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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 6

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1 MR. WILLEY: I'm fine.

2 THE WITNESS: You're fine?

3 A. No, I think I'm okay.

4 Q. If you have any doubt about it, let's
5 just take a break. This isn't a race; it's not a
6 contest. I want you to be comfortable. Okay?

7 A. Okay.

8 Q. Do you want to take a break?

9 A. Yeah.

10 MR. WHELAN: Okay. Let's go off the
11 record.

12 THE VIDEOGRAPHER: Off the record at
13 10:54.

14 (The deposition went off the record.)

15 THE VIDEOGRAPHER: This is media No. 2
16 in the deposition of Therese Hood. We're on
17 the record at 11:03.

18 BY MR. WHELAN:

19 Q. Okay, Ms. Hood. We took a short break.
20 Are you ready to keep going?

21 A. Yeah. I'm just in pain right now. I've
22 just got to work this out here, I think.

23 Q. Okay. Well, let's just take a break and
24 -- what is bothering you?

25 A. My leg.

1 MR. WHELAN: Okay. We'll take a break
2 and let you work that out.

3 THE VIDEOGRAPHER: Off the record at
4 11:03.

5 (The deposition went off the record.)

6 THE VIDEOGRAPHER: On the record at
7 11:04.

8 BY MR. WHELAN:

9 Q. Okay. So, Ms. Hood, you just had a leg
10 spasm. Are you feeling good to go?

11 A. I'm okay.

12 Q. Okay. And like I said, we're here to
13 make you comfortable, and I want your best
14 testimony today. If there's any reason that you
15 can't give it, let us know and we will find a way
16 to either make you more comfortable, or we'll just
17 come back another time. Okay?

18 A. Okay.

19 Q. Thank you. Um, now, we were talking, I
20 think, about what you -- what you described as
21 USAA choosing sides. And, basically, that
22 concerns the expert opinion, right, concerning the
23 lights on? Is that what you're talking about?

24 A. Um, yes.

25 Q. And the expert was a Mr. Woody Poplin,

1 who went and looked at your car and your light
2 assembly?

3 A. I -- I never was told who it was.

4 Q. Okay. What were you told?

5 MR. WILLEY: I'm going to object. So
6 you --

7 Q. Well, let me ask you this: Can you tell
8 me -- were you told anything by anyone other than
9 your attorneys?

10 A. No.

11 Q. Okay. Do you know what Mr. Poplin said?

12 MR. WILLEY: So -- just so I'm on the
13 record and you know, anything that you were
14 told by your attorneys, you should not testify
15 to. Okay? So if someone else told you, it's
16 fine. But if you only got the information
17 from your attorneys, you should just say that.

18 MR. WHELAN: Well, I'm not sure that's
19 correct. Let -- if you need to instruct her
20 not to answer, that's fine. But I'm just
21 trying -- I need to get to the bottom of this
22 whole expert issue.

23 BY MR. WHELAN:

24 Q. So did you ever read Mr. Poplin's
25 report?

1 A. No, sir.

2 Q. Did you ever meet Mr. Poplin?

3 A. No, sir.

4 Q. Did you ever talk to Mr. Poplin?

5 A. No, sir.

6 Q. Um, do you know what it was that Mr.
7 Poplin did?

8 A. It's attorney privilege --
9 attorney-client privilege.

10 Q. But my question, ma'am, is, do you know
11 what he actually did?

12 A. Yes.

13 Q. Okay. What is it that he did?

14 A. What I was told he did was to
15 investigate -- investigate the accident, and
16 specifically the mechanics that caused the
17 accident, which, in this case, were the lights.

18 Q. Okay. Do you know how he did that
19 investigation?

20 A. No, sir.

21 Q. Do you know what his findings were?

22 A. Uh, I was told that the findings were
23 based on the Kucks' case, that my high lights --
24 my high beams were on.

25 Q. Now, prior to that, had you ever thought

1 that your high beams were on in the accident?

2 A. I knew my lights were on.

3 Q. Right.

4 A. I didn't know which part of my -- I knew
5 they were going to find my lights on.

6 Q. Right.

7 A. But I didn't know which part they would
8 find.

9 Q. Right. And --

10 A. And this is after the accident.

11 Q. Sure. But you do not recall turning --
12 having your high beams on on 278?

13 A. I don't recall.

14 Q. All right. And so when you were told he
15 found your high beams were on, that was a surprise
16 to you; true?

17 MR. WILLEY: Object to the form.

18 A. Um, he didn't say anything. My
19 attorney --

20 Q. Right.

21 A. -- said something.

22 Q. But when you were told that your high
23 beams were on, that was a surprise to you --

24 MR. WILLEY: I'm going to object to the
25 form.

1 Q. -- fair?

2 A. No, not really. Because I knew my
3 lights were on. It didn't matter which ones were
4 on. I knew lights were on. And the whole case
5 was based on my lights being on or off. So it
6 didn't matter if it was high beams or lights are
7 on -- you know, daytime running lights. But I
8 don't use daytime running lights. I don't -- you
9 know, I don't touch that thing. So -- but I knew
10 my lights were on and he should have seen me.

11 Q. So before you were told that Mr. Poplin
12 found your high beams on, you had no idea that
13 your high beams were on, although you knew your
14 low beams were on; is that fair?

15 MR. WILLEY: Object to the form.

16 A. What does that mean?

17 Q. It does not -- it's nothing you need to
18 worry about.

19 A. Oh. What was the question?

20 Q. So before you heard what Mr. Poplin
21 found, you knew that your low beams were on,
22 correct?

23 A. Right.

24 Q. You did not have any information that
25 your high beams were on at that point, correct?

1 MR. WILLEY: Object to the form.

2 A. No.

3 Q. Okay. Why not?

4 A. Why?

5 Q. Yes, ma'am. What information did you
6 have that your high beams were on before you were
7 told what Mr. Poplin found?

8 MR. WILLEY: Object to the form.

9 A. None.

10 Q. So before you were told what Mr. Poplin
11 found, you had no information that your high beams
12 were on; true?

13 MR. WILLEY: Object to the form.

14 A. Yes.

15 Q. Okay. Now, did you believe that Mr.
16 Poplin's finding was beyond dispute?

17 A. I relied on my attorney for all that
18 information.

19 Q. Did you understand, then, that there was
20 no doubt whatsoever, based on what Mr. Poplin
21 found, that your high beams were on?

22 A. No, sir.

23 Q. Okay. Did you believe that anyone who
24 saw or heard Mr. Poplin's opinion would have to
25 find that you had zero percent fault in causing

1 the accident?

2 MR. WILLEY: Object to the form.

3 A. Yeah. I'd never seen him; I'd never
4 heard (sic) him. I don't know who he's talked to.
5 I don't know anything about that.

6 Q. Okay. So, obviously, people can say
7 things.

8 A. Correct.

9 Q. And things they say aren't always true,
10 right?

11 A. That's true.

12 Q. And sometimes somebody can say
13 something, and it's a hundred percent certain.
14 For example, I could say the sun rose in the east
15 this morning, right?

16 A. Okay.

17 Q. And sometimes some people can say things
18 and it's not a hundred percent certain; like when
19 the weather guy says, it's going to rain today,
20 right?

21 A. Right. But this was your own
22 professional expert that you -- that USAA hired to
23 find that information. So -- and he's got that in
24 a statement. So that alone is proof that he
25 believes in his own words and that -- you know,

1 who are we to judge the expert?

2 Q. Well, putting aside who hired him, ma'am

3 --

4 A. Oh. Oh, okay.

5 Q. If we can do that, this is what I'd like

6 to focus on. You know, we just talked about

7 there's a -- some sort of scale between no

8 certainty and complete certainty, right?

9 A. Okay.

10 Q. Do you know where on that scale Mr.

11 Poplin's opinion fit?

12 A. No, sir.

13 Q. Did you believe that it was 100 -- if

14 Mr. Poplin said it, it was 100 percent true?

15 A. I didn't have an opinion.

16 Q. Um, did you believe that -- do you

17 believe today that since Mr. Poplin said it, it's

18 100 percent true?

19 A. I believe what I'm told, basically.

20 Because everybody has the information. I just

21 have to rely on the information I receive.

22 Q. From your attorneys?

23 A. Yes.

24 Q. Now, my question, though, is, do you

25 believe today that because Mr. Poplin said it,

1 it's a hundred percent true?

2 MR. WILLEY: Object to the form.

3 A. Back step.

4 Q. Sure.

5 A. I was told that he was going to be here
6 to the deposition and be able to testify at some
7 point.

8 Q. That Mr. Poplin would?

9 A. Yes.

10 Q. Okay.

11 A. But why would USAA question their own
12 expert?

13 Q. Well, ma'am, I'm just trying to answer
14 this question, which is, do you believe today that
15 because Mr. Poplin said your high beams were on,
16 it's a hundred percent true that your high beams
17 were on?

18 MR. WILLEY: Object to the form.

19 A. I believe so.

20 Q. And you do you base that on anything
21 other than what your attorneys have told you?

22 MR. WILLEY: Object to the form.

23 A. (Inaudible.)

24 Q. I'm sorry?

25 A. I said, I don't believe so.

1 Q. Okay. And you believe that anybody who
2 heard Mr. Poplin say that, that your high beams
3 were on, would conclude that your lights were on
4 and that you weren't at fault; is that fair?

5 A. Yes.

6 Q. Okay. Explain to the jury why you did
7 not call Mr. Poplin to testify at trial in this
8 case.

9 MR. WILLEY: I object to the form.

10 A. That was my attorney. And that has
11 nothing to do with this case, I don't believe.

12 Q. Well, you know, you went to the trial in
13 the underlying case?

14 A. Right.

15 Q. And that was about what caused the
16 wreck, right?

17 A. Right.

18 Q. And you did not call Mr. Poplin to
19 testify, correct?

20 A. My attorneys handled that.

21 Q. Okay. Well, they're working for you,
22 right?

23 A. Right.

24 Q. But did they talk to you about what
25 would happen and what wouldn't?

1 MR. WILLEY: And she's not going to
2 testify to anything that we discussed with her
3 about witnesses to call or not to call.

4 MR. WHELAN: You can instruct her not to
5 answer.

6 MR. WILLEY: Well, I am instructing --
7 that's why I'm instructing her not to answer
8 anything about --

9 MR. WHELAN: Just focus on the question
10 I asked, please.

11 MR. WILLEY: -- what we told her
12 respecting trial strategy or what witnesses we
13 were going to call or not call. It's
14 perfectly acceptable to ask her why she made
15 that decision. She's already told you that
16 her attorneys decided that, not her.

17 MR. WHELAN: Okay.

18 BY MR. WHELAN:

19 Q. And why didn't you read Mr. Poplin's
20 deposition to the jury?

21 A. Again, I didn't know there was one.

22 Q. Okay. Did you leave that up to your
23 attorneys?

24 A. Yes.

25 Q. But you believe that if the jury had

1 heard Mr. Poplin, they would have found you to be
2 zero percent at fault, correct?

3 A. Um, they should have.

4 Q. Right.

5 A. But -- no.

6 Q. Have you ever asked -- well, I was going
7 to say, have you ever asked your attorneys why
8 they didn't -- let me ask you: Have you ever
9 asked your attorneys why they didn't call Mr.
10 Poplin?

11 MR. WILLEY: And for purposes of this
12 question, you can say, Yes, I have, or, No, I
13 haven't, but don't get into the substance of
14 anything that we would have told you. Okay?

15 A. Um, no. There was -- at my attorney
16 (sic), a witness that was a Judge that was behind
17 me, and he had his lights on. He has those neon
18 lights, and he could see my lights and he could
19 see Antoine.

20 Q. Now, it's -- you're suing USAA because
21 they had this report of Mr. Poplin, right?

22 MR. WILLEY: Object to the form.

23 A. No. I'm suing USAA because USAA lied to
24 me and, um, I don't know why USAA is playing these
25 games with, you know, information that is or is

1 not, since it's all in the case, and why they keep
2 insisting that my lights were off to protect their
3 interest, and I believe I was wronged by that.

4 Q. Well, don't you believe that when USAA
5 got Mr. Poplin's report, that at that point they
6 should have realized you had no fault and paid you
7 the money?

8 A. Yes.

9 Q. All right. But you cannot explain why
10 you did not have the jury hear from Mr. Poplin?

11 MR. WILLEY: Object to the form.

12 A. No.

13 Q. Um, what settlement negotiations
14 occurred between you and USAA before the trial?

15 A. Before the trial? The settlement was
16 the personal injury.

17 Q. Well, I'm actually talking about the --
18 well, yes. But I'm talking about in the context
19 of the underinsured motorist coverage.

20 MR. WILLEY: Are you asking about any
21 negotiations she personally had? Because
22 she's already told you she didn't talk to USAA
23 after the lawsuit was filed personally.

24 BY MR. WHELAN:

25 Q. Well, let me back up a second. Do you

1 know what Underinsured Motorist Coverage is?

2 A. Yes. It's to cover the person that hits
3 you if they don't have enough insurance.

4 Q. Okay. Um, and did -- you went to trial,
5 and a jury determined the damages that Mr. Johnson
6 owed you, right?

7 A. Right.

8 Q. You understand that's what that trial
9 was about?

10 A. Yes.

11 Q. And then did you know that the policy
12 covers damages that Mr. Johnson is legally
13 obligated to pay you?

14 MR. WILLEY: I object to the form.

15 A. Yes.

16 Q. And Mr. Johnson was not -- did not --
17 Mr. Johnson was not legally obligated to pay you
18 any money before the trial ended, was he?

19 MR. WILLEY: Object to the form.

20 A. I don't know.

21 Q. Okay. Now, before you tried the case,
22 do you know whether any settlement negotiations
23 occurred between you, through your attorneys, and
24 USAA concerning the Underinsured Motorist
25 Coverage?

1 A. I don't recall.

2 Q. Okay. Do you recall USAA ever offering
3 you any money under the Underinsured Motorist
4 Coverage?

5 A. I don't recall.

6 Q. Okay. Do you recall you, through your
7 attorneys, ever telling USAA that you wanted a
8 certain amount of money from USAA for the UIM
9 coverage?

10 A. No.

11 Q. Can you speak at all to whether there
12 were any negotiations between you and USAA before
13 the trial?

14 A. There was none.

15 Q. And what did you do with -- I'm just
16 looking at Exhibit 2, I think, which is the check.
17 So there's a check for a million dollars and then
18 about \$24,000 in interest.

19 A. Right.

20 Q. And that looks like it was dated
21 December 21st of 2017.

22 A. Right. And the case had been solved
23 September the 7th.

24 THE COURT REPORTER: I'm sorry?

25 A. The case had -- the court case had been

1 solved, I believe, September 7th. I believe. Or
2 right around there. And so the fact that USAA
3 hadn't paid me, they accrued the interest and the
4 interest they had to pay me, and that was their
5 fault. Because they should have paid me a long
6 time before then; then they wouldn't have incurred
7 the cost. And that went towards defraying the
8 costs of my additional attorneys, video settings,
9 all the additional things I needed at the trial
10 that I would not have had needed had USAA paid in
11 a timely manner.

12 Q. Um, and what did you do with the money?

13 MR. WILLEY: I'm going to object to the
14 form.

15 A. Yeah. I don't think this has nothing to
16 do with the case, what I did with the money.

17 Q. What did you do with it? Do you know?

18 A. Yes, I know. I just told you that more
19 than half of it went towards attorney fees,
20 documentation they had to have, witnesses.

21 Q. Okay. So let's see. That a
22 million-23,993. So how much of that did you
23 actually get? Was it less than 500,000?

24 A. It was right at 500,000 -- \$500,002.

25 Q. Oh, wow. Okay. And so where did the

1 rest of the money go?

2 A. I used it -- part of it again to pay
3 some of the bills I had incurred.. I paid off my
4 vehicles. I had to have continued medical
5 support. I eventually -- I had to have surgery
6 for my back. And so a lot of it went towards
7 medical or paying bills; like paying off my new
8 vehicle that's insured through USAA and my
9 husband's and, um -- and I gave some to my
10 daughter.

11 Q. That's nice.

12 A. That's it.

13 Q. Were you able to save any?

14 A. Yes. And we put that in a savings
15 account --

16 Q. Okay.

17 A. -- um, for an investment.

18 Q. And is it in an investment -- I know
19 these are personal questions; and I'm sorry. Is
20 it in an investment account or like a bank savings
21 account?

22 A. No. An investment account.

23 Q. Okay. And how much were you able to
24 save of that 500,000?

25 A. Around 200,000.

1 Q. And how much were you able to give your
2 daughter?

3 A. 25. I just gave her 25.

4 Q. Okay. And do you know how much went to
5 pay for medical treatment?

6 A. I'm -- I'm not exactly sure. I recently
7 had -- based on the accident, I recently had to
8 have spinal surgery. I did that like just about
9 four months ago.

10 Q. Okay.

11 A. So I'm still -- my spine is still
12 recovering. And I've had to have continued
13 medical for my neck before the spinal surgery and
14 for my leg. And I, you know, continue -- as the
15 doctors said, I would have issues and be needing
16 medical care for the rest of my life. And that's
17 where the money -- the 200,000 is going to go
18 towards my spinal surgery, which was close to a
19 hundred thousand.

20 Q. Wow. And how much are you going to have
21 to come out-of-pocket for that?

22 A. Um, it hasn't been approved by TRICARE
23 yet. And Medicare didn't acknowledge the surgery
24 because I had the option of getting -- what do you
25 call those? -- epidurals that numb something,

1 every three months. And that was not an option I
2 wanted to entertain, so I elected the surgery.

3 Q. So your insurance claim is pending?

4 A. Well, Medicare won't pay for it. And so
5 TRICARE is paying for it. But, meanwhile, I have
6 to pay in advance, because, you know, they want
7 their money. It's been four months. So...

8 Q. And how much was that?

9 A. 114,000.

10 Q. Wow. So you had to pay \$114,000?

11 A. The surgery was five and a half hours.
12 And they -- two of my discs had collapsed where
13 they had fractured before during the accident.
14 And they had to take a bone from my hip and then
15 go through my throat, which has a scar and, um,
16 put a titanium plate, fuse it with the bone, and
17 use a nerve specialist who ensured that the nerves
18 that were being damaged, you know, wouldn't be
19 damaged. So that was probably, you know, a lot of
20 the cost. But, um, I was in the hospital for
21 three days and, um, then I went home with a brace.
22 And for six weeks I couldn't turn my head this way
23 or that way. And at my three-month visit, which
24 was three weeks ago, I could start bending my head
25 back a little bit and a little bit down. Other

1 than that, the motion still has to heal. So they
2 gave me a fuse -- fusion neck brace that you wear.
3 It has a magnetic plate in the front and it, I
4 guess, produces enough energy to fuse the bone to
5 the titanium plate, and I have to wear that four
6 hours a day.

7 Q. Okay. So you had to put 114 down on
8 that?

9 A. Right.

10 Q. And you're hoping that TRICARE pays it
11 back?

12 A. Right.

13 Q. And are you suing USAA for the \$500,000
14 that went to your attorneys and the costs?

15 MR. WILLEY: Object to the form.

16 A. No.

17 Q. Okay. So the -- let me ask you, then,
18 how you were damaged by USAA. Is it basically
19 that you should have got the million sooner than
20 you got it?

21 MR. WILLEY: I object to the form.

22 A. I think so, because I could have had the
23 interest from -- as soon as it was disclosed that
24 I was not at fault, and then that amount would
25 have accrued interest over the years.

1 Q. Uh-huh.

2 A. And I've already mentioned the other
3 things that were -- that had affected me.

4 Q. The mental anguish?

5 A. Yes.

6 Q. And I'll -- we'll get to that. But just
7 from a financial standpoint --

8 A. Oh.

9 Q. -- are you seeking anything -- putting
10 the mental anguish aside, besides the interest on
11 not receiving the million dollars sooner?

12 A. I left that up to my attorneys.

13 Q. But are you aware of any other way that
14 you've been damaged financially?

15 A. Financially, no.

16 Q. Okay. Now, you --

17 MR. WHELAN: Are you writing notes over
18 there?

19 MR. WILLEY: Don't look at mine. No;
20 don't look at mine.

21 A. Oh, I haven't been looking at -- I'm
22 looking at this thing.

23 Q. Yeah, I just noticed that too. Um --

24 A. I couldn't see -- I need glasses for
25 close up, so...

1 Q. All right.

2 MR. WILLEY: I'm taking notes just like
3 Mr. Whelan is taking notes.

4 MR. WHELAN: Mine are in a different
5 location.

6 Q. Now, um --

7 A. Oh.

8 Q. -- the -- would you have ever accepted
9 less than a million dollars to settle your claim?

10 MR. WILLEY: Object to the form.

11 A. Um, I don't know. I mean, it was never
12 offered to me. USAA contested every opportunity
13 we gave them to work out something before going to
14 trial, and I guess USAA was confident they would
15 win at trial, so they weren't willing players.

16 Q. Okay. Um, do -- did you ever ask them
17 for any amount less than a million dollars, to
18 your knowledge?

19 A. To my knowledge, no.

20 Q. Okay. Were you present at the mediation
21 in the underlying case? That's when the parties
22 get together and negotiate.

23 A. At the very beginning?

24 Q. I am --

25 A. I believe, from what I know, there was

1 only one mediation, and that was at the very
2 beginning. And Mr. Daniels had the offer of
3 \$2,000, and he wouldn't go any higher.

4 Q. And what was your -- what was your
5 offer, if you remember?

6 A. Oh, I don't know. We definitely were
7 shocked by \$2,000, since I had over \$200,000 worth
8 of medical bills. But we just didn't negotiate.
9 You know, that was unacceptable.

10 Q. Do you recall demanding \$650,000 from
11 USAA?

12 A. My attorney handled that part. I don't
13 -- I don't know what the amount was.

14 Q. So you left the amounts up to your
15 attorneys?

16 A. Yes.

17 Q. Okay. And are you aware of any
18 settlement offer made by USAA other than \$2,000?

19 A. No, sir.

20 Q. And just to be clear, we're not talking
21 about -- we're talking about 2,000, not 20,000,
22 not 200,000?

23 A. No. 2,000.

24 Q. Okay. Um, did you go --

25 A. Crazily.

1 Q. Did you go to any of the focus groups
2 that your attorneys did in the case?

3 A. No.

4 Q. You didn't? Um, what were the -- were
5 amounts discussed at the focus groups?

6 MR. WILLEY: Object to the form.

7 A. I don't know.

8 Q. Do you have any knowledge of the -- do
9 you know how many focus groups there were?

10 A. No, sir.

11 Q. You know there were more than one,
12 right?

13 A. Yes. I believe so.

14 Q. They had them at the library in
15 Ridgeland, right?

16 A. I have no idea where they took place.

17 Q. Okay. And do you know what the jury's
18 -- or the focus groups that you guys presented
19 your evidence to, do you know what they determined
20 they thought the case was worth?

21 A. I wasn't there. I had no idea. I mean,
22 my attorney said he was going to hold focus
23 groups. I don't know how many. I didn't know
24 where. I don't know what was discussed. I have
25 no knowledge.

1 Q. Do you know whether those groups were
2 told that your lights were on or off?

3 A. I have no idea, sir. I wasn't --

4 Q. Do you know whether -- do you know
5 whether they were shown the Poplin report?

6 A. I have no idea.

7 Q. Do you know whether they found any fault
8 on your behalf?

9 A. Again, sir, I have no idea.

10 Q. Okay. Now, did you talk to any jurors
11 after the trial?

12 A. No, sir.

13 Q. Did any approach you after the trial?

14 A. No, sir.

15 Q. All right. Are you aware of anything
16 that any juror said after the trial?

17 A. After the trial?

18 Q. Yes, ma'am.

19 A. No. I was -- the end was the end --

20 Q. Okay.

21 A. -- is how I saw it.

22 Q. And -- all right. Well, the reason I'm
23 asking is, there's a -- this is something that was
24 filed in this case.

25 MR. WHELAN: I guess we can mark it as

1 an exhibit.

2 Q. Well, I'm just going to show you. On
3 page 12 of this --

4 MR. WILLEY: Are we marking it? What is
5 it?

6 MR. WHELAN: I'm going to hand you a
7 copy of it, Roy.

8 MR. WILLEY: Oh, I probably have it. Is
9 this the memo --

10 MR. WHELAN: Yeah.

11 MR. WILLEY: -- in opposition? Okay. I
12 have it.

13 BY MR. WHELAN:

14 Q. Yeah. So on page 12 of this memo,
15 ma'am, it said -- it says, After the trial, it was
16 made clear by a juror, who approached Plaintiff
17 after the verdict had been entered and the jury
18 excused, that Plaintiff's comparative negligence,
19 which was a benefit to Defendant USAA, was
20 assigned due to Defendant USAA's continually
21 alluding to or referencing Plaintiff's headlamps
22 throughout the trial, despite the trial Court's
23 instruction to refrain from such assertions or
24 allusions?

25 A. I don't remember talking to anybody

1 except Roy and Kevin when I walked out. And as
2 soon as it was over, I went to thank the Judge for
3 having done such a good job. But that person may
4 have talked to somebody else other than me. I
5 didn't talk to Mr. Johnson. I know we went
6 outside for a group picture. But I don't recall
7 anyone approaching me to talk about the amount
8 or --

9 Q. Okay.

10 A. -- you know, who was at fault or -- I
11 thought that was already decided by the 49, 51
12 percent rule.

13 Q. Okay. Is it possible that you'd just
14 forgotten that a juror approached you?

15 A. It's possible. It was a busy day.

16 Q. All right. Do you have any -- any idea
17 of why this says that a juror approached you after
18 trial?

19 A. No, sir.

20 Q. Okay.

21 A. Are you sure it was a juror and not one
22 of my witnesses?

23 Q. I'm just reading what this says, ma'am.
24 I didn't write it. And it says, It was made clear
25 by a juror who approached the Plaintiff after the

1 verdict, that that is the reason they found you at
2 fault, was for your headlights. Did somebody --
3 has anybody told you that the reason the jury
4 found you at fault was because of your headlights?

5 A. Um, I know that was the case all along.

6 MR. WILLEY: Before you ask your next
7 question, whose pen is that?

8 MR. WHELAN: It might be yours. Is this
9 yours, Eve?

10 MR. WILLEY: It looks like one of ours.
11 Can I have it?

12 MR. WHELAN: Sure.

13 MR. WILLEY: Because this one is out of
14 ink. Great. Okay.

15 MR. WHELAN: I have a --

16 THE WITNESS: I have another pen.

17 BY MR. WHELAN:

18 Q. What did you say?

19 A. I said, I have another pen.

20 Q. Okay. Um, how are you doing, ma'am? Do
21 you need to take a break? Do you want to walk
22 around and use the restroom, or are you good?

23 A. No. I think some of this is getting to
24 be repetitious, like I don't recall or I -- you
25 know, things that happened, um, but I sincerely

1 don't recall nobody coming up to me.

2 Q. Okay. Um, was it -- do you think it was
3 reasonable for the jurors in the case to have
4 found you 49 percent at fault?

5 MR. WILLEY: I object to the form.

6 A. I don't think they should have found me
7 at fault at all. I attribute the fact to them
8 finding 40- -- me at 49 percent fault, by Mr.
9 Daniels' cross-questioning of me on the -- on the
10 witness stand and putting me in a -- I guess in a
11 negative light, still with that accusatory tone of
12 voice and manners and -- you know, if I had -- if
13 I had sat on that jury, I would have questioned
14 the Plaintiff myself because of how he was
15 treating my witnesses. I mean, who -- who in
16 their right mind won't allow a witness because
17 they're Catholic? And I'm Catholic, and most of
18 my friends are Catholic. And that's not even --
19 that's plain not only harassment but -- I don't
20 even know what else to call it. That, I think,
21 hurt me a lot. Because there's my friends sitting
22 there, and they're being badgered by him, trying
23 to get them to say something that they either
24 don't know or twist the question enough that they
25 would be questioning themselves like he so oftenly

1 does.

2 And I'm sorry this attributes a lot to
3 Mr. Daniels. But to be honest, he's the only one
4 I dealt with from USAA. And had I dealt with
5 other people, I could have been a little bit more
6 -- maybe a little bit more understanding or
7 objective. But that's not the case. It seemed
8 like USAA wasn't interested in my case at all, or
9 else they would do as they say, you know, they
10 would be there for the person.

11 Q. Ma'am, I was asking you about the jury.
12 And let me put it this way -- okay? So given the
13 evidence that was put up by Mr. Daniel, all right
14 --

15 A. Okay.

16 Q. -- do you think it was reasonable for
17 the jury to find some fault for you?

18 MR. WILLEY: Object to the form.

19 A. I -- I believe so.

20 Q. Um, and you think that if Mr. Poplin had
21 been -- had been put on the witness stand by your
22 attorneys and had talked to the jury, they would
23 have found you zero percent at fault, correct?

24 MR. WILLEY: Object to the form.

25 A. I have no way of knowing that, sir. To

1 be honest with you, I have no way how the jury
2 would vote based on somebody else's deposition or
3 paperwork, other than -- because I know nothing of
4 him; I know nothing of the paperwork; I know
5 nothing. So I have -- I have no reason how that
6 would have affected the jury one way or the other.
7 I would just think that that would have helped in
8 my case.

9 Q. Okay. So it's possible that had your
10 attorneys put Mr. Poplin up, the jury still would
11 have found you at fault?

12 MR. WILLEY: Object to the form.

13 A. I was told by my attorney that I believe
14 they might have, um, tried to do that. But I
15 don't recall exactly.

16 Q. But, ma'am, my question is, if Mr.
17 Poplin had been put up at trial --

18 A. Right.

19 Q. -- you agree it's possible the jury
20 still would have found you 49 percent at fault --

21 MR. WILLEY: Object to the form.

22 Q. -- fair?

23 A. I'm not going to say that. That's not
24 how I see it. I would see it as they would have
25 not found me at fault at all.

1 Q. Okay. So you believe, then -- and tell
2 me if I'm wrong. You believe if your attorneys
3 had put up Mr. Poplin, the jury would have found
4 you zero percent at fault; true?

5 A. That's opinionated, sir. You know,
6 you're asking me to form an opinion on something
7 that is not factual, that I'm guessing about into
8 the future of what would be said and try to answer
9 for the jury, which I can't do. I know what
10 you're getting at. And, um, I think that the --
11 it would have helped make their decision a little
12 easier. I can't say that it would have. I don't
13 know.

14 Q. Okay.

15 A. Because you just don't know people.

16 Q. Right. So in other words, it is
17 possible that even if you had put up Mr. Poplin,
18 they still could have found you at fault?

19 MR. WILLEY: Object to the form.

20 A. Yes, it's possible.

21 Q. Okay. Um, and if your attorneys had
22 some evidence that would prove that you were free
23 of fault, you would expect them to present that at
24 trial, wouldn't you?

25 MR. WILLEY: Object to the form.

1 A. Um, I trust the attorneys completely
2 that are in my case.

3 Q. Right.

4 A. So I trust that they would show me
5 whatever I needed to see or inform me of whatever
6 I needed to know.

7 Q. Right. And you also trust that if they
8 had some evidence that would prove 100 percent
9 that you weren't at fault, they would have
10 presented it at trial, correct?

11 MR. WILLEY: Object to the form.

12 A. I can't speak for the attorneys, sir.

13 Q. Well, I know you can't speak for them,
14 and I'm not asking you to.

15 A. Okay.

16 Q. I'm just asking you, because they work
17 for you, right?

18 A. Correct.

19 Q. And you -- your expectation is that they
20 would put up any evidence that would prove to the
21 jury you weren't at fault, correct?

22 A. And they did.

23 Q. Okay. So you don't believe they had any
24 other evidence, that would have proved 100 percent
25 that you were free from fault, that they didn't

1 put up?

2 MR. WILLEY: Object to the form.

3 A. Um, I don't recall anything like that.

4 Q. Okay. Now, you told us, that based on
5 the way that Mr. Daniel presented the case, that
6 the 12 people sitting in that jury box -- the way
7 he presented the case, it would -- you can see how
8 they found you some fault, right?

9 A. By his questioning methods, even the
10 Judge had to stop him several times by his
11 questioning.

12 Q. Okay. And if USAA had been sitting in
13 that box with the jurors, okay, it would be
14 reasonable for them to find you at fault too,
15 right?

16 MR. WILLEY: Object to the form.

17 A. I -- I don't know. I really -- I can't
18 recall why they -- USAA would make a difference
19 sitting in the box. Because I had no idea who the
20 people were in the box.

21 Q. Right. In other words, you wouldn't
22 hold them to a different standard than you would
23 hold those people that heard all the evidence,
24 would you?

25 A. Oh, no.

1 MR. WILLEY: Object to the form.

2 Q. Um, you don't have -- the suits that
3 were brought against you by the Kucks, you know
4 that they sued you, right?

5 A. Yes.

6 Q. And they're asking for damages against
7 you, right?

8 A. Right.

9 Q. And they're probably asking for punitive
10 damage against you, right?

11 A. I wasn't aware of that.

12 Q. Okay. But you know that the Kucks are
13 saying you were at fault and they're trying to get
14 money from you, right?

15 A. Yes. At their deposition, they -- they
16 lied. They didn't even acknowledge they were
17 there.

18 Q. Hmm. And you also know that Antoine
19 Johnson filed a counterclaim against you and
20 wanted to get money from you as well --

21 A. Right.

22 Q. -- right? And did you ask USAA to hire
23 a lawyer for you to represent you in all three of
24 those cases?

25 A. No. I kept the same lawyers I had.

1 Q. That would be Mr. Smith and Mr. Willey?

2 MR. WILLEY: Object to the form.

3 A. Yes.

4 Q. And did you also -- did you know that
5 USAA retained a firm called Clawson & Staubes and
6 Chris Nickels to --

7 A. Right.

8 Q. -- represent you and defend you in those
9 three cases?

10 A. Um, no. I knew he was there at my
11 deposition.

12 Q. Well, who is defending you right now in
13 the suits by the Kucks?

14 A. By the Kucks?

15 Q. Yes, ma'am.

16 A. My --

17 Q. Is Mr. Willey?

18 A. I'm not sure.

19 Q. Mr. Willey isn't, is he?

20 A. Sir, at this point, I don't -- I don't
21 recall. I don't know.

22 Q. And do you know that USAA paid Mr.
23 Johnson to get a release for you so that he
24 couldn't sue you anymore? Did you know that?

25 MR. WILLEY: Object to the form.

1 A. No, sir.

2 Q. Did you know that USAA paid -- I might
3 be wrong about this number, but I think they paid
4 \$10,000 to Mr. Johnson to get a release for you.
5 Did you know that?

6 A. No, sir.

7 Q. And you didn't know that they hired an
8 attorney to defend you from his claims?

9 MR. WILLEY: Object to the form.

10 A. I believe Mr. -- all I can tell you is
11 I've seen Mr. Nickels once -- he wasn't even there
12 at my trial -- and that was when I did my
13 deposition. And he didn't advise me, like, Hey,
14 we're with USAA and I'm supportive of you and
15 we'll try to work through this, or anything like
16 that.

17 Q. The only time you ever saw him was at
18 the deposition that Mr. Daniel was at?

19 A. Uh-huh.

20 Q. Yes?

21 A. Yes. Or, you know, he wasn't just
22 sitting there.

23 Q. Okay. Did you know that USAA paid money
24 to Mrs. Kuck so -- to get a release from her so
25 she couldn't sue you anymore?

1 MR. WILLEY: Object to the form.

2 A. I have no idea, sir.

3 Q. Do you think that USAA should have paid
4 money to these people to get a release for you so
5 they couldn't sue you anymore?

6 MR. WILLEY: Object to the form.

7 A. I can't answer that. I don't --

8 Q. Because you believe that this Poplin
9 report showed that you were not at fault, right?

10 A. Right.

11 Q. And, um, would -- do you think it would
12 have been better if USAA had just said, okay,
13 we're not going to defend Mrs. Hood because the
14 Poplin report shows she's not at fault?

15 MR. WILLEY: Object to the form.

16 A. To be honest --

17 Q. Yes, ma'am.

18 A. To be honest with you, sir, had it been
19 resolved as soon as the accident had been found
20 that I was not guilty, none of those actions would
21 have come into play.

22 Q. Okay.

23 A. Because it came over the last year, like
24 2017. The accident was in 2014. It could have
25 been solved a lot sooner than that. And by then,

1 you know, people start thinking, people start
2 making decisions. But it would have never gotten
3 to the point where the Kucks sued me or Johnson
4 sued me had it been resolved from the beginning.

5 Q. And when do you contend it should have
6 been resolved?

7 A. Within at least a year. I mean --

8 Q. Okay.

9 A. -- to me, that is kind of reasonable.
10 Because, you know, every -- the reports showed
11 that I wasn't guilty, that I was hit. My vehicle
12 inspection -- I was hit -- I was t-boned from the
13 passenger's side. Antoine hit me in the right
14 wheel -- right driver's (sic) side wheel well. So
15 it immediately turned my tire to the left.

16 And so the median is here; it's full of
17 grass. The impact of the accident, I could not
18 turn any other way than the way the car was going
19 to go, and it went towards the Kucks.

20 Q. Okay. Well, ma'am, do you recognize
21 that there was some evidence that your lights may
22 not have been on at the time of the accident?

23 MR. WILLEY: Object to the form.

24 A. No, sir.

25 Q. Okay. So is it your belief that there

1 was no evidence that your lights were off at the
2 time of the accident?

3 A. Yes. I believe there was no evidence
4 showing that they were off.

5 Q. All right. If there had been some
6 evidence that your lights --

7 A. You like the ifs.

8 Q. Right.

9 A. We've got to be cutting (sic) and dry:
10 Yes, no, maybe.

11 Q. So let's just say that there was some
12 evidence --

13 A. Okay.

14 Q. -- that your lights were off. Do you
15 agree it would be reasonable for USAA to consider
16 that evidence?

17 MR. WILLEY: Object to the form.

18 A. I believe that's why they did the
19 investigation of the vehicle, to preclude (sic)
20 the fact that the lights were on or off. I mean,
21 if -- some eyewitnesses, they saw the lights off.
22 Some eyewitness said I rolled over in a ditch. I
23 mean, how reliable is that eyewitness thing? So
24 some witnesses said my lights were off; some said
25 they were on. And to be honest with you, the

1 police lady that came to give me the police report
2 told me, Well, three people told me that your
3 lights were off and two people said they were on,
4 so I have to go with the three people that said
5 your lights were off and that's what she put on
6 the police report. And that's what she told me
7 when I was still very wide awake, because I was
8 awake through the whole thing in the trauma room.

9 Q. So you do acknowledge that some
10 eyewitnesses said your lights were off?

11 MR. WILLEY: Object to the form.

12 A. I believe so.

13 Q. Okay. And you acknowledge that the jury
14 in this case found that you were 49 percent at
15 fault because they found your lights were off,
16 correct?

17 MR. WILLEY: I object to the form.

18 A. I don't know if that's the reason, but
19 they found me at 49 percent at fault.

20 Q. Okay. And, um, you -- is it your
21 contention that because of the Poplin report, USAA
22 was required to ignore all evidence showing that
23 your lights were off; is that what you contend?

24 MR. WILLEY: Object to the form.

25 A. No.

1 Q. Okay.

2 A. I don't contend that.

3 Q. So you agree that it would be reasonable
4 for USAA to consider eyewitness -- eyewitnesses
5 who said that your lights were off, right?

6 MR. WILLEY: Object to the form.

7 A. Um, I suppose.

8 Q. Okay. And do you know, ma'am, that if
9 -- that the jury -- they found you 49 percent at
10 fault, but if they had found you just 2 percent
11 more at fault, you couldn't have recovered
12 anything? Do you know that?

13 A. Okay. No, sir.

14 Q. Do you think it would be reasonable for
15 USAA to think that you may be found 49 percent at
16 fault in the accident?

17 MR. WILLEY: I object to the form.

18 A. Sir, you're referring to a court case
19 that has been recorded in public record.

20 Q. Yes, ma'am.

21 A. If there was any question about the
22 court case, then you could look it up in public
23 records. As a matter of fact, all you have to do
24 is look outside the wall. My case is posted in
25 the Lawyers Weekly on the wall back there.

1 Q. Yeah. They have it posted a lot of
2 places around their lobby, actually.

3 A. Oh, really?

4 Q. Yeah.

5 A. So, um, I think the questions you're
6 asking me, that I have to assume something or
7 guess at something, versus a question that's
8 direct, like, did this happen? Did this happen?
9 What did you do in this instance? Or what should
10 we do in this instance? Because it just sounds
11 like going in a roundabout way that USAA is not at
12 fault for anything.

13 Q. Well, I guess what I'm trying to find
14 out -- and, you know, you're suing USAA. You
15 contend that they didn't --

16 A. Right.

17 Q. -- handle it the right way. So that's
18 why I'm asking you these questions. Okay?

19 A. Well, let me turn this around and ask
20 you the same question. What would you have done
21 had USAA done to you what they've done to me?

22 Q. Well, I think that you've been paid --
23 you've been paid what was owed under the contract.
24 But my question, ma'am --

25 A. But you didn't have to take two sides.

1 You know, you would have owed me this money
2 regardless, right? Because of the claim --
3 because I'm insured; I'm insured for, you know,
4 500,000, my husband is insured for 500,000. You
5 know -- and you knew that I was innocent. So you
6 would have had to pay this regardless.

7 Q. When you say "innocent," do you mean --

8 A. That I had my lights on.

9 Q. -- zero --

10 A. Yeah.

11 Q. -- excuse me -- zero percent at fault,
12 right?

13 A. And everybody that -- you know, friends
14 or relatives couldn't believe that this would have
15 to go to trial because it was cut and dry, and it
16 was just lights on, lights off. But I have had to
17 deal with people calling me a liar or, you know,
18 ask -- questioning my own sanity at some point
19 about what this was about. And when Mr. Smith
20 told me about the Kuck lawsuit, that I was -- I
21 was surprised at. But it just -- it just would
22 not have happened.

23 Q. Okay. So what you said is that USAA
24 should have paid you because they knew you were
25 innocent, right?

1 A. Yes.

2 Q. And innocent means zero percent at
3 fault, right?

4 A. Right.

5 Q. But if there was some information that
6 you were not zero percent at fault, that maybe you
7 were 50 percent at fault or 51 percent at fault,
8 that would be a different story, wouldn't it?

9 MR. WILLEY: Object to the form.

10 A. Yes.

11 Q. Okay. And if it hadn't have been for
12 this Poplin report -- let me ask you a different
13 question.

14 A. Okay. I was -- I was told that there
15 were several, um, inspections of my vehicle, you
16 know. I don't know by -- who all the people were,
17 but I was told there were several that found
18 things. But the one that stuck out, I guess, was
19 Mr. Whelan's (sic). But I know -- I believe,
20 anyhow, that perhaps there were other people
21 involved in checking the vehicle, more than likely
22 for damages.

23 Q. Who else checked the vehicle?

24 A. I think USAA checked it for damages.
25 They had it towed to a lot. I don't know where,

1 but they kept it protected with plastic or
2 something so that they could go back and look at,
3 you know, what caused the accident, what damages
4 were done, how they came about to say that it was
5 a total wreck -- a total loss, rather.

6 Q. Well, that would pertain to your
7 property damage.

8 A. Yes.

9 Q. Let me ask you this, are you aware of
10 anybody inspecting it and determining that the
11 lights were on or off besides Mr. Poplin?

12 A. No, sir.

13 Q. Now, um, if you had received the million
14 dollars earlier than you got it, would you have
15 spent the money the same way?

16 A. I don't think I would have had to spend
17 it the same way, simply because I wouldn't have
18 kept incurring medical issues. I mean, I have
19 life damaging -- I can't walk; I can't wear heels.
20 As you saw, I have spasms to this very day. My
21 shoe -- my whole left side of my leg, from my
22 ankle up to the mid-calf, was split in half. So
23 this whole half has arthritis. Um, my shoes are
24 turning inside out. I have pain in my leg,
25 obviously my neck and back daily. That's why I

1 said I could tolerate the pain when it's a spasm.
2 But it's -- I think a lot of that would have been,
3 you know -- would have continued, the medical
4 bills and so forth. But I think with that money
5 earlier, I could have probably planned the bill
6 and my attorneys' fees wouldn't have been as high
7 as having to get the focus groups and the extra
8 lawyers, which, you know -- and the videotaping of
9 the Kucks' deposition and all this -- other things
10 that had to happen in the middle of the time, had
11 it been resolved earlier. And now I'm just
12 wondering, do you do this to everybody?

13 Q. Well, ma'am, my question was, if you had
14 received the million dollars earlier than you got
15 it, would you have spent the money the same way?

16 MR. WILLEY: Object to the form.

17 Q. The -- you told me about your medical
18 treatment, right?

19 A. Right.

20 Q. Now, your medical treatment would --
21 your injuries would not be any different
22 regardless --

23 A. Right.

24 Q. -- of when you got the million dollars?

25 A. Right.

1 Q. Your medical treatment would not be any
2 different regardless of when you got the money,
3 correct?

4 MR. WILLEY: Object to the form.

5 A. I'm not sure how that would have
6 impacted it, you know, because there could have
7 been different avenues that I could have maybe
8 sought. I don't know.

9 Q. Can you -- I mean, other than anything
10 is possible, can you tell me anything that you
11 didn't have done that you would have had done or
12 anything else?

13 MR. WILLEY: Object to the form.

14 A. Um, I'm trying to think. I can't think
15 of anything.

16 Q. Okay. If you think of something, will
17 you please let me know?

18 A. Okay.

19 Q. Thank you. Um, let's see. And you said
20 that the attorneys' fee was different. Tell me
21 about that.

22 A. The attorneys' fee, uh, would have been
23 -- okay. You're talking a million dollars. The
24 attorneys' fee was 40 percent.

25 Q. Okay.

1 A. Okay. So had I received it earlier, the
2 amount would have still been 40 percent. Yes, it
3 would have been -- how do I say this? -- the money
4 would have gone a longer way.

5 Q. Okay.

6 A. Because it would have gained interest,
7 and that could have deferred the attorneys' fees.
8 And the fact that he didn't have to spend all this
9 additional time and documentation and all the
10 other stuff he had to do and the specialists he
11 had to hire and all these other people he had to
12 hire to support the case, which turned out to be
13 like around \$300,000.

14 Q. Wow.

15 A. Because he did the best. I mean --

16 Q. Who?

17 A. Kevin Smith, he did the best. Mr. Wiley
18 (sic) came in at the ending. He did a super job
19 in the -- dealing with our friend. And he came in
20 at the end but did the court case.

21 Q. Okay. So you were told that your --
22 that the costs were \$300,000?

23 MR. WILLEY: Object to the form.

24 A. I believe so.

25 Q. Okay. And as far as what Mr. Smith was

1 paid, he was paid 40 percent, right?

2 A. Right.

3 Q. And that would have been the same if
4 they had paid you earlier or if they paid you
5 after trial?

6 A. Right.

7 MR. WILLEY: Object to the form.

8 Q. Now -- and you said costs for extra
9 lawyers. That wouldn't have -- you didn't have to
10 pay anything more for Mr. Willey, did you?

11 A. Um, I don't believe so.

12 Q. Okay. Um --

13 MR. WILLEY: Free of charge.

14 Q. So the --

15 A. But there were other -- there was other
16 attorneys involved. Kevin had two.

17 THE WITNESS: Then there was you.

18 A. Then there were experts; then they did
19 all this research on his phone --

20 Q. Yeah.

21 A. -- on --

22 Q. So I assume --

23 A. There was so much that they presented at
24 the court case. I can't believe that they -- they
25 didn't find me innocent.

1 Q. Yeah.

2 A. But --

3 MR. WILLEY: I think we've got you
4 everything that we spent, if you need anything
5 else --

6 A. This --

7 MR. WILLEY: I think she's a little
8 confused about --

9 A. Yeah. I --

10 MR. WILLEY: -- the cost versus the
11 fees.

12 BY MR. WHELAN:

13 Q. Well, let's do this --

14 A. Okay.

15 Q. -- so Exhibit 3 are the costs.

16 A. Okay. This is the cost for this case;
17 you're not referring to the cost of the accident?

18 Q. No, ma'am. What I'm talking about is
19 you had a million-24,000 --

20 A. Right.

21 Q. -- right? And then it went to the
22 attorneys?

23 A. Right.

24 Q. And then you had \$500,000, right?

25 A. Right.

1 Q. Okay. You were given a breakdown to
2 show where that other \$500,000 went, correct?

3 A. I never got it in paper. I briefly saw
4 a paper --

5 Q. Uh-huh.

6 A. -- um, but, no, I didn't see the actual
7 document like you have it here so I can study it,
8 no.

9 Q. Okay. So other than looking at that
10 document, is there any way for you to sit here
11 right now and tell me what was spent for who, when
12 and why?

13 A. Um, no. It's more based on information
14 I received.

15 Q. Okay. So we need the document to
16 actually see what it was, right?

17 A. Okay. I don't have that.

18 Q. Okay. The only thing I've been given is
19 Exhibit 3, which totals \$49,052 in costs. Do you
20 see that?

21 A. Yeah. I just don't recognize it.

22 Q. Okay. So you saw something different
23 than this that broke down the costs?

24 A. Yes.

25 MR. WHELAN: All right. Can you all

1 produce that to me?

2 MR. WILLEY: What?

3 MR. WHELAN: The -- well, I asked you
4 for the retainer agreement and anything
5 specifying her damages.

6 MR. WILLEY: That's the costs --

7 MR. WHELAN: So to the extent that you
8 have any -- that you're seeking anything other
9 than this, you need to produce it to me.

10 MR. WILLEY: That's the costs in the
11 case. Whatever we produced are the costs in
12 the case.

13 MR. WHELAN: Okay.

14 MR. WILLEY: I think she's confused --

15 THE WITNESS: This is a separate case.

16 MR. WILLEY: Yeah, I think she's
17 confused about the distinction between
18 attorneys' fees and costs, which we're talking
19 about freely.

20 THE WITNESS: Because I'm talking about
21 the other case.

22 MR. WILLEY: And there's multiple cases.
23 I mean, the case we're here about is Therese
24 versus Antoine Johnson, right?

25 MR. WHELAN: Uh-huh.

1 MR. WILLEY: Okay. These are the costs
2 for that case.

3 MR. WHELAN: Right.

4 MR. WILLEY: That's what we produced.

5 MR. WHELAN: All right.

6 MR. WILLEY: We haven't produced any
7 other costs related to any other case,
8 including this case, which is the bad faith,
9 negligent adjustment case, whatever.

10 BY MR. WHELAN:

11 Q. But you're saying you have costs in
12 other cases?

13 A. Yeah. Well, the case --

14 MR. WILLEY: We're here at this moment
15 incurring costs.

16 MR. WHELAN: You're talking about the
17 costs in the bad faith case? Are you talking
18 about anything -- we're just speaking in
19 riddles here. What other costs do you have?

20 MR. WILLEY: This case. The costs in
21 this case.

22 MR. WHELAN: Okay.

23 THE WITNESS: But you're referring to
24 the million dollars I received for the other
25 case?

1 MR. WHELAN: Correct.

2 MR. WILLEY: Right.

3 MR. WHELAN: Right.

4 THE WITNESS: And so you're asking where
5 that money went. And that's where I'm giving
6 you the information that I received about the
7 breakdown --

8 MR. WILLEY: Yeah.

9 THE WITNESS: -- that I saw.

10 BY MR. WHELAN:

11 Q. Okay. Um, and are you seeking
12 attorneys' fees for this case?

13 MR. WILLEY: Object to the form.

14 A. I pass that on to my attorney.

15 Q. Okay. Do you know what you're being
16 charged in this case? Do you know what the fee
17 is?

18 A. No, sir.

19 Q. Do you know whether it's a percentage of
20 the recovery?

21 A. No, sir.

22 Q. Do you know whether it's hourly?

23 A. No, sir.

24 Q. If you had -- okay.

25 A. I will just put it like that way: I

1 know nothing --

2 Q. Okay. So --

3 A. -- about this stuff.

4 Q. You're leaving that up to your attorneys
5 as far as what they want to charge?

6 A. Yes. I'm sure Mr. Wiley (sic) is very
7 honest and discreet and he will treat me justly.

8 Q. Okay. Are you seeking any damages for
9 mental health or mental anguish in this case?

10 A. I would say yes.

11 Q. Okay.

12 A. Because I've had to deal with mental
13 anguish for the whole time of the accident. And
14 then with this procedure, um, not as much, but the
15 fear of having to deal with one other person, um,
16 the anxiety that presents in itself. But this
17 case is not nearly, um, as anguishing -- causing
18 more anguish than the other one. That's for sure.

19 Q. Okay. So just to be clear, what you're
20 talking about is you had some anxiety before this
21 deposition today, correct?

22 A. A little. Because I didn't know what
23 the deposition was about, mostly. And I told you.
24 I thought it was Mr. Daniels. I didn't want to
25 face him again.

1 Q. Okay.

2 A. That's bad, I know, and definitely not
3 Christian.

4 Q. All right. So tell me -- so you had
5 anxiety about coming to your deposition today,
6 correct?

7 A. Yes.

8 Q. And you knew when you filed this lawsuit
9 you would have to be deposed at some point, didn't
10 you?

11 A. No. I was not aware of that.

12 Q. Okay.

13 A. But, then, I don't remember exactly when
14 this lawsuit started, but it started a long time
15 ago.

16 Q. Yeah. Um, and are you claiming as part
17 of this suit mental anguish caused to you by Jack
18 Daniel?

19 A. Um, I can't really say it's him, because
20 USAA appointed him. And when I asked that they
21 remove him, they left him there. So I blame USAA
22 mostly for the mental anguish.

23 Q. Okay. And I'm going to talk to you
24 about that, and I told you an hour ago that I
25 would, so we're almost there. But before I get

1 there, other than the anxiety about this
2 deposition and the anguish that you had as a
3 result of Jack Daniel's conduct, is there anything
4 else that causes you mental anguish that we're
5 here for today?

6 MR. WILLEY: Object to the form.

7 A. Um, I said that earlier, anger. Because
8 I wasn't fairly treated. I don't believe I was
9 fairly treated.

10 Q. Anything else?

11 A. I mean, what more could there be to say
12 than someone that you've trusted in all your --
13 basically your life let you down like this? You
14 know, there's nothing else to say.

15 MR. WHELAN: Um, why don't we do this,
16 why don't we take a little break?

17 THE WITNESS: Okay.

18 THE VIDEOGRAPHER: This is the end of
19 media No. 2 in the deposition of Therese Hood.
20 We're off the record at 12:11.

21 (The deposition went off the record.)

22 THE VIDEOGRAPHER: This is media No. 3
23 in the deposition of Therese Hood. We're on
24 the record at 12:20.

25 BY MR. WHELAN:

1 Q. Okay, Ms. Hood. We just took a little
2 break. We talked about lunch; you had a late
3 breakfast, so it's your preference that we push
4 through with the deposition?

5 A. Okay.

6 Q. All right. But if you get hungry or
7 feel distracted or whatever, just let me know and
8 we'll take a break and fix whatever is wrong.
9 Okay?

10 A. Okay.

11 Q. Excellent.

12 A. I just don't want this to take as long
13 as it took for you guys to resolve the case three
14 years ago, four years ago.

15 Q. Well, I can tell you this deposition
16 will take less than three years.

17 So we were talking before we broke about
18 the mental anguish that you had. And you said
19 that you were angry because you wanted to be
20 treated better?

21 A. I say angry. Probably hurt would be --
22 saddened by the beliefs that I had. And I was
23 disappointed in those beliefs.

24 Q. Okay. So you were hurt and disappointed
25 that USAA did not pay you when they thought --

1 when you thought they should have paid you,
2 correct?

3 A. Um, I was disappointed by the whole
4 unfair treatment of -- and the unfair relate back
5 to the fact that in one case my lights were on and
6 in another case the lights were off, which
7 happened to be in the court case that my lights
8 were off. And knowingly -- at least Mr. Daniels,
9 working for USAA, would have known about the
10 headlights, I would think. He would have known
11 about the expert testimony. And that was never
12 acknowledged. So I can't say it's all one thing;
13 it's a compilation of things.

14 Um, my relationship with USAA has always
15 been strong. I stand behind it, because I'm a
16 veteran. And like, you know, the other veterans,
17 they stand behind it too. And, like I said, if I
18 would have put anything in the newspaper or out in
19 the public or anything about what had happened to
20 me as far as the dual decision -- and to me,
21 that's a breach of faith or lying -- that people
22 would have a totally different outlook on USAA.
23 But I didn't say anything.

24 Q. Um, and the dual decision, do you
25 understand who it was who got the Poplin report?

1 Do you know who that was?

2 A. No, sir.

3 Q. Have you ever taken any steps to find
4 out -- so you've been told that USAA got the
5 report; is that right?

6 A. I believe so.

7 Q. Okay. Have you been told who from USAA
8 supposedly got this report?

9 A. No. No, sir.

10 Q. All right. And have you taken any steps
11 to talk with anyone other than your attorneys
12 about where this report came from?

13 A. No. Like I said, I trusted them
14 completely and --

15 Q. Um --

16 A. -- um --

17 Q. Did the attorneys -- well, let me ask a
18 different question. Were you ever told that the
19 person who got that report or who hired Mr. Poplin
20 was an attorney who was defending you from the
21 claim of Mr. Johnson, where he was trying to get
22 money from you?

23 A. No, sir.

24 Q. Okay. And you -- were you -- were you
25 ever told or do you know that Mr. Nickels was your

1 attorney, who had an attorney-client relationship
2 with you, whose job it was to protect you? Did
3 you know that?

4 A. Yes.

5 Q. Okay. Did you believe that Mr. Daniel
6 also had an attorney-client relationship with you?

7 A. Yes.

8 Q. And did you believe it was Mr. Daniel's
9 job to protect you?

10 A. Well, if you're told by an insurance
11 company that they've assigned two attorneys for
12 you, most people would assume that they were there
13 to defend you, not to turn against you.

14 Q. Okay. So it was your belief that Mr.
15 Daniel's job was to protect you, right?

16 A. Yes.

17 MR. WILLEY: Object to the form.

18 Q. And to fight for you, right?

19 MR. WILLEY: Object to the form.

20 A. Uh-huh.

21 Q. And not to question whether your lights
22 were on or off, right?

23 MR. WILLEY: Object to the form.

24 A. Well, I can't speak for him.

25 Q. Right.

1 A. So I don't want to shed opinions or
2 things that are gonna go into my deposition that I
3 don't have factual answers for. But I do -- my
4 assumption is that if you have an attorney
5 representing you, then they find all of the
6 documentation or all -- everything they need to do
7 to protect you. And in this case, that didn't
8 happen by either one of them. Neither one of them
9 went -- my husband drove to the site where the
10 accident was, made a map of the whole thing.
11 Neither attorney did that. Neither attorney ever
12 went to Hilton Head, that I believe of. Um, so
13 how could they investigate in my faith if they
14 don't know? And they've not been there and not
15 seen, and, you know, they could have immediately
16 disclosed the -- quelched (sic) the idea that my
17 vehicle was turned over in the median and my
18 lights were off, when the median is flat.

19 Q. But, ma'am, back to Mr. Daniel, okay,
20 you believed he was representing you, and you
21 believed Mr. Nickels was representing you too --

22 A. Yes.

23 MR. WILLEY: Object to the form.

24 Q. -- right? And when you say that you
25 were hurt and you thought that there was this dual

1 decision going on, that's because you thought both
2 of these guys were representing you, right?

3 MR. WILLEY: Object to the form.

4 Q. Right?

5 A. No, no. Because I didn't know who was
6 representing the Kucks.

7 Q. But that's somebody completely
8 different.

9 A. Okay. So the person who was
10 representing the Kucks, that was a completely
11 different person but from USAA, was, um, Mr. --
12 Mr. Whelan (sic) provided them with the document
13 of expert testimony that my high beams were on.

14 Q. Now, hold on.

15 MR. WILLEY: Object to the form. This
16 is Mr. Whelan.

17 THE WITNESS: Oh.

18 Q. That's okay.

19 A. You're the expert person?

20 Q. Oh, you're talking about Mr. Poplin?

21 A. Poplin.

22 Q. Poplin, yes. Yeah, okay.

23 MR. WILLEY: I think we're getting the
24 whole thing confused here, but go ahead.

25 A. Okay. So that person, um, knew, I

1 guess, or had the paperwork that showed that my
2 high beams were on and presented that to the court
3 case for the Kucks against me. And in that court
4 case, they used that document to prove -- to find
5 me guilty because I didn't have my lights -- or,
6 rather, to find me innocent because I didn't have
7 my lights on, but yet I did. Now, when it
8 actually came time for trial, Mr. Daniels had all
9 along assumed that I was lying about my lights, I
10 was lying about direction -- everything, and he
11 said that my lights were off.

12 Q. Uh-huh.

13 A. So my whole thing about that is, how can
14 one USAA attorney say that, Oh, she had her
15 brights on, to dismiss the Kucks' case, and then
16 to turn around and say that I'm at fault for the
17 actual accident because I didn't have my lights
18 on?

19 Q. All right. So let me just be clear
20 about something, make sure I'm clear.

21 A. Okay.

22 Q. So Chris Nickels --

23 A. Uh-huh.

24 Q. -- who had the Poplin report, right,
25 along with your attorney Mr. Smith --

1 A. Oh, okay.

2 MR. WILLEY: Object to the form.

3 A. I don't know. Okay.

4 Q. -- they said your lights were on, right?

5 A. I don't know, sir.

6 Q. You don't know?

7 A. I don't know.

8 Q. Okay. Um, well, is it -- you're saying
9 that somebody from USAA took the position that
10 your lights were on? That's what you just told
11 me?

12 A. Yes.

13 Q. And who is that person that you're
14 talking about?

15 A. I'm not sure. That's what I was told,
16 that the person -- that that is how the case had
17 gone with the Kucks, the result of the case with
18 the Kucks.

19 Q. Who told you that?

20 A. My attorney.

21 Q. In this case?

22 A. No, no. In the other case.

23 Q. Mr. Smith?

24 A. Yes.

25 Q. So Mr. Smith told you that --

1 A. This isn't about my lights being on or
2 off. This is about whether you did a bad faith
3 case. So my lights should not even come into this
4 discussion, I think. Because what does that have
5 to do with the fact that -- how else to put it?
6 That in one instance I had lights on, one instance
7 I didn't have, and that protected USAA from paying
8 any money. And that's my thought of what this
9 deposition is about.

10 Q. Right. The lights. Right?

11 A. Okay.

12 Q. I mean, I don't understand what you just
13 said, Ms. Hood, when you said this case isn't
14 about the lights and then you told me it is about
15 the lights.

16 A. I guess -- yeah. I guess it's looking
17 at that. But the reason I'm saying it's about the
18 lights is because of the positions that USAA took
19 --

20 Q. Yes.

21 A. -- about the lights.

22 Q. Okay.

23 A. So it doesn't really have to do with
24 lights being on or lights being off. It has to do
25 with the position that USAA took.

1 Q. And you're talking about the position
2 taken by Mr. Daniel, correct?

3 MR. WILLEY: Object to the form.

4 A. I -- Mr. Daniels was paid hourly, I
5 believe, by USAA; in my opinion -- this is going
6 to sound bad -- to let the case go as long as it
7 could so he could continue to get paid and put a
8 stop on every single thing my attorney tried to
9 present to him, but Mr. Daniels got his
10 information or passed on his information to
11 somebody, some attorney at USAA, so that it still
12 is USAA's responsibility, I feel. Um, I'm not
13 absolving Mr. Daniels. Like I said in my e-mail,
14 that was, you know -- nobody, nobody on this earth
15 deserved what he did to me and to my witnesses.
16 Nobody.

17 Q. All right. So let's talk about that.

18 A. Okay.

19 Q. And if you need to take a break, you
20 just let me know. Okay?

21 A. Okay.

22 Q. What did Mr. Daniel do to you and your
23 witnesses? Give me a list and then we'll go
24 through it. Okay?

25 A. Okay. When we first went in -- when I

1 first went in for my deposition, which was the
2 first time I met him, I was informed by Mr.
3 Nickels that he was an attorney for me, and then
4 introduced Mr. Daniels and said that he also was
5 an attorney for me and would be handling a
6 different part of my case.

7 So when it came for Mr. Daniels to
8 question me, he -- how could I put it? He had a
9 bunch of books in front of him and was flipping
10 back and forth, back and forth the pages and
11 asking questions and stuck on the idea of whether
12 my wheels turned right, my wheels turned left.
13 Where were you looking? And then he -- he said,
14 Oh, you said this in this sentence, and you said
15 this in this sentence. When, in fact, he had
16 asked me three questions since that sentence, and
17 I was replying to the first one, and then he
18 alluded to the fact that I was lying. And I said,
19 No, I'm replying to this question that you -- he
20 said, Well, that's not what I just asked. And he
21 was very antagonizing.

22 And -- you know. And then he said,
23 Well, you don't know what you're talking about.
24 And I said, Well, you know, I was there; I know
25 what I'm talking about. He said, Well, you've got

1 all your facts confused. And my thinking was, how
2 can this man say this to me, who is supposed to be
3 defending me? And then he continued with his line
4 of questioning, which is bizarre, to -- to
5 everybody that's ever heard him.

6 And then, finally, he looks at me and he
7 says, Well, it seems to me that you just can't
8 handle this anymore. So we need to end this
9 deposition because you're not prepared. You're --
10 you know, I feel that you're lying, basically, is
11 how -- he probably didn't use "lying." But he
12 used the word "untruth."

13 And, um, so I told him I was okay to go
14 on. But I left there feeling stupid, feeling like
15 I didn't know what I was saying; I had lied about
16 something when I knew darn well I hadn't been
17 lying about anything. And it's just -- it was a
18 horrible experience to go there and somebody look
19 at you -- when all the people in the room look at
20 you like you're lying, like you're stupid, like
21 you don't know what happened, you don't know your
22 left from your right. All of that happened.

23 And so when I went home, I'm asking my
24 family members, Do you think I lie? And they
25 said, Why do you ask that? And I said, Because

1 that's what I've been told. And they said, No,
2 Mom, you don't lie. You know, you're the most
3 honest person there is. I had a top secret
4 clearance in the Army.

5 And so, you know, this went on. And I
6 was really, really depressed. And I said, Maybe
7 my sanity is going, I don't know. So I went to
8 see my doctor and, you know, told her what
9 happened. And she was -- I can't imagine the face
10 that she had. And then she looked at me and she
11 said, That was disgusting of anybody to treat
12 another person like that.

13 And so she said -- I told them -- I told
14 her, I said, Well, I believe I blew the
15 deposition. She said, Well, I'll go do a
16 deposition on your behalf because of what this has
17 done to you. And, um -- but Kevin said that
18 wouldn't be necessary. He said that, you know, he
19 would accept a letter. And she wrote a letter to
20 him explaining to him what happened.

21 Well, because the case wasn't resolved,
22 of course, this anguish continued. And I'm still
23 questioning -- you know, I questioned myself up
24 until the accident -- the day of the court,
25 September 7th, because I had no proof that my

1 lights were on; nobody told me that. And so I had
 2 to go through this whole time, and I was so
 3 relieved when it was over. But in every instance
 4 where either Mr. Daniels was there present for
 5 somebody else's deposition or was there in the
 6 room with me, it's like he'd always give me these
 7 dirty looks or these "you're a nobody" look. And
 8 that hurt. And he did it every time, and I must
 9 have seen him like five times. And it got to the
 10 point where I asked Kevin, Is Mr. Daniels going to
 11 be there? I even asked Mr. Wiley (sic) today, Is
 12 Mr. Daniels going to be there? And he said, No.
 13 Because I told Kevin I didn't want to go anymore
 14 to anything where I would have to be subjected to
 15 that.

16 And my witnesses only got a few minutes
 17 with him when they were on the stand. And they --
 18 and I told them before they even went on the
 19 stand -- I said, Be prepared for Mr. Daniels; he's
 20 abusive, and he will try to trip you up. And,
 21 sure enough, that's what he did. And they stuck
 22 to their knowledge of me as a person. And then he
 23 -- then he made that comment, Well, we can't use
 24 these witnesses; they're all Catholic.

25 And I had tried to explain earlier that

1 my witnesses were not all Catholic, but most of
2 them were, because I'm very involved in the
3 church, and those are my friends, you know. Those
4 are the people who have known me for the last ten
5 years, who know my personality and who know who I
6 am. And they all said, She is now not the person
7 she was before this accident and before this
8 happened. She's not that person at all. They
9 said, She used to be so happy, always smiling,
10 always giving and -- you know. And one of them
11 said, She used to stay after church and be
12 sociable. And she said, Now she can't wait to get
13 out of church because she doesn't want to see
14 anybody. And I didn't, because I didn't believe
15 in myself, my self-esteem had been crushed.

16 And so if you don't think highly of
17 yourself and you don't think of yourself as a good
18 person, then you don't want to be around anybody
19 else because you don't want them to see you like
20 that. And that's why I stayed home all the time.
21 Um, I still stay home. Not as much. I get out.
22 I'm back doing things with my friends, but that's
23 been after this -- after I've been found innocent
24 of the accident.

25 Q. Okay. Okay.

1 A. And I've been able -- you know, I still
2 have -- if I don't have the mental anguish
3 reminding me of everything, I have all the pain
4 every day to remind me. So it's not like
5 something that just goes away and -- like, I'm a
6 very proud person. I guess that's the other
7 thing. And to attack my mental state or me as a
8 person is really hard on me. Because I am that
9 perfectionist and I want everything to be perfect.
10 And I want -- you know, and I'm honest. And to
11 have somebody question that all the time and
12 accuse you of things is I think harder on the
13 person who is truthful and who takes everything to
14 heart. And that's why it probably affected me
15 more than some other people.

16 Q. All right. And it's obvious, Ms. Hood,
17 that how you felt after that deposition still
18 affects you deeply today, right?

19 MR. WILLEY: Object to the form.

20 A. Yes.

21 Q. And is part of that because you were
22 told that Mr. Daniel -- or you felt that Mr.
23 Daniel was supposed to be defending you at that
24 deposition?

25 MR. WILLEY: Object to the form.

1 A. I'm not sure. I'm treating him as a
2 person versus an attorney, because I can't -- as
3 the attorney who should be representing me,
4 obviously, he didn't do that.

5 Q. Right. But you felt --

6 A. Um, but I had to rely on USAA's word
7 that they had hired him to defend me, and that's
8 what I was told.

9 Q. And so based on that, you believed that
10 he was defending you, right?

11 MR. WILLEY: Object to the form.

12 A. Well, why -- he wasn't?

13 Q. But -- right. So even today, you
14 believe he was defending you, right?

15 MR. WILLEY: Object to the form.

16 A. Yes.

17 Q. And that's why this hurts, right?

18 MR. WILLEY: Object to the form.

19 A. No.

20 Q. Well, that's why --

21 A. If you would have sat down and somebody
22 accused you of lying and not being able to
23 remember anything, not having your -- basically
24 your right faculties, that you couldn't even stand
25 for a deposition, that's not representing the

1 person. It's -- you know, that's the person
2 (sic).

3 And so the case -- even if I -- I don't
4 blame this all on Mr. Daniels. I think it has had
5 -- equal with my physical pain, I guess, it's had
6 one of the longest effects because of my
7 personality, because of who I am. But I also know
8 that I was told that USAA hired him. And when
9 you're deciding anything, you go back to the
10 source. Who did what first? And you did --
11 hiring Mr. Daniels did first -- or USAA; not you
12 personally, but USAA.

13 So -- and the fact that I had requested
14 a different attorney and I got no reply and no
15 results, and the fact that he continued his abuse,
16 led me to believe that USAA just didn't care. And
17 so that -- that's where USAA I blame.

18 Q. So you told me that after this
19 deposition, you would tell Mr. Smith, you told Mr.
20 Willey this morning, that you did not -- Is Mr.
21 Daniel going to be there, right?

22 A. Yes, I did. I did.

23 Q. Because you didn't want -- they -- you
24 wanted them to know you're uncomfortable around
25 him, right?

1 A. Well, they knew.

2 Q. Sure. And, um --

3 A. But I think both Mr. Smith and Mr.
4 Daniels got into several face-to-faces.

5 Q. Yeah.

6 A. And everybody that has been involved in
7 this case or that I have talked to have had
8 words -- to put it politely, words with the other
9 -- with him as an attorney. And --

10 Q. With Mr. Daniel?

11 A. Yeah.

12 Q. Okay.

13 A. And he, in my view, does not have a
14 reputable -- no. I can't say that. He's not
15 popular with other attorneys, I think, and this is
16 an opinion, you know.

17 Q. Um, based on your conversations with
18 your attorneys?

19 MR. WILLEY: Object to the form.

20 A. No. It was just --

21 Q. Let me ask you this --

22 A. -- based on observation.

23 Q. -- have you talked to anybody about Mr.
24 Daniel's reputation beyond your own attorneys?

25 A. I don't even think I told them.

1 Q. Okay. So you --

2 A. It's an observation that I've made by
3 watching interactions -- you know, his
4 interactions with people. And it's not -- you
5 know, the reason I say I can't just blame him on
6 the whole thing is because he doesn't -- as far as
7 I've seen, at every deposition, at every place
8 that I've been to that he's been to, he does it to
9 the other people too. You know --

10 Q. So you have witnessed a style that he
11 has with all witnesses that you've seen him
12 interact with, correct?

13 A. Yes.

14 Q. Now, when you talked to Mr. Willey and
15 Mr. Smith about your uncomfot with -- or your
16 discomfort, I should say, with Mr. Daniel, did you
17 -- did you talk with them about whether or not Mr.
18 Daniel was defending you?

19 MR. WILLEY: Object to the form.

20 A. No.

21 MR. WILLEY: And don't -- you can't get
22 into the substance of anything we've
23 discussed. Okay?

24 BY MR. WHELAN:

25 Q. Um, now, let me ask you this: You said

1 that you -- every time you met with Mr. Daniel you
2 had this discomfort. I'd like to talk about those
3 times, and I know it might be difficult for you,
4 but we'll get through it. So we have -- I know we
5 have the deposition, right?

6 A. Right. And then we had the mediation.

7 Q. Okay.

8 A. And then we had Mr. Johnson's
9 deposition.

10 Q. Okay.

11 A. And then we had the Kucks' depositions.

12 Q. Both of them?

13 A. Hmm?

14 Q. Both depositions? You and him were at
15 both of those?

16 A. Yes.

17 Q. Okay. All right.

18 A. And wherever the attorney had to go
19 referenced my case and, of course, Mr. Daniels
20 would be involved, I went too. But those are the
21 ones that come off the top of my head, other than
22 the day of the court date.

23 Q. Uh-huh. Okay. Um, so your deposition,
24 Mr. Johnson's deposition, the Kucks' depositions.
25 Do you recall going to any other depositions in

1 the case?

2 A. Yes. The police officer was deposed.

3 Um, I don't remember -- I don't remember -- I
4 think there was another person that was deposed,
5 but I'm not remembering right now.

6 Q. Okay. And, um, you also saw him at the
7 mediation and you saw him at trial, right?

8 A. Yes.

9 Q. Have you seen him anywhere else besides
10 those places?

11 A. No.

12 Q. And you said that you first met him at
13 your deposition, right?

14 A. Yes.

15 Q. And did you also meet Chris Nickels for
16 the first time --

17 A. Yes.

18 Q. -- that day? And you remember somebody
19 telling you that Mr. Daniel would be representing
20 you at that deposition?

21 MR. WILLEY: Object to the form.

22 A. Yes.

23 Q. Do you remember whether that was Mr.
24 Smith or Mr. Nickels or Mr. Daniel?

25 A. I think it was Mr. Nickels.

1 Q. Okay.

2 A. Because he made it specific to say that
3 he was representing, um, me in the property
4 damage, and that Mr. Daniels would be, um,
5 representing me in the personal injury.

6 Q. And, of course, you just met Mr.
7 Nickels, but you've known Mr. Smith for a while?

8 A. Yeah. That's -- yes.

9 Q. You spent some time with Mr. Smith, and
10 you trusted Mr. Smith?

11 A. I trusted him very completely.

12 Q. And was he there when you discussed this
13 with Mr. Nickels and Mr. Daniel?

14 A. Yes.

15 Q. Okay. Kevin Smith was there?

16 A. Yes.

17 Q. Do you remember --

18 A. It was the deposition, so the attorneys
19 were like you are.

20 Q. So when you remember somebody saying
21 that Mr. Daniel was representing you, Mr. Smith
22 was there at that time, correct?

23 A. Yes.

24 Q. Okay.

25 A. I believe so.

1 Q. Um, and -- let's see. You said that,
2 um, Mr. Daniel said some things to you that you
3 took to mean that you were a liar, right? And
4 when he was talking to you, there was a court
5 reporter just like Ms. Wilbanks writing down what
6 was being said, right?

7 A. Right.

8 Q. Do you remember him saying anything to
9 you that was improper, other than when you were
10 going through the deposition and the court
11 reporter was typing it down?

12 MR. WILLEY: Object to the form.

13 A. I don't remember. I know when I got my
14 copy of that deposition, I went through it with a
15 fine-tooth comb and highlighted everything, um,
16 that was said to me. Um, and I replied to all
17 those comments, and I gave it to Kevin, and he
18 said that wouldn't help anything; that the
19 deposition is a deposition, and you can't contest
20 your own deposition.

21 So in that document, it was highlighted,
22 all the instances.

23 Q. So all the things that you just told us
24 about, you actually looked in your deposition and
25 they're there?

1 MR. WILLEY: Object to the form.

2 A. Yes.

3 Q. Okay. And let's see. And -- you
4 mentioned that he -- I think your word was, abused
5 some other witnesses.

6 A. I didn't say abused. I didn't -- that's
7 a very sensitive subject. I said I felt like he
8 accosted me --

9 Q. Okay.

10 A. -- by his look of disgust every time I
11 saw him. And, um, obviously, he didn't say
12 anything to me. He only looked at me like with
13 disdain. When I caught his eye -- I avoided his
14 eyes all of the time.

15 Q. So to be clear, then, the only time you
16 actually -- putting looks aside, the only time you
17 would have spoken to Mr. Daniel or he would have
18 spoken to you would be during the deposition and
19 during the trial, when he was asking you
20 questions, correct?

21 MR. WILLEY: Object to the form.

22 A. I don't remember. I don't recall that.

23 Q. Okay.

24 A. I don't recall exactly.

25 Q. Let's just -- let me just maybe simplify

1 it a little bit. So you remember he asked you
2 questions in a deposition, right?

3 A. Uh-huh.

4 Q. Yes?

5 A. I remember he asked me questions there.

6 Q. You remember he asked you questions at
7 trial?

8 A. Right.

9 Q. Okay.. Do you remember speaking with Mr.
10 Daniel at any time beyond those two times?

11 A. I want to say yes, but I don't recall,
12 to be honest with you, exactly.

13 Q. Well, can you think -- and even if it's
14 just general, can you think of any time, other
15 than when you would have been under oath answering
16 questions, that you would have spoken to Mr.
17 Daniel?

18 MR. WILLEY: Object to the form.

19 A. The only thing is perhaps I said hello
20 one time. But I don't -- didn't talk to him, like
21 a conversation.

22 Q. All right. So there would have been no
23 conversations other than hello besides --

24 A. Uh-huh.

25 Q. -- when you were under oath?

1 MR. WILLEY: Object to the form.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Thank you. Um -- all right. Now, you
5 said that he did something to some other
6 witnesses. And I don't know whether it was
7 accosted or abused or what. But he treated some
8 witnesses improperly, I believe?

9 A. Yes.

10 Q. What witnesses were those, besides
11 yourself?

12 A. Oh, the names?

13 Q. Yes, ma'am.

14 A. Okay. Helen Hernandez.

15 Q. Okay.

16 A. Nilda Fowler.

17 Q. Melba?

18 A. Nilda --

19 Q. Nilda.

20 A. -- N-I-L-D-A, Fowler, F-O-W-L-E-R.

21 Q. Okay.

22 A. Rosa Olmeda, O-L-M-E-D-A.

23 Q. Okay.

24 A. Father -- I can't say his last name.

25 Father Jason of Immaculate Conception Church. I

1 don't -- I can't think of his last name. It's a
2 weird long last name.

3 Q. That's okay.

4 A. And those were the four that were mostly
5 the ones that he tried to twist their words by
6 saying -- he was trying to decide -- they were
7 character witnesses. So he was questioning them
8 about what they knew about me and how long they'd
9 known me. And then he'd say, Well, would that
10 have anything to do with something -- he'd refer
11 it back to the accident, which some of them were
12 aware of and some -- obviously, some were aware of
13 that could tell how I reacted towards that. But
14 he, at one point -- I don't know. He twisted
15 questions because they'd look at me, and I -- I
16 couldn't say anything, you know; I had just
17 prepared them that he would try to trump up their
18 questions.

19 And when he got to the last witness -- I
20 think Father Jason was the third witness. And
21 when he got to Rosa -- Rosa was the last
22 witness -- he said, Oh -- he was frustrated, and
23 he started walking away instead of asking
24 questions. And then he said, We need to discount
25 -- I don't know what the word was -- these

1 witnesses because, you know, they're Catholic;
2 they're all her friends; they're gonna basically
3 lie for her.

4 Q. And he said that to the jury?

5 A. Hmm?

6 Q. He said that --

7 A. He said that in front of the jury.

8 Q. Okay.

9 A. Um, and then the Judge I know stopped
10 him on several questions with the way he was
11 questioning the witnesses. And she corrected him
12 several times. And she felt sorry for me. At the
13 end of the court case, she said, I feel so bad
14 that you had to go through this. And, um --

15 Q. And you felt she was talking about Mr.
16 Daniel?

17 A. I don't know what she was talking about.
18 But I thought that had a part in it.

19 Q. That Mr. Daniel did?

20 A. Yeah. But not totally the whole thing,
21 obviously.

22 Q. So what was it that he said about
23 Catholics?

24 A. Um, that they were Catholics and that,
25 um -- he couldn't accept -- first of all, the

1 Judge said that we could accept the testimony from
2 my friends. And he -- he objected to the
3 testimony because he said they were Catholic and
4 they were my friends. And --

5 Q. And you thought that was based on
6 religion?

7 A. Well, what would you think?

8 Q. I'm asking you. So I don't know.

9 A. Yeah, I thought it was -- I thought it
10 was a dict- -- a direct affront to the Catholic
11 religion.

12 Q. And that's caused you mental anguish?

13 A. Well, no, not so much that --

14 Q. Oh, okay.

15 A. -- as much as --

16 Q. Well, let's focus on what --

17 A. -- disgusted.

18 Q. Let's focus on what has caused you
19 mental anguish. Did Mr. Daniel do anything else
20 to any other witnesses that has caused you --

21 A. He --

22 Q. -- any pain, any suffering?

23 A. I don't know that it caused me pain, but
24 when he questioned the Judge (sic), he tried to
25 imply something about -- because the Judge (sic)

1 was testifying to the lights. And I know -- I
2 seem to recall the Judge correcting him on
3 something that he asked.

4 Q. Okay. Anything else?

5 A. No. You're getting frustrated now.

6 Q. No, I'm not. It's okay. It's okay. I
7 promise you.

8 A. I'm very sensitive to people's moods.

9 Q. Um, well, don't worry about my mood,
10 please.

11 Um, let's see. So anything that Mr.
12 Daniel did to cause you any suffering, putting
13 aside the looks, okay --

14 A. Okay.

15 Q. -- would have been typed down by a court
16 reporter, either in the depositions or at trial;
17 is that true?

18 MR. WILLEY: Object to the form.

19 A. I have -- I don't know. I would assume
20 so. But --

21 Q. Yeah.

22 A. -- for a fact, I don't know.

23 Q. Okay. Now, the court reporter --

24 A. She was always there, but --

25 Q. This is what I want to know: So did he

1 do anything improper that was not in the middle of
2 a court proceeding?

3 MR. WILLEY: Object to the form.

4 A. I don't recall.

5 Q. Okay. And if you do recall, will you
6 let me know?

7 A. Yes.

8 MR. WILLEY: During the depo?

9 MR. WHELAN: Sure.

10 MR. WILLEY: Yeah.

11 MR. WHELAN: Um, and not --

12 MR. WILLEY: I'm not doing this again.

13 MR. WHELAN: This we might.

14 BY MR. WHELAN:

15 Q. This is my chance to ask you questions
16 today. All right?

17 A. I understand.

18 Q. And you knew this was coming, right?

19 A. Yes.

20 Q. And you met with your attorney ahead of
21 time, right?

22 A. Yeah.

23 Q. And so --

24 A. I'm not saying anything about you.

25 You're very pleasant.

1 Q. Well, thank you.

2 A. And, um, you seem to be very
3 understanding, so that helps a whole lot with the
4 stress level.

5 Q. I'm glad to hear that.

6 A. And it's treatment from a USAA member or
7 representative that I would expect.

8 Q. Well, thank you very much for that. My
9 only point is that this is my chance to ask you
10 questions, and I don't know that we'll speak
11 again. And so if there -- that's why I'm asking
12 you now. So if you think that you -- that Mr.
13 Daniel did something to you or did something
14 improper that wasn't in a deposition or a trial
15 where there's going to be a record of it, that's
16 what I want to know.

17 A. No.

18 MR. WILLEY: Object to the form.

19 Q. Okay. So there was none?

20 A. No.

21 MR. WILLEY: Object to the form.

22 A. He didn't do anything to me

23 (inaudible) --

24 THE COURT REPORTER: I'm sorry?

25 A. He didn't do anything to me physically,

1 if that's what you were alluding to.

2 Q. Well, no. But even psychologically,

3 um --

4 A. Oh.

5 Q. I mean, we can go and we can look at the
6 transcript of the deposition and --

7 A. Right.

8 Q. -- see the things he said to you, right?

9 MR. WILLEY: Object to the form.

10 A. Right.

11 Q. And we can do the same thing at trial,
12 right?

13 A. Right.

14 Q. But that's why I'm asking you, is there
15 anything else, like out in the hallway or before
16 the court reporter was there or anything like
17 that, anything else? Because I want to know about
18 that.

19 A. Okay.

20 Q. Can you think of anything else?

21 MR. WILLEY: Object to the form.

22 A. No, sir.

23 Q. Thank you. And you said that after the
24 deposition, up until the -- I guess the verdict
25 came back, that your self-esteem was damaged,

1 right?

2 A. Yeah.

3 Q. And that was because you felt Mr. Daniel
4 didn't believe you, correct?

5 MR. WILLEY: Object to the form.

6 A. Not just that. About he -- when he did
7 all of that to me in front of all those other
8 people in the deposition, and for some reason
9 there was like 10 or 12 people at my deposition,
10 um, they believed what he was saying. And I could
11 look -- you know, I told you, I'm sensitive to
12 feelings and faces. And I could look around the
13 room, and I could see, you know, what they were
14 looking at. And, you know, it wasn't like, I feel
15 sorry for you. It was more like, You're lying.
16 You don't even know what you're talking about,
17 kind of thing, which is what he was saying to me.

18 Um, and, you know -- and that's what I
19 think -- let's put it this way: After I retired
20 from the Army, I was -- I went to college and got
21 my master's degree in education, then taught for
22 ten years at -- elementary school students. And
23 then after that, I became a manager at Walmart for
24 ten years. And, um, I left Walmart because my
25 oldest daughter had a pregnancy -- a difficult

1 pregnancy. But my -- you know, I was a
2 happy-go-lucky person, just like my -- you know,
3 my friend said I was. And then after that
4 deposition, it just -- I had changed, you know,
5 and I told you how I changed.

6 Q. Right.

7 A. So it's been since then that I -- I
8 guess have been anguished or questioning myself
9 and...

10 Q. So you -- you felt at the deposition
11 that everybody -- all these people around the
12 table, some who you knew and some who you didn't,
13 just didn't think you were telling the truth,
14 right?

15 A. Right.

16 Q. And that affected you deeply?

17 A. Yes.

18 Q. Okay. And I think what you're saying is
19 you just -- after that point, until you got to
20 trial, you just had this question that people
21 didn't believe you, right?

22 A. Yes.

23 Q. And then you said it was such a relief
24 when the jury came back, right?

25 A. Yes. Because then it proved I didn't

1 lie.

2 Q. Okay. And did you feel vindicated at
3 that point?

4 MR. WILLEY: Object to the form.

5 A. I don't really know how I was feeling.
6 I felt the sense of relief. I wasn't out to hurt
7 anybody. I wasn't out to get anybody. The relief
8 came from me, because knowing that I hadn't lied.

9 Q. Yeah.

10 A. So it was not a vindication. It was
11 just for me.

12 Q. And I don't really care about that word.
13 I'm not trying to make it sound different than it
14 is. But I guess my point is, you had -- it sounds
15 like you had some self-doubt even perhaps until
16 the jury came back --

17 MR. WILLEY: Object to the form.

18 Q. -- is that fair?

19 A. Because it was placed there --

20 Q. Right.

21 A. -- yes.

22 Q. But then when the jury came back, you
23 were like, I was telling the truth?

24 A. Yes.

25 Q. Okay.

1 MR. WILLEY: Object to the form.

2 Q. And was that therapeutic for you, the
3 verdict?

4 MR. WILLEY: Object to the form.

5 Q. And you can say it however you like it,
6 if you don't like that word.

7 A. I -- I think it was somewhat, because I
8 started to regain some belief in myself. But then
9 I was, you know -- I was disappointed that I had
10 to go through all of this for three years -- or
11 close to four years, really, because it was 2014
12 -- it was 2018 before I got the money, so that's
13 four years that I had to go through this.

14 Q. Okay. And I know that you said you saw
15 a doctor after the deposition?

16 A. Yeah.

17 Q. And you explained --

18 A. Yes, I told --

19 Q. -- explained how you felt?

20 A. -- her what happened. And, um --

21 Q. Let me ask you this, other than that
22 time, have you ever consulted a physician or a
23 medical professional specifically about Mr.
24 Daniel's conduct or USAA's conduct?

25 A. Um, well, I don't know if I told them or

1 if they knew. But besides Dr. Scott, who is the
2 psychiatrist, Dr. Ann Hanlon is my family doctor,
3 and she saw me and she did a deposition. And --
4 who was the other doctor? Dr. Jaskwhich. And he
5 did a video deposition that was admitted at trial.
6 And, um, I hate to say it, but they were all
7 disgusted by the behavior that --

8 Q. By how they were treated?

9 MR. WILLEY: Object to the form.

10 A. Well, by Mr. Daniels, but that was
11 allowed to happen to me. And that USAA hadn't
12 done anything about it.

13 Q. Okay. Did you talk to anybody else
14 about it, besides those doctors?

15 A. Those doctors, well, other than my
16 husband. That didn't cause him to cancel
17 policies, though.

18 Q. Um, did -- um, is there anything that
19 Chris Nickels has done or Clawson & Staubes has
20 done that you are suing about in this case?

21 MR. WILLEY: Object to the form.

22 A. I don't believe so.

23 Q. Um, do you know how much USAA has paid
24 to Clawson & Staubes to defend you?

25 A. I have no idea how much USAA has paid

1 anybody anything other than myself.

2 Q. Okay. Do you know whether USAA paid to
3 fix the Kucks' car or Mr. Johnson's car for you?

4 A. No. I think we discussed that earlier
5 and I said no.

6 Q. Okay.

7 A. And basically, I just cleared it by
8 saying, the only money I knew that was spent on me
9 was the money I was given at the end of the trial,
10 other than my personal injury.

11 Q. Okay. Would you want USAA to pay money
12 to release you from the claims against you by the
13 Kucks and Mr. Johnson?

14 MR. WILLEY: Object to the form.

15 A. I would need counseling for that to
16 advise me as to what I should do.

17 Q. And who would you seek that from?

18 A. Right now, I would see Mr. Wiley (sic).

19 Q. When you testified in your deposition,
20 did you tell the truth?

21 A. Yes.

22 Q. And when you testified at trial, did you
23 tell the truth?

24 A. Yes.

25 Q. Okay. And, of course, today you're

1 telling the truth?

2 A. Yes.

3 Q. Um --

4 A. I couldn't have positive eye contact
5 with you had I been lying.

6 Q. Um --

7 MR. WILLEY: She's not as good as you.

8 MR. WHELAN: Speak for yourself.

9 MR. WILLEY: I'm kidding. That was a
10 joke. Let the record reflect that's a joke.

11 A. Yeah. What is it, your eyes reflect
12 your soul?

13 Q. Okay. Um, I do have --

14 A. That's it, right?

15 Q. I don't know. You know better than I
16 do, Ms. Hood. I hope so.

17 A. It's good, though, I can laugh about
18 this.

19 Q. It is.

20 A. And it's interesting that all attorneys
21 go back and ask you the same question three times.
22 It's like taking the elementary school test to be
23 an elementary schoolteacher. At different phases
24 they will ask you the same question -- a couple of
25 words differently, but the same question at least

1 three times.

2 Q. It is an occupational hazard, and I
3 apologize for that. But let me just make sure, I
4 mean, I know we're sort of laughing around, but I
5 want to be serious. Are you comfortable right
6 now? Are you good to keep going?

7 A. Yes.

8 Q. Okay. And I'm not making you feel
9 uncomfortable in any way, am I?

10 A. No.

11 Q. Okay. Am I behaving well?

12 A. Yes, you are.

13 Q. Thank you very much. Um, now, looking
14 at exhibit -- just to prove what you just said,
15 look at Exhibit 3 for me.

16 A. Now, remember, I haven't seen this until
17 just now.

18 Q. Okay. Um, looking at the -- so there's
19 a list of expenses that begin on December 22nd,
20 2014, which I think would have been a little after
21 a month after your accident, I believe?

22 A. Yeah. Because it was on the 7th of
23 November.

24 Q. And then they go up to November of 2017.
25 Um, is it your contention that USAA owes you for

1 all of the items on Exhibit 3?

2 MR. WILLEY: I object to the form.

3 A. I have no knowledge of that, no.

4 Q. Okay. It's your contention that at some
5 point USAA should have just paid you the million
6 dollars before trial, right?

7 A. Yes.

8 Q. Now -- and would you say, ma'am, that
9 there was a point before that happened when it was
10 reasonable for USAA to say, well, we're not going
11 to pay the million at this time?

12 MR. WILLEY: I object to the form.

13 Q. Do you agree with that?

14 A. Um, I have to default to my attorney
15 based on what -- you know, I look at him as the
16 best interest -- has -- he has in me. So I would,
17 um -- he would have told me if that was something
18 we should do.

19 Q. True. Mr. Smith?

20 A. Yes.

21 Q. And do you know when it was that Mr.
22 Smith for the first time asked USAA to pay a
23 million dollars?

24 A. No clue.

25 Q. Okay.

1 A. And weren't some of these expenses --

2 THE WITNESS: I think these are your
3 expenses for this case, right?

4 MR. WILLEY: I can't answer any
5 questions, Ms. Hood. I'm sorry.

6 Q. It looks like they were for the records.

7 MR. WILLEY: I can answer them after but
8 not during.

9 A. For the records, yes. But the ones that
10 USAA did, that was to protect themselves, right;
11 all the inquisitions (sic) and the --

12 MR. WILLEY: Inquisitions.

13 A. -- costs incurred to not pay me would
14 apply to USAA. So you're saying this is -- to me,
15 you're saying it as it is gratuitous on USAA's
16 part because, you know, you gave money to -- to
17 the Kucks for their vehicle. Am I aware of the
18 money that you have expended on my behalf?

19 Q. Well, I know you're not, right?

20 A. Right.

21 Q. But that's not what I was asking you.
22 This is what I'm asking you -- I'm trying to get a
23 timeframe. Okay?

24 A. Okay.

25 Q. So I assume that it's not your position

1 that USAA owed you a million dollars on the day of
2 the accident, right?

3 A. I never thought of that. That never
4 came into my mind.

5 Q. Okay. So you don't contend that?

6 A. No.

7 Q. And, obviously, after the verdict
8 occurred, you contend they owed you a million
9 dollars, right?

10 A. Yes.

11 Q. Okay. And then you contend that
12 sometime between the accident and the verdict,
13 there was some time in there that it became -- at
14 the beginning it was okay not to pay; but then
15 there came some time when USAA should have paid
16 you that million, right?

17 A. Right.

18 Q. Okay. What I'm trying to do, ma'am, is
19 to find that time. And let me give you an example
20 why. You were not asking the jury to give you
21 costs that your attorneys incurred during the time
22 that you would agree USAA shouldn't have paid you
23 the million, right?

24 A. Can you like reword that question?

25 Q. Sure. Let's just write it down. So

1 there's the wreck.

2 A. Okay.

3 Q. And that is on 11/7/14.

4 A. Okay.

5 Q. And then there's the trial. And I'm not
6 sure when that was. September?

7 A. September 7th.

8 Q. Okay. So we'll say 9/7/17.

9 A. '17.

10 Q. So on 11/7/14, they did not owe you a
11 million dollars at that point?

12 MR. WILLEY: I object to the form.

13 A. Well, to be honest with you, I was in
14 the hospital, so my husband would have dealt with
15 that. And he would have found out for -- from
16 somebody what was owed. And like I said, at the
17 very beginning of the accident (sic), I -- I
18 couldn't talk because I had a brace from my chin
19 all the way down to my chest.

20 Q. I understand that, ma'am. But I'm
21 talking about today.

22 A. Oh, today.

23 Q. In 2019, looking back, you would
24 acknowledge that on the day of the accident, um,
25 it was reasonable for USAA not to write a check

1 for \$1,000,000 on the day of the accident, right?

2 It would be reasonable to investigate what
3 happened, correct?

4 A. It would be reasonable to investigate.

5 Q. So on November 7, 2014, they did not owe
6 you the million dollars, correct?

7 MR. WILLEY: Object to the form.

8 A. I guess you had to investigate.

9 Q. Let's put it this way --

10 A. But I believe that you did --

11 Q. Yeah.

12 A. -- because I wasn't at fault. So my --
13 that's my belief.

14 Q. Okay. So let's say it this way --

15 A. But reality --

16 Q. -- on November 7, 2014, it was
17 reasonable for USAA to investigate whether to pay
18 you?

19 A. But it was also reasonable for them to
20 not find me at fault.

21 Q. Okay. When between November 7th, 2014,
22 and September 7th of 2017, did it become
23 unreasonable for USAA not to pay you the million
24 dollars?

25 MR. WILLEY: I object to the form.

1 A. I would have no idea.

2 Q. Was it in 2014?

3 MR. WILLEY: Object to the form.

4 A. Personally, my attorney took care of
5 that, and I have no idea.

6 Q. Okay. So you sort of left that up to
7 your attorney?

8 A. Yes.

9 Q. Was it in 2015?

10 MR. WILLEY: Object to the form.

11 A. Like I said, sir, I left that up to my
12 attorney, and I -- I -- first of all, I couldn't
13 confirm any dates because that happened so long
14 ago.

15 Q. Sure.

16 A. And, secondly, I don't know.

17 Q. Was it in 2016?

18 MR. WILLEY: Object to the form.

19 A. Sir, I just said I didn't know in 2015;
20 I didn't know in 2016; I didn't know in 2017.

21 Q. But this is my question, ma'am: This is
22 your lawsuit.

23 A. Okay.

24 Q. Okay? It's not my lawsuit. It's yours.

25 A. Okay.

1 Q. And you had said that -- that USAA took
2 this unreasonable action at some point. And what
3 I'm trying to do is find out when that point was.
4 Not necessarily a day, perhaps, but maybe a week
5 or a month or even a year. Can you give me any
6 day, week, month or even year when you contend it
7 became -- it was time for USAA to pay the million?

8 MR. WILLEY: I object to the form.

9 A. No, I cannot give you that.

10 Q. Um, and can you tell me -- so is it your
11 contention -- are you asking the jury to pay you
12 for the costs you incurred in 2014?

13 MR. WILLEY: Object to the form.

14 A. I really don't know how to answer that.
15 I mean, the case is resolved, except for the part
16 where -- the part where the decision was made that
17 my lights were on was during the case of the
18 Kucks, when USAA took the position my lights were
19 on. And I don't know when that date was.

20 Q. But the day -- okay. So it's your
21 contention that the date when USAA contended that
22 your lights were on --

23 A. Right.

24 Q. -- is when they should have paid you?

25 MR. WILLEY: Object to the form.

1 A. Um, I don't want to answer that.

2 Q. Can you answer that? It looked like you
3 were going to before Mr. Willey objected.

4 A. No. He didn't object -- I didn't even
5 hear his objection.

6 MR. WILLEY: For the record, I did
7 object. I don't know if it's on there. I
8 can't read that far back.

9 MR. WHELAN: We heard you.

10 A. I'm not sure.

11 Are you going through these again?

12 Q. Perhaps.

13 A. Okay.

14 Q. And I want to look at Exhibit 4, please,
15 ma'am.

16 A. If I had them in order. Oh, here we go.
17 Oh, this is Mr. -- what's his name? This is
18 Johnson's, uh --

19 Q. These --

20 A. -- Interrogatories.

21 Q. These, ma'am, are the -- are your
22 answers --

23 A. Right.

24 Q. -- to our Interrogatories.

25 A. Oh, to yours?

1 Q. Yeah, because that's against USAA.

2 Um --

3 A. Okay.

4 Q. The -- I had Interrogatory No. 16 on
5 page 4 that asks for a list of any consequential
6 damages that you claim in this case. And there
7 are none listed.

8 A. 16?

9 Q. Yeah, 16. And I've done my best to ask
10 you about your damages in this case today.

11 A. Yes.

12 Q. And those would include any interest you
13 could have earned on the million if it had been
14 paid earlier, correct? Maybe?

15 A. Maybe.

16 Q. And you also want -- may or may not want
17 some of the costs on Exhibit 3, correct?

18 A. I guess you could assume that.

19 Q. Okay. And are you seeking to be
20 compensated for the mental anguish that you had to
21 endure because of what you've described with Mr.
22 Daniel?

23 A. Yes.

24 Q. Do you have any other damages that
25 you're seeking in this case?

1 MR. WILLEY: Object to the form.

2 A. Just disappointment.

3 Q. Anything else?

4 A. No.

5 Q. Okay. Are you okay?

6 A. No. I was just saying I put my tissue
7 down here. Maybe I should have put it someplace
8 else.

9 Q. Um, your Complaint alleges that USAA
10 forced you to file a lawsuit. Let's see if I have
11 it. Yeah. It says -- your Complaint says that
12 USAA forced the Plaintiff to bring, prosecute and
13 maintain an action of law in Jasper County with
14 the intent to distress and harass you. Do you
15 know what that is referring to?

16 A. No, sir.

17 Q. Do you know of any case that USAA forced
18 you to file?

19 MR. WILLEY: Object to the form.

20 A. No, sir.

21 Q. Do you know of any case that USAA filed
22 with an intent to distress or harass you?

23 A. I would say -- it would have to be the
24 Kucks' case. Because that did distress me, that I
25 was being sued. And then the outcome of that

1 case, which was from USAA, was the outcome.

2 Q. And what was the outcome of the Kucks'
3 case?

4 A. That, um, I was found innocent because I
5 had my high beams on.

6 Q. And who told you that?

7 A. Hmm?

8 Q. And who told you that?

9 A. Can you rephrase that question?

10 Q. Sure, sure.

11 A. Who -- can you rephrase that question
12 again? I'm sorry.

13 Q. Well, you said that the Kucks' lawsuit
14 caused you some distress. That's when the
15 Kucks --

16 A. Yes.

17 Q. -- sued you, right?

18 A. Right. And that I was found innocent in
19 that case.

20 Q. And you know that case didn't go to
21 trial, right?

22 A. Well, I -- no. I didn't know that. But
23 in either case, I was found innocent as far as
24 having my lights on.

25 Q. When you say you were found innocent,

1 ma'am, are you referring to the fact that USAA
2 hired a lawyer to protect you and to fight for you
3 and to defend you against the Kucks' claim?

4 MR. WILLEY: Object to the form.

5 A. Well, if they did that -- if they did
6 that, then why would they turn around and accuse
7 me of not having my lights on in the trial?

8 Q. You mean by Mr. Daniel?

9 A. No. By USAA.

10 Q. Through Mr. Daniel?

11 A. Yes, through Mr. Daniels. And
12 throughout the whole case.

13 Q. Well, the answer, ma'am, is that in the
14 Kuck case, USAA hired an attorney to represent
15 you, okay, and that attorney took the position
16 that your lights were on. Because that's your
17 position, right?

18 A. Yes.

19 Q. Okay. But in the -- um, Jack Daniel, he
20 was not actually hired to represent you. Okay?

21 A. Okay.

22 Q. I'm representing that to you. All
23 right? You have not known that until this moment,
24 have you?

25 MR. WILLEY: Object to the form.

1 A. I haven't known that.

2 Q. And so the reason that the two different
3 positions were taken was because, on one hand, Mr.
4 Nickels, he was representing you; he was -- you
5 wanted Mr. Nickels to say that your lights were on
6 because you believed they were on, right?

7 MR. WILLEY: Object to the form.

8 Q. Is that right?

9 A. I don't know that I expected anything
10 from him, other than his, um, support, his -- you
11 know, researching and finding out the facts and
12 presenting them on my behalf.

13 Q. And he did that, right?

14 MR. WILLEY: Object to the form.

15 Q. To the best of your knowledge?

16 MR. WILLEY: Object to the form.

17 A. To the best of my knowledge, no.
18 Because I told you, he didn't go -- he didn't go
19 see the vehicle, number one, and he was supposed
20 to be the person responsible for the physical
21 damage to the vehicle. He never went to the site;
22 he didn't question the police officer. The police
23 officer didn't give her -- I told you what she
24 told me, and she didn't give her report until four
25 or five days after the accident; she didn't

1 provide it until then. And then she did it wrong.

2 She marked the roads wrong.

3 So from the beginning, this is -- you
4 know, this has been bad. But had Mr. Nickels
5 investigated that, the police officer -- where the
6 things were done or what actually happened, that
7 would have been supportive to me. But he didn't
8 do that, you know. Basically, he told me to say
9 my lights were on.

10 Q. Who told you that Mr. Nickels didn't do
11 those things?

12 A. He did. It was brought up -- um, I
13 don't remember where, but, um -- I'm not sure
14 exactly where, but there was only -- well, Kevin
15 went to see the accident and the vehicle, and Mr.
16 Wiley (sic) wasn't involved at the time.

17 Q. Has Mr. Wiley (sic) gone to see the
18 accident and the vehicle?

19 A. No, no. Because he wasn't involved at
20 the time.

21 Q. So all of your -- so all of your
22 attorneys don't need to go see the vehicle in the
23 accident, right?

24 MR. WILLEY: Object to the form.

25 A. No. But he came -- towards the court

1 case is when he came on.

2 Q. Mr. Willey?

3 A. Yes. My husband went and drew a map.
4 My attorney went and -- during the sunlight time
5 and driving the street and looking at the lights.
6 So he went and investigated. Um, but Mr. Nickels
7 never presented any facts that he had found to
8 help me.

9 Q. Okay. And have you talked to Mr.
10 Nickels, other than the time that you saw him at
11 the deposition -- at your deposition?

12 A. Um, he was at somebody else's
13 deposition, so I just, you know --

14 Q. Other than that?

15 A. No -- well, I had asked him for my
16 records because he had notes that he took during
17 my deposition that nobody else had. And I wanted
18 those notes. And, um, I told him that they were
19 my records, so I had a right to get the documents.
20 And he didn't send them, refused to send them.
21 And, um, so the interaction I had with him then
22 was by e-mail. And as far as I know, he never
23 sent them. Um, and that -- you know, to me, that
24 would have helped, at least. But that's all I can
25 say about that.

1 Q. Okay. So other than the e-mails about
2 your file and seeing him at one or two
3 depositions, you have not had any communications
4 with Mr. Nickels?

5 A. No.

6 Q. And did -- was Mr. Nickels working with
7 Mr. Smith on your case?

8 A. Um, I didn't get that impression.

9 Q. Okay. Now -- you know what? We need to
10 go off the record.

11 THE VIDEOGRAPHER: This is the end of
12 media No. 3 in the deposition of Therese Hood.
13 We're off the record at 1:29.

14 (The deposition went off the record.)

15 THE VIDEOGRAPHER: This is media No. 4
16 in the deposition of Therese Hood. We're on
17 the record at 1:35.

18 BY MR. WHELAN:

19 Q. Okay, Ms. Hood. We just took a break.
20 Are you comfortable to keep going with the
21 deposition?

22 A. Yes.

23 Q. You mentioned, I think -- and I could
24 have written this down wrong, but I have a note
25 that says you may have said in the deposition

1 that, quote, USAA lied to me.

2 A. You mean in this deposition?

3 Q. Yes, ma'am. And I'm --

4 A. You know, I -- no. I didn't say that.

5 Q. Okay.

6 A. I said that USAA took two different
7 positions.

8 Q. Okay.

9 A. You know, and one of them I guess could
10 be considered as lying because you -- because in
11 that decision with the Kucks, which I explained to
12 you, I had my lights on, and then in my own case,
13 at trial, I didn't have my lights on. So, um, I
14 think there's a law about this somewhere.

15 Q. Okay.

16 A. According to the South Carolina Rules of
17 Procedures, I guess, you can't do that; it's a
18 breach of contract. Let's see if I can find it.

19 Q. What are you looking for?

20 A. Well, I was just looking to see if I
21 could find where it was written.

22 Q. No, I don't think it is written. I just
23 had a note -- when I asked you about --

24 A. Oh.

25 Q. -- your complaints, I had a note that

1 you said, USAA lied to me, and I wanted to follow
2 up --

3 A. Oh, okay.

4 Q. -- on that. So just -- just to clarify
5 that, when you say USAA lied to you, you're
6 talking about the position USAA took --

7 A. Right.

8 Q. -- through Mr. Daniel that your lights
9 were off?

10 A. Off.

11 Q. Okay. Um, you (sic) also had a note --
12 I also had a note that said -- you said, People
13 called me a liar. Who called you a liar?

14 A. In -- what were we talking about at the
15 time?

16 Q. Well, I believe I had asked you to go
17 ahead and give me a list of the complaints that
18 you had. And I believe one of them was that
19 people called you a liar.

20 A. No. They looked at me like I was a
21 liar. They didn't physically tell me I was -- you
22 know, I was a liar. But there were -- at my
23 deposition I think is what we're referring to?

24 Q. Okay. That's -- I'm not referring to
25 anything. I'm just asking you --

1 A. I don't know.

2 Q. So to be clear, nobody called you a
3 liar?

4 MR. WILLEY: Object to the form.

5 A. No.

6 Q. But you felt that people were looking at
7 you at your deposition like you were?

8 A. Yes. And pretty much throughout, um --
9 no, I can't say throughout this whole thing, but
10 -- I'll leave it at that.

11 Q. Um, now, in your Complaint, um, you
12 accused USAA --

13 A. Is that in here?

14 Q. No, it's not.

15 A. Okay. And that's fine. I was just
16 knowing -- trying to see if I needed to pick up
17 anything.

18 Q. Well, you're welcome to look at it.
19 It's a copy of your Complaint.

20 MR. WHELAN: What exhibit are we on? 9?
21 Or we don't even need to mark it as an
22 exhibit. It's a copy of the Amended
23 Complaint.

24 MR. WILLEY: I have one.

25 A. Okay.

1 BY MR. WHELAN:

2 Q. And on page 12 of the Complaint, there's
3 a cause of action -- it's the Fifth Cause of
4 Action for Outrage. And if you look at paragraph
5 65, you allege that, "USAA intentionally or
6 recklessly inflicted severe emotional distress on
7 the Plaintiff."

8 And then in paragraph 66 you say, USAA's
9 actions were "extreme, outrageous and atrocious."
10 Do you see that?

11 A. Yes.

12 Q. What actions of USAA were "extreme,
13 outrageous and atrocious"?

14 A. I'd have to defer that to my attorney.

15 Q. Okay. So sitting here right now, you
16 can't think of that?

17 MR. WILLEY: Object to the form.

18 A. No. I can think of that. I probably --
19 I don't know what he was thinking when he used
20 these words.

21 Q. Okay.

22 A. But I've already told you I felt that
23 USAA had not been supportive of me. Here is yours
24 back.

25 Q. Thank you so much.

1 A. You're welcome.

2 Q. Um -- oh, I'm sorry.

3 A. I'm sorry.

4 Q. That's my fault. Are you okay?

5 A. Yeah. I'm --

6 MR. WILLEY: Did he kick you?

7 THE WITNESS: Yes, on my bad foot.

8 BY MR. WHELAN:

9 Q. Are you okay? I apologize.

10 MR. WILLEY: It could hurt more later.

11 BY MR. WHELAN:

12 Q. He may be back to -- he may have another
13 lawsuit for you -- or you may have another lawsuit
14 for you.

15 Um, on Exhibit 3, there are several
16 costs related to focus group facilities and focus
17 group participants. Those would have been the
18 people that Kevin took the case to to evaluate the
19 case?

20 A. That's correct.

21 Q. Okay. And you don't know how many times
22 that was done, right?

23 A. Oh, no. I've never seen that document.

24 Q. Um, I think Exhibit 5, there's an
25 Interrogatory that asks, "Prior to trial of the

1 Plaintiff's case" -- it's on the first page --

2 A. Okay.

3 Q. -- "Prior to trial of the Plaintiff's
4 case against Antoine Johnson, did the Plaintiff or
5 the Plaintiff's counsel have any third party
6 evaluate the case value?" And the answer is "No."
7 Right? That's a mistake, correct?

8 MR. WILLEY: Object to the form.

9 A. I'll leave that up to my attorney.

10 Q. Well, that -- one of the answers would
11 be focus groups looked at it several times,
12 correct?

13 MR. WILLEY: Object to the form.

14 Q. Right?

15 A. Being that I've never seen that document
16 and don't know about focus groups, I can't say yes
17 or no.

18 Q. All right. I have printed out your
19 testimony from the trial of the case.

20 A. Okay.

21 Q. And I just wanted to ask you about a few
22 questions on that.

23 MR. WHELAN: I'm going to mark it as
24 Exhibit 8.

25 (Deposition Exhibit No. 8, Section of

1 trial testimony, was marked for identification.)

2 BY MR. WHELAN:

3 Q. Have you seen any portion of this
4 transcript from the trial before today?

5 A. This, you mean?

6 Q. Any --

7 A. I have not seen any of this --

8 Q. Okay.

9 A. -- before today.

10 Q. Okay. Fair enough. Um, do you recall
11 during the trial Mr. Smith asked you whether you
12 would -- if all the other -- if several witnesses
13 said that they did not see headlights on your car,
14 whether you would disagree with them or whether
15 you could accept that. Do you recall that? And
16 I'll show you the testimony, but I'm just asking
17 if you remember it.

18 A. How did you phrase that question?

19 Q. Um, whether -- so let me ask it this
20 way: So before the trial, your consistent
21 position was that your headlights were on,
22 correct?

