

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-000163

Henry Pressley,.....Respondent,

v.

Eric Sanders,.....Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Henry Pressley,)

Plaintiff,)

v.)

Eric Sanders,)

Defendant.)

) IN THE COURT OF COMMON PLEAS

) Civil Action No.: 2015-CP-40-4689

) **ORDER GRANTING PLAINTIFF'S**
) **MOTION FOR NEW TRIAL**
) **ABSOLUTE OR IN THE**
) **ALTERNATIVE FOR A NEW TRIAL**
) **NISI ADDITUR**

2017 JAN 23 PM 2:31
JEANETTE HOSBRIDE
CLERK
RICHLAND COUNTY
FILED

This matter came before the Court on October 24, 2016, on Plaintiff's post-trial motions seeking relief in the form of a new trial absolute, new trial under the thirteenth juror doctrine, or relief under the doctrine of new trial *nisi additur*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court in *Proctor v. Dept. of Health and Environmental Control* determined:

A new trial nisi is one in which a new trial will be granted unless the party opposing it complies with a condition set by the court. The grant or denial of new trial motions rests within the discretion of the trial judge, and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. The trial court alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. However, compelling reasons must be given to justify invading the jury's province by granting a new trial nisi remittitur. The consideration for a motion for a new trial nisi remittitur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. Great deference is given to the trial judge who heard the evidence and is more familiar with the evidentiary atmosphere at trial, and who thus possesses a better-informed view of the damages than this Court.

368 S.C. 279, 319-21, 628 S.E.2d 496, 518 (Ct. App. 2006)(internal citations and quotation marks omitted).

This case involved a rear end motor vehicle collision and was tried before me during the two day period of October 12, 2016 to October 13, 2016. At this trial the Defendant admitted liability, but disputed the damages. However, there was no contrary testimony or evidence to dispute that the medical treatment and bills resulted from the car collision at issue in this trial. Plaintiff submitted undisputed, uncontroverted evidence of loss in the amount of his total medical bills that were \$9,658.00.

The testifying treating physician, Timothy M. Zgleszewski, M.D., was qualified as an expert and gave an undisputed opinion that the injuries, pain, and subsequent treatment were related to the collision. The treating physician also testified that the treatment was reasonable and necessary as were the bills incurred for treatment. There was no testimony or evidence to rebut the treating physician's testimony or opinions.

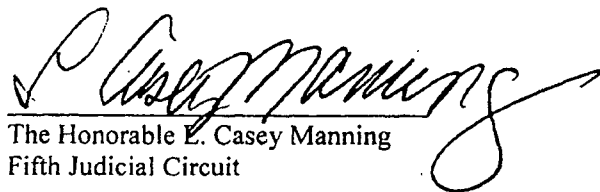
The Plaintiff has been a brick mason for over forty years and he testified that he suffered injuries to his neck and back that caused radiating pain in his extremities. Plaintiff testified that he missed work due to the injuries, could not sleep at night, and could not engage in normal daily activities. Plaintiff suffered great pain as a result of the accident. He sought a conservative course of treatment that started with chiropractic care and ultimately ended at the pain specialist when he could not tolerate the needles that were required in the procedures. There was no evidence or testimony that Plaintiff ever suffered from injuries to his neck or back prior to the collision.


At the conclusion of the trial, the jury returned a verdict of \$9,888.30, of which almost half was allocated to pain and suffering. The jury verdict was inadequate based upon the evidence and testimony that was presented at trial. This verdict was significantly insufficient and inadequate to compensate the Plaintiff for the actual damages that he suffered as a result of the collision. Therefore, the verdict was not reasonable.

The Trial Judge is vested with the authority to grant a new trial. *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996) ("The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law."); *id.* at 404, 477 S.E.2d at 723 ("The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives."); *id.* at 404-05, 477 S.E.2d at 723 ("The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute."). For all of the compelling reasons listed above, it is abundantly clear that the verdict in this case was inadequate, in light of the evidence and testimony presented at trial, and granting *nisi additur* is appropriate.

THEREFORE, Plaintiff's Motion for a new trial *nisi additur* is hereby granted, and an additional \$10,000.00 in actual damages is to be paid by the Defendant, bringing the total verdict to \$19,888.30, or a new trial will be granted.

IT IS SO ORDERED.


The Honorable E. Casey Manning
Fifth Judicial Circuit

 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
Henry Pressley,)	Civil Action No.: 2015-CP-40-4689
)	
Plaintiff,)	
)	PLAINTIFF'S NOTICE OF MOTION
v.)	AND MOTION FOR NEW TRIAL
)	ABSOLUTE OR IN THE
Eric Sanders,)	ALTERNATIVE FOR A NEW TRIAL
)	<i>NISI ADDITUR</i>
Defendant.)	
)	
)	
)	

TO: RICHARD A. JONES, III, ESQ., ATTORNEY FOR DEFENDANT, AND TO THE DEFENDANT ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by the undersigned attorney, hereby moves within ten days, or earlier at the request of the Court, for an Order granting Plaintiff's Motion for a New Trial Absolute, or in the alternative, a New Trial *Nisi Additur*, on the following grounds:

1. That the Court grant Plaintiff a new trial pursuant to SCRCP 59(a). The rule states,

"A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered,

take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.”

SCRCP 59(a).

2. That the Court grant Plaintiff a new trial on actual damages only under the “thirteenth juror” doctrine pursuant to *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990)(outlining the thirteenth juror doctrine as a vehicle by which the trial judge may grant a new trial when he or she is convince that justice has not been served by the verdict).

3. That the Court grant Plaintiff a new trial, *nisi additur*, on actual damages. If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial nisi additur. *Easler v. Hejaz Temple*, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985).

ARGUMENT

The Trial Judge is vested with the authority to grant a new trial. *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996) (“The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.”); *id.* at 404, 477 S.E.2d at 723 (“The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.”); *id.* at 404-05, 477 S.E.2d at 723 (“The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute.”)

This case involved a rear end motor vehicle collision. At this trial the Defendant admitted liability and disputed the actual damages. However, there was no contrary testimony or evidence to dispute that the medical treatment and bills resulted from the car collision at issue in this trial. Plaintiff's total medical bills were \$9,658.00.

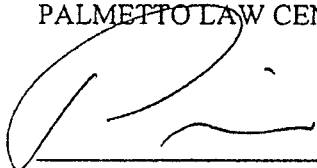
The testifying treating physician, Timothy M. Zgleszewski, M.D., was qualified as an expert and gave an undisputed opinion that the injuries, pain, and subsequent treatment were related to the collision. The treating physician also testified that the treatment was reasonable and necessary as were the bills incurred for treatment. There was no testimony or evidence to rebut the treating physician's testimony or opinions.

The Plaintiff has been a brick mason for over forty years and he testified that he suffered injuries to his neck and back that caused radiating pain in his extremities. Plaintiff missed work due to the injuries, could not sleep at night, and could not engage in normal daily activities. He sought a conservative course of treatment that ultimately ended at the pain specialist when he could not tolerate the needles that were required in the procedures. There was no evidence or testimony that Plaintiff ever suffered from injuries to his neck or back prior to the collision.

The jury returned a verdict of \$9,888.30, of which almost half was allocated to pain and suffering. The jury verdict is not supported by the evidence and testimony that was presented at trial. This verdict was significantly insufficient and inadequate to compensate the Plaintiff for the actual damages that he suffered as a result of the collision. Therefore, the verdict was not reasonable.

Wherefore, Plaintiff moves this Court for new trial absolute or new trial *nisi additur*, in a sum the Court determines is reasonable, or in the alternative a new trial on Plaintiff's actual damages.

PALMETTO LAW CENTER, P.C.



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October 19, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)

Henry Pressley,)

Plaintiff,)

v.)

Eric Sanders,)

Defendant.)

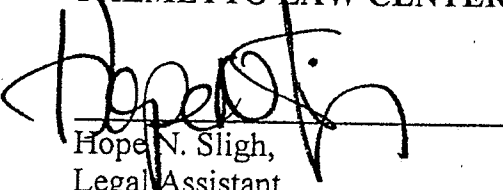
Civil Action No.: 2015-CP-40-4689)

CERTIFICATE OF SERVICE

I, Hope N. Sligh, the undersigned employee of the Law Offices of Palmetto Law Center, hereby certify that a copy of the Plaintiff's Notice of Motion and Motion for a New Trial has been served on the following individual by depositing same in the United States Postal Service with the proper amount of first class postage duly affixed:

SERVED ON: Richard A. Jones, III, Esq.
Turner Padgett
1901 Main Street
17th Floor
Columbia SC 29202

PALMETTO LAW CENTER, P.C.



Hope N. Sligh,
Legal Assistant

October 19, 2016
Columbia, South Carolina

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
3) No. 2015 CP 40 04689

4 HENRY PRESSLEY)
5 Plaintiff)
6 versus) TRANSCRIPT OF RECORD
7)
8 ERIC SANDERS)
9 Defendant)

Columbia, South Carolina
October 11/12, 2016

12
13 B E F O R E :
14 HONORABLE CASEY MANNING, Judge Presiding, and a Jury

15
16 A P P E A R A N C E S :
17 For the Plaintiff: P. KALISH, Esq.
18 For the Defendant: R. JONES, Esq.
19 Reporter Present: CRYSTAL HOLMES
20
21
22

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S. C. 29485

25

1 means I agree with the objection and the witness should not
2 answer that question.

3 If I overrule the objection, that means that the witness
4 may answer the question.

5 Now, I would ask that you not take notes in this case.
6 It is a relatively short case as I anticipate it to be.

7 While I realize that notes you may take might be helpful
8 to you in your deliberations, but I find the best system is
9 for you to listen carefully as the evidence is presented to
10 you during the trial.

11 As I said, in this case you do not have to consider neg-
12 ligence. The only thing you will have to resolve for the par-
13 ties in this case is the value of this case from the evidence
14 that is presented to you.

15 So I would ask that you pay close attention now to the
16 opening statements made on behalf of the parties, and I would
17 call first upon Mr. Kalish for Mr. Pressley, followed by Mr.
18 Jones for Mr. Sanders.

19 Mr. Kalish.

20 MR. KALISH: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. KALISH: Ladies and gentlemen of the jury, thank you
23 for being here. I know you aren't here by choice but as the
24 Judge told you on Tuesday it is your civic duty.

25 You are here to find the truth in this matter, and that

1 is a very important job. The twelve of you have to listen to
2 all of the facts in the case and consider the evidence and to
3 render a verdict.

4 Let me tell you a little bit about Mr. Pressley. Mr.
5 Pressley is my client and he was in a car wreck, and we'll be
6 talking about that.

7 Unfortunately, this car wreck is not exciting but we are
8 here to show you how the car wreck happened. It is important
9 to my client.

10 I'm going to show you that the cars were not damaged to
11 a great extent. Nothing was smashed to pieces. There were no
12 roll-overs, nothing of that nature. You will see the evidence.

13 This is a picture of the Defendant's car that ran into my
14 client's car, and this is the rear of my client's car as it is
15 going to be towed and that portion of the car. There is not
16 a lot of physical damage to this car, but what I want you to
17 remember is that Mr. Pressley's sitting in his car at a stop
18 sign next to the Interstate at I-77 going south and toward
19 Sumter, on Garner's Ferry.

20 The exit started out like this and goes over the Inter-
21 state, and this is the exit ramp. As you come down the exit
22 ramp here you come on down to a stop sign.

23 He comes to the stop sign where the road curves around,
24 to make a right turn. Mr. Pressley had stopped at the stop
25 sign.

1 Mr. Pressley is looking out to make sure the traffic com-
2 ing from the left had cleared. Garner's Ferry is both ways.
3 At that point something strikes him in the back and that is
4 what caused the problems.

5 Mr. Pressley is seventy now. He was sixty-nine when the
6 accident occurred. He was employed as he had been employed
7 since 1972, in various facets of masonry. He had worked as a
8 brick mason, as a foreman, or in some similar capacity through
9 all the years of his working life.

10 He grew up in Richland County, went to school in Richland
11 County, worked here in Richland County. His work was very im-
12 portant to him and is even at seventy years old. He loves his
13 work in brick masonry.

14 He will also testify about how he likes to work and that
15 he worked hard, but he is no longer in a condition to work.
16 You will hear about the reason he is not able to work. You'll
17 see he went after the accident and had x-rays taken that in-
18 volved his neck, his back and his lower back. He wasn't better
19 after going to the emergency room so he went to a chiropractor
20 who treated him. He was give an MRI. The x-ray didn't show
21 any problems. So after his chiropractor treatment and getting
22 an MRI he went to his family doctor.

23 His family doctor wasn't able to relieve his pain so he
24 came to us. He came to us as his lawyers, and there were other
25 medical treatment he received that did not resolve his physical

1 problems. Then we said we know a pain doctor you can see, Dr.
2 Zgleszewski -- we'll call him Dr. Z, and he will testify today
3 by video, Dr. Z. We sent him to Dr. Z because all of the other
4 treatments he'd received did not resolve his problems.

5 Dr. Z is a specialist in pain medicine and he went to
6 see him approximately four months after the accident. He had
7 been trying to resolve his problem since the accident happened
8 and he went to Dr. Z approximately four months after his acci-
9 dent happened. What Dr. Z did was to have a course of treat-
10 ment set up for Mr. Pressley. All of this was as a result of
11 Mr. Sanders not stopping for the stop sign.

12 He had to wear a back brace and take medications that had
13 not resolved his problem. You will hear what that course of
14 treatment entailed but essentially he injected him with a
15 needle or a scapel in the area of the most pain, and when it
16 didn't work he made another injection into the neck area to put
17 medication there. He continued with treatment, and finally
18 he went back to Dr. Z and said I can't tolerate the pain I am
19 still having.

20 Dr. Z then did a procedure where he actually used inserted
21 medicine using a needle around the nerves to try to help with
22 the pain. What happened is the first diagnostic test was done
23 to try to figure out where the main problem was and other
24 treatment followed.

25 Unfortunately for Mr. Pressley he didn't know what to do

1 because he had never had this problem before. He had never
2 had back and neck problems. No trouble with his back or his
3 neck; never received treatment for it and never missed any
4 work because of any problem like that.

5 You all will see the bills which were incurred by Mr.
6 Pressley for this kind of treatment. The bills will be admit-
7 ted into evidence so you will actually see the bills and de-
8 termine how much he was charged for the treatment that he has
9 received due to the accident.

10 Mr. Pressley will testify and tell you about all of the
11 problems he has had since the accident and all the expenses he
12 has had that are associated with the accident, including his
13 inability to work since the accident.

14 So I want you to pay close attention to the testimony and
15 the evidence that is introduced. You will hear from My client
16 about how different his life is now. He will testify he spends
17 most of his time sitting in a chair, not able to do anything
18 else.

19 You will hear as well from Dr. Z as to the treatment he
20 has received, and I ask that you consider all of that; that
21 you listen and hear all of the evidence and testimony. I ask
22 you to consider all of that and return a verdict in favor of my
23 client, Mr. Pressley.

24 Thank you very much for your time and for your attention
25 to my remarks.

1 THE COURT: Mr. Jones.

2 MR. JONES: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. JONES: Good morning.

6 My name is Trey Jones, and I am pleased to represent Mr.
7 Eric Sanders. I'm an attorney here in Columbia.

8 As my friend, Mr. Kalish, told you, the reason we are
9 here today is because a car accident happened on February 16,
10 2015, last year.

11 Now, the first thing I want to do is to address a miscon-
12 ception that any of you might have that I certainly had before
13 I started spending time in the Courthouse. I think the Judge
14 may have touched on it.

15 That misconception is that this proceeding here is not
16 going to be like an episode of Law and Order. It's not going
17 to be anything overly exciting or dramatic. If you tune into
18 a Courtroom drama on TV you see action and compelling dialogue
19 that was written by professional writers. You have dramatic
20 music playing in the background.

21 Folks, that is not what is going to happen today, and one
22 way of taking drama out of what you're seeing is by another
23 factor, by admitting liability.

24 You heard the Judge say that that burden of proof is now
25 taken off the Plaintiff. He no longer has to provide witnesses

1 and testimony that proves that Mr. Sanders was at fault. Mr.
2 Sanders will say I bumped into the back of his car. I caused
3 this accident. I take responsibility for this accident.

4 We are admitting that we are at fault and in doing that
5 we streamline this process.

6 Now, the evidence is going to be as Mr. Kalish has said;
7 that Mr. Pressley and Mr. Sanders were traveling on the Inter-
8 state and they got off on the Garners Ferry Exit, and if you
9 are familiar with the area you know that there is a long exit
10 ramp with a stop sign at the end.

11 You will hear Mr. Sanders testify that Mr. Pressley was
12 stopped at that stop sign and he attempted to stop behind him.
13 Again, if you are familiar with it you know that it is a tough
14 angle where you are looking and watching traffic going both
15 ways and heavy traffic is possibly there, and you will hear
16 testimony that Mr. Sanders saw Mr. Pressley start to proceed
17 into traffic.

18 Mr. Sanders took his foot off the brake and started his
19 move forward, and evidently Mr. Pressley did not pull into
20 traffic because Mr. Sanders ended up hitting the back of his
21 vehicle.

22 He bumped into the back of his truck. Now, there are
23 some things that Mr. Kalish and I agree on in this lawsuit,
24 as to how this accident happened. That is not in dispute and
25 is not for your consideration.

1 We admit we caused the accident. In a case like this and
2 in many other automobile wreck cases the how of it is the very
3 least part of the case. You can have one driver saying one
4 thing and one saying another. He said, she said, but you are
5 not going to get that drama today.

6 Another part of this case is the medical costs claimed by
7 the Plaintiff, and there is some agreement surprisingly between
8 the parties on that in this case. However, the reason we are
9 here today is there are some things we do not agree on. That
10 is why we have twelve or thirteen jurors to tell us that. So
11 that is what this case is about.

12 Now, something that is very important, very important, is
13 that I am never going to say that if you are involved in a car
14 accident that you do not have a right to -- you have no right
15 to come into Court and bring a suit. I will not say that. It
16 is not fair and it is not reasonable to a Plaintiff who is in-
17 volved in a car accident.

18 When I come back and speak to you again this afternoon I
19 am going to tell you to take every single doctor bill, including
20 the emergency room bill, including a bill for x-rays that were
21 done in the E.R., and we will talk about some of them.

22 Now, those will come to you in the evidence and the testi-
23 mony presented today. Like I told you, a lot of things are
24 not in dispute, not how the accident happened or Mr. Pressley
25 took himself to the emergency room. That is not in dispute.

50

1 The fact that he saw some other doctors is not in dispute
2 here.

3 I ask that you listen very carefully to the Plaintiff in
4 his testimony and to Mr. Sanders' testimony. Listen to Dr. Z
5 as well very carefully as you hear how he describes the treat-
6 ment and hear what he bases his opinions on.

7 I want you to pay attention to the bottom line in this
8 case from February 16 of 2015 until today. It is easy to say
9 an emergency room doctor, a chiropractor, a primary care doc-
10 tor and a specialist see no trauma.

11 I want you to pay attention. Judge Manning gave you a
12 kind of preliminary charge, and he will tell you at the end
13 about the law which I am not permitted to tell you about, but
14 I will mention that you twelve and the alternate are the sole
15 judges of the credibility of each witness today.

16 You don't get to -- you are not supposed to just count up
17 the number of witnesses presented by each side and whoever has
18 the most will win.

19 Rather, you must listen to the testimony of each witness
20 in its entirety, and then you get to determine what weight, if
21 any, you give that witness' testimony.

22 Judge Manning will tell you that you all are the sole
23 fact-finders in this case, and there is nobody in this whole
24 wide world who can tell you what the facts are in this case.

25 Judge Manning has said that you cannot discuss the case

1 between yourselves until it is time to begin your delibera-
2 tions. Typically, a Judge will tell you don't research this
3 case. That is typically something that might have been writ-
4 ten on a paper, but there is one thing you can do. That is
5 use your common sense.

6 When you all came into the Courthouse yesterday nobody
7 asked you to leave your common sense behind or to check your
8 common sense at the door.

9 This morning nobody asked you to leave your common sense
10 at the door. Your common sense is the most powerful tool you
11 have to process the evidence in this case. I want you to use
12 your common sense.

13 I want you to listen carefully to what the witnesses say.
14 I want you to be mindful of what you do not hear.

15 On behalf of Eric Sanders I thank you for your time and
16 thank you for your attention. This may not be an exciting
17 drama but it will not take a long time for us to wrap this up.
18 Thank you so much.

19 (Brief pause)

20 THE COURT: Thank you.

21 All right, Mr. Kalish, are you ready to call your first
22 witness?

23 MR. KALISH: Yes, sir.

24 THE COURT: Then you may proceed to call your witness at
25 this time.

1 MR. KALISH: The Plaintiff calls Henry Pressley
2 HENRY PRESSLEY, being duly
3 sworn, testified as follows:

4 CLERK: Please be seated and speak into that microphone.
5 State your full name for the record.

6 When you are seated state your name.

7 WITNESS: Henry Pressley.

8 DIRECT EXAMINATION

9 BY MR. KALISH:

10 Q. State your name, please.

11 A. Henry Pressley.

12 Q. Mr. Pressley, how old are you?

13 A. Seventy.

14 Q. How old were you last year?

15 A. Sixty-nine.

16 Q. Okay, do you remember when you were in a wreck last
17 year?

18 A. Yes, sir.

19 Q. And then you were sixty-nine, correct?

20 A. Yes

21 Q. You were sixty-nine years old?

22 A. Yes, sir.

23 Q. Henry, where do you live?

24 A. Eastover.

25 Q. Where were you born?

53

H. PRESSLEY ON DIRECT

- 1 A. Eastover.
- 2 Q. Where did you go to school?
- 3 A. Went in Eastover.
- 4 Q. How far along did you go in school?
- 5 A. Twelfth grade.
- 6 Q. Okay, you got a diploma?
- 7 A. Yes, graduated.
- 8 Q. And did you have any after high school studies?
- 9 A. No, sir. Brick layer -- I started laying bricks.
- 10 Q. You started work while you were in high school laying
- 11 bricks?
- 12 A. Yes.
- 13 Q. Did you work while you were in high school laying
- 14 bricks?
- 15 A. No, I -- well, I helped my cousin out some while I was
- 16 in high school.
- 17 Q. How long did you do that?
- 18 A. For two years.
- 19 Q. Okay.
- 20 A. I mean, after high school I would go over and help him
- 21 there.
- 22 Q. What was the name of that business?
- 23 A. (Inaudible) It's changed over the years. That was a
- 24 long time ago.
- 25 Q. Do you still work there?

