ADR COUNTIES ONLY

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

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post-Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

ELECTRONICALLY FILED - 2017 Mar 23 5:50 PM - JASPER - COMMON PLEAS - CASE#2017CP2700073

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IN THE STATE OF SOUTH CAROLINA) COUNTY OF JASPER)	IN THE COURT OF COMMON PLEAS FOR THE 14TH JUDICIAL CIRCUIT CASE NO: 2017-CP-27-0073
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	**AMENDED SUMMONS** **(Jury Trial Demanded)**

TO: DEFENDANT ABOVE-NAMED AND ITS COUNSEL OF RECORD

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorneys, Eric M. Poulin and Roy T. Willey, IV, at their office, 62 Columbus Street, Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 23th day of March 2017.

[Signature Block on Following Page]

ANASTOPOULO LAW FIRM, LLC

/s/ Eric M. Poulin
Roy T. Willey, IV, Esquire
S.C. Bar Number: 101010
Eric M. Poulin, Esquire
S.C. Bar Number: 100209
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

ATTORNEYS FOR PLAINTIFF

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IN THE STATE OF SOUTH CAROLINA) COUNTY OF JASPER)	IN THE COURT OF COMMON PLEAS FOR THE 14TH JUDICIAL CIRCUIT CASE NO: 2017-CP-27-00073
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	**AMENDED COMPLAINT** **(Jury Trial Demanded)**

TO: DEFENDANT ABOVE-NAMED AND ITS COUNSEL OF RECORD

Plaintiff Therese Hood, complaining of Defendant United Services Automobile Association, would respectfully show unto this Court:

PARTIES

1. That Plaintiff Therese Hood (hereinafter "Plaintiff") is a citizen and resident of the State of South Carolina, County of Berkeley.

2. That Defendant United Services Automobile Association, (hereinafter Defendant "USAA") is a for-profit corporation organized and existing under the laws of the State of Texas, with its principal place of business in the State of Texas, and is authorized to transact business in the State of South Carolina.

3. That Defendant USAA is, and at all times relative hereto was, an "insurer" within the meaning of S.C. Code § 38-1-20(33).

4. That Defendant USAA is, and at all times relative hereto was, an "admitted insurer" within the meaning of S.C. Code § 38-1-20(5) and in the business of offering for sale contracts of insurance, including automobile liability and underinsured motorist insurance.

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5. That, upon information and belief, Defendant USAA carries on, contracts for, and does substantial business deriving in a large revenue therefrom in the State of South Carolina, County of Jasper.

6. That Defendant USAA, at all times relevant hereto, held itself out to the public, including Plaintiff, as an expert in automobile insurance matters.

JURISDICTION AND VENUE

7. That, upon information and belief, this Court has jurisdiction over the subject matter of this action pursuant to S.C. Code § 38-61-10, in that this action involves a contract of automobile insurance, including insuring property, lives, and interests in the State of South Carolina, the application for insurance was taken in the State of South Carolina, and the contract for insurance involves an automobile owned within the State of South Carolina.

8. That, upon information and belief, this Court has personal jurisdiction over the parties in connection with this action.

9. That the facts, acts, and/omissions giving rise to this dispute arose in the County of Jasper, State of South Carolina.

10. That Defendant USAA derives income from insuring individuals in the County of Jasper, State of South Carolina.

11. That, upon information and belief, venue is proper in the State of South Carolina, County of Jasper.

FACTUAL BACKGROUND

12. On or about November 7, 2014, at approximately 5:59 p.m., Plaintiff was operating her 2011 Chevrolet SUV heading in an easterly direction on U.S. Highway 17 in the State of South Carolina, County of Beaufort.

13. At the time and place aforesaid, Antoine Johnson was operating his 2003 Honda sedan and had stopped his vehicle at an intersection at U.S. Highway 17 in order to cross same heading north.

14. At the time and place aforesaid, Mr. Johnson, suddenly and without warning, collided into the right side of Plaintiff's vehicle causing Plaintiff to collide into another vehicle operated by William Kuck and registered to Mary Elizabeth Kuck, thereby proximately causing Plaintiff to suffer personal injuries and property damage.

15. That, at the time and place of the subject collision aforesaid, Plaintiff was insured by Defendant USAA under an automobile insurance policy which included automobile liability and underinsured motorist insurance coverage.

16. That, in consideration of the premium paid, Defendant USAA issued a policy for automobile insurance (the "Policy") to Plaintiff, and assigned number 02555180G71017 the policy number for same.

17. That the Policy covered Plaintiff's 2011 Chevrolet SUV which Plaintiff operated in the November 7, 2014, collision.

18. That the Policy and its terms were in full force and effect at the time of the November 7, 2014, collision.

19. That the Policy contained an implied covenant of good faith and fair dealing which is inherent in all contracts for automobile insurance in the State of South Carolina.

20. That on November 7, 2014, the Policy was a valid, enforceable, and legally binding contract in full force and effect under the laws of the State of South Carolina.

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21. That, at all times relevant hereto, Plaintiff placed her confidence in Defendant USAA and relied upon it exclusively to formulate an insurance program that would protect Plaintiff under the terms of the Policy.

22. That, at all times relevant hereto, Plaintiff purchased and paid insurance premiums to Defendant USAA in reasonable and justifiable reliance that Defendant USAA would act in accordance with the terms of the Policy, which did not include Defendant USAA's placing its own interests above those of Plaintiff.

23. That on or about March 17, 2015, Plaintiff filed her Summons and Complaint in the matter of Therese Hood v. Antoine Johnson (case no. 2015-CP-27-0119) in the Court of Common Pleas for the State of South Carolina, County of Jasper, asserting negligence claims against Mr. Johnson with respect to the aforementioned November 7, 2014, collision.

24. That on or about July 7, 2015, upon the settlement between the liability insurer for Mr. Johnson and Ms. Hood, Defendant USAA, the underinsured motorist carrier, appeared in the name of, and to provide a defense for, Mr. Johnson in the matter of Therese Hood v. Antoine Johnson pursuant to S.C. Code § 38-77-160.

25. That on March 23, 2016, Mary Elizabeth Kuck filed her Summons and Complaint in the matter of Mary Elizabeth Kuck v. Therese Hood and Antoine Johnson (case no. 2016-CP-27-0123) in the Court of Common Pleas for the State of South Carolina, County of Jasper, asserting negligence claims against Ms. Hood and Mr. Johnson with respect to the aforementioned November 7, 2014, collision.

26. That Defendant USAA, by and through its servants, agents, and/or employees, and as the liability insurer of Ms. Hood in the matter of Mary Elizabeth Kuck v. Therese Hood and Antoine Johnson, asserted that an "inspection of [Ms. Hood's] 2011 Chevrolet Equinox

forward lighting provided conclusive evidence that the high beam headlamps on both sides of the vehicle were illuminated at the time of the collision." (See Exhibit A; August 12, 2016, Report of Woodrow M. Poplin, M.S.E., P.E.) (emphasis added.)

27. That on January 11, 2017, Defendant USAA, by and through its servants, agents, and/or employees, served its Responses to Plaintiff's First Set of Request for Admission in the matter of Therese Hood v. Antoine Johnson, wherein Defendant USAA unconditionally denied that Plaintiff was operating her vehicle with her headlamps illuminated at the time of the aforementioned November 7, 2014, collision. (See Exhibit B; January 11, 2017, UIM Carrier's Responses to Plaintiff's First Requests for Admission.)

28. That Defendant USAA, by and through its servants, agents, and/or employees, took wholly disparate positions in the matters of Therese Hood v. Antoine Johnson and Elizabeth Kuck v. Therese Hood and Antoine Johnson with respect to Plaintiff's headlamps being illuminated on her 2011 Chevrolet SUV at the time of November 7, 2014, collision.

29. That Defendant USAA's disparate positions as to Plaintiff's headlamps being illuminated evince Defendant USAA's self-serving, conscious indifference to the terms of the Policy, their obligations of good faith and fair dealing, and candor to the Court, and constitute bad faith on the part of Defendant USAA.

30. That, at all times relevant hereto, Defendant USAA, by and through the acts and/or omissions of its servants, agents, and/or employees as set forth above, was negligent, careless, and/or reckless through its refusal to pay benefits due under an existing contract of insurance (the Policy).

31. That, at all times relevant hereto, Defendant USAA's refusal to pay benefits due under the Policy constitutes a breach the implied covenant of good faith and fair dealing.

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32. That, at all times relevant hereto, Defendant USAA's negligence, carelessness, and/or recklessness, as set forth above, has proximately caused damage to Plaintiff.

AS A FIRST CAUSE OF ACTION AGAINST DEFENDANT USAA
(Bad Faith)

33. Plaintiff re-alleges and reincorporates each of the preceding allegations as if specifically set forth herein verbatim.

34. That, at all times relevant herein, Defendant USAA, by and through its servants, agents, and/or employees, acted within the course and scope of said service, agency, and/or employment, thereby making Defendant USAA liable for the acts and/or omissions of its servants, agents, and/or employees based on the theory of *respondeat superior*.

35. That Defendant USAA has willfully, wantonly, and intentionally taken steps to unreasonably delay prompt and full payment under the Policy.

36. That Defendant USAA had, and continues to have, a duty to deal in good faith and fair dealing with their insureds, namely Plaintiff.

37. That Defendant USAA has breached the implied covenant of good faith and fair dealing under the Policy by refusing to make any reasonable offer whatsoever for Plaintiff's loss.

38. That under both South Carolina law and the Policy, Plaintiff, as the owner of the 2011 Chevrolet SUV covered under the Policy, is herself considered a "Class I" insured, and is, therefore, entitled to collect underinsured motorist benefits.

39. That Plaintiff promptly reported her loss to Defendant USAA, and has otherwise performed all conditions as required by the Policy, including the voluntary submission of documents and other pertinent information to Defendant USAA, its servants, agents, and/or employees.

40. That Defendant USAA has failed to promptly and effectively investigate the

claims that are the subject of this action.

41. That Defendant USAA has willfully, wantonly, and intentionally taken steps to unreasonable delay prompt and full payment under the Policy.

42. That, despite Plaintiff's repeated demands, Defendant USAA has refused, and continues to refuse, to make the required payments under the terms of the Policy.

43. That Defendant USAA has breached the implied covenant of good faith and fair dealing under the Policy by refusing to make any reasonable offer whatsoever for Plaintiff's loss.

44. That Defendant USAA has acted, and continues to act, in bad faith and/or was negligent, grossly negligent, careless, reckless, and wanton in the following particulars, to wit:

a. In refusing to undertake, adopt, and/or implement prompt, reasonable, or good faith methods and practices in investigating, prosecuting, and/or defending the subject collision, including Plaintiff's claims;

b. In unreasonably failing to make any reasonable offer of funds due to Plaintiff under the Policy;

c. In failing to communicate any reasonable justification for failing to pay benefits after attorneys for Plaintiff alerted Defendant USAA of the facts and circumstances of the losses associated with Plaintiff's claims and after Defendant USAA's own hired expert informed Defendant USAA that Plaintiff's lights were illuminated at the time of the subject collision;

d. In failing to attempt in good faith to affect a fair, prompt, and equitable settlement and/or resolution of Plaintiff's claims;

e. In failing to act responsibly in light of the totality of the circumstances presented by Plaintiff's claims;

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f. In failing to act as a reasonable and prudent insurer would act with regard to Plaintiff's claims;

g. In violating S.C. Code § 38-59-20;

h. In failing to acknowledge, with reasonable promptness, pertinent communications with respect to Plaintiff's claims arising under the Policy;

i. In compelling Plaintiff to instate this action to recover the UIM funds reasonably due under the policy;

j. In unreasonably delaying settlement and/or resolution of Plaintiff's claims;

k. In any other such acts that constitute a violation of the statutory and/or common laws of the State of South Carolina; and

l. In any other such manner as Plaintiff may discover through discovery.

45. That Defendant USAA's breach of the implied covenant of good faith and fair dealing was the direct and proximate cause of Plaintiff's damage, including her mental anguish, anxiety, stress, her incurring of costs and expenses (including attorney's fees), and punitive damages.

46. That, as a direct and proximate result of Defendant USAA's breach of the covenant of good faith and fair dealing, Plaintiff has been, and continues to be, injured in the following respects, among others:

a. In suffering an unreasonable delay in receiving compensation to which she is legally entitled;

b. In suffering the mental anguish, anxiety, and stress of being denied the funds reasonably due, and the additional burden of pursuing this action to recover funds to which she is legally entitled and should have already received; and

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c. In other such ways as would cause Plaintiff additional and unnecessary pain, suffering, and aggravation.

47. That Plaintiff's damages would not have occurred but for Defendant USAA's breach of the covenant of good faith and fair dealing under the Policy.

48. That Plaintiff's damages occurred as a natural and probable consequence of Defendant USAA's breach of the covenant of good faith and fair dealing under the Policy.

49. That, upon information and belief, Plaintiff is entitled to judgment against Defendant USAA for actual, compensatory, exemplary, and/or punitive damages for her personal injuries as set forth herein in an amount that is fair, just, and reasonable under the circumstances, plus whatever costs, pre-judgment and post-judgment interest, and attorney's fees that she may be entitled to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT USAA
(Breach of Contract)

50. Plaintiff re-alleges and reincorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

51. That Defendant USAA's conduct, as described above, was in violation of the Policy and constitutes a breach of contract.

52. That, as a direct and proximate result of Defendant USAA's breach of contract, Plaintiff has sustained damages as set forth above.

53. That Plaintiff is entitled to judgment against Defendant USAA for the full amount of her actual damages and attorney's fees.

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT USAA
(Negligence/Gross Negligence)

54. Plaintiff re-alleges and reincorporates by reference, as if fully set forth, each and

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every allegation in the preceding paragraphs.

55. That Defendant USAA owed Plaintiff certain duties to properly handle Plaintiff's claims arising out of the special relationship and confidence of trust placed on Defendant USAA by Plaintiff, as well as the covenant and duty of good faith and fair dealing implied as a matter of law under the Policy as a contract of insurance.

56. That Defendant USAA also owed Plaintiff a duty arising under the law of barratry not to force Plaintiff to maintain a lawsuit that effectively forces Plaintiff to incur legal fees, and that Defendant breached this duty as set forth more fully above.

57. That Defendant USAA was negligent, reckless, grossly negligent, willful, and wanton in its investigation and handling of Plaintiff's claims in one or more of the following particulars, to wit:

a. In failing to offer to pay the amount on a reasonable evaluation of Plaintiff's claims;

b. In failing to make an appropriate offer to Plaintiff after being placed on notice of all relevant facts and information upon which to provide a good faith response to Plaintiff's claims;

c. Upon information and belief, in considering improper factors when evaluating Plaintiff's claims, thereby forcing Plaintiff to file a lawsuit;

d. In forcing Plaintiff to file a lawsuit by not making a reasonable offer while knowing the great likelihood that Plaintiff would sustain further damages as a result of Defendant USAA's delay in evaluating Plaintiff's claims;

e. In using tactics to delay the settlement and/or resolution of Plaintiff's claims, thereby causing Plaintiff to suffer stress and mental anguish;

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f. In failing to make a reasonable offer when Defendant USAA had no reasonable basis upon which to do so;

g. In failing to evaluate Plaintiff's claims properly given the information available that would otherwise afford a reasonable and prudent insurer to properly evaluate such claims;

h. In failing to make any effort whatsoever to settle or resolve Plaintiff's claims in a reasonable, timely manner;

i. Upon information and belief, in violating Defendant USAA's own policies, procedures, and/or guidelines regarding the investigation and handling of similar claims;

j. In failing to exercise the degree of care, caution, and good faith that a reasonably prudent insurance carrier, manager, or adjuster would exercise under the same or similar circumstances;

k. In placing its own interest ahead of those of its insured, namely Plaintiff; and

l. In failing to place Plaintiff's interests ahead of those of Defendant.

58. That by reason of Defendant USAA's negligence, recklessness, gross negligence, willfulness, and wantonness, Plaintiff directly and proximately suffered actual damages, including by not limited to, loss of insurance benefits, loss of use of insurance benefits, medical expenses, mental anguish, consequential damages, and other damages as set forth above.

59. That Plaintiff is entitled to a judgment against Defendant USAA for the full amount of her actual damages, as well as for punitive damages.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT USAA
(Barratry)

60. Plaintiff re-alleges and reincorporates by reference, as if fully set forth, each and

every allegation in the preceding paragraphs.

61. That Defendant USAA willfully invited and forced Plaintiff to bring, prosecute, and maintain an action at law in the Jasper County Court of Common Pleas with the intent to distress and harass Plaintiff.

62. That Defendant USAA committed these acts against Plaintiff in total disregard of the judicial system of the State of South Carolina and the concept of judicial economy.

63. That Defendant USAA thereby committed barratry against Plaintiff and directly and proximately caused great damage to Plaintiff as described above.

FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT USAA
(Outrage)

64. Plaintiff re-alleges and reincorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

65. That Defendant USAA, by and through the acts and/or omissions of its agents, servants, and/or employees, intentionally or recklessly inflicted severe emotional distress on Plaintiff, or Defendant USAA was substantially certain that its actions would cause Plaintiff to suffer severe emotional distress.

66. That Defendant USAA's extreme, outrageous, and atrocious actions exceeded all possible bounds of decency and are intolerable in a civilized community.

67. That as a direct and proximate result of the Defendant USAA's extreme and outrageous conduct, Plaintiff has suffered extreme and severe emotional distress, nervousness, anxiety, and other damages as described above.

68. That Plaintiff is entitled to a judgment against Defendant for the full amount of her actual damages, as well as for punitive damages.

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FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANT USAA
(Negligence *Per Se*)

69. Plaintiffs restate and re-allege every allegation set forth above as if fully stated herein verbatim.

70. That, in addition to the acts and omissions of negligence and bad faith as set forth more fully above, Defendant USAA is negligent *per se* for violating S.C. Code Ann. § 38-47-10.

71. That, pursuant to S.C. Code Ann. § 38-47-10(a), "[a]n individual commonly called an adjuster, adjusting loses for an insurer licensed to do business in this State, must be licensed by the director [of insurance] or his designee."

72. That Defendant USAA violated S.C. Code Ann. § 38-47-10.

73. That one or more adjusters assigned to the claim in question by Defendant USAA is/was not licensed in South Carolina during the pendency of the claim, and those adjusters are not subject to any of the exceptions to licensure as set forth in S.C. Code Ann. § 38-47-10(B).

74. That the licensure requirement was enacted to protect South Carolina residents from unskilled adjusters and adjusters lacking knowledge of local custom, practice, or law.

75. That the statute was designed to protect insureds by ensuring that adjusters assigned to handle their claims were capable of protecting their interests.

76. That the statute was further designed to protect claimants by ensuring a fair and regulated adjustment process.

77. That Defendant USAA's breach of this statute caused the exact harm that the legislature sought to prevent.

78. That Defendant USAA, through its use of unlicensed and unskilled adjusters, failed to recognize the gravity of the claim, failed to properly respond to a time limited policy limit demand, and was otherwise were negligent in adjusting the claim, as set forth more fully

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herein, exposing Plaintiff to a substantial personal judgment.

79. That Plaintiff is of the exact class of citizens whom the legislature intended to protect when enacting the statute.

80. That, accordingly, Defendant USAA's breach of the statute constitutes negligence *per se*, entitling Plaintiff to actual and punitive damages for the injuries set forth more fully above.

WHEREFORE, Plaintiff prays for judgment against Defendant USAA for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the costs and disbursements of this action, both pre-judgment and post-judgment interest, and for such other and further relief, in law or in equity, in favor of Plaintiff as this Court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

/s/ Eric M. Poulin
Roy T. Willey, IV, Esquire
S.C. Bar Number: 101010
Eric M. Poulin, Esquire
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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
Date: March 23, 2017

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POPLIN ENGINEERING

ENGINEERING ANALYSIS OF ACCIDENTS

Vehicle Accident: Kuck v. Hood, et al.

Date of Accident: 11/07/14

W Poplin File Number: PT047

Engineer

Woodrow M. Poplin, M.S.E., P.E.

W Poplin Engineering LLC
PO Box 210
Wadmalaw Island, SC 29487

(843) 559-8801
(800) 567-5868
WP...



POPLIN ENGINEERING
ENGINEERING ANALYSIS OF ACCIDENTS

August 12, 2016

REPORT TO: Mr. Chris Nichols
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

FROM: Woodrow M. Poplin, M.S.E., P.E.
W Poplin Engineering LLC

REFERENCE: Vehicle Accident: Kuck v. Hood, et al.
Date of Accident: 11/07/14
W Poplin File Number: PT047

INTRODUCTION

In follow up to your request, a vehicle inspection has been conducted on a 2011 Chevrolet Equinox sport utility vehicle that was involved in a three vehicle accident on US Highway 278 in Beaufort County, South Carolina. The accident occurred at approximately 5:59 p.m. on November 7, 2014. It is understood that there has been some dispute regarding whether or not the Chevrolet Equinox was being operated with its headlamps illuminated at the time of the accident. The objective of this investigation has been to examine the 2011 Chevrolet Equinox with the primary purpose of determining what the physical evidence indicates regarding the status of the headlamps at the time of collision.

The vehicle in question is identified as a four-door bluish gray 2011 Chevrolet Equinox LT sport utility vehicle. The 2011 Chevrolet Equinox was inspected on July 18, 2016 at the facilities of Co-Parts in Savannah, Georgia. Representative photographs of the Chevrolet Equinox as it appeared at that time are presented in Figs 1 - 6. The entire sequence of

photographs taken during the inspection are presented in electronic format on the computer disk attached as part of this report. The Chevrolet Equinox is further identified as follows:

VIN number:	2CNFLPE54B6418470
Model Year:	2011
Make:	Chevrolet
Model:	Equinox
Trim Level:	LT
Body Type:	4 Door Wagon
Engine:	V6, 3.0L; FFV; VVT
Fuel:	Gasoline/E85
Drive Line:	Front wheel drive
Brake System:	Hydraulic
Restraint System:	Dual Air Bag; Active belts-Manual; Front Seat Side (1st row); Roof Side (All seating rows)
Assembly Plant:	Ingersoll, Ontario, Canada

As can be seen in the photographs, the Chevrolet Equinox has minor collision damage in the passenger side and it has been extensively damaged in the front. The collision damage is offset toward the driver side. The driver side lighting assemblies were involved in the collision contact and are broken and crushed. Because of the offset collision, the area surrounding the passenger side lighting was not directly involved in the collision contact. However, the lamp assembly had separated from its mounting position and was not present on the front of the vehicle. An intact lighting assembly was found in the passenger compartment (Fig. 7). Identification markings on the lighting assembly identified it as a passenger side lighting assembly for a General Motors vehicle. The Chevrolet brand is part of the General Motors Corporation. The shape of the lighting assembly matches the pattern of the 2011 Chevrolet Equinox. It does not match the pattern of the other General Motors vehicle in the accident, a 2007 Chevrolet Tahoe. Data from the web searches to confirm the lighting assembly patterns is attached in Appendix I.

The passenger side lighting assembly contained three intact individual lamps. These are identified as a) a single filament high beam lamp, b) a single filament low beam lamp and c) a twin filament lamp in which the larger filament is utilized as a turn signal and the smaller filament as a marker (park) lamp. The marker lamp filament can be energized without the headlamps, but is always energized whenever the headlamps are also energized.

Whenever a lamp is illuminated, the tungsten filament is heated and becomes relatively malleable under the inertial forces of a collision. As it is manufactured, the individual lamp filament consist of a uniformly coiled tungsten wire. If the lamp is not illuminated, the inertial forces necessary to significantly deform a cold filament are not typically encountered outside areas of direct contact. Significant filament deformation was found in the passenger side high beam headlamp shown in Figs. 8 – 9 and in the passenger marker lamp filament shown in Figs. 10 - 11. It is therefore concluded that both of these filaments were illuminated at the time of the collision. The passenger side turn signal filament (Fig. 11) and the passenger side low beam headlamp filament (Fig. 12 - 13) exhibit no deformation indicating that they were not illuminated at the time of the collision.

On the driver side, as a result of the collision damage all of the lighting was missing except for the one broken headlamp shown in Figs. 14 - 16. The base for the high beam and low beam lamps is different so that they are not interchangeable. The pattern of the base and the wiring indicate that the broken lamp on the driver side is the high beam lamp. The outer glass envelope is broken away and one of the filament support posts has been torn from the base. The filament is intact. It has significant axial deformation to the coils and is discolored from oxidation that occurred when the glass envelope was broken and the heated filament was exposed to the oxygen in the atmosphere. It is therefore concluded that the condition of the high beam filament on the driver side also indicates that it was illuminated at the time of the collision.

The 2011 Chevrolet Equinox is equipped with an airbag control module that records some of the operating parameters of the vehicle in the seconds prior to the collision. As part of the inspection of the vehicle, data was electronically downloaded from the airbag control module. This data suggests that the 2011 Chevrolet Equinox was traveling at an indicated speed of approximately 62 miles an hour as it approached collision. The data recovered from the Chevrolet Equinox airbag control module is attached as Appendix II.

Also as part of this investigation, the timing of sunset and civil twilight was checked with the US Naval Observatory website for the latitude and longitude of the accident as provided in the South Carolina traffic collision report. Sunset is reported at 5:28 p.m. and the end of civil twilight at 5:53 p.m. South Carolina requires that vehicles operate with illuminated headlamps beginning 30 minutes after sunset, a time of 5:58 p.m. on the day of the accident.

In summary, inspection of the 2011 Chevrolet Equinox forward lighting provided conclusive evidence that the high beam headlamps on both sides of the vehicle were illuminated at the time of the collision.

Woodrow M. Poplin, P.E.

PHOTOGRAPHS

(Attached and on Disk)



Fig. 1 Damaged 2011 Chevrolet Equinox



Fig. 2 Damaged 2011 Chevrolet Equinox

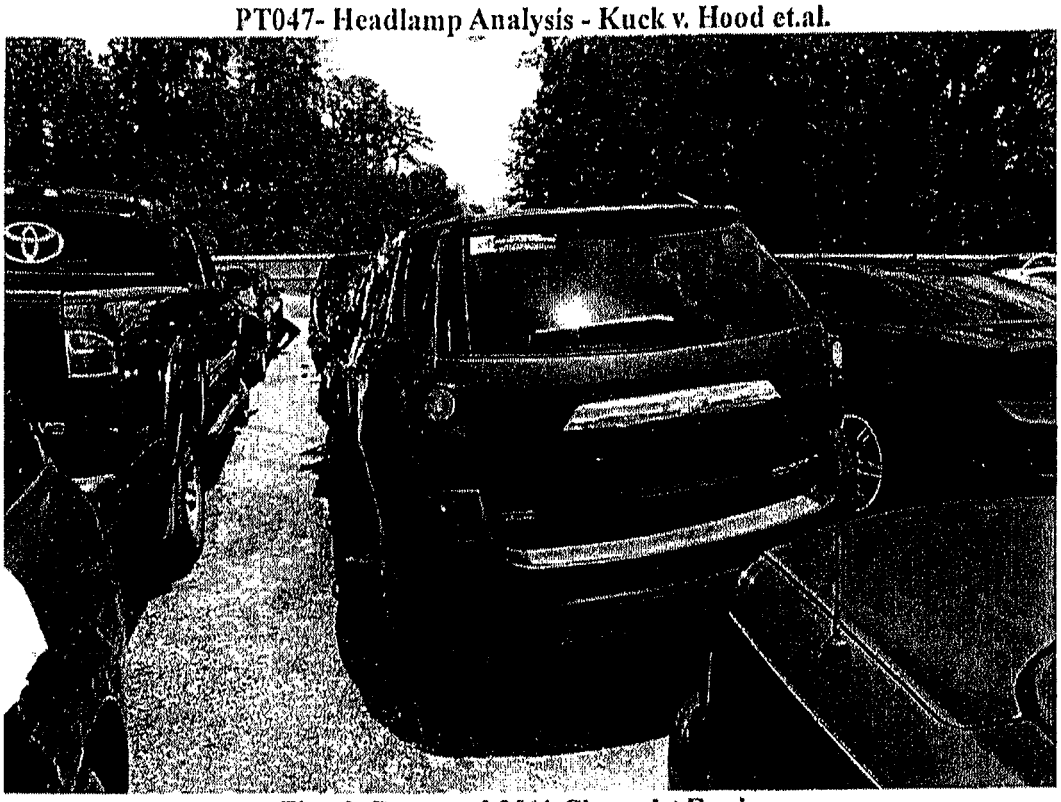


Fig. 3 Damaged 2011 Chevrolet Equinox



Fig. 4 Damaged 2011 Chevrolet Equinox

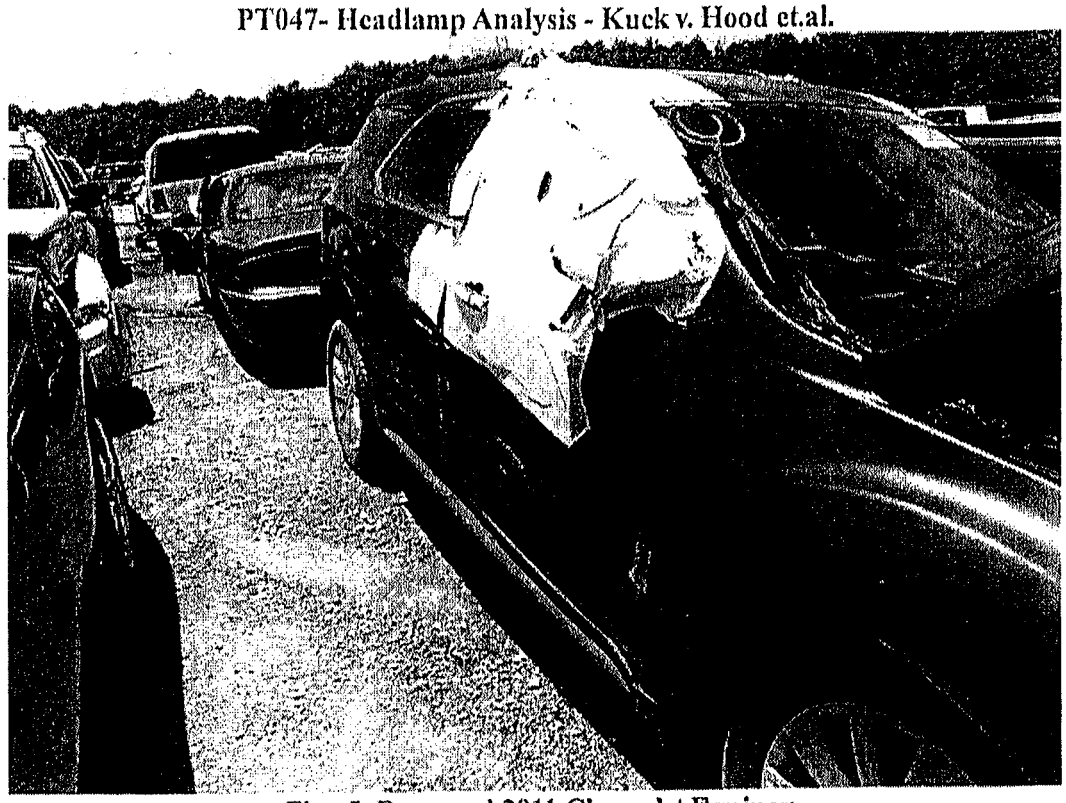


Fig. 5 Damaged 2011 Chevrolet Equinox



Fig. 6 Damaged 2011 Chevrolet Equinox



Fig. 7 Loose passenger side headlamp assembly found inside the Chevrolet Equinox



Fig. 8 Passenger side high beam headlamp

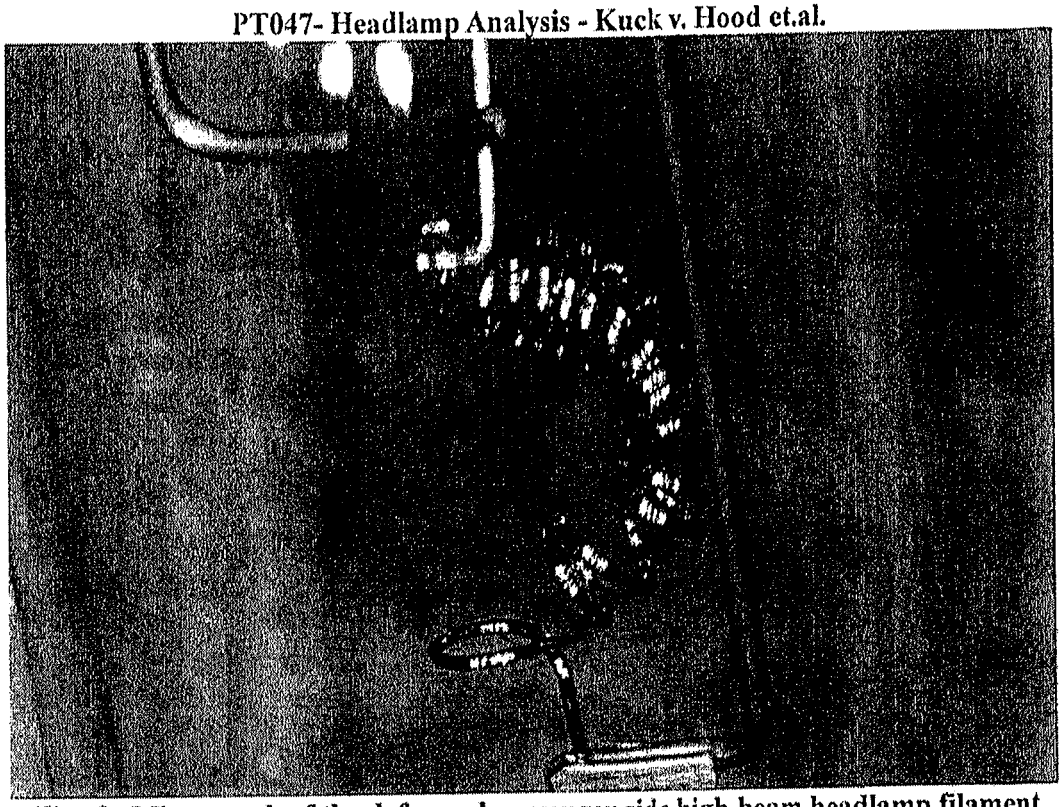


Fig. 9 Micrograph of the deformed passenger side high beam headlamp filament



Fig. 10 Passenger side marker-turn signal lamp

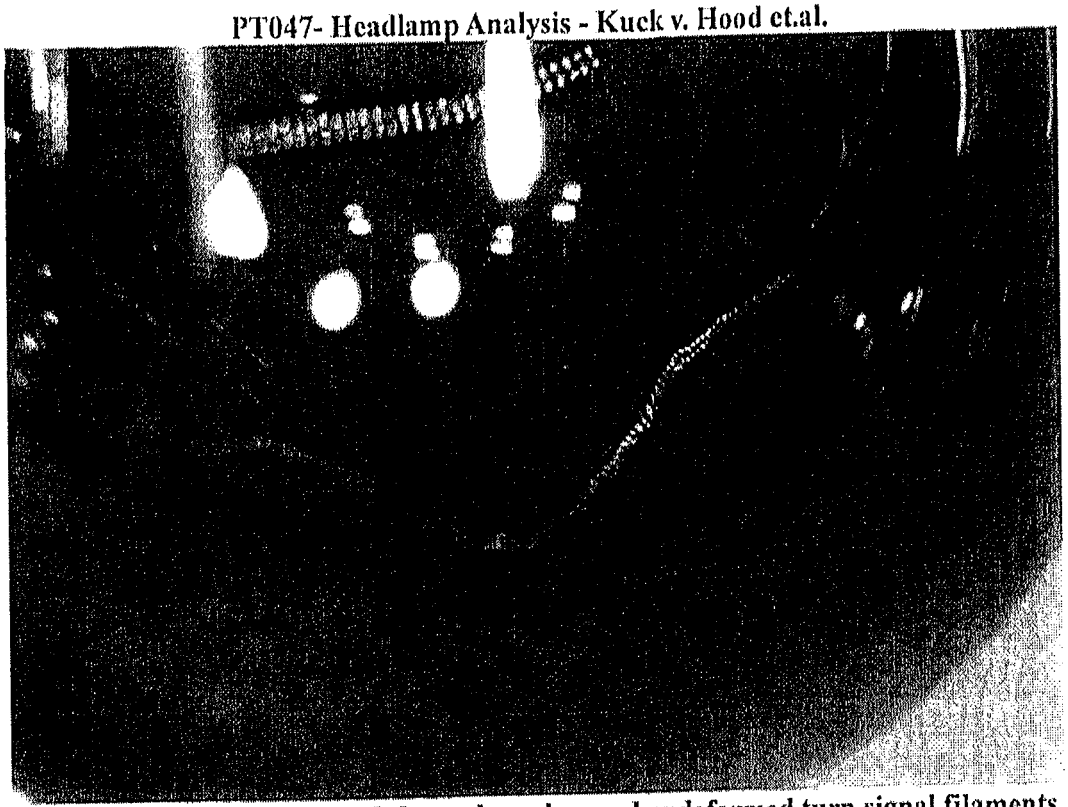


Fig. 11 Micrograph of the deformed marker and undeformed turn signal filaments

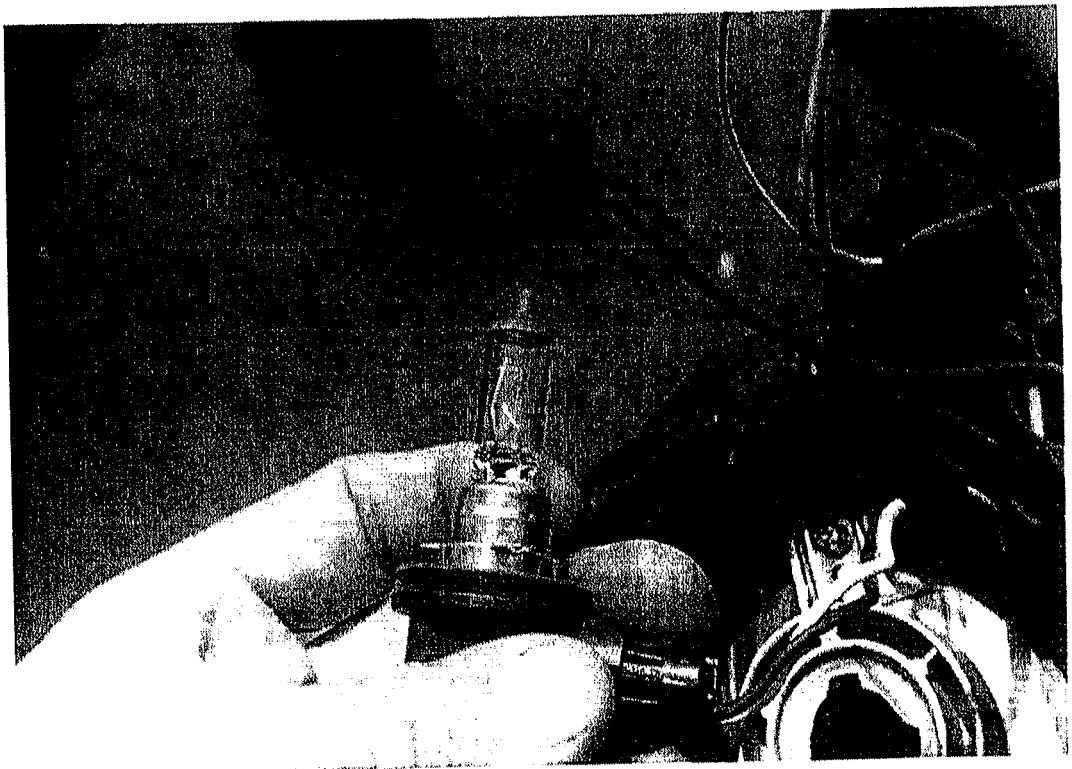


Fig. 12 Passenger side low beam headlamp

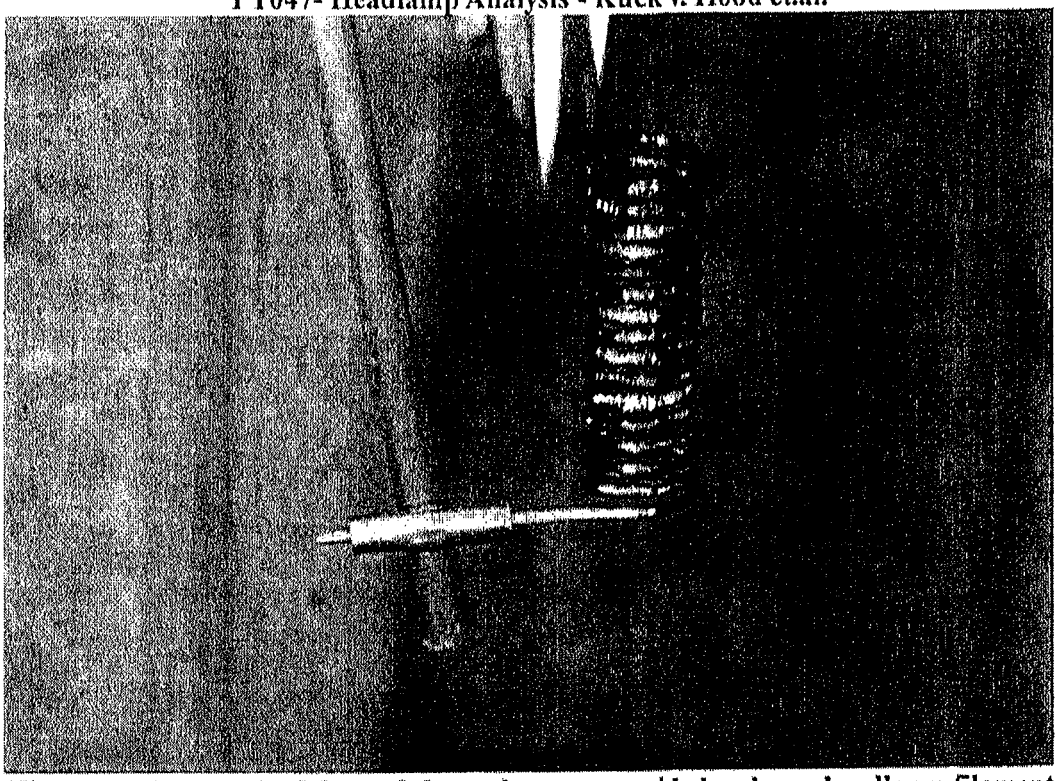


Fig. 13 Micrograph of the undeformed passenger side low beam headlamp filament



Fig. 14 Broken driver side high beam headlamp

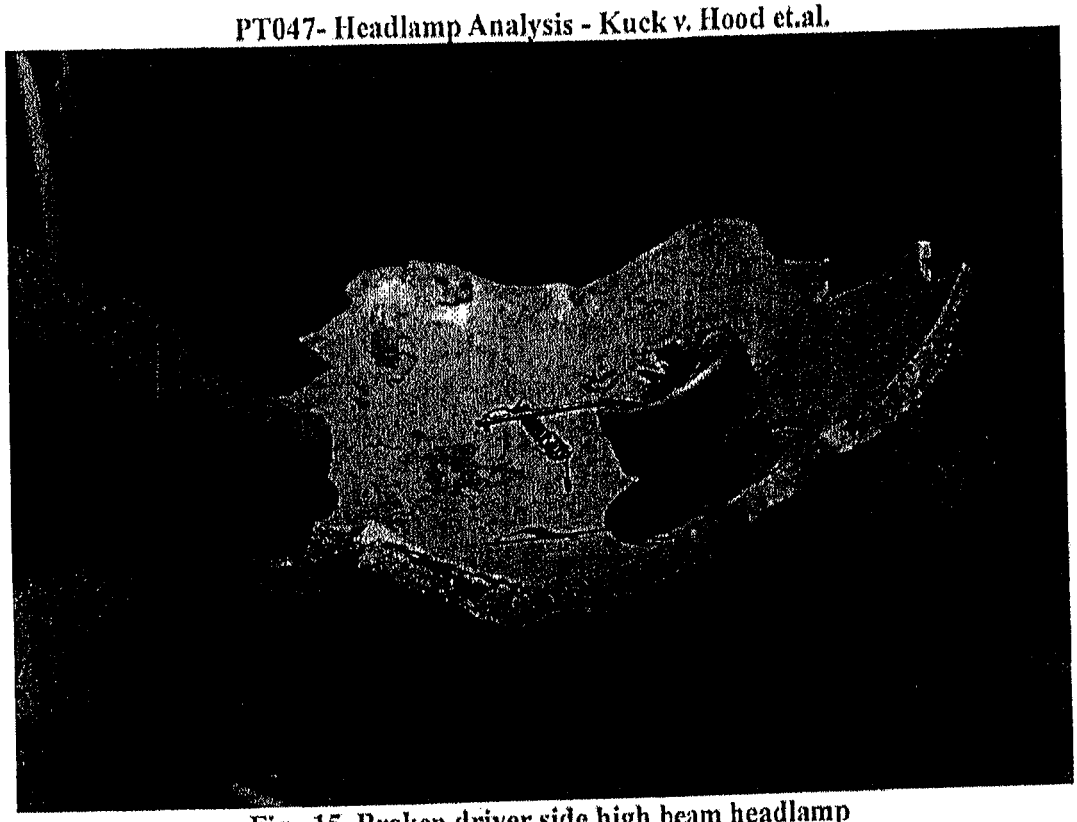


Fig. 15 Broken driver side high beam headlamp



Fig. 16 Micrograph of the deformed and oxidized driver side high beam filament

APPENDIX I

Lighting Assembly Patterns

EAUTOLIGHTS.com
ORDER BY PHONE

Menu

HOME / 2010-2011 CHEVROLET EQUINOX OEM HEADLIGHT-RIGHT

2010-2011 CHEVROLET EQUINOX OEM HEADLIGHT-RIGHT

~~$198.51~~ $119.48

IN STOCK

RIGHT OEM HEADLIGHT FOR 2010-2011 CHEVROLET EQUINOX

Qty: 1 ADD TO CART

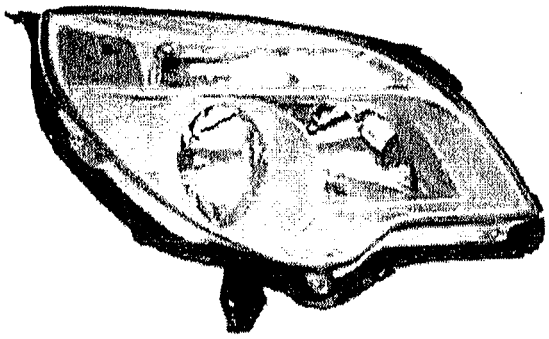
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MORE VIEWS



Description
Additional Information
Reviews

Description

Chevrolet Equinox 10-11 HeadLight (LS-LT MODEL)

Additional Information

TYPE	OEM REPLACEMENT
STYLE	FACTORY LOOK
SIDE	RIGHT
MAKE	CHEVROLET

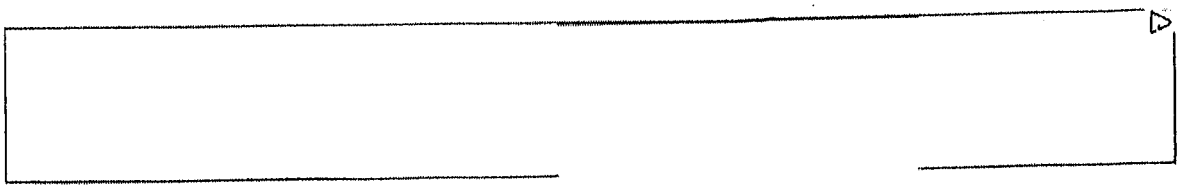
MODEL	EQUINOX
YEAR	2010-2011
EE NUMBER	GM546-B001R
OE NUMBER	20892426
PL NUMBER	GM2503338

Reviews

Be the first to review this product

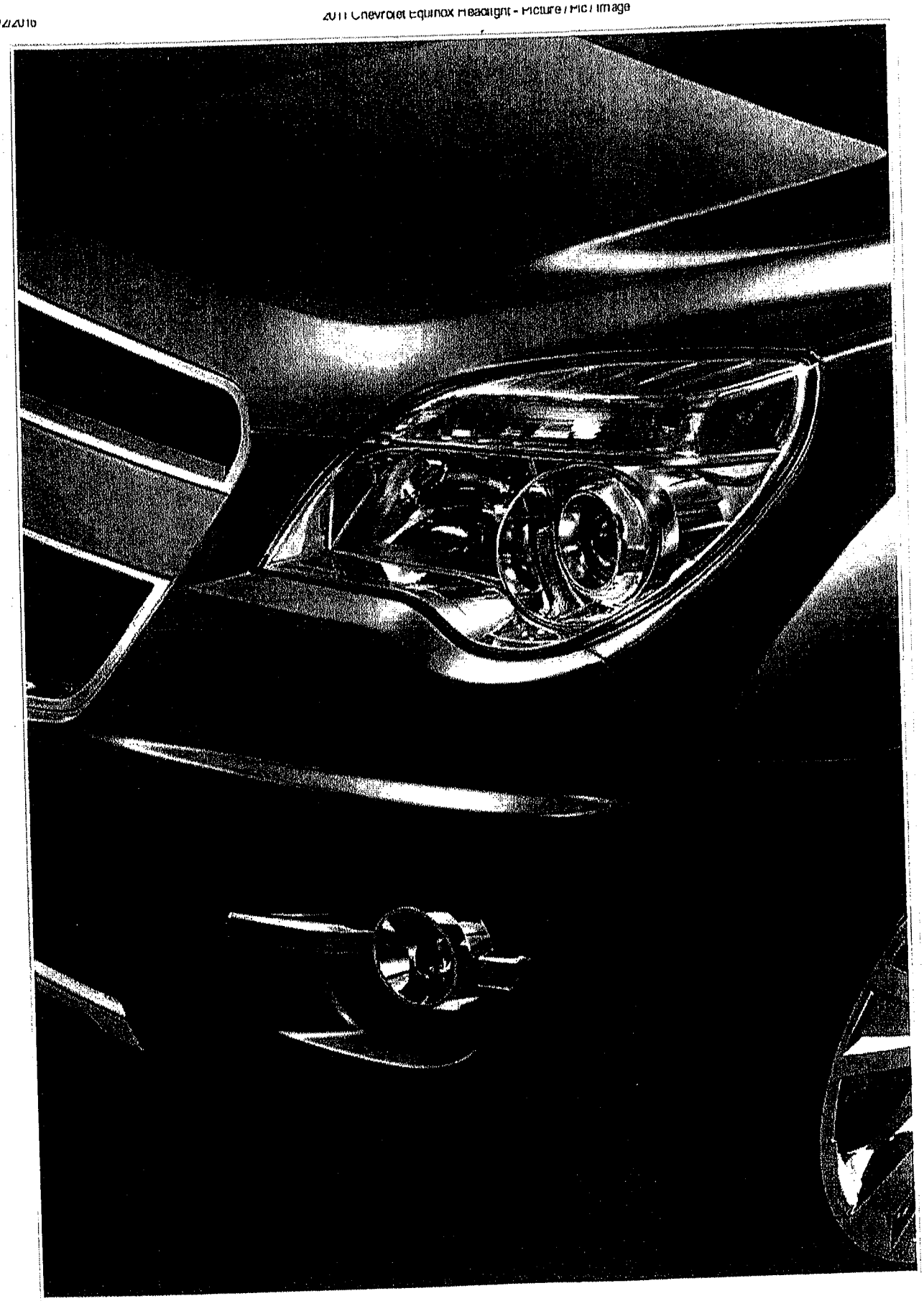
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Popular: Chevy Cruze | Ford Edge | Ford Escape | Hyundai Elantra | Nissan Rogue | Nissan Versa | Scion xD | Scion tC | Toyota Corolla | Toyota RAV4



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«« Picture 3

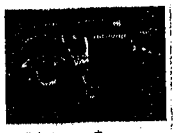

«« Picture 4


« Picture 5


You Are Here


Picture 7 »


Picture 8 »»


Picture 9 »»»

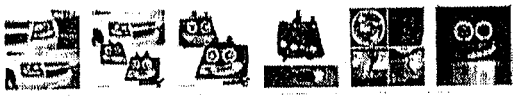
« previous :: 6 of 72 :: next »

Back to Equinox Pictures »

Home > Chevrolet > Chevrolet Equinox > 2011 Chevrolet Equinox > 2011 Chevrolet Equinox Pictures > 2011 Chevrolet Equinox Headlight Picture

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Have one to sell? Sell now

2007-2014 CHEVY AVALANCHE SUBURBAN TAHOE Halo LED Projec Headlight Lamp Black

[GUARANTEED 3 DAY DELIVERY] 48 CONTINENTAL STATES

2 viewed per hour 10 ratings

Item condition: New

Compatibility: See compatible vehicles

Quantity: 1 Limited quantity available / 540 sold

List price: ~~$219.99~~

You save: $64.38 (29% off)

Now: **US $155.61** Buy It Now

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1-yr protection $23.49 from Assurant

721 watching Add to watch list

Add to collection

540 sold More than 98% sold Free shipping and returns

Shipping: FREE Standard Shipping | See details

Item location: Walnut, California, United States

Ships to: [illegible] | See details

Delivery: Estimated between Thu. Aug. 4 and Thu. Aug. 11

Use Expedited Shipping to get it by Aug. 8

Payments: PayPal VISA

Credit Cards processed by PayPal

PayPal CREDIT

6 months to pay on $99+. Apply Now | See Terms

See details

Returns: 60 days money back or item exchange, free return shipping | See details

Guarantee: | See details

Get the item you ordered or get your money back. Covers your purchase price and original shipping.

VIPMOTOZ

vipmotoz (67928) me

100% Positive feedback

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Marked down item price reflects all savings. Items provided by vipmotoz

Current item

See all

2007-2014 CHEVY AVALANCHE SUBURBAN TAHOE Halo LED Projector

List price: $219.99 Now: $155.61

2002-2005 Dodge Ram 1500 [FACTORY STYLE] 03-05 Ram 2500 3500 Chrome

List price: $104.99 Now: $76.41

2002-2005 Dodge Ram 1500 2500 3500 *SINISTER BLACK* Smoke Headlight Tail

List price: $200.00 Now: $143.36

2002-2005 Dodge Ram 1500 Chrome Halo LED Projector Headlight 03-05 Ram 2500

List price: $194.63 Now: $138.46

* Savings are reflected in item price. Prices are subject to change without notice, while supplies last. Offer conditions | Learn about pricing

All promotional offers fr

Add to cart and save!

2007-2014 CHEVY AVALAN.

Subtotal:

You can change qu

Description | Shipping and payments

eBay item number

Seller assumes all responsibility for this listing.

Last updated on: Aug 01, 2016 21:09:46 PDT View all revisions

Compatibility

Please choose your vehicle year, make and model for specific results.

Year: -Select- | Make: -Select- | Model: Tahoe | Trim: All Trims | Engine: All Engines | Go

(show all compatible vehicles)

This part is compatible with 44 vehicle(s) matching Tahoe.

Notes	Year	Make	Model	Trim	Engine
	2014	Chevrolet	Tahoe	LS Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	LT Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	LTZ Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	PPV Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	SSV Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	Hybrid Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	LS Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	LT Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	LTZ Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	PPV Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	SSV Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	Base Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	Hybrid Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	LS Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	LT Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	LTZ Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	PPV Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	SSV Sport Utility 4-Door	All
	2011	Chevrolet	Tahoe	Base Sport Utility 4-Door	All
	2011	Chevrolet	Tahoe	Hybrid Sport Utility 4-Door	All

1 2 3

Page 1 of 3

Portions of the information contained in this table have been provided by vipmotor

Item specifics

Condition:	New
[Headlight] Low Beam Bulb	H1 Bulb Provided
[Headlight] DOT & SAE:	Approved
[Headlight] LED Brand:	Nichia - Made In Japan
[Headlight] High Beam Bulb:	H1 Bulbs Provided
[Headlight] Lens Type:	Crystal Sapphire
Contact Us	TEL: 1-844-884-7847 | HOURS: 9am - 6pm PST
Returns:	60-Days LOVE IT or RETURN IT!
EAN:	742593549048?
Brand:	Venom Inc.
Manufacturer Part Number	OEM#A7907A0A8007A0A6207A_2010 2011 2012 2013 201
Interchange Part Number	20760578/20760579
Other Part Number:	GM2502253/GM2503263
Placement on Vehicle:	Left, Right, Front
Surface Finish:	Black Housing / Clear Lens
Warranty	Yes
UPC	742593549048?

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2007-2013 CHEVROLET AVALANCHE
2007-2014 CHEVROLET SUBURBAN 1500 | 2500
2007-2014 CHEVROLET TAHOE

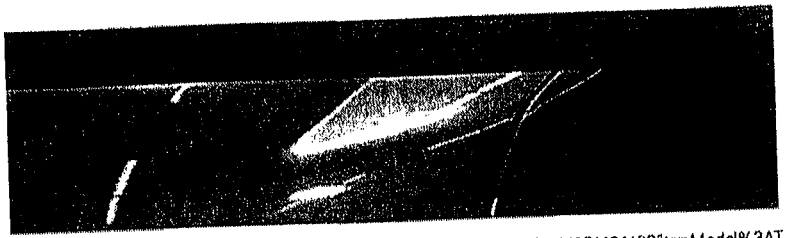
BASE | LS | LT | LTZ | Z71 | HYBRID



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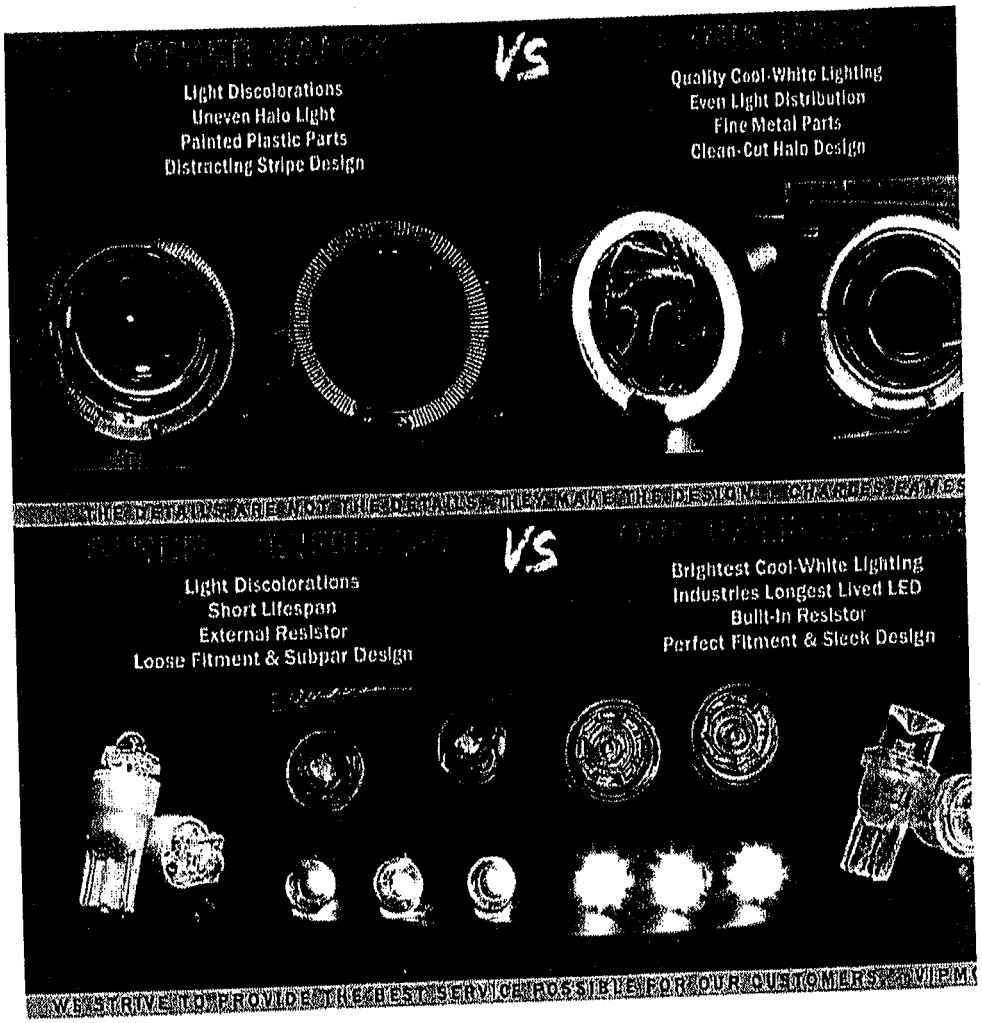




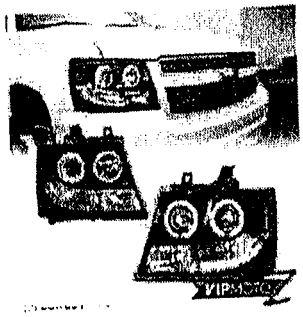
PRODUCT VIDEO

*Product in video may vary. Video illustrates housing removal and re-installation only.

Spyder Auto Installation: 2007-14 Chevrolet Suburban/Tahoe/Avalanche Pro...



PRODUCT DETAILS ABOUT US CONTACT SHIPPING PAYME



Designed to Fit

2007-2013 CHEVROLET AVALANCHE
2007-2014 CHEVROLET SUBURBAN 1500 | 2500
2007-2014 CHEVROLET TAHOE
BASE | LS | LT | LTZ | Z71 | HYBRID

Highlights & Features

Crystal Sapphire Halos
Crystal Sapphire Halos A European Luxury Detailing Crafted From Premium Acrylic
Philips Superflux LEDs
Philips Superflux LED Unique Illuminated Appearance & Highly Customizable
4 of LED
4 Perfectly Placed Philips Superflux LED Illuminates The Darkest Of Nights

What You Might Need

Headlight
Please Re-Use Original Bulbs:
Turn Signal | Parking

Color Description

Infinity Black
Matte Black Housing With Transpar
Clear Lens

What's in the Box

Headlight
Driver & Passenger Side
Osram High & Low Beam Bulbs

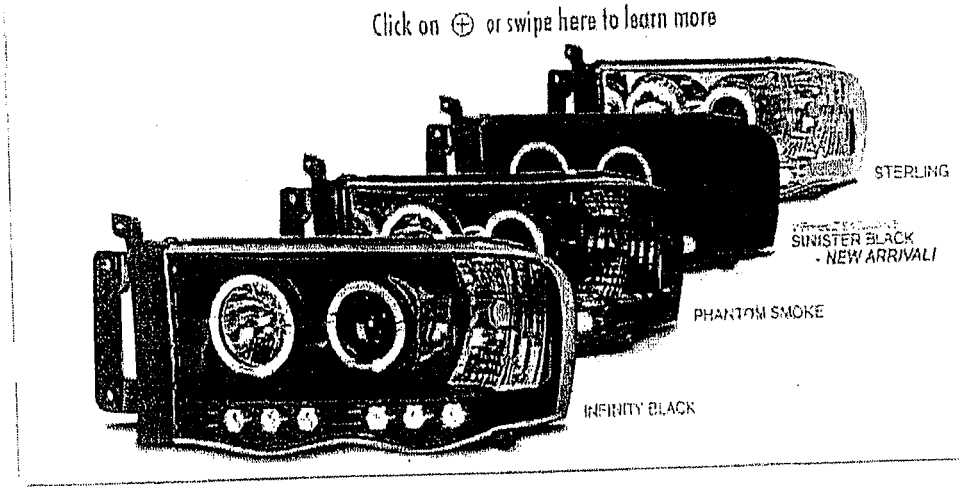
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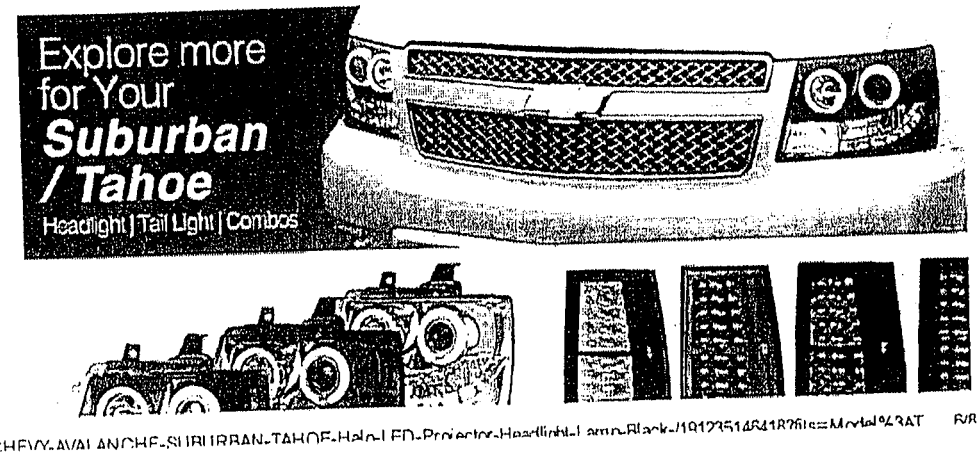
LED

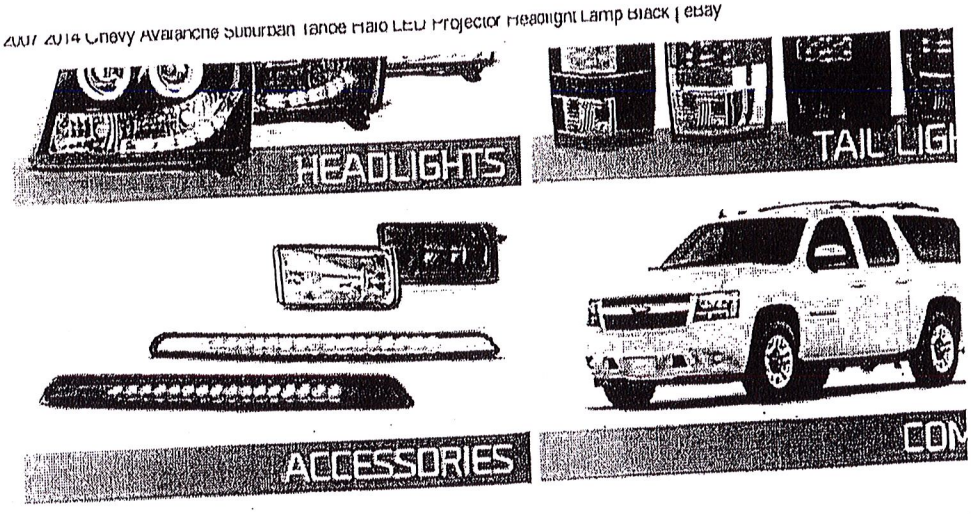
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HALOS

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By entering a bid or clicking the Commit to buy button, you are entering into a legal binding contract to purchase the item described above and yo confirm that you have read and understand the terms and conditions herein and you hereby agree to be bound by the obligation and responsibilit buyer and promise to pay the full amount as it shows on the final invoice.

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Questions and answers about this item

No questions or answers have been posted about this item.

Ask a question

4.9

16 ratings

5 ★ 9
4 ★ 1
3 ★ 0
2 ★ 0
1 ★ 0

100%
Item

Would recommend

100%
Seller

Good value

Write a review

Most relevant reviews

See all 8 reviews

Bought for mom as gift .

by jonathonchinn
Jan 27, 2016

Bought these for my mom's tahoe as a Christmas gift after she has commented on her headlights being dull and slightly damaged. She loves them and they look great. She says they are much brighter than the stock configuration. Only took a few minutes and basic wiring knowledge to hook them up maybe an hour total and in the run of that...

Verified purchase: Yes | Condition: New | Sold by: vipmotoz

Helpful (0) Unhelpful (0) Report

Awesome lights

by bella093020
May 06, 2016

I keep getting compliments on them everywhere I go. They make my car look like a newer model. I love them! Thank you

Verified purchase: Yes | Condition: New | Sold by: vipmotoz

Helpful (0) Unhelpful (0) Report

factory fit and looks great

by malibu622
Apr 12, 2016

not only do these look good, they fit perfect and work great

Verified purchase: Yes | Condition: New | Sold by: vipmotoz

Helpful (0) Unhelpful (0) Report

Great product with excellent quality.

by kemach0727
Jan 08, 2016

It is a very good Headlight lamp because of the quality and design of the product. I definately recommend it!

Verified purchase: Yes | Condition: New | Sold by: vipmotoz

Helpful (0) Unhelpful (0) Report

100%
agree

Good quality

by jstr3084
May 02, 2016

Good stuff

Exactly what I was expecting. And arrived early. I'm very pleased.

Verified purchase: Yes | Condition: New | Sold by: vipmotoz

Helpful (0)
Unhelpful (0)
Report

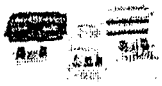
Sponsored Links

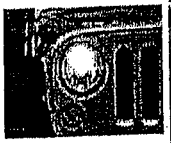

Spyder 5005456 Black Projector...
$226.10
Free Shipping
Xtreme Diesel...


Spyder 5010544 Black Projector...
$279.30
Free Shipping
Xtreme Diesel...


Spyder Auto 5010061 Halo Led...
$216.93
Autoplicity


Spyder 5009364 Chrome Projector...
$179.55
Free Shipping
Xtreme Diesel...


2007 Chevy Avalanche 1500
$199.95
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2014 Jeep Wrangler Recon Chrome
$949.95
Free Shipping
ExtremeTerrain.com


Fit 2007-2014 Chevy...
$159.71
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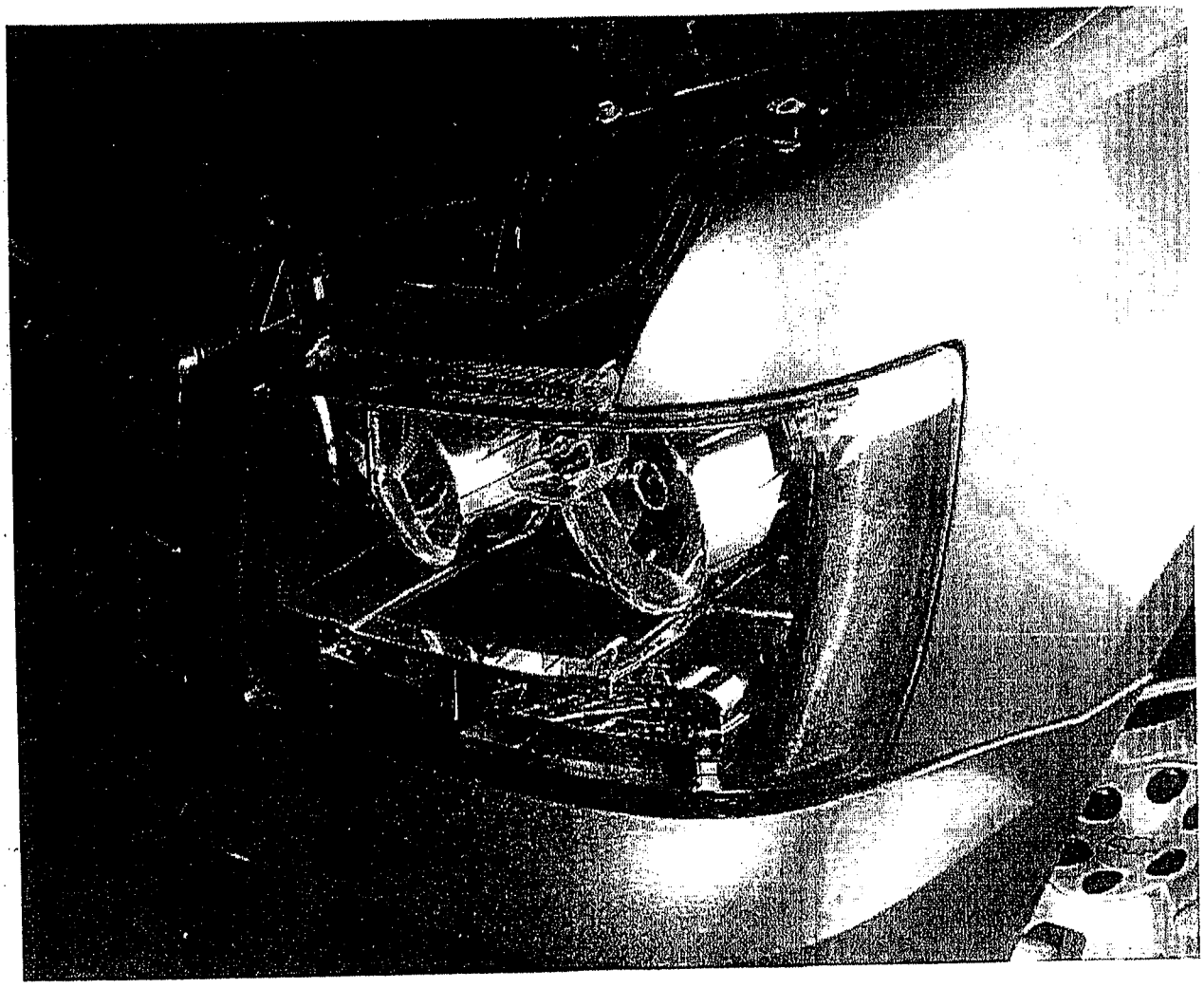
More to explore : Chevrolet Chevy II Headlights, Chevrolet Tahoe Headlights, Chevrolet Tahoe LED Lights, Chevrolet Chevy II LED Lights, LED Projectors, Chevrolet Avalanche 1500 He

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GM-Chevrolet-Tahoe-Headlight-Bulbs-Replacement-Guide-001

How to change the low beam, high beam, turn signal, DRL and front side marker light bulbs in the headlights of a 2007 to 2014 GM Chevy Tahoe SUV.



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APPENDIX II

Chevrolet Equinox Airbag Control Module Data

IMPORTANT NOTICE: Robert Bosch LLC and the manufacturers whose vehicles are accessible using the CDR System urge end users to use the latest production release of the Crash Data Retrieval system software when viewing, printing or exporting any retrieved data from within the CDR program. Using the latest version of the CDR software is the best way to ensure that retrieved data has been translated using the most current information provided by the manufacturers of the vehicles supported by this product.

CDR File Information

User Entered VIN	2CNFLPE54B6418470
User	W Poplin
Case Number	PT047-BU
EDR Data Imaging Date	07/18/2016
Crash Date	11/07/2014
Filename	PT047-2-2CNFLPE54B6418470_ACM.CDRX
Saved on	Monday, July 18 2016 at 15:09:26
Collected with CDR version	Crash Data Retrieval Tool 16.6
Reported with CDR version	Crash Data Retrieval Tool 16.6
EDR Device Type	Airbag Control Module
Event(s) recovered	Deployment, Deployment, Non-Deployment

Comments

Direct to module-BU

Data Limitations

Recorded Crash Events:

There are two types of recorded crash events for Front, Side, and Rear (FSR) Events. The first is the Non-Deployment Event. A Non-Deployment Event records data but does not deploy the air bag(s). The minimum SDM Recorded Vehicle Velocity Change, that is needed to record a Non-Deployment Event, is five MPH [8 km/h]. A Non-Deployment Event contains Pre-Crash and Crash data. The oldest Non-Deployment event can be overwritten by a Deployment Event, if all three records are full and the Non-Deployment Event is not locked. A Non-Deployment Event can be overwritten by a more recent Non-Deployment Event if all three records are full and the Non-Deployment is older than approximately 250 ignition cycles. Also, a Non-Deployment event can be recorded if one of the following occurs without the Deployment of any of the frontal air bags, side air bags, or roll bars:

- -Pretensioner(s) only Deployment
- -Head Rest Deployment
- -Battery Cut-Off Deployment

The second type of SDM recorded crash event for FSR Events is the Deployment Event. It also contains Pre-Crash and Crash data. Deployment Events cannot be overwritten or cleared by the SDM.

Rollover Events contains Pre-Crash and Crash data. Rollover event follow the same rules as FSR Deployment events.

The SDM can store up to three Events.

Data:

For FSR Events, SDM Recorded Vehicle Velocity Change reflects the change in velocity that the sensing system experienced during the recorded portion of the event. SDM Recorded Vehicle Velocity Change is the change in velocity during the recording time and is not the speed the vehicle was traveling before the event, and is also not the Barrier Equivalent Velocity. For Deployment Events, the SDM will record 220 milliseconds of data after the Deployment criteria is met and up to 70 milliseconds before the Deployment criteria is met. For Non-Deployment Events, the SDM will record the first 300 milliseconds of data after algorithm enable.

For Rollover Events, the SDM may record Lateral Acceleration, Vertical Acceleration, and Roll Rate data, if the SDM is rollover capable. This data reflects what the sensing system experienced during the recorded portion of the event. For Non-Deployment (Non-rollover) Events, the SDM will record 750 milliseconds of data before a calibrated angle threshold is reached. For Deployment Events, the SDM will record up to 490 milliseconds of data before the Deployment criteria is met and 250 milliseconds after the Deployment criteria is met.

-Deployment loops may be displayed as being deployed in a Non-Deployment event record, if a Deployment event is qualified during the Non-Deployment event. That is, if two or more events are occurring at the same time and one is a Non-Deployment event and one of the others is a Deployment event, and the Deployment event is qualified while the Non-Deployment is still active, the deployed loops may be recorded in the Non-Deployment event record.

-Time between events is recorded in 10 msec intervals and is displayed in seconds for a maximum time of 655.33 seconds. The counter measures the time from the start of one event to the start of the next event if both events occur within the same ignition cycle.

-The CDR tool displays time from Algorithm Enable (AE) to time of Deployment command in a Deployment event and AE to time of maximum SDM recorded vehicle velocity change in a Non-Deployment event. Time from AE begins when the first air bag system enable threshold is met and ends when Deployment command criteria is met or at maximum SDM recorded vehicle velocity change. Any air bag systems may be a source of an enable.

-Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change is captured when the largest, absolute value of either the Longitudinal or Lateral Recorded Vehicle Velocity Change occurs. The Maximum may occur between the recorded 10 millisecond sample points.

-Event Recording Complete will indicate if data from the recorded event has been fully written to the SDM memory or if it has been interrupted and not fully written.

-SDM Recorded Vehicle Speed accuracy can be affected by various factors, including but not limited to the following:

- -Significant changes in the tire's rolling radius
- -Final drive axle ratio changes

-Wheel lockup and wheel slip
-Brake Switch Circuit Status indicates the open/closed state of the brake switch circuit.
-Pre-Crash data is recorded asynchronously. The 0.5 second Pre-crash data value (most recent recorded data point) is the data point last sampled before AE. That is to say, the last data point may have been captured just before AE but no more than 0.5 second before AE. All subsequent Pre-crash data values are referenced from this data point.
-Pre-Crash Electronic Data Validity Check Status indicates "Data Invalid" if:
-The SDM receives a message with an "invalid" flag from the module sending the pre-crash data
-Pre-Crash Electronic Data Validity Check Status indicates "Data Not Available" if:
-No data is received from the module sending the pre-crash data
-For diesel powered vehicles, the data displayed as Throttle Position (%) is actually the data for the Air Inlet Flap Position. This is not the same as the throttle position for a gasoline powered engines.
-Belt Switch Circuit Status indicates the status of the seat belt switch circuit.
-The ignition cycle counter will increment when the power mode cycles from OFF/Accessory to RUN. Applying and removing of battery power to the module will not increment the ignition cycle counter.
-Ignition Cycles Since DTCs Were Last Cleared can record a maximum value of 253 cycles and can only be reset by a scan tool.
-Dynamic Deployment Event Counter tracks the number of Deployment events that have occurred during the SDM's lifetime.
-Dynamic Event Counter tracks the number of qualified events (either Deployments, Non-Deployments, or Rollover events) that have occurred during the SDM's lifetime.
-For Deployment Events, DTC B0052 (Deployment commanded) shall be recorded with the remainder of the data for this event even though it occurred after Event Enable.
-Once a firing loop has been commanded to be deployed, it will not be commanded to be deployed again during the same ignition cycle. Firing loop deployment times for subsequent deployment type events, during the same ignition cycle, will not be recorded. Also, forced timer loops, will not be shown as being commanded to deploy. Loops without their own independent deployment calibration are called "forced timer loops." Examples of a forced timer loops are Pretensioner Deployment Loop #2 and Knee Deployment Loop.
-Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously may be reported higher than Ignition Cycles At Event because the Ignition Cycles SIR Warning Lamp was ON/OFF counter is not cleared during the vehicle build process.
-Ignition Cycles At Event may be reported higher than Ignition Cycles At Investigation by one ignition cycle. This is due to the way Ignition Cycles At Investigation is written during a vehicle power loss situation.
-The reported range of the longitudinal and lateral acceleration values is approximately ± 50 g.
-All data should be examined in conjunction with other available physical evidence from the vehicle and scene.

Data Source:
All SDM recorded data is measured, calculated, and stored internally, except for the following:
-Vehicle Status Data (Pre-Crash) is transmitted to the SDM, by Body Control Module, via the vehicle's communication network.
-The Belt Switch Circuit is wired directly to the SDM.

Data Element Sign Convention:
The following table provides an explanation of the sign notation for data elements that may be included in this CDR report. Directional references to sign notation are all from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Data Element Name	Positive Sign Notation Indicates
Longitudinal Velocity Change	Forward
Lateral Acceleration	Left to Right
Lateral Velocity Change	Left to Right
Vertical Acceleration	Downward
Roll Rate	Clockwise Rotation

Hexadecimal Data:
Data that the vehicle manufacturer has specified for data retrieval is shown in the hexadecimal data section of the CDR report. The hexadecimal data section of the CDR report may contain data that is not translated by the CDR program. The control module contains additional data that is not retrievable by the CDR tool.

01038_SDM10&SDM10i-autoliv_r021

Event Data (General)

Ignition Cycles At Investigation	3466
ESS # 1 Traceability Data	AU0000E000000000
ESS # 2 Traceability Data	DA0000E000000000
ESS # 3 Traceability Data	AH0000E000000000
ESS # 4 Traceability Data	AJ0000E000000000
ESS # 5 Traceability Data	AT0000E000000000
ESS # 6 Traceability Data	DB0000E000000000
ESS # 7 Traceability Data	000000E000000000
ESS # 8 Traceability Data	000000E000000000
Dynamic Deployment Event Counter	2
Dynamic Event Counter	3
Dynamic OnStar Notification Event Counter	2
Vehicle Identification Number	2CNFLPE54B6418470
System Type	Autoliv
Manufacturing Traceability Data	AS4893E050709201
Software Module Identifier 1	00CF22EB
Software Module Identifier 2	0140467E
Software Module Identifier 3	0189ECCF
End Model Part Number	00CF22ED

Event Data (Event Record 1)

Event Recording Complete	Yes
Event Record Type	Deployment
Crash Record Locked	Yes
OnStar Deployment Status Data Sent	Yes
OnStar SDM Recorded Vehicle Velocity Change Data Sent	Yes
Deployment Event Counter	1
Event Counter	1
OnStar Notification Event Counter	1
Algorithm Active: Rear	No
Algorithm Active: Rollover	Yes
Algorithm Active: Side	Yes
Algorithm Active: Frontal	Yes
Ignition Cycles At Event	3466
Time Between Events (sec)	Data Not Available
Concurrent Event Flag Set	No
Event Severity Status: Rollover	No
Event Severity Status: Rear	No
Event Severity Status: Right Side	Yes
Event Severity Status: Left Side	No
Event Severity Status: Frontal Stage 2	No
Event Severity Status: Frontal Stage 1	No
Event Severity Status: Frontal Pretensioner	No
Driver 1st Stage Deployment Loop Commanded	No
Passenger 1st Stage Deployment Loop Commanded	No
Driver 2nd Stage Deployment Loop Commanded	No
Passenger 2nd Stage Deployment Loop Commanded	No
Driver Pretensioner Deployment Loop #1 Commanded	Yes
Passenger Pretensioner Deployment Loop #1 Commanded	Yes
Driver Pretensioner Deployment Loop #2 Commanded	Yes
Passenger Pretensioner Deployment Loop #2 Commanded	Yes
Driver Thorax Loop Commanded	No
Passenger Thorax Loop Commanded	Yes
Left Row 1 Roof Rail/Head Curtain Loop Commanded	Yes
Right Row 1 Roof Rail/Head Curtain Loop Commanded	Yes
Driver Belt Switch Circuit Status	Buckled
Passenger Belt Switch Circuit Status	Not Buckled
Passenger Seat Occupancy Status	Empty
Passenger Classification Status	Not Applicable
Passenger Air Bag ON Indicator Status	Off
Passenger Air Bag OFF Indicator Status	On
Low Tire Pressure Warning Lamp	Off
SIR Warning Lamp Status	Off
SIR Warning Lamp ON/OFF Time Continuously (seconds)	655330
Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously	230
Ignition Cycles Since DTCs Were Last Cleared at Event Enable	253
Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change (msec)	200
Longitudinal SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	-2 [-4]
Lateral SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	-4 [-7]
Driver 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	27
Passenger Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	27
Driver Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	27

Passenger Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	27

DTCs Present at Time of Event (Event Record 1)

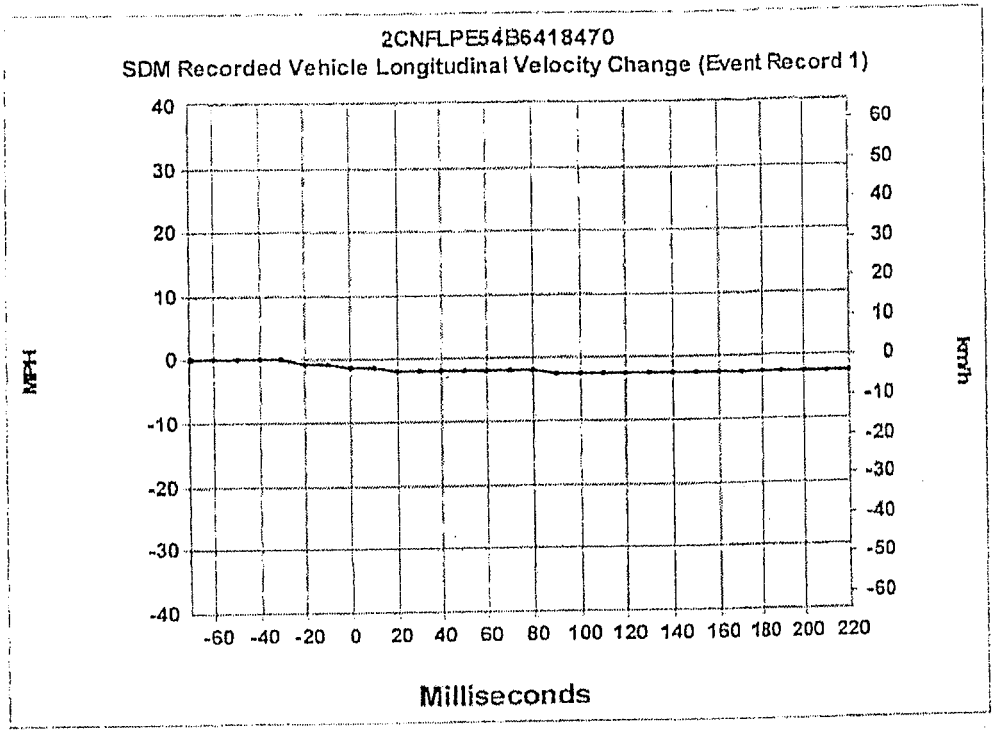
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Pre-Crash Data -1 to -.5 sec (Event Record 1)

Times (sec)	Cruise Control Active	Cruise Control Resume Switch Active	Cruise Control Set Switch Active	Engine Torque (lb-ft [N-m])	Reduced Engine Power Mode Indicator
-1.0	No	No	No	72 [97]	Off
-0.5	No	No	No	69 [94]	Off

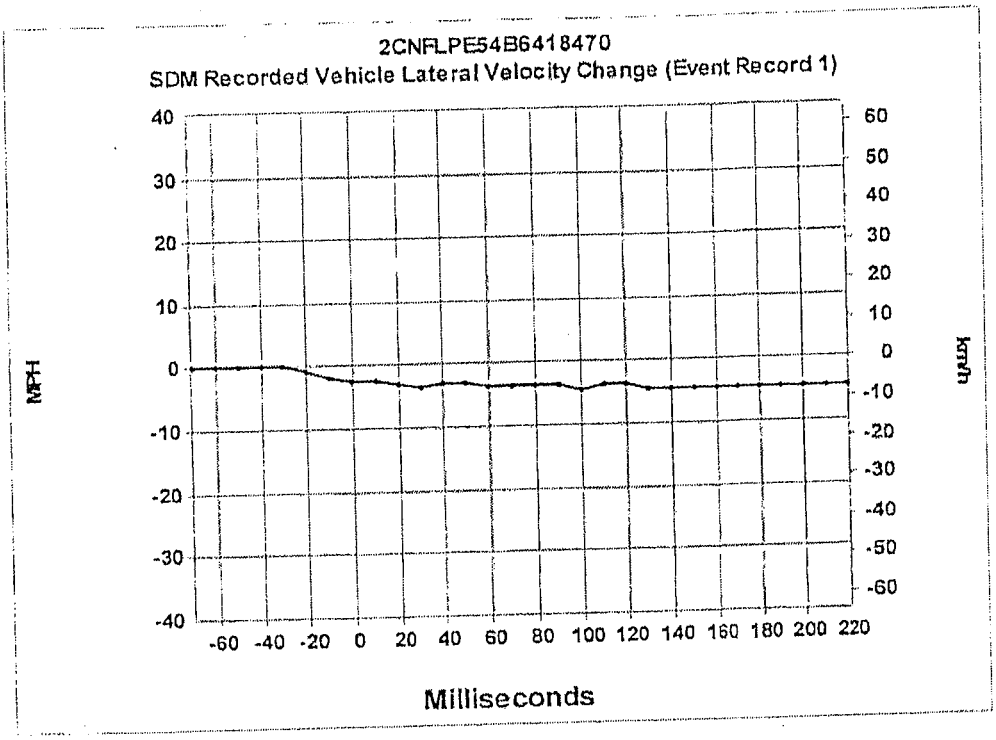
Pre-Crash Data -2.5 to -.5 sec (Event Record 1)

Times (sec)	Accelerator Pedal Position (percent)	Brake Switch Circuit State	Engine Speed	Throttle Position (%)	Vehicle Speed (MPH [km/h])
-2.5	17	Off	1600	30	62 [100]
-2.0	14	Off	1536	27	62 [100]
-1.5	14	Off	1600	26	63 [101]
-1.0	13	Off	1600	26	62 [100]
-0.5	13	Off	1600	26	62 [100]



Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	-0.6	-1.0
-10	-0.6	-1.0
0	-1.2	-2.0
10	-1.2	-2.0
20	-1.9	-3.0
30	-1.9	-3.0
40	-1.9	-3.0
50	-1.9	-3.0
60	-1.9	-3.0
70	-1.9	-3.0
80	-1.9	-3.0
90	-2.5	-4.0
100	-2.5	-4.0
110	-2.5	-4.0
120	-2.5	-4.0
130	-2.5	-4.0

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
140	-2.5	-4.0
150	-2.5	-4.0
160	-2.5	-4.0
170	-2.5	-4.0
180	-2.5	-4.0
190	-2.5	-4.0
200	-2.5	-4.0
210	-2.5	-4.0
220	-2.5	-4.0



Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	-0.6	-1.0
-10	-1.9	-3.0
0	-2.5	-4.0
10	-2.5	-4.0
20	-3.1	-5.0
30	-3.7	-6.0
40	-3.1	-5.0
50	-3.1	-5.0
60	-3.7	-6.0
70	-3.7	-6.0
80	-3.7	-6.0
90	-3.7	-6.0
100	-4.3	-7.0
110	-3.7	-6.0
120	-3.7	-6.0
130	-4.3	-7.0

Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
140	-4.3	-7.0
150	-4.3	-7.0
160	-4.3	-7.0
170	-4.3	-7.0
180	-4.3	-7.0
190	-4.3	-7.0
200	-4.3	-7.0
210	-4.3	-7.0
220	-4.3	-7.0

SDM Recorded Vehicle Lateral Acceleration (Event Record 1)

Contains No Recorded Data

SDM Recorded Vehicle Vertical Acceleration (Event Record 1)

Contains No Recorded Data

SDM Recorded Vehicle Roll Rate (Event Record 1)

Contains No Recorded Data

Event Data (Event Record 2)

Event Recording Complete	Yes
Event Record Type	Deployment
Crash Record Locked	Yes
OnStar Deployment Status Data Sent	Yes
OnStar SDM Recorded Vehicle Velocity Change Data Sent	Yes
Deployment Event Counter	2
Event Counter	2
OnStar Notification Event Counter	2
Algorithm Active: Rear	Yes
Algorithm Active: Rollover	Yes
Algorithm Active: Side	Yes
Algorithm Active: Frontal	Yes
Ignition Cycles At Event	3466
Time Between Events (sec)	2.64
Concurrent Event Flag Set	No
Event Severity Status: Rollover	No
Event Severity Status: Rear	No
Event Severity Status: Right Side	No
Event Severity Status: Left Side	Yes
Event Severity Status: Frontal Stage 2	Yes
Event Severity Status: Frontal Stage 1	Yes
Event Severity Status: Frontal Pretensioner	Yes
Driver 1st Stage Deployment Loop Commanded	No
Passenger 1st Stage Deployment Loop Commanded	Yes
Driver 2nd Stage Deployment Loop Commanded	No
Passenger 2nd Stage Deployment Loop Commanded	Yes
Driver Pretensioner Deployment Loop #1 Commanded	Yes
Passenger Pretensioner Deployment Loop #1 Commanded	Yes
Driver Pretensioner Deployment Loop #2 Commanded	Yes
Passenger Pretensioner Deployment Loop #2 Commanded	No
Driver Thorax Loop Commanded	No
Passenger Thorax Loop Commanded	No
Left Row 1 Roof Rail/Head Curtain Loop Commanded	No
Right Row 1 Roof Rail/Head Curtain Loop Commanded	Buckled
Driver Belt Switch Circuit Status	Not Buckled
Passenger Belt Switch Circuit Status	Empty
Passenger Seat Occupancy Status	Not Applicable
Passenger Classification Status	Off
Passenger Air Bag ON Indicator Status	On
Passenger Air Bag OFF Indicator Status	Off
Low Tire Pressure Warning Lamp	Off
SIR Warning Lamp Status	655330
SIR Warning Lamp ON/OFF Time Continuously (seconds)	230
Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously	253
Ignition Cycles Since DTCs Were Last Cleared at Event Enable	110
Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change (msec)	-48 [-78]
Longitudinal SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	6 [10]
Lateral SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	6
Driver 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	9
Driver 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

Passenger Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

DTCs Present at Time of Event (Event Record 2)

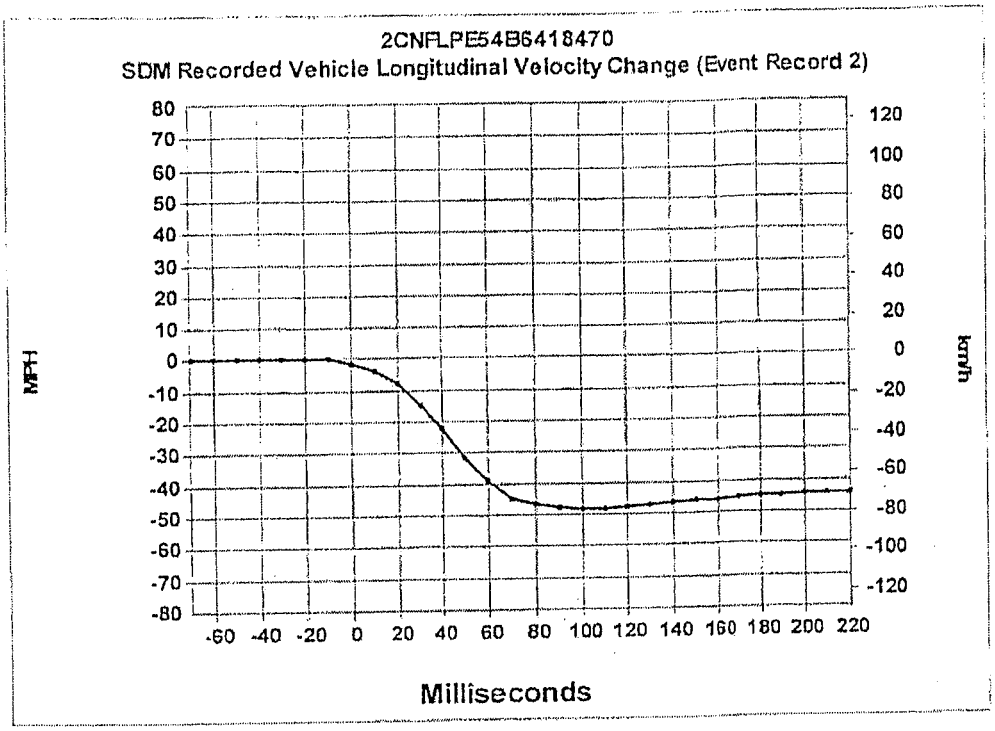
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Pre-Crash Data -1 to -.5 sec (Event Record 2)

Times (sec)	Cruise Control Active	Cruise Control Resume Switch Active	Cruise Control Set Switch Active	Engine Torque (lb-ft [N-m])	Reduced Engine Power Mode Indicator
-1.0	No	No	No	110 [149]	Off
-0.5	No	No	No	13 [18]	Off

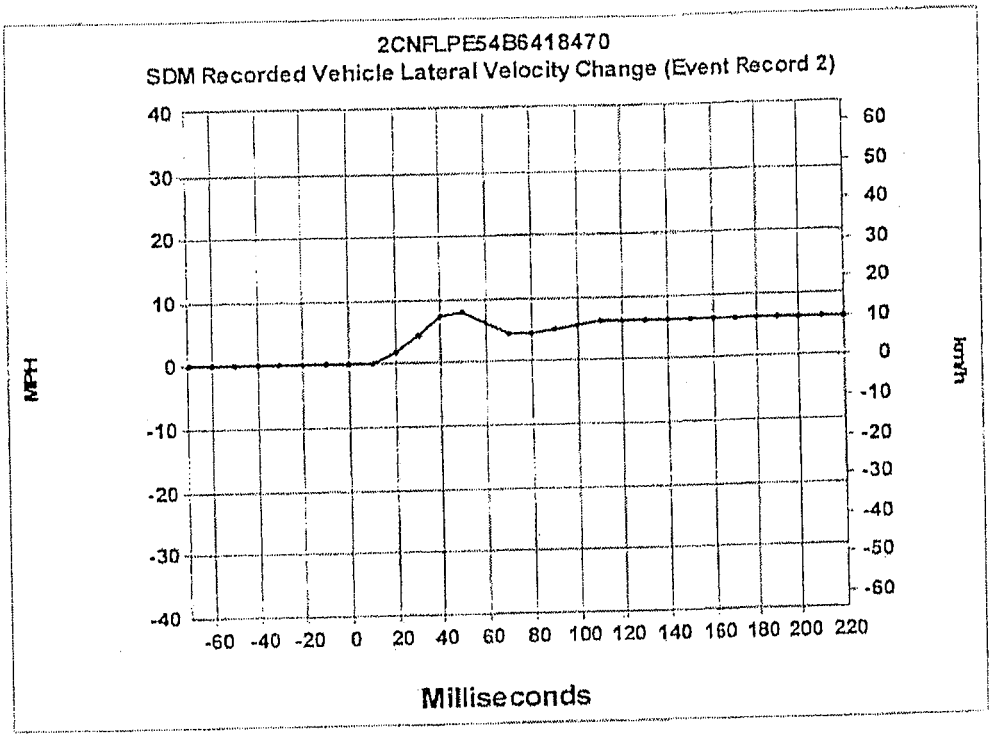
Pre-Crash Data -2.5 to -.5 sec (Event Record 2)

Times (sec)	Accelerator Pedal Position (percent)	Brake Switch Circuit State	Engine Speed	Throttle Position (%)	Vehicle Speed (MPH [km/h])
-2.5	0	Off	1664	20	51 [82]
-2.0	0	Off	1344	8	57 [92]
-1.5	29	Off	1216	47	53 [85]
-1.0	0	Off	1920	28	53 [85]
-0.5	0	On	1280	12	48 [77]



Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	0.0	0.0
-10	0.0	0.0
0	-1.2	-2.0
10	-3.7	-6.0
20	-8.1	-13.0
30	-14.9	-24.0
40	-22.4	-36.0
50	-31.7	-51.0
60	-39.1	-63.0
70	-44.7	-72.0
80	-46.6	-75.0
90	-47.8	-77.0
100	-48.5	-78.0
110	-48.5	-78.0
120	-47.8	-77.0
130	-47.2	-76.0

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
140	-46.6	-75.0
150	-46.0	-74.0
160	-46.0	-74.0
170	-45.4	-73.0
180	-44.7	-72.0
190	-44.7	-72.0
200	-44.1	-71.0
210	-44.1	-71.0
220	-44.1	-71.0



Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	0.0	0.0
-10	0.0	0.0
0	0.0	0.0
10	0.0	0.0
20	1.9	3.0
30	4.3	7.0
40	7.5	12.0
50	8.1	13.0
60	6.2	10.0
70	4.3	7.0
80	4.3	7.0
90	5.0	8.0
100	5.6	9.0
110	6.2	10.0
120	6.2	10.0
130	6.2	10.0

Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
140	6.2	10.0
150	6.2	10.0
160	6.2	10.0
170	6.2	10.0
180	6.2	10.0
190	6.2	10.0
200	6.2	10.0
210	6.2	10.0
220	6.2	10.0

SDM Recorded Vehicle Lateral Acceleration (Event Record 2)

Contains No Recorded Data

SDM Recorded Vehicle Vertical Acceleration (Event Record 2)

Contains No Recorded Data

SDM Recorded Vehicle Roll Rate (Event Record 2)

Contains No Recorded Data

Event Data (Event Record 3)

Event Recording Complete	Yes
Event Record Type	Non-Deployment
Crash Record Locked	No
OnStar Deployment Status Data Sent	Yes
OnStar SDM Recorded Vehicle Velocity Change Data Sent	Yes
Deployment Event Counter	2
Event Counter	3
OnStar Notification Event Counter	2
Algorithm Active: Rear	No
Algorithm Active: Rollover	Yes
Algorithm Active: Side	No
Algorithm Active: Frontal	No
Ignition Cycles At Event	3466
Time Between Events (sec)	0.39
Concurrent Event Flag Set	No
Event Severity Status: Rollover	No
Event Severity Status: Rear	No
Event Severity Status: Right Side	No
Event Severity Status: Left Side	No
Event Severity Status: Frontal Stage 2	No
Event Severity Status: Frontal Stage 1	No
Event Severity Status: Frontal Pretensioner	No
Driver 1st Stage Deployment Loop Commanded	No
Passenger 1st Stage Deployment Loop Commanded	No
Driver 2nd Stage Deployment Loop Commanded	No
Passenger 2nd Stage Deployment Loop Commanded	No
Driver Pretensioner Deployment Loop #1 Commanded	No
Passenger Pretensioner Deployment Loop #1 Commanded	No
Driver Pretensioner Deployment Loop #2 Commanded	No
Passenger Pretensioner Deployment Loop #2 Commanded	No
Driver Thorax Loop Commanded	No
Passenger Thorax Loop Commanded	No
Left Row 1 Roof Rail/Head Curtain Loop Commanded	No
Right Row 1 Roof Rail/Head Curtain Loop Commanded	No
Driver Belt Switch Circuit Status	Buckled
Passenger Belt Switch Circuit Status	Not Buckled
Passenger Seat Occupancy Status	Empty
Passenger Classification Status	Not Applicable
Passenger Air Bag ON Indicator Status	Off
Passenger Air Bag OFF Indicator Status	On
Low Tire Pressure Warning Lamp	Off
SIR Warning Lamp Status	Off
SIR Warning Lamp ON/OFF Time Continuously (seconds)	655330
Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously	230
Ignition Cycles Since DTCs Were Last Cleared at Event Enable	253
Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change (msec)	210
Longitudinal SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	6 [9]
Lateral SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	0 [0]
Driver 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

Passenger Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

DTCs Present at Time of Event (Event Record 3)

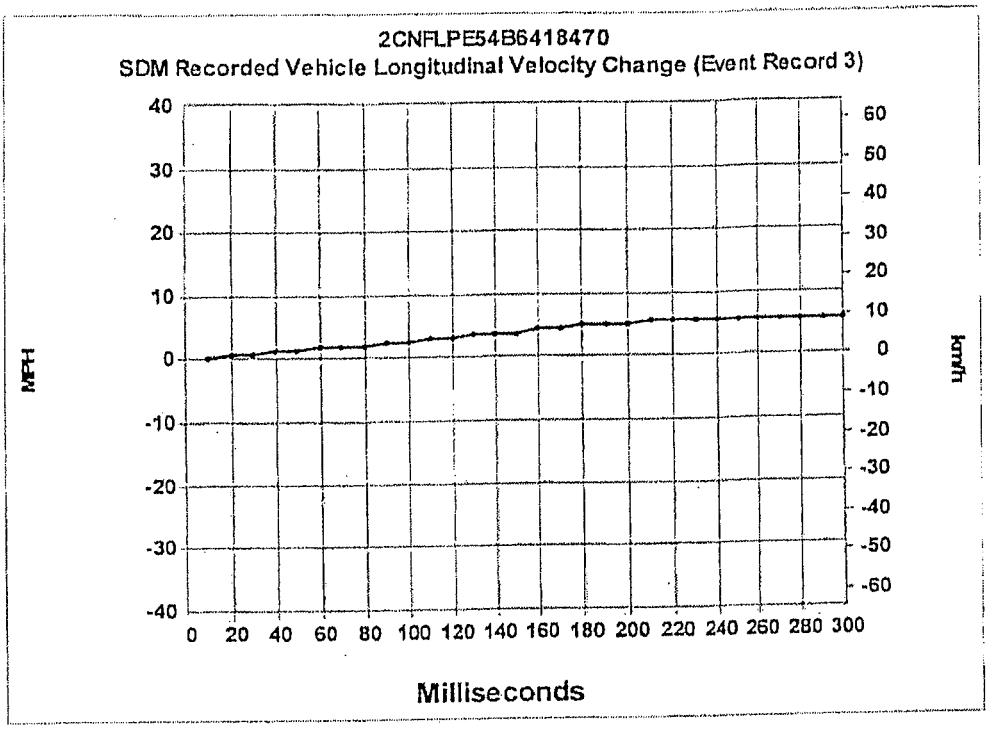
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Pre-Crash Data -1 to -.5 sec (Event Record 3)

Times (sec)	Cruise Control Active	Cruise Control Resume Switch Active	Cruise Control Set Switch Active	Engine Torque (lb-ft [N-m])	Reduced Engine Power Mode Indicator
-1.0	No	No	No	13 [18]	Off
-0.5	No	No	No	-4 [-5]	Off

Pre-Crash Data -2.5 to -.5 sec (Event Record 3)

Times (sec)	Accelerator Pedal Position (percent)	Brake Switch Circuit State	Engine Speed	Throttle Position (%)	Vehicle Speed (MPH [km/h])
-2.5	0	Off	1344	8	57 [92]
-2.0	29	Off	1216	47	53 [85]
-1.5	0	Off	1920	28	53 [85]
-1.0	0	On	1280	12	48 [77]
-0.5	0	On	960	15	40 [65]



Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
10	0.0	0.0
20	0.6	1.0
30	0.6	1.0
40	1.2	2.0
50	1.2	2.0
60	1.9	3.0
70	1.9	3.0
80	1.9	3.0
90	2.5	4.0
100	2.5	4.0
110	3.1	5.0
120	3.1	5.0
130	3.7	6.0
140	3.7	6.0
150	3.7	6.0
160	4.3	7.0
170	4.3	7.0
180	5.0	8.0
190	5.0	8.0
200	5.0	8.0
210	5.6	9.0

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
220	5.6	9.0
230	5.6	9.0
240	5.6	9.0
250	5.6	9.0
260	5.6	9.0
270	5.6	9.0
280	5.6	9.0
290	5.6	9.0
300	5.6	9.0

SDM Recorded Vehicle Lateral Velocity Change (Event Record 3)

Contains No Recorded Data

SDM Recorded Vehicle Lateral Acceleration (Event Record 3)

Contains No Recorded Data

SDM Recorded Vehicle Vertical Acceleration (Event Record 3)

Contains No Recorded Data

SDM Recorded Vehicle Roll Rate (Event Record 3)

Contains No Recorded Data

Hexadecimal Data

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DPID $15
01 02 03 04 05 06 07

DPID $16
08 09 0A 0D 0E 00 00

DPID $17
00 00 00 00 00 00 00

DPID $32
00 FD 0D 8A 00 00 00

DPID $35
78 00 00 00 00 00 00

DID $01
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DID $03
44 41 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $05
41 48 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $07
41 4A 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $09
41 54 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $0B
44 42 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $0D
30 30 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $0F
30 30 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $30
02 00 03 02

DID $90
32 43 4E 46 4C 50 45 3E 34 42 36 34 31 38 34 37 30

DID $9A
04 01

DID $B4
41 53 34 38 39 33 45 30 35 30 37 30 39 32 30 31

DID $C1
00 CF 22 EB

DID $C2
01 40 46 7E

DID $C3
01 89 EC CF
```

DID $CB
00 CF 22 ED

DID $31

```
0000   A5 F0 01 00 01 01 07 0D 8A FF
0010   FF 00 00 00 20 03 D3 00 00 00
0020   4C FC FC F0 00 00 C0 10 0D 0D
0030   0E 0E 11 00 00 00 00 19 19 19
0040   18 19 07 5B 07 62 1A 1A 1A 1B
0050   1E 64 64 65 64 64 00 FF FD 00
0060   E6 FD 00 00 00 00 00 00 00 00
0070   00 00 00 00 00 00 00 00 00 00
0080   00 00 00 00 00 00 80 52 00 14
0090   7B 78 FF FF FF FF 09 09 09 09
0100   7F 7E 7F 7E 7F 7F 7F 7F 7E 7E
0110   7E 7E 7E 7C 7D 7B 7D 7B 7C 7A
0120   7C 79 7C 7A 7C 7A 7C 79 7C 79
0130   7C 79 7B 79 7B 7B 7B 79 7B 79
0140   7B 7B 7B 7B 7B 7B 7B 7B 7B 7B
0150   7B 7B 7B 7B 7B 7B 7B 7B 7B 7B
0160   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
0170   7D 7F 7D 7D 7F 7D 7D 7F 7D 7D
0180   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0190   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
0200   7D 7F 7D 7D 7F 7D 7D 7F 7D 7D
0210   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0220   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
0230   7D 7F 7D 7D 7F 7D 7D 7F 7D 7D
0240   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0250   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
0260   7D 7F 7D 7D 7F 7D 7D 7F 7D 7D
0270   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0280   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
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0360   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0370   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
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0470   00 00 00 00 00 00 00 00 00 00
0480   00 00 00 00 00 00 00 00 00 00
0490   00 00 00 00 00 00 00 00 CC 19
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DID $32

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DID $33

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0180   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0190   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
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0210   7F 7D 7D 7F 7D 7D 7F 7D 7D 7F
0220   7D 7D 7F 7D 7D 7F 7D 7D 7F 7D
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0230	7D	7F	7D	7D	7F	7D	7D	7F	7D	7D
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0270	7F	7D	7D	7F	7D	7D	7F	7D	7D	7F
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0350	7D	7F	7D	7D	7F	7D	7D	7F	7D	7D
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0370	7D	7D	7F	7D	7D	7F	7D	7D	7F	7D
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0450	00	00	00	00	00	00	00	00	00	00
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0480	00	00	00	00	00	00	00	00	00	00
0490	00	00	00	00	00	00	00	00	DB	19

Disclaimer of Liability

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**UIM CARRIER'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSION**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFF

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, UIM Carrier USAA General Indemnity Company on behalf of Defendant, reserving the right to amend and/or supplement, hereby responds to Plaintiff's First Request for Admission to Defendant's UIM Carrier, as follows:

1. Admit that Plaintiff, Therese Hood, was operating her vehicle with her headlamps illuminated at the time of the collision.

RESPONSE: Denied.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: MBS

JACKSON H. DANIEL, III
State Bar No.:70308

MADISON B. SUTTIE
State Bar No.: 101385

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
843-727-0307

Attorneys for USAA General Indemnity Company appearing pursuant to S.C. Code §38-77-160 on behalf of Defendant

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Kevin B. Smith, Esq.
Hoffman Law Firm
7087 Rivers Avenue
North Charleston, SC 29406
Attorney for Plaintiff Therese Hood

This 11th day of January, 2017.

Legal Secretary to Jackson H. Daniel, III

Carlock, Copeland & Stair LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2017-CP-27-00073
Plaintiff,	)	
vs.	)	**ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	**(Jury Trial Requested)**
Defendant.	)	

Defendant United Services Automobile Association ("USAA") answers the Plaintiff's Amended Complaint ("Complaint") as set forth below. All allegations of the Complaint not specifically admitted are denied.

1. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies the same.

2. By way of response to Paragraph 2, USAA states that it is a reciprocal inter-insurance exchange organized under Texas law that is an unincorporated association with its principal place of business in Texas and that it is authorized to engage in the business of insurance in the State of South Carolina. Otherwise, the allegations of Paragraph 2 are denied.

3. The allegations of Paragraph 3 contain legal conclusions to which no response is required.

4. The allegations of Paragraph 4 contain legal conclusions to which no response is required.

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

5. Due to the vagueness and ambiguity of the allegations of Paragraph 5, USAA is without knowledge or information sufficient to form a belief as to the truth of those allegations. Further answering, USAA admits that it insures property in Jasper County, South Carolina.

6. Due to the vagueness and ambiguity of the allegations of Paragraph 6, USAA is without knowledge or information sufficient to form a belief as to the truth of those allegations.

7. The allegations of Paragraph 7 contain legal conclusions to which no response is required.

8. The allegations of Paragraph 8 contain legal conclusions to which no response is required.

9. The allegations of Paragraph 9 are denied.

10. Due to the vagueness and ambiguity of the allegations of Paragraph 10, USAA is without knowledge or information sufficient to form a belief as to the truth of those allegations. Further answering, USAA admits that it insures property in Jasper County, South Carolina.

11. The allegations of Paragraph 11 are denied.

12. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefore denies the same.

13. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and therefore denies the same.

14. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 and therefore denies the same.

15. By way of response to Paragraphs 15, 16, 17, and 18, USAA admits that it issued Policy No. 011043223U71034 effective November 1, 2014, which insured Therese Hood and a 2011 Chevrolet Equinox as of November 7, 2014. USAA craves reference to the policy of

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP270073

insurance for the terms, coverages, and conditions contained therein. Otherwise, the allegations of those paragraphs are denied.

16. The allegations of Paragraph 19 contain legal conclusions to which no response is required.

17. The allegations of Paragraph 20 contain legal conclusions to which no response is required.

18. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies the same.

19. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies the same.

20. The allegations of Paragraph 23 are admitted, upon information and belief.

21. The allegations of Paragraph 24 are admitted, upon information and belief.

22. The allegations of Paragraph 25 are admitted, upon information and belief.

23. USAA denies that the assertion continued in Paragraph 26 was made by and through the servants, agents, or employees of USAA. With respect to the assertions of Woodrow Poplin's report, USAA craves reference to the report for the assertions contained therein. Otherwise, the allegations of Paragraph 26 are denied.

24. By way of response to Paragraph 27, USAA craves reference to the responses to the Plaintiff's First Set of Requests for Admission for the assertions contained therein.

25. The allegations of Paragraph 28 are denied.

26. The allegations of Paragraph 29 are denied.

27. The allegations of Paragraph 30 are denied.

28. The allegations of Paragraph 31 are denied.

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

29. The allegations of Paragraph 32 are denied.

30. By way of response to Paragraph 33, USAA refers to the previous paragraphs.

31. The allegations of Paragraph 34 contain legal conclusions to which no response is required. To the extent that a response is required, those allegations are denied.

32. The allegations of Paragraph 35 are denied.

33. The allegations of Paragraph 36 contain legal conclusions to which no response is required.

34. The allegations of Paragraph 37 are denied.

35. The allegations of Paragraph 38 contain legal conclusions to which no response is required. Further answering, USAA craves reference to the contract of insurance for the terms, conditions, and coverages stated therein.

36. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 and therefore denies the same.

37. The allegations of Paragraph 40 are denied.

38. The allegations of Paragraph 41 are denied.

39. The allegations of Paragraph 42 are denied.

40. The allegations of Paragraph 43 are denied.

41. The allegations of Paragraph 44 are denied.

42. The allegations of Paragraph 45 are denied.

43. The allegations of Paragraph 46 are denied.

44. The allegations of Paragraph 47 are denied.

45. The allegations of Paragraph 48 are denied.

46. The allegations of Paragraph 49 are denied.

47. By way of response to Paragraph 50, USAA refers to the previous paragraphs.

48. The allegations of Paragraph 51 are denied.

49. The allegations of Paragraph 52 are denied.

50. The allegations of Paragraph 53 are denied.

51. By way of response to Paragraph 54, USAA refers to the previous paragraphs.

52. The allegations of Paragraph 55 contain legal conclusions to which no response is required.

53. The allegations of Paragraph 56 are denied.

54. The allegations of Paragraph 57 are denied.

55. The allegations of Paragraph 58 are denied.

56. The allegations of Paragraph 59 are denied.

57. By way of response to Paragraph 60, USAA refers to the previous paragraphs.

58. The allegations of Paragraph 61 are denied.

59. The allegations of Paragraph 62 are denied.

60. The allegations of Paragraph 63 are denied.

61. By way of response to Paragraph 64, USAA refers to the previous paragraphs.

62. The allegations of Paragraph 65 are denied.

63. The allegations of Paragraph 66 are denied.

64. The allegations of Paragraph 67 are denied.

65. The allegations of Paragraph 68 are denied.

66. By way of response to Paragraph 69, USAA refers to the previous paragraphs.

67. The allegations of Paragraph 70 are denied.

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

68. The allegations of Paragraph 71 contain legal conclusions to which no response is required.

69. The allegations of Paragraph 72 are denied.

70. The allegations of Paragraph 73 are denied.

71. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74 and therefore denies the same.

72. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 75 and therefore denies the same.

73. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76 and therefore denies the same.