23 A. Yes.

24 Q. Is it true that at the trial you told
25 the jury, Well, I might have been mistaken about

1 that; maybe they were on and maybe they were off?

2 A. I don't recall that, but it's in here?

3 Q. I'm just asking you if you recall that.

4 A. No.

5 Q. So is it your recollection that you
6 maintained at trial that your lights were
7 definitely on?

8 MR. WILLEY: Object to the form.

9 A. Yes.

10 Q. And I'm going to ask you to turn to page
11 496 at this time.

12 A. How did we get to 400?

13 Q. Well, this is just your -- so this does
14 not include anything before you took the stand.

15 A. Oh, okay.

16 Q. Does that make sense?

17 A. 496. Yeah, that makes sense.

18 Q. Okay. Um, and do you see --

19 A. There were -- (inaudible.)

20 THE COURT REPORTER: I'm sorry?

21 THE WITNESS: Oh, I'm just reading what
22 it says.

23 Q. So if you want, you can just read out
24 loud starting with line No. 5.

25 A. "All right. Mrs. Hood, we heard from a

1 lot of people this week, people saying no
2 headlights but running lights. Mrs. Hood, if
3 that's the testimony and we have heard that over
4 and over again, are you going to disagree with
5 that?"

6 And I go, "No, I'm not."

7 And you know who was asking that
8 question?

9 Q. Who?

10 A. Mr. Daniels.

11 Q. Okay. Um, but --

12 A. You know, and I'm --

13 Q. So do you think you were tricked into
14 giving that answer?

15 MR. WILLEY: Object to the form.

16 A. Yes.

17 Q. And you think you gave that answer
18 because you were scared of Mr. Daniel?

19 MR. WILLEY: Object to the form.

20 A. Well, to be honest, yes.

21 Q. And then the next question you were
22 asked is, "Can you accept that?" Right?

23 A. Yes.

24 Q. What was your answer to that?

25 A. "Yes, I can."

1 Q. And in other words, yes, you could
2 accept that your lights may have been off, right?

3 MR. WILLEY: Object to the form.

4 A. Let me see how he asked that question.

5 Q. Sure.

6 A. First of all, I hadn't heard from a lot
7 of people this week that they were saying no
8 headlights but running lights. There wasn't a lot
9 of people. I didn't talk to any people that week.
10 This happened in Orangeburg or -- no.

11 Q. Jasper?

12 A. Jasper County. And I only went there
13 the day of the trial. And I have the hotel bill
14 to prove that I hadn't been there. So I hadn't
15 heard anything --

16 Q. So --

17 A. -- by these people. So that was -- you
18 know, now that I think -- now that I'm really
19 looking at it on paper --

20 Q. Uh-huh.

21 A. -- that was -- that was his method of
22 asking people things.

23 Q. Mr. Daniel's?

24 A. Yes.

25 MR. WILLEY: Object to the form.

1 Q. So the question --

2 A. So, yeah, he said something about "we
3 heard." Okay? And he says, "We heard." I'm
4 assuming he means me in there too. Um --

5 Q. So the question that we're looking at on
6 page 496 is just an example of the type of
7 question --

8 MR. WILLEY: Object to the form.

9 Q. -- you were talking about earlier from
10 Mr. Daniel, correct?

11 A. Yeah.

12 MR. WILLEY: I'm -- okay.

13 MR. WHELAN: I'm sorry. Hold on a
14 second. She can leave -- she can leave --

15 MR. WILLEY: I'm going to object to the
16 form.

17 MR. WHELAN: You don't -- don't say
18 anything else.

19 MR. WILLEY: What you can do is mark
20 this as an exhibit.

21 MR. WHELAN: It's marked as an exhibit.

22 MR. WILLEY: Well, no, it's not.

23 MR. WHELAN: Yes, it is. It's Exhibit

24 8. Now, hold on a second. I'm going to ask
25 that we go off the record and the witness

1 leave the room --

2 MR. WILLEY: That's fine.

3 MR. WHELAN: So you can make a statement
4 on the record.

5 THE VIDEOGRAPHER: Off the record at
6 1:48.

7 (Following statements on stenographic
8 transcript only.)

9 MR. WILLEY: You need to lay a
10 foundation for what you're showing her.
11 You're showing her documents that she said she
12 has never seen before; she has no idea what
13 they are. And you're making her guess and
14 telling her what they are. So if you want to
15 lay a foundation rather than try to trick her
16 into saying things that you know are not
17 correct and you know she's just confused, then
18 you can do that. But we're not going to have
19 a whole section hour-long of tricking -- "Mr.
20 Daniel asked you that question, didn't he?" --
21 when you know it's not true, when you know
22 she's confused.

23 We can just stipulate she's confused
24 about it, if that's what we need to do.

25 MR. WHELAN: Do you have anything else

1 to say?

2 MR. WILLEY: That's it.

3 MR. WHELAN: The record will reflect
4 what was asked and what she volunteered. I
5 never tricked her. I'm absolutely floored --

6 MR. WILLEY: The first two questions --

7 MR. WHELAN: I'm floored that she said
8 that. Okay? It wasn't my intention, but it
9 shows what we're dealing with here. So if you
10 want to instruct her not to answer the
11 question and file a motion, you're welcome to
12 do that. But I'm going to keep asking these
13 questions. And I don't want you suggesting to
14 her -- now, you can ask her questions when
15 it's your turn. But I don't want you
16 suggesting to her that she's wrong about this.

17 MR. WILLEY: I haven't suggested
18 anything to her. And I'm not going to.

19 MR. WHELAN: Great. Anything else?

20 MR. WILLEY: No. Ready?

21 (The following resumes videotaped
22 portion of transcript.)

23 THE VIDEOGRAPHER: On the record at
24 1:50.

25 BY MR. WHELAN:

1 Q. All right, ma'am. I believe that the
2 question I had just asked you was, the question on
3 page 496 was typical of the type of question that
4 you were talking about earlier from Mr. Daniel,
5 correct?

6 MR. WILLEY: Object to the form.

7 A. Yes. Putting words -- putting words in
8 people's mouths, I guess.

9 Q. Okay. Now, I'd like you to turn for me,
10 if you would, to page -- actually, let me ask you
11 this, ma'am: So I'll represent to you that the
12 question that was asked of you on page 496 was
13 actually not asked by Mr. Daniel. It was asked by
14 Mr. Smith.

15 A. Really?

16 Q. Yes. Do you recall who asked you that
17 question?

18 A. No. No. I don't recall.

19 Q. Do you still feel that that is a tricky,
20 unfair question?

21 A. Um -- uh, I would think that, um, I
22 didn't -- I wasn't prepared for him to ask that
23 question, so I just agreed with what was said.

24 Q. Well, you took the --

25 A. But -- and that's, you know, an honest

1 opinion. But this is similar to the questions
2 that Mr. Daniels asked.

3 Q. Um, now, when you were sitting on the
4 stand, you were telling the truth to the jury,
5 correct?

6 A. Yes.

7 Q. Okay. And you don't want to take back
8 that answer you gave, do you?

9 A. No.

10 Q. Okay.

11 A. I wouldn't disagree. The only part that
12 I was disagreeing with was that, talked to "a lot
13 of people this week."

14 Q. Okay.

15 A. Not about -- anything about the lights
16 or anything else.

17 Q. All right. Now, if you would, turn to
18 page 511 for me.

19 A. Okay.

20 Q. Actually, let's go a little bit farther
21 to page 514.

22 A. Okay.

23 Q. And here, if you look at line 11, you
24 were asked the question, "What you told me under
25 oath is everybody else got it wrong, I had my

1 headlights on, I am the one that got it right;
2 that is what you said?" That question was asked
3 of you, correct?

4 A. It's on paper. I guess.

5 Q. Do you remember that?

6 A. No.

7 Q. Okay. And you said, well, "...that is
8 what I thought," right?

9 A. Yes.

10 Q. And then the question was, "That is what
11 you thought but, you know, that is what you
12 testified to and now maybe you are not so (sic)
13 sure about, right?" Was that question asked to
14 you?

15 A. Isn't that a leading question?

16 Q. Yes. That question was asked of you,
17 right?

18 A. I can't contest that.

19 Q. Okay.

20 A. I see it.

21 Q. And you said that you were sure -- that
22 you were sure you thought you had your headlights
23 on, right?

24 A. Yes.

25 Q. And then the question is, "But now you

1 think you may have been mistaken?" And your
2 answer was what?

3 A. "Yes."

4 Q. Okay. And do you remember -- sitting
5 here, do you remember telling the jury that you
6 think you might have been mistaken about whether
7 your lights were on or off?

8 MR. WILLEY: Object to the form.

9 A. No.

10 Q. Okay. But looking at this testimony, do
11 you dispute --

12 A. Yes.

13 Q. -- that you told the jury that you
14 thought you may have been mistaken?

15 MR. WILLEY: Object to the form.

16 A. Apparently I said that.

17 Q. Were you telling the truth when you said
18 that?

19 MR. WILLEY: Object to the form.

20 A. I believe so, because I don't -- I don't
21 lie. Um --

22 Q. And sitting here --

23 A. I think -- my thinking was that it was
24 presented on so many occasions and brought up in
25 the trial for everybody to ask the same question

1 about the lights being on and off that, at some
2 point, I just thought it would be better to
3 question myself, to have the jury think, Well, at
4 least she's thinking she didn't have them on,
5 because everybody else says she didn't have them
6 on. Do you follow that train of thought?

7 Q. Well, if I do, and I'm not sure I did,
8 but let me just see if it's right. Are you saying
9 that this wasn't the truth, that you really didn't
10 think you were mistaken, but you thought that it
11 would help you strategically if you said you were?

12 MR. WILLEY: Object to the form.

13 A. No. I didn't think that. I -- I was
14 thinking -- I gave them this answer because so
15 many people had said I didn't have them on. And I
16 had no proof at that point that they were on. It
17 was just what I believed.

18 Q. What about Mr. Poplin?

19 MR. WILLEY: Object to the form.

20 A. He wasn't there.

21 Q. Why not?

22 MR. WILLEY: Object to the form.

23 A. I don't know.

24 Q. Okay. What about the other experts?

25 A. Um, I don't know who actually was --

1 everybody that was at trial. But -- this question
2 had to be from Mr. Daniels. Um, I always tried to
3 second-guess what he was going to ask me, and I
4 knew it would be something that I couldn't
5 factually make it -- you know, say yes or no to.
6 Because it was alluded to that fact. He already
7 basically said, I am the one that got it right,
8 and that's what I said. That's true, I said that.
9 And the reason I said, "That is what I "thought
10 but, you know, that is what you test-" -- oh, he
11 said that, "That is what you thought but, you
12 know, that is...testified (sic) -- "what you
13 testified to and now maybe you are not sure about
14 it, right?" And I don't know why I said, "No, I'm
15 sure." Because I -- the following sentence says,
16 "I am sure that I" -- oh, "that I thought." I
17 used that word, "thought."

18 Q. Right. So was what you told the jury
19 the truth?

20 MR. WILLEY: Object to the form.

21 A. I should have phrased it differently. I
22 should have not used "thought." Because I knew
23 that my headlights were on.

24 Q. So when you said, "I am sure I thought
25 that I had my headlights on," what you meant to

1 say was, I know that I had my headlights on,
2 right?

3 A. Yes.

4 Q. And so when it said below, "...now you
5 think you may have been mistaken?," and you said,
6 "Yes," that was not the truth?

7 MR. WILLEY: I'm going to tell her to
8 quiet down. Can we go off the record?

9 MR. WHELAN: Sure.

10 THE VIDEOGRAPHER: Off the --

11 MR. WILLEY: Will you all quiet down,
12 please? We can hear everything you're saying.
13 Thanks.

14 THE WITNESS: Really? I couldn't hear a
15 thing.

16 MR. WILLEY: We can stay on. It's fine.
17 I just didn't want it to get in the way of the
18 tape.

19 A. God, why did I do this? Here is that
20 question again. "You swore under oath in your
21 deposition that it was" -- "you had the headlights
22 on." And I did say that in the deposition, so I
23 responded to that question.

24 I'd like to know where he got the
25 information to ask me "what you told me under

1 oath" because everybody else got it wrong.
2 Because that doesn't even sound like something I
3 would say. I could have been, you know, very
4 nervous, but that doesn't even sound like anything
5 I would say. Yeah, that's something -- I wouldn't
6 say everybody else is wrong. Because it's always
7 half and half, right?

8 Q. What do you mean by that?

9 A. Everything is either one way or the
10 other. 50 percent will think it's one way, 50
11 percent will think it's the other. That's what I
12 mean by half and half. So I would never -- I
13 don't recall saying this, and I don't believe I
14 would have said that everybody else got it wrong.
15 Because why would I believe that if Mr. Poplin
16 said that my lights were on?

17 Q. But, ma'am, what I --

18 A. I know you have to go by what's down
19 here on paper.

20 Q. And what I was asking you about is when
21 you told the jury, um, and when you agreed that
22 you may have been mistaken --

23 A. Mistaken.

24 MR. WILLEY: Object to the form.

25 MR. WHELAN: What is that objection?

1 MR. WILLEY: Is it a question?

2 MR. WHELAN: Yes.

3 MR. WILLEY: Okay. Well, I don't think
4 the foundation has been laid. It's assuming
5 facts not in evidence; there's no evidence
6 anywhere that this is the transcript of the
7 actual trial or who did it or anything else.

8 MR. WHELAN: Okay. All right.

9 BY MR. WHELAN:

10 Q. So, ma'am, when you told the jury that
11 you think that you may have been mistaken, was
12 that true?

13 MR. WILLEY: Object to the form.

14 A. Um, I'm trying to put myself in that
15 frame of thought. I thought that "everybody else
16 got it wrong." I still don't see how I would have
17 said that. But I would have been replying to the
18 fact that everyone thought I got -- "everybody
19 else got it wrong," I know I didn't say that. But
20 I know it's typed there, so I had to have said it,
21 but there's something missing in that sentence.
22 And so the rest is true. Basically, that is what
23 I thought.

24 Q. So --

25 A. So if he -- so the next question is,

1 "That is what you thought but, you know, that is
2 what you testified to and now maybe you are not
3 sure about it, right?" This is what I'm talking
4 about, his questions. You know, what do you say
5 to that? I mean, if that's what I thought, left
6 it there. But then he adds on that, um -- that I
7 testified it to (sic) "and now maybe you are not
8 sure about it, right?" He didn't refer to "it"
9 being this testimony or the deposition, which is
10 probably where it occurred. So I'm answering his
11 question with, I guess, another -- not another
12 question, but -- I'm confused.

13 Q. Okay.

14 A. So I will go with what is written here
15 and, um --

16 Q. Well, it's --

17 A. -- and attest to the fact that, um, I
18 may not have asked for a clarification about the
19 question, because there is more than one question
20 in that question, and, um, I should have asked for
21 a clarification, what he was trying to say, but,
22 you know --

23 Q. So --

24 A. -- I have to go with this.

25 Q. All right. So let me ask you this: So

1 sitting here today, is it your testimony that at
2 trial you knew that you weren't mistaken and you
3 knew that your headlights were on?

4 MR. WILLEY: Object to the form.

5 A. I knew my lights were on.

6 Q. Okay. And so if you told the jury that
7 --

8 A. I questioned whether they were on or
9 not? I did question myself.

10 Q. Well, let me ask you -- let me ask the
11 question, okay, before you answer. So if you told
12 the jury at trial that you think you may have been
13 mistaken when you said your lights were on, that
14 was not accurate, right?

15 A. It was accurate.

16 Q. Was it? Okay.

17 A. Because, um, I -- you know, the one
18 thing I knew was that any of these places, you
19 have to have facts. And I didn't have any facts
20 to support it otherwise.

21 Q. Uh-huh. And that's why you told the
22 jury you may have been mistaken?

23 A. Yes.

24 Q. And so at that point, had you already
25 decided -- when you gave this testimony, did you

1 think your attorneys were going to bring Mr.
2 Poplin to testify or not?

3 A. I had no idea.

4 Q. So for all you know --

5 A. I didn't know. For all I know, nobody
6 was coming.

7 Q. But in the same sense, for all you know,
8 he was going to come, right?

9 A. Well, no. Because, number one, I didn't
10 know who he was, and I had not been told anything.

11 Q. Um, and then if you'd look at page 511
12 for me, and look at the bottom, the very last
13 question, starting at line 22 -- actually, let's
14 start at line 18. Mr. Daniel says -- this is when
15 Mr. Daniel is first asking you questions. Okay?
16 And he says, "...if I heard you correctly...you
17 say, If other people say that I did not have
18 headlights on, I am not going to dispute that."
19 Do you see that he asked you that question?

20 A. Yeah.

21 MR. WILLEY: Object to the form.

22 A. But then --

23 Q. Excuse me.

24 A. But he prefaces that by saying, "I'm
25 asking you your testimony. What do" -- "What

1 do" -- blah-blah-blah.-- "if they say that you
2 didn't have your headlights on..."

3 Q. I'm going to underline for you what I'm
4 talking about because I think it's -- right there.

5 A. Oh.

6 Q. He says "...what you say, If other
7 people say that I did not have headlights on, I am
8 not going to dispute that." Do you see that?

9 A. Yeah.

10 Q. And your answer was "I understand"?

11 MR. WILLEY: I object to the form.

12 Q. Is that what you said?

13 A. Yes, that's what I said.

14 Q. And you acknowledge that you told the
15 jury you weren't going to dispute that you didn't
16 have your headlights on, based on what the other
17 witnesses had said, right?

18 MR. WILLEY: I object to the form.

19 A. I guess you could say that.

20 Q. Was that the truth?

21 MR. WILLEY: I object to the form.

22 A. My thinking at that time is as is
23 written on paper. Um, I was very emotional at my
24 trial. I knew that I would be questioned by Mr.
25 Daniels, and I know how he questions. And I was

1 tense and I -- if I agreed with him, then there
2 wouldn't be any arguments. And -- because then he
3 would just continue and continue to badger me, so
4 it was easier to just agree with him.

5 But my heart, um, thought is that I had
6 my lights on. And that -- but I didn't have any
7 proof of that. So I started questioning myself.
8 Because I didn't have any solid proof that I had,
9 and I already told you all the mental anguish I
10 had about questioning myself.

11 So when he asked that question, um, when
12 I was talking to the jury, it was -- I had to take
13 account into what he was gonna -- I don't know if
14 I should say how he was going to ask me next, uh,
15 what it was. And I just didn't want -- I was
16 going to say, I didn't want to argue with him, you
17 know. Basically, that's it. I'm not going to say
18 that I lied. I'm going to say that I agreed on
19 his -- actually, I don't know if I have to say I
20 agreed with his things -- yes, I agreed with his
21 questions because I didn't want to deal with the,
22 um -- the arguments. I was protecting myself from
23 being argued anymore.

24 And the possibility always exists, and I
25 think in somebody's life that things -- you know,

1 you remember some things one way at one point in
2 your life, and then you have time to think about
3 it and other situations happen and then you
4 remember it a different way... Does that answer
5 your question? No?

6 Q. So are you saying that what you told the
7 jury may not have been the truth because you just
8 didn't want to deal with Mr. Daniel, basically?

9 MR. WILLEY: Object to the form.

10 A. I told them the truth. But I agreed
11 with Mr. Daniels because I was avoiding
12 confrontation.

13 Q. Okay. And when you were -- when Mr.
14 Smith asked you whether you were going to dispute
15 with these people who said your lights were off --

16 A. Uh-huh.

17 Q. -- and you said you weren't, was that
18 because you were avoiding confrontation too?

19 MR. WILLEY: Object to the form.

20 A. No. That's because I didn't have any
21 proof of anything else. You know, I just had
22 people's word to go on. And that's all that I
23 think people were using, um, to define my case.
24 To be honest with you, this whole section is
25 interesting. At best I can say, I must have been

1 very confused.

2 Q. And Mr. -- Mr. Smith was at that trial,
3 right?

4 A. Yes, he was.

5 Q. And Mr. --

6 A. And I -- you know, I think I -- I'm
7 pretty sure I knew he was going to ask that
8 question, but he did tell me about the focus
9 groups and that he had met with them. So I
10 assumed that he had seen -- talked to a lot of
11 people about my lights being on and off. And
12 that's why I said, okay.

13 Q. Okay. You would -- you wouldn't
14 maintain that they were on a hundred percent?

15 MR. WILLEY: Object to the form.

16 A. Let me see.

17 Q. When you say --

18 A. Wait a minute. Where are we?

19 Q. I'm asking you this, ma'am, not on the
20 transcript, but when you said that based off what
21 the focus groups had said --

22 A. When Mr. --

23 Q. Mr. Smith --

24 A. -- asked me --

25 Q. You said, Okay?

1 A. Yes.

2 Q. Okay, what? What are you referring to?

3 A. I'll have to go back and look.

4 Q. I don't think Mr. Smith asked you about
5 the focus groups in your trial.

6 A. No.

7 Q. It had to be --

8 A. He just said people.

9 Q. It had to be before the testimony
10 started.

11 A. Um, no. He told me, um, that there were
12 some, and that he talked to a lot of people.

13 Q. Who?

14 A. And I -- you know, why would I not
15 believe him, that he talked to a lot of people?

16 Q. Who said what?

17 A. That I had my lights off.

18 Q. So the testimony you gave was based off
19 what Mr. Smith had told you?

20 MR. WILLEY: Object to the form.

21 A. Well, no. I had formed my own opinions,
22 but -- my thoughts about what he said. But, um,
23 he explained everything thoroughly to me. Um,
24 he's very good at that. And so I understood, you
25 know, what, um, the questions were going to be

1 like, based on other questions he had asked me in
2 the past.

3 Q. Okay. So before you got up there on the
4 stand?

5 A. Yes. But we -- well, we really didn't
6 talk during -- we weren't allowed to talk during
7 the trial.

8 MR. WHELAN: Okay, ma'am. I'm sure Mr.
9 Willey is going to have some questions for
10 you, but I want to thank you again for your
11 time and your patience during this process.

12 THE WITNESS: Oh, thank you.

13 MR. WHELAN: Absolutely.

14 MR. WILLEY: Would you like to take a
15 break?

16 THE WITNESS: No.

17 MR. WILLEY: Okay.

18 THE VIDEOGRAPHER: Don't forget your
19 microphone.

20 Off the record at 2:14.

21 (The deposition went off the record.)

22 THE VIDEOGRAPHER: On the record at
23 2:15..

24 EXAMINATION

25 BY MR. WILLEY:

1 Q. All right, Terry. This trial
2 transcript, Exhibit 8, alleged -- have you ever
3 seen it before?

4 A. No.

5 Q. Do you know where it came from?

6 A. No.

7 Q. Have you read it at any period of time
8 before it was just shown to you?

9 A. No.

10 Q. Did anybody ever ask you to make edits
11 or corrections or if everything you said was taken
12 down correctly in this document?

13 A. No.

14 Q. Okay. Look at page 511 for me.

15 A. Okay.

16 Q. And I'm going to represent to you
17 accurately that this is Mr. Daniel in this section
18 asking you these questions. Okay?

19 A. Okay.

20 MR. WHELAN: Object to the form.

21 Q. Line 18 it says, "If I heard you
22 earlier, if I heard it correctly, you are now,
23 what you say, If other people say that I did not
24 have headlights on, I am not going to dispute
25 that." That's actually what that section says,

1 correct?

2 A. That's three questions.

3 Q. Well, hold on. Is that what that
4 section says?

5 A. Yes.

6 Q. Okay. Is there a question mark there at
7 the end of that section?

8 A. No.

9 Q. Okay. Is he asking you anything
10 specific, based on how that is taken down on this
11 document?

12 A. No. He's assuming I'm going to answer
13 --

14 Q. Okay, yes or no. Line 21 says what; how
15 did you respond?

16 A. "I understand."

17 Q. Okay. Did you understand what he was
18 saying there? Did you state, allegedly --

19 A. "I understand."

20 Q. -- that you understood? Okay. So let's
21 go to the next page, 512.

22 A. Okay.

23 Q. Line 4 and 5 is an actual question,
24 correct? There's a question mark; do you see
25 that?

1 A. Yes.

2 Q. Okay. What -- what -- did he ask you --
3 is this correct, "Right. Are you disputing that
4 you did not have your headlights on?" Did I state
5 that question correctly?

6 A. Yes.

7 Q. Okay. And what was your response,
8 according to this document?

9 A. Okay. Well, on line 3, it says,
10 "Running lights on."

11 Q. Hold on. Go to line 6. I'm asking you
12 about line 6.

13 A. Oh, 6. Okay.

14 Q. What -- what --

15 A. That's --

16 Q. Read it.

17 A. "I drive with my lights on automatic all
18 of the time. I don't recall touching them."

19 Q. Okay. Has that been your consistent
20 position throughout the entire underlying case?

21 A. Yes, it has.

22 Q. Okay. Is that what you told Mr. Whelan
23 today before he handed you this document?

24 A. Yes.

25 Q. Okay. And is that what you said in,

1 allegedly, the trial transcript of this document
2 if we had just kept reading?

3 A. Yes.

4 Q. In response to Mr. Daniel's question?

5 A. Yes.

6 Q. Okay. Now, when you were talking
7 earlier, he gave you this, do you recall from
8 September of 2017 exactly what was asked to you
9 during the trial of that case question for
10 question?

11 A. No.

12 Q. Do you remember specific details about
13 that day as far as exactly who you talked to
14 necessarily and what they said?

15 A. No.

16 Q. Okay. Would your memory of those events
17 have been closer in accuracy closer in time to
18 that trial or now? In other words, would your
19 memory have been closer -- better closer to the
20 trial, or would your memory about the events that
21 occurred at trial be better now?

22 A. Well, considering I was under a lot of
23 stress at trial, I would have to say now.

24 Q. Okay. Look at Exhibit 6 for me, if you
25 will. I think it's right under that one.

1 A. She lined them back up for me.

2 Q. Okay. Good. I'll try to help you.

3 Maybe -- did he take that one back?

4 MR. WHELAN: Maybe I did. What is it?

5 MR. WILLEY: Exhibit 6. It's the
6 Interrogatories. Oh, no. Here it is. Sorry.
7 Okay.

8 I wrote down the wrong one. Disregard
9 that one. I'm not even going to ask you about
10 that.

11 BY MR. WILLEY:

12 Q. Okay. I'm not going to ask you about
13 the document, so you can set it aside.

14 A. Okay.

15 Q. Prior to your deposition in your case
16 against Antoine Johnson, had you ever met Attorney
17 Chris Nickels?

18 A. No.

19 Q. Had you ever spoken to attorney Chris
20 Nickels --

21 A. No.

22 Q. -- prior to that? Had Attorney Chris
23 Nickels, prior to your deposition in your case
24 against Antoine Johnson, ever asked you what you
25 thought occurred in the underlying wreck?

1 A. No.

2 Q. Okay. There was conversation about what
3 occurred at that deposition with Mr. Nickels and
4 Mr. Daniels (sic) being there; is that correct?

5 A. Yes.

6 Q. And I think there's some confusion; I'm
7 going to try to iron out. At that deposition, Mr.
8 Daniels asked you questions, correct?

9 A. Yes.

10 Q. Okay. At that deposition, you were
11 being represented by Mr. Smith?

12 A. Yes.

13 Q. And Mr. Smith is the attorney that
14 brought the lawsuit on your behalf against Antoine
15 Johnson, correct?

16 A. Yes.

17 Q. Okay. And USAA, who is your insurance
18 company, right --

19 A. Uh-huh.

20 Q. Is that correct?

21 A. Yes, that's correct.

22 Q. -- you understand that they hired Mr.
23 Daniel, correct?

24 A. That's what he said.

25 Q. And did you understand at that time that

1 Mr. Daniel was hired in that case to be the
2 defense lawyer on your claims against Mr. Johnson
3 for USAA?

4 MR. WHELAN: Object to the form.

5 A. Did I -- had --

6 Q. Let me rephrase. I think it's a bad
7 question.

8 A. I did not know Mr. Daniels --

9 Q. Let me rephrase it. Let me rephrase it.
10 You never met one-on-one with Mr. Daniel prior to
11 that, correct?

12 A. No.

13 Q. Okay. You never had a one-on-one
14 conversation with Mr. Daniel prior to that,
15 correct?

16 A. No.

17 Q. Okay. You understood that, although Mr.
18 Daniel was working for USAA, he was not your
19 personal lawyer, correct?

20 MR. WHELAN: Object to the form.

21 A. No.

22 Q. Okay.

23 A. I understood that he was.

24 Q. You understood that he was? Okay. Did
25 you understand at that particular point in time

1 that Mr. Nickels had been hired to be your
2 personal lawyer?

3 A. That, he told me.

4 Q. That, he told you. And during the
5 course of that introduction, Mr. Nickels
6 introduced Mr. Daniel as your lawyer for USAA?

7 A. Yes.

8 Q. Okay. If -- scratch all that. You
9 understand that you're a USAA customer, correct?

10 A. Yes.

11 Q. Does the fact that Mr. Daniel worked for
12 USAA make you believe that he was supposed to be
13 looking out for your interests?

14 A. Yes.

15 Q. Okay. And is that where your confusion
16 about him representing you or not comes from?

17 A. Yes.

18 MR. WHELAN: Object to the form.

19 Q. So as I understand it, you understood
20 that Mr. Daniel was hired by USAA to investigate
21 the case?

22 MR. WHELAN: Object to the form.

23 A. Yes. He was supposed to do the personal
24 injury; that's how it was explained to me, that I
25 recall. And that Mr. Nickels did the property

1 damage.

2 Q. Okay. During -- the Kucks, during the
3 courses of these cases, also said that your car
4 turned over, correct?

5 A. I'm -- I don't recall.

6 Q. Okay. You don't recall. Did you --

7 A. I don't recall who said it. Somebody
8 said it.

9 Q. Okay. Did the fact that the jury found
10 you 49 percent at fault in the underlying case
11 bother you? How did that make you feel?

12 MR. WHELAN: Object to the form.

13 A. That bothered me.

14 Q. How did it make you feel?

15 A. Oh, that they saw that I was either
16 negligent or at fault for the accident for that
17 percentage of awardance (sic), I guess.

18 Q. Do you recall at the trial of the case
19 there being anything else brought up that would
20 show you were at fault in any way other than the
21 headlights by Mr. Daniel?

22 A. Um, no.

23 Q. Do you -- does -- your husband's name is
24 David?

25 A. Right.

1 Q. And does David or you generally handle
2 the purchasing of the actual insurance and the
3 renewals --

4 A. Yes.

5 Q. -- and things like that? Who does that?

6 A. Um, I have been doing it.

7 Q. Okay.

8 A. But we put it -- I think we put it in
9 his name -- well, it's in both our names. Because
10 both of us have checking and savings --

11 Q. Right.

12 A. -- and insurance.

13 Q. Right. And so you're the one for the
14 family that handles that portion of the finances
15 in terms of --

16 A. The majority of the time, yes.

17 Q. Okay. And in deciding to go with USAA
18 in the beginning, did you rely on their
19 advertisements and what they -- how they said they
20 treated people?

21 A. Yes.

22 MR. WHELAN: Object to the form.

23 Q. Okay. And as part of that -- the
24 statement, that when you join USAA, you become
25 part of a family who stands by you during every

1 stage of your life --

2 A. Yes.

3 Q. -- was that your general understanding?

4 A. Yes.

5 MR. WHELAN: Object to the form.

6 Q. And do you feel like in the underlying
7 case that they did that for you?

8 A. No.

9 MR. WHELAN: Object to the form.

10 Q. There was a mention about after the
11 trial a juror coming up and making -- making some
12 remarks. Um, do you recall after the trial being
13 outside of the courthouse in the courtyard?

14 A. Yes.

15 Q. Okay. Do you remember there being a lot
16 of people around?

17 A. Yes.

18 Q. Okay. Do you remember the --

19 A. The boisterous one?

20 Q. The boist- -- the attendees and some of
21 the jurors and others that came out during that
22 period of time?

23 A. Yes.

24 Q. Okay. And do you recall, you know, that
25 some of the jurors were -- were hanging around and

1 talking to everyone?

2 A. Yes.

3 Q. Okay. Do you recall, um, you know, the
4 jurors talking to you and David, you know, a
5 couple of them and other people in the party?

6 A. Yes.

7 Q. Okay. But you don't specifically, as
8 you sit here today, recall what was said, right?

9 A. No.

10 Q. Okay. But you do remember the general
11 environment of everybody kind of --

12 A. It was in front of the -- I think we
13 took the picture in front of the courthouse.

14 Q. Right. And some of the jurors wanted to
15 be in the picture, right?

16 A. Right.

17 Q. And, um, your memory about what was said
18 out in the courtyard and everything would have
19 been better closer in time to those events than
20 they are today, correct?

21 A. Yes.

22 Q. Okay. You were asked about damages.
23 Isn't part of the reason for your bringing this
24 case is you don't want this to happen to anyone
25 else?

1 MR. WHELAN: Object to the form.

2 A. Yes. Oh, I did say that, yes.

3 Q. And I don't expect you to know all the
4 legal terms, but part of the damages that we're
5 asking for in this case -- that we've asked for is
6 punitive damages, which are damages that are, I'll
7 represent to you, generally meant to deter USAA
8 from doing this again. Aren't you seeking those
9 damages in this case?

10 MR. WHELAN: Object to the form.

11 A. Yes.

12 Q. There was a lot of talk about USAA's
13 relations with you and they lied to you and all
14 like that. After you retained counsel, Mr. Smith,
15 aside from the one e-mail that you sent, isn't it
16 true that all of your contact with USAA was
17 through counsel?

18 A. Yes.

19 Q. Okay. And so Mr. Smith obviously made
20 available to you letters and things and pleadings
21 that Mr. Daniel filed?

22 A. Yes.

23 MR. WHELAN: Object to the form.

24 Q. Okay. And so you had the opportunity to
25 see what USAA was saying through those documents,

1 correct?

2 A. Right.

3 Q. But it's equally accurate to say that,
4 you know, USAA with the little red hat, never
5 stood up itself and specifically lied to you,
6 correct?

7 A. Correct.

8 Q. Okay. And so what you were saying is
9 that in those documents and through the course of
10 the case, you were lied to; is that accurate?

11 A. Yes.

12 Q. Okay.

13 THE WITNESS: (Inaudible.)

14 MR. WHELAN: What did you say?

15 THE WITNESS: You're at ease.

16 Q. One of those --

17 THE COURT REPORTER: What did you say?

18 I'm sorry.

19 MR. WILLEY: You're at ease.

20 BY MR. WILLEY:

21 Q. One of those documents that you saw or
22 had communicated to you was Mr. Poplin's -- the
23 expert's report, correct?

24 A. Yes.

25 Q. Okay. And was it your understanding

1 that in that report Mr. Poplin said it was
2 conclusive that your high beams were on at the
3 time of the wreck?

4 MR. WHELAN: Object to the form.

5 A. Yes.

6 Q. Okay. And did that report indicate to
7 you at that point USAA should have known
8 conclusively that your lights were on?

9 A. Correct.

10 MR. WHELAN: Object to the form.

11 Q. There was a lot of questions about what
12 court reporters took down or didn't take down at
13 depositions or trial. Do you know, as you sit
14 here today, everything that was or was not taken
15 down by a court reporter in the underlying case
16 and proceedings?

17 MR. WHELAN: Object to the form.

18 A. No. I don't know what was videotaped
19 and wasn't.

20 Q. Okay. Do you recall if there was a
21 court reporter at the mediation in the underlying
22 case?

23 A. At the mediation? The first mediation?

24 Q. Right.

25 A. No.

1 Q. You don't know one way or the other --

2 A. No.

3 Q. -- if they had one?

4 A. No. There was no court reporter.

5 Q. There was no court reporter. Okay. Do
6 you know during the course of depositions that
7 were taken when exactly the court reporters
8 started taking down everything that was being said
9 and when they stopped taking down everything that
10 was being said?

11 MR. WHELAN: Object to the form.

12 A. No.

13 Q. Okay. So you don't know one way or
14 another whether or not those transcripts reflect
15 everything that Mr. Daniel would have said to you
16 or whether they don't, do you?

17 MR. WHELAN: Object to the form.

18 A. No.

19 Q. You were asked about focus groups, and
20 you've said that you had no idea, you know, how
21 many, correct?

22 A. No. I don't.

23 Q. You don't know where they occurred,
24 correct?

25 A. No.

1 Q. You don't know what they were asked to
2 evaluate, do you?

3 A. No.

4 Q. Do you know if they were asked to
5 evaluate case value, verdict amount or settlement
6 value, one way or the other?

7 A. No.

8 MR. WHELAN: Are you saying they
9 weren't, and that's why you said no in the
10 Interrogatory?

11 BY MR. WILLEY:

12 Q. Do you believe that the way that USAA
13 treated you in this case is how they should treat
14 their insureds?

15 A. I would hope not, no.

16 Q. Is it how you would ever treat a member
17 of your family?

18 A. No.

19 Q. Do you believe that the pain, I guess,
20 anguish, I think you called it, that they have put
21 you through has been extreme?

22 A. Yes.

23 MR. WHELAN: Object to the form.

24 Q. Do you think that the actions they took
25 in taking disparate positions exceeds the bounds

1 of decency?

2 MR. WHELAN: Object to the form.

3 A. Yes.

4 Q. Do you agree that an insurance company
5 can't just go around in court and take positions
6 that it knows to be false to protect its money?

7 MR. WHELAN: Object to the form.

8 A. Yes.

9 Q. Ms. Hood, you were asked a lot about
10 specific dates today. Okay? Are you good with
11 specific dates?

12 A. Well, not really. I don't, you know,
13 recall specific dates, recall specific incidences.

14 Q. Okay. If today, during the course of
15 this deposition, you got dates wrong or details
16 wrong, were you intentionally lying to Mr. Whelan
17 and the jury in this case?

18 A. No.

19 Q. It's been your intention to tell the
20 truth to the best of your ability?

21 A. Yes.

22 Q. Okay. And when you've answered his
23 questions, have you erred on the side of trying to
24 answer truthfully rather than saying "I don't
25 recall" if you didn't exactly remember every

1 detail?

2 A. Yes.

3 THE WITNESS: I tried to remember.

4 BY MR. WILLEY:

5 Q. There was a question about USAA forcing
6 you to file a lawsuit.

7 A. Okay.

8 Q. If USAA had paid you the full policy
9 limits prior to you filing the underlying lawsuit,
10 would you have ever served a lawsuit on USAA?

11 A. No.

12 Q. Okay. You don't find the process of a
13 lawsuit to be enjoyable, do you?

14 A. This is my first one. And I would say
15 definitely not.

16 Q. Okay. And is it true that the only
17 reason you did that is because you wanted what was
18 owed to you?

19 A. Yes.

20 Q. Have you ever done anything to try to
21 get more than was owed to you?

22 A. No.

23 Q. Okay. And isn't that what this lawsuit
24 is about, to get what USAA owes to you and to stop
25 them from doing this to anyone else?

1 MR. WHELAN: Object to the form.

2 A. It was to stop from doing it to anybody
3 else, but to be an insurance company of their word
4 is more important.

5 MR. WILLEY: Thank you. That's all I
6 have.

7 RE-EXAMINATION

8 BY MR. WHELAN:

9 Q. Ms. Hood, I am going to have some
10 follow-up questions. Are you good to keep going,
11 or do you --

12 A. Yes.

13 Q. -- want to take a little break?

14 A. Okay.

15 Q. Are you good?

16 A. Uh-huh.

17 Q. Okay. Um, now, Mr. Willey -- I'm
18 confused. You told Mr. Willey in response to one
19 of his questions that you were lied to. Who lied
20 to you?

21 MR. WILLEY: I object to the form.

22 THE WITNESS: What was your question
23 that I said that to?

24 BY MR. WILLEY:

25 Q. It was one of his long questions that

1 you said yes to. And the question was, you were
2 lied to?

3 MR. WILLEY: Object to the form.

4 A. Um --

5 Q. Can you tell me any lie that was told to
6 you, ma'am?

7 MR. WILLEY: Object to the form.

8 A. I would say -- well, for one, um, the
9 fact that Mr. Daniels wasn't my attorney. That
10 was never -- that was -- you know, the implication
11 that he was the attorney to do personal injury and
12 Mr. Nickels was the attorney to do the property
13 damage, so I was lied to then.

14 Q. Okay. Can you think of anything else?

15 A. Um, other than the things I mentioned
16 earlier, no.

17 Q. I'm talking about lies.

18 A. Oh, lies --

19 Q. Yeah.

20 A. -- that people said? Um --

21 Q. And I thought earlier you had told me
22 that there weren't lies. But then you told Mr.
23 Willey there were lies. But that's why I'm asking
24 you.

25 MR. WILLEY: Object to the form.

1 A. Yeah. I think that was based on the
2 wording of the question, maybe.

3 Q. Sure. And if there weren't any lies,
4 fine. If there were lies, fine. I just want to
5 know about it.

6 MR. WILLEY: Object to the form.

7 A. That was just about Mr. Daniels and...

8 Q. Okay. Um, let's see. Did you -- when
9 you answered these Interrogatories and the one
10 that asked about a third party evaluating damages,
11 did you check with Mr. Smith to see whether those
12 focus groups did evaluate damages?

13 A. No.

14 Q. Okay. So for all you -- so they may
15 have talked about damages, they may not have, but
16 you don't know?

17 A. I don't know.

18 Q. Okay. At the mediation -- and Mr.
19 Willey made a good point; there would not be a
20 court reporter at the mediation. What -- what do
21 you remember, if anything, being said at the
22 mediation?

23 A. Well, the mediator, um, we would come up
24 with a proposal for USAA and then, of course, he
25 went to talk to USAA; and they would come back

1 with something else. And then he'd tell us, Well,
2 this is ridiculous. And then he went back, and
3 they did this back and forth a few times. And
4 then, finally, the mediator said, They're not
5 gonna go any further. You might as well just drop
6 this.

7 Um, so I think that's what you're
8 asking, right?

9 Q. Yes, ma'am. What you remember from the
10 mediation.

11 A. Yeah. And then the amount. And I
12 thought that was...

13 Q. Now --

14 A. Even the mediator thought that was...

15 Q. Now, at the mediation, you would have
16 given your attorneys some authority to settle the
17 case; in other words, We can accept this amount to
18 make the case go away --

19 A. Right.

20 Q. -- right? Do you remember what that
21 number was?

22 A. No. I don't think he ever said.

23 Q. Okay. Did you ever tell Mr. Smith or
24 Mr. Willey that you would settle this case for
25 less than a million dollars?

1 MR. WILLEY: Object to the form.

2 A. I didn't say that to anybody.

3 Q. Okay.

4 A. I didn't even think anything like that.

5 Q. So as far as you were concerned, a
6 million was the minimum amount that you would take
7 to settle the case; is that right?

8 A. I would -- I wasn't confronted with that
9 fact about another offer. So I would have to say,
10 yes, I would expect the million. But I had any
11 other figure --

12 Q. Now, my understanding -- and I wasn't
13 there -- was that you had asked for \$650,000 to
14 settle the case in mediation or your attorneys
15 had.

16 A. My attorney.

17 Q. Okay. Did you have anything to do with
18 that?

19 MR. WILLEY: Object to the form.

20 A. No.

21 Q. Did -- would you have settled the case
22 for \$650,000?

23 A. I don't know.

24 Q. Would you have settled the case for less
25 than \$650,000?

1 A. I don't -- I can't answer that. It
2 would be based on how I felt at the time, I guess.

3 Q. Now, if USAA had paid you the \$650,000,
4 the case would have ended at that point, correct?

5 A. I think that's how it goes.

6 Q. And you would have had to pay Mr. Smith
7 40 percent of the --

8 MR. WILLEY: Object to the form.

9 Q. -- of the \$650,000; is that right?

10 MR. WILLEY: Object to the form.

11 A. (Inaudible.)

12 THE COURT REPORTER: I'm sorry. What
13 was the answer to that?

14 THE WITNESS: Yes.

15 MR. WHELAN: I think she said "that's
16 correct."

17 Q. Didn't you?

18 A. That's correct.

19 Q. And I guess it turned out to be a good
20 thing for you financially that USAA didn't settle
21 it for \$650,000, right?

22 MR. WILLEY: Object to the form.

23 A. I could agree to that.

24 Q. I mean, that's true, isn't it?

25 A. Yes, that's true.

1 Q. I mean, if they had settled -- if they
2 had accepted the \$650,000, you and your attorneys
3 would have had 350,000 less dollars, right?

4 MR. WILLEY: Object to the form.

5 A. Well, actually, that's not true.

6 Q. Okay.

7 A. Because when I went to trial, I had no
8 idea how the jury was gonna vote. Either they
9 voted me at fault and I wouldn't get any money --
10 so I think the offer from USAA was to prevent the
11 case from going to trial, perhaps thinking that I
12 would win and, therefore, if they offered the, um,
13 amount before the trial, then since I didn't have
14 to go to trial, they wouldn't have to pay the full
15 amount. But it was a risk all along for me,
16 because I had no idea what the outcome was going
17 to be.

18 Q. Right. Nobody did?

19 A. Yes, nobody did.

20 Q. Did anybody involved in this case have a
21 crystal ball that said what the jury would do?

22 A. No.

23 Q. Roy is raising his hand.

24 A. It was a risk.

25 Q. So there was risk for you, right?

1 A. Yes.

2 Q. And there was risk for USAA, right?

3 A. Yeah.

4 Q. And it turned out that the cards were in
5 your favor, right? The risk --

6 A. Yes.

7 Q. -- worked out in your direction, didn't
8 it?

9 A. Yes.

10 Q. And you actually got -- because you took
11 that risk, all right, and because USAA took that
12 risk, you actually ended up with more money,
13 correct?

14 MR. WILLEY: Object to the form.

15 A. I ended up with more money, yes.

16 Q. Now, the picture in front of the
17 courthouse, tell me about that.

18 A. Well, I was still in a daze. I had
19 gotten up with my friends. They weren't in the
20 picture. We just used some of the -- we all
21 walked out as a group. There were several other
22 attorneys that Mr. Smith had hired to help and
23 plus his paralegal. They were in the picture and
24 then several of the witnesses. But it was like a
25 friendly, just discussion, you know, about -- not

1 necessarily about the trial, but some of -- some
2 of the questions, you know, that had been
3 answered, I guess. But mostly it was just about
4 getting to know the person. And because Kevin and
5 Roy and all of the staff were such a
6 family-oriented kind of situation, that we took
7 the family picture, and it was like a camaraderie
8 kind of thing.

9 Q. Sure. So this was a celebratory
10 photograph, right?

11 MR. WILLEY: Object to the form.

12 A. Um, I guess you could say that or just
13 team work.

14 Q. Sure. You won?

15 A. Yeah.

16 Q. I mean, you were taking the picture
17 because you were successful, right?

18 A. Yeah, that's true.

19 Q. And were there -- so -- and -- so there
20 were some pictures with the witnesses, some
21 without the witnesses, some staff?

22 A. I don't remember that. I don't know how
23 many pictures were taken, if more than one. I
24 think maybe a jury person might have taken a
25 picture, but I don't recall.

1 Q. And how many of the pictures do you
2 have?

3 A. None.

4 Q. Who has them?

5 A. I don't know. Whoever took the
6 pictures.

7 Q. Okay. Um, and have you seen -- have you
8 seen the pictures since they were taken?

9 A. No, sir.

10 Q. Okay. And did you do any celebrating
11 after you left the courthouse?

12 A. No, sir.

13 MR. WHELAN: I'm not asking you.

14 MR. WILLEY: You've never been to
15 Ridgeville (sic) apparently or wherever --
16 Ridgeland.

17 THE WITNESS: Ridgeville (sic).

18 MR. WHELAN: Um, okay.

19 MR. WILLEY: There's a fricking Sonic.

20 BY MR. WHELAN:

21 Q. So let's see here.

22 THE WITNESS: Yeah, that's true.
23 Everybody went to eat at the same place, this
24 little diner, southern diner. Yeah, that was
25 interesting --

1 Q. Now --

2 THE WITNESS: No. McDonald's. That's
3 serious.

4 Q. Okay. Well, you take what you can get.

5 A. Yeah.

6 Q. The -- you said that, um -- you
7 mentioned some advertisements before you got USAA,
8 I think. There may have been some confusion.

9 A. Well, it was some -- when -- when you're
10 in the service, they have advertisements about
11 banks, like the Pentagon Federal Credit Union,
12 USAA for insurance; they have information that
13 they give you that, you know -- I wouldn't say it
14 was propaganda. I would say it's in- -- just
15 information that -- of what is available to you,
16 like different banking ideas or whatever. And I
17 picked one of the USAA advertisers. I had no
18 knowledge about USAA at that point; nobody in my
19 family had ever had USAA.

20 Q. This would have been --

21 A. Well, nobody qualified for USAA.

22 Q. True. So this would have been, if I'm
23 understanding, in either the '70s or the '80s?

24 A. Let me see. I didn't start driving --
25 the late '70s.

1 Q. And I assume that -- let me ask you
2 this: Once you got USAA in the late '70s, other
3 than the incident that we're here for today, has
4 it been -- I mean, has it lived up to what it said
5 it was? Has it been a great company?

6 A. Yes, yes.

7 Q. And I think you told me at the
8 beginning, you said, We profess that USAA is the
9 best insurance company?

10 MR. WILLEY: Object to the form.

11 A. Yeah. USAA says that.

12 Q. But you told me we --

13 A. Yeah. I would say --

14 Q. You and your husband?

15 MR. WILLEY: Object to the form.

16 A. Well, I meant we, as in the people, like
17 the people you see on TV is the group of people.
18 And you, on your commercials, say that people
19 should buy USAA because you can be members for
20 life, and you have all these things that you
21 offer, like the accident protection and, um -- I
22 don't remember. Some other ones, the medical, the
23 401(k) that some people have used. And that's
24 where I got some of the information.

25 And recently -- well, after the car

1 accident, we had to change our insurance carrier
2 because we live in a flood area. And we had
3 Liberty Mutual, and they don't insure flood area
4 things. But USAA, we did a contract with them,
5 they came to investigate, you know, the property
6 and its lines, and then we got that for house
7 insurance.

8 MR. WHELAN: Okay. We're going to go
9 off the record real quick.

10 THE VIDEOGRAPHER: This is the end of
11 media No. 4 in the deposition of Therese Hood.
12 We're off the record at 2:52.

13 (The deposition went off the record.)

14 THE VIDEOGRAPHER: On the record at
15 2:53.

16 BY MR. WHELAN:

17 Q. Okay, ma'am. So as far as the -- I'm
18 going to go back and look at the transcript, and I
19 could be completely wrong, but my impression of
20 what you were telling me at the beginning of the
21 deposition was that you and your husband like USAA
22 a lot and tell people that USAA is a good
23 insurance company?

24 MR. WILLEY: Object to the form.

25 A. Yes, we tell everybody.

1 Q. Yeah. Okay. Um, and so -- you know,
2 that's what I thought. I just wanted to make sure
3 that I heard that right.

4 A. Yeah, that's correct. You -- in my
5 view, your reputation went way down. Um, but
6 that's my view, and I didn't share it with people.
7 I didn't discourage anybody from getting insurance
8 through USAA. As a matter of fact, I encouraged
9 them. And I think this accident was a very
10 unfortunate experience for me, and I don't want to
11 have anybody to have to go through this. I mean,
12 that was so unprofessional and -- just a lack of
13 words for what happened to me. That should never
14 happen to anybody.

15 Q. And you mentioned -- you mentioned some
16 advertisements. I assume you've never seen any
17 advertisement that talks about underinsured
18 motorist coverage?

19 MR. WILLEY: Object to the form.

20 A. No, I have not.

21 Q. Okay.

22 A. Do you advertise that?

23 Q. I do not know. And when you -- when you
24 signed on in the '70s, that was based on some
25 paperwork you got in the military; is that right?

1 A. Yes -- well, yes, fliers, like Army
2 Emergency Relief and all of those.

3 Q. Yeah.

4 A. And we had GEICO or -- to pick from and
5 -- who else? But I -- it just stuck out --

6 Q. Okay.

7 A. -- your paperwork.

8 Q. And am I correct that since the --
9 starting in the '70s, you became insured with
10 USAA?

11 A. Uh-huh.

12 Q. And up until this accident, you had an
13 excellent experience with them; is that right?

14 A. Yes.

15 Q. Okay. And you continue to be insured
16 with them not because of any advertisements you
17 saw --

18 A. No, no. Just --

19 Q. -- but because of your experience?

20 A. -- because I believed -- well, not
21 because of my experience. But I believed that --
22 you know, the good faith that is there. And
23 that's what hurt me so much, was it wasn't there.
24 But overall, I believe that it's an excellent
25 insurance company. And now I would have to

1 contest that it serves its people well, but I
2 think that the -- you know, all my family members,
3 my daughter -- younger daughter has USAA.

4 I met Kevin through her because we hired
5 him for an accident she was in. But we had -- we
6 had USAA, another thing that went on. She was
7 found innocent. But anyhow, so all the family
8 members have USAA.

9 MR. WHELAN: Okay. Thank you very much,
10 ma'am. I don't know if -- Roy, do you have
11 anything else?

12 MR. WILLEY: Um, just --

13 RE-EXAMINATION

14 BY MR. WILLEY:

15 Q. Just the lie thing; let me just ask you
16 about that briefly. You know that -- you know
17 that USAA took two different positions in two
18 different cases, right?

19 A. Yes.

20 Q. Okay. It's your understanding that both
21 times that was to protect their money, right?

22 MR. WHELAN: Object to the form.

23 A. Yes.

24 Q. So when we talked earlier about a lie,
25 we weren't talking about, again, the guy with the

1 USAA hat who came down and told you that the sky
2 was yellow, right?

3 A. Uh-huh.

4 Q. We were talking generally about them
5 taking multiple positions in the underlying cases,
6 correct?

7 A. Yes.

8 MR. WILLEY: Okay. That's all.

9 THE VIDEOGRAPHER: This concludes the
10 deposition of Therese Hood. We're off the
11 record at 2:58, media No. 5.

12 (The deposition concluded at 2:58 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 12th day of February, 2019, in the City of Charleston, County of Charleston, State of South Carolina.

Eve Wilbanks



Eve Wilbanks,
Registered Professional Reporter
and Notary Public

My commission expires:
November 18, 2024

1 ERRATA SHEET

2 I have read the transcript of my deposition
3 and find that no changes are necessary.

4
5 THERESE HOOD

6 Having read the transcript of my deposition, I
7 wish to make the following corrections (Please
8 state reason):

9 Page ____ Line :

10 Page Line :

11 Page Line :

12 Page Line :

13 Page Line :

14 Page Line :

15 Page Line :

16 Page Line :

17 Page Line :

18 Page Line :

19 Page Line :

20

21 THERESE HOOD

22 Sworn to and subscribed before me this
23 day of _____, 2019, _____ County,
24 S.C.

25 Notary Public
My commission expires

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THERESE HOOD

Plaintiff

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION GIC, et al

Defendant

THE COURT OF COMMON PLEAS

DOCKET NO. 2018-CP-10-0666

TRANSCRIPT OF RECORD

June 20, 2018
Charleston, South Carolina

B E F O R E:

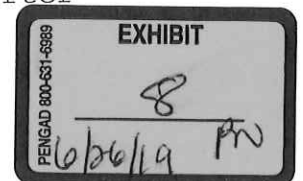
THE HONORABLE JENNIFER B. MCCOY, JUDGE

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

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Circuit Court Reporter



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PROCEEDINGS

THE COURT: The next matter is Therese Hood versus United Services Automobile Association, GIC. Good afternoon. Are all the parties present wishing to be heard today in this matter?

MR. WHELAN: They are, Your Honor.

THE COURT: All right. It looks like we have three motions; a motion to compel, a motion for summary judgment, I have a plaintiff's motion; it's hard to tell or decipher from here.

MR. WILLEY: It's just two motions, Your Honor.

THE COURT: Just those two?

MR. WILLEY: The two you stated.

MR. WHELAN: There are I think two motions to compel. The first one was a motion to compel a third party compliance with a subpoena.

THE COURT: Okay.

MR. WHELAN: I think that one has been resolved.

THE COURT: Okay.

MR. WHELAN: And so the next one is the defendant's motion for summary judgment and then the plaintiff's have a motion to compel.

THE COURT: Okay. I'm happy to hear those in any order. I've got various documents that have been filed in association with these motions.

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1 MR. WHELAN: The motion for summary judgment was
2 filed first and it probably makes sense to hear that ---

3 THE COURT: --- I think so, yes ---

4 MR. WHELAN: --- first if that's okay.

5 THE COURT: Okay.

6 MR. WHELAN: Your Honor, Robbie Whelan for USAA.
7 There is I think one thing that Mr. Willey and I will
8 agree on today and that is this is an unusual case with
9 an unusual legal theory.

10 THE COURT: Okay.

11 MR. WHELAN: And I'd like to talk about the theory
12 and the facts. I drew up -- may I hand something up,
13 Your Honor?

14 THE COURT: Of course.

15 MR. WHELAN: Okay. I drew up a chart.

16 [Whereupon, Mr. Whelan provides documents to the
17 court]

18 THE COURT: Thank you.

19 MR. WHELAN: And what this shows Judge is ---

20 THE COURT: --- do you want me to mark this as a
21 court's exhibit or?

22 MR. WHELAN: That would be great.

23 THE COURT: I'll do that momentarily. Give me one
24 moment. It will be court's 1 -- actually plaintiff's 1
25 -- no defendant's 1.

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1 [Whereupon, defendant's exhibit number 1 is marked
2 by the court reporter]

3 THE COURT: All right, defendant's 1.

4 [Whereupon, defendant's exhibit number 1 is entered
5 into evidence by the court]

6 MR. WHELAN: Thank you, Judge. So this is a bad
7 faith suit and this is an underlying suit that is at the
8 bottom of this triangle. That is a suit by Ms. Hood
9 against Mr. Johnson and then a counterclaim from Mr.
10 Johnson back against Ms. Hood. And then there is a
11 separate suit by the Cooks against both the Hoods and the
12 Johnsons, okay.

13 THE COURT: All right.

14 MR. WHELAN: And I'll get into the facts and I
15 think this will make more sense. This case involves
16 positions taken by defense counsel. And I just wanted to
17 illustrate that Ms. Hood was defended by Chris Nickels.
18 Ms. Hood is a USAA insured. And so USAA hired Mr.
19 Nichels from Clawson and Staubes to defend Ms. Hood from
20 the Cooks suit and also from Mr. Johnson's counterclaim.

21 And then in the case of Hood v Johnson I think Geico
22 was Johnson's liability insurer and they hired Toland
23 Sams to represent Mr. Johnson. Ultimately Geico tendered
24 their limits and so Jack Daniel stepped in for the UIM
25 carrier, who is USAA. So let me back up to the facts of

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1 the case. So the plaintiff in our bad faith suit is
2 Therese Hood. Therese Hood was driving down 278 at dusk
3 and her lights were either on or they were off and that's
4 at the center of this dispute. As she is driving down
5 the road Mr. Johnson pulls out of a driveway and hits
6 her. So that's the first collision. She crosses the
7 street and then hits the Cooks and that's the second
8 collision.

9 So there are two sets of suits. The Cooks sue Hood
10 and Johnson saying that one or both of them are at fault.
11 There is a suit by Mr. Cook and there is a suit by Mrs.
12 Cook and those cases are pending right now in Jasper
13 County and subject to trial any day. As I already
14 mentioned Ms. Hood has liability insurance with USAA and
15 they represented Chris Nickels to defend Ms. Hood.

16 In that suit there is a question of were her lights
17 on or off. A bunch of eyewitnesses say they were off.
18 Mr. Nichels hires an expert witness who opines that they
19 were on. And that expert witness position is essential
20 to the plaintiff's bad faith suit.

21 Now in the other suit Ms. Hood sues Mr. Johnson and
22 Johnson counterclaims back against Ms. Hood. Then again
23 the central issue is were her lights on or were they off.
24 Mr. Johnson says your lights were off. That's the
25 position taken by Toland Sams for Geico. During the Hood

1 v Johnson trial -- or not the trial but during the case
2 Geico tenders its limits, gets a covenant not to execute
3 and so at that point USAA's counsel steps into the shoes
4 of Mr. Johnson and defends the case; and that's Jack
5 Daniel.

6 Now when that happened after Mr. Daniel took over
7 the defense for Mr. Johnson Hoods lawyers, the
8 plaintiff's lawyers, sent a request to admit to Mr.
9 Daniel and it said admit that her lights were on. And in
10 that request to admit and the expert witness opinion
11 procured by Chris Nickels are the two exhibits to this
12 bad faith case. It's what this bad faith case is based
13 on.

14 And it's the plaintiff's position that Jack Daniel
15 because he was hired by USAA had to admit that the lights
16 on despite the fact that all these eyewitnesses said they
17 were off. And they claim that Mr. Daniel had to admit
18 that they were on simply because USAA was paying Mr.
19 Daniel and because USAA was also paying Chris Nickels to
20 defend Ms. Hood.

21 So that is the legal theory. There are several
22 different causes of action that are asserted in the
23 complaint. But this much is based, Your Honor, on a
24 matter of law. There is no cause of action that would
25 require or could be based on Mr. Daniel defending the UIM

1 carrier to the best of his ability. This is controlled
2 by statute. South Carolina Code 38-77-160 controls
3 underinsured motorist coverage. And it says the insurer
4 has the right, the right, to appear and defend in the
5 name of the underinsured motorist. And obviously there
6 is going to be a conflict between the plaintiff and the
7 underinsured motorist carrier. The legislature
8 recognized that and it said, this is in the statute, it
9 says the underinsured motorist insurer may assume control
10 of the defense of action for its own benefit.

11 So USAA and Jack Daniel when they step into the
12 shoes of Mr. Johnson are defending USAA. They are not
13 defending Ms. Hood. And the plaintiff's position that
14 they have to look out for Ms. Hood's interest or they
15 have to adjust their evidence depending on what Ms. Hood
16 claims is just inconsistent with the statute.

17 I won't go through them but we cited a few briefs --
18 excuse me, a few cases in the brief we submitted on
19 Friday, Brew v Watts [phonetic] and there are few others.
20 But they talk about the fact that the statute gives the
21 insurer the right to defend itself. It steps into the
22 shoes of the tortfeasor.

23 The plaintiff's position is it steps into the shoes
24 of the plaintiff. And I just can't see how Jack Daniel
25 or me or any defense lawyer could step into the shoes of

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1 the tortfeasor and simultaneously look out for the
2 interest of the plaintiff, which is what they are
3 claiming. The complaint as I mentioned has six causes of
4 action. The first is bad faith. Again, we think none of
5 them can survive because of 38-77-160. But beyond that
6 bad faith cannot lie if an insurer has a reasonable basis
7 for the action it undertakes. Here there was a
8 reasonable basis provided by 38-77-160.

9 I should mention that that Hood v Johnson case went
10 to trial in Jasper County. In the trial there was
11 substantial evidence that Ms. Hood's lights were off.
12 The plaintiff, Mrs. Hood, elected not to call an expert
13 to say that her lights were on and the jury attributed 49
14 percent of fault to Ms. Hood. There was a 2.5 million
15 dollar verdict reduced by 49 percent. USAA's UIM limits
16 were a million dollars and they tendered this plus
17 interest to the plaintiff.

18 With respect to breach of contract Lawson v Porter
19 talks about the fact that an insurer has a right to
20 defend a case under 38-77-160. In fact Lawson v Porter
21 says the right to recover UIM benefits does not even
22 arise until a judgment against the underlying tortfeasor.
23 They had sued for barratry and barratry could not apply
24 under these facts that its barratry to defendant a UIM
25 suit and it would render the statute meaningless.

1 Additionally barratry applies to someone who interferes
2 in a suit between two unrelated parties. That is not the
3 case here. Ms. Hood cannot claim you made me sue you and
4 that is barratry.

5 The fifth cause of action is outrage. And outrage
6 requires -- I could quote you the language; you know the
7 language. But it requires absolutely abhorrent behavior
8 that is atrocious to a civilized society or something
9 like that. And this is just run of the mill insurance
10 defense. So there is no facts that would support a cause
11 of action for outrage.

12 And then their last cause of action is negligence
13 per se. This is a little bit of a different cause of
14 action. They claim that USAA's insurance adjusters
15 weren't licensed. They did not have evidence to support
16 that. They filed an opposition to a motion for summary
17 judgment and said well two of the adjusters we talked to
18 may not have been licensed with the South Carolina
19 Department of Insurance.

20 So I submitted an affidavit in response to that on
21 Friday that said yes, they were licensed. In any event
22 the statute they cite does not give rise to a private
23 cause of action. Thank you, Your Honor.

24 THE COURT: All right. Thank you so much. Mr.
25 Willey, if you don't mind stating your name for the

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1 record and the party you represent.

2 MR. WILLEY: Your Honor, Roy Willey, and I
3 represent Therese Hood. And I disagree with just about
4 everything Mr. Whelan said. But I'm going to start with
5 the motion itself because the motion was filed on the
6 basis of USAA not having a duty to the plaintiff. And
7 under the Nichols case and all the progeny UIM carrier
8 like any other insurance carrier has a duty to act in
9 good faith and fair dealing toward its insured. Our
10 allegations in this case are that USAA did not do that
11 for multiple reasons.

12 Taking disparate positions as to headlights and
13 different cases to protect their own bottom line at the
14 expense and humiliation of Ms. Hood is one of those ways,
15 but it is not the only way. Dragging out a claim is
16 another way that that can give rise. And Mr. Whelan said
17 something interesting which is there has to be a
18 reasonable basis. Well, reasonable basis is a question
19 of fact for a jury to determine whether or not the
20 insurer in this instance acted as a reasonable insurer
21 would.

22 And in this situation we would obviously argue that
23 they did not. But that's the basis of the motion.
24 Anything else raised today I don't have fair notice of
25 and so it can't come before the court other than the duty

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1 argument and he claims that there are no damages. But as
2 Your Honor knows and we cited it in our memorandum in the
3 Nichols case the plaintiff is entitled to recover
4 consequential damages in a bad faith action against an
5 insurer. Ms. Hood in this case has alleged that she
6 suffered damages including humiliation, going through the
7 litigation process; expenses that she should not have had
8 to endure and those would be recoverable in the case if
9 the jury found that USAA did not act as a reasonable
10 insurer should.

11 But in this case I'm not even sure we get there
12 because as Your Honor noted I have filed a motion to
13 compel. And let me give you a little procedural history
14 on this case before even Mr. Whelan became involved. And
15 that is that I was associated late in the underlying
16 matter to try the underlying case in Jasper County which
17 we did and got a verdict of two and half million dollars
18 reduced by 49 percent.

19 And at that time an appeal was filed by USAA and
20 post trial motions and all the rest all of which was
21 taken away. I'm sure if the appeal actually got filed
22 and I'd have to check that. But in any event we filed a
23 bad faith action after that point. And Mr. Whelan became
24 involved and we had a conversation about the case. He
25 said I think your case is crap. I said I think my case

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1 is good. And he said well, let me talk to USAA and see
2 if we can agree on mediation before we go through the
3 full litigation of the bad faith claim, and I said that
4 would be fine. We were able to get a mediation set and
5 we agreed and had a gentleman's agreement not to conduct
6 depositions and further discovery during that period of
7 time despite the fact that I had served discovery in
8 August of 2017. We did not file the motion to compel.

9 One day I'm sitting in my office with mediation on
10 the horizon and I get a motion for summary judgment in
11 March of this year just before we were to have the
12 mediation that we had agreed upon in this case. I called
13 Robbie and I believe Robbie said you know my client asked
14 me to file it and I had to get the motion filed. And I
15 said I understand but you know we have this outstanding
16 discovery and we haven't done any discovery in the case
17 pursuant to our agreement. And as a result I don't think
18 the motion is proper.

19 So my motion to compel August 2017 we served
20 discovery September. They filed a motion to stay pending
21 transfer of the underlying cases. An order to transfer
22 venue to Charleston from Jasper was signed in September,
23 but the case was not actually transferred until February
24 the 9th. Before that, even before the case was
25 transferred we had had an agreement to go into an early

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1 mediation without discovery. Despite that March the 12th
2 about a month after the case was transferred the motion
3 for summary judgment was filed and then immediately
4 thereafter I filed this motion to compel discovery
5 responses. The case law is quite clear and we cited it
6 in our ---

7 THE COURT: --- I don't want to stop you but it's a
8 little bit confusing because you're referring to the case
9 and I think you're referring to two separate cases. So
10 just so I'm clear when you say we were on the horizon for
11 mediation was it for the underlying case ---

12 MR. WILLEY: --- this case ---

13 THE COURT: --- or this bad faith case ---

14 MR. WILLEY: --- this case.

15 THE COURT: Okay.

16 MR. WILLEY: So the verdict in the underlying case
17 was rendered prior to this bad faith case law suit being
18 filed.

19 THE COURT: Okay. Thank you.

20 MR. WILLEY: We filed this just before the verdict.

21 THE COURT: Okay.

22 MR. WILLEY: But we're talking about this case.

23 THE COURT: Okay.

24 MR. WILLEY: So this timeline in August we served
25 discovery in this case which we have filed in Jasper

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1 County which is where we allege the bad faith took place
2 since that's where the trial was pending. Judge Mullen
3 in September -- well, a motion was filed to transfer the
4 venue in September. She signed it September 19th saying
5 no, you need to go to Charleston which we had kind of
6 agreed on. It's kind of complicated how we got there but
7 anyway. But it was not transferred, this case, until
8 February of 2018.

9 THE COURT: Okay.

10 MR. WILLEY: I still had no discovery responses
11 obviously while we were pending transfer. We had
12 mediation on the horizon, which I can't remember exactly
13 ---

14 THE COURT: --- has it been mediated?

15 MR. WILLEY: --- it has been mediated.

16 THE COURT: Okay.

17 MR. WILLEY: The early mediation we did with Marvin
18 Infinger. We were not able to reach an agreement mainly
19 because this motion was pending, which is kind of ironic.
20 But in any event March the 12th they filed this motion
21 and immediately thereafter I filed my motion to compel
22 and said basically hey, we had an agreement and we're
23 supposed to not do anything until we mediate. But if
24 this is the route you want to go and litigate I've got to
25 get the discovery responses. Obviously, I need to know

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1 everything USAA knew and when because that all goes into
2 reasonable basis for the positions that they took in the
3 case. So it boils down to this. Does an underinsured
4 motorist carrier have a duty to its insured? Yes, of
5 course it does; the law is clear. Is it possible based
6 on the pleadings in this case that USAA breached that
7 duty to Ms. Hood by dragging on litigation that did not
8 need to drag on by taking disparate positions in
9 different courts to protect their pocketbook.

10 And the thing that wasn't mentioned in this
11 particular argument is that the checks were actually
12 written by USAA so this is not a litigant situation, it
13 is an insurer situation; they hired the expert, the
14 expert that rendered the opinion. But none of that
15 matters none of that matters because we don't have
16 discovery so it's moot.

17 But even if we did the basis of the motion on duty
18 is clear. They have a duty; we've alleged they breached
19 it. There are some facts just in the argument that Mr.
20 Whelan made to support that but further discovery is
21 required in order to give us a full and fair opportunity
22 to respond and to complete discovery. And the Beira
23 [phonetic] case is right on point, the Cunningham case.
24 There is a whole litany of cases as Your Honor knows.
25 And so that's our basis. We have fully briefed it in

1 terms of each of the causes of action. The fact is that
2 Your Honor doesn't need to read, and I hope you didn't
3 spend time reading the full trial transcript because that
4 is not really relevant to what we are arguing today
5 because the bad faith goes deeper than that and it's
6 beyond that and we need the discovery in order to be able
7 to litigate this case properly. I think it's pretty
8 clear but I would be happy to answer any questions the
9 court has.

10 THE COURT: Okay. What do you say about, address
11 briefly if you don't mind his argument as to the statute
12 38, the underinsured motorists statute 38-77-160, and the
13 underinsured duty with respect to the -- under --
14 insurer's duty with respect to the insured.

15 MR. WILLEY: He is -- his statement, and in fact we
16 cited that statute in our memo. The insurer does have a
17 right to defend the case but they do not have a right to
18 defend the case in bad faith or in an otherwise negligent
19 manner. The Nichols case, Nichols v State Farm 279 S.C.
20 336 speaks directly to that.

21 And it says if an insured can demonstrate bad faith
22 or unreasonable action by an insurer in processing a
23 claim under their mutually binding insurance contract she
24 can recover damages in a court action. That's exactly
25 what we allege here; that they were unreasonable and

1 committed bad faith in processing and litigating the
2 claim for a variety of reasons. As a result Ms. Hood was
3 damaged. So while they have a right to defend they do
4 not have carte blanche to take disparate positions to
5 commit fraud on the court, to take you know inconsistent
6 positions to protect their money at the expense of their
7 insured. They have a duty to act in good faith and in
8 fair dealing as to their dealings with their insured even
9 when they are defending an action from that insured.

10 And we've cited the UIM cases that clearly provide
11 the law in terms of allowing an action against an
12 underinsured carrier or a first party -- it's called a
13 first party bad faith action. There is a whole section
14 on it in the insurance book. It wouldn't exist if it
15 didn't, if it wasn't possible.

16 And we've brought these cases many times. I've
17 never -- I don't recall ever having defended the argument
18 that a UIM carrier has no duty and they can do what they
19 want pursuant to the statute. It's just not consistent
20 with the case law.

21 THE COURT: All right.

22 MR. WHELAN: Thank you, Your Honor. Just to
23 clarify we're not taking the position that an insurer
24 does not have a duty. That is not what we say. Our
25 motion says that the duty sought to be imposed by the

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1 plaintiff is not recognized under South Carolina
2 contract, negligence or bad faith law. The plaintiff has
3 an obligation is response to our motion to not rest on
4 the pleadings but to provide facts that support for their
5 theory. They have filed a 12 or 14 page memorandum in
6 opposition. I think there is about 300 pages of exhibits
7 that are attached to that.

8 And the only thing they allege is that or the only
9 facts they have is what Mr. Willey just called
10 inconsistent positions, disparate positions and fraud on
11 the court he said. And that goes to this request to
12 admit and Mr. Daniel maintaining that Ms. Hood's lights
13 were off.

14 Both parties, Your Honor, have attached the trial
15 transcript as exhibits to the motion. I have pulled out
16 just a very few pages of excerpts. May I approach and
17 hand up these excerpts?

18 THE COURT: Yes.

19 [Whereupon, Mr. Whelan provides documents to the
20 court]

21 THE COURT: Do you want these marked?

22 MR. WHELAN: It's not necessary; they're in the
23 record.

24 THE COURT: Okay.

25 MR. WHELAN: Thank you. So Your Honor, these are

1 witnesses in this trial. The plaintiff called I'm not
2 sure how many witnesses and the defense called one. And
3 I pulled these pages because they concern whether her
4 lights were off or on. And again the plaintiff claims
5 that the fraud on the court was claiming that the lights
6 were off.

7 The very first page is an excerpt for the
8 plaintiff's witness Mr. Lee. He says that the headlights
9 were not on. The second page is an excerpt of Officer
10 Welch [phonetic] called by the plaintiff. And there are
11 two pages here 246 and 247. Officer Welch [phonetic]
12 said the headlights were not on. And that's when she
13 arrived. She didn't see the wreck but when she arrived
14 afterwards her dashboard camera showed the lights were
15 off.

16 The next page 285 the plaintiff's witness Mr. Cook:
17 Question: Now Mr. Cook in this case your testimony is no
18 headlights, right? Answer: Yes, sir. The next page is
19 Mr. Johnson at page 304: I didn't see no headlights.
20 The next is Ms. Hood herself at page 496.

21 And here plaintiff's counsel says: Now Ms. Hood
22 we've heard from a lot of people this week, people saying
23 no headlights but running lights, Ms. Hood that is the
24 testimony and we have heard that over and over again are
25 you going to disagree with that. And her answer was:

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1 No, I'm not. Then the next page is page 556. This was
2 the defense's single witness. This is Carey Tanraft
3 [phonetic]. And Carey Tanraft [phonetic] said that he
4 did not see headlights and he told the officers that
5 because it was important and it was dark outside.

6 And then I saved the best for last, Your Honor, and
7 that's page 553. This is plaintiff counsel Kevin Smith
8 who tried the case with Mr. Willey. I quote from Mr.
9 Smith, quote: If this witness is going to testify that
10 Ms. Hood did not have her headlights on we'd stipulate to
11 that; period end quote. So they're claiming it was bad
12 faith for USAA to say Ms. Hood's headlights were off. We
13 went into trial and when I read the transcript I was
14 shocked to see they stipulated her headlights were off.

15 With respect to the discovery the discovery was
16 served in August of 2017. At that time both of the
17 lawsuits on my diagram were pending. The Cook case had
18 not gone to trial yet. So we filed a motion to stay
19 discovery pending the resolution of the Hood lawsuit and
20 both Cook lawsuits. I'm not sure why that motion was not
21 scheduled today but it is pending.

22 And the point here is that if the plaintiffs are
23 allowed to proceed under this theory, if they are filing
24 a suit concerning actions taken in two underlying suits
25 then we need to wait until those suits conclude to

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1 conduct discovery. I don't see how you can do discovery
2 on these suits while they are pending. The Hood suit has
3 concluded. The Cook suit has not although I understand
4 it should be set for trial soon. And then the other
5 point on discovery is and I'm going to quote from the
6 plaintiff's brief at page 5 where they are citing the
7 Ginneken [phonetic] case but there are many cases that
8 say the same thing.

9 A party that claims summary judgment is premature
10 because she has not been provided a full and fair
11 opportunity of discovery must advance a good reason why
12 time was insufficient under the facts of this of this
13 case -- that doesn't apply -- but they must advance why
14 further discovery would uncover additional relevant
15 evidence and create a genuine issue of fact, of material
16 fact.

17 And in this case the plaintiffs have not said I need
18 to learn this or I need to learn that. They have -- the
19 only thing they have said in response to our motion is a
20 disparate position. Mr. Willey made reference to USAA
21 dragging out a claim. There has been no evidence of that
22 provided to Your Honor. In fact the case was just
23 litigated and there is no evidence that it was dragged
24 out, and therefore summary judgment is appropriate on
25 each of the plaintiff's causes of action.

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1 MR. WILLEY: Your Honor, if I may briefly?

2 THE COURT: Sure.

3 MR. WILLEY: The elements for a bad faith negligent
4 insurance action is what we should call it or the
5 existence of a contract of insurance between the parties,
6 which we have, refusal by the insurer to pay benefits due
7 under the contract, which we have, resulting from the
8 insurer's bad faith or unreasonable action, which is a
9 jury question, causing damage to the insured, which we
10 have.

11 This transcript doesn't mean anything because the
12 facts that we need to uncover in discovery are what USAA
13 knew, when they knew it, what their claims file showed,
14 what they decisions in not paying the case or paying the
15 claim were based upon, why they chose to drag out the
16 litigation. And I can go through each of these and tell
17 you why they aren't relevant. I mean Mr. Lee for example
18 admits he didn't see her car at the time of the wreck.
19 This is talking about minutes before the wreck for
20 example ---

21 THE COURT: --- I realize these are out of context
22 ---

23 MR. WILLEY: --- but the ---

24 THE COURT: --- let me ask you something real quick
25 and I don't mean to interrupt tell me is this under a

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1 scheduling order right now at all this current case?

2 MR. WILLEY: No. The current case ---

3 THE COURT: --- there is no pending scheduling
4 order ---

5 MR. WILLEY: --- I don't think it is and part of
6 the reason on the unreasonable time ---

7 THE COURT: --- it's not that old ---

8 MR. WILLEY: --- I had forgotten he's correct that
9 they did file a motion to stay discovery, which I had
10 forgotten about that which initially got our conversation
11 going. But there is the unreasonable time. I mean there
12 is a motion to stay discovery pending and I was thinking
13 a motion to compel discovery is pending and so we've had
14 zero opportunity to do anything.

15 And the question in the case what did USAA know
16 about the claim, when did they know it, what did their
17 agents do in response to it. I need all of that
18 information. I need the claims file. I now have the
19 file from one of the lawyers. I need the full and
20 complete file from the lawyers.

21 I need to take depositions of the adjusters and what
22 they knew because frankly what came out at trial doesn't
23 mean a hill of beans if they didn't have that in their
24 file as knowledge before. And I can tell you that what's
25 in their file is they paid an expert to go out and do a

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1 landfill of an analysis test who said her lights were
2 off. So whether or not they had anything to contradict
3 that prior we need to know. That's what ---

4 THE COURT: --- I'm not going to grant them a
5 motion for summary judgment today. I think it is
6 premature given what has not happened in the case. I
7 know it's really not that old of a case necessarily
8 relatively. You're not under a current scheduling order.

9 I'm going to dismiss it without prejudice. In other
10 words you can bring it back at a later time after some
11 more discovery has been conducted, okay. And I don't
12 know -- do y'all need -- I don't think a formal order
13 really is going to be required. Do the parties consent
14 to a form order just simply stating that the motion is
15 denied without prejudice to...

16 MR. WHELAN: That's fine, Your Honor ---

17 THE COURT: --- or with leave I could say without
18 prejudice and leave to renew at a later time during ---

19 MR. WILLEY: --- that's fine. And the other motion
20 before Your Honor is my motion to compel ---

21 THE COURT: --- right. And I mean giving my
22 reasoning for the denial of summary judgment is that
23 nothing is there -- we can go forward with it if you want
24 to.

25 MR. WILLEY: I just need an order compelling them

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1 to respond. I don't have any responses.

2 THE COURT: Well, apparently there is a pending
3 motion to stay discovery. So I don't know; it's not
4 showing up on this roster ---

5 MR. WILLEY: --- and I believe ---

6 THE COURT: --- was it filed in Jasper ---

7 MR. WILLEY: --- it was filed in Jasper ---

8 THE COURT: --- and not transferred is probably
9 what happened.

10 MR. WHELAN: Your Honor, I think that is going to
11 take care of itself when this Cook case resolves. And I
12 don't know but you may know better than I but I think
13 it's going to be relatively soon.

14 MR. WILLEY: I don't need anything right now for
15 the Cook case. I need the claims file in this case so
16 that I can start identifying an expert as I work through
17 the claims file in this case.

18 I'm fine if he wants to put on a privilege log
19 everything about the Cooks case and say it will be
20 provided once that case wraps up I'm fine with that. But
21 as to this case which is resolved they've already written
22 a check and all that. We need this claims file and the
23 files related to this case.

24 THE COURT: Well, I'll just state that it's --
25 defendant will have 30 days to respond as he would. Now

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1 you're on notice that we're moving forward. So now you
2 have 30 days to respond to the plaintiff's discovery
3 requests.

4 MR. WHELAN: Okay. And Your Honor, there are 90
5 some discovery requests including subparts. Obviously
6 I'm going to have objections to some of those. You're
7 not ruling on ---

8 THE COURT: --- I'm not ruling on individual pieces
9 at this point in time. I mean I understand you have
10 sufficient reasoning for not responding to date. I don't
11 think opposing counsel, I mean you understand ---

12 MR. WILLEY: --- oh, of course I want sanctions.

13 THE COURT: I'm not going to do that today. So
14 anyway I'll state that the motion to compel is granted
15 and I'm not issuing any fees or costs or anything like
16 that against you; just 30 days to respond as you would
17 during the course of normal discovery proceedings.

18 MR. WHELAN: Okay. Thank you, Your Honor.

19 THE COURT: And of course I encourage y'all to keep
20 up the communication. Any extensions you grant between
21 yourselves are fine.

22 MR. WHELAN: We will. Thank you, Judge.

23 THE COURT: Thank you.

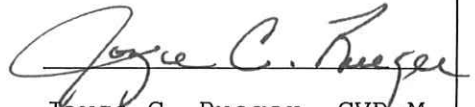
24 *****END OF TRANSCRIPT OF RECORD*****
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 20th day of June, 2018.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

July 9, 2018


Joyce C. Rueger, CVR-M
Court Reporter

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
Anastopoulos Law Firm LLC
62 Columbus Street
Charleston, SC 29403

AND

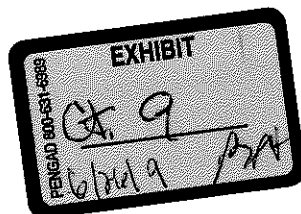
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PROCEEDINGS

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. So let me tell you what my thoughts are as far as timing is concerned and how this is going to unfold. Because he would be, I guess, a fact witness.

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1 To begin with, pull the jury at 11, it
2 will take us till 12. I probably anticipate
3 that I would send them to lunch at that point.
4 I know it'll be a little bit. But instead of
5 just doing opening statements and then sending
6 them, I think we'll probably just pull the
7 jury, send them to lunch, bring them back. I
8 guess my hope then, if we can get a jury
9 roughly by 12:30-ish, 1:00, 1:30-ish.

10 Mr. Lee, I'm thinking we have you back
11 here at 1:30. Is that okay with you, sir?

12 MR. LEE: I have a 608 Merits hearing in
13 Allendale County at 2 o'clock. Then I have at
14 9 o'clock in the morning a 608 Merits hearing
15 at 9:00 a.m. in the morning. They kind of call
16 them like general sessions cases. You get
17 there, and you don't know when the Judge is
18 going to call them. So that's what I'm -- I'm
19 trying to express that to both sides.

20 THE COURT: What Judge is that?

21 MR. LEE: I believe in Allendale, it's
22 Judge Jenkinson today. And then --

23 THE COURT: Is that a magistrate Judge?

24 MR. LEE: No, it's a family court Judge.
25 It's a 608 family court merits hearing for

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1 abuse and neglect case. I'm a 608 contract
2 attorney for five counties. And I think that's
3 got --

4 THE COURT: Okay. Do they start -- do
5 they have many cases on a roster, or what do
6 they have?

7 MR. LEE: I don't know how many they have
8 now. To tell you the truth, this is my first
9 appointment in two years there. So as far as
10 today, I'm not sure. It starts at 2:00. It's
11 a solid hour drive. I just don't know -- it's
12 our initial merits hearing. Basically, the
13 case just got filed last week. I got appointed
14 on Wednesday morning.

15 THE COURT: Were you subpoenaed to be here
16 today?

17 MR. LEE: Excuse me?

18 THE COURT: Were you subpoenaed to be here
19 today?

20 MR. LEE: I was subpoenaed by both sides
21 to be here today, just throughout the entire
22 week. So I've got --

23 THE COURT: Well, obviously, I'm going to
24 release you from the entire week. But I want
25 your testimony, I need to get it up today.

PRE-TRIAL MOTIONS

1 So yes, sir.

2 MR. WILLEY: We could -- if you wanted to
3 come back after that hearing, we could call him
4 late this afternoon. That would work.

5 MR. LEE: I could do that.

6 MR. WILLEY: We could commit to that.

7 THE COURT: Is that easiest for you?

8 MR. LEE: That would be the easiest. I
9 just don't know exactly when I'll get out of
10 there because if we start exactly 2:00 and it
11 goes half an hour, hop in my car, I still might
12 not be back here until 4:00.

13 THE COURT: And that's fine. I think
14 that's fine. And I plan to go today until at
15 least 5:00. So that works separately.

16 MR. LEE: I just can't promise when I'll
17 be out of there because that --

18 THE COURT: That's okay, because I can
19 call Judge Jenkinson and have him send you. So
20 just make sure you leave from Allendale and
21 come straight back here.

22 MR. LEE: I will.

23 THE COURT: Okay? And we'll go from
24 there.

25 And quickly, I would like to get you up

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1 and done today so we don't have to worry about
2 you the rest of the week. Okay? Then you can
3 go on about your schedule. Okay?

4 MR. LEE: All right.

5 THE COURT: Mr. Lee, does someone here
6 have good cell phone numbers for you?

7 MR. LEE: I believe both sides have my
8 cell phone number. I just changed providers so
9 I could hopefully get service out in Allendale
10 over the weekend. So --

11 THE COURT: Okay. So we should be fine.

12 All right. As long as we have a number
13 for you. Obviously, we'll give you a call, Mr.
14 Lee. Go on your way right now, we'll see you
15 back later this afternoon. And we'll get you
16 up today. Okay?

17 MR. LEE: All right. Thank you very much.

18 THE COURT: Thank you, sir.

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 All right. Well, that takes care of that
22 issue.

23 Oh, Mr. Lee, one other thing before you
24 come today. Just so you understand, when
25 you're in court this afternoon you're going to

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1 be addressed as Mr. Lee, not as Judge Lee. And
2 when asked what your job is, you are a lawyer.
3 You don't say anything about being a judge or a
4 magistrate judge in any way. It's not lying to
5 the jury because you are, in fact, a lawyer,
6 and you're a practicing lawyer. So we're just
7 going to be relaxed saying anything about you
8 being a judge. Okay?

9 MR. LEE: The only reason I asked that, I
10 was directly asked in the deposition. So --

11 THE COURT: And that's fine. The lawyers
12 in this case aren't going to raise that in any
13 way, shape, or form. It wouldn't be
14 appropriate. I know it does bring into
15 influence, you know, on your testimony if you
16 are called a judge and Your Honor. So we're
17 just going to refer to you as Mr. Lee. That's
18 it. And we'll go from there. Okay?

19 MR. LEE: Thank you.

20 THE COURT: Thank you.

21 MR. LEE: I'll see you back this
22 afternoon. Thanks.

23 THE COURT: Okay. Let's start going
24 through the motions.

25 MR. SMITH: Yes, ma'am.

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1 THE COURT: I think maybe the best place
2 to start might be the Motion to Bifurcate. I
3 understand that there is a motion to go ahead
4 and try to split this case.

5 My understanding, just from what I've read
6 and everything I've heard, I'm quite familiar
7 with this intersection. It's about two miles
8 from my house. And I hate to say it, we are
9 frequent flyers of Dunkin' Donuts and Yummy
10 House, which is right there, and also The
11 Batter's Box there, which is batting cages.
12 And I'll go ahead and say it, we have a monthly
13 contract with them because I have a little girl
14 who plays softball, and plays softball there.
15 So I'm familiar with where it is, and what's
16 going on.

17 I understand, and I'm kind of seeing as
18 far as this case is concerned, you know, I have
19 just -- could Plaintiff's tell me in a nutshell
20 what their idea of liability is, if you would.
21 And I want to hear from Defense counsel of what
22 your contentions are. Like, for instance, I
23 know that one of your things that you've said
24 is that allegedly she didn't have her
25 headlights on, so driving without a light.

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1 I just kind of want to hear from your
2 point of view what you would put up and from
3 your point of view what you offer for that.
4 Not really going to need anything, but whether
5 or not certain things are admitted. I just
6 wanted to know. Okay?

7 So let's go ahead and start with you.

8 MR. WILLEY: Your Honor, Roy Willey
9 representing the Plaintiff.

10 Liability in this case is actually pretty
11 clear despite all of the pretrial filings.
12 What happened is, Ms. Hood was traveling down
13 278, going east, and Mr. Johnson was at the
14 stop sign, exiting Dunkin' Donuts.

15 And when Ms. Hood was in the lane closest
16 to the median, so the farthest lane from him,
17 he proceeded through the stop sign and T-boned
18 her vehicle. And there's actually photographs.
19 Obviously, this is his vehicle with the
20 front-end damage, and here's a photograph of
21 her car, where he impacted her.

22 THE COURT: Okay.

23 MR. WILLEY: And what happened after that
24 is Ms. Hood was diverted into the oncoming lane
25 of traffic, across that small grass median

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1 there.

2 THE COURT: So she went up through that
3 whole grass median.

4 MR. WILLEY: Correct.

5 THE COURT: Okay.

6 MR. WILLEY: And they head-on -- had a
7 head-on collision with somebody coming --

8 THE COURT: With the Kucks -- tell me --

9 MR. WILLEY: Yes, the Kucks, yes. The
10 Kucks, coming in the opposite direction, hit
11 her head on. So liability in this case you
12 know, as far as that goes is fairly clear.

13 Now, there is an assertion by the
14 Defendants that Ms. Hood did not have her
15 headlights on, and, therefore, she would have
16 been hard to see. But it's undisputed in this
17 case that she did, in fact, have her running
18 lights on. And, in fact, as the expert
19 testimony will show that at the point of --

20 THE COURT: So you have this expert
21 testimony? Who's your expert witness?

22 MR. WILLEY: We have a combination of
23 experts. We have Woody Poplin, Ken Richardson,
24 and Stephanie Borzendski. And the
25 combination of those experts testify as to --

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1 when obviously there's a statute that deals
2 specifically with headlights, and when it's
3 required, 30 minutes before sunrise and up to
4 30 minutes after sunset. And in this case, we
5 actually have the data about sunset from that
6 exact intersection.

7 And what the, you know, evidence will show
8 is at this time she wasn't required to have her
9 headlights on. She says that she does have her
10 headlights on anyway. And so that -- that's
11 their issue for comparative negligence.

12 The only problem with that is that the
13 impact in the case happened to the side of her
14 vehicle. And, obviously, immediately before
15 impact he would have had to see her because she
16 was directly in front of him. Either that or
17 he didn't have his headlights on or he wasn't
18 able, you know, to see what was going on. So
19 that's basically liability in a nutshell in
20 this case --

21 THE COURT: Are they alleging speed is an
22 issue at all?

23 MR. WILLEY: Speed is not a proximate
24 cause or a potential proximate cause.

25 THE COURT: I mean, are they alleging it?

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1 Is the Defense alleging it?

2 MR. WILLEY: They have raised that, and
3 it's sort of derisive so, you know, scenario
4 that --

5 THE COURT: So the speed limit there is 45
6 miles per hour?

7 MR. WILLEY: Right.

8 THE COURT: What are they putting your
9 lady at allegedly?

10 In my experience, there was -- there was
11 some type of black box that was out of
12 someone's car, in this case. Was it the
13 Plaintiff's, Defendant's, or anyone's?

14 MR. WILLEY: Plaintiff's.

15 THE COURT: It was the Plaintiff's car.
16 Okay. Was that something you got in your
17 discovery that you pulled it out of your --

18 MR. WILLEY: It's sort of interesting
19 because initially Mr. Poplin was hired by USAA
20 to defend Ms. Hood in another case resulting
21 from this wreck. So he was actually USAA's
22 expert.

23 THE COURT: So did the Kucks sue her?

24 MR. SMITH: Yes.

25 THE COURT: Is that what happened?

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1 MR. WILLEY: Yes.

2 THE COURT: Excellent.

3 MR. SMITH: And Mr. Johnson.

4 MR. WILLEY: And Mr. Johnson.

5 So whose expert is who is sort of for
6 anyone to guess.

7 THE COURT: Okay. So in that case,
8 Mr. Poplin got her -- correct me if I'm
9 wrong -- Ms. Hood's box out of her car; is that
10 correct?

11 MR. WILLEY: Yes, ma'am.

12 THE COURT: Okay. Okay. Interesting. I
13 was wondering why. It's somehow a little odd
14 how it came about in this case.

15 Okay. And what does that black box have
16 her going at? Or do we have -- I guess there's
17 two points of impact, and I'm not sure how the
18 black box does that. It's the first impact
19 with the Defendant in this case, and then also
20 the impact with the Kucks.

21 MR. WILLEY: And that's what makes that
22 unreliable in this case. The actual black box
23 reading puts her about 60 miles an hour. But
24 the black box they go -- you know, it's
25 completely unreliable because of the nature of

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1 the wreck. And this particular case, even if
2 it's not unreliable, it's still not a proximate
3 cause of the wreck because she was T-boned.

4 This is not a situation where she ran into him.
5 So just the fact that her speed, whether
6 it was 35 miles an hour or 75 miles per hour,
7 put her in that position at that specific time
8 is in no way a proximate cause. We deal with
9 that in one of our pretrial motions that Your
10 Honor has read.

11 THE COURT: Okay. All right. Happy to
12 hear again.

13 Yes.

14 MS SUTTIE: Yes, Your Honor. I'm Madison
15 Suttie for the Defendant. I'm just going to go
16 and address our arguments in order.

17 As to the lack of headlights, I think it's
18 more than just an assertion by the Defense.
19 We're going to present eyewitness testimony
20 from four witnesses who put Mrs. Hood as
21 driving on 278 without her lights operating.

22 We also have the investigating officer who
23 checked her in-car video and saw that she
24 didn't have her headlights operating at the
25 time.

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1 THE COURT: How does your in-car video say
2 that you don't have headlights on?
3 MS SUTTIE: She -- the officer's in-car
4 video shows that the running lights were on,
5 which means that the parking lights were off.
6 I have to look at the exact --
7 THE COURT: So it's just in --
8 MR. DANIEL: It's not here.
9 THE COURT: Is this on every time the
10 investigating officer --
11 MS SUTTIE: No, in the investigating
12 officer's Officer Welch.
13 MR. DANIEL: It's destroyed though. She's
14 -- you're not actually going to see it. You're
15 going to --
16 MR. WILLEY: And it was after the wreck.
17 THE COURT: Okay.
18 MS SUTTIE: She went back and she put it
19 in her report that as -- so the headlights are
20 probably a primary issue, but also the speeding
21 as not being proximate cause. There will be
22 testimony from Plaintiff's own experts and also
23 from the officer that, you know, the speed did
24 have an impact on the Plaintiff's ability to
25 react, to avoid the incident, to, you know --

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1 she closed the distance in a shorter amount of
2 time, but --
3 THE COURT: Did she say she ever saw the
4 Defendant's car?
5 MS SUTTIE: No.
6 MR. SMITH: No.
7 THE COURT: So she didn't see his car and
8 he didn't see her car. Is that correct? Is
9 that the testimony in all this?
10 MR. DANIEL: Yes.
11 MS SUTTIE: Yes, ma'am.
12 THE COURT: And this happened at 5:59 at
13 night in November -- okay.
14 MR. WILLEY: And one piece on that, Your
15 Honor. Mr. Lee, who was actually traveling
16 behind Ms. Hood will testify that he was able
17 to see her car in front of him, and also the
18 Defendant's car, which he estimates was several
19 hundred feet away from him when the wreck
20 occurred. So he could clearly see everything
21 that was going on.
22 MS SUTTIE: Well, I mean, Mr. Lee had his
23 headlights on.
24 But after the expert reliability of the
25 black box data, it records by events. So the

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1 first -- when if something triggers a -- you
2 know, an event, like unusual braking or
3 something, it records in .5 second intervals
4 before. So Plaintiff's expert took both of
5 them and testified that as to the speeds, up to
6 event one, and even speeds leading to event
7 two, they have no reason to dispute the
8 accuracy, and they place her at up to 63 miles
9 per hour right up until the point of collision
10 with Mr. Johnson's vehicle. And not only that,
11 but the data shows that she didn't hit her
12 brakes at all prior to Event One.
13 THE COURT: Which would make sense if she
14 never saw him.
15 MR. SMITH: Yes, ma'am.
16 THE COURT: Okay. All right. And do we
17 have any kind of black box out of your client's
18 car? Mr. Lee's car?
19 MS SUTTIE: Oh, our client is Mr. Johnson,
20 but, no, Your Honor --
21 THE COURT: Mr. Johnson. I apologize.
22 MS SUTTIE: You're fine.
23 THE COURT: Okay. Well, at least, now, I
24 know what some of the issues are, which I had
25 no idea from pretrial briefs.

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1 THE WITNESS: Well, let's go ahead and
2 start with -- you know what, let's not. Let's
3 wait for bifurcation issue until we get a
4 little further down, I hear a little more facts
5 in the case.
6 But let's go ahead and start -- I can tell
7 you that you both have given me some
8 proposed -- well, let's go ahead and talk about
9 the motion for Plaintiff to do -- or
10 participate in voir dire. I don't think I need
11 to hear anything on that motion, I just don't
12 allow anyone to do it. I just think the
13 arguments, obviously, about this case do it.
14 I'll even go ahead and go so far as to tell you
15 that I have at one point allowed in a railroad
16 case the attorneys, not necessarily to ask the
17 questions, but to do some follow-up. And my
18 experience has been in that case, is that the
19 lawyers will either try to, if they want the
20 witness rehabilitated, to bring them back to
21 their side or try to push them so far out that
22 they have to be struck for cause.
23 So I've learned that lesson, I've learned
24 it well. I don't let lawyers do voir dire.
25 I can tell you, I've gone through both the

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1 Plaintiff's voir dire and the Defendant's. I
2 scratched out a lot. I'll get into obviously
3 my standard that asks a lot of normal questions
4 that you'd want to know. So I'm comfortable
5 that we don't need to discuss that anymore.
6 It's pretty excessive.

7 MR. SMITH: Can I make one request, Your
8 Honor?

9 THE COURT: Sure.

10 MR. SMITH: If a witness does present an
11 answer or an issue that you deem this -- there
12 may be an issue with, could we just ask that
13 the witness not be rehabilitated by any sort of
14 a leading question? For instance, "Well, you
15 can be fair and impartial, can't you?" "Well,
16 you can apply to the law, can't you?" Just, we
17 would just ask that that not be done on leading
18 questions.

19 THE COURT: Okay. Well, I will ask that.
20 One of my tailored questions is, is the issue
21 is not yes or no, but it's whether or not you
22 can be fair and impartial in the trial of this
23 case. And not being one way or the other.

24 So while I don't necessarily think it's as
25 leading, I think it does ask the question of

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1 whether or not they can be fair and impartial.

2 MR. SMITH: Sure.

3 THE COURT: So to the extent I hope it's
4 not leading, but I'm the one asking it, and so
5 I can ask it any way I want.

6 MR. SMITH: All right. Sure.

7 THE COURT: Okay. All right. So that
8 takes us past voir dire.

9 I'm next looking at Plaintiff's Motion in
10 Support -- or to preclude certain evidence and
11 arguments.

12 First off, we talked about the Plaintiff's
13 speed, braking time, and other similar or black
14 box data.

15 Let me just ask you this: So my
16 understanding is from the Plaintiffs, you are
17 going to have Woody Poplin testify. You are
18 going to have Kim Richardson testify, both as
19 engineers. And then you're going to have the
20 human factor, or attempt to have the human
21 factor witness testify.

22 MR. SMITH: Yes, ma'am.

23 THE COURT: Well, tell me, I understand
24 what Woody Poplin and Kim Richardson will
25 testify to. I've seen them testify a number of

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1 times. What is it -- what is the human factors
2 expert going to testify to?

3 MR. SMITH: Your Honor, there's a side
4 issue involved here, and it's distraction --
5 distracted driving due to some cell phone use.
6 We have a time line in this case that puts the
7 wreck at 5:57 p.m. We have an incoming text to
8 the Defendant at 5:57 p.m.

9 Ms. Borzendowski is going to talk about
10 distracted driving, what's been referred to as
11 "inattention blindness," and how that works.
12 So --

13 THE COURT: Do we have anyone who can say,
14 a witness, that they saw him either holding a
15 phone or looking down at a phone?

16 MR. SMITH: No, ma'am. There's no read
17 receipts. I mean, we have the record of the
18 incoming call. And what we will show, we have
19 the rest of his text messages as well.

20 THE COURT: Yeah. Is it a call or a text
21 message?

22 MR. SMITH: It's a text message.

23 THE COURT: So it's a text message. And
24 I'm assuming you have that text message printed
25 out? Downloaded? Yes?

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1 MR. SMITH: We do. We do.

2 THE COURT: Okay. Okay.

3 MR. SMITH: And, Your Honor, we have -- we
4 have a day of -- what, a hundred and -- how
5 many is it?

6 MS. SUTTIE: 170-some.

7 MR. SMITH: A hundred and seventy. So
8 we've got a phone activity during a workday of
9 about 170-plus activities throughout the day.
10 So, you know, at the end of the day the jury is
11 going to see the time line between the 911
12 caller and all the things that happened before
13 she got on the phone. We know the exact time
14 the 911 call, the first one, came in.

15 And we're going to contend that puts it at
16 5:57. The jury's going to see an incoming text
17 at 5:57, and they're going to be asked -- one
18 of the things they're going to be asked to
19 determine is, do you think he was looking at
20 it? Is that the reason he didn't see Ms. Hood
21 coming down the road with her -- with at least
22 her running lights on? And so --

23 THE COURT: How many of these text
24 messages did you try to get in? Like I could
25 go ahead and just tell you right now, I was

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1 worried that anything that occurred right
2 before and during the accident I think would be
3 relevant.

4 In other words, when I say "right before,"
5 I mean, like within a minute before. Because I
6 could see someone could be checking their phone
7 at a stop light. He could have been checking
8 his phone when he was at Dunkin' Donuts. And
9 I'm not going to have her testify that
10 something might have happened at -- if he's got
11 170 text messages, he's looking at them all day
12 long.

13 MR. SMITH: Oh, she's --

14 THE COURT: And she can't say he looked at
15 them back to back. I was worried that I think
16 it's fair game for her to testify that 30
17 seconds before this, if there was any text
18 messages, if what you say is 5:57 there is a
19 message that came in, you're saying the point
20 of impact is 5:57 for, I'm guessing, the black
21 box, is how you do that time -- or is it by
22 911?

23 MR. SMITH: It's the 911 call.

24 THE COURT: It's by 911. I think that is
25 relevant. And I do think, obviously, there's a

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1 question about violation of the statute at that
2 point.

3 But other than that, what else -- yes.

4 MR. WILLEY: Just to clear up one thing.
5 The actual substance of the text messages,
6 we're not intending to admit. We're only
7 intending to admit the actual time line and use
8 of the cell phone. And part of the reason in
9 this case as well, is that we need more of that
10 whole history as when it starts. So he starts
11 his phone activity --

12 MR. SMITH: 4:44 a.m.

13 MR. WILLEY: 4:44 a.m. in the morning,
14 goes and works a landscaping job. Obviously
15 this record occurs some 14 hours later. And so
16 that sort of plays into the theory as well with
17 the human factors expert, how that period of
18 time, you know, would factor into a person's
19 attentiveness and alert -- alert --

20 THE COURT: I don't see how that's just
21 not pure speculation on her behalf. I just
22 don't see how she could testify to any type of
23 scientific, security, knowledge, in any way,
24 shape, or form.

25 Like I said, I could see it being relevant

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1 at the time of the accident, directly before
2 the accident, but not what his pattern is, you
3 know, up until that -- you would ask him
4 whether or not he wore his seatbelt all day
5 long beforehand, or Ms. Hood was wearing her
6 seatbelt all day long, as to habit or whether
7 or not she was wearing it when this occurred.
8 I think that's pure speculation.

9 We can address that if we need to when she
10 testifies. Again, I understand you said you
11 don't have any interest in the context, but I
12 can tell you this: If you want the context of
13 it, if they're going to get into it, I'm going
14 to let you put the context in.

15 In other words, if the text message is
16 something specific. I don't know if it's
17 anything either one of you want to get into.

18 MR. SMITH: No one has it. We don't know
19 what it is.

20 MR. DANIEL: Your Honor, and I was just
21 checking. I don't think we actually have the
22 substantive text messages.

23 THE COURT: Okay.

24 MR. SMITH: We don't.

25 MR. DANIEL: And it just shows that, you

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1 know, there's an incoming text that -- you
2 know.

3 THE COURT: At 5:57 p.m. that night.

4 MR. DANIEL: Right. And I don't even
5 think it really even verifies whether the text
6 has been read. It's just -- it could be like
7 an email in your inbox.

8 THE COURT: Well, there's no way to tell
9 if a text message is read or not. You can't go
10 back. So -- unless he replied to it and then I
11 think that would be even worse for you.

12 So, anyway -- all right. Well, to that
13 extent then, I will tell you just in looking at
14 everything, I'm assuming you have an expert
15 that is going to make speed relevant, correct?

16 MR. SMITH: No.

17 MR. DANIEL: Your Honor, we can actually
18 draw that out through the officer who's a
19 certified accident reconstruction -- yeah,
20 she's certified in it, which it's a special
21 education --

22 THE COURT: She didn't see the accident,
23 correct? She came onto it afterward.

24 MR. DANIEL: She did not. But we have the
25 speed that's verified by the crash data that

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1 their experts pulled, and have testified to in
2 their depositions.

3 THE COURT: And I'm going to assume that
4 Woody Poplin and Kim Richardson are testifying
5 that speed had absolutely no proximate -- he
6 can't talk about proximate cause because he
7 didn't -- that wasn't a factor contributing to
8 this accident. Am I correct on that? Is my
9 hypothesis correct?

10 MR. SMITH: Well, if we even take it down
11 to a further baseline level, no accident
12 reconstruction has ever been done in this case.
13 The officer didn't do it. Kim didn't do it.
14 Woody didn't do it. Borzendski didn't do it.

15 I know they'd been talking to an expert,
16 but presumably he didn't do it either. It has
17 not been done, so essentially what they're
18 asking the jury to do is do their own accident
19 reconstruction here live in court.

20 You know, to make speed a proximate cause
21 you've got to talk about braking time, and the
22 human reaction time, and do all that. So the
23 starting point would at least be someone who
24 has done an accident reconstruction. No one
25 from either side has done one, Your Honor.

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1 THE COURT: The only problem I have is
2 that if you think speed is relevant most of the
3 time. And I have a hard time believing I'm
4 going to tie their hands and not allow them to
5 talk about speed.

6 I'm going to assume his speed potentially
7 is an issue as well. I know he's pulling out
8 allegedly -- is there a question of whether or
9 not he stopped at the stop sign or if he just
10 went through the stop sign pulling out? Do we
11 know?

12 MR. DANIEL: We don't know either way.

13 THE COURT: Do your people say anything?

14 MR. DANIEL: We don't know either way.

15 THE COURT: Okay.

16 MR. SMITH: And, Your Honor, I know you've
17 read the briefs. And, you know, the only thing
18 that we can -- well, the cases that talk about
19 this and the cases that talk about it's
20 reversible error to admit something like this,
21 they talk about the requirement fraction of
22 reconstruction. You've got to bring something
23 to proximate cause.

24 You know, the fact that speed -- all speed
25 did is -- that we know about, is bring these

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1 two people together. If she's going 80 miles
2 an hour, accident doesn't happen. If she's
3 going 14 miles an hour, accident doesn't
4 happen. If she hits snooze on her alarm clock
5 this morning, accident doesn't happen.

6 But the case law talks about the need to
7 bring science in to draw this proximate cause.
8 Because, Your Honor, this is the exact reason
9 the 403, I think, is in place. Speed could be
10 such a toxic issue for the jury that they're
11 going to see just a bad driver, an out of
12 control driver, and they're going to assume for
13 themselves that it had something to do with it.

14 Trying to draw these legal arguments about
15 cause and effect to a jury that it wouldn't
16 have happened if she was going slower or it
17 wouldn't have happened if she was going faster,
18 neither one of them saw each other, so it
19 didn't affect any sort of reaction time.

20 Asking the jury to make these legal
21 arguments, Judge, I'm worried about it.
22 Because, you know, this is a legal issue and
23 these go to not only, you know, our claim, but
24 it goes to comparative negligence.

25 So both sides had an opportunity to do

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1 accident reconstruction. Both sides had an
2 opportunity to call a doctor and say, hey, if
3 she was going slower, would the injuries have
4 been this severe?

5 No one did that either. I mean, it's not
6 -- you know, clearly, under the case law it
7 wouldn't be admissible under proximate cause
8 for liability. But as far as damages, too, are
9 they going to ask the jury now to infer from a
10 legal -- from a medical standpoint, do you
11 think her ankle would have been shattered so
12 severely if she was going slower?

13 I mean, this is -- this is expert
14 testimony that's required, Judge, and I --
15 asking the jury to do this, I -- we all know
16 what they're likely to do with speed without
17 expert testimony. They're going to interpret
18 it as a bad driver and -- who knows what
19 they're going to do.

20 THE COURT: All right. Well, I'm assuming
21 you're going to ask their experts whether or
22 not speed played a factor into this, if you
23 don't have your own saying there's any issue.

24 MR. DANIEL: Your Honor, we will, and we
25 can ask the -- just the officer, generally, can

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1 speed be a factor? And I think we can elicit
2 enough testimony.
3 The case law though does -- I mean, we can
4 provide opinions, some South Carolina
5 decisions.
6 There's really -- there's no requirement
7 that you need an accident reconstruction expert
8 to talk about speed. I mean, speed and
9 persons -- a person has a general duty to drive
10 at the appropriate speed to keep their car
11 under control. It's a general jury
12 instruction.
13 I think there will be testimony, even from
14 fact witnesses, that she was speeding. Mr. Lee
15 is -- that was just excused by the Court -- was
16 driving, and she was tailgating him. He pulled
17 to the side. His normal standard, and what he
18 testified and will testify to, he testified to
19 in his deposition, is he goes about five over,
20 she passed him, and then the accident happened.
21 And then you have this crash data, where
22 their experts verify in their testimony,
23 deposition testimony that's usually accurate
24 within about a mile or an hour or two. There
25 might be a little variance, but they have no

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1 I want to know what speed he says he was
2 going, and what he knows and what he can
3 testify to, and what he can swear to under
4 oath. So, again --
5 MR. DANIEL: Well, he does -- well, he --
6 I think he will give competent testimony that
7 she was going in excess of the speed limit when
8 she passed him, and the accident happens
9 moments later. She doesn't have her headlights
10 on, he observes that as she passes him, which
11 would be certainly directly relevant to whether
12 her headlights were on and corroborates
13 Mr. Johnson's testimony position like, "I never
14 saw anything, I never saw headlights."
15 And then what another witness says they
16 saw as she actually hits this third vehicle,
17 which is the -- really the severe impact.
18 And that's really -- to put it all in
19 context, Your Honor, what you haven't really
20 heard so far is that there's this sort of
21 sideswiping, scraping, impact. It's not a very
22 severe impact, a minor impact, their experts
23 concede that, between Mr. Johnson's vehicle and
24 the Plaintiff's vehicle.
25 And then she goes over a hundred feet

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1 reason to dispute it. And there was speed just
2 before the first event, which is the right side
3 impact --
4 THE COURT: Well, I don't know how just
5 before, because what I understood in that
6 motion in reference to Mr. Lee, it's something
7 about she was tailgating him and passing him.
8 It's kind of the same thing as the cell phone,
9 and whether or not a text was coming.
10 I don't care if she was tailgating him
11 five miles behind. I don't care if she was
12 tailgating him up to the light before then.
13 That doesn't matter. What matters is what
14 happened at this wreck.
15 And that, to me, is testified to. So I
16 don't think we can conclude that she had a bad
17 motive to her in some way.
18 So you need to be careful of what Mr.
19 Lee's testimony is going to be. I'm not
20 exactly sure. He can say that at the time of
21 this accident, she passed me. But one of the
22 things you just said is he normally goes
23 five miles over the speed limit. Again, I
24 don't care what he normally does, I want to
25 know what he was doing on this occasion.