H. PRESLEY ON DIRECT

1 A. I did work there.

2 Q. If you could explain what you did when you were lay-
3 ing bricks?

4 A. Lay bricks going back a lot of years. After a few
5 years I was in charge and I would tell them what needed to
6 be done and show them how it needed to be done.

7 Q. And were you laying bricks all of your life?

8 A. Nearly all of my life, yes. Some construction work.

9 Q. And were you laying bricks pretty much all over the
10 City?

11 A. I was laying bricks pretty much my whole life on the
12 jobs wherever they were.

13 One would finish and then there would be another job
14 somewhere else. We'd go where the jobs were.

15 I did it from high school and up until the time when I
16 couldn't do it any more without pain.

17 Q. But you were always outside working?

18 A. Yes, wherever the job was at.

19 Q. Laying bricks?

20 A. Yes.

21 Q. And are you still laying bricks now at this time,
22 Henry?

23 A. I have tried to do it but I couldn't.

24 Q. Do you have to carry bricks when you are laying them
25 on a job?

H. PRESSLEY ON DIRECT

- 1 A. Yeah, sure. Did I carry brick?
- 2 Q. Yes, sir.
- 3 A. Well, on the job they are delivered there but you have
4 to carry them to get ready to lay them.
- 5 Q. Why can't you lay bricks now?
- 6 A. Because it hurts too much.
- 7 Q. What would hurt when you were trying to work?
- 8 A. My back and my neck.
- 9 Q. Well, let me ask you this. In the past, had you ever
10 had any problems with your neck or with your back before?
- 11 A. No, I didn't.
- 12 Q. No problems prior to the accident?
- 13 A. No. Never did.
- 14 Q. So you aren't laying bricks now?
- 15 A. No.
- 16 Q. What did you like to do before when you were off from
17 laying bricks?
- 18 A. I'd be outside doing something. I always wanted to be
19 outdoors. Cleaning my gun, fishing. (Portion inaudible)
- 20 Q. Estimate for me how many hours a week you would work
21 before you stopped working?
- 22 A. How many hours I worked?
- 23 Q. Yes, how many in a week?
- 24 A. Whatever it would take to get a job done on time. We
25 had jobs to do and we would work whatever it took until we
- 56

H. PRESSLEY ON DIRECT

1 would get it finished. Then we'd go on to the next job and
2 start it.

3 Q. And was that the way you were working up to the time
4 of your accident?

5 A. Yes, and for many years before that.

6 Q. All right, Mr. Pressley. I'm going to hand you . . .

7 MR. KALISH: I have some pictures here, Judge.

8 THE COURT: Okay.

9 (Brief pause)

10 BY MR. KALISH:

11 Q. I'll start with the first picture. Can you tell me
12 what that is, what that picture is?

13 A. . .

14 Q. What is it taken of?

15 A. Yes, sir.

16 Q. What does it show?

17 A. This is my truck, the back of my truck, and when you
18 look it there is the damage.

19 Q. The damages from the accident?

20 A. Yes, sir.

21 Q. All right, let's go to the next picture.

22 A. Okay.

23 Q. Is that a picture of the back of the truck?

24 A. Yes.

25 Q. What does the picture show?

H. PRESSLEY ON DIRECT

1 A. My truck.

2 Q. Okay, is that a picture of the truck after the ac-
3 cident?

4 A. After he ran into the back of my truck.

5 Q. Okay.

6 A. You can see where this part of it is smashed in in
7 the picture there. Also the trailer hitch.

8 Q. That's the way it looked after you were hit?

9 A. Yes.

10 Q. I'm sorry, let me -- well, was this picture taken at
11 the accident scene?

12 A. Yes.

13 Q. Right after the accident?

14 A. Yes.

15 Q. I'm sorry, You said that was right after the acci-
16 dent happened?

17 A. Yes.

18 Q. Is that a fair and accurate depiction of the truck at
19 the accident scene right after the accident?

20 A. Yes, it was.

21 Q. Okay.

22 A. That's the way my truck looked after the accident.

23 Q. Okay.

24 A. That is how it was. The pictures were taken there at
25 the place where the accident was.

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H. PRESSLEY ON DIRECT

1 Q. I'm sorry. I need to slow you down just a little bit
2 here.

3 A. Sure.

4 (Brief pause)

5 BY MR. KALISH:

6 Q. So this was at the accident scene after the accident
7 happened?

8 A. Yes, it was.

9 Q. Okay.

10 A. The way my truck looked after the accident. That is
11 how it was.

12 MR. KALISH: We would offer the photographs in evi-
13 dence.

14 We'd like to have admitted Plaintiff's 2 through 7.

15 MR. JONES: Your Honor, we'd stipulate to all Exhibits
16 except for Number 1 being admitted into evidence.

17 THE COURT: Except for Number 1?

18 MR. KALISH: That -- the photographs are Plaintiff's
19 Exhibits 2 through 7.

20 THE COURT: Exhibit Number 1 we will take up when we
21 get to that point, but those are admitted.

22 MR. KALISH: Thank you.

23 (Photographs admitted in evidence by stipulation as
24 Plaintiff's Exhibits 2 through 7)

25 BY MR. KALISH:

H. PRESSLEY ON DIRECT

1 Q. Handing you Exhibit 3, is that your car -- your truck,
2 Mr. Pressley.

3 A. Yes, sir.

4 Q. And the damage to the bumper, is that how it appeared
5 after the accident?

6 A. It is how it was.

7 Q. And is this from the side?

8 A. It is.

9 Q. Was there any damage to your truck prior to this ac-
10 cident?

11 A. No.

12 Q. And you had been laying brick up until the time you
13 were in the accident and using your truck?

14 A. Yes, I was on a job.

15 Q. And you said you had to carry bricks on your job, did
16 you not?

17 A. Carry bricks?

18 Q. Yes.

19 A. Well, it was part of the job.

20 Q. And you had never had gotten any medical treatment for
21 your back and neck?

22 A. No.

23 Q. Prior to the accident?

24 A. No, not before the accident. Never did have to
25 get any.

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H. PRESSLEY ON DIRECT

1 Q. Let's go on to the next Exhibit. What does that re-
2 flect?

3 A. That was another picture taken out there that day.
4 This is of his truck and those are of my truck taken that
5 day.

6 Q. Now, just so the jury understands, you are talking
7 about this area right here? Is that what you're indicating?
8 Correct?

9 A. Right.

10 Q. Okay, and where were you coming from on the day of the
11 accident?

12 A. Coming from home to the back way to -- coming the back
13 way up to the Interstate. The back road . .

14 Q. By the back way you mean on the Interstate?

15 A. Yes. I'd come that way because it was less cars on
16 the road.

17 Q. Take a look at this picture.

18 A. Okay.

19 (Brief pause)

20 BY MR. KALISH:

21 Q. Do you recognize those pictures?

22 A. The pictures -- yes, I do. That is of the scene where
23 it happened.

24 Q. Take a look at all of these.

25 A. Yes. That was around the scene.

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H. PRESSLEY ON DIRECT

1 Q. Okay.

2 A. This is the side of the road there.

3 Q. And the other two as well?

4 A. Yes, the side of the road going to the stop sign up
5 here.

6 Q. Is that on the exit ramp?

7 A. Yes.

8 Q. And the road?

9 A. Yes, sir. The side of the road.

10 Q. Let me hold this one up.

11 A. This one?

12 Q. Just point to the jury where you were stopped?

13 A. I come up to where the stop sign was and stopped.

14 Q. Okay, and where were you?

15 A. Right there where I could see on that road to see what
16 might be coming before I pulled out.

17 I was there at the stop sign.

18 Q. So what were you doing at the time of the accident?

19 A. Well, just stopped and looking out at the road to
20 see what was out there.

21 Q. Were you coming as you were heading out toward Sumter?

22 A. Right.

23 Q. Tell me about the accident itself. What were you
24 doing when it happened?

25 A. Well, I was at the stop sign and had been moving slow

H. PRESSLEY ON DIRECT

1 up to it and stopped. The next thing I knew I felt it
2 happen. He was pulling up behind me. I was looking out at
3 the traffic before the accident. I hadn't seen him before.

4 Q. Were you stopped at the time of the accident?

5 A. I was, yes.

6 Q. And did it jerk your body around in the car at the
7 time of the accident? Did it jerk your body forward?

8 A. Yes, it did.

9 Q. Were you wearing a seat belt?

10 A. Yes.

11 Q. You were wearing your seat belt?

12 A. Yes.

13 Q. How were you feeling after the accident?

14 A. I was stunned.

15 Q. What happened right after the accident? Did you get
16 out of your vehicle right away?

17 A. No.

18 Q. What happened then after the accident and you realized
19 what had happened?

20 A. He come to the car. He got out of his truck and came
21 up there.

22 Q. Okay. What did you all talk about?

23 A. He told me that -- he told me that he had looked away
24 for a few minutes. He didn't mean for it to happen
25 like that.

H. PRESSLEY ON DIRECT

1 Q. Did someone come out there to investigate?

2 A. Yes. There was someone who come there and he walked
3 around. He told me I could go on and he would file the ac-
4 cident report, the officer.

5 So that's what I did, and he pulled his truck out and
6 I left after he backed up.

7 Q. So you left the accident scene then?

8 A. I did, yes.

9 Q. You were able to drive away after the accident?

10 A. Yes, I did. There was some damage to my truck but I
11 could drive it away from the scene.

12 Q. Was an ambulance called to the scene?

13 A. No.

14 Q. After the accident did you go to the emergency room?

15 A. Yes, I did but not right then. Not from the accident.

16 Q. When did you go to the emergency room?

17 A. The next day, I believe. I can't remember exactly
18 what time.

19 Q. Why did you go to the emergency room?

20 A. To get checked out.

21 Q. And did they take x-rays and give you prescriptions
22 at the emergency room?

23 A. Yes, they took x-rays and give me something for the
24 pain.

25 Q. Did you take the pain medicine?

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H. PRESSLEY ON DIRECT

1 A. Yes.

2 Q. Did it help?

3 A. A little while but not much.

4 Q. So were you hurting then after a little bit of time
5 after the accident?

6 A. Yes, sir.

7 Q. Where were you hurting?

8 A. My neck and back.

9 Q. And that's when you went to the emergency room?

10 A. Yes. The second day or the third day.

11 (Brief pause)

12 BY MR. KALISH:

13 Q. Did you begin hurting after you left the scene and
14 before you went to the emergency room?

15 A. Yes.

16 Q. And you received services from the emergency room?

17 A. Yes.

18 Q. Was the total of the bill for that Sixteen Hundred
19 and Fifty-two Dollars?

20 A. Yes, it was.

21 Q. What's the date that you received that treatment? Do
22 you see that on there?

23 A. Yes. It was the 16th, I believe it says on there.

24 Q. So February 16th of 2015?

25 A. Yes.

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H. PRESSLEY ON DIRECT

1 Q. Okay,

2 A. February 16th.

3 Q. What year?

4 A. Fifteen -- 2015.

5 MR. KALISH: Your Honor, we would move to admit Plain-
6 tiff's Exhibit 8, the emergency room bill.

7 THE COURT: Any objection?

8 MR. JONES: No objection.

9 THE COURT: It's admitted.

10 (Emergency room bill admitted into evidence without
11 objection as Plaintiff's Exhibit 8)

12 BY MR. KALISH:

13 Q. And let me show you these items. Are those bills you
14 received for the x-rays that were taken by the emergency
15 room?

16 A. Yes.

17 Q. And what's the date?

18 A. What's the . . .

19 Q. The date you received this service.

20 A. February 16th. The same day. It was all done
21 there on the 16th.

22 Q. Do you recognize this bill?

23 A. Yes.

24 Q. Is this the bill you received for the MRI that you
25 received?

H. PRESSLEY ON DIRECT

1 A. Yes, sir.

2 Q. And what is the amount of that bill?

3 A. Two Thousand and Fifty-nine Dollars.

4 Q. And that was the charge for the MRI?

5 A. Yes, I believe so.

6 Q. And did you receive treatment from a chiropractor as
7 well?

8 A. Yes, I did.

9 MR. KALISH: I would move to admit the x-ray bills from
10 the emergency room into evidence as well as the MRI bill.

11 THE COURT: Any objection?

12 MR. JONES: No objection.

13 (Plaintiff's Exhibits 9, 10 and 11 admitted into evi-
14 dence without objection, being the x-ray bills and the MRI
15 bill, without objection)

16 BY MR. KALISH:

17 Q. And were you treated by a chiropractor after the visit
18 to the emergency room?

19 A. Yes.

20 Q. Do you know when you first went to him?

21 A. It was a couple of days after I was at the emergency
22 room when the pain got worse.

23 Q. How long were you treated by the chiropractor, if you
24 remember?

25 A. About three weeks, I believe.

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H. PRESSLEY ON DIRECT

1 Q. What was the last date you went to the chiropractor's
2 office for treatment?

3 A. It was in March of 2015.

4 Q. Could it have been March 11th of 2015?

5 A. Yes, sir.

6 Q. And did he give you that treatment for injuries you
7 received in this accident?

8 A. Yes.

9 Q. Were you still hurting after seeing the chiropractor?

10 A. Yes, sir.

11 Q. And did you then see your family doctor as well?

12 A. Yes, I did after I was released by the chiropractor
13 when I was still having pain.

14 Q. So what did you do then?

15 A. I went to my family doctor, Dr. Stahl.

16 Q. Do you know when that was?

17 A. In April, about a month later

18 Q. And was he able to do anything to relieve your pain?

19 A. Medication that helped some but it came back again.

20 Q. And after that point, did you go to see your lawyer?

21 A. Yes, sir.

22 Q. Were you still having pain in your neck and your back?

23 A. Yes, sir.

24 Q. Was the pain beginning to radiate down into your legs
25 and arms?

H. PRESSLEY ON DIRECT

1 A. Yes, it was.

2 Q. It was the chiropractor who sent you to get an MRI?

3 A. Yes.

4 Q. And is the bill I'm showing you a true and accurate
5 representation of the bill you received?

6 A. Yes.

7 Q. And that one is for the MRI?

8 A. Yes.

9 Q. And that is what that cost?

10 A. Yes, sir.

11 Q. What was that?

12 A. Two Thousand Fifty-nine Dollars.

13 Q. And is this bill a true and accurate representation of
14 the bill you received from the chiropractor?

15 A. Yes.

16 Q. And you also received a bill from your family physician,
17 is that correct?

18 A. Yes.

19 Q. Explain to the jury who that was?

20 A. It is where my family went, and when I went this time
21 I saw Dr. Stahl. When you go in you are seen by the doctor
22 that is first available to see you.

23 Q. And what did he tell you?

24 A. He gave me medicine and it got better for a time but
25 it came back after a while.

H. PRESSLEY ON DIRECT

1 Q. Let me hand you this which is marked as Exhibit 12.

2 Was that the bill of your family doctor?

3 A. Yes, sir.

4 Q. And is that a Hundred Thirty-eight Dollars and Thirty-
5 seven Cents?

6 A. Yes, sir.

7 Q. And that was on April 2, 2015?

8 A. Yes.

9 Q. Okay, and that would be after the chiropractic treat-
10 ment, correct?

11 A. Correct.

12 Q. Is this an accurate representation of what you received
13 from the family medicine practice?

14 A. It is, yes.

15 Q. And what did you do after you went to your family doc-
16 tor? Well, first, what did your family doctor do for you?

17 A. . . .

18 Q. What was his treatment?

19 A. Well, he examined me.

20 Q. And did he then talk to you?

21 A. Yes. He came and talked to me after that.

22 He gave me medication and told me about some exercises
23 that might help. He said it should get better with some

24 time. That was about it.

25 Q. He gave you pain medicine?

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H. PRESSLEY ON DIRECT

1 A. Yes.

2 Q. And did the pain medicine resolve your pain?

3 A. For a while, yes, and then the pain came back in my
4 back and neck.

5 Q. And what did the chiropractor do for you while you were
6 going there?

7 A. . . .

8 Q. What would he do when you were there?

9 A. He would just manipulate some areas.

10 Q. And did that help with the pain?

11 A. Not for long.

12 Q. So it didn't get better?

13 A. No, it would come back in my back and down my legs.
14 It would help while he was treating it but it wouldn't be
15 better for long.

16 Q. So he tried to heal your back by manipulation and
17 treatment?

18 A. Yes.

19 Q. And did the pain come back?

20 A. Oh, yes.

21 Q. So it wouldn't help for long?

22 A. No.

23 Q. So he would treat you by manipulating and massaging
24 the muscles in your back and neck?

25 A. Yes, sir.

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H. PRESSLEY ON DIRECT

1 Q. Did he crack your back and things of that nature when
2 he was treating you?

3 A. Yeah, it sounds like what he did.

4 Q. And did it seem to help?

5 A. It did at the time.

6 Q. And did it feel better as you walked out of his of-
7 fice?

8 A. Yeah, for a while but it came back worse sometimes as
9 far as my back and my neck.

10 Q. Can you describe the pain?

11 A. It was bad. My back hurt and my neck, those muscles
12 in my back and neck, and sometimes it would go into my legs
13 and my arms.

14 Q. Did you have some muscle weakness in your right arm?

15 A. Well, if I would try to do anything, so I couldn't do
16 what I had been used to doing.

17 Q. Were you able to work?

18 A. No, I couldn't work.

19 (Brief pause)

20 BY MR. KALISH:

21 Q. Did you go to work and try to do what was needed on
22 the job?

23 A. Yes, but I couldn't.

24 Q. Why couldn't you work?

25 A. Because of the pain.

H. PRESSLEY ON DIRECT

1 Q. And just so it's clear, you are not asking today --
2 you don't have any claim for lost wages, do you?

3 A. No, sir.

4 (Brief pause)

5 BY MR. KALISH:

6 Q. Let me hand you this and ask if you recognize what
7 that is?

8 A. Yes, I do.

9 Q. Is that from Dr. Z?

10 A. Yes, sir.

11 Q. Is that a fair representation of the bill you received
12 from Dr. Z for his treatment?

13 A. It's the -- yeah, it's from Dr. Z.

14 Q. Tell me about going to see Dr. Z.

15 A. Well, I was still in a lot of pain and it wasn't get-
16 ting any better. You told me I could go to a doctor who
17 treated pain. So I thought I would try and see if he could
18 help me.

19 Q. Okay.

20 A. You said he treated people for their pain. So I said
21 maybe he could help me.

22 Q. And about when did you go to see Dr. Z?

23 A. I don't remember the date but I believe it was in May
24 when I first saw him.

25 Q. And you were still in pain?

H. PRESSLEY ON DIRECT

1 A. Yes.

2 Q. Did you tell him about your pain?

3 A. Yes, I did.

4 Q. And did he do something to your back?

5 A. He stuck a needle in it.

6 Q. Let me back up. He examined you and talked to you
7 about your pain?

8 A. Yeah, I told him about all of it.

9 Q. He stuck a needle in your back?

10 A. Yeah.

11 Q. And was that painful?

12 A. Yes.

13 Q. Okay, did he inject something in your back?

14 A. Well, he took a needle and put it in and seemed to be
15 pushing with the needle . .

16 Q. Were you still in pain?

17 A. Yeah, a lot of pain.

18 Q. Did you tell him you were hurting?

19 A. Yeah.

20 Q. Do you remember someone saying the needle was not in?

21 A. I'm not sure. He was doing something with it at the
22 time. I'm not . .

23 (Portion not audible due to noise on audio)

24 Q. Just a minute.

25 And did you after that go back to see Dr. Z?

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H. PRESSLEY ON DIRECT

1 A. Yes.

2 Q. And were you told to make another appointment to come
3 back?

4 A. Yes. To come back and they were trying to find out
5 where the pain was coming from.

6 Q. And to do that they would have to use another needle?

7 A. Yes.

8 Q. So you did go back to see Dr. Z after your first visit,

9 A. Yes, I did.

10 Q. Do you remember when you went back?

11 A. I don't remember the date but it must have been about
12 a month later.

13 Q. And did he treat you further?

14 A. No, I didn't want any more treatments.

15 Q. Did you ever go back to see Dr. Z to this day?

16 A. No.

17 Q. Have you had any other treatment since then?

18 A. No. Just to my family doctor when I needed to.

19 Q. Why didn't you go back to see Dr. Z?

20 A. Because I didn't want any more needles in my back or
21 my neck. I didn't like the needles because of the pain so
22 I didn't go back.

23 Q. You made no follow-up appointments with him at that
24 time?

25 A. No.

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H. PRESSLEY ON DIRECT

1 Q. All right. You are not continuing to seek any treat-
2 ment for your back?

3 A. No.

4 Q. Since you left Dr.Z's office the last time?

5 A. No.

6 (Brief pause)

7 BY MR. KALISH:

8 Q.. Can you remember what the date was when you were last
9 at Dr. Z's office?

10 A. Not the date but it was in 2015.

11 Q. So no other treatment since then?

12 A. No. I take something for pain.

13 Q. But no medical treatment to your back or neck?

14 A. No. My family doctor will give me a prescription for
15 pain medicine as I need it. I take it when I have to take
16 it.

