

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James E. Lockemy, Chief Judge

Case No. 2017-002289

Clawson and Staubes, LLC Ms., Julie
A. Coleman, as Personal Representative
of Lynne N. Johnson,

Respondent,

V.

Miriam H. Samuel, Pro Se

Appellant.

Record on Appeal

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MAY 11 2021

SC Court of Appeals

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Appellant's designation of matter see pp. 40-47.

Respondents' designation of matter see pp. 48-51.

Appellant's Summon see pp. 52-59.

Trial Court Verdict see p. 60.

Trial Court Judgment see p. 61.

Respondents Summons from the Lower Court see pp. 62-67.

Respondents Notice of ADR see pp. 68-69.

Appellant's Transcript Pages see pp. 70-187.

Appellant's Cases/ Orders/ Statutes/ Opinions See pp. 188-214.

Respondents Transcripts Pages see pp. 215-229.

Mrs. Samuel's pages for review by The Appeal Court.

(R.P.P. 230 lines 6-25) (R.P.P.233 line 1-25) (R.P.P. 234-239)

The Court, "I think it's a close call. I think that they are--- again, I'm only concerned with the existence of the evidence, not with the weight." "and so, I-- I think that that is a jury question for

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them to have to decide.” (R.P. 292) (R.P.298) Respondents Transcript Pages: . (R.P.P. 202 lines 19-25 ; 203 lines 1-7) (R.P. 203 line 21-25) Motion/Mr. Lang (R.P. 292; 298 lines 22-25) Mr. Lang “your Honor, we’d submitted a Defense Request.” Mr. Lang, Had many Motions Objections and Requests from the Court Judge.

The Appellant’s is asking that this Honorable Court of Appeals and The South Carolina Supreme Court, please, review these Transcript pages closely. Mr. Saltzman, lawyer for the Plaintiff, agreed to almost everything Mr. Lang and The Court did. He made little objections, motions and almost NO defense, for Mrs. Samuel. On the other hand, Mr. Lang seems to be running the court. He has basically instructed the judge on how to charge the jury, for the following day.

Your honorable Court of Appeal, The South Carolina Supreme Court, please review the Appellant’s Transcript pages carefully. Her transcript pages are 70-187 found in this Record on Appeal. Please, see her Cases, Orders, Statutes, Opinions pages on pages 188-214 in this Record on Appeal. Thank you for your consideration in the Most important matter that we are all faced which that of Right V. Wrong, Justice v. Injustice. Please, your Honorable Judges remember Lady Justice is blind so that she can be fair. I throw myself upon the mercy of this court Please help me see if justice was perverted in my case. I am just a lowly person, seeking help from the highest legal entity, besides Our God Almighty.

RECORD ON APPEAL

ORDERS

Case Number: 2017-002289

1. Order of October 2-5, 2017, Civil Trial begin Case Number 2014-CP-40-00633.
2. Order of November 5, 2017, Post-trial Motion were heard and deny.
3. Order of December 12, 2017, to relieve counsel Mr. Williams M. Saltzman.
4. Order of May 25, 2018 time to serve Initial Brief and Designation of Matter.
5. Order of July 24, 2018, Appellant's Initial Brief and Designation of Matters is hereby extended until August 6, 2018.
6. Order of August 20, 2018 The Appellant's Initial Brief and Designation of Matters is hereby extended until September 5, 2018.
7. Order of November 5, 2018, The Appellant's time for serving The Record on Appeal is hereby extended until December 3, 2018.

8. Order of December 19, 2018 the time for serving The Record on Appeal is hereby extended until February 1, 2019. No further extension shall be granted absent extraordinary circumstances.
9. Order of February 13, 2019, The Appellant's Motion to file an Amended Initial Brief and Amended Designation of Matters is granted.
10. Order of July 2, 2019, The Appellant's Order for filing fees and fewer copies of The Initial Brief and Record on Appeal is granted.
11. Order of October 25, 2019, The Appellate filed a fourth extension to serve The Record on Appeal this Motion was received on August 1, 2019. No return was filed. The Motion for an extension is granted until November 15, 2019.
12. Order of December 11, 2019, The Appellate has failed to file The Record on Appeal as required by rule 210 of the South Carolina Court of Appeals.
13. Order of March 6, 2020 the Appellate has filed a Petition to reinstate this Appeal within 30 days of the date of this Order the Appellate shall serve The Record on Appeal and Proof of Service with this court.

14. Order of May 7, 2020, the Appellate has provided Proof that she has served The Record on Appeal on respondent. The Motion to reinstate this Appeal is granted.
15. Order of June 24, 2020, Counsel for the Respondents Petition the court to relieve as counsel Mr. Dale Lang Jr. and Mrs. Jescelyn Tillman Spitz the Motion is granted.
16. Order of July 9, 2020, Respondents Motion to strike The Record on Appeal is granted. Appellate shall serve and file an Amended Record on Appeal that includes all Matters of Designations by both parties.
17. Order of January 7, 2021, the court has reviewed the Appellants Motion filed October 20, 2020 to the extent that Appellate is requesting to supplement her Designation of Matters, The Motion is denied the Appellant is requested File Extension is granted, within 20 days of this order.
18. Order of March 8, 2021, the Appellate served and filed a second amended Record on Appeal it does not comply with rule 210, SCACR, the court's orders of July 9, 2020 and January 7, 2021 this Appeal is dismissed. The remittitur will be sent as provided in Rule 221, SCACR.

19. Order of April 29, 2021, Appellant's motion to file a corrected Record on appeal is granted. To the extent that the Appellant file a corrected record on appeal within 10 days of this order.

THE RECORD ON APPEAL

Case Number: 2017-002289

MOTIONS

1. Motion filed November 6, 2017, by Mr. William M. Saltzman to be relieved of Counsel for the Appellate.
2. Motion from the Appellate filed on August 7, 2018, asking for a 30-day extension to submit Initial Brief.
3. Motion from the Appellate requesting Lower Court to transfer exhibits that **were used** in the Civil Trial. This Motion also included that Mrs. Samuel's designation of matter be amended. This motion was filed on February 1, 2019.

4. Motion from the appellate requesting time to submit the record of 90 days.

Motion was file on November 14, 2019, due to a severe car accident that led to her needed two surgical procedures.

5. Motion from the Appellate for reinstatement filed December 23rd, 2019.

6. Motion from the Respondents filed May 27, 2020, to strike the Record on Appeal for the Appellate.

7. Motion from the Respondents, substitution of counsel filed June 4th, 2020.

8. Motion and petition filed by The Appellate, to be heard by the Court of Appeals. To reopen/ reinstate. Appellant's case. Appellant's asking to submit corrected record on appeals. Appellate asked to redact all previous file records on appeal.

RECORD ON APPEAL

Case Number: 2017-002289

The Appellant's Complaint

This lawsuit arises out of a motor vehicle accident that occur on February 5, 2011, at the Rite Aid drive-through, located at 1501 broad River Rd. This store was on the corner of Bush Rv. And Broad Rv. which is now closed. The Appellate complaints that the judgment did not withstand the verdict. The civil court trial case number 2016-CP-40-02393 ended with the verdict from the jury in favor of the defendant. The plaintiffs post-trial Motions were heard and denied. On November 1, 2017, Miriam H. Samuel, Pro se, filed an appeal in the South Carolina Court of Appeals in the Supreme Court. Mrs. Samuel filed this appeal so that her civil court case could be reviewed. **(Rule 8 SCACR) General Rules of Pleading**

Admissible Relevant Evidence was withheld that supported Mrs. Samuel's case. On the other hand, The Judge allowed incomplete and false evidence to be presented by the Respondent's Lawyers. The amount of false and Irrelevant Evidence that was allowed be heard, confused, and hinder the jury from making a fair judgment. **(Rule 1008, SCACR)** Thereby, The Court fail the Jury by not allowing them to fully do

their job. **(Rule 103 SCACR) Rulings on Evidence. (Rule 105 SCACR Limited Admissibility)** Mrs. Samuel's civil trial was conducted unprofessionally. Mrs. Samuel request that her civil court case be reviewed because she received **Ineffective Representation**, from the Lawyers and the law firm that they work with. **(Rule 1.1, SCACR) (Rule 1.3, SCACR) (Rule 1.19, RPC)** Mrs. Samuel Civil Court case was not giving fair treatment by The Trial Court when it came to dismissing Juror 120 without a replacement Juror.

Mrs. Samuel is asking for a review of her Civil Trial for JNOV, Unprofessional Conduct, The Courts Failure to allow Admissible Relevant Evidence for both parties in a fair and unbiased manner. Bias Statements made to the Jury from The Court, The Court Judge mishandling, and her failure to provide Equal opportunities for Justice under Law for both parties involved. The Judge Limited Admissible Relevant Evidence, while allowing Bias Irrelevant Evidence, Erroneous Evidence, and False testimonies to be presented to the Jury for them to make a sound and reasonable judgment. **(Rule 608 SCACR)** Due to so much confusing information presented to them the jury's job was complication. They were not able to discharge their duties fairly and without prejudice.

Mrs. Samuel complained to her attorney, for allowing Juror 120 dismissal, without a replacement. He waits late to bring the matter to the court's attention. This also cause Confusing and Bias actions during these court proceedings. The court erred when instructing jurors by confusing and bias instructions before deliberation.

The Prepaid Law Firm, Merritt, Webb, Wilson, and Caruso, PLLC failed to provide Mrs. Samuel with expedite litigation. They also failed to provide, the experienced Attorney, Mrs. Samuel had requested for many times before the trial. Mr. Saltzman, the plaintiff's lawyer failed to be professional, diligent, and competent.

Mrs. Samuel complained to her lawyer for not polling the 11 jurors at the end of the trial. He was asked by Judge; would he like to poll the Jurors? Mr. Saltzman declined against his client's wishes, providing Ineffective Representation throughout this trial. Mr. Ben Cahill, another attorney from that law firm came there just to receive credentials that he needed. He was not there to assist in this trial, as The Appellant thought that why he was there. **(Rule 1.2 SCACR)** Mrs. Miriam Samuel, Appellant filed for her case to be heard, in the South Carolina Court of Appeals, South Carolina Supreme Court for a fair review and hopefully reversal in the trial court judgments. Mrs. Miriam Samuel, Pro Se, filed her case because the judgment did not withstand the verdict and she is Pro Se, because she

could not afford the price of an Appeal Court Lawyer. Mrs. Samuel even searched for an attorney to take this case Pro Bono. **(Rule 72, SCACR)** Judgments and Orders are subject to Appeal. Mrs. Samuel included **(Rule 215, SCACR)** submission without oral argument because the Appellate Court may decide any case without oral arguments if it determines that oral argument would not aid the court in resolving this issue. After seeing how the Respondent's Lawyers, the main one Mr. Lang, turn this trial into a joke. I felt it best if I did not have to be subjected to oral testimony. I have since changed my mind and whatever this Court deem necessary, I am willing to do. Mr. Lang controlled the Court by his many Objections and Motions he made throughout the court trial. He too showed a lack of respect to the Judge, by his approaching the bench as if he had a close friendship with Judge Lee.

The Trial Court, Jury, and Attorney, Mr. William M. Saltzman failed to carry out their duties on behalf of the Appellant. **(Rule 1.19, RPC) (Rule 43 (a), SCACR)** **Conduct of Trial. (Rule 1008, SCACR)** Functions of Court and Jury, Evidence that would tend to make the existing of any fact that is of consequences to the determination of the action more probable or less probable than it would be without the evidence.” Did the court and attorney fail to carry out their duties, by

omitting the “Relevant Evidence” that the jurors ask for? Did Juror 120 personally know Mrs. Samuel and needed to be Dismissed?

Did the Court Fail the Jury by allowing lots of Opinion Testimony by a Lay Witnesses? Did the Court Judge error by allow too much false, confusing evidence into this trial? Thereby, the facts of this case became obscured and was overshadowed, causing the Juror’s much confusion. Did the Juror’s fail to discharge their duties, by taking JUST 45 Minutes in deliberations to decide this case? **(Rule 704 SCACR) Opinion on Ultimate Issue** Did the Trial Court and Appellant’s Lawyer suppression Mrs. Samuel’s Relevant Evidence? **(Rule 105, SCACR)** Did the Trial Court show bias by not following the rule on “Limited Admissible Evidence”?

(Rule103 (a) 1, 2 (b) (c), SCACR) Did the Court know that Ms. Lynne Johnson could not be impeached? Yes, the Court knew she would not be impeached.

In this trial case, the omission of evidence effected Mrs. Samuel’s rights to a fair trial.

(Rule104 (a), (b), (c), (d), (e), SCACR) The court failed in this fact of preliminary questioning of Ms. Johnson, The Respondent. The court knew that the

relevant evidence was established throughout the trial and should have been admitted. Did the Jurors failed to do their duties by not listening closely to Ms. Lynne Johnson when she testified? She admitted under oath that she slammed into the back of Mrs. Samuel's Car. **(Rule 603, SCACR)** Oath or Affirmation means testify every witness shall be required to declare that the witness will testify truthfully. **(Rule 608 (A1), (A2), SCACR)** Evidence of Character, conduct and Bias of Witness.

(Rule 407, SCACR) Professional Conduct Lawyer's responsibilities. By omitting relevant evidence for the Appellant, the jurors failed to carry out their duties. The appellate states that according to **(Rule 403, SCACR)** exclusion of relevant evidence on the grounds of prejudice, confusion, or waste of time, violated her rights to receive a fair trial.

The Jury was affected by the exclusion of evidence and they made an erroneous decision. Did the rulings on Evidence or lack of Evidence, force the Jury to make a quick erroneous decision? **(Rule 1005, SCACR) public records.**

The jury were not allowed the evidence to help them make a competent fair judgment. **(Rule 1008, SCACR)** Functions of the Court and Jury. The Appellant's Admissible Evidence was omitted because both Attorneys negotiated

concerning leaving out this Relevant Evidence. They also agreed to proceed with one less juror. These Lawyer did not involve Mrs. Samuel in any decisions concerning her trial case. All of this was done without her knowledge and without her being present in court. There by juror 120 was dismissed without any replacement. **Mr. William M. Saltzman failed in his duties, when he stopped communicating with his client, Mrs. Miriam Samuel. (Rule 43 (a), SCACR)**

The opinions on ultimate issues in testimony in the form of opinion or influence is that which embrace the ultimate issue to be decided, by the tier of facts. The jurors could not consider the tier of facts without the Relevant Evidence, that they asked for from the court during their deliberations. **If the jury had this evidence, it would have added to the tier of facts. (Rule 704, SCACR)**

The appellate attorney failed his duties by negotiating with the respondent's attorney, concerning leaving out this relevant evidence. They agreed that Mr. Saltzman would not submit evidence and would not question the Respondent, Miss Lynne Johnson, concerning her driving record, citations, and many traffic tickets. Especially, this one she received on private property. This was done in exchange to leave out Mrs. Samuel's disability rating from her primary care doctors, Dr. Fuller. **(Rule 1.1, SCACR) ; (Rule 31, RLDE) (Rule 413, SCACR) (Rule 1.2, SCACR)**

(Rule 1.3, SCACR) (Rule 407, SCACR) (Rule 3.2, SCACR) (Rule 105, SCACR) (Rule 5.1, SCACR) (Rule 5.2, SCACR) (Rule 428 (a), (b), (c), SCACR). Advisory Committee on Standards of Judicial Conduct. Opinion Number 10-1998

Mrs. Samuel included **(Rule 215, SCACR)** submission without oral argument. However, Mrs. Samuel would like to appear before the honorable Judges of The Court of Appeals, to plead her case. Mrs. Samuel feels that her oral arguments could help aid the court in resolving this issue. The Judgment Did Not Withstand the Verdict.

RECORD ON APPEAL

Case Number: 2017-002289

The Appellant's Answer

1. Revise Judgement in favor of the Appellant, Mrs. Miriam Samuel. She was aggrieved by the order, judgment, and verdict, rendered by the lower court.
2. Mr. Saltzman's and Mr. Ben Cahill should be disciplined by the proper authorities. They should also receive training on standards of judiciary conduct. Perhaps a suspension with no pay would be effective.

3. All Lawyer and their Law firm should be held responsible, reprimand or discipline as The Court deemed fair.
4. The Court, Lawyers and Jury failed to provide effective representation, professionalism, and lack of diligence.
5. The mount of false and irrelevant evidence that was allowed be heard, may have confused, and hinder the jury from making a fair judgment. Thereby, the court fail the jury by not allowing them to fully do their job.
6. The Court Judge was curious of this '**new type**' of evidence, that the Respondents Lawyers introduced, therefore she allowed the Respondents Evidence into court. This would mean that Admissible Evidence is ok as to one party, for one purpose, but not admissible as to another party, for the purpose in their case.
7. The Appellant's case needed her Admissible Evidence because it embraces an ultimate issue to be decided by the tier of fact . The Court failed and showed bias, in Mrs. Samuel court trial. The Effects of erroneous ruling could be predicted in Mrs. Samuel's trial, by the omission of her evidence.
8. The Court should revise the Jury's Verdict and find Judgement in favor for Mrs. Samuel.

9. The trial court failed under the rule of preliminary questioning, in determining if this admissible “Relevant Evidence,” was needed to this case in relation with the other issues of facts.
10. By omitting this relevant evidence, the trial court and the lawyers failed, the jury by **NOT** allowing them to discharge their duties fully, fairly, and **completely**.

Mr. Saltzman violated the rule of professional conduct because his client, Mrs. Samuel suggested many times to him, before and during trial that this relevant evidence must be admitted.

11. The trial court and the lawyers were aware, from the preliminary questioning and from the respondent disposition's, that the relevant evidence for Mrs. Samuel's case, would not impeach the defendant Ms. Johnson.

12. The Respondents traffic ticket of the accident was asked for by the Jurors for them to determine causation. This “Relevant Evidence” was unfairly left out of the Appellant's Civil Court Trial, even though this evidence was mentioned throughout the trial.

13. Mrs. Samuel Prayer for Relief is to have this Verdict reversed. Mrs. Samuel Prayerfully ask for The Honorable Court of Appeals to compensate her for
 - a. Actual Damages.

- b. Punitive damages in an amount to be assessed by this Court.
- c. Cost of this action.
- d. Any applicable pre-judgment interest: this Court may deem just and proper.

According to Ms. Lynne Johnson testimony and the fact that she had proximity to cause this car accident, she should be held responsible for Mrs. Samuel's injuries. She showed negligence and wanton disregard for the safety of Mrs. Samuel, herself, and her Sister by driving reckless. She admitted under oath, that she was playing with her sister, while driving her motor vehicle.

ECORD ON APPEAL

Case Number: 2017-00228

The Attorneys for the respondent, Ms. Lynne N. Johnson

Complaint

- 1) Are appellant's allegations of ineffective representation being not appealable issues?
- 2) Did the trial court error in denying the appellate motion for judgment notwithstanding the verdict?

- 3) Did the trial court error by “limiting” the relevance and admissibility of Evidence?
- 4) Did the trial court air in its jury instructions?
- 5) Did trial court error in dismissing juror #120?

Rules 201, SCACR Rule 48, SCRCP

RECORD ON APPEAL

Case Number: 2017-002289

ANSWERS

The Attorneys for the respondent, Ms. Lynne N. Johnson

- i. As this court is aware, an appeal is not the proper vehicle to bring allegations of legal malpractice an ineffective assistance of counsel in a civil matter. In fact, there are separate procedures and causes of action within South Carolina for those allegations. Furthermore, according to rule 201 SCACR, the issue of ineffective assistance of counsel and legal malpractice where the founded or unfounded is not an appealable issue as is it is not a “judgment appealable order or decision” for this court to consider.
- ii. At the conclusion of the trial, appellate move for a JNOV “based on there was not enough evidence in the record for the jury to find by preponderance of the evidence in favor of the plaintiff (R.P.P. 357-358). In moving for JNOV, Appellant’s attorney stated the wrong standards for a JNOV which as noted above is to be granted “ only if no reasonable jury could have reached the challenged verdict.” The trial court properly denied the motion and

stated, “there were disputed issues in this particular case. The Jury heard all the evidence. They had the opportunity to discuss and determine the facts based upon their view of what the evidence showed...transcript page 358. Further, the trial court explained that there was not “anything that would indicate that their verdict was based upon something other than the evidence in this case...this court, employing the same standards as the trial court, should, therefore, also denied Appellant’s motion and argument for JNOV.

- iii. Appellant appears to complain of various evidentiary rulings throughout the trial of this matter. The Appellant’s arguments appear two related to exclusion of the respondents traffic citation, driving record and the accident report related to the accident in question. S.C. Code Ann. §§ 56-5-1260-1280 (1991) provides that accident reports are not admissible as evidence of neglect or do care in an action at law for damages. In the case at bar, they responded I made it simple negligence. As to the issue of respondents traffic citation, appellant testified that the respondents received a traffic citation. (R.P.115) the Appellant's attorney also stipulated that he would not question the respondent regarding her driving history. (R.P.246)

Appellant also cites the trial court's exclusion of doctor fuller's testimony regarding her alleged impairment rating as improper. Judge Lee, clearly stated that the testimony of doctor Fuller regarding the issue of Appellant's impairment rating lacked foundation, because doctor Fuller did not stake how he "came up with a particular percentage that he chose." (R.P. 39)

It is well established in South Carolina that "the admission or exclusion of evidence is within the trial judge's discretion." further, the appellate must show both abuse of discretion and prejudice. In the case at hand, the appellate has failed to provide that the trial courts evidentially ruling were an abuse of discretion or resulting in any prejudice to appellate Additionally, Appellant appears to complain of evidence that was not offered by her attorney.

- iv. The appellate appears to complain of confusing, bias, and prejudicial jury instructions. The only reference to the trial transcript found in the appellants initial brief is a citation to respondent's motion to exclude a jury charge regarding punitive damages. (R.P.292 SCARC) The trial court ruled in appellant's favor on the issue of primitive damages and denied respondent's motion and jury was charged with punitive damages. Most important,

appellant's council had no objection to the proposed jury changes. (R.P.298) (R.P. 352.) As such the issue was not preserved for consideration by this court on appeal.

- v. Rule 48 SCRCP provides in pertinent part that a jury shall be composed of twelve persons except that the party may stipulate that the jury shall consist of any number less than twelve. Appellant appears to complain that juror number 120 was improperly dismissed once the trial began. When a jury was selected the parties agreed to waive an alternative and proceed with 11 jurors if necessary. (R.P.57) after the first day of trial, the appellants attorney advised the court that the appellate and Juror 120 had seen each other at church after the trial began, and the appellate and Juror 120 had discussed the appellant's alleged injuries at issues in the case. (R.P.P. 202-207) As such the juror was dismissed and the trial proceeded with 11 jurors, as agreed. With no contemporaneous objection. As such the issue was not preserved for consideration by the Court of Appeal.

RECORD ON APPEAL Testimony October 2, 2017 Day-1

Case Number: 2017-002289

Mrs. Samuel had no Knowledge that the trial began on this date. I should have been there. I would not have allowed all the Pre-trial Motion in agreement with the Respondent's, Miss Lynne N. Johnson's Lawyers. Miss. Lynne Johnson's deposition was also heard during this time; therefore, it was known that no impeachment would occur if evidence of her driver's history tickets and citations what allowed into evidence. Mr. Saltzman even neglected to enter my photographs of the original scene enter Evidence. He did not follow The Rule in the of SCARC concerning Best Evidence. He knew he would receive his payment for this trial working along with the prepaid legal law firm. He gets paid on a regular basis a lot of money.

RECORD ON APPEAL Testimony October 3, 2017 Day-2

Case Number: 2017-002289

The Court Rulings on previous days Motions.

Jury qualification and selection

(R.P.39) (The Respondent Transcript Page)

(R.P.57) (The Respondent Transcript Page)

The Court: Mrs. Samuel is introduced to the Jurors. All witnesses are introduced to the Jury Panel and asked, “is there any member of the jury panel who is related by blood, marriage or close friend?

The Court: Ladies and gentlemen, this lawsuit arises out of a motor vehicle accident that occur dawn February 5th, 2011 at the Rite Aid drive thru. **(R.P.P. 59, lines 3-8;13-15) (R.P. 59, lines 21-25)**

Was Mr. Ben Cahill in court to assist Mr. Saltzman with his client Miriam Samuel, as he stated? No, he was actually here to get his 403's. **(R.P. 60 lines 1-9)**

Admissible Evidence was omitted because both attorneys negotiated concerning

leaving out this “relevant evidence”. These matters were decided on during Day-1 on October 2, 2017, during Mrs. Samuel’s, absence. **Mr. Saltzman did not confer nor confirm with his client concerning these pre-trial Motions.** My notice to appear in Court was dated Oct. 3, 2017, mailed to me from Mr. Saltzman’s Paralegal, Ms. Filippo.

Direct Examination by Mr. Saltzman - Mrs. Samuel

(R.P.P.105-148) Direct---Cross---Re-Direct---Re-Cross

During Mrs. Samuel's testimony it was made clear that she was disabled before this accident.

On Day-1 The attorneys discussed and agreed upon non replacement of a juror if need be. These attorneys agreed upon themselves to leave out pertinent admissible relevant evidence, in support of Mrs. Samuel's case.

I did not know Juror 120 personally. She could have remained on the Jury.

(R.P.115) (The Respondent Transcript Page) (R.P.P. 115-116 lines 1-11) Mr. Saltzman asked, Mrs. Samuel, did you go straight home after the accident?” ‘ No,

the police wanted me to wait for the ticket with Ms. Lynne Johnson's insurance information on it.

Testimony October 3, 2017 Day-2

The Lawyer for the Respondent Transcript Pages: (R.P.39); (R.P.57); (R.P.115); (R.P.P. 202-207); (R.P.246); (R.P.292); (R.P.298); (R.P.352); (R.P. 357-358)

(R.P.P. 155-158) Mr. Lang-Mrs. Samuel Cross Examination

"The accident happened on February 5th, 2011. It went to trial years later in 2017. Mr. Lang is presenting photos which was difficult for Mrs. Samuel to identify with. **(R.P.157 lines 13-24)**

(R.P.160 lines 1-25) The Photos of my car were taken in my driveway. Mr. Lang's question was confusing. **(R.P.161)**

October 4, 2017 Morning Day-3

Testimony: Mr. Saltzman- Court-The Plaintiff

(R.P.P. 202-207) (The Respondent Transcript Pages)

(R.P.P. 202 lines 19-25 ; 203 lines 1-7)

(R.P. 203 line 21-25) Motion/Mr. Lang

Juror 120 was questioned and dismissed without a replacement. There are over 100 members who attended that Bible Study. When being introduced to the jury panel, the question was asked, “is there any member of the jury panel who is related by blood, marriage or close friend?”

Motion/Mr. Lang (R.P.233) Motion/ Mr. Lang (R.P.239)

The Court-Mr. Saltzman-Mr. Lang: (R.P.P. 230 lines 6-25) (R.P.P.233 line 1-25) (R.P.P. 234-239) Mr. Saltzman, showed lack of diligence, lack of

competency, lack of professionalism by not make a Motion when he had opportunity from the Court. He should have submitted exhibits into the court, that was needed to support Mrs. Samuel's Case. Mr. Saltzman provide Mrs. Samuel inadequate and ineffective representation. **(Rule 1.1 SCACR) (Rule 1.2 SCACR) (Rule 1.3 SCACR) (Rule 1.19 SCACR)** Asked Mr. Saltzman were there any more exhibits? His answer no. This was another opportunity to enter the Admissible Relevant Evidence, that Mrs. Samuel requested. **(R.P.P 234 lines 1-25)**
Court-Mr. Saltzman-Mr. Lang

(R.P.246) (The Respondent Transcript Page) The Court-Mr. Saltzman-Mr. Lang: They are in negotiations. Mr. Lang wanted to be sure that Mr. Saltzman, suppress the evidence of Miss L. Johnson's reckless driving in the past. Mr. Saltzman agrees not to mention. **The Many motor vehicle accidents that Miss Lynne N. Johnson had in the past.** This was being done without Mrs. Samuel's knowledge or approval.

Afternoon Mr. Lang calls his first witness.

(R.P.P. 280-289) Cross Examination by Mr. Lang-Lynne Johnson

Notice the many discrepancies during Ms. Johnson's testimony. There were credibility issues in her testimony, there was no problem with submitting relevant evidence because she spoke about her deposition and there were no impeachment concerns. **(R.P. 281 lines 10-16)** Miss Johnson gave conflicting testimony. This testimony from Mrs. Johnson shows her negligence while operating a motor vehicle. **(R.P. 282 lines 21-25)** Miss Johnson is testifying to photographs. These are the same photographs that Mr. Samuel had a hard time with because they were unfamiliar to Her.

Cross-Examination Mr. Saltzman- Miss Lynne Johnson

(R.P.P. 288 lines 10-13) ; (R.P. 289) ; (R.P. 290 lines 1-25)

Lynn Johnson referred to her deposition, she knows that her testimony could not Impeach her. Miss. Lynne Johnson was dishonest during cross examination and admitted to proximity and causation of this accident. She described the force at which she hit Mrs. Samuel's car. This impact was forceful that it caused the injuries to Mrs. Samuel's left shoulder, requiring her to have two surgical procedures, and intense physical therapy. It took about three years for her shoulder to heal, so why did it take so long for this case to come to trial? Reference Appellant's Complaint.

(R.P. 292) (The Respondent Transcript Page) Court-Saltzman-Lang The Court, are there any motions at this time? Opportunity for motions, whereas Mr. Saltzman, could have any evidence that would assist, in Mrs. Samuel's trial submitted into court.

Mr. Lang, "your honor at this time, the defense would renew motions made at the end of the plaintiff's case specifically those as to charging the jury with punitive damages."

The court, "I think it's a close call. I think that they are--- again, I'm only concerned with the existence of the evidence, not with the weight." "and so, I-- I think that that is a jury question for them to have to decide." Mr. Lang: "Yes, your Honor. Thank you." The Court: "so then I'll deny your motion."

The court, "at this time, what I like to do is go over what I intend to instruct the jury tomorrow. I will give them my charge and there see if there is anything I think I have looked at the charges that you all have given me. I think I've will incorporate what is in there it may not be in the exact same language, but I will incorporate the things that you requested. Who oversaw this court? "I will charge the jury that they have to determine the facts based upon the evidence. To do that, they reprehensibility of the conduct, the harm

that is caused, the defendant's awareness of the conduct wrongfulness, the duration of the conduct and any concealment. "Does any penalty imposed should bear a relationship to the nature and extent of the conduct and to the harm caused, including the actual damages awarded made by you, the jury." Secondly, the penalty shall take no into account as a mitigating factor any other penalty that may be imposed for which for the conduct, including any criminal or civil penalties for the same conduct. In finally any award of punitive damages must be limited to punishment and thus must may not effect economic bankruptcy to this end the defense ability to pay any punitive damages awarded should be considered however economic bankruptcy is not a bar to punitive damages." So, why did the Trial Judge say that?

(R.P.298) (The Respondent Transcript Page)

(R.P.P.292 lines 1-25) The Court-----Mr. Saltzman---Mr. Lang they are going over how to instruct the jury. The Judge is allowing the attorneys to give instructions to her, that they want the jury to follow. The court was concerned with the lack of evidence or the mounds of conflicting evidence that was allowed into court.

(R.P.P. 293-301) **The Court---Mr. Saltzman---Mr. Lang** These pages show their concern with instructing the Jury, on day. They are concerned with the language they will use in their instructions. The court judge, and the attorneys, seemed to struggle with how to instruct the jury. I said, there was a lot of confusing evidence allowed into court. I feel that the main evidence that should have been presented was suppressed, by the attorneys and the Court Judge. The court and both lawyers were determined to keep my evidence out. Why? My rights to a fair trial were not due to me. Please, your Honorable Court of Appeal, / review these pages closely. I am not versed in the law however, there seem to be misuse and mishandling of the Court Judge's authority.

October 5, 2017 Morning Day-4 Testimony:

(R.P.P. 354-360) Mrs. Samuel's, Appellant's Pages to be reviewed.

(R.P.P. 302-312) **Mr. Saltzman's Closing arguments**

(R.P. 333 lines 1-13) **Mr. Lang's Closing Arguments Ended**

The Court Charge the Jury on the Law.

(R.P.P. 333 lines 14-15 Court “ Any Rebuttal?” Mr. Saltzman, nothing further, your honor. Mrs. Samuel’s lawyer did not provide Competent Representation.

