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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 7

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1 **says, set up claim for U.I.M. under L/R7. What is**
2 **that? What is L/R7?**

3 A Loss report number seven.

4 Q **Okay. What does that mean?**

5 A We have -- That's how you distinguish
6 between our -- the claims itself. Our member
7 numbers is pretty much our claims numbers.

8 Q **Right.**

9 A And each date of loss would be, have its
10 own loss report number.

11 Q **Okay.**

12 A But because of -- This one I don't know if
13 I mentioned -- Oh, loss report five would be the
14 one that I handled --

15 Q **Okay.**

16 A -- the liability.

17 Q **Okay.**

18 A So that's kind of -- That's what
19 distinguishes each loss report.

20 Does that make sense?

21 Q **That does.**

22 **Is there anywhere in here that I could**
23 **look to determine what loss report one, two, three,**
24 **four and six are?**

25 A No, no.

1 Q Okay. Where would I find that
2 information?

3 A In their, their file. Just their entire
4 file.

5 Q Member file?

6 A Member file.

7 Q Okay. Does USAA have a policy or a
8 standard for once a claim is opened how quickly the
9 investigation should begin?

10 A As quickly as you have the information to
11 be able to start it. So you should be calling on
12 it right away, whoever you had the information for.

13 Q Okay. Is there a certain number of days
14 that a claim can be opened with no action before it
15 alerts a manager or alerts a supervisor?

16 Does that make sense?

17 A It does. And I'm not sure --

18 Q Okay.

19 A -- if there's anything that, if there's
20 any type of mechanism or anything like that that's
21 set up.

22 Q Okay. Is there anything for you, as an
23 examiner, where if you don't touch a file for,
24 hypothetically, forty-five days, you get a message
25 that says, you know, tickler, you haven't touched

1 **this file for forty-five days or anything like**
2 **that?**

3 A No.

4 Q Okay. So it's expected at USAA that,
5 **basically, you would be actively working on all of**
6 **your files continuously from the moment that the**
7 **claim is opened?**

8 A Correct.

9 MR. WHELAN: Object to the form.

10 A Depending on what is needed.

11 Q Right, right.

12 A So it's not necessarily you would need it
13 every day, to touch it every day.

14 Q Right.

15 A Just depending.

16 Q If you request a police report, you're not
17 going to touch it tomorrow, most likely, right?

18 A Correct.

19 Q Okay. Something Robbie doesn't know
20 anything about. But anyway.

21 The number next to your name, 49086, what
22 is that number?

23 A That is my employee number.

24 Q Okay. And if I click that, where do I go?

25 A To the, I guess, employee profile page

1 that shows my face.

2 Q Okay.

3 A This face, that picture and then that.

4 Q And is that where you would go to click
5 like your pending list or --

6 A I don't know that you can do that.

7 Q Okay.

8 A I don't know that you can't do that.

9 Q Right.

10 A You see information on me and my team.

11 Q Okay.

12 A People that work with me and my manager.

13 Q Okay. All right. The -- there's a little
14 box up here that starts with available actions.

15 You see that?

16 A Yes.

17 Q That has a few options.

18 A Uh-huh.

19 THE COURT REPORTER: Yes?

20 A Yes.

21 Q The claims documentation option, what, if
22 I click that, what happens?

23 A You can see just the claim documentation,
24 the claim docs is what you're looking at right now.

25 Q Okay. If I click start new conversation,

1 **what does that do?**

2 A You -- Let me just say that I, you know,
3 some of this stuff you just like, you're so use to
4 this --

5 **Q I understand.**

6 A You know, you do the same thing day after
7 day, but I think that's how you add new docs --

8 **Q Okay.**

9 A -- add new claims docs. But, again, I
10 don't -- I think I just see the same thing over and
11 over every day, so I don't pay attention, actually,
12 what it says.

13 **Q Muscle memory?**

14 A Yes.

15 **Q So I understand that.**

16 Is there a mechanism on claims docs or on
17 your computer at USAA to have any kind of instant
18 messaging chats with any other member of your team
19 or USAA employee?

20 A On the computer, on our main computer?

21 **Q Yes.**

22 A Yes. We have instant messaging.

23 **Q Instant messaging.**

24 **And what is that program called?**

25 A I.M., I guess, I guess.

1 Q Okay.

2 A I.M. I don't know.

3 Q Is it part of this claims management
4 software? Do you know? Or, is it separate?

5 A Oh, I think it's separate, but I don't
6 really know.

7 Q But you don't know.

8 Do you use that regularly to communicate?

9 A I do not. I'm bad at that.

10 Q I'm bad at that too.

11 Do you know if those messages get stored
12 anywhere on the claims docs or in the claims file?

13 A No. Not that I'm aware of, because I
14 don't think they're specific to the claim.

15 Q Got it. If you flip with me to 002,
16 looking at documentation number five. It says
17 conversion of record new to old; old unit, new
18 unit, et cetera.

19 What is that? What does that mean?

20 A When I was setting it up -- Initially,
21 when a new claim sets up, gets set up, it --
22 whoever is setting it up, until you assign it to
23 whoever you're going to assign it to, whether it's
24 yourself or someone else, it starts out in the
25 manager's name.

1 So at the time in 2015 my unit was 7980.
2 And my manager at the time digits were 41.

3 **Q Okay.**

4 A So that's just how it, that's the way it
5 looks now.

6 **Q Okay.**

7 A That's the way it, if I set up the claim
8 now, it's going to be 7972-41. It's just my
9 manager's now.

10 So then when I transferred it to --
11 assigned it to a new person, which that person's
12 unit is 7984-13, which ended up being Diane.

13 **Q All right. So at this point, was your**
14 **manager Alisa?**

15 A No.

16 **Q Who was your manager at this point?**

17 A I think that it was Neal.

18 **Q Okay. And Neal's last name?**

19 A Schleifer. And I think that is -- I'm
20 going -- It's S-C-H -- If I had a pen. Can I have
21 a pen. Let me just write it.

22 Oh, we're going to go with that.

23 **Q Okay. S-C-H-L-E-I-F-E-R. And if it's not**
24 **exactly right --**

25 MR. WHELAN: She's holding her hands

1 up. It's a guess.

2 MR. WILLEY, IV: It's a guess.

3 MR. WHELAN: Is it a guess?

4 A It's a guess.

5 MR. WHELAN: Try not to guess, unless
6 he's asked you to guess, okay?

7 A Okay. Sorry.

8 BY MR. WILLEY, IV:

9 Q All right.

10 A But Cal was my manager at the time.

11 Q It was Neal Schleifer for who we think is
12 spelled this way?

13 A Correct.

14 Q But we're not sure?

15 A But he's still there.

16 Q Okay.

17 A He's still a manager there. I just got --
18 we got changed around a couple different units --

19 Q Got it.

20 A -- quickly.

21 Q Okay. Do you know why?

22 A My manager was initially Donna. And then
23 she retired and I got Neal. And then I went to --
24 somebody got promoted and Alisa's unit lost an
25 examiner, and then she picked me.

1 Q Okay. Got it.

2 A I'm not sure.

3 Q Okay. That's fine. The next item is a
4 view conversation. Is that what shows up when you
5 send a letter or something out, or what is that?

6 A That is a automated claims communication
7 that goes from USAA.com.

8 Q Okay. Do you have to do anything special
9 to initiate that?

10 A No. It's automatic.

11 Q How does the system know that now is the
12 time to send that communication?

13 A Because the claim, because the claim
14 was --

15 Q Okay.

16 A -- open.

17 Q Okay. The next documentation six,
18 W-R-C-O-M.

19 Do you know what that is?

20 A That is the automated e-mail that's sent
21 that says something similar too.

22 Q Yes. Got it. I'm with you. Okay.

23 And we have the PDFs of those so that's
24 why I'm not wasting your time explaining it to me.
25 I just wanted to make sure that's what that was.

1 Going back to documentation number four,
2 it says arbitration decision that I.D., insured
3 driver, contributed twenty percent for not
4 traveling with headlights on. As witness stated,
5 insured vehicle did not have headlights on, but
6 witness was able to see C.V. Johnson, therefore
7 C.V. Johnson should have been able to see insured
8 vehicle, I.V.

9 Do you see that?

10 A Yes.

11 Q Okay. And was that basically a summary of
12 what you used in your liability investigation of
13 the claim?

14 A I'm not exactly sure of that. It appears
15 from what I can see. But that is just a
16 summarizing what the arbitration decision was. And
17 I was just putting in that.

18 Q All right. The next portion says
19 approximate cause was C.V. Johnson failing to yield
20 right-of-way.

21 Do you see that?

22 A Yes.

23 Q That is something that you would have
24 input into claims docs?

25 A And I'm only going just from what, what it

1 appears here, that that's still part of arbitration
2 decision, that they were saying the proximate cause
3 of the accident.

4 **Q** My question is, you would have input that
5 into the claims docs system?

6 A This, this one we're looking at?

7 **Q** Yes. That sentence.

8 A Yes.

9 **Q** Okay. And you used the arbitration
10 decision in your liability investigation, correct?

11 A I'm not looking at my file, so I can't
12 necessarily say that I would do that, no.

13 **Q** That's my next question.

14 So in order to be able to determine all of
15 the facts that you used in your liability
16 investigation, you would need to refer to your
17 claims file?

18 A What I remember from this was that I
19 wasn't -- hadn't finished any investigation when it
20 got transferred.

21 **Q** Right.

22 A So I have some memory of this claim. And
23 I don't -- The investigation wasn't concluded when
24 it got transferred. So I don't think that the
25 arbitration issues would have mattered, but I

1 hadn't concluded my investigation.

2 Q And at this particular point in time, you
3 can't tell me all of the facts that you had in your
4 investigation in your claims file without actually
5 looking at it; is that accurate?

6 A Not all of it, no.

7 Q The arbitration referral, is that a proper
8 way to say it, transfer? How do you all say that?

9 A It just -- Arbitration was filed.

10 Q Okay.

11 A Filing.

12 Q All right. And do you know if USAA filed
13 that or if Geico filed that?

14 A I can't say for certain based on the time
15 frame. I would think it would be Geico.

16 Q All right. Documentation number eleven,
17 it says 99999 and a dash with no name.

18 Do you see that?

19 A Yes.

20 Q What does that indicate? Who would have
21 input that?

22 A System generated.

23 Q Okay.

24 A That they -- The claim information was
25 sent to I.S.O.

1 **Q And what is that?**

2 A I don't know, and I'm not -- I don't know
3 what that stands for.

4 **Q Right.**

5 A But it's a system that we send -- some
6 insurance companies send the claims information to.

7 **Q Okay. On the next page, documentation**
8 **number twelve starts with Diane Martin. It has**
9 **some additional information at twelve and thirteen**
10 **and fourteen.**

11 **Why did it move to Diane, this claim?**

12 A Because of being a U.I.M. claim, claim is
13 being made under the U.I.M. coverage. And I was
14 handling the B.I. investigation. So we had to
15 split out -- We split out claims in that situation,
16 so it was moved to her for handling of it.

17 **Q Okay. How does the decision get made who**
18 **it moves to?**

19 A It would be the next available examiner,
20 as long as they're not in your unit.

21 **Q All right. Does the computer determine**
22 **that?**

23 A The computer can determine the next
24 available examiner that's --

25 **Q Okay.**

1 A -- that's, in essence, oh, she hasn't had
2 a claim, so she's next on the --

3 Q Okay.

4 A -- next to get a claim.

5 Q So it's just like a list?

6 A It's just a, you know, it's all internal
7 system.

8 Q Got it, all right. And, so the system
9 would have populated it to her without any human
10 inputs?

11 A Correct.

12 Q Did you after that point have anymore
13 interaction with this claim?

14 A Going into this claim?

15 Q Yes.

16 A Not that I'm aware of.

17 Q Okay. What about did you ever have any
18 discussions with Diane about the claim or any
19 meetings with her about it?

20 A I don't remember specifically, but I --
21 she most likely either called me or -- We sat
22 across in aisle from each other. So she probably
23 when she got it turned around and asked me, hey,
24 you know. But it would be the same as her picking
25 the phone up. But because we were in close

1 proximity that she might have asked me what was
2 going on.

3 Q And do you remember when Alisa, when you
4 joined her team exactly?

5 A I do not.

6 Q Okay. Did she -- Was she Diane's manager
7 before she was yours? Do you know?

8 A Yes.

9 Q Okay. Did she switch, or did you switch
10 during the pendency of this claim?

11 A No.

12 Q Okay. If you will go to page 10 of that
13 and look at documentation number forty-five. It's
14 just a note from Alisa about suit being filed.

15 Documentation forty-five at the bottom.

16 A Uh-huh.

17 Q So at this point she was Diane's manager?

18 A Okay.

19 Q Is that accurate?

20 A Yes.

21 Q Okay. Who's Jerry Wolfe? If you look up
22 two entries.

23 A He is our physical damage specialist in
24 the field.

25 Q Once the file down here in documentation

1 **forty-five it says, suit filed, served, handled**
2 **under L/R number five and answer filed, would that**
3 **indicate a relation back to a previous loss report?**

4 A Right. Loss report five is me.

5 Q Is you, right?

6 MR. WHELAN: You have a question

7 or --

8 Q Would that involve a relation back to that
9 **previous loss report number five?**

10 A This doc?

11 Q Yes.

12 A It appears -- Hang on.

13 So this appears to say this file is for
14 the U.I.M. and that suit, there's suit then filed
15 and served on loss report five.

16 Is that what you're asking?

17 Q Yes. So the suit that was filed in this
18 **case --**

19 A Uh-huh. At this time.

20 Q Right. That is the subject, the
21 **underlying suit, that is now subject of this case,**
22 **was handled under your loss report when it was**
23 **answered, correct?**

24 MR. WHELAN: Object to the form.

25 A I don't -- I'm not sure.

1 Q Okay. The entry says suit filed, slash,
2 served; handled under L/R number five and answered
3 filed, right?

4 A Yes.

5 Q Okay. Appears majority of liability,
6 L.I.A.B., on C.D. Johnson insured with Geico.

7 Do you see that?

8 A Uh-huh.

9 Q Okay.

10 THE COURT REPORTER: Yes?

11 A Yes.

12 Q What does handle under L/R number five
13 mean to you, in your experience, reviewing claims
14 docs?

15 MR. WHELAN: Object.

16 A It does appear to me that this suit, that
17 it -- suit was handled under loss report number
18 five.

19 Q Okay.

20 A But I don't know if it's -- which suit,
21 because they both filed suits. So that's what I
22 don't --

23 Q Right.

24 A -- I can't speak to.

25 Q But we do know, based on this, is that

1 **what we're talking about here is the suit where**
2 **Johnson is a claimant driver, right --**

3 MR. WHELAN: Object to the form.

4 **Q -- based on this note? Looking at**
5 **documentation number forty-five. It says C.D.**
6 **Johnson --**

7 A Uh-huh.

8 **Q -- right?**

9 THE COURT REPORTER: Yes?

10 A Yes.

11 MR. WHELAN: What? Is the question
12 that it says C.D. Johnson?

13 A Then it would be the B.I. suit that's
14 being handled under loss report five.

15 **Q Right. So based on this note, what**
16 **we're -- what it's referencing is the suit being**
17 **handled under your loss report, which involves**
18 **claimant driver Johnson, correct?**

19 MR. WHELAN: Object to form.

20 **Q That's what this note says?**

21 MR. WHELAN: Asked and answered.

22 Object to the form.

23 A That it appears, correct.

24 **Q Okay. So moving onto the next page, which**
25 **is a continuation of documentation number forty-**

1 five, it says comp neg, which is comparative
2 negligence, right?

3 A Yes.

4 Q Presumably.

5 Eighty percent on Johnson and twenty
6 percent on I.D., based on arb, correct?

7 A Yes.

8 Q And I.D., again, is insured driver, which
9 would have been Therese Hood?

10 A Yes.

11 Q Okay. Then it says pending insured driver
12 records, bills for eval of U.I.M. claim, right?

13 A Yes.

14 Q Okay. So at this point, we can summarize
15 that suit's been filed, right?

16 A Yes.

17 Q And suit's being answered under the loss
18 report that you're handling with the B.I. loss
19 report, right?

20 A That's what it appears, yes.

21 Q That we have made a comparative negligence
22 note of eighty percent on Johnson and twenty
23 percent on Hood based on the arbitration, right?

24 A That's what our file for the property
25 damage, yes.

1 Q And at this point we're just waiting for
2 the records and the bills for the evaluation of the
3 U.I.M. claim?

4 MR. WHELAN: Object to form.

5 Q Correct?

6 A That's what I see here from the manager,
7 yes.

8 Q Okay. All right. The next. Received
9 suit for U.I.M., Hood verse Johnson. Due date
10 7-3-15. Suit has already been answered by adverse
11 and a countersuit has been filed against insured
12 driver.

13 The countersuit is being handled under
14 L/R6, right?

15 A Yes.

16 Q Okay. And the countersuit in the case
17 styled Hood v. Johnson, would be Johnson's
18 counterclaim against Therese Hood, right?

19 A I'm sorry? Again.

20 Q This is telling us that we received a suit
21 styled Therese Hood v. Johnson, right?

22 A Yes.

23 Q Okay. That that suit has been answered by
24 the adverse, which is Johnson --

25 A Uh-huh.

1 Q -- right?

2 THE COURT REPORTER: Yes?

3 A Yes.

4 Q And Johnson has filed a countersuit
5 against Hood, right?

6 A Yes.

7 Q Okay. And that the countersuit is being
8 handled under loss report number six, right?

9 A I do see that's what that says, yes.

10 Q Okay. Are you able to determine from this
11 note, or you can flip through a few if you want,
12 but who was handling loss report number six?

13 A I don't know, and I don't -- Is that a
14 typo?

15 Q I don't know either.

16 A It potentially could be.

17 Q Okay.

18 A Because -- That's what my thought is.

19 Q Okay. All right. Who is Marsha, I think
20 Eichman?

21 A She is one of our litigation directors, I
22 think is her title.

23 Q Do you know how the litigation teams are
24 set up?

25 A I do not.

1 Q Saved you about five questions.

2 MR. WHELAN: More like fifty.

3 Q What about Peter Munroe, you know who he
4 is?

5 A No. I never heard that name.

6 Q Never?

7 A No.

8 Q Okay. All right. Kathy -- we're going to
9 talk to her. We don't need to go through that.

10 Do you know Kathy?

11 A I do.

12 Q You do. Do you speak with Kathy
13 regularly?

14 A I do not.

15 Q Is Kathy in your office?

16 A No. She's, I believe she's a work at
17 home, maybe.

18 Q Oh, that's nice.

19 A I think so.

20 Q How do you get that gig?

21 MR. WHELAN: Object to the form.

22 Q What, I'm not saying it's a bad thing.

23 How do you get to work at home?

24 A You just ask for it, I guess.

25 Q Okay.

1 MR. WHELAN: She said I guess.

2 Q I guess, all right.

3 Have you ever worked on the litigation
4 team?

5 A No, I have not.

6 Q Every time that it says five nines, dash,
7 blank name, does that always mean the same thing as
8 the person making the entry? So, for example, if
9 you will look at page 16 is where I'm at. I'm
10 looking at documentation number seventy, seventy-
11 one, seventy-four where it says the input person
12 was 99999, dash, no name.

13 A Yes. That -- And I'm only going to make
14 the assumption --

15 Q Okay.

16 A -- that that's -- those are automated
17 payments.

18 Q Okay. Because in the pre-litigation, is
19 the all nines with the dash and blank, always
20 associated with an automated entry?

21 A Not -- No. 'Cause we can make -- we have
22 automated payments as well.

23 Q Okay. So in your department, you can also
24 make an automated entry and it would look exactly
25 the same, in terms of the nines?

1 A I can't say for sure.

2 **Q Okay. All right.**

3 MR. WILLEY, IV: I will mark 0024
4 through 0027 as Plaintiff's Exhibit Number
5 2.

6 (Whereupon, Plaintiff's Exhibit Number 2
7 was marked for identification.)

8 **Q All right. It's kind of small type. If**
9 **you want to look at it. If you need to see**
10 **anything on mine, let me know, because I can blow**
11 **it up, okay.**

12 First, looking at the top left at what I
13 would call the index. Yes.

14 What -- Are all of these things separate
15 parts of the claims file?

16 A I mean, I guess that's one way to look at
17 them. It's -- would just be it would take you some
18 place if you clicked on that, maybe. This is the
19 way our claim file looks.

20 **Q Okay. So, for example, if you clicked on**
21 **claims plan, where would that take you?**

22 A To a screen that shows -- Everything
23 that's kind of set up in the, all the -- I'm trying
24 to think -- exposure is not the right word I'm
25 thinking to use.

1 I can't, I can't explain it. I don't know
2 what else to say.

3 Q Okay.

4 A I see it every day and I don't -- I mean,
5 it just gives you some more information, but --

6 Q Tell me what kind of, like what, for
7 example, just would be listed there?

8 A It may -- Information that you might have
9 to, may -- Information that's pending.

10 Q Okay.

11 A It may show that the statements that are
12 taken or maybe they haven't been taken. If a
13 police report's been received; if the liability
14 assessment's been updated; if we've gotten the
15 appraisal done on the vehicles; if total loss is
16 still pending. And it kind of list all those
17 things out, like, kind of pending items. Maybe
18 that's --

19 Q How do things get added to the claims
20 plan?

21 A They're added -- This is called the tree
22 view.

23 Q Are they added by you?

24 A They could be. If you say add to the loss
25 here, sometimes they're added when the claim is set

1 up. And it's automatic.

2 Q That's what I'm getting at.

3 So when you set up a claim and you look at
4 the file for the first time and you determine, I
5 want to talk with witness A, B, C; I want to get a
6 copy of the police report; I want to get a copy of
7 the scene investigation -- I want to do a scene
8 investigation; I want to get a statement from this
9 person, you would put those things listed in the
10 claims plan?

11 A It's automatic.

12 Q Right.

13 A It's there.

14 Q Okay.

15 A And then, say the police report. You see
16 the police report is here?

17 Q Uh-huh.

18 A Once you actually receive it and you file
19 it, it's going to show completed in the claims
20 plan. It will automatically.

21 When you get that statement from, even
22 from each person, whether it's the witness, any
23 witnesses or drivers or passengers, it will
24 automatic, and you complete, once you take it and
25 you hit a complete radio button, it completes it in

1 the claims plan.

2 Q That's kind of what I was asking earlier.
3 And I should have been better with my question.
4 But is it true to say that the claims plan is
5 basically the checklist of all the things that you
6 would like to do on a claim?

7 MR. WHELAN: Object to form.

8 A Possibly.

9 Q Right.

10 A Not necessarily though.

11 Q Maybe not all inclusive, right?

12 A Yes.

13 Q Okay. But it is what it says it is, which
14 is a plan for the claim, right?

15 A Yes.

16 Q Okay. And if you click that link, it
17 would take you to a separate page that would show
18 all of those items which have been complete and
19 which were pending, correct?

20 A Yes.

21 Q Okay. And it would also show you when the
22 completed items were completed, right? Does it
23 give you a date?

24 A Maybe somewhere. I'm not sure exactly if
25 this shows in there or not.

1 Q In looking at 0024, if you look at the
2 kind of tabs on claim docs where injury evaluation
3 is in blue.

4 Do you see that?

5 A Yes.

6 Q If you were in the claims plan section,
7 would that section be blue?

8 A Yes.

9 Q Okay. So my basic question is if we got a
10 printout of the claims plan section, we would know
11 it was the claims plan section if it looked like
12 this, except 0024 instead of injury evaluation
13 being highlighted, the claims plan tab was
14 highlighted?

15 A I believe so.

16 Q Okay. This injury evaluation tab
17 section --

18 A Uh-huh.

19 Q -- who inputs this information?

20 A The file handler.

21 Q Okay. Are other individuals, like,
22 managers able to document things in there?

23 A I guess they have the ability to, but
24 normally that's not what -- Usually, it's kind of a
25 working document that we use.

1 Q Okay. And this document builds as you go
2 through the process; is that fair?

3 MR. WHELAN: Object to form.

4 Q In other words, the information that is on
5 this document that we're looking at may have been
6 entered at different times?

7 A Correct, yes.

8 Q All right. Do you know whether or not in
9 setting up the claim you would have entered any of
10 this information into the injury evaluation?

11 A I would not have, no.

12 Q Okay. And how do you know that?

13 A Because I would have just set the claim
14 up, specifically, to get it assigned and moved it
15 on.

16 Q When someone documents and says that a
17 U.I.M. coverage is, for example, twenty-five,
18 slash, twenty-five, what does that mean in USAA's
19 world?

20 A Well, it would mean that -- What it would
21 mean to me is twenty-five thousand per person,
22 twenty-five thousand per occurrence, which I don't
23 think that exist.

24 Q Right.

25 A But that's what, typically, that's what we

1 would look at it to mean.

2 Q So here under physical evidence, if you
3 look. Can you see that where it says hard impact,
4 compelling photos, USAA U.I.M five hundred, slash,
5 five hundred.

6 A Uh-huh.

7 Q To you that would mean?

8 A Five hundred thousand per person, five
9 hundred per occurrence.

10 Q Right. Which is -- The reserves on this
11 particular sheet at this moment in time, I have two
12 hundred and fifty thousand.

13 Do you see that?

14 A I do.

15 Q Okay. Do you know, does USAA have a
16 policy of paying out the undisputed U.I.M. amount?
17 I'll give you -- You need an example?

18 A Yes, please.

19 Q Okay. And then I'll reask my question.

20 Some insurance companies say that in order
21 to fairly compensate our insureds or what have you,
22 if we think thirty thousand U.I.M. is coverage is
23 owed and the insured thinks a hundred thousand in
24 U.I.M. coverage is owed, we will go ahead and pay
25 the thirty thousand that's undisputed out and

1 litigate over the seventy thousand.

2 Have you ever seen a time where USAA has
3 done that?

4 MR. WHELAN: Object to the form.

5 A Not any of my files.

6 Q Have you ever seen that in anyone else's
7 files?

8 A I can really only speak to my own.

9 Q Okay. So you're not aware of USAA ever
10 having done that?

11 A Not -- Again, I can only, really, only
12 speak to my own, anything that I've ever handled.

13 Q Right.

14 A And I've not ever done that.

15 Q Okay. Have you ever thought of that
16 before today?

17 A I have not.

18 Q Okay.

19 A Property damage, maybe.

20 Q Okay. Right. You think that's a good
21 practice --

22 MR. WHELAN: Object to the form.

23 Q -- to protect your insured?

24 A I would have to look at -- It would,
25 again, be a case-by-case basis situation. You

1 know, am I getting a release. I mean, it's a whole
2 situation.

3 Q Well, let's just talk about it generally.
4 So we talked earlier about USAA's ethics of honest,
5 integrity, loyalty, and it's kind of stand by the
6 insured idea, right?

7 A Certainly.

8 Q Okay.

9 A Well, hang on a second.

10 Q You said --

11 A Wait. Say that again.

12 Q The ethos, I think you said were on the
13 wall.

14 A Yes.

15 Q Honesty, integrity, loyalty and maybe one
16 other, right?

17 A And standing by our insured.

18 Q The idea, right?

19 A You know, I mean, if we can support them,
20 you know, and that's what -- We want to investigate
21 the claim.

22 Q Right. And you said earlier that USAA's
23 purpose of handling U.I.M. coverage is to determine
24 how much the insured should be compensated from
25 that coverage, right?

1 A If there's a claim owed and paying what we
2 owe, yes, right.

3 Q And, so my question is, just to you
4 generally, there's no dispute about a particular
5 amount being owed? In other words, USAA agrees
6 it's owed and the insured agrees its owed, don't
7 you think it would be appropriate for USAA to go
8 ahead and pay that undisputed amount to their
9 insured?

10 A Again, I can't speak to every single case
11 because there's so many factors that come in. You
12 know, am I getting a release for that, because I'm
13 going to need that. And I don't believe that I
14 would be getting a release, if there's other
15 factors that are going to come into play. So I, I
16 just don't know.

17 Q Let's talk about the release factor. The
18 release, its purposes is to protect the rest of the
19 coverage that USAA is not paying, right?

20 MR. WHELAN: Object to the form.

21 Q Would you agree with that? That's what a
22 release does?

23 A Correct.

24 Q It says, we will pay you "X"; you will
25 sign this and we will never pay you another dollar,

1 right?

2 MR. WHELAN: Object to form.

3 A Yes.

4 Q Basically. So, no, you wouldn't get a
5 release under that circumstance, but rather than
6 being able to hold the disputed amount hostage and
7 basically negotiate against your insured, the
8 company would be paying the insured what everybody
9 agrees the insured is owed and only disputing the
10 disputed amount, doesn't that seem more fair than
11 holding the undisputed amount to try to get the
12 insured to take less on the disputed amount in
13 exchange for a release?

14 MR. WHELAN: Object to the form.

15 Q Just as a person, I mean?

16 A That's just not my decision to make.

17 Q I understand that.

18 A So I, you know, I can't speak to that.
19 It's just not for, it's not for me to make that
20 decision.

21 Q And I'm just asking you based on your
22 claims handling experience. I'm not asking you to
23 make a decision for USAA or to tell them what they
24 should do. I'm just saying, from a common sense
25 perspective, if our purpose is to stand by our

1 insureds, pay what we believe is owed, doesn't that
2 make more sense?

3 MR. WHELAN: Object to form.

4 A Not necessarily. That's all I can -- I
5 just don't feel like -- I feel like it's a case-by-
6 case basis, so I can't say that that, that that --

7 Q All right. So in this case at this
8 particular point in time where this injury
9 evaluation is printed, the reserves were set at two
10 hundred and fifty thousand, right?

11 A Yes.

12 Q That's the internal evaluation of the
13 case, right, the reserve?

14 A I don't know why it was set at that.

15 Q Right. But it is set at that?

16 A It is set at that, correct.

17 Q Okay. And if you go to the next page, we
18 see that the total specials allowed are two hundred
19 and seven thousand two hundred and two dollars.

20 Do you see that?

21 A Yes.

22 Q Okay. I'm going to have a short
23 conversation about medicals claim verse medicals
24 allowed.

25 Medicals allowed is the amount that USAA

1 agrees is actually compensable?

2 MR. WHELAN: Object to the form.

3 Q Is that accurate?

4 A That they feel is owed or they feel is
5 related?

6 Q Right. So, for example, sometimes people
7 claim -- They get in a car wreck, they go to the
8 hospital, they get treated and then they get a
9 pregnancy test on the way out. Pregnancy test is
10 on the bill. That may be part of medicals claim,
11 but it wouldn't necessarily go on medicals allowed,
12 right?

13 A Possibly.

14 Q Right. So in this case, the total
15 specials that were allowed, including the medicals
16 at this point in time were two hundred and seven
17 thousand two hundred two dollars, right?

18 A Yes.

19 Q Okay. And we got the reserve set at two
20 hundred and fifty thousand.

21 So do you see any reason, given your
22 experience in claims handling that it would not
23 have been appropriate to compensate Ms. Hood for
24 the two hundred and fifty thousand, and just argue
25 over the remainder?

1 MR. WHELAN: Object to form.

2 A Because we hadn't settled the claim.

3 Q So you don't think it would be appropriate
4 to compensate the undisputed amount without her
5 signing a release, releasing her right to collect
6 additional money, right?

7 MR. WHELAN: Object to form.

8 A Based on the information that I have here
9 and that we didn't have a settlement.

10 Q Okay. All right.

11 On authorization notes which is about
12 halfway down on page 0025 --

13 A Uh-huh.

14 Q -- it says claims authority conference
15 conducted today and authority granted for two
16 hundred and fifty thousand regarding U.I.M. claim
17 for Therese Hood.

18 Do you see that?

19 A I do.

20 Q Okay. How would I determine what day that
21 claim authority conference was held on? Is there
22 somewhere else in the claims docs I could look to
23 find that?

24 A I don't know if it would be somewhere
25 else. I'm not sure.

1 Q Where else might it be if that information
2 were going to be somewhere else, on what sections
3 would be possible?

4 A I'm not -- You know, I mean, I have ones
5 that look like this. My files look like this where
6 my manager docs, and it doesn't show a date either.

7 Q Okay.

8 A It just shows that I made an offer after
9 that, so.

10 Q All right. If I -- And I'm not trying to
11 pin you down to one section or another, I'm just
12 saying, if I came to your desk and said, Missy, I
13 need to know when this client authority conference
14 was held, where would you kind of go to see if you
15 could find it?

16 A I don't -- Again, this is, I think a
17 litigation file.

18 Q Okay.

19 A And I don't know if they have -- do
20 something any different than what I do. So I don't
21 know.

22 Q All right. So in your file it doesn't
23 look like that?

24 A It does look like this, but I don't -- it
25 did. The conference, fact that there was a

1 conference, I don't have a conference. My manager
2 just looks at it.

3 **Q All right.**

4 A And there's no conference.

5 **Q Okay. All right.**

6 A So it wouldn't have been a conference.

7 **Q This next section, do you have this**
8 **section called Negotiation Points and Strategy in**
9 **your --**

10 A Yes.

11 **Q Who inputs that information?**

12 A The file handler.

13 **Q Okay. Anyone else?**

14 A And when I say file handler, that would be
15 the person in litigation as well. But I don't know
16 if -- I'm not saying a manager can't put
17 information in there. I don't, you know -- I can
18 only speak to what my manager, doesn't normally doc
19 anything in there.