17 Q. And you have not worked since you were injured in the
18 accident?

19 A. No. I'm not able to any more. (Portion inaudible on
20 audio) I take my medicine and do the best I can.

21 Q. So your activities have been restricted?

22 A. Yes, sir. I only do what I can without it causing me
23 pain.

24 Q. In other words, no work like you used to do?

25 A. No, sir.

H. PRESSLEY ON DIRECT

1 (Brief pause)

2 Q. During the time you were under a doctor's care did you
3 -- were you able to still do your outdoor activities?

4 A. . . .

5 Q. The things you liked to do. I know you said you like
6 to be outdoors,

7 A. Yes.

8 Q. Were you able to then do the same activites while you
9 were under a doctor's care?

10 A. No, not really. I sit outdoors at times and . . .

11 Q. So you are restricted in what you can do?

12 A. . . .

13 Q. In other words, you have to watch what you do?

14 A. Right. Some things I had to do. My wife had cancer.

15 Q. Did you take care of her when you were working?

16 A. I did take care of her.

17 Q. Did you have trouble taking care of her while you were
18 working?

19 A. No, I could take care of her.

20 Q. But you were restricted after the wreck?

21 A. Yes.

22 Q. That's all I have. Please answer any questions Mr.
23 Jones might have.

24 A. Sure.

25 THE COURT: We'll take a short break in a few minutes, but

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1 let me explain about objections and when counsel come up
2 to the bench or what we call a side bar.

3 That is so that we can resolve issues up here when we
4 can and it happens sometimes. We've all seen that happen
5 before.

6 I may have told you this earlier but when there is an
7 objection to a question or there is some legal matter that
8 comes up I have to send you out and resolve it out of your
9 presence.

10 I like to take up what matters I can here without our
11 sending you in and out but still so that it is out of your
12 hearing.

13 That is because we may be discussing some of the facts
14 of the case and, as I told you, I am not allowed nor do I
15 have any opinion concerning the facts.

16 You may go ahead and take a break now. Do not discuss
17 the case.

18 (Jury excused from Courtroom)

19 (Whereupon, the Court took a brief recess, after which
20 the matter resumed)

21 THE COURT: Mr. Pressley, you may return to the stand,
22 sir.

23 (Plaintiff resumed the witness stand)

24 THE COURT: Bring in our jury, please.

25 (Jury returned to Courtroom)

H. PRESSLEY ON CROSS

1 THE COURT: You may cross examine, Mr. Jones

2 CROSS EXAMINATION

3 BY MR. JONES:

4 Q. Good afternoon, Mr. Pressley.

5 A. Good afternoon.

6 Q. I apologize to you in advance for asking some of the same
7 questions that Mr. Kalish did. In this Courtroom the accous-
8 tics are not wonderful. So if I seem not to hear very clearly
9 your responses bear with me, or if you've already answered.

10 I'm not trying to trick you. It is just that I need to
11 hear your answers. Okay?

12 A. Okay.

13 Q. All right, sir. You are seventy years old, is that cor-
14 rect?

15 A. Correct.

16 Q. You have had a long career as a brick mason. Is that cor-
17 rect?

18 A. Correct.

19 Q. Is it fair to say you've been laying bricks for around
20 forty-four years?

21 A. Well, I was a carpenter before that and I went from
22 there to . . .

23 MR. JONES: Your Honor, I object as he is not being
24 responsive.

25 THE COURT: Beg your pardon.

H. PRESLEY ON CROSS

1 MR. JONES: My objection is that he is not being respon-
2 sive to the question. I'd ask him to be responsive.

3 THE COURT: I'm not sure what the question was. Would
4 you repeat it?

5 MR. JONES: I was asking him if it is fair to say he
6 has been laying brick for forty-four years and . . .

7 THE COURT: Okay, I don't think he -- Mr. Pressley, try
8 to answer the questions he asks. Okay?

9 WITNESS: Okay.

10 BY MR. JONES:

11 Q. Mr. Pressley, were you wearing your seat belt at the
12 time of the accident?

13 A. Yes, sir.

14 Q. Is it correct that your air bag was not deployed?

15 A. No.

16 Q. Is it true that when you were hit from behind no part
17 of your body hit the interior of the cab? Is that true?

18 A. No.

19 Q. You did not lose consciousness as a result of this ac-
20 cident, is that right?

21 A. No.

22 Q. You were able to get out of the truck after the acci-
23 dent?

24 A. Yes.

25 Q. Was your truck still driveable after the collision?

H. PRESSLEY ON CROSS

1 A. Yes.

2 Q. And as far as you know was Mr. Sanders' truck still
3 driveable after the collision?

4 A. Yes.

5 Q. It is correct you did not take an ambulance to the hos-
6 pital, is that right?

7 A. . .

8 Q. Is it correct you did not . . .

9 A. Correct.

10 Q. In fact, an ambulance was not called to the scene. Is
11 that correct?

12 A. Correct.

13 Q. Now, you see this photograph here of the back of your
14 truck or your son's truck?

15 A. Yes.

16 Q. You've testified previously that the impact was on the
17 trailer hitch. Is that correct?

18 A. Correct.

19 Q. Was there damage to the bumper here?

20 A. No.

21 Q. So did Mr. Sanders hit the trailer hitch or the bumper?

22 A. He hit the trailer hitch.

23 Q. All right, sir. Is it correct your son still drives
24 this truck today?

25 A. Yes.

1 Q. And I understand that later on, on February 16, 2015,
2 you drive it yourself?

3 A. Yes.

4 Q. Do you recall getting a prescription for pain medica-
5 tion?

6 A. Yes.

7 Q. And I think you just testified that that pain medica-
8 tion helped your pain. Is that true?

9 A. It did.

10 Q. Isn't it true that the first doctor you saw after the
11 accident did not make any referrals to other doctors that
12 day for you?

13 A. No.

14 Q. And I understand you went to a chiropractor that day.
15 Is that right?

16 A. Yes.

17 Q. And I believe you may have testified to this previously.
18 You have never been to a chiropractor prior to February 17,
19 2015. Is that correct?

20 A. Correct.

21 Q. And isn't it true it was not the hospital but your at-
22 torney who sent you to the chiropractor?

23 A. Yes.

24 Q. In fact, you went to see your attorneys -- I believe
25 it was the day after this. Is that correct?

H. PRESSLEY ON CROSS

1 A. Yes.

2 Q. And I understand from the records that you were treated
3 by the doctor for about three weeks. Does that sound cor-
4 rect?

5 A. Correct.

6 Q. In fact, the exact dates were February 17, 2015 to
7 March 11, 2015. Does that sound right?

8 A. Yes.

9 Q. Do you recall that the chiropractor treatments helped
10 to relieve your pain?

11 A. It may have helped some. I don't know.

12 Q. I forgot to ask you this. If the chiropractor was
13 helping to relieve your pain, what was the reason you stopped
14 the treatment in three weeks?

15 A. . . .

16 (Brief pause for noise interruption)

17 BY MR. JONES:

18 Q. I'll ask it a different way after the interruption.
19 Is there a reason you did not go back to the chiropractor
20 when you had continued to go to him three weeks straight
21 and after your back continued to hurt?

22 A. No, it continued to hurt. I was released.

23 Q. Did you go back to the chiropractor and ask him to
24 continue your treatment after those three weeks?

25 A. No, I believe I went to a doctor.

1 Q. And I believe you testified that on April 20, 2015,
2 which is four days after you finished with the chiropractor,
3 that you went to see your primary care doctor. Is that cor-
4 rect, sir?

5 A. Yes.

6 Q. And that was (inaudible) Family Practice, correct?

7 A. Yes.

8 Q. And your Doctor is Stahl, S T A H L. Is that correct?

9 A. Yes.

10 Q. Okay.

11 A. I see him sometimes when I go but you see whatever doc-
12 tor they give you there after you sit.

13 Q. Okay, but you did see a doctor?

14 A. Yes, I saw a doctor.

15 Q. Okay, and I understand that your doctor, whoever it
16 was on April 20, 2015, prescribed pain medication and a
17 muscle relaxer? Do you recall that?

18 A. Uh huh.

19 Q. And do you recall that he was recommending heat and
20 stretching exercises? Local heat and stretching exercises?

21 A. Yes.

22 Q. Okay. Now, in the treatment with the chiropractor in
23 March of 2015, that was before you went to see your primary
24 care doctor?

25 A. Yes, but I didn't get any relief. It would go down a

1 little and come back worse. So it really wasn't helping
2 me. I had to do something about the pain.

3 Q. And so on April 20, 2015 you go to your doctor for pain
4 medication, muscle relaxer, and stretching exercises. Is
5 that right?

6 A. Yes, sir.

7 Q. And on May 14 of 2015, twenty days after you went to
8 see your doctor, you go to see Dr. Z at Palmetto Spine, is
9 that correct?

10 A. Correct.

11 Q. And is it true you had never been a patient of Dr. Z
12 before May 14, 2015?

13 A. Correct.

14 Q. Now, Mr. Pressley, is it true that not the hospital
15 doctor, not the chiropractor, not even your family doctor,
16 recommended Dr. Z? Is that true?

17 A. Yes, sir.

18 Q. Now, I know you have the injections from Dr. Z, is that
19 correct?

20 A. Yes.

21 Q. You mentioned the injections, and was it your under-
22 standing that that was a diagnostic test to identify the
23 source of the back pain?

24 A. I don't know what it was but it was a big needle.

25 Q. Okay, was it your understanding that once the source

H. PRESSLEY ON CROSS

1 was identified they would have to give you another needle
2 to actually give you long term relief?

3 A. Well, they told me to come back and they used another
4 needle.

5 Q. And when you talk about coming back, do you remember
6 them talking about using other diagnostic needles to find
7 the source of your pain?

8 A. Yes.

9 Q. And I understand you returned on June 9th of 2015 to
10 see Dr. Z and that was another diagnostic test to your back
11 and you told him that you had had a complete resolution of
12 your pain.

13 Do you recall that?

14 A. No, I didn't, but I didn't want any more of the need-
15 les.

16 Q. You were afraid of the needles, is that correct?

17 A. It was more pain.

18 Q. Okay, do you recall ^{telling} Dr. Z that you had complete resolu-
19 tion on June 9 of 2015?

20 A. No, I didn't say it like that. I didn't want the pain
21 from the needles along with what I had.

22 Q. Well, we'll have Dr. Z testify in . . .

23 THE COURT: Just ask your questions.

24 MR. JONES: Thank you.

25 BY MR. JONES:

H. PRESSLEY ON CROSS

1 Q. Is it correct that on that date on June 9, 2015, you
2 left Dr. Z with no return appointments?

3 A. . .

4 Q. Is that right?

5 A. I can't testify about that.

6 Q. And you have not returned to see Dr. Z at Palmetto
7 Spine since June 9th of 2015?

8 A. Yeah.

9 Q. Is it your testimony that you were still in pain on
10 June 9, 2015?

11 A. Yes.

12 Q. Do you recall when you first became a patient at (in-
13 audible) Family Medicine?

14 A. It was quite a long time ago.

15 Q. It was before the car accident, is that fair?

16 A. Yeah, they had been our doctor for me and my family
17 before.

18 Q. Mr. Pressley, to be clear, you are not making claim for
19 lost wages from your employment?

20 A. Right.

21 MR. JONES: The Court's indulgence for a moment.

22 THE COURT: Yes, sir.

23 (Brief pause)

24 MR. JONES: Judge, I have no further questions. Thank
25 you.

H. PRESSLEY ON REDIRECT

1 THE COURT: Any Redirect?

2 MR. KALISH: Just briefly, Your Honor.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MR. KALISH:

6 Q. Mr. Pressley, you testified that you are still in pain
7 at this time. Correct?

8 A. Correct.

9 Q. So you had a conversation with the Doctor about that.
10 Correct?

11 A. Correct.

12 Q. Is it possible that when you said you wanted to stop
13 the treatment you may have said I'm feeling better; my pain's
14 gone. Correct?

15 A. Correct.

16 Q. Do you recall the conversation you had with Dr. Z?

17 A. . .

18 MR. JONES: Objection, Your Honor, to leading.

19 MR. KALISH: He can answer the question. This is Re-
20 direct.

21 THE COURT: He can answer.

22 Q. Do you recall a conversation you had with Dr. Z spe-
23 cifically on June 9th?

24 A. A conversation when?

25 Q. With Dr. Z on June 9th.

H. PRESSLEY ON REDIRECT

1 A. . .

2 Q. Do you recall specifically the conversation?

3 A. No, I don't. I don't remember much but getting the
4 shot.

5 Q. But do you remember that you specifically talked about
6 it?

7 A. He knew I didn't want any more shots.

8 Q. Thank you. That's all I have.

9 THE COURT: You may step down.

10 (Witness excused from stand)

11 THE COURT: Members of the jury, we will take a lunch
12 break now. I believe what's left is a video deposition of
13 the Doctor and then the Defendant's case. I believe we'll
14 hear from Mr. Sanders.

15 Is that it?

16 MR. JONES: Yes, sir.

17 THE COURT: So why don't we come back at one thirty.
18 That should be long enough so we'll see you at one thirty.

19 Please don't talk about this case, and keep your badges
20 on so nobody will speak to you.

21 Try to be back at one thirty and we'll get started at
22 about that time.

23 Thank you.

24 (Jury excused from the Courtroom for the lunch recess)

25 THE COURT: Mr. Pressley, you may step down.

1 (Plaintiff excused from the stand)

2 THE COURT: Anything before we break for lunch?

3 MR. KALISH: No, Your Honor.

4 MR. JONES: Nothing from us.

5 THE COURT: Mr. Jones, I understand we only have the
6 Doctor's deposition left for the Plaintiff.

7 So one thirty and we'll continue with that.

8 (Whereupon, the Court stood in recess for the lunch
9 break, after which the matter was resumed)

10 THE COURT: I understand from Mr. Jones that there are
11 some parts of the deposition of the doctor that we might
12 need to take up.

13 MR. KALISH: Yes, sir, and I could make a Motion in
14 limine in behalf of the Plaintiff but I don't believe it is
15 necessary.

16 THE COURT: We don't need any extraneous stuff. I mean,
17 I don't know what the questions are but we can take them
18 up now or during the deposition. I'm saying I don't care
19 either way.

20 I have no idea what those parts of the deposition are.
21 You may wish to let me know when we are coming to those
22 parts so we can send the jury out to take them up at that
23 time.

24 Is that agreeable with both sides?

25 MR. KALISH: Yes, sir.

1 THE COURT: We can do it either way but, as I said, we
2 don't need anything to come up that is extraneous.

3 I haven't seen it so I won't know without hearing it
4 or seeing it.

5 (Brief pause)

6 THE COURT: All right, if you would bring the jury in,
7 please.

8 (Whereupon, the jury returned to the Courtroom)

9 BAILIFF: Your Honor, the jury is seated.

10 THE COURT: Members of the jury, welcome back. I hope
11 you had a pleasant lunch.

12 We will now proceed with the showing of a video deposi-
13 tion that has been taken which represents the testimony of
14 Dr. Z for Z G L E S Z E W S K I, who was a treating physi-
15 cian.

16 I tell you that a deposition is an out-of-Court exam-
17 ination of a witness that is generally taken for the pur-
18 pose of a trial.

19 The way that proceeded was that each party through the
20 attorneys asked questions of the witness. I understand that
21 Mr. Kalish was present for the Plaintiff and that Mr. Jones
22 was present for the Defendant in this case, just as they
23 are here.

24 I tell you that the testimony is to be given the same
25 consideration and to be judged as to credibility and be

1 weighed by you in the same way as though the witness was
2 present before you and gave the testimony to you from the
3 witness stand here in the Courtroom.

4 I think all of you can understand that description of
5 what occurs with a deposition.

6 So you may continue and start the deposition.

7 UNIDENTIFIED PERSON: This is a videotaped deposition
8 which was taken on August 9, 2016, at 8:46 A.M. at the Of-
9 fices of Palmetto Spine and Sports Medicine, PA, at Three
10 Southern Court, Suite B, West Columbia, South Carolina, in
11 the case of Henry Pressley, Plaintiff, versus Eric Sanders,
12 Defendant, Number 2015 CP 40 4689, Court of Common Pleas
13 for Richland County, South Carolina.

14 Present and participating in the taking of the deposi-
15 tion were Mr. Kalish for the Plaintiff and Mr. Jones
16 for the Defendant.

17 The Reporter taking the deposition was Sandra Ayers.

18 (Whereupon, the deposition was played for the jury as
19 follows)

20 (Dr. Timothy M. Zgleszewski was sworn and testified)

21 EXAMINATION BY MR. KALISH

22 Q. Doctor, good morning. My name is Page Kalish. I'm
23 here on behalf of Henry Pressley.

24 How are you this morning?

25 A. I'm doing fine.

DR. Z DEPOSITION

1 Q. If you could, state your full name for the record,
2 please?

3 A. Timothy Michael Zglezewski.

4 Q. And, Doctor, would it be acceptable if I called you Dr.
5 Z for the deposition?

6 A. Yes.

7 Q. Thank you. All right, if I could hand you what's been
8 marked as Plaintiff's Exhibit 1. If you'd take a look at
9 that. That's a notice of your deposition. Have you seen
10 that before?

11 A. No.

12 Q. Okay, it's a notice of deposition videotaped for use
13 at trial.

14 A. Okay.

15 Q. Okay, and what I'd like to do is go ahead and hand you
16 what's been marked as Exhibit 2 for this deposition.

17 Could you a look at that and tell me if you recognize
18 that document?

19 A. Yes.

20 Q. Okay, can you tell me what that document is?

21 A. It's my CV or resume.

22 Q. Okay, and is that the most up to date resume that -- or
23 CV?

24 A. If you received this from my office today or within the
25 past week or so I'd have to say yes.

DR. Z DEPOSITION

1 Q. Okay, and I did.

2 A. I went to Temple University for undergraduate studies.

3 Q. Okay.

4 A. I received my bachelor of science in biochemistry, then
5 went to Temple University School of Medicine where I re-
6 ceived my medical degree.

7 Then went on and received a five year residency program
8 for general surgery. Completed one year of that program and
9 then switched into physical medicine and rehabilitation.

10 I then completed that residency program and then went
11 into a one year fellowship in musculoskeletal spine and pain . . .

12 Q. Okay.

13 A. . . and completed that fellowship.

14 Q. And in the course of your studies have you received any
15 honors such as cum laude or any other honors of that na-

16 A. I believe so.

17 Q. Okay, and where did you complete your residency?

18 A. For physical medicine and rehabilitation it would've
19 been Graduate Hospital, which was sort of bought and then it
20 was part of the University of Pennsylvania for a short bit.
21 Then it became, I believe, finished off at Alleghany Univer-
22 sity Hospitals.

23 Q. Okay, and what about your fellowship?

24 A. Fellowship was at KDV Orthopedics which is out of York,
25 Pennsylvania.

1 Q. Okay, and do you currently have any licenses?

2 A. Yes.

3 Q. Okay, and if you could tell me what professional li-
4 censes you have?

5 A. Active licenses. I have one for South Carolina and
6 for North Carolina.

7 Q. Okay, and are you board certified?

8 A. Yes.

9 Q. And in what areas are you board certified?

10 A. In the physical medicine and rehabilitation as well
11 as a subspeciality of pain medicine.

12 Q. Okay, have you authored any publications through the
13 course of your professional life?

14 A. As a second or third author, yes.

15 Q. Okay, and in what areas were those publications?

16 A. If I remember correctly it would have been under spine.
17 It was during the -- I believe my fellowship.

18 Q. Which -- correct. Okay, are you referring to your CV
19 at this time?

20 A. I am.

21 Q. Okay.

22 A. It's been that long ago.

23 MR. KALISH, At this time and subject to any voir dire
24 from defense counsel I'd like to offer Dr. Z as an expert
25 in the areas of medicine, physical medicine and rehabilitation

DR. Z DEPOSITION

1 as well as pain.

2 MR. JONES: I have no additional voir dire.

3 BY MR. KALISH:

4 Q. Okay, all right. Dr. Z, if you could, tell me about
5 your career and practice. What is the name of your current
6 practice?

7 A. Palmetto Spine and Sports Medicine.

8 Q. Okay, and how long has that been in existence?

9 A. It's been in existence since, I believe, 2002.

10 Q. Okay, and were you the person who started this practice?

11 A. Yes.

12 Q. Okay, and have you practiced in this -- with this
13 practice continuously since that time?

14 A. Yes.

15 Q. Okay, and what areas of medicine do you practice?

16 A. Physical medicine and rehabilitation, as well as the
17 subspecialty of pain medicine but also regenerative medi-
18 cine as well.

19 Q. Okay, and what does that mean to a lay person?

20 A. What's that?

21 Q. In other words, what is physical rehabilitation?

22 A. Sure. It's a large specialty that encompasses stroke
23 patients, brain injury patients, as well as the entire
24 musculoskeletal system.

25

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1 We don't do open surgeries. We do, basically, treat-
2 ment from anywhere from acute all the way up to chronic, in-
3 cluding some physical medicine and rehabilitation.

4 Specialists do interventional spine and pain like my-
5 self. We also are trained in residence to do basically
6 nerve and muscle testing which is called EMG and nerve con-
7 duction testing.

8 So basically we're -- we're physicians that can take
9 care of pretty much almost all different types of musculo-
10 skeletal and nervous system conditions.

11 I don't do any type of stroke care or sort of anything
12 in the brain. That's sort of more toward the neurologist,
13 but sort of the peripheral nervous system and musculoskel-
14 etal system.

15 Q. Okay, and let's talk about the speciality of pain man-
16 agement. What is that in layman's terms?

17 A. In layman's terms, basically, treating anywhere from
18 acute all the way up to chronic pain, from managing with
19 different types of therapies, medications, as well as dif-
20 ferent types of interventional procedures to, basically,
21 try to minimize or eliminate pain as well as increase
22 function.