(R.P. 352) (R.P.P. 357-358) (The Respondent Transcript Pages)

(R.P.P. 333-347) (R.P.P 348-359) Mrs. Samuel’s pages for review by The Appeal Please, take note of the Court Judge instructions to the jury and who’s instructions they are. **(R.P. 350 lines 12-24) Bias instructions this implied to Mrs. Samuel’s Emotional State during this trial.**

(Rule 105 Limited Admissibility) In ruling on a motion for directed verdict, the trial court is reasonably can be drawn therefore in the light of most favorable to the party opposing the motion and to deny the motion when either the evidence yields more than one inference or is inferences in doubt. However, this rule does not authorize submission of speculative, theoretical, or hypothetical views to the jury. In essence, the court must determine whether a verdict for the opposing party would be reasonable possible under the facts as liberally construed in his or her favor. The appellate court will reverse the trial court ruling on a direct verdict motion when there is evidence to support the ruling or when the ruling is controlled by an error of law. When considering direct verdict motions, neither the

trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.

At the conclusion of the trial, Appellate moved for a JNOV based on there was not enough evidence in the record for the jury to find by a preponderance of the evidence in favor of the plaintiff.

RECORD ON APPEAL

TABLE OF CASES AND AUTHORITY

Estate of Beatrice Carr V. Circle S. Enterprises V. The South Carolina Court of Appeals (4410).....	I
The South Carolina Supreme Court. V. Christopher. Taft, Appellant Case No. 2013- 002246.....	II
The State of South Carolina Respondent v. Kevin Covert, Appellant 4071 (2006).....	III
David Ray Matthews, partitioner v. The State of South Carolina Case Number 25487 (2002).....	IV

STATUTES AND ORDERS

The Supreme Court of South Carolina in the matter of William James Barnes. (24555)

The Supreme Court of South Carolina in the matter of Walter Bilbro,

The Supreme Court of South Carolina. In the matter of William E. Walsh. (2008-11-18-1-01)

RECORD ON APPEAL

Case Number: 2017-002289

OTHER AUTHORITYS

2013-09-10-01 The South Carolina Supreme Court. Rule 31; Advisory Committee
on Standards of Judicial Conduct Opinion No. 10-1998

RECORD ON APPEAL

Case Number: 2017-002289

Exhibits for both parties will be pick up from the Lower Court by Mrs.

Samuel.

Exhibits for the Appellate: [C-2 Dr. Guy DVD I.D. 224] [C-3 Dr. Fuller's

Transcript; I.D.229] [C-4 Dr. Fuller DVD I.D. 229] [C-5 Juror Notes I.D. 357]

P-1 Photo 34 Medical Bills, EV.141 Doctor J. Guy's Notes 22 pages, EV. 232.

Doctor Fuller's Notes 21 pages. Ev.232**Exhibits for the Respondents: 34**

Photographs. D1-D 38; Kennett Curriculum VITAE

I certified that this Record on Appeal is relevant to my Appeal Case. It has nothing in it that is not relevant. It has nothing in it that was not in The Appellant's Designation of Matter.

X *Mrs. Miriam Samuel*

Mrs. Miriam Samuel
Appellant, Pro Se

5-11-2021

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

The Honorable James E. Lockamy

**The Honorable Alison Renee Lee
Circuit Court Judge**

**APPEAL FROM RICHLAND COUNTY
Designation of Matter to be Included in the Record on Appeal**

Case No. 2017-002289

Case No. 2016-CP-40-02393

**Clawson and Stubbs
1612 Merica St.
Columbia, SC 29201
Jocelyn Spitz, E. Dale Lang Jr, as
Personal Representative of
Lynne N. Johnson**

Respondent

v.

**Mrs. Miriam Samuel, Pro Se
4014 Margrave Road
Columbia, SC 29203
(803) 256-7283**

Appellant.

RECEIVED

SEP 05 2018

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

The Honorable James E. Lockemy

**The Honorable Alison Renee Lee
Circuit Court Judge**

**APPEAL FROM RICHLAND COUNTY
Designation of Matter to be Included in the Record on Appeal**

Case No. 2017-002289

Case No. 2016-CP-40-02393

**Clawson and Starnes
1612 Marion St.
Columbia, SC 29201
Jocelyn Spitz, E. Dale Lang Jr, as
Personal Representative of
Lynne N. Johnson**

Respondent

v.

**Mrs. Miriam Samuel, Pro Se
4014 Margrave Road
Columbia, SC 29203
(803) 256-7283**

Appellant.

RECEIVED

SEP 05 2018

SC Court of Appeals

INCLUDED IN THE RECORD ON APPEAL

**Miriam H. Samuel, Appellant in the Civil Court Case Number: 2016-CF-40-02393; Court of
Appeals Case Number: 2017-002289**

- 1. Order of October 2-5, 2017; Rule 72, SCACR. Rule 8, SCACR. Rule 215, SCACR.**
- 2. Order of October 3-5, 2017; Rule 704, SCACR. Rule 104 (a) (b) (c) (d) (e), SCACR.
Rule 103, SCACR. Rule 401, SCACR. Rule 403, SCACR. Rule 43 (a), SCACR. Rule
1005, SCACR. Rule 1008, SCACR. Section 4-7-210; Section 14-7-1020.
**ADVISORY COMMITTEE ON STANDARDS OF JUDICIAL CONDUCT
OPINION NO. 10-1998 SEE (OPINION) Canon 3(D)(2)****
- 3. Order of October 3-5, 2017; Rule 603, SCACR. Rule 608 (A1), (A2), SCACR.**
- 4. Order of October 3-5, 2017; Rule 1.1, SCACR. Rule 31, RLDE, Rule 413, SCACR.
Rule 1.2, SCACR. Rule 1.3, SCACR. Rule 1.12, RPC, Rule 407, SCACR. Rule 3.2,
SCACR. Rule 105, SCACR. Rule 5.1, SCACR. Rule 5.2, SCACR. Rule 428 (a) (b)
(c), SCACR.**

Complaint:

- **The Judgement is notwithstanding the verdict.**
- **The Court failed to carry out its duties by omitting "Relevant Evidence".**
- **Mr. Saltzman, the Plaintiff's lawyer failed in his duties by omitting "Relevant Evidence".**
- **The Jury failed in their duties, they were not allowed "The Relevant Evidence" they needed during the trial.**

- Trial Court erred Mrs. Samuel by dismissing Juror Number 120, without an alternate juror. That left the plaintiff with 11 jurors.
- The Trial Court erred when instructing jurors, by confusing and bias instructions before deliberation.
- This Prepaid law firm, Merritt, Web, Wilson & Caruso, PLLC failed to provide Mrs. Samuel with expedite litigation.
- Mr. Saltzman, the Plaintiff's lawyer failed to be Professional, Diligent and competent
- The Plaintiff's lawyer, Mr. Saltzman, erred by not carrying out his responsibilities of partner manager, and supervisory lawyer of his Prepaid law firm, Merritt, Webb, Wilson, & Caruso PPLC

Answers:

The judgement in this case is notwithstanding the Verdict.

This shows under the rules of Court, Mr. Saltzman's lack of professionalism, diligence, lack competence,

During preliminary questioning, and during the course of the trial, "Relevant Evidence" was spoken about, but never admitting throughout the Trial Court Proceedings.

The Trial Court failed under the rule of preliminary questioning, in determining if this Admissible "Relevant Evidence," was needed to this case in relation with the other issues of facts.

By omitting this "Relevant Evidence," The Trial Court and Lawyers failed, The Jury by NOT allowing them to discharge their duties Fully, Fairly and completely.

Mr. Saltzman violated the Rules of Professional Conduct, because his client, Mrs. Samuel suggested many times to him, before and during trial that this "Relevant Evidence," must be submitted.

The Trial Court and Lawyers knew during preliminary questioning and from the defendant's depositions, that this "Relevant Evidence," would not impeach the defendant, Ms. Johnson.

The Court and Lawyers failed in their duties by not having this "Relevant Evidence" for jury to see that the defendant's cause this accident, Mrs. Johnson clearly admitted negligence.

Mr. Saltzman's failure and incompetence to submit these items, caused the Jury to make an unfair, and unjust verdict.

Mr. Saltzman, plaintiff's lawyer rendered ineffective representation, by not cross-examining the testimony of Mrs. Wanda Puryear, thereby causing the jurors to be even more confused.

The jury came back from deliberation within 40 minutes just to ask, "was there a police officer report"? The Jurors could not render a fair and impartial verdict without this "Relevant Evidence."

This "Relevant Evidence" would have added support to the defendant's truthfulness or untruthfulness as Character Witness. It was known by the trial court and the attorneys that she could not be impeached.

The jury failed to carry out their duties, the jury did not take enough time in deliberations, to use their good judgement and common sense, to render a fair and just verdict.

Mrs. Lyane N. Johnson admitted to causing the accident while under oath, that she was playing with her sister while driving, proved her negligence.

Mrs. Lyane N. Johnson stated during cross-examination that her car "did bounce back off hers." (Speaking of the Plaintiff's, Mrs. Samuel's car.)

This indicates that Mrs. Samuel's car was hit with great force.

This caused considerable damages to Mrs. Miriam Samuel's physical body.

This car accident also, caused Mrs. Samuel mental and physical anguish.

Mrs. Samuel's medical bills is in excess of \$120,000.00.

This is why The Honorable Judge Lee, allowed the jury to consider, Actual Damages and Punitive Damages. Mrs. Johnson caused my injuries and was clearly negligence.

The Court erred by dismissing Juror 120 without replacing her.

Mrs. Samuel and Juror 120 attends the same place of worship; however, they are not close friends.

At their place of worship, the attendance has over 100 members. Mrs. Samuel feels that there

was no need to dismiss the juror. One less juror could have caused this unfavorable verdict for Miriam Samuel. Mrs. Samuel and juror 120 are not close friends. Therefore, they didn't recognize each other until after day two concluded, when they saw one another at bible study that evening.

Miriam Samuel argues that Mr. Salzman was unprofessional and lack competence.

Mrs. Samuel told Mr. William Salzman that Juror 120 and herself, knew each other by way of attending the same religious services.

Mr. Salzman did not tell Judge Lee until the beginning of day three. Mr. Salzman said, " Your Honor. It actually just it was brought to my attention that we have a juror issue."

Mrs. Samuel was questioned by Judge Lee. Mr. Samuel told the judge that juror 120 and her were not close friends.

Judge Lee questioned Juror 120. She basically, stated the same thing as Mrs. Samuel. Juror 120 also told the judge that saw my arm (Injury). I had on a sleeveless dress at bible study. Juror 120 said, to Judge Lee that she knows nothing about the case and that she could be fair in her judgement.

Judge dismissed juror 120 without replacing her. Ms. Samuel is not a close friend of juror 120, therefore juror 120 should've remained on the jury panel or replaced.

Honorable Judge Lee is associated to my Doctor Jeffery Guy, did that disqualify her to hear this case?

The Juror's may have been affected by the late dismissal of juror 120 during the trial, causing them to look at this case with bias and prejudice.

Transcripts of Proceedings:

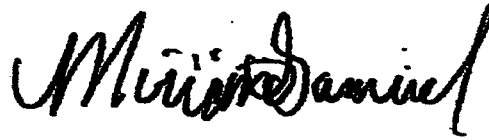
Request to Change: Mrs. Samuel request to change The Jury's Verdict

Appellants Exhibits: Medical Bills,

Transcript of Proceedings: pp. 59-60; pp.105-148; pp.155-158; pp.160-161; p.230; PP. 233-236; pp.237; pp.238-239; pp.280-289; p.290; PP. 292-293; pp.294-301; p.p. 302-312; pp.333-347; pp.348-359

I Certify that this designation contains no matter which is irrelevant to this appeal.

August 29, 2018

A handwritten signature in black ink, appearing to read "Miriam Samuel". The signature is fluid and cursive, with the first name "Miriam" and last name "Samuel" clearly distinguishable.

**/s/ Miriam Samuel, Pro Se
4014 Margrave road
Columbia, SC 29203
(803)256-7283**

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
The Honorable James E. Lockemy,
Chief Appeal Court Judge

Case No. 2017-CP-40-002289
Case No. 2016-CP-40-02393

RECEIVED

SEP 05 2018

SC Court of Appeals

Miriam H. Samuel, Pro Se
/s/Miriam H. Samuel,

Appellant

Clawson and Staubes
Jescelyn Spitz, E. Dale Lang Jr, as
Personal Representative of
Lynne N. Johnson

Respondent

PROOF OF SERVICE

I certify that I have served the Record on Appeal, Designation of Matter and Initial Brief to be Included in the Record on Appeal be heard. on Lynne N. Johnson by depositing a copy of it in the United States Mail, postage prepaid, on September 5, 2018. Delivered to address of her attorney of record, Jescelyn Spitz, E. Dale Lang Jr., Clawson and Staubes 1612 Marion Street Columbia, SC 29201. [by personally delivering a copy of it to her attorneys Office of record]

September 5, 2018

s/ Miriam H. Samuel, Miriam H. Samuel
4014 Mangrove Road
Columbia, South Carolina 29203
(803) 256-7283
Pro Se Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2017-002289

RECEIVED

OCT 03 2018

SC Court of Appeals

MIRIAM H. SAMUEL Appellant

v.

LYNNE N. JOHNSON Respondent

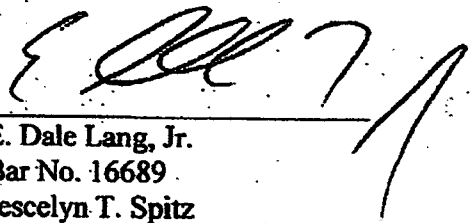
**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following be included in the Record on Appeal:

1. Complaint;
2. Answer;
3. Transcript of Proceedings pp. 39, 57, 115, 202, 203, 204, 205, 206, 207, 246, 292, 298, 352, 357, 358.
4. Verdict form dated October 5, 2017.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 3, 2018


E. Dale Lang, Jr.

Bar No. 16689

Jescelyn T. Spitz

Bar No.: 101880

1612 Marion Street, Suite 200

Columbia, South Carolina 29201-2939

Phone: (800) 774-8242

Attorneys for Respondent

STATEMENT OF ISSUES ON APPEAL

1. Are Appellant's allegations of ineffective representation appealable issues?
2. Did the trial court err in denying the Appellant's motion for judgment notwithstanding the verdict?
3. Did the trial court err by "limiting" relevant evidence?
4. Did the trial court err in its jury instructions?
5. Did the trial court err in dismissing juror number one hundred twenty (120)?

STATEMENT OF THE CASE

This is a personal injury action in which the Appellant and Respondent were involved in a motor vehicle accident while waiting in line at a Rite Aid pharmacy drive thru in Richland County on February 5, 2011. Appellant, through counsel, filed her Complaint on February 3, 2014, alleging negligence on the part of Respondent. A jury trial commenced on October 2, 2017, which lasted through October 5, 2017. On October 5, 2017, the jury returned a unanimous verdict for the Respondent. At the conclusion of the trial, Appellant moved for a judgment notwithstanding the verdict. The Appellant filed and served a Notice of Appeal on November 1, 2017.

I. APPELLANT'S ALLEGATIONS OF INEFFECTIVE REPRESENTATION ARE NOT APPEALABLE ISSUES.

STANDARD OF REVIEW

Rule 201, SCACR provides that "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."

ARGUMENT

Throughout Appellant's Initial Brief, she has alleged ineffective assistance of counsel and complaints against her own counsel. As this Court is aware, an appeal is not the proper vehicle to bring allegations of legal malpractice and ineffective assistance of counsel in a civil matter. In fact, there are separate processes and causes of action within South Carolina for those allegations. Furthermore, according to Rule 201, SCACR, the issue of ineffective assistance of counsel and legal malpractice, whether founded or unfounded, is not an appealable issue as it is not a "judgment, appealable order or decision" for this Court to consider.

II. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

STANDARD OF REVIEW

When reviewing the denial of a motion for directed verdict or judgment notwithstanding the verdict ("JNOV"), this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. See, e.g., Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. Steinke, supra. This Court should reverse the trial court only when there is no evidence to support the ruling below. Id.; Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997). When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Creech, supra; Reiland v. Southland Equip. Serv. Inc., 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998).

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). The jury's verdict will not be overturned if any evidence exists that sustains the factual findings implicit in its decision. Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999).

Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000).

ARGUMENT

At the conclusion of the trial, Appellant moved for a JNOV "based on there was enough evidence in the record for the jury to find by a preponderance of the evidence in favor of the Plaintiff." Transcript pp. 357-358. In moving for a JNOV, the Appellant's attorney stated the wrong standard for a JNOV, which as noted above is to be granted "only if no reasonable jury could have reached the challenged verdict." Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). The trial court properly denied the motion and stated, "there were disputed issues in this particular case. [The jury] heard all the evidence. They had the opportunity to discuss that and determine the facts based upon their view of what the evidence showed" Transcript p. 358. Further, the trial court explained that there was not "anything that would indicate that their verdict was based upon something other than the evidence in this case. . . ." Id. This Court, employing the same standard as the trial court, should, therefore, also deny Appellant's motion and argument for JNOV.

III. THE TRIAL COURT ISSUED APPROPRIATE RULINGS REGARDING THE RELEVANCE AND ADMISSIBILITY OF EVIDENCE.

STANDARD OF REVIEW

The admission or exclusion of evidence is within the trial judge's discretion and to warrant reversal an appellant must show both abuse of discretion and prejudice. See Fields v. Reg'l Med. Cent. Orangeburg, 363 S.C. 19, 25-26, 609 S.E.2d 506-509 (2005).

ARGUMENT

Appellant appears to complain of various evidentiary rulings throughout the trial of this matter. Appellant's arguments appear to relate to exclusion of the Respondent's traffic citation, driving record and the accident report related to the accident in question. S.C. Code Ann. §§ 56-5-1260-1280 (1991) provides that accident reports are not admissible as evidence of negligence or due care in an action at law for damages. In the case at bar, the Respondent admitted simple negligence. As to the issue of Respondent's traffic citation, Appellant actually testified that the Respondent received a traffic citation. Transcript p. 115. The Appellant's attorney also stipulated that he would not question the Respondent regarding her driving history. Transcript p. 246.

Appellant also cites the trial court's exclusion of Dr. Fuller's testimony regarding her alleged impairment rating as improper. Judge Lee clearly stated that the testimony of Dr. Fuller regarding the issue of Appellant's impairment rating lacked foundation, because Dr. Fuller did not state how he "came up with the particular percentage that he chose." Transcript p. 39.

It is well-established in South Carolina that "the admission or exclusion of evidence is within the trial judge's discretion." See Fields v. Reg'l Med. Cent. Orangeburg, 363 S.C. 19, 25-26, 609 S.E.2d 506-509 (2005). Further, the Appellant "must show both abuse of discretion and prejudice." Id. In the case at hand, the Appellant has failed to prove that the trial court's evidentiary rulings were an abuse of discretion or resulted in any prejudice to Appellant. Additionally, Appellant appears to complain of evidence that was not offered by her attorney.

IV. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY.

STANDARD OF REVIEW

"To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Adkins, 353 S.C. 312, 319, 577 S.E.2d 460, 464 (Ct. App. 2003) (citing State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000)).

ARGUMENT

Appellant appears to complain of confusing, biased and prejudicial jury instructions. The only reference to the trial transcript found in Appellant's Initial Brief is a citation to Respondent's motion to exclude a jury charge regarding punitive damages. Transcript p. 292. The trial court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Miriam H. Samuel,

Plaintiff,

vs.

Lynne N. Johnson and Paulette Weston,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO. 2014-CP-40- _____

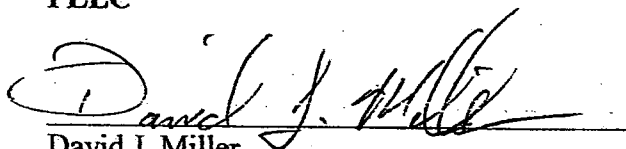
SUMMONS

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer on the subscribers at their offices, 1122 Lady Street, Fourth Floor, Post Office Box 11879, Columbia, SC 29211, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, judgment by default for the relief demanded in the Complaint will be rendered against you.

Respectfully submitted by,

**MERRITT, WEBB, WILSON AND CARUSO,
PLLC**



David J. Miller
Attorneys for the Plaintiff
1122 Lady Street, Fourth Floor
Post Office Box 11879
Columbia, SC 29211
Telephone No.: (803) 255-0598
Facsimile No.: (803) 779-4822

Columbia, South Carolina
January 31st, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Miriam H. Samuel,

Plaintiff

vs.

Lynne N. Johnson and Paulette Weston,

Defendants

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION COVERSHEET

2014 CP - 40-_____

(Please Print)

Submitted By: David J. Miller, Esquire

Address: Merritt, Webb, Wilson, and Caruso, PLLC

P.O. Box 11879

Columbia, SC 29211

SC Bar #: 71091

Telephone #: (803) 255-0598

Fax #: (803) 779-4822

Other:

E-mail: dmiller@merrittwebb.com

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

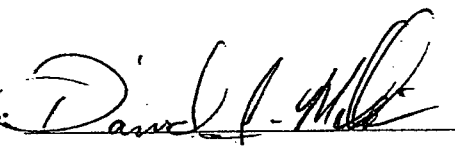
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☒ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | _____ | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Other (399) | ☐ Building Code Violation (460) |
| | | | ☐ Other (499) |
| | | | _____ |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture (840) | ☐ Probate Court (940) |
| _____ | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCDOT (950) |
| | ☐ Other (799) | _____ | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
| | | | _____ |
| Special/Complex /Other | | | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) | | | |
| _____ | | | |

Submitting Party Signature: 

Date: January 31st, 2014

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

FROM MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville, Anderson****

**** Contact Respective County Clerk of Court for modified ADR Program Rules**

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

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

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2014-CP-40- _____
	)	
Miriam H. Samuel,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(Jury Trial Demanded)
	)	
Lynne N. Johnson and Paulette Weston,	)	
	)	
	)	
Defendants.	)	

The Plaintiff, complaining of the Defendants, would respectfully show unto the Court:

JURISDICTION

1. The Plaintiff, Miriam H. Samuel (hereinafter "Plaintiff"), is a citizen and resident of the State of South Carolina, County of Richland.
2. Upon information and belief, the Defendant Lynne N. Johnson (hereinafter "Defendant Johnson"), is a citizen and resident of South Carolina, County of Richland.
3. Upon information and belief, the Defendant, Paulette Weston (hereinafter "Defendant Weston"), is a citizen and resident of South Carolina, County of Richland.
4. The incident forming the basis of this lawsuit occurred in Richland County, South Carolina.
5. Accordingly, matters and things contained herein are most properly within the jurisdiction of this Court.

FACTS

6. On or about February 5, 2010 Ms. Samuel was stopped in her vehicle at the drive through window of Rite Aid in Columbia, South Carolina, when she was struck from behind by

Defendant Lynne N. Johnson, who was, upon information and belief following too closely and operating the vehicle in a careless, reckless, and negligent manner.

7. As a result of Defendants' negligence and recklessness, Plaintiff sustained serious bodily injuries, including, but not limited to, injuries to her shoulder and back. Plaintiff's injuries are such that she still has not been released fully from treatment.

8. Plaintiff's injuries from this accident, including her present and future pain, were caused solely by the negligent, negligent per se, grossly negligent, willful and wanton acts of Defendants.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE, MALICIOUS, WILLFUL OR WANTON CONDUCT AND GROSS NEGLIGENCE)

9. The Plaintiff reiterates each and every allegation contained in Paragraphs 1 through 8 above as if repeated verbatim herein.

10. Defendant Johnson, on or about the date and time in question, was negligent, negligent per se, and reckless in one or more of the following particulars:

- a. In failing to keep a proper lookout;
- b. In creating an unreasonable risk of harm to vehicular traffic;
- c. In driving negligently;
- d. In failing to avoid the accident;
- e. In failing to use her brakes, if any, she had;
- f. In failing to sound her horn, if any, she had to alert others in the area to her negligence;
- g. In improperly backing her vehicle;
- h. In failing to keep control of her vehicle;

- i. In failing to obey the traffic laws then and there prevailing;
- j. In failing to take evasive action to avoid striking Plaintiff;
- k. In driving her vehicle into Plaintiff's vehicle;
- l. In failing to observe and adhere to the road and traffic conditions;
- m. In failing to use that degree of care and caution which a reasonably prudent driver would have under the circumstances then and there prevailing; and/or,
- n. In such other and further ways as may be shown through discovery or at trial.

Any and all of which Defendant Johnson knew, or should have known, was negligent, negligent per se, reckless, and posed a tremendous danger to all pedestrians and vehicular traffic in the area.

11. As a direct and proximate result of the negligent, reckless acts and omissions of Defendant Johnson, Plaintiff suffered the following;

- a. Injuries to her body;
- b. Past, present and future medical expenses;
- c. Past, present and future loss of earning and earning capacity;
- d. Permanent impairment;
- e. Past, present and future pain and suffering; and,
- f. Such other and further injuries as will be determined through discovery and/or evidence presented at trial.

12. Plaintiff's injuries were caused solely by the negligence of Defendant.

13. As a direct and proximate result of the negligent and reckless acts and omissions of Defendant Johnson, Plaintiff suffered severe injuries and is entitled to appropriate compensation and punitive damages for such injuries.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENT ENTRUSTMENT)

14. The Plaintiffs reiterate each and every allegation contained in Paragraphs 1 through 13 above as if repeated verbatim herein.

15. Defendant Weston, on or about the date and time in question, was negligent, Negligent *per se*, grossly negligent, reckless, willful and wanton in entrusting the vehicle she owned to Defendant Johnson.

16. Defendant Weston knew or should have known that entrustment of this vehicle to Defendant Johnson was negligent, careless, negligent per se, reckless, grossly negligent, willful, wanton, and in violation of the laws of the State of South Carolina and in violation of the duty she owed to Plaintiffs and all other drivers in the vicinity.

17. As a direct and proximate result of the negligent, grossly negligent, willful, wanton, and reckless acts and omissions of Defendant Weston, Plaintiff suffered the following:

- a. Injuries to her body;
- b. Past, present and future medical expenses;
- c. Past, present and future loss of earning and earning capacity;
- d. Permanent impairment;
- e. Past, present and future pain and suffering; and,
- f. Such other and further injuries as will be determined through discovery and/or evidence presented at trial.

18. As a direct and proximate result of the negligent, grossly negligent, willful, wanton, and reckless acts and omissions of Defendant Weston, Plaintiff suffered injuries and are entitled to appropriate compensatory damages for such injuries.

19. Further, as a result of the negligent, negligent per se, willful and wanton conduct, and

grossly negligent acts of Defendants, Plaintiff is entitled to recover punitive damages.

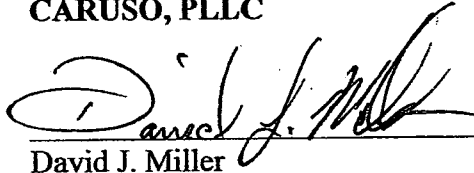
PRAYER FOR RELIEF

WHEREFORE, having fully complained herein, the Plaintiff demands a jury trial and prays for judgment against the Defendants for the following:

- a. Actual Damages;
- b. Punitive damages in an amount to be assessed by the jury;
- c. Costs of this action;
- d. Any applicable pre-judgment interest; and
- e. Such other and further relief as this Court may deem just and proper.

Respectfully submitted by,

**MERRITT, WEBB, WILSON AND
CARUSO, PLLC**



David J. Miller
Attorneys for the Plaintiff
1122 Lady Street, Fourth Floor
Post Office Box 11879
Columbia, SC 29211
Telephone No.: (803) 255-0598
Facsimile No.: (803) 779-4822

Columbia, South Carolina
January 31st, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Miriam H. Samuel

Plaintiff,

v.

Lynne N. Johnson,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No: 2016-CP-40-02393

VERDICT

WE, THE JURY, UNANIMOUSLY FIND FOR:

☐ **PLAINTIFF**

____ (\$)
Actual damages

____ (\$)
Punitive damages

☒ **DEFENDANT.**



Foreperson

Date: 10/5/2017

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016 CP4002393

Miriam H. Samuel

Lynne N. Johnson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code _____

Date

10/5/2017

For Clerk of Court Office Use Only

This judgment was entered on the 6 day of Oct, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

William N. Saltzman

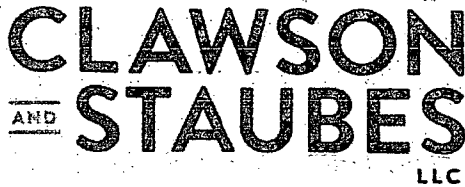
ATTORNEY(S) FOR THE PLAINTIFF(S)

E. Dale Lang, Jr. / Jocelyn Spitz

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



Jescelyn T. Spitz
Licensed in SC
jspitz@clawsonandstaubes.com

February 09, 2018

File No.: 20144069.000

Ms. Miriam H. Samuel
4014 Margrave Road
Columbia, SC 29203-3949

Re: Miriam H. Samuel vs. Lynne N. Johnson
Appellate Case No.: 2017-002289

Dear Ms. Samuel:

In response to your letter dated February 5, 2018, we are unable to consent to your request to order less than the entire trial transcript. At this time we are not aware of your basis for this appeal, and no post-trial motions were made at the conclusion of trial.

Very truly yours,

CLAWSON and STAUBES, LLC

A handwritten signature in black ink, appearing to be "J. Spitz".

Jescelyn T. Spitz

cc. V. Claire Allen, Deputy Clerk

www.clawsonandstaubes.com
1612 Marion Street, Suite 200, Columbia, South Carolina 29201-2939
Office: (800) 774-8242 / Fax: (843) 722-2867

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-00633

Miriam H. Samuel,

Plaintiff,

vs.

Lynne N. Johnson and Paulette Weston,

Defendants.

ANSWER
(Jury Trial Demanded)

The defendant, above named, answering the Complaint of the plaintiff, above named, alleges and says as follows:

1. That the defendant admits the allegations contained in paragraph 1 of the Complaint.
2. That the defendant admits the allegations contained in paragraph 2 of the Complaint.
3. That the defendant admits the allegations contained in paragraph 3 of the Complaint.
4. That the defendant admits only so much of the allegations contained in paragraph 4 that allege that allegations upon which Plaintiff's lawsuit is based allegedly occurred in Richland County. The remaining allegations of paragraph 4, however construed, are denied.
5. That the allegations of paragraph 5 are conclusions of law, and the defendant is not required to answer the same.
6. That the defendant denies the allegations contained in paragraph 6 of the Complaint.
7. That the defendant lacks sufficient information to form a belief as to the allegations

SCANNED

of paragraph 7 of the Complaint and, therefore, denies the allegations of said paragraph.

8. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 8 of the Complaint and, therefore, denies the allegations of said paragraph.

9. In response to the allegations of paragraph 9, the defendant hereby realleges and incorporates by reference paragraphs 1 through 8 as fully and effectively as if set forth herein verbatim.

10. That the defendant denies the allegations contained in paragraph 10, including all subparts, of the Complaint.

11. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 11, including all subparts, of the Complaint and, therefore, denies the allegations of said paragraph.

12. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 12 of the Complaint and, therefore, denies the allegations of said paragraph.

13. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 13 of the Complaint and, therefore, denies the allegations of said paragraph.

14. In response to the allegations of paragraph 14, the defendant hereby realleges and incorporates by reference paragraphs 1 to 13 as fully and effectively as if set forth herein verbatim.

15. That the defendant denies the allegations contained in paragraph 15 of the Complaint.

16. That the defendant denies the allegations contained in paragraph 16 of the Complaint.

17. That the defendant lacks sufficient information to form a belief as to the allegations

of paragraph 17, including all its subparts, of the Complaint and, therefore, denies the allegations of said paragraph.

18. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 18 of the Complaint and, therefore, denies the allegations of said paragraph.

19. That the defendant denies the allegations contained in paragraph 19 of the Complaint.

20. That the defendant denies each and every allegation of the Complaint not hereinabove specifically admitted or modified.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO.
THE DEFENDANT ALLEGES AND SAYS:
(Failure to State Facts Sufficient)

21. That the Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(6).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO.
THE DEFENDANT ALLEGES AND SAYS:
(Punitive Damages Unconstitutional - Procedural Due Process)

22. That the plaintiff's Complaint to the extent that it seeks punitive or exemplary damages violates the right of this defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

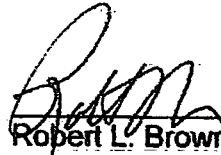
FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO.
THE DEFENDANT ALLEGES AND SAYS:
(Punitive Damages Unconstitutional - Procedural Due Process)

23. That the plaintiff's Complaint to the extent that it seeks punitive or exemplary

damages violates the right of this defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

WHEREFORE, having fully answered the Complaint of the plaintiff, this defendant prays for a trial by jury and that the plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON AND STAUBES, LLC



Robert L. Brown
1612 Marion Street, Suite 200
Columbia, South Carolina 29201
(800) 774-8242

Attorney for the Defendants

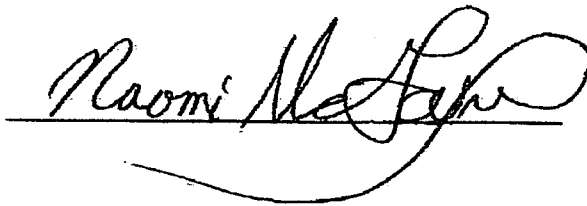
Columbia, South Carolina

April 21, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading(s) has been served upon opposing counsel on the 21st day of April, 2014 via:

☒	United States Postal Service
☐	Facsimile
☐	Electronic Email



FILED
2014 APR 24 AM 10:59
CLERK OF COURT
C.C.P. & G.S.