74. The allegations of Paragraph 77 are denied.

75. The allegations of Paragraph 78 are denied.

76. USAA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 79 and therefore denies the same.

77. The allegations of Paragraph 80 are denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

78. The Plaintiff's Complaint fails to state claims upon which relief can be granted against USAA and therefore those claims should be dismissed pursuant to SCRCP Rule 12(b)(6).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

79. The Plaintiff's claims should be barred or reduced in proportion to her own comparative fault, if any.

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

80. The statutes cited in the Plaintiff's Complaint, including S.C. Codes § 38-59-20 and 38-47-10 do not give rise to a private cause of action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

81. The Plaintiff's Complaint fails to state a valid claim for punitive damages. Moreover, Plaintiff's claim for punitive damages is barred or limited under South Carolina law and/or by the procedural and substantive due process guarantees, the guarantees against the taking of property in an arbitrary or irrational manner or without adequate compensation, the guarantees of equal protection of the laws, and the guarantees against undue burden upon commerce set forth in the United States Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

82. Pursuant to Rule 12(b)(3), USAA asserts that this action has been brought in an improper venue and that it should be transferred to a proper venue.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

83. USAA reserves the right to assert any additional defenses as may be revealed during the course of discovery.

WHEREFORE, having fully answered the Plaintiff's Complaint, USAA prays that the claims against it be dismissed and for such other and further relief as this Court may deem just and proper.

[*SIGNATURE ON FOLLOWING PAGE*]

ELECTRONICALLY FILED - 2017 May 05 10:04 AM - JASPER - COMMON PLEAS - CASE#2017CP2700073

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ ROBERT W. WHELAN

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SC Bar No: 102339
E-Mail: matt.orville@nelsonmullins.com
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(843) 853-5200

Counsel for USAA

Charleston, South Carolina

May 1, 2017

ELECTRONICALLY FILED - 2017 Mar 23 5:50 PM - JASPER - COMMON PLEAS - CASE#2017CP2700073

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**UIM CARRIER'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSION**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFF

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, UIM Carrier USAA General Indemnity Company on behalf of Defendant, reserving the right to amend and/or supplement, hereby responds to Plaintiff's First Request for Admission to Defendant's UIM Carrier, as follows:

1. Admit that Plaintiff, Therese Hood, was operating her vehicle with her headlamps illuminated at the time of the collision.

RESPONSE: Denied.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: MBS

JACKSON H. DANIEL, III
State Bar No.:70308

MADISON B. SUTTIE
State Bar No.: 101385

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
843-727-0307

Attorneys for USAA General Indemnity Company appearing pursuant to S.C. Code §38-77-160 on behalf of Defendant



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Kevin B. Smith, Esq.
Hoffman Law Firm
7087 Rivers Avenue
North Charleston, SC 29406
Attorney for Plaintiff Therese Hood

This 11th day of January, 2017.

Legal Secretary to Jackson H. Daniel, III

Carlock, Copeland & Stair LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531

ELECTRONICALLY FILED - 2017 Mar 23 5:50 PM - JASPER - COMMON PLEAS - CASE#2017CP2700073

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	**MOTION AND ORDER INFORMATION FORM AND COVER SHEET**
Defendant.	)	

Plaintiff's Counsel:	**Defendant's Counsel:**
Roy T. Willey, IV Eric M. Poulin ANASTOPOULO LAW FIRM, LLC 62 Columbus Street Charleston, SC 29403 Emails: eric@akimlawfirm.com; roy@akimlawfirm.com	Robert W. Whelan Nelson Mullins Riley & Scarborough LLP 151 Meeting Street, Suite 600 Charleston, SC 29401 Phone: (843) 534-4113 Email: robert.whelan@nelsonmullins.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **MOTION FOR SUMMARY JUDGMENT**
Estimated Time Needed: **15 minutes** Court Reporter Needed: ☒ **Yes** / ☐ No

SECTION II: Motion Type

☒ **Written motion attached**
☐ Form Motion—I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ **March 12, 2018**
Signature of Attorney for ☐Plaintiff/☒**Defendant** Date submitted

SECTION III: Motion Fee

☒ **PAID—AMOUNT: $25.00**
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status
☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act
☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication
☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ DATE FILED
(print name)

☐ MOTION FEE COLLECTED:_____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	**MOTION FOR SUMMARY JUDGMENT**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

FILED
2019 MAR 12 PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant USAA moves for summary judgment as to the plaintiff's claims. The grounds for this motion are that the duty sought to be imposed by the plaintiff is not recognized under South Carolina contract, negligence, or bad faith law. Additionally, there is no factual basis for the plaintiff's claims of barratry, outrage or negligence per se. Finally, under any cause of action, the plaintiff cannot show that she has been damaged by any conduct of USAA, particularly because the conduct she complains of resulted in her receiving more money than she would have had USAA accepted her settlement demands. A transcript of the underlying trial is attached as Exhibit A. This motion is made pursuant to the South Carolina Rules of Civil Procedure and may be supplemented by a memorandum in support.

[*SIGNATURE PAGE FOLLOWING*]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert W. Whelan
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Counsel for USAA

Charleston, South Carolina

March 12, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	**MOTION FOR SUMMARY JUDGMENT**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

USAA renews its motion for summary judgment filed on March 12, 2018. USAA refers to and incorporates by reference the arguments made in that motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Counsel for USAA

Charleston, South Carolina

June 19, 2019

FILED
2019 JUN 19 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
THERESE HOOD, Plaintiff, vs. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	)	Case No. 2018-CP-10-00666 **MOTION AND ORDER INFORMATION FORM AND COVER SHEET**

Plaintiff's Counsel:	**Defendant's Counsel:**
Roy T. Willey, IV Eric M. Poulin ANASTOPOULO LAW FIRM, LLC 32 Ann Street Charleston, SC 29403 Emails: eric@akimlawfirm.com; roy@akimlawfirm.com	Robert W. Whelan Nelson Mullins Riley & Scarborough LLP 151 Meeting Street, Suite 600 Charleston, SC 29401 Phone: (843) 534-4113 Email: robert.whelan@nelsonmullins.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **MOTION FOR SUMMARY JUDGMENT**
Estimated Time Needed: **30 minutes** Court Reporter Needed: ☒ Yes / ☐ No

SECTION II: Motion Type

☒ **Written motion attached**
☐ Form Motion—I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ June 19, 2019
Signature of Attorney for ☐Plaintiff/☒Defendant Date submitted

SECTION III: Motion Fee

☒ **PAID—AMOUNT: $25.00**
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status
☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act
☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication
☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ DATE FILED
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for USAA, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **MOTION FOR SUMMARY JUDGMENT**

Counsel Served:

Roy T. Willey, IV, Esquire
Eric M. Poulin, Esquire
ANASTOPOULO LAW FIRM, LLC
32 Ann Street
Charleston, SC 29403

Counsel for Plaintiff

Administrative Assistant

June 19, 2019

FILED
2019 JUN 19 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

2018 JUN 15 PM 3:38

INTRODUCTION

This case arises from a single question in an underlying lawsuit: whether plaintiff Therese Hood's headlights were on at the time of her underlying accident with defendant Antoine Johnson. Hood claimed her headlights were on; Johnson claimed they were off. Evidence in discovery supported each contention—Hood and an expert said that her headlights were on; multiple witnesses for the defense said her headlights were off.

In this suit, the plaintiff contends that it was bad faith for USAA to present the headlight evidence favorable to the defense in the underlying case. She also claims that presenting this evidence constitutes breach of contract, outrage, and barratry. As discussed below, this theory is fundamentally contrary to state law.

BRIEF FACTS

Plaintiff Hood was insured with USAA. USAA provided her with (1) liability coverage and (2) underinsured motorist (UIM) coverage. In 2014 Hood was in a wreck with Antoine Johnson and Mary Kuck. In 2015, Hood sued Johnson, also serving USAA with the complaint as UIM carrier under S.C. Code § 38-77-160. After Johnson's liability carrier tendered its limits

to Hood, counsel hired by USAA, Carlock Copeland, defended the suit (in Johnson's name) pursuant to the statute.

Meanwhile, Johnson filed a counterclaim against Hood and Kuck filed a separate action against Hood arising from the same car accident. Hood requested that USAA defend her under her liability coverage with USAA. USAA retained Clawson and Staubbes to defend Hood from Johnson's counterclaim and from Kuck's complaint. Kuck and Johnson alleged Hood was negligent for not having her headlights on at the time of the collision. Hood, through Clawson and Staubbes, as well as through her personal counsel, maintained that her headlights were on, obtaining an expert report opining that Hood's headlights were on.

In September 2017, the case of *Hood v. Johnson* was tried. The jury found in Hood's favor, awarding her $2,500,000 in damages, but finding her 49% at fault. After the verdict USAA paid the plaintiff $1,023,993 under her UIM policy. This controversy stems from the fact that USAA's counsel presented evidence and argument that Hood's lights were not on during that trial.

ARGUMENT

A. The South Carolina Legislature has given UIM insurers the right to defend actions like the underlying one for their own benefit.

The South Carolina Legislature has given UIM carriers an express **right** to defend in the name of underinsured motorists and to control the defense for the insurers' own benefit. The South Carolina Supreme Court has emphasized the fact that in defending a UIM suit, the defense is to be conducted for the insurer's "*own benefit.*" *Broome v. Watts*, 461 S.E.2d 46, 47 (1995) (emphasis in original) (quoting S.C. Code § 38-77-160). Moreover, the Supreme Court has held that the "intent of § 38-77-160 is to protect an insurance carrier's right to contest its liability for underinsured benefits." *Williams v. Selective Ins. Co.*, 446 S.E.2d 402, 404 (S.C. 1994); see also,

Crawford v. Henderson, 589 S.E. 2d 204 (S.C. Ct. App. 2003) (noting the UIM carrier steps into the tortfeasor's shoes to the extent of coverage). If an insured could limit the arguments available in defending a UIM action simply by making contrary arguments in a related proceeding, this would effectively deprive an insurer of its statutory right to stand in the shoes of the tortfeasor. In fact, the plaintiff seems to be arguing that USAA should have to stand in her shoes, not the tortfeasor's. Additionally, adopting the plaintiff's position would have the practical effect of creating an impossible conflict for counsel retained by the insurer. Counsel would have to act zealously to defend the insurer, while simultaneously abridging her arguments and evidence in consideration of her adversary's wishes.

B. The fact that the insured was represented by counsel retained by USAA does not affect the insurer's right to defend a UIM action for its own benefit.

The plaintiff contends that USAA's right under section 38-77-160 to control the defense of Antoine Johnson was waived or abridged through its retention of a separate lawyer to represent Hood in the liability claims against her. She cites no authority to support this proposition, and there is none. The retention of an attorney to represent Hood was a contractual obligation, independent of section 38-77-160. Counsel retained for Hood was, at the risk of stating the obvious, Hood's attorney. See, e.g., *State Farm Fire & Cas. Co. v. Admiral Ins. Co.*, 225 F. Supp. 3d 474, 480 (D.S.C. 2016) ("the sole client of the attorney is the insured"). The plaintiff cannot cite any authority suggesting that a UIM insurer's right to defend a UIM suit is limited by the fact that the insurer must separately provide a defense to the insured. Had the Legislature intended that the rights bestowed by S.C. Code § 38-77-160 not apply when a UIM insurer is also providing a defense under liability coverage, it would have said so.

C. These facts do not support a claim for bad faith, barratry, breach of contract, or outrage.

USAA's presentation of evidence that Ms. Hood's lights were on does not give her a right to relief under any legal theory she asserted. With respect to her claim for bad faith, an insured must prove there is "no reasonable basis to support the insurance company's decision." *Nichols v. State Farm Auto Ins. Co.* 279 S.C. 336, 340, 306 S.E.2d 616 (1983). Here, there were numerous eye witnesses supporting that Hood's lights were off and this constituted a reasonable basis to present that evidence. In fact, as the plaintiff's brief points out, Hood was told by a juror that the jury believed that her headlights were off and accordingly found her 49% at fault for the accident. (Resp. p. 12)

With respect to barratry (a virtually unused cause of action enacted to suppress the NAACP during the Civil Rights era), simply defending a lawsuit under section 38-77-160 cannot create a private cause of action. The South Carolina insurance code specifically allows for an insurer to defend a suit against an underinsured motorist, and our case law makes recovery in such a suit a condition precedent to contractual liability for insurance benefits. *See*, *Lawson v. Porter*, 180 S.E.2d 643 (S.C.1971). If the plaintiff's theory were correct, every UIM suit in the state would automatically give rise to a claim for barratry.

Finally, outrage requires proof that: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from the defendant's conduct; (2) the defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the action of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that no reasonable person could be expected to endure it. *Argoe v. Three Rivers Behavioral Center*, 697 S.E.2d 551, 555 (S.C. 2010). South Carolina appellate courts have been highly skeptical of outrage claims

and the case law does not support a finding of outrage on anything close to the present facts. Presenting evidence of a lack of headlights that was believed by both a circuit court judge and a Jasper County jury, cannot constitute outrage under South Carolina law.

D. The plaintiff has not established a cause of action with respect to her negligence per se cause of action.

In her final cause of action, the plaintiff alleges a private cause of action against USAA for allegedly violating S.C. Code § 38-47-10, concerning the licensing of insurance adjusters. As a factual matter, the plaintiff's claims are inaccurate as shown in Exhibit A. Notwithstanding these facts, there is no private cause of action under 38-47-10 under South Carolina law. The South Carolina Supreme Court has held that similar statutes do not create a private cause of action. For example, in *Masterclean, Inc. v. Star Ins. Co.*, 556 S.E.2d 371, 377 (2001) the Supreme Court held that the Insurance Trade Practices Act, S.C. Code § 38–57–10, et seq. (1989), and the Insurance Claims Practices Act, S.C. Code § 38–59–20, et seq. (1989), do no not create private causes of action. In doing so, the court reasoned that the statutes "[mandate] the penalties for violating the statute [in S.C.Code Ann. § 38–2–10 (1989)]", "[t]he Department of Insurance is vested with determining whether an insurer has violated the insurance code", and, as such, "[t]he statute[s]clearly [manifest] legislative intent to create an administrative remedy and not a private right of action." *Id.*

Like the Insurance Trade Practices Act and the Claims Practices Act, the remedies for violation of S.C. Code § 38-47-10 are outlined in S.C. Code § 38-2-10 and the Department of Insurance is vested with determining whether the statute has been violated. S.C. Code § 38-47-70 ("When the director or his designee determines after investigation that there has been a violation of this title by an adjuster, upon ten days' notice, he may impose the penalties provided

in Section 38-2-10.") Accordingly, following the reasoning in *Masterclean*, the statute manifests legislative intent to create an administrative remedy and not a private right of action.

Finally, the plaintiff's attorneys asserted this same cause of action, and had it dismissed by Judge Norton in *Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC*, No. 2:13-CV-03035-DCN, 2016 WL 3219538, at *11 (D.S.C. June 8, 2016) ("Kehagias's negligence per se claim alleges that Founders and Utica violated section 38-47-20 of the South Carolina Code of Laws because neither adjustor assigned to the claim in question was licensed in South Carolina at the relevant time. Founders requests that the court grant summary judgment on Kehagias's negligence per se claim because section 38-47-20(a) does not provide a private cause of action. ECF No. 87, 26. Kehagias did not oppose Founders and Utica's request for summary judgment as to the negligence per se claim and did not even address the claim in the briefing.").

E. Discovery will not create a genuine issue of material fact.

There is no discovery that could change these facts or entitle the plaintiff to judgment under any of her causes of action. As her brief points out "A party claiming summary judgment is premature because she has not been provided a full and fair opportunity to conduct discovery must advance ... why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." (Resp. p. 5) Here, no discovery could affect the incongruity of the plaintiff's theories with South Carolina law. USAA respectfully requests that its motion for summary judgment be granted.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____ for RWW

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(843) 853-5200

Counsel for USAA

Charleston, South Carolina

June 15, 2018

2018-CP-10-664

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for USAA, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

2018 JUN 15 PM 3:38
CLERK OF COURT

Pleadings: **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Counsel Served:

Roy T. Willey, IV, Esquire
Eric M. Poulin, Esquire
ANASTOPOULO LAW FIRM, LLC
62 Columbus Street
Charleston, SC 29403

Counsel for Plaintiff

Administrative Assistant

June 15, 2018

IN THE STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO: 2018-CP-10-666
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant.	PLAINTIFF'S MEMORANDUM RE: **EMOTIONAL DISTRESS IN FIRST PARTY INSURANCE BAD FAITH**

TO: THE HONORABLE JUDGE CURTIS AND ALL COUNSEL OF RECORD

QUESTION PRESENTED

Does South Carolina recognize emotional distress as an element of damages in bad faith?

BRIEF ANSWER

Yes. The right to recover actual damages for emotional distress in a bad faith case was recognized in *University Medical Associates of the Medical University of South Carolina v. UnumProvident Corp.*, 335 F. Supp. 2d 702 (D. S.C. 2004) (applying South Carolina law). Emotional distress damages related to a bad faith action in South Carolina are recoverable when the distress was related to the refusal to pay benefits. *State Farm Fire and Cas. Co. v. Barton*, 897 F. 2d 729 (4th Cir. 1990).

ANALYSIS[1]

The right to recover actual damages for distress in a bad faith case was recognized in the case of *University Medical Associates of the Medical University of South Carolina v. UnumProvident Corp.*, 335 F. Supp. 2d 702 (D. S.C. 2004). As the Court in that case recognized,

[1] Quoted directly from Judge Michael G. Nettles' Order in *Mitchell v Fortis Ins. Co.*, No. 2003-CP-21-1347, 2006 WL 6379502 (S.C.Com.Pl. July 19, 2006) on Defendant's "Defendant's Motion for Judgement Notwithstanding the Verdict or, in the Alternative, for a New Trial Absolute, or, in the Alternative, for a New Trial *Nisi*."

the Fourth Circuit has implicitly held that emotional distress damages related to a bad faith action in South Carolina are recoverable when the distress was related to the refusal to pay benefits. *State Farm Fire and Cas. Co. v. Barton*, 897 F. 2d 729 (4th Cir. 1990).

Numerous cases from other jurisdictions recognize that emotional damages are recoverable as an element of actual damages in a bad faith case, without proof of injury, illness, or severe distress. *See*, *e.g.*, *Ace v. Aetna Life Insurance Company*, 139 F. 3 d 1241 (9th Cir. 1998); *Goodson v. American Standard Insurance Company of Wisconsin*, 89 P. 3 d 409 (Col. 2004); *Ingalls v. Paul Revere Life Insurance Group*, 561 N.W. 2d 273 (N.D. 1997); *Hangarter v. Paul Revere Life Insurance Company*, 236 F. Supp. 2d 1069 (Cal. 2002); *State Farm Mut. Auto Ins. Co. v. Campbell*, *supra*; *Washington v. Group Hospitalization, Inc.*, 585 F. Supp. 517 (U.S. D. C. 1984); *Bibault v. Hanover Insurance Company*, 417 A. 2d 313 (R.I. 1980); *Tran v. State Farm Mut. Auto Ins. Co.*, 999 F. Supp. 1369 (D.Ha. 1998); and *Patel v. United Fire and Cas. Co.*, 80 F. Supp. 2d 948 (N. D. Ind. 2004).

Policy considerations for requiring severity of emotional distress to be shown in the "outrage" context do not support applying that requirement in the bad faith context. The basic assumption underlying limits to the tort of outrage is that emotional distress without physical injury or illness may be relatively trivial and too easily asserted. In contrast, when an insurance company wrongfully refuses to honor its obligations, emotional distress is a natural and believable response. Insureds bargained and paid for the security and peace of mind of knowing that reimbursement and financial support will be provided in the event that a misfortune occurs. *Ace v. Aetna Life Insurance Company*, *supra*, 139 F.3d at 1250.

Given that insureds purchase insurance policies to obtain financial security and peace of mind, emotional distress is a likely and foreseeable result of [ ] bad faith . . . . The action of the

insurer causing anxiety, stress, inconvenience, and financial risk to the insured by delaying payment owed under the policy contravenes a fundamental benefit of obtaining the insurance. *Goodson v. American Standard Insurance Company of Wisconsin*, *supra*, 89 P.3d at 417.

"[A]n unreasonable denial of insurance benefits--a necessary element of every bad faith breach of insurance contract-- can cause anxiety, fear, stress, and uncertainty, even when the benefits are eventually paid." *Id.* An insured purchases insurance in the first place so as not to suffer such anxiety, fear, stress, and uncertainty. The fact that an insurer finally pays in full does not erase the distress caused by the bad faith conduct. Damages for emotional distress the insured proves are therefore available in actions for bad faith breach of insurance contract upon the showing of the insurer's liability. *Id.*

"Because a primary consideration in purchasing insurance is the peace of mind and security it will provide, an insured may recover for any emotional distress resulting from an insurer's bad faith." *Jarchow v. TransAmerica Title Ins. Co.*, 48 Cal. App. 3d 917, 122 Cal. Rptr. 470, 486 (1975); *Ingalls v. Paul Revere Life Insurance Group*, *supra*, 561 N.W. 2d at 283.

CONCLUSION

South Carolina recognizes emotional distress damages in a bad faith suit when the insured's emotional distress is directly related to an insurer's bad faith refusal to pay benefits.

SIGNATURE ON FOLLOWING PAGE

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Roy Willey
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Eric M. Poulin, Esquire
SC Bar Number: 100209
Alexis W. McCumber, Esquire
SC Bar Number: 101611
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32 Ann Street
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(843) 614-8888

Charleston, South Carolina
June 25, 2019

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
Therese Hood)
Plaintiff,)
vs.)
United Services Automobile Assoc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT
CASE NO.: 2018 -CP-10 - 02666

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Roy Willey, Bar No. 10010	Robert Whelan, Bar No
Address: 32 Ann St Charleston SC 29403	Address:
Phone: Fax	Phone: Fax
E-mail: Other:	E-mail: Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Post trial motions
Estimated Time Needed: 30 mins Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Roy L Willey IV July 8, 2019
Signature of Attorney for ☒ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE
☐ Other:	Date: , 20

CLERK'S VERIFICATION

Collected by: Date Filed: , 20

☐ MOTION FEE COLLECTED: $
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

IN THE STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO: 2018-CP-10-666
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant.	PLAINTIFF'S POST TRIAL MOTION ON HER **OFFER OF JUDGMENT**

FILED
2019 JUL -8 PM 12:06
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

Pursuant to *South Carolina Rule of Civil Procedure 68(b)*, Plaintiff Therese Hood respectfully requests this Court award her court costs and interest from the date of her Offer of Judgment.

ARGUMENT

When a party declines an offer of judgment and receives an adverse verdict, the non-prevailing party must pay costs and interest to the offeree. *S.C. Civ. P. R. 68(b)*. Here, Plaintiff filed a Rule 68 Offer of Judgment for $200,000 on March 28, 2019. This case was tried to verdict on June 28, 2019 – some 92 days, later. The jury returned the following verdict:

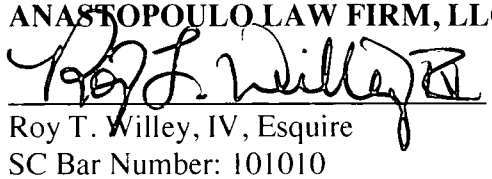
1. USAA was negligent;
2. Plaintiff sustained $49,052.20 in actual damages; and,
3. Awarded $250,000 in punitive damages.

CONCLUSION

Since USAA did not accept Plaintiff's March 2019, Offer of Judgment and the jury found them negligent, Plaintiff is entitled to costs and interest from the date of the Offer under Rule 68. Therefore, Plaintiff requests this Court enter an Order reflecting the same.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Eric M. Poulin, Esquire
SC Bar Number: 100209
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Charleston, South Carolina
July 3, 2019

ATTORNEYS FOR PLAINTIFF

IN THE STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO: 2018-CP-10-666
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant.	PLAINTIFF'S POST TRIAL MOTION FOR **ATTORNEYS' FEES, AND NEW TRIAL *NISI ADDITUR***

FILED
2019 JUL -8 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

Pursuant to *South Carolina Rules of Civil Procedure 54, 59*, and S.C. Code Ann. § 38-59-40, Plaintiff respectfully moves this Court for payment of court costs as the prevailing party, New Trial *Nisi Additur* because the jury failed to account for Plaintiff's emotional distress damages, and attorney fees due to the insurer's failure to pay benefits.

FACTS

This first party insurance bad faith suit was filed March 23, 2017. Before trial, Plaintiff's causes of action were narrowed to insurance bad faith and negligence. Trial occurred June 25-28, 2019, with the jury hearing testimony relating to Plaintiff's emotional distress caused by USAA's nonpayment. The jury returned the following verdict:

1. USAA was negligent;
2. Plaintiff sustained $49,052.20 in actual damages; and,
3. Awarded $250,000 in punitive damages.

ARGUMENT

First, this Court should award court costs to Plaintiff under *S.C. R. Civ. P. 54* because she is the prevailing party. Second, this Court should grant Plaintiff's *S.C. R. Civ. P. 59* Motion for a New Trial *Nisi Additur* because the jury's verdict does not account for Plaintiff's emotional

distress and is therefore, inadequate. Third, Plaintiff should be awarded attorney fees because the jury found USAA's handled Plaintiff's claim negligently and is therefore unreasonable under S.C. Code Ann. § 38-59-40.

I. Plaintiff should be awarded court costs because she prevailed at trial.

"[C]osts shall be allowed as of course to the prevailing party . . . . " *S.C. R. Civ. P. 54(d).* Therefore, pursuant to *S.C. R. Civ. P. 54(d)* Plaintiff respectfully requests that this Court order Defendant USAA pay Plaintiff's costs incurred in this action.

II. A New Trial *Nisi Additur* is necessary because the jury did not consider evidence of Plaintiff's emotional distress.

"When the jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial *nisi*." *Waring v. Johnson*, 341 S.C. 248, 256 (Ct. App. 2000). For the trial judge to invade the jury's province, the moving party must present compelling reasons why the verdict was excessive or inadequate. *Id.* Upon the motion, the court "must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530 (1993). "[A] new trial *nisi additur* requires the court to consider the adequacy of the verdict in light of the evidence presented . . . [and] may be ordered when the verdict is merely insufficient based on the evidence." *Waring* 341 S.C. at 257.

Here, the jury heard testimony related to Plaintiff's emotional distress based on Defendant USAA's non-payment, but did not reflect those damages in their verdict. South Carolina recognizes that "[t]he action of the insurer causing anxiety, stress, inconvenience, and financial risk to the insured by delaying payment owed under the policy contravenes a fundamental benefit of obtaining the insurance." *Mitchell v Fortis Ins. Co.*, Order on Defendant's Motion for Judgement Notwithstanding the Verdict or, in the Alternative, for a New Trial

Absolute, or, in the Alternative, for a New Trial *Nisi*, No. 2003-CP-21-1347, 2006 WL 6379502 (S.C.Com.Pl. July 19, 2006) (Nettles J.).

Therefore, Plaintiff requests this Court order a New Trial *Nisi*, or in the alternative, *additur*, to increase the jury's verdict to compensate Plaintiff for her emotional distress caused by USAA's negligent non-payment of benefits under the policy.

III. Plaintiff is entitled to attorneys' fees because of USAA's refusal to pay policy benefits and that amount shall be added to the judgment.

Attorneys fees are awarded by the trial judge under S.C. Code Ann. § 38-59-40 when:

> In the event of a claim, loss, or damage which is covered by a policy of insurance...and the refusal of the insurer, plan, or corporation to pay the claim within ninety days after a demand has been made by the holder of the policy or contract and a finding on suit of the contract made by the trial judge that the refusal was without reasonable cause or in bad faith, the insurer, plan, or corporation is liable to pay the holder, in addition to any sum or any amount otherwise recoverable, all reasonable attorneys' fees for the prosecution of the case against the insurer, plan, or corporation. The amount of reasonable attorneys' fees must be determined by the trial judge and the amount added to the judgment. The amount of the attorneys' fees may not exceed one-third of the amount of the judgment.

S.C. Code Ann. § 38-59-40.

Here, the Court heard evidence of USAA's unreasonable refusal to pay benefits when it took contrary positions the underlying car-wreck lawsuits, and the jury found that USAA was unreasonable / negligent in the processing and handling of Plaintiff's claim. Therefore, this Court should order USAA to pay attorneys' fees related to the prosecution of this claim at the maximum amount of one-third of the amount of the judgment amount.

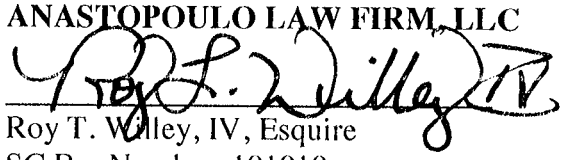
CONCLUSION

In light of the jury's verdict, finding USAA negligent for its refusal to pay benefits owed to Plaintiff, this Court should now hold USAA responsible for Plaintiff's court costs, *additur* for emotional distress damages, and attorney fees in the prosecution of this claim.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

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July 3, 2019

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	**MOTION FOR JNOV**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

FILED
2019 JUL -8 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to Rule 50 and all other applicable rules of the South Carolina Rules of Civil Procedure, Defendant United Services Automobile Association ("USAA") moves the Court for Judgment Notwithstanding the Verdict.

The grounds for this motion are those set forth below. Any grounds asserted prior, during, and after the trial in this matter not herein listed are adopted and incorporated the same is if fully set forth below. Additionally, for purposes of this motion, USAA incorporates the arguments and points made in its prior motion for summary judgment, motions in limine, and prior motions for directed verdict. USAA also incorporates its arguments, motions, and points otherwise made at trial, if consistent herewith. Further, all arguments advanced in support of USAA's Motions for New Trial Absolute and New Trial *Nisi Remittitur* are also advanced in support of this motion to the extent consistent herewith.

PROCEDURAL HISTORY

This case arose out of an underlying lawsuit concerning an accident involving USAA's insured, Plaintiff Therese Hood, and two other drivers. A contested issue of fact in that lawsuit was whether Ms. Hood's lights were on at the time of her accident with the first driver, Antoine

Johnson. Hood claimed her headlights were on, Johnson claimed they were off. There was conflicting discovery and testimony on this issue. Ultimately, the jury found in Hood's favor, but also found her to be 49% at fault.

Hood brought this suit contending that it was bad faith for USAA to present the headlight evidence favorable to the defense in the underlying case and also constituted breach of contract, outrage, and barratry. On July 23-26, 2019, the case was tried before the Honorable Kristi Curtis and a jury. The Court granted summary judgment or directed verdict on all claims except for negligence and bad faith. The jury found in USAA's favor on bad faith, but in Hood's favor on negligence. The jury awarded actual damages of $49,000 and punitive damages of $250,000.

Argument

USAA renews it Motion for Directed Verdict as to Plaintiff's negligence claim and demand for punitive damages. When reviewing a motion for JNOV, this Court should view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016). The court must grant JNOV "if no reasonable jury could have reached the challenged verdict." *Id.*

There is no legally sufficient basis for a jury to find against USAA, or for judgment to be entered against USAA. The evidence is insufficient to support a verdict against USAA, and the evidence affirmatively demonstrates that USAA is entitled to judgment as a matter of law on the negligence claim as well as the claim for punitive damages.

I. USAA owed Plaintiff no separate duty in tort beyond the duty of good faith and fair dealing.

A. South Carolina law does not support the existence of such a duty.

First, USAA is entitled to JNOV because it owed no duty in tort to the Plaintiff that could support a claim of negligence. The duty arising from an insurance contract that could give rise to

a tort claim is the implied duty of good faith and fair dealing. Although South Carolina law recognizes that breach of the implied duty of good faith and fair dealing can support a claim in tort for bad faith, South Carolina courts have never recognized that a *separate*, additional duty is owed by an insurer to its insured sufficient to support a negligence claim. Plaintiff's claim here was, in essence, that USAA owed her a duty not to take disparate positions with regard to her UIM claim and should have simply paid the UIM benefits. The Court held that the duty owed by State Farm under a negligence cause of action would be the same as that owed under a bad faith cause of action, although proof of negligence would be subject to a different standard. Such a stand-alone duty in negligence is unsupported by South Carolina law and inconsistent with the evidence presented at trial.

Federal cases applying South Carolina law have recognized that under the circumstances of this case—where the claims revolve around an insurer's refusal to pay UIM benefits—a stand-alone negligence claim is not viable. *See Maranto v. State Farm Mutual Automobile Insurance Co.*, No. 2:98-3131-23-PMD, at 1 (D.S.C. Aug. 11, 1999); *see also Kraemer v. Massachusetts Mut. Life Ins. Co.*, No. CV 2:15-04571-CWH, 2017 WL 5635469, at *6 (D.S.C. Apr. 28, 2017), *aff'd*, 701 F. App'x 268 (4th Cir. 2017) (discussing *Maranto*). In *Maranto*, the plaintiff asserted claims for negligence and bad faith for the insurer's failure to pay UIM benefits and make a reasonable offer to settle the claim. *Kraemer*, 2017 WL 5635469, at *6. The *Maranto* court explained that the negligence allegations were "more appropriately considered in the context of a claim for bad faith." *Id.* Thus, the Court granted summary judgment on that claim, explaining that:

> "[a] jury is entitled to consider issues of an insurance company's negligence in determining whether the company acted unreasonably in refusing to pay benefits. However, ***no authority . . . support[s]***

> ***the existence of a separate, free-standing claim of negligence in such circumstances. . . .***"

Id. (emphasis added).

Although *Kraemer* did not involve UIM coverage, the plaintiff there similarly alleged that the insurer owed certain duties under the disability policy at issue that were separate and apart from the contractual duties and duty of good faith and fair dealing. *See id.* at *5. Specifically, the plaintiff contended that the insurer owed him a duty to: (1) "accurately and truthfully convey to consumers the true coverage and benefits amounts for each policy marketed and/or sold," (2) "refrain from willfully and intentionally defrauding policyholders of contracted-for benefits," and (3) "do those things which a reasonable, prudent person would do under the circumstances then and there prevailing." *Id.* Relying on *Maranto*, the court granted summary judgment on the plaintiff's negligence claim, finding that the "crux" of that claim was really that the insurer "breached the policies in bad faith when it refused to pay benefits," and thus the claim was "better suited as a bad faith claim." *Id.* at *6.

Finally, although *Skinner v. Horace Mann Ins. Co.*, 369 F. Supp. 3d 649 (D.S.C. 2019) did not involve UIM coverage either, it also relied on *Maranto* and reached the same result regarding first-party coverage. *See id.* at 653. As the *Skinner* court explained, although the complaint stated a claim for negligence, the gravamen of the cause of action was really that the insurer was "negligent in processing, handling, and adjusting Plaintiff's claim against [insured]," and that this conduct related to a breach of the covenant of good faith and fair dealing. *Id.* at 654. The court found that the claim was therefore "duplicative of the bad faith claim, as other judges in this District have recognized," and thus the freestanding claim of negligence was improper. *Id.*

As these authorities support, an underinsured motorist carrier defending a lawsuit under S.C. Code Ann. § 38-77-160 simply does not owe a duty of due care to its insured beyond the duty

of good faith and fair dealing. The Court's recognition of such a duty permitted the Plaintiff, in essence, to litigate the merits of how the General Assembly structured South Carolina UIM law and the rights explicitly granted to insurers like USAA by statute. To require a UIM carrier to put the insured's interests ahead of its own in an UIM defense as Plaintiff contended would render the statutory protections of § 38-77-160 meaningless. ***As a matter of law***, an insurer has a statutory right to defend an underinsured motorist coverage suit for its own benefit. Therefore, there is no duty to admit a request to admit or to the denial of a request to admit where there was evidence to support the facts asserted by the carrier. No reasonable juror could find that taking "disparate positions" in these circumstances gives rise to an additional tort duty supporting a negligence cause of action.

Furthermore, the attorney hired by the liability insurer to represent the insured works for the insured alone, not the insurer. *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 426 S.C. 154, 157, 826 S.E.2d 270, 271 (2019) ("An insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured—his client. Pursuant to that relationship, the attorney owes the client—not the insurer—a fiduciary duty."). Thus, that attorney's denial of liability on behalf of the insured cannot create a duty on the insurer to take a different position where the insured is defending an underinsured motorist pursuant to its statutory right under § 38-77-160. The attorney hired by an underinsured motorist carrier to represent its interests under § 38-77-160 is representing the carrier, not the insured, and thus is under no obligation to take a position inconsistent with the fact.

Therefore, for all these reasons, the Court erred by refusing to grant judgment as a matter of law on Plaintiff's negligence claim. South Carolina law does not recognize the existence of a duty beyond the implied duty of good faith and fair dealing that could support Plaintiff's

negligence claim. As the authorities detailed above explain, as there is no duty supporting a negligence claim separate and independent claim from Plaintiff's bad faith claim. Thus, the Court should grant USAA's motion for JNOV.

B. Even if there was a possibility of a duty existing, Plaintiff failed to plead a duty that would comport with South Carolina law.

In the operative complaint, Plaintiff alleged that a duty existed based on three theories: (1) a special relationship between Plaintiff and USAA, (2) the implied duty of good faith and fair dealing in the insurance contract, and (3) a duty not to require Plaintiff to engage in barratry by pursing her claim in the underlying action. The Court granted judgment as a matter of law on the barratry claim. During the trial, Plaintiff confirmed that her negligence theory was premised on a separate duty from the implied duty of good faith and fair dealing, as reflected by her proposed verdict form. The jury then found in USAA's favor on the duty of good faith and fair dealing. Thus, the only alleged duty that could support the negligence claim was a purported "special relationship" between Plaintiff and USAA.

Plaintiff alleged that such a relationship existed because she "placed her confidence in Defendant USAA and relied on it exclusively to formulate an insurance program that would protect Plaintiff under the terms of the Policy." (Compl. ¶ 21.) Likewise, she contended that USAA owed her "certain duties to properly handle Plaintiff's claims arising out of the special relationship and confidence of trust placed on Defendant USAA by Plaintiff, as well as the covenant of good faith and fair dealing implied as a matter of law." (Compl. ¶ 55.) These alleged duties, however, are merely retreads of the gravamen of her complaint, which was that USAA owed a duty to comply with its end of the contract and act in good faith.

Plaintiff's allegations, therefore, were insufficient to support a separate duty beyond the contractual obligations and related duty of good faith and fair dealing. "It is settled law that if a

tort arises out of a contract there must also exist a relationship, irrespective of the contract, that gives rise to a duty." *Troutman v. Facetglas, Inc.*, 281 S.C. 598, 601, 316 S.E.2d 424, 426 (Ct. App. 1984). Moreover, "[a] mere breach of contract is ***not actionable as a tort*** in South Carolina, no matter what the intent of the breaching party was." *Id.* (emphasis added). Thus, in order to assert a tort claim, South Carolina law requires a special relationship between the claimant and the alleged tortfeasor that gives rise to a recognized duty in law. *Andrade v. Johnson*, 356 S.C. 238, 245, 588 S.E.2d 588, 592 (2003). Plaintiff did not meet her burden of showing that such a relationship beyond the standard insurer-insured relationship existed here.

Therefore, even if some metaphysical duty could exist, Plaintiff failed to properly allege or prove a legally cognizable duty. For this reason as well, the Court should grant USAA's motion for JNOV.

II. No reasonable juror could have found in Plaintiff's favor on the remaining elements of her negligence claim.

The Court should also grant JNOV in favor of USAA because no reasonable juror could have found in Plaintiff's favor on the negligence claim.

As for breach of the purported duty (which, as detailed above, does not exist), no reasonable juror could have found that an insurer's defending a liability suit pursuant to its statutory rights under the UIM statutes, and allegedly taking of disparate positions pursuant to those rights breached a duty of care. Likewise, no reasonable juror could have found that the alleged taking of disparate positions in the liability suit breached a duty of care where fault was allocated almost equally between the two parties. Finally, no reasonable juror could have found that the disparate positions made any difference in the ultimate result of the underlying trial because Plaintiff ultimately acknowledged that her lights may have in fact been off.

Similarly, no reasonable juror could have found that this purported breach of duty proximately caused any harm to Plaintiff. As a matter of law, USAA could not have caused any harm by defending a UIM case and proceeding to trial pursuant to a statute that ***requires*** USAA to do so. As detailed above, USAA was justified in taking the purported "disparate positions" pursuant to its rights under the UIM framework established by the General Assembly. There is simply no legally recognized, cognizable harm to the Plaintiff here.

Finally, damages were not supported by the evidence and testimony presented at trial, and no reasonable juror could have awarded damages in Plaintiff's favor. The only testimony presented was that the Plaintiff would have settled the underlying case for $250,000. Her theory was that USAA's failure to pay $250,000 led her to incur $49,000 in litigation expenses. However, those litigation expenses lead her to an over $1,000,000 recovery. Thus, USAA's purported breach of duty caused the plaintiff to recover a windfall of $700,000 more than she would have received had no alleged tort have been committed. Thus, no reasonable juror could have found that USAA caused any damage to Plaintiff, even if there was a legally recognized duty owed by USAA or breach of said duty (which there was not).

Because no reasonable juror could have found in Plaintiff's favor on the negligence claim, the Court should grant USAA's motion for JNOV.

III. No reasonable juror could have found in Plaintiff's favor on punitive damages.

Because Plaintiff's negligence claim fails as a matter of law and, even if it was viable, no reasonable juror could have found in her favor, Plaintiff's claim for punitive damages necessarily fails as well.

Additionally, there was simply no evidence to support a finding that USAA's conduct was reckless, willful, or wanton. In fact, the jury found that USAA did not breach the duty of good

faith and fair dealing and therefore acted ***reasonably***. Reasonableness and recklessness are mutually exclusive. No reasonable juror could have found that USAA was reckless, willful, or wanton while at the same time acted with good faith and reasonableness. Therefore, because no reasonable juror could have found in Plaintiff's favor on punitive damages, USAA is at a minimum entitled to judgment as a matter of law on this issue.

CONCLUSION

Based upon the foregoing, USAA respectfully requests the Court grant this Motion for JNOV and award such other and further relief in favor of USAA as the Court deems just and appropriate.

USAA reserves the right to amend this motion to the extent permissible by law.

As well, USAA reserves the right to supplement this motion with a memorandum of law in support. USAA respectfully requests argument prior to the disposition of this motion by the Court.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Counsel for USAA

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July 8, 2019

2018-CP-10-6666

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for United Services Automobile Association, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by United States mail, postage pre-paid to the following address(es):

Pleadings: **UNITED SERVICES AUTOMOBILE ASSOCIATION'S MOTION FOR JNOV**

Counsel Served:

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July 8, 2019

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CLERK OF COURT
BY

ELECTRONICALLY FILED - 2019 Nov 12 2:01 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000666

IN THE STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO: 2018-CP-10-666
THERESE HOOD, Plaintiff(s), v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant(s).	**MOTION TO ALTER AND/OR AMEND PURSUANT TO SCRCP 59**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff THERESE HOOD, by and through undersigned counsel and pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Court of Common Pleas, within ten (10) days of the date of this Motion, or as soon as counsel may be heard, to reconsider the Order Granting USAA's Motion for JNOV and Denying Both Parties' Other Post-Trial Motions entered on November 1, 2019.

LEGAL STANDARD

"Issues on which the trial judge never ruled and which are not raised in a post-[judgment] motion are not properly" preserved for appeal. Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 412, 426 S.E.2d 828, 831 (Ct. App. 1993); see also Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 305, 468 S.E.2d 292, 300-01 (1996) (holding that the defendant failed to preserve its claim for appellate review when it failed to bring a post-trial motion challenging the issue). In South Carolina, a motion to alter or amend a judgment pursuant to Rule 59(e) must be made in order to preserve error when the trial court has not explicitly ruled on a matter of import in its order. See Bailey v. Covil Corp., 291 S.C. 417, 419, 354 S.E.2d 35, 36 (1987); Washington v. Whitaker, 317 S.C. 108, 114, 451 S.E.2d 894, 898 (1994); see, e.g.,

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Talley v. S.C. Higher Educ. Tuition Grants Comm., 289 S.C. 483, 487, 347 S.E.2d 99, 101 (1986) (holding that issue raised in the lower court but not ruled on by trial judge was not preserved because plaintiff did not bring post trial motion to alter or amend the judgment). Further, "[a] party **must** file such a (Rule 59) motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24 (2004). Finally, "[a] party **may** wish to file such a (Rule 59) motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id.

A motion to reconsider "shall be served not later than 10 days after receipt of written notice of the entry of the order." S.C.R.Civ.P. 59(e).

ARGUMENT

I. Timeliness of This Motion

Plaintiff received written notice of the entry of the order filed, November 1, 2019, on that same date. Therefore, this motion is timely.

II. Judgment Notwithstanding the Verdict Generally Improper Here

"A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention." Daves v. Cleary, 355 S.C. 216, 234, 584 S.E.2d 423, 432 (Ct. App. 2003) citing New York Carpet World v. Houston, 292 S.C. 101, 103, 354 S.E.2d 924, 925 (Ct.App.1987). "A directed verdict or judgment notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury." Creighton v. Coligny Plaza Ltd. P'ship, 334 S.C. 96, 112, 512 S.E.2d 510, 518 (Ct. App.

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1998) citing Brady Dev. Co. v. Town of Hilton Head Island, 312 S.C. 73, 439 S.E.2d 266 (1933); see also Gamble v. International Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438 (1996).

Moreover, "a motion for judgment notwithstanding the verdict simply takes us back to the point in the trial when a motion was made for a directed verdict, and is limited to those grounds." Standard Warehouse Co. v. Atl. Coast Line R. Co., 222 S.C. 93, 106–07, 71 S.E.2d 893, 897 (1952) citing Gleaton v. Southern Railway Company, 208 S.C. 507, 517, 38 S.E.2d 710; Circuit Court Rule 79. "Concomitantly, a motion for JNOV under Rule 50(b), SCRCP is a renewal of a directed verdict motion." Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006) citing Glover v. N.C. Mut. Life Ins. Co., 295 S.C. 251, 256, 368 S.E.2d 68, 72 (Ct.App.1988). "If a party fails to make a directed verdict motion before the jury retires, the party cannot subsequently move for JNOV." Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 420, 453 S.E.2d 908, 911 (Ct. App. 1995) citing Ballew v. Liberty Life Ins. Co., 270 S.C. 301, 241 S.E.2d 907 (1978); Government Employees Ins. Co. v. Mackey, 260 S.C. 306, 195 S.E.2d 830 (1973). And the issues raised must be identical, as our Court of Appeals has held judgment notwithstanding the verdict

> …is available to one suffering an adverse ruling of the jury only when the *same issues* were submitted to the judge at the directed verdict stage. Inasmuch as no motion was made for a directed verdict at the conclusion of the trial, no motion for relief as a matter of law is available after the jury verdict.

Smith v. Ridgeway Chemicals, Inc., 302 S.C. 303, 305-06, 395 S.E.2d 742, 743-44 (Ct. App. 1990)(*emphasis* added); See also Rule 50 SCRCP and Henderson v. St. Francis Community Hospital, 295 S.C. 441, 369 S.E.2d 652 (Ct.App.1988).

In one such case against an insurer, the Court found that the denial of such a JNOV motion on strictly procedural grounds was proper:

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> We also hold the trial court was correct in refusing the company's motions for directed verdict, judgment n.o.v. and a new trial on procedural grounds. S.C.R.Civ.P. 50(a) requires the specific statement of the grounds for a motion for directed verdict. **A motion for judgment n.o.v. under Rule 50(b) is a renewal of the directed verdict motion and is limited to the grounds asserted in the directed verdict motion.** Taylor v. Bridgebuilders, 275 S.C. 236, 269 S.E.2d 337 (1980): 5A J. Moore, Moore's Federal Practice Section 50.08 (2d ed. 1987). The directed verdict motion was based only upon the factual assertion that the company was prepared to pay if a claim had been filed under the policy during the time premiums were paid. The evidence does not sustain this assertion. In fact, viewing the evidence in the light most favorable to Glover, it supports the contrary. Regardless of the basis asserted, the ground upon which the motion for judgment n.o.v. was made was not the same ground stated in the motion for directed verdict.

Glover v. N. Carolina Mut. Life Ins. Co., 295 S.C. 251, 256–57, 368 S.E.2d 68, 72 (Ct. App. 1988)(**emphasis** added).

Here, the same is the case. The Court has granted a judgment notwithstanding the verdict motion on a basis that could not have been made prior to the jury delivering its verdict – that is that there is an inconsistency between questions 1, 2, and the direction given on the verdict form to continue to damages. **Clearly the jury intended to deliver damages against USAA and did, in fact, deliver a verdict against them in the exact maximum amount permitted by the Court.** Therefore, to collaterally attack that verdict as improper and not supported by the evidence, as USAA has done to its insured is improper. Moreover, it is not a proper basis for this Court to grant a JNOV motion because no such motion containing the same issues (the verdict form having not yet been completed) could have been made at the directed verdict stage and the verdict form with accompanying instructions was not contemporaneously objected to in the same manner. The Court of Appeals in Johnson v. Hoechst Celanese Corp.[1] faced a similar procedural scenario and dealt with it this way:

[1] Factually the Johnson case with background as follows: The plaintiffs in this tort action asserted claims of nuisance, trespass, negligence, and strict liability for the alleged contamination of their properties located in the Pineforest Subdivision of Greenville County. The plaintiffs alleged Hoechst Celanese Corporation dumped

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If a party fails to make a directed verdict motion before the jury retires, the party cannot subsequently move for JNOV. Ballew v. Liberty Life Ins. Co., 270 S.C. 301, 241 S.E.2d 907 (1978); Government Employees Ins. Co. v. Mackey, 260 S.C. 306, 195 S.E.2d 830 (1973). The trial court properly denied the motion for JNOV, because the landowners did not move for a directed verdict. The landowners argue that no such motion could have been made in this instance because the error came later in the trial. This argument simply highlights the fact that a motion for judgment notwithstanding the verdict was not the appropriate vehicle to address the alleged error.

…

We also note the landowners could have objected to the map and verdict form during the trial. Counsel discussed the classifications of the plaintiffs to be placed on the exhibit and had an opportunity to review it. There was no objection to the map or verdict form, nor was there an objection to the trial court's instructions to the jury on the use of the map and verdict form. The landowners did not call any purported error to the court's attention until after the liability verdict was rendered. Because they did not raise the alleged error at the first opportunity, we hold the landowners failed to preserve any issue regarding the court's exhibit and verdict form. See Vaughn v. City of Anderson, 300 S.C. 55, 386 S.E.2d 297 (Ct.App.1989) (failure to object to jury charge waives any alleged error in the charge); Ramos v. Hawley, —— S.Ct. ——, 451 S.E.2d 27 (Ct.App.1994) (failure of party to object to admission of photographs with notations on back waived right to object on appeal).

Although we view any alleged error with the map and verdict form as a trial error which must be preserved for appeal, the landowners argue a new trial should have been granted because the verdicts were inconsistent and against the weight of the evidence. We disagree.

The decision of whether to grant a new trial is left to the sound discretion of the trial judge. E.g., Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). The burden to show an abuse of discretion lies with the appellant. E.g., Watson v. United States Rubber Co., 260 S.C. 129, 194 S.E.2d 395 (1973). Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge believes the verdict is unsupported by the evidence. Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990). Similarly, a new trial may be granted if the verdict is

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chemicals on land located on Hoechst Celanese property, and the chemicals migrated off the property through the air, ground, and surface water, contaminating their land…As the liability portion of the trial neared conclusion, the trial judge advised counsel he intended to give the jury a color coded map as a court exhibit which depicted the location of each plaintiff using the classifications argued by the parties. The court instructed the parties to prepare such an exhibit and corresponding verdict form. The exhibit as used by the court consisted of a blown up copy of a tax map of the subdivision, with a clear plastic overlay. Different colored dots were then stuck onto the overlay to delineate the five categories of property. The court's exhibit and verdict form were reviewed by the parties before they were given to the jury, and after specific inquiry by the court, there was no objection to them. Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 419, 453 S.E.2d 908, 910–11 (Ct. App. 1995).

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> inconsistent and reflects the jury's confusion. Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95 (1983).
>
> A trial judge's order denying a new trial will not be disturbed unless the decision is wholly unsupported by the evidence, or the conclusion reached is controlled by an error of law. Folkens, 300 S.C. 251, 387 S.E.2d 265.

Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 421–22, 453 S.E.2d 908, 912 (Ct. App. 1995).

Like in Johnson, there is no finding that the jury's verdict against USAA is wholly unsupported by the evidence – that is that the jury could not have ever found against USAA on the evidence – only that the verdict is inconsistent in so much as the charge was inconsistent and the finding of the jury to question 1 is inconsistent with its finding to question 2. USAA did not object to the jury's instruction regarding the verdict form, nor in the same manner to the verdict form itself. Now, USAA has had this Court enter an Order for judgment notwithstanding the verdict, after the jury returned a verdict against it on grounds not properly preserved during the trial with respect to the same.

The practical effect of this maneuver essentially gives USAA a mulligan after the jury rendered its just and true verdict against them. The rules with respect to directed verdict and judgment notwithstanding the verdict are meant to aid judicial economy in not having litigants present cases to juries where the facts cannot support a finding for or against one particular party under the law. They are not meant to be an absolute shield whereby a party can go through an entire trial, not raise objections to the instructions given to the jury with respect to how they should find their verdict, and then come back after an adverse verdict is rendered and take exception with the manner by which the jury did so particularly when no exception was raised prior to the jury verdict itself.

Stated differently, the Court cannot accept the jury's finding as to question 1, if the Court believes the charge or verdict form was erroneous, and not accept the jury's finding as to

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question 2. If the Court believes that the jury charge or verdict form was erroneous, and to the extent there is a preserved objection to the same, the remedy may be a new trial, but the Court cannot charge a jury on how to arrive at a verdict for or against a party and then undo part of a jury's verdict while accepting its findings as to another. The same would result in confusion of the jury trial system and a breakdown in our legal system generally. The most appropriate remedy would have been for USAA to request special interrogatories to be submitted to the jury related to the same or potentially a new trial. Hood acknowledges, without conceding, the applicability thereto here, that the trial court "possesses broad, inherent authority to grant a new trial for any prejudicial errors committing during the trial as a matter of fundamental fairness." Ex parte Kent, 379 S.C. 633, 640, 666 S.E.2d 921, 925 (Ct. App. 2008); Graham v. Town of Latta, S.C., 417 S.C. 164, 789 S.E.2d 71 (Ct. App. 2016); Kennedy v. Richland Cty. Sch. Dist. Two, 833 S.E.2d 414 (S.C. Ct. App. 2019), reh'g denied (Oct. 24, 2019), et al.

Therefore, Hood asks the Court to alter and/or amend its Order on USAA's Motion for Directed Verdict on these grounds reinstating the jury's verdict, or in the alternative rehearing the other post-trial motions including motions for new trial and ruling thereon.

III. Therese Hood's Meritorious Claims Against USAA

The Court's Order states "Hood alleged that USAA was liable to her for taking disparate factual positions under liability coverage and underinsured motorist coverage within an automobile insurance policy issued to Hood by USAA." This fails to consider the full basis of Hood's claims as laid out in her complaint and in argument before the Court. Specifically, but not all inclusively, Hood also alleged:

- USAA was liable to her for not offering its full valuation of what she was owed under her insurance policy;
- USAA was liable to her for not following its own policies and procedures;

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- USAA was liable to her for negligently evaluating, investigating and/or adjusting the claim; and

- USAA was liable to her for intentional infliction of emotional distress.

As noted in the Order at issue, Hood brought claims for bad faith and negligence, which were submitted to the jury, but also for breach of contract and intentional infliction of emotional distress among others that were not.

The Court's Order that is subject of this motion states "judgment notwithstanding the verdict should be granted because the duty in tort arising from the contract of insurance is the duty of good faith and fair dealing, and no separate cause of action for negligence exists under these facts." The Court essentially finds that the jury could not have found "yes" to negligence (question 2) without also finding yes to bad faith (question 1) in derogation of its instructions to the jury and the verdict form itself. If that were the law, Hood's presentation of the case on the merits, and her closing argument would have been very different. However, the case was tried, and jury charged as the verdict form is outlined.

In any event, in so finding the Court fails to consider the duty to not act unreasonably or take "unreasonable action" by an insurer as contemplated in the case law, and how the instant claims were presented to the jury by the Court in this case. The Court instructed the jury that finding of a "yes" on Question 1 was a finding specifically of bad faith in the processing of the claim. Here, the Court instructed the jury that finding of a "yes" on Question 2 was a finding of negligence or unreasonable action in the processing of the claim. The Court further instructed the jury that a finding of "yes" on either Question 1 or 2 would entitle Plaintiff to damages. Here, the jury clearly intended to find that USAA's actions were unreasonable and that therefore hold them liable to Hood, their insured. USAA now attempts to confuse the issues, after not

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taking exception with the Court's instruction to the jury regarding the verdict form or cause of action as submitted.

The fundamental issue before the Court if the merits are reached despite the other objections raised supra is, as instructed, could the jury find USAA liable to Hood as a result of its unreasonable action if it did not find USAA liable to Hood as a result of its bad faith. The law of South Carolina supports an unequivocal yes to that question. One need look no further than the seminal South Carolina case on first party claims against an insurer and the Supreme Court's finding in Nichols, which plainly states: "[w]e hold today that if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action." Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 340–41, 306 S.E.2d 616, 619–20 (1983), see also Duncan v. Provident Mut. Life Ins. Co. of Philadelphia, 310 S.C. 465, 427 S.E.2d 657 (1993), et al.

USAA has argued, and the Court has adopted in its Order a basic association fallacy. That is that in the context of first party insurance all bad faith is negligence, and therefore all negligence must be bad faith. However, the same is without merit. What is actually true is that bad faith is merely another flavor of negligence that requires the additional element of a "mutually binding contract of insurance" and a "refusal to pay." It is also true that in finding negligence or "unreasonable action" and assuming the other elements of a "mutually binding contract of insurance" and "refusal to pay" are met, that negligence constitutes bad faith.

In South Carolina, "[t]o establish a cause of action for negligence, a plaintiff must show three elements:

(1) a duty of care owed by the defendant to the plaintiff;

(2) a breach of that duty; and

(3) damage proximately resulting from the breach of duty."

Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co., 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) citing e.g. South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986).

There is a common law duty to exercise reasonable care. The "affirmative legal duty to act [as between two parties] exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co., 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003), citing Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997). In South Carolina, both **the insurance contract itself** between the insurer and insured, and **the relationship and accompanying status between the insurer and insured** establish the existence of the affirmative legal duty to act reasonably toward the insured. In fact, these duties arise even in the absence of the contractual relationship as a pure result of the relationship, as discussed in Hinds v. United Ins. Co. of Am., 248 S.C. 285, infra.

In South Carolina the elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance are:

(1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant;

(2) refusal by the insurer to pay benefits due under the contract;

(3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract;

(4) causing damage to the insured.

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BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc., 399 S.C. 444, 453, 731 S.E.2d 902, 907 (Ct. App. 2012) citing Crossley v. State Farm Mut. Auto. Ins. Co., 307 S>C. 354, 359, 415 S.E.2d 393, 396-97 (1992). This cause of action necessarily requires the "existence of a mutually binding contract of insurance" that negligence may not.

It also includes the additional element of the refusal by the insurer to pay benefits due under the contract, which is absolute in the "bad faith" claim, but not a requirement in a negligence claim so long as other damage can be established. Moreover, the bad faith claim specifically deals with the implied covenant of good faith and fair dealing, whereas a negligence claim may not.

The Court's holding in this case would foreclose insureds from bringing any claim in tort against any insurer except that there is a contract of insurance between the two, and the insurer "refuse[d] to pay benefits due under the contract," and where the insurer specifically breached the specific duty of "good faith and fair dealing." This would foreclose any negligence claim against an insurer ever, except on that limited basis. Yet, South Carolina law allows a cause of action against insurance companies for **negligence from the time of the submission of an insurance application by a prospective insured** even before any contract between the two exists, and even before any payment to the insured could possibly be due. South Carolina courts have recognized this for at least the last half century due to the status and relationship between insurers and the public:

> As pointed out by the appellant, the decisions from other jurisdictions are not unanimous on the question of whether an insurer may be liable in tort for damages resulting from negligent delay in acting upon an application for insurance. See 29 Am.Jur. 593, Insurance, Sec, 204; 15 A.L.R. 1029; 75 A.L.R. 955; 32 A.L.R.2d 511. The cited annotations will reflect that other jurisdictions are approximately evenly divided on the question, but we think that the better reasoned decisions are in complete accord with the rationale of our own decision in Tobacco Redrying Corp. v. United States Fidelity & Guaranty Co., supra.

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While various reasons have been advanced for either allowing or denying a recovery, one of the principal reasons advanced in support of the allowance of a recovery is the fact that, as stated by Appleman in Insurance Law and Practice, Vol. 12, Sec. 7226.

> 'The business of insurance is affected by public interest, the insurer being bound to furnish the indemnity which the state has authorized it to issue, or to decline to do so within such a reasonable time as will enable the applicant to act intelligently upon rejection. * * *
>
> 'The more liberal, and probably the better rule, is to the effect that an insurance company obtaining an application for insurance is under a duty to accept it or reject it within a reasonable time, and is liable if it delays unreasonably in acting thereon.'

The jurisdictions which deny recovery for negligence with respect to an application would appear to either not recognize, or else not give effect to, the principle that the insurance business is affected with a public interest. In this jurisdiction it has long been recognized that insurance is a business affected with a public interest. See La Tourette v. McMaster, 104 S.C. 501, 89 S.E. 398. In the opinion in that case the court, speaking of insurance agents and brokers, said,

> 'It is important for the protection of the interests of the people of the state that the business should be in the hands of competent and trustworthy persons. * * * Moreover, they are required to exercise due care in placing insurance, and would be personally liable for the neglect of that duty.'

While not dealing with the precise controversy we have here, a number of our decisions have recognized the duty owed by an insurer and its agents to an applicant to avoid representations which would mislead the applicant to his detriment, and at the same time handle the application with care and without unreasonable delay. See Ward v. Liberty Life Ins. Co., 232 S.C. 582, 103 S.E.2d 48; Keller v. Provident Life and Accident Ins. Co., 213 S.C. 339, 49 S.E.2d 577. In the last cited case it was said,

> Upon the filing of an application, it is the duty of the insurer to act upon it with reasonable promptness and, in the meantime, to refrain from doing anything reasonably calculated to mislead the applicant.'

In the instant case we think the complaint clearly and fully alleges delicts by the appellant in the legal duties it owed respondent, and that as a result of such delicts, respondent has been damaged. It follows that the complaint states a cause of action.

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Hinds v. United Ins. Co. of Am., 248 S.C. 285, 290–91, 149 S.E.2d 771, 774–75 (1966). It cannot follow then that once the application is accepted and insurance policy placed the insurer would have a lesser duty to the insured than that imposed by the relationship arising from the mere consideration of an application. In fact, the opposite should be true and the duty of care owed by the insurer to its insured, as opposed to merely its prospective insured, heightened. Moreover, where an insurer has a duty to a prospective insured without any contract of insurance at all, it is clear that they may also have those same duties – including to act reasonably – to their insureds.

IV. Hood's Breach of Contract Cause of Action Against USAA

The Court's holding as to the singular duty owed by an insurer to its insured here, is also inconsistent with the Court's prior finding that there could be no breach of contract as the "duty of good faith and fair dealing" arises directly from the contract of insurance itself. Therefore, if there is no independent duty beyond that of not acting in "bad faith" relying on the cases cited, then the breach of contract cause of action should have been submitted to the jury so that the Plaintiff could elect remedies following the verdict. There simply cannot be a rule where the only duty (contractual or otherwise) owed by an insurance company to an insured is the duty of good faith and fair dealing under the contract (omitting unreasonable action generally) and no cause of action for actually breaching of the contract itself. Of course, the cases hold that there can be unreasonable action that makes an insurer liable in tort without a breach of contract (or any contract at all, See Hinds supra), but under the facts presented here there could not be a tort finding where there was no breach of the contract as this is a first party case and the contractual duties flowed directly from USAA to Hood and vice versa.

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The cases cited in the Order, most of which are all federal cases and not binding on this Court, nevertheless support that there is also a breach of contract cause of action. Of course, if that is the Court's holding that there can be no other duty in tort than that duty – which is not supported by the case law cited – the easiest way to fix that (if a fix is necessary) is to rectify the verdict to say in finding negligence they found the requisite breach element for bad faith, and therefore their verdict stands irrespective of the cause of action, or have a new trial with those two causes of action breach of contract and breach of duty of good faith and fair dealing (in tort) without giving the jury the independent cause of action for negligence. Hood would then have a remedy if no verdict at all to appeal that ruling, but it would not leave her to prove something that the Court has deemed she need not prove as the current Order, in effect, would as to the first trial. However, as discussed supra the negligence cause of action is viable against USAA and the verdict could simply be reinstated.

The Nichols court in extending the "Tyger River Doctrine" to a first party claim against the insurer, specifically contemplated what is discussed here:

> Next, Insurer asserts the trial judge erred in failing to require Respondent to elect between his tort and contract causes of action. This exception is without merit**. In Respondent's suit for breach of contract he must only show that his claim is valid. In the tort action, Respondent must show bad faith or unreasonable conduct. Therefore, the jury could have found for Respondent on the contract and in favor of the Insurer in tort. Where a jury finds in favor of plaintiff on both causes of action as here, the verdict then must be reformed as plaintiffs may only recover once for their actual damages.** The trial judge acted properly in presenting both causes of action to the jury and in striking the damages portion of the contract cause of action.
>
> Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 340–41, 306 S.E.2d 616, 619–20 (1983) emphasis added.

The Nichols court goes on to clarify:

> Insurer next argues the trial judge erred in instructing the jury that an insured can recover in a "bad faith" cause of action for negligence of the insurer in handling

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> the claim. Under our view of the bad faith cause of action, above stated, the jury is entitled to consider negligence on the issue of unreasonable refusal to pay benefits. See generally, Tyger River Pine Co., supra; and Robertsen, supra.
>
> Id.

The jury in the present case was charged that they could find bad faith (breach of the duty of good faith and fair dealing specifically) under the first question on the verdict form, or unreasonable action (negligence) under the second. The case law specifically supports this, as noted above "must show bad faith or unreasonable conduct." Unreasonable conduct, of course, is negligence. USAA now attempts to have it both ways in this proposed order that Hood must have been able to prove bad faith (breach of duty of good faith and fair dealing) and unreasonable conduct (negligence) to recover. That does not comport with what the jury was charged or the law.

In any event, if the court were to rule this way, that there can be no negligence and only bad faith, the breach of contract issue should have then been put before the jury separately as that encompasses other duties owed under the contract. As the Supreme Court held in Tadlock:

> While we have not had occasion to address this issue, we have consistently emphasized that a bad faith action exists separately from an action in contract. In Brown, the Court of Appeals suggested that from a policy standpoint it would make more sense to treat a bad faith action as one in contract instead of tort. 284 S.C. at 54, 324 S.E.2d at 646. See also Bartlett v. Nationwide Mut. Fire Ins. Co., 290 S.C. 154, 348 S.E.2d 530 (Ct.App.1986). However, we explicitly overruled both Brown and Bartlett to the extent that they suggested a bad faith action is one in contract rather than tort. Charleston County Sch. Dist., 313 S.C. at 7-8, 437 S.E.2d at 9 (1993).5 See also Nichols, 279 S.C. at 342, 306 S.E.2d at 620 (whether insurer had legal right to refuse to renew insured's policy not the issue in a bad faith action; rather, the issue is whether such non-renewal was in bad faith); Carolina Bank & Trust Co., 279 S.C. at 576, 310 S.E.2d at 163 (duty of good faith and fair dealing does not extend only to performance of obligations arising under the terms of insurance contract). We agree with the reasoning of Deese that the benefits due an insured are not limited solely by those expressly set out in the contract.

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Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 502–03, 473 S.E.2d 52, 54–55 (1996) emphasis added.

Essentially the proposed order would make it impossible to find for the Plaintiff in the underlying case unless the jury found for Plaintiff on both causes of action of which they were charged. This is clearly not within the interests of justice when the jury was charged and the verdict form read they could find either 1 or 2 and still award damages and, in fact, they did award damages and punitive damages finding that the breach of the duty or duties was willful, wanton or reckless. There are many duties that the jury could have found USAA violated that were owed to Hood without finding they breached a duty owed specifically under the contract. For example:

- Duty to offer or pay the internal valuation amount (which there was evidence was never done in this case)
- Duty to not be negligent in adjustment of the claim (which there was evidence was never done in this case)
- Duty to not violate own internal policies and procedures at expense of Plaintiff (which there was evidence was done in this case)
- Duty not to delay payment or protract litigation to delay payment (which there was evidence was done in this case)

Of course, they could also find USAA breached the contract without finding a tort breach of the duty of good faith and fair dealing. The point being that the jury was charged, in this case, that there was the bad faith cause of action or duty of "good faith and fair dealing" under the contract where the insurance company could be liable. And then charged that there was the negligence cause of action or duty not to act unreasonably where the insurance company could be liable. Now USAA wishes to have it both ways and say unless they found both they could not find the other. That is not congruent with

how the jury was charged and not the law since the law clearly states "bad faith **or** unreasonable action" and permits a separate cause of action for negligence.

The same essentially would leave the jury no way to ever find for Plaintiffs in actions involving insurance contracts unless there was some explicit breach of the contract *and* the insurer acted unreasonably / negligently. A law on that basis would seem to remove the public interest focus from insurance law and allow insurers to act with impunity so long as they did not forever refuse to pay a particular claim.

PRAYER

For the reasons set forth above the Plaintiff respectfully requests the Court reconsider its prior Order reinstating the jury verdict and entering judgment for Plaintiff on her post-trial motions, or in the alternative grant a new hearing on the relevant motions, and/or new trial on the issues.

Respectfully submitted,

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November 11, 2019

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L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

October 10, 2019

VIA E-MAIL ONLY
Hon. Kristi Curtis

RE: *Therese Hood v. United Services Automobile Association*
Case No.: 2018-CP-10-666

Dear Judge Curtis:

Plaintiff's objections to the proposed order are on the basis that it does not comport with South Carolina law or the procedural and factual history of the present case as outlined in your charge to the jury and email decision in this matter.

First, if there is no independent duty beyond that of good faith and fair dealing relying on the cases cited, then the breach of contract cause of action should have been submitted to the jury so that the Plaintiff could elect remedies following the verdict. There simply cannot be an order where the only duty (contractual or otherwise) owed by an insurance company to an insured is the duty of good faith and fair dealing. The cases cited in the email (which are all federal cases and not binding on this court support that there is also a breach of contract cause of action). Of course, if that is the Court's holding that there can be no other duty in tort than that duty – which is not supported by the case law cited - the easiest way to fix that is to have a new trial with those two causes of action breach of contract and breach of duty of good faith and fair dealing (in tort).

For example, under the Nichols case the same is specifically contemplated:

> Next, Insurer asserts the trial judge erred in failing to require Respondent to elect between his tort and contract causes of action. This exception is without merit. **In Respondent's suit for breach of contract he must only show *341 that his claim is valid. In the tort action, Respondent must show bad faith or unreasonable conduct. Therefore, the jury could have found for Respondent on the contract and in favor of the Insurer in tort. Where a jury finds in favor of plaintiff on both causes of action as here, the verdict then must be reformed as plaintiffs may only recover once for their actual damages.** The trial judge acted properly in presenting both causes of action to the jury and in striking the damages portion of the contract cause of action.
>
> Insurer next argues the trial judge abused his discretion in ordering the parties to proceed to trial, despite the pendency of an appeal from an order overruling Insurer's demurrer to the tort action.
>
> First, S.C.Code Ann. § 18–9–220 (1976) gives the trial judge discretion to order the parties to proceed to trial if he finds it will serve the ends of justice. Second, the trial judge was justified in overruling the demurrer based on this court's ruling in Vaden v. College Heights Subdivision, 261 S.C. 509, 201 S.E.2d 113 (1973)

(holding that questions of novel impression should not be decided on demurrer) and Baldwin v. Sanders, 266 S.C. 394, 223 S.E.2d 602 (1976) (following Vaden and additionally holding that a complaint is sufficient if it states any cause of action or when the plaintiff is entitled to any relief whatever).

Additionally, if the judge had not ordered the parties to proceed on the tort action, the contract action could still have been tried. To obtain the statutory attorney's fees, Respondent would have to prove bad faith or **620 refusal to pay without reasonable cause, the same set of facts required for the tort action. By ordering the parties to proceed to trial on all causes of action, the trial judge avoided the administrative waste of a second trial and the possibility of two appeals involving the same parties and the same facts. This was a proper exercise of discretion under § 18–9–220.

Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 340–41, 306 S.E.2d 616, 619–20 (1983) emphasis added.

The jury in the present case was charged that they could find bad faith under the first question on the verdict form, or negligence under the second. The case law specifically supports this, as noted above "must show bad faith or unreasonable conduct." Unreasonable conduct, of course, is negligence. USAA now attempts to have it both ways in this proposed order that Hood must have been able to prove bad faith (breach of duty of good faith and fair dealing) and unreasonable conduct (negligence) to recover. That does not comport with what the jury was charged or the law.

In any event, if the court were to rule this way, that there can be no negligence and only bad faith, the breach of contract issue should have then been put before the jury separately as that encompasses other duties owed under the contract. As the Supreme Court held in Tadlock (cited by USAA in its proposed Order):

> While we have not had occasion to address this issue, we have consistently emphasized that a bad faith action exists separately from an action in contract. In Brown, the Court of Appeals suggested that from a policy standpoint it would make more sense to treat a bad faith action *503 as one in contract **55 instead of tort. 284 S.C. at 54, 324 S.E.2d at 646. See also Bartlett v. Nationwide Mut. Fire Ins. Co., 290 S.C. 154, 348 S.E.2d 530 (Ct.App.1986). However, we explicitly overruled both Brown and Bartlett to the extent that they suggested a bad faith action is one in contract rather than tort. Charleston County Sch. Dist., 313 S.C. at 7-8, 437 S.E.2d at 9 (1993).5 See also Nichols, 279 S.C. at 342, 306 S.E.2d at 620 (whether insurer had legal right to refuse to renew insured's policy not the issue in a bad faith action; rather, the issue is whether such non-renewal was in bad faith); Carolina Bank & Trust Co., 279 S.C. at 576, 310 S.E.2d at 163 (duty of good faith and fair dealing does not extend only to performance of obligations arising under the terms of insurance contract). We agree with the reasoning of Deese that the benefits due an insured are not limited solely by those expressly set out in the contract.

Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 502–03, 473 S.E.2d 52, 54–55 (1996) emphasis added.

Essentially the proposed order would have made it impossible to find for the Plaintiff in the underlying case unless the jury found for Plaintiff on both causes of action of which they were charged. This is clearly not within the interests of justice when the jury was charged and the verdict form read they could find either 1 or 2 and still award damages. There are many other duties that a jury could find USAA violated without finding they breached a duty owed under the contract. For example:

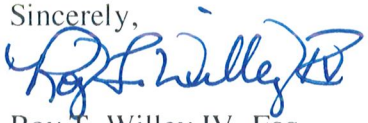
- Duty to offer or pay the internal valuation amount (which there was evidence was never done in this case)
- Duty to not be negligent in adjustment of the claim (which there was evidence was never done in this case)

Of course, they could also find they breached the contract without finding a tort breach of the duty of good faith and fair dealing. The point being that the jury was charged, in this case, that there was the bad faith cause of action or duty of "good faith and fair dealing" under the contract where the insurance company could be liable. And then charged that there was the negligence cause of action or duty not to act unreasonably where the insurance company could be liable. Now USAA wishes to have it both ways and say unless they found both they could not find the other. That is not congruent with how the jury was charged and not the law since the law clearly states "bad faith **or** unreasonable action."

However, under the reasoning in the proposed order and authority cited if those line of cases were followed the breach of contract action then should have been submitted to the jury so that the jury would have the option of finding a breach of the contract separate and apart from the "duty of good faith and fair dealing." The appeal then will focus on whether where bad faith is submitted there should also be a submission of contract breach – which is clearly the law if the only tort duty is the duty arising from the contract itself of good faith and fair dealing. Of course, Plaintiff has argued there are other duties available under the negligence cause of action, but understands the Court's ruling in that regard. However, with that ruling there cannot then be no general duty owed under the contract for a breach if the only duty that could be owed were the very duty arising from the existence of the same contract. The same essentially would leave the jury no way to ever find for Plaintiff in actions involving insurance contracts.

Of course, Plaintiff does not believe that is this Court's intent and if it is not the only way to remedy that is a new trial absolute, not by reversing the jury's verdict entirely.

Sincerely,



Roy T. Willey IV, Esq.

IN THE STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO: 2018-CP-10-00666
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT USAA'S MOTION FOR SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD

COMES NOW Plaintiff, Therese Hood ("Plaintiff"), by and through her undersigned counsel, who submits the following Memorandum of Law in Opposition to Defendant, United Services Automobile Association's (Defendant "USAA"), Motion for Summary Judgment in the above-captioned matter.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff was severely injured in an automobile collision involving three vehicles on November 7, 2014, in Beaufort County, South Carolina. At the time of the collision, Plaintiff was insured by Defendant USAA under an automobile liability and underinsured motorist policy. Plaintiff filed suit in the underlying matter of Therese Hood v. Antoine Johnson, Case No. 2015-CP-27-0119, on March 17, 2015, in the Jasper County Court of Common Pleas. Anastopoulo Law Firm, LLC, entered into an association agreement with Hoffman Law Firm for the underlying matter on January 2, 2017. A judgment was entered against Mr. Johnson at the trial of Therese Hood v. Antoine Johnson on September 7, 2017, awarding $2,500,000 in actual damages to Plaintiff, with forty-nine percent comparative negligence assigned to Plaintiff, and fifty-one percent of negligence assigned to Mr. Johnson.

Plaintiff filed her lawsuit against Defendant USAA in the present case in the Jasper County Court of Common Pleas on March 23, 2017. Plaintiff's March 23, 2017, lawsuit arises from Defendant USAA's bad faith adjustment, investigation, prosecution, and/or review of the November 7, 2014, collision, including Plaintiff's underinsured motorist ("UIM") claim made under Plaintiff's policy with Defendant USAA. Plaintiff's Amended Complaint sets forth that Defendant USAA, by and through its servants, agents, and/or employees, and as the liability insurer of Plaintiff (Mrs. Hood) in the matter of Mary Elizabeth Kuck v. Therese Hood and Antoine Johnson, Case No. 2016-CP-27-00123, asserted that an "inspection of [Mrs. Hood's] 2011 Chevrolet Equinox forward lighting provided conclusive evidence that the high beam headlamps on both sides of the vehicle were illuminated at the time of the collision." (See Ex. A - Aug. 12, 2016, Report of Woodrow M. Poplin, M.S.E., P.E.). Plaintiff's Amended Complaint further sets forth that, on January 11, 2017, Defendant USAA, by and through its servants, agents, and/or employees, served its Responses to Plaintiff's First Set of Request for Admission in the matter of Therese Hood v. Antoine Johnson, wherein Defendant USAA unconditionally denied that Plaintiff was operating her vehicle with her headlamps illuminated at the time of the November 7, 2014, collision. (See Ex. B - Jan. 11, 2017, Responses to Plaintiff's First Requests for Admission.)

On August 10, 2017, Plaintiff served Defendant USAA with her first set of discovery in the present case, which consisted of Plaintiff's Standard and First Supplemental Interrogatories and Plaintiff's First Set of Requests for Production. (See Ex. C - Aug. 10, 2017, Discovery Requests.) After service of Plaintiff's discovery requests, counsel for the parties agreed to stay motions regarding discovery until after the parties could convene for an early mediation. However, prior to the parties convening in an attempt to resolve the present case at an early mediation, Defendant USAA filed its Motion for Summary Judgment on March 12, 2018. Upon receipt of

Defendant USAA's motion, Plaintiff's counsel notified counsel for Defendant USAA that Plaintiff required Defendant USAA's responses to Plaintiff's first set of discovery requests by March 16, 2017. (See Ex. D - Mar. 12, 2018, Rule 11 Ltr.) Upon not receiving Defendant USAA's responses to Plaintiff's first set of discovery requests by the requested deadline, Plaintiff filed her Motion to Compel Defendant USAA's discovery responses on March 20, 2017. (See Ex. E - Mar. 20, 2017, Motion to Compel.) To date, Defendant USAA has yet to respond to Plaintiff's discovery requests.

On May 1, 2017, Defendant USAA moved to transfer the present case from Jasper County to Charleston County. The Jasper County Court granted Defendant USAA's transfer motion on September 19, 2017, and Defendant USAA's present Motion for Summary Judgment is now before this Court. In its motion, Defendant USAA claims that: (1) the law of this State does not impose a duty upon Defendant USAA in either contract, negligence, or bad faith law; (2) there is no factual basis for Plaintiff's claims of barratry, outrage, or negligence *per se*; and (3) Plaintiff cannot show that she has been damaged by any conduct of Defendant USAA. For the reasons set forth more fully herein, Defendant USAA's Motion for Summary Judgment should be denied

LEGAL STANDARD

Summary judgment is appropriate only if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56, SCRCP. In deciding whether a genuine issue of material fact exists, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in her favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The moving party has the burden of proving that summary judgment is appropriate. See id. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the rule, set forth specific facts showing that there is a genuine issue for

trial. See Rule 56, SCRCP; see also, Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

A party asserting that a fact is genuinely disputed must support the assertion by citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials. Rule 56, SCRCP. A litigant "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985). Therefore, "[m]ere unsupported speculation . . . is not enough to defeat a summary judgment motion." Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc., 53 F.3d 55, 62 (4th Cir. 1995).

"[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." Teamsters Joint Council No. 83 v. Centra, Inc., 947 F.2d 115, 119 (4th Cir. 1996). The court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 251-52. Summary judgment **must not be granted until the opposing party has had a full and fair opportunity to complete discovery**. Baird v. Charleston Cty., 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991) (emphasis added)).

ARGUMENT

I. PLAINTIFF HAS SERVED DISCOVERY UPON DEFENDANT USAA, AND DEFENDANT USAA HAS NOT RESPONDED TO PLAINTIFF'S DISCOVERY REQUESTS. THUS, PLAINTIFF HAS NOT HAD A FULL AND FAIR OPPORTUNITY TO COMPLETE DISCOVERY, AND DEFENDANT USAA'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED.

Summary judgment is a drastic remedy and must not be granted **until the opposing party has had a full and fair opportunity to complete discovery**. Cunningham v. Anderson Cty., 402

S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884 (emphasis added). A party claiming summary judgment is premature because she has not been provided a full and fair opportunity to conduct discovery must advance a good reason why time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009). **Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery**; nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) (emphasis added).

Here, Plaintiff has been summarily denied a full and fair opportunity to complete discovery due to Defendant USAA's refusal to respond to Plaintiff's Standard and First Supplemental Interrogatories and Plaintiff's First Set of Requests for Production, which were served upon Defendant USAA on August 10, 2017. Plaintiff, upon conferring with Defendant USAA as required by Rule 11 of the South Carolina Rules of Civil Procedure, requested receipt of Defendant USAA's responses to Plaintiff's first set of discovery requests no later than March 16, 2017. Defendant USAA did not (and has not) responded to Plaintiff's discovery requests, even in the face of Plaintiff's pending Motion to Compel Defendant USAA's discovery responses. Plaintiff's discovery requests are not fashioned as a fishing expedition. Rather, Plaintiff's discovery requests seek relevant evidence as to Defendant USAA's bad faith, negligent adjustment, prosecution, investigation, review, and/or evaluation of Plaintiff's UIM claim in accordance with Plaintiff's UIM policy with Defendant USAA (the "Policy"). As summary judgment is a drastic remedy that

must not be granted until the non-moving party (in this instance, Plaintiff) has had a full and fair opportunity to complete discovery, Defendant USAA's Motion for Summary Judgment should be denied.

II. THE LAW OF THIS STATE IMPOSES A DUTY UPON DEFENDANT USAA IN CONTRACT, NEGLIGENCE, AND BAD FAITH LAW REGARDING ITS DEALINGS WITH ITS INSURED, NAMELY PLAINTIFF HEREIN. FURTHER, THERE IS, INDEED, A FACTUAL BASIS FOR PLAINTIFF'S CLAIMS OF BARRATRY, OUTRAGE, AND NEGLIGENCE *PER SE*. ACCORDINGLY, PLAINTIFF CAN SHOW THAT SHE HAS BEEN DAMAGED BY THE ACTS AND/OR OMISSIONS OF DEFENDANT USAA, AND DEFENDANT USAA'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED.

> Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident.... The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability.... In the event the automobile insurance insurer for the putative at-fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist insurer may assume control of the defense of action for its own benefit.

S.C. Code Ann. § 38-77-160.

Under South Carolina law, the UIM insurer's duty to act in good faith regarding UIM benefits arises no later than when the insured brings suit against the at-fault driver and serves the carrier with process. Hartsock v. Am. Auto. Ins. Co., 2011, 788 F. Supp. 2d 447, reconsideration denied 2011 WL 2559519 (holding that an insured is not required to obtain a judgment against an

at-fault driver before the insured's carrier's duty arises to exercise good faith and deal fairly with the insured regarding UIM benefits. The law must protect the interests of the insured against insurers who invoke their rights as a hollow, technical means of avoiding paying the insured what she is owed. Halmon v. Am. Int'l Grp. Ins. Co., 586 F. Supp. 2d 401, 407 (D.S.C. 2007) (stating that "[t]he court cannot and will not ignore the harsh reality ... that the insured often suffers substantial health and property damage, only to discover that the UIM benefits which they had been paying premiums for precisely to come to their aid in just such an occasion were not being made available to them.") Accordingly, "[t]here is simply no good reason why insurance companies should not be required to treat customers who have been paying premiums for years with at least a modicum of respect and dignity, instead of automatically doubting them in an attempt to avoid paying them benefits." Id.

Here, the law of this State does impose a duty upon Defendant USAA in contract, negligence, and bad faith law regarding its insured, Plaintiff herein. Further, there is, indeed, a factual basis for Plaintiff's claims of barratry, outrage, and negligence *per se*. Accordingly, Plaintiff can show that she has been damaged by the acts/omissions of Defendant USAA, and Defendant USAA's Motion for Summary Judgment should be denied.

A. Plaintiff Meets the Four Requirements for a Bad Faith Action Under the Law of this State. Thus, Defendant USAA's Motion for Summary Judgment Should Be Denied.

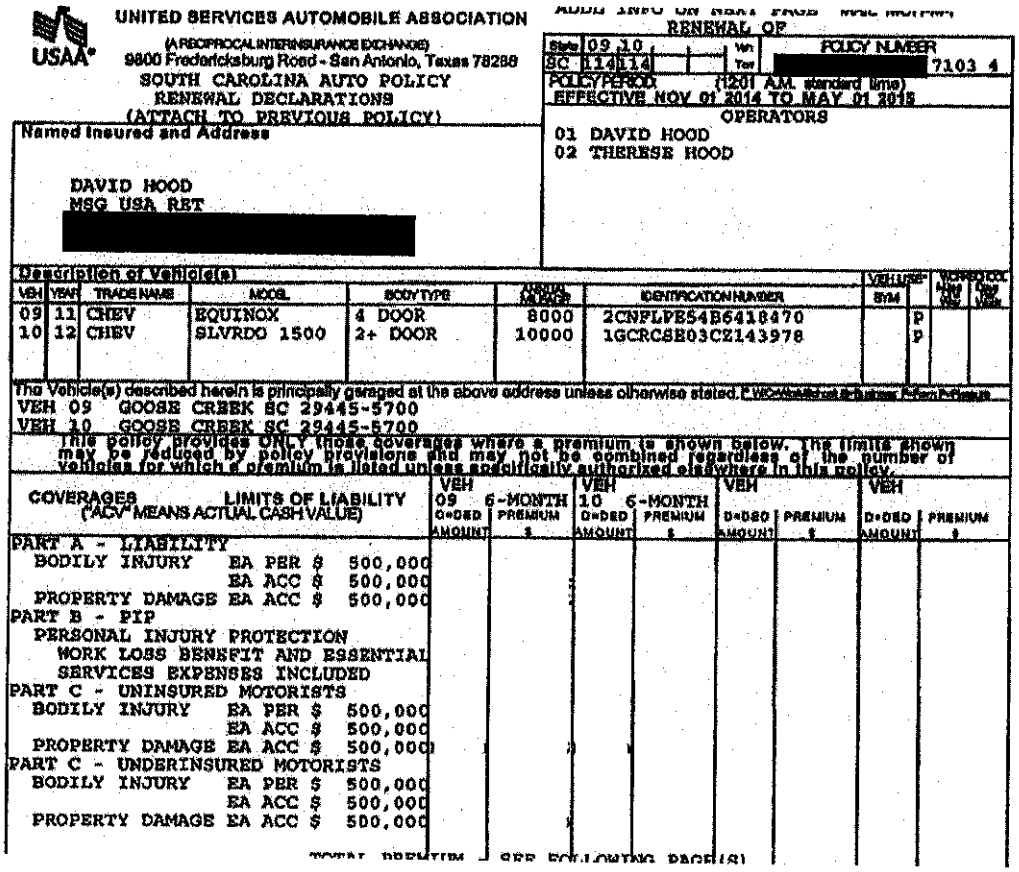
Given that every insurance contract in this State contains the inherent duty of an insurer to act in good faith and with fair dealing toward its insured, "if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, [s]he can recover consequential damages in a tort action." Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983). The elements of a bad faith

insurance action are: (1) the existence of a contract of insurance between the parties; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action; and (4) causing damage to the insured. Howard v. State Farm Mut. Auto. Ins. Co., 316 S.C. 445, 451, 450 S.E.2d 582, 586 (1994). A bad faith claim may exist even in the absence of any violation of an insurance contract provision as "the benefits due an insured are not limited solely by those expressly set out in the contract." Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 503, 473 S.E.2d 52, 55 (1996). In order to show improper claims practices, the South Carolina Supreme Court has written that the plaintiff must demonstrate that the insurer was "not attempting in good faith to effect prompt, fair, and equitable settlement of claims." Kleckley v. Northwestern Nat. Cas. Co., 338 S.C. 131, 137, 526 S.E.2d 218, 221 (2000).

The South Carolina Supreme Court has held that an insurer cannot merely rely upon the results of its own investigation to insulate itself from summary judgment, because doing so would "effectually insulate [] the insurer from liability" and "foreclose [] a jury consideration of the insured's evidence of bad faith." Snyder v. State Farm Mut. Auto. Ins. Co., 586 F. Supp. 2d 453, 460 (D.S.C. 2008) (quoting Varnadore v. Nationwide Mut. Ins. Co., 289 S.C. 155, 158, 345 S.E.2d 711, 713 (1986)).

Here, as to the first element of bad faith, in consideration of the premiums paid by Plaintiff and her husband, David Hood, Defendant USAA issued the Policy that included a stackable UIM coverage limit of $1,000,000, as excerpted on the following page:

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UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
9800 Fredericksburg Road - San Antonio, Texas 78288

SOUTH CAROLINA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

RENEWAL OF

State 09 10 | Ver | POLICY NUMBER [redacted] 7103 4
SC 114114 | Ter |

POLICY PERIOD (12:01 A.M. standard time)
EFFECTIVE NOV 01 2014 TO MAY 01 2015

Named Insured and Address

DAVID HOOD
MSG USA RET
[redacted]

OPERATORS
01 DAVID HOOD
02 THERESE HOOD

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	SYM			
09	11	CHEV	EQUINOX	4 DOOR	8000	2CNFLPE54B6418470		P		
10	12	CHEV	SLVRDO 1500	2+ DOOR	10000	1GCRCSE03CZ143978		P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated.
VEH 09 GOOSE CREEK SC 29445-5700
VEH 10 GOOSE CREEK SC 29445-5700

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES ("ACV" MEANS ACTUAL CASH VALUE)	LIMITS OF LIABILITY	VEH 09 6-MONTH DED AMOUNT	VEH 09 6-MONTH PREMIUM $	VEH 10 6-MONTH DED AMOUNT	VEH 10 6-MONTH PREMIUM $	VEH DED AMOUNT	VEH PREMIUM $	VEH DED AMOUNT	VEH PREMIUM $
PART A - LIABILITY									
BODILY INJURY	EA PER $ 500,000								
	EA ACC $ 500,000								
PROPERTY DAMAGE	EA ACC $ 500,000								
PART B - PIP									
PERSONAL INJURY PROTECTION									
WORK LOSS BENEFIT AND ESSENTIAL SERVICES EXPENSES INCLUDED									
PART C - UNINSURED MOTORISTS									
BODILY INJURY	EA PER $ 500,000								
	EA ACC $ 500,000								
PROPERTY DAMAGE	EA ACC $ 500,000								
PART C - UNDERINSURED MOTORISTS									
BODILY INJURY	EA PER $ 500,000								
	EA ACC $ 500,000								
PROPERTY DAMAGE	EA ACC $ 500,000								

TOTAL PREMIUM | SEE FOLLOWING PAGE(S)

The Policy covered Plaintiff's 2011 Chevrolet SUV, which is the same vehicle Plaintiff was driving in the November 7, 2014, collision. The Policy and its terms were in full force and effect at the time of the collision; however, from the outset it was clear that Defendant USAA did not intend to honor the terms of the Policy.

As to the second element of bad faith, upon settlement of Plaintiff's liability claims against Mr. Johnson, on July 7, 2017, the defense of Plaintiff's case against Mr. Johnson was tendered to Defendant USAA pursuant to S.C. Code § 38-77-160. Prior to that time, Plaintiff and her attorneys attempted in good faith to resolve Plaintiff's UIM claim. Plaintiff reminded Defendant USAA that her claim against Mr. Johnson was in excess of Mr. Johnson's policy limits, and that there was clear liability through Mr. Johnson's total disregard to look before crossing a busy roadway, causing Mr. Johnson to collide with Plaintiff and sending Plaintiff into the path of the Kucks'

vehicle. Still, Defendant USAA refused to offer a reasonable amount to compensate Plaintiff, pursuant to the Policy, for Plaintiff's extreme injuries, the medical expenses for which well exceeded $200,000.

As to the third element of bad faith, namely Defendant USAA's bad faith/unreasonable action, on March 23, 2016, Mary Kuck filed her Summons and Complaint in the matter of Mary Elizabeth Kuck v. Therese Hood and Antoine Johnson in the Jasper County Court of Common Pleas, asserting negligence claims against Plaintiff (Mrs. Hood) and Mr. Johnson with respect to the November 7, 2014, collision. Defendant USAA, as the liability insurer of Plaintiff in the matter brought by Mrs. Kuck, asserted that an "inspection of [Mrs. Hood's] 2011 Chevrolet Equinox forward lighting provided "conclusive evidence" that the high beam headlamps on both sides of the vehicle were illuminated at the time of the collision." (See Ex. A - Aug. 12, 2016, Report of Woodrow M. Poplin, M.S.E., P.E.). On August 12, 2016, Defendant USAA's paid expert, hired for the purpose of determining what the physical evidence indicated regarding the status of the headlamps of Plaintiff's vehicle at the time of the collision, stated that there was conclusive evidence that the high beam headlamps on both sides of Plaintiff's vehicle were illuminated at the time of the collision. Defendant USAA compensated Mr. Poplin's firm thousands of dollars for his opinion as to Plaintiff's lighting compartment. (See Ex. E - Sept. 13, 2016, Payment to W. Poplin Engineering, LLC.)

On January 11, 2017, Defendant USAA served its Responses to Plaintiff's First Set of Requests for Admission in her case against Mr. Johnson (with Defendant USAA at the helm of the defense by way of Plaintiff's settlement of her liability claims against Mr. Johnson on a Covenant Not to Execute). In its responses, Defendant USAA unconditionally denied that Plaintiff was operating her vehicle with her headlamps illuminated at the time of the November 7, 2014,

collision. (See Ex. B - Jan. 11, 2017, UIM Carrier's Responses to Plaintiff's First Requests for Admission.) Defendant USAA, looking out for nothing except its own bottom line in making such a denial, knowingly undertook wholly disparate positions in Plaintiff's case against Mr. Johnson and Mrs. Kuck's case against Plaintiff and Mr. Johnson. Defendant USAA's disparate positions as to its own insured's headlamps being illuminated evince Defendant USAA's self-serving, conscious indifference to the terms of the Policy, its obligations of good faith and fair dealing to its own insured, candor to the Court, and constitute bad faith on the part of Defendant USAA.

As to the fourth element of bad faith, for the next eight months following Defendant USAA's perplexing denial as to Plaintiff's headlamps in its responses to Plaintiff's Requests for Admission, Defendant USAA continued to subject Plaintiff to needless, divisive, and unreasonable delays in compensating her for the severe injuries she sustained in the November 2014 collision. By then, Plaintiff had incurred nearly $224,000 in medical expenses, and had been subjected to ridicule, doubt, and humiliation in a very public forum. By late fall of 2017, it was clear that Plaintiff was going to have to show a jury what had been obvious to everyone except Defendant USAA; that is, that Plaintiff did not contribute to the collision, that Defendant USAA had no reasonable basis, factual or otherwise, upon which to assert its disparate position as to Plaintiff's headlamps in the case against Mr. Johnson, and that, ultimately, Defendant USAA should have compensated Plaintiff under the Policy in good faith.

Beginning on September 4, 2017, Plaintiff's case against Mr. Johnson, with Defendant USAA at the helm of the defense, was tried before a Jasper County jury. On September 7, 2017, the jury did for Plaintiff what her own insurance carrier would not do, which was to fairly and properly evaluate Plaintiff's UIM claim for the injuries she had suffered (and to date continues to suffer) due to the November 2014 collision. The jury entered a verdict of $2,500,000 in Plaintiff's

favor, assigning forty-nine percent of comparative negligence to Plaintiff, and fifty-one percent negligence to Mr. Johnson. After the trial, it was made clear by a juror who approached Plaintiff after the verdict had been entered and the jury excused, that Plaintiff's comparative negligence, which was a benefit to Defendant USAA, was assigned due to Defendant USAA's continually alluding to or referencing Plaintiff's headlamps throughout the trial, despite the trial court's instruction to refrain from such assertions or allusions. (See Ex. G - Hood v. Johnson Trial Trans.)

Additionally, despite the jury's verdict, Defendant USAA subjected its own insured to further divisive and unreasonable delays in paying Plaintiff's UIM claims by filing clearly erroneous and unwarranted post-trial motions, all of which were denied. (See Ex. H - Defendant USAA's Post-Trial Motions; see Ex. I - Order Denying Defendant USAA's Post-Trial Motions.) It was not until January 2018 that Defendant USAA tendered to Plaintiff the limits under the Policy, as evinced by the Satisfaction of Judgment filed on January 24, 2018. (See Ex. J - Jan. 24, 2018, Satisfaction of Judgment.) Defendant USAA's divisive and unreasonable delays in compensating Plaintiff for the severe injuries she sustained in the collision subjected Plaintiff to ridicule, doubt, and humiliation in a very public forum, and ultimately discounted her claim to the benefit of Defendant USAA through the jury's determination that Plaintiff was forty-nine percent contributorily negligent in the collision. Thus, Plaintiff was damaged as a result of Defendant USAA's actions, and Defendant USAA's Motion for Summary Judgment should be denied.

B. Having Established that Plaintiff Meets the Elements of Bad Faith, and that the Policy is a Binding Contract, Defendant USAA's Bad Faith Actions Constitute a Breach of the Policy, and Defendant USAA's Motion for Summary Judgment Should Be Denied.

The duty of good faith and fair dealing is such a duty that arises by operation of law due to the special relationship of the parties in an insurance contract. Tadlock, 322 S.C. at 503 n. 5, 473 S.E.2d at 55 n. 5. There is "an implied covenant of good faith and fair dealing in every insurance

contract 'that neither party will do anything to impair the other's rights to receive benefits under the contract.'" Id. at 500, 473 S.E.2d at 53 (quoting Nichols, 279 S.C. at 339, 306 S.E.2d at 618).

Here, the Policy contains an implied covenant of good faith and fair dealing, which is inherent in all contracts for automobile insurance in South Carolina. To be clear, the Policy was at every second of this entire ordeal a valid, enforceable, and legally binding contract in full force and effect under the laws of this State. Plaintiff purchased and paid insurance premiums to Defendant USAA in reasonable and justifiable reliance that Defendant USAA would act in accordance with the terms of the Policy, which did not include Defendant USAA placing its own interests above those of its insured, especially in the wake of a collision where it was obvious that Plaintiff was not at fault and where Plaintiff deserved to have Defendant USAA adjust and compensate her fairly for the injuries she suffered in that collision. In addition to paying premiums to Defendant USAA pursuant to the Policy, Plaintiff placed her confidence in Defendant USAA and relied upon Defendant USAA exclusively to formulate an insurance program that would protect her as an insured under the terms of the Policy. Unfortunately, what Plaintiff received from Defendant USAA in exchange for upholding her duties under the Policy was delay, annoyance, and further heartache through the bad faith actions of Defendant USAA. Having established that Plaintiff meets the elements of bad faith and that the Policy is a binding contract, Defendant USAA's bad faith actions constitute a breach of the Policy, and Defendant USAA's Motion for Summary Judgment should be denied.

C. Defendant USAA's Wildly Disparate and Baseless Approach as to Plaintiff's Headlamp Illumination at the Time of the Collision Rises to the Extreme and Outrageous Level of Conduct Necessary to Constitute Outrage.

The South Carolina Supreme Court has held that, in order to show outrage, the plaintiff must show that the tortfeasor's conduct was so "extreme and outrageous" so as to "exceed all

possible bounds of decency[,]" and must be regarded as "atrocious, and utterly intolerable in a civilized community ...." Hansson v. Scalise Builders of S, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007) (quoting Restatement (Second) of Torts § 46, cmts. d, i, and j).

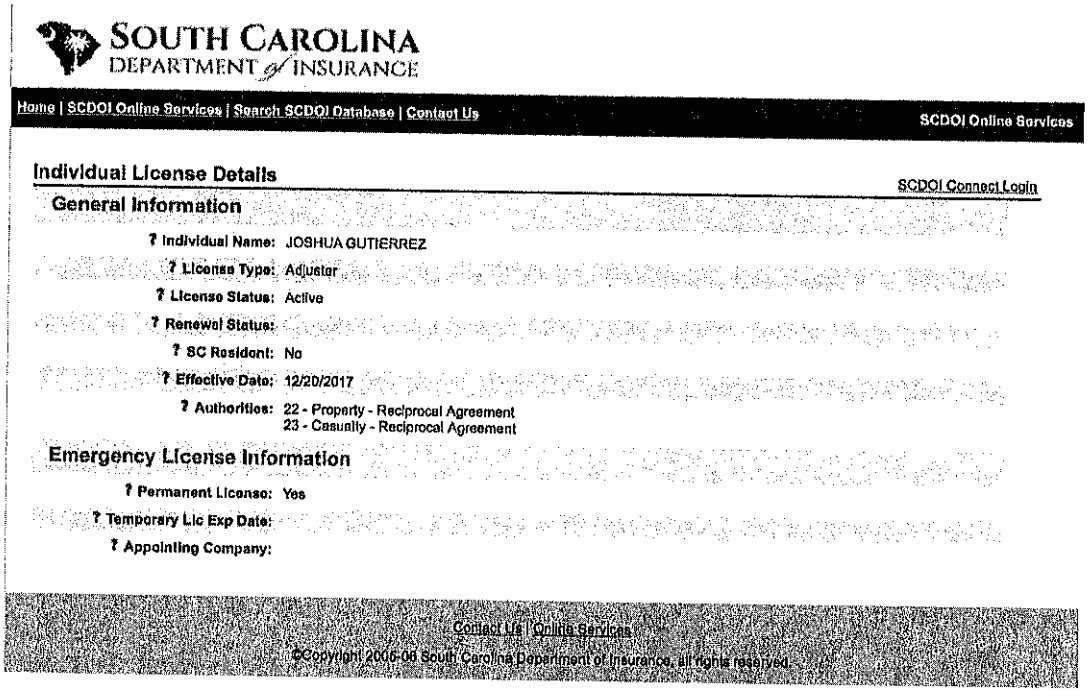
Here, Defendant USAA's wildly disparate and baseless approach as to Plaintiff's headlamp illumination rises to the extreme and outrageous level of conduct by an insurance carrier necessary to constitute outrage. Only one of Defendant USAA's positions as to Plaintiff's headlamps can be true; that is, the headlamps were either on or off at the time of the collision that is the subject of the case brought by Plaintiff against Mr. Johnson and that case brought by Mrs. Kuck against Plaintiff (Mrs. Hood) and Mr. Johnson. The position taken by Defendant USAA at the trial of Plaintiff's case against Mr. Johnson had no factual basis whatsoever. In fact, Defendant USAA had previously paid for an opinion which "conclusively" established that Plaintiff was operating her vehicle with her headlamps illuminated at the time of the collision. However, Defendant USAA elected to change its position for the purposes of Plaintiff's UIM claim without any basis other than that the taking of such a position directly benefited Defendant USAA (and Defendant USAA alone) at the trial against Mr. Johnson. Such blatant disregard for the facts and the purpose behind such disregard ultimately subjected Plaintiff to ridicule, doubt, and humiliation in a very public forum, and ultimately discounted her claim significantly to the benefit of Defendant USAA through the jury's determination that Plaintiff was forty-nine percent contributorily negligent in the collision. Thus, Defendant USAA's Motion for Summary Judgment should be denied.

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D. One or More of the Adjusters Assigned to Plaintiff's UIM Claim Were/Was Not Licensed by the Director of the South Carolina Department of Insurance, Constituting Negligence *Per Se* on the Part of Defendant USAA.

"An individual commonly called an adjuster, adjusting loses for an insurer licensed to do business in this State, **must** be licensed by the director [of insurance] or his designee." S.C. Code Ann. § 38-47-10(A) (emphasis added).

Here, one or more adjusters assigned to the claim in question by Defendant USAA is/was not licensed in South Carolina during the pendency Plaintiff's UIM claim, and those adjusters are not subject to any of the exceptions to licensure as set forth in S.C. Code Ann. § 38-47-10(B). Of course, Plaintiff has not had the benefit of the complete claims file regarding Plaintiff's UIM claim given Defendant USAA's failure to respond to Plaintiff's discovery requests. However, upon information and belief, "Jo Gutierrez" was involved in the adjustment of Plaintiff's UIM claim with Defendant USAA. Mr. Gutierrez, according to the South Carolina Department of Insurance, was not a licensed adjuster in South Carolina until December 20, 2017, as set forth below from the South Carolina Department of Insurance website:


SOUTH CAROLINA
DEPARTMENT of INSURANCE

Home | SCDOI Online Services | Search SCDOI Database | Contact Us — SCDOI Online Services

Individual License Details — SCDOI Connect Login

General Information

? Individual Name: JOSHUA GUTIERREZ
? License Type: Adjuster
? License Status: Active
? Renewal Status:
? SC Resident: No
? Effective Date: 12/20/2017
? Authorities: 22 - Property - Reciprocal Agreement
23 - Casualty - Reciprocal Agreement

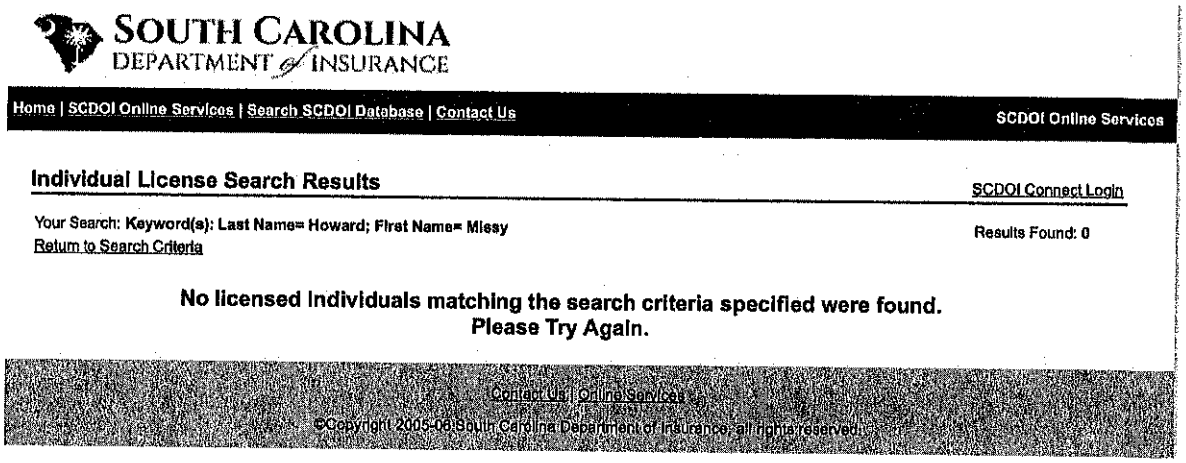
Emergency License Information

? Permanent License: Yes
? Temporary Lic Exp Date:
? Appointing Company:

Contact Us | Online Services

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Similarly, Missy Howard, who is also believed to have been involved in the adjustment of Plaintiff's UIM claim, does not appear to be registered at all as an adjuster with the South Carolina Department of Insurance:


SOUTH CAROLINA
DEPARTMENT of INSURANCE

Home | SCDOI Online Services | Search SCDOI Database | Contact Us — SCDOI Online Services

Individual License Search Results — SCDOI Connect Login

Your Search: Keyword(s): Last Name= Howard; First Name= Missy — Results Found: 0

Return to Search Criteria

No licensed individuals matching the search criteria specified were found.
Please Try Again.

Contact Us | Online Services

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Thus, where it cannot be shown that Defendant USAA assigned only adjusters licensed within this State to adjust Plaintiff's UIM claim, Defendant USAA is in violation of S.C. Code Ann. § 38-47-10(A), which constitutes negligence *per se*, and Defendant USAA's Motion for Summary Judgment should be denied.

E. Defendant USAA Willfully Invited and Forced Plaintiff to Bring, Prosecute, and Maintain an Action at Law in the Jasper County Court of Common Pleas with the Intent to Distress and Harass Plaintiff. Thus, Plaintiff's Barratry Claim is Proper and Defendant USAA's Motion for Summary Judgment Should Be Denied.

One who willfully prosecutes or maintains an action, at law or in equity, in any court having jurisdiction within this State, and thereby seeks to defraud or mislead the court or maintains such a legal action with the intent to distress or harass any party to the action, may be liable for barratry. S.C. Code Ann. § 16-17-10.

Here, Defendant USAA willfully invited and forced Plaintiff to bring, prosecute, and maintain an action at law in the Jasper County Court of Common Pleas with the intent to distress and harass Plaintiff. Defendant USAA committed these acts against Plaintiff in total disregard of

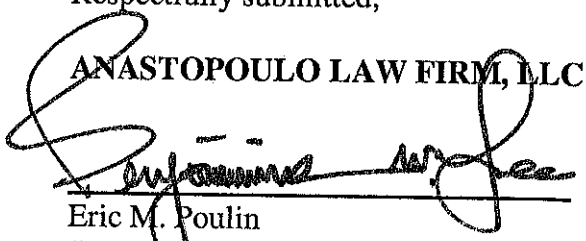
the judicial system of this State and the concept of judicial economy, and in doing so subjected Plaintiff to ridicule, doubt, and humiliation in a very public forum, and ultimately discounted her claim significantly to the benefit of Defendant USAA through the jury's determination that Plaintiff was forty-nine percent contributorily negligent in the collision. Thus, Defendant USAA's Motion for Summary Judgment should be denied.

CONCLUSION

Based on the foregoing reasoning and law, Defendant USAA's Motion for Summary Judgment should be denied.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin
SC Bar Number: 100209
Roy T. Willey, IV
S.C. Bar Number: 101010
Benjamin W. Lee
S.C. Bar Number: 103213
32 Ann Street
Charleston, S.C. 29403
(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
May 29, 2018

POPLIN ENGINEERING

ENGINEERING ANALYSIS OF ACCIDENTS

Vehicle Accident: Kuck v. Hood, et al.

Date of Accident: 11/07/14

W Poplin File Number: PT047

Engineer

Woodrow M. Poplin, M.S.E., P.E.

W Poplin Engineering LLC
PO Box 210
Wadmalaw Island, SC 29487

(843) 559-8801
(800) 567-5868

EXHIBIT
A

POPLIN ENGINEERING
ENGINEERING ANALYSIS OF ACCIDENTS

August 12, 2016

REPORT TO: Mr. Chris Nichols
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

FROM: Woodrow M. Poplin, M.S.E., P.E.
W Poplin Engineering LLC

REFERENCE: Vehicle Accident: Kuck v. Hood, et al.
Date of Accident: 11/07/14
W Poplin File Number: PT047

INTRODUCTION

In follow up to your request, a vehicle inspection has been conducted on a 2011 Chevrolet Equinox sport utility vehicle that was involved in a three vehicle accident on US Highway 278 in Beaufort County, South Carolina. The accident occurred at approximately 5:59 p.m. on November 7, 2014. It is understood that there has been some dispute regarding whether or not the Chevrolet Equinox was being operated with its headlamps illuminated at the time of the accident. The objective of this investigation has been to examine the 2011 Chevrolet Equinox with the primary purpose of determining what the physical evidence indicates regarding the status of the headlamps at the time of collision.

The vehicle in question is identified as a four-door bluish gray 2011 Chevrolet Equinox LT sport utility vehicle. The 2011 Chevrolet Equinox was inspected on July 18, 2016 at the facilities of Co-Parts in Savannah, Georgia. Representative photographs of the Chevrolet Equinox as it appeared at that time are presented in Figs 1 - 6. The entire sequence of

photographs taken during the inspection are presented in electronic format on the computer disk attached as part of this report. The Chevrolet Equinox is further identified as follows:

VIN number:	2CNFLPE54B6418470
Model Year:	2011
Make:	Chevrolet
Model:	Equinox
Trim Level:	LT
Body Type:	4 Door Wagon
Engine:	V6, 3.0L; FFV; VVT
Fuel:	Gasoline/E85
Drive Line:	Front wheel drive
Brake System:	Hydraulic
Restraint System:	Dual Air Bag; Active belts-Manual; Front Seat Side (1st row); Roof Side (All seating rows)
Assembly Plant:	Ingersoll, Ontario, Canada

As can be seen in the photographs, the Chevrolet Equinox has minor collision damage in the passenger side and it has been extensively damaged in the front. The collision damage is offset toward the driver side. The driver side lighting assemblies were involved in the collision contact and are broken and crushed. Because of the offset collision, the area surrounding the passenger side lighting was not directly involved in the collision contact. However, the lamp assembly had separated from its mounting position and was not present on the front of the vehicle. An intact lighting assembly was found in the passenger compartment (Fig. 7). Identification markings on the lighting assembly identified it as a passenger side lighting assembly for a General Motors vehicle. The Chevrolet brand is part of the General Motors Corporation. The shape of the lighting assembly matches the pattern of the 2011 Chevrolet Equinox. It does not match the pattern of the other General Motors vehicle in the accident, a 2007 Chevrolet Tahoe. Data from the web searches to confirm the lighting assembly patterns is attached in Appendix I.

The passenger side lighting assembly contained three intact individual lamps. These are identified as a) a single filament high beam lamp, b) a single filament low beam lamp and c) a twin filament lamp in which the larger filament is utilized as a turn signal and the smaller filament as a marker (park) lamp. The marker lamp filament can be energized without the headlamps, but is always energized whenever the headlamps are also energized.

Whenever a lamp is illuminated, the tungsten filament is heated and becomes relatively malleable under the inertial forces of a collision. As it is manufactured, the individual lamp filament consist of a uniformly coiled tungsten wire. If the lamp is not illuminated, the inertial forces necessary to significantly deform a cold filament are not typically encountered outside areas of direct contact. Significant filament deformation was found in the passenger side high beam headlamp shown in Figs. 8 – 9 and in the passenger marker lamp filament shown in Figs. 10 - 11. It is therefore concluded that both of these filaments were illuminated at the time of the collision. The passenger side turn signal filament (Fig. 11) and the passenger side low beam headlamp filament (Fig. 12 - 13) exhibit no deformation indicating that they were not illuminated at the time of the collision.

On the driver side, as a result of the collision damage all of the lighting was missing except for the one broken headlamp shown in Figs. 14 - 16. The base for the high beam and low beam lamps is different so that they are not interchangeable. The pattern of the base and the wiring indicate that the broken lamp on the driver side is the high beam lamp. The outer glass envelope is broken away and one of the filament support posts has been torn from the base. The filament is intact. It has significant axial deformation to the coils and is discolored from oxidation that occurred when the glass envelope was broken and the heated filament was exposed to the oxygen in the atmosphere. It is therefore concluded that the condition of the high beam filament on the driver side also indicates that it was illuminated at the time of the collision.

The 2011 Chevrolet Equinox is equipped with an airbag control module that records some of the operating parameters of the vehicle in the seconds prior to the collision. As part of the inspection of the vehicle, data was electronically downloaded from the airbag control module. This data suggests that the 2011 Chevrolet Equinox was traveling at an indicated speed of approximately 62 miles an hour as it approached collision. The data recovered from the Chevrolet Equinox airbag control module is attached as Appendix II.

Also as part of this investigation, the timing of sunset and civil twilight was checked with the US Naval Observatory website for the latitude and longitude of the accident as provided in the South Carolina traffic collision report. Sunset is reported at 5:28 p.m. and the end of civil twilight at 5:53 p.m. South Carolina requires that vehicles operate with illuminated headlamps beginning 30 minutes after sunset, a time of 5:58 p.m. on the day of the accident.

In summary, inspection of the 2011 Chevrolet Equinox forward lighting provided conclusive evidence that the high beam headlamps on both sides of the vehicle were illuminated at the time of the collision.

Woodrow M. Poplin, P.E.