23 Q. Okay, and you mentioned a subspeciality as well. If
24 you could explain that subspecialty and what it means in
25 layman's terms?

DR. Z. DEPOSITION

1 A. Are you talking about regenerative medicine or . . .

2 Q. Yes, sir.

3 A. Regenerative medicine is an emerging specialty where
4 we are using different modalities to actually stimulate
5 someone's own body to start healing themselves

6 Most notably with the PRP or platelet rich plasma, stem
7 cells, and one that's a treatment that's been around actu-
8 ally for I think sixty or seventy years, which is prolo-
9 therapy.

10 All of those sort of treatments, basically, essentially
11 just stimulate your own body to repair itself.

12 Q. Okay. Have you ever testified at trial before?

13 A. Yes.

14 Q. Okay, do you know how many times you've testified at
15 trial?

16 A. At trial as with a Judge and jury and all present?

17 Q. Yes.

18 A. It -- I believe it was two times.

19 Q. Okay, were you qualified as an expert?

20 A. Yes.

21 Q. Okay, has there ever been an opportunity when you were
22 not qualified as an expert?

23 A. No.

24 Q. Okay. All right, now I'd like to kind of change course
25 and focus on the -- on Mr. Pressley's case.

DR. Z. DEPOSITION

1 Have you had a chance before today to review the re-
2 cords in Mr. Pressley's case?

3 A. Yes.

4 Q. Okay, and did you review both your records as well as
5 records from other treating physicians?

6 A. I have.

7 Q. Okay. What I'd like to do is take you through chrono-
8 logically the treatment process of Mr. Pressley.

9 What I'm going to hand you for brief review is a copy
10 of the records from the emergency room visit for Mr.
11 Pressley.

12 It's dated February 16, 2015, is that correct?

13 A. Yes.

14 Q. Okay, have you had a chance to review these records?

15 A. I have.

16 Q. Okay, if you could explain to me what the emergency
17 room physician was looking at while Mr. Pressley was there?

18 A. Well, basically he came in after a motor vehicle acci-
19 dent and was reporting neck and lower back pain.

20 Q. Okay, and if you look at the physical examination sec-
21 tion, what were the physical examinations that were per-
22 formed by the physician?

23 A. You want me to just read the whole thing?

24 Q. Not the whole . . .

25 A. Okay, going toward neck it says tender to palpation

DR. Z DEPOSITION

1 posteriorly. Going to the back it states revealed tender-
2 ness all the way across his lower lumbar area.

3 Q. Okay, is that what you would typically expect from a
4 motor vehicle accident?

5 A. Yes..

6 Q. Okay, and if you would go to the next page and look at
7 the laboratory data?

8 A. Okay.

9 Q. And tell me what was done with regards to laboratory
10 data?

11 A. Appears that he was sent for x-rays of his neck.

12 Q. Okay, and are there any findings from those x-rays?

13 A. It states here, negative for any acute process.

14 Q. Okay.

15 Q. It also stated he has some degenerative changes.

16 Q. Okay, and if you look at clinical impression, how old
17 was the patient?

18 A. Sixty.

19 Q. Okay, would it be typical for a person of around that
20 age to have some degenerative changes in their back and
21 spine?

22 A. Yes.

23 Q. Okay, and just going back quickly and I apologize but
24 for acute process, what does that mean?

25 A. I can't state for sure what that -- what their meaning

DR. Z DEPOSITION

1 is but my meaning would be there's no fracture.

2 Q. Okay, so the x-ray is looking for fractures of the
3 bone, is that correct?

4 A. Typically for a bony alignment and fractures.

5 Q. Okay, and if you would look at the next page, which it
6 appears to be a final report.

7 Does that appear to be a final report from the x-ray
8 or from the radiologist who would read the x-ray?

9 A. Yes.

10 Q. Okay, and is there anything in this report that would
11 change what you just talked about, the acute abnormality --
12 there not being an acute abnormality?

13 A. No.

14 Q. Or this is consistent with no acute abnormality?
15 Correct?

16 A. Correct.

17 Q. Okay. Now, the next few pages deal with a disability
18 index. Could you explain to me what the disability index
19 is?

20 A. It's basically a -- a way to try to put a number on how
21 someone's pain and all is -- is affecting them.

22 Q. We're through with that. Thank you.

23 Q. I'm going to hand you Plaintiff's Exhibit 4. Before I
24 do that, let me go back to Plaintiff's Exhibit 3, and look
25 at Plaintiff's Exhibit 3 which is the ER records.

1 Were any prescriptions given to Mr. Pressley?

2 A. Yes.

3 Q. And what were they?

4 A. Naprosyn and Ultram.

5 Q. Okay, and what is the purpose of those two medications?

6 A. Naprosyn is anti-inflammatory, can help with acute
7 injuries, as well as Ultram which will take care of pain.

8 Q. Okay, great. Thank you.

9 Now we can switch to Exhibit 4. Do those appear to be
10 records from Fields Chiropractic?

11 A. Yes.

12 Q. Okay, and would you agree with me that it appears that
13 there were twelve visits between February 17th of 2015 to
14 March 11, 2015?

15 A. Yes.

16 Q. Okay, and what is the purpose of chiropractic treatment
17 in your opinion?

18 A. Chiropractic has emerged so there's -- you know, even
19 with chiropractic there's a large sway between the different
20 chiropractors and how they treat patients in sort of their
21 approach.

22 Traditionally, it -- it helps to accelerate healing in
23 an acute phase and minimize dysfunction through sort of
24 adjustments as well as doing different types of therapies.

25 Q. Okay, and if you would look on -- let's see. Turn to

1 the page -- page one. If you could explain to me what the
2 objective findings were.

3 They're at the bottom of the page leading into the next
4 -- into page two of twenty-one.

5 And we can focus specifically on the back and the neck
6 for this figure.

7 A. So under the neck -- I'll just read it.

8 Cervical compression is positive bilaterally; cervical
9 distraction is positive bilaterally; foraminal compression
10 is positive bilaterally; Valsalva is positive bilaterally.

11 And then under low back, nachlas is negative bilater-
12 ally; yeoman's is positive bilaterally; straight leg rais-
13 ing is negative bilaterally, kemps is positive bilaterally;
14 kemps is positive bilaterally; bechterews is negative bilat-
15 erally; and soto halls is negative bilaterally.

16 It then went on to document strength testing, motor
17 testing for both upper and lower extremities; was normal on
18 each side. Same thing with deep tendon reflexes

19 Q. Okay, and if you look down at the radiology portion,
20 what were normal findings?

21 A. It appears that there are no fractures, pathologies
22 or severe dislocation as are displayed.

23 Q. And is that consistent with what we saw at the -- from
24 the ER records?

25 A. I believe so.

DR. Z DEPOSITION

1 Q. Okay, and what about the abnormal findings?

2 A. It lists DJD which is degenerative joint disease.

3 Moderate degenerative joint disease is displayed at the
4 C3, C4, C5 and C6 vertebrae levels, DJD.

5 Moderate degenerative joint disease is displayed at the
6 L3, L4, L5 vertebrae levels.

7 Disc thinning: Moderate disc thinning is noted at L4, L5
8 vertebral levels.

9 Q. Okay.

10 A. And then also I guess below that is curve reversal with
11 a quote, a moderate reversal of the cervical curve with the
12 apex at C5 is noted.

13 Q. Okay, and does it appear that there were some sorts of
14 treatment that was rendered as a result of these findings
15 by the chiropractor?

16 A. Yes.

17 Q. Okay, and what were those treatments?

18 A. It looks like chiropractic manipulation, cryotherapy and E
19 E stim.

20 Q. Okay, and what is E stim?

21 A. Electrical stimulation.

22 Q. Okay, is this a physical therapy type treatment that
23 is done?

24 A. It would be considered as physical medicine so physi-
25 cal therapists utilize it, chiropractors utilize it and

DR. Z DEPOSITION

1 physicians utilize it.

2 Q. Okay. Okay, if you would turn to page 20 of 21.

3 A. Okay.

4 Q. Okay, and it appears -- is the date of visit for this
5 exit exam listed as March 15, 2015?

6 I'm sorry, 19 of 21.

7 A. Yes.

8 Q. Okay, and if you could explain to me the objective
9 findings for the neck and back?

10 A. That was -- again, I'll just read it. Cervical com-
11 pression is negative bilaterally. Cervical compression is
12 negative bilaterally. Cervical distraction is negative bi-
13 laterally.

14 Foraminal compression is negative bilaterally and val-
15 salva is negative bilaterally.

16 For the low back essentially all the same testing that
17 was done initially is all negative.

18 Q. Okay, and what is the assessment which is further down
19 the page, 20 of 21?

20 A. After today's assessment, patient's progress has im-
21 proved and is evidenced by decreased pain, increased range
22 of motion, and the return to norm -- to normal activities of
23 daily living.

24 Q. Okay. So from looking at that, does it appear that
25 chiropractic treatment did some good for Mr. Pressley?

DR. Z DEPOSITION

1 A. Yes.

2 Q. Okay, I'm going to hand you what's been marked as
3 Plaintiff's Exhibit 5. If you would, take a minute and
4 review that.

5 A. Okay.

6 Q. Okay, and what is that document that we're looking
7 at?

8 A. It's an MRI lumbar spine without contrast.

9 Q. Okay, and what is the date of that?

10 A. March fourth, 2015.

11 Q. Okay, so does it appear that that MRI was taken at
12 some point during the treatment with the chiropractic care?

13 A. I don't know. Yes.

14 Q. Okay, and what is the purpose of an MRI?

15 A. You're trying to get a look at the soft tissue and in
16 this case it would be the low back.

17 Q. Okay, and what does it say under the history for the
18 MRI?

19 A. Back pain radiating to both legs with numbness in the
20 feet.

21 Q. Okay, and who was the referring physician for this
22 MRI?

23 A. It says Fred Vallejo which is V A L L E J O.

24 Q. Okay, and what is the technique for this MRI?

25 A. MRI of the lumbar spine was performed using sagittal.

DR. Z DEPOSITION

1 and axial pulse sequences.

2 Q. Okay, so what does that mean? The MRI was focused on
3 a certain part of the body?

4 A. Well, in this case it was focused on the low back or the
5 lumbar spine.

6 Q. Okay, and what were the findings for the MRI?

7 A. Basically the first two levels, L 1, 2 and L 2, 3 were
8 normal.

9 Q. Okay, let me slow you down a little bit.

10 A. Sure.

11 Q. I know that you do this on a daily basis but where are
12 the L 1 and L 2 and the L 2 and L3 located?

13 A. The L 1, 2 and L 2, 3 are the top two discs in the
14 lumbar spine.

15 Q. Okay.

16 A. So that would be the top two discs in the low back.

17 Q. Okay, thank you.

18 A. And then the -- the middle discs or L 3, 4, they're
19 showing some disc desiccation which is sort of dehydration
20 of the disc, early signs of degeneration, with a broad base
21 being across -- sort of the whole back part of the disc.

22 They're sort of bulging out. However, there's no im-
23 pingement or no entrapment of the nerve roots as relieving
24 at that level.

25 There's little joints in the back part of the spine

1 called facet joints. They're about the size of your finger
2 joints. Those two little joints are showing some arthritis
3 at that level.

4 The next level below that is L 4, 5, and that's again
5 showing some bulging or protrusion of the disc which is
6 across or the whole back part of the disc.

7 Again, it's not noting any type of nerve root impinge-
8 ment and again it's showing some mild facet arthritis or
9 degeneration.

10 And then at L 15, S 1, which is sort of the bottom disc
11 in the low back -- again, it's noting facet arthritis or
12 degeneration.

13 And again showing some broad base disc protrusions or
14 bulging as well.

15 But again no mass defect which just means no impinge-
16 ment of the nerve roots.

17 Q. Okay, and without impingement are there any -- would
18 there be any symptoms that would be associated with arth-
19 ritis or any other degenerative changes in the spine?

20 A. Well, I mean, without impingement you can still have
21 nerve root irritation. However, it doesn't have to be
22 there.

23 But again with this it makes it less likely that there
24 is going to be nerve root impingement, I mean, or nerve
25 root irritation.

DR. Z DEPOSITION

1 And, you know, the arthritis is present there. I may
2 or may not be symptomatic.

3 Q. Okay, and is that something that just happens as you
4 get older?

5 That you would have signs of discs getting smaller,
6 arthritis setting in, and things of that nature?

7 A. It's consistent with that.

8 Q. Okay, so from looking at this MRI, the results of the
9 MRI, are you able to determine anything about the condition
10 of Mr. Pressley with relation to any pain or problems that
11 he's having?

12 Or is it just a diagnostic tool to rule out certain
13 things?

14 A. No, you get -- I mean, there's been multiple studies
15 that show you don't treat anybody based on the MRI.

16 Q. Okay.

17 A. That's taken in context with the presentation of the
18 patient.

19 Q. Okay, I'm going to show you what's been marked as
20 Plaintiff's Exhibit 6 which are records from Woodhill Fam-
21 ily Practice.

22 Take a moment to review. Let me know when you are
23 ready.

24 Q. Okay.

25 A. Okay, and what is the document you're looking at or

1 the documents?

2 A. Again, it's a note from April 20th of 2015 from
3 Woodhill Family Medicine.

4 Q. Okay.

5 A. And then there's some labs attached too it looks like.

6 Q. Okay, and if you look at the subjective area could you
7 please explain to me what was going on with Mr. Pressley?

8 A. All right. It just reviewed sort of his initial treat-
9 ments at the ER, as well as with a chiropractor, and then
10 states, over the past five days he has had problems with
11 neck pain and has felt a little weakness in his right hand.

12 He denies any paresthesia which is sort of numbness,
13 tingling, to the arms, hands or fingers.

14 Q. Okay, and then what about the objective findings that
15 are following the subjective findings?

16 A. The cervical range of motion is limited to about fif-
17 teen degrees of lateral rotation toward the left and he has
18 some limitation of side bending.

19 No palpable spasm, and then he goes on to state upper
20 extremity strength and range of motion are grossly intact.

21 Q. Okay, and what does that mean?

22 A. Essentially it means normal.

23 Q. Okay, and what is the -- would this be the prognosis
24 or the -- what does A slash P stand for?

25 A. Assessment and plan.

DR. Z DEPOSITION

1 Q. Okay, and what does that state?

2 A. Cervical strain secondary to motor vehicle accident
3 with recurrence of symptoms.

4 Then they go on to state that they're going to get
5 x-rays or -- I'm sorry, ER records, obtain an MRI.

6 He was prescribed Ultracet which is a pain medicine and
7 Soma which is a muscle relaxer, and then also recommended
8 local heat and stretching exercises.

9 Q. Okay, so that would be more physical attempts to help
10 repair the back?

11 A. Yes.

12 Q. Okay, as well as some medical -- excuse me -- prescrip-
13 tion medications to help with the pain and spasms?

14 A. Yes.

15 Q. Okay, all right, I'm going to hand you what's been
16 marked as Plaintiff's Exhibit 7. If you would, take a look
17 at these documents and tell me if you recognize those?

18 A. Those are my records.

19 Q. Okay, and when did you start treating Mr. Pressley?

20 A. I believe I saw him the first time on May 14th of 2015.

21 Q. Okay. In the first document in this Plaintiff's Ex-
22 hibit 7, could you explain to me what that document is?

23 A. I think just the history of the visits for him
24 at my office.

25 Q. Okay. Is that a document that's created by your

DR. Z DEPOSITION

1 office?

2 A. Yes.

3 Q. And is it created in the normal course of business of
4 your office?

5 A. Yes.

6 Q. Okay, does it also containing billing information?

7 A. Yes.

8 Q. Okay, and what do you see for the billing amounts?

9 A. It just lists the balance of Four Thousand Nine Hundred
10 Thirty-five Dollars.

11 Q. Okay, and in reviewing that document in your opinion,
12 to a reasonable degree of medical certainty, is that bill
13 consistent or being fair and reasonable for the services
14 rendered?

15 A. In my opinion, yes.

16 Q. Okay, and briefly explain why Mr. Pressley came to you
17 and what the purpose of the first visit was?

18 A. He stated that he was in pain as a result of a motor
19 vehicle accident that occurred on or about February 16th of
20 2015, and basically was reporting low back and neck pain
21 and some pain traveling through his right arm.

22 Q. Okay. At that time did you take a history to under-
23 stand what treatments he'd undergone beforehand?

24 A. Yes.

25 Q. Okay, and based on looking at the records does it

DR. Z DEPOSITION

1 appear to you that he received physical medicine in the form
2 of chiropractic treatment?

3 A. Yes.

4 Q. Okay. Did he also receive prescription medications?

5 A. Yes.

6 Q. Okay, and at some point did those no longer help his
7 condition?

8 A. Yes.

9 Q. Okay, and at that point you take over as his treating
10 physician, is that correct?

11 A. Yes.

12 Q. Okay, and as stated earlier what are the options that
13 you have available to you to try and help Mr. Pressley re-
14 cover from this auto accident?

15 A. Again, everything from sort of the acute all the way
16 up to chronic, and that would include various different
17 types of diagnostic as well as therapeutic interventions.

18 Q. Okay, and what areas of medical issues were you look-
19 ing at with regards to Mr. Pressley? What parts of his
20 body?

21 A. The low back and the neck.

22 Q. Okay, and what did you do in his first visit?

23 A. To the history and did a physical examination and then
24 came up with a -- a list of diagnoses based on that, and
25 then listed out a -- a plan of sort of how to approach his

1 conditions and try to, number one, diagnose and then to
2 treat him.

3 Q. Okay, and what was your diagnosis?

4 A. Initially just the low back pain and cervical pain.

5 Q. Okay, and what was your treatment plan?

6 A. Initially I believe the low back was bothering him
7 more, so I listed out that we were going to do some diag-
8 nostic procedures or blocks to look at both his sacroil-
9 iac joints, which are joints in the lower back, hip, . .

10 THE COURT: Would you please stop for a minute?

11 MR. KALISH: Yes, sir.

12 THE COURT: I'm going to give you all a break as
13 I believe some of you indicted you need a break.

14 It is my job to take care of my jurors. It's required
15 by statute so we will take a short break so you can refresh
16 yourselves.

17 Then we'll bring you back in.

18 (Jurors excused from the Courtroom)

19 (Whereupon, the Court took a brief recess, after
20 which the matter was resumed)

21 THE COURT: I'm sorry for that but it happens all the
22 time. It's not easy for the jurors.

23 (Discussion concerning schedule between counsel and
24 the Court off the record)

25 THE COURT: Once again, I'm sorry.

1 All right, if you would invite the jury back in.

2 (Jury returned to the Courtroom)

3 THE COURT: You can back up a little bit.

4 MR. KALISH: I believe he was testifying about ther-
5 apeutic interventions.

6 Q. Okay, and what areas of medical issues were you look-
7 ing at with regards to Mr. Pressley? What parts of his
8 body?

9 A. The low back and the neck.

10 Q. Okay, and what did you do in his first visit?

11 A. Took the history and did a physical examination and
12 then came up with a -- a list of diagnoses based on that, and
13 then listed out a -- a plan of sort of how to approach his
14 conditions and try to, number one, diagnose and then to
15 treat him.

16 Q. Okay, and what was your diagnosis?

17 A. Initially just the low back pain and cervical pain.

18 Q. Okay, and what was your treatment plan?

19 A. Initially I believe the low back was bothering him
20 more, so I listed out that we were going to do some diag-
21 nostic procedures or blocks to look at both his sacroil-
22 iac joints which are joints in the lower back, hip, pelvic
23 area right below sort of the belt line.

24 And then also possibly his facet joints which are the
25 little muscle joints that are on the back part of the spine.

1 Q. Okay, and what procedures would you use diagnostically
2 to look into the sacroiliac joints?

3 A. Essentially it's just a fancy joint injection that
4 is under x-ray untrasound guidance where we take a needle,
5 place it into the joint and just essentially number it
6 up.

7 If someone's pain goes away then we know that's where
8 it is coming from. If it doesn't then we know it's not
9 coming from there.

10 Q. Okay, and during this visit did you undertake to do
11 an injection of the sacroiliac joint?

12 A. Not during this -- not during this visit.

13 Q. Okay. You were just setting up the plan for treat-
14 ment?

15 A. Correct.

16 Q. Okay. When is the next time that you were able to
17 see Mr. Pressley?

18 A. I believe it would be -- I believe it would be May
19 21st of 2015.

20 Q. Okay, and at that time what did you do?

21 A. At that time we did a left diagonalistic sacroiliac
22 or a SI joint injection.

23 Q. Okay, and you said that it is done either under x-ray
24 or . . .

25 A. I'm sorry Both . . .

DR. Z DEPOSITION

1 Q. . . .

2 A. Both left and right.

3 Q. Okay.

4 A. I just saw the second page.

5 Q. Okay.

6 A. Sorry.

7 Q. Okay, and this was done under ultrasound guidance, is

8 that correct?

9 A. Correct.

10 Q. And what is the purpose of that?

11 A. It is imaging to make sure that we get into the --

12 into the joint.

13 Q. Okay, and if you could just explain the procedure.

14 A. Sure.

15 Q. I know that you do this every day and so you are

16 very comfortable with it and -- but I want you to explain

17 exactly what happens with the patient.

18 A. Sure. Patient comes in. They come into our sort

19 of pre-op, post-op area.

20 There a nurse will sort of do the typical pre-op.

21 Q. Okay.

22 A. Vital signs. Go through the history and make sure

23 they have stopped certain medications that would need

24 to be stopped.

25 Q. Okay.

DR. Z DEPOSITION

1 A. Once that's done then we'll bring them into the pro-
2 cedure suite and then they'll lay down on a table.

3 They'll then get cleaned sterilely and then once they
4 are clean I'll come in and basically drape them sterilely.

5 For in this case I just draw up numbing medicine and
6 then we take a needle -- it's about three inches long, or
7 it's on the tiny side as far as the thickness so the worst
8 part is basic needle going through the skin.