20 **Q Okay. What's the purpose of that section?**

21 MR. WHELAN: Object to the form.

22 A Everybody has a different kind of use for
23 it, but when you look at this, it's kind of a lot
24 of information in there, and it kind of helps you
25 break down -- makes it a little more concise for

1 you.

2 Q Is it specifically to give you -- to
3 remind you of facts or things to negotiate on when
4 you're trying to resolve a case?

5 MR. WHELAN: Object to form.

6 A I mean, it can. Again, everybody -- I've
7 seen it used for different purposes for different
8 people.

9 Q Right. I mean, it's under the subject of
10 strategy. And the ultimate goal is to get the case
11 resolved, right? That's the goal of every claim,
12 get it resolved?

13 A For everyone involved, yes.

14 Q Right. And you have a goal, you have
15 objectives, you may have a strategy, whatever. The
16 strategy is to get the case resolved, as far as
17 little payment as possible, right?

18 MR. WHELAN: Object to form.

19 A No.

20 Q All right. You said the reserve, for
21 example, in this case, two hundred and fifty
22 thousand, right?

23 MR. WHELAN: You said you set the
24 reserve?

25 MR. WILLEY, IV: USAA.

1 Q The reserve is set at two hundred and
2 fifty thousand, okay.

3 Would you expect that opening offer to be
4 two hundred and fifty thousand?

5 A I don't know what to expect, because I
6 don't know what was going on in this claim.

7 Q Typically when you're handling claims, is
8 your first offer the full amount of the reserve
9 that's set on that claim?

10 A Not -- For myself, not typically, but that
11 doesn't mean it hasn't happened.

12 Q Right. And would you expect that for
13 other claims handlers their first offers are very
14 rarely the full amount of the reserve set for their
15 claims?

16 MR. WHELAN: Object to form.

17 A It just -- I can't speak to what anyone
18 else might do. Each case -- It's a case-by-case
19 basis.

20 Q Isn't part of the training that you get at
21 USAA about how to negotiate claims with attorneys
22 and claimants? Isn't part of the training USAA
23 gives claims examiners and adjusters about
24 negotiating claims with attorneys and claimants?

25 A Yes. At some point I had some training.

1 Q All right. And isn't the purpose of
2 trying to resolve the claim to resolve it at as low
3 of a payment as possible?

4 A Is that the purpose?

5 Q That's the purpose of trying to negotiate
6 a claim, right, to resolve it at the lowest number
7 possible where both sides accept the settlement?

8 A No. It's just to pay what we owe and to
9 come to a mutual agreement, whatever that number
10 may be. There isn't --

11 Q Okay. Right. But USAA has determined
12 that the reserve on a claim, for example, here it's
13 set at two hundred and fifty thousand. I think
14 we've agreed that it would be very rare, I will
15 submit to you in this case they did not, USAA ever
16 offer two hundred and fifty thousand as its first
17 offer, right?

18 MR. WHELAN: Object to the form, if
19 that's a question.

20 A Again, I don't know what went on with this
21 and how it was negotiated, how -- what offer was
22 initially made and what was the, you know, what the
23 specifics were when everything transpired. I can't
24 speak to that.

25 Q And I'm not -- Right. And I'm not asking

1 you for specifics on what happened with the
2 negotiations.

3 What I'm saying, what I'm asking you is,
4 isn't it true if we went and looked at USAA's
5 files, negotiation files, you would expect that it
6 would be the rare file where USAA's first offer to
7 resolve a case was at the full amount of the
8 reserve that was set?

9 A Again, I don't -- Possibly. I just don't
10 know. I don't have enough information.

11 Q Okay.

12 A I can only speak to my own.

13 Q All right. And you agree that that would
14 be rare for your files, to find a file where the
15 first offer that you made to a claimant or a
16 claimant's attorney was the full amount of the
17 reserve authority you had on that file?

18 A In fact, it would be rare. But I'm not
19 saying it couldn't happen.

20 Q Right. And isn't part of the negotiation
21 process, to attempt to get that claimant attorney,
22 or claimant, to agree to accept as low a number as
23 possible, but to accept? It has to be mutually
24 accepted. But to accept as low a number as
25 possible to resolve the claim?

1 A No.

2 Q Okay. It's never your goal when you go
3 into a claim negotiation to pay the full amount of
4 the reserve, is it?

5 A Is it my goal to pay what we owe and to
6 settle it amicably with the party?

7 Q Right.

8 A So, I mean, that's the way I think about
9 it.

10 Q Right.

11 A That's what I do.

12 Q Right. And I understand that, and I don't
13 disagree with what you're saying. It has to be
14 amicable settlement where both sides agree,
15 correct?

16 A Yes.

17 Q Okay. And it is the company's objective
18 to make that agreement number as low behind the
19 reserve as possible, right?

20 A I'm not aware of that, no, I don't.

21 Q No one has ever said to you, or you've
22 never seen a report or you've never been in a
23 meeting where they discussed claims paid as a
24 percentage of reserves?

25 A No.

1 Q Okay. You've never been in a meeting or
2 seen a document or had any information distributed
3 to you about your team's performance in terms of
4 total payment of claims over a assessed value or
5 anything like that?

6 A No, to be honest.

7 Q Okay. Do you believe that the claims
8 examiner's job to pay the claimant as much money as
9 possible?

10 A I believe that it's my job to pay what we
11 owe on a claim.

12 Q Right. And the payment of the owed amount
13 is based upon the valuation of the claim, right?

14 A Yes.

15 Q And the internal valuation of the claim is
16 what you use to set the reserve, right?

17 MR. WHELAN: Object.

18 A I'm sorry?

19 Q The internal valuation of the claim is
20 what is used to set the reserve amount, correct?

21 A Typically the high value of the claim is
22 what the reserve is set at.

23 Q Right. Based upon the internal valuation
24 of the claim, right?

25 A Correct.

1 Q Okay. What I'm getting at is the claimant
2 has no input on the reserve on a typical claim,
3 right?

4 A Correct.

5 THE COURT REPORTER: Can we take a
6 break?

7 MR. WILLEY, IV: Sure.

8 (Whereupon, a recess was had from
9 4:37 p.m. to 4:44 p.m.)
10 BY MR. WILLEY, IV:

11 Q So looking back at Plaintiff's Exhibit 2,
12 I'm going to go to the last page of that, which is
13 0027.

14 We're going to be done with this one.

15 Look again at the index on the left-hand
16 side. I call it the index.

17 A We'll go with that.

18 Q Okay. At the bottom of the loss event
19 overview where it says Cary Tanrath, witness;
20 Missy Howard, X443XX handling B.I. claim;
21 Jack Daniel, those three. What would you expect to
22 be there?

23 A Should there -- Are you asking should
24 there be anything different or should there --

25 Q Like if you click that --

1 A Oh.

2 Q -- where would it take you, would you
3 expect?

4 A It would just take you to a screen that
5 looks similar to this.

6 Q Okay.

7 A When I say similar, it would just have a
8 place for somebody's name, address and phone
9 number.

10 Q Okay.

11 A So that's the -- So like Jack Daniel, his
12 information is probably there.

13 Q Okay.

14 A His contact information, maybe --

15 Q Yeah.

16 A -- e-mail address and things like that, is
17 what I'm assuming, if that's the screen.

18 Q Yeah.

19 A Because these are under add to loss.
20 There -- that becomes a drop down.

21 Q Got it.

22 A And it can -- there's a -- You can add
23 something that says other party.

24 Q Okay.

25 A Because, typically, what this is, when you

1 add, when it's add to loss, it's going to be
2 claimant vehicle, witnesses --

3 Q Got it.

4 A -- personal property, different things
5 that might be associated with this. And there's
6 one that's other party.

7 Q Okay.

8 A And then that's how I got added, or that's
9 how my name got added and Jack Daniel --

10 Q Okay.

11 A -- if you have to add another party.

12 Q And, so if you went there, would it, would
13 you expect to see like a summary if you all talked
14 on the phone sort of thing?

15 A No.

16 Q Okay.

17 A It's really just information.

18 Q Got it, okay.

19 A Like if you were to go to detail under
20 where we are now --

21 Q Uh-huh.

22 A -- it would list Therese Hood's name,
23 address and phone number --

24 Q Okay.

25 A -- and maybe e-mail.

1 **Q All right.**

2 **A And that's what it would look like.**

3 **Q Well, I hope to be able to see all that**
4 **one day, but we'll figure that out.**

5 **Let me ask you about Plaintiff's --**

6 MR. WHELAN: Jack Daniel's e-mail
7 address?

8 MR. WILLEY, IV: No.

9 What this tab showed.

10 MR. WHELAN: She just told you.

11 **Q Let me show you Plaintiff's Exhibit 3.**

12 (Whereupon, Plaintiff's Exhibit Number 3
13 was marked for identification.)

14 **Q Which is Hood USAA 0028 through 0044.**
15 **Just take a minute and familiarize yourself.**

16 **Do you know what this document is?**

17 A Not just by looking at it, no.

18 **Q Okay. It doesn't look like anything that**
19 **you're familiar with, as far as USAA's forms and**
20 **all like that?**

21 A Wait a second. It looks like all the
22 information that's from our screens, but I don't
23 know where it's coming from.

24 **Q Okay. Fair enough.**

25 A Yeah. I don't -- I'm not sure.

1 **Q Who is Ronald Vestal? Do you know him?**

2 A I did know him.

3 **Q How is he?**

4 A He passed away.

5 **Q What was his role?**

6 A He was, maybe a litigation director --

7 **Q Okay.**

8 A -- possibly. I'm not sure his exact
9 title. But he passed away a couple years ago,
10 maybe a year or two ago.

11 **Q Okay. All right. Sorry to hear that.**

12 Have you ever seen the, what I'm going to
13 mark as Exhibit 4, which is Hood USAA 0045.

14 (Whereupon, Plaintiff's Exhibit Number 4
15 was marked for identification.)

16 A I'm sorry. What was the question?

17 **Q Have you ever seen that?**

18 A Have I seen this screen before?

19 **Q Yes.**

20 A On other files, yes.

21 **Q And what is that?**

22 A It's the reserve history. When the
23 reserves were changed or opened and closed or,
24 and/or changed.

25 **Q And that's what I was going to ask you.**

1 So there's -- You see where it stays a
2 hundred thousand for a while, but there's several
3 entries for that, like, 5-21, 6-22, 6-22, 6-22?

4 A Yes.

5 Q Why -- How does --

6 When you say open, does that open and
7 close -- I'm trying to figure out why there would
8 be multiple entries for the same amount.

9 A I'm not exactly sure --

10 Q Okay.

11 A -- about everything.

12 Q Okay.

13 A Okay. I can tell you that when there's a
14 change, you're going to get like a change -- This
15 is the file handler code, like --

16 Q Yeah.

17 A So like -- or not -- The employee number,
18 I apologize. So Diane is 46902.

19 Q Right.

20 A Okay. So as soon as the file changes
21 over, when it went M0085, it's always going to --
22 Then it will make an update.

23 Q Right.

24 A And then when there's an increase, it will
25 make an update.

1 **Q Right.**

2 A The other things, and this is what I'm not
3 sure on. This is just going to be what I --

4 **Q Just the best of your knowledge.**

5 MR. WILLEY, IV: You can't tell her
6 not to answer. She's allowed to answer.

7 A It's just that it -- We have reserve
8 remainders that we can look at that we get.

9 **Q Uh-huh.**

10 A I don't know if that's what that is or
11 not.

12 **Q Okay. How would you be able to determine**
13 **what that is? Is there any way in the claims file?**

14 A Not that I know.

15 **Q Other than on the claim docs, Exhibit 1,**
16 **would there be anywhere you could look to determine**
17 **why a reserve was changed? Would that be notated**
18 **anywhere else, other than as a documentation on**
19 **Exhibit 1?**

20 A Not that I'm aware of.

21 **Q Okay.**

22 MR. WILLEY, IV: All right. I will
23 mark 0046 through 0384 as 5.

24 (Whereupon, Plaintiff's Exhibit Number 5
25 was marked for identification.)

1 MR. WHELAN: These are all the pages
2 from 0046 through?

3 MR. WILLEY, IV: Yes. The full,
4 unless somebody stole one on the plane.

5 BY MR. WILLEY, IV:

6 Q Okay. You don't need to flip through
7 that.

8 If you will go with me to 0077.

9 All right. What is this?

10 A Recorded statement transcript.

11 Q Okay. And you took this recorded
12 statement, correct?

13 A I did.

14 Q Okay. You said earlier when you take a
15 recorded statement you, obviously, tell the person
16 you go up top and you hit the button to record,
17 right?

18 A Yes.

19 Q Okay. And then you have the opportunity
20 to record statement, obviously. And you also take
21 notes in the claims doc of the file?

22 A Yes.

23 Q Okay. And sometimes might those notes be
24 useful, for example, for negotiation points or
25 liability issues related to the incident?

1 MR. WHELAN: Object to the form.

2 A Regarding what happened, yes.

3 Q Okay. This recorded statement is part of
4 L/R7, okay, which is the one part, I will say, at
5 least of the U.I.M. claim file, okay. That's where
6 this is, or at least it's been represented to me.

7 This recorded statement would have been
8 taken by you under L/R5, correct?

9 A Correct.

10 Q Okay. And L/R5 is where you would have
11 notated anything that you took down during that
12 call, correct?

13 In other words, you're not going to have
14 any notations in Plaintiff's Exhibit 1 that you
15 made about this call, right?

16 A I wouldn't have docked anything in loss
17 report seven, but, I mean, this recorded statement
18 is, is the facts of --

19 Q What happened?

20 A -- what happened.

21 Q Right. And if you go to 86, which is the
22 last page of that recorded statement.

23 This recorded statement was transcribed on
24 what day? December --

25 A December 11, 2014.

1 Q Okay. And according to the first page,
2 you took the recorded statement on November 13,
3 2014.

4 Does that sound like a typical gap, in
5 terms of getting a transcription back on a
6 statement you took?

7 A I don't transcribe every statement I get.

8 Q Okay. If you do transcribe a statement,
9 does it generally take about a month; is that a
10 fair estimate?

11 A I wouldn't think so.

12 Q Okay. Is it generally faster?

13 A Yes.

14 Q Okay. And at the time that this statement
15 was taken and transcribed L/R7 was not open yet,
16 correct, the U.I.M. claim file?

17 A Correct.

18 Q As you sit here today, do you know why you
19 asked to have this particular statement
20 transcribed?

21 A I could only think of one reason.

22 Q What's the one reason you can think of?

23 A That -- and I don't know for sure for
24 sure.

25 Q Right.

1 A Is that if this Mr. Johnson got an
2 attorney and the attorney requested a copy of the
3 statement.

4 Q But you don't know for sure that was the
5 reason?

6 A No.

7 Q Okay. Would you generally have documented
8 that reason in your communication requesting the
9 transcription?

10 A Let me go back on that.

11 Q Okay.

12 A Is that the -- our sub department,
13 subrogation department could have requested it for
14 arbitration.

15 Q Is another possible way?

16 A Yes.

17 Q But you don't know in this case, as we sit
18 here today, whether it was one of those, the other
19 or either, right?

20 A No.

21 Q Okay. You need to look at the date that
22 you requested the transcription to determine that,
23 right?

24 A Yes.

25 Q Do you know how a recorded statement from

1 **L/R5 would get into the claims file for L/R7?**

2 A No.

3 **Q Okay. Is that typical?**

4 MR. WHELAN: I'm sorry. One second.

5 Yeah. I just wanted to see that last
6 question.

7 Okay. I'm sorry.

8 A I, and I don't know for sure. I could
9 have copied it over when I created the U.I.M. file.
10 BY MR. WILLEY, IV:

11 **Q Okay. Would that be reflected on the**
12 **claims doc for L/R7 if you had input a document**
13 **into the file?**

14 A I don't know that it would show in here or
15 not, that it wouldn't.

16 **Q Okay. But you just flipped through that.**
17 **You don't see it in there, do you?**

18 A No, huh-uh.

19 **Q Is it possible that somebody handling that**
20 **file went into your pending B.I. claim and**
21 **transferred it subsequent?**

22 A They could have asked me or could have
23 called another person if I wasn't in the office and
24 had someone else, you know, transfer.

25 **Q Right. So they could have gained access**

1 to, they being the people handling the U.I.M.
2 claim, could have gained access to your B.I. file
3 and transferred documents, that's possible,
4 correct?

5 MR. WHELAN: Object to the form.

6 A They would have -- They wouldn't have gone
7 into it.

8 Q Right. An intermediary could have gone
9 into it and transferred information, correct?

10 MR. WHELAN: Object to form.

11 A Possibly.

12 Q In fact, somebody had to go into the file
13 at some point and move your recorded statement from
14 that file L/R5 to L/R7 in order for it to be in
15 there --

16 A A copy of it.

17 Q -- right?

18 A Yes.

19 Q If you go to 88. This is a recorded
20 statement that Diane Martin took, correct?

21 A Yes.

22 Q Okay. And Diane Martin testified earlier
23 was the individual that the system randomly
24 selected to assign the U.I.M. file to after you
25 opened it, right?

1 A Correct.

2 Q Okay. If you will go to page 94. The
3 date this statement was transcribed is January 29,
4 2015, correct?

5 A Yes.

6 Q And that would have been prior to May 20,
7 2015 when you actually opened the U.I.M. file,
8 right?

9 A Yes.

10 Q Do you have any idea why Diane Martin
11 would have been taking this recorded statement five
12 months before the U.I.M. file was assigned to her?

13 A It appears, because it says here that --
14 Hang on a second. Something about Mysti, I think
15 that's what Mysti was interested in.

16 So she must have been taking it on my --
17 taking the statement for me.

18 Q Where did you see that, Miss?

19 A Hang on.

20 Q Spell the word miss at.

21 A On the top of page 94. It says --

22 Q Oh.

23 A -- okay, that's probably what Mysti was
24 interested in. It says Mysti.

25 Q Okay. Right.

1 A But I thought I saw that somewhere else
2 too, something here references my name.

3 Oh, right here. Mr. Smith, is there
4 anything else you would like to add to the
5 statement.

6 Q I see the middle of 93.

7 A "I think for Mysti's sake, uhm, one of the
8 issues is gonna be were the headlights on".

9 Q Right.

10 A So she must have -- maybe I was out and
11 she just happen to be the one that answered the
12 phone the day they called.

13 Q And, so this transcription was done in
14 January of 2015, which means that the statement
15 would have been taken prior to January 29, 2015,
16 right?

17 A Yes.

18 Q And there's not a date on the first page
19 of it, at least.

20 A Oh.

21 Q So Diane's involvement at that point, she
22 took a recorded statement for the B.I. file, which
23 was L/R5 five months, at least five months before
24 the U.I.M. file was opened and assigned to her; is
25 that a fair statement?

1 A Yes.

2 Q So she would have known, obviously, when
3 she got assigned the U.I.M. file that this
4 statement existed, right?

5 A I don't know that she would have wouldn't
6 have remembered.

7 Q Okay. Fair enough.

8 A I can't speak on that.

9 Q All right. I'm going to blow your mind
10 again. Let's go to 96. It gets even better.

11 Who took this recorded statement?

12 A All right. I think it's me.

13 Q You think it's you?

14 A I believe it's me.

15 Q Okay. Are you sure? Not a hundred
16 percent but --

17 A Ninety-nine.

18 Q Ninety-nine, okay.

19 Where could we find out for sure? If we
20 looked in L/R5, we'd be able to see the number
21 associated, the employee number associated with
22 that recorded statement, right?

23 A Yes.

24 Q That would tell us who took it, right?

25 A Yes.

1 Q Okay. Did you handle the B.I. claim all
2 the way through?

3 A No.

4 Q Once it went into litigation, you handed
5 off that claim; is that right?

6 A Correct, yes.

7 Q There are some e-mails between you and
8 defense counsel that was hired to defend the B.I.
9 claim.

10 Do you recall any conversations with a man
11 by the name of Chris Nickels?

12 A I know Chris Nickels, but don't remember
13 any communication with Chris.

14 Q How do you know him?

15 A Just through other files or, you know,
16 calling him to see if I can get information or
17 assistance.

18 Q When not handling litigation claims, when
19 would you ever need to contact him?

20 Does that question make sense?

21 A If I need maybe a minor court approval.

22 Q All right. Betsy Kushner (Phonetically),
23 do you know her?

24 A Yes.

25 Q She was the senior litigation manager?

1 A I know she works in our office.

2 Q Okay. Would it be typical for her to ask
3 you to speak with an attorney hired to defend a
4 B.I. claim?

5 A I can't say that she would or wouldn't. I
6 just don't know.

7 Q Okay.

8 A I don't remember.

9 Q If she did --

10 MR. WILLEY, IV: I don't have a copy
11 for you, but I will show you the e-mail.

12 MR. WHELAN: You have the whole
13 e-mail? I just, I got some notes when I
14 --

15 MR. WILLEY, IV: Oh, that's okay.
16 No, the notes are fine.

17 MR. WHELAN: I think you should show
18 her the whole e-mail.

19 BY MR. WILLEY, IV:

20 Q Yeah. You can take a look at it. It goes
21 in reverse, okay. So this one is -- Hold on a
22 second. Go all the way back. How about that.

23 Guys, I spoke with the plaintiff's office
24 already. Alex Myrtle (Phonetically) is handling
25 attorney on the Kucks over there. It's kind of

1 **immaterial at that point.**

2 MR. WHELAN: Well, it's still not all
3 the way back. It's responding to
4 something.

5 MR. WILLEY, IV: That's where she
6 gets pulled in.

7 MR. WHELAN: Good gracious. Eight
8 pages.

9 MR. WILLEY, IV: Yeah.

10 BY MR. WILLEY, IV:

11 **Q So you get pulled in up here with Betsy.**
12 **Let's see. I lost my spot. So --**

13 MR. WHELAN: Let's me just take a
14 look at that.

15 MR. WILLEY, IV: You have all this.
16 It's all plaintiff's production.

17 BY MR. WILLEY, IV:

18 **Q All right. So plaintiff's production 2284**
19 **is kind of where it starts. And you get brought in**
20 **on what is actually plaintiff's production 2282,**
21 **which is an e-mail from Betsy which says, good**
22 **morning, attached please find lawsuits which have**
23 **now been filed on behalf of William and Mary Kuck.**
24 **And that is sent to you, Alisa and Chris Nickels**
25 **from Betsy Kushner.**

1 Do you -- And your e-mail back was, thank
2 you; do you know if they have been served;
3 Missy Howard; April 10, 2016, eight-eighteen a.m.

4 You typically get to work that early?

5 A Yeah.

6 Q You're an early one?

7 A Yeah.

8 Q Okay. Do you have any independent
9 recollection of this e-mail thread?

10 A No.

11 Q Okay. Later Betsy says, Chris, and,
12 Melody, do you have confirmation of service upon
13 the insured of these two suits for William and
14 Mary Kuck. And Chris says, it's possible that
15 their personal lawyer, Kevin Smith, accepted
16 service. We will reach out to him and find out.

17 Then there's a conversation about the
18 plaintiff's lawyers in this case, okay.
19 Chris Nickels replies and says, with you on the
20 e-mail, Betsy Kushner, Melody Reeves
21 (Phonetically), recommend extreme caution, perhaps
22 a quick T.C., telephone call, I assume that means
23 next week. Then the call was set up, okay. Please
24 coordinate with Missy.

25 There is an e-mail from you indicating

1 what times work for you and then the e-mail from
2 Melody Reeves who is Chris Nickels paralegal
3 setting the time, okay. Chris will call you.

4 Do you remember that phone call?

5 A I do not.

6 Q Okay. And --

7 MR. WHELAN: Object to form.

8 Q Would that phone call have been documented
9 in L/R5, L/R6 or L/R4, 3, 2, 1?

10 Do you know where that would have been
11 documented?

12 A I would think -- I mean, L/R5, but I don't
13 remember.

14 Q Okay.

15 A I don't remember it.

16 Q All right. Would you expect that it would
17 have been documented somewhere by you?

18 A If there was a phone call, yes.

19 Q Okay. How long does, if you know, maybe
20 you don't know, USAA keep its claims files after a
21 claim is closed?

22 A Oh, seven years, ten years.

23 Q Okay.

24 A But I'm really not sure.

25 Q I understand. There's an e-mail which is

1 Hood, plaintiff production 2378 dated May 21, 2015.
2 So we're now at the point where you've opened the
3 U.I.M. file and it's been transferred to Diane,
4 right?

5 A Yes.

6 Q This is an e-mail from Diane to
7 Chris Nickels copying you, okay.

8 MR. WHELAN: Let me see it.

9 MR. WILLEY, IV: You have all these?

10 MR. WHELAN: Well, Roy, you're
11 supposed to bring copies of the exhibits
12 to the deposition. I mean, there's three
13 thousand pages.

14 MR. WILLEY, IV: Four thousand.

15 MR. WHELAN: Four thousand pages.

16 MR. WILLEY, IV: You don't have them
17 on your computer?

18 MR. WHELAN: I do not.

19 MR. WILLEY, IV: Well, read just that
20 e-mail.

21 MR. WHELAN: Okay.

22 MR. WILLEY, IV: Okay. All right.

23 BY MR. WILLEY, IV:

24 Q This is, just show you, Hood plaintiff
25 production 2378. And the second highlighted line

1 just says, this claim went to arb and that decision
2 was eighty percent on claimant Johnson and twenty
3 percent on USAA Hood for no headlights. Missy is
4 handling the B.I. at a twenty percent liability
5 based on that outcome.

6 Do you see that?

7 A Yes.

8 Q Okay. And is that in fact an accurate
9 reflection of how you handled the B.I. claim on
10 eighty percent Johnson, twenty percent Hood
11 comparative?

12 A I can't accurately say that. I know that
13 that's what that says, but I didn't type that. So
14 I don't know.

15 Q Okay. And in order to accurately be able
16 to say that, would you have to look at your claims
17 file?

18 A I didn't handle the B.I. claim, so I
19 didn't settle it.

20 Q Right. But at that point in time she says
21 you're handling the claim. I know it didn't
22 settle.

23 A I mean, I never even got a demand. I was
24 still --

25 Q Right. You did an investigation?

1 MR. WHELAN: You got the
2 interruption?

3 THE COURT REPORTER: Yes.

4 Q You did an investigation, right, on
5 liability?

6 A I was in the process -- You know, I, from
7 what I remember, was that I always wanted to get
8 Kuck's statement to assist with finalizing my
9 liability decision.

10 Q Right.

11 A And that was, that was -- And I don't know
12 that I ever got that prior to it getting
13 transferred.

14 Q Okay. And that information would be in
15 L/R5, your claims file, right?

16 A Correct.

17 Q Okay. And what your investigation showed
18 and how you were handling the claim up until that
19 point would also be in your claims file, correct?

20 A Yes.

21 Q Okay. And if the statement was in fact
22 still being waited on, you still wanted that, you
23 would expect to see that as an uncompleted item in
24 your claims plan, right?

25 A Yes.

1 Q Okay. You have any questions for me?

2 MR. WHELAN: Object to the form.

3 A No.

4 MR. WILLEY, IV: Okay. Thank you for
5 your time. That's all I have.

6 MR. WHELAN: All right.

7 CROSS-EXAMINATION

8 BY MR. WHELAN:

9 Q All right. Ms. Howard, are reserves a
10 reflection of -- he's also said they're a
11 reflection of exposure, as opposed to value?

12 A Yes.

13 Q Okay. And looking at when you opened up
14 this U.I.M. file, you would have -- there would be
15 nothing in it, correct, on May the 20th; is that
16 right?

17 A Correct.

18 Q Okay. And, so in your file you would have
19 had factual information, such as the police report
20 and the statements that you took, right?

21 A That is correct.

22 Q Would you have take -- Would it be your
23 practice to take that information and put it into
24 the U.I.M. file when you opened it?

25 A Yes. That is what I do.

1 Q Okay. So let me ask you this.
2 Now, on Exhibit 3, is that over there?
3 Thank you.
4 Looking at page 2 of Exhibit 3.
5 Mr. Willey was asking you about what he called the
6 index on the document with the blue tabs. And he
7 was asking you about where it had a link for
8 Cary Tanrath.
9 You remember that?
10 A Yes.
11 Q These witnesses. And he said it would
12 have their address, basically?
13 A Yes.
14 Q Looking at page, the second page of
15 Exhibit 3 under Cary Tanrath, is that, that
16 essentially the information that you would get when
17 you click on that link?
18 A That is correct, yes.
19 Q All right. And then same thing with
20 respect to Jack Daniel down below?
21 A Yes.
22 Q All right. Then see where it says
23 Missy Howard XX44366? Again, that's the same thing
24 on that blue tab?
25 A Yes.

1 Q Okay. But you have not seen this info --
2 In your day-to-day job, you don't see the
3 information presented as it appears in Exhibit 3
4 that we have here today; is that fair?

5 A Yes.

6 Q It's in a different format?

7 A Right.

8 MR. WHELAN: All right. I think
9 that's all I have for you. Thank you.

10 MR. WILLEY, IV: It's not early, but
11 it's not late.

12 THE COURT REPORTER: You need this
13 transcribed, Mr. Willey?

14 MR. WILLEY, IV: Yes.

15 THE COURT REPORTER: You need a copy,
16 Mr. Whelan?

17 MR. WHELAN: Oh, yes, please, please.

18 (Whereupon, the deposition was concluded
19 at 5:30 p.m.)
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ERRATA SHEET
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE
IN RE: Therese Hood v. USAA

CASE NO. 2018-CP-10-0666

PAGE NO.	LINE NO.	CHANGE	REASON
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Under penalties of perjury, I declare that I have
read my deposition and that the facts stated in it
are true and correct subject to any changes in form
or substance entered here.

DATE

GAIL (MISSY) HOWARD

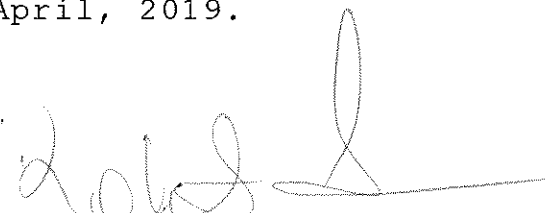
CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, ROBERTA TURNER, Registered Professional Reporter and Notary Public, State of Florida, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named GAIL (MISSY) HOWARD was by me, before the giving of her deposition, first duly sworn to testify as to the truth, the whole truth and nothing but the truth.

WITNESS my hand and official seal this 3rd day of April, 2019.


 ROBERTA TURNER, RPR, FPR, CLR, CCR (GA)
 Registered Professional Reporter
 NOTARY PUBLIC - STATE OF FLORIDA
 My Commission No. FF 235676
 Expires: 09-28-19



ROBERTA TURNER
 MY COMMISSION # FF 235676
 EXPIRES September 28, 2019
 Turned In Notary Services

1 REPORTER'S DEPOSITION CERTIFICATE

2 STATE OF FLORIDA

3 COUNTY OF ORANGE

4 I, ROBERTA TURNER, Registered Professional
5 Reporter, hereby certify that I was authorized to
6 and did stenographically report the deposition of
7 GAIL (MISSY) HOWARD; that a review of the
8 transcript was not requested; and that said
9 deposition was later reduced to computer
10 transcription under my personal supervision, and
11 pages 4 through 157 is a true and complete record
12 of my stenographic notes.
13

14 I further certify that the deposition was
15 taken at the time and place specified herein above
16 and that I am not a relative or employee or
17 attorney or counsel of any of the parties, nor am I
18 a relative or employee of any of the attorneys,
19 counsel connected with the action, nor am I
20 financially interested in the action.

21 Dated this 3rd day of April, 2019.

22 
23 _____
24 ROBERTA TURNER, RPR, FPR, CLR, CCR (GA)
25 Registered Professional Reporter
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1 TURNER REPORTING, INC.
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5 APRIL 3, 2019

6 GAIL (MISSY) HOWARD
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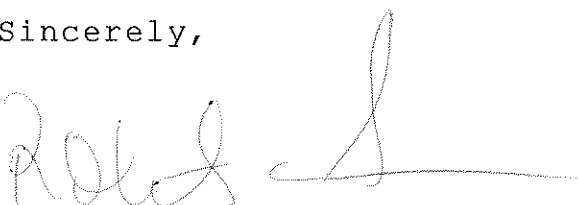
12 RE: Therese Hood v. USAA
13 CASE NO. 2018-CP-10-0666

14 The transcript of the above-referenced proceeding
15 has been prepared and a copy is enclosed here for
16 your review.

17 Any corrections you wish to make to the transcript
18 should be made on the errata sheet. Please do not
19 write on the transcript itself.

20 Please complete review of your transcript by May 3,
21 2019 and return the errata sheet to our office.
22 You need not return the entire transcript.

23 Sincerely,

24 

25 Roberta Turner, RPR, FPR, CLR, CCR, (GA),

26 CC: Roy T. Willey, IV, Esq.
27 Robert W. Whelan, Esq.

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Deposition of:

Kevin Smith, Esquire

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Therese Hood
v.
USAA

Case #: 2018-CP-10-666

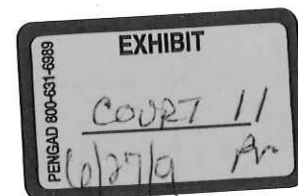
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THERESE HOOD,

Plaintiff,

v.