FILED
2016 APR 13 AM 9:01
JEANETTE M. GERRARD
C.C.P. & G.S.

NOTICE OF CASE SCHEDULING

January 28, 2015



**Case 2014CP4000633 - Miriam H Samuel vs Lynne N Johnson ,
defendant, et al has been added to the following Court Roster:**

**Roster ID: 407 - JURY TRIAL ROSTER FEBRUARY 17, 2015
ROSTER MEETING 9 AM COURTROOM 2-C**

This case has been assigned as priority 13 of 20 cases scheduled for the court period of
2/17/2015 through 2/20/2015

In order to insure that we have a sufficient docket of cases to be tried, the above referenced
case will be placed on the Common Pleas Jury Trial Docket for the week beginning February
16, 2015. A Roster Meeting will be held on February 17, 2015 at 9:00 A.M. in Courtroom
2-C. ATTENDANCE IS MANDATORY.

Status Conferences will be held ONLY if requested by both parties. If a Status Conference is
necessary or would be helpful, please contact my office in writing immediately.

Mail Noted On
David J. Miller 1122 Lady Street, 4Th Floor PO Box 11879 Columbia, SC 29201

Court Info
Richland County Common Pleas Richland County Judicial Center 1701 Main Street Columbia, SC 29201-9201

Judge L. Casey Manning
Chief Administrator Judge
Fifth Judicial Circuit

NOTICE OF ADR

2014CP4000633

Filing Date: 2/3/2014

Sarah Patricia Edgecomb
1015 Charlotte Avenue
Suite 150
Rock Hill, SC 29732

October 15, 2014
FILED-CLERK OF COURT
RICHLAND COUNTY, S. C.
JEANETTE W. McBRIDE

Miriam H Samuel

VS Lynne N Johnson

PLAINTIFF(S)

DEFENDANT(S)

Pursuant to the Standing Order for Alternative Dispute Resolution, dated September 7, 2000 you are required to participate in the following methods of Alternative Dispute Resolution (ADR): mediation or arbitration (binding or non-binding) on or before 300 days from the date of filing of this action. The parties have a right to mutually agree upon the form of ADR and a neutral person(s) to conduct that ADR process. In the event the parties are unable to agree upon the form of ADR, the court hereby designates mediation as the default process of ADR. In the event the parties are unable to agree upon a mediator, the court hereby appoints

Sarah Patricia Edgecomb, 1015 Charlotte Avenue, Suite 150, Rock Hill, SC 29732, Phone (803) 619-9611

to serve as mediator. In the event the aforementioned mediator has a conflict of interest or is unable to serve, the alternate mediator is

Jean Bergeron, 109 Barton Bend Ln., , Columbia, SC 29206, Phone (803) 960-9920

The parties and/or their attorneys shall contact the court-appointed mediator directly regarding scheduling and payment of the court mandated fee.

A Rule to Show Cause why sanctions should not be imposed may be issued in all cases that fail to file a Proof of ADR or Exemption form indicating evidence of participation in, or exemption from an ADR process within 300 days from the date of filing of the action or 90-days from the date of this notice JANUARY 13, 2015

Date: October 15, 2014

s/Jeanette W. McBride
Jeanette W. McBride, Clerk of Court
Fifth Judicial Circuit, Richland County

NOTICE BY FAX OR MAIL

Notice of this Order was given by facsimile transmission or by first class mail if no fax# is shown, to the attorneys of record on JANUARY 13. 2015.

Plaintiff Attorney(s):
David J. Miller
1122 Lady Street, 4Th Floor
PO Box 11879
Columbia, SC 29045

Defendant Attorney(s):
Robert Lesley Brown
1612 Marion Street
Suite 200
Columbia, SC 29201

FILE COPY

1 of Miriam Samuel vs. Lynne Johnson. And in order to
2 determine your qualifications to serve as jurors in this
3 case, I need to ask you a series of questions. Ladies and
4 gentlemen, this lawsuit arises out of a motor vehicle
5 accident that occurred on or about February the 5, of 2011,
6 at the Rite Aid drive-through, located at 1501 Broad River
7 Road, which is the intersection of Broad River and Bush
8 River Roads.

9 Is there any member of the jury panel that has any
10 knowledge of any of the facts or any of the issues that are
11 to be tried in this particular case? If so, please stand.

12 (No response.)

13 THE COURT: The Plaintiff in this case is Miriam
14 Samuel. Mrs. Samuel, if you'll stand and face the jury
15 panel.

16 (Mrs. Samuel complies.)

17 THE COURT: Is there any member of the jury panel who
18 is related by blood or marriage or a close personal friend
19 of Mrs. Samuel? If so, please stand.

20 (No response.)

21 THE COURT: (To Mrs. Samuel) Thank you, ma'am.

22 Ms. Samuel is represented by William Saltzman. If
23 you'd please stand, please.

24 (Mr. Saltzman complies.)

25 THE COURT: And today Ben Cahill is assisting with the

1 law firm of Merrit, Webb, Wilson, and Caruso. Is there any
2 member of the jury panel who is related by blood or
3 marriage or a close personal friend of any of these --
4 either of these attorneys, or have you ever been
5 represented by them or by their law firms, or have you ever
6 been on the other side or against them or their law firm?
7 If so, please stand.

8 (No response.)

9 THE COURT: (To Mr. Saltzman and Mr. Cahill) Thank
10 you. You may be seated.

11 (Mr. Saltzman and Mr. Cahill comply.)

12 THE COURT: The Defendant in this case is Lynne
13 Johnson. Ms. Johnson, if you'd stand and face the jury
14 panel.

15 (Ms. Johnson complies.)

16 THE COURT: Is there any member of the jury panel
17 related by blood or marriage or a close personal friend of
18 Ms. Johnson? If so, please stand.

19 ((No response.))

20 THE COURT: (To Ms. Johnson) Thank you, ma'am.

21 Ms. Johnson is represented by Jescelyn Spitz as well
22 as Dale Lang of the law firm of Clawson and Staubes. Is
23 there any member of the jury panel who is related by blood
24 or marriage or a close personal friend of either of these
25 two attorneys; or have you ever been represented by them or

1 Q Hello, Mrs. Samuel. Will you please state your
2 address for the Court.

3 A 4014 Margrave Road, Columbia, South Carolina, 29203.

4 Q Will you tell me a little about your educational
5 background.

6 A Yes. I graduated high school from A.C. Flora and I
7 went to Midlands Technical College and I became a teacher
8 assistant.

9 Q And are you currently married?

10 A Yes, 34 years.

11 Q And do you have any children?

12 A Yes. I have two sons by birth and one step-daughter,
13 but she's like my daughter.

14 Q How 'bout grandchildren?

15 A Yes. We have nine grandchildren, and my oldest
16 grandson, who drives trucks -- he's 25 -- and he gave us a
17 great granddaughter.

18 Q So you have a great grandchild as well.

19 A Yes, sir.

20 Q And I know you -- just mentioned about your
21 educational background a moment ago. What -- what did you
22 get your education in?

23 A I got my education in radiology actually, but I didn't
24 finish because I decided to get married. You know how it
25 is when you fall in love.

1 Q But that -- but you got into the educational field; is
2 that right?

3 A Yes.

4 Q Would you go over some of your work history?

5 A Yes. I worked for Richland School District 1 at two
6 different elementary schools: E.E. Taylor Elementary for
7 about 15 years, and another approximately 10 years or so at
8 Watkins-Nance Elementary with early childhood,
9 kindergarten, four-year olds, and five-year olds; however,
10 I was experienced in media center as well the science lab
11 and personal language arts train -- tutoring.

12 Q So what did you do when you were working for the
13 school?

14 A Oh. They were a lot varied. I had to walk a lot
15 taking the children to various areas of the school, special
16 classes like music, art, Spanish. We went out for recess
17 and I played with the students, you know, kindergartens.
18 They want to play.

19 And in the classroom, we had centers, different types
20 of centers, and I sat on the floor a lot with them and
21 there was just a lot of movement throughout my day with my
22 job.

23 Q Are you retired now?

24 A Yes, sir.

25 Q About when did you retire?

1 A I retired -- I would say I filed for retirement in
2 2009.

3 Q Okay. And was that because of a disability?

4 A Yes. I was diagnosed -- I've had asthma for the
5 majority of my life, and I'm getting older and I was having
6 a lot of issues going outside with the children during the
7 pollen season as well as fibromyalgia. It took a long time
8 for it to be diagnosed. I was, like, having just a general
9 ache. I felt like I had the flu all the time. And
10 fatigue.

11 So I would just go to work, come home, and sleep. And
12 I didn't know why, so of course, I went to my family doctor
13 and he sent me to a lot of different specialists; and they
14 verified and -- and authorized that I did have
15 fibromyalgia, which the Federal government gave me my
16 disability for fibromyalgia which is a chronic pain disease
17 as well as asthma.

18 Q Okay. What type of treatment would you do to treat
19 this illness.

20 A With asthma, I have to avoid allergents [sic].
21 Actually I had the -- my -- my youngest son premature -- he
22 was 3 pounds, 12 ounces -- because of an asthma attack.

23 So, I mean, I could go outside right now and probably
24 get stung by something and have to have my epipen for
25 asthma.

1 And for the fibromyalgia, basically, I have to keep
2 moving. That's what I -- I have to do because you can get
3 stiff to the point where you don't want to move, you get
4 depressed by not having a active life, and that's what Dr.
5 Fuller said ---

6 MR. LANG: Objection to anything Dr. Fuller may or may
7 not have said, Your Honor.

8 THE COURT: I'll sustain it as hearsay. You can
9 describe your symptoms, but you can't tell what the doctor
10 said you.

11 THE WITNESS: Okay.

12 A Yes. I have to continue to move, keep active in order
13 to have a productive life and not get depressed.

14 And the treatment for fibromyalgia varies. It could
15 be physical therapy, heat, ice, pain rubs, and they -- they
16 now know that antidepressants help. And Gabapentin, like
17 Lyrican, it may help some patients, as well as some
18 patients need to put on pain medication.

19 Q Were you also involved in an automobile accident some
20 time around 2009?

21 A Yes, with my grandchildren, two of my oldest son's
22 grandchildren. The two older ones. We were in a bad
23 accident which was a roll-over accident, but we got out and
24 -- without a scratch. I just had a little back pain, low
25 neck pain, and my grandchildren was like, "Wow. That car

1 is really --- "

2 MR. LANG: Objection to saying anything the
3 grandchildren may or may not have said, Your Honor.

4 THE COURT: Again ---

5 THE WITNESS: I'm sorry.

6 THE COURT: --- that's hearsay. You can't say what --
7 even your conversations ---

8 THE WITNESS: I'm sorry.

9 THE COURT: --- with others.

10 THE WITNESS: I apologize. This -- this is all new to
11 me.

12 BY MR. SALTZMAN:

13 Q Okay.

14 A So -- but they were okay and so was I. Just had a
15 little back problem.

16 Q And so leading up to the accident that we're here
17 about today, the one from February the 5th, 2011, how were
18 you feeling leading up to that day?

19 A Oh, I felt great. In fact, I do a lot of hobbies. I
20 do -- I make preserves. We have a huge fig tree in our
21 yard, and we make preserves, my husband and I, every year.
22 I sell them and also I enter them in the South Carolina
23 Fair and they've won ribbons. So I enjoy doing that.

24 I also do scrap booking. I also have dogs. I love
25 animals. And ... (crying) I'm sorry. I couldn't even

1 spend time with my animals.

2 Q Mrs. Samuel, we'll get -- we'll get into that.

3 A I'm sorry. But ---

4 Q What ---

5 A --- they just passed and that's why I'm kind of
6 emotional.

7 Q Okay. Let's -- let's talk about the automobile
8 accident that we're -- that we're here for today. Now,
9 were you involved in an automobile accident with the -- the
10 Defendant, Ms. Lynne Johnson?

11 A Yes, I was.

12 Q And that was on February 5, 2011.

13 A Yes, sir.

14 Q Now, what were you doing, I guess, just leading up to
15 that -- that accident?

16 A Well, I had gone to get my prescription filled at Rite
17 Aid, and I was in the drive -- the drive box and I had my
18 arm in the box because either I was picking up -- I can't
19 remember -- I can't recall if I was picking up the
20 medication or get -- getting the tablet to sign for the
21 medication -- when my arm was in the box.

22 And then all of a sudden, I looked up and I saw this
23 car coming at me without slowing down, and my foot was on
24 the brakes, but my car was not in park. And when she hit
25 me, my car moved forward and my arm jerked forward. Well,

1 it -- it felt like I was moving with the car.

2 And I -- I just was in a state of shock at that point
3 because I'm like, I cannot believe somebody just hit me,
4 and that's what the -- the person at the window --

5 MR. LANG: Objection to say anything the person at the
6 window may or may not have said, Your Honor.

7 THE COURT: Again, that's -- that's hearsay.

8 THE WITNESS: Okay.

9 A Well, it was observed that I moved, my car actually
10 moved from the ---

11 MR. LANG: Objection, Your Honor.

12 A --- impact.

13 THE COURT: She can testify as to what she knows of
14 her own personal knowledge through what -- through her --
15 her five senses. She cannot testify as to what somebody
16 told her.

17 MR. LANG: I believe her testimony was it was
18 observed, as if by someone else, Your Honor, which was my
19 objection, and I move to strike.

20 THE COURT: I sustain the objection.

21 Q Mrs. Samuel, was -- was your arm actually caught in
22 that drop box?

23 A Yes, sir, it was.

24 Q Okay. When the collision happened, what did it feel
25 like, as far as the impact's concerned?

1 A It was -- it was a big jolt. As I said, my car moved
2 forward and I was in a state of shock. So I just sat there
3 for a minute and tried to recollect myself. And I was
4 looking at the lady and -- when she was coming down the
5 hill, and I saw the car not slowing down -- because it is
6 an incline coming into Rite Aid. And I saw her car not
7 slowing down. I saw her looking down like this
8 (indicates.)

9 And I thought she was texting actually, but -- well, I
10 can't say what she said. But anyway, she was distracted.
11 She wasn't paying attention. And you can turn in and keep
12 going because the driveway is a short driveway. It's not
13 that long, but it is that incline that will motivate the
14 car to keep moving, you know, if your foot is not on the
15 brake.

16 And I think that's what ---

17 MR. LANG: Objection, Your Honor.

18 THE COURT: I'll sustain -- I'll sustain it as to the
19 speculation. You can -- you can testify as to what
20 happened in your car --

21 THE WITNESS: Okay.

22 THE COURT: -- and what you saw. You can't speculate
23 as to what you think it -- think went on.

24 A Okay. Well, I don't -- I don't really know what she
25 was thinking, but I saw her head down. And I feel like she

1 was texting and wasn't paying attention when she hit me.

2 Q Okay. Mrs. Samuel, I'm going to show you what -- what
3 is -- what's already been marked as Defendant's Exhibit No.
4 7, which is photo of the -- the drive-through pharmacy at
5 Rite Aid.

6 A Yes.

7 Q Is that an accurate production of -- of the -- the
8 scene?

9 A Yes, it is. Except for it's not coming from the
10 street because when you turn in before that sign where it
11 says "lane through -- drive through," it is an incline. So
12 that's not being shown there.

13 Q And I'd also like to show you what's been already
14 marked as Plaintiff's Exhibit No. 1, which is a photograph
15 of the -- the drop box involved in this case. Is that ---

16 A Yes, that --

17 Q --- a photo of it?

18 A That's the box, but it's not all the way open. This
19 comes all the way down, this part right here (indicates).
20 It comes all the way down so that you can reach in. So
21 that's not all the way open.

22 Q Okay. Mrs. Samuel, what -- what time of day did this
23 incident happen?

24 A It happened in the early evening, somewhere probably
25 between four and five. It was still light outside, and

1 that's in February so it gets dark earlier.

2 Q And what type of car were you driving?

3 A I was driving a 2006 Impala.

4 Q Okay.

5 A No, 2007. I'm sorry. 2007 Impala.

6 Q And when the accident happened -- or after the
7 accident happened, did you get out of the car at all?

8 A No. Actually, I went on and finished getting my
9 transaction completed. And I pulled up and I moved over to
10 the side. And I called my husband first. I didn't even
11 call 911. (Crying) And I told him -- I said, "You wouldn't
12 believe it, but I was in a car accident." And I said, "It
13 -- it really shook me up.

14 He said, "Well, call the police."

15 MR. LANG: Objection ---

16 A He said, "Are you okay".

17 MR. LANG: --- to what he might or might not say, Your
18 Honor.

19 THE COURT: I'll ---

20 A He was concerned about my health because of me being
21 very sickly, you know.

22 THE COURT: Okay. I'll -- I'll sustain as to the
23 hearsay. Remember that you cannot testify as to what
24 someone said to you or what someone told you.

25 THE WITNESS: Okay.

1 A So I pulled over to the side and after calling my
2 husband, I called 911 to get the police out. But it took
3 them so long and as I was sitting there, my nerves was so
4 (crying) -- it was unimaginable that I could be hit that
5 way. I ended up urinating on myself.

6 Q Mrs. Samuel ---

7 A I was so embarrassed.

8 Q Mrs. Samuel, did you go right home after the accident?

9 A No. Right after the accident I had to wait on the
10 police officer to get there, and I didn't get out the car
11 because I -- I messed up my clothes.

12 So the police officer came over to me and told me --
13 and she got the ticket.

14 MR. LANG: Objection ---

15 THE COURT: Again ---

16 MR. LANG: --- to anything that ---

17 THE COURT: Again ---

18 MR. LANG: --- anything that was said.

19 THE COURT: Again ---

20 A Well, he gave me a copy of the ticket.

21 THE COURT: One moment, please, ma'am. Please
22 remember, you cannot testify as to what anybody said to
23 you. So you can't testify about your conversation with the
24 police officer. You can say what you said, but you can't
25 say what he said, he or she said.

1 THE WITNESS: Okay. I'm sorry.

2 THE COURT: So I -- and that -- and that applies to
3 all -- all conversations that you had, unless it was a
4 conversation you had with the Defendant herself.

5 THE WITNESS: Okay.

6 A So the police officer came to my car and handed me a
7 copy of the ticket, and then I went home.

8 Q You didn't receive a ticket, did you?

9 A No. Uh-huh.

10 Q It was the Defendant?

11 A Yes, sir.

12 Q Okay. Did you have any -- any communication with the
13 -- the Defendant?

14 A No.

15 Q So after, I guess, the accident scene had -- had
16 settled down, did you actually return home?

17 A Yes, I did.

18 Q Now, in your opinion, the Defendant caused this
19 accident.

20 MR. LANG: Objection as to Plaintiff's opinion, Your
21 Honor. Speculation.

22 THE COURT: Rephrase the question.

23 Q Mrs. -- Mrs. Samuel, who do you believe caused this
24 accident?

25 A Well, it was Ms. Lynne Johnson who caused the

1 accident.

2 Q So after you went home, how did you start to feel just
3 shortly after the accident physically?

4 A Physically, that night I felt okay. I didn't have
5 extreme pain because again, I -- I have pain all over. So
6 I didn't feel nothing out -- out of the ordinary because
7 mentally I was still, like, how could this happen? I mean,
8 I can't believe this, that I've been hit from behind when
9 my arm is in the box. My foot was on the brakes, my car
10 was in gear, and I've been slammed in the back, moving my
11 car like that. It's just -- it was unreasonable.

12 And so my mind was really on the way the accident
13 happened. That distracted me, I guess, from even feeling
14 any pain at that time. I didn't feel pain until Sunday.
15 This accident happened on a Saturday, and I continued my
16 daily routine and I'm feeling pain. I said, "Oh. I gotta
17 get this checked out," because it was an unusual pain. Not
18 like the fibromyalgia pain.

19 And being it was my arm that was just in the box, I
20 said, "I -- I need to go see my doctor on Monday and see if
21 something wrong."

22 Q Can you describe that pain in -- in your left shoulder
23 for us?

24 A Yes. It was excruciating pain.

25 Q Okay. Could you elaborate any more?

1 A Yeah. Because Sunday, when I was cooking dinner,
2 that's when the pain hit me. It was like a sharp pain that
3 just hit my arm. And I said, "Better go to the doctor."

4 Q And Mrs. Samuel, was this a different type of pain
5 that you had experienced -- I guess, fibromyalgia ---

6 A Yes, sir. It was different. That's what made me
7 conclude that I did need to go see a doctor.

8 Q So did you go to see Dr. Fuller February the 8th, 2011
9 ---

10 A Yes.

11 Q --- a couple of days after the accident?

12 And how long has Dr. Filler -- Dr. Fuller been your
13 primary physician?

14 A He's been my physician for over 20 years. He's my
15 children's physician and my husband's physician.

16 Q What complaints did you have for him at the visit?

17 A I told him that I was in a car accident, and that my
18 arm was hurting. I told him the way that my arm was in the
19 -- in position in the dropbox, and that I was having severe
20 pain.

21 Q And Dr. Fuller examined you?

22 A Yes, he did. And when he touched it and have me move
23 it up and down and all around, it was stiff and it hurt
24 when he was trying press on it. So being he's not an
25 orthopaedic surgeon, he referred me out for some MRI and I

1 believe x-rays.

2 Q You said Dr. Fuller had recommended x-rays ---

3 A Yes.

4 Q --- MRI and referral.

5 A Right.

6 Q So he was ---

7 A And then it came back showing I had a tear.

8 MR. LANG: Objection as to what may or may not have
9 been shown, Your Honor.

10 THE COURT: I'll sustain that as hearsay.

11 Q Mrs. -- Mrs. Samuel, did you receive this MRI on March
12 the 8th, 2011?

13 A It happened so long, I -- I'm not good with dates, but
14 I did receive the MRI around that time.

15 Q What was it like getting the MRI?

16 A It was very hard on me. I'm claustrophobic. (Crying)
17 They said it would be 20 minutes to do the MRI, and I was
18 in the enclosed thing for about 30/40 minutes. I felt like
19 I was buried. I didn't know I had that type of
20 claustrophobic when it comes to MRIs.

21 And so they did ask me when they pre-registered me and
22 I said, "No. I'm fine." But when I got in there, I got
23 really anxious because being in that enclosed MRI -- but I
24 had to go through with it. I didn't want them to stop
25 'cause I wanted to know why my arm was hurting because they

1 did ask me, "Mrs. Samuel, are you okay?"

2 I think -- I know they can see you from when you're
3 inside the MRI and I had a button I could press if I needed
4 them -- for them to stop.

5 Q So you had the MRI completed and you subsequently went
6 to Moore Orthopedics where you first saw a Dr. Burnworth?

7 A Yes.

8 Q That was in mid-March, 2011?

9 A Yes.

10 Q And what were your complaints to Dr. Burnworth?

11 A I had told him that I was in a car accident and that
12 my shoulder was hurting very bad; and I had went to my
13 primary care doctor. He already had the MRI sent over to
14 him, so he knew what was wrong. And he suggested ---

15 Q And Mrs. -- Mrs. Samuel, what -- did you go over the
16 MRI with Dr. Burnworth?

17 A Yes, I did.

18 Q What was your understanding of -- of your issues?

19 A The MRI showed that I had a tear in my shoulder and it
20 showed, I think, maybe some beginning arthritis. I'm not
21 sure, but I think it did. But the tear was what I was
22 focused on because I knew, even if I had arthritis in that
23 shoulder, it wasn't bothering me. So that's what it
24 showed.

25 Q What treatment was recommended for you?

1 A He recommended a steroid to relieve the pain, a -- a
2 shot, a needle in the joint.

3 Q What was it like getting the shot in the shoulder?

4 A Well, he called another person in. He told me that --

5 -

6 MR. LANG: Objection, Your Honor

7 THE WITNESS: I'm sorry. I'm sorry. I never been on
8 a trial before. Please forgive me.

9 A He brought his nurse assistant in (crying) with a
10 surgical tray and it had a big needle on it. The needle
11 was probably about this long (indicates) of my glasses --
12 about that long.

13 Q A few inches? Okay.

14 A And he sprayed my arm with some numbing spray and then
15 he put that needle in my arm (crying). I remember how
16 painful it was, but I did want the pain from my arm to get
17 better. So of course, him being the doctor ...

18 But when the needle came in with -- with the nurse, I
19 didn't want -- I didn't really want to have that shot, but
20 I knew he said it would relieve the swelling in my arm.

21 Q Mrs. Samuel, did -- ultimately, did the injection help
22 your shoulder?

23 A It helped temporarily. It relieved some of the pain.
24 I had to go home and put ice on it and rest. So it helped
25 a little bit, but not long. The pain came back.

1 Q And on top of the steroid injection, did you also
2 begin physical therapy with the doctor's recommendation?

3 A Yes.

4 Q Did you begin physical therapy on or about March 29 of
5 2011, with Carolina Physical Therapy Sports Medicine?

6 A Yes, it was.

7 Q What did you have to do at physical therapy?

8 A I had to do a lot of things like it was a ball that I
9 had to use to roll up and down the wall. And I had to be
10 able to lift stuff and carry from one end to the room to
11 the next. I had to use bands, these elastic bands, to
12 strengthen my arm. And that's what the goal was, to
13 strengthen the area, but it didn't help. It was very
14 painful. (Crying) And it felt like I wasn't getting no
15 relief from physical therapy. In fact, I didn't even want
16 to be going.

17 I got to a point where I didn't want to go to physical
18 therapy 'cause it hurt so bad.

19 Q Mrs. Samuel, did you go -- return to Dr. Burnworth and
20 -- I think this was May the 9th -- for a follow-up
21 appointment?

22 A Yes.

23 Q After you'd gone ---

24 A Well, I left physical therapy. It was a long -- it
25 was a lot of physical therapy.

1 Q How were you feeling at that follow-up visit with Dr.
2 Burnworth?

3 A I told him that I was still in pain, and that physical
4 therapy was not helping me at -- it was hurting me
5 actually.

6 Q And what was recommended by -- to you by Dr. Burnworth
7 at that point?

8 A He said that he would recommend for me to see Dr.
9 Fulton, which was the orthopaedic specialist in the
10 shoulder area who specialized with shoulders.

11 Q Did he also recommend further physical therapy going
12 forward?

13 A Yes. I went through more physical -- some -- some
14 more physical therapy --

15 Q Okay.

16 A -- at the doctor's request.

17 Q Did that come to about another four to six weeks ---

18 A Yes.

19 Q --- approximately?

20 A And I did it because he's a specialist, so I had to.

21 Q You said that you went to go see Dr. Fulton to be
22 referred by Dr. Burnworth. Did -- did you see Dr. Fulton
23 in -- August 1, 2011?

24 A Yes.

25 Q What were your complaints to Dr. Fulton?

1 A I told him the physical therapy was hurting me instead
2 of helping me, and I said, "I think something else is wrong
3 than just a small tear," because it just said "tear" on the
4 MRI. And I think -- I know that -- I'm trying to phrase it
5 where I won't be doing hearsay because he's not here to
6 testify. So I can't tell you what he said.

7 THE COURT: This would be a good time to take a lunch
8 break. Ladies and gentlemen, I'm going to remind you the
9 instructions that I've given to you, as you come and go
10 from the courthouse, not to allow anyone to approach you to
11 discuss this matter with you. If -- please do not discuss
12 this matter among yourselves. You certainly have not heard
13 all the evidence that has to be presented.

14 Please also do not listen to conversations that you
15 may in the hallways as you come and go, again for the
16 reasons that you have to make the decision based upon the
17 evidence that's presented here in this courtroom and not
18 based upon conversations that you may overhear.

19 Ladies and gentlemen, I'm going to ask that you report
20 back to the same jury room at 2:15, and when you report
21 back at 2:15, then we'll be ready to continue on with the
22 trial of this matter.

23 I hope that you'll have a good lunch, and we'll see
24 you back at 2:15. Thank you.

25 (Jury exits at 1:04 p.m.)

1 THE COURT: Mrs. Samuel, during this lunch break, you
2 cannot discuss your testimony with anyone. Since you've
3 not concluded your testimony, it would inappropriate for
4 you to discuss it with anyone, including your attorneys.
5 And so I ask that, during the break, that you not have any
6 conversations about your -- your testimony.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Is there anything we need to take up
9 before we take a break for lunch?

10 MR. LANG: None from the Defense, Your Honor.

11 MR. SALTZMAN: Nothing from us, Your Honor.

12 THE COURT: Then -- then we'll see you all back at
13 2:15. Thank you.

14 (Off the record at 1:05 p.m.)

15 (On the record at 2:18 p.m.)

16 THE COURT: Is there anything that we need to take up
17 before we bring the jury in?

18 MR. LANG: No, Your Honor. Not from the Defense other
19 than I would ask that the witness be reminded about
20 hearsay.

21 MR. SALTZMAN: Your Honor, I guess the only, I guess,
22 housekeeping issue as far as -- we got the TV here for the
23 depositions. I don't know if we're going to get to those
24 today. Okay.

25 THE COURT: Probably not.

1 MR. SALTZMAN: Probably not. Okay.

2 THE COURT: Well, I mean, it depends. There's a
3 possibility.

4 MR. SALTZMAN: I just want to be sure since we got
5 your ruling this morning on how we need to redact, I might
6 need to adjust some of the times that -- you know, I can
7 have the queued up, ready to go, when to stop.

8 So I would just ask for some time plan so I know
9 exactly the second I need to pause that.

10 THE COURT: My thought is if we finish with the
11 Plaintiff's testimony, depending on when that is, that may
12 be it for today because I would hate to start the
13 deposition and have to stop it in the middle of it. But
14 I'll -- I mean, I'll wait and see kind of where we are.

15 I assume she's -- she's -- she's been on the witness
16 stand for about a half -- a little bit less than a half
17 hour, about 20 minutes or so. So I assume she's still
18 gonna be on the witness stand for a little while longer.

19 MR. SALTZMAN: We'll move along, Your Honor.

20 THE COURT: And Mrs. Samuel, please remember about the
21 hearsay, that you cannot testify as to what someone told
22 you. You can testify as to what you see, what you -- what
23 *you hear or feel, you know, things from your senses. But
24 you can't testify as to what someone told you.

25 THE PLAINTIFF: Yes, ma'am. I apologize.

1 THE COURT: Well, I -- I mean, that's -- that's fine.
2 I'm just -- just try to keep that in your mind and remember
3 that.

4 And anything else we need to take up?

5 (No audible response.)

6 THE COURT: Mrs. Samuel, if you will come and resume
7 the witness stand before we call the jury in, please.

8 (Mrs. Samuel complies.)

9 (Jury enters at 2:21 p.m.)

10 THE BAILIFF: The jurors are present, Your Honor.

11 THE COURT: Thank you.

12 We're ready to continue on with the trial of this
13 matter. You may continue, Mr. Saltzman.

14 MR. SALTZMAN: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SALTZMAN:

17 Q Mrs. Samuel, we had left off with the break, we were
18 discussing initial treatment with Dr. Fulton with Moore
19 Orthopaedics on August 1, 2011. We mentioned already, but
20 please, what -- what were your -- what was some of your
21 complaints to Dr. Fulton at that time?

22 A Well, it was my left shoulder still having pain that -
23 - well, this was -- this was before the surgery. So he
24 recommended surgery after physical therapy because I was
25 still in a lot of pain.

1 Q Did -- so he did recommend physical therapy?

2 A Yes.

3 Q And during that visit of August 1, 2011, did you
4 receive another one of those corticosteroid injections ---

5 A Yes, I --

6 Q --- in your left shoulder?

7 A Yes, I did. He -- he did one of those injections on
8 me.

9 Q So I believe you saw Dr. Fulton again with follow up
10 about mid-September, September the 13, 2011.

11 A Yes, sir.

12 Q Is that right?

13 A Uh-huh. And I was letting him know the -- the shot
14 did work. It eased the swelling and the pain a little, but
15 when it wore off, the pain was back again.

16 Q So what were your complaints that September 13, 2011
17 visit with Dr. Fulton?

18 A Well, I felt he wasn't listening to me. I was having
19 a lot of issues with my arm. I couldn't shampoo my hair, I
20 couldn't cook, I couldn't lift my cast iron pan. It was a
21 lot of things, and I just really thought that he was think
22 -- well, I can't say that. I felt that I wasn't being
23 taken seriously from him.