9 And what we do is basically once the needle goes on
10 through the skin use the ultrasound to guide the tip of the
11 needle down to where the joint is.

12 Once it's there we'll then basically install in this
13 case numbing medicine.

14 No steroid because it's diagnostic, just . . .

15 Q. Do you . . .

16 A. . . numbing medicine. Once that's done -- in this
17 case we would have moved to the other side, done the same
18 thing and then, once done, cleaned the patient up, put
19 bandaids on, and then bring back in the pre-op, post-op
20 area.

21 Q. Okay, and how long does that procedure typically take?

22 A. Procedure itself for -- just one side typically takes
23 maybe two to three minutes to do.

24 Q. Okay, and is there discomfort by the patient?

25 A. Yes.

DR. Z DEPOSITION

1 Q. In other words, is it painful for the patient?

2 A. Yes.

3 Q. Okay.

4 A. Initial placement of the needle through the skin and
5 then as the numbing medicine goes in, described basically
6 like a big bee sting or hornet sting.

7 Q. Okay, and that would be internally because that's
8 where the medicine is going, into the joint?

9 A. Correct.

10 Q. Okay, and are some patients able to tolerate that pain
11 more than others?

12 A. Yes, and what I tell my patients is I'm really good
13 at giving needles but I'm like most patients and don't like
14 getting them.

15 You know, so yes.

16 Q. And just so that I'm clear, the diagnostic portion
17 is only to determine whether there's -- whether you can
18 resolve the pain issue, is that correct?

19 A. That is correct. Now, there's a very few number of
20 patients where they'll actually get long term benefit from
21 just numbing medicine, but the -- the real purpose is diag-
22 nostic.

23 Q. Okay, after receiving the diagnostic injections do you
24 have patients who would prefer to deal with the pain than
25 continue with the injection procedure?

DR. Z DEPOSITION

1 A. We've had some patients do that, yes.

2 Q. After you performed the procedure -- after you per-
3 formed the procedure on Mr. Pressley what takes place?

4 A. . .

5 Q. You said that he -- after the procedure he's taken
6 post-op. Is that correct?

7 A. Because he's not receiving sedation typically, bas-
8 ically, five to ten minutes.

9 Q. Okay, and in this case -- if you would look at page
10 two of your May 21st notes, it says the patient was ob-
11 served for an appropriate period of observation post-proced-
12 ure and discharged to home with a driver in stable condi-
13 tion.

14 Q. Why is the patient discharged with the help of a
15 driver?

16 A. Reason is is you can sometimes get numbness or ting-
17 ling down the leg, and not typically with an SI-joints
18 injection; more so for an epidural.

19 But some patients will actually have a delayed vaso-
20 vagal event or faint.

21 And there's cases where people have fainted ten to
22 twenty minutes afterwards and they may actually get into
23 a major accident because they were actually driving when
24 they passed out.

25 Q. Okay.

DR. Z DEPOSITION

1 A. So it's pretty much standard of care.

2 Q. Okay, and in these notes is there any information
3 about whether his procedure was successful or not?

4 A. What do you mean by successful?

5 You mean successful as yes, we numbed up both of the
6 SI joints?

7 Q. Okay, were you able to determine that those were
8 the location of the pain . . .

9 A. I don't . . .

10 Q. . . or the cause of pain?

11 A. I believe when he came back in follow-up . . .

12 Q. Okay.

13 A. . . I think it would have been May 26th;, and it
14 reads, you know, he did have a positive block. So yes.

15 Q. Okay, and let's move to the May 26th visit.

16 If you could explain to me what you did during that
17 visit?

18 A. Basically just spoke to him regarding the diagnos-
19 tic injection that we did the prior time.

20 Q. Okay, and if you would look at your notes, is there
21 anything else that was discussed during tha visit of May
22 26th dealing with the bilateral SI joint and ablation?

23 A. Yes. Under the -- the plan it says he had a positive
24 diagnostic block through the SI joints.

25 I recommended doing two procedures. One would

DR. Z DEPOSITION

1 have been radiofrequency ablation to each joint, followed
2 by platelet-rich plasma, or PRP, to the SI joints as well.

3 Q. Okay, and what is the purpose of the ablation?

4 A. Purpose of the ablation is to essentially deaden
5 the sensory pain fibers that are coming out of the SI
6 joint that eventually travel up to the brain so as you
7 -- one can perceive pain.

8 Q. So it dulls the pain sensation. Correct?

9 A. Dulls and/or eliminates.

10 Q. Or eliminates? Okay, and was there anything that you
11 recommended with regards to the neck pain that he was . .

12 A. Recommended at that point since we had determined
13 what was going on with the -- the low back, then moved --
14 you know, we were going to move on to treatment for the
15 low back.

16 At that point we were going to move then to diag-
17 nostics for the neck. I had recommended what's called
18 diagnostic facet nerve blocks.

19 Again, facet joints are little joints in the back
20 part of your spine, and the only way to really know for
21 sure if those joints are painful is to basically numb them
22 up under x-ray guidance, and that's what I recommended.

23 Q. Okay, and would that be something that would be
24 accomplished at another date?

25 A. Yes.

DR. Z DEPOSITION

1 Q. Okay, so it was not performed on the May 26th visit.

2 Correct?

3 A. Correct.

4 Q. Okay. Okay, if you would turn to the June 9th vi-
5 sit which appears to be the next visit.

6 A. Okay.

7 Q. If you could tell me what went on during that visit?

8 A. Mr. Pressley came in for a follow-up visit.

9 Q. Okay, and what happened during that visit?

10 A. Patient states that all my pain is gone. That -- he
11 reports that this includes his low back, neck and right
12 upper extremity pain.

13 He stated that he had not experienced any flairs of
14 pain at all. He states he's pretty much doing his activi-
15 ties of daily living without pain and that the medication
16 was no longer required, and he denies any further acute
17 incidents.

18 Q. Okay, and would this have been the last visit that
19 you had with Mr. Pressley?

20 A. I believe so, yes.

21 Q. Okay. Did Mr. Pressley talk to you at all about any
22 discomfort from the needles or fear of the needles or fear
23 in the treatment plan?

24 A. I believe the visit prior to when I'd recommended
25 proceeding with the diagnostic facet nerve blocks to the

1 neck that he actually declined them.

2 And basically was just not -- didn't want to do any
3 further sort of injections such sa that, if I remember
4 correctly.

5 Q. Okay, and in your opinion would that be due to the
6 fact that he was feeling discomfort from the injections
7 or had some sort of fear from the treatment that was
8 planned?

9 A. I can't state for sure. It may have been a little of
10 both.

11 Q. Okay, and was he released from your care on June 9th
12 of 2015?

13 A. Yes.

14 Q. Okay, did you offer any prescription or any other
15 type of exercise or anything of that nature for follow up?

16 A. Not at that time.

17 Q. Okay, and if you could I see that I'm -- under cur-
18 rent medications on that page it appears that Tramadol is
19 one of the current medications?

20 A. Wait a minute. That is correct.

21 Q. And what is the purpose of Tramadol?

22 A. It was a pain medication.

23 Q. Okay, and in looking at the list of other medications
24 that were prescribed at that time, do any of those appear
25 to be for pain and . . .

DR. Z DEPOSITION

1 A. No.

2 Q. . . or muscle spasms?

3 A. No.

4 Q. Okay, Dr. Z, we've looked at quite a few records to-
5 day from various physicians and chiropractors who treated
6 Mr. Pressley throughout the course following his auto
7 accident.

8 Based upon the review of the records, your interview
9 with Mr. Pressley and other information that you had, is
10 it more likely than not that the automobile accident caused
11 a medical problem that you treated?

12 A. Yes.

13 Q. Okay, and is that opinion to a reasonable degree of
14 medical certainty?

15 A. Yes.

16 Q. Okay, and was this the actual and proximate cause of
17 Mr. Pressley's medical problems that you treated him for?

18 A. Yes.

19 Q. And is that opinion to a reasonable degree of med-
20 ical certainty?

21 A. Yes.

22 Q. Okay. Now, I note that there was discussion about a
23 degenerative -- degeneration of the spine for Mr. Pressley.

24 If he was asymptomatic before the car accident would
25 this have been an exacerbation or would this have been

DR. Z DEPOSITION

1 something that set him off?

2 A. It is one possible mechanism. From my standpoint as
3 far as the lower back, we know for sure that was coming
4 from the SI joints and that would have been part of or,
5 sort of, like a lumbosacral sprain/strain of the ligaments
6 as well as inflammation and irritation within the SI joints.

7 As far as the neck, that was one of the reasons I re-
8 commended doing the diagnostic facet nerve blocks.

9 I was concerned about the facet joints being painful
10 versus a cervical sprain/strain, and that would have been
11 able to sort of elucidate for sure, you know, were we deal-
12 ing with more of a cervical sprain-strain versus an aggra-
13 vation of the preexisting facet arthritis that was in the
14 neck.

15 Q. Okay, so either it was a exacerbation of a preexist-
16 ing condition or it was a new problem that was caused by
17 the car wreck. Is that correct?

18 A. In my medical opinion, yes.

19 Q. Okay, and is that opinion stated to a reasonable degree
20 of medical certainty?

21 A. Yes.

22 Q. Okay.

23 MR. KALISH: Dr. Z, those are all the questions I
24 have.

25 Please answer any questions the other attorney may

DR. Z DEPOSITION

1 have for you.

2 WITNESS: Sure.

3 MR. KALISH: Can we take a break for a second?

4 MR. JONE: Absolutely.

5 (Brief pause)

6 CROSS EXAMINATION

7 BY MR. JONES:

8 Q. Good morning, Dr. Z.

9 A. Good morning.

10 Q. Again, my name is Trey Jones with the Turner, Padgett
11 Law Firm, and we represent Eric Sanders which is the Defen-
12 dant in this case.

13 You and I met briefly just before we started your de-
14 position this morning.

15 We have not had the occasion to meet before today,
16 is that correct?

17 A. I don't believe so.

18 Q. Okay. Can you tell me what your date of birth is?

19 A. July third, 1968.

20 Q. Where were you born?

21 A. In Chester, Pennsylvania.

22 Q. Did you grow up in Pennsylvania?

23 A. Yes.

24 Q. Where do you presently live?

25 A. Isle of Palms, South Carolina.

DR. Z DEPOSITION

- 1 Q. Do you maintain a office down in Mount Pleasant as
2 well?
- 3 A. Down in West Ashley but, yes, down in Charleston.
- 4 Q. And does this practice have the same name, as Palmetto
5 Spine?
- 6 A. Yes.
- 7 Q. Which boards have you sat for?
- 8 A. For physical medicine and rehabilitation as well as
9 a subspecialty for pain medicine.
- 10 Q. And are those two separate boards?
- 11 A. Yes.
- 12 Q. Okay. Did you pass on the first attempt?
- 13 A. I believe so.
- 14 Q. Do you recall when you took thoe boards?
- 15 A. Well, the originals I think would be ninety-nine and
16 maybe two thousand. I think it's in the CV.
- 17 Q. And do they require you to re-certify every certain
18 number of years?
- 19 A. Every ten years, yes.
- 20 Q. And are you up to date on these re-certifications?
- 21 A. Yes, sir.
- 22 Q. Have you ever taught any courses in medical education?
- 23 A. I've taught courses, yes.
- 24 Q. Can you give me an overview of what medical courses
25 you've taught?

1 A. Sure. Taught a course in SI joint dysfunction and
2 pain at our national meeting for -- used to be called
3 PASOR, but basically physicians that were doing musculo-
4 skeletal medicine.

5 And then have done courses throughout -- through my
6 office from an interventional standpoint, instructing phy-
7 sicians on, you know, performing greater frequency and
8 other different procedures.

9 Q. Are those continuing education, for lack of a better
10 word, courses?

11 A. I -- the PASOR for sure was. I believe that the other
12 courses which went through a company are as well.

13 Q. Okay, they -- but they were not at a . . .

14 A. No.

15 Q. . . . medical university. Is that fair?

16 A. No, they were through my Charleston procedure suite
17 where we actually have orthopedic surgeons come through
18 and do training for -- for the same but are different types
19 of fusions and/or whatever new they're doing from their
20 standpoint.

21 Q. Has your South Carolina -- well, let me ask you this.
22 You said you have a South Carolina license and a North
23 Carolina license. Is that correct?

24 A. That's correct.

25 Q. Have you ever held a license in another state?

DR. Z DEPOSITION

1 A. Yes.

2 Q. Have you ever held a license in another state?

3 A. Yes.

4 Q. What states?

5 A. Pennsylvania. It's inactive at this point.

6 Q. Okay. Of these three states has your license in
7 North Carolina, South Carolina or Pennsylvania ever been
8 revoked or suspended?

9 A. No, sir.

10 Q. Okay, do you maintain any hospital privileges here in
11 Columbia or down in Charleston?

12 A. I do.

13 Q. Which hospitals?

14 A. At Roper-St. Francis.

15 Q. And what are those privileges at Roper-St. Francis?

16 A. I believe it's courtesy.

17 Q. Do you ever perform any procedures at Roper-St. Francis
18 Hospital?

19 A. I used to do a handful but I don't think I've done one
20 in several years.

21 Q. Do you recall what types of procedures you performed
22 at Roper-St. Francis?

23 A. The -- it's the same stuff that we're doing at the
24 office. I just was forced to do it at the hospital be-
25 cause of an insurance issue.

DR. Z DEPOSITION

1 Q. Does your facility in Columbia -- West Columbia --
2 have a procedure suite?

3 A. Yes.

4 Q. Okay, so you have a procedure suite in both offices.
5 Is that fair?

6 A. Yes, sir.

7 Q. Do you have any formal education in chiropractics?

8 A. No.

9 Q. Do you have any formal education in family medicine?

10 A. Just what was included in medical school.

11 Q. Do you do any legal medical expert witness work for
12 attorneys?

13 A. Yes.

14 Q. How often do you do legal medical expert witness work?

15 A. Maybe -- maybe one to two-times a week but they sort
16 of come in bunches so . .

17 Q. Okay, so you do independent medical examination for
18 attorneys. Do you ever consult with attorneys on
19 cases or review records, give opinions in that regard with-
20 out doing an MRI?

21 A. I have.

22 Q. Have you done that on --- can you give me an idea how
23 many occasions you've done that?

24 A. I think I've done it maybe -- oh, probably a handful
25 or less and it would have been for defense and I'm trying to

DR. Z DEPOSITION

1 remember the defense firm out of Charleston.

2 Q. Okay, and as far as the independent medical examina-
3 tions that you do for attorneys, how many of those if you
4 are able to estimate come from plaintiffs versus defen-
5 dants?

6 A. It's probably sixty to seventy percent plaintiff.
7 Maybe thirty to forty percent would be defense.

8 And when I include defense I'm including the IMEs that
9 I get from national companies, and those are either for
10 disability and/or workers' compensation.

11 Q. Do you do independent medical examinations for at-
12 torneys all over the state or just down in the lowcountry?

13 A. No, I've done them -- I guess you would call them the
14 midlands, lowcountry, as well as up -- in the past I've
15 done up in Greenville, Spartanburg area as well.

16 Q. Do you consider the work you did seeing Henry Pressley
17 to be an independent medical exam?

18 A. No.

19 Q. You -- you testified earlier that you have testified
20 at -- at trial, I believe, twice, and both times you were
21 qualified as an expert.

22 Do you recall -- were those in South Carolina?

23 A. Yes, sir.

24 Q. Do you recall what counties those were in?

25 A. Well, I hate to say it like this but it's the county

DR. Z DEPOSITION

1 that is down, I guess, sort of almost between Charleston
2 and, I guess, Beaufort-Hilton Head.

3 And again, pardon for this -- and you probably recall,
4 but it's a county that supposedly was heavily plaintiff
5 oriented..

6 Q. If I said Hampton County . . .

7 A. That's it.

8 Q. . . of Jasper?

9 A. Hampton County.

10 Q. Okay.

11 A. And then the other one would -- that I would have tes-
12 tified up in I guess downtown Columbia.

13 Q. And were those -- do you recall the substance of
14 those lawsuits? Were they disability or were you -- do you
15 recall why you were called to testify in those?

16 A. I do.

17 Q. Or those trials?

18 A. I do.

19 Q. Can you share that with me?

20 A. Sure. The Hampton County was a auto accident where
21 I was hired by, I guess, and paid for from the standpoint
22 of my work from defense, and then Columbia would have been
23 an MVA, or motor vehicle accident, for a plaintiff.

24 Q. Do you recall which attorney you worked for in the
25 Columbia case?

DR. Z DEPOSITION

1 A. It's right on the tip of my tongue but I can't --
2 it's -- maybe starts with a G.

3 Q. Okay. Well, if you think of it . .

4 A. Sure.

5 Q. . .will you let me know?

6 A. You betcha.

7 Q. Thank you. Do you have a special hourly rate for
8 performing independent medical exams, or is that a flat
9 fee?

10 A. I believe it's a flat fee, yes.

11 Q. Do you have any knowledge of what that fee is?

12 A. I believe it's capped by workers' comp at nine hundred
13 but my customary fee is, I believe, twelve hundred.

14 Q. Do you recall when you were first contacted about see-
15 ing Mr. Henry Pressley in this case?

16 A. No.

17 Q. Do you have any recollection of how he came to be re-
18 ferred to you?

19 A. No, I don't. It would have gone through our front
20 desk and the administrative side.

21 Q. Do you have any recollection of when you first re-
22 viewed the medical records that were marked, I believe,
23 four through seven that you previously reviewed today?

24 A. No, that would have been back in 2015.

25 Q. Because that's your typical practice, to review those

1 while sitting with the patient, or do you prepare ahead of
2 time?

3 A. Both.

4 Q. Okay. All right, if I can draw your attention to your
5 first visit. I only have a couple of questions per visit.
6 Page did a good job going through those.

7 This is May 14th, I believe. We were looking -- do
8 you have those in front of you?

9 A. Right there, yes.

10 Q. Okay, can you confirm that Mr. Pressley represented to
11 you that his neck and back pain were at four out of ten on
12 a pain scale?

13 A. Yes.

14 Q. And I believe you've got some medications listed on
15 that note, is that true?

16 A. In the body report or toward the end?

17 Q. Let's see.

18 A. Might have been prescribed -- I did a prescription
19 for Tramadol on that visit.

20 Q. Okay.

21 A. It was at the very end.

22 Q. On page two you have a list of current medications . . .

23 A. Oh, there we go.

24 A. That Mr. Pressley represented he was taking?

25 A. Yes, sir.

DR. Z DEPOSITION

1 Q. Can you tell me what those medications are commonly
2 taken for, one through six there?

3 A. I'll do my best.

4 Q. Okay.

5 A. Allopurinol, which typically is gout. Aspirin at
6 81 milligrams is going to be typically for sort of the
7 anti-platelet effect so maybe for the heart or, you know,
8 I think maybe he had a prior stroke. We were trying to
9 prevent that.

10 Cialis, I believe, would have been -- or Viagra --
11 would be more for man issues.

12 Then you have Lisinopril which would be a blood pres-
13 sure medicine, and Preavastatin which is going to be one
14 of the statins which is going to be for high cholesterol.

15 Q. Are any of those drugs for pain management?

16 A. No.

17 Q. Do you enter your own notes in the chart or do you
18 have like a scribe nurse that sits in with you?

19 A. At this point no, but I would enter my notes.

20 Q. The SI joint injections, are they expected to be per-
21 manent?

22 A. Again that's both diagnostic and therapeutic, and
23 then you have also the SI joint injections for the sambutta
24 PRPS.

25 So you'll have to be more specific about which one

DR. Z DEPOSITION

1 we're addressing.

2 Q. The SI joint injection that you performed . .

3 A. Okay.

4 Q. . . on May twenty-first, that was a diagnostic injec-
5 tion, is that true?

6 A. Correct.

7 Q. And those are not expected to provide permanent re-
8 sults. Is that fair?

9 A. Not expected to. However, as previously stated, there
10 are a handful of patients where we'll actually see a long
11 term benefit.

12 Q. Do you believe Mr. Pressley to be one of those -- an
13 example of that small group?

14 A. He may have been, yes.

15 Q. Do you believe that to be true even though he re-
16 turned for the first follow-up still reporting pain, three
17 of ten?

18 A. And that's an improvement and he had worsening after-
19 ward, but, yes, it's possible.

20 Q. Okay. On your note of May twenty-first, which was
21 the injection, was this procedure done at a hospital or out-
22 patient procedure facility, or was it done in your pro-
23 cedure suite?

24 A. It would be done in my office.

25 Q. In West Columbia?

DR. Z DEPOSITION

1 A. I believe so, yes.

2 Q. And I believe that you testified that the procedure
3 takes two to three minutes per side, is that true?

4 A. Roughly speaking, yes.

5 Q. Okay. How many of those do you perform a year,
6 roughly?

7 A. I have no idea. Let me do it with some -- this is going
8 to be very, very rough.

9 Q. Sure.

10 A. Anywhere between two fifty and three hundred, maybe
11 more.

12 Q. And I just was looking at the first page of Exhibit 7 -- I
13 believe are your notes -- which appears to be a billing sum-
14 mary and I -- I added a few numbers together.-----

15 Looks like the total cost for that procedure was
16 Three Thousand Eight Hundred FiftyFive Dollars, including,
17 maybe, some materials that were collected.

18 In your experience and expertise, do you believe that
19 Three Thousand Eight Hundred Fifty-five Dollars is a fair
20 and reasonable cost for that procedure?