UNITED STATES AUTOMOBILE
ASSOCIATION (USAA),

Defendant,

* * * * *

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Page 2 1 APPEARANCES 2 3 REPRESENTING THE PLAINTIFF: 4 ROY T. WILLEY, IV, ESQUIRE 5 ERIC MARC POULIN, ESQUIRE 6 Anastopoulo Law Firm 7 32 Ann Street 8 Charleston, SC 29403 9 (843) 614-8888 10 email: roy@akimlawfirm.com 11 eric@akimlawfirm.com 12 13 REPRESENTING THE DEFENDANT: 14 ROBERT W. WHELAN, ESQUIRE 15 KATIE M. MELLEN, ESQUIRE 16 Nelson Mullins Riley & Scarborough 17 Suite 600, 151 Meeting Street 18 Charleston, SC 29401 19 (843) 853-5200 20 email: robert.wheLAN@nmrs.com 21 katie.mellen@nelsonmullins.com 22 23 ALSO PRESENT: 24 GRACE HAMILL 25	Page 3 1 INDEX 2 3 WITNESS: KEVIN B. SMITH, ESQUIRE 4 Examination Page 5 BY MR. WHELAN..... 4, 38 6 BY MR. WILLEY..... 37 7 REPORTER'S CERTIFICATE..... 39 8 9 EXHIBITS: 10 Defendant's 11 Exhibit Description Page 12 1 Excerpt of Cary Tanrath 30 13 ----- 14 STIPULATIONS 15 It is hereby stipulated and agreed by and 16 between the parties hereto, through their respective 17 counsel, that the reading and signing of the 18 transcript is waived by the Deponent. 19 20 21 22 23 24 25
Page 4 1 CHARLESTON, SOUTH CAROLINA, WEDNESDAY, JUNE 26, 2019 2 7:07 P.M. 3 PROCEEDINGS 4 ----- 5 WHEREUPON, 6 KEVIN B. SMITH, ESQUIRE 7 being first duly sworn, testified as follows: 8 EXAMINATION 9 BY MR. WHELAN: 10 Q All right, Mr. Smith, what, it's 7:00, the 11 night before you are going to testify. What have 12 you -- what has Mr. Willey asked you to testify about? 13 A Mostly timeline stuff. 14 Q Okay. 15 A Identifying documents, and timeline matters, 16 offers at mediation. That's about as much as I know. 17 Q Okay. All right. What documents? 18 A He mentioned my costs. 19 Q Okay. 20 A Trial costs. 21 Q All right. 22 A He mentioned some pleadings. 23 Q What pleadings? 24 A The Cooke (ph) complaint and answer and a 25 request to admit. There may be one more that I am	Page 5 1 forgetting, but... 2 Q And what timeline stuff? 3 A Just like dates, when things happened. He 4 may have just been asking me for curiosity, but like 5 when was the mediation and things like that, maybe 6 those were just -- that was just information he wanted 7 to get from me, but I tried to familiarize myself with 8 the timeline again because it has been so long. 9 Q What did you look at? 10 A Just my computer files about when the wreck 11 was, when mediation was, when the trial was, and then I 12 looked at when the Cooke's complaint was filed, but I 13 forgot the date already. I imagine the complaint has 14 got it stamped, so I didn't concern myself with it. 15 Q All right. So you are -- do you have an 16 interest in this case? 17 A Yeah. 18 Q What is that? 19 A I am sharing the fees. 20 Q Okay. What percentage? 21 A I believe it is 50. I haven't looked at it, 22 but I imagine that's what it is. 23 Q All right. And in the last case did you guys 24 split the fee on that one, 50/50? 25 A Yeah.

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Page 6 1 Q Have you -- do you and the Anastopoulo -- 2 Hoffman and Anastopoulo law firm, have you shared other 3 cases? 4 A I have referred him other work, but this is 5 the only case we have tried together. 6 Q You have referred cases to Mr. Willey? 7 A I have referred out of like upstate cases. 8 Q Okay. 9 A Statewide practice, so I have referred them a 10 case near York, which is my cousin, one more I thought 11 I -- yeah. Oh, there is one more. It is like a Blue 12 Cross Blue Shield denial of treatment and a guy killed 13 himself on a wheelhouse. 14 Q Has Anastopoulo referred cases to the Hoffman 15 Law Firm? 16 A No, they have not, so let's get that on the 17 record. 18 Q All right. Now, take me through the -- you 19 said timeline stuff. I guess you said that -- I guess 20 let me ask you about the negotiation, okay? 21 A Okay. 22 Q What settlement authority did you have from 23 Miss Hood? 24 A Going into it, I think we were -- I think we 25 were around between three and 400, maybe a little bit	Page 7 1 north of that kind of going into mediation. And at 2 some point at the very end, I forget what the exact 3 offers were, but it was in the low 100,000s, I think. 4 And we were leaving and they came in at the end. Jack 5 Daniel came at the end and through out 200 and said 6 this is all I got, just wanted to put my authority on 7 the table before you all leave. 8 And so I went and talked to her and she and I 9 had discussions that possibly 250 would do it; but Jack 10 was adamant -- mediator was adamant that Jack was 11 telling him that 200 was all they had and there would 12 never be any more. And she had come from quite a bit 13 already and just wasn't really into going under 250 so 14 we left. 15 Q And were there any negotiations after that 16 mediation? 17 A No. 18 Q Ever? 19 A Roy and I, I think, talked to the adjuster 20 during the trial and she laughed at us and walked away, 21 snickered. So... 22 Q What was the conversation? 23 A I don't -- she said something about we ought 24 to settle this case or something and we said sure, 25 let's talk about it. Do you want to increase your
Page 8 1 offer, do you have any more money and she kind of 2 snickered and didn't say anything -- 3 Q Okay. 4 A -- after that. 5 Q Was anything else said about negotiations 6 other than what you just described? 7 A After mediation? 8 Q Yes, sir. 9 A No. 10 Q Okay. 11 A That was it. 12 Q And the conversation you mentioned with the 13 adjuster at the trial? 14 A Yeah. 15 Q Where was that, where did that occur? 16 A It was like in the hallway. 17 Q And Mr. Willey was present for that? 18 A I think he was. I don't know. We were -- we 19 were literally passing each other on the stairs in the 20 courthouse. I don't think it was a serious 21 conversation. I think it was more like a, like a, you 22 know, hey buddy, let's settle this case or something 23 and like yeah, right, you know what I mean. 24 Q So who brought that up, you? 25 A She said -- honest, I don't know.	Page 9 1 Q Okay. 2 A I don't know. 3 Q So you don't remember who brought up 4 settlement negotiations in the hallway at trial? 5 A I don't. 6 Q Okay. 7 A I don't. And honestly I don't think it was 8 -- I don't think it was even settlement negotiations. 9 I think it was just comments back and forth. 10 Q But your best recollection is that the USAA 11 adjuster said something? 12 A I think she said something. I'm not totally 13 sure. I can't swear to it. I think she said something 14 like we ought to get this case settled or maybe we said 15 to her let's settle this case. I don't remember how it 16 went, but I do remember -- I do remember when we said 17 well, can you increase your offer or something like 18 that and she just kind of -- she laughed and just 19 walked away. 20 Q Okay. 21 A So I don't think it was -- I wouldn't call it 22 a settlement negotiation. I think it was just 23 adversaries meeting in the hallway. 24 Q Did you ever make any -- did you have 25 authority to settle the case at trial?

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Page 10 1 A Well, she never -- Therese never revoked her 2 authority to me for 250 grand. 3 Q Okay. 4 A She never revoked it. 5 Q So if USAA had offered \$250,000, you had the 6 authority to accept that? 7 A Yeah. 8 Q And would you have? 9 A I mean, I would have checked with her first. 10 I mean, trial was going pretty good, man. I would have 11 checked with her first, but Therese was more -- 12 honestly, she was more about closure than she was with 13 the money. 14 Q And what is the lowest demand that you ever 15 made to USAA? 16 A Officially 650. 17 Q And you said earlier -- actually let's go 18 back to the mediation real quick. Do you recall what 19 the opening offer demand was? 20 A All I can tell you, it was insultingly low 21 because the air in our room was -- I was a counselor 22 more than I was a lawyer that day in that room with 23 Terri and her husband. They were -- they didn't 24 understand and I was trying to keep them calm and this 25 is just kind of how it goes, but it was a -- it was an	Page 11 1 insultingly low start. 2 Q And it is -- it is common for -- 3 A I know, and I explained it to them. 4 Q But just to finish my question. It is common 5 in mediation for a defendant to give an insultingly low 6 number to start and for a plaintiff to give an 7 insultingly high number to start, isn't it? 8 A It is not my practice. 9 Q But it is common, you know that? 10 A I have only been in -- I have only been in 11 mediations in my cases. I have never been in 12 mediations in somebody else's case. 13 MR. WHELAN: Off the record. 14 (Off the record discussion.) 15 BY MR. WHELAN: 16 Q So, all right, back on the record. 17 All right. So can't speak to plaintiffs, but 18 certainly for defendants it is common to get a very low 19 number to start, right? 20 A I'm not playing games with you, but not 21 anymore. 22 Q Okay. 23 A I don't entertain it. I -- I set 24 preconditions a lot of times to mediation where the 25 first offer will be. That tells me if people are
Page 12 1 serious about getting the case settled. If they are 2 not getting the case settled, there's no reason to go 3 to mediation. And if they are not serious about 4 getting the case settled -- if they are serious about 5 settling the case, there is no problem putting some 6 money up front first. So -- but I don't really see it 7 anymore. 8 Q Okay. You think that's because of the way 9 that you practice yourself? 10 A If somebody is not serious about settling a 11 case, I am going to petition the court to be relieved 12 from the obligation to mediate. 13 Q Okay. Now, do you remember, do you have any 14 recollection of what the number was that was offered to 15 you first? 16 A The first one, no. 17 Q Do you have any recollection of what your 18 opening offer was, opening demand? 19 A I think maybe it was -- I think it was 750 or 20 eight. 21 Q Okay. And was this a pretty short mediation, 22 like how long? 23 A We had lunch. 24 Q Okay. Do you recall how many moves you made 25 to get to 650?	Page 13 1 A I would imagine three or four. 2 Q Do you know? 3 A I don't know, I don't know for sure. 4 Q Okay. 5 A No. 6 Q All right. But you ended up at 650, and USAA 7 was at 100? 8 A They were -- they were around -- they were 9 less than -- well, obviously they were less than 200, 10 but I think they were in the -- well, let me just say I 11 think they were in the low -- low 100,000, like less 12 than 150. But I don't know the exact number. 13 Q Okay. 14 A What I remember was 200 was a significant 15 jump and a surprise. 16 Q Okay. So they were at one -- around 150 or 17 under 150? 18 A I think it was under 150. 19 Q And then were you at -- so then did you go to 20 650 next after that? 21 A You know, what happened was -- then we just 22 kind of started talking at that point, offers kind of 23 stop, and we start to just exchange messages and the 24 mediator is kind of walking back and it is kind of like 25 we are talking about whether or not to do a bracket or

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Page 14 1 something. And I think that's when I told him that, 2 you know, we could probably do something between three 3 and four, which I think was my authority kind of 4 walking into the thing. And -- 5 Q You told John Tiller you could do between 6 three and four? 7 A Yeah. And then it -- it broke down. I mean, 8 I don't know how much of this you want to hear, but it 9 broke down. Jack was insulting to me. He was 10 insulting. He went so far as -- well, let's just say 11 he was insulting. He knew everything, so there wasn't 12 anything to talk about. 13 Q Okay. So -- so you told John Tiller that you 14 would settle the case between 300 and 400, right? 15 A Yeah, I said I thought -- yeah, and I think, 16 the words I would use in that situation is we can 17 probably get it done somewhere between three and 400. 18 Q Okay. And then the mediator takes that to 19 Jack Daniel, right? 20 A Uh-huh. 21 Q Yes? 22 A Yes. 23 Q And then next does the mediator come back to 24 you? 25 A Yeah.	Page 15 1 Q Okay. And does the mediator have any 2 additional authority, is that when the mediator has -- 3 A I -- well, I think what he -- I don't know if 4 he came back with additional authority. I don't think 5 any numbers were going back and forth at this time. I 6 think he just came back with a message like they are 7 not paying that. 8 Q So he told you they are not going to pay 9 between 300 and 400? 10 A Yeah, yeah. That's not going to happen. 11 Q All right. Then what happened? 12 A And then I remember I -- so I started talking 13 to them about bad faith. 14 Q You started talking to who? 15 A John Tiller. And I said this is crazy, you 16 know, USAA has hired one lawyer to go in a one 17 courtroom and say her lights were on and they have 18 hired another lawyer to go into a different courtroom 19 and say the lights are off. You know, this is a first 20 party benefits case. You all owe a duty of good faith 21 and fair dealing to her and I think that you violated 22 that and we are going to -- we are going to file a bad 23 faith claim and I wanted Tiller to go and express that 24 to Jack. And he kind of seemed like he did. 25 And -- but I was getting a sense that maybe
Page 16 1 the message wasn't being relayed, so I left my room and 2 walked into the other room and they are joking and 3 laughing and everything. And I say hey guys, what's 4 going on. We are just talking. I said well, did you 5 tell him about my bad faith case and they just started 6 laughing and Tiller said that's BS, carriers can do 7 whatever they want. And I was like -- he says I do it, 8 I do whatever I want. 9 And I said okay, but it seems kind of -- it 10 has never happened to me or at least I have never 11 discovered it and so that was part of the know it all 12 thing with Jack. He gets very loud, and honestly, my, 13 my goal was for going in there and talking to him was 14 we had all kind of legal issues going on at the time. 15 I would sit there and just go talk it out with him. If 16 he can convince me, right, man to man, that I am really 17 going to lose that issue, that it is something that I 18 am not aware of, a way of looking at it or something, I 19 am going to go tell my client, maybe we are a little 20 bit off on that or something, but I just wanted to talk 21 to him and he wanted to scream at me. 22 Q So this is you in the room with Mr. Daniel? 23 A Yeah. 24 Q So you walk over there, Mr. Hood and 25 Mrs. Hood are back in your room?	Page 17 1 A Yeah. 2 Q Was anything else said in that discussion 3 with Jack Daniel and the mediator, Mr. Tiller? 4 A That they said a bad faith claim would never 5 get past a judge, it would never get to a jury. They 6 acknowledged a jury probably wouldn't like it, but a 7 jury would never hear it. I don't -- I don't -- I can 8 guarantee you at some point there were snide comments 9 about Miss Hood being a liar, being crazy, being 10 something. She gave a really long deposition, it was 11 about five hours, and she was toast. I mean, she just 12 didn't -- she literally did not know her right from her 13 left in her deposition. And they kind of sort of had 14 their way with her about it. 15 So there were comments about -- about her. 16 They didn't call her stupid or something like that, but 17 there were insinuations that she was lying and she was 18 a little kookie, a little crazy in the context of you 19 can't depend on her at trial. 20 Q Okay. And that was also -- you go back -- 21 you tell -- so just to sort of recap, all right, they 22 offer 200, you tell John Tiller we can probably settle 23 between 300 and 400? 24 A Uh-huh. 25 Q And yes, good so far?

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Page 18 1 A Yes. 2 Q Then they tell you they can't get -- they 3 can't pay that much, right, or they are not going to 4 pay that much, right? 5 A I forget the words they used, but it was a 6 negative. 7 Q And then you go in there to see if you can 8 talk man to man to Jack Daniel and settle the case, 9 right? 10 A Yeah. You know, it may have been the man to 11 man may have been before it. I don't know the exact 12 order. 13 Q Okay. 14 A But that sounds logical that that's the way 15 it would have gone. 16 Q All right. And so the mediator was there in 17 the room? 18 A Yeah. 19 Q And you talked about the bad faith case and 20 then they also talked about the credibility? 21 A Yes. 22 Q Anything else discussed in that meeting that 23 you recall? 24 A You know, I told them, I think I told them at 25 that point we were leaving.	Page 19 1 Q And did you leave? 2 A No, because they asked me to stay because he 3 wanted to talk to the claims rep before I left. And 4 then -- and so we waited a little bit and then we 5 waited, then we were a little tired of waiting so we 6 were packing up and just about to leave and he comes in 7 and offers the 200, Jack does, personally. 8 Q Okay. Do you know whether the 200 was 9 offered before or after you said that you could settle 10 between 300 and 400? 11 A Oh, it was definitely after because it was on 12 our way out the door. 13 Q Okay. 14 A We were leaving and he says I just want to 15 put -- if you all are going to go, I just want to put 16 my full authority on the table. I don't have a penny 17 more and I just want to put it on the table. Here it 18 is. 19 Q Okay. And what was -- did you make any 20 response to that? 21 A Well, I told him hold on, let me talk to my 22 lady. And so I talked to Therese and that's when she 23 indicated that she would probably go for 250 and then I 24 relayed that to Jack and he said that he didn't have a 25 penny more.
Page 20 1 Q Your testimony is that you told Jack that she 2 would settle the case for 250? 3 A Let meet think. No. I don't think I said 4 that. I think what I said was do you have any more 5 room to move and he said absolutely not. So I don't 6 think I -- I don't think I gave him my client's bottom 7 -- that was her effective bottom line authority. I 8 don't know that I would have given him that. If he 9 would have offered it, she would have taken it. But I 10 think I said to him do you have any more room or any -- 11 some way of asking him do you have any more authority, 12 can you get any more authority, should we wait for you 13 to make a call, anything like that. And he said this 14 is -- this is all I have got, this is all I have, this 15 number will never change, so I said okay. 16 Q Now, why -- and at that point you are between 17 300 and 400, right? 18 A The last thing I had told them, my official 19 offer was 650, but I had told the mediator that I could 20 get it done between 300 and 400. 21 Q Was it a bracket? 22 A It wasn't a bracket. It was just a message. 23 After the 650, there were no other numbers exchanged 24 until Jack came in at the very end and offered 200. 25 Q Okay. Now, why didn't you offer to settle	Page 21 1 for 250? 2 A He said this is all he had and he would never 3 have any more and there is no more money and that this 4 is it, take it or leave it, 200 grand. 5 Q Okay. Now, you hear take it or leave it a 6 lot, right? 7 A I say it a lot. 8 Q But you hear it too, right? 9 A Not so much. Not so much. If I were to hear 10 that, I leave, I walk out of the room. I don't -- when 11 I say it, I try to mean what I say. And I would assume 12 if somebody else is going to say it, they are going to 13 mean what they say too. 14 Q But, you have -- 15 A When I was younger I heard that, yeah. 16 Q What do you mean by that? 17 A Well, when I was younger and when I went into 18 depositions with my beggar's cup out, sure, I fell into 19 every trick in the book. 20 Q So is a negotiation strategy to say -- well, 21 let me just back up. You had said in your past that 22 you have a number that you can't go below, right? 23 A I usually get a -- I get a -- I get firm 24 authority from the clients before we walk into 25 mediation, yeah.

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Page 22 1 Q And occasionally, you end up settling the 2 case for less than that authority? 3 A I can't remember the last time I did. I 4 settled it for less than my client's bottom line 5 authority. I mean, I've got an object at mediation, 6 right, and I have our bottom line authority. And I 7 will be honest with you, when I come up with my 8 client's bottom line authority, there is a formula I 9 use, there are all kinds of things that I do, focus 10 groups come into this, all kinds of stuff, right, 11 bottom line authority is bottom line authority. I want 12 my client's bottom line authority and to me bottom line 13 authority means that this is it and there will never be 14 any more. My clients express it to me in a way that if 15 you receive an offer for less than my bottom line 16 authority, you don't have to discuss it with me, I give 17 you authority to reject it and that's what I want. 18 Q Okay. 19 A In actuality, I still discuss offers with my 20 clients because, you know, I think I should, and I 21 respect them so I think they are owed that. But that's 22 what bottom line authority means, that means that there 23 is a fire and we need to evacuate the house and we need 24 to grab what we can get and run. That's bottom line 25 authority. I can't think of the last case i settled	Page 23 1 for less than my bottom line authority. 2 Q All right. Do you remember any other 3 discussions that occurred at the mediation? 4 A My -- my memory of openings was pretty much 5 par for the course of everything else, that it was sort 6 of filled with insults to Miss Hood, inaccuracies that 7 she has given. I don't know if they mentioned it, but 8 I think at some point Jack was questioning her military 9 service or her clearance level or something like that. 10 I know she was talking to me about it because she was 11 all upset about it at mediation. I don't know if Jack 12 mentioned that in his opening or not. But I don't 13 remember anything else specific. 14 Q Okay. Do you remember anything else about 15 the mediation? 16 A Uh-uh, no. 17 Q Okay. All right. We have been going a 18 little over a half hour. Do you remember anything else 19 about the negotiations with USAA other than what we 20 have talked about? 21 A Like formal negotiations? 22 Q Any, yeah, settlement negotiations. 23 A Yeah, I knew early on that we had to file a 24 lawsuit because no offers would be made. I mean, I 25 remember that from the adjuster because we never sent a
Page 24 1 formal demand on the case pre-suit and that was because 2 they were contesting everything. 3 Q Who was contesting everything? 4 A The USAA adjuster. I think it was Misty or 5 Missy, Missy, Missy at the time. I don't know if I 6 would call that settlement negotiations or not, but it 7 was just a you are going to have to file suit. It was 8 one of those kind of things. 9 Q What was your demand to her? 10 A I was -- I was just asking, is this a case we 11 can get resolved. It was one of those general kind of 12 conversations, you know, because I knew that I had the 13 police report, right. I knew what the cop put on the 14 police report, I knew there were defenses. And so I 15 usually start off those kinds of cases just with a 16 conversation with the adjuster, is this a case we are 17 going to be able to settle or not, and sometimes I will 18 say I think you just need to file suit and I -- that's 19 what I do. 20 Q Okay. Did you ever make any demand to USAA? 21 Did you ever ask for any specific amount of money? 22 A Before mediation? 23 Q Sure. 24 A I want to say that I told them I wanted 25 policy limits, but I checked my file, I don't have	Page 25 1 anything in writing to that effect and I don't have any 2 specific memory of when and where that would have taken 3 place. So my only specific memories of specific 4 numbers would come from mediation. 5 Q Okay. All right. 6 MR. WHELAN: Is this witness going to testify 7 about any other subject than what we have discussed? 8 MR. WILLEY: Probably. 9 MR. WHELAN: What? 10 MR. POULIN: Depends where the testimony 11 goes. 12 MR. WILLEY: I mean, everything that we told 13 you about today, pleadings, the acts in underlying 14 case, the interactions that he had with Jack at the 15 deposition, the -- when Jack deposed Miss Hood 16 potentially, you know, the -- his experience probably 17 in negotiating cases. I don't know. I mean, the jury 18 has to know who he is. There has to be some 19 background. Let's see. 20 MR. WHELAN: What do you mean his experience 21 in negotiating other cases? 22 MR. WILLEY: Just that he is a lawyer, you 23 know, he knows what's going on. It is not like -- is 24 this all on the record? 25 MR. WHELAN: Yeah, it is.

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Page 26 1 MR. WILLEY: Well, I'm not being deposed so 2 I'm not answering questions on the record. 3 MR. WHELAN: Yeah, I just trying to figure 4 out what we can try to cover with Kevin. 5 MR. WILLEY: I am happy to -- you have what 6 was said in court as far as the topics. We listed all 7 the topics for the judge that he would cover. Those 8 are the same topics. Have you asked -- if your 9 question is have you asked all the questions that I 10 would ask, the answer is no. 11 MR. WHELAN: I don't know what questions you 12 would ask. 13 BY MR. WHELAN: 14 Q But let me ask you, Kevin, about Jack 15 Daniel's deposition of Miss Hood. Did you feel that 16 his conduct was improper? 17 A Improper means reporting him to the bar, no. 18 Q Okay. 19 A Didn't rise to that level. He was 20 disorganized. He jumped from one date back to another 21 date back to another thing. Therese was clearly 22 confused and just not understanding, not following, 23 couldn't -- just very confused and I just -- I can tell 24 you and you might be able to see this in the 25 transcript, but there were several times we were just	Page 27 1 trying to get through with something, right. Therese, 2 when you saw Mr. Johnson on your right coming out, did 3 you try and avoid him. Yeah. Which way did you 4 swerve? I swerved to the right. You mean you swerved 5 at him? No, I didn't swerve at him. You mean you 6 swerved to the left? I swerved to the left. 7 And then he would go back over it again and 8 get her to say the right and then he would have to get 9 her to say left. It was crazy because every time he 10 would kind of get to the end, he would throw about four 11 or five extra words in his question and then she would 12 get confused again. 13 And so her head was spinning, and she was 14 crying, and she was upset, she was just out of it and, 15 you know, so it was five hours from start to finish. 16 There may have been a lunch break in there. And I 17 think there were instances where he was asking her, you 18 know, she said something, then he says, well I asked 19 you a question about that earlier, why did you leave 20 that off, why are you being inaccurate or something, 21 and I mean this is four hours into it. So I thought it 22 was uncalled for. But to be honest with you, I thought 23 it gave us insight into how Jack would cross her so... 24 Q Worked out pretty good for you? 25 A Worked out pretty good. He crossed her
Page 28 1 pretty much the same way. 2 Q At trial? 3 A Yes. He should have let Madison do it. 4 Q All right. So the -- anything else that he 5 did improper at the deposition? 6 A Well, again, I wouldn't call it improper. I 7 wouldn't say he violated any rules of professional 8 conduct or court rules or anything. It was just -- it 9 was just -- it was -- I mean, listen, maybe he was 10 trying to test her and see how far he had to go to get 11 her to kind of lose it. I don't know. It didn't seem 12 like such a -- I don't know. It seemed like such a 13 conscious effort to me to be honest with you. I think 14 he was just disorganized. 15 Q All right. Other than the deposition, let's 16 see, you have been practicing how long? 17 A Since '02, 17 years. 18 Q Have you been -- I know you were at the -- 19 A Steinberg. 20 Q Steinberg, is that where you started? 21 A Uh-huh, yes. 22 Q And you handle plaintiff's cases? 23 A Yes. I am six feet nine. Well, he is going 24 to ask me that, I know. 25 (Short recess taken.)	Page 29 1 BY MR. WHELAN: 2 Q So Mr. Smith, you stipulated at trial that 3 Miss Hood's lights were off, correct? 4 MR. WILLEY: Object. All right. We will 5 agree that all of the trial is not relevant and is out. 6 So we are not going to go into what happened at trial. 7 The judge has already ordered that nothing that 8 happened at trial is relevant in this matter, so we are 9 not going to get into it for purposes of the 10 deposition, but I appreciate the question. 11 MR. WHELAN: No, I need him to answer the 12 question. 13 MR. WILLEY: But you are not allowed to ask 14 him that at trial. 15 MR. WHELAN: Well -- 16 MR. WILLEY: The judge has already ruled. 17 You have the trial -- you have the trial transcript. 18 MR. WHELAN: We will take that up with the 19 judge. 20 MR. WILLEY: You already have and you lost. 21 MR. WHELAN: Right. 22 BY MR. WHELAN: 23 Q But Mr. Smith, you stipulated at trial that 24 her lights were off, correct? 25 MR. WILLEY: Objection.

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Page 30 1 A (Continuing) No. 2 Q No. What did you do? 3 A Well, stipulation is a legally defined term 4 so we did not stipulate. There was some testimony from 5 my client saying that she has her headlights on auto. 6 She always has her headlights on auto. She never 7 switches her lights off and she doesn't remember ever 8 switching her lights off. But if this person and that 9 person are going to say that or say that, she is not 10 going to argue with them anymore. I think that was the 11 gist of it. 12 (Defendant's Exhibit No. 1 marked for I.D.) 13 A (Continuing) I don't think there was ever a 14 formal stipulation. 15 Q Okay. Now, I have marked as Defendant's 1 16 page 553 from the trial testimony. And you say at line 17 eight, Your Honor, may I address the court very 18 briefly. And the judge says, you may. And then you 19 say, if this witness is going to testify that Miss Hood 20 did not have her headlights on, we stipulate to that. 21 A I don't remember saying that. 22 MR. WILLEY: I also object because his 23 explanation of that -- 24 MR. WHELAN: Hold on. No, no, no. Do not 25 make a speaking objection. You can object to it. You	Page 31 1 can instruct him not to answer. 2 MR. WILLEY: He is an attorney. 3 MR. WHELAN: It doesn't matter. Roy, stop. 4 That's not -- 5 MR. WILLEY: No, I object. This is a 6 mischaracterization. It is a mischaracterization. 7 MR. WHELAN: Stop the speaking objections, 8 that's incredible. 9 A (Continuing) Well, when -- when was this, it 10 is page 5, was this before. Therese testified last, 11 right? 12 Q Let's just be clear. You don't remember 13 making this statement, fair? 14 A No. I don't remember -- well, no, I reviewed 15 the -- I reviewed the transcript, the direct and cross 16 of Terri. I did not review the entirety of the 17 transcript so -- I don't question that this is -- that 18 these words were entered, this is what the transcript 19 says. I don't remember saying that. 20 Q Okay. So you are not denying that you 21 stipulated, you just don't remember? 22 MR. WILLEY: Objection. He has already 23 explained. 24 MR. WHELAN: You can object or not. You can 25 object or not, Roy. Please stop the speaking
Page 32 1 objections. 2 A (Continuing) As far as the way I am reading 3 this Robbie, I think that the stipulation would be in 4 lieu of the witness's testimony, but the witness 5 testified so there was no stipulation. 6 Q Well, actually you said, of course, you don't 7 remember saying this, you don't remember? 8 A Well, I got a paper so, whatever is here is 9 what was said, okay. But I said if this witness is 10 going to testify that Miss Hood did not have her 11 headlights on, we stipulate to that, but the witness -- 12 that was in lieu of him testifying. We had a hurricane 13 bearing down on us and the jury wanted to get out of 14 there and the court wanted to close and this trial was 15 going to end. 16 So we needed to cut this thing short and so I 17 was trying to -- as far as I can remember, I was trying 18 to eliminate this witness's testimony if that's what he 19 was going to say, but Jack didn't want it, he wanted 20 the guy to testify. So unless there is another page 21 where I actually do it, that's how I would read this 22 and that's how I would remember it. 23 Q Okay. Well, your testimony speaks for 24 itself. Not your testimony, the trial transcript 25 speaks for itself?	Page 33 1 A Yeah. 2 Q Now, you made -- you and Mr. Willey made a 3 strategic decision not to contest that her lights were 4 off at trial, right? 5 A Really, yeah, maybe it was a strategic 6 decision, but I think it was also that Therese just 7 couldn't handle being berated over it any more and it 8 was 6:00 in the afternoon. We had people testifying 9 that there was plenty of light outside. You could see 10 cars, you could see -- you could see trees, you could 11 see the median, you could see all of this with or 12 without headlights on and it was 6:00 in the afternoon. 13 The law did not require her headlights to be on at the 14 time of the wreck, so -- and she was -- she felt, she 15 felt very attacked over this issue, so I think maybe 16 for her mental health, we decided not to subject her to 17 that any more. 18 Q Okay. Now, the -- how many times did you 19 focus group this one? 20 A Four, five, six, something like that. 21 Q What sort of numbers? 22 A Maybe even more than that. 23 Q What sort of numbers did you get back? 24 A We were doing real bad. We were -- we were 25 doing really, really, really bad.

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Page 34 1 Q Like what? 2 A We were losing. We were losing the case 3 until last day. We made a little change in the order 4 of the evidence and we started winning so we called 5 another one. We were doing our focus groups down at 6 the Jasper County library and we just reordered. We 7 reordered the order of the information and we started 8 winning so we ran another one and duplicated it and we 9 won again. 10 So I don't remember what the numbers were 11 come back from that. You know me. The numbers don't 12 really mean very much. There is a way to get a number 13 out of a focus group. But this was not that kind of a 14 focus group. This was other issues in the case, the 15 lights, you know, all of those kind of things to figure 16 out if they mattered. And -- but they were, they were 17 killing us, they were killing us all the way until the 18 last two or three. 19 Q Okay. And so what, what did you do 20 strategically when you say you reordered the evidence 21 to go from losing the focus groups to winning the focus 22 groups? 23 A We took out the texting and we took out her 24 speeding and then we added back in the texting and then 25 added back in the speeding and that flipped everybody.	Page 35 1 Q I don't understand what you mean you took it 2 out. 3 A The order, that you give them the 4 information, this happened, then this happened, then 5 this happened, and this or just the order you give them 6 the information. When we had given them the texting in 7 with kind of everything else, they rejected it, they 8 said texting doesn't have anything to do with anything, 9 they got mad at us for even bringing it up. And then 10 we figured out that if we just didn't say anything 11 about texting, and didn't say anything about her speed, 12 and then we gave them -- later on, we gave them the 13 texting and then the speed in that order, they said bad 14 person, he shouldn't have been texting behind the 15 wheel. And then we told them the speed and they said 16 who cares about the speed, he wasn't looking at her, he 17 was looking at his phone. 18 So we came up with that idea, I came up with 19 that idea the night before the last focus group. We 20 were running focus groups on Saturday -- Saturday and 21 Sunday, we were running focus groups Saturday and 22 Sunday. Trial was starting Monday. Running focus 23 groups on Saturday and Sunday, our last round of them, 24 and Saturday night I was like let's just do this. 25 And good ole Jack Daniel said, Your Honor, I
Page 36 1 don't think Kevin should be able to mention the texting 2 in his open. I said I will agree to that if you don't 3 mention the speeding and he said okay, so I was now in 4 control of the order of the information. 5 Q Okay. 6 A We looked more confident at that point. 7 Q So really that sort of winning theory, 8 strategy came together, did you say the Saturday before 9 the -- 10 A Sunday. 11 Q Sunday before the Monday trial. And do -- 12 let's see. And when did you figure out how you were 13 going to play the lights? 14 A I don't know. I would tell you if I did. I 15 really don't. 16 Q Somewhere in that group of five to six focus 17 groups? 18 A You know, I don't even know that it was with 19 the focus groups to be honest with you, because I think 20 it had -- us developing this, the sun set and the time 21 of the wreck, and the law about when your lights have 22 to be on, I think we developed that a little bit early, 23 I would think. But I forget when we made the decision. 24 It was -- I think -- and it was also more of a 25 conversation I think with Therese too, she was just not	Page 37 1 -- she was not handling it. The morning she was 2 supposed to testify, she spilled chocolate sauce all 3 over her white blouse and started freaking out about it 4 and her husband had to get a change. She was not in a 5 good place. 6 So I don't know exactly when. I prepare 7 questions for trial several months in advance, but I 8 don't remember exactly when we made the decision. I 9 think it was -- I think it was a joint decision with 10 Therese to be honest with you. I felt like it didn't 11 matter because it was 6:00, you could see. The law 12 didn't require the headlights to be on. 13 Q Okay. Well, I think that is all I have for 14 you. 15 A Cross? 16 MR. WILLEY: Just briefly. 17 EXAMINATION 18 BY MR. WILLEY: 19 Q So any time when you talk about focus groups 20 and you said we were losing, that would have been after 21 the mediation? 22 A Yes. 23 Q All focus groups? 24 A Yes. 25 MR. WILLEY: Okay. That's all I have.