24 Q During that visit though, did -- did he actually
25 recommend surgery ---

1 A Yes.

2 Q --- on the left shoulder?

3 A Yes, he did.

4

5 Q What was your understanding of what the procedure to
6 your shoulder was going to be?

7 A He explained to me ---

8 MR. LANG: Objection as to what he may or may not have
9 said, Your Honor.

10 THE COURT: I -- I think she can talk about what her
11 understanding of the surgery was.

12 A I understood that he would do laparoscopic surgery on
13 my arm and there would be four small incisions, two in the
14 front and two in the back, for cameras and instruments.

15 And when I woke up from surgery and after the dressing
16 came off, when I looked, I said, "Oh, my goodness. There's
17 four -- five. There's five. You told me only four."

18 And I was really upset over it because I -- I like my
19 shoulders to be out. And I felt scarred from not -- I felt
20 like he didn't do what he promised.

21 So I continued to heal, but I was upset over the fact
22 that I had five scars instead of four. But other than
23 that, the surgery went well. I continued to heal. He --
24 he gave me a shot of steroids to keep the swelling down.

25 Q Okay. Mrs. Samuel, let's back up a little bit here.

1 I think -- now, before you had the surgery done when you
2 went to Dr. Fuller, did you seek clearance for the surgery
3 and -- on about December the 1st, 2011?

4 A Yes.

5 Q And did he clear you for surgery?

6 A Yes, I was cleared for surgery. And as -- has to be
7 done because of my chronic asthma, I have to have a EKG
8 before any type of surgery and a breathing test to make
9 sure that my lungs are capable of being sedated.

10 Q And concerning the surgery, was that performed at
11 Providence Hospital?

12 A Yes, it was.

13 Q And who performed the surgery?

14 A Dr. Fulton.

15 Q And what was -- what did you go through leading up to
16 the surgery?

17 A Well, I was very anxious. I'm afraid to be put to
18 sleep because that's a dangerous thing. I mean, when you
19 have surgery, you may not wake up. So my mother was there
20 with me, and my husband was there. And they knew I was
21 nervous, well, from my reactions, you know, and I just had
22 to calm down and go through with it because I needed it. I
23 wouldn't have had surgery otherwise if I didn't need it.

24 Q Ultimately you made it through the ---

25 A Yes.

1 Q --- surgery.

2 A Yes.

3 Q And apparently you had a follow up with Dr. Fulton on
4 about December the 20th, 2011?

5 A Yes, that's correct.

6 Q And that was about 10 or 11 days after the surgery ---

7 A Right.

8 Q --- correct?

9 A And that's when the bandages came off.

10 Q Okay. You mentioned there was five incisions that
11 were ---

12 A Five, and we -- he said it was four. And I -- I --
13 let's see how I'm gonna phrase this. The surgery was a
14 little more involved because the tear was -- was larger
15 that what ---

16 MR. LANG: Objection as to anything she may have heard
17 from the doctor when she gets into supposedly the specifics
18 of the surgery or the surgical procedure.

19 THE COURT: I'll sustain that objection.

20 Q So Mrs. Samuel, was there any scarring done to your
21 shoulder as a result of the surgery?

22 A Yes, it was.

23 Q Okay. And it was five incisions?

24 A Five incisions and I went through -- I was mentally
25 kind of destroyed over that because as I said, I like

1 wearing my shoulders out. And I said, "Oh, you know, I
2 just scarred now." But I'm glad that I have my arm. Could
3 have been yanked off. So I really do appreciate that fact
4 that I'm here and I have my arm and I'm healed. I'm
5 healed. I mean, it's still emotional problems when I talk
6 about it. I buried it. I -- I -- that's why I was so
7 emotional about this because something I went through and I
8 never really got into details of the accident. So I guess
9 I really wasn't healed from it mentally.

10 Q So after you met with Dr. Fulton late December, did
11 you continue with physical therapy to try to rehabilitate
12 your -- your left shoulder?

13 A Yes. He said I needed -- well, excuse me. I did
14 rehabilitation to get the strength back. Any time you --
15 well, I had -- I knew from my own research of it that I
16 would have to do more physical therapy because that's the
17 procedure after this surgery to build your -- your muscles
18 back and your -- your range of motion back. So I knew I
19 had to go through that even though it -- it didn't help the
20 first times that I was put through it. I knew I had to do
21 it this -- after the surgery.

22 Q After the surgery, were you -- was that left shoulder
23 feeling any better. How were you feeling?

24 A It felt better, but every time I lifted my arm around
25 about this much (indicates) or even tried to raise my arm

1 over my head to wash my hair or anything in that type of
2 movement, I couldn't go no further without excruciating
3 pain.

4 Q So throughout 2012, did you have multiple follow ups
5 with Dr. Fulton just to track your progress with the
6 shoulder?

7 A Yes, sir.

8 Q And what did you tell him about your shoulder during
9 this -- those visits throughout 2012?

10 A I showed him my range of motion and how I could not
11 perform certain things with my arm, and that it wasn't --
12 something was wrong inside there because it was -- it was
13 not moving like it should have been. With all physical
14 therapy I'd been through, it seemed like I -- I -- I should
15 have been able to raise my arm up and behind me and across.

16 Before I had the accident, I was able to do all that.
17 So I felt that something was not done correctly with the
18 surgery.

19 Q Was there any pain whenever you tried to move ---

20 A Yes.

21 Q --- your left shoulder?

22 A Yes, it was when I moved it in -- in those directions.

23 Q So apparently you -- you're of the belief that there
24 was still some issue there with your -- your left shoulder

25 ---

1 A Yes.

2 Q --- is that right?

3 A I -- in that -- that thought, of course, because it
4 wasn't functioning like it should have been.

5 Q By the time of November, 2012, did you get another MRI
6 to see what was going on with your shoulder?

7 A Yes, I did.

8 Q That's about November 21, 2012?

9 A Yes.

10 Q And did you have a chance to visit with Dr. Fulton
11 about the MRI results?

12 A Yes, I did.

13 Q And -- and what was your plan moving forward after
14 hearing the MRI results.

15 A My shoulder revealed that there was some bursitis,
16 which means swelling, and so if I -- if I recall correctly,
17 and I'm not sure because it's been a little while, I think
18 I had another cortisone shot to bring down the swelling.
19 And I might have had another visit with him. I'm not sure.

20 Q Did Dr. Fulton suggest any further operations for you
21 or what --

22 A When he looked at the MRI, he said -- well, I can't
23 say what ---

24 MR. LANG: Your Honor, objection to what he may or may
25 not have said.

1 A I'm sorry.

2 THE COURT: She can testify as to what treatment she
3 received after -- after that.

4 A So after the MRI, there was really no more treatment
5 except for the steroid shots that was recommended by Dr.
6 Fulton. He -- he -- he -- he done all he could. That's
7 what he did. He done all he could, and I didn't think that
8 was sufficient because I still wasn't able to move my arm
9 to -- to the extent that it should have been able to move.

10 Even before the surgery, I could move it. I had that
11 range of motion even though it was -- it was painful. But
12 now I have pain and lack of range -- range of motion.

13 Q Did you go back to your family doctor, Dr. Fuller,
14 about January 15, 2013 about this continuing issue with
15 your left shoulder?

16 A Yes because I -- it was no need to go back to -- to Dr
17 Fulton. He did all he could do basically, and the -- he --
18 I felt that -- I felt that he thought my -- I hope I'm
19 phrasing this right ---

20 MR. LANG: Objection as to speculation, Your Honor.

21 THE WITNESS: She said I could talk to my feelings.

22 MR. LANG: Your Honor, when she -- when she's
23 speculating to what the doctor may or may not have thought,
24 it's speculation.

25 THE COURT: You can -- you can talk about what you did

1 and you can talk about how you felt as a result of the
2 treatment, but you can't speculate as to what you think the
3 doctor might have felt.

4 A Well, I told the doctor -- can I say that?

5 THE COURT: Yes, ma'am.

6 A I told the doctor that -- you know, of course my arm
7 was moving. He -- he said it -- he -- well, all the
8 treatment he could do was done, and he explained to me what
9 he did.

10 I -- I want to back up a little bit because during the
11 post-operative, he explained what he did to me, and he -- I
12 have a wire mesh in my arm with a screw. That's why I had
13 the five incisions. I had five incisions because it was
14 more involved than -- than -- than was thought to be
15 involved.

16 The wire mesh is holding on the rotator ---

17 MR. LANG: Your Honor, can we approach?

18 THE COURT: Yes.

19 (Bench conference.)

20 Q All right. Mrs. Samuel, after you'd seen Dr. Fuller
21 in January, 2013, did he wind up referring you to Dr.
22 Jeffrey Guy of USC Specialty Clinics for a second opinion?

23 A Yes, he did.

24 Q So did you see Dr. Guy about February 21, 2013?

25 A Yes.

1 Q What were your complaints to Dr. Guy when you first
2 saw him?

3 A The same thing. I -- I took all my records from Moore
4 Orthopaedic, had them scanned in to Dr. Guy's office, and
5 the complaint was that I had a previous surgery and my arm
6 was not giving me full range of motion without pain; that I
7 have a lot of pain, and didn't have my full range of
8 motion.

9 Q So after you met with him, was a CT scan recommended
10 for your shoulders -- for -- for ---

11 A Yes.

12 Q --- further evaluation?

13 A Yes.

14 Q Did you get that CT scan on or about March 6, 2013?

15 A Yes.

16 Q And did you have a chance to go over some of those
17 results with ---

18 A Yes.

19 Q --- with Dr. Guy.

20 A I did.

21 Q Okay.

22 A He showed me the x-ray, the CT scan, and showed me
23 where there's a bone there that could -- well, it wasn't
24 shaved down during the first surgery and that's what was
25 preventing my ---

1 MR. LANG: Your Honor, the witness has moved into the
2 province of the doctor. I would object to any medical
3 testimony from this witness. We've gone beyond what her
4 impression is to medical testimony.

5 THE COURT: I'll sustain the objection to the extent
6 that it goes beyond what she of her own knowledge would
7 have.

8 Q So Mrs. Samuel, after going over the CT scan with Dr.
9 Guy, getting examined by Dr. Guy, did he recommend a second
10 surgery on your left shoulder?

11 A Yes, he did.

12 Q All right. What was your reaction after finding that
13 you needed a second -- second surgery to correct your
14 shoulder?

15 A I immediately broke down and cried.

16 Q Why is that?

17 A (Crying) 'Cause it was so -- so traumatic for me. I
18 didn't want to go through that again. All that physical
19 therapy and I couldn't do nothing. My whole life was
20 restricted, and I didn't want to go through it. So I
21 cried.

22 And I don't know, I can't say what he said, but let me
23 see how I can word this. He -- well, I felt better with
24 him because it wouldn't be as an intense surgery like the
25 first one in that the same incisions would be used for the

1 second surgery and it wouldn't be as bad of a surgery.

2 Q And did you have that second surgery on April the 12
3 of 2013?

4 A Yes.

5 Q Was that performed at Palmetto Health Baptist
6 Hospital?

7 A Yes.

8 Q And it was Dr. Guy that performed that surgery?

9 A Yes.

10 Q What was your experience going into that second
11 surgery?

12 A Nervous as usual. I mean, I -- I don't know who
13 wouldn't be nervous. I was nervous and -- but he -- well,
14 I continued to be comforted by my family and I knew it was
15 something I had to do unless I wanted to live with my
16 shoulder not being able to fully move. And I'm a very
17 active person. I like to play with my grandkids and I play
18 basketball, I throw balls with them; and I couldn't live
19 like that.

20 Q So you were basically willing to do whatever it took
21 to get back to good health in that shoulder ---

22 MR. LANG: Objection. Leading, Your Honor.

23 A Yes.

24 THE COURT: Overruled for the time being.

25 Q So after the surgery of April 2013, did you have

1 several follow up visits with Dr. Guy at his office, and
2 even into early 2014, regarding the shoulder?

3 A Yes. He -- he continued to monitor the swelling and
4 the -- and the scar tissue because that would build up in
5 the shoulder. It would get stiff from time to time. And I
6 had maybe one or two shots to keep down the swelling.

7 Q And did you continue the physical therapy as well
8 after that second surgery?

9 A I had intense physical therapy, but it wasn't as bad.
10 It was at Drayer's Center, which the doctor recommended
11 that center and ---

12 Q For physical therapy?

13 A Yes. And they -- they were a good place to go. They
14 didn't feel -- well, I felt like they didn't want you to
15 suffer pain at -- like people say "no pain, no gain." This
16 -- this physical therapist was not like that. They didn't
17 believe in hurting you. So it wasn't a bad experience
18 going to physical therapy after that surgery.

19 Q So after -- by early 2014, had the pain and the
20 stiffness in your left shoulder, that began to -- did it
21 begin to degree ---

22 A Yes.

23 Q --- decrease a great deal?

24 A Yes, it did. In fact, I got full range of motion and
25 I can use my arm. I mean, of course, in the winter time

1 any time you have a surgery somewhere, like myself, I have
2 stiffness and pain in that arm. And I'm probably going to
3 always have that.

4 Q Are you still treating today regarding that ---

5 A No.

6 Q After going through those -- the medical procedures,
7 I'm assuming there was some medical bills; is that right?

8 A Yes, in fact, I'm still paying on some of them myself.

9 A sheriff came to my house because --

10 Q Mrs. Samuel, I'd like to show you what's marked as
11 Plaintiff's Exhibit No. 2, which is a compilation of the
12 medical bills that you received.

13 A Okay.

14 MR. SALTZMAN: I'd like to offer them into evidence.

15 MR. LANG: Your Honor, we discussed it. We have no
16 objection at this time. I understand before it's
17 officially moved in, there may be some changes.

18 THE COURT: It's admitted.

19 MR. SALTZMAN: Thank you, Your Honor.

20 (Plaintiff Exhibit No. 2, medical bills, in evidence.)

21 Q Mrs. Samuel, you can flip those -- flip through those,
22 if you'd like. Those -- is that a compilation of your
23 medical bills that -- that you received throughout your
24 treatment?

25 (Brief pause as the witness looks through the

1 documents.)

2 A Is this in chronological order?

3 Q Not necessarily. I think it's done by provider.

4 A Okay.

5 (Brief pause continues.)

6 Q If you could verify those and we can discuss them --
7 the -- the totals and the breakdowns.

8 A I didn't see Dr. Fuller's bill in here. That's what I
9 was looking for as well.

10 Q Well, Mrs. Samuel, from your knowledge of all these
11 bills, did the total amount of medical bills amount to
12 \$107,100.55?

13 A Yes, it did.

14 Q And as far as a breakdown (clears throat) -- excuse me
15 -- of that amount, Dr. Fuller's bill came out to \$435; is
16 that right?

17 A Yes.

18 Q Then we've got the initial scans with Dr. Fuller from
19 Palmetto Health and Pitts Radiology. That came out to
20 \$1,019?

21 A Yes.

22 Q And the MRI you received on March 8, 2011, done at
23 Palmetto Health and read by Pitts Radiology, that came out
24 to \$4,808; is that right?

25 A Yes.

1 Q And the bills you got from Moore Orthopaedics, which
2 included treatment and surgery done by Dr. Burnworth and
3 Dr. Fulton, came out to \$24,556?

4 A Yes, it did.

5 Q And the first surgery that you received (clears
6 throat) -- excuse me -- at Providence Hospital, that came
7 out to \$15,296.19?

8 A Yes.

9 Q And your physical therapy that you received at
10 Carolina Physical Therapy, did that amount to \$8,749?

11 A Yes.

12 Q And for USC Specialty Clinics's bill where you got
13 treated by Dr. Guy and his staff, that was \$14,035.

14 A Yes.

15 Q And the MRI you received at Palmetto Health and by
16 Pitts Radiology on November 21, 2012, did that amount to
17 \$2,509?

18 A Yes.

19 Q And cat scan or CT scan you received by Palmetto
20 Health and Pitts Radiology on March the 6, 2013, did that
21 amount to \$3,943?

22 A Yes.

23 Q And the second surgery you received at Palmetto Health
24 you were billed \$25,981; is that right?

25 A Yes.

1 Q And finally, Drayer Physical Therapy, they billed you
2 \$5,768.96.

3 A Yes.

4 Q And that came out to a grand total of \$107,100.55.

5 A Yes, it did.

6 Q Now, before this accident ever happened, did you ever
7 have such pain in that left shoulder?

8 A I never experienced pain in my shoulder before the
9 accident.

10 Q And any pain you've had in your neck or your back
11 shortly after the accident, you have any of that just
12 before the accident?

13 A No, not just before the accident. In '09, when we had
14 our accident then, I had some minor pain and had a little
15 physical therapy for that, and that was it.

16 And at the time of this accident in 2011, I didn't
17 have any pain leading up to it that was in my shoulder. I
18 just had the general fibromyalgia pain.

19 And best way I can describe it is, as I said earlier,
20 a pain all over, aching pain. And sometimes it -- it could
21 be intense pain. Called it a "flare up," a fibromyalgia
22 flare up. And sometimes I would have flare ups, but other
23 than that, I didn't have any pain in my left shoulder.

24 Q After the accident, what -- what was the difference
25 like after that accident of -- of February 5, 2011?

1 A It was very bad. That's what led me to seek medical
2 treatment for my arm because after the accident, this pain
3 was something that I didn't have. I never had pain in my
4 shoulder. I did learn that there was some arthritis, but
5 everybody gets arthritis at a certain age. I mean, anybody
6 in here. That wasn't causing me any pain.

7 Q And leading up to the accident, did you have any need
8 for any type of corticosteroid injections?

9 A Oh, no, no.

10 Q But you did after the accident; is that right?

11 A Yes.

12 Q And as far as physical therapy, did you have any need
13 for physical therapy before the accident?

14 A No.

15 Q So you didn't need physical therapy 'til after the
16 accident ---

17 A After the accident, I had all this intense physical
18 therapy.

19 Q And was there any indication before the accident you
20 would have needed not one, but two surgeries in that left
21 shoulder?

22 A No.

23 Q That came out after the accident, right?

24 A Right. Correct.

25 Q So going through this whole ordeal, I know you touched

1 on it before, but this had a pretty good impact on your
2 life, correct? What were ---

3 A Yes, it has.

4 Q What were some of the things specifically that
5 prohibited you from doing as a result of the -- of the
6 injury to that left shoulder?

7 A Well, it -- it really took a whole year, almost two
8 years away from me. (Crying) I couldn't cook, couldn't --
9 I couldn't do my own hair. I grew up with four brothers.
10 I -- I'm self-sufficient. So I always took care of myself.
11 And I couldn't even get up out the bed by myself.

12 Q How 'bout getting dressed, what was that like?

13 A I couldn't do that. I needed help 'cause you have to
14 lift the arm up to get your clothes on. So I needed help.
15 Couldn't play with my grandchildren. I had a little baby
16 grandchild at that -- (crying) at that time.

17 Q I know you mentioned your figs. Do you have a fig
18 tree in your backyard?

19 A Yes. We have a large fig tree and every year my
20 husband and I either make fig wine or we make fig preserves
21 and we enter it into the fair for contest. And for two
22 years I haven't been able to do that.

23 Q You weren't able to pick figs.

24 A No. My husband picks them, but I haven't able -- been
25 able to make jam or -- or the wine with it even though he

1 picked them to eat. But ...

2 Q And I understand you had a couple of dogs, too, as
3 well.

4 A Yes. They passed away now, and that's why I was so
5 emotional talking about them.

6 Q Now, before the accident happened, did you and your
7 husband go on walks with the dogs?

8 A Yes, we would. And he would have one, and I -- I
9 would walk the other one, and I couldn't do that.

10 Q What type of dogs were they?

11 A American Staffordshire Terriers. Some people call
12 them "pitbulls," but mine were pure bred American
13 Staffordshire Terriers.

14 Q And were you able to walk them given the condition of
15 -- of your left shoulder after the accident?

16 A I couldn't walk them. Some days I couldn't even go
17 out and feed them.

18 Q Was there anything else, I mean, specifically that you
19 may have -- you were unable to do after ---

20 A Yes. I couldn't play with me grands. I love my
21 family and we -- they would come over almost every weekend,
22 play the WI games. I couldn't play the WI with them during
23 this -- this whole procedure, but later on I did try to
24 start back gradually after Dr. Guy's surgery to get my life
25 back.

1 Q Couldn't -- couldn't play basketball --

2 A No.

3 Q -- go swimming.

4 A No. And I had a membership at Drew Wellness Center.
5 Finally got that back, so I -- I actually -- I actually put
6 on a lot of weight. I weighed over 200 pounds during this
7 ordeal, but now I've lost 33 of those pounds and was able
8 to come off of two of my medications for diabetes. I was
9 on three and I'm off of two. I'm only on one now.

10 Q Now, from a physical and mental standpoint, you're
11 doing much better now compared to a few years ago.

12 A Yes. It's just hurting to recall what I -- I lost
13 going back through the ordeal. It's painful. (Crying) I'm
14 sorry.

15 Q Mrs. Samuel, my last -- my last question here is today
16 are you looking to be -- to be compensated for your
17 damages, for your pain and suffering that's -- that was
18 done ---

19 A Yes.

20 Q --- because of this automobile accident that was
21 caused by the Defendant?

22 A Yes. I feel I need to be compensated. I feel like
23 it's only fair. She was negligent. Her head was down.
24 She wasn't paying attention, and my arm got hurt from it.
25 So I feel like she needs to own up to her responsibility.

1 A I saw her coming fast.

2 Q And how far away is that slope from where you were?
3 How many car lengths?

4 A Probably one car length.

5 Q So --

6 A Maybe one and a half.

7 Q So looking at this picture, the slope that you're
8 talking about would really be about where the
9 photographer's standing?

10 A No.

11 Q Okay. It'd be further away?

12 A Yes.

13 Q And you saw her when she was on that slope however far
14 back that is.

15 A Yes.

16 Q Okay. But you would agree it's more than one car
17 length, isn't it?

18 A It would be then. Yes.

19 Q Do you remember how many car lengths that would be.

20 A I can't actually -- I would have to really think about
21 it because I'm not there at the scene right now. So I
22 didn't measure it and anything like that. But there is a
23 slope and if you need to --

24 Q And did you see her in your rearview mirror or ---

25 A Rearview.

1 Q --- or your driver's side door mirror?

2 A Rearview.

3 Q And if you were reaching to either take something out
4 or pick something up out of the bank window, what made you
5 look in the rearview window to see that?

6 A It wasn't a bank.

7 Q It's a -- yes, ma'am. The Rite Aid pharmacy. It's a
8 drawer like you would see at a bank, wouldn't you?

9 A That's what one of the doctor's thought.

10 Q Okay.

11 A That's why my treatment wasn't good.

12 Q Okay. Well, the pharmaceutical window, the drawer.
13 What do you want to call it, the drawer there?

14 A It's totally different than a bank drawer.

15 Q Yes, ma'am.

16 A It's deeper. It comes out longer, and the bank --
17 when you go to pay at a teller machine, that drawer's not
18 that far out and you can't reach your arm all the way in
19 like that. And in fact ...

20 Q Does -- does the drawer that we're talking about look
21 like Plaintiff's Exhibit 1?

22 A It's not all the way open, but yes.

23 Q Okay.

24 A That's the drawer.

25 Q It looks like that. This is, in fact, that drawer; is

1 it not?

2 A I can't testify to it if that's the drawer or not.

3 I'm not -- I don't know that picture. I mean --

4 Q This ---

5 A -- I don't know who took that picture. I don't know
6 where it was taken. There's several Rite Aid pharmacies in
7 Columbia.

8 Q Well, this is your exhibit, Exhibit No. 1. It says
9 "Plaintiff's Exhibit." Are you saying you're not sure if
10 that's the -- the actual drawer that you had the accident
11 in?

12 A I didn't take that picture.

13 Q Okay. Do you know one way or the other if Plaintiff's
14 Exhibit 1 is an accurate reflection of the drawer that you
15 were at when the accident happened?

16 A That's action -- that is a reflection of the drawer.

17 Q All right. Do you know if this is the drawer?

18 A No. I didn't take the picture.

19 Q If this is the drawer or not, it's still a drawer like
20 this, right?

21 A It's a Rite Aid drawer.

22 Q Okay. All right. And it comes out --

23 A Can I see that, please?

24 Q Yes, ma'am.

25 (Mr. Lang hands the photograph to the witness.)

1 Q Now that you've had a chance to take a good close look
2 at that, do you know if that's the same ---

3 A That's a Rite Aid drawer.

4 Q Is that the one that we're here about?

5 A I don't know if that's the one because, like I said, I
6 didn't take that picture. But it is a Rite Aid drawer.
7 And the reason why I know it has the basket inside of the
8 drawer, the basket that you put your medicine in and --
9 that she puts the medicine in and that they put the -- the
10 small clipboard in for you to sign for your release of the
11 medication.

12 Q If I refer to that as the "Rite Aid drawer," can we
13 agree we're talking about the same thing?

14 A Yes.

15 Q Okay. And I understand from your testimony that you
16 are reaching into the Rite Aid drawer, either to put
17 something in or take something out, when the accident
18 happened; is that correct?

19 A Correct.

20 Q Okay. And if you are putting something in or taking
21 something out, why would you be looking in your rearview
22 mirror?

23 A Because that's a habit I have. I've been in accidents
24 over the years and I mean, I just look in the rearview
25 mirror. I seen this car coming, so that caught my

1 Q And you didn't experience any immediate pain at the
2 accident scene, did you?

3 A Just emotionally shook up. That's painful.

4 Q Yes, ma'am, but we were talking about physical pain.
5 You didn't experience any physical pain at the time, did
6 you?

7 A No.

8 Q And do you recall getting out of your vehicle and
9 going to speak to Lynne?

10 A No, I did not. As I said, I pulled up out of the way.

11 Q Ma'am, I'm gonna show you what's been marked for
12 identified -- for identification purposes as Defendant's
13 Exhibit 5 and 6. Do you recognize the vehicle pictured in
14 5 and 6?

15 A This is my vehicle in front of my house.

16 Q Are -- are those photographs accurate reflections of
17 the way your vehicle looked after the accident?

18 A After the accident?

19 Q Yes, ma'am.

20 A I would say yes. They look like that right now.

21 Q Okay.

22 A That's my vehicle.

23 MR. LANG: Your Honor, Defendant's would move
24 Defendant's 5 and 6 into evidence.

25 THE COURT: Any objection?

1 MR. SALTZMAN: Take a look?

2 (Brief pause.)

3 A You said after the accident or after the car repair?

4 Q After the accident.

5 A Oh, no. That's not after the accident. That was
6 after it was repaired.

7 MR. SALTZMAN: Your Honor, we'll object because we
8 don't know when these photographs were taken, who took
9 them.

10 THE WITNESS: Uh-huh.

11 MR. LANG: All right.

12 By MR. LANG:

13 Q Mrs. Samuel, I understand this is your vehicle; is
14 that correct, 5 and 6?

15 A My attorney objected.

16 Q Yes, ma'am.

17 THE COURT: He can still ask you questions about them.

18 A What you say?

19 Q You -- you agree with me that Defendant's 5 and 6 are
20 pictures of the back of your vehicle; is that right?

21 A Yes.

22 Q Okay. And what part of your vehicle got damaged?

23 A The rear end.

24 Q The right hand side? The middle? The left hand side?

25 A I can't recall actually. I didn't -- I didn't get out

1 back to the jury room at about 2:20 p.m., and when you
2 report back at that time, we should be ready to continue
3 on. Have a good lunch and we'll see you back at 2:20.
4 Thank you.

5 (The jury exits at 12:58 p.m.)

6 THE COURT: Before -- Mr. Saltzman, before you
7 completely close, were there any additional exhibits that
8 you need to have introduced or marked at this time? Other
9 -- I mean, those will be Court's exhibits, but I didn't
10 know whether you had any others that you intended to
11 introduce.

12 MR. SALTZMAN: As far as any other exhibits, no, Your
13 Honor.

14 THE COURT: Okay.

15 MR. LANG: Well, Your -- Your Honor, we did discuss
16 the medical records attached to the depositions. I don't
17 know if you're still planning on doing it -- I just didn't
18 want -- my understanding was we have agreed for Fuller's
19 notes for Fuller and Guy's notes for Guy. Is that still
20 your intention to do that?

21 MR. SALTZMAN: Yes.

22 MR. LANG: And so -- aside from what we'd already
23 agreed to, Your Honor, is all ---

24 THE COURT: Yeah. But they just need to be -- we need
25 to get them and mark them separately for purposes of this

1 numbers. You're going to have to use different numbers.

2 MR. SALTZMAN: Okay. So you're just saying just put
3 the stickers over the ---

4 THE COURT: Uh-huh.

5 MR. SALTZMAN: --- exhibit -- I guess, copy of the
6 exhibit --

7 THE COURT: Exactly.

8 MR. SALTZMAN: -- rather than place it on the exhibit
9 sticker on the originals in this transcript.

10 THE COURT: Yes.

11 MR. SALTZMAN: That works for me.

12 THE COURT: And if -- and you can just pass those up
13 to the Court Reporter. Those will be Court's exhibits.

14 MR. SALTZMAN: Yes, thank you.

15 THE COURT: Are there motions?

16 MR. SALTZMAN: No motions from the Plaintiff, Your
17 Honor.

18 MR. LANG: On behalf of the Defense, Your Honor, we
19 have some.

20 THE COURT: Yes, sir.

21 MR. LANG: First we would move for a directed verdict
22 in favor of the Defendant on the grounds that the evidence
23 and testimony presented to the jury would not find -- or
24 would not allow a reasonable jury to find in favor of the
25 Plaintiff on either negligence, proximate cause, or

1 damages, which I'm sure is respectfully denied.

2 However, more specifically, Your Honor, we would move
3 for a directed verdict on the grounds of punitive damages.
4 There's been no testimony that would lead the jury to find
5 in favor of the Plaintiff on punitive damages. There was
6 no testimony of any kind of gross or wildly negligent
7 behavior or anything of that nature.

8 Do you want me to handle one at a time or go all the
9 way through them, Your Honor?

10 THE COURT: You're right. I would deny the first one.
11 I -- I think that the -- you know, there's obviously
12 evidence there from which the jury could make their
13 decision. And so I'm going to send the negligence,
14 proximate cause, and damages to the jury for their
15 determination.

16 What about punitive damages?

17 MR. SALTZMAN: I believe Mrs. Samuel did testify, as
18 far as the factual situation, that she was sitting in the
19 Rite Aid pharmacy drive through where she witnessed a -- a
20 vehicle coming in from behind her where the Defendant in
21 the case may have been texting or using her phone and just
22 simply disregarding the -- the laws of -- of the road.

23 I believe Mrs. Samuel also testified that the -- the
24 law enforcement officer that came on the scene issued a
25 citation to the Defendant. This type of reckless behavior

1 could possibly lead to punitive damages.

2 MR. LANG: Well, Your Honor, first of all, she didn't
3 -- she said she wasn't still looking at them when the
4 accident happened. So we don't know if -- if the -- the
5 driver was actually looking down at the time of the
6 accident. It's pure speculation that she was texting,
7 which she admitted.

8 Your Honor, the fact that the Defendant may or may not
9 have been given a ticket does not necessarily mean
10 anything. It'd just been the officer's opinion. We don't
11 know -- there's been no testimony as to what happened to
12 the ticket that did, in fact, get issued.

13 On top of that, we're talking about a private
14 driveway. So any of the statutes applying to a controlled
15 access highway would not apply onto private property, Your
16 Honor.

17 And so once again there's really nothing to go to a
18 jury on a negligence per se argument or even if it's
19 anything other than an accident, Your Honor, which would
20 give rise to actual damages, but not necessarily punitive
21 damages.

22 (Brief pause.)

23 MR. LANG: Likewise, Your -- Your Honor, there's --
24 unless the Defendant received a ticket, and either pled
25 guilty or was actually tried on the ticket, a jury

1 shouldn't even hear about a ticket, a citation, or a simple
2 nolo or just paying of the ticket. So the fact that it
3 came out at all, if it did, would be inappropriate and not
4 for the jury's consideration.

5 (Brief pause.)

6 MR. SALTZMAN: If -- if I may, Your Honor, in -- in
7 addition to the Defendant's deposition testimony, she said
8 the other side -- the Defense's side of the story here is
9 the Defendant apparently was in -- in her vehicle with her
10 sister as they were singing, laughing, and tickling each
11 other while -- while the -- while she was operating the
12 motor vehicle.

13 While that may have been offered in the Plaintiff's
14 side of the case, I think it might be premature to
15 disregard the punitive damages argument that -- that we're
16 bringing here because, what I understand, the Defendant
17 both putting -- the Defense will be putting up the
18 Defendant as a witness.