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1 across a lane or two of travel and a median,
2 and hits another vehicle head on. And that
3 damage is the significant damage in the case.
4 That is what caused injury here. And so her
5 speed is directly relevant to damages, it's
6 directly relevant to her ability to control her
7 vehicle, make an appropriate, evasive maneuver,
8 swerve, keep her vehicle under control to avoid
9 hitting that second SUV, the third car involved
10 in this accident.
11 THE COURT: So was that case settled?
12 What happened with that case?
13 MR. DANIEL: That case is still pending,
14 Your Honor. And I do take -- just to be clear,
15 Mr. Poplin was hired on behalf of Mrs. Hood,
16 the Plaintiff, in this case. And he went and
17 inspected her vehicle and pulled this crash
18 data. Mr. Richardson has reviewed the crash
19 data. They both testified under oath in
20 depositions about how it reads, what it reads,
21 and what that means about her vehicle speed.
22 So we should be allowed to have ask some
23 questions about that.
24 MR. WILLEY: Just to be clear, Your Honor,
25 so you don't think I misrepresented something

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1 important. This is a UIH case with USAA
2 defending. So when I said USAA hired Mr.
3 Poplin, that was accurate, on behalf of Ms.
4 Hood when they were defending her in that case.

5 THE COURT: I understand.

6 MR. SMITH: Mr. Johnson originally had a
7 counterclaim. And that's why Chris was here.

8 THE COURT: Okay. I certainly understand
9 that. Okay. That is --

10 MR. SMITH: Your Honor, if I could maybe
11 just direct your attention to the -- I think
12 the most instructive case out of everything
13 that we filed is probably the Odum case. And
14 in that case, Your Honor, Defendant was stopped
15 at a stop sign, just like Mr. Johnson,
16 testified he did not see Plaintiff's vehicle
17 approaching from the left, just like
18 Mr. Johnson, when he attempted to pull out
19 through the intersection to make a left turn,
20 exactly like Mr. Johnson.

21 He testified even that he was
22 approximately two car lengths away when this
23 happened. So he's even giving further
24 information, it's not even so sudden and
25 direct. And then the Defendant's vehicle

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1 struck the front left fender, just like
2 Mr. Johnson.

3 The Court knows, the Supreme Court held
4 that excessive speed was not a proximate cause
5 because he pulled directly into traffic. They
6 also looked at who's got the right of way in
7 these situations. And in that case, that's the
8 one where the Supreme Court held that directed
9 verdict on liability was reversible error, not
10 to have granted that speed was not a proximate
11 cause.

12 And, Your Honor, that's our argument.
13 It's not a proximate cause, and if it's not,
14 it's irrelevant. And any probative value is --
15 is grossly outweighed by the prejudicial
16 effect.

17 THE COURT: All right. Well, I'm just
18 going to have to hear testimony obviously from
19 the witnesses to see. I can tell you that I
20 understand your argument that -- you know,
21 obviously it doesn't matter. The only
22 testimony is that speed did not matter. That
23 would be one thing. But I would be arguing
24 that speed was at issue. Someone is going to
25 link speed to the issue.

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1 Regardless, I also think it's probative.
2 It's prejudicial, but I agree that someone's
3 got to give me some type of idea what the speed
4 did or did not do. And I've heard you argue
5 that, you know, even though you can't see the
6 impact, that speed had to have been a reason
7 why he didn't see her car. And I haven't heard
8 the issues, and I don't have any answers to
9 that yet.

10 MR. DANIEL: And it sounds like you've
11 already kind of decided which way you'll go
12 with it. I just want to add one more thing
13 about speed, that it has to be sort of taken in
14 context. Like the fact that there were two
15 impacts, and that this impact with this third
16 vehicle a good ways down the road.

17 There's also the speed coupled with the
18 lighting issue. And what you'll hear, and I
19 think what a jury can draw, based on their
20 common sense, the conclusion they can draw is
21 if this lady, the Plaintiff, is going 62 miles
22 an hour, and Mr. Johnson's at an intersection
23 where he's at the T, if she's going that fast,
24 62 versus 45, she's going to be a lot farther
25 back down the road at that intersection, as

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1 it's getting dusk, as it's dark. And the
2 farther back she is, we all know the farther
3 something is away, the harder it is to see.
4 And when you compound that issue with darkness,
5 I mean, it's directly relevant to his defense
6 for liability and it's also -- I mean, the
7 comparative fault and comparative negligence of
8 the Plaintiff. So the speed and the lighting,
9 you almost can't talk about one without the
10 other, is our position.

11 THE COURT: I certainly understand your
12 position. I am a bit concerned about what
13 you're going to have this officer testify to.
14 She didn't do an accident reconstruction. She
15 can testify to information she gathered, but I
16 think that you're going to have to be very
17 careful with her reaching her conclusions about
18 what occurred when she wasn't there.

19 So we're just going to have to cross that
20 road when we come to it, but I am concerned.
21 You know, she may have been -- she may be
22 qualified as an accident reconstructionist.
23 She may tell me that she's done 500 accident
24 reconstructions, but she didn't do a
25 reconstruction in this case is what I'm

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1 hearing. She may have gotten her facts, but
 2 we'll just kind of go from there and see where
 3 she is and how she'll testify.
 4 Who is the officer in this case?
 5 MR. SMITH: Officer Laurel.
 6 MR. DANIEL: Now, Laurel Welch.
 7 THE COURT: Welch. Okay.
 8 MR. SMITH: Your Honor, since we're going
 9 to approach this issue when we get into it and
 10 we have the appropriate testimony, I assume
 11 that this is not something that should come out
 12 in opening statements because --
 13 THE COURT: Exactly.
 14 MR. SMITH: Okay.
 15 THE COURT: We're not going to -- I will
 16 say this though. I'm assuming we're getting to
 17 the speed at some point, and I think I will let
 18 him -- I'm going to let him testify to speed in
 19 this case.
 20 MR. SMITH: We'll see how it proceeds,
 21 sure, but --
 22 THE COURT: Speed and lighting. But I
 23 think you need to be careful as far as what
 24 your experts are going to testify to based on
 25 that limitation. Okay?

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1 MR. SMITH: Thank you, Your Honor.
 2 THE COURT: I think that somewhat talks
 3 about --
 4 MR. SMITH: That would cover basically our
 5 motion for speed and probably his directed
 6 verdict or motion for partial summary judgment.
 7 I would imagine that would settle both of your
 8 rulings.
 9 THE COURT: I'm good, yeah. I'm not going
 10 to grant summary judgment to anything at this
 11 point. We're going to let the jury hear it.
 12 So -- okay.
 13 MR. SMITH: Our next issue, Your Honor, is
 14 certain limitations, which you've already
 15 touched upon with Dustin Lee. And, basically,
 16 you know, there's just a lot of information
 17 there.
 18 I mean, he was trying to be helpful, and
 19 God bless him for that, but, you know, there's
 20 a difference between making a very helpful 911
 21 call and offering opinion testimony.
 22 THE COURT: I'm not going to let this guy
 23 get away -- I'm not going to let him give
 24 opinions. I'm quite confident he is not an
 25 accident reconstructionist unless there's more

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1 that I don't know.
 2 But then again, all's I can tell you, even
 3 though I know him as a lawyer, I didn't know he
 4 was a magistrate lawyer. So -- I think I swore
 5 him in, but I don't know that.
 6 So, anyway, we ought to be careful with
 7 that. I completely agree with you. He can't
 8 give his testimony --
 9 MR. SMITH: I'm not going to elicit those
 10 responses, and I imagine Jack won't as well.
 11 MR. DANIEL: Your Honor, just to be clear
 12 on that, so that, you know, we don't run afoul
 13 of any rulings. There is in the 911 call, he
 14 makes the statement and he's talking -- he's
 15 just seen this event, and his testimony is that
 16 he pulls over. As soon as he's clear off the
 17 roadway, he dials 911. And whatever length of
 18 time, it may have been a minute, however long
 19 it takes to connect, he's then talking about
 20 what he just saw and describing the details of
 21 it.
 22 And he gives good -- he actually gets the
 23 type of license plate that the Plaintiff has.
 24 He gets that right. There's a lot of
 25 information in there, I do agree with Kevin

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1 about that.
 2 He doesn't -- and I'm not going to ask him
 3 questions like, Do you think that the Plaintiff
 4 was negligent? Do you think that she caused
 5 the accident? I'm staying away from that. But
 6 there's a -- what our position is, there's a
 7 clear, present sense impression this 911 call
 8 was made right after the accident. So it --
 9 you know, the case law on that and the reason
 10 why that is admissible is because it tends to
 11 be factually accurate and not just an honest --
 12 THE COURT: I have heard the 911 tape.
 13 MR. DANIEL: We can play it, we --
 14 THE COURT: He can testify as to facts.
 15 He can testify as to facts, but I'm not going
 16 to allow him to testify as to conclusions.
 17 MR. DANIEL: Well, what -- one thing --
 18 one thing he says in the 911 call, and I just
 19 wanted to draw Your Honor's attention to it,
 20 because he actually says -- he describes the
 21 SUV that passes him, which turns out to be the
 22 Plaintiff's vehicle. And he talks about the
 23 car that's crossing 278, which we know is
 24 Mr. Johnson's vehicle. And he says, "I don't
 25 think the car -- or "the car probably couldn't

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1 have seen that vehicle coming."

2 THE COURT: Well, that portion isn't
3 coming in, because that's pure speculation.
4 Unless we all agree that he says he didn't see
5 it. But I -- it's his opinion, and I think
6 that's their own defense.

7 So, yeah, I don't know how you're going to
8 redact the 911 tape. If you plan on using it,
9 you're going to have to deal with that when you
10 get to it. But him speculating -- he can't
11 speculate. He just can't. He can't say what
12 he saw. I assume he's going to testify he
13 never saw her, which is what you all are
14 telling me, and that she never saw him. So I
15 don't think that's fair game. I think he can
16 state actually what he saw.

17 MR. DANIEL: If we redact that from the
18 911 call, Your Honor, do you have any
19 opposition to us bringing that call and
20 introducing it into evidence?

21 THE COURT: I haven't heard it in its
22 totality. You could just play it for me, you
23 could tell me what portions that you object to.

24 MR. SMITH: There is a lot to redact.

25 THE COURT: I think it's relevant. I

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1 think it can be. I mean, I think typically it
2 would come in. A 911 call, contemporaneously
3 saying what had just occurred. However, if
4 there's anything that he's talking about that
5 runs to a fact -- I'm sorry, an opinion in some
6 way, some type of speculation, I'm not letting
7 that part come in. So you're going to have to
8 cut it or do something. Okay?

9 MR. DANIEL: Yes, Your Honor. And we can
10 play it for you before he testifies.

11 THE COURT: And that's fine. We'll just
12 do that when we get to it. Okay?

13 All right. What else do we have?

14 MR. SMITH: The letter to the Kucks. This
15 is --

16 THE COURT: Okay. Tell me about that.

17 MR. SMITH: This is a little strange.
18 Okay?

19 THE COURT: Tell me how that is relevant
20 in any way.

21 MR. SMITH: So initially what happens is,
22 you know, the Kucks are the vehicle that were
23 hit head on. Right? That they were coming in
24 the opposite way of traffic.

25 The Kucks initially give a recorded

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1 statement where the driver says to the
2 insurance company, "Ma'am, all I seen was
3 headlights coming right at me." He says it
4 three different times. Right?

5 THE COURT: Okay.

6 MR. SMITH: This image is just burned into
7 his brain. Therese Hood is barreling down on
8 him and all he's seeing is headlights coming
9 right at him. Right?

10 THE COURT: Okay.

11 MR. SMITH: Well, subsequent to that, the
12 Kucks hire a lawyer. We're in contact with
13 them to try and get an affidavit saying the
14 same thing, right? So at this time, we don't
15 have a statement yet. We're just trying to get
16 a statement from him that the lights were on,
17 right, because we understand that's what
18 they're going to say.

19 Well, they get a lawyer, statement comes
20 out, and also then the Kucks learn Therese
21 carries \$500,000 per person, so a million for
22 the Kucks. Ms. Johnson carries 25. The Kucks
23 story has now changed.

24 THE COURT: Okay.

25 MR. SMITH: Okay. No more headlights.

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1 Right?

2 They are -- so Therese writes them a
3 letter, explaining again the insurance. Now,
4 she -- she gets it backwards. Okay? She gets
5 it backwards. She says how much insurance
6 she's got with USAA, she says how much
7 insurance he's got with GEICO. But she says,
8 "If you say the same thing, if you say my
9 lights were on, like you said before, you'll
10 get more money." Which it would actually work
11 in the opposite, and she was just very
12 confused.

13 But that's what that letter was. It's
14 explaining the insurance money, it's saying,
15 "Please tell the truth." They're waffling at
16 this point, and they're changing their
17 testimony -- well, not testimony at this point,
18 but they're changing their story after the
19 event about insurance.

20 THE COURT: Who wants to enter this
21 letter?

22 MR. SMITH: He does.

23 MR. DANIEL: Your Honor, we -- I mean --

24 MR. SMITH: Well, if he didn't want to,
25 it's not an issue.

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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 --

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inpeachment 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 --

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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

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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.

THE COURT: He can say I had my headlights

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1 on. I even think he can say, I needed my
2 headlights at that exact time to be able to
3 appropriately see.
4 I just -- I'm worried about him
5 extrapolating and going from whatever his
6 experience is to the next one.
7 MR. DANIEL: We're not going to ask --
8 THE COURT: So he needs to be really
9 careful.
10 MR. DANIEL: We're not going to ask him to
11 make legal conclusions or phrase it of, you
12 know, in the way of, you know, statutorily were
13 you required. It's just a general perception
14 thing, and as a driver what his common
15 knowledge is.
16 THE COURT: Just be careful. If not, you
17 need to object when it occurs or if it goes too
18 far, and I'll make a ruling on it.
19 MR. WILLEY: Can we -- can we at least
20 remove that from opening until we see what he's
21 going to testify to, as to specifically the
22 headlights? And, again, I'm relying on this
23 case. This is actually a railroad case which
24 --
25 THE COURT: I don't think anyone in their

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1 opening statement better put any words into
2 Mr. Lee's mouth, because I don't know. But I'm
3 getting the feeling in this that he's a little
4 all over the board.
5 MR. WILLEY: Correct.
6 THE COURT: And I might be wrong on that,
7 but that's what I'm gathering.
8 MR. SMITH: We do all agree that one thing
9 he says, and this is his observation, and we
10 don't have any objection to this, but he
11 observed Therese in his rearview mirror, and as
12 she's passing him, he says that she had her
13 running lights on and no headlights.
14 MR. WILLEY: As she was passing him.
15 MR. SMITH: There's no getting around
16 that. He saw it, Your Honor, and -- you know.
17 There's nothing --
18 MR. WILLEY: That's fine.
19 MR. SMITH: And he had his headlights on
20 at the time. So I know those two facts, those
21 are his observations, we can't argue with that.
22 But all this other stuff is obviously --
23 THE COURT: That's all I'm going to say is
24 in the opening statement, you can say what, you
25 know, you believe the evidence is going to

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1 prove. But I would be careful on putting words
2 in anyone's mouth. But, of course, that's to
3 your own peril. Because if you promise
4 something that doesn't get delivered by a
5 witness, then you are the one that looks bad.
6 So --
7 MR. SMITH: Yes, ma'am.
8 THE COURT: Again, I think everyone needs
9 to be so careful. But, like I said, apparently
10 that's an issue in this case potentially. So
11 to the extent you need to use it, again, I just
12 wouldn't be putting words in people's mouths.
13 MR. WILLEY: So for purposes of that
14 motion granted as to opening and held dependant
15 on what the testimony shows?
16 THE COURT: What I just granted is the
17 opening to specifics. I think they can say
18 what's going to be argued. Again, I don't
19 think he can say this is specific to Mr. Lee.
20 But I think he can say the evidence is going to
21 show.
22 MR. WILLEY: So it's denied?
23 THE COURT: I think it's denied.
24 MR. WILLEY: Okay. And for purposes of
25 our pretrial motions, do you have printed

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1 copies for the record, or would you like us to
2 provide them?
3 THE COURT: You need to go ahead and
4 provide.
5 MR. WILLEY: Okay. And we will do that at
6 a break.
7 THE COURT: All right. What else do you
8 have?
9 MR. SMITH: I could probably -- these are
10 it for our motions, Your Honor. I could
11 probably tell you which of his that we don't
12 have objection to, which may shorten his
13 presentation.
14 THE COURT: Perfect.
15 MR. SMITH: Your Honor, this would be in
16 the master Motion in Limine filed by Mr.
17 Daniel.
18 THE COURT: Yes. Go ahead.
19 MR. SMITH: And it will be Issue No. 2,
20 testimony of Dr. Hanlon regarding the
21 exacerbation of Plaintiff's bipolar disorder
22 and mental health issues.
23 Also, I imagine it will be Parkinson's in
24 there as well, because that was really the
25 subject of her testimony.

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1 Your Honor, we agree that the Plaintiff's
2 mental condition, bipolar disease, depression,
3 and Parkinson's Disease is irrelevant. We're
4 not going to bring it into trial.
5 THE COURT: Are you not claiming that it
6 was exacerbated by this accident?
7 MR. SMITH: No, ma'am.
8 THE COURT: Okay.
9 I guess I'll just hear from you.
10 MS SUTTIE: Yes, Your Honor. It is
11 relevant though to the issue of the extent of
12 her damages. I mean, this depends on a ruling
13 on the Motion to Bifurcate, but the Parkinson's
14 may come in.
15 THE COURT: Well, they say they're not
16 putting it in. So I think to the extent though
17 that -- I mean, we have to take her as she
18 comes. I mean, with whatever she's got. I
19 mean, I think that's going to be certainly a
20 jury charge in this case.
21 I don't think anyone should touch on the
22 issue, I don't think we need to go there.
23 MR. SMITH: Yes, ma'am.
24 THE COURT: If you open the door on
25 bipolar and depression, that's a whole 'nother

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1 issue. I think the Parkinson's a little
2 different. I think it's fair game.
3 If you have a medical doctor testify, if
4 must be something. But you don't want to open
5 the door on bipolar or any depression or
6 anything along these lines. If you open that
7 door up, they'll come all day long and go
8 through it.
9 MR. SMITH: Yes, ma'am.
10 MS SUTTIE: Yes, Your Honor. Just the
11 Parkinson's, I think, for maybe liability
12 purposes will get brought up, and that's the
13 only other inference I could potentially see.
14 MR. SMITH: You don't want us to bring it
15 up for damages, but you want to bring it up --
16 if it's irrelevant, it's irrelevant.
17 MS SUTTIE: Well, it could come up for
18 damages, too, but Dr. Hanlon can't talk about
19 that.
20 THE COURT: I don't think potentially
21 Parkinson's could be. I don't know what the
22 doctors say. But, I mean, my understanding is,
23 she had a very badly shattered ankle and as
24 well as she some fractures of her cervical and
25 her lower back, correct?

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1 MR. SMITH: Yes, ma'am.
2 THE COURT: Okay. Well, obviously the
3 relevant doctors will testify as to what they
4 can in those cases they saw and what they did
5 or what their treatment is.
6 And if one of them can't opine the
7 Parkinson's had something to do or made things
8 more difficult, I think that's fair game for
9 you to testify to.
10 And are you telling me that Kim Richardson
11 or Woody Poplin's going to talk about her
12 Parkinson's, the effect? I mean, she does have
13 a valid driver's license, correct?
14 MR. SMITH: Yes, ma'am.
15 THE COURT: I mean, she can drive a car.
16 So, again, I don't know where anyone's going
17 through the door on that one, so --
18 MR. SMITH: We won't. So we agree that
19 those issues are irrelevant. You won't hear
20 those words out of our mouth, and we would also
21 ask that that --
22 THE COURT: I will say this. It's
23 probably fair game to bring it up. Because I
24 will say this, and I don't mean any disrespect.
25 I can see you shaking a little bit, and I think

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1 people would wonder maybe, just a little bit,
2 what that is.
3 So, again, it's very subtle. But, again,
4 I don't think it's completely out of bounds
5 here. I think it can be mentioned, but unless
6 you got someone saying that somehow that
7 affects her -- and I don't see that because I
8 don't hear you brought an expert witness. And
9 any way that's there, we're not going through
10 that door. Okay?
11 MR. SMITH: Your Honor, on Issue No. 4, on
12 Defendant's master Motion in Limine, Charmane
13 Bonham (phonetic), we've never been able to
14 find Ms. Bonham, so we're not going to offer
15 her hearsay testimony.
16 THE COURT: Okay. That shouldn't be a
17 problem.
18 MR. SMITH: Yes, ma'am.
19 THE COURT: Okay. What else?
20 MR. SMITH: And Issues No. 5 and 6 are
21 kind of intertwined. And they have to do with
22 the Defendant's criminal record and driving
23 record.
24 Your Honor, we'll agree initially that
25 those would certainly be irrelevant. However,

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1 if the Defendant testifies that he's always a
2 safe driver and always has been a safe driver,
3 or he testifies that he has always told the
4 truth, there's a crime of dishonesty in his
5 criminal record. So if he stays away from that
6 --

7 THE COURT: You can't ask him that
8 question either. You can't ask that question.

9 MR. SMITH: I'm not. I'm not going to set
10 him up. I'm not going to set him up.

11 THE COURT: Okay. All right. Just don't
12 open the door on it. Okay?

13 MR. SMITH: Right. Failed attempts at
14 settlement.

15 THE COURT: Obviously it's irrelevant.

16 MR. SMITH: We're not bringing any numbers
17 into this.

18 THE COURT: Okay.

19 MR. SMITH: And --

20 THE COURT: The reptile theory?

21 MR. SMITH: Yeah. I don't know, you may
22 have seen this before, Judge. It's a Golden
23 Rule argument. Roy and I, this ain't our first
24 day in court. If we approach the Golden Rule,
25 let us know. We're very aware of the rule.

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1 But -- and that's a little similar to Jack's
2 argument about we can't refer to the vehicle
3 being totaled. You know, you've seen the -- I
4 mean, they were crunched up.

5 THE COURT: Right. It certainly wasn't
6 totaled in this part of the wreck.

7 MR. SMITH: Right. So, anyway, so, those
8 are what we agreed on so far, and I'll give
9 Jack the floor to go over the remainders.

10 THE COURT: All right. Are you ready?

11 MS SUTTIE: Yes, Your Honor. We have
12 another one. The first one, and now a master
13 motion, is to exclude the video testimony of
14 Dr. David Jaskwhich regarding Plaintiff's other
15 medical conditions.

16 In his video deposition, Mr. Smith asked
17 him general questions, such as, "Were
18 Plaintiff's injuries related to the subject
19 accident and --"

20 THE COURT: Correct me if I'm wrong, Dr.
21 Jaskwhich is an orthopedic surgeon?

22 MS SUTTIE: Orthopedic surgeon. He just
23 treated her ankle.

24 THE COURT: He had nothing to do with her
25 back?

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1 MS SUTTIE: Nothing to do with the back,
2 spine, ribs, anything else.

3 THE COURT: He treated her for her spine,
4 her fractures and that?

5 MR. SMITH: Hilton Head Hospital.

6 THE COURT: Hilton Head Hospital, just
7 directly after the accident? Did she have any
8 follow-up?

9 MR. SMITH: She did have some follow-up.
10 She saw a neurologist. These were -- these
11 were fractures in her cervical and lumbar
12 spine. You know, you either get a kyphoplasty
13 or you deal with the pain.

14 THE COURT: Exactly.

15 MR. SMITH: So she had some follow-ups.
16 But these are --

17 THE COURT: Epidurals? Or what did she
18 have done?

19 MR. SMITH: She did -- these are emergency
20 room diagnoses that happened. They were a
21 little bit more concerned, she had a dissection
22 of the vertebral artery near the level of the
23 cervical fracture. They were a little bit more
24 concerned with that.

25 But there were follow-ups. So

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1 Dr. Jaskwhich is reading the records about what
2 Dr. Tobin did, where he popped the ankle, then
3 he did the surgery, and all the other diagnoses
4 that come along with it.

5 THE COURT: Okay. So you don't want
6 Jaskwhich to be able to testify to anything
7 other than the ankle?

8 MS SUTTIE: No, ma'am.

9 THE COURT: And do you agree with that? I
10 mean, I don't think her looking at other
11 things -- or him looking at other things, I
12 think he can bring up. He treated her for the
13 ankle.

14 Now, how do you intend on getting in
15 injuries? Who's going to get in for you the
16 injuries for cervical and her lower back?

17 MR. SMITH: Well, Dr. Jaskwhich is her
18 treating doctor. He reviewed the records from
19 Hilton Head, he relied on those records in
20 formulating his treatment plan. He discussed
21 the injuries in his treatment notes, not only
22 the ankle injury, but all the other injuries
23 with Ms. Hood.

24 THE COURT: I mean, I'm just reading what
25 they gave me as far as the testimony.

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1 MR. SMITH: Right. We're not -- we're not
2 going with him any further than that. He's not
3 talking about any future treatment, epidurals,
4 facets for the neck, for the low back. He's
5 not doing any of that kind of stuff.

6 But he is competent to testify as a
7 treating medical doctor that he relied upon
8 those records, and based upon what he knows and
9 his medical training and his examination of
10 her, that those appear to be related to the
11 wreck.

12 I mean, the wreck happens and she gets
13 diagnosed with all these things. We've got her
14 records before, she didn't have cervical
15 fractures, rib fractures, lumbar fractures, a
16 concussion, which is really it, in addition to
17 --

18 THE COURT: Well, let me ask you, when he
19 does a physical of her, and he didn't treat her
20 at Hilton Head Hospital, correct? He treated
21 her in Charleston?

22 MR. SMITH: That's right. She lives in
23 Goose Creek.

24 THE COURT: So he didn't treat her at
25 Hilton Head Hospital, but when she saw him as

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1 an orthopedic surgeon, I don't know what he
2 specializes in, whether it's ankles, arms,
3 backs, whatever. But does he actually do a
4 physical exam of her cervical or lower back?

5 MR. SMITH: He does a physical
6 examination, head to toe, yes, ma'am.

7 THE COURT: I mean, does he in his notes,
8 write obviously, that she had a fracture to her
9 cervical whatever number and whatever level?

10 MR. SMITH: Yes, ma'am.

11 THE COURT: Same thing with the --

12 MR. SMITH: Yes.

13 THE COURT: So who -- are you having an ER
14 doctor testify?

15 MR. SMITH: No, ma'am.

16 THE COURT: And are you having Dr. Tobin
17 testify?

18 MR. SMITH: No, ma'am.

19 THE COURT: Okay. Okay. I think to some
20 extent he can say that he is her treating
21 doctor, and they did discuss her cervical, her
22 lower back. And I don't know what the written
23 medical records show. It just depends on how
24 in-depth. I think if he does testify -- I
25 think he can testify to some extent that

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1 something caused it, he's relying on the
2 record. I just don't know that the situation
3 was with her back, either cervical or her low
4 back, prior to this accident.

5 MR. SMITH: He doesn't go any further than
6 that, Your Honor.

7 THE COURT: Who's treating her -- who
8 treats her for her Parkinson's?

9 MR. SMITH: Ma'am?

10 THE COURT: Who treats her for her
11 Parkinson's?

12 MR. SMITH: Her family doctor at the VA.

13 MS SUTTIE: That's actually a
14 misrepresentation. She's primarily treated for
15 her Parkinson's by a neurologist at the VA who
16 -- not Dr. Hanlon, who's her primary care
17 physician.

18 And to clarify some points that were
19 raised, Dr. Jaskwhich didn't have the entire
20 Hilton Head records. He had Dr. Tobin's
21 records from the ankle surgery. And so Mr.
22 Smith asked him on the record, "Were these
23 injuries caused by this accident?"

24 He didn't clarify, you know, the first
25 impact with Mr. Johnson, the second impact with

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1 the Rucks. Objected to the questions and
2 offered him an opportunity to correct the
3 former question, maybe get back verification.

4 But I think if Dr. Jaskwhich's testimony
5 about her other injuries are allowed to come
6 in, it could -- it's unfairly prejudicial and
7 outside the scope of his expert testimony.

8 THE COURT: I think it comes, as far as
9 Dr. Jaskwhich feels comfortable, he can
10 testify. So most of the time a doctor will
11 say, well, you know, I can say as a medical
12 doctor that this accident caused her problems
13 that -- you know, whatever and whatever. Then
14 they can say, I treated her back, I didn't take
15 care of that. You're telling me --

16 MR. SMITH: He says all that.

17 THE COURT: -- he won't testify to any
18 futures, anything along those lines?

19 MR. SMITH: That's right.

20 THE COURT: As long as he qualifies it, I
21 think he can. He's a medical doctor. And I
22 think it goes to the weight, not admissibility.
23 So I think he can testify to that.

24 MR. SMITH: Yes, ma'am. And all those
25 questions that you just brought up, those were

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1 all asked during cross. So that is all
2 highlighted that he's not treating that and --
3 you know.

4 THE COURT: Okay. I mean, do you have
5 anything as far as pre-existing, that she had
6 other previous back injuries?

7 MS SUTTIE: Yes, Your Honor. She had a
8 prior cervical injury, she had -- just
9 significant fall risk. We know there's a lot
10 of --

11 THE COURT: Is that as a result of the
12 Parkinson's or is that from the back?

13 MS SUTTIE: The -- I mean, close in time
14 to the Parkinson's, but I don't think the back
15 injury is a result of Parkinson's. But perhaps
16 prior right ankle foot injury as well. I mean,
17 there's extensive pre-existing issues.

18 THE COURT: Okay.

19 MS SUTTIE: The next one that we have was
20 during Dr. Jaskwhich's video deposition for
21 trial. Mr. Smith introduced the actual
22 hardware that was placed in Mrs. Hood's ankle,
23 and then subsequently removed by Dr. Jaskwhich,
24 in addition to an x-ray that clearly shows, you
25 know, the hardware in there.

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1 Dr. Jaskwhich had already testified as to
2 what was placed in the ankle, what was removed
3 from the ankle.

4 THE COURT: Do you plan on trying to get
5 the hardware in?

6 MR. SMITH: Yes, ma'am.

7 THE COURT: I don't know what it looks
8 like, so show me.

9 MR. SMITH: Sure.

10 THE COURT: So how long was this in?

11 MR. SMITH: Actually it was November of
12 2014, it was removed about three months ago.

13 THE COURT: Okay. Your premise is that
14 it's prejudicial?

15 MS SUTTIE: And it's duplicative, and they
16 have x-rays showing exactly that in the x-ray.
17 And then Dr. Jaskwhich has already testified,
18 showing on the x-ray what each piece of
19 hardware is. And I think it's just -- the only
20 purpose of that needs to come in is to, you
21 know, invite sympathy and prejudice the jury.
22 I just don't see the purpose of it.

23 THE COURT: I think it can come in. It
24 shows what was in her ankle.

25 Okay. What else?

PRE-TRIAL MOTIONS

1 MS SUTTIE: The next one may be --

2 MR. DANIEL: One of them, Your Honor, is
3 the -- we got -- we filed a Motion in Limine as
4 to the video, presenting the video testimony of
5 William and Mary Kuck, the drivers from --

6 MS SUTTIE: No objection.

7 MR. SMITH: They are coming live. I mean,
8 there may be cross examination of theirs, but
9 we don't -- we're not just going to throw it --
10 they don't qualify under the statute. Unless
11 they don't show up, because they've been
12 subpoenaed.

13 THE COURT: Then we'll cross that when we
14 get it to.

15 Okay. What else?

16 MR. DANIEL: Then there's the motion to
17 exclude the mention of insurance in the case,
18 which, I mean, this is a --

19 THE COURT: We always agree, right.

20 MR. DANIEL: I'm sorry?

21 THE COURT: We always agree.

22 MR. SMITH: Unless, of course, he says he
23 has to pay a verdict, and then it's relevant.
24 Because he doesn't.

25 MR. DANIEL: Right. But there's also,

PRE-TRIAL MOTIONS

1 there's a specific issue as to Mr. Kuck and --

2 THE COURT: We're not going to talk about
3 the other lawsuit. We're not going to talk
4 about any of that. We're not going into that.

5 MR. DANIEL: Okay. I just -- the
6 Plaintiff's counsel, in Mr. Kuck's deposition
7 asked -- I mean, probably a couple hours worth
8 of questions about this prior statement that
9 Mr. Kuck gave.

10 THE COURT: We're not talking about that.
11 We're not going into it. And whoever let
12 Mr. Kuck know, I want to make sure that you
13 tell him ahead of time, everybody tells the
14 witnesses ahead of time, no mention of
15 insurance. If they think for some reason their
16 question has to be responsive to it, they need
17 to say, stop, and look at me, and say we need
18 to take break. Okay?

19 MR. DANIEL: Yes, Your Honor.

20 You've ruled on the Motion for Partial
21 Summary Judgment. And we did file a Motion to
22 Exclude Mrs. Borzendowski just because of the
23 timing of it, Your Honor. She was named about
24 --

25 THE COURT: I saw July 17th, is what I

PRE-TRIAL MOTIONS

1 saw.

2 MR. DANIEL: Yes, Your Honor. And the --

3 THE COURT: Did you have a chance to

4 depose her -- did you have a chance to depose

5 her?

6 MR. DANIEL: We deposed her just five days

7 ago.

8 THE COURT: Okay. But you deposed her.

9 Okay.

10 I'm not even sure if she is -- I don't

11 know what her testimony is. Actually, that's

12 one that I might want to between now and when

13 you put her up, I don't whether you intend on

14 putting her up, but let me take a look at her

15 deposition.

16 MR. SMITH: It will be sometime tomorrow,

17 Your Honor.

18 THE COURT: Okay. Well, then you can give

19 me a copy of her deposition, let me take a look

20 at it.

21 MR. WILLEY: I'll email it first --

22 THE COURT: But you have deposed her,

23 right?

24 MR. DANIEL: We have, Your Honor. It's

25 just from the Defense position, we did --

PRE-TRIAL MOTIONS

1 THE COURT: Did you have a scheduling

2 order?

3 MR. DANIEL: We did, and we had this date

4 certain trial that was set --

5 THE COURT: And did your scheduling order

6 cut off discovery at some point?

7 MR. DANIEL: It did. I'd have to go look

8 at it. Well, it didn't cut off discovery, I

9 think there were deadlines to name experts at

10 one point.

11 MS SUTTIE: We just had a date certain

12 trial, a mediation trial deadline.

13 THE COURT: Okay. Then you got to live

14 with what you have. And if you guys didn't put

15 it in there, then, like I said, the discovery

16 goes to the date of trial.

17 And as long as -- I would be more

18 concerned if you hadn't deposed her. But it

19 sounds like you deposed her, so -- and there

20 was no cut-offs for naming of experts and there

21 was no cut-offs for doing discovery, so --

22 MR. DANIEL: There's also a Motion to

23 Compel that we filed. Mrs. Borzendowski, when

24 we deposed her five days ago, said that she had

25 been provided a summary of Ken Richardson's

PRE-TRIAL MOTIONS

1 deposition testimony. We asked for a copy of

2 that because I think we're entitled --

3 THE COURT: I think you're entitled to

4 have whatever she was given.

5 MR. SMITH: It was a mistake, Your Honor.

6 My office did a summary, and they included the

7 abstract of my work product instead.

8 THE COURT: It was provided and looked at

9 it and they're entitled to it.

10 MR. SMITH: All right. I'll give it to

11 them.

12 THE COURT: So you need to get that to

13 them, and you need to get it to them today.

14 MR. SMITH: Yes, ma'am.

15 MS SUTTIE: And I think our last one

16 before the Motion to Bifurcate is the exclusion

17 of punity, which is on the grounds that

18 Plaintiff hasn't produced evidence of -- clear

19 and convincing evidence that Mr. Johnson was

20 driving --

21 THE COURT: Okay. I'm not going to make a

22 decision on human damages until I actually hear

23 and we have a decision on just liability first.

24 So that's the first thing we're going to do.

25 I'm trying to think about how and

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1 potentially where to bifurcate this case. I

2 want to make sure that if we were to do that,

3 it would make the case go more quickly.

4 Again, it's usually based for me on

5 whether or not there's a real issue as to

6 liability.

7 Just so I understand, I want to make sure

8 that there is no duplicative witnesses. We're

9 going to bifurcate liability and damages, I

10 want to make sure that there will be no

11 witnesses that have to testify twice. Is that

12 correct?

13 MS SUTTIE: That's my understanding. But

14 we don't have an objection to the Plaintiff,

15 just so she only has to testify once, if she

16 would like to testify about her injuries.

17 THE COURT: Well, of course, if that's

18 what's going to happen.

19 MS SUTTIE: I mean, that's the only

20 witness I would think who could testify to both

21 issues unless --

22 MR. WILLEY: Your Honor, that's actually

23 not accurate. There would be multiple

24 crossover.

25 THE COURT: Who? Who?

PRE-TRIAL MOTIONS

1 MR. WILLEY: So, as an initial matter, the
2 cop would be a crossover, property damages as
3 an element of damage, and she testifies about
4 the damage that she saw when she --

5 THE COURT: We're going to have property
6 damage in this case?

7 MR. WILLEY: Yes. We're talking about all
8 the damages that are recoverable, yes, ma'am.

9 THE COURT: Okay. That does not matter.
10 I'm more worried, obviously Ms. Hood will have
11 to testify again. Who else besides that? Who
12 else besides the police officer?

13 MR. WILLEY: The cop would have to testify
14 again. Potentially the Defendant, when we're
15 talking about mechanism of injury and where
16 exactly the impact occurred.

17 THE COURT: Yeah. He would not testify
18 twice.

19 He doesn't need to. Okay. Who else?

20 MR. WILLEY: And then, again, obviously
21 the doctors that are going to be coming in for
22 that just specifically.

23 But we have limited -- their concern with
24 the bifurcation was our amount of treating
25 physicians, and we have really narrowed that

PRE-TRIAL MOTIONS

1 back. I mean, I don't think -- with the door
2 openings, the door closings, I actually think
3 we have time.

4 THE COURT: I'll tell you what I'm
5 concerned is, I see treating physicians, but I
6 also see some type of RN, which I'm going to
7 assume is a life care planner. Am I correct on
8 that? I saw Tricia Yount on there, who -- I
9 mean, it doesn't matter, she used to be my
10 accountant. Probably worked forever, from
11 years and years ago. But -- so Tricia Yount
12 obviously.

13 Who else as far as the damages expert?

14 MR. WILLEY: We are actually -- we're
15 going to go ahead and take out -- okay.

16 Judge, we'll actually remove the life care
17 plan, which will also obviate the need for
18 Ms. Yount, which takes the damages witnesses
19 just down to -- if we don't bifurcate, just
20 takes the damages witnesses down to the
21 doctors, who are about an hour. They're on --
22 that's on video obviously.

23 THE COURT: When you say "doctors," who
24 are we talking about?

25 MR. WILLEY: Dr. Jaskwhich.

PRE-TRIAL MOTIONS

1 THE COURT: And what about Dr. Hanlon?
2 Are you bringing her?

3 MR. WILLEY: She's short.

4 THE COURT: But she's coming.

5 MR. SMITH: We -- yeah. Well, there's
6 some limits on what she can testify to, Your
7 Honor. We're going to consider. But if she
8 comes, she's coming live. There's no video,
9 but we're going to have to think about --

10 THE COURT: So if you took out the life
11 care planner, if you took out Tricia Yount, I
12 just need to know who is -- I mean, who's going
13 to testify as medical experts?

14 In other words, it would be David
15 Jaskwhich, Dr. Ann Hanlon. Anyone else?

16 MR. WILLEY: No. And, I mean, talking
17 about less than two hours. If we limit it down
18 to that, which we're willing to do if we don't
19 bifurcate.

20 MS SUTTIE: Your Honor, I wanted to
21 clarify one point.

22 THE COURT: Sure.

23 MS SUTTIE: If the Plaintiffs are willing
24 to strike the safety and the life care planner,
25 from what I'm hearing, Dr. Hanlon said maybe --

PRE-TRIAL MOTIONS

1 if they're going to strike their claim for
2 future damages.

3 MR. WILLEY: Well, you don't strike them.

4 THE COURT: Based on this, she's got
5 permanent injuries as a result.

6 MR. SMITH: Yes, ma'am. That's all over
7 Dr. Jaskwhich's --

8 MS SUTTIE: As to her ankle.

9 MR. WILLEY: Which gets us to the future
10 damages, which is all we can get to. Because
11 we don't have to prove them to a mathematical
12 certainty, which, of course, is the purpose of
13 a life care planner.

14 THE COURT: But someone's got to be able
15 to testify that she is going to need -- if it's
16 just permanency for pain, or is it permanency
17 for other treatment?

18 MR. SMITH: Well, what his testimony is,
19 is that she's going to require more treatment
20 for her ankle. And he's going to talk about
21 that.

22 THE COURT: What type of treatment? I
23 mean, is she going to have to have more
24 hardware put --

25 MR. SMITH: Well, what she's got is, she's

PRE-TRIAL MOTIONS

1 got severe post traumatic arthritis, she's got
2 scar tissue, and she's got a broken, you know,
3 healed ankle.

4 THE COURT: And the future medical
5 treatment, I want to know if this doctor has --

6 MR. SMITH: Injections, physical therapy,
7 ankle braces, and possibly 20 percent chance of
8 an ankle fusion.

9 THE COURT: And does he put a dollar
10 amount on this?

11 MR. SMITH: No, ma'am.

12 THE COURT: Well, then how do get the
13 dollar amount, because she can't speculate?

14 MR. WILLEY: We're not required to have a
15 -- all we're required to do to submit future
16 damages to the Court.

17 THE COURT: You got to have some kind of
18 way to make a claim to say she's going to have
19 to have an injection. Someone has to be able
20 to testify the injection costs roughly X amount
21 of dollars. If your life care planner was the
22 one that did that, then I think you have to
23 have your life care planner.

24 But a doctor, absolutely can testify as to
25 an injection that roughly costs \$400, whatever

PRE-TRIAL MOTIONS

1 it is.

2 MR. SMITH: Yeah. Your Honor, it's really
3 not the focus of, I guess, that. You know,
4 our future damages that we're focused on is
5 this woman's retirement, right?

6 THE COURT: Okay.

7 MR. SMITH: So going back and forth to the
8 doctor to go get injections. Limited mobility
9 --

10 THE COURT: For pain suffering and her
11 time. Obviously she can testify as to value of
12 her time.

13 MR. SMITH: Yes, ma'am. Yes, ma'am.

14 MR. WILLEY: We're not interested in a
15 dollar amount on specific features in terms of
16 cost amount.

17 MR. SMITH: No ma'am. I mean, they're
18 going to hear she's a veteran.

19 THE COURT: I mean, I have a problem, just
20 so we're all clear -- I have a problem. If
21 you're going to stand up and say this woman
22 needs future X, Y, and Z, I can't have the jury
23 speculating on what the cost of that medical
24 procedures will be.

25 I would agree that goes to additional pain

PRE-TRIAL MOTIONS

1 and suffering for her. Going back and forth to
2 the doctor, having to live through the
3 injections. I agree that's all for them and
4 there's no number that you can attach to that.

5 But I -- you just need to be careful because
6 I'm not going to let you sit and say, you know,
7 we're asking for whatever medical damages are.

8 As long as you limit it to the pain and
9 suffering part, I just can't let the jury just
10 grasp in the air of what an injection costs.

11 MR. SMITH: Yes, ma'am. And we're on the
12 same page.

13 MR. WILLEY: We're on the same page.

14 MR. SMITH: And if we want to bring in the
15 costs, we'll bring in the nurse at the life
16 care plan. Otherwise --

17 THE COURT: Well, that's the difference
18 though. I need to know that now. It's like I
19 said, if you're going to have Patricia -- or
20 Tricia Yount in, a life care planner, I am
21 going to bifurcate it. If you're not, I'm
22 inclined to just put it all over. If there
23 really is just the two doctors, then I would
24 agree it's probably more efficient --

25 MR. SMITH: We're going to scratch it.

PRE-TRIAL MOTIONS

1 MR. WILLEY: We'll withdraw those in
2 exchange for not bifurcating.

3 THE COURT: Okay. All right. So that's
4 what we'll do then. Okay. So we're not going
5 to bifurcate the case but we're not --

6 MR. SMITH: Sorry about that.

7 THE COURT: That's okay.

8 MS SUTTIE: I do have one final issue,
9 your Honor, and it's not in our motions. But
10 I've noticed some type of full courtroom back
11 here. I would like to point out that
12 Plaintiff's counsel brought a number of people
13 from their firm with them and have had them sit
14 on the outside of the courtroom. And for the
15 purposes of jury selection and trial, I want to
16 ask that they sit on their side.

17 THE COURT: That's okay with me, because I
18 don't know how much room we're going to have.

19 I will say this. Where's Margaret?
20 Margaret's not here. Y'all are going to have
21 to like go for a corner. I don't know how many
22 people she's got coming, but I have to let them
23 in for right now.

24 MR. SMITH: And, Judge, you do have some
25 403s. Those are the --

PRE-TRIAL MOTIONS

1 THE COURT: Okay. And that's perfect. I
2 just need everybody -- I don't need you while
3 we're addressing the jury. So what I'm going
4 to ask is those of you that are here, I'm just
5 going to stick you all -- you want to come over
6 here?

7 It's strange, too -- I will admit I don't
8 want to do this. I'm going to put you all in
9 the far corner. Is that okay for right now?
10 Once I get rid of all my jurors, of course
11 you're welcome to sit wherever you want.

12 Margaret, would you want them sitting in
13 the gallery here that are not jurors? I'm just
14 going to ask them all to go to the far corners.
15 I don't know how many people you've got coming
16 in. But I just need to know, if we're going to
17 start on this side, we'll line people up left
18 and get them as close as we can over here to
19 this side. Okay?

20 MR. DANIEL: One last issue. Mr. Hood is
21 here as well, and he's not a party. You know,
22 I'd just ask that Your Honor sequester
23 witnesses. I think he may be testifying.

24 MR. SMITH: He's not testifying about
25 anything to do with --

PRE-TRIAL MOTIONS

1 THE COURT: Was he in the accident?

2 MR. SMITH: No.

3 MR. DANIEL: No, ma'am.

4 THE COURT: Well, then, I mean --

5 MR. SMITH: He's here for moral support.

6 THE COURT: Is he testifying at all?

7 MR. DANIEL: Your Honor, he's on our
8 witness list. If we need him, we're going to
9 call him. If we don't, we won't. It's not
10 generally something that I do, as far as
11 damages go.

12 THE COURT: You don't need to. If he was
13 in a wreck, that might be one thing, his
14 liability is an issue. But all he's going to
15 testify to is that, you know, the difficult
16 time she's had afterwards. So -- okay?

17 All right. Thank you all for doing that.

18 I'm going to step down, Margaret is going
19 to go ahead and do roll call with them. I'm
20 going to come out and qualify.

21 Margaret, my intent, it's going to be all
22 week.

23 THE CLERK: I'll try to get three.

24 THE COURT: Okay. If we can, we'll go for
25 three; if not, we'll go for two. And if not,

PRE-TRIAL MOTIONS

1 we'll just go with one. Okay? So that's what
2 we're going to try to do.

3 MR. WILLEY: And, Your Honor, I am done,
4 but these are our pretrial motions. I'll just
5 mark this binder as a Court's exhibit with the
6 --

7 THE COURT: Okay. I'm going to step down.

8 Before I go off, I want to see if any of
9 these people we can cross off this witness
10 list. It's a combined witness list, I want to
11 know if there's any people we can cross off,
12 then the less people I'm calling out the
13 better.

14 MR. SMITH: Well, yes, ma'am. And I will
15 say that if you noticed in my pretrial brief, I
16 listed specifically every witness the Defendant
17 has listed since the beginning of this case.
18 Most of them are --

19 THE COURT: I saw that. That's why I'm
20 asking the two of you to look at this and cross
21 off anyone that you're the one that named
22 that's not coming. Just so I get a short list,
23 right? Okay?

24 (Recess.)

25 THE COURT: Good morning, ladies and

JURY QUALIFICATION

1 gentlemen. It's a pleasure to see you. My
2 name is Carmen Mullen. I am the resident
3 circuit court Judge here in the Fourteenth
4 Judicial Circuit, which includes not only
5 Jasper County, but also Beaufort, Hampton,
6 Allendale, and Colleton Counties.

7 Ladies and gentlemen, it's my pleasure
8 this week to be trying or holding a term of
9 civil court here, and as I'm sure you've seen
10 in front of you we do have the first case on
11 our roster ready to begin.

12 Ladies and gentlemen, what this means for
13 you is that if you are chosen as a juror in the
14 trial of this first case, you can expect to be
15 with me for the week, ladies and gentlemen.
16 And when I say, "for the week," I mean through
17 Friday. And I will also tell you that we
18 typically have court from roughly 9:30 or 10:00
19 in the morning until 5:00, 5:30 in the
20 afternoon. That's just to let you know what to
21 expect while you are here performing jury duty.

22 Ladies and gentlemen, I also want you to
23 know that if you had a dispute or a matter, you
24 would hope that the good people of Jasper
25 County would be here to help you decide these

JURY QUALIFICATION

1 issues. What I always tell jurors is you will
2 know and readily understand 12 heads are always
3 better than one.

4 And that's why we want and need citizens
5 of Jasper County to decide these matters. All
6 right?

7 So with that said, ladies and gentlemen, I
8 need to go through and ask you a number of
9 questions in regards to your jury service.

10 Have you sworn them in yet?

11 THE CLERK: No.

12 THE COURT: So we're going to ask you all
13 to stand and we're going to swear you in as a
14 jury pool in this case. The result of that,
15 ladies and gentlemen, is that you're required
16 to answer questions that pertain to you.

17 So let's go ahead and get you sworn in and
18 then I'll start asking you questions.

19 (The jury panel is sworn by the Clerk of
20 Court.)

21 THE COURT: Thank you.

22 Now, ladies and gentlemen, I have certain
23 questions that I am required by law to ask you
24 in regards to your jury service. If you need
25 to respond to one of these questions, I ask

JURY QUALIFICATION

1 that you stand. We'll bring a microphone to
2 you, because sometimes it's a little difficult
3 to hear in this courtroom, and if you need to
4 respond to the question.

5 Also, ladies and gentlemen, I want you to
6 know that some of the questions I'm required to
7 ask can be a bit personal. If you don't feel
8 comfortable standing up and announcing whatever
9 you have to tell me in front of all your
10 jurors, or all your fellow jurors, what you can
11 simply do is stand, give me your name and juror
12 number, and then ask to approach.

13 You and I will have a conversation over
14 here next to the court reporter, and I can tell
15 you it's in relative private. Because, number
16 one, she has to put it on the record, and the
17 attorneys trying this case are also entitled to
18 hear what you have to say. All right?

19 So ladies and gentlemen, I just remind you
20 that this is a civil term of court, we're not
21 hearing any criminal matters this week. And
22 the first case before us that we are expected
23 to try this week is an automobile accident
24 case. All right? Just to give you a bit of an
25 idea about what we're doing.

JURY QUALIFICATION

1 So, ladies and gentlemen, if you need to
2 respond to my questions, again, simply stand.
3 Give me your name and juror number, and then go
4 ahead and respond to my question.

5 Is there any member of the jury panel
6 that's not a citizen of the United States? If
7 so, would you please stand?

8 (No response.)

9 THE COURT: Is there any member of the
10 jury panel who is not a resident and citizen of
11 Jasper County? If so, please stand.

12 (No response.)

13 THE COURT: Is any member of the jury
14 panel unable to read, write, speak, or
15 understand the English language? If so, would
16 you please stand.

17 (No response.)

18 THE COURT: If you can't understand the
19 English language, I have no idea how you're
20 supposed to respond to that question, but I'm
21 required to ask it.

22 Ladies and gentlemen, does any member of
23 the jury panel have less than a sixth grade
24 education or its equivalent?

25 Now, ladies and gentlemen, if you've

JURY QUALIFICATION

1 raised a family, held a job, and paid your
2 bills, you have more than a sixth grade
3 education. But I want to make sure you feel
4 comfortable sitting as a juror.

5 If you have any concerns about this
6 question or any of the other questions, I will
7 at the very end ask a catch-all question that
8 simply says if for any reason whatsoever you
9 need to discuss your jury service with me,
10 now's the time to do it. Because after that,
11 ladies and gentlemen, you will be qualified as
12 a potential juror.

13 So is there anyone that wants to respond
14 to this question? If so, please stand.

15 (No response.)

16 THE COURT: Is there any member of the
17 jury panel who is unable because of mental or
18 physical infirmities to render efficient jury
19 service?

20 Ladies and gentlemen, again, you're going
21 to be sitting as a juror up here in the jury
22 box --

23 THE CLERK: Someone's standing.

24 THE COURT: Thank you, Margaret. Up here
25 in the jury box, you're typically going to be

JURY QUALIFICATION

1 here roughly an hour at a time or so. We will
 2 stand up and take stretches. If anyone is
 3 diabetic, you can certainly make sure you have
 4 juice and candy. But this is for people who
 5 just simply cannot sit in a jury box primarily
 6 an hour at a time, and you brought a doctor's
 7 note with you today.
 8 Go ahead and give her the -- does she want
 9 a microphone? Give her the microphone.
 10 Ma'am, would you give me your name and
 11 juror number.
 12 JUROR: Oradell Lee, 97.
 13 THE COURT: Yes, ma'am.
 14 JUROR: Yes. I suffer with bipolar
 15 disorder and manic depression.
 16 THE COURT: Okay. And you're unable to
 17 sit? Did you bring a doctor's note today?
 18 JUROR: No, ma'am.
 19 THE COURT: All right. And you don't
 20 think you're able to sit during the trial of
 21 this case; is that correct?
 22 JUROR: No, ma'am. That's correct.
 23 THE COURT: All right. Ma'am, I will go
 24 ahead and excuse you. Thank you for being
 25 here.

JURY QUALIFICATION

1 JUROR: Thank you.
 2 THE COURT: Anyone else?
 3 (No response.)
 4 THE COURT: Has any member of the jury
 5 panel been convicted by guilty plea or trial in
 6 a state or federal court of record for a crime
 7 punishable by imprisonment for more than one
 8 year, and your civil rights have not been
 9 restored by pardon or amnesty? If so, please
 10 stand.
 11 Sir, your name and juror number.
 12 JUROR: Mike Foley, 56.
 13 THE COURT: Mr. Foley, do you know what
 14 you were convicted of or plead guilty to?
 15 JUROR: I don't. This last time I was
 16 here in court, the Judge told me I had been, so
 17 --
 18 THE COURT: That you had been. Do you
 19 know what it was?
 20 JUROR: That I'd been convicted of
 21 something that carried a penalty of one year.
 22 I didn't do any time.
 23 THE COURT: Okay. How long ago was that?
 24 JUROR: 1987.
 25 THE COURT: You weren't under the age of

JURY QUALIFICATION

1 18, were you?
 2 JUROR: Ma'am?
 3 THE COURT: Were you under the age of 18
 4 at the time?
 5 JUROR: No, ma'am.
 6 THE COURT: Okay. All right. Sir, well,
 7 if you tell me that another judge has excused
 8 you, and you don't know exactly what it was,
 9 I'll go ahead and excuse you. Thank you for
 10 being here, sir.
 11 JUROR: Yes, ma'am.
 12 THE COURT: Anyone else?
 13 (No response.)
 14 THE COURT: Is any member of the jury
 15 panel a clerk or deputy clerk of court,
 16 constable, sheriff, or other commissioned law
 17 enforcement officer, probate judge, county
 18 commissioner, magistrate, or other county
 19 officer, or employed within the walls of any
 20 courthouse? If so, please stand.
 21 Yes, ma'am. Your name and juror number.
 22 JUROR: Susan Waite, 155.
 23 THE COURT: Yes, ma'am.
 24 JUROR: Employed as a county assessor.
 25 THE COURT: A county assessor. Very good.

JURY QUALIFICATION

1 Are you in the building behind us?
 2 JUROR: Yes.
 3 THE COURT: All right. Ma'am, I'm going
 4 to go ahead and excuse you, but I appreciate
 5 you being here. Thank you.
 6 Anyone else?
 7 (No response.)
 8 THE COURT: Ladies and gentlemen, is there
 9 anyone on jury duty who's previously served up
 10 here in circuit court, not magistrate's court,
 11 municipal court, or Federal court, during the
 12 last calendar year? If so, please stand.
 13 (No response.)
 14 THE COURT: Has anyone served as a member
 15 of the Jasper County grand jury during the past
 16 several years? If so, please stand.
 17 (No response.)
 18 THE COURT: Ladies and gentlemen, we now
 19 move to jury exemptions. State law provides
 20 for several exemptions to jury service.
 21 An exemption does not mean you are not
 22 qualified to serve; it means you may choose not
 23 to serve. But I, ladies and gentlemen,
 24 encourage you if you are at all inclined to
 25 stay with us, we'd love to have you.

JURY QUALIFICATION

1 Do I have anyone who is 65 years of age or
2 older who does not wish to serve with me this
3 week? If so, please stand.
4 All right. Ma'am, name and juror number.
5 JUROR: Arlene Smith, 144.
6 THE COURT: And, Ms. Smith, you don't wish
7 to stay this week?
8 JUROR: I have two doctors appointments on
9 Thursday. One of them took me two months to
10 get.
11 THE COURT: Okay. Ma'am, I'll go ahead
12 and excuse you. Thank you for being here.
13 Yes, ma'am.
14 JUROR: Virginia Garbade. I'm not sure of
15 my number.
16 THE CLERK: Sixty-three.
17 THE COURT: And you don't wish to stay?
18 JUROR: Not really, if I don't have to.
19 THE COURT: All right. Ms. Garbade, I'll
20 excuse you. Thank you.
21 Yes, ma'am.
22 JUROR: My name is Ethel Walker. I have a
23 sick husband with a feeding tube, and I have
24 the only car that we have.
25 THE COURT: Okay. Ma'am, I'm going to go

JURY QUALIFICATION

1 ahead and excuse you as well. Thank you.
2 THE CLERK: That would be 40 right there.
3 THE COURT: Forty. Okay.
4 Another exemption concerns prior jury
5 service. No person is required to serve as a
6 juror more often than once every three calendar
7 years. Therefore, is there anyone who has
8 served up here in the last couple of years who
9 wishes to be excused this week? If so, please
10 stand.
11 (No response.)
12 THE COURT: Ladies and gentlemen, those of
13 you who have served as grand jurors during the
14 last five calendar years may also be exempted.
15 Do I have anyone who served on a grand jury?
16 (No response.)
17 THE COURT: The next exemption of law says
18 if you have small children, it has four parts,
19 all of which must apply, ladies and gentlemen,
20 for you to be able to claim this exemption.
21 You may be exempted from jury service if
22 you have a small child or small children under
23 the age of seven for which you have legal
24 custody of that child or children; and you have
25 the principal care, custody, and control of

JURY QUALIFICATION

1 that child or children; and lastly, you are
2 unable to make adequate arrangements for the
3 care of your child or children while performing
4 jury duty.
5 Ladies and gentlemen, if you take your
6 children to school or take them to daycare and
7 go to work, it's presumed you can do the exact
8 same thing while you're here. All right?
9 So if anyone needs to claim this
10 exemption, if so, please stand.
11 (No response.)
12 THE COURT: The next exemption involves
13 those of you who may be attending school at
14 this time or working in some capacity with a
15 school. Now, if this exemption applies to you,
16 what I can do is transfer your jury service to
17 a term of court that doesn't conflict with your
18 school responsibilities.
19 In other words, the holiday break, spring
20 break, or the summer break.
21 So is there anyone here who is a full-time
22 student, school teacher, school crossing guard,
23 school bus driver, or who serves in any other
24 school related function and as a result of your
25 school involvement you are unable to sit on

JURY QUALIFICATION

1 jury duty this week? If so, please stand.
2 Okay. Yes, ma'am. Your name and juror
3 number.
4 JUROR: Paige Peoples, I'm Juror 120. I
5 am the head volleyball coach at Legacy
6 Christian Academy, and we have games on
7 Thursday and Friday at 5 o'clock, and I need to
8 be there with the girls at 3:30 to begin
9 warm-up.
10 THE COURT: Okay. I'm going to ask you to
11 sit tight with me. I may need you. And so I'm
12 a little bit concerned. But sit tight, and
13 I'll let me see what I can do.
14 Give me her number again, Margaret.
15 THE CLERK: One-twenty.
16 THE COURT: Okay. I can tell you right
17 now, if y'all are teachers and they can get
18 assistants and substitute teachers, I'm going
19 to tell them they have to do that.
20 Now, let's start with you. Your name and
21 juror number.
22 JUROR: My name is Gloria Williams. I am
23 an assistant teacher at Beaufort Jasper PCO.
24 THE COURT: Okay. Ma'am, I'm going to
25 tell you that I'm going to have to have you

JURY QUALIFICATION

1 stay. They're going to have to get somebody to
 2 come in and substitute for you. If you get
 3 chosen, I just -- I need you all. I've got to
 4 tell you right now, I am down to, I believe,
 5 it's 39 people. And I need enough people to
 6 choose a jury from.

7 So, sir, your name and juror number.

8 JUROR: I don't know my juror number.

9 It's Gregg Wright.

10 THE CLERK: One-seventy-three.

11 THE COURT: Yes, sir.

12 JUROR: Ma'am, I'm contracted with four
 13 different school districts. I respond to all
 14 the crises that happens in school. I'm
 15 contracted with them.

16 THE COURT: What kind of crises?

17 JUROR: Well, we manage behavioral issues,
 18 emotional issues, all these things. And
 19 typically, I respond to all the crises. I'm
 20 like the clinical back-up. So I have a meeting
 21 in the morning that -- in Colleton that's
 22 extremely important to helping them with their
 23 school system in setting up this programming at
 24 school. So I don't know -- and also, I have a
 25 relationship with the Solicitor's office, as

JURY QUALIFICATION

1 well. A program that I provide for them.

2 THE COURT: And that doesn't matter. This
 3 is not criminal court. So that's irrelevant.

4 Sir, give me your number.

5 JUROR: One-seventy-three.

6 THE COURT: All right. Sit tight, sir.

7 Let me see what I can do. If I can transfer
 8 you, I will. But if I need enough people,
 9 again, I may have to keep you.

10 Go ahead.

11 JUROR: Davaron Edwards, Juror No. 51.
 12 I'm director of band at the high school.

13 THE COURT: Director of what?

14 JUROR: Band. The problem is, on a school
 15 day, the problem is after school. We have band
 16 practice. There is -- I do have some support
 17 staff, but they are at the Hardeeville campus.
 18 So they will not get to the Ridgeland campus
 19 until about 4:30, if at all. And we have a
 20 home football game Friday night, so I really
 21 need to have band practice this week, if I can.

22 THE COURT: Is it your first home game
 23 this year?

24 JUROR: No, it's the second.

25 THE COURT: It's the second one. Give me

JURY QUALIFICATION

1 your number.

2 JUROR: Fifty-one.

3 THE COURT: All right. Sit tight. I
 4 don't know what I can do yet. If I can help
 5 you, I will. But I'm losing a lot of people,
 6 so I'm concerned.

7 All right. Yes, sir.

8 JUROR: William Rutland. I'm supposed to
 9 be teaching a short course up in Athens,
 10 Georgia next week, I've been doing planning for
 11 it this week. So -- and I'm Juror 131. If
 12 there's anything you can do, I'd appreciate it.

13 THE COURT: All right. Sir, I can't
 14 transfer you. This is next week. You're going
 15 to have to -- it's in between. But I can tell
 16 you this. Bring your materials with you,
 17 there's going to be some downtime if you get
 18 chosen as a juror. Typically, I don't let
 19 people bring computers, but if I need to make
 20 an exception for you, as long as you promise
 21 not to use it in any way, if you do this as a
 22 juror, I'll let you bring whatever you need so
 23 during your downtime you can prepare. Okay?

24 I appreciate it, sir, though. Thank you.

25 Sit tight.

JURY QUALIFICATION

1 Yes, sir.

2 JUROR: How you doing, Your Honor. My
 3 name is Horace Eady, I'm not sure of my jury
 4 number.

5 THE CLERK: Fifty.

6 JUROR: I work for Thomas Hayes Fence of
 7 Hilton Head.

8 THE COURT: Who do you work for?

9 JUROR: Thomas Hayes Fence at Hilton Head,
 10 278. And I've just been approved to start
 11 training as an auto check. And I start school
 12 for training this week, Monday.

13 THE COURT: Okay. Where is that training
 14 at? Is it in Hilton Head or elsewhere?

15 JUROR: I'm not sure. I'm not sure
 16 exactly where it's at right now.

17 THE COURT: And you say "this Monday,"
 18 that mean next Monday?

19 JUROR: This Monday coming up.

20 THE COURT: You'll be out of here in time,
 21 so you're fine. I'm not worried about it. Sit
 22 tight. We're going to finish the trial by
 23 then, I can assure you of that. All right. So
 24 sit tight with me.

25 Okay. Everyone. Is there anyone here

JURY QUALIFICATION

1 who's employed with the Department of
 2 Corrections at a penitentiary? If so, please
 3 stand.
 4 (No response.)
 5 THE COURT: Ladies and gentlemen, is there
 6 any juror who performs services for a business,
 7 commercial, or agricultural enterprise that
 8 you're so essential to the operation of that
 9 business or enterprise that if you are required
 10 to perform jury duty, that business or
 11 enterprise would have to shut its doors?
 12 Ladies and gentlemen, what in the world
 13 does that mean? It means that I understand a
 14 lot of you have jobs, and you have a need to be
 15 elsewhere. However, ladies and gentlemen, I
 16 have to have enough people to pull this jury.
 17 So do I have anyone because of work that they
 18 are absolutely not able to stay this week? And
 19 I got to tell you, if you own your own
 20 business, I'm going to tell you, do you have
 21 any support staff? If you say you work for
 22 someone and you're the only one on this day,
 23 tell your boss to go hire more people. Okay?
 24 Ladies and gentlemen, I need jurors, and
 25 I'm not kidding when I say that. Okay? But I

JURY QUALIFICATION

1 certainly understand that sometimes this is the
 2 absolute worst week in all 52 that you could
 3 have been assigned here.
 4 I also may remind you that this is a short
 5 week. You could have been here five days,
 6 you're here four days, ladies and gentlemen.
 7 And these lawyers know that I told them they
 8 need to take this case up now and down in that
 9 time period.
 10 I'll tell you, from my experience there
 11 are good weeks and bad weeks to serve on jury
 12 duty. This is a very good week because of the
 13 shortened week. You could be on a case that
 14 could last longer than a week, it could go two
 15 or three, which happens. So, again, it's a
 16 good week to serve if you are able.
 17 However, ladies and gentlemen, again I
 18 remind you I understand that this can be an
 19 incredibly bad week for you.
 20 Ladies and gentlemen, if anyone wants me
 21 to entertain a transfer of your jury service, I
 22 can do that. But I got to tell you, the
 23 chances are that I'm going to hold it in my
 24 back pocket for a bit until I know I've got
 25 enough people to go ahead and pull this jury.

JURY QUALIFICATION

1 But, again, if you have a compelling
 2 reason, and ladies and gentlemen, general
 3 inconvenience is not enough, I know sometimes
 4 it's difficult, but if you have a truly
 5 compelling reason to transfer your jury service
 6 to another week, I will entertain it. All
 7 right?
 8 Do I have anyone that wants me to consider
 9 a transfer? If so, please stand.
 10 JUROR: Oh, yes.
 11 THE COURT: Yes, sir.
 12 JUROR: Like I said, I have an extremely
 13 important meeting --
 14 THE COURT: Okay. Anything additional to
 15 what you've already told me?
 16 JUROR: No. And, well, here's the thing.
 17 I -- no one else can go to this meeting. I
 18 mean, I don't have a boss, I am the boss. So
 19 --
 20 THE COURT: All right. Take a seat, sir.
 21 Yes, ma'am.
 22 JUROR: My brother has a -- I'm sorry.
 23 THE COURT: You're my volleyball coach,
 24 right?
 25 JUROR: Yes. But my brother, he has a

JURY QUALIFICATION

1 court hearing in Beaufort County that I have an
 2 affidavit involved in.
 3 THE COURT: I can take care of that. If
 4 it's just an affidavit, no one's going to let
 5 you testify. They just want the affidavits. I
 6 can take care of that. Don't worry about it.
 7 Yes, ma'am.
 8 JUROR: May I talk to you privately?
 9 THE COURT: Of course. Come on with me.
 10 (Juror and Judge speak privately.)
 11 THE COURT: It's okay. I'll transfer you.
 12 What number are you?
 13 THE CLERK: Twenty-nine.
 14 THE COURT: All right. I'm going to
 15 excuse you.
 16 THE CLERK: We have a juror that just went
 17 out the door.
 18 THE COURT: Who just went out the door?
 19 THE CLERK: Mr. Wright.
 20 THE COURT: Tell him to get back in here.
 21 You're fine. You're fine. You're
 22 excused.
 23 THE CLERK: Twenty-nine.
 24 THE COURT: Is excused.
 25 Ladies and gentlemen, does anyone else

JURY QUALIFICATION

1 need to speak with me regarding jury service?
 2 Yes, sir.
 3 JUROR: Can I come up?
 4 THE COURT: Of course you can come up.
 5 Anyone else? Come on up.
 6 Yes, sir.
 7 THE CLERK: No. 174.
 8 JUROR: I went to school with the
 9 Defendant.
 10 THE COURT: You consider yourself close
 11 friends?
 12 JUROR: We grew up together. His family
 13 is close with my family.
 14 THE COURT: I'll excuse you from the trial
 15 of this case, No. 174. It's for cause.
 16 Come on up. How are you?
 17 JUROR: I'm doing great.
 18 THE CLERK: Number 60.
 19 THE COURT: Number 60, I'm going to go
 20 ahead and excuse 60 for cause as well. Okay?
 21 Come on up. Yes, ma'am.
 22 JUROR: I am a relative. Mary Dupont.
 23 THE COURT: How are you related to him?
 24 JUROR: We are like second cousins, his
 25 mom and my mom are first cousins.

JURY QUALIFICATION

1 THE COURT: Okay. What is her number?
 2 THE CLERK: Forty-eight.
 3 THE COURT: All right. Forty-eight is
 4 struck for cause as well.
 5 Anyone else?
 6 You can go ahead and leave, sir. I'm
 7 going to go ahead and excuse you. It's okay.
 8 You can go ahead and go. Okay?
 9 THE CLERK: That's 174, 60, and 48.
 10 THE COURT: Okay. Is there anyone else?
 11 I'm going to go ahead and just ask my
 12 questions for voir dire as to this case, and
 13 then we'll talk about cross-offs. Okay?
 14 All right. Ladies and gentlemen, I am now
 15 going to ask you some questions more
 16 particularly directed to the trial in this
 17 case, including the parties, potential
 18 witnesses, those types of things, ladies and
 19 gentlemen. If you need to respond to a
 20 question, like you just did before, simply
 21 stand, give me your name and juror number, and
 22 you can go ahead and respond. All right?
 23 I do find at this point, this panel
 24 qualified, Margaret. I apologize, I should
 25 have told you that.

JURY SELECTION

1 Ladies and gentlemen, we are about to call
 2 the case entitled Therese Hood versus Antoine
 3 Johnson. Ladies and gentlemen, this case
 4 allegedly occurred on November 7th of 2014 at
 5 the intersection of Highway 278 and Southwood
 6 Park Drive on Hilton Head Island.
 7 Southwood Park Drive is right where the
 8 Dunkin' Donuts comes out and also there's a
 9 restaurant called The Yummy House and the
 10 Batters Box are right along there, and a shoe
 11 repair shop.
 12 Ladies and gentlemen, I know that this
 13 occurred back in 2014, but I need to know if
 14 any of you have any personal knowledge about
 15 this case whatsoever. In other words, you
 16 happened to be there at the time, or you know
 17 someone that knows something about this case.
 18 If so, please stand.
 19 (No response.)
 20 THE COURT: Additionally, I'm going to ask
 21 the Plaintiff's attorneys to introduce their
 22 clients as well as themselves and their law
 23 firm. Ladies and gentlemen, my question is
 24 going to be, are you related by blood,
 25 connected by marriage, have a close personal

JURY SELECTION

1 friend, or social relationship with any of
 2 these people, or are you kin to any of these
 3 people? And then I'm going to ask Defendant's
 4 counsel to do the exact same thing, ladies and
 5 gentlemen. Okay?
 6 Additionally, when it comes to the
 7 lawyers, I'm also going to ask if you've ever
 8 been represented by them, sued by them,
 9 employed by them in any way, shape, or form.
 10 Okay?
 11 So, gentlemen, I'll go ahead and start
 12 with the Plaintiff, if you would.
 13 MR. WILLEY: Good afternoon. Roy Willey,
 14 and I am one of the attorneys that has the
 15 pleasure of representing Ms. Therese Hood.
 16 MR. SMITH: And I'm Kevin Smith, I
 17 represent Ms. Hood as well.
 18 MS. STEARNS: Amanda Stearns, I represent
 19 Ms. Hood.
 20 THE COURT: All right. Will someone
 21 introduce Ms. Hood for us, please. And she
 22 doesn't need to stand up, she's fine.
 23 MR. SMITH: This is Therese, Ms. Therese
 24 Hood. She goes by Terry.
 25 THE COURT: Thank you.

JURY SELECTION

1 All right. Mr. Daniel.
 2 MR. DANIEL: Jack Daniel, appearing on
 3 behalf of the Defendant. This is the
 4 Defendant, Antoine Johnson, in this case.
 5 MS SUTTIE: And Madison Suttie, also
 6 appearing on behalf of Mr. Johnson.
 7 THE COURT: All right. Mr. Johnson, would
 8 you stand for the jury, if you would. Sir,
 9 thank you.
 10 Thank you, sir. You all may be seated.
 11 Ladies and gentlemen, to begin with,
 12 anyone related by blood, connected by marriage,
 13 have a close personal relationship, or a
 14 special friendship with either the Plaintiff in
 15 this case, Ms. Therese Hood, or the Defendant
 16 in this case, Antoine Johnson? If so, please
 17 stand.
 18 (No response.)
 19 THE COURT: Ladies and gentlemen, you have
 20 been introduced to the attorneys that are
 21 trying this case. Again, you have to answer
 22 are you related by blood, connected by
 23 marriage, have a close personal relationship,
 24 or special friendship with any of these
 25 attorneys? Or have you ever been represented

JURY SELECTION

1 by, sued by, or employed by, or anyone in your
 2 immediate family been employed by any of these
 3 attorneys? If so, please stand.
 4 (No response.)
 5 THE COURT: Bear with me, ladies and
 6 gentlemen.
 7 Ladies and gentlemen, the following is a
 8 list of potential witnesses in the trial of
 9 this case. And if any of these people are here
 10 in the courtroom, I'm going to ask that you
 11 please stand and face the jury panel, although
 12 I don't think anyone is here. Maybe one or
 13 two.
 14 Ladies and gentlemen, potential witnesses
 15 in this case are, of course: Ms. Hood, the
 16 Plaintiff; the Defendant, Mr. Johnson; William
 17 Kuck; Mary Elizabeth Kuck; Corporal Jennifer
 18 Welch, formerly known as Jennifer Worrell.
 19 Dr. David Jaskwich; Cary Tanrath; Woody
 20 Poplin; Ken Richardson; Cindy Brian; Nilda
 21 Fowler; Therese Milligan; Helen Hernandez.
 22 Christine Hood Davis; Stanley Davis; Rosa
 23 Almeda; David Hood.
 24 Thank you, Mr. Hood. Thank you, sir.
 25 Tami Melnick; Dustin Lee; Stephanie

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1 Whetsel Borzendowski; Tasha Haupt; Alison
 2 Morenio; Clint Thomas.
 3 Ladies and gentlemen, the question is, is
 4 anyone related by blood, connected by marriage,
 5 have a close personal friendship, or special
 6 relationship with any of these potential
 7 witnesses? If so, please stand.
 8 Yes, ma'am. Your name and juror number.
 9 JUROR: Cara Koerner, 93.
 10 THE COURT: Who do you know?
 11 JUROR: Tasha Haupt.
 12 THE COURT: How do you know her?
 13 JUROR: She worked with my sister-in-law.
 14 She was a manager for dispatch at Beaufort
 15 County 911. They're best friends, so we've had
 16 several encounters with each at family
 17 gatherings and just different sort of things
 18 like that.
 19 THE COURT: Okay. May I see the
 20 attorneys?
 21 Let me ask you, do you know anything about
 22 this case? Have you ever had any information
 23 in regards to this case?
 24 JUROR: No, ma'am.
 25 THE COURT: Okay. Let me see the

JURY SELECTION

1 attorneys.
 2 (Off-the-record discussion held.)
 3 THE COURT: Ma'am, I'm going to go ahead
 4 and keep you. It's my guess, and I just spoke
 5 with the attorneys, that she may have been the
 6 person that accepted the phone call at 911, or
 7 maybe just a records custodian. So, I'm not
 8 going to star her. Her testimony may just
 9 simply be what comes in.
 10 So, again, I appreciate you disclosing
 11 that and letting us know.
 12 All right. Anyone else?
 13 (No response.)
 14 THE COURT: Ladies and gentlemen, has any
 15 member of the jury panel ever been involved in
 16 an automobile accident that resulted in either
 17 a claim being made or a lawsuit? If so, please
 18 stand.
 19 All right. Mr. Wright, I'm going to start
 20 with you. Give me your name, sir, and juror
 21 number again.
 22 JUROR: Gregg Wright, 173.
 23 THE COURT: Okay. You were in an
 24 automobile accident?
 25 JUROR: Yes, ma'am.

JURY SELECTION

1 THE COURT: Okay. Were you the Plaintiff
2 or the Defendant?
3 JUROR: Help me out -- plaintiff,
4 plaintiff.
5 THE COURT: Did you bring the case or did
6 someone bring a case against you?
7 JUROR: Somebody brought a case against
8 me.
9 THE COURT: Okay. Were you injured in
10 that accident?
11 JUROR: No, I wasn't.
12 THE COURT: Okay. And has that case been
13 resolved?
14 JUROR: Yes.
15 THE COURT: Okay. Thank you. You may be
16 seated.
17 Sir, your name and juror number.
18 JUROR: Robin Cane, Juror No. is 26. I
19 was sued for a kid on a bicycle when they
20 crossed the road and I hit him. And I was
21 sued.
22 THE COURT: Has that case been resolved?
23 JUROR: Yes, ma'am.
24 THE COURT: Okay. Thank you, sir. You
25 may be seated.

JURY SELECTION

1 And I keep calling you my volleyball
2 coach. I'm sorry.
3 JUROR: That's all right.
4 THE COURT: Yes, ma'am.
5 JUROR: Paige Peoples, Juror No. 120. I
6 was a Plaintiff in a case, a gentleman ran a
7 stop sign and T-boned my car into a ditch.
8 THE COURT: How long ago was that?
9 JUROR: Two years ago.
10 THE COURT: And did you bring a claim?
11 JUROR: Yes, ma'am, I did.
12 THE COURT: And what were your injuries as
13 a result of that?
14 JUROR: A neck injury.
15 THE COURT: Are those resolved?
16 JUROR: They are now, yes, ma'am.
17 THE COURT: And is the claim resolved?
18 JUROR: Yes.
19 THE COURT: Okay. Very good. Thank you.
20 You may be seated.
21 Yes, ma'am.
22 JUROR: I'm Erica Horton, 78. And this
23 was a few years ago, someone ran a red light
24 and I T-boned a -- it was a pleasure truck. I
25 had a neck injury and a shoulder injury. All

JURY SELECTION

1 that's resolved now, and the claim is resolved,
2 too.
3 THE COURT: And that's resolved as well?
4 JUROR: Yes.
5 THE COURT: Yes, ma'am.
6 JUROR: All right. Ma'am, thank you. You
7 may be seated.
8 Yes, ma'am.
9 JUROR: Surenda Burrison, Juror No. 21. I
10 brought a case against someone. They hit me,
11 and I had a neck injury, hip replacement, and a
12 little bit of everything.
13 THE COURT: How long ago was that?
14 JUROR: About 2011.
15 THE COURT: And has that case been
16 resolved?
17 JUROR: Yes.
18 THE COURT: Okay. Thank you, ma'am. You
19 may be seated.
20 Yes, ma'am.
21 JUROR: Linette Laszlo, Juror No. 96. I
22 was hit in the back about several years ago,
23 sustained back injury and neck. And that case
24 is resolved.
25 THE COURT: Resolved. Thank you, ma'am.

JURY SELECTION

1 I appreciate that.
2 JUROR: You're welcome.
3 THE COURT: Yes, ma'am.
4 JUROR: Deborah Harper, No. 69. I was a
5 Plaintiff in 2013, it's been resolved.
6 THE COURT: Okay. And what were your
7 injuries as a result of that?
8 JUROR: My cheek, my face was broke, my
9 cheekbone was broke, and I had some back
10 problems.
11 THE COURT: And some back problems. Okay.
12 Thank you. You may be seated.
13 Ladies and gentlemen, has any member of
14 the jury panel or any member of your immediate
15 family ever been treated by Dr. Ann Hanlon of
16 the Ralph Johnson V.A. Medical Center in
17 Charleston, South Carolina? If so, please
18 stand.
19 (No response.)
20 THE COURT: Ladies and gentlemen, has any
21 member of the jury panel or any member of your
22 immediate family ever been treated by Dr. David
23 Jaskwhich of LowCountry Orthopedics in North
24 Charleston or Dr. Joseph Tobin of Tobin
25 joint -- excuse me, Bone and Joint Surgery on

JURY SELECTION

1 Hilton Head Island, South Carolina?

2 JUROR: My mother was a patient of

3 Dr. Tobin for a long time.

4 THE COURT: Ma'am, give me your name and

5 juror number again.

6 JUROR: Cara Koerner, No. 93.

7 THE COURT: Your mother was a patient

8 there?

9 JUROR: Yes, ma'am.

10 THE COURT: Is she still treated by Dr.

11 Tobin?

12 JUROR: No, ma'am. There was some

13 discrepancies with the doctor that they had, so

14 she withdrew from that practice.

15 THE COURT: Okay. And can you tell me,

16 did you ever carry your mother to that doctor's

17 office?

18 JUROR: Yes, ma'am.

19 THE COURT: Okay. All right. Thank you,

20 ma'am. You may be seated.

21 Has anyone in the jury panel ever been

22 treated by or any member of your immediate

23 family ever been treated by Dr. Habib Risk of

24 the Medical University of South Carolina in

25 Charleston? If so, please stand.

JURY SELECTION

1 (No response.)

2 THE COURT: Ladies and gentlemen, is any

3 member of the jury panel, or any member of your

4 immediate family, any member of the Immaculate

5 Conception Ladies Guild? If so, please stand.

6 (No response.)

7 THE COURT: Ladies and gentlemen, I'm

8 going to ask this question a little more

9 broadly. This would be other than someone

10 involved in an automobile accident.

11 Has any member of the jury panel, or any

12 member of your immediate family, ever been a

13 plaintiff or a defendant in a lawsuit other

14 than an automobile accident?

15 It could be a breach of contract. It

16 could be just about anything. It could be

17 potentially a workman's compensation issue.

18 Anything along those lines other than an

19 automobile accident.

20 Sir, your name and jury number.

21 JUROR: Cody Clevinger, Juror. 30. My

22 mother was a plaintiff in an assault case from

23 her work.

24 THE COURT: I'm sorry, at her work? Is

25 that what you said?

JURY SELECTION

1 JUROR: Yes.

2 THE COURT: Do you know, is that case

3 resolved?

4 JUROR: Yes.

5 THE COURT: Thank you, sir. You may be

6 seated.

7 Yes, ma'am.

8 JUROR: Tyra Johnson, 85.

9 THE COURT: Yes, Ms. Johnson. Sure, come

10 on up.

11 (Juror and Judge confer at the Bench.)

12 JUROR: My mom had a case, it was

13 involving my sister, step, my sister's father.

14 He molested me and they had that. He just got

15 charged.

16 THE COURT: It's a criminal case.

17 JUROR: Yes. I just --

18 THE COURT: Thank you. I appreciate you

19 disclosing that to me. Thank you. And it's

20 just now starting.

21 JUROR: No, he just got charged, but, I

22 guess, I went to the courthouse in Hampton,

23 they sent my mom a letter like last year and I

24 guess at the end of the year he got charged.

25 They resolved it. He took a plea deal.

JURY SELECTION

1 THE COURT: Okay. To resolve it. Okay.

2 Thank you.

3 Sir?

4 JUROR: Yes, ma'am. James Lynch, Juror

5 102. My youngest daughter was a plaintiff in a

6 lawsuit in regards to a physical handicap.

7 THE COURT: I'm sorry. I missed this.

8 Physical what?

9 JUROR: Her hand was crushed when a table

10 fell on it.

11 THE COURT: Okay. And has that case been

12 resolved?

13 JUROR: Yes, ma'am.

14 THE COURT: All right. How long ago was

15 that, roughly, sir?

16 JUROR: 2005 -- excuse me, 2010.

17 THE COURT: Okay. Thank you, sir. I

18 appreciate it.

19 Yes, ma'am.

20 JUROR: My mom has a lot of medical

21 problems, so when it comes to doctors, she was

22 recently in a body mesh lawsuit with a doctor

23 in Savannah that she had going on. That one's

24 still kind of like lingering in the air. She's

25 got a partial settlement from him, but it

JURY SELECTION

1 hasn't completely been disclosed.
 2 THE COURT: Okay. And give me your name
 3 and juror number, ma'am.
 4 JUROR: Cara Koerner, No. 93.
 5 THE COURT: Thank you, ma'am. Okay.
 6 Ladies and gentlemen, has any member of
 7 the jury panel ever previously served on a
 8 jury? If so, please stand.
 9 All right. Ma'am, I'm going to start with
 10 you, you're closest to me. Give me your name
 11 and juror number.
 12 JUROR: Yes. Claudia Brown, I'm not sure
 13 what my number was.
 14 THE CLERK: Eighteen.
 15 THE COURT: All right. Ms. Brown, where
 16 did you previously serve on a jury? Was it
 17 here in Jasper County?
 18 JUROR: Here.
 19 THE COURT: And how long ago was that
 20 roughly?
 21 JUROR: About 15 years ago.
 22 THE COURT: Fifteen years ago. Okay. It
 23 was one of my predecessors then.
 24 Do you remember what the case was about at
 25 all? Or do you know if it was civil or

JURY SELECTION

1 criminal?
 2 JUROR: It was civil. They basically did
 3 a lot of reading. The people had already died,
 4 and the family members were here, and they kept
 5 us in that back room most of the time.
 6 THE COURT: Into the jury room. Okay.
 7 JUROR: Yeah. They sent us to lunch and
 8 then we'd come back in and sat back in the jury
 9 room, and then they said "go home."
 10 THE COURT: Okay. So it sounds like the
 11 case must have resolved. All right.
 12 Is there anything about that experience
 13 other than being sent back in the jury room,
 14 anything about that experience that would
 15 affect your ability to be fair and impartial in
 16 the trial of this case?
 17 JUROR: No.
 18 THE COURT: No, for the record. All
 19 right. Thank you, ma'am. You may be seated.
 20 I'm going to go ahead and -- do you have a
 21 juror number?
 22 JUROR: It's Yvette Smith, and I believe
 23 my number was 147.
 24 THE COURT: All right. What kind of case
 25 did you sit on?

JURY SELECTION

1 JUROR: I really do not remember it, it's
 2 been that long ago. But it was right here, and
 3 I probably sat like over there.
 4 THE COURT: And you don't remember if it
 5 was civil or criminal?
 6 JUROR: No.
 7 THE COURT: So if you can't remember the
 8 case, I can't imagine there was anything that
 9 affected your ability to be fair and impartial
 10 in this case.
 11 JUROR: Correct.
 12 THE COURT: That's not unusual at all. I
 13 can tell you that. So please be seated.
 14 THE CLERK: 147.
 15 THE COURT: Sir?
 16 JUROR: James Lynch, 102.
 17 THE COURT: Yes, sir.
 18 JUROR: It was a civil case in regards to
 19 a lawsuit for property damage.
 20 THE COURT: Okay. How long was ago it?
 21 JUROR: It's been several years.
 22 THE COURT: Anything that would affect
 23 your ability to be fair and impartial in the
 24 trial of this case?
 25 JUROR: No, ma'am.

JURY SELECTION

1 THE COURT: Thank you, sir. I appreciate
 2 it.
 3 Ms. Turner?
 4 MS SUTTIE: Koerner.
 5 THE COURT: Koerner. Sorry. Okay. When
 6 did you serve on jury duty?
 7 JUROR: Two years ago. I believe it was
 8 criminal, it was a child abuse case.
 9 THE COURT: Okay. Was I the Judge, by any
 10 chance?
 11 JUROR: No.
 12 THE COURT: No. Okay. Well, that's good.
 13 Because I should remember you then.
 14 All right. Anything about that experience
 15 that would affect your ability to be fair and
 16 impartial?
 17 JUROR: No, ma'am.
 18 THE COURT: All right. You may be seated.
 19 Sir in the very back of the room, sure.
 20 Yes.
 21 JUROR: Travis Holden, Juror No. 76. I
 22 was here last year.
 23 THE COURT: You were here last year?
 24 JUROR: Last year. I think it was like
 25 around September or October.

JURY SELECTION

1 THE COURT: What kind of case?
 2 MS SUTTIE: It didn't last long, like two
 3 days. I guess it got resolved and so --
 4 THE COURT: Okay. You don't remember what
 5 kind of case it was?
 6 JUROR: No, I'm sorry.
 7 THE COURT: That's all right. So nothing
 8 about it would affect your ability to be fair
 9 and impartial in the trial of this case,
 10 correct?
 11 JUROR: No.
 12 THE COURT: All right. Thank you. You
 13 may be seated, Mr. Holden.
 14 All right. Yes, sir, in the very back, in
 15 the striped shirt.
 16 JUROR: Edwin Harvey, Juror 112.
 17 THE COURT: Yes, sir.
 18 JUROR: It's been right at six years. It
 19 was criminal.
 20 THE COURT: Okay. Do you remember what
 21 the person was charged with?
 22 JUROR: It involved -- he was charged with
 23 robbing a lady at an ATM in Hardeeville.
 24 THE COURT: Okay. So anything about that
 25 process that would affect your ability to be

JURY SELECTION

1 fair and impartial in this case?
 2 JUROR: No, ma'am.
 3 THE COURT: Thank you, sir. You may be
 4 seated.
 5 Yes, ma'am.
 6 JUROR: Deborah Harper, 69. It was a
 7 civil case, and it was a long time ago.
 8 THE COURT: A long time ago. Okay.
 9 Anything that would affect your ability to be
 10 fair and impartial in the trial of this case?
 11 JUROR: No, ma'am.
 12 THE COURT: Thank you. You may be seated.
 13 Yes, ma'am.
 14 JUROR: Brenda Dooley, 43. It was also a
 15 car accident case, 15 years ago.
 16 THE COURT: Was it here?
 17 JUROR: Nebraska.
 18 THE COURT: In Nebraska. Okay. Anything
 19 about that case that would affect your ability
 20 to be fair and impartial in the trial of this
 21 one?
 22 JUROR: No.
 23 THE COURT: All right. Thank you.
 24 Ladies and gentlemen, does any person on
 25 this jury panel, or any member of their

JURY SELECTION

1 immediate family, who is a disabled veteran?
 2 If so, please stand.
 3 (No response.)
 4 THE COURT: It could you or your spouse or
 5 maybe a child. It wouldn't be, I guess a child
 6 anymore, but I guess an adult. Anyone?
 7 Sir, your name and juror number.
 8 JUROR: Ryan Barker, No. 5.
 9 *Note to Mona: He's clearly saying Ryan
 10 Barker, but the jury list says Ryan Baker.
 11 THE COURT: Yes, sir. Who's this?
 12 JUROR: I'm a disabled vet.
 13 THE COURT: You are, sir?
 14 JUROR: Yes.
 15 THE COURT: Let me ask you, are you
 16 getting treatment in Charleston?
 17 JUROR: I got my initial disability
 18 statement.
 19 THE COURT: Up in Charleston?
 20 JUROR: Through them, yes.
 21 THE COURT: All right. So that's okay.
 22 That's what I need to know. Thank you. You
 23 may be seated.
 24 Again, ladies and gentlemen, I know you
 25 know very little about this case. It's an

JURY SELECTION

1 allegation that this accident occurred. Give
 2 me one minute. I'm seeing two conflicting
 3 dates on this last question.
 4 On November 7th of 2014, ladies and
 5 gentlemen, in the evening, it was on Highway
 6 278, which is also known as William Hilton
 7 Parkway, it's the one way where you go to
 8 Hilton Head. And, I apologize, someone remind
 9 me of the crossroad?
 10 MR. DANIEL: Southwood Park Drive.
 11 THE COURT: Southwood Park Drive, ladies
 12 and gentlemen.
 13 Again, it happened in 2014. Does anyone
 14 have independent knowledge, anyone saw the
 15 case, talked to anyone that saw the case, know
 16 anything about the case, whatsoever? If so,
 17 please stand.
 18 (No response.)
 19 THE COURT: All right. Is there any
 20 further questions required of this panel from
 21 the Plaintiff?
 22 MR. SMITH: No, Your Honor.
 23 THE COURT: From the Defense?
 24 MR. DANIEL: No, Your Honor.
 25 THE COURT: Thank you.

JURY SELECTION

1 Ladies and gentlemen, what's going to
2 happen at this time is all your names are being
3 placed into a random computer list. It is
4 going to draw a list for me. What's going to
5 happen is the lawyers are going to be given
6 this list, they're going to have around 15
7 minutes to look at them in order to choose this
8 jury panel.

9 Margaret will tell you where you can go,
10 wherever you're able to, while they're look at
11 the list.

12 So, ladies and gentlemen, what I'm going
13 to do is this: I'm giving you a break till 20
14 till 1:00.

15 I also want to tell you, at 1 o'clock,
16 regardless if you get chosen or not, I'm going
17 to send you to lunch. So I'm going to tell you
18 to go grab a bite to eat, so I don't want
19 anyone concerned if their stomach is starting
20 to growl. Okay?

21 Either way, if you're chosen or not,
22 you're going to be able to be free to go about
23 your business after we pull this jury.

24 If you are seated on this jury, I'm going
25 to ask you to come back this afternoon. We're

JURY SELECTION

1 going to go ahead and start the trial of this
2 case. But, again, I don't want you to be
3 concerned. You're free right now to go refresh
4 yourselves.

5 The only thing I ask, if you have to go
6 outside the courthouse to smoke or something
7 along those lines, please tell one of the
8 bailiffs or deputy so we know. Because we're
9 going to be looking for you. I can't start
10 until you all are back.

11 So I just ask you, there's a clock at the
12 back of the courtroom, the top of the exit
13 sign, if you're back at 20 minutes till 1:00,
14 we'll go ahead and pull this jury. Okay?

15 Margaret, can I talk to you a second?

16 (Discussion off the record.)

17 THE COURT: Sir, you need to sit tight.
18 Okay? Thank you.

19 JUROR: Can I see you a minute?

20 THE COURT: Sir, if it's about you sitting
21 on jury duty, I needed you all to talk to me
22 beforehand.

23 JUROR: Oh, okay. All right. I'm sorry.

24 THE COURT: Are you sure?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: Okay. Sit tight.

2 Sir, give me your name and juror number,
3 just so I know.

4 JUROR: It's Terry Keith, 87.

5 THE CLERK: Eighty-seven.

6 THE COURT: Eighty-seven, okay.

7 (Pause.)

8 MR. SMITH: Is it okay for Ms. Hood to
9 leave and go to work?

10 THE COURT: That's fine. The only thing I
11 need to tell her and Mr. Johnson is they are
12 not to have any conversation with the jury.
13 She's completely welcome to leave, she just
14 can't talk to any jurors. And I mean, she
15 can't even say hello, good-bye, or isn't it
16 gorgeous outside. Okay?

17 MR. SMITH: Your Honor, 1 o'clock. Is
18 that a good time, is she coming back, or
19 quarter till?

20 THE COURT: No, we're going to break for
21 lunch. So, it's probably going to be 2
22 o'clock.

23 Mr. Hood, the same thing for you. You
24 can't speak to any jurors.

25 MR. HOOD: Yes, ma'am. I understand.

JURY SELECTION

1 THE COURT: Okay, sir.

2 (Pause.)

3 All right. Ladies and gentlemen, I will
4 tell you that you all have all been reassigned
5 new numbers. So if you think you've heard your
6 number struck, you have not.

7 Once the lawyers go through and strike the
8 numbers, we will then call off the list as
9 jurors. Bring all your belongings with you if
10 your name is called and you can come on up.
11 And you understand you're going to take a seat
12 in the jury box, you'll know you're a juror
13 then. All right?

14 So with that said, Margaret.

15 THE CLERK: Plaintiff strikes first using
16 the new assigned number on the left.

17 THE COURT: Between one and 20.

18 MR. WILLEY: Plaintiff strikes Number 18.

19 MR. DANIEL: Your Honor, we need one
20 moment.

21 MS SUTTIE: I think I left my sheet
22 outside. I can run. Thank you.

23 (Pause.)

24 MR. DANIEL: Your Honor, Defendant strikes
25 93.

JURY SELECTION

1 THE COURT: Okay. We're using the numbers
2 to the left. So between one and 20, on the
3 left.
4 MR. DANIEL: No. 27.
5 THE COURT: One through 20. Do you have
6 the right list?
7 MR. DANIEL: We do, Your Honor. Just bear
8 with us.
9 No. 18, Your Honor.
10 THE COURT: Okay. They already struck 18,
11 so --
12 MR. DANIEL: Okay. Your Honor, Defendant
13 strikes No. 8.
14 MR. WILLEY: Plaintiff strikes No. 2.
15 MR. DANIEL: Defendant strikes No. 22.
16 THE COURT: Between one and 20.
17 MR. DANIEL: Defendant strikes No. 9.
18 THE COURT: Okay.
19 MR. WILLEY: Plaintiff strikes No. 1.
20 MR. DANIEL: Defendant strikes No. 5, Your
21 Honor.
22 MR. WILLEY: Plaintiff strikes No. 20.
23 MR. DANIEL: Defendant strikes No. 14.
24 THE COURT: All right. The first
25 alternate. One strike each side for numbers

JURY SELECTION

1 21, 22, and 23.
2 MR. WILLEY: Plaintiff strikes No. 21.
3 And I'm done.
4 MR. DANIEL: Defendant strikes No. 22.
5 THE COURT: Next one is between 24, 25,
6 and 26.
7 MR. WILLEY: Plaintiff strikes No. 25.
8 THE COURT: Between --
9 MR. DANIEL: Your Honor, defendant strikes
10 26, Your Honor.
11 THE COURT: All right. Then the next one
12 is between 27, 28, and 29.
13 MR. WILLEY: The Plaintiff will strike No.
14 28, Your Honor.
15 MR. DANIEL: The Defendant will strike No.
16 27.
17 THE COURT: You don't need to call them.
18 Just call the names.
19 THE CLERK: As I call your name, please
20 come forward.
21 Juror No. 163, Brian Williams. Juror No.
22 151, Lashaun Taylor. Have a seat in the jury
23 box.
24 Juror No. 85, Tyra Johnson-Swafford.
25 Juror No. 57, Mary Lou Ford. Juror No. 38,

JURY SELECTION

1 Jeffrey Davis. Juror No. 149, Sylvia Stoney.
2 Juror No. 50, Horace Eady.
3 Juror No. 121, Alexis Pinkney. Juror No.
4 147, Yvette Smith. Juror No. 164, Gloria
5 Williams. Juror No. 30, Cody Clevinger. Juror
6 No. 117, Betty Paisley.
7 Alternate One, Linette Lazslo. Alternate
8 Two, Rosemary Hamilton Aiken. Alternate Three,
9 Erica Horton.
10 THE COURT: Is there any matters of law
11 that we need to take up about the jury
12 selection process from the Plaintiffs?
13 MR. SMITH: No, Your Honor.
14 THE COURT: From the Defense?
15 MR. DANIEL: No, Your Honor.
16 THE COURT: Very good.
17 Ladies and gentlemen, welcome. You're
18 going to be my jury for the trial of this case.
19 If you will sit tight for just a minute,
20 I'll give you a few instructions and then I'm
21 going to send you to lunch. All right?
22 Ladies and gentlemen, those of you back in
23 the back -- ladies and gentlemen, in the back,
24 I get to give you the good news that you are
25 excused for the week. Thank you for being

JURY SELECTION

1 here. We appreciate it. If you need a work
2 excuse, go down to the Clerk of Court's office.
3 All right? Thank you.
4 (Remaining members of proposed jury panel
5 excused.)
6 THE COURT: All right. Let's get that
7 door shut. Thank you.
8 Ladies and gentlemen, again, welcome. I
9 want to thank you for being here. I want to
10 thank you for helping us determine this case.
11 I will tell you this, ladies and
12 gentlemen, I recognize that it's a short week,
13 and I'm going to get this case finished this
14 week. So we're going to work hard, but, of
15 course, I can only work as hard as the jury is
16 willing to work.
17 If at any time during this process you
18 need a break, need a Coke, coffee, whatever it
19 takes, you raise your hands and let me know.
20 If you need a restroom break, let me know.
21 We will take breaks, ladies and gentlemen,
22 but sometimes we'll have someone who needs a
23 little more or something, let other people know
24 or just get my attention, or let the bailiff
25 know or the court reporter, and we are going to

INSTRUCTIONS TO THE JURY PANEL

1 take care of you.

2 I will tell you this: You have the best
3 Clerk of Court in the state. Every courthouse
4 has a Clerk of Court, but Margaret is
5 phenomenal. She takes care of her jurors,
6 ladies and gentlemen. If you need anything,
7 please ask her or her staff, and we'll take
8 care of you.

9 I need to give you a couple of ground
10 rules before we break for lunch. And then once
11 we do, I'm going to ask you to return back to
12 the jury room at 2:30, where we're going to
13 begin the trial of this case.

14 We'll also tell you we'll run until
15 roughly 5:00-ish. But that is dictated by you,
16 ladies and gentlemen. It's depends on how you
17 tell me you're feeling and what's going on.
18 Roughly that's how we're going to run this case
19 is roughly about 9:30 or 10:00, and until about
20 5:00.

21 If someone has somewhere they need to be
22 before that, I need you to tell me. All right?
23 And I'll have you tell the bailiff, when we
24 break.

25 Ladies and gentlemen, just a couple of

INSTRUCTIONS TO THE JURY PANEL

1 things to begin. Number one, if you were able
2 to get in the courthouse with a cell phone, I'm
3 going to ask that you leave it back in your car
4 or hand it to the bailiff when you come in.

5 And the reason why is you can get so much
6 information off of a cell phone. I don't want
7 you Googling anything or trying to figure out
8 anything in reference to the case. Out of
9 abundance of caution, I tell you to leave it
10 back in the car.

11 Also, if you need to use a phone while
12 you're here, simply ask the bailiff. She'll
13 take you to a phone.

14 Also, if you're worried about someone
15 needing to reach emergently while you are here,
16 simply tell them to call the Clerk of Court's
17 office and say your name and that you are a
18 juror, and I promise you someone will sprint up
19 here and talk to me and I will get you. All
20 right?

21 Also, I want you to know the attorneys,
22 the witnesses in this case, have been
23 instructed not to speak to you in coming and
24 going from the courthouse. And the reason is
25 this: Even an innocent conversation out in the

INSTRUCTIONS TO THE JURY PANEL

1 parking lot -- isn't it beautiful outside, or
2 it just looks like it might rain -- will be
3 reported back. And, again, ladies and
4 gentlemen, you are not to talk to them in any
5 way, shape, or form. So in an abundance of
6 caution I told them not even to speak to you.
7 So if you pass them in the hallway during the
8 lunch hour or in the evening and they don't
9 even say hello, don't be offended. They are
10 not being rude, they are just following my
11 instructions.

12 Additionally, ladies and gentlemen, you
13 are going to be given everything you need to
14 decide this case right here in this courtroom.
15 Therefore, it'll be highly inappropriate for
16 you to do any of your own research or to talk
17 to anyone about this case.

18 Over the lunch hour, or tonight when you
19 go home, the only thing you are permitted to
20 say to a loved one, a spouse, a child, family
21 member, is that you've been chosen as a juror
22 in a trial of a civil case. You're not to say
23 the parties involved, what kind of case it is,
24 or the attorneys. And the reason is this: In
25 every case, someone's going to try to tell you

INSTRUCTIONS TO THE JURY PANEL

1 something about something when they know
2 nothing about this case.

3 And, again, because I wouldn't want you to
4 be influenced in any way, out of an abundance
5 of caution, I tell you not even to discuss it.

6 And I also tell you that I don't think
7 there's going to be anything in the news, the
8 newspaper, or the radio about this case. But
9 out of an abundance of caution, if you turn on
10 the news tonight or if in reading the newspaper
11 you see anything about this case, you are not
12 to read it or look at it or be told or talk
13 about it. If there is something, I'm going to
14 ask you under oath whether or not you looked at
15 it. All right?

16 So, ladies and gentlemen, with that said,
17 the only thing I ask is you grab a bite to eat.
18 Come back. Please understand I cannot start
19 until all 15 of you are here. So if anyone
20 runs into car trouble, decides they're having a
21 problem getting back here, know that I am going
22 to send a sheriff's deputy to find you. All
23 right? That is how important this is. I want
24 you to understand that.

25 You're going to retire back to your jury

INSTRUCTIONS TO THE JURY PANEL

1 room. They're going to tell you that you
2 report back at 2:30, ladies and gentlemen. We
3 are going to get numbers for you, good
4 addresses. I want to know exactly where you're
5 sleeping the next three or four nights. And
6 it's not just prying into your personal
7 business. If we can't find you if there's some
8 problem, we are going to come looking for you.

9 Also, if for any reason you fall ill
10 during this trial and you call in, call in and
11 tell us and leave us a message. And it better
12 be pretty serious, ladies and gentlemen, you
13 better tell me you're either in the hospital or
14 you are just deathly ill. Because, again, I
15 need you here. I need you to be able to
16 resolve this matter for us. All right?

17 The last thing I'm going to ask you to do,
18 when you go back to your jury room before you
19 break for lunch, I need you to elect a
20 foreperson. A foreperson doesn't have any more
21 say than anyone else, they're simply the person
22 that's going to communicate with me regarding
23 scheduling.

24 And they're also the person that when I
25 send the case to you for your deliberations,

INSTRUCTIONS TO THE JURY PANEL

1 they get the ball rolling, and make sure
2 everybody's contributing. All right?
3 I'm going to ask that foreperson to take
4 this front seat right here every time in the
5 jury room. For the rest of you, as you come
6 and go, you can move around in your seats.
7 It's not a problem if you don't move around too
8 much. The only thing I want to do is tell my
9 alternates I need you to sit where you are
10 among those three seats so I can always find
11 you. Okay?

12 Ladies and gentlemen, again, thank you.
13 You are excused back to your jury room. You'll
14 get a few more instructions. I look forward to
15 seeing you all back in your jury room at 2:30.
16 If you're running just a couple minutes late,
17 don't worry. It's not a big deal. But after
18 that, like I said, I'm going to be scouring for
19 you. So - and I mean that. And,
20 unfortunately, I got to do that. Actually I've
21 had people that didn't show up, I've had to
22 send them to their work, to their home,
23 whatever. We need you here. Okay, ladies and
24 gentlemen?

25 Go grab a bite to eat and we'll see you

INSTRUCTIONS TO THE JURY PANEL

1 back at 2:30. Thank you.
2 JUROR: Ms. Bostick, I need to talk to the
3 Judge.

4 THE CLERK: If you go in the back,
5 Mr. Eady, she'll bring you back out.
6 (Whereupon, the jury exits the courtroom.)

7 THE COURT: She's just going back there.
8 Apparently one of them was supposed to
9 pick up a wife from work or something right at
10 2:30. So they're trying to arrange to get
11 someone else to grab her for him. Okay? Sit
12 down.

13 THE CLERK: Excuse me. He says this is
14 something else.

15 THE COURT: No, I'm not for three
16 different things. You can find out what it is
17 and bring it to my attention, but other than
18 that --

19 All right. For the rest of y'all, is
20 there anything we need to take up? I mean, I
21 think we pretty much have done a good bit of
22 the pretrials. I saw that you gave me the
23 human factors expert's deposition back there.
24 At least Crystal gave me a copy. I'm going to
25 look at that over lunch.

PRE-TRIAL MATTERS

1 Anything else you all want me to look at
2 over lunch? And I guess another question is,
3 are you going to use -- anybody going to use
4 any kind of technology up here in the opening
5 statement that you need to --

6 MR. SMITH: I am. I went over with Jack,
7 I showed him all the pictures I'm going to use.
8 There's only one that he has an objection to,
9 and I'll show it to Your Honor.

10 THE COURT: Okay. I'll look at that, and
11 then also you need to talk to Margaret about
12 getting it all turned on before they all come
13 back in.

14 MR. WILLEY: I just have one other small
15 thing.

16 THE COURT: Okay. Let me take care of
17 this first, let's just put it on the record and
18 we'll see what it is.

19 MR. SMITH: So this is the Google of the
20 intersection, to explain to the jury how it
21 happened. Mr. and Mrs. Johnson come out of
22 Southwood Park, and Ms. Hood is on the inside,
23 he hits her there on the passenger side, she
24 hits the Kucks head on. This is just
25 demonstrative to show them.

PRE-TRIAL MATTERS

1 MR. DANIEL: Yeah. The one is, it's kind
2 of an animation. And there's been no accident
3 reconstruction.

4 THE COURT: Yeah, I understand that. I
5 don't want you using that in opening statement.
6 And I don't know, I mean, you're going to
7 somehow lay some kind of foundation for that.

8 You know, I'm fine with just a photograph,
9 but you didn't have anyone create this, so I
10 don't know how you're using it.

11 I don't know how you do that as to where
12 everybody was.

13 But, I guess, I'm probably okay with just
14 the first picture, saying this is where it
15 started. But you telling me that that's where
16 point of impact was, it doesn't do anything
17 without an accident reconstructionist.

18 You can say -- you're just laying a
19 picture, this is where it is, this is what it
20 looks like.

21 MR. SMITH: Sure. No problem.

22 MR. WILLEY: My only thing is, Mr. Eady, I
23 don't know what his latest thing is, but he had
24 two things during voir dire, and now another
25 thing. I mean, I would rather just go ahead

PRE-TRIAL MATTERS

1 and sit an alternate. Because I think he's
2 going to be an ongoing problem.

3 THE COURT: And I'm going to have Ms.
4 Bostick tell me what his problem is.

5 THE CLERK: His problem is, he can't miss
6 work. He has a loan, he won't be able to pay
7 his bills. He has to pick up his wife. That
8 was it.

9 MR. WILLEY: I would prefer just to go
10 ahead and let him go. We've got three
11 alternates, that will leave us with two.

12 THE COURT: Okay. I will only agree to
13 that if you all will agree to go down as low as
14 ten jurors. I mean, we won't go below that.
15 But if we lose just vast amounts of people, I
16 need you to be able to agree to at least ten.
17 You're fine with that. It's a civil case.

18 MR. WILLEY: I think that's fine, just to
19 cut him loose. Otherwise, we're going to be
20 having an alternate in the middle -- I mean,
21 something is going to happen. Clearly.

22 THE COURT: I'm afraid you're right. I'm
23 afraid you're right.

24 MR. WILLEY: One excuse is one thing, but
25 every three minutes?

PRE-TRIAL MATTERS

1 THE COURT: Okay. So you can agree. If
2 Plaintiffs don't agree to ten --

3 MR. WILLEY: Yeah, we can agree to that.

4 MR. SMITH: Yes, ma'am.

5 THE COURT: That's losing a lot of people.
6 That's getting everybody in the car together
7 and then getting hit at lunch.

8 Mr. Daniel, what about you?

9 MR. DANIEL: Yeah, we'd just rather play
10 it by ear for maybe another day, but --

11 THE COURT: He's just going to be a
12 problem, so let's just let him go. Let's do
13 that.

14 Okay, Margaret, just cut him loose.

15 There's no "S" on it, and I apologize, Mr.
16 Daniel. I will not put an "S" on your name
17 again. You have a sense of humor about it.

18 MR. DANIEL: I'm the third, so -- yeah.
19 My dad has no sense of humor, but --

20 (Discussion off the record.)

21 THE COURT: Anything else y'all need?
22 Thank you. We're good.

23 MR. SMITH: No. We should just come back
24 a little early, need to make sure the TVs are
25 on and --

PRE-TRIAL MATTERS

1 THE COURT: Well, we'll talk to Margaret.
2 2:15 for you all to be back here. Okay? And I
3 will make sure the technology is working,
4 everything's on and no problems. Okay?

5 And I'm going to tell you guys, too, it's
6 kind of funky with all of this over here. And
7 I'm not saying you particularly, but in every
8 trial we have this problem with all kinds of
9 junk. So I just want to make sure that you all
10 kind of --

11 MR. SMITH: Oh, you're talking about our
12 corner of junk?

13 THE COURT: No, I'm not worried about
14 that, it's that screen. I just want to make
15 sure, sometimes it's difficult for the jurors
16 in that far corner to be looking this way. I'm
17 just giving you a heads up just because that
18 screen is strange right there. I'm just saying
19 just be cognizant. If you don't want them
20 looking at --

21 MR. WILLEY: I think we'll move it around.

22 MR. SMITH: All right. We'll move it
23 around. Thank you.

24 THE COURT: Just so you know. It's very
25 awkward at times. So just a heads up. Okay?

PRE-TRIAL MATTERS

1 All right. We'll see you all at 2:15.
 2 (Lunch recess.)
 3 (Proceedings continued in Volume 2.)
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PRE-TRIAL MATTERS

1
 2 CERTIFICATE
 3
 4 STATE OF SOUTH CAROLINA:
 5 COUNTY OF BEAUFORT:
 6 I, MONA L. MANLEY, Court Reporter, certify that I was
 7 authorized to and did stenographically report the foregoing
 8 proceedings and that the transcript is a true and complete
 9 record of my stenographic notes.
 10 DATED this 3rd day of January, 2018.
 11
 12 *Monica L. Manley /s/*
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 14 Official South Carolina Court Reporter
 15 Circuit Reporter for the 14th Circuit
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1 In the Court of Common Pleas for the
 2 State of South Carolina, County of Jasper
 3 Case No.: 2015CP2700119
 4 Therese Hood,
 5 Plaintiff,
 6 vs. Transcript of Record
 7 Antoine Johnson,
 8 Defendant.
 9
 10
 11
 12 VOLUME 2
 13
 14 September 5, 2017
 15 Ridgeland, South Carolina
 16
 17
 18
 19
 20 BEFORE:
 21 The Honorable CARMEN T. MULLEN
 22
 23
 24
 25

APPEARANCE PAGE

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1 PROCEEDINGS

2 THE COURT: All right. I think we're just a

3 little bit early for the jury. But I just wanted to

4 know if there is anything else we need to take up

5 before we go ahead and start right in? And do you

6 mind, I'm not asking you to turn over everyone, but

7 just tell me the first couple witnesses you have,

8 looking out for if there is a need to get through

9 anyone today?