21 A. Yes.

22 Q. Do you set your prices based on any kind of Medicaid
23 guidelines or any federal guidelines?

24 A. My practice administrator from -- who is no longer
25 with us -- pretty much set up the fee schedule.

DR. Z DEPOSITION

1 Q. Allright, the next visit, the follow-up on May 26th,
2 2015 -- just let me know when you've found that. I know . .

3 A. Yeah, it's all . . .

4 Q. . . they got out of order.

5 A. . . messed up. You're about about in this one or
6 did I lose it? These are -- May 26th, correct?

7 Q. Correct. This is a copy right here, if you just want
8 to look at it. It's . . .

9 A. Yeah, I might as well do that.

10 Q. . . a quick question.

11 A. It would be easier.

12 Q. You documented in there that Mr. Pressley did not
13 like having the injection. Do you have a recollection of
14 why -- what grounds for not liking the injection he gave?

15 A. Again, he just -- it puts here expresses a fear of
16 injection so that would -- that would pretty much, I guess,
17 cover the question.

18 The patient expresses a fear of injection and states
19 that he does not wish to proceed with the treatment.

20 Q. Was -- so was it your understanding based on that
21 that it was fear of the pain of the injection?

22 A. That's one assumption that could be made.

23 Q. Can you confirm it for me that Mr. Pressley reported
24 on that day that his pain was a three out of ten on the
25 pain scale?

DR. Z DEPOSITION

1 A. That's correct. It was averaging three of ten.

2 Q. I noticed in reviewing your records from May 14th,
3 May 26th, and June 9th, that the constitutional section,
4 most of the lumbosacral section, the thoracic, lower-
5 extremity, cervical and upper-extremity sections were bas-
6 ically just copy and pasted.

7 Do you . .

8 A. Excuse me, but please do not accuse me of any type of
9 fraud. That is entered independently.

10 If you're going to continue that I'll stop the depo-
11 sition right now.

12 Q. Okay.

13 A. Do you understand what I said?

14 Q. I appreciate that.

15 A. You will not accuse me of that.

16 Q. If you would . .

17 WITNESS: Please can we -- it is -- can we discontinue
18 the deposition, please. He's accusing me of fraud. That's

19 . .

20 MR. JONES: I don't . .

21 WITNESS: . . not happening.

22 MR. JONES: . . think it's fair . .

23 WITNESS: The deposition's over. I'm going to call my

24 . .

25 MR. JONES: I was just asking you about your electronic

DR. Z DEPOSITION

1 medical records.

2 WITNESS: I'm calling my attorney right now, okay, and
3 you can talk to him about accusing me of something. I won't
4 stand for that. Nice try.

5 MR. JONES: Sir, I . . .

6 WITNESS: The deposition's over.

7 (Unidentified person stating that the deposition was
8 stopped at 9:52 A.M. and resumed at 9:58 A.M.)

9 MR. JONES: Just for the record I am going to strike my
10 last question, which was in fairness poorly phrased and in
11 no way was I trying to insinuate any kind of improper con-
12 duct on the part of Dr. Z, and I apologize to him personally
13 and professionally for putting forth a question that in my
14 opinion the inquiry was not clear, so I am going to move
15 on from that, and I appreciate his patience with me, . . .

16 WITNESS: Thank you.

17 MR. JONES: . . . as we wrap up here. Thank you, Doctor.

18 (Deposition continued to be played)

19 Q. Do you have any recollection of why Mr. Pressley de-
20 clined any further injection treatment?

21 A. Here we go. No, there it is. I don't personally re-
22 collect exactly. I do know that he didn't want to pro-
23 ceed but the note from -- the May 26 visit?

24 But -- or the 29th -- but the note where I sort of ex-
25 plained the PRP and the radiofrequency, as far as the next

DR. Z DEPOSITION

1 step, and then also recommended the diagnostic facet nerve
2 blocks to the neck -- I put in the note the patient expres-
3 ses a fear of injection and states he does not wish to pro-
4 ceed with the treatment.

5 Q. Okay, thank you, and . . .

6 A. You're welcome.

7 Q. . . the -- the radiation ablation, I understand that's
8 an invasive procedure as well?

9 A. Yes.

10 Q. With needles and possibly electricity?

11 A. Yes.

12 Q. Okay.

13 A. Much more invasive than the -- than the diagnostic.

14 Q. Okay, are there any conservative versions of that
15 treatment that you can think of that might have appeased
16 Mr. Pressley's fear of needles?

17 A. No. The only -- the only options at that point would
18 have been either and/or the radiofrequency and the PRP
19 treatments, both of which require needles.

20 The PRP would require a blood draw stick followed by
21 treatment of those joints.

22 And the difference between the diagnostic, which is one
23 needle going to the joint, the -- the PRP treatment could
24 be as many as fifteen to twenty needles on each side be-
25 cause you do a comprehensive treatment of the ligaments and

1 tendons that support the SI joints, and that would sort of
2 be that sprain-strain portion of the diagnosis,

3 Q. Okay, thank you.

4 Can you flip over to June 9th? That's your last visit
5 with Mr. Pressley.

6 A. If you have the note, it might . . .

7 Q. I certainly do.

8 A. It might be faster.

9 Q. Sure. Here you go.

10 A. Oops, there we go.

11 Q. I believe it's just two pages.

12 A. Okay.

13 Q. Can you confirm for me based on that note that Mr.
14 Pressley represented to you that all of his pain was gone
15 on June 9th, 2015?

16 A. That's correct.

17 Q. Is there any medical explanation you -- that you can
18 think of for why Mr. Pressley's pain -- Mr. Pressley's
19 pain, which he had previously represented as four of ten or
20 three of ten, had completely resolved, despite not having
21 any treated -- treatment on May 26?

22 A. Sure. For the same of the lower back. Again, there's
23 a handful of patients that can get long-term benefit with a
24 diagnostic procedure and then from
25 the same for the neck.

DR. Z DEPOSITION

1 Again, we never formally tested for the facet joints
2 versus the ligaments that would be a cervical sprain/strain.
3 So his resolution of symptoms -- his resolution of symptoms
4 in my medical opinion would push that diagnosis toward the
5 diagnosis of a cervical sprain/strain versus a facet joint
6 problem.

7 And we see patients have resolution of those symptoms
8 all the time.

9 Q. And, just briefly, I think you've explained it a lit-
10 tle bit to Page, but can you tell me what a cervical strain-
11 sprain is?

12 A. Sure. A sprain/strain is going to be a ligamentous or
13 tendon injury and you can have certainly of a varying degree.

14 Of course, nothing is ever simple. You can have a very
15 minor one where sort of the ligament is just sort of tweaked
16 or a tendon is tweaked.

17 In actually sets off the healing response, the patient
18 gets better.

19 You get sort of a moderate one where you don't have ne-
20 cessarily tendon damage but from the -- seem like a tear but
21 you might see like a little partial tear but you have
22 stretching, much further stretching, of the ligament or ten-
23 don.

24 That, in and of itself, is painful even without a tear.
25 Again, that will set off the body's mechanism to heal.

DR. Z DEPOSITION

1 Some of those patients heal, some don't, and then you
2 have more of the more moderate to severe where you can get
3 tendon-ligament tears or partial tears that may not heal
4 that may require further interventions.

5 I hope that answered your question.

6 Q. It did. Thank you, sir.

7 Do you have a recollection as to whether you truly be-
8 lieved his pain had resolved on June 9th, 2015?

9 A. I can't recall that visit. I just know it's documented
10 in the notes.

11 Q. Okay, and as far as -- excuse me -- degenerative joint
12 disease, do you have an opinion of whether that could have
13 been caused by working as a brick mason for forty years?

14 A. To which part of the spine?

15 Q. I believe it was the lumbar spine.

16 A. It's possible.

17 Q. Have you spoken with anybody else about this case other
18 than Mr. Pressley before this morning?

19 A. Before this morning and with my attorney just now, no.

20 Q. Okay, based on your records had you ever seen or treated
21 Mr. Pressley prior to the time of the motor vehicle accident
22 which was in February 2015?

23 A. No.

24 Q. And I'm going to show you -- this was, I think, page
25 one of Exhibit 7, which was a letter from you to Attorney

1 Beale.

2 Can you confirm that that letter states that based on
3 the AMA Guidelines your opinion was that Mr. Pressley had a
4 zero impairment rating to the whole person?

5 A. Yes.

6 Q. And can you tell me just what does the AMA stand for?

7 A. American Medical Association.

8 Q. Okay, and in that letter you referenced maximum med-
9 ical improvement. What is that?

10 A. It's a term that means someone has either received
11 treatment that's -- you know, the available treatment and
12 has either gotten better or has seen partial relief, or got-
13 ten no benefit and there is really no further options for
14 treatment.

15 So that would be considered maximum medical improvement.
16 The other time that I'll place somebody in MMI is if we
17 recommend treatment and they, for whatever reason, don't
18 want to proceed.

19 Then at that point they're at maximum medical improve-
20 ment because again there's nothing else available except
21 what was offered.

22 Q. Is it your opinion that Mr. Pressley was at maximum
23 medical improvement on June 9th, 2015?

24 A. Yes.

25 Q. Has Mr. Pressley returned to your care since June 9th,

DR. Z DEPOSITION

1 2015?

2 A. I don't believe so, no.

3 Q. Do you have any relatives in Richland County?

4 A. No.

5 Q. Okay.

6 A. Not that I'm aware of.

7 Q. Have you ever performed any legal medical work for
8 the Palmetto Law Center or Mr. Kalish or Mr. Beale before?

9 A. I can't recall except for this. I -- I may or I may
10 not have.

11 Q. Okay, thank you, and are we paying you for your time
12 today?

13 A. I'm not sure who is. I hope someone is.

14 Q. Right, does your staff . . .

15 A. Someone's paying for my time.

16 Q. Does your staff handle that?

17 A. Yes, sir.

18 Q. Okay.

19 MR. JONES: Those are all the questions I have for you,
20 Doctor. I appreciate your patience today.

21 WITNESS: You're welcome.

22 (Redirect Examination)

23 (By Mr. Kalish)

24 Q. Just briefly in reply, Dr. Z, I want to hand you Ex-
25 hibit 7. If you would, flip through it one more time.

DR. Z DEPOSITION

1 A. Okay.

2 Q. And my question to you is, is that a fair and accur-
3 ate representation of the billing letter and notes from
4 your office?

5 A. Yes.

6 Q. Okay.

7 MR. KALISH: At this time I'd like to move to have
8 it put in evidence.

9 Q. That's all I have. Thank you.

10 WITNESS: You're welcome.

11 MR. JONES: No questions.

12 (Playing of deposition completed)

13 THE COURT: All right, do you rest your case with that,
14 Mr. Kalish?

15 MR. KALISH: Yes, sir.

16 THE COURT: Members of the jury, Mr. Kalish has rested
17 his case which means we're at the point in this trial where
18 I have some matters to take up with the attorneys. The
19 only way I can do that is in your absence.

20 I'm going to have you go back to your jury room for
21 a few minutes, after which we will bring you back in and
22 Mr. Jones will present his case.

23 When he completes his case these attorneys will come
24 to you in closing arguments, which I'll give the lawyers
25 twenty minutes to thirty. Then I'll charge you on the law

1 which will take thirty minutes or so.

2 So we'll take a break and I'll go through what I need
3 to go through with the lawyers. Right now I'm leaning to-
4 ward bringing you back in the morning. You may be a little
5 bit tired and I'm a little tired myself.

6 I'll make that decision after you retire to your jury room
7 for a few minutes. Don't talk about the case.

8 (Jury excused from Courtroom)

9 THE COURT: Let's take a short break and come back and
10 finish up Mr. Sanders. Then we'll see where are are.

11 (Whereupon, the Court took a brief recess, after which
12 the matter continued)

13 THE COURT: All right, bring in the jury

14 (Jury returned to the Courtroom)

15 THE COURT: Welcome back, ladies and gentlemen.

16 The case will resume with Mr. Jones calling Mr. Sanders.
17 All right.

18 Mr. Jones.

19 MR. JONES: Thank you, Your Honor.

20 ERIC SANDERS, being duly sworn
21 testified as follows:

22 CLERK: Please be seated and state your name. Speak
23 into the microphone.

24 WITNESS: Eric Sanders.

25 DIRECT EXAMINATION

1 BY MR. JONES:

2 Q. Good afternoon, Eric.

3 A. Good afternoon.

4 Q. Eric, you and I have had a chance to get to know each
5 other a little bit over the course of days but the jury has
6 not, so tell the jury how old you are?

7 A. Forty-one.

8 Q. Forty-one, and where are you from, Eric?

9 A. Grew up in Richland, grew up in Ridgeland, and moved to
10 Lexington County some twelve years ago. I got married and
11 started a family.

12 Q. Tell the jury about your educational history.

13 A. Actually I have -- I did not finish high school but have
14 a GED. No college education. I went to work right out of
15 high school, and through perseverance and hard work I currently
16 own a small construction company in Lexington.

17 Q. Tell the jury a little bit about what Sanders, Incorpor-
18 ated does.

19 A. We do restoration. After the -- currently with the situa-
20 tion we had last week we have been doing repair or in the re-
21 pair business. So what we do is restoration basically.

22 Q. You told me you moved to Lexington County. How long is
23 it you have lived in Richland or Lexington County?

24 A. Forty-one years.

25 Q. Your whole life?

E. SANDERS ON DIRECT

1 A. Yes.

2 Q. And I know that the storm has kind of thrown a wrench in
3 what has occurred over the last week, but do you understand
4 -- you are here but do you understand that you don't have to
5 be here today? Is that fair?

6 A. Absolutely.

7 Q. Okay, and, Eric, I want to ask you briefly about the acci-
8 dent we are here about today. Do you recall that accident?

9 A. I do.

10 Q. Okay. Tell the jury where you were headed on February
11 16 of 2015?

12 A. If I remember correctly I was going to meet my dad who
13 lives on Garner's Ferry Road at the Waffle House down the
14 street.

15 Q. Okay, and do you remember where you were coming from on
16 that morning?

17 A. My home-office in Lexington.

18 Q. I want you to tell the jury in your own words what hap-
19 pened on the exit ramp from I-77 onto Garner's Ferry Road.

20 A. When I got on the exit ramp, as I remember it, I took
21 the exit ramp there and it has a merge lane that you have to
22 look for oncoming traffic at Garner's Ferry Road.

23 So I came to a stop and stopped just behind this vehicle
24 and I quite frankly looked up and down the road to see what
25 was there. I saw the brake lights go off. I looked down

E. SANDERS ON DIRECT

1 the road and I went to move to the stop sign.

2 I looked up and saw he was still there and so was I.

3 Q. So you ran into his back? Is that correct?

4 A. I did.

5 Q. Okay. How fast do you think you were going when your
6 truck bumped into the back of Mr. Pressley's truck?

7 A. I am not really a great judge of speed. I was going
8 to the stop sign and calmly rolled about ten feet.

9 We each had been driving a full size truck so . . .

10 Q. In this picture right here on the easel which I have
11 got displayed for the jury, what is it that we see?

12 A. That's the damage that resulted from my hitting his
13 vehicle. My front bumper you can see is bent down and we
14 were able to pull it back out and the truck still looks very
15 similar to that today.

16 Q. That's fine. That's your truck, is that correct?

17 A. Yes.

18 Q. All right. After this accident, were you able to get
19 out of your truck?

20 A. Yes.

21 Q. Okay. Do you recall having a conversation with any-
22 body when you got out of your truck?

23 A. I walked over to his vehicle and apologized.

24 Q. Then what occurred?

25 A. I realized it might take some time to resolve the

E. SANDERS ON DIRECT

1 matter and . . .

2 Q. Eric, were you hurt as a result of this motor vehicle
3 accident?

4 A. No, sir.

5 Q. Did you go to a doctor or a hospital at any point or
6 did you have any complaint of pain or injury from this motor
7 vehicle accident?

8 A. No, sir.

9 Q. We have a picture of the damage there. How would you
10 describe the damage to that truck, your truck?

11 A. Um, after the accident we actually had it looked at.
12 You mean his vehicle or mine?

13 Q. Describe those damages?

14 A. There was -- my truck needed a new bumper. It still
15 needs a new bumper today, you know, but we pulled it out.
16 The wrecker guy came and we pulled it away from the tire.
17 It is still just like that today after a year.

18 Q. So you didn't bother to ever fix the Silverado. Is
19 that fair?

20 A. Yes.

21 Q. Did Mr. Pressley do anything to cause this accident?

22 A. Not at all.

23 Q. Do you admit you were at fault in causing this acci-
24 dent?

25 A. Absolutely.

E. SANDERS ON DIRECT

1 Q. Do you accept responsibility for causing this accident
2 then?

3 A. Absolutely.

4 Q. Was it an accident?

5 A. Yes, sir.

6 Q. Are you sorry it happened?

7 A. Absolutely.

8 Q. Eric, have you been in any other vehicle accidents of
9 any kind since February 16, 2015?

10 A. No, sir.

11 Q. Okay. I don't believe I have any more questions for
12 you.

13 Please answer any questions Mr. Kalish may have.

14 A. Yes, sir.

15 THE COURT: Cross examine.

16 CROSS EXAMINATION

17 BY MR. KALISH:

18 Q. Mr. Sanders, good afternoon.

19 A. Good afternoon, sir.

20 Q. You said you were traveling from Lexington from your
21 house to go out on Garner's Ferry. You were going on the
22 Interstate in a northerly direction toward Sumter. Is that
23 right?

24 A. I was coming from the northerly direction headed south-
25 erly.

1 Q. And were you on your telephone while you were driving
2 your vehicle?

3 A. Potentially.

4 Q. It's been a long time I know, but do you know specifi-
5 cally?

6 A. No, sir.

7 Q. Does your phone have texting on it?

8 A. Absolutely.

9 Q. Could you have been texting at the time?

10 A. Possibly.

11 Q. You said you drive a full size pickup truck, is that
12 correct?

13 A. Yes, sir.

14 Q. You were approaching a stop sign. Correct?

15 A. . . .

16 Q. When the accident took place?

17 A. It was a stop sign that I had stopped at behind his ve-
18 hicle, yes.

19 Q. You said you approached the stop sign and you were
20 approximately ten feet behind Mr. Pressley, is that correct?

21 A. It was not ten feet behind when I came to a stop. I
22 was a fair distance behind, a half a car length, so prob-
23 ably less than ten feet from him.

24 Q. All right, and you said you needed to stop and look for
25 approaching traffic?

E. SANDERS ON CROSS

1 A. Correct.

2 Q. So you were approximately ten feet behind him as you
3 testified?

4 A. . .

5 Q. Is that correct?

6 A. I pulled approximately feet before I hit Mr. Pressley,
7 yes.

8 Q. You came to a stop and you waited your turn to access
9 Garner's Ferry Road, correct?

10 A. Correct.

11 Q. Okay, and at some point you had to look, first of all,
12 to see whether or not Mr. Pressley was clear from the stop
13 sign, correct?

14 A. Okay.

15 Q. Then your next observation should be to see if there
16 is traffic approaching on Garner's Ferry. Do you recall the
17 traffic conditions at the time?

18 A. It was morning and it was busy.

19 Q. So you were looking for your spot to enter traffic on
20 Garner's Ferry. Is that correct?

21 A. I came to a stop and I saw him let off the brakes, his
22 brake lights went out, and I began to look to the left for
23 oncoming traffic.

24 Q. Then you hit him. Right?

25 A. I hit him.

E. SANDERS ON CROSS

1 Q. And you would agree with me that you looked for your
2 place in traffic on Garner's Ferry Road, traffic coming on
3 from your left, and you accelerated. Right?

4 A. After coming to a stop at the stop sign.

5 Q. So you weren't accelerating at the time you hit Mr.
6 Pressley?

7 A. Not at all.

8 Q. Were you looking at your speedometer?

9 A. No.

10 Q. Were you looking ahead of you?

11 A. No.

12 Q. Were you looking to your left?

13 A. I was.

14 Q. So you never saw Mr. Pressley when you hit him?

15 A. No.

16 Q. You said you're forty-one years old. Correct?

17 A. Correct.

18 Q. You're in pretty good health, aren't you?

19 A. Relatively speaking.

20 Q. Now, following the accident you say you spoke to Mr.
21 Pressley, correct?

22 A. I just went to check on him. I got out and went up to
23 his vehicle.

24 Q. After that initial visit with him that day, did you
25 check on him? Did you call to check on him?

E. SANDERS ON CROSS

1 A. No.

2 Q. Did you try to find out how he was or anything of that
3 nature?

4 A. No, sir. I had no way to contact him. I gave him my
5 business card so he could contact me if he needed to.

6 Q. I have no further questions.

7 THE COURT: Anything further?

8 MR. JONES: No, sir.

9 THE COURT: You may step down.

10 (Witness excused from stand)

11 MR. JONES: We would rest, Your Honor.

12 THE COURT: All right, ladies and gentlemen, members
13 of the jury, you have heard all of the testimony and the
14 evidence that you will receive in this case.

15 I am going to send you home and I don't know if you
16 will be watching the football game, the baseball game or
17 whatever it is, but we will finish this up in the morning.

18 You cannot talk about the case with anyone, and we will
19 see you at ten o'clock in the morning. Be here at ten
20 o'clock.

21 By the time we have the argument and I charge you on
22 the law it will be eleven thirty or so or somewhere in that
23 range.

24 Then you will have the case and we will have sandwiches
25 ready for your lunch so you can eat and consider the case

1 at the same time. At least we'll have some type of snack
2 or lunch for you.

3 In the meantime, we will excuse you at this time. Have
4 a good evening and we will see you in the morning at ten
5 o'clock.

6 Thank you.

7 (Jury excused for the evening)

8 THE COURT: All right. Is there anything you need to
9 take up at this time about the Exhibits or anything you might
10 have?

11 MR. KALISH: I believe we have agreed on all of the
12 Exhibits, Your Honor.

13 MR. JONES: There is the sealed copy of the transcript
14 of Dr. Zgleszewski's deposition that is marked for identi-
15 fication.