PHOTOGRAPHS

(Attached and on Disk)

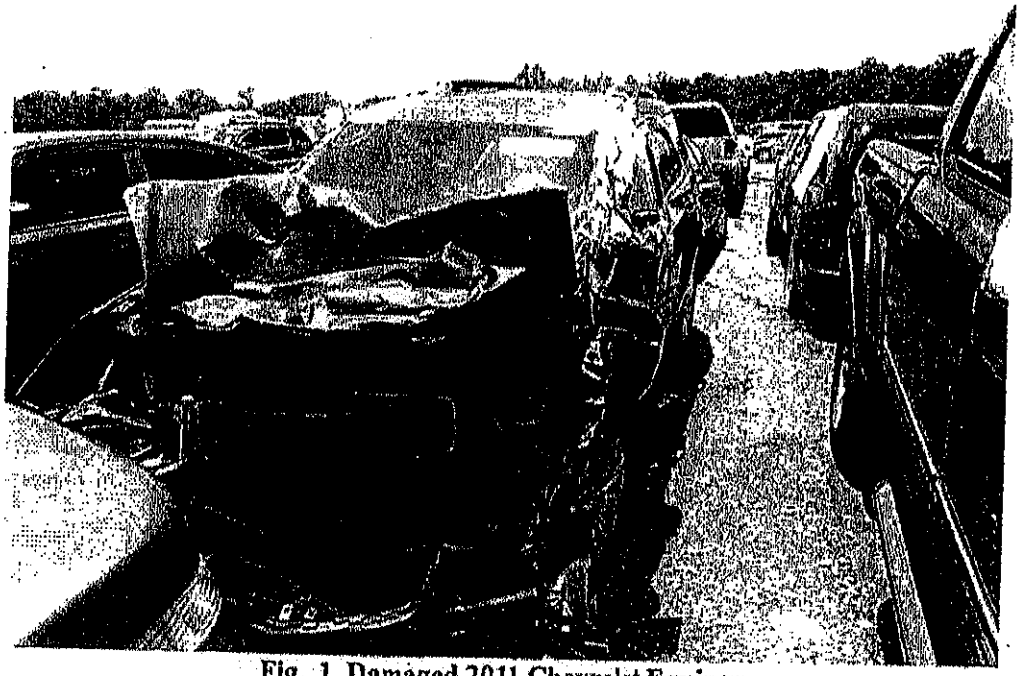


Fig. 1 Damaged 2011 Chevrolet Equinox



Fig. 2 Damaged 2011 Chevrolet Equinox

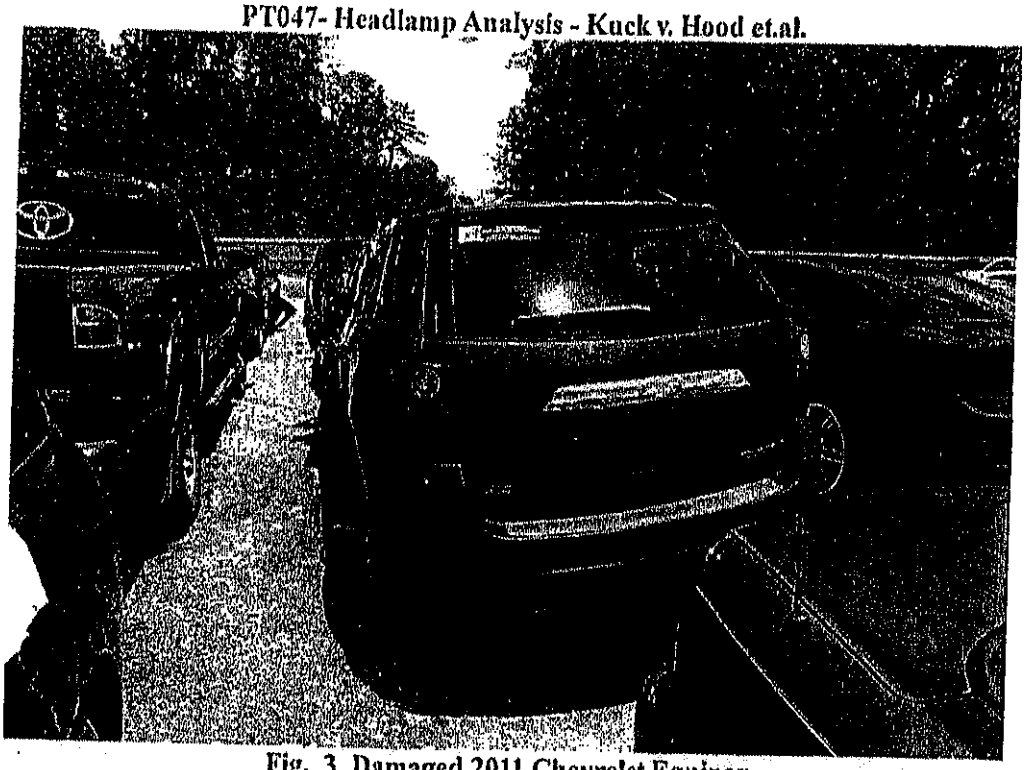


Fig. 3 Damaged 2011 Chevrolet Equinox



Fig. 4 Damaged 2011 Chevrolet Equinox

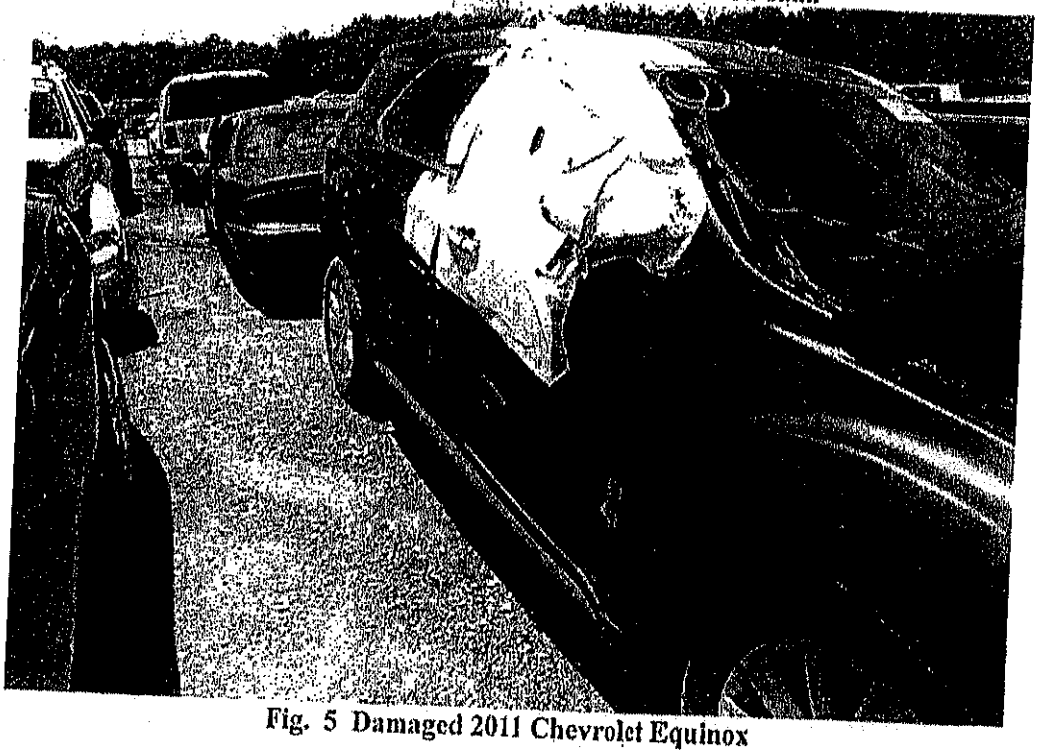


Fig. 5 Damaged 2011 Chevrolet Equinox



Fig. 6 Damaged 2011 Chevrolet Equinox



Fig. 7 Loose passenger side headlamp assembly found inside the Chevrolet Equinox

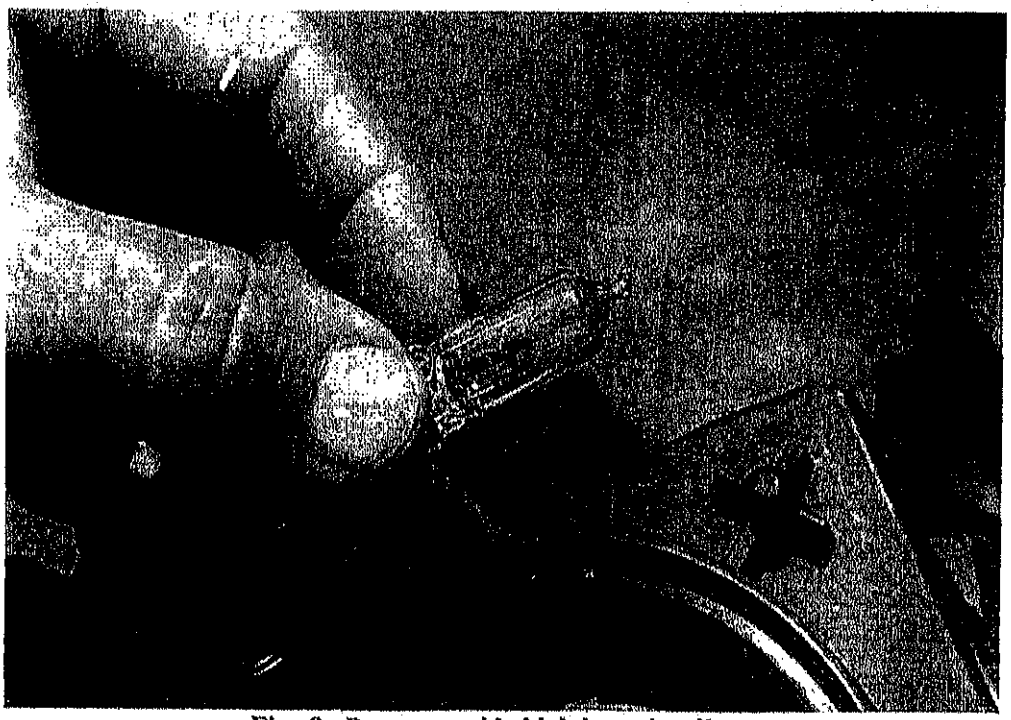


Fig. 8 Passenger side high beam headlamp

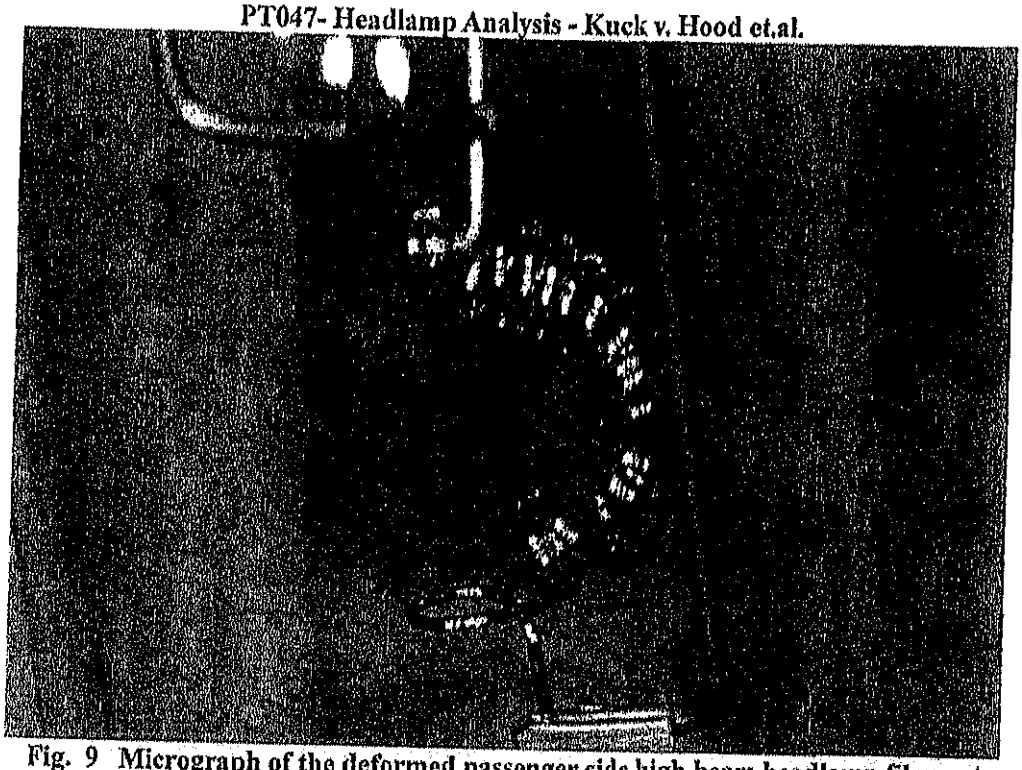


Fig. 9 Micrograph of the deformed passenger side high beam headlamp filament



Fig. 10 Passenger side marker-turn signal lamp

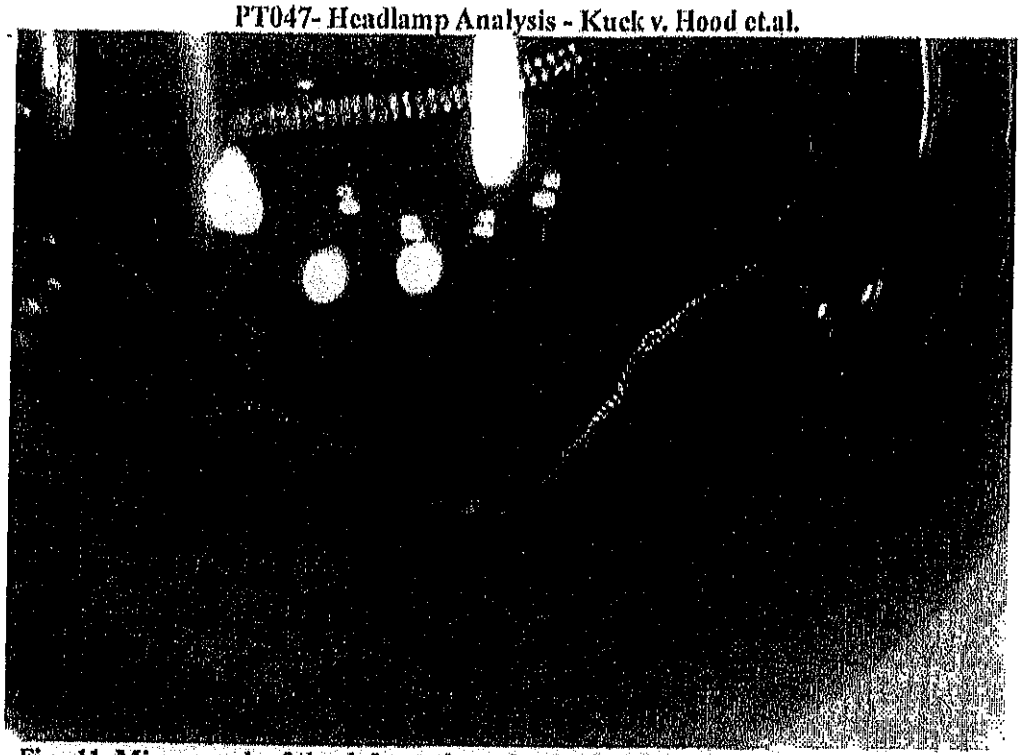


Fig. 11 Micrograph of the deformed marker and undeformed turn signal filaments



Fig. 12 Passenger side low beam headlamp

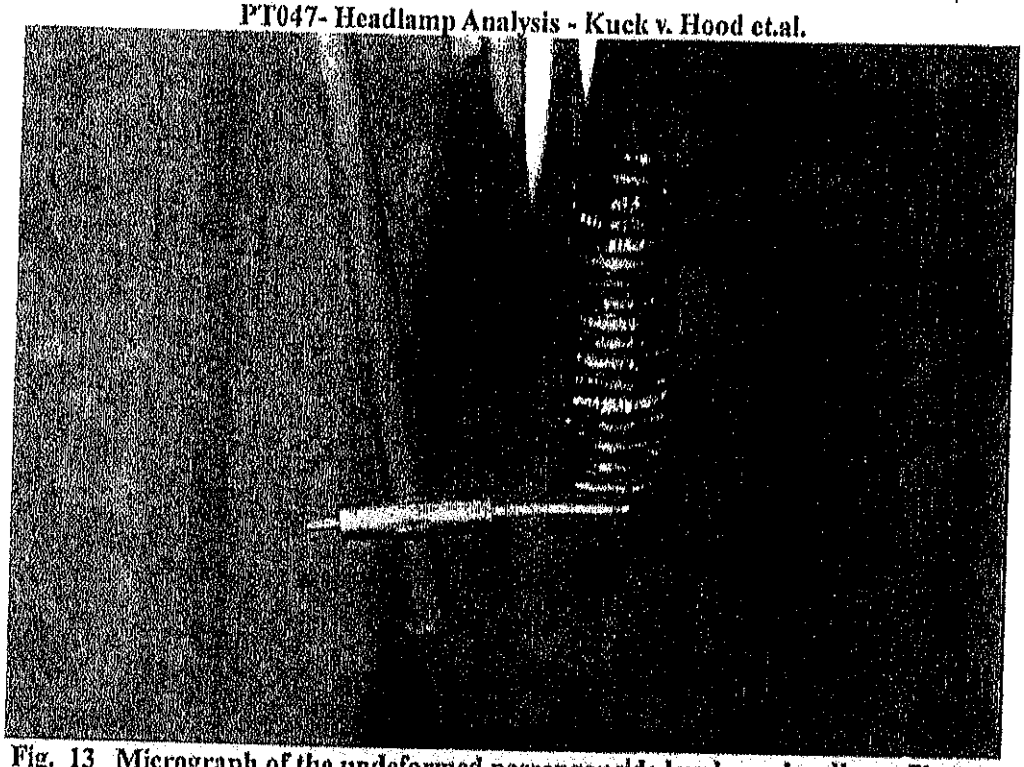


Fig. 13 Micrograph of the undeformed passenger side low beam headlamp filament

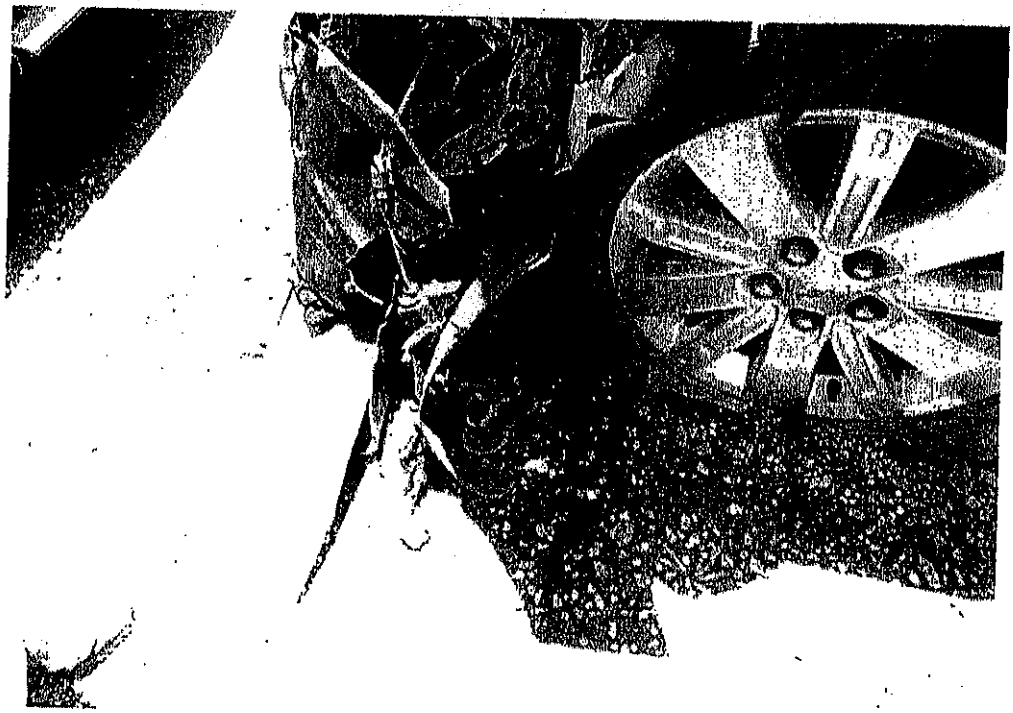


Fig. 14 Broken driver side high beam headlamp

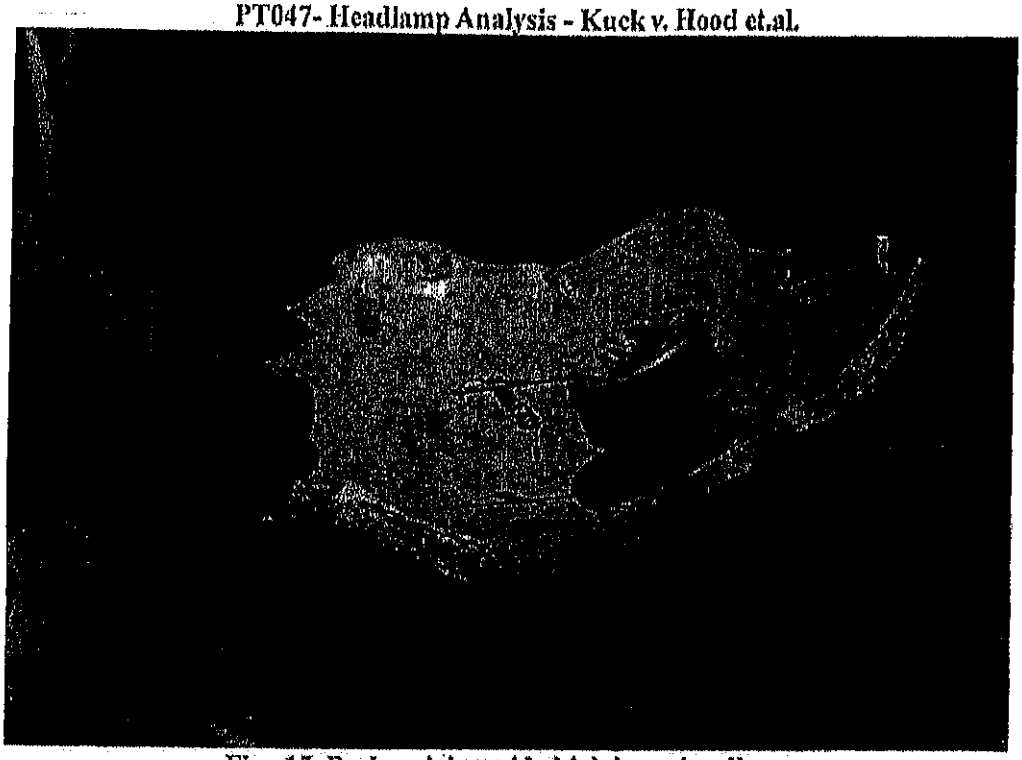


Fig. 15 Broken driver side high beam headlamp



Fig. 16 Micrograph of the deformed and oxidized driver side high beam filament

APPENDIX I

Lighting Assembly Patterns

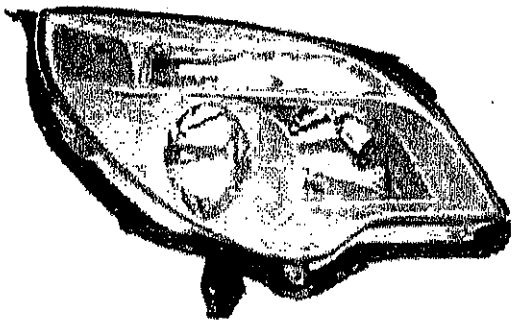
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Description
Additional Information
Reviews

Description

Chevrolet Equinox 10-11 HeadLight (LS-LT MODEL)

Additional Information

TYPE	OEM REPLACEMENT
STYLE	FACTORY LOOK
SIDE	RIGHT
MAKE	CHEVROLET

MODEL	EQUINOX
YEAR	2010-2011
EE NUMBER	GM546-B001R
OE NUMBER	20892426
PL NUMBER	GM2503338

Reviews

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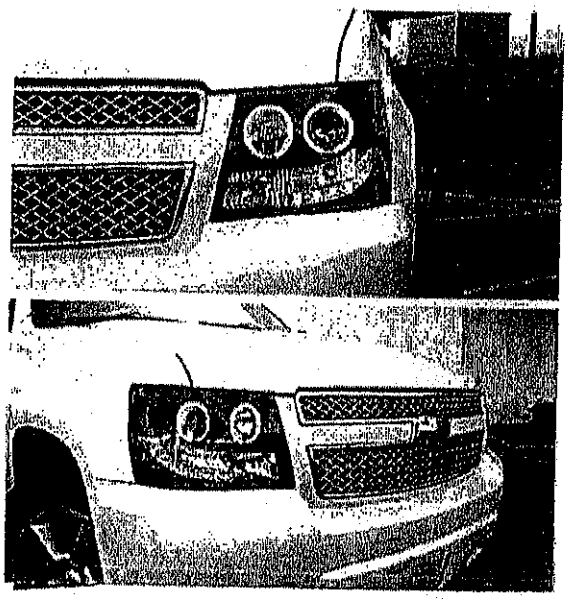
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Item condition: New

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Ships to: [illegible] | See details

Delivery: Estimated between Thu. Aug. 4 and Thu. Aug. 11

Use Expedited Shipping to get it by Aug. 8

Payments: PayPal VISA

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PayPal CREDIT

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List price: $104.80 Now: $76.41

2002-2005 Dodge Ram 1500 2500 3500 *SINISTER BLACK* Smoke Headlight Tail

List price: $200.00 Now: $143.36

2002-2005 Dodge Ram 1500 Chrome Halo LED Projector Headlight 02-05 Ram 2500

List price: $194.65 Now: $138.46

* Savings are reflected in item price. Prices are subject to change without notice. Applicable tax, other conditions apply. | Learn about pricing

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Compatibility

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Year: -Select- | Make: -Select- | Model: Tahoe | Trim: All Trims | Engine: All Engines | Go

(show all compatible vehicles)

This part is compatible with 44 vehicle(s) matching Tahoe.

Notes	Year	Make	Model	Trim	Engine
	2014	Chevrolet	Tahoe	LS Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	LT Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	LTZ Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	PPV Sport Utility 4-Door	All
	2014	Chevrolet	Tahoe	SSV Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	Hybrid Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	LS Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	LT Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	LTZ Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	PPV Sport Utility 4-Door	All
	2013	Chevrolet	Tahoe	SSV Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	Base Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	Hybrid Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	LS Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	LT Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	LTZ Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	PPV Sport Utility 4-Door	All
	2012	Chevrolet	Tahoe	SSV Sport Utility 4-Door	All
	2011	Chevrolet	Tahoe	Base Sport Utility 4-Door	All
	2011	Chevrolet	Tahoe	Hybrid Sport Utility 4-Door	All

Page 1 of 3 1 2 3

Portions of the information contained in this table have been provided by viPartstar

Item specifics

Condition:	New	Brand:	Venom Inc.
[Headlight] Low Beam Bulb	H1 Bulb Provided	Manufacturer Part Number	OEM#A7907A0A8007A0A6237A_2010 2011 2012 2013 201
[Headlight] DOT & SAE:	Approved	Interchange Part Number	20760578/20760579
[Headlight] LED Brand:	Nichia - Made In Japan	Other Part Number:	GM2503263/GM2503263
[Headlight] High Beam Bulb:	H1 Bulbs Provided	Placement on Vehicle:	Left, Right, Front
[Headlight] Bulb Type:	Crystal Sapphire	Surface Finish:	Black Housing / Clear Lens
Contact Us	TEL: 1-844-884-7847 | HOURS: 9am - 6pm PST	Warranty	Yes
Returns	60-Days LOVE IT or RETURN IT!	UPC	7425935490482
EAN:	7425935490482		

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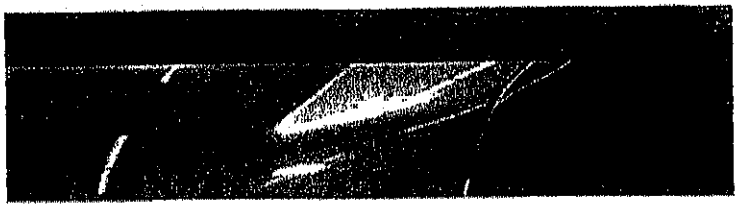
2007-2013 CHEVROLET AVALANCHE
2007-2014 CHEVROLET SUBURBAN 1500 | 2500
2007-2014 CHEVROLET TAHOE
BASE | LS | LT | LTZ | Z71 | HYBRID

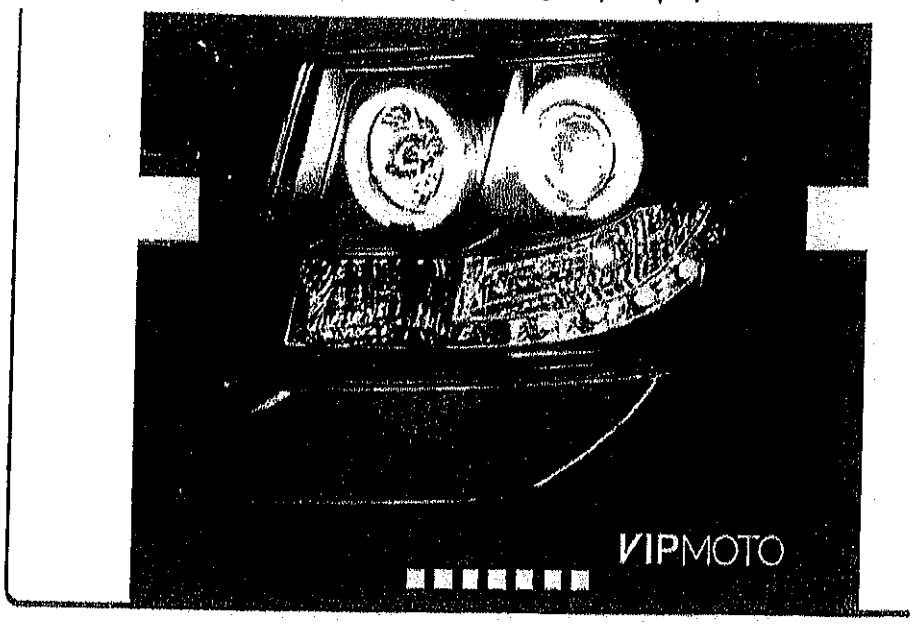


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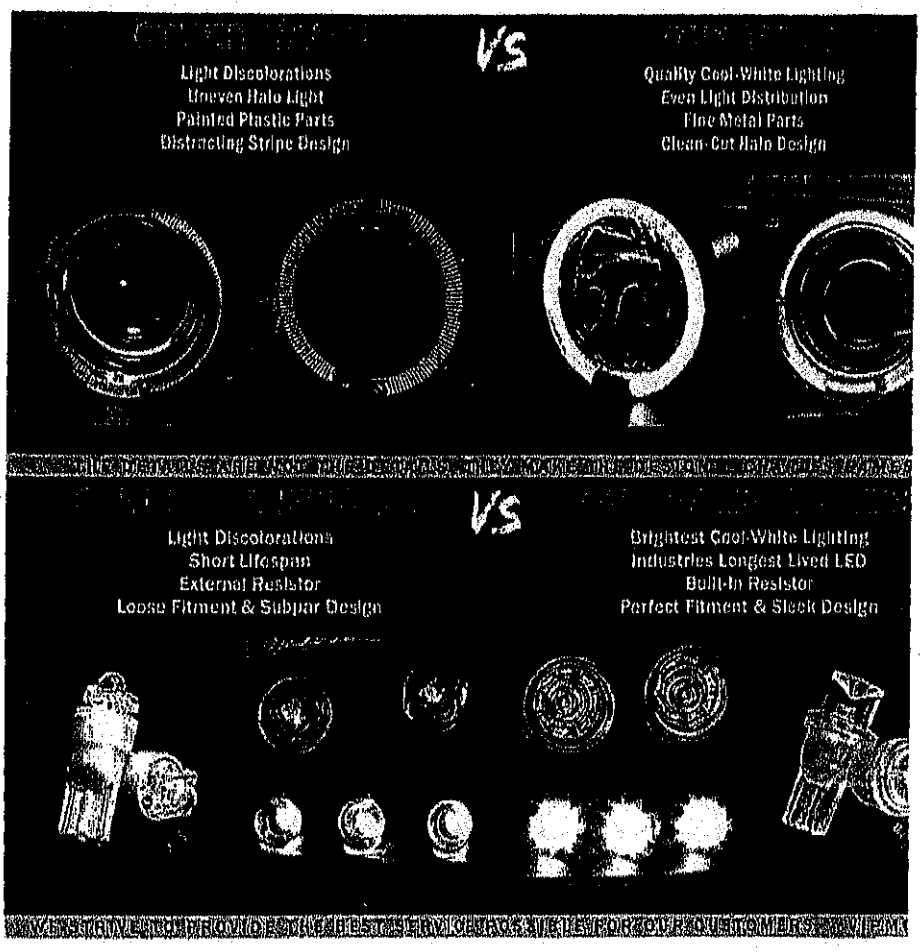




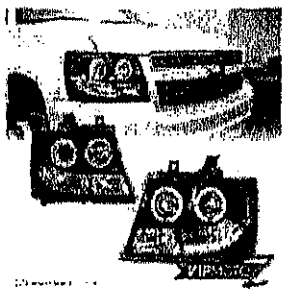
PRODUCT VIDEO

*Product video may vary. Video illustrates housing removal and re-installation only.

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2007-2014 CHEVROLET SUBURBAN 1500 | 2500
2007-2014 CHEVROLET TAHOE
BASE | LS | LT | LTZ | Z71 | HYBRID

Highlights & Features

Crystal Sapphire Halos
Crystal Sapphire Halos A European Luxury Detailing Crafted From Premium Acrylic
Philips Superflux LEDs
Philips Superflux LED Unique Illuminated Appearance & Highly Customizable
4 of LED
4 Perfectly Placed Philips Superflux LED Illuminates The Darkest Of Nights

What You Might Need

Headlight
Please Re-Use Original Bulbs:
Turn Signal | Parking

Color Description

Infinity Black
Matte Black Housing With Transpar
Clear Lens

What's in the Box

Headlight
Driver & Passenger Side
Osram High & Low Beam Bulbs

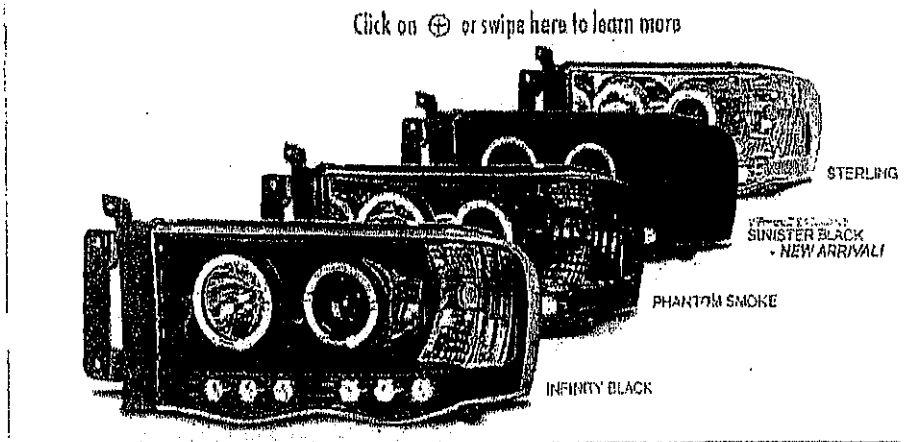
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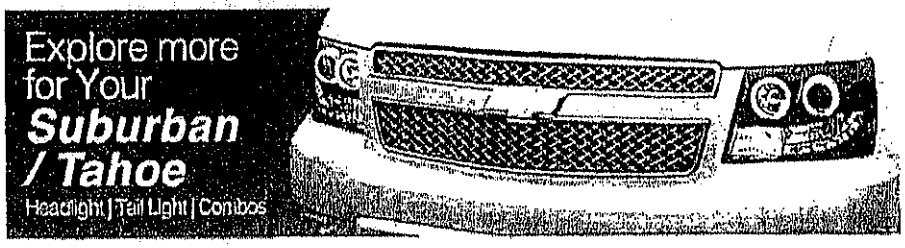
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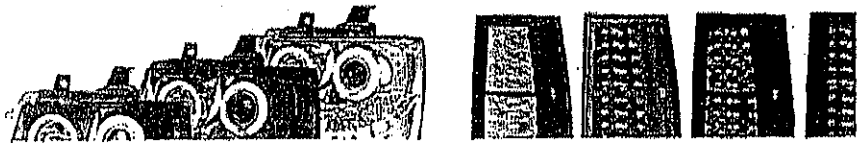
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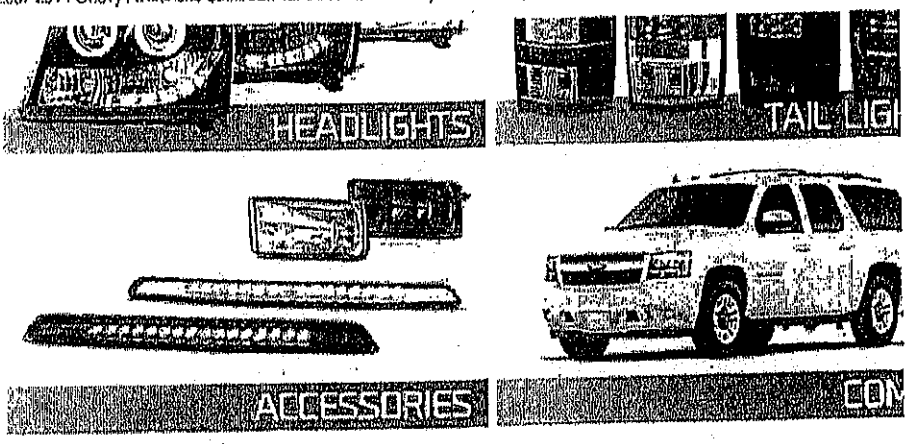
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3 0
2 0
1 0

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100%

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Good seller

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Bought for mom as gift .

by jonathonshins
Jan 27, 2016

Bought these for my mom's tahoe as a Christmas gift after she had accidentally hit her headlights using bull and slightly damaged. She loves them and they look great. She says they are much brighter than the stock configuration. Only took a few minutes and basic wiring knowledge to hook them up maybe an hour total and in the box at that...

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Helpful (0)
Unhelpful (0)
Report

Awesome lights

by bella0923020
May 06, 2016

I keep getting compliments on them everywhere I go. They make my car look like a newer model. I love them! Thank you

Verified purchase: Yes | Condition: New | Sold by: vipmotoz

Helpful (0)
Unhelpful (0)
Report

factory fit and looks great

by realbud22
Apr 12, 2016

Not only do these look good they fit perfect as well great

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Unhelpful (0)
Report

Great product with excellent quality.

by kemach0727
Jan 08, 2016

It is a very good Headlight lamp because of the quality and design of the product. I definitely recommend it!

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Helpful (0)
Unhelpful (0)
Report

100%
Agree

Good quality

by jstr3084
May 02, 2016

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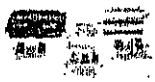
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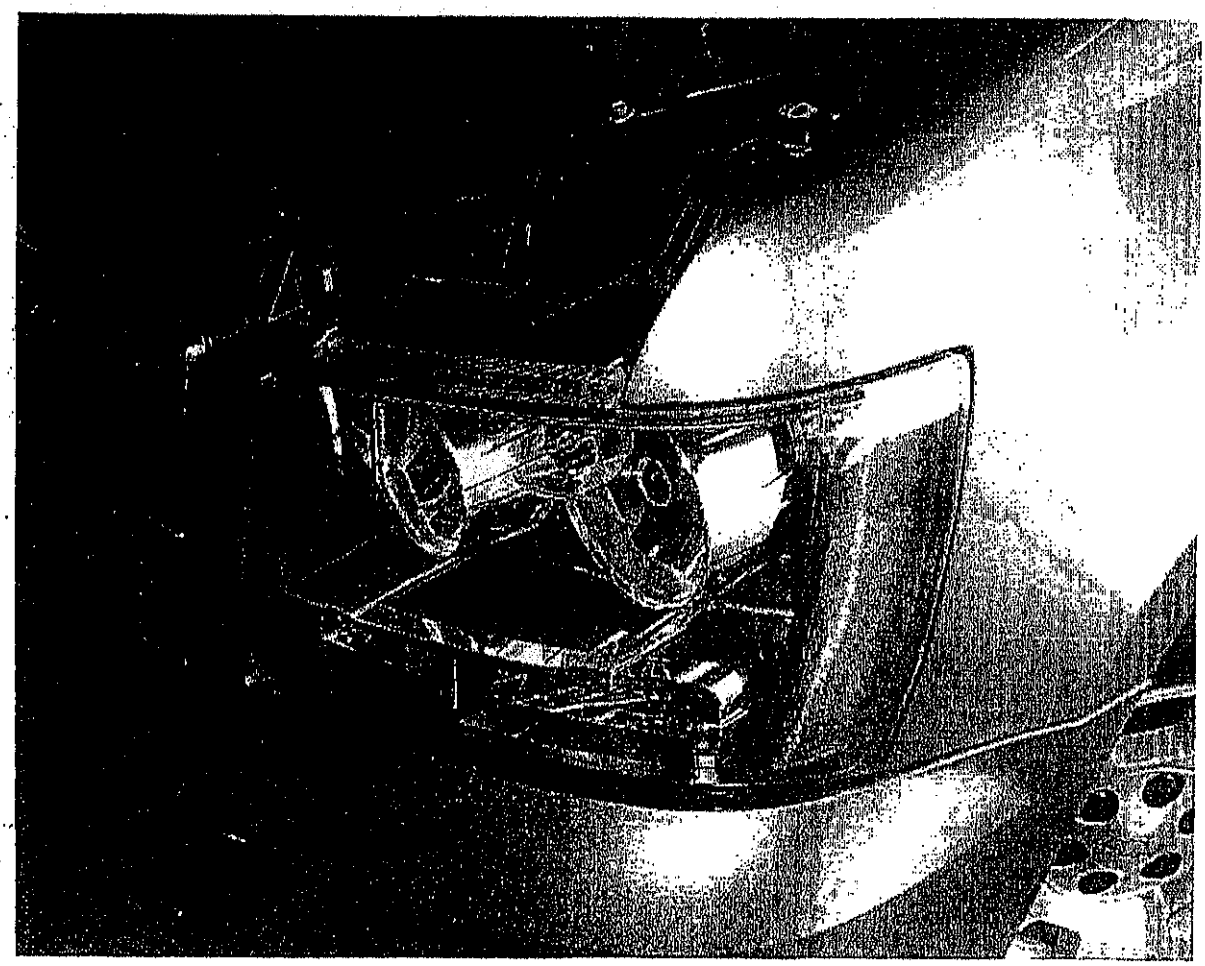
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APPENDIX II

Chevrolet Equinox Airbag Control Module Data

BOSCH

CDR CRASH DATA RETRIEVAL

IMPORTANT NOTICE: Robert Bosch LLC and the manufacturers whose vehicles are accessible using the CDR System urge end users to use the latest production release of the Crash Data Retrieval system software when viewing, printing or exporting any retrieved data from within the CDR program. Using the latest version of the CDR software is the best way to ensure that retrieved data has been translated using the most current information provided by the manufacturers of the vehicles supported by this product.

CDR File Information

User Entered VIN	2CNFLPE54B6418470
User	W Poplin
Case Number	PT047-BU
EDR Data Imaging Date	07/18/2016
Crash Date	11/07/2014
Filename	PT047-2-2CNFLPE54B6418470_ACM.CDRX
Saved on	Monday, July 18 2016 at 15:09:26
Collected with CDR version	Crash Data Retrieval Tool 16.6
Reported with CDR version	Crash Data Retrieval Tool 16.6
EDR Device Type	Airbag Control Module
Event(s) recovered	Deployment, Deployment, Non-Deployment

Comments

Direct to module-BU

Data Limitations

Recorded Crash Events:

There are two types of recorded crash events for Front, Side, and Rear (FSR) Events. The first is the Non-Deployment Event. A Non-Deployment Event records data but does not deploy the air bag(s). The minimum SDM Recorded Vehicle Velocity Change, that is needed to record a Non-Deployment Event, is five MPH (8 km/h). A Non-Deployment Event contains Pre-Crash and Crash data. The oldest Non-Deployment event can be overwritten by a Deployment Event, if all three records are full and the Non-Deployment Event is not locked. A Non-Deployment Event can be overwritten by a more recent Non-Deployment Event if all three records are full and the Non-Deployment is older than approximately 250 ignition cycles. Also, a Non-Deployment event can be recorded if one of the following occurs without the Deployment of any of the frontal air bags, side air bags, or roll bars:

- -Pretensioner(s) only Deployment
- -Head Rest Deployment
- -Battery Cut-Off Deployment

The second type of SDM recorded crash event for FSR Events is the Deployment Event. It also contains Pre-Crash and Crash data. Deployment Events cannot be overwritten or cleared by the SDM.

Rollover Events contains Pre-Crash and Crash data. Rollover event follow the same rules as FSR Deployment events.

The SDM can store up to three Events.

Data:

For FSR Events, SDM Recorded Vehicle Velocity Change reflects the change in velocity that the sensing system experienced during the recorded portion of the event. SDM Recorded Vehicle Velocity Change is the change in velocity during the recording time and is not the speed the vehicle was traveling before the event, and is also not the Barrier Equivalent Velocity. For Deployment Events, the SDM will record 220 milliseconds of data after the Deployment criteria is met and up to 70 milliseconds before the Deployment criteria is met. For Non-Deployment Events, the SDM will record the first 300 milliseconds of data after algorithm enable.

For Rollover Events, the SDM may record Lateral Acceleration, Vertical Acceleration, and Roll Rate data, if the SDM is rollover capable. This data reflects what the sensing system experienced during the recorded portion of the event. For Non-Deployment (Non-rollover) Events, the SDM will record 750 milliseconds of data before a calibrated angle threshold is reached. For Deployment Events, the SDM will record up to 490 milliseconds of data before the Deployment criteria is met and 250 milliseconds after the Deployment criteria is met.

-Deployment loops may be displayed as being deployed in a Non-Deployment event record, if a Deployment event is qualified during the Non-Deployment event. That is, if two or more events are occurring at the same time and one is a Non-Deployment event and one of the others is a Deployment event, and the Deployment event is qualified while the Non-Deployment is still active, the deployed loops may be recorded in the Non-Deployment event record.

-Time between events is recorded in 10 msec intervals and is displayed in seconds for a maximum time of 655.33 seconds. The counter measures the time from the start of one event to the start of the next event if both events occur within the same ignition cycle.

-The CDR tool displays time from Algorithm Enable (AE) to time of Deployment command in a Deployment event and AE to time of maximum SDM recorded vehicle velocity change in a Non-Deployment event. Time from AE begins when the first air bag system enable threshold is met and ends when Deployment command criteria is met or at maximum SDM recorded vehicle velocity change. Any air bag systems may be a source of an enable.

-Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change is captured when the largest, absolute value of either the Longitudinal or Lateral Recorded Vehicle Velocity Change occurs. The Maximum may occur between the recorded 10 millisecond sample points.

-Event Recording Complete will indicate if data from the recorded event has been fully written to the SDM memory or if it has been interrupted and not fully written.

-SDM Recorded Vehicle Speed accuracy can be affected by various factors, including but not limited to the following:

- -Significant changes in the tire's rolling radius
- -Final drive axle ratio changes

-Wheel lockup and wheel slip
-Brake Switch Circuit Status indicates the open/closed state of the brake switch circuit.
-Pre-Crash data is recorded asynchronously. The 0.5 second Pre-crash data value (most recent recorded data point) is the data point last sampled before AE. That is to say, the last data point may have been captured just before AE but no more than 0.5 second before AE. All subsequent Pre-crash data values are referenced from this data point.
-Pre-Crash Electronic Data Validity Check Status indicates "Data Invalid" if:
-The SDM receives a message with an "invalid" flag from the module sending the pre-crash data
-Pre-Crash Electronic Data Validity Check Status indicates "Data Not Available" if:
-No data is received from the module sending the pre-crash data
-For diesel powered vehicles, the data displayed as Throttle Position (%) is actually the data for the Air Inlet Flap Position. This is not the same as the throttle position for a gasoline powered engines.
-Belt Switch Circuit Status indicates the status of the seat belt switch circuit.
-The ignition cycle counter will increment when the power mode cycles from OFF/Accessory to RUN. Applying and removing of battery power to the module will not increment the ignition cycle counter.
-Ignition Cycles Since DTCs Were Last Cleared can record a maximum value of 253 cycles and can only be reset by a scan tool.
-Dynamic Deployment Event Counter tracks the number of Deployment events that have occurred during the SDM's lifetime.
-Dynamic Event Counter tracks the number of qualified events (either Deployments, Non-Deployments, or Rollover events) that have occurred during the SDM's lifetime.
-For Deployment Events, DTC B0052 (Deployment commanded) shall be recorded with the remainder of the data for this event even though it occurred after Event Enable.
-Once a firing loop has been commanded to be deployed, it will not be commanded to be deployed again during the same ignition cycle. Firing loop deployment times for subsequent deployment type events, during the same ignition cycle, will not be recorded. Also, forced timer loops, will not be shown as being commanded to deploy. Loops without their own independent deployment calibration are called "forced timer loops." Examples of a forced timer loops are Pretensioner Deployment Loop #2 and Knee Deployment Loop.
-Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously may be reported higher than Ignition Cycles At Event because the Ignition Cycles SIR Warning Lamp was ON/OFF counter is not cleared during the vehicle build process.
-Ignition Cycles At Event may be reported higher than Ignition Cycles At Investigation by one ignition cycle. This is due to the way Ignition Cycles At Investigation is written during a vehicle power loss situation.
-The reported range of the longitudinal and lateral acceleration values is approximately ± 50 g.
-All data should be examined in conjunction with other available physical evidence from the vehicle and scene.

Data Source:
All SDM recorded data is measured, calculated, and stored internally, except for the following:
-Vehicle Status Data (Pre-Crash) is transmitted to the SDM, by Body Control Module, via the vehicle's communication network.
-The Belt Switch Circuit is wired directly to the SDM.

Data Element Sign Convention:
The following table provides an explanation of the sign notation for data elements that may be included in this CDR report. Directional references to sign notation are all from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Data Element Name	Positive Sign Notation Indicates
Longitudinal Velocity Change	Forward
Lateral Acceleration	Left to Right
Lateral Velocity Change	Left to Right
Vertical Acceleration	Downward
Roll Rate	Clockwise Rotation

Hexadecimal Data:
Data that the vehicle manufacturer has specified for data retrieval is shown in the hexadecimal data section of the CDR report. The hexadecimal data section of the CDR report may contain data that is not translated by the CDR program. The control module contains additional data that is not retrievable by the CDR tool.

01038_SDM10&SDM10i-autoliv_r021

Event Data (General)

Ignition Cycles At Investigation	3466
ESS # 1 Traceability Data	AU0000E000000000
ESS # 2 Traceability Data	DA0000E000000000
ESS # 3 Traceability Data	AH0000E000000000
ESS # 4 Traceability Data	AJ0000E000000000
ESS # 5 Traceability Data	AT0000E000000000
ESS # 6 Traceability Data	DB0000E000000000
ESS # 7 Traceability Data	000000E000000000
ESS # 8 Traceability Data	000000E000000000
Dynamic Deployment Event Counter	2
Dynamic Event Counter	3
Dynamic OnStar Notification Event Counter	2
Vehicle Identification Number	2CNFLPE54B6418470
System Type	Autoliv
Manufacturing Traceability Data	AS4893E050709201
Software Module Identifier 1	00CF22EB
Software Module Identifier 2	0140467E
Software Module Identifier 3	0189ECCF
End Model Part Number	00CF22E0

Event Data (Event Record 1)

Event Recording Complete	Yes
Event Record Type	Deployment
Crash Record Locked	Yes
OnStar Deployment Status Data Sent	Yes
OnStar SDM Recorded Vehicle Velocity Change Data Sent	Yes
Deployment Event Counter	1
Event Counter	1
OnStar Notification Event Counter	1
Algorithm Active: Rear	No
Algorithm Active: Rollover	Yes
Algorithm Active: Side	Yes
Algorithm Active: Frontal	Yes
Ignition Cycles At Event	3468
Time Between Events (sec)	Data Not Available
Concurrent Event Flag Set	No
Event Severity Status: Rollover	No
Event Severity Status: Rear	No
Event Severity Status: Right Side	Yes
Event Severity Status: Left Side	No
Event Severity Status: Frontal Stage 2	No
Event Severity Status: Frontal Stage 1	No
Event Severity Status: Frontal Pretensioner	No
Driver 1st Stage Deployment Loop Commanded	No
Passenger 1st Stage Deployment Loop Commanded	No
Driver 2nd Stage Deployment Loop Commanded	No
Passenger 2nd Stage Deployment Loop Commanded	No
Driver Pretensioner Deployment Loop #1 Commanded	Yes
Passenger Pretensioner Deployment Loop #1 Commanded	Yes
Driver Pretensioner Deployment Loop #2 Commanded	Yes
Passenger Pretensioner Deployment Loop #2 Commanded	Yes
Driver Thorax Loop Commanded	No
Passenger Thorax Loop Commanded	Yes
Left Row 1 Roof Rail/Head Curtain Loop Commanded	Yes
Right Row 1 Roof Rail/Head Curtain Loop Commanded	Yes
Driver Belt Switch Circuit Status	Buckled
Passenger Belt Switch Circuit Status	Not Buckled
Passenger Seat Occupancy Status	Empty
Passenger Classification Status	Not Applicable
Passenger Air Bag ON Indicator Status	Off
Passenger Air Bag OFF Indicator Status	On
Low Tire Pressure Warning Lamp	Off
SIR Warning Lamp Status	Off
SIR Warning Lamp ON/OFF Time Continuously (seconds)	655330
Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously	230
Ignition Cycles Since DTCs Were Last Cleared at Event Enable	253
Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change (msec)	200
Longitudinal SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	-2 [-4]
Lateral SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	-4 [-7]
Driver 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	27
Passenger Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	27
Driver Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	27

Passenger Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	27

DTCs Present at Time of Event (Event Record 1)

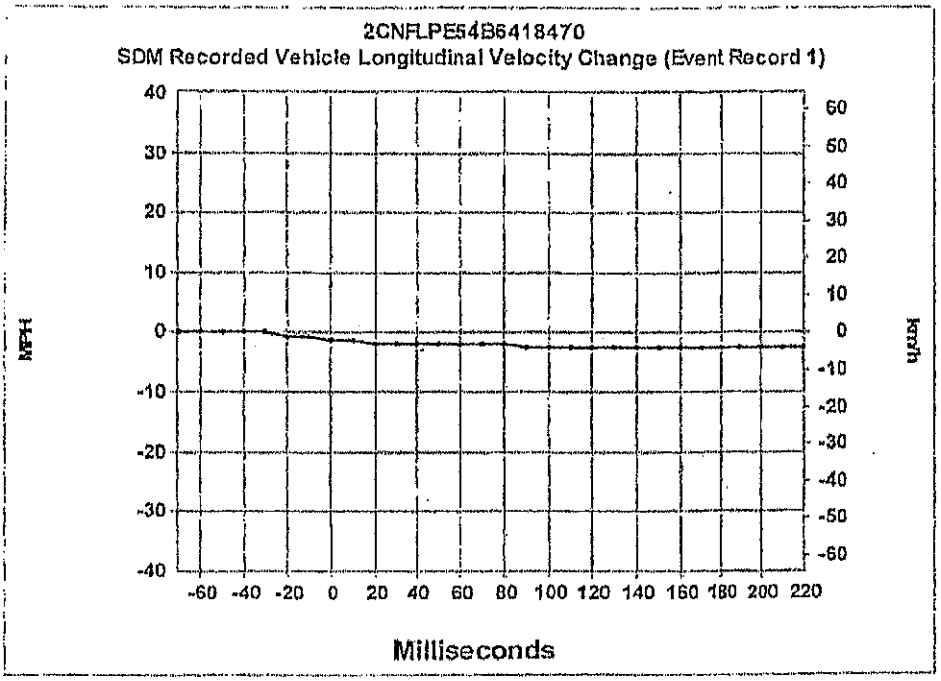
B0052-00

Pre-Crash Data -1 to -.5 sec (Event Record 1)

Times (sec)	Cruise Control Active	Cruise Control Resume Switch Active	Cruise Control Set Switch Active	Engine Torque (lb-ft [N-m])	Reduced Engine Power Mode Indicator
-1.0	No	No	No	72 [97]	Off
-0.5	No	No	No	69 [94]	Off

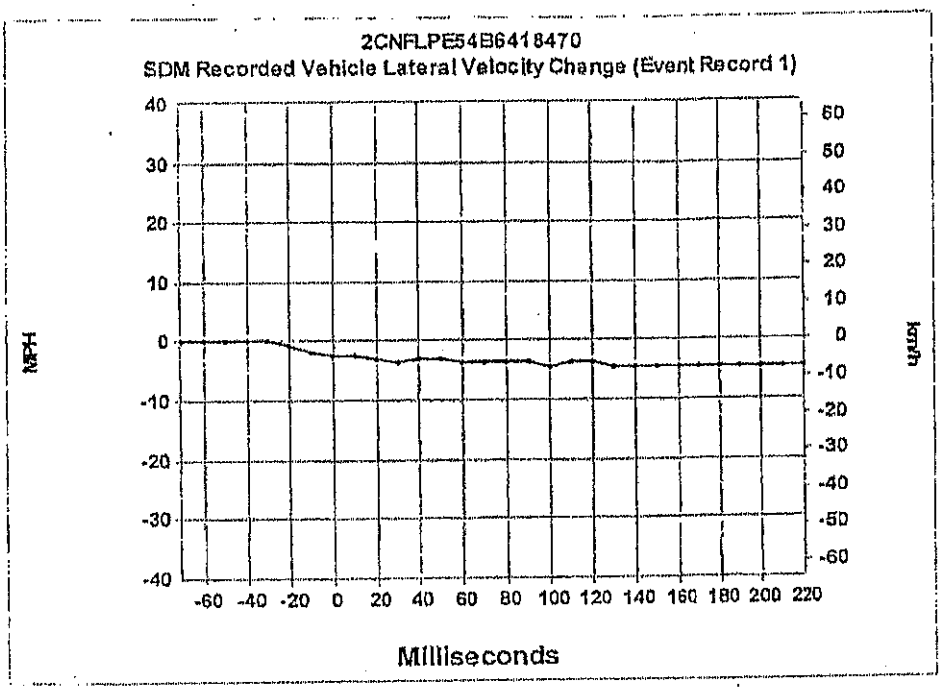
Pre-Crash Data -2.5 to -.5 sec (Event Record 1)

Times (sec)	Accelerator Pedal Position (percent)	Brake Switch Circuit State	Engine Speed	Throttle Position (%)	Vehicle Speed (MPH [km/h])
-2.5	17	Off	1600	30	62 [100]
-2.0	14	Off	1536	27	62 [100]
-1.5	14	Off	1600	26	63 [101]
-1.0	13	Off	1600	26	62 [100]
-0.5	13	Off	1600	26	62 [100]



Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	-0.6	-1.0
-10	-0.6	-1.0
0	-1.2	-2.0
10	-1.2	-2.0
20	-1.9	-3.0
30	-1.9	-3.0
40	-1.9	-3.0
50	-1.9	-3.0
60	-1.9	-3.0
70	-1.9	-3.0
80	-1.9	-3.0
90	-2.5	-4.0
100	-2.5	-4.0
110	-2.5	-4.0
120	-2.5	-4.0
130	-2.5	-4.0

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
140	-2.5	-4.0
150	-2.5	-4.0
160	-2.5	-4.0
170	-2.5	-4.0
180	-2.5	-4.0
190	-2.5	-4.0
200	-2.5	-4.0
210	-2.5	-4.0
220	-2.5	-4.0



Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	-0.6	-1.0
-10	-1.9	-3.0
0	-2.5	-4.0
10	-2.5	-4.0
20	-3.1	-5.0
30	-3.7	-6.0
40	-3.1	-5.0
50	-3.1	-5.0
60	-3.7	-6.0
70	-3.7	-6.0
80	-3.7	-6.0
90	-3.7	-6.0
100	-4.3	-7.0
110	-3.7	-6.0
120	-3.7	-6.0
130	-4.3	-7.0

Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
140	-4.3	-7.0
150	-4.3	-7.0
160	-4.3	-7.0
170	-4.3	-7.0
180	-4.3	-7.0
190	-4.3	-7.0
200	-4.3	-7.0
210	-4.3	-7.0
220	-4.3	-7.0

SDM Recorded Vehicle Lateral Acceleration (Event Record 1)

Contains No Recorded Data

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CDR CRASH DATA RETRIEVAL

SDM Recorded Vehicle Vertical Acceleration (Event Record 1)

Contains No Recorded Data

SDM Recorded Vehicle Roll Rate (Event Record 1)

Contains No Recorded Data

Event Data (Event Record 2)

Event Recording Complete	Yes
Event Record Type	Deployment
Crash Record Locked	Yes
OnStar Deployment Status Data Sent	Yes
OnStar SDM Recorded Vehicle Velocity Change Data Sent	Yes
Deployment Event Counter	2
Event Counter	2
OnStar Notification Event Counter	2
Algorithm Active: Rear	Yes
Algorithm Active: Rollover	Yes
Algorithm Active: Side	Yes
Algorithm Active: Frontal	Yes
Ignition Cycles At Event	3466
Time Between Events (sec)	2.64
Concurrent Event Flag Set	No
Event Severity Status: Rollover	No
Event Severity Status: Rear	No
Event Severity Status: Right Side	No
Event Severity Status: Left Side	No
Event Severity Status: Frontal Stage 2	Yes
Event Severity Status: Frontal Stage 1	Yes
Event Severity Status: Frontal Pretensioner	Yes
Driver 1st Stage Deployment Loop Commanded	Yes
Passenger 1st Stage Deployment Loop Commanded	No
Driver 2nd Stage Deployment Loop Commanded	Yes
Passenger 2nd Stage Deployment Loop Commanded	No
Driver Pretensioner Deployment Loop #1 Commanded	Yes
Passenger Pretensioner Deployment Loop #1 Commanded	Yes
Driver Pretensioner Deployment Loop #2 Commanded	Yes
Passenger Pretensioner Deployment Loop #2 Commanded	Yes
Driver Thorax Loop Commanded	No
Passenger Thorax Loop Commanded	No
Left Row 1 Roof Rail/Head Curtain Loop Commanded	No
Right Row 1 Roof Rail/Head Curtain Loop Commanded	No
Driver Belt Switch Circuit Status	Buckled
Passenger Belt Switch Circuit Status	Not Buckled
Passenger Seat Occupancy Status	Empty
Passenger Classification Status	Not Applicable
Passenger Air Bag ON Indicator Status	Off
Passenger Air Bag OFF Indicator Status	On
Low Tire Pressure Warning Lamp	Off
SIR Warning Lamp Status	Off
SIR Warning Lamp ON/OFF Time Continuously (seconds)	655330
Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously	230
Ignition Cycles Since DTCs Were Last Cleared at Event Enable	253
Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change (msec)	110
Longitudinal SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	-48 [-78]
Lateral SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	6 [10]
Driver 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	6
Driver 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	9
Passenger 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

Passenger Prelensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

DTCs Present at Time of Event (Event Record 2)

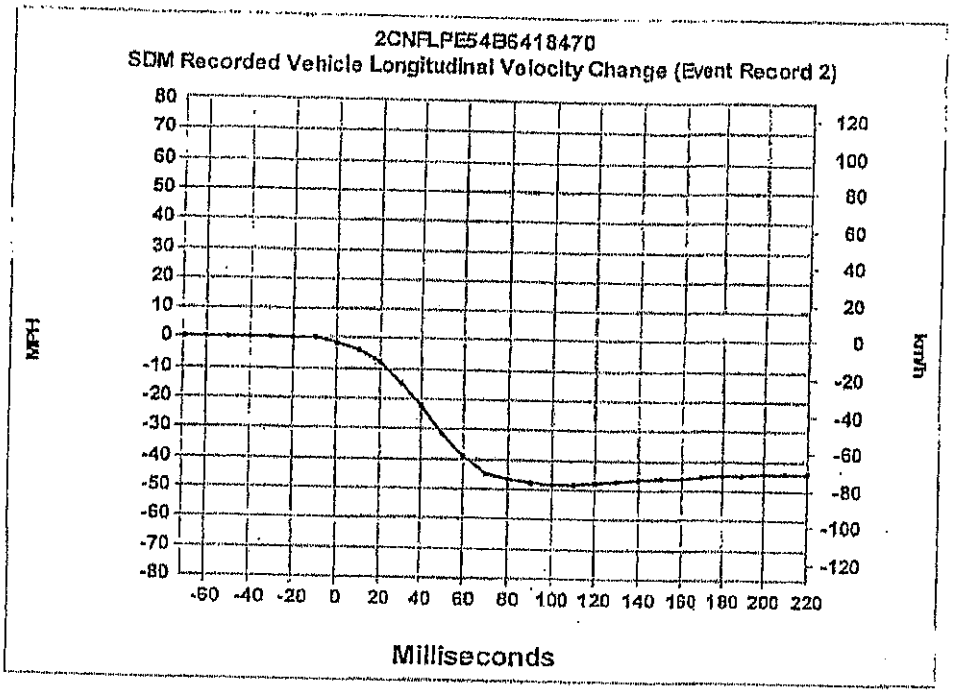
B0052-00

Pre-Crash Data -1 to -.5 sec (Event Record 2)

Times (sec)	Cruise Control Active	Cruise Control Resume Switch Active	Cruise Control Set Switch Active	Engine Torque (lb-ft [N-m])	Reduced Engine Power Mode Indicator
-1.0	No	No	No	110 [149]	Off
-0.5	No	No	No	13 [18]	Off

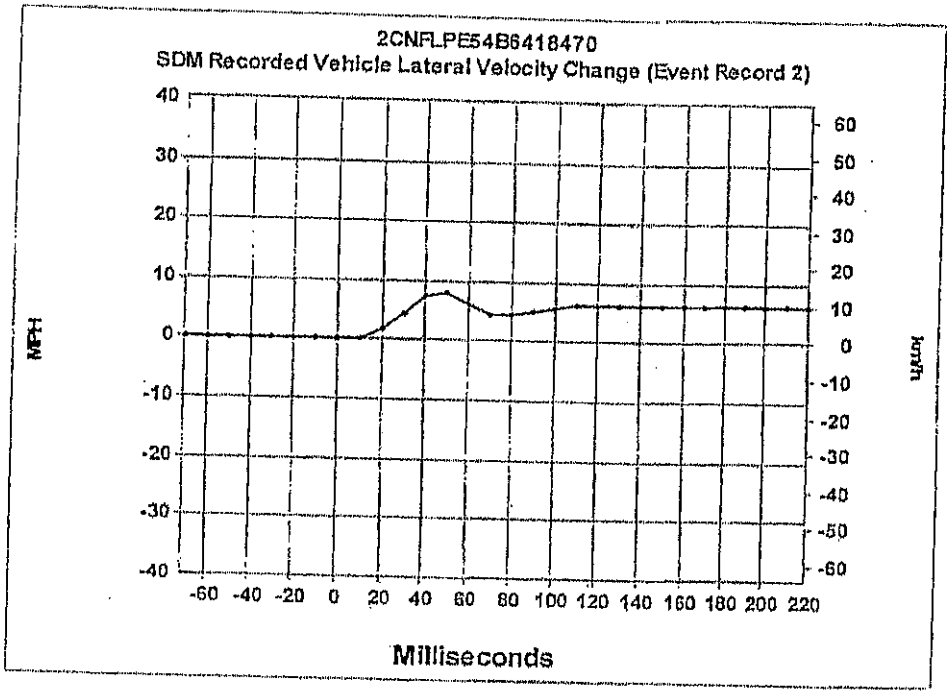
Pre-Crash Data -2.5 to -.5 sec (Event Record 2)

Times (sec)	Accelerator Pedal Position (percent)	Brake Switch Circuit State	Engine Speed	Throttle Position (%)	Vehicle Speed (MPH [km/h])
-2.5	0	Off	1664	20	51 [82]
-2.0	0	Off	1344	8	57 [92]
-1.5	29	Off	1216	47	53 [85]
-1.0	0	Off	1920	28	53 [85]
-0.5	0	On	1280	12	48 [77]



Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	0.0	0.0
-10	0.0	0.0
0	-1.2	-2.0
10	-3.7	-6.0
20	-8.1	-13.0
30	-14.9	-24.0
40	-22.4	-36.0
50	-31.7	-51.0
60	-39.1	-63.0
70	-44.7	-72.0
80	-46.6	-75.0
90	-47.8	-77.0
100	-48.5	-78.0
110	-48.5	-78.0
120	-47.8	-77.0
130	-47.2	-76.0

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
140	-46.6	-75.0
150	-46.0	-74.0
160	-46.0	-74.0
170	-45.4	-73.0
180	-44.7	-72.0
190	-44.7	-72.0
200	-44.1	-71.0
210	-44.1	-71.0
220	-44.1	-71.0



Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
-70	0.0	0.0
-60	0.0	0.0
-50	0.0	0.0
-40	0.0	0.0
-30	0.0	0.0
-20	0.0	0.0
-10	0.0	0.0
0	0.0	0.0
10	0.0	0.0
20	1.9	3.0
30	4.3	7.0
40	7.5	12.0
50	8.1	13.0
60	6.2	10.0
70	4.3	7.0
80	4.3	7.0
90	5.0	8.0
100	5.6	9.0
110	6.2	10.0
120	6.2	10.0
130	6.2	10.0

Time (msec)	Delta-V, lateral (MPH)	Delta-V, lateral (km/h)
140	6.2	10.0
150	6.2	10.0
160	6.2	10.0
170	6.2	10.0
180	6.2	10.0
190	6.2	10.0
200	6.2	10.0
210	6.2	10.0
220	6.2	10.0

SDM Recorded Vehicle Lateral Acceleration (Event Record 2)

Contains No Recorded Data

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SDM Recorded Vehicle Vertical Acceleration (Event Record 2)

Contains No Recorded Data

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SDM Recorded Vehicle Roll Rate (Event Record 2)

Contains No Recorded Data

Event Data (Event Record 3)

Event Recording Complete	Yes
Event Record Type	Non-Deployment
Crash Record Locked	No
OnStar Deployment Status Data Sent	Yes
OnStar SDM Recorded Vehicle Velocity Change Data Sent	Yes
Deployment Event Counter	2
Event Counter	3
OnStar Notification Event Counter	2
Algorithm Active: Rear	No
Algorithm Active: Rollover	Yes
Algorithm Active: Side	No
Algorithm Active: Frontal	No
Ignition Cycles At Event	3466
Time Between Events (sec)	0.39
Concurrent Event Flag Set	No
Event Severity Status: Rollover	No
Event Severity Status: Rear	No
Event Severity Status: Right Side	No
Event Severity Status: Left Side	No
Event Severity Status: Frontal Stage 2	No
Event Severity Status: Frontal Stage 1	No
Event Severity Status: Frontal Pretensioner	No
Driver 1st Stage Deployment Loop Commanded	No
Passenger 1st Stage Deployment Loop Commanded	No
Driver 2nd Stage Deployment Loop Commanded	No
Passenger 2nd Stage Deployment Loop Commanded	No
Driver Pretensioner Deployment Loop #1 Commanded	No
Passenger Pretensioner Deployment Loop #1 Commanded	No
Driver Pretensioner Deployment Loop #2 Commanded	No
Passenger Pretensioner Deployment Loop #2 Commanded	No
Driver Thorax Loop Commanded	No
Passenger Thorax Loop Commanded	No
Left Row 1 Roof Rail/Head Curtain Loop Commanded	No
Right Row 1 Roof Rail/Head Curtain Loop Commanded	No
Driver Belt Switch Circuit Status	Buckled
Passenger Belt Switch Circuit Status	Not Buckled
Passenger Seat Occupancy Status	Empty
Passenger Classification Status	Not Applicable
Passenger Air Bag ON Indicator Status	Off
Passenger Air Bag OFF Indicator Status	On
Low Tire Pressure Warning Lamp	Off
SIR Warning Lamp Status	Off
SIR Warning Lamp ON/OFF Time Continuously (seconds)	655330
Number of Ignition Cycles SIR Warning Lamp was ON/OFF Continuously	230
Ignition Cycles Since DTCs Were Last Cleared at Event Enable	253
Time From Algorithm Enable to Maximum SDM Recorded Vehicle Velocity Change (msec)	210
Longitudinal SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	6 [9]
Lateral SDM Recorded Vehicle Velocity Change at time of Maximum SDM Recorded Vehicle Velocity Change MPH [km/h]	0 [0]
Driver 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 1st Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger 2nd Stage Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Passenger Thorax/Curtain Time From Algorithm Enable to Deployment Command Criteria Met (msec)	Data Not Available
Driver Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

Passenger Pretensioner Time From Algorithm Enable to Deployment Loop #1 or Loop #2 Command Criteria Met (msec)	Data Not Available

BOSCH

CRASH DATA RETRIEVAL

DTCs Present at Time of Event (Event Record 3)

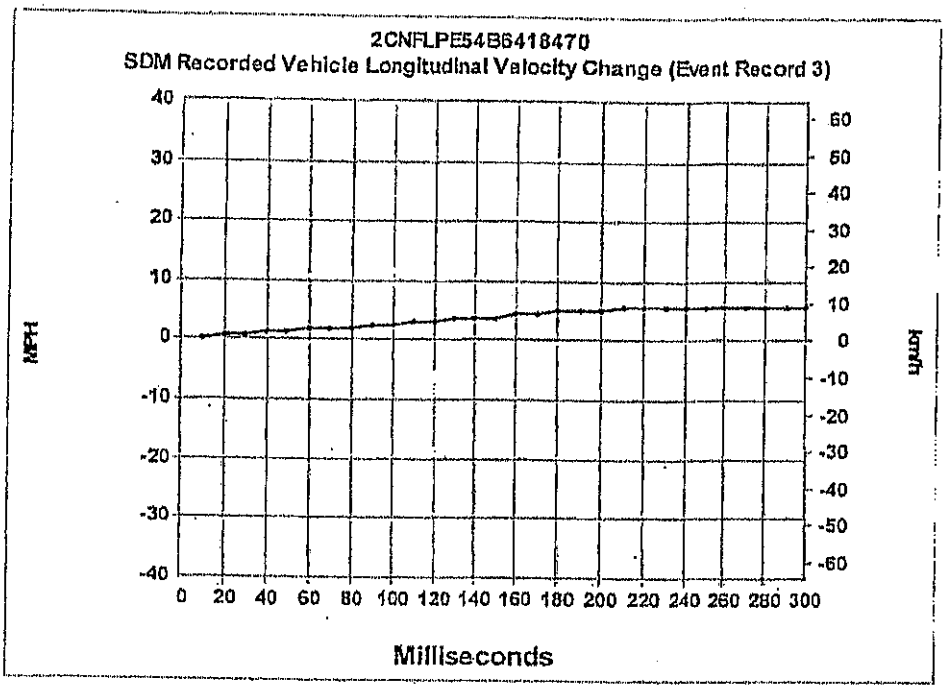
B0052-00

Pre-Crash Data -1 to -.5 sec (Event Record 3)

Times (sec)	Cruise Control Active	Cruise Control Resume Switch Active	Cruise Control Set Switch Active	Engine Torque (lb-ft [N-m])	Reduced Engine Power Mode Indicator
-1.0	No	No	No	13 [18]	Off
-0.5	No	No	No	-4 [-5]	Off

Pre-Crash Data -2.5 to -.5 sec (Event Record 3)

Times (sec)	Accelerator Pedal Position (percent)	Brake Switch Circuit State	Engine Speed	Throttle Position (%)	Vehicle Speed (MPH [km/h])
-2.5	0	Off	1344	8	57 [92]
-2.0	29	Off	1216	47	53 [85]
-1.5	6	Off	1920	28	53 [85]
-1.0	0	On	1280	12	48 [77]
-0.5	0	On	960	15	40 [65]



Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
10	0.0	0.0
20	0.6	1.0
30	0.6	1.0
40	1.2	2.0
50	1.2	2.0
60	1.9	3.0
70	1.9	3.0
80	1.9	3.0
90	2.5	4.0
100	2.5	4.0
110	3.1	5.0
120	3.1	5.0
130	3.7	6.0
140	3.7	6.0
150	3.7	6.0
160	4.3	7.0
170	4.3	7.0
180	5.0	8.0
190	5.0	8.0
200	5.0	8.0
210	5.6	9.0

Time (msec)	Delta-V, longitudinal (MPH)	Delta-V, longitudinal (km/h)
220	5.6	9.0
230	5.6	9.0
240	5.6	9.0
250	5.6	9.0
260	5.6	9.0
270	5.6	9.0
280	5.6	9.0
290	5.6	9.0
300	5.6	9.0

BOSCH

CDR CRASH DATA RETRIEVAL

SDM Recorded Vehicle Lateral Velocity Change (Event Record 3)

Contains No Recorded Data

BOSCH

CDR CRASH DATA RETRIEVAL

SDM Recorded Vehicle Lateral Acceleration (Event Record 3)

Contains No Recorded Data

BOSCH

CDR CRASH DATA RETRIEVAL

SDM Recorded Vehicle Vertical Acceleration (Event Record 3)

Contains No Recorded Data

SDM Recorded Vehicle Roll Rate (Event Record 3)

Contains No Recorded Data

Hexadecimal Data

DPID $11
FF F0 00 FC C0 7C 00

DPID $15
01 02 03 04 05 06 07

DPID $16
08 09 0A 0D 0E 00 00

DPID $17
00 00 00 00 00 00 00

DPID $32
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DPID $35
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DID $01
41 55 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $03
44 41 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $05
41 46 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $07
41 4A 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $09
41 54 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $0B
44 42 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $0D
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DID $0F
30 30 30 30 30 30 45 30 30 30 30 30 30 30 30 30

DID $30
02 00 03 02

DID $90
32 43 4E 46 4C 50 45 3E 34 42 36 34 31 38 34 37 30

DID $9A
04 01

DID $B4
41 53 34 38 39 33 45 30 35 30 37 30 39 32 30 31

DID $C1
00 CF 2C EB

DID $C2
01 40 46 7E

DID $C3
01 89 EC CF

DID $CB
00 CF 22 ED

DID $31

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0490	00	00	00	00	00	00	00	00	DB	19

Disclaimer of Liability

The users of the CDR product and reviewers of the CDR reports and exported data shall ensure that data and information supplied is applicable to the vehicle, vehicle's system(s) and the vehicle ECU. Robert Bosch LLC and all its directors, officers, employees and members shall not be liable for damages arising out of or related to incorrect, incomplete or misinterpreted software and/or data. Robert Bosch LLC expressly excludes all liability for incidental, consequential, special or punitive damages arising from or related to the CDR data, CDR software or use thereof.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**UIM CARRIER'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSION**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFF

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, UIM Carrier USAA General Indemnity Company on behalf of Defendant, reserving the right to amend and/or supplement, hereby responds to Plaintiff's First Request for Admission to Defendant's UIM Carrier, as follows:

1. Admit that Plaintiff, Therese Hood, was operating her vehicle with her headlamps illuminated at the time of the collision.

RESPONSE: Denied.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

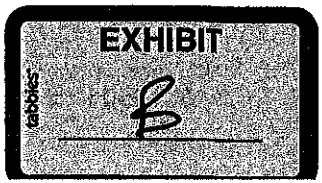
By: _____

JACKSON H. DANIEL, III
State Bar No.:70308

MADISON B. SUTTIE
State Bar No.: 101385

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
843-727-0307

Attorneys for USAA General Indemnity Company appearing pursuant to S.C. Code §38-77-160 on behalf of Defendant



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Kevin B. Smith, Esq.
Hoffman Law Firm
7087 Rivers Avenue
North Charleston, SC 29406
Attorney for Plaintiff Therese Hood

This 11th day of January, 2017.

Legal Secretary to Jackson H. Daniel, III

Carlock, Copeland & Stair LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531

IN THE STATE OF SOUTH CAROLINA) COUNTY OF JASPER)	IN THE COURT OF COMMON PLEAS FOR THE 14TH JUDICIAL CIRCUIT CASE NO: 2017-CP-27-00073
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant.	**PLAINTIFF'S STANDARD AND FIRST SUPPLEMENTAL INTERROGATORIES TO DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA)**

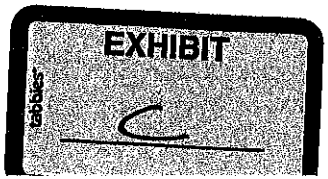
TO: DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), AND ALL COUNSEL OF RECORD:

Plaintiff THERESE HOOD ("Plaintiff"), pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby requests that Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA) ("Defendant") answer within thirty (30) days after the service hereof the following interrogatories:

DEFINITIONS AND INSTRUCTIONS

A. These interrogatories are deemed to be continuing, such as to require Defendant to file and serve supplemental answers should it learn of additional information called for by these interrogatories between the time of trial and the time its responses are served. Said supplemental answers are required to be served within a reasonable time after the discovery of such additional information.

B. You are under a duty to promptly amend prior answers to these interrogatories if you obtain information upon the basis of which you know the answer was incorrect when made or you know the answer, though correct when made, is no longer true



C. "You," "your," or "Defendant" means Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), its agents, partners, accountants, servants, employees, assignees, lessees, affiliates, or anyone acting on their behalf, including any affiliate, subsidiary, parent, or related corporation, partnership or entity, and anyone acting for or on behalf of any such subsidiary, related corporation, parent, partnership, entity, or natural person.

D. "Person" means natural persons, corporations, partnerships, sole proprietorships, associations, federations, government agencies, or any other kind of entity.

E. "Identify," when used with respect to an individual, means to state the person's full name and any aliases now or previously used by such person, to state and identify the person's present occupation, principal business affiliation, and any other business affiliations; present home address, business address, or other applicable addresses; and present and past business affiliations or relations, including those (if any) with any of the parties to this civil action.

F. "Identify," when used in reference to a person (as defined above) other than a natural person, means to state its full name; the nature of its organization, including the name of the state under which it was organized; its address(es); the address(es) of its principal place(s) of business; its principal line(s) of business; and identify all known natural persons who serve as officers, directors, partners, owners, or in other supervisory or ownership capacity in said organization. If any of the above information is not available to Defendant, state any other available means of identifying such person.

H. Please note that "incident" refers to the November 7, 2014, motor vehicle collision that is associated with this cause of action.

NOTE: If Defendant contends that any interrogatory is "overly broad," please answer with a timeframe or breadth which Defendant deems appropriate so that the parties may attempt to limit taking discovery issues before the Court.

STANDARD INTERROGATORIES

1. Give the names, addresses, and telephone numbers of persons who may be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, indicate whether or not written or recorded statements have been taken from these witnesses, and indicate who has possession of such statements.

2. For each person listed in response to Interrogatory No. 1, set forth either a summary sufficient to inform Plaintiff of the important facts known to or observed by such witnesses or, if applicable, provide a copy of any written or recorded statements taken from such witnesses.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of Defendant or its attorney that relate to the claim(s) or defense(s) in this case.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage or property damage coverage relating to this cause of action, and set forth the number or numbers of the policies involved, and the amount or amounts of liability coverage provided in each policy.

5. List the names, addresses, and telephone numbers of any individual whom you propose to use as an expert witness at the trial of this action, and for each state in detail his/her qualifications to testify, the substance of his/her opinions, and the basis for his/her opinions.

6. If Defendant is improperly identified, give the proper identification and state whether Defendant's attorney will accept service of an amended pleading reflecting the correct

information.

FIRST SUPPLEMENTAL INTERROGATORIES

1. List any and all individuals that were/are responsible for the automobile insurance claims made regarding the November 7, 2014, collision. Please include specifically the local agent, any supervisors (from any branch offices, regional offices, and national offices), claim reviewers, claim adjusters, claim investigators, claim experts, and any other individual otherwise involved in reviewing, adjusting, or investigating any claim regarding the November 7, 2014, collision.

2. List the name of any experts or witnesses spoken to by the investigators, adjusters, or claim reviewers during the processing and valuation of any claims related to the November 7, 2014, collision, and indicate whether any written or recorded statements have been taken and who is in possession of such statements.

3. List the name, current mailing address, and phone number(s) of each person or entity to which any insurance adjuster, claim representative, supervisor, or other employee of Defendant has spoken or written while investigating any claim arising from the November 7, 2014, collision, and indicate whether such consultation was recorded or reduced to writing, and indicate who is in possession of the writing or recording.

4. Please describe, in detail, Defendant's routine process for handling claims when timely submitted by Defendant's insureds.

5. Please describe in full any departures from routine practices in the handling of any and all claims arising from the November 7, 2014, collision, and the justifications, if any, for such departures from established processing routines.

6. State what facts were known to all claims adjusters, investigators, and experts

involved any claims arising from the November 7, 2014, collision, and set forth the circumstances under which any determinations were made by these individuals in the course of their respective involvement in said claims.

7. To what extent are employees of Defendant rewarded for the inexpensive disbursement of claims, measured by total payouts or payouts as a percentage of reserves, or other similar system? Describe any bonus systems that reward employees for such conduct.

8. Have the claims practices of Defendant ever been evaluated by the insurance commissioner of any state for fraudulent or bad faith practices in the past? If so please include the disposition of those investigations, the circumstances that led to those investigations, including the location and date(s) of each investigation.

9. List the title and case name of any other bad faith or fraud claims made against Defendant or its subsidiaries, whether pending or previously adjudicated. Please include the party names, the date of trial, the disposition of the case, and the case number for each claim.

10. What is the amount of the reserve set on Plaintiff's claim?

11. List specifically the reasons for the denial of Plaintiff's claim. Include in detail the process that is used and what factors led to the denial.

12. Describe the process by which Defendant determines the amount of reserves for each claim and, in particular, describe the process that was used to determine any reserve for Plaintiff's claim.

13. If an electronic program is used in calculating the reserve amount, provide the name of the program, the company that designed the program, and the process that is used by that program in determining the reserve amount. Include specifically what variables are entered into the program, the formula used by the program, and the type of result produced (whether it is

a single value, a range, or has any qualitative descriptors).

14. Describe in detail the data retention plan for claims that are in dispute. Your answer should describe the general policy and specifically what measures have been implemented to maintain the integrity of Plaintiff's claim file.

15. How often does the Defendant have meetings regarding limiting its exposure by reducing the payouts on insurance claims? Please give the schedule of such meetings from a time three years prior to the claim until the present.

16. For each person identified as an employee, independent contractor, expert, investigator, or person otherwise involved in this claim state:

a. The date on which the person became involved in this claim;

b. The reason why the person became involved in this claim;

c. If they are no longer involved, the date on which they ceased involvement and the reason for the cessation of their involvement;

d. If applicable, any reprimands, warnings, demotion, citations, or other disciplinary action taken with respect to the person based upon their action or inaction with respect to this claim.

17. What does Defendant contend to be the standard of care necessary to satisfy the duty of good faith and fair dealing with regard to the adjustment, prosecution, and/or defense of liability and underinsured motorist claims arising from incidents that occur in the State of South Carolina and insured by policies issued in South Carolina?

18. State all actions taken by Defendant to ensure that the standard of care referred to in Interrogatory No. 17 was followed with respect to the claim.

19. As to each expert witness listed in response to Standard Interrogatory No. 5

above, please state:

a. A complete statement of all opinions the witness will express and the basis and reasons for those opinions;

b. The data and other information considered by the witness in forming those opinions;

c. A description of any exhibits the witness or counsel intends to introduce to summarize or support those opinions (to be provided in response to Plaintiff's Requests for Production);

d. The witness's qualifications, including a list of all publications authored in the previous ten years;

e. A list of all other cases in which, during the previous five years, the witness has testified as an expert at trial or by deposition; and

f. A statement of the compensation to be paid for the study and testimony in connection with this case.

20. For each affirmative defense that is raised in your Answer, please state with particularity each and every fact or basis in law upon which you allege to have "good grounds," as defined in Rule 11, SCRCP, to assert such a defense. A full and complete response should include, for each defense:

a. Identify all witnesses that support this contention;

b. Identify all writings that support this contention;

c. Identify all court cases upon which you base this contention; and

d. Identify all statutes that you rely on to support this contention.

21. For all photographs relating to this case which are in the possession of the Defendant or

the Defendant's counsel, please provide:

a. A brief description of the content of the photograph;

b. The date the photograph was taken;

c. The name, address and employer of the person who took the photograph.

22. Has Defendant ever been involved in any other legal action arising out of claims of bad faith, either as a defendant or as a plaintiff? If so, please state:

a. The date and place each such action was filed, giving the name of the other party or parties involved, the number of such actions, and the names of the attorneys representing all parties;

b. A description of the nature of each action; and

c. The result of each action.

23. Has Defendant or anyone acting on Defendant's behalf obtained any statement in any form from any potential witness or party in this case that concerns the events described in Plaintiff's Complaint? If so, please state from whom those statements were taken and who has possession of those statements.

24. State Defendant's net worth.

[Signature Block on Following Page]

ANASTOPOULO LAW FIRM, LLC

BY: _____

Eric Poulin, Esquire
S.C. Bar No: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No: 101010
Matthew L. Nall, Esquire
S.C. Bar No.: 102329
62 Columbus Street
Charleston, S.C. 29403
(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
Date: August 7, 2017

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT [illegible] SERVED A COPY OF THE
PLEADING [illegible] FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 10th
DAY OF August, 2017

IN THE STATE OF SOUTH CAROLINA) COUNTY OF JASPER)	IN THE COURT OF COMMON PLEAS FOR THE 14TH JUDICIAL CIRCUIT CASE NO: 2017-CP-27-00073
THERESE HOOD, Plaintiff, v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant.	**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA)**

TO: DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), AND ALL COUNSEL OF RECORD:

Plaintiff THERESE HOOD ("Plaintiff"), pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby requests that Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA) ("Defendant") respond within thirty (30) days after the service hereof to the following requests for production, to wit, and that Defendant produce and permit Plaintiff to inspect, copy, and/or photograph each of the following documents or things which may be in the possession, custody, or control of Defendant or its attorney.

DEFINITIONS AND INSTRUCTIONS

A. These requests are deemed to be continuing, such as to require Defendant to file and serve supplemental responses should it learn of additional information called for by these requests between the time of trial and the time its responses are served. Said supplemental responses are required to be served within a reasonable time after the discovery of such additional information.

B. You are under a duty to promptly amend prior responses to these requests if you obtain information upon the basis of which you know the response was incorrect when made or you know the response, though correct when made, is no longer true

C. "You," "your," or "Defendant" means Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), its agents, partners, accountants, servants, employees, assignees, lessees, affiliates, or anyone acting on their behalf, including any affiliate, subsidiary, parent, or related corporation, partnership or entity, and anyone acting for or on behalf of any such subsidiary, related corporation, parent, partnership, entity, or natural person.

D. "Person" means natural persons, corporations, partnerships, sole proprietorships, associations, federations, government agencies, or any other kind of entity.

E. "Identify," when used with respect to an individual, means to state the person's full name and any aliases now or previously used by such person, to state and identify the person's present occupation, principal business affiliation, and any other business affiliations; present home address, business address, or other applicable addresses; and present and past business affiliations or relations, including those (if any) with any of the parties to this civil action.

F. "Identify," when used in reference to a person (as defined above) other than a natural person, means to state its full name; the nature of its organization, including the name of the state under which it was organized; its address(es); the address(es) of its principal place(s) of business; its principal line(s) of business; and identify all known natural persons who serve as officers, directors, partners, owners, or in other supervisory or ownership capacity in said organization. If any of the above information is not available to Defendant, state any other available means of identifying such person.

H. Please note that "incident" refers to the November 7, 2014, motor vehicle collision that is associated with this cause of action.

REQUESTS FOR PRODUCTION

1. All documents identified or referred to in Defendant's answers to Plaintiff's

Standard and First Supplemental Interrogatories.

2. All photographs, videotapes, maps, plats, drawings, diagrams, measurements, surveys, or other descriptions related in any way to the subject matter of this action, made either before or after the incident that is the subject of this action.

3. Any and all documents or other tangible items, including books, records, reports, photographs, moving pictures, videotapes, drawings, charts, maps, diagrams, models, or other documentary materials, or tangible objects that Defendant intends to rely upon to support Defendant and/or which Defendant intends to offer into evidence as exhibits or use as demonstrative aids at the trial of this action.

4. All statements of any witnesses in the possession of Defendant or its attorney, whether written or recorded on a tape recorder or otherwise, that relate to the matters alleged in Plaintiff's Complaint or Defendant's Answer.

5. All memoranda, notes, diagrams, reports, photographs, e-mails, computer data or documents, videotapes, audiotapes, or other materials relating in any way to the matters alleged or referred to in the Complaint, any injuries or damages claimed, and any defenses raised or which could reasonably be raised.

6. Produce or permit Plaintiff or his attorney to inspect, photograph, or otherwise copy all photographs, plats, or diagrams Defendant or Defendant's attorney may have which relate to the matter alleged herein.

7. Any documents (as defined in Rule 34(a), SCRCP) and tangible things of whatever nature and description which you intend to introduce into evidence or to use as impeachment or evidence at the trial of this case.

8. The most recent resume or curriculum vitae of any experts that Defendant intends

to use at trial or in preparing documents in response to this or other inquiries by Plaintiff.

9. Copies of any statutes relied upon by Defendant in its Answer, pre-trial motions, and trial.

10. Results from any tests or evaluations ordered by Defendant, or any expert retained by Defendant, that is used to support Defendant's position in this matter.

11. Results from any tests or evaluations ordered by Defendant, including expert witnesses retained by Defendant, in the matter of Mary Elizabeth Kuck v. Therese Hood and Antoine Johnson (case no. 2016-CP-27-0123) in the Court of Common Pleas for the State of South Carolina, County of Jasper.

12. Results from any tests or evaluations ordered by Defendant, including expert witnesses retained by Defendant, in the matter of Therese Hood v. Antoine Johnson (case no. 2015-CP-27-0119) in the Court of Common Pleas for the State of South Carolina, County of Jasper.

13. Receipts of all transactions with experts used by Defendant in this cause of action, including receipts for payment for services rendered by said experts.

14. Receipts of all transactions with experts used by Defendant in the matter of Mary Elizabeth Kuck v. Therese Hood and Antoine Johnson (case no. 2016-CP-27-0123) in the Court of Common Pleas for the State of South Carolina, County of Jasper, and in the matter of Therese Hood v. Antoine Johnson (case no. 2015-CP-27-0119) in the Court of Common Pleas for the State of South Carolina, County of Jasper.

15. A copy of all non-privileged documents relating to any pending criminal or civil matter involving Defendant which include allegations against Defendant of bad-faith in the adjustment, prosecution, or defense of automobile insurance claims.

16. A complete copy of any insurance policies, including the declarations page(s), for any policies that may provide coverage to Defendant for the allegations contained in the Complaint.

17. Returns to any subpoena or FOIA requests that you have served to date in this action, or any that are served in the future through the trial of this action.

18. All training manuals related to the process used for the settlement of automobile claims made by or against a USAA insured which were or have been used from January 1, 2013, through the present date.

19. All instructional materials used in education programs related to the negotiation and adjustment of automobile claims made by or against a USAA insured which were or have been used from January 1, 2013, through the present date, including instructional materials related to the training of Defendant's employees in the processing, negotiation, and adjustment of insurance claims, whether on paper or in video, audio, or other electronic form.

20. Minutes and agendas for any meeting related to the limitation of exposure and the lowering of payouts on automobile claims made by or against a USAA insured from January 1, 2013, through the present date.

21. A copy of all protocols related to your interaction with re-insurance companies from January 1, 2013, through the present date.

22. The complete underwriting file, including the policy, application, amendments, and letters between any adjusters, their supervisors, and any re-insurers that were involved in the adjustment process of the claim arising from the November 7, 2014, motor vehicle collision.

23. The report(s) of any investigators and experts that were assigned to investigate claims arising from the November 7, 2014, collision, along with any documentation such persons

have including photographs, videos, and affidavits.

24. The entire files related to November 7, 2014, collision of any investigators, independent contractors, employees, agents, experts, or anyone that has knowledge of collision. Defendant's response should include any and all notes, memorandum, emails, transcripts of recorded conversations, text messages, or correspondences with any such investigators, independent contractors, employees, agents, experts, or anyone that has knowledge of the November 7, 2014, collision.

25. Any marketing materials and advertisements concerning the type of coverage that is in dispute in this case. Please include all advertisements in all mediums, including video, pamphlets, or mailings from January 1, 2013, through the present date.

26. All claims files for pending or previously disposed of litigation concerning bad faith or fraudulent claims practices of Defendant.

27. Any and all files related to investigations undertaken against Defendant by any insurance commissioner (nationwide) regarding Defendant's claims practices.

28. All notes, log entries, correspondence, internal memoranda, e-mails, and transcripts between any of Defendant's employees or agents that are related to Plaintiff's claim.

29. All letters from Defendant or its subsidiaries that are addressed to Plaintiff or his attorney.

30. Any and all internal memoranda discussing in any way Plaintiff's claim against Defendant regarding the November 7, 2014, collision.

31. The application made concerning the automobile insurance policy that is the subject of this action.

32. Any agent training booklets or seminar materials that relate to the instruction of

agents, claims adjusters, or salespersons with regard to the investigation of claims made against a USAA insured.

33. Any and all guidelines regarding the selection and retention of experts for the purposes of evaluating and investigating a claim made against or by a USAA insured.

34. The articles of incorporation of Defendant and its subsidiary, sister, and parent corporations.

35. Defendant's corporate tax returns, including returns for and any of its subsidiaries, parents, or sister corporations, for the past ten (10) years.

36. Copies of all documents related in any way to programs, goals, or incentives employed by Defendant regarding claim cost reduction.

37. Copies of all documents related in any way to any programs employed by Defendant regarding the eligibility for, earning or, considerations for, and ward of bonuses to adjusters, claims representatives, supervisors, and other employees who handle supervise, or otherwise perform work on claims.

38. Copies of the personnel files related to job performance, evaluation, bonuses, wages, salary data, and disciplinary matters for all adjusters, claims representatives, supervisors, experts, investigators, and other employees or agents of Defendant who handled, supervised, or otherwise performed work related to the November 7, 2014, collision.

39. Any hidden claims files that include internal memoranda, minutes of internal meetings or roundtable discussions, or any other internal documents related to the processing, investigation, and adjustment of any claims related to the November 7, 2014, collision.

40. Copies of any complaints filed by or through the insurance commission of any state's insurance commissioner involving allegations of fraud or bad faith against Defendant or

any of its subsidiaries or parent companies.

41. A copy of Defendant's corporate bylaws, as well as a copy of the bylaws of any of Defendant's parent, subsidiary, or sister corporations.

42. Any and all contracts between Defendant's parent, subsidiary, or sister corporations that make those corporations liable for claims payouts or any portion of claims payouts.

43. Copies of any reprimands, citations, or other disciplinary material for any and all individuals involved in the processing, assessment, investigation, and/or adjustment of claims arising from the November 7, 2014, collision.

44. Any and all actuarial memoranda filed with the insurance commission of any state or internal actuarial memos used by Defendant in evaluating the profitability of insurance contracts similar to the one at issue in this cause of action.

45. Any and all loss experience ratios for the type of contract at issue in this cause of action from January 1, 2013, through the present date.

DOCUMENTS THAT WOULD BE OVERLY BURDENSOME TO PRODUCE

a. List all documents that are excluded from Defendant's production pursuant to Rule 26(b)(2). List in detail each document's location, its contents, and the specific burden that would be upon Defendant in producing said documents.

b. For all other documents Defendant determines would be overly burdensome to produce, to permit Plaintiff or his Plaintiff's attorney to inspect, photograph, and otherwise copy all photographs, plats, diagrams, documents, or electronic media Defendant or its attorney may have which relate to the allegations contained in Plaintiff's Complaint. To the extent an objection is made on the basis of "overly burdensome" or some related basis, identify all documents that Defendant's attorney contends are not within a reasonable time frame,

geographic range, etc.

PRIVILEGE LOG

For each document that would be required to be produced but for a privilege asserted against producing it, set forth:

a. The date the document was generated;

b. The type of document (e.g., letter, memorandum, record, etc.);

c. The name of the person who prepared the original;

d. The name and address of the person who received the original;

e. The name and address of anyone who received a copy;

f. A general description of the information recorded in the document;

g. The ground upon which production is objected;

h. The name of each person, in addition to those identified in (a) through (e) of this subpart, known to have seen or have access to the document; and

i. The name of the person who now possesses the document.

DOCUMENTS NO LONGER IN EXISTENCE OR NO LONGER CONTROLLED OR POSSESSED

If any requested document existed at one time in the possession, custody, or control of any party but has been lost, discarded or destroyed, or removed from the party's possession, custody or control, indicate for each such document:

a. Its identity (i.e., a description of its contents its date, title, and type of document);

b. When it was most recently in the possession, custody or control of Defendant;

c. Identify any person who currently possesses the document;

d. State whether the document was transferred or destroyed;

e. State the person who transferred or destroyed the document and the person who

authorized or knows of its transfer or destruction;

f. State the reason the document was transferred or destroyed; and

g. Identify, by providing the name, address, and daytime telephone number of all persons having knowledge or the contents of each document.

ANASTOPOULO LAW FIRM, LLC

BY: _____

Eric Poulin, Esquire
S.C. Bar No: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No: 101010
Matthew L. Nall, Esquire
S.C. Bar No.: 102329
62 Columbus Street
Charleston, S.C. 29403
(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
Date: August 7, 2017

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE HAS SERVED A COPY OF THE
PLEADING PAPERS ON
ALL COUNSEL OF RECORD THIS 10th
DAY August, 2017

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
ROY@AKIMLAWFIRM.COM

ANASTOPOULO
LAW FIRM

AKIM A. ANASTOPOULO (SC)

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
STEFAN B. FEIDLER (SC)
HERB F. GLASS (SC)
J. CAMDEN HODGE (SC)
MARLEY N. GRIM (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
SEAN M. TROPEA (SC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

March 14, 2018

VIA E-MAIL ONLY
Robert W. Whelan
Robert.Whelan@nelsonmullins.com

RE: *Therese Hood v. United Services Automobile Association*
Case No.: 2018-CP-10-666

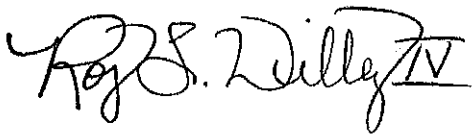
Dear Robbie:

I hope this letter finds you well. I thought we had agreed to do a mediation and not file anything on this one until that time. However, today I received a Motion for Summary Judgment filed by you. Obviously, I will now need your responses to the discovery I served in August, 2017. After our many conversations I had not pushed the issue due to the, apparently mistaken, belief we had agreed on an early mediation.

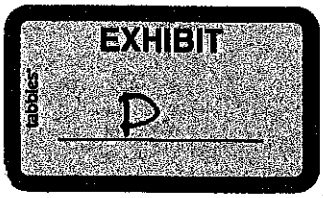
In any event, I will now need those responses by Friday, March 16, 2017, or I will have to file a Motion to Compel.

If you should have any questions, or if you require additional time to respond, please do not hesitate to contact us.

Sincerely,



Roy T. Willey IV



IN THE STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO: 2018-CP-10-666
THERESE HOOD, Plaintiff(s), v. UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant(s).	**PLAINTIFF'S NOTICE OF MOTION, MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff(s) above-named by and through their undersigned counsel, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel may be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Defendant's Responses to discovery requests.

COMES NOW Plaintiff(s) by and through undersigned counsel, and does move before this Honorable Court for an Order compelling discovery responses from Defendant USAA. This Motion is based on the following grounds:

1. On August 10, 2017, Plaintiff served Defendant with Interrogatories and Requests for Production [Exhibit A].
2. In September 2017, Defendant files Motion to Stay Pending Transfer and Underlying Cases and an Order to Transfer Venue was signed September 19, 2017.
3. The case file was not transferred to Charleston County until February 9, 2018.
4. March 12, 2018, Defendant files Motion for Summary Judgment.
5. Defendants have refused and continue to refuse to provide responses to Plaintiff's

EXHIBIT E

discovery requests.

WHEREFORE, Plaintiff(s) moves for an Order compelling the Defendant's responses to Plaintiff's Interrogatories and Requests for Production.

RULE 11 CERTIFICATION

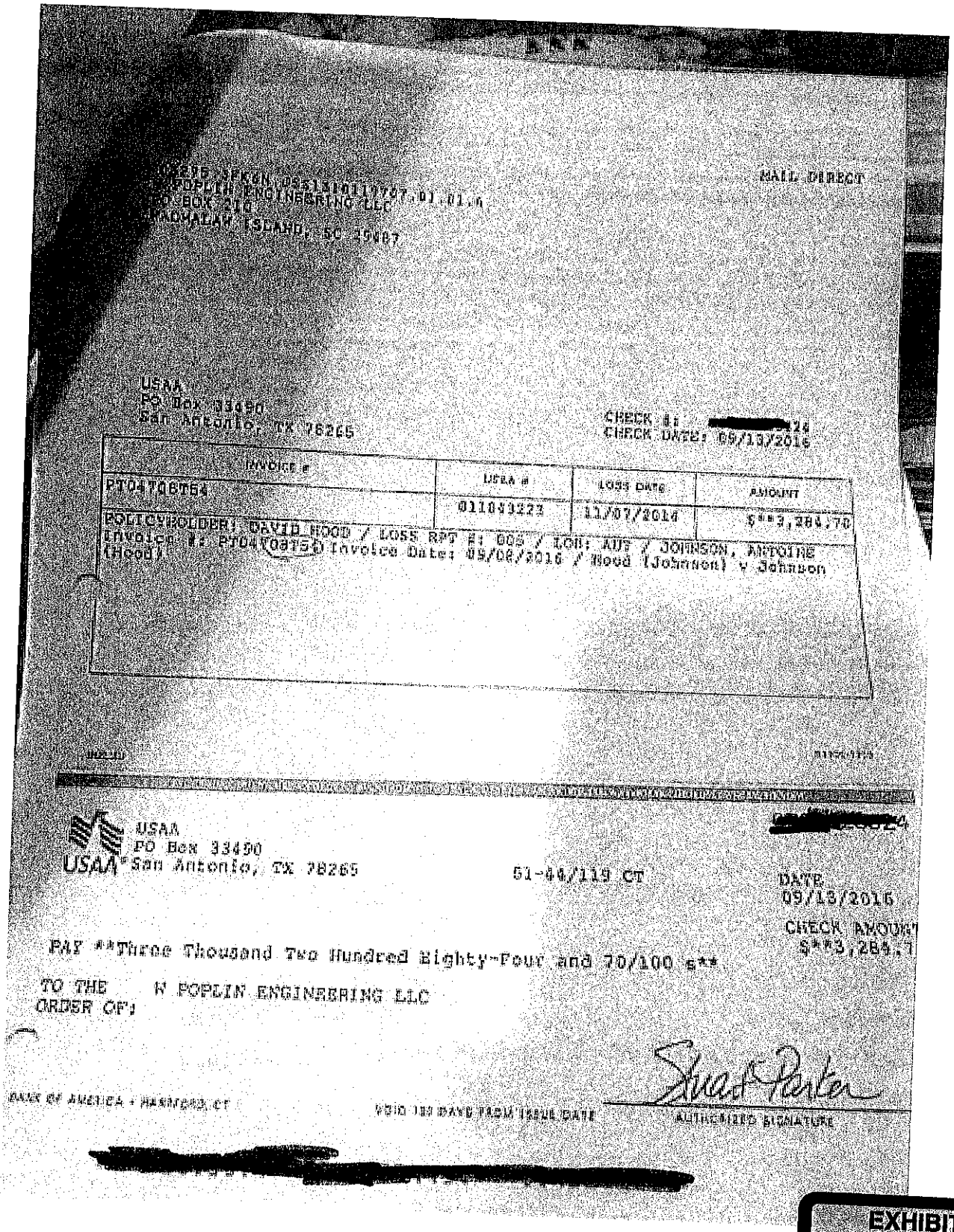
Plaintiff's counsel affirms that he communicated with Defendants in a good faith effort to resolve the matter prior to the filing of this Motion. |Exhibit B|

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey IV, Esquire
SC Bar Number: 101010
Anastopoulo Law Firm, LLC
32 Ann Street, Unit B
Charleston, SC 29403
(843) 614-8888

Charleston, South Carolina
March 19, 2018



MAIL DIRECT

W POPLIN ENGINEERING LLC
PO BOX 210
KIAWAH ISLAND, SC 29487

USAA
PO Box 33490
San Antonio, TX 78265

CHECK #: [redacted]24
CHECK DATE: 09/13/2016

INVOICE #	USAA #	LOSS DATE	AMOUNT
PT04708T64	011033223	11/07/2014	$**3,284.70

POLICYHOLDER: DAVID HOOD / LOSS RPT #: 005 / LOB: AUT / JOHNSON, ANTOINE (Hood)
Invoice #: PT04708T64 Invoice Date: 09/08/2016 / Hood (Johnson) v Johnson

USAA
PO Box 33490
USAA San Antonio, TX 78265

51-40/113 CT

[redacted]24

DATE
09/13/2016

CHECK AMOUNT
$**3,284.7

PAY **Three Thousand Two Hundred Eighty-Four and 70/100 $**

TO THE ORDER OF: W POPLIN ENGINEERING LLC

Stuart Porter

BANK OF AMERICA - HARRIS CT

VOID 180 DAYS FROM ISSUE DATE

AUTHORIZED SIGNATURE

[redacted]

EXHIBIT
P

In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119\

Therese Hood,

Plaintiff,

vs. Transcript of Record

Antoine Johnson,

Defendant.

VOLUME 1

September 5, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

Roy T. Willey, IV, Esquire
Anastopoulo Law Firm LLC
62 Columbus Street
Charleston, SC 29403

AND

Kevin B. Smith, Esquire
Amanda Stearns, Esquire
Hoffman Law Firm
7087 Rivers Avenue
North Charleston, SC 29406

REPRESENTING DEFENDANT:

Jackson Daniel, Esquire
Madison Suttie, Esquire
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, SC 29401

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PROCEEDINGS

THE COURT: Good morning. Okay. Well, there's a number of pre-trial motions in this case. I say we start. The jury is coming in at 11:00. Obviously, we need to take up as many motions as we possibly can. I can tell you I've read everything.

Some of them I may need some type of proffer before I'm able to make a decision, or get a little more argument. Just a couple of them I wasn't quite clear about what had been done.

But I know that we need to start with Mr. Lee, who is sitting out in the back. He wants to get back to work.

So I understand, Mr. Lee, that you were the one that made the 911 call following the accident. My understanding is the Plaintiff is going to call you as a witness in the trial of this case, correct?

MR. SMITH: Yes, ma'am.

THE COURT: All right. [illegible] what my thoughts are as far [illegible] concerned and how this is go[illegible] Because he would be, I guess

EXHIBIT
Stipp
G

To begin with, pull the jury at 11, it will take us till 12. I probably anticipate that I would send them to lunch at that point. I know it'll be a little bit. But instead of just doing opening statements and then sending them, I think we'll probably just pull the jury, send them to lunch, bring them back. I guess my hope then, if we can get a jury roughly by 12:30-ish, 1:00, 1:30-ish.

Mr. Lee, I'm thinking we have you back here at 1:30. Is that okay with you, sir?

MR. LEE: I have a 608 Merits hearing in Allendale County at 2 o'clock. Then I have at 9 o'clock in the morning a 608 Merits hearing at 9:00 a.m. in the morning. They kind of call them like general sessions cases. You get there, and you don't know when the Judge is going to call them. So that's what I'm -- I'm trying to express that to both sides.

THE COURT: What Judge is that?

MR. LEE: I believe in Allendale, it's Judge Jenkinson today. And then --

THE COURT: Is that a magistrate Judge?

MR. LEE: No, it's a family court Judge. It's a 608 family court merits hearing for

abuse and neglect case. I'm a 608 contract attorney for five counties. And I think that's got --

THE COURT: Okay. Do they start -- do they have many cases on a roster, or what do they have?

MR. LEE: I don't know how many they have now. To tell you the truth, this is my first appointment in two years there. So as far as today, I'm not sure. It starts at 2:00. It's a solid hour drive. I just don't know -- it's our initial merits hearing. Basically, the case just got filed last week. I got appointed on Wednesday morning.

THE COURT: Were you subpoenaed to be here today?

MR. LEE: Excuse me?

THE COURT: Were you subpoenaed to be here today?

MR. LEE: I was subpoenaed by both sides to be here today, just throughout the entire week. So I've got --

THE COURT: Well, obviously, I'm going to release you from the entire week. But I want your testimony, I need to get it up today.

So yes, sir.

MR. WILLEY: We could -- if you wanted to come back after that hearing, we could call him late this afternoon. That would work.

MR. LEE: I could do that.

MR. WILLEY: We could commit to that.

THE COURT: Is that easiest for you?

MR. LEE: That would be the easiest. I just don't know exactly when I'll get out of there because if we start exactly 2:00 and it goes half an hour, hop in my car, I still might not be back here until 4:00.

THE COURT: And that's fine. I think that's fine. And I plan to go today until at least 5:00. So that works separately.

MR. LEE: I just can't promise when I'll be out of there because that --

THE COURT: That's okay, because I can call Judge Jenkinson and have him send you. So just make sure you leave from Allendale and come straight back here.

MR. LEE: I will.

THE COURT: Okay? And we'll go from there.

And quickly, I would like to get you up

and done today so we don't have to worry about you the rest of the week. Okay? Then you can go on about your schedule. Okay?

MR. LEE: All right.

THE COURT: Mr. Lee, does someone here have good cell phone numbers for you?

MR. LEE: I believe both sides have my cell phone number. I just changed providers so I could hopefully get service out in Allendale over the weekend. So --

THE COURT: Okay. So we should be fine.

All right. As long as we have a number for you. Obviously, we'll give you a call, Mr. Lee. Go on your way right now, we'll see you back later this afternoon. And we'll get you up today. Okay?

MR. LEE: All right. Thank you very much.

THE COURT: Thank you, sir.

MR. SMITH: Thank you, Your Honor.

THE COURT: You're welcome.

All right. Well, that takes care of that issue.

Oh, Mr. Lee, one other thing before you come today. Just so you understand, when

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be addressed as Mr. Lee, not as Judge Lee. And when asked what your job is, you are a lawyer. You don't say anything about being a judge or a magistrate judge in any way. It's not lying to the jury because you are, in fact, a lawyer, and you're a practicing lawyer. So we're just going to be relaxed saying anything about you being a judge. Okay?

MR. LEE: The only reason I asked that, I was directly asked in the deposition. So --

THE COURT: And that's fine. The lawyers in this case aren't going to raise that in any way, shape, or form. It wouldn't be appropriate. I know it does bring into influence, you know, on your testimony if you are called a judge and Your Honor. So we're just going to refer to you as Mr. Lee. That's it. And we'll go from there. Okay?

MR. LEE: Thank you.

THE COURT: Thank you.

MR. LEE: I'll see you back this afternoon. Thanks.

THE COURT: Okay. Let's start going through the motions.

MR. SMITH: Yes, ma'am.

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THE COURT: I think maybe the best place to start might be the Motion to Bifurcate. I understand that there is a motion to go ahead and try to split this case.

My understanding, just from what I've read and everything I've heard, I'm quite familiar with this intersection. It's about two miles from my house. And I hate to say it, we are frequent flyers of Dunkin' Donuts and Yummy House, which is right there, and also The Batter's Box there, which is batting cages. And I'll go ahead and say it, we have a monthly contract with them because I have a little girl who plays softball, and plays softball there. So I'm familiar with where it is, and what's going on.

I understand, and I'm kind of seeing as far as this case is concerned, you know, I have just -- could Plaintiff's tell me in a nutshell what their idea of liability is, if you would. And I want to hear from Defense counsel of what your contentions are. Like, for instance, I know that one of your things that you've said is that allegedly she didn't have her headlights on, so driving without a light.

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I just kind of want to hear from your point of view what you would put up and from your point of view what you offer for that. Not really going to need anything, but whether or not certain things are admitted. I just wanted to know. Okay?

So let's go ahead and start with you.

MR. WILLEY: Your Honor, Roy Willey representing the Plaintiff.

Liability in this case is actually pretty clear despite all of the pretrial filings. What happened is, Ms. Hood was traveling down 278, going east, and Mr. Johnson was at the stop sign, exiting Dunkin' Donuts.

And when Ms. Hood was in the lane closest to the median, so the farthest lane from him, he proceeded through the stop sign and T-boned her vehicle. And there's actually photographs. Obviously, this is his vehicle with the front-end damage, and here's a photograph of her car, where he impacted her.

THE COURT: Okay.

MR. WILLEY: And what happened after that is Ms. Hood was diverted into the oncoming lane of traffic, across that small grass median

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there.

THE COURT: So she went up through that whole grass median.

MR. WILLEY: Correct.

THE COURT: Okay.

MR. WILLEY: And they head-on -- had a head-on collision with somebody coming --

THE COURT: With the Kucks -- tell me --

MR. WILLEY: Yes, the Kucks, yes. The Kucks, coming in the opposite direction, hit her head on. So liability in this case you know, as far as that goes is fairly clear.

Now, there is an assertion by the Defendants that Ms. Hood did not have her headlights on, and, therefore, she would have been hard to see. But it's undisputed in this case that she did, in fact, have her running lights on. And, in fact, as the expert testimony will show that at the point of --

THE COURT: So you have this expert testimony? Who's your expert witness?

MR. WILLEY: We have a combination of experts. We have Woody Poplin, Ken Richardson, and Stephanie Borzendowski. And the

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when obviously there's a statute that deals specifically with headlights, and when it's required, 30 minutes before sunrise and up to 30 minutes after sunset. And in this case, we actually have the data about sunset from that exact intersection.

And what the, you know, evidence will show is at this time she wasn't required to have her headlights on. She says that she does have her headlights on anyway. And so that -- that's their issue for comparative negligence.

The only problem with that is that the impact in the case happened to the side of her vehicle. And, obviously, immediately before impact he would have had to see her because she was directly in front of him. Either that or he didn't have his headlights on or he wasn't able, you know, to see what was going on. So that's basically liability in a nutshell in this case --

THE COURT: Are they alleging speed is an issue at all?

MR. WILLEY: Speed is not a proximate cause or a potential proximate cause.

THE COURT: I mean, are they alleging it?

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Is the Defense alleging it?