10 MR. WILLEY: Well, Sergeant Welch is here. We

11 plan to call her. We plan to do the 911 person,

12 Haupt, or representative, whoever. They got like

13 three people here, so --

14 THE COURT: Okay. So Sergeant Welch, 911

15 person, obviously, Dustin Lee.

16 MR. WILLEY: Melnick, which is a video, and

17 Dustin Lee. And then we can be prepared to go

18 farther than that. We'll have people here, but --

19 THE COURT: And then -- yes.

20 MR. DANIEL: Just a couple things. As far as

21 the 911 operators or witnesses, if we were going to

22 introduce some of the recorded calls, and given what

23 Your Honor has said about Dustin Lee's call in

24 particular, and that we might need to redact a

25 portion of that, we may need to recall one or two of

INSTRUCTIONS TO THE JURY

1 those witnesses to get that evidence in. We might

2 not be able to agree to excuse those witnesses today.

3 We might have to recall one or two of them.

4 MR. WILLEY: I mean, if they get them under

5 subpoena, that's fine.

6 THE COURT: Yeah.

7 MR. DANIEL: Yeah, I'm just making Your Honor

8 aware of that issue. And then Officer Worrell, I

9 believe, there might be a couple of things that she

10 can testify to that, at this point, would be -- might

11 be hearsay, about what people have said. But

12 depending on how this plays out, we might need to

13 recall her for those limitations, too.

14 THE COURT: Okay. And you've got her under

15 subpoena.

16 MR. DANIEL: Yes, Your Honor.

17 THE COURT: Okay. All right.

18 Anything else? You've got everything,

19 technology, in working order, and got all this queued

20 up and ready to go?

21 MR. SMITH: As far as we know. It won't break

22 until two minutes before we start, so --

23 THE COURT: Okay. I'm just asking. Anyway --

24 okay. I just want to make sure we're good to go.

25 Okay. Well, I'm going to step down until all

INSTRUCTIONS TO THE JURY

1 the rest of the jurors are here. If there's anything

2 that comes up, I just wanted to make sure we were

3 ready to go at 2:30. And I don't remember ahead of

4 time on opening statements, but I think we are in

5 this case. So we're ready to go.

6 Oh, I do want to ask you all, tomorrow morning,

7 are we okay to start at 9:30? Everyone?

8 MR. SMITH: Sure.

9 THE COURT: If the jury allows me to, I'd like

10 to start by 9:30. And I hate to say it, but I can

11 start as early as 8:30, but it's up to them. I don't

12 want to push anyone too much. So I'll ask them for

13 9:00, 9:30, maybe even 10:00, but --

14 No one else has any other problems or

15 commitments in the evenings, do they? Is everyone

16 okay? Y'all are good?

17 MR. DANIEL: We're good, Your Honor.

18 THE COURT: I guess I'm just looking at the

19 clients and the attorneys, just to make sure no one's

20 got to coach a team or something. Okay.

21 MR. WILLEY: We're allowed to have -- trial

22 lawyers are allowed to have extracurriculars?

23 THE COURT: You are.

24 (Pause.)

25 THE COURT: All right. Let's bring the jury in.

INSTRUCTIONS TO THE JURY

1 Yes. Do you need me?

2 MR. WILLEY: Yeah. Just one quick matter that I

3 thought of after you left.

4 When Mr. Lee gets here, I will need a few

5 minutes with him to prep him on Your Honor's rulings

6 on the motions in limine since they go directly to

7 his testimony. Just wanted to make the Court aware

8 of that.

9 THE COURT: Okay. That's fine. We'll take care

10 of that. Okay?

11 If you want to be standing there and ask him

12 when he does it, you may also.

13 MR. DANIEL: Okay.

14 THE CLERK: And they chose a foreperson. They

15 chose a foreperson, Betty Paisley, Juror No. 117 she

16 was the last juror.

17 {Jury enters the courtroom.}

18 THE CLERK: We have to seat Alternate One.

19 THE COURT: All right. Thank you. I apologize.

20 Who is it, Margaret?

21 THE CLERK: Alternate One is Linette Lazslo.

22 THE COURT: Ms. Lazslo, ma'am, I have already

23 removed one person from the jury, so I need to put

24 you actually as part of the 12-person jury. So I'm

25 going to ask you to go ahead and take a seat next to

INSTRUCTIONS TO THE JURY

1 disregard it. And as jurors, you are to determine

2 the facts from the testimony that you're going to

3 hear from the witness stand, as well as any other

4 evidence that's introduced in this case.

5 You should you be influenced by any opinions or

6 statements you may have heard outside this courtroom.

7 And please understand that it is especially important

8 that you perform your duty in determining the facts

9 diligently and conscientiously because ordinarily

10 there's no way to correct an erroneous determination

11 of the facts by a jury.

12 On the other hand, the same law that makes you,

13 the jury, the judge of the facts makes me the judge

14 of the law. The law given by the Court is the only

15 law that you may consider.

16 You must accept the law and apply the law as I

17 give it to you. I cannot tell you what the facts of

18 the case are, and you cannot disagree with me about

19 what the law is or what you think the law ought to

20 be. Your job is to take the law as I give it to you

21 and apply it to the facts as you find them, and from

22 there, render a true and just verdict in the trial.

23 Now, until I advise you to begin your

24 deliberations, you must not discuss this case with

25 anyone, and that includes your fellow jurors or

INSTRUCTIONS TO THE JURY

1 our foreperson. And I want to thank you for being

2 willing to serve.

3 Ladies, gentlemen, scoot on up. This is why we

4 have alternates. Okay? So thank you again.

5 All right. Ladies and gentlemen, just very

6 briefly, I want to tell you what we're going to do.

7 First off, Ms. Bostick, the Clerk of Court, is

8 going to swear you in as the jury in the trial of

9 this case. After that, I'm going to make just some

10 very brief comments, just about how a trial kind of

11 unfolds. And then the attorneys are going to make

12 their opening statements. All right?

13 So at this time, if you'd please pay attention

14 to Ms. Bostick, and she's going to administer the

15 juror's oath.

16 {Jurors sworn.}

17 THE COURT: Ladies and gentlemen, I want to

18 explain to you the procedure that we're going to use

19 so you can better understand what's happening during

20 the trial of this case.

21 You've been selected as fair and impartial

22 jurors whose purpose it is to find and determine the

23 facts. You, the jury, are the sole judge of all the

24 facts in this case. If at any time I make any

25 comment regarding the facts of this case, you must

INSTRUCTIONS TO THE JURY

1 anyone at home, ladies and gentlemen. I remind you

2 again, you are going to have everything you need to

3 determine this case right here in this courtroom, and

4 it would be highly inappropriate for you to be

5 influenced by any outside source.

6 I also remind you, although I don't think

7 there's going to be anything on the television, the

8 news, or the radio, or the papers, again, in an

9 abundance of caution I have to warn you, you are not

10 to read anything, view anything, or listen to

11 anything in regards to this case.

12 Ladies and gentlemen, please remember that it's

13 important that you keep an open mind and not decide

14 any issue in this case until all the evidence has

15 been produced, you've heard the closing arguments

16 from the lawyers, and I've charged you on the law

17 after this case, which I will do at the very end of

18 the trial.

19 Now, I want you to know that in just a minute,

20 the attorneys are going to make what are called

21 opening statements. And what I want you to

22 understand is, these opening statements are not

23 evidence in this case. They are simply contention of

24 what they believe, the lawyers believe, issues will

25 be in this case.

INSTRUCTIONS TO THE JURY

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

INSTRUCTIONS TO THE JURY

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?

INSTRUCTIONS TO THE JURY

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.

OPENING STATEMENT BY THE PLAINTIFF

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?

OPENING STATEMENT BY THE PLAINTIFF

1 Third vehicle I draw for you is Mr. and
 2 Mrs. Kuck. You're going to hear from them later.
 3 Okay?
 4 What happens is, Mr. Johnson, it's his intention
 5 to cross Highway 278 and make a left. All right.
 6 But before he does that, he's going to stop in the
 7 median.
 8 What happens is, Ms. Hood is coming along this
 9 direction. As she gets to about here, Mr. Johnson
 10 pulls out, and he hits her right here on the front
 11 passenger side of her vehicle. The force of the
 12 impact causes Ms. Hood to head across the median and
 13 strike this vehicle head-on.
 14 Important to note, stop sign here. All right?
 15 No traffic lights or stop signs anywhere in the area
 16 that I've drawn.
 17 Now, the person that he hit, my client -- sorry,
 18 Therese Hood. It was a few minutes before 6 o'clock
 19 in the afternoon on a Friday. People are getting off
 20 work, driving home. Families are heading to the
 21 beach for the weekend. It's a busy road filled with
 22 locals, tourists, and people just passing through.
 23 Now, we've brought a lawsuit against Antoine
 24 Johnson for three reasons. The first reason is
 25 because he wasn't paying attention to the road. The

OPENING STATEMENT BY THE PLAINTIFF

1 evidence will show that Therese Hood wasn't far from
 2 him when he pulled out across the highway, and if he
 3 was paying attention, he would have seen her.
 4 The second reason is because he didn't look
 5 before crossing a major highway. If you remember one
 6 thing, it's that Therese Hood had the right-of-way.
 7 We know Ms. Hood was in the inside lane, and
 8 there was another car in the outside lane not far
 9 behind her, sort of down here in this direction.
 10 Mr. Johnson testified that he looked left. He
 11 didn't see Ms. Hood's car or the other car. Had he
 12 truly looked to his left before crossing out the busy
 13 highway, we will ask you to decide if he should have
 14 seen both Ms. Hood and the other vehicle not far
 15 behind her.
 16 Now, the third reason is because Mr. Johnson
 17 refuses to accept responsibility, so we are forced to
 18 bring him to trial.
 19 Now, before we decided to come to trial, certain
 20 things had to be determined. We had to determine
 21 what the defense would say, and we also wanted to
 22 know what questions you folks would have. So the
 23 first thing we needed to know was who hit who.
 24 We spoke to Mr. Johnson, himself, and he
 25 testified under oath that he, in fact, hit Therese

OPENING STATEMENT BY THE PLAINTIFF

1 Hood's vehicle. Ms. Hood told us the same thing.
 2 And to take it even further, here's a picture of
 3 Mr. Johnson's car, the front damage to his car that
 4 shows a front impact. And this is a picture of the
 5 side of Ms. Hood's car. It shows a side impact, and
 6 that's how we determined who hit who.
 7 Next, we needed to determine if there was
 8 anything blocking Mr. Johnson's vision. The people
 9 involved have told us the weather was clear, dry, the
 10 road was straight, and nothing was blocking his
 11 vision. This is the Dunkin' Donuts where he is
 12 coming out of that lands him on 278.
 13 And at the stop bar, where Mr. Johnson is, this
 14 is his view looking left. And as he's pulling out
 15 across one lane, this is his view looking left.
 16 Once we determined that nothing was blocking his
 17 vision, the next thing we wanted to know, what's the
 18 visibility at almost 6 o'clock in the afternoon? We
 19 know Ms. Hood had her running lights on at the time
 20 Mr. Johnson hit her. So we looked up the law about
 21 when headlights are required. It says, "Drivers must
 22 have their headlights on 30 minutes after sunset.
 23 You must have your headlights turned on at night, and
 24 from a half hour after sunset to a half hour before
 25 sunrise, and at any other time when you have to use

OPENING STATEMENT BY THE PLAINTIFF

1 your windshield wipers."
 2 So we wanted to know what time sunset was. This
 3 is an image --
 4 MR. DANIEL: Your Honor, I mean, this is not in
 5 evidence.
 6 MR. SMITH: Your Honor, I went over all these
 7 exhibits with Mr. Daniel before we started.
 8 MR. DANIEL: I did -- I did not -- I did not see
 9 this one.
 10 MR. SMITH: I went over every exhibit. It's a
 11 Power Point.
 12 THE COURT: Okay. I don't need you arguing
 13 today in front of the jury. So do you need to
 14 approach?
 15 MR. SMITH: Yes, ma'am. Sorry.
 16 THE COURT: Come on up.
 17 (Off-the-record discussion held.)
 18 MR. SMITH: Excuse us for that.
 19 Sunset. This is the GPS coordinates for the
 20 intersection where the collision happened, and it put
 21 sunset at 1729, all right, which is 5:29. Thirty
 22 minutes after is going to be 5:59 in the afternoon.
 23 5:59 p.m., right?
 24 Now, there's another source for sunset that puts
 25 it at 5:58 p.m, and you'll hear about that as well.

OPENING STATEMENT BY THE PLAINTIFF

1 You'll hear the difference between the two is one, is
2 the exact GPS coordinates, one is from another
3 source. Mr. Daniel will tell you all about that.

4 What we do know is that the first 911 call came
5 in at 5:58 and 46 seconds. Okay? That was the time
6 the first 911 call was recorded that came in. And we
7 also know several things happened before that call
8 came in. And that's going to be important for you
9 guys to see for yourselves and look at.

10 We know that the first collision with
11 Mr. Johnson happened. We know the second collision
12 happened. We know people got out of their cars. We
13 know that people are already helping. And all this
14 again is what's happening before 5:58 and 46 seconds.

15 We know that the people that have stopped to
16 help and render aid, we know they've already gotten
17 at least one person out of that vehicle. We know the
18 caller is at the Dunkin' Donuts over here, and she's
19 out on the patio taking a break. She leaves the
20 patio, she goes inside, she goes behind the counter,
21 she dials 911.

22 But when she first dials 911, she doesn't get
23 Beaufort dispatch, she gets Hilton Head. When she
24 starts talking to the first dispatcher, before this
25 time starts, she testifies the phone rings a couple

OPENING STATEMENT BY THE PLAINTIFF

1 of times and that the Hilton Head dispatcher answers.
2 She speaks to the dispatcher. She describes where it
3 happened, she describes what happened, she obviously
4 gives them her name.

5 And then at that point the Hilton Head dispatch
6 calls the first responders. Now, like I said, when
7 this call comes in, all of this had already happened.

8 Well, you can easily see that if you find the
9 more reliable -- the time for sunset y'all are going
10 to depend on is 5:59, question answered. We know the
11 first call came in before that, headlights are not
12 required.

13 But if we use the other source, 5:58, then the
14 question that's going to be in your mind is, did all
15 of this take 47 seconds or more? If all of this took
16 more than 47 seconds to take place, then the wreck
17 happened before 5:58 p.m., and the law did not
18 require headlights on at the time.

19 Now, keep in mind, she had her running lights
20 on, but the law did not require headlights. And
21 we're going to address this with you with the very
22 first two witnesses. We're going to show you the 911
23 call, we're going to show you who made it, we're
24 going to show you what time it came in. And then
25 we're going to have video testimony from the person

OPENING STATEMENT BY THE PLAINTIFF

1 who made that call, and she's going to tell you about
2 all these things happening.

3 We believe the evidence will show the wreck
4 happened before 5:58; therefore, no headlights were
5 required by law. But we didn't stop there.

6 Being this close to the requirement for
7 headlights, we wanted to take it a step further. We
8 needed to determine whether or not Mr. Johnson should
9 have seen her. We started by asking the people
10 involved about lighting conditions. We spoke to
11 Mr. Johnson first. He said it wasn't totally dark.
12 A passenger in the vehicle that Ms. Hood hit head-on,
13 up here, told us that it was just beginning to turn
14 dark, that there was enough light to see the median,
15 enough light to see the trees alongside the road, and
16 enough light to see other vehicles, with or without
17 headlights.

18 So, why didn't he see her? Why didn't he see
19 the other car behind her with its headlights shining
20 on her?

21 So in the end, the evidence will show, number
22 one, Therese Hood had the right-of-way. Number two,
23 that she was not required to have any headlights on.
24 Number three, that Ms. Hood's vehicle was clearly
25 visible had Mr. Johnson looked before crossing

OPENING STATEMENT BY THE PLAINTIFF

1 Highway 278. And four, the reason he didn't see her
2 is because he either didn't look, or he was
3 distracted by something.

4 You'll see that he only went a few feet, barely
5 crossing a single lane, before he ran into the side
6 of Ms. Hood's car, pushing her into oncoming traffic.
7 Y'all will have to decide if he was paying attention.
8 That's why we're here.

9 Now, the last thing we needed to determine is
10 what Therese's injuries were. Before presenting her
11 injuries and damages to you, we needed to figure out
12 if the things that she described were caused by the
13 wreck.

14 We know from emergency responders that Therese
15 and the other people up here were injured. Therese's
16 ankle was shattered, she fractured two vertebrae in
17 her neck. She fractured one vertebrae in her lower
18 back. She had multiple rib fractures. And she was
19 diagnosed with a dissection of her left vertebral
20 artery. And this is an artery that runs up along the
21 neck, close to where the neck fracture was.

22 For her shattered ankle, Therese has gone
23 through a total of three surgeries so far. First,
24 they were able to put her ankle back together, and
25 then another surgery where they put in a steel plate

OPENING STATEMENT BY THE PLAINTIFF

1 and screws. This is an x-ray of the surgical pins
2 and screws.

3 Now, it's a long road from there, hardly any
4 mobility. She was confined to her house. She had to
5 depend on others to get where she needed to be. It's
6 been three years since the wreck, and she's still
7 being treated by her doctors. Now, her last surgery
8 to remove these pins and screws was just a few months
9 ago.

10 You will hear that she continues to be in pain,
11 that she has limitations on what she can do. And
12 Ms. Hood's treating doctor will go over the medical
13 treatment she's got and what she'll have to deal with
14 as time passes. This same doctor that treated her
15 shattered ankle will explain that while the surgery
16 was a success, the wreck also caused post traumatic
17 arthritis.

18 He told us that post traumatic arthritis is not
19 just causing problems now, but it's going to worsen
20 over time. The result over time is worsening
21 stiffness, increased pain, and even less mobility.
22 This is what the future holds for Therese Hood. This
23 is the sworn testimony of her treating doctor.

24 Now, before all this, Therese Hood served her
25 country in the Army for 20 years. After her service,

OPENING STATEMENT BY THE PLAINTIFF

1 she went back to school, got a degree in economics,
2 and a Masters in education. From there, she went to
3 work as a teacher for young children. When she
4 retired from teaching, Therese looked forward to
5 spending more time with her family, and volunteering
6 with her church. This was her vision for retirement.

7 Before the wreck with Mr. Johnson, Therese loved
8 to get together with her family and cook for them.
9 At church, she volunteered a lot. She gave
10 communion, and she was a member of a ladies' guild.
11 You will hear how she was good at getting events at
12 church organized, and was someone they could always
13 count on when they needed a volunteer.

14 Where she was headed that day was a timeshare.
15 Her timeshare in Hilton Head was her get-away. It
16 wasn't much, but it's where she went when she had
17 time to relax. Therese's life was about serving her
18 family and her church.

19 Now, at the end of trial we will ask you to
20 decide how much money should be in the verdict. It's
21 one of the hardest jobs you'll have this week, to
22 decide on an amount of money to make up for all the
23 harms, the losses, and the permanent damage to
24 Therese's body.

25 So we're here for two reasons. All right?

OPENING STATEMENT BY THE PLAINTIFF

1 We're here to fix, and we're here to make up for it.

2 The first thing to do is fix. That deals with
3 the cost of the medical treatment that Therese has
4 gotten. Her medical bills total just over \$220,000.
5 That's how much her treatment has cost, and it's an
6 easy fix because you'll see exactly how her bills add
7 up to that amount. And that's an important number,
8 \$220,000, but it pales in comparison to the real
9 damages here. And that brings us to the second part,
10 to make up for it.

11 This is one of the most important and the
12 hardest tasks that you will have as jurors, to try
13 and decide how to assign an amount of money on the
14 worst part of her injuries and damages. You see,
15 Therese is permanently injured, and her doctor is
16 going to explain that. She's going to live with
17 chronic pain for the rest of her life. And as her
18 treating doctor will explain, it's only going to get
19 worse as time goes on. And as it does, it will
20 become harder and harder to get around, to walk, to
21 do the things that she used to enjoy doing.

22 So every time that Therese can't do something
23 like she used to, or just can't do it at all, like
24 stand and give communion at church, like volunteer
25 with her church, like put together a big spread in

OPENING STATEMENT BY THE PLAINTIFF

1 the kitchen. Y'all know how much time that takes on
2 your feet.

3 Or when she's awoken at night because of the
4 pain and feels tired the next day. Or when she's got
5 to stop, she's got to elevate her ankle, she's got to
6 soak it in ice, soak it in Epsom Salts just to endure
7 the pain from moving it.

8 And most importantly, every time she is stuck at
9 home, rather than enjoying the life and the
10 retirement that she has earned, you can't fix that.
11 You can't even help it. But you can make up for
12 that.

13 Now, it's my job to give you the tools to do
14 just that. It's also my job to suggest what that
15 number ought to be. It's too early. You haven't
16 seen the whole case. But I will be up front with you
17 and tell you the number will be significant.

18 Now, I'm not sure what the lawyer sitting at
19 Mr. Johnson's table will say when he gets up here in
20 a few minutes. I anticipate it will range from it's
21 not Mr. Johnson's fault, it's all Therese's fault.
22 But even if it is a little bit Mr. Johnson's fault,
23 it really wasn't that bad. He may even say he's
24 sorry.

25 Well, ladies and gentlemen, time to say sorry

OPENING STATEMENT BY THE PLAINTIFF

1 has passed. Sorry doesn't fix, it doesn't make up
2 for it, and it doesn't tell Mr. Johnson to look
3 before crossing a busy highway.

4 As of today, that's your job. You not only have
5 the right, but you have the power to fix what was
6 broken and to make up for what cannot be fixed. And
7 by doing this, you enforce the safety rules in your
8 community, and you fulfill your oath to administer
9 justice.

10 Thank you.

11 THE COURT: Mr. Daniel.

12 MR. DANIEL: Thank you, Your Honor.

OPENING STATEMENT BY DEFENSE

14 MR. DANIEL: We can't see in the dark. We, as
15 human beings, all have limitations, and that's a fact
16 of life.

17 Antoine Johnson, the Defendant in this case, can
18 only be held to the standard of what a reasonable
19 person can do, what an ordinary driver being careful
20 and paying attention can do.

21 You just heard a lot about safety rules and
22 avoiding killing somebody. Let's get one thing
23 clear. No one died in this accident, fortunately.
24 And I'll be up front, yeah, I don't hide from it, I
25 am sorry that we're here. I'm not hiding that.

OPENING STATEMENT BY THE DEFENSE

1 Antoine Johnson doesn't want to be here. He's not
2 happy that Mrs. Hood was hurt. We're not -- we're
3 not trying to hide that fact either.

4 There was a lot about this intersection. One
5 thing I want you to keep in mind is that where this J
6 is, where Antoine Johnson is, it is lawful -- lawful
7 to make a left turn there. You're allowed to make a
8 left turn if you check traffic, and there's nothing
9 there.

10 Now, you heard me object, and that's usually
11 considered bad form in opening statement, but the law
12 is not about what's posted on some website. Counsel
13 read from some manual over there, but that's not law.

14 Your Honor is the expert and authority on the
15 law. She's going to tell you what the law is and
16 what rules to apply to the facts in this case. I
17 don't get to decide that, and Mr. Smith doesn't get
18 to decide that.

19 But the reality is, why we chose you as jurors,
20 is you all have common sense. You didn't leave it at
21 your house when you left and came to the courthouse
22 today. You all have the everyday experience. What
23 you know is that on a dark road, at night, when
24 something's coming from a distance, and if there
25 aren't headlights on, you know, we all have limited

OPENING STATEMENT BY THE DEFENSE

1 ability to see things. Antoine Johnson, there'll be
2 testimony, and there's claims that he was texting or
3 he was on the phone, he wasn't paying attention. I
4 remind you to pay close attention to that. There's
5 going to be no proof, there's to be no -- they're the
6 ones, the Plaintiff, is the ones with the burden of
7 proof in this case. There should be no one to say
8 that they saw him texting on his phone or calling
9 somebody or reading a text.

10 What you will hear is, he'll get on the stand,
11 he'll tell you he looked to the left, and he was
12 honest, it wasn't totally dark. But you listen to
13 all the factual witnesses, all the witnesses that saw
14 this, and you decide. I submit to you credible
15 evidence was that it was pretty well dark out there.

16 And Hilton Head, at that intersection, at around
17 6:00, at around 5:50, 5:55, whatever the general time
18 is, whatever these witnesses say, it'll be crystal
19 clear to you it was pretty well dark. Antoine
20 Johnson checked to his left, he didn't see anything
21 because there were no headlights on.

22 There will be independent witnesses. Your Honor
23 has talked about you being the judges of credibility.
24 You got to think about bias. There will be witnesses
25 that take the stand that have nothing to gain from

OPENING STATEMENT BY THE DEFENSE

1 being here, and they'll tell you they didn't see
2 headlights either. And they'll verify what Antoine
3 Johnson says, that Mrs. Johnson (sic) did not have
4 her headlights on, and that it was dark.

5 You may hear other things about the accident and
6 things that you can use your common sense to draw
7 conclusions from. What have you just seen? You've
8 seen pictures of the side of this vehicle, what looks
9 like a scraping motion, a sideswipe sort of impact.
10 There's no one that's going to tell you Antoine
11 Johnson was speeding. And Plaintiffs hired
12 engineers, they characterized that impact as a minor
13 one.

14 The real accident happened down the road,
15 several hundred feet down the road, between Mrs. Hood
16 and a Chevy Tahoe. Her Equinox went clear across
17 traffic and hit a Chevy Tahoe head-on causing severe
18 damage to the front of her vehicle and severe damage
19 to the Kucks' vehicle, causing injury both to her and
20 both to William and Mary Kuck.

21 William and Mary Kuck will testify, and listen
22 to what they have to say about the headlights, too.

23 The Plaintiff has the burden of proof in this
24 case, not Antoine Johnson. The Plaintiff has to
25 prove to you more likely than not that Mr. Johnson is

OPENING STATEMENT BY THE DEFENSE

1 the reason why this accident happened. What he did
2 caused the accident. I submit to you that when the
3 evidence has ended, and you've heard from the
4 witnesses, it'll be the opposite way around.

5 You will see that more likely than not the
6 Plaintiff unfortunately is the one that caused this
7 accident, and she is responsible for her own
8 injuries. And you'll hear from some engineers, they
9 may call these engineers that they've hired, and
10 they'll talk about science and some issues with
11 headlights and headlight bulbs. I ask you to keep an
12 open mind about that, and to -- can you cut that off,
13 please.

14 MR. SMITH: The TV is just on. Do you want me
15 to turn it off?

16 MR. DANIEL: I ask you to keep an open mind.
17 Think to yourself at the end of the day to the
18 unanswered questions, Does what they say add up? Did
19 they, the experts, do all the investigation they were
20 supposed to do before they came to certain
21 conclusions about these headlights.

22 As far as when the 911 call was made, what time,
23 whether it was 5:58, 5:57, 5:59, it doesn't matter.
24 It's what the conditions on the roadway were at the
25 time. It's whether there was the ability to see this

OPENING STATEMENT BY THE DEFENSE

1 car coming on a dark road, no street lights, it's
2 tree lined, as the sun, by the way, is already set.
3 Sunset was at 5:20--something, 5:30 that day.

4 Antoine Johnson will get up on the stand, and
5 he'll tell what he saw. He'll tell you the truth.
6 You get to judge the credibility of all these
7 witnesses. The fact witnesses that have no stake in
8 this matter, they will tell you what they saw. And
9 incredibly, the unbiased evidence will be that
10 Mr. Johnson didn't cause the accident. You cannot be
11 held responsible for seeing something through
12 darkness at a distance.

13 Now, Mr. Johnson has been named as Defendant.
14 Again, there was some talk about the Plaintiff's
15 medical bills, and we can all have sympathy for her.
16 There's nothing wrong with that. But a judgment for
17 Plaintiff is also a judgment against the Defendant,
18 and when you swore to be a member of this jury you
19 agreed to be fair to both sides. You can't award
20 money damages in this case, you cannot render a
21 verdict against the Defendant unless you believe that
22 he is the reason why the accident happened, and he is
23 the reason -- and his actions are what caused the
24 wreck.

25 If you decide the Plaintiff, at the very least

OPENING STATEMENT BY THE DEFENSE

1 is -- her actions were a greater cause, you can end
2 up deciding maybe they're both a little bit at fault.
3 But if she was more responsible for the accident than
4 Antoine Johnson was, then you also, again, under the
5 law, have to render a verdict for the Defendant in
6 this case.

7 There will be witnesses that, again, have
8 nothing to gain by what they say. They will tell you
9 what they saw that night. On that road, where
10 there's no streetlights, and what the objective
11 evidence will bear out, will be that Antoine Johnson
12 did not cause this wreck. And because of that,
13 you'll have to render a verdict for the Defendant.

14 THE COURT: Thank you. Plaintiffs call your
15 first witness.

16 MR. SMITH: Yes, ma'am. Plaintiffs call Tasha
17 Haupt.

18 THE COURT: Come forward, Ms. Haupt. Right
19 around here.

20 Thereupon,

21 TASHA HAUPT

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

DIRECT EXAMINATION

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 BY MR. SMITH:

2 Q Good morning. Good afternoon. Can you tell us
3 your name, please?

4 A Tasha Haupt.

5 Q Ms. Haupt, my name is Kevin Smith. Thank you
6 for being here today.

7 A Okay.

8 Q Did you used to work for the Beaufort County
9 dispatch?

10 A The Sheriff's Office, yes.

11 Q Sheriff's Office. And the reason we've called
12 you -- what was your job?

13 A I was the records custodian.

14 Q Okay. The reason we've called you here today is
15 to identify some records and tell us a little bit about
16 it. Okay?

17 A Okay.

18 Q All right. Did you get a request to produce and
19 print some information from the 911 calls that came in
20 about the wreck that we're here about today?

21 A Yes, sir.

22 Q Okay.

23 MR. SMITH: May I approach the witness, Your
24 Honor?

25 THE COURT: You may.

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 BY MR. SMITH
 2 Q Ms. Haupt, do you recognize that?
 3 A Yes, sir.
 4 Q And, in fact, does it have an indication on
 5 those records as to who printed them?
 6 A Yes, sir.
 7 Q And who is that?
 8 A Myself.
 9 Q All right. Do they appear genuine to you?
 10 A Yes, sir.
 11 Q All right. And were these records kept in the
 12 ordinary course of business where you work?
 13 A Yes, sir.
 14 Q Will they be helpful to you in explaining the
 15 timing of the 911 calls?
 16 A Yes, sir.
 17 MR. SMITH: Your Honor, at this time, I'll offer
 18 to admit this into evidence as Exhibit No. 1.
 19 THE COURT: Has Mr. Daniel seen it?
 20 MR. SMITH: Yes, ma'am. He's got a copy.
 21 MR. DANIEL: I have no objection.
 22 THE COURT: Without objection, it's in evidence.
 23 MR. SMITH: Thank you.
 24 *(Whereupon, Plaintiff's Exhibit No(s), I marked*
 25 *for identification and received in evidence.)*

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 A Yes, sir.
 2 Q All right. And E-911-7 looks like it came in at
 3 5:58 and 46 seconds; do you see that?
 4 A Yes, sir.
 5 Q Is that the first 911 call that came in that
 6 Ms. Melnick made?
 7 A Yes.
 8 MR. DANIEL: Where are we now?
 9 MR. SMITH: Last page, first entry. Can we blow
 10 that up at all?
 11 I don't know if that's going to be terribly
 12 visible to y'all.
 13 BY MR. SMITH
 14 Q All right. So first call, 5:58 and 46 seconds,
 15 true?
 16 A Yes, sir.
 17 MR. SMITH: That's all the questions I have,
 18 ma'am. Thank you.
 19 THE COURT: Anything?
 20 MR. DANIEL: Ms. Haupt? Yes, briefly.
 21 CROSS EXAMINATION
 22 BY MR. DANIEL:
 23 Q How do you pronounce your last name? Just --
 24 A Haupt.
 25 Q Okay. That first page of this record has

DIRECT EXAMINATION OF T. HAUPT BY MR. SMITH

1 BY MR. SMITH:
 2 Q Ms. Haupt, let's begin on Page 1. I believe I
 3 had a copy up here, too.
 4 Okay. We'll start on Page 1. Is that what
 5 you're looking at?
 6 A Yes.
 7 Q So did Beaufort dispatch receive a call, a 911
 8 call, from a lady named Tami Melnick?
 9 A Yes, sir.
 10 Q All right. And you see Tami's name on the sheet
 11 itself?
 12 A Yes, sir.
 13 Q Okay. Is -- does it indicate where she was
 14 calling from?
 15 A I'm looking now. I -- it says in the remarks,
 16 "at Dunkin' Donuts."
 17 Q Okay. Also says down there under business name,
 18 "Dunkin' Donuts."
 19 A Yes.
 20 Q All right. And was this the first 911 call that
 21 came in?
 22 A It appears so, yes, sir.
 23 Q All right. And if we turn around -- if you can
 24 turn to the back page for me, the very last page. We see
 25 a listing of the different 911 calls.

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 Ms. Melnick's name on there. Is there a time that
 2 actually indicates on this page when she called in?
 3 A When she actually called in the phone system,
 4 no, sir, I can tell that the call was created at the
 5 Dunkin' Donuts, what time that was created.
 6 Q Right. There are a number of calls, I'm looking
 7 on the last page, with different times. The one that
 8 says, 5:58 and 46 seconds?
 9 A Yes, sir.
 10 Q That does not have a name by it, does it?
 11 A No, not on that one.
 12 Q But none of them do; is that right?
 13 A Correct.
 14 Q How many calls are on that page?
 15 A One, two, three, four -- five.
 16 Q Okay. Is this -- is someone -- are you the
 17 person that inputs who called, or the record of --
 18 A No, sir.
 19 Q Who does that?
 20 A The dispatchers in the 911 center.
 21 Q Someone other than you?
 22 A Yes, sir.
 23 Q So really as far as Ms. Melnick or, say, a
 24 gentleman named Dustin Lee, or one of the three or four
 25 people -- other people that saw this accident and actually

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 called 911, you can't say whether Ms. Melnick was the
 2 first one to call? You --
 3 A I can't, other than comparing the times and
 4 listening to the phone call.
 5 Q And the times -- right. And, again, the last
 6 page, the one that has 5:58 there as the listed time,
 7 there's nothing to indicate that Ms. Melnick was the one
 8 that called at 5:58; do you agree?
 9 A Not on that page, no.
 10 Q What was there -- is there a designated time
 11 next to her name anywhere in this document?
 12 A Other than on that first page when the call was
 13 created.
 14 Q Right. When the call was created, and someone
 15 else creates this record other than you?
 16 A The information that's put into the CAD system
 17 --
 18 Q Someone else does that?
 19 A The dispatchers, as they get the information.
 20 Q All right. And it's possible that, you know,
 21 someone else could have called first, but that dispatcher,
 22 as they're going through, and there's five or six
 23 different people that called in, they may have put Tami
 24 Melnick in there as one of the callers, and she's just
 25 listed right there when they create the CAD document.

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 A When I created the copy of the call, yes, on the
 2 disk.
 3 Q Where is that?
 4 A I don't know.
 5 Q Okay. But you haven't -- is that on the audio,
 6 or is that in another document somewhere?
 7 A No, that's audio.
 8 Q Okay. And we haven't heard that. That hasn't
 9 been played?
 10 A Okay.
 11 Q Right? I mean, today?
 12 A Correct, yes.
 13 Q Okay. That's in the -- that's in the audio, the
 14 actual recorded call?
 15 A The name, yes, that she gives.
 16 Q I'm talking about the time.
 17 A No, the time is not time stamped in the audio.
 18 Q Right. So would you agree with me though that
 19 there's no -- there's no designated time on this sheet of
 20 paper right here, the front sheet that has Tami Melnick's
 21 name on it that says 5:58, that's when she called?
 22 A No, there's not.
 23 Q And the different phone calls on here from the
 24 last page, there's no name assigned to those -- those
 25 phone calls that were made. You know, this person called

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 A No, sir. For each call, there should be a
 2 designated CAD call in the system.
 3 Q Okay. Well, where's the designated CAD call for
 4 the other -- for the -- these are the entire set of
 5 records that your offices has. Where are the designated
 6 CAD calls for the other --
 7 A It looks like there is narrative. There are
 8 other calls that were received.
 9 Q Right.
 10 A On Page 3.
 11 Q What was the -- the record actually for this
 12 alarm time, Tami Melnick, do you see up here it says, 1759
 13 on the front page?
 14 A Yes, sir.
 15 Q So that's actually 5:59 when the alarm on this
 16 first page that has Tami Melnick's name, that's what it
 17 says.
 18 A Yes, correct.
 19 Q So there's nothing really that definitively says
 20 Tami Melnick called in at 5:58?
 21 A Other than listening to the phone call and when
 22 it comes into the system.
 23 Q Okay. And have you done that?
 24 A When I created the call, correct.
 25 Q When you created this?

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 911 versus this one called at this time?
 2 A Not on that page, no.
 3 Q Is there a specific time listed for other
 4 callers?
 5 A Yes.
 6 Q Okay.
 7 A Page 3, 1801, a call was put in from Dustin Lee
 8 about an accident. That's pretty much the only other call
 9 that I see.
 10 Q Where does it say 1801?
 11 A 1855 there was --
 12 Q Where does it say 1801 for Dustin Lee?
 13 A See narrative No. 3 toward the bottom.
 14 Q And doesn't it say 1800 above that?
 15 A I'm sorry?
 16 Q Doesn't it say 1800 above that? 38?
 17 A At the very top. But that --
 18 Q Yeah, right about right --
 19 A It's a completely different narrative. Look
 20 toward the bottom where it says, "Created by Garnes,
 21 Matthew, date 11/7, time 1801."
 22 Q Okay. Is that when he enters it, Garnes?
 23 A Correct. That's putting the information in from
 24 the call into the system.
 25 Q Okay. So that's when the dispatcher is actually

CROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 typing the man's name in?
 2 A Correct.
 3 Q So did you know that Dustin Lee actually was
 4 transferred -- he was actually transferred from another
 5 dispatch to central dispatch to your unit? And so he was
 6 on the call longer before someone probably actually doing
 7 data entry?
 8 A I'm not aware of that, no.
 9 Q Would that be unusual though?
 10 A No. Because it's on Hilton Head.
 11 Q It's certainly possible?
 12 A Yes, anything is possible.
 13 Q And as far as Tami Melnick, the page that has
 14 her name on it, actually says, 5:59, doesn't it?
 15 A Correct.
 16 Q Okay. So, that's when that --
 17 A That initial call was created in the CAD system.
 18 That has nothing to do with the phone system.
 19 MR. DANIEL: Thank you.
 20 THE WITNESS: You're welcome.

REDIRECT EXAMINATION

23 BY MR. SMITH:
 24 Q Ms. Haupt, it's on the last page -- now, first
 25 of all, was it Mr. Daniel's office that requested these

REDIRECT EXAMINATION OF HAUPT BY MR. SMITH

1 records in the first place?
 2 A I'm not sure who requested. I don't have access
 3 to any of those records anymore.
 4 Q Okay. But you provided them a long time ago
 5 before today, right?
 6 A To someone, yes.
 7 Q Okay. Now, on that last page again, each call
 8 is given a resource number; is that right?
 9 A Yes.
 10 Q And that E-911-7?
 11 A Yes. That is actual 911 line. And it would be
 12 Line 7 in the 911 system.
 13 Q And did you listen to the audio recording for
 14 E-911-7?
 15 A Yes, sir.
 16 Q And did the person state her name on E-911-7?
 17 A Yes, sir.
 18 Q And what did the person say her name was?
 19 A Tami Melnick.
 20 Q All right. Does that tell you that Tami Melnick
 21 was connected to the Beaufort dispatch at 5:58 and 46
 22 seconds?
 23 A Yes, sir.
 24 Q Are you sure about that?
 25 A Yes, sir.

REDIRECT EXAMINATION OF HAUPT BY MR. SMITH

1 Q Thank you.
 2 RE-CROSS EXAMINATION
 3 BY MR. DANIEL:
 4 Q Do you agree that that -- that doesn't affect
 5 when some of these other people may have called 911?
 6 A Her calling?
 7 Q Right.
 8 A It doesn't affect it, no.
 9 Q And that E -- that time, as far as the -- that's
 10 the start time of the call?
 11 A Correct.
 12 Q Do you know how quickly she got to the phone?
 13 A I do not.
 14 MR. DANIEL: Thank you.
 15 THE COURT: Anything further from the witness?
 16 MR. SMITH: No, ma'am.
 17 THE COURT: Any objection to her being excused?
 18 MR. DANIEL: No, Your Honor.
 19 THE COURT: You're excused. Thank you.
 20 Ladies and gentlemen of the jury, we're going to
 21 take a very brief recess. Again, do not discuss this
 22 case. It would be inappropriate to do so.
 23 And I would like to know from the foreperson,
 24 when you go back to the jury room, how late the jury
 25 is willing to stay. I would like to get to 5

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 o'clock, or even a little later than that.
 2 But probably more importantly than that, I need
 3 to know what time you all are willing to start
 4 working tomorrow morning. We can start at 9:00,
 5 9:30, or 10:00. Any of those times, you just let me
 6 know.
 7 Again, just realize that we're going to be here
 8 all day. Okay?
 9 So, again, you're excused to go back to the jury
 10 room. Do not discuss this case.
 11 (Jury exits the courtroom.)
 12 THE COURT: All right. We're going to be at
 13 case. Mr. Lee just came back, I'm going to give you
 14 an opportunity to talk to him. We'll probably go
 15 ahead and get him up, if you can.
 16 Mr. Lee, there were just a couple of things that
 17 I had spoken to them about, what you can testify or
 18 not testify to. The most important one is probably
 19 that no one is to address you as "Judge." If they
 20 ask you what you do and who you are, you're a lawyer.
 21 Okay?
 22 And, again, it doesn't really matter if you're a
 23 plaintiff's lawyer, defense lawyer, or what exactly
 24 that you do. But anyway, there's to be no mention of
 25 being a judge.

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 There's a couple other things that I stated that
2 I didn't want you testifying to. Obviously, you
3 can't come to conclusions and you certainly can't
4 testify as to the law.

5 But Mr. Wiley is going to talk to you -- or Mr.
6 Willey, I apologize, is going to talk to you about
7 what you can or cannot do.

8 Like I said, Mr. Daniel, if he does start
9 testifying to something that is objectionable, just
10 say "objection" for the record. The good news is Mr.
11 Lee will understand my ruling. So he'll know what he
12 can or cannot say.

13 So how about if we're going to take a break just
14 very quickly. Five minutes. Okay? Thank you.

15 (Whereupon, a brief recess was taken.)

16 MR. WILLEY: Judge, not to alarm you. But just
17 as I would in live testimony, during the course of
18 the video, when she refers to something I will check
19 it off. I would do that if she were live, but she's
20 not.

21 THE COURT: Who are we talking about?

22 MR. SMITH: Tami Melnick, she is next by video.
23 And then we will get Dustin Lee out of here. And
24 then after Dustin Lee, it is the officer, and is that
25 is what we plan on today.

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 (The jury enters the courtroom.)

2 THE COURT: All right. Y'all may be seated.
3 Welcome back. At this point in time the next witness
4 is Tami Melnick. My understanding is that it's by
5 deposition.

6 MR. SMITH: Yes, ma'am.

7 THE COURT: Ladies and gentlemen, a deposition
8 is simply testimony given by a witness. It is
9 usually taken at a lawyer's office or the courthouse
10 where everyone has an opportunity to ask that witness
11 questions.

12 And again, you are to judge that just as if she
13 were sitting here testifying. Are you ready?

14 MR. SMITH: Yes, ma'am.

15 THE COURT: Okay, let's go ahead and play it.

16 (Video deposition being played of Tami Melnick.)

17 MR. DANIEL: Your Honor, may we approach about
18 one thing while this is being queued up?

19 THE COURT: You may.

20 MR. WILLEY: I don't know how high it is. If
21 it's too loud. Let us know on the volume.

22 (Off-the-record discussion held.)

23 THE COURT: It is their witness, if they want it
24 up there, they can have it up. Just play it.

25 THE COURT: Okay. Turn that off and call your

RECROSS EXAMINATION OF HAUPT BY MR. DANIEL

1 next witness.

2 MR. WILLEY: We call Dustin Lee.
3 Thereupon,

4 DUSTIN LEE

5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WILLEY:

9 Q Mr. Lee, would you please introduce yourself to
10 this jury?

11 A I'm Dustin Lee.

12 Q And, Mr. Lee, what do you do for a living?

13 A I have a private law firm on Hilton Head. So
14 I'm a solo practitioner.

15 Q Okay. How long have you been a lawyer?

16 A I got sworn in, I believe it was November 17th
17 of 2008. So that puts me not quite at nine years yet.

18 Q Okay. And are you married?

19 A Yes.

20 Q And where do y'all live?

21 A We live in Bluffton.

22 Q And you are here today because you were a
23 witness to a wreck that occurred on November 7th, 2014; is
24 that correct?

25 A Yes.

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q And are you familiar with the area on 278 where
2 this occurred?

3 A Yes. I was raised on Hilton Head in the area,
4 so I am. Thank you.

5 Q You travel that road frequently?

6 A I do.

7 Q You know there's a Yummy House, Batters' Box,
8 and Dunkin' Donuts all to the right down frontage road?

9 A I definitely know that Dunkin' Donuts is still
10 there, but --

11 Q Okay. Fair enough.

12 And earlier we had a drawing. I'll just
13 show this to you as best I can. You -- with the Judge's
14 permission, you can actually step down, if that's
15 agreeable.

16 THE COURT: Certainly, if he'd like to.

17 THE WITNESS: All right.

18 (Witness complies.)

19 BY MR. WILLEY

20 Q Mr. Lee, I will submit to you that this is 278.
21 Okay? And back over here is the Dunkin' Donuts. All
22 right.

23 And this is roughly a fair depiction of
24 that intersection as you remember it?

25 A Basically, yes. Of course, this is South Park

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Road, it's kind of a frontage road right here in front of
 2 Dunkin' Donuts.
 3 Q Right.
 4 A It kind of goes parallel with 278.
 5 Q Right. Let me see if we have a picture.
 6 A Basically that curves around the front there.
 7 Q Are you talking about this right here, this is
 8 Southwood Park Drive?
 9 A Yes.
 10 Q You got the Yummy House here, correct?
 11 A Yes.
 12 Q And the Dunkin' Donuts back over here.
 13 A Yes. I knew that the Dunkin' Donuts was there.
 14 The Yummy House is new to me.
 15 Q Okay. The Dunkin' Donuts has a front patio here
 16 with some umbrellas on it. Is that what you recall? Do
 17 you recall that?
 18 A I don't recall going in that direction. That's
 19 kind of new in my general vicinity of where I was.
 20 Q All right. And on this particular day,
 21 November 7th, 2014, you're headed east on 278, correct?
 22 A Yes. Kind of deeper onto the island. I think I
 23 was going to where Sam's Club used to be in Port Royal
 24 Plaza.
 25 Q Right. So if we take this, put it like that,

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 this is the Defendant, Mr. Johnson's vehicle. And you
 2 recall seeing his vehicle at that time, correct?
 3 A Yes.
 4 Q Okay. And this "H" depicts Ms. Hood's vehicle.
 5 And you recall seeing her vehicle?
 6 A Yes.
 7 Q Okay. And then down here, on the other lane,
 8 the outside lane here, we've drawn a box, and who would
 9 that be?
 10 A That would probably be me.
 11 Q Okay. And between and you Ms. Hood, there were
 12 no other vehicles, correct?
 13 A None that I recall.
 14 Q Okay. As you recall, it was you in the outside
 15 lane, her up ahead-on the inside lane, correct?
 16 A Yes.
 17 Q Okay. And prior to this wreck, had you seen
 18 Ms. Hood's vehicle?
 19 A I was in the right lane and her vehicle had
 20 passed me heading the same direction, just a little while
 21 before.
 22 Q Okay. And as she passed, were you able to
 23 discern anything about -- about her vehicle?
 24 A I remember it was South Carolina veterans
 25 license plate, and it was kind of a third row, a crossover

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 type vehicle. It reminded me a lot of -- I have a best
 2 friend from growing up, his wife has a Chrysler Pacifica,
 3 not the new minivan one, but kind of the older style, so
 4 it looked like that, kind of curved in back, third row,
 5 darker color, crossover vehicle.
 6 Q And this -- this picture here is all banged up,
 7 but this is roughly what you remember as her vehicle
 8 before the wreck?
 9 A Yes. And as I said, I saw on the back, the
 10 South Carolina veterans license plate.
 11 Q Correct. Okay. You can take your seat.
 12 A Yes, sir. Excuse me.
 13 Q Now, Mr. Lee, as you were traveling down 278,
 14 your vehicle had automatic headlights, correct?
 15 A Yes, I -- I had them on.
 16 Q Okay. And what kind of vehicle were you driving
 17 at the time?
 18 A It's a Genesis. It's got -- I believe they're
 19 Xenon headlights. So it's a four-door sedan, rear wheel
 20 drive. It's silver in color.
 21 Q Okay. And those Xenon headlights, why -- why is
 22 that important to you? What is a Xenon headlight?
 23 A Xenon headlights are -- they're a bit brighter,
 24 in my opinion. I don't know, there's the marketing out
 25 there, but I've got a truck that I got back when I was in

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 college, and so generally I drive a car with better
 2 headlights when I'm at night just because -- especially if
 3 I'm going in back roads or, you know, during the
 4 wintertime, or if I'm going somewhere kind of on island.
 5 It's not very well lit in the low country at night, so it
 6 just lights up the road a little bit better because my
 7 truck, I got to put the fog lights on to kind of compare a
 8 little bit.
 9 Q And on this particular day, where were you
 10 headed to?
 11 A I was either going to Sam's Club or to Kroger,
 12 or both. There's a Kroger kind of mid-island, where the
 13 mall used to be a long time ago.
 14 Q Okay. So you were going out to do some grocery
 15 shopping and whatnot?
 16 A Exactly.
 17 Q All right. So you planned to be out for a
 18 little while, right?
 19 A For, you know, however long it'd take me to go
 20 through those stores exactly.
 21 Q Past dark?
 22 A Yes.
 23 Q Okay. And at the time of this wreck, you did
 24 not see anything after the first collision, correct?
 25 A I did not.

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q Okay. And why is that?

2 A I was -- I know you got your --

3 Q You can come show it, if you want. You can step

4 down if that's easier for you.

5 A Okay. It may make better sense with the photo.

6 Q Right.

7 A So I was coming up this direction. I don't know

8 if this is accurate as to distance, per se. But as I was

9 coming up here, I saw -- there was a vehicle kind of

10 coming out, I kind of -- just a bad feeling as I saw

11 something going on there. I started hitting my brakes.

12 This vehicle, the H vehicle, kind of went

13 over. This car was here -- I was able -- this kind of -- it

14 happened really quickly, because I was still at -- I guess I

15 was slowing down, but I was close enough where I was kind of

16 myself trying to avoid this accident. I was -- I glanced

17 very, very quickly at this J vehicle. I saw it was a car.

18 Of course, I'd seen this car was pulling out, but then this

19 car went kind of over, and there are bushes and some other

20 stuff right here, so then my visibility wasn't there.

21 After that, I kind of pulled up to the right

22 so I could -- my adrenaline was really pumping, but I pulled

23 over to the right so I could try to call 911, so I got all

24 the way off the road.

25 Did I answer your question?

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 time, I don't know whether it was there or not.

2 Q Okay. You haven't been there recently. Okay.

3 Thank you, sir. Take your seat.

4 A (Witness complies.)

5 Q And so after you saw the wreck, you indicated

6 that you went up 700 or so feet or --

7 A I don't know exactly how far it would be. I

8 believe it was before. There's a community there called

9 The Oaks that has their sign. I think I was before that

10 sign. I don't know exactly how far that would be, but I

11 pulled all the way over right to get out of 278 William

12 Hilton Parkway completely, and parked on the side of the

13 road.

14 Q All right. And we -- we've heard that somebody

15 beat you to the 911 call. But explain your sequence of

16 trying to dial -- to try to dial 911.

17 A I had that car for about a month, so I pressed a

18 little button, and I think I said, "Call 911." And it

19 said, "I'm sorry, I don't get it. Call 911. I'm sorry."

20 So then -- then I said, "Call Beaufort County

21 dispatch." Because through my private law practice,

22 sometimes I have to call law enforcement, et cetera, so I

23 pressed the button and said, "Call Beaufort County

24 dispatch." Same thing. So I had -- I parked the car, I

25 turned off the radio, and then I had to dig. I have -- it's

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q Yes. And in this picture, you can actually see

2 those bushes a little bit better than in my co-counsel's

3 drawing. He didn't go to art school, as he said.

4 So at the time of this wreck, you were

5 actually so close that you thought you might be involved

6 in it; is that accurate?

7 MR. DANIEL: Objection. Mischaracterization.

8 THE COURT: Okay. Rephrase it, if you would.

9 BY MR. WILLEY

10 Q Okay. Explain, again, why -- why you were

11 slowing down as you saw that car come out?

12 A It looked like there was going to be, in my

13 opinion, some type of potential collision, so I slowed

14 down to get out of the way, as far as whether --

15 Q Okay. And you had your headlights on, your

16 Xenon headlights on?

17 A Yes. I have a little green indicator on my dash

18 that was on that showed my lights were on. My car, I keep

19 in the auto position unless I'm going in a gated

20 community.

21 Q Right. And at this particular entrance on the

22 278, this intersection, Mr. Johnson would have had a stop

23 sign there. Are you familiar with that or not? If not,

24 just say, "not."

25 A I am from maybe a year ago. At that particular

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 kind of in the charger between the console thing, so I had

2 to, I think, pull the thing out, unlock the phone, go

3 through the whole process, and then call. I don't know if I

4 dialed 911 or if I dialed Beaufort County dispatch, which I

5 think goes to the same place. But that was kind of the

6 delay.

7 Q And when you got finally connected through, what

8 did -- what did you learn?

9 A Well, I spoke with someone, I don't remember if

10 it was Hilton Head or what, and then I remember hearing

11 something along the lines of we're going to -- "this

12 person saw the accident." I believe they connected me to

13 someone else that kind of asked me what happened.

14 Q Okay. And when did you first hear the sirens

15 and the first responders?

16 A I don't remember exactly. It was before I

17 pulled out completely. I don't remember if I stayed an

18 extra minute or two afterwards, because as I said, my

19 adrenaline was really pumping. And just trying to --

20 because after I left, I end up going to Starbucks not too

21 far and getting a hot chocolate, just kind of sit down and

22 calm down a little bit.

23 Q And, Mr. Lee, at the time that Mr. Johnson

24 pulled out, you -- you could clearly see Ms. Hood's SUV,

25 correct?

DIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 A They were both still in my sight.
 2 Q Okay. And at the time that Mr. Johnson pulled
 3 out, you were able to see Mr. Johnson, correct?
 4 A I was able to see, again, that it was a car. I
 5 couldn't tell you what type or make, model, of car, but I
 6 knew there was a car pulling out. I could see the H
 7 vehicle as well.
 8 Q Okay. And Ms. Hood would have actually been
 9 closer in distance to Ms. Johnson than you were at that
 10 point, correct? You were behind her?
 11 A Yes, I was behind her.
 12 MR. WILLEY: Thank you, sir.

CROSS EXAMINATION

14 BY MS. SUTTIE:
 15 Q Good afternoon, Mr. Lee.
 16 A Good afternoon.
 17 Q I'm Madison Suttie, I'm here for the Defendant.
 18 You answered a number of questions about
 19 what you witnessed. I want to start from kind of the end,
 20 if you will.
 21 You called 911, correct?
 22 A Yes.
 23 Q Would it have been within one or two minutes of
 24 you witnessing the accident?
 25 A I thought it was very close. When I pulled

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 over, as I said, however long it took me to kind of get
 2 over, press the buttons on the car a few times, and
 3 actually connect. And if I had to guess, I'd say it was
 4 within that two-minute time period.
 5 Q In other words, it was a fast turnaround, the
 6 connection.
 7 A It was kind of as fast as I could, again, pull
 8 over, park, do all that with my adrenaline pumping.
 9 Q And you're familiar with that stretch of road on
 10 Highway 278?
 11 A Yes.
 12 Q Okay. And are there any streetlights on in that
 13 area?
 14 A Not that I recall. Hilton Head is not very well
 15 known for having a lot of kind of -- I went to school at
 16 USC in Columbia. And when you kind of leave there, you
 17 got those big overhead lights. Again, I don't recall any
 18 then, and I still don't really remember any now.
 19 Q I did, too. You're right about that.
 20 But does it get fairly dark at night along
 21 those stretches of road?
 22 A Yes. And in kind of in general, again, there
 23 aren't any overhead streetlights. So you're kind of on
 24 your own as far as that's concerned.
 25 Q And from what you recall, at the time of the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 accident, was it getting dark?
 2 A Yes, it was getting dark.
 3 Q In your opinion, as a driver on the road at that
 4 night, did you feel like you had to have your headlights
 5 on ---
 6 MR. WILLEY: I'm going to object, Your Honor.
 7 He's not an expert witness. He's not qualified to
 8 give opinion testimony. She can ask him about his
 9 observations, what he saw or heard.
 10 THE COURT: Agreed. Sustained.
 11 BY MS. SUTTIE:
 12 Q Were there other vehicles on the road that night
 13 besides you and Mrs. Hood and Mr. Johnson?
 14 A There were. There was some traffic coming the
 15 other way, and there were -- I don't remember, at the
 16 exact time if there were cars behind me. But there were,
 17 of course, other cars on the road as a general principle.
 18 Q Of all those other vehicles, did anyone else
 19 have their headlights off, from what you recall?
 20 A Not that I recall. Everyone, again, that I
 21 recall immediately seeing around me had their headlights
 22 on.
 23 Q That brings me back. When did you first notice
 24 this vehicle?
 25 A I was in the right lane, and it passed me on the

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 left-hand side.
 2 Q And was she tailgating?
 3 MR. WILLEY: Objection, Your Honor.
 4 THE COURT: Okay. Sustained. It's not
 5 appropriate.
 6 Ladies and gentlemen, just strike that question.
 7 BY MS. SUTTIE
 8 Q When Mrs. Hood's vehicle passed you, you said
 9 that you had looked and you noticed a veterans tag; is
 10 that correct?
 11 A Yes. There was a South Carolina veterans tag.
 12 Q What made you notice her veterans tag?
 13 A It was, again, something that I just recall
 14 specifically on that particular evening. I guess when I
 15 was younger, I actually watched, it was like a Jason
 16 Bourne movie. I saw him remember all the license plates
 17 when he came out. So certain cars, I would, for better,
 18 for worse, kind of just remember license plates. So it as
 19 that, you know, again, going past me, I remember that
 20 particular vehicle again.
 21 I don't know if that answers your question.
 22 Q Is there -- it kind of does.
 23 But did you notice that the Plaintiff's SUV
 24 traveling behind you didn't have lights on; is that
 25 correct?

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 A As I was traveling, again, east on 278, the -- I
 2 guess the H car --
 3 Q We can pull this out. Okay?
 4 A No, it's fine. I -- I remember that.
 5 The H car, I don't remember having the
 6 headlights on. I remember it was either daytime running
 7 lights or it was parking lights. I couldn't tell you which,
 8 but I -- I remember it did not have its headlights on.
 9 Q And you were shown a photo of Mrs. Hood's
 10 vehicle. It was a darker in color vehicle, right?
 11 A Yes.
 12 Q And did you agree it was difficult to see at the
 13 time; is that correct? When it was behind you. Sorry,
 14 when it was behind.
 15 A Yes, it was -- it was difficult to see.
 16 Q Was that because the headlights weren't on?
 17 A Again, that certainly made it quite a bit more
 18 difficult to not see. And, again, it was dark in color
 19 and the headlights were not on. So, again, it was kind of
 20 there.
 21 Q You let Mrs. Hood's vehicle pass you. You moved
 22 into the right lane and let her pass. Do you -- can you
 23 estimate how many cars lengths ahead of you that she got
 24 by the time the collision had happened? I mean, was there
 25 a fair distance or --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 A It was -- I mean, I could still see everything.
 2 I played baseball growing up, so I kind of said it was at
 3 least three pitcher's mounds, which I think is 60,
 4 65 feet. So we're looking at more -- probably at least
 5 200 feet in front of me. But I couldn't tell you -- and
 6 it wasn't, you know, two miles down the road. It was
 7 definitely still clear, but it was however many cars can
 8 fit in that. If you've got a car that's 15 feet long,
 9 then you've got a minimum of ten cars to be 150 feet if
 10 that's --
 11 Q So ten cars between you and --
 12 A That would be probably a minimum. But, again,
 13 it wasn't a mile or anything like that. I could still see
 14 it well enough.
 15 Q But there was a fair distance between the point
 16 -- between you and the Plaintiff's vehicle after she had
 17 passed you and the collision; is that fair?
 18 A Yes.
 19 Q At any point from the moment you first noticed
 20 Mrs. Hood's vehicle to the moment that you called 911, did
 21 you ever see the vehicle with its low beams on?
 22 A As far as the H vehicle?
 23 MR. WILLEY: Objection, Your Honor. Calls for
 24 speculation. The vehicle was up ahead of him. I
 25 don't know --

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 THE COURT: Okay. He can answer if he knows.
 2 BY MS. SUTTIE
 3 Q Based on your observation.
 4 A As far as the H vehicle, the Ms. Hood vehicle, I
 5 never saw that vehicle with its headlights on. Just that
 6 I saw it with its either daytime running lights or its
 7 parking lots on.
 8 Q Did those daytime running lights or parking
 9 lots, in your opinion, what you observed, did they
 10 illuminate the vehicle at all?
 11 MR. WILLEY: I'm going to object, Your Honor.
 12 THE COURT: Okay. At this point, I'm not sure
 13 he can answer that.
 14 MS. SUTTIE: Okay. Let me confer with --
 15 (Off-the-record discussion held.)
 16 MS. SUTTIE: Sorry for the brief intermission.
 17 BY MS. SUTTIE
 18 Q As a licensed driver, did you feel that you
 19 needed --
 20 MR. WILLEY: Objection, Your Honor. This is the
 21 same question with a different wording.
 22 MS. SUTTIE: I'm asking about his opinion --
 23 observation of his surroundings.
 24 THE COURT: Again, I think it calls for
 25 speculation. I think you need to move on.

CROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 MS. SUTTIE: Okay.
 2 (Pause.)
 3 BY MS. SUTTIE
 4 Q You called 911 after this accident, correct?
 5 A Yes, or the Beaufort County dispatch, because I
 6 believe it goes to the same general line.
 7 Q Sure. And did you tell 911 dispatch or the
 8 operator that Ms. Hood's vehicle only had its parking
 9 lights on, or running lights?
 10 A I believe I told them it only had either it's
 11 parking lights or daytime running lights. I may have said
 12 DRL, but I don't -- just daytime running lights. But --
 13 Q Okay. Why did you feel that was -- why did you
 14 do that? Why did you tell the operator that it only had
 15 daytime running lights on?
 16 A Again, I don't recall other than, you know, it
 17 was kind of that almost dark, not quite dark time, and it
 18 just kind of hit me based on other vehicles on the road
 19 had their headlights on at that time that I saw.
 20 MS. SUTTIE: No further questions. Thank you.
 21 MR. WILLEY: Just briefly, Mr. Lee.
 22 REDIRECT EXAMINATION
 23 BY MR. WILLEY:
 24 Q Back to my trusty Picasso here.
 25 No doubt in your mind that Ms. Hood's

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 vehicle had its running lights on when it was up ahead of
2 you, correct?

3 A As it was, I guess, passing me, it had either
4 its daytime running lights or its parking lights on. As
5 far as what it had on at the time, I'm not sure. It was
6 ahead of me.

7 Q Correct. And you don't recall the exact timing
8 of how long it had been since the SUV passed you when the
9 wreck occurred, correct?

10 A The exact time, no, I don't.

11 Q Well, it -- what you know is that enough time
12 had elapsed for her to at least get a ten-car length, a
13 gap, between you and herself, correct?

14 A Yes.

15 Q Probably more?

16 A Again, it wasn't 200 cars, but it was --

17 Q Right. But at that point, you could still see
18 her?

19 A I could -- could I -- I could still see the back
20 of her vehicle, and I could see, I believe, you have as
21 the J car coming out.

22 Q So at that point, where she's a minimum ten car
23 lengths away from you, you could still see her up ahead,
24 correct?

25 A Yes.

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 Q And you could see the Defendant's vehicle, which
2 was even farther away, correct?

3 A Yes.

4 Q Okay. And if you had not had your headlights
5 on, do you believe that you still would have been able to
6 read her license plate as she went by?

7 A I recall reading her license plate initially,
8 when it was right almost next to me. So it would probably
9 be like this court reporter's head. So it was very close
10 in distance when I first read it.

11 So, again, I had my -- my headlights on. So
12 I think -- and, again, if I didn't, I don't know, but I had
13 my lights on, and I saw it passing me. So I'll let that
14 answer your question.

15 Q Do you remember saying that without the lights,
16 you think you still could have read the license plate?

17 A Well, again, I initially paid attention to it
18 when it was right at the hood of my car.

19 Q And is that because at that particular point, it
20 wasn't a hundred percent dark yet, correct?

21 A It was probably 90 percent, but not a hundred
22 percent. It was -- it was getting there, but it wasn't
23 quite. It wasn't pitch black, by any means.

24 Q Right. And Ms. Hood's vehicle would have been
25 closer to Mr. Johnson at the point of impact, when he ran

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 into the side of her, than it would have been to you,
2 correct?

3 A Again, I was farther back. So were those two
4 cars closer together, absolutely.

5 Q So at the point of impact, clearly Ms. Hood's
6 car was closer to Mr. Johnson, correct?

7 A Yes. Again, I was in that right lane. I
8 eventually got in the left lane to get around it.

9 Q And at that time, you could still see Ms. Hood's
10 vehicle, correct?

11 A At the --

12 Q Before the time --

13 A Right before the collision occurred, I could
14 still see the two vehicles.

15 Q Right. You could still see Mr. Johnson's
16 vehicle, right?

17 A Yes, with my -- again, I had my headlights on,
18 but I could see them.

19 Q Right. And when this wreck occurred, you
20 slammed on your brakes, I think you testified, to get over
21 because you didn't want to get caught up in it, correct?

22 A I don't know if I slammed, but I definitely
23 decelerated and kind of -- it was more than a standard,
24 just kind of turn the cruise control off or something type
25 slow down. It was more of a deliberate slow down, but I

REDIRECT EXAMINATION OF D. LEE BY MR. WILLEY

1 don't -- I don't think that I slammed on the brakes, like
2 to squeal or anything like that.

3 Q My point is, as you went by this collision, the
4 second collision, you didn't look over. You were focused
5 on what you were doing to try to stay out of it, correct?

6 A The -- I saw the H vehicle hit kind of that
7 median section --

8 Q Right.

9 A -- and then kind of right after that I was
10 focused on making sure I got around whatever this was
11 without hitting anyone, damaging any property. And then I
12 thought as soon as the second I kind of got past there,
13 pull over, let's call 911.

14 Q Thank you, sir.

15 THE COURT: Anything further?

16 RE-CROSS EXAMINATION

17 BY MS. SUTTIE:

18 Q Mr. Lee, do you recall whether the accident
19 happened within moments of Ms. Hood's vehicle passing your
20 vehicle?

21 A Moments, like two or three seconds, no.

22 Q How many seconds; do you recall?

23 A I -- again, I don't recall exactly. I'd say
24 probably a minimum of 25, 30 seconds, a maximum of maybe a
25 minute and a half, somewhere in that time range. And,

RECROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 again, it's -- it was --
 2 Q Two years ago?
 3 A Three -- almost three years ago.
 4 Q More, yeah. But it was a short time frame,
 5 correct?
 6 A It was a relatively short time frame, yes.
 7 Q Do you recall how fast you were going that
 8 evening?
 9 MR. WILLEY: I'm going to object, Your Honor.
 10 It's not relevant how fast Mr. Lee was going.
 11 THE COURT: Can you tell me what the relevance
 12 is? Do you need to approach?
 13 MR. DANIEL: I think so.
 14 THE COURT: Sure.
 15 (Off-the-record discussion held.)
 16 THE COURT: You can answer the question,
 17 Mr. Lee.
 18 THE WITNESS: Okay.
 19 BY MS. SUTTIE
 20 Q Do you recall how fast you were going?
 21 A I had my cruise control set at 49 miles per
 22 hour.
 23 Q What made you choose 49 miles per hour?
 24 A It's -- again, I have these weird things. It's
 25 kind of like I don't like to tell people necessarily to be

RECROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 its headlights on?
 2 A Is that the J car that was crossing?
 3 Q Yes.
 4 A I don't necessarily. As I said, I saw from a
 5 distance, from whatever distance that was, that there was
 6 a car coming across. But, you know, it's almost three
 7 years ago. I noticed the car from that distance coming
 8 across, and as I said, I just don't recall at this point
 9 why I kind of had that feeling that something was going to
 10 happen kind of immediately thereafter.
 11 MS. SUTTIE: No further questions, Your Honor.
 12 THE COURT: Anything further?
 13 MR. WILLEY: May the witness be excused?
 14 THE COURT: Any objection?
 15 MR. DANIEL: Your Honor, just what we discussed
 16 earlier.
 17 THE COURT: Okay. Mr. Lee, you're excused. If
 18 I need you, I'll find you. Thank you.
 19 THE WITNESS: All right. Thank you.
 20 THE COURT: All right. Call your next witness.
 21 MR. WILLEY: Plaintiff calls Sergeant Welch.
 22 THE COURT: Come on, Sergeant Welch.
 23 Thereupon,
 24 SERGEANT JENNIFER WELCH
 25 was called as a witness, having been first duly sworn,

RECROSS EXAMINATION OF D. LEE BY MS. SUTTIE

1 somewhere at 9 o'clock, because they might be five, ten
 2 minutes late either way. So you say he there at 9:03.
 3 But in my private practice, when I have clients, they kind
 4 of joke, and they say "I only go five miles per hour over
 5 the speed limit." I say, "just go four over."
 6 Or they say, "Cops don't mess with me at
 7 five." I say, "go four over." So it's kind of a practice
 8 what you preach type thing. So, as I said, I try to really
 9 -- it's just kind of a habit I always get into.
 10 Q What's the speed limit on that stretch of road
 11 where the accident happened?
 12 A It was 45 miles per hour.
 13 Q And the accident happened within, you know, 25
 14 to 30, and less than a minute of Mrs. Hood's vehicle
 15 passing you, correct?
 16 A Yes.
 17 Q And she was ten car vehicles, at minimum, ahead
 18 of you; is that what you testified?
 19 A I believe so, yes, if you kind of calculate
 20 about 15 feet per vehicle.
 21 Q And you were going four over the speed limit?
 22 A Yes. I was -- I was basically speeding
 23 four miles per hour over, yes.
 24 Q Mr. Lee, one further question.
 25 Do you recall if Mr. Johnson's vehicle had

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 was examined and testified as follows:
 2 DIRECT EXAMINATION
 3 BY MR. WILLEY:
 4 Q Sergeant Welch, will you introduce yourself to
 5 the jury.
 6 A Sergeant Jennifer Welch. I've been with the
 7 Beaufort County Sheriff's Office since 2007, which is
 8 about ten years in August. Been working the road south
 9 and north for those ten years.
 10 Q And Sergeant Welch, are you still with the
 11 Beaufort County Sheriff's Office?
 12 A Yes, sir.
 13 Q I assumed they didn't let you borrow the uniform
 14 just for the day.
 15 Where did you go to college?
 16 A Delaware Valley College in Pennsylvania.
 17 Q Okay. And where did you attend the criminal
 18 justice academy?
 19 A Here in South Carolina, in Columbia.
 20 Q And when -- when approximately were you there?
 21 A That was February of 2008.
 22 Q And when you got out of the academy, where was
 23 your first job?
 24 A With Beaufort County.
 25 Q And at the time of November 7th, 2014, what was

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 your rank?
 2 A In 2007?
 3 Q November 7th, 2014.
 4 A '14, I was corporal.
 5 Q And so you have elevated through the ranks since
 6 that time?
 7 A Yes, sir.
 8 Q When you were a corporal in 2014, what were some
 9 of your primary duties with the sheriff's department?
 10 A Mainly the same as now, to respond to calls for
 11 service, 911 calls, motor vehicle collisions, traffic
 12 enforcement.
 13 Q And at that time, were you certified in accident
 14 reconstruction?
 15 A Yes.
 16 Q And what does that mean, just for the benefit of
 17 the jury?
 18 A Basically it's -- there are three classes.
 19 There's three phases. Both are two weeks long each, and
 20 it teaches you about the physics and basically all the
 21 math you have to do to figure out what happened in a
 22 collision.
 23 Q And is that obviously important to what you do
 24 with the Sheriff's Department?
 25 A Yes.

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 Q And respect to motor vehicle wrecks, what are
 2 your roles and responsibilities?
 3 A First and foremost would be injuries, and then
 4 making sure that the scene is safe and that no more
 5 injuries occur once we arrive. Then I would interview all
 6 parties, whether it be on scene or at the hospital, if
 7 they get transported. And then I would either complete a
 8 report, issue a ticket, if I felt need be.
 9 Q And Sergeant Welch, I'm going to hand you a copy
 10 of a code section, South Carolina code section. As part
 11 of your roles and responsibilities, are you --
 12 THE COURT: Hold on a second. Can I take a look
 13 at that?
 14 Do y'all need to come talk to me?
 15 (Off-the-record discussion held.)
 16 BY MR. WILLEY
 17 Q All right. Sergeant Welch, you would agree with
 18 me that when a driver is on the roadway they have certain
 19 responsibilities that -- you know, that they've got to
 20 look after, correct?
 21 A Correct.
 22 Q Like look where you're going, right?
 23 A Yes.
 24 Q Make sure it's safe before you cross a busy
 25 highway, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Correct.
 2 Q Okay. And those things are important to prevent
 3 harm to other folks, correct?
 4 A Correct.
 5 Q Now, I know it's been almost three years, but do
 6 you recall, based on reviewing your notes and report, this
 7 wreck that we're here about today?
 8 A Yes.
 9 Q Okay.
 10 MR. WILLEY: Your Honor, may Sergeant Welch step
 11 down?
 12 THE COURT: Yes.
 13 BY MR. WILLEY
 14 Q Sergeant Welch, can you describe to the jury,
 15 you know, what this image shows?
 16 A Yes. Right here in the middle, it is labeled
 17 William Hilton Parkway at 278. This direction towards me
 18 would be eastbound. This side would be westbound.
 19 Southwood Park Drive runs, as they discussed earlier, in
 20 front of Dunkin' Donuts and Yummy House, parallel to 278.
 21 Q And you were notified -- how did you get
 22 notified about this wreck?
 23 A By dispatch.
 24 Q And do you have any idea what happened prior to
 25 dispatch notifying you? Or do you -- you just get the

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 call straight from dispatch?
 2 A Straight from dispatch.
 3 Q Okay. And when you arrived, what did you see?
 4 A I saw the -- if we want to stick with the same
 5 picture that you have, the J vehicle was right around in
 6 here. And then Ms. Hood's vehicle had left skid marks
 7 across the grass, and then hit another vehicle over around
 8 in here somewhere, head-on.
 9 Q And did you interview all the witnesses at the
 10 scene?
 11 A Yes. The ones that stayed, yes.
 12 Q You didn't interview Mr. Lee, for example?
 13 A No, I didn't know who he was.
 14 Q Okay. But you were able to interview the
 15 Defendant, Mr. Johnson?
 16 A Yes.
 17 Q You were able to interview the Kucks?
 18 A Correct. I'm not sure if that was at the
 19 hospital or both on scene.
 20 Q Okay. And you were able to also interview
 21 Ms. Hood at the hospital?
 22 A Correct.
 23 Q Okay. And as far as when you got there, how
 24 would you describe the damage to Ms. Hood's vehicle? What
 25 did you observe?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A It was major damage.
 2 Q Was Ms. Hood already gone in the EMS when you
 3 arrived?
 4 A If I remember correctly, I believe she was on
 5 the grass right about here, where they were treating her,
 6 but I didn't have an opportunity to speak with her because
 7 they were treating her.
 8 Q Okay. And you spoke with her later?
 9 A Yes.
 10 Q All right. Thank you.
 11 Sergeant Welch, I'm just going to show this
 12 photograph here. Do you recognize this image?
 13 A Yeah. That would be the passenger side of
 14 Ms. Hood's vehicle.
 15 Q Okay. And is that a fair and accurate
 16 representation of the damage to Ms. Hood's vehicle as you
 17 observed it that day?
 18 A Yes, the damage to the side, yeah.
 19 Q To the side, correct.
 20 A Yeah.
 21 MR. WILLEY: Your Honor, at this time, we would
 22 move Plaintiff's Exhibit 3 into evidence.
 23 THE COURT: Any objection?
 24 MR. DANIEL: The side view?
 25 THE COURT: Just look at it.

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MR. DANIEL: The side view, no.
 2 THE COURT: Any objection?
 3 MS. SUTTIE: No objection, Your Honor.
 4 THE COURT: Without objection, it's in evidence.
 5 *(Whereupon, Plaintiff's Exhibit No(s). 3 marked*
 6 *for identification and received in evidence.)*
 7 BY MR. WILLEY:
 8 Q And Sergeant Welch, you were able to ascertain
 9 what about this damage? What did this damage tell you?
 10 A With my experience in I couldn't tell you how
 11 many accidents I've, it appeared to me that another
 12 vehicle, which I believe was Mr. Johnson's vehicle, hit
 13 that vehicle in the front passenger side close to the
 14 wheel. And due to her traveling, it then created the
 15 scratch marks down the end of the vehicle.
 16 Q And how many motor vehicle wrecks would you say
 17 you've investigated?
 18 A Being that I was on the traffic team for two
 19 years, I -- hundreds. I couldn't -- maybe even a
 20 thousand. I couldn't put a number on it.
 21 Q And you're still investigating traffic wrecks,
 22 correct?
 23 A Yes.
 24 Q More than your fair share of those wrecks for
 25 every nine minutes, according to your Department of Public

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 Safety?
 2 A Yes.
 3 Q Okay. Were you also able to get a look at this
 4 vehicle?
 5 A Yes.
 6 Q Okay. And was this a picture of Mr. Johnson's
 7 vehicle as you remember it?
 8 A Correct, yes.
 9 Q And was all -- this front-end damage existing to
 10 his vehicle at the time that you saw it?
 11 A Yes.
 12 Q Okay. And is this a fair and accurate
 13 representation of his vehicle, as you saw it?
 14 A Yes.
 15 MR. WILLEY: At this time, we would move to
 16 enter into evidence Plaintiff's Exhibit No. 4.
 17 THE COURT: Any objection?
 18 MS. SUTTIE: No objection, Your Honor.
 19 THE COURT: Without objection, it's in evidence.
 20 *(Whereupon, Plaintiff's Exhibit No(s). 4 marked*
 21 *for identification and received in evidence.)*
 22 BY MR. WILLEY:
 23 Q And just -- just so we're clear, was it your
 24 understanding that the entirety of this damage was caused
 25 by his impact with Ms. Hood?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Yes.
 2 Q Okay. As far as you know, Mr. Johnson did not
 3 impact another vehicle or object on the roadway that day?
 4 A Correct.
 5 Q I'll show you what I'll mark for ID as
 6 Plaintiff's 5. And this is an image of 276 looking down
 7 the eastbound lane. And this is the intersection area,
 8 and you're familiar with that intersection?
 9 A Yes.
 10 Q Okay. And can you -- let me step over here.
 11 Can you show the jury where Mr. Johnson's vehicle would
 12 have been located?
 13 A He would have been down here at the stop line
 14 and pulled out into this first lane.
 15 Q Okay. So as he began to pull out to the first
 16 lane, if you look left, this would be his view basically?
 17 A Correct, yes.
 18 Q And is this photograph a fair and accurate
 19 representation of that?
 20 A Yes.
 21 MR. WILLEY: Your Honor, at this time, we're
 22 going to move to enter into evidence Plaintiff's
 23 Exhibit 5.
 24 MS. SUTTIE: No objection, Your Honor.
 25 THE COURT: It's without objection. It's in

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 evidence.
 2 *(Whereupon, Plaintiff's Exhibit No(s) 5 marked*
 3 *for identification and received in evidence.)*
 4 BY MR. WILLEY:
 5 Q And Sergeant Welch, this book was talked about
 6 during opening. You familiar with the South Carolina
 7 Driver's Manual?
 8 A I've never actually held one or seen one, but --
 9 Q Okay.
 10 A I know they're one.
 11 Q I'm going to hand you one.
 12 What does that book say on the cover?
 13 A South Carolina Driver's Manual.
 14 Q Okay. And does that appear to be a fair and
 15 accurate copy of the driver's manual? Or are you just not
 16 familiar enough with it to say?
 17 A I'm just not familiar because I didn't -- I
 18 didn't get a license in South Carolina.
 19 Q Okay. That's fine.
 20 But you are familiar with the law as it
 21 relates to headlight usage in South Carolina, correct?
 22 A Correct.
 23 Q Okay. And one of your responsibilities in
 24 investigating a traffic accident, would be to cite a
 25 driver who wasn't following the law, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Correct, yeah.
 2 Q The statute specifically deals with when you
 3 have to have them on with respect to nighttime, correct?
 4 A Correct.
 5 Q All right. Another example might be, for
 6 example, if it got dark in the middle of the day, like, if
 7 we had an eclipse, right?
 8 A Correct.
 9 Q That would be an environmental factor that would
 10 require you to have your lights on, right? And we just
 11 had one of those.
 12 So let me ask you: On this particular day,
 13 at this particular time, was there any fog in the area?
 14 A No.
 15 Q Was there any snow in the area?
 16 A No.
 17 Q Was there any rain in the area?
 18 A No.
 19 Q Okay. Was there a fire nearby such as that it
 20 was creating smoke?
 21 A No.
 22 Q Okay. And finally, we didn't have an eclipse
 23 just before dark that day, did we?
 24 A No.
 25 Q Okay. So the only factor that, in this case

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Correct.
 2 Q Okay. And that statute requires, correct me if
 3 I am wrong, but it requires headlight use 30 minutes after
 4 sunset and 30 minutes before sunrise, correct?
 5 A Correct.
 6 Q Okay. And it also gives a list of other times
 7 when headlight usage might be required. You're familiar
 8 with that?
 9 A Yes.
 10 Q Okay. And can you tell this jury when some of
 11 those -- what those times are?
 12 A It would depend on the circumstance, such as
 13 maybe fog or snow. Rain is the big one. If there were
 14 some other kind of circumstance, like there was a fire in
 15 the area and you couldn't see the road maybe. Just as
 16 some examples.
 17 Q Okay. So the big one is when you have your
 18 windshield wipers on, correct?
 19 A Correct.
 20 Q Except if you have them on just intermittently
 21 for misting, then you're not required to, right?
 22 A I'm not familiar if it's got a subsection about
 23 that in there.
 24 Q But the other environmental factors that are
 25 spelled out are like fog and smoke, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 would have required the headlights, is whether or not it
 2 was 30 minutes after sunset, according to the statute,
 3 correct?
 4 A Correct.
 5 Q And in this case, when you spoke with
 6 Mr. Johnson, isn't it true that he actually told you that
 7 Ms. Hood hit him?
 8 A Yes.
 9 Q You remember -- you have that in your notes and
 10 remember that?
 11 A Yes.
 12 Q And upon looking at the damage from their
 13 vehicles, is there any doubt in your mind that actually he
 14 hit Ms. Hood?
 15 A No, there's no doubt in my mind.
 16 Q Based on your investigation in this case, how
 17 fast was Ms. Hood traveling?
 18 A I just put an estimated, which is what the
 19 actual speed limit of the road was. Because of the extent
 20 of the damage, I knew it was at least 45.
 21 Q You estimate around 45 miles an hour?
 22 A Correct.
 23 Q And there was no evidence in your investigation
 24 statement or otherwise that led you to believe that she
 25 was speeding, correct?

DIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MS. SUTTIE: Objection.
 2 THE COURT: Well, she can answer the question if
 3 she can answer it.
 4 THE WITNESS: Correct.
 5 BY MR. WILLEY:
 6 Q There was no information in your investigation,
 7 based on your investigation, that led you to believe she
 8 was speeding, correct?
 9 A Correct. There were not any skid marks behind
 10 the car.
 11 Q And you did not write Ms. Hood a citation for
 12 this incident, did you?
 13 A No.
 14 MR. WILLEY: Thank you. Nothing further, Your
 15 Honor.
 16 MR. DANIEL: May we approach?
 17 THE COURT: You may.
 18 (Off-the-record discussion held.)

CROSS EXAMINATION

19
 20 BY MS. SUTTIE:
 21 Q Hello. I'm Madison Suttie.
 22 You were asked a number of questions about
 23 statute, 30 minutes, and all of this kind of stuff, when
 24 you should have your headlights on; is that correct?
 25 A Yes, yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 Q You can pull people over for having no
 2 headlights on; is that fair?
 3 A Yes.
 4 Q And does the visibility of a vehicle go into
 5 that determination?
 6 A Yes.
 7 Q So if you were having trouble seeing a vehicle
 8 on a roadway, you'd pull it over; is that fair?
 9 A Correct, yeah.
 10 Q If it is 28 minutes past sunset, and you've
 11 having issues seeing that vehicle and you assume other
 12 drivers on the road have the same difficulty, would you
 13 pull that vehicle over?
 14 A Yes.
 15 Q You were shown some pictures of damage that you
 16 would assume that Mr. Johnson and Mrs. Hood's vehicle, by
 17 Mr. Willey -- bear with me one second.
 18 Do you recall off of the top of your head
 19 the tag on Mrs. Hood's vehicle?
 20 A The license plates, no.
 21 Q Would you like to see a copy of your accident
 22 report to refresh your recollection as to the license
 23 plate?
 24 A If you wanted the exact number, yes.
 25 MR. WILLEY: We can stipulate to the license

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 plate number.
 2 MR. SMITH: She can just read it, Your Honor.
 3 MR. WILLEY: Yeah, she can just read it. That's
 4 fine.
 5 BY MS. SUTTIE
 6 Q Here you go. Can you read the license plate for
 7 me for Mrs. Hood's vehicle?
 8 A It's V32138.
 9 Q Okay. And I'm going to show you a picture and
 10 ask you if that is the same license plate number on that
 11 vehicle.
 12 A Yes.
 13 Q Okay. So fair to say, does that look like the
 14 Plaintiff's vehicle in that photo I just handed to you?
 15 A Yes.
 16 Q Okay. You can keep that photo in front of you.
 17 You were also shown -- this is Plaintiff's
 18 exhibit, but I can show you on the large copy -- this is
 19 the damage to the side of Mrs. Hood's vehicle, correct?
 20 A Yes.
 21 Q And that was the damage you found contributed --
 22 caused by the collision with Mr. Johnson's vehicle; is
 23 that fair?
 24 A Yes.
 25 Q Okay. There was another impact in this

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 incident, correct?
 2 A Yes.
 3 Q And that was with Mrs. Hood's vehicle and the
 4 vehicle belonging to the Kucks?
 5 A Correct.
 6 Q Okay. I'm going to show you a photo and ask you
 7 if that looks representative of the damage to the front of
 8 the Plaintiff's vehicle caused by the collision with the
 9 Kucks?
 10 A Yes, correct.
 11 Q Little more severe than the one with
 12 Mr. Johnson; is that fair?
 13 A Yes, very fair.
 14 Q And you were shown a photo of Mr. Johnson's
 15 vehicle after the accident. Do you remember all these
 16 years later whether his front bumper had fallen off or
 17 not, in the accident?
 18 A I remember there being debris on the roadway,
 19 but I don't remember specifically a bumper on the road.
 20 Q Okay. And then the third vehicle, belonging to
 21 the Kucks, does this look like that vehicle to you?
 22 A Yes.
 23 Q That's pretty severe damage, correct?
 24 A Correct, yes.
 25 Q Okay. And that was caused by the collision with

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

- 1 the Plaintiff's vehicle and the Kucks; is that fair?
- 2 A Correct, yes.
- 3 Q You were asked by Plaintiff's counsel whether or
- 4 not you performed a full accident reconstruction, and you
- 5 didn't in this case, correct?
- 6 A Correct.
- 7 Q Okay. So you wouldn't have any opinion on
- 8 whether Mrs. Hood was pushed into oncoming traffic or
- 9 whether she overcorrected; is that fair?
- 10 A I don't think that I would need to take
- 11 measurements to form that opinion.
- 12 Q Okay. Is it correct to say that it could have
- 13 been a bit of both?
- 14 A Both what?
- 15 Q Of being -- of overcorrecting and also from the
- 16 collision with Mr. Johnson?
- 17 A Yes, I would say they both contributed.
- 18 Q Okay. Can you say how much either one of those
- 19 contributed to the --
- 20 A To that, I would need to do the math for.
- 21 Q And you didn't do the math in this?
- 22 A No, ma'am.
- 23 Q What time did you arrive at the subject -- at
- 24 the accident scene?
- 25 A Is it okay to refer to the report?

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

- 1 A That the headlights were not on.
- 2 Q And that they were not on that night?
- 3 A Correct.
- 4 Q So her car was still on after the accident, but
- 5 her headlights weren't on?
- 6 A Correct.
- 7 Q But the running lights were still on?
- 8 A When I referred to the camera, the running
- 9 lights were not on, which would be consistent with the
- 10 brake lights, because I pulled in behind her when I
- 11 arrived on scene.
- 12 Q Bear with me one second.
- 13 You were shown an aerial view of the
- 14 intersection.
- 15 MS. SUTTIE: You've already marked it?
- 16 MR. WILLEY: I had marked it.
- 17 MS. SUTTIE: Okay. Would you mind if I showed
- 18 the witness?
- 19 MR. WILLEY: No, sure.
- 20 MS. SUTTIE: Thank you very much.
- 21 BY MS. SUTTIE
- 22 Q Can you see this okay?
- 23 A Yeah, I can -- for the most part, I can see it.
- 24 I know the intersection well enough.
- 25 Q Okay. So Mr. Johnson made his turn starting

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

- 1 Q Yes, of course.
- 2 A Arrived at 1809, which would be 6:09.
- 3 Q Okay. 6:09, and from what I understood,
- 4 Mr. Hood was still there sitting on the grass; is that
- 5 correct?
- 6 A Correct.
- 7 Q Okay. When you arrived on the scene, was
- 8 Mrs. Hood's vehicle still running?
- 9 A I believe it was, yes.
- 10 Q And how did you make that determination?
- 11 A I could hear it running. The engine was on.
- 12 Q Does your squad car have an in-car video?
- 13 A Yes.
- 14 Q Did you review your in-car video prior to
- 15 completing your accident report?
- 16 A I did.
- 17 Q Why did you do that?
- 18 A Because there were -- there was discussion about
- 19 her lights being on, and I had different stories about --
- 20 they weren't all matching.
- 21 Q The Plaintiff's running lights weren't on in
- 22 that video; is that correct?
- 23 A Correct.
- 24 Q What does that indicate to you about her
- 25 headlights?

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

- 1 here on Southwood Park Drive; is that correct?
- 2 A Correct.
- 3 Q And it is legal to make a left turn onto this
- 4 westbound lane of 278?
- 5 A Correct.
- 6 Q As long as you check for any oncoming hazards,
- 7 fair?
- 8 A Yes.
- 9 Q That are visible, fair?
- 10 A Yes.
- 11 Q So was Mrs. Hood's vehicle traveling in this --
- 12 what lane would you call this on eastbound?
- 13 A I call it the number one lane.
- 14 Q Number one lane. Okay. She was traveling here.
- 15 When you arrived at the accident, where was
- 16 this vehicle?
- 17 A It was on the white lines on the other side of
- 18 the road.
- 19 Q All the way over here?
- 20 A Yes, ma'am.
- 21 Q So she went over to -- in lane one, she went
- 22 over this median; is that correct?
- 23 A Correct, yes.
- 24 Q And this turning lane?
- 25 A Yes.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 Q And landed all the way over here?

2 A Yeah. A little farther down on the road,

3 probably down by where that -- in between the two arrows.

4 Q Okay. Oh, so all the way down here?

5 A Yes, ma'am.

6 Q And so if Mr. Johnson was trying to come

7 straight across, that collision happened around here; is

8 that fair?

9 A Yes.

10 Q And she ended up between the two arrows?

11 A Somewhere around that area, yes.

12 Q Thank you.

13 Did you give Mr. Johnson a citation for

14 this incident?

15 A I don't recall. Not according to the report. I

16 would have listed it on the report.

17 Q And did you note on your report how many yards

18 away Ms. Hood's vehicle ended up from the collision with

19 Mr. Johnson?

20 A I did not.

21 Q Would it have been about, if you were to

22 estimate based on what we discussed from the picture,

23 about 100 hundred to 200 yards?

24 A I would say around a hundred.

25 Q And do you recall what speed Mr. Johnson was

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 going at the time of the accident?

2 A I put 15. It's hard to accelerate from a stop

3 sign that fast, so --

4 Q Right. And you can't really gain that much

5 motion.

6 A Right.

7 Q And you put 45 on your accident report, correct?

8 A For the speed limit?

9 Q For Ms. Hood's speed limit.

10 A Right, as an estimate.

11 Q And that was just an estimate based on the speed

12 limit that was posted?

13 A Correct. I take that into account and the

14 damage, so it could have been faster or slower.

15 MS. SUTTIE: I'd like to offer in the photo that

16 I have shown earlier into evidence.

17 THE COURT: Which ones are they? Have you

18 marked them?

19 MR. SMITH: May I see them?

20 MS. SUTTIE: Yeah, sure.

21 THE COURT: These aren't duplicates of what's

22 already in evidence?

23 MR. WILLEY: No, ma'am.

24 THE COURT: Okay. Any objection?

25 MR. WILLEY: To those three, no.

CROSS EXAMINATION OF WELCH BY MS. SUTTIE

1 THE COURT: Okay. So let's go ahead and mark

2 those for the court reporter. Just go give them to

3 the court reporter.

4 *(Whereupon, Defendant's Exhibit No(s) 1-3*

5 *marked for identification and received in evidence.)*

6

7 THE COURT: Anything, Mr. Willey?

8 MR. WILLEY: Just briefly.

9 THE COURT: Yes, sir.

REDIRECT EXAMINATION

10

11 BY MR. WILLEY:

12 Q So Sergeant Welch, she asked you whether or not

13 if there had been overcorrecting, if that could have also

14 contributed along with the impact of Mr. Johnson.

15 In this case, did you find any evidence

16 that Ms. Hood overcorrected?

17 There were no skid marks, correct?

18 A Well, she -- correct.

19 Q And she ended up just over the median in this

20 other lane down aways, correct?

21 A Correct.

22 Q Okay. The physical evidence clearly establishes

23 that the impact between her vehicle and Mr. Johnson's

24 vehicle was quite an impact, correct?

25

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MS. SUTTIE: Objection.

2 MR. WILLEY: Basis?

3 MS. SUTTIE: Mischaracterization.

4 THE COURT: Okay. I don't know if she actually

5 testified as to that.

6 MR. WILLEY: I'll rephrase it.

7 BY MR. WILLEY

8 Q Sergeant Welch, how would you characterize the

9 impact, based on these photos, between Mr. Johnson's

10 vehicle and Ms. Hood's vehicle?

11 A If it were just those two alone, I would

12 consider it to be minor.

13 Q Okay. And in this particular case, his front

14 end is smashed in, correct?

15 A Correct.

16 Q And the inside of her door along the wheel well

17 is smashed in, correct?

18 A Correct.

19 Q And that impact is enough to move a vehicle

20 that's traveling that speed; you would agree with that?

21 A Yes.

22 Q Okay. And that's -- in this case, her vehicle

23 did move, correct?

24 A Yes.

25 Q You arrived just after 6 o'clock -- 6:09,

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 correct?

2 A Yes.

3 Q Where did you come from?

4 A I don't remember where I was originally, but I

5 know that I came -- I was headed eastbound on 278.

6 Q Okay. But you were not right there at that

7 particular intersection, correct?

8 A Correct. It took me about three minutes to get

9 there.

10 Q You had a three-minute transit time from the

11 time you got the call?

12 A Correct.

13 Q You don't know what happened prior to that?

14 A No.

15 THE COURT: Is that a "no," for the record?

16 THE WITNESS: No. Sorry. It was a little

17 quiet.

18 BY MR. WILLEY

19 Q And when you arrived at 6:09, which was sometime

20 after the wreck, there was still some light visibility,

21 correct?

22 A Correct.

23 Q Okay. And as you sit here today, and as you

24 told us in your deposition, you cannot say one way or the

25 other, whether or not, at the time of the wreck, Ms. Hood

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 had her lights on, lights off, running lights on, running

2 lights off, any of that, can you?

3 A Other than what I pulled up on the video.

4 Q Right. When you arrived at 6:09.

5 A Right. I was not paying attention.

6 Q And at that particular time, she had already

7 been extracted from the vehicle, correct?

8 A Yes.

9 Q And she was laying over on the grass being

10 treated?

11 A Correct.

12 Q Do you have any information as to whether she

13 changed anything in the vehicle as she was getting out or

14 anything that she did prior to being extracted by the

15 paramedics?

16 A No.

17 Q Okay. And in this particular case, there's a

18 stop sign here at the end of Southwood Park Drive,

19 correct?

20 A Yes.

21 Q And who would have had that stop sign?

22 A Mr. Johnson.

23 Q All right. And if a vehicle is traveling east

24 on 278 and a vehicle was stopped at that stop sign

25 attempting to cross, who would have the right-of-way?

REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 A Ms. Hood would.

2 Q Thank you.

3 RE-CROSS EXAMINATION

4 BY MS. SUTTIE:

5 Q Officer Welch, is it fair to say that Ms. Hood

6 would only have the roadway if her vehicle were visible?

7 MR. WILLEY: Object. It's a mischaracterization

8 of the law.

9 THE COURT: You can ask the question.

10 If you can answer it, answer it.

11 THE WITNESS: Can you ask it again?

12 BY MS. SUTTIE

13 Q Is it fair to say that Mrs. Hood would only have

14 the right-of-way if her vehicle were visible? Or I can

15 rephrase it.

16 Do you have to give way to oncoming traffic

17 that you cannot see?

18 A I would say that would make it difficult.

19 Q Great. You were asked by Mr. Willey whether you

20 can say one way or the other whether she overcorrected or

21 whether she was pushed. Actually, you list it in your

22 accident report that she overcorrected, correct?

23 A Correct.

24 MS. SUTTIE: No further questions.

25 THE COURT: Anything further?

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1

2 FURTHER REDIRECT EXAMINATION

3 BY MR. WILLEY:

4 Q Just the one portion in the accident report.

5 That was one data point in your investigation, correct?

6 A Yes.

7 Q Okay. And in this accident, you actually had

8 pretty good physical evidence, which we don't always have,

9 correct?

10 A Correct.

11 Q And there were no skid marks in this case?

12 A No.

13 Q Okay. There was no indication from skid marks

14 or otherwise that she made a sharp maneuver to the left,

15 correct?

16 A Correct.

17 Q Other than the fact that her vehicle crossed the

18 median, correct?

19 A Correct.

20 Q And, again, you did not have the benefit of

21 talking to Mr. Lee, who indicated that once the vehicle

22 entered that median, it got a little airborne, correct?

23 A Correct.

24 Q Thank you.

25 THE COURT: Anything further?

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 MS. SUTTIE: No, Your Honor.
 2 THE COURT: Okay. Any objection to Sergeant
 3 Welch being excused from anyone?
 4 MR. WILLEY: None.
 5 THE COURT: You're excused. Thank you.
 6 All right. Ladies and gentlemen, I think this
 7 is a very good time to wrap up for the evening.
 8 Madam Foreperson, I do not want to start as
 9 early as 9 o'clock tomorrow morning because, in fact,
 10 I was reminded I have a conference call.
 11 THE FOREPERSON: Well, we had decided on ten, if
 12 that works for you.
 13 THE COURT: Absolutely. 10 o'clock sounds good.
 14 Ladies and gentlemen, I need to remind you, do
 15 not discuss this case. It would be inappropriate to
 16 do so. Don't do any independent research. Ladies
 17 and gentlemen, don't go look at the scene. If you
 18 happen to have to drive by to go home, just drive by
 19 it. All right?
 20 I look forward to seeing you all at 10:00 a.m.
 21 tomorrow morning. I expect to run to roughly 5
 22 o'clock again tomorrow, ladies and gentlemen. So I
 23 suggest get a good night's sleep, have a good
 24 breakfast. We look forward to seeing you.
 25 Also, it was real cold in here earlier today.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 They warned me as I walked in. They told me it was
 2 64 degrees. But I have the benefit of wearing a
 3 robe. So bring a sweater or a jacket or something,
 4 ladies and gentlemen. I know we're on the tail end
 5 of summer, but I suggest bringing the same thing, so
 6 you can shed it if it gets hot in here.
 7 And, again, we look forward to seeing you all at
 8 10:00 a.m tomorrow morning. You all are excused.
 9 Thank you.
 10 (Jury exits the courtroom at 5:22 p.m.)
 11 THE COURT: All right. Any exceptions or
 12 additions from anyone?
 13 Anything to add? Anything that you need to
 14 place on the record?
 15 MR. SMITH: No, Your Honor.
 16 MR. DANIEL: No.
 17 THE COURT: Yes, ma'am.
 18 THE CLERK: There's a juror that says he needs
 19 to speak with you because he has made his decision
 20 already. He's biased.
 21 THE COURT: Okay. Well, I'll take that up
 22 afterwards. So you can pull him out of the jury room
 23 and go stick him somewhere separate, if you can.
 24 Okay?
 25 THE CLERK: Everybody else has gone now.

FURTHER REDIRECT EXAMINATION OF WELCH BY MR. WILLEY

1 THE COURT: Yeah, he can't stay in there right
 2 now though. You need to take him out and put him in
 3 the hall.
 4 THE CLERK: The other people have gone
 5 downstairs.
 6 THE COURT: Oh, they are. Okay. He can sit
 7 right there.
 8 Anything else? Tomorrow morning, if they want
 9 to start at 10 o'clock, so we will begin and you all
 10 can be here by roughly 9:45. Is that acceptable to
 11 everybody? Okay?
 12 MR. SMITH: Yes, ma'am.
 13 THE COURT: Anything else from anyone? No? All
 14 right.
 15 Well, I'm going to talk to this juror. You're
 16 welcome to sit tight while I speak with him. The
 17 rest of you, if you want to leave, you're welcome to,
 18 whichever way.
 19 So let's bring him out.
 20 (Juror enters the courtroom.)
 21 THE CLERK: This is Mr. Clevinger.
 22 JUROR: Yes, where would you like me to stand?
 23 THE COURT: Right where you are.
 24 JUROR: I don't want to disrespect your court
 25 any, but I've come to a biased information, and I've

JUROR EXCUSED FROM THE JURY

1 already made my decision and know which way I would
 2 like to go with this, based on the information that's
 3 already been provided.
 4 THE COURT: You weren't able to follow my
 5 instruction that I told you at the beginning of this
 6 case that you weren't to make any decisions until
 7 you've heard all the evidence?
 8 JUROR: I can't help that. I can't help that.
 9 THE COURT: You can't help that?
 10 JUROR: No. Being and --
 11 THE COURT: So you can't follow the law?
 12 JUROR: No. Being an intelligent human being,
 13 I've just come to my decision based on the
 14 information provided.
 15 THE COURT: Okay. Well, with all due respect,
 16 that's not the law. So to qualify this being an
 17 intelligent human being would be a
 18 mischaracterization.
 19 I am going to remove you from the jury of this
 20 case, but I am going to have you sit and watch the
 21 rest of the trial with us.
 22 JUROR: Yes, ma'am.
 23 THE COURT: So I look forward to seeing you back
 24 at 10:00 a.m. I trust that you didn't say any of
 25 that to any of the other jurors.

JUROR EXCUSED FROM THE JURY

1 JUROR: Not at all, ma'am.
 2 THE COURT: All right. Well, we look forward to
 3 seeing you back at 10:00 a.m. back in the gallery.
 4 Thank you.
 5 JUROR: Thank you so much.
 6 MR. WILLEY: Your Honor, will you instruct him
 7 not to talk to any other jurors.
 8 JUROR: No, you have my word. I won't do that.
 9 THE COURT: He knows that. You were right, Mr.
 10 Willey.
 11 You can just go out the front door.
 12 JUROR: Thank you, Your Honor.
 13 THE COURT: Anything else?
 14 MR. DANIEL: No, Your Honor. Not from the
 15 Defendant.
 16 THE COURT: All right. We'll see you here
 17 tomorrow morning.
 18 MR. SMITH: Thank you.
 19 (Whereupon, the Court was in recess for the
 20 day.)
 21
 22
 23
 24
 25

JUROR EXCUSED FROM THE JURY

1
 2 CERTIFICATE
 3
 4 STATE OF SOUTH CAROLINA:
 5 COUNTY OF BEAUFORT:
 6 I, MONA L. MANLEY, Court Reporter, certify that I was
 7 authorized to and did stenographically report the
 8 foregoing proceedings and that the transcript is a true
 9 and complete record of my stenographic notes.
 10 DATED this 3rd day of January, 2018.
 11
 12 *Monica L. Manley /s/*
 13 MONA L. MANLEY
 14 Official South Carolina Court Reporter
 15 Circuit Reporter for the 14th Circuit
 16 (850) 893-6662
 17 mmanley@sccourts.org
 18
 19
 20
 21
 22
 23
 24
 25

1 In the Court of Common Pleas for the
 2 State of South Carolina, County of Jasper
 3
 4 Case No.: 2015CP2700119
 5 Therese Hood,
 6 Plaintiff,
 7 vs. Transcript of Record
 8 Antoine Johnson,
 9 Defendant.
 10
 11
 12
 13 VOLUME 3
 14
 15 September 6, 2017
 16 Ridgeland, South Carolina
 17
 18
 19
 20
 21 BEFORE:
 22 The Honorable CARMEN T. MULLEN
 23
 24
 25

APPEARANCES

1
 2
 3 REPRESENTING PLAINTIFF:
 4 Roy T. Willey, IV, Esquire
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 6 62 Columbus Street
 7 Charleston, SC 29403
 8
 9 AND
 10 Kevin B. Smith, Esquire
 11 Amanda Stearns, Esquire
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 15
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 21 Charleston, SC 29401
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 23
 24
 25

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PROCEEDINGS

1 THE COURT: Good morning. What do we want to
2 take up before the jury comes in this morning?
3
4 MR. SMITH: Nothing.
5 THE COURT: Nothing.
6 MR. DANIEL: Your Honor, one matter.
7 THE COURT: Yes, sir.
8 MR. DANIEL: There's an expert witness in the
9 courtroom that's been retained by the Plaintiffs.
10 Unless she's called first, I wouldn't have any
11 objection to her obviously being in the courtroom
12 right now. But if we've got some fact witnesses that
13 are going to testify, I would again renew my motion
14 to sequester witnesses. A retained expert --
15 MR. WILLEY: Your Honor, sequestration isn't
16 appropriate for experts. They're able to rely on
17 testimony at trial, that's why we brought her here
18 today, so she can hear the first few witnesses.
19 THE COURT: Okay. Thank you. I would agree
20 with Mr. Willey. She can't rely on what their
21 testimony is, so she can remain.
22 Anything else this morning?
23 MR. WILLEY: Now, I would just tell the Court we
24 do have our first four witnesses that are in or
25 around the courthouse, and we are attempting to get

1 more here so we can move through this expeditiously.
2 THE COURT: Very good. So who are your first
3 four witnesses for this morning? And how long do you
4 expect each of them to --
5 MR. WILLEY: We expect to have enough folks here
6 to go through lunchtime.
7 THE COURT: Okay. Very good. Let's bring the
8 jury in.
9 (Jury enters the courtroom.)
10 THE COURT: Good morning, ladies and gentlemen.
11 Good morning. You all may be seated.
12 Ms. Hamilton, ma'am, I lost another juror. So
13 you are now part of this jury as well. I'm going to
14 go ahead and place you up here if you would.
15 Are we missing someone?
16 THE CLERK: Someone must be up in there.
17 THE COURT: Come on. And then there were 13.
18 All right.
19 Well, again, good morning ladies and
20 gentlemen. At this time we're going to go ahead and
21 continue with the Plaintiff's case.
22 Mr. Willey, or gentlemen, if you'll call your
23 first witness for this morning.
24 MR. SMITH: Yes, ma'am. The Plaintiff calls
25 Mary Kuck.

1 THE COURT: All right. Come on forward,
2 Ms. Kuck, to be sworn. Right here.
3 Thereupon,
4 MARY E. KUCK
5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:
7 DIRECT EXAMINATION
8 BY MR. SMITH:
9 Q Good morning.
10 A Good morning.
11 Q Tell us your name.
12 A Mary Elizabeth Ira Kuck.
13 Q Ms. Kuck, thank you for being here today. Where
14 did you drive in from?
15 A Orangeburg.
16 Q All right. And are you married?
17 A Yes, sir.
18 Q And is that your husband back there?
19 A Yes, sir.
20 Q What do y'all do for work?
21 A I'm a school nurse at Orangeburg Preparatory
22 Schools in Orangeburg. And he is -- he works for The
23 Kuckery, which is a local restaurant and catering company.
24 Q That's y'all's restaurant?
25 A No, sir. It's his daughter's restaurant.

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 Q Oh, okay. I'm going to be very brief with you
2 and get you guys out of here very quickly. But what I
3 want to ask you about is the wreck back in November
4 of 2014. Okay?
5 A Yes, sir.
6 Q And was one of -- were you in one of the
7 vehicles that was involved in that wreck?
8 A Yes, sir.
9 Q We've been referring to this flip chart for a
10 while now. Can you see it from there okay?
11 A Yes, sir.
12 Q Is that podium blocking you?
13 A A little bit.
14 Q Would you mind just stepping down for just a
15 minute?
16 THE COURT: You're welcome, Ms. Kuck, to go
17 ahead and step down to better see it.
18 MR. SMITH: It'll be just a second.
19 A (Witness complies.)
20 Q So, Ms. Kuck, this is something that we've drawn
21 up here. Okay?
22 A Yes, sir.
23 Q And you weren't here to hear everyone else's
24 explanation, but this is right where the Dunkin' Donuts is
25 and Southwood Park Drive, and where Mr. Johnson's vehicle

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 was coming out. And Ms. Hood, we've got an "H" for her
2 car. She's coming up this way. There was a collision
3 into oncoming traffic. I've got that "K" there.
4 Is that the vehicle that you were riding
5 in?
6 A Yes, sir.
7 Q All right. You can go ahead and take your seat.
8 Sorry.
9 A Okay. (Witness complies.)
10 Q Ms. Kuck, now, what type of vehicle were you in
11 that day?
12 A A Chevrolet Tahoe.
13 Q And where were y'all coming from and going to at
14 the time?
15 A We had left the Hampton Inn, and we were going
16 to our grandson's ballgame.
17 Q Where was the ballgame?
18 A At Hilton Head Christian School.
19 Q And as we described here, you're riding along
20 Highway 278. Did another vehicle cross the center line
21 and hit y'all?
22 A Yes, sir.
23 Q All right. Ms. Kuck, I'd like to hand you a
24 photo.
25 MR. SMITH: May I approach the witness, Your

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 Honor?
2 THE COURT: You may.
3 BY MR. SMITH
4 Q I know it's hard, but do you recognize that
5 picture?
6 A Yes, sir.
7 Q Is that the vehicle that you and your husband
8 were riding in?
9 A Yes, sir.
10 Q Does that picture fairly and accurately describe
11 the damage from the wreck?
12 A Yes, sir.
13 MR. SMITH: At this time, Your Honor, I'd like
14 to admit as Plaintiff's Exhibit -- I don't know what
15 number though -- Number 6.
16 THE COURT: Any objection?
17 MR. DANIEL: No, Your Honor.
18 THE COURT: Without objection, it's in evidence.
19 (Whereupon, Plaintiff's Exhibit No(s) 6 marked
20 for identification and received in evidence.)
21 MR. SMITH: Your Honor, may I publish the
22 picture to the jury?
23 THE COURT: You may.
24 (Plaintiff's Exhibit No. 6 published to jury.)
25 BY MR. SMITH

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 Q Ms. Kuck, were you hurt?
2 A Yes, sir.
3 Q Was your husband hurt?
4 A Yes, sir.
5 Q I'm sorry that happened to both of you.
6 What I'd like to ask you about are the
7 lighting conditions that day. And I've asked you these
8 same questions before. Do you recall that?
9 A Yes, sir.
10 Q Okay. We're going to go through this very
11 shortly.
12 Was it just beginning to turn dark?
13 A Yes, sir.
14 Q Was it totally dark yet?
15 A No, sir.
16 Q Was it enough light outside to see the median?
17 A Yes, sir.
18 Q Was it enough light outside that you could see
19 the trees lining the highway?
20 A Yes, sir.
21 Q And was it light enough outside that you could
22 see other vehicles on the road?
23 A Yes, sir.
24 Q And that would be vehicles with or without
25 headlights on?

DIRECT EXAMINATION OF MS. KUCK BY SMITH

1 A Yes, sir.
 2 Q Ms. Kuck, that's all the questions I have for
 3 you. Thank you for your time today.
 4 A Thank you.
 5 THE COURT: Sit tight. Go ahead.
 6 MR. DANIEL: I'm sorry. Thank you, Your Honor.
 7 THE COURT: Mr. Daniel, whenever you're ready,
 8 sir.
 9 MR. DANIEL: Your Honor, may I approach the
 10 witness?
 11 THE COURT: You may.