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1 FURTHER EXAMINATION 2 BY MR. WHELAN: 3 Q And when you say losing, was that like on a 4 comparative basis, like would you do the comparative 5 percentages or would it just be -- 6 A We did percentages and they were just -- I 7 don't remember what they all averaged out to be, but 8 they were not in our favor. 9 Q So they were all over 51 percent? 10 A I don't know if they were all over 51 11 percent, but they were -- it wasn't 90/10 in our favor, 12 right. Anything short of 90/10 or even 80/20 in my 13 mind is bad for us. You don't have any emotions in the 14 case, you might win it, but you are not going to get 15 much of a verdict. But -- and my memory was that they 16 were just very low. 17 MR. WHELAN: Okay. All right. Thank you, 18 sir. 19 (Deposition concluded at 8:01 p.m.) 20 21 22 23 24 25	1 CERTIFICATE 2 STATE OF SOUTH CAROLINA: 3 COUNTY OF CHARLESTON: 4 I, TERI L. SAMPSON, Registered Professional 5 Reporter, Notary Public and Certified Live Note 6 Reporter, State of South Carolina at Large, certify 7 that I was authorized to and did stenographically 8 report the foregoing deposition; and that the 9 transcript is a true record of the testimony given by 10 the witness. 11 I further certify that I am not a relative, 12 employee, attorney or counsel of any of the parties, 13 nor am I a relative or employee of any of the parties' 14 attorney or counsel connected with the action, nor am I 15 financially interested in the action. 16 WITNESS MY HAND AND OFFICIAL SEAL this 26th day of 17 June, 2019, in the City of Charleston, County of 18 Charleston, State of South Carolina. 19 20 21 22 23 24 25  Teri L. Sampson Teri L. Sampson, RPR, Notary Public and Certified Live Note Reporter My commission expires:

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29403 2:6	9			
29419 1:25	90/10 38:11,12			
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400 6:25 14:14 14:17 15:9 17:23 19:10 20:17,20				
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50/50 5:24				

~~insert the~~
May the Jury have the list of
considerations in the Plaintiff's
closing argument?

May we also have a copy
of the charge of the law?

[Handwritten signature]



Can Verdict 1 + 4 be
mutually exclusive?

W. J. Reed

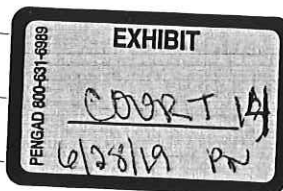


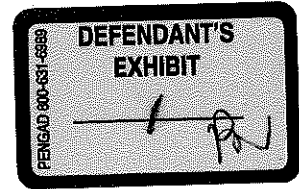
May we know the ~~a~~ exact amount
of court costs for the 1st trial?
- The Plaintiff's court costs

[Signature]
[Signature]

Answer:

\$49,052.20





FACE OF DOCUMENT HAS A COLORED BACKGROUND. THE BACK CONTAINS AN ARTIFICIAL WATERMARK. HOLD AT ANGLE TO VIEW.



United Services Automobile Association
PO Box 33490
San Antonio, TX 78265

51-44/119 CT

0020546712

DATE
12/21/2017

CHECK AMOUNT
\$*1,023,993.15

PAY **One Million Twenty-Three Thousand Nine Hundred Ninety-Three and 15/100 s**

TO
THE
ORDER
OF:
THERESE HOOD AND HOFFMAN LAW FIRM

ISAA #: 011043223 / LR #: 7

NATURE OF PAYMENT:
FED EX OVERNIGHT &&&& Payment under Underinsured Motorists
coverage - Therese Hood - Tender policy limits plus interest
BANK OF AMERICA - HARTFORD, CT

VOID 180 DAYS FROM ISSUE DATE

AUTHORIZED SIGNATURE

HOOD_PLTF_PROD_0002

ORIGINAL

DEFENDANT'S
EXHIBIT

NO. 83

STAPLE HERE

Cleared: 1957 Grid: S-Y01

SOUTH CAROLINA DPS/DHS & DMV USE ONLY				Page #		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		# Of Units		Amended - Attach Copy of Original Report		Notified		Arrived					
				Of: 1		TR-310 (Rev. 11/2011)		3		Corrected		1806		1809					
Date 11-07-2014		Time of Collision 1759		County 07		Collision Location (Rt. # / Name) 5 / US 278		Main Line 2-Alternate 5-Spur		6-Connection 7-Business 9-Other		Miles 1806		In / Near City or Town of Hilton Head					
Lane # / Dir. 1 / 4 N E S W		Distance Offset 009 Feet		Direction N E S W		Base Intersection (Rt. # / Name) 333 / Beach City Rd		Main Line 2-Alternate 5-Spur		6-Connection 7-Business 9-Other		GPS COORDINATES 00 00 00.00 DEGREES MINUTES SECONDS		Latitude N 32° 12' 59.90"					
R.R. Id. N/A		From N E S W		To N E S W		Second Intersection (Rt. # / Name) 44 / Matthews Dr		Main Line 2-Alternate 5-Spur		6-Connection 7-Business 9-Other		Longitude W 80° 42' 38.00"							
G-248992 Driver/Pedestrian's Full Name Johnson-Antoine Terrel				G-248993 Driver/Pedestrian's Full Name Hood-Therese Marie															
Unit # 1		Sex M		Race B		Street 890 Cherry Hill Rd		Unit # 2		Sex F		Race W		Street 832 N Aylesbury Rd					
POB 1		Birth Date 07-14-1994		City, State, & Zip Ridgeland SC 29936		POB 1		Birth Date 07-22-1954		City, State, & Zip Goose Creek SC 29445									
State SC		Driver's License # 090599159		Class D		Insurance Company Geico		State SC		Driver's License # 101202433		Class D		Insurance Company USAA					
Year 2003		Body 45		Vehicle Make Honda		VIN # 1HGCM66553A031414		Year 2011		Body SU		Vehicle Make Chev		VIN # 2CNFLPE54					
State SC		Year 2015		License Plate # 9819EJ		Owner's D.L. #		State SC		Year 2011		License Plate # V32138		Owner's D.L. #					
Home Telephone (843) 338-4115		Owner's Full Name Johnson-Letizia Darnelle		Home Telephone (843) 614-2392		Owner's Full Name Hood-Therese Marie													
Bus. Telephone (843) 338-4115		Street 890 Cherry Hill Rd		Bus. Telephone (843) 614-2392		Street 832 N Aylesbury Rd													
Contributed To Collision Yes		City, State, & Zip Ridgeland SC 29936		Contributed To Collision Yes		City, State, & Zip Goose Creek SC 29445													
Estimated Speed 15		Speed Limit 45		C.D.L. Req: Yes (No) N/A		T/B S Req: Yes (No) N/A		Estimated Speed 45		Speed Limit 45		C.D.L. Req: Yes (No) N/A		T/B S Req: Yes (No) N/A					
Summons # N/A		Code N/A		Summons # N/A		Code N/A		Summons # N/A		Code N/A		Summons # N/A		Code N/A					
By Carolina				By Palmetto															
G-248994 Driver/Pedestrian's Full Name Kuck-William Legare				G-248995 Driver/Pedestrian's Full Name Kuck-Mary Elizabeth Enick															
Unit # 3		Sex M		Race W		Street 2286 Hoffman Drive		Unit # 3		Sex F		Race W		Street 2286 Hoffman Dr					
POB 2		Birth Date 08-29-1952		City, State, & Zip Orangeburg SC 29118		POB 2		Birth Date 08-29-1952		City, State, & Zip Orangeburg SC 29118									
State SC		Driver's License # 004561730		Class D		Insurance Company Allstate		State SC		Driver's License # 004561730		Class D		Insurance Company Allstate					
Year 2007		Body SU		Vehicle Make Chev		VIN # 1GNFK13027R11166		Year 2007		Body SU		Vehicle Make Chev		VIN # 1GNFK13027R11166					
State SC		Year 2007		License Plate # N/A		Owner's D.L. # N/A		State SC		Year 2007		License Plate # N/A		Owner's D.L. # N/A					
Home Telephone (803) 535-9588		Owner's Full Name Kuck-Mary Elizabeth Enick		Home Telephone (803) 535-9588		Owner's Full Name Kuck-Mary Elizabeth Enick													
Bus. Telephone (803) 535-9588		Street 2286 Hoffman Dr		Bus. Telephone (803) 535-9588		Street 2286 Hoffman Dr													
Contributed To Collision Yes		City, State, & Zip Orangeburg SC 29118		Contributed To Collision Yes		City, State, & Zip Orangeburg SC 29118													
Estimated Speed 35		Speed Limit 45		C.D.L. Req: Yes (No) N/A		T/B S Req: Yes (No) N/A		Estimated Speed 35		Speed Limit 45		C.D.L. Req: Yes (No) N/A		T/B S Req: Yes (No) N/A					
Summons # N/A		Code N/A		Summons # N/A		Code N/A		Summons # N/A		Code N/A		Summons # N/A		Code N/A					
By Carolina				By Palmetto				By Carolina				By Palmetto							
Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W				Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W															
Unit 1 Dam. \$2500 Unit 2 Dam. \$2500 Unit 3 Dam. \$2500				Unit 1 Dam. \$2500 Unit 2 Dam. \$2500 Unit 3 Dam. \$2500															
Property Owner/Witness: Tarrath-Cary				Property Owner/Witness: Tarrath-Cary															
Address: 104 Binnacle				Address: 104 Binnacle															
State: GA Zip: 31410				State: GA Zip: 31410															
Photo: 912-4126355				Photo: 912-4126355															
Describe What Happened (Refer to Units by Number)				Describe What Happened (Refer to Units by Number)															
Unit one attempted to cross US 278. Unit				Unit one attempted to cross US 278. Unit															
one did not see unit two due to not having their head				one did not see unit two due to not having their head															
lights on. Unit two struck unit one in lane one				lights on. Unit two struck unit one in lane one															
west bound. Due to the collision unit two over				west bound. Due to the collision unit two over															
corrected into on coming traffic. Unit two				corrected into on coming traffic. Unit two															
then struck unit three head on in lane				then struck unit three head on in lane															
one west bound. This collision caused major				one west bound. This collision caused major															
damage and four injuries. Unit two's running lights				damage and four injuries. Unit two's running lights															
were not on upon my arrival, confirmed on in car video.				were not on upon my arrival, confirmed on in car video.															
32-216627-80-710533				32-216627-80-710533															
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION, AND BELIEF COVERING THE COLLISION, BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																			
Investigating Officer's Name Worrell				Rank CPL				Badge # 5542				Jurisdiction Code 0700				Review Date 11-08-2014			
Reviewer's Name SST				Rank SST				Internal Agency Code 20141107-427											

Mail flat - Do Not Fold, Crease or Mutilate

Not to
Scale

Beach City Rd

Mail To: SC Department of Motor Vehicles

USAA Confidential

0901119c905f4e52

03121

Hood_USAA_0054

Unit	Date of Birth	Sex	Race	INJ	Seat	RSD	A.B.D.	Eject	LAI	Tran	Name	Street Address	Zip Code
1	07-14-1994	M	B	1	01	13	43	1	1	1	Johnson-Antoine	870 Cherry Hill Rd Ridgeland	29936
2	07-22-1959	F	W	3	01	13	33	1	1	1	Hood-Therese	832 N. Aylesbury Rd	29445
3	08-29-1952	M	W	1	01	13	33	1	1	1	Kuck-William	2286 Hoffman Dr	29118
3	01-14-1971	F	W	2	03	13	33	1	1	1	Kuck-Mary	2286 Hoffman Dr	29118

Race	A - Asian/Pacific Islander	W - Caucasian	a) Injury Status	2 - Non-Inspicating	Seating Loc.	20 - Pedestrian	60 - Sleeper of Cab	Restraint/Safety Device
B - African American	H - Hispanic	O - Other	0 - Not Injured	3 - Incapacitating	01 02 03	30 - Trailing Unit	70 - Riding on Unit Exterior	00 - None Used
I - Alaskan Native or American Indian	U - Unk.		1 - Possible Injury	4 - Fatal	04 05 06	40 - Bus or Van (4th row or Higher)	80 - Lap	21 - Child Safety Seat
			b) 2 or 3 Wheel Motorized Vehicle Only		07 08 09	50 - Other Enclosed Area (nontrailing)	99 - Unk./NA	11 - Shoulder belt
						51 - Other Unenclosed Area (nontrailing)		12 - Lap Belt Only
								13 - Shoulder & Lap Belt
								14 - Pedestrian, Motor/Pedalcycle Only
								31 - Helmet
								51 - Reflective Clothing
								41 - Protective Pads
								61 - Lighting

Air Bag Deployment / Switch	Ejection	Head Injury	1 - Yes	2 - No	Location After Impact	3 - Freed (non-mech.)	4 - Not Applicable	5 - Transported to Medical Facility	1 - Yes	2 - No	3 - Unknown	b) By:	1 - EMS	2 - Police	8 - Other	9 - Unk.
1 - Deployed Front	4 - Not Deployed	1 - Not Ejected			1 - Not Trapped			1 - Yes								
2 - Deployed Side	7 - Not Applicable	2 - Part Ejected			2 - Extricated (Mechanical Means)			2 - No								
3 - Deployed Both	9 - Deployment Unk.	3 - Tot. Ejected			3 - Sequence of Events			3 - Unknown								
1 - Switch In On Position	3 - No Switch	17 - Not App.														
2 - Switch In Off Position	9 - Unknown	9 - Unk.														

Non-Collision	Collision: Not Fixed	Collision: Fixed Object	47 - Embankment	55 - Mail Box	66 - Other
01 - Cargo/Equip Loss or Shift	20 - Animal (Deer Only)	40 - Bridge Overhead Structure	48 - Equipment	56 - Median Barrier	69 - Unk.
02 - Cross Median/Center	21 - Animal (All Other)	41 - Bridge Parapet End	49 - Fence	57 - Overhead Sign Support	
03 - Downhill Runaway	22 - Motor Veh. (n Transp.)	42 - Bridge Pier or Abutment	50 - Guardrail End	58 - Other (Post, Pole, Support, Etc.)	
	23 - Motor Veh. (Stopped)	43 - Bridge Rail	51 - Guardrail Face	59 - Other (Wall, Building, Tunnel, Etc.)	
	24 - Motor Veh. (Other Roadway)	44 - Culvert	52 - Highway Traffic Sign Post	60 - Tree	
	25 - Motor Veh. (Parkd)	45 - Curb	53 - Impact Attenuator/Crash Cushion	61 - Utility Pole	
	26 - Pedalcycle	46 - Ditch	54 - Light/Luminaire Support	62 - Work Zone Maint. Equipment	

Manner of Collision (Struck Veh.)	30 - Rear-to-Rear	50 - Sideswipe Same Dir.	1st / Most Deformed Area	1st Deformed	Most Deformed
01 - Not Coll. w/ Motor Veh.	41 - Angle (A) (K)	60 - Sideswipe Opposite Dir.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99

Vehicle Type	15 - Full Size Van	27 - Pedalcycle	61 - School Bus	Alcohol / Drug Test Results	Special Use Only
01 - Automobile	16 - Mini Van	38 - Animal Drawn Veh	62 - Passenger Bus	A1 01 1 - Given - Known Refusal	1 - None
02 - Pickup Truck	17 - Sport Utility	39 - Animal (Ridden)	68 - Other	A2 02 2 - Given - Unknown	2 - None
03 - Truck Tractor	25 - Motorcycle	41 - Pedestrian	99 - Unk. (Hit and Run Only)	A3 03 3 - Blood	3 - None
04 - Other Truck	28 - Other Motorbike	61 - Train		A4 04 4 - Other	4 - None
	04 - Ambulance	08 - Farm Use		A5 05 5 - Other	5 - None
	05 - Military	09 - Wrecker or Tow		A6 06 6 - Other	6 - None
	06 - Transport Passengers	10 - Police		A7 07 7 - Other	7 - None
	07 - Transport Property	11 - Government		A8 08 8 - Other	8 - None
	08 - Pedestrian	41 - Pedestrian		A9 09 9 - Other	9 - None
	09 - Personal	08 - Towed Motor Vehicle		A10 10 10 - Other	10 - None
	01 - Driver Training	06 - Transport Passengers		A11 11 11 - Other	11 - None
	02 - Construction/Maint.	07 - Transport Property		A12 12 12 - Other	12 - None
	03 - Construction/Maint.	04 - Utility Trailer		A13 13 13 - Other	13 - None
	1 - None	5 - Farm Trailer		A14 14 14 - Other	14 - None
	2 - Mobile Home	6 - Trailer w/ Boat		A15 15 15 - Other	15 - None
	3 - Semi-Trailer	7 - Camper Trailer		A16 16 16 - Other	16 - None
		8 - Automobile Trailer		A17 17 17 - Other	17 - None
		9 - Petroleum Tanker		A18 18 18 - Other	18 - None
		A - Lowboy Trailer		A19 19 19 - Other	19 - None
		E - Twin Trailers		A20 20 20 - Other	20 - None

Action Prior to Impact (Vehicle)	(Non-motorist)	Alc Test Results	1 - Two-way, Divided, Unprotected Median	4 - One-way, Divided, Unprotected Median	Trafficway
01 - Backing	21 - Approaching/Leaving Vehicle	A1 -	1 - Gore	3 - Median	5 - Roadway
02 - Changing lanes	22 - Entering/Crossing Location	A2 -	6 - Shoulder	8 - Outside Trafficway	1 - Y 2 - N 3 - D 4 - F
03 - Entering traffic lane	23 - Playing/Working on Vehicle	A3 -	2 - Island	4 - Roadside	3 - Straight - Hillcrest
04 - Leaving traffic lane	24 - Pushing Vehicle		1 - Straight - Level	3 - Straight - Hillcrest	5 - Curve - On grade
05 - Making U-turn	25 - Standing		2 - Straight - On grade	4 - Curve - Level	6 - Curve - Hillcrest
06 - Movements Essentially Straight Ahead	26 - Walking, Playing, Cycling		1 - Dry	3 - Snow	5 - Ice
07 - Overtaking/passing	27 - Working		2 - Wet	4 - Slush	6 - Contaminant
			01 - Stop and Go Light	21 - Officer or Flagman	
			02 - Flashing Traffic Signal	22 - Oncoming Emergency Vehicle	
			11 - RR (X-bucks, Lights & Gates)	31 - Pavement Markings (only)	43 - Yield Sign
			12 - RR (X-bucks & Lights)	41 - Stop Sign	51 - Flashing Beacon
			13 - RR (X-bucks Only)	42 - School zone Sign	61 - None
			1 - Yes, Directly	2 - Yes, Indirectly	3 - No
			1 - Before 1st Sign	3 - Transition Area	5 - Termination
			2 - Advanced Warning Area	4 - Activity Area	Area
			1 - Shoulder/Median Work	3 - Intermittent/Moving Work	Work Zone Location
			2 - Lane Shift/Crossover	4 - Lane Closure	8 - Other 9 - Unk.
					1 - Yes 2 - No 3 - Workers Present

Weather Condition	3 - Cloudy	6 - Fog, Smog, Smoke	02 - Flashing Traffic Signal <th>22 - Oncoming Emergency Vehicle <th>11 - RR (X-bucks, Lights & Gates) <th>31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon </th></th></th></th></th>	22 - Oncoming Emergency Vehicle <th>11 - RR (X-bucks, Lights & Gates) <th>31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon </th></th></th></th>	11 - RR (X-bucks, Lights & Gates) <th>31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon </th></th></th>	31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon </th></th>	43 - Yield Sign <th>51 - Flashing Beacon </th>	51 - Flashing Beacon
1 - Clear (no adverse conditions)	4 - Steel Hal	7 - Blowing Sand	8 - Severe Crosswinds					
2 - Rain	5 - Snow	8 - Dirt or Snow	9 - Unk.					

Light Condition	3 - Dusk	6 - Dark (Street Lamp Not Lit)	11 - RR (X-bucks, Lights & Gates) <th>31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon </th></th></th>	31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon </th></th>	43 - Yield Sign <th>51 - Flashing Beacon </th>	51 - Flashing Beacon
1 - Daylight	4 - Dark (Lighting Unspecified)	7 - Dark (No Lights)				
2 - Dawn	5 - Dark (Street Lamp Lit)					

Junction Type	03 - Five/More Points	07 - Shared Use Paths or Trail 12 - Y - Intersection	11 - RR (X-bucks, Lights & Gates) <th>31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon</th> </th></th>	31 - Pavement Markings (only) <th>43 - Yield Sign <th>51 - Flashing Beacon</th> </th>	43 - Yield Sign <th>51 - Flashing Beacon</th>	51 - Flashing Beacon
01 - Crossover	04 - Four-way Intersection	08 - T-Intersection	13 - Nonjunction			
02 - Driveway	05 - Railway Grade Crossing	09 - Traffic Circle	99 - Unk.			

Primary Contributing Factors	12 - Aggressive Operation of Vehicle	Roadway	Non-Motorist	Environmental	62 - Obstruction
01 - Disregard Signs, Signals, Etc.	13 - Over-correcting/Over-steering	30 - Debris	48 - Other	60 - Animal In Road	63 - Weather Cond.
02 - Distracted/Inattention	14 - Swerving to Avoiding Object	31 - Non-highway Work	49 - Unk.	61 - Giant	68 - Other
03 - Driving Too Fast for Conditions	15 - Wrong Side or Wrong Way	32 - Obstruction in Roadway		62 - Failure to Yield R. of W.	69 - Unk.
04 - Exceeded Authorized Speed Limit	16 - Under the Influence	33 - Road Surface Condition (i.e., Wet)		63 - Not Visible (Dark Clothing)	70 - Brakes
05 - Failed to Yield Right of Way	17 - Vision Obscured (Within Unit)	34 - Rut, Holes, Bumps		64 - Disregard Signs, Signals, Etc.	71 - Steering
06 - Ran off Road	18 - Improper lane Usage/Change	35 - Shoulders (None, Low, Soft, High)		65 - Improper Crossing	72 - Power Plant
07 - Fatigued/Asleep	19 - On Cell Phone	36 - Traffic Control Device (i.e., Missing)		66 - Darting	73 - Tires/Wheel
08 - Followed Too Closely	20 - Testing	37 - Work Zone (Const/Maint/Utility)		67 - Wrong Side of Road	74 - Lights
	28 - Other Improper Action	38 - Worn, Travel-Polished Surface		68 - Other Person Under Int	75 - Signals
					76 - Windows/Shield
					77 - Restraint System
					78 - Truck Coupling
					79 - Cargo
					80 - Fuel System
					88 - Other
					89 - Unk.

RECORDED STATEMENT

RE: MEMBER NUMBER: 011043223-005-0000-00
INTERVIEWEE: CARY T. TANRATH
DATE OF LOSS: 11-07-14
LOSS REPORT NUMBER: 005

FROM TAMPA, FLORIDA, I'M SPEAKING WITH CARY TANRATH REGARDING AN ACCIDENT HE WITNESSED ON NOVEMBER THE 7TH, 2014. TODAY IS DECEMBER THE 17TH, 2014. CURRENTLY, IT IS 3:06 P.M. EASTERN STANDARD TIME. AND THIS CONVERSATION IS BEING RECORDED.

Q: UH, MR. TANRATH, PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR ME.

A: CARY THAD (SIC) TANRATH, T A N A S IN NOVEMBER, R A T H.

Q: AND, UH, WHAT IS YOUR ADDRESS?

A: 104 BENICKLE COURT, SAVANNAH, GEORGIA, 31410.

Q: AND, UH, THE BEST CONTACT NUMBER IS THIS, THE 9-1-2, UH, 412-8255?

A: YES, NA'AM.

Q: OKAY, UHM, NOW DO YOU REMEMBER ABOUT WHAT TIME THE ACCIDENT HAPPENED ON NOVEMBER 7TH?

A: UH, IT WOULD BE... IT WAS AFTER 5:30 'CAUSE IT WAS... BECAUSE IT WAS DARK OUT.

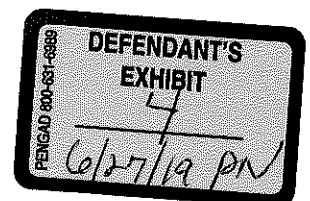
Q: OKAY.

A: BUT THAT'S THE BEST I COULD PUT THE TIME. SOMETIME AFTER 5:30 BUT BEFORE SEVEN O'CLOCK.

Q: OKAY. BUT IT WAS, UHM... WAS IT TOTALLY DARK OUT, WAS IT... OR WAS IT DUSK?

A: NO, IT WAS TOTALLY DARK OUT.

Q: OKAY. ALRIGHT, ALRIGHT, NOW, UHM, WERE YOU TRAVELING IN A CAR OR WERE YOU, UHM, LIKE ON THE SIDE WALK OR...?



MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	CARY T. TANRATH

A: I WAS TRAVELING IN A VEHICLE.

Q: OKAY, WHAT ROAD WERE YOU.. (CROSS-TALK)

A: TRAVELING... TRAVELING WEST ON 278.

Q: ALRIGHT. AND, UHM, CAN YOU TELL ME WHAT YOU SAW HAPPEN?

A: UHM, TRAVELING WEST ON 278, THE VEHICLE IN FRONT OF ME, WE WERE BOTH IN THE FAR LEFT HAND LANE, AND THEN I OBSERVED A VEHICLE COMING STRAIGHT AT, UHM, US, TRAVELING EAST IN THE, UH, WESTBOUND LANE. LIKE CROSSING OVER THE MEDIAN.

Q: UH-HUH.

A: AND THEN I SAW THE CAR IMPACT THE CAR IN FRONT OF ME.

Q: OKAY. ALRIGHT. NOW, UHM, SO YOU WERE... YOU WERE TRAVELING DIRECTLY BEHIND THAT CAR THAT HIT HEAD ON. I GUESS THEN?

A: UH, YES. I WAS BEHIND THEM PROBABLY 50 100 FEET.

Q: OKAY, ALRIGHT.

A: ENOUGH TIME THAT I COULD BRAKE... I COULD BRAKE BECAUSE WHEN HE GOT HIT, DEBRIS STARTED FLYING EVERYWHERE.

Q: OKAY. AND IT DIDN'T GET ON YOUR VEHICLE OR ANYTHING?

A: NO.

Q: OKAY. UHM, NOW DID YOU SEE ANYTHING THAT HAPPENED PRIOR TO SEEING THE CAR... THE ONCOMING CAR?

A: THE ONLY... THE ONLY THING I OBSERVED, THE ONCOMING CAR DID NOT HAVE ANY HEADLIGHTS ON.

Q: OKAY.

A: BUT IT... AND I HAVE TO PUT A... UHM, FROM MY VANTAGE POINT, ALL THAT I COULD SEE WAS THE PASSENGER SIDE OF THE ONCOMING VEHICLE, AND THE PASSENGER SIDE LIGHT... DRIVERS'S... DRIVING LIGHT WAS NOT ON.

Q: OKAY.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	CARY T. TANRATH

- A: SO I COULDN'T SEE THE FULL FRONT OF THE VEHICLE THAT... THAT IMPACTED THE... THE VEHICLE IN FRONT OF ME.
- Q: OKAY. YOU COULD ONLY SEE THE VEH... THE PASSENGER SIDE?
- A: CORRECT.
- Q: OKAY. UHM, SO IT WAS COMING AT KIND OF AT AN ANGLE IN Y'ALLS LANE THEN, I'M ASSUMING?
- A: YES, MA'AM.
- Q: OKAY, ALRIGHT. NOW, UHM, AFTER THE IMPACT OCCURRED, UHM, DID YOU, UHM... WHAT HAPPENED? DID YOU STOP AND... AND SPEAK WITH SOMEBODY OR...?
- A: I... I, UHM, SLOWED DOWN, STOPPED, PULLED OFF TO THE LEFT SIDE OF THE ROAD.
- Q: UH-HUH.
- A: UHM, AND THEN HELPED TO, UHM, EXTRACT THE TWO PEOPLE THAT WERE HIT IN THE VEHICLE IN FRONT OF ME.
- Q: OKAY, ALRIGHT. ALRIGHT, AND, UHM, DID YOU HAVE ANY DISCUSSION ABOUT WHAT THEY SAW? ANYBODY OTHER THAN YOURSELF?
- A: JUST... JUST WITH THE POLICE OFFICERS THAT WERE THERE. AND THEN THERE WAS ONE OTHER WITNESS THAT, UHM, HE AND I TALKED ABOUT WHAT WE HAD SEEN. AND IT WAS PRETTY MUCH... AND FROM WHAT I CAN REMEMBER, WE HAD THE SAME RECOLLECTION AS THE VEHICLE COMING IN TO OUR LANE HEADING THE WRONG DIRECTION.
- Q: OKAY. ALRIGHT. AND DO YOU REMEMBER, UHM, YOU MAY NOT. AFTER THE IMPACT OCCURRED, ANY NOTICE OF ANY LIGHTS AT THAT POINT IN TIME WHEN YOU COULD SEE?
- A: NO, MA'AM. THE... THE FRONT ENDS OF THE VEHICLES WERE SMASHED UP REALLY BAD.
- Q: OKAY, ALRIGHT. AND DO YOU KNOW WHAT CAUSED THAT ONCOMING VEHICLE TO BE IN THAT LANE?
- A: I DO NOT.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	CARY T. TANRATH

Q: OKAY, ALRIGHT. UHM, AND IS... AGAIN, JUST FROM VANTAGE POINT, YOU COULD NOT SEE ANYTHING ON THAT RIGHT SIDE OF THE CAR, PASSENGER SIDE OF THE CAR?

A: CORRECT.

Q: OKAY, ALRIGHT. ALRIGHT, AND, UHM, AND THEN YOU JUST GAVE YOUR, UHM, STATEMENT TO THE OFFICER?

A: YES, MA'AM.

Q: OKAY. UH, AND YOU'RE NOT... I... I KNEW YOU SPOKE WITH SOMEONE ELSE THERE, BUT, UHM, DO YOU KNOW IF THAT PERSON SPOKE WITH THE OFFICER?

A: YES, MA'AM.

Q: THEY DID... (CROSS-TALK)

A: UH, HE HAD... HE HAD... YEAH, HE HELPED EXTRACT THE, UH, PEOPLE FROM THE OTHER VEHICLE.

Q: UH-HUH.

A: OR THE INDIVIDUAL FROM THE OTHER VEHICLE. AND BOTH OF US GAVE STATEMENTS TO THE, UH, UHM, POLICE OFFICERS.

Q: OKAY. NOW ARE YOU RELATED OR ACQUAINTED TO EITHER OF THE PARTIES INVOLVED?

A: NO, MA'AM.

Q: ALRIGHT, THE TIME IS APPROXIMATELY 3:11 AND I WILL TURN THE RECORDER...

END OF STATEMENT

TRANSCRIBED BY: MGW\0901119c90aacbd6\WWD
MARCH 2, 2015
750-01-301449

This is to certify the above statement is a true transcription to the best of my ability.

RECORDED STATEMENT

RE: MEMBER NUMBER: 011043223-005-0000-00
INTERVIEWEE: ANTOINE JOHNSON
DATE OF LOSS: 11-07-14
LOSS REPORT NUMBER: 005

THIS IS MISSY HOWARD SPEAKING FROM TAMPA, FLORIDA. I'M SPEAKING WITH ANTOINE JOHNSON REGARDING AN ACCIDENT HE WAS INVOLVED IN ON NOVEMBER, UHM, 8TH, 2014. TODAY IS NOVEMBER 13TH, 2014. CURRENTLY, IT IS 9:56 A.M. EASTERN STANDARD TIME AND THIS CONVERSATION IS BEING RECORDED.

Q: MR. JOHNSON, ARE YOU AWARE THAT YOU'RE BEING RECORDED?

A: YES, MA'AM.

Q: ALRIGHT. AND DO I HAVE YOUR PERMISSION TO RECORD THIS INTERVIEW?

A: YES, MA'AM.

Q: ALRIGHT. PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR ME.

A: ANTOINE TERRELL JOHNSON, J O H N S O N.

Q: AND WHAT IS YOUR ADDRESS?

A: 890 CHERRY HILL ROAD, HILTON HEAD, SOUTH CAROLINA.

Q: AND, UHM, FOR VERIFICATION PURPOSES, WHAT IS YOUR DATE OF BIRTH?