MR. WILLEY: They have raised that, and it's sort of derisive so, you know, scenario that --

THE COURT: So the speed limit there is 45 miles per hour?

MR. WILLEY: Right.

THE COURT: What are they putting your lady at allegedly?

In my experience, there was -- there was some type of black box that was out of someone's car, in this case. Was it the Plaintiff's, Defendant's, or anyone's?

MR. WILLEY: Plaintiff's.

THE COURT: It was the Plaintiff's car. Okay. Was that something you got in your discovery that you pulled it out of your --

MR. WILLEY: It's sort of interesting because initially Mr. Poplin was hired by USAA to defend Ms. Hood in another case resulting from this wreck. So he was actually USAA's expert.

THE COURT: So did the Kucks sue her?

MR. SMITH: Yes.

THE COURT: Is that what happened?

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MR. WILLEY: Yes.

THE COURT: Excellent.

MR. SMITH: And Mr. Johnson.

MR. WILLEY: And Mr. Johnson.

So whose expert is who is sort of for anyone to guess.

THE COURT: Okay. So in that case, Mr. Poplin got her -- correct me if I'm wrong -- Ms. Hood's box out of her car; is that correct?

MR. WILLEY: Yes, ma'am.

THE COURT: Okay. Okay. Interesting. I was wondering why. It's somehow a little odd how it came about in this case.

Okay. And what does that black box have her going at? Or do we have -- I guess there's two points of impact, and I'm not sure how the black box does that. It's the first impact with the Defendant in this case, and then also the impact with the Kucks.

MR. WILLEY: And that's what makes that unreliable in this case. The actual black box reading puts her about 60 miles an hour. But the black box they go -- you know, it's completely unreliable because of the nature of

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the wreck. And this particular case, even if it's not unreliable, it's still not a proximate cause of the wreck because she was T-boned. This is not a situation where she ran into him.

So just the fact that her speed, whether it was 35 miles an hour or 75 miles per hour, put her in that position at that specific time is in no way a proximate cause. We deal with that in one of our pretrial motions that Your Honor has read.

THE COURT: Okay. All right. Happy to hear again.

Yes.

MS SUTTIE: Yes, Your Honor. I'm Madison Suttie for the Defendant. I'm just going to go and address our arguments in order.

As to the lack of headlights, I think it's more than just an assertion by the Defense. We're going to present eyewitness testimony from four witnesses who put Mrs. Hood as driving on 278 without her lights operating.

We also have the investigating officer who checked her in-car video and saw that she didn't have her headlights operating, ah

THE COURT: How does your in-car video say that you don't have headlights on?

MS SUTTIE: She -- the officer's in-car video shows that the running lights were on, which means that the parking lights were off. I have to look at the exact --

THE COURT: So it's just in --

MR. DANIEL: It's not here.

THE COURT: Is this on every time the investigating officer --

MS SUTTIE: No, in the investigating officer's Officer Welch.

MR. DANIEL: It's destroyed though. She's -- you're not actually going to see it. You're going to --

MR. WILLEY: And it was after the wreck.

THE COURT: Okay.

MS SUTTIE: She went back and she put it in her report that as -- so the headlights are probably a primary issue, but also the speeding as not being proximate cause. There will be testimony from Plaintiff's own experts and also from the officer that, you know, the speed did have an impact on the Plaintiff's ability to react, to avoid the incident, to, you know --

she closed the distance in a shorter amount of time, but --

THE COURT: Did she say she ever saw the Defendant's car?

MS SUTTIE: No.

MR. SMITH: No.

THE COURT: So she didn't see his car and he didn't see her car. Is that correct? Is that the testimony in all this?

MR. DANIEL: Yes.

MS SUTTIE: Yes, ma'am.

THE COURT: And this happened at 5:59 at night in November -- okay.

MR. WILLEY: And one piece on that, Your Honor. Mr. Lee, who was actually traveling behind Ms. Hood will testify that he was able to see her car in front of him, and also the Defendant's car, which he estimates was several hundred feet away from him when the wreck occurred. So he could clearly see everything that was going on.

MS SUTTIE: Well, I mean, Mr. Lee had his headlights on.

But after the expert reliability of the black box data, it records by events. So the

first -- when if something triggers a -- you know, an event, like unusual braking or something, it records in .5 second intervals before. So Plaintiff's expert took both of them and testified that as to the speeds, up to event one, and even speeds leading to event two, they have no reason to dispute the accuracy, and they place her at up to 63 miles per hour right up until the point of collision with Mr. Johnson's vehicle. And not only that, but the data shows that she didn't hit her brakes at all prior to Event One.

THE COURT: Which would make sense if she never saw him.

MR. SMITH: Yes, ma'am.

THE COURT: Okay. All right. And do we have any kind of black box out of your client's car? Mr. Lee's car?

MS SUTTIE: Oh, our client is Mr. Johnson, but, no, Your Honor --

THE COURT: Mr. Johnson. I apologize.

MS SUTTIE: You're fine.

THE COURT: Okay. Well, at least, now, I know what some of the issues are, which I had no idea from pretrial briefs.

THE WITNESS: Well, let's go ahead and start with -- you know what, let's not. Let's wait for bifurcation issue until we get a little further down, I hear a little more facts in the case.

But let's go ahead and start -- I can tell you that you both have given me some proposed -- well, let's go ahead and talk about the motion for Plaintiff to do -- or participate in voir dire. I don't think I need to hear anything on that motion, I just don't allow anyone to do it. I just think the arguments, obviously, about this case do it. I'll even go ahead and go so far as to tell you that I have at one point allowed in a railroad case the attorneys, not necessarily to ask the questions, but to do some follow-up. And my experience has been in that case, is that the lawyers will either try to, if they want the witness rehabilitated, to bring them back to their side or try to push them so far out that they have to be struck for cause.

So I've learned that lesson, I've learned it well. I don't let lawyers do voir dire

Plaintiff's voir dire and the Defendant's. I scratched out a lot. I'll get into obviously my standard that asks a lot of normal questions that you'd want to know. So I'm comfortable that we don't need to discuss that anymore. It's pretty excessive.

MR. SMITH: Can I make one request, Your Honor?

THE COURT: Sure.

MR. SMITH: If a witness does present an answer or an issue that you deem this -- there may be an issue with, could we just ask that the witness not be rehabilitated by any sort of a leading question? For instance, "Well, you can be fair and impartial, can't you?" "Well, you can apply to the law, can't you?" Just, we would just ask that that not be done on leading questions.

THE COURT: Okay. Well, I will ask that. One of my tailored questions is, is the issue is not yes or no, but it's whether or not you can be fair and impartial in the trial of this case. And not being one way or the other.

So while I don't necessarily think it's as leading, I think it does ask the question of

whether or not they can be fair and impartial.

MR. SMITH: Sure.

THE COURT: So to the extent I hope it's not leading, but I'm the one asking it, and so I can ask it any way I want.

MR. SMITH: All right. Sure.

THE COURT: Okay. All right. So that takes us past voir dire.

I'm next looking at Plaintiff's Motion in Support -- or to preclude certain evidence and arguments.

First off, we talked about the Plaintiff's speed, braking time, and other similar or black box data.

Let me just ask you this: So my understanding is from the Plaintiffs, you are going to have Woody Poplin testify. You are going to have Kim Richardson testify, both as engineers. And then you're going to have the human factor, or attempt to have the human factor witness testify.

MR. SMITH: Yes, ma'am.

THE COURT: Well, tell me, I understand what Woody Poplin and Kim Richardson will testify to. I've seen them testify a number of

times. What is it -- what is the human factors expert going to testify to?

MR. SMITH: Your Honor, there's a side issue involved here, and it's distraction -- distracted driving due to some cell phone use. We have a time line in this case that puts the wreck at 5:57 p.m. We have an incoming text to the Defendant at 5:57 p.m.

Ms. Borzendowski is going to talk about distracted driving, what's been referred to as "inattentional blindness," and how that works. So --

THE COURT: Do we have anyone who can say, a witness, that they saw him either holding a phone or looking down at a phone?

MR. SMITH: No, ma'am. There's no read receipts. I mean, we have the record of the incoming call. And what we will show, we have the rest of his text messages as well.

THE COURT: Yeah. Is it a call or a text message?

MR. SMITH: It's a text message.

THE COURT: So it's a text message. And I'm assuming you have that text message printed out? Downloaded? Yes?

MR. SMITH: We do. We do.

THE COURT: Okay. Okay.

MR. SMITH: And, Your Honor, we have -- we have a day of -- what, a hundred and -- how many is it?

MS SUTTIE: 170-some.

MR. SMITH: A hundred and seventy. So we've got a phone activity during a workday of about 170-plus activities throughout the day. So, you know, at the end of the day the jury is going to see the time line between the 911 caller and all the things that happened before she got on the phone. We know the exact time the 911 call, the first one, came in.

And we're going to contend that puts it at 5:57. The jury's going to see an incoming text at 5:57, and they're going to be asked -- one of the things they're going to be asked to determine is, do you think he was looking at it? Is that the reason he didn't see Ms. Hood coming down the road with her -- with at least her running lights on? And so --

THE COURT: How many of these text messages did you try to get in? Like I could

worried that anything that occurred right before and during the accident I think would be relevant.

In other words, when I say "right before," I mean, like within a minute before. Because I could see someone could be checking their phone at a stop light. He could have been checking his phone when he was at Dunkin' Donuts. And I'm not going to have her testify that something might have happened at -- if he's got 170 text messages, he's looking at them all day long.

MR. SMITH: Oh, she's --

THE COURT: And she can't say he looked at them back to back. I was worried that I think it's fair game for her to testify that 30 seconds before this, if there was any text messages, if what you say is 5:57 there is a message that came in, you're saying the point of impact is 5:57 for, I'm guessing, the black box, is how you do that time -- or is it by 911?

MR. SMITH: It's the 911 call.

THE COURT: It's by 911. I think that is relevant. And I do think, obviously, there's a

question about violation of the statute at that point.

But other than that, what else -- yes.

MR. WILLEY: Just to clear up one thing. The actual substance of the text messages, we're not intending to admit. We're only intending to admit the actual time line and use of the cell phone. And part of the reason in this case as well, is that we need more of that whole history as when it starts. So he starts his phone activity --

MR. SMITH: 4:44 a.m.

MR. WILLEY: 4:44 a.m. in the morning, goes and works a landscaping job. Obviously this record occurs some 14 hours later. And so that sort of plays into the theory as well with the human factors expert, how that period of time, you know, would factor into a person's attentiveness and alert -- alert --.

THE COURT: I don't see how that's just not pure speculation on her behalf. I just don't see how she could testify to any type of scientific, security, knowledge, in any way, shape, or form.

Like I said, I could see it being relevant

at the time of the accident, directly before the accident, but not what his pattern is, you know, up until that -- you would ask him whether or not he wore his seatbelt all day long beforehand, or Ms. Hood was wearing her seatbelt all day long, as to habit or whether or not she was wearing it when this occurred. I think that's pure speculation.

We can address that if we need to when she testifies. Again, I understand you said you don't have any interest in the context, but I can tell you this: If you want the context of it, if they're going to get into it, I'm going to let you put the context in.

In other words, if the text message is something specific. I don't know if it's anything either one of you want to get into.

MR. SMITH: No one has it. We don't know what it is.

MR. DANIEL: Your Honor, and I was just checking. I don't think we actually have the substantive text messages.

THE COURT: Okay.

MR. SMITH: We don't.

MR. DANIEL: And it just shows that, you

know, there's an incoming text that -- you know.

THE COURT: At 5:57 p.m. that night.

MR. DANIEL: Right. And I don't even think it really even verifies whether the text has been read. It's just -- it could be like an email in your inbox.

THE COURT: Well, there's no way to tell if a text message is read or not. You can't go back. So -- unless he replied to it and then I think that would be even worse for you.

So, anyway -- all right. Well, to that extent then, I will tell you just in looking at everything, I'm assuming you have an expert that is going to make speed relevant, correct?

MR. SMITH: No.

MR. DANIEL: Your Honor, we can actually draw that out through the officer who's a certified accident reconstruction -- yeah, she's certified in it, which it's a special education --

THE COURT: She didn't see the accident, correct? She came onto it afterward.

MR. DANIEL: She did not. But we have the

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their experts pulled, and have testified to in their depositions.

THE COURT: And I'm going to assume that Woody Poplin and Kim Richardson are testifying that speed had absolutely no proximate -- he can't talk about proximate cause because he didn't -- that wasn't a factor contributing to this accident. Am I correct on that? Is my hypothesis correct?

MR. SMITH: Well, if we even take it down to a further baseline level, no accident reconstruction has ever been done in this case. The officer didn't do it. Kim didn't do it. Woody didn't do it. Borzendowski didn't do it.

I know they'd been talking to an expert, but presumably he didn't do it either. It has not been done, so essentially what they're asking the jury to do is do their own accident reconstruction here live in court.

You know, to make speed a proximate cause you've got to talk about braking time, and the human reaction time, and do all that. So the starting point would at least be someone who has done an accident reconstruction. No one from either side has done one, Your Honor.

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THE COURT: The only problem I have is that if you think speed is relevant most of the time. And I have a hard time believing I'm going to tie their hands and not allow them to talk about speed.

I'm going to assume his speed potentially is an issue as well. I know he's pulling out allegedly -- is there a question of whether or not he stopped at the stop sign or if he just went through the stop sign pulling out? Do we know?

MR. DANIEL: We don't know either way.

THE COURT: Do your people say anything?

MR. DANIEL: We don't know either way.

THE COURT: Okay.

MR. SMITH: And, Your Honor, I know you've read the briefs. And, you know, the only thing that we can -- well, the cases that talk about this and the cases that talk about it's reversible error to admit something like this, they talk about the requirement fraction of reconstruction. You've got to bring something to proximate cause.

You know, the fact that speed -- all speed did is -- that we know about, is bring these

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two people together. If she's going 80 miles an hour, accident doesn't happen. If she's going 14 miles an hour, accident doesn't happen. If she hits snooze on her alarm clock this morning, accident doesn't happen.

But the case law talks about the need to bring science in to draw this proximate cause. Because, Your Honor, this is the exact reason the 403, I think, is in place. Speed could be such a toxic issue for the jury that they're going to see just a bad driver, an out of control driver, and they're going to assume for themselves that it had something to do with it.

Trying to draw these legal arguments about cause and effect to a jury that it wouldn't have happened if she was going slower or it wouldn't have happened if she was going faster, neither one of them saw each other, so it didn't affect any sort of reaction time.

Asking the jury to make these legal arguments, Judge, I'm worried about it. Because, you know, this is a legal issue and these go to not only, you know, our claim, but it goes to comparative negligence.

So both sides had an opportunity to do

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accident reconstruction. Both sides had an opportunity to call a doctor and say, hey, if she was going slower, would the injuries have been this severe?

No one did that either. I mean, it's not -- you know, clearly, under the case law it wouldn't be admissible under proximate cause for liability. But as far as damages, too, are they going to ask the jury now to infer from a legal -- from a medical standpoint, do you think her ankle would have been shattered so severely if she was going slower?

I mean, this is -- this is expert testimony that's required, Judge, and I -- asking the jury to do this, I -- we all know what they're likely to do with speed without expert testimony. They're going to interpret it as a bad driver and -- who knows what they're going to do.

THE COURT: All right. Well, I'm assuming you're going to ask their experts whether or not speed played a factor into this, if you don't have your own saying there's any issue.

MR. DANIEL: Your Honor, we will, and

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speed be a factor? And I think we can elicit enough testimony.

The case law though does -- I mean, we can provide opinions, some South Carolina decisions.

There's really -- there's no requirement that you need an accident reconstruction expert to talk about speed. I mean, speed and persons -- a person has a general duty to drive at the appropriate speed to keep their car under control. It's a general jury instruction.

I think there will be testimony, even from fact witnesses, that she was speeding. Mr. Lee is -- that was just excused by the Court -- was driving, and she was tailgating him. He pulled to the side. His normal standard, and what he testified and will testify to, he testified to in his deposition, is he goes about five over, she passed him, and then the accident happened.

And then you have this crash data, where their experts verify in their testimony, deposition testimony that's usually accurate within about a mile or an hour or two. There might be a little variance, but they have no

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reason to dispute it. And there was speed just before the first event, which is the right side impact --

THE COURT: Well, I don't know how just before, because what I understood in that motion in reference to Mr. Lee, it's something about she was tailgating him and passing him. It's kind of the same thing as the cell phone, and whether or not a text was coming.

I don't care if she was tailgating him five miles behind. I don't care if she was tailgating him up to the light before then. That doesn't matter. What matters is what happened at this wreck.

And that, to me, is testified to. So I don't think we can conclude that she had a bad motive to her in some way.

So you need to be careful of what Mr. Lee's testimony is going to be. I'm not exactly sure. He can say that at the time of this accident, she passed me. But one of the things you just said is he normally goes five miles over the speed limit. Again, I don't care what he normally does, I want to know what he was doing on this occasion.

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I want to know what speed he says he was going, and what he knows and what he can testify to, and what he can swear to under oath. So, again --

MR. DANIEL: Well, he does -- well, he -- I think he will give competent testimony that she was going in excess of the speed limit when she passed him, and the accident happens moments later. She doesn't have her headlights on, he observes that as she passes him, which would be certainly directly relevant to whether her headlights were on and corroborates Mr. Johnson's testimony position like, "I never saw anything, I never saw headlights."

And then what another witness says they saw as she actually hits this third vehicle, which is the -- really the severe impact.

And that's really -- to put it all in context, Your Honor, what you haven't really heard so far is that there's this sort of sideswiping, scraping, impact. It's not a very severe impact, a minor impact, their experts concede that, between Mr. Johnson's vehicle and the Plaintiff's vehicle.

And then she goes over a hundred feet

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across a lane or two of travel and a median, and hits another vehicle head on. And that damage is the significant damage in the case. That is what caused injury here. And so her speed is directly relevant to damages, it's directly relevant to her ability to control her vehicle, make an appropriate, evasive maneuver, swerve, keep her vehicle under control to avoid hitting that second SUV, the third car involved in this accident.

THE COURT: So was that case settled? What happened with that case?

MR. DANIEL: That case is still pending, Your Honor. And I do take -- just to be clear, Mr. Poplin was hired on behalf of Mrs. Hood, the Plaintiff, in this case. And he went and inspected her vehicle and pulled this crash data. Mr. Richardson has reviewed the crash data. They both testified under oath in depositions about how it reads, what it reads, and what that means about her vehicle speed. So we should be allowed to have ask some questions about that.

MR. WILLEY: Just to be clear, Your Honor,

important. This is a UIM case with USAA defending. So when I said USAA hired Mr. Poplin, that was accurate, on behalf of Ms. Hood when they were defending her in that case.

THE COURT: I understand.

MR. SMITH: Mr. Johnson originally had a counterclaim. And that's why Chris was here.

THE COURT: Okay. I certainly understand that. Okay. That is --

MR. SMITH: Your Honor, if I could maybe just direct your attention to the -- I think the most instructive case out of everything that we filed is probably the Odum case. And in that case, Your Honor, Defendant was stopped at a stop sign, just like Mr. Johnson, testified he did not see Plaintiff's vehicle approaching from the left, just like Mr. Johnson, when he attempted to pull out through the intersection to make a left turn, exactly like Mr. Johnson.

He testified even that he was approximately two car lengths away when this happened. So he's even giving further information, it's not even so sudden and direct. And then the Defendant's vehicle

struck the front left fender, just like Mr. Johnson.

The Court knows, the Supreme Court held that excessive speed was not a proximate cause because he pulled directly into traffic. They also looked at who's got the right of way in these situations. And in that case, that's the one where the Supreme Court held that directed verdict on liability was reversible error, not to have granted that speed was not a proximate cause.

And, Your Honor, that's our argument. It's not a proximate cause, and if it's not, it's irrelevant. And any probative value is -- is grossly outweighed by the prejudicial effect.

THE COURT: All right. Well, I'm just going to have to hear testimony obviously from the witnesses to see. I can tell you that I understand your argument that -- you know, obviously it doesn't matter. The only testimony is that speed did not matter. That would be one thing. But I would be arguing that speed was at issue. Someone is going to link speed to the issue.

Regardless, I also think it's probative. It's prejudicial, but I agree that someone's got to give me some type of idea what the speed did or did not do. And I've heard you argue that, you know, even though you can't see the impact, that speed had to have been a reason why he didn't see her car. And I haven't heard the issues, and I don't have any answers to that yet.

MR. DANIEL: And it sounds like you've already kind of decided which way you'll go with it. I just want to add one more thing about speed, that it has to be sort of taken in context. Like the fact that there were two impacts, and that this impact with this third vehicle a good ways down the road.

There's also the speed coupled with the lighting issue. And what you'll hear, and I think what a jury can draw, based on their common sense, the conclusion they can draw is if this lady, the Plaintiff, is going 62 miles an hour, and Mr. Johnson's at an intersection where he's at the T, if she's going that fast, 62 versus 45, she's going to be a lot farther back down the road at that intersection, as

it's getting dusk, as it's dark. And the farther back she is, we all know the farther something is away, the harder it is to see. And when you compound that issue with darkness, I mean, it's directly relevant to his defense for liability and it's also -- I mean, the comparative fault and comparative negligence of the Plaintiff. So the speed and the lighting, you almost can't talk about one without the other, is our position.

THE COURT: I certainly understand your position. I am a bit concerned about what you're going to have this officer testify to. She didn't do an accident reconstruction. She can testify to information she gathered, but I think that you're going to have to be very careful with her reaching her conclusions about what occurred when she wasn't there.

So we're just going to have to cross that road when we come to it, but I am concerned. You know, she may have been -- she may be qualified as an accident reconstructionist. She may tell me that she's done 500 accident reconstructions, but she didn't do a

hearing. She may have gotten her facts, but we'll just kind of go from there and see where she is and how she'll testify.

Who is the officer in this case?

MR. SMITH: Officer Laurel.

MR. DANIEL: Now, Laurel Welch.

THE COURT: Welch. Okay.

MR. SMITH: Your Honor, since we're going to approach this issue when we get into it and we have the appropriate testimony, I assume that this is not something that should come out in opening statements because --

THE COURT: Exactly.

MR. SMITH: Okay.

THE COURT: We're not going to -- I will say this though. I'm assuming we're getting to the speed at some point, and I think I will let him -- I'm going to let him testify to speed in this case.

MR. SMITH: We'll see how it proceeds, sure, but --

THE COURT: Speed and lighting. But I think you need to be careful as far as what your experts are going to testify to based on that limitation. Okay?

MR. SMITH: Thank you, Your Honor.

THE COURT: I think that somewhat talks about --

MR. SMITH: That would cover basically our motion for speed and probably his directed verdict or motion for partial summary judgment. I would imagine that would settle both of your rulings.

THE COURT: I'm good, yeah. I'm not going to grant summary judgment to anything at this point. We're going to let the jury hear it. So -- okay.

MR. SMITH: Our next issue, Your Honor, is certain limitations, which you've already touched upon with Dustin Lee. And, basically, you know, there's just a lot of information there.

I mean, he was trying to be helpful, and God bless him for that, but, you know, there's a difference between making a very helpful 911 call and offering opinion testimony.

THE COURT: I'm not going to let this guy get away -- I'm not going to let him give opinions. I'm quite confident he is not an accident reconstructionist unless there's more

that I don't know.

But then again, all's I can tell you, even though I know him as a lawyer, I didn't know he was a magistrate lawyer. So -- I think I swore him in, but I don't know that.

So, anyway, we ought to be careful with that. I completely agree with you. He can't give his testimony --

MR. SMITH: I'm not going to elicit those responses, and I imagine Jack won't as well.

MR. DANIEL: Your Honor, just to be clear on that, so that, you know, we don't run afoul of any rulings. There is in the 911 call, he makes the statement and he's talking -- he's just seen this event, and his testimony is that he pulls over. As soon as he's clear off the roadway, he dials 911. And whatever length of time, it may have been a minute, however long it takes to connect, he's then talking about what he just saw and describing the details of it.

And he gives good -- he actually gets the type of license plate that the Plaintiff has. He gets that right. There's a lot of information in there, I do agree with Kevin

about that.

He doesn't -- and I'm not going to ask him questions like, Do you think that the Plaintiff was negligent? Do you think that she caused the accident? I'm staying away from that. But there's a -- what our position is, there's a clear, present sense impression this 911 call was made right after the accident. So it -- you know, the case law on that and the reason why that is admissible is because it tends to be factually accurate and not just an honest --

THE COURT: I have heard the 911 tape.

MR. DANIEL: We can play it, we --

THE COURT: He can testify as to facts. He can testify as to facts, but I'm not going to allow him to testify as to conclusions.

MR. DANIEL: Well, what -- one thing -- one thing he says in the 911 call, and I just wanted to draw Your Honor's attention to it, because he actually says -- he describes the SUV that passes him, which turns out to be the Plaintiff's vehicle. And he talks about the car that's crossing 278, which we know is Mr. Johnson's vehicle. And he says, "I don't

have seen that vehicle coming."

THE COURT: Well, that portion isn't coming in, because that's pure speculation. Unless we all agree that he says he didn't see it. But I -- it's his opinion, and I think that's their own defense.

So, yeah, I don't know how you're going to redact the 911 tape. If you plan on using it, you're going to have to deal with that when you get to it. But him speculating -- he can't speculate. He just can't. He can't say what he saw. I assume he's going to testify he never saw her, which is what you all are telling me, and that she never saw him. So I don't think that's fair game. I think he can state actually what he saw.

MR. DANIEL: If we redact that from the 911 call, Your Honor, do you have any opposition to us bringing that call and introducing it into evidence?

THE COURT: I haven't heard it in its totality. You could just play it for me, you could tell me what portions that you object to.

MR. SMITH: There is a lot to redact.

THE COURT: I think it's relevant. I

think it can be. I mean, I think typically it would come in. A 911 call, contemporaneously saying what had just occurred. However, if there's anything that he's talking about that runs to a fact -- I'm sorry, an opinion in some way, some type of speculation, I'm not letting that part come in. So you're going to have to cut it or do something. Okay?

MR. DANIEL: Yes, Your Honor. And we can play it for you before he testifies.

THE COURT: And that's fine. We'll just do that when we get to it. Okay?

All right. What else do we have?

MR. SMITH: The letter to the Kucks. This is --

THE COURT: Okay. Tell me about that.

MR. SMITH: This is a little strange. Okay?

THE COURT: Tell me how that is relevant in any way.

MR. SMITH: So initially what happens is, you know, the Kucks are the vehicle that were hit head on. Right? That they were coming in the opposite way of traffic.

The Kucks initially give a recorded

statement where the driver says to the insurance company, "Ma'am, all I seen was headlights coming right at me." He says it three different times. Right?

THE COURT: Okay.

MR. SMITH: This image is just burned into his brain. Therese Hood is barreling down on him and all he's seeing is headlights coming right at him. Right?

THE COURT: Okay.

MR. SMITH: Well, subsequent to that, the Kucks hire a lawyer. We're in contact with them to try and get an affidavit saying the same thing, right? So at this time, we don't have a statement yet. We're just trying to get a statement from him that the lights were on, right, because we understand that's what they're going to say.

Well, they get a lawyer, statement comes out, and also then the Kucks learn Therese carries $500,000 per person, so a million for the Kucks. Ms. Johnson carries 25. The Kucks story has now changed.

THE COURT: Okay.

MR. SMITH: Okay. No more headlights

Right?

They are -- so Therese writes them a letter, explaining again the insurance. Now, she -- she gets it backwards. Okay? She gets it backwards. She says how much insurance she's got with USAA, she says how much insurance he's got with GEICO. But she says, "If you say the same thing, if you say my lights were on, like you said before, you'll get more money." Which it would actually work in the opposite, and she was just very confused.

But that's what that letter was. It's explaining the insurance money, it's saying, "Please tell the truth." They're waffling at this point, and they're changing their testimony -- well, not testimony at this point, but they're changing their story after the event about insurance.

THE COURT: Who wants to enter this letter?

MR. SMITH: He does.

MR. DANIEL: Your Honor, we -- I mean --

MR. SMITH: Well, if he didn't want to,

MR. DANIEL: I don't think that we will go there or need to go there other than if they start talking about I don't think that the issue with Mr. Kuck and the fact that there's insurance there, when she actually misrepresented how it would work and told them there would be more money if they sided with her and said Antoine Johnson was at fault.

MR. SMITH: But it's all on her.

MR. DANIEL: That's what she says in the letter, but I really -- I didn't -- I don't plan on going there. I also don't think --

THE COURT: I don't think --

MR. DANIEL: I also don't think --

THE COURT: That letter is relevant in any way unless you tell me it's for some -- I don't even know what purpose it could be.

So as of right now, we're not talking about the letter, it's not coming in. If someone wants to try to put it in, you need to address it with me first during the proffer.

MR. DANIEL: Yes, ma'am.

THE COURT: You need to take a break, I need to look at this because I'm going to try to use this. I don't remember what for --

impeachment purposes? I don't know. But, again, right there on --

MR. SMITH: All right. Roy has our last issue, so I'm going to sit down.

MR. WILLEY: The last issue, Your Honor, comes from Page 4 of the Defendant's pretrial brief. There's a sentence in there that says, "Mr. Lee will further testify that it was dark enough outside to require the use of headlights."

THE COURT: And, of course, that's a legal conclusion, which he will not be able to testify to. So he'll be able to say it's dark outside, but he can't make the jump to go that it requires. Because, again, there's a statute that says 30 minutes -- it's 30 minutes before and 30 minutes after?

MR. WILLEY: Thirty minutes after sunset, 30 minutes before sunrise.

MR. DANIEL: But, Your Honor, I mean, it would be, just to be clear about our position, we're not going to ask him questions in the legal context of, you know, were you legally required --

THE COURT: You can ask him --

MR. DANIEL: I think we can ask him was it dark? And, two -- was it dark, and was it hard to see? And did you need your headlights to see? I think those are the --

THE COURT: He can testify to that. Those are factual issues, he just can't give you ultimate conclusion of, "I think it's required by law to have the headlights on."

MR. DANIEL: We'll fashion the questions properly.

MR. WILLEY: And the key piece that I just want to hit on there, it's the Key v. Charleston, a railroad case, 144 SC164, is making sure that not only can he not make the jump, but that he cannot say it was dark enough where he felt like he should have his headlights on.

So darkness is not an issue. The issue with respect to headlights as to the statute is timing. Whether or not it was 30 minutes after sunset or whether it wasn't. There's no -- there's no other option for that except with respect, for example, it talks about environmental factors. So if you have an eclipse, obviously if you have an eclipse, you

might need to have your headlights on. It deals with that.

But with respect to the normal course of day and night, the statute specifically lays out when you are required to have headlights on. And I don't think that he can testify in contrary to the law on that point. The Court will give them the law. He can -- of course, he can say he can have his headlights on. That's fine.

THE COURT: And I can guess he had his headlights on at the time, correct? And he's going to testify to that.

MR. WILLEY: Correct.

MR. DANIEL: Yes, Your Honor. But I mean, I think it is 701 type lay witness testimony where, you know, you were out there, was it dark? It was -- it was dark. Did you think you needed your headlights on? Yeah, I needed my headlights on to see.

I mean, that's not a -- that's a conclusion that a driver, a licensed driver in the state of South Carolina, or really anywhere, can attest to.

on. I even think he can say, I needed my headlights at that exact time to be able to appropriataly see.

I just -- I'm worried about him extrapolating and going from whatever his experience is to the next one.

MR. DANIEL: We're not going to ask --

THE COURT: So he needs to be really careful.

MR. DANIEL: We're not going to ask him to make legal conclusions or phrase it of, you know, in the way of, you know, statutorily were you required. It's just a general perception thing, and as a driver what his common knowledge is.

THE COURT: Just be careful. If not, you need to object when it occurs or if it goes too far, and I'll make a ruling on it.

MR. WILLEY: Can we -- can we at least remove that from opening until we see what he's going to testify to, as to specifically the headlights? And, again, I'm relying on this case. This is actually a railroad case which --

THE COURT: I don't think anyone in their

opening statement better put any words into Mr. Lee's mouth, because I don't know. But I'm getting the feeling in this that he's a little all over the board.

MR. WILLEY: Correct.

THE COURT: And I might be wrong on that, but that's what I'm gathering.

MR. SMITH: We do all agree that one thing he says, and this is his observation, and we don't have any objection to this, but he observed Therese in his rearview mirror, and as she's passing him, he says that she had her running lights on and no headlights.

MR. WILLEY: As she was passing him.

MR. SMITH: There's no getting around that. He saw it, Your Honor, and -- you know. There's nothing --

MR. WILLEY: That's fine.

MR. SMITH: And he had his headlights on at the time. So I know those two facts, those are his observations, we can't argue with that. But all this other stuff is obviously --

THE COURT: That's all I'm going to say is in the opening statement, you can say what, you know, you believe the evidence is going to

prove. But I would be careful on putting words in anyone's mouth. But, of course, that's to your own peril. Because if you promise something that doesn't get delivered by a witness, then you are the one that looks bad. So --

MR. SMITH: Yes, ma'am.

THE COURT: Again, I think everyone needs to be so careful. But, like I said, apparently that's an issue in this case potentially. So to the extent you need to use it, again, I just wouldn't be putting words in people's mouths.

MR. WILLEY: So for purposes of that motion granted as to opening and held dependent on what the testimony shows?

THE COURT: What I just granted is the opening to specifics. I think they can say what's going to be argued. Again, I don't think he can say this is specific to Mr. Lee. But I think he can say the evidence is going to show.

MR. WILLEY: So it's denied?

THE COURT: I think it's denied.

MR. WILLEY: Okay. And for purposes of

copies for the record, or would you like us to provide them?

THE COURT: You need to go ahead and provide.

MR. WILLEY: Okay. And we will do that at a break.

THE COURT: All right. What else do you have?

MR. SMITH: I could probably -- these are it for our motions, Your Honor. I could probably tell you which of his that we don't have objection to, which may shorten his presentation.

THE COURT: Perfect.

MR. SMITH: Your Honor, this would be in the master Motion in Limine filed by Mr. Daniel.

THE COURT: Yes. Go ahead.

MR. SMITH: And it will be Issue No. 2, testimony of Dr. Hanlon regarding the exacerbation of Plaintiff's bipolar disorder and mental health issues.

Also, I imagine it will be Parkinson's in there as well, because that was really the

Your Honor, we agree that the Plaintiff's mental condition, bipolar disease, depression, and Parkinson's Disease is irrelevant. We're not going to bring it into trial.

THE COURT: Are you not claiming that it was exacerbated by this accident?

MR. SMITH: No, ma'am.

THE COURT: Okay.

I guess I'll just hear from you.

MS SUTTIE: Yes, Your Honor. It is relevant though to the issue of the extent of her damages. I mean, this depends on a ruling on the Motion to Bifurcate, but the Parkinson's may come in.

THE COURT: Well, they say they're not putting it in. So I think to the extent though that -- I mean, we have to take her as she comes. I mean, with whatever she's got. I mean, I think that's going to be certainly a jury charge in this case.

I don't think anyone should touch on the issue, I don't think we need to go there.

MR. SMITH: Yes, ma'am.

THE COURT: If you open the door on bipolar and depression, that's a whole 'nother

issue. I think the Parkinson's a little different. I think it's fair game.

If you have a medical doctor testify, if must be something. But you don't want to open the door on bipolar or any depression or anything along these lines. If you open that door up, they'll come all day long and go through it.

MR. SMITH: Yes, ma'am.

MS SUTTIE: Yes, Your Honor. Just the Parkinson's, I think, for maybe liability purposes will get brought up, and that's the only other inference I could potentially see.

MR. SMITH: You don't want us to bring it up for damages, but you want to bring it up -- if it's irrelevant, it's irrelevant.

MS SUTTIE: Well, it could come up for damages, too, but Dr. Hanlon can't talk about that.

THE COURT: I don't think potentially Parkinson's could be. I don't know what the doctors say. But, I mean, my understanding is, she had a very badly shattered ankle and as well as she some fractures of her cervical and her lower back, correct?

MR. SMITH: Yes, ma'am.

THE COURT: Okay. Well, obviously the relevant doctors will testify as to what they can in those cases they saw and what they did or what their treatment is.

And if one of them can't opine the Parkinson's had something to do or made things more difficult, I think that's fair game for you to testify to.

And are you telling me that Kim Richardson or Woody Poplin's going to talk about her Parkinson's, the affect? I mean, she does have a valid driver's license, correct?

MR. SMITH: Yes, ma'am.

THE COURT: I mean, she can drive a car. So, again, I don't know where anyone's going through the door on that one, so --

MR. SMITH: We won't. So we agree that those issues are irrelevant. You won't hear those words out of our mouth, and we would also ask that that --

THE COURT: I will say this. It's probably fair game to bring it up. Because I will say this, and I don't mean any disrespect, I can see you shaking a little bit, and I think

people would wonder maybe, just a little bit, what that is.

So, again, it's very subtle. But, again, I don't think it's completely out of bounds here. I think it can be mentioned, but unless you got someone saying that somehow that affects her -- and I don't see that because I don't hear you brought an expert witness. And any way that's there, we're not going through that door. Okay?

MR. SMITH: Your Honor, on Issue No. 4, on Defendant's master Motion in Limine, Charmane Bonham (phonetic), we've never been able to find Ms. Bonham, so we're not going to offer her hearsay testimony.

THE COURT: Okay. That shouldn't be a problem.

MR. SMITH: Yes, ma'am.

THE COURT: Okay. What else?

MR. SMITH: And Issues No. 5 and 6 are kind of intertwined. And they have to do with the Defendant's criminal record and driving record.

Your Honor, we'll agree initially that

if the Defendant testifies that he's always a safe driver and always has been a safe driver, or he testifies that he has always told the truth, there's a crime of dishonesty in his criminal record. So if he stays away from that --

THE COURT: You can't ask him that question either. You can't ask that question.

MR. SMITH: I'm not. I'm not going to set him up. I'm not going to set him up.

THE COURT: Okay. All right. Just don't open the door on it. Okay?

MR. SMITH: Right. Failed attempts at settlement.

THE COURT: Obviously it's irrelevant.

MR. SMITH: We're not bringing any numbers into this.

THE COURT: Okay.

MR. SMITH: And --

THE COURT: The reptile theory?

MR. SMITH: Yeah. I don't know, you may have seen this before, Judge. It's a Golden Rule argument. Roy and I, this ain't our first day in court. If we approach the Golden Rule, let us know. We're very aware of the rule.

But -- and that's a little similar to Jack's argument about we can't refer to the vehicle being totaled. You know, you've seen the -- I mean, they were crunched up.

THE COURT: Right. It certainly wasn't totaled in this part of the wreck.

MR. SMITH: Right. So, anyway, so, those are what we agreed on so far, and I'll give Jack the floor to go over the remainders.

THE COURT: All right. Are you ready?

MS SUTTIE: Yes, Your Honor. We have another one. The first one, and now a master motion, is to exclude the video testimony of Dr. David Jaskwhich regarding Plaintiff's other medical conditions.

In his video deposition, Mr. Smith asked him general questions, such as, "Were Plaintiff's injuries related to the subject accident and --"

THE COURT: Correct me if I'm wrong, Dr. Jaskwhich is an orthopedic surgeon?

MS SUTTIE: Orthopedic surgeon. He just treated her ankle.

THE COURT: He had nothing to do with her back?

MS SUTTIE: Nothing to do with the back, spine, ribs, anything else.

THE COURT: He treated her for her spine, her fractures and that?

MR. SMITH: Hilton Head Hospital.

THE COURT: Hilton Head Hospital, just directly after the accident? Did she have any follow-up?

MR. SMITH: She did have some follow-up. She saw a neurologist. These were -- these were fractures in her cervical and lumbar spine. You know, you either get a kyphoplasty or you deal with the pain.

THE COURT: Exactly.

MR. SMITH: So she had some follow-ups. But these are --

THE COURT: Epidurals? Or what did she have done?

MR. SMITH: She did -- these are emergency room diagnoses that happened. They were a little bit more concerned, she had a dissection of the vertebral artery near the level of the cervical fracture. They were a little bit more concerned with that.

Dr. Jaskwhich is reading the records about what Dr. Tobin did, where he popped the ankle, then he did the surgery, and all the other diagnoses that come along with it.

THE COURT: Okay. So you don't want Jaskwhich to be able to testify to anything other than the ankle?

MS SUTTIE: No, ma'am.

THE COURT: And do you agree with that? I mean, I don't think her looking at other things -- or him looking at other things, I think he can bring up. He treated her for the ankle.

Now, how do you intend on getting in injuries? Who's going to get in for you the injuries for cervical and her lower back?

MR. SMITH: Well, Dr. Jaskwhich is her treating doctor. He reviewed the records from Hilton Head, he relied on those records in formulating his treatment plan. He discussed the injuries in his treatment notes, not only the ankle injury, but all the other injuries with Ms. Hood.

THE COURT: I mean, I'm just reading what

MR. SMITH: Right. We're not -- we're not going with him any further than that. He's not talking about any future treatment, epidurals, facets for the neck, for the low back. He's not doing any of that kind of stuff.

But he is competent to testify as a treating medical doctor that he relied upon those records, and based upon what he knows and his medical training and his examination of her, that those appear to be related to the wreck.

I mean, the wreck happens and she gets diagnosed with all these things. We've got her records before, she didn't have cervical fractures, rib fractures, lumbar fractures, a concussion, which is really it, in addition to --

THE COURT: Well, let me ask you, when he does a physical of her, and he didn't treat her at Hilton Head Hospital, correct? He treated her in Charleston?

MR. SMITH: That's right. She lives in Goose Creek.

THE COURT: So he didn't treat her at Hilton Head Hospital, but when she saw him as

an orthopedic surgeon, I don't know what he specializes in, whether it's ankles, arms, backs, whatever. But does he actually do a physical exam of her cervical or lower back?

MR. SMITH: He does a physical examination, head to toe, yes, ma'am.

THE COURT: I mean, does he in his notes, write obviously, that she had a fracture to her cervical whatever number and whatever level?

MR. SMITH: Yes, ma'am.

THE COURT: Same thing with the --

MR. SMITH: Yes.

THE COURT: So who -- are you having an ER doctor testify?

MR. SMITH: No, ma'am.

THE COURT: And are you having Dr. Tobin testify?

MR. SMITH: No, ma'am.

THE COURT: Okay. Okay. I think to some extent he can say that he is her treating doctor, and they did discuss her cervical, her lower back. And I don't know what the written medical records show. It just depends on how in-depth. I think if he does testify -- I think he can testify to some extent that

something caused it, he's relying on the record. I just don't know that the situation was with her back, either cervical or her low back, prior to this accident.

MR. SMITH: He doesn't go any further than that, Your Honor.

THE COURT: Who's treating her -- who treats her for her Parkinson's?

MR. SMITH: Ma'am?

THE COURT: Who treats her for her Parkinson's?

MR. SMITH: Her family doctor at the VA.

MS SUTTIE: That's actually a misrepresentation. She's primarily treated for her Parkinson's by a neurologist at the VA who -- not Dr. Hanlon, who's her primary care physician.

And to clarify some points that were raised, Dr. Jaskwhich didn't have the entire Hilton Head records. He had Dr. Tobin's records from the ankle surgery. And so Mr. Smith asked him on the record, "Were these injuries caused by this accident?"

He didn't clarify, you know, the first impact with Mr. Johnson, the second [illegible]

the Kucks. Objected to the questions and offered him an opportunity to correct the former question, maybe get back verification.

But I think if Dr. Jaskwhich's testimony about her other injuries are allowed to come in, it could -- it's unfairly prejudicial and outside the scope of his expert testimony.

THE COURT: I think it comes, as far as Dr. Jaskwhich feels comfortable, he can testify. So most of the time a doctor will say, well, you know, I can say as a medical doctor that this accident caused her problems that -- you know, whatever and whatever. Then they can say, I treated her back, I didn't take care of that. You're telling me --

MR. SMITH: He says all that.

THE COURT: -- he won't testify to any futures, anything along those lines?

MR. SMITH: That's right.

THE COURT: As long as he qualifies it, I think he can. He's a medical doctor. And I think it goes to the weight, not admissibility. So I think he can testify to that.

MR. SMITH: Yes, ma'am. And all those

all asked during cross. So that is all highlighted that he's not treating that and -- you know.

THE COURT: Okay. I mean, do you have anything as far as pre-existing, that she had other previous back injuries?

MS SUTTIE: Yes, Your Honor. She had a prior cervical injury, she had -- just significant fall risk. We know there's a lot of --

THE COURT: Is that as a result of the Parkinson's or is that from the back?

MS SUTTIE: The -- I mean, close in time to the Parkinson's, but I don't think the back injury is a result of Parkinson's. But perhaps prior right ankle foot injury as well. I mean, there's extensive pre-existing issues.

THE COURT: Okay.

MS SUTTIE: The next one that we have was during Dr. Jaskwhich's video deposition for trial. Mr. Smith introduced the actual hardware that was placed in Mrs. Hood's ankle, and then subsequently removed by Dr. Jaskwhich, in addition to an x-ray that clearly shows, you know, the hardware in there.

Dr. Jaskwhich had already testified as to what was placed in the ankle, what was removed from the ankle.

THE COURT: Do you plan on trying to get the hardware in?

MR. SMITH: Yes, ma'am.

THE COURT: I don't know what it looks like, so show me.

MR. SMITH: Sure.

THE COURT: So how long was this in?

MR. SMITH: Actually it was November of 2014, it was removed about three months ago.

THE COURT: Okay. Your premise is that it's prejudicial?

MS SUTTIE: And it's duplicative, and they have x-rays showing exactly that in the x-ray. And then Dr. Jaskwhich has already testified, showing on the x-ray what each piece of hardware is. And I think it's just -- the only purpose of that needs to come in is to, you know, invite sympathy and prejudice the jury. I just don't see the purpose of it.

THE COURT: I think it can come in. It shows what was in her ankle.

Okay. What else?

MS SUTTIE: The next one may be --

MR. DANIEL: One of them, Your Honor, is the -- we got -- we filed a Motion in Limine as to the video, presenting the video testimony of William and Mary Kuck, the drivers from --

MS SUTTIE: No objection.

MR. SMITH: They are coming live. I mean, there may be cross examination of theirs, but we don't -- we're not just going to throw it -- they don't qualify under the statute. Unless they don't show up, because they've been subpoenaed.

THE COURT: Then we'll cross that when we get it to.

Okay. What else?

MR. DANIEL: Then there's the motion to exclude the mention of insurance in the case, which, I mean, this is a --

THE COURT: We always agree, right.

MR. DANIEL: I'm sorry?

THE COURT: We always agree.

MR. SMITH: Unless, of course, he says he has to pay a verdict, and then it's relevant. Because he doesn't.

MR. DANIEL: Right. But there's also

there's a specific issue as to Mr. Kuck and --

THE COURT: We're not going to talk about the other lawsuit. We're not going to talk about any of that. We're not going into that.

MR. DANIEL: Okay. I just -- the Plaintiff's counsel, in Mr. Kuck's deposition asked -- I mean, probably a couple hours worth of questions about this prior statement that Mr. Kuck gave.

THE COURT: We're not talking about that. We're not going into it. And whoever let Mr. Kuck know, I want to make sure that you tell him ahead of time, everybody tells the witnesses ahead of time, no mention of insurance. If they think for some reason their question has to be responsive to it, they need to say, stop, and look at me, and say we need to take break. Okay?

MR. DANIEL: Yes, Your Honor.

You've ruled on the Motion for Partial Summary Judgment. And we did file a Motion to Exclude Mrs. Borzendowski just because of the timing of it, Your Honor. She was named about --

saw.

MR. DANIEL: Yes, Your Honor. And the --

THE COURT: Did you have a chance to depose her -- did you have a chance to depose her?

MR. DANIEL: We deposed her just five days ago.

THE COURT: Okay. But you deposed her. Okay.

I'm not even sure if she is -- I don't know what her testimony is. Actually, that's one that I might want to between now and when you put her up, I don't whether you intend on putting her up, but let me take a look at her deposition.

MR. SMITH: It will be sometime tomorrow, Your Honor.

THE COURT: Okay. Well, then you can give me a copy of her deposition, let me take a look at it.

MR. WILLEY: I'll email it first --

THE COURT: But you have deposed her, right?

MR. DANIEL: We have, Your Honor. It's just from the Defense position, we did --

THE COURT: Did you have a scheduling order?

MR. DANIEL: We did, and we had this date certain trial that was set --

THE COURT: And did your scheduling order cut off discovery at some point?

MR. DANIEL: It did. I'd have to go look at it. Well, it didn't cut off discovery, I think there were deadlines to name experts at one point.

MS SUTTIE: We just had a date certain trial, a mediation trial deadline.

THE COURT: Okay. Then you got to live with what you have. And if you guys didn't put it in there, then, like I said, the discovery goes to the date of trial.

And as long as -- I would be more concerned if you hadn't deposed her. But it sounds like you deposed her, so -- and there was no cut-offs for naming of experts and there was no cut-offs for doing discovery, so --

MR. DANIEL: There's also a Motion to Compel that we filed. Mrs. Borzendowski, when we deposed her five days ago, said that she had been provided a summary of Ken Richardson's

deposition testimony. We asked for a copy of that because I think we're entitled --

THE COURT: I think you're entitled to have whatever she was given.

MR. SMITH: It was a mistake, Your Honor. My office did a summary, and they included the abstract of my work product instead.

THE COURT: It was provided and looked at it and they're entitled to it.

MR. SMITH: All right. I'll give it to them.

THE COURT: So you need to get that to them, and you need to get it to them today.

MR. SMITH: Yes, ma'am.

MS SUTTIE: And I think our last one before the Motion to Bifurcate is the exclusion of punity, which is on the grounds that Plaintiff hasn't produced evidence of -- clear and convincing evidence that Mr. Johnson was driving --

THE COURT: Okay. I'm not going to make a decision on human damages until I actually hear and we have a decision on just liability first. So that's the first thing we're going to do.

I'm trying to think about how and

potentially where to bifurcate this case. I want to make sure that if we were to do that, it would make the case go more quickly.

Again, it's usually based for me on whether or not there's a real issue as to liability.

Just so I understand, I want to make sure that there is no duplicative witnesses. We're going to bifurcate liability and damages, I want to make sure that there will be no witnesses that have to testify twice. Is that correct?

MS SUTTIE: That's my understanding. But we don't have an objection to the Plaintiff, just so she only has to testify once, if she would like to testify about her injuries.

THE COURT: Well, of course, if that's what's going to happen.

MS SUTTIE: I mean, that's the only witness I would think who could testify to both issues unless --

MR. WILLEY: Your Honor, that's actually not accurate. There would be multiple crossover.

MR. WILLEY: So, as an initial matter, the cop would be a crossover, property damages as an element of damage, and she testifies about the damage that she saw when she --

THE COURT: We're going to have property damage in this case?

MR. WILLEY: Yes. We're talking about all the damages that are recoverable, yes, ma'am.

THE COURT: Okay. That does not matter. I'm more worried, obviously Ms. Hood will have to testify again. Who else besides that? Who else besides the police officer?

MR. WILLEY: The cop would have to testify again. Potentially the Defendant, when we're talking about mechanism of injury and where exactly the impact occurred.

THE COURT: Yeah. He would not testify twice.

He doesn't need to. Okay. Who else?

MR. WILLEY: And then, again, obviously the doctors that are going to be coming in for that just specifically.

But we have limited -- their concern with the bifurcation was our amount of treating physicians, and we have really narrowed that

back. I mean, I don't think -- with the door openings, the door closings, I actually think we have time.

THE COURT: I'll tell you what I'm concerned is, I see treating physicians, but I also see some type of RN, which I'm going to assume is a life care planner. Am I correct on that? I saw Tricia Yount on there, who -- I mean, it doesn't matter, she used to be my accountant. Probably worked forever, from years and years ago. But -- so Tricia Yount obviously.

Who else as far as the damages expert?

MR. WILLEY: We are actually -- we're going to go ahead and take out -- okay.

Judge, we'll actually remove the life care plan, which will also obviate the need for Ms. Yount, which takes the damages witnesses just down to -- if we don't bifurcate, just takes the damages witnesses down to the doctors, who are about an hour. They're on -- that's on video obviously.

THE COURT: When you say "doctors," who are we talking about?

MR. WILLEY: Dr. Jaskwhich.

THE COURT: And what about Dr. Hanlon? Are you bringing her?

MR. WILLEY: She's short.

THE COURT: But she's coming.

MR. SMITH: We -- yeah. Well, there's some limits on what she can testify to, Your Honor. We're going to consider. But if she comes, she's coming live. There's no video, but we're going to have to think about --

THE COURT: So if you took out the life care planner, if you took out Tricia Yount, I just need to know who is -- I mean, who's going to testify as medical experts?

In other words, it would be David Jaskwhich, Dr. Ann Hanlon. Anyone else?

MR. WILLEY: No. And, I mean, talking about less than two hours. If we limit it down to that, which we're willing to do if we don't bifurcate.

MS SUTTIE: Your Honor, I wanted to clarify one point.

THE COURT: Sure.

MS SUTTIE: If the Plaintiffs are willing to strike the safety and the life care planner, from what I'm hearing, Dr. Hanlon said maybe --

if they're going to strike their claim for future damages.

MR. WILLEY: Well, you don't strike them.

THE COURT: Based on this, she's got permanent injuries as a result.

MR. SMITH: Yes, ma'am. That's all over Dr. Jaskwhich's --

MS SUTTIE: As to her ankle.

MR. WILLEY: Which gets us to the future damages, which is all we can get to. Because we don't have to prove them to a mathematical certainty, which, of course, is the purpose of a life care planner.

THE COURT: But someone's got to be able to testify that she is going to need -- if it's just permanency for pain, or is it permanency for other treatment?

MR. SMITH: Well, what his testimony is, is that she's going to require more treatment for her ankle. And he's going to talk about that.

THE COURT: What type of treatment? I mean, is she going to have to have more hardware put --

got severe post traumatic arthritis, she's got scar tissue, and she's got a broken, you know, healed ankle.

THE COURT: And the future medical treatment, I want to know if this doctor has --

MR. SMITH: Injections, physical therapy, ankle braces, and possibly 20 percent chance of an ankle fusion.

THE COURT: And does he put a dollar amount on this?

MR. SMITH: No, ma'am.

THE COURT: Well, then how do get the dollar amount, because she can't speculate?

MR. WILLEY: We're not required to have a -- all we're required to do to submit future damages to the Court.

THE COURT: You got to have some kind of way to make a claim to say she's going to have to have an injection. Someone has to be able to testify the injection costs roughly X amount of dollars. If your life care planner was the one that did that, then I think you have to have your life care planner.

But a doctor, absolutely can testify as to an injection that roughly costs $400, whatever

it is.

MR. SMITH: Yeah. Your Honor, it's really not the focus of, I guess, that. You know, our future damages that we're focused on is this woman's retirement, right?

THE COURT: Okay.

MR. SMITH: So going back and forth to the doctor to go get injections. Limited mobility --

THE COURT: For pain suffering and her time. Obviously she can testify as to value of her time.

MR. SMITH: Yes, ma'am. Yes, ma'am.

MR. WILLEY: We're not interested in a dollar amount on specific features in terms of cost amount.

MR. SMITH: No ma'am. I mean, they're going to hear she's a veteran.

THE COURT: I mean, I have a problem, just so we're all clear -- I have a problem. If you're going to stand up and say this woman needs future X, Y, and Z, I can't have the jury speculating on what the cost of that medical procedures will be.

I would agree that goes to additional pain

and suffering for her. Going back and forth to the doctor, having to live through the injections. I agree that's all for them and there's no number that you can attach to that. But I -- you just need to be careful because I'm not going to let you sit and say, you know, we're asking for whatever medical damages are.

As long as you limit it to the pain and suffering part, I just can't let the jury just grasp in the air of what an injection costs.

MR. SMITH: Yes, ma'am. And we're on the same page.

MR. WILLEY: We're on the same page.

MR. SMITH: And if we want to bring in the costs, we'll bring in the nurse at the life care plan. Otherwise --

THE COURT: Well, that's the difference though. I need to know that now. It's like I said, if you're going to have Patricia -- or Tricia Yount in, a life care planner, I am going to bifurcate it. If you're not, I'm inclined to just put it all over. If there really is just the two doctors, then I would agree it's probably more efficient --

MR. SMITH: We're going to scratch it.

MR. WILLEY: We'll withdraw those in exchange for not bifurcating.

THE COURT: Okay. All right. So that's what we'll do then. Okay. So we're not going to bifurcate the case but we're not --

MR. SMITH: Sorry about that.

THE COURT: That's okay.

MS SUTTIE: I do have one final issue, your Honor, and it's not in our motions. But I've noticed some type of full courtroom back here. I would like to point out that Plaintiff's counsel brought a number of people from their firm with them and have had them sit on the outside of the courtroom. And for the purposes of jury selection and trial, I want to ask that they sit on their side.

THE COURT: That's okay with me, because I don't know how much room we're going to have.

I will say this. Where's Margaret? Margaret's not here. Y'all are going to have to like go for a corner. I don't know how many people she's got coming, but I have to let them in for right now.

MR. SMITH: And, Judge, you do have some

THE COURT: Okay. And that's perfect. I just need everybody -- I don't need you while we're addressing the jury. So what I'm going to ask is those of you that are here, I'm just going to stick you all -- you want to come over here?

It's strange, too -- I will admit I don't want to do this. I'm going to put you all in the far corner. Is that okay for right now? Once I get rid of all my jurors, of course you're welcome to sit wherever you want.

Margaret, would you want them sitting in the gallery here that are not jurors? I'm just going to ask them all to go to the far corners. I don't know how many people you've got coming in. But I just need to know, if we're going to start on this side, we'll line people up left and get them as close as we can over here to this side. Okay?

MR. DANIEL: One last issue. Mr. Hood is here as well, and he's not a party. You know, I'd just ask that Your Honor sequester witnesses. I think he may be testifying.

MR. SMITH: He's not testifying about anything to do with --

THE COURT: Was he in the accident?

MR. SMITH: No.

MR. DANIEL: No, ma'am.

THE COURT: Well, then, I mean --

MR. SMITH: He's here for moral support.

THE COURT: Is he testifying at all?

MR. DANIEL: Your Honor, he's on our witness list. If we need him, we're going to call him. If we don't, we won't. It's not generally something that I do, as far as damages go.

THE COURT: You don't need to. If he was in a wreck, that might be one thing, his liability is an issue. But all he's going to testify to is that, you know, the difficult time she's had afterwards. So -- okay?

All right. Thank you all for doing that.

I'm going to step down, Margaret is going to go ahead and do roll call with them. I'm going to come out and qualify.

Margaret, my intent, it's going to be all week.

THE CLERK: I'll try to get three.

THE COURT: Okay. If we can, we'll go for three; if not, we'll go for two. And if not,

we'll just go with one. Okay? So that's what we're going to try to do.

MR. WILLEY: And, Your Honor, I am done, but these are our pretrial motions. I'll just mark this binder as a Court's exhibit with the --

THE COURT: Okay. I'm going to step down.

Before I go off, I want to see if any of these people we can cross off this witness list. It's a combined witness list, I want to know if there's any people we can cross off, then the less people I'm calling out the better.

MR. SMITH: Well, yes, ma'am. And I will say that if you noticed in my pretrial brief, I listed specifically every witness the Defendant has listed since the beginning of this case. Most of them are --

THE COURT: I saw that. That's why I'm asking the two of you to look at this and cross off anyone that you're the one that named that's not coming. Just so I get a short list, right? Okay?

(Recess.)

THE COURT: Good morning, ladies and

gentlemen. It's a pleasure to see you. My name is Carmen Mullen. I am the resident circuit court Judge here in the Fourteenth Judicial Circuit, which includes not only Jasper County, but also Beaufort, Hampton, Allendale, and Colleton Counties.

Ladies and gentlemen, it's my pleasure this week to be trying or holding a term of civil court here, and as I'm sure you've seen in front of you we do have the first case on our roster ready to begin.

Ladies and gentlemen, what this means for you is that if you are chosen as a juror in the trial of this first case, you can expect to be with me for the week, ladies and gentlemen. And when I say, "for the week," I mean through Friday. And I will also tell you that we typically have court from roughly 9:30 or 10:00 in the morning until 5:00, 5:30 in the afternoon. That's just to let you know what to expect while you are here performing jury duty.

Ladies and gentlemen, I also want you to know that if you had a dispute or a matter, you would hope that the good people of Jasper

issues. What I always tell jurors is you will know and readily understand 12 heads are always better than one.

And that's why we want and need citizens of Jasper County to decide these matters. All right?

So with that said, ladies and gentlemen, I need to go through and ask you a number of questions in regards to your jury service.

Have you sworn them in yet?

THE CLERK: No.

THE COURT: So we're going to ask you all to stand and we're going to swear you in as a jury pool in this case. The result of that, ladies and gentlemen, is that you're required to answer questions that pertain to you.

So let's go ahead and get you sworn in and then I'll start asking you questions.

(The jury panel is sworn by the Clerk of Court.)

THE COURT: Thank you.

Now, ladies and gentlemen, I have certain questions that I am required by law to ask you in regards to your jury service. If you need to respond to one of these questions, I ask

that you stand. We'll bring a microphone to you, because sometimes it's a little difficult to hear in this courtroom, and if you need to respond to the question.

Also, ladies and gentlemen, I want you to know that some of the questions I'm required to ask can be a bit personal. If you don't feel comfortable standing up and announcing whatever you have to tell me in front of all your jurors, or all your fellow jurors, what you can simply do is stand, give me your name and juror number, and then ask to approach.

You and I will have a conversation over here next to the court reporter, and I can tell you it's in relative private. Because, number one, she has to put it on the record, and the attorneys trying this case are also entitled to hear what you have to say. All right?

So ladies and gentlemen, I just remind you that this is a civil term of court, we're not hearing any criminal matters this week. And the first case before us that we are expected to try this week is an automobile accident case. All right? Just to give you a bit of an idea about what we're doing.

So, ladies and gentlemen, if you need to respond to my questions, again, simply stand. Give me your name and juror number, and then go ahead and respond to my question.

Is there any member of the jury panel that's not a citizen of the United States? If so, would you please stand?

(No response.)

THE COURT: Is there any member of the jury panel who is not a resident and citizen of Jasper County? If so, please stand.

(No response.)

THE COURT: Is any member of the jury panel unable to read, write, speak, or understand the English language? If so, would you please stand.

(No response.)

THE COURT: If you can't understand the English language, I have no idea how you're supposed to respond to that question, but I'm required to ask it.

Ladies and gentlemen, does any member of the jury panel have less than a sixth grade education or its equivalent?

Now, ladies and gentlemen, if you've

raised a family, held a job, and paid your bills, you have more than a sixth grade education. But I want to make sure you feel comfortable sitting as a juror.

If you have any concerns about this question or any of the other questions, I will at the very end ask a catch-all question that simply says if for any reason whatsoever you need to discuss your jury service with me, now's the time to do it. Because after that, ladies and gentlemen, you will be qualified as a potential juror.

So is there anyone that wants to respond to this question? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is unable because of mental or physical infirmities to render efficient jury service?

Ladies and gentlemen, again, you're going to be sitting as a juror up here in the jury box --

THE CLERK: Someone's standing.

THE COURT: Thank you, Margaret. Up here

here roughly an hour at a time or so. We will stand up and take stretches. If anyone is diabetic, you can certainly make sure you have juice and candy. But this is for people who just simply cannot sit in a jury box primarily an hour at a time, and you brought a doctor's note with you today.

Go ahead and give her the -- does she want a microphone? Give her the microphone.

Ma'am, would you give me your name and juror number.

JUROR: Oradell Lee, 97.

THE COURT: Yes, ma'am.

JUROR: Yes. I suffer with bipolar disorder and manic depression.

THE COURT: Okay. And you're unable to sit? Did you bring a doctor's note today?

JUROR: No, ma'am.

THE COURT: All right. And you don't think you're able to sit during the trial of this case; is that correct?

JUROR: No, ma'am. That's correct.

THE COURT: All right. Ma'am, I will go ahead and excuse you. Thank you for being here.

JUROR: Thank you.

THE COURT: Anyone else?

(No response.)

THE COURT: Has any member of the jury panel been convicted by guilty plea or trial in a state or federal court of record for a crime punishable by imprisonment for more than one year, and your civil rights have not been restored by pardon or amnesty? If so, please stand.

Sir, your name and juror number.

JUROR: Mike Foley, 56.

THE COURT: Mr. Foley, do you know what you were convicted of or plead guilty to?

JUROR: I don't. This last time I was here in court, the Judge told me I had been, so --

THE COURT: That you had been. Do you know what it was?

JUROR: That I'd been convicted of something that carried a penalty of one year. I didn't do any time.

THE COURT: Okay. How long ago was that?

JUROR: 1987.

THE COURT: You weren't under the age of

18, were you?

JUROR: Ma'am?

THE COURT: Were you under the age of 18 at the time?

JUROR: No, ma'am.

THE COURT: Okay. All right. Sir, well, if you tell me that another judge has excused you, and you don't know exactly what it was, I'll go ahead and excuse you. Thank you for being here, sir.

JUROR: Yes, ma'am.

THE COURT: Anyone else?

(No response.)

THE COURT: Is any member of the jury panel a clerk or deputy clerk of court, constable, sheriff, or other commissioned law enforcement officer, probate judge, county commissioner, magistrate, or other county officer, or employed within the walls of any courthouse? If so, please stand.

Yes, ma'am. Your name and juror number.

JUROR: Susan Waite, 155.

THE COURT: Yes, ma'am.

JUROR: Employed as a county assessor.

THE COURT: A county assessor. Very good.

Are you in the building behind us?

JUROR: Yes.

THE COURT: All right. Ma'am, I'm going to go ahead and excuse you, but I appreciate you being here. Thank you.

Anyone else?

(No response.)

THE COURT: Ladies and gentlemen, is there anyone on jury duty who's previously served up here in circuit court, not magistrate's court, municipal court, or Federal court, during the last calendar year? If so, please stand.

(No response.)

THE COURT: Has anyone served as a member of the Jasper County grand jury during the past several years? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, we now move to jury exemptions. State law provides for several exemptions to jury service.

An exemption does not mean you are not qualified to serve; it means you may choose not to serve. But I, ladies and gentlemen, encourage you if you are at all inclined to

JURY QUALIFICATION

Do I have anyone who is 65 years of age or older who does not wish to serve with me this week? If so, please stand.

All right. Ma'am, name and juror number.

JUROR: Arlene Smith, 144.

THE COURT: And, Ms. Smith, you don't wish to stay this week?

JUROR: I have two doctors appointments on Thursday. One of them took me two months to get.

THE COURT: Okay. Ma'am, I'll go ahead and excuse you. Thank you for being here.

Yes, ma'am.

JUROR: Virginia Garbade. I'm not sure of my number.

THE CLERK: Sixty-three.

THE COURT: And you don't wish to stay?

JUROR: Not really, if I don't have to.

THE COURT: All right. Ms. Garbade, I'll excuse you. Thank you.

Yes, ma'am.

JUROR: My name is Ethel Walker. I have a sick husband with a feeding tube, and I have the only car that we have.

THE COURT: Okay. Ma'am, I'm going to go

JURY QUALIFICATION

ahead and excuse you as well. Thank you.

THE CLERK: That would be 40 right there.

THE COURT: Forty. Okay.

Another exemption concerns prior jury service. No person is required to serve as a juror more often than once every three calendar years. Therefore, is there anyone who has served up here in the last couple of years who wishes to be excused this week? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, those of you who have served as grand jurors during the last five calendar years may also be exempted. Do I have anyone who served on a grand jury?

(No response.)

THE COURT: The next exemption of law says if you have small children, it has four parts, all of which must apply, ladies and gentlemen, for you to be able to claim this exemption.

You may be exempted from jury service if you have a small child or small children under the age of seven for which you have legal custody of that child or children; and you have the principal care, custody, and control of

JURY QUALIFICATION

that child or children; and lastly, you are unable to make adequate arrangements for the care of your child or children while performing jury duty.

Ladies and gentlemen, if you take your children to school or take them to daycare and go to work, it's presumed you can do the exact same thing while you're here. All right?

So if anyone needs to claim this exemption, if so, please stand.

(No response.)

THE COURT: The next exemption involves those of you who may be attending school at this time or working in some capacity with a school. Now, if this exemption applies to you, what I can do is transfer your jury service to a term of court that doesn't conflict with your school responsibilities.

In other words, the holiday break, spring break, or the summer break.

So is there anyone here who is a full-time student, school teacher, school crossing guard, school bus driver, or who serves in any other school related function and as a result of your school involvement you are unable to sit on

JURY QUALIFICATION

jury duty this week? If so, please stand.

Okay. Yes, ma'am. Your name and juror number.

JUROR: Paige Peoples, I'm Juror 120. I am the head volleyball coach at Legacy Christian Academy, and we have games on Thursday and Friday at 5 o'clock, and I need to be there with the girls at 3:30 to begin warm-up.

THE COURT: Okay. I'm going to ask you to sit tight with me. I may need you. And so I'm a little bit concerned. But sit tight, and I'll let me see what I can do.

Give me her number again, Margaret.

THE CLERK: One-twenty.

THE COURT: Okay. I can tell you right now, if y'all are teachers and they can get assistants and substitute teachers, I'm going to tell them they have to do that.

Now, let's start with you. Your name and juror number.

JUROR: My name is Gloria Williams. I am an assistant teacher at Beaufort Jasper PCO.

THE COURT: Okay. Ma'am, I'm going to

stay. They're going to have to get somebody to come in and substitute for you. If you get chosen, I just -- I need you all. I've got to tell you right now, I am down to, I believe, it's 39 people. And I need enough people to choose a jury from.

So, sir, your name and juror number.

JUROR: I don't know my juror number. It's Gregg Wright.

THE CLERK: One-seventy-three.

THE COURT: Yes, sir.

JUROR: Ma'am, I'm contracted with four different school districts. I respond to all the crises that happens in school. I'm contracted with them.

THE COURT: What kind of crises?

JUROR: Well, we manage behavioral issues, emotional issues, all these things. And typically, I respond to all the crises. I'm like the clinical back-up. So I have a meeting in the morning that -- in Colleton that's extremely important to helping them with their school system in setting up this programming at school. So I don't know -- and also, I have a relationship with the Solicitor's office, as

well. A program that I provide for them.

THE COURT: And that doesn't matter. This is not criminal court. So that's irrelevant.

Sir, give me your number.

JUROR: One-seventy-three.

THE COURT: All right. Sit tight, sir. Let me see what I can do. If I can transfer you, I will. But if I need enough people, again, I may have to keep you.

Go ahead.

JUROR: Davaron Edwards, Juror No. 51. I'm director of band at the high school.

THE COURT: Director of what?

JUROR: Band. The problem is, on a school day, the problem is after school. We have band practice. There is -- I do have some support staff, but they are at the Hardeeville campus. So they will not get to the Ridgeland campus until about 4:30, if at all. And we have a home football game Friday night, so I really need to have band practice this week, if I can.

THE COURT:. Is it your first home game this year?

JUROR: No, it's the second.

THE COURT: It's the second one. Give me

your number.

JUROR: Fifty-one.

THE COURT: All right. Sit tight. I don't know what I can do yet. If I can help you, I will. But I'm losing a lot of people, so I'm concerned.

All right. Yes, sir.

JUROR: William Rutland. I'm supposed to be teaching a short course up in Athens, Georgia next week, I've been doing planning for it this week. So -- and I'm Juror 131. If there's anything you can do, I'd appreciate it.

THE COURT: All right. Sir, I can't transfer you. This is next week. You're going to have to -- it's in between. But I can tell you this. Bring your materials with you, there's going to be some downtime if you get chosen as a juror. Typically, I don't let people bring computers, but if I need to make an exception for you, as long as you promise not to use it in any way, if you do this as a juror, I'll let you bring whatever you need so during your downtime you can prepare. Okay?

I appreciate it, sir, though. Thank you. Sit tight.

Yes, sir.

JUROR: How you doing, Your Honor. My name is Horace Eady, I'm not sure of my jury number.

THE CLERK: Fifty.

JUROR: I work for Thomas Hayes Fence of Hilton Head.

THE COURT: Who do you work for?

JUROR: Thomas Hayes Fence at Hilton Head, 278. And I've just been approved to start training as an auto check. And I start school for training this week, Monday.

THE COURT: Okay. Where is that training at? Is it in Hilton Head or elsewhere?

JUROR: I'm not sure. I'm not sure exactly where it's at right now.

THE COURT: And you say "this Monday," that mean next Monday?

JUROR: This Monday coming up.

THE COURT: You'll be out of here in time, so you're fine. I'm not worried about it. Sit tight. We're going to finish the trial by then, I can assure you of that. All right. So sit tight with me.

who's employed with the Department of Corrections at a penitentiary? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, is there any juror who performs services for a business, commercial, or agricultural enterprise that you're so essential to the operation of that business or enterprise that if you are required to perform jury duty, that business or enterprise would have to shut its doors?

Ladies and gentlemen, what in the world does that mean? It means that I understand a lot of you have jobs, and you have a need to be elsewhere. However, ladies and gentlemen, I have to have enough people to pull this jury. So do I have anyone because of work that they are absolutely not able to stay this week? And I got to tell you, if you own your own business, I'm going to tell you, do you have any support staff? If you say you work for someone and you're the only one on this day, tell your boss to go hire more people. Okay?

Ladies and gentlemen, I need jurors, and I'm not kidding when I say that. Okay? But I

certainly understand that sometimes this is the absolute worst week in all 52 that you could have been assigned here.

I also may remind you that this is a short week. You could have been here five days, you're here four days, ladies and gentlemen. And these lawyers know that I told them they need to take this case up now and down in that time period.

I'll tell you, from my experience there are good weeks and bad weeks to serve on jury duty. This is a very good week because of the shortened week. You could be on a case that could last longer than a week, it could go two or three, which happens. So, again, it's a good week to serve if you are able.

However, ladies and gentlemen, again I remind you I understand that this can be an incredibly bad week for you.

Ladies and gentlemen, if anyone wants me to entertain a transfer of your jury service, I can do that. But I got to tell you, the chances are that I'm going to hold it in my back pocket for a bit until I know I've got enough people to go ahead and pull this jury.

But, again, if you have a compelling reason, and ladies and gentlemen, general inconvenience is not enough, I know sometimes it's difficult, but if you have a truly compelling reason to transfer your jury service to another week, I will entertain it. All right?

Do I have anyone that wants me to consider a transfer? If so, please stand.

JUROR: Oh, yes.

THE COURT: Yes, sir.

JUROR: Like I said, I have an extremely important meeting --

THE COURT: Okay. Anything additional to what you've already told me?

JUROR: No. And, well, here's the thing. I -- no one else can go to this meeting. I mean, I don't have a boss, I am the boss. So --

THE COURT: All right. Take a seat, sir.

Yes, ma'am.

JUROR: My brother has a -- I'm sorry.

THE COURT: You're my volleyball coach, right?

court hearing in Beaufort County that I have an affidavit involved in.

THE COURT: I can take care of that. If it's just an affidavit, no one's going to let you testify. They just want the affidavits. I can take care of that. Don't worry about it.

Yes, ma'am.

JUROR: May I talk to you privately?

THE COURT: Of course. Come on with me.

(Juror and Judge speak privately.)

THE COURT: It's okay. I'll transfer you. What number are you?

THE CLERK: Twenty-nine.

THE COURT: All right. I'm going to excuse you.

THE CLERK: We have a juror that just went out the door.

THE COURT: Who just went out the door?

THE CLERK: Mr. Wright.

THE COURT: Tell him to get back in here.

You're fine. You're fine. You're excused.

THE CLERK: Twenty-nine.

THE COURT: Is excused.

need to speak with me regarding jury service?

Yes, sir.

JUROR: Can I come up?

THE COURT: Of course you can come up. Anyone else? Come on up.

Yes, sir.

THE CLERK: No. 174.

JUROR: I went to school with the Defendant.

THE COURT: You consider yourself close friends?

JUROR: We grew up together. His family is close with my family.

THE COURT: I'll excuse you from the trial of this case, No. 174. It's for cause.

Come on up. How are you?

JUROR: I'm doing great.

THE CLERK: Number 60.

THE COURT: Number 60, I'm going to go ahead and excuse 60 for cause as well. Okay?

Come on up. Yes, ma'am.

JUROR: I am a relative. Mary Dupont.

THE COURT: How are you related to him?

JUROR: We are like second cousins, his mom and my mom are first cousins.

THE COURT: Okay. What is her number?

THE CLERK: Forty-eight.

THE COURT: All right. Forty-eight is struck for cause as well.

Anyone else?

You can go ahead and leave, sir. I'm going to go ahead and excuse you. It's okay. You can go ahead and go. Okay?

THE CLERK: That's 174, 60, and 48.

THE COURT: Okay. Is there anyone else?

I'm going to go ahead and just ask my questions for voir dire as to this case, and then we'll talk about cross-offs. Okay?

All right. Ladies and gentlemen, I am now going to ask you some questions more particularly directed to the trial in this case, including the parties, potential witnesses, those types of things, ladies and gentlemen. If you need to respond to a question, like you just did before, simply stand, give me your name and juror number, and you can go ahead and respond. All right?

I do find at this point, this panel qualified, Margaret. I apologize, I should have told you that.

Ladies and gentlemen, we are about to call the case entitled Therese Hood versus Antoine Johnson. Ladies and gentlemen, this case allegedly occurred on November 7th of 2014 at the intersection of Highway 278 and Southwood Park Drive on Hilton Head Island.

Southwood Park Drive is right where the Dunkin' Donuts comes out and also there's a restaurant called The Yummy House and the Batters Box are right along there, and a shoe repair shop.

Ladies and gentlemen, I know that this occurred back in 2014, but I need to know if any of you have any personal knowledge about this case whatsoever. In other words, you happened to be there at the time, or you know someone that knows something about this case. If so, please stand.

(No response.)

THE COURT: Additionally, I'm going to ask the Plaintiff's attorneys to introduce their clients as well as themselves and their law firm. Ladies and gentlemen, my question is going to be, are you related by blood, connected by marriage, have a close personal

friend, or social relationship with any of these people, or are you kin to any of these people? And then I'm going to ask Defendant's counsel to do the exact same thing, ladies and gentleman. Okay?

Additionally, when it comes to the lawyers, I'm also going to ask if you've ever been represented by them, sued by them, employed by them in any way, shape, or form. Okay?

So, gentlemen, I'll go ahead and start with the Plaintiff, if you would.

MR. WILLEY: Good afternoon. Roy Willey, and I am one of the attorneys that has the pleasure of representing Ms. Therese Hood.

MR. SMITH: And I'm Kevin Smith, I represent Ms. Hood as well.

MS. STEARNS: Amanda Stearns, I represent Ms. Hood.

THE COURT: All right. Will someone introduce Ms. Hood for us, please. And she doesn't need to stand up, she's fine.

MR. SMITH: This is Therese, Ms. Therese Hood. She goes by Terry.

THE COURT: Thank you.

All right. Mr. Daniel.

MR. DANIEL: Jack Daniel, appearing on behalf of the Defendant. This is the Defendant, Antoine Johnson, in this case.

MS SUTTIE: And Madison Suttie, also appearing on behalf of Mr. Johnson.

THE COURT: All right. Mr. Johnson, would you stand for the jury, if you would. Sir, thank you.

Thank you, sir. You all may be seated.

Ladies and gentlemen, to begin with, anyone related by blood, connected by marriage, have a close personal relationship, or a special friendship with either the Plaintiff in this case, Ms. Therese Hood, or the Defendant in this case, Antoine Johnson? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, you have been introduced to the attorneys that are trying this case. Again, you have to answer are you related by blood, connected by marriage, have a close personal relationship, or special friendship with any of these attorneys? Or have you ever been represented

by, sued by, or employed by, or anyone in your immediate family been employed by any of these attorneys? If so, please stand.

(No response.)

THE COURT: Bear with me, ladies and gentlemen.

Ladies and gentlemen, the following is a list of potential witnesses in the trial of this case. And if any of these people are here in the courtroom, I'm going to ask that you please stand and face the jury panel, although I don't think anyone is here. Maybe one or two.

Ladies and gentlemen, potential witnesses in this case are, of course: Ms. Hood, the Plaintiff; the Defendant, Mr. Johnson; William Kuck; Mary Elizabeth Kuck; Corporal Jennifer Welch, formerly known as Jennifer Worrell.

Dr. David Jaskwhich; Cary Tanrath; Woody Poplin; Ken Richardson; Cindy Brian; Nilda Fowler; Therese Milligan; Helen Hernandez. Christine Hood Davis; Stanley Davis; Rosa Almeda; David Hood.

Thank you, Mr. Hood. Thank you, sir.

Tami Melnick; Dustin Lee; Stephanie

Whetsel Borzendowski; Tasha Haupt; Alison Morenio; Clint Thomas.

Ladies and gentlemen, the question is, is anyone related by blood, connected by marriage, have a close personal friendship, or special relationship with any of these potential witnesses? If so, please stand.

Yes, ma'am. Your name and juror number.

JUROR: Cara Koerner, 93.

THE COURT: Who do you know?

JUROR: Tasha Haupt.

THE COURT: How do you know her?

JUROR: She worked with my sister-in-law. She was a manager for dispatch at Beaufort County 911. They're best friends, so we've had several encounters with each at family gatherings and just different sort of things like that.

THE COURT: Okay. May I see the attorneys?

Let me ask you, do you know anything about this case? Have you ever had any information in regards to this case?

JUROR: No, ma'am.

attorneys.

(Off-the-record discussion held.)

THE COURT: Ma'am, I'm going to go ahead and keep you. It's my guess, and I just spoke with the attorneys, that she may have been the person that accepted the phone call at 911, or maybe just a records custodian. So, I'm not going to star her. Her testimony may just simply be what comes in.

So, again, I appreciate you disclosing that and letting us know.

All right. Anyone else?

(No response.)

THE COURT: Ladies and gentlemen, has any member of the jury panel ever been involved in an automobile accident that resulted in either a claim being made or a lawsuit? If so, please stand.

All right. Mr. Wright, I'm going to start with you. Give me your name, sir, and juror number again.

JUROR: Gregg Wright, 173.

THE COURT: Okay. You were in an automobile accident?

THE COURT: Okay. Were you the Plaintiff or the Defendant?

JUROR: Help me out -- plaintiff, plaintiff.

THE COURT: Did you bring the case or did someone bring a case against you?

JUROR: Somebody brought a case against me.

THE COURT: Okay. Were you injured in that accident?

JUROR: No, I wasn't.

THE COURT: Okay. And has that case been resolved?

JUROR: Yes.

THE COURT: Okay. Thank you. You may be seated.

Sir, your name and juror number.

JUROR: Robin Cana, Juror No. is 26. I was sued for a kid on a bicycle when they crossed the road and I hit him. And I was sued.

THE COURT: Has that case been resolved?

JUROR: Yes, ma'am.

THE COURT: Okay. Thank you, sir. You may be seated.

And I keep calling you my volleyball coach. I'm sorry.

JUROR: That's all right.

THE COURT: Yes, ma'am.

JUROR: Paige Peoples, Juror No. 120. I was a Plaintiff in a case, a gentleman ran a stop sign and T-boned my car into a ditch.

THE COURT: How long ago was that?

JUROR: Two years ago.

THE COURT: And did you bring a claim?

JUROR: Yes, ma'am, I did.

THE COURT: And what were your injuries as a result of that?

JUROR: A neck injury.

THE COURT: Are those resolved?

JUROR: They are now, yes, ma'am.

THE COURT: And is the claim resolved?

JUROR: Yes.

THE COURT: Okay. Very good. Thank you. You may be seated.

Yes, ma'am.

JUROR: I'm Erica Horton, 78. And this was a few years ago, someone ran a red light and I T-boned a -- it was a pleasure truck. I had a neck injury and a shoulder injury. All

that's resolved now, and the claim is resolved, too.

THE COURT: And that's resolved as well?

JUROR: Yes.

THE COURT: Yes, ma'am.

JUROR: All right. Ma'am, thank you. You may be seated.

Yes, ma'am.

JUROR: Surenda Burrison, Juror No. 21. I brought a case against someone. They hit me, and I had a neck injury, hip replacement, and a little bit of everything.

THE COURT: How long ago was that?

JUROR: About 2011.

THE COURT: And has that case been resolved?

JUROR: Yes.

THE COURT: Okay. Thank you, ma'am. You may be seated.

Yes, ma'am.

JUROR: Linette Laszlo, Juror No. 96. I was hit in the back about several years ago, sustained back injury and neck. And that case is resolved.

THE COURT: Resolved. Thank you, ma'am.

I appreciate that.

JUROR: You're welcome.

THE COURT: Yes, ma'am.

JUROR: Deborah Harper, No. 69. I was a Plaintiff in 2013, it's been resolved.

THE COURT: Okay. And what were your injuries as a result of that?

JUROR: My cheek, my face was broke, my cheekbone was broke, and I had some back problems.

THE COURT: And some back problems. Okay. Thank you. You may be seated.

Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever been treated by Dr. Ann Hanlon of the Ralph Johnson V.A. Medical Center in Charleston, South Carolina? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, has any member of the jury panel or any member of your immediate family ever been treated by Dr. David Jaskwhich of LowCountry Orthopedics in North Charleston or Dr. Joseph Tobin of Tobin joint -- excuse me, Bone and Joint Surgery on

Hilton Head Island, South Carolina?

JUROR: My mother was a patient of Dr. Tobin for a long time.

THE COURT: Ma'am, give me your name and juror number again.

JUROR: Cara Koerner, No. 93.

THE COURT: Your mother was a patient there?

JUROR: Yes, ma'am.

THE COURT: Is she still treated by Dr. Tobin?

JUROR: No, ma'am. There was some discrepancies with the doctor that they had, so she withdrew from that practice.

THE COURT: Okay. And can you tell me, did you ever carry your mother to that doctor's office?

JUROR: Yes, ma'am.

THE COURT: Okay. All right. Thank you, ma'am. You may be seated.

Has anyone in the jury panel ever been treated by or any member of your immediate family ever been treated by Dr. Habib Rizk of the Medical University of South Carolina in Charleston? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, is any member of the jury panel, or any member of your immediate family, any member of the Immaculate Conception Ladies Guild? If so, please stand.

(No response.)

THE COURT: Ladies and gentlemen, I'm going to ask this question a little more broadly. This would be other than someone involved in an automobile accident.

Has any member of the jury panel, or any member of your immediate family, ever been a plaintiff or a defendant in a lawsuit other than an automobile accident?

It could be a breach of contract. It could be just about anything. It could be potentially a workman's compensation issue. Anything along those lines other than an automobile accident.

Sir, your name and jury number.

JUROR: Cody Clevinger, Juror. 30. My mother was a plaintiff in an assault case from her work.

THE COURT: I'm sorry, at her work? Is that what you said?

JUROR: Yes.

THE COURT: Do you know, is that case resolved?

JUROR: Yes.

THE COURT: Thank you, sir. You may be seated.

Yes, ma'am.

JUROR: Tyra Johnson, 85.

THE COURT: Yes, Ms. Johnson. Sure, come on up.

(Juror and Judge confer at the Bench.)

JUROR: My mom had a case, it was involving my sister, step, my sister's father. He molested me and they had that. He just got charged.

THE COURT: It's a criminal case.

JUROR: Yes. I just -- .

THE COURT: Thank you. I appreciate you disclosing that to me. Thank you. And it's just now starting.

JUROR: No, he just got charged, but, I guess, I went to the courthouse in Hampton, they sent my mom a letter like last year and I guess at the end of the year he got charged.

THE COURT: Okay. To resolve it. Okay. Thank you.

Sir?

JUROR: Yes, ma'am. James Lynch, Juror 102. My youngest daughter was a plaintiff in a lawsuit in regards to a physical handicap.

THE COURT: I'm sorry. I missed this. Physical what?

JUROR: Her hand was crushed when a table fell on it.

THE COURT: Okay. And has that case been resolved?

JUROR: Yes, ma'am.

THE COURT: All right. How long ago was that, roughly, sir?

JUROR: 2005 -- excuse me, 2010.

THE COURT: Okay. Thank you, sir. I appreciate it.

Yes, ma'am.

JUROR: My mom has a lot of medical problems, so when it comes to doctors, she was recently in a body mesh lawsuit with a doctor in Savannah that she had going on. That one's still kind of like lingering in the air. She's

hasn't completely been disclosed.

THE COURT: Okay. And give me your name and juror number, ma'am.

JUROR: Cara Koerner, No. 93.

THE COURT: Thank you, ma'am. Okay.

Ladies and gentlemen, has any member of the jury panel ever previously served on a jury? If so, please stand.

All right. Ma'am, I'm going to start with you, you're closest to me. Give me your name and juror number.

JUROR: Yes. Claudia Brown, I'm not sure what my number was.

THE CLERK: Eighteen.

THE COURT: All right. Ms. Brown, where did you previously serve on a jury? Was it here in Jasper County?

JUROR: Here.

THE COURT: And how long ago was that roughly?

JUROR: About 15 years ago.

THE COURT: Fifteen years ago. Okay. It was one of my predecessors then.

Do you remember what the case was about at all? Or do you know if it was civil or

criminal?

JUROR: It was civil. They basically did a lot of reading. The people had already died, and the family members were here, and they kept us in that back room most of the time.

THE COURT: Into the jury room. Okay.

JUROR: Yeah. They sent us to lunch and then we'd come back in and sat back in the jury room, and then they said "go home."

THE COURT: Okay. So it sounds like the case must have resolved. All right.

Is there anything about that experience other than being sent back in the jury room, anything about that experience that would affect your ability to be fair and impartial in the trial of this case?

JUROR: No.

THE COURT: No, for the record. All right. Thank you, ma'am. You may be seated.

I'm going to go ahead and -- do you have a juror number?

JUROR: It's Yvette Smith, and I believe my number was 147.

THE COURT: All right. What kind of case did you sit on?

JUROR: I really do not remember it, it's been that long ago. But it was right here, and I probably sat like over there.

THE COURT: And you don't remember if it was civil or criminal?

JUROR: No.

THE COURT: So if you can't remember the case, I can't imagine there was anything that affected your ability to be fair and impartial in this case.

JUROR: Correct.

THE COURT: That's not unusual at all. I can tell you that. So please be seated.

THE CLERK: 147.

THE COURT: Sir?

JUROR: James Lynch, 102.

THE COURT: Yes, sir.

JUROR: It was a civil case in regards to a lawsuit for property damage.

THE COURT: Okay. How long was ago it?

JUROR: It's been several years.

THE COURT: Anything that would affect your ability to be fair and impartial in the trial of this case?

THE COURT: Thank you, sir. I appreciate it.

Ms. Turner?

MS SUTTIE: Koerner.

THE COURT: Koerner. Sorry. Okay. When did you serve on jury duty?

JUROR: Two years ago. I believe it was criminal, it was a child abuse case.

THE COURT: Okay. Was I the Judge, by any chance?

JUROR: No.

THE COURT: No. Okay. Well, that's good. Because I should remember you then.

All right. Anything about that experience that would affect your ability to be fair and impartial?

JUROR: No, ma'am.

THE COURT: All right. You may be seated.

Sir in the very back of the room, sure. Yes.

JUROR: Travis Holden, Juror No. 76. I was here last year.

THE COURT: You were here last year?

JUROR: Last year. I think it was like

THE COURT: What kind of case?

MS SUTTIE: It didn't last long, like two days. I guess it got resolved and so --

THE COURT: Okay. You don't remember what kind of case it was?

JUROR: No, I'm sorry.

THE COURT: That's all right. So nothing about it would affect your ability to be fair and impartial in the trial of this case, correct?

JUROR: No.

THE COURT: All right. Thank you. You may be seated, Mr. Holden.

All right. Yes, sir, in the very back, in the striped shirt.

JUROR: Edwin Harvey, Juror 112.

THE COURT: Yes, sir.

JUROR: It's been right at six years. It was criminal.

THE COURT: Okay. Do you remember what the person was charged with?

JUROR: It involved -- he was charged with robbing a lady at an ATM in Hardeeville.

THE COURT: Okay. So anything about that process that would affect your ability to be

fair and impartial in this case?

JUROR: No, ma'am.

THE COURT: Thank you, sir. You may be seated.

Yes, ma'am.

JUROR: Deborah Harper, 69. It was a civil case, and it was a long time ago.

THE COURT: A long time ago. Okay. Anything that would affect your ability to be fair and impartial in the trial of this case?

JUROR: No, ma'am.

THE COURT: Thank you. You may be seated.

Yes, ma'am.

JUROR: Brenda Dooley, 43. It was also a car accident case, 15 years ago.

THE COURT: Was it here?

JUROR: Nebraska.

THE COURT: In Nebraska. Okay. Anything about that case that would affect your ability to be fair and impartial in the trial of this one?

JUROR: No.

THE COURT: All right. Thank you.

Ladies and gentlemen, does any person on this jury panel, or any member of their

immediate family, who is a disabled veteran? If so, please stand.

(No response.)

THE COURT: It could you or your spouse or maybe a child. It wouldn't be, I guess a child anymore, but I guess an adult. Anyone?

Sir, your name and juror number.

JUROR: Ryan Barker, No. 5.

*Note to Mona: He's clearly saying Ryan Barker, but the jury list says Ryan Baker.

THE COURT: Yes, sir. Who's this?

JUROR: I'm a disabled vet.

THE COURT: You are, sir?

JUROR: Yes.

THE COURT: Let me ask you, are you getting treatment in Charleston?

JUROR: I got my initial disability statement.

THE COURT: Up in Charleston?

JUROR: Through them, yes.

THE COURT: All right. So that's okay. That's what I need to know. Thank you. You may be seated.

Again, ladies and gentlemen, I know you know very little about this case. It's an

allegation that this accident occurred. Give me one minute. I'm seeing two conflicting dates on this last question.

On November 7th of 2014, ladies and gentlemen, in the evening, it was on Highway 278, which is also known as William Hilton Parkway, it's the one way where you go to Hilton Head. And, I apologize, someone remind me of the crossroad?

MR. DANIEL: Southwood Park Drive.

THE COURT: Southwood Park Drive, ladies and gentlemen.

Again, it happened in 2014. Does anyone have independent knowledge, anyone saw the case, talked to anyone that saw the case, know anything about the case, whatsoever? If so, please stand.

(No response.)

THE COURT: All right. Is there any further questions required of this panel from the Plaintiff?

MR. SMITH: No, Your Honor.

THE COURT: From the Defense?

MR. DANIEL: No, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, what's going to happen at this time is all your names are being placed into a random computer list. It is going to draw a list for me. What's going to happen is the lawyers are going to be given this list, they're going to have around 15 minutes to look at them in order to choose this jury panel.

Margaret will tell you where you can go, wherever you're able to, while they're look at the list.

So, ladies and gentlemen, what I'm going to do is this: I'm giving you a break till 20 till 1:00.

I also want to tell you, at 1 o'clock, regardless if you get chosen or not, I'm going to send you to lunch. So I'm going to tell you to go grab a bite to eat, so I don't want anyone concerned if their stomach is starting to growl. Okay?

Either way, if you're chosen or not, you're going to be able to be free to go about your business after we pull this jury.

If you are seated on this jury, I'm going to ask you to come back this afternoon. We're

going to go ahead and start the trial of this case. But, again, I don't want you to be concerned. You're free right now to go refresh yourselves.

The only thing I ask, if you have to go outside the courthouse to smoke or something along those lines, please tell one of the bailiffs or deputy so we know. Because we're going to be looking for you. I can't start until you all are back.

So I just ask you, there's a clock at the back of the courtroom, the top of the exit sign, if you're back at 20 minutes till 1:00, we'll go ahead and pull this jury. Okay?

Margaret, can I talk to you a second?

(Discussion off the record.)

THE COURT: Sir, you need to sit tight. Okay? Thank you.

JUROR: Can I see you a minute?

THE COURT: Sir, if it's about you sitting on jury duty, I needed you all to talk to me beforehand.

JUROR: Oh, okay. All right. I'm sorry.

THE COURT: Are you sure?

JUROR: Yes.

THE COURT: Okay. Sit tight.

Sir, give me your name and juror number, just so I know.

JUROR: It's Terry Keith, 87.

THE CLERK: Eighty-seven.

THE COURT: Eighty-seven, okay.

(Pause.)

MR. SMITH: Is it okay for Ms. Hood to leave and go to work?

THE COURT: That's fine. The only thing I need to tell her and Mr. Johnson is they are not to have any conversation with the jury. She's completely welcome to leave, she just can't talk to any jurors. And I mean, she can't even say hello, good-bye, or isn't it gorgeous outside. Okay?

MR. SMITH: Your Honor, 1 o'clock. Is that a good time, is she coming back, or quarter till?

THE COURT: No, we're going to break for lunch. So, it's probably going to be 2 o'clock.

Mr. Hood, the same thing for you. You can't speak to any jurors.

THE COURT: Okay, sir.

(Pause.)

All right. Ladies and gentlemen, I will tell you that you all have all been reassigned new numbers. So if you think you've heard your number struck, you have not.

Once the lawyers go through and strike the numbers, we will then call off the list as jurors. Bring all your belongings with you if your name is called and you can come on up. And you understand you're going to take a seat in the jury box, you'll know you're a juror then. All right?

So with that said, Margaret.

THE CLERK: Plaintiff strikes first using the new assigned number on the left.

THE COURT: Between one and 20.

MR. WILLEY: Plaintiff strikes Number 18.

MR. DANIEL: Your Honor, we need one moment.

MS SUTTIE: I think I left my sheet outside. I can run. Thank you.

(Pause.)

MR. DANIEL: Your Honor, Defendant strikes

THE COURT: Okay. We're using the numbers to the left. So between one and 20, on the left.

MR. DANIEL: No. 27.

THE COURT: One through 20. Do you have the right list?

MR. DANIEL: We do, Your Honor. Just bear with us.

No. 18, Your Honor.

THE COURT: Okay. They already struck 18, so --

MR. DANIEL: Okay. Your Honor, Defendant strikes No. 8.

MR. WILLEY: Plaintiff strikes No. 2.

MR. DANIEL: Defendant strikes No. 22.

THE COURT: Between one and 20.

MR. DANIEL: Defendant strikes No. 9.

THE COURT: Okay.

MR. WILLEY: Plaintiff strikes No. 1.

MR. DANIEL: Defendant strikes No. 5, Your Honor.

MR. WILLEY: Plaintiff strikes No. 20.

MR. DANIEL: Defendant strikes No. 14.

THE COURT: All right. The first alternate. One strike each side for numbers

21, 22, and 23.

MR. WILLEY: Plaintiff strikes No. 21. And I'm done.

MR. DANIEL: Defendant strikes No. 22.

THE COURT: Next one is between 24, 25, and 26.

MR. WILLEY: Plaintiff strikes No. 25.

THE COURT: Between --

MR. DANIEL: Your Honor, defendant strikes 26, Your Honor.

THE COURT: All right. Then the next one is between 27, 28, and 29.

MR. WILLEY: The Plaintiff will strike No. 28, Your Honor.

MR. DANIEL: The Defendant will strike No. 27.

THE COURT: You don't need to call them. Just call the names.

THE CLERK: As I call your name, please come forward.

Juror No. 163, Brian Williams. Juror No. 151, Lashaun Taylor. Have a seat in the jury box.

Juror No. 85, Tyra Johnson-Swafford. Juror No. 57, Mary Lou Ford. Juror No. 38,

Jeffrey Davis. Juror No. 149, Sylvia Stoney. Juror No. 50, Horace Eady.

Juror No. 121, Alexis Pinkney. Juror No. 147, Yvette Smith. Juror No. 164, Gloria Williams. Juror No. 30, Cody Clevinger. Juror No. 117, Betty Paisley.

Alternate One, Linette Laszlo. Alternate Two, Rosemary Hamilton Aiken. Alternate Three, Erica Horton.

THE COURT: Is there any matters of law that we need to take up about the jury selection process from the Plaintiffs?

MR. SMITH: No, Your Honor.

THE COURT: From the Defense?

MR. DANIEL: No, Your Honor.

THE COURT: Very good.

Ladies and gentlemen, welcome. You're going to be my jury for the trial of this case.

If you will sit tight for just a minute, I'll give you a few instructions and then I'm going to send you to lunch. All right?

Ladies and gentlemen, those of you back in the back -- ladies and gentlemen, in the back, I get to give you the good news that you are excused for the week. Thank you for being

here. We appreciate it. If you need a work excuse, go down to the Clerk of Court's office. All right? Thank you.

(Remaining members of proposed jury panel excused.)

THE COURT: All right. Let's get that door shut. Thank you.

Ladies and gentlemen, again, welcome. I want to thank you for being here. I want to thank you for helping us determine this case.

I will tell you this, ladies and gentlemen, I recognize that it's a short week, and I'm going to get this case finished this week. So we're going to work hard, but, of course, I can only work as hard as the jury is willing to work.

If at any time during this process you need a break, need a Coke, coffee, whatever it takes, you raise your hands and let me know. If you need a restroom break, let me know.

We will take breaks, ladies and gentlemen, but sometimes we'll have someone who needs a little more or something, let other people know or just get my attention, or let the bailiff know or the court reporter, and we are going to

INSTRUCTIONS TO THE JURY PANEL

take care of you.

I will tell you this: You have the best Clerk of Court in the state. Every courthouse has a Clerk of Court, but Margaret is phenomenal. She takes care of her jurors, ladies and gentlemen. If you need anything, please ask her or her staff, and we'll take care of you.

I need to give you a couple of ground rules before we break for lunch. And then once we do, I'm going to ask you to return back to the jury room at 2:30, where we're going to begin the trial of this case.

We'll also tell you we'll run until roughly 5:00-ish. But that is dictated by you, ladies and gentlemen. It's depends on how you tell me you're feeling and what's going on. Roughly that's how we're going to run this case is roughly about 9:30 or 10:00, and until about 5:00.

If someone has somewhere they need to be before that, I need you to tell me. All right? And I'll have you tell the bailiff, when we break.

Ladies and gentlemen, just a couple of

INSTRUCTIONS TO THE JURY PANEL

things to begin. Number one, if you were able to get in the courthouse with a cell phone, I'm going to ask that you leave it back in your car or hand it to the bailiff when you come in.

And the reason why is you can get so much information off of a cell phone. I don't want you Googling anything or trying to figure out anything in reference to the case. Out of abundance of caution, I tell you to leave it back in the car.

Also, if you need to use a phone while you're here, simply ask the bailiff. She'll take you to a phone.

Also, if you're worried about someone needing to reach emergently while you are here, simply tell them to call the Clerk of Court's office and say your name and that you are a juror, and I promise you someone will sprint up here and talk to me and I will get you. All right?

Also, I want you to know the attorneys, the witnesses in this case, have been instructed not to speak to you in coming and going from the courthouse. And the reason is this: Even an innocent conversation out in the

INSTRUCTIONS TO THE JURY PANEL

parking lot -- isn't it beautiful outside, or it just looks like it might rain -- will be reported back. And, again, ladies and gentlemen, you are not to talk to them in any way, shape, or form. So in an abundance of caution I told them not even to speak to you. So if you pass them in the hallway during the lunch hour or in the evening and they don't even say hello, don't be offended. They are not being rude, they are just following my instructions.

Additionally, ladies and gentlemen, you are going to be given everything you need to decide this case right here in this courtroom. Therefore, it'll be highly inappropriate for you to do any of your own research or to talk to anyone about this case.

Over the lunch hour, or tonight when you go home, the only thing you are permitted to say to a loved one, a spouse, a child, family member, is that you've been chosen as a juror in a trial of a civil case. You're not to say the parties involved, what kind of case it is, or the attorneys. And the reason is this: In every case, someone's going to try to tell you

INSTRUCTIONS TO THE JURY PANEL

something about something when they know nothing about this case.

And, again, because I wouldn't want you to be influenced in any way, out of an abundance of caution, I tell you not even to discuss it.

And I also tell you that I don't think there's going to be anything in the news, the newspaper, or the radio about this case. But out of an abundance of caution, if you turn on the news tonight or if in reading the newspaper you see anything about this case, you are not to read it or look at it or be told or talk about it. If there is something, I'm going to ask you under oath whether or not you looked at it. All right?

So, ladies and gentlemen, with that said, the only thing I ask is you grab a bite to eat. Come back. Please understand I cannot start until all 15 of you are here. So if anyone runs into car trouble, decides they're having a problem getting back here, know that I am going to send a sheriff's deputy to find you. All right? That is how important this is. I want you to understand that.

You're going to retire back to your jury

room. They're going to tell you that you report back at 2:30, ladies and gentlemen. We are going to get numbers for you, good addresses. I want to know exactly where you're sleeping the next three or four nights. And it's not just prying into your personal business. If we can't find you if there's some problem, we are going to come looking for you.

Also, if for any reason you fall ill during this trial and you call in, call in and tell us and leave us a message. And it better be pretty serious, ladies and gentlemen, you better tell me you're either in the hospital or you are just deathly ill. Because, again, I need you here. I need you to be able to resolve this matter for us. All right?

The last thing I'm going to ask you to do, when you go back to your jury room before you break for lunch, I need you to elect a foreperson. A foreperson doesn't have any more say than anyone else, they're simply the person that's going to communicate with me regarding scheduling.

And they're also the person that when I send the case to you for your deliberations,

they get the ball rolling, and make sure everybody's contributing. All right?

I'm going to ask that foreperson to take this front seat right here every time in the jury room. For the rest of you, as you come and go, you can move around in your seats. It's not a problem if you don't move around too much. The only thing I want to do is tell my alternates I need you to sit where you are among those three seats so I can always find you. Okay?

Ladies and gentlemen, again, thank you. You are excused back to your jury room. You'll get a few more instructions. I look forward to seeing you all back in your jury room at 2:30. If you're running just a couple minutes late, don't worry. It's not a big deal. But after that, like I said, I'm going to be scouring for you. So - and I mean that. And, unfortunately, I got to do that. Actually I've had people that didn't show up, I've had to send them to their work, to their home, whatever. We need you here. Okay, ladies and gentlemen?

Go grab a bite to eat and we'll see you

back at 2:30. Thank you.

JUROR: Ms. Bostick, I need to talk to the Judge.

THE CLERK: If you go in the back, Mr. Eady, she'll bring you back out.

(Whereupon, the jury exits the courtroom.)

THE COURT: She's just going back there.

Apparently one of them was supposed to pick up a wife from work or something right at 2:30. So they're trying to arrange to get someone else to grab her for him. Okay? Sit down.

THE CLERK: Excuse me. He says this is something else.

THE COURT: No, I'm not for three different things. You can find out what it is and bring it to my attention, but other than that --

All right. For the rest of y'all, is there anything we need to take up? I mean, I think we pretty much have done a good bit of the pretrials. I saw that you gave me the human factors expert's deposition back there. At least Crystal gave me a copy. I'm going to look at that over lunch

Anything else you all want me to look at over lunch? And I guess another question is, are you going to use -- anybody going to use any kind of technology up here in the opening statement that you need to --

MR. SMITH: I am. I went over with Jack, I showed him all the pictures I'm going to use. There's only one that he has an objection to, and I'll show it to Your Honor.

THE COURT: Okay. I'll look at that, and then also you need to talk to Margaret about getting it all turned on before they all come back in.

MR. WILLEY: I just have one other small thing.

THE COURT: Okay. Let me take care of this first, let's just put it on the record and we'll see what it is.

MR. SMITH: So this is the Google of the intersection, to explain to the jury how it happened. Mr. and Mrs. Johnson come out of Southwood Park, and Ms. Hood is on the inside, he hits her there on the passenger side, she hits the Kucks head on. This is just demonstrative to show them.

MR. DANIEL: Yeah. The one is, it's kind of an animation. And there's been no accident reconstruction.

THE COURT: Yeah, I understand that. I don't want you using that in opening statement. And I don't know, I mean, you're going to somehow lay some kind of foundation for that.

You know, I'm fine with just a photograph, but you didn't have anyone create this, so I don't know how you're using it.

I don't know how you do that as to where everybody was.

But, I guess, I'm probably okay with just the first picture, saying this is where it started. But you telling me that that's where point of impact was, it doesn't do anything without an accident reconstructionist.

You can say -- you're just laying a picture, this is where it is, this is what it looks like.

MR. SMITH: Sure. No problem.

MR. WILLEY: My only thing is, Mr. Eady, I don't know what his latest thing is, but he had two things during voir dire, and now another thing. I mean, I would rather just go ahead

and sit an alternate. Because I think he's going to be an ongoing problem.

THE COURT: And I'm going to have Ms. Bostick tell me what his problem is.

THE CLERK: His problem is, he can't miss work. He has a loan, he won't be able to pay his bills. He has to pick up his wife. That was it.

MR. WILLEY: I would prefer just to go ahead and let him go. We've got three alternates, that will leave us with two.

THE COURT: Okay. I will only agree to that if you all will agree to go down as low as ten jurors. I mean, we won't go below that. But if we lose just vast amounts of people, I need you to be able to agree to at least ten. You're fine with that. It's a civil case.

MR. WILLEY: I think that's fine, just to cut him loose. Otherwise, we're going to be having an alternate in the middle -- I mean, something is going to happen. Clearly.

THE COURT: I'm afraid you're right. I'm afraid you're right.

MR. WILLEY: One excuse is one thing, but every three minutes?

THE COURT: Okay. So you can agree. If Plaintiffs don't agree to ten --

MR. WILLEY: Yeah, we can agree to that.

MR. SMITH: Yes, ma'am.

THE COURT: That's losing a lot of people. That's getting everybody in the car together and then getting hit at lunch.

Mr. Daniel, what about you?

MR. DANIEL: Yeah, we'd just rather play it by ear for maybe another day, but --

THE COURT: He's just going to be a problem, so let's just let him go. Let's do that.

Okay, Margaret, just cut him loose.

There's no "S" on it, and I apologize, Mr. Daniel. I will not put an "S" on your name again. You have a sense of humor about it.

MR. DANIEL: I'm the third, so -- yeah. My dad has no sense of humor, but --

(Discussion off the record.)

THE COURT: Anything else y'all need? Thank you. We're good.

MR. SMITH: No. We should just come back a little early, need to make sure the TVs are on and --

THE COURT: Well, we'll talk to Margaret, 2:15 for you all to be back here. Okay? And I will make sure the technology is working, everything's on and no problems. Okay?

And I'm going to tell you guys, too, it's kind of funky with all of this over here. And I'm not saying you particularly, but in every trial we have this problem with all kinds of junk. So I just want to make sure that you all kind of --

MR. SMITH: Oh, you're talking about our corner of junk?

THE COURT: No, I'm not worried about that, it's that screen. I just want to make sure, sometimes it's difficult for the jurors in that far corner to be looking this way. I'm just giving you a heads up just because that screen is strange right there. I'm just saying just be cognizant. If you don't want them looking at --

MR. WILLEY: I think we'll move it around.

MR. SMITH: All right. We'll move it around. Thank you.

THE COURT: Just so you know. It's very awkward at times. So just a heads up. Okay?

All right. We'll see you all at 2:15.

(Lunch recess.)

(Proceedings continued in Volume 2.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 3rd day of January, 2018.

Mona L. Manley /s/
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Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper
Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 2

September 5, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

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AND

Kevin B. Smith, Esquire
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REPRESENTING DEFENDANT:

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PROCEEDINGS

THE COURT: All right. I think we're just a little bit early for the jury. But I just wanted to know if there is anything else we need to take up before we go ahead and start right in? And do you mind, I'm not asking you to turn over everyone, but just tell me the first couple witnesses you have, looking out for if there is a need to get through anyone today?

MR. WILLEY: Well, Sergeant Welch is here. We plan to call her. We plan to do the 911 person, Haupt, or representative, whoever. They got like three people here, so --

THE COURT: Okay. So Sergeant Welch, 911 person, obviously, Dustin Lee.

MR. WILLEY: Melnick, which is a video, and Dustin Lee. And then we can be prepared to go farther than that. We'll have people here, but --

THE COURT: And then -- yes.

MR. DANIEL: Just a couple things. As far as the 911 operators or witnesses, if we were going to introduce some of the recorded calls, and given what Your Honor has said about Dustin Lee's call in particular, and that we might need to redact a portion of that, we may need to recall one or two of

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those witnesses to get that evidance in. We might not be able to agree to excuse those witnesses today. We might have to recall one or two of them.

MR. WILLEY: I mean, if they get them under subpoena, that's fine.

THE COURT: Yeah.

MR. DANIEL: Yeah, I'm just making Your Honor aware of that issue. And then Officer Worrell, I believe, there might be a couple of things that she can testify to that, at this point, would be -- might be hearsay, about what people have said. But depending on how this plays out, we might need to recall her for those limitations, too.

THE COURT: Okay. And you've got her under subpoena.

MR. DANIEL: Yes, Your Honor.

THE COURT: Okay. All right.

Anything else? You've got everything, technology, in working order, and got all this queued up and ready to go?

MR. SMITH: As far as we know. It won't break until two minutes before we start, so --

THE COURT: Okay. I'm just asking. Anyway -- okay. I just want to make sure we're good to go.

Okay. Well, I'm going to step down until all

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the rest of the jurors are here. If there's anything that comes up, I just wanted to make sure we were ready to go at 2:30. And I don't remember ahead of time on opening statements, but I think we are in this case. So we're ready to go.

Oh, I do want to ask you all, tomorrow morning, are we okay to start at 9:30? Everyone?

MR. SMITH: Sure.

THE COURT: If the jury allows me to, I'd like to start by 9:30. And I hate to say it, but I can start as early as 8:30, but it's up to them. I don't want to push anyone too much. So I'll ask them for 9:00, 9:30, maybe even 10:00, but --

No one else has any other problems or commitments in the evenings, do they? Is everyone okay? Y'all are good?

MR. DANIEL: We're good, Your Honor.

THE COURT: I guess I'm just looking at the clients and the attorneys, just to make sure no one's got to coach a team or something. Okay.

MR. WILLEY: We're allowed to have -- trial lawyers are allowed to have extracurriculars?

THE COURT: You are.

(Pause.)

THE COURT: All right. Let's bring the jury in

Yes. Do you need me?

MR. WILLEY: Yeah. Just one quick matter that I thought of after you left.

When Mr. Lee gets here, I will need a few minutes with him to prep him on Your Honor's rulings on the motions in limine since they go directly to his testimony. Just wanted to make the Court aware of that.

THE COURT: Okay. That's fine. We'll take care of that. Okay?

If you want to be standing there and ask him when he does it, you may also.

MR. DANIEL: Okay.

THE CLERK: And they chose a foreperson. They chose a foreperson, Betty Paisley, Juror No. 117 she was the last juror.

(Jury enters the courtroom.)

THE CLERK: We have to seat Alternate One.

THE COURT: All right. Thank you. I apologize. Who is it, Margaret?

THE CLERK: Alternate One is Linette Lazslo.

THE COURT: Ms. Lazslo, ma'am, I have already removed one person from the jury, so I need to put you actually as part of the 12-person jury. So I'm going to ask you to go ahead and take a seat next to

our foreperson. And I want to thank you for being willing to serve.

Ladies, gentlemen, scoot on up. This is why we have alternates. Okay? So thank you again.

All right. Ladies and gentlemen, just very briefly, I want to tell you what we're going to do.

First off, Ms. Bostick, the Clerk of Court, is going to swear you in as the jury in the trial of this case. After that, I'm going to make just some very brief comments, just about how a trial kind of unfolds. And then the attorneys are going to make their opening statements. All right?

So at this time, if you'd please pay attention to Ms. Bostick, and she's going to administer the juror's oath.

(Jurors sworn.)

THE COURT: Ladies and gentlemen, I want to explain to you the procedure that we're going to use so you can better understand what's happening during the trial of this case.

You've been selected as fair and impartial jurors whose purpose it is to find and determine the facts. You, the jury, are the sole judge of all the facts in this case. If at any time I make any comment regarding the facts of this case, you must

disregard it. And as jurors, you are to determine the facts from the testimony that you're going to hear from the witness stand, as well as any other evidence that's introduced in this case.

You should you be influenced by any opinions or statements you may have heard outside this courtroom. And please understand that it is especially important that you perform your duty in determining the facts diligently and conscientiously because ordinarily there's no way to correct an erroneous determination of the facts by a jury.

On the other hand, the same law that makes you, the jury, the judge of the facts makes me the judge of the law. The law given by the Court is the only law that you may consider.

You must accept the law and apply the law as I give it to you. I cannot tell you what the facts of the case are, and you cannot disagree with me about what the law is or what you think the law ought to be. Your job is to take the law as I give it to you and apply it to the facts as you find them, and from there, render a true and just verdict in the trial.

Now, until I advise you to begin your deliberations, you must not discuss this case with anyone, and that includes your fellow jurors or

anyone at home, ladies and gentlemen. I remind you again, you are going to have everything you need to determine this case right here in this courtroom, and it would be highly inappropriate for you to be influenced by any outside source.

I also remind you, although I don't think there's going to be anything on the television, the news, or the radio, or the papers, again, in an abundance of caution I have to warn you, you are not to read anything, view anything, or listen to anything in regards to this case.

Ladies and gentlemen, please remember that it's important that you keep an open mind and not decide any issue in this case until all the evidence has been produced, you've heard the closing arguments from the lawyers, and I've charged you on the law after this case, which I will do at the very end of the trial.

Now, I want you to know that in just a minute, the attorneys are going to make what are called opening statements. And what I want you to understand is, these opening statements are not evidence in this case. They are simply contention of what they believe, the lawyers believe, issues will be in this case.

Again, I remind you, the evidence comes from the witness stand and the other evidence that's introduced.

I also want you to know that from time to time, you may hear the lawyers say something like, Your Honor, there's a matter of law we need to take up, or I make a motion on the floor. I may have a short sidebar with them.

I want you to understand something. We're not hiding anything from you. Often times when I have to rule as a matter of law whether or not certain testimony is admitted, ladies and gentlemen, I may make a comment on the facts of the case. And because I do not want anything I do to influence you in your determination of the facts, out of an abundance of caution, we just do that outside of your presence.

Now, in determining what the true facts are in this case, you must decide whether or not the testimony of the witnesses is believable. It's my responsibility to rule as a matter of law whether or not certain testimony is admitted. But once it is admitted, whether or not you believe it is for you to determine.