CROSS EXAMINATION

12 BY MR. DANIEL:
 13 Q Good morning, Mrs. Kuck. I'm just going to hand
 14 you two more while we're -- for efficiency purposes.
 15 A Okay.
 16 Q You were just shown some photos of your Tahoe
 17 you were in. Those two photographs that I just handed
 18 you, do those look like additional photographs of the same
 19 Tahoe that you were riding in on the night, or evening,
 20 late afternoon of this accident?
 21 A Yes, sir.
 22 Q Okay.
 23 MR. DANIEL: At this time, I'd like to have
 24 these marked as Defendant's 4.
 25

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 *(Whereupon, Defendant's Exhibit No(s) 4 marked*
 2 *for identification.)*
 3 BY MR. DANIEL
 4 Q Now, you were just asked some questions about
 5 the lighting outside at the time of this accident. You
 6 said it wasn't all the way dark, and I'm paraphrasing.
 7 Was it pretty dark out there?
 8 A It -- it was hard to see because there's no
 9 lights on the road.
 10 Q Yes, ma'am. And you -- the Plaintiff's counsel
 11 was asking you questions about this diagram.
 12 First of all, it's not -- as far as where
 13 the vehicle with this -- with a K on it, you agree this
 14 thing is not necessarily drawn to scale, right?
 15 A Not necessarily.
 16 Q The vehicle with a K could have been even
 17 farther back down the road; is that right?
 18 A Yes, sir.
 19 Q Could it be --
 20 MR. SMITH: Jack, Jack, Jack, Jack. You're
 21 drawing on my exhibit. Draw on your own.
 22 MR. DANIEL: Okay. Your Honor -- it could have
 23 been farther back now -- I think I can use it, Your
 24 Honor.
 25 THE COURT: Actually he can refer to it, he just

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 can't write on it. That's fine. He can't write on
 2 it.
 3 MR. SMITH: We don't mind him using it.
 4 MR. WILLEY: Because we have to use it for our
 5 expert.
 6 THE COURT: He just can't write on it. That's
 7 fine.
 8 MR. SMITH: Thank you.
 9 BY MR. DANIEL
 10 Q But where this K is, I'll do this so, you know,
 11 you can see it and the jury can see it clearly.
 12 Where this K is, that's not necessarily
 13 where your Tahoe was at the time it was hit; do you agree?
 14 A Yes, sir.
 15 Q And, ma'am, it could have been farther up back
 16 down the road on US 278; is that right?
 17 A Yes, sir.
 18 Q Okay. And trees lined this roadway; is that
 19 right?
 20 A I believe so.
 21 Q It's Hilton Head, there's trees -- this is like
 22 a frontage road. You know, they don't allow them to have
 23 like a lot of commercial businesses right on -- right up
 24 on the highway; is that right? Is that your understanding
 25 of how Hilton Head works?

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 A Yes, sir.
 2 Q And I can show you some -- some other
 3 photographs that have been marked as exhibits.
 4 Looking at Plaintiff's Exhibit 5, now,
 5 ma'am, I'm not asking you to identify the intersection,
 6 but there's been testimony already yesterday establishing
 7 that this is the intersection of where Southwood Park
 8 Drive is and US 278.
 9 Now, for the purposes of this series of
 10 questions, if you're back farther down the road this way,
 11 outside of the picture, over to the left from where the
 12 little sticker is, Exhibit 5 on the bottom, the bottom
 13 side of this corner, you see all these trees right there,
 14 right?
 15 A Yes, sir.
 16 Q And they're pretty tall trees, right?
 17 A Yes, sir.
 18 Q And once the sun starts going down, just common
 19 sense, those trees, they're going to obstruct sunlight; do
 20 you agree?
 21 A Yes, sir.
 22 MR. SMITH: Objection, Your Honor. Excuse me.
 23 Objection, Your Honor. I think without a proper
 24 foundation of the positioning of the sun and what
 25 this witness' point of view is, this calls for

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 speculation.

2 THE COURT: Well, if she can answer, she can

3 answer the question. So, go ahead.

4 BY MR. DANIEL

5 Q When this accident happened, had the sun started

6 to go down?

7 A Yes, sir.

8 Q It was starting to get dark, wasn't it?

9 A Yes, sir.

10 Q The sun was a good well on its way down?

11 A Yes, sir.

12 Q And when the sun starts going down, you'd agree

13 that just common sense, what people know is that once it

14 starts going down below trees it's going to make that

15 roadway even darker; is that right?

16 A Yes, sir.

17 Q Okay. Do you see any streetlights in this

18 photo?

19 A No, sir.

20 Q Okay. Do you remember giving a deposition --

21 A Yes, sir.

22 Q -- in this case that was noticed by the

23 Plaintiff's attorney, Mr. Smith, and he had you on video

24 and all that? Do you remember that?

25 A Yes, sir.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 was coming, but I could see something coming fast.

2 Q Mrs. Kuck, did you see headlights coming at you

3 in the moments before you were hit?

4 A No, sir.

5 Q So that -- then you found out after the fact

6 what ended up hitting you, it was another SUV; was it not?

7 A Yes, sir.

8 Q Was it your understanding that SUV was driven by

9 the Plaintiff in this case, Mrs. Hood?

10 A Yes, sir.

11 Q You'd agree with me those photos there, there's

12 some severe damage to your vehicle?

13 A Yes, sir.

14 Q Just based on what you know, common sense as a

15 driver and the impact you experienced, you believe that

16 Mrs. Hood was traveling at a high rate of speed?

17 A Yes, sir.

18 Q And you never saw headlights?

19 A No, sir.

20 Q In your deposition, and I didn't ask these

21 questions, Plaintiff's counsel did, it was on video, but I

22 think he tried to go through the timing --

23 MR. SMITH: Your Honor, I object. I don't know

24 what exactly he's doing with the deposition here. I

25 believe the proper procedure would be to use it for

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 Q And you were there for pretty much the whole

2 day; is that right?

3 A Yes, sir.

4 Q Do you remember describing what you saw right

5 before you were hit head on?

6 A Yes, sir.

7 Q Okay. Tell the jury what you saw.

8 A I just saw an object coming towards us very

9 fast, and then it was only a matter of seconds and we were

10 hit.

11 Q Okay. And you were in that Chevy Tahoe, we got

12 photos there; is that right?

13 A Yes, sir.

14 Q Was your husband driving?

15 A Yes, sir.

16 Q And what is your husband's name?

17 A William Kuck.

18 Q Where were you?

19 A I was in the passenger seat.

20 Q And you said an object coming at you fast. Your

21 husband, did he have his headlights on?

22 A He did.

23 Q Okay. Could you make out what was coming at

24 you, whether it was a car? SUV?

25 A I didn't -- I -- no, sir. I did not know what

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 impeachment in some way, but not simply to review the

2 questions that I asked.

3 THE COURT: I agree. You have to ask her a

4 question. And once you've asked her the question, if

5 it's something different than she answered in the

6 deposition, then you impeach her with it.

7 MR. DANIEL: Yes, ma'am.

8 BY MR. DANIEL

9 Q Mrs. Kuck, you saw something coming at you, and

10 you said it was moving fast?

11 A Yes, sir.

12 MR. SMITH: Your Honor, he just did it again.

13 He just said what she said in the deposition, despite

14 the instruction.

15 THE COURT: Okay. He can ask the question, but

16 you can't say, "in your deposition." You just need

17 to ask the question.

18 MR. SMITH: I didn't say it.

19 THE COURT: Okay. Well, go ahead.

20 BY MR. DANIEL

21 Q I'll just put it this way: What was coming, was

22 it coming slow?

23 A No, sir.

24 Q And you didn't see headlights, we've established

25 that.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 A That's correct.

2 Q Okay. Now, as far as the time frame, at some

3 point you first noticed something coming down the roadway

4 at you; is that correct?

5 A Yes, sir.

6 Q How long was it in your view before it hit?

7 A A few seconds.

8 Q Do you think it was longer than one second?

9 A Yes, sir.

10 Q Did -- where was the object coming from? If you

11 were -- I'm not going to draw on this. But if you were in

12 the vehicle labeled K, you're farther back down the road

13 or somewhere there, just for demonstrative purposes, this

14 vehicle that is identified with a K, in which direction

15 was the object coming from that struck you?

16 A It came this way (indicating.)

17 Q Will you come down here and just show the jury?

18 A (Witness complies.)

19 Q You can just point, don't mark on it.

20 A Okay. It was coming down this way.

21 Q So something was coming from the direction where

22 this vehicle labeled with an H is?

23 A Yes, sir.

24 Q And then struck you head on --

25 A Right.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 Q So -- so one, 1,000; two, 1,000; three, 1,000 --

2 A Boom.

3 Q Did you have time to say anything before you

4 were hit?

5 A No, sir.

6 Q Do you think your husband had time to avoid this

7 accident?

8 A No, sir.

9 Q As far as what happened with vehicles farther up

10 the road, before this other SUV came and struck yours, did

11 you see anything take place?

12 A No, sir.

13 Q Antoine Johnson is the Defendant named in this

14 case, sitting over at the table next to Ms. Suttie. Do

15 you know him?

16 A No, sir.

17 Q Okay. Never talked to him? Never met him

18 before?

19 A No, sir.

20 Q Okay. I'll represent to you that he was in a

21 vehicle that night, and there was another impact between

22 his vehicle and Mrs. Hood's vehicle. Did you see that

23 take place?

24 A No, sir.

25 Q Did you ever talk with me before that deposition

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 Q -- on the other side of traffic?

2 A Yes.

3 Q Okay. Y'all were not stopped; is that right?

4 A No, sir.

5 Q You were driving somewhere, and did -- were you

6 looking -- was your husband looking at GPS or anything

7 like that?

8 A No, sir. I was -- I was navigating. I mean, I

9 was telling him where to go.

10 Q We just looked at this basic diagram. You're in

11 the passenger seat.

12 A Right.

13 Q What we now know, based on what you saw that

14 evening, late afternoon, as the sun's going down, is an

15 object coming at you from what would be your left, headed

16 toward you at an angle?

17 A Right.

18 Q And striking your vehicle head on; is that

19 right?

20 A Yes. Yes, sir.

21 Q And you believe that you saw that object for

22 more than one second?

23 A Yes, sir.

24 Q Was it more than two seconds?

25 A It was probably around three seconds.

CROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 that's been, I don't know, months ago, maybe a year? It's

2 been a while.

3 A No, sir.

4 MR. DANIEL: That's all I have.

5 MR. SMITH: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. SMITH:

8 Q Ms. Kuck, you didn't speak to me either before

9 that deposition, did you?

10 A No, sir.

11 Q I want to go back to the basics. Mr. Daniel

12 just talked about what we all know, right? We all know

13 about the trees and the sun.

14 Ms. Kuck, is it true that the sun rises in

15 the east and sets in the west?

16 A I don't know.

17 Q If we assume that's true, the sun rises in the

18 east and sets in the west -- now, y'all were going west on

19 Highway 278, right?

20 A Yes, sir.

21 Q And the road, Highway 278, runs east to west;

22 right?

23 A Yes, sir.

24 Q So if the sun sets in the west, the sun wasn't

25 behind all these trees, the sun was right in front of you,

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 wasn't it? As it was setting.
 2 MR. DANIEL: Objection, Your Honor.
 3 THE WITNESS: I don't recall.
 4 MR. DANIEL: What's the objection?
 5 THE COURT: Okay. Let's just ask the question.
 6 That's fine.
 7 MR. SMITH: I withdraw it.
 8 BY MR. SMITH
 9 Q Now, Ms. Kuck, in this case, your testimony, no
 10 headlights, right?
 11 A Yes, sir.
 12 Q One of the issues that we have, and the
 13 testimony that we will receive, and the argument so far is
 14 Mr. Johnson couldn't see Ms. Hood's vehicle because she
 15 didn't have headlights on. Is that what you understand
 16 this to be about?
 17 A You said Ms. Kuck's vehicle?
 18 Q I'm sorry, Ms. Hood. Right?
 19 One of the issues is Mr. Johnson says he
 20 couldn't see her because her headlights weren't on. Do
 21 you understand that?
 22 A Yes, sir.
 23 Q And that goes back to my questions that I asked
 24 you in the very beginning. There was enough light outside
 25 for you to see vehicles, vehicles with or without

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 headlights? Is that your testimony?
 2 A Yes, sir.
 3 Q And is that the truth?
 4 A Yes, sir.
 5 Q And no matter what Mr. Daniel comes up here and
 6 says to you, are you going to change that testimony for
 7 him in any way?
 8 A No, sir.
 9 MR. SMITH: Okay. Thank you.
 10 THE COURT: Anything further?
 11 MR. DANIEL: Yeah. I just want --
 12 THE COURT: Ms. Kuck, you need to speak up a
 13 little bit. Okay?
 14 THE WITNESS: Okay.
 15 RE-CROSS EXAMINATION
 16 BY MR. DANIEL:
 17 Q I want to put a little finer point on that
 18 though. I'm not asking you to change your testimony, but
 19 what you did testify to is, you saw an object coming at
 20 you. You couldn't even -- it was dark enough out where
 21 you couldn't tell whether it was a truck or car; is that
 22 right?
 23 A True.
 24 Q It was dark enough out where you couldn't make
 25 details of what was coming; is that right?

RECROSS EXAMINATION OF MS. KUCK BY MR. DANIEL

1 A Yes, sir. Yes, sir.
 2 Q And you agree with me that as things get farther
 3 away in the dark, or in dark conditions, it's hard to see
 4 them?
 5 A Yes, sir.
 6 Q And you're not here to testify to what Antoine
 7 Johnson could or couldn't see at the time of this
 8 accident; is that right?
 9 A Yes, sir.
 10 Q Would you agree with me that Exhibit 5 that's
 11 been entered by the Plaintiffs, it was a heck of lot
 12 darker out by the time of this accident than what
 13 Exhibit 5 depicts?
 14 A Yes, sir.
 15 Q Okay. Did you see running lights or parking
 16 lights lit up, or anything lit up on the object that hit
 17 your vehicle?
 18 A No, sir.
 19 MR. DANIEL: Thank you.
 20 THE COURT: Anything further of this witness?
 21 MR. SMITH: Just one question, Your Honor.
 22 THE COURT: Yes.
 23 REDIRECT EXAMINATION
 24 BY MR. SMITH:
 25 Q I'm not going to ask you what Mr. Johnson could

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 see. But you, as one of the people there that day, one of
 2 the vehicles involved, not far away from all this that's
 3 happening, you, yourself, you could see other vehicles
 4 with or without headlights on. Right?
 5 A I -- I could not.
 6 Q Okay. I'm sorry. You could see other -- there
 7 was enough light outside that you, not Mr. Johnson I'm
 8 talking about, but there was enough light outside that you
 9 could see vehicles with or without headlights?
 10 A No, sir, I could not.
 11 Q Are you confused by the question? I've asked
 12 you that, it seems, three or four times. Am I confusing
 13 you with the question?
 14 THE COURT: You need to rephrase it. You need
 15 to rephrase it.
 16 THE WITNESS: No.
 17 BY MR. SMITH
 18 Q Let me just ask the original question I asked
 19 you from before.
 20 Was it light enough outside that you could
 21 see other vehicles on the road?
 22 A No, sir.
 23 Q You don't remember testifying under direct with
 24 me just now that there was enough light outside that you
 25 could see other vehicles on the road?

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 A I guess I didn't understand what you was asking.
 2 Q Did you understand it when I asked it in your
 3 deposition as well?
 4 A (No response.)
 5 Q I asked you this question before, didn't I?
 6 A Yes, sir.
 7 Q In your deposition, the exact same question,
 8 word for word; did I not?
 9 A Yes, sir.
 10 Q And you told me in your deposition, when you
 11 swore to tell the truth, you told me that there was enough
 12 light outside that you could see other vehicles with or
 13 without headlights. That was your sworn testimony; was it
 14 not?
 15 A Yes, sir.
 16 Q And again, today, you took the same oath, and
 17 your sworn testimony was, "it was just beginning to turn
 18 dark, there was enough light outside you could see the
 19 median. There was enough light outside you could see the
 20 trees lining the highway. And there was enough light
 21 outside you could see other vehicles on the road with or
 22 without headlights."
 23 That was your sworn testimony when you got
 24 up on the stand, right?
 25 A Yes, sir.

FURTHER RECROSS EXAMINATION OF MS. KUCK BY MR.
DANIEL

1 Q Now, that question was not prefaced with
 2 vehicles 10 feet from you, 15 feet from you, 20 or 30 feet
 3 from you, 100 yards from you. That question was not
 4 prefaced in that manner, was it?
 5 A No, sir.
 6 Q And you could see the trees lining the roadway.
 7 He didn't ask you, you know, was it dark where those trees
 8 -- was it dark when you looked at the trees, or was the
 9 sun shining on the trees? He didn't ask you that
 10 question, did he?
 11 A No, sir.
 12 Q And was the sun shining on those trees at that
 13 time of day?
 14 A No, sir.
 15 Q Was the sun setting at that time of day?
 16 A It was.
 17 Q Was the sun in your husband's face, or in your
 18 face, as y'all were headed off of Hilton Head Island
 19 towards Beaufort at the time of this accident?
 20 A No, sir.
 21 Q So you would agree that a vehicle on this road
 22 that's getting dark, or pretty well dark, if it's off in
 23 the distance from you might be pretty hard to see; is that
 24 right? If it didn't have its headlights on.
 25 A Yes, sir.

REDIRECT EXAMINATION OF MS. KUCK BY MR. SMITH

1 Q And then you told me you were not going to
 2 change that testimony, no matter what Mr. Daniel had
 3 asked; you remember that?
 4 A Yes, sir.
 5 Q But now you're changing that testimony?
 6 A I was --
 7 MR. DANIEL: Objection, Your Honor,
 8 argumentative.
 9 THE COURT: Okay. Agreed. Don't argue with
 10 her. Just ask the question.
 11 BY MR. SMITH
 12 Q Okay. Were you confused by my --
 13 A Yes, sir.
 14 Q -- last question?
 15 A Yes, sir.
 16 Q Do you stand by your original response?
 17 A Yes, sir.
 18 MR. SMITH: I'm sorry. Thank you.
 19 MR. DANIEL: Very briefly, Your Honor. I just
 20 want to put a finer point on this.
 21 FURTHER RE-CROSS EXAMINATION
 22 BY MR. DANIEL:
 23 Q You were confused. You were asked a general
 24 question, "Could you see vehicles out there?"
 25 A Right.

FURTHER RECROSS EXAMINATION OF MS. KUCK BY MR.
DANIEL

1 MR. DANIEL: Thank you.
 2 THE COURT: Anything further?
 3 MR. SMITH: No, ma'am.
 4 THE COURT: Okay. You may step down.
 5 THE WITNESS: Thank you.
 6 THE COURT: Call your next witness.
 7 MR. SMITH: Plaintiff calls Antoine Johnson.
 8 Your Honor, may this witness be excused?
 9 THE COURT: He may.
 10 Thereupon,
 11 ANTOINE JOHNSON
 12 was called as a witness, having been first duly sworn,
 13 was examined and testified as follows:
 14 DIRECT EXAMINATION
 15 BY MR. SMITH
 16 Q Mr. Johnson, good morning.
 17 A Good morning.
 18 Q How are you doing today?
 19 A Pretty good.
 20 Q I want to start out with some basics with you.
 21 Okay?
 22 Do you believe all drivers must pay
 23 attention to the road to prevent injury or death to other
 24 people?
 25 A Yes, sir.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 MR. DANIEL: Objection, Your Honor.
 2 THE COURT: Basis?
 3 MR. DANIEL: May we approach?
 4 THE COURT: You may.
 5 (Off-the-record discussion held.)
 6 BY MR. SMITH:
 7 Q Mr. Johnson, do you believe all drivers must pay
 8 attention to the road to prevent injury or death to other
 9 people using the road?
 10 A Yes, sir.
 11 Q Could you speak up for us, please?
 12 A Yes, sir.
 13 Q Do you believe all drivers must look before
 14 crossing a busy highway to prevent injury or death to
 15 other people using the road?
 16 A Yes, sir.
 17 Q These are the rules of the road; are they not?
 18 A Yes.
 19 Q Rules everyone must follow?
 20 A Yes.
 21 Q And, Mr. Johnson, if these rules aren't
 22 enforced, they don't mean anything, do they?
 23 A Yes.
 24 Q Now, the first thing we need to do is, we need
 25 to establish who hit who. Okay?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 in evidence.
 2 THE COURT: And, again, I haven't heard it. So
 3 I don't know.
 4 MR. SMITH: Well, I'm asking him. After he hit
 5 Ms. Hood, her office (SIC) went across the median
 6 into oncoming traffic.
 7 MR. DANIEL: He said "sent."
 8 THE COURT: Okay. You can say "did." But go
 9 ahead, ask him a question.
 10 BY MR. SMITH
 11 Q After you hit Ms. Hood's vehicle, did her car go
 12 across into oncoming traffic?
 13 A Yes.
 14 Q Just like what's pictured here?
 15 A Yes.
 16 Q I know this isn't to scale, but does this
 17 generally represent what happened?
 18 A Yes, sir.
 19 Q I'm sorry?
 20 A Yes.
 21 Q Okay. And what caused Ms. Hood's car to go into
 22 oncoming traffic? Was it because you hit her?
 23 A I can't be the one to call that.
 24 Q When I took your deposition, you took the same
 25 oath that you took here today; do you remember that?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: Is that a question?
 2 MR. DANIEL: Well, just telling --
 3 THE COURT: Okay. You need to ask a question.
 4 Okay? I know he's an adverse witness, I know you can
 5 lead him. But, again, ask him a question.
 6 MR. SMITH: Yes, ma'am.
 7 BY MR. SMITH
 8 Q Mr. Johnson, who hit who? Did you hit Ms. Hood,
 9 or did she hit your vehicle?
 10 A I hit Ms. Hood.
 11 Q All right. Now, that's not what you told the
 12 police officer, is it?
 13 A I don't recall.
 14 Q If the police officer testified you told her at
 15 the scene that Ms. Hood hit you, would you have any reason
 16 to disagree with that?
 17 A She can say anything, but I don't recall what I
 18 told her at the time.
 19 Q Okay. Don't know either way?
 20 A I don't recall.
 21 Q Okay. And the next thing that happened after
 22 the collision was Ms. Hood's car was sent across the
 23 median into oncoming traffic, true?
 24 A Yes.
 25 MR. DANIEL: Objection, Your Honor. Facts not

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I do.
 2 Q "And what do you think caused her direction
 3 change to have her career across the highway?"
 4 Answer: "I guess us colliding."
 5 Does that sound correct?
 6 A If that's what the deposition said, then I guess
 7 that's my statement.
 8 Q Okay. It had nothing to do with overcorrecting,
 9 did it?
 10 A I don't know.
 11 Q It was a bad wreck, a head-on collision?
 12 A Yes.
 13 Q From what you saw, someone could have died,
 14 true?
 15 MR. DANIEL: Objection, Your Honor, speculation.
 16 THE COURT: Well, it's irrelevant as well.
 17 So move on. It's not an appropriate question.
 18 BY MR. SMITH:
 19 Q Did you see smoke?
 20 A I don't recall.
 21 Q But you did not immediately get out of your car,
 22 did you?
 23 A I don't believe so.
 24 Q But you were able to get out of your car,
 25 weren't you?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yeah.

2 Q But you chose not to.

3 A No.

4 Q You chose not to render aid or go check on the

5 people involved?

6 MR. DANIEL: Objection, Your Honor, relevance.

7 MR. SMITH: Your Honor, there's going to be a

8 jury charge on this.

9 THE COURT: Well, just go ahead and if he can

10 answer the question, he can answer the question.

11 BY MR. SMITH:

12 Q You chose not to go check on the people or

13 render aid after this happened, true?

14 A I called help for myself.

15 Q For yourself. But you did not get out of your

16 vehicle to go check on the people?

17 A No.

18 Q And you called help for yourself, but you did

19 not call 911? You did not call an ambulance, did you?

20 A No.

21 Q You sat in the car?

22 A Yeah.

23 Q And you got on the phone, right?

24 A I did.

25 Q And when you finally got out of the car, the

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 reason you got out of the car was to check the damage to

2 your own vehicle; is that true?

3 A I don't recall.

4 (Pause.)

5 BY MR. SMITH:

6 Q Mr. Johnson, is this a copy of the deposition

7 transcript from when you testified previously?

8 A Yes.

9 Q Okay. Could you turn to Page 126 for me, sir?

10 Are you there?

11 A Almost.

12 Q Okay.

13 A All right.

14 Q Can you see the little numbers down on the left

15 side of the page?

16 A Yes, sir.

17 Q Those are line numbers. Okay?

18 So, I'd like -- I'm going to ask you about

19 Page 126, lines 20 to 24. Okay? I'm going to ask the

20 question and you read the answer.

21 "Where was the first place you -- what was

22 the first reason you got out of your vehicle; do you

23 remember?"

24 And what was your answer, sir?

25 A "To check the damage."

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Keep going.

2 A "To check the damage to my car."

3 Q To check the damage to your car. Does that

4 refresh your recollection as to why you finally got out of

5 your vehicle?

6 A Yeah.

7 Q Who had the stop sign in front of them, was it

8 you or Ms. Hood?

9 A I did.

10 Q And you can put that down. I'm sorry.

11 Who had the responsibility to yield to

12 traffic, would that have been you or Ms. Hood?

13 A Me.

14 Q Now, just before the wreck, you were at Dunkin'

15 Donuts, right?

16 A Yes.

17 Q Okay. And you were dropping off your cousin,

18 Scooby.

19 A Yeah.

20 Q Because somebody else was coming to pick him up?

21 A Yeah.

22 Q I'm sorry. Can you say that again?

23 A Yes.

24 Q And your plan, if we refer to this chart over

25 here, your plan was, you were going to turn left and go

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 west on Highway 278.

2 A Yes.

3 Q Right? But before you were going to make this

4 left onto that road, was your intention to get to the

5 median, stop, and then proceed the rest of the way

6 through?

7 A Yes.

8 MR. DANIEL: I just want to be able to see.

9 THE COURT: Pardon?

10 MR. DANIEL: I just want to be able to see.

11 THE COURT: That's fine.

12 BY MR. SMITH

13 Q Now, when you reached the stop sign -- when you

14 looked left, that would have been your point of view;

15 would it not?

16 A Yes.

17 Q Nothing obstructing your vision at this

18 intersection, right?

19 A No.

20 Q And left, this is where Ms. Hood was coming

21 from, right?

22 A Yes.

23 Q Now, you've been to this intersection before?

24 A Yes.

25 Q And you know it's a busy road.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yes.

2 Q And you knew you needed to look very carefully

3 before crossing?

4 A Yes.

5 Q Yes?

6 A Yes.

7 Q Not just glance, but really look, right?

8 A Right.

9 MR. DANIEL: Objection, Your Honor.

10 THE COURT: Basis?

11 MR. DANIEL: He's asked and answered the

12 question.

13 THE COURT: Okay. Overruled. Go ahead.

14 BY MR. SMITH:

15 Q And at the time that this happened, your

16 testimony is it wasn't totally dark, there was still a

17 little bit of light out, right?

18 A Right.

19 Q But you didn't see anyone coming?

20 A I waited for one car to pass me, but then I

21 looked left again.

22 Q Yeah. But after that car had passed you, I

23 think you said it was a Hyundai or something, right?

24 A All I know, it was a silver car.

25 Q Okay. After the silver car passed and you

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 looked left, you didn't see anyone?

2 A Nothing.

3 Q You didn't see a car with running lights in the

4 left lane?

5 A Not at all.

6 Q Coming down this inside lane to the median?

7 A Not at all.

8 Q And you didn't see a car with Xenon headlights

9 about ten car lengths back, with full headlights on,

10 coming from the outside lane, did you?

11 A No.

12 Q You didn't see either one of them.

13 A They probably was at that stop light, I don't

14 know.

15 Q And when you hit the gas and decided to cross

16 Highway 278, you had no idea two vehicles were approaching

17 from your left, did you?

18 A I didn't see two vehicles.

19 Q You had no idea who was in those cars.

20 A Not at all.

21 Q You didn't know if it was a man, woman, mother,

22 daughter, grandmother? Had no idea who was coming down

23 the road?

24 A I didn't see no car.

25 Q But as soon as you pulled out, she was right

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 there?

2 A Yeah.

3 Q Never sounded your horn?

4 A No.

5 Q You had no time to react whatsoever?

6 A No.

7 Q Now, you started from a complete stop; did you

8 not?

9 A I did.

10 Q Okay. And you were accelerating toward the

11 median?

12 A I was.

13 Q All right. Now, I just want to make absolutely

14 certain here, okay, to this point. This is not a

15 situation where you saw Ms. Hood but misjudged how much

16 time you had and ended up hitting her?

17 A Rephrase the question.

18 Q This is not the situation where you saw her,

19 misjudged how much distance you had, or how much time you

20 had to get in front, and ended up being wrong about that.

21 You just never saw her in the first place.

22 A I never saw her at all.

23 Q Okay. And when you decided to hit the gas and

24 cross the road, you can't say how close Ms. Hood was

25 because you never saw her?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A No.

2 Q Or Dustin Lee, you don't know how close he was

3 either?

4 MR. DANIEL: Asked and answered, Judge.

5 MR. SMITH: I'll withdraw it, Your Honor.

6 BY MR. SMITH:

7 Q So you don't know what lights Ms. Hood had on.

8 You're just assuming they were off because you say, if she

9 had headlights on, you think you would have seen her; is

10 that true?

11 MR. DANIEL: Objection, Your Honor,

12 mischaracterization. He didn't testify to that.

13 THE COURT: Okay. You need to rephrase the

14 question.

15 BY MR. SMITH:

16 Q Mr. Johnson, are you assuming that Ms. Hood's

17 headlights were off?

18 A I didn't see no headlights.

19 Q But you didn't see her car, period, right?

20 A If I would have seen her headlights, I would

21 have seen her car.

22 Q But my question is: You didn't see her car, so

23 you don't know if her headlights were on or off. You're

24 just assuming they were off because you — that's why you

25 didn't see her.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I didn't see no headlights, so I didn't see no
2 car.
3 Q Do you remember telling the police officer that
4 you saw her car and that she did not have headlights on?
5 A I don't recall.
6 Q You might have said that. You don't recall
7 either way.
8 A I don't recall.
9 Q Mr. Johnson, do you have a cell phone?
10 A I do.
11 Q Is the phone number (843)338-4115?
12 A It was.
13 Q Sprint?
14 A It was.
15 Q Is that a smart phone?
16 A It is.
17 Q Does it have a keyboard for texting?
18 A Yeah.
19 Q Are you on that phone a lot?
20 A Sort of, yeah.
21 Q Sort of?
22 A Yeah.
23 Q Mostly texting?
24 A I do a little of everything.
25 Q And you had your phone on you at the time of the

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 MR. DANIEL: At least look at what he's handing
2 the witness.
3 MR. SMITH: Oh, I'm sorry. Can you give Jack a
4 copy?
5 MR. WILLEY: You have all of the copies. He's
6 seen it before.
7 BY MR. SMITH
8 Q Mr. Johnson, is your phone number (843)338-4115?
9 A That was the number I had at the time.
10 Q Okay. And if we start here in this first entry,
11 on 11-6-2014, so that would be November the 6th, 2014, the
12 night before the wreck, right?
13 A Uh-huh.
14 Q Is that a "yes"?
15 A Yes.
16 Q We see a call that starts -- a voice call that
17 starts at 2114. That 's 9:14, right?
18 A Yes.
19 Q And that's a three-hour call that ends at 0017.
20 That's at 12:17 a.m., just after midnight.
21 A Yeah.
22 Q All right. So if you hung up the phone at
23 12:17, just after midnight the day before the wreck, does
24 that refresh your recollection as to how late you were up
25 that night?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 wreck, didn't you?
2 A My phone's always on.
3 Q No, I mean it was -- it was with you?
4 A Yeah.
5 Q And you had it in your car?
6 A It was.
7 Q Now, at the time of the wreck, were you feeling
8 alert?
9 A I was very alert.
10 Q Very alert?
11 A Yes.
12 Q You were not tired or drowsy?
13 A Not at all.
14 Q Do you remember how late you were up the night
15 before?
16 A Probably until about -- I can't even say.
17 Q Do you recall getting off the phone the night
18 before at 12:17 a.m.?
19 A Don't recall.
20 Q A three-hour call?
21 A Don't recall.
22 MR. SMITH: Your Honor, may I approach?
23 THE COURT: You may.
24 MR. DANIEL: May I approach, Your Honor?
25 THE COURT: Sure.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A It doesn't show that I hung up the phone though.
2 The caller on the other end could have hung up the phone.
3 I could have been sleeping.
4 Q So you're saying that this entry for an inbound
5 call -- right?
6 A Yeah. I answered the call, but that doesn't
7 mean I ended the call though.
8 Q Okay. So you're saying what may have happened
9 was, you didn't talk to this person, you just answered the
10 phone and you sat the phone down for three hours and
11 didn't talk to them --
12 A I could have had a phone conversation and fell
13 asleep on the phone. I'm known for doing that.
14 Q Okay. What do you think's more likely? That
15 you had a conversation until just after midnight, or that
16 you fell asleep during the phone call?
17 A I don't know what happened. I can't tell you.
18 Q Well, let me ask you this: Do you remember who
19 is 473-5686? Who were you talking to?
20 A Don't recall.
21 Q You don't know who that number is?
22 A I don't recall. I haven't had that number in
23 three years.
24 Q No, no, no. Your number -- I'm sorry.
25 A That's the caller's number.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Do you remember calling --

2 A That's the caller number. I didn't have this

3 phone in three years, so I don't remember whose number

4 that is.

5 Q Okay. But, what you want the jury to believe is

6 that this voice call that came in from this number that

7 lasted three hours, that you don't think you were on the

8 phone that late, you went to bed earlier. Is that what

9 you're saying?

10 MR. DANIEL: Objection, mischaracterization.

11 BY MR. SMITH:

12 Q Well, what are you saying?

13 A I could have been on the phone, but I don't know

14 how long I was on the phone. I don't know if I ended the

15 call or not.

16 Q Well, if you were on the phone, as these records

17 suggest through just after midnight -- I mean, do you stay

18 up after midnight? Is that unusual for you?

19 A Sometimes, depending on the time of the week.

20 Q Okay. Now, Mr. Johnson, do you recall what time

21 you woke up that morning?

22 A I usually get up for work about 6:00.

23 Q Okay. You see here, the next entry, 11-7, okay,

24 it's the day of the wreck, we've got an outbound call. So

25 that is -- I'm sorry, an outbound text.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Is that normal for you? The second you wake up,

2 you reach for that phone and you either make a call or

3 send a text?

4 A After I do what I got to do, yeah, I usually go

5 to my phone.

6 Q Okay. And you went to work that day sometime

7 between 5:00 and 7:00 a.m., true?

8 A I usually get to work about 6:45.

9 Q Sometime between 5:00 and 7:00 a.m.?

10 A About 6:45.

11 Q Okay. Between 7:30 and 9:30, did you use your

12 phone 26 times?

13 A I guess.

14 Q Okay. I mean, we can go through them and count

15 them up, if you like.

16 So between 7:30 a.m. and 9:30 a.m. --

17 MR. DANIEL: Your Honor, I'm going to object to

18 --

19 THE COURT: What's your objection?

20 MR. DANIEL: Can we approach unless you want me

21 to make the objection?

22 THE COURT: Sure.

23 (Off-the-record discussion held.)

24 BY MR. SMITH:

25 Q So Mr. Johnson -- I'm sorry. Would you come

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Do you see that next entry?

2 A Yep.

3 Q So that is your sending a text. And what time

4 of the morning are you sending your first text of the day?

5 A 4:44.

6 Q 4:44 in the morning?

7 A Yeah.

8 Q So, about four and a half hours between the last

9 call and the first text in the morning. Would you agree

10 with that?

11 A Yes.

12 Q Mr. Johnson, is it fair to say that the last

13 thing that you did at night was hang up the phone, and the

14 very first thing you did in the morning was grab your

15 phone?

16 A I can't say that far that the first thing I did

17 in the morning was grab my phone.

18 THE COURT: Mr. Johnson, you need to sit up and

19 get the microphone to your mouth, sir, so we can hear

20 you.

21 BY MR. SMITH:

22 Q Can you tell us?

23 A I can't say that the last thing I did was hang

24 up the phone, but I know the first thing I did was pick up

25 the phone. That's usually what I do in the morning.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 down here, please? I don't think you're going to be able

2 to see it from up there.

3 A (Witness complies.)

4 Q So the question was: Between 7:30 in the

5 morning to 9:30 in the morning, I count 26 phone

6 activities, one of those being a voice call.

7 Does that seem right to you?

8 A I guess.

9 Q I'm sorry. Can you -- you got to speak up.

10 A I guess.

11 Q Okay. The court reporter is right behind you as

12 well, and she's going to need to hear you. Okay?

13 And then from 10:25 a.m. through

14 11:56 a.m., I count another 35 times. You're welcome to

15 count them if you like.

16 Does that seem accurate to you?

17 A Okay.

18 Q Okay. And now from 11:57 a.m. through

19 3:50 p.m., we're getting into military time here, 350, we

20 got another 25 times.

21 Does that seem correct?

22 A Correct.

23 Q And you got off work at 4:00 that day; is that

24 true?

25 A About 2:30, 3:30.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Okay. So from 7:00 a.m. to 4:00 p.m. -- well,
 2 from 7:30 a.m. to 4:00 p.m., we've got 26, 35, and 25.
 3 That's 93 times, 93 uses of the phone up to this point; is
 4 that right?
 5 A Yes.
 6 Q And this is while you're at work, right? Yes?
 7 A Right.
 8 Q Okay. And then you went home.
 9 A No, I didn't.
 10 Q Okay. You went to go cut Scooby's hair?
 11 A Yeah.
 12 Q And from 4:02 through 4:26 -- I'm sorry. From
 13 4:02 to 4:26, another 29 times.
 14 Does that seem correct?
 15 A Correct.
 16 Q And then you got back in the car to take Scooby
 17 up to Dunkin' Donuts a little after 4:30 -- well, after
 18 4:30; is that fair to say?
 19 A I don't really recall what time we left the
 20 house.
 21 Q Okay. So we know the wreck happened somewhere
 22 around 6 o'clock at night, right?
 23 A Yeah.
 24 Q Okay. And it happened at just outside the
 25 Dunkin' Donuts, right?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yes.
 2 Q Okay. So is it fair to say -- you don't live an
 3 hour and a half away from Dunkin' Donuts, do you?
 4 A About an hour -- about 45 minutes.
 5 Q About 45 minutes. So you would have gone up to
 6 -- and you didn't get anything to eat at Dunkin' Donuts,
 7 right?
 8 A No.
 9 Q You were just dropping him off, right?
 10 A Yes.
 11 Q So sometime after 4:30 is when you went to
 12 Dunkin' Donuts to go drop Scooby off?
 13 A Yeah, sometime after that.
 14 Q And then as we start getting a little closer in
 15 time here we see voice calls at 4:42, 4:50, and 5:43; you
 16 see that?
 17 A That's a text message.
 18 Q Okay. Text message there.
 19 And these two text messages here, they're
 20 just 16 seconds apart at 5:43 p.m.; do you see that? It's
 21 got the seconds on here, 5:43:12 and 5:43:28.
 22 A Okay.
 23 Q Did you say "okay"?
 24 A Right.
 25 Q I'm not trying to be rude, I'm just making sure

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 the court reporter can hear you. Okay?
 2 And at this point, from the time you went
 3 to work, right -- from the time you went to work, you had
 4 used your phone 93 plus 29 plus 2 -- that's 124 times.
 5 MR. DANIEL: Objection, Your Honor. This
 6 document doesn't show that he's using the phone every
 7 time. A lot of it --
 8 THE COURT: That's a mischaracterization.
 9 MR. DANIEL: Yes, ma'am. Some of these are
 10 inbound texts. I'll deal with it with a question,
 11 but objection.
 12 THE COURT: Okay.
 13 BY MR. SMITH:
 14 Q Mr. Johnson, is it true that generally when you
 15 receive a text message, you look at it?
 16 A Not always.
 17 Q Not always? If you used your phone -- well, if
 18 your phone log shows phone activity 124 times from the
 19 time you went to work at 5:45, your testimony is
 20 "sometimes you look at them, sometimes you don't."
 21 A I mean, I look at them, but not always right
 22 away.
 23 Q Okay. And then at 5:57, you receive a text
 24 message; do you not?
 25 A I do.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q And you understand that we contend this is when
 2 the wreck happened, at 5:57 or earlier?
 3 A I can't recall.
 4 Q You've been sitting here through the trial. You
 5 don't know that that's --
 6 A I don't know the actual time of the wreck.
 7 Q All right. Mr. Johnson, can you see how some
 8 people might believe that explains why you didn't see the
 9 vehicles coming down the road, because you were looking at
 10 this text that came in in the exact minute of the wreck?
 11 MR. DANIEL: Objection, speculation.
 12 THE WITNESS: There's no guarantee I opened the
 13 text message though.
 14 BY MR. SMITH
 15 Q I'm sorry?
 16 A There's no guarantee I opened the text message.
 17 Q No, there's no guarantee, but my question is:
 18 Can you see how people might think that explains why you
 19 didn't see Ms. Hood coming down the road to your left, and
 20 why you didn't see Dustin Lee with his Xenon headlights
 21 ten car lengths behind?
 22 MR. DANIEL: Your Honor, objection. He's asking
 23 the witness to speculate.
 24 THE COURT: Agreed. It's a speculative
 25 question.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 BY MR. SMITH:
 2 Q Mr. Johnson, do you expect the jury to believe
 3 that you were not looking at your phone as you crossed
 4 Highway 278 at 5:57 p.m.?
 5 A Say that again?
 6 Q Do you expect the jury to believe that you were
 7 not looking at your phone when you crossed the highway at
 8 5:57 p.m.?
 9 A I can't think for the jury.
 10 Q Are you asking them to believe that? You
 11 understand that's one of the things that we're claiming,
 12 right?
 13 A I don't know.
 14 Q I want to get -- you know, I want to be straight
 15 with you and tell -- and give you an opportunity to answer
 16 this question because this is what we're claiming. All
 17 right?
 18 A Okay.
 19 Q And so my question to you is: Is that what you
 20 want the jury to believe? Do you want the jury to believe
 21 you were not looking at this text at 5:57, when you
 22 crossed Highway 278?
 23 A I wasn't.
 24 Q You were not?
 25 A I wasn't.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I seen a silver car pass me first.
 2 MR. SMITH: May I have just a moment, Your
 3 Honor?
 4 THE COURT: You may.
 5 (Pause.)
 6 BY MR. SMITH:
 7 Q Mr. Johnson, I want to ask you one more thing
 8 about the last slide. You can stay where you are. I'll
 9 come to you.
 10 We talked earlier about after the wreck
 11 happened and you stayed in your car and you made a phone
 12 call. Do you remember that?
 13 A Yes.
 14 Q Okay. You made that phone call -- this is the
 15 next entry we've got at 5:59:04.
 16 A Correct.
 17 Q Right? So -- and who was it that you called?
 18 Who's 837-1126?
 19 A My mama.
 20 Q Okay. But you didn't stop there, did you?
 21 A No.
 22 Q You sat in your car and continued to make phone
 23 calls, send text messages through 6:48 p.m.?
 24 A After the time I was in the hospital.
 25 Q How long did it take you -- if the wreck was at

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Okay. Then what were you looking at?
 2 A The road.
 3 Q Can you offer any other reason why you didn't
 4 see Ms. Hood coming down the road with her running lights
 5 on, and Mr. Dustin Lee ten car lengths behind with his
 6 Xenon lights on?
 7 A If I would have seen her with her running lights
 8 on, I would have stayed at the stop sign.
 9 Q Mr. Johnson, is it possible that maybe you just
 10 didn't look as close as you needed to?
 11 A Not at all, because I looked twice.
 12 THE COURT: Okay. If you're done with whatever
 13 your exhibit is, come take a seat, sir.
 14 MR. SMITH: I'm sorry.
 15 THE WITNESS: (Complies.)
 16 BY MR. SMITH:
 17 Q Mr. Johnson, is it possible you just didn't look
 18 as close as you needed to? Maybe it was more of a glance?
 19 A I looked twice. There was a silver car that
 20 passed me before I pulled out, and I didn't see no cars
 21 passing after that.
 22 Q So you looked two times then?
 23 A Yes.
 24 Q And neither one of those times you saw either
 25 one, Ms. Hood, or the Xenon headlight, Dustin Lee?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 5:57, how long did it take you to get to the hospital or
 2 leave the scene? How would -- they didn't come to you
 3 first, did they?
 4 A I don't recall.
 5 Q All right. They treated Ms. Hood and the Kucks,
 6 I imagine, before they came to you?
 7 A Correct.
 8 Q All right. So how quickly do you think you left
 9 the scene? Because from 5:59 -- 25 minutes? You think it
 10 took them 25 minutes to talk to you and get you away? Or
 11 do you think that it was 48 minutes? Or somewhere in
 12 between?
 13 MR. DANIEL: Your Honor, speculation.
 14 MR. SMITH: I'm just asking.
 15 THE COURT: Ask him "do you know?"
 16 BY MR. SMITH
 17 Q Do you know?
 18 A I don't recall.
 19 Q Okay. But you would agree with me, these
 20 records show that 5:59 through 6:48, one, two, three,
 21 four, five, six, seven, eight, nine, ten, 11, 12, 13, 14,
 22 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 -- 27.
 23 So in the 48 minutes after the wreck, your
 24 phone records show 27 activities. Does that sound
 25 correct?

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Uh-huh. (Indicating affirmatively.)
 2 Q You sat in your car and used your phone a lot,
 3 right?
 4 A I wasn't on my phone while I was in the car.
 5 Q Okay. Were you in your car at 17 -- at 5:59,
 6 when you called your mom?
 7 A I made two calls while I was in the car, and I
 8 didn't have my phone until I got back in the hospital.
 9 And that was to my mom and my brother.
 10 Q Okay. You called at 5:59. You made another
 11 call at 6 o'clock, another call at 6:03. I'm sorry, a
 12 text at 6:03, another text at 6:03, another text at 6:03.
 13 None of these were in your car?
 14 A That was to my brother. He lives -- he was
 15 living across the street, so I was telling him what was
 16 going on.
 17 Q I know, but what I'm saying is, you sat in your
 18 car and started talking on the phone and sending text
 19 messages.
 20 MR. DANIEL: Objection, leading.
 21 THE COURT: He can. He's an adverse witness.
 22 He can. Go ahead.
 23 BY MR. SMITH:
 24 Q Mr. Johnson, you sat in your car after the
 25 wreck, and got on the phone and start sending text

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 messages. Right?
 2 A You can say that, I guess.
 3 Q Well, I don't want to say that, I'm not
 4 testifying. If you know, you know. The records are the
 5 records.
 6 A You can say that.
 7 Q Well, okay. Well, these are your records; are
 8 they not?
 9 A They are.
 10 Q I sent these to your lawyer well in advance of
 11 today, right? And he agrees these are genuine accurate
 12 records of your phone.
 13 A Correct.
 14 Q Okay. And you don't argue with the accuracy of
 15 those records, do you?
 16 A Not at all.
 17 Q All right.
 18 MR. SMITH: And, Your Honor, I'd like to offer
 19 these exhibits as 7 through 12.
 20 MR. DANIEL: No objection.
 21 THE COURT: Without objection.
 22 *(Whereupon, Plaintiff's Exhibit No(s) 7-12*
 23 *marked for identification and received in evidence.)*
 24 MR. SMITH: I have no further questions, Your
 25 Honor.

DIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: Okay. Anything, Mr. Daniel?
 2 MR. SMITH: Go ahead. I'm sorry.
 3 CROSS EXAMINATION
 4 BY MR. DANIEL:
 5 Q Antoine, I'm 40 years old. How are you -- how
 6 old are you?
 7 A Twenty-three.
 8 Q I text some, but, you've grown up with it,
 9 right?
 10 A Yes.
 11 Q They haven't shown you a single substantive text
 12 in this series of texts --
 13 MR. SMITH: Objection, leading.
 14 MR. DANIEL: Your Honor, he called the witness.
 15 THE COURT: He's your witness. Don't lead him.
 16 BY MR. DANIEL:
 17 Q Okay. Did they show you any texts, actual texts
 18 that were sent back and forth in this call log that we're
 19 looking at?
 20 A No.
 21 Q Who's your cell phone carrier?
 22 A Sprint.
 23 Q Looking at Exhibit 7, the one that Mr. Smith was
 24 asking you questions about, where this thing's highlighted
 25 right at 175743, it says, that's a -- is that a text?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 175743? You see call type?
 2 A Correct.
 3 Q What does it say?
 4 A A text to me, too.
 5 Q And then what does it say over here on this
 6 side?
 7 A Inbound.
 8 Q So that's someone sending you a text?
 9 A Correct.
 10 Q Do you see -- you're not sending a text back to
 11 that number?
 12 MR. SMITH: Your Honor, object, leading.
 13 THE COURT: Basis -- to some extent, just ask
 14 the question.
 15 BY MR. DANIEL:
 16 Q When's the next time on this record we looked at
 17 where you send an outbound text?
 18 A 1803.
 19 Q 1803 is 6:03; is that right?
 20 A Correct.
 21 Q Had you called your mom before that?
 22 A Correct.
 23 Q Because you had just gotten in an accident?
 24 A Correct.
 25 Q You wanted to let -- did you want to let her

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 know?
 2 A Yeah.
 3 Q And then who did you text?
 4 A My brother.
 5 Q Can you text fast?
 6 A Pretty so.
 7 Q Are your messages brief?
 8 A Yeah.
 9 Q When you're working during the course of the
 10 day, is there downtime?
 11 A All the time.
 12 Q How old were you at the time?
 13 A Nineteen, I believe.
 14 Q So sometimes you stay up till midnight?
 15 A Depending on the time of the day.
 16 Q That text that was at -- that they were asking
 17 you about at 4-something in the morning, do you know if
 18 that was something that -- do you ever wake up in the
 19 middle of the night and see something and send a text and
 20 go back to sleep?
 21 A Yes. Sometime I stay up.
 22 Q Do you know that morning, and this happened a
 23 long time ago, do you know that morning, at 4:40, whatever
 24 the time was, whether you sent that text and then you
 25 started doing things that morning, or whether you rolled

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q How many times did you check traffic before you
 2 pulled out to make that left-hand turn?
 3 A Twice.
 4 Q You heard that lawyer testify yesterday. You
 5 were in the courtroom, right, Antoine?
 6 A Yes.
 7 Q Do you remember what he said about how dark it
 8 was?
 9 MR. SMITH: Your Honor, I object. Pitting
 10 witnesses, lay witnesses.
 11 THE COURT: Okay. Let's not pit witnesses.
 12 But, again, you did some to that extent as well,
 13 Mr. Smith. So --
 14 THE WITNESS: Say again?
 15 BY MR. DANIEL
 16 Q Do you remember hearing the lawyer testify about
 17 how dark it was when this accident happened?
 18 A Yes.
 19 Q Do you remember hearing him put a percentage on
 20 it?
 21 A Yes.
 22 Q What did he say?
 23 A I believe it was like 90 percent or something
 24 like that.
 25 MR. SMITH: I -- I'm sorry. I --

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 back over and went back to sleep?
 2 A I don't recall.
 3 Q Do you keep your phone right there by your
 4 bedside?
 5 A Yeah.
 6 Q Is it possible you just looked at something and
 7 went back to sleep?
 8 MR. SMITH: Objection, leading.
 9 THE COURT: It's not a leading question. He
 10 said, "Is it possible".
 11 THE WITNESS: Say again.
 12 BY MR. DANIEL
 13 Q Is it possible that you looked at something,
 14 sent a text, and then rolled over and went back to sleep?
 15 A It could happen.
 16 Q Have you ever done that before?
 17 A Yes.
 18 Q You would agree that just -- he's asking you,
 19 you've said, you know, the jury, you can't speak for the
 20 jury. That's what you just testified to, right?
 21 A Yes.
 22 Q But I want to ask you, and I want you to be very
 23 clear because it's important. Were you reading a text
 24 when you pulled out to make that left-hand turn?
 25 A No.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 THE COURT: Okay. You just need to repeat his
 2 testimony, and you can refer to him as Mr. Lee.
 3 BY MR. DANIEL
 4 Q Do you remember what Mr. Lee said?
 5 A I believe it was 90 percent dark.
 6 Q Do you know Mr. Lee?
 7 A Not at all.
 8 Q Have you ever met him before this accident?
 9 A Not at all.
 10 Q Did -- have you ever met him since the accident?
 11 A Not at all.
 12 Q Exhibit 5, is that the intersection where you
 13 were when this accident happened?
 14 A Yes.
 15 Q Where were you? Were you at --
 16 A I was by -- at the stop sign.
 17 Q Okay. Did you have to pull up to -- do you see
 18 that white line down there?
 19 A Yes.
 20 Q Is that a stop bar?
 21 A Yes.
 22 Q Did you pull up to that?
 23 A Yes.
 24 Q I guess you -- it looks like -- would you have
 25 to ease up even a little farther to see?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 A A little bit more, yes.
 2 Q So you had to do that. And, again, you checked
 3 traffic how many times?
 4 A Twice.
 5 Q The first time you checked traffic, what did you
 6 see?
 7 A A silver car.
 8 Q Was it pretty dark when you saw that silver car
 9 go by?
 10 A Yes.
 11 Q Did the silver car have its lights on?
 12 A I don't recall.
 13 Q Did you have your lights on?
 14 A Yes.
 15 Q You have a mobile phone. Do you have a headset
 16 or Bluetooth in your car?
 17 A Yes.
 18 Q Did you have one in your Honda at the time of
 19 the accident?
 20 A Yes.
 21 Q Now, this intersection, there's -- is there a
 22 median?
 23 A Yes.
 24 Q Okay. And --
 25 MR. DANIEL: Your Honor, may I approach?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 like the little walkway, right?
 2 A Yes.
 3 Q So this is the picture where the accident
 4 happened, an overhead view?
 5 A Yes.
 6 MR. DANIEL: Your Honor, at this time I'd admit
 7 that as Defendant's Exhibit 5.
 8 THE COURT: Okay. Any objection?
 9 MR. SMITH: No. No, ma'am.
 10 THE COURT: It's in evidence then.
 11 *(Whereupon, Defendant's Exhibit No(s). 5 marked*
 12 *for identification and received in evidence.)*
 13 BY MR. DANIEL:
 14 Q You see in this photograph that there's this
 15 median, and when you look at it you can answer. And then
 16 in the Google overhead view, there's like a little white
 17 car where the median is; do you see that?
 18 A Correct.
 19 Q Were you going to turn right or left?
 20 A Turn left.
 21 Q Turn left from Southwood Park Drive?
 22 A Yes.
 23 Q Okay. To head back off Hilton Head Island
 24 toward Beaufort?
 25 A Back toward Ridgeland. Towards Ridgeland.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 THE COURT: You may.
 2 MR. DANIEL: Antoine, I'm just handing you a
 3 black and white photo. Take your time and look at
 4 that for a second.
 5 MR. SMITH: May I?
 6 MR. DANIEL: Here, you can look.
 7 MR. SMITH: You don't have one for me? I just
 8 want to follow along.
 9 BY MR. DANIEL:
 10 Q I'll just stand right here.
 11 Have you looked at it?
 12 A Yes.
 13 Q Do you see in the top left of the photo, it's
 14 kind of upside down, but you see what that -- can you read
 15 what that writing says?
 16 A Have I asked them?
 17 Q I'm looking at the top left. Top left.
 18 A Oh, the William -- William Hilton Parkway.
 19 Q No. It's upside down, right -- you've got it
 20 turned the other way. Right -- right there. Or -- yeah,
 21 just turn it this way. Sorry.
 22 A Southwood Park -- Southwood Park Trail.
 23 Q What road were you on?
 24 A Southwood Park Drive.
 25 Q And there's that stop bar right there, and then

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Toward Ridgeland.
 2 A Yep.
 3 Q Okay. So you check traffic to your left.
 4 You've already said you checked it twice. You start to
 5 move. Did you ever check traffic to the right, what's
 6 coming across the other way, over on the other side of
 7 that median?
 8 A Yes.
 9 Q What did you see?
 10 A More cars.
 11 Q There were -- there were cars coming?
 12 A Yes.
 13 Q Okay. So those cars would have been coming from
 14 your right, but on the other side of the road?
 15 A Yes.
 16 Q Do you remember seeing some cars with headlights
 17 on?
 18 A Yes.
 19 Q So the cars over there had their headlights on?
 20 A Yes.
 21 Q So when you looked to your left and didn't see
 22 anything, and you started to move forward, was your focus
 23 moving forward just to get to that median?
 24 A To get to the median and come to another stop.
 25 Q Because there were cars on the side?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

- 1 A Coming up.
- 2 Q Do you know whether you may have hit Mrs. Hood
- 3 on her front tire? Or that's where the contact was? You
- 4 didn't know?
- 5 A I don't know. I just know it was on the front
- 6 passenger side somewhere.
- 7 Q You've seen these photos. Have you been able to
- 8 look at the photos from where you're sitting of her
- 9 vehicle?
- 10 A Yes.
- 11 Q The impact was up front; do you agree?
- 12 A Yes.
- 13 Q Were you driving fast?
- 14 A No.
- 15 Q Had you barely hit the gas?
- 16 A Barely, yes.
- 17 Q Were you -- were you into that left lane? Or
- 18 was most of your car still in that right lane? Do you
- 19 know where you were as far as the body of your car in that
- 20 overhead view?
- 21 A I want to say I was still in the right lane a
- 22 little bit.
- 23 Q Okay. You didn't hit -- did you hit her hard
- 24 enough to spin her around?
- 25 A I don't believe so.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

- 1 Q Are you familiar with that intersection?
- 2 A Yes.
- 3 Q Is it straight as far as the eye can see? Is
- 4 there a bend?
- 5 A It's pretty straight.
- 6 Q Yeah. Is there a gradual bend though, do you
- 7 think?
- 8 A Yeah.
- 9 Q You didn't see anything coming when you looked
- 10 left?
- 11 A No.
- 12 Q Your cousin, you cut his hair that day?
- 13 A Yes.
- 14 Q Were you cutting his hair the whole time or --
- 15 when you went to his house?
- 16 A No.
- 17 Q Okay. What do you remember doing? I know it
- 18 was a long time ago.
- 19 A I got off from work, cut his hair, and played
- 20 like this a game of Madden, I believe.
- 21 MR. SMITH: Played what?
- 22 THE WITNESS: Madden.
- 23 BY MR. DANIEL:
- 24 Q Is it the Madden football?
- 25 A Yeah, I believe.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

- 1 Q The vehicle that you made contact with, did it
- 2 keep going down the road, or did it spin like a top?
- 3 A I don't recall.
- 4 Q You didn't -- once you hit it, you -- it went --
- 5 did it go down the road out of your vision?
- 6 A Yeah.
- 7 Q Were people on the scene quickly --
- 8 A Yeah.
- 9 Q Or did it take a while?
- 10 A They was there pretty quick.
- 11 Q Did you see the impact between Mrs. Hood's
- 12 vehicle and the Tahoe that some witnesses have been
- 13 talking about earlier this morning?
- 14 A No, I just heard it.
- 15 Q Was it too far down the road for you to see, or
- 16 was it too dark to see?
- 17 A It was farther down the road, so I could barely
- 18 see what was going on.
- 19 Q Did you see people around those vehicles going
- 20 to help?
- 21 A Yes.
- 22 Q How quickly were those people there?
- 23 A I can't put an estimated time on how fast they
- 24 got there, but it was -- I guess you could say pretty
- 25 quick.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

- 1 Q Okay. And I just started right in with the text
- 2 messages, Antoine. Tell me about yourself. Where did you
- 3 grow up?
- 4 A Hardeeville and Ridgeland.
- 5 Q Have you lived in Hardeeville and Ridgeland all
- 6 your life?
- 7 A Ten years.
- 8 Q Okay. Where did you go to high school?
- 9 A Ridgeland High.
- 10 Q Did you play sports?
- 11 A Football and track.
- 12 Q Football and track?
- 13 A Yes.
- 14 Q Did you -- what did you -- what events did you
- 15 compete in in track?
- 16 A A 110-meter hurdles and 400 hurdles, four by
- 17 one, 200, and the four by four.
- 18 Q Did you go to State in track?
- 19 A For the 110 hurdles, 400 hurdles, and the four
- 20 by four.
- 21 Q Did you win or place in any event?
- 22 A Placed top three in all. I won the 110.
- 23 Q You won the State champion in the 110?
- 24 A Yeah.
- 25 Q You were working at the time of this accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 A Correct.

2 Q Where were you working?

3 A The Greenery.

4 Q And is that a landscaping business?

5 A Yes.

6 Q You working now?

7 A Yes.

8 Q Where are you working?

9 A I detail cars in the auto mall.

10 Q How long -- how long have you been working

11 there?

12 A I just started back working there, so about two

13 months.

14 Q You were there before?

15 A Yes.

16 Q Why did you leave?

17 A I was going back to school.

18 Q What were you going to school for?

19 A Barbering.

20 Q Who do you live with?

21 A My mama and daddy.

22 Q And what are their names?

23 A Richard and Lativia Johnson.

24 Q How long have you lived there?

25 A All my life.

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 the car passed, then I looked again, then I tried to move

2 forward.

3 Q Okay. You didn't see a vehicle when you started

4 to move forward and hit the gas; is that right?

5 A No.

6 Q And then a vehicle was just there?

7 A Yes.

8 Q Have you seen the color of that vehicle now,

9 after the fact?

10 A Yes, sir.

11 Q Is it dark in color?

12 A Yes, sir.

13 Q And I realize this happened fast but -- and I

14 don't want to put words in your mouth, but was what ended

15 up being right in front of you the car you made contact

16 with, that SUV, going slow? Fast? Do you have any idea?

17 A I don't recall.

18 Q How quick did that contact happen?

19 A Pretty quick.

20 Q They have some photos of your Honda.

21 Is Exhibit 4, is that your car?

22 A Yes.

23 Q Do you remember whether your bumper was torn off

24 at the scene?

25 A During -- during the accident?

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Those text messages that were inbound that

2 Mr. Smith was asking you about, looking at -- are you

3 looking at those phone records now?

4 A Yes.

5 Q Does it say whether you were reading them?

6 A No.

7 Q The text messages that you sent that were

8 outbound, does that record say how long those messages

9 were, or how long you were on the phone?

10 A No. As far as how long --

11 Q How long the text message is, or how long it

12 took you to send it?

13 A Oh, no.

14 Q Do you ever answer "yes", "okay," or "no,"

15 "can't", things like that?

16 A All the time.

17 Q Short. Sometimes your texts are pretty short?

18 A Yes.

19 Q Are your texts usually short?

20 A All the time mostly.

21 Q So you looked to your left, didn't see anything,

22 Antoine, you looked -- you looked to your left, you didn't

23 see anything, you started to move forward to make a left

24 turn?

25 A I looked to the left, and I looked again after

CROSS EXAMINATION OF A. JOHNSON BY MR. DANIEL

1 Q Yes. Yes.

2 A I don't believe it were.

3 Q Is this at the scene?

4 A No.

5 Q It looks like it's at a tow yard somewhere,

6 right?

7 A Correct.

8 Q There was damage to your vehicle, but you

9 don't -- as far as you remember, the bumper wasn't

10 completely off?

11 A No.

12 Q Mr. Smith asked you about not getting out to

13 help people. When you looked over and saw that there had

14 been another accident, were people already there rendering

15 aid?

16 A Yes.

17 MR. DANIEL: Thank you, Antoine.

18 THE COURT: Anything further?

19 MR. SMITH: Yes, ma'am.

20 REDIRECT EXAMINATION

21 BY MR. SMITH:

22 Q Mr. Johnson, I want to try to get something

23 straight, a couple of things here.

24 Number one, you said that during the day

25 you got breaks, right?

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A Yeah.

2 Q But if we review these records from the time you

3 were at work --

4 MR. SMITH: Just put them up one through --

5 yeah. Okay.

6 BY MR. SMITH:

7 Q If we review these records from while you were

8 at work -- sorry.

9 You said you got to work around what time?

10 A About 6:45.

11 Q Six-forty-five. So did you have a break at

12 7:29? At 7:42? At 7:49? At 8:13? At 8:14? At 8:30:

13 At 8:34? At 8:35? At eight -- did you have a break all

14 those times?

15 A The job description I had at the time, it was a

16 lot of us standing around. So if there is nothing going

17 on, we can be on our phones.

18 Q So what you're asking the jury to believe -- you

19 understand the jury is -- they're assessing credibility

20 today; do you understand that?

21 A Yes.

22 Q Okay. And you -- but you want the jury to

23 believe, when they receive these phone records and they go

24 back to the jury box and they're looking at them, you want

25 them to believe that every entry between 7:30 in the

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 morning and 4 o'clock in the afternoon, 90-something

2 times, that each one of those, you were on a break?

3 A Probably was one of my free periods.

4 Q I'm sorry?

5 A Probably was one of my free periods, when there

6 wasn't nothing going on. I was on the pine straw crew at

7 the time, so if our job was done we ain't have nothing to

8 do but ride the clock out.

9 Q Okay. Mr. Johnson, I also want to ask you about

10 the call you made the night before, the one -- the call

11 that you made the night before, or the entry that we see

12 for the night before, the three-hour phone call -- I'm

13 sorry. No. My mistake.

14 The 4:44 entry, the day of the collision,

15 the very first activity on your cell phone that day, who

16 are you getting a text from?

17 A I'm sending a text.

18 Q Okay. Who are you sending a text to at

19 4:44 a.m., the day of the wreck?

20 A To one of my friends.

21 Q 1200?

22 A Yeah.

23 Q Okay. That's one of your friends?

24 A Yeah.

25 Q And you know that. What's that friend's name?

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 A I don't think --

2 Q What's that?

3 A Travia.

4 Q Tray what?

5 A Travia.

6 Q Okay. Now, you said this text that came in at

7 5:57 p.m., when we say the wreck happened, you say you

8 didn't look at that text, right?

9 A Correct.

10 Q And that's from the same number, 1200, isn't it?

11 A Correct.

12 Q So the very first thing you do in the morning,

13 the day of, is reach for your phone and you send a text to

14 this person. The very first thing.

15 A You can't say that's the first thing that I did

16 that morning.

17 Q How -- when did you wake up?

18 A There's no telling when I got up.

19 Q Well, we know the first text you sent was at

20 4:44 a.m. Did you wake up -- well, let me rephrase the

21 question.

22 Do you recall waking up sooner than

23 4:44 a.m., or was that about when you woke up that day?

24 A I tend to get up in the middle of the night at

25 random times between 2:00 and 3:00 -- between 2:00 and

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 4:00 in the morning. So there's no telling when I got up.

2 I could have got up, went back to sleep, and then got back

3 up and started messaging. I don't know.

4 Q Well, if you got up at 2 o'clock in the morning,

5 and your last phone call ended at 12 -- just after

6 midnight, that gives you about an hour and 45 minutes of

7 sleep the night --

8 A Well, like I said the first time, there's no,

9 guarantee that I ended that phone call at 12 o'clock. I'm

10 known for getting on the phone and going to sleep on the

11 phone.

12 Q I get you. But Mr. Johnson, your memory is not

13 perfect back to this day and what time you got up and all

14 that; would you -- is that fair to say?

15 A Correct.

16 Q Okay. And all that we have to rely on here is

17 your cell phone records; is that correct?

18 A Correct.

19 Q All right. And those cell phone records show

20 that at 4:44 a.m. you called this number, you sent a text

21 to this fellow, Travia.

22 A Female, yeah.

23 Q Right?

24 A Correct.

25 Q Okay. That was the first activity on your phone

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 that day, the very first activity we see on your phone
 2 that day, right?
 3 A Correct.
 4 Q All right. And that same exact person, who was
 5 your first activity, that exact same person was the one
 6 that sent you the text at 5:57, when we contend you were
 7 crossing Highway 278. And you want the jury to believe
 8 you didn't read that text that came from the same person
 9 that your very first activity of the day was with.
 10 A Correct.
 11 Q That you grabbed that phone and sent a text?
 12 A Correct.
 13 THE COURT: All right. Let's move on, y'all.
 14 MR. SMITH: Okay. Your Honor, may I ask one
 15 more question?
 16 THE COURT: One.
 17 BY MR. SMITH:
 18 Q Who's Travia?
 19 MR. DANIEL: Your Honor, relevance.
 20 THE COURT: Okay. Go ahead and ask that.
 21 THE WITNESS: That was my girlfriend.
 22 BY MR. SMITH:
 23 Q I thought you met your girlfriend in the
 24 hospital after the wreck?
 25 A At the time she was my girlfriend.

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 want to discuss and get out of the way.
 2 THE COURT: Okay. Which expert?
 3 MR. WILLEY: Ms. Borzendowski --
 4 Dr. Borzendowski.
 5 THE COURT: Okay. Your human factors expert; is
 6 that correct?
 7 MR. WILLEY: Yes, ma'am.
 8 THE COURT: Okay. Well, y'all take a
 9 five-minute break and we'll come back and we'll talk
 10 about her testimony. Okay?
 11 MR. WILLEY: Okay. Thank you.
 12 (Whereupon, the Court stood in recess.)
 13 THE COURT: All right. Anything you need to put
 14 on the record, Mr. Willey?
 15 MR. WILLEY: Yes, ma'am. We -- our second
 16 witness that we will call is Dr. Stephanie
 17 Borzendowski. In pretrial we moved in limine to
 18 prohibit counsel from making any reference to any
 19 black box data until those witnesses came forward or
 20 any witness as to the speed, as it's not a proximate
 21 cause and for other reasons.
 22 And in this case, when we call Ms. Borzendowski
 23 we expect, because he just told us as much, him to
 24 make reference to the speed of the vehicles. And in
 25 her deposition, specifically on Pages 23 through --

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Q Okay. Okay. Thank you.
 2 THE COURT: Anything further?
 3 MR. DANIEL: No, Your Honor.
 4 THE COURT: You may step down, sir.
 5 Ladies and gentlemen, this is a good time for a
 6 break.
 7 Again, do not discuss the case. It would be
 8 inappropriate to do so.
 9 Depending on how long the next witness is, I
 10 have to get the next witness up and then break for
 11 lunch. Or if there's another short witness, we're
 12 likely to do that.
 13 But I'm looking at somewhere between 12:30 and
 14 1:30 breaking for lunch today. Okay? Just to let
 15 you know.
 16 Go back, get a coffee, ladies and gentlemen,
 17 stretch your legs. We'll be back with you. Do not
 18 discuss this case, it would be inappropriate to do
 19 that.
 20 (Jury exits the courtroom.)
 21 THE COURT: All right. Anything on the record
 22 before we go on break for just about ten minutes,
 23 from the Plaintiff?
 24 MR. WILLEY: Yeah, we -- before our expert is
 25 called we will have some matters of law that we just

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: He's not going to say "the speed
 2 from the black box said." He's going to ask her if
 3 she considered speed in making her -- or forming her
 4 opinion as to this case. Read her deposition, she
 5 says "no."
 6 MR. WILLEY: Right. And our position is that's
 7 as far as they can go. Because what happened
 8 yesterday is Your Honor ruled that they cannot
 9 mention tailgating. And on the third question it
 10 specifically came out with that word from counsel
 11 about that specific incident. And I'm afraid that's
 12 going to happen again because before that occurred, I
 13 believe Mr. Daniel is going to address this witness,
 14 Ms. Suttie went over to him, and I believe based on
 15 what I could hear instructed her to do that.
 16 So I want to make sure that this is not going to
 17 happen with this witness. If she says no, that will
 18 be the end of that as to speed.
 19 MR. DANIEL: Your Honor, we did talk about this
 20 briefly in chambers. It's our position that, and I
 21 don't believe Your Honor has ruled on it, it's a
 22 standard jury instruction, or standard instruction on
 23 speed. It is certainly our position that speed is a
 24 factor in this case, that speed -- the jury can draw,
 25 based on their own common knowledge and common sense,

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 that speed may have been a contributing cause or
2 proximate cause of the accident.

3 This witness, this particular expert, provided a
4 number of things, not by us. Plaintiff's expert
5 provided a number of things that are in reply,
6 including Woody Poplin's deposition. I simply wanted
7 to ask her if in her testimony she testifies that she
8 read his deposition and recalls certain things about
9 what Woody Poplin found, what he pulled from the
10 vehicle.

11 I should be able to at least ask her what Woody
12 Poplin found, what he documented, and whether she
13 considered it.

14 THE COURT: Okay. What I'm going to let you do
15 is, you can ask to the extent in Woody Poplin's
16 deposition he talks about or testifies to speed. I'm
17 not going to let you say, "Did you consider that in
18 forming your opinion?"

19 And she's going to say yes or no.

20 But, again, you can't testify as to what Woody
21 Poplin found in his deposition until and unless Woody
22 Poplin testifies to that. Okay?

23 MR. DANIEL: Your Honor, just -- I do think that
24 if she's going to be evaluating and drawing
25 conclusions and inferences from --

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: If she says she didn't use it, then
2 she isn't.

3 MR. DANIEL: You're right. But, Your Honor, I
4 think it is admissible what evidence an expert did
5 not consider that's in the record.

6 THE COURT: You get that in there by saying --

7 MR. DANIEL: She has documentation --

8 THE COURT: Don't talk over me.

9 You get that in there by saying you didn't
10 consider speed in this case.

11 Let's bring the jury in.

12 MR. WILLEY: Okay. One more thing, Your Honor,
13 as to that witness, and that's as to the Parkinson's,
14 because it's the same concern. You already ruled on
15 it, but again we got into it with the tailgating.
16 She says in her deposition on Page 86 and 87 she
17 didn't consider it, she didn't even know she had it.
18 It played no role at all in her analysis and would
19 not play a role. So I just want to make it perfectly
20 clear that they're not able to bring that out through
21 this witness without some medical testimony to say
22 that it played a role or otherwise. We're not
23 claiming exacerbation or anything else.

24 MR. DANIEL: Your Honor, she's a human factors
25 expert. And she can say she's not a medical doctor,

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 but there's some things that people have common
2 knowledge of that affect driving. I think we should
3 be allowed to at least show her a few medical
4 records, not going to be a lot, but a few things and
5 ask her whether she considered it.

6 THE COURT: She didn't consider. I think the
7 only thing you -- I think you can ask whether or not
8 you considered whether her Parkinson's and any
9 residual side effects had an effect. She's either
10 going to say one of two things. She is either going
11 to say, "No, I didn't consider it;" or "No, I'm not a
12 medical doctor, and that's not an appropriate thing
13 for me to consider."

14 Or she's going to say, "I flat out didn't
15 consider it."

16 MR. DANIEL: I'll try and lay a foundation for
17 things, if it's improper.

18 THE COURT: That's fine.

19 MR. WILLEY: Your Honor, I just want to --

20 THE COURT: That's fine. He just does it at his
21 own peril.

22 MR. WILLEY: Well, I also, just to be clear,
23 just in the case he's going to introduce some medical
24 records through a non-medical expert. I don't think
25 you can do that.

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 THE COURT: You're not going to give her any
2 medical records on her Parkinson's. Unless she tells
3 me -- listen, you tell me you've got an expert in
4 this case that's going to say her Parkinson's caused
5 this wreck or in some way affected her ability?

6 MR. DANIEL: That's not what I have.

7 THE COURT: Well, I don't know what you have.

8 MR. DANIEL: I can -- I can proffer it now. And
9 it's records they have as well. They stipulated to
10 the authentication of them, they're --

11 MR. WILLEY: We what?

12 MR. DANIEL: Stipulated to the authentication of
13 these records before trial. They're the Plaintiff's
14 VA records that say she had -- she was complaining of
15 blurred vision on the morning of the accident.

16 THE COURT: Okay. And, again, you tell me how
17 that affects her being in her lane bound straight,
18 blurred vision. If I were alleging speed on her
19 behalf --

20 MR. DANIEL: Also, too, you can keep a proper
21 lookout as well. I mean, it's not my decision.

22 Your Honor, I don't have -- the Defendant
23 doesn't have the burden of proof. There's a record
24 --

25 MR. WILLEY: You do as to affirmative defenses,

REDIRECT EXAMINATION OF A. JOHNSON BY MR. SMITH

1 Mr. Daniel.

2 THE COURT: Okay. Let's just do this. We're

3 going to bring -- let's just bring the jury out, put

4 the next witness up, and then --

5 MR. WILLEY: Can I get just a preliminary ruling

6 on the Parkinson's one way or the other? I don't

7 think he can use the medical records, and once he

8 does it, we're prejudiced by it.

9 THE COURT: Well, I think that would have been

10 more properly asked a question of her when she was up

11 on the stand. Did you or did you not complain about,

12 you know, you had blurred vision on the morning of

13 this accident to a doctor?

14 It's not appropriate to put it in through the

15 human factors expert. Okay.

16 MR. WILLEY: Thank you.

17 {The jury enters the courtroom at 12:18 p.m.}

18 THE COURT: Welcome back, ladies and gentlemen.

19 All right. Call your next witness.

20 MR. SMITH: Ma'am, we call Cindy Bryan.

21 Thereupon,

22 CINDY BRYAN

23 was called as a witness, having been first duly sworn,

24 was examined and testified as follows:

25 MR. SMITH: Judge, before we begin, I've been

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 communion to all the parishioners.

2 Q And when you say "communion", what are you

3 distributing?

4 A We believe that the -- at the time when

5 communion is distributed, Jesus is actually physically

6 present in the wine and in the host, in the bread.

7 Q Let me stop you for just a second. We don't

8 need to go -- I don't know who here is Catholic and who

9 here is not.

10 So, communion, what are you distributing?

11 I know you're about to tell us what it stands for, but

12 what --

13 A You would know it as bread and wine. We

14 distribute the bread and wine.

15 Q Okay. So the Eucharistic minister helps the

16 priest distribute the bread and wine, which is the

17 communion.

18 A Yes.

19 Q Now, is that something that you can just

20 volunteer for or do? Or is it something that has to be

21 approved?

22 A You can try to volunteer, but the priest has to

23 know something about you and would approve it.

24 Q Okay. Now, I guess that's for -- we're are not

25 all Catholics here, not everybody knows what it means to

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 seeing a lot of shiver up here. Is there any way we

2 could bring the AC down a little bit?

3 THE CLERK: I'm texting them now.

4 MR. SMITH: Okay. Thanks.

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q Ms. Bryan, please tell us your name.

8 A Cindy Bryan.

9 Q Ms. Bryan, where do you live?

10 A In Goose Creek.

11 Q And what do you do for work?

12 A I work for the Diocese of Charleston.

13 Q How long have you been doing that kind of thing?

14 A Going on 19 years.

15 Q All right. Do you know Therese Hood?

16 A I do.

17 Q Where do you know Therese from?

18 A I know Therese from church.

19 Q All right. And what church is that?

20 A Immaculate Conception Church in Goose Creek.

21 Q Are you what's called a Eucharistic minister?

22 A I am.

23 Q And what does a Eucharistic minister do? What's

24 the function?

25 A They help the priest at Mass to distribute

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 be a Eucharistic minister, so I want to give you an

2 opportunity just to explain that to the jury, as a

3 Catholic, and a church member with Ms. Hood, what does it

4 mean to be a Eucharistic minister? And just talk to them.

5 A Okay. You would almost have to have a calling.

6 You feel that this is where Jesus is leading you to be

7 able to help the priest to distribute Holy Communion.

8 And at the time of the distribution of

9 communion, we believe -- there's a point in the Mass where

10 the priest will consecrate the bread and the wine to where

11 Jesus actually becomes physically present in the bread and

12 the wine. And so you're actually holding Jesus in your

13 hands when you are doing this.

14 Q Now, you take your faith very seriously?

15 A I do.

16 Q All right. And from what you have observed

17 through your observations of Therese Hood, does she take

18 her faith very seriously as well?

19 A Yes, she does.

20 Q Okay. And you mentioned "a calling." Did you

21 yourself feel the calling to become a Eucharistic

22 minister?

23 MR. DANIEL: Your Honor, relevance.

24 THE COURT: Okay. You need to the wrap this up

25 pretty quick as far as relevance is concerned, I

DIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 would agree. Let's go.

2 BY MR. SMITH

3 Q Ms. Bryan, how would you feel if the privilege
4 of being a Eucharistic minister was taken away from you?

5 A I would feel a loss, a hurt, because I'm drawn
6 to that ministry. And for it to be taken away, I would
7 miss it, and it would be hard to sit there in church every
8 week and watch other people that have that calling and
9 just not be able to participate actively anymore.

10 Q Would there be a void in your life?

11 A I believe so.

12 Q Now, you visited Therese at her house after the
13 wreck sometime. What did do you that for?

14 A I had to take communion to her for about a month
15 when she couldn't get to church.

16 Q And what could you -- what could you see? Or
17 how did she appear?

18 A She was in a wheelchair. I think at the very
19 beginning she had, like, a brace on her -- I think that it
20 was her right leg. I don't remember which leg, but it was
21 in a cast. And there were pins and -- in her ankles and
22 everything. It looked very painful.

23 Q Okay. All right. That's all the questions I
24 have for you. Thank you.

25 CROSS EXAMINATION

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 BY MR. DANIEL:

2 Q I'm sorry. Just could you -- so you took
3 communion to Mrs. Hood for how many -- how long was the
4 period?

5 A About three or four weeks.

6 Q Okay. Was she able to come back to church after
7 that three- or four-week period?

8 A It might have been another week or so, but yeah,
9 she eventually returned back to church.

10 Q And she's given a deposition in the case. I'll
11 represent to you that she says that she --

12 MR. SMITH: Your Honor.

13 THE COURT: Okay. Again, that's improper use of
14 a deposition. So --

15 MR. DANIEL: Yes, ma'am.

16 BY MR. DANIEL:

17 Q Is it your understanding that she has also
18 volunteered as a Eucharistic minister after this accident?

19 A She has.

20 Q And that involves standing up as the entire, I
21 guess, members of the church, everybody in your church,
22 the Catholic faith, they walk in a procession line to
23 receive communion, right?

24 A Yes.

25 Q So if it's a busy Sunday or Saturday evening,

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 whenever y'all have Mass, the person handing out
2 communion, the Eucharistic minister, they have to be on
3 their feet for a while?

4 A Probably around ten, 15 minutes at the most, I
5 would think.

6 Q Okay. But Mrs. Hood has been able to do that
7 and can manage that after this accident?

8 A I believe she has for a little while.

9 Q Okay. And she is your friend?

10 A We're not close friends, we're just more like
11 acquaintances. We're involved in some things, but not a
12 lot of things together.

13 Q How often do you see her?

14 A Probably on a monthly basis.

15 Q Once a month? Is that -- I'm trying to be rude.
16 Is that a "yes"? The court reporter has to write it down.

17 A I'd say about once a month.

18 Q Okay. You're not around her day-to-day
19 everyday?

20 A No.

21 Q You don't know what medication she takes?

22 A No.

23 Q You don't know what medication she took before
24 this accident?

25 A No.

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 Q You don't know what her health issues were
2 before this accident?

3 A I know a little bit.

4 Q Okay. What do you know?

5 A I know --

6 MR. SMITH: Your Honor, I would object for
7 relevance. I don't know exactly where he's going
8 with this.

9 THE COURT: Okay. Come up and approach.

10 (Off-the-record discussion held.)

11 BY MR. DANIEL

12 Q And, Ms. Bryan, before the objection, I just --
13 you do know a little bit about Mrs. Hood's health
14 condition, or conditions, before this accident?

15 A A little bit, yes.

16 Q Okay. Just tell us what you know.

17 A I just know she had MS.

18 THE COURT: Anything further?

19 BY MR. DANIEL

20 Q Do you live near Ms. Hood?

21 A It would probably take me -- not real close. It
22 would probably take me about ten minutes, 15 minutes to
23 get to her house.

24 Q And as far as how frequently you would see her,
25 you would see her about once a month before the accident

CROSS EXAMINATION OF MS. BRYAN BY MR. DANIEL

1 as well?

2 A Yes.

3 MR. DANIEL: Thank you, ma'am.

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q Ms. Bryan, that once a month that you saw her,

7 was that at church?

8 A Yes.

9 Q I mean, y'all ain't going over to each other's

10 house, getting together for dinner, and stuff like that.

11 You're seeing each other at church, right?

12 A Yes.

13 Q And you're also in the ladies guild and she was

14 in the ladies guild as well, right?

15 A Yes.

16 Q But Therese is not a Eucharistic minister

17 anymore, is she?

18 A No, she's not.

19 Q She had an incident where her leg got shaky and

20 she spilled the wine, the blood of Christ; did she not?

21 A That's what I was told.

22 Q Right. And the priest said, "You are no longer

23 to do that function," right?

24 A Exactly.

25 Q And that's because Catholics regard the wine in

REDIRECT EXAMINATION OF MS. BRYAN BY MR. SMITH

1 that process as the actual blood of Christ. That's what

2 you believe.

3 A Oh, yes. That's --

4 Q How do you think it felt for Therese to be

5 standing there and spill the blood of Christ?

6 THE COURT: Calls for speculation. That's just

7 not a good question. You need to move on.

8 MR. SMITH: I withdraw it. No more questions.

9 RE-CROSS EXAMINATION

10 BY MR. DANIEL:

11 Q Ma'am, were you there for that incident?

12 A No, I wasn't.

13 THE COURT: Anything further?

14 MR. SMITH: No, ma'am.

15 THE COURT: Anything objection to this witness

16 being excused?

17 MR. SMITH: No objection.

18 THE COURT: You're excused, ma'am. Thank you.

19 Call your next witness.

20 MR. WILLEY: The Plaintiff calls Dr. Stephanie

21 Borzendowski.

22 THE COURT: Come on forward.

23 Thereupon,

24 DR. STEPHANIE BORZENDOWSKI

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WILLEY:

4 Q Dr. Borzendowski, would you introduce yourself

5 to the jury?

6 A Absolutely. I am Stephanie Metzel Borzendowski.

7 Q And where do you live?

8 A I live in Summerville.

9 Q And how long have you lived in Summerville?

10 A A little over two years.

11 Q And do you do for work?

12 A I'm a human factors consultant with a company

13 called Applied Building Sciences.

14 Q What does Applied Building Sciences do

15 generally?

16 A A pretty wide range of things. But we do a lot

17 of consultation on matters that are in litigation or have

18 the potential to be in litigation.

19 Q And as part of your work, you mention that you

20 have an expertise in human factors. What is that?

21 Explain that to the jury.

22 A Human factors is basically the study of human

23 interaction with their environment, and that can take the

24 form of a lot of different things, including driving or

25 walking.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And tell the jury the educational background

2 that you had to go through in order to become a doctorate

3 in that field.

4 A Sure. I got my Bachelor's in Psychology from

5 Hartwick College, which is in upstate New York. And I

6 then got my Masters in Applied Psychology with a

7 concentration in human factors from Clemson University.

8 And I earned my Ph.D. in Human Factors Psychology also

9 from Clemson University.

10 Q And what is applied psychology? How would you

11 describe that?

12 A So my masters was in applied psychology and, in

13 a nutshell, that's basically taking the principles of

14 psychology and applying them to sort of real world

15 problems.

16 Q So, is it fair to say that basically you look at

17 how people act and react in different circumstances?

18 A Yes.

19 Q And you do that based on science and data?

20 A Correct.

21 Q And, Dr. Borzendowski, how long, including

22 college, you know, did you have to go to school in order

23 to get your doctorate in human factors?

24 A From college through graduate school. I was in

25 school for nine years.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And that's why we call you Doctor. You earned
 2 it, right?
 3 A Yeah. Try not to enforce it, people don't call
 4 me that too often.
 5 Q Tell the jury a little bit about your experience
 6 in the field of human factors.
 7 A Starting with graduate school?
 8 Q Starting with graduate school.
 9 A Okay. So while I was in graduate school, I
 10 worked in a visual perception lab, and I also served as a
 11 teaching assistant and later as an instructor. And my
 12 primary research area was in the nighttime conspicuity of
 13 pedestrians as well as driving safety kind of broadly at
 14 night.
 15 Q And where was that lab? Where did you do those
 16 courses?
 17 A That was all at Clemson University.
 18 Q And we won't hold that against -- or for you.
 19 A Oh, I think I sense some bitterness.
 20 Q "Conspicuity" you mentioned. Will you explain
 21 to -- I think I said it right, "conspicuity"?
 22 A You did.
 23 Q I'll have to break it down each time.
 24 Will you tell the jury what that is?
 25 A Conspicuity, simple stated, is the extent to

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 which an object stands out from it's background.
 2 Q And what sort of factors deal with conspicuity?
 3 What are you looking at specifically when you deal with
 4 that?
 5 A There's a number of factors that you would
 6 consider, including the background or the environment in
 7 which the object is being viewed, as well as properties of
 8 the objects such as size, brightness, color.
 9 Q And we deal with this field a lot in motor
 10 vehicle wrecks, correct?
 11 A We do.
 12 Q And is a portion of that conspicuity analysis
 13 also, you know, who was looking? The individual that is
 14 actually looking at the object?
 15 A Yes, as far as characteristics associated with
 16 that individual.
 17 Q And in terms of motor vehicle wrecks, what are
 18 some of the characteristics that you look for when you're
 19 making an analysis of the situation?
 20 A We might look at things such as visual health.
 21 Do they wear corrective lenses? Were there any
 22 extenuating environment factors? Was the driver
 23 reasonably attentive? Things like that.
 24 Q And in terms of your field, you have done both
 25 lab training and also field training, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A I've conducted studies in both settings, yes.
 2 Q And when we say, "field training," that just
 3 sort of means out -- out in the world, right?
 4 A Yes. I've conducted a number of studies that
 5 were out on the road.
 6 Q And have you been published in these fields?
 7 A I have.
 8 Q And have you been qualified as an expert in the
 9 fields of human factors, conspicuity before?
 10 A Yes.
 11 Q And for purposes of this matter, did you have
 12 the opportunity to review a lot of deposition transcripts,
 13 data points, and things like that?
 14 A I did.
 15 Q And in this case, did you have the data to
 16 analyze that would be normally accepted in the field in
 17 coming to a determination?
 18 A Yes.
 19 MR. WILLEY: Your Honor, at this time, we would
 20 move to qualify Dr. Borzendowski as an expert in the
 21 field of human factors with a specialty in
 22 conspicuity and attentiveness.
 23 THE COURT: Okay. Do you have any voir dire for
 24 her?
 25 MR. DANIEL: Your Honor, no. I just -- just an

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 expert in human factors, I believe.
 2 THE COURT: And I agree with that.
 3 Ladies and gentlemen, in this case, this witness
 4 is being qualified as an expert in human factors.
 5 That allows her to give her opinion and the reasons
 6 for her opinion. And that's for you to use as you
 7 see appropriate, and to assist you in any way as
 8 compared to other evidence in this case.
 9 MR. WILLEY: She's qualified?
 10 THE COURT: I just did.
 11 BY MR. WILLEY
 12 Q Dr. Borzendowski, you've had the opportunity to
 13 review the Department of Public Safety document in this
 14 case, the statistic?
 15 A I have seen the page I think you're about to
 16 show me.
 17 Q Okay. And Department of Public Safety says that
 18 an injury wreck occurs in South Carolina every nine
 19 minutes; is that accurate?
 20 A Yes.
 21 MR. DANIEL: I haven't seen this, Your Honor, as
 22 far as statistics.
 23 THE COURT: Okay. If she can testify to that
 24 and she knows it of her own personal knowledge, fine.
 25 BY MR. WILLEY:

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q Let me ask you this, Dr. Borzendowski, are
2 statistics from the Department of Public Safety something
3 you rely on in your field?
4 A A lot of times -- excuse me.
5 A lot of times I would rely on national data
6 from the DOT and Federal Highway.
7 Q When you're looking at specific state instances,
8 would you sometimes also look in that specific state's
9 data relative to motor vehicle wrecks and timing and that
10 sort of thing?
11 A If it's available.
12 Q And in this case, the data from the South
13 Carolina Department of Public Safety is available,
14 correct?
15 A I'm looking at it.
16 Q Okay. And what does it say about how often we
17 have an injury wreck in South Carolina?
18 A According to this, in 2015, one person was
19 injured every nine minutes.
20 Q So the point of that is, we keep you pretty
21 busy, don't we?
22 A Yes.
23 Q In these sorts of cases. And you make your
24 living analyzing these types of cases, both of a civil and
25 criminal nature for the Court, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A A number of other individuals, yes.
2 Q And in those depositions from the engineers, did
3 you -- what did you rely upon on those depositions?
4 A Primarily on their testimony regarding the
5 timing and sequence of the events associated with the two
6 collisions we're here about today.
7 Q Okay. And in terms of that, that was primarily
8 just how the wreck occurred, basically who hit who first,
9 second, third?
10 A Right.
11 Q And I'll show you this. I'll tell you what, for
12 bad artwork it is sure getting some playing time here.
13 But this is a diagram that Kevin,
14 Mr. Smith, drew in his opening statement which shows
15 Ms. Hood's vehicle down here in the inside lane,
16 Mr. Johnson's vehicle at the stop sign, and Mr. Lee's
17 vehicle down here in the outside lane. Okay?
18 And is it your general understanding that
19 the way this wreck occurred is Ms. Hood was broadsided by
20 Mr. Johnson?
21 A That's my understanding, yes.
22 Q And then she was pushed over into another lane
23 of travel?
24 A That's my understanding.
25 Q And that's what you use the accident

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A Primarily, yes.
2 Q And you're paid for that?
3 A I am.
4 Q And how much are you being paid?
5 A My hourly rate for non-testimony time is \$190,
6 and my hourly rate for testimony time is \$290.
7 Q You were also paid, when Mr. Daniel took your
8 deposition by him, correct?
9 A I don't know if he's cut the check yet, but he
10 has an invoice, I think.
11 Q Okay. And that's how you pay your bills, right?
12 A Those checks are paid to my company, and I am a
13 salaried employee.
14 Q Just wanted to get that out of the way. It's
15 paid for the deposition.
16 So in this case, did you have an
17 opportunity to review the depositions of the parties that
18 were involved?
19 A I did.
20 Q And did you have the opportunity to review the
21 live testimony here this morning?
22 A Yes.
23 Q And in addition to the parties involved, did you
24 also have the opportunity to review the depositions of
25 witnesses and engineers?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 reconstruction depositions for, correct?
2 A Primarily.
3 Q Okay. Now, in terms of -- you had the
4 opportunity in this case to review the cell phone records,
5 correct, of the Defendant and testimony about those?
6 A Yes.
7 Q Okay. And so you are aware that at 12 -- well,
8 let me ask you this. I'll step over here so you can see a
9 little better.
10 At what time did his last call on 11/6
11 officially end?
12 A It looks like it ended at 12:17 a.m. on November
13 7th.
14 Q Okay. And the duration of that call in seconds?
15 A 10,978.
16 Q Okay. That's about three hours?
17 A I believe so.
18 Q Okay. And on 11/7, his first activity was at
19 what time?
20 A 4:44 a.m.
21 Q Okay. And what was that?
22 A It appears to have been an outbound text
23 message.
24 Q Okay. So that's a text message that he would
25 have actually typed out?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A Presumably, yes.

2 Q And you had the opportunity in this case to

3 review Ms. Melnick's deposition, correct?

4 A Yes.

5 Q And that's the exact same deposition that the

6 jury saw, just saw it via video. So when I refer to

7 testimony or deposition, it's the same. Okay.

8 And you also had the opportunity to review

9 the 911 records, correct?

10 A I did.

11 Q And you were able to determine who made the

12 first 911 call?

13 A I don't recall off of the top of my head, but

14 there's a time stamp associated with it. I know that.

15 Q Okay. And I'll show you Plaintiff's Exhibit 1,

16 which are those.

17 You understand that individual was

18 Ms. Melnick?

19 A Yes.

20 Q Okay. Now, in reviewing Ms. Melnick's

21 deposition, were you able to see some of the things

22 between the time that she saw the wreck and actually made

23 the 911 call that she did?

24 A Yes. I believe she described kind of what she

25 did after she heard and saw the collision.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 BY MR. WILLEY:

2 Q Okay. What is your understanding about what

3 aftermath she was referring to?

4 A Given the timing of events and the location of

5 the Dunkin' Donuts, presumably the aftermath of Ms. Hood's

6 collision with the Kuck's vehicle.

7 Q All right. And continue.

8 A So after she heard and saw collision activity, I

9 believe Ms. Melnick testified that she had to go back

10 inside the Dunkin' Donuts in order to call 911, and that

11 involved going around a counter to get to the phone that

12 was within the restaurant, coffeehouse.

13 Q Okay. So she left the patio, went inside and

14 went behind the counter is your understanding?

15 A Correct.

16 Q Okay. And when Ms. Melnick testified that she

17 was able to see the aftermath. Did she give any

18 indication about whether people were out there and that

19 sort of thing, by that point, that you recall?

20 A My recollection is that she could see that there

21 were already some bystanders, perhaps, that were

22 responding.

23 Q And when she got in off the patio, inside,

24 around the counter, in the back, what did she do?

25 A I believe she then called 911.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q Okay. And describe for us, you know, basically,

2 Ms. Melnick, what you remember about that.

3 A From what I recall, she was an employee of the

4 Dunkin' Donuts along two -- the frontage road off 278, and

5 she was putting umbrellas down, I believe and --

6 Q Let me stop you there.

7 MR. WILLEY: May the witness step down?

8 THE COURT: She may.

9 (Witness complies.)

10 BY MR. WILLEY:

11 Q The jury already knows what this is, we talked

12 about it ad nauseam. Okay.

13 But up here is the Dunkin' Donuts. So just

14 continue. Thought it might be helpful to have a visual.

15 A Okay. So my understanding is that she was out

16 in this front patio area, and that she was putting

17 umbrellas down. And I think the first thing she said is

18 that she heard some kind of collision, and then looked

19 through the trees and saw what she described as the

20 aftermath. And then she --

21 Q So is it your understanding, based on her

22 testimony, that that was the first impact, and that she

23 saw the aftermath after the second impact?

24 MR. DANIEL: Objection, leading, Your Honor.

25 THE COURT: Sustained. Don't lead her.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And what time was that call?

2 A I believe the 911 numbers indicate 5:58.

3 Q And as a human factors expert, and just person

4 with common sense, what does that tell you about the time

5 of the wreck in this case, the initial wreck?

6 A That would suggest that at least some time had

7 elapsed from the initial wreck to the 911 call, given that

8 two wrecks had to happen and she had to witness the

9 aftermath and get inside the restaurant before dialing

10 911.

11 Q Okay. Now, as part of this, you also had the

12 opportunity -- excuse me -- to review what Mr. Johnson did

13 after the wreck, correct?

14 A With his cell phone records.

15 Q In terms of his cell phone records.

16 A Yes.

17 Q I'll show you what's in evidence as Plaintiff's

18 Exhibit No. 7. And what were you able, in your field of

19 expertise, to gather from this wreck?

20 A Primarily that there was an inbound text message

21 that arrived at Mr. Johnson's phone close in proximity to

22 the time of the first impact.

23 Q And based on the timing of the 911 call at

24 5:58:46, about how long before that 911 call did that text

25 message come in?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A It looks like almost exactly the minute.
 2 Q And based on your expertise and human factors
 3 and about, you know, how long things would take, what do
 4 you then notice about the next -- next call log on his
 5 record?
 6 A The next item is an outbound call at 1759, or
 7 5:59.
 8 Q And that call is basically, at 5:59 and four
 9 seconds. So right at 5:59?
 10 A Yes.
 11 Q And you had the opportunity to hear
 12 Mr. Johnson's testimony?
 13 A I did.
 14 Q And you, based on that, are able to obviously
 15 determine, he admitted, that that was after the wreck,
 16 correct?
 17 A Correct. I believe he said he was calling his
 18 mother.
 19 Q Okay. So we now walk through, basically, the
 20 wreck sequence and what occurred thereafter. And in terms
 21 of making your analyses in this case, what other data was
 22 important to you?
 23 A Primarily the timing of the two collisions as
 24 well as any information about witness recollection from
 25 that time period.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q Okay. And where does that data come from?
 2 A This is from a website called "SunCalc."
 3 MR. DANIEL: Your Honor, may we approach?
 4 THE COURT: You may.
 5 (Off-the-record discussion held.)
 6 BY MR. WILLEY:
 7 Q Okay. So, Dr. Borzendowski, this document in
 8 front of you you recognize?
 9 A Yes.
 10 Q It is from SunCalc, correct?
 11 A Yes.
 12 Q And what does SunCalc do? What does that
 13 document do?
 14 A It basically provides information about the
 15 timing of sunrise and sunset, the day of the collision.
 16 Q And is that a website that you would normally
 17 rely on in your field?
 18 A I've used it before, yes.
 19 Q You've used it before in other matters?
 20 A Yes.
 21 Q And there is another source as well that
 22 provides sunset and sunrise data. You are familiar with
 23 that?
 24 A Yes.
 25 Q Okay. Tell the jury about that source.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Q And prior to this CAD record of 5:58:46, you
 2 were able to review this testimony about what Ms. Melnick
 3 went through before she got connected, correct?
 4 A Correct.
 5 Q And what was your understanding of that process?
 6 Was it she called and they just picked up? Or describe it
 7 for the jury.
 8 A My recollection is that the phone obviously
 9 rang. And then I believe she was transferred at least
 10 once, perhaps, between operators.
 11 Q All right. Before she spoke with someone?
 12 A Correct.
 13 Q And then, again, that would take additional
 14 time, correct?
 15 A One would assume so, yes.
 16 Q Okay. Now, with respect to the data, I'm going
 17 to show you a smaller version of what we are going to mark
 18 as Plaintiff's Exhibit 12 -- 13.
 19 Are you familiar with that document?
 20 A Yes.
 21 Q And describe for the jury what it is.
 22 A It is basically a map of the intersection where
 23 the collision occurred and off to the side of the map, we
 24 can see some data about sunrise and sunset on the day of
 25 impact.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A Can I refer to the document, so I don't mess up
 2 the acronym?
 3 Q Right. Just who puts out that data.
 4 A I believe it is the Naval Observatory. The U.S.
 5 Naval Observatory.
 6 Q Right. And is that data more general or more
 7 specific than SunCalc?
 8 A So the Naval observatory data allows you to put
 9 in a kind of general location, such as Hilton Head
 10 broadly, whereas SunCalc you are able to pinpoint a more
 11 specific location.
 12 Q Okay. So the SunCalc is more specific. And
 13 where does SunCalc derive their data?
 14 A My understanding is that it's based on a
 15 European astronomy formula.
 16 Q And in your deposition, you weren't able to
 17 specifically recall that, correct?
 18 A Correct.
 19 Q Were you able to go back and research that?
 20 A Yes.
 21 Q And as you sit here today, do you know exactly
 22 where the Naval Observatory derives their information?
 23 A My understanding is it's a similar formula.
 24 Q And that formula is accepted by experts in your
 25 field, correct?

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 A I certainly am not going to say I'm qualified to
2 perform it myself. But we rely on this type of data
3 regularly.

4 Q Okay. And that smaller version of Plaintiff's
5 Exhibit 13 that you have, is that a fair and accurate
6 representation of the SunCalc data, data point, for the
7 particular day of this wreck?

8 A Yes.

9 MR. WILLEY: Your Honor, at this time we would
10 move to enter into evidence the Plaintiff's Exhibit
11 13.

12 MR. DANIEL: This is the SunCalc record or the
13 Naval Observatory?

14 MR. WILLEY: The SunCalc, the specific one.

15 MR. DANIEL: No objection.

16 THE COURT: With no objection, it's in evidence.

17 *(Whereupon, Plaintiff's Exhibit No(s) 13 marked*
18 *for identification and received in evidence.)*

19 BY MR. WILLEY:

20 Q Dr. Borzendowski, would you mind stepping down?
21 The jury is going to have this back in the jury room, so
22 will you just explain to them what they're looking at
23 here.

24 A So hopefully what you can see here is this is a
25 map of the intersection where the both collisions

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 occurred, actually, approximately. So we can see here
2 Southwood Park Drive, which is where Mr. Johnson's vehicle
3 was stopped. And then we have William Hilton Parkway,
4 where Ms. Hood was traveling east.

5 And over here in this little box, we can see
6 some data regarding dawn, sunrise, noon, sunset, and dusk
7 for this particular geographic location.

8 Q And with respect to sunset for this location,
9 what does it say?

10 A It is identified as having occurred at 1729,
11 which would be 5:29 p.m.

12 Q And William Hilton Parkway, 278, that road runs
13 east to west, correct?

14 A Yes.

15 Q And how does the -- where does the sun set?

16 A West.

17 Q In the west. So the sun would be setting closer
18 to you than it is to me, correct?

19 A If I were driving here, yes.

20 Q And with respect to specific geographic
21 coordinates, obviously those are more specific than just
22 giving it for an entire town, correct?

23 A Right.

24 Q Is it fair to say that if you were somewhere
25 else on Hilton Head, the sunset may be at a different

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 Time?

2 A It's going to be slightly different, yes.

3 Q A minute or two?

4 A Possibly.

5 Q And in this particular case, you relied on this
6 document, correct?

7 A Correct.

8 Q And the sunset again was at 5:29.

9 A Correct.

10 Q Okay. Thank you. Just to be clear, as the sun
11 was setting in the west, it would be setting down on this
12 end of the road, right?

13 A Yes.

14 Q It wouldn't be setting behind these trees or
15 setting behind these trees, correct?

16 A It would be somewhere into that direction.

17 Q This direction. Okay.

18 So those are the data points that you use
19 at arriving at your opinions in this case, correct?

20 A Correct.

21 Q And briefly, just before we break here, would
22 you tell the jury your opinions in this case?

23 A Absolutely. The first being that, given the
24 time of sunset --

25 MR. DANIEL: Your Honor, I object.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 THE COURT: Basis?

2 MR. DANIEL: May we approach?

3 THE COURT: Sure.

4 *(Off-the-record discussion held.)*

5 BY MR. WILLEY

6 Q All right. Dr. Borzendowski, all right, will
7 you tell -- we'll go through them later, but will you just
8 tell the jury the opinions that you've reached in this
9 matter.

10 THE COURT: Is this -- are you wrapping up
11 everything with her or not?

12 MR. WILLEY: No.

13 THE COURT: Okay. Well, then now might be a
14 very good time for us to break for lunch. It is
15 close to 1 o'clock.

16 Ladies and gentlemen of the jury, you are not to
17 discuss this case. It wouldn't be appropriate to do
18 so. Go grab a bite to eat, I'm asking you to be back
19 in your jury room by 2:15, when we're going to go
20 ahead and continue the trial of this case. All
21 right?

22 Have a nice lunch, everyone.

23 *(The Jury exits the courtroom.)*

24 THE COURT: Okay. We're going to go ahead and
25 break for lunch. I know you know this, what they're

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 concerned about is you testifying to the law in some
2 way, shape, or form that somebody is required by law
3 from where the other two -- do something or do not do
4 something. You're a professional, you're an expert.
5 Presumably trained by Ellen Campbell, and the rest of
6 the progeny. You know that you can't testify as to
7 the law. The Court can probably say that you can
8 just give your opinions based on your expertise in
9 human factors.

10 I'm not concerned about what you're going to
11 testify to, but apparently everyone else in this room
12 is.

13 So with that said, I'm going to go ahead and
14 we're going to excuse everyone for lunch. We'll be
15 back just a little after 2 o'clock. If there's
16 anything else we need to talk about, we'll go ahead
17 and discuss that at that time.

18 If you have any questions or any concerns about
19 you crossing the line -- but I can tell you that if
20 you start to, he's going to object, I'm going to
21 sustain it, and we'll go from there.

22 But I think we're fine. All right? Let's stick
23 to what her expertise is. Okay?

24 MR. WILLEY: If you stick to the three things we
25 talked about, in those words, you'll be fine.

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 MR. DANIEL: The one concern is whether someone
2 was legally required or not required.

3 THE COURT: And she can't testify to that.
4 Okay?

5 THE WITNESS: Yes.

6 THE COURT: All right. She understands that.

7 Okay. We'll break for lunch. We'll see y'all
8 just a little after 2:00. Okay.

9 MR. WILLEY: Any objection to me talking to her
10 during lunch, so we can be clear on the exact
11 wording, so it's not tactful for you?

12 MR. DANIEL: No. I mean, I can ask her what you
13 talked about, but I --

14 THE COURT: Don't talk about it. Because he'll
15 ask her.

16 MR. SMITH: This afternoon, we're going to go a
17 little bit out of order. I'm having witnesses come
18 in instead of tomorrow, today. So we'll going to
19 take them a little bit out of order just to get
20 through it. Okay?

21 THE COURT: Doesn't matter to me.

22 MR. SMITH: Okay. I mean, it may seem a little
23 unusual, but I'm trying to fit it in.

24 THE COURT: Okay.

25 (Whereupon, the Court was in lunch recess.)

DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1 (Proceedings continue in Volume 4.)
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DIRECT EXAMINATION OF BORZENDOWSKI BY MR. WILLEY

1
2 CERTIFICATE
3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
9 and complete record of my stenographic notes.

10 DATED this 4th day of January, 2018.
11

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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.

Transcript of Record

Antoine Johnson,

Defendant.

VOLUME 4

September 6, 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: 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

1 anything that you need to be concerned about
2 whatsoever. It's absolutely fine right now, so
3 let's not worry. But in case any of you are
4 watching the weather, I just want you to know
5 that we are on top of it and making sure
6 everything is fine. Okay?

7 With that said, please go ahead and
8 continue with this witness. Ladies and
9 gentlemen, I just reminded her before you came
10 in that she's still under oath and she knows
11 that.

12 So Mr. Willey, whenever you're ready.

13 MR. WILLEY: Thank you, Judge.

14 Thereupon,

15 DR. STEPHANIE BORZENDOWSKI
16 was called as a witness, having been previously duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION CONTINUED

19 BY MR. WILLEY:

20 Q Dr. Borzendowski, before lunch we went
21 through your education and expertise and the data
22 and information you relied on in this case, right?

23 A We did.

24 Q Okay. And just before we broke for lunch,
25 you were about to tell us your findings of expert

1 opinions in this case, correct?

2 A Yes.

3 Q And, of course, during lunch, you and I
4 had lunch together; correct?

5 A We did.

6 Q And we had -- what did we have?

7 A Wendy's.

8 Q Okay. There were a bunch of other people
9 around, right?

10 A Yes.

11 Q And we -- did we discuss your testimony in
12 any substantive way?

13 A Other than just making sure that we came
14 up with wording that was comfortable for everyone.

15 Q Okay. So we wouldn't have another
16 objection, right?

17 A Correct.

18 Q So with that said, will you tell the jury
19 what your findings were in this case?

20 A Yes. The first being that this first
21 collision occurred at 5:58 p.m. or earlier on the
22 day of the collision. That Ms. Hood's -- that the
23 vehicle would have been visible to Mr. Johnson. And
24 that if Mr. Johnson were distracted at the time
25 leading up to impact, that would have contributed to

1 his inability to avoid it.

2 Q Okay. So the first one was that the
3 collision occurred at 5:58 or earlier, correct?

4 A Correct.

5 Q The second one was Hood's vehicle would
6 have been visible to Johnson if he were looking,
7 correct?

8 A Correct.

9 Q All right. And what was the third one?

10 A That if Mr. Johnson were distracted at the
11 time of impact or shortly before that, it would have
12 contributed to his ability to avoid a collision.

13 Q All right. And do you have any other
14 findings in this matter at this time?

15 A Those are the primary findings.

16 Q Okay. Let me see what I wrote -- I
17 basically just wrote what you said, but is this
18 accurate as to what you said?

19 A It appears to be.

20 Q Okay. Handwriting is not the best.

21 With respect to your first opinion
22 that the collision happened at 5:58 or earlier, what
23 specifically did you base that upon?

24 A That's based primarily on the first 911
25 call in response to the collision.

1 Q And we know that that 911 call was placed
2 when?

3 A 5:58 and 46 seconds, I believe.

4 Q Okay. And that 911 call was placed by
5 Ms. Melnick?

6 A Yes.

7 Q And Ms. Melnick did all these things prior
8 to placing that call, correct?

9 A That's my understanding, yes.

10 Q And obviously got transferred a few times
11 before it was logged?

12 A That's her testimony, yes.

13 Q So in your opinion today, you are
14 estimating that obviously that took longer -- all of
15 this took longer than 46 seconds?

16 A I believe it would have.

17 Q Okay. And that's based on her testimony
18 and your experience in human factors, correct?

19 A Correct.

20 Q With respect to your second opinion of
21 that, Ms. Hood's vehicle would have been visible to
22 Johnson if he was looking, what -- what did you base
23 that up? Which specific data point helped you reach
24 that conclusion?

25 A In part that it was not completely dark

1 outside based on the timing of the collision; and,
2 therefore, there still would have been some
3 illumination at the scene. And that there was also
4 another vehicle coming from that direction of travel
5 that would have been -- should have been visible to
6 Mr. Johnson, and per his testimony, he did not see
7 that one either.

8 Q And with respect to Mr. Lee's testimony,
9 did you put any weight on the fact that he said he
10 was able to see both the Plaintiff and the
11 Defendant?

12 A Yes. So he did testify that he could see
13 both vehicles prior to impact.

14 Q And today you had the opportunity to hear
15 Ms. Kuck's testimony?

16 A Yes. Which was that they did see an
17 object approaching them prior to impact with
18 Ms. Hood's vehicle, and that it was light enough to
19 see the roadway entry and other vehicles.

20 Q And specifically she said other vehicles
21 with or without headlights?

22 A She did, yes.

23 Q And does that support your second opinion?

24 A It does.

25 Q And with respect to your third -- well,

1 let's stick there for a second.

2 So you also had the opportunity to
3 hear Mr. Johnson's testimony today, correct?

4 A I did.

5 Q And Mr. Johnson testified that he did not
6 see Ms. Hood's vehicle at all, correct?

7 A Yes.

8 Q Is that important when you are analyzing
9 and reaching a finding on why something occurred?

10 In other words, an individual,
11 whether they saw something and it was specifically
12 one way, or just didn't see it at all? I mean, do
13 you take that into account?

14 A In the sense that if there was visual
15 information available, and that that observer failed
16 to observe it, then that's an indicator of some
17 extenuating factor potentially, yes.

18 Q Okay. And in this case, were you able to
19 use the data available to you and the testimony of
20 the parties and witnesses in order to reach a
21 finding about potentially why Mr. Johnson did not
22 see Ms. Hood?

23 A Potentially that he was distracted and did
24 not -- either did not attend to that area of the
25 intersection or failed to perceive it as a result of

1 the distraction.

2 Q And Dr. Borzendowski, I believe you
3 prepared a demonstrative that deals with your third
4 opinion?

5 A Yes.

6 Q Which you provided to Mr. Daniel last
7 night, correct?

8 A I did.

9 Q And which he's, I assume, fine with you
10 using.

11 So would you step down at this point
12 with a copy of that exhibit? Do you have it?

13 A I do.

14 Q Okay.

15 A (Witness complies.)

16 Q And would you explain to the jury what it
17 is that you prepared here?

18 A I apologize, it's kind of small. Bear
19 with me.

20 Basically it's just illustrating some
21 of the more common causes of distracted driving. So
22 up at the top you'll see someone texting on a phone,
23 and I think that's probably one that many people are
24 familiar with, that texting while driving can be
25 distracting, and this data supports that.