19 MR. LANG: Your Honor, if the Court -- if -- to the --
20 to the extent that the Court wants me to respond to that,
21 right now the Court's decision would be on the evidence
22 provided to this point, whether it supports a charge of
23 punitive damages.

24 If later testimony then allows for them to move to
25 have it reinstated, that would be, of course, a time for

1 the Plaintiff to make a motion at that time.

2 (Brief pause.)

3 THE COURT: There is -- there's a statutory provision
4 that talks about both the use of accident reports and, I
5 believe, whether tickets were issued to individuals, that
6 that can't be deter -- can't be used as -- to determine
7 liability in a civil case. And when I find that statute
8 ...

9 MR. LANG: I know there's an evidentiary rule, Your
10 Honor, that says that the police report can't come in. I
11 don't know if that addresses it as well.

12 THE COURT: The -- there is -- there is an
13 evidentiary rule, but there is also a State statute that
14 specifically says that.

15 And so just to be clear, whether or not anyone was
16 given a ticket by a police officer at the scene is not
17 evidence of liability and can't be used as evidence of
18 liability in the case. I will continue to -- to look for
19 that. Okay.

20 MR. LANG: And Your Honor, in this case we're -- we've
21 admitted simple negligence.

22 THE COURT: I -- I understand that, and I -- and I
23 think -- the -- the question -- the question for me is -- I
24 -- I think it is speculation as to what she was doing.

25 There was testimony that her head was down, and so I -

1 - and I think that goes to the -- the negligence. I -- I
2 guess an argument could be made that -- that it is -- there
3 has to be -- in order to get -- to send punitives to the --
4 to the jury, it has to be willful, reckless, wanton
5 conduct. That's a conscious disregard of the Plaintiff's
6 rights, and so -- and it has to be established by clear and
7 convincing evidence.

8 So I would say, at this particular point, there is --
9 there is some evidence from which a jury could make that
10 decision. And so I'm -- I'm gonna -- I'm gonna let that
11 particular issue on -- on that point only, go to the -- to
12 the jury at this particular point.

13 The jury will then have to determine -- remember I--
14 I'm only concerned with the existence, not with the weight.
15 And so the jury will have to determine whether it's clear
16 and convincing and whether it's a conscious disregard of --
17 of the Plaintiff's rights, that it's done with a
18 consciousness of wrongdoing, and all of those things that -
19 - that they'll have to consider.

20 I understand that simple negligence is
21 inattentiveness, and so -- and that that was admitted; but
22 whether the conduct rises to clear and convincing that is
23 willful, reckless, and wanton is a -- is a jury question.
24 So -- but specifically, information could not be used that
25 it is -- that -- that a ticket was given by the police

1 officer.

2 And to the extent -- and -- and I had some question in
3 my mind as whether, on private property, police would even
4 give a ticket. But the statutes require -- the State
5 statutes, if you're trying to rely on the State statute,
6 requires that it has to be on a public -- public roadway,
7 and so the rules of the road apply on the public roadway.

8 So I'm not sure that you can argue on that basis. And
9 I haven't heard you argue on that basis that that's why
10 you're seeking punitive damages. So I won't let it --
11 allow it on that basis either.

12 MR. LANG: And Counsel won't be allow -- allowed to
13 talk about the existence or non-existence of the ticket.

14 THE COURT: Right. No ticket.

15 MR. LANG: Your Honor, we'd also move for a directed
16 verdict as to any claims for future medical, future
17 treatment, future pain and suffering, anything of that
18 nature. There's been no testimony that would lead a
19 reasonable jury to find in favor of the Plaintiff on any of
20 that.

21 Dr. Fuller testified just now that he hasn't -- he
22 hasn't treated her, isn't still treating her for any left
23 shoulder pain.

24 There's really been no discussion by either Mrs.
25 Samuel or either of the doctors about neck and back pain,

1 A I do.

2 Q And where do you work?

3 A Department of Juvenile Justice.

4 Q And do you -- does your family also live here in
5 Columbia?

6 A The majority.

7 Q Now, were you involved in an accident back February 5,
8 2011?

9 A Yes, sir, I was.

10 Q And where were you coming from that day?

11 A I was coming from home.

12 Q And where is home? What part of town?

13 A At that time, I was on Broad River side, by the St.
14 Andrews branch library.

15 Q And where -- where were you going that day?

16 A Going to pick up my sister's prescription.

17 Q And is that at the Rite Aid we've been talking about
18 the last day or so?

19 A Yes, sir.

20 Q Is that -- had you been there before?

21 A Yes, sir.

22 Q Was that an area that you were familiar with?

23 A Yes, sir.

24 Q And at that time, how old was your sister?

25 A Seventeen. She -- she was 17 going on 18.

1 Q And how -- tell the jury how the accident happened.

2 A Basically, we were pulling -- I pulled into the
3 driveway. I didn't put the car in park, but I had my foot
4 on the brake.

5 So we were sitting there waiting to pick up a
6 prescription, and what had happened was before we got there,
7 I -- I tickled my sister. I did. And so when we got to the
8 -- when we got to Rite Aid and I did stop behind Mrs.
9 Samuels [sic], my sister startled me. I guess it was in
10 retaliation for me tickling her, so she started to tickle me
11 back. So as I'm waiting and my foot on my the brake, my
12 sister says, "Ah," she tickles me; and then, when that
13 happened, I jumped and took my foot off the brake and then
14 that's when my car impacted with Ms. Samuel's car.

15 Q Now, when you came to a complete stop behind Mrs.
16 Samuel's car, how far was that?

17 A Not that far. I can see -- because my dad always told
18 me to park -- make sure I could see the tires behind
19 somebody, so I could still see her tires. So I wasn't that
20 close, but I wasn't that far at the same time.

21 Q Now, did you have a phone with you that day?

22 A Yes, I did have my phone.

23 Q At the time of the accident or when you were pulling in
24 into the Rite Aid parking lot, were you on your phone?

25 A No, sir.

1 Q When -- when you entered the Rite Aid parking lot and
2 as you approached the -- the rear of Ms. Samuel's vehicle,
3 were -- where were you looking?

4 A Straight ahead.

5 Q Lynne, I'm going to show you what's previously marked
6 as Defendant's Exhibit 1, 2, 3, and 4.

7 A Okay.

8 Q Do you recognize the vehicle pictured in those
9 photographs?

10 A Yes, sir.

11 Q What -- what -- whose vehicle is that?

12 A My mom's.

13 Q Is that the vehicle you were driving on the day of the
14 accident?

15 A Yes, sir.

16 Q And do those four photographs, Defendant's 1, 2, 3, and
17 4, accurately reflect the way your mother's vehicle looked
18 after the accident?

19 A Yes, sir.

20 Q Thank you, ma'am.

21 MR. LANG: At this time, Your Honor, we would --
22 Defense would move Defendant's 1, 2, 3, and 4 into evidence.

23 MR. SALTZMAN: Your Honor, the Plaintiff objects to
24 these photos. Don't know who actually took these photos,
25 when they were actually taken, where they were actually

1 taken.

2 MR. LANG: Your Honor, the question as to evidence is
3 whether they are -- what they're of, which has been
4 identified, and whether or not they're fair and accurate
5 representations of what they show.

6 And the question under oath has been answered "yes."
7 It's relevant evidence and we would ask that it be admitted.

8 THE COURT: And again, the -- the question to the
9 witness was ...

10 MR. LANG: Are those a fair and accurate representation
11 of the way the vehicle looked after the accident? And I
12 believe the answer was "yes."

13 THE COURT: I'll overrule the objection.

14 MR. LANG: Thank you, Your Honor.

15 THE COURT: They're admitted.

16 (Defendant's Exhibit Nos. 1, 2, 3, and 4, photos, in
17 evidence.)

18 BY MR. LANG:

19 Q Lynne, while you -- while you were out there, were you
20 in a position to see the rear of Mrs. Samuel's vehicle?

21 A Yes, sir.

22 Q I'm going to show you what's been previously marked for
23 identification as Defendant's Exhibit 5 and 6.

24 A Okay.

25 Q Do you recognize the vehicle shown in those two

1 photographs?

2 A Yes, sir.

3 Q And what -- what vehicle is shown in those two vehicles
4 [sic].

5 A The Chevy Impala that Ms. Miriam was driving.

6 Q And those photographs, are they fair and accurate
7 representations of the way Mrs. Samuel's vehicle looked after
8 the accident?

9 A Yes, sir. 'Cause you -- I can actually still see the
10 scrape ---

11 Q Well, just hold on just a second. So these are fair
12 and accurate representations of the way Mrs. Samuel's vehicle
13 looked following the accident?

14 A Yes, sir.

15 MR. LANG: At this time, Your Honor, Defense would move
16 5 -- Defendant's 5 and 6 into evidence.

17 THE COURT: Any objection?

18 MR. SALTZMAN: Your Honor, same objection as before.
19 We don't know who took these photographs and when they were
20 taken.

21 THE COURT: And again, I'll -- I'll overrule the
22 objection. Those are questions that you can ask on cross-
23 examination if you choose to do so. But the -- the
24 question's whether or not they are fair and accurate
25 depictions of what the vehicle looked like at the time --

1 after the accident, and you -- and you can ask her any
2 questions about what she observed or anything related to
3 those. So I'll admit them.

4 MR. LANG: Thank you, Your Honor.

5 (Defendant's Exhibits Nos. 5 and 6, photographs, in
6 evidence.)

7 BY MR. LANG:

8 Q Lynne, I didn't mean to cut you off earlier. You were
9 -- you were about to say something to the jury about No. 6
10 there?

11 A Yes, sir. The reason ---

12 Q Don't forget to show it to them. Hold it up so they
13 can see it.

14 A Okay. The reason I could recognize it is because when
15 my car did impact her, it scraped her bottom rear bumper and
16 that's the car paint from my mom's car that I remember seeing
17 from when I bumped into her.

18 Q Is that paint red?

19 A Yes, sir.

20 Q Is that what you're point to?

21 Now, afterwards did you have any conversation with Ms.
22 Samuel?

23 A Yes, sir.

24 Q And how did that come about?

25 A So when our cars impact, she -- she got out her car.

26 She actually beat me out my car because I was coming to check

1 on her, but she actually came to our car.

2 So I got out the car. Of course, apologized, profusely
3 saying how sorry I was, it was an accident, I didn't mean to.
4 And she was saying, "It's okay, It's okay. Are you hurt?" I
5 wasn't hurt. I told her that -- that we weren't.

6 And then I asked her same thing, "Are you hurt, ma'am,
7 because I really didn't mean to." She said, "No, I'm fine,
8 you know, it's good thing that we're all -- that we're not
9 hurt."

10 Q Now, did you call anyone from the scene?

11 A I called my mom.

12 Q And did your mom come to the scene?

13 A Yes, sir.

14 Q Could you see whether or not your mother ever had any
15 conversation or spend any time with Ms. Samuel?

16 A Yes, sir.

17 Q And were they together for awhile?

18 A Yes, sir.

19 Q And when they were talking, was that Ms. Samuel in her
20 car or was she out of her car?

21 A She was at her car -- she was at our car -- well, in
22 the middle of her car and our car.

23 Q And at any time while you were out there observing Ms.
24 Samuel, did she ever give any indication that she was injured
25 in any way?

1 A No, sir.

2 Q While you were out there, was Rite Aid open?

3 A Yes, sir.

4 Q Did it stay open the entire time?

5 A Yes, sir.

6 Q Did an ambulance come to the scene?

7 A No, sir.

8 Q Excuse me. After the -- the accident did Ms. Samuel
9 drive her vehicle away from the accident?

10 A Yes, sir.

11 Q Were both vehicles driveable?

12 A Yes, sir.

13 Q And when y'all left, did -- was the Rite Aid still
14 open?

15 A Yes, sir.

16 Q Before you left, were you able to go inside and get
17 your prescription -- or your sister's prescription?

18 A My mom went and got the prescription. I wasn't the one
19 that got it.

20 MR. LANG: Request permission to publish the
21 photographs to the jury, Your Honor.

22 THE COURT: Yes, sir.

23 Q Lynne, I have no further questions. Please answer any
24 other questions as the Court may direct.

25 A Okay.

1 THE COURT: Any cross?

2 MR. SALTZMAN: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. SALTZMAN:

5 Q Miss Johnson, do you admit responsibility for causing
6 this accident?

7 A Yes, sir.

8 Q When the cars hit each other, did they bounce off of
9 each other?

10 A My car -- because I did hit her rear bumper, my car did
11 bounce back off hers. (Indicates) So this is her car, this
12 is my car. This her rear bumper right here, this is mine.
13 So when I hit her, my car bounced off and came back.

14 Q Okay. And you said a moment ago that you had lifted
15 your foot off the brake and that you rolled into Mrs. Samuel;
16 is that your testimony?

17 A Correct.

18 Q So when you lifted your foot of the brake, how far did
19 you -- did you roll?

20 A Not -- really not that far. It's kind of hard to put
21 how close I was because I really wasn't that close, but I
22 wasn't that far. But it -- it was to the point where when I
23 did lift my foot off the brake, my car did impact hers.

24 Q Okay. But to the extent that they -- your car bounced
25 off of Mrs. Samuel's.

1 A I wouldn't really even say it really like -- it was
2 like a bounce back. It was more like when my car touched
3 hers, of course my car did go back; but I wouldn't say it was
4 like a real hard bounce, if that makes sense.

5 Q All right. So you must have been rolling for quite
6 awhile if you just lifted your foot off the brake and that's
7 what you're claiming.

8 A No, sir.

9 Q You also -- you mentioned a moment ago that -- that you
10 had communication with Mrs. Samuel at the scene of the
11 incident?

12 A Yes, sir.

13 Q Because in your deposition testimony you were asked, I
14 guess, whether you or your mother had any communication at
15 that time with the Plaintiff and -- and was asked -- and
16 then, let's see, your response (as read): "When my mom came
17 ..." -- I'm trying to ask questions -- you said (as read):
18 "No, my mom did. I didn't. I stayed in the car."

19 So which one was it: Did you speak with Mrs. Samuel or
20 did you not?

21 A I did speak with Mrs. Samuel. As soon as our cars
22 impacted, she came and approached me and my sister. Now,
23 when my mom came, I got back in the car because my mom told
24 me -- she said, "Lynne, get back in the car." From that
25 point on, her and Mrs. Samuels [sic] had conversations.

1 Q But in your deposition, you said that you did not speak
2 with Mrs. Samuel.

3 A Don't remember that. But I did have a conversation
4 with Mrs. Samuels.

5 MR. SALTZMAN: I have no further questions, Your Honor.

6 MR. LANG: No further questions for this witness, Your
7 Honor.

8 THE COURT: You may step down. Thank you.

9 (The witness complies.)

10 MR. LANG: Your Honor, at this time the Defense rests.

11 THE COURT: Is there anything in rebuttal testimony
12 from the Plaintiffs?

13 MR. SALTZMAN: No, Your Honor.

14 THE COURT: Then at this time, ladies and gentlemen,
15 you have now heard all of the evidence that has to be
16 presented in this matter. Given the hour, we would not be
17 able to start this afternoon because of prior work
18 commitments. And so I'm going to ask that you report
19 tomorrow morning at 9:30.

20 When you report tomorrow morning at 9:30, we will be
21 ready to hear the closing arguments of the attorneys. And
22 then once they've made those closing arguments, then I will
23 instruct you on the law and you may begin your deliberations
24 at that particular point.

25 Please remember all the instructions that I've given to

1 evening and we'll see you tomorrow morning.

2 (Jury exits at 3:33 p.m.)

3 THE COURT: Are there any motions at this time?

4 MR. SALTZMAN: No, Your Honor.

5 MR. LANG: Your Honor, at this time, the Defense would
6 renew motions made at the end of the Plaintiff's case,
7 specifically those as to charging the jury with punitive
8 damages.

9 THE COURT: You know, I -- I think it's a close call.
10 But I think that they're -- again, I'm only concerned with
11 the existence of the evidence, not with the weight. And so I
12 -- I think that that -- that is a jury question for them to
13 have to decide.

14 MR. LANG: Yes, Your Honor. Thank you.

15 THE COURT: And so I'll deny that motion.

16 MR. SALTZMAN: Thank you, Your Honor.

17 THE COURT: At this time what I'd like to do is go over
18 what I intend to instruct the jury tomorrow. I'll give them
19 my charge and then see if there's anything -- I think -- I've
20 -- I've looked at the charges that you all have given to me.
21 I think I've -- I will incorporate what's in there. It may
22 not be in the exact same language, but I will incorporate the
23 things that you've requested.

24 I will charge the jury that they have to determine the
25 facts based upon the evidence. In order to do that, they

1 have to judge the credibility of the witnesses. They may
2 also consider whether the witness's testimony has been
3 challenged or impeached.

4 I will charge them on expert witnesses. Then I will
5 charge them when a -- a professional -- when an expert
6 renders an opinion as to the cause of an injury, the witness
7 must state that, in his or her professional opinion, the --
8 the injuries were, to a reasonable degree of professional
9 certainty, most probably caused by the event in question.
10 It's not necessary that the experts use the words "most
11 probably." It's enough for the expert to state that, in his
12 or her professional opinion, that the Defendant's negligence
13 was most likely one among the possible causes of the
14 Plaintiff's injuries.

15 I'll charge them on burden of proof. I'll charge them
16 on the elements of a negligence claim, being negligence the -
17 - damages and proximate cause.

18 I will charge the jury that the Defendant has admitted
19 that she was negligent or careless in this case; and
20 therefore, when negligence is admitted, the Plaintiff is
21 entitled to a verdict in some monetary amount for actual
22 damages unless the Plaintiff fails to prove causation and
23 damages. So unless there's absolutely no proof of damages
24 that are proximately caused by the Defendant's negligence,
25 the Plaintiff would be entitled to a verdict based upon the

1 laws I instruct you.

2 I'll charge them on proximate cause -- is something
3 that produces a chain of events which in the end brings about
4 the injury. It's a direct cause of the injury. The mere
5 fact that physical problems occurred after an incident is not
6 sufficient by itself to show that the incident caused the
7 physical problems.

8 The Plaintiff must establish a natural and obvious
9 relationship between the incident and the physical problems
10 and that the injuries resulted from the Defendant's
11 negligence in causing the accident.

12 The Plaintiff has to prove that the Defendant's
13 negligence in causing the accident proximate -- proximately
14 caused the Plaintiff's injuries. In order to do that, they
15 have to first prove causation in fact. And then I -- I'll
16 explain that as well as then Plaintiff also has to prove
17 legal cause.

18 I will then charge them on damages for someone whose
19 been physically injured. That would include pain and
20 suffering, both past and present, as well as mental anguish,
21 physical condition. You can also take into consideration
22 reasonable and necessary medical expenses.

23 I'll charge them on pain and suffering, that they have
24 the authority to make that decision. There's no definite
25 stand about which to compensate someone for pain and

1 suffering. The law requires that when -- in considering pain
2 and suffering, that they use calm and rational judgement, and
3 any amount of damages that they award will be fair and just
4 and reasonable.

5 Same with mental suffering. That would include
6 apprehension, anxiety, fright. Those are proper
7 psychological trauma. Embarrassment, humiliation, those are
8 all elements of mental suffering.

9 Again, they have to make that authority -- they make
10 that decision based upon their authority to do so with calm
11 and rational judgement and based upon the evidence.

12 Loss of enjoyment of life is separate and apart from
13 pain and suffering. It's to compensate someone for the
14 inability -- for the limitations that are placed upon the
15 persons ability to participate and derive pleasure from the
16 normal activities of life, including the inability to pursue
17 any recreational talents -- interests or talents or hobbies.

18 With medical expenses, it could be medical, hospital,
19 or other healthcare costs. The Plaintiff can only recover
20 the sum that they determine is reasonable and necessary.
21 While the amount that's actually charged and paid may be
22 considered, they're not bound by that amount. The -- they
23 must find only a sum that's reasonable and necessary to treat
24 any injuries that are directly and proximately caused by the
25 Defendant's negligence.

1 The burden is on the Plaintiff to show that the medical
2 treatment that she received was reasonable -- necessary --
3 necessary for proper treatment of injuries, and that the
4 amount that's charged was reasonable.

5 I will also charge them on pre-existing medical
6 conditions. The Defendant claims at the time of the incident
7 that the Plaintiff states that she -- or the Plaintiff states
8 that she had -- or was suffering from existing physical
9 conditions. Even if you find that to be so, the mere fact of
10 an existing defect or condition would not prevent the
11 Plaintiff from being able to recover.

12 Under our laws, one who negligent -- negligently
13 injures another is responsible for all the effects which are
14 related to the incident. That's true no matter what the
15 Plaintiff's physical condition was when the incident
16 occurred. The Defendant takes the Plaintiff as she finds him
17 -- finds her, whether that's in good health, poor health, or
18 somewhere in between.

19 It may seem that if the Plaintiff had been in good
20 health the injury would not have happened or perhaps it would
21 have been easier to cure,, but that in no way affects the
22 Defendant's liability. If the presence of a disease or an
23 existing physical condition aggravates and prolongs the
24 injury which in turn increases the amount of the damages,
25 then the Plaintiff is entitled to recover the increased

1 amount.

2 If you find that the Plaintiff had the existing -- an
3 existing physical defect or impairment before the accident,
4 the amount that you award for damages should not include
5 damages for the existing impairment. The Defendant is only
6 liable for the worsening of the condition, not for the
7 condition itself or for it's natural worsening.

8 I will also then charge them on punitive damages. For
9 punitive damages, they're designed to compensate -- to punish
10 the Defendant for extraordinary and outrageous misconduct and
11 to prevent the defendant and others from committing the same
12 or similar acts in the future. Punitive damages can only be
13 awarded when the conduct is something more than negligence.
14 It must be willful, wanton, or reckless -- I'll define those
15 terms -- ultimately meaning that there was a conscious
16 failure to exercise due care or a conscious indifference to
17 the rights and safety of others or a reckless disregard
18 thereof.

19 In other words, while a negligent person is one who
20 acts carelessly, a person whose behavior is willful,
21 reckless, or wanton is not only careless in their actions,
22 but they are aware that they're being careless.

23 In considering punitive damages, they may take into
24 account certain elements. They can consider the character of
25 the wrong, any penalty imposed should take into account the

1 reprehensibility of the conduct, the harm that's caused, the
2 Defendant's awareness of a conducts wrongfulness, the
3 duration of the conduct, and any concealment. Thus any
4 penalty imposed should bear a relationship to the nature and
5 extent of the conduct and the harm caused, including the
6 actual damages award made by you, the jury.

7 Secondly, the penalty should take into account as -- as
8 a mitigating factor, any other penalty that may be imposed
9 for -- for which -- for the conduct, including any criminal
10 or civil penalty for the same conduct.

11 And finally, any award of punitive damages must be
12 limited to punishment and thus must -- may not effect
13 economic bankruptcy. To this end, the Defendants ability to
14 pay any punitive damages award should be considered; however,
15 economic bankruptcy is not a bar to punitive damages.

16 The verdict form would be (as read): "We the jury
17 unanimously find for the Plaintiff." A line for actual
18 damages, a line for punitive damages -- excuse me-- or (as
19 read): "We find for the Defendant."

20 Is there -- is there anything further from the
21 Plaintiff?

22 MR. SALTZMAN: Nothing further, Your Honor, and I agree
23 with all of those charges.

24 THE COURT: Anything further from the Defendant?

25 MR. LANG: Your Honor, we'd submitted a Defense request

1 charge 1, 2, and 3. I noticed specifically you read one of
2 them. I said -- I think you said that they were incorporated
3 in some way, but we would ask that they be charged as
4 submitted as accurate statements of the law and ---

5 THE COURT: Oh. And I did -- I did tell them that with
6 the damages, the Plaintiff doesn't have to prove them to a
7 precise mathematical certainty -- certainty, but she has to
8 put forth enough evidence that would enable a jury to -- to
9 be able to determine an amount that's fair and just and
10 reasonable. It cannot be left to conjecture, guess, or
11 speculation. That's your charge No. 1 basically.

12 MR. LANG: Yes, ma'am. I just didn't hear -- just
13 didn't hear that earlier.

14 THE COURT: Your charge No. 3 I think I've already
15 included. That's the one about the mere fact that physical
16 problems occurred.

17 And your charge No. 2 is -- proximate cause is
18 something that brings about the natural -- that produces a
19 natural chain of events which in the end brings about the
20 injury.

21 (As read) "If the injury could have happened as a
22 natural and probable consequence, even in the absence of the
23 alleged breach, then the Plaintiff has failed to demonstrate
24 proximate cause."

25 That comes out of Ralph King Anderson's request to

1 charge. I'll look at that. That language is not one that I
2 usually use, but I'll -- I'll -- I'll look at again at what
3 exactly my charge says and see if -- if the idea's
4 incorporated.

5 MR. LANG: Thank you, Your Honor. Appreciate it.

6 THE COURT: Anything else?

7 MR. LANG: None from the Defense, Your Honor.

8 MR. SALTZMAN: Nothing from the Plaintiff, Your Honor.

9 MR. LANG: Other than I think counsel and I still need
10 to go over those medical records of ---

11 THE COURT: Yes.

12 MR. LANG: --- Guy and --

13 MR. SALTZMAN: Yes.

14 THE COURT: And if you will try to do that so that you
15 all can come to an agreement or that the Court Reporter can
16 get stickers on them --

17 MR. LANG: Exactly.

18 THE COURT: -- so we don't have to do that tomorrow
19 morning. Y'all have got a little time to do that. If y'all
20 look at them.

21 MR. LANG: Before everybody scattered, I wanted to ---

22 THE COURT: Yes. Please do before everybody scatters
23 because tomorrow morning I -- trying to get us started on
24 time.

25 MR. LANG: Well, I'd like to think we can be big boys

1 and girls and take care of that without supervision.

2 THE COURT: Yeah. I just want to make sure that Bonnie
3 gets stickers on them.

4 (Off the record at 3:48 p.m.)

5 DAY 4

6 (On the record at 9:34 a.m.)

7 THE COURT: Good morning again. You have a copy of the
8 verdict form. Is there anything that I need to change or
9 revise on the ...

10 MR. SALTZMAN: Looks good to the Plaintiff, Your Honor.

11 MR. LANG: None from the Defense, Your Honor, subject
12 to our prior objections as to punitive.

13 THE COURT: Yes, sir. And I think I told Mr. Lang that
14 I would look at his Defense -- Defendant's request to charge
15 No. 2, the additional language under proximate cause.

16 And I've reviewed what I -- what I would intend to
17 charge the jury, and I think that sufficiently covers it.
18 And so I will decline to -- to charge the additional
19 sentence, the last sentence of your request to charge.

20 MR. LANG: Yes, Your Honor. Thank you.

21 THE COURT: Is there anything we need to take up before
22 we bring the jury in?

23 MR. SALTZMAN: Nothing from the Plaintiff, Your Honor.

24 MR. LANG: Surprisingly, nothing from the Defendant,
25 Your Honor.

1 THE COURT: All right. Then I guess we are ready to
2 bring the jury in.

3 (Jury enters at 9:35 a.m.)

4 THE BAILIFF: The jurors are seated, Your Honor.

5 THE COURT: Good morning, ladies and gentlemen.

6 Jurors: Good morning.

7 THE COURT: At this time we are now ready to hear the
8 closing arguments of the attorneys. As I indicated to you
9 earlier, the closing arguments are not evidence; but what
10 they will do is they will pick out portions of the evidence
11 that you've heard and will make arguments to you in an effort
12 to try to sway you to find the facts in accordance with their
13 view of what occurred. So I ask that you listen carefully to
14 those closing arguments.

15 Sometimes they cause you to think about the evidence in
16 a different light or they may raise questions that you'll
17 want to discuss among yourselves when it's time for you all
18 to begin your deliberations.

19 Once they've made those closing arguments, then I will
20 instruct you in the law that's to be applied and then you may
21 begin your deliberations at that particular point.

22 Mr. Saltzman.

23 MR. SALTZMAN: Thank you, Your Honor.

24 Good morning, everyone.

25 JURORS: Good morning.

1 MR. SALTZMAN: First of all, I'd like to thank all of
2 you for being here and for the service that you've done in
3 serving as our jurors; and also, probably most importantly,
4 for paying attention throughout this whole trial. I know it
5 took a little bit of time, but I -- we certainly appreciate
6 your patience.

7 Now, as -- as we -- I do want you to understand that
8 the decision you'll be making here today does have an impact
9 on the community. The way this case is decided will help
10 shape and mold future cases that might be similar to this.
11 So it does have an impact on -- on your community.

12 That being said, when we're done with our closing
13 arguments here, you're gonna get some jury instructions from
14 the judge about how -- on the law and how -- things you need
15 to take into account when you're making your decision.

16 The judge is going to explain to you how the Plaintiff,
17 that's our side, has the burden of proof in showing our case.
18 And we have to prove that by something called the
19 "preponderance of the evidence." And to try to illustrate
20 what proving a case by the preponderance of the evidence is
21 you may have seen Lady Justice, a lady -- she's holding some
22 scales out where the balance is even.

23 With preponderance of the evidence, in order for us to
24 prove our case, we just need to tip the scales on our side
25 just by a grain of sand more than the other side, just a

1 grain of sand or even just a feather more than the other
2 side. If we show our case just by that much, then we've
3 proven our case.

4 It's different than, you know, any type of criminal
5 trial you've heard up on the stand is beyond a reasonable
6 doubt where it's like a 99 percent chance that -- that the
7 alleged has to prove -- has done what they've done. Here
8 it's just 50.01 percent chance. That's all the burden of
9 proof is -- that we have to show on our side. So I certainly
10 want you to keep that in mind when you make your decision.

11 The other day I mentioned how this case is very simple,
12 just like a children's puzzle. And what the picture has
13 shown, I mean, you've seen the evidence, you've heard
14 testimony, I mean, so I -- we did that in an effort to show
15 you the picture that's on the box of the puzzle. And there's
16 three things that the picture will show or has shown is that
17 the Defendant, Ms. Johnson, was negligent in calling -- in
18 causing this accident and which she's already admitted it.

19 The second thing is that Mrs. Samuel was injured in
20 this accident as a direct result of that negligence by the
21 Defendant.

22 And the other thing the picture shows is that the --
23 that Mrs. Samuel needed medical treatment as a result for
24 those injuries from the accident.

25 So now it's really just a matter of putting all those

1 pieces together in the puzzle.

2 Now, like I said before, you've heard testimony, you
3 saw the evidence. So there's pieces to this puzzle.

4 The first part of this puzzle is that Mrs. Samuel did
5 have some -- some pain prior to this accident with
6 fibromyalgia, there was some asthma. She was -- she was in
7 that automobile accident from 2009, but she had shown -- or
8 she testified, as well as Dr. Fuller her family doctor
9 testified, that leading up to the accident, she really didn't
10 have any significant shoulder pain in that left shoulder.
11 Any type of problem from that accident had cleared up by the
12 time of the accident.

13 Leading up to the accident, Mrs. Samuel was able to
14 pick her figs. She was able to walk her dogs. She was able
15 to get dressed without pain. But then all -- that all
16 changed once the accident happened.

17 Now, that's the next piece of the puzzle because the
18 Defendant caused the accident, and the Defendant has admitted
19 that she caused the accident and was at fault for this. Now,
20 the actual facts and circumstances, how that collision
21 happened, there's -- there's some different stories.

22 Now, Mrs. Samuel had testified that the Defendant
23 pulled into the -- the Rite Aid pharmacy and was looking
24 down, wasn't paying attention, possibly looking at -- at her
25 cell phone, when the Defendant came in and hit the rear end

1 of Mrs. Samuel's vehicle.

2 Now, the Defendant has testified that she was just
3 right behind Mrs. Samuel at the Rite Aid pharmacy drive-
4 through and she got tickled and her foot came off the brake
5 and it rolled into Mrs. Samuel's car.

6 Well, either way you look at it -- it was still
7 reckless by the Defendant, either way you look at it, no
8 matter which story that -- that you believe it happened.

9 The -- the thing is though, the Defendants -- you heard
10 yesterday she had some discrepancies in her story where she
11 had mentioned how she -- how she had talked to Mrs. Samuel
12 right after the accident. However, when we took the
13 Defendant's deposition under oath two years ago, she said
14 that she never had spoken to Mrs. -- Mrs. Samuel after the
15 accident. So I mean, that -- those discrepancies there,
16 things are just simply not adding up as far as what the
17 Defendant is saying. There's discrepancy there. There could
18 be some discrepancies elsewhere in what she said yesterday.