In deciding whether to believe a witness, you have the right to consider if the witness has an

interest in the outcome of the case. You can look at whether the witness is prejudiced towards either the Plaintiff or the Defendant. And you can hear and listen to the opportunity that witness had to have seen and known some things about which they're testifying.

And you can also look at the way the witness acts on the witness stand. You have the right to use anything in the record that will help you judge that witness' testimony. Therefore, I ask that you pay close attention while they testify, ladies and gentlemen, so you can accurately remember the testimony when you go back to your deliberations, or in your jury room to deliberate.

Now, ladies and gentlemen, in order to preserve everyone's rights, I'm going to ask the attorneys if there's anything that they would like me to further instruct you on. If not, we're going to go ahead and begin the trial of this case.

The Plaintiff is allowed to make the opening statement first, and then the Defense attorney is allowed to make the opening statement.

Any additions?

MR. SMITH: No, ma'am.

THE COURT: Anything from Defense?

MR. DANIEL: No, Your Honor.

THE COURT: Ladies and gentlemen, we'll begin the trial. Thank you.

Mr. Smith.

MR. SMITH: Thank you, Your Honor.

OPENING STATEMENT BY PLAINTIFF

MR. SMITH: Every nine minutes a person is injured in South Carolina due to an automobile collision. This is according to the South Carolina Department of Public Safety.

What brings us together in the Jasper County courthouse are the safety rules that protect each and every one of us. They protect us as we are driving or riding alongside or walking any highway, any street, or the interstate, right down the way.

Now, the only way that these safety rules can protect us is if juries choose to enforce them. There are two basic safety rules that apply to this case.

Safety rule number one, all drivers must pay attention to the road to prevent injury or death to other people using the road.

Safety rule number two, all drivers must look before crossing a busy highway to prevent injury or death to other people using the road.

So these are simple rules. Pay attention, look before crossing.

This case is about a driver who crossed Highway 278 without looking to make sure it was safe. And so we can orient you folks on exactly where this happened, this is Highway 278 running along here towards the beach. Right? And this is the Dunkin' Donuts that you've heard the Judge speak about.

Also in there is this -- The Batters' Box, My Yummy House. And what I want to do for you now is I'm going to draw up a little diagram to show you exactly what happened.

Now, I was not an art major, but I'm going to do my best.

Okay. So to get everybody oriented a little bit -- can everybody see this okay? Y'all see it okay on the end?

So Highway 278, right, headed towards the beach. Okay. First car that I would like to point out for you was right here, and we're going to put a "J" for Mr. Johnson.

The second vehicle here -- I'm sorry, I think I told you that way is the beach. This way is the beach. This is Mrs. Hood. I'll put an "H" for Ms. Hood. Okay?

Third vehicle I draw for you is Mr. and Mrs. Kuck. You're going to hear from them later. Okay?

What happens is, Mr. Johnson, it's his intention to cross Highway 278 and make a left. All right. But before he does that, he's going to stop in the median.

What happens is, Ms. Hood is coming along this direction. As she gets to about here, Mr. Johnson pulls out, and he hits her right here on the front passenger side of her vehicle. The force of the impact causes Ms. Hood to head across the median and strike this vehicle head-on.

Important to note, stop sign here. All right? No traffic lights or stop signs anywhere in the area that I've drawn.

Now, the person that he hit, my client -- sorry, Therese Hood. It was a few minutes before 6 o'clock in the afternoon on a Friday. People are getting off work, driving home. Families are heading to the beach for the weekend. It's a busy road filled with locals, tourists, and people just passing through.

Now, we've brought a lawsuit against Antoine Johnson for three reasons. The first reason is because he wasn't paying attention to the road. The

evidence will show that Therese Hood wasn't far from him when he pulled out across the highway, and if he was paying attention, he would have seen her.

The second reason is because he didn't look before crossing a major highway. If you remember one thing, it's that Therese Hood had the right-of-way.

We know Ms. Hood was in the inside lane, and there was another car in the outside lane not far behind her, sort of down here in this direction.

Mr. Johnson testified that he looked left. He didn't see Ms. Hood's car or the other car. Had he truly looked to his left before crossing out the busy highway, we will ask you to decide if he should have seen both Ms. Hood and the other vehicle not far behind her.

Now, the third reason is because Mr. Johnson refuses to accept responsibility, so we are forced to bring him to trial.

Now, before we decided to come to trial, certain things had to be determined. We had to determine what the defense would say, and we also wanted to know what questions you folks would have. So the first thing we needed to know was who hit who.

We spoke to Mr. Johnson, himself, and he testified under oath that he, in fact, hit Therese

Hood's vehicle. Ms. Hood told us the same thing. And to take it even further, here's a picture of Mr. Johnson's car, the front damage to his car that shows a front impact. And this is a picture of the side of Ms. Hood's car. It shows a side impact, and that's how we determined who hit who.

Next, we needed to determine if there was anything blocking Mr. Johnson's vision. The people involved have told us the weather was clear, dry, the road was straight, and nothing was blocking his vision. This is the Dunkin' Donuts where he is coming out of that lands him on 278.

And at the stop bar, where Mr. Johnson is, this is his view looking left. And as he's pulling out across one lane, this is his view looking left.

Once we determined that nothing was blocking his vision, the next thing we wanted to know, what's the visibility at almost 6 o'clock in the afternoon? We know Ms. Hood had her running lights on at the time Mr. Johnson hit her. So we looked up the law about when headlights are required. It says, "Drivers must have their headlights on 30 minutes after sunset. You must have your headlights turned on at night, and from a half hour after sunset to a half hour before sunrise, and at any other time when you have to use

your windshield wipers."

So we wanted to know what time sunset was. This is an image --

MR. DANIEL: Your Honor, I mean, this is not in evidence.

MR. SMITH: Your Honor, I went over all these exhibits with Mr. Daniel before we started.

MR. DANIEL: I did -- I did not -- I did not see this one.

MR. SMITH: I went over every exhibit. It's a Power Point.

THE COURT: Okay. I don't need you arguing today in front of the jury. So do you need to approach?

MR. SMITH: Yes, ma'am. Sorry.

THE COURT: Come on up.

(Off-the-record discussion held.)

MR. SMITH: Excuse us for that.

Sunset. This is the GPS coordinates for the intersection where the collision happened, and it put sunset at 1729, all right, which is 5:29. Thirty minutes after is going to be 5:59 in the afternoon. 5:59 p.m., right?

Now, there's another source for sunset that puts it at 5:58 p.m, and you'll hear about that as well.

You'll hear the difference between the two is one, is the exact GPS coordinates, one is from another source. Mr. Daniel will tell you all about that.

What we do know is that the first 911 call came in at 5:58 and 46 seconds. Okay? That was the time the first 911 call was recorded that came in. And we also know several things happened before that call came in. And that's going to be important for you guys to see for yourselves and look at.

We know that the first collision with Mr. Johnson happened. We know the second collision happened. We know people get out of their cars. We know that people are already helping. And all this again is what's happening before 5:58 and 46 seconds.

We know that the people that have stopped to help and render aid, we know they've already gotten at least one person out of that vehicle. We know the caller is at the Dunkin' Donuts over here, and she's out on the patio taking a break. She leaves the patio, she goes inside, she goes behind the counter, she dials 911.

But when she first dials 911, she doesn't get Beaufort dispatch, she gets Hilton Head. When she starts talking to the first dispatcher, before this time starts, she testifies the phone rings a couple

of times and that the Hilton Head dispatcher answers. She speaks to the dispatcher. She describes where it happened, she describes what happened, she obviously gives them her name.

And then at that point the Hilton Head dispatch calls the first responders. Now, like I said, when this call comes in, all of this had already happened.

Well, you can easily see that if you find the more reliable -- the time for sunset y'all are going to depend on is 5:59, question answered. We know the first call came in before that, headlights are not required.

But if we use the other source, 5:58, then the question that's going to be in your mind is, did all of this take 47 seconds or more? If all of this took more than 47 seconds to take place, then the wreck happened before 5:58 p.m., and the law did not require headlights on at the time.

Now, keep in mind, she had her running lights on, but the law did not require headlights. And we're going to address this with you with the very first two witnesses. We're going to show you the 911 call, we're going to show you who made it, we're going to show you what time it came in. And then we're going to have video testimony from the person

who made that call, and she's going to tell you about all these things happening.

We believe the evidence will show the wreck happened before 5:58; therefore, no headlights were required by law. But we didn't stop there.

Being this close to the requirement for headlights, we wanted to take it a step further. We needed to determine whether or not Mr. Johnson should have seen her. We started by asking the people involved about lighting conditions. We spoke to Mr. Johnson first. He said it wasn't totally dark. A passenger in the vehicle that Ms. Hood hit head-on, up here, told us that it was just beginning to turn dark, that there was enough light to see the median, enough light to see the trees alongside the road, and enough light to see other vehicles, with or without headlights.

So, why didn't he see her? Why didn't he see the other car behind her with its headlights shining on her?

So in the end, the evidence will show, number one, Therese Hood had the right-of-way. Number two, that she was not required to have any headlights on. Number three, that Ms. Hood's vehicle was clearly visible had Mr. Johnson looked before crossing

Highway 278. And four, the reason he didn't see her is because he either didn't look, or he was distracted by something.

You'll see that he only went a few feet, barely crossing a single lane, before he ran into the side of Ms. Hood's car, pushing her into oncoming traffic. Y'all will have to decide if he was paying attention. That's why we're here.

Now, the last thing we needed to determine is what Therese's injuries were. Before presenting her injuries and damages to you, we needed to figure out if the things that she described were caused by the wreck.

We know from emergency responders that Therese and the other people up here were injured. Therese's ankle was shattered, she fractured two vertebrae in her neck. She fractured one vertebrae in her lower back. She had multiple rib fractures. And she was diagnosed with a dissection of her left vertebral artery. And this is an artery that runs up along the neck, close to where the neck fracture was.

For her shattered ankle, Therese has gone through a total of three surgeries so far. First, they were able to put her ankle back together, and then another surgery where they put in a steel plate

and screws. This is an x-ray of the surgical pins and screws.

Now, it's a long road from there, hardly any mobility. She was confined to her house. She had to depend on others to get where she needed to be. It's been three years since the wreck, and she's still being treated by her doctors. Now, her last surgery to remove these pins and screws was just a few months ago.

You will hear that she continues to be in pain, that she has limitations on what she can do. And Ms. Hood's treating doctor will go over the medical treatment she's got and what she'll have to deal with as time passes. This same doctor that treated her shattered ankle will explain that while the surgery was a success, the wreck also caused post traumatic arthritis.

He told us that post traumatic arthritis is not just causing problems now, but it's going to worsen over time. The result over time is worsening stiffness, increased pain, and even less mobility. This is what the future holds for Therese Hood. This is the sworn testimony of her treating doctor.

Now, before all this, Therese Hood served her country in the Army for 20 years. After her service,

she went back to school, got a degree in economics, and a Masters in education. From there, she went to work as a teacher for young children. When she retired from teaching, Therese looked forward to spending more time with her family, and volunteering with her church. This was her vision for retirement.

Before the wreck with Mr. Johnson, Therese loved to get together with her family and cook for them. At church, she volunteered a lot. She gave communion, and she was a member of a ladies' guild. You will hear how she was good at getting events at church organized, and was someone they could always count on when they needed a volunteer.

Where she was headed that day was a timeshare. Her timeshare in Hilton Head was her get-away. It wasn't much, but it's where she went when she had time to relax. Therese's life was about serving her family and her church.

Now, at the end of trial we will ask you to decide how much money should be in the verdict. It's one of the hardest jobs you'll have this week, to decide on an amount of money to make up for all the harms, the losses, and the permanent damage to Therese's body.

So we're here for two reasons. All right?

We're here to fix, and we're here to make up for it.

The first thing to do is fix. That deals with the cost of the medical treatment that Therese has gotten. Her medical bills total just over $220,000. That's how much her treatment has cost, and it's an easy fix because you'll see exactly how her bills add up to that amount. And that's an important number, $220,000, but it pales in comparison to the real damages here. And that brings us to the second part, to make up for it.

This is one of the most important and the hardest tasks that you will have as jurors, to try and decide how to assign an amount of money on the worst part of her injuries and damages. You see, Therese is permanently injured, and her doctor is going to explain that. She's going to live with chronic pain for the rest of her life. And as her treating doctor will explain, it's only going to get worse as time goes on. And as it does, it will become harder and harder to get around, to walk, to do the things that she used to enjoy doing.

So every time that Therese can't do something like she used to, or just can't do it at all, like stand and give communion at church, like volunteer with her church, like put together a big spread in

the kitchen. Y'all know how much time that takes on your feet.

Or when she's awoken at night because of the pain and feels tired the next day. Or when she's got to stop, she's got to elevate her ankle, she's got to soak it in ice, soak it in Epsom Salts just to endure the pain from moving it.

And most importantly, every time she is stuck at home, rather than enjoying the life and the retirement that she has earned, you can't fix that. You can't even help it. But you can make up for that.

Now, it's my job to give you the tools to do just that. It's also my job to suggest what that number ought to be. It's too early. You haven't seen the whole case. But I will be up front with you and tell you the number will be significant.

Now, I'm not sure what the lawyer sitting at Mr. Johnson's table will say when he gets up here in a few minutes. I anticipate it will range from it's not Mr. Johnson's fault, it's all Therese's fault. But even if it is a little bit Mr. Johnson's fault, it really wasn't that bad. He may even say he's sorry.

Well, ladies and gentlemen, time to say sorry

has passed. Sorry doesn't fix, it doesn't make up for it, and it doesn't tell Mr. Johnson to look before crossing a busy highway.

As of today, that's your job. You not only have the right, but you have the power to fix what was broken and to make up for what cannot be fixed. And by doing this, you enforce the safety rules in your community, and you fulfill your oath to administer justice.

Thank you.

THE COURT: Mr. Daniel.

MR. DANIEL: Thank you, Your Honor.

OPENING STATEMENT BY DEFENSE

MR. DANIEL: We can't see in the dark. We, as human beings, all have limitations, and that's a fact of life.

Antoine Johnson, the Defendant in this case, can only be held to the standard of what a reasonable person can do, what an ordinary driver being careful and paying attention can do.

You just heard a lot about safety rules and avoiding killing somebody. Let's get one thing clear. No one died in this accident, fortunately. And I'll be up front, yeah, I don't hide from it, I am sorry that we're here. I'm not hiding that.

Antoine Johnson doesn't want to be here. He's not happy that Mrs. Hood was hurt. We're not -- we're not trying to hide that fact either.

There was a lot about this intersection. One thing I want you to keep in mind is that where this J is, where Antoine Johnson is, it is lawful -- lawful to make a left turn there. You're allowed to make a left turn if you check traffic, and there's nothing there.

Now, you heard me object, and that's usually considered bad form in opening statement, but the law is not about what's posted on some website. Counsel read from some manual over there, but that's not law.

Your Honor is the expert and authority on the law. She's going to tell you what the law is and what rules to apply to the facts in this case. I don't get to decide that, and Mr. Smith doesn't get to decide that.

But the reality is, why we chose you as jurors, is you all have common sense. You didn't leave it at your house when you left and came to the courthouse today. You all have the everyday experience. What you know is that on a dark road, at night, when something's coming from a distance, and if there aren't headlights on, you know, we all have limited

ability to see things. Antoine Johnson, there'll be testimony, and there's claims that he was texting or he was on the phone, he wasn't paying attention. I remind you to pay close attention to that. There's going to be no proof, there's to be no -- they're the ones, the Plaintiff, is the ones with the burden of proof in this case. There should be no one to say that they saw him texting on his phone or calling somebody or reading a text.

What you will hear is, he'll get on the stand, he'll tell you he looked to the left, and he was honest, it wasn't totally dark. But you listen to all the factual witnesses, all the witnesses that saw this, and you decide. I submit to you credible evidence was that it was pretty well dark out there.

And Hilton Head, at that intersection, at around 6:00, at around 5:50, 5:55, whatever the general time is, whatever these witnesses say, it'll be crystal clear to you it was pretty well dark. Antoine Johnson checked to his left, he didn't see anything because there were no headlights on.

There will be independent witnesses. Your Honor has talked about you being the judges of credibility. You got to think about bias. There will be witnesses

being here, and they'll tell you they didn't see headlights either. And they'll verify what Antoine Johnson says, that Mrs. Johnson (sic) did not have her headlights on, and that it was dark.

You may hear other things about the accident and things that you can use your common sense to draw conclusions from. What have you just seen? You've seen pictures of the side of this vehicle, what looks like a scraping motion, a sideswipe sort of impact. There's no one that's going to tell you Antoine Johnson was speeding. And Plaintiffs hired engineers, they characterized that impact as a minor one.

The real accident happened down the road, several hundred feet down the road, between Mrs. Hood and a Chevy Tahoe. Her Equinox went clear across traffic and hit a Chevy Tahoe head-on causing severe damage to the front of her vehicle and severe damage to the Kucks' vehicle, causing injury both to her and both to William and Mary Kuck.

William and Mary Kuck will testify, and listen to what they have to say about the headlights, too.

The Plaintiff has the burden of proof in this case, not Antoine Johnson. The Plaintiff has to

OPENING STATEMENT BY THE DEFENSE

the reason why this accident happened. What he did caused the accident. I submit to you that when the evidence has ended, and you've heard from the witnesses, it'll be the opposite way around.

You will see that more likely than not the Plaintiff unfortunately is the one that caused this accident, and she is responsible for her own injuries. And you'll hear from some engineers, they may call these engineers that they've hired, and they'll talk about science and some issues with headlights and headlight bulbs. I ask you to keep an open mind about that, and to -- can you cut that off, please.

MR. SMITH: The TV is just on. Do you want me to turn it off?

MR. DANIEL: I ask you to keep an open mind. Think to yourself at the end of the day to the unanswered questions, Does what they say add up? Did they, the experts, do all the investigation they were supposed to do before they came to certain conclusions about these headlights.

As far as when the 911 call was made, what time, whether it was 5:58, 5:57, 5:59, it doesn't matter. It's what the conditions on the roadway were at the time. It's whether there was the ability to see this

OPENING STATEMENT BY THE DEFENSE

car coming on a dark road, no street lights, it's tree lined, as the sun, by the way, is already set. Sunset was at 5:20-something, 5:30 that day.

Antoine Johnson will get up on the stand, and he'll tell what he saw. He'll tell you the truth. You get to judge the credibility of all these witnesses. The fact witnesses that have no stake in this matter, they will tell you what they saw. And incredibly, the unbiased evidence will be that Mr. Johnson didn't cause the accident. You cannot be held responsible for seeing something through darkness at a distance.

Now, Mr. Johnson has been named as Defendant. Again, there was some talk about the Plaintiff's medical bills, and we can all have sympathy for her. Thee's nothing wrong with that. But a judgment for Plaintiff is also a judgment against the Defendant, and when you swore to be a member of this jury you agreed to be fair to both sides. You can't award money damages in this case, you cannot render a verdict against the Defendant unless you believe that he is the reason why the accident happened, and he is the reason -- and his actions are what caused the wreck.

If you decide the Plaintiff, at the very least

OPENING STATEMENT BY THE DEFENSE

is -- her actions were a greater cause, you can end up deciding maybe they're both a little bit at fault. But if she was more responsible for the accident than Antoine Johnson was, then you also, again, under the law, have to render a verdict for the Defendant in this case.

There will be witnesses that, again, have nothing to gain by what they say. They will tell you what they saw that night. On that road, where there's no streetlights, and what the objective evidence will bear out, will be that Antoine Johnson did not cause this wreck. And because of that, you'll have to render a verdict for the Defendant.

THE COURT: Thank you. Plaintiffs call your first witness.

MR. SMITH: Yes, ma'am. Plaintiffs call Tasha Haupt.

THE COURT: Come forward, Ms. Haupt. Right around here.

Thereupon,

TASHA HAUPT

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

BY MR. SMITH:

Q Good morning. Good afternoon. Can you tell us your name, please?

A Tasha Haupt.

Q Ms. Haupt, my name is Kevin Smith. Thank you for being here today.

A Okay.

Q Did you used to work for the Beaufort County dispatch?

A The Sheriff's Office, yes.

Q Sheriff's Office. And the reason we've called you -- what was your job?

A I was the records custodian.

Q Okay. The reason we've called you here today is to identify some records and tell us a little bit about it. Okay?

A Okay.

Q All right. Did you get a request to produce and print some information from the 911 calls that came in about the wreck that we're here about today?

A Yes, sir.

Q Okay.

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

THE COURT: You may.

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

BY MR. SMITH

Q Ms. Haupt, do you recognize that?

A Yes, sir.

Q And, in fact, does it have an indication on those records as to who printed them?

A Yes, sir.

Q And who is that?

A Myself.

Q All right. Do they appear genuine to you?

A Yes, sir.

Q All right. And were these records kept in the ordinary course of business where you work?

A Yes, sir.

Q Will they be helpful to you in explaining the timing of the 911 calls?

A Yes, sir.

MR. SMITH: Your Honor, at this time, I'll offer to admit this into evidence as Exhibit No. 1.

THE COURT: Has Mr. Daniel seen it?

MR. SMITH: Yes, ma'am. He's got a copy.

MR. DANIEL: I have no objection.

THE COURT: Without objection, it's in evidence.

MR. SMITH: Thank you.

(Whereupon, Plaintiff's Exhibit No(s). 1 marked for identification and received in evidence.)

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

BY MR. SMITH:

Q Ms. Haupt, let's begin on Page 1. I believe I had a copy up here, too.

Okay. We'll start on Page 1. Is that what you're looking at?

A Yes.

Q So did Beaufort dispatch receive a call, a 911 call, from a lady named Tami Melnick?

A Yes, sir.

Q All right. And you see Tami's name on the sheet itself?

A Yes, sir.

Q Okay. Is -- does it indicate where she was calling from?

A I'm looking now. I -- it says in the remarks, "at Dunkin' Donuts."

Q Okay. Also says down there under business name, "Dunkin' Donuts."

A Yes.

Q All right. And was this the first 911 call that came in?

A It appears so, yes, sir.

Q All right. And if we turn around -- if you can turn to the back page for me, the very last page. We see a listing of the different 911 calls.

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

A Yes, sir.

Q All right. And E-911-7 looks like it came in at 5:58 and 46 seconds; do you see that?

A Yes, sir.

Q Is that the first 911 call that came in that Ms. Melnick made?

A Yes.

MR. DANIEL: Where are we now?

MR. SMITH: Last page, first entry. Can we blow that up at all?

I don't know if that's going to be terribly visible to y'all.

BY MR. SMITH

Q All right. So first call, 5:58 and 46 seconds, true?

A Yes, sir.

MR. SMITH: That's all the questions I have, ma'am. Thank you.

THE COURT: Anything?

MR. DANIEL: Ms. Haupt? Yes, briefly.

CROSS EXAMINATION

BY MR. DANIEL:

Q How do you pronounce your last name? Just --

A Haupt.

Q Okay. That first page of this record has

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

Ms. Melnick's name on there. Is there a time that actually indicates on this page when she called in?

A When she actually called in the phone system, no, sir, I can tell that the call was created at the Dunkin' Donuts, what time that was created.

Q Right. There are a number of calls, I'm looking on the last page, with different times. The one that says, 5:58 and 46 seconds?

A Yes, sir.

Q That does not have a name by it, does it?

A No, not on that one.

Q But none of them do; is that right?

A Correct.

Q How many calls are on that page?

A One, two, three, four -- five.

Q Okay. Is this -- is someone -- are you the person that inputs who called, or the record of --

A No, sir.

Q Who does that?

A The dispatchers in the 911 center.

Q Someone other than you?

A Yes, sir.

Q So really as far as Ms. Melnick or, say, a gentleman named Dustin Lee, or one of the three or four people -- other people that saw this accident and actually

called 911, you can't say whether Ms. Melnick was the first one to call? You --

A I can't, other than comparing the times and listening to the phone call.

Q And the times -- right. And, again, the last page, the one that has 5:58 there as the listed time, there's nothing to indicate that Ms. Melnick was the one that called at 5:58; do you agree?

A Not on that page, no.

Q What was there -- is there a designated time next to her name anywhere in this document?

A Other than on that first page when the call was created.

Q Right. When the call was created, and someone else creates this record other than you?

A The information that's put into the CAD system --

Q Someone else does that?

A The dispatchers, as they get the information.

Q All right. And it's possible that, you know, someone else could have called first, but that dispatcher, as they're going through, and there's five or six different people that called in, they may have put Tami Melnick in there as one of the callers, and she's just listed right there when they create the CAD document.

A No, sir. For each call, there should be a designated CAD call in the system.

Q Okay. Well, where's the designated CAD call for the other -- for the -- these are the entire set of records that your offices has. Where are the designated CAD calls for the other --

A It looks like there is narrative. There are other calls that were received.

Q Right.

A On Page 3.

Q What was the -- the record actually for this alarm time, Tami Melnick, do you see up here it says, 1759 on the front page?

A Yes, sir.

Q So that's actually 5:59 when the alarm on this first page that has Tami Melnick's name, that's what it says.

A Yes, correct.

Q So there's nothing really that definitively says Tami Melnick called in at 5:58?

A Other than listening to the phone call and when it comes into the system.

Q Okay. And have you done that?

A When I created the call, correct.

Q When you created this?

A When I created the copy of the call, yes, on the disk.

Q Where is that?

A I don't know.

Q Okay. But you haven't -- is that on the audio, or is that in another document somewhere?

A No, that's audio.

Q Okay. And we haven't heard that. That hasn't been played?

A Okay.

Q Right? I mean, today?

A Correct, yes.

Q Okay. That's in the -- that's in the audio, the actual recorded call?

A The name, yes, that she gives.

Q I'm talking about the time.

A No, the time is not time stamped in the audio.

Q Right. So would you agree with me though that there's no -- there's no designated time on this sheet of paper right here, the front sheet that has Tami Melnick's name on it that says 5:58, that's when she called?

A No, there's not.

Q And the different phone calls on here from the last page, there's no name assigned to those -- those

911 versus this one called at this time?

A Not on that page, no.

Q Is there a specific time listed for other callers?

A Yes.

Q Okay.

A Page 3, 1801, a call was put in from Dustin Lee about an accident. That's pretty much the only other call that I see.

Q Where does it say 1801?

A 1855 there was --

Q Where does it say 1801 for Dustin Lee?

A See narrative No. 3 toward the bottom.

Q And doesn't it say 1800 above that?

A I'm sorry?

Q Doesn't it say 1800 above that? 38?

A At the very top. But that --

Q Yeah, right about right --

A It's a completely different narrative. Look toward the bottom where it says, "Created by Garnes, Matthew, date 11/7, time 1801."

Q Okay. Is that when he enters it, Garnes?

A Correct. That's putting the information in from the call into the system.

Q Okay. So that's when the dispatcher is actually

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

typing the man's name in?
A Correct.
Q So did you know that Dustin Lee actually was transferred -- he was actually transferred from another dispatch to central dispatch to your unit? And so he was on the call longer before someone probably actually doing data entry?
A I'm not aware of that, no.
Q Would that be unusual though?
A No. Because it's on Hilton Head.
Q It's certainly possible?
A Yes, anything is possible.
Q And as far as Tami Melnick, the page that has her name on it, actually says, 5:59, doesn't it?
A Correct.
Q Okay. So, that's when that --
A That initial call was created in the CAD system. That has nothing to do with the phone system.
MR. DANIEL: Thank you.
THE WITNESS: You're welcome.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Ms. Haupt, it's on the last page -- now, first of all, was it Mr. Daniel's office that requested these

REDIRECT EXAMINATION OF HAUPT BY MR. SMITH

records in the first place?
A I'm not sure who requested. I don't have access to any of those records anymore.
Q Okay. But you provided them a long time ago before today, right?
A To someone, yes.
Q Okay. Now, on that last page again, each call is given a resource number; is that right?
A Yes.
Q And that E-911-7?
A Yes. That is actual 911 line. And it would be Line 7 in the 911 system.
Q And did you listen to the audio recording for E-911-7?
A Yes, sir.
Q And did the person state her name on E-911-7?
A Yes, sir.
Q And what did the person say her name was?
A Tami Melnick.
Q All right. Does that tell you that Tami Melnick was connected to the Beaufort dispatch at 5:58 and 46 seconds?
A Yes, sir.
Q Are you sure about that?
A Yes, sir.

REDIRECT EXAMINATION OF HAUPT BY MR. SMITH

Q Thank you.

RE-CROSS EXAMINATION

BY MR. DANIEL:
Q Do you agree that that -- that doesn't affect when some of these other people may have called 911?
A Her calling?
Q Right.
A It doesn't affect it, no.
Q And that E -- that time, as far as the -- that's the start time of the call?
A Correct.
Q Do you know how quickly she got to the phone?
A I do not.
MR. DANIEL: Thank you.
THE COURT: Anything further from the witness?
MR. SMITH: No, ma'am.
THE COURT: Any objection to her being excused?
MR. DANIEL: No, Your Honor.
THE COURT: You're excused. Thank you.
Ladies and gentlemen of the jury, we're going to take a very brief recess. Again, do not discuss this case. It would be inappropriate to do so.
And I would like to know from the forsperson, when you go back to the jury room, how late the jury

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

o'clock, or even a little later than that.
But probably more importantly than that, I need to know what time you all are willing to start working tomorrow morning. We can start at 9:00, 9:30, or 10:00. Any of those times, you just let me know.
Again, just realize that we're going to be here all day. Okay?
So, again, you're excused to go back to the jury room. Do not discuss this case.
(Jury exits the courtroom.)
THE COURT: All right. We're going to be at ease. Mr. Lee just came back, I'm going to give you an opportunity to talk to him. We'll probably go ahead and get him up, if you can.
Mr. Lee, there were just a couple of things that I had spoken to them about, what you can testify or not testify to. The most important one is probably that no one is to address you as "Judge." If they ask you what you do and who you are, you're a lawyer. Okay?
And, again, it doesn't really matter if you're a plaintiff's lawyer, defense lawyer, or what exactly that you do. But anyway, there's to be no mention of

There's a couple other things that I stated that I didn't want you testifying to. Obviously, you can't come to conclusions and you certainly can't testify as to the law.

But Mr. Wiley is going to talk to you -- or Mr. Willey, I apologize, is going to talk to you about what you can or cannot do.

Like I said, Mr. Daniel, if he does start testifying to something that is objectionable, just say "objection" for the record. The good news is Mr. Lee will understand my ruling. So he'll know what he can or cannot say.

So how about if we're going to take a break just very quickly. Five minutes. Okay? Thank you.

(Whereupon, a brief recess was taken.)

MR. WILLEY: Judge, not to alarm you. But just as I would in live testimony, during the course of the video, when she refers to something I will check it off. I would do that if she were live, but she's not.

THE COURT: Who are we talking about?

MR. SMITH: Tami Melnick, she is next by video. And then we will get Dustin Lee out of here. And then after Dustin Lee, it is the officer, and is that is what we plan on today.

(The jury enters the courtroom.)

THE COURT: All right. Y'all may be seated. Welcome back. At this point in time the next witness is Tami Melnich. My understanding is that it's by deposition.

MR. SMITH: Yes, ma'am.

THE COURT: Ladies and gentlemen, a deposition is simply testimony given by a witness. It is usually taken at a lawyer's office or the courthouse where everyone has an opportunity to ask that witness questions.

And again, you are to judge that just as if she were sitting here testifying. Are you ready?

MR. SMITH: Yes, ma'am.

THE COURT: Okay, let's go ahead and play it.

(Video deposition being played of Tami Melnick.)

MR. DANIEL: Your Honor, may we approach about one thing while this is being queued up?

THE COURT: You may.

MR. WILLEY: I don't know how high it is. If it's too loud. Let us know on the volume.

(Off-the-record discussion held.)

THE COURT: It is their witness, if they want it up there, they can have it up. Just play it.

THE COURT: Okay. Turn that off and call your

next witness.

MR. WILLEY: We call Dustin Lee.

Thereupon,

DUSTIN LEE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLEY:

Q Mr. Lee, would you please introduce yourself to this jury?

A I'm Dustin Lee.

Q And, Mr. Lee, what do you do for a living?

A I have a private law firm on Hilton Head. So I'm a solo practitioner.

Q Okay. How long have you been a lawyer?

A I got sworn in, I believe it was November 17th of 2008. So that puts me not quite at nine years yet.

Q Okay. And are you married?

A Yes.

Q And where do y'all live?

A We live in Bluffton.

Q And you are here today because you were a witness to a wreck that occurred on November 7th, 2014; is that correct?

A Yes.

Q And are you familiar with the area on 278 where this occurred?

A Yes. I was raised on Hilton Head in the area, so I am. Thank you.

Q You travel that road frequently?

A I do.

Q You know there's a Yummy House, Batters' Box, and Dunkin' Donuts all to the right down frontage road?

A I definitely know that Dunkin' Donuts is still there, but --

Q Okay. Fair enough.

And earlier we had a drawing. I'll just show this to you as best I can. You -- with the Judge's permission, you can actually step down, if that's agreeable.

THE COURT: Certainly, if he'd like to.

THE WITNESS: All right.

(Witness complies.)

BY MR. WILLEY

Q Mr. Lee, I will submit to you that this is 278. Okay? And back over here is the Dunkin' Donuts. All right.

And this is roughly a fair depiction of that intersection as you remember it?

A Basically, yes. Of course, this is South Park

Road, it's kind of a frontage road right here in front of Dunkin' Donuts.

Q Right.

A It kind of goes parallel with 278.

Q Right. Let me see if we have a picture.

A Basically that curves around the front there.

Q Are you talking about this right here, this is Southwood Park Drive?

A Yes.

Q You got the Yummy House here, correct?

A Yes.

Q And the Dunkin' Donuts back over here.

A Yes. I knew that the Dunkin' Donuts was there. The Yummy House is new to me.

Q Okay. The Dunkin' Donuts has a front patio here with some umbrellas on it. Is that what you recall? Do you recall that?

A I don't recall going in that direction. That's kind of new in my general vicinity of where I was.

Q All right. And on this particular day, November 7th, 2014, you're headed east on 278, correct?

A Yes. Kind of deeper onto the island. I think I was going to where Sam's Club used to be in Port Royal Plaza.

Q Right. So if we take this, put it like that,

this is the Defendant, Mr. Johnson's vehicle. And you recall seeing his vehicle at that time, correct?

A Yes.

Q Okay. And this "H" depicts Ms. Hood's vehicle. And you recall seeing her vehicle?

A Yes.

Q Okay. And then down here, on the other lane, the outside lane here, we've drawn a box, and who would that be?

A That would probably be me.

Q Okay. And between and you Ms. Hood, there were no other vehicles, correct?

A None that I recall.

Q Okay. As you recall, it was you in the outside lane, her up ahead--on the inside lane, correct?

A Yes.

Q Okay. And prior to this wreck, had you seen Ms. Hood's vehicle?

A I was in the right lane and her vehicle had passed me heading the same direction, just a little while before.

Q Okay. And as she passed, were you able to discern anything about -- about her vehicle?

A I remember it was South Carolina veterans license plate, and it was kind of a third row, a crossover

type vehicle. It reminded me a lot of -- I have a best friend from growing up, his wife has a Chrysler Pacifica, not the new minivan one, but kind of the older style, so it looked like that, kind of curved in back, third row, darker color, crossover vehicle.

Q And this -- this picture here is all banged up, but this is roughly what you remember as her vehicle before the wreck?

A Yes. And as I said, I saw on the back, the South Carolina veterans license plate.

Q Correct. Okay. You can take your seat.

A Yes, sir. Excuse me.

Q Now, Mr. Lee, as you were traveling down 278, your vehicle had automatic headlights, correct?

A Yes, I -- I had them on.

Q Okay. And what kind of vehicle were you driving at the time?

A It's a Genesis. It's got -- I believe they're Xenon headlights. So it's a four-door sedan, rear wheel drive. It's silver in color.

Q Okay. And those Xenon headlights, why -- why is that important to you? What is a Xenon headlight?

A Xenon headlights are -- they're a bit brighter, in my opinion. I don't know, there's the marketing out there, but I've got a truck that I got back when I was in

college, and so generally I drive a car with better headlights when I'm at night just because -- especially if I'm going in back roads or, you know, during the wintertime, or if I'm going somewhere kind of on island. It's not very well lit in the low country at night, so it just lights up the road a little bit better because my truck, I got to put the fog lights on to kind of compare a little bit.

Q And on this particular day, where were you headed to?

A I was either going to Sam's Club or to Kroger, or both. There's a Kroger kind of mid-island, where the mall used to be a long time ago.

Q Okay. So you were going out to do some grocery shopping and whatnot?

A Exactly.

Q All right. So you planned to be out for a little while, right?

A For, you know, however long it'd take me to go through those stores exactly.

Q Past dark?

A Yes.

Q Okay. And at the time of this wreck, you did not see anything after the first collision, correct?

A I did not.

Q Okay. And why is that?
A I was -- I know you got your --
Q You can come show it, if you want. You can step down if that's easier for you.
A Okay. It may make better sense with the photo.
Q Right.
A So I was coming up this direction. I don't know if this is accurate as to distance, per se. But as I was coming up here, I saw -- there was a vehicle kind of coming out, I kind of -- just a bad feeling as I saw something going on there. I started hitting my brakes.
This vehicle, the H vehicle, kind of went over. This car was here -- I was able -- this kind of -- it happened really quickly, because I was still at -- I guess I was slowing down, but I was close enough where I was kind of myself trying to avoid this accident. I was -- I glanced very, very quickly at this J vehicle. I saw it was a car. Of course, I'd seen this car was pulling out, but then this car went kind of over, and there are bushes and some other stuff right here, so then my visibility wasn't there.
After that, I kind of pulled up to the right so I could -- my adrenaline was really pumping, but I pulled over to the right so I could try to call 911, so I got all the way off the road.
Did I answer your question?

Q Yes. And in this picture, you can actually see those bushes a little bit better than in my co-counsel's drawing. He didn't go to art school, as he said.
So at the time of this wreck, you were actually so close that you thought you might be involved in it; is that accurate?
MR. DANIEL: Objection. Mischaracterization.
THE COURT: Okay. Rephrase it, if you would.
BY MR. WILLEY
Q Okay. Explain, again, why -- why you were slowing down as you saw that car come out?
A It looked like there was going to be, in my opinion, some type of potential collision, so I slowed down to get out of the way, as far as whether --
Q Okay. And you had your headlights on, your Xenon headlights on?
A Yes. I have a little green indicater on my dash that was on that showed my lights were on. My car, I keep in the auto position unless I'm going in a gated community.
Q Right. And at this particular entrance on the 278, this intersection, Mr. Johnson would have had a stop sign there. Are you familiar with that or not? If not, just say, "not."
A I am from maybe a year ago. At that particular

time, I don't know whether it was there or not.
Q Okay. You haven't been there recently. Okay. Thank you, sir. Take your seat.
A (Witness complies.)
Q And so after you saw the wreck, you indicated that you went up 700 or so feet or --
A I don't know exactly how far it would be. I believe it was before. There's a community there called The Oaks that has their sign. I think I was before that sign. I don't know exactly how far that would be, but I pulled all the way over right to get out of 278 William Hilton Parkway completely, and parked on the side of the road.
Q All right. And we -- we've heard that somebody beat you to the 911 call. But explain your sequence of trying to dial -- to try to dial 911.
A I had that car for about a month, so I pressed a little button, and I think I said, "Call 911." And it said, "I'm sorry, I don't get it. Call 911. I'm sorry."
So then -- then I said, "Call Beaufort County dispatch." Because through my private law practice, sometimes I have to call law enforcement, et cetera, so I pressed the button and said, "Call Beaufort County dispatch." Same thing. So I had -- I parked the car, I turned off the radio, and then I had to dig. I have -- it's

kind of in the charger between the console thing, so I had to, I think, pull the thing out, unlock the phone, go through the whole process, and then call. I don't know if I dialed 911 or if I dialed Beaufort County dispatch, which I think goes to the same place. But that was kind of the delay.
Q And when you got finally connected through, what did -- what did you learn?
A Well, I spoke with someone, I don't remember if it was Hilton Head or what, and then I remember hearing something along the lines of we're going to -- "this person saw the accident." I believe they connected me to someone else that kind of asked me what happened.
Q Okay. And when did you first hear the sirens and the first responders?
A I don't remember exactly. It was before I pulled out completely. I don't remember if I stayed an extra minute or two afterwards, because as I said, my adrenaline was really pumping. And just trying to -- because after I left, I end up going to Starbucks not too far and getting a hot chocolate, just kind of sit down and calm down a little bit.
Q And, Mr. Lee, at the time that Mr. Johnson pulled out, you -- you could clearly see Ms. Hood's SUV, correct?

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

A They were both still in my sight.

Q Okay. And at the time that Mr. Johnson pulled out, you were able to see Mr. Johnson, correct?

A I was able to see, again, that it was a car. I couldn't tell you what type or make, model, of car, but I knew there was a car pulling out. I could see the H vehicle as well.

Q Okay. And Ms. Hood would have actually been closer in distance to Ms. Johnson than you were at that point, correct? You were behind her?

A Yes, I was behind her.

MR. WILLEY: Thank you, sir.

CROSS EXAMINATION

BY MS. SUTTIE:

Q Good afternoon, Mr. Lee.

A Good afternoon.

Q I'm Madison Suttie, I'm here for the Defendant.

You answered a number of questions about what you witnessed. I want to start from kind of the end, if you will.

You called 911, correct?

A Yes.

Q Would it have been within one or two minutes of you witnessing the accident?

A I thought it was very close. When I pulled

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

over, as I said, however long it took me to kind of get over, press the buttons on the car a few times, and actually connect. And if I had to guess, I'd say it was within that two-minute time period.

Q In other words, it was a fast turnaround, the connection.

A It was kind of as fast as I could, again, pull over, park, do all that with my adrenaline pumping.

Q And you're familiar with that stretch of road on Highway 278?

A Yes.

Q Okay. And are there any streetlights on in that area?

A Not that I recall. Hilton Head is not very well known for having a lot of kind of -- I went to school at USC in Columbia. And when you kind of leave there, you got those big overhead lights. Again, I don't recall any then, and I still don't really remember any now.

Q I did, too. You're right about that.

But does it get fairly dark at night along those stretches of road?

A Yes. And in kind of in general, again, there aren't any overhead streetlights. So you're kind of on your own as far as that's concerned.

Q And from what you recall, at the time of the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

accident, was it getting dark?

A Yes, it was getting dark.

Q In your opinion, as a driver on the road at that night, did you feel like you had to have your headlights on --

MR. WILLEY: I'm going to object, Your Honor. He's not an expert witness. He's not qualified to give opinion testimony. She can ask him about his observations, what he saw or heard.

THE COURT: Agreed. Sustained.

BY MS. SUTTIE:

Q Were there other vehicles on the road that night besides you and Mrs. Hood and Mr. Johnson?

A There were. There was some traffic coming the other way, and there were -- I don't remember, at the exact time if there were cars behind me. But there were, of course, other cars on the road as a general principle.

Q Of all those other vehicles, did anyone else have their headlights off, from what you recall?

A Not that I recall. Everyone, again, that I recall immediately seeing around me had their headlights on.

Q That brings me back. When did you first notice this vehicle?

A I was in the right lane, and it passed me on the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

left-hand side.

Q And was she tailgating?

MR. WILLEY: Objection, Your Honor.

THE COURT: Okay. Sustained. It's not appropriate.

Ladies and gentlemen, just strike that question.

BY MS. SUTTIE

Q When Mrs. Hood's vehicle passed you, you said that you had looked and you noticed a veterans tag; is that correct?

A Yes. There was a South Carolina veterans tag.

Q What made you notice her veterans tag?

A It was, again, something that I just recall specifically on that particular evening. I guess when I was younger, I actually watched, it was like a Jason Bourne movie. I saw him remember all the license plates when he came out. So certain cars, I would, for better, for worse, kind of just remember license plates. So it as that, you know, again, going past me, I remember that particular vehicle again.

I don't know if that answers your question.

Q Is there -- it kind of does.

But did you notice that the Plaintiff's SUV traveling behind you didn't have lights on; is that correct?

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

A As I was traveling, again, east on 278, the -- I guess the H car --

Q We can pull this out. Okay?

A No, it's fine. I -- I remember that.

The H car, I don't remember having the headlights on. I remember it was either daytime running lights or it was parking lights. I couldn't tell you which, but I -- I remember it did not have its headlights on.

Q And you were shown a photo of Mrs. Hood's vehicle. It was a darker in color vehicle, right?

A Yes.

Q And did you agree it was difficult to see at the time; is that correct? When it was behind you. Sorry, when it was behind.

A Yes, it was -- it was difficult to see.

Q Was that because the headlights weren't on?

A Again, that certainly made it quite a bit more difficult to not see. And, again, it was dark in color and the headlights were not on. So, again, it was kind of there.

Q You let Mrs. Hood's vehicle pass you. You moved into the right lane and let her pass. Do you -- can you estimate how many cars lengths ahead of you that she got by the time the collision had happened? I mean, was there a fair distance or --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

A It was -- I mean, I could still see everything. I played baseball growing up, so I kind of said it was at least three pitcher's mounds, which I think is 60, 65 feet. So we're looking at more -- probably at least 200 feet in front of me. But I couldn't tell you -- and it wasn't, you know, two miles down the road. It was definitely still clear, but it was however many cars can fit in that. If you've got a car that's 15 feet long, then you've got a minimum of ten cars to be 150 feet if that's --

Q So ten cars between you and --

A That would be probably a minimum. But, again, it wasn't a mile or anything like that. I could still see it well enough.

Q But there was a fair distance between the point -- between you and the Plaintiff's vehicle after she had passed you and the collision; is that fair?

A Yes.

Q At any point from the moment you first noticed Mrs. Hood's vehicle to the moment that you called 911, did you ever see the vehicle with its low beams on?

A As far as the H vehicle?

MR. WILLEY: Objection, Your Honor. Calls for speculation. The vehicle was up ahead of him. I don't know --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

THE COURT: Okay. He can answer if he knows.

BY MS. SUTTIE

Q Based on your observation.

A As far as the H vehicle, the Ms. Hood vehicle, I never saw that vehicle with its headlights on. Just that I saw it with its either daytime running lights or its parking lots on.

Q Did those daytime running lights or parking lots, in your opinion, what you observed, did they illuminate the vehicle at all?

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

THE COURT: Okay. At this point, I'm not sure he can answer that.

MS. SUTTIE: Okay. Let me confer with --

(Off-the-record discussion held.)

MS. SUTTIE: Sorry for the brief intermission.

BY MS. SUTTIE

Q As a licensed driver, did you feel that you needed --

MR. WILLEY: Objection, Your Honor. This is the same question with a different wording.

MS. SUTTIE: I'm asking about his opinion -- observation of his surroundings.

THE COURT: Again, I think it calls for speculation. I think you need to move on.

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

MS. SUTTIE: Okay.

(Pause.)

BY MS. SUTTIE

Q You called 911 after this accident, correct?

A Yes, or the Beaufort County dispatch, because I believe it goes to the same general line.

Q Sure. And did you tell 911 dispatch or the operator that Ms. Hood's vehicle only had its parking lights on, or running lights?

A I believe I told them it only had either it's parking lights or daytime running lights. I may have said DRL, but I don't -- just daytime running lights. But --

Q Okay. Why did you feel that was -- why did you do that? Why did you tell the operator that it only had daytime running lights on?

A Again, I don't recall other than, you know, it was kind of that almost dark, not quite dark time, and it just kind of hit me based on other vehicles on the road had their headlights on at that time that I saw.

MS. SUTTIE: No further questions. Thank you.

MR. WILLEY: Just briefly, Mr. Lee.

REDIRECT EXAMINATION

BY MR. WILLEY:

Q Back to my trusty Picasso here.

No doubt in your mind that Ms. Hood's

vehicle had its running lights on when it was up ahead of you, correct?

A As it was, I guess, passing me, it had either its daytime running lights or its parking lights on. As far as what it had on at the time, I'm not sure. It was ahead of me.

Q Correct. And you don't recall the exact timing of how long it had been since the SUV passed you when the wreck occurred, correct?

A The exact time, no, I don't.

Q Well, it -- what you know is that enough time had elapsed for her to at least get a ten-car length, a gap, between you and herself, correct?

A Yes.

Q Probably more?

A Again, it wasn't 200 cars, but it was --

Q Right. But at that point, you could still see her?

A I could -- could I -- I could still see the back of her vehicle, and I could see, I believe, you have as the J car coming out.

Q So at that point, where she's a minimum ten car lengths away from you, you could still see her up ahead, correct?

A Yes.

Q And you could see the Defendant's vehicle, which was even farther away, correct?

A Yes.

Q Okay. And if you had not had your headlights on, do you believe that you still would have been able to read her license plate as she went by?

A I recall reading her license plate initially, when it was right almost next to me. So it would probably be like this court reporter's head. So it was very close in distance when I first read it.

So, again, I had my -- my headlights on. So I think -- and, again, if I didn't, I don't know, but I had my lights on, and I saw it passing me. So I'll let that answer your question.

Q Do you remember saying that without the lights, you think you still could have read the license plate?

A Well, again, I initially paid attention to it when it was right at the hood of my car.

Q And is that because at that particular point, it wasn't a hundred percent dark yet, correct?

A It was probably 90 percent, but not a hundred percent. It was -- it was getting there, but it wasn't quite. It wasn't pitch black, by any means.

Q Right. And Ms. Hood's vehicle would have been closer to Mr. Johnson at the point of impact, when he ran

into the side of her, than it would have been to you, correct?

A Again, I was farther back. So were those two cars closer together, absolutely.

Q So at the point of impact, clearly Ms. Hood's car was closer to Mr. Johnson, correct?

A Yes. Again, I was in that right lane. I eventually got in the left lane to get around it.

Q And at that time, you could still see Ms. Hood's vehicle, correct?

A At the --

Q Before the time --

A Right before the collision occurred, I could still see the two vehicles.

Q Right. You could still see Mr. Johnson's vehicle, right?

A Yes, with my -- again, I had my headlights on, but I could see them.

Q Right. And when this wreck occurred, you slammed on your brakes, I think you testified, to get over because you didn't want to get caught up in it, correct?

A I don't know if I slammed, but I definitely decelerated and kind of -- it was more than a standard, just kind of turn the cruise control off or something type slow down. It was more of a deliberate slow down, but I

don't -- I don't think that I slammed on the brakes, like to squeal or anything like that.

Q My point is, as you went by this collision, the second collision, you didn't look over. You were focused on what you were doing to try to stay out of it, correct?

A The -- I saw the B vehicle hit kind of that median section --

Q Right.

A -- and then kind of right after that I was focused on making sure I got around whatever this was without hitting anyone, damaging any property. And then I thought as soon as the second I kind of got past there, pull over, let's call 911.

Q Thank you, sir.

THE COURT: Anything further?

RE-CROSS EXAMINATION

BY MS. SUTTIE:

Q Mr. Lee, do you recall whether the accident happened within moments of Ms. Hood's vehicle passing your vehicle?

A Moments, like two or three seconds, no.

Q How many seconds; do you recall?

A I -- again, I don't recall exactly. I'd say probably a minimum of 25, 30 seconds, a maximum of maybe a minute and a half, somewhere in that time range. And,

again, it's -- it was --

Q Two years ago?

A Three -- almost three years ago.

Q More, yeah. But it was a short time frame, correct?

A It was a relatively short time frame, yes.

Q Do you recall how fast you were going that evening?

MR. WILLEY: I'm going to object, Your Honor. It's not relevant how fast Mr. Lee was going.

THE COURT: Can you tell me what the relevance is? Do you need to approach?

MR. DANIEL: I think so.

THE COURT: Sure.

(Off-the-record discussion held.)

THE COURT: You can answer the question, Mr. Lee.

THE WITNESS: Okay.

BY MS. SUTTIE

Q Do you recall how fast you were going?

A I had my cruise control set at 49 miles per hour.

Q What made you choose 49 miles per hour?

A It's -- again, I have these weird things. It's kind of like I don't like to tell people necessarily to be

somewhere at 9 o'clock, because they might be five, ten minutes late either way. So you say be there at 9:03. But in my private practice, when I have clients, they kind of joke, and they say "I only go five miles per hour over the speed limit." I say, "just go four over."

Or they say, "Cops don't mess with me at five." I say, "go four over." So it's kind of a practice what you preach type thing. So, as I said, I try to really -- it's just kind of a habit I always get into.

Q What's the speed limit on that stretch of road where the accident happened?

A It was 45 miles per hour.

Q And the accident happened within, you know, 25 to 30, and less than a minute of Mrs. Hood's vehicle passing you, correct?

A Yes.

Q And she was ten car vehicles, at minimum, ahead of you; is that what you testified?

A I believe so, yes, if you kind of calculate about 15 feet per vehicle.

Q And you were going four over the speed limit?

A Yes. I was -- I was basically speeding four miles per hour over, yes.

Q Mr. Lee, one further question.

Do you recall if Mr. Johnson's vehicle had

its headlights on?

A Is that the J car that was crossing?

Q Yes.

A I don't necessarily. As I said, I saw from a distance, from whatever distance that was, that there was a car coming across. But, you know, it's almost three years ago. I noticed the car from that distance coming across, and as I said, I just don't recall at this point why I kind of had that feeling that something was going to happen kind of immediately thereafter.

MS. SUTTIE: No further questions, Your Honor.

THE COURT: Anything further?

MR. WILLEY: May the witness be excused?

THE COURT: Any objection?

MR. DANIEL: Your Honor, just what we discussed earlier.

THE COURT: Okay. Mr. Lee, you're excused. If I need you, I'll find you. Thank you.

THE WITNESS: All right. Thank you.

THE COURT: All right. Call your next witness.

MR. WILLEY: Plaintiff calls Sergeant Welch.

THE COURT: Come on, Sergeant Welch.

Thereupon,

SERGEANT JENNIFER WELCH

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLEY:

Q Sergeant Welch, will you introduce yourself to the jury.

A Sergeant Jennifer Welch. I've been with the Beaufort County Sheriff's Office since 2007, which is about ten years in August. Been working the road south and north for those ten years.

Q And Sergeant Welch, are you still with the Beaufort County Sheriff's Office?

A Yes, sir.

Q I assumed they didn't let you borrow the uniform just for the day.

Where did you go to college?

A Delaware Valley College in Pennsylvania.

Q Okay. And where did you attend the criminal justice academy?

A Here in South Carolina, in Columbia.

Q And when -- when approximately were you there?

A That was February of 2008.

Q And when you got out of the academy, where was your first job?

A With Beaufort County.

your rank?

A In 2007?

Q November 7th, 2014.

A '14, I was corporal.

Q And so you have elevated through the ranks since that time?

A Yes, sir.

Q When you were a corporal in 2014, what were some of your primary duties with the sheriff's department?

A Mainly the same as now, to respond to calls for service, 911 calls, motor vehicle collisions, traffic enforcement.

Q And at that time, were you certified in accident reconstruction?

A Yes.

Q And what does that mean, just for the benefit of the jury?

A Basically it's -- there are three classes. There's three phases. Both are two weeks long each, and it teaches you about the physics and basically all the math you have to do to figure out what happened in a collision.

Q And is that obviously important to what you do with the Sheriff's Department?

A Yes.

Q And respect to motor vehicle wrecks, what are your roles and responsibilities?

A First and foremost would be injuries, and then making sure that the scene is safe and that no more injuries occur once we arrive. Then I would interview all parties, whether it be on scene or at the hospital, if they get transported. And then I would either complete a report, issue a ticket, if I felt need be.

Q And Sergeant Welch, I'm going to hand you a copy of a code section, South Carolina code section. As part of your roles and responsibilities, are you --

THE COURT: Hold on a second. Can I take a look at that?

Do y'all need to come talk to me?

(Off-the-record discussion held.)

BY MR. WILLEY

Q All right. Sergeant Welch, you would agree with me that when a driver is on the roadway they have certain responsibilities that -- you know, that they've got to look after, correct?

A Correct.

Q Like look where you're going, right?

A Yes.

Q Make sure it's safe before you cross a busy highway, correct?

A Correct.

Q Okay. And those things are important to prevent harm to other folks, correct?

A Correct.

Q Now, I know it's been almost three years, but do you recall, based on reviewing your notes and report, this wreck that we're here about today?

A Yes.

Q Okay.

MR. WILLEY: Your Honor, may Sergeant Welch step down?

THE COURT: Yes.

BY MR. WILLEY

Q Sergeant Welch, can you describe to the jury, you know, what this image shows?

A Yes. Right here in the middle, it is labeled William Hilton Parkway at 278. This direction towards me would be eastbound. This side would be westbound. Southwood Park Drive runs, as they discussed earlier, in front of Dunkin' Donuts and Yummy House, parallel to 278.

Q And you were notified -- how did you get notified about this wreck?

A By dispatch.

Q And do you have any idea what happened prior to

call straight from dispatch?

A Straight from dispatch.

Q Okay. And when you arrived, what did you see?

A I saw the -- if we want to stick with the same picture that you have, the J vehicle was right around in here. And then Ms. Hood's vehicle had left skid marks across the grass, and then hit another vehicle over around in here somewhere, head-on.

Q And did you interview all the witnesses at the scene?

A Yes. The ones that stayed, yes.

Q You didn't interview Mr. Lee, for example?

A No, I didn't know who he was.

Q Okay. But you were able to interview the Defendant, Mr. Johnson?

A Yes.

Q You were able to interview the Kucks?

A Correct. I'm not sure if that was at the hospital or both on scene.

Q Okay. And you were able to also interview Ms. Hood at the hospital?

A Correct.

Q Okay. And as far as when you got there, how would you describe the damage to Ms. Hood's vehicle? What

A It was major damage.
Q Was Ms. Hood already gone in the EMS when you arrived?
A If I remember correctly, I believe she was on the grass right about here, where they were treating her, but I didn't have an opportunity to speak with her because they were treating her.
Q Okay. And you spoke with her later?
A Yes.
Q All right. Thank you.
Sergeant Welch, I'm just going to show this photograph here. Do you recognize this image?
A Yeah. That would be the passenger side of Ms. Hood's vehicle.
Q Okay. And is that a fair and accurate representation of the damage to Ms. Hood's vehicle as you observed it that day?
A Yes, the damage to the side, yeah.
Q To the side, correct.
A Yeah.
MR. WILLEY: Your Honor, at this time, we would move Plaintiff's Exhibit 3 into evidence.
THE COURT: Any objection?
MR. DANIEL: The side view?
THE COURT: Just look at it.

MR. DANIEL: The side view, no.
THE COURT: Any objection?
MS. SUTTIE: No objection, Your Honor.
THE COURT: Without objection, it's in evidence.
(Whereupon, Plaintiff's Exhibit No(s). 3 marked for identification and received in evidence.)
BY MR. WILLEY:
Q And Sergeant Welch, you were able to ascertain what about this damage? What did this damage tell you?
A With my experience in I couldn't tell you how many accidents I've, it appeared to me that another vehicle, which I believe was Mr. Johnson's vehicle, hit that vehicle in the front passenger side close to the wheel. And due to her traveling, it then created the scratch marks down the end of the vehicle.
Q And how many motor vehicle wrecks would you say you've investigated?
A Being that I was on the traffic team for two years, I -- hundreds. I couldn't -- maybe even a thousand. I couldn't put a number on it.
Q And you're still investigating traffic wrecks, correct?
A Yes.
Q More than your fair share of those wrecks for every nine minutes, according to your Department of Public

Safety?
A Yes.
Q Okay. Were you also able to get a look at this vehicle?
A Yes.
Q Okay. And was this a picture of Mr. Johnson's vehicle as you remember it?
A Correct, yes.
Q And was all -- this front-end damage existing to his vehicle at the time that you saw it?
A Yes.
Q Okay. And is this a fair and accurate representation of his vehicle, as you saw it?
A Yes.
MR. WILLEY: At this time, we would move to enter into evidence Plaintiff's Exhibit No. 4.
THE COURT: Any objection?
MS. SUTTIE: No objection, Your Honor.
THE COURT: Without objection, it's in evidence.
(Whereupon, Plaintiff's Exhibit No(s). 4 marked for identification and received in evidence.)
BY MR. WILLEY:
Q And just -- just so we're clear, was it your understanding that the entirety of this damage was caused by his impact with Ms. Hood?

A Yes.
Q Okay. As far as you know, Mr. Johnson did not impact another vehicle or object on the roadway that day?
A Correct.
Q I'll show you what I'll mark for ID as Plaintiff's 5. And this is an image of 278 looking down the eastbound lane. And this is the intersection area, and you're familiar with that intersection?
A Yes.
Q Okay. And can you -- let me step over here. Can you show the jury where Mr. Johnson's vehicle would have been located?
A He would have been down here at the stop line and pulled out into this first lane.
Q Okay. So as he began to pull out to the first lane, if you look left, this would be his view basically?
A Correct, yes.
Q And is this photograph a fair and accurate representation of that?
A Yes.
MR. WILLEY: Your Honor, at this time, we're going to move to enter into evidence Plaintiff's Exhibit 5.
MS. SUTTIE: No objection, Your Honor.
THE COURT: It's without objection. It's in

evidence.

(Whereupon, Plaintiff's Exhibit No(s). 5 marked for identification and received in evidence.)

BY MR. WILLEY:

Q And Sergeant Welch, this book was talked about during opening. You familiar with the South Carolina Driver's Manual?

A I've never actually held one or seen one, but --

Q Okay.

A I know they're one.

Q I'm going to hand you one.

What does that book say on the cover?

A South Carolina Driver's Manual.

Q Okay. And does that appear to be a fair and accurate copy of the driver's manual? Or are you just not familiar enough with it to say?

A I'm just not familiar because I didn't -- I didn't get a license in South Carolina.

Q Okay. That's fine.

But you are familiar with the law as it relates to headlight usage in South Carolina, correct?

A Correct.

Q Okay. And one of your responsibilities in investigating a traffic accident, would be to cite a driver who wasn't following the law, correct?

A Correct.

Q Okay. And that statute requires, correct me if I am wrong, but it requires headlight use 30 minutes after sunset and 30 minutes before sunrise, correct?

A Correct.

Q Okay. And it also gives a list of other times when headlight usage might be required. You're familiar with that?

A Yes.

Q Okay. And can you tell this jury when some of those -- what those times are?

A It would depend on the circumstance, such as maybe fog or snow. Rain is the big one. If there were some other kind of circumstance, like there was a fire in the area and you couldn't see the road maybe. Just as some examples.

Q Okay. So the big one is when you have your windshield wipers on, correct?

A Correct.

Q Except if you have them on just intermittently for misting, then you're not required to, right?

A I'm not familiar if it's got a subsection about that in there.

Q But the other environmental factors that are spelled out are like fog and smoke, correct?

A Correct, yeah.

Q The statute specifically deals with when you have to have them on with respect to nighttime, correct?

A Correct.

Q All right. Another example might be, for example, if it got dark in the middle of the day, like, if we had an eclipse, right?

A Correct.

Q That would be an environmental factor that would require you to have your lights on, right? And we just had one of those.

So let me ask you: On this particular day, at this particular time, was there any fog in the area?

A No.

Q Was there any snow in the area?

A No.

Q Was there any rain in the area?

A No.

Q Okay. Was there a fire nearby such as that it was creating smoke?

A No.

Q Okay. And finally, we didn't have an eclipse just before dark that day, did we?

A No.

Q Okay. So the only factor that, in this case

would have required the headlights, is whether or not it was 30 minutes after sunset, according to the statute, correct?

A Correct.

Q And in this case, when you spoke with Mr. Johnson, isn't it true that he actually told you that Ms. Hood hit him?

A Yes.

Q You remember -- you have that in your notes and remember that?

A Yes.

Q And upon looking at the damage from their vehicles, is there any doubt in your mind that actually he hit Ms. Hood?

A No, there's no doubt in my mind.

Q Based on your investigation in this case, how fast was Ms. Hood traveling?

A I just put an estimated, which is what the actual speed limit of the road was. Because of the extent of the damage, I knew it was at least 45.

Q You estimate around 45 miles an hour?

A Correct.

Q And there was no evidence in your investigation statement or otherwise that led you to believe that she was speeding, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

MS. SUTTIE: Objection.

THE COURT: Well, she can answer the question if she can answer it.

THE WITNESS: Correct.

BY MR. WILLEY:

Q There was no information in your investigation, based on your investigation, that led you to believe she was speeding, correct?

A Correct. There were not any skid marks behind the car.

Q And you did not write Ms. Hood a citation for this incident, did you?

A No.

MR. WILLEY: Thank you. Nothing further, Your Honor.

MR. DANIEL: May we approach?

THE COURT: You may.

(Off-the-record discussion held.)

CROSS EXAMINATION

BY MS. SUTTIE:

Q Hello. I'm Madison Suttie.

You were asked a number of questions about statute, 30 minutes, and all of this kind of stuff, when you should have your headlights on; is that correct?

A Yes, yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

Q You can pull people over for having no headlights on; is that fair?

A Yes.

Q And does the visibility of a vehicle go into that determination?

A Yes.

Q So if you were having trouble seeing a vehicle on a roadway, you'd pull it over; is that fair?

A Correct, yeah.

Q If it is 28 minutes past sunset, and you've having issues seeing that vehicle and you assume other drivers on the road have the same difficulty, would you pull that vehicle over?

A Yes.

Q You were shown some pictures of damage that you would assume that Mr. Johnson and Mrs. Hood's vehicle, by Mr. Willey -- bear with me one second.

Do you recall off of the top of your head the tag on Mrs. Hood's vehicle?

A The license plates, no.

Q Would you like to see a copy of your accident report to refresh your recollection as to the license plate?

A If you wanted the exact number, yes.

MR. WILLEY: We can stipulate to the license

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

plate number.

MR. SMITH: She can just read it, Your Honor.

MR. WILLEY: Yeah, she can just read it. That's fine.

BY MS. SUTTIE

Q Here you go. Can you read the license plate for me for Mrs. Hood's vehicle?

A It's V32138.

Q Okay. And I'm going to show you a picture and ask you if that is the same license plate number on that vehicle.

A Yes.

Q Okay. So fair to say, does that look like the Plaintiff's vehicle in that photo I just handed to you?

A Yes.

Q Okay. You can keep that photo in front of you.

You were also shown -- this is Plaintiff's exhibit, but I can show you on the large copy -- this is the damage to the side of Mrs. Hood's vehicle, correct?

A Yes.

Q And that was the damage you found contributed -- caused by the collision with Mr. Johnson's vehicle; is that fair?

A Yes.

Q Okay. There was another impact in this

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

incident, correct?

A Yes.

Q And that was with Mrs. Hood's vehicle and the vehicle belonging to the Kucks?

A Correct.

Q Okay. I'm going to show you a photo and ask you if that looks representative of the damage to the front of the Plaintiff's vehicle caused by the collision with the Kucks?

A Yes, correct.

Q Little more severe than the one with Mr. Johnson; is that fair?

A Yes, very fair.

Q And you were shown a photo of Mr. Johnson's vehicle after the accident. Do you remember all these years later whether his front bumper had fallen off or not, in the accident?

A I remember there being debris on the roadway, but I don't remember specifically a bumper on the road.

Q Okay. And then the third vehicle, belonging to the Kucks, does this look like that vehicle to you?

A Yes.

Q That's pretty severe damage, correct?

A Correct, yes.

Q Okay. And that was caused by the collision with

the Plaintiff's vehicle and the Kucks; is that fair?
A Correct, yes.
Q You were asked by Plaintiff's counsel whether or not you performed a full accident reconstruction, and you didn't in this case, correct?
A Correct.
Q Okay. So you wouldn't have any opinion on whether Mrs. Hood was pushed into oncoming traffic or whether she overcorrected; is that fair?
A I don't think that I would need to take measurements to form that opinion.
Q Okay. Is it correct to say that it could have been a bit of both?
A Both what?
Q Of being -- of overcorrecting and also from the collision with Mr. Johnson?
A Yes, I would say they both contributed.
Q Okay. Can you say how much either one of those contributed to the --
A To that, I would need to do the math for.
Q And you didn't do the math in this?
A No, ma'am.
Q What time did you arrive at the subject -- at the accident scene?
A Is it okay to refer to the report?

Q Yes, of course.
A Arrived at 1809, which would be 6:09.
Q Okay. 6:09, and from what I understood, Mr. Hood was still there sitting on the grass; is that correct?
A Correct.
Q Okay. When you arrived on the scene, was Mrs. Hood's vehicle still running?
A I believe it was, yes.
Q And how did you make that determination?
A I could hear it running. The engine was on.
Q Does your squad car have an in-car video?
A Yes.
Q Did you review your in-car video prior to completing your accident report?
A I did.
Q Why did you do that?
A Because there were -- there was discussion about her lights being on, and I had different stories about -- they weren't all matching.
Q The Plaintiff's running lights weren't on in that video; is that correct?
A Correct.
Q What does that indicate to you about her headlights?

A That the headlights were not on.
Q And that they were not on that night?
A Correct.
Q So her car was still on after the accident, but her headlights weren't on?
A Correct.
Q But the running lights were still on?
A When I referred to the camera, the running lights were not on, which would be consistent with the brake lights, because I pulled in behind her when I arrived on scene.
Q Bear with me one second.
You were shown an aerial view of the intersection.
MS. SUTTIE: You've already marked it?
MR. WILLEY: I had marked it.
MS. SUTTIE: Okay. Would you mind if I showed the witness?
MR. WILLEY: No, sure.
MS. SUTTIE: Thank you very much.
BY MS. SUTTIE
Q Can you see this okay?
A Yeah, I can -- for the most part, I can see it. I know the intersection well enough.
Q Okay. So Mr. Johnson made his turn starting

here on Southwood Park Drive; is that correct?
A Correct.
Q And it is legal to make a left turn onto this westbound lane of 278?
A Correct.
Q As long as you check for any oncoming hazards, fair?
A Yes.
Q That are visible, fair?
A Yes.
Q So was Mrs. Hood's vehicle traveling in this -- what lane would you call this on eastbound?
A I call it the number one lane.
Q Number one lane. Okay. She was traveling here.
When you arrived at the accident, where was this vehicle?
A It was on the white lines on the other side of the road.
Q All the way over here?
A Yes, ma'am.
Q So she went over to -- in lane one, she went over this median; is that correct?
A Correct, yes.
Q And this turning lane?
A Yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

Q And landed all the way over here?
A Yeah. A little farther down on the road, probably down by where that -- in between the two arrows.
Q Okay. Oh, so all the way down here?
A Yes, ma'am.
Q And so if Mr. Johnson was trying to come straight across, that collision happened around here; is that fair?
A Yes.
Q And she ended up between the two arrows?
A Somewhere around that area, yes.
Q Thank you.
Did you give Mr. Johnson a citation for this incident?
A I don't recall. Not according to the report. I would have listed it on the report.
Q And did you note on your report how many yards away Ms. Hood's vehicle ended up from the collision with Mr. Johnson?
A I did not.
Q Would it have been about, if you were to estimate based on what we discussed from the picture, about 100 hundred to 200 yards?
A I would say around a hundred.
Q And do you recall what speed Mr. Johnson was

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

going at the time of the accident?
A I put 15. It's hard to accelerate from a stop sign that fast, so --
Q Right. And you can't really gain that much motion.
A Right.
Q And you put 45 on your accident report, correct?
A For the speed limit?
Q For Ms. Hood's speed limit.
A Right, as an estimate.
Q And that was just an estimate based on the speed limit that was posted?
A Correct. I take that into account and the damage, so it could have been faster or slower.
MS. SUTTIE: I'd like to offer in the photo that I have shown earlier into evidence.
THE COURT: Which ones are they? Have you marked them?
MR. SMITH: May I see them?
MS. SUTTIE: Yeah, sure.
THE COURT: These aren't duplicates of what's already in evidence?
MR. WILLEY: No, ma'am.
THE COURT: Okay. Any objection?
MR. WILLEY: To those three, no.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

THE COURT: Okay. So let's go ahead and mark those for the court reporter. Just go give them to the court reporter.
(Whereupon, Defendant's Exhibit No(s). 1-3 marked for identification and received in evidence.)
THE COURT: Anything, Mr. Willey?
MR. WILLEY: Just briefly.
THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. WILLEY:
Q So Sergeant Welch, she asked you whether or not if there had been overcorrecting, if that could have also contributed along with the impact of Mr. Johnson.
In this case, did you find any evidence that Ms. Hood overcorrected?
There were no skid marks, correct?
A Well, she -- correct.
Q And she ended up just over the median in this other lane down aways, correct?
A Correct.
Q Okay. The physical evidence clearly establishes that the impact between her vehicle and Mr. Johnson's vehicle was quite an impact, correct?

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

MS. SUTTIE: Objection.
MR. WILLEY: Basis?
MS. SUTTIE: Mischaracterization.
THE COURT: Okay. I don't know if she actually testified as to that.
MR. WILLEY: I'll rephrase it.
BY MR. WILLEY
Q Sergeant Welch, how would you characterize the impact, based on these photos, between Mr. Johnson's vehicle and Ms. Hood's vehicle?
A If it were just those two alone, I would consider it to be minor.
Q Okay. And in this particular case, his front end is smashed in, correct?
A Correct.
Q And the inside of her door along the wheel well is smashed in, correct?
A Correct.
Q And that impact is enough to move a vehicle that's traveling that speed; you would agree with that?
A Yes.
Q Okay. And that's -- in this case, her vehicle did move, correct?
A Yes.
Q You arrived just after 6 o'clock -- 6:09,

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

correct?
A Yes.
Q Where did you come from?
A I don't remember where I was originally, but I know that I came -- I was headed eastbound on 278.
Q Okay. But you were not right there at that particular intersection, correct?
A Correct. It took me about three minutes to get there.
Q You had a three-minute transit time from the time you got the call?
A Correct.
Q You don't know what happened prior to that?
A No.
THE COURT: Is that a "no," for the record?
THE WITNESS: No. Sorry. It was a little quiet.
BY MR. WILLEY
Q And when you arrived at 6:09, which was sometime after the wreck, there was still some light visibility, correct?
A Correct.
Q Okay. And as you sit here today, and as you told us in your deposition, you cannot say one way or the other, whether or not, at the time of the wreck, Ms. Hood

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

had her lights on, lights off, running lights on, running lights off, any of that, can you?
A Other than what I pulled up on the video.
Q Right. When you arrived at 6:09.
A Right. I was not paying attention.
Q And at that particular time, she had already been extracted from the vehicle, correct?
A Yes.
Q And she was laying over on the grass being treated?
A Correct.
Q Do you have any information as to whether she changed anything in the vehicle as she was getting out or anything that she did prior to being extracted by the paramedics?
A No.
Q Okay. And in this particular case, there's a stop sign here at the end of Southwood Park Drive, correct?
A Yes.
Q And who would have had that stop sign?
A Mr. Johnson.
Q All right. And if a vehicle is traveling east on 278 and a vehicle was stopped at that stop sign attempting to cross, who would have the right-of-way?

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

A Ms. Hood would.
Q Thank you.

RE-CROSS EXAMINATION

BY MS. SUTTIE:
Q Officer Welch, is it fair to say that Ms. Hood would only have the roadway if her vehicle were visible?
MR. WILLEY: Object. It's a mischaracterization of the law.
THE COURT: You can ask the question.
If you can answer it, answer it.
THE WITNESS: Can you ask it again?
BY MS. SUTTIE
Q Is it fair to say that Mrs. Hood would only have the right-of-way if her vehicle were visible? Or I can rephrase it.
Do you have to give way to oncoming traffic that you cannot see?
A I would say that would make it difficult.
Q Great. You were asked by Mr. Willey whether you can say one way or the other whether she overcorrected or whether she was pushed. Actually, you list it in your accident report that she overcorrected, correct?
A Correct.
MS. SUTTIE: No further questions.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

FURTHER REDIRECT EXAMINATION

BY MR. WILLEY:
Q Just the one portion in the accident report. That was one data point in your investigation, correct?
A Yes.
Q Okay. And in this accident, you actually had pretty good physical evidence, which we don't always have, correct?
A Correct.
Q And there were no skid marks in this case?
A No.
Q Okay. There was no indication from skid marks or otherwise that she made a sharp maneuver to the left, correct?
A Correct.
Q Other than the fact that her vehicle crossed the median, correct?
A Correct.
Q And, again, you did not have the benefit of talking to Mr. Lee, who indicated that once the vehicle entered that median, it got a little airborne, correct?
A Correct.
Q Thank you.
THE COURT: Anything further?

MS. SUTTIE: No, Your Honor.
THE COURT: Okay. Any objection to Sergeant Welch being excused from anyone?
MR. WILLEY: None.
THE COURT: You're excused. Thank you.
All right. Ladies and gentlemen, I think this is a very good time to wrap up for the evening.
Madam Foreperson, I do not want to start as early as 9 o'clock tomorrow morning because, in fact, I was reminded I have a conference call.
THE FOREPERSON: Well, we had decided on ten, if that works for you.
THE COURT: Absolutely. 10 o'clock sounds good.
Ladies and gentlemen, I need to remind you, do not discuss this case. It would be inappropriate to do so. Don't do any independent research. Ladies and gentlemen, don't go look at the scene. If you happen to have to drive by to go home, just drive by it. All right?
I look forward to seeing you all at 10:00 a.m. tomorrow morning. I expect to run to roughly 5 o'clock again tomorrow, ladies and gentlemen. So I suggest get a good night's sleep, have a good breakfast. We look forward to seeing you.
Also, it was real cold in here earlier today.

They warned me as I walked in. They told me it was 64 degrees. But I have the benefit of wearing a robe. So bring a sweater or a jacket or something, ladies and gentlemen. I know we're on the tail end of summer, but I suggest bringing the same thing, so you can shed it if it gets hot in here.
And, again, we look forward to seeing you all at 10:00 a.m tomorrow morning. You all are excused. Thank you.
(Jury exits the courtroom at 5:22 p.m.)
THE COURT: All right. Any exceptions or additions from anyone?
Anything to add? Anything that you need to place on the record?
MR. SMITH: No, Your Honor.
MR. DANIEL: No.
THE COURT: Yes, ma'am.
THE CLERK: There's a juror that says he needs to speak with you because he has made his decision already. He's biased.
THE COURT: Okay. Well, I'll take that up afterwards. So you can pull him out of the jury room and go stick him somewhere separate, if you can. Okay?
THE CLERK: Everybody else has gone now.

THE COURT: Yeah, he can't stay in there right now though. You need to take him out and put him in the hall.
THE CLERK: The other people have gone downstairs.
THE COURT: Oh, they are. Okay. He can sit right there.
Anything else? Tomorrow morning, if they want to start at 10 o'clock, so we will begin and you all can be here by roughly 9:45. Is that acceptable to everybody? Okay?
MR. SMITH: Yes, ma'am.
THE COURT: Anything else from anyone? No? All right.
Well, I'm going to talk to this juror. You're welcome to sit tight while I speak with him. The rest of you, if you want to leave, you're welcome to, whichever way.
So let's bring him out.
(Juror enters the courtroom.)
THE CLERK: This is Mr. Clevinger.
JUROR: Yes, where would you like me to stand?
THE COURT: Right where you are.
JUROR: I don't want to disrespect your court any, but I've come to a biased information, and I've

already made my decision and know which way I would like to go with this, based on the information that's already been provided.
THE COURT: You weren't able to follow my instruction that I told you at the beginning of this case that you weren't to make any decisions until you've heard all the evidence?
JUROR: I can't help that. I can't help that.
THE COURT: You can't help that?
JUROR: No. Being and --
THE COURT: So you can't follow the law?
JUROR: No. Being an intelligent human being, I've just come to my decision based on the information provided.
THE COURT: Okay. Well, with all due respect, that's not the law. So to qualify this being an intelligent human being would be a mischaracterization.
I am going to remove you from the jury of this case, but I am going to have you sit and watch the rest of the trial with us.
JUROR: Yes, ma'am.
THE COURT: So I look forward to seeing you back at 10:00 a.m. I trust that you didn't say any of that to any of the other jurors.

JUROR EXCUSED FROM THE JURY

JUROR: Not at all, ma'am.

THE COURT: All right. Well, we look forward to seeing you back at 10:00 a.m. back in the gallery. Thank you.

JUROR: Thank you so much.

MR. WILLEY: Your Honor, will you instruct him not to talk to any other jurors.

JUROR: No, you have my word. I won't do that.

THE COURT: He knows that. You were right, Mr. Willey.

You can just go out the front door.

JUROR: Thank you, Your Honor.

THE COURT: Anything else?

MR. DANIEL: No, Your Honor. Not from the Defendant.

THE COURT: All right. We'll see you here tomorrow morning.

MR. SMITH: Thank you.

(Whereupon, the Court was in recess for the day.)

JUROR EXCUSED FROM THE JURY

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 3rd day of January, 2018.

/s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 3

September 6, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

Roy T. Willey, IV, Esquire
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PROCEEDINGS

THE COURT: Good morning. What do we want to take up before the jury comes in this morning?

MR. SMITH: Nothing.

THE COURT: Nothing.

MR. DANIEL: Your Honor, one matter.

THE COURT: Yes, sir.

MR. DANIEL: There's an expert witness in the courtroom that's been retained by the Plaintiffs. Unless she's called first, I wouldn't have any objection to her obviously being in the courtroom right now. But if we've got some fact witnesses that are going to testify, I would again renew my motion to sequester witnesses. A retained expert --

MR. WILLEY: Your Honor, sequestration isn't appropriate for experts. They're able to rely on testimony at trial, that's why we brought her here today, so she can hear the first few witnesses.

THE COURT: Okay. Thank you. I would agree with Mr. Willey. She can't rely on what their testimony is, so she can remain.

Anything else this morning?

MR. WILLEY: Now, I would just tell the Court we do have our first four witnesses that are in or around the courthouse, and we are attempting to get

more here so we can move through this expeditiously.

THE COURT: Very good. So who are your first four witnesses for this morning? And how long do you expect each of them to --

MR. WILLEY: We expect to have enough folks here to go through lunchtime.

THE COURT: Okay. Very good. Let's bring the jury in.

(Jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen. Good morning. You all may be seated.

Ms. Hamilton, ma'am, I lost another juror. So you are now part of this jury as well. I'm going to go ahead and place you up here if you would.

Are we missing someone?

THE CLERK: Someone must be up in there.

THE COURT: Come on. And then there were 13. All right.

. Well, again, good morning ladies and gentlemen. At this time we're going to go ahead and continue with the Plaintiff's case.

Mr. Willey, or gentlemen, if you'll call your first witness for this morning.

MR. SMITH: Yes, ma'am. The Plaintiff calls

THE COURT: All right. Come on forward, Ms. Kuck, to be sworn. Right here.

Thereupon,

MARY E. KUCK

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Good morning.

A Good morning.

Q Tell us your name.

A Mary Elizabeth Ira Kuck.

Q Ms. Kuck, thank you for being here today. Where did you drive in from?

A Orangeburg.

Q All right. And are you married?

A Yes, sir.

Q And is that your husband back there?

A Yes, sir.

Q What do y'all do for work?

A I'm a school nurse at Orangeburg Preparatory Schools in Orangeburg. And he is -- he works for The Kuckery, which is a local restaurant and catering company.

Q That's y'all's restaurant?

Q Oh, okay. I'm going to be very brief with you and get you guys out of here very quickly. But what I want to ask you about is the wreck back in November of 2014. Okay?

A Yes, sir.

Q And was one of -- were you in one of the vehicles that was involved in that wreck?

A Yes, sir.

Q We've been referring to this flip chart for a while now. Can you see it from there okay?

A Yes, sir.

Q Is that podium blocking you?

A A little bit.

Q Would you mind just stepping down for just a minute?

THE COURT: You're welcome, Ms. Kuck, to go ahead and step down to better see it.

MR. SMITH: It'll be just a second.

A (Witness complies.)

Q So, Ms. Kuck, this is something that we've drawn up here. Okay?

A Yes, sir.

Q And you weren't here to hear everyone else's explanation, but this is right where the Dunkin' Donuts is and Southwood Park Drive, and where Mr. Johnson's vehicle

was coming out. And Ms. Hood, we've got an "H" for her car. She's coming up this way. There was a collision into oncoming traffic. I've got that "K" there.

Is that the vehicle that you were riding in?

A Yes, sir.

Q All right. You can go ahead and take your seat. Sorry.

A Okay. (Witness complies.)

Q Ms. Kuck, now, what type of vehicle were you in that day?

A A Chevrolet Tahoe.

Q And where were y'all coming from and going to at the time?

A We had left the Hampton Inn, and we were going to our grandson's ballgame.

Q Where was the ballgame?

A At Hilton Head Christian School.

Q And as we described here, you're riding along Highway 278. Did another vehicle cross the center line and hit y'all?

A Yes, sir.

Q All right. Ms. Kuck, I'd like to hand you a photo.

MR. SMITH: May I approach the witness, Your

Honor?

THE COURT: You may.

BY MR. SMITH

Q I know it's hard, but do you recognize that picture?

A Yes, sir.

Q Is that the vehicle that you and your husband were riding in?

A Yes, sir.

Q Does that picture fairly and accurately describe the damage from the wreck?

A Yes, sir.

MR. SMITH: At this time, Your Honor, I'd like to admit as Plaintiff's Exhibit -- I don't know what number though -- Number 6.

THE COURT: Any objection?

MR. DANIEL: No, Your Honor.

THE COURT: Without objection, it's in evidence.

(Whereupon, Plaintiff's Exhibit No(s). 6 marked for identification and received in evidence.)

MR. SMITH: Your Honor, may I publish the picture to the jury?

THE COURT: You may.

(Plaintiff's Exhibit No. 6 published to jury.)

Q Ms. Kuck, were you hurt?

A Yes, sir.

Q Was your husband hurt?

A Yes, sir.

Q I'm sorry that happened to both of you.

What I'd like to ask you about are the lighting conditions that day. And I've asked you these same questions before. Do you recall that?

A Yes, sir.

Q Okay. We're going to go through this very shortly.

Was it just beginning to turn dark?

A Yes, sir.

Q Was it totally dark yet?

A No, sir.

Q Was it enough light outside to see the median?

A Yes, sir.

Q Was it enough light outside that you could see the trees lining the highway?

A Yes, sir.

Q And was it light enough outside that you could see other vehicles on the road?

A Yes, sir.

Q And that would be vehicles with or without

DIRECT EXAMINATION OF MS. KUCK BY SMITH

A Yes, sir.
Q Ms. Kuck, that's all the questions I have for you. Thank you for your time today.
A Thank you.
THE COURT: Sit tight. Go ahead.
MR. DANIEL: I'm sorry. Thank you, Your Honor.
THE COURT: Mr. Daniel, whenever you're ready, sir.
MR. DANIEL: Your Honor, may I approach the witness?
THE COURT: You may.

CROSS EXAMINATION

BY MR. DANIEL:
Q Good morning, Mrs. Kuck. I'm just going to hand you two more while we're -- for efficiency purposes.
A Okay.
Q You were just shown some photos of your Tahoe you were in. Those two photographs that I just handed you, do those look like additional photographs of the same Tahoe that you were riding in on the night, or evening, late afternoon of this accident?
A Yes, sir.
Q Okay.
MR. DANIEL: At this time, I'd like to have these marked as Defendant's 4.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

(Whereupon, Defendant's Exhibit No(s). 4 marked for identification.)

BY MR. DANIEL
Q Now, you were just asked some questions about the lighting outside at the time of this accident. You said it wasn't all the way dark, and I'm paraphrasing.
Was it pretty dark out there?
A It -- it was hard to see because there's no lights on the road.
Q Yes, ma'am. And you -- the Plaintiff's counsel was asking you questions about this diagram.
First of all, it's not -- as far as where the vehicle with this -- with a K on it, you agree this thing is not necessarily drawn to scale, right?
A Not necessarily.
Q The vehicle with a K could have been even farther back down the road; is that right?
A Yes, sir.
Q Could it be --
MR. SMITH: Jack, Jack, Jack, Jack. You're drawing on my exhibit. Draw on your own.
MR. DANIEL: Okay. Your Honor -- it could have been farther back now -- I think I can use it, Your Honor.
THE COURT: Actually he can refer to it, he just

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

can't write on it. That's fine. He can't write on it.
MR. SMITH: We don't mind him using it.
MR. WILLEY: Because we have to use it for our expert.
THE COURT: He just can't write on it. That's fine.
MR. SMITH: Thank you.

BY MR. DANIEL
Q But where this K is, I'll do this so, you know, you can see it and the jury can see it clearly.
Where this K is, that's not necessarily where your Tahoe was at the time it was hit; do you agree?
A Yes, sir.
Q And, ma'am, it could have been farther up back down the road on US 278; is that right?
A Yes, sir.
Q Okay. And trees lined this roadway; is that right?
A I believe so.
Q It's Hilton Head, there's trees -- this is like a frontage road. You know, they don't allow them to have like a lot of commercial businesses right on -- right up on the highway; is that right? Is that your understanding of how Hilton Head works?

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

A Yes, sir.
Q And I can show you some -- some other photographs that have been marked as exhibits.
Looking at Plaintiff's Exhibit 5, now, ma'am, I'm not asking you to identify the intersection, but there's been testimony already yesterday establishing that this is the intersection of where Southwood Park Drive is and US 278.
Now, for the purposes of this series of questions, if you're back farther down the road this way, outside of the picture, over to the left from where the little sticker is, Exhibit 5 on the bottom, the bottom side of this corner, you see all these trees right there, right?
A Yes, sir.
Q And they're pretty tall trees, right?
A Yes, sir.
Q And once the sun starts going down, just common sense, those trees, they're going to obstruct sunlight; do you agree?
A Yes, sir.
MR. SMITH: Objection, Your Honor. Excuse me. Objection, Your Honor. I think without a proper foundation of the positioning of the sun and what this witness' point of view is, this calls for

speculation.

THE COURT: Well, if she can answer, she can answer the question. So, go ahead.

BY MR. DANIEL

Q When this accident happened, had the sun started to go down?

A Yes, sir.

Q It was starting to get dark, wasn't it?

A Yes, sir.

Q The sun was a good well on its way down?

A Yes, sir.

Q And when the sun starts going down, you'd agree that just common sense, what people know is that once it starts going down below trees it's going to make that roadway even darker; is that right?

A Yes, sir.

Q Okay. Do you see any streetlights in this photo?

A No, sir.

Q Okay. Do you remember giving a deposition --

A Yes, sir.

Q -- in this case that was noticed by the Plaintiff's attorney, Mr. Smith, and he had you on video and all that? Do you remember that?

A Yes, sir.

Q And you were there for pretty much the whole day; is that right?

A Yes, sir.

Q Do you remember describing what you saw right before you were hit head on?

A Yes, sir.

Q Okay. Tell the jury what you saw.

A I just saw an object coming towards us very fast, and then it was only a matter of seconds and we were hit.

Q Okay. And you were in that Chevy Tahoe, we got photos there; is that right?

A Yes, sir.

Q Was your husband driving?

A Yes, sir.

Q And what is your husband's name?

A William Kuck.

Q Where were you?

A I was in the passenger seat.

Q And you said an object coming at you fast. Your husband, did he have his headlights on?

A He did.

Q Okay. Could you make out what was coming at you, whether it was a car? SUV?

A I didn't -- I -- no, sir. I did not know what

was coming, but I could see something coming fast.

Q Mrs. Kuck, did you see headlights coming at you in the moments before you were hit?

A No, sir.

Q So that -- then you found out after the fact what ended up hitting you, it was another SUV; was it not?

A Yes, sir.

Q Was it your understanding that SUV was driven by the Plaintiff in this case, Mrs. Hood?

A Yes, sir.

Q You'd agree with me those photos there, there's some severe damage to your vehicle?

A Yes, sir.

Q Just based on what you know, common sense as a driver and the impact you experienced, you believe that Mrs. Hood was traveling at a high rate of speed?

A Yes, sir.

Q And you never saw headlights?

A No, sir.

Q In your deposition, and I didn't ask these questions, Plaintiff's counsel did, it was on video, but I think he tried to go through the timing --

MR. SMITH: Your Honor, I object. I don't know what exactly he's doing with the deposition here. I

impeachment in some way, but not simply to review the questions that I asked.

THE COURT: I agree. You have to ask her a question. And once you've asked her the question, if it's something different than she answered in the deposition, then you impeach her with it.

MR. DANIEL: Yes, ma'am.

BY MR. DANIEL

Q Mrs. Kuck, you saw something coming at you, and you said it was moving fast?

A Yes, sir.

MR. SMITH: Your Honor, he just did it again. He just said what she said in the deposition, despite the instruction.

THE COURT: Okay. He can ask the question, but you can't say, "in your deposition." You just need to ask the question.

MR. SMITH: I didn't say it.

THE COURT: Okay. Well, go ahead.

BY MR. DANIEL

Q I'll just put it this way: What was coming, was it coming slow?

A No, sir.

Q And you didn't see headlights, we've established

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

A That's correct.
Q Okay. Now, as far as the time frame, at some point you first noticed something coming down the roadway at you; is that correct?
A Yes, sir.
Q How long was it in your view before it hit?
A A few seconds.
Q Do you think it was longer than one second?
A Yes, sir.
Q Did -- where was the object coming from? If you were -- I'm not going to draw on this. But if you were in the vehicle labeled K, you're farther back down the road or somewhere there, just for demonstrative purposes, this vehicle that is identified with a K, in which direction was the object coming from that struck you?
A It came this way (indicating.)
Q Will you come down here and just show the jury?
A (Witness complies.)
Q You can just point, don't mark on it.
A Okay. It was coming down this way.
Q So something was coming from the direction where this vehicle labeled with an H is?
A Yes, sir.
Q And then struck you head on --
A Right.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

Q -- on the other side of traffic?
A Yes.
Q Okay. Y'all were not stopped; is that right?
A No, sir.
Q You were driving somewhere, and did -- were you looking -- was your husband looking at GPS or anything like that?
A No, sir. I was -- I was navigating. I mean, I was telling him where to go.
Q We just looked at this basic diagram. You're in the passenger seat.
A Right.
Q What we now know, based on what you saw that evening, late afternoon, as the sun's going down, is an object coming at you from what would be your left, headed toward you at an angle?
A Right.
Q And striking your vehicle head on; is that right?
A Yes. Yes, sir.
Q And you believe that you saw that object for more than one second?
A Yes, sir.
Q Was it more than two seconds?
A It was probably around three seconds.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

Q So -- so one, 1,000; two, 1,000; three, 1,000 --
A Boom.
Q Did you have time to say anything before you were hit?
A No, sir.
Q Do you think your husband had time to avoid this accident?
A No, sir.
Q As far as what happened with vehicles farther up the road, before this other SUV came and struck yours, did you see anything take place?
A No, sir.
Q Antoine Johnson is the Defendant named in this case, sitting over at the table next to Ms. Suttle. Do you know him?
A No, sir.
Q Okay. Never talked to him? Never met him before?
A No, sir.
Q Okay. I'll represent to you that he was in a vehicle that night, and there was another impact between his vehicle and Mrs. Hood's vehicle. Did you see that take place?
A No, sir.
Q Did you ever talk with me before that deposition

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

that's been, I don't know, months ago, maybe a year? It's been a while.
A No, sir.
MR. DANIEL: That's all I have.
MR. SMITH: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Ms. Kuck, you didn't speak to me either before that deposition, did you?
A No, sir.
Q I want to go back to the basics. Mr. Daniel just talked about what we all know, right? We all know about the trees and the sun.
Ms. Kuck, is it true that the sun rises in the east and sets in the west?
A I don't know.
Q If we assume that's true, the sun rises in the east and sets in the west -- now, y'all were going west on Highway 278, right?
A Yes, sir.
Q And the road, Highway 278, runs east to west; right?
A Yes, sir.
Q So if the sun sets in the west, the sun wasn't behind all these trees, the sun was right in front of you,

wasn't it? As it was setting.

MR. DANIEL: Objection, Your Honor.

THE WITNESS: I don't recall.

MR. DANIEL: What's the objection?

THE COURT: Okay. Let's just ask the question. That's fine.

MR. SMITH: I withdraw it.

BY MR. SMITH

Q Now, Ms. Kuck, in this case, your testimony, no headlights, right?

A Yes, sir.

Q One of the issues that we have, and the testimony that we will receive, and the argument so far is Mr. Johnson couldn't see Ms. Hood's vehicle because she didn't have headlights on. Is that what you understand this to be about?

A You said Ms. Kuck's vehicle?

Q I'm sorry, Ms. Hood. Right?

One of the issues is Mr. Johnson says he couldn't see her because her headlights weren't on. Do you understand that?

A Yes, sir.

Q And that goes back to my questions that I asked you in the very beginning. There was enough light outside for you to see vehicles, vehicles with or without

headlights? Is that your testimony?

A Yes, sir.

Q And is that the truth?

A Yes, sir.

Q And no matter what Mr. Daniel comes up here and says to you, are you going to change that testimony for him in any way?

A No, sir.

MR. SMITH: Okay. Thank you.

THE COURT: Anything further?

MR. DANIEL: Yeah. I just want --

THE COURT: Ms. Kuck, you need to speak up a little bit. Okay?

THE WITNESS: Okay.

RE-CROSS EXAMINATION

BY MR. DANIEL:

Q I want to put a little finer point on that though. I'm not asking you to change your testimony, but what you did testify to is, you saw an object coming at you. You couldn't even -- it was dark enough out where you couldn't tell whether it was a truck or car; is that right?

A True.

Q It was dark enough out where you couldn't make details of what was coming; is that right?

A Yes, sir. Yes, sir.

Q And you agree with me that as things get farther away in the dark, or in dark conditions, it's hard to see them?

A Yes, sir.

Q And you're not here to testify to what Antoine Johnson could or couldn't see at the time of this accident; is that right?

A Yes, sir.

Q Would you agree with me that Exhibit 5 that's been entered by the Plaintiffs, it was a heck of lot darker out by the time of this accident than what Exhibit 5 depicts?

A Yes, sir.

Q Okay. Did you see running lights or parking lights lit up, or anything lit up on the object that hit your vehicle?

A No, sir.

MR. DANIEL: Thank you.

THE COURT: Anything further of this witness?

MR. SMITH: Just one question, Your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SMITH:

Q I'm not going to ask you what Mr. Johnson could

see. But you, as one of the people there that day, one of the vehicles involved, not far away from all this that's happening, you, yourself, you could see other vehicles with or without headlights on. Right?

A I -- I could not.

Q Okay. I'm sorry. You could see other -- there was enough light outside that you, not Mr. Johnson I'm talking about, but there was enough light outside that you could see vehicles with or without headlights?

A No, sir, I could not.

Q Are you confused by the question? I've asked you that, it seems, three or four times. Am I confusing you with the question?

THE COURT: You need to rephrase it. You need to rephrase it.

THE WITNESS: No.

BY MR. SMITH

Q Let me just ask the original question I asked you from before.

Was it light enough outside that you could see other vehicles on the road?

A No, sir.

Q You don't remember testifying under direct with me just now that there was enough light outside that you could see other vehicles on the road?

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

A I guess I didn't understand what you was asking.
Q Did you understand it when I asked it in your deposition as well?
A (No response.)
Q I asked you this question before, didn't I?
A Yes, sir.
Q In your deposition, the exact same question, word for word; did I not?
A Yes, sir.
Q And you told me in your deposition, when you swore to tell the truth, you told me that there was enough light outside that you could see other vehicles with or without headlights. That was your sworn testimony; was it not?
A Yes, sir.
Q And again, today, you took the same oath, and your sworn testimony was, "it was just beginning to turn dark, there was enough light outside you could see the median. There was enough light outside you could see the trees lining the highway. And there was enough light outside you could see other vehicles on the road with or without headlights."
That was your sworn testimony when you got up on the stand, right?
A Yes, sir.

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

Q And then you told me you were not going to change that testimony, no matter what Mr. Daniel had asked; you remember that?
A Yes, sir.
Q But now you're changing that testimony?
A I was --
MR. DANIEL: Objection, Your Honor, argumentative.
THE COURT: Okay. Agreed. Don't argue with her. Just ask the question.

BY MR. SMITH

Q Okay. Were you confused by my --
A Yes, sir.
Q -- last question?
A Yes, sir.
Q Do you stand by your original response?
A Yes, sir.
MR. SMITH: I'm sorry. Thank you.
MR. DANIEL: Very briefly, Your Honor. I just want to put a finer point on this.

FURTHER RE-CROSS EXAMINATION

BY MR. DANIEL:

Q You were confused. You were asked a general question, "Could you see vehicles out there?"
A Right.

FURTHER RECROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

Q Now, that question was not prefaced with vehicles 10 feet from you, 15 feet from you, 20 or 30 feet from you, 100 yards from you. That question was not prefaced in that manner, was it?
A No, sir.
Q And you could see the trees lining the roadway. He didn't ask you, you know, was it dark where those trees -- was it dark when you looked at the trees, or was the sun shining on the trees? He didn't ask you that question, did he?
A No, sir.
Q And was the sun shining on those trees at that time of day?
A No, sir.
Q Was the sun setting at that time of day?
A It was.
Q Was the sun in your husband's face, or in your face, as y'all were headed off of Hilton Head Island towards Beaufort at the time of this accident?
A No, sir.
Q So you would agree that a vehicle on this road that's getting dark, or pretty well dark, if it's off in the distance from you might be pretty hard to see; is that right? If it didn't have its headlights on.

FURTHER RECROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

MR. DANIEL: Thank you.
THE COURT: Anything further?
MR. SMITH: No, ma'am.
THE COURT: Okay. You may step down.
THE WITNESS: Thank you.
THE COURT: Call your next witness.
MR. SMITH: Plaintiff calls Antoine Johnson. Your Honor, may this witness be excused?
THE COURT: He may.

Thereupon,

ANTOINE JOHNSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH

Q Mr. Johnson, good morning.
A Good morning.
Q How are you doing today?
A Pretty good.
Q I want to start out with some basics with you. Okay?
Do you believe all drivers must pay attention to the road to prevent injury or death to other people?

MR. DANIEL: Objection, Your Honor.
THE COURT: Basis?
MR. DANIEL: May we approach?
THE COURT: You may.
(Off-the-record discussion held.)
BY MR. SMITH:
Q Mr. Johnson, do you believe all drivers must pay attention to the road to prevent injury or death to other people using the road?
A Yes, sir.
Q Could you speak up for us, please?
A Yes, sir.
Q Do you believe all drivers must look before crossing a busy highway to prevent injury or death to other people using the road?
A Yes, sir.
Q These are the rules of the road; are they not?
A Yes.
Q Rules everyone must follow?
A Yes.
Q And, Mr. Johnson, if these rules aren't enforced, they don't mean anything, do they?
A Yes.
Q Now, the first thing we need to do is, we need to establish who hit who. Okay?

THE COURT: Is that a question?
MR. DANIEL: Well, just telling --
THE COURT: Okay. You need to ask a question. Okay? I know he's an adverse witness, I know you can lead him. But, again, ask him a question.
MR. SMITH: Yes, ma'am.
BY MR. SMITH
Q Mr. Johnson, who hit who? Did you hit Ms. Hood, or did she hit your vehicle?
A I hit Ms. Hood.
Q All right. Now, that's not what you told the police officer, is it?
A I don't recall.
Q If the police officer testified you told her at the scene that Ms. Hood hit you, would you have any reason to disagree with that?
A She can say anything, but I don't recall what I told her at the time.
Q Okay. Don't know either way?
A I don't recall.
Q Okay. And the next thing that happened after the collision was Ms. Hood's car was sent across the median into oncoming traffic, true?
A Yes.
MR. DANIEL: Objection, Your Honor. Facts not

in evidence.
THE COURT: And, again, I haven't heard it. So I don't know.
MR. SMITH: Well, I'm asking him. After he hit Ms. Hood, her office (SIC) went across the median into oncoming traffic.
MR. DANIEL: He said "sent."
THE COURT: Okay. You can say "did." But go ahead, ask him a question.
BY MR. SMITH
Q After you hit Ms. Hood's vehicle, did her car go across into oncoming traffic?
A Yes.
Q Just like what's pictured here?
A Yes.
Q I know this isn't to scale, but does this generally represent what happened?
A Yes, sir.
Q I'm sorry?
A Yes.
Q Okay. And what caused Ms. Hood's car to go into oncoming traffic? Was it because you hit her?
A I can't be the one to call that.
Q When I took your deposition, you took the same

A I do.
Q "And what do you think caused her direction change to have her careen across the highway?"
Answer: "I guess us colliding."
Does that sound correct?
A If that's what the deposition said, then I guess that's my statement.
Q Okay. It had nothing to do with overcorrecting, did it?
A I don't know.
Q It was a bad wreck, a head-on collision?
A Yes.
Q From what you saw, someone could have died, true?
MR. DANIEL: Objection, Your Honor, speculation.
THE COURT: Well, it's irrelevant as well.
So move on. It's not an appropriate question.
BY MR. SMITH:
Q Did you see smoke?
A I don't recall.
Q But you did not immediately get out of your car, did you?
A I don't believe so.
Q But you were able to get out of your car,

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A Yeah.
Q But you chose not to.
A No.
Q You chose not to render aid or go check on the people involved?
MR. DANIEL: Objection, Your Honor, relevance.
MR. SMITH: Your Honor, there's going to be a jury charge on this.
THE COURT: Well, just go ahead and if he can answer the question, he can answer the question.
BY MR. SMITH:
Q You chose not to go check on the people or render aid after this happened, true?
A I called help for myself.
Q For yourself. But you did not get out of your vehicle to go check on the people?
A No.
Q And you called help for yourself, but you did not call 911? You did not call an ambulance, did you?
A No.
Q You sat in the car?
A Yeah.
Q And you got on the phone, right?
A I did.
Q And when you finally got out of the car, the

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reason you got out of the car was to check the damage to your own vehicle; is that true?
A I don't recall.
(Pause.)
BY MR. SMITH:
Q Mr. Johnson, is this a copy of the deposition transcript from when you testified previously?
A Yes.
Q Okay. Could you turn to Page 126 for me, sir? Are you there?
A Almost.
Q Okay.
A All right.
Q Can you see the little numbers down on the left side of the page?
A Yes, sir.
Q Those are line numbers. Okay?
So, I'd like -- I'm going to ask you about Page 126, lines 20 to 24. Okay? I'm going to ask the question and you read the answer.
"Where was the first place you -- what was the first reason you got out of your vehicle; do you remember?"
And what was your answer, sir?
A "To check the damage."

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Q Keep going.
A "To check the damage to my car."
Q To check the damage to your car. Does that refresh your recollection as to why you finally got out of your vehicle?
A Yeah.
Q Who had the stop sign in front of them, was it you or Ms. Hood?
A I did.
Q And you can put that down. I'm sorry.
Who had the responsibility to yield to traffic, would that have been you or Ms. Hood?
A Me.
Q Now, just before the wreck, you were at Dunkin' Donuts, right?
A Yes.
Q Okay. And you were dropping off your cousin, Scooby.
A Yeah.
Q Because somebody else was coming to pick him up?
A Yeah.
Q I'm sorry. Can you say that again?
A Yes.
Q And your plan, if we refer to this chart over here, your plan was, you were going to turn left and go

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west on Highway 278.
A Yes.
Q Right? But before you were going to make this left onto that road, was your intention to get to the median, stop, and then proceed the rest of the way through?
A Yes.
MR. DANIEL: I just want to be able to see.
THE COURT: Pardon?
MR. DANIEL: I just want to be able to see.
THE COURT: That's fine.
BY MR. SMITH
Q Now, when you reached the stop sign -- when you looked left, that would have been your point of view; would it not?
A Yes.
Q Nothing obstructing your vision at this intersection, right?
A No.
Q And left, this is where Ms. Hood was coming from, right?
A Yes.
Q Now, you've been to this intersection before?
A Yes.
Q And you know it's a busy road.

A Yes.
Q And you knew you needed to look very carefully before crossing?
A Yes.
Q Yes?
A Yes.
Q Not just glance, but really look, right?
A Right.
MR. DANIEL: Objection, Your Honor.
THE COURT: Basis?
MR. DANIEL: He's asked and answered the question.
THE COURT: Okay. Overruled. Go ahead.
BY MR. SMITH:
Q And at the time that this happened, your testimony is it wasn't totally dark, there was still a little bit of light out, right?
A Right.
Q But you didn't see anyone coming?
A I waited for one car to pass me, but then I looked left again.
Q Yeah. But after that car had passed you, I think you said it was a Hyundai or something, right?
A All I know, it was a silver car.
Q Okay. After the silver car passed and you

looked left, you didn't see anyone?
A Nothing.
Q You didn't see a car with running lights in the left lane?
A Not at all.
Q Coming down this inside lane to the median?
A Not at all.
Q And you didn't see a car with Xenon headlights about ten car lengths back, with full headlights on, coming from the outside lane, did you?
A No.
Q You didn't see either one of them.
A They probably was at that stop light, I don't know.
Q And when you hit the gas and decided to cross Highway 278, you had no idea two vehicles were approaching from your left, did you?
A I didn't see two vehicles.
Q You had no idea who was in those cars.
A Not at all.
Q You didn't know if it was a man, woman, mother, daughter, grandmother? Had no idea who was coming down the road?
A I didn't see no car.
Q But as soon as you pulled out, she was right

there?
A Yeah.
Q Never sounded your horn?
A No.
Q You had no time to react whatsoever?
A No.
Q Now, you started from a complete stop; did you not?
A I did.
Q Okay. And you were accelerating toward the median?
A I was.
Q All right. Now, I just want to make absolutely certain here, okay, to this point. This is not a situation where you saw Ms. Hood but misjudged how much time you had and ended up hitting her?
A Rephrase the question.
Q This is not the situation where you saw her, misjudged how much distance you had, or how much time you had to get in front, and ended up being wrong about that. You just never saw her in the first place.
A I never saw her at all.
Q Okay. And when you decided to hit the gas and cross the road, you can't say how close Ms. Hood was

A No.
Q Or Dustin Lee, you don't know how close he was either?
MR. DANIEL: Asked and answered, Judge.
MR. SMITH: I'll withdraw it, Your Honor.
BY MR. SMITH:
Q So you don't know what lights Ms. Hood had on. You're just assuming they were off because you say, if she had headlights on, you think you would have seen her; is that true?
MR. DANIEL: Objection, Your Honor, mischaracterization. He didn't testify to that.
THE COURT: Okay. You need to rephrase the question.
BY MR. SMITH:
Q Mr. Johnson, are you assuming that Ms. Hood's headlights were off?
A I didn't see no headlights.
Q But you didn't see her car, period, right?
A If I would have seen her headlights, I would have seen her car.
Q But my question is: You didn't see her car, so you don't know if her headlights were on or off. You're just assuming they were off because you -- that's why you

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A I didn't see no headlights, so I didn't see no car.
Q Do you remember telling the police officer that you saw her car and that she did not have headlights on?
A I don't recall.
Q You might have said that. You don't recall either way.
A I don't recall.
Q Mr. Johnson, do you have a cell phone?
A I do.
Q Is the phone number (843)338-4115?
A It was.
Q Sprint?
A It was.
Q Is that a smart phone?
A It is.
Q Does it have a keyboard for texting?
A Yeah.
Q Are you on that phone a lot?
A Sort of, yeah.
Q Sort of?
A Yeah.
Q Mostly texting?
A I do a little of everything.
Q And you had your phone on you at the time of the

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wreck, didn't you?
A My phone's always on.
Q No, I mean it was -- it was with you?
A Yeah.
Q And you had it in your car?
A It was.
Q Now, at the time of the wreck, were you feeling alert?
A I was very alert.
Q Very alert?
A Yes.
Q You were not tired or drowsy?
A Not at all.
Q Do you remember how late you were up the night before?
A Probably until about -- I can't even say.
Q Do you recall getting off the phone the night before at 12:17 a.m.?
A Don't recall.
Q A three-hour call?
A Don't recall.
MR. SMITH: Your Honor, may I approach?
THE COURT: You may.
MR. DANIEL: May I approach, Your Honor?
THE COURT: Sure.

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MR. DANIEL: At least look at what he's handing the witness.
MR. SMITH: Oh, I'm sorry. Can you give Jack a copy?
MR. WILLEY: You have all of the copies. He's seen it before.
BY MR. SMITH
Q Mr. Johnson, is your phone number (843)338-4115?
A That was the number I had at the time.
Q Okay. And if we start here in this first entry, on 11-6-2014, so that would be November the 6th, 2014, the night before the wreck, right?
A Uh-huh.
Q Is that a "yes"?
A Yes.
Q We see a call that starts -- a voice call that starts at 2114. That 's 9:14, right?
A Yes.
Q And that's a three-hour call that ends at 0017. That's at 12:17 a.m., just after midnight.
A Yeah.
Q All right. So if you hung up the phone at 12:17, just after midnight the day before the wreck, does that refresh your recollection as to how late you were up

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A It doesn't show that I hung up the phone though. The caller on the other end could have hung up the phone. I could have been sleeping.
Q So you're saying that this entry for an inbound call -- right?
A Yeah. I answered the call, but that doesn't mean I ended the call though.
Q Okay. So you're saying what may have happened was, you didn't talk to this person, you just answered the phone and you sat the phone down for three hours and didn't talk to them --
A I could have had a phone conversation and fell asleep on the phone. I'm known for doing that.
Q Okay. What do you think's more likely? That you had a conversation until just after midnight, or that you fell asleep during the phone call?
A I don't know what happened. I can't tell you.
Q Well, let me ask you this: Do you remember who is 473-5686? Who were you talking to?
A Don't recall.
Q You don't know who that number is?
A I don't recall. I haven't had that number in three years.
Q No, no, no. Your number -- I'm sorry.
A That's the caller's number

Q Do you remember calling --

A That's the caller number. I didn't have this phone in three years, so I don't remember whose number that is.

Q Okay. But, what you want the jury to believe is that this voice call that came in from this number that lasted three hours, that you don't think you were on the phone that late, you went to bed earlier. Is that what you're saying?

MR. DANIEL: Objection, mischaracterization.

BY MR. SMITH:

Q Well, what are you saying?

A I could have been on the phone, but I don't know how long I was on the phone. I don't know if I ended the call or not.

Q Well, if you were on the phone, as these records suggest through just after midnight -- I mean, do you stay up after midnight? Is that unusual for you?

A Sometimes, depending on the time of the week.

Q Okay. Now, Mr. Johnson, do you recall what time you woke up that morning?

A I usually get up for work about 6:00.

Q Okay. You see here, the next entry, 11-7, okay, it's the day of the wreck, we've got an outbound call. So that is -- I'm sorry, an outbound text.

Do you see that next entry?

A Yep.

Q So that is your sending a text. And what time of the morning are you sending your first text of the day?

A 4:44.

Q 4:44 in the morning?

A Yeah.

Q So, about four and a half hours between the last call and the first text in the morning. Would you agree with that?

A Yes.

Q Mr. Johnson, is it fair to say that the last thing that you did at night was hang up the phone, and the very first thing you did in the morning was grab your phone?

A I can't say that far that the first thing I did in the morning was grab my phone.

THE COURT: Mr. Johnson, you need to sit up and get the microphone to your mouth, sir, so we can hear you.

BY MR. SMITH:

Q Can you tell us?

A I can't say that the last thing I did was hang up the phone, but I know the first thing I did was pick up the phone. That's usually what I do in the morning.

Q Is that normal for you? The second you wake up, you reach for that phone and you either make a call or send a text?

A After I do what I got to do, yeah, I usually go to my phone.

Q Okay. And you went to work that day sometime between 5:00 and 7:00 a.m., true?

A I usually get to work about 6:45.

Q Sometime between 5:00 and 7:00 a.m.?

A About 6:45.

Q Okay. Between 7:30 and 9:30, did you use your phone 26 times?

A I guess.

Q Okay. I mean, we can go through them and count them up, if you like.

So between 7:30 a.m. and 9:30 a.m. --

MR. DANIEL: Your Honor, I'm going to object to --

THE COURT: What's your objection?

MR. DANIEL: Can we approach unless you want me to make the objection?

THE COURT: Sure.

(Off-the-record discussion held.)

BY MR. SMITH:

Q So Mr. Johnson -- I'm sorry. Would you come

down here, please? I don't think you're going to be able to see it from up there.

A (Witness complies.)

Q So the question was: Between 7:30 in the morning to 9:30 in the morning, I count 26 phone activities, one of those being a voice call.

Does that seem right to you?

A I guess.

Q I'm sorry. Can you -- you got to speak up.

A I guess.

Q Okay. The court reporter is right behind you as well, and she's going to need to hear you. Okay?

And then from 10:25 a.m. through 11:56 a.m., I count another 35 times. You're welcome to count them if you like.

Does that seem accurate to you?

A Okay.

Q Okay. And now from 11:57 a.m. through 3:50 p.m., we're getting into military time here, 350, we got another 25 times.

Does that seem correct?

A Correct.

Q And you got off work at 4:00 that day; is that true?

A About 2:30, 3:30.

Q Okay. So from 7:00 a.m. to 4:00 p.m -- well, from 7:30 a.m. to 4:00 p.m., we've got 26, 35, and 25. That's 93 times, 93 uses of the phone up to this point; is that right?

A Yes.

Q And this is while you're at work, right? Yes?

A Right.

Q Okay. And then you went home.

A No, I didn't.

Q Okay. You went to go cut Scooby's hair?

A Yeah.

Q And from 4:02 through 4:26 -- I'm sorry. From 4:02 to 4:26, another 29 times.

Does that seem correct?

A Correct.

Q And then you got back in the car to take Scooby up to Dunkin' Donuts a little after 4:30 -- well, after 4:30; is that fair to say?

A I don't really recall what time we left the house.

Q Okay. So we know the wreck happened somewhere around 6 o'clock at night, right?

A Yeah.

Q Okay. And it happened at just outside the Dunkin' Donuts, right?

A Yes.

Q Okay. So is it fair to say -- you don't live an hour and a half away from Dunkin' Donuts, do you?

A About an hour -- about 45 minutes.

Q About 45 minutes. So you would have gone up to -- and you didn't get anything to eat at Dunkin' Donuts, right?

A No.

Q You were just dropping him off, right?

A Yes.

Q So sometime after 4:30 is when you went to Dunkin' Donuts to go drop Scooby off?

A Yeah, sometime after that.

Q And then as we start getting a little closer in time here we see voice calls at 4:42, 4:50, and 5:43; you see that?

A That's a text message.

Q Okay. Text message there.