1 Similarly, reading text messages. So
2 typing and reading text messages are goal activities
3 that take your attention away from the task of
4 driving.

5 And then talking on the phone,
6 hopefully many people are familiar with that one.
7 They are -- not in South Carolina, but other states
8 do regulate cell phone use in vehicles because of
9 the issues associated with distraction of talking
10 while driving.

11 One that some of the ladies might be
12 more familiar with, which is putting on makeup in
13 the car. So that is certainly an activity that is
14 going to take your attention away from the roadway.

15 And eating and drinking while
16 driving, and not just alcohol. That -- again,
17 that's a task that requires some physical abilities,
18 obviously, and I don't know if you guys can see in
19 this photo, this person is juggling a soda and a
20 burger. But, again, it's taking away some visual
21 and cognitive abilities as well.

22 And finally, there's data to suggest
23 that interacting with voice commands in your vehicle
24 can also distract you while you're driving.

25 Q And when you're talking about voice

1 commands, specifically that's dealing with the
2 in-car system.

3 A Right. So if you have Bluetooth in your
4 car and you can voice dial your contacts and things
5 like that.

6 Q And in this particular case, which of
7 these did you find to be relevant?

8 A The most relevant would be reading a text
9 while driving, because we know that there is a
10 record of an inbound text message prior to the
11 collision.

12 Q And you had the opportunity to review the
13 totality of Mr. Johnson's cell phone usage from that
14 particular day and the evening before, correct?

15 A Correct.

16 Q And were you able to make any analysis of
17 that? In other words, when you looked at that, what
18 did you -- what did you see?

19 A Primarily what I think everyone heard
20 during testimony this morning, which was that he had
21 been using his phone pretty actively throughout the
22 day, including up to shortly before the first
23 collision.

24 Q Okay. And when you looked at the phone
25 numbers that he was texting to, were you able to see

1 any similarities or draw any --

2 A My recollection is that there was one
3 number in particular that there was correspondence
4 between throughout the day.

5 Q And is that the 1200 -- ends in 1200?

6 A That sounds familiar, yes.

7 Q Okay. When you look at his texts in
8 detail, is this the number you're talking about,
9 this 305-1200?

10 A Yes.

11 Q Okay. And in terms of this record,
12 obviously this is calling and called. So whoever
13 sent the text would be here, whoever received it --

14 A Right.

15 Q What were you able to determine about his
16 interaction with that person throughout the day?

17 A It seemed to be sort of a give and take
18 conversation. We can see that there's a pretty
19 healthy mix of inbound and outbound, indicating
20 correspondence between Mr. Johnson and that party.

21 Q And was that the individual also that he
22 texted at 4:40 that morning?

23 A I do not recall off of the top of my head,
24 but I think it might be this one.

25 And that's 4:44, yes.

1 Q And at the time of this wreck, is that
2 also the individual that he was --

3 A So he received a text from that individual
4 at 5:57:43.

5 Q Okay. And we now know that individual was
6 his girlfriend?

7 A From his testimony, it sounds that way.

8 Q Thank you.

9 Dr. Borzendowski, can you tell the
10 jury a little bit about how reading the text from a
11 scientific perspective, because I think, you know, a
12 lot of folks think, well, if I just glance, it's not
13 that big of a deal. But will you explain to them
14 from a scientific perspective how that works in
15 terms of actually distracting you and the effects on
16 your body?

17 A Sure. For most of the activity that we
18 just talked about on that diagram, there are
19 multiple components to the distraction that they
20 cause. So some of it is the obvious, the physical
21 handling of a phone or a makeup brush, for example,
22 is taking a hand away from the steering wheel and
23 other controls in the vehicle.

24 There's the visual component with
25 reading a text message. For example, where you do

1 have to make a glance to the phone to read the
2 message and that time that you spend reading the
3 text message is time that your eyes are not on the
4 roadway. And as many of us know, all it takes is a
5 brief period of time where you're not attending to
6 the roadway where something unexpected can happen.

7 And the third kind of big issue with
8 these type of distracting tasks is the cognitive
9 factor. So once you've read that text message, your
10 brain has to kind of process the message. You might
11 start thinking about how you're going to respond,
12 what you're going to say back. And so when you're
13 using your cognitive and attentional resources on
14 that task, that's attentional resources that are no
15 longer available for attending to the roadway and
16 the other tasks associated with driving.

17 Q And, Dr. Borzendowski, does that reading a
18 text, looking at a text, looking at your phone have
19 a similar impact as the other items on the
20 demonstrative that you put together?

21 A It does.

22 MR. WILLEY: Your Honor, at this time
23 we're going to mark this as Plaintiff's exhibit
24 and go ahead and move it into evidence for
25 demonstrative.

1 MR. DANIEL: Your Honor, as long as I can
2 use it and talk to her about it, I don't have
3 an objection.

4 THE COURT: Okay. He's just putting it
5 into evidence. So if you're fine with that,
6 then, of course you can use it.

7 MR. DANIEL: That's fine.

8 THE COURT: It's in evidence, and you can
9 use it all you want to.

10 *(Whereupon, Plaintiff's Exhibit No(s). 14*
11 *marked for identification and received in*
12 *evidence.)*

13 BY MR. WILLEY:

14 Q Dr. Borzendowski, we've heard a lot, and
15 you've heard a lot today, about alleged speed of
16 Ms. Hood. And did you consider that in any way in
17 your analysis today?

18 A And it didn't factor into my opinions
19 really in this matter.

20 Q Okay. And tell this jury why you believe
21 speed is not a factor -- did not factor into your
22 opinion in this matter.

23 A If we look at my three opinions as they're
24 posted on the board there, none of them have
25 anything to do with speed. It really wouldn't have

1 impacted those factors.

2 Q And you had the opportunity, obviously, to
3 review the photographs on the reconstruction -- or
4 the testimony, correct?

5 A Yes.

6 Q Okay. And you were obviously able to
7 determine that Mr. Johnson actually struck Ms. Hood,
8 correct?

9 A Based on the evidence available.

10 Q Pretty obvious, right?

11 A It appears to be, yes.

12 Q And so whether or not Ms. Hood was
13 traveling 25 or 65, it wouldn't have mattered,
14 correct?

15 A Given the mechanism of the collision, no.

16 Q The only thing that that may not have done
17 is put her in that place at that time, correct?

18 A Right. It would have changed the time it
19 would take her to traverse that section.

20 Q Which if she had set her snooze button
21 that morning and got up five minutes later, the
22 wreck wouldn't have happened either, correct?

23 A Potentially.

24 MR. WILLEY: Thank you. Please answer any
25 questions Mr. Daniel may have.

1 CROSS EXAMINATION

2 BY MR. DANIEL:

3 Q Ms. Borzendowski -- did I say it right?

4 A You did.

5 Q I just want to make sure I heard you
6 correctly with what you said just now.

7 Is it your testimony and your opinion
8 that speed was not a factor in this accident?

9 A I said that speed was not a factor, in my
10 opinion, related to this matter.

11 Q Speed was not a factor, in your opinion.

12 A Correct.

13 Q As an expert in this case?

14 A To my specific opinions that I just
15 offered.

16 Q Right. And you have considered
17 information about speed as part of your
18 investigation in this case, being hired as an expert
19 on behalf of the Plaintiff; is that right?

20 A I did not conduct an independent analysis
21 of Ms. Hood's speed personally, no.

22 Q You just ruled it out though as a factor,
23 in your opinion. That's what you just testified to.

24 A It's not related to my opinions that I'm
25 offering today.

1 Q You just said speed is not a factor in
2 your opinion. That's what you told the jury.

3 A What I am intending to say is that of the
4 three opinions I've offered, that speed is not
5 related to those three opinions.

6 Q Okay. But you're commenting on speed, and
7 you just gave an opinion about speed not being a
8 factor; do you agree?

9 A Again, I testified that speed was not a
10 factor in my opinions that I'm offering today.

11 MR. DANIEL: Madame -- Mrs. Bostick, can
12 we pull this up?

13 MR. WILLEY: Your Honor, can we approach?

14 THE COURT: Sure.

15 MR. WILLEY: I think that you've already
16 ruled on this, but --

17 *(Off-the-record discussion held.)*

18 BY MR. DANIEL:

19 Q Bear with me. I'm not as tech savvy as
20 some of the other folks here.

21 *(Pause.)*

22 BY MR. DANIEL:

23 Q You read Woody Poplin's deposition. Isn't
24 that correct, ma'am?

25 A I did.

1 Q That was provided to you?

2 THE COURT: Okay. Come back up here.

3 MR. DANIEL: I got to ask the questions,

4 Your Honor.

5 THE COURT: Come back up here.

6 (Off-the-record discussion held.)

7 BY MR. DANIEL:

8 Q Was information provided to you about the

9 crash data taken from -- I'll use the slang term, "a

10 computer chip" in the Plaintiff's vehicle?

11 A I don't have that specific data, no.

12 Q But have you seen testimony about it?

13 A I have.

14 Q From an engineer; is that right?

15 A Correct.

16 Q Someone that specializes in accident

17 reconstruction, something you don't do?

18 A Correct. I am not an accident

19 reconstructionist.

20 Q Do you remember what the testimony is

21 about the documented speed of Ms. Hood's vehicle

22 just before impact with Mr. Johnson's vehicle?

23 MR. WILLEY: Your Honor, I'm going to

24 object. These are facts not in evidence.

25 There's no documents showing her speed.

1 didn't consider it.

2 The only other way to go ahead and use

3 that against her is if you put Woody Poplin on

4 the stand, or somebody does, and says, "You

5 consider speed important, don't you?"

6 Because at this point, you are pitting her

7 against a witness that hasn't even testified in

8 this case.

9 MR. DANIEL: Yes, Your Honor. But as an

10 expert witness, she's considering testimony in

11 what Ms. Melnick said, fact witness. She was

12 also provided testimony about what this expert

13 said he did. So she's considering hearsay in

14 testimonies --

15 THE COURT: She said she didn't consider

16 the speed. She said she didn't consider it.

17 MR. DANIEL: Well, she actually just

18 testified that, in her opinion, speed is not a

19 factor, and she knows what the documented speed

20 was. We can call Woody Poplin, but she

21 actually testified in her deposition that she

22 saw what the documentation and the electronic

23 --

24 THE COURT: So just ask her what the speed

25 is. You're sitting here trying to impeach her

1 MR. DANIEL: I'm asking her if she

2 remembers.

3 MR. WILLEY: He can call the witness, if

4 he has a witness to say that. He doesn't get

5 to just make it up.

6 THE COURT: Okay. Ladies and gentlemen of

7 the jury, I'm going to send you back to your

8 jury room. Do not discuss this case, it

9 wouldn't be appropriate to do so at this time.

10 We'll be right back with you. Okay?

11 (The jury exits the courtroom.)

12 THE COURT: Okay. Do either one of you

13 list Woody Poplin as a potential witness in

14 this case, on their pretrial brief?

15 MR. WILLEY: Everyone did.

16 THE COURT: Okay. So you did. So he

17 potentially could be your witness. You're

18 sitting here saying he was hired by USAA, which

19 he may have been originally, but you now deem

20 him as a witness as well.

21 Secondly, you've asked her a question of

22 whether or not she thinks speed was considered.

23 She said no. You can't get out Woody Poplin's

24 testimony through her if she says she didn't

25 consider it. You got to move on. She said she

1 on something that is not even impeachable at

2 this point.

3 MR. WILLEY: But Your Honor --

4 THE COURT: She's going to say the

5 documented speed according to the black box was

6 62 or 63 miles an hour. So when she testifies

7 to that, she's going to go ahead and then give

8 her answer and explain that yeah, and I still

9 didn't consider it, and this is why.

10 MR. WILLEY: But, Your Honor, she doesn't

11 know that. She did not get actually, as she

12 testified, get that data to look at the data,

13 which he could have given her to look at. He

14 did not do that, we're already --

15 THE COURT: But she read Woody Poplin's

16 deposition.

17 MR. WILLEY: Yeah, but she doesn't -- she

18 can't -- we can't get in testimony from another

19 witness without bringing in all the testimony

20 --

21 THE COURT: She can though because that's

22 something she reviewed in coming to her

23 opinion. She reviewed it. What I'm hearing

24 from her is she reviewed it, but it still

25 doesn't make a bit of difference to her.

1 That's what I'm hearing.

2 MR. WILLEY: I think what she actually said
3 is that she only reviewed that deposition for
4 purposes of trying to figure out the accident
5 sequence.

6 And if you look at the abstract, that she
7 actually sent Mr. Daniel last night after he
8 won his motion at his request, the only
9 portions that were highlighted for her to read
10 dealt with the sequencing and lighting. We
11 didn't deal at all. She didn't look at it.
12 End of deposition. I was there, this was five
13 days ago. He's showing her portions of the
14 deposition trying to get her to regurgitate
15 what someone else said. It's totally
16 inappropriate. You cannot pit witnesses like
17 that, and it's prejudicial.

18 Woody Poplin is -- he can call him. We
19 can call him, and it's proper then. But it's
20 not proper to discredit her based on something
21 that someone else said that she didn't even
22 consider.

23 THE COURT: And all she has to do is say
24 she didn't consider it.

25 MR. WILLEY: She already said that. And

1 now he's going in to trying to get prejudicial
2 information, after she's already said on my
3 direct and his cross, she didn't consider it,
4 review it, count on it. Hasn't even received
5 the data at all. She said that. I mean, you
6 know, it's totally, totally improper.

7 What he could do, you know -- it's the
8 equivalent -- I mean, it's the equivalent of me
9 getting my Plaintiff up there and having my
10 Plaintiff testify about what some doctor said
11 in their deposition about her medical
12 condition. I mean, it's totally improper. You
13 have to bring the witness of the subject to
14 cross examination unless you had a deposition
15 for trial.

16 THE COURT: It's an expert witness that
17 you relied on.

18 MR. WILLEY: But she did not consider that
19 information. She's already said it, and he's
20 trying to get the evidence in through her even
21 though she's already said, No, I didn't look at
22 it, didn't consider it.

23 MR. DANIEL: Your -- I'll be very brief,
24 Your Honor.

25 THE COURT: Go ahead.

1 MR. DANIEL: She considered Tammy
2 Melnick's testimony. We just heard that. We
3 just heard about this, oh, this lady was on
4 this porch.

5 THE COURT: Because Tammy Melnick
6 testified already. She's already testified.

7 MR. DANIEL: Well, she can consider
8 deposition testimony or live testimony.
9 Experts are allowed to do that. They can't
10 have it both ways. They provided Woody
11 Poplin's deposition to her.

12 THE COURT: This is the problem. You keep
13 asking her questions, and basically you're
14 feeding what Woody Poplin's testimony was, when
15 she says she didn't rely on it. We need to go
16 one step farther. She needs to say she didn't
17 rely on it because of this reason. And once
18 she says "because of this reason," you have got
19 to move on.

20 MR. WILLEY: And, Your Honor, I would
21 submit to the Court that in direct when we just
22 went through that, she did. She said because
23 whether she was going 25 or 80, she was
24 T-boned, the sequence of the wreck, it played
25 no role. The same role that would have

1 happened if the Plaintiff hit the snooze button
2 that morning and was not there at that time.
3 It's a res ipsa argument.

4 MR. DANIEL: And from a craftsman
5 perspective, Your Honor, so that I don't raise
6 any more issues, can I at least ask her if she
7 knows what the documented speed was? That
8 question.

9 MR. WILLEY: No. She already said no.

10 THE COURT: Already, she said no, she
11 didn't.

12 MR. WILLEY: We're just rehashing --

13 MR. DANIEL: She actually testified that
14 she did in the deposition.

15 MR. WILLEY: You showed it, yes. When you
16 showed it to her.

17 MR. DANIEL: She knows it secondhand
18 through their expert. She's looked at what he
19 said.

20 MR. WILLEY: But you don't get to --

21 MR. DANIEL: You want me to read it -- I
22 can read --

23 THE COURT: I don't want you to read
24 anything. I want you to ask her an appropriate
25 question. I think she needs to answer it. If

1 you, in a deposition, turned around and said,
2 "In fact, in a deposition, didn't I hand you
3 the document that Woody Poplin said it's 62
4 miles per an hour?" And you said, Well, at
5 that point, yes. But she can then still say
6 after that, "but it's not important because."
7 And I expect her to do that, which she's going
8 to do.

9 MR. WILLEY: And just briefly, I mean, the
10 other issue with that is, it wasn't a discovery
11 deposition, so he gets way more leeway. It
12 would not have been admissible if it were a
13 trial deposition anymore than it's admissible
14 now. What some --

15 THE COURT: Mr. Willey, this witness was
16 disclosed on July 17th. Correct me if I'm
17 wrong. Yes? Of this year.

18 MR. DANIEL: Yes, that's correct.

19 MR. WILLEY: Yes, ma'am.

20 THE COURT: This wreck happened in 2014.
21 You already made a motion to try to eliminate
22 her testimony, exclude it. So you need to be
23 careful.

24 Again, I could have just kept her out
25 completely. So, again, I think this is fair

1 game. I think he can ask the question. We
2 don't beat a dead horse.

3 She said it is not a factor, and I expect
4 her now, once again, I'm sure, to say why, and
5 tell these people why it's not a factor, and
6 then move on. Okay?

7 MR. DANIEL: Can I --

8 MR. WILLEY: My only objection is to
9 saying the speed because there's no reliable
10 evidence that was the speed. It's what some
11 other person said. She has not seen the data,
12 there is no foundation for it, nor expert
13 testimony. Not anyone that actually reviewed
14 the black box has testified yet to establish
15 it.

16 And so asking her what some other document
17 says --

18 THE COURT: So you're not bringing Woody
19 Poplin; is that what I'm hearing you say?

20 MR. WILLEY: At this moment, he's -- I
21 mean, he's on our list, but he's not here.

22 THE COURT: You're not bringing him.
23 Either yes or no. You're either bringing him
24 or not bringing him. And if you're not
25 bringing him, I can't imagine why you wouldn't.

1 MR. DANIEL: I have him under subpoena,
2 Your Honor, and we can just -- we could just
3 cut to the chase and ask her what she remembers
4 that speed being, per Woody Poplin, and she can
5 answer that the way she wants.

6 MR. WILLEY: No, that's improper. When we
7 call him -- when we call him or when he calls
8 him, he can ask him. And then Mr. Poplin is
9 subject to redirect by --

10 THE COURT: Okay. I'm going to let you go
11 ahead and ask her if she remembers what the
12 speed is, that's fine. If she doesn't, you
13 could say, "In the deposition, in fact, didn't
14 I show you what the downloaded black box is."

15 And I'm assuming -- and she's going to
16 turn around and say, "Yes, but again that's
17 irrelevant to me because." That's what she can
18 testify to. So let's just move on.

19 But what you're not going to do is say all
20 these things that Woody Poplin considered, who
21 hasn't even testified yet. Okay?

22 MR. DANIEL: I will keep it as brief and
23 --

24 THE COURT: Well, that's great, because if
25 you don't I'm going to cut you off. Okay?

1 MR. DANIEL: Yes, ma'am.

2 THE COURT: Let's bring the jury back now.

3 (The jury enters the courtroom.)

4 THE COURT: All right. Mr. Daniel, ask
5 your question. Let's go.

6 BY MR. DANIEL:

7 Q You were talking about sunset. I'm going
8 to come back to the questions we were just -- the
9 topic we were on. But you were talking about sunset
10 and what time it was based on some data, based on
11 some European equation.

12 What country in Europe; do you know?

13 A I believe that SunCalc website links to
14 the University of Netherlands.

15 Q Okay. So that's what people in Holland
16 say about sunset in Bluffton or Hilton Head?

17 A No. It's a formula grounded in physics
18 and astronomy.

19 Q But the U.S. Navy also has a similar
20 formula, right?

21 A I'm certain they do.

22 Q And didn't -- do you remember telling me
23 in your deposition that you more often than not rely
24 on the U.S. Naval Observatory data when pulling
25 times for sunset. Do you agree?

1 A That I typically use the Navel
2 Observatory, yes, for a general area.
3 Q Okay.
4 MR. DANIEL: Your Honor, may I approach?
5 THE COURT: You.
6 MR. DANIEL: We'll mark this in just a
7 second.
8 *(Whereupon, Defendant's Exhibit No(s) 6*
9 *marked for identification.)*
10 BY MR. DANIEL:
11 Q Can you tell the jury what that is?
12 A That is sun and moon data for the date of
13 the collision from the U.S. Naval Observatory.
14 Q And what does that say about the sunset?
15 A That it occurred at 5:28.
16 Q 5:28 p.m. that day?
17 A Correct.
18 Q Was the official time per the Naval
19 Observatory in Hilton Head.
20 A In Hilton Head, yes.
21 Q Okay. This accident happened on Hilton
22 Head Island, right?
23 A It did.
24 Q Okay. So your -- one of your opinions is
25 that no lay -- either 5:58 or earlier was the time

1 of this accident; isn't that what we just had up in
2 this demonstrative?
3 A Correct.
4 Q 5:58. So it would be, per the Naval
5 Observatory, if you do the math, 5:58 is 30 minutes
6 after sunset in Hilton Head?
7 A Exactly 30 minutes, yes.
8 Q Okay.
9 BY MR. DANIEL:
10 Q Okay. Defendant's 6. This will be
11 Defendant's 6.
12 Is that considered a more official
13 source -- is that considered a more official source
14 for sunrise and sunset times?
15 A I would say that that is certainly an
16 official source. It's the U.S. Naval Observatory,
17 but the SanCalc website as well is relying on the
18 same physics to calculate sunset.
19 Q But physics in a formula that you don't --
20 you don't really know exactly how they do it, right?
21 A I'm not a physicist, so, no.
22 Q And would you agree -- I mean, you're not
23 a law enforcement officer?
24 A No, I'm not.
25 Q I mean, one of those obvious lawyer

1 questions, but just -- I'm going to get there.
2 As far as making a determination of
3 whether it's pretty dark out and someone should have
4 their headlights on, and whether someone should be
5 pulled over for that and given a ticket, you agree
6 that that's the discretion of the officer on patrol,
7 right?
8 A A one-person officer would make that call,
9 yes.
10 Q And you weren't not out there that night
11 -- that evening, 25 minutes after sunset, 35 minutes
12 after sunset on the night of this accident?
13 A I was not.
14 Q Would you agree with me 5:50, 5:53, in the
15 evening, on November 7th, that time of year in
16 Hilton Head, it's relatively dark outside?
17 A Relative to daylight, yes.
18 Q Well, relative to daylight. You've looked
19 at Google photos, there are no street lights --
20 there are no street lights at this intersection, are
21 there?
22 A Not that I've seen.
23 Q Yeah. So -- and there's trees up here,
24 right?
25 A There are.

1 Q So once the sun starts going down these
2 trees can -- they're to block some of the natural
3 light once the sun starts setting; would you say?
4 A They may.
5 Q All right. They may? That's a fact.
6 A I mean, it depends on where the sun is
7 setting relative to the trees. But, yes, it would
8 block sunlight in that area.
9 Q Right. There have been -- I mean, you've
10 been in a big city, those tall buildings, they can
11 block out the sun. It's just a fact of life. A
12 fact of light and life; do you agree?
13 A That the sun can create shadows when there
14 are objects in the way, yes.
15 Q Right. And trees -- trees cast shadows,
16 don't they?
17 A They can.
18 Q And there are no street lights in that
19 intersection.
20 A Not that I've seen.
21 Q And one of the opinions --
22 MR. DANIEL: Your Honor, I don't want to
23 -- just demonstrative. I'm just going to show
24 it to her, I'm not going to write on it. I
25 don't --

1 THE COURT: Go ahead.
 2 BY MR. DANIEL:
 3 Q Okay. I want to make sure everybody can
 4 see this.
 5 One of the opinions, your opinion two
 6 that is written down here Mr. Willey asked you
 7 about. Hood's vehicle would have been visible to
 8 Johnson, if looking, right?
 9 A Correct.
 10 Q And do you agree that that's a little bit
 11 different than what you testified to in your
 12 deposition just about a week ago -- less than a week
 13 ago?
 14 A If you will refer me to a specific page,
 15 I'll be happy to compare.
 16 Q Page 18, last line, 25. You see that?
 17 You gave three opinions in your deposition, too.
 18 Just a week ago.
 19 A Yes.
 20 Q Okay. The second opinion, which is this
 21 opinion. If you want to come down here and compare,
 22 you can.
 23 A I can see.
 24 Q I'm going to read it to you and I want you
 25 to tell --

1 THE COURT: Give her a page and line
 2 first.
 3 BY MR. DANIEL:
 4 Q Okay. I'm starting at Page 18, line 25.
 5 Then you go to 19.
 6 A Okay.
 7 Q Your testimony, as far as your second
 8 opinion, second being that any lights that she did
 9 have activated on her vehicle would have been
 10 visible to Mr. Johnson.
 11 A Correct.
 12 Q So we should add "lights would have been
 13 visible."
 14 A On her vehicle, yes.
 15 Q Yeah. It's not this simple -- at least
 16 five days ago, six days ago, it wasn't this simple.
 17 You didn't say he should have seen her vehicle,
 18 lights or no lights.
 19 Your sworn testimony, under oath, as
 20 an expert, being paid \$290 an hour was that if she
 21 had lights activated they would have been visible to
 22 Mr. Johnson.
 23 A Yes.
 24 Q That was opinion two.
 25 A Yes.

1 Q Not this opinion. It wasn't this simple;
 2 do you agree?
 3 A They're not identical, I agree.
 4 Q And they're not the same.
 5 A That her vehicle, at some point, yes,
 6 would have been visible. It's not the same as what
 7 you're reading here, no.
 8 Q At some point -- so you agree distance
 9 matters?
 10 A In a sense it does matter when viewing
 11 certain objects, yes.
 12 Q And the faster you go at a given point in
 13 time, if you're going 30 miles an hour versus
 14 60 miles an hour, in a one-second period, all things
 15 being equal, if you're going 60 you travel a farther
 16 distance, don't you?
 17 A Yes, in one second.
 18 Q So when you do the math backwards, if
 19 someone's going 60 miles an hour, they're a lot
 20 farther back down the road from a given point to
 21 where they end up in a second, a second later, than
 22 if they're going 30, right?
 23 A If I understand your question correctly,
 24 yes. A vehicle traveling 60 miles an hour will
 25 travel a longer distance in one second than one

1 going 30.
 2 Q So speed can be a factor in an accident;
 3 do you agree?
 4 A Yes, I agree.
 5 Q And do you remember, or do you know from
 6 your review in records provided to you by
 7 Plaintiff's counsel, what the computer chip data
 8 said about Mrs. Hood's speed?
 9 MR. WILLEY: Your Honor, objection, lack
 10 of foundation, relevance, hearsay, and 403. If
 11 he has the data, he can bring it per an expert.
 12 THE COURT: Denied. Go ahead, you can
 13 answer the question.
 14 THE WITNESS: I've seen the specific data
 15 that you're referring to. I have seen
 16 testimony about speed.
 17 BY MR. DANIEL:
 18 Q Have you seen Mr. Poplin's testimony about
 19 speed?
 20 A I have.
 21 Q And what did he say?
 22 A My recollection is that he downloaded the
 23 data from the vehicle and per his information that
 24 the speed was 62 to 63, I believe.
 25 Q Speed of whose vehicle?

1 A Ms. Hood's.
 2 Q The Plaintiff?
 3 A I believe that's who you were asking
 4 about.
 5 Q Yes. I'm just making sure we're clear.
 6 So --
 7 A But that, as I said before, isn't a factor
 8 in my opinions.
 9 Q Was it 62 to 63?
 10 A That's my recollection.
 11 Q And in your opinion -- in your opinion as
 12 a human factors expert, it's not an issue?
 13 A That is not my testimony.
 14 Q Okay. It could be a factor then?
 15 A As far as the distance that you travel in
 16 the time that you covered it, and in general as far
 17 as damage to vehicles, speed can be a factor. But
 18 as far as my opinions that I'm offering today, I'm
 19 not relying on speed for that.
 20 Q If she's a lot farther back down the road
 21 because she's driving a lot -- you know, 30 as
 22 opposed to 62, 63 miles an hour. If someone is
 23 driving 62 miles an hour, this is not a specific
 24 distance, but if they are back towards this back
 25 door back here versus right here on a dark roadway,

1 that can affect visibility; do you agree?
 2 A The speed?
 3 Q Yep.
 4 A No. Visibility is based on the properties
 5 of the object that you're trying to view.
 6 Q Okay. And you testified in your
 7 deposition that as things get farther away, or at a
 8 distance, even in bright conditions, even in daytime
 9 conditions, we don't have unlimited sight as things
 10 get farther away from you. You lose the ability to
 11 see details of those objects, do you agree?
 12 A Because they appear visually smaller, yes.
 13 Q Right. And I mean, oversimplification,
 14 but if it's like if you look at a plane in the sky,
 15 as it starts going away, even in daytime, eventually
 16 that plane's gone. You can't see it anymore, right?
 17 Basic level, do you agree?
 18 A At some point it may reach an altitude
 19 where it would become very difficult to see, yes.
 20 Q At some point, you can't see it. That's a
 21 fact; do you agree?
 22 A Yes, for a number of reasons.
 23 Q I just want to make sure we're on the same
 24 page.
 25 So on a dark road, if a vehicle is

1 going 62 miles an hour covering however many feet,
 2 where there's no lights shining on it and there's no
 3 lights on, and it's a dark vehicle, you're saying
 4 that's not a factor how far back down the road it
 5 is, and that doesn't affect visibility?
 6 A But the speed doesn't matter in that
 7 situation, because at the end of the day she's still
 8 has to come from half mile, four miles, however many
 9 miles back. It doesn't matter what speed at which
 10 she's traversing that distance. It doesn't change
 11 the visibility of that object.
 12 Q I got you. Okay.
 13 Well, did you hear Mrs. Kuck earlier
 14 this morning?
 15 A I was hear for her testimony, yes.
 16 Q Yeah. She couldn't even make out whether
 17 it was a sedan, or an SUV, or what was coming at
 18 her, and that thing hit her car.
 19 A That's her testimony.
 20 Q That might have -- you agree that, you
 21 know, as far as how dark it was, it seems like it
 22 was getting pretty dark by the time of this
 23 accident?
 24 A The sun had set at that point, yes.
 25 Q Okay. And what have you done -- you

1 looked at this website that has calculations from a
 2 university in Europe, the Naval Observatory records.
 3 Have you gone to the scene?
 4 A For this case, no.
 5 Q Okay. Have you gone out there to
 6 put yourself in -- haven't gone out there to put
 7 yourself in Antoine Johnson's perspective, have you?
 8 A I have not.
 9 Q And you agree that it's a heck of a lot
 10 darker out at this intersection at 5:50 in November
 11 than what we see here in Exhibit 5, right?
 12 A It would be darker, yes.
 13 Q And your understanding is that Antoine
 14 Johnson, he would be right around where that white
 15 stop bar is, or right here by this crosswalk looking
 16 at --
 17 A Assuming that's Southwood Park Drive, yes.
 18 Q Okay. And you haven't gone out there to
 19 take photos or document how dark that intersection
 20 gets and how dark it is looking down the road at
 21 5:45 at night, 6:00 at night, 20 minutes after
 22 sunset, 30 minutes after sunset, 27 minutes after
 23 sunset. You haven't done any of that?
 24 A I don't have that data, no.
 25 Q And you could do that, if you were asked

1 to do that?

2 A If I were asked to do that, yes.

3 Q And you have people in your office that do
4 speed calculations; is that correct?

5 A I have engineers that are capable of it.
6 I don't have an accident reconstructionist, if
7 that's what you're asking.

8 Q You don't have a single person that does
9 accident reconstruction in your firm?

10 A I do not have a certified accident
11 reconstructionist, no.

12 Q Okay. Well, Woody Poplin is a certified
13 accident reconstructionist, right? Would you agree?

14 A I can't speak to his specific
15 qualifications, but I understand that he is an
16 expert in accident reconstruction.

17 Q Okay. And you did read his testimony and
18 what he said?

19 A I read his testimony.

20 Q Right. So you've done nothing to put
21 yourself in Antoine Johnson's perspective, but
22 you're going to comment about what he should have
23 been able to see?

24 A I did not place myself in his spot at the
25 scene, but I have extensive experience in nighttime

1 driving as well as the appearance of headlamps and
2 vehicles at night.

3 Q Do you agree that at nighttime, we as
4 people have a limited ability to see?

5 A We do.

6 Q You don't have any opinion about whether
7 Ms. Hood's headlights were on or off, do you?

8 A I have not conducted an independent
9 analysis of that.

10 Q Would you agree that it's dangerous at a
11 certain time once it starts getting dark to operate
12 your vehicle without your headlights on?

13 A It can be, yes.

14 Q Would you agree that that can pose a risk
15 to you as the driver, if you're driving without your
16 headlights on, and pose a risk to others on the
17 roadway if you're driving without your headlights on
18 at night?

19 A It can.

20 Q And you've already said it gets relatively
21 dark at about 5:50, 5:53 p.m. in Hilton Head, South
22 Carolina, the area where this accident occurred; is
23 that right?

24 A At that time of year, yes.

25 Q All right. And you went to Clemson to get

1 your Ph.D.

2 A I did.

3 Q And one of the professors that you studied
4 under, and I think you said one of the reasons why
5 you went there is Dr. Tyrrell.

6 A Dr. Rick Tyrrell, yes.

7 Q Dr. Rick Tyrrell. All right. Do you
8 think he's an authority in human factors?

9 A He is certainly a well-published and
10 well-researched individual, absolutely.

11 Q Do you respect his opinions as someone who
12 was your professor and taught you on the subject of
13 human factors?

14 A I certainly respect his opinion.

15 Q Okay.

16 MR. DANIEL: We went to Clemson --

17 MR. WILLEY: I haven't seen this, Judge.
18 I didn't see it before he shows it to the jury.
19 And I object to this, it wasn't produced in
20 discovery.

21 MR. DANIEL: Impeachment, Your Honor.

22 MR. WILLEY: It's not -- it's not proper.
23 He can call Dr. Tyrrell about this case if he
24 wants.

25 THE COURT: You can ask her if she's

1 familiar with it. If she's not familiar with
2 it, she's not familiar with it. But it's not
3 for you to just go ahead and show them.

4 MR. DANIEL: Yes, ma'am.

5 BY MR. DANIEL:

6 Q Have you ever been to Clemson's website?

7 A I have been to Clemson's website.

8 Q Have you ever seen this quote on
9 Dr. Tyrrell's page, "You can't see a damn thing in
10 the dark."

11 A I have.

12 Q You have seen this?

13 A Can I explain?

14 Q Well, yeah.

15 A Okay. That was a quote from Dr. Tyrrell's
16 graduate advisor, and it is a clever little thing
17 that we use as sort of -- again, a clever thing that
18 guided our research for why nighttime conspicuity
19 was important.

20 Q And I mean, if I'm looking at it -- it's
21 got headlights in it. You've seen this picture,
22 right? You've seen this --

23 A I haven't seen his website recently. So I
24 don't know if I've seen that photo.

25 Q But you've heard of his quote, "You can't

1 see a damn thing in the dark."

2 A Again, it's a clever saying, and, yes.

3 Q And that's something Dr. Tyrrell taught
4 you?

5 A Yes.

6 Q Okay. So you didn't look at the vehicle
7 damage to assess speed. That's not something that
8 you do, an accident reconstructionist would do that.

9 A Yes.

10 Q There was testimony, and I believe it was
11 the way the question was worded, not necessarily the
12 way you answered it, but that the impact between
13 Antoine Johnson's Honda and the Plaintiff's Equinox
14 pushed her over into the other oncoming lanes.

15 Since you didn't do an accident
16 reconstruction, you really -- you can't testify to
17 that, can you?

18 A No, I did not offer any opinions about
19 that.

20 Q She could have overcorrected?

21 A I suppose that's possible.

22 Q And, I mean, just common sense, if you're
23 going 30 versus 60 and you jerk the wheel hard, it
24 can be a lot worse at 60; do you agree?

25 A I'm not sure what you mean by "worse."

1 Q All right. Well, if you're going 10 miles
2 an hour and you start to turn the wheel of your
3 vehicle, in your experience, can you give it a
4 little more of a tug versus 60? You got to be
5 really careful about how hard you turn your wheel?

6 A I'm not an accident reconstructionist, I'm
7 not going to speak to that.

8 Q You're not going to go there even though
9 you drive everyday, right?

10 A I do.

11 Q You actually have a Chevy Equinox, don't
12 you?

13 A I do.

14 Q Same vehicle as the Plaintiff; is that
15 right?

16 A Different year.

17 Q Yeah. 2015. Do you know if the lighting
18 on that has changed?

19 A I don't.

20 Q You haven't gone out to the scene to go
21 out there and take a photo or something as it's
22 getting dark with just the parking lights on, or
23 running lights on, have you?

24 A As you just pointed out, I don't know
25 what's changed from '11 to '15.

1 Q Okay. As far as texting and driving, or
2 distractions, do you think -- I mean, you've got
3 that -- this exhibit here, Plaintiff's 14, is there
4 any information that you have that Antoine Johnson
5 was eating something when this accident happened?

6 A No.

7 Q So that would be pure speculation there?

8 A As far as whether or not he was doing it,
9 yes. As far as whether or not it's a cause of
10 distraction while driving, no.

11 Q Well, we're here about Antoine Johnson.
12 Makeup, he's probably not putting on makeup?

13 MR. WILLEY: We stipulate that the only
14 one that's relevant is the one that she said
15 was relevant, reading the text, instead of
16 going through all eight of them. Can we agree
17 on that? The relevant one in this case is
18 reading the texts.

19 THE COURT: That's fine.

20 BY MR. DANIEL:

21 Q And that cell phone record, Exhibit 7, if
22 you want to come down and look at it, you can. But
23 you've seen it, right?

24 A I guess. Depends on what your question
25 is.

1 Q I invite you to come down and look at it
2 if you're unsure. You haven't checked with the cell
3 phone carrier about what all this information means?

4 A Which information?

5 Q This information in this exhibit.

6 A I mean, some of it is fairly
7 self-explanatory. But if you have a specific
8 question.

9 Q This is -- you're suggesting a question.
10 You haven't checked with the cell phone carrier
11 about what this information means?

12 A I have not checked with the cell phone
13 carrier, no.

14 Q All right. And Mr. Johnson received a
15 text at 5:57:43; is that what that says?

16 A It does.

17 Q Does that mean he was necessarily reading
18 that text?

19 A No. There's no indication of that.

20 Q And you know of no witness that says that
21 he was reading -- yes, ma'am.

22 You know of no witness that says he
23 was reading a text, or there's nothing showing that
24 he sent a text at that time, right?

25 A Correct.

1 Q That could just mean that that text came
2 in at that time and was on his phone, like email in
3 your inbox on Outlook or something, right?

4 A It could.

5 Q Or mail in the mailbox. Once it's there,
6 it's electronically documented. That could be what
7 that means.

8 A It could.

9 Q You don't know one way or the other.

10 A No.

11 Q And Mr. Johnson said, you know, he had
12 just been involved in the accident. The first thing
13 he did, he lives with his mom, he's a young age, he
14 called his mom, right?

15 A That's what he testified to, yes.

16 Q You were here?

17 A Yes.

18 Q He did that right after the accident?

19 A That's what he testified, yes.

20 Q If his phone's right there, that wouldn't
21 take but as long as it takes to pick up the phone,
22 and I've got mom on there, I'm calling mom.

23 A Sorry?

24 Q It could be within moments, right?

25 A Potentially.

1 Q You can't put a precise time on when this
2 accident happened, can you?

3 A A precise time, no. But I think in my
4 deposition, we both agreed that the phone records
5 between, I think it was, 43 and 57, were before the
6 collision. So that gives us an approximate range.

7 Q I'm not -- I don't know that we agreed to
8 anything, but I'm not -- I certainly didn't say -- I
9 mean, this 57 is just a text that maybe came in,
10 right? It doesn't mean that Antoine Johnson is
11 doing anything with his phone at 5:57:43. That
12 doesn't show you that Antoine is doing anything with
13 his phone. You agree?

14 A It does not indicate what he was doing
15 with his phone, no.

16 Q We do know that he made an outbound call
17 at what looks like 6 o'clock and eight seconds,
18 right?

19 A I can't read that from here. But I trust
20 that that's what you're reading me.

21 Q I want to make sure you can read it.

22 A I can. Thank you, I'm not that blind.

23 Q All right. Six o'clock and eight seconds.

24 A Yes.

25 Q Okay. So the accident could have happened

1 at 5:58 p.m.?

2 A It could have.

3 Q And do you have any reason to dispute that
4 Mrs. Hood may have been traveling at 62, 63 miles an
5 hour just before this accident?

6 A I don't have any evidence either way, but
7 I have reviewed.

8 Q You've reviewed the testimony of an
9 engineer?

10 A I've reviewed the testimony of an
11 engineer.

12 Q And we've already talked about what that
13 testimony was?

14 A I believe so.

15 MR. DANIEL: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. WILLEY:

18 Q You can't see a darn thing in the dark --
19 but let's start at the end.

20 MR. WILLEY: And, Ms. Margaret, would you
21 be so kind as to turn on this screen?

22 BY MR. WILLEY:

23 Q You mentioned a piece of your deposition.

24 Y'all agreed.

25 What -- what page were you referring

1 to there?

2 A Page 66.

3 Q Okay. And during your deposition
4 Mr. Daniel was the one asking you the questions?

5 A He was.

6 Q Okay.

7 THE CLERK: What do you have it hooked up
8 to?

9 MR. WILLEY: Airplay.

10 BY MR. WILLEY:

11 Q And what -- what lines were you referring
12 to?

13 A Lines five through ten.

14 Q Okay. And --

15 MR. DANIEL: I think it's number one.

16 It's from Apple TV. You've got the DVD on.

17 BY MR. WILLEY:

18 Q It's not on this one, but let me see if I
19 can get it up here. Lines 11 through -- or what did
20 you say?

21 A Five through ten.

22 Q Five through ten. Okay. Let's call those
23 out.

24 And that's Mr. Daniel asking you the
25 question. What did he say?

1 A Would you like me to just read it?
 2 Q Yeah, that would be great.
 3 A "And the time frame, we kind of talked
 4 about it, but the guestimate to the time frame in
 5 the records in the 1743 to 1757 would be the most --
 6 the ones closest in time to this accident based on
 7 what we know."
 8 Q And you answered?
 9 A "Yes."
 10 Q So you accurately reflected your
 11 deposition when he asked you that, right?
 12 A I believe so.
 13 Q Y'all agreed on that, 4357, right?
 14 A Yes.
 15 Q And you're familiar with this book. It
 16 might be the first person in the whole trial that's
 17 seen it before.
 18 A Yes.
 19 Q Okay. And what is this?
 20 A The South Carolina driver's manual.
 21 Q All right. We've been through a few here.
 22 And is this, in your line of work, a
 23 publication that you use and rely on to gather
 24 information?
 25 A It is.

1 be fun, but these top four, are these the four that
 2 it lists out as environmental factors?
 3 A I definitely recall the first three, yes.
 4 Q Okay. So it specifically deals with
 5 darkness, right?
 6 A Independent of the environmental factors,
 7 yes.
 8 Q Okay. And in this case your opinion was
 9 that the collision was at 5:58 or earlier, correct?
 10 A Correct.
 11 Q And in your deposition you and Mr. Daniel
 12 agree that it was between 43 and 57, based on what
 13 we have there, correct?
 14 A Those records were the closest to the
 15 collision, yes.
 16 Q Right. And if we take his U.S. Naval
 17 Observatory, which, again, is for the whole town,
 18 that's the average for the whole town, correct?
 19 A Correct.
 20 Q When would it have been 30 minutes after
 21 sunset?
 22 A 5:58.
 23 Q After this wreck?
 24 A Yes, around that time.
 25 Q With the only possible exception being if

1 Q Okay. And does this document give you
 2 some indication about when, in South Carolina, you
 3 know, it's dark, so to speak?
 4 A Yes.
 5 MR. DANIEL: Your Honor.
 6 THE COURT: Do you have an objection?
 7 What's the basis?
 8 MR. DANIEL: I'll wait for the question.
 9 BY MR. WILLEY:
 10 Q Okay. What does it say about when it's
 11 dark?
 12 A Based on the driver's manual, it would be
 13 dark 30 minutes before sunrise and 30 minutes after
 14 sunset.
 15 Q Okay. And what does the driver's manual
 16 say that you should do when it is dark?
 17 A Activate your headlights.
 18 Q Does it give other circumstances, other
 19 than that 30 minutes after sunset or 30 minutes
 20 before sunrise, when you should activate your
 21 headlights?
 22 A It does.
 23 Q And what does it call those things?
 24 A Environmental factors, I believe.
 25 Q Okay. And I added the eclipse earlier to

1 this wreck occurred exactly at 5:58, right?
 2 A Right.
 3 Q But in this case, you actually went a step
 4 further and got a more specific data point, correct?
 5 A It's using more precise coordinates, yes.
 6 Q And the precise coordinates put sunset at
 7 that exact intersection at what time?
 8 A Five fifty-nine, I believe.
 9 Q And this data point and this data point is
 10 using the same exact physics, correct?
 11 A That's my understanding, yes.
 12 Q Okay. This one is more general for the
 13 whole town. This one's more specific, correct?
 14 A Specific to the location of the collision,
 15 yes.
 16 Q And according to this data point, this
 17 specific data point, when would it have been 30
 18 minutes after sunset at that intersection where this
 19 wreck occurred?
 20 A Five fifty-nine.
 21 Q And that would have been the point at
 22 which headlights would have been required?
 23 MR. DANIEL: Objection, Your Honor.
 24 BY MR. WILLEY:
 25 Q According to the driver's manual.

1 A Based on the driver's manual.
 2 THE COURT: Okay. Based on the driver's
 3 manual. Go ahead.
 4 BY MR. WILLEY:
 5 Q And presumably, folks that have automatic
 6 headlights, they come on at a specific time;
 7 correct?
 8 A It's based on the lighting in the
 9 environment.
 10 Q And generally they click on when it's time
 11 or whatever.
 12 A When it's dark.
 13 Q And since you've been -- I didn't bring
 14 this up because I don't really -- didn't think it
 15 was relevant. But we went into this Poplin fellow's
 16 deposition. You reviewed his deposition, correct?
 17 A I did.
 18 Q What did -- what did he say about
 19 Ms. Hood's headlights?
 20 A There is --
 21 MR. DANIEL: Objection, Your Honor.
 22 THE COURT: Basis?
 23 MR. DANIEL: Lack of foundation. She's
 24 not giving an opinion about headlights.
 25 MR. WILLEY: I'm just asking her what she

1 said. He asked her what she said about a
 2 thousand things.
 3 THE COURT: You asked her questions about
 4 lights, so go ahead.
 5 MR. WILLEY: I, mean, I actually, for the
 6 record, agree with the objection.
 7 BY MR. WILLEY:
 8 Q What did he say about the headlights?
 9 A He indicated that at some point the high
 10 beam assembly had been activated prior to impact.
 11 Q Along with the running lights, correct?
 12 A I believe that either he or another
 13 engineer had testified to that, yes.
 14 Q Okay. But according to the driver's
 15 manual, assuming what we all agree on, that this
 16 wreck occurred before 5:58, she wouldn't have been
 17 required to have anything on, correct?
 18 A Based on the driver's manual, that's
 19 correct.
 20 Q This specific point, this intersection,
 21 this road runs east to west; correct? We've gone
 22 through this.
 23 A It does.
 24 Q Okay. And the sun sets where?
 25 A West.

1 Q Okay. So the sun would be setting on this
 2 side, correct?
 3 A This side.
 4 Q Right. Would that, in your -- you know,
 5 field of expertise provide some reason why this
 6 intersection might have a little later sunset than
 7 somewhere in the middle of the trees in Hilton Head,
 8 for example?
 9 A Yes. I believe there's a section on the
 10 U.S. Naval Observatory's website that discusses that
 11 there can be minor variations in sunset time based
 12 on where exactly the data's from because there's
 13 differences in elevation and the horizon and things
 14 like that.
 15 Q And so in this case, you know, it's an
 16 open road and the sunset in the west, there would
 17 have been more light potentially than other places
 18 on Hilton Head?
 19 A Depending on where it was calculated from,
 20 yes.
 21 Q And you were here, we were all here, we've
 22 all been here all week. You heard Ms. Melnick's
 23 testimony, correct?
 24 A I read her testimony.
 25 Q You read. Okay. And you -- will you step

1 down, please?
 2 A Oh, yes.
 3 Q Where is it -- you know, your
 4 understanding Ms. Melnick was putting down the
 5 umbrellas. Where was she?
 6 A In this area.
 7 Q Okay. And roughly, where was the
 8 aftermath that she was able to see?
 9 A My understanding is that she was looking
 10 through the trees from this area, so somewhere in
 11 this vicinity.
 12 Q And based on your review of, you know, her
 13 testimony, she was able to identify roughly the
 14 number of vehicles involved, correct?
 15 A That's my recollection.
 16 Q And people were helping and all that sort
 17 of thing?
 18 A That's what she testified to.
 19 Q And she was able to see that through these
 20 trees?
 21 A Yes.
 22 Q Now, based on your expertise in human
 23 factors and conspicuity, would she have had better
 24 or worse ambient lighting looking through the trees,
 25 through the woods, than an individual would have had

1 stopped at the stop sign on the open highway?

2 A She may have had some shadowing, for
3 example, from the trees in that area. So that may
4 have changed things from her perspective versus
5 being in the open area at the intersection.

6 Q But she was able to see the vehicles out
7 there on the highway.

8 A Yes, she did in her deposition.

9 Q As far as we know, she didn't have
10 headlights on.

11 A No, to my understanding.

12 Q Okay.

13 Just so we're clear on that.

14 Now, your second opinion, there was
15 some talk about that, so let's just deal with that.
16 You did not have the benefit of a live testimony
17 like this morning prior to your deposition, correct?

18 A I'm sorry?

19 Q The testimony that you heard this morning
20 as you sat in the courtroom, obviously you had not
21 heard that prior to your deposition, correct?

22 A Right.

23 Q Okay. And we talked about some of the
24 factors, but obviously this morning you heard
25 Mr. Lee say that the Xenon headlights he had on,

1 correct?

2 MR. DANIEL: Objection. Mr. Lee didn't
3 testify to that.

4 BY MR. WILLEY:

5 Q Oh, excuse me. In his deposition.

6 A Yes, I was going to say, in his
7 deposition.

8 Q Okay. What I was saying is this morning
9 you heard Mr. Johnson say that he could not -- he
10 also did not see Mr. Lee, correct?

11 A He indicated he did not see any vehicles.

12 Q So what did that -- what does that tell
13 you in your expert opinion about the importance of
14 headlights to Mr. Johnson's ability to see cars
15 coming?

16 A It would indicate that he either was not
17 looking in that direction, or failed to perceive
18 information in that direction because headlights in
19 general are a fairly conspicuous visual queue. And
20 I think that many people have experience with the
21 Xenon or the blue lights in particular. They have
22 the appearance of being quite bright.

23 Q And he didn't even -- he didn't see those?

24 A He testified that he did not.

25 Q Does that support your third finding as to

1 distractiveness and inattentiveness?

2 A It did.

3 Q And based upon that, were you able to find
4 to a reasonable degree of professional certainty,
5 most probably that Mr. Johnson being distracted at
6 the time contributed to the inability to see
7 Ms. Hood?

8 MR. DANIEL: Objection,
9 mischaracterization.

10 MR. WILLEY: She can say yes or no.

11 THE COURT: Okay. Go ahead and answer it.

12 THE WITNESS: That would be the most
13 probable explanation.

14 MR. WILLEY: Thank you, Doctor.

15 RE-CROSS EXAMINATION

16 BY MR. DANIEL:

17 Q And, Doctor, your opinion actually is if --
18 if -- I mean, we can underline it. I don't want to
19 mark their demonstrative up -- but if Johnson was
20 distracted, so you're assuming -- that's an
21 assumption, right?

22 A Based on the evidence available, that is
23 what is suggested.

24 Q That's an assumption, though, that you
25 have to make?

1 A To some extent.

2 Q And you don't know -- you didn't hear
3 Dustin Lee testify, you don't know what he said
4 about how far back down the road he was, whether it
5 was -- and he's really giving a guesstimation, it
6 was ten car lengths, 12 car lengths, how far back
7 down the road he was, do you?

8 A I was not here for his testimony, no.

9 Q And you don't know whether at the time,
10 really what Antoine Johnson saw was -- there is
11 nothing right in front of me, there may be a vehicle
12 way back there, 100, 200 yards back with lights on,
13 but I can get through to this median and pass, and
14 get to the median before that vehicle back there
15 with lights gets here.

16 You don't -- you don't know what his
17 process was actually at the time, do you?

18 A I'm sorry?

19 Q You can't go -- you can't go back and see
20 what he saw; is that right?

21 A None of us can.

22 Q Right. And obviously Dustin Lee did not
23 hit Mr. Johnson's vehicle; do you agree?

24 A That is correct.

25 Q We know that. That's a fact. That's not

1 an assumption, that's a fact?

2 A That is a fact.

3 Q And so he was far enough back to safely
4 either stop or stop in time to avoid making contact
5 with Mr. Johnson, who was in the middle of this
6 roadway; do you agree?

7 A Can you repeat that?

8 Q Yeah. Dustin Lee was far enough back on
9 William Hilton Parkway, 278, that -- do you see the
10 shade right there?

11 A I do.

12 Q Yeah. That's in the photo, aerial shot
13 here. He was far enough back to stop in time to
14 avoid hitting Mr. Johnson; do you agree?

15 A I do agree. He could also see him.

16 Q Yeah. And he's being asked to recall
17 exact specifics three years later. He knows he
18 didn't see any headlights, he didn't see anything
19 right in front of him. He's definitely testified to
20 that; do you agree?

21 A Who?

22 Q Antoine Johnson.

23 A Sorry. I thought we were still talking
24 about Mr. Lee. Can you repeat that?

25 Q Yeah.

1 Antoine Johnson, if he says he didn't
2 see any headlights or anything right there that
3 would have made it unsafe for him to pull out, you
4 don't have really any reason to disagree with that?

5 A He testified he didn't see any vehicles.
6 But I have no reason to disagree with his testimony
7 about that.

8 Q There could have been a vehicle though
9 with lights on well back of him, Dustin Lee, and if
10 it's far enough back, as a driver, you agree, if you
11 see headlights that are way down the road, a couple
12 hundred yards away, you can get through two lanes of
13 travel, right? If you -- do you agree?

14 A I'm sorry?

15 Q You're a driver. You drive?

16 A I do. I'm sorry, I'm not understanding
17 your question. I'm asking you to repeat it.

18 Q Have you ever made a left turn? Have you
19 ever made a left turn like this, when you saw
20 headlights down the road from you, but they were off
21 in the distance?

22 A Yes.

23 Q Okay. And what we have established is you
24 don't know whether Antoine Johnson was reading a
25 text, right?

1 A We can't say for certain, no.

2 Q There's at least one source that you
3 actually used more often that says sunset is at
4 5:58, 30 minutes after sunset in Hilton Head, right?

5 A I'm --

6 Q U.S. Naval Observatory says that it's 30
7 minutes after sunset at 5:58 p.m. on the day of this
8 accident, right?

9 A Yes, that was unclear in your first
10 question.

11 Q You're right, poorly worded question.

12 But the sun has been going down, and
13 it's down. It's been 30 minutes after sunset, per
14 the Naval Observatory, at 5:58 p.m. on the day of
15 this accident?

16 A Per the Naval Observatory, for the general
17 Hilton Head area, yes.

18 Q And 27 minutes after sunset it's pretty
19 dark with conditions like this; do you agree?

20 A It is getting dark.

21 Q Yeah. You haven't gone out there and
22 recreated it and shown how dark that actually is?

23 A I have not recreated it, no.

24 Q You don't have any photos of any vehicles
25 with their headlights on or off at a time like that,

1 20 minutes, 25 minutes, 30 minutes after sunset?

2 A For this case, no. For studies I've
3 conducted in the past, yes.

4 Q So you could show studies to the jury with
5 pictures like that that they could see, to see how
6 dark it is; but you're not doing it here today?

7 A I have photos showing how conspicuous
8 headlights are under those circumstances.

9 Q You didn't bring any of those type photos
10 with you?

11 A I don't have them with me, no.

12 Q Okay. You could have brought them.

13 A I suppose.

14 Q Right. And you could have talked to the
15 witnesses about what they observed?

16 A I could have, I suppose, yes.

17 Q You didn't do that?

18 A No. I relied on their sworn testimony.

19 Q Right. Have you considered the deposition
20 testimony of Cary Tanrath?

21 A I didn't see deposition testimony of Cary
22 Tanrath.

23 Q You don't even know who he is?

24 A I know who he is. I did not see his
25 deposition.

1 Q What do you know about Cary Tanrath?

2 A He was a witness to the collision. He

3 gave a statement after the collision.

4 Q Do you know specifically what he says

5 about headlights?

6 A My recollection is that he said he did not

7 see headlights on Ms. Hood's vehicle.

8 Q Do you know where he was?

9 A I don't recall specifically.

10 Q And you agree that you're not a police

11 officer?

12 MR. WILLEY: Your Honor, we're going way

13 outside the scope. We've got down this road,

14 she's not a police officer, she's not a doctor.

15 We agree to all of that. She is a doctorate in

16 human factors.

17 THE COURT: Let's just move on with it,

18 okay?

19 MR. DANIEL: Yes, ma'am.

20 THE COURT: Thank you.

21 BY MR. DANIEL:

22 Q You were shown the driver's ed or some

23 kind of South Carolina driving guide. You agree

24 that that's not the actual law on what is required

25 as far as headlights in South Carolina?

1 A No, it is not the law.

2 Q Have you read the law at this point before

3 today?

4 A I have not.

5 Q You have not?

6 A No.

7 MR. WILLEY: Your Honor.

8 THE COURT: Okay. We are starting to get

9 into territory. She can't testify to law, you

10 know that.

11 MR. WILLEY: I will show her the law.

12 THE COURT: Let's move on. Let's go.

13 MR. DANIEL: Yes, Your Honor.

14 BY MR. DANIEL:

15 Q And do you agree that environmental

16 conditions, though, dictate when you should or

17 should not have your headlights on?

18 A In part, yes.

19 Q And you should have your headlights on

20 when it starts getting hard for you to see other

21 drivers on the roadway or other drivers to see you;

22 do you agree?

23 A I don't recall how specific it's in there.

24 Q Does that make sense?

25 A It makes common sense, yes.

1 MR. DANIEL: Thank you.

2

3 REDIRECT EXAMINATION

4 BY MR. WILLEY:

5 Q Briefly, Your Honor.

6 Dr. Borzendowski, is this the page

7 from the driver's manual you were relying on in your

8 testimony that he just questioned you about?

9 MR. DANIEL: Your Honor, I didn't question

10 her about that driver's manual.

11 MR. WILLEY: You did.

12 THE COURT: Ask the question.

13 MR. WILLEY: Thank you, Your Honor.

14 BY MR. WILLEY:

15 Q It is a fair and accurate representation

16 of the page from the driver's manual?

17 A Yes.

18 Q Is it in fact an exact copy of the page

19 from the driver's manual?

20 A It appears to be.

21 MR. WILLEY: Your Honor, at this time we

22 would move to admit the evidence of this page

23 from the driver's manual.

24 MR. DANIEL: Objection.

25 THE COURT: You can object. No, it's not

1 going in evidence. Let's move on.

2 BY MR. WILLEY:

3 Q Experts in your field rely on that?

4 A They do.

5 Q And just briefly, once again, you read

6 Mr. Lee's testimony, correct?

7 A I did.

8 Q Mr. Lee testified that he could see

9 Ms. Hood, correct?

10 A Yes.

11 Q And he also testified that he was close

12 enough to see Mr. Johnson, correct?

13 A He testified that he could see

14 Mr. Johnson's vehicle, yes.

15 Q And Mr. Lee would have been farther away

16 from Mr. Johnson than Ms. Hood would have been from

17 Mr. Johnson, correct?

18 A Based on Mr. Lee's testimony, yes.

19 Q He was an eye witness?

20 A Yes.

21 Q Without a stake in the matter, as far as

22 you know, correct?

23 A As far as I know.

24 Q And did you use that testimony, that data

25 point, to aid you in your opinion that Ms. Hood

1 should have been visible to Ms. Johnson?

2 A In part, yes.

3 Q Thank you.

4 THE COURT: Anything further?

5 MR. DANIEL: No, Your Honor.

6 THE COURT: Any objection to this witness
7 being excused?

8 MR. WILLEY: Not from the Plaintiff.

9 THE COURT: You're excused. Thank you.

10 MR. SMITH: Can we take a short break?

11 THE COURT: Ladies and gentlemen, we will
12 go ahead and take a short break at this time.
13 Do not discuss this case. It would be
14 inappropriate to do so. We will be right back
15 with you.

16 (Whereupon, a brief recess was taken.)

17 (Jury exits the courtroom at 4:48 p.m.)

18 MR. WILLEY: Your Honor, and just for --
19 just so my conscience is clear, I do realize
20 that it was the driver's manual, but when he
21 brought it up, I felt like it was necessary not
22 to think that I was hiding anything from them.
23 So --

24 THE COURT: All right.

25 What's next, a video?

1 9:00. So at your --

2 THE COURT: That's fine. I don't want to
3 start till 10:00, so that's fine.

4 MR. SMITH: But, Your Honor, one last
5 thing. I object, I made the representation,
6 they've got Woody Poplin under subpoena. I've
7 asked for a copy of the subpoena.

8 MS. SUTTIE: I have it here.

9 MR. SMITH: I just want to see it.

10 THE COURT: Okay. We're just going to be
11 at ease for about ten minutes. Be here a
12 couple of minutes before 4:00. Make sure it's
13 queued up and you've already tried the
14 deposition and it's ready to go.

15 (Whereupon, a brief recess was taken.)

16 THE COURT: Okay. Tell the jury to come
17 on out.

18 (Jury enters the courtroom at 4:10 p.m.)

19 THE COURT: Go ahead and queue it up. Who
20 is this a deposition of?

21 MR. SMITH: Dr. David Jaskwich, a doctor
22 in this case.

23 THE COURT: What we are going to do, like
24 you saw prior with Ms. Melnick, there is a
25 video deposition of the treating doctor in this

1 MR. SMITH: Treating doctor.

2 THE COURT: How long is that video?

3 MR. SMITH: Forty minutes.

4 THE COURT: Okay. Let's get it queued up.
5 We're going to take about ten minutes. What is
6 after that?

7 MR. SMITH: I have probably -- I have
8 lined up.

9 THE COURT: How many?

10 MR. SMITH: I know two are outside,
11 possibly three.

12 THE COURT: And how short? You said two
13 briefly. My question is: Can we get all that
14 done by 5 o'clock today, or do you want to
15 bring some back later?

16 MR. WILLEY: Maybe, briefly in the morning
17 will be fine.

18 THE COURT: Just asking.

19 MR. SMITH: I think we can get it done. I
20 mean, whenever you want to call it, we can call
21 it. But these two witnesses I expect will be
22 ten, 15 minutes each.

23 THE COURT: Each, okay.

24 MR. WILLEY: And we have witnesses lined
25 up for first thing in the morning, as early as

1 case. Again, that is for you to use like the
2 doctor is testifying right here.

3 As I said before, this deposition is taken
4 in a lawyer's or doctor's office, and it is
5 like any testimony, it is for y'all to judge.
6 And if you need to stand up and stretch, let me
7 know and we will pause it for a minute.

8 On the back row, you will not block anyone
9 but I know that it becomes rough. This one is
10 roughly 40 minutes, and I can tell you that it
11 will also take us to the end of the day. Okay?

12 (Video deposition being played.)

13 MR. SMITH: Judge, we have two very short
14 witnesses that drove up. I promise the first
15 one is maybe less than five minutes. And then
16 we could squeeze them in before the end of the
17 day.

18 THE COURT: Are y'all okay?

19 JURORS: No.

20 THE COURT: That is what I wanted to hear.
21 Y'all have spoke. We will break for the end of
22 the day. Again, do not discuss the case. We
23 will return at 10 in the morning is that's
24 acceptable to everybody?

25 JURORS: Yes.

1 THE COURT: Stay dry. Don't do
2 independent research or discuss this case and
3 have a good evening. Get some rest and have a
4 good evening. See you tomorrow at 10:00 a.m.

5 MR. WILLEY: We have a few things for
6 housekeeping. In the first video we marked and
7 entered into evidence the flash drive of the
8 call, called Exhibit 1. So, for housekeeping
9 purposes we will move that and the video in as
10 Exhibit 2 for purposes of this trial.
11 Ms. Melnick's video.

12 MR. DANIEL: Is that an exhibit?

13 THE COURT: It is in evidence, so it would
14 be an exhibit, yes.

15 *(Whereupon, Plaintiff's Exhibit No(s). 2*
16 *marked for identification and received in*
17 *evidence.)*

18 MR. DANIEL: So, then, we could also have
19 the jury, I guess, look at the deposition
20 testimony if we wanted to move that into
21 evidence.

22 MR. SMITH: Just the video used at trial.

23 MR. DANIEL: I would object to the actual
24 video being an exhibit. Maybe the flash drive
25 of the 911 call. I didn't hear that they were

1 moving the entire video testimony of a witness
2 into evidence as an exhibit.

3 MR. WILLEY: Your Honor, a video
4 deposition always comes into evidence. It is
5 for use at trial. There is time to object and
6 that is when it's noticed. That is fine. It
7 is here. Wouldn't it normally be an exhibit if
8 testimony needed to be played back Mona would
9 bring them out and play it. If deposition
10 testimony needs to be played. It is just like
11 a deposition at trial. We would have to come
12 back and play the entire testimony. I don't
13 know if it was an exhibit. I think that it was
14 already a part -- it was published. That would
15 be duplicative. They have seen it once and it
16 goes back to them again. I would say no. It
17 needs to be marked as a Court's exhibit for
18 sure, but it doesn't go to the jury as a jury
19 exhibit. It is a Court's exhibit, correct?
20 That is what we are saying.

21 MR. WILLEY: We need that as a Court's
22 exhibit. We need Exhibit 1 moved in actually.

23 THE COURT: That would go in as an
24 exhibit. That would be an exhibit.

25 *(Whereupon, Court's Exhibit No(s). 2*

1 *marked for identification and received in*
2 *evidence.)*

3 MR. WILLEY: For purposes of what we did.
4 This was referred to also as an exhibit,
5 Plaintiff's 15, which would be in evidence.
6 And Plaintiff's 2 referred to in the
7 deposition, a packet of bolts and screws would
8 be Exhibit 16 for Plaintiff so that the record
9 is clear.

10 *(Whereupon, Court's Exhibit No(s). 3*
11 *marked for identification and received in*
12 *evidence.)*

13 THE COURT: No one has testified that
14 those were the bolts and that were in her ---

15 MR. WILLEY: Yes, Mr. Jaskowich did.
16 They were moved in without objection into
17 evidence.

18 MR. SUTTIE: I objected in the transcript.
19 We had a motions hearing.

20 THE COURT: I ruled before that they could
21 come in. I think that they can both come in.
22 That is fine.

23 MR. WILLEY: I'm clarifying the numbers.

24 THE COURT: Okay. What else?

25 MR. WILLEY: That is all that I have.

1 *(Whereupon, Plaintiff's Exhibit No(s). 15*
2 *marked for identification and received in*
3 *evidence.)*

4 *(Whereupon, Plaintiff's Exhibit No(s). 16*
5 *marked for identification and received in*
6 *evidence.)*

7 MR. DANIEL: One thing about housekeeping,
8 if you have two short witnesses, we would like
9 to the get our witness right away. Is that how
10 many.

11 THE COURT: How many do you have left?

12 MR. WILLEY: You should be prepared to go
13 by -- what time are you starting, we will go at
14 least through lunch.

15 THE COURT: Okay. Well, then then, tell
16 me how many witnesses you have if you are going
17 through lunch?

18 MR. WILLEY: Potentially four or five.

19 THE COURT: Some of them are lengthy?

20 MR. WILLEY: We have the Plaintiff.

21 MR. SMITH: She would be the most lengthy.
22 A before and after person.

23 THE COURT: I would have one person before
24 lunch, if I were you. Just -- okay. If you
25 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.

Mona L. Manley /s/

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Official South Carolina Court Reporter
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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.

Transcript of Record

Antoine Johnson,

Defendant.

VOLUME 5

September 7, 2017

Ridgeland, South Carolina

BEFORE:

The Honorable CARMEN T. MULLEN

APPEARANCES

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AND

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REPRESENTING DEFENDANT:

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PROCEEDINGS

1 THE COURT: Good morning, ladies and gentlemen.

2 Obviously, the news has been very exciting. I don't

3 know if exciting is the right word for it. But you all

4 are from Ridgeland and from the area and we have

5 experienced the last couple of hurricanes that had come

6 through. Let me tell you what I am hoping to do. And

7 again, I say "hope". I have talked to the attorneys,

8 they are streamlining their case. We are going to try

9 very hard to finish this case today. And that means

10 that we are going to push and I mean push. And I'm

11 going to tell you that right now. Okay?

12 For some reason we are unable to finish, we just

13 can't wrap it up I'll have to make a different decision

14 at the end of the day. I just want you to sit back and

15 relax and there will be evidence put in front of you.

16 This is what we are going to attempt to do today.

17 Okay?

18 So, I don't want anyone concerned. If anyone has

19 any problems at home. All of the schools are still in

20 in Beaufort County, which is where I come from so no

21 one should have problems with kids being home. And,

22 again, the weather is still fine so we are good.

23 My understanding is if it were to hit this area it

24 won't be here until Monday. That is what I'm being

25

1 told by SLED and my Sheriff. So, everyone sit back and

2 relax and we will get it done as best as we can and we

3 will go forward from there.

4 Okay. Again, good morning, ladies and gentlemen.

5 And if the plaintiffs want to call their next witness

6 for this morning.

7 MR. SMITH: Yes, ma'am, the plaintiffs call Nelda

8 Fowler.

9 Thereupon,

10 NELDA FOWLER

11 was called as a witness, having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SMITH:

15 Q Good morning.

16 A Good morning.

17 Q All right. Tell us your name please.

18 A Nelda Fowler.

19 Q Ms. Fowler, are you married?

20 A Yes, I am.

21 Q How long have you been married?

22 A 47 years.

23 Q Congratulations.

24 A Thank you.

25 Q Do you have kids?

TESTIMONY OF NELDA FOWLER

1 A Yes.

2 Q How many kids you got?

3 A Four.

4 Q All right. Where do you live?

5 A I live in Goose Creek, South Carolina.

6 Q Okay, all right. You know Therese Hood, Terry?

7 A Yes, I know.

8 Q Okay. And where do you know her from?

9 A I know her from church.

10 Q All right. Ms. Fowler, we had planned a whole

11 presentation here today. But I'm just going to get right to

12 it with you, okay?

13 A Okay.

14 Q What I would like for you to do is tell the jury

15 the story of why Therese is no longer a Eucharistic

16 Minister.

17 A Okay. Well, Therese was a Eucharistic Minister,

18 that means that -- that means we help the priest give the

19 blood of Christ and the body of Christ to the congregation.

20 It is a very important role. We have to be commissioned for

21 that. If there's something that Father does not -- does

22 think that should be stopped, he does tell us. So, Therese

23 was giving communion, the wine or the blood of Christ,

24 apparently I was not there but apparently she, her leg was

25 giving out on her.

TESTIMONY OF NELDA FOWLER

1 MR. DANIEL: Objection, Your Honor, hearsay.
 2 THE COURT: Okay. kind of redirect her, if you
 3 could. You can't say things that someone else has told
 4 you, that you have heard. You just have to say things
 5 that you know.
 6 BY MR. SMITH:
 7 Q Yes, ma'am. What is your understanding of why
 8 Therese -- what happened?
 9 A My understanding is that she spilled the blood of
 10 Christ.
 11 Q Okay. Was that the talk of the church?
 12 A That was the talk of the church.
 13 Q Everybody knew about it?
 14 A Everybody knew about it.
 15 Q And was Therese basically fired from that job by
 16 father?
 17 A Right.
 18 MR. SMITH: Thank you.
 19 CROSS EXAMINATION
 20 BY MR. DANIEL:
 21 Q Ms. Fowler, how long have you known Therese?
 22 A Probably about five years.
 23 Q Did she serve as Eucharistic Minister after you
 24 know about when this accident happened?
 25 A Maybe about three years.

TESTIMONY OF NELDA FOWLER

1 there is a subdivision back there.
 2 Q Does she still go to church?
 3 A Yes, she goes to church. Sometimes she does not
 4 go, but most of the time she is there.
 5 MR. DANIEL: Okay, thank you.
 6 MR. SMITH: No questions, Your Honor.
 7 THE COURT: All right. You may step down. Thank
 8 you.
 9 MR. SMITH: Yes, the plaintiff calls Helen
 10 Hernandez.
 11 Thereupon,
 12 HELEN HERNANDEZ
 13 was called as a witness, having been first duly sworn,
 14 was examined and testified as follows:
 15 DIRECT EXAMINATION
 16 BY MR. SMITH:
 17 Q Good morning.
 18 A Good morning.
 19 Q Please tell us your name.
 20 A Helen Hernandez.
 21 Q Ms. Hernandez, do you know Terry?
 22 A I do.
 23 Q Where do you know Terry from?
 24 A Church.
 25 Q Okay. Do you know Terry outside of church?

TESTIMONY OF NELDA FOWLER

1 Q When did the incident happen with the --
 2 A It happened about a year -- just prior to her --
 3 it happened after her accident.
 4 Q Do you know about her medical conditions or any
 5 issues that she had before this accident?
 6 A She was -- she is -- she was a real outgoing
 7 person and willing to cooperate with everything. She
 8 volunteer most of everything that we have in church.
 9 Q Yes, ma'am. But do you know if she had any
 10 medical issues before this accident?
 11 A No.
 12 Q You are not aware of any?
 13 A No.
 14 Q Do you ever spend time with her at her house?
 15 A Yes, after the accident, I went to her house and
 16 visited with her for a while.
 17 Q Do you know what neighborhood she lives in?
 18 A Excuse me.
 19 Q What is the name of the neighborhood where she
 20 lives?
 21 A That she lives in?
 22 Q Yes, ma'am.
 23 A Um -- I am having a senior moment.
 24 Q Do you live near her?
 25 A It is right across from the church. Right across

TESTIMONY OF HELEN HERNANDEZ

1 A Not really. No.
 2 Q Okay.
 3 A Everything that I have done with her has been at
 4 the church.
 5 Q And at church, were you a member of the Ladies
 6 Guild?
 7 A Yes.
 8 Q Are you still?
 9 A Non active right now.
 10 Q And was Therese?
 11 A Yes.
 12 Q Okay. What does the Ladies Guild do?
 13 A We do everything, bake sales, dinners, lunches.
 14 You name it, the Ladies Guild is involved.
 15 Q Okay. And when the Ladies Guild is looking for
 16 people to do certain things, do y'all go through and assign
 17 the task or do you ask for volunteers?
 18 A We volunteer.
 19 Q Before the wreck that we are here about, three
 20 years ago, how often did your -- did Terry -- how often did
 21 she volunteer?
 22 A Almost always. We about lived there. We were
 23 there a lot.
 24 Q Did Terry serve as the secretary at some point as
 25 well?

TESTIMONY OF HELEN HERNANDEZ

1 A Yes, she was, she was the secretary.
 2 Q Okay.
 3 A But she was also -- if I can answer?
 4 Q Sure.
 5 A She was also involved in our Pro Life and our
 6 youth group. We were -- our teenagers were going to Poland
 7 and she helped us arrange things for fund raisers. And any
 8 time that we needed anything, she was there. I mean --
 9 Q It sounded like Therese was someone that y'all
 10 could count on?
 11 A Yes.
 12 Q And tell me about the church service. Tell me
 13 about afterwards. Did y'all rush out to go get brunch, or
 14 what did y'all do?
 15 A Most people can't wait to get out of church. They
 16 couldn't get us away from church. We would visit, talk
 17 about church, talk about the upcoming events that we had.
 18 You know, just kind of check on everyone. If anyone at the
 19 church needed anything we would talk about how we could
 20 serve.
 21 Q Okay. And did Therese seem to enjoy this
 22 fellowship?
 23 A Yes.
 24 Q And was she ever in a rush to leave?
 25 A No.

TESTIMONY OF HELEN HERNANDEZ

1 that makes sense.
 2 Q Yeah. And when you -- this facial expression that
 3 you said when you see her, it's sort of like, I'm here?
 4 A Yes, it's not like before. Before it was a smile,
 5 you know, it was engaging and it was like -- but now it's
 6 like, I want to talk to you but maybe not -- I don't know
 7 how to put it into words. Instead of being like smiling,
 8 it's almost like she's hesitant or maybe not as comfortable.
 9 Maybe that is the word that I need.
 10 MR. SMITH: Ma'am, that is all of the questions
 11 that I have for you.
 12 THE WITNESS: Okay.
 13 CROSS EXAMINATION
 14 BY MR. DANIEL:
 15 Q Mrs. Hernandez, do you know Antoine Johnson?
 16 A I do not.
 17 Q Do you know whether he goes to church?
 18 A I have no idea.
 19 Q You don't know his family?
 20 A No.
 21 Q Do you know whether Mrs. Hood suffered from
 22 depression at any point before this accident?
 23 A Never saw her sad, never saw her upset.
 24 Q Do you know anything about her medical treatment
 25 or any conditions?

TESTIMONY OF HELEN HERNANDEZ

1 Q I will just get right to it with you as well.
 2 Okay?
 3 A Uh-huh.
 4 Q Nowadays, do you still see Therese at church; does
 5 she still attend the service?
 6 A Not as much as before.
 7 Q Okay.
 8 A Whenever the accident happened, you know, of
 9 course we didn't see her and then when we did see her it was
 10 sporadic. Her husband would bring her in. She was never
 11 the same afterwards.
 12 Q Do you still hang around after church like you
 13 used to and enjoy the fellowship?
 14 A Yes.
 15 Q Tell me about Therese.
 16 A I don't see her as much anymore. Usually she's
 17 leaving. She doesn't spend a whole lot of time there.
 18 Q Do you try to engage her?
 19 A Yes.
 20 Q What happens?
 21 A Well, we talk but she's -- I don't want to use the
 22 word "depressed," but she's not -- her whole being changed.
 23 I think that the thing that I noticed the most was her
 24 facial expressions. It was kind of like, I'm here, I want
 25 to be part of it, but not being able to follow through. If

TESTIMONY OF HELEN HERNANDEZ

1 A No.
 2 Q It's already been testified to that she may have
 3 had MS before the accident --
 4 MR. SMITH: Objection. Well, go ahead, you can
 5 ask her.
 6 A No, I don't have any idea.
 7 Q Do you know that she had MS or Parkinson's before?
 8 A No, I never saw her with anything that made me
 9 think that something was wrong.
 10 Q Does she still go to church?
 11 A Yes, she does. Not as often.
 12 Q With her husband?
 13 A When I see her, it is with her husband.
 14 MR. SMITH: Nothing further.
 15 THE COURT: You may step down. Thank you.
 16 Thereupon,
 17 THERESE HOOD
 18 was called as a witness, having been first duly sworn,
 19 was examined and testified as follows:
 20 DIRECT EXAMINATION
 21 BY MR. SMITH:
 22 Q Take three long breaths for me, in your nose, out
 23 your mouth. Let it go. Okay?
 24 A Okay.
 25 Q We are going to tell your story today, all right?

TESTIMONY OF THERESE HOOD

1 A Okay.

2 Q We need your name. Tell us your name.

3 A My name is Therese Hood.

4 Q Are you nervous?

5 A A little. My first time.

6 Q You have never been through anything like this

7 before, have you?

8 A No.

9 Q Have you waited a long time for this day to get

10 here?

11 A Yes, two years and ten months.

12 Q All right. Before we tell your story I want to

13 get the jury -- let them get to know you a little bit. We

14 have seen you sit in this chair. We have heard about you,

15 but I want to give them a very abbreviated version. Okay?

16 Just a little background information. The first question is

17 irregular but I need to ask you this because the Judge later

18 will address the jury on life expectancy. So, please tell

19 us your age, ma'am.

20 A My age is 63 years old.

21 Q Therese, do you have any brothers or sisters?

22 A I have one brother. My sister passed away.

23 Q What did your parents do for work?

24 A My mother worked in the shoe mill and my father

25 was a carpenter.

TESTIMONY OF THERESE HOOD

1 A Yes, for ten years.

2 Q What ages?

3 A Five through eight and 12 through 14.

4 Q Okay. And did you retire from teaching at some

5 point?

6 A Yes, ten years later.

7 Q All right. And tell me, what is your husband's

8 name?

9 A David Hood.

10 Q All right. And David, he has been sitting here in

11 the audience, hasn't he?

12 A Yes, he has.

13 Q He's gone to get Christene, your daughter now,

14 right?

15 A Yes.

16 Q She has got two young kids?

17 A A two month old and a two year old.

18 Q All right. And we are going to hear from

19 Christine after you. But do you have -- so we know

20 Christene. What other children do you have?

21 A I have another daughter, Stephanie, and she's 35

22 years old.

23 Q I don't know if I asked you this, how long have

24 you and David been married?

25 A Forty-two years.

TESTIMONY OF THERESE HOOD

1 Q Where did you go to high school?

2 A I went to St. Dominic's Regional Catholic high

3 School.

4 Q Where was that?

5 A That was in Lewiston, Maine.

6 Q What did you do after that?

7 A I went into the military.

8 Q What branch was it?

9 A I was in the Army.

10 Q How old were you when you joined the Army?

11 A I was 18.

12 Q Did you do that for 20 years?

13 A I did that for 20 years.

14 Q Were you honorably discharged?

15 A Yes, I was.

16 Q What was your rank?

17 A Sergeant First Class.

18 Q Okay. And after the Army, did you go back to

19 school?

20 A Yes, I did.

21 Q What degrees did you get at school?

22 A I got my bachelors in elementary education, a

23 bachelors in economics, and a masters in elementary

24 education.

25 Q Did you go to teach kids after that?

TESTIMONY OF THERESE HOOD

1 Q Okay. Grandchildren, do you have any?

2 A I have five.

3 Q And tell me what their ages are.

4 A My daughter, Stephanie, has a three year old, a

5 five year old and an 11 year old. All girls.

6 Q Okay. And you told us Christene has a two month

7 old and a two year old?

8 A Yes.

9 Q Okay. Are you a proud grandmother?

10 A Yes.

11 Q Mrs. Hood, do you have MS?

12 A No.

13 Q Now we understand that you are Catholic, and we

14 have heard a lot about that this week, and you are a member

15 of the Church of the Immaculate Conception?

16 A Yes.

17 Q In Goose Creek?

18 A Yes.

19 Q With the ladies that we heard from today?

20 A Yes.

21 Q How long have you been a member of that church?

22 A Eleven years.

23 Q Have you always been active?

24 A Yes.

25 Q We heard a little bit about giving communion and

TESTIMONY OF THERESE HOOD

1 serving in the Ladies Guild, any other -- well, we also
 2 heard some other activities from Ms. Hernandez, but anything
 3 else that you can think of with regards to your activities
 4 with the church and volunteering?
 5 A Not at the moment.
 6 Q Ladies Guild takes up a lot of time?
 7 A Yes.
 8 Q Okay. Mrs. Hood, what were your plans for
 9 retirement? It is okay.
 10 A I meant to travel, spend time with my
 11 grandchildren, to help more in the church community. And I
 12 have military organizations that I participate in that I
 13 could continue too.
 14 Q Okay. That was your vision?
 15 A Yes.
 16 Q I want to talk to you about the wreck.
 17 A Okay.
 18 Q That was poor timing, I had no idea that I was
 19 going to get an emotional response. But we have made an
 20 abbreviated version here, okay?
 21 A Okay.
 22 Q So, I want to show you the flip chart that we have
 23 been getting a lot of miles out of this week. Now, what
 24 I'll do so everybody can see, I'll not ask you to come down,
 25 but I'll hold it here. Can you see okay?

TESTIMONY OF THERESE HOOD

1 Q Okay. Mrs. Hood, did you have any time to react?
 2 A No.
 3 Q When you saw him for the first time, was it right
 4 before he hit you?
 5 A Yes.
 6 Q And how would you -- well, let me ask you this:
 7 Did you see him pull out?
 8 A No.
 9 Q Okay. And the visibility at that time, we have
 10 heard a lot of people talk about it, was it getting darker
 11 outside?
 12 A It was.
 13 Q Okay. Was there still some light out?
 14 A Yes.
 15 Q Could you see the median?
 16 A Yes.
 17 Q Could you see the trees and the businesses
 18 alongside the highway?
 19 A Yes.
 20 Q Could you see other vehicles?
 21 A Yes.
 22 Q Okay. And as you are driving did it seem like to
 23 you you didn't have your headlights on?
 24 A No, I always have my headlights on. I have a
 25 newer vehicle that has automatic lights and I don't turn

TESTIMONY OF THERESE HOOD

1 A Yes.
 2 Q Ms. Hood, we started out in opening statement by
 3 drawing this diagram here. And we have got Highway 278, all
 4 right?
 5 A Okay.
 6 Q Heading towards the beach, heading away from the
 7 beach. And we have this car right here is you with the H?
 8 A Right.
 9 Q And Mr. Johnson coming off of Southwood Park
 10 Drive.
 11 A Yes.
 12 Q Dunkin' Donuts back here. And then we have the
 13 Kuck vehicle up here. Okay?
 14 A Yes.
 15 Q This was another fellow that I don't know was in
 16 your sight.
 17 A Okay.
 18 Q So, is this -- does this accurately describe what
 19 happened?
 20 A Yes.
 21 Q That you were coming up here, Mr. Johnson pulled
 22 out and hit you on the front right side about where your
 23 tire was and sent you into traffic where you had a head-on
 24 collision?
 25 A Yes.

TESTIMONY OF THERESE HOOD

1 them off.
 2 Q All right. You don't remember switching it to
 3 running lights?
 4 A No.
 5 Q All right. Mrs. Hood, we heard from a lot of
 6 people this week, people saying no headlights but running
 7 lights. Mrs. Hood, if that's the testimony and we have
 8 heard that over and over again, are you going to disagree
 9 with that?
 10 A No, I'm not.
 11 Q Can you accept that?
 12 A Yes, I can.
 13 Q How is your eyesight?
 14 A I just had my eyes checked in June of this year
 15 and I have 20/25 vision. I see perfectly.
 16 Q Wear glasses, contacts?
 17 A I wear no glasses, no contacts.
 18 Q And moving along. Your car, is that where
 19 Mr. Johnson hit you?
 20 A Yes.
 21 Q You have got to speak up for us.
 22 A Yes.
 23 Q And you can move a little closer and use the
 24 microphone if it's uncomfortable, okay. Sorry.
 25 A Okay.

TESTIMONY OF THERESE HOOD

1 Q Mrs. Hood, what caused you to veer into on-coming
2 traffic after he hit you?

3 A My tires shifted to the left and I couldn't turn
4 them to the right.

5 Q Did you do your best to avoid crossing over?

6 A Yes, I did my best to the point where I felt the
7 brake went through the bottom of my car and shattered my
8 ankle and my foot broken completely in half.

9 Q Ms. Hood, what did it feel like for those moments
10 as your car is out of control and you are heading into
11 on-coming traffic?

12 A I knew I was going to die so Catholics believe if
13 you say "Our father" or some sort of prayer before you die
14 that God absolves you of your sins, so I was doing that
15 before I hit the Kucks.

16 Q Were you wearing your seat belt at the time?

17 A Yes, I was.

18 Q Did your air bags go off?

19 A Yes.

20 Q What did that sound like?

21 A What did it sound like?

22 Q What did it sound like, the air bags, for those of
23 us who have never had it happen, including me?

24 A It had a strong odor and it was a strong push that
25 pushed me back into my car seat.

TESTIMONY OF THERESE HOOD

1 Q Okay. Now, Ms. Hood, I know that this is a lot to
2 remember, but I would like for you to tell us what your
3 injuries were, and if you could just organize that by
4 starting at the top of your head and let's go down to the
5 bottom of your feet. Okay? Tell the jury what your
6 injuries were.

7 A My injuries were I had a black eye. What felt the
8 worst which really wasn't the worst is I fractured all of my
9 ribs, I had a fracture in my neck, I had a fracture in my
10 lower spine, and of course, you know, I shattered my foot in
11 half and my ankle.

12 Q Was there some mention of a dissection of your
13 left vertebral artery?

14 A Yes, the Savannah Memorial Trauma Center found
15 that.

16 Q Okay. You went into surgery?

17 A Yes, I did.

18 Q Okay. And after Savannah Memorial, where did they
19 take you after that?

20 A They transferred me to a nursing home in Moncks
21 Corner, which is supposed to be a rehab center as well.

22 Q How did it feel being in a nursing home?

23 A There's no words to explain it.

24 Q There's people there rehabbing and there are
25 people there to stay?

TESTIMONY OF THERESE HOOD

1 Q Okay. Do you remember hitting the SUV head on?

2 A No.

3 Q And I want to just take a moment and see if we put
4 these pictures in. Yeah. All right, so we have already
5 seen pictures of the front of your car, right? Is that it?

6 A Yes.

7 Q Okay. And this is the Defendant's Exhibit No. 2.
8 And this is the Kuck's car, defendant No. 3?

9 A Yes, I didn't see it though.

10 Q Well, we are not going -- we are not going to go
11 back over those. At the scene, what is the first thing that
12 you remember after the wreck?

13 A On Star called me and told me that I had been in
14 an accident and that they were going to call the ambulance
15 and the police.

16 Q Okay. And now, how were you feeling?

17 A I was in so much pain I don't know.

18 Q Okay. Did the ambulance take you away?

19 A Yes, they did.

20 Q And where did they take you to?

21 A Hilton Head Emergency Hospital.

22 Q Okay. And were you transferred to Hilton Head by
23 ambulance over to Savannah Memorial?

24 A Yes, I was transferred from there because Hilton
25 Head could not deal with the fracture in my neck.

TESTIMONY OF THERESE HOOD

1 A They put me in the section that was a nursing home
2 and there was one therapist that would come help me with
3 therapy once a day.

4 Q Let's talk about when you finally got home. Day
5 before Thanksgiving you went home?

6 A Yes.

7 Q Able to get around?

8 A No.

9 Q Can you tell us about Thanksgiving that year.

10 A Thanksgiving that year was horrible. I couldn't
11 get up. I had a neck brace, a body brace, a leg brace. I
12 couldn't move. My daughter from -- she had just come back
13 from Germany. She stayed with me for three weeks. My
14 husband attended to me, and my younger daughter. I had to
15 move downstairs in our sunroom. My bedroom is upstairs. We
16 have -- our sunroom is pretty much lit like this so we had
17 to put blinders up. And I had to have a clothes rack so I
18 could have clothes, but I couldn't dress myself. I couldn't
19 eat by myself. I couldn't go to the bathroom by myself. I
20 really couldn't do anything by myself.

21 Q Could you bathe yourself?

22 A No, that was the most humiliating part. Our
23 bathroom was upstairs, and of course I couldn't go upstairs
24 so they would wheel me to the bottom of the stairs.

25 Q Ms. Hood let's --

TESTIMONY OF THERESE HOOD

1 A I would have to sit on the stairs and back myself
2 up to the top of the stairs and somebody would have to pick
3 me up and bring me to the tub and put a chair in there and
4 then help me step over the tub to get into the chair and
5 then they would have to watch me. And that was so
6 humiliating. I'm such a proud person.

7 I just felt so helpless and humiliated and I
8 always tried to do something and I couldn't do anything.

9 Q Thank God for your family.

10 A Thank God.

11 Q They were there for you?

12 A Yes, they were.

13 Q And Dr. Jaskowich, you thank God for him as well?

14 A Yes, he was a life saver.

15 Q Now you eventually started walking again, did you
16 not?

17 A Yes, I had a boot that came up to my ankle that
18 completely confined my foot so that they tried to fuse the
19 bone of the ankle together. And I wore that for months. I
20 finally was able to wear just an ankle brace in late May of
21 2015.

22 Q And when you did start walking again, I imagine it
23 was a progressional sort of thing.

24 A Yes.

25 Q And even when you were back on your feet without a

TESTIMONY OF THERESE HOOD

1 cane or a walker --

2 A I had to have a cane.

3 Q Well, let's say after all of that. How was
4 walking after that point?

5 A It was difficult. I couldn't walk very far. I
6 was so scared that I would fall. I walked very, very
7 slowly. I had to walk with somebody assisting me. And I
8 finally was -- I tried and was able to go to church. I
9 couldn't kneel down. I had to sit on the bench and prop my
10 foot up through the whole service.

11 Q Could you feel the plates and screws underneath
12 your skin?

13 A Yes.

14 Q Did you eventually have those taken out?

15 A I had the first one taken out in June of 2016. It
16 was a 5-inch screw holding the top part of my ankle to where
17 your foot and your ankle meet. So, I couldn't lift my foot
18 up. You know, your toes forward because that screw just
19 hurt so bad. And so maybe in 2016 I had that one screw
20 taken out. And --

21 Q I think that it was this February you had the rest
22 of them taken out, right?

23 A In April.

24 Q Okay.

25 A April of this year I had the others taken out,

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1 which were --

2 Q Is that these?

3 A Yes.

4 Q You gave these to me, didn't you?

5 A Yes, I did. They let me save them.

6 Q What did it feel like -- so you could -- what did
7 it feel like to wear shoes? And what did it feel like to
8 live with this hardware for three years?

9 A It was very painful. I could -- I didn't have any
10 support. Why I had the screws taken out, they were 5 inches
11 like scissors holding my ankle together and they started
12 protruding on either side of my ankle and it really hurt
13 more. So, I talked to Dr. Jaskowich and he said that he
14 would take them out. But he said that it wouldn't make that
15 much of a difference because my leg was so already damaged
16 and my bones had fused together and it probably never would.

17 Q Okay.

18 A So I'm crippled.

19 Q Now let's -- we are getting there. This is the
20 last part, okay?

21 A Okay.

22 Q Let's talk about how you are doing now, okay? AND
23 I don't mean as we sit here now, I'm talking about the
24 present as opposed to the past that we have been talking
25 about. How does your ankle feel?

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1 A My ankle hurts all of the time. It either feels
2 like there's needles jabbing into it, it throbs, it swells.
3 Like when I was sitting at the table, I can't sit with my
4 foot down very long so I have been propping it up on a box.

5 Q Is this the box that you have been using all week?

6 A Yes. And when it is -- when it swells my ankles
7 overlap my shoe, which is a -- I have to buy special shoes
8 with ankle support.

9 Q Okay.

10 A And so when it gets to that point I can barely
11 take my shoe off, so I wear ankle support slippers.

12 Q Now, Ms. Hood, we heard from Dr. Jaskowich
13 talking about getting off of your feet, elevating your
14 ankle, soaking in Epsom salt, soaking in ice, taking
15 medications, antiinflammatory medications, pain medications,
16 all of that. Is that what you do when it gets bad?

17 A Well, since it hurts most of the time and my
18 family doctor has prescribed 800-milligram Motrin for the
19 swelling and the pain, but that doesn't help with the
20 swelling.

21 Q Now, Ms. Hood, this seems obvious but I have got
22 to ask you: Are you able to wear heels anymore?

23 A No, I can't wear skirts anymore, I can't wear
24 heels anymore. I have two pairs of shoes. I have my
25 support, my support slippers, the tennis shoes that I have

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1 been wearing and I wear one other shoe that seems like a
2 presentable shoe so I don't always have to be in my slippers
3 or my tennis shoes.

4 Q Did you used to exercise before all of this
5 happened to you?

6 A Yes.

7 Q What did you do for exercise?

8 A I walked on a treadmill. I walked with my
9 friends. I walked the dog.

10 Q Are you able to do those things anymore, or do
11 like you used to?

12 A No. What I do now, I take the dogs out and sit
13 with them, but I'm sure that they miss the long walks.

14 Q Ms. Hood, do you know what the future holds for
15 you?

16 A I'm crippled for life.

17 Q Dr. Jaskowich, when he started to talk about the
18 future in the last visit, he was talking about, Well, we are
19 rounding all of this up. It seems like he's kind of done
20 with the things, the help and the fix at this point.

21 A Yes, but I still have a standing appointment with
22 him because he, as time progresses my bones won't fuse
23 completely together so he could do an ankle fusion if he
24 thinks that would help.

25 Q Okay. Last resort, right?

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1 A Yes.

2 MR. SMITH: May I approach?

3 THE COURT: You may.

4 BY MR. SMITH:

5 Q Ms. Hood, I hand you what's been marked as
6 Plaintiff's Exhibit No. 17. Is that a summary of the places
7 you went, the dates, and the costs of the medical treatment?

8 A It appears to be so.

9 Q Okay. And did you help us put that together?

10 A Yes.

11 Q And does that fairly and accurately show the cost
12 of the medical treatment that you received after the wreck?

13 A Yes, I provided you the bills.

14 Q Okay. And was all of that treatment related to
15 the injuries that you received in the wreck?

16 A Yes.

17 Q Okay.

18 MR. SMITH: Your Honor, at this time I move to
19 introduce the document as Plaintiff's Exhibit No. 17.

20 MR. DANIEL: No objection, Your Honor.

21 THE COURT: Okay. Without objection, it is in
22 evidence.

23 *(Whereupon, Plaintiff's Exhibit No(s). 17 marked*
24 *for identification and received in evidence.)*

25

TESTIMONY OF THERESE HOOD

1 BY MR. SMITH:

2 Q I'm not going over the communion story, but I just
3 want to ask you, was what we heard true?

4 A Yes.

5 Q Was that a loss in your life?

6 A Yes, I feel since it was a calling I feel torn
7 because I feel like I'm not as close to God and I'm ashamed
8 that I dropped blood because for a Catholic that is an
9 extremely traumatic thing, it is so sacred and I dropped it
10 because I tripped.

11 Q Ms. Hood you know -- you know that that wasn't
12 your fault, right?

13 A I know but it is still hard --

14 Q Well you know that God forgives you, right?

15 A -- to accept. Yes, I'm sure.

16 Q Okay. But you miss being able to do that?

17 A Yes.

18 Q Now, aside from your family and your church, did
19 you have many friends?

20 A Not many. I had mostly acquaintances.

21 Q And was that okay with you?

22 A That was fine with me.

23 Q We heard Ms. Hernandez talk about you still go to
24 church, not quite as much, but you still go. But what she
25 talked about was, you don't hang around after, you don't

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1 have the fellowship. And tell the jury what it's like not
2 to have that part of your life and why you are not -- why
3 you are not doing that?

4 A I really don't want to go through the story all of
5 the time so I don't really like to be asked about it. And I
6 am in pain and so our service is an hour, hour and 15
7 minutes, and I just -- I'm just not the same person.

8 Q Let's switch gears for a moment, okay.

9 A Okay.

10 Q Now he's not here, but tell us about David. David
11 has been with you for 46 years?

12 A Forty-two years.

13 Q Right. Was y'all's relationship affected by this?

14 A Yes.

15 Q Can you tell us about that please?

16 A It was -- it was -- it has been hard for my
17 husband to deal with my injuries. He would get frustrated.
18 He would sleep and he was my main caregiver so it ended up
19 that we separated for a while. And my youngest daughter, I
20 went to live with her for a while and she could help me.

21 But then we -- I worked things out with my husband and he
22 came back and now he helps me walk, as you have seen. He
23 helps me go shopping because I can't go shopping alone. I
24 can't stand for more than an hour, an hour and a half.

25 Q Is David your rock?

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1 A Yes, he is.

2 Q Have you ever thought about, with how you are now,
3 what would happen if you lost him?

4 A I wouldn't be alive.

5 Q Now, I want to talk about your grandchildren. It
6 sounds like I think I heard an 11, 5, 3, maybe two 2 year
7 olds and a two month old.

8 A One two year old and a two month old.

9 Q Ms. Hood, you know, in my house grandmommy's job
10 is to spoil the grandchildren, and when my child goes over
11 to grandmommy's house her feet don't touch the ground and
12 she picks up very bad habits. And that is the price that
13 you pay for going out to dinner and having a good time,
14 right? But what is your interaction like with your
15 grandchildren?

16 A The three, the three children that live in Alabama
17 with my oldest daughter, when I go visit and when we do
18 anything there's a lot that I can't do with them. And it
19 seems like they get so upset and frustrated with me because
20 I can't do things with them. And they -- I'm from French,
21 I'm French, so they call me Meme. They say, Meme, Why don't
22 you do this with us, don't you love us any more.

23 Q Well, they are young, and they will understand.
24 Right?

25 A I think that sometimes they do. The two year old

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1 is very attached to me. I can't bring them up and down the
2 stairs and I can't carry him anywhere. And the two month
3 old, my daughter won't even let me carry him because she's
4 afraid that I'll fall, so she carries him to me in the
5 chair.

6 Q Ms. Hood, do you find yourself at home a lot now?

7 A Yes, I do. I don't have doctors' appointments
8 very often, but I go to my appointments and since WalMart is
9 only a light away I can go to WalMart and get a few things.
10 And that is where I do my grocery shopping as well.

11 Q When you are at home, are you alone a lot?

12 A I am alone all of the time. My oldest daughter
13 comes to visit me, to check on me, to see how I am doing.
14 My husband calls me every day at noon to make sure that I'm
15 okay. But other than that, I'm completely alone.

16 MR. SMITH: I think that we can end there. All
17 right. Keep your seat. Please answer any questions
18 counsel may have.

19 THE WITNESS: Okay.

20 CROSS EXAMINATION

21 BY MR. DANIEL:

22 Q Mrs. Hood, are you okay to keep going?

23 A Yes, I'm fine.

24 MR. DANIEL: Madam Reporter, could you hand her a
25 sealed copy of her deposition?

TESTIMONY OF THERESE HOOD

1 COURT REPORTER: Okay.

2 BY MR. DANIEL:

3 Q Mrs. Hood, we may refer to that here and there to
4 refresh your memory and clarify things. So, I'll ask you to
5 look at a page if you need to and you can just let me know
6 when you are there; is that fair?

7 A Okay.

8 Q Okay. Do you remember sitting for deposition in
9 this case?

10 A Yes.

11 Q If you look on the front of that. That was
12 April 27, 2016?

13 A Yes.

14 Q Do you remember showing up and being there for
15 Antoine Johnson's deposition that your lawyer took in this
16 case before yours on January 25th, 2016?

17 A Yes, I believe so.

18 Q If I heard you earlier, if I heard it correctly,
19 you are now, what you say, if other people say that I did
20 not have headlights on, I am not going to dispute that.

21 A I understand.

22 Q I'm asking you your testimony. What do -- if they
23 say that you didn't have your headlights on, are you no
24 longer disputing that?

25 A I am no longer disputing that I had running lights

TESTIMONY OF THERESE HOOD

1 on.

2 Q You are no longer disputing that you had --

3 A Running lights on.

4 Q Right. Are you disputing that you did not have
5 your headlights on?

6 A I drive with my lights on automatic all of the
7 time. I don't recall touching them.

8 Q Okay. I'll turn your attention to Page 63 of your
9 deposition. Sixty-three, and actually the bottom of 62.
10 Let's just start there.

11 A Okay.

12 Q See the last line, 25?

13 A Yes.

14 MR. SMITH: What is the line number?

15 MR. DANIEL: Twenty-five.

16 BY MR. DANIEL:

17 Q Were you aware that this gentleman, Dustin Lee,
18 witnessed the accident?

19 MR. SMITH: I am sorry, did you say 63?

20 MR. DANIEL: Sixty-two, line 25.

21 Q "Are you aware that this gentleman, Dustin Lee,
22 witnessed this accident? Your answer: No, sir."

23 A Yes.

24 Q Is that your testimony?

25 A Yes.

TESTIMONY OF THERESE HOOD

1 Q You swore under oath in your deposition just like
 2 you did here today, right?
 3 A Yes.
 4 Q "Okay. So you listened to the recorded 911 calls
 5 for this accident? Your answer: No, sir." All right?
 6 A Yes.
 7 Q Following me?
 8 A Yes.
 9 Q "So, you wouldn't have any specifics, personal
 10 knowledge, and I'll represent to you that he made a point to
 11 say that you were driving and didn't have your headlights on
 12 at the time, so you disagree with that? And your answer
 13 was: I would disagree with that?"
 14 A Yes.
 15 Q And I was asking you about your headlights, so at
 16 the time you disputed -- your contention was you had your
 17 headlights on; is that right?
 18 A That's correct.
 19 Q You are now changing your story and saying, you
 20 know, I don't dispute any more if people say I didn't have
 21 my headlights on, maybe I just didn't have them on; is that
 22 fair?
 23 A Yes. I go by the testimony of the experts.
 24 Q Well, you swore under oath that you remembered
 25 this accident in your deposition?

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1 trees. I could see ahead of me very well.
 2 Q Dustin Lee testified that you were here, that it
 3 was 90 percent dark; you disagree with that?
 4 MR. SMITH: Your Honor, I think I have to object
 5 for pitting the witness.
 6 THE COURT: Sustained. Don't pit witnesses.
 7 BY MR. DANIEL:
 8 Q Okay. Do you agree that it was 90 percent dark?
 9 A I don't believe that. I don't think so.
 10 Q If you had to put a percentage on it, what
 11 percentage would you put?
 12 A Maybe 80 from where my vehicle was.
 13 Q Is 80 percent pretty dark?
 14 A Yes, it is fairly.
 15 Q Fairly?
 16 A Fairly dark.
 17 Q And you were headed to your condo, your time share
 18 condo on Hilton Head?
 19 A Yes, I was, sir.
 20 Q You went down maybe two, or three, maybe four
 21 times a year is what you testified to in your deposition?
 22 A That's correct.
 23 Q And so you are somewhat familiar with this area;
 24 is that right? Hilton Head?
 25 A Oh, with Hilton Head itself, yes.

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1 A Yes.
 2 Q And you told me that you didn't do anything wrong,
 3 that you were driving in a safe manner?
 4 A Yes.
 5 Q You swore all of that under oath, right?
 6 A Yes.
 7 Q And you swore under oath in your deposition that
 8 it was your position that you had your headlights on; is
 9 that right?
 10 A Yes.
 11 Q What you told me under oath is everybody else got
 12 it wrong, I had my headlights on, I am the one that got it
 13 right; that is what you said?
 14 A Basically that is what I thought.
 15 Q That is what you thought but, you know, that is
 16 what you testified to and now maybe you are not sure about
 17 it; right?
 18 A No, I'm sure. I am sure that I thought that I had
 19 my headlights on.
 20 Q But now you think that you may have been mistaken?
 21 A Yes, sir.
 22 Q What about what these witnesses have said about
 23 how dark it was at the time of the accident?
 24 A I agree with them, it was. It wasn't that dark,
 25 but I would have had my headlights on. I could see the

TESTIMONY OF THERESE HOOD

1 Q You don't drive that road everyday, or you didn't
 2 at the time?
 3 A And my husband normally drives when we go there.
 4 Q You were by yourself driving?
 5 A That day, yes, sir.
 6 Q Would you agree that it gets dark in Hilton Head
 7 in early November, the date of this accident was
 8 November 7th, it is pretty dark by around 5:50?
 9 A I'm not sure if that's the occasion all of the
 10 time.
 11 Q Do you remember testifying -- I understand that
 12 you just took an eye exam and you don't have any vision
 13 problems right now. What I am going to ask you so we are
 14 clear, at the time of this accident did you have any vision
 15 problems?
 16 A No.
 17 Q When did this accident happen?
 18 A November 7, 2014.
 19 Q And you are sure about that?
 20 A Of course.
 21 Q I understand that.
 22 MR. DANIEL: May I approach, Your Honor?
 23 THE COURT: Yes.
 24 (Whereupon, Defendant's Exhibit No(s). 7 marked
 25 for identification.)

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1 MR. DANIEL: Your Honor, I'm handing what's been
2 marked as Defendant's 7 for identification purposes.
3 THE COURT: Thank you.
4 BY MR. DANIEL:
5 Q Tell me when you -- you have looked at this now?
6 Seven, you are looking at it?
7 A Yes.
8 Q In the bottom left-hand corner, is that your name?
9 A Yes, it is.
10 Q And that is -- this Goose Creek address, 832
11 North, is that Alsberry. How do you pronounce that?
12 A North Alsberry.
13 Q Is that your address?
14 A Yes, it is.
15 Q Does this appear to be a medical record for you?
16 A Yes.
17 Q Do you see the date -- I think that it's
18 highlighted for you, date of note down near the bottom?
19 A Yes.
20 Q And it says, November 7th, 2014; do you see that?
21 A Yes.
22 Q And it says, 1109 right there; do you see that?
23 A Yes.
24 Q And down a little bit farther I have got another
25 statement that is highlighted. It says, Patient requesting

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1 eye exam for blurred vision. Can you see that?
2 A Yes, sir.
3 Q So, is this a record of you calling to the VA on
4 the day of the accident, the morning of the accident,
5 complaining of blurred vision?
6 A I went to the doctor's office, yes, sir.
7 Q You went in that morning?
8 A Yes, sir.
9 Q Is there a record of that? Because I haven't seen
10 it.
11 MR. SMITH: I think I would object to Mr. Daniel
12 testifying as to his personal knowledge.
13 THE COURT: Okay, if there's a question, ask her.
14 MR. DANIEL: Yes, ma'am.
15 BY MR. DANIEL:
16 Q Your lawyer, do you understand, produced documents
17 to us?
18 A Yes, sir.
19 Q Are you personally aware of a record of you going
20 in to visit to have your eyes checked on this date, November
21 7th, 2014?
22 A Yes, sir.
23 Q You are aware of a record existing?
24 A I believe so. They record appointments.
25 Q You see that there's an addendum. If you look on

TESTIMONY OF THERESE HOOD

1 the next page it actually looks -- you see at the top,
2 December 12th, 2014?
3 MR. SMITH: Is that Page 2? Did you just flip the
4 page?
5 BY MR. DANIEL:
6 Q I just flipped the page, so at the bottom just so
7 you follow with me, Mrs. Hood; you see that 3112?
8 A I have Page 94.
9 Q 3112 in bold. I'll help you.
10 (Pause.)
11 Q You agree this is your medical record, Exhibit 7
12 that we are looking at?
13 A Yes, I agree.
14 Q It says that you hadn't had an eye exam in two
15 years; do you see that?
16 A Yes, sir.
17 MR. DANIEL: At this time we offer Defendant's 7
18 into evidence.
19 THE COURT: Any objection?
20 MR. SMITH: Can I just have a moment to look at
21 it. He's only asked her about two lines and there is
22 several pages.
23 THE COURT: Sure. But let's move on with her,
24 let's keep going with her, if you could. Keep going.
25

TESTIMONY OF THERESE HOOD

1 BY MR. DANIEL:
2 Q Do you agree that you had -- ma'am, I'm not trying
3 to make light of your conditions. I understand that you
4 were hurt and I want to be clear about that.
5 A Yes, sir.
6 Q But you were -- you had been diagnosed with
7 Parkinson's disease before this accident?
8 A Yes, sir.
9 Q You had had incidents where you had fallen before
10 this accident?
11 A Yes, sir.
12 Q And do you remember that you actually before this
13 accident, I guess in August of 2012, had been evaluated for
14 walking aids?
15 A I don't recall.
16 Q Ms. Hood, I'm handing you what's marked as
17 Defendant's 8. And I only have one. I'm not trying to
18 hover, but do you agree that that is your name in the bottom
19 left?
20 A Yes.
21 Q We are looking at Defendant's 8 for ID purposes.
22 Go to the second page, which is 134 -- VA134. It has got a
23 date here, August 6, 2012; do you see that?
24 A Yes, sir.
25 Q And you see where the highlighted language it

TESTIMONY OF THERESE HOOD

1 says, Patient educated that when she receives her MRI
 2 appointment. So you were going for an MRI?
 3 A Yes.
 4 Q She may also come to PT as a walker --
 5 MR. SMITH: Your Honor, I have to object to the
 6 reading of medical records. And this document is not
 7 in evidence. I don't know what is going on here. The
 8 relevance is -- I am sorry.
 9 MR. DANIEL: Your Honor.
 10 THE COURT: Do you need to come talk to me?
 11 MR. DANIEL: I can.
 12 THE COURT: Okay.
 13 (Off-the-record discussion held.)
 14 (Whereupon, Defendant's Exhibit No(s). 8 marked
 15 for identification.)
 16 BY MR. DANIEL:
 17 Q Does Defendant's 8 for ID purposes now refresh
 18 your recollection that in August of the same year as the
 19 accident, so a few months before, you went to the doctor and
 20 were advised about getting walking --
 21 MR. SMITH: Your Honor, same objection. He is
 22 just recanting exactly what -- he is just reading the
 23 medical record without reading it.
 24 THE COURT: Okay. Ask her a question about her
 25 treatment. Don't ask her about the medical record.

TESTIMONY OF THERESE HOOD

1 Ask her about her treatment.
 2 BY MR. DANIEL:
 3 Q Ma'am, in August of 2014 you were advised that you
 4 could get walking aids; is that correct?
 5 MR. SMITH: Your Honor, objection, hearsay.
 6 THE COURT: Just ask her the question, Were you
 7 advised.
 8 BY MR. DANIEL:
 9 Q Were you advised that you should have walking
 10 aids?
 11 A Yes, because at that time I was taking duplicate
 12 medication which was causing me to be more unstable. My
 13 psychiatrist and my neurologist had given me
 14 contraindication medications. Now I no longer tremble
 15 because I only take Adderall.
 16 Q But you had had balance issues and you had fallen
 17 in the past, right?
 18 A Yes.
 19 Q And what you testified to is in church that day,
 20 I'm not trying to embarrass you, but when you spilled the
 21 wine you had tripped; is that right?
 22 A That's correct.
 23 Q Okay. So, you were having blurred vision at least
 24 when -- maybe went to the doctor that day, the day of the
 25 accident, maybe not, but you were having blurred vision that

TESTIMONY OF THERESE HOOD

1 day; right?
 2 A I don't recall the blurred vision. But I do
 3 recall going to the doctors and having my eyes checked
 4 because I was reading a document, several documents and
 5 magazines, and I was having difficulty seeing the words
 6 whatever, so because I felt that you know my eyes might be a
 7 little blurry. So I went to have my eyes checked that day
 8 to make sure that there was nothing serious, and they did an
 9 eye check and found that there was nothing there; I had
 10 perfect eye vision.
 11 Q But you went in to the doctor about blurred vision
 12 the day of the accident, and that is up at the VA in
 13 Charleston, right?
 14 A Yes.
 15 Q And you chose -- the same day you chose to drive
 16 down in the afternoon by yourself to Hilton Head; is that
 17 right?
 18 A Yes. And that was based on the findings of my eye
 19 exam.
 20 Q You testified that you now no longer dispute if
 21 others say you didn't have your headlights on, you don't
 22 dispute that?
 23 A I am sorry?
 24 Q If others say that you didn't have your headlights
 25 on at the time of the accident like Antoine Johnson, you

TESTIMONY OF THERESE HOOD

1 don't dispute that?
 2 MR. SMITH: Objection, asked and answered.
 3 MR. DANIEL: Just trying to make sure.
 4 THE COURT: Move along, get going.
 5 BY MR. DANIEL:
 6 Q Do you realize that this is the first time that
 7 Antoine Johnson has ever heard you say that you didn't have
 8 your headlights on?
 9 MR. SMITH: Your Honor, I don't think --
 10 THE COURT: Again, this is not relevant. Move on.
 11 BY MR. DANIEL:
 12 Q Did you see the sedan, the vehicle, pulling out
 13 before you were impacted on your right side?
 14 A No, sir.
 15 Q You never saw it. Do you know how fast you were
 16 going?
 17 A I was following traffic.
 18 Q Do you remember telling me in your deposition you
 19 were only going 35 miles an hour?
 20 A I wasn't sure about the speed. And I had been in
 21 there for five hours.
 22 Q Do you have your deposition there?
 23 A Yes, sir.
 24 Q Look in your deposition, I want you to start at
 25 Line 18.