19 Now, the next piece of the puzzle is the actual
20 collision itself. Mrs. Samuel was -- had her foot on the
21 brake at the -- at that drop box at the pharmacy at Rite Aid.
22 She was just minding her own business. I mean, this was a
23 normal day, picking up her prescription like most people do,
24 and she reaches out, she goes to -- to complete her
25 transaction at the pharmacy and she gets hit from behind by

1 the Defendant, with her arm in the drop box, making that arm
2 bend backwards.

3 And -- and after that -- that incident, she was just in
4 complete shock of -- of what happened to the point where you
5 heard she didn't want to get out of her car. She was so
6 distraught over this whole incident of having her arm getting
7 caught back -- caught in that box, getting pushed forward
8 while she was at the drop box, that while she's waiting for
9 law enforcement to arrive, while she's waiting for the
10 accident to -- for the accident scene to just kind of get
11 cleaned up, she actually urinates on herself. I mean, this
12 was such a strange and bizarre thing for her causing her a
13 lot of embarrassment in doing that.

14 So after the accident, she decided just to go home and
15 just, you know, try to calm down.

16 However, the next day, which kind of leads into the --
17 the next part of the puzzle -- was the medical treatment that
18 -- that Mrs. Samuel had received. That next day she
19 testified that she started getting some really, really bad
20 pain in that left shoulder, pain that she'd never experienced
21 before, something so severe that she felt that she needed to
22 go see her doctor who's her family doctor, Dr. Fuller. And
23 that's when all this medical treatment began.

24 She didn't really have any need for -- for this type of
25 treatment before the accident, and now she's looking to get

1 this treatment from Dr. Fuller and take any doctor --
2 doctor's recommendations in order to -- in order to -- so she
3 could feel better and so she could return to her life as
4 before.

5 She went through extensive medical treatment. You --
6 you heard the testimony from doctors, you heard testimony
7 from Mrs. Samuel. She had to endure steroid injections. She
8 had to endure months and months and months of physical
9 therapy. She had to do not one, but two surgeries, the first
10 one being that arthroscopic surgery which required five
11 incisions in -- in her shoulder to repair the tear in her
12 rotator cuff.

13 Then she had to do that second surgery just to kind of
14 clean up the scar tissue or clean up whatever was needed to -
15 - to get her range of motion, get her arm back as -- as good
16 as it could possibly be. And this went over the course of
17 about three years and that's a long time to go through that
18 much medical treatment and not really have the full
19 functioning use of your left shoulder.

20 And you heard testimony from two of her doctors. First
21 you heard from Dr. Guy who was the orthopaedic -- orthopaedic
22 surgeon with USC Specialty Clinics. He performed that second
23 surgery on her, and he -- he did state that it was his
24 opinion, to a reasonable degree of medical certainty, that
25 the accident caused those injuries to Mrs. Samuel's shoulder

1 as long as she was asymptomatic or, in other words, she did
2 not have any symptoms of any real severe shoulder pain
3 leading up to the accident.

4 And Dr. Fuller who -- who has treated for Mrs. Samuel
5 for over 10 years, knows Mrs. Samuel's medical history better
6 than any of those doctors, said that before the accident,
7 there was no need to treat her left shoulder. And it was his
8 opinion that she was asymptomatic because she didn't have any
9 symptoms of any real shoulder pain or any rotator cuff tears
10 before the accident, and that it was, in fact, the accident
11 from February 5, 2011, that caused the -- the left shoulder's
12 rotator cuff to tear.

13 So with that being said, Mrs. Samuel was -- had a lot
14 of medical bills as the result of this. After all this
15 medical treatment, after all of the pain that she went
16 through, she was left with a medical bill of just over
17 \$107,000. Not only was she left with that bill of 107,000 --
18 actually, it was \$107,155. Not only was she left with that,
19 she went through the grueling pain and suffering of dealing
20 with this shoulder injury in the course of about three years.

21 She wasn't able to walk her dogs. She wasn't able to
22 play with her grandchildren to the best of her ability or at
23 least as much as she wanted to. She wasn't able to pick figs
24 with -- with her husband from the fig tree in her backyard
25 because it would just hurt for her to climb up and down the

1 ladder, to move her arm. It even hurt to get dressed. Every
2 single day it was significant pain and effort for her just to
3 put her shirt on -- on and off.

4 So when it comes to this case, it's really just a
5 matter of common sense. It's very simple. Before the
6 accident, didn't really have any -- she didn't really have
7 any issues or real pain or any struggles with that left
8 shoulder. Then we have the accident of February 5, 2011,
9 where her arm is in the box at the pharmacy and she's rear
10 ended in her vehicle by the Defendant, her arm gets pulled
11 back and then very next day, that pain comes in and she needs
12 all this medical treatment for the next three years to repair
13 that shoulder.

14 All of those things were not needed before the
15 accident. That pain was not there before the accident. Any
16 -- any recommendation of medical treatment was not there --
17 or was not needed before the accident. So only thing that
18 really could have caused all of those injuries was the
19 accident of February 5, 2011, caused by the Defendant.

20 Now, those are the pieces of the puzzle. I know I've
21 talked about how my -- my kids like to put together puzzles.
22 My kids have a lot of puzzles, and sometimes the puzzle
23 pieces get mixed around from other -- from other puzzle
24 boxes. Well, I think that's what the Defendant is trying to
25 do here. They're trying to add some pieces to the puzzle

1 that just don't fit into this puzzle, and it's going to be up
2 to you to take those pieces the other side is putting in and
3 just simply disregard them just like my kids do. They say,
4 "Oh. This -- this piece just doesn't go with this puzzle.
5 It goes with another box."

6 So that's what we're asking you to do here in regard to
7 what the Defense is claiming here.

8 And some of those pieces they're trying to throw you
9 off with is first, we had the engineer come up and testify
10 yesterday, claiming that, oh, this physically couldn't have
11 happened to Mrs. Samuel's shoulder.

12 But that engineer who testified -- he stated that he
13 was actually hired by defend -- by the Defense attorneys for
14 his -- for his testimony to -- to give his analysis. He's
15 being paid by them. He is making thousands of dollars off of
16 his testimony. They're even putting him up at the Hilton.
17 So any -- any type of -- any type of good business man knows,
18 hey, if you want to get some repeat business, I've got to
19 give good testimony. So really though, the only real purpose
20 that -- that this doctor [sic] had yesterday of being here
21 was to testify against the plaintiff.

22 And furthermore, this engineer, he's not a doctor. He
23 doesn't treat patients. He doesn't diagnose injury, and he'd
24 never even met Mrs. Samuel before this trial. He didn't even
25 go out and take a look at the Rite Aid drop box itself. He

1 had just relied on some -- some photos taken by other people.
2 He also did some type of a test which was just done in -- in
3 general. The test was not specific to Mrs. Samuel. It was
4 just some surrogate study where there was many variables that
5 he very may well not take into account in giving his
6 analysis.

7 Now, on top of that -- yes, this guy is an engineer,
8 but we had two doctors basically say that it was -- it was
9 the accident that caused the injuries to Mrs. Samuel's left
10 shoulder. So we've got an engineer, got two doctors, and
11 you'll have to weigh that.

12 The Defense is also probably gonna say this car
13 accident from 2009, that may have had something to do with
14 Mrs. Samuel's left shoulder pain or -- or had some relation
15 to the injury. That accident from 2009 did not really alter
16 that left shoulder at all. Yes, she had gotten her left
17 shoulder checked out, but there was no real pain or any other
18 real excessive symptoms here showing that -- that this left
19 shoulder was indicating some type of problem leading up to
20 the accident February 5, 2011.

21 Mrs. Samuel's supported that in testifying that she was
22 able to do everything beforehand that she'd normally do
23 leading up to the accident. She'd fully recovered from any
24 issues that she had from that 2009 accident, and Dr. Fuller
25 supported that as well. Said that they weren't treating her

1 for Mrs. Samuel specifically." Well, you've seen the
2 pictures on the wall and you'll see them in there. He said,
3 "We did it as close as we could. We did it as far away as we
4 could. We had the seat as low as possible. We measured it
5 up. We even went as far as we could. Whatever movement it
6 was, physically impossible."

7 In short, ladies and gentlemen, we did not tear her
8 rotator cuff because we couldn't have. And Dr. Guy agrees
9 based on what he said: It typically doesn't happen that way.
10 Dr. Fuller says it's an overhead motion. None of those were
11 made because it's all right here and you've seen it.

12 When you go back there, look at the evidence. We ask
13 that you find for the Defendant. Thank you.

14 THE COURT: Any rebuttal argument?

15 MR. SALTZMAN: Nothing further, Your Honor.

16 THE COURT: During this trial, ladies and gentlemen,
17 you and I have certain duties to perform. As a trial judge,
18 it's my responsibility to preside over the trial of this case
19 and to rule upon or pass upon the admissibility of evidence
20 that was presented throughout the course of this trial. And
21 you are to consider only the competent evidence which is
22 before you.

23 To any evidence to which there was an objection
24 sustained, you must not speculate as to what the evidence
25 might have been or the reasons for the objection. Again, you

1 should consider all the evidence in the form of the testimony
2 and the exhibits that -- that have been made a part of the
3 record in this case.

4 Now, I have the additional duty and responsibility to
5 instruct you on the law that applies in this case, and as a
6 trial judge, I'm the sole judge of the law that applies. If
7 you have any preconceived ideas as to what the law is or your
8 interpretation of the law or what you want the law to be, you
9 must set all of that aside; for under your oath as jurors,
10 you are sworn to accept the law as I instruct it to you.

11 Now, if by chance I make some error in my charge, then
12 there's another court at another time that can correct those
13 errors of law. But for purposes of this trial right now,
14 this moment, you must accept the law as I instruct you as
15 being the correct statement of law.

16 Now, in every case tried before a jury, you the jurors
17 become the sole and exclusive judges of the facts of this
18 case. No one can tell you what the facts of this case are,
19 and if I've done anything throughout the course of this trial
20 that's given you any impression that I'm commenting on the
21 facts, that I'm telling you what facts to find, I ask that
22 you set that aside as well. I assure you, I don't have any
23 opinion about the facts in this case. That's not my job
24 here, that's not my role. That's your duty, your
25 responsibility as jurors, to determine the facts of this

1 case.

2 Now, in order to do that, you have to analyze and
3 evaluate the evidence and determine what evidence convinces
4 you of its truth. In order to do that, you have to judge the
5 credibility or believability of the witnesses who testified.
6 And in judging their credibility, you may consider the
7 following factors: What was the manner and the appearance of
8 the witness who testified? Was he or she hesitant or
9 straightforward in answering the questions? Was the
10 testimony of a witness consistent or inconsistent? How did
11 the witness come to know the facts that he or she testified
12 to or what was his or her ability to know these facts? Is
13 there some reason that a witness would want to give testimony
14 that would help or hurt one side or the other? In other
15 words, was the witness's testimony biased or prejudiced in
16 some manner, and was the testimony of a witness strengthened
17 or weakened by other testimony or other evidence?

18 Now, ladies and gentlemen, in determining the
19 credibility of the witnesses, you may believe one witness
20 against several witnesses; or you may believe several
21 witnesses against one witness. You may believe a portion of
22 a witness's testimony and disregard other portions of that
23 same witness's testimony. And if you have a good and
24 sufficient reason for doing so, you can accept a witness's
25 testimony in its entirety or you may reject it in its

1 entirety.

2 You may also consider whether a witness's testimony has
3 been impeached or challenged by prior -- by prior testimony
4 on prior inconsistent statements, and if the witness's
5 testimony has been impeached, you may give any or all the
6 witness's prior testimony or present testimony the weight
7 that you think that it deserves.

8 Ladies and gentlemen, you're objective is to seek the
9 truth, and whether it comes from a witness or witnesses for
10 the Plaintiff or a witness or witnesses for the Defendant,
11 you do not determine the truthfulness of the testimony by
12 counting the number of witnesses who've testified for one
13 side or the other. The truth isn't determined by counting
14 witnesses. What the law simply requires is that when you
15 exercise your mental processes in coming up with what you
16 consider to be truthful evidence, you should use your good
17 common sense, your sense of logic and reasoning. Use your
18 experiences in life. You then apply these attributes to the
19 evidence and determine what you, the jury, consider to be
20 truthful evidence. And then, to those true statements of
21 fact as determined by you, you apply the law as I instruct
22 you and then you will be able to arrive at your verdict.

23 Ladies and gentlemen, your verdict should not be based
24 upon sympathy, passion, or prejudice. By your verdict, you
25 have no friends to reward and you have no enemies to punish.

1 Additionally, ladies and gentlemen, you've heard from
2 what we call "expert witnesses," and ordinarily our rules
3 don't allow witnesses to give opinions or conclusions. An
4 exception exists for those that we call "expert witnesses."
5 Those are witnesses who, because of their education or
6 training, they profess to be an expert in some art of
7 science, and they can give an opinion in the -- as to the
8 relevant and material matter in which they profess to be an
9 expert. And you should consider any expert opinion that has
10 been offered in this particular case and give it the weight
11 that you think that it deserves.

12 If you should determine that an expert's opinion is not
13 based upon sufficient education or training, or if the
14 opinion is outweighed by other evidence or it's not sound,
15 then you do not have to accept that witness's opinion and you
16 may disregard it in its entirety.

17 An expert's opinion is -- is entitled to no greater
18 weight than any other witness just because that person
19 professes to be an expert, and you are not required to accept
20 an expert's opinion even if it is uncontradicted.

21 Now, when it comes to determining whether the -- the
22 cause of an injury when an expert renders an opinion as to
23 the cause of any injury, the witness must state in his or her
24 opinion that the injury -- injuries, to a reasonable degree
25 of professional certainty, was most probably caused by the

1 event in question. It's not necessary that the expert use
2 the words "most probably." It's enough that the expert state
3 that in his or her professional opinion, that -- that it
4 ultimately was the Defendant's negligence that most likely
5 caused -- most likely was the proximate cause of the
6 Plaintiff's injuries.

7 Now, ladies and gentlemen, each and every time a law
8 suit is filed and we come to court for a trial, the Plaintiff
9 has the burden of proving their claim by what we call the
10 "greater weight or preponderance of the evidence." And
11 that's typically illustrated by looking at a set of those old
12 fashioned scales where, at the beginning of the trial, the
13 scales are even; but throughout the course of the trial, as
14 the evidence is presented, the scales may tip back and forth.

15 If, after all of the evidence has been presented, the
16 scales remain even or they tip ever so slightly in the favor
17 of the Defendant, then that means that the Plaintiff has not
18 satisfied the burden of proof and your verdict must be for
19 the Defendant. If, on the other hand, after all of the
20 evidence has been presented, the scales should tip ever so
21 slightly in the favor of the Plaintiff, then that means that
22 the Plaintiff did satisfy the burden of proof and your
23 verdict must be for the Plaintiff.

24 Now, there's no way to physically weigh the evidence.
25 It's entirely a mental process, and the evidence to which you

1 assign the most weight should be the evidence that convinces
2 you of its truth regardless of from whom or from what source
3 it comes.

4 Now, in this case, this is what we call a "negligence
5 case," and in a negligence case, the Plaintiff has to prove
6 three essential elements by the greater weight or
7 preponderance of the evidence. First, the Plaintiff has to
8 prove that the Defendant was negligent. Secondly, she has to
9 prove that she was injured. And third, she has to prove that
10 the negligence of the Defendant was the proximate cause of
11 her injuries. So let me explain some of the terms to you.

12 Negligence: Negligence means that a person did not use
13 the same amount of care that a person of ordinary reason and
14 prudence would have used under this same or similar
15 circumstances. The word "careless" means the same thing.

16 It can be said that a negligent person did something
17 that a reasonably prudent person would not have done if faced
18 with that circumstance. Or, on the other hand, it could be
19 that a negligent person failed to do something that a
20 reasonably prudent person would have done if faced with the
21 same -- same circumstances, or it could be a combination of
22 the two.

23 To determine whether a particular act is negligent, you
24 have to judge that -- that act in the -- with the manner in
25 which a person of ordinary reason and prudence would have

1 acted under the same or similar circumstances.

2 Now, in this particular case, the Defendant has
3 admitted that she was negligent or careless in this case; and
4 therefore, when negligence is admitted, the Plaintiff is
5 entitled to a verdict in some monetary amount for actual
6 damages unless the Plaintiff fails to prove causation and --
7 and those damages.

8 So I instruct you that unless there's no proof of
9 damages that are proximately caused by the Defendant's
10 negligence, the Plaintiff would be entitled to a verdict for
11 damages based upon the law as I instruct you.

12 So since negligence has been admitted, ladies and
13 gentlemen, you must ask yourselves then whether the Plaintiff
14 has proven by a greater weight or preponderance of the
15 evidence that her injuries were proximately caused by that
16 negligence by the Defendant.

17 Proximate cause: Proximate cause is something that
18 produces a chain of events which in the end brings about the
19 injury. It is the direct cause of an injury. The mere fact
20 that physical problems occurred after an incident is not
21 sufficient by itself to show that the incident caused the
22 physical problems. The Plaintiff must establish a natural
23 and obvious relationship between the incident and the
24 physical problems and that the injuries resulted from the
25 Defendant's negligence in causing the accident.

1 The Plaintiff has to prove that the Defendant's
2 negligence proximately caused her injuries. In order to do
3 this, the Plaintiff must first prove causation in fact.
4 Causation in fact is proven by showing that the injury would
5 not have occurred but for the Defendant's negligence.

6 The Plaintiff also has to prove legal cause. Legal
7 cause is proven by showing that the injury was foreseeable.
8 Now, that means that the injury occurred as a natural and
9 probable consequence of the Defendant's conduct. The
10 Plaintiff has to prove that some injury from the Defendant's
11 conduct was foreseeable, but that does not mean that the
12 Plaintiff has to prove that the precise injury that occurred
13 was foreseeable. It is sufficient that the Plaintiff must
14 show that the Defendant should have foreseen that her
15 negligence would probably cause injury to someone or to
16 something.

17 Now, ladies and gentlemen, if you determine that the
18 Plaintiff has failed to prove by greater weight or
19 preponderance of the evidence that the Defendant's negligence
20 was the proximate cause of her injuries, then you would find
21 for the Defendant; however, if you find that the Plaintiff
22 has proven that her injuries were proximately caused by the
23 Defendant's negligence, then you would go on to consider
24 damages.

25 There are two types of damages. There are actual

1 damages and punitive damages, and we'll talk about both of
2 those. Actual damages are intended to compensate the injured
3 party and put that person as near as possible in the same
4 position that they would have been in before the injury
5 occurred in so far as that can be done with money.

6 For someone who has been physically injured that would
7 include pain and suffering, both past and present, as well as
8 any mental anguish or impairment of health or physical
9 condition.

10 In determining the amount of compensation for someone
11 who's been physically injured, that would include physical or
12 mental pain and suffering, expenses incurred from necessary
13 medical treatment, the loss of enjoyment of life that's
14 suffered as a result of the injury, and any other losses that
15 are reflected by the character of the injury itself.

16 Now, as to pain and suffering, pain and suffering is to
17 compensate someone for their physical discomfort and the
18 emotional response of the sensation of pain, and there's no
19 precise manner or amount in which to award for pain and
20 suffering. You alone have that authority, and you -- and the
21 law simply requires that when you determine to make an award
22 for pain and suffering, that you should do so with calm and
23 rational judgement; and that any award for pain and suffering
24 should be reasonable in light of all the evidence that's been
25 presented.

1 The same applies to mental suffering. That would
2 include apprehension, anxiety, psychological trauma,
3 emotional upset, distress, fright. Those are all elements of
4 mental suffering, and again, you have the authority to make
5 an award for mental suffering. Again, you must do so with
6 calm and rational judgement, and the award that you make
7 should be reasonable in light of all the evidence that's been
8 presented.

9 Now, with loss of enjoyment of life, you may consider
10 that as well. That is separate from pain and suffering. In
11 other words, the Plaintiff can recover for loss of enjoyment
12 of life as well as pain and suffering, and that's because the
13 award for pain and suffering, as I indicated earlier,
14 compensates the Plaintiff for the physical discomfort and the
15 emotional response to the sensation of pain caused by the
16 injury itself.

17 On the other hand, the loss of enjoyment of life
18 compensates the Plaintiff for the limitations that are placed
19 upon her ability to participate and derive pleasure from the
20 normal activities of life and -- and -- or the inability of --
21 -- for her to be able to pursue her recreational -- any -- any
22 talents that she may have, recreational interests, or her
23 hobbies.

24 You may also make an award for reasonable and necessary
25 medical expenses. If you determine that the Plaintiff is

1 entitled to recover damages, then that should include
2 medical, hospital, or other healthcare costs, rehabilitation
3 costs. The Plaintiff can only recover those sums that you
4 determine from the evidence are both reasonable and
5 necessary. While the amount that's actually charged or paid
6 may be considered by you, you are not bound by that amount.
7 You -- you must find only such time that's reasonably
8 necessary to treat those injuries and proximately caused by
9 the Defendant's negligence.

10 The Plaintiff has the burden to show that the medical
11 attention that she was -- she received was reasonably
12 necessary for the proper treatment of her injuries and that
13 the charges that were incurred were reasonable in amount.
14 Evidence of the amount that's charged for medical, hospital,
15 or other healthcare costs is not by itself evidence of the
16 reasonableness of those expenses.

17 Additionally, ladies and gentlemen, in this case
18 there's been some discussion that the Plaintiff was suffering
19 from an existing physical defect or condition. Even if you
20 find this to be so, the mere fact of an existing defect or
21 condition would not prevent the Plaintiff from being able to
22 recover damages from the Defendant. Under our laws, a person
23 who negligently injures another is responsible for all the
24 affects which are related to that particular incident, and
25 that's true no matter what the Plaintiff's physical condition

1 was when the event occurred. The Defendant takes the
2 Plaintiff as he or she finds them, whether that's in good
3 health or poor health or somewhere in between.

4 Now, it may seem that if the Plaintiff had been in good
5 physical condition or good health that the injury would not
6 have happened or perhaps it would have been easier to cure,
7 but that in no way affects the Defendant's liability. If the
8 presence of a disease or an existing physical condition
9 aggravates and prolongs the injury which in turn increases
10 the amount of damages, then the Plaintiff is in -- entitled
11 to recover the increased amount.

12 If you find that the == that the Plaintiff had an
13 existing physical impairment or condition before the
14 accident, the amount that you award for actual damages should
15 not include damages for the existing impairment. The
16 Defendant is only liable for the worsening of the condition,
17 not for the condition itself or for its natural worsening.

18 And ladies and gentlemen, as with all actual damages,
19 the Plaintiff is -- has to prove those damages by the greater
20 weight or preponderance of the evidence. But that does not
21 mean that the Plaintiff has to prove them to a precise
22 mathematical certainty. What the law requires is that the
23 Plaintiff has to put up enough evidence to be able to
24 demonstrate to you an amount that's fair and just and
25 reasonable, and any damages that are to be awarded should not

1 be based upon conjecture or speculation or guess.

2 Additionally, ladies and gentlemen, in this case there
3 is also a claim for punitive damages. If and only if you
4 make an award for actual damages may you award punitive
5 damages. Punitive damages, as the name implies, is to punish
6 the Defendant for extraordinary and outrageous misconduct and
7 to prevent the Defendant and others from committing similar
8 acts in the future.

9 Punitive damages can only be awarded where the conduct
10 of the Defendant is something more than negligence. The
11 evidence must establish that the Defendant's acts were
12 reckless, willful, or wanton. These words are used to
13 describe a conscious failure to use reasonable care. Conduct
14 is willful, reckless, or wanton when it is committed with a
15 deliberate intention under such circumstances that a person
16 of ordinary reason and prudence would be conscious of it as
17 an invasion of the injured party's rights. In other words,
18 while a negligent person is someone who acts carelessly, a
19 person who's behavior is willful, reckless, and wanton is not
20 only careless in their actions, but they are aware that
21 they've being careless.

22 If you find that the Defendant's conduct was willful,
23 reckless, or wanton, you may award the Plaintiff punitive
24 damages. In order to support an award for punitive damages,
25 the Plaintiff has to prove those damages by clear and

1 convincing evidence -- by clear and convincing evidence of
2 the conduct complained of included a consciousness of wrong
3 doing at the time.

4 Now, clear and convincing evidence is more than a
5 preponderance of the evidence, but it's less than the
6 criminal standard of beyond a reasonable doubt. Clear and
7 convincing proof is a higher standard, as I've indicated,
8 than the -- than preponderance of the evidence. It means
9 that the evidence is not ambiguous, doubtful, equivocal, or
10 contradictory. Convincing means by persuading by proof or
11 argument causing one to believe in the truth of what's
12 asserted. Clear and convincing proof establishes in your
13 mind not only that the fact at issue was probable, but that
14 it is highly probable.

15 In making a decision as to whether to award punitive
16 damages, you may consider some of these factors. First, you
17 must consider the character of the wrong. Any penalty
18 imposed should take into account the reprehensibility of the
19 conduct, the harm it's caused, the Defendant's awareness of
20 the conduct's wrongfulness, the duration of the conduct, and
21 any concealment. Thus, any award for punitive damages must
22 bear a relationship to the nature and extent of the conduct
23 and harm caused, including the actual damage award made by
24 you.

25 Secondly, any penalty imposed should take into account

1 as a mitigating factor any other penalty that may have been
2 imposed or which could be imposed for the same conduct.

3 And finally, any award for punitive damages must be
4 limited to punishment and thus must not effect economic
5 bankruptcy. And to this end, the Defendant's ability to pay
6 any punitive damages award should be considered; however,
7 economic bankruptcy is -- that factor is not an absolute bar
8 to an award of punitive damages.

9 Now, ladies and gentlemen, once you have considered all
10 of the evidence in this case and you've applied the law as
11 I've charged it to you, then you will be able to arrive at
12 your verdict and I will go over the verdict form with you.

13 Madam Foreperson, you will be responsible for
14 completing this form. It says (as read): "We the jury
15 unanimously find for the Plaintiff." There's a line for
16 actual damages with a dollar sign in parenthesis. There's a
17 line for punitive damages with a dollar sign in parenthesis.
18 Or "we find for the Defendant."

19 In completing this form, your thought process should be
20 this: Did the Plaintiff prove by a greater weight or
21 preponderance of the evidence that the Defendant was
22 negligent? The answer to that question is yes. The
23 Defendant admitted that she was negligent. So then you would
24 go on to determine whether or not the Plaintiff has proved by
25 a greater weight or preponderance of the evidence that that

1 negligence was the proximate cause of her injuries.

2 If you find that the Plaintiff has failed to meet that
3 burden, then you would check for the Defendant and your job
4 would be done.

5 If, however, you find that the Plaintiff has proven by
6 a greater weight or preponderance of the evidence that the
7 Defendant was negligent and that that negligence was the
8 proximate cause of her injuries, then you would go on to
9 consider actual damages, and you determine an amount of
10 actual damages based upon the law that I have instructed --
11 instructed you, those things involving pain and suffering,
12 loss of enjoyment of life, mental suffering, reasonable and
13 necessary medical expenses. You will also consider if
14 there's -- any aggravating -- aggravating previous condition.
15 All of those things.

16 Once you determine an amount for actual damages, you
17 would complete this like you would a check. You write the
18 words on the line with the numbers behind the dollar sign.

19 If and only if you make an award for actual damages may
20 you consider punitive damages. With punitive damages, your
21 thought process is this: Did the Plaintiff prove by clear and
22 convincing evidence that the Defendant's conduct was willful,
23 reckless, or wanton? If you find that she has failed to
24 prove that, then you would write zero on the line and just --
25 just to let us know zero.

1 If you determine that the Plaintiff has proven that the
2 Defendant's conduct was -- by clear and convincing evidence,
3 that the Defendant's conduct was willful, wanton, or
4 reckless, then you would award an amount for punitive damages
5 based upon the law as I instructed you and those factors to
6 consider.

7 Once you've done that, again, you would complete that
8 like a check, the words on the line with the numbers behind
9 the dollar sign.

10 Once you've completed the form, Madam Foreperson, if
11 you would sign your name and place today's date.

12 Now, ladies and gentlemen, your verdict must be
13 unanimous. It must be the verdict of all 11 of you. You
14 have been sworn as fair and impartial jurors to determine the
15 facts of this case based upon the evidence that's been
16 presented and based upon my instructions to you as to the
17 law. When you have determined what you consider to be the
18 facts and you have applied the law and you've completed your
19 verdict form, then no one will be able to complain about your
20 verdict and you will have fully discharged your duty and your
21 responsibility in this particular case.

22 Ladies and gentlemen, again, your verdict should not be
23 based upon sympathy, passion, or prejudice. Your verdict
24 should simply speak the truth.

25 Now, at this time, ladies and gentlemen, I'm going to

1 ask that you return to the jury room in just a moment.

2 Before you begin any deliberations, the law requires that I
3 consult with the attorneys to see if there's anything that I
4 have omitted from my instructions. If I have not omitted
5 anything, then the verdict form, along with all of the
6 exhibits, will be sent to you into the jury room.

7 Madam Foreperson, if, during the course of your
8 deliberations, there are any questions that come up that you
9 would like for us to try to answer, if you'll write the
10 question on a sheet of paper, sign your name, and knock on
11 the door and give it to the bailiff, and we'll try to answer
12 it.

13 If there are -- have no questions, then once you have
14 completed the verdict form, knock on the door at that time
15 and tell us that you have a verdict and we'll receive you
16 into court to receive your verdict.

17 Now, ladies and gentlemen, I know that we've ordered
18 lunch for you. I've asked for lunch to arrive about 11:30,
19 and so when it does arrive, they will knock on the door and
20 tell you to stop deliberating. They'll bring in the lunch
21 and get everything distributed. When you've gotten situated,
22 then you can continue on with your deliberations while you
23 eat.

24 At this time I ask that you retire to the jury room and
25 await further instructions.

1 (Jury exits at 10:52 a.m.)

2 THE COURT: Are there any exceptions to the charge by
3 the Plaintiff?

4 MR. SALTZMAN: No, Your Honor.

5 THE COURT: By the Defendant?

6 MR. LANG: No, Your Honor.

7 THE COURT: Okay. If you all will come and take a look
8 at all the exhibits and make sure they're all there and
9 another look at the verdict form.

10 (All counsel comply.)

11 THE COURT: Anything else y'all need to look at?

12 MR. LANG: Nothing from the Defense.

13 (Brief pause.)

14 MR. SALTZMAN: We're good.

15 THE COURT: Everybody good?

16 MR. SALTZMAN: We're good.

17 MR. LANG: Yes, Judge.

18 THE COURT: Okay. (To the bailiff) You may tell them
19 they may begin their deliberations.

20 (Exhibits and verdict form are taken to the jurors to
21 begin deliberations at 11:01 a.m.)

22 (Off the record at 11:01 a.m.)

23 (Back on the record at 11:39 a.m.)

24 THE COURT: I received a note from the jury. It says
25 (as read): "Is there a copy of the -- it says "policy

1 report" -- from the accident February 2011."

2 I assume that they meant "police report," and I didn't
3 send it back to them to ask.

4 So my typical response is generally that the police
5 report is not evidence in this case and cannot be considered
6 by them. And it's -- and they should -- they can consider
7 only the evidence, along with the exhibits, that have been
8 made a part of the record.

9 And so I'll be happy to put whatever you all -- if
10 y'all can agree with that.

11 MR. LANG: Your Honor, on behalf of the Defense, I --
12 it would be our position you -- you just tell them they have
13 to consider the case on the evidence already -- that's been
14 presented to them and cannot consider other things.

15 MR. SALTZMAN: (Nods head.)

16 THE COURT: Okay.

17 (Brief pause.)

18 THE COURT: Okay. What I wrote is (as read): "You
19 must decide this case based upon the evidence and testimony
20 that's been presented. There was no police report presented
21 in evidence in this case."

22 Anything else?

23 MR. SALTZMAN: Your Honor, could we mention that there
24 -- there was a police report, but we -- we ---

25 MR. LANG: Well, actually, Your Honor ---

1 THE COURT: Did you ---

2 MR. LANG: --- I mean, the police report could not --
3 by -- by rule, the police report could not be entered. And
4 so rather than say "it wasn't entered," it just can't be.

5 THE COURT: Okay.

6 (Brief pause.)

7 THE COURT: Okay. What I wrote is (as read): "You
8 must decide this case based upon the evidence, testimony, and
9 exhibits presented. There was no police report presented in
10 evidence in this case. The law prohibits police reports in
11 evidence."