And these two text messages here, they're just 16 seconds apart at 5:43 p.m.; do you see that? It's got the seconds on here, 5:43:12 and 5:43:28.

A Okay.

Q Did you say "okay"?

A Right.

Q I'm not trying to be rude, I'm just making sure

the court reporter can hear you. Okay?

And at this point, from the time you went to work, right -- from the time you went to work, you had used your phone 93 plus 29 plus 2 -- that's 124 times.

MR. DANIEL: Objection, Your Honor. This document doesn't show that he's using the phone every time. A lot of it --

THE COURT: That's a mischaracterization.

MR. DANIEL: Yes, ma'am. Some of these are inbound texts. I'll deal with it with a question, but objection.

THE COURT: Okay.

BY MR. SMITH:

Q Mr. Johnson, is it true that generally when you receive a text message, you look at it?

A Not always.

Q Not always? If you used your phone -- well, if your phone log shows phone activity 124 times from the time you went to work at 5:45, your testimony is "sometimes you look at them, sometimes you don't."

A I mean, I look at them, but not always right away.

Q Okay. And then at 5:57, you receive a text message; do you not?

A I do.

Q And you understand that we contend this is when the wreck happened, at 5:57 or earlier?

A I can't recall.

Q You've been sitting here through the trial. You don't know that that's --

A I don't know the actual time of the wreck.

Q All right. Mr. Johnson, can you see how some people might believe that explains why you didn't see the vehicles coming down the road, because you were looking at this text that came in in the exact minute of the wreck?

MR. DANIEL: Objection, speculation.

THE WITNESS: There's no guarantee I opened the text message though.

BY MR. SMITH

Q I'm sorry?

A There's no guarantee I opened the text message.

Q No, there's no guarantee, but my question is: Can you see how people might think that explains why you didn't see Ms. Hood coming down the road to your left, and why you didn't see Dustin Lee with his Xenon headlights ten car lengths behind?

MR. DANIEL: Your Honor, objection. He's asking the witness to speculate.

THE COURT: Agreed. It's a speculative question.

BY MR. SMITH:

Q Mr. Johnson, do you expect the jury to believe that you were not looking at your phone as you crossed Highway 278 at 5:57 p.m.?

A Say that again?

Q Do you expect the jury to believe that you were not looking at your phone when you crossed the highway at 5:57 p.m.?

A I can't think for the jury.

Q Are you asking them to believe that? You understand that's one of the things that we're claiming, right?

A I don't know.

Q I want to get -- you know, I want to be straight with you and tell -- and give you an opportunity to answer this question because this is what we're claiming. All right?

A Okay.

Q And so my question to you is: Is that what you want the jury to believe? Do you want the jury to believe you were not looking at this text at 5:57, when you crossed Highway 278?

A I wasn't.

Q You were not?

A I wasn't.

Q Okay. Then what were you looking at?

A The road.

Q Can you offer any other reason why you didn't see Ms. Hood coming down the road with her running lights on, and Mr. Dustin Lee ten car lengths behind with his Xenon lights on?

A If I would have seen her with her running lights on, I would have stayed at the stop sign.

Q Mr. Johnson, is it possible that maybe you just didn't look as close as you needed to?

A Not at all, because I looked twice.

THE COURT: Okay. If you're done with whatever your exhibit is, come take a seat, sir.

MR. SMITH: I'm sorry.

THE WITNESS: (Complies.)

BY MR. SMITH:

Q Mr. Johnson, is it possible you just didn't look as close as you needed to? Maybe it was more of a glance?

A I looked twice. There was a silver car that passed me before I pulled out, and I didn't see no cars passing after that.

Q So you looked two times then?

A Yes.

Q And neither one of those times you saw either one, Ms. Hood, or the Xenon headlight, Dustin Lee?

A I seen a silver car pass me first.

MR. SMITH: May I have just a moment, Your Honor?

THE COURT: You may.

(Pause.)

BY MR. SMITH:

Q Mr. Johnson, I want to ask you one more thing about the last slide. You can stay where you are. I'll come to you.

We talked earlier about after the wreck happened and you stayed in your car and you made a phone call. Do you remember that?

A Yes.

Q Okay. You made that phone call -- this is the next entry we've got at 5:59:04.

A Correct.

Q Right? So -- and who was it that you called? Who's 837-1126?

A My mama.

Q Okay. But you didn't stop there, did you?

A No.

Q You sat in your car and continued to make phone calls, send text messages through 6:48 p.m.?

A After the time I was in the hospital.

5:57, how long did it take you to get to the hospital or leave the scene? How would -- they didn't come to you first, did they?

A I don't recall.

Q All right. They treated Ms. Hood and the Kucks, I imagine, before they came to you?

A Correct.

Q All right. So how quickly do you think you left the scene? Because from 5:59 -- 25 minutes? You think it took them 25 minutes to talk to you and get you away? Or do you think that it was 48 minutes? Or somewhere in between?

MR. DANIEL: Your Honor, speculation.

MR. SMITH: I'm just asking.

THE COURT: Ask him "do you know?"

BY MR. SMITH

Q Do you know?

A I don't recall.

Q Okay. But you would agree with me, these records show that 5:59 through 6:48, one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 -- 27.

So in the 48 minutes after the wreck, your phone records show 27 activities. Does that sound correct?

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A Uh-huh. (Indicating affirmatively.)
Q You sat in your car and used your phone a lot, right?
A I wasn't on my phone while I was in the car.
Q Okay. Were you in your car at 17 -- at 5:59, when you called your mom?
A I made two calls while I was in the car, and I didn't have my phone until I got back in the hospital. And that was to my mom and my brother.
Q Okay. You called at 5:59. You made another call at 6 o'clock, another call at 6:03. I'm sorry, a text at 6:03, another text at 6:03, another text at 6:03. None of these were in your car?
A That was to my brother. He lives -- he was living across the street, so I was telling him what was going on.
Q I know, but what I'm saying is, you sat in your car and started talking on the phone and sending text messages.
MR. DANIEL: Objection, leading.
THE COURT: He can. He's an adverse witness. He can. Go ahead.
BY MR. SMITH:
Q Mr. Johnson, you sat in your car after the wreck, and got on the phone and start sending text

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messages. Right?
A You can say that, I guess.
Q Well, I don't want to say that, I'm not testifying. If you know, you know. The records are the records.
A You can say that.
Q Well, okay. Well, these are your records; are they not?
A They are.
Q I sent these to your lawyer well in advance of today, right? And he agrees these are genuine accurate records of your phone.
A Correct.
Q Okay. And you don't argue with the accuracy of those records, do you?
A Not at all.
Q All right.
MR. SMITH: And, Your Honor, I'd like to offer these exhibits as 7 through 12.
MR. DANIEL: No objection.
THE COURT: Without objection.
(Whereupon, Plaintiff's Exhibit No(s). 7-12 marked for identification and received in evidence.)
MR. SMITH: I have no further questions, Your Honor.

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THE COURT: Okay. Anything, Mr. Daniel?
MR. SMITH: Go ahead. I'm sorry.

CROSS EXAMINATION

BY MR. DANIEL:
Q Antoina, I'm 40 years old. How are you -- how old are you?
A Twenty-three.
Q I text some, but, you've grown up with it, right?
A Yes.
Q They haven't shown you a single substantive text in this series of texts --
MR. SMITH: Objection, leading.
MR. DANIEL: Your Honor, he called the witness.
THE COURT: He's your witness. Don't lead him.
BY MR. DANIEL:
Q Okay. Did they show you any texts, actual texts that were sent back and forth in this call log that we're looking at?
A No.
Q Who's your cell phone carrier?
A Sprint.
Q Looking at Exhibit 7, the one that Mr. Smith was asking you questions about, where this thing's highlighted right at 175743, it says, that's a -- is that a text?

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175743? You see call type?
A Correct.
Q What does it say?
A A text to me, too.
Q And then what does it say over here on this side?
A Inbound.
Q So that's someone sending you a text?
A Correct.
Q Do you see -- you're not sending a text back to that number?
MR. SMITH: Your Honor, object, leading.
THE COURT: Basis -- to some extent, just ask the question.
BY MR. DANIEL:
Q When's the next time on this record we looked at where you send an outbound text?
A 1803.
Q 1803 is 6:03; is that right?
A Correct.
Q Had you called your mom before that?
A Correct.
Q Because you had just gotten in an accident?
A Correct.
Q You wanted to let -- did you want to let her

know?
A Yeah.
Q And then who did you text?
A My brother.
Q Can you text fast?
A Pretty so.
Q Are your messages brief?
A Yeah.
Q When you're working during the course of the day, is there downtime?
A All the time.
Q How old were you at the time?
A Nineteen, I believe.
Q So sometimes you stay up till midnight?
A Depending on the time of the day.
Q That text that was at -- that they were asking you about at 4-something in the morning, do you know if that was something that -- do you ever wake up in the middle of the night and see something and send a text and go back to sleep?
A Yes. Sometime I stay up.
Q Do you know that morning, and this happened a long time ago, do you know that morning, at 4:40, whatever the time was, whether you sent that text and then you started doing things that morning, or whether you rolled

back over and went back to sleep?
A I don't recall.
Q Do you keep your phone right there by your bedside?
A Yeah.
Q Is it possible you just looked at something and went back to sleep?
MR. SMITH: Objection, leading.
THE COURT: It's not a leading question. He said, "Is it possible".
THE WITNESS: Say again.
BY MR. DANIEL
Q Is it possible that you looked at something, sent a text, and then rolled over and went back to sleep?
A It could happen.
Q Have you ever done that before?
A Yes.
Q You would agree that just -- he's asking you, you've said, you know, the jury, you can't speak for the jury. That's what you just testified to, right?
A Yes.
Q But I want to ask you, and I want you to be very clear because it's important. Were you reading a text when you pulled out to make that left-hand turn?
A No.

Q How many times did you check traffic before you pulled out to make that left-hand turn?
A Twice.
Q You heard that lawyer testify yesterday. You were in the courtroom, right, Antoine?
A Yes.
Q Do you remember what he said about how dark it was?
MR. SMITH: Your Honor, I object. Pitting witnesses, lay witnesses.
THE COURT: Okay. Let's not pit witnesses. But, again, you did some to that extent as well, Mr. Smith. So --
THE WITNESS: Say again?
BY MR. DANIEL
Q Do you remember hearing the lawyer testify about how dark it was when this accident happened?
A Yes.
Q Do you remember hearing him put a percentage on it?
A Yes.
Q What did he say?
A I believe it was like 90 percent or something like that.

THE COURT: Okay. You just need to repeat his testimony, and you can refer to him as Mr. Lee.
BY MR. DANIEL
Q Do you remember what Mr. Lee said?
A I believe it was 90 percent dark.
Q Do you know Mr. Lee?
A Not at all.
Q Have you ever met him before this accident?
A Not at all.
Q Did -- have you ever met him since the accident?
A Not at all.
Q Exhibit 5, is that the intersection where you were when this accident happened?
A Yes.
Q Where were you? Were you at --
A I was by -- at the stop sign.
Q Okay. Did you have to pull up to -- do you see that white line down there?
A Yes.
Q Is that a stop bar?
A Yes.
Q Did you pull up to that?
A Yes.
Q I guess you -- it looks like -- would you have

A A little bit more, yes.
Q So you had to do that. And, again, you checked traffic how many times?
A Twice.
Q The first time you checked traffic, what did you see?
A A silver car.
Q Was it pretty dark when you saw that silver car go by?
A Yes.
Q Did the silver car have its lights on?
A I don't recall.
Q Did you have your lights on?
A Yes.
Q You have a mobile phone. Do you have a headset or Bluetooth in your car?
A Yes.
Q Did you have one in your Honda at the time of the accident?
A Yes.
Q Now, this intersection, there's -- is there a median?
A Yes.
Q Okay. And --
MR. DANIEL: Your Honor, may I approach?

THE COURT: You may.
MR. DANIEL: Antoine, I'm just handing you a black and white photo. Take your time and look at that for a second.
MR. SMITH: May I?
MR. DANIEL: Here, you can look.
MR. SMITH: You don't have one for me? I just want to follow along.
BY MR. DANIEL:
Q I'll just stand right here.
Have you looked at it?
A Yes.
Q Do you see in the top left of the photo, it's kind of upside down, but you see what that -- can you read what that writing says?
A Have I asked them?
Q I'm looking at the top left. Top left.
A Oh, the William -- William Hilton Parkway.
Q No. It's upside down, right -- you've got it turned the other way. Right -- right there. Or -- yeah, just turn it this way. Sorry.
A Southwood Park -- Southwood Park Trail.
Q What road were you on?
A Southwood Park Drive.
Q And there's that stop bar right there, and then

like the little walkway, right?
A Yes.
Q So this is the picture where the accident happened, an overhead view?
A Yes.
MR. DANIEL: Your Honor, at this time I'd admit that as Defendant's Exhibit 5.
THE COURT: Okay. Any objection?
MR. SMITH: No. No, ma'am.
THE COURT: It's in evidence then.
(Whereupon, Defendant's Exhibit No(s). 5 marked for identification and received in evidence.)
BY MR. DANIEL:
Q You see in this photograph that there's this median, and when you look at it you can answer. And then in the Google overhead view, there's like a little white car where the median is; do you see that?
A Correct.
Q Were you going to turn right or left?
A Turn left.
Q Turn left from Southwood Park Drive?
A Yes.
Q Okay. To head back off Hilton Head Island toward Beaufort?
A Back toward Ridgeland. Towards Ridgeland.

Q Toward Ridgeland.
A Yep.
Q Okay. So you check traffic to your left. You've already said you checked it twice. You start to move. Did you ever check traffic to the right, what's coming across the other way, over on the other side of that median?
A Yes.
Q What did you see?
A More cars.
Q There were -- there were cars coming?
A Yes.
Q Okay. So those cars would have been coming from your right, but on the other side of the road?
A Yes.
Q Do you remember seeing some cars with headlights on?
A Yes.
Q So the cars over there had their headlights on?
A Yes.
Q So when you looked to your left and didn't see anything, and you started to move forward, was your focus moving forward just to get to that median?
A To get to the median and come to another stop.
Q Because there were cars on the side?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

A Coming up.
Q Do you know whether you may have hit Mrs. Hood on her front tire? Or that's where the contact was? You didn't know?
A I don't know. I just know it was on the front passenger side somewhere.
Q You've seen these photos. Have you been able to look at the photos from where you're sitting of her vehicle?
A Yes.
Q The impact was up front; do you agree?
A Yes.
Q Were you driving fast?
A No.
Q Had you barely hit the gas?
A Barely, yes.
Q Were you -- were you into that left lane? Or was most of your car still in that right lane? Do you know where you were as far as the body of your car in that overhead view?
A I want to say I was still in the right lane a little bit.
Q Okay. You didn't hit -- did you hit her hard enough to spin her around?
A I don't believe so.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q The vehicle that you made contact with, did it keep going down the road, or did it spin like a top?
A I don't recall.
Q You didn't -- once you hit it, you -- it went -- did it go down the road out of your vision?
A Yeah.
Q Were people on the scene quickly --
A Yeah.
Q Or did it take a while?
A They was there pretty quick.
Q Did you see the impact between Mrs. Hood's vehicle and the Tahoe that some witnesses have been talking about earlier this morning?
A No, I just heard it.
Q Was it too far down the road for you to see, or was it too dark to see?
A It was farther down the road, so I could barely see what was going on.
Q Did you see people around those vehicles going to help?
A Yes.
Q How quickly were those people there?
A I can't put an estimated time on how fast they got there, but it was -- I guess you could say pretty quick.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Are you familiar with that intersection?
A Yes.
Q Is it straight as far as the eye can see? Is there a bend?
A It's pretty straight.
Q Yeah. Is there a gradual bend though, do you think?
A Yeah.
Q You didn't see anything coming when you looked left?
A No.
Q Your cousin, you cut his hair that day?
A Yes.
Q Were you cutting his hair the whole time or -- when you went to his house?
A No.
Q Okay. What do you remember doing? I know it was a long time ago.
A I got off from work, cut his hair, and played like this a game of Madden, I believe.
MR. SMITH: Played what?
THE WITNESS: Madden.
BY MR. DANIEL:
Q Is it the Madden football?
A Yeah, I believe.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Okay. And I just started right in with the text messages, Antoine. Tell me about yourself. Where did you grow up?
A Hardeeville and Ridgeland.
Q Have you lived in Hardeeville and Ridgeland all your life?
A Ten years.
Q Okay. Where did you go to high school?
A Ridgeland High.
Q Did you play sports?
A Football and track.
Q Football and track?
A Yes.
Q Did you -- what did you -- what events did you compete in in track?
A A 110-meter hurdles and 400 hurdles, four by one, 200, and the four by four.
Q Did you go to State in track?
A For the 110 hurdles, 400 hurdles, and the four by four.
Q Did you win or place in any event?
A Placed top three in all. I won the 110.
Q You won the State champion in the 110?
A Yeah.
Q You were working at the time of this accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

A Correct.
Q Where were you working?
A The Greenery.
Q And is that a landscaping business?
A Yes.
Q You working now?
A Yes.
Q Where are you working?
A I detail cars in the auto mall.
Q How long -- how long have you been working there?
A I just started back working there, so about two months.
Q You were there before?
A Yes.
Q Why did you leave?
A I was going back to school.
Q What were you going to school for?
A Barbering.
Q Who do you live with?
A My mama and daddy.
Q And what are their names?
A Richard and Lativia Johnson.
Q How long have you lived there?
A All my life.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Those text messages that were inbound that Mr. Smith was asking you about, looking at -- are you looking at those phone records now?
A Yes.
Q Does it say whether you were reading them?
A No.
Q The text messages that you sent that were outbound, does that record say how long those messages were, or how long you were on the phone?
A No. As far as how long --
Q How long the text message is, or how long it took you to send it?
A Oh, no.
Q Do you ever answer "yes", "okay," or "no," "can't", things like that?
A All the time.
Q Short. Sometimes your texts are pretty short?
A Yes.
Q Are your texts usually short?
A All the time mostly.
Q So you looked to your left, didn't see anything, Antoine, you looked -- you looked to your left, you didn't see anything, you started to move forward to make a left turn?
A I looked to the left, and I looked again after

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

the car passed, then I looked again, then I tried to move forward.
Q Okay. You didn't see a vehicle when you started to move forward and hit the gas; is that right?
A No.
Q And then a vehicle was just there?
A Yes.
Q Have you seen the color of that vehicle now, after the fact?
A Yes, sir.
Q Is it dark in color?
A Yes, sir.
Q And I realize this happened fast but -- and I don't want to put words in your mouth, but was what ended up being right in front of you the car you made contact with, that SUV, going slow? Fast? Do you have any idea?
A I don't recall.
Q How quick did that contact happen?
A Pretty quick.
Q They have some photos of your Honda.
Is Exhibit 4, is that your car?
A Yes.
Q Do you remember whether your bumper was torn off at the scene?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

Q Yes. Yes.
A I don't believe it were.
Q Is this at the scene?
A No.
Q It looks like it's at a tow yard somewhere, right?
A Correct.
Q There was damage to your vehicle, but you don't -- as far as you remember, the bumper wasn't completely off?
A No.
Q Mr. Smith asked you about not getting out to help people. When you looked over and saw that there had been another accident, were people already there rendering aid?
A Yes.
MR. DANIEL: Thank you, Antoine.
THE COURT: Anything further?
MR. SMITH: Yes, ma'am.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Johnson, I want to try to get something straight, a couple of things here.
Number one, you said that during the day

A Yeah.

Q But if we review these records from the time you were at work --

MR. SMITH: Just put them up one through -- yeah. Okay.

BY MR. SMITH:

Q If we review these records from while you were at work -- sorry.

You said you got to work around what time?

A About 6:45.

Q Six-forty-five. So did you have a break at 7:29? At 7:42? At 7:49? At 8:13? At 8:14? At 8:30: At 8:34? At 8:35? At eight -- did you have a break all those times?

A The job description I had at the time, it was a lot of us standing around. So if there is nothing going on, we can be on our phones.

Q So what you're asking the jury to believe -- you understand the jury is -- they're assessing credibility today; do you understand that?

A Yes.

Q Okay. And you -- but you want the jury to believe, when they receive these phone records and they go back to the jury box and they're looking at them, you want them to believe that every entry between 7:30 in the

morning and 4 o'clock in the afternoon, 90-something times, that each one of those, you were on a break?

A Probably was one of my free periods.

Q I'm sorry?

A Probably was one of my free periods, when there wasn't nothing going on. I was on the pine straw crew at the time, so if our job was done we ain't have nothing to do but ride the clock out.

Q Okay. Mr. Johnson, I also want to ask you about the call you made the night before, the one -- the call that you made the night before, or the entry that we see for the night before, the three-hour phone call -- I'm sorry. No. My mistake.

The 4:44 entry, the day of the collision, the very first activity on your cell phone that day, who are you getting a text from?

A I'm sending a text.

Q Okay. Who are you sending a text to at 4:44 a.m., the day of the wreck?

A To one of my friends.

Q 1200?

A Yeah.

Q Okay. That's one of your friends?

A Yeah.

Q And you know that. What's that friend's name?

A I don't think --

Q What's that?

A Travia.

Q Tray what?

A Travia.

Q Okay. Now, you said this text that came in at 5:57 p.m., when we say the wreck happened, you say you didn't look at that text, right?

A Correct.

Q And that's from the same number, 1200, isn't it?

A Correct.

Q So the very first thing you do in the morning, the day of, is reach for your phone and you send a text to this person. The very first thing.

A You can't say that's the first thing that I did that morning.

Q How -- when did you wake up?

A There's no telling when I got up.

Q Well, we know the first text you sent was at 4:44 a.m. Did you wake up -- well, let me rephrase the question.

Do you recall waking up sooner than 4:44 a.m., or was that about when you woke up that day?

A I tend to get up in the middle of the night at random times between 2:00 and 3:00 -- between 2:00 and

4:00 in the morning. So there's no telling when I got up. I could have got up, went back to sleep, and then got back up and started messaging. I don't know.

Q Well, if you got up at 2 o'clock in the morning, and your last phone call ended at 12 -- just after midnight, that gives you about an hour and 45 minutes of sleep the night --

A Well, like I said the first time, there's no, guarantee that I ended that phone call at 12 o'clock. I'm known for getting on the phone and going to sleep on the phone.

Q I get you. But Mr. Johnson, your memory is not perfect back to this day and what time you got up and all that; would you -- is that fair to say?

A Correct.

Q Okay. And all that we have to rely on here is your cell phone records; is that correct?

A Correct.

Q All right. And those cell phone records show that at 4:44 a.m. you called this number, you sent a text to this fellow, Travia.

A Female, yeah.

Q Right?

A Correct.

Q Okay. That was the first activity on your phone

that day, the very first activity we see on your phone that day, right?

A Correct.

Q All right. And that same exact person, who was your first activity, that exact same person was the one that sent you the text at 5:57, when we contend you were crossing Highway 278. And you want the jury to believe you didn't read that text that came from the same person that your very first activity of the day was with.

A Correct.

Q That you grabbed that phone and sent a text?

A Correct.

THE COURT: All right. Let's move on, y'all.

MR. SMITH: Okay. Your Honor, may I ask one more question?

THE COURT: One.

BY MR. SMITH:

Q Who's Travia?

MR. DANIEL: Your Honor, relevance.

THE COURT: Okay. Go ahead and ask that.

THE WITNESS: That was my girlfriend.

BY MR. SMITH:

Q I thought you met your girlfriend in the hospital after the wreck?

A At the time she was my girlfriend.

Q Okay. Okay. Thank you.

THE COURT: Anything further?

MR. DANIEL: No, Your Honor.

THE COURT: You may step down, sir.

Ladies and gentlemen, this is a good time for a break.

Again, do not discuss the case. It would be inappropriate to do so.

Depending on how long the next witness is, I have to get the next witness up and then break for lunch. Or if there's another short witness, we're likely to do that.

But I'm looking at somewhere between 12:30 and 1:30 breaking for lunch today. Okay? Just to let you know.

Go back, get a coffee, ladies and gentlemen, stretch your legs. We'll be back with you. Do not discuss this case, it would be inappropriate to do that.

(Jury exits the courtroom.)

THE COURT: All right. Anything on the record before we go on break for just about ten minutes, from the Plaintiff?

MR. WILLEY: Yeah, we -- before our expert is called we will have some matters of law that we just

want to discuss and get out of the way.

THE COURT: Okay. Which expert?

MR. WILLEY: Ms. Borzendowski -- Dr. Borzendowski.

THE COURT: Okay. Your human factors expert; is that correct?

MR. WILLEY: Yes, ma'am.

THE COURT: Okay. Well, y'all take a five-minute break and we'll come back and we'll talk about her testimony. Okay?

MR. WILLEY: Okay. Thank you.

(Whereupon, the Court stood in recess.)

THE COURT: All right. Anything you need to put on the record, Mr. Willey?

MR. WILLEY: Yes, ma'am. We -- our second witness that we will call is Dr. Stephanie Borzendowski. In pretrial we moved in limine to prohibit counsel from making any reference to any black box data until those witnesses came forward or any witness as to the speed, as it's not a proximate cause and for other reasons.

And in this case, when we call Ms. Borzendowski we expect, because he just told us as much, him to make reference to the speed of the vehicles. And in her deposition, specifically on Pages 22 through --

THE COURT: He's not going to say "the speed from the black box said." He's going to ask her if she considered speed in making her -- or forming her opinion as to this case. Read her deposition, she says "no."

MR. WILLEY: Right. And our position is that's as far as they can go. Because what happened yesterday is Your Honor ruled that they cannot mention tailgating. And on the third question it specifically came out with that word from counsel about that specific incident. And I'm afraid that's going to happen again because before that occurred, I believe Mr. Daniel is going to address this witness, Ms. Suttie went over to him, and I believe based on what I could hear instructed her to do that.

So I want to make sure that this is not going to happen with this witness. If she says no, that will be the end of that as to speed.

MR. DANIEL: Your Honor, we did talk about this briefly in chambers. It's our position that, and I don't believe Your Honor has ruled on it, it's a standard jury instruction, or standard instruction on speed. It is certainly our position that speed is a factor in this case, that speed -- the jury can draw, based on their own common knowledge and common sense,

that speed may have been a contributing cause or proximate cause of the accident.

This witness, this particular expert, provided a number of things, not by us. Plaintiff's expert provided a number of things that are in reply, including Woody Poplin's deposition. I simply wanted to ask her if in her testimony she testifies that she read his deposition and recalls certain things about what Woody Poplin found, what he pulled from the vehicle.

I should be able to at least ask her what Woody Poplin found, what he documented, and whether she considered it.

THE COURT: Okay. What I'm going to let you do is, you can ask to the extent in Woody Poplin's deposition he talks about or testifies to speed. I'm not going to let you say, "Did you consider that in forming your opinion?"

And she's going to say yes or no.

But, again, you can't testify as to what Woody Poplin found in his deposition until and unless Woody Poplin testifies to that. Okay?

MR. DANIEL: Your Honor, just -- I do think that if she's going to be evaluating and drawing conclusions and inferences from --

THE COURT: If she says she didn't use it, then she isn't.

MR. DANIEL: You're right. But, Your Honor, I think it is admissible what evidence an expert did not consider that's in the record.

THE COURT: You get that in there by saying --

MR. DANIEL: She has documentation --

THE COURT: Don't talk over me.

You get that in there by saying you didn't consider speed in this case.

Let's bring the jury in.

MR. WILLEY: Okay. One more thing, Your Honor, as to that witness, and that's as to the Parkinson's, because it's the same concern. You already ruled on it, but again we got into it with the tailgating. She says in her deposition on Page 86 and 87 she didn't consider it, she didn't even know she had it. It played no role at all in her analysis and would not play a role. So I just want to make it perfectly clear that they're not able to bring that out through this witness without some medical testimony to say that it played a role or otherwise. We're not claiming exacerbation or anything else.

MR. DANIEL: Your Honor, she's a human factors expert. And she can say she's not a medical doctor,

but there's some things that people have common knowledge of that affect driving. I think we should be allowed to at least show her a few medical records, not going to be a lot, but a few things and ask her whether she considered it.

THE COURT: She didn't consider. I think the only thing you -- I think you can ask whether or not you considered whether her Parkinson's and any residual side effects had an effect. She's either going to say one of two things. She is either going to say, "No, I didn't consider it;" or "No, I'm not a medical doctor, and that's not an appropriate thing for me to consider."

Or she's going to say, "I flat out didn't consider it."

MR. DANIEL: I'll try and lay a foundation for things, if it's improper.

THE COURT: That's fine.

MR. WILLEY: Your Honor, I just want to --

THE COURT: That's fine. He just does it at his own peril.

MR. WILLEY: Well, I also, just to be clear, just in the case he's going to introduce some medical records through a non-medical expert. I don't think

THE COURT: You're not going to give her any medical records on her Parkinson's. Unless she tells me -- listen, you tell me you've got an expert in this case that's gong to say her Parkinson's caused this wreck or in some way affected her ability?

MR. DANIEL: That's not what I have.

THE COURT: Well, I don't know what you have.

MR. DANIEL: I can -- I can proffer it now. And it's records they have as well. They stipulated to the authentication of them, they're --

MR. WILLEY: We what?

MR. DANIEL: Stipulated to the authentication of these records before trial. They're the Plaintiff's VA records that say she had -- she was complaining of blurred vision on the morning of the accident.

THE COURT: Okay. And, again, you tell me how that affects her being in her lane bound straight, blurred vision. If I were alleging speed on her behalf --

MR. DANIEL: Also, too, you can keep a proper lookout as well. I mean, it's not my decision.

Your Honor, I don't have -- the Defendant doesn't have the burden of proof. There's a record --

Mr. Daniel.

THE COURT: Okay. Let's just do this. We're going to bring -- let's just bring the jury out, put the next witness up, and then --

MR. WILLEY: Can I get just a preliminary ruling on the Parkinson's one way or the other? I don't think he can use the medical records, and once he does it, we're prejudiced by it.

THE COURT: Well, I think that would have been more properly asked a question of her when she was up on the stand. Did you or did you not complain about, you know, you had blurred vision on the morning of this accident to a doctor?

It's not appropriate to put it in through the human factors expert. Okay.

MR. WILLEY: Thank you.

(The jury enters the courtroom at 12:18 p.m.)

THE COURT: Welcome back, ladies and gentlemen. All right. Call your next witness.

MR. SMITH: Ma'am, we call Cindy Bryan.

Thereupon,

CINDY BRYAN

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. SMITH: Judge, before we begin, I've been

seeing a lot of shiver up here. Is there any way we could bring the AC down a little bit?

THE CLERK: I'm texting them now.

MR. SMITH: Okay. Thanks.

DIRECT EXAMINATION

BY MR. SMITH:

Q Ms. Bryan, please tell us your name.

A Cindy Bryan.

Q Ms. Bryan, where do you live?

A In Goose Creek.

Q And what do you do for work?

A I work for the Diocese of Charleston.

Q How long have you been doing that kind of thing?

A Going on 19 years.

Q All right. Do you know Therese Hood?

A I do.

Q Where do you know Therese from?

A I know Therese from church.

Q All right. And what church is that?

A Immaculate Conception Church in Goose Creek.

Q Are you what's called a Eucharistic minister?

A I am.

Q And what does a Eucharistic minister do? What's the function?

A They help the priest at Mass to distribute

communion to all the parishioners.

Q And when you say "communion", what are you distributing?

A We believe that the -- at the time when communion is distributed, Jesus is actually physically present in the wine and in the host, in the bread.

Q Let me stop you for just a second. We don't need to go -- I don't know who here is Catholic and who here is not.

So, communion, what are you distributing? I know you're about to tell us what it stands for, but what --

A You would know it as bread and wine. We distribute the bread and wine.

Q Okay. So the Eucharistic minister helps the priest distribute the bread and wine, which is the communion.

A Yes.

Q Now, is that something that you can just volunteer for or do? Or is it something that has to be approved?

A You can try to volunteer, but the priest has to know something about you and would approve it.

Q Okay. Now, I guess that's for -- we're are not all Catholics here, not everybody knows what it means to

be a Eucharistic minister, so I want to give you an opportunity just to explain that to the jury, as a Catholic, and a church member with Ms. Hood, what does it mean to be a Eucharistic minister? And just talk to them.

A Okay. You would almost have to have a calling. You feel that this is where Jesus is leading you to be able to help the priest to distribute Holy Communion.

And at the time of the distribution of communion, we believe -- there's a point in the Mass where the priest will consecrate the bread and the wine to where Jesus actually becomes physically present in the bread and the wine. And so you're actually holding Jesus in your hands when you are doing this.

Q Now, you take your faith very seriously?

A I do.

Q All right. And from what you have observed through your observations of Therese Hood, does she take her faith very seriously as well?

A Yes, she does.

Q Okay. And you mentioned "a calling." Did you yourself feel the calling to become a Eucharistic minister?

MR. DANIEL: Your Honor, relevance.

THE COURT: Okay. You need to the wrap this up pretty quick as far as relevance is concerned. I

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

would agree. Let's go.

BY MR. SMITH

Q Ms. Bryan, how would you feel if the privilege of being a Eucharistic minister was taken away from you?

A I would feel a loss, a hurt, because I'm drawn to that ministry. And for it to be taken away, I would miss it, and it would be hard to sit there in church every week and watch other people that have that calling and just not be able to participate actively anymore.

Q Would there be a void in your life?

A I believe so.

Q Now, you visited Therese at her house after the wreck sometime. What did do you that for?

A I had to take communion to her for about a month when she couldn't get to church.

Q And what could you -- what could you see? Or how did she appear?

A She was in a wheelchair. I think at the very beginning she had, like, a brace on her -- I think that it was her right leg. I don't remember which leg, but it was in a cast. And there were pins and -- in her ankles and everything. It looked very painful.

Q Okay. All right. That's all the questions I have for you. Thank you.

CROSS EXAMINATION

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

BY MR. DANIEL:

Q I'm sorry. Just could you -- so you took communion to Mrs. Hood for how many -- how long was the period?

A About three or four weeks.

Q Okay. Was she able to come back to church after that three- or four-week period?

A It might have been another week or so, but yeah, she eventually returned back to church.

Q And she's given a deposition in the case. I'll represent to you that she says that she --

MR. SMITH: Your Honor.

THE COURT: Okay. Again, that's improper use of a deposition. So --

MR. DANIEL: Yes, ma'am.

BY MR. DANIEL:

Q Is it your understanding that she has also volunteered as a Eucharistic minister after this accident?

A She has.

Q And that involves standing up as the entire, I guess, members of the church, everybody in your church, the Catholic faith, they walk in a procession line to receive communion, right?

A Yes.

Q So if it's a busy Sunday or Saturday evening,

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

whenever y'all have Mass, the person handing out communion, the Eucharistic minister, they have to be on their feet for a while?

A Probably around ten, 15 minutes at the most, I would think.

Q Okay. But Mrs. Hood has been able to do that and can manage that after this accident?

A I believe she has for a little while.

Q Okay. And she is your friend?

A We're not close friends, we're just more like acquaintances. We're involved in some things, but not a lot of things together.

Q How often do you see her?

A Probably on a monthly basis.

Q Once a month? Is that -- I'm trying to be rude. Is that a "yes"? The court reporter has to write it down.

A I'd say about once a month.

Q Okay. You're not around her day-to-day everyday?

A No.

Q You don't know what medication she takes?

A No.

Q You don't know what medication she took before this accident?

A No.

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

Q You don't know what her health issues were before this accident?

A I know a little bit.

Q Okay. What do you know?

A I know --

MR. SMITH: Your Honor, I would object for relevance. I don't know exactly where he's going with this.

THE COURT: Okay. Come up and approach.

(Off-the-record discussion held.)

BY MR. DANIEL

Q And, Ms. Bryan, before the objection, I just -- you do know a little bit about Mrs. Hood's health condition, or conditions, before this accident?

A A little bit, yes.

Q Okay. Just tell us what you know.

A I just know she had MS.

THE COURT: Anything further?

BY MR. DANIEL

Q Do you live near Ms. Hood?

A It would probably take me -- not real close. It would probably take me about ten minutes, 15 minutes to get to her house.

Q And as far as how frequently you would see her, you would see her about once a month before the accident

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

as well?
A Yes.
MR. DANIEL: Thank you, ma'am.
REDIRECT EXAMINATION
BY MR. SMITH:
Q Ms. Bryan, that once a month that you saw her, was that at church?
A Yes.
Q I mean, y'all ain't going over to each other's house, getting together for dinner, and stuff like that. You're seeing each other at church, right?
A Yes.
Q And you're also in the ladies guild and she was in the ladies guild as well, right?
A Yes.
Q But Therese is not a Eucharistic minister anymore, is she?
A No, she's not.
Q She had an incident where her leg got shaky and she spilled the wine, the blood of Christ; did she not?
A That's what I was told.
Q Right. And the priest said, "You are no longer to do that function," right?
A Exactly.
Q And that's because Catholics regard the wine in

REDIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

that process as the actual blood of Christ. That's what you believe.
A Oh, yes. That's --
Q How do you think it felt for Therese to be standing there and spill the blood of Christ?
THE COURT: Calls for speculation. That's just not a good question. You need to move on.
MR. SMITH: I withdraw it. No more questions.
RE-CROSS EXAMINATION
BY MR. DANIEL:
Q Ma'am, were you there for that incident?
A No, I wasn't.
THE COURT: Anything further?
MR. SMITH: No, ma'am.
THE COURT: Anything objection to this witness being excused?
MR. SMITH: No objection.
THE COURT: You're excused, ma'am. Thank you. Call your next witness.
MR. WILLEY: The Plaintiff calls Dr. Stephanie Borzendowski.
THE COURT: Come on forward.
Thereupon,
DR. STEPHANIE BORZENDOWSKI
was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

was examined and testified as follows:
DIRECT EXAMINATION
BY MR. WILLEY:
Q Dr. Borzendowski, would you introduce yourself to the jury?
A Absolutely. I am Stephanie Wetzel Borzendowski.
Q And where do you live?
A I live in Summerville.
Q And how long have you lived in Summerville?
A A little over two years.
Q And do you do for work?
A I'm a human factors consultant with a company called Applied Building Sciences.
Q What does Applied Building Sciences do generally?
A A pretty wide range of things. But we do a lot of consultation on matters that are in litigation or have the potential to be in litigation.
Q And as part of your work, you mention that you have an expertise in human factors. What is that? Explain that to the jury.
A Human factors is basically the study of human interaction with their environment, and that can take the form of a lot of different things, including driving or walking.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

Q And tell the jury the educational background that you had to go through in order to become a doctorate in that field.
A Sure. I got my Bachelor's in Psychology from Hartwick College, which is in upstate New York. And I then got my Masters in Applied Psychology with a concentration in human factors from Clemson University. And I earned my Ph.D. in Human Factors Psychology also from Clemson University.
Q And what is applied psychology? How would you describe that?
A So my masters was in applied psychology and, in a nutshell, that's basically taking the principles of psychology and applying them to sort of real world problems.
Q So, is it fair to say that basically you look at how people act and react in different circumstances?
A Yes.
Q And you do that based on science and data?
A Correct.
Q And, Dr. Borzendowski, how long, including college, you know, did you have to go to school in order to get your doctorate in human factors?
A From college through graduate school. I was in school for nine years.

Q And that's why we call you Doctor. You earned it, right?

A Yeah. Try not to enforce it, people don't call me that too often.

Q Tell the jury a little bit about your experience in the field of human factors.

A Starting with graduate school?

Q Starting with graduate school.

A Okay. So while I was in graduate school, I worked in a visual perception lab, and I also served as a teaching assistant and later as an instructor. And my primary research area was in the nighttime conspicuity of pedestrians as well as driving safety kind of broadly at night.

Q And where was that lab? Where did you do those courses?

A That was all at Clemson University.

Q And we won't hold that against -- or for you.

A Oh, I think I sense some bitterness.

Q "Conspicuity" you mentioned. Will you explain to -- I think I said it right, "conspicuity"?

A You did.

Q I'll have to break it down each time.

Will you tell the jury what that is?

A Conspicuity, simple stated, is the extent to

which an object stands out from it's background.

Q And what sort of factors deal with conspicuity? What are you looking at specifically when you deal with that?

A There's a number of factors that you would consider, including the background or the environment in which the object is being viewed, as well as properties of the objects such as size, brightness, color.

Q And we deal with this field a lot in motor vehicle wrecks, correct?

A We do.

Q And is a portion of that conspicuity analysis also, you know, who was looking? The individual that is actually looking at the object?

A Yes, as far as characteristics associated with that individual.

Q And in terms of motor vehicle wrecks, what are some of the characteristics that you look for when you're making an analysis of the situation?

A We might look at things such as visual health. Do they wear corrective lenses? Were there any extenuating environment factors? Was the driver reasonably attentive? Things like that.

Q And in terms of your field, you have done both lab training and also field training, correct?

A I've conducted studies in both settings, yes.

Q And when we say, "field training," that just sort of means out -- out in the world, right?

A Yes. I've conducted a number of studies that were out on the road.

Q And have you been published in these fields?

A I have.

Q And have you been qualified as an expert in the fields of human factors, conspicuity before?

A Yes.

Q And for purposes of this matter, did you have the opportunity to review a lot of deposition transcripts, data points, and things like that?

A I did.

Q And in this case, did you have the data to analyze that would be normally accepted in the field in coming to a determination?

A Yes.

MR. WILLEY: Your Honor, at this time, we would move to qualify Dr. Borzendowski as an expert in the field of human factors with a specialty in conspicuity and attentiveness.

THE COURT: Okay. Do you have any voir dire for her?

MR. DANIEL: Your Honor, no. I just -- just an

expert in human factors, I believe.

THE COURT: And I agree with that.

Ladies and gentlemen, in this case, this witness is being qualified as an expert in human factors. That allows her to give her opinion and the reasons for her opinion. And that's for you to use as you see appropriate, and to assist you in any way as compared to other evidence in this case.

MR. WILLEY: She's qualified?

THE COURT: I just did.

BY MR. WILLEY

Q Dr. Borzendowski, you've had the opportunity to review the Department of Public Safety document in this case, the statistic?

A I have seen the page I think you're about to show me.

Q Okay. And Department of Public Safety says that an injury wreck occurs in South Carolina every nine minutes; is that accurate?

A Yes.

MR. DANIEL: I haven't seen this, Your Honor, as far as statistics.

THE COURT: Okay. If she can testify to that and she knows it of her own personal knowledge, fine.

BY MR. WILLEY:

Q Let me ask you this, Dr. Borzendowski, are statistics from the Department of Public Safety something you rely on in your field?

A A lot of times -- excuse me.

A lot of times I would rely on national data from the DOT and Federal Highway.

Q When you're looking at specific state instances, would you sometimes also look in that specific state's data relative to motor vehicle wrecks and timing and that sort of thing?

A If it's available.

Q And in this case, the data from the South Carolina Department of Public Safety is available, correct?

A I'm looking at it.

Q Okay. And what does it say about how often we have an injury wreck in South Carolina?

A According to this, in 2015, one person was injured every nine minutes.

Q So the point of that is, we keep you pretty busy, don't we?

A Yes.

Q In these sorts of cases. And you make your living analyzing these types of cases, both of a civil and criminal nature for the Court, correct?

A Primarily, yes.

Q And you're paid for that?

A I am.

Q And how much are you being paid?

A My hourly rate for non-testimony time is $190, and my hourly rate for testimony time is $290.

Q You were also paid, when Mr. Daniel took your deposition by him, correct?

A I don't know if he's cut the check yet, but he has an invoice, I think.

Q Okay. And that's how you pay your bills, right?

A Those checks are paid to my company, and I am a salaried employee.

Q Just wanted to get that out of the way. It's paid for the deposition.

So in this case, did you have an opportunity to review the depositions of the parties that were involved?

A I did.

Q And did you have the opportunity to review the live testimony here this morning?

A Yes.

Q And in addition to the parties involved, did you also have the opportunity to review the depositions of witnesses and engineers?

A A number of other individuals, yes.

Q And in those depositions from the engineers, did you -- what did you rely upon on those depositions?

A Primarily on their testimony regarding the timing and sequence of the events associated with the two collisions we're here about today.

Q Okay. And in terms of that, that was primarily just how the wreck occurred, basically who hit who first, second, third?

A Right.

Q And I'll show you this. I'll tell you what, for bad artwork it is sure getting some playing time here.

But this is a diagram that Kevin, Mr. Smith, drew in his opening statement which shows Ms. Hood's vehicle down here in the inside lane, Mr. Johnson's vehicle at the stop sign, and Mr. Lee's vehicle down here in the outside lane. Okay?

And is it your general understanding that the way this wreck occurred is Ms. Hood was broadsided by Mr. Johnson?

A That's my understanding, yes.

Q And then she was pushed over into another lane of travel?

A That's my understanding.

Q And that's what you use the accident

reconstruction depositions for, correct?

A Primarily.

Q Okay. Now, in terms of -- you had the opportunity in this case to review the cell phone records, correct, of the Defendant and testimony about those?

A Yes.

Q Okay. And so you are aware that at 12 -- well, let me ask you this. I'll step over here so you can see a little better.

At what time did his last call on 11/6 officially end?

A It looks like it ended at 12:17 a.m. on November 7th.

Q Okay. And the duration of that call in seconds?

A 10,978.

Q Okay. That's about three hours?

A I believe so.

Q Okay. And on 11/7, his first activity was at what time?

A 4:44 a.m.

Q Okay. And what was that?

A It appears to have been an outbound text message.

Q Okay. So that's a text message that he would have actually typed out?

A Presumably, yes.
Q And you had the opportunity in this case to review Ms. Melnick's deposition, correct?
A Yes.
Q And that's the exact same deposition that the jury saw, just saw it via video. So when I refer to testimony or deposition, it's the same. Okay.
And you also had the opportunity to review the 911 records, correct?
A I did.
Q And you were able to determine who made the first 911 call?
A I don't recall off of the top of my head, but there's a time stamp associated with it. I know that.
Q Okay. And I'll show you Plaintiff's Exhibit 1, which are those.
You understand that individual was Ms. Melnick?
A Yes.
Q Okay. Now, in reviewing Ms. Melnick's depositon, were you able to see some of the things between the time that she saw the wreck and actually made the 911 call that she did?
A Yes. I believe she described kind of what she did after she heard and saw the collision.

Q Okay. And describe for us, you know, basically, Ms. Melnick, what you remember about that.
A From what I recall, she was an employee of the Dunkin' Donuts along two -- the frontage road off 278, and she was putting umbrellas down, I believe and --
Q Let me stop you there.
MR. WILLEY: May the witness step down?
THE COURT: She may.
(Witness complies.)
BY MR. WILLEY:
Q The jury already knows what this is, we talked about it ad nauseam. Okay.
But up here is the Dunkin' Donuts. So just continue. Thought it might be helpful to have a visual.
A Okay. So my understanding is that she was out in this front patio area, and that she was putting umbrellas down. And I think the first thing she said is that she heard some kind of collision, and then looked through the trees and saw what she described as the aftermath. And then she --
Q So is it your understanding, based on her testimony, that that was the first impact, and that she saw the aftermath after the second impact?
MR. DANIEL: Objection, leading, Your Honor.
THE COURT: Sustained. Don't lead her.

BY MR. WILLEY:
Q Okay. What is your understanding about what aftermath she was referring to?
A Given the timing of events and the location of the Dunkin' Donuts, presumably the aftermath of Ms. Hood's collision with the Kuck's vehicle.
Q All right. And continue.
A So after she heard and saw collision activity, I believe Ms. Melnick testified that she had to go back inside the Dunkin' Donuts in order to call 911, and that involved going around a counter to get to the phone that was within the restaurant, coffeehouse.
Q Okay. So she left the patio, went inside and went behind the counter is your understanding?
A Correct.
Q Okay. And when Ms. Melnick testified that she was able to see the aftermath. Did she give any indication about whether people were out there and that sort of thing, by that point, that you recall?
A My recollection is that she could see that there were already some bystanders, perhaps, that were responding.
Q And when she got in off the patio, inside, around the counter, in the back, what did she do?
A I believe she then called 911.

Q And what time was that call?
A I believe the 911 numbers indicate 5:58.
Q And as a human factors expert, and just person with common sense, what does that tell you about the time of the wreck in this case, the initial wreck?
A That would suggest that at least some time had elapsed from the initial wreck to the 911 call, given that two wrecks had to happen and she had to witness the aftermath and get inside the restaurant before dialing 911.
Q Okay. Now, as part of this, you also had the opportunity -- excuse me -- to review what Mr. Johnson did after the wreck, correct?
A With his cell phone records.
Q In terms of his cell phone records.
A Yes.
Q I'll show you what's in evidence as Plaintiff's Exhibit No. 7. And what were you able, in your field of expertise, to gather from this wreck?
A Primarily that there was an inbound text message that arrived at Mr. Johnson's phone close in proximity to the time of the first impact.
Q And based on the timing of the 911 call at 5:58:46, about how long before that 911 call did that text message come in?

A It looks like almost exactly the minute.
Q And based on your expertise and human factors and about, you know, how long things would take, what do you then notice about the next -- next call log on his record?
A The next item is an outbound call at 1759, or 5:59.
Q And that call is basically, at 5:59 and four seconds. So right at 5:59?
A Yes.
Q And you had the opportunity to hear Mr. Johnson's testimony?
A I did.
Q And you, based on that, are able to obviously determine, he admitted, that that was after the wreck, correct?
A Correct. I believe he said he was calling his mother.
Q Okay. So we now walk through, basically, the wreck sequence and what occurred thereafter. And in terms of making your analyses in this case, what other data was important to you?
A Primarily the timing of the two collisions as well as any information about witness recollection from that time period.

Q And prior to this CAD record of 5:58:46, you were able to review this testimony about what Ms. Melnick went through before she got connected, correct?
A Correct.
Q And what was your understanding of that process? Was it she called and they just picked up? Or describe it for the jury.
A My recollection is that the phone obviously rang. And then I believe she was transferred at least once, perhaps, between operators.
Q All right. Before she spoke with someone?
A Correct.
Q And then, again, that would take additional time, correct?
A One would assume so, yes.
Q Okay. Now, with respect to the data, I'm going to show you a smaller version of what we are going to mark as Plaintiff's Exhibit 12 -- 13.
Are you familiar with that document?
A Yes.
Q And describe for the jury what it is.
A It is basically a map of the intersection where the collision occurred and off to the side of the map, we can see some data about sunrise and sunset on the day of impact.

Q Okay. And where does that data come from?
A This is from a website called "SunCalc."
MR. DANIEL: Your Honor, may we approach?
THE COURT: You may.
(Off-the-record discussion held.)
BY MR. WILLEY:
Q Okay. So, Dr. Borzendowski, this document in front of you you recognize?
A Yes.
Q It is from SunCalc, correct?
A Yes.
Q And what does SunCalc do? What does that document do?
A It basically provides information about the timing of sunrise and sunset, the day of the collision.
Q And is that a website that you would normally rely on in your field?
A I've used it before, yes.
Q You've used it before in other matters?
A Yes.
Q And there is another source as well that provides sunset and sunrise data. You are familiar with that?
A Yes.
Q Okay. Tell the jury about that source.

A Can I refer to the document, so I don't mess up the acronym?
Q Right. Just who puts out that data.
A I believe it is the Naval Observatory. The U.S. Naval Observatory.
Q Right. And is that data more general or more specific than SunCalc?
A So the Naval observatory data allows you to put in a kind of general location, such as Hilton Head broadly, whereas SunCalc you are able to pinpoint a more specific location.
Q Okay. So the SunCalc is more specific. And where does SunCalc derive their data?
A My understanding is that it's based on a European astronomy formula.
Q And in your deposition, you weren't able to specifically recall that, correct?
A Correct.
Q Were you able to go back and research that?
A Yes.
Q And as you sit here today, do you know exactly where the Naval Observatory derives their information?
A My understanding is it's a similar formula.
Q And that formula is accepted by experts in your field, correct?

A I certainly am not going to say I'm qualified to perform it myself. But we rely on this type of data regularly.

Q Okay. And that smaller version of Plaintiff's Exhibit 13 that you have, is that a fair and accurate representation of the SunCalc data, data point, for the particular day of this wreck?

A Yes.

MR. WILLEY: Your Honor, at this time we would move to enter into evidence the Plaintiff's Exhibit 13.

MR. DANIEL: This is the SunCalc record or the Naval Observatory?

MR. WILLEY: The SunCalc, the specific one.

MR. DANIEL: No objection.

THE COURT: With no objection, it's in evidence.

(Whereupon, Plaintiff's Exhibit No(s). 13 marked for identification and received in evidence.)

BY MR. WILLEY:

Q Dr. Borzendowski, would you mind stepping down? The jury is going to have this back in the jury room, so will you just explain to them what they're looking at here.

A So hopefully what you can see here is this is a map of the intersection where the both collisions

occurred, actually, approximately. So we can see here Southwood Park Drive, which is where Mr. Johnson's vehicle was stopped. And then we have William Hilton Parkway, where Ms. Hood was traveling east.

And over here in this little box, we can see some data regarding dawn, sunrise, noon, sunset, and dusk for this particular geographic location.

Q And with respect to sunset for this location, what does it saying?

A It is identified as having occurred at 1729, which would be 5:29 p.m.

Q And William Hilton Parkway, 278, that road runs east to west, correct?

A Yes.

Q And how does the -- where does the sun set?

A West.

Q In the west. So the sun would be setting closer to you than it is to me, correct?

A If I were driving here, yes.

Q And with respect to specific geographic coordinates, obviously those are more specific than just giving it for an entire town, correct?

A Right.

Q Is it fair to say that if you were somewhere else on Hilton Head, the sunset may be at a different

time?

A It's going to be slightly different, yes.

Q A minute or two?

A Possibly.

Q And in this particular case, you relied on this document, correct?

A Correct.

Q And the sunset again was at 5:29.

A Correct.

Q Okay. Thank you. Just to be clear, as the sun was setting in the west, it would be setting down on this end of the road, right?

A Yes.

Q It wouldn't be setting behind these trees or setting behind these trees, correct?

A It would be somewhere into that direction.

Q This direction. Okay.

So those are the data points that you use at arriving at your opinions in this case, correct?

A Correct.

Q And briefly, just before we break here, would you tell the jury your opinions in this case?

A Absolutely. The first being that, given the time of sunset --

MR. DANIEL: Your Honor, I object.

THE COURT: Basis?

MR. DANIEL: May we approach?

THE COURT: Sure.

(Off-the-record discussion held.)

BY MR. WILLEY

Q All right. Dr. Borzendowski, all right, will you tell -- we'll go through them later, but will you just tell the jury the opinions that you've reached in this matter.

THE COURT: Is this -- are you wrapping up everything with her or not?

MR. WILLEY: No.

THE COURT: Okay. Well, then now might be a very good time for us to break for lunch. It is close to 1 o'clock.

Ladies and gentlemen of the jury, you are not to discuss this case. It wouldn't be appropriate to do so. Go grab a bite to eat, I'm asking you to be back in your jury room by 2:15, when we're going to go ahead and continue the trial of this case. All right?

Have a nice lunch, everyone.

(The Jury exits the courtroom.)

THE COURT: Okay. We're going to go ahead and break for lunch. I know you know this, what they're

concerned about is you testifying to the law in some way, shape, or form that somebody is required by law from where the other two -- do something or do not do something. You're a professional, you're an expert. Presumably trained by Ellen Campbell, and the rest of the progeny. You know that you can't testify as to the law. The Court can probably say that you can just give your opinions based on your expertise in human factors.

I'm not concerned about what you're going to testify to, but apparently everyone else in this room is.

So with that said, I'm going to go ahead and we're going to excuse everyone for lunch. We'll be back just a little after 2 o'clock. If there's anything else we need to talk about, we'll go ahead and discuss that at that time.

If you have any questions or any concerns about you crossing the line -- but I can tell you that if you start to, he's going to object, I'm going to sustain it, and we'll go from there.

But I think we're fine. All right? Let's stick to what her expertise is. Okay?

MR. WILLEY: If you stick to the three things we talked about, in those words, you'll be fine.

MR. DANIEL: The one concern is whether someone was legally required or not required.

THE COURT: And she can't testify to that. Okay.7

THE WITNESS: Yes.

THE COURT: All right. She understands that.

Okay. We'll break for lunch. We'll see y'all just a little after 2:00. Okay.

MR. WILLEY: Any objection to me talking to her during lunch, so we can be clear on the exact wording, so it's not tactful for you?

MR. DANIEL: No. I mean, I can ask her what you talked about, but I --

THE COURT: Don't talk about it. Because he'll ask her.

MR. SMITH: This afternoon, we're going to go a little bit out of order. I'm having witnesses come in instead of tomorrow, today. So we'll going to take them a little bit out of order just to get through it. Okay?

THE COURT: Doesn't matter to me.

MR. SMITH: Okay. I mean, it may seem a little unusual, but I'm trying to fit it in.

THE COURT: Okay.

(Whereupon, the Court was in lunch recess.)

(Proceedings continue in Volume 4.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 4th day of January, 2018.

/s/ MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 4

September 6, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

Roy T. Willey, IV, Esquire
Anastopoulo Law Firm LLC
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Charleston, SC 29403

AND

Kevin B. Smith, Esquire
Amanda Stearns, Esquire
Hoffman Law Firm
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REPRESENTING DEFENDANT:

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PROCEEDINGS

THE COURT: Okay. Let's bring the jury out.

(The jury enters the courtroom.)

THE COURT: Welcome back ladies and gentlemen. I'm going to go ahead and tell you right now that, interestingly enough, Jasper County Courthouse is controlled, the AC system, is controlled in Virginia. That happens all over this state. I can tell you that anytime that the courthouse has been redone or is fancy or brand new, which ours is, it gets controlled elsewhere. Because apparently they don't trust us to keep it.

But the good news is we'll -- go ahead, y'all can be seated.

The good news is that we do have running water, we do have hot water, so -- which was a problem we had for a few years back. Margaret knows that.

So anyway, I trust you all had a good lunch. We're going to keep moving forward. I just wanted to let you all know we've been watching just what's going on with Hurricane Irma. And we will let you know if there's

anything that you need to be concerned about whatsoever. It's absolutely fine right now, so let's not worry. But in case any of you are watching the weather, I just want you to know that we are on top of it and making sure everything is fine. Okay?

With that said, please go ahead and continue with this witness. Ladies and gentlemen, I just reminded her before you came in that she's still under oath and she knows that.

So Mr. Willey, whenever you're ready.

MR. WILLEY: Thank you, Judge.

Thereupon,

DR. STEPHANIE BORZENDOWSKI

was called as a witness, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION CONTINUED

BY MR. WILLEY:

Q Dr. Borzendowski, before lunch we went through your education and expertise and the data and information you relied on in this case, right?

A We did.

Q Okay. And just before we broke for lunch, you were about to tell us your findings of expert

opinions in this case, correct?

A Yes.

Q And, of course, during lunch, you and I had lunch together; correct?

A We did.

Q And we had -- what did we have?

A Wendy's.

Q Okay. There were a bunch of other people around, right?

A Yes.

Q And we -- did we discuss your testimony in any substantive way?

A Other than just making sure that we came up with wording that was comfortable for everyone.

Q Okay. So we wouldn't have another objection, right?

A Correct.

Q So with that said, will you tell the jury what your findings were in this case?

A Yes. The first being that this first collision occurred at 5:58 p.m. or earlier on the day of the collision. That Ms. Hood's -- that the vehicle would have been visible to Mr. Johnson. And that if Mr. Johnson were distracted at the time leading up to impact, that would have contributed to

his inability to avoid it.

Q Okay. So the first one was that the collision occurred at 5:58 or earlier, correct?

A Correct.

Q The second one was Hood's vehicle would have been visible to Johnson if he were looking, correct?

A Correct.

Q All right. And what was the third one?

A That if Mr. Johnson were distracted at the time of impact or shortly before that, it would have contributed to his ability to avoid a collision.

Q All right. And do you have any other findings in this matter at this time?

A Those are the primary findings.

Q Okay. Let me see what I wrote -- I basically just wrote what you said, but is this accurate as to what you said?

A It appears to be.

Q Okay. Handwriting is not the best.

With respect to your first opinion that the collision happened at 5:58 or earlier, what specifically did you base that upon?

A That's based primarily on the first 911 call in response to the collision.

Q And we know that that 911 call was placed when?

A 5:58 and 46 seconds, I believe.

Q Okay. And that 911 call was placed by Ms. Melnick?

A Yes.

Q And Ms. Melnick did all these things prior to placing that call, correct?

A That's my understanding, yes.

Q And obviously got transferred a few times before it was logged?

A That's her testimony, yes.

Q So in your opinion today, you are estimating that obviously that took longer -- all of this took longer than 46 seconds?

A I believe it would have.

Q Okay. And that's based on her testimony and your experience in human factors, correct?

A Correct.

Q With respect to your second opinion of that, Ms. Hood's vehicle would have been visible to Johnson if he was looking, what -- what did you base that up? Which specific data point helped you reach that conclusion?

A In part that it was not completely dark

outside based on the timing of the collision; and, therefore, there still would have been some illumination at the scene. And that there was also another vehicle coming from that direction of travel that would have been -- should have been visible to Mr. Johnson, and per his testimony, he did not see that one either.

Q And with respect to Mr. Lee's testimony, did you put any weight on the fact that he said he was able to see both the Plaintiff and the Defendant?

A Yes. So he did testify that he could see both vehicles prior to impact.

Q And today you had the opportunity to hear Ms. Kuck's testimony?

A Yes. Which was that they did see an object approaching them prior to impact with Ms. Hood's vehicle, and that it was light enough to see the roadway entry and other vehicles.

Q And specifically she said other vehicles with or without headlights?

A She did, yes.

Q And does that support your second opinion?

A It does.

Q And with respect to your third -- well,

let's stick there for a second.

So you also had the opportunity to hear Mr. Johnson's testimony today, correct?

A I did.

Q And Mr. Johnson testified that he did not see Ms. Hood's vehicle at all, correct?

A Yes.

Q Is that important when you are analyzing and reaching a finding on why something occurred?

In other words, an individual, whether they saw something and it was specifically one way, or just didn't see it at all? I mean, do you take that into account?

A In the sense that if there was visual information available, and that that observer failed to observe it, then that's an indicater of some extenuating factor potentially, yes.

Q Okay. And in this case, were you able to use the data available to you and the testimony of the parties and witnesses in order to reach a finding about potentially why Mr. Johnson did not see Ms. Hood?

A Potentially that he was distracted and did not -- either did not attend to that area of the intersection or failed to perceive it as a result of

the distraction.

Q And Dr. Borzendowski, I believe you prepared a demonstrative that deals with your third opinion?

A Yes.

Q Which you provided to Mr. Daniel last night, correct?

A I did.

Q And which he's, I assume, fine with you using.

So would you step down at this point with a copy of that exhibit? Do you have it?

A I do.

Q Okay.

A (Witness complies.)

Q And would you explain to the jury what it is that you prepared here?

A I apologize, it's kind of small. Bear with me.

Basically it's just illustrating some of the more common causes of distracted driving. So up at the top you'll see someone texting on a phone, and I think that's probably one that many people are familiar with, that texting while driving can be

Similarly, reading text messages. So typing and reading text messages are goal activities that take your attention away from the task of driving.

And then talking on the phone, hopefully many people are familiar with that one. They are -- not in South Carolina, but other states do regulate cell phone use in vehicles because of the issues associated with distraction of talking while driving.

One that some of the ladies might be more familiar with, which is putting on makeup in the car. So that is certainly an activity that is going to take your attention away from the roadway.

And eating and drinking while driving, and not just alcohol. That -- again, that's a task that requires some physical abilities, obviously, and I don't know if you guys can see in this photo, this person is juggling a soda and a burger. But, again, it's taking away some visual and cognitive abilities as well.

And finally, there's data to suggest that interacting with voice commands in your vehicle can also distract you while you're driving.

commands, specifically that's dealing with the in-car system.

A Right. So if you have Bluetooth in your car and you can voice dial your contacts and things like that.

Q And in this particular case, which of these did you find to be relevant?

A The most relevant would be reading a text while driving, because we know that there is a record of an inbound text message prior to the collision.

Q And you had the opportunity to review the totality of Mr. Johnson's cell phone usage from that particular day and the evening before, correct?

A Correct.

Q And were you able to make any analysis of that? In other words, when you looked at that, what did you -- what did you see?

A Primarily what I think everyone heard during testimony this morning, which was that he had been using his phone pretty actively throughout the day, including up to shortly before the first collision.

Q Okay. And when you looked at the phone numbers that he was texting to, were you able to see

any similarities or draw any --

A My recollection is that there was one number in particular that there was correspondence between throughout the day.

Q And is that the 1200 -- ends in 1200?

A That sounds familiar, yes.

Q Okay. When you look at his texts in detail, is this the number you're talking about, this 305-2200?

A Yes.

Q Okay. And in terms of this record, obviously this is calling and called. So whoever sent the text would be here, whoever received it --

A Right.

Q What were you able to determine about his interaction with that person throughout the day?

A It seemed to be sort of a give and take conversation. We can see that there's a pretty healthy mix of inbound and outbound, indicating correspondence between Mr. Johnson and that party.

Q And was that the individual also that he texted at 4:40 that morning?

A I do not recall off of the top of my head, but I think it might be this one.

And that's 4:44, yes.

Q And at the time of this wreck, is that also the individual that he was --

A So he received a text from that individual at 5:57:43.

Q Okay. And we now know that individual was his girlfriend?

A From his testimony, it sounds that way.

Q Thank you.

Dr. Borzendowski, can you tell the jury a little bit about how reading the text from a scientific perspective, because I think, you know, a lot of folks think, well, if I just glance, it's not that big of a deal. But will you explain to them from a scientific perspective how that works in terms of actually distracting you and the effects on your body?

A Sure. For most of the activity that we just talked about on that diagram, there are multiple components to the distraction that they cause. So some of it is the obvious, the physical handling of a phone or a makeup brush, for example, is taking a hand away from the steering wheel and other controls in the vehicle.

There's the visual component with reading a text message. For example, where you do

have to make a glance to the phone to read the message and that time that you spend reading the text message is time that your eyes are not on the roadway. And as many of us know, all it takes is a brief period of time where you're not attending to the roadway where something unexpected can happen.

And the third kind of big issue with these type of distracting tasks is the cognitive factor. So once you've read that text message, your brain has to kind of process the message. You might start thinking about how you're going to respond, what you're going to say back. And so when you're using your cognitive and attentional resources on that task, that's attentional resources that are no longer available for attending to the roadway and the other tasks associated with driving.

Q And, Dr. Borzendowski, does that reading a text, looking at a text, looking at your phone have a similar impact as the other items on the demonstrative that you put together?

A It does.

MR. WILLEY: Your Honor, at this time we're going to mark this as Plaintiff's exhibit and go ahead and move it into evidence for demonstrative.

MR. DANIEL: Your Honor, as long as I can use it and talk to her about it, I don't have an objection.

THE COURT: Okay. He's just putting it into evidence. So if you're fine with that, then, of course you can use it.

MR. DANIEL: That's fine.

THE COURT: It's in evidence, and you can use it all you want to.

(Whereupon, Plaintiff's Exhibit No(s). 14 marked for identification and received in evidence.)

BY MR. WILLEY:

Q Dr. Borzendowski, we've heard a lot, and you've heard a lot today, about alleged speed of Ms. Hood. And did you consider that in any way in your analysis today?

A And it didn't factor into my opinions really in this matter.

Q Okay. And tell this jury why you believe speed is not a factor -- did not factor into your opinion in this matter.

A If we look at my three opinions as they're posted on the board there, none of them have anything to do with speed. It really wouldn't have

impacted those factors.

Q And you had the opportunity, obviously, to review the photographs on the reconstruction -- or the testimony, correct?

A Yes.

Q Okay. And you were obviously able to determine that Mr. Johnson actually struck Ms. Hood, correct?

A Based on the evidence available.

Q Pretty obvious, right?

A It appears to be, yes.

Q And so whether or not Ms. Hood was traveling 25 or 85, it wouldn't have mattered, correct?

A Given the mechanism of the collision, no.

Q The only thing that that may not have done is put her in that place at that time, correct?

A Right. It would have changed the time it would take her to traverse that section.

Q Which if she had set her snooze button that morning and got up five minutes later, the wreck wouldn't have happened either, correct?

A Potentially.

MR. WILLEY: Thank you. Please answer any questions Mr. Daniel may have.

CROSS EXAMINATION

BY MR. DANIEL:

Q Ms. Borzendowski -- did I say it right?

A You did.

Q I just want to make sure I heard you correctly with what you said just now.

Is it your testimony and your opinion that speed was not a factor in this accident?

A I said that speed was not a factor, in my opinion, related to this matter.

Q Speed was not a factor, in your opinion.

A Correct.

Q As an expert in this case?

A To my specific opinions that I just offered.

Q Right. And you have considered information about speed as part of your investigation in this case, being hired as an expert on behalf of the Plaintiff; is that right?

A I did not conduct an independent analysis of Ms. Hood's speed personally, no.

Q You just ruled it out though as a factor, in your opinion. That's what you just testified to.

A It's not related to my opinions that I'm offering today.

Q You just said speed is not a factor in your opinion. That's what you told the jury.

A What I am intending to say is that of the three opinions I've offered, that speed is not related to those three opinions.

Q Okay. But you're commenting on speed, and you just gave an opinion about speed not being a factor; do you agree?

A Again, I testified that speed was not a factor in my opinions that I'm offering today.

MR. DANIEL: Madame -- Mrs. Bostick, can we pull this up?

MR. WILLEY: Your Honor, can we approach?

THE COURT: Sure.

MR. WILLEY: I think that you've already ruled on this, but ---

(Off-the-record discussion held.)

BY MR. DANIEL:

Q Bear with me. I'm not as tech savvy as some of the other folks here.

(Pause.)

BY MR. DANIEL:

Q You read Woody Poplin's deposition. Isn't that correct, ma'am?

A I did.

Q That was provided to you?
THE COURT: Okay. Come back up here.
MR. DANIEL: I got to ask the questions, Your Honor.
THE COURT: Come back up here.
(Off-the-record discussion held.)
BY MR. DANIEL:
Q Was information provided to you about the crash data taken from -- I'll use the slang term, "a computer chip" in the Plaintiff's vehicle?
A I don't have that specific data, no.
Q But have you seen testimony about it?
A I have.
Q From an engineer; is that right?
A Correct.
Q Someone that specializes in accident reconstruction, something you don't do?
A Correct. I am not an accident reconstructionist.
Q Do you remember what the testimony is about the documented speed of Ms. Hood's vehicle just before impact with Mr. Johnson's vehicle?
MR. WILLEY: Your Honor, I'm going to object. These are facts not in evidence. There's no documents showing her speed.

MR. DANIEL: I'm asking her if she remembers.
MR. WILLEY: He can call the witness, if he has a witness to say that. He doesn't get to just make it up.
THE COURT: Okay. Ladies and gentlemen of the jury, I'm going to send you back to your jury room. Do not discuss this case, it wouldn't be appropriate to do so at this time. We'll be right back with you. Okay?
(The jury exits the courtroom.)
THE COURT: Okay. Do either one of you list Woody Poplin as a potential witness in this case, on their pretrial brief?
MR. WILLEY: Everyone did.
THE COURT: Okay. So you did. So he potentially could be your witness. You're sitting here saying he was hired by USAA, which he may have been originally, but you now deem him as a witness as well.
Secondly, you've asked her a question of whether or not she thinks speed was considered. She said no. You can't get out Woody Poplin's testimony through her if she says she didn't consider it. You got to move on. She said she

didn't consider it.
The only other way to go ahead and use that against her is if you put Woody Poplin on the stand, or somebody does, and says, "You consider speed important, don't you?
Because at this point, you are pitting her against a witness that hasn't even testified in this case.
MR. DANIEL: Yes, Your Honor. But as an expert witness, she's considering testimony in what Ms. Melnick said, fact witness. She was also provided testimony about what this expert said he did. So she's considering hearsay in testimonies --
THE COURT: She said she didn't consider the speed. She said she didn't consider it.
MR. DANIEL: Well, she actually just testified that, in her opinion, speed is not a factor, and she knows what the documented speed was. We can call Woody Poplin, but she actually testified in her deposition that she saw what the documentation and the electronic --
THE COURT: So just ask her what the speed

on something that is not even impeachable at this point.
MR. WILLEY: But Your Honor --
THE COURT: She's going to say the documented speed according to the black box was 62 or 63 miles an hour. So when she testifies to that, she's going to go ahead and then give her answer and explain that yeah, and I still didn't consider it, and this is why.
MR. WILLEY: But, Your Honor, she doesn't know that. She did not get actually, as she testified, get that data to look at the data, which he could have given her to look at. He did not do that, we're already --
THE COURT: But she read Woody Poplin's deposition.
MR. WILLEY: Yeah, but she doesn't -- she can't -- we can't get in testimony from another witness without bringing in all the testimony --
THE COURT: She can though because that's something she reviewed in coming to her opinion. She reviewed it. What I'm hearing from her is she reviewed it, but it still

That's what I'm hearing.

MR. WILLEY: I that what she actually said is that she only reviewed that deposition for purposes of trying to figure out the accident sequence.

And if you look at the abstract, that she actually sent Mr. Daniel last night after he won his motion at his request, the only portions that were highlighted for her to read dealt with the sequencing and lighting. We didn't deal at all. She didn't look at it. End of deposition. I was there, this was five days ago. He's showing her portions of the deposition trying to get her to regurgitate what someone else said. It's totally inappropriate. You cannot pit witnesses like that, and it's prejudicial.

Woody Poplin is -- he can call him. We can call him, and it's proper then. But it's not proper to discredit her based on something that someone else said that she didn't even consider.

THE COURT: And all she has to do is say she didn't consider it.

MR. WILLEY: She already said that. And

now he's going in to trying to get prejudicial information, after she's already said on my direct and his cross, she didn't consider it, review it, count on it. Hasn't even received the data at all. She said that. I mean, you know, it's totally, totally improper.

What he could do, you know -- it's the equivalent -- I mean, it's the equivalent of me getting my Plaintiff up there and having my Plaintiff testify about what some doctor said in their deposition about her medical condition. I mean, it's totally improper. You have to bring the witness of the subject to cross examination unless you had a deposition for trial.

THE COURT: It's an expert witness that you relied on.

MR. WILLEY: But she did not consider that information. She's already said it, and he's trying to get the evidence in through her even though she's already said, No, I didn't look at it, didn't consider it.

MR. DANIEL: Your -- I'll be very brief, Your Honor.

THE COURT: Go ahead.

MR. DANIEL: She considered Tammy Melnick's testimony. We just heard that. We just heard about this, oh, this lady was on this porch.

THE COURT: Because Tammy Melnick testified already. She's already testified.

MR. DANIEL: Well, she can consider deposition testimony or live testimony. Experts are allowed to do that. They can't have it both ways. They provided Woody Poplin's deposition to her.

THE COURT: This is the problem. You keep asking her questions, and basically you're reading what Woody Poplin's testimony was, when she says she didn't rely on it. We need to go one step farther. She needs to say she didn't rely on it because of this reason. And once she says "because of this reason," you have got to move on.

MR. WILLEY: And, Your Honor, I would submit to the Court that in direct when we just went through that, she did. She said because whether she was going 25 or 80, she was T boned, the sequence of the wreck, it played -- [illegible] The same rate that would have

happened if the Plaintiff hit the snooze button that morning and was not there at that time. It's a res ipsa argument.

MR. DANIEL: And from a craftsman perspective, Your Honor, so that I don't raise any more issues, can I at least ask her if she knows what the documented speed was? That question.

MR. WILLEY: No. She already said no.

THE COURT: Already, she said no, she didn't.

MR. WILLEY: We're just rehashing --

MR. DANIEL: She actually testified that she did in the deposition.

MR. WILLEY: You showed it, yes. When you showed it to her.

MR. DANIEL: She knows it secondhand through their expert. She's looked at what he said.

MR. WILLEY: But you don't get to --

MR. DANIEL: You want me to read it -- I can read --

THE COURT: I don't want you to read anything. I want you to ask her an appropriate question. I think she needs to answer it. If

you, in a deposition, turned around and said, "In fact, in a deposition, didn't I hand you the document that Woody Poplin said it's 62 miles per an hour?" And you said, Well, at that point, yes. But she can then still say after that, "but it's not important because." And I expect her to do that, which she's going to do.

MR. WILLEY: And just briefly, I mean, the other issue with that is, it wasn't a discovery deposition, so he gets way more leeway. It would not have been admissible if it were a trial deposition anymore than it's admissible now. What some --

THE COURT: Mr. Willey, this witness was disclosed on July 17th. Correct me if I'm wrong. Yes? Of this year.

MR. DANIEL: Yes, that's correct.

MR. WILLEY: Yes, ma'am.

THE COURT: This wreck happened in 2014. You already made a motion to try to eliminate her testimony, exclude it. So you need to be careful.

Again, I could have just kept her out completely. So, again, I think this is fair

game. I think he can ask the question. We don't beat a dead horse.

She said it is not a factor, and I expect her now, once again, I'm sure, to say why, and tell these people why it's not a factor, and then move on. Okay?

MR. DANIEL: Can I --

MR. WILLEY: My only objection is to saying the speed because there's no reliable evidence that was the speed. It's what some other person said. She has not seen the data, there is no foundation for it, nor expert testimony. Not anyone that actually reviewed the black box has testified yet to establish it.

And so asking her what some other document says --

THE COURT: So you're not bringing Woody Poplin; is that what I'm hearing you say?

MR. WILLEY: At this moment, he's -- I mean, he's on our list, but he's not here.

THE COURT: You're not bringing him. Either yes or no. You're either bringing him or not bringing him. And if you're not bringing him, I can't imagine why you wouldn't.

MR. DANIEL: I have him under subpoena, Your Honor, and we can just -- we could just cut to the chase and ask her what she remembers that speed being, per Woody Poplin, and she can answer that the way she wants.

MR. WILLEY: No, that's improper. When we call him -- when we call him or when he calls him, he can ask him. And then Mr. Poplin is subject to redirect by --

THE COURT: Okay. I'm going to let you go ahead and ask her if she remembers what the speed is, that's fine. If she doesn't, you could say, "In the deposition, in fact, didn't I show you what the downloaded black box is."

And I'm assuming -- and she's going to turn around and say, "Yes, but again that's irrelevant to me because." That's what she can testify to. So let's just move on.

But what you're not going to do is say all these things that Woody Poplin considered, who hasn't even testified yet. Okay?

MR. DANIEL: I will keep it as brief and --

THE COURT: Well, that's great, because if you don't I'm going to cut you off. Okay?

MR. DANIEL: Yes, ma'am.

THE COURT: Let's bring the jury back now.

(The jury enters the courtroom.)

THE COURT: All right. Mr. Daniel, ask your question. Let's go.

BY MR. DANIEL:

Q You were talking about sunset. I'm going to come back to the questions we were just -- the topic we were on. But you were talking about sunset and what time it was based on some data, based on some European equation.

What country in Europe; do you know?

A I believe that SunCalc website links to the University of Netherlands.

Q Okay. So that's what people in Holland say about sunset in Bluffton or Hilton Head?

A No. It's a formula grounded in physics and astronomy.

Q But the U.S. Navy also has a similar formula, right?

A I'm certain they do.

Q And didn't -- do you remember telling me in your deposition that you more often than not rely on the U.S. Naval Observatory data when pulling times for sunset. Do you agree?

A That I typically use the Naval Observatory, yes, for a general area.

Q Okay.

MR. DANIEL: Your Honor, may I approach?

THE COURT: You.

MR. DANIEL: We'll mark this in just a second.

(Whereupon, Defendant's Exhibit No(s). 6 marked for identification.)

BY MR. DANIEL:

Q Can you tell the jury what that is?

A That is sun and moon data for the date of the collision from the U.S. Naval Observatory.

Q And what does that say about the sunset?

A That it occurred at 5:28.

Q 5:28 p.m. that day?

A Correct.

Q Was the official time per the Naval Observatory in Hilton Head.

A In Hilton Head, yes.

Q Okay. This accident happened on Hilton Head Island, right?

A It did.

Q Okay. So your -- one of your opinions is that no lay -- either 5:58 or earlier was the time

of this accident; isn't that what we just had up in this demonstrative?

A Correct.

Q 5:58. So it would be, per the Naval Observatory, if you do the math, 5:58 is 30 minutes after sunset in Hilton Head?

A Exactly 30 minutes, yes.

Q Okay.

BY MR. DANIEL:

Q Okay. Defendant's 6. This will be Defendant's 6.

Is that considered a more official source -- is that considered a more official source for sunrise and sunset times?

A I would say that that is certainly an official source. It's the U.S. Naval Observatory, but the SanCalc website as well is relying on the same physics to calculate sunset.

Q But physics in a formula that you don't -- you don't really know exactly how they do it, right?

A I'm not a physicist, so, no.

Q And would you agree -- I mean, you're not a law enforcement officer?

A No, I'm not.

Q I mean, one of those obvious lawyer

questions, but just -- I'm going to get there.

As far as making a determination of whether it's pretty dark out and someone should have their headlights on, and whether someone should be pulled over for that and given a ticket, you agree that that's the discretion of the officer on patrol, right?

A A one-person officer would make that call, yes.

Q And you weren't not out there that night -- that evening, 25 minutes after sunset, 35 minutes after sunset on the night of this accident?

A I was not.

Q Would you agree with me 5:50, 5:53, in the evening, on November 7th, that time of year in Hilton Head, it's relatively dark outside?

A Relative to daylight, yes.

Q Well, relative to daylight. You've looked at Google photos, there are no street lights -- there are no street lights at this intersection, are there?

A Not that I've seen.

Q Yeah. So -- and there's trees up here, right?

A There are.

Q So once the sun starts going down these trees can -- they're to block some of the natural light once the sun starts setting; would you say?

A They may.

Q All right. They may? That's a fact.

A I mean, it depends on where the sun is setting relative to the trees. But, yes, it would block sunlight in that area.

Q Right. There have been -- I mean, you've been in a big city, those tall buildings, they can block out the sun. It's just a fact of life. A fact of light and life; do you agree?

A That the sun can create shadows when there are objects in the way, yes.

Q Right. And trees -- trees cast shadows, don't they?

A They can.

Q And there are no street lights in that intersection.

A Not that I've seen.

Q And one of the opinions --

MR. DANIEL: Your Honor, I don't want to -- just demonstrative. I'm just going to show it to her, I'm not going to write on it. I don't --

THE COURT: Go ahead.

BY MR. DANIEL:

Q Okay. I want to make sure everybody can see this.

One of the opinions, your opinion two that is written down here Mr. Willey asked you about. Hood's vehicle would have been visible to Johnson, if looking, right?

A Correct.

Q And do you agree that that's a little bit different than what you testified to in your deposition just about a week ago -- less than a week ago?

A If you will refer me to a specific page, I'll be happy to compare.

Q Page 18, last line, 25. You see that? You gave three opinions in your deposition, too. Just a week ago.

A Yes.

Q Okay. The second opinion, which is this opinion. If you want to come down here and compare, you can.

A I can see.

Q I'm going to read it to you and I want you to tell --

THE COURT: Give her a page and line first.

BY MR. DANIEL:

Q Okay. I'm starting at Page 18, line 25. Then you go to 19.

A Okay.

Q Your testimony, as far as your second opinion, second being that any lights that she did have activated on her vehicle would have been visible to Mr. Johnson.

A Correct.

Q So we should add "lights would have been visible."

A On her vehicle, yes.

Q Yeah. It's not this simple -- at least five days ago, six days ago, it wasn't this simple. You didn't say he should have seen her vehicle, lights or no lights.

Your sworn testimony, under oath, as an expert, being paid $290 an hour was that if she had lights activated they would have been visible to Mr. Johnson.

A Yes.

Q That was opinion two.

A Yes.

Q Not this opinion. It wasn't this simple; do you agree?

A They're not identical, I agree.

Q And they're not the same.

A That her vehicle, at some point, yes, would have been visible. It's not the same as what you're reading here, no.

Q At some point -- so you agree distance matters?

A In a sense it does matter when viewing certain objects, yes.

Q And the faster you go at a given point in time, if you're going 30 miles an hour versus 60 miles an hour, in a one-second period, all things being equal, if you're going 60 you travel a farther distance, don't you?

A Yes, in one second.

Q So when you do the math backwards, if someone's going 60 miles an hour, they're a lot farther back down the road from a given point to where they end up in a second, a second later, than if they're going 30, right?

A If I understand your question correctly, yes. A vehicle traveling 60 miles an hour will travel a longer distance in one second than one

going 30.

Q So speed can be a factor in an accident; do you agree?

A Yes, I agree.

Q And do you remember, or do you know from your review in records provided to you by Plaintiff's counsel, what the computer chip data said about Mrs. Hood's speed?

MR. WILLEY: Your Honor, objection, lack of foundation, relevance, hearsay, and 403. If he has the data, he can bring it per an expert.

THE COURT: Denied. Go ahead, you can answer the question.

THE WITNESS: I've seen the specific data that you're referring to. I have seen testimony about speed.

BY MR. DANIEL:

Q Have you seen Mr. Poplin's testimony about speed?

A I have.

Q And what did he say?

A My recollection is that he downloaded the data from the vehicle and per his information that the speed was 62 to 63, I believe.

Q Speed of whose vehicle?

A Ms. Hood's.
Q The Plaintiff?
A I believe that's who you were asking about.
Q Yes. I'm just making sure we're clear. So --
A But that, as I said before, isn't a factor in my opinions.
Q Was it 62 to 63?
A That's my recollection.
Q And in your opinion -- in your opinion as a human factors expert, it's not an issue?
A That is not my testimony.
Q Okay. It could be a factor then?
A As far as the distance that you travel in the time that you covered it, and in general as far as damage to vehicles, speed can be a factor. But as far as my opinions that I'm offering today, I'm not relying on speed for that.
Q If she's a lot farther back down the road because she's driving a lot -- you know, 30 as opposed to 62, 63 miles an hour. If someone is driving 62 miles an hour, this is not a specific distance, but if they are back towards this back door back here versus right here on a dark roadway,

that can affect visibility; do you agree?
A The speed?
Q Yep.
A No. Visibility is based on the properties of the object that you're trying to view.
Q Okay. And you testified in your deposition that as things get farther away, or at a distance, even in bright conditions, even in daytime conditions, we don't have unlimited sight as things get farther away from you. You lose the ability to see details of those objects, do you agree?
A Because they appear visually smaller, yes.
Q Right. And I mean, oversimplification, but if it's like if you look at a plane in the sky, as it starts going away, even in daytime, eventually that plane's gone. You can't see it anymore, right? Basic level, do you agree?
A At some point it may reach an altitude where it would become very difficult to see, yes.
Q At some point, you can't see it. That's a fact; do you agree?
A Yes, for a number of reasons.
Q I just want to make sure we're on the same page.
So on a dark road, if a vehicle is

going 62 miles an hour covering however many feet, where there's no lights shining on it and there's no lights on, and it's a dark vehicle, you're saying that's not a factor how far back down the road it is, and that doesn't affect visibility?
A But the speed doesn't matter in that situation, because at the end of the day she's still has to come from half mile, four miles, however many miles back. It doesn't matter what speed at which she's traversing that distance. It doesn't change the visibility of that object.
Q I got you. Okay.
Well, did you hear Mrs. Knck earlier this morning?
A I was hear for her testimony, yes.
Q Yeah. She couldn't even make out whether it was a sedan, or an SUV, or what was coming at her, and that thing hit her car.
A That's her testimony.
Q That might have -- you agree that, you know, as far as how dark it was, it seems like it was getting pretty dark by the time of this accident?
A The sun had set at that point, yes.
Q Okay. And what have you done -- you

looked at this website that has calculations from a university in Europe, the Naval Observatory records. Have you gone to the scene?
A For this case, no.
Q Okay. Have you gone out there to put yourself in -- haven't gone out there to put yourself in Antoine Johnson's perspective, have you?
A I have not.
Q And you agree that it's a heck of a lot darker out at this intersection at 5:50 in November than what we see here in Exhibit 5, right?
A It would be darker, yes.
Q And your understanding is that Antoine Johnson, he would be right around where that white stop bar is, or right here by this crosswalk looking at --
A Assuming that's Southwood Park Drive, yes.
Q Okay. And you haven't gone out there to take photos or document how dark that intersection gets and how dark it is looking down the road at 5:45 at night, 6:00 at night, 20 minutes after sunset, 30 minutes after sunset, 27 minutes after sunset. You haven't done any of that?
A I don't have that data, no.
Q And you could do that, if you were asked

to do that?
A If I were asked to do that, yes.
Q And you have people in your office that do speed calculations; is that correct?
A I have engineers that are capable of it. I don't have an accident reconstructionist, if that's what you're asking.
Q You don't have a single person that does accident reconstruction in your firm?
A I do not have a certified accident reconstructionist, no.
Q Okay. Well, Woody Poplin is a certified accident reconstructionist, right? Would you agree?
A I can't speak to his specific qualifications, but I understand that he is an expert in accident reconstruction.
Q Okay. And you did read his testimony and what he said?
A I read his testimony.
Q Right. So you've done nothing to put yourself in Antoine Johnson's perspective, but you're going to comment about what he should have been able to see?
A I did not place myself in his spot at the scene, but I have extensive experience in nighttime

driving as well as the appearance of headlamps and vehicles at night.
Q Do you agree that at nighttime, we as people have a limited ability to see?
A We do.
Q You don't have any opinion about whether Ms. Hood's headlights were on or off, do you?
A I have not conducted an independent analysis of that.
Q Would you agree that it's dangerous at a certain time once it starts getting dark to operate your vehicle without your headlights on?
A It can be, yes.
Q Would you agree that that can pose a risk to you as the driver, if you're driving without your headlights on, and pose a risk to others on the roadway if you're driving without your headlights on at night?
A It can.
Q And you've already said it gets relatively dark at about 5:50, 5:53 p.m. in Hilton Head, South Carolina, the area where this accident occurred; is that right?
A At that time of year, yes.
Q All right. And you went to Clemson to get

your Ph.D.
A I did.
Q And one of the professors that you studied under, and I think you said one of the reasons why you went there is Dr. Tyrrell.
A Dr. Rick Tyrrell, yes.
Q Dr. Rick Tyrrell. All right. Do you think he's an authority in human factors?
A He is certainly a well-published and well-researched individual, absolutely.
Q Do you respect his opinions as someone who was your professor and taught you on the subject of human factors?
A I certainly respect his opinion.
Q Okay.
MR. DANIEL: We went to Clemson --
MR. WILLEY: I haven't seen this, Judge. I didn't see it before he shows it to the jury. And I object to this, it wasn't produced in discovery.
MR. DANIEL: Impeachment, Your Honor.
MR. WILLEY: It's not -- it's not proper. He can call Dr. Tyrrell about this case if he wants.
THE COURT: You can ask her if she's

familiar with it. If she's not familiar with it, she's not familiar with it. But it's not for you to just go ahead and show them.
MR. DANIEL: Yes, ma'am.
BY MR. DANIEL:
Q Have you ever been to Clemson's website?
A I have been to Clemson's website.
Q Have you ever seen this quote on Dr. Tyrrell's page, "You can't see a damn thing in the dark."
A I have.
Q You have seen this?
A Can I explain?
Q Well, yeah.
A Okay. That was a quote from Dr. Tyrrell's graduate advisor, and it is a clever little thing that we use as sort of -- again, a clever thing that guided our research for why nighttime conspicuity was important.
Q And I mean, if I'm looking at it -- it's got headlights in it. You've seen this picture, right? You've seen this --
A I haven't seen his website recently. So I don't know if I've seen that photo.
Q But you've heard of his quote, "You can't

see a damn thing in the dark."
A Again, it's a clever saying, and, yes.
Q And that's something Dr. Tyrrell taught you?
A Yes.
Q Okay. So you didn't look at the vehicle damage to assess speed. That's not something that you do, an accident reconstructionist would do that.
A Yes.
Q There was testimony, and I believe it was the way the question was worded, not necessarily the way you answered it, but that the impact between Antoine Johnson's Honda and the Plaintiff's Equinox pushed her over into the other oncoming lanes.
Since you didn't do an accident reconstruction, you really -- you can't testify to that, can you?
A No, I did not offer any opinions about that.
Q She could have overcorrected?
A I suppose that's possible.
Q And, I mean, just common sense, if you're going 30 versus 60 and you jerk the wheel hard, it can be a lot worse at 60; do you agree?
A I'm not sure what you mean by "worse."

Q All right. Well, if you're going 10 miles an hour and you start to turn the wheel of your vehicle, in your experience, can you give it a little more of a tug versus 60? You got to be really careful about how hard you turn your wheel?
A I'm not an accident reconstructionist, I'm not going to speak to that.
Q You're not going to go there even though you drive everyday, right?
A I do.
Q You actually have a Chevy Equinox, don't you?
A I do.
Q Same vehicle as the Plaintiff; is that right?
A Different year.
Q Yeah. 2015. Do you know if the lighting on that has changed?
A I don't.
Q You haven't gone out to the scene to go out there and take a photo or something as it's getting dark with just the parking lights on, or running lights on, have you?
A As you just pointed out, I don't know what's changed from '11 to '15.

Q Okay. As far as texting and driving, or distractions, do you think -- I mean, you've got that -- this exhibit here, Plaintiff's 14, is there any information that you have that Antoine Johnson was eating something when this accident happened?
A No.
Q So that would be pure speculation there?
A As far as whether or not he was doing it, yes. As far as whether or not it's a cause of distraction while driving, no.
Q Well, we're here about Antoine Johnson. Makeup, he's probably not putting on makeup?
MR. WILLEY: We stipulate that the only one that's relevant is the one that she said was relevant, reading the text, instead of going through all eight of them. Can we agree on that? The relevant one in this case is reading the texts.
THE COURT: That's fine.
BY MR. DANIEL:
Q And that cell phone record, Exhibit 7, if you want to come down and look at it, you can. But you've seen it, right?

Q I invite you to come down and look at it if you're unsure. You haven't checked with the cell phone carrier about what all this information means?
A Which information?
Q This information in this exhibit.
A I mean, some of it is fairly self-explanatory. But if you have a specific question.
Q This is -- you're suggesting a question. You haven't checked with the cell phone carrier about what this information means?
A I have not checked with the cell phone carrier, no.
Q All right. And Mr. Johnson received a text at 5:57:43; is that what that says?
A It does.
Q Does that mean he was necessarily reading that text?
A No. There's no indication of that.
Q And you know of no witness that says that he was reading -- yes, ma'am.
You know of no witness that says he was reading a text, or there's nothing showing that he sent a text at that time, right?

Q That could just mean that that text came in at that time and was on his phone, like email in your inbox on Outlook or something, right?
A It could.
Q Or mail in the mailbox. Once it's there, it's electronically documented. That could be what that means.
A It could.
Q You don't know one way or the other.
A No.
Q And Mr. Johnson said, you know, he had just been involved in the accident. The first thing he did, he lives with his mom, he's a young age, he called his mom, right?
A That's what he testified to, yes.
Q You were here?
A Yes.
Q He did that right after the accident?
A That's what he testified, yes.
Q If his phone's right there, that wouldn't take but as long as it takes to pick up the phone, and I've got mom on there, I'm calling mom.
A Sorry?
Q It could be within moments, right?
A Potentially.

Q You can't put a precise time on when this accident happened, can you?
A A precise time, no. But I think in my deposition, we both agreed that the phone records between, I think it was, 43 and 57, were before the collision. So that gives us an approximate range.
Q I'm not -- I don't know that we agreed to anything, but I'm not -- I certainly didn't say -- I mean, this 57 is just a text that maybe came in, right? It doesn't mean that Antoine Johnson is doing anything with his phone at 5:57:43. That doesn't show you that Antoine is doing anything with his phone. You agree?
A It does not indicate what he was doing with his phone, no.
Q We do know that he made an outbound call at what looks like 6 o'clock and eight seconds, right?
A I can't read that from here. But I trust that that's what you're reading me.
Q I want to make sure you can read it.
A I can. Thank you, I'm not that blind.
Q All right. Six o'clock and eight seconds.
A Yes.
Q Okay. So the accident could have happened

at 5:58 p.m.?
A It could have.
Q And do you have any reason to dispute that Mrs. Hood may have been traveling at 62, 63 miles an hour just before this accident?
A I don't have any evidence either way, but I have reviewed.
Q You've reviewed the testimony of an engineer?
A I've reviewed the testimony of an engineer.
Q And we've already talked about what that testimony was?
A I believe so.
MR. DANIEL: Thank you.

REDIRECT EXAMINATION

BY MR. WILLEY:
Q You can't see a darn thing in the dark -- but let's start at the end.
MR. WILLEY: And, Ms. Margaret, would you be so kind as to turn on this screen?
BY MR. WILLEY:
Q You mentioned a piece of your deposition. Y'all agreed.
What -- what page were you referring

to there?
A Page 66.
Q Okay. And during your deposition Mr. Daniel was the one asking you the questions?
A He was.
Q Okay.
THE CLERK: What do you have it hooked up to?
MR. WILLEY: Airplay.
BY MR. WILLEY:
Q And what -- what lines were you referring to?
A Lines five through ten.
Q Okay. And --
MR. DANIEL: I think it's number one. It's from Apple TV. You've got the DVD on.
BY MR. WILLEY:
Q It's not on this one, but let me see if I can get it up here. Lines 11 through -- or what did you say?
A Five through ten.
Q Five through ten. Okay. Let's call those out.
And that's Mr. Daniel asking you the question. What did he say?

A Would you like me to just read it?
Q Yeah, that would be great.
A "And the time frame, we kind of talked about it, but the guestimate to the time frame in the records in the 1743 to 1757 would be the most -- the ones closest in time to this accident based on what we know."
Q And you answered?
A "Yes."
Q So you accurately reflected your deposition when he asked you that, right?
A I believe so.
Q Y'all agreed on that, 4357, right?
A Yes.
Q And you're familiar with this book. It might be the first person in the whole trial that's seen it before.
A Yes.
Q Okay. And what is this?
A The South Carolina driver's manual.
Q All right. We've been through a few here. And is this, in your line of work, a publication that you use and rely on to gather information?
A It is.

Q Okay. And does this document give you some indication about when, in South Carolina, you know, it's dark, so to speak?
A Yes.
MR. DANIEL: Your Honor,
THE COURT: Do you have an objection? What's the basis?
MR. DANIEL: I'll wait for the question.
BY MR. WILLEY:
Q Okay. What does it say about when it's dark?
A Based on the driver's manual, it would be dark 30 minutes before sunrise and 30 minutes after sunset.
Q Okay. And what does the driver's manual say that you should do when it is dark?
A Activate your headlights.
Q Does it give other circumstances, other than that 30 minutes after sunset or 30 minutes before sunrise, when you should activate your headlights?
A It does.
Q And what does it call those things?
A Environmental factors, I believe.
Q Okay. And I added the eclipse earlier to

be fun, but these top four, are these the four that it lists out as environmental factors?
A I definitely recall the first three, yes.
Q Okay. So it specifically deals with darkness, right?
A Independent of the environmental factors, yes.
Q Okay. And in this case your opinion was that the collision was at 5:58 or earlier, correct?
A Correct.
Q And in your deposition you and Mr. Daniel agree that it was between 43 and 57, based on what we have there, correct?
A Those records were the closest to the collision, yes.
Q Right. And if we take his U.S. Naval Observatory, which, again, is for the whole town, that's the average for the whole town, correct?
A Correct.
Q When would it have been 30 minutes after sunset?
A 5:58.
Q After this wreck?
A Yes, around that time.
Q With the only possible exception being if

this wreck occurred exactly at 5:58, right?
A Right.
Q But in this case, you actually went a step further and got a more specific data point, correct?
A It's using more precise coordinates, yes.
Q And the precise coordinates put sunset at that exact intersection at what time?
A Five fifty-nine, I believe.
Q And this data point and this data point is using the same exact physics, correct?
A That's my understanding, yes.
Q Okay. This one is more general for the whole town. This one's more specific, correct?
A Specific to the location of the collision, yes.
Q And according to this data point, this specific data point, when would it have been 30 minutes after sunset at that intersection where this wreck occurred?
A Five fifty-nine.
Q And that would have been the point at which headlights would have been required?
MR. DANIEL: Objection, Your Honor.
BY MR. WILLEY:
Q According to the driver's manual.

A Based on the driver's manual.
THE COURT: Okay. Based on the driver's manual. Go ahead.
BY MR. WILLEY:
Q And presumably, folks that have automatic headlights, they come on at a specific time; correct?
A It's based on the lighting in the environment.
Q And generally they click on when it's time or whatever.
A When it's dark.
Q And since you've been -- I didn't bring this up because I don't really -- didn't think it was relevant. But we went into this Poplin fellow's deposition. You reviewed his deposition, correct?
A I did.
Q What did -- what did he say about Ms. Hood's headlights?
A There is --
MR. DANIEL: Objection, Your Honor.
THE COURT: Basis?
MR. DANIEL: Lack of foundation. She's not giving an opinion about headlights.
MR. WILLEY: I'm just asking her what she

said. He asked her what she said about a thousand things.
THE COURT: You asked her questions about lights, so go ahead.
MR. WILLEY: I, mean, I actually, for the record, agree with the objection.
BY MR. WILLEY:
Q What did he say about the headlights?
A He indicated that at some point the high beam assembly had been activated prior to impact.
Q Along with the running lights, correct?
A I believe that either he or another engineer had testified to that, yes.
Q Okay. But according to the driver's manual, assuming what we all agree on, that this wreck occurred before 5:58, she wouldn't have been required to have anything on, correct?
A Based on the driver's manual, that's correct.
Q This specific point, this intersection, this road runs east to west, correct? We've gone through this.
A It does.
Q Okay. And the sun sets where?
A West.

Q Okay. So the sun would be setting on this side, correct?
A This side.
Q Right. Would that, in your -- you know, field of expertise provide some reason why this intersection might have a little later sunset than somewhere in the middle of the trees in Hilton Head, for example?
A Yes. I believe there's a section on the U.S. Naval Observatory's website that discusses that there can be minor variations in sunset time based on where exactly the data's from because there's differences in elevation and the horizon and things like that.
Q And so in this case, you know, it's an open road and the sunset in the west, there would have been more light potentially than other places on Hilton Head?
A Depending on where it was calculated from, yes.
Q And you were here, we were all here, we've all been here all week. You heard Ms. Melnick's testimony, correct?
A I read her testimony.

down, please?
A Oh, yes.
Q Where is it -- you know, your understanding Ms. Melnick was putting down the umbrellas. Where was she?
A In this area.
Q Okay. And roughly, where was the aftermath that she was able to see?
A My understanding is that she was looking through the trees from this area, so somewhere in this vicinity.
Q And based on your review of, you know, her testimony, she was able to identify roughly the number of vehicles involved, correct?
A That's my recollection.
Q And people were helping and all that sort of thing?
A That's what she testified to.
Q And she was able to see that through these trees?
A Yes.
Q Now, based on your expertise in human factors and conspicuity, would she have had better or worse ambient lighting looking through the trees,

stopped at the stop sign on the open highway?
A She may have had some shadowing, for example, from the trees in that area. So that may have changed things from her perspective versus being in the open area at the intersection.
Q But she was able to see the vehicles out there on the highway.
A Yes, she did in her deposition.
Q As far as we know, she didn't have headlights on.
A No, to my understanding.
Q Okay.
Just so we're clear on that.
Now, your second opinion, there was some talk about that, so let's just deal with that. You did not have the benefit of a live testimony like this morning prior to your deposition, correct?
A I'm sorry?
Q The testimony that you heard this morning as you sat in the courtroom, obviously you had not heard that prior to your deposition, correct?
A Right.
Q Okay. And we talked about some of the factors, but obviously this morning you heard Mr. Lee say that the Xenon headlights he had on,

correct?
MR. DANIEL: Objection. Mr. Lee didn't testify to that.
BY MR. WILLEY:
Q Oh, excuse me. In his deposition.
A Yes, I was going to say, in his deposition.
Q Okay. What I was saying is this morning you heard Mr. Johnson say that he could not -- he also did not see Mr. Lee, correct?
A He indicated he did not see any vehicles.
Q So what did that -- what does that tell you in your expert opinion about the importance of headlights to Mr. Johnson's ability to see cars coming?
A It would indicate that he either was not looking in that direction, or failed to perceive information in that direction because headlights in general are a fairly conspicuous visual queue. And I think that many people have experience with the Xenon or the blue lights in particular. They have the appearance of being quite bright.
Q And he didn't even -- he didn't see those?
A He testified that he did not.
Q Does that support your third finding as to

distractiveness and inattentiveness?
A It did.
Q And based upon that, were you able to find to a reasonable degree of professional certainty, most probably that Mr. Johnson being distracted at the time contributed to the inability to see Ms. Hood?
MR. DANIEL: Objection, mischaracterization.
MR. WILLEY: She can say yes or no.
THE COURT: Okay. Go ahead and answer it.
THE WITNESS: That would be the most probable explanation.
MR. WILLEY: Thank you, Doctor.
RE-CROSS EXAMINATION
BY MR. DANIEL:
Q And, Doctor, your opinion actually is if - if -- I mean, we can underline it. I don't want to mark their demonstrative up -- but if Johnson was distracted, so you're assuming -- that's an assumption, right?
A Based on the evidence available, that is what is suggested.
Q That's an assumption, though, that you have to make?

A To some extent.
Q And you don't know -- you didn't hear Dustin Lee testify, you don't know what he said about how far back down the road he was, whether it was -- and he's really giving a guesstimation, it was ten car lengths, 12 car lengths, how far back down the road he was, do you?
A I was not here for his testimony, no.
Q And you don't know whether at the time, really what Antoine Johnson saw was -- there is nothing right in front of me, there may be a vehicle way back there, 100, 200 yards back with lights on, but I can get through to this median and pass, and get to the median before that vehicle back there with lights gets here.
You don't -- you don't know what his process was actually at the time, do you?
A I'm sorry?
Q You can't go -- you can't go back and see what he saw; is that right?
A None of us can.
Q Right. And obviously Dustin Lee did not hit Mr. Johnson's vehicle; do you agree?
A That is correct.
Q We know that. That's a fact. That's not

an assumption, that's a fact?
A That is a fact.
Q And so he was far enough back to safely either stop or stop in time to avoid making contact with Mr. Johnson, who was in the middle of this roadway; do you agree?
A Can you repeat that?
Q Yeah. Dustin Lee was far enough back on William Hilton Parkway, 278, that -- do you see the shade right there?
A I do.
Q Yeah. That's in the photo, aerial shot here. He was far enough back to stop in time to avoid hitting Mr. Johnson; do you agree?
A I do agree. He could also see him.
Q Yeah. And he's being asked to recall exact specifics three years later. He knows he didn't see any headlights, he didn't see anything right in front of him. He's definitely testified to that; do you agree?
A Who?
Q Antoine Johnson.
A Sorry. I thought we were still talking about Mr. Lee. Can you repeat that?
Q Yeah.

Antoine Johnson, if he says he didn't see any headlights or anything right there that would have made it unsafe for him to pull out, you don't have really any reason to disagree with that?
A He testified he didn't see any vehicles. But I have no reason to disagree with his testimony about that.
Q There could have been a vehicle though with lights on well back of him, Dustin Lee, and if it's far enough back, as a driver, you agree, if you see headlights that are way down the road, a couple hundred yards away, you can get through two lanes of travel, right? If you -- do you agree?
A I'm sorry?
Q You're a driver. You drive?
A I do. I'm sorry, I'm not understanding your question. I'm asking you to repeat it.
Q Have you ever made a left turn? Have you ever made a left turn like this, when you saw headlights down the road from you, but they were off in the distance?
A Yes.
Q Okay. And what we have established is you don't know whether Antoine Johnson was reading a text, right?

A We can't say for certain, no.
Q There's at least one source that you actually used more often that says sunset is at 5:58, 30 minutes after sunset in Hilton Head, right?
A I'm --
Q U.S. Naval Observatory says that it's 30 minutes after sunset at 5:58 p.m. on the day of this accident, right?
A Yes, that was unclear in your first question.
Q You're right, poorly worded question.
But the sun has been going down, and it's down. It's been 30 minutes after sunset, per the Naval Observatory, at 5:58 p.m. on the day of this accident?
A Per the Naval Observatory, for the general Hilton Head area, yes.
Q And 27 minutes after sunset it's pretty dark with conditions like this; do you agree?
A It is getting dark.
Q Yeah. You haven't gone out there and recreated it and shown how dark that actually is?
A I have not recreated it, no.
Q You don't have any photos of any vehicles with their headlights on or off at a time like that,

20 minutes, 25 minutes, 30 minutes after sunset?
A For this case, no. For studies I've conducted in the past, yes.
Q So you could show studies to the jury with pictures like that that they could see, to see how dark it is; but you're not doing it here today?
A I have photos showing how conspicuous headlights are under those circumstances.
Q You didn't bring any of those type photos with you?
A I don't have them with me, no.
Q Okay. You could have brought them.
A I suppose.
Q Right. And you could have talked to the witnesses about what they observed?
A I could have, I suppose, yes.
Q You didn't do that?
A No. I relied on their sworn testimony.
Q Right. Have you considered the deposition testimony of Cary Tanrath?
A I didn't see deposition testimony of Cary Tanrath.
Q You don't even know who he is?
A I know who he is. I did not see his deposition.

Q What do you know about Cary Tanrath?
A He was a witness to the collision. He gave a statement after the collision.
Q Do you know specifically what he says about headlights?
A My recollection is that he said he did not see headlights on Ms. Hood's vehicle.
Q Do you know where he was?
A I don't recall specifically.
Q And you agree that you're not a police officer?
MR. WILLEY: Your Honor, we're going way outside the scope. We've got down this road, she's not a police officer, she's not a doctor. We agree to all of that. She is a doctorate in human factors.
THE COURT: Let's just move on with it, okay?
MR. DANIEL: Yes, ma'am.
THE COURT: Thank you.
BY MR. DANIEL:
Q You were shown the driver's ed or some kind of South Carolina driving guide. You agree that that's not the actual law on what is required as far as headlights in South Carolina?

A No, it is not the law.
Q Have you read the law at this point before today?
A I have not.
Q You have not?
A No.
MR. WILLEY: Your Honor.
THE COURT: Okay. We are starting to get into territory. She can't testify to law, you know that.
MR. WILLEY: I will show her the law.
THE COURT: Let's move on. Let's go.
MR. DANIEL: Yes, Your Honor.
BY MR. DANIEL:
Q And do you agree that environmental conditions, though, dictate when you should or should not have your headlights on?
A In part, yes.
Q And you should have your headlights on when it starts getting hard for you to see other drivers on the roadway or other drivers to see you; do you agree?
A I don't recall how specific it's in there.
Q Does that make sense?
A It makes common sense, yes.

MR. DANIEL: Thank you.

REDIRECT EXAMINATION
BY MR. WILLEY:
Q Briefly, Your Honor.
Dr. Borzendowski, is this the page from the driver's manual you were relying on in your testimony that he just questioned you about?
MR. DANIEL: Your Honor, I didn't question her about that driver's manual.
MR. WILLEY: You did.
THE COURT: Ask the question.
MR. WILLEY: Thank you, Your Honor.
BY MR. WILLEY:
Q It is a fair and accurate representation of the page from the driver's manual?
A Yes.
Q Is it in fact an exact copy of the page from the driver's manual?
A It appears to be.
MR. WILLEY: Your Honor, at this time we would move to admit the evidence of this page from the driver's manual.
MR. DANIEL: Objection.
THE COURT: You can object. No, it's not

going in evidence. Let's move on.
BY MR. WILLEY:
Q Experts in your field rely on that?
A They do.
Q And just briefly, once again, you read Mr. Lee's testimony, correct?
A I did.
Q Mr. Lee testified that he could see Ms. Hood, correct?
A Yes.
Q And he also testified that he was close enough to see Mr. Johnson, correct?
A He testified that he could see Mr. Johnson's vehicle, yes.
Q And Mr. Lee would have been farther away from Mr. Johnson than Ms. Hood would have been from Mr. Johnson, correct?
A Based on Mr. Lee's testimony, yes.
Q He was an eye witness?
A Yes.
Q Without a stake in the matter, as far as you know; correct?
A As far as I know.
Q And did you use that testimony, that data point, to aid you in your opinion that Ms. Hood

should have been visible to Ms. Johnson?
A In part, yes.
Q Thank you.
THE COURT: Anything further?
MR. DANIEL: No, Your Honor.
THE COURT: Any objection to this witness being excused?
MR. WILLEY: Not from the Plaintiff.
THE COURT: You're excused. Thank you.
MR. SMITH: Can we take a short break?
THE COURT: Ladies and gentleman, we will go ahead and take a short break at this time. Do not discuss this case. It would be inappropriate to do so. We will be right back with you.
(Whereupon, a brief recess was taken.)
(Jury exits the courtroom at 4:48 p.m.)
MR. WILLEY: Your Honor, and just for -- just so my conscience is clear, I do realize that it was the driver's manual, but when he brought it up, I felt like it was necessary not to think that I was hiding anything from them. So --
THE COURT: All right.
What's next, a video?

MR. SMITH: Treating doctor.
THE COURT: How long is that video?
MR. SMITH: Forty minutes.
THE COURT: Okay. Let's get it queued up. We're going to take about ten minutes. What is after that?
MR. SMITH: I have probably -- I have lined up.
THE COURT: How many?
MR. SMITH: I know two are outside, possibly three.
THE COURT: And how short? You said two briefly. My question is: Can we get all that done by 5 o'clock today, or do you want to bring some back later?
MR. WILLEY: Maybe, briefly in the morning will be fine.
THE COURT: Just asking.
MR. SMITH: I think we can get it done. I mean, whenever you want to call it, we can call it. But these two witnesses I expect will be ten, 15 minutes each.
THE COURT: Each, okay.
MR. WILLEY: And we have witnesses lined up for first thing in the morning, as early as

9:00. So at your --
THE COURT: That's fine. I don't want to start till 10:00, so that's fine.
MR. SMITH: But, Your Honor, one last thing. I object, I made the representation, they've got Woody Poplin under subpoena. I've asked for a copy of the subpoena.
MS. SUTTIE: I have it here.
MR. SMITH: I just want to see it.
THE COURT: Okay. We're just going to be at ease for about ten minutes. Be here a couple of minutes before 4:00. Make sure it's queued up and you've already tried the deposition and it's ready to go.
(Whereupon, a brief recess was taken.)
THE COURT: Okay. Tell the jury to come on out.
(Jury enters the courtroom at 4:10 p.m.)
THE COURT: Go ahead and queue it up. Who is this a deposition of?
MR. SMITH: Dr. David Jaskwhich, a doctor in this case.
THE COURT: What we are going to do, like you saw prior with Ms. Melnick, there is a video deposition of the treating doctor in this

case. Again, that is for you to use like the doctor is testifying right here.
As I said before, this deposition is taken in a lawyer's or doctor's office, and it is like any testimony, it is for y'all to judge. And if you need to stand up and stretch, let me know and we will pause it for a minute.
On the back row, you will not block anyone but I know that it becomes rough. This one is roughly 40 minutes, and I can tell you that it will also take us to the end of the day. Okay?
(Video deposition being played.)
MR. SMITH: Judge, we have two very short witnesses that drove up. I promise the first one is maybe less than five minutes. And then we could squeeze them in before the end of the day.
THE COURT: Are y'all okay?
JURORS: No.
THE COURT: That is what I wanted to hear. Y'all have spoke. We will break for the end of the day. Again, do not discuss the case. We will return at 10 in the morning is that's acceptable to everybody?
JURORS: Yes.

THE COURT: Stay dry. Don't do independant research or discuss this case and have a good evening. Get some rest and have a good evening. See you tomorrow at 10:00 a.m.

MR. WILLEY: We have a few things for housekeeping. In the first video we marked and entered into evidence the flash drive of the call, called Exhibit 1. So, for housekeeping purposes we will move that and the video in as Exhibit 2 for purposes of this trial. Ms. Melnick's video.

MR. DANIEL: Is that an exhibit?

THE COURT: It is in evidence, so it would be an exhibit, yes.

(Whereupon, Plaintiff's Exhibit No(s). 2 marked for identification and received in evidence.)

MR. DANIEL: So, then, we could also have the jury, I guess, look at the deposition testimony if we wanted to move that into evidence.

MR. SMITH: Just the video used at trial.

MR. DANIEL: I would object to the actual video being an exhibit. Maybe the flash drive of the 911 call. I didn't hear that they were

moving the entire video testimony of a witness into evidence as an exhibit.

MR. WILLEY: Your Honor, a video deposition always comes into evidence. It is for use at trial. There is time to object and that is when it's noticed. That is fine. It is here. Wouldn't it normally be an exhibit if testimony needed to be played back Mona would bring them out and play it. If deposition testimony needs to be played. It is just like a deposition at trial. We would have to come back and play the entire testimony. I don't know if it was an exhibit. I think that it was already a part -- it was published. That would be duplicative. They have seen it once and it goes back to them again. I would say no. It needs to be marked as a Court's exhibit for sure, but it doesn't go to the jury as a jury exhibit. It is a Court's exhibit, correct? That is what we are saying.

MR. WILLEY: We need that as a Court's exhibit. We need Exhibit 1 moved in actually.

THE COURT: That would go in as an exhibit. That would be an exhibit.

(Whereupon, Court's Exhibit No(s). 2

marked for identification and received in evidence.)

MR. WILLEY: For purposes of what we did. This was referred to also as an exhibit, Plaintiff's 15, which would be in evidence. And Plaintiff's 2 referred to in the deposition, a packet of bolts and screws would be Exhibit 16 for Plaintiff so that the record is clear.

(Whereupon, Court's Exhibit No(s). 3 marked for identification and received in evidence.)

THE COURT: No one has testified that those were the bolts and that were in her --

MR. WILLEY: Yes, Mr. Jaskowhich did. They were moved in without objection into evidence.

MR. SUTTIE: I objected in the transcript. We had a motions hearing.

THE COURT: I ruled before that they could come in. I think that they can both come in. That is fine.

MR. WILLEY: I'm clarifying the numbers.

THE COURT: Okay. What else?

MR. WILLEY: That is all that I have.

(Whereupon, Plaintiff's Exhibit No(s). 15 marked for identification and received in evidence.)