TESTIMONY OF THERESE HOOD

1 A Yes, sir.
 2 Q See it?
 3 A Yes, sir. Okay.
 4 Q I want you to start at Line 18.
 5 A Eighteen?
 6 Q You see it?
 7 A Yes, sir.
 8 Q I want you to read, that is my question, starting
 9 with my question, and read for the jury down through 32, go
 10 to -- just read the whole page and then turn the page and
 11 keep reading until Line 12.
 12 A "How fast do you think you were going at the time
 13 when the accident happened?
 14 About 30 miles per hour.
 15 Why do you say 30?
 16 Because the Equinox has in the console a
 17 place where -- has a place for the speed to be and it shows
 18 you numerically what speed you are going.
 19 When do you remember looking at your speed
 20 before the accident?"
 21 Oh, was it "Do you remember"?
 22 Q That is right, do you remember.
 23 A "Do you remember looking at your speed before the
 24 accident?"
 25 Yes.

TESTIMONY OF THERESE HOOD

1 When did you look at it?
 2 I always look at it.
 3 Really? Do you think that you were looking
 4 at it at the time that you were hit or when?
 5 No, I wasn't looking at it then."
 6 I was confused with that question as you
 7 remember before. I believe that at this deposition I was
 8 confused with many of your questions. I am reading what I
 9 wrote -- what I said.
 10 Q Do you see that question of, "How frequently do
 11 you look at your speed?"
 12 A Yes.
 13 Q What did you say?
 14 A I said, "In the case of one minute, probably 20
 15 times."
 16 Q Do you agree that that is a pretty simple
 17 question, "How frequently do you look at your speed?"
 18 A I don't look at my speed every minute. I look at
 19 it maybe every three or four minutes. I'm always aware of
 20 my speed.
 21 Q But in your deposition you testified differently;
 22 is that right?
 23 A Yes, sir, I was very nervous at the deposition.
 24 And you confused me a lot, which I -- if you look at the
 25 deposition I have noted that.

TESTIMONY OF THERESE HOOD

1 Q Okay. In your deposition, didn't I instruct you
 2 to answer my questions and if you didn't understand a
 3 question to let me know?
 4 A Yes, you did.
 5 Q And you didn't tell me that you didn't understand
 6 that question; is that right?
 7 A Yes, I did. I was afraid. It was my first
 8 deposition. I had no experience and somehow I felt
 9 intimidated by you. And I, I just really wanted to get it
 10 over with.
 11 Q Do you think that you may have been speeding at
 12 the time of the accident?
 13 A At the time of the accident, I remember following
 14 traffic. I believe that the speed limit was 45. From past
 15 experience of driving down that road, I don't believe that
 16 many people go 45. But based on the time of day there's --
 17 especially that time of day, there's more traffic going to
 18 Hilton Head, so the flow of traffic.
 19 Q So, people were speeding and you were speeding?
 20 A I can't attest for that, for who is speeding and
 21 who is not.
 22 Q But if you were following traffic and if they were
 23 speeding you may have been speeding?
 24 A I don't want to say that they were speeding, I
 25 have no fact.

TESTIMONY OF THERESE HOOD

1 Q Were you aware that your lawyers hired an
 2 engineer, two engineers?
 3 MR. SMITH: Your Honor, I don't have any idea.
 4 THE COURT: I assume it is an objection. It is
 5 sustained. Move on.
 6 MR. DANIEL: Yes, Your Honor.
 7 BY MR. DANIEL:
 8 Q If Antoine Johnson said he was at that stop sign
 9 and checked to his left before he pulled out, you didn't see
 10 him, you didn't see his vehicle; is that right?
 11 A No, sir.
 12 Q And you can't dispute that based on your
 13 knowledge, can you?
 14 A Based on my knowledge, I didn't see him.
 15 MR. DANIEL: Thank you. Well, one more, a few
 16 more things.
 17 BY MR. DANIEL:
 18 Q As far as your expenses, the medical expenses that
 19 you have, do you agree that you were regularly seeing
 20 doctors before this accident for different medical
 21 conditions?
 22 A Yes, sir.
 23 Q And I'm not trying to make light, but you were on
 24 a number of medications; is that right, before this
 25 accident?

TESTIMONY OF THERESE HOOD

1 A Yes, sir, the medications that I had been on for
 2 years.
 3 Q What medications are those?
 4 A They would be thyroid, cholesterol, a sleeping
 5 sedative.
 6 Q Trazodone or --
 7 A Trazodone, which that is a sedative.
 8 MR. SMITH: I object to relevance, Your Honor.
 9 MR. DANIEL: I am going to get there.
 10 THE COURT: Overruled. You can ask it.
 11 BY MR. DANIEL:
 12 Q You have taken those medications after the
 13 accident too, right?
 14 A Actually I stopped taking the Parkinson's
 15 medication because it was making me tremble, and at that
 16 time the neurologist was experimenting with a drug,
 17 Adderall, which I take for my attention deficit and they
 18 were the same, they did the same thing, which was causing me
 19 to tremble. So, as soon as I stopped taking it my trembling
 20 went away.
 21 Q At your deposition, though, do you remember
 22 telling me that you were taking the same medications after
 23 the accident as you were before the accident?
 24 A Yes, I only stopped taking Parkinson's medication
 25 when they asked me to participate in the study about

TESTIMONY OF THERESE HOOD

1 Adderall and just taking that, and I said I wouldn't profit
 2 from that because I already take it.
 3 Q Okay. And do you agree, do you remember telling
 4 me that the only thing different after the accident, as of
 5 your deposition in April of 2016, two years later, was that
 6 you took Motrin for pain when your leg, pain in your leg
 7 from time to time would get unbearable, is that right?
 8 A Yes, sir.
 9 Q And you told me that -- I said, Well, how often do
 10 you have to take Motrin; do you remember that?
 11 A Yes.
 12 Q Do you remember really telling me, "Really only
 13 about once every two months"?
 14 A No, sir.
 15 Q You don't remember that? Okay. If you will turn
 16 to Page 98 of your deposition?
 17 A Okay.
 18 Q Okay. You see on line 12 there. I'll read this.
 19 I want you to tell me if what I'm reading is accurate.
 20 "Question: How often do you take Motrin?
 21 Answer: I try not to take it too often. I
 22 probably take as needed.
 23 Question: And that would be once a week,
 24 three times a week, once a month?
 25 Answer: When my foot is unbearable in pain,

TESTIMONY OF THERESE HOOD

1 which I can't exactly say when it occurs. I haven't taken
 2 it very many since so --
 3 Best guess? My question.
 4 Maybe once.
 5 Once a month or once a week, best guess?
 6 It would be like once every two months."
 7 That was your answer.
 8 A I see that.
 9 Q Is that what you testified to?
 10 A That is what I testified to.
 11 Q If you didn't have your lights on and you were
 12 speeding and it was 80 percent dark out, do you believe that
 13 you may bear some responsibility for the accident that
 14 happened?
 15 A I have the right-of-way and he hit me.
 16 Q You don't believe that you did anything wrong?
 17 A No, sir.
 18 MR. DANIEL: No further questions.
 19 THE COURT: Anything further?
 20 MR. SMITH: Yes, ma'am, very briefly.
 21 REDIRECT EXAMINATION
 22 BY MR. SMITH:
 23 Q Ms. Hood, the medical bill summary, now the
 24 medications that you were taking before all of this, did you
 25 get those through the VA?

TESTIMONY OF THERESE HOOD

1 A Yes.
 2 Q Okay. Is the VA anywhere on here? Are you asking
 3 for reimbursement for any drugs supplied by the VA?
 4 A No, sir.
 5 Q Do you see the VA for your personal health
 6 conditions?
 7 A Yes.
 8 Q Before and after the wreck, right?
 9 A Yes.
 10 Q Is the VA, for those personal health conditions,
 11 anywhere on this summary?
 12 A No, sir.
 13 Q And Ms. Hood, we have heard about your eyesight.
 14 Were you able to read that deposition that Mr. Daniel was
 15 giving you?
 16 A Very well, yes, sir.
 17 Q All right. And when you felt like your eyes were
 18 blurry, what was the remedy?
 19 A What was the remedy?
 20 Q Yes.
 21 A They gave me eye drops.
 22 Q Because your eyes were dry?
 23 A My eyes are constantly dry.
 24 Q Okay.
 25 MR. SMITH: Nothing further.

TESTIMONY OF THERESE HOOD

1 THE COURT: Anything further, Mr. Daniel?

2 RE-CROSS EXAMINATION

3 BY MR. DANIEL:

4 Q Mrs. Hood, this exhibit with your medical bills on
5 it --

6 A I don't have that here with me.

7 Q It is the one here. Would you agree that a number
8 of the bills on there are related to treatment for
9 dizziness?

10 MR. SMITH: Your Honor, I have to object. This is
11 outside my redirect. I asked her if any bills from the
12 VA were on there and she said no.

13 THE COURT: He can ask it, is it on there or not.

14 THE WITNESS: No.

15 BY MR. DANIEL:

16 Q Who do you see for neurological problems?

17 A Dr. Henlon.

18 Q Which group is he with?

19 A It is a she. And she is with the neurology
20 department at the VA.

21 Q Where?

22 A At the VA in Charleston.

23 Q Okay. Did you see the folks at MUSC about
24 dizziness? There is a bill for \$64,000. Did you get
25 treatment?

TESTIMONY OF THERESE HOOD

1 A Yes, sir. The dizziness I was experiencing was
2 from the fracture in my neck because the fracture in my neck
3 was causing to push the artery in my neck so that I wasn't
4 getting the oxygen that I had after the accident.

5 Q But you would agree that you are not a medical
6 doctor?

7 A No, sir, but they performed an angiogram.

8 Q But you can't give a medical opinion?

9 A No, sir.

10 Q And you actually testified in your deposition when
11 I asked you, Did they ever figure out what was causing your
12 dizziness, you agree that you told me, No, they have not,
13 they have not figured it out?

14 A No, they hadn't.

15 Q And you had dizziness before this accident, from
16 Parkinson's, you had dizziness before this accident?

17 A Not from Parkinson's.

18 Q Had you complained of dizziness to doctors before
19 this accident?

20 A I don't believe so.

21 MR. SMITH: Your Honor, are we still within the
22 course of redirect? I tried to just let it play out,
23 but I think that we are a little further.

24 THE COURT: How much further do we have?

25

TESTIMONY OF THERESE HOOD

1 BY MR. DANIEL:

2 Q You would dispute that you were treated for
3 dizziness before, before the accident?

4 A I don't recall, sir.

5 MR. DANIEL: Okay. No further questions.

6 THE COURT: Anything further?

7 MR. SMITH: No, ma'am.

8 THE COURT: You may step down, Ms. Hood.

9 Ms. Suttie and Mr. Willey, come on up.

10 (Off-the-record discussion held.)

11 THE COURT: Ladies and gentlemen, do not discuss
12 this case. It wouldn't be appropriate to do so. We
13 will be right back with you. We are trying to figure
14 out scheduling-wise how we are going to keep going,
15 okay.

16 (Brief recess.)

17 (The jury enters the courtroom.)

18 THE COURT: Ladies and gentlemen of the jury,
19 we're going to keep moving on. Just to let you know,
20 we are trying to get through this quickly today.

21 Ms. Bostick, I think, has ordered pizza -- am I
22 correct in saying pizza -- for lunch. So we're just
23 going to keep running until it gets here, so it's hot,
24 ladies and gentlemen. Just to let you know, that's
25 what we intend to do. We'll then only break for maybe

TESTIMONY OF THERESE HOOD

1 20 minutes, 30 minutes, then keep going. Okay?

2 All right. Go ahead and call your next witness.

3 MR. SMITH: Your Honor, plaintiff's final witness
4 will be Christine Hood.

5 THE COURT: Okay. Come on forward, Ms. Hood.

6 MR. SMITH: Christine Davis, sorry.

7 Thereupon,

8 CHRISTINE DAVIS

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 WITNESS: This is intimidating.

12 DIRECT EXAMINATION

13 BY MR. SMITH:

14 Q Please tell us your name.

15 A Christina Davis.

16 Q You've been married recently?

17 A Yes.

18 Q Sorry.

19 A Yeah.

20 Q Who's your mom?

21 A Terry Hood.

22 Q Christine, I'd like for you to tell us about the
23 family reunion, when it was, what happened. Talk to the
24 jury about that experience.

25 A Okay. So I'll give you a little bit of back

TESTIMONY OF CHRISTINE DAVIS

1 history. In 2010, 2011, we went on a trip to Germany, and
2 that was prior to the accident. We traveled from Germany to
3 France. My dad was actually working there at the time. And
4 she -- we were up and about, we walked everywhere, we did
5 everything we wanted to do. We got to see so many different
6 sites, it was amazing.

7 So fast forward till after the accident,
8 we've actually been here, to Georgia, twice. Most recently
9 was Helen, Georgia. We went on a trip to WalMart because we
10 stayed in a cabin.

11 Q Just to give us some perspective, when was this?

12 A This was two, three days ago. So it was just
13 recent. It was this vacation.

14 Q Let's slow down just a little bit. So this was a
15 family reunion, right?

16 A Uh-huh. (Indicating affirmatively.)

17 Q And what was the -- in Georgia somewhere?

18 A Helen, Georgia, yes, sir.

19 Q Okay. Y'all got a big family?

20 A Immediate. It's my sister, with her three
21 children and her husband and myself with my two children and
22 my husband. So, it's immediate family.

23 Q Y'all stay in a lodge together?

24 A Uh-huh. (Indicating affirmatively.)

25 Q Okay.

TESTIMONY OF CHRISTINE DAVIS

1 THE COURT: Is that a "yes," for the record?

2 THE WITNESS: Yes, sorry.

3 BY MR. SMITH:

4 Q Explain it to them from there.

5 A Okay. So we went to WalMart to get some of our
6 supplies, some food for the trip that we were going to make
7 food there to save money and things like that. And that was
8 basically the excursion that she got to enjoy. She went --
9 we -- it was me and my sister that went to WalMart, and we
10 actually had to cut our WalMart trip short because her leg
11 was really starting to bother her and hurt her.

12 The next morning we woke up and we all
13 decided that we were going to go to walk up to a waterfall
14 which was only a half mile. And she wasn't able to go
15 because she couldn't walk. It pains her to walk.

16 The same thing -- and then the thing happened
17 throughout the rest of the vacation we were there, she had
18 to limit everything that she does because she physically
19 can't move past a certain point. She can only do maybe one
20 excursion, and that's it for the rest of -- for a few days.

21 So it may sound like, you know, nothing big,
22 but it's huge in your daily life when you can't go out on a
23 daily basis.

24 The same, we went previous, maybe a month.
25 July of last year, we went to Stone Mountain, and she

TESTIMONY OF CHRISTINE DAVIS

1 couldn't do anything pretty much. It was on a hill, and she
2 went walking around, but we explored the entire area and she
3 was confined to a hotel room. And that's no fun.

4 MR. SMITH: Thank you.

5 MR. DANIEL: No questions, Your Honor.

6 THE COURT: You may step down. Thank you.

7 WITNESS: Thank you.

8 MR. SMITH: The plaintiff rests, Your Honor.

9 THE COURT: Ladies and gentlemen, at this time the
10 Plaintiffs have rested their case. There's a matter of
11 law I need to take up with the attorneys. And I'm
12 sorry I'm shouting, my microphone is off.

13 I'm going to send you back to your jury room very
14 briefly. Do not discuss this case, it wouldn't be
15 appropriate to do so. We'll bring you right back out.

16 Like I said, we're just going to keep going until
17 that pizza gets here. Okay? Thank you.

18 (The jury exits the courtroom.)

19 THE COURT: Okay. Y'all need to see this. Any
20 motions?

21 MR. DANIEL: Yes, Your Honor. At this time, the
22 defendant moves for a directed verdict based on the
23 testimony about liability and headlights. At best, the
24 testimony now is that it was 80 percent dark, and she
25 figured she might not have headlights on, and there's

TESTIMONY OF CHRISTINE DAVIS

1 also evidence of the plaintiff speeding and damage, and
2 there is testimony from their expert about what the
3 likely speed was. That's it, Your Honor.

4 THE COURT: Okay. Mr. Willey, do you want to
5 respond?

6 MR. WILLEY: I don't understand his question
7 frankly. I guess -- is it to headlights or is it to
8 liability in general? I mean, I don't understand what
9 his motion is.

10 THE COURT: Okay.

11 MR. DANIEL: Your Honor, our position is that
12 reasonable minds differ on the issue of the liability
13 in this case based upon the testimony.

14 MR. WILLEY: Okay. And I will just briefly
15 address that. Obviously, in this case the plaintiff
16 has the burden of proof. We have to prove that its
17 more likely than not that the defendant had a duty and
18 a breach of duty proximately caused some injury in
19 this case. The statute laws of South Carolina
20 obviously applies. It's been testified to at the time
21 of the wreck the plaintiff had the right-of-way, that
22 defendant after leaving the stop sign entering the
23 highway struck her, which obviously is negligence. And
24 there has been testimony from a doctor that she was
25 proximately caused injuries as a result of the wreck.

TESTIMONY OF CHRISTINE DAVIS

1 So, at this time directing your verdict as to liability
2 and negligence, of course, would be improper,
3 particularly for the defendant. But we will make our
4 motions at the appropriate time.

5 THE COURT: Thank you. All right, respectfully, I
6 think given the evidence in the case there's evidence
7 obviously that your client failed to yield the
8 right-of-way. I think that it is a jury issue in this
9 case. We are definitely going to charge comparative
10 negotiations. So, with that said, I am going to
11 respectfully deny your motion.

12 MR. DANIEL: The defendant also moves for directed
13 verdict on punitive damages. And, just briefly, the
14 basis for that being that there's no one that said that
15 Antoine Johnson was actually texting, reading a text,
16 sending a text or on his phone. The only evidence in
17 the record is that he checked twice before he drove
18 into the intersection and there's obviously
19 witnesses -- Dustin Lee's testimony is that there was a
20 vehicle coming without headlights, so we would move for
21 directed verdict.

22 THE COURT: All right. Yes, sir.

23 MR. WILLEY: Your Honor, the law as you know in
24 South Carolina is that violation of a statute gives
25 rise as evidence of punitive damages can be used to

TESTIMONY OF CHRISTINE DAVIS

1 establish recklessness. In this case we have the
2 defendants by like several statutes which we will go
3 through when we go through the jury charge, so directed
4 verdict as to punitive damages would be improper.

5 THE COURT: I agree, and we are going to have to
6 charge punitive damages. And I think there's damages,
7 obviously, by violation of a state statute. Failure to
8 yield the right-of-way, failure to keep proper lookout,
9 among other things that would allow this jury to return
10 a punitive damages award, so I will allow it. Anything
11 else?

12 MR. WILLEY: Not from the plaintiff.

13 MR. DANIEL: No, Your Honor.

14 THE COURT: How many witnesses do you have?

15 MR. DANIEL: One.

16 THE COURT: Just one.

17 MS. SUTTIE: I can get him.

18 THE COURT: How long will that be?

19 MR. DANIEL: Short.

20 THE COURT: Short, okay. Margaret, how long till
21 the pizza is here?

22 THE CLERK: It says it is out. That was seven
23 minutes ago, so it was may be downstairs.

24 THE COURT: That would be great.

25 MR. WILLEY: Can we finish the cases and then

TESTIMONY OF CHRISTINE DAVIS

1 perhaps --

2 THE COURT: That is what I'm going to try to see.
3 I'm worried that the people won't be here when we need
4 to take a break. So, that is fine. We have to work on
5 the jury charge.

6 MR. WILLEY: I have never seen a schedule work out
7 like this.

8 THE COURT: Okay. Let's bring the jury back in,
9 we will sit through one witness and then you can rest
10 as well. And you need to let me know if you have any
11 rebuttal witnesses.

12 MR. WILLEY: We do not, Your Honor, based on who
13 they are calling.

14 THE COURT: All right. Let's bring them out.

15 THE BAILIFF: If you could come into the
16 courtroom, please.

17 (The Jury enters the courtroom.)

18 THE COURT: Welcome back, ladies and gentlemen.

19 MR. DANIEL: Your Honor, I need a moment.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Ready to go, Mr. Daniel?

23 MR. DANIEL: Just a second.

24 THE COURT: Okay.

25 (Pause.)

TESTIMONY OF CHRISTINE DAVIS

1 THE COURT: Okay?

2 Thereupon,

3 CARY TANRATH

4 was called as a witness, having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DANIEL:

8 Q Mr. Tanrath, good afternoon.

9 A Good afternoon, sir.

10 Q Could you just please state your name, and full
11 name for members of the jury?

12 A Cary Thad Tanrath.

13 Q And thank you for coming today. Where did you
14 come in from?

15 A Savannah, Georgia, sir.

16 Q Did you drive up this morning?

17 A Yes, sir.

18 Q Tell us a little bit about yourself. I'm trying
19 to be brief. Where are you from originally?

20 A I was a military brat, born in Clark Air Force,
21 the Philippines. Spent 20 years, five months, 11 days in
22 uniform, and currently have a handyman service in the
23 Savannah, Georgia area.

24 Q What branch of the military?

25 A U.S. Army, sir.

TESTIMONY OF CARY TANRATH

1 Q How many years did you serve?

2 A Twenty years, five months, 11 days.

3 Q And are you married?

4 A Yes, sir.

5 Q How long have you been married?

6 A Married for 13 years come this December, sir.

7 Q Have any children?

8 A Three daughters.

9 Q And, sir, we're here about an accident. Did you

10 witness an accident on November 7th, 2014?

11 A Yes, sir.

12 Q Could you -- what were you doing at the time, that

13 day?

14 A I was leaving Hilton Head. At the time, I was

15 employed by a company called Clearview Window Cleaning and

16 Pressure Washing. Headed back from Sean Pines, I believe,

17 sometime after 5:00, 5:30, because it was dark out.

18 For those of you not familiar with the Hilton

19 Head area, 278 has three lanes that run eastbound, three

20 lanes that run westbound. I was in the far left lane of the

21 eastbound traffic, and traveling home, and witnessed a

22 vehicle hitting another vehicle that was directly in front

23 of me.

24 Q That stretch of road, with the company you were

25 working with, did you have to travel that frequently at the

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1 A The vehicle in front of me was an SUV. The one

2 that impacted, I believe, was an SUV. All I caught was the

3 front glimpse of it.

4 Q Okay. Was there more than one person in that

5 vehicle?

6 A That, the vehicle in front of me, there were two

7 people. The vehicle that hit them, I do not know how many

8 people were in that vehicle, sir.

9 Q What did you do once you saw this collision?

10 A I don't follow directly behind anybody. I follow

11 at about -- when I went through driver's ed, the way I was

12 taught to -- when you're driving down the highway, you have

13 a two-count between you and the vehicle in front of you.

14 So -- and if you've driven the road in Hilton

15 Head, you don't follow directly behind somebody because you

16 can't see the taillights in front of them. So I usually

17 stagger a little bit off to the side of them, and then back

18 far enough that it gives myself braking time.

19 What I saw is I'm driving and it was one of

20 those -- oh, no, moments. When you see the vehicle coming

21 towards you, and it was somebody's going to get hit. And

22 the vehicle in front of me got hit, debris started flying up

23 over the vehicle and onto the right-of-way.

24 I slowed down and pulled off to the side of

25 the road, and there was smoke and fluid all over the

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1 time?

2 A I traveled to Hilton Head anywhere from three to

3 four days a week.

4 Q And what -- this happened when? In November?

5 A Yes, sir.

6 Q You said that it was dark out. How dark?

7 A Dark enough that the lights -- that I had my

8 lights on. November, yeah, it's dark by 5:30, because we

9 got to get out of Plantations because you can't work after

10 dark, so --

11 Q You had your headlights on?

12 A Yes, sir.

13 Q Did -- the impact that you described, we've had

14 this up for -- while the jury has been very patient,

15 probably tired of seeing this, but could you tell me, the

16 orient of the jury, where were you, if this -- if this is

17 headed westbound off of Hilton Head?

18 A Westbound off of Hilton Head, the vehicle, I would

19 be behind the vehicle that's got the X in front of it.

20 Q Okay. What kind of vehicle -- so you saw an

21 impact just between two cars?

22 A Yes, sir.

23 Q Two vehicles?

24 A Yes, sir.

25 Q What type of vehicles?

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1 highway. So I helped extract the driver, pulled his door

2 open, and then myself and another individual opened the

3 passenger side door. If I remember correctly, her seat belt

4 would not come undone, so that had to get cut to extract her

5 from the vehicle. And then some other people were helping

6 the vehicle that impacted the vehicle in front of me.

7 Q So the vehicle where you -- that you stopped as

8 soon as you saw the impact?

9 A I started to slow down once I knew that there was

10 going to be an accident.

11 Q Okay. Did you run to render aid right away?

12 A Yes, sir. Once I stopped my vehicle and pulled

13 off to the side of the road.

14 Q And other people were there and started to help as

15 well?

16 A Yes, sir.

17 Q And that happened as soon as the -- right after

18 the accident?

19 A Yes, sir.

20 Q So you were behind -- based on what we've been

21 discussing, behind the vehicle, in this depiction, vehicle

22 K?

23 A Yes, sir.

24 Q There were two people in there?

25 A Yes, sir.

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1 Q Okay. Did that vehicle, do you remember, did it
2 have its headlights on?
3 A The vehicle in front of me?
4 Q Yes, sir.
5 A I can't say if it had its headlights on. I know
6 its taillights were on, and it's braking lights were
7 working.
8 Q The other vehicle, the one that --
9 A That impacted?
10 Q -- impacted the one with label K. Can you tell us
11 -- can you come down and tell us where it was coming from
12 and where you first noticed it?
13 A This is 278 westbound. I was following behind
14 this vehicle K. This vehicle here traveling -- and all of a
15 sudden, you just see the oblique side of the vehicle. So it
16 wasn't turned completely sideways, but it wasn't head on
17 from where I was, and it starts to veer into the westbound
18 lanes, and that's when it was "Oh sh", somebody's going to
19 get hit. And that's when I hit -- hit my brakes, pull off
20 to the side of the road. And by the time it was done, there
21 was debris everywhere, two smashed cars, and like I said,
22 fluid and steam or smoke rising up from everywhere.
23 That's why I was more worried about the
24 people in the vehicle getting burnt than somebody having an
25 injury that you shouldn't move them, so --

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1 Q So the vehicle labeled -- that would be labeled H,
2 you saw that vehicle --
3 A Here.
4 Q -- come across the median?
5 A Yes, sir.
6 Q And there's actually -- is there a turn lane? You
7 described three lanes. There's actually a turn lane right
8 here, isn't there?
9 A There's three lanes of traffic going each
10 direction, and then there's an intersection where you can
11 pull into the intersection so that you can cut across to go
12 to one of the side streets or make a U turn.
13 Q Is it possible that the actual accident that you
14 saw, the impact between the K and this H vehicle, happened
15 farther back than what's depicted in this drawing?
16 A What I remember is where the wreckage was would be
17 closer to where you would actually start to turn in to make
18 the turn. But I didn't measure it or anything like that.
19 That's what I remember is it was up farther.
20 Closer to the end of the island, I guess is how I would
21 describe it.
22 Q You didn't do any measurements or anything?
23 A No, sir. No.
24 Q You could go ahead and sit down. I'm sorry, Mr.
25 Tanrath.

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1 A (Witness complies.)
2 Q Were there any vehicles between you and the one
3 that was hit?
4 A No, sir.
5 Q You had a clear view of the vehicle in front of
6 you?
7 A Yes, sir.
8 Q And you saw this vehicle come across the median
9 and directly impact the vehicle in front of you head on?
10 A Not head -- it came in at an angle, but, yes, sir.
11 Q Did the front of those two vehicles --
12 A Yes. The front of the two vehicles did collide.
13 Q Was it a violent collision?
14 A Yes, sir.
15 Q You said there was smoke?
16 A Well, there was steam rising up, so I don't know
17 if it was smoke from a fire or just steam from radiator --
18 hot radiator fluid escaping and -- but there was debris all
19 over the road.
20 Q The vehicle that came across traffic, not holding
21 you to anything, was it moving slowly? Fast?
22 A That, I cannot -- it was one of those -- it was a
23 blink of an eye. Oh, sh -- pardon my expression, ma'am, oh,
24 shit moments, when you know that something is going to
25 happen. I mean, it wasn't -- when your senses are

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1 heightened time seems to move slower, but it was one of
2 those, this is going to happen, it's going to happen now.
3 And it was smash, and then pull off the side of the road and
4 render aid.
5 Q Mr. Tanrath, this has already been entered into
6 evidence. The smaller version has been offered into
7 evidence, but the vehicle in front of you, do you -- was it
8 perhaps a Chevy Tahoe?
9 A In front of me? It was an SUV, I can't tell you
10 what brand it was, sir.
11 Q Okay. Would that -- would -- if people have
12 already testified that the vehicle labeled K was driven by
13 William Kuck, and Mary Kuck was the passenger in this
14 vehicle, would you have any reason to dispute that?
15 A No, sir.
16 Q And would the damage you see here be consistent
17 with the type of impact and collision you witnessed that
18 evening?
19 A Yes, sir.
20 Q Okay. Now, you saw the vehicle coming across
21 traffic sort of at an angle; is that correct?
22 A Yes, sir.
23 Q Were you able to see the front of that vehicle?
24 A Not the entire front, no, sir.
25 Q Were you able to see a portion of the front of

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1 that vehicle?

2 A Yes, sir.

3 Q Can you come down and just, Mr. Tanrath, draw what
4 the front of the car looks like?

5 A (Witness complies.)

6 This is the vehicle in front of me.

7 Q All right. And not to scale, but --

8 MR. SMITH: Your Honor, may I address the Court
9 very briefly?

10 THE COURT: You may.

11 MR. SMITH: If this witness is going to testify
12 that Ms. Hood did not have her headlights on, we
13 stipulate to that.

14 THE COURT: Okay. He can still testify to
15 whatever he needs to. That's fine.

16 MR. SMITH: Yes, ma'am. Okay.

17 THE WITNESS: So as far as this, so I did not see
18 the entire curve of the vehicle, but I did see from
19 that area on. Because, like I mentioned, I was
20 staggered behind the vehicle probably more like that.

21 So I wasn't directly behind the vehicle, but I saw
22 an oblique side of the vehicle that hit the vehicle in
23 front of me, and a little portion of the front.

24 BY MR. WILLEY:

25 Q Okay. And the -- so you're looking at the -- this

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1 is the vehicle that would be labeled H. You're now the
2 other way around, right? You put an H on there?

3 A (Witness complies.)

4 BY MR. DANIEL:

5 Q And then your vehicle, I for Tanrath.

6 A (Witness complies.)

7 Q Go ahead. And could you see at least a portion of
8 the front passenger side of the H vehicle?

9 A Yes, sir.

10 Q Could you see the area where the headlights are
11 positioned?

12 A Yes, sir.

13 Q Were those headlights on?

14 A I do not remember seeing headlights.

15 Q And do you remember giving a statement about a
16 week or two after the accident?

17 MR. SMITH: Your Honor, I don't know if he's
18 impeaching this witness with the statement, at this
19 point, but --

20 THE COURT: Ask him the question, and then if he
21 says something different then --

22 BY MR. DANIEL:

23 Q Do you remember telling someone that the
24 headlights, the passenger side headlights on that vehicle,
25 were not on?

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1 MR. SMITH: Your Honor.

2 BY MR. DANIEL:

3 Q I'm just asking the question.

4 MR. SMITH: No, you're --

5 THE COURT: Okay. Just ask the question. Let's
6 go.

7 BY MR. DANIEL:

8 Q It's a straight question. Do you remember telling
9 somebody that the headlights on the passenger side of that
10 vehicle were not on?

11 MR. SMITH: Objection, hearsay.

12 THE WITNESS: I do not remember seeing headlights.

13 BY MR. DANIEL:

14 Q Okay. And you actually stayed behind and talked
15 to the police?

16 A Yes, sir.

17 Q Did you tell the police, as far as the headlights
18 on the H vehicle, did you talk to the police officer about
19 that?

20 A I did talk to a police officer, yes, sir.

21 Q And what do you remember saying?

22 MR. SMITH: Objection, Your Honor, hearsay.

23 THE WITNESS: The best I can -- best I can
24 remember, sir, is there were no -- I did not witness
25 any headlights.

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1 THE COURT: This is what he said, correct? That's
2 not hearsay. He can say what he said.

3 THE WITNESS: I don't remember there being any
4 headlights. I don't remember what the police officers
5 question was to me.

6 BY MR. DANIEL:

7 Q I'm not asking you for a direct quote of what you
8 said but do you -- did you offer that information to the
9 police?

10 A Yes, sir.

11 Q And did you feel that was an important thing to
12 mention?

13 A Yes, sir.

14 Q And was that because it was dark outside?

15 A Yes, sir.

16 MR. DANIEL: That's all I have. Thank you.

17 THE COURT: Any cross?

18 CROSS EXAMINATION

19 BY MR. SMITH:

20 Q Mr. Tanrath, you don't know either way whether or
21 not Ms. Hood had any running lights on at the time, do you?

22 A I do not. I -- I don't remember any lights being
23 on.

24 Q All right. But you don't know either way whether
25 the running lights were on. Can't say yes, can't say no,

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1 don't remember either way; is that correct?

2 A Correct.

3 MR. SMITH: Thank you. No other questions.

4 REDIRECT EXAMINATION

5 BY MR. DANIEL:

6 Q Do you remember -- you don't remember seeing
7 running lights illuminated, do you?

8 A I don't remember seeing any lights.

9 THE COURT: All right. Anything further?

10 MR. SMITH: No, ma'am.

11 THE COURT: All right. You may be excused, sir.

12 Thank you.

13 You're going to rest, correct?

14 MR. DANIEL: Yes, Your Honor.

15 THE COURT: Ladies and gentlemen, at this time,
16 the Defense also rests their case. And the pizza is
17 here. I'm going to send you back.

18 Ladies and gentlemen, knock on the door and let me
19 know when y'all are finished eating. All right? And
20 at that point I'll see where we are. There's some
21 matters that the lawyers and I need to take up while
22 you all are eating. But we're going to hopefully get
23 this case wrapped up for you. Okay? Thank you.

24 (The jury exits the courtroom.)
25

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1 With respect to the legal duty, all of the
2 testimony in the case -- all of the testimony, and this
3 is important -- is that the wreck occurred sometime
4 prior to 5:58 p.m. Which no matter which source, no
5 matter which source you take, whether you take the
6 Naval Observatory or you take SunCalc, would place this
7 wreck within that 30-minute window after sunset. And,
8 of course, there's a case on point which says that the
9 law cannot require anything other than what the law
10 requires. And when the Legislature speaks on a piece
11 of law via statute, it should be strictly construed.

12 We have referred throughout the week -- we have
13 referred throughout the week to the statute that
14 requires headlight use, and that is 56-5-4450, which is
15 times when vehicles must be equipped with headlights.
16 And with respect to ordinary darkness, sunrise and
17 sunset, it specifically says, 30 minutes after sunset.

18 Therefore, the jury, in order to find within the
19 law, would have to find that plaintiff did not have a
20 legal duty at the time of this wreck to have her
21 headlights on. There's been no testimony, zero
22 testimony, that this wreck occurred anything other than
23 before 5:58 p.m.

24 And so on that basis, our motion as to headlights
25 should be granted. Directed verdict as to headlight

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1 THE COURT: We are going to be at ease for about
2 15 minutes or so. We are working on the jury charge.
3 I know we need motions at this point. I guess it's
4 going to be motions first and then we'll take a break.
5 And then after that, I want to talk to Mr. Clevinger
6 real quick. Okay? All right.

7 So any motions?

8 MR. WILLEY: Yes, Your Honor.

9 Your Honor, we do have motions and I will --

10 MR. DANIEL: Your Honor, one thing before motions,
11 as a housekeeping matter. We have blow-ups of some of
12 the exhibits.

13 MR. WILLEY: You've already rested, and we don't
14 consent.

15 MR. DANIEL: We would move these, the bigger
16 exhibits we have, they have some of the same size.

17 MR. WILLEY: You've already wrapped.

18 THE COURT: You haven't agreed to it and you have
19 already rested without moving them in.

20 All right. Motions?

21 MR. WILLEY: Yes. Your honor, we're going to
22 start with Motion for Directed Verdict as to the issue
23 of plaintiff's headlights usage. And this deals with
24 two separate things. First the legal duty, and then to
25 proximate cause.

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1 usage, plaintiff not having a legal duty.

2 Second --

3 THE COURT: Okay. Let her respond. Go ahead.

4 MS. SUTTIE: Your Honor, we would point to the
5 rest of the headlight statute, which also mentions that
6 headlights need to be on when environmental 56-5-4450
7 -- which also says that headlights are required to be
8 on, when environmental factors reduce the ability to
9 see persons and/or vehicles on street or highway at
10 distances of 500 feet ahead. I think that there is a
11 question as to whether the defendant was able to see
12 Mrs. Hood's vehicle, whether the environmental
13 conditions, you know, allowed her vehicle to be
14 invisible and, you know, how far away she was when the
15 defendant was looking to make the turn and that speed
16 comes into that as well. So, I think that it is a
17 question of fact.

18 MR. WILLEY: Your Honor, with respect to
19 environmental factors, we did go through with our
20 expert, obviously to the extent that the statute
21 specifically deals with lightness and darkness, which
22 it does in this case, it speaks to that, specifically
23 it has to be strictly construed as to that piece.

24 In addition to that, we actually went through with
25 our expert environmental factors, and with the police

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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. Borzondowski 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

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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

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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

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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.

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1 THE COURT: I'm going to deny that motion. I
2 think it's a jury issue.

3 MR. WILLEY: All right. Our second -- third. We
4 also have a motion as to speed in this case. And we
5 would direct the Court's attention to the Odom case,
6 which is citation Odom V Steigerwald, which is 260
7 South Carolina 422, a 1973 case, Supreme Court. In
8 that case the defendant was stopped at a stop sign, and
9 he testified that he did not see the Plaintiff's
10 vehicle approaching from the left when he attempted to
11 pull through the intersection to make a left turn.

12 Odom, the plaintiff, testified the defendant was
13 approximately two car lengths away when this happened.

14 THE COURT: What's your motion?

15 MR. WILLEY: My motion is to direct a verdict as
16 to comparative negligence with regard to speed, because
17 it's not --

18 THE COURT: As to speed, right? That's what I was
19 looking for. Okay.

20 MR. WILLEY: Yes, ma'am. And in the Odom case,
21 the plaintiff testified the defendant was approximately
22 two car lengths away when this happened. Odom's
23 vehicle struck the front left fender of the defendant's
24 vehicle.

25 So in that case you actually had the plaintiff

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1 hitting the defendant, which in this case it's the
2 other way around. But even in that case the Supreme
3 Court held that the plaintiff's excessive speed was not
4 a proximate cause of the wreck, because the defendant
5 pulled into oncoming traffic. The trial court's denial
6 of the Plaintiff's motion for directed verdict on
7 liability in that case was reversed and the case was
8 remanded and sent back down for a retrial.

9 In the present matter, we have a very similar
10 factual scenario, except it's actually stronger from
11 the plaintiff's standpoint. Plaintiff was traveling in
12 her proper lane legally, allegedly in excess of the
13 speed. We don't even have any definitive testimony as
14 to that. But as she approached the intersection of 270
15 and Southwood Park Drive, the defendant's vehicle
16 pulled out into the highway, colliding with plaintiff's
17 front passenger side.

18 Just as a note, the defendant testified he did not
19 see plaintiff's vehicle approaching from the left when
20 he pulled out and caused the wreck. Odom is clear
21 precedent in this case and instructs that the
22 plaintiff's vehicle is not a proximate cause of the
23 wreck.

24 And I think a clear distinction here that the
25 Supreme Court drew, and correctly, obviously I think,

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1 is that in a case where you have a defendant who says,
2 "Yes, I saw the plaintiff coming, I pulled out and I
3 misjudged it and the plaintiff was speeding."

4 Obviously speed would play a role in that wreck. It
5 would potentially be a proximate cause for comparative
6 negligence purposes.

7 In this case, we have a defendant who said he
8 didn't see her, just like in Odom. And, in fact, in
9 Odom, where the plaintiff struck the defendant, in this
10 case the defendant actually struck the plaintiff, so it
11 is a stronger factual scenario in this case.

12 And in addition to that, you know, we have the
13 testimony obviously from the sole expert that was
14 called in the case that said the speed played no role
15 in forming her opinions and that she actually drew the
16 comparison, which is essentially -- they're attempting
17 to make a res ipsa argument. Well, she was there, and
18 because she was allegedly speeding to get there, that
19 caused it. But that doesn't work. Because obviously
20 that would apply to if she had hit her snooze button
21 that morning and been delayed three minutes it wouldn't
22 have happened. So they don't get that.

23 THE COURT: Mr. Daniel, you want to be heard in
24 response?

25 MR. DANIEL: Your Honor, I think Dustin Lee

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1 testified that it's his routine to go 49. He was
2 traveling 49. Mrs. Hood's vehicle, he saw her.

3 THE COURT: Yeah, but how is the speed the
4 proximate cause of this accident?

5 MR. DANIEL: Well, Judge, there's also their
6 expert that testified and the jury heard that an
7 engineer pulled the computer chip data and that this,
8 the plaintiff in this case, was going 62, 63 miles per
9 hour.

10 THE COURT: Again, I understand that she was going
11 that speed, allegedly. The question is, though, how
12 was that speed a proximate cause of this wreck?

13 I could see it potentially affecting the damages
14 in this case.

15 MR. DANIEL: Your Honor, it could affect the
16 damages and -- it could affect the damages and
17 liability, because at this intersection there is a bend
18 in the road. You heard the trooper testify to that,
19 the officer did. And a vehicle without its lights on,
20 traveling at a high rate of speed, the jury can draw a
21 conclusion about this vehicle was going at a high rate
22 of speed, the plaintiff's vehicle, based on the damage
23 alone. But there's also testimony from an eyewitness
24 about that.

25 The fact that Antoine Johnson is making a left

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1 turn on a dark road and there's a vehicle that could be
2 hundreds of yards or hundreds of feet down the road
3 without its lights on approaching at 62 miles an hour,
4 that speed -- the speed there is absolutely an issue
5 and could be a contributing cause of the wreck.

6 If she's going 30 or 25, you know, in this
7 circumstance, she would be a lot more -- a lot closer
8 to him in the roadway and perhaps he sees her. So the
9 speed and how fast she might be going, that's directly
10 related to liability; it's an issue for the jury.

11 The human factors expert actually in basic terms
12 just said that speed -- she admitted that the faster
13 you're going the more ground you cover in a given set
14 of time.

15 So the jury can, from that, draw their own
16 conclusion. It's common sense. If you're going
17 62 miles an hour you cover a lot more ground in one
18 second than you do if you're going 30. It plays a
19 direct role in the visibility of the plaintiff's
20 vehicle. And if her vehicle wasn't visible, then
21 Antoine Johnson, a reasonable and ordinary, prudent
22 driver in his situation would look left and assume the
23 way is clear.

24 So, that's why speed is absolutely an issue in
25 this case. And it's a contributing cause. Perhaps the

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1 primary cause. That, coupled with no headlights.

2 MR. WILLEY: And, Your Honor, that's all good and
3 well. It's the same arguments they made actually in
4 Odom, but in this case those facts aren't present here
5 because the defendant hit the plaintiff and she crossed
6 in front of his path of travel prior to the impact.
7 And he still says he didn't see her. So it's even a
8 stronger case than Odom.

9 And if you look at it, I mean, they can make the
10 argument, of course, that if this, and if this. They
11 had the opportunity to call an expert to say that it
12 played a role based on an accident reconstruction.
13 They didn't do that.

14 I mean, they hired a -- I mean, I've got the check
15 where the, you know, company hired an expert. They
16 could have called the expert in here to do a
17 reconstruction that played a role. They didn't do it.

18 And as to damages, that's a separate issue which
19 we can deal with, but they would have to have expert
20 testimony to talk about the speed and the fact that
21 that could cause a worse mechanism of injury than if
22 she were going 10 miles an hour slower. They did not
23 do that in this case, and therefore, it's even weaker.
24 It's even weaker than the Odom case.

25 MR. DANIEL: There are -- I can cite some cases

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1 that don't require expert testimony. There is
2 Livingston v Oakman, which is 251 S.C. 611. There's
3 Lynch v TDE (phonetic) 204 SC 537. Expert testimony is
4 not necessary for speed to be presented as an issue to
5 the jury.

6 MR. WILLEY: That's not the argument. Correct.
7 We agree.

8 MR. DANIEL: I'm not done yet.

9 THE COURT: Let him finish.

10 MR. SMITH: Okay.

11 MR. WILLEY: Really. I've been -- Your Honor,
12 we've got an eyewitness that says that the plaintiff
13 was speeding. It's common sense that you cover more
14 ground in a given period of time the faster you go.

15 Visibility is the issue here. If the driver is
16 making a left turn on a dark road and actually checks
17 to their left and traffic is clear, or they don't see
18 anything an ordinary person with the appropriate level
19 of vision, there's been no allegation that this young
20 man has a vision problem. If they look, the way is
21 clear, it's safe to assume they can go. The fact that
22 his vehicle made contact with Mrs. Hood's on the front
23 tire or just a foot down the front of the -- side of
24 the vehicle is irrelevant if she's doing 63 miles an
25 hour. Which there's testimony before the jury that she

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1 may have been going that fast. There's a bend in the
2 road. It is directly related.

3 THE COURT: Okay. You are retreading old ground.
4 Is there anything new? You've already been through and
5 covered that.

6 All right. I think it's a jury issue in this
7 case. I'm going to let it go to the jury, and I'm
8 going to deny that motion.

9 Any other motions?

10 MR. WILLEY: Yes, ma'am. Yes, Your Honor. We
11 also have a motion for directed verdict on proximate
12 cause as to the ankle injury. It's uncontroverted in
13 this case. There's been no testimony to show that her
14 ankle injury came from anything other than this wreck.

15 The doctor's testimony in this case establishes to
16 a reasonable degree of medical certainty most probably
17 that the ankle injury came from this wreck. There's
18 been no testimony from any other expert that says the
19 ankle injury could have occurred any other way. And so
20 we would move for a directed verdict on proximate cause
21 as to the ankle injury.

22 MS. SUTTIE: Your Honor, I think there's a
23 question as to whether the ankle injury occurred in the
24 collision with Johnson's vehicle or the collision with
25 the Kucks and whether or not the collision with the

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1 Rucks is Mr. Johnson's fault is at issue too.

2 MR. WILLEY: And, Your Honor, when you -- as you
3 well know, when you charge the jury on negligence and
4 the causal chain, the charge is and the law is that the
5 first act of negligence that leads to the causal chain,
6 which was the second wreck, the first actor is
7 responsible for that. In this case, the plaintiff has
8 elected to sue Mr. Johnson. Clearly, if they find him
9 negligent, then he is also negligent and responsible
10 for the second wreck. And all we're looking for is
11 proximate cause as to the ankle injury resulting from
12 this wreck, the sequence of events.

13 THE COURT: I think it's a jury issue. What else?

14 MR. WILLEY: I would move on those same grounds as
15 to the neck and the back injury from the doctor's
16 testimony as well.

17 THE COURT: Respectfully, I'm going to deny those
18 as well. Anything else?

19 MS. SUTTIE: I think in your consideration of jury
20 charges we would like to request a standard jury charge
21 on speed as well.

22 MR. DANIEL: Your Honor, I don't know in the
23 standard charge if there's anything about religion.
24 There was a lot about religion in the testimony.

25 THE COURT: If you have a charge on religion, I

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1 would be happy to look at it.

2 MR. WILLEY: We do have additional from what was
3 submitted prior, just three additional.

4 THE COURT: Okay. Anything?

5 I'm going to tell you, I'm going to charge the
6 Bench book just like I always do. Everything that you
7 all have requested from both sides, for the most part,
8 I have got a standard charge on it from the Bench book
9 which I'm going to use.

10 Yeah. The duty of care, duty for information, and
11 rendering aid, I'm not charging that.

12 MR. WILLEY: Which one's that, Your Honor?

13 THE COURT: Whatever you just handed me. This
14 duty to give information and render aid. And immediate
15 report of accidents resulting in personal injury or
16 death. I don't think that there's any question that
17 someone made a report.

18 Making false complaint to law enforcement officer,
19 giving false information to rescue squad.

20 MR. WILLEY: May I be heard on those, Your Honor?

21 THE COURT: Actually, what I'm going to do is
22 this: I am going to just mark -- the first one, the
23 duty of care is in my standard charge. So that's
24 there.

25 We are just going to mark as a Court's exhibit

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1 these three. You didn't number them, so I'm going to
2 have to them marked as a Court's exhibit and I don't
3 need to hear anything on them. We'll just mark it, and
4 it is preserved for the record that I'm not going to
5 charge the three of these.

6 Also you all also requested a spoliation of
7 evidence charge.

8 MR. WILLEY: Briefly, Your Honor. I just want to
9 make sure that the record includes that these are all
10 based on statutory code sections and punitive damages
11 will be charged in this case.

12 Uncontroverted defendant violated these statutes,
13 and so we're requesting them on the basis that they go
14 to punitive damages.

15 THE COURT: All right. Respectfully, not charging
16 them. Go ahead and mark those. Go ahead.

17 MR. WILLEY: And with respect to the spoliation of
18 evidence on our behalf, there was testimony that the
19 actual content of the text messages was not preserved
20 by the defendant. In this case there was also the
21 black box, but we didn't get into that because we
22 didn't call the expert. So just with respect to this,
23 it's the actual content of the text messages. At first
24 he pretended not to know who sent it. He eventually
25 told us, but still did not preserve what they actually

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1 said, which is relevant and probative.

2 THE COURT: Did you send him a non-spoliation
3 letter requesting that he not delete text messages?

4 MR. WILLEY: The case -- the case was in a
5 posture, Your Honor, that it was within the time frame
6 where he could have retrieved them. In fact, we were
7 able to retrieve these actual records, but obviously
8 that --

9 THE COURT: Did you request that he do it?

10 MR. SMITH: In the discovery request, it's
11 anything -- and I could get you the exact request, but
12 it is included. I mean, we don't -- we don't send a
13 letter as soon as a wreck happens, but it's within --
14 it is within the time frame.

15 THE COURT: Yes.

16 MR. DANIEL: Your Honor, they're not -- they're
17 cell phone records from the carrier. The records that
18 you're talking about are Antoine Johnson's records.

19 MR. WILLEY: Right. They wouldn't even give us
20 those, we had to subpoena them from the carrier.

21 THE COURT: I don't think a spoliation charge is
22 appropriate in this case. I'm not going to charge it
23 anyway. But thank you for putting it on the record.

24 Is there anything else that I had a question on?

25 You had a motion for a duty to mitigate for

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1 damages. And I don't know where that's coming from.
 2 Why did you ask for that?
 3 MR. DANIEL: We will withdraw that, Your Honor.
 4 THE COURT: Okay.
 5 MR. DANIEL: We actually requested spoliation
 6 charge as well and --
 7 THE COURT: For what?
 8 MR. DANIEL: We could present to Your Honor, if
 9 you would like to review Woody Poplin's testimony and
 10 then Ken Richards' testimony, the two engineers that
 11 were hired by plaintiff's counsel and then not called.
 12 They inspected -- Woody Poplin inspected his
 13 vehicle well into the lawsuit, several months after
 14 suit was filed. Probably, I think, six months. I can
 15 get the specific date for you.
 16 THE COURT: That was on behalf of the insurance
 17 company?
 18 MR. DANIEL: That was on behalf -- that was on
 19 behalf of and at the instruction of a lawyer that was
 20 representing Mrs. Hood. I believe it is -- I can't
 21 speak to --
 22 MR. SMITH: Tell her who hired Woody.
 23 MR. DANIEL: Chris Nichols, who was representing
 24 Ms. Hood hired --
 25 MR. SMITH: Who paid him?

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1 MR. DANIEL: Can I finish?
 2 MR. SMITH: Tell her who paid him. That's what
 3 she wants to know.
 4 THE COURT: Guys. This is embarrassing at this
 5 point. Really, it's embarrassing.
 6 We're going to go ahead and we're going to take
 7 about a 15-minute break. Y'all grab a bite to eat.
 8 We'll come back and we will finish up our discussion on
 9 the charges. And I have noted for the record what you
 10 all have requested. I'll make those lists exhibits.
 11 And I'm going to charge what I'm going to charge.
 12 So with that said, y'all go grab a bite to eat and
 13 we'll come back and I will tell you what I'm going to
 14 charge and we'll go forward with the closing. Okay?
 15 Thank you.
 16 MR. WILLEY: Will we also, at that time, Your
 17 Honor, have a chance to review the verdict form?
 18 THE COURT: Yes, I'll have a copy.
 19 MR. WILLEY: Thank you.
 20 MR. DANIEL: Thanks, Your Honor.
 21 (Whereupon, the Court stood in recess.)
 22 (Proceedings continue in Volume 6.)
 23
 24
 25

TESTIMONY OF CARY TANRATH

1
 2 CERTIFICATE
 3
 4 STATE OF SOUTH CAROLINA:
 5 COUNTY OF BEAUFORT:
 6 I, MONA L. MANLEY, Court Reporter, certify that I was
 7 authorized to and did stenographically report the foregoing
 8 proceedings and that the transcript is a true and complete
 9 record of my stenographic notes.
 10 DATED this 16th day of January, 2018.
 11
 12 *Mona L. Manley* /s/
 13 MONA L. MANLEY
 14 Official South Carolina Court Reporter
 15 Circuit Reporter for the 14th Circuit
 16 (850) 893-6662
 17 mmanley@sccourts.org
 18
 19
 20
 21
 22
 23
 24
 25

1 In the Court of Common Pleas for the
 2 State of South Carolina, County of Jasper
 3
 4 Case No.: 2015CP2700119
 5 Therese Hood,
 6 Plaintiff,
 7 vs. Transcript of Record
 8 Antoine Johnson,
 9 Defendant.
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 21 BEFORE:
 22 The Honorable CARMEN T. NULLEN
 23
 24
 25

APPEARANCES

REPRESENTING PLAINTIFF:

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AND

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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

1 identification and received in evidence.)

2 (Whereupon, Court's Exhibit No(s). 5 marked for
3 identification and received in evidence.)

4 MR. SMITH: Your Honor, I believe that
5 it's been submitted but I don't think that it
6 was mentioned. You can't find someone
7 negligent for not doing more than the law
8 requires. If they find that it didn't require
9 headlights, they cannot find her negligent for
10 not having headlights when the law did not
11 require them.

12 THE COURT: The problem though, with that
13 statute, is what we talked about with directed
14 verdict is because it also says, other
15 environmental factors reducing someone's
16 ability to see, which there would have been in
17 this situation, required that she had
18 headlights on. It didn't have to be strictly
19 the time period but also as to the other
20 environmental factors. And I loved the
21 eclipse.

22 MR. WILLEY: The key there is if, I think
23 that what he's attempting to say is because of
24 darkness and environmental factors it wasn't
25 required. They could not find negligence.

1 They have to find that one of those apply.

2 There's a jury charge on point about not
3 finding negligence for something other than the
4 law.

5 MR. SMITH: If they find that.

6 THE COURT: Give me --

7 MR. DANIEL: Your Honor --

8 THE COURT: Hold on a second.

9 (Pause.)

10 THE COURT: I agree with them, to the
11 extent that I think that they can find that her
12 speed was a factor and she was driving too fast
13 for conditions. But can somebody give me a
14 proposed copy of the charge that you are asking
15 for?

16 MR. WILLEY: It was enclosed in our
17 charge.

18 THE COURT: I don't think this whole
19 charge is appropriate. I think that portions
20 of -- that a person cannot breach a duty when
21 they are in compliance with the law, and the
22 Court cannot require a person to do more than
23 what the law requires.

24 That would be the only portion I would feel
25 comfortable with.

1 MR. SMITH: Sure.

2 MR. WILLEY: And that's what we're looking
3 for.

4 THE COURT: Okay. I'll put that in.
5 What else?

6 MR. WILLEY: Okay. One other question on
7 the actual -- I'm not sure exactly what charge
8 you're using, but our act -- from the Bench
9 book, I just want to make sure these are in
10 there. It's out-of-pocket expenses, medical
11 expenses, psychological trauma, mental anguish.

12 THE COURT: Hold on a second. Hold on a
13 second.

14 So I think that's something that you can argue.
15 I think by the end we will cover it fine. I think you
16 can go down the list of what I expected from you in
17 front of the jury and include all this. I think my
18 damages charge is fine, and it is good enough on the
19 damages that I don't say -- and I want you to know
20 that I don't say, "including out of pocket damages,"
21 you know.

22 I go through -- I tried very hard, I'm going to
23 tell you this, to try to narrow this down somewhat.
24 Any time you are charging comparative negligence and
25 punitive damages, it is one long charge. And I know

1 you all know that.

2 So I've tried very hard to kind of make this to
3 the point where they can understand it, you know, and
4 stay with me. And I think it's pretty good. I think
5 it's a proper charge on the law. I do ask about
6 actual damages, and I do want medical expenses and
7 costs. I don't say out of pocket costs. That's going
8 to be for you to argue.

9 MR. WILLEY: Do you do mental anguish,
10 anxiety, depression, pain, suffering,
11 disfigurement?

12 THE COURT: Hold on.

13 I do. Mental anguish, loss of enjoyment of
14 life -- what is the third one?

15 MR. WILLEY: Pain and suffering.

16 THE COURT: I've already got pain and
17 suffering.

18 MR. WILLEY: Depression.

19 THE COURT: I don't think depression
20 specifically.

21 MR. WILLEY: When she talked about that.

22 THE COURT: Right. I think you need to be
23 very careful though. Because when we had
24 issues before when you said you were not
25 claiming an exacerbation of any bipolar issues,

1 and I agree. Her testimony did clearly cover
2 depression. So I think that's a comment on the
3 facts, but I wouldn't specifically address
4 anything particular, like depression or bipolar
5 or anything along those lines. I think you
6 already covered it.

7 MR. WILLEY: Okay. And then anxiety. She
8 specifically testified about her anxiety during
9 the day.

10 THE COURT: I think that goes to -- I
11 don't specifically say anxiety, I think you
12 could argue it, but I --

13 MR. WILLEY: Okay. And then the other two
14 were disfigurement and property damage. She's
15 permanently disfigured, by the doctor's
16 testimony. I mean, so I think that one is
17 proper, and property damage, obviously it --

18 THE COURT: Okay. You know what, it says
19 "permanent injury." I'm going to say, "and
20 disfigurement."

21 And I apologize, I missed the testimony about
22 property damage. So the car was never paid for?

23 MR. DANIEL: I thought it was.

24 MR. WILLEY: So there's no evidence in the
25 record about any accordant satisfaction. They

1 didn't raise it, so we're claiming it.

2 THE COURT: Was there any testimony about
3 the cost of the car? Did I miss that?

4 MR. WILLEY: No, but you can see the
5 property damage.

6 THE COURT: Doesn't matter though. They
7 can't just -- I have no idea, I can't tell --
8 well, it tells you what kind of wreck this was.
9 But I can't tell what kind of car that was.

10 MR. WILLEY: All right. I'll take that
11 one out. I'm not going to argue over that one.

12 Two final things. Potentially an insurance
13 charge, if you would charge an insurance, you're not
14 being considered any --

15 THE COURT: The insurance word has not
16 been used in this, like miraculously.

17 MR. WILLEY: Here's why. He specifically
18 brought in the VA. People generally know that
19 the VA treatment is not paid for by the
20 plaintiff. And so we think it's important that
21 the Court instruct them that they are not to
22 consider that. They are only to consider the
23 testimony before them. I mean, everybody knows
24 you don't pay when you go to the VA. And he
25 specifically brought that in. We specifically

1 didn't bring it in.

2 MR. DANIEL: It wasn't objected to, Your
3 Honor. I didn't say "insurance." I don't
4 think people know that in general, and I also
5 think they want specific charge --

6 THE COURT: I think it's more a collateral
7 source rule than anything. I mean, it's more
8 of a collateral source charge that I would
9 request, if I were you.

10 MR. WILLEY: Well, we're fine with it if
11 you do --

12 THE COURT: I'm not going to say the word
13 "insurance."

14 MR. WILLEY: As long as you say, you know,
15 health benefits and, you know, whatever.

16 THE COURT: I know, but that's commenting
17 on the facts. I can tell you, what you're
18 asking for is collateral source charge. If you
19 want me to charge that, I will charge that.
20 Because I would agree with you with any VA
21 talk.

22 MR. WILLEY: Okay. We'll take the
23 collateral source charge. That's perfect.

24 THE COURT: Hold on a second. Okay.

25 MR. WILLEY: And then the final thing,

1 Your Honor, which --

2 THE COURT: Hold on a second.

3 MR. WILLEY: Okay. Take your time.

4 THE COURT: Yes, the time thing, he ruled
5 on the Woody Poplin. You ruled on the
6 tailgating.

7 MR. DANIEL: And Your Honor. Yes, the
8 final thing which he raised this issue of who
9 hired Mr. Poplin, I just want to bring it to
10 the Court's attention because you ruled on
11 tailgating, they brought that in; you ruled on
12 Parkinson's, he brought that in today against
13 your ruling. And I'm just putting the Court on
14 notice that I have a check here that USAA paid
15 Mr. Poplin's retainer, and if he raises that,
16 I'm going to ask the Court for sanctions.
17 Because it is not true, and if he says we hired
18 Mr. Poplin and didn't call him, not only is
19 that in violation of the Davis v Sparks case,
20 which says, "a party cannot be prejudiced by
21 its failure to call a witness or hire a
22 witness that it doesn't call."

23 But it's also just not true. And, Your Honor,
24 it's a UIM case, so the way UIM works, I had -- I had
25 no involvement in defending that case and hiring

1 Mr. Poplin.

2 USAA had a duty to defend Mrs. Hood, who had
3 counterclaims from Mr. Johnson, which we haven't
4 brought up. We stayed out of that. Counterclaims
5 that have been paid on by USAA to protect her
6 interest.

7 USAA from that physician through a lawyer hired
8 to defend her, Chris Nichols, and that's all I said,
9 "a lawyer hired on her behalf," Mr. Nichols hired
10 Woody Poplin.

11 THE COURT: But you're not going to
12 discuss it in closing argument is what we're
13 going to do. You're not going to talk about
14 it. Okay.

15 MR. DANIEL: Your Honor, I would just, for
16 the record, I made an objection to that.

17 THE COURT: Okay. And, again, you're not
18 going to talk about it. It's
19 mischaracterization. It's misleading the jury.
20 It's a trial in search of the truth, and it
21 misleads the jury. And we can't get into that
22 without getting into insurance issues, and you
23 can't talk about insurance. So you can't use
24 that as a great fact or use it against her.

25 So, anything else?

1 MR. WILLEY: Nothing from the plaintiff,
2 Your Honor.

3 THE COURT: Okay.

4 All right. That's what the proposed verdict form
5 is. And I got to tell you, I have not read it all the
6 way through, so y'all need to read it carefully and
7 I'll read it.

8 (Pause.)

9 THE COURT: All right. Who's doing the
10 closing for the plaintiff?

11 MR. WILLEY: I am.

12 THE COURT: And who's doing it for the
13 Defense?

14 MR. DANIEL: I am, Your Honor.

15 THE COURT: She's just making a couple of
16 changes to a portion at the end. What else? I
17 know the jury is ready to go.

18 MR. WILLEY: I just need that to use it in
19 closing, but other than that, I'm ready.

20 THE COURT: Okay.

21 MR. DANIEL: And, Your Honor, just for the
22 record, as far as the collateral source charge,
23 we object to that charge.

24 THE COURT: Okay. Yeah, you're the one
25 that brought the VA into it, so it's

1 appropriate.

2 Anything else?

3 MR. SMITH: Nothing from the plaintiff.

4 THE COURT: Okay. So we're just going to
5 wait. Mr. Willey needs a copy of this then.

6 MR. DANIEL: One other thing, Your Honor.
7 I haven't seen their Power Point yet.

8 MR. WILLEY: You can object
9 contemporaneously. Paula has that.

10 MR. DANIEL: Well, I do know that it's
11 their practice to put the per diem, some kind
12 of per diem amount up.

13 MR. WILLEY: Correct. And I will do that.

14 MR. DANIEL: Which if he does that, I just
15 want to make it clear that it's for the jury to
16 decide if that's appropriate.

17 MR. WILLEY: And I'll make it clear.

18 THE COURT: He's going to say that.

19 And also, just so we're clear, I know once you're
20 finished, you're removing all of that?

21 MR. WILLEY: Yes, all of this has to come
22 down.

23 THE COURT: Okay. Before he can pass.
24 Okay?

25 MR. SMITH: Oh, yes. Yes. Yes, I will.

1 THE COURT: Do it like that.

2 MR. SMITH: I will.

3 THE COURT: I don't want to sit and have
4 to wait. Certainly don't want to make the jury
5 wait. Okay?

6 MR. SMITH: Okay.

7 THE COURT: All right. We're ready to go.
8 Gentlemen, yes? Let's bring the jury out.

9 (The jury enters the courtroom.)

10 THE COURT: Welcome back, ladies and
11 gentlemen. I trust y'all got a bite to eat.

12 At this time, what we're going to is hear the
13 closing arguments from the lawyers. After that, we're
14 going to take a very brief break, and then I'm going
15 to come back and charge you on the law.

16 My charge usually takes roughly about 20 minutes
17 or so, just want to let y'all know and warn you. So
18 we're going to go ahead and pay attention to the
19 attorneys at this time, and like I said, we'll take a
20 break before I charge you on the law, and then we're
21 going to send the case to you, okay, for your
22 deliberations.

23 Mr. Willey, whenever you're ready, sir.

24 CLOSING ARGUMENT BY PLAINTIFF

25 MR. WILLEY: Good afternoon.

CLOSING ARGUMENT BY PLAINTIFF

1 Every nine minutes in South Carolina, a driver is
2 injured in an automobile wreck. The majority of those
3 wrecks are caused by distracted driving.

4 Ladies and gentlemen, in a little while, you'll
5 go back through that door one last time and you'll
6 have three jobs. The first job is going to be to
7 answer the questions that the Judge gives you. Those
8 questions will be laid out on the verdict form.

9 Your second job will be to make sure that
10 everyone else on the jury follows the law as the judge
11 instructs you on it. Because you will have to reach a
12 unanimous verdict. And no one juror can make you
13 serve on a jury that doesn't follow the law, because
14 you all took an oath to follow the law.

15 And third, before you answer those questions, of
16 course, you'll have a conversation, and you'll have to
17 explain to each other why you as individuals feel the
18 way that you do about your personal answer to those
19 questions. Because, again, the verdict will have to
20 be unanimous.

21 So for the next few minutes, I'd like to give you
22 some ways to think about those questions and some
23 things to think about that came in during the course
24 of this trial.

25 You'll remember that we were forced to bring this

CLOSING ARGUMENT BY PLAINTIFF

1 claim -- Ms. Hood was forced to bring this claim, we
2 were all forced to be here this week for three basic
3 reasons.

4 The first reason is that Mr. Johnson did not pay
5 attention to the roadway in front of him before
6 crossing the highway.

7 The second reason is that Mr. Johnson violated
8 the safety rule requiring all drivers to look before
9 crossing a busy highway. As a result of those
10 actions, Ms. Hood was injured. And that's the third
11 reason that we were forced to be here this week,
12 because they have refused to accept full
13 responsibility for his actions.

14 And so that's why we're here. We're here with
15 you, as members of the community, as representatives
16 of the community, on this particular day, this
17 particular week, to determine whether or not when an
18 individual in this community injures another
19 individual, whether or not the injured individual
20 should be compensated for those injuries.

21 1,035 days is how many days it has been since
22 November 7th, 2014. For 1,035 days Therese Hood, my
23 client, who you've met, has gotten up in the morning
24 in pain, gone to bed at night in pain, and lives her
25 days and nights in pain.

CLOSING ARGUMENT BY PLAINTIFF

1 For 1,035 days, there hasn't been an apology, a
2 check-in, hey, how you doing, a lending of a helping
3 hand. For 1,035 days, they have said exactly what
4 Mr. Daniel said to you in their opening statement,
5 "the plaintiff caused this wreck."

6 And now, the 12 of you know what Ms. Hood has
7 known for 1,035 days, and what I've known for a period
8 shorter than that, that that's not the truth. This
9 wreck occurred because when Mr. Johnson pulled away
10 from the stop sign he didn't pay attention to the
11 road. He didn't look to the left to see what was
12 coming.

13 And as Ms. Hood traveled to spend the weekend
14 with family in Hilton Head she was hit by Mr. Johnson
15 on the side, broadsided, locking her wheel, as she
16 testified, and pushing her to the left into oncoming
17 traffic. It's as simple as that. It's as simple as
18 that. When you cross a busy highway, you have to
19 look.

20 Mr. Johnson himself was honest with you. He was
21 honest. He said, "I didn't see her, and I didn't see
22 Dustin Lee."

23 Dustin Lee, who we know has Xenon headlights, the
24 bright, real bright headlights, kind of annoying
25 actually when somebody's coming from the opposite

CLOSING ARGUMENT BY PLAINTIFF

1 direction with them.

2 So you have to use your common sense. Why didn't
3 he see them? Why didn't he see Ms. Hood even
4 immediately before he broadsided her? Why didn't he
5 see Dustin Lee, who testified he had to decelerate
6 quickly and veer around so that he didn't get caught
7 up in it; he was that close. Why didn't he see?

8 I would submit to you, and we don't have to prove
9 why he didn't see, but in this case we have some
10 evidence. He didn't see because he was on his cell
11 phone, ladies and gentlemen. The evidence in this
12 case is, the night before, at 9:14 he got on the
13 phone, 5:22 -- or excuse me, at 1722, 17 minutes after
14 midnight, he got off the phone.

15 The evidence in the case is that the next morning
16 at 4:44, as soon as he woke up, he sent a message.
17 And the last call the night before ends just after
18 midnight. A three-hour call. The next morning, four
19 and a half hours later, at 4:44 a.m., he sends his
20 first text message of the day to the number ending in
21 1200, who for 1,035 days they haven't told us who that
22 was.

23 Finally under oath, Mr. Johnson admitted that was
24 his girlfriend. Reasonable thing to send your
25 girlfriend the first text message of the day. Between

CLOSING ARGUMENT BY PLAINTIFF

1 5:00 and 7:00 a.m., he goes to work. While at work,
2 he uses his cell phone 93 times. That's what these
3 records show. Ninety-three incoming or outgoing text
4 messages or phone calls. Fifty-seven of those -- 57
5 of those to or from his girlfriend. They're having a
6 conversation throughout the day, back and forth.
7 Normal thing to do. We've all done it.

8 4:00 p.m., he gets off work. Between 4:00 and
9 4:50 p.m., 50 minutes, he uses his phone another 29
10 times. Another 29 times he uses his phone between
11 4:00 and 4:50 p.m. He testified that he gets off
12 work, cuts his cousin's hair, and then he takes Scooby
13 to meet somebody at Dunkin' Donuts, just dropping off
14 Scooby at the Dunkin' Donuts to meet somebody after he
15 gets his hair cut.

16 5:43 p.m., the defendant, Mr. Johnson, sends a
17 text message. Now, we're all the way over here. We
18 have gone through this board, 26 messages that day.
19 Gone through this board, while at work, another 53
20 messages to the girlfriend. Total of 93 messages
21 between these two boards, over 50 of which were to the
22 girlfriend.

23 And we've gone through this board. Another 29
24 either messages, four calls, I believe on there, maybe
25 five. And these will be back in the jury room with

CLOSING ARGUMENT BY PLAINTIFF

1 you, and you can analyze them and look at them and
2 read them. See how many of these messages are from
3 1200. This is the calling or texting number, this is
4 the calling or texted number. Okay. Just so you know
5 how to look at it. His number is the 4155. You'll
6 notice it appears in every single entry, because these
7 are his phone records. So obviously he's either
8 texting or being texted, calling or being called. And
9 we've gone through that board.

10 Now, at 5:43, we're into the hundreds now. Sends
11 another text message. 16 seconds later, sends another
12 text message, 5:43:12, 5:43:28.

13 And then at 5:57, the girlfriend that he's been
14 having a conversation with all day, back and forth,
15 back and forth, back and forth, back and forth, back
16 and forth, back and forth, back and forth, almost a
17 hundred times, back and forth, while at work, gets a
18 text message from number 1200. And, bam, he
19 broadsides with this vehicle Ms. Hood.

20 That's what happened in this case. And you know
21 that. Ms. Hood has known for 1,035 days this wasn't
22 her fault. She didn't know about the text messages.
23 Mr. Johnson knew, they knew. We had to go to the cell
24 phone carrier to get the records, but eventually we
25 found out. And now you know.

CLOSING ARGUMENT BY PLAINTIFF

1 At 5:58, and you'll have records back there,
2 Plaintiff's Exhibit 1, these are the CAD 911 records
3 that you heard testified to. If you go to the last
4 page, which has all of the 911 calls. As y'all know,
5 frequently, when a wreck or something happens, a bunch
6 of people call 911, so they log each one.

7 And you will see quite clearly on here that the
8 very first 911 call came in at 5:58 and 46 seconds,
9 relative to this wreck. Very first 911 call. 5:58
10 and 46 seconds, and you will have this back there,
11 Plaintiff's Exhibit 1.

12 And you heard the testimony in this case from
13 Tasha Haupt, who was the records custodian for
14 Beaufort 911. She testified to you that that first
15 caller, based on the records and based on the actual
16 recording of the call was Tammy Melnick. And you will
17 have that call back there, Plaintiff's Exhibit 2. If
18 you want to hear it, the Court will make it available
19 to you, but you've already heard it. And you've heard
20 Ms. Melnick testify. And Ms. Melnick has testified
21 that prior to making -- getting somebody on that call,
22 which Tasha said once the person picks up, that's when
23 it logs, that's when the CAD entry logs. It's
24 obviously not when the person dials the number, right?
25 All of this happens before she talks to someone in

CLOSING ARGUMENT BY PLAINTIFF

1 dispatch.

2 The first wreck, broadsided. Second wreck, where
3 she was pushed into the fucks. People got out, you
4 heard from Mr. Tanrath today. He got out of his
5 vehicle. Other people were out. People were already
6 out. She could see them through the trees.

7 She left the patio. You remember, Ms. Melnick
8 was out here by these the umbrellas. She testified
9 she was putting down the umbrellas, having a
10 cigarette. It was towards the end of her shift. And
11 through these trees she could see people getting out
12 in the wreck. She left the patio, she went inside the
13 Dunkin' Donuts, she went into the back, behind the
14 counter, to the phone, dialed 911, and you heard. It
15 rang two times. There was an initial pick up to the
16 local dispatch. She described what and where it
17 happened. She was transferred and then she finally
18 got through to the right person Hilton Head first
19 responders were dispatched at 5:58:46, when that CAD
20 call is there.

21 Clearly, in this case, the wreck occurred prior
22 to 5:58:46. And all of this had to occur before
23 5:58:46, but after the wreck. So you can use your
24 common sense to figure out that it made sense that
25 that would be around a minute. Or would it be a few

CLOSING ARGUMENT BY PLAINTIFF

1 more minutes than a minute, which would be the other
2 text message? Or two more minutes than that minute,
3 which would be the other text message? It really
4 doesn't matter. The text messages are all going to
5 agree.

6 Now, in this case you've heard a lot of evidence,
7 and you've heard the defense say a few things, and I
8 want to make sure I get them right.

9 Mr. Daniel has said he looked. If you go back
10 there and somebody says he can't be at fault because
11 he looked, I want you to remind them of what the Judge
12 is going to charge you. And the Judge is going to
13 charge you that the driver of a vehicle about to enter
14 or cross a roadway from anyplace other than another
15 roadway shall -- shall, not may -- yield the right of
16 way to all vehicles approaching on the roadway to be
17 entered or crossed. That's South Carolina Code
18 Section 5652350. The duty is to look, see, and to
19 yield.

20 In this case, it's uncontroverted, not in dispute
21 that Mr. Johnson did not yield, not in dispute that
22 Ms. Hood had the right of way. You heard the cop
23 testify to that, heard Ms. Hood testify to that.

24 You've also heard him say but "he didn't see any
25 cars," neither Ms. Hood or Dustin Lee. We know Dustin

CLOSING ARGUMENT BY PLAINTIFF

1 Lee had Xenon headlights on. Somebody says that, say,
2 well, the only way he didn't see him, he didn't look.
3 He didn't look. We know why he didn't look, which you
4 don't have in a lot of cases, but we have in this
5 case.

6 The Defense has said, "well, she was speeding."
7 Talked about some other person that was going to
8 testify to that in the opening. We never heard from
9 that person.

10 Ladies and gentlemen, even if she had been
11 speeding, the only effect speeding would have had --
12 if she was going a little bit faster, she might have
13 got through there before he got that text message and
14 broadsided her. This isn't a case where she hit him
15 because she was going too fast to react. The only
16 thing speed has to do with it is she just happened to
17 be here. Well, I'll submit to you, if she was going
18 45 or 48 or 65, or whatever -- any speed but the speed
19 she wasn't going -- this wouldn't have happened. Same
20 thing would have been true if she was going 105. Same
21 thing would be true if, when her alarm clock went off
22 that morning, she hit snooze and slept in two minutes.

23 Speed played no role in this wreck at all. You
24 didn't hear any valid testimony about it. But even if
25 you had, it didn't cause anything. The only thing

CLOSING ARGUMENT BY PLAINTIFF

1 that caused this wreck is the defendant not paying
2 attention. And he said, "Ms. Hood didn't have
3 functioning headlights on."

4 And in law, we call this the kitchen sink
5 approach. That's, they teach you in law school, trial
6 advocacy, they say, "if you got the facts on your
7 side, hammer the facts. If you got the law on your
8 side, hammer the law. And if you got neither one on
9 your side, just throw it all out there and see what
10 sticks."

11 And that's what you've seen here this week.
12 You've seen a lot of throwing it all out there, trying
13 to get something to stick.

14 Let's talk about the headlights. It doesn't
15 matter. Doesn't matter. The law on headlights, the
16 Judge is going to instruct you -- and I'll read you
17 the law because the law and the facts happen to be on
18 our side -- South Carolina Code Section 56-5-4450,
19 times when vehicles must be equipped with lights. And
20 the Judge will read this to you as well.

21 "Every vehicle upon a street or a highway within
22 this state shall display lighted lamps and
23 illuminating devices, excluding parking lights, from a
24 half hour after sunset to a half hour before sunrise,
25 and at any other time when windshield wipers are in

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1 use as a result of rain, sleet, snow, or when
2 inclement weather or environmental factors severely
3 reduce the ability to clearly discern persons and
4 vehicles on the street or highway at a distance of 500
5 feet ahead, as required in this article."

6 You heard from Dr. Borzendowski, an expert in
7 human factors. Came in here and testified before you,
8 and she testified that she had used a source, which
9 used physics to determine, exactly in that
10 intersection when sunset was on this particular day.
11 Okay.

12 Sunset at that intersection on this particular
13 day was 1729. That means 30 minutes after that,
14 according to the law of South Carolina, half hour
15 after sunset, 5:59, you would be required to have your
16 headlights on. They click on automatically at that
17 time if it gets dark enough. Okay?

18 We know this wreck occurred before 5:59 because
19 we have a 911 call that came in at 5:58 and 46
20 seconds. So at the time of this wreck, whether she
21 had headlights on or whether she had headlights off,
22 or whether she didn't have headlights connected to her
23 vehicle doesn't matter. And the Judge will instruct
24 you on the law, when she reads to you about the duty
25 of care, you cannot hold somebody responsible for a

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1 duty that the law does not create. And the law in
2 this case tells you when you need headlights. And in
3 this case, at the time of this wreck, she didn't need
4 them.

5 So they did something else. Another one of these
6 kitchen sinks. They brought in another source, and I
7 don't know if it went into evidence or not. Not a lot
8 went into evidence that they -- that was talked about.

9 I don't see it here but -- oh, here it is.
10 "Hilton Head, U.S. Naval Observatory, sunset at 5:28."
11 Okay. And you remember Dr. Borzendowski's
12 conversation about this. This would have been the
13 average for the whole town of Hilton Head. Okay.

14 And if you take a look at it, I mean you can
15 clearly see that it's Hilton Head, you know, as a
16 whole. Sunset 1728, which means that 30 minutes after
17 would have been at 5:58. Okay. But we've got a more
18 exact source.

19 But even if -- even if you take this at face
20 value, that means, to buy their kitchen sink approach,
21 all of that, first wreck, second wreck, people get
22 out, people helping, helping people out of the
23 vehicles, leaving the patio, Ms. Melnick going inside,
24 Ms. Melnick going in the back, Ms. Melnick going
25 behind the counter, Ms. Melnick making the call. Two

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1 rings on the phone, speaking, being transferred,
2 describing where and what happened. The dispatch at
3 5:58:46, that means all of that would have had to have
4 taken less than 46 seconds to happen after 5:58. Use
5 your common sense.

6 Now, the final thing, which, frankly, I was a
7 little bit shocked by, but we heard, was she wasn't
8 injured. That's the kitchen sink, see? Wreck's her
9 fault. Even if it's not her fault, she bears some
10 fault because she might have been speeding, although
11 we didn't bring in who we talked about the whole time
12 to say that. She might have not had her headlights
13 on, although we can't prove that. We're just going
14 off what people said. By the way, all those people
15 said they could see her vehicle without her headlights
16 on. Okay. Everybody apparently except Mr. Johnson.

17 And -- and now, we get all the way down to "well,
18 even if she wasn't at fault, even if he was at fault,
19 she's not injured." Whew! That's a lot to cover.

20 You heard from the doctor. You heard from the
21 doctor. You saw -- you saw the screws and plates, and
22 they'll be back in the jury room with you, that she
23 has in her ankle, as a result of this wreck, 5-inch
24 screws, all these little screws holding this plate on,
25 holding her foot and her ankle to her leg. And you

CLOSING ARGUMENT BY PLAINTIFF

1 heard the doctors say to a reasonable degree of
2 medical certainty this was caused by the wreck.
3 Obviously, it was caused by the wreck. She wasn't
4 driving down the roadway with her right foot hanging
5 off.

6 And if she was, she was sure as heck wasn't
7 pushing it hard enough on the accelerator to be
8 speeding. So which way do they want it?

9 She was injured because of this wreck. And in
10 this wreck, her medical bills to date for the three
11 surgeries, the injections, the trips back and forth,
12 physical therapy, the nursing home, which she
13 testified to was humiliating, \$222,475.47 to date. To
14 date. That's her out of pocket medical expenses
15 because of what they will not accept responsibility
16 for in this case.

17 And the Judge is going to instruct you, and you'll
18 see there was something about the VA. She gets her
19 primary care at the VA, you won't see that on here.
20 Okay. They're just going to instruct you that any
21 collateral source is not to be considered.

22 Consider the facts in evidence. This is what's
23 in evidence before you. We didn't submit anything
24 from the VA. Okay.

25 Now, you can also remind somebody if they say,

CLOSING ARGUMENT BY PLAINTIFF

1 "well, I just believe he looked and he didn't see
2 her," that nobody else said that. Nobody else except
3 the defendant in this case said he could not see that
4 night.

5 You heard from Ms. Melnick. Ms. Melnick, who was
6 standing back here on the patio, who testified and
7 made the 911 call accurately, which you heard. Three
8 cars in a wreck. She could see them through these
9 trees.

10 Ms. Melnick could see them through these trees.
11 You heard from Mr. Lee, who you will remember was
12 farther back in this outside lane behind Ms. Hood. He
13 testified not only could he see Ms. Hood, he could see
14 Mr. Johnson.

15 Well, if Mr. Johnson had looked, certainly,
16 Mr. Lee was way back here, with his Xenon headlights
17 shining this way, and he could see him, Mr. Johnson
18 should have been able to see Ms. Hood and Mr. Lee.

19 You heard testimony from Ms. Kuck. Ms. Kuck, the
20 other unfortunate party injured in this case, had to
21 be cut out of the car. What did she tell you? She
22 could see other cars on the roadway, whether or not
23 they had headlights on. She could see the trees
24 clearly on the side of the median. She could see.

25 Ms. Hood, at this time, 60-year-old lady, good

CLOSING ARGUMENT BY PLAINTIFF

1 vision, she could see. She didn't get in a wreck.
2 She didn't run into nobody. He ran into her.

3 They called for you one witness, Cary Tanzath,
4 who frankly we would have called, but thought it was
5 kind of duplicative. Because what did he tell you?

6 He could see. He's behind the Kucks. He was
7 behind the Kucks. He had a Chevrolet Tahoe in front
8 of him. She gets shot on over here, and he can see
9 around that Tahoe and see her vehicle, even though she
10 didn't have her headlights on. He could see her.
11 Their own witness. Everybody could see if they
12 looked. Okay.

13 Now, the Judge instructs you on the law. She's
14 going to tell you that the plaintiff, as to our
15 claims, has the burden of proof in this case, and that
16 the defendant, as to any affirmative defenses, such as
17 some called comparative negligence that they raised,
18 they have the burden of proof.

19 Preponderance of evidence simply means this:
20 What is more likely than not. And if you think about
21 it, you always see the set of scales, you know, in the
22 legal system. And in a civil case, the burden of
23 proof is a preponderance of the evidence, and that
24 means if the scales tip ever so slightly, one grain of
25 sand in favor of the plaintiff, the plaintiff has met

CLOSING ARGUMENT BY PLAINTIFF

1 her burden as to that cause of action as to that
2 claim.

3 And the Judge will tell you that simply means it
4 is more likely true than not true? She's going to
5 instruct you on negligence. This is a negligence
6 case. Negligence means that a person has done
7 something that a reasonable person would not have
8 done, or has failed to do something that a reasonable
9 person would have done in the same situation.

10 Duty, breach, causation, damages. The duty is
11 created by the statutes, and she's going to tell you
12 that -- about entering a roadway, about turning left,
13 about looking where you're going. And if you find in
14 this case that it's more likely than not that scale
15 tips ever so slightly that Mr. Johnson was negligent,
16 then you'll find for the plaintiff in this case.
17 Okay.

18 And she's going to tell you about proximate
19 cause, which is an element of that. And proximate
20 cause is something that produces a chain of events,
21 which in the end brings about the injury. Proximate
22 cause does not mean the only cause. The defendant's
23 act can be a proximate cause of the plaintiff's injury
24 if it was at least one of the direct causes of the
25 injury. Okay.

CLOSING ARGUMENT BY PLAINTIFF

1 So that means if you find that Mr. Johnson
2 pulling out and broadsiding her was negligent, and
3 that she was injured as a result of that, then any way
4 that happened, first impact, second impact, whatever,
5 was proximately caused by him. Okay. His negligent
6 act caused the chain of events, which in the end
7 brings about the injury.

8 Oh, I forgot this. There's been so much, but
9 there's this mention of this overcorrecting. Remember
10 that? Saying maybe she overcorrected. Well, if you
11 get hit broadside, the defendant doesn't get to tell
12 you what to do about it. Okay? They don't get to
13 say, well, you should have done X, you should have
14 done Y. You just got to do the best you can in that
15 circumstance.

16 And what she testified was that she tried to get
17 her wheel back right because she didn't want anybody
18 else to get hurt, but it was locked over. Well, if
19 you look at the damage you can understand why that
20 might have been. It's right there at the back of the
21 wheel base. Okay. Common sense.

22 But even if she had, it doesn't matter because
23 proximate cause is something that produces a chain of
24 events, which in the end brings about the injury,
25 which is what we have in this case.

CLOSING ARGUMENT BY PLAINTIFF

1 Negligence as a matter of law. This one's
2 important. So if you find that the defendant violated
3 a statute, that's negligence as a matter of law.
4 She's going to tell you that the failure to follow any
5 of these statutory rules is negligence as a matter of
6 law. So if you find it more likely than not,
7 preponderance of the evidence, that he violated any of
8 these, he's negligent as a matter of law. Those
9 statutes, vehicle entering the roadway shall yield the
10 right of way to all vehicles approaching on the
11 roadway. Okay.

12 Duty to keep a proper lookout. The driver must
13 keep a proper lookout for other vehicles, pedestrians
14 on or along the roadway.

15 Unlawful use of cell phones. It is unlawful for
16 a person to use a wireless electronic communication
17 device to compose, send, or read a text based
18 communication while operating a motor vehicle on the
19 public streets and highways of this state.

20 Unlawful to turn or move upon roadway unless and
21 until such movement can be made with reasonable safety
22 nor without giving an appropriate signal. No evidence
23 in this case he gave a signal he was turning left.
24 Zero.

25 Vehicle turning left. The driver of a vehicle

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1 intending to turn left within an intersection or into
 2 an alley, private road, or driveway, shall yield the
 3 right of way to any vehicle approaching from the
 4 opposite direction, which is in the intersection or so
 5 close thereto as to constitute an immediate hazard.
 6 Testimony is Mr. Johnson was attempting to take a left
 7 across the intersection. Therefore, according to the
 8 statute, he had a duty to yield the right of way. If
 9 anybody approaching so close as to create or
 10 constitute an immediate hazard. If you find more
 11 likely than not he violated that, that's negligence as
 12 a matter of law.

13 Stop signs. Except when directed to proceed by a
 14 police officer, every driver of a vehicle approaching
 15 a stop sign shall stop at a clearly marked stop line.
 16 But if none, before entering the crosswalk on the near
 17 side of the intersection, which, in this case, we do
 18 have a clearly marked stop line, which you can see
 19 here in the diagram, so he had to stop there. And
 20 after having stopped, the driver shall yield the right
 21 of way to any vehicle in the intersection or
 22 approaching on another roadway so closely as to
 23 constitute an immediate hazard. During such time,
 24 when the driver is using a cross or within the
 25 intersection or junction of roadways.

CLOSING ARGUMENT BY PLAINTIFF

1 you're going to look at past actual damages, present
 2 actual damages, and future actual damages, which we
 3 will go through.

4 Now, medical expenses, \$222,475.47. You'll have
 5 this back there with you. This money all goes to
 6 other people to pay for Therese's care. She testified
 7 to you that she felt like her doctors, and Dr.
 8 Jaskwhich, were really heroes. They saved her foot,
 9 were able to put it back on with those plates and
 10 screws. And although it's not perfect, she feels as
 11 though they did the best job that they could under the
 12 circumstances. And this money goes to pay them for
 13 what they did for her.

14 But in a case like this, and you'll notice,
 15 frankly, when Judge Mullen instructs you on the law,
 16 she spends a lot more time on the other damages than
 17 on medical expenses. And that's because in South
 18 Carolina and in our civil justice system, we value the
 19 other damages as much or more than the medical
 20 expenses, because we value, in this community and in
 21 this state, a person's life. A person's quality of
 22 life.

23 And so when you go through these damages, you're
 24 going to go through each element, and you're going to
 25 talk about it. And so I want to just give you a way

CLOSING ARGUMENT BY PLAINTIFF

1 Those are some of the statutory rules that she is
 2 going to instruct you on. If you find he violated one
 3 of those, we have negligence as a matter of law. I
 4 will submit to you that he violated them all.

5 Now, with respect to damages, the damages in this
 6 case, Mr. Smith told you in opening, are substantial.
 7 You've had the opportunity to hear the testimony,
 8 which prior to hearing the testimony when you walked
 9 in, seen Ms. Hood sitting there with her legs under
 10 the table, you didn't have full knowledge of what she
 11 has been through and her damages. Now, you do.

12 And the actual damages in this case are required
 13 to be proved by the same standard of negligence, just
 14 more likely than not. So if you find on each element
 15 of damages that she proved more likely than not she
 16 suffered that damage, the law requires you to award
 17 her a money verdict on that element of damages.

18 The elements of actual damages, as the Judge will
 19 instruct you, put medical expenses, which are out of
 20 pocket expenses, trauma, mental anguish, of which she
 21 had anxiety, depression, pain and suffering,
 22 disfigurement, and loss of enjoyment of life. Those
 23 are the components that make up actual damages, that
 24 all go into actual damages.

25 And when you're considering actual damages,

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1 to think about a couple of these. And the first is
 2 pain and suffering. And pain that lasts for a short
 3 time, a few weeks, maybe a month, is pretty low on the
 4 scale of pain. The twisted ankle, the banged elbow.
 5 It takes just a little bit to make up for that level
 6 of pain. And so that might be the kind of case where
 7 someone went to a chiropractor, and so I'm asking you
 8 for 20- or \$30,000 for that level of pain.

9 But what if it lasts for two or three years, and
 10 it's high on the pain scale? What if the level of
 11 pain is, as Ms. Hood testified to you, everyday when
 12 she wakes up in the morning, she feels it? And what
 13 if that pain is everyday with every step she takes she
 14 feels it? And what if that pain is the type of pain
 15 that robs someone of the enjoyment of the rest of
 16 their life? What is that pain worth?

17 She doesn't have, ladies and gentlemen, the one
 18 thing that a lot of people have, and that we have
 19 sometimes when we get hurt, and that's a hope that
 20 we'll get better. Therese doesn't have that. And you
 21 heard her surgeon, Dr. Jaskwhich, who she goes to
 22 follow-up, say she will never get better. She will
 23 get worse. She will get worse.

24 So the woman whose daughter testified last week
 25 was able to at least travel to Georgia and make the

CLOSING ARGUMENT BY PLAINTIFF

1 trip to the WalMart, short trip, but couldn't do
2 anything else on the family reunion, that woman, only
3 three years out, is going to get worse.

4 So you have to think about what it takes to
5 compensate her for the rest of her life for that kind
6 of pain. Health and physical impairment,
7 disfigurement is much the same thing. What impairment
8 does somebody have? Not the physical sensation of the
9 pain every time she takes a step, the flinch, but the
10 impairment, the things that it keeps her from doing is
11 a separate element.

12 And you know in this case, the impairment that
13 she has, because you've heard it not only from her,
14 but from the folks at the church, and from her
15 daughter. The biggest impairment, one of the biggest
16 impairments to her personally, was being able to
17 administer the communion. That's an impairment to her
18 quality of life. It may not be to mine, it may not be
19 to yours, you may have other things. But to her,
20 that's a huge impairment. And she told you it
21 humiliates her, and she feels like she's let God down
22 by not being able to fulfill that which he has called
23 her to do in administering that communion. What is
24 that impairment worth? What is that impairment worth?

25 So I tell you all that to just say that if,

CLOSING ARGUMENT BY PLAINTIFF

1 during deliberations, someone says, "well, I don't
2 think we should award money for that element of actual
3 damages," you remind them that you took an oath to
4 follow the law. And if she has proven that it's more
5 likely than not that she has pain and suffering past,
6 present, and future, that she has disfigurement past,
7 present, and future, that she has loss of enjoyment of
8 life past, present, and future, that she has mental
9 anguish past, present, and future, then as a jury you
10 are compelled by law to award money damages for that
11 injury. And nobody can make you break the law. Your
12 verdict has to be unanimous.

13 And so there are a lot of ways to think about
14 calculating -- calculating loss. There are a lot of
15 ways to think about it. You can think about it in
16 terms of assigning a number. You don't have to prove
17 it to a mathematical certainty.

18 Well, what about her past and present, take the
19 medical bills, the 222,475.47, which are obviously
20 proven. They're in evidence. And you take the 1,035
21 days since the wreck, and you say that every step of
22 every day of being alone at home, the husband leaving
23 her, coming back from being isolated, her worrying
24 when she wakes up in the middle of the night, going to
25 the restroom, she might fall down, so she has to wake

CLOSING ARGUMENT BY PLAINTIFF

1 someone else up. The humiliation, having to have her
2 children bathe her, a proud woman.

3 The humiliation not being able to use a bathroom
4 on her own for several months. Is that worth \$10 an
5 hour for pain and suffering? \$10 an hour for mental
6 anguish? \$10 an hour of loss and enjoyment of life?
7 If it is, if you find it's only worth \$10 an hour,
8 then her past and present actual damages, not
9 including the medical bills, come to \$2 million,
10 235,600, if you award her \$10 an hour for her past and
11 present pain and suffering, \$10 an hour for her past
12 and present mental anguish, and on down.

13 And when you get back there, if somebody says, "I
14 think that's too much," talk about it. Why? If you
15 get back there and somebody says "that's too little,"
16 talk about it. Why do they feel that way? You have
17 to come to a unanimous agreement.

18 So I picked a round number to show you what it
19 looks like at \$10 an hour. If you take \$10 an hour
20 plus the medical bills, you get past and present
21 damages of \$2 million, 458,075.47. That's the max.
22 And I used the calculator.

23 Now, when you're looking at future damages, it's
24 -- what does it say for the rest of her life? And the
25 Judge will instruct you that in South Carolina, for

CLOSING ARGUMENT BY PLAINTIFF

1 better or worse, we have allowed our Legislature to
2 determine how long we are expected to live. And they
3 do that using an actuarial table.

4 And the actuarial table we call life expectancy
5 base. And in South Carolina, what that tells us for a
6 63-year-old woman, which is why it was important that
7 we get her to admit her age even though Mr. Smith knew
8 his mother would probably crack his knuckles if he
9 asked a woman that, gives her 21.68 years to live.
10 She could live more than that, she could live less
11 than that. That's the going rate, as they say --
12 21.68 years, which is 190,000 hours, a little over. A
13 hundred and 90,000 hours of everyday she wakes up,
14 puts her right foot down, feeling pain. A hundred and
15 90,000 hours of every time she takes a step,
16 everywhere she goes, worrying about falling down,
17 about her ankle giving out. A hundred and 90,000
18 hours of when she's with her grandkids not being able
19 to pick them up or do the things she wanted and would
20 be able to do but for this wreck. A hundred and
21 90,000 hours of it getting worse every day.

22 You've heard the testimony that now her husband
23 helps her around the house. So this is her one day in
24 court. She doesn't get to come back, if she loses
25 David, and ask for more. This is it.

CLOSING ARGUMENT BY PLAINTIFF

1 So the choice for you is who should bear that
2 risk? Who should bear that risk of the additional
3 pain, if she loses him, of being isolated and having
4 to do it alone? Should it be Ms. Hood? Or should it
5 be them?

6 And if you take future, which we know is going to
7 be worse, because the doctor has testified to it,
8 everyone has testified to it, and you define each
9 element of actual damages at \$2 an hour -- \$2 an hour,
10 a cup of coffee. Oh, you're worried about falling
11 down everywhere you go? Here's a cup of coffee.

12 Oh, you're worried about your ankle giving out
13 and you falling down while your husband's at work and
14 not being able to reach the phone? Here's a pack of
15 gum.

16 Oh, you're worried about getting up in the middle
17 of the night and falling in the bathroom and hitting
18 your head? Here's a chicken -- chicken breast. Two
19 dollars.

20 If that's worth \$2 an hour, that's \$3 million,
21 420,843.84. If you think that's at least worth a
22 Happy Meal, which my son who's 11 months old, turns a
23 year next month, I'm not quite in the Happy Meal stage
24 yet, but I understand they're about \$5. If you think
25 that's at least worth a Happy Meal, then for future

CLOSING ARGUMENT BY PLAINTIFF

1 damages you'd award \$8 million, 552,109.60.

2 But if you get back there and somebody says, "I
3 don't think future damages are worth anything," you
4 ask them, "Didn't you hear the doctor testify that the
5 cartilage between her foot and her leg and her ankle
6 joint is wearing away because of this wreck? Because
7 he had to take -- he had to take the plate and screws
8 out because they were protruding through the skin.
9 And eventually, it's going to be bone on bone?"

10 Bone on bone is like when you bite into a bone.
11 You know what that feels like, when you just common
12 everyday experience what that feeling feels like.
13 That's what those bones are going to do. So he
14 testified he thinks it's more likely than that, to a
15 reasonable degree of certainty she's going to need
16 future surgery or a fusion.

17 So if you get back there and somebody says,
18 "that's not worth a Happy Meal every hour," talk about
19 it. Talk about it.

20 If you take those things and add them up, past
21 related medical bills, \$10 an hour for past and
22 present pain and suffering, mental anguish, loss of
23 enjoyment of life, disfigurement, on down, it's
24 \$2,458,075.47 cents for past and present. If you look
25 at the future at \$2 an hour, and add those two numbers

CLOSING ARGUMENT BY PLAINTIFF

1 together, you get \$5 million, 878,919.31.

2 If you think the future damages, the pain and
3 suffering which is going to get worse, the loss of
4 enjoyment of life, the fear of losing David and being
5 alone and having to live with this on her own is worth
6 \$5 an hour, then you're going to get \$11 million,
7 10,185.07.

8 And you don't have to find one of these numbers.
9 You can find less, you can find more. I use it to
10 demonstrate a point. I use this to demonstrate that
11 in this case, the pain, the anxiety, which you saw
12 some of, when she sat up here on this stand and had
13 the opportunity to testify to you, she looked at you
14 when she could, but the rest of the time she was
15 looking at the table, as we instructed her to do if
16 she felt herself get too emotional. She was getting
17 too emotional because this is her one day forever.
18 She doesn't get to come back, no matter what happens.
19 This is it.

20 And if you believe that God puts everyone
21 somewhere for a reason, which I do, then you were all
22 put here to decide what her being stripped of her
23 future retirement, what she planned to do, travel,
24 spend time with her grandkids, what that's worth.

25 And so at the end, you can get a verdict form. I

CLOSING ARGUMENT BY PLAINTIFF

1 don't believe in playing hide the ball, I like to show
2 you everything. So here's what it's going to look
3 like. It's going to look just like this.

4 And Madam Forelady is going to be the person
5 responsible for filling it out and actually writing it
6 in. But you all have to agree on the answers, talk
7 about them and agree to them.

8 The first question is: Was defendant, Antoine
9 Johnson, negligent, and has such negligence
10 proximately caused the plaintiff's injury? Obviously,
11 the answer to that is "yes."

12 Was plaintiff, Therese Hood, negligent? And that
13 such negligence proximately caused her injuries.
14 Answer to that, "no."

15 However, No. 3 is: If your answers to both
16 questions, No. 1 and No. 2 are "yes," if you answered
17 both yes, somehow they're both negligent of proximate
18 cause, then you would answer this question: Using the
19 combined negligence that proximately caused
20 plaintiff's injuries was one hundred percent, what
21 percentage of that negligence is attributable to
22 defendant Johnson, and what percentage is attributable
23 to plaintiff Hood? And, of course, the percentage
24 must add up to 100.

25 And in that instance, if you found that Ms. Hood

CLOSING ARGUMENT BY PLAINTIFF

1 was negligent for some reason, not hitting the snooze
2 button, which wouldn't be a proper reason under the
3 law, or speeding, which we know didn't play a role in
4 the wreck because he broadsided her, you would assign
5 a percentage.

6 If plaintiff Hood's percentage of the combined
7 negligence was greater than 50 percent, you would
8 stop, because that would mean she would get nothing.
9 She would not recover anything for her injuries. That
10 would be like if someone goes out, jumps off a bridge,
11 they would be responsible. So, obviously, they can't
12 recover. It's their negligence. Obviously, that's
13 not the case here. She had the right-of-way, he hit
14 her.

15 If plaintiff Hood's percentage of the combined
16 negligence is greater than 50, than less, then you
17 would go on to the next. And this is damages.

18 Please state the total amount of damages, if any,
19 sustained by the plaintiff, Therese Hood. Do not
20 reduce the plaintiff's total damages based on the
21 percentage of negligence by any party.

22 What that basically means is that if you found
23 them both negligent for a percentage you wouldn't
24 reduce the damages by that amount. You'd still have
25 to award her the full amount of damages. Then the

CLOSING ARGUMENT BY PLAINTIFF

1 Judge goes back, based on that percentage, and reduces
2 the number. If you reduce it, it's going to get
3 actually reduced twice. So you just award the full
4 damages that you find.

5 After you've answered these questions and it
6 tells you that the Judge will compute the amount of
7 damages for which the defendant or plaintiff are
8 responsible, based on the percentage of the respective
9 party's negligence, she will decide the proximate
10 cause of the plaintiff's injuries. You are to
11 determine only the total amount of damages and enter
12 it below.

13 There's then a line for punitive damages. And
14 the Judge will talk to you about punitive damages.

15 Punitive damages have a different standard.
16 Punitive damages have to be proved by something called
17 clear and convincing evidence, which is not quite
18 beyond a reasonable doubt, but just a criminal
19 standard. A little bit lower, but a little bit higher
20 than civil. Has to be clear and convincing evidence.

21 She's going to tell you that punitive damages can
22 be awarded if someone broke a statute, that they
23 violated a law that is to protect the State against
24 the public. And punitive damages are out there as a
25 message to the community. Punitive damage award is

CLOSING ARGUMENT BY PLAINTIFF

1 awarded, it tells the community that in this
2 community, if you break the law and injure somebody,
3 not only are we going to compensate that person, but
4 there's going to be punishment civilly associated with
5 it. That's why it's a little higher standard, which
6 she'll talk to you about.

7 You, Madam Forelady, will then certify that this
8 is the unanimous decision of the jury, signing here,
9 dating there, and, of course, notifying the bailiff.

10 I'm going to sit down, and Mr. Daniel's going to
11 get up here. And we've talked about every item in the
12 kitchen sink that has been turned so far. But I have
13 no control over what he's going to say.

14 No matter what he says, I want you to remember
15 six questions. If he talks about headlights and
16 darkness, when does he contend the sunset was? We
17 know sunset was at 5:59 at this particular
18 intersection. And we know that it was at 5:58
19 generally. If he has another time, listen to when he
20 says it is.

21 When does he contend the wreck occurred? Is he
22 willing to argue to you against the clear letter of
23 the law that Ms. Hood was required to have her
24 headlights on at the time of this wreck?

25 Listen to see if he tells you what the text from

CLOSING ARGUMENT BY PLAINTIFF

1 Mr. Johnson's girlfriend said anyway.

2 And, finally, he's going to attack these numbers
3 or arrange a suggestion. But remember the kitchen
4 sink approach. Listen to see how much does he think
5 is appropriate for them to compensate Ms. Hood for the
6 lifelong injuries that she sustained in this wreck.
7 Does he give you an alternative? Don't let him just
8 attack, listen to see if he gives you a plausible
9 explanation. I bet he won't.

10 It's like that old story about when the cookie
11 goes missing from the cookie jar, and they ask the
12 kid, "did you take the cookie?" The kid doesn't say
13 yes, the kid doesn't say no, because he knows better
14 than to lie. So he just keeps talking. And the more
15 he talks, the more you'll know the truth.

16 Ladies and gentlemen, you know the truth of what
17 happened in this case. And you know -- you know how
18 badly that woman was injured. Please do her justice.
19 Thank you.

20 THE COURT: Whenever you are ready, sir.

21 CLOSING ARGUMENT BY DEFENDANT

22 MR. DANIEL: Your Honor, may it please the
23 Court.

24 Ladies and gentlemen, this ain't about kids and
25 it ain't about cookie jars. Everybody -- everybody in

CLOSING ARGUMENT BY DEFENDANT

1 this country has the right to a defense.

2 At the beginning of this closing, which was
3 pretty lengthy, there was something about a thousand
4 days. I just want to make it clear, if anybody in
5 this country has been sued and accused of doing
6 something wrong in court, whether criminal or civil,
7 they have a right to challenge those allegations. And
8 that's what Antoine Johnson's done. He didn't do
9 anything wrong, and he has every right to a trial. He
10 doesn't have to apologize for that. And, hopefully, I
11 think you would agree that I don't have to apologize
12 for that.

13 I've tried to be as brief as I can through the
14 course of this week. I know there's a storm coming,
15 and I know that everybody has families and their own
16 life going on. I appreciate your patience.

17 I do have to cover topics. There's been starts
18 and stops, and I apologize for that, but you can't
19 hold that against Antoine Johnson because just like
20 anybody, regardless of whether they're Catholic,
21 whatever their creed may be, he has a right to a
22 defense.

23 And I don't know about kids and cookie jars, we
24 saw some numbers up there, but this is a serious case.
25 We're not hiding from that. He just threw up numbers

CLOSING ARGUMENT BY DEFENDANT

1 like \$11 million, \$2 million, and let's get one other
2 thing clear. They have the burden of proof. You
3 don't get to damages unless you decide Antoine Johnson
4 was more than 50 percent -- well, 50 percent or more
5 at fault in this case. He doesn't have the burden of
6 proof. He didn't have to prove anything this week.
7 But he got up there on the stand, and he told you what
8 happened. He told you what he did. And a lot of
9 other people got up on the stand and they told you
10 what they saw.

11 And if I misstate facts, you're the judge of the
12 facts. You heard the evidence. I'm going to do my
13 best right now to remind you of some things that we
14 heard. If I'm inaccurate, y'all deliberate, and you
15 decide what the evidence was. But I'm just going to
16 go through some things and hit some highlights for
17 you.

18 First of all, before we get to that, but I want
19 to talk about the law. Your Honor, again, said in
20 openings, she is the authority and expert on the law.
21 She will charge you on things like speeding, things
22 like the right-of-way, things like when you need to
23 have your headlights on.

24 And Antoine Johnson's position, our position, the
25 defendant's position in this case that speed was a

CLOSING ARGUMENT BY DEFENDANT

1 primary cause of Mrs. Hood's injuries, and that the
2 fact that she didn't have her headlights on was also
3 the real reason why this whole accident and sequence
4 of two impacts happened in the first place.

5 You heard from Dustin Lee, and Dustin Lee said
6 that he was driving on 278 headed towards -- he was
7 headed in this direction. He got to Southwood Park
8 Drive right here. That's where Antoine Johnson, and
9 we had those diagrams with the H and K, all of those
10 letters. J was for Johnson, H was for Hood. She was
11 this way. And Dustin Lee, he's back here. This is
12 not some static thing. Traffic is a fluid situation.

13 He's back here on William Hilton Parkway, 278,
14 when he first sees the car behind him -- not far
15 behind him, but behind him, and there's no headlights
16 on. He notices that because it's dark. At some point
17 someone asked him the question, I don't remember
18 whether it was Ms. Suttie or whether it was Mr.
19 Willey, but that he got to the point, "well, how dark
20 was it?"

21 "It was 90 percent dark."

22 The plaintiff on the stand said 80 percent.
23 We've heard from -- I mean, it's been redundant, but
24 you need to hear what all the witnesses out there saw.
25 I think that everybody's in collective agreement, it

CLOSING ARGUMENT BY DEFENDANT

1 was pretty well dark out.

2 So you've got a vehicle driven by a plaintiff,
3 Mrs. Hood, with no lights on, coming in this
4 direction. You got these tall trees up here. And
5 whether it's one minute, two minutes, three minutes
6 before sunset, driving conditions -- and you'll hear
7 from the judge, environmental conditions is a
8 phrase -- driving conditions are difficult because
9 it's getting dark. It's really dark.

10 And what the law actually says is, you have a
11 duty to turn your headlights on when environmental
12 conditions significantly reduce your ability to see
13 people in the road, other cars in the road, or vice
14 versa. If it significantly reduces people in the road
15 or other drivers, with their ability to see you.

16 There was a lot of talk about Antoine Johnson.
17 But no one -- I didn't see Mr. Willey really walk you
18 through the scenario. But he's on this street, at a
19 stop sign, turning left. No one said he wasn't
20 stopped. He stopped, checked once, there's a car goes
21 by, he checks again. It's dark out. We know there's
22 a vehicle coming without its headlights on. You've
23 got to ask yourself would an ordinary driver see that
24 vehicle? Would an ordinary driver see that vehicle?

25 Their expert, being paid \$290 an hour, said she

CLOSING ARGUMENT BY DEFENDANT

1 didn't consider speed. She admitted speed can be a
2 factor in an accident, and why is that? Because we
3 all know that the faster you go in a given period of
4 time, one second, two seconds, the more ground you
5 cover. You're going to go a lot farther when you're
6 traveling at 60 miles an hour versus 30 in one second,
7 two seconds --

8 MR. WILLEY: Your Honor, I just want to
9 the preserve my objection for the record that
10 that's a misstatement of the law as it applies
11 to this case. She was broadsided hit.

12 THE COURT: Noted for the record. Thank
13 you.

14 MR. DANIEL: We all know that speed can be
15 a factor in an accident. And the reason why
16 it's a major factor here is, if you've got a
17 vehicle coming down the road -- and they don't
18 want to show you how dark it was, we don't have
19 any pictures of that -- but if you've got a
20 vehicle coming down the road and that vehicle
21 is going, say, 60 miles an hour, versus 40 or
22 45, two seconds before Antoine Johnson starts
23 to pull into this roadway at 60, she's going to
24 be a lot farther back. A lot farther back, and
25 there's a bend way back here. You heard the

CLOSING ARGUMENT BY DEFENDANT

1 officer testify about that.

2 There are these trees up here, the sun's going
3 down, and her car, she doesn't even say that her car
4 has any lights on. She doesn't contest that. Says,
5 "if people say I didn't have my headlights on, I
6 didn't have them on." That's what -- that's what she
7 said here today, and she didn't say that in her
8 deposition. She said she had her headlights on.
9 She's now changed her story on that.

10 And when Antoine Johnson was deposed, she was
11 maintaining the position that she had her headlights
12 on. Why is that?