12 MR. LANG: No objection from the Defense, Your Honor.

13 MR. SALTZMAN: I'm sorry. What was the last part of
14 that?

15 THE COURT: "The law prohibits police reports into
16 evidence."

17 MR. SALTZMAN: That's fine. Perfect, Your Honor.

18 THE COURT: Okay. (To the bailiff) If you will give it
19 to the foreperson, ask her to save the note. Do not throw it
20 away. Do not ball it up. Do not write on it. She can read
21 it to the jury and just save it for us --

22 THE BAILIFF: Yes, I will.

23 THE COURT: -- along with everything else.

24 (The bailiff exits the courtroom.)

25 THE COURT: And we'll stand in recess. Lunch just

1 arrived, so you know, there will be some -- I assume some
2 time. But again, just let us know how we can reach you and
3 where you'll -- where you'll be. Thanks.

4 MR. SALTZMAN: Thank you.

5 MS. SPITZ: Thank you.

6 (Off the record at 11:43 a.m.)

7 (Back on the record at 11:51 a.m.)

8 THE COURT: All right. I understand the jury has a
9 verdict. Is there anything we need to take up before we
10 bring the jury back in?

11 MR. SALTZMAN: Nothing from the Plaintiff, Your Honor.
12 We're ready when they are.

13 MR. LANG: Nothing from the Defense, Your Honor.

14 THE COURT: All right. (To the bailiff) You can ask
15 the jury to come in, please.

16 (Jury enters the courtroom at 11:53 a.m.)

17 THE BAILIFF: The jurors are seated, Your Honor.

18 THE COURT: Madam Foreperson, you -- it's my
19 understanding you reached a verdict; is that correct?

20 FOREPERSON: Yes, Your Honor.

21 THE COURT: If you'd please pass it to the bailiff.

22 (The foreperson complies.)

23 (The bailiff hands the verdict form to the court clerk
24 and the court clerk hands it to the Court.)

25 (Brief pause.)

1 THE COURT: Madam Clerk, if you'd please publish the
2 verdict.

3 COURT CLERK: Yes, Your Honor.

4 (As read) "State of South Carolina, county of Richland.
5 2016-CP-40-2393, Miriam H. Samuel vs. Lynne N. Johnson. We,
6 the jury, unanimously find for the Defendant." Signed No.
7 284, Hazel Washington, foreperson. October the 5th, 2017.

8 Madam Forelady, was this your verdict and the verdict
9 of the entire jury?

10 FOREPERSON: Yes.

11 COURT CLERK: Thank you.

12 THE COURT: Do the parties wish to poll the jurors?

13 MR. SALTZMAN: No, Your Honor.

14 MR. LANG: No, Your Honor.

15 THE COURT: Ladies and gentlemen, the Court is not
16 concerned with the verdict that you -- that you reached so
17 much as I'm concerned with the process by which you reach
18 your verdict.

19 You listened to the evidence as it was presented
20 throughout the course of this trial, and you also listened to
21 my instructions to you as to the law. You determined the
22 facts in accordance with your view of what the evidence
23 showed, and you applied the law as I instructed you and there
24 you were able to reach your verdict. *

25 And based upon that, the -- there's no one that can

1 complain about the verdict that you've reached, and you've
2 fully discharged your duty and your responsibility as jurors
3 in this matter.

4 On behalf of the State and the County, I'd like to
5 thank you very much for your willingness to serve as jurors
6 in this matter. I will tell you that your service is
7 concluded for the week, and so you do not need to call back
8 after 6, you do not need to report.

9 Please go back to the jury room. You can pick up your
10 lunch. The clerk will come in with your work excuses for
11 those of you who need work excuses, and then you will be free
12 to go.

13 If you will leave with us the plastic portion of your
14 badge. The white portion is your souvenir for jury service,
15 and the checks will be in the mail.

16 (Jurors laugh.)

17 THE COURT: Thank you so much for your service.

18 (Marked Court's Exhibit No. 5, Juror note.)

19 (The Court exits the bench to confer with the jurors as
20 they exit at 11:55 a.m.)

21 (Brief pause.)

22 THE COURT: Are there any post-trial motions at this
23 time?

24 MR. SALTZMAN: Your Honor, at this time the Plaintiff
25 would ask for a judgement not withstanding the verdict based

1 on there was enough evidence in the record for the jury to
2 find by a preponderance of the evidence in favor of the
3 Plaintiff.

4 THE COURT: Any response to that, Mr. Lang?

5 MR. LANG: Your Honor, by my calculations, the jury was
6 out approximately 45/47 minutes. There's no indication that
7 they considered anything other than the evidence, the law
8 presented to the jury. There's nothing to say that they
9 acted on anything other than the instructions of the Court.
10 They had evidence to consider. They were told they could
11 believe all, some, or none, and they had evidence that would
12 lead them to find that we did not cause the claimed injury.

13 THE COURT: I'll respectfully deny your request. I
14 think the jury certainly -- there -- there were disputed
15 issues in this particular case. They heard all the evidence.
16 They had the opportunity to discuss that and determine the
17 facts based upon their view of what the evidence showed, and
18 -- and were able to arrive at their verdict.

19 I -- I don't see anything that would indicate that
20 their verdict was based upon something other than the
21 evidence in this case, and so I respectfully deny your
22 request.

23 MR. LANG: Thank you, Your Honor.

24 THE COURT: And so I'll enter a Form 4, I will be happy
25 to sign your 403, and thank you very much.

(Off the record at 11:58 a.m.)

-- END OF TRANSCRIPT RECORD --

4410 - Estate of Beatrice Carr v. Circle S Enterprises
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Estate of Beatrice K. Carr by and through Beatrice Sue
Bolton, Personal Representative, Appellant,

v.

Circle S Enterprises, Inc. d/b/a Newberry Auto Mart,
Respondent.

Appeal From Newberry County
Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 4410
Heard May 7, 2008 – Filed June 10, 2008

REVERSED

Paul A. James, of N. Charleston and Paula Howker
Amick, of Columbia, for Appellant.

Karl S. Brehmer and L. Darby Plexico, III, both of
Columbia, for Respondent.

PIEPER, J.: The Estate of Beatrice K. Carr (Estate) appeals the trial court's order granting the motion for directed verdict by Circle S Enterprises, Inc. d/b/a Newberry Auto Mart. (the Dealership). The Estate argues the trial court erred in granting a directed verdict in favor of the Dealership on the following grounds: (1) the motion for a directed verdict was improperly postured; (2) the Estate suffered damages as a result of the Dealership's conduct; and (3) there was sufficient evidence for submission of the various causes of action to the jury. We reverse.

FACTS

In late September 2000, Linda Carr (Linda) was in the market to buy an automobile. Linda, her mother Beatrice Carr (Beatrice), and the rest of her family went to the Dealership to purchase a vehicle for Linda. While negotiating for the purchase of a 1999 Chrysler Sebring convertible with the Dealership's salesman, it was brought to Linda and Beatrice's attention that they would receive a more favorable interest rate on their loan if the vehicle was purchased in Beatrice's name as opposed to Linda's name. Accordingly, Beatrice agreed to allow the vehicle to be purchased under her name and signed a retail installment contract and security agreement with the financing company, Firststar Financial Services (Firststar), for the financing of the vehicle.[1] The amount financed was \$15,751.49 and monthly payments on the loan came to \$334.09. Each of the first 41 monthly payments included \$29.00 to pay

for credit life and disability insurance, which Linda testified the Dealership required in order for the sale to be completed in Beatrice's name. The total cost of the proposed insurance coverage came to \$1,543.49.

On June 1, 2003, Beatrice, at age eighty-one, passed away. After her mother's death, Linda stopped making the payments on the note under the assumption that the credit life insurance would apply and pay off the note. Upon discovering that the note had not been paid, Linda contacted the Dealership which, after numerous attempts to justify the misapplication of the premiums, eventually informed her that Beatrice had been too old to qualify for the insurance; the Dealership proceeded as if the coverage had never been purchased. The Dealership thereafter refunded the insurance premiums plus 6% interest from the date of the sale to the Estate. However, at this point, the note was past due and the vehicle had been repossessed.

The only beneficiaries under Beatrice's last will and testament were Linda's daughter, Deborah S. Carr, and Linda's sister, Beatrice Sue Bolton (Mrs. Bolton). Mrs. Bolton was the personal representative for the Estate. She filed the original inventory and appraisement on February 3, 2005, without mention of the 1999 Sebring as an asset of the Estate, the potential civil claim against the Dealership, or the debt owed to Firststar/US Bank. Mrs. Bolton reopened the Estate in August of 2006, after this claim was filed, to account for the action against the Dealership.

The Estate filed a Summons and Complaint on January 18, 2005, alleging breach of contract, conversion, negligence, violation of the South Carolina Unfair Trade Practices Act (hereinafter SCUTPA), and violations of the Regulation of Manufacturers, Distributors, and Dealers Act (hereinafter Dealers Act). Ultimately, the case was called for trial before a jury on February 5, 2007, in the Newberry County Court of Common Pleas. At the close of all evidence, the trial court granted the Dealership's motion for a directed verdict. The trial judge stated "there's no evidence that the Estate has suffered any loss or has been damaged in any way on the specific causes. . . . I also find there's insufficient evidence to show a violation of the Dealers Act . . . and the same thing with unfair trade practice." This ruling on the record was solemnized by a written form order stating "Court Directed Verdict Against Plaintiff." The Estate thereafter filed and served this notice of appeal on February 26, 2007.

STANDARD OF REVIEW

In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and to deny the motion when either the evidence yields more than one inference or its inference is in doubt. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). However, this rule does not authorize submission of speculative, theoretical, or hypothetical views to the jury. Proctor v. Dep't of Health & Envtl. Control, 368 S.C. 279, 292-93, 628 S.E.2d 496, 503 (Ct. App. 2006). In essence, the court must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his or her favor. Harvey v. Strickland, 350 S.C. 303, 309, 566 S.E.2d 529, 532 (2002); Proctor at 293, 628 S.E.2d at 503.

The appellate court will reverse the trial court's ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law. Law at 434-35, 629 S.E.2d at 648. When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006).

LAW/ANALYSIS

First, the Estate argues that the trial court erred in directing a verdict since a motion for a directed verdict was not made by the Dealership at the close of the plaintiff's case. We disagree.

The Estate claims that because the Dealership only made a motion to dismiss at the close of the plaintiff's case, it could not subsequently make a motion for a directed verdict at the close of all the evidence. The Estate is mischaracterizing the motions made by the Dealership. At the close of the plaintiff's case, the Dealership did make a motion to dismiss challenging the Estate's existence at the time the suit was filed. However, immediately thereafter, the Dealership asserted its directed verdict motion as to each of the causes of action. The trial court entertained the request as a directed verdict motion, despite not initially being mentioned by name, and denied the request at that point in the trial. At the close of all evidence, the directed verdict motion was revisited. The Dealership appropriately referred to the motion by claiming entitlement to a directed verdict and the trial judge treated the motion as such in his order by directing a verdict against the Estate. Regardless of the form in which the request for relief was framed, the substance of the relief sought is controlling. Standard Federal Sav. and Loan Ass'n v. Mungo, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991). The record is clear that throughout the arguments both counsel and the trial judge understood the motion being entertained was a motion for a directed verdict. Counsel for the Dealership at the close of his final argument stated: "we think that we're entitled to a directed verdict on all causes of action for all the reasons stated." Accordingly, the motion was properly before the court and the judge appropriately treated the motion as a directed verdict motion.

In addition, the Estate failed to contemporaneously object to the trial court treating the motion as one for a directed verdict. Therefore, the matter is not preserved for our review. See In re Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) ("An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court."); Lucas v. Rawl Family Ltd. P'ship., 359 S.C. 505, 510-11, 598 S.E.2d 712, 715 (2004) ("It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court.").

As to the remainder of the Estate's allegations, we must consider whether or not the Estate suffered any damage. The trial judge based his ruling primarily on the conclusion that the Estate suffered no damage. We respectfully find the court erred.

We first note that it was error for the trial court to conclude that the Estate suffered no damage at the directed verdict stage of the trial. "The failure to list an item in the inventory of an estate is not determinative of the title." Gibson v. Belcher, 287 S.C. 315, 318, 338 S.E.2d 330, 332 (1985) (citing Griffith Adm'x. v. Miller, 285 Ky. 675, 149 S.W.2d 11 (1941)). Furthermore, the president of the Dealership admitted the existence of a contract between Beatrice and the Dealership. Beatrice bought the vehicle from the Dealership by arranging for financing through Firstar. Beatrice was therefore the legal owner of the vehicle, although Linda made payments on the vehicle. Therefore, under these circumstances, legal title would remain in Beatrice but we recognize Linda may arguably have a legal or equitable claim because of any payments made.

Since Beatrice was the legal owner of the vehicle, her interest passes to her estate upon her demise. "It has long been the law in South Carolina that upon the testator's death, title to the personal property vests in the executor." Belcher, 287 S.C. at 318, 338 S.E.2d at 332 (citing Lenoir v. Sylvester, 1 Bail. 632, 17 S.C.L. 632 (1830)).[2] Therefore, we find the Estate would have benefitted had the insurance been obtained and the policy paid, thereby preventing the repossession of the vehicle. The loan in Beatrice's name would have been paid off by those proceeds as an obvious benefit to the Estate in its entirety. The Estate's legal title would only be subject to Linda's equitable or legal interest at that point as opposed to also being subject to Firstar/U.S. Bank's security interest.

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Moreover, we find that whether the Dealership is liable for any alleged insurance coverage is a question for the jury. If the jury were to find such liability, that coverage would be an asset of the Estate. See Moultis v. Degen, 279 S.C. 1, 7, 301 S.E.2d 554, 558 (1983) (citing In re Miles Estate, 262 N.C. 647, 138 S.E.2d 487 (1964) (holding that an undistributed insurance policy is an asset of the estate)). There is sufficient evidence in the record to support the claim that the Dealership was obtaining insurance for Beatrice. Generally, one who pays insurance premiums is justified in assuming that payment will bring immediate protection. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 357, 415 S.E.2d 393, 395 (1992). In the case at hand, the insurance premium was paid up front through its inclusion in the financing arrangement thereby evidencing an insurance agreement between the parties; however, we also recognize the existence of contrary contractual language yet cannot resolve these conflicts at the directed verdict stage. The terms of the contract included the offer to secure credit life and disability coverage in exchange for the payment of the premium. The premiums were admittedly received and misapplied. While the Dealership argues that it is not an insurance provider and that it was only offering to obtain quotes for Beatrice, it nonetheless accepted and retained payments for insurance coverage it never obtained for an extensive period of time. The acceptance of these payments at a minimum presents a question as to the existence of a contract as well as a question as to the Dealership's liability for said coverage.

Having established that the Estate suffered damage, we now turn to the remainder of the Estate's allegations. First, as to the breach of contract claim, there is sufficient evidence as to the existence of a contract and its breach by the Dealership. Further, sufficient evidence exists in the record for a jury to conclude that the Estate, as legal owner of the automobile, was damaged by the breach of that contract. Second, the Dealership admitted to accepting and retaining the insurance premiums for its own benefit, thereby creating at least an inference that the funds were improperly converted, although eventually returned. Third, as to the negligence cause of action, due to the nature of the relationship between the Dealership and Beatrice, the Dealership had a duty to properly utilize the insurance premiums paid to obtain the proper insurance coverage; otherwise, at a minimum, the Dealership should have indicated that coverage was not obtained. Sufficient evidence exists in the record that such duty was breached and that the breach proximately injured the Estate, thereby warranting the submission of the claim to the jury. The mere fact the Dealership subsequently realized its error and refunded the alleged premiums is not dispositive as to whether the Estate's claims may proceed.

Accordingly, we respectfully find the court erred in directing a verdict as to the causes of action for breach of contract, conversion, and negligence.

The Estate next asserts that the court erred in directing a verdict on its cause of action for a violation of the Dealers Act. The Dealers Act declares certain unfair methods of competition and unfair or deceptive acts or practices to be unlawful. S.C. Code Ann. § 56-15-30(a) (2006). It is a violation of the Dealers Act for any manufacturer or motor vehicle dealer "to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." S.C. Code Ann. § 56-15-40(1) (2006).

Our supreme court has defined the term "arbitrary" for purposes of the Dealers Act to include "acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone." Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992). Furthermore, our supreme court has defined bad faith as:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

State v. Griffin, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915) (quoting Black's Law Dictionary).

"The Dealers Act defines 'fraud' to include its 'normal legal connotation' as well as 'misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.'" deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 263-64, 536 S.E.2d 399, 404 (Ct. App. 2000) (quoting S.C. Code Ann. § 56-15-10(m) (1991)).

To be liable under the Dealers Act, the dealer must participate in the wrongful conduct. Jackson v. Speed, 326 S.C. 289, 302, 486 S.E.2d 750, 756 (1997). "An agent for an entity who makes misrepresentations while attempting to sell a motor vehicle qualifies as a dealer who may be held liable under this act." Id. at 302, 486 S.E.2d at 756. The record contains evidence of misrepresentations by the Dealership. Whether intentional or not, the president of the Dealership admitted to unintentionally offering numerous misleading explanations regarding the ultimate disposition of the insurance premiums. These misrepresentations constitute a sufficient basis to submit the violation of the Dealers Act cause of action to the jury. Accordingly, the trial court erred in granting a directed verdict on this cause of action.

Finally, the Estate claims the trial court erred in directing a verdict on its SCUTPA cause of action. To recover in an action under the SCUTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). S.C. Code Ann. § 39-5-10-560 (Supp. 2007). The second element may be satisfied by proof of "facts demonstrating the potential for repetition of the defendant's actions." Daisy Outdoor Adver. Co., Inc. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). "Plaintiffs . . . generally have shown potential for repetition in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence . . . or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." Id. at 496, 473 S.E.2d at 51 (citations omitted).

Sufficient evidence exists in the record for submission of this cause of action to the jury. The first and third elements of the cause of action are sufficiently supported by the evidence for submission to the jury for reasons similar to those as necessary for submission of the Dealers Act claim. The public interest element necessitates additional scrutiny. The Estate, while questioning the president of the Dealership, specifically inquired about the existence of safeguards to ensure that unapplied premiums would be refunded. While the response to the question was unclear, an inference could be made that the Dealership lacked internal protections to prevent the reoccurrence of this conduct in the future. The conduct complained of herein continued for approximately three years without action.[3] Therefore, there is some evidence relating to the potential for public harm which justifies the submission of the SCUTPA claim to the jury. Accordingly, the trial court erred by directing a verdict against the Estate as to the SCUTPA cause of action.

CONCLUSION

For the aforementioned reasons, the order of the trial court directing a verdict against the Estate is hereby

REVERSED.

HEARN, C.J., and CURETON, A.J. concur.

[1] Firstar subsequently sold the note to U.S. Bank.

[2] This concept is currently codified in section 62-3-101 which states that a decedent's personal property "devolves, first, to his personal representative." S.C. Code Ann. § 62-3-101 (Supp. 2007).

[3] As to SCUTPA, counsel specifically asked whether other customers could have been similarly overcharged. The question was never answered even after an objection to the question was successfully overruled.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of the Care and Treatment of Christopher
Taft, Petitioner.

Appellate Case No. 2013-002246

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 27543
Heard April 9, 2015 – Filed July 1, 2015

REVERSED

Appellate Defender LaNelle C. DuRant, of Columbia, for
Petitioner.

Attorney General Alan M. Wilson and Senior Assistant
Deputy Attorney General Deborah R.J. Shupe, of
Columbia, for Respondent.

JUSTICE HEARN: In this civil commitment proceeding, Christopher Taft was found to be a sexually violent predator and was committed to the South Carolina Department of Mental Health. He now argues the trial court should have

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granted his motion for directed verdict because the State failed to present sufficient evidence under the Sexually Violent Predators Act (the SVP Act) that he was presently likely to reoffend if not confined. We agree and reverse.

FACTUAL/PROCEDURAL HISTORY

The underlying facts of this case are tragic and disturbing. Taft grew up in a family rife with intergenerational incest. As a young child, he was sexually abused by his aunts, uncles, and a number of older cousins. As Taft went through puberty, he became an abuser himself of his younger siblings.

In June of 2006, at age fifteen, Taft pled guilty to three counts of assault and battery of a high and aggravated nature, stemming from the sexual assault of his sisters, then five and six, and his nine-year-old brother. Taft was committed to the Department of Juvenile Justice (DJJ) for six months, and the family court suspended his sentence upon placement in a sex offender treatment facility and probation after his release. He was admitted to Generations Group Home, a facility for juvenile sex offenders in November 2006. After he was discharged from Generations in June 2007, he was remanded to DJJ until his release in July 2008. Upon his release from DJJ, he was returned home to live with the same siblings he had previously assaulted.

In March of 2010, Taft, then nineteen, pled guilty to two counts of lewd act on a minor after being charged with two counts of CSC for fondling and engaging in intercourse with his eight and nine-year-old sisters. He received concurrent sentences of fifteen years' imprisonment on both charges, suspended to three years' incarceration and five years' probation.

The State brought a civil commitment proceeding pursuant to the SVP Act in July 2010. After an initial probable cause hearing, the court appointed Dr. Rebecca Jackson to evaluate whether Taft met the criteria for civil commitment. After examining Taft, Dr. Jackson issued a report on November 19, 2010, concluding he did not.

The State sought another expert and retained Dr. Gregg Dwyer to evaluate Taft. However, Dr. Dwyer was in the process of relocating from the University of South Carolina School of Medicine to the Medical University of South Carolina and had not yet finished setting up his new lab. Consequently, Dr. Dwyer was unable to complete the evaluation within the sixty-day time limit required by

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statute. On February 17, 2011, the final day before the time limit expired, the State filed a motion for a continuance, requesting more time to allow Dr. Dwyer to complete his evaluation.

Taft objected to the request for a continuance, arguing the SVP Act required that a trial be conducted within ninety days of the court-appointed evaluation, and the State's claim that its expert did not have time to set up his new lab did not constitute good cause. Taft contended the State should have realized earlier that Dr. Dwyer could not meet the statutory deadline and obtained another expert. The trial court disagreed and granted the motion. The court directed the evaluation be completed by May 2, 2011, and set the trial for May 23, 2011.

Prior to commencement of the trial, Taft moved to exclude the State's second evaluation because even though it had been timely submitted pursuant to the trial court's latest order, it was authored by both Dr. Dwyer and a Dr. William Mulbry. Dr. Mulbry had been retained due to the continued difficulties with Dr. Dwyer's schedule. Taft argued the report should be excluded because the trial court's order granting the continuance specifically authorized only Dr. Dwyer to evaluate him. The court agreed, and excluded the report. The trial court also excluded any testimony regarding the second evaluation except from Dr. Dwyer, who the State acknowledged was not prepared to testify.

Taft subsequently moved for summary judgment, arguing that absent any evaluation or testimony from Dr. Dwyer, the State failed to provide any evidence that Taft was a sexually violent predator. He argued the only remaining evidence was the report and testimony of Dr. Jackson, who had concluded that Taft was not a sexually violent predator. In response, the State argued that it still had the reports of Drs. Geoffrey McKee and Jack Luadzers who had concluded Taft was a sexually violent predator in connection with his prior criminal investigation in 2009. Taft, however, asserted those two reports were outdated and inadmissible because they were not probative of whether he was *currently* a sexually violent predator. The trial court disagreed with Taft, finding the prior evaluations were admissible; it therefore denied the motion.

At trial, the State offered the testimony of Dr. McKee, who had examined Taft nearly two years earlier in June 2009. Dr. McKee discussed Taft's ability to accept and utilize the treatment he had received, and testified about the previous sexual abuse Taft had himself endured beginning at age five. Dr. McKee opined that based upon his previous evaluation of Taft, he concluded Taft suffered from

"pedophilia, sexually attracted to females and nonexclusive type,"¹ and that based on that prior evaluation, Taft met the statutory definition of a sexually violent predator. He testified that in reaching these conclusions he had conducted several risk assessment tests to measure Taft's likelihood of reoffending; based on Taft's score on these tests, McKee determined he had a moderate to high risk of sexual recidivism.

The court-appointed expert, Dr. Rebecca Jackson, also testified. Unlike Dr. McKee, Dr. Jackson's opinion was based on her evaluation of Taft in this civil commitment proceeding. Dr. Jackson opined Taft suffered from pedophilia, limited to incest, based on her finding that there was no evidence he was aroused by other females or other children. Dr. Jackson testified that she performed one risk assessment test which scored him as having a twenty-five percent chance of reoffending in five years and a thirty-three percent chance of reoffending over a ten-year period. However, she testified that in her professional opinion, Taft did not meet the criteria of the SVP Act, and other measures short of confinement could effectively prevent him from victimizing his sisters again.

At the close of the State's case, Taft moved for directed verdict, arguing the State failed to put forth any evidence that Taft *presently* suffered from a mental abnormality that made him likely to reoffend. The court denied the motion, concluding it was a jury issue. The jury ultimately found Taft was a sexually violent predator. Taft moved for judgment notwithstanding the verdict, again arguing lack of evidence, but the trial court denied the motion.

On appeal, Taft contended the trial court erred in failing to direct a verdict in his favor based on the lack of expert testimony that he was currently a sexually violent predator. The court of appeals affirmed in an unpublished opinion. *In re Taft*, Op. No. 2013-UP-334 (S.C. Ct. App. filed Aug. 7, 2013). This Court granted certiorari.

ISSUE PRESENTED

Did the court of appeals err in affirming the trial court's failure to direct a verdict in favor of Taft?

¹ Dr. McKee's diagnosis indicated Taft is attracted to children under the age of thirteen, predominately female, and his attraction is nonexclusive so he is interested in children and adults.

LAW/ANALYSIS

Taft argues the court of appeals erred in affirming the trial court's denial of his motion for directed verdict. Specifically, Taft argues the State failed to put forth evidence he satisfied the definition of a sexually violent predator because neither expert testified that he had a present risk of reoffending. We agree.

On appeal from the denial of a defendant's directed verdict motion, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *In re Matthews*, 345 S.C. 638, 646, 550 S.E.2d 311, 315 (2001). In considering a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003). Thus, a trial judge should grant a motion for directed verdict when the evidence presented merely raises a suspicion of guilt. *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.*

The State bears the burden of proving a person is a sexually violent predator. *In re Care & Treatment of Corley*, 353 S.C. 202, 206, 577 S.E.2d 451, 453 (2003). Pursuant to the SVP Act, a sexually violent predator is defined as a person who: "(a) has been convicted of a sexually violent offense; and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment." *In re Care & Treatment of Harvey*, 355 S.C. 53, 60, 584 S.E.2d 893, 896 (2003). A person is considered likely to engage in acts of sexual violence if "the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others." S.C. Code Ann. § 44-48-30(9) (2002 and Supp. 2014).

It is undisputed Taft was convicted of a sexually violent offense and suffers from a mental abnormality; the sole question is whether the State produced evidence that his mental abnormality is such that he is *presently* likely to reoffend if not confined. The thrust of Taft's argument is that the State's expert testimony established only that he had a risk of reoffending in 2009 when he was evaluated in conjunction with the underlying criminal charges, and not that he had a risk of reoffending in 2011 in the context of this civil commitment proceeding. The State contends the issue of present risk goes to the weight—not existence—of the

evidence, and thus the trial court properly submitted the question to the jury.

We find the State's evidence devoid of proof Taft has a present risk to reoffend. Although the State's expert, Dr. McKee, stated that Taft met the definition of a sexually violent predator in 2009, he consistently refused to render a current diagnosis. Dr. McKee expressly testified that he "[did not] have the personal contact and the personal interview that [he] would need to do to form a current and active opinion" because "to be able to say whether [Taft] is a sexually violent predator now, [he] would have to be able to evaluate [him]." In fact, Dr. McKee admitted on cross-examination that "as of [that day] he could not give an opinion as to whether or not [Taft] is a sexually violent predator."

A civil proceeding to commit an individual, perhaps for life, following service of his criminal sentence, is an extraordinary remedy. Although this Court has repeatedly held the Act constitutional, we decline to construe it in a manner which would lessen the State's burden of proof. The General Assembly has carefully written our SVP Act to lay out exactly what is required to establish that someone is a sexually violent predator; the State must prove, beyond a reasonable doubt that the individual is *presently* a sexually violent predator. See *State v. Gaster*, 349 S.C. 545, 551, 564 S.E.2d 87, 90 (2002) (holding, in the context of an ex post facto challenge, that the SVP Act "permits involuntary confinement based upon the determination the person *currently* suffers from both a mental abnormality or personality disorder and is likely to engage in acts of sexual violence" (emphasis added)). Today, we give force to this requirement.

We decline to accept the State's argument that an expert's evaluation from a prior criminal proceeding is sufficient to prove an individual is a sexually violent predator. If this were so, it would obviate any possibility of rehabilitation during incarceration. Further, it would violate the legislature's statutory scheme, which clearly envisions a new civil commitment proceeding based upon current evidence that the individual suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. In this case, Dr. Jackson opined that Taft did not meet the definition of a sexually violent predator under the SVP Act and Dr. McKee testified he could not say Taft was presently a sexually violent predator because he had not evaluated him since 2009. Accordingly, we find the State failed to present sufficient evidence that Taft had a current risk of reoffending which would allow a jury to conclude he was a sexually violent predator.

CONCLUSION

Based on the foregoing, we find the trial court erred in denying Taft's motion for directed verdict. We therefore reverse.²

TOAL, C.J., PLEICONES, BEATTY and KITTREDGE, JJ., concur.

² Because our holding on this issue is dispositive, we decline to address Taft's additional argument that the court of appeals erred in affirming the trial court's grant of a continuance. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address remaining issues where one issue is dispositive).

4071 - State v. Covert

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kevin Covert, Appellant.

Appeal From Greenville County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 4071
Heard November 7, 2005 – Filed January 17, 2006

Katherine Carruth Link, of West Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Norman Mark Rapoport, Office of the Attorney General, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

SHORT, J.: Kevin Covert appeals his convictions for possession with intent to distribute cocaine in proximity of a school and trafficking in cocaine. Covert argues the trial court erred by denying his motion to suppress evidence due to a defective search warrant, allowing improper closing arguments, and using an unusual verdict form. We reverse and remand.

4237 - State v. Grigg

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

State of South Carolina, Respondent,

v.

Rebecca Lee-Grigg, Appellant.

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**Appeal from Greenwood County
Wyatt T. Saunders, Jr., Circuit Court Judge**

**Opinion No. 4237
Heard April 3, 2007 – Filed April 16, 2007**

REVERSED

C. Rauch Wise, of Greenwood, and James W. Bannister of Greenville, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Special Assistant Attorney General Amie L. Clifford, all of Columbia; and Solicitor Jerry W. Peace, of Greenwood, for Respondent.

ANDERSON, J.: Appellant Rebecca Lee-Grigg ("Lee-Grigg") challenges her conviction for forgery, contending the trial court erred in denying her (1) motion for a directed verdict; (2) request to charge the jury on a good faith defense; and (3) request to instruct the jury on use of evidence of good character. We reverse.

The law to be charged to the jury is determined by the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000); State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002); State v. Harrison, 343 S.C. 165, 172, 539 S.E.2d 71, 74 (Ct. App. 2000) (citing State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues. State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996); see also State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989) (acknowledging that a defendant is generally entitled to a requested jury instruction if it is a correct statement of the law on an issue raised by the indictment); State v. West, 138 S.C. 421, 136 S.E. 736, 737 (1927) (finding the court has a duty to charge jury as to law applicable to facts brought out in testimony).

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Arnold v. State provides a reviewing court with the accepted framework for analyzing a defective jury instruction for harmless error. 309 S.C. at 166, 420 S.E.2d at 838.

To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. . . .

Before reaching such a judgment, a court must take two quite distinct steps. First, it must ask what evidence the jury actually considered in reaching its verdict ... [Secondly, the Court] must weigh the probative force of the evidence as against the probative force of the presumption standing alone.

Following Arnold, the court applied this bifurcated analysis in Taylor v. State and reversed the defendant's conviction for possession with intent to distribute crack cocaine and marijuana. 312 S.C. at 183, 439 S.E.2d at 822. The court determined the jury heard sufficient evidence on possession, but no direct evidence on intent to distribute. Instead, the State relied on statutory inferences of the defendant's intent. Id. at 182, 439 S.E.2d at 821. In light of the trial court's jury instructions, those inferences became presumptions that the defendant was required to rebut. Id. "While there was sufficient evidence from which the jury could have inferred the Petitioner's intent to distribute the cocaine and marijuana, we cannot say beyond a reasonable doubt the jury did not base its verdict on the erroneous jury charge. Id.

In State v. Jeffries, our supreme court considered an inadequate and confusing jury charge on an element of the crime of kidnapping. 316 S.C. at 22, 446 S.E.2d at 432. Accordingly, the court weighed the facts the jury actually heard against the trial court's confusing jury charge to determine what effect, if any, it had on the verdict. Id. Concluding the jury's confusion centered on a defense that had no support in view of the facts, the supreme court decided, beyond a reasonable doubt, that the jury verdict did not rest on the inadequate charge. Id. at 23, 446 S.E. 2d at 433.