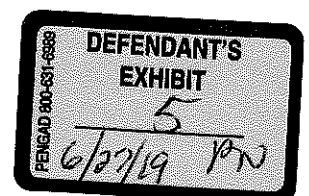
A: 7/14/94.

Q: ALRIGHT. NOW YOU WERE THE DRIVER OF YOUR VEHICLE?

A: YES, MA'AM.

Q: OKAY. DID YOU HAVE ANY PASSENGERS?

A: NO, MA'AM.



MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

Q: OKAY. UHM, WHAT'S THE YEAR, MAKE, AND MODEL OF THE VEHICLE YOU WERE DRIVING?

A: A 2003 HONDA ACCORD.

Q: AND WHAT COLOR IS IT?

A: BLUE, LIKE, A NAVY BLUISH.

Q: OKAY. AND WHO IS THE REGISTERED OWNER OF THE VEHICLE?

A: MY MOTHER, UHM, LAKEVIA (SIC) JOHNSON.

Q: OKAY. AND IS YOUR VEHICLE STILL DRIVABLE?

A: UHM, I DON'T KNOW. I JUST KNOW THEY TOWED IT OFF THE SCENE.

Q: OKAY.

A: I BELIEVE IT IS. THEY JUST TOWED IT, I DON'T KNOW.

Q: OKAY. THAT'S OKAY. ALRIGHT, NO PROBLEM. UH, WHERE IS THE DAMAGE ON IT?

A: THE FRONT BUMPER AND THE DRIVER'S MIRROR.

Q: FRONT BUMPER AND THE, THE DRIVER'S MIRROR?

A: YES.

Q: OKAY. UHM, DID YOUR AIR BAGS DEPLOY?

A: NO, MA'AM.

Q: OKAY. DO YOU KNOW WHERE THEY TOWED IT TO?

A: UH, CAR, I WANNA (SIC) SAY CAROLINA TOWING.

Q: OKAY, NO PROBLEM.

A: I HAVE A CARD, UHM, I'LL GIVE YOU A CALL BACK AND GIVE YOU THAT.

Q: OKAY, THAT'S FINE. SOUNDS GOOD. ALRIGHT. UHM, NOW, UH, ABOUT WHAT TIME DID THIS ACCIDENT HAPPEN ON SATURDAY?

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

A: IT WAS ABOUT 5:45, SIX.

Q: UHM, IN THE EVENING?

A: YES, MA'AM, FRIDAY AFTERNOON, FRIDAY EVENING.

Q: OKAY. ALRIGHT. UHM, AND, UH, WHAT CITY AND, WHAT CITY DID THE ACCIDENT HAPPEN IN?

A: HILTON HEAD

Q: OKAY. ALRIGHT. AND WHAT ROAD DID IT HAPPEN ON?

A: 278.

Q: HIGHWAY 278?

A: YES, MA'AM.

Q: OKAY. NOW, UHM, HOW MANY LANES IS HIGHWAY 278 EACH WAY?

A: UHM, TWO GOIN' (SIC) ON HILTON HEAD AND TWO COMIN' (SIC) OFF.

Q: IS THERE, UHM, THOSE LANES, ARE THEY DIVIDED BY, LIKE, A MEDIAN OR A, A DOTTED LINE OR A DOUBLE LINE OR SOMETHING LIKE THAT?

A: UHM, A MEDIAN 'CAUSE I WAS TRYIN' (SIC) TO GET IN THE MEDIAN ACTUALLY.

Q: OKAY. ALRIGHT. UHM, ALRIGHT. IS IT, LIKE, A, LIKE, A CONCRETE MEDIAN, IS IT A GRASS MEDIAN, OR IS IT JUST A?

A: YEAH, IT'S NOT A MEDIAN, IT'S A TURNING LANE.

Q: IT'S A, LIKE, A CENTER TURN LANE IN THE MIDDLE?

A: YES, MA'AM.

Q: I GOTCHA (SIC), OKAY. ALRIGHT. UHM, ALRIGHT. AND, UHM, WERE YOU PULLING OUT OF A ROAD OR A, A?

A: YES, MA'AM.

Q: OKAY. UHM, DO YOU KNOW THE, THE ROAD THAT YOU WERE PULLING FROM?

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

A: I DON'T KNOW THE EXACT NAME OF THE ROAD.

Q: OKAY. UHM, IS IT, LIKE, A RESIDENTIAL ROAD OR IS IT A COM, UHM, LIKE, A PARKING?

A: IT'S, LIKE, IT'S, IT'S A DUNKIN' DONUTS AND A COUPLE BUILDINGS IN FRONT, BUT BEHIND THERE IS A RES, SOME RESIDENTIAL HOUSES, LIKE, APARTMENT COMPLEX.

Q: I GOTCHA, OKAY. AND SO IT HAS AN EXIT FOR ALL OF THAT THEN MAYBE?

A: MA'AM?

Q: IS IT KIND OF AN EXIT FOR, FOR, LIKE, THE DUNKIN' DONUTS AND THE APARTMENTS?

A: YES, MA'AM.

Q: OKAY. ALRIGHT.

A: ONE WAY IN, ONE WAY OUT.

Q: OKAY. UHM, AND IS THAT CONTROLLED BY A LIGHT OR ANYTHING RIGHT THERE WITH, FOR THAT INTER...(CROSS-TALK)

A: WELL, IT'S A LIGHT, NOT IN FRONT OF THE, UHM, TURNIN' (SIC) SECTION BUT, LIKE, I'D SAY 25 FEET BEHIND THERE IT'S A LIGHT.

Q: OKAY. ALRIGHT. MAYBE FURTHER DOWN ON 278 THEN?

A: YES.

Q: I GOTCHA.

A: IT'S, LIKE, TWO MINUTES FROM THE, FROM THE HEAD OF THE ROAD.

Q: OKAY, I GOTCHA.

A: NOT EVEN TWO MINUTES.

Q: OKAY, ALRIGHT. UHM, ALRIGHT. CAN, COULD YOU TELL ME WHAT HAPPENED?

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

A: UHM, I WAS COMING OUT AND I LOOKED BOTH WAYS, AND FROM MY VIEW IT WAS CLEAR.

Q: OKAY.

A: BUT WHEN I PULLED OUT IT WAS, LIKE, SHE WAS RIGHT THERE. AND SHE HIT ME ON THE SIDE AND THEN KEPT GOING AND THEN WENT ON THE OTHER SIDE OF 278 AND HIT SOMEONE ELSE THAT, UH, BUT SHE WAS DRIVING WITH NO LIGHTS ON.

Q: ALRIGHT. SO THERE WAS A VEHICLE COMING FROM YOUR LEFT THEN OR FROM YOUR RIGHT?

A: YES, MA'AM. SHE WAS COMING FROM MY LEFT.

Q: OKAY. UHM, AND WHAT, DO YOU KNOW WHAT TYPE OF VEHICLE THAT WAS?

A: I JUST KNOW THAT IT'S A S-U-V, I CAN'T, I DON'T KNOW THE MAKE.

Q: UH-HM.

A: THE MAKE OR MODEL OF IT.

Q: OKAY.

A: I DIDN'T EVEN GET TO SEE, I DIDN'T GET TO SEE HER OR THE VEHICLE ACTUALLY.

Q: OKAY, NO PROBLEM. UHM, SO YOU, UHM, YOU WERE TRYING TO MAKE THE LEFT TO GET OUT INTO THE, THAT CENTER TURN LANE OR WHAT HAVE YOU SO THAT YOU COULD GO THEN LEFT, UHM.

A: YES, MA'AM.

Q: OKAY, ONTO 278. DO YOU KNOW WHICH LANE SHE WOULD'VE BEEN IN, THE, 'CAUSE I.

A: SHE WAS IN, SHE WAS IN THE LEFT LANE.

Q: THE LEFT LANE. OKAY. ALRIGHT. AND, UHM, WHAT PART OF HER, WHAT PART OF, UHM, HER VEHICLE DID SHE HIT YOU WITH?

A: THE FRONT.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

Q: ALRIGHT. SO, UH, YOU, THE FRONT OF HER VEHICLE HIT THE FRONT OF YOUR VEHICLE?

A: THE FRONT OF HERS HIT THE SIDE OF MINE.

Q: OH, THE SIDE OF YOURS. OKAY, MY BAD, I'M SORRY.

A: I GUESS THE FRONT SIDE.

Q: LIKE, THE, THE RIGHT, LIKE, BY THE FRONT TIRE THEN, OR?

A: CLOSE TO IT ON THE, ON THE DRIVER'S SIDE.

Q: OKAY, UH-HM.

A: CLOSE TO IT.

Q: OKAY. SO, ALRIGHT. SO BY THE DRIVER'S SIDE FRONT TIRE?

A: YES.

Q: OKAY. UHM, AND THEN AFTER, SO, UHM, AFTER SHE HIT YOU THEN SHE WENT INTO ONCOMING LANES, THE ONCOMING LANE OF TRAFFIC?

A: YEAH, INTO THE OPPOSITE SIDE AND HIT SOMEONE HEAD-ON.

Q: OKAY. AND SHE DID NOT HAVE HER HEADLIGHTS ON?

A: NO, MA'AM.

Q: OKAY. UHM, UHM, DID YOU, WHEN IS THE FIRST TIME YOU SAW HER, OR SAW THAT VEHICLE?

A: WHEN I PULLED OUT.

Q: OKAY. AND SO AFTER YOU PULLED OUT YOU SAW THAT SHE WAS THERE, OR?

A: WHEN I PULLED, LIKE, SOON AS I GOT IN, LIKE, THE MIDDLE OF THE ROAD SHE WAS RIGHT THERE.

Q: OKAY. ALRIGHT. AND, UHM, NOW DID YOU HAVE ANY DISCUSSION WITH, UHM, ANY PARTIES INVOLVED IN THE ACCIDENT?

A: NO, MA'AM.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

Q: DO YOU KNOW IF THERE WERE ANY WITNESSES THAT GAVE ANY INFORMATION?

A: UHM, IT WAS TWO, I HAVE TWO WITNESSES THAT STAYED OUT WITH ME 'TIL MY PARENTS GOT THERE BUT I, I DIDN'T GET THEIR NAMES AND NUMBERS.

Q: UH-HM.

A: BUT I DON'T KNOW IF THE OFFICERS DID OR NOT.

Q: OKAY. ALRIGHT. UHM, AND WHAT POLICE DEPARTMENT RESPONDED?

A: UHM, BUFORD COUNTY SHERIFF'S DEPARTMENT.

Q: ALRIGHT. UHM, AND YOU SAID IT WAS ABOUT, UHM, 5:45 OR SIX. WHERE WERE YOU COMING FROM, UHM?

A: I WAS COMING FROM DUNKIN' DONUTS (INAUDIBLE)

Q: OKAY. AND WERE YOU, UH, WHERE WERE YOU ON YOUR WAY TO?

A: HOME.

Q: OKAY. AND, UHM, WAS, UH, LIKE, AT 5:45 OR, YOU KNOW, ABOUT THE TIME YOU, WHEN YOU WERE GETTING OFF THERE, UHM, HOW WAS, HOW WERE THE LIGHTING CONDITIONS? I MEAN, WAS IT TOTALLY DARK OUTSIDE, WAS IT DUSK, WHAT'S THE, AT THAT TIME?

A: IT WAS, YOU CAN SAY IT WAS PRETTY MUCH TOTALLY DARK.

Q: OKAY. UHM, DO YOU KNOW IF THERE WAS ANY STREET LIGHTS OUT ON THAT ROAD?

A: WELL, IT'S NOT, I WOULDN'T SAY TOTALLY DARK 'CAUSE THERE WAS A LITTLE BIT OF SUNLIGHT OUT.

Q: ALRIGHT.

A: BUT NO, MA'AM, THERE'S NOT NO, UHM, I DON'T BELIEVE THERE'S NO STREET LIGHTS ON THAT ROAD.

Q: ALRIGHT. ALRIGHT. ALRIGHT. DID, UHM, DO YOU KNOW IF THE, UH, OR DID YOU RECEIVE ANY TICKETS OR CITATIONS?

A: NO, MA'AM.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

Q: OKAY. DO YOU KNOW IF ANYONE RECEIVED TICKETS OR CITATIONS?

A: UH, I CAN'T SPEAK FOR THE OTHER TWO PARTIES 'CAUSE I NEVER I GOT OUT MY CAR.

Q: OKAY. YOU STAYED IN YOUR CAR THE WHOLE TIME?

A: YES.

Q: OKAY. ALRIGHT. UHM, AND, UH, DO, WERE YOU INJURED AS A RESULT OF THE ACCIDENT?

A: YES, MA'AM.

Q: OKAY. UHM, WERE YOU TRANSPORTED TO THE HOSPITAL?

A: YES, MA'AM.

Q: OKAY. WHAT HOSPITAL DID YOU GO TO?

A: HILTON HEAD, I DON'T KNOW IF IT'S, HILTON HEAD REGIONAL CENTER I BELIEVE.

Q: ALRIGHT. AND, UHM, WHAT TYPE OF INJURIES DID YOU SUSTAIN IN THE ACCIDENT?

A: LIKE MIDDLE AND LOWER BACK INJURIES.

Q: DID THEY TAKE, UHM, X-RAYS?

A: YES.

Q: ALRIGHT. UHM.

A: THEY TOOK X-RAYS OF MY BACK, MY ELBOW, AND MY SHOULDER.

Q: OKAY. UHM, YOUR LEFT OR YOUR RIGHT SHOULDER?

A: LEFT.

Q: OKAY. AND, UH, WERE THERE ANY FRACTURES NOTED IN, IN THE X-RAYS?

A: NO, MA'AM, JUST A LOT OF BRUISES.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

Q: OKAY. AND, UH, DID THEY GIVE YOU, UHM, MEDICATION TO TAKE?

A: YES, MA'AM.

Q: OKAY. HAVE YOU HAD TO FOLLOW UP WITH ANYONE, OR DO YOU HAVE TO FOLLOW UP WITH ANYONE?

A: UHM, I WENT TO THE, I HAD MY FOLLOW UP MONDAY AT DOCTOR'S CARE.

Q: HOW IS THAT GOIN'?

A: UHM, THEY, THEY PRESCRIBED ME SOME MORE, UH, SOME MUSCLE RELAXERS.

Q: OKAY.

A: SO I HAVEN'T, I DON'T, I DIDN'T START MY PHYSICAL THERAPY YET.

Q: OKAY. ALRIGHT. AND, UHM, THE, UH, ARE YOU MISSING ANY TIME FROM WORK BECAUSE OF THE ACCIDENT?

A: YES, MA'AM, I'VE MISSED A WEEK.

Q: OKAY. AND WHO IS YOUR EMPLOYER?

A: THE GREENERY.

Q: ALRIGHT. AND, UH, WHAT DO YOU DO AT THE GREENERY?

A: LANDSCAPING.

Q: OKAY. DO YOU NORMALLY WORK EIGHT HOURS A DAY?

A: YES, MA'AM.

Q: ALRIGHT. AND HOW MUCH DO YOU MAKE AN HOUR?

A: UH, 9.25.

MEMBER NUMBER:	011043223-005-0000-00
INTERVIEWEE:	ANTOINE JOHNSON

Q: ALRIGHT. ALRIGHT. UHM, THE TIME IS APPROXIMATELY 10:07.
I'LL TURN THE RECORDER OFF.

END OF STATEMENT

TRANSCRIBED BY: KK\0901119c9058014e\WWD
DECEMBER 11, 2014
750-01-363860

*This is to certify the above statement is a true transcription
to the best of my ability.*

✓ SERGEANT DAVID HOOD # 1104 32 23 L/R # 7 DOL: 11/07/2014

Loss Summary

Add to Loss: -- SELECT --

Loss Event Overview

- DAVID HOOD - Member
- Loss Details
- Claims Plan
- Alerts
- Excesses
- Invoices & Receipts
- Payments
- Financials
- Liability Assessment
- Policy
- Hilton Head Police - Police/Fire
- CARY TARDATH - Witness
- Missy Howard - 44766-handling BI claim - C
- Jack Daniel - Carlock Copeland and Stair - C
- 7103 USAA SC auto policy - Effective 11-1-1
- TV 2011 CHEVROLET EQUINOX 4D 2LT**
- THERESE HOOD - Driver
- KEVIN SMITH - Attorney
- Hilton Head Memorial Hospital - Hospital
- 02/02/16 Employee slipped on bus step
- DAVID HOOD - Owner
- CV 2003 HONDA**
- ANTHONY JOHNSON - Driver
- GREGORY WEATHERS - Attorney
- Hilton Head Memorial Hospital - Hospital
- Georgia Insurance
- LEITZIA JOHNSON - Owner
- CV 2007 CHEVROLET TAHOE 4D**
- WILLIAM KUKK - Driver
- SHANE BURROUGHS - Attorney
- Hilton Head Memorial Hospital - Hospital
- Alabama - Insurance
- HARRY KUKK - Owner/Passenger
- SHANE BURROUGHS - Attorney
- Alabama - Insurance
- eDocs**

Toolbar >

Claims Documentation

Integrated View

To: BROWSE

Details Injury Summary Injury Evaluation eDocs Claims Plan Payment Preference

Injury Evaluation

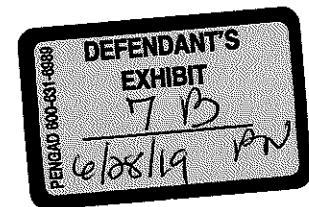
Evaluation #1 Status: Complete and Authority Granted

Loss and Injured Party Details

Name: THERESE HOOD
 Role: Insured Vehicle Driver
 Marital Status: Married
 Date of Birth: 07/22/1954
 Gender: Female
 Occupation: None
 Year, Make, Model of IV: 2011 CHEVROLET EQUINOX 4D 2LT
 IV Damage Description: lt fr crnr, ft bmpr, rt fr crnr, rt fndr
 IV Gross Estimate:
 Physical Evidence: Hard impact - Compelling photos - USAA UDM 500/500.
 Loss Location: South Carolina
 Base State: South Carolina
 Occurrence County: Beaufort
 Excess or Umbrella Policy? No
 Type of Loss: Collision - Failure to yield right of way
 Negligence Type: Comparative Negligence - Modified Form Not Greater Than

Loss, Liability and Coverage Notes: 6:00 pm Johnson pulling out of a Dunkin Donuts to cross into the median to make a left. He pulled into the path of Hood. Impact to Hood's right side pushed it into oncoming traffic and hit Kuck head on. Dispute as to whether Hood had head lights on. Plaintiff expert supports they did. Police report indicated Hood's lights were not on upon police arrival and Hood will testify they had turned them off prior to the police arriving.

Coverage	Description	Reserves	Indemnity Paid to Date
Underinsured Motorists	Coverage selected	\$250,000	



Additional Notes:

UTM coverage \$500,000/\$500,000 per person/per resident. This claim was opened for UTM split - suit was filed on LR 5 Hood vs Johnson. Then a counter suit was filed Johnson vs Hood. 2 plaintiffs - Kuck also have significant bodily injury claims against plaintiff/Hood. The bodily injury claims against Hood are being handled by Senior IM Phil Heister. Witness Death Lee - driving in the left lane, plaintiff came up behind him and started the speed limit and plaintiff easily passed him. Lee states plaintiff vehicle only had the running lights on at the time.

Damages

Medicals Claimed: \$207,202
Wages Claimed:

Medicals Allowed: \$207,202
Wages Allowed:

Medicals Paid:
Are there any features? No

Total Specials Allowed: \$207,202

Adjuster Low: \$242,798

Adjuster High: \$342,798

Settlement

Claimant Comparative Negligence: 50%

Underlying Coverage Offset: (25,000)

Value Range: \$200,000 - \$250,000

Authorized Up To: \$250,000

Authorization Notes: Claims authority conference conducted today and authority granted for \$250,000 regarding UTM claim for Therese Hood.

Liens

Liens	Liensholder	Liens Amount
Medical	Medicare	

Strategy

Were there aggravating circumstances? No

Negotiation Points:

Getco/Johnson has tendered their BI limits of 225,000 per person/\$50,000 per accident. USAA UTM \$500/500 for this loss.

Liability issue - our evaluation is the evidence will support probable liability rests with Johnson.

Johnson states the plaintiff was driving without her headlights. Police report also states that Johnson was driving with her headlights on. The police report shows plaintiff vehicle running lights were not on upon his arrival (documented on car video camera).

Police report shows Johnson did not contribute to collision and that Hood did contribute to collision about the time of the accident and whether she was required to have them on or not. Police report shows dark (no lights). Time of accident 5:55. It is a fine line.

Also, the plaintiff attorney has hired an expert to review the headlights on the plaintiff vehicle. The expert has stated that the headlights on the plaintiff vehicle arrived headlights were not on and witnessed in the dashcam but did not preserve the dashcam and entered in the PM when she can testify about.

Venue is Jasper County, very liberal venue in South Carolina.

Kuck has a companion BI suit pending against Johnson and Hood.

Mediation 10/28. No UTM Negotiations to date.

Negotiations

Date: 06/19/2015 01:00 p.m. CT
Type:

Amount: \$25,000
Recorded by: Notes

LOA: RECD NOTICE OF NEW SUIT ON DIARY
COUNT OF COMMON PLEAS FOR THE 14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
JASPER HOOD V JASPER JOHNSON AND USAA
JASPER HOOD V STATE 6/3/15 AND CREDIT MAIL TO CT CORP 6/4/15
5PM 7/3/15
RETURNING TO LIT: BI CASE IN LIT BEING HANDLED BY LIT MGR
BRIAN ROBINSON

Handwritten notes: -- this is a potential UTM for Hood
-- Hood filed suit against Johnson and Johnson's carrier filed answer and counterclaim against Hood set up for the BI claim Johnson is making against Hood and lit mgr Betsy Kushner is handling and has assigned out to d/c Clemons and Stranber
-- we were served as UTM carrier and answer due 7/3
-- file needs to be received to d/c Clemons and Stranber to answer on behalf of USAA for the UTM claim made by Hood

Date: 06/08/2015 02:38 p.m. CT

50

10002

Time Demand
Received: 06/04/2015
Due: 07/03/2015

SUIT TEMPLATE
Date of service: 06/04/2015
Case Number: 2015-02115
Type of service: Personal/certified mail: Certified Mail
County: Jasper
County Court of Common Pleas
Date filed: 03/17/2015
Stylod (plaintiff vs. defendant): Hood vs Johnson

Days to respond: 30 in all states, except Kentucky which is only 20 days
Answer due: 07/03/2015
Punitive alleged: no
Settled alleged: no

Refresh Exit

10:10

INITIAL CASE ANALYSIS

Report Submission Date: 10.21.15

Attorney Open Date: 6.30.15

Date of Loss: November 7, 2014

Trial Date: Not before March 13, 2016

Discovery Cut Off Date: n/a

SUIT SPECIFIC INFORMATION:

Attorney: Jack Daniel and Madison Suttie

Law Firm: Carlock, Copeland & Stair, LLP

Claim Handler: Kathy Moats

Claim Number: 011043223-7103-7

ALIS Number: 2015-13866

On Appeal (yes or no): No

Court: Court of Common Pleas (State Court)

County: Jasper

Client(s): UIM Carrier on behalf of Defendant Antoine Johnson

Case Name: Therese Hood v. Antoine Johnson

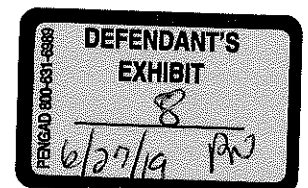
FINANCIAL INFORMATION:

Last Offer: N/A

Last Offer Date: N/A

Last Demand: N/A

Last Demand Date: N/A



I. SIGNIFICANT FACTS

On November 7, 2014 at approximately 5:59 p.m., Plaintiff Therese Hood ("Plaintiff") was driving her 2011 Chevrolet in an easterly direction on U.S. Highway 278 in the County of Beaufort, South Carolina. Defendant Antoine Johnson ("Defendant") was operating his 2003 Honda and stopped at an intersection, preparing to cross US 278 to head north. According to the police report, Defendant did not see Plaintiff's vehicle as she did not have her headlights on. Defendant collided with the right side of Plaintiff's vehicle. As a result of the collision, Plaintiff over corrected her vehicle into oncoming westbound traffic and struck another driver, William Legare Kuck, head on. Mr. Kuck is not a party to the present action. The incident report notes that upon police arrival, Plaintiff's headlights were not on, a fact confirmed on the squad vehicle video.

A number of 911 calls were made and witness statements taken. After being assigned the case we requested and obtained the recorded 911 calls pertaining to this accident. Dustin Lee saw the accident occur and made a 911 call. He noted that Plaintiff was in the left lane, traveling over the speed limit with only her parking lights on. She was tailgating him so he pulled back into the right hand lane. He said that Defendant only pulled out onto the highway because Plaintiff's lights were off and given the time of day it would have been difficult to see Plaintiff's vehicle. A second 911 caller observed that people were trying to pull people out of the involved vehicles and that one vehicle was possibly smoking. The third 911 caller was Tammy Melvin. Ms. Melvin manages the Dunkin Doughnuts located at the intersection where the accident happened. She did not witness the accident, but the description she provides portrays this as being a fairly serious accident.

Plaintiff provided a recorded statement to USAA in which she estimated that she was travelling 30 mph at best. She claims that she saw Defendant's vehicle pulling out and tried to avoid it by veering to the right. Defendant hit her on the passenger side and then dragged along the side of her car. She believes he pushed her across the median into oncoming traffic. Plaintiff was asked about whether her headlights on and she claimed that they were at the time of the accident as her vehicle has an automatic switch where the headlights are always on when the vehicle is operating. Defendant also made a statement to USAA and noted that he didn't see Plaintiff's vehicle because she was traveling with no lights on.

Cary T. Tanrath, a witness to the accident, also provided a recorded statement to USAA. He noted that it was totally dark out at the time of the accident. Mr. Tanrath was traveling behind Mr. Kuck's vehicle heading westbound on US 278. (He was behind the vehicle that Plaintiff claims she was pushed into). Mr. Tanrath noted that Plaintiff's headlights were not on at the time of the accident and therefore he wasn't able to see her before she impacted Mr. Kuck's car. After the accident he pulled off the road and helped to extract the two people from the vehicle who were hit in front of him. As he was behind, Mr. Kuck's car, Mr. Tanrath did not witness the initial collision between Plaintiff and Defendant's vehicle.

Both Plaintiff and Defendant's vehicles were towed from the scene. Plaintiff claims to have sustained injuries to her neck, right leg and right ankle. She believes that she has suffered permanent impairment to her right ankle and that the damages exceed \$10,000. To our knowledge, Plaintiff's counsel has not made a settlement demand, or provided medical records related to treatment for the injuries alleged. Defendant Johnson also claims to have sustained injuries as a result of the accident. In his recorded statement he states that he suffered middle and lower back injuries and has filed a counter claim regarding the same.

II. ANALYSIS: THE COMPLAINT

The Complaint in this case is basic and somewhat unspecific. It states that Plaintiff was traveling in an easterly direction on U.S. Highway 278 in Beaufort County when Defendant failed to yield right of way and collided with her right passenger side. The Complaint states that as a result of the accident, Plaintiff suffered injuries to various parts of her body, including but not limited to her neck, right leg and right ankle. She believes she has suffered permanent impairment to her right ankle. She seeks damages for:

- Physical harm
- Permanent body impairment
- Medical expenses
- Past and future emotional and psychological injuries
- Inability to perform household duties.

The Complaint raises standard allegations regarding the negligent operation of a motor vehicle, including: operating a vehicle with reckless disregard for the rights and safety of others, failure to keep control and a proper lookout, driving in a manner indicating either willful or wanton disregard for the rights and safety of others, colliding with Plaintiff's motor vehicle, violating the safety rules, failing to take evasive action, and violating applicable laws, statutes, and ordinances. The Complaint states that the Plaintiff is seeking actual and punitive damages.

Liability counsel for the Defendant filed a Counterclaim in addition to their Answer. In the Counterclaim our raising allegations regarding Plaintiff's negligent driving, including: failing to keep a proper lookout, driving too fast for conditions, being inattentive to the road, following too closely, failing to ensure vehicle was equipped with proper safety and navigational lighting, failing to maintain proper control over vehicle, and failing to take evasive action. Defendant's counterclaim does not specify his injuries but makes a claim for medical expenses, lost wages, lost employment opportunities, loss of earning capacity, permanent injuries and debilitation, present and future trauma, anxiety, annoyance, inconvenience and loss of enjoyment of life and emotional distress. The Counterclaim states that Defendant is seeking actual and punitive damages.

III. ANALYSIS: LIABILITY

Liability counsel for the Defendant filed an Answer and Counterclaim asserting general denials for all substantive allegations in Plaintiff's Complaint and affirmative defenses. There does not appear to be a dispute that Defendant collided into the right side of Plaintiff's vehicle. However, a number of accounts, including the incident report, suggest that Plaintiff was travelling without her headlights on and this could help us argue against liability in this matter.

The police report generated from the incident notes that Defendant attempted to cross US 278 and did not see the Plaintiff's vehicle because she did not have her headlights on. Although this report would be inadmissible, we may be able to obtain testimony to this effect from the officer that worked the accident and the supporting witnesses. Our argument for comparative fault is that Plaintiff had a duty to travel with her headlights on in the evening and the accident would have been avoidable had she done so. However, despite a good argument against liability, Jasper County is a dangerous venue and Plaintiff verdicts in Jasper are usually well in excess of the medical bills.

Once we obtain Plaintiff's medical records we will determine whether we have an argument as to causation. We have yet to receive Plaintiff's discovery responses and therefore it is unclear at this stage whether we have a causation argument as to her injuries.

IV. ANALYSIS: DAMAGES

Although we are not yet in possession of Plaintiff's medical records, the Complaint states that damages in this matter exceed \$10,000. Once we obtain medical records we can provide a summary or chronology. It is our understanding that plaintiff has complained of neck, back and ankle injuries. Once we receive discovery responses from the Plaintiff, we plan to serve subpoenas on her treating physician/providers and will provide you with an updated damages analysis upon receipt and review of Plaintiff's medical records. It should be noted that we are UIM counsel and therefore do not control the defense. However, we have sent basic discovery because of the complete lack of detail regarding the potential damages and Plaintiff's post-accident medical condition.

V. ASSESSMENT OF VENUE, JUDGE AND PLAINTIFF'S COUNSEL

Jasper County is one of the more liberal counties in the State of South Carolina. It is not ideal from a defense perspective and can present problems with "runaway" juries. The majority of the Jasper County population is lower income and fairly uneducated. Consideration should be given to the location of this case, however, it may actually favor the Defendants in this case. Defendant Johnson is a Jasper County local and the Plaintiff is from Berkeley County, which does not neighbor Jasper. It is likely that Plaintiff has no family and no ties to Jasper County. If this Plaintiff is an outsider to the venue, that fact could make a significant difference in the case. Additionally, the Plaintiff's firm is not local. While it is still early in the case and difficult to predict at this stage, it is possible that the choice of venue could end up working against the

Plaintiff and in our favor. South Carolina operates on a system of rotating judges and therefore a Judge has not yet been assigned to this matter.

Plaintiff's counsel, Kevin Smith, is attorney with the Hoffman Law Firm in Charleston. Mr. Smith is a competent and experienced lawyer, who handles personal injury and worker's compensation cases. He should represent his client well, but Mr. Smith is not local to the Jasper area. Furthermore, he does not normally handle cases in Jasper or even the neighboring venues. If the case is tried, his involvement should have no impact with any judge we draw and he could potentially be received with skepticism by a jury in Jasper County.

VI. ANALYSIS: INITIAL THEORY OF DEFENSE

As noted above, we are counsel for the UIM carrier and therefore do not control the defense in this matter. The initial strategy will be determined by Toland Sams, liability counsel for Geico. This is definitely a case of disputed liability. We have been in contact with Mr. Sams and it is possible that he may demand more on the counterclaim against Plaintiff Hood, than she and her attorney will demand on her direct claim. As we will be defending in the name of a local and there are a number of independent witness accounts to help us establish Plaintiff was driving at dark with her headlights off (and in a reckless manner), we will have a solid case against liability. We cannot control the defense at this point, but we will be trying to locate the eye witnesses and obtain affidavits and/or coordinate their depositions with liability defense counsel. We may also obtain supportive testimony for from the investigating officer because he confirmed that Plaintiff's lights were off when he arrived.

After receipt of Plaintiff's initial damages information and medical records, we will be able to assess whether we have a strong causation and/or damages argument. If we cannot obtain good testimony from any of the treating physicians, we may want to discuss obtaining an expert to challenge damages and potentially coordinating that with liability counsel (GEICO).

VII. PROCEDURAL STATUS

This action was filed on March 13, 2015. Defendant answered and filed a counterclaim on April 24, 2015. We filed a Notice of Appearance and Conditional Answer on behalf of USAA as the UIM Carrier on July 2, 2015. Jasper County is a mandatory mediation County, and it is required that such mediation occur within 300 days of filing the action (January 7, 2016). Additionally, unless the case is placed under a scheduling order, the Jasper County clerk will place the case on the trial roster one year after the date of filing (March 13, 2016).

As the UIM carrier we have little direction over the case but we have sent initial discovery requests to the Plaintiff and will participate in and monitor all written discovery and depositions moving forward.