(Whereupon, Plaintiff's Exhibit No(s). 16 marked for identification and received in evidence.)

MR. DANIEL: One thing about housekeeping, if you have two short witnesses, we would like to the get our witness right away. Is that how many.

THE COURT: How many do you have left?

MR. WILLEY: You should be prepared to go by -- what time are you starting, we will go at least through lunch.

THE COURT: Okay. Well, then then, tell me how many witnesses you have if you are going through lunch?

MR. WILLEY: Potentially four or five.

THE COURT: Some of them are lengthy?

MR. WILLEY: We have the Plaintiff.

MR. SMITH: She would be the most langthy. A before and after person.

THE COURT: I would have one person before lunch, if I were you. Just -- okay. If you can.

MR. DANIEL: Sure.

THE COURT: All right. We will see you in the morning.

(Court adjourned for the day.)

(Whereupon, the trial proceedings continue in Volume 5.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of January, 2018.

/s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,

Plaintiff,

vs.

Antoine Johnson,

Defendant.

Transcript of Record

VOLUME 5

September 7, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

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AND

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REPRESENTING DEFENDANT:

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PROCEEDINGS

THE COURT: Good morning, ladies and gentlemen. Obviously, the news has been very exciting. I don't know if exciting is the right word for it. But you all are from Ridgeland and from the area and we have experienced the last couple of hurricanes that had come through. Let me tell you what I am hoping to do. And again, I say "hope". I have talked to the attorneys, they are streamlining their case. We are going to try very hard to finish this case today. And that means that we are going to push and I mean push. And I'm going to tell you that right now. Okay?

For some reason we are unable to finish, we just can't wrap it up I'll have to make a different decision at the end of the day. I just want you to sit back and relax and there will be evidence put in front of you. This is what we are going to attempt to do today. Okay?

So, I don't want anyone concerned. If anyone has any problems at home. All of the schools are still in in Beaufort County, which is where I come from so no one should have problems with kids being home. And, again, the weather is still fine so we are good.

My understanding is if it were to hit this area it won't be here until Monday. That is what I'm being

told by SLED and my Sheriff. So, everyone sit back and relax and we will get it done as best as we can and we will go forward from there.

Okay. Again, good morning, ladies and gentlemen. And if the plaintiffs want to call their next witness for this morning.

MR. SMITH: Yes, ma'am, the plaintiffs call Nelda Fowler.

Thereupon,

NELDA FOWLER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Good morning.

A Good morning.

Q All right. Tell us your name please.

A Nelda Fowler.

Q Ms. Fowler, are you married?

A Yes, I am.

Q How long have you been married?

A 47 years.

Q Congratulations.

A Thank you.

Q Do you have kids?

TESTIMONY OF NELDA FOWLER

A Yes.

Q How many kids you got?

A Four.

Q All right. Where do you live?

A I live in Goose Creek, South Carolina.

Q Okay, all right. You know Therese Hood, Terry?

A Yes, I know.

Q Okay. ANd where do you know her from?

A I know her from church.

Q All right. Ms. Fowler, we had planned a whole presentation here today. But I'm just going to get right to it with you, okay?

A Okay.

Q What I would like for you to do is tell the jury the story of why Therese is no longer a Eucharistic Minister.

A Okay. Well, Therese was a Eucharistic Minister, that means that -- that means we help the priest give the blood of Christ and the body of Christ to the congregation. It is a very important role. We have to be commissioned for that. If there's something that Father does not -- does think that should be stopped, he does tell us. So, Therese was giving communion, the wine or the blood of Christ, apparently I was not there but apparently she, her leg was giving out on her.

MR. DANIEL: Objection, Your Honor, hearsay.
THE COURT: Okay. kind of redirect her, if you could. You can't say things that someone else has told you, that you have heard. You just have to say things that you know.
BY MR. SMITH:
Q Yes, ma'am. What is your understanding of why Therese -- what happened?
A My understanding is that she spilled the blood of Christ.
Q Okay. Was that the talk of the church?
A That was the talk of the church.
Q Everybody knew about it?
A Everybody knew about it.
Q And was Therese basically fired from that job by father?
A Right.
MR. SMITH: Thank you.

CROSS EXAMINATION

BY MR. DANIEL:
Q Ms. Fowler, how long have you known Therese?
A Probably about five years.
Q Did she serve as Eucharistic Minister after you know about when this accident happened?
A Maybe about three years.

Q When did the incident happen with the --
A It happened about a year -- just prior to her -- it happened after her accident.
Q Do you know about her medical conditions or any issues that she had before this accident?
A She was -- she is -- she was a real outgoing person and willing to cooperate with everything. She volunteer most of everything that we have in church.
Q Yes, ma'am. But do you know if she had any medical issues before this accident?
A No.
Q You are not aware of any?
A No.
Q Do you ever spend time with her at her house?
A Yes, after the accident, I went to her house and visited with her for a while.
Q Do you know what neighborhood she lives in?
A Excuse me.
Q What is the name of the neighborhood where she lives?
A That she lives in?
Q Yes, ma'am.
A Um -- I am having a senior moment.
Q Do you live near her?
A It is right across from the church. Right across

there is a subdivision back there.
Q Does she still go to church?
A Yes, she goes to church. Sometimes she does not go, but most of the time she is there.
MR. DANIEL: Okay, thank you.
MR. SMITH: No questions, Your Honor.
THE COURT: All right. You may step down. Thank you.
MR. SMITH: Yes, the plaintiff calls Helen Hernandez.

Thereupon,

HELEN HERNANDEZ

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:
Q Good morning.
A Good morning.
Q Please tell us your name.
A Helen Hernandez.
Q Ms. Hernandez, do you know Terry?
A I do.
Q Where do you know Terry from?
A Church.
Q Okay. Do you know Terry outside of church?

A Not really. No.
Q Okay.
A Everything that I have done with her has been at the church.
Q And at church, were you a member of the Ladies Guild?
A Yes.
Q Are you still?
A Non active right now.
Q And was Therese?
A Yes.
Q Okay. What does the Ladies Guild do?
A We do everything, bake sales, dinners, lunches. You name it, the Ladies Guild is involved.
Q Okay. And when the Ladies Guild is looking for people to do certain things, do y'all go through and assign the task or do you ask for volunteers?
A We volunteer.
Q Before the wreck that we are here about, three years ago, how often did your -- did Terry -- how often did she volunteer?
A Almost always. We about lived there. We were there a lot.
Q Did Terry serve as the secretary at some point as well?

A Yes, she was, she was the secretary.
Q OKay.
A But she was also -- if I can answer?
Q Sure.
A She was also involved in our Pro Life and our youth group. We were -- our teenagers were going to Poland and she helped us arrange things for fund raisers. And any time that we needed anything, she was there. I mean --
Q It sounded like Therese was someone that y'all could count on?
A Yes.
Q And tell me about the church service. Tell me about afterwards. Did y'all rush out to go get brunch, or what did y'all do?
A Most people can't wait to get out of church. They couldn't get us away from church. We would visit, talk about church, talk about the upcoming events that we had. You know, just kind of check on everyone. If anyone at the church needed anything we would talk about how we could serve.
Q Okay. And did Therese seem to enjoy this fellowship?
A Yes.
Q And was she ever in a rush to leave?
A No.

Q I will just get right to it with you as well. Okay?
A Uh-huh.
Q Nowadays, do you still see Therese at church; does she still attend the service?
A Not as much as before.
Q Okay.
A Whenever the accident happened, you know, of course we didn't see her and then when we did see her it was sporadic. Her husband would bring her in. She was never the same afterwards.
Q Do you still hang around after church like you used to and enjoy the fellowship?
A Yes.
Q Tell me about Therese.
A I don't see her as much anymore. Usually she's leaving. She doesn't spend a whole lot of time there.
Q Do you try to engage her?
A Yes.
Q What happens?
A Well, we talk but she's -- I don't want to use the word "depressed," but she's not -- her whole being changed. I think that the thing that I noticed the most was her facial expressions. It was kind of like, I'm here, I want to be part of it, but not being able to follow through. If

that makes sense.
Q Yeah. And when you -- this facial expression that you said when you see her, it's sort of like, I'm here?
A Yes, it's not like before. Before it was a smile, you know, it was engaging and it was like -- but now it's like, I want to talk to you but maybe not -- I don't know how to put it into words. Instead of being like smiling, it's almost like she's hesitant or maybe not as comfortable. Maybe that is the word that I need.
MR. SMITH: Ma'am, that is all of the questions that I have for you.
THE WITNESS: Okay.

CROSS EXAMINATION

BY MR. DANIEL:
Q Mrs. Hernandez, do you know Antoine Johnson?
A I do not.
Q Do you know whether he goes to church?
A I have no idea.
Q You don't know his family?
A No.
Q Do you know whether Mrs. Hood suffered from depression at any point before this accident?
A Never saw her sad, never saw her upset.
Q Do you know anything about her medical treatment or any conditions?

A No.
Q It's already been testified to that she may have had MS before the accident --
MR. SMITH: Objection. Well, go ahead, you can ask her.
A No, I don't have any idea.
Q Do you know that she had MS or Parkison's before?
A No, I never saw her with anything that made me think that something was wrong.
Q Does she still go to church?
A Yes, she does. Not as often.
Q With her husband?
A When I see her, it is with her husband.
MR. SMITH: Nothing further.
THE COURT: You may step down. Thank you.

Thereupon,

THERESE HOOD

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:
Q Take three long breaths for me, in your nose, out your mouth. Let it go. Okay?
A Okay.
Q We are going to tell your story today, all right?

A Okay.
Q We need your name. Tell us your name.
A My name is Therese Hood.
Q Are you nervous?
A A little. My first time.
Q You have never been through anything like this before, have you?
A No.
Q Have you waited a long time for this day to get here?
A Yes, two years and ten months.
Q All right. Before we tell your story I want to get the jury -- let them get to know you a little bit. We have seen you sit in this chair. We have heard about you, but I want to give them a very abbreviated version. Okay? Just a little background information. The first question is irregular but I need to ask you this because the Judge later will address the jury on life expectancy. So, please tell us your age, ma'am.
A My age is 63 years old.
Q Therese, do you have any brothers or sisters?
A I have one brother. My sister passed away.
Q What did your parents do for work?
A My mother worked in the shoe mill and my father was a carpenter.

Q Where did you go to high school?
A I went to St. Dominic's Regional Catholic high School.
Q Where was that?
A That was in Lewiston, Maine.
Q What did you do after that?
A I went into the military.
Q What branch was it?
A I was in the Army.
Q How old were you when you joined the Army?
A I was 18.
Q Did you do that for 20 years?
A I did that for 20 years.
Q Were you honorably discharged?
A Yes, I was.
Q What was your rank?
A Sergeant First Class.
Q Okay. And after the Army, did you go back to school?
A Yes, I did.
Q What degrees did you get at school?
A I got my bachelors in elementary education, a bachelors in economics, and a masters in elementary education.
Q Did you go to teach kids after that?

A Yes, for ten years.
Q What ages?
A Five through eight and 12 through 14.
Q Okay. And did you retire from teaching at some point?
A Yes, ten years later.
Q All right. And tell me, what is your husband's name?
A David Hood.
Q All right. And David, he has been sitting here in the audience, hasn't he?
A Yes, he has.
Q He's gone to get Christene, your daughter now, right?
A Yes.
Q She has got two young kids?
A A two month old and a two year old.
Q All right. And we are going to hear from Christine after you. But do you have -- so we know Christene. What other children do you have?
A I have another daughter, Stephanie, and she's 35 years old.
Q I don't know if I asked you this, how long have you and David been married?
A Forty-two years.

Q Okay. Grandchildren, do you have any?
A I have five.
Q And tell me what their ages are.
A My daughter, Stephanie, has a three year old, a five year old and an 11 year old. All girls.
Q Okay. And you told us Christene has a two month old and a two year old?
A Yes.
Q OKay. ARe you a proud grandmother?
A Yes.
Q Mrs. Hood, do you have MS?
A No.
Q Now we understand that you are Catholic, and we have heard a lot about that this week, and you are a member of the Church of the Immaculate Conception?
A Yes.
Q In Goose Creek?
A Yes.
Q With the ladies that we heard from today?
A Yes.
Q How long have you been a member of that church?
A Eleven years.
Q Have you always been active?
A Yes.
Q We heard a little bit about giving communion and

serving in the Ladies Guild, any other -- well, we also heard some other activities from Ms. Hernandez, but anything else that you can think of with regards to your activities with the church and volunteering?

A Not at the moment.

Q Ladies Guild takes up a lot of time?

A Yes.

Q Okay. Mrs. Hood, what were your plans for retirement? It is okay.

A I meant to travel, spend time with my grandchildren, to help more in the church community. And I have military organizations that I participate in that I could continue too.

Q Okay. That was your vision?

A Yes.

Q I want to talk to you about the wreck.

A Okay.

Q That was poor timing, I had no idea that I was going to get an emotional response. But we have made an abbreviated version here, okay?

A Okay.

Q So, I want to show you the flip chart that we have been getting a lot of miles out of this week. Now, what I'll do so everybody can see, I'll not ask you to come down, but I'll hold it here. Can you see okay?

A Yes.

Q Ms. Hood, we started out in opening statement by drawing this diagram here. And we have got Highway 278, all right?

A Okay.

Q Heading towards the beach, heading away from the beach. And we have this car right here is you with the H?

A Right.

Q And Mr. Johnson coming off of Southwood Park Drive.

A Yes.

Q Dunkin' Donuts back here. And then we have the Kuck vehicle up here. Okay?

A Yes.

Q This was another fellow that I don't know was in your sight.

A Okay.

Q So, is this -- does this accurately describe what happened?

A Yes.

Q That you were coming up here, Mr. Johnson pulled out and hit you on the front right side about where your tire was and sent you into traffic where you had a head-on collision?

A Yes.

Q Okay. Mrs. Hood, did you have any time to react?

A No.

Q When you saw him for the first time, was it right before he hit you?

A Yes.

Q And how would you -- well, let me ask you this; Did you see him pull out?

A No.

Q Okay. And the visibility at that time, we have heard a lot of people talk about it, was it getting darker outside?

A It was.

Q Okay. Was there still some light out?

A Yes.

Q Could you see the median?

A Yes.

Q Could you see the trees and the businesses alongside the highway?

A Yes.

Q Could you see other vehicles?

A Yes.

Q Okay. And as you are driving did it seem like to you you didn't have your headlights on?

A No, I always have my headlights on. I have a newer vehicle that has automatic lights and I don't turn

them off.

Q All right. You don't remember switching it to running lights?

A No.

Q All right. Mrs. Hood, we heard from a lot of people this week, people saying no headlights but running lights. Mrs. Hood, if that's the testimony and we have heard that over and over again, are you going to disagree with that?

A No, I'm not.

Q Can you accept that?

A Yes, I can.

Q How is your eyesight?

A I just had my eyes checked in June of this year and I have 20/25 vision. I see perfectly.

Q Wear glasses, contacts?

A I wear no glasses, no contacts.

Q And moving along. Your car, is that where Mr. Johnson hit you?

A Yes.

Q You have got to speak up for us.

A Yes.

Q And you can move a little closer and use the microphone if it's uncomfortable, okay. Sorry.

A Okay.

Q Mrs. Hood, what caused you to veer into on-coming traffic after he hit you?

A My tires shifted to the left and I couldn't turn them to the right.

Q Did you do your best to avoid crossing over?

A Yes, I did my best to the point where I felt the brake went through the bottom of my car and shattered my ankle and my foot broken completely in half.

Q Ms. Hood, what did it feel like for those moments as your car is out of control and you are heading into on-coming traffic?

A I knew I was going to die so Catholics believe if you say "Our father" or some sort of prayer before you die that God absolves you of your sins, so I was doing that before I hit the Rucks.

Q Were you wearing your seat belt at the time?

A Yes, I was.

Q Did your air bags go off?

A Yes.

Q What did that sound like?

A What did it sound like?

Q What did it sound like, the air bags, for those of us who have never had it happen, including me?

A It had a strong odor and it was a strong push that pushed me back into my car seat.

Q Okay. Do you remember hitting the SUV head on?

A No.

Q And I want to just take a moment and see if we put these pictures in. Yeah. All right, so we have already seen pictures of the front of your car, right? Is that it?

A Yes.

Q Okay. And this is the Defendant's Exhibit No. 2. And this is the Ruck's car, defendant No. 3?

A Yes, I didn't see it though.

Q Well, we are not going -- we are not going to go back over those. At the scene, what is the first thing that you remember after the wreck?

A On Star called me and told me that I had been in an accident and that they were going to call the ambulance and the police.

Q Okay. And now, how were you feeling?

A I was in so much pain I don't know.

Q Okay. Did the ambulance take you away?

A Yes, they did.

Q And where did they take you to?

A Hilton Head Emergency Hospital.

Q Okay. And were you transferred to Hilton Head by ambulance over to Savannah Memorial?

A Yes, I was transferred from there because Hilton Head could not deal with the fracture in my neck.

Q Okay. Now, Ms. Hood, I know that this is a lot to remember, but I would like for you to tell us what your injuries were, and if you could just organize that by starting at the top of your head and let's go down to the bottom of your feet. Okay? Tell the jury what your injuries were.

A My injuries were I had a black eye. What felt the worst which really wasn't the worst is I fractured all of my ribs, I had a fracture in my neck, I had a fracture in my lower spine, and of course, you know, I shattered my foot in half and my ankle.

Q Was there some mention of a dissection of your left vertebral artery?

A Yes, the Savannah Memorial Trauma Center found that.

Q Okay. You went into surgery?

A Yes, I did.

Q Okay. And after Savannah Memorial, where did they take you after that?

A They transferred me to a nursing home in Moncks Corner, which is supposed to be a rehab center as well.

Q How did it feel being in a nursing home?

A There's no words to explain it.

Q There's people there rehabbing and there are people there to stay?

A They put me in the section that was a nursing home and there was one therapist that would come help me with therapy once a day.

Q Let's talk about when you finally got home. Day before Thanksgiving you went home?

A Yes.

Q Able to get around?

A No.

Q Can you tell us about Thanksgiving that year.

A Thanksgiving that year was horrible. I couldn't get up. I had a neck brace, a body brace, a leg brace. I couldn't move. My daughter from -- she had just come back from Germany. She stayed with me for three weeks. My husband attended to me, and my younger daughter. I had to move downstairs in our sunroom. My bedroom is upstairs. We have -- our sunroom is pretty much lit like this so we had to put blinders up. And I had to have a clothes rack so I could have clothes, but I couldn't dress myself. I couldn't eat by myself. I couldn't go to the bathroom by myself. I really couldn't do anything by myself.

Q Could you bathe yourself?

A No, that was the most humiliating part. Our bathroom was upstairs, and of course I couldn't go upstairs so they would wheel me to the bottom of the stairs.

Q Ms. Hood let's --

A I would have to sit on the stairs and back myself up to the top of the stairs and somebody would have to pick me up and bring me to the tub and put a chair in there and then help me step over the tub to get into the chair and then they would have to watch me. And that was so humiliating. I'm such a proud person.

I just felt so helpless and humiliated and I always tried to do something and I couldn't do anything.

Q Thank God for your family.

A Thank God.

Q They were there for you?

A Yes, they were.

Q And Dr. Jaskowhich, you thank God for him as well?

A Yes, he was a life saver.

Q Now you eventually started walking again, did you not?

A Yes, I had a boot that come up to my ankle that completely confined my foot so that they tried to fuse the bone of the ankle together. And I wore that for months. I finally was able to wear just an ankle brace in late May of 2015.

Q And when you did start walking again, I imagine it was a progressional sort of thing.

A Yes.

Q And even when you were back on your feet without a

cane or a walker --

A I had to have a cane.

Q Well, let's say after all of that. How was walking after that point?

A It was difficult. I couldn't walk very far. I was so scared that I would fall. I walked very, very slowly. I had to walk with somebody assisting me. And I finally was -- I tried and was able to go to church. I couldn't kneel down. I had to sit on the bench and prop my foot up through the whole service.

Q Could you feel the plates and screws underneath your skin?

A Yes.

Q Did you eventually have those taken out?

A I had the first one taken out in June of 2016. It was a 5-inch screw holding the top part of my ankle to where your foot and your ankle meet. So, I couldn't lift my foot up. You know, your toes forward because that screw just hurt so bad. And so maybe in 2016 I had that one screw taken out. And --

Q I think that it was this February you had the rest of them taken out, right?

A In April.

Q Okay.

A April of this year I had the others taken out,

which were --

Q Is that these?

A Yes.

Q You gave these to me, didn't you?

A Yes, I did. They let me save them.

Q What did it feel like -- so you could -- what did it feel like to wear shoes? And what did it feel like to live with this hardware for three years?

A It was very painful. I could -- I didn't have any support. Why I had the screws taken out, they were 5 inches like scissors holding my ankle together and they started protruding on either side of my ankle and it really hurt more. So, I talked to Dr. Jaskowhich and he said that he would take them out. But he said that it wouldn't make that much of a difference because my leg was so already damaged and my bones had fused together and it probably never would.

Q Okay.

A So I'm crippled.

Q Now let's -- we are getting there. This is the last part, okay?

A Okay.

Q Let's talk about how you are doing now, okay? And I don't mean as we sit here now, I'm talking about the present as opposed to the past that we have been talking about. How does your ankle feel?

A My ankle hurts all of the time. It either feels like there's needles jabbing into it, it throbs, it swells. Like when I was sitting at the table, I can't sit with my foot down very long so I have been propping it up on a box.

Q Is this the box that you have been using all week?

A Yes. And when it is -- when it swells my ankles overlap my shoe, which is a -- I have to buy special shoes with ankle support.

Q Okay.

A And so when it gets to that point I can barely take my shoe off, so I wear ankle support slippers.

Q Now, Ms. Hood, we heard from Dr. Jaskowhich talking about getting off of your feet, elevating your ankle, soaking in Epsom salt, soaking in ice, taking medications, antiinflammatory medications, pain medications, all of that. Is that what you do when it gets bad?

A Well, since it hurts most of the time and my family doctor has prescribed 800-milligram Motrin for the swelling and the pain, but that doesn't help with the swelling.

Q Now, Ms. Hood, this seems obvious but I have got to ask you: Are you able to wear heels anymore?

A No, I can't wear skirts anymore, I can't wear heels anymore. I have two pairs of shoes. I have my support, my support slippers, the tennis shoes that I have

been wearing and I wear one other shoe that seems like a presentable shoe so I don't always have to be in my slippers or my tennis shoes.

Q Did you used to exercise before all of this happened to you?

A Yes.

Q What did you do for exercise?

A I walked on a treadmill. I walked with my friends. I walked the dog.

Q Are you able to do those things anymore, or do like you used to?

A No. What I do now, I take the dogs out and sit with them, but I'm sure that they miss the long walks.

Q Ms. Hood, do you know what the future holds for you?

A I'm crippled for life.

Q Dr. Jaskowhich, when he started to talk about the future in the last visit, he was talking about, Well, we are rounding all of this up. It seems like he's kind of done with the things, the help and the fix at this point.

A Yes, but I still have a standing appointment with him because he, as time progresses my bones won't fuse completely together so he could do an ankle fusion if he thinks that would help.

Q Okay. Last resort, right?

A Yes.

MR. SMITH: May I approach?

THE COURT: You may.

BY MR. SMITH:

Q Ms. Hood, I hand you what's been marked as Plaintiff's Exhibit No. 17. Is that a summary of the places you went, the dates, and the costs of the medical treatment?

A It appears to be so.

Q Okay. And did you help us put that together?

A Yes.

Q And does that fairly and accurately show the cost of the medical treatment that you received after the wreck?

A Yes, I provided you the bills.

Q Okay. And was all of that treatment related to the injuries that you received in the wreck?

A Yes.

Q Okay.

MR. SMITH: Your Honor, at this time I move to introduce the document as Plaintiff's Exhibit No. 17.

MR. DANIEL: No objection, Your Honor.

THE COURT: Okay. Without objection, it is in evidence.

(Whereupon, Plaintiff's Exhibit No(s). 17 marked for identification and received in evidence.)

BY MR. SMITH:

Q I'm not going over the communion story, but I just want to ask you, was what we heard true?

A Yes.

Q Was that a loss in your life?

A Yes, I feel since it was a calling I feel torn because I feel like I'm not as close to God and I'm ashamed that I dropped blood because for a Catholic that is an extremely traumatic thing, it is so sacred and I dropped it because I tripped.

Q Ms. Hood you know -- you know that that wasn't your fault, right?

A I know but it is still hard --

Q Well you know that God forgives you, right?

A -- to accept. Yes, I'm sure.

Q Okay. But you miss being able to do that?

A Yes.

Q Now, aside from your family and your church, did you have many friends?

A Not many. I had mostly acquaintances.

Q And was that okay with you?

A That was fine with me.

Q We heard Ms. Hernandez talk about you still go to church, not quite as much, but you still go. But what she talked about was, you don't hang around after, you don't

have the fellowship. And tell the jury what it's like not to have that part of your life and why you are not -- why you are not doing that?

A I really don't want to go through the story all of the time so I don't really like to be asked about it. And I am in pain and so our service is an hour, hour and 15 minutes, and I just -- I'm just not the same person.

Q Let's switch gears for a moment, okay.

A Okay.

Q Now he's not here, but tell us about David. David has been with you for 46 years?

A Forty-two years.

Q Right. Was y'all's relationship affected by this?

A Yes.

Q Can you tell us about that please?

A It was -- it was -- it has been hard for my husband to deal with my injuries. He would get frustrated. He would sleep and he was my main caregiver so it ended up that we separated for a while. And my youngest daughter, I went to live with her for a while and she could help me. But then we -- I worked things out with my husband and he came back and now he helps me walk, as you have seen. He helps me go shopping because I can't go shopping alone. I can't stand for more than an hour, an hour and a half.

Q Is David your rock?

A Yes, he is.
Q Have you ever thought about, with how you are now, what would happen if you lost him?
A I wouldn't be alive.
Q Now, I want to talk about your grandchildren. It sounds like I think I heard an 11, 5, 3, maybe two 2 year olds and a two month old.
A One two year old and a two month old.
Q Ms. Hood, you know, in my house grandmommy's job is to spoil the grandchildren, and when my child goes over to grandmommy's house her feet don't touch the ground and she picks up very bad habits. And that is the price that you pay for going out to dinner and having a good time, right? But what is your interaction like with your grandchildren?
A The three, the three children that live in Alabama with my oldest daughter, when I go visit and when we do anything there's a lot that I can't do with them. And it seems like they get so upset and frustrated with me because I can't do things with them. And they -- I'm from French, I'm French, so they call me Meme. They say, Meme, Why don't you do this with us, don't you love us any more.
Q Well, they are young, and they will understand. Right?
A I think that sometimes they do. The two year old

is very attached to me. I can't bring them up and down the stairs and I can't carry him anywhere. And the two month old, my daughter won't even let me carry him because she's afraid that I'll fall, so she carries him to me in the chair.
Q Ms. Hood, do you find yourself at home a lot now?
A Yes, I do. I don't have doctors' appointments very often, but I go to my appointments and since WalMart is only a light away I can go to WalMart and get a few things. And that is where I do my grocery shopping as well.
Q When you are at home, are you alone a lot?
A I am alone all of the time. My oldest daughter comes to visit me, to check on me, to see how I am doing. My husband calls me every day at noon to make sure that I'm okay. But other than that, I'm completely alone.
MR. SMITH: I think that we can end there. All right. Keep your seat. Please answer any questions counsel may have.
THE WITNESS: Okay.
CROSS EXAMINATION
BY MR. DANIEL:
Q Mrs. Hood, are you okay to keep going?
A Yes, I'm fine.
MR. DANIEL: Madam Reporter, could you hand her a sealed copy of her deposition?

COURT REPORTER: Okay.
BY MR. DANIEL:
Q Mrs. Hood, we may refer to that here and there to refresh your memory and clarify things. So, I'll ask you to look at a page if you need to and you can just let me know when you are there; is that fair?
A Okay.
Q Okay. Do you remember sitting for deposition in this case?
A Yes.
Q If you look on the front of that. That was April 27, 2016?
A Yes.
Q Do you remember showing up and being there for Antoine Johnson's deposition that your lawyer took in this case before yours on January 25th, 2016?
A Yes, I believe so.
Q If I heard you earlier, if I heard it correctly, you are now, what you say, If other people say that I did not have headlights on, I am not going to dispute that.
A I understand.
Q I'm asking you your testimony. What do -- if they say that you didn't have your headlights on, are you no longer disputing that?
A I am no longer disputing that I had running lights

on.
Q You are no longer disputing that you had --
A Running lights on.
Q Right. Are you disputing that you did not have your headlights on?
A I drive with my lights on automatic all of the time. I don't recall touching them.
Q Okay. I'll turn your attention to Page 63 of your deposition. Sixty-three, and actually the bottom of 62. Let's just start there.
A Okay.
Q See the last line, 25?
A Yes.
MR. SMITH: What is the line number?
MR. DANIEL: Twenty-five.
BY MR. DANIEL:
Q Were you aware that this gentleman, Dustin Lee, witnessed the accident?
MR. SMITH: I am sorry, did you say 63?
MR. DANIEL: Sixty-two, Line 25.
Q "Are you aware that this gentleman, Dustin Lee, witnessed this accident? Your answer: No, sir."
A Yes.
Q Is that your testimony?
A Yes.

Q You swore under oath in your deposition just like you did here today, right?
A Yes.
Q "Okay. So you listened to the recorded 911 calls for this accident? Your answer: No, sir." All right?
A Yes.
Q Following me?
A Yes.
Q "So, you wouldn't have any specifics, personal knowledge, and I'll represent to you that he made a point to say that you were driving and didn't have your headlights on at the time, so you disagree with that? And your answer was: I would disagree with that?"
A Yes.
Q And I was asking you about your headlights, so at the time you disputed -- your contention was you had your headlights on; is that right?
A That's correct.
Q You are now changing your story and saying, you know, I don't dispute any more if people say I didn't have my headlights on, maybe I just didn't have them on; is that fair?
A Yes. I go by the testimony of the experts.
Q Well, you swore under oath that you remembered this accident in your deposition?

A Yes.
Q And you told me that you didn't do anything wrong, that you were driving in a safe manner?
A Yes.
Q You swore all of that under oath, right?
A Yes.
Q And you swore under oath in your deposition that it was your position that you had your headlights on; is that right?
A Yes.
Q What you told me under oath is everybody else got it wrong, I had my headlights on, I am the one that got it right; that is what you said?
A Basically that is what I thought.
Q That is what you thought but, you know, that is what you testified to and now maybe you are not sure about it; right?
A No, I'm sure. I am sure that I thought that I had my headlights on.
Q But now you think that you may have been mistaken?
A Yes, sir.
Q What about what these witnesses have said about how dark it was at the time of the accident?
A I agree with them, it was. It wasn't that dark, but I would have had my headlights on. I could see the

trees. I could see ahead of me very well.
Q Dustin Lee testified that you were here, that it was 90 percent dark; you disagree with that?
MR. SMITH: Your Honor, I think I have to object for pitting the witness.
THE COURT: Sustained. Don't pit witnesses.
BY MR. DANIEL:
Q Okay. Do you agree that it was 90 percent dark?
A I don't believe that. I don't think so.
Q If you had to put a percentage on it, what percentage would you put?
A Maybe 80 from where my vehicle was.
Q Is 80 percent pretty dark?
A Yes, it is fairly.
Q Fairly?
A Fairly dark.
Q And you were headed to your condo, your time share condo on Hilton Head?
A Yes, I was, sir.
Q You went down maybe two, or three, maybe four times a year is what you testified to in your deposition?
A That's correct.
Q And so you are somewhat familiar with this area; is that right? Hilton Head?
A Oh, with Hilton Head itself, yes.

Q You don't drive that road everyday, or you didn't at the time?
A And my husband normally drives when we go there.
Q You were by yourself driving?
A That day, yes, sir.
Q Would you agree that it gets dark in Hilton Head in early November, the date of this accident was November 7th, it is pretty dark by around 5:50?
A I'm not sure if that's the occasion all of the time.
Q Do you remember testifying -- I understand that you just took an eye exam and you don't have any vision problems right now. What I am going to ask you so we are clear, at the time of this accident did you have any vision problems?
A No.
Q When did this accident happen?
A November 7, 2014.
Q And you are sure about that?
A Of course.
Q I understand that.
MR. DANIEL: May I approach, Your Honor?
THE COURT: Yes.
(Whereupon, Defendant's Exhibit No(s). 7 marked for identification.)

MR. DANIEL: Your Honor, I'm handing what's been marked as Defendant's 7 for identification purposes.

THE COURT: Thank you.

BY MR. DANIEL:

Q Tell me when you -- you have looked at this now? Seven, you are looking at it?

A Yes.

Q In the bottom left-hand corner, is that your name?

A Yes, it is.

Q And that is -- this Goose Creek address, 832 North, is that Alsberry. How do you pronounce that?

A North Alsberry.

Q Is that your address?

A Yes, it is.

Q Does this appear to be a medical record for you?

A Yes.

Q Do you see the date -- I think that it's highlighted for you, date of note down near the bottom?

A Yes.

Q And it says, November 7th, 2014; do you see that?

A Yes.

Q And it says, 1109 right there; do you see that?

A Yes.

Q And down a little bit farther I have got another statement that is highlighted. It says, Patient requesting

eye exam for blurred vision. Can you see that?

A Yes, sir.

Q So, is this a record of you calling to the VA on the day of the accident, the morning of the accident, complaining of blurred vision?

A I went to the doctor's office, yes, sir.

Q You went in that morning?

A Yes, sir.

Q Is there a record of that? Because I haven't seen it.

MR. SMITH: I think I would object to Mr. Daniel testifying as to his personal knowledge.

THE COURT: Okay, if there's a question, ask her.

MR. DANIEL: Yes, ma'am.

BY MR. DANIEL:

Q Your lawyer, do you understand, produced documents to us?

A Yes, sir.

Q Are you personally aware of a record of you going in to visit to have your eyes checked on this date, November 7th, 2014?

A Yes, sir.

Q You are aware of a record existing?

A I believe so. They record appointments.

Q You see that there's an addendum. If you look on

the next page it actually looks -- you see at the top, December 12th, 2014?

MR. SMITH: Is that Page 2? Did you just flip the page?

BY MR. DANIEL:

Q I just flipped the page, so at the bottom just so you follow with me, Mrs. Hood; you see that 3112?

A I have Page 94.

Q 3112 in bold. I'll help you.

(Pause.)

Q You agree this is your medical record, Exhibit 7 that we are looking at?

A Yes, I agree.

Q It says that you hadn't had an eye exam in two years; do you see that?

A Yes, sir.

MR. DANIEL: At this time we offer Defendant's 7 into evidence.

THE COURT: Any objection?

MR. SMITH: Can I just have a moment to look at it. He's only asked her about two lines and there is several pages.

THE COURT: Sure. But let's move on with her, let's keep going with her, if you could. Keep going.

BY MR. DANIEL:

Q Do you agree that you had -- ma'am, I'm not trying to make light of your conditions. I understand that you were hurt and I want to be clear about that.

A Yes, sir.

Q But you were -- you had been diagnosed with Parkinson's disease before this accident?

A Yes, sir.

Q You had had incidents where you had fallen before this accident?

A Yes, sir.

Q And do you remember that you actually before this accident, I guess in August of 2012, had been evaluated for walking aids?

A I don't recall.

Q Ms. Hood, I'm handing you what's marked as Defendant's 8. And I only have one. I'm not trying to hover, but do you agree that that is your name in the bottom left?

A Yes.

Q We are looking at Defendant's 8 for ID purposes. Go to the second page, which is 134 -- VA134. It has got a date here, August 6, 2012; do you see that?

A Yes, sir.

Q And you see where the highlighted language it

says, Patient educated that when she receives her MRI appointment. So you were going for an MRI?

A Yes.

Q She may also come to PT as a walker --

MR. SMITH: Your Honor, I have to object to the reading of medical records. And this document is not in evidence. I don't know what is going on here. The relevance is -- I am sorry.

MR. DANIEL: Your Honor.

THE COURT: Do you need to come talk to me?

MR. DANIEL: I can.

THE COURT: Okay.

(Off-the-record discussion held.)

(Whereupon, Defendant's Exhibit No(s). 8 marked for identification.)

BY MR. DANIEL:

Q Does Defendant's 8 for ID purposes now refresh your recollection that in August of the same year as the accident, so a few months before, you went to the doctor and were advised about getting walking --

MR. SMITH: Your Honor, same objection. He is just recanting exactly what -- he is just reading the medical record without reading it.

THE COURT: Okay. Ask her a question about her treatment. Don't ask her about the medical record.

Ask her about her treatment.

BY MR. DANIEL:

Q Ma'am, in August of 2014 you were advised that you could get walking aids; is that correct?

MR. SMITH: Your Honor, objection, hearsay.

THE COURT: Just ask her the question, Were you advised.

BY MR. DANIEL:

Q Were you advised that you should have walking aids?

A Yes, because at that time I was taking duplicate medication which was causing me to be more unstable. My psychiatrist and my neurologist had given me contraindication medications. Now I no longer tremble because I only take Adderall.

Q But you had had balance issues and you had fallen in the past, right?

A Yes.

Q And what you testified to is in church that day, I'm not trying to embarrass you, but when you spilled the wine you had tripped; is that right?

A That's correct.

Q Okay. So, you were having blurred vision at least when -- maybe went to the doctor that day, the day of the accident, maybe not, but you were having blurred vision that

day; right?

A I don't recall the blurred vision. But I do recall going to the doctors and having my eyes checked because I was reading a document, several documents and magazines, and I was having difficulty seeing the words whatever, so because I felt that you know my eyes might be a little blurry. So I went to have my eyes checked that day to make sure that there was nothing serious, and they did an eye check and found that there was nothing there; I had perfect eye vision.

Q But you went in to the doctor about blurred vision the day of the accident, and that is up at the VA in Charleston, right?

A Yes.

Q And you chose -- the same day you chose to drive down in the afternoon by yourself to Hilton Head; is that right?

A Yes. And that was based on the findings of my eye exam.

Q You testified that you now no longer dispute if others say you didn't have your headlights on, you don't dispute that?

A I am sorry?

Q If others say that you didn't have your headlights on at the time of the accident like Antoine Johnson, you

don't dispute that?

MR. SMITH: Objection, asked and answered.

MR. DANIEL: Just trying to make sure.

THE COURT: Move along, get going.

BY MR. DANIEL:

Q Do you realize that this is the first time that Antoine Johnson has ever heard you say that you didn't have your headlights on?

MR. SMITH: Your Honor, I don't think --

THE COURT: Again, this is not relevant. Move on.

BY MR. DANIEL:

Q Did you see the sedan, the vehicle, pulling out before you were impacted on your right side?

A No, sir.

Q You never saw it. Do you know how fast you were going?

A I was following traffic.

Q Do you remember telling me in your deposition you were only going 35 miles an hour?

A I wasn't sure about the speed. And I had been in there for five hours.

Q Do you have your deposition there?

A Yes, sir.

Q Look in your deposition, I want you to start at Line 18.

A Yes, sir.
Q See it?
A Yes, sir. Okay.
Q I want you to start at Line 18.
A Eighteen?
Q You see it?
A Yes, sir.
Q I want you to read, that is my question, starting with my question, and read for the jury down through 32, go to -- just read the whole page and then turn the page and keep reading until Line 12.
A "How fast do you think you were going at the time when the accident happened?
About 30 miles per hour.
Why do you say 30?
Because the Equinox has in the console a place where -- has a place for the speed to be and it shows you numerically what speed you are going.
When do you remember looking at your speed before the accident?"
Oh, was it "Do you remember"?
Q That is right, do you remember.
A "Do you remember looking at your speed before the accident?
Yes.

When did you look at it?
I always look at it.
Really? Do you think that you were looking at it at the time that you were hit or when?
No, I wasn't looking at it then."
I was confused with that question as you remember before. I believe that at this deposition I was confused with many of your questions. I am reading what I wrote -- what I said.
Q Do you see that question of, "How frequently do you look at your speed?"
A Yes.
Q What did you say?
A I said, "In the case of one minute, probably 20 times."
Q Do you agree that that is a pretty simple question, "How frequently do you look at your speed?"
A I don't look at my speed every minute. I look at it maybe every three or four minutes. I'm always aware of my speed.
Q But in your deposition you testified differently; is that right?
A Yes, sir, I was very nervous at the deposition, And you confused me a lot, which I -- if you look at the deposition I have noted that.

Q Okay. In your deposition, didn't I instruct you to answer my questions and if you didn't understand a question to let me know?
A Yes, you did.
Q And you didn't tell me that you didn't understand that question; is that right?
A Yes, I did. I was afraid. It was my first deposition. I had no experience and somehow I felt intimidated by you. And I, I just really wanted to get it over with.
Q Do you think that you may have been speeding at the time of the accident?
A At the time of the accident, I remember following traffic. I believe that the speed limit was 45. From past experience of driving down that road, I don't believe that many people go 45. But based on the time of day there's -- especially that time of day, there's more traffic going to Hilton Head, so the flow of traffic.
Q So, people were speeding and you were speeding?
A I can't attest for that, for who is speeding and who is not.
Q But if you were following traffic and if they were speeding you may have been speeding?
A I don't want to say that they were speeding, I have no fact.

Q Were you aware that your lawyers hired an engineer, two engineers?
MR. SMITH: Your Honor, I don't have any idea.
THE COURT: I assume it is an objection. It is sustained. Move on.
MR. DANIEL: Yes, Your Honor.
BY MR. DANIEL:
Q If Antoine Johnson said he was at that stop sign and checked to his left before he pulled out, you didn't see him, you didn't see his vehicle; is that right?
A No, sir.
Q And you can't dispute that based on your knowledge, can you?
A Based on my knowledge, I didn't see him.
MR. DANIEL: Thank you. Well, one more, a few more things.
BY MR. DANIEL:
Q As far as your expenses, the medical expenses that you have, do you agree that you were regularly seeing doctors before this accident for different medical conditions?
A Yes, sir.
Q And I'm not trying to make light, but you were on a number of medications; is that right, before this accident?

A Yes, sir, the medications that I had been on for years.

Q What medications are those?

A They would be thyroid, cholesterol, a sleeping sedative.

Q Trazodone or --

A Trazodone, which that is a sedative.

MR. SMITH: I object to relevance, Your Honor.

MR. DANIEL: I am going to get there.

THE COURT: Overruled. You can ask it.

BY MR. DANIEL:

Q You have taken those medications after the accident too, right?

A Actually I stopped taking the Parkinson's medication because it was making me tremble, and at that time the neurologist was experimenting with a drug, Adderall, which I take for my attention deficit and they were the same, they did the same thing, which was causing me to tremble. So, as soon as I stopped taking it my trembling went away.

Q At your deposition, though, do you remember telling me that you were taking the same medications after the accident as you were before the accident?

A Yes, I only stopped taking Parkinson's medication when they asked me to participate in the study about

Adderall and just taking that, and I said I wouldn't profit from that because I already take it.

Q Okay. And do you agree, do you remember telling me that the only thing different after the accident, as of your deposition in April of 2016, two years later, was that you took Motrin for pain when your leg, pain in your leg from time to time would get unbearable, is that right?

A Yes, sir.

Q And you told me that -- I said, Well, how often do you have to take Motrin; do you remember that?

A Yes.

Q Do you remember really telling me, "Really only about once every two months"?

A No, sir.

Q You don't remember that? Okay. If you will turn to Page 98 of your deposition?

A Okay.

Q Okay. You see on line 12 there. I'll read this. I want you to tell me if what I'm reading is accurate. "Question: How often do you take Motrin?

Answer: I try not to take it too often. I probably take as needed.

Question: And that would be once a week, three times a week, once a month?

Answer: When my foot is unbearable in pain,

which I can't exactly say when it occurs. I haven't taken it very many since so --

Best guess? My question.

Maybe once.

Once a month or once a week, best guess?

It would be like once every two months."

That was your answer.

A I see that.

Q Is that what you testified to?

A That is what I testified to.

Q If you didn't have your lights on and you were speeding and it was 80 percent dark out, do you believe that you may bear some responsibility for the accident that happened?

A I have the right-of-way and he hit me.

Q You don't believe that you did anything wrong?

A No, sir.

MR. DANIEL: No further questions.

THE COURT: Anything further?

MR. SMITH: Yes, ma'am, very briefly.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Ms. Hood, the medical bill summary, now the medications that you were taking before all of this, did you

A Yes.

Q Okay. Is the VA anywhere on here? Are you asking for reimbursement for any drugs supplied by the VA?

A No, sir.

Q Do you see the VA for your personal health conditions?

A Yes.

Q Before and after the wreck, right?

A Yes.

Q Is the VA, for those personal health conditions, anywhere on this summary?

A No, sir.

Q And Ms. Hood, we have heard about your eyesight. Were you able to read that deposition that Mr. Daniel was giving you?

A Very well, yes, sir.

Q All right. And when you felt like your eyes were blurry, what was the remedy?

A What was the remedy?

Q Yes.

A They gave me eye drops.

Q Because your eyes were dry?

A My eyes are constantly dry.

Q Okay.

MR. SMITH: Nothing further

THE COURT: Anything further, Mr. Daniel?

RE-CROSS EXAMINATION

BY MR. DANIEL:

Q Mrs. Hood, this exhibit with your medical bills on it --

A I don't have that here with me.

Q It is the one here. Would you agree that a number of the bills on there are related to treatment for dizziness?

MR. SMITH: Your Honor, I have to object. This is outside my redirect. I asked her if any bills from the VA were on there and she said no.

THE COURT: He can ask it, is it on there or not.

THE WITNESS: No.

BY MR. DANIEL:

Q Who do you see for neurological problems?

A Dr. Henlon.

Q Which group is he with?

A It is a she. And she is with the neurology department at the VA.

Q Where?

A At the VA in Charleston.

Q Okay. Did you see the folks at MUSC about dizziness? There is a bill for $64,000. Did you get treatment?

A Yes, sir. The dizziness I was experiencing was from the fracture in my neck because the fracture in my neck was causing to push the artery in my neck so that I wasn't getting the oxygen that I had after the accident.

Q But you would agree that you are not a medical doctor?

A No, sir, but they performed an angiogram.

Q But you can't give a medical opinion?

A No, sir.

Q And you actually testified in your deposition when I asked you, Did they ever figure out what was causing your dizziness, you agree that you told me, No, they have not, they have not figured it out?

A No, they hadn't.

Q And you had dizziness before this accident, from Parkinson's, you had dizziness before this accident?

A Not from Parkinson's.

Q Had you complained of dizziness to doctors before this accident?

A I don't believe so.

MR. SMITH: Your Honor, are we still within the course of redirect? I tried to just let it play out, but I think that we are a little further.

THE COURT: How much further do we have?

BY MR. DANIEL:

Q You would dispute that you were treated for dizziness before, before the accident?

A I don't recall, sir.

MR. DANIEL: Okay. No further questions.

THE COURT: Anything further?

MR. SMITH: No, ma'am.

THE COURT: You may step down, Ms. Hood.

Ms. Suttle and Mr. Willey, come on up.

(Off-the-record discussion held.)

THE COURT: Ladies and gentlemen, do not discuss this case. It wouldn't be appropriate to do so. We will be right back with you. We are trying to figure out scheduling-wise how we are going to keep going, okay.

(Brief recess.)

(The jury enters the courtroom.)

THE COURT: Ladies and gentlemen of the jury, we're going to keep moving on. Just to let you know, we are trying to get through this quickly today.

Ms. Bostick, I think, has ordered pizza -- am I correct in saying pizza -- for lunch. So we're just going to keep running until it gets here, so it's hot, ladies and gentlemen. Just to let you know, that's what we intend to do. We'll then only break for maybe

20 minutes, 30 minutes, then keep going. Okay?

All right. Go ahead and call your next witness.

MR. SMITH: Your Honor, plaintiff's final witness will be Christine Hood.

THE COURT: Okay. Come on forward, Ms. Hood.

MR. SMITH: Christine Davis, sorry.

Thereupon,

CHRISTINE DAVIS

was called as a witness, having been first duly sworn, was examined and testified as follows:

WITNESS: This is intimidating.

DIRECT EXAMINATION

BY MR. SMITH:

Q Please tell us your name.

A Christina Davis.

Q You've been married recently?

A Yes.

Q Sorry.

A Yeah.

Q Who's your mom?

A Terry Hood.

Q Christine, I'd like for you to tell us about the family reunion, when it was, what happened. Talk to the jury about that experience.

A Okay. So I'll give you a little bit of back

history. In 2010, 2011, we went on a trip to Germany, and that was prior to the accident. We traveled from Germany to France. My dad was actually working there at the time. And she -- we were up and about, we walked everywhere, we did everything we wanted to do. We got to see so many different sites, it was amazing.

So fast forward till after the accident, we've actually been here, to Georgia, twice. Most recently was Helen, Georgia. We went on a trip to WalMart because we stayed in a cabin.

Q Just to give us some perspective, when was this?

A This was two, three days ago. So it was just recent. It was this vacation.

Q Let's slow down just a little bit. So this was a family reunion, right?

A Uh-huh. (Indicating affirmatively.)

Q And what was the -- in Georgia somewhere?

A Helen, Georgia, yes, sir.

Q Okay. Y'all got a big family?

A Immediate. It's my sister, with her three children and her husband and myself with my two children and my husband. So, it's immediate family.

Q Y'all stay in a lodge together?

A Uh-huh. (Indicating affirmatively.)

Q Okay.

THE COURT: Is that a "yes," for the record?

THE WITNESS: Yes, sorry.

BY MR. SMITH:

Q Explain it to them from there.

A Okay. So we went to WalMart to get some of our supplies, some food for the trip that we were going to make food there to save money and things like that. And that was basically the excursion that she got to enjoy. She went -- we -- it was me and my sister that went to WalMart, and we actually had to cut our WalMart trip short because her leg was really starting to bother her and hurt her.

The next morning we woke up and we all decided that we were going to go to walk up to a waterfall which was only a half mile. And she wasn't able to go because she couldn't walk. It pains her to walk.

The same thing -- and then the thing happened throughout the rest of the vacation we were there, she had to limit everything that she does because she physically can't move past a certain point. She can only do maybe one excursion, and that's it for the rest of -- for a few days.

So it may sound like, you know, nothing big, but it's huge in your daily life when you can't go out on a daily basis.

The same, we went previous, maybe a month. July of last year, we went to Stone Mountain, and she

couldn't do anything pretty much. It was on a hill, and she went walking around, but we explored the entire area and she was confined to a hotel room. And that's no fun.

MR. SMITH: Thank you.

MR. DANIEL: No questions, Your Honor.

THE COURT: You may step down. Thank you.

WITNESS: Thank you.

MR. SMITH: The plaintiff rests, Your Honor.

THE COURT: Ladies and gentlemen, at this time the Plaintiffs have rested their case. There's a matter of law I need to take up with the attorneys. And I'm sorry I'm shouting, my microphone is off.

I'm going to send you back to your jury room very briefly. Do not discuss this case, it wouldn't be appropriate to do so. We'll bring you right back out.

Like I said, we're just going to keep going until that pizza gets here. Okay? Thank you.

(The jury exits the courtroom.)

THE COURT: Okay. Y'all need to see this. Any motions?

MR. DANIEL: Yes, Your Honor. At this time, the defendant moves for a directed verdict based on the testimony about liability and headlights. At best, the testimony now is that it was 80 percent dark, and she figured she might not have headlights on, and there's

also evidence of the plaintiff speeding and damage, and there is testimony from their expert about what the likely speed was. That's it, Your Honor.

THE COURT: Okay. Mr. Willey, do you want to respond?

MR. WILLEY: I don't understand his question frankly. I guess -- is it to headlights or is it to liability in general? I mean, I don't understand what his motion is.

THE COURT: Okay.

MR. DANIEL: Your Honor, our position is that reasonable minds differ on the issue of the liability in this case based upon the testimony.

MR. WILLEY: Okay. And I will just briefly address that. Obviously, in this case the plaintiff has the burden of proof. We have to prove that its more likely than not that the defendant had a duty and a breach of duty proximately caused some injury in this case. The statute laws of South Carolina obviously applies. It's been testified to at the time of the wreck the plaintiff had the right-of-way, that defendant after leaving the stop sign entering the highway struck her, which obviously is negligence. And there has been testimony from a doctor that she was proximately caused injuries as a result of the wreck.

So, at this time directing your verdict as to liability and negligence, of course, would be improper, particularly for the defendant. But we will make our motions at the appropriate time.

THE COURT: Thank you. All right, respectfully, I think given the evidence in the case there's evidence obviously that your client failed to yield the right-of-way. I think that it is a jury issue in this case. We are definitely going to charge comparative negotiations. So, with that said, I am going to respectfully deny your motion.

MR. DANIEL: The defendant also moves for directed verdict on punitive damages. And, just briefly, the basis for that being that there's no one that said that Antoine Johnson was actually texting, reading a text, sending a text or on his phone. The only evidence in the record is that he checked twice before he drove into the intersection and there's obviously witnesses -- Dustin Lee's testimony is that there was a vehicle coming without headlights, so we would move for directed verdict.

THE COURT: All right. Yes, sir.

MR. WILLEY: Your Honor, the law as you know in South Carolina is that violation of a statute gives rise as evidence of punitive damages can be used to

establish recklessness. In this case we have the defendants by like several statutes which we will go through when we go through the jury charge, so directed verdict as to punitive damages would be improper.

THE COURT: I agree, and we are going to have to charge punitive damages. And I think there's damages, obviously, by violation of a state statute. Failure to yield the right-of-way, failure to keep proper lookout, among other things that would allow this jury to return a punitive damages award, so I will allow it. Anything else?

MR. WILLEY: Not from the plaintiff.

MR. DANIEL: No, Your Honor.

THE COURT: How many witnesses do you have?

MR. DANIEL: One.

THE COURT: Just one.

MS. SUTTIE: I can get him.

THE COURT: How long will that be?

MR. DANIEL: Short.

THE COURT: Short, okay. Margaret, how long till the pizza is here?

THE CLERK: It says it is out. That was seven minutes ago, so it was may be downstairs.

THE COURT: That would be great.

MR. WILLEY: Can we finish the cases and then

perhaps --

THE COURT: That is what I'm going to try to see. I'm worried that the people won't be here when we need to take a break. So, that is fine. We have to work on the jury charge.

MR. WILLEY: I have never seen a schedule work out like this.

THE COURT: Okay. Let's bring the jury back in, we will sit through one witness and then you can rest as well. And you need to let me know if you have any rebuttal witnesses.

MR. WILLEY: We do not, Your Honor, based on who they are calling.

THE COURT: All right. Let's bring them out.

THE BAILIFF: If you could come into the courtroom, please.

(The Jury enters the courtroom.)

THE COURT: Welcome back, ladies and gentlemen.

MR. DANIEL: Your Honor, I need a moment.

THE COURT: Okay.

(Pause.)

THE COURT: Ready to go, Mr. Daniel?

MR. DANIEL: Just a second.

THE COURT: Okay.

(Pause.)

THE COURT: Okay?

Thereupon,

CARY TANRATH

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Tanrath, good afternoon.

A Good afternoon, sir.

Q Could you just please state your name, and full name for members of the jury?

A Cary Thad Tanrath.

Q And thank you for coming today. Where did you come in from?

A Savannah, Georgia, sir.

Q Did you drive up this morning?

A Yes, sir.

Q Tell us a little bit about yourself. I'm trying to be brief. Where are you from originally?

A I was a military brat, born in Clark Air Force, the Philippines. Spent 20 years, five months, 11 days in uniform, and currently have a handyman service in the Savannah, Georgia area.

Q What branch of the military?

A U.S. Army, sir.

Q How many years did you serve?
A Twenty years, five months, 11 days.
Q And are you married?
A Yes, sir.
Q How long have you been married?
A Married for 13 years come this December, sir.
Q Have any children?
A Three daughters.
Q And, sir, we're here about an accident. Did you witness an accident on November 7th, 2014?
A Yes, sir.
Q Could you -- what were you doing at the time, that day?
A I was leaving Hilton Head. At the time, I was employed by a company called Clearview Window Cleaning and Pressure Washing. Headed back from Sean Pines, I believe, sometime after 5:00, 5:30, because it was dark out.

For those of you not familiar with the Hilton Head area, 278 has three lanes that run eastbound, three lanes that run westbound. I was in the far left lane of the eastbound traffic, and traveling home, and witnessed a vehicle hitting another vehicle that was directly in front of me.

Q That stretch of road, with the company you were working with, did you have to travel that frequently at the

time?
A I traveled to Hilton Head anywhere from three to four days a week.
Q And what -- this happened when? In November?
A Yes, sir.
Q You said that it was dark out. How dark?
A Dark enough that the lights -- that I had my lights on. November, yeah, it's dark by 5:30, because we got to get out of Plantations because you can't work after dark, so --
Q You had your headlights on?
A Yes, sir.
Q Did -- the impact that you described, we've had this up for -- while the jury has been very patient, probably tired of seeing this, but could you tell me, the orient of the jury, where were you, if this -- if this is headed westbound off of Hilton Head?
A Westbound off of Hilton Head, the vehicle, I would be behind the vehicle that's got the X in front of it.
Q Okay. What kind of vehicle -- so you saw an impact just between two cars?
A Yes, sir.
Q Two vehicles?
A Yes, sir.
Q What type of vehicles?

A The vehicle in front of me was an SUV. The one that impacted, I believe, was an SUV. All I caught was the front glimpse of it.
Q Okay. Was there more than one person in that vehicle?
A That, the vehicle in front of me, there were two people. The vehicle that hit them, I do not know how many people were in that vehicle, sir.
Q What did you do once you saw this collision?
A I don't follow directly behind anybody. I follow at about -- when I went through driver's ed, the way I was taught to -- when you're driving down the highway, you have a two-count between you and the vehicle in front of you.

So -- and if you've driven the road in Hilton Head, you don't follow directly behind somebody because you can't see the taillights in front of them. So I usually stagger a little bit off to the side of them, and then back far enough that it gives myself braking time.

What I saw is I'm driving and it was one of those -- oh, no, moments. When you see the vehicle coming towards you, and it was somebody's going to get hit. And the vehicle in front of me got hit, debris started flying up over the vehicle and onto the right-of-way.

I slowed down and pulled off to the side of

highway. So I helped extract the driver, pulled his door open, and then myself and another individual opened the passenger side door. If I remember correctly, her seat belt would not come undone, so that had to get cut to extract her from the vehicle. And then some other people were helping the vehicle that impacted the vehicle in front of me.
Q So the vehicle where you -- that you stopped as soon as you saw the impact?
A I started to slow down once I knew that there was going to be an accident.
Q Okay. Did you run to render aid right away?
A Yes, sir. Once I stopped my vehicle and pulled off to the side of the road.
Q And other people were there and started to help as well?
A Yes, sir.
Q And that happened as soon as the -- right after the accident?
A Yes, sir.
Q So you were behind -- based on what we've been discussing, behind the vehicle, in this depiction, vehicle K?
A Yes, sir.
Q There were two people in there?

Q Okay. Did that vehicle, do you remember, did it have its headlights on?

A The vehicle in front of me?

Q Yes, sir.

A I can't say if it had its headlights on. I know its taillights were on, and it's braking lights were working.

Q The other vehicle, the one that --

A That impacted?

Q -- impacted the one with label K. Can you tell us -- can you come down and tell us where it was coming from and where you first noticed it?

A This is 278 westbound. I was following behind this vehicle K. This vehicle here traveling -- and all of a sudden, you just see the oblique side of the vehicle. So it wasn't turned completely sideways, but it wasn't head on from where I was, and it starts to veer into the westbound lanes, and that's when it was "Oh sh", somebody's going to get hit. And that's when I hit -- hit my brakes, pull off to the side of the road. And by the time it was done, there was debris everywhere, two smashed cars, and like I said, fluid and steam or smoke rising up from everywhere.

That's why I was more worried about the people in the vehicle getting burnt than somebody having an injury that you shouldn't move them, so --

Q So the vehicle labeled -- that would be labeled H, you saw that vehicle --

A Here.

Q -- come across the median?

A Yes, sir.

Q And there's actually -- is there a turn lane? You described three lanes. There's actually a turn lane right here, isn't there?

A There's three lanes of traffic going each direction, and then there's an intersection where you can pull into the intersection so that you can cut across to go to one of the side streets or make a U turn.

Q Is it possible that the actual accident that you saw, the impact between the K and this H vehicle, happened farther back than what's depicted in this drawing?

A What I remember is where the wreckage was would be closer to where you would actually start to turn in to make the turn. But I didn't measure it or anything like that.

That's what I remember is it was up farther. Closer to the end of the island, I guess is how I would describe it.

Q You didn't do any measurements or anything?

A No, sir. No.

Q You could go ahead and sit down. I'm sorry, Mr. Tanrath.

A (Witness complies.)

Q Were there any vehicles between you and the one that was hit?

A No, sir.

Q You had a clear view of the vehicle in front of you?

A Yes, sir.

Q And you saw this vehicle come across the median and directly impact the vehicle in front of you head on?

A Not head -- it came in at an angle, but, yes, sir.

Q Did the front of those two vehicles --

A Yes. The front of the two vehicles did collide.

Q Was it a violent collision?

A Yes, sir.

Q You said there was smoke?

A Well, there was steam rising up, so I don't know if it was smoke from a fire or just steam from radiator -- hot radiator fluid escaping and -- but there was debris all over the road.

Q The vehicle that came across traffic, not holding you to anything, was it moving slowly? Fast?

A That, I cannot -- it was one of those -- it was a blink of an eye. Oh, sh -- pardon my expression, ma'am, oh, shit moments, when you know that something is going to happen. I mean, it wasn't -- when your senses are

heightened time seems to move slower, but it was one of those, this is going to happen, it's going to happen now. And it was smash, and then pull off the side of the road and render aid.

Q Mr. Tanrath, this has already been entered into evidence. The smaller version has been offered into evidence, but the vehicle in front of you, do you -- was it perhaps a Chevy Tahoe?

A In front of me? It was an SUV, I can't tell you what brand it was, sir.

Q Okay. Would that -- would -- if people have already testified that the vehicle labeled K was driven by William Kuck, and Mary Kuck was the passenger in this vehicle, would you have any reason to dispute that?

A No, sir.

Q And would the damage you see here be consistent with the type of impact and collision you witnessed that evening?

A Yes, sir.

Q Okay. Now, you saw the vehicle coming across traffic sort of at an angle; is that correct?

A Yes, sir.

Q Were you able to see the front of that vehicle?

A Not the entire front, no, sir.

Q Were you able to see a portion of the front of

that vehicle?
A Yes, sir.
Q Can you come down and just, Mr. Tanrath, draw what the front of the car looks like?
A (Witness complies.)
This is the vehicle in front of me.
Q All right. And not to scale, but --
MR. SMITH: Your Honor, may I address the Court very briefly?
THE COURT: You may.
MR. SMITH: If this witness is going to testify that Ms. Hood did not have her headlights on, we stipulate to that.
THE COURT: Okay. He can still testify to whatever he needs to. That's fine.
MR. SMITH: Yes, ma'am. Okay.
THE WITNESS: So as far as this, so I did not see the entire curve of the vehicle, but I did see from that area on. Because, like I mentioned, I was staggered behind the vehicle probably more like that.
So I wasn't directly behind the vehicle, but I saw an oblique side of the vehicle that hit the vehicle in front of me, and a little portion of the front.
BY MR. WILLEY:
Q Okay. And the -- so you're looking at the -- this

is the vehicle that would be labeled H. You're now the other way around, right? You put an H on there?
A (Witness complies.)
BY MR. DANIEL:
Q And then your vehicle, T for Tanrath.
A (Witness complies.)
Q Go ahead. And could you see at least a portion of the front passenger side of the H vehicle?
A Yes, sir.
Q Could you see the area where the headlights are positioned?
A Yes, sir.
Q Were those headlights on?
A I do not remember seeing headlights.
Q And do you remember giving a statement about a week or two after the accident?
MR. SMITH: Your Honor, I don't know if he's impeaching this witness with the statement, at this point, but --
THE COURT: Ask him the question, and then if he says something different then --
BY MR. DANIEL:
Q Do you remember telling someone that the headlights, the passenger side headlights on that vehicle, were not on?

MR. SMITH: Your Honor.
BY MR. DANIEL:
Q I'm just asking the question.
MR. SMITH: No, you're --
THE COURT: Okay. Just ask the question. Let's go.
BY MR. DANIEL:
Q It's a straight question. Do you remember telling somebody that the headlights on the passenger side of that vehicle were not on?
MR. SMITH: Objection, hearsay.
THE WITNESS: I do not remember seeing headlights.
BY MR. DANIEL:
Q Okay. And you actually stayed behind and talked to the police?
A Yes, sir.
Q Did you tell the police, as far as the headlights on the H vehicle, did you talk to the police officer about that?
A I did talk to a police officer, yes, sir.
Q And what do you remember saying?
MR. SMITH: Objection, Your Honor, hearsay.
THE WITNESS: The best I can -- best I can remember, sir, is there were no -- I did not witness any headlights.

THE COURT: This is what he said, correct? That's not hearsay. He can say what he said.
THE WITNESS: I don't remember there being any headlights. I don't remember what the police officers question was to me.
BY MR. DANIEL:
Q I'm not asking you for a direct quote of what you said but do you -- did you offer that information to the police?
A Yes, sir.
Q And did you feel that was an important thing to mention?
A Yes, sir.
Q And was that because it was dark outside?
A Yes, sir.
MR. DANIEL: That's all I have. Thank you.
THE COURT: Any cross?
CROSS EXAMINATION
BY MR. SMITH:
Q Mr. Tanrath, you don't know either way whether or not Ms. Hood had any running lights on at the time, do you?
A I do not. I -- I don't remember any lights being on.
Q All right. But you don't know either way whether the running lights were on. Can't say yes, can't say no,

don't remember either way; is that correct?

A Correct.

MR. SMITH: Thank you. No other questions.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Do you remember -- you don't remember seeing running lights illuminated, do you?

A I don't remember seeing any lights.

THE COURT: All right. Anything further?

MR. SMITH: No, ma'am.

THE COURT: All right. You may be excused, sir. Thank you.

You're going to rest, correct?

MR. DANIEL: Yes, Your Honor.

THE COURT: Ladies and gentlemen, at this time, the Defense also rests their case. And the pizza is here. I'm going to send you back.

Ladies and gentlemen, knock on the door and let me know when y'all are finished eating. All right? And at that point I'll see where we are. There's some matters that the lawyers and I need to take up while you all are eating. But we're going to hopefully get this case wrapped up for you. Okay? Thank you.

(The jury exits the courtroom.)

THE COURT: We are going to be at ease for about 15 minutes or so. We are working on the jury charge. I know we need motions at this point. I guess it's going to be motions first and then we'll take a break. And then after that, I want to talk to Mr. Clevinger real quick. Okay? All right.

So any motions?

MR. WILLEY: Yes, Your Honor.

Your Honor, we do have motions and I will --

MR. DANIEL: Your Honor, one thing before motions, as a housekeeping matter. We have blow-ups of some of the exhibits.

MR. WILLEY: You've already rested, and we don't consent.

MR. DANIEL: We would move these, the bigger exhibits we have, they have some of the same size.

MR. WILLEY: You've already wrapped.

THE COURT: You haven't agreed to it and you have already rested without moving them in.

All right. Motions?

MR. WILLEY: Yes. Your honor, we're going to start with Motion for Directed Verdict as to the issue of plaintiff's headlights usage. And this deals with two separate things. First the legal duty, and then to proximate cause.

With respect to the legal duty, all of the testimony in the case -- all of the testimony, and this is important -- is that the wreck occurred sometime prior to 5:58 p.m. Which no matter which source, no matter which source you take, whether you take the Naval Observatory or you take SunCalc, would place this wreck within that 30-minute window after sunset. And, of course, there's a case on point which says that the law cannot require anything other than what the law requires. And when the Legislature speaks on a piece of law via statute, it should be strictly construed.

We have referred throughout the week -- we have referred throughout the week to the statute that requires headlight use, and that is 56-5-4450, which is times when vehicles must be equipped with headlights. And with respect to ordinary darkness, sunrise and sunset, it specifically says, 30 minutes after sunset.

Therefore, the jury, in order to find within the law, would have to find that plaintiff did not have a legal duty at the time of this wreck to have her headlights on. There's been no testimony, zero testimony, that this wreck occurred anything other than before 5:58 p.m.

And so on that basis, our motion as to headlights should be granted. Directed verdict as to headlight

usage, plaintiff not having a legal duty.

Second --

THE COURT: Okay. Let her respond. Go ahead.

MS. SUTTIE: Your Honor, we would point to the rest of the headlight statute, which also mentions that headlights need to be on when environmental 56-5-4450 -- which also says that headlights are required to be on, when environmental factors reduce the ability to see persons and/or vehicles on street or highway at distances of 500 feet ahead. I think that there is a question as to whether the defendant was able to see Mrs. Hood's vehicle, whether the environmental conditions, you know, allowed her vehicle to be invisible and, you know, how far away she was when the defendant was looking to make the turn and that speed comes into that as well. So, I think that it is a question of fact.

MR. WILLEY: Your Honor, with respect to environmental factors, we did go through with our expert, obviously to the extent that the statute specifically deals with lightness and darkness, which it does in this case, it speaks to that, specifically it has to be strictly construed as to that place.

In addition to that, we actually went through with our expert environmental factors, and with the police

officer, environmental factors that may be included: Fog, snow, rain, smoke, and just for fun, the eclipse, obviously.

But as to normal light and darkness, sunrise and sunset, the statute and the Legislature has specifically said, 30 minutes and 30 minutes. And the uncontroverted testimony in this case is that this happened before that 30-minute window. And, therefore, plaintiff did not have a legal duty to have her headlights on.

THE COURT: May I have a copy of the whole statute, please?

MR. WILLEY: Yes, ma'am. And Your Honor, I'm sorry --

THE COURT: That's okay.

MS. SUTTIE: Your Honor, I think it's not uncontroverted that the accident happened outside of that 30-minute window. The plaintiff's own expert, Ms. Borzendowski testified that it had occurred at 5:58 which is within the window, or could have occurred at 5:58.

THE COURT: Okay. Well, I think the catch-all in this statute where it says, "Or environmental factors severely reduce the ability to clearly discern persons and vehicles on a street or highway at a distance of

500 feet ahead as required. Again, I think that that might be a jury issue. I heard some testimony as to the distance, but I also think too that y'all were talking about there is a bit of a curve from the direction that she was coming in.

So, respectfully, I'm going to deny your motion as to that issue.

MR. WILLEY: Okay. Your Honor, the second piece of our motion as to headlights deals with proximate cause. The uncontroverted testimony in this case, including from the defendant, is that he did not see any other vehicles coming from his left, which would include Mr. Dustin Lee who testified that he was, you know, ten car lengths behind plaintiff in the inside lane, closer therefore to Mr. Johnson, had his Xenon headlights on, could see plaintiff, and could see defendant's vehicle.

And that, in fact, when this wreck occurred, as he approached it, he had to decelerate and move aside in order to avoid the aftermath of the wreck.

The testimony from the defendant in this case is that not only did he not look and see the plaintiff, but that he did not look and see Mr. Lee who had his headlights on. Therefore, without any evidence to the contrary, the headlight usage by her cannot be

proximately cause of this wreck. Because if he was unable to see the Xenon headlights of Mr. Lee, he would not have been able to see the headlights of the plaintiff. And that's clear from the testimony. There's been no evidence presented to the contrary, Your Honor.

THE COURT: Okay. Mr. Daniel.

MR. DANIEL: Your Honor, the witness is actually -- seems fairly conclusive that she did not have her headlights on. The only testimony by Antoine Johnson was that he testified before the jury that he checked twice. And the jury is allowed to draw the common sense implication that if he saw a car coming with headlights that was an immediate hazard to him he would not have pulled into the intersection. The way was clear, and that's why he proceeded.

So it's clearly an issue of fact. And the fact that this plaintiff did not have her headlights on is something the jury should -- that's what the whole case is about. They should be allowed to evaluate that and instructed that on negligence and negligence of the plaintiff for not having her headlights on.

And the other thing is about the speed, but I think this is definitely an issue of fact.

MR. WILLEY: Your Honor, with respect to that, the

defendant's own testimony cannot stand on its own. It has to be taken, you know, in the light -- you can't just simply stand up and say, in the face of everything else, that I didn't do it or it wasn't me.

The evidence has to be taken from all of the witnesses, which in this case is clear. In fact, the defendant has admitted that he did not see Mr. Lee, that he did not see the plaintiff. It is uncontroverted, Mr. Lee was close enough to the scene that he had to move over to defer himself so he wasn't caught up in it, as he put it. And Mr. Johnson admitted that he saw neither of them. So the headlight usage cannot be a proximate cause of the wreck here.

In addition, you know, to that, he hit her. He -- his testimony is that he didn't even see her prior to hitting her, and she obviously crossed in front of his vehicle because the evidence in the case, the photograph, clearly shows that he broadsided her. So, she's not required to, certainly, have headlights on the side of her car, and he still indicates that he didn't see her.

Of course, we know why he didn't see her, but that's really not an issue. The issue in this case is that the headlight usage cannot be a proximate cause of this particular wreck.

THE COURT: I'm going to deny that motion. I think it's a jury issue.

MR. WILLEY: All right. Our second -- third. We also have a motion as to speed in this case. And we would direct the Court's attention to the Odom case, which is citation Odom V Steigerwald, which is 260 South Carolina 422, a 1973 case, Supreme Court. In that case the defendant was stopped at a stop sign, and he testified that he did not see the Plaintiffs's vehicle approaching from the left when he attempted to pull through the intersection to make a left turn.

Odom, the plaintiff, testified the defendant was approximately two car lengths away when this happened.

THE COURT: What's your motion?

MR. WILLEY: My motion is to direct a verdict as to comparative negligence with regard to speed, because it's not --

THE COURT: As to speed, right? That's what I was looking for. Okay.

MR. WILLEY: Yes, ma'am. And in the Odom case, the plaintiff testified the defendant was approximately two car lengths away when this happened. Odom's vehicle struck the front left fender of the defendant's vehicle.

So in that case you actually had the plaintiff

hitting the defendant, which in this case it's the other way around. But even in that case the Supreme Court held that the plaintiff's excessive speed was not a proximate cause of the wreck, because the defendant pulled into oncoming traffic. The trial court's denial of the Plaintiff's motion for directed verdict on liability in that case was reversed and the case was remanded and sent back down for a retrial.

In the present matter, we have a very similar factual scenario, except it's actually stronger from the plaintiff's standpoint. Plaintiff was traveling in her proper lane legally, allegedly in excess of the speed. We don't even have any definitive testimony as to that. But as she approached the intersection of 278 and Southwood Park Drive, the defendant's vehicle pulled out into the highway, colliding with plaintiff's front passenger side.

Just as a note, the defendant testified he did not see plaintiff's vehicle approaching from the left when he pulled out and caused the wreck. Odom is clear precedent in this case and instructs that the plaintiff's vehicle is not a proximate cause of the wreck.

And I think a clear distinction here that the Supreme Court drew, and correctly, obviously I think,

is that in a case where you have a defendant who says, "Yes, I saw the plaintiff coming, I pulled out and I misjudged it and the plaintiff was speeding." Obviously speed would play a role in that wreck. It would potentially be a proximate cause for comparative negligence purposes.

In this case, we have a defendant who said he didn't see her, just like in Odom. And, in fact, in Odom, where the plaintiff struck the defendant, in this case the defendant actually struck the plaintiff, so it is a stronger factual scenario in this case.

And in addition to that, you know, we have the testimony obviously from the sole expert that was called in the case that said the speed played no role in forming her opinions and that she actually drew the comparison, which is essentially -- they're attempting to make a res ipsa argument. Well, she was there, and because she was allegedly speeding to get there, that caused it. But that doesn't work. Because obviously that would apply to if she had hit her snooze button that morning and been delayed three minutes it wouldn't have happened. So they don't get that.

THE COURT: Mr. Daniel, you want to be heard in response?

MR. DANIEL: Your Honor, I think Dustin Lee

testified that it's his routine to go 49. He was traveling 49. Mrs. Hood's vehicle, he saw her.

THE COURT: Yeah, but how is the speed the proximate cause of this accident?

MR. DANIEL: Well, Judge, there's also their expert that testified and the jury heard that an engineer pulled the computer chip data and that this, the plaintiff in this case, was going 62, 63 miles per hour.

THE COURT: Again, I understand that she was going that speed, allegedly. The question is, though, how was that speed a proximate cause of this wreck?

I could see it potentially affecting the damages in this case.

MR. DANIEL: Your Honor, it could affect the damages and -- it could affect the damages and liability, because at this intersection there is a bend in the road. You heard the trooper testify to that, the officer did. And a vehicle without its lights on, traveling at a high rate of speed, the jury can draw a conclusion about this vehicle was going at a high rate of speed, the plaintiff's vehicle, based on the damage alone. But there's also testimony from an eyewitness about that.

The fact that Antoine Johnson is making a left

turn on a dark road and there's a vehicle that could be hundreds of yards or hundreds of feet down the road without its lights on approaching at 62 miles an hour, that speed -- the speed there is absolutely an issue and could be a contributing cause of the wreck.

If she's going 30 or 25, you know, in this circumstance, she would be a lot more -- a lot closer to him in the roadway and perhaps he sees her. So the speed and how fast she might be going, that's directly related to liability; it's an issue for the jury.

The human factors expert actually in basic terms just said that speed -- she admitted that the faster you're going the more ground you cover in a given set of time.

So the jury can, from that, draw their own conclusion. It's common sense. If you're going 62 miles an hour you cover a lot more ground in one second than you do if you're going 30. It plays a direct role in the visibility of the plaintiff's vehicle. And if her vehicle wasn't visible, then Antoine Johnson, a reasonable and ordinary, prudent driver in his situation would look left and assume the way is clear.

So, that's why speed is absolutely an issue in this case. And it's a contributing cause. Perhaps the

primary cause. That, coupled with no headlights.

MR. WILLEY: And, Your Honor, that's all good and well. It's the same arguments they made actually in Odom, but in this case those facts aren't present here because the defendant hit the plaintiff and she crossed in front of his path of travel prior to the impact. And he still says he didn't see her. So it's even a stronger case than Odom.

And if you look at it, I mean, they can make the argument, of course, that if this, and if this. They had the opportunity to call an expert to say that it played a role based on an accident reconstruction. They didn't do that.

I mean, they hired a -- I mean, I've got the check where the, you know, company hired an expert. They could have called the expert in here to do a reconstruction that played a role. They didn't do it.

And as to damages, that's a separate issue which we can deal with, but they would have to have expert testimony to talk about the speed and the fact that that could cause a worse mechanism of injury than if she were going 10 miles an hour slower. They did not do that in this case, and therefore, it's even weaker. It's even weaker than the Odom case.

MR. DANIEL: There are -- I can cite some cases

that don't require expert testimony. There is Livingston v Oakman, which is 251 S.C. 611. There's Lynch v TDE (phonetic) 204 SC 537. Expert testimony is not necessary for speed to be presented as an issue to the jury.

MR. WILLEY: That's not the argument. Correct. We agree.

MR. DANIEL: I'm not done yet.

THE COURT: Let him finish.

MR. SMITH: Okay.

MR. WILLEY: Really. I've been -- Your Honor, we've got an eyewitness that says that the plaintiff was speeding. It's common sense that you cover more ground in a given period of time the faster you go.

Visibility is the issue here. If the driver is making a left turn on a dark road and actually checks to their left and traffic is clear, or they don't see anything an ordinary person with the appropriate level of vision, there's been no allegation that this young man has a vision problem. If they look, the way is clear, it's safe to assume they can go. The fact that his vehicle made contact withs Mrs. Hood's on the front tire or just a foot down the front of the -- side of the vehicle is irrelevant if she's doing 63 miles an hour. Which there's testimony before the jury that she

may have been going that fast. There's a bend in the road. It is directly related.

THE COURT: Okay. You are retreading old ground. Is there anything new? You've already been through and covered that.

All right. I think it's a jury issue in this case. I'm going to let it go to the jury, and I'm going to deny that motion.

Any other motions?

MR. WILLEY: Yes, ma'am. Yes, Your Honor. We also have a motion for directed verdict on proximate cause as to the ankle injury. It's uncontroverted in this case. There's been no testimony to show that her ankle injury came from anything other than this wreck.

The doctor's testimony in this case establishes to a reasonable degree of medical certainty most probably that the ankle injury came from this wreck. There's been no testimony from any other expert that says the ankle injury could have occurred any other way. And so we would move for a directed verdict on proximate cause as to the ankle injury.

MS. SUTTLE: Your Honor, I think there's a question as to whether the ankle injury occurred in the collision with Johnson's vehicle or the collision with the Rucks and whether or not the collision with the

Kucks is Mr. Johnson's fault is at issue too.

MR. WILLEY: And, Your Honor, when you -- as you well know, when you charge the jury on negligence and the causal chain, the charge is and the law is that the first act of negligence that leads to the causal chain, which was the second wreck, the first actor is responsible for that. In this case, the plaintiff has elected to sue Mr. Johnson. Clearly, if they find him negligent, then he is also negligent and responsible for the second wreck. And all we're looking for is proximate cause as to the ankle injury resulting from this wreck, the sequence of events.

THE COURT: I think it's a jury issue. What else?

MR. WILLEY: I would move on those same grounds as to the neck and the back injury from the doctor's testimony as well.

THE COURT: Respectfully, I'm going to deny those as well. Anything else?

MS. SUTTLE: I think in your consideration of jury charges we would like to request a standard jury charge on speed as well.

MR. DANIEL: Your Honor, I don't know in the standard charge if there's anything about religion. There was a lot about religion in the testimony.

THE COURT: If you have a charge on religion, I

would be happy to look at it.

MR. WILLEY: We do have additional from what was submitted prior, just three additional.

THE COURT: Okay. Anything?

I'm going to tell you, I'm going to charge the Bench book just like I always do. Everything that you all have requested from both sides, for the most part, I have got a standard charge on it from the Bench book which I'm going to use.

Yeah. The duty of care, duty for information, and rendering aid, I'm not charging that.

MR. WILLEY: Which one's that, Your Honor?

THE COURT: Whatever you just handed me. This duty to give information and render aid. And immediate report of accidents resulting in personal injury or death. I don't think that there's any question that someone made a report.

Making false complaint to law enforcement officer, giving false information to rescue squad.

MR. WILLEY: May I be heard on those, Your Honor?

THE COURT: Actually, what I'm going to do is this: I am going to just mark -- the first one, the duty of care is in my standard charge. So that's there.

We are just going to mark as a Court's exhibit

these three. You didn't number them, so I'm going to have to them marked as a Court's exhibit and I don't need to hear anything on them. We'll just mark it, and it is preserved for the record that I'm not going to charge the three of these.

Also you all also requested a spoliation of evidence charge.

MR. WILLEY: Briefly, Your Honor. I just want to make sure that the record includes that these are all based on statutory code sections and punitive damages will be charged in this case.

Uncontroverted defendant violated these statutes, and so we're requesting them on the basis that they go to punitive damages.

THE COURT: All right. Respectfully, not charging them. Go ahead and mark those. Go ahead.

MR. WILLEY: And with respect to the spoliation of evidence on our behalf, there was testimony that the actual content of the text messages was not preserved by the defendant. In this case there was also the black box, but we didn't get into that because we didn't call the expert. So just with respect to this, it's the actual content of the text messages. At first he pretended not to know who sent it. He eventually told us, but still did not preserve what they actually

said, which is relevant and probative.

THE COURT: Did you send him a non-spoliation letter requesting that he not delete text messages?

MR. WILLEY: The case -- the case was in a posture, Your Honor, that it was within the time frame where he could have retrieved them. In fact, we were able to retrieve these actual records, but obviously that --

THE COURT: Did you request that he do it?

MR. SMITH: In the discovery request, it's anything -- and I could get you the exact request, but it is included. I mean, we don't -- we don't send a letter as soon as a wreck happens, but it's within -- it is within the time frame.

THE COURT: Yes.

MR. DANIEL: Your Honor, they're not -- they're cell phone records from the carrier. The records that you're talking about are Antoine Johnson's records.

MR. WILLEY: Right. They wouldn't even give us those, we had to subpoena them from the carrier.

THE COURT: I don't think a spoliation charge is appropriate in this case. I'm not going to charge it anyway. But thank you for putting it on the record.

Is there anything else that I had a question on?

You had a motion for a duty to mitigate for

damages. And I don't know where that's coming from. Why did you ask for that?

MR. DANIEL: We will withdraw that, Your Honor.

THE COURT: Okay.

MR. DANIEL: We actually requested spoliation charge as well and --

THE COURT: For what?

MR. DANIEL: We could present to Your Honor, if you would like to review Woody Poplin's testimony and then Ken Richards' testimony, the two engineers that were hired by plaintiff's counsel and then not called.

They inspected -- Woody Poplin inspected his vehicle well into the lawsuit, several months after suit was filed. Probably, I think, six months. I can get the specific date for you.

THE COURT: That was on behalf of the insurance company?

MR. DANIEL: That was on behalf -- that was on behalf of and at the instruction of a lawyer that was representing Mrs. Hood. I believe it is -- I can't speak to --

MR. SMITH: Tell her who hired Woody.

MR. DANIEL: Chris Nichols, who was representing Ms. Hood hired --

MR. SMITH: Who paid him?

MR. DANIEL: Can I finish?

MR. SMITH: Tell her who paid him. That's what she wants to know.

THE COURT: Guys. This is embarrassing at this point. Really, it's embarrassing.

We're going to go ahead and we're going to take about a 15-minute break. Y'all grab a bite to eat. We'll come back and we will finish up our discussion on the charges. And I have noted for the record what you all have requested. I'll make those lists exhibits. And I'm going to charge what I'm going to charge.

So with that said, y'all go grab a bite to eat and we'll come back and I will tell you what I'm going to charge and we'll go forward with the closing. Okay? Thank you.

MR. WILLEY: Will we also, at that time, Your Honor, have a chance to review the verdict form?

THE COURT: Yes, I'll have a copy.

MR. WILLEY: Thank you.

MR. DANIEL: Thanks, Your Honor.

(Whereupon, the Court stood in recess.)

(Proceedings continue in Volume 6.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 16th day of January, 2018.

/s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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In the Court of Common Pleas for the
State of South Carolina, County of Jasper

Case No.: 2015CP2700119

Therese Hood,
Plaintiff,
vs.
Antoine Johnson,
Defendant.

Transcript of Record

VOLUME 6

September 7, 2017
Ridgeland, South Carolina

BEFORE:
The Honorable CARMEN T. MULLEN

APPEARANCES

REPRESENTING PLAINTIFF:

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THE COURT: We are still working on the charge. I will ask you to do closing arguments and then we will take a small break and then I'll charge. But to let you know, I'll charge as to the finder of facts, the judge of the law. The direct evidence and circumstantial evidence. Obviously, the burden of proof in this case, as to negligence is by preponderance of the evidence.

Going to the charge, expert witness charge, deposition testimony charge. I am going to charge negligence, comparative negligence. I am going to charge the duty to yield a right-of-way when you are entering a roadway. I am going to charge that every driver of a vehicle approaching a stop sign, stop at the stop sign and then it goes on to say basically see if the other cars are coming before you enter the roadway.

The duty of proper lookout. The duty to keep a car under control. It is improper to use a wireless apparatus statute. And the headlight statute, 56-5-4450.

I'm going to charge the other is speed, 56-5-1520. I'm going to charge negligence, per se.

As far as the actual damages, medical bills, pain and suffering, mental anguish and permanent injuries as define them as the past present and future, obviously. Damages, in this case, typically, only get one award. And burden of proof again as to actual damages. And explain that it is obviously by preponderance of the evidence. I will talk about that you can't recover from perspective damages, although it's not required to be proven by mathematical certainty.

I'll charge the life expectancy. In this case, at 63 years old her life expectancy is 21.68 years.

And then I am going to charge punitive damages, obviously. Those must be proven by clear and convincing. And then at the end I will charge typical, don't owe your support or sympathy to anyone. The verdict must be unanimous.

The verdict form is the typical, comparative negligence. It is in the Bench book. Other than that, I am not charging spoliation or the three that you have passed up today. We have marked those as Court's exhibits hopefully. Anything else that you can think of?

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 4 marked for

identification and received in evidence.)

(Whereupon, Court's Exhibit No(s). 5 marked for identification and received in evidence.)

MR. SMITH: Your Honor, I believe that it's been submitted but I don't think that it was mentioned. You can't find someone negligent for not doing more than the law requires. If they find that it didn't require headlights, they cannot find her negligent for not having headlights when the law did not require them.

THE COURT: The problem though, with that statute, is what we talked about with directed verdict is because it also says, other environmental factors reducing someone's ability to see, which there would have been in this situation, required that she had headlights on. It didn't have to be strictly the time period but also as to the other environmental factors. And I loved the eclipse.

MR. WILLEY: The key there is if, I think that what he's attempting to say is because of darkness and environmental factors it wasn't required. They could not find negligence.

They have to find that one of those apply. There's a jury charge on point about not finding negligence for something other than the law.

MR. SMITH: If they find that.

THE COURT: Give me --

MR. DANIEL: Your Honor --

THE COURT: Hold on a second.

(Pause.)

THE COURT: I agree with them, to the extent that I think that they can find that her speed was a factor and she was driving too fast for conditions. But can somebody give me a proposed copy of the charge that you are asking for?

MR. WILLEY: It was enclosed in our charge.

THE COURT: I don't think this whole charge is appropriate. I think that portions of -- that a person cannot breach a duty when they are in compliance with the law, and the Court cannot require a person to do more than what the law requires.

That would be the only portion I would feel comfortable with.

MR. SMITH: Sure.

MR. WILLEY: And that's what we're looking for.

THE COURT: Okay. I'll put that in.

What else?

MR. WILLEY: Okay. One other question on the actual -- I'm not sure exactly what charge you're using, but our act -- from the Bench book, I just want to make sure these are in there. It's out-of-pocket expenses, medical expenses, psychological trauma, mental anguish.

THE COURT: Hold on a second. Hold on a second.

So I think that's something that you can argue. I think by the end we will cover it fine. I think you can go down the list of what I expected from you in front of the jury and include all this. I think my damages charge is fine, and it is good enough on the damages that I don't say -- and I want you to know that I don't say, "including out of pocket damages," you know.

I go through -- I tried very hard, I'm going to tell you this, to try to narrow this down somewhat. Any time you are charging comparative negligence and punitive damages, it is one long charge. And I know

you all know that.

So I've tried very hard to kind of make this to the point where they can understand it, you know, and stay with me. And I think it's pretty good. I think it's a proper charge on the law. I do ask about actual damages, and I do want medical expenses and costs. I don't say out of pocket costs. That's going to be for you to argue.

MR. WILLEY: Do you do mental anguish, anxiety, depression, pain, suffering, disfigurement?

THE COURT: Hold on.

I do. Mental anguish, loss of enjoyment of life -- what is the third one?

MR. WILLEY: Pain and suffering.

THE COURT: I've already got pain and suffering.

MR. WILLEY: Depression.

THE COURT: I don't think depression specifically.

MR. WILLEY: When she talked about that.

THE COURT: Right. I think you need to be very careful though. Because when we had issues before when you said you were not claiming an exacerbation of any bipolar issues,

and I agree. Her testimony did clearly cover depression. So I think that's a comment on the facts, but I wouldn't specifically address anything particular, like depression or bipolar or anything along those lines. I think you already covered it.

MR. WILLEY: Okay. And then anxiety. She specifically testified about her anxiety during the day.

THE COURT: I think that goes to -- I don't specifically say anxiety, I think you could argue it, but I --

MR. WILLEY: Okay. And then the other two were disfigurement and property damage. She's permanently disfigured, by the doctor's testimony. I mean, so I think that one is proper, and property damage, obviously it --

THE COURT: Okay. You know what, it says "permanent injury." I'm going to say, "and disfigurement."

And I apologize, I missed the testimony about property damage. So the car was never paid for?

MR. DANIEL: I thought it was.

MR. WILLEY: So there's no evidence in the record about any accordant satisfaction. They

didn't raise it, so we're claiming it.

THE COURT: Was there any testimony about the cost of the car? Did I miss that?

MR. WILLEY: No, but you can see the property damage.

THE COURT: Doesn't matter though. They can't just -- I have no idea, I can't tell -- well, it tells you what kind of wreck this was. But I can't tell what kind of car that was.

MR. WILLEY: All right. I'll take that one out. I'm not going to argue over that one.

Two final things. Potentially an insurance charge, if you would charge an insurance, you're not being considered any --

THE COURT: The insurance word has not been used in this, like miraculously.

MR. WILLEY: Here's why. He specifically brought in the VA. People generally know that the VA treatment is not paid for by the plaintiff. And so we think it's important that the Court instruct them that they are not to consider that. They are only to consider the testimony before them. I mean, everybody knows you don't pay when you go to the VA. And he specifically brought that in. We specifically

didn't bring it in.

MR. DANIEL: It wasn't objected to, Your Honor. I didn't say "insurance." I don't think people know that in general, and I also think they want specific charge --

THE COURT: I think it's more a collateral source rule than anything. I mean, it's more of a collateral source charge that I would request, if I were you.

MR. WILLEY: Well, we're fine with it if you do --

THE COURT: I'm not going to say the word "insurance."

MR. WILLEY: As long as you say, you know, health benefits and, you know, whatever.

THE COURT: I know, but that's commenting on the facts. I can tell you, what you're asking for is collateral source charge. If you want me to charge that, I will charge that. Because I would agree with you with any VA talk.

MR. WILLEY: Okay. We'll take the collateral source charge. That's perfect.

THE COURT: Hold on a second. Okay.

MR. WILLEY: And then the final thing,

Your Honor, which --

THE COURT: Hold on a second.

MR. WILLEY: Okay. Take your time.

THE COURT: Yes, the time thing, he ruled on the Woody Poplin. You ruled on the tailgating.

MR. DANIEL: And Your Honor. Yes, the final thing which he raised this issue of who hired Mr. Poplin, I just want to bring it to the Court's attention because you ruled on tailgating, they brought that in; you ruled on Parkinson's, he brought that in today against your ruling. And I'm just putting the Court on notice that I have a check here that USAA paid Mr. Poplin's retainer, and if he raises that, I'm going to ask the Court for sanctions. Because it is not true, and if he says we hired Mr. Poplin and didn't call him, not only is that in violation of the Davis v Sparks case, which says, "a party cannot be prejudiced by it's failure to call a witness or hire a witness that it doesn't call."

But it's also just not true. And, Your Honor, it's a UIM case, so the way UIM works, I had -- I had no involvement in defending that case and hiring

Mr. Poplin.

USAA had a duty to defend Mrs. Hood, who had counterclaims from Mr. Johnson, which we haven't brought up. We stayed out of that. Counterclaims that have been paid on by USAA to protect her interest.

USAA from that physician through a lawyer hired to defend her, Chris Nichols, and that's all I said, "a lawyer hired on her behalf," Mr. Nichols hired Woody Poplin.

THE COURT: But you're not going to discuss it in closing argument is what we're going to do. You're not going to talk about it. Okay.

MR. DANIEL: Your Honor, I would just, for the record, I made an objection to that.

THE COURT: Okay. And, again, you're not going to talk about it. It's mischaracterization. It's misleading the jury. It's a trial in search of the truth, and it misleads the jury. And we can't get into that without getting into insurance issues, and you can't talk about insurance. So you can't use that as a great fact or use it against her.

So, anything else?

MR. WILLEY: Nothing from the plaintiff, Your Honor.

THE COURT: Okay.

All right. That's what the proposed verdict form is. And I got to tell you, I have not read it all the way through, so y'all need to read it carefully and I'll read it.

(Pause.)

THE COURT: All right. Who's doing the closing for the plaintiff?

MR. WILLEY: I am.

THE COURT: And who's doing it for the Defense?

MR. DANIEL: I am, Your Honor.

THE COURT: She's just making a couple of changes to a portion at the end. What else? I know the jury is ready to go.

MR. WILLEY: I just need that to use it in closing, but other than that, I'm ready.

THE COURT: Okay.

MR. DANIEL: And, Your Honor, just for the record, as far as the collateral source charge, we object to that charge.

THE COURT: Okay. Yeah, you're the one that brought the VA into it, so it's

appropriate.

Anything else?

MR. SMITH: Nothing from the plaintiff.

THE COURT: Okay. So we're just going to wait. Mr. Willey needs a copy of this then.

MR. DANIEL: One other thing, Your Honor. I haven't seen their Power Point yet.

MR. WILLEY: You can object contemporaneously. Paula has that.

MR. DANIEL: Well, I do know that it's their practice to put the per diem, some kind of per diem amount up.

MR. WILLEY: Correct. And I will do that.

MR. DANIEL: Which if he does that, I just want to make it clear that it's for the jury to decide if that's appropriate.

MR. WILLEY: And I'll make it clear.

THE COURT: He's going to say that.

And also, just so we're clear, I know once you're finished, you're removing all of that?

MR. WILLEY: Yes, all of this has to come down.

THE COURT: Okay. Before he can pass. Okay?

MR. SMITH: Oh, yes. Yes. Yes, I will.

THE COURT: Do it like that.

MR. SMITH: I will.

THE COURT: I don't want to sit and have to wait. Certainly don't want to make the jury wait. Okay?

MR. SMITH: Okay.

THE COURT: All right. We're ready to go. Gentlemen, yes? Let's bring the jury out.

(The jury enters the courtroom.)

THE COURT: Welcome back, ladies and gentlemen. I trust y'all got a bite to eat.

At this time, what we're going to is hear the closing arguments from the lawyers. After that, we're going to take a very brief break, and then I'm going to come back and charge you on the law.

My charge usually takes roughly about 20 minutes or so, just want to let y'all know and warn you. So we're going to go ahead and pay attention to the attorneys at this time, and like I said, we'll take a break before I charge you on the law, and then we're going to send the case to you, okay, for your deliberations.

Mr. Willey, whenever you're ready, sir.

CLOSING ARGUMENT BY PLAINTIFF

MR. WILLEY: Good afternoon.

Every nine minutes in South Carolina, a driver is injured in an automobile wreck. The majority of those wrecks are caused by distracted driving.

Ladies and gentlemen, in a little while, you'll go back through that door one last time and you'll have three jobs. The first job is going to be to answer the questions that the Judge gives you. Those questions will be laid out on the verdict form.

Your second job will be to make sure that everyone else on the jury follows the law as the judge instructs you on it. Because you will have to reach a unanimous verdict. And no one juror can make you serve on a jury that doesn't follow the law, because you all took an oath to follow the law.

And third, before you answer those questions, of course, you'll have a conversation, and you'll have to explain to each other why you as individuals feel the way that you do about your personal answer to those questions. Because, again, the verdict will have to be unanimous.

So for the next few minutes, I'd like to give you some ways to think about those questions and some things to think about that came in during the course of this trial.

You'll remember that we were forced to bring this

claim -- Ms. Hood was forced to bring this claim, we were all forced to be here this week for three basic reasons.

The first reason is that Mr. Johnson did not pay attention to the roadway in front of him before crossing the highway.

The second reason is that Mr. Johnson violated the safety rule requiring all drivers to look before crossing a busy highway. As a result of those actions, Ms. Hood was injured. And that's the third reason that we were forced to be here this week, because they have refused to accept full responsibility for his actions.

And so that's why we're here. We're here with you, as members of the community, as representatives of the community, on this particular day, this particular week, to determine whether or not when an individual in this community injures another individual, whether or not the injured individual should be compensated for those injuries.

1,035 days is how many days it has been since November 7th, 2014. For 1,035 days Therese Hood, my client, who you've met, has gotten up in the morning in pain, gone to bed at night in pain, and lives her days and nights in pain.

For 1,035 days, there hasn't been an apology, a check-in, hey, how you doing, a lending of a helping hand. For 1,035 days, they have said exactly what Mr. Daniel said to you in their opening statement, "the plaintiff caused this wreck."

And now, the 12 of you know what Ms. Hood has known for 1,035 days, and what I've known for a period shorter than that, that that's not the truth. This wreck occurred because when Mr. Johnson pulled away from the stop sign he didn't pay attention to the road. He didn't look to the left to see what was coming.

And as Ms. Hood traveled to spend the weekend with family in Hilton Head she was hit by Mr. Johnson on the side, broadsided, locking her wheel, as she testified, and pushing her to the left into oncoming traffic. It's as simple as that. It's as simple as that. When you cross a busy highway, you have to look.

Mr. Johnson himself was honest with you. He was honest. He said, "I didn't see her, and I didn't see Dustin Lee."

Dustin Lee, who we know has Xenon headlights, the bright, real bright headlights, kind of annoying actually when somebody's coming from the opposite

direction with them.

So you have to use your common sense. Why didn't he see them? Why didn't he see Ms. Hood even immediately before he broadsided her? Why didn't he see Dustin Lee, who testified he had to decelerate quickly and veer around so that he didn't get caught up in it; he was that close. Why didn't he see?

I would submit to you, and we don't have to prove why he didn't see, but in this case we have some evidence. He didn't see because he was on his cell phone, ladies and gentlemen. The evidence in this case is, the night before, at 9:14 he got on the phone, 5:22 -- or excuse me, at 1722, 17 minutes after midnight, he got off the phone.

The evidence in the case is that the next morning at 4:44, as soon as he woke up, he sent a message. And the last call the night before ends just after midnight. A three-hour call. The next morning, four and a half hours later, at 4:44 a.m., he sends his first text message of the day to the number ending in 1200, who for 1,035 days they haven't told us who that was.

Finally under oath, Mr. Johnson admitted that was his girlfriend. Reasonable thing to send your girlfriend the first text message of the day. Between

5:00 and 7:00 a.m., he goes to work. While at work, he uses his cell phone 93 times. That's what these records show. Ninety-three incoming or outgoing text messages or phone calls. Fifty-seven of those -- 57 of those to or from his girlfriend. They're having a conversation throughout the day, back and forth. Normal thing to do. We've all done it.

4:00 p.m., he gets off work. Between 4:00 and 4:50 p.m., 50 minutes, he uses his phone another 29 times. Another 29 times he uses his phone between 4:00 and 4:50 p.m. He testified that he gets off work, cuts his cousin's hair, and then he takes Scooby to meet somebody at Dunkin' Donuts, just dropping off Scooby at the Dunkin' Donuts to meet somebody after he gets his hair cut.

5:43 p.m., the defendant, Mr. Johnson, sends a text message. Now, we're all the way over here. We have gone through this board, 26 messages that day. Gone through this board, while at work, another 53 messages to the girlfriend. Total of 93 messages between these two boards, over 50 of which were to the girlfriend.

And we've gone through this board. Another 29 either messages, four calls, I believe on there, maybe five. And these will be back in the jury room with

you, and you can analyze them and look at them and read them. See how many of these messages are from 1200. This is the calling or texting number, this is the calling or texted number. Okay. Just so you know how to look at it. His number is the 4155. You'll notice it appears in every single entry, because these are his phone records. So obviously he's either texting or being texted, calling or being called. And we've gone through that board.

Now, at 5:43, we're into the hundreds now. Sends another text message. 16 seconds later, sends another text message, 5:43:12, 5:43:28.

And then at 5:57, the girlfriend that he's been having a conversation with all day, back and forth, back and forth, back and forth, back and forth, back and forth, back and forth, back and forth, almost a hundred times, back and forth, while at work, gets a text message from number 1200. And, bam, he broadsides with this vehicle Ms. Hood.

That's what happened in this case. And you know that. Ms. Hood has known for 1,035 days this wasn't her fault. She didn't know about the text messages. Mr. Johnson knew, they knew. We had to go to the cell phone carrier to get the records, but eventually we found out. And now you know.

At 5:58, and you'll have records back there, Plaintiff's Exhibit 1, these are the CAD 911 records that you heard testified to. If you go to the last page, which has all of the 911 calls. As y'all know, frequently, when a wreck or something happens, a bunch of people call 911, so they log each one.

And you will see quite clearly on here that the very first 911 call came in at 5:58 and 46 seconds, relative to this wreck. Very first 911 call. 5:58 and 46 seconds, and you will have this back there, Plaintiff's Exhibit 1.

And you heard the testimony in this case from Tasha Haupt, who was the records custodian for Beaufort 911. She testified to you that that first caller, based on the records and based on the actual recording of the call was Tammy Melnick. And you will have that call back there, Plaintiff's Exhibit 2. If you want to hear it, the Court will make it available to you, but you've already heard it. And you've heard Ms. Melnick testify. And Ms. Melnick has testified that prior to making -- getting somebody on that call, which Tasha said once the person picks up, that's when it logs, that's when the CAD entry logs. It's obviously not when the person dials the number, right? All of this happens before she talks to someone in

dispatch.

The first wreck, broadsided. Second wreck, where she was pushed into the Kucks. People got out, you heard from Mr. Tanrath today. He got out of his vehicle. Other people were out. People were already out. She could see them through the trees.

She left the patio. You remember, Ms. Melnick was out here by these the umbrellas. She testified she was putting down the umbrellas, having a cigarette. It was towards the end of her shift. And through these trees she could see people getting out in the wreck. She left the patio, she went inside the Dunkin' Donuts, she went into the back, behind the counter, to the phone, dialed 911, and you heard. It rang two times. There was an initial pick up to the local dispatch. She described what and where it happened. She was transferred and then she finally got through to the right person Hilton Head first responders were dispatched at 5:58:46, when that CAD call is there.

Clearly, in this case, the wreck occurred prior to 5:58:46. And all of this had to occur before 5:58:46, but after the wreck. So you can use your common sense to figure out that it made sense that that would be around a minute. Or would it be a few

more minutes than a minute, which would be the other text message? Or two more minutes than that minute, which would be the other text message? It really doesn't matter. The text messages are all going to agree.

Now, in this case you've heard a lot of evidence, and you've heard the defense say a few things, and I want to make sure I get them right.

Mr. Daniel has said he looked. If you go back there and somebody says he can't be at fault because he looked, I want you to remind them of what the Judge is going to charge you. And the Judge is going to charge you that the driver of a vehicle about to enter or cross a roadway from anyplace other than another roadway shall -- shall, not may -- yield the right of way to all vehicles approaching on the roadway to be entered or crossed. That's South Carolina Code Section 56523350. The duty is to look, see, and to yield.

In this case, it's uncontroverted, not in dispute that Mr. Johnson did not yield, not in dispute that Ms. Hood had the right of way. You heard the cop testify to that, heard Ms. Hood testify to that.

You've also heard him say but "he didn't see any cars," neither Ms. Hood or Dustin Lee. We know Dustin

Lee had Xenon headlights on. Somebody says that, say, well, the only way he didn't see him, he didn't look. He didn't look. We know why he didn't look, which you don't have in a lot of cases, but we have in this case.

The Defense has said, "Well, she was speeding." Talked about some other person that was going to testify to that in the opening. We never heard from that person.

Ladies and gentlemen, even if she had been speeding, the only effect speeding would have had -- if she was going a little bit faster, she might have got through there before he got that text message and broadsided her. This isn't a case where she hit him because she was going too fast to react. The only thing speed has to do with it is she just happened to be here. Well, I'll submit to you, if she was going 45 or 48 or 65, or whatever -- any speed but the speed she wasn't going -- this wouldn't have happened. Same thing would have been true if she was going 105. Same thing would be true if, when her alarm clock went off that morning, she hit snooze and slept in two minutes.

Speed played no role in this wreck at all. You didn't hear any valid testimony about it. But even if you had, it didn't cause anything. The only thing

that caused this wreck is the defendant not paying attention. And he said, "Ms. Hood didn't have functioning headlights on."

And in law, we call this the kitchen sink approach. That's, they teach you in law school, trial advocacy, they say, "if you got the facts on your side, hammer the facts. If you got the law on your side, hammer the law. And if you got neither one on your side, just throw it all out there and see what sticks."

And that's what you've seen here this week. You've seen a lot of throwing it all out there, trying to get something to stick.

Let's talk about the headlights. It doesn't matter. Doesn't matter. The law on headlights, the Judge is going to instruct you -- and I'll read you the law because the law and the facts happen to be on our side -- South Carolina Code Section 56-5-4450, times when vehicles must be equipped with lights. And the Judge will read this to you as well.

"Every vehicle upon a street or a highway within this state shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in

use as a result of rain, sleet, snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of 500 feet ahead, as required in this article."

You heard from Dr. Borzendowski, an expert in human factors. Came in here and testified before you, and she testified that she had used a source, which used physics to determine, exactly in that intersection when sunset was on this particular day. Okay.

Sunset at that intersection on this particular day was 1729. That means 30 minutes after that, according to the law of South Carolina, half hour after sunset, 5:59, you would be required to have your headlights on. They click on automatically at that time if it gets dark enough. Okay?

We know this wreck occurred before 5:59 because we have a 911 call that came in at 5:58 and 46 seconds. So at the time of this wreck, whether she had headlights on or whether she had headlights off, or whether she didn't have headlights connected to her vehicle doesn't matter. And the Judge will instruct you on the law, when she reads to you about the duty of care, you cannot hold somebody responsible for a

duty that the law does not create. And the law in this case tells you when you need headlights. And in this case, at the time of this wreck, she didn't need them.

So they did something else. Another one of these kitchen sinks. They brought in another source, and I don't know if it went into evidence or not. Not a lot went into evidence that they -- that was talked about.

I don't see it here but -- oh, here it is. "Hilton Head, U.S. Naval Observatory, sunset at 5:28." Okay. And you remember Dr. Borzendowski's conversation about this. This would have been the average for the whole town of Hilton Head. Okay.

And if you take a look at it, I mean you can clearly see that it's Hilton Head, you know, as a whole. Sunset 1728, which means that 30 minutes after would have been at 5:58. Okay. But we've got a more exact source.

But even if -- even if you take this at face value, that means, to buy their kitchen sink approach, all of that, first wreck, second wreck, people get out, people helping, helping people out of the vehicles, leaving the patio, Ms. Melnick going inside, Ms. Melnick going in the back, Ms. Melnick going behind the counter, Ms. Melnick making the call. Two

rings on the phone, speaking, being transferred, describing where and what happened. The dispatch at 5:58:46, that means all of that would have had to have taken less than 46 seconds to happen after 5:58. Use your common sense.

Now, the final thing, which, frankly, I was a little bit shocked by, but we heard, was she wasn't injured. That's the kitchen sink, see? Wreck's her fault. Even if it's not her fault, she bears some fault because she might have been speeding, although we didn't bring in who we talked about the whole time to say that. She might have not had her headlights on, although we can't prove that. We're just going off what people said. By the way, all those people said they could see her vehicle without her headlights on. Okay. Everybody apparently except Mr. Johnson.

And -- and now, we get all the way down to "well, even if she wasn't at fault, even if he was at fault, she's not injured." Whew! That's a lot to cover.

You heard from the doctor. You heard from the doctor. You saw -- you saw the screws and plates, and they'll be back in the jury room with you, that she has in her ankle, as a result of this wreck, 5-inch screws, all these little screws holding this plate on, holding her foot and her ankle to her leg. And you

heard the doctors say to a reasonable degree of medical certainty this was caused by the wreck. Obviously, it was caused by the wreck. She wasn't driving down the roadway with her right foot hanging off.

And if she was, she was sure as heck wasn't pushing it hard enough on the accelerator to be speeding. So which way do they want it?

She was injured because of this wreck. And in this wreck, her medical bills to date for the three surgeries, the injections, the trips back and forth, physical therapy, the nursing home, which she testified to was humiliating, $222,475.47 to date. To date. That's her out of pocket medical expenses because of what they will not accept responsibility for in this case.

And the Judge is going instruct you, and you'll see there was something about the VA. She gets her primary care at the VA, you won't see that on here. Okay. They're just going to instruct you that any collateral source is not to be considered.

Consider the facts in evidence. This is what's in evidence before you. We didn't submit anything from the VA. Okay.

Now, you can also remind somebody if they say,

"well, I just believe he looked and he didn't see her," that nobody else said that. Nobody else except the defendant in this case said he could not see that night.

You heard from Ms. Melnick. Ms. Melnick, who was standing back here on the patio, who testified and made the 911 call accurately, which you heard. Three cars in a wreck. She could see them through these trees.

Ms. Melnick could see them through these trees. You heard from Mr. Lee, who you will remember was farther back in this outside lane behind Ms. Hood. He testified not only could he see Ms. Hood, he could see Mr. Johnson.

Well, if Mr. Johnson had looked, certainly, Mr. Lee was way back here, with his Xenon headlights shining this way, and he could see him, Mr. Johnson should have been able to see Ms. Hood and Mr. Lee.

You heard testimony from Ms. Kuck. Ms. Kuck, the other unfortunate party injured in this case, had to be cut out of the car. What did she tell you? She could see other cars on the roadway, whether or not they had headlights on. She could see the trees clearly on the side of the median. She could see.

Ms. Hood, at this time, 60-year-old lady, good

vision, she could see. She didn't get in a wreck. She didn't run into nobody. He ran into her.

They called for you one witness, Cary Tanrath, who frankly we would have called, but thought it was kind of duplicative. Because what did he tell you?

He could see. He's behind the Kucks. He was behind the Kucks. He had a Chevrolet Tahoe in front of him. She gets shot on over here, and he can see around that Tahoe and see her vehicle, even though she didn't have her headlights on. He could see her. Their own witness. Everybody could see if they looked. Okay.

Now, the Judge instructs you on the law. She's going to tell you that the plaintiff, as to our claims, has the burden of proof in this case, and that the defendant, as to any affirmative defenses, such as some called comparative negligence that they raised, they have the burden of proof.

Preponderance of evidence simply means this: What is more likely than not. And if you think about it, you always see the set of scales, you know, in the legal system. And in a civil case, the burden of proof is a preponderance of the evidence, and that means if the scales tip ever so slightly, one grain of sand in favor of the plaintiff, the plaintiff has met

her burden as to that cause of action as to that claim.

And the Judge will tell you that simply means it is more likely true than not true? She's going to instruct you on negligence. This is a negligence case. Negligence means that a person has done something that a reasonable person would not have done, or has failed to do something that a reasonable person would have done in the same situation.

Duty, breach, causation, damages. The duty is created by the statutes, and she's going to tell you that -- about entering a roadway, about turning left, about looking where you're going. And if you find in this case that it's more likely than not that scale tips ever so slightly that Mr. Johnson was negligent, then you'll find for the plaintiff in this case. Okay.

And she's going to tell you about proximate cause, which is an element of that. And proximate cause is something that produces a chain of events, which in the end brings about the injury. Proximate cause does not mean the only cause. The defendant's act can be a proximate cause of the plaintiff's injury if it was at least one of the direct causes of the injury. Okay.

So that means if you find that Mr. Johnson pulling out and broadsiding her was negligent, and that she was injured as a result of that, then any way that happened, first impact, second impact, whatever, was proximately caused by him. Okay. His negligent act caused the chain of events, which in the end brings about the injury.

Oh, I forgot this. There's been so much, but there's this mention of this overcorrecting. Remember that? Saying maybe she overcorrected. Well, if you get hit broadside, the defendant doesn't get to tell you what to do about it. Okay? They don't get to say, well, you should have done X, you should have done Y. You just got to do the best you can in that circumstance.

And what she testified was that she tried to get her wheel back right because she didn't want anybody else to get hurt, but it was locked over. Well, if you look at the damage you can understand why that might have been. It's right there at the back of the wheel base. Okay. Common sense.

But even if she had, it doesn't matter because proximate cause is something that produces a chain of events, which in the end brings about the injury, which is what we have in this case.

Negligence as a matter of law. This one's important. So if you find that the defendant violated a statute, that's negligence as a matter of law. She's going to tell you that the failure to follow any of these statutory rules is negligence as a matter of law. So if you find it more likely than not, preponderance of the evidence, that he violated any of these, he's negligent as a matter of law. Those statutes, vehicle entering the roadway shall yield the right of way to all vehicles approaching on the roadway. Okay.

Duty to keep a proper lookout. The driver must keep a proper lookout for other vehicles, pedestrians on or along the roadway.

Unlawful use of cell phones. It is unlawful for a person to use a wireless electronic communication device to compose, send, or read a text based communication while operating a motor vehicle on the public streets and highways of this state.

Unlawful to turn or move upon roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal. No evidence in this case he gave a signal he was turning left. Zero.

Vehicle turning left. The driver of a vehicle

intending to turn left within an intersection or into an alley, private road, or driveway, shall yield the right of way to any vehicle approaching from the opposite direction, which is in the intersection or so close thereto as to constitute an immediate hazard. Testimony is Mr. Johnson was attempting to take a left across the intersection. Therefore, according to the statute, he had a duty to yield the right of way. If anybody approaching so close as to create or constitute an immediate hazard. If you find more likely then not he violated that, that's negligence as a matter of law.

Stop signs. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line. But if none, before entering the crosswalk on the near side of the intersection, which, in this case, we do have a clearly marked stop line, which you can see here in the diagram, so he had to stop there. And after having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard. During such time, when the driver is using a cross or within the intersection or junction of roadways.

Those are some of the statutory rules that she is going to instruct you on. If you find he violated one of those, we have negligence as a matter of law. I will submit to you that he violated them all.

Now, with respect to damages, the damages in this case, Mr. Smith told you in opening, are substantial. You've had the opportunity to hear the testimony, which prior to hearing the testimony when you walked in, seen Ms. Hood sitting there with her legs under the table, you didn't have full knowledge of what she has been through and her damages. Now, you do.

And the actual damages in this case are required to be proved by the same standard of negligence, just more likely than not. So if you find on each element of damages that she proved more likely than not she suffered that damage, the law requires you to award her a money verdict on that element of damages.

The elements of actual damages, as the Judge will instruct you, put medical expenses, which are out of pocket expenses, trauma, mental anguish, of which she had anxiety, depression, pain and suffering, disfigurement, and loss of enjoyment of life. Those are the components that make up actual damages, that all go into actual damages.

And when you're considering actual damages,

you're going to look at past actual damages, present actual damages, and future actual damages, which we will go through.

Now, medical expenses, $222,475.47. You'll have this back there with you. This money all goes to other people to pay for Therese's care. She testified to you that she felt like her doctors, and Dr. Jaskwhich, were really heroes. They saved her foot, were able to put it back on with those plates and screws. And although it's not perfect, she feels as though they did the best job that they could under the circumstances. And this money goes to pay them for what they did for her.