16 The Defense only had one Exhibit, Your Honor.

17 THE COURT: Let's take a break and then we'll go over
18 the charge in my office.

19 (Whereupon, the Court stood in recess for the evening,
20 the case being resumed on October 12, 2016)

21 THE COURT: Good morning.

22 Bring the jury in.

23 (Jury returned to the Courtroom)

24 THE COURT: Welcome back to the Courtroom, ladies and
25 gentlemen of the jury, your Foreman. Good morning.

1 I understand this morning some of you all were down-
2 stairs in the jury assembly room rather than coming up to
3 your jury room.

4 You should have come straight to the jury room and been
5 there with all the jurors, and so I have to ask this ques-
6 tion of you. Did you talk to anybody while you were down
7 there this morning or did anybody talk to you about this
8 case? That's the question.

9 (Jurors responding no)

10 You have heard the response. Okay.

11 Now, this morning you shall hear closing arguments by
12 the attorneys for the parties.

13 As I have indicated to you already here in the Court-
14 room, these will be arguments in their true nature. In a
15 civil case like this one the Plaintiff's case must be proven
16 by the greater weight or preponderance of the evidence.

17 I will give to you my charge on the law later on concern-
18 ing the law in detail that you are to apply to this case.

19 But because the negligence or liability in this case
20 has been admitted what you will have to decide in this case,
21 members of the jury, is the value of this case. How much
22 money should be awarded to the Plaintiff.

23 You must weigh that simply by the greater weight or the
24 preponderance of the evidence.

25 You will hear a closing argument by Mr. Kalish in behalf

1 of the Plaintiff, followed by Mr. Jones who will argue in
2 behalf of the Defendant.

3 Then there will be another argument by Mr. Kalish
4 when he is given an opportunity to respond to Mr. Jones'
5 argument.

6 You must pay close attention to the final arguments,
7 ladies and gentlemen. Like I told you in the beginning,
8 the final arguments are the attorneys' way to try to per-
9 suade you to their version of the case and their facts
10 in the case as they have given them to you.

11 So with that in mind, I ask that you pay close atten-
12 tion to these closing arguments.

13 Thank you.

14 Mr. Kalish, you may proceed.

15 MR. KALISH: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. KALISH: Ladies and gentlemen, before I even thank
18 you for being here and your service in this case, I want
19 to stress to you the importance of what your role or your
20 job is here.

21 Your work is not completed when you have listened care-
22 fully to the evidence and testimony. What you are now
23 entering into is the most important part of your service
24 here.

25 Now, I admit that doctors sometimes are not the most

1 exciting speakers, and being on videotape makes it much less
2 than that.

3 But here it is testimony that is extremely important
4 because he is an expert, he is the treating physician, and
5 he went through all of the treatment to my client.

6 I want to talk to you about that, about that and about
7 the doctor's testimony first, to try to give you an under-
8 standing of what the connection is between the car accident
9 and the injuries that my client sustained in the accident
10 we are here about.

11 That is what is important about what Dr. Z said to
12 you on yesterday.

13 He walked you through all of the different medical
14 visits and the treatments my client went through. He has
15 talked to you about all of the treatments, and he went to
16 the details of the injuries my client sustained from that
17 car accident.

18 Now, he also talked to you or when he testified here
19 by deposition, and he admitted to a fear of needles as did
20 my client.

21 He said to you that there is really no less invasive
22 treatment that doctors can offer to my client to make him
23 heal up and no treatment to make him feel better.

24 He described the procedure that he performed where he
25 injected medication into his hip sockets and the next part

1 of the diagnostic treatment would have been sticking him in
2 the neck, but my client said I can't handle that, can't
3 deal with the pain.

4 (Short portion inaudible due to noise on the record
5 from the Courtroom)

6 I can appreciate that because, I mean, I don't like
7 needles either. In fact, my son just went to the pediatric-
8 ian this morning and he didn't like needles either.

9 I stand before you today as an advocate in behalf of
10 my client. My client came to me and he said I need help
11 and I'm hurting.

12 When he came to me he didn't have a doctor who was
13 treating him. He said he had had a doctor who was treat-
14 ing him and he told me about the chiropractor and the other
15 doctors and a physical therapist.

16 He said I've got this pain that I've had since the
17 accident. I've been to the ER before, and now what can I
18 do.

19 I said I would suggest he go to another doctor and
20 keep trying to get some relief for his back, his neck, his
21 hips. Maybe he can help you to deal with it and to heal,
22 and he went but it didn't work out.

23 So he went to his family doctor, and the family doc-
24 tor gave him some pills and said here's some exercises you
25 can do.

1 He tried those and they brought him some relief but
2 it didn't help him to heal.

3 So I said, all right, here's what we can do. I do
4 know a pain doctor and maybe he can help you. I said I
5 can send you to him, and so he went but he didn't complete
6 the treatment.

7 He chose not to complete the treatment. I sent him
8 there but it didn't work out. He said he couldn't continue
9 with it.

10 Now, I know each one of you would speak up for your-
11 self if this happened to you, as he did. He spoke up for
12 himself.

13 Now, I know you were asked when you were being quali-
14 fied for the jury whether you had been involved in a car
15 accident. You were asked if that would interfere with you
16 being fair and impartial to both sides in the case if you
17 served as a juror.

18 You know that when you are in an accident that it can
19 cause pain, and I'll tell you a story. We all know what
20 pain is, how it hurts.

21 I wasn't in a car wreck but I have had a lot of pain
22 in my back and neck about six years ago. Forty-two years
23 old. I was helping my father-in-law cut firewood.

24 I was thirty-six years old and I wasn't as young as I
25 thought I was.

1 I reached over and picked up a log and (few words in-
2 audible) my back. I had a one year old son and I had
3 tweaked my back and he would call for his daddy but I just
4 couldn't even help him.

5 We got the chain saw up, put it back in the truck and
6 that was the end of that. I couldn't even pick up my son
7 who was a one year old and he didn't understand that my
8 back was hurting.

9 I was thirty-six years old, as I said, and I know what
10 that pain in the back is like. My client was sixty-nine
11 years old when this happened. This morning he's wearing a
12 brace. He had never had any problems until this happened.

13 You heard the testimony that he had to have all of
14 this treatment by doctors and that he received all of the
15 doctor bills and medical bills for any treatment he ever
16 received with his back.

17 He had been able to work every day and did not have
18 any problems. After this happened he would go to work but
19 he couldn't do what he had been doing for years due to
20 pain and weakness; that his back was hurting.

21 He talked about that, and he talked about what he
22 went through, how he couldn't get relief.

23 That evidence is important and you've heard it from
24 him. You have to consider all that you've heard and seen
25 to be able to understand all of it.

1 After the arguments are completed and the Court gives
2 you the law you will be able to sit down together and de-
3 liberate in just a little while.

4 We know three things here. We know that Henry Pressley
5 was involved in a wreck. We know Mr. Pressley was hurt.
6 We know from his testimony that he sought treatment for his
7 neck and back.

8 Those are three things that we know. Okay?

9 We also know that he had had no problems with his back
10 in the past. We know he was sixty-nine years old, a brick
11 mason, had lived in this community all of his life.

12 That was the first witness, and our second witness
13 was Dr. Z.

14 Dr. Z talked about all of the technical things, that
15 information, I did my best. Doctors have a history of
16 starting to talk about things connected with treatment when
17 we have no idea of what he's talking about.

18 So I was trying to get the doctor to talk to us in lay-
19 men's terms. Okay? It's hard to get them to do that some-
20 times.

21 Dr. Z, like I said earlier, talked about the wreck
22 causing the injuries. I asked him about that, and he said
23 yes.

24 In his treatment plan he tried to help Mr. Pressley,
25 and Dr. Z is a trained physician. He's an expert and he

1 was qualified as an expert witness here.

2 While you certainly can discount whatever you want as
3 with any witness, he was able to talk to you about techni-
4 cal matters because that's what doctors do.

5 Furthermore, he is a pain specialist. He's been qual-
6 ified as that. He's certified, board certified, as a pain
7 doctor. That is what his job is, to give treatment to help
8 patients feel better.

9 Now, through the testimony of those two witnesses we
10 put into evidence the treatment and the bills for that
11 treatment. You will see them.

12 You will see that it all totals, the individual bills,
13 some Nine Thousand Six Hundred and Fifty-eight Dollars and
14 Thirty Cents.

15 That is the amount that Mr. Pressley was billed for
16 medical treatment he received.

17 As he said yesterday, that is the actual amount of
18 money that Mr. Pressley is out of pocket because of this
19 accident.

20 Well, let's talk about the final witness, the Defen-
21 dant in this case. As the Judge has told you, and as has
22 been talked about, liability in this case is not an issue.
23 here.

24 The wreck happened. Okay? What I need you to under-
25 stand is what you heard from the stand yesterday as Mr.

1 Sanders testified.

2 He said he was at the median and he glanced up to see
3 what might be coming and he hit Mr. Pressley. He admitted
4 that he hit Mr. Pressley.

5 He also backed away from that yesterday. That was the
6 first time Mr. Sanders has apologized to Mr. Pressley be-
7 cause of that wreck.

8 Yesterday in meeting with his lawyers and preparing for
9 trial was the first time he apologized and admitted that he
10 was at fault.

11 He backed away from that and if you recall his testi-
12 was that he was ten feet away and approaching Mr. Pressley's
13 car. He saw his car, and these were two three thousand
14 pound vehicles, big vehicles.

15 He said, well, I was rolling up and I was looking left
16 trying to see if traffic was coming down Garner's Ferry
17 side, you know, of I-77. I had my phone and might have
18 been texting.

19 If you look at these pictures you'll have to decide
20 for yourselves and use your common sense, but one vehicle
21 hit another car. It was enough to cause these damages.

22 I told you yesterday that the cars are not smashed up
23 or anything like that, if you just look at them, but I
24 asked Mr. Sanders, Mr. Sanders, did you ever encounter Mr.
25 Pressley and talk to him afterwards, the day of the

1 accident? Did you ever check on him afterwards to see how
2 he was, and he said no, I didn't have any contact with him
3 but I gave him my card.

4 He could call me. He could call me if he needed me,
5 That's what he said.

6 I know you could be in a horrible accident and not be
7 able to have contact with the other person.

8 But I gave him my card; he can call me. He could call
9 me if he needed me.

10 When an officer comes to investigate an accident he
11 has a lot of discussion with each party, including your
12 name and address, your phone number, so he can have the in-
13 formation as needed.

14 But he said Mr. Pressley could call him if he needed
15 him. Take that into consideration.

16 Now, I'm going to talk to you all about what is an
17 uncomfortable thing to talk about with some people, and it
18 is money. Some people don't like to talk about it. It is
19 just one of those topics they don't talk about.

20 I'm here before you today to tell you about money be-
21 cause in our judicial system today we don't have a way to
22 go back in time and erase something, make it not happen.
23 We can't put a body back together and say this never hap-
24 pened.

25 We have to talk about it in the judicial system.

1 We have to talk about it in order to find a way to
2 make things right. So it is your burden, the burden of
3 you guys, to decide how much it is going to take to make
4 this right.

5 You will have before you the hard evidence of the Nine
6 Thousand Six Hundred and Fifty-eight Dollars in the bills
7 that came about because of this accident. That is there
8 for your consideration.

9 But there is a more subjective aspect of it, and the
10 Judge is going to charge you about those things. These are
11 damages for you to consider when you are back in that jury
12 room discussing this case.

13 One is pain and suffering, and it is subjective be-
14 cause I can't sit before you and use a calculator or a cal-
15 culation or spread sheets and say, Mr. Pressley was sixty-
16 nine back in February of 2015 when he was hurt and he had
17 treatment all the way to June of 2015.

18 The body is worth X, the back and neck are worth Y,
19 and wind up with Z.

20 I can't do that. Okay? That is something you'll have
21 to do. One of the things you can look at is the medical
22 treatment that he received. Remember the testimony that
23 you heard from him.

24 He talked about his symptoms. He talked about his
25 life every day, what he goes through, and he was not able

1 to get back to where he was before, go back outside, and he
2 also talked about the amount of pain. He said he had not
3 ever had back pain before, and he didn't want to deal with
4 needles again.

5 So I ask you to seriously consider all that he said, to
6 get together and talk about what you think that pain and
7 suffering were worth, because different people have differ-
8 ent values as far as these things.

9 That is something that you have to reduce to a monetary
10 value. Okay?

11 That value is not something that I can give you. I
12 could talk to you a long time about what he was like before
13 and what his life is like now.

14 But sympathy is not a factor as that is emotional, so
15 we have to talk about physical things.

16 There is also an emotional thing about during this
17 time his wife was dying of cancer and he was trying to care
18 for her while his body was not exactly right, and that is
19 emotional too.

20 The fact that he can't work. He was active before this
21 happened and doing a job. Whether it's laying bricks or
22 practicing law or being out in the yard like he had done,
23 going fishing like he talked about yesterday.

24 Those are all things that he had been doing, and it
25 is good to be outside. Most people like to be outside doing

1 things they like to do.

2 We ask that you carefully consider the evidence and
3 the testimony from yesterday in behalf of my client. I
4 told you yesterday this case wasn't going to be exciting,
5 but this is a real life event that people have to deal
6 with in real life.

7 People have adversities in their lives, and the twelve
8 of you have a very hard job, like I said.

9 The twelve of you have to decide what the value of the
10 case is. Look at the evidence before you and look at the
11 testimony.

12 There were no witnesses, no experts, nobody to dis-
13 pute the treatment that Mr. Pressley received. There was
14 no IED, which is an independent doctor's exam, but only
15 Dr. Z talking about his findings and his treatment. None
16 of that was presented, no witnesses to say that Mr. Pressley
17 wasn't hurt, that he doesn't suffer pain.

18 But Mr. Pressley is not going fishing like he did.
19 He isn't going out in the yard like he likes to do. There
20 is nothing to dispute that. There are no witnesses, no evi-
21 dence to contradict what Mr. Pressley said or what Dr. Z
22 talked about.

23 There are documents to take back to the jury room, and
24 we ask that you consider them carefully. Mr. Pressley does
25 not want your sympathy. We don't want you to base your

1 verdict on sympathy. The Judge will talk to you about not
2 basing your verdict on sympathy.

3 You are to take into consideration the evidence and
4 testimony that you've heard.

5 As I said before, I'm asking you to compensate my
6 client for losses he incurred due to this accident, and the
7 Judge will tell you about that. That is very important.

8 You have to take that back to the jury room and decide
9 what it's worth. After you consider all of the evidence
10 and the testimony I am sure you will come back with a very
11 just verdict. In this case it would have to be in behalf
12 of my client.

13 Thank you.

14 THE COURT: All right, Mr. Jones

15 MR. JONES: Thank you, Judge. May it please the Court.

16 THE COURT: Yes, sir.

17 MR. JONES: Ladies and gentlemen, I have put these pic-
18 tures up many times in front of you because I believe that
19 pictures are worth a thousand words.

20 Now, I only have one chance to speak with you. Mr.
21 Kalish gets to speak again, so I have to get all of my
22 points in now and will talk a little bit longer than I did
23 yesterday.

24 I will try to be as precise and succinct as possible.
25 When I first talked to you yesterday I kind of gave you

1 three things that you were going to hear from us.

2 The first is that you were going to hear Eric Sanders
3 get in the witness box and apologize.

4 The second was that you would hear that we were going
5 to have some issues with the medical treatment with Mr.
6 Sanders and whether it was reasonable and necessary, as a
7 result of this motor vehicle accident.

8 And the third thing you heard me say was that I am not
9 going to stand up here and tell you that they are due zero
10 dollars.

11 Now on the first point, you saw Eric Sanders take the
12 stand. You heard him say it is my fault, this accident;
13 I am sorry.

14 You heard him take responsibility for it, and I think
15 it is time to speak to that. You heard questions about why
16 didn't you go over and apologize. I think it is appropri-
17 ate to speak to that.

18 To that, I would express to you that after an accident
19 where your car is involved with hitting another car and the
20 law is called that there are other things going on and I
21 don't think it is absolutely necessary at that time. So I
22 think that is an inaccurate assesment.

23 He did apologize, as Mr. Kalish said. Mr. Sanders
24 said he got out of the car and went to the other car and he
25 is sorry; he asked if the person was all right.

1 To the second part or issue from my opening statement,
2 I ask that you consider carefully the questions regarding
3 the medical treatment in this case.

4 That is what the case is about. Eric thinks that Mr.
5 Pressley is entitled to compensation for his injuries that
6 were caused by this accident.

7 Mr. Pressley testified that he went to the emergency
8 room after the accident to get checked out. I submit to you
9 that is absolutely reasonable and necessary after a rear
10 end accident. It really is.

11 We agree that bill should be paid, and I want you to
12 take and look at the bills you will have in evidence, which
13 is Four Thousand Six Hundred Fifty-two Dollars for the ER
14 bill, plus Fifty Dollars for an x-ray. That's Four Thousand
15 Seven Hundred and Two Dollars.

16 I want you to pay that bill because if you run into
17 somebody you're going to have to cover the cost for his
18 going and being checked at the hospital.

19 Now, you heard that Mr. Pressley went and got an x-ray
20 of his spine. We heard that he was given pain medication
21 by prescription.

22 Now, you heard about his medical care from his testi-
23 mony and it is very important in this case. There was no
24 referral made by the hospital doctor and no recommendation
25 of follow-up care by his primary care doctor.

1 He was discharged with pain medicine, and while you
2 are precessing this evidence you have to ask yourselves
3 at each stage was it reasonable, was it necessary as a re-
4 sult of this car accident.

5 Now, you heard from Mr. Pressley he went to a chiro-
6 practor and was treated there for three weeks. He was
7 treated by the chiropractor for three weeks. He went to
8 him the very next day.

9 He went for care so certainly there is a possibility
10 that we should be responsible for the cost if that treatment
11 was caused by this accident.

12 We know there was no loss of consciousness. We know
13 Mr. Pressley was wearing his seat belt. We know from this
14 photograph that his vehicle was hit from behind by the ve-
15 hicle of Mr. Sanders. You can see the damage.

16 You have to decide whether the treatment for back is-
17 sues and neck issues are the result of forty-some years of
18 working as he did.

19 Ask yourselves why did the hospital doctor not refer
20 him for any further treatment. Ask yourselves if it was
21 reasonable for him to go to the chiropractor for three weeks
22 or at all without giving the pain medication a chance to
23 work. He didn't see if the pain would resolve with the
24 medication by itself.

25 You heard Mr. Pressley testify he went to his

1 chiropractor the next day.

2 Ask yourselves why he stopped the treatment after the
3 three weeks. Ask why he didn't go back to the chiropractor
4 when the pain continued later.

5 Then you can decide if the visit to the chiropractor
6 was reasonable and whether that was a result of this acci-
7 dent and you should award him the amount of that bill which
8 was Two Thousand Fifty-nine Dollars.

9 If you think that bill from the chiropractor was rea-
10 sonable and necessary as a result of this car accident, in
11 the amount of Two Thousand Fifty-nine Dollars, you have to
12 add it on to the other bill, total of Three Thousand Seven
13 Hundred Sixty-one Dollars.

14 Now, we know the three weeks he took the chiropractor
15 treatment he was given an MRI, and we know that the bill
16 was Nine Hundred Eighty-nine Dollars.

17 All we heard from Dr. Z was that that identified the
18 place of degenerative disc disease in his back. That had
19 nothing to do with what the chiropractor treatment he was
20 given at all.

21 So, again, ask yourselves if that was reasonable and
22 necessary.

23 If it was, Nine Hundred Eighty-nine dollars -- if you
24 believe it was reasonable and necessary add it on.

25 Then forty days after stopping treatment by the

1 chiropractor on April 20, 2015, we heard Mr. Pressley tes-
2 tify about his back pain, and so he then went to his pri-
3 mary care doctor.

4 The primary care doctor examined him and gave him the
5 prescription for pain and a muscle relaxer; gave him in-
6 structions to use local heat and instructions on exercises.

7 You didn't hear that this primary care doctor referred
8 him to any specialist.

9 You will have to consider what you heard Mr. Pressley
10 testify to. I asked him how long he had been going to his
11 primary care doctor, whatever his name was, and he said it
12 was maybe three years.

13 I said to him, you know, you had gone to him before
14 the car accident, and he said yes. So if he had this doctor
15 why did it take sixty days to go to him?

16 Now, you all must use our good judgment. If his going
17 to his primary care doctor was reasonable and necessary, and
18 related to this car accident, add it on.

19 I think it was a Hundred and Thirty-eight Dollars and
20 Thirty Cents or Fifty Cents.

21 Then if you run the tab and if you accept everything to
22 this point it's Four Thousand Eight Hundred and Eighty-eight
23 Dollars, some cents.

24 You've got options at this point and an option as to
25 where you draw the line.

1 The ER, Four Thousand Seven Hundred and Two Dollars,
2 and then the chiropractor's bill of Two Thousand Fifty-nine
3 Dollars and some Cents. The MRI then was Nine Hundred and
4 Eighty-nine Dollars.

5 If you accept the primary care doctor's treatment that
6 was One Hundred Thirty-eight Dollars.

7 Now, here is where I suggest you draw the line. On
8 February 16 he goes to the pain doctor. His attorney sent
9 him there.

10 May I have the Judge's permission to approach the jury
11 box and use the railing there?

12 THE COURT: Sure.

13 MR. JONES: He sends him there and Mr. Pressley goes.
14 He goes to see Dr. Z of Palmetto Spine.

15 That's sixty-four days after he finishes with the
16 chiropractic work that he went to see Dr. Z without the
17 referral from another doctor.

18 Ask yourself why there are no referrals in this case.
19 Ask yourselves why it was through his attorney that he went
20 to see Dr. Z.

21 So while he was seen by Dr. Z for three weeks, his
22 bill was Four Thousand Nine Hundred and Thirty-five Dollars
23 total.