VIII. CURRENT ASSESSMENT OF CASE VALUE

Although there is a strong argument as to liability, there is a chance of an adverse verdict as Plaintiff will have her own arguments for liability. As Defendant Johnson was in the process of turning into traffic, Plaintiff's counsel will argue that Mrs. Hood had the right of way. It will be a credibility fight as to whether Plaintiff was operating her vehicle with her headlights on and we should anticipate some argument about visibility at the time of day (5:59 p.m. in November). However, the fact the Defendant is a resident of Jasper County and the Plaintiff is not may work in our favor. It is possible that a jury would apportion anywhere from 30 – 80% of liability to the Plaintiff. The Plaintiff has yet to make an initial demand and a more specific value range will be provided upon receipt of initial discovery from this Plaintiff. It is our understanding that GEICO has \$25,000 in liability coverage that will proceed UIM.

Until we have more information about Plaintiff's medical treatment and alleged damages, we would not recommend paying a value above \$4,000 - \$12,000 to resolve the UIM claim. If Plaintiff had significant medical treatment, then the case could carry some legitimate exposure simply because of the venue. However, the fact that our driver is a resident of Jasper and the Plaintiff is an outside should make a difference. Even if Plaintiff has legitimate injuries the venue and liability defenses will detract from the normal value attributed to cases in Jasper. Given our liability assessment, we may end up recommending a reduction of 30 to 50 percent (or more) from our normal damages evaluation for cases in this venue. Again, our damages and value estimate will be supplemented when we received more information.

IX. STRATEGY: LITIGATION PLAN

Although we do not control the defense in this matter, we have sent some basic discovery to obtain information about Plaintiff's medical treatment and alleged damages. The Defendant's counterclaim could potentially hold up the resolution of the liability claim for the GEICO coverage. We have been in contact with liability counsel for the Defendant, but we will reach out to him again in order to gauge GEICO's position. We will attend any upcoming depositions and recommend that liability counsel schedule the deposition of Mr. Kuck and other eye witnesses in order to establish that it was dark out and Plaintiff was driving without her lights on. We will attempt to interview these witnesses prior to their depositions.

As of this report, Plaintiff counsel's responses to our discovery are overdue. As required by our courts, we just sent opposing counsel a Rule 11 letter about the overdue discovery. If we do not have discovery within the next week, we will file a Motion to Compel.

X. ESTIMATED LEGAL BUDGET

The initial budget, accompanying this report, contemplates the cost of taking depositions of Plaintiff's treating physicians and the Plaintiff. At this stage, we do not recommend retaining an expert and, ultimately, we may not need one. However, we will not be in a position to rule out the need for an expert until we have obtained more facts in discovery.

Sincerely,

s/Jack Daniel

JACKSON H. DANIEL, III

LAW OFFICES
CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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REPLY TO CHARLESTON
OFFICE

March 29, 2016

VIA EMAIL ONLY

Kathy Moats
Field Litigation Manager
Claims Litigation Operations
Tampa, General Counsel, USAA
9800 Fredericksburg Road
San Antonio, TX 78265
Kathy.Moats@usaa.com

Re: Hood v. Johnson
C/A No.: 2015-CP-27-119
CCS File No.: 3133-52037
Claim No.: 11043223-7
ALIS No.: 2015-13866

Dear Kathy,

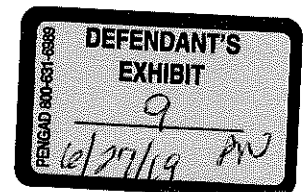
I write to provide an update on the recent discovery and case activity in this lawsuit. Due to the UIM claim and counterclaims, we have several attorneys involved in this case. For clarity, the attorneys and their respective roles are listed below:

Plaintiff Therese Hood

- Kevin Smith – Mr. Smith is representing Plaintiff Hood and pursuing her claims for personal injury.
- Chris Nichols – Mr. Nichols is defending Plaintiff Hood against the Counterclaim brought by Antoine Johnson.

Defendant Antoine Johnson

- Toland Sams – Mr. Sams is defending Mr. Johnson under a GIECO policy with \$25,000 in liability limits.
- Greg Weathers – Mr. Weathers is representing Mr. Johnson on his counterclaims.
- Jack Daniel and Madison Suttie – We are defending the UIM claim and appearing in the name of Defendant Johnson.



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USAA Confidential

Hood_USAA_0148

Scheduled Discovery and Other Potential Claims

The deposition of the investigating officer, Cpl. Warrel, is scheduled for April 27th. Cpl. Warrel may provide us with helpful testimony because he cited Plaintiff as the at-fault driver. It was our understanding that counsel for Mr. Johnson would be moving forward with Plaintiff's deposition and additional discovery, but I was informed last week that he is postponing depositions. I recently spoke with Johnson's defense counsel, Toland Sams, and he indicated that GEICO wants to tender its limit of \$25,000 to Plaintiff Johnson. GEICO is waiting to tender its per person limit because the accident involved other injured persons - William and Mary Kuck - and the extent of their injuries is currently unknown. Mr. and Mrs. Kuck were in the 3rd vehicle (2007 Chevy SUV) that was struck head on by Plaintiff Johnson's SUV. Mr. and Ms. Kuck are represented by Shane Burroughs, an attorney in Orangeburg, South Carolina. We do not have any information about the extent of their injuries, and it is our understanding that Mr. Burroughs has not provided any information to the other attorneys in this case. Based on my discussion with Toland Sams, it is clear that GEICO is not going to develop a defense in this case. Thus, we recommend moving forward with scheduling depositions and taking lead in discovery even though we are defending the UIM claim. We can verify that Plaintiff's counsel has no objection, if this agreeable. We will be in contact about this issue before proceeding with any depositions.

Initial Discovery from Plaintiff

We have received written discovery from Plaintiff, which includes a list of various providers that have treated Plaintiff since the accident. We have sent subpoenas to all providers identified and have documents from 16 out of approximately 18. According to Plaintiff's discovery responses, she has incurred **\$207, 202.16** in medical costs due to her injuries from the accident, and her counsel indicated in her deposition that she was continuing to incur medical expenses. Plaintiff is not claiming any lost earnings or lost wages. Her discovery responses indicate that she "no longer has the full use of her right leg." Plaintiff is a 61 year old white female that resides in Goose Creek, South Carolina. **She is a Medicare recipient.** According to discovery, she has been paid \$50,000 for her injuries through her PIP coverage with USAA. Plaintiff's Interrogatory Responses claim that Defendant Johnson ran a stop sign and collided with her vehicle. She contends that the impact from Defendant Johnson's vehicle pushed her into traffic that was across a median, traveling in the opposite direction. Plaintiff identifies the following witnesses in her discovery: Cpl. Warrell (investigating officer), William and Mary Kuck (occupants of vehicle 3), Defendant Johnson, and Cary Turnam. We have a phone number for Cary Turnam and are in the process of trying to contact her and conduct an interview.

Deposition of Defendant Johnson

Depositions of the Plaintiff and Defendant were scheduled for January 25, 2016. The Plaintiff's deposition was postponed by liability counsel, Toland Sams. However, Plaintiff's counsel moved forward with the deposition of Defendant, Antoine Johnson. A summary of Defendant Johnson's deposition testimony is as follows:

Plaintiff's counsel on Defendant Johnson's Cross-Claim, Christopher Nickels, took the deposition of Defendant Antoine Johnson. Mr. Johnson is a 21 year old African-American male from Ridgeland, South Carolina. He graduated from Ridgeland High where he was a state track champion. He did a year of college at OC Tech in Orangeburg after he graduated high school, where he studied barbering. However, he was unable to afford to finish so he quit and now currently works full-time as a porter for Jaguar. His typical responsibilities include taking cars through the car wash and bringing them back around front to the customer. Prior to that, he worked at Walmart, where his employment was terminated for breach of trust in August of 2015. In short, Mr. Johnson would take merchandise and "stash it" so that his friends could come back later and take it. This was caught on the security cameras and he was arrested for this incident. According to Mr. Johnson, this was the first and last time he had ever been arrested. He pled guilty and did 35 hours of community service, a prison tour, and an "Alive at 25" safe driving class. He was also required to make restitution. At the time of the accident he was working for The Greenery, a large landscape company where he would cut grass. He was laid off due to company-wide time-cuts.

Mr. Johnson was questioned about his driving history. He said he has three driving citations, two for speeding and another one for driving too fast for conditions. He never contested these charges and instead paid the fines. According to Mr. Johnson, he was not awarded a citation for the accident with the Plaintiff. Prior to the subject accident, Mr. Johnson had only ever been involved in one single-vehicle accident. He was driving too fast for conditions and lost control of the vehicle. No one was injured in this accident. He was also rear-ended once at a stop-light, but no one was injured and there was only minor damage to the vehicles involved. At the time of the accident, Mr. Johnson had a valid South Carolina Driver's License with no restrictions.

On the day of the accident, Mr. Johnson was driving from work and stopped to drop his cousin off at the Dunkin Donuts on Hilton Head Island, on the corner near where the accident occurred. He was driving in his mother's car that he had driven many times before. Mr. Johnson had made a complete stop at a stop sign and was attempting to turn left onto Highway 278. Prior to turning, he saw a gray Hyundai Sonata coming from his left side. He testified that he was clearly able to see the Hyundai's lights from his position. After that vehicle cleared past him, he looked left and saw some cars that were stopped at a stoplight approximately 25 feet from the stop sign. When he looked right he saw a few cars coming. His plan was to pull into the median and complete the turn once the cars from his right had passed. When he pulled out to reach the center median, he collided with Plaintiff's vehicle. Plaintiff then went to the other side of the road and hit someone head-on. He did testify that he would guess that the collision with his vehicle caused her to careen across the highway. Mr. Johnson testified that he did not see Plaintiff's vehicle before the collisions and that if she had had her headlights on, he would have seen her.

After the accident, Defendant Johnson believes he waited until the police arrived to get out of his vehicle. He did not speak to the Plaintiff at the accident scene, and only spoke to the investigating officer. He recalls telling the officer that he tried to cross into the median and did not see the Plaintiff's vehicle because she didn't have headlights on. Apparently the investigating officer told him at the time that another party also had reported that she had no lights on.

Mr. Johnson testified that he was injured in the accident and was taken by ambulance to the ER. He underwent X-rays and CT Scans, as his head and middle and lower back were hurting him. These tests were unremarkable and Mr. Johnson was discharged home that same day. He was still feeling pain after the hospital visit and went to Doctor's Care, who referred him to physical therapy. He felt pain for approximately a month or two after the accident, but now feels fine.

Plaintiff's Counsel, Kevin Smith, also questioned Defendant Johnson. Mr. Smith began by asking Mr. Johnson about the weather conditions on the day of the accident. According to Mr. Johnson, it was not raining and although it was dark outside, it was not pitch black. There was still a bit of light out. Mr. Smith showed Mr. Johnson pictures of the damage done to Plaintiff's car, and Defendant conceded that the damage looks like it was to the passenger side, more than Plaintiff's front bumper.

Defendant Johnson was asked when he first saw Plaintiff's vehicle. He maintained that he did not see her when he looked to the left, and would guess that he first saw her car about two seconds before the collision. He had no time to react, turn his vehicle or slam on his brakes. After the accident, he recalled that two female witnesses to the accident waited around until his mother arrived. However, he did not talk to them and he does not recall their names.

Mr. Smith asked a series of questions regarding whether Mr. Johnson had told his current employer at Jaguar about the subject accident. He hinted that someone would call Mr. Johnson's supervisor and inform him about the wreck that occurred before he started working there, and that would put his job in jeopardy. Mr. Johnson maintained that he didn't believe his employer would be concerned with an accident that occurred before he began working there. It was an obvious scare tactic but didn't seem to have a significant effect on Mr. Johnson's testimony.

Plaintiff's Letter to Mr. and Mrs. Kuck (other injured persons)

We have enclosed a letter from Plaintiff Hood to William and Mary Kuck. Apparently, Plaintiff wrote this letter against the instructions of her attorneys. This letter was produced by the attorney for Mr. and Mrs. Kuck. In the letter, Plaintiff indicates that she did not "hit" Antoine Johnson and that the accident report is incorrect. She starts the letter by apologizing to Mr. and Mrs. Kuck. Plaintiff also inquires about the extent of their injuries. The letter mentions

another witness, Charlynn Bonham, and states that Ms. Bonham rode with her in the ambulance after the accident. Although Plaintiff's counsel denied having any statements, this letter suggests that Ms. Bonham may have given a statement or witness interview. We were unaware of this witness until we received this letter and will send supplemental discovery for more information about Ms. Bonham.

Plaintiff's letter also provides a detailed evaluation of the amount of insurance coverage she believes is available. Plaintiff's analysis of coverage seems incorrect, and highly suggestive. Plaintiff indicates that it may be "profitable" for the Kucks if they cooperate with her attorney and provide witness statements. She also suggests Mr. and Mrs. Kuck will have more insurance money available to cover their injuries if they side with her on liability. Interestingly, she adds that she will get her money "regardless of the outcome." Plaintiff enclosed a diagram and accompanying analysis with her letter to Mr. and Mrs. Kuck. Based on the wording of this analytical diagram, it is possible that it was drafted by her counsel or an accident reconstruction consultant, rather than Plaintiff.

According to Plaintiff's accident analysis, the police officer was incorrect in citing her as causing the accident. Plaintiff states that her Chevy Equinox had day-time running lights. She does not definitively state that her running lights were on at the time of the accident; however, we should anticipate she will maintain that her lights (or running lights) were on. Although she admits in the letter that the accident happened 25 minutes after sunset, Plaintiff states that the officer ignored the fact that Defendant Johnson (vehicle 1) had a clear view of traffic at an "open" intersection with commercial establishments around it that would have provided "secondary illumination." We need to do more analysis of the accident scene, but basic photographs suggest Plaintiff's assertions are questionable. Online photographs of the intersection show trees lining both sides of the road from the entry point in the roadway where Defendant Johnson's vehicle was located, so lighting and visibility would likely pose a problem at night time. Plaintiff also places emphasis on the investigating officers' statement about her lights not being activated (turned on) when he arrived. She indicated that her lights were off prior to the officer's arrival because her keys had been removed from the vehicle. Although this may be less significant, we will find out more about this potential issue at the officer's deposition and through supplemental discovery.

Mr. Kuck's Recorded Statement

Last week we were provided an audio recorded statement of William Kuck. The recording is somewhat confusing because you cannot hear the person conducting the interview. We were informed that there is a transcription of the interview and have requested a copy. Based on what can be heard, Mr. Kuck's account may support Plaintiff Hood's liability argument. In the recording, Mr. Kuck states multiple times that he just remembers "seeing headlights coming at him." Given the context, he is clearly referring to Plaintiff Hood's vehicle just prior to impact. Mr. Kuck also repeatedly states he was hit "head on" and that there was nothing he could have done to avoid the accident. He states that it was "just beginning to get dark" when the accident happened. He recalls that he was driving between 30-35 mph at the time. Although information

is disjointed because the conversation is not entirely audible, he indicates that he had cuts on both arms and hands. Mr. Kuck states that he had a lot of pain as a result of the accident. He also indicated that he had three broken bones in his foot and a cracked bone in his chest. Mr. Kuck states that he is currently unable to work because of the accident. He says that he was a restaurant manager, making \$900 per week, and that he cannot put weight on his injured foot since the accident. He does not provide any information about his wife's injuries in the recording. The statement about headlights may or may not contradict the eye witness account of Dustin Lee. Mr. Lee confirmed that Plaintiff's parking lights were turned on when the accident happened, so it is possible that Mr. Kuck could have unintentionally misstated what he saw prior to being struck. It is also possible that his wife, who was in the vehicle, could provide more insight on this key issue.

Eye Witness: Dustin Lee

As previously reported, we obtained the 911 calls for this accident. In the calls, one witness, Dustin Lee, provides very detailed information about the accident and what he observed just before it happened. In late 2015, we interviewed Mr. Lee. He is an attorney and part time Magistrate Judge in Bluffton, South Carolina (near the area where the accident happened). Mr. Lee was driving in the same direction as Plaintiff, headed eastbound on Highway 278. Mr. Lee is frequently on this stretch of highway and said he routinely drives about 4 miles per hour above the speed limit. He said that he was in the left lane (passing lane) when Plaintiff drove up behind him and started to tailgate his vehicle. Mr. Lee moved over into the right lane to let Plaintiff pass. He was clear about the fact that she only had on her "parking lights" (running lights) when she passed his vehicle. During the phone interview, Mr. Lee confirmed that it was dark when the accident happened and that, in his view, anyone driving at the time should have had their headlights turned on. Mr. Lee described the Plaintiff's vehicle pass and said he could see the other vehicle (Defendant's Hood) pulling out from near the Dunkin Donuts up ahead. Mr. Lee said that it was like he could see the accident about to happen. He witnessed the Plaintiff's SUV flip and go over into the oncoming lanes of traffic. Mr. Lee said that the sequence of events – from the time Plaintiff passed him to the moment of the accident – was very short in duration. Plaintiff was driving faster than him and she was still only about 100 yards or so ahead of his vehicle. Based on the interview, this witness should support our position that it would have been very difficult for Defendant Johnson to see Plaintiff at the time he drove forward from Southwood Park Drive onto Grissom Parkway (278). He will also state that the Plaintiff must have been speeding because he drives 4 mph over and she easily passed him. Mr. Lee also indicated that his wife may have seen everything that happened in the accident.

Medical Records and Accident-related Treatment

We recently obtained a significant amount of medical records and we are still reviewing them. We will work on a detailed medical chronology and provide a comprehensive assessment of the medical treatment in the coming weeks. After an initial review, it is clear Plaintiff sustained a broken right ankle in the accident and that she underwent a significant amount of care in the hospital after the accident. While much of the treatment costs are due to Plaintiff's poor

health, she would be able to recover damages for those costs. (In South Carolina, "a defendant takes the plaintiff as he finds her.") However, there is a significant amount in medical bills – approximately \$50,000 - \$60,000 – that were incurred from tests and a cervical procedure performed on the Plaintiff at MUSC, about two weeks after the accident. Plaintiff reported feeling dizzy and scans of her neck showed a fracture at C-6 fracture and suspected vertebral artery dissection (artery tear). The notes we have from MUSC indicate Plaintiff may have sustained a tear in one of the arteries leading to her brain, but the operative note does not indicate any tear was repaired. We are still reviewing the MUSC records and all records from the 18 providers that have sent records, but at this point it is possible that the perceived artery tear may have been due to pre-existing issues. We will provide a full assessment on this aspect of damages after we determined whether this aspect of damages can be challenged.

Discovery to Be Scheduled and Updated Exposure Range

We recommend noticing and taking the depositions of Plaintiff and Mr. Lee. I can also reach out to Mr. Kuck's attorney, Shane Burroughs, to obtain a better idea of his client's recollection of what he observed just prior to being hit. The initial exposure analysis was provided before we had discovery or any information about Plaintiff's injuries and medical bills. We have good arguments against liability in this case, but the fact that Plaintiff had some type of lights activated will be a basis for placing some liability on Defendant Johnson. South Carolina is a "greater than/less than" state for the purposes of comparative negligence. In other words, if Plaintiff is found 50% at fault, then she would not be able to recover any amount in damages against Defendant Johnson. The strength of our defense is largely dependent on the other witnesses to the accident – Plaintiff, Mr. Kuck, Mrs. Kuck, and any other independent witnesses. However, if Dustin Lee were to provide strong testimony about Plaintiff's headlights not being on and confirm that it was sufficiently dark enough that any driving at the time should have had their headlights on, then his testimony alone should provide us with a decent liability defense. Based on Plaintiff's letter, it is also possible that the other independent witness – Charlynn Bonham - may further bolster our liability position. Plaintiff has sued Defendant Johnson in Jasper County, which is a very Plaintiff-oriented venue. However, the jurors in Jasper place a great deal of significance on which party or parties are locals. The respective ethnicity of Plaintiff and Defendant cannot be ignored. We should have a decent liability defense with a local Defendant, who is facing a Plaintiff that is an outsider. The venue should actually weigh in our favor, not Plaintiff's.

Assuming the medical bills and treatment are causally related to the accident, Plaintiff has just over \$200,000 in special damages that can be presented in this case. Given this amount, the case has the potential for significant exposure. If the Plaintiff is sympathetic and the jury sides with her entirely on liability, a verdict of more than three times medical bills is possible. However - given the current information - the chance of a jury finding Defendant Johnson entirely liable is low. Plaintiff will likely be assigned some portion of fault, if not 50% or higher. The UIM under Plaintiff's policy should not be triggered by the claims of Mr. and Mrs. Kuck, so we should be able to engage in negotiations without details regarding the injuries of these non-parties.

Kathy Moats
March 29, 2016
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This case may be entirely defensible; however, there is also a significant risk of an adverse six figure verdict. Under the circumstances, there is not much likelihood of settling the UIM claim for an amount under \$100,000. Provided the \$25,000.00 credit for GEICO's policy and assuming our liability argument remains slightly stronger than Plaintiff's, a reasonable to settlement range in this case is \$170,000 - \$275,000. We would not recommend offering more than \$300,000, until more facts have been developed. Under the circumstances, we recommend reevaluating the case's value after more discovery has been conducted. We will contact you to discuss a resolution plan and litigation strategy.

Sincerely yours,

s/Jack
JACKSON H. DANIEL, III

JHD/bjg
Enclosure

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REPLY TO CHARLESTON
OFFICE

May 12, 2016

VIA EMAIL ONLY

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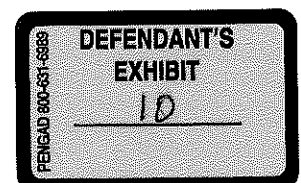
Re: Hood v. Johnson
C/A No.: 2015-CP-27-119
Claim No.: 11043223-7
ALIS No.: 2015-13866
CCS File No.: 3133-52037

Dear Kathy:

We have taken the depositions of Plaintiff, Theresa Hood, and the lead investigating officer with the Beaufort County Sheriff's Department, Corporeal Jennifer Worrell. Plaintiff did not present well as a witness, and although Cpl. Worrell conceded points for both parties, the officer's testimony provides more support for our client's position than it does for Plaintiff. A summary of the depositions and planned case activity follows.

Corporal Jennifer Worrell

Corporal Jennifer Worrell has been an officer with the Beaufort County Sheriff's Office since 2007. She is certified in accident reconstruction, which is a multi-week course for police officers in South Carolina. Cpl. Worrell came across as knowledgeable and credible. While her disposition was fairly neutral, the majority of her testimony supports our liability argument. Cpl. Worrell understandably did not remember every detail of her investigation, but she had a fairly good memory of the accident. She arrived at the scene at 6:09 p.m., which was three minutes after she was notified and about ten minutes after the accident happened. Although she is certified and capable of doing a full accident reconstruction, Cpl. Worrell did not do a full accident reconstruction because she determined there were no life-threatening injuries. She did not take photographs of the vehicles or take measurements because she determined the accident



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did not involve life-threatening injuries. She estimated Plaintiff's vehicle collided with Mr. and Mrs. Kuck's SUV about seventy-five to one hundred feet away from the initial point of impact with Defendant Johnson's vehicle. Cpl. Worrell recalled interviewing all three drivers, Defendant Antoine Johnson, Plaintiff Therese Hood, and William Kuck.

Cpl. Worrell was fairly sure she spoke with Mr. Kuck about the accident three different times, at least once at the hospital and once on scene. Cpl. Worrell said Mr. Kuck gave conflicting information. She remembered him stating at one point that Plaintiff Hood's headlights were on when the vehicle came across the highway and hit his vehicle head on. She also remembered Mr. Kuck telling her at one point that Plaintiff's lights were not turned on at the time of the accident, and her recollection is that he also said he did not remember if Plaintiff's lights were on or off. She was not sure which account Mr. Kuck gave first, but said she spoke with him at the hospital and the accident scene and recalled he had conflicting recollection about the headlights. Cpl. Worrell also interviewed Mary Kuck and recalled Mrs. Kuck saying Plaintiff Hood did not have her headlights on when the accident happened. She was not one hundred percent sure of the details provided by Mrs. Kuck, but the officer was fairly confident about her general memory of the interview with Mrs. Kuck.

Cpl. Worrell interviewed Plaintiff at the hospital. Plaintiff told Cpl. Worrell her headlights were on at the time of the accident. According to Cpl. Worrell, Plaintiff did not state she had a specific recollection of her headlights being on, rather Plaintiff just stated her lights turn on automatically so "she didn't have to touch them."

Cpl. Worrell interviewed Defendant Johnson at the scene. The officer told Plaintiff's counsel that Defendant Johnson said Plaintiff's headlights were off. Plaintiff's counsel then recited from Defendant Johnson's testimony, in which Johnson indicated that he did not see Plaintiff's vehicle coming when he looked to check traffic. Defendant Johnson's testimony makes sense; if he checked traffic and had actually seen Plaintiff's car coming (even with its lights off), Mr. Johnson would not pull out in front of her. However, Plaintiff's counsel suggested Defendant Johnson's initial statement to Cpl. Worrell was different from his sworn testimony (i.e., noticing the car without lights on, and not seeing it all). Although Cpl. Worrell agreed this was a distinction, when I asked more open-ended questions about Defendant Johnson's recollection later in her deposition, she confirmed Defendant Johnson was "pretty adamant" that he just "didn't see her," even though he looked before pulling into the intersection. Cpl. Worrell said Defendant Johnson did reference Plaintiff's headlights being off. However, the overall gist of her recollection is consistent with Defendant Johnson telling her that he checked traffic coming from Plaintiff's direction, but did not see Plaintiff's vehicle because it was dark and she did not have her lights on.

Cpl. Worrell agreed it would be unsafe to drive without headlights turned on at the time when this accident occurred. She said it was close to being completely dark, indicating that "it would be hard to put a number on it" but that it was about "80-85% dark" when she arrived. Cpl. Worrell interviewed eye witness Cary Tanrath at the scene. Mr. Tanrath was positioned directly behind Mr. and Mrs. Kuck's SUV at the time of the accident. We have a recorded statement from Mr. Tanrath, in which he states he could see the right front headlight of Plaintiff's SUV as

it was coming over from the opposite side of the highway. In the recorded statement, Mr. Tanrath said Plaintiff's right headlight was off. This is contradicted by Cpl. Worrell's recollection of her interview with Mr. Tanrath. Although she was not entirely sure of the specifics of this interview, Cpl. Worrell recalled Mr. Tanrath told her that his view of Plaintiff's vehicle was obstructed when the accident happened. We will have to interview Mr. Tanrath for clarification in the coming weeks.

Cpl. Worrell's accident report specifically states she checked her in-car video of the accident scene before finalizing her report. The in-car video confirmed Plaintiff's running lights were not on when the officer arrived. This was significant to Cpl. Worrell because the running lights would have been on (illuminated) in her video if Plaintiff's headlights had been turned on. Cpl. Worrell also said she was fairly confident Plaintiff's SUV was still running when she arrived. She remembered looking in the vehicle and remembered it sounded like it was still turned and running at the time. Plaintiff's vehicle was smoking immediately after the collision and Cpl. Worrell recalled Fire Department personnel were working on it when she arrived. It is possible Plaintiff was pulled out of her vehicle because of the danger of an explosion. This makes it conceivable that she may have been pulled from the vehicle before turning it off or removing the keys. The Fire Department records may have information on this issue and we will make sure we have all records from first responders, including the Fire Department. Plaintiff counsel was able to get Cpl. Worrell to admit that it is possible Plaintiff had turned her vehicle off prior to the officer's arrival. I did not belabor this point because it was clear Cpl. Worrell's recalled Plaintiff's vehicle was still on and running when she look at it, even if this officer was not entirely positive.

As previously reported, we have a fairly definitive recorded statement from eye witness Dustin Lee via his 911 phone call. Mr. Lee, an attorney and part-time magistrate judge, was driving in the same direction as Plaintiff when Plaintiff passed him just prior to the accident. He informed the 911 dispatcher that the other driver (Antoine Johnson) probably did not see Plaintiff's vehicle (Chevy SUV) because it only had the running lights on. Apparently, Cpl. Worrell did not interview Mr. Lee. She was not aware of what he reported to 911 dispatch at her deposition and it apparently did not factor in her conclusion to fault Plaintiff.

Unfortunately, Cpl. Worrell's in-car video has been erased. Before the deposition she had checked and told us videos are erased after about 90 days, even when an officer asks that they be saved. Although the video would be ideal, Cpl. Worrell's notes can be referenced in the trial. She can testify to her routine and the fact that she documented reviewing the video recording of Plaintiff's vehicle. Of course, she would not document the running lights being off if that was inaccurate. Cpl. Worrell said, in her opinion as the investigating officer, the fact the running lights were off was significant because it would mean the headlights were also not turned on. Cpl. Worrell's reasoning makes sense, unless the vehicle's entire electrical system went out.

Through his questions, Plaintiff's counsel indicated that Mrs. Hood's Chevy Equinox has a default setting for the automatic lights. He suggested that even if the vehicle's headlight setting is switched from the automatic setting (for the headlights to activate at dark) to a manual

setting in which headlights have to be turned on by hand, the vehicle “defaults” back to the automatic setting when it is turned off. Even if true, this fact would not be definitive either way, but we will try to find out if counsel is accurate about the mechanical setup for this vehicle’s lights (and the default setting). Cpl. Worrell’s testimony is significant for us, unless the entire electrical system or lighting capabilities were disabled by the accident. In discovery, Plaintiff did not indicate that her vehicle has been inspected since the accident. However, as detailed below, we have learned that a number of Plaintiff’s discovery responses were inaccurate. Given the circumstances, we will be sure to follow up and specifically inquire as to whether a post-accident inspection was conducted by anyone. We will also find out if the vehicle is still available for inspection.

Plaintiff Therese Hood

A. Background

Plaintiff, Therese M. Hood, is 61 years old. She is retired from the Army and stopped working in 2012. Plaintiff has been married for over forty years and has two grown daughters. She lives in Goose Creek, South Carolina, which is a fairly suburban area of Berkeley County. She has lived in Goose Creek for the past ten years and prior to that lived in various places as she and her husband moved because of military service. Plaintiff has bipolar disorder, and she became very emotional a number of times during her deposition. She was a difficult witness to question and exhibited several mood swings during the deposition. She was a poor historian and seemed to be advocating her case too much. If this case is tried, Plaintiff will not present well in front of a jury. While Jasper County is traditionally a plaintiff-oriented venue, it is unlikely this Plaintiff would draw much sympathy from members of a jury in Jasper County, especially when she has sued a local defendant and has significant credibility concerns, as outlined below.

Plaintiff started the deposition by stating she worked “undercover” while she was in the Army. She was cryptic about this. When asked if this meant she was a field operative with an alias or if “undercover” meant she held a top secret clearance, she did not give a clear answer. (Based on her full testimony, it is likely she was trying to seem important with this statement.) Plaintiff said she was honorably discharged from the Army as a Sergeant First Class in 1992. Her husband, David Hood, is also former military and currently works for SPAWAR in the Charleston area. (SPAWAR is a local civilian/military complex that is a tech hub for the armed services.) After leaving the military, Plaintiff went to college in Fayetteville, North Carolina. She obtained a Master’s in Education and an Economics degree. She then taught kindergarten and first grade in Florida and North Carolina for about ten years. Then, she stopped teaching and became a manager at Staples in Goose Creek. Initially, Plaintiff said Staples was her last job before fully retiring; however, later in her deposition, Plaintiff revealed she had also worked for Walmart. Apparently, she worked at Walmart and filed for state disability after leaving Walmart in 2011 – 2012. She had not disclosed any information about disability claims in discovery.

B. Pre-accident Destination

Plaintiff said she has a clear memory of the accident with Antoine Johnson ("Defendant Johnson") and William and Mary Kuck. The accident happened on Friday evening, November 7, 2014. She was alone that evening and driving her Chevy Equinox down to Hilton Head Island, South Carolina. Plaintiff has owned an interest in a Timeshare condo on Hilton Head Island since 2012. Curiously, she could not provide an address or even a good description of where the Timeshare is located. According to Plaintiff, the Timeshare is part of a complex called Coral Sands. Plaintiff said she was on her way to her condo on the evening of the accident because she was driving down to pay the annual fees and property taxes for this Timeshare. Interestingly, the accident happened at about 6:00 p.m. Most businesses would be closed by that time on a Friday, but Plaintiff was very clear about the fact that she was headed to the Coral Sands property management office to pay her taxes and fees. Plaintiff said she has traveled down to Hilton Head about four times per year since purchasing the Timeshare. Again, she did not seem very familiar with geography of Hilton Head.

Plaintiff said the sun was going down when the accident happened, but disagreed with the suggestion that it was "dark." Throughout the deposition, Plaintiff repeatedly pointed out the fact that her SUV had an automatic headlight function. She said she leaves her headlights on the default setting, which activates the headlights when daylight fades and driving conditions start to darken. She conceded her headlights could be switched to a different mode, in which they do not turn on automatically. However, she said she never changes it from the automatic setting. Plaintiff also adamantly maintained her headlights were on when the accident happened, but when pressed about how dark it was outside she said there was still enough daylight to drive with your lights turned off. While this is not a clear-cut contradiction, this is one example of how Plaintiff was trying to have it both ways (i.e., "it was still light out, but my automatic headlights were also on").

C. The Accident

Plaintiff was asked to walk through the accident. She was clear about the fact that she first noticed Defendant Johnson's vehicle in her peripheral vision. Initially, she did not see Mr. Johnson as he started to drive forward onto Highway 278 from Southwood Park Drive. This is a minor point, but the fact that she did not even notice Defendant's vehicle ahead of her as she approached suggests it had gotten dark. It should also rule out her allegation that Defendant Johnson ran his stop sign. While she was clear about not seeing Defendant Johnson until he was in her peripheral sightline, Plaintiff was confused about which side of her car was hit by Defendant Johnson's vehicle. At one point, she said Mr. Johnson drove at her from the "left" side, and then she corrected herself and said he came from the "right." She seemed to get herself confused, but, ultimately, concluded Defendant Hood pulled out from a road on her "right" and hit her right passenger side on the front wheel.