But in a case like this, and you'll notice, frankly, when Judge Mullen instructs you on the law, she spends a lot more time on the other damages than on medical expenses. And that's because in South Carolina and in our civil justice system, we value the other damages as much or more than the medical expenses, because we value, in this community and in this state, a person's life. A person's quality of life.

And so when you go through these damages, you're going to go through each element, and you're going to talk about it. And so I want to just give you a way

to think about a couple of these. And the first is pain and suffering. And pain that lasts for a short time, a few weeks, maybe a month, is pretty low on the scale of pain. The twisted ankle, the banged elbow. It takes just a little bit to make up for that level of pain. And so that might be the kind of case where someone went to a chiropractor, and so I'm asking you for 20- or $30,000 for that level of pain.

But what if it lasts for two or three years, and it's high on the pain scale? What if the level of pain is, as Ms. Hood testified to you, everyday when she wakes up in the morning, she feels it? And what if that pain is everyday with every step she takes she feels it? And what if that pain is the type of pain that robs someone of the enjoyment of the rest of their life? What is that pain worth?

She doesn't have, ladies and gentlemen, the one thing that a lot of people have, and that we have sometimes when we get hurt, and that's a hope that we'll get better. Therese doesn't have that. And you heard her surgeon, Dr. Jaskwhich, who she goes to follow-up, say she will never get better. She will get worse. She will get worse.

So the woman whose daughter testified last week was able to at least travel to Georgia and make the

trip to the WalMart, short trip, but couldn't do anything else on the family reunion, that woman, only three years out, is going to get worse.

So you have to think about what it takes to compensate her for the rest of her life for that kind of pain. Health and physical impairment, disfigurement is much the same thing. What impairment does somebody have? Not the physical sensation of the pain every time she takes a step, the flinch, but the impairment, the things that it keeps her from doing is a separate element.

And you know in this case, the impairment that she has, because you've heard it not only from her, but from the folks at the church, and from her daughter. The biggest impairment, one of the biggest impairments to her personally, was being able to administer the communion. That's an impairment to her quality of life. It may not be to mine, it may not be to yours, you may have other things. But to her, that's a huge impairment. And she told you it humiliates her, and she feels like she's let God down by not being able to fulfill that which he has called her to do in administering that communion. What is that impairment worth? What is that impairment worth?

So I tell you all that to just say that if,

during deliberations, someone says, "Well, I don't think we should award money for that element of actual damages," you remind them that you took an oath to follow the law. And if she has proven that it's more likely than not that she has pain and suffering past, present, and future, that she has disfigurement past, present, and future, that she has loss of enjoyment of life past, present, and future, that she has mental anguish past, present, and future, then as a jury you are compelled by law to award money damages for that injury. And nobody can make you break the law. Your verdict has to be unanimous.

And so there are a lot of ways to think about calculating -- calculating loss. There are a lot of ways to think about it. You can think about it in terms of assigning a number. You don't have to prove it to a mathematical certainty.

Well, what about her past and present, take the medical bills, the 222,475.47, which are obviously proven. They're in evidence. And you take the 1,035 days since the wreck, and you say that every step of every day of being alone at home, the husband leaving her, coming back from being isolated, her worrying when she wakes up in the middle of the night, going to the restroom, she might fall down, so she has to wake

someone else up. The humiliation, having to have her children bathe her, a proud woman.

The humiliation not being able to use a bathroom on her own for several months. Is that worth $10 an hour for pain and suffering? $10 an hour for mental anguish? $10 an hour of loss and enjoyment of life? If it is, if you find it's only worth $10 an hour, then her past and present actual damages, not including the medical bills, come to $2 million, 235,600, if you award her $10 an hour for her past and present pain and suffering, $10 an hour for her past and present mental anguish, and on down.

And when you get back there, if somebody says, "I think that's too much," talk about it. Why? If you get back there and somebody says "that's too little," talk about it. Why do they feel that way? You have to come to a unanimous agreement.

So I picked a round number to show you what it looks like at $10 an hour. If you take $10 an hour plus the medical bills, you get past and present damages of $2 million, 458,075.47. That's the max. And I used the calculator.

Now, when you're looking at future damages, it's -- what does it say for the rest of her life? And the Judge will instruct you that in South Carolina, for

better or worse, we have allowed our Legislature to determine how long we are expected to live. And they do that using an actuarial table.

And the actuarial table we call life expectancy base. And in South Carolina, what that tells us for a 63-year-old woman, which is why it was important that we get her to admit her age even though Mr. Smith knew his mother would probably crack his knuckles if he asked a woman that, gives her 21.68 years to live. She could live more than that, she could live less than that. That's the going rate, as they say -- 21.68 years, which is 190,000 hours, a little over. A hundred and 90,000 hours of everyday she wakes up, puts her right foot down, feeling pain. A hundred and 90,000 hours of every time she takes a step, everywhere she goes, worrying about falling down, about her ankle giving out. A hundred and 90,000 hours of when she's with her grandkids not being able to pick them up or do the things she wanted and would be able to do but for this wreck. A hundred and 90,000 hours of it getting worse every day.

You've heard the testimony that now her husband helps her around the house. So this is her one day in court. She doesn't get to come back, if she loses David, and ask for more. This is it.

So the choice for you is who should bear that risk? Who should bear that risk of the additional pain, if she loses him, of being isolated and having to do it alone? Should it be Ms. Hood? Or should it be them?

And if you take future, which we know is going to be worse, because the doctor has testified to it, everyone has testified to it, and you define each element of actual damages at $2 an hour -- $2 an hour, a cup of coffee. Oh, you're worried about falling down everywhere you go? Here's a cup of coffee.

Oh, you're worried about your ankle giving out and you falling down while your husband's at work and not being able to reach the phone? Here's a pack of gum.

Oh, you're worried about getting up in the middle of the night and falling in the bathroom and hitting your head? Here's a chicken -- chicken breast. Two dollars.

If that's worth $2 an hour, that's $3 million, 420,843.84. If you think that's at least worth a Happy Meal, which my son who's 11 months old, turns a year next month, I'm not quite in the Happy Meal stage yet, but I understand they're about $5. If you think that's at least worth a Happy Meal, then for future

damages you'd award $8 million, 552,109.60.

But if you get back there and somebody says, "I don't think future damages are worth anything," you ask them, "Didn't you hear the doctor testify that the cartilage between her foot and her leg and her ankle joint is wearing away because of this wreck? Because he had to take -- he had to take the plate and screws out because they were protruding through the skin. And eventually, it's going to be bone on bone?"

Bone on bone is like when you bite into a bone. You know what that feels like, when you just common everyday experience what that feeling feels like. That's what those bones are going to do. So he testified he thinks it's more likely than that, to a reasonable degree of certainty she's going to need future surgery or a fusion.

So if you get back there and somebody says, "that's not worth a Happy Meal every hour," talk about it. Talk about it.

If you take those things and add them up, past related medical bills, $10 an hour for past and present pain and suffering, mental anguish, loss of enjoyment of life, disfigurement, on down, it's $2,458,075.47 cents for past and present. If you look at the future at $2 an hour, and add those two numbers

together, you get $5 million, 878,919.31.

If you think the future damages, the pain and suffering which is going to get worse, the loss of enjoyment of life, the fear of losing David and being alone and having to live with this on her own is worth $5 an hour, then you're going to get $11 million, 10,185.07.

And you don't have to find one of these numbers. You can find less, you can find more. I use it to demonstrate a point. I use this to demonstrate that in this case, the pain, the anxiety, which you saw some of, when she sat up here on this stand and had the opportunity to testify to you, she looked at you when she could, but the rest of the time she was looking at the table, as we instructed her to do if she felt herself get too emotional. She was getting too emotional because this is her one day forever. She doesn't get to come back, no matter what happens. This is it.

And if you believe that God puts everyone somewhere for a reason, which I do, then you were all put here to decide what her being stripped of her future retirement, what she planned to do, travel, spend time with her grandkids, what that's worth.

And so at the end, you can get a verdict form. I

don't believe in playing hide the ball, I like to show you everything. So here's what it's going to look like. It's going to look just like this.

And Madam Forelady is going to be the person responsible for filling it out and actually writing it in. But you all have to agree on the answers, talk about them and agree to them.

The first question is: Was defendant, Antoine Johnson, negligent, and has such negligence proximately caused the plaintiff's injury? Obviously, the answer to that is "yes."

Was plaintiff, Therese Hood, negligent? And that such negligence proximately caused her injuries. Answer to that, "no."

However, No. 3 is: If your answers to both questions, No. 1 and No. 2 are "yes," if you answered both yes, somehow they're both negligent of proximate cause, then you would answer this question: Using the combined negligence that proximately caused plaintiff's injuries was one hundred percent, what percentage of that negligence is attributable to defendant Johnson, and what percentage is attributable to plaintiff Hood? And, of course, the percentage must add up to 100.

And in that instance, if you found that Ms. Hood

was negligent for some reason, not hitting the snooze button, which wouldn't be a proper reason under the law, or speeding, which we know didn't play a role in the wreck because he broadsided her, you would assign a percentage.

If plaintiff Hood's percentage of the combined negligence was greater than 50 percent, you would stop, because that would mean she would get nothing. She would not recover anything for her injuries. That would be like if someone goes out, jumps off a bridge, they would be responsible. So, obviously, they can't recover. It's their negligence. Obviously, that's not the case here. She had the right-of-way, he hit her.

If plaintiff Hood's percentage of the combined negligence is greater than 50, than less, then you would go on to the next. And this is damages.

Please state the total amount of damages, if any, sustained by the plaintiff, Therese Hood. Do not reduce the plaintiff's total damages based on the percentage of negligence by any party.

What that basically means is that if you found them both negligent for a percentage you wouldn't reduce the damages by that amount. You'd still have to award her the full amount of damages. Then the

Judge goes back, based on that percentage, and reduces the number. If you reduce it, it's going to get actually reduced twice. So you just award the full damages that you find.

After you've answered these questions and it tells you that the Judge will compute the amount of damages for which the defendant or plaintiff are responsible, based on the percentage of the respective party's negligence, she will decide the proximate cause of the plaintiff's injuries. You are to determine only the total amount of damages and enter it below.

There's then a line for punitive damages. And the Judge will talk to you about punitive damages.

Punitive damages have a different standard. Punitive damages have to be proved by something called clear and convincing evidence, which is not quite beyond a reasonable doubt, but just a criminal standard. A little bit lower, but a little bit higher than civil. Has to be clear and convincing evidence.

She's going to tell you that punitive damages can be awarded if someone broke a statute, that they violated a law that is to protect the State against the public. And punitive damages are out there as a message to the community. Punitive damage award is

awarded, it tells the community that in this community, if you break the law and injure somebody, not only are we going to compensate that person, but there's going to be punishment civilly associated with it. That's why it's a little higher standard, which she'll talk to you about.

You, Madam Foreladdy, will then certify that this is the unanimous decision of the jury, signing here, dating there, and, of course, notifying the bailiff.

I'm going to sit down, and Mr. Daniel's going to get up here. And we've talked about every item in the kitchen sink that has been turned so far. But I have no control over what he's going to say.

No matter what he says, I want you to remember six questions. If he talks about headlights and darkness, when does he contend the sunset was? We know sunset was at 5:59 at this particular intersection. And we know that it was at 5:58 generally. If he has another time, listen to when he says it is.

When does he contend the wreck occurred? Is he willing to argue to you against the clear letter of the law that Ms. Hood was required to have her headlights on at the time of this wreck?

Listen to see if he tells you what the text from

Mr. Johnson's girlfriend said anyway.

And, finally, he's going to attack these numbers or arrange a suggestion. But remember the kitchen sink approach. Listen to see how much does he think is appropriate for them to compensate Ms. Hood for the lifelong injuries that she sustained in this wreck. Does he give you an alternative? Don't let him just attack, listen to see if he gives you a plausible explanation. I bet he won't.

It's like that old story about when the cookie goes missing from the cookie jar, and they ask the kid, "did you take the cookie?" The kid doesn't say yes, the kid doesn't say no, because he knows better than to lie. So he just keeps talking. And the more he talks, the more you'll know the truth.

Ladies and gentlemen, you know the truth of what happened in this case. And you know -- you know how badly that woman was injured. Please do her justice. Thank you.

THE COURT: Whenever you are ready, sir.

CLOSING ARGUMENT BY DEFENDANT

MR. DANIEL: Your Honor, may it please the Court.

Ladies and gentlemen, this ain't about kids and it ain't about cookie jars. Everybody -- everybody in

this country has the right to a defense.

At the beginning of this closing, which was pretty lengthy, there was something about a thousand days. I just want to make it clear, if anybody in this country has been sued and accused of doing something wrong in court, whether criminal or civil, they have a right to challenge those allegations. And that's what Antoine Johnson's done. He didn't do anything wrong, and he has every right to a trial. He doesn't have to apologize for that. And, hopefully, I think you would agree that I don't have to apologize for that.

I've tried to be as brief as I can through the course of this week. I know there's a storm coming, and I know that everybody has families and their own life going on. I appreciate your patience.

I do have to cover topics. There's been starts and stops, and I apologize for that, but you can't hold that against Antoine Johnson because just like anybody, regardless of whether they're Catholic, whatever their creed may be, he has a right to a defense.

And I don't know about kids and cookie jars, we saw some numbers up there, but this is a serious case. We're not hiding from that. He just threw up numbers

like $11 million, $2 million, and let's get one other thing clear. They have the burden of proof. You don't get to damages unless you decide Antoine Johnson was more than 50 percent -- well, 50 percent or more at fault in this case. He doesn't have the burden of proof. He didn't have to prove anything this week. But he got up there on the stand, and he told you what happened. He told you what he did. And a lot of other people got up on the stand and they told you what they saw.

And if I misstate facts, you're the judge of the facts. You heard the evidence. I'm going to do my best right now to remind you of some things that we heard. If I'm inaccurate, y'all deliberate, and you decide what the evidence was. But I'm just going to go through some things and hit some highlights for you.

First of all, before we get to that, but I want to talk about the law. Your Honor, again, said in openings, she is the authority and expert on the law. She will charge you on things like speeding, things like the right-of-way, things like when you need to have your headlights on.

And Antoine Johnson's position, our position, the defendant's position in this case that speed was a

primary cause of Mrs. Hood's injuries, and that the fact that she didn't have her headlights on was also the real reason why this whole accident and sequence of two impacts happened in the first place.

You heard from Dustin Lee, and Dustin Lee said that he was driving on 278 headed towards -- he was headed in this direction. He got to Southwood Park Drive right here. That's where Antoine Johnson, and we had those diagrams with the H and K, all of those letters. J was for Johnson, H was for Hood. She was this way. And Dustin Lee, he's back here. This is not some static thing. Traffic is a fluid situation.

He's back here on William Hilton Parkway, 278, when he first sees the car behind him -- not far behind him, but behind him, and there's no headlights on. He notices that because it's dark. At some point someone asked him the question, I don't remember whether it was Ms. Suttie or whether it was Mr. Willey, but that he got to the point, "well, how dark was it?"

"It was 90 percent dark."

The plaintiff on the stand said 80 percent. We've heard from -- I mean, it's been redundant, but you need to hear what all the witnesses out there saw. I think that everybody's in collective agreement, it

was pretty well dark out.

So you've got a vehicle driven by a plaintiff, Mrs. Hood, with no lights on, coming in this direction. You got these tall trees up here. And whether it's one minute, two minutes, three minutes before sunset, driving conditions -- and you'll hear from the judge, environmental conditions is a phrase -- driving conditions are difficult because it's getting dark. It's really dark.

And what the law actually says is, you have a duty to turn your headlights on when environmental conditions significantly reduce your ability to see people in the road, other cars in the road, or vice versa. If it significantly reduces people in the road or other drivers, with their ability to see you.

There was a lot of talk about Antoine Johnson. But no one -- I didn't see Mr. Willey really walk you through the scenario. But he's on this street, at a stop sign, turning left. No one said he wasn't stopped. He stopped, checked once, there's a car goes by, he checks again. It's dark out. We know there's a vehicle coming without its headlights on. You've got to ask yourself would an ordinary driver see that vehicle? Would an ordinary driver see that vehicle?

Their expert, being paid $290 an hour, said she

didn't consider speed. She admitted speed can be a factor in an accident, and why is that? Because we all know that the faster you go in a given period of time, one second, two seconds, the more ground you cover. You're going to go a lot farther when you're traveling at 60 miles an hour versus 30 in one second, two seconds --

MR. WILLEY: Your Honor, I just want to the preserve my objection for the record that that's a misstatement of the law as it applies to this case. She was broadsided hit.

THE COURT: Noted for the record. Thank you.

MR. DANIEL: We all know that speed can be a factor in an accident. And the reason why it's a major factor here is, if you've got a vehicle coming down the road -- and they don't want to show you how dark it was, we don't have any pictures of that -- but if you've got a vehicle coming down the road and that vehicle is going, say, 60 miles an hour, versus 40 or 45, two seconds before Antoine Johnson starts to pull into this roadway at 60, she's going to be a lot farther back. A lot farther back, and there's a bend way back here. You heard the

officer testify about that.

There are these trees up here, the sun's going down, and her car, she doesn't even say that her car has any lights on. She doesn't contest that. Says, "if people say I didn't have my headlights on, I didn't have them on." That's what -- that's what she said here today, and she didn't say that in her deposition. She said she had her headlights on. She's now changed her story on that.

And when Antoine Johnson was deposed, she was maintaining the position that she had her headlights on. Why is that?

You heard the expert, the human factors expert, testify about an engineer that pulled a computer chip from Mrs. Hood's vehicle, and that computer chip said that she was either going 62 or 63 miles an hour. You heard the officer say that the posted speed limit on that road is 45 miles an hour.

So if that computer chip is right, we haven't heard anybody dispute that it's wrong --

MR. WILLEY: Your Honor, I object. The computer chip is not in evidence. He's the only one that talked about it.

THE COURT: Move on.

MR. WILLEY: I move to strike that

sentence about it.

THE COURT: Okay. There was a discussion about it in trial. You can continue.

MR. DANIEL: If her speed was 62 miles an hour, if it was 60 miles an hours, she was going 14, 15 -- 17 miles an hour over the posted speed limit. The officer told you that the speed limit on that road is 45. And there's going to be an instruction about speed.

Speed affects your ability to maintain control of your vehicle. Speed affects your ability to stop, to avoid someone who can't see you because it's dark and you don't have your headlights on. Speed causes -- and there was a demonstrative exhibit that shows you, it's not in evidence, there's a smaller version that are in evidence.

Are you able to see it? Speed causes things like this.

No one said Antoine Johnson was speeding. He was just trying to get through that median, and you've seen the pictures of the side of her vehicle. You've seen the pictures of the side of her vehicle, and you've heard what the officer said, that impact was minor. The injuries that Mrs. Hood sustained were due to her speed, due to her not having her lights on, and

due to her not being able to stop in time, and due to her actions, not having her lights on, speeding. Antoine, when checked, like any reasonable driver with normal sight couldn't see her.

Now, their expert said a lot of things, but she wanted you to make assumptions. She wanted you to make assumptions about the visibility at that intersection. I asked her -- she actually has a Chevy Equinox, the same type of car as the plaintiff. I said, have you even been out there when it's 20 minutes before -- or 20 minutes after, excuse me -- sunset that day. What we do know is actual sunset was at 5:20 -- or 5:28 or 5:29. Thirty minutes after sunset, I don't dispute what they say was either 5:59 or 5:58. It doesn't matter, it's about how dark it was.

They're the ones -- plaintiff is the one with the burden of proof. The Plaintiffs, Mr. Willey, Mr. Smith, plaintiff's counsel, they're the ones who are supposed to prove the case to you.

Has anyone shown you how dark that intersection can be 20 minutes, 25 minutes after sunset?

Antoine Johnson has every right to challenge the allegations in the case. He's been honest with you. He's a young man, he texts a lot. He was on the

phone, he hadn't -- said he had downtime during that day. There's no one that's been here to challenge that. They're asking you to assume that he was on the phone at 5:57 -- their exhibit, Plaintiff's 7 -- at 5:57 and 43 seconds, when cell phone records say an inbound text came in.

Now, they're the ones that subpoenaed the records. They could get text messages. It's not Antoine Johnson's fault that they don't have whatever the substantive message is. But even -- even if they did, this record doesn't show you anything other than that a text came in at that time. Their own expert said, yeah, I don't -- that doesn't tell me that he was reading a text. That doesn't tell me that he was sending a text. That doesn't tell me that he was on the phone.

What we do know is he was up front with you. The first thing he did after the accident was call his mom, and that was at 1808. Or 1808, which is 6 o'clock, which is military time. It's 6 o'clock at night. So if he did that a minute later, then maybe it is 5:59 or 5:58 when the accident happened, which would be 30 minutes after sunset, which would mean Mrs. Hood was actually, per se, violating the headlight law. That's for you to decide.

But your common sense tells you that it was dark out there, based on what all the witnesses say. Common sense tells you that she was speeding, based on the damage, and based on what we heard about her potential speed. And all I'm asking, and all Antoine's asking is for you to use your common sense.

And, you know, I did ask Mrs. Hood some questions about her health. And don't hold that against Antoine. I'm doing my job. Because what she was like before the accident versus after, that does matter.

There's a record that she had blurred vision and she was complaining of blurred vision that day. That's something I think you should consider. She admitted that she had had falls before this accident. That's unfortunate, I'm not trying to beat up on her. But she had Parkinson's before this accident, and that's something you can consider for the purposes of what kind of condition she was in on the day she was driving. That's only fair to the defendant. We're not asking you to do more than be fair.

It's okay. It's okay to feel sorry for her. There's nothing wrong with that, but what's not okay, what's not okay is to render a judgment against the defendant here if you don't think he's the primary reason why the accident happened.

Cary Tanrath, he said he didn't see headlights on that one corner. Seemed like a credible guy, military, very precise. He told you he's got to be out of there off Hilton Head Island when he was working there by 5:30 because it gets dark. He said it was dark at the time of the accident.

But what they haven't explained and what they haven't clarified, I'm trying to be brief, hope you heard it, at least I can stress the point now, he had his headlights on, Mrs. Kuck, who was in the vehicle ahead, she said, "my husband had his headlights on."

Well, their headlights were shining directly at Mrs. Hood's vehicle, that H vehicle, as it's coming down the road directly at them. Antoine Johnson didn't have that benefit, because Antoine Johnson is turning left. Antoine Johnson has his headlights looking at that median. And once he looks and it's clear, you heard the officer say, if somebody with ordinary sight looks and sees it's clear at a stop sign, yeah, at that intersection, they can make a left. You can't put more on him than what is required under the law. It's about what a reasonable driver would do under the circumstances.

And there's just not enough proof here about this lady's visibility in the road, how conspicuous that

were -- how visible her vehicle was at the time. The credible evidence and what all of these people have said, strongly suggests it wasn't visible. It was an issue, all of these people felt it was an issue, that's why they told the police about it. That's why Dustin Lee called 911. That's why Cary Tanrath stayed behind and told the police officers about the fact that that vehicle that came across the highway didn't have its lights on.

Cary Tanrath doesn't -- didn't know Antoine Johnson. He's got nothing to gain by being here. He wasn't being paid $290 an hour to testify.

Dustin Lee, same thing. Never met Antoine Johnson, didn't see him at the -- never met him at the scene, hasn't met him or ever talked to him after the accident. Nothing to gain by being here and testifying.

You get to judge witness credibility, and Your Honor is going to instruct you about experts. And she's going to tell you that you can consider expert testimony just like eyewitness testimony. You don't have to give it any more emphasis or weight. It's about what you decide, and what you believe is true, and what most likely happened.

Now, it is -- it is a tough situation here

because it's okay to feel sorry for Mrs. Hood, but you've got to do something as a jury sometimes when you have cases with tough facts. You can't let your sympathy outweigh what's right or wrong under the law. Your Honor is going to instruct you that you cannot render a verdict based on sympathy, and that's your obligation.

You have to decide the case based on facts. Credible evidence and facts in this case show that it was actually flight of speed, whether she was going 52, 62 -- we know Dustin Lee said he was going 49, and she passed by him. So she's going over the speed limit. So speed, plus the fact that she doesn't have her lights on, that's why this young man here couldn't see her when he went to turn left.

Ladies and gentlemen, I said I would be brief. And I just submit to you the credible evidence and the right verdict in this case is one for the defendant.

Now, they showed you the verdict form, and I want you to realize that even if you decide that Antoine bears some responsibility, you cannot render damages against the defendant if his share of the responsibility is 49 percent, 48, lower than that. The credible evidence is even if he shares a little bit, if it's a small percentage like that, you can't

render a judgment against the defendant. And I submit to you that the credible evidence shows that an ordinary person at that intersection, looking left at that time of the evening wouldn't see a vehicle from that far back coming that fast without its headlights on.

Thank you. I appreciate your patience, and I hope everybody gets home safe.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

MR. WILLEY: Now, she's lying. That's what he just said.

Now she is a liar because in her deposition she told me she thought her headlights were on. Today she said she wasn't going to disagree with people if they said they were off. She told you quite clearly her headlights are always on automatic. She never switches them off automatic. She could see fine. She couldn't see her headlights, obviously, she was in the car.

The statute on headlights is important. Half an hour after sunset, and we've talked a lot about that, I'm not going to talk about it again. But you will remember, with the expert, we specifically talked about those environmental factors. With the cop we specifically talked about those environmental factors

that are covered in the statute. And those environmental factors are fog, snow, rain, smoke, maybe an eclipse. Maybe we add Irma to the bottom of that, although that would probably fall under rain. None of those things were present here.

The only question as to headlight usage is: Did this wreck occur less than 30 minutes after sunset?

I told you to listen very closely for six things, because a lot would be thrown up. When does he contend sunset was? Okay. You know, in that particular spot, 5:25, which would make 30 minutes later 5:59, which is after the 911 call.

When does he contend the wreck occurred? Won't tell you. Didn't tell you. Won't tell you because if you look at those cell phone records, whether it happened before or after he was on the phone. If it happened after, he was making a call because that was to his mom. I mean, two minutes later.

Is he willing to argue that she was required to have her headlights on? He said because of the environmental factors. The environmental factors didn't exist in this case. According to everybody who testified, none of these things occurred.

And if so, does he explain Mr. Johnson's failure to see Mr. Lee's car with the Xenon headlights on? He

didn't even mention Mr. Lee.

Remember, Mr. Lee -- Ms. Hood -- in this lane Mr. Lee is back here with his Xenon headlights on, shining on her car, by the way. He's behind her. He can see her, he can see Mr. Johnson. Mr. Johnson says he can't see him. Headlights don't matter anyway.

Everybody that's testified has testified they could see cars with or without their headlights on. Everybody. Even Mr. Tanrath.

Still didn't tell us what the text said. He didn't give us an alternate number.

Now, ladies and gentlemen, I don't usually tell a story at the end, but she's not a liar. Okay. Said she's old, she fell down before in her life. Well, everybody's fallen down. The question is: Every time you take a step on your right foot, do you feel like you're going to fall down? She does, because of this wreck.

My father died earlier this year. And I'm Roy Thomas Willey, the fourth. He was Roy Thomas Willey, the third, and we called him "Tom", and I didn't have a great relationship with him. My parents divorced when I was young, Mom remarried, and I was pretty much raised by them.

But my dad was one of those people who always

knew exactly the right thing to say. When you were having the worst day, you could call him, he would tell you what to think. He would tell you whatever it took to make you feel better. If he thought you were getting a little too high on your horse, he'd knock you down with just the right comment.

So yesterday, I said, it's like a rat giving birth to an elephant, it's painful to watch. You laughed. I haven't heard that in a while. My dad said that. That's where I got that.

But often before closing arguments, when I know that the case is important to my client, I would call my dad and I'd say, "Dad, here's the case, what should I tell these jurors?"

Can't do that. But I did ask him last night -- and you know how sometimes you feel like somebody is giving you a sign, that God's giving you a sign? I usually don't talk about religion in closing arguments, because I know not everybody is Christian or religious. They're good stories, good lessons to live by. And I'm not a perfect Christian, I try to read a little bit of scripture everyday, but don't always get to it, particularly in days of trial.

Last night I asked him, "What should I tell this jury?" And this morning when I went out to the

driveway, I found three nails. He was Roy Thomas Willey, the third. And I took the first nail, I threw it onto the house. Took the second nail, threw it onto the house. When I found the third nail, I said, you know, the thought occurred to me to hold onto that. So I did, and I carried it in my pocket all day.

And when I got here this morning, I always -- if you look at the sign-in sheet, I always get here early, because I like to see the courtroom with nobody in it. Because things get tense throughout the day. I like to have a minute to reflect.

And when I got here this morning, I saw this Bible up here that everybody swore on all week, all the witnesses who said they could see her and everything else, and I realized I hadn't read my scripture this morning. And so I came up here and I opened it. And it went to the book of John, Chapter 20. And about that time, Ms. Mona walked in, she's the court reporter, she was the next person here. And I read the rest of that book, and that's the book about doubting Thomas.

For those of you that have had time to read scripture, you'll remember that when they had Jesus in the tomb and he rose, it was the women who went to the

tomb and first discovered he wasn't there. And the women came back and told the disciples, "Jesus has risen."

And back then, women were considered lower in society. And so the disciples said, "I got to verify." So they went and looked, and they found his linen. Thomas didn't go. It was the disciples. They came back and they told Thomas, they said, "Thomas, the Lord has risen. The Lord has risen."

And Thomas said, "I will not believe it until I can feel the holes in his hands and I can touch his side."

And Jesus came later, and he went up to Thomas and he said, "Thomas, feel the holes in my hands caused by those nails, touch my side."

And Thomas said, "My Lord and my God. I believe."

Now, at the start of the trial this week, you heard opening statements, some of you were like those women that first discovered and believed. Some of you are like those disciples that came along later, after you saw more of the evidence. And I think when I found these nails this morning and opened that Bible, I think my daddy was reminding me that some of you would be like Thomas. And we would have to show you.

And we did show you.

So my challenge to you is that when you come back out through that door, Thomas was the first person in the Bible to say that Jesus Christ is not only Lord, but he's God. Doubting Thomas was the first one to claim that when he believed.

And I hope that you were Thomas at the beginning of this week. When you come out, you will tell this community the truth. You can tell Ms. Hood that her life, this woman's life, is worth something. Please do that.

THE COURT: All right. Ladies and gentlemen, as I told you, I'm going to give you just a brief break to go refresh yourselves. My charge takes about 20 minutes.

And I can tell you that it's hard to listen after you've been talked to for a while, so go back there, Madam Foreperson, and when y'all are ready to come back out, knock on the door. Grab a drink of water, and we'll bring y'all right back out. Okay?

Do not discuss the case yet. You haven't heard my charge. Okay?

(Jury exits the courtroom.)

THE COURT: All right. I'm just going to wait for a couple minutes for them to come

back. I just want to give them a break. Okay?

All right. Be back in five minutes.

(Brief recess.)

THE COURT: We're going to bring the jury out. You all may be seated.

(The jury enters the courtroom.)

JURY CHARGE

THE COURT: Madam Foreperson, members of the jury. You've heard the argument and the evidence in this case. I'm now going to explain to you the law that applies to this case.

The plaintiff has claimed she was injured or damaged by the actions of the defendant. In bringing this lawsuit, the plaintiff claims the defendant should compensate her for her injuries, or damages.

Now, under our constitution and code of laws, only you, the jury, can make the findings of fact in this case. I'm not permitted to tell you how I feel about the evidence which has been presented. And throughout this trial, I have attempted to be fair and impartial to both sides.

Ladies and gentlemen, to the tone of this accident in the case, you will have to evaluate the credibility or believability of the witnesses.

I've already discussed with you some of the things that you may consider as you decide whether or not to believe a witness' testimony about a particular matter. You can believe as much or as little of each witness' testimony as you think proper.

You may believe the testimony of a single witness against that of many witnesses, or just the opposite. You may believe a part of a witness' testimony and disbelieve the rest. You should not determine the truth merely by counting the number of witnesses presented by each side.

And throughout this trial, you had but one objective, and that is to seek the truth regardless of its source.

Now, in a trial, evidence may be either direct or circumstantial. Direct evidence is testimony by a witness about what the witness personally saw, heard, or did. Circumstantial evidence is indirect evidence. That is, it is proof of one or more facts in which one can find another fact.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both. But, again, it's for you to decide how much weight to give any evidence.

Now, the standard role in constitution, which

makes you the jury, the finders of fact, making me the judge of the law. You must accept the law as I give it to you. If I'm wrong, there's another place and time for that error to be considered, and if necessary, corrected.

But for now, you must accept the law as I give it to you. This means that you should not be concerned what you think the law should be, but only with what I charge you the law is.

Now, the plaintiff in this case has the burden of proving her claim. Now, the burden of proof in this case is by what we call a preponderance of the evidence.

A preponderance of the evidence simply means the greater weight of the evidence, which as a whole shows that the facts sought to be proven is more likely true than not true.

This can be illustrated by an imaginative set of scales. When a case begins, the scales are even. And after all the evidence has been presented, if the scales should remain even, or if they should tip even slightly in favor of the defendant, then the plaintiff will have failed to meet her burden of proof and would not be entitled to recover in the case, and your verdict would be for the defendant.

If, on the other hand, those scales tip even slightly in favor of the plaintiff, then she will have met her burden of proof and you should return a verdict for the plaintiff.

Now, ladies and gentlemen, normally a person cannot give opinion testimony. Normally when a person testifies, they must testify as to what they either saw, heard, or sensed by smell or something of that nature.

However, there is an exception when someone qualifies with education or experience as an expert in some area. These expert witnesses are permitted to give their opinions in certain areas, if the Court qualifies them as such.

Ladies and gentlemen, this does not mean you have to accept their opinion. Again, it is just evidence that you can use in any way you feel appropriate, and as compared to other evidence in the case.

Now, ladies and gentlemen, in this case testimony was presented to you by way of a video deposition. A deposition is a recording containing sworn testimony that's given by a witness outside of court in the presence of lawyers for each party who may ask questions of the witness.

This testimony is entitled to the same

consideration and is to be judged as to credibility and weighed by you in the same way as if that witness were present and gave that testimony to you right from the witness stand.

I remind you that it is for you to determine the effect, the value, the weight, and the truth of the testimony that's given in a deposition.

Now, the plaintiff, Ms. Hood, claims defendant was negligent, and that the defendant should compensate her for the injuries she suffered as a result of the defendant's negligence.

Now, in order to prove that the defendant was negligent, the plaintiff must prove by a preponderance or greater weight of the evidence four things.

First, the plaintiff must prove by preponderance or greater weight of the evidence the defendant owes the plaintiff a duty of care.

A duty of care is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care of performing any act that could foreseeably harm others. A person cannot breach a duty when they are in compliance with the law. And the court cannot require a person to do more than what the law requires.

Now, next, the plaintiff must prove by a

preponderance or greater weight of the evidence the defendant breached that duty by a negligent act or omission.

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

Third, the plaintiff must also prove by a preponderance or greater weight of the evidence that she suffered damages as a result of the defendant's breach of duty.

And, finally, the plaintiff must prove by a preponderance or greater weight of the evidence that the damages were proximately caused by defendant's breach of duty.

Proximate cause is something that produces a natural chain of events, which in the end brings about the injury. It's the direct cause of the injury. To prove defendant's negligence proximately caused the plaintiff's injuries, the plaintiff must prove causation in fact. This is proven by showing the injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing the injury was foreseeable.

They do not have to prove that the particular injury that occurred was foreseeable.

However, the defendant cannot be held responsible for things which cannot be expected to happen. And proximate cause does not mean the only cause. The defendant's act can be a proximate cause of the plaintiff's injuries if it was at least one of the direct concurring causes of the injury.

Now, in this case, the defendant claims that the plaintiff's own negligence proximately caused her injury. If you find that the defendant was negligent in this case, you must then find whether the plaintiff was also negligent.

The defendant must prove by a preponderance or greater weight of the evidence that the plaintiff breached the duty of care which proximately caused her injury.

Now, the same law, which I told you you'd use in deciding whether the defendant was negligent should be used in deciding whether the plaintiff was negligent. If you find the negligence of both the plaintiff and the defendant proximately caused the plaintiff's injuries, you must then decide how much the negligence of the plaintiff contributed to the plaintiff's injuries and how much the defendant's negligence

contributed to the plaintiff's injuries.

In deciding the percentages of negligence of the plaintiff and the defendant, you may consider, among other things, the following factors: Whether each party's conduct was only inadvertent, or whether it was engaged in with an awareness of the danger involved.

The magnitude of the risk created by each party's conduct, including the number of persons endangered in the possible -- excuse me, and the possible severity of the injury. The significance of the goal that each party was trying to reach and the need to achieve the goals in that manner.

Each party's capabilities and abilities to realize and eliminate the risk involved.

Now, particular circumstances confronting each party at the time the conduct occurred, such as the existence of an emergency requiring a quick decision. The relative closeness of the causal relationship of the negligent conduct of the defendant and the harm to the plaintiff. And whether the conduct of either party involved a violation of a safety statute or regulation.

Now, I charge you that it is the law of this state that the driver of a vehicle about to enter or

cross a roadway from any place other than another roadway, shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed.

It is also the law of this state that every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line. But if there is none, before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, then at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting road before entering it.

After coming to a stop, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of a roadway.

Now, it is also the law of this state that the operator of the motor vehicle is required to use the same care that would be used by a person of ordinary reason and prudence, if that person were driving the same vehicle at the same time and place and under the same circumstances.

It is also the law of this state that the driver of an automobile had a duty to keep a proper lookout

for other vehicles on the road. This duty requires the driver to watch attentively so that the driver will be able to see a person or object on the highway.

It is also the law of this state that the driver of an automobile also has a duty to keep the automobile under proper control so that the driver is able to slow down, stop, or turn the automobile to avoid colliding with other vehicles, pedestrians, and objects lawfully on the road.

It is also the law of this state that it is unlawful for a person to use a wireless, electronic communication device to compose, send, or read a text -- excuse me, a text-based communication while operating a motor vehicle on the public streets and highways of this state.

It is also the law of this state that every vehicle upon the street or highway within this state shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise. Or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of 500 feet ahead.

It is also the law of this state that a person

shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to actual and potential hazards in existence.

Speed must be so controlled to avoid colliding with a person, a vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

The driver of a vehicle shall drive consistent with the requirements of the Section above, at an appropriate reduced speed when approaching and crossing an intersection, or railway grade crossing, when approaching and going around a curve, approaching a hill crest, when traveling on a narrow bridge, narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic, or by reason of weather or highway conditions.

Now, I charge you that the failure to follow a statutory rule is negligence as a matter of law. If you find that a party failed to follow a statutory rule, you must then decide if the failure proximately caused the plaintiff's injury.

Now, ladies and gentlemen, if you decide that the plaintiff is entitled to a verdict in this case, your next step would be to decide how much money the

defendant should be required to pay. And these are what we call actual damages.

Actual damages are to compensate the plaintiff for the plaintiff's injuries, or loss, and to put the plaintiff in as near as possible the same position that she was in before the accident occurred.

In other words, actual damages would be the actual losses and expenses which the plaintiff has suffered because of the defendant's negligence.

Now, ladies and gentlemen, the following are actual damages for you to consider in this case: Medical bills, pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury and disfigurement.

Now, in personal injury actions, the general rule is that the plaintiff may recover for the necessary and reasonable expenses caused by the injury. This doesn't mean necessarily incurred, for medicine, medical services, treatment, and any other out-of-pocket expenses.

If you determine from the evidence and the law, as I've instructed you, that the plaintiff is entitled to recover damages, including medical or other healthcare costs, then the plaintiff can only recover such sums as you, the jury, determine from the

evidence, being both reasonable and necessary.

And while the amount charged and incurred may be considered by you, you're not bound by that amount. You must find only such sums as is reasonable and necessary.

Now, ladies and gentlemen, pain and suffering compensates a plaintiff for physical discomfort and emotional responses to sensations of pain caused by the injury itself. And there is no definite standard by which to compensate the plaintiff for pain and suffering. You, the jury, have the authority to determine the amount, if any, to be allowed for pain and suffering, using calm and reasonable judgment to ensure that the damages are just and reasonable in light of the testimony and evidence presented in this case.

Now, loss of enjoyment of life compensates a plaintiff for limitations on a plaintiff's ability to participate in and derive pleasure from the normal activities of daily life.

Now, an injured party may also recover for mental anguish brought about by bodily injuries and suffering. Where a party's negligence is directly responsible for physical injury to another, the injured party may recover both for the actual physical

injury sustained and for the concomitant mental and emotional suffering which is a natural consequence of the wrongful act.

When connected with a physical injury, the term "mental anguish" includes both the resulting mental sensation of pain and also the accompanying feelings of distress, fright, and anxiety. That is, mental anguish covers not only the pain associated with the injury, but also the mental reaction to that pain, and to the possible consequences of the injury.

Ladies and gentlemen, mental anguish is more than mere disappointment, anger, worry, resentment, or embarrassment, although it may include all of these things. And it includes mental sensation of pain resulting in such emotion as grief, severe disappointment, indignation, wounded pride, shame, despair, and humiliation.

Now, ladies and gentlemen, a plaintiff is never entitled to recover conjectural or speculative damages. But if you find the plaintiff is entitled to a verdict for actual damages, your verdict should include an amount to cover any past, present, and future damages which were proximately caused by the defendant, and have been proven by a preponderance of the evidance in this case.

Again, actual damages may not be proven to a mathematical certainty or be based on evidence of the precise amount of damages the plaintiff has suffered. Instead, the evidence must allow you to determine what amount of damages including past, present, and future, are fair, just, and reasonable.

Now, I remind you, ladies and gentlemen, that if you do award future damages, you must reduce them to present day value.

Ladies and gentlemen, if you find that the plaintiff, Ms. Hood, was permanently injured as a result of the defendant's actions, you must then decide how, if at all, that injury will affect the rest of Ms. Hood's life.

A person's life expectancy is determined by a life expectancy table, which is a part of the laws in this state. The life expectancy table is only an estimate of the probable average remaining length of the life of all persons in our state at a given age.

Now, in this case, the plaintiff is a 63-year-old female with a life expectancy of 21.68 years. This fact is to be considered by you along with any other fact and circumstances in evidence bearing on the plaintiff's life expectancy including occupation, habits, and health at the time of the injury, when

deciding what amount of damages to be awarded to the plaintiff.

Now, compensation received by an injured party from a source wholly independent of the defendant will not reduce the amount of damages owed by the defendant. In other words, under the collateral source rule, which is what we call it, if an injured plaintiff receives compensation for their injuries from a source wholly independent of the defendant, that payment wouldn't be deducted from the damages which they would otherwise collect from the defendant. The only requirement for qualification of a collateral source is that the source be wholly independent of the wrongdoer. A defendant cannot take advantage of payments or services rendered by a collateral source for the plaintiff's benefit.

Ladies and gentlemen, in this case, the plaintiff also seeks what are called punitive damages in addition to actual damages. Punitive damages are imposed as punishment. They're not intended to compensate.

Punitive damages are allowed in the interest of society as a warning and an example to deter a wrongdoer and others from committing like offenses in the future. Moreover, they serve to vindicate by

requiring the wrongdoer to pay money to the injured party.

Ladies and gentlemen, punitive damages serve at least three important purposes: Punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights.

What would justify an award of punitive damages? First, ladies and gentlemen, you must realize that the highest burden of proof known in civil law is required to prove punitive damages. And that is what we call by clear and convincing evidence.

Again, any civil action where punitive damages are claimed, the claimant has the burden of proving those damages by clear and convincing evidence. And punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence that the defendant's actions were willful, wanton, malicious, or in reckless disregard of the plaintiff's rights.

A conscious failure to exercise due care constitutes willfulness. It is the present consciousness of wrongdoing that justifies the assessment of punitive damages against a wrongdoer.

Punitive damages will be allowed even when the defendant does not realize that they are invading a plaintiff's rights, so long as the act is committed in such a manner that a person of ordinary prudence would conclude it was done in reckless disregard of the rights of another.

The plaintiff cannot recover punitive damages based on negligent conduct. I remind you again that negligence is the doing of some act which a person of ordinary prudence would not have done under similar circumstances, or failure to do what a person of ordinary prudence would have done under similar circumstances.

Again, I remind you, to recover punitive damages, the plaintiff must prove by clear and convincing evidence that the defendant's actions were willful, wanton, or reckless. And the words, "reckless, willfulness, and wantonness" are synonymous. The terms are used to describe the conscious failure to exercise and observe reasonable or due care.

Again, so you understand, recklessness is distinguished from negligence. It's different. Again, negligence is failure by omission or commission to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances.

Recklessness is a higher degree of culpability and responsibility. Recklessness signifies a conscious failure to exercise due care. Recklessness is a conscious indifference to the rights of a plaintiff or a reckless disregard of the rights of a plaintiff. Recklessness is an awareness of the wrongful conduct and a continuation to act regardless of consequences.

Ladies and gentlemen, before you can consider punitive damages, you must first find the plaintiff entitled to actual damages in this case. There must be an award of actual damages for a verdict of punitive damages to be considered and supported. This rule is premised on the fact that liability must be established before plaintiff can receive punitive damages.

Therefore, I remind you, Madam Foreperson, if you do not award actual damages in this case to the plaintiff, you cannot consider an award of punitive damages.

Now, there is no formula or standard that can be used as a measure for assessing punitive damages. However, factors relevant to your consideration of punitive damages are: The character of the defendant's acts; the nature and extent of the harm to

the plaintiff which the defendant caused or intended to cause; the defendant's degree of culpability; the punishment that should be imposed; the duration of the conduct; the defendant's awareness or concealment; the existence of similar past conduct; likelihood the award will deter the defendant or others from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's wealth or ability to pay.

The financial condition of a defendant is a factor you should consider in awarding punitive damages. However, there is no requirement that the defendant be a person of means before you are justified in awarding punitive damages. And while the wealth of the defendant is a relevant factor in assessing punitive damages, it is not necessarily controlling.

Now, the fact that a person is more susceptible to injury or death because of pre-existing conditions or weakness does not serve to excuse an otherwise negligent defendant who has caused the injury or allowed an injury to happen when there is a duty to prevent it.

A negligent defendant takes a plaintiff as he finds her, whether plaintiff be in perfect health, in

poor health, or somewhere in between. An injured person is entitled to recover all damages caused by the defendant's negligence. When a plaintiff's pre-existing physical condition is aggravated or activated by a subsequent act, the defendant is liable to the extent that their wrongful act proximately and naturally aggravated or activated the plaintiff's pre-existing condition.

The plaintiff can recover her pre-existing injuries only to the extent they were aggravated by the defendant's actions. Any portion of the injury which was not caused by an act or omission on the part of the defendant is not compensable. You can award damages for any aggravation of a pre-existing condition, but not for the original condition or injury itself.

If you find that a plaintiff received an injury as a result of the negligence of the defendant, so that they are entitled to recover for that injury, the fact that a plaintiff had a pre-existing injury or defect would not defeat their recovery.

It is the law of this state that when someone negligently inflicts a personal injury on another, they are responsible for all ill effects which, considering the condition of health in which the

plaintiff was in when they received the injury naturally and necessarily follows that injury.

Therefore, a defendant's liability is in no way lessened or affected by reason of the fact that the injury was not the resultant had the plaintiff been in good health or that they were aggravated and rendered more difficult to cure by reason of the fact that they were not in good health.

In other words, ladies and gentlemen, if the presence of a pre-existing illness or physical condition aggravated or prolonged the injury, and correspondingly increases the damages, such increased or added damages may be recovered.

Madam Foreperson, members of the jury, as you retire to begin your deliberations in this case, let's just spread the hope that each of you are mindful of the importance of your job here today. You're not called upon very often to serve as jurors very often and the proper performance of that duty requires that each of you reach the height of freeing your minds of all improper influences.

In fact, do not think I tried to intimate to you how I think you should decide this case. As I've already told you, under the laws of this state, you, the jury, are the sole judge of all questions of fact.

And it would be highly improper for me to influence you in your performance of that duty.

Further, ladies and gentlemen, I am vitally concerned that every verdict you reach will be the result of you going back into that jury room and confining your consideration and deliberation to the evidence and the law that you've heard here in this courtroom, weighing it fairly and impartially. I have every confidence you will.

Ladies and gentlemen, everyone is entitled to justice in this case, both the plaintiff and the defendant. You owe no support or sympathy to anyone. The Court is of the firm opinion that whatever verdict you reach will represent truth and justice for all parties concerned.

Now, Madam Foreperson, I remind you, your verdict must be unanimous. It must be the verdict of all 12 jurors. And to that end, my law clerk has prepared a verdict form. It simply has the case caption on it. It says, "Therese Hood, plaintiff versus Antoine Johnson, defendant." And it just simply says "Verdict."

The first question is, "Was the defendant, Antoine Johnson, negligent, and that such negligence proximately caused the plaintiff's injuries?"

And the answer is either yes or no.

If you answer yes, you may go on to answer Question No. 2. If your answer is no, you stop and deliberate no further. You have found for the defendant.

If it was yes, and you go on to Question No. 2,, you answer, "Was the plaintiff, Therese Hood, negligent, and that such negligence proximately caused her injuries?"

And, again, the answer is either yes, if it's yes, go to Question No. 3, or if it's no, you go straight to Question No. 4.

Again, if you answer yes, it then asks you, "If your answers to both Questions 1 and Question No. 2 are yes, then answer this question."

It says, "Using the combined negligence that proximately caused the plaintiff's injuries as 100 percent, what percentage of that negligence is attributable to defendant Johnson, and what percentage is attributable to plaintiff Hood?"

Now, I remind you, percentages must add up to 100 percent. All right?

Now, please understand, if the plaintiff Hood's percentage of the combined negligence is more than 50 percent, you are to stop and deliberate no further.

That means you would not find for the plaintiff in this case, and you wouldn't even consider any damages.

Ladies and gentlemen, if plaintiff Hood's percentage of the combined negligence is 50 percent or less, all the way to zero, you would go to question No. 4. Okay? And that question says, "Please state the total amount of damages sustained by plaintiff Therese Hood."

Now, do not reduce for damages based on the percentage of negligence by any party. You are to award the considered actual damages for her and award them for her. You are to award her her total amount of damages. At the very end, I will reduce the amount of damages that would be appropriate for her based on the percentages. You are to only consider the full amount of damages in this case that you feel were proximately caused by the defendant. Do you understand that?

JUROR3: Yes.

THE COURT: Now, that leaves the two lines under No. 4. The first is for actual damages. As I reminded you before, those are for the medical bills and expenses. They're for pain and suffering, they're for mental anguish. They're for permanent impairment and permanent

disfigurement.

Ladies and gentlemen, those, again, are actual damages. And you would put the dollar amount for those actual damages, and I remind you that they must be proven by a preponderance of the evidence, which just means more likely than not.

You then may consider punitive damages, although you are not required to award them. I remind you again that you can only award punitive damages if you have first awarded Ms. Hood actual damages. And I remind you yet again that punitive damages have to be proven by even a higher standard. It's what we call clear and convincing evidence. Okay?

So you would not award a punitive damages amount until and unless you actually awarded actual damages to Ms. Hood, and then only if you found punitive damages are appropriate in this case, given the factors that I discussed with you earlier.

And I remind you again, they're meant to punish, they're not meant to compensate. All right?

After that, Madam Foreperson, there is a line for your name, you would sign this when you've reached a verdict, a unanimous verdict, and date this. And then you will knock on your jury room door. At that point, we can expect you back into this courtroom to take

your verdict.

Madam Foreperson and members of the jury, I am going to ask you for the very last time that you go back to your jury room and not begin discussing this case. If there's something further on the law that the lawyers want me to charge you, I'm going to bring you back out and I'm going to charge you further on the law.

Then you're on, Madam Foreperson. What I'm going to do is send this verdict form and the evidence that was entered into this case back into the jury room, and that's going to be your signal to begin your deliberations. And I remind you, you are to get everybody discussing and talking in this case, all 12 of you. All right?

JURY FOREPERSON: Your Honor, do we get any paper to write notes or anything like that?

THE COURT: Whatever you need, simply ask the bailiff and she will give it to you. Whatever you need. All right?

Again, do not begin discussing the case until you've received the verdict form. I may need to bring you back out here and charge you further. But, again, if not, you'll get the evidence and that will be your queue to start. Okay? Thank you.

(The jury exits the courtroom at 4:30 p.m.)

THE COURT: All right. Yeah, you may be seated.

Any exceptions or due diligence additions from the plaintiff?

MR. WILLEY: Briefly, Your Honor. We obviously would take exception to the previous charges that we submitted not being included, just for preservation.

THE COURT: And we made those Court's exhibits, and they will have them.

MR. WILLEY: Yes. And in addition to that, I do think it's now an appropriate time to charge the jury -- you ruled pretrial that the Defense would not be able to argue that the defendant would have to pay a verdict. And, of course, we did not get to see your charge prior to you reading it, but you did say three times in your charge that the defendant would compensate her.

And in this case, the defendant will not compensate her. And so it's actually a misreading of what will happen. Her own insurance carrier, USAA, or UIM, will be the one compensating her. The defendant has a covenant not to execute. So, in no way, will he

be responsible for any amount at any time. And so, we would ask for a curative instruction to the jury that he will not be responsible for paying the amount of actual damages in this case.

THE COURT: Respectfully, I'm going to deny that motion. It's not appropriate.

MR. WILLEY: And the final thing is, just once again, take exception to the verdict form, as we believe the Court should have directed liability against the defendant and directed comparative negligence in favor of the plaintiff.

THE COURT: Thank you.

MR. WILLEY: And denied, right?

THE COURT: Denied, yes.

Any exception or additions?

MR. DANIEL: No exceptions or additions, Your Honor.

THE COURT: Okay. Y'all, let's make sure we have the evidence. My Rule 403 people, and Mr. Clevinger come on up as well. I'd like to speak with you for just a minute.

(Whereupon, the trial was concluded.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of January, 2018.

/s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**DEFENDANT'S MOTION AND**
v.	)	**MEMORANDUM IN SUPPORT OF**
	)	**MOTION FOR A NEW TRIAL**
ANTOINE JOHNSON,	)	**ABSOLUTE AND/OR JUDGMENT**
	)	**NOTWITHSTANDING THE VERDICT**
Defendant.	)	

TO: KEVIN SMITH AND ROY T. WILLEY, IV, ATTORNEYS FOR THE PLAINTIFF:

COMES NOW USAA General Indemnity Company, appearing pursuant to S.C. Code § 38-77-160 on behalf of Defendant Antoine Johnson (hereinafter "Defendant" or "Defendant Johnson"), by and through the undersigned counsel, and hereby respectfully submits this Motion and Memorandum in support of the following post-trial motions:

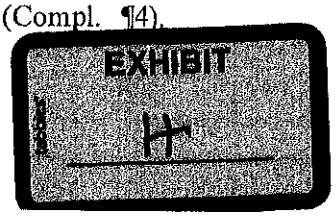
(1) Motion for New Trial Absolute; and

(2) Motion for Judgment Notwithstanding the Verdict.

Defendant's post-trial motions are brought pursuant to Rules 50 and 59 and all other applicable rules of the South Carolina Rules of Civil Procedure. The grounds for these motions are set forth below and may be supported by supplemental memoranda upon receipt of the trial transcript. Any grounds asserted prior, during and after the trial in this matter not herein listed are adopted and incorporated the same as if fully set forth below.

INTRODUCTION

This lawsuit arises out of an automobile accident that occurred on November 7, 2014, between Plaintiff Therese Hood and Defendant Antoine Johnson. Defendant Johnson was operating a 2003 Honda and was stopped at the intersection of U.S. Highway 278/William Hilton Parkway and Southwood Park Drive in Beaufort County, South Carolina. (Compl. ¶4).



Highway 278 is a four-lane highway with two lanes of traffic in either direction in the area at which the accident occurred. There is a median lane which separates the two directions of travel. Mr. Johnson was stopped at this intersection, preparing to cross the eastbound lanes of traffic and pull into the center median, in order to complete his left turn into the westbound lanes of Highway 278. Plaintiff was traveling eastbound on Highway 278. (Compl ¶3). Defendant Johnson collided with Plaintiff's 2011 Chevrolet Equinox as he was approaching the center median. Defendant Johnson was adamant that he never saw Plaintiff's vehicle prior to the impact because she was traveling with no lights on.

Plaintiff filed suit against Defendant Johnson on March 13, 2015, alleging Defendant was negligent, careless or reckless and Plaintiff sustained injuries as a result. The case was tried in front of Judge Carmen T. Mullen and a twelve-member jury in the Jasper County Court of Common Pleas beginning September 5, 2017. Defendant Johnson and other eyewitnesses to the collision testified that Mrs. Hood was operating her vehicle without her headlights on at the time of the accident. At trial, Plaintiff presented evidence of economic damages totaling $223,225.47. Although Defendant did not dispute that Plaintiff was injured in the subject accident, there was dispute as to the medical necessity of a number of present and projected future medical expenses and whether certain issues pre-dated and/or were exacerbated by the subject accident. Plaintiff did not contest that her headlights may have been off at the time of the accident, and instead produced an untimely identified expert, Stephanie Borzendowski, PhD to testify that Defendant was distracted at the time of the accident and that the Plaintiff was not required to have her headlights on at the time of the accident.

On September 7, 2017, at the close of evidence in this trial, the trial court submitted the case to the jury and at 5:30 p.m. after approximately one hour of deliberations, the jury returned

a verdict finding Plaintiff 49% contributorily negligent, and awarding a verdict against Defendant Johnson in the amount of $2,500,000. The Court allowed the parties ten days to file post-trial motions. Due to Hurricane Irma, South Carolina State Courts were closed September 6, September 11, September 12, and September 13, 2017. In light of these court closures, Defendant was permitted until September 21, 2017 to file post-trial motions.

I. MOTION FOR A NEW TRIAL ABSOLUTE

The law provides three grounds for a new trial whereby the trial court may be called upon to review the size of the jury's verdict – most simply described as (1) the grossly excessive verdict, (2) the unduly liberal verdict, or (3) the judicial veto under the thirteenth juror doctrine. *See* Pinckney v. Winn-Dixie Stores, Inc., 311 S.C. 1, 426 S.E.2d 327 (Ct. App. 1992) (discussing and distinguishing the three grounds). Defendant has filed a separate motion in the alternative for a New Trial *Nisi Remittitur*, filed contemporaneously with the present motion. Defendant respectfully requests a new trial absolute on the following grounds:

A. Defendant is entitled to a new trial because the verdict was grossly excessive and the product of bias, passion, prejudice, or other improper motive.

It is the duty of the trial court to set aside a verdict that is grossly excessive and so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other considerations not founded on the evidence. Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E.2d 452, 455 (1987); *see also* Nelson v. Charleston & W. C. Ry. Co., 231 S.C. 351, 98 S.E.2d 798, 802-03 (1957) ("Ordinarily the only means of discovering the existence of passion and prejudice as influencing the verdict is by comparing the amount of the verdict with the evidence before the trial court . . . The size of the verdict alone may show that it must have been the result of passion or prejudice, as for instance, when it was

apparent that the award is so obviously disproportionate to the injury proved as to justify the conclusion that the verdict is not the result of the cool and dispassionate discretion of the jury."). In Sanders v. Price, 403 S.E.2d 640 (Sup. Ct. 1991), a case involving defamation and civil conspiracy, the Supreme Court reversed the trial court, which had denied the defendants' post-trial motion for a new trial absolute on the ground that the verdict was excessive. The Court concluded that while there was some evidence that Plaintiff's reputation was damaged, there was no evidence that the damage to reputation was to the extent that a $750,000.00 award of damages was warranted. Id.

While an element of damages such as pain and suffering is not easily rendered into a mathematical formula with which to value the loss, that does not mean that the jury has free rein to award a sum that is unfounded based on the evidence presented at trial and under the applicable legal standards. And while the Court has acknowledged that "[t]he assessment of such intangible elements of damage is most difficult and the court is always reluctant to interfere with the exercise of the jury's discretion in fixing the amount to be awarded[,]" that does not mean that the jury's verdict is insulated from review or is without limitation. Zorn v. Crawford, 252 S.C. 127, 137, 165 S.E.2d 640, 645 (1969). "The determination is not left to the whim or caprice of the jury. There must be some semblance of a basis for justifying the verdict." Id. at 645 – 646 (citing Nelson v. Charleston & W.C. Ry. Co., 231 S.C. 351, 98 S.E.2d 798 (1957)).

Plaintiff presented evidence at trial of economic damages totaling $223,225.47. While the court instructed that the jury could consider the Plaintiff's costs and expenses in deciding this case, there was simply no testimony or evidence of those costs upon which the jury could base its

award.[1] The jury returned a verdict of $2,500,000 after deliberating for approximately one hour, if not less. The verdict is grossly excessive and can only be explained by improper motives, namely, that Plaintiff's counsel successfully invoked the jury's passion, prejudice, and sympathy with his appeals to the jurors religious beliefs and exaggeration of Plaintiff's alleged injuries. This theme continued throughout the trial, with Plaintiff's counsel eliciting testimony from a number of Plaintiff's church acquaintances regarding Plaintiff "spilling the blood of Christ" and her limited ability to participate in religious services and activities. Plaintiff's counsel then emphasized during his rebuttal closing argument his own religious beliefs, quoting directly from the Bible and imploring the jury to follow its directives and find in favor of the Plaintiff. Plaintiff was attributed 49% fault for the subject accident and the unsubstantiated medical expenses incurred totaled $223,225.47. The only explanation for this shockingly disproportionate verdict, over eleven-times Plaintiff's economic damages, was that Plaintiff's attempts to invoke sympathy and unity on religious grounds incited the jury's bias, passion and prejudice.

The jury verdict in favor of the Plaintiff was likely influenced by the impending impact of Hurricane Irma in Jasper County and the knowledge that a State of Emergency was declared for the State of South Carolina and mandatory evacuations would be ordered from Jasper and surrounding South Carolina counties on September 8, 2017. The jury began their deliberations on the third day of trial at approximately 4:30 p.m. and returned their verdict at approximately 5:30 p.m. During that time, the jury ate dinner. The Defendant concedes that the jury could have deliberated while eating their dinner. On the other hand, the jury would have to stop their deliberations as the food was brought in. Given all of the testimony and evidence, the Defendant

[1] A full explanation of the Defendant's contention that the amount of actual damages is excessive and the evidence submitted to the jury inadmissible is contained in the Memorandum in Support of Defendant's Motion for a New

is of the position that the jury could not properly consider the evidence in one hour. For example, there were a number of exhibits, including detailed text message records, medical records regarding Plaintiff's pre-existing conditions, and data regarding the time of sunset on the date of the accident. The South Carolina Supreme Court has held that "premature jury deliberations may affect the 'fundamental fairness' of a trial such that the trial court may inquire into such allegations and may consider affidavits in support of such allegations." State v. Aldret, 333 S.C. 307, 312, 509 S.E.2d 811; *accord* United States v. Olano, 507 U.S. 725, 736-38, 111 S. Ct. 1770, 1779-80, 1123 L.Ed. 2d 508 (1993) (U.S. Supreme Court generally analyzes outside intrusions upon jury for prejudicial impact). There were three full days of testimony and it is the Defendant's contention that the jury did not and could not have fully evaluated all of the testimony and evidence. Instead, the jury's verdict was motivated not only by passion, caprice, prejudice, partiality, but also the consideration of the impending Hurricane and a desire to finish deliberations expediently and make evacuation preparations.

The jury returned a verdict in favor of the Plaintiff in an amount of $2.5 million. This is consistent with the present damages and associated pain and suffering per diem figure ball parked by Counsel for the Plaintiff during his initial closing arguments. The verdict suggests the jury did not award future damages and the verdict form shows the jury awarded no punitive damages, which would show a desire to "punish" the Defendant. Under these circumstances, it appears that the jury did not intend to award Plaintiff future damages, including any future pain or suffering, and rather agreed that Plaintiff was contributorily negligent and awarded her the first figure emphasized by Plaintiff's counsel during closing arguments.

Accordingly, because the verdict was the product of bias, passion, prejudice, or other improper motive, the Court should grant a new trial absolute.

Trial *Nisi Remittitur*, filed herewith.

A. The trial court erred when it failed to charge the jury with an instruction on religion and religious affiliation.

Reference to or testimony about a party's religious affiliations, beliefs, or opinions is irrelevant and inadmissible under SOUTH CAROLINA RULE OF EVIDENCE 610, which provides, "evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced." Rule 610, SCRE is a ***total*** bar to evidence of religion when used as character evidence to show that someone is worthy of belief, and it is one of the few instances in which a judge has no discretion to admit or exclude evidence. The impetus for Rule 610, SCRE is two-fold: (1) a party's religious beliefs have little to no probative value; and (2) the connection between religious beliefs and morality in jurors' minds may unfairly prejudice them against a witness. *See* 1 Kenneth S. Broun, et. al., *McCormick on Evidence* § 46, at 171 (4th ed. 1992). "It is well settled that evidence of a witness's religion may not be introduced for the purposes of enhancing . . . the witness's credibility." United States v. Anwari, 393 Fed. Appx. 54 (4th Cir. 2010).

Plaintiff introduced the testimony of a number of witnesses who attend church with the Plaintiff and a great deal of the Plaintiff's case was devoted to an in depth explication of Plaintiff's religious beliefs and practices, in the guise of introducing her permanent limitations post-accident. Additionally, and perhaps most egregiously, Plaintiff's counsel devoted his entire rebuttal closing to a consideration of religious beliefs and how he and the members of the jury can best "help his client" as Christians, in essence imploring the jury to do their "Christian duty" and award a verdict to the Plaintiff. The clear aim of injecting religion into Plaintiff's rebuttal closing was to connect religion and the "right thing to do" with the theme persistently raised during trial that Plaintiff's religious beliefs and convictions illustrate her character and credibility

and to convince the jury that her testimony represents the "moral" version of events. *See e.g.* Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (S.C. 2010) (holding that a prosecutor's comments "improperly invoked religious prejudice and, thus, served only to inflame the passions and prejudice of the jury."). This court declined to charge the jury with an instruction on evidence of a party's religious affiliation and/or beliefs and this error allowed the jury to return an excessive actual damages award. This omission alone warrants a new trial absolute.

B. Defendant is entitled to a new trial absolute because of prejudicial evidentiary rulings and other trial errors.

For the specific grounds explained in greater detail below, Defendant's motion is based on the singular, cumulative, and prejudicial impact of numerous evidentiary and legal rulings by the Court. The following grounds in support of Defendant's motion for a new trial are so enumerated:

a. Lay Opinion of Dustin Lee

The Court erred in excluding important testimony of independent eye witness Dustin Lee, a key defense witness who directly observed Plaintiff's actions prior to the accident, the accident itself, and called 911 to report his observations.

Rule 701, SCRE, provides that a lay witness is permitted to provide opinion testimony when those opinions or inferences "(a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, expertise or training. Murphy v. Jefferson Pilot Communications Co., 364 S.C. 453, 613 S.E.2d 808 (Ct. App. 2005) (applying the rule). Opinions of a lay witness should be rejected only where their opinion is superfluous and where all the facts are clearly detailed so that the jury may form the correct conclusion therefrom.

Green v. Sparks, 232 S.C. 414, 102 S.E.2d 435 (1958). The admission of lay witness opinion or conclusion testimony, and the foundation required for admission, rest largely in the judge's discretion. Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003). The trial judge should determine the basis for lay opinion testimony before excluding the evidence. State v. Bottoms, 260 S.C. 187, 195 S.E.2d 116 (1973).

Mr. Lee's opinion testimony met all three of the threshold requirements set forth in SCRE Rule 701. His observations as to Plaintiff's speed, the visibility of Plaintiff's vehicle, and his conclusion as to whether Defendant Johnson would have been able to see her are rationally based on his perception made at the time of the subject accident, as documented in his 911 call. His position in the roadway gave him ostensibly the best observational opportunity of the subject accident and he has sufficient experience as a driver and user of South Carolina roadways on which to base his opinions and testimony. It is indisputable that Mr. Lee's 911 call, including his statement that Plaintiff's vehicle probably wasn't visible to Defendant Johnson, would help elucidate the jury's understanding as to the conditions on the night of the subject accident.

Finally, Mr. Lee is properly qualified to offer his layman's opinion and observations as to the visibility of Plaintiff's vehicle, the fact that Plaintiff was tailgating him and Plaintiff's speed prior to and at the time of the accident. Under South Carolina law, a witness may state his or her impression or inference with respect to the appearance of an object or place if he/she has adequate opportunity for observation and the details of a place or objects appearance cannot be reproduced for the jury in order for them to draw their own inference, so long as the testifying witness states as much as possible of the constituent facts. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). Having observed Plaintiff's vehicle from the time in which she began to tailgate him, to her overtaking him on the roadway, through to the collision with Defendant

Johnson's vehicle, Mr. Lee had more than an adequate opportunity to observe the conditions on the roadway and render an opinion as to whether Mrs. Hood's vehicle would have been visible to the Defendant. Furthermore, the Plaintiff tailgating and overtaking his vehicle does not constitute an "opinion" but rather an observable fact that Mr. Lee should have been permitted to testify to without restraint or limitation.

Mr. Lee should also have been allowed to freely testify as to the speed Plaintiff was traveling prior to and at the time of the accident and how this speed contributed to the collision. South Carolina case law provides that testimony of a lay witness as to speed of a vehicle is both competent and admissible. Livingston v. Oakman, 251 S.C. 611, 164 S.E.2d 758 (1968) (a defendant's estimate of the speed of the plaintiff's vehicle was admissible). Further, when an injury occurs soon after an accident and the results are within the experience and observation of ordinary people, and circumstances are such that the lay mind may draw reasonable inferences of causation, a lay witness may offer opinion or conclusion testimony as to cause and effect. Carter v. Anderson Memorial Hosp., 284 S.C. 229, 325 S.E.2d 78 (Ct. App. 1985). It is only where the lay witness ventures "beyond the realm of common experience" that section (c) of Rule 701, SCRE is triggered.

Rule 704, SCRE plainly states that "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Lay witness opinion will not work to usurp the role of the jury by telling the jury which conclusion to reach as the "jury retains the power and duty to judge the credibility of the witness and the weight to be given his opinion." Hughes v. Children's Clinic, P.A., 269 S.C. 389, 403, 237 S.E.2d 753 (1977). Given that Mr. Lee's opinions are based on his personal perception, and would definitely be instrumental in helping the jury understand the conditions of

the road that contributed to the accident, the fact that it goes to one of the ultimate issues in the case, whether Defendant Johnson could see Plaintiff's vehicle on the roadway, does not render it inadmissible.

The Court's evidentiary rulings pertaining to the scope of Mr. Lee's testimony precluded Defendant from presenting the 911 call audio recording made by Dustin Lee on the date of the accident, including Mr. Lee's statements to the 911 operator regarding the visibility of Plaintiff's vehicle and precluded Defendant's counsel from effectively cross-examining Mr. Lee on his observations immediately prior to and during the subject accident, impeaching Plaintiff's testimony as to her visibility and speed on the roadway, and precluding Mr. Lee from effectively explaining to the jury why he first noticed Plaintiff's vehicle prior to the accident and how he reached the conclusion that the Defendant probably did not see Plaintiff's vehicle prior to the collision.

b. Expert Testimony/Opinion of Stephanie Borzendowski, PhD

At the beginning of trial in a Motion for Limine, Defendant moved to exclude the testimony of Plaintiff's purported human factors expert, Stephanie Borzendowski, PhD. The court denied Defendant's motion and the Plaintiff was allowed to introduce the testimony of Ms. Borzendowski on the role of distracted driving in the subject accident and the time of sunset on the day of the accident, over Defendant's objection. The court erred in denying Defendant's motion. "Qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005). "The trial court . . . is charged with the duty of determining issues of law. As a part of this duty, the trial court serves as the gatekeeper and

must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law." Watson v. Ford, 389 S.C. 434, 450, 699 S.E.2d 169, 177 (2010).

The first problem with the admission of Ms. Borzendowski's testimony is that Ms. Borzendowski was named as an expert witness just before trial and under circumstances that unfairly prejudiced the Defendant, depriving Defendant of the opportunity to analyze Ms. Borzendowski's opinions and obtain a rebuttal human factors expert to present at trial. A date certain trial was set pursuant to a Consent Scheduling Order filed on June 11, 2017. On July 19, 2017, over two years after this case was filed, counsel for Defendant received Plaintiff's Sixth Supplemental Answers to Defendant's First Interrogatories, disclosing Ms. Borzendowski as an expert witness for the first time. No report was provided and her anticipated testimony was vaguely described as regarding "visibility of the vehicles and distracted driving." No indication of the substance and basis of Ms. Borzendowski's opinions were provided.

As raised during argument on Defendant's pre-trial motion and again at trial, whether or not Plaintiff had her headlights on at the time of the accident, the time of sunset on the date of the accident have been key issues in this case since Defendant Johnson filed his Answer and Counterclaim on April 24, 2015, wherein he specifically alleged that Plaintiff was operating her vehicle without headlights at the time of the accident and he did not see her prior to crossing Highway 278. Additionally, Defendant Johnson's alleged texting on the date of the accident was addressed *ad nauseum* by Plaintiff's counsel during Defendant's deposition on January 25, 2016. Plaintiff's counsel obtained Defendant's cell phone records from the date of the accident on May 26, 2016. Plaintiff had ample time, well over a year, to retain and identify an expert witness to testify regarding "the visibility of the vehicles" and "distracted driving."

Plaintiff waited almost two months before identifying Ms. Borzendowski as an expert witness in this case.[2] Defendant was only able to depose Ms. Borzendowski on August 30, 2017, just ***three*** business days prior to the scheduled trial date of September 5, 2017. It is unthinkable that Defendant would have ample time in which to analyze Ms. Borzendowski's testimony, the opinions enumerated therein, and retain a rebuttal human factors expert to offer counter-testimony to her opinions. It was clearly prejudicial to allow the Plaintiff to name a new expert at this late date, and the court erred in denying Defendant's motion to exclude and allowing Ms. Borzendowski to testify at trial. Defendant was denied the time required to fully evaluate any expert opinions and was never afforded the ability to retain a human factors expert to respond to Ms. Borzendowski's opinions and adverse testimony.

Additionally, despite being an accomplished expert in human factors, Ms. Borzendowski's testimony regarding the cause of the subject action was legally insufficient, incompetent, and unreliable because she performed no inspection, investigation (or even basic observation), no accident reconstruction and took no measurements or photographs of the accident scene, all of which Ms. Borzendowski candidly admitted at trial. Despite her failure to conduct any investigation of the accident scene, Ms. Borzendowski was permitted to testify, over Defendant's objections, that Plaintiff's vehicle speed played no role in this accident. Her comments on the role of speed in the causation of the accident are based on pure speculation and not based on the knowledge, professional experience or training in Ms. Borzendowski's field of

[2] Based on the documentation received from Ms. Borzendowski on August 25, 2017 (just 10 days before trial and four days before her deposition), pursuant to Defendant's *subpoena duces tecum* for Ms. Borzendowski's entire expert file, counsel for the Plaintiff first discussed this case with Ms. Borzendowski on April 26, 2017 as evidenced by her invoice for services rendered. In that time, Ms. Borzendowski had billed over over ten (10) hours reviewing file materials and almost two hours discussing the case with counsel for the Plaintiff, Mr. Smith. Before her deposition, she had spent a total of 16.9 hours on this case alone. Ms. Borzendowski's invoices were provided to this Court as an exhibit to Defendant's pre-trial motion to exclude Ms. Borzendowski as an expert.

specialty. For the aforementioned reasons, Ms. Borzendowski's testimony and opinions should have been excluded at trial.

C. Defendant is entitled to a new trial absolute as a result of violation of the 'Golden Rule' in closing arguments.

"The 'Golden Rule' argument, suggesting to jurors as it does that they put themselves in the shoes of one of the parties, is generally impermissible because it encourages the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence." State v. Reese, 359 S.C. 260, 271, 597 S.E.2d 169, 175 (Ct. App. 2004) aff'd in part, rev'd in part, 370 S.C. 31, 633 S.E.2d 898 (2006) overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) (quoting 75A Am.Jur.2d Trial § 650 (1991)). A Golden Rules argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice. Id. at 38, 633 S.E.2d at 901.

Thus, regardless of the nomenclature used, any argument that importunes the jurors to place themselves in the victim's shoes is disallowed by the Golden Rule Argument. Id. When the effect is to deprive the other party of a fair and impartial trial, violation of the Golden Rule constitutes reversible error. Id. (affirming the Court of Appeals' finding that the defendant was entitled to a new trial based on the solicitor's "Golden Rule" closing argument, in which he repeatedly asked jurors to "speak" for the murdered victim). To be impermissible, a Golden Rule argument in a civil matter must be used to inflame the jury and encourage and increase a damages award. 75A Am. Jur. 2d Trial § 547.

In his closing argument, Plaintiff's counsel asked the jurors to place themselves in Plaintiff's position and to consider the value they would place on her day to day experience with

her alleged injuries, asking the jurors to compare her day to day pain and suffering with the cost of everyday items such as a cup of coffee, a carton of milk, in direct violation of the Golden Rule. This Court need only look to the excessiveness of the $2.5 million verdict to determine whether the effect of this violation was to arouse the passion, prejudice and sympathy of the jurors and to deprive Defendant Johnson of a fair and impartial trial. Because Plaintiff's counsel violated the Golden Rule, which resulted in clear prejudice and the denial of due process to this Defendant, the Defendant asks this Court to grant a new trial and to prevent the miscarriage of justice.

II. MOTION FOR A NEW TRIAL ON THE FACTS (THE THIRTEENTH JUROR DOCTRINE).

The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he/she is convinced that a new trial is necessitated based on the facts in the case or if the verdict is so confused that the jury's intent is unclear. Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40, 45 (1984). It is in the trial judge's discretion to grant a new trial absolute in a case "upon his disapproval of the verdict on factual grounds." South Carolina State Highway Dep't v. Townsend, 265 S.C. 253, 258, 217 S.E.2d 778, 781 (1975) (internal citations omitted). Such "discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them. . . ." Fallon v. Rucks, 217 S.C. 180, 60 S.E.2d 88, 92 (1950).

"The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts." Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (citing Townsend, 265 S.C. 253, 217 S.E.2d 778 (1975)). Defendant's Motion for a New Trial Upon the Facts, based on the Thirteenth Juror Doctrine, is entirely separate and

distinct from a Motion for a New Trial. As the South Carolina Court of Appeals made clear in 2003, "the question of whether the evidence is legally sufficient to support a verdict – a question of law – is totally different from the question of whether a fair preponderance of the evidence supports a verdict – a question involving the exercise of discretion . . . ." McEntire v. Mooregard Exterminating Services, Inc., 353 S.C. 629, 633 578 S.E.2d 746, 748 (Ct. App. 2003) (citing Russell v. Pilger, 113 Vt. 537, 37 A.2d 403, 414 (1944)). The Court need not provide reasons, nor must it make specific factual findings, for setting aside the verdict. *See* Bailey v. Peacock, 455 S.E.2d 690, 318 S.C. 13 (1995). Defendant "does not assert a claim to have the verdict set aside as a matter of law, or of right, but asks the court, as a matter of discretion, to grant [its] motion." Pilger, 113 Vt. 537, 37 A.2d at 414 (1944). "It may well be that a party's evidence makes a case for the jury while it is so outweighed by the countervailing evidence that, in the exercise of its discretion, the trial court should not hesitate to set aside a verdict in his favor." McEntire, 578 S.E.2d at 748 (citing Pilger, 37 A.2d at 414). In short, the circumstances are as though the judge, as the thirteenth juror, "hangs" the jury. Norton v. Norfolk Southern Railway Co., 350 S.C. 473, 567 S.E.2d 851 (2002); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

The evidence presented at trial and the facts of this case do not justify a jury verdict eleven-times Plaintiff's alleged economic damages. Plaintiff offered no testimony at trial to substantiate the Plaintiff's alleged medical expenses and the relatedness of the same to the subject accident, and the sole treating physician who testified at trial made no mention of the costs of Plaintiff's medical treatment and could only testify to the medical treatment he provided to her right ankle. In light of the record as a whole and a finding that Plaintiff was 49% at fault

for the subject accident, the jury's $2,500,000 verdict is unsupported, unjustified, and excessive, and this Court should order a new trial absolute pursuant to the thirteenth juror doctrine.

For both the aforementioned reasons and those set forth in Defendant's SCRCP Rule 59 Motion for a New Trial, as well as the evidence presented at trial, the verdict in this case is contrary to a fair preponderance of the evidence, and Defendant asks this judge to exercise her discretion to act as the thirteenth juror, and upon taking her own view of the evidence, order a new trial because the verdict was contrary to the evidence presented at trial, against the greater weight and preponderance of the evidence, and was palpably wrong and manifestly unjust.

IV. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT PURSUANT TO SCRCP 50(B).

Defendant respectfully requests that this Court grant its Motion for Judgment Notwithstanding the Verdict pursuant to Rule 50(b) of the SOUTH CAROLINA RULES OF CIVIL PROCEDURE. Defendant incorporates by reference the oral arguments previously made in support of Defendant's Motion for Directed Verdict, pursuant to Rule 50(a), SCRCP, at trial.

"A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have the judgment entered in accordance with his motion for a directed verdict." Rule 50(b), SCRCP. In ruling on a motion for judgment notwithstanding the verdict, the trial judge must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. JNOV should be granted when only one reasonable inference can be drawn from the evidence and no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998); Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001).

In this case, Defendant moved for a Directed Verdict at the close of Plaintiff's case-in-chief and renewed at the close of the evidence in full. Specifically, the Court erred in submitting Plaintiff's damages claim to the jury because the evidence presented at trial was insufficient to support a finding that Defendant Johnson was negligent, that said negligence was the proximate cause of the subject accident, and that Plaintiff sustained damages as a result of the subject accident. Given the admissions and undisputed evidence at trial, Plaintiff has failed to present a legally sufficient evidentiary basis for a reasonable jury to find for the Plaintiff on these issues and as such, the Court should grant Defendant's motion for judgment as a matter of law in favor of Defendant with respect to all claims. To the extent not inconsistent with the relief sought, all arguments advanced in support of Defendant's other post-trial motions also support this relief.

CONCLUSION

In addition to the above-stated grounds, Defendant incorporates herein by reference all grounds previously raised in the motions for directed verdict made during trial, any supplemental memorandum of law in support hereof to be filed in advance of the hearing, as well as any oral argument the Court may permit in support of the instant motions. Defendant reserves the right to add additional and further grounds in support of these motions upon receipt and review of the final trial transcript in this case.

The Defendant respectfully moves this Honorable Court to grant its motion for a New Trial Absolute pursuant to South Carolina Rule of Civil Procedure 59 on all issues under this Court's broad discretionary powers, or in the alternative grants Defendant's Motion for Judgment Notwithstanding the Verdict pursuant to Rule 50(b), SCRCP, and for any such other

and further relief this Court deems proper under the facts and circumstances, including but not limited to a new trial as to damages only.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: Jackson H. Daniel III
JACKSON H. DANIEL, III
State Bar No.:70308

MADISON B. SUTTIE
State Bar No.: 101385

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
843-727-0307

Attorneys for USAA General Indemnity Company appearing pursuant to S.C. Code § 38-77-160 on behalf of Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Kevin B. Smith, Esq.
Hoffman Law Firm
7087 Rivers Avenue
North Charleston, SC 29406
-and-
Roy T. Willey, IV, Esq.
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403

Attorneys for Plaintiff Therese Hood

This 21st day of September, 2017.

Anne Marie Tytlar
Legal Assistant to Jackson H. Daniel, III

Carlock, Copeland & Stair LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**DEFENDANT'S MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR A NEW TRIAL *NISI REMITTITUR***
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

TO: KEVIN SMITH AND ROY T. WILLEY, IV, ATTORNEYS FOR THE PLAINTIFF:

COMES NOW USAA General Indemnity Company, appearing pursuant to S.C. Code § 38-77-160 on behalf of Defendant Antoine Johnson (hereinafter "Defendant" or "Defendant Johnson"), by and through the undersigned counsel, and hereby respectfully moves, as an alternative to his motions for a New Trial Absolute and/or for judgment notwithstanding the verdict, for a New Trial *Nisi Remittitur* in light of the jury's excessive actual damages award of $2,500,000.00. The Defendant's Motion is based on the excessiveness of the jury's verdict in light of the cumulative effect of numerous evidentiary rulings by the Court and the absence of a jury instruction regarding religion, addressed in Defendant's Motion for a New Trial Absolute and/or for judgment notwithstanding the verdict, which is filed herewith.

At the outset, the Defendant notes that it is entitled to a set-off of the amount of $25,000.00 based on the settlement of Defendant Johnson's liability insurance carrier, GEICO. Furthermore, Defendant should be entitled to set-off the $50,000 in Personal Injury Protection ("PIP")/MedPay coverage paid to the Plaintiff in connection with the subject accident.[1] Finally,

[1] *See* Rowzie v. Allstate Ins. Co., 556 F.3d 165, 166 (4th Cir. 2009) (holding that Allstate was entitled to reduce the amount payable as UIM benefits by the amounts previously paid as PIP benefits to the Plaintiff. The court held that S.C. Code Ann. § 38-77-144's prohibition against setoffs based on PIP coverage did not apply to the insurer because the setoff prohibition applied only to a tortfeasor and the insurer, which had rights separate and distinct from an underinsured tortfeasor, was not the legal equivalent of an at-fault, underinsured driver.). In the most basic sense,

the Defendant files the instant motion as an alternative to his primary Motion for a New Trial Absolute and/or for judgment notwithstanding the verdict.

STANDARD OF REVIEW

While the trial judge may not impose his or her will on a party by substituting the judge's judgment for that of the jury, the trial judge may give the party the option of *additur* or *remittitur* or, in the alternative, a new trial. In reviewing a jury verdict, the South Carolina appellate courts have held that "the amount of such awards is subject to the supervisory powers of the trial court." S.C. Farm Bur. Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 478 S.E.2d 57 (1996)(citing Thompson v. Home Security Life Ins., 271 S.C. 54, 244 S.E.2d 533 (1978); Durham v. Clements, 295 S.C. 90, 367 S.E.2d 174 (Ct. App. 1988)). Likewise, the trial judge alone has the power to grant a new trial *nisi remittitur* when he finds the amount of the verdict to be merely inadequate or excessive. Id. (citing McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995); O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993); Hicks v. Herring, 246 S.C. 429, 144 S.E.2d 151 (1965)). A motion for new trial *nisi remittitur* requests the trial court to reduce the verdict because it is *merely* excessive. O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993). On the other hand, if the amount of the verdict is so grossly excessive as to shock the conscience of the Court and to result from caprice, passion, prejudice, partiality, corruption or some other proper motive, the trial judge should grant a new trial absolute. Cock and Bull Steak House, Inc. v. Generale, 466 S.E.2d 727 (1996). Taken as a whole, a verdict of $2,500,000.00, which amounts to approximately eleven - times the actual damages is grossly, let alone merely, excessive.

The trial court has wide discretionary power to reduce the amount of a verdict, which in its judgment is excessive. The South Carolina Supreme Court has recognized this discretion, noting: "the reasonableness of the verdict was challenged before the trial judge[,] and he reduced it. The fact that he heard the evidence and was more familiar than we with the evidentiary atmosphere at trial give him, we

---

USAA has already paid for $50,000.00 of Plaintiff's medical bills which she contends arise from the subject accident. It should not be made to pay that amount again. Id. (finding an insurer is not required to "double compensate" an insured).

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think, a better informed view than we have." S.C. Farm Bur. Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 478 S.E.2d 57 (1996)(quoting Lucht v. Youngblood, 266 S.C. 127, 138, 221 S.E.2d 350 (1991)). Indeed, when the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to grant a new trial *nisi remittitur*. If a reviewing court concludes that a verdict is excessive, it is the court's duty to require a remittitur *or* order a new trial. Becker v. Wal-Mart Stores, Inc., 529 S.E.2d 758 (Ct. App.2000). This decision will not be disturbed on appeal unless it clearly appears that the exercise of discretion was controlled by a manifest error of law. Cock-N-Bull, supra; Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993); Fennell v. Littlejohn, 240 S.C. 189, 125 S.E.2d 408 (1962)).

ARGUMENT

Defendant respectfully submits that the verdict in this case is grossly excessive and warrants a new trial absolute. Nonetheless, to the extent this Court finds the verdict to be merely excessive, Defendant alternatively moves for a new trial *nisi remittitur*, without waiving the argument that the failure to grant a new trial absolute in this case amounts to an abuse of discretion. *See* O'Neal, 314 S.C. 525, 431 S.E.2d 555 (1993) ("The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute.").

The Plaintiff presented evidence of $223,225.47 in actual damages at trial. This is the exact amount contained on an exhibit that was admitted over the Defendant's objection. This exhibit contained a total for the Plaintiff's medical expenses, without any testimony regarding the authenticity of Plaintiff's medical bills or the relatedness of each expense to the treatment Plaintiff received in connection to the subject accident.[2] As an initial matter, this document

[2] In fact, Plaintiff ***hand delivered*** to Defense counsel on the final day of trial responses to Defendant's Second Requests to Admit, served on counsel for Plaintiff on August 3, 2017, requesting admission of the authenticity of recently obtained medical records and bills. Plaintiff's counsel denied the authenticity of these records, albeit well past the responsive deadline.

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should have been excluded because it was produced at trial during the direct examination of Plaintiff Therese Hood and the Defendant had no meaningful opportunity to address it. In addition, the exhibit should never have been admitted because it lacks a proper foundation and because it contains inadmissible hearsay. Defendant objected to Plaintiff testifying regarding this document and Defendant's objection was overruled.

I. The Medical Expenses should have been excluded at trial because no foundation for relevance and medical necessity had been laid.

The medical expenses presented at trial should have been excluded at Defendant's objection because no foundation was laid to prove the expenses were related to injuries sustained in this accident and to treatment that was reasonable and necessary. Medical testimony is required to separate treatment that is medically necessary from treatment that is not. Importantly, the exhibit "summarizing" Plaintiff's medical expenses that was entered as an exhibit over Defendant's objection and was taken back into the jury room during deliberations, was not produced prior to the testimony of the sole treating physician, Dr. David Jaskwhich, Plaintiff's orthopedic surgeon, whose testimony was offered at the trial of this case. Dr. Jaskwhich testified that he played no role in any of Plaintiff's treatment other than that of her ankle and would defer to the other physicians as to the necessity of any other medical treatment. Further, no medical professional testified as to the accuracy of the sums enumerated in the exhibit and the relatedness of these expenses to the subject accident. The only person who testified as to the accuracy and validity of these medical expenses, typed into a word document of unknown origin and authorship, was the Plaintiff herself.

To recover damages for medical treatment in a personal injury case, a plaintiff must establish that the medical expenses for treatment are the result of the defendant's negligence and that the medical treatment provided was reasonably necessary. *See* South Carolina Damages,

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2004 at 2-1, citing Sossamon v. Nationwide Mut. Ins. Co., 243 S.C. 552, 559, 135 S.E.2d 87, 91 (1964). The South Carolina Supreme Court has also previously addressed the requirements for medical record and bill foundation in Carlyle v. Tuomey Hospital, 407 S.E.2d 630 (S.C. 1991). The injured party in Carlyle treated at Tuomey Hospital, and recovery was later sought for a portion of the medical bills. The court ruled that "evidence presented must be sufficient to enable the factfinder to make a determination with reasonable certainty or accuracy. 'Neither the existence, causation nor amount of damages can be left to conjecture, guess, or speculation.'" Id., at 633 (quoting Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971)). The court favorable cited American Jurisprudence for authority in holding that the bills should not have been entered into evidence due to lack of proper foundation:

> Medical bills not clearly identified by medical testimony, or otherwise, as being connected with the tortious act which resulted in injuries under litigation are generally held inadmissible, especially where there is evidence that plaintiff was treated for a condition unrelated to the injuries sustained in the accident.

Carlyle, at 633 (quoting 22 Am. Jur. 2d *Damages* § 933 (1988)). The South Carolina Supreme Court reversed and remanded the judgment and verdict because the medical bills were properly admitted "without a proper foundation upon which the jury could arrive at a determination with reasonable accuracy" and "allowed the jury to arrive at a verdict through surmise, conjecture, or speculation." Carlyle, at 633.

The Fourth Circuit has addressed this issue in an unpublished per curiam opinion. *See* Hoffman v. Wal-Mart Stores, Inc., 191 F.3d 447, 1999 WL 710350 (4th Cir. 1999). The court noted that the district court did not abuse its discretion in permitting the plaintiff to testify about her injuries and treatment that were within her personal knowledge. Id., at *3. The court further noted with approval that the district court "did, in the absence of testimony by doctors, exclude

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evidence about what the doctors told [the Plaintiff], what they prescribed, as well as what they charged by way of medical bills." Id.

Pursuant to Rule 701 of the South Carolina Rules of Evidence, a witness not testifying as an expert "is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience, or training." Only those witnesses who are qualified by reason of "knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. The clear rule in South Carolina, set forth in the Rules of Evidence and echoed through the case law, is that medical records and bills must be shown to be clearly related to injuries sustained in the accident in order to come in as evidence at trial. This relating must come through medical testimony. Plaintiff is unqualified to offer testimony regarding the medical necessity of the treatment she received and the relatedness of said treatment to the subject accident. Without medical testimony or evidence, the jury will be left to "surmise, conjecture and speculation" when it comes to determine which treatment and bills relate to reasonable and necessary medical treatment and which may not be medically necessary.

Plaintiff did not provide any evidence at trial to causally link a number (if not the majority) of the enumerated medical expenses to the subject accident, or the medical necessity of this treatment, and the presentation of such unconnected medical bills to the jury was both misleading and prejudicial.[3] This is significant as Plaintiff did not call her own primary care physician at trial who would have testified that a number of these expenses were related to pre-

[3] Defendant has not attached the aforementioned bills based on HIPAA concerns, but can provide them for an *in camera review* at the Court's request.

existing medical issues. Instead, Plaintiff tried to use a new exhibit produced during the trial that contained unsubstantiated figures in order to bolster her damages.

II. **The medical expenses were not properly authenticated and lacked a proper foundation.**

The fundamental problem is that the figures and treating providers that appear in the exhibit, are inadmissible as hearsay under Rule 801(c), SCRE because they are statements from the medical providers offered by the Plaintiff to prove the treatment and the amount of the charges from these providers. Hearsay is excluded under Rule 802, SCRE unless some exception applies. The only two exceptions that might apply to these medical expenses are found in Rule 803(4) and (6), SCRE. Exception (4) does not apply to the present case because the records and the amounts of the bills were not used to diagnose or treat the Plaintiff. That exception would apply to medical records other than bills a doctor is referring to when testifying. Exception (6) does not apply because no "custodian or other qualified witness" has testified that these are the regular records for the respective business. *See* Fn. 2. Without this testimony, the business records have not been authenticated in a manner that allows them to overcome exclusion as hearsay.

Further, the medical records and bills have not been authenticated as required by Rules 901 and 902, SCRE. No records custodian or doctor has testified that the records and bills are correct and are regular records for the medical provider. Without the authentication required by the Rules of Evidence, the bills should have been excluded from the trial of this case. The Defendants had no opportunity to cross-examine these providers or records custodians, whoever they are, regarding the treatment that made up these expenses, how these treatments related to the subject accident, and a whole host of other questions that would have been asked of any treating physician and/or witness proffering such damages testimony.

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III. Arguments by Plaintiff's counsel regarding future damages and pain and suffering were both misleading and prejudicial.

The Plaintiff's actual damage award is defective and "merely grossly excessive" for other reasons as well. "[T]he existence or amount of damages may not be left to conjecture, speculation or guess." Pearson v. Bridges, 344 S.C. 366, 544 S.E.2d 617, 619 n. 5 (S.C. 2001). "Thus, when future injury is only merely possible, rather than probable, or where the amount is speculative rather than reasonably certain, the plaintiff cannot recover." 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc., 411 S.C. 466, 478, 769 S.E.2d 242, 249 (Ct. App. 2014) (citing 11 S.C. Jur. Damages § 5 (1992)). During closing arguments, Plaintiff's counsel stated that Dr. Jaskwhich opined to a reasonable degree of medical certainty that Plaintiff would require an ankle replacement in the future. This is in direct opposition to Dr. Jaskwhich's actual trial testimony, which is that while it was a "possibility" that Plaintiff could require an ankle replacement in the future, he could not say with any degree of certainty and it would be "just a guess."

The actual damage award is clearly "merely excessive" for yet another reason. During closing arguments, Plaintiff's counsel provided a number of "proposed" per diem sums to represent Plaintiff's present and future damages. The proposed per diem sum for Plaintiff's "present" damages, not including future damages, was approximately $2,500,000.00. By awarding the exact amount of Plaintiff's actual present damages contained in Plaintiff's closing arguments, it is clear that the jury did not award her future damages. Given that there was a finding of 49% negligence attributable to the Plaintiff and alleged medical expenses incurred of $223,225.47, it is clear that the amount of actual damages awarded by the jury is excessive. Based upon all of the evidence, the actual damages award is grossly excessive in light of the

evidence presented at trial and necessarily resulted from improper passion, prejudice, or other improper motive, entitling the Defendant to a new trial or reduction of the verdict.

CONCLUSION

As additional support for its Motion for a New Trial *Nisi Remittitur*, and in the interest of brevity, the Defendant incorporates his argument set forth in his Motion for a Judgment Notwithstanding the Verdict and his Motion for a New Trial Absolute, which are filed herewith. As these Memoranda demonstrate, various evidentiary rulings by the Court prejudiced and undermined the Defendant's defense in this matter and resulted in an excessive verdict against the clear weight of admissible evidence. As such, Defendant is entitled to a new trial *nisi remittitur* and so moves. For all of the aforementioned reasons, as well as the reasons set forth in their alternative Motions filed herewith, Defendant respectfully moves for a new trial *nisi remittitur* of the jury's actual damages award to the Plaintiff.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: Jackson H. Daniel III
JACKSON H. DANIEL, III
State Bar No.:70308

MADISON B. SUTTIE
State Bar No.: 101385

40 Calhoun Street, Suite 400
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Attorneys for USAA General Indemnity Company appearing pursuant to S.C. Code § 38-77-160 on behalf of Defendant

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
THERESE HOOD,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
ANTOINE JOHNSON,	)	
	)	
Defendant.	)	

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Kevin B. Smith, Esq.
Hoffman Law Firm
7087 Rivers Avenue
North Charleston, SC 29406
-and-
Roy T. Willey, IV, Esq.
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403

Attorneys for Plaintiff Therese Hood

This 21st day of September, 2017.

Anne Marie Tytlar
Legal Assistant to Jackson H. Daniel, III

Carlock, Copeland & Stair LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531

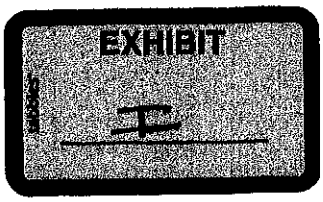
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ELECTRONICALLY FILED - 2017 Dec 12 8:24 AM - JASPER - COMMON PLEAS - CASE#2015CP2700119

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF JASPER	)	**CASE NO.: 2015-CP-27-00119**
	)	
THERESE HOOD,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	**ORDER**
	)	
ANTOINE JOHNSON,	)	
	)	
DEFENDANT	)	
	)	

THIS MATTER comes before the Court upon Post Trial Motions filed by USAA General Indemnity ("USAA") appearing on behalf of Defendant Antoine Johnson pursuant to S.C. Code of Laws Section 38-77-160. A hearing was held on October 13, 2017. Present at the hearing was Roy T. Willey, IV for the Plaintiff and, for USAA, attorney Jackson H. Daniel, III.

Having reviewed the Motions, Memoranda in support and opposition thereof, and having heard the arguments of counsel, the Court denied USAA's Motion for New Trial Absolute and / or Judgment Notwithstanding the Verdict as well as Defendant's Motion for New Trial *Nisi Remittitur* filed therewith. Subsequent to the hearing and prior to this Court's issuance of an Order denying the aforementioned post-trial motions, USAA, by letter, requested the Court to clarify its ruling as to USAA's Motion for New Trial Nisi Remittitur and the issues raised therein, specifically whether USAA should be entitled to set-off for Personal Injury Payments made by USAA to the Plaintiff and liability limits paid to the Plaintiff by Defendant Johnson's liability insurance carrier. These arguments, not discussed during the hearing, are now addressed below.



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USAA's Entitlement to Set-off for Personal Injury Protection

In its Motion for New Trial *Nisi Remittitur*, USAA claims entitlement to set-off in the amount of $50,000 from the verdict rendered in this case for Personal Injury Protection ("PIP")/MedPay coverage paid to the Plaintiff in connection with the subject accident. According to USAA, the Plaintiff received $50,000 in PIP benefits from USAA as payment for medical treatment related to the accident.

In support of their argument, USAA points to the Fourth Circuit's ruling in *Rowzie v. Allstate Ins. Co.* 556 F.3d 165, 166 (4th Cir. 2009). In *Rowzie*, the Plaintiff was involved in a motor vehicle accident with an underinsured motorist and received PIP benefits from her insurer. *Id.* The Plaintiff also sought to recover UIM benefits from her insurer, but the Court held, **based on express language in the policy**, Allstate was entitled to reduce the amount payable as UIM benefits by the amounts previously paid as PIP benefits to the Plaintiff. *Id.* (emphasis added). In *Rowzie*,, the policy provided for a reduction of underinsured motorist damages payable by amounts paid as PIP/MedPay benefits and found that such a provision does not violate either South Carolina Code § 38-77-144 or § 38-77-160. *Id.*

However, in the instant case, the language of USAA's policy differs from that in *Rowzie*. 556 F.3d 165, 166 (4th Cir. 2009). The policy in question does not set forth an entitlement to setoff as to PIP and therefore is not in the contemplation of the parties. Accordingly, USAA is not entitled to setoff for the $50,000 for PIP benefits paid to the Plaintiff. *Coakley v. Horace Mann Ins. Co.*, 376 S.C. 2, 5–6, 656 S.E.2d 17, 18–19 (2007) (per curiam) ("An insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law.").

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USAA's Entitlement to Set-off for Liability Limits Paid by the Defendant

Finally, USAA claims entitlement to set-off of the amount of $25,000.00 based on the settlement of Defendant Johnson's liability insurance carrier, GEICO. The $25,000 was the limit of Mr. Johnson's liability coverage. Contrary to the absence of a setoff provision under the PIP provision of the insurance agreement, the USAA policy in question states "amounts otherwise **payable for damages under UIM coverage shall be reduced** by all sums paid because of the BI or PD by or on behalf of persons or organizations who may be legally responsible. *See* Part C – Underinsured Motorists Coverage, Section E, 17 (emphasis added). In accordance with the terms of the insurance agreement, USAA is entitled to setoff in the amount of $25,000.00. *See also Cobb v. Benjamin,* 325 S.C. 573, 589, 482 S.E.2d 589, 597 (S.C. Ct. App. 1997) (UIM carrier is entitled to a credit for the full limits of liability coverage available to its insured).

CONCLUSION

For the reasons stated above, it is:

ORDERED USAA's post-trial motions for New Trial Absolute and/or Judgment Notwithstanding the Verdict and for New Trial *Nisi Remittitur* are DENIED;

ORDERED USAA is not entitled to setoff of PIP benefits; and

ORDERED USAA is entitled to setoff for liability limits paid for by GEICO on behalf of the Defendant.

IT IS SO ORDERED.

_____
Carmen Tevis Mullen
Presiding Circuit Court Judge

December _____, 2017
Ridgeland, South Carolina

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Jasper Common Pleas

Case Caption: Therese Hood VS Antoine Johnson , defendant, et al

Case Number: 2015CP2700119

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CASE NO.: 2015-CP-27-00119
	)	
Therese Hood,	)	
	)	
Plaintiff,	)	**SATISFACTION OF JUDGMENT**
v.	)	
	)	
Antoine Johnson,	)	
	)	
Defendant.	)	

COMES NOW, Plaintiff Therese Hood, by and through her attorney Kevin B. Smith, Esquire, and acknowledges the verdict and all costs and post-judgment interest awardable to the Plaintiff from Defendant as set forth in the Verdict rendered upon the 7th day of September, 2017, have been fully paid and satisfied. THEREFORE, Antoine Johnson, Defendant, is therefrom and henceforth, forever discharged. Such judgment is to be marked satisfied in its entirety. The Plaintiff and his counsel hereby authorize and direct the Clerk for the County of Jasper's Court of Common Pleas to enter the satisfaction of record of said judgment.

This 12 day of January, 2018.

Respectfully submitted,

HOFFMAN LAW FIRM, LLC

By: _____
KEVIN B. SMITH, ESQ.
State Bar No.: 70587

Attorney for the Plaintiff

7087 Rivers Avenue
North Charleston, SC 29406

EXHIBIT 1

IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON IN THE
COURT OF COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO: 2018-CP-10-0666

THERESE HOOD,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION (USAA),

Defendant.
_____/

DEPOSITION OF:

GAIL MARIE (MISSY) HOWARD

Examination of a Witness, beginning at 1:00 P.M. and concluding at 5:30 P.M. on Thursday, March 21, 2019, taken by the Plaintiff at Nelson, Mullins; 100 N. Tampa Street, Suite 3500; Tampa, Florida, before Roberta Turner, RPR, FPR, CLR, CCR (GA), Certified Court Reporter.

APPEARANCES:

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On behalf of the Plaintiff;

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I N D E X

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GAIL MARIE (MISSY) HOWARD

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THE WITNESS: Yes, I do.

GAIL MARIE (MISSY) HOWARD

called as a witness having been first duly sworn, was examined and deposed as follows:

DIRECT EXAMINATION

BY MR. WILLEY, IV:

Q Okay. So, Ms. Howard, your name is Gail Howard, correct?

A Yes, sir.

Q You go my Missy?

A Yes.

Q Would it be okay if I call you Missy?

A It's perfect.

Q Okay. Have you had your deposition taken before?

A No.

Q First time?

A Yes.

Q Okay. So let me go over some ground rules, okay.

This is not an endurance contest. This is not a, like you see on Suits or something on TV where, you know, I'm trying to beat you up or trick you into saying something. If you need a break at any time just say so, okay. We'll take breaks

whenever you need it, however long you need.

If you don't understand my question, ask me to rephrase it. Because if you do answer it, we're going to assume that you understood it, okay?

A Okay. Yes, sir.

Q And that's the other thing. Obviously, she's taking down everything that we're saying into a written record. So as we go through today, if you will just say yes or no, you can always explain your answer, but just give an audible response, all right?

A Yes.

Q If at any point we do take a break, now that the deposition has started, you're not allowed to discuss your testimony with Mr. Whelan. And if you have any questions about your testimony, you should direct those to me, okay?

A Yes.

Q All right.

MR. WILLEY, IV: Did I miss anything, Rob? Anything else? Did I miss anything?

MR. WHELAN: I don't understand your question.

MR. WILLEY, IV: Okay. All right. So anything I should be aware of since she

hasn't taken her deposition before?

MR. WHELAN: You ask her whatever questions you want to.

MR. WILLEY, IV: Okay. All right. Very good.

BY MR. WILLEY, IV:

Q You understand why we're here today, Ms. Howard?

A Yes.

Q Okay. And you understand generally what this case is about?

A Yes.

THE COURT REPORTER: Since this is a South Carolina case, any stipulations you want to put on the record?

MR. WHELAN: We just follow the South Carolina Rules of Civil Procedure.

MR. WILLEY, IV: Right. We follow South Carolina Rules of Civil Procedure.

I will put on the record that we have agreed that for the depositions this week, we're just going to mark one set of exhibits. So we'll share those when we get to them.

BY MR. WILLEY, IV:

Q What is your understanding of what this case is about?

MR. WHELAN: Object to the form.

You can answer.

Q And let me say that too, before, and you can think about it.

During the course of the deposition, he may make objections to some of the things that I ask. And, basically, it's an objection to the form. And, so what he's saying is he doesn't like the way I asked the question, or he thinks the form of my question is improper.

But you will still go ahead and answer that. He's just preserving that for the record so that when we get later into a court case, that objection shows up on the record for the judge, okay?

A Okay, yes.

Q All right. And, again, I'm not trying to trick you with anything. So if you don't understand my question, you ask me to rephrase it and I will be glad to do so. So let me ask it again.

What do you understand this lawsuit to be

about?

A I'm not sure exactly, a hundred percent sure. I didn't handle that much of the file. And certainly I didn't handle it, really, I didn't handle any of this claim. So there were some issues with coming to a resolution of the underinsured motorist claim, is just what I understand.

Q Okay. And how did you come to that understanding? How do you know what you know about this particular lawsuit?

A Just meeting with USAA attorney.

Q Okay. With Mr. Whelan?

A Yes.

Q Okay. Have you ever been provided any documents or any e-mails about this lawsuit in advance of today?

MR. WHELAN: You talking about outside of meeting with me?

MR. WILLEY, IV: Just been provided with documents.

A That I have in my possession?

Q No. Just at some point prior to today, have you been provided with any documents concerning this lawsuit?

A To look at?
Q To look at, to read, to take home.
A Yes.
Q Okay. And when were you provided with those documents?
A Yesterday and Tuesday.
Q Okay. So Tuesday and Wednesday of this week?
A Yes.
Q All right. How were you provided those documents?
A I was shown those documents.
Q Okay. In an in-person meeting?
A Yes.
Q Okay. Was that meeting with Mr. Whelan?
A Yes.
Q Okay. How long did those meetings last?
A Couple of hours; two hours each day, maybe.
Q During those meetings, did you review anything other than documents?
A No.
Q Have you had the opportunity at any point to review the claims file in the underlying case that's the subject of this lawsuit?

MR. WHELAN: You talking about the U.I.M. file?

MR. WILLEY, IV: Right.

A Have I reviewed the U.I.M. file?

Q Right.

A I only, I've looked or been in it when I initially set it up.

Q Okay. When you met with Mr. Whelan on Tuesday and Wednesday of this week, was anyone else present?

A In the room?

Q Yes.

A No, sir.

Q Okay. Was there anyone on the phone or video conference?

A No, sir.

Q Okay. Have you met with anyone, other than Mr. Whelan about this lawsuit?

A No, sir.

Q Have you ever been involved in a meeting at USAA about this lawsuit?

A Other than with Robbie?

Q Other than with Robbie, right.

A No.

Q Okay. Have you ever been in a meeting

with Robbie where anyone else was present or participating via phone or video conference?

A No.

Q How long have you been at USAA?

A Two years October of -- This past October was twenty years.

Q Okay. All right. Do you agree with the general statement that USAA should not take factual liability positions solely to protect its money?

MR. WHELAN: Object to the form.

A I don't really understand the question.

Q All right. Let me back up, let me back up.

Do you agree that the purpose of civil litigation is a search for the truth of what actually happened?

MR. WHELAN: Object to the form.

A I'm not sure that I'm qualified to answer that. I don't -- I'm not an attorney, so.

Q Okay. You spent twenty years at USAA --

A Uh-huh.

THE COURT REPORTER: Yes?

A Yes. Yes, ma'am. I'm sorry.

Q I'll try to be better about reminding you. I know in the course of conversation it's not

natural to always have to give an audible response.
-- handling civil litigation claims, right?
A Yes.
Q Okay. And --
A Well --
Q Go ahead.
A Let me rephrase. Let me go back to that.
Q Sure.
A My claims are presuit.
Q Right.
A So I handle presuit --
Q You handle --
A -- claims.
Q You handle presuit claims that are part of the civil process, right?
MR. WHELAN: Object to the form.
Make sure that he finishes his question before you answer.
I object to that question.
Q You handle insurance claims prior to a lawsuit actually being filed, correct?
A Yes, sir.
Q Okay. Have you ever handled or participated in claims after a lawsuit was filed,

in your career?

A Yes. If I can explain the reason.

Q Yeah, of course.

A That would be that there was not going to actually -- Maybe there was a statute running and that they filed just to protect that. And we were just to -- So that was just a technicality, I guess. So, really, and therefore, I was just continuing up my normal negotiations ongoing with that. That would be the only reason.

Q All right. Does USAA provide training? Did you get training about how to handle insurance, automobile insurance claims?

A When I first started working at USAA?

Q Yes.

A Yes, sir, I did.

Q Okay. And have you had subsequent training in the years that followed, or did you just get one dose, and that's it?

A No. We -- Yes. We have additional training, ongoing training.

Q Does part of that training include that in the adjustment of automobile insurance claims, you should try to find out what actually occurred?

A Yes. That's the investigation piece of

it, the claim.

Q And in the investigation piece of a claim at USAA, is the purpose supposed to be to find out the truth about what happened, or is the purpose supposed to be to come up with a theory, a factual theory that helps protect the insurance company's money?

A The purpose of the investigation is to determine the best we can what actually happened with the evidence provided or obtained in that investigation.

Q So would you agree with me that it would be against USAA's policy for an insurance adjuster or a claims' handler to attempt to create or twist the facts in order to create a version other than the truth in their investigation of underwriting?

A Just to clarify what you're asking.

Is it against USAA's practice to create our own, create facts or come up with facts on our own?

Q Right.

A Yes. We don't do that. That's not -- USAA does not do that.

Q Right. So would you agree with me then that it would be against USAA's policy for

individuals at its company to take different factual positions related to the same wreck in order to protect its money?

MR. WHELAN: Objection.

A Well, I wouldn't agree with what you're saying, is that it has -- During our investigation it doesn't have anything to do with protecting USAA's money. We have to look at the facts for each case on a case-by-case basis for what we're provided and what we're given.

And when looking at that, what we can successfully, or what we can prove based on the information provided at that time.

Q Right. And I think we're in agreement. USAA's purpose is to protect its insureds, right?

A Yes.

MR. WHELAN: Object to form.

A Yeah, yes.

Q That's what you're trained at USAA, that your job as a claims handler is to protect the insured?

A That is part of our, that is part of what we mean -- That's part of what we do as an adjuster.

Q Right. And you agree with me that if USAA took two different factual positions related to the same wreck in order to protect its money, that would be against USAA's policy, right?

A I don't agree with that, what you're saying.

Q Okay.

A 'Cause I don't believe that that, the protecting USAA's money, that's not what, that's not what's coming into play. We're looking at each accident and each circumstance as it is and handling each claim.

If you want to give me a more specific case, then I can answer that maybe a little better. But we have to handle each claim on a case-by-case basis, and the facts that we're looking at at that time.

Q All right. And sometimes multiple adjusters at USAA investigate the same wreck, right?

A That can happen, yes.

Q Okay. And in any given wreck there can only be one set of true facts; would you agree with that?

MR. WHELAN: Object to form.

A Obviously, there are only one set of true facts. If you're able to obtain those, the true facts, yes.

Q All right. I mean, in any given car wreck it only happened one way, right? Whether or not you can obtain the facts, it only happened one way?

A That is correct. If you can obtain that information.

Q Right. So it would be impossible then, would you agree with me, for there to be two sets of different facts representing the truth that arise out of the same wreck?

MR. WHELAN: Object to the form.

Q In other words -- Let me try to make it clear.

If I investigate a wreck and I say the person ran a stop sign, and the adjuster next to me investigates the wreck and says the person didn't run the stop sign, one of us is wrong, right?

A Correct. But, again, it's going to be a case-by-case basis, based on what information each person has.

Q I agree, I agree. There is no disagreement here about that.

But either I made a mistake in my

investigation in determining that the individual ran the stop sign, or adjuster-B made a mistake in their investigation in determining that the individual did not run the stop sign, right?

A Not necessarily.

Q All right. Explain.

A Maybe one of the other of the two adjusters had additional information that the other one didn't have.

Q Okay.

A That, you know, led to the one decision versus the other decision.

Q All right. If they both had identical information, would you agree that one of them would have had to have made a mistake in analyzing the information?

A Would I agree that they made a mistake. Not necessarily. But is it a possibility; certainly.

Q What are the different ways, in your mind, that the wrong adjuster, the adjuster whose investigation led to the wrong conclusion could have arrived there, if they didn't make a mistake?

MR. WHELAN: Object to the form.

A Again, I will go to say that, you know, I

handle and have handled a lot of claims, in my experience with, you know, over the twenty years of time. And with each case, everyone is different and everything you have to look at is different. So it makes it hard to make an assumption of what somebody might or might not have done incorrectly, based on given the information that they were given.

Do you have anything specific that you can --

Q No. I'm just trying to figure out from you how you would explain two adjusters having the same set of facts arriving at different factual conclusions without one making a mistake.

MR. WHELAN: Asked and answered.

A Again, there's just so many factors that go into investigating and things that you have to consider and look at.

Q How many claims do you oversee at any given time? Right now how many claims are you handling?

A My current pending right now is approximately a hundred and twenty.

Q Okay. And is that, is that average for you?

A Yes, sir.

Q Okay. Is that average for other claims' handlers of your experience at USAA?

A I would say about in that range, yes, uh-huh.

Q They all auto claims?

A The majority are auto, but I also handle homeowner liability.

Q Okay. How many of those would you say you have of the hundred twenty?

A I would be guessing. Maybe a quarter of that.

Q Okay. And is that pretty typical, you know, usually about three-quarters auto?

A Yes.

Q Do you always handle the liability and auto claims, or do you sometimes handle other coverages?

A Just because I'm not sure exactly which coverages, I'll just let you know what I do handle.

Q Perfect.

A Comp, collision.

Q Sorry. What was the first one?

A Comprehensive.

Q Okay.

A That, you know, sometimes that does come into play; B.I., P.D., U.M.

Our first-party coverage, which we refer to like PIP or med pay. We have those specific department for that.

Q Okay. And you said U.M., which here does that --

A U.I.M.

Q U.I.M.

A U.M. or U.I.M. I handle both those. I apologize.

Q Okay. Sometimes when you go to different states, they look like --

A So that's because --

Q -- three heads.

A Yes.

Q Okay. At USAA, what is the, what is the structure? Who do you report to?

A I have a direct manager.

Q Okay. Who is that person?

A Currently her name is Lisa Mitchell.

Q All right. How long has she been your manager?

A I would say approximately two years, at the most.