Addressing the trial court's failure to instruct on good character evidence, our supreme court held the error was harmless when the whole record conclusively established the defendant's guilt. State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982). Concomitantly, in State v. Harrison, the Court of Appeals found the trial court's failure to issue a good character charge was not harmless error because the State did not present overwhelming evidence of the defendant's guilt. 343 S.C. at 175, 539 S.E.2d at 76. The State charged and tried Harrison for simple possession of cocaine. Harrison admitted he attempted to purchase cocaine but denied he ever possessed the substance. Id. Harrison submitted evidence of his

community involvement with adolescents and testimony about the assistance he provided to two single mothers. Id. at 170, 539 S.E.2d at 73. The State's main evidence consisted of the arresting officer's testimony that he saw Harrison drop the drugs. Id. at 174, 539 S.E.2d at 75. Harrison requested an instruction regarding the evidence of his good character, which the trial court denied. Id. at 173, 539 S.E.2d at 75. While deliberating, the jury repeatedly questioned the trial court, indicating it struggled significantly with the decision of Harrison's guilt. Id. We ruled the trial court's denial was reversible error:

A different verdict might have been reached if the jury had been instructed that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant. The State did not present overwhelming evidence of Harrison's possession of cocaine, and did not try him for attempting to possess cocaine. Thus, the refusal to charge the requested instruction regarding evidence of good character and reputation was not harmless, but was reversible error.

Id. at 175, 539 S.E.2d at 76.

In the present case, the jury had before it evidence that Lee-Grigg signed a reimbursement request claiming she had incurred the relocation expenses. The State presented testimony that the City actually paid the costs of relocating the victim. Lee-Grigg professed she attempted to collect the funds because she believed the Chief had authorized her reimbursement. Furthermore, she asserted the Chief did not plan to claim reimbursement for the City's costs. Lee-Grigg averred she concealed the driver's signature and the Chief's initials on the City's fuel receipts to protect the victim's new location. At least two witnesses testified as to Lee-Grigg's good character and reputation in the community.

After deliberating an hour, the jury asked for clarification on the definition of criminal intent. The trial court recharged criminal intent. Subsequently, the jury notified the trial court it was deadlocked, with "six for guilty, four not guilty, and two undecided." The trial court then issued an Allen charge.[1] Within an hour the jury returned a verdict of guilty.

Weighing the evidence the jury had before it against the failure of the trial court to issue the good character charge, we cannot conclude the trial court's error was harmless. The linchpin of Lee-Grigg's defense was her claim she lacked the criminal intent necessary to constitute the crime of forgery. She repeatedly testified the Chief authorized her claim for reimbursement and assured her the City would not attempt to recoup its costs. The Chief's testimony neither confirmed, nor denied Lee-Grigg's assertion. Because she

relied on the Chief's authorization, Lee-Grigg contends she did not have the requisite intent to defraud.

Indubitably, the jury struggled with this case (to the point an Allen charge was given), and it seems fair to conclude the struggle centered around whether the State proved the critical element of criminal intent. In our view, the element of intent is inextricably connected to defendant's character. We cannot say, beyond a reasonable doubt, that the good character charge would not have made a difference in the outcome.

CONCLUSION

We hold the State provided direct and substantial circumstantial evidence to support the trial court's denial of Lee-Grigg's motion for directed verdict. We adhere to our established precedent that good faith is not a defense to forgery. We rule that Lee-Grigg was entitled to a jury instruction on good character and the trial court's failure to issue that instruction was reversible error.

Accordingly, the trial court's ruling on the request to charge evidence of good character is

REVERSED.

KITTREDGE and SHORT, JJ., concur.

[1] An Allen charge is "an instruction advising deadlocked jurors to have deference to each other's views, that they should listen, with a disposition to be convinced, to each other's argument; deriving its name from the case of Allen v. United States, 164 U.S. 492 (1896)." Black's Law Dictionary, 74 (6th ed. 1990).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

David Ray Matthews, Petitioner,

v.

State of South Carolina, Respondent.

ON WRIT OF CERTIORARI

Appeal From Darlington County
John H. Waller, Jr., Trial Judge
Edward B. Cottingham, Post-Conviction Judge

Opinion No. 25487
Submitted December 13, 2001 - Filed June 17, 2002

REVERSED

Deputy Chief Attorney Joseph L. Savitz, III, of Office of Appellate Defense, of Columbia, for petitioner.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General B. Allen Bullard, Jr., and Assistant Attorney General David Spencer, all of Columbia, for respondent.

JUSTICE BURNETT: David Ray Matthews ("Matthews") appeals the denial of post-conviction relief ("PCR"). We reverse.

FACTS/PROCEDURAL HISTORY

The State Grand Jury indicted David Ray Matthews ("Matthews") along with twenty-one others for trafficking cocaine in excess of 400 grams. ⁽¹⁾ The solicitor, in addition to other errors, ⁽²⁾ vouched for the credibility of a State's witness by stating during her summation:

Now, you may not have liked Bimbo Hudson. I didn't like Bimbo Hudson. I don't have to like him. All I have to do is determine whether or not he is a credible witness. I don't trust any of these people until I **corroborate their testimony**. And once I **corroborate their testimony**, yes, I put them on the witness stand because they were the ones that were there, they were the ones that can tell it.

(emphasis added). A jury convicted Matthews of the indicted charge. After unsuccessfully challenging his conviction on appeal, he instituted this PCR.

At the PCR hearing, Matthews' trial counsel testified he believed the remarks were improper but felt continual objections would adversely affect his client. The PCR judge denied relief finding Matthews failed to carry his burden of proof that counsel rendered ineffective assistance.

ANALYSIS

Matthews argues counsel rendered ineffective assistance by failing to object to solicitor's comments vouching for the credibility of the State's witness. We agree.

The applicant bears the burden to prove allegations in a PCR. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985), cert. denied, 474 U.S. 1094, 106 S.Ct. 869, 88 L.Ed.2d 908 (1986). To prove ineffective assistance of counsel, the applicant must show trial counsel's performance fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, *supra*.

The State argues counsel's failure to object was valid trial strategy. Counsel, at the PCR hearing, testified he did not object because he did not want the trial judge to scold him in front of the jury or give the prosecution any more time to make their closing. The record does reflect the trial judge admonished counsel for wrongfully objecting during the solicitor's summation. The trial judge also granted additional time to solicitor's closing to compensate for the interruption.

Where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992); Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). However, counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial. See Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001)(Counsel's failure to object to prejudicial hearsay because he did not want to "confuse or upset the jury" was not valid strategy); Gallman v. State, 307 S.C. 273, 414 S.E.2d 780 (1992)(Trial counsel's failure to object to judge's comments inviting jury to prematurely discuss the case was not "strategic" where error of law involved and such comments are inherently prejudicial).

The solicitor's statement is improper. A solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). A solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). Vouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution which supports conviction. *Id.* It is inappropriate for the State to assure the jury of a witness' credibility, because the jury is charged with assessing the credibility of witnesses based on evidence in the record. *Id.*

The solicitor's summation led the jury to believe the government corroborated the witness' testimony before trial and found it credible. The solicitor did not support this vouching with anything within the record, such as corroboration by other witnesses or physical evidence. The solicitor improperly vouched for the witness.

Counsel's failure to object was incorrect and prejudicial. The mass drug conspiracy trial created an environment where the jury faced an overwhelming number of defendants, attorneys, witnesses, and evidence. ⁽³⁾ This Court, in the related case of Barroso II, *supra*, noted the evidence against Matthews' co-defendants was far from overwhelming, resting entirely on testimony of individuals, all higher in the cocaine conspiracy hierarchy, who

testified for the State for reduced sentences. Moreover, the State erroneously introduced voluminous testimony of other prior bad acts which served as a basis for this Court overturning the co-defendants' convictions. See Barroso II, supra.

Counsel's failure to object prejudiced his client by allowing the solicitor to vouch for the credibility of a key State's witness. His silence compounded the duty of a jury faced with a confusing, mass trial characterized by improperly admitted evidence. See id. We believe Matthews has carried his burden to establish prejudice by counsel's failure to object. For these reasons we **REVERSE**.

TOAL, C.J., MOORE and PLEICONES, JJ., concur. WALLER, J., not participating.

1. Matthews and ten of his co-conspirators were tried together. A jury convicted seven of the co-conspirators of the indicted charge, convicted two of lesser offenses and acquitted two. The Court of Appeals reversed one conviction and affirmed six, including Matthews. State v. Barroso, 320 S.C. 1, 462 S.E.2d 862 (Ct. App. 1995) (Barroso I). The six petitioned for a writ of certiorari to this Court.

Subsequently, Matthews and one co-defendant, moved to withdraw their petitions to pursue PCR. After warning the two of the dangers of withdrawing the petitions, this Court granted the motions. We subsequently granted certiorari to the remaining petitions and reversed the convictions. State v. Barroso, 328 S.C. 268, 493 S.E.2d 854 (1997) (Barroso II).

2. See Barroso II, supra. The solicitor improperly introduced a marijuana conspiracy involving several of the defendants throughout the trial. In her summation, the solicitor also made references to various unrelated crimes without objection from Matthew's counsel.

3. This case occurred before State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993), where this Court cautioned against mass drug conspiracy trials.

Davis Adv. Sh. No. 2
S.E.2d

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William James Barnes, Respondent

Opinion No. 24555

Submitted December 11, 1996 - Filed January 20, 1997

PUBLIC REPRIMAND

William James Barnes, of Greenville, pro se.

Attorney General Charles Molony Condon, Assistant Deputy Attorney General J. Emory Smith, Jr., and Assistant Attorney General Paul M. Koch, all of Columbia, for complainant.

PER CURIAM: In this attorney grievance proceeding, respondent admits that he has committed ethical violations and consents to a public reprimand. We accept respondent's admission and publicly reprimand him.

The ethical violations committed by respondent arose out of his representation of a married couple who were injured in the parking lot of a Greenville restaurant. Two weeks after the incident, the clients contacted respondent and discussed the prospect of bringing an action against the restaurant. Respondent agreed to represent the clients during this meeting and subsequently drafted a letter to the restaurant informing it that he represented the clients and requesting information regarding the restaurant's liability insurance carrier.

Respondent then falsely informed the clients that he had filed a complaint on their behalf, that the case was on the docket, and that there was a possibility that it would come up for trial in a short time. Between 1987 and 1995, respondent met with the clients some twenty-five times. Respondent repeatedly assured them that there was no need to worry about the statute of

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IN THE MATTER OF BARNES

limitations as the suit had already been filed. During respondent's final meeting with the clients, he admitted to them that he had never filed a complaint on their behalf. By this time the statute of limitations had already run.

Respondent has violated Rule 1.3 of the Rules of Professional Conduct contained in Rule 407, SCACR, by failing to act with reasonable diligence and promptness in representing a client. He has also violated Rule 1.4(a) of the Rules of Professional Conduct contained in Rule 407, SCACR, by failing to keep his clients reasonably informed about the status of a matter and by failing to comply promptly with reasonable requests for information. Finally, respondent has violated Rules 8.4(a), (d), and (e) of the Rules of Professional Conduct contained in Rule 407, SCACR, by engaging in conduct involving dishonesty, fraud or deceit, by engaging in conduct that is prejudicial to the administration of justice, and by violating the Rules of Professional Conduct.

Under the circumstances of this case, we have decided to accept respondent's conditional admission for a public reprimand. Accordingly, respondent is hereby publicly reprimanded for his conduct in this matter.

PUBLIC REPRIMAND.

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**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Walter Bilbro, Jr., Respondent.

Opinion No. 25329

Submitted June 12, 2001 - Filed July 23, 2001

PUBLIC REPRIMAND

Henry B. Richardson, Jr. and Assistant Attorney General
Tracey C. Green, both of Columbia, for the Office of
Disciplinary Counsel.

Coming B. Gibbs, Jr., of Charleston, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and Disciplinary Counsel have entered into an agreement pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a public reprimand. We accept the agreement.

The facts as stated in the agreement are as follows. Respondent undertook representation of a client in a workers' compensation matter when he had previously, and was currently, representing the client's employer. Respondent did not fully disclose the conflict to the client nor did he obtain the client's consent to continue representation despite the conflict. Respondent also gave the client advice with respect to the workers' compensation claim without having conducted an adequate factual and legal investigation of the claim.

By his conduct, respondent has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (failing to provide competent representation to a client); Rule 1.3 (failing to act with reasonable diligence in representing a client); Rule 1.4 (failing to properly communicate with a client); and Rule 1.7 (representing a client when representation of the client is directly adverse to another client). By violating the Rules of Professional Conduct, respondent has also violated Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

We find the facts as set forth in the agreement warrant a public reprimand. Accordingly, we hereby publicly reprimand respondent for his conduct.

PUBLIC REPRIMAND.

Pg 2/11

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

2008-11-18-01

The Supreme Court of South Carolina

In the Matter of William E. Walsh, Respondent.

ORDER

By order dated November 5, 2008, respondent was placed on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and Stanley T. Case, Esquire, was appointed attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Mr. Case advises that respondent has a partner who is capable of conducting his law office affairs and, therefore, he believes it is not necessary for him to continue with his appointment. See Rule 31(a), RLDE. The Commission on Lawyer Conduct agrees.

Stanley T. Case, Esquire, is hereby relieved from his appointment as attorney to protect respondent's clients' interests. Respondent shall remain on interim suspension pursuant to this Court's November 5, 2008 order.

IT IS SO ORDERED.

s/ Jean H. Toal _____ C.J.

FOR THE COURT

Columbia, South Carolina
November 18, 2008

B 2/3

2013-09-10-01

The Supreme Court of South Carolina

RE: Amendments to Rule 31, RLDE, Rule 413,
SCACR

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution, Rule 31(c) of Rule 413 of the South Carolina Appellate Court Rules (SCACR) is hereby amended as follows:

(c) Duties. The receiver shall:

(1) Take custody of the lawyer's active and closed files and trust, escrow, operating and any other law office accounts. The chair or vice chair may issue such orders as may be necessary to assist the receiver in obtaining custody over such files and accounts, to include orders compelling the lawyer or a third party to take specific action regarding the files and accounts. The willful failure to comply with such an order may be punished as a contempt of the Supreme Court. A party who wishes to challenge such an order must immediately seek review of the order by petition to the Supreme Court;

This amendment shall be effective immediately.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

Columbia, South Carolina
September 10, 2013

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT
OPINION NO. 10 - 1998

RE: Does a judge have a duty to inquire as to whether or not a copy of a document has been provided to opposing counsel where such disclosure is not obvious?

FACTS

A judge has inquired into whether he has a duty to inquire into whether a copy of a document, such as a pre-trial brief or proposed order, has been provided to opposing counsel where the facts do not indicate that such disclosure has been made.

CONCLUSION

A judge should take appropriate action where he or she has suspicion that there are violations of the Rules of Professional Conduct.

OPINION

Under Canon 3(D)(2), a judge should take appropriate action where he or she believes a lawyer has violated the Rules of Professional Conduct contained in Rule 407, SCACR. The Code of Judicial Conduct does not specifically address whether a judge has a duty to inquire as to whether or not a copy of a document has been provided to opposing counsel. However, where a judge has a specific suspicion that the Rules of Professional Conduct has been violated, he or she must take action. For example, Rule 3.4 of the Rules of Professional Conduct governs fairness to opposing party and counsel, which includes abusive discovery practices.

Thus, a judge should take appropriate action where he or she believes there has been violations of the Rules of Professional Conduct. Canon 3(D)(2).

A. CAMDEN LEWIS, CHAIRMAN
HONORABLE HENRY F. FLOYD
HONORABLE JAMES A. SPRUILL, III

March 12, 1998

1 allowing the redaction of any testimony as far as permanent
2 impairment because we do have -- we were going to bring
3 that up with the Court.

4 THE COURT: I -- I would agree that there -- there's
5 not -- there's not a foundation in the -- established in
6 the deposition to determine how he was able to come up with
7 that particular -- well, first of all, that he had any
8 experience in evaluating impairment. Secondly, how he came
9 up with that particular percentage that he chose to -- to -
10 - to -- or that he reached.

11 And so that's my real concern about that particular
12 testimony because there doesn't seem to be any foundation
13 for it.

14 And so I -- I notice that there were objections to
15 that, I believe, and I can't tell you what pages or lines
16 at this particular point. But I -- I would agree to redact
17 that part.

18 MR. LANG: Thank you, Your Honor.

19 MR. SALTZMAN: Your Honor, is that the permanent
20 impairment part or the disability rating? There was two --
21 two things that he mentioned there. He gave a disability
22 rating about 15 to 20 percent. Is that what you're
23 referring to?

24 THE COURT: If you can point me to the page, I can ...

25 MR. SALTZMAN: I think it's around page 26.

1 last year or so. And likewise, we would ask that he be
2 struck for cause.

3 THE COURT: What I'll do is I'll add those questions
4 because I think the questions I ask generally say, "Have --
5 have you ever been represented by them." It does not talk
6 about being adverse. So I will add the adverse part to the
7 voir dire and -- and see what comes out.

8 MR. LANG: Your Honor, Defense is willing to waive an
9 alternate and go forward with 11 if we need to.

10 THE COURT: What's the Defendant's position on that.

11 MR. LANG: That was the Defense position.

12 THE COURT: I'm sorry. The Plaintiff's position. I'm
13 sorry.

14 MR. SALTZMAN: I'm sorry. I could hear all ---

15 MR. LANG: We're willing to waive an alternate and is
16 we lose a juror, we'll go forward with an 11-person verdict
17 if we have to.

18 MR. SALTZMAN: We'll consent to that, Your Honor.

19 THE COURT: Okay.

20 MR. LANG: That way we bother one less person out
21 there.

22 THE COURT: All right. Anything else we need to take
23 up?

24 MR. LANG: Not from the Defense, Your Honor.

25 MR. SALTZMAN: Nothing further, Your Honor, from the

1 A So I pulled over to the side and after calling my
2 husband, I called 911 to get the police out. But it took
3 them so long and as I was sitting there, my nerves was so
4 (crying) -- it was unimaginable that I could be hit that
5 way. I ended up urinating on myself.

6 Q Mrs. Samuel ---

7 A I was so embarrassed.

8 Q Mrs. Samuel, did you go right home after the accident?

9 A No. Right after the accident I had to wait on the
10 police officer to get there, and I didn't get out the car
11 because I -- I messed up my clothes.

12 So the police officer came over to me and told me --
13 and she got the ticket.

14 MR. LANG: Objection ---

15 THE COURT: Again ---

16 MR. LANG: --- to anything that ---

17 THE COURT: Again ---

18 MR. LANG: --- anything that was said.

19 THE COURT: Again ---

20 A Well, he gave me a copy of the ticket.

21 THE COURT: One moment, please, ma'am. Please
22 remember, you cannot testify as to what anybody said to
23 you. So you can't testify about your conversation with the
24 police officer. You can say what you said, but you can't
25 say what he said, he or she said.

1 addressed all the issues. You -- and you'll be able to go
2 back and look through the -- the videos tonight and --

3 MR. SALTZMAN: Yes.

4 THE COURT: So I think we're all squared away to be
5 able to start -- I mean, you -- I'm sure you'll come and we
6 can get it set up beforehand. And -- okay. And with that,
7 we're done.

8 MR. LANG: Thank you, Your Honor.

9 MR. SALTZMAN: Thank you, Your Honor.

10 (Off the record at 4:36 p.m.)

11 DAY 3

12 (On the record at 9:58 a.m.)

13 THE COURT: Good morning, everyone.

14 ALL COUNSELORS: Good morning, Your Honor.

15 THE COURT: Thank you. Be seated. I apologize for my
16 lateness. I didn't realize I had a doctor's appointment
17 this morning. So I'm healthy, in case anyone wanted to
18 know. Not that you -- you asked, but I told you.

19 Is there anything that we need to take up before we
20 get started?

21 MR. SALTZMAN: Yes, Your Honor. It actually just --
22 it was brought to my attention that we have a juror issue.
23 It's Juror No. 120, Latricia Hammond.

24 Apparently she is a member of -- of Mrs. Samuel's
25 church and she actually had approached Mrs. Samuel at bible

1 study last night.

2 From what I understand, Ms. Hammond is -- apparently
3 when we did our voir dire of the jurors, I guess she didn't
4 connect the dots -- didn't realize that Mrs. Samuel was a
5 member of the church. And I guess when we prepared to
6 proceed to trial, I guess -- guess the dots connected.

7 THE COURT: Okay. And so was there any conversation
8 with her yesterday?

9 THE PLAINTIFF: Your Honor, she just said, "I'm
10 sorry," and "Can I see your arm?"

11 THE COURT REPORTER: Can I see your what?

12 THE PLAINTIFF: My arm.

13 THE COURT: You all need to really move that for the
14 time being. So it - because it blocks the -- the court
15 reporter needs to see -- I didn't realize it was blocking
16 her.

17 (Brief pause.)

18 THE COURT: Yeah. So -- so there was conversation?

19 THE PLAINTIFF: Yes, ma'am.

20 THE COURT: Okay. Yes, sir?

21 MR. LANG: It may be unsurprising to the Court, but we
22 would ask that the juror be removed. She did her own
23 investigation, contrary to the Court's instruction, not to
24 contact the parties or do their own investigation.

25 Also, if the Court agrees that she should be removed,

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1 I would ask that she be brought in and asked if she's had
2 any conversations with the other jurors in providing
3 details of her investigation to the other jurors or the --
4 or bolstering her by saying she's a good member of my
5 church or something like that, in which case she would have
6 poisoned the entire jury panel and force us to come back
7 another week.

8 THE COURT: (To the bailiff) Would you ask Latrisha
9 Hammond, Juror No. 120, to come into the courtroom, please?

10 THE BALIFF: What's her number again, Judge?

11 THE COURT: One twenty.

12 THE BAILIFF: One twenty. Thank you.

13 (The juror enters at 10:01 a.m.)

14 THE BAILIFF: Judge, this is Ms. Hammond.

15 THE COURT: Ms. -- Ms. Hammond.

16 THE JUROR: Yes, ma'am.

17 THE COURT: I understand -- I'm -- I've been told this
18 morning that you attend church with Mrs. Samuel; is that
19 correct?

20 THE JUROR: Yes, that's correct.

21 THE COURT: Did you have any conversations with her
22 yesterday about either her injuries or anything along those
23 lines?

24 THE JUROR: No.

25 THE COURT: Okay. Did you see her at the bible study

1 last night?

2 THE JUROR: Yes, I did.

3 THE COURT: Okay. Did you have any conversations with
4 her about -- about the testimony or anything along those
5 lines?

6 THE JUROR: No.

7 THE COURT: Okay. She -- did you have any
8 conversations with her about any of her scars or her
9 shoulder surgery or her injuries?

10 THE JUROR: Well, she did show me her scars.

11 THE COURT: You need to -- if you could speak up just
12 a little bit.

13 THE JUROR: Oh, okay. Yes, she did show me her scar.

14 THE COURT: Okay. Did you -- did you ask to see them
15 or she just voluntarily showed them to you?

16 THE JUROR: She showed it to me.

17 THE COURT: Okay.

18 THE JUROR: I didn't ask to see it.

19 THE COURT: Okay. And have you had any conversations
20 with any of the jurors this morning about your interaction
21 with Mrs. Samuel?

22 THE JUROR: Oh, no.

23 THE COURT: Okay. And so there's been no conversation
24 with her -- with anybody in the jury room about your, you
25 know, going to the same church with her or ---

1 THE JUROR: Oh, no, no.

2 THE COURT: --- or seeing her last night or anything
3 along those lines?

4 THE JUROR: No, no.

5 THE COURT: Okay. And are you ceratin that you did
6 not ask to see her -- her -- her scars or her injuries?

7 THE JUROR: I'm certain. I did not ask.

8 THE COURT: Okay. Did you say -- did -- did you
9 express any opinion or express any sympathies about the --
10 the incident or anything along those lines?

11 THE JUROR: No. I just said I -- I just said,
12 "Awwww" when I saw her scars, and that's it.

13 THE COURT: Okay. Mrs. Hammond, in -- do you -- Mrs.
14 Hammond, I'm going to -- I'm -- out of -- out of an
15 abundance of caution, I'm going to go ahead and excuse you
16 from the -- any further matters in this particular trial.
17 I just want -- the -- the idea that -- that you have now
18 been exposed to her -- her injuries that other jurors do
19 not have the opportunity to see and -- and is really not
20 before you all to -- to do that, I just want to ensure, you
21 know, that -- that -- that because of that and the fact
22 that you also attend church with her, that that doesn't
23 raise any issues for the trial. And so I'm just going to
24 go ahead and excuse you at this particular time.

25 You -- you know, you've -- you've come in and you've

1 told me what you -- what you know and I appreciate that
2 very much, but I'm going to go ahead and excuse you at this
3 particular time. And you would just need to go downstairs
4 to the jury assembly room ---

5 THE JUROR: I'm ---

6 THE COURT: Okay. And -- and just tell them that
7 you've been excused from the trial for today, but you're --
8 you're still on jury duty for the list. You may be called,
9 you may not be called. I just don't know for the future.
10 All right?

11 MR. LANG: Your Honor, the Defense would ask that if
12 she has to go back into the jury assembly room for any
13 reasons, to get personal items, that she doesn't discuss
14 this at all.

15 THE COURT: Do you -- did -- when you came out of the
16 jury room, you have everything that you needed? Do you
17 need to go back in the jury room?

18 THE JUROR: Oh, no. I don't need to go back in there.

19 THE COURT: Okay.

20 THE JUROR: I have my bag.

21 THE COURT: All right. Thank you very much. I
22 appreciate it.

23 THE JUROR: Okay.

24 MR. LANG: Thank you, Your Honor.

25 (Juror exits the courtroom at 10:06 a.m.)

1 MR. SALTZMAN: Right. And -- and I -- I wouldn't get
2 into that anyway.

3 THE COURT: Okay. Now, what -- what -- and what about
4 the motor vehicle accidents?

5 MR. SALTZMAN: Motor vehicle accidents, I -- I -- I
6 don't think we need to discuss that. I wasn't going to ask
7 the Defendant about that anyway.

8 THE COURT: Okay. So you agree not to discuss those
9 prior motor vehicle accidents other than this one.

10 MR. SALTZMAN: Yeah. I'm fine with that..

11 THE COURT: Okay.

12 MR. LANG: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. LANG: And Defense is ready to proceed, Your
15 Honor, when the Court's ready.

16 THE COURT: Okay. (To the bailiff) You may ask the
17 jury to come in.

18 THE BAILIFF: Yes, ma'am.

19 (Jury enters at 2:32 p.m.)

20 THE BAILIFF: Jury's seated, Your Honor.

21 THE COURT: Good afternoon, ladies and gentlemen.
22 We're ready to continue on. We will now hear from the
23 Defense.

24 (To Mr. Lang) You may call your first witness.

25 MR. LANG: Thank you, Your Honor. The Defense would

1 evening and we'll see you tomorrow morning.

2 (Jury exits at 3:33 p.m.)

3 THE COURT: Are there any motions at this time?

4 MR. SALTZMAN: No, Your Honor.

5 MR. LANG: Your Honor, at this time, the Defense would
6 renew motions made at the end of the Plaintiff's case,
7 specifically those as to charging the jury with punitive
8 damages.

9 THE COURT: You know, I -- I think it's a close call.
10 But I think that they're -- again, I'm only concerned with
11 the existence of the evidence, not with the weight. And so I
12 -- I think that that -- that is a jury question for them to
13 have to decide.

14 MR. LANG: Yes, Your Honor. Thank you.

15 THE COURT: And so I'll deny that motion.

16 MR. SALTZMAN: Thank you, Your Honor.

17 THE COURT: At this time what I'd like to do is go over
18 what I intend to instruct the jury tomorrow. I'll give them
19 my charge and then see if there's anything -- I think -- I've
20 -- I've looked at the charges that you all have given to me.
21 I think I've -- I will incorporate what's in there. It may
22 not be in the exact same language, but I will incorporate the
23 things that you've requested.

24 I will charge the jury that they have to determine the
25 facts based upon the evidence. In order to do that, they

1 reprehensibility of the conduct, the harm that's caused, the
2 Defendant's awareness of a conduct's wrongfulness, the
3 duration of the conduct, and any concealment. Thus any
4 penalty imposed should bear a relationship to the nature and
5 extent of the conduct and the harm caused, including the
6 actual damages award made by you, the jury.

7 Secondly, the penalty should take into account as -- as
8 a mitigating factor, any other penalty that may be imposed
9 for -- for which -- for the conduct, including any criminal
10 or civil penalty for the same conduct.

11 And finally, any award of punitive damages must be
12 limited to punishment and thus must -- may not effect
13 economic bankruptcy. To this end, the Defendants ability to
14 pay any punitive damages award should be considered; however,
15 economic bankruptcy is not a bar to punitive damages.

16 The verdict form would be (as read): "We the jury
17 unanimously find for the Plaintiff." A line for actual
18 damages, a line for punitive damages -- excuse me-- or (as
19 read): "We find for the Defendant."

20 Is there -- is there anything further from the
21 Plaintiff?

22 MR. SALTZMAN: Nothing further, Your Honor, and I agree
23 with all of those charges.

24 THE COURT: Anything further from the Defendant?

25 MR. LANG: Your Honor, we'd submitted a Defense request

1 (Jury exits at 10:52 a.m.)

2 THE COURT: Are there any exceptions to the charge by
3 the Plaintiff?

4 MR. SALTZMAN: No, Your Honor.

5 THE COURT: By the Defendant?

6 MR. LANG: No, Your Honor.

7 THE COURT: Okay. If you all will come and take a look
8 at all the exhibits and make sure they're all there and
9 another look at the verdict form.

10 (All counsel comply.)

11 THE COURT: Anything else y'all need to look at?

12 MR. LANG: Nothing from the Defense.

13 (Brief pause.)

14 MR. SALTZMAN: We're good.

15 THE COURT: Everybody good?

16 MR. SALTZMAN: We're good.

17 MR. LANG: Yes, Judge.

18 THE COURT: Okay. (To the bailiff) You may tell them
19 they may begin their deliberations.

20 (Exhibits and verdict form are taken to the jurors to
21 begin deliberations at 11:01 a.m.)

22 (Off the record at 11:01 a.m.)

23 (Back on the record at 11:39 a.m.)

24 THE COURT: I received a note from the jury. It says
25 (as read): "Is there a copy of the -- it says "policy

1 complain about the verdict that you've reached, and you've
2 fully discharged your duty and your responsibility as jurors
3 in this matter.

4 On behalf of the State and the County, I'd like to
5 thank you very much for your willingness to serve as jurors
6 in this matter. I will tell you that your service is
7 concluded for the week, and so you do not need to call back
8 after 6, you do not need to report.

9 Please go back to the jury room. You can pick up your
10 lunch. The clerk will come in with your work excuses for
11 those of you who need work excuses, and then you will be free
12 to go.

13 If you will leave with us the plastic portion of your
14 badge. The white portion is your souvenir for jury service,
15 and the checks will be in the mail.

16 (Jurors laugh.)

17 THE COURT: Thank you so much for your service.

18 (Marked Court's Exhibit No. 5, Juror note.)

19 (The Court exits the bench to confer with the jurors as
20 they exit at 11:55 a.m.)

21 (Brief pause.)

22 THE COURT: Are there any post-trial motions at this
23 time?

24 MR. SALTZMAN: Your Honor, at this time the Plaintiff
25 would ask for a judgement not withstanding the verdict based

1 on there was enough evidence in the record for the jury to
2 find by a preponderance of the evidence in favor of the
3 Plaintiff.

4 THE COURT: Any response to that, Mr. Lang?

5 MR. LANG: Your Honor, by my calculations, the jury was
6 out approximately 45/47 minutes. There's no indication that
7 they considered anything other than the evidence, the law
8 presented to the jury. There's nothing to say that they
9 acted on anything other than the instructions of the Court.
10 They had evidence to consider. They were told they could
11 believe all, some, or none, and they had evidence that would
12 lead them to find that we did not cause the claimed injury.

13 THE COURT: I'll respectfully deny your request. I
14 think the jury certainly -- there -- there were disputed
15 issues in this particular case. They heard all the evidence.
16 They had the opportunity to discuss that and determine the
17 facts based upon their view of what the evidence showed, and
18 -- and were able to arrive at their verdict.

19 I -- I don't see anything that would indicate that
20 their verdict was based upon something other than the
21 evidence in this case, and so I respectfully deny your
22 request.

23 MR. LANG: Thank you, Your Honor.

24 THE COURT: And so I'll enter a Form 4, I will be happy
25 to sign your 403, and thank you very much.