Plaintiff was also confused about whether she may have swerved to try and avoid impact with Defendant Johnson's car. In addition, she was inconsistent about whether she may have swerved to avoid the second impact with Mr. and Mrs. Kuck's SUV. It became clear that,

instead of answering candidly, Plaintiff was trying to anticipate questions and deliberately attempting to avoid giving an answer that might suggest she was at fault. After being inconsistent about whether she may have swerved to the "right" or "left" to try and avoid being hit, she eventually, said she "didn't recall" which way she would have swerved, but **"it would have been the safest way."** She then walked through her own thought process on the record and decided the "safest way" to avoid colliding with the second vehicle (the Kuck's SUV), was for her to swerve "right." Ultimately, she admitted she was not sure which way she swerved during the collision or if she did at all. When asked if she may have swerved "hard" to try and avoid the impact with Defendant Johnson's vehicle, Plaintiff was adamant that if she swerved, she did not swerve "hard." If this case is tried, the inconsistencies and portions of testimony in which Plaintiff seemed to place avoidance of blame over accuracy can be used to impeach her credibility.

After hitting the Kuck's SUV head-on and coming to a stop, Plaintiff recalled people coming to her aid quickly. She confirmed she did not lose consciousness. Her right leg was severely broken and it took some effort for EMS and a bystander to help her out of her vehicle. Plaintiff said a woman helped her, along with EMS. (We now know from her letter to the Kuck's that this woman, is a potential witness named, Charlynn/Charmaine Bonham.) Plaintiff said she did not speak with anyone at the scene other than Ms. Bonham and EMS personnel. When asked to provide every detail she remembered, Plaintiff did not say anything about removing her keys from the vehicle or turning it off. However, her attorney followed up with leading questions and, when prompted, she said she "removed her keys" before being helped out of the vehicle.

D. New Witness - Bonham

Plaintiff recalled being interviewed by Cpl. Worrell at the hospital and said she told Cpl. Worrell that her lights were on at the time of the accident. She also told the officer that the impact of Defendant Johnson's vehicle pushed her into traffic on the other side of Highway 278. Plaintiff said the bystander witness, Charlynn/ Charmaine Bonham, actually rode with her in the ambulance. Ms. Bonham apparently visited Plaintiff at the hospital two days after the accident. Plaintiff Hood said Ms. Bonham also sent her a Christmas card afterward. She gave contradictory testimony about Ms. Bonham, stating at one point that Ms. Bonham witnessed the accident, but that Ms. Bonham "preferred not to tell her" about the details of what she witnessed. Later in her deposition, Plaintiff said Ms. Bonham told her that she witnessed the accident and that Ms. Bonham would verify Plaintiff's lights were on and that Ms. Bonham "saw Mr. Antoine [Mr. Hood] push her into the Kuck's vehicle."

E. Plaintiff's Letter to Mr. and Mrs. Kuck

On August 3, 2015, Plaintiff wrote a letter to William and Mary Kuck. The Kucks were occupants of the third vehicle in the accident, and they have recently filed a separate lawsuit against Mrs. Hood and Mr. Johnson for their own injuries. In her letter to the Kucks, Plaintiff clearly tries to encourage them to agree to talk to her attorneys and provide a witness statement. Plaintiff gave a financial incentive to Mr. and Mrs. Kuck, as the letter indicates that it would be

“profitable” for the Kucks if they give a statement to her attorneys. In addition, Plaintiff also represented there would be more money available for all three of them (Plaintiff and the Kucks) if she ends up being cleared of liability. Plaintiff agreed her letter suggested there would be more money available for the Kucks if she was found not at fault, stating: “I – I, remember, I believe, in a roundabout way, that’s what I said.” Some of this testimony was choppy because Plaintiff’s counsel (Kevin Smith) raised a number of objections to questions about the letter. These objections were most likely improper; regardless, we obtained several solid concessions from Plaintiff about this letter. Plaintiff’s representations in the letter about the amounts of insurance coverage available to the Kucks were also inaccurate. She openly admitted she was just “guessing” about how much insurance money would be available. Plaintiff said she was not sure if she was even “allowed” to send this letter, but she sent it to the Kucks in effort “to speed up her case.” She did not speak to Mr. or Mrs. Kuck before sending them this letter, nor did she ever speak with them after sending it. When asked if she thought she might be subject to a lawsuit or personal injury claim from Mr. and Mrs. Kuck at the time she sent the letter, Plaintiff said the possibility had not crossed her mind.

The letter Plaintiff mailed is a total of seven pages, but Plaintiff only wrote the first two pages. This letter was provided several weeks ago by the Kucks’ attorney. It was our understanding the Kucks’ attorney, Shane Burroughs, had provided it to all counsel. Apparently, Mr. Smith and Mr. Nickels had not been provided with the last five pages, so it was agreed Plaintiff could discuss the last five pages of the letter with her attorneys off-the record. After reconvening, Plaintiff indicated that she personally wrote the first two pages of the letter, but that her husband wrote the last five pages. The last five pages contain a detailed analysis of the accident with photos of Plaintiff’s vehicle and an aerial shot of the scene. The five-page analysis by Mr. Hood contains a number of conclusions about why Plaintiff was not responsible the accident. Plaintiff confirmed her husband is not an accident reconstruction expert, nor was he present during the accident. Plaintiff was not comfortable using the aerial shot of the accident her husband printed as reference for the accident, even though she provided it with her letter to the Kucks. When asked to draw her location in the roadway on the aerial depiction, she was clearly confused and stated, “I wish I would have known what he was trying to show” in the aerial photo. Basically, Plaintiff included her husband’s analysis in this letter - even though her husband’s analysis is all secondhand information – and she did not understand did not understand the analysis herself.

The letter to the Kucks should significantly damage Plaintiff’s credibility with any objective juror. There are potential admissibility issues because the letter mentions insurance several times. However, this information can be redacted if we need to present the actual letter. We might not need the letter, as Plaintiff’s deposition excerpts about its content may be sufficient for our credibility points. By sending this letter, Plaintiff was clearly trying to influence potential witnesses. She suggested it would be profitable for these witnesses to side with her. She made the representation that it would be “more profitable” to side with her, even though she knew that statement was a “guess.” If this case is tried, this letter and its contents should clearly show Plaintiff has been overzealous in pursuing her case.

F. Injuries

Plaintiff's testimony about her injuries and medical history was all over the place. There is no question that she sustained serious injury in this accident. Plaintiff's medical bills total \$207,202.16 according to current discovery. Plaintiff contends she broke all of her ribs, injured her head (suffering a concussion), fractured vertebrae in her mid-back, fractured vertebrae in her neck, and sustained severe fractures breaking her right leg and ankle "in half." Even though Plaintiff's injuries were significant, she still seemed to exaggerate about certain aspects of her injuries. There were several notations in the records that, on their face, seem to contradict what Plaintiff would say or suggest her injuries were not as severe as Plaintiff was indicating in her testimony. We can point this out at a trial, but it would be used solely as another credibility point rather than as a challenge to her injury claims.

G. Dizziness and Balance Problems

One significant issue is Plaintiff's continued complaint of dizziness and balance problems. Plaintiff has complained of frequent bouts of dizziness since the accident. Following the accident, she was admitted to Hilton Head Regional Medical Center, but she was then transferred (over her objection) to Memorial Health University Medical Center, a hospital in Savannah, Georgia. Plaintiff said she wanted to return to Charleston to be treated at MUSC, but MUSC did not have a bed for her. She was sent to Memorial Health for evaluation of her cervical spine because of the issues with dizziness. Her physicians initially suspected Plaintiff had suffered cervical fractures in her neck from the accident and that her dizzy spells were caused by the fractured bone pressing on vertebral arteries, impeding blood flow to her brain. The records from Memorial Health indicate a small cervical fracture, but her physicians appear to have later ruled out the possibility that Plaintiff's dizziness was being caused by fractures impinging on the arteries in her neck. After five days at the hospital in Savannah, Plaintiff was released to a rehabilitation facility in Moncks Corner, which is closer to her home in Goose Creek.

On November 22nd, approximately three weeks after the accident, Plaintiff continued to complain of dizzy spells. Plaintiff was transported from the rehabilitation facility to MUSC where neurologists performed an exploratory angiogram to recheck the issue of possible vertebral dissection (impingement of blood flow to her head due to a neck fracture). The MUSC records note definite fractures in Plaintiff's cervical spine (C6). However, the MUSC specialists also determined the impediment of blood flow in Plaintiff's vertebral arteries was minor and neck surgery was unnecessary. While we may have a practical argument that Plaintiff's dizziness cannot be attributed to the accident (and resulting neck fractures), opposing counsel will argue that all of the testing for this potentially significant issue was medically necessary and directly attributable to the accident. Based on our legal standards, it is likely that any motion to exclude the costs for these expensive tests would be denied. We should assume the costs for testing this issue will be recoverable if there is an adverse verdict.

Plaintiff has also seen an ENT specialist, Dr. Behrens, in Charleston regarding her post-accident dizziness. Several records indicate that the dizziness issue is "visual," and Plaintiff describes seeing "3D images" and suddenly feeling dizzy. Dr. Behrens' records state Plaintiff

has seen an eye doctor and her vision was normal. It is possible the dizziness may be neurological. Importantly, the notes from Dr. Behrens may provide another pre-existing reason for this problem. Plaintiff was previously diagnosed with Parkinson's disease. In his records, Dr. Behrens states Plaintiff reported symptoms of "nausea, headaches, and difficulty walking" which are brought about during the dizzy spells. He noted the symptoms are consistent with other symptoms Plaintiff has experienced due to Parkinson's. Plaintiff was asked about this and admitted she must have said this to Dr. Behrens, but she disagreed that the issue could be related to Parkinson's. According to Plaintiff, her problems with Parkinson's disease have been a non-issue since she began taking medication for it. She believes she started taking Parkinson's medication in the fall of 2012. Plaintiff said there is no confirmed diagnosis about what is causing her continued dizzy spells. She is seeing another specialist in the coming months, so we will make sure any new information is forwarded to us by opposing counsel.

Plaintiff has a significant history of prior medical issues. She has been diagnosed with bipolar disorder, she had cancer several years ago, she had severe sinus problems and prior back problems, and she had insomnia and a longstanding diagnosis of depression, as well as the recent diagnosis of Parkinson's disease. Some the notes regarding Plaintiff's Parkinson's symptoms indicate "blurred vision when looking left. We will be sending a subpoena for Plaintiff's medical records from the VA Medical Center so that we can determine the severity of her issues pre-accident medical issues, including her Parkinson's symptoms.

H. Prior Disability Claims

Late in the deposition, Plaintiff revealed she had been placed on disability through the Army. She began receiving disability in 1991-1992 when she would have reached twenty years of service. Initially, she was given a partial disability rating of 30%. Plaintiff said the initial reason she went on disability was due her diagnosis of bipolar disorder and a back injury. Her military disability payments and rating has increased over the years. Around 2005, it was increased from a 30% rating to an 80% rating. She said the increase was due to more significant problems with her mental health condition, yet she could not provide specifics. Plaintiff said her disability rating with the military was increased to 100% in 2011. She received the full disability rating because of more documented psychological problems. Near the end of her deposition, Plaintiff confirmed she also receives disability from the State of South Carolina. Plaintiff said she worked for both Walmart and Staples around 2011-2012. (We assume she can obtain disability from both sources, but we will explore the possibility that Plaintiff may be receiving "double disability" or excess payments). According to Plaintiff, the reason for her state disability is also some diagnosed mental health problem. She could not specifically identify the mental condition that is the basis for her state disability, but said that she is "unable to interact with other people" because - - "I like to be superior." She said this diagnosis arose from her employment situation at Walmart in Moncks Corner and the Walmart in Summerville. This was the first time we learned of her prior disability claims as Plaintiff's discovery responses on this direct question were answered "N/A." We will specifically request all disability information and materials from Plaintiff's counsel and independently seek to obtain these records by subpoena if possible.

Current Facts: Liability Analysis

At this point, many of the eye witnesses to this accident have yet to be deposed. However, we currently have the strong case on liability. We have the recorded statement from Cary Tanrath wherein he indicated he could see Plaintiff's front right headlight (on the passenger side) from his vantage. He was directly behind the Kucks' SUV, so Plaintiff came across Hwy 278 and hit the car in front of Mr. Tanrath. Mr. Tanrath indicated Plaintiff's right front headlight was not on at the time of the accident. It is now unclear whether Mr. Tanrath will be as supportive as anticipated, based on Cpl. Worrell's recollection of her interview with him. But, Cpl. Worrell was testifying from memory so we should assume Mr. Tanrath will testify consistent with his recorded interview until proven otherwise. We are in the process of trying to interview this witness and will schedule Mr. Tanrath's deposition if we confirm that he will testify consistently with his prior statement to Progressive.

Plaintiff has severe credibility problems, but the case still bears significant exposure because she sustained significant injuries in this accident. After taking her deposition, we are confident Plaintiff would not present well in Jasper County. Background and race can be significant factors in this venue, and being local is perhaps even more significant. In her deposition, Plaintiff came across as highly opinionated, yet unreliable at the same time. She is suing a Jasper resident when the accident did not happen there and she has never lived there. This case does pose more risk because it is a UIM claim and we do not directly represent Defendant Johnson. It is our understanding that Progressive, Defendant Johnson's insurance carrier, will be tendering its aggregate limit of \$50,000. Even though it has not happened to date, Mr. Johnson's defense lawyer has confirmed Progressive is only focused on reaching an agreement as to the allocation settlement amounts for Therese Hood and the Kucks.

Defendant Johnson is represented by Greg Weather on his counterclaim for injuries, but Mr. Weather has also taken a passive role in discovery thus far. Based on the current posture of the case, we anticipate Defendant Johnson settling his counterclaim in the next few months. For the purposes of evaluating a possible trial, we should assume Defendant Johnson will be without his own lawyer at the defense table. We would have less influence over him and Mr. Johnson may be less motivated at trial if his claim has settled, but his testimony is consistent and defensible. We should also have corroborating witnesses. At present, we have four potential witnesses who will say Plaintiff was driving without her lights on – Defendant Johnson, Dustin Lee, Mary Kuck, and Cary Tanrath. We plan to continue with discovery and confirm the strength of our defense based on these witnesses, but at this point not one witness has come forward with a consistent statement to police or given a recorded statement that supports Plaintiff's version of the accident. Under normal circumstances, Jasper is a problematic venue for defendants, but it should be a favorable venue given our facts.

Based on the liability defense and Plaintiff's apparent issues, the case commands a lower value relative to damages. At present, a reasonable settlement value for this case would be **\$95,000 - \$245,000**. This value could increase if there are independent witnesses that support Plaintiff's story about her lights. However, if no independent witnesses are located, then it is difficult to justify an amount significantly higher than the medical bills.

May 12, 2016
Page 11

Plaintiff's counsel asked to speak with me after these depositions. In our discussion, he openly admitted he was not pleased with his client's performance in her deposition. He talked with me at length and pressed me for my thoughts on a value range, which I did not provide. I told him that we may need to continue discovery to fully evaluate which party has the stronger argument on liability. Mr. Smith is a good lawyer, but he primarily practices workers' compensation law. I came away with the impression from our discussion that he had not thought through the actual dynamics of Jasper County as a venue. When I suggested Jasper was not a good venue for him, he was visibly concerned. Although he did not provide a number or value range to me, it was evident that he would like to settle this case. At present, it is unlikely this case can be settled for less than six figures, but Plaintiff's counsel may push his client to consider a number below the medical bills.

Our bargaining position will depend on the strength of these additional fact witnesses. If the supportive witnesses are as strong as they have been in their statements, then we have a defensible case. Mediation is scheduled for August 19th. We have certain discovery that needs to be conducted prior to mediation. We will be sending subpoenas for Plaintiff's employment records. Unless directed otherwise, we will move forward with the depositions of Dustin Lee and Cary Tanrath. We will also locate Ms. Charlynn/Charmaine Bonham and interview her. Depending on the strength of Mr. Lee's testimony, we may also need to depose Mr. and Mrs. Kuck before mediation. I will be in touch with you to discuss your thoughts on the planned discovery and the litigation strategy moving forward.

Best regards,

s/ Jack H. Daniel
JACK H. DANIEL, III

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REPLY TO CHARLESTON
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August 22, 2016

VIA EMAIL ONLY

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Re: Therese Hood v. Antoine T. Johnson
C/A No.: 2015-CP-27-0119
Claim No.: 11043223-7
ALIS No.: 2015-13866
CCS File No.: 3133-52037

Dear Kathy:

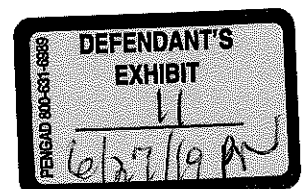
I write to provide an update on the status of this case. The parties were scheduled for mediation in this case on August 19, 2016. On August 5th, Plaintiff's counsel, Kevin Smith, contacted us to cancel mediation and we agreed to postpone it. Although there may be a few reasons for the cancellation, Mr. Smith stressed his belief that Plaintiff's liability position has become stronger because of his recent efforts in developing her case. In particular, he contends Defendant Johnson's cell phone records show he was talking on the phone at the time of the accident. Mr. Smith also said that he has retrieved data from Plaintiff Hood's vehicle that proves Plaintiff's lights were activated at the time of the accident. Although both of these contentions remain questionable based upon current information, it is clear Mr. Smith is expecting USAA to give them consideration (and value). Mr. Smith also said he would be sending us a demand letter and packet, outlining Plaintiff's case. To date, we have not received a demand letter.

Potential Accident Expert for Plaintiff

In this recent discussion, Mr. Smith said he has hired Wood Poplin, P.E. We are familiar with Mr. Poplin as he is a frequently used accident reconstruction expert. According to Plaintiff's counsel, Mr. Poplin has inspected Plaintiff's Chevy SUV and obtained its "Event Data Recorder" information. Mr. Smith said Poplin has confirmed Plaintiff's headlights were turned

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on when the accident happened. Supposedly, he was able to discern this from Data Recorder information he retrieved. Although Mr. Poplin can be aggressive in his opinions, this assertion may be a stretch. Our initial research suggests the Data Recorder in Plaintiff's vehicle (2011 Chevy Equinox) is not capable of capturing this type of information. Mr. Smith said he does not have a final opinion or report from Woody Poplin, but he expects to receive one and will be forwarding it to us. Even though Plaintiff's counsel has yet to formally name this expert, we are going to send Mr. Poplin a subpoena, rather than await production of his file. If Plaintiff has employed Mr. Poplin, we should consider retaining our own reconstruction expert. Please let us know if you would like us to recommend options.

Contention that Defendant Johnson was on Cell Phone

As for the contention that Defendant Johnson was on the phone during the accident, Plaintiff's counsel is relying on Johnson's cell phone records and a "Call for Service" sheet that was included in the Beaufort County Sheriff's Department records. (Both of these records accompany this correspondence.) Mr. Smith contends the accident happened at approximately 5:59:20 p.m. (17:59:20) according to the "Alarm" time on the Call Sheet. Defendant Johnson's cell records show an outgoing call at 5:59:04 p.m. (17:59:04), which lasted for one minute and four seconds. If we simply accept Plaintiff counsel's contention about the accident happening at exactly 5:59 p.m., then Defendant was on the phone at the time. However, this is a shaky assumption that can be discounted by practical factors as well as other records. First, the 17:59:20 time listed on the Call Sheet is located under a heading that says "Responding Unit Info." The Call Sheet includes what appear to be response times for several officers, which suggests that the 17:59:20 entry relied upon by opposing counsel is actually documentation of when the first police officer was notified about the accident, rather than documentation of the first witness/bystander call being made to 9-1-1. There would be some lag time for the dispatcher to take the accident information from the first caller and then place a bulletin to patrolling officers, so this theory is potentially misplaced based upon review of the document itself. Second, there is at least one record we obtained from the Sheriff's Department that indicates a "Start Time" for this accident as "5:58:46.8 PM." If the "Start Time" indicated in this other police record is the actual time of the collision, the phone call referenced by Plaintiff's counsel was made immediately after the accident (about twenty seconds after it happened).

I have talked to Toland Sams, liability defense counsel for Defendant Johnson, and asked him to confer with his client about this phone call. There is a number listed for the outgoing call in the cell phone records, so Defendant Johnson may be able to determine who he was calling and when that call was made based upon that phone number. The records also show a flurry of incoming and outgoing calls immediately following the 17:59:04 phone call. Given the pattern of calls, it is entirely possible Defendant Johnson made the 17:59 call immediately after the accident happened, rather than before it. While these potential counter points are helpful, the most powerful counter on this issue may be the practical considerations that come with pinpointing the exact time of the collision. Dispatch logs like these are always dependent upon how quickly someone makes that initial emergency call. (The first person to call 9-1-1 would have to reach for his or her phone, dial the number, wait for cell reception to pick up, etc.) It will be extremely difficult, if not impossible, to pinpoint the exact accident time. Also, even if

Defendant Johnson was on the phone at the time of the accident, he has already testified that he had a "hands-free" set up in his vehicle. It operated through his radio and he said it was activated and working on the day of the accident. Unless opposing counsel presents stronger evidence than the "Call for Service" sheet, we do not believe Plaintiff can definitively establish Defendant was on the phone when the accident happened. We will let you know if Defendant has an explanation for these calls, and the 17:59 call in particular, after we hear back from his attorney.

Plaintiff's Headlights/SC Law On Headlight Activation

We have continued with our analysis of the vehicle lighting issue, as the question of whether Plaintiff's headlights were on when the accident happened is our most significant issue. South Carolina law requires a driver to have their headlights turned on "a half hour after sunset" until "a half hour" before sunrise. Based on some initial web research, sunset was at 5:27 pm or 5:28 pm. This places the accident almost exactly 30 minutes after sunset, assuming the accident time was 5:58 pm or later. Even though law enforcement records suggest the accident happened around 5:58 pm, we should anticipate Plaintiff's counsel will argue against the "half hour" presumption. He may have a competing source for the "official sunset" time or he may change his theory about the time of the accident to rebut this presumption. We will continue to evaluate this issue, which may require follow up discovery to better pinpoint the accident time. There are some conflicting records on this point. For instance, EMS records list a response time that appears to be incorrect, as it is far too early in the day (at least an hour before the initial police dispatch). We have been trying to contact EMS to seek more clarity regarding their records and the times listed on them. If the case is tried with the current information about the probable accident time, our trial judge should at least instruct the jury on the statutory law and the duty to drive with headlights activated 30 minutes after sunset. However, if we cannot establish a more definitive answer about the exact time of the collision, we should expect a trial judge to leave the issue of the accident time for the jury to decide. As it currently stands, the timing of sunset is so close to the "half hour" window and opposing counsel will likely present some type of competing evidence and/or reasons why the accident happened less than 30 minutes after sunset.

Plaintiff's counsel has requested information about the amount of UIM coverage available. The declarations page for Plaintiff's policy lists two covered vehicles, and South Carolina allows for stacking UIM coverage based on the number of vehicles insured. We have not conducted a detailed coverage analysis, but it appears Plaintiff may have \$1 Million in UIM coverage available for this claim. As previously reported, even though Jasper County is traditionally a very plaintiff-friendly venue, it is unlikely a traditional assessment of the venue would apply. In this case, Defendant Johnson is from Jasper County. Plaintiff has never lived there. She is originally from Maine. At a trial, Defendant Johnson is more likely to receive the benefit of local favoritism. Furthermore, the fact that witnesses, other than Defendant, have raised the issue about Plaintiff's headlights not being turned on should bode well for the defense.

This is a case with substantial exposure, but it is also a case in which we have a decent chance of a verdict in favor of Defendant on liability. Plaintiff's medical bills total approximately \$208,000. Our value range and exposure analysis is essentially the same.

However, the possibility of an unfavorable verdict should be considered in evaluating the exposure range and probable settlement value. If the case were to go poorly at trial, a \$500,000 – \$850,000 verdict is possible. If a jury decides Defendant should have seen Plaintiff and yielded to her as the driver with the right-of-way, and the damages case goes well, we can foresee a verdict of \$275,000 – \$450,000. Of course, a jury could side entirely with Defendant Johnson on liability with these facts, so the possibility of a defense verdict or significant apportionment of liability to Plaintiff is a realistic consideration that should be factored into the case value. Even though Plaintiff had major surgery, it is unlikely she will be overly sympathetic as a plaintiff. While the high medical bills bring the possibility of a seven-figure verdict into play, the chance of a verdict in excess of \$1 Million is fairly low.

Case Assessment and Discovery

Previously, we provided a fairly wide settlement range, suggesting that an offer from \$95,000 – \$245,000 might be reasonable. After more recent discussions with Plaintiff's counsel, it is unlikely this case can be settled for \$100,000 or a number in that range. However, assuming any liens can be negotiated, a low six-figure settlement is one Plaintiff would need to give serious consideration. If we were to extend an offer that exceeds Plaintiff's medical bills or entertain negotiations above \$210,000, we could reasonably state that any numbers presented in that range are generous. It might be worth offering some amount on the higher end of the prior recommended range to eliminate the risk of a bad verdict, but the current facts do not warrant an offer that far exceeds \$245,000. In fact, any number above \$275,000 could signal that we are afraid of this case even when the facts could make this venue favorable to the defense.

It has been our understanding that GEICO was actively trying to settle this case and tender its limits. While that is not necessarily accurate, the filing of the related lawsuit by the Kucks presents at least two issues that should be considered by USAA. First, this second case will almost certainly hold up the resolution of our lawsuit with Plaintiff Hood. Defense counsel on the GEICO policy has confirmed he has offered his policy limits to be split pro rata based upon medical bills among the claimants in both lawsuits (Theresa Hood, William Kuck, and Mary Kuck). Normally, this offer would be accepted by all three claimants, but there are strategic reasons why it is being ignored by counsel for William and Mary Kuck. They are represented by Shane Burroughs and Alex Murdaugh, two prominent plaintiff lawyers. Both of these lawyers, especially Mr. Murdaugh, have connections to the venue and their involvement in that case will likely impact its value. Given the circumstances, it is clear they are ignoring the pro rata offer of limits from GEICO because they do not want to settle with Defendant Johnson too early in their case. If they were to settle now, the Kucks' case could potentially be transferred from Jasper County. As a practical matter, this has been preventing GEICO from settling with Plaintiff Hood in our case and it could potentially prolong our lawsuit. As the carrier with primary liability coverage in our case, GEICO should, at least arguably, be working up the defense of our case and bearing the costs of discovery. There are reasons why we may or may not want to raise this issue with GEICO, but, please let me know if you would like to discuss the issue.

August 22, 2016
Page 5

Now that mediation has been postponed, we will submit a new Case Management Order for approval. If the Chief Administrative Judge does not provide us more time, we may need to take several fact depositions and one or two medical depositions just prior to trial. As it stands, the case is currently subject for trial on or after September 12, 2016. We will let you know if the Court takes issue with our amended Scheduling Order. The companion lawsuit filed by William and Mary Kuck is now underway and parties may be deposing Mr. and Mrs. Kuck within the next month. Technically, we could be excluded from these depositions as they have been noticed for the other case. However, we expect to be able to attend and will inquire as to whether we can participate and ask questions. We are also still awaiting Plaintiff's VA medical records, which should have information about her mental conditions. The VA requires a signed HIPAA authorization, which took some time to obtain from Plaintiff. The parties have rescheduled mediation in this case for October 28, 2016.

Please contact me should you have any questions or concerns about the case or our planned case activity.

Best regards,

s/ Jack H. Daniel
JACK H. DANIEL, III

JHD:sea
Enclosures

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February 20, 2017

VIA EMAIL ONLY

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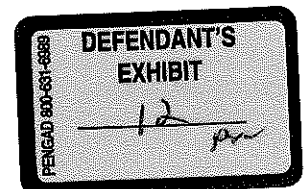
Re: Hood v. Johnson
C/A No.: 2015-CP-27-119
Claim No.: 11043223-7
ALIS No.: 2015-13866
CCS File No.: 3133-52037

Dear Kathy:

This correspondence summarizes the most recent developments and activity in the case. Since our last full report, we have retained an accident reconstruction consultant, inspected a vehicle of the same make and model as Plaintiff's, and we also took the depositions of William and Mary Kuck on February 14, 2017. Our planned discovery and our analysis of recent developments is outlined below.

DEPOSITION OF WILLIAM AND MARY KUCK

Plaintiff's counsel took the video depositions of William and Mary Kuck on February 14, 2017. The depositions were held at the law office of Shane Burroughs in Orangeburg, South Carolina. Mr. and Mrs. Kuck were in the third vehicle involved in this three-car accident. Their Chevy Tahoe was struck head on by Plaintiff Therese Hood's Chevy Equinox. As previously reported, this second collision was far more significant than the first impact between Plaintiff Hood's SUV and Defendant Antoine Johnson's Honda sedan. Mr. and Mrs. Kuck sustained legitimate injuries in the accident, and their attorneys, Shane Burroughs and Alex Murdaugh, have filed two separate lawsuits against Therese Hood and Antoine Johnson. Those two lawsuits are also pending in Jasper County, but will most likely be tried after our case.



a. William Kuck's Deposition

William Legare Kuck has lived in Orangeburg, South Carolina, since he was eight years old. He is 64 years old and has three children – one is a young child and two are grown adults. After graduating high school, Mr. Kuck started working in the restaurant and food services industry. He testified that he currently works at his daughter's restaurant in Orangeburg, which is called "The Kuckery." Mr. Kuck, who speaks with a thick Lowcountry accent, remained calm throughout his deposition despite very aggressive and repetitive questioning from Plaintiff's counsel, Kevin Smith. As outlined below, this witness has a credibility issue based upon an inconsistent statement he made in the days immediately following the accident. Nonetheless, he will likely have more jury appeal than Plaintiff. If our case is tried, a Jasper County jury will probably empathize with Mr. Kuck.

It was clear from his questioning that Kevin Smith noticed these depositions with the sole purpose of trying to impeach and discredit Mr. and Mrs. Kuck based upon the prior statement given by William Kuck. Mr. Smith spent the better part of the day grilling Mr. Kuck about an audio recorded statement he had given to GEICO about this accident. The recorded interview was conducted on November 12, 2014, just five days after the accident. There are two instances during the interview in which Mr. Kuck states that he saw headlights coming at him just before his SUV was struck head on. He tells the claims examiner, "All I seen was headlights coming at me. . . . it was a two lane highway and all I saw was two headlights coming at us . . . [.]” Mr. Kuck now recalls that Plaintiff did not have headlights on at the time of the collision. He was fairly confident about this fact during his deposition.

Mr. Kuck said he did not remember giving a recorded statement to GEICO, nor did he remember agreeing to have a phone interview recorded. He testified that, at the time of the wreck, he "didn't know what hit [him]." Mr. Kuck said he did not see anything coming, so the statement about seeing headlights did not "sound like him." While it seemed objectively clear that Mr. Kuck meant the comment about the headlights from the recorded statement *did not sound like something he would say*, Plaintiff's counsel jumped on his response and repeatedly tried to suggest Mr. Kuck was claiming that another man posed as him during the interview with GEICO. Mr. Kuck did not take the bait when this was suggested and Plaintiff's counsel was probably too aggressive with his questions about the prior statement. Mr. Kuck sustained a broken foot and injured his shoulder and back in the accident. He had burns on his hands and arms, likely from the airbag deployment. Mr. Kuck said he was on strong pain medications in the week after the accident. During the extensive questions about his prior inconsistent statement, Mr. Kuck said it is possible that he gave the recorded interview and that he could have misstated facts at the time because of the pain medications he was taking. While this prior statement presents a credibility issue, Mr. Kuck appeared genuine when stating that he had absolutely no memory of giving the recorded statement.

Although it is understandable that Plaintiff's counsel is wanting to place a great deal of emphasis on Mr. Kuck's contradictory statement, an issue like this can have less impact in a venue like Jasper County. Mr. Kuck never flatly denied being the person who was interviewed. He simply would not confirm that he provided the recorded statement because he did not

remember it. The inconsistency is also less impactful because other independent witnesses verify Mr. Kuck's current recollection about Plaintiff's headlights being off.

Plaintiff Hood is being defended by Chris Nickels in the two lawsuits filed by Mr. and Mrs. Kuck. Mr. Nickels asked questions after Kevin Smith. He was more effective and far more efficient in his questioning of William Kuck. Initially, Mr. Nickels had William Kuck concede that he just "didn't know" if Mrs. Hood's headlights were on. However, Mr. Kuck quickly clarified this point with Mr. Nickels, stating in follow up, "I didn't see any headlights, **so they had to be off.**" Mr. Kuck said conditions were dark at the time of the accident and he had his headlights on. He also confirmed the area where the accident happened is not well lit. Overall, Mr. Kuck was likeable and his explanation of the reason why he may have given an inconsistent statement about "seeing headlights" coming at him was better than most witnesses who are impeached by prior inconsistent statements. Mr. Kuck was also shown a written transcript of the statement, which he said he had never seen before.