13 You heard the expert, the human factors expert,
14 testify about an engineer that pulled a computer chip
15 from Mrs. Hood's vehicle, and that computer chip said
16 that she was either going 62 or 63 miles an hour. You
17 heard the officer say that the posted speed limit on
18 that road is 45 miles an hour.

19 So if that computer chip is right, we haven't
20 heard anybody dispute that it's wrong --

21 MR. WILLEY: Your Honor, I object. The
22 computer chip is not in evidence. He's the
23 only one that talked about it.

24 THE COURT: Move on.

25 MR. WILLEY: I move to strike that

CLOSING ARGUMENT BY DEFENDANT

1 sentence about it.

2 THE COURT: Okay. There was a discussion
3 about it in trial. You can continue.

4 MR. DANIEL: If her speed was 62 miles an
5 hour, if it was 60 miles an hours, she was
6 going 14, 15 -- 17 miles an hour over the
7 posted speed limit. The officer told you that
8 the speed limit on that road is 45. And
9 there's going to be an instruction about speed.

10 Speed affects your ability to maintain control of
11 your vehicle. Speed affects your ability to stop, to
12 avoid someone who can't see you because it's dark and
13 you don't have your headlights on. Speed causes --
14 and there was a demonstrative exhibit that shows you,
15 it's not in evidence, there's a smaller version that
16 are in evidence.

17 Are you able to see it? Speed causes things like
18 this.

19 No one said Antoine Johnson was speeding. He was
20 just trying to get through that median, and you've
21 seen the pictures of the side of her vehicle. You've
22 seen the pictures of the side of her vehicle, and
23 you've heard what the officer said, that impact was
24 minor. The injuries that Mrs. Hood sustained were due
25 to her speed, due to her not having her lights on, and

CLOSING ARGUMENT BY DEFENDANT

1 due to her not being able to stop in time, and due to
2 her actions, not having her lights on, speeding.
3 Antoine, when checked, like any reasonable driver with
4 normal sight couldn't see her.

5 Now, their expert said a lot of things, but she
6 wanted you to make assumptions. She wanted you to
7 make assumptions about the visibility at that
8 intersection. I asked her -- she actually has a Chevy
9 Equinox, the same type of car as the plaintiff. I
10 said, have you even been out there when it's 20
11 minutes before -- or 20 minutes after, excuse me --
12 sunset that day. What we do know is actual sunset was
13 at 5:20 -- or 5:28 or 5:29. Thirty minutes after
14 sunset, I don't dispute what they say was either 5:59
15 or 5:58. It doesn't matter, it's about how dark it
16 was.

17 They're the ones -- plaintiff is the one with the
18 burden of proof. The Plaintiffs, Mr. Willey, Mr.
19 Smith, plaintiff's counsel, they're the ones who are
20 supposed to prove the case to you.

21 Has anyone shown you how dark that intersection
22 can be 20 minutes, 25 minutes after sunset?

23 Antoine Johnson has every right to challenge the
24 allegations in the case. He's been honest with you.
25 He's a young man, he texts a lot. He was on the

CLOSING ARGUMENT BY DEFENDANT

1 phone, he hadn't -- said he had downtime during that
2 day. There's no one that's been here to challenge
3 that. They're asking you to assume that he was on the
4 phone at 5:57 -- their exhibit, Plaintiff's 7 -- at
5 5:57 and 43 seconds, when cell phone records say an
6 inbound text came in.

7 Now, they're the ones that subpoenaed the
8 records. They could get text messages. It's not
9 Antoine Johnson's fault that they don't have whatever
10 the substantive message is. But even -- even if they
11 did, this record doesn't show you anything other than
12 that a text came in at that time. Their own expert
13 said, yeah, I don't -- that doesn't tell me that he
14 was reading a text. That doesn't tell me that he was
15 sending a text. That doesn't tell me that he was on
16 the phone.

17 What we do know is he was up front with you. The
18 first thing he did after the accident was call his
19 mom, and that was at 1808. Or 1808, which is 6
20 o'clock, which is military time. It's 6 o'clock at
21 night. So if he did that a minute later, then maybe
22 it is 5:59 or 5:58 when the accident happened, which
23 would be 30 minutes after sunset, which would mean
24 Mrs. Hood was actually, per se, violating the
25 headlight law. That's for you to decide.

CLOSING ARGUMENT BY DEFENDANT

1 Cary Tanrath, he said he didn't see headlights on
2 that one corner. Seemed like a credible guy,
3 military, very precise. He told you he's got to be
4 out of there off Hilton Head Island when he was
5 working there by 5:30 because it gets dark. He said
6 it was dark at the time of the accident.

7 But what they haven't explained and what they
8 haven't clarified, I'm trying to be brief, hope you
9 heard it, at least I can stress the point now, he had
10 his headlights on, Mrs. Ruck, who was in the vehicle
11 ahead, she said, "my husband had his headlights on."

12 Well, their headlights were shining directly at
13 Mrs. Hood's vehicle, that H vehicle, as it's coming
14 down the road directly at them. Antoine Johnson
15 didn't have that benefit, because Antoine Johnson is
16 turning left. Antoine Johnson has his headlights
17 looking at that median. And once he looks and it's
18 clear, you heard the officer say, if somebody with
19 ordinary sight looks and sees it's clear at a stop
20 sign, yeah, at that intersection, they can make a
21 left. You can't put more on him than what is required
22 under the law. It's about what a reasonable driver
23 would do under the circumstances.

24 And there's just not enough proof here about this
25 lady's visibility in the road, how conspicuous that

CLOSING ARGUMENT BY DEFENDANT

1 But your common sense tells you that it was dark
2 out there, based on what all the witnesses say.
3 Common sense tells you that she was speeding, based on
4 the damage, and based on what we heard about her
5 potential speed. And all I'm asking, and all
6 Antoine's asking is for you to use your common sense.

7 And, you know, I did ask Mrs. Hood some questions
8 about her health. And don't hold that against
9 Antoine. I'm doing my job. Because what she was like
10 before the accident versus after, that does matter.

11 There's a record that she had blurred vision and
12 she was complaining of blurred vision that day.
13 That's something I think you should consider. She
14 admitted that she had had falls before this accident.
15 That's unfortunate, I'm not trying to beat up on her.
16 But she had Parkinson's before this accident, and
17 that's something you can consider for the purposes of
18 what kind of condition she was in on the day she was
19 driving. That's only fair to the defendant. We're
20 not asking you to do more than be fair.

21 It's okay. It's okay to feel sorry for her.
22 There's nothing wrong with that, but what's not okay,
23 what's not okay is to render a judgment against the
24 defendant here if you don't think he's the primary
25 reason why the accident happened.

CLOSING ARGUMENT BY DEFENDANT

1 were -- how visible her vehicle was at the time. The
2 credible evidence and what all of these people have
3 said, strongly suggests it wasn't visible. It was an
4 issue, all of these people felt it was an issue,
5 that's why they told the police about it. That's why
6 Dustin Lee called 911. That's why Cary Tanrath stayed
7 behind and told the police officers about the fact
8 that that vehicle that came across the highway didn't
9 have its lights on.

10 Cary Tanrath doesn't -- didn't know Antoine
11 Johnson. He's got nothing to gain by being here. He
12 wasn't being paid \$290 an hour to testify.

13 Dustin Lee, same thing. Never met Antoine
14 Johnson, didn't see him at the -- never met him at the
15 scene, hasn't met him or ever talked to him after the
16 accident. Nothing to gain by being here and
17 testifying.

18 You get to judge witness credibility, and Your
19 Honor is going to instruct you about experts. And
20 she's going to tell you that you can consider expert
21 testimony just like eyewitness testimony. You don't
22 have to give it any more emphasis or weight. It's
23 about what you decide, and what you believe is true,
24 and what most likely happened.

25 Now, it is -- it is a tough situation here

CLOSING ARGUMENT BY DEFENDANT

1 because it's okay to feel sorry for Mrs. Hood, but
 2 you've got to do something as a jury sometimes when
 3 you have cases with tough facts. You can't let your
 4 sympathy outweigh what's right or wrong under the law.
 5 Your Honor is going to instruct you that you cannot
 6 render a verdict based on sympathy, and that's your
 7 obligation.

8 You have to decide the case based on facts.
 9 Credible evidence and facts in this case show that it
 10 was actually flight of speed, whether she was going
 11 52, 62 -- we know Dustin Lee said he was going 49, and
 12 she passed by him. So she's going over the speed
 13 limit. So speed, plus the fact that she doesn't have
 14 her lights on, that's why this young man here couldn't
 15 see her when he went to turn left.

16 Ladies and gentlemen, I said I would be brief.
 17 And I just submit to you the credible evidence and the
 18 right verdict in this case is one for the defendant.

19 Now, they showed you the verdict form, and I want
 20 you to realize that even if you decide that Antoine
 21 bears some responsibility, you cannot render damages
 22 against the defendant if his share of the
 23 responsibility is 49 percent, 48, lower than that.
 24 The credible evidence is even if he shares a little
 25 bit, if it's a small percentage like that, you can't

CLOSING ARGUMENT BY DEFENDANT

1 render a judgment against the defendant. And I submit
 2 to you that the credible evidence shows that an
 3 ordinary person at that intersection, looking left at
 4 that time of the evening wouldn't see a vehicle from
 5 that far back coming that fast without its headlights
 6 on.

7 Thank you. I appreciate your patience, and I
 8 hope everybody gets home safe.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

9 MR. WILLEY: Now, she's lying. That's
 10 what he just said.

11 Now she is a liar because in her deposition she
 12 told me she thought her headlights were on. Today she
 13 said she wasn't going to disagree with people if they
 14 said they were off. She told you quite clearly her
 15 headlights are always on automatic. She never
 16 switches them off automatic. She could see fine. She
 17 couldn't see her headlights, obviously, she was in the
 18 car.

19 The statute on headlights is important. Half an
 20 hour after sunset, and we've talked a lot about that,
 21 I'm not going to talk about it again. But you will
 22 remember, with the expert, we specifically talked
 23 about those environmental factors. With the cop we
 24 specifically talked about those environmental factors
 25

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 that are covered in the statute. And those
 2 environmental factors are fog, snow, rain, smoke,
 3 maybe an eclipse. Maybe we add Irma to the bottom of
 4 that, although that would probably fall under rain.
 5 None of those things were present here.

6 The only question as to headlight usage is: Did
 7 this wreck occur less than 30 minutes after sunset?

8 I told you to listen very closely for six things,
 9 because a lot would be thrown up. When does he
 10 contend sunset was? Okay. You know, in that
 11 particular spot, 5:29, which would make 30 minutes
 12 later 5:59, which is after the 911 call.

13 When does he contend the wreck occurred? Won't
 14 tell you. Didn't tell you. Won't tell you because if
 15 you look at those cell phone records, whether it
 16 happened before or after he was on the phone. If it
 17 happened after, he was making a call because that was
 18 to his mom. I mean, two minutes later.

19 Is he willing to argue that she was required to
 20 have her headlights on? He said because of the
 21 environmental factors. The environmental factors
 22 didn't exist in this case. According to everybody who
 23 testified, none of these things occurred.

24 And if so, does he explain Mr. Johnson's failure
 25 to see Mr. Lee's car with the Xenon headlights on? He

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 didn't even mention Mr. Lee.

2 Remember, Mr. Lee -- Ms. Hood -- in this lane
 3 Mr. Lee is back here with his Xenon headlights on,
 4 shining on her car, by the way. He's behind her. He
 5 can see her, he can see Mr. Johnson. Mr. Johnson says
 6 he can't see him. Headlights don't matter anyway.

7 Everybody that's testified has testified they
 8 could see cars with or without their headlights on.
 9 Everybody. Even Mr. Tanrath.

10 Still didn't tell us what the text said. He
 11 didn't give us an alternate number.

12 Now, ladies and gentlemen, I don't usually tell a
 13 story at the end, but she's not a liar. Okay. Said
 14 she's old, she fell down before in her life. Well,
 15 everybody's fallen down. The question is: Every time
 16 you take a step on your right foot, do you feel like
 17 you're going to fall down? She does, because of this
 18 wreck.

19 My father died earlier this year. And I'm Roy
 20 Thomas Willey, the fourth. He was Roy Thomas Willey,
 21 the third, and we called him "Tom", and I didn't have
 22 a great relationship with him. My parents divorced
 23 when I was young, Mom remarried, and I was pretty much
 24 raised by them.

25 But my dad was one of those people who always

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 knew exactly the right thing to say. When you were
2 having the worst day, you could call him, he would
3 tell you what to think. He would tell you whatever it
4 took to make you feel better. If he thought you were
5 getting a little too high on your horse, he'd knock
6 you down with just the right comment.

7 So yesterday, I said, it's like a rat giving
8 birth to an elephant, it's painful to watch. You
9 laughed. I haven't heard that in a while. My dad
10 said that. That's where I got that.

11 But often before closing arguments, when I know
12 that the case is important to my client, I would call
13 my dad and I'd say, "Dad, here's the case, what should
14 I tell these jurors?"

15 Can't do that. But I did ask him last night --
16 and you know how sometimes you feel like somebody is
17 giving you a sign, that God's giving you a sign? I
18 usually don't talk about religion in closing
19 arguments, because I know not everybody is Christian
20 or religious. They're good stories, good lessons to
21 live by. And I'm not a perfect Christian, I try to
22 read a little bit of scripture everyday, but don't
23 always get to it, particularly in days of trial.

24 Last night I asked him, "What should I tell this
25 jury?" And this morning when I went out to the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 driveway, I found three nails. He was Roy Thomas
2 Willey, the third. And I took the first nail, I threw
3 it onto the house. Took the second nail, threw it
4 onto the house. When I found the third nail, I said,
5 you know, the thought occurred to me to hold onto
6 that. So I did, and I carried it in my pocket all
7 day.

8 And when I got here this morning, I always -- if
9 you look at the sign-in sheet, I always get here
10 early, because I like to see the courtroom with nobody
11 in it. Because things get tense throughout the day.
12 I like to have a minute to reflect.

13 And when I got here this morning, I saw this
14 Bible up here that everybody swore on all week, all
15 the witnesses who said they could see her and
16 everything else, and I realized I hadn't read my
17 scripture this morning. And so I came up here and I
18 opened it. And it went to the book of John, Chapter
19 20. And about that time, Ms. Mona walked in, she's
20 the court reporter, she was the next person here. And
21 I read the rest of that book, and that's the book
22 about doubting Thomas.

23 For those of you that have had time to read
24 scripture, you'll remember that when they had Jesus in
25 the tomb and he rose, it was the women who went to the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 tomb and first discovered he wasn't there. And the
2 women came back and told the disciples, "Jesus has
3 risen."

4 And back then, women were considered lower in
5 society. And so the disciples said, "I got to
6 verify." So they went and looked, and they found his
7 linen. Thomas didn't go. It was the disciples. They
8 came back and they told Thomas, they said, "Thomas,
9 the Lord has risen. The Lord has risen."

10 And Thomas said, "I will not believe it until I
11 can feel the holes in his hands and I can touch his
12 side."

13 And Jesus came later, and he went up to Thomas
14 and he said, "Thomas, feel the holes in my hands
15 caused by those nails, touch my side."

16 And Thomas said, "My Lord and my God. I
17 believe."

18 Now, at the start of the trial this week, you
19 heard opening statements, some of you were like those
20 women that first discovered and believed. Some of you
21 are like those disciples that came along later, after
22 you saw more of the evidence. And I think when I
23 found these nails this morning and opened that Bible,
24 I think my daddy was reminding me that some of you
25 would be like Thomas. And we would have to show you.

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1 And we did show you.

2 So my challenge to you is that when you come back
3 out through that door, Thomas was the first person in
4 the Bible to say that Jesus Christ is not only Lord,
5 but he's God. Doubting Thomas was the first one to
6 claim that when he believed.

7 And I hope that you were Thomas at the beginning
8 of this week. When you come out, you will tell this
9 community the truth. You can tell Ms. Hood that her
10 life, this woman's life, is worth something. Please
11 do that.

12 THE COURT: All right. Ladies and
13 gentlemen, as I told you, I'm going to give you
14 just a brief break to go refresh yourselves.
15 My charge takes about 20 minutes.

16 And I can tell you that it's hard to listen after
17 you've been talked to for a while, so go back there,
18 Madam Foreperson, and when y'all are ready to come
19 back out, knock on the door. Grab a drink of water,
20 and we'll bring y'all right back out. Okay?

21 Do not discuss the case yet. You haven't heard
22 my charge. Okay?

23 (Jury exits the courtroom.)

24 THE COURT: All right. I'm just going to
25 wait for a couple minutes for them to come

FURTHER CLOSING ARGUMENT BY PLAINTIFF

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.

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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

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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.

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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

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1 consideration and is to be judged as to credibility
2 and weighed by you in the same way as if that witness
3 were present and gave that testimony to you right from
4 the witness stand.

5 I remind you that it is for you to determine the
6 effect, the value, the weight, and the truth of the
7 testimony that's given in a deposition.

8 Now, the plaintiff, Ms. Hood, claims defendant
9 was negligent, and that the defendant should
10 compensate her for the injuries she suffered as a
11 result of the defendant's negligence.

12 Now, in order to prove that the defendant was
13 negligent, the plaintiff must prove by a preponderance
14 or greater weight of the evidence four things.

15 First, the plaintiff must prove by preponderance
16 or greater weight of the evidence the defendant owes
17 the plaintiff a duty of care.

18 A duty of care is a legal obligation which is
19 imposed on an individual requiring adherence to a
20 standard of reasonable care of performing any act that
21 could foreseeably harm others. A person cannot breach
22 a duty when they are in compliance with the law. And
23 the court cannot require a person to do more than what
24 the law requires.

25 Now, next, the plaintiff must prove by a

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1 preponderance or greater weight of the evidence the
2 defendant breached that duty by a negligent act or
3 omission.

4 Negligence means that a person has done something
5 that a reasonable person would not have done, or
6 failed to do something that a reasonable person would
7 have done in the same situation.

8 Third, the plaintiff must also prove by a
9 preponderance or greater weight of the evidence that
10 she suffered damages as a result of the defendant's
11 breach of duty.

12 And, finally, the plaintiff must prove by a
13 preponderance or greater weight of the evidence that
14 the damages were proximately caused by defendant's
15 breach of duty.

16 Proximate cause is something that produces a
17 natural chain of events, which in the end brings about
18 the injury. It's the direct cause of the injury. To
19 prove defendant's negligence proximately caused the
20 plaintiff's injuries, the plaintiff must prove
21 causation in fact. This is proven by showing the
22 injury would not have occurred but for the defendant's
23 negligence.

24 The plaintiff must also prove legal cause. Legal
25 cause is proven by showing the injury was foreseeable.

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1 They do not have to prove that the particular injury
2 that occurred was foreseeable.

3 However, the defendant cannot be held responsible
4 for things which cannot be expected to happen. And
5 proximate cause does not mean the only cause. The
6 defendant's act can be a proximate cause of the
7 plaintiff's injuries if it was at least one of the
8 direct concurring causes of the injury.

9 Now, in this case, the defendant claims that the
10 plaintiff's own negligence proximately caused her
11 injury. If you find that the defendant was negligent
12 in this case, you must then find whether the plaintiff
13 was also negligent.

14 The defendant must prove by a preponderance or
15 greater weight of the evidence that the plaintiff
16 breached the duty of care which proximately caused her
17 injury.

18 Now, the same law, which I told you you'd use in
19 deciding whether the defendant was negligent should be
20 used in deciding whether the plaintiff was negligent.
21 If you find the negligence of both the plaintiff and
22 the defendant proximately caused the plaintiff's
23 injuries, you must then decide how much the negligence
24 of the plaintiff contributed to the plaintiff's
25 injuries and how much the defendant's negligence

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1 contributed to the plaintiff's injuries.

2 In deciding the percentages of negligence of the
3 plaintiff and the defendant, you may consider, among
4 other things, the following factors: Whether each
5 party's conduct was only inadvertent, or whether it
6 was engaged in with an awareness of the danger
7 involved.

8 The magnitude of the risk created by each party's
9 conduct, including the number of persons endangered in
10 the possible -- excuse me, and the possible severity
11 of the injury. The significance of the goal that each
12 party was trying to reach and the need to achieve the
13 goals in that manner.

14 Each party's capabilities and abilities to
15 realize and eliminate the risk involved.

16 Now, particular circumstances confronting each
17 party at the time the conduct occurred, such as the
18 existence of an emergency requiring a quick decision.
19 The relative closeness of the causal relationship of
20 the negligent conduct of the defendant and the harm to
21 the plaintiff. And whether the conduct of either
22 party involved a violation of a safety statute or
23 regulation.

24 Now, I charge you that it is the law of this
25 state that the driver of a vehicle about to enter or

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1 cross a roadway from any place other than another
2 roadway, shall yield the right-of-way to all vehicles
3 approaching on the roadway to be entered or crossed.

4 It is also the law of this state that every
5 driver of a vehicle approaching a stop sign shall stop
6 at a clearly marked stop line. But if there is none,
7 before entering the crosswalk on the near side of the
8 intersection, or if there is no crosswalk, then at a
9 point nearest the intersecting roadway where the
10 driver has a view of approaching traffic on the
11 intersecting road before entering it.

12 After coming to a stop, the driver shall yield
13 the right-of-way to any vehicle in the intersection or
14 approaching on another roadway so closely as to
15 constitute an immediate hazard during the time when
16 such driver is moving across or within the
17 intersection or junction of a roadway.

18 Now, it is also the law of this state that the
19 operator of the motor vehicle is required to use the
20 same care that would be used by a person of ordinary
21 reason and prudence, if that person were driving the
22 same vehicle at the same time and place and under the
23 same circumstances.

24 It is also the law of this state that the driver
25 of an automobile had a duty to keep a proper lookout

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1 for other vehicles on the road. This duty requires
2 the driver to watch attentively so that the driver
3 will be able to see a person or object on the highway.

4 It is also the law of this state that the driver
5 of an automobile also has a duty to keep the
6 automobile under proper control so that the driver is
7 able to slow down, stop, or turn the automobile to
8 avoid colliding with other vehicles, pedestrians, and
9 objects lawfully on the road.

10 It is also the law of this state that it is
11 unlawful for a person to use a wireless, electronic
12 communication device to compose, send, or read a text
13 -- excuse me, a text-based communication while
14 operating a motor vehicle on the public streets and
15 highways of this state.

16 It is also the law of this state that every
17 vehicle upon the street or highway within this state
18 shall display lighted lamps and illuminating devices,
19 excluding parking lights, from a half hour after
20 sunset to a half hour before sunrise. Or when
21 inclement weather or environmental factors severely
22 reduce the ability to clearly discern persons and
23 vehicles on the street or highway at a distance of 500
24 feet ahead.

25 It is also the law of this state that a person

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1 shall not drive a vehicle on a highway at a speed
2 greater than is reasonable and prudent under the
3 conditions and having regard to actual and potential
4 hazards in existence.

5 Speed must be so controlled to avoid colliding
6 with a person, a vehicle, or other conveyance on or
7 entering the highway in compliance with legal
8 requirements and the duty of a person to use care.

9 The driver of a vehicle shall drive consistent
10 with the requirements of the Section above, at an
11 appropriate reduced speed when approaching and
12 crossing an intersection, or railway grade crossing,
13 when approaching and going around a curve, approaching
14 a hill crest, when traveling on a narrow bridge,
15 narrow or winding roadway, and when special hazard
16 exists with respect to pedestrians or other traffic,
17 or by reason of weather or highway conditions.

18 Now, I charge you that the failure to follow a
19 statutory rule is negligence as a matter of law. If
20 you find that a party failed to follow a statutory
21 rule, you must then decide if the failure proximately
22 caused the plaintiff's injury.

23 Now, ladies and gentlemen, if you decide that the
24 plaintiff is entitled to a verdict in this case, your
25 next step would be to decide how much money the

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1 defendant should be required to pay. And these are
2 what we call actual damages.

3 Actual damages are to compensate the plaintiff
4 for the plaintiff's injuries, or loss, and to put the
5 plaintiff in as near as possible the same position
6 that she was in before the accident occurred.

7 In other words, actual damages would be the
8 actual losses and expenses which the plaintiff has
9 suffered because of the defendant's negligence.

10 Now, ladies and gentlemen, the following are
11 actual damages for you to consider in this case:
12 Medical bills, pain and suffering, mental anguish,
13 loss of enjoyment of life, and permanent injury and
14 disfigurement.

15 Now, in personal injury actions, the general rule
16 is that the plaintiff may recover for the necessary
17 and reasonable expenses caused by the injury. This
18 doesn't mean necessarily incurred, for medicine,
19 medical services, treatment, and any other
20 out-of-pocket expenses.

21 If you determine from the evidence and the law,
22 as I've instructed you, that the plaintiff is entitled
23 to recover damages, including medical or other
24 healthcare costs, then the plaintiff can only recover
25 such sums as you, the jury, determine from the

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1 evidence, being both reasonable and necessary.

2 And while the amount charged and incurred may be
3 considered by you, you're not bound by that amount.
4 You must find only such sums as is reasonable and
5 necessary.

6 Now, ladies and gentlemen, pain and suffering
7 compensates a plaintiff for physical discomfort and
8 emotional responses to sensations of pain caused by
9 the injury itself. And there is no definite standard
10 by which to compensate the plaintiff for pain and
11 suffering. You, the jury, have the authority to
12 determine the amount, if any, to be allowed for pain
13 and suffering, using calm and reasonable judgment to
14 ensure that the damages are just and reasonable in
15 light of the testimony and evidence presented in this
16 case.

17 Now, loss of enjoyment of life compensates a
18 plaintiff for limitations on a plaintiff's ability to
19 participate in and derive pleasure from the normal
20 activities of daily life.

21 Now, an injured party may also recover for mental
22 anguish brought about by bodily injuries and
23 suffering. Where a party's negligence is directly
24 responsible for physical injury to another, the
25 injured party may recover both for the actual physical

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1 injury sustained and for the concomitant mental and
2 emotional suffering which is a natural consequence of
3 the wrongful act.

4 When connected with a physical injury, the term
5 "mental anguish" includes both the resulting mental
6 sensation of pain and also the accompanying feelings
7 of distress, fright, and anxiety. That is, mental
8 anguish covers not only the pain associated with the
9 injury, but also the mental reaction to that pain, and
10 to the possible consequences of the injury.

11 Ladies and gentlemen, mental anguish is more than
12 mere disappointment, anger, worry, resentment, or
13 embarrassment, although it may include all of these
14 things. And it includes mental sensation of pain
15 resulting in such emotion as grief, severe
16 disappointment, indignation, wounded pride, shame,
17 despair, and humiliation.

18 Now, ladies and gentlemen, a plaintiff is never
19 entitled to recover conjectural or speculative
20 damages. But if you find the plaintiff is entitled to
21 a verdict for actual damages, your verdict should
22 include an amount to cover any past, present, and
23 future damages which were proximately caused by the
24 defendant, and have been proven by a preponderance of
25 the evidence in this case.

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1 Again, actual damages may not be proven to a
2 mathematical certainty or be based on evidence of the
3 precise amount of damages the plaintiff has suffered.
4 Instead, the evidence must allow you to determine what
5 amount of damages including past, present, and future,
6 are fair, just, and reasonable.

7 Now, I remind you, ladies and gentlemen, that if
8 you do award future damages, you must reduce them to
9 present day value.

10 Ladies and gentlemen, if you find that the
11 plaintiff, Ms. Hood, was permanently injured as a
12 result of the defendant's actions, you must then
13 decide how, if at all, that injury will affect the
14 rest of Ms. Hood's life.

15 A person's life expectancy is determined by a
16 life expectancy table, which is a part of the laws in
17 this state. The life expectancy table is only an
18 estimate of the probable average remaining length of
19 the life of all persons in our state at a given age.

20 Now, in this case, the plaintiff is a 63-year-old
21 female with a life expectancy of 21.68 years. This
22 fact is to be considered by you along with any other
23 fact and circumstances in evidence bearing on the
24 plaintiff's life expectancy including occupation,
25 habits, and health at the time of the injury, when

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1 deciding what amount of damages to be awarded to the
2 plaintiff.

3 Now, compensation received by an injured party
4 from a source wholly independent of the defendant will
5 not reduce the amount of damages owed by the
6 defendant. In other words, under the collateral
7 source rule, which is what we call it, if an injured
8 plaintiff receives compensation for their injuries
9 from a source wholly independent of the defendant,
10 that payment wouldn't be deducted from the damages
11 which they would otherwise collect from the defendant.
12 The only requirement for qualification of a collateral
13 source is that the source be wholly independent of the
14 wrongdoer. A defendant cannot take advantage of
15 payments or services rendered by a collateral source
16 for the plaintiff's benefit.

17 Ladies and gentlemen, in this case, the plaintiff
18 also seeks what are called punitive damages in
19 addition to actual damages. Punitive damages are
20 imposed as punishment. They're not intended to
21 compensate.

22 Punitive damages are allowed in the interest of
23 society as a warning and an example to deter a
24 wrongdoer and others from committing like offenses in
25 the future. Moreover, they serve to vindicate by

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 requiring the wrongdoer to pay money to the injured
2 party.

3 Ladies and gentlemen, punitive damages serve at
4 least three important purposes: Punishment of the
5 defendant's reckless, willful, wanton, or malicious
6 conduct; deterrence of similar future conduct by the
7 defendant or others; and compensation for the reckless
8 or willful invasion of the plaintiff's private rights.

9 What would justify an award of punitive damages?
10 First, ladies and gentlemen, you must realize that the
11 highest burden of proof known in civil law is required
12 to prove punitive damages. And that is what we call
13 by clear and convincing evidence.

14 Again, any civil action where punitive damages
15 are claimed, the claimant has the burden of proving
16 those damages by clear and convincing evidence. And
17 punitive damages can only be awarded where the
18 plaintiff proves by clear and convincing evidence that
19 the defendant's actions were willful, wanton,
20 malicious, or in reckless disregard of the plaintiff's
21 rights.

22 A conscious failure to exercise due care
23 constitutes willfulness. It is the present
24 consciousness of wrongdoing that justifies the
25 assessment of punitive damages against a wrongdoer.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 Punitive damages will be allowed even when the
2 defendant does not realize that they are invading a
3 plaintiff's rights, so long as the act is committed in
4 such a manner that a person of ordinary prudence would
5 conclude it was done in reckless disregard of the
6 rights of another.

7 The plaintiff cannot recover punitive damages
8 based on negligent conduct. I remind you again that
9 negligence is the doing of some act which a person of
10 ordinary prudence would not have done under similar
11 circumstances, or failure to do what a person of
12 ordinary prudence would have done under similar
13 circumstances.

14 Again, I remind you, to recover punitive damages,
15 the plaintiff must prove by clear and convincing
16 evidence that the defendant's actions were willful,
17 wanton, or reckless. And the words, "reckless,
18 willfulness, and wantonness" are synonymous. The
19 terms are used to describe the conscious failure to
20 exercise and observe reasonable or due care.

21 Again, so you understand, recklessness is
22 distinguished from negligence. It's different.
23 Again, negligence is failure by omission or commission
24 to exercise due care as a person of ordinary reason
25 and prudence would exercise in the same circumstances.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 Recklessness is a higher degree of culpability
2 and responsibility. Recklessness signifies a
3 conscious failure to exercise due care. Recklessness
4 is a conscious indifference to the rights of a
5 plaintiff or a reckless disregard of the rights of a
6 plaintiff. Recklessness is an awareness of the
7 wrongful conduct and a continuation to act regardless
8 of consequences.

9 Ladies and gentlemen, before you can consider
10 punitive damages, you must first find the plaintiff
11 entitled to actual damages in this case. There must
12 be an award of actual damages for a verdict of
13 punitive damages to be considered and supported. This
14 rule is premised on the fact that liability must be
15 established before plaintiff can receive punitive
16 damages.

17 Therefore, I remind you, Madam Foreperson, if you
18 do not award actual damages in this case to the
19 plaintiff, you cannot consider an award of punitive
20 damages.

21 Now, there is no formula or standard that can be
22 used as a measure for assessing punitive damages.
23 However, factors relevant to your consideration of
24 punitive damages are: The character of the
25 defendant's acts; the nature and extent of the harm to

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 the plaintiff which the defendant caused or intended
2 to cause; the defendant's degree of culpability; the
3 punishment that should be imposed; the duration of the
4 conduct; the defendant's awareness or concealment; the
5 existence of similar past conduct; likelihood the
6 award will deter the defendant or others from like
7 conduct; whether the award is reasonably related to
8 the harm likely to result from such conduct; and the
9 defendant's wealth or ability to pay.

10 The financial condition of a defendant is a
11 factor you should consider in awarding punitive
12 damages. However, there is no requirement that the
13 defendant be a person of means before you are
14 justified in awarding punitive damages. And while the
15 wealth of the defendant is a relevant factor in
16 assessing punitive damages, it is not necessarily
17 controlling.

18 Now, the fact that a person is more susceptible
19 to injury or death because of pre-existing conditions
20 or weakness does not serve to excuse an otherwise
21 negligent defendant who has caused the injury or
22 allowed an injury to happen when there is a duty to
23 prevent it.

24 A negligent defendant takes a plaintiff as he
25 finds her, whether plaintiff be in perfect health, in

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 poor health, or somewhere in between. An injured
2 person is entitled to recover all damages caused by
3 the defendant's negligence. When a plaintiff's
4 pre-existing physical condition is aggravated or
5 activated by a subsequent act, the defendant is liable
6 to the extent that their wrongful act proximately and
7 naturally aggravated or activated the plaintiff's
8 pre-existing condition.

9 The plaintiff can recover her pre-existing
10 injuries only to the extent they were aggravated by
11 the defendant's actions. Any portion of the injury
12 which was not caused by an act or omission on the part
13 of the defendant is not compensable. You can award
14 damages for any aggravation of a pre-existing
15 condition, but not for the original condition or
16 injury itself.

17 If you find that a plaintiff received an injury
18 as a result of the negligence of the defendant, so
19 that they are entitled to recover for that injury, the
20 fact that a plaintiff had a pre-existing injury or
21 defect would not defeat their recovery.

22 It is the law of this state that when someone
23 negligently inflicts a personal injury on another,
24 they are responsible for all ill effects which,
25 considering the condition of health in which the

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 plaintiff was in when they received the injury
2 naturally and necessarily follows that injury.

3 Therefore, a defendant's liability is in no way
4 lessened or affected by reason of the fact that the
5 injury was not the resultant had the plaintiff been in
6 good health or that they were aggravated and rendered
7 more difficult to cure by reason of the fact that they
8 were not in good health.

9 In other words, ladies and gentlemen, if the
10 presence of a pre-existing illness or physical
11 condition aggravated or prolonged the injury, and
12 correspondingly increases the damages, such increased
13 or added damages may be recovered.

14 Madam Foreperson, members of the jury, as you
15 retire to begin your deliberations in this case, let's
16 just spread the hope that each of you are mindful of
17 the importance of your job here today. You're not
18 called upon very often to serve as jurors very often
19 and the proper performance of that duty requires that
20 each of you reach the height of freeing your minds of
21 all improper influences.

22 In fact, do not think I tried to intimate to you
23 how I think you should decide this case. As I've
24 already told you, under the laws of this state, you,
25 the jury, are the sole judge of all questions of fact.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 And it would be highly improper for me to influence
2 you in your performance of that duty.

3 Further, ladies and gentlemen, I am vitally
4 concerned that every verdict you reach will be the
5 result of you going back into that jury room and
6 confining your consideration and deliberation to the
7 evidence and the law that you've heard here in this
8 courtroom, weighing it fairly and impartially. I have
9 every confidence you will.

10 Ladies and gentlemen, everyone is entitled to
11 justice in this case, both the plaintiff and the
12 defendant. You owe no support or sympathy to anyone.
13 The Court is of the firm opinion that whatever verdict
14 you reach will represent truth and justice for all
15 parties concerned.

16 Now, Madam Foreperson, I remind you, your verdict
17 must be unanimous. It must be the verdict of all 12
18 jurors. And to that end, my law clerk has prepared a
19 verdict form. It simply has the case caption on it.
20 It says, "Therese Hood, plaintiff versus Antoine
21 Johnson, defendant." And it just simply says
22 "Verdict."

23 The first question is, "Was the defendant,
24 Antoine Johnson, negligent, and that such negligence
25 proximately caused the plaintiff's injuries?"

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 And the answer is either yes or no.

2 If you answer yes, you may go on to answer
3 Question No. 2. If your answer is no, you stop and
4 deliberate no further. You have found for the
5 defendant.

6 If it was yes, and you go on to Question No. 2,
7 you answer, "Was the plaintiff, Therese Hood,
8 negligent, and that such negligence proximately caused
9 her injuries?"

10 And, again, the answer is either yes, if it's
11 yes, go to Question No. 3, or if it's no, you go
12 straight to Question No. 4.

13 Again, if you answer yes, it then asks you, "If
14 your answers to both Questions 1 and Question No. 2
15 are yes, then answer this question."

16 It says, "Using the combined negligence that
17 proximately caused the plaintiff's injuries as 100
18 percent, what percentage of that negligence is
19 attributable to defendant Johnson, and what percentage
20 is attributable to plaintiff Hood?"

21 Now, I remind you, percentages must add up to 100
22 percent. All right?

23 Now, please understand, if the plaintiff Hood's
24 percentage of the combined negligence is more than 50
25 percent, you are to stop and deliberate no further.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 That means you would not find for the plaintiff in
2 this case, and you wouldn't even consider any damages.

3 Ladies and gentlemen, if plaintiff Hood's
4 percentage of the combined negligence is 50 percent or
5 less, all the way to zero, you would go to question
6 No. 4. Okay? And that question says, "Please state
7 the total amount of damages sustained by plaintiff
8 Therese Hood."

9 Now, do not reduce for damages based on the
10 percentage of negligence by any party. You are to
11 award the considered actual damages for her and award
12 them for her. You are to award her her total amount
13 of damages. At the very end, I will reduce the amount
14 of damages that would be appropriate for her based on
15 the percentages. You are to only consider the full
16 amount of damages in this case that you feel were
17 proximately caused by the defendant. Do you
18 understand that?

19 JURORS: Yes.

20 THE COURT: Now, that leaves the two lines
21 under No. 4. The first is for actual damages.
22 As I reminded you before, those are for the
23 medical bills and expenses. They're for pain
24 and suffering, they're for mental anguish.
25 They're for permanent impairment and permanent

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 disfigurement.

2 Ladies and gentlemen, those, again, are actual
3 damages. And you would put the dollar amount for
4 those actual damages, and I remind you that they must
5 be proven by a preponderance of the evidence, which
6 just means more likely than not.

7 You then may consider punitive damages, although
8 you are not required to award them. I remind you
9 again that you can only award punitive damages if you
10 have first awarded Ms. Hood actual damages. And I
11 remind you yet again that punitive damages have to be
12 proven by even a higher standard. It's what we call
13 clear and convincing evidence. Okay?

14 So you would not award a punitive damages amount
15 until and unless you actually awarded actual damages
16 to Ms. Hood, and then only if you found punitive
17 damages are appropriate in this case, given the
18 factors that I discussed with you earlier.

19 And I remind you again, they're meant to punish,
20 they're not meant to compensate. All right?

21 After that, Madam Foreperson, there is a line for
22 your name, you would sign this when you've reached a
23 verdict, a unanimous verdict, and date this. And then
24 you will knock on your jury room door. At that point,
25 we can expect you back into this courtroom to take

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 your verdict.

2 Madam Foreperson and members of the jury, I am
3 going to ask you for the very last time that you go
4 back to your jury room and not begin discussing this
5 case. If there's something further on the law that
6 the lawyers want me to charge you, I'm going to bring
7 you back out and I'm going to charge you further on
8 the law.

9 Then you're on, Madam Foreperson. What I'm going
10 to do is send this verdict form and the evidence that
11 was entered into this case back into the jury room,
12 and that's going to be your signal to begin your
13 deliberations. And I remind you, you are to get
14 everybody discussing and talking in this case, all 12
15 of you. All right?

16 JURY FOREPERSON: Your Honor, do we get
17 any paper to write notes or anything like that?

18 THE COURT: Whatever you need, simply ask
19 the bailiff and she will give it to you.
20 Whatever you need. All right?

21 Again, do not begin discussing the case until
22 you've received the verdict form. I may need to bring
23 you back out here and charge you further. But, again,
24 if not, you'll get the evidence and that will be your
25 queue to start. Okay? Thank you.

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 (The jury exits the courtroom at 4:30 p.m.)

2 THE COURT: All right. Yeah, you may be
3 seated.

4 Any exceptions or due diligence additions from
5 the plaintiff?

6 MR. WILLEY: Briefly, Your Honor. We
7 obviously would take exception to the previous
8 charges that we submitted not being included,
9 just for preservation.

10 THE COURT: And we made those Court's
11 exhibits, and they will have them.

12 MR. WILLEY: Yes. And in addition to
13 that, I do think it's now an appropriate time
14 to charge the jury -- you ruled pretrial that
15 the Defense would not be able to argue that the
16 defendant would have to pay a verdict. And, of
17 course, we did not get to see your charge prior
18 to you reading it, but you did say three times
19 in your charge that the defendant would
20 compensate her.

21 And in this case, the defendant will not
22 compensate her. And so it's actually a misreading of
23 what will happen. Her own insurance carrier, USAA, or
24 UIM, will be the one compensating her. The defendant
25 has a covenant not to execute. So, in no way, will he

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1 be responsible for any amount at any time. And so, we
 2 would ask for a curative instruction to the jury that
 3 he will not be responsible for paying the amount of
 4 actual damages in this case.

5 THE COURT: Respectfully, I'm going to
 6 deny that motion. It's not appropriate.

7 MR. WILLEY: And the final thing is, just
 8 once again, take exception to the verdict form,
 9 as we believe the Court should have directed
 10 liability against the defendant and directed
 11 comparative negligence in favor of the
 12 plaintiff.

13 THE COURT: Thank you.

14 MR. WILLEY: And denied, right?

15 THE COURT: Denied, yes.

16 Any exception or additions?

17 MR. DANIEL: No exceptions or additions,
 18 Your Honor.

19 THE COURT: Okay. Y'all, let's make sure
 20 we have the evidence. My Rule 403 people, and
 21 Mr. Clevinger come on up as well. I'd like to
 22 speak with you for just a minute.

23 (Whereupon, the trial was concluded.)
 24
 25

FURTHER CLOSING ARGUMENT BY PLAINTIFF

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
 7 authorized to and did stenographically report the foregoing
 8 proceedings and that the transcript is a true and complete
 9 record of my stenographic notes.

10 DATED this 15th day of January, 2018.

11

12

13 *Mona L. Manley* /s/

14 MONA L. MANLEY

15 Official South Carolina Court Reporter

16 Circuit Reporter for the 14th Circuit

17 (850) 893-6662

18 mmanley@sccourts.org

19

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1 IN THE STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON IN THE
3 COURT OF COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

4 CASE NO: 2018-CP-10-0666

5 THERESE HOOD,

6 Plaintiff,

7 vs.

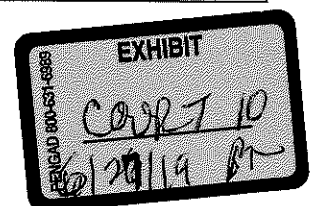
8 UNITED SERVICES AUTOMOBILE
9 ASSOCIATION (USAA),

10 Defendant.
11 _____ /

12 DEPOSITION OF:

13 GAIL MARIE (MISSY) HOWARD

14 Examination of a Witness, beginning
15 at 1:00 P.M. and concluding at 5:30 P.M.
16 on Thursday, March 21, 2019, taken by the
17 Plaintiff at Nelson, Mullins; 100 N. Tampa
18 Street, Suite 3500; Tampa, Florida, before
19 Roberta Turner, RPR, FPR, CLR, CCR (GA),
20 Certified Court Reporter.
21
22
23
24
25



1 APPEARANCES:

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5 On behalf of the Plaintiff;

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9 Charleston, South Carolina 29401

10 On behalf of the Defendant.
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I N D E X

WITNESS

GAIL MARIE (MISSY) HOWARD

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PLAINTIFF'S EXHIBITS MARKED

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1 THE WITNESS: Yes, I do.

2 GAIL MARIE (MISSY) HOWARD

3 called as a witness having been first duly
4 sworn, was examined and deposed as follows:

5 DIRECT EXAMINATION

6 BY MR. WILLEY, IV:

7 Q Okay. So, Ms. Howard, your name is
8 Gail Howard, correct?

9 A Yes, sir.

10 Q You go my Missy?

11 A Yes.

12 Q Would it be okay if I call you Missy?

13 A It's perfect.

14 Q Okay. Have you had your deposition taken
15 before?

16 A No.

17 Q First time?

18 A Yes.

19 Q Okay. So let me go over some ground
20 rules, okay.

21 This is not an endurance contest. This is
22 not a, like you see on *Suits* or something on TV
23 where, you know, I'm trying to beat you up or trick
24 you into saying something. If you need a break at
25 any time just say so, okay. We'll take breaks

1 whenever you need it, however long you need.

2 If you don't understand my question, ask
3 me to rephrase it. Because if you do answer it,
4 we're going to assume that you understood it, okay?

5 A Okay. Yes, sir.

6 Q And that's the other thing. Obviously,
7 she's taking down everything that we're saying into
8 a written record. So as we go through today, if
9 you will just say yes or no, you can always explain
10 your answer, but just give an audible response, all
11 right?

12 A Yes.

13 Q If at any point we do take a break, now
14 that the deposition has started, you're not allowed
15 to discuss your testimony with Mr. Whelan. And if
16 you have any questions about your testimony, you
17 should direct those to me, okay?

18 A Yes.

19 Q All right.

20 MR. WILLEY, IV: Did I miss anything,
21 Rob? Anything else? Did I miss anything?

22 MR. WHELAN: I don't understand your
23 question.

24 MR. WILLEY, IV: Okay. All right.
25 So anything I should be aware of since she

1 hasn't taken her deposition before?

2 MR. WHELAN: You ask her whatever
3 questions you want to.

4 MR. WILLEY, IV: Okay. All right.
5 Very good.

6 BY MR. WILLEY, IV:

7 Q You understand why we're here today,
8 Ms. Howard?

9 A Yes.

10 Q Okay. And you understand generally what
11 this case is about?

12 A Yes.

13 THE COURT REPORTER: Since this is a
14 South Carolina case, any stipulations you
15 want to put on the record?

16 MR. WHELAN: We just follow the South
17 Carolina Rules of Civil Procedure.

18 MR. WILLEY, IV: Right. We follow
19 South Carolina Rules of Civil Procedure.

20 I will put on the record that we have
21 agreed that for the depositions this week,
22 we're just going to mark one set of
23 exhibits. So we'll share those when we
24 get to them.

25

1 BY MR. WILLEY, IV:

2 Q What is your understanding of what this
3 case is about?

4 MR. WHELAN: Object to the form.

5 You can answer.

6 Q And let me say that too, before, and you
7 can think about it.

8 During the course of the deposition, he
9 may make objections to some of the things that I
10 ask. And, basically, it's an objection to the
11 form. And, so what he's saying is he doesn't like
12 the way I asked the question, or he thinks the form
13 of my question is improper.

14 But you will still go ahead and answer
15 that. He's just preserving that for the record so
16 that when we get later into a court case, that
17 objection shows up on the record for the judge,
18 okay?

19 A Okay, yes.

20 Q All right. And, again, I'm not trying to
21 trick you with anything. So if you don't
22 understand my question, you ask me to rephrase it
23 and I will be glad to do so. So let me ask it
24 again.

25 What do you understand this lawsuit to be

1 **about?**

2 A I'm not sure exactly, a hundred percent
3 sure. I didn't handle that much of the file. And
4 certainly I didn't handle it, really, I didn't
5 handle any of this claim. So there were some
6 issues with coming to a resolution of the
7 underinsured motorist claim, is just what I
8 understand.

9 Q Okay. And how did you come to that
10 understanding? How do you know what you know about
11 this particular lawsuit?

12 A Just meeting with USAA attorney.

13 Q Okay. With Mr. Whelan?

14 A Yes.

15 Q Okay. Have you ever been provided any
16 documents or any e-mails about this lawsuit in
17 advance of today?

18 MR. WHELAN: You talking about
19 outside of meeting with me?

20 MR. WILLEY, IV: Just been provided
21 with documents.

22 A That I have in my possession?

23 Q No. Just at some point prior to today,
24 have you been provided with any documents
25 concerning this lawsuit?

1 A To look at?

2 Q To look at, to read, to take home.

3 A Yes.

4 Q Okay. And when were you provided with
5 those documents?

6 A Yesterday and Tuesday.

7 Q Okay. So Tuesday and Wednesday of this
8 week?

9 A Yes.

10 Q All right. How were you provided those
11 documents?

12 A I was shown those documents.

13 Q Okay. In an in-person meeting?

14 A Yes.

15 Q Okay. Was that meeting with Mr. Whelan?

16 A Yes.

17 Q Okay. How long did those meetings last?

18 A Couple of hours; two hours each day,
19 maybe.

20 Q During those meetings, did you review
21 anything other than documents?

22 A No.

23 Q Have you had the opportunity at any point
24 to review the claims file in the underlying case
25 that's the subject of this lawsuit?

1 MR. WHELAN: You talking about the
2 U.I.M. file?

3 MR. WILLEY, IV: Right.

4 A Have I reviewed the U.I.M. file?

5 Q Right.

6 A I only, I've looked or been in it when I
7 initially set it up.

8 Q Okay. When you met with Mr. Whelan on
9 Tuesday and Wednesday of this week, was anyone else
10 present?

11 A In the room?

12 Q Yes.

13 A No, sir.

14 Q Okay. Was there anyone on the phone or
15 video conference?

16 A No, sir.

17 Q Okay. Have you met with anyone, other
18 than Mr. Whelan about this lawsuit?

19 A No, sir.

20 Q Have you ever been involved in a meeting
21 at USAA about this lawsuit?

22 A Other than with Robbie?

23 Q Other than with Robbie, right.

24 A No.

25 Q Okay. Have you ever been in a meeting

1 with Robbie where anyone else was present or
2 participating via phone or video conference?

3 A No.

4 Q How long have you been at USAA?

5 A Two years October of -- This past October
6 was twenty years.

7 Q Okay. All right. Do you agree with the
8 general statement that USAA should not take factual
9 liability positions solely to protect its money?

10 MR. WHELAN: Object to the form.

11 A I don't really understand the question.

12 Q All right. Let me back up, let me back
13 up.

14 Do you agree that the purpose of civil
15 litigation is a search for the truth of what
16 actually happened?

17 MR. WHELAN: Object to the form.

18 A I'm not sure that I'm qualified to answer
19 that. I don't -- I'm not an attorney, so.

20 Q Okay. You spent twenty years at USAA --

21 A Uh-huh.

22 THE COURT REPORTER: Yes?

23 A Yes. Yes, ma'am. I'm sorry.

24 Q I'll try to be better about reminding you.
25 I know in the course of conversation it's not

1 natural to always have to give an audible response.

2 -- handling civil litigation claims,
3 right?

4 A Yes.

5 Q Okay. And --

6 A Well --

7 Q Go ahead.

8 A Let me rephrase. Let me go back to that.

9 Q Sure.

10 A My claims are presuit.

11 Q Right.

12 A So I handle presuit --

13 Q You handle --

14 A -- claims.

15 Q You handle presuit claims that are part of
16 the civil process, right?

17 MR. WHELAN: Object to the form.

18 Make sure that he finishes his
19 question before you answer.

20 I object to that question.

21 Q You handle insurance claims prior to a
22 lawsuit actually being filed, correct?

23 A Yes, sir.

24 Q Okay. Have you ever handled or
25 participated in claims after a lawsuit was filed,

1 **in your career?**

2 A Yes. If I can explain the reason.

3 **Q Yeah, of course.**

4 A That would be that there was not going to
5 actually -- Maybe there was a statute running and
6 that they filed just to protect that. And we were
7 just to -- So that was just a technicality, I
8 guess. So, really, and therefore, I was just
9 continuing up my normal negotiations ongoing with
10 that. That would be the only reason.

11 **Q All right. Does USAA provide training?**
12 **Did you get training about how to handle insurance,**
13 **automobile insurance claims?**

14 A When I first started working at USAA?

15 **Q Yes.**

16 A Yes, sir, I did.

17 **Q Okay. And have you had subsequent**
18 **training in the years that followed, or did you**
19 **just get one dose, and that's it?**

20 A No. We -- Yes. We have additional
21 training, ongoing training.

22 **Q Does part of that training include that in**
23 **the adjustment of automobile insurance claims, you**
24 **should try to find out what actually occurred?**

25 A Yes. That's the investigation piece of

1 it, the claim.

2 Q And in the investigation piece of a claim
3 at USAA, is the purpose supposed to be to find out
4 the truth about what happened, or is the purpose
5 supposed to be to come up with a theory, a factual
6 theory that helps protect the insurance company's
7 money?

8 A The purpose of the investigation is to
9 determine the best we can what actually happened
10 with the evidence provided or obtained in that
11 investigation.

12 Q So would you agree with me that it would
13 be against USAA's policy for an insurance adjuster
14 or a claims' handler to attempt to create or twist
15 the facts in order to create a version other than
16 the truth in their investigation of underwriting?

17 A Just to clarify what you're asking.

18 Is it against USAA's practice to create
19 our own, create facts or come up with facts on our
20 own?

21 Q Right.

22 A Yes. We don't do that. That's not --
23 USAA does not do that.

24 Q Right. So would you agree with me then
25 that it would be against USAA's policy for

1 individuals at its company to take different
2 factual positions related to the same wreck in
3 order to protect its money?

4 MR. WHELAN: Objection.

5 A Well, I wouldn't agree with what you're
6 saying, is that it has -- During our investigation
7 it doesn't have anything to do with protecting
8 USAA's money. We have to look at the facts for
9 each case on a case-by-case basis for what we're
10 provided and what we're given.

11 And when looking at that, what we can
12 successfully, or what we can prove based on the
13 information provided at that time.

14 Q Right. And I think we're in agreement.

15 USAA's purpose is to protect its insureds,
16 right?

17 A Yes.

18 MR. WHELAN: Object to form.

19 A Yeah, yes.

20 Q That's what you're trained at USAA, that
21 your job as a claims handler is to protect the
22 insured?

23 A That is part of our, that is part of what
24 we mean -- That's part of what we do as an
25 adjuster.

1 **Q Right. And you agree with me that if USAA**
2 **took two different factual positions related to the**
3 **same wreck in order to protect its money, that**
4 **would be against USAA's policy, right?**

5 A I don't agree with that, what you're
6 saying.

7 **Q Okay.**

8 A 'Cause I don't believe that that, the
9 protecting USAA's money, that's not what, that's
10 not what's coming into play. We're looking at each
11 accident and each circumstance as it is and
12 handling each claim.

13 If you want to give me a more specific
14 case, then I can answer that maybe a little better.
15 But we have to handle each claim on a case-by-case
16 basis, and the facts that we're looking at at that
17 time.

18 **Q All right. And sometimes multiple**
19 **adjusters at USAA investigate the same wreck,**
20 **right?**

21 A That can happen, yes.

22 **Q Okay. And in any given wreck there can**
23 **only be one set of true facts; would you agree with**
24 **that?**

25 MR. WHELAN: Object to form.

1 A Obviously, there are only one set of true
2 facts. If you're able to obtain those, the true
3 facts, yes.

4 Q All right. I mean, in any given car wreck
5 it only happened one way, right? Whether or not
6 you can obtain the facts, it only happened one way?

7 A That is correct. If you can obtain that
8 information.

9 Q Right. So it would be impossible then,
10 would you agree with me, for there to be two sets
11 of different facts representing the truth that
12 arise out of the same wreck?

13 MR. WHELAN: Object to the form.

14 Q In other words -- Let me try to make it
15 clear.

16 If I investigate a wreck and I say the
17 person ran a stop sign, and the adjuster next to me
18 investigates the wreck and says the person didn't
19 run the stop sign, one of us is wrong, right?

20 A Correct. But, again, it's going to be a
21 case-by-case basis, based on what information each
22 person has.

23 Q I agree, I agree. There is no
24 disagreement here about that.

25 But either I made a mistake in my

1 investigation in determining that the individual
2 ran the stop sign, or adjuster-B made a mistake in
3 their investigation in determining that the
4 individual did not run the stop sign, right?

5 A Not necessarily.

6 Q All right. Explain.

7 A Maybe one of the other of the two
8 adjusters had additional information that the other
9 one didn't have.

10 Q Okay.

11 A That, you know, led to the one decision
12 versus the other decision.

13 Q All right. If they both had identical
14 information, would you agree that one of them would
15 have had to have made a mistake in analyzing the
16 information?

17 A Would I agree that they made a mistake.
18 Not necessarily. But is it a possibility;
19 certainly.

20 Q What are the different ways, in your mind,
21 that the wrong adjuster, the adjuster whose
22 investigation led to the wrong conclusion could
23 have arrived there, if they didn't make a mistake?

24 MR. WHELAN: Object to the form.

25 A Again, I will go to say that, you know, I

1 handle and have handled a lot of claims, in my
2 experience with, you know, over the twenty years of
3 time. And with each case, everyone is different
4 and everything you have to look at is different.
5 So it makes it hard to make an assumption of what
6 somebody might or might not have done incorrectly,
7 based on given the information that they were
8 given.

9 Do you have anything specific that you
10 can --

11 **Q No. I'm just trying to figure out from**
12 **you how you would explain two adjusters having the**
13 **same set of facts arriving at different factual**
14 **conclusions without one making a mistake.**

15 MR. WHELAN: Asked and answered.

16 A Again, there's just so many factors that
17 go into investigating and things that you have to
18 consider and look at.

19 **Q How many claims do you oversee at any**
20 **given time? Right now how many claims are you**
21 **handling?**

22 A My current pending right now is
23 approximately a hundred and twenty.

24 **Q Okay. And is that, is that average for**
25 **you?**

1 A Yes, sir.

2 Q Okay. Is that average for other claims'
3 handlers of your experience at USAA?

4 A I would say about in that range, yes,
5 uh-huh.

6 Q They all auto claims?

7 A The majority are auto, but I also handle
8 homeowner liability.

9 Q Okay. How many of those would you say you
10 have of the hundred twenty?

11 A I would be guessing. Maybe a quarter of
12 that.

13 Q Okay. And is that pretty typical, you
14 know, usually about three-quarters auto?

15 A Yes.

16 Q Do you always handle the liability and
17 auto claims, or do you sometimes handle other
18 coverages?

19 A Just because I'm not sure exactly which
20 coverages, I'll just let you know what I do handle.

21 Q Perfect.

22 A Comp, collision.

23 Q Sorry. What was the first one?

24 A Comprehensive.

25 Q Okay.

1 A That, you know, sometimes that does come
2 into play; B.I., P.D., U.M.

3 Our first-party coverage, which we refer
4 to like PIP or med pay. We have those specific
5 department for that.

6 Q Okay. And you said U.M., which here does
7 that --

8 A U.I.M.

9 Q U.I.M.

10 A U.M. or U.I.M. I handle both those. I
11 apologize.

12 Q Okay. Sometimes when you go to different
13 states, they look like --

14 A So that's because --

15 Q -- three heads.

16 A Yes.

17 Q Okay. At USAA, what is the, what is the
18 structure? Who do you report to?

19 A I have a direct manager.

20 Q Okay. Who is that person?

21 A Currently her name is Lisa Mitchell.

22 Q All right. How long has she been your
23 manager?

24 A I would say approximately two years, at
25 the most.

1 Q Okay.

2 A Maybe not that long.

3 Q Who was your manager before her?

4 A Alisa Sumner.

5 Q Okay. And do you know --

6 What's your actual title now?

7 A Examiner.

8 Q Examiner?

9 A Uh-huh.

10 Q I know I was messing that up.

11 How many examiners does Lisa manage?

12 A Currently I think she has, I think there

13 are seven of us.

14 Q Okay. And is that pretty average, the

15 examiner team is generally groups of five, seven,

16 eight, in that range?

17 A Yes. I think between seven and eight.

18 That's -- Yes, examiner teams.

19 Q Who does Lisa report to?

20 A Crystal McDaniel.

21 Q What's her -- What is Crystal's title?

22 A Director.

23 Q All right. And do you know how long she's

24 been director?

25 A Fifteen plus years --

1 Q Okay.

2 A -- she's been director for.

3 Q What do we call a group of managers and
4 examiners, like that team?

5 A M.S.T., Member Service Team.

6 Q Do you know how many Member Service Teams
7 Crystal has responsibility for?

8 A I do not.

9 Q Okay. Is Crystal in your office?

10 A She is.

11 Q Who does Crystal report to?

12 A It just changed. His name --

13 Q Who was the last person, if you know?

14 A His name is Matt, Matt Smith I believe his
15 name is.

16 Q Who was before Matt? You said it just
17 changed.

18 A Carol Witherow, W-I-T-H-E-R-O-W.

19 Q What is Matt's title?

20 A Executive director.

21 Q Is he in your Office?

22 A No, he's not.

23 Q Is he in Texas? Do you know?

24 A No, no. He's not.

25 Q Okay.

1 A Maybe Colorado.

2 Q Okay. How many directors are in the Tampa
3 office?

4 A Claims' directors?

5 Q Claims directors.

6 A I -- injury claims between the two
7 buildings, I'm going to say possibly four to five,
8 but.

9 Q That's an estimate. We're not going to
10 hold you to it.

11 Have you ever worked on Member Service
12 Teams under any of those directors?

13 A No.

14 Q Okay. So your director, prior to Crystal,
15 left the company or moved on or something?

16 A Crystal has always been my director for
17 many years.

18 Q Right.

19 A And I think when I first got into,
20 promoted to injury, which was a long, long time
21 ago, it wasn't initially her, but --

22 Q Okay.

23 A But, again, that was --

24 Q Pretty quickly thereafter?

25 A Correct.

1 **Q Okay. Where did you start at the company?**
2 **What was your first position?**

3 **A It was called a customer account**
4 **professional cap, entry level.**

5 **Q Okay. Where did you go from there?**

6 **A To not handling non-injury claims.**

7 **Q What's the -- Can you give me an example**
8 **of a non-injury claim.**

9 **A Okay. So a entry-level claim would be**
10 **no -- one vehicle. You're not really having to**
11 **make too much of a liability decision when you have**
12 **two vehicles. No property damage, really,**
13 **exposure.**

14 **Q Right.**

15 **A Just comp loss of a collision loss.**

16 **Q Okay.**

17 **A So when you get to the non-injury level,**
18 **it's, for the most part, it would -- it could be a**
19 **one vehicle as well, occasionally. But you're**
20 **looking at two vehicle accidents where you're**
21 **having to do an investigation, but there's no**
22 **injuries related. But you're investigating and**
23 **you're handling property damage along with the**
24 **collision piece.**

25 **Q Okay. Then from there you went to your**

1 **current position?**

2 A From there I went to injury, which was
3 just minimal soft-tissue type injuries.

4 **Q Okay.**

5 A And then --

6 **Q That's not all of them? I'm kidding.**

7 A No.

8 MR. WHELAN: In some perhaps it is.

9 A Then from there, eventually, I went to --
10 it got to examiner, which is where I am now
11 handling severe injuries.

12 **Q Okay. How is at USAA, how is a severe**
13 **injury claim? How does it meet that cap, or that**
14 **threshold?**

15 A What is considered a severe injury?

16 **Q Right. What's the difference between soft**
17 **tissue and severe, according to USAA?**

18 A We look at it --

19 MR. WHELAN: Object to the form.

20 Go ahead. I'm sorry.

21 A We look at it as with -- Examiners handle
22 surgery cases, death cases, severe scarring,
23 paraquadruplegic, so something with that type of
24 severity.

25 **Q Does it have a, like, a medical special**

1 **dollar amount affixed to it, or is it more**
2 **subjective?**

3 A It's based on the injury itself.

4 Q **Okay. Who decides that, decides how to**
5 **classify or assign a claim?**

6 A The -- it could be the person taking the
7 claim who -- if somebody's calling in and saying,
8 either I'm the one hurt and this is the, this is
9 the severity of my injury, or I've had surgery or
10 this is what's happened. Or, this is something
11 happened; I know, I'm aware this has happened to
12 someone else, so they would know it right away.
13 Or, potentially, you know, it changes down the
14 road.

15 So you may -- It could be through life of
16 the claimant. It may get transferred once.
17 Additional information is known, or becomes a more
18 severe injury case at that time, later on down the
19 road.

20 Q **Okay. And when someone just calls in to**
21 **make a claim, who -- where does that call go? I**
22 **mean, I assume, for example, you don't take all**
23 **those calls, right?**

24 A No. So they, when they call in, there is,
25 like, it kind of -- it asked you, it prompts you

1 to, hey, what is your, what type of -- does it
2 involve an injury, the severity. And so sometimes
3 it can be routed to us just like that, and we may
4 pick the call up based on that, what's being told.

5 **Q Automated?**

6 A Correct. And sometimes it can be, if it's
7 overnight or something, later hours, we have a
8 company -- or within USAA that's kind of our
9 reporting unit that may take it in and just assign
10 it, based on what they're being told.

11 **Q Okay.**

12 A Now, it could be that they go to the
13 automated system, the person puts in the wrong
14 information and they -- it gets taken. And it just
15 gets assigned correctly, based on the person that's
16 keying it in, because they find out, oh, it's worse
17 than we thought that we have here. So multiple
18 different ways.

19 **Q If a claim ends up being -- comes to you,**
20 **for example, and you say this is not a severe**
21 **claim, how does it get kicked back down?**

22 A That doesn't.

23 **Q It doesn't. Do you --**

24 A I would just keep it.

25 **Q Okay.**

1 A For customer service.

2 Q Okay. That's good.

3 The lower -- What's under examiner again?

4 A It's Adjuster-I is under.

5 Q Adjuster-I.

6 Okay. So for Adjuster-I, if they get a
7 claim and then they say, no, this is a, this is
8 more severe than was reported, how do they kick it
9 up?

10 A Depending on when they find it out. They
11 can go through their manager or they can just
12 transfer it themselves.

13 Q Just by changing it in the system?

14 A We have -- There's a way that you can, say
15 reassign claim, reassign claim. And it prompts you
16 to examiner.

17 Q All right. Are you able to see on the
18 software all of the claims in your Management
19 Service Team?

20 A I am not, no.

21 Q Okay. Are you only able to see claims
22 that are officially assigned to you, or are you
23 able to see claims in addition to that?

24 A Let me -- Can you clarify. Do you mean
25 like what's, what I'm currently handling, am I the

1 only one that can see what I'm currently handling?
2 Is that what you mean?

3 Q No, no. Are you able to see claims in
4 addition to what you're currently handling, is what
5 I'm asking?

6 A If I was to -- If I needed to go into
7 someone else's pending?

8 Q Right.

9 A Then, yes, I can. But I would have to go
10 in, literally, go into that. So --

11 Q Right.

12 A -- I think I might have misunderstood your
13 previous question.

14 Q No. I think we're on the same page.

15 A Because I had said before that I couldn't
16 see, so maybe --

17 Q No. And I'm not trying to trick you.

18 A Okay.

19 Q I mean, I understand -- Correct me if I'm
20 wrong.

21 When you sit down, you call up your
22 computer, you call up the software. What you
23 initially have on there are just your claims --

24 A Correct.

25 Q -- correct?

1 A Yes.

2 Q But you are able to, through the software,
3 go and see someone else's pending claims?

4 A If I change the information, yes.

5 Q Yes. And when you say change the
6 information, you just mean there's a way, I assume,
7 to change it from seeing your pending to seeing
8 John Smith's pending?

9 A Correct.

10 Q Okay. And is that a company-wide process?
11 In other words, you can see pending claims that are
12 not part of your M.S.T., if you change the
13 information?

14 MR. WHELAN: Object to form.

15 A I would assume, yes.

16 Q Okay. Not something you do --

17 MR. WHELAN: I'm sorry.

18 When he interrupts her, are you
19 getting the little dash?

20 THE COURT REPORTER: Yes. If I
21 don't, trust me, I will speak up.

22 MR. WHELAN: No --

23 THE COURT REPORTER: But I know what
24 you're saying. Yes. I'm dashing off when
25 she's cutting him off, the same way when

1 he's cutting her off.

2 MR. WHELAN: Okay. Thank you.

3 MR. WILLEY, IV: I'm not trying to do
4 that. Sorry.

5 THE COURT REPORTER: If it's to the
6 point I can't get it, I will let them
7 know.

8 MR. WHELAN: Yeah. I mean, I just
9 want to make -- So she's not done with her
10 answer and then he asks a question, I just
11 want to make sure that's noted.

12 Thank you.

13 MR. WILLEY, IV: He's just trying to
14 make a good record. I'm bad at that,
15 'cause I feel like you've answered and
16 then still want to say something.

17 BY MR. WILLEY, IV:

18 Q So if I do cut you off and you're not
19 done, just say so, okay. I'm not trying to -- It's
20 not a strategy to it where I'm trying to cut you
21 right there in the middle of the sentence to get
22 you to say something that you don't want to say.

23 So my understanding is that's not
24 something you do on a daily basis, correct, go and
25 look at other people's claims?

1 A No.

2 Q Okay. But you're able to?

3 A Yes.

4 Q Okay. Does USAA, to your understanding,
5 have any sort of ethos or code of ethics, you know,
6 that the company asks employees to abide by?

7 MR. WHELAN: Object to form.

8 A Yes.

9 Q Okay. What is that?

10 A Integrity, honesty. I know they're two
11 more. I'm sorry. Those are the ones I can
12 remember.

13 Q That's okay. If they come back to you at
14 some point, just let me know.

15 A Okay.

16 Q And that's, like I said, I'm not trying to
17 trick you. I'm certainly not going to type up the
18 transcript and say, hey, Missy forgot two of these.

19 Where would you find those? You know, and
20 what I'm asking is, like, some companies put them
21 up on the wall, you know. Sometimes they're on a
22 poster in the bathroom or whatever.

23 A They are, I believe, on one of the walls
24 when you first come in the build -- or like on one
25 hallway.

1 Q Okay.

2 A Loyalty I think is one of them.

3 Q Makes sense. Okay.

4 Is there, is there a different training
5 that you go through for moving into an examiner
6 position from an Adjuster-I position?

7 A There was some. It's just been a while.
8 So there was some form, some form of training as
9 some of it was O.J.T., kind of like on-the-job.
10 But there was a little bit of both.

11 Q Okay. Do you remember what, specifically,
12 the additional training consisted of?

13 A It had to do with partially homeowner
14 liability claims, because that's something totally,
15 totally new.

16 Q Right.

17 A And then just the handling of serious
18 injury cases and what you're to do with those when
19 that's recognized.

20 But that's the -- Mainly, I remember so
21 much about the homeowner liability because that was
22 something so new.

23 Q Right. Does the company give you any kind
24 of manual or handbook to outline, you know, how to
25 do investigations, how to go through the adjustment

1 **process, how to value a claim, how to negotiate;**
2 **any of those things?**

3 A No, no.

4 Q So when you get the training, when you got
5 **training, you just -- How did that happen?**

6 A It's, you know, it's been a building --
7 For me, it's been a building process.

8 Q **Right.**

9 A You know, when you start off handling
10 minor claims, you learn that. And then as you --
11 they become more severe, you learn what those
12 values are. It's a learning process.

13 So I don't -- I don't even remember what,
14 maybe, the initial, what my initial -- what I did
15 initially or what, how --

16 Q **Okay.**

17 A -- I learned that initially.

18 Q **All right.**

19 A Obviously, my manager -- That would have
20 been involved with my manager, certainly --

21 Q **Okay.**

22 A -- at the time back then and moving
23 forward even.

24 Q **Okay. Do they give you any kind of like,**
25 **you know, checklist or outline to follow, you know,**

1 **so you don't miss any steps in the process?**

2 A Of investigation?

3 **Q Investigation adjustment. At any time in**
4 **the process, is there any checklist or processes**
5 **outlines; anything like that?**

6 A I'm not aware of that.

7 **Q Okay.**

8 A And I think the job is a building,
9 building block of -- Because the investigation
10 never changes.

11 **Q Right.**

12 A And never has, and not changed since
13 probably the beginning.

14 **Q Okay.**

15 A And everything we just spoke on that, so.
16 You just kind of know and know and know what you
17 know.

18 **Q And, I mean, how -- So how does that start**
19 **initially? Like, does the manager sit with**
20 **somebody for a period of time? I mean, I'm**
21 **assuming USAA doesn't just like, hey, new adjuster,**
22 **here is the phone and a computer; have at it.**

23 A I mean, I don't know so much about the
24 processes now.

25 **Q Okay.**

1 A Just because 'I don't really see them that
2 much --

3 **Q Right.**

4 A -- for what we do.

5 I know that there was -- I don't
6 necessarily know that it's the manager that has the
7 -- They have, whether it's training classes. They
8 have a way that they come in and learn our systems
9 and the processes. And they go through that before
10 they really hit the floor. So I don't understand,
11 because it's very different than when I first
12 started --

13 **Q Okay.**

14 A -- of how we get -- how they get there.

15 **Q All right. Is there an electronic process**
16 **or checklist that you go through in an**
17 **investigation, negotiations of a claim?**

18 A Again, not -- I'm not, no. I'm not aware
19 of any type of checklist; no, huh-uh.

20 **Q All right. Is there any sort of narrative**
21 **process that you can refer to that provides**
22 **educational and investigation or negotiations of**
23 **claims?**

24 MR. WHELAN: Object to form.

25 A I'm not sure exactly. I know what you're,

1 what you -- I guess what you're looking for what we
2 have available to us.

3 **Q Right. That's what I'm asking, just**
4 **what's available.**

5 A I mean, we have -- our computer -- in our
6 computer system we have what's called K.D.,
7 knowledge delivery --

8 **Q Okay.**

9 A -- that if we have questions, you can --
10 they're relating to anything, whether it's policy,
11 things like that, you can go to that and the
12 information is there.

13 **Q It's like a help guide or --**

14 A Correct.

15 **Q Correct.**

16 Okay. And that's actually on your
17 **computer, not in a hard copy?**

18 A Correct.

19 **Q All right. Is there anything else on the**
20 **computer like that that gives any guidance if you**
21 **need it, or is that kind of all encompassing?**

22 A That's all encompassing.

23 **Q Okay. Is there ever -- Have you ever seen**
24 **any kind of best practices circulation -- I will**
25 **give you some examples so you know what I'm talking**

1 about.

2 Some companies, if a particular team comes
3 up with a new best practice for the way they do
4 something, they will circulate that, you know,
5 whether it's through a memo, or once a year they
6 might recognize and implement new policies; things
7 like that.

8 Is there anything at USAA like that, that
9 you're aware of?

10 MR. WHELAN: Object to form.

11 A Not -- I would think that it -- The only
12 thing that I can think of would be the same as in
13 K.D., in the knowledge delivery.

14 Now, if there was some type of changes
15 that were coming for some type of change that was
16 company-wide, then our managers would be
17 communicating that to us, usually. But that's just
18 a verbal communication. And usually we have
19 huddles.

20 Q How often do you all -- That was kind of
21 my next question.

22 How often do you all, as a M.S.T. huddle,
23 you know, get together?

24 A We meet -- We huddle with our managers
25 usually daily.

1 **Q** Okay. What types of things, topics, do
2 you all discuss at the huddle?

3 A That can vary.

4 **Q** Okay.

5 A If -- It could just be what I just
6 mentioned, if there was some type of change that
7 came down. It may just be something quick about,
8 you know, what's, you know, what's going, what's
9 the week look like;, you know, things are going on,
10 like that.

11 And usually it's four days a week, not --
12 It's four a week, not five. And, yeah, just if --
13 it's a case-by-case basis, just --

14 **Q** Do you all regularly discuss specific
15 claims at those huddles?

16 A No.

17 **Q** Okay. Do you ever discuss specific claims
18 at those huddles?

19 A I guess we have. I don't know that it's
20 common practice, but I'm not going to say we
21 haven't; so, yes.

22 **Q** Okay.

23 MR. WHELAN: If you're going to
24 change topics, I need to use the restroom.

25 MR. WILLEY, IV: I'm not, but we can

1 take a break. I assume, whenever. It's
2 not a marathon. Let's break.

3 (Whereupon, a recess was had from
4 2:10 p.m. to 2:17 p.m.)

5 MR. WILLEY, IV: What was my last
6 question?

7 THE COURT REPORTER: You had asked,
8 "Okay. Do you ever discuss specific
9 claims at those huddles?"

10 Her answer: I guess we have. I
11 don't know that it's common practice, but
12 I'm not going to say we haven't; so, yes.

13 BY MR. WILLEY, IV:

14 Q Okay. Do you ever have meetings or
15 huddles with other M.S.T.s, other than your own?

16 A Have I ever?

17 Q Right, yes.

18 A Yes.

19 Q How often?

20 A I haven't had any recently, but I have in
21 the past.

22 Q Okay. For what reasons? Why would that
23 happen?

24 A To meet with -- We don't have examiners in
25 the regular units any longer, because we are --

1 examiners are separated. So it kind of -- The
2 Adjuster-I's, Adjuster-II's lose that piece, you
3 know, ability to, you know, if they have questions
4 or what have you, you know.

5 So I would -- we would, our examiners,
6 maybe would go down to and just offer kind of like
7 a mentoring, like, if you have any questions,
8 something you don't understand; opportunity. So
9 just that, you know.

10 **Q How many examiners are there? Do you**
11 **know?**

12 A Oh, I don't. In our total building?

13 **Q Yeah.**

14 A I mean, I know in my unit, you know --

15 **Q Right.**

16 A -- like I said, but -- Yeah.

17 **Q Okay. When you huddle with other M.S.T.s,**
18 **do you all ever discuss specific claims?**

19 A No, huh-uh.

20 **Q You don't, okay.**

21 **Is there ever any kind of, like,**
22 **department-wide trainings where everyone gets**
23 **together and gets trained on a specific topic or**
24 **subject?**

25 A There can be.

1 **Q Okay.**

2 A If there's something new that comes out.

3 **Q And when you say something new that has**
4 **come out, what's an example?**

5 A That probably, like, they're going to be
6 changing the way we handle total losses; so, you
7 know, we're going to be -- we'll be getting
8 together, most likely, with groups of people so
9 they can go over that with us. And that isn't
10 specific to examiners or, you know, that we'll all
11 be doing that. So they will do that.

12 And then we've had another total loss
13 meeting previously, and that was all of us. I'm
14 sure there's other times in the past it's been
15 other things, like, changes that we've made
16 internally that, you know, I just can't think of
17 anything right now.

18 **Q Are you a veteran?**

19 A I'm not.

20 **Q How did you come to work at USAA?**

21 A My dad was in the Navy, but --

22 **Q Okay.**

23 A And my grandfather. But, so I was aware
24 of it through that. But then a friend of mine, you
25 know, she was going to apply there, so I applied

1 too and just -- I don't know.

2 **Q Got the job?**

3 A Yeah.

4 **Q She get the job?**

5 A She got a job too.

6 **Q She still there?**

7 A No. She's a stay-at-home mom.

8 **Q Okay.**

9 A So.

10 **Q Good. That's the harder job.**

11 A Exactly.

12 **Q What did you do before you went to work at**
13 **USAA? You were in middle school or something?**

14 A Yes, I was. I was just a young child. I
15 was a pharmacy tech --

16 **Q Oh, okay.**

17 A -- with the same girl I said that we both
18 left the same place to come there.

19 **Q Okay. Interesting.**

20 **And are you from Tampa?**

21 A I'm from Land O' Lakes, which is just
22 north of here.

23 **Q Okay. Do you have, do you have any family**
24 **in South Carolina?**

25 A I do not.

1 **Q** What about know anybody in Charleston
2 County, South Carolina? Do you know anybody?

3 A Friends?

4 **Q** Friends.

5 A No.

6 **Q** No, okay.

7 With your auto claims, what percentage of
8 those claims are underinsured motorist claims?

9 A I don't -- I couldn't really even tell
10 you. I mean I can give you a guess.

11 **Q** Yeah. Just a guess. I'm not going to
12 hold you to it --

13 A No.

14 **Q** -- and say you can work them all, you
15 know.

16 A Because, obviously, it's just pretty much
17 what I get.

18 **Q** Right.

19 A It's what comes in and what the
20 investigation reveals.

21 **Q** Right.

22 A But I -- I mean, I don't know. Forty
23 percent maybe, maybe.

24 **Q** Okay. And is that pretty typical?

25 MR. WHELAN: Object to form.

1 A Yes.

2 Q Okay.

3 A Uh-huh.

4 Q All right. When a claim comes in, I'd
5 like for you to walk me through the process of what
6 you do. And when I say claim, I'm specifically
7 talking about auto claims in this instance.

8 A So when I get a new claim. When I get the
9 new claim, I -- first thing I look at is where the
10 loss occurred; where the base of the policy is; who
11 was driving the vehicles, as far as our insured's
12 vehicle. Look at the, what kind of coverages we
13 have available, all of them, everything we have.

14 Once I determine that, make contact with
15 the insured, get all my statements from anybody
16 that was -- that vehicle; get a police report, talk
17 to all the parties involved, any witnesses,
18 statements from all of that; photos of the vehicle.

19 Any -- Let me stop there and say that, you
20 know, each claim, again, has to be handled on its
21 own merits. And any investigation is different,
22 based on what -- some need more, some need less.
23 So this is just kind of a, you know, all the
24 possibilities that I may need, you know, maybe have
25 to do a scene investigation.

1 Q What was that word?

2 A Scene --

3 Q Scene.

4 A -- investigation.

5 Q All right.

6 A And sometimes it's just based on what
7 information is given to us. Because as we learn
8 more and get more, maybe that means I need to do a
9 little bit more, or find out more things or get
10 more information. Just each one, each thing is
11 different.

12 Q So to back up, how do most claims come to
13 you? And what I'm asking is, imagine -- I'm going
14 to go on a little narrative for this question,
15 okay.

16 Imagine I'm coming into USAA tomorrow and
17 I'm going to have no access to the K.D., and I'm
18 not going to be able to ask anybody questions. I
19 need you to tell me everything I need to know in
20 order to find my first claim, where it is, how I
21 get it and what I do with it to set it up.

22 Does that make sense?

23 MR. WHELAN: Object to form.

24 Q Just those kind of first initial steps,
25 where the claim is.

1 A I mean, it would -- If I'm answering this
2 correctly, and I hope this is what you're asking.
3 If it's -- By getting the claim -- Well, it could
4 be called in, so it's going to be there. It's on
5 the phone.

6 **Q Right.**

7 A So it's going -- I'm going to be keying
8 that whole loss report.

9 **Q So the phone rings, I have the ability on**
10 **my computer to mash a button?**

11 A Yes.

12 **Q All right.**

13 A And then you can enter all the information
14 that's provided to you by whoever is calling in,
15 calling that in --

16 **Q Okay.**

17 A -- and what they have.

18 **Q And that sets up the new claim?**

19 A Correct.

20 **Q Okay. Then what I do? Am I responsible**
21 **as the examiner for figuring out who the witnesses**
22 **are and where it occurred?**

23 A The person that calls it in, if --
24 depending on what they're able to give you, you
25 know. Sometimes depending on who it is that's

1 calling you. Sometimes it's a person involved.
2 Sometimes it's a spouse, parent, child, you know,
3 that doesn't really know a whole lot. So you get
4 as much as you can from that person, which may be
5 the witness.

6 South Carolina, for instance, you have an
7 F.R.-10, so you're going to have some information
8 if they have that.

9 Q Okay.

10 A But that's not going to have any witnesses
11 on there, it's just going to have the people
12 involved and maybe the other insurance companies.
13 So we'll go with -- We're dealing with South
14 Carolina. We'll say that.

15 So we'll get what we can from that. And
16 then everything is going to be on me or on the
17 person that's handling the claim to get what we
18 can, either from the person calling. I mean, I
19 will request the police report if they don't have
20 it.

21 Q Right.

22 A Which normally they do not, so we
23 typically request that. So, but, again, each thing
24 is different. You know, you're going to be seeing
25 what information as much you can get from the

1 person that's calling it in. And then from there
2 you move forward based on what you get.

3 **Q Right.**

4 A And then the next call would be to our
5 insureds, if that's possible, to maybe get a little
6 bit more information.

7 **Q Okay.**

8 A And we continue to investigate it that
9 way. Maybe there's an attorney calling me.
10 They're the ones that have the information. Maybe
11 there is an attorney that we can call and see if we
12 can get.

13 But, again, each claim is different. So
14 you can't say that each time it's going to
15 necessarily take you in this direction or that
16 direction, because, you know, sometimes a first
17 notice of loss is an attorney rep letter that comes
18 in with, hey, this accident happened. And that's
19 it.

20 **Q Right.**

21 A And now here we are, you know, trying --

22 **Q And they won't take your calls?**

23 A So, you know, so here we are trying to
24 then get ahold of whoever we can. So each claim
25 is, that you get is different.

1 Q Okay. Once you get the basic information,
2 the stuff we just talked about, the police report,
3 statements, if you need them from witnesses, any
4 photographs, et cetera, who would make the
5 determination about whether or not to do a scene
6 investigation?

7 A Could be the current file -- the person
8 that's handling the claim.

9 Q Okay.

10 A Maybe they review it with a manager and
11 they, you know, after that discussion they
12 determine that they may need a scene investigation
13 so it could be done.

14 Q What's the process for that? Like, you
15 got a wreck in South Carolina --

16 A Uh-huh.

17 Q -- I assume that they're not saying,
18 Missy, long weekend in Charleston, have fun.

19 How does that, how does somebody get
20 assigned to go do it? Who is that person?

21 A Oh, how do we get a scene investigation?

22 Q Right.

23 A We have outside adjusters that we can
24 hire --

25 Q Okay.

1 A -- to go and do those for us.

2 Q Right.

3 A So that's typically what we do.

4 Q Okay.

5 A And depending on what we need.

6 Q And is there a list somewhere of those
7 that you have access to?

8 A I believe there might be. I typically use
9 Crawford and Company, just because I've always --
10 I'm not -- There may be other ones --

11 Q Right.

12 A -- we can use. That's just the --

13 Q All right. That's another question.

14 So lay down the line -- I'm going to skip
15 around a little bit. We're going to come back to
16 this, okay.

17 But when we're deciding which defense
18 counsel to hire, assuming the case is going to go
19 into litigation, is that a decision that you make?

20 A I can, I could, potentially, but not
21 always.

22 Q All right.

23 A Depends on -- I mean, typically not. I
24 will say that. But I'm not going to say that I
25 haven't had a defense attorney who I haven't worked

1 with the defense attorneys and assigned something
2 myself for other reasons.

3 **Q Okay. Who typically does that assignment?**

4 A Our litigation department. Once we know
5 there's going to be -- the lawsuit is filed, it
6 usually gets transferred to them and then the -- If
7 for some reason I need to, we need to do something,
8 then they would let us know who to contact.

9 **Q Okay. So once you do the basic, call it**
10 **liability investigation, at what point are reserves**
11 **set on particular coverage?**

12 MR. WHELAN: Object to form.

13 A They should be set when the claim is
14 open -- or when the coverage, I'm sorry, is open.

15 **Q And does the examiner or adjuster set that**
16 **reserve?**

17 A Yes.

18 **Q Does anyone else have input on the amount**
19 **of that reserve, other than the examiner or**
20 **adjuster?**

21 A Typically it is just the adjuster, the
22 person that's handling, that's their
23 responsibility. If for some reason you might have
24 discussed it with your manager, maybe there was a
25 recommend -- you know, there would have been

1 guidance or discussion to increase the reserve or
2 set it higher for some reason.

3 **Q At USAA what is a reserve?**

4 MR. WHELAN: Object to form.

5 A What do we reserve it for, or are you
6 asking what it --

7 **Q What is it? What is it? Like if the jury**
8 **doesn't understand what that term means. At your**
9 **company, what does it mean?**

10 MR. WHELAN: Object to form.

11 A It's what we anticipate -- what we --

12 Based on the information at the time
13 thinking that the claim is valued at, at that given
14 time, or based on the information we've received.

15 **Q Okay. So the reserve is the claim**
16 **valuation as of the moment that it is set --**

17 MR. WHELAN: Object --

18 **Q -- is that an accurate statement?**

19 MR. WHELAN: Object to the form.

20 A Based on the information that we have.

21 **Q Right.**

22 A So we may not -- Obviously, we don't -- we
23 could only know, you know, the information that we
24 have at that time. If somebody calls in and says,
25 oh, yes, the person went to the hospital and they

1 looked okay. And, so you think, okay, well, maybe
2 it's just a treat and release. And then you find
3 out later it's a fracture. Well, obviously, that
4 wouldn't have been an accurate, but we wouldn't
5 have known that. So it's based on the information
6 we have at the time.

7 Q Okay. So the reserve amount is the claim
8 valuation based on the information that the
9 examiner or adjuster has at the time that that
10 reserve is set?

11 A Correct.

12 Q Okay. How would somebody know what amount
13 to set a reserve at?

14 A Based on your experience with settling
15 claims and based on the accurate information you've
16 been given, you know, it's an estimation or
17 guesstimate of what the claim may settle for.

18 Q Are there any sort of guidelines or
19 approximations available in the K.D., or otherwise,
20 with respect to setting a reserve?

21 A As far as? Do you mean like --

22 Q Like if you have a broken leg, that might
23 be estimated at "X"?

24 A No, huh-uh.

25 Q Okay.

1 A Because that would, you know, it's, you
2 know -- No, no.

3 Q Okay. Just have to know.

4 A Based on your experience. And, obviously,
5 the amount of coverage available as well.

6 Q Right. So I guess that's my next
7 question.

8 You're never going to set a reserve above
9 the available coverage, right?

10 A Correct.

11 Q And each coverage on a policy gets its own
12 reserve, correct?

13 A Yes. Let me just go back to that.

14 Q Okay.

15 A On U.I.M. if you have stacking, obviously,
16 it might show more.

17 Q Fair enough.

18 A So --

19 Q So if you have U.I.M., B.I. and you got
20 two policies that's stacked --

21 A Then it's --

22 Q -- it could go up to the stackable limit?

23 A Correct, uh-huh.

24 Q But you're never going to have liability
25 B.I. and U.I.M., B.I. combined on the same reserve;

1 is that right?

2 A That is correct.

3 Q Do you know why that is, why those
4 coverages are kept separate?

5 A I would only assume it's because they're
6 written separate.

7 Q Okay. Do you ever handle the liability
8 and U.I.M. claims on the same wreck?

9 A Yes.

10 Q Okay. Do you always handle, if you were
11 handling one of the claims, the other claim
12 involving the same wreck?

13 So if you're handling the liability claim
14 and there's a U.I.M. claim made, would you always
15 be assigned that U.I.M. claim?

16 A No.

17 Q Okay.

18 A It depends on the circumstances.

19 Q Right. That's my next question.

20 Tell me the circumstances under which you
21 would not be assigned both claims?

22 A If there was a bodily injury liability
23 claim being made against our named insured, or like
24 driver of our insured vehicle --

25 Q Right.

1 A And then that driver of our insured
2 vehicle was also making a U.I.M. claim.

3 Q Okay.

4 A At that point I wouldn't handle both of
5 those.

6 Q Do you know why?

7 A It's always -- this is the way it's always
8 been done from my understanding. And this is the
9 way I know it to be is that when you are
10 investigating the claim and you are investigating
11 that somebody's making a liability claim against
12 our insured driver, saying they are responsible for
13 an accident and you are looking at that, you have
14 that person, that set of eyes looking to determine
15 and protect our insured as we need to.

16 And then when our insured is then saying,
17 hey, you know, I was injured in this and I have an
18 underinsured motorist claim and I was not at fault,
19 then we need somebody to investigate that with
20 another set of eyes to determine if there was
21 something owed to the insured as the -- for a
22 coverage that they paid for.

23 Q Okay.

24 A So we have two sets of eyes on it, two
25 different sets, if that --

1 Q All right. And the person handling the
2 U.I.M. claim, what are they protecting?

3 MR. WHELAN: Object to form.

4 A Protecting the insured to make sure that
5 we, that we're paying the insured what we owe them,
6 if something is owed to them.

7 Q So it's not that individual's job to try
8 to keep the U.I.M. money from the insured; is that
9 fair?

10 A Correct.

11 Q And it wouldn't be that person's job to
12 try to hide a fact that is known to them in order
13 to keep the U.I.M. money from the insured, correct?

14 A Correct.

15 Q And if that person did take part in
16 keeping facts hidden from the insured which helped
17 the insured's claim, that person would not be doing
18 their job, would they?

19 A If they had hidden facts, no.

20 Q Okay. Is it your understanding that it's
21 not USAA goal to prevent their insured from
22 collecting as much of the U.I.M. coverage as
23 possible?

24 MR. WHELAN: Object to the form.

25 A You're asking it's not USAA goal to

1 prevent?

2 Q Right. Is it your understanding that USAA
3 does not have the goal of preventing its insured
4 from collecting as much of the U.I.M. coverage as
5 possible?

6 MR. WHELAN: Object to form.

7 A I mean, our goal is to pay what we owe,
8 investigate a claim and pay, you know, what we owe.

9 Q Okay. And what is owed would be
10 determined by the true set of facts and
11 circumstances relative to that particular wreck,
12 correct?

13 MR. WHELAN: Object to the form.

14 A Yes.

15 Q Okay. And if an adjuster at USAA
16 participated in keeping facts hidden in order to
17 not pay an insured what they are owed, that
18 individual would be violating USAA's policies and
19 ethics, correct?

20 MR. WHELAN: Object to the form.

21 A Yes. If that had happened.

22 Q In your position, and I don't want to know
23 the specifics of your salary or anything like that,
24 okay. Be clear on that.

25 Is your -- What is your pay structure? Is

1 **it a salary? Is it hourly? How are you**
2 **compensated in your position?**

3 A I'm hourly.

4 Q And is that true for all examiners, as far
5 as you know?

6 A Yes.

7 Q Okay. Same with adjusters?

8 A Yes.

9 Q All right. And is that hourly rate based
10 on your experience and years of service?

11 A I don't really know that. I mean, I know
12 that there's, in each level, there's a, I guess a
13 rate or range of what you can make.

14 Q Okay. How do you get from one level to
15 the next?

16 A To be -- You have to be promoted.

17 Q Is there a set of written criteria that
18 you have to meet in order to move from one level to
19 the next?

20 A There are some. And then there are some
21 recommendations. Again, it's been so long I
22 couldn't really tell you specifics though. But I
23 know that there are some that are required and some
24 that are recommendations.

25 Q Okay. Where are those written down? Like

1 if you wanted to go look and see how you could get
2 to the next level, where would you go?

3 A I don't really know. I know that when
4 they post the position --

5 Q Okay.

6 A -- you know, like, you know, hey, there's
7 an examiner posting coming. And then it would, I
8 know it would say it then --

9 Q Okay.

10 A -- for sure. You know, in order to post
11 you have to have been an Adjuster-I for "X" amount
12 of years and you have to maybe at least have a
13 degree or have something else and it -- you know.

14 Q Within the examiner position, are there
15 different levels?

16 A No.

17 Q Okay. So is it your understanding that
18 all examiners are paid the same?

19 A I don't know --

20 Q Okay.

21 A -- what anyone else makes.

22 Q Okay. How long have you been an examiner?

23 A Since 2012.

24 Q Okay. And has your pay -- And, again, I
25 don't want to know how much or what you make or

1 anything like that.

2 Has your pay increased during that period
3 of time?

4 A It has.

5 Q Okay. What was that increase or those
6 increases based upon?

7 MR. WHELAN: Object to form.

8 A It can involve projects. It can, you
9 know, furthering your education. And I just
10 think -- That's the best of my memory.

11 Q Okay. What have, in those seven years,
12 have you done to further your education? What are
13 some examples of that?

14 A Taking some, like, continuing education
15 courses, P.L.R.B. courses, but it's not continuing
16 education 'cause it's -- That's all I -- the word I
17 can use. Because it doesn't go toward my,
18 necessarily go toward my licensing. But courses
19 just have to do with, you know, insurance
20 adjusting.

21 Q Where have you taken those courses?

22 A I take them online at home.

23 Q Okay. And when you say involvement in
24 projects, what does that consist of?

25 A I am on a Medicare reporting team where I

1 handle Medicare checks or, you know, checking the
2 portal and getting those things handled.

3 Q She deserves all the money for that.
4 Medicare is a nightmare.

5 A Mentoring projects. There probably have
6 been other things, but I can't remember.

7 Q All right. So one of the numbers that you
8 called off is you knew how many cases you have
9 pending?

10 A Uh-huh.

11 Q What other numbers do you keep tabs on --
12 MR. WHELAN: Object to form.

13 Q -- related to your work? I'm not --
14 I mean, you might know, you know, the
15 local --

16 MR. WHELAN: That might be the
17 weirdest question I've heard.

18 Q -- baseball team's record or something. I
19 don't want to know that. I want to know statistics
20 related to your work. Sorry.

21 A Probably the only other thing I can tell
22 you, is I know average claim volume --

23 Q Okay.

24 A -- that I get in a week, but only myself.
25 Because I can only see my own self, so, you know,

1 that's probably about it.

2 Q What is that?

3 A Usually five to seven claims a week.

4 Q Okay. And I guess that's about how many
5 you close out every week to keep it coming?

6 A Try to.

7 Q Okay.

8 A Sometimes more, sometimes less.

9 Q Okay. Are there any tracking mechanisms,
10 in terms of negotiation or settlement of claims
11 below a reserve or within specific ranges or
12 anything like that?

13 A Maybe that someone else can see. We don't
14 see that. We can't see that.

15 Q Okay. Are there any kind of awards or
16 bonus systems, bonus, you know, programs related to
17 claims handling, specifically?

18 A No.

19 Q Okay. Are there any kind of award
20 programs or bonus programs at all for examiners or
21 adjusters?

22 A No.

23 Q Okay. Do you ever have any communication
24 with anyone related to settlement amounts? In
25 other words, the amount that you're settling a

1 particular claim or particular claims for within
2 USAA? I'm not talking about outside attorneys, or
3 the insureds. Obviously, you talk to them about
4 it.

5 But any internal conversations about that
6 that take place?

7 A In what sense, like --

8 Q Well, it's my understanding from what you
9 said that the examiner does the investigation, gets
10 the meds, sets the reserve, does the negotia --
11 handles the negotiations; is that right?

12 A Yes.

13 Q Okay. And so my question is, is there
14 ever any communication, file note, e-mail, meeting,
15 where somebody says, you know, you might have
16 settled that case for a little more than you should
17 have; or, you might have set -- you might have
18 should have set that reserve a little higher to
19 start with, so we know what we're dealing with on
20 the front-end? Anything like that take place from
21 time to time?

22 A There's no discussion, no, about
23 settlement amounts or what we settled anything for
24 after the fact.

25 Q Okay. What, if any, correspondence or

1 **conversations take place on the front-end about**
2 **those topics?**

3 A With?

4 Q **Anyone. So when you set a reserve amount,**
5 **you get a demand letter --**

6 A Uh-huh.

7 Q **-- it says I demand the moon, the sky, the**
8 **stars and the sun for good measure, what happens**
9 **next?**

10 A Demand comes in, should be sending a copy
11 to our insured, copy of the demand letter talking
12 about it. Potentially an access letter either has
13 already been sent; or, if it hasn't, for whatever
14 reason, then you would send it at that point in
15 time.

16 And that would be it. Depending on, you
17 know, where you need to go with it from there.

18 Q **Okay.**

19 A You evaluate it and you go from there.

20 Q **And what does the evaluation process look**
21 **like?**

22 A Just break out the, you know, break down
23 the demand, the medicals; put them in a file and
24 determine the value of it, and then determine if
25 you need to get authority.

1 **Q Do you use a software program in order to**
2 **value claims?**

3 A I do not, no. Within USAA?

4 **Q (Nods head.)**

5 A Yes.

6 **Q Okay.**

7 A Some people could, yes.

8 **Q Who uses the program?**

9 A Depending on the value of the claim, any
10 claim valued -- Well, there's criteria for it.
11 Under twenty-five thousand. As long as they're not
12 treat and release, they would be entered in our
13 colossus system.

14 **Q Okay. And so anything over twenty-five**
15 **thousand does not go into colossus?**

16 A Correct. Or U.I.M. claims.

17 **Q No U.I.M. claims?**

18 A No.

19 **Q No?**

20 A No, no.

21 **Q Do you know why U.I.M. claims do not?**

22 A There's some type of suit.

23 **Q Have you ever had a meeting, or how do you**
24 **know what you know about that?**

25 MR. WHELAN: Object to form.

1 A Just always told.

2 **Q Okay. Just water cooler talk?**

3 A No. Just, we just -- through -- It wasn't
4 a direct communication, like a document, but
5 through manager, verbal.

6 **Q Okay. Just at some point they said, we're**
7 **not doing U.I.M. on colossus anymore?**

8 MR. WHELAN: Object to form.

9 A Correct. And it's probably in our K.D. as
10 well.

11 **Q Okay. So those claims aside.**

12 A Uh-huh..

13 **Q U.I.M. claim comes in, demand is made, you**
14 **set a reserve, right?**

15 THE COURT REPORTER: Yes?

16 **Q Yes?**

17 A Yes.

18 **Q Without communicating with anyone,**
19 **typically?**

20 A Typically, yes.

21 **Q Okay.**

22 A But each case, again, each case on its own
23 merit, so it just depends on the specifics. But
24 once you look at all the information.

25 **Q Typically you set it as the examiner?**

1 A Correct.

2 Q If you do need to talk to somebody, you
3 talk to your manager?

4 A First.

5 Q First?

6 A Yes, uh-huh.

7 Q Can you give me an example of a situation
8 where you would need to talk to your manager before
9 doing that?

10 A Before setting the reserves?

11 Q Right.

12 A Maybe if there was some kind of, something
13 in question. A questionable relatedness of the
14 injury or -- Potentially.

15 Q All right. Where does it go from the
16 manager? You said you talk to your manager. Do
17 you always get a final decision there?

18 A Not necessarily.

19 Q Okay.

20 A Maybe we then might meet with the
21 director, if needed.

22 Q Okay. And that's a meeting you would have
23 with the director?

24 A With the manager.

25 Q Okay. And then the manager would meet

1 with the director?

2 MR. WHELAN: Object to form.

3 A The three of us.

4 Q The three, okay. That's what I'm trying
5 to get.

6 Some companies are very chain of command
7 oriented. Others are more collaborative. So
8 that's all I'm trying to get at, okay?

9 A (Nods head.)

10 Q Yes?

11 A Yes.

12 MR. WHELAN: Object to form.

13 Q All right. We set a reserve, we have to
14 respond, right?

15 A Yes.

16 Q How do we decide how to respond?

17 A To the demand?

18 Q Right.

19 A If -- Again, case by case.

20 Q Right.

21 A You know, maybe I'm doing it by myself and
22 I can write it up and either it's within my
23 authority, or it's not and I have to get authority,
24 or I maybe need some additional information, so --

25 Q Okay.

1 A -- then I just -- we make the
2 determination of how we're going to respond and
3 then we move forward, or I make that determination.
4 It just depends.

5 Q Okay. So let's -- The different authority
6 levels, what is your authority level?

7 A Forty-five thousand.

8 Q Okay. And is that true for all examiners,
9 as far as you know?

10 MR. WHELAN: Object to form.

11 A I don't know what anyone else's authority
12 is.

13 Q Okay. Has your authority ever changed
14 while you've been an examiner?

15 A Yes.

16 Q Okay. How often?

17 A Maybe twice, maybe three times. I can't
18 remember.

19 Q Okay. What was it last?

20 A Either thirty or thirty-five.

21 Q Okay. And do you know what an
22 Adjuster-I's authority is?

23 A I do not.

24 Q Okay. If you need to offer above forty-
25 five thousand dollars on a case, how do you go

1 **about that? What's the process?**

2 A After I evaluate the claim, the injury,
3 and if I feel that it's worth over forty-five
4 thousand, then I would have to send it to my
5 manager --

6 **Q Okay.**

7 A -- for her to review that. And she would
8 have to agree with that, and put the authority in
9 the file for me to make any offers.

10 **Q Okay. What is the manager able to go to?**

11 A My manager has seventy-five thousand, I
12 believe.

13 **Q Okay. Aggregate? So, in other words,**
14 **another thirty thousand on top of your forty-five?**

15 A Correct.

16 **Q Okay.**

17 A Total per exposure.

18 **Q Exposure.**

19 **So if you and your manager agree that it's**
20 **a hundred-thousand-dollar case, what would happen?**

21 A It would have to go to the director --

22 **Q Okay.**

23 A -- for the authority.

24 **Q Okay. And what is the director's**
25 **authority level?**

1 MR. WHELAN: Object to the form.

2 A I think a hundred.

3 Q Okay. And have you had claims that have
4 resolved above a hundred thousand, you personally?

5 A Have I paid claims over a hundred
6 thousand?

7 Q Yes.

8 A Yes.

9 Q So if everybody agrees, you, your manager,
10 your director, that you need to offer a hundred and
11 fifty thousand on a claim, what happens?

12 A It has to go to the executive director.

13 Q And do you know what -- That's not very
14 good. It's now a guy, it's now --

15 A Matt.

16 Q -- Matt, right. Okay.

17 A Matthew.

18 Q Do you know what Matthew's authority level
19 is?

20 A I'm not sure.

21 Q Okay. And that authority level would
22 apply to reserves and offers, correct?

23 A So that I can understand that the
24 reserve -- I can't reserve a file without his
25 authority?

1 Q So let me ask it better.

2 MR. WHELAN: That's a question. For
3 the record, that's a question she's
4 asking.

5 MR. WILLEY, IV: Yeah.

6 Q Let me ask -- That's a question. Let me
7 ask my question better, okay.

8 If you want to set a reserve above forty-
9 five thousand, you have to get approval from your
10 manager; is that correct?

11 A No. That is not correct.

12 Q That is not correct, okay.

13 So this process, the authority process
14 only applies to the offering of money; is that
15 accurate?

16 A Yes.

17 Q Okay. As an examiner, is it accurate to
18 say that you were able to set a reserve at any
19 amount within the coverage without anyone else's
20 approval?

21 A Yes.

22 Q Okay. However, you would not be able to
23 offer any amount above forty-five thousand without
24 getting additional authority from your manager,
25 correct?

1 A Correct.

2 **Q Okay. That's what I was trying --**

3 MR. WHELAN: All right.

4 MR. WILLEY, IV: You need a break?

5 MR. WHELAN: Yeah. Let's take a
6 break.

7 MR. WILLEY, IV: Okay.

8 (Whereupon, a recess was had from
9 3:10 p.m. to 3:14 p.m.)

10 MR. WILLEY, IV: If you don't mind
11 reading my last question.

12 THE COURT REPORTER: "Okay. However,
13 you would not be able to offer any amount
14 above forty-five thousand without getting
15 additional authority from your manager,
16 correct?"

17 Her answer is: Correct.

18 BY MR. WILLEY, IV:

19 **Q So those authority requests, do they go**
20 **through the computer system? How do they get**
21 **transmitted? You yell down the hall, post a note?**

22 A Yes. Through the computer system.

23 **Q Okay. Are there preset meetings on**
24 **authority requests? In other words, do you all get**
25 **together every Wednesday at three to discuss all**

1 your authority requests, or do you just take them
2 as they come up?

3 A Take them as they come up.

4 Q Okay. I think I already asked this. But
5 your manager and director are in close proximity to
6 where you are at work?

7 A Yes.

8 Q Okay. The executive director, you don't
9 know where he is, right?

10 A No.

11 Q Got that right.

12 Have you ever been reprimanded at work?

13 A No.

14 Q Okay. How does USAA do it? Is there like
15 a -- and I'll give you an example so you know what
16 I'm talking about.

17 Some companies have a, you know, a verbal
18 warning, then a written warning, you know, and you
19 get two written warnings and you're toast or
20 whatever.

21 Do you know what USAA's reprimand process
22 is?

23 A I think it's something like what you said,
24 but I honestly, I don't know.

25 Q Never been involved with it?

1 A No.

2 Q Okay. I figured not. You seem to nice.
3 Do you have any hard copy files that you
4 deal with, or is everything electronic?

5 A It's all electronic.

6 Q Okay. Do you keep paper for any reason?

7 A Not that I keep, no.

8 Q Okay. Do you, from time to time, take
9 notes on paper at your desk?

10 A I have. I take my voice mails down on
11 paper and throw those away and maybe scribble
12 something down here and there, but not actual
13 notes.

14 Q When you take your voice mails down, do
15 you then input them into the claims file, or do you
16 just take it down, return the call and then dispose
17 of the paper?

18 A Correct. I return the call. And then I
19 will dock in the file that I have, whatever is
20 done.

21 Q Okay. And is it USAA's policy that every
22 call on a claim is supposed to be documented?

23 A Yes.

24 Q Okay. And is it documented in the claims
25 file?

1 A Claims docs.

2 Q Claims docs.

3 Are the meetings that are had, for
4 example, if you met with your manager to get
5 additional authority, is that meeting documented in
6 the claims docs?

7 A Typically it is.

8 Q Okay. Supposed to be?

9 A That I don't know. I mean, maybe it's the
10 reason that you're meeting with them, you know,
11 that just a quick question about something. But if
12 you're conferencing a file, no. The manager docs
13 the file.

14 Q Okay. You know when you call an insurance
15 company and they say on the thing, this call may be
16 recorded for, you know --

17 A Qualify purposes?

18 Q -- qualify assurance purposes. Does USAA
19 record calls?

20 A They do.

21 Q Okay. Are those recordings stored in the
22 claims docs?

23 A No, no.

24 Q Okay. As an examiner, do you have access
25 to those recordings?

1 A They're just the, the randomly recorded
2 calls, not anything that we didn't record. Like,
3 if I record a statement, obviously, I have access
4 to that.

5 Q Right, okay.

6 A But they're randomly, no, we do not.

7 Q Okay.

8 A They're not --

9 Q And, so USAA doesn't record every call for
10 purposes of inclusion in the claims file; is that
11 correct?

12 A Correct.

13 Q Okay.

14 A That I'm aware of.

15 Q That you're aware of.

16 When you want to record a call, for
17 example, record a statement to put into the claims
18 file, how do you do it?

19 MR. WHELAN: You talking about a
20 statement, not a call, right? You said
21 record a call or a statement.

22 MR. WILLEY, IV: Well, a call
23 statement. I mean, a person doesn't sit
24 there typically for --

25 MR. WHELAN: Okay. You talking about

1 a recorded statement.

2 BY MR. WILLEY, IV:

3 Q I will give you an example.

4 First time you talk to your insured and
5 you say, okay, I'm going to record this call. Tell
6 me what happened. How do you record that call?
7 Like, is there a button on claims doc, or how does
8 that work?

9 A Yes. There's a button that you push when
10 you're ready to record the statement.

11 Q Okay. And then that recording gets saved
12 into the claims file?

13 A Correct.

14 (Whereupon, Plaintiff's Exhibit Number 1
15 was marked for identification.)

16 Q All right. I need an education, okay.
17 All right.

18 A I will do my best.

19 Q I know you will.

20 The first thing I'm going to mark is
21 Plaintiff's Exhibit 1, which is going to be Hood
22 USAA production 001 through 0023.

23 MR. WHELAN: Let me see that for a
24 second.

25 MR. WILLEY, IV: Yeah. That's the

1 most recent one.

2 MR. WHELAN: Okay.

3 BY MR. WILLEY, IV:

4 Q What is it?

5 A What is this?

6 Q Yes. And you can flip through it, feel
7 free to flip through it.

8 A Copy of the claims docs.

9 Q Okay. And is that printed off the
10 computer? Is that how that's generated?

11 A It looks like it.

12 Q Okay. Looking at the first page, your
13 name is on it, right?

14 A Yes.

15 Q Okay. Did you open this file; is that
16 accurate? Is that what that first entry is?

17 A I set the claim up, yes.

18 Q Okay. How did you get notice of the
19 claim?

20 A How did you get a notice of this claim?

21 Q Yes.

22 A I was already handling the initial claim
23 that was set up. I was handling the liability
24 investigation claim.

25 Q All right. At the time that you opened

1 **this claim, how long had you been handling that**
2 **claim?**

3 A I would assume, because I don't really
4 remember, since somewhere, approximately, since the
5 date of the accident in November. I don't know the
6 exact time frame, no.

7 Q **At the time that you opened this claim,**
8 **had you already conducted an investigation into the**
9 **facts surrounding the accident at issue in this**
10 **claim?**

11 A From what I can remember, I was still
12 investigating the accident. It was not completed.

13 Q **Okay. So if that original accident was**
14 **reported to you in November, this claim was open in**
15 **May, 2015 --**

16 A Uh-huh.

17 Q **-- correct?**

18 A Yes.

19 Q **Okay. So you were six months into but not**
20 **completed with your investigation of the underlying**
21 **facts; is that accurate?**

22 A From what I can remember.

23 Q **Okay.**

24 A Yes.

25 Q **All right. Who -- What was the posture of**

1 the claim that you were handling? Who was trying
2 to get compensated from who?

3 A From what I remember, Antoine Johnson was
4 presenting the claim to USAA.

5 Q Okay. Looking at this claims file, are
6 you able to tell me all of the facts that you had
7 gathered in that six-month period as it relates to
8 this wreck, prior to getting this claim?

9 MR. WHELAN: You talking about just
10 this exhibit or the whole U.I.M. file?

11 MR. WILLEY, IV: The claims file.

12 A Just from right here, just from what's
13 here?

14 MR. WHELAN: You're pointing to the
15 exhibit, but you're saying the claims
16 file.

17 MR. WILLEY, IV: Right. She said
18 that Exhibit 1 is the claims docs.

19 MR. WHELAN: Yeah. But you're saying
20 the claims file.

21 MR. WILLEY, IV: Okay.

22 A Just from this?

23 BY MR. WILLEY, IV:

24 Q From the claims docs.

25 A Okay. All right. Can I look at this?

1 Q Yes.

2 A Okay. Can you repeat your question again.
3 I'm sorry.

4 Q Yeah. The claims docs that you started on
5 May 20, 2015 --

6 A Uh-huh.

7 Q -- it doesn't include all of the facts
8 that you had gathered in your six-month
9 investigation of this wreck, correct?

10 A Just seems like it's a synopsis.

11 Q Right. That's what I'm getting at.

12 So in your file, your claims docs, there
13 would have been more exhaustive information
14 relating to the facts and circumstances of the
15 underlying wreck than what we have here, correct?

16 A Correct.

17 Q Okay. For terminology sake, just so I can
18 make sure I have this right, what does I.D. mean?
19 Is that insured driver?

20 A Yes.

21 Q Okay. And I.V. is insured vehicle?

22 A Yes.

23 Q Okay. C.V. claimant vehicle?

24 A Correct.

25 Q Okay. On documentation number four it