Kevin Smith also asked a number of questions about the amount of insurance money available for Mr. and Mrs. Kuck's personal injury claims. Mr. Smith suggested William Kuck is most likely changing his story about the headlights because his lawyer informed him that Plaintiff Hood has more insurance coverage than Antoine Johnson. While this certainly could be his motivation, we will argue that questions about insurance or the amount of coverage available should be excluded from trial.

b. Mary Kuck

Mary Irick Kuck is 46 years old and works as a school nurse. She had been married once before. She divorced her prior husband in 2006, and married William Kuck in 2009. They now have a 5 year-old daughter together. Like her husband, Mary Kuck has lived in Orangeburg all of her life. She also speaks with a distinct South Carolina accent. While she was nervous at times, Mary Kuck appeared to be very sincere during her testimony. She will definitively have more jury appeal in Jasper County than Plaintiff, Therese Hood. She has also been consistent about her recollection of the accident.

Mrs. Kuck said she never provided a recorded statement to an insurance company about this accident. She was interviewed by the police who investigated the accident, but they did not take recorded statement from her.¹ She recalled being interviewed by a male police officer, but did not specifically remember being interviewed by a female police officer (Cpl. Worrell). Mary Kuck testified she did not see headlights coming towards her in the moments before being struck by Plaintiff Hood's SUV. She did not become aggressive on this point, even though she was repeatedly questioned by Plaintiff's counsel.

Mrs. Kuck said she saw an object (something) coming at her vehicle as she was in the passenger seat. She and her husband were driving to see her husband's grandson play in a high school football game. They had just checked into a Hampton Inn and were on their way to the football field. Mrs. Kuck was paying attention to the road because they were looking for their turn and she was checking road signs. When asked how long the object coming at their vehicle

¹ The police did not take written or recorded statements from any party involved in the accident.

was in her view before the actual impact, Mrs. Kuck said she saw it coming for approximately three seconds. Plaintiff's counsel actually counted out the time frame ("one one-thousand, two one-thousand. . .") and Mrs. Kuck agreed that she observed what turned out to Plaintiff's SUV for that length of time before it hit them.

Mrs. Kuck said she screamed just as they were about to be hit head-on, which is consistent with her husband's recollection and testimony. Initially, Mrs. Kuck said it was "getting dark" and gave answers to certain questions that suggested it may have still been fairly bright outside when the accident happened. However, I had her confirm that it was dark enough for her to see an object coming at her vehicle, but not be able to make out that object as being an SUV.

Mrs. Kuck hurt her ribs, and sustained a bad sprain to her right foot and a burn on her left knee. She did not become angry or visibly annoyed during her testimony. It was clear from her deposition that she had a full opportunity to see Plaintiff Hood's vehicle just before the crash. In response to repeated questions, Mrs. Kuck testified that she "did not believe" the vehicle that hit her had headlights on at the time of the accident.

(POSSIBLE) ADDITIONAL STATEMENT

Mr. Nickels asked Mr. and Mrs. Kuck if either of them had given any other recorded statements about the accident. Apparently, Mr. Kuck may have given a statement to Allstate, which is his insurer. He said that he may have also talked to his insurance agent, Wayne Lorick, about the accident. Mrs. Kuck said she did not speak with anyone at Allstate. If Mr. Kuck told Allstate that Plaintiff's headlights were on, then we will be addressing two prior inconsistent statements rather than one. This would negatively impact our position on liability, but – as stated above – there are other independent witnesses who have been consistent about the lighting issue. We will follow up on obtaining a copy of any statements given to Allstate and inform USAA of their contents upon receipt.

NEW CONTENTION: PROPERTY LOSS & PUNITIVE DAMAGES

After the depositions of Mr. and Mrs. Kuck, I spoke with Kevin Smith about the case to gauge his interest in settlement and his position on value. It should be noted that Mr. Smith has recently associated Roy Willey, an attorney with the Anastopoulos Law Firm. Madison Suttie and I just tried a case against Mr. Willey and another associate at the Anastopoulos Law Firm, so we are familiar with this lawyer. We had assumed Mr. Smith associated Mr. Willey because he predominantly handles workers' compensation claims and he wanted a co-counsel who is more familiar with jury trials. However, Mr. Smith informed me that he involved Mr. Willey because he is going to help him pursue a bad faith claim in this case.

Mr. Smith suggested there is \$2 Million in available coverage because of an additional \$1 Million in property damage limits. At this point, defense counsel is unaware of what, if anything, happened with Plaintiff's property loss claim. However, I suggested Plaintiff had most likely accepted payment from USAA for the loss of her Chevy Equinox. Mr. Smith said he did not believe USAA had obtained a Release for Plaintiff's property damage claim.

We may need to research this issue, but there should be a strong argument that acceptance of insurance funds for the loss of a vehicle – even without a formal release – should constitute “accord and satisfaction” under South Carolina law. And, while punitive damages can be recoverable through a property damage claim, the argument that a plaintiff should receive the maximum in property damage coverage when his or her property loss is far below the property damage limit is still a questionable position in our state.² Even assuming the applicable policy provides a significant amount of property damage coverage, the chance of Plaintiff obtaining a punitive award is low. At trial, we will request a directed verdict on punitive damages. If that motion is not granted, and Plaintiff’s property damage claim has not been paid, we can submit a specific verdict form and ask the judge to have the jury decide whether punitive damages should be specifically awarded for Plaintiff’s property loss.

Please send us any documentation regarding payment or resolution of Plaintiff Hood’s property loss resulting from this accident. While this newly communicated bad faith allegation should be weak, it is a position we will need to address. If we can show that Plaintiff was paid for her vehicle damage by USAA, then any claim for property damage should be precluded altogether.

VEHICLE INSPECTION: SAME MAKE & MODEL

Madison Suttie visited a car dealership in Beaufort, South Carolina, that was willing to let us inspect a 2011 Chevy Equinox they had in stock. With the assistance of a sales representative, Ms. Suttie documented each setting on the Equinox’s headlight system. The Equinox that she inspected did not have a setting in which its high beams could be turned on while the low beams were off. The only scenario in which it is possible to activate the high beams without also activating the low beams is when a driver uses the “flash” feature.³ However, the “flash” feature is exactly as it sounds – it only activates the vehicle’s high beams for a brief moment. This is a crucial fact to our case because it suggests there is a problem with the conclusions and findings made by Plaintiff’s reconstruction expert.

The report from Plaintiff’s expert, Woody Poplin, contains an unusual finding about the headlights of Plaintiff’s Equinox. Mr. Poplin determined Plaintiff’s passenger-side high beams were illuminated at the moment of impact because the bulb showed clear evidence of “hot shock” when he conducted a bulb test on the lighting assembly. He determined Plaintiff’s passenger side low beams were not illuminated at the moment of impact because the low beam bulb did not have signs of “hot shock” when he inspected it. As it is our understanding that most vehicles do not have a setting in which the high beams can be activated while the low beams are turned off, we found this finding questionable and worth further analysis. Our inspection of the same make and model vehicle suggests that short of a lighting malfunction or non-functioning low beams, the only scenario in which the high beams in Plaintiff’s vehicle could be illuminated

² This attorney’s strategy of seeking the property damage limit based upon the perceived strength of aspects of the case unrelated to property damage, such as high medical bills for Plaintiff, is one that defense attorneys are seeing with increasing regularity.

³ Flashing the high beams is accomplished by pulling the high beam lever, which is also the turn signal lever, towards the driver.

while the low beams are off is if Plaintiff momentarily “flashed” her high beams just before impact.

CONSULTING ENGINEER

We recently retained Tyler Black, a professional engineer with Delta V Forensics. We had Mr. Black analyze Mr. Poplin’s report and his file, and we asked him to assess the lighting issue. In Mr. Black’s opinion, the bulb inspection that was performed by the opposing expert appears to have been properly conducted. In his view, the photographs of the two passenger-side bulbs (high beam and low beam) show one bulb with clear evidence of “hot shock” and one bulb that does not have signs of “hot shock.” We asked Mr. Black to determine whether Plaintiff’s vehicle could be operated with its high beams turned on while its low beams were shut off. He could not find a definitive answer based on initial research, so we decided to conduct an inspection of the same make and model vehicle.

Mr. Black agreed there are potential credibility issues with the bulb test because of chain of custody and the decision to conduct the bulb test without inviting the defense to observe or participate. As previously reported, Plaintiff’s expert tested a lighting assembly that he believes is the passenger side assembly. However, he found the lighting assembly in the front passenger seat of Plaintiff’s Chevy Equinox 1 year, 8 months after the accident. While we will definitely raise the chain of custody question at trial, Mr. Black noted that tow truck drivers often put vehicle lights or items like bumpers inside a vehicle they are towing. We had previously anticipated this possibility, and it is the explanation we should presume will come from Mr. Poplin.

We conducted the inspection of the 2011 Chevy Equinox without Mr. Black for cost reasons. In a recent conference call, Mr. Black suggested he might be more effective in a consulting role because if he is named as an expert he may ultimately be forced to give certain concessions to Plaintiff’s counsel. At this point, we do not foresee any critical concessions Mr. Black would be forced to give, but calling him as a witness could overcomplicate the case. Mr. Black has been helpful with interpreting the CDR data extracted from Plaintiff’s Equinox. He has explained that the data shows Plaintiff was speeding and never hit her brakes during the accident sequence. At present, our current plan is to consult Mr. Black again prior to taking the deposition of Plaintiff’s reconstruction expert. We still have time to name Mr. Black as an expert should it become necessary.

POTENTIAL TRIAL DATE

The case will be subject to trial on May 15, 2017. The current Scheduling Order should give us sufficient time to conduct the remaining discovery needed before the case is presented to a jury.

REMAINING DISCOVERY AND UPCOMING CASE ACTIVITY

a. Independent Video Documentation of Lighting Set-Up

Now that we have confirmed there is a significant issue with the findings of Plaintiff’s expert, we plan to obtain independent documentation of the lighting capabilities of the 2011

Chevy Equinox. An additional inspection of the same make and model vehicle by an independent source will provide us with a definitive means of challenging Mr. Poplin's findings. It will also provide us with an independent witness we can call to establish the lighting set up for Plaintiff's vehicle, and who can help us highlight the fact that Mr. Poplin's findings from the bulb inspection suggest a lighting setting that does not exist on Plaintiff's vehicle.

To accomplish this, I would like to retain a video consultant to rent or inspect another 2011 Chevy Equinox. There is a local firm in Charleston we have used for various projects in the past. We are in the process of obtaining an estimate from this group to provide to USAA. Using a video consultant will be cheaper than using an engineer for this task. Additionally, if we need to call the videographer as a witness, he will not have to render or concede opinions about the accident that might be damaging to our defense.

b. Medical Depositions

We have the deposition of Plaintiff's treating physicians Dr. Habib Rizk, Dr. David Jaskwich, and Dr. Ann Hanlon scheduled. These depositions have been set to address damages issues, but the doctors should also give us significant concessions about Plaintiff's health. Namely, we now have VA records that confirm a host Plaintiff's medical problems predated the accident. The records show Plaintiff's issues with falling and her dizziness predated this accident. They also establish significant pre-existing mental health problems and other cognitive issues that could have been effecting Plaintiff's ability to drive at the time of the accident.

c. Deposition of Woody Poplin, PE

We plan on deposing Mr. Poplin in the coming weeks to see if we can obtain concessions from him about Plaintiff's vehicle lighting, his bulb test, and Plaintiff's speed during the accident. Assuming we obtain favorable concessions from Mr. Poplin, we may not need to name our own accident reconstruction expert.

d. Dustin Lee

We are also scheduling the deposition of Dustin Lee, an independent eye witness who called 911 right after this accident. Mr. Lee is an attorney and part-time magistrate judge. As previously reported, we have his recorded 911 call in which he states Plaintiff only had her running lights on when she passed him in the moments just before the accident. We want to obtain Mr. Lee's sworn testimony (1) to evaluate how strong he will be as witness, and (2) to ensure we have his testimony for trial if he is unavailable.

IMPACT OF RECENT DEVELOPMENTS

Our last settlement offer at mediation was \$200,000. Plaintiff's counsel suggested the case could be settled for an amount between \$300,000 and \$400,000, but his lowest specific demand at mediation was **\$650,000**. While the case is in a venue that is traditionally plaintiff oriented, Jasper County is populated by rural white and African-American citizens. Defendant Antoine Johnson is a local African-American male. William and Mary Kuck are two witnesses from Orangeburg, a rural county that is very similar to Jasper. Eye witness Dustin Lee is a plaintiff lawyer and part-time judge from a county that neighbors Jasper. All four of these

February 20, 2017
Page 8

witnesses confirm Plaintiff was driving on a dark road without her headlights on. Plaintiff is the only witness who says otherwise. Plaintiff is not originally from South Carolina and that would be evident to jurors in Jasper County. She will be viewed as an outsider who is contradicted by every other witness in the case, save her own engineering expert.

Our projected value could change depending upon the strength of the testimony from Plaintiff's reconstruction expert, but at this time our recommended value range is still **\$95,000 – \$245,000**. We will continue to provide updates on case activity as we approach a trial date. Please let us know if you are agreeable with using a videographer to independently document the lighting set up for the 2011 Chevy Equinox.

Best regards,

s/ Jack H. Daniel
JACK H. DANIEL, III

JHD:sea

Defendant.

PLAINTIFF'S FIRST REQUEST FOR ADMISSION TO UIM CARRIER

03179

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS FOR
THE FOURTEENTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-27-119

THERESE HOOD,

Plaintiff(s),

vs.

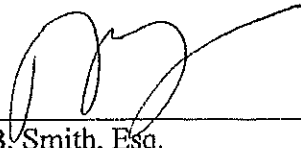
ANTOINE JOHNSON,

Defendant(s).

CERTIFICATE OF SERVICE

I hereby certify that I served the Defendant in the foregoing matter with a copy of the attached **Plaintiff's First Request for Admission to UIM Carrier** by hand delivering a copy of same to the following:

Jackson B. Daniel, III, Esq.
Carlock, Copeland & Stair, LLP
40 Calhoun St., Ste. 400
Charleston, SC 29401



Kevin B. Smith, Esq.
Hoffman Law Firm, LLC
7087 Rivers Ave.
N. Charleston, SC 29406

North Charleston, South Carolina

December 22, 2016

Policy Summary

[Reach a Representative](#)

South Carolina Auto Policy

[Nickname This Account](#)

Policy Number ¹	USAA 011043223 7103	Six-Month Subtotal	\$ 1,322.38
NAIC Code	25941	Fees Required by South Carolina Law	\$ 4.00
Policy Term	Nov 01, 2014 - May 01, 2015	Discounts & Savings	\$ 626.54
		Total Six-Month Premium	\$ 695.84



Want a lower premium?
Check out these options

[View & Pay Bill](#)

Get Proof of
Insurance
(Auto ID Cards)

Add or Replace a
Vehicle

Change Coverages

Drive Sharp
Sharpen your Driving
Skills

Want a Lower
Premium?

[View More](#)

Vehicles

[Add or Replace a Vehicle](#)

2012 CHEVROLET SLVR 1500 EXT CAB LT
1GCRCSE03CZ143978

Premium	\$ 691.84 per 6 months
Discounts	\$ 33.51 per 6 months
Primary Driver	DAVID HOOD
Usage	10,000 miles per year Edit
Financing	ALLY FINANCIAL Edit
Garaging Address	832 NAYLESBURY RD GOOSE CREEK, SC 29445 Edit

Drivers

[Add a Driver](#)

DAVID HOOD
Primary Driver

Drivers License 101204334
State/Type SC / Regular

[Edit Info](#)

THERESE HOOD
[Covered on this Policy](#)

Drivers License 101202433
State/Type SC / Regular

[Edit Info](#)

Coverage

[Change Coverages](#)

FINANCIAL PROTECTION

DRIVER AND PASSENGER PROTECTION

Bodily Injury Liability

\$ 500,000/500,000 per person/per accident \$ 162.43

Property Damage Liability

\$ 500,000 per accident \$ 116.90

PROTECT YOUR VEHICLES**Comprehensive**

2012 SLVR 1500 EXT CAB LT: \$ 300 per occurrence \$ 108.09

Collision

2012 SLVR 1500 EXT CAB LT: \$ 300 per occurrence \$ 159.24

Uninsured Motorists

Coverage Selected \$ 29.49

Uninsured Motorists Bodily Injury: \$ 500,000/500,000 per person/per accident

Uninsured Motorists Property Damage: \$ 500,000 per accident 200 per accident

Underinsured Motorists

Coverage Selected \$ 59.40

Underinsured Motorists Bodily Injury: \$ 500,000/500,000 per person/per accident

Underinsured Motorists Property Damage: \$ 500,000 per accident

Personal Injury Protection

\$ 1,000 per person \$ 14.28

Medical Expenses: Coverage Included

Funeral Expenses: Coverage Included

Work Loss Benefits: Coverage Included

Essential Services Expenses: Coverage Included

Additional Personal Injury Protection

\$ 49,000 per accident \$ 8.06

POLICY FEATURES**Accident Forgiveness**

Applies to the Apr. 06, 2012 at-fault accident Coverage Selected \$ 9.32

Rental Reimbursement

2012 SLVR 1500 EXT CAB LT: \$ 30/900 per day/maximum \$ 18.00

Towing & Labor

2012 SLVR 1500 EXT CAB LT: Coverage Selected \$ 6.63

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Visit the Member Community.GO MOBILE
apps & more

Switch to mobile site

5

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1 Your insurance company can be determined by looking at the alpha prefix in your policy number. The prefix USAA means you are insured by UNITED SERVICES AUTOMOBILE ASSOCIATION; the prefix CIC means you are insured by USAA CASUALTY INSURANCE COMPANY; the prefix GIC means you are insured by USAA GENERAL INDEMNITY COMPANY; the prefix GAR means you are insured by GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY; the prefix USCM means you are insured by USAA County Mutual Insurance Company; the prefix LLYD means you are insured by USAA Texas Lloyd's Insurance Company; and the prefix LTD means you are insured by USAA LIMITED.

Use of the term "member" or "membership" does not convey any legal, eligibility, or ownership rights.

Accident Forgiveness may require an additional premium and is not available in CT, DE, NC, CA, MA, and NY. Not applicable to past accidents. Can only be applied to one accident at a time per policy. Accident Forgiveness is not a promise to continue coverage and the policy continues to be subject to underwriting guidelines.

All limits and deductibles are in U.S. dollars unless otherwise noted.

Some premiums are rounded to the nearest penny.

Change to your policy will not be effective until you receive confirmation from USAA.

ENT-2007-1724

211819-1214

About Our Ads





9800 Fredericksburg Road
San Antonio, TX 78288

KEVIN SMITH
HOFFMAN LAW FIRM
7087 RIVERS AVENUE
NORTH CHARLESTON SC 29406-4622

May 21, 2015

Reference: Acknowledgement of Representation

Dear Kevin Smith,

We received your letter of representation dated November 12, 2014 regarding this claim:

Your client:	Therese Hood
Policyholder:	David Hood
Claim #:	011043223 - 7
Date of loss:	November 7, 2014
Loss location:	Hilton Head, South Carolina

To assist us with our evaluation of your client's claim, please provide documentation about the case as it becomes available.

I am the examiner that has been assigned to handle the under insured motorist claim on behalf on Mrs. Hood. If you have any questions, in regard to that, please contact me.

Include the reference number 011043223-7 on all correspondence and mail it to:

Auto Injury Solutions
Attn: USAA Medical Mail Dept.
P.O. Box 26001
Daphne, AL 36526
Fax: 1-866-828-2330

If you have questions, please call 1-210-531-8722 #44662.

Sincerely,

Diane D. Martin

Diane D Martin
Southeast Regional Office
United Services Automobile Association
Phone: 1-210-531-8722 #44662
Fax: 1-800-531-8669



9800 Fredericksburg Road
San Antonio, TX 78288

04664.1NZGQ.JSS971338595.01.01.687

KEVIN SMITH
HOFFMAN LAW FIRM
7087 RIVERS AVE
NORTH CHARLESTON SC 29406-4622

December 19, 2014

Reference: Your Client - Therese Hood

Dear Kevin Smith,

I am writing regarding the claim referenced below.

Policyholder:	David Hood
Reference #:	011043223-5
Date of loss:	November 7, 2014
Location of loss:	Hilton Head, South Carolina

This is a follow up to our request for a recorded statement from your client and our insured, Therese Hood. We need to confirm the facts of the loss from Mrs. Hood to assist with our liability investigation.

We recently received notice that arbitration was filed by Geico for their damages and we need to conclude our investigation and submit an answer timely.

As you are aware, our insured must cooperate with our investigation. Please contact me to schedule Mrs. Hood's statement.

You may submit correspondence or questions to me. My contact information is:

Address: P.O. BOX 659461
SAN ANTONIO, TEXAS 78265
Fax: 1 800 531 8669
Phone: 1-800-531-8722 x44366

Sincerely,

Missy Howard
USAA Southeast Regional Office
United Services Automobile Association
Phone: 44366
Fax: 1 800 531 8669



9800 Fredericksburg Road
San Antonio, TX 78288

KEVIN SMITH
HOFFMAN LAW FIRM
7087 RIVERS AVE
NORTH CHARLESTON SC 29406-4622

November 12, 2014

Reference: Acknowledgement of Representation

Dear Kevin Smith,

We received your letter of representation dated November 12, 2014 regarding this claim:

Your client:	Therese Hood
Policyholder:	David Hood
Claim #:	011043223 - 5
Date of loss:	November 8, 2014
Loss location:	Hilton Head, South Carolina

We also need to receive these forms, completed and signed:

- Application for PIP Benefits
- Authorization for Disclosure of Medical Information to USAA

To ensure prompt processing of your client's medical bills, please ask the providers to ensure the following are included in all billings:

- **Itemized billings to include CPT and ICD-9 codes.**
- **Tax Identification Number(TIN).**
- **Physical address where the treatment occurred.**

While the independent audit firm provides assistance in reviewing the medical bills, please know that USAA will make the final payment decision.

Include the reference number 011043223-5 on all correspondence and mail it to:

Auto Injury Solutions
Attn: USAA Medical Mail Dept.
P.O. Box 5000
Daphne, AL 36526
Fax: 1-888-272-1255

If you have questions, please call 800-531-8722 ext. 61667.

Sincerely,



Jo A Gutierrez
Central Region
United Services Automobile Association
Phone: 800-531-8722 ext. 61667
Fax: 1-888-272-1255

Enc: List Of Providers/Employers - MAP044F
Important Notice - MA011F
Medical Authorization - MA059
PIP Application - MA061



United Services
Automobile Association

LIST OF PROVIDERS/EMPLOYERS

Member Name David Hood	USAA Number 011043223	L/R Number 5	Date of Loss 11-08-2014
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INJURED PERSON: Therese Hood

PLEASE LIST BELOW THE NAMES AND ADDRESSES OF ANY TREATING PROVIDERS /EMPLOYERS:

NAME OF PROVIDER : _____

ADDRESS : _____

CITY, STATE, ZIP : _____

PHONE NUMBER : _____

FAX NUMBER : _____

DESCRIBE TYPE OF TREATMENT BEING PROVIDED: _____

NAME OF PROVIDER : _____

ADDRESS : _____

CITY, STATE, ZIP : _____

PHONE NUMBER : _____

FAX NUMBER : _____

DESCRIBE TYPE OF TREATMENT BEING PROVIDED: _____

NAME OF EMPLOYER : _____

ADDRESS : _____

CITY, STATE, ZIP : _____

PHONE NUMBER : _____

FAX NUMBER : _____

GIVE OCCUPATION AND DATES OF EMPLOYMENT : _____

***USE BACK OF FORM FOR ANY ADDITIONAL INFORMATION.**

PLEASE RETURN THIS FORM WITH YOUR SIGNED MEDICAL AND/OR WAGE AUTHORIZATION OR PERSONAL INJURY PROTECTION APPLICATION FORMS.



United Services
Automobile Association

Member Name David Hood	USAA Number 011043223	L/R Number 5	Date of Loss 11-08-2014
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IMPORTANT NOTICE!

The language of the USAA auto policy and applicable state statutes determine the benefits available to you under your medical coverage. If you have questions, please refer to the auto policy for details of your medical coverage. To request a copy of the auto policy, please contact your claim representative.

The continuing increase in the cost of health care has a direct impact on the premiums paid by USAA's insureds. USAA receives more than 600,000 health care bills each year. While the majority of these bills are proper and appropriate, some contain billing errors or excessive charges. Many other bills are duplicates. Regrettably, some bills are simply fraudulent. In order to ensure that USAA pays only those medical bills that are appropriate, USAA utilizes an independent third party contractor, Auto Injury Solutions, to provide a medical bill auditing tool to assist USAA in reviewing health care providers services and charges to ensure billing accuracy, to avoid duplication of payment, to identify treatment that is reasonable, necessary and appropriate for accident related injuries and to evaluate the reimbursement amount. USAA uses this analysis in determining whether the services rendered and fees charged are covered by the provisions of the policy and applicable state laws.

USAA remains committed to providing the best possible service at the most affordable price. Please be advised that your health care provider may provide services not covered by the auto policy or charge more for services than the amount covered by the policy. Some providers will expect you to pay the balance of the bill not paid by USAA. We suggest you discuss with your health care providers their payment expectations for non-reimbursable services or costs.

Please have your health care providers send their invoices for your care directly to USAA either electronically or by regular mail. It is important that the USAA claim number, date of accident, your name, your address, your date of birth, the physical address where the treatment occurred, the provider's Tax ID number, and ICD-9-CM codes and CPT codes for each date of service appear on each medical bill we receive. Therefore, please provide each of your health care providers with this information and request that your providers submit, with each invoice, the above information and their treatment and/or office notes for each date of service.

Should you receive any invoices from your health care providers, please forward them to USAA with the above information.



United Services
Automobile Association

AUTHORIZATION FOR DISCLOSURE OF MEDICAL INFORMATION TO USAA

Member Name David Hood	USAA Number 011043223	L/R Number 5	Date of Loss 11-08-2014
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We are not HIPAA covered entities. Your disclosure of information to us is not subject to the Minimum Necessary standard.

Patient: Therese Hood

I HEREBY GRANT PERMISSION TO, AND AUTHORIZE THE USE OR DISCLOSURE OF, THE ABOVE NAMED INDIVIDUAL'S RECORDS.

I authorize the following persons and organizations (a) any licensed physician, surgeon, or dentist; (b) any psychiatrist or psychologist; (c) any other medical practitioner or nurse; (d) any hospital, clinic, health care facility or rehabilitation/convalescent/custodial facility; (e) ambulance owner; (f) any insurance company (the "Provider") to provide information (as defined below) to USAA and/or their retrieval service ABI/VIP.

I, the Undersigned, as the patient, or in my capacity as personal representative of the patient, Therese Hood, understand the information obtained by this Authorization will be used by USAA and its authorized representatives, performing business or legal services, its affiliated insurance companies, and its authorized representatives, performing business or legal services for the purpose of verification, evaluation, and negotiation of any claim for benefits or services, arising from the above-identified date of loss, and any other pertinent claim handling or legal uses in connection to such claims, or as USAA Otherwise determines is necessary to underwrite insurance.

For purposes of this Authorization, "Information" means all records or knowledge

concerning the patient's health, any injuries, medical history, mental and physical conditions, before and after the date of this Authorization, regardless of the time of occurrence. The term "records" includes, but is not limited to, written or graphic documentation, including notes, billing records or statements, sound recordings,

computer records of health care services, and diagnostic documentation, such as x-rays, lab test results, and other test results such as blood alcohol level and drug use. In addition to medical records developed by the Provider described above, this Authorization also includes any medical records received by the Provider from other providers.

This Authorization shall be in force and effect until all claims arising from the above-identified date of loss are concluded, but no more than 24 months, at which time this Authorization to disclose this information expires.

I also understand and agree to the following:

- Although this Authorization is voluntary, USAA reserves the right to discontinue processing any claim if I refuse to grant this Authorization, and such refusal may be in breach of a policy condition if USAA reasonably needs this Authorization to adequately investigate any claim.
- That the information released pursuant to this Authorization may be redisclosed by USAA and may no longer be protected by federal privacy regulations.
- That I may receive a copy of this Authorization, and I have the right to revoke this Authorization, in writing, at any time. I may request a copy or revoke the Authorization by sending such written request to
Jo A Gutierrez at
9800 Fredericksburg Road, San Antonio, TX 78288.
- That a revocation is not effective: (i) until receipt by USAA, and (ii) to the extent that USAA has relied on the use or disclosure of the information.
- That: (1) this Authorization overrides any existing agreement to restrict information pursuant to 45 CFR 164.502(b)(2)(ii), (2) a copy of this Authorization is as valid as an original, and (3) I have read and understand this Authorization.

THIS IS NOT A RELEASE OF CLAIM FOR DAMAGES.

Signature of Patient or Personal Representative

Date

Patient's Date of Birth / Social Security Number

Description of Personal Representative's Authority

(Reminder: Please return this entire form, including the signature page.)



United Services
Automobile Association

SOUTH CAROLINA APPLICATION FOR BENEFITS ECONOMIC LOSS PROTECTION

Member Name David Hood	USAA Number 011043223	L/R Number 5	Date of Loss 11-08-2014
----------------------------------	---------------------------------	------------------------	-----------------------------------

PATIENT NAME Therese Hood		DATE OF BIRTH 07/22/1954	
ADDRESS (NO., STREET, CITY OR TOWN, STATE, AND ZIP CODE)		HOME PHONE ()	BUSINESS PHONE ()
DATE AND TIME OF ACCIDENT November 8, 2014		PLACE OF ACCIDENT (STREET, CITY OR TOWN, AND STATE) Hilton Head, SC,	
BRIEF DESCRIPTION OF ACCIDENT AND AUTOMOBILE YOU OCCUPIED OR WERE STRUCK BY			
AT TIME OF ACCIDENT: WERE YOU AN OCCUPANT OF OUR MEMBER'S CAR? ☐ YES ☐ NO WERE YOU RIDING IN A SEAT PROTECTED BY AN AIRBAG? ☐ YES ☐ NO WERE YOU A PEDESTRIAN STRUCK BY OUR MEMBER'S CAR? ☐ YES ☐ NO WERE YOU IN THE COURSE OF YOUR EMPLOYMENT? ☐ YES ☐ NO HAVE YOU RECEIVED OR ARE YOU ELIGIBLE FOR MEDICAL OR DISABILITY BENEFITS UNDER (1) ANY WORKERS' COMPENSATION PLAN? ☐ YES ☐ NO (2) ANY OTHER BENEFIT OR INSURANCE PLAN? ☐ YES ☐ NO (3) GOVERNMENT MEDICAL INSURANCE? ☐ YES ☐ NO WAS YOUR SEATBELT/CHILD RESTRAINT IN USE? ☐ YES ☐ NO DOES YOUR HOUSEHOLD HAVE ANY OTHER AUTO INSURANCE POLICIES? ☐ YES ☐ NO AMT OF BENEFIT \$ _____ (NAME) _____ \$ _____ (NAME) _____ \$ _____			
AS A RESULT OF THIS ACCIDENT WERE YOU INJURED? "NO", SIGN HERE AND RETURN THIS FORM TO US.		IF YOUR ANSWER IS "YES", COMPLETE THE REST OF THIS FORM. IF	
SIGNATURE: _____		DATE: _____	
DESCRIBE YOUR INJURY:			
WERE YOU TREATED BY A DOCTOR? ☐ YES ☐ NO		DATE OF 1ST TREATMENT _____ DOCTOR'S NAME AND ADDRESS _____	
IF YOU WERE TREATED IN A HOSPITAL, WERE YOU AN ☐ INPATIENT ☐ OUTPATIENT		HOSPITAL'S NAME AND ADDRESS _____	
HAVE YOU PREVIOUSLY BEEN TREATED BY THE ABOVE LISTED DOCTORS OR HOSPITALS? IF YES, PLEASE PROVIDE DATE(S) OF TREATMENT AND NATURE OF CONDITION TREATED ON REVERSE SIDE.		☐ YES ☐ NO	
HAVE YOU EVER BEEN TREATED FOR THIS TYPE OF INJURY OR CONDITION PRIOR TO THIS ACCIDENT? IF YES, PLEASE PROVIDE DATE(S) AND DOCTORS AND/OR HOSPITALS WHERE TREATMENT WAS OBTAINED ON REVERSE SIDE.		☐ YES ☐ NO	
HAD YOU RECOVERED FROM THIS CONDITION AT THE TIME OF THE ACCIDENT?		☐ YES ☐ NO	
AMOUNT OF MEDICAL BILLS TO DATE \$ _____		WILL YOU HAVE MORE MEDICAL BILLS? ☐ YES ☐ NO	
AS A RESULT OF YOUR INJURY, WILL YOU HAVE ANY OTHER EXPENSES, INCLUDING TRANSPORTATION EXPENSES?		☐ YES ☐ NO	
DID YOU LOSE TIME FROM YOUR EMPLOYMENT AS A RESULT OF YOUR INJURY? IF YES, AMOUNT OF TIME LOST TO DATE _____		☐ YES ☐ NO WHAT IS YOUR AVERAGE WEEKLY WAGE OR SALARY? _____	
IF YOU LOST TIME, GIVE DATE DISABILITY FROM WORK BEGAN _____		DATE RETURNED TO WORK _____	
LIST NAME AND ADDRESS OF YOUR EMPLOYER AT THE DATE OF THE ACCIDENT. GIVE OCCUPATION AND DATES OF EMPLOYMENT.			
EMPLOYER AND ADDRESS	OCCUPATION	FROM	TO

SIGNATURE _____

DATE _____

IMPORTANT:

1. COMPLETE AND SIGN THIS APPLICATION.
2. SIGN AND RETURN PROMPTLY ANY ATTACHED AUTHORIZATION(S).
3. SEND ANY MEDICAL BILLS YOU HAVE RECEIVED TO DATE.