24 If Dr. Z's bill is added on to the previous figure of
25 Four Thousand Eight Hundred Eighty-eight Dollars, that is

1 Four Thousand Nine Hundred and Thirty-five Dollars for the
2 three weeks of treatment by Dr. Z.

3 When you consider your verdict you must decide whether
4 Mr. Sanders has to be responsible for the cost of the treat-
5 ment by Dr. Z.

6 He does not have to be responsible for that. Not a
7 single doctor referred him to Dr. Z.

8 You must remember that in the deposition Dr. Z in his
9 testimony said I never saw Mr. Pressley before May 14, 2015,
10 and maybe that means he never examined him before May 14,
11 2015.

12 He doesn't know him personally, and Dr. Z testified the
13 pain was either new pain from the car accident or it was an
14 exacerbation. He talked about the ER notes and he reviewed
15 the chiropractic notes. He reviewed the primary care doc-
16 tor record from April 20, 2013, but he did not review any
17 single medical record from before the car accident.

18 He never reviewed any medical records from before the
19 accident that the primary care doctor had, whatever they
20 were and whatever they show.

21 You twelve get to determine and evaluate the credibil-
22 ity of each witness. You get to decide how much, if any,
23 of the testimony of each witness you want to accept. You
24 get to use your judgment.

25 You heard Dr. Z say that his work for all those years

1 as a brick mason may have caused deterioration of Mr.
2 Pressley's body through the years, and you have to ask your-
3 selves if the Plaintiff is responsible for whatever Dr. Z
4 saw upon examination of the Plaintiff's body.

5 Think about what Dr. Z told you about what he found
6 in his examination and procedure on Mr. Pressley. The
7 Judge will give you a charge on the law in a few minutes
8 It is your decision to make.

9 Mr. Pressley is the Plaintiff and Eric Sanders is the
10 Defendant. The Plaintiff in this case has the burden of
11 proof. They have to prove to you by a preponderance of the
12 evidence, which the Judge will explain to you means more
13 likely than not, that every dollar of these medical damages
14 is related to the motor vehicle accident.

15 If you do not find that every dollar was reasonable
16 and necessary, and as a result of the motor vehicle acci-
17 dent, even though negligence was admitted, you have to act
18 on that finding.

19 But if you find these damages were related, from the
20 ER visit through to the primary care doctor, I suggest to
21 you that you should award whatever you find is reasonably
22 and necessarily from this car accident.

23 No hospital, no doctor, no primary care doctor, no
24 chiropractor, made a referral of Mr. Pressley to see Dr.
25 Z, and I stress to you again that the burden of proof

1 rests with the Plaintiff, and I suggest to you that that
2 burden was not met. The burden of proof does not rest with
3 Mr. Sanders.

4 So you must make a finding on whether or not the care
5 and treatment to Mr. Pressley were reasonably and necssar-
6 ily a result of the automobile accident.

7 (Brief pause)

8 You must not base your verdict, as the Judge will tell
9 you, upon sympathy or passion or prejudice. You must base
10 your verdict on the evidence that has come from the witness
11 stand and on the law given to you by the Judge.

12 Briefly, you heard some testimony about needles and
13 fear of needles, of Mr. Pressley stopping treatment, and
14 there is no question that Mr. Pressley did not complete the
15 treatment by Dr. Z.

16 But you heard Dr. Z testify that on June 9, 2015, Mr.
17 Pressley said the pain was resolved. It wasn't an aspect
18 of him saying he doesn't want the needles any more. He
19 said the pain had resolved.

20 That's what he told the doctor, that the pain had re-
21 solved, and you heard Dr. Z say that that is possible;
22 that it happens to some people.

23 They get an injection and improve. When I asked him
24 if that was what happened in this case he said it was pos-
25 sible; that it could happen.

1 He changed his diagnosis based on the fact that Mr.
2 Pressley said he was pain free on June 9 of 2015; he was
3 one hundred percent better.

4 You heard one of us ask Dr. Z during the deposition if
5 there were other treatment options, and he said no, that's
6 it. That's what he said.

7 As I said before, it is your determination to make.
8 You need to evaluate every word you heard in this case from
9 every witness.

10 As far as an expert witness goes, the Judge will tell
11 you how you should consider that, and that is in same way
12 you consider other testimony. You still must weigh each
13 witness' testimony and give it the weight you believe it
14 deserves.

15 As I said a moment ago, Mr. Pressley said to the doc-
16 tor that he had received a complete resolution of his pain.
17 He did not want to go further with treatment. That's what
18 he said to Dr. Z.

19 You also heard testimony that Dr. Z had said he was
20 zero percent disabled. Zero.

21 So he wanted no more treatment, and think about that
22 when you go back to the jury room.

23 You heard the testimony about a treatment plan that Dr.
24 Z spoke to him about but Mr. Pressley didn't continue with
25 that.

1 You haven't seen any other bills for medical treatment
2 received by him since that time.

3 During the video Dr. Z -- I upset him by a question
4 that he felt was objectionable, but I apologized to him for
5 the way the question was phased.

6 You can ask yourselves why he reacted like that to my
7 question.

8 (Brief pause)

9 The burden of proof, as I said, is upon the Plaintiff
10 to prove his case, and I can stand up here for hours and
11 talk to you but it is your decision to make and yours alone
12 from all that you have seen and heard.

13 I can say it's worth zero dollars, and I would tell
14 you that is not without saying the ER bill of Four Thousand
15 Seven Hundred and Two Dollars -- pay it if you find it is
16 reasonable and necessary.

17 If you decide the chiropractor was reasonable and
18 necessary, Two Thousand Fifty-nine Dollars. If you find
19 the MRI was necessary pay the Nine Hundred and Eighty-nine
20 Dollars.

21 You may find it was reasonable and necessary for him
22 to go to his primary care doctor -- One Hundred and Thirty-
23 eight Dollars and some Cents.

24 I want you to consider that there was no testimony
25 regarding a referral to Dr. Z by any medical doctor.

1 For three weeks of treatment his bill was Four Thousand
2 Nine Hundred and Thirty-five Dollars. Think about it and
3 whether that is reasonably and necessarily a result of
4 this motor vehicle accident.

5 (Brief pause)

6 Your verdict must be unanimous, and I ask that you go
7 back and discuss the evidence and testimony from your rec-
8 collection of it. I understand some of you may remember
9 different parts of it.

10 If there are some questions you need to ask then just
11 ask them so everything will be clear to you.

12 Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. JONES: Mr. Kalish gets to speak to you again, and
15 I do not.

16 I want to ask you to consider as far as Dr. Z's treat-
17 ment of Mr. Pressley that if he was not referred by a doctor
18 was it reasonably and necessarily a result of this car acci-
19 dent. We don't believe that it was a result of this car
20 accident.

21 You will also have the exhibits with you to consider
22 while you are deliberating. There is no claim for lost
23 wages here.

24 THE COURT: What was your statement?

25 MR. JONES: I said there is no claim for lost wages here.

1 THE COURT: There was evidence that there is no claim
2 for lost wages?

3 MR. JONES: That's correct.

4 THE COURT: All right.

5 MR. JONES: Thank you for your kind attention, and thank
6 you for your help in assisting the parties.

7 Think about what treatment was reasonable and neces-
8 sary. Thank you.

9 THE COURT: Mr. Kalish

10 MR. KALISH: Just briefly, Your Honor. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 MR. KALISH: Ladies and gentlemen, I would like to
14 clarify some things, go over a couple of points.

15 There is no evidence that Mr. Pressley had a previous
16 back condition. You can bet your bottom dollar that if
17 there were, that testimony would have come to you before now.

18 You can also bet your bottom dollar that Dr. Z would
19 have been asked about that in the deposition. There was
20 absolutely no evidence of a prior back condition, not before
21 the accident, and there is no record of any prior condition
22 before the accident because none existed.

23 Not only that, but Mr. Pressley told you that from the
24 stand. It is not a factor and we ask you not to consider
25 that because it's not true.

1 So that did not exist. You would have heard about
2 it if it did exist.

3 Now, there was mention of Dr. Z, and you heard a list
4 of the things he looked at prior to examining Mr. Pressley.
5 The MRI, the chiropractic records and the records of the
6 family doctor.

7 He had no further pain, and that's not true either.
8 You heard Mr. Pressley testify that he went to him when he
9 was still in pain. That's the most important thing.

10 So he went to Dr. Z to see if he could figure out what
11 to do, and Dr. Z talked about the MRI, which is what a doc-
12 tor has to evaluate a patient and his pain, a tool he has.

13 He looked at the MRI and talked to the patient, and he
14 said we'll need to do some tests to find out how to treat
15 your pain.

16 So he looked at all of that and they did talk about
17 treatment. He told you the best way to find out what the
18 patient needed was to talk to the patient.

19 So he did examine the patient and talk to him, and
20 they don't seem to like Dr. Z, a board certified expert.
21 Dr. Z told you about his education, his training, his resi-
22 dency, his practice. He is a well-known physician.

23 Now, he also testified when he was asked is it possi-
24 ble that Mr. Pressley has this pain from this injury as a
25 result of forty-four years of brick masonry.

1 He said that it's possible. He said it's possible
2 but he did not say it is probable. It's also possible that
3 it was caused by the accident. It is possible and there is
4 no way around that. More likely true than not? More prob-
5 able than not? He didn't say that, and that is important.

6 You saw Dr. Z get upset in the deposition, and he act-
7 ually stopped the deposition. He thought the attorney was
8 accusing him of something. He thought it was important
9 enough to stop the deposition because he thought there was
10 an accusation of fraud. Dr. Z was going to call his lawyer.

11 You can bet that if he was in the business of building
12 cases he would have said other things on the record than
13 something was possible.

14 Dr. Z wanted to talk to his lawyer and you heard that
15 from the playing of the deposition. I hope you remember
16 the question he was asked and what occurred. (Portion not
17 audible due to noise in Courtroom)

18 Mr. Jones apologized professionally and personally and
19 went on with his questions. He had made an accusation that
20 he couldn't back up. The Doctor could have lost his license
21 over such a matter.

22 What we're asking you to do is to consider all of this
23 with your experiences in life. Consider also that there is
24 nothing that says you have to be referred to a doctor in
25 order to see a doctor for help with your pain.

1 You go to the emergency room and, for lack of a bet-
2 ter term, what they are going to do for you is triage their
3 patients, look at their injuries and release them back out
4 to go home.

5 They do x-rays and if they see no breaks on them they
6 try to get you out of there. That is what they did in this
7 ER situation.

8 But what they did didn't resolve his pain and so he
9 went to seek further treatment. He wanted some resolution
10 to his back and neck problems. He went to get treatment
11 so he would get well.

12 We ask that you take the time to carefully consider
13 the matter, and we are sure that you will make the right
14 decision.

15 Thank you.

16 THE COURT: All right, Mr. Foreman and members of the
17 jury. You have now heard the evidence and the arguments
18 of counsel, and I will give you to law that applies to this
19 action.

20 Henry Pressley, the Plaintiff, claims that he was in-
21 jured by the actions of Eric Sanders, the Defendant, and
22 by bringing this lawsuit the Plaintiff claims the Defendant
23 should compensate him for his injuries.

24 Now, members of the jury, under our Constitution and
25 laws only you can make the findings of fact in this case.

1 I am not permitted to indicate to you how I may feel
2 about the case. Throughout the case and as the evidence
3 was presented I have attempted to be fair and impartial to-
4 ward these parties and the lawyers.

5 In your finding of the facts in this case you have to
6 evaluate the credibility, which means the believability, of
7 each witness.

8 Some of the things you may consider as you decide whe-
9 ther or not to believe a witness' testimony about a parti-
10 cular matter are what was the manner and appearance of the
11 witness who testified. Was he or she straight-forward or
12 were they hesitant in answering?

13 Was the testimony of a witness consistent or inconsis-
14 tent? How could the witness know the facts that he or she
15 testified about?

16 What was his ability to know these facts? Is there a
17 reason the witness would want to give tes-
18 timony which would help or hurt one side or the other, or,
19 in other words, was the witness biased or prejudiced, and
20 was the testimony weakened or strengthened by the tes-
21 timony and evidence.

22 Members of the jury, you can believe as much or as lit-
23 tle of the witness' testimony as you deem proper. You may
24 believe the testimony of a single witness against that of
25 many witnesses. You may do just the opposite.

1 Of course, you do not find the truth merely by how big
2 a number of witnesses that are presented by each side.

3 Throughout this process you have but one objective
4 and that is to seek the truth regardless of its source.

5 Now, the Constitution and laws of this State that make
6 you the finders of the facts in this case also make me the
7 judge of the law.

8 You must accept the law as I give it to you as the cor-
9 rect law of this case. You must apply the law as I give
10 it to you. You should not be concerned with what you think
11 the law should be but only apply the law as I tell it to
12 you.

13 Now, the Plaintiff has the burden of proving his claim
14 against the Defendant, and he must meet this burden by what
15 is said to be the greater weight or the preponderance of
16 the evidence.

17 Now, what we mean by the greater weight of the evidence
18 can be illustrated by taking a traditional set of scales.
19 When the case begins the scales are even.

20 After all the evidence has been presented to you if the
21 scales remain even or if they should tip even slightly in
22 favor of the Defendant, the Plaintiff will have failed to
23 meet his burden of proof, and your verdict would be for the
24 Defendant.

25 Now, on the other hand, if the scales should tip even

1 slightly in favor of the Plaintiff then he will have met
2 his burden of proof, and your verdict would be for the
3 Plaintiff.

4 Now, there is no way to weigh evidence except through
5 the exercise of your good common sense and judgment. It is
6 entirely a mental process.

7 The evidence you give the most weight to is that which
8 convinces you of its truth regardless of from what source
9 it comes.

10 All of these instructions are intended to go to what
11 you are asked to do in this case, and that is to decide how
12 much money the Plaintiff should be given if the Plaintiff
13 has met his burden of proof by the greater weight or the
14 preponderance of the evidence, which will make sense to you.

15 Now, in this case the Plaintiff is seeking what has
16 been referred to as actual damages. By actual damages is
17 meant to compensate the Plaintiff for the Plaintiff's rea-
18 sonable loss and to put the Plaintiff as near as possible
19 in the same position the Plaintiff was in before the inci-
20 dent occurred, the Plaintiff's injuries and damages.

21 In other words, actual damages would be the actual
22 losses and expenses which the Plaintiff has suffered because
23 of the negligence of the Defendant.

24 Now, part of the actual damages is what is referred
25 to as pain and suffering. Pain and suffering means to

1 compensate the Plaintiff for the physical discomfort and emo-
2 tional response to the sensation of pain caused by the in-
3 jury itself.

4 There is no method or standard by which to compensate
5 the Plaintiff for pain and suffering. You have to determine
6 the amount to be awarded for pain and suffering using calm
7 and reasonable judgment to ensure that the damages are rea-
8 sonable in light of the testimony and the evidence that was
9 presented in this case.

10 Loss of enjoyment of life can be a part of actual dam-
11 ages, and loss of enjoyment of life can be compensable, and
12 that means a limitation on the Plaintiff's ability to par-
13 ticipate in and to enjoy the former activities that he had
14 previously enjoyed.

15 The Plaintiff must prove that expenses caused by the
16 injury were made necessary and reasonable.

17 Actual damages for the Plaintiff include physical in-
18 jury which caused pain and suffering both in the past and
19 future pain and suffering, as well as mental anguish from
20 the physical condition.

21 In determining the amount of compensation for personal
22 injuries to the Plaintiff, it is proper to consider the
23 past and present aspects of the injury.

24 This would include physical and mental pain and suf-
25 fering, expenses incurred for necessary medical treatment,

1 and the loss of enjoyment of life suffered as a result of
2 the injury and any other losses which are reflected by the
3 character of the injury.

4 Now, the injured party may recover for those future
5 damages that are reasonably sure to result from the injur-
6 ies.

7 A principle in awarding compensation for future dam-
8 ages is that only one action can be brought and, therefore,
9 only one recovery may be had.

10 It is proper to include in any estimate of future dam-
11 ages compensation for loss of -- compensation for any pain
12 and suffering which reasonably may result in the future.

13 Now, a Plaintiff is never entitled to recover conjec-
14 tural or speculative damages, but if you find that the
15 Plaintiff is entitled to a verdict for actual damages your
16 verdict should include an amount to cover any past, present
17 and future damages that are proximately caused by the De-
18 fendant's negligence.

19 Any future damages must be reasonably certain to occur
20 in the future as a result of the Defendant's acts. Actual
21 damages need not be proven to a mathematical certainty or
22 be based upon evidence of the precise amount of damages the
23 Plaintiff has suffered.

24 Instead, the evidence must allow you to determine what
25 amount of damages is fair, just and reasonable. Any future

1 damages must be reasonably calculated from the injury or
2 damages sustained by the Plaintiff in this case. Such dam-
3 ages must be reduced to their present day value.

4 Now, mental suffering is another aspect of actual dam-
5 ages, ladies and gentlemen. Mental suffering includes such
6 apprehension, shock, emotional upset, humiliation that is
7 either present or expected in the future.

8 Now, any award of damages for mental suffering cannot
9 be exactly measured.

10 You have heard testimony from a witness who was quali-
11 fied as an expert witness. The rules of evidence are that
12 I cannot permit witnesses to testify to opinions or con-
13 clusions.

14 An exception to this rule exists for witnesses we call
15 experts, a witness who by education and experience has become
16 expert in some art, science or profession, and they can give
17 an opinion as well as the reasons for their opinion.

18 You should consider any expert opinion given by a wit-
19 ness like any other evidence given, and give it the weight
20 you think it deserves.

21 If you decide that the expert witness' opinion was not
22 based on sufficient education and experience, or if you de-
23 cide that the reasons given to support that opinion are not
24 sound or that the opinion is not weighed by the other evi-
25 dence, you may disregard the opinion entirely.

1 An expert witness' testimony is to be given no greater
2 weight than that of any other witness simply because the
3 witness is an expert, and you do not have to accept the ex-
4 pert's opinion even though it comes from an expert.

5 Now, you heard testimony by way of deposition, and I've
6 told you a little bit about this earlier in talking about
7 deposition testimony.

8 There was testimony in this case that was presented to
9 you by way of deposition, which is sworn testimony that is
10 given by a witness outside of the Courtroom in the presence
11 of the lawyers for each party.

12 The lawyers ask questions of the witness, and this tes-
13 timony is entitled to the same consideration and is to be
14 judged as to credibility and weight by you the same way as
15 any other witness here in person and gave testimony to you
16 from the witness stand.

17 It is up to you, the jury, to determine the weight and
18 value to give to this testimony. You must determine the
19 value and weight to be given to this testimony.

20 Now, Mr. Foreman and members of the jury, your verdict
21 in this case cannot be based upon sympathy, passion, preju-
22 dice or some other consideration not found in the evidence
23 from either party. It may not be based upon emotion.

24 You cannot speculate about any other considerations but
25 you must simply place a value on this case based on the law

1 and the evidence that you have received. You must place a
2 monetary value on the case based upon what you have heard.

3 I believe that completes the law that I have to give
4 you. Very well.

5 Now, Mr. Foreman, the verdict of the jury must be unan-
6 imous. That means that all twelve of you must agree.

7 I have a verdict form here for your use which says,
8 State of South Carolina, County of Richland, Henry Pressley,
9 Plaintiff, versus Eric Sanders, Defendant.

10 Then it reads, we, the jury, by unanimous consent, find
11 for the Plaintiff in the amount of blank, actual damages.

12 Now, below that is a box for you to put the date and a line
13 for you to sign as Foreman when the jury has reached a
14 unanimous verdict.

15 When you have reached a verdict please knock on the
16 door and tell the bailiff you have a verdict, after your
17 verdict is reached and you have completed the verdict form.

18 Now, I need to ask you to go to your jury room and do
19 not start talking about the case yet. The time to do so
20 will be when all the exhibits are brought in to your jury
21 room along with the verdict form.

22 When the bailiff hands that to you, that will be your
23 signal to begin your deliberations. Until then you cannot
24 talk about the case.

25 Please retire to the jury room at this time.

1 Thank you.

2 (Jury excused from the Courtroom)

3 THE COURT: All right, are there any additions or ex-
4 ceptions from the Plaintiff?

5 MR. KALISH: None, Your Honor . . .

6 THE COURT: From the Defense?

7 MR. JONES: We have nothing.

8 THE COURT: Take all the Exhibits to the jury room
9 along with the verdict form.

10 (Jury instructed to commence deliberations by the bailiff
11 at 12:05 P.M.)

12 THE COURT: Bring the jury in.

13 (Jury returned to the Courtroom at 1:25 P.M.)

14 THE COURT: All right, Mr. Clerk.

15 CLERK: Mr. Foreman and members of the jury, have you
16 reached a verdict?

17 FOREMAN: Yes.

18 CLERK: Would you hand it to me, please?

19 (Brief pause)

20 THE COURT: All right, I have to ask a question.

21 We, the jury, by unanimous consent, find for the
22 Plaintiff in the amount of -- it says Four Thousand Eight
23 Hundred Eighty-eight Dollars and Ninety Cents actual, pain
24 and suffering Five Thousand Dollars.

25 JUROR: Sir, our total would be Nine Thousand Eight

1 Hundred Eighty-eight Dollars.

2 You told us to break it down.

3 THE COURT: That's fine.

4 So the total is Nine Thousand Eight Hundred Eighty-
5 eight -- Nine Thousand Eight Hundred and Eighty . .

6 JURY FOREMAN: Eight Hundred Eighty-eight . .

7 THE COURT: And Thirty Cents, so you want to add these
8 two figures together?

9 JURY FOREMAN: Yes, sir.

10 THE COURT: All right. Thank you, sir.

11 Anything further from the jury on behalf of the Plain-
12 tiff?

13 MR. KALISH: No, Your Honor

14 THE COURT: On behalf of the Defendant?

15 MR. JONES: No, Your Honor.

16 THE COURT: All right. Mr. Foreman and members of the
17 jury, thank you for your service on this trial.

18 It's difficult to sit in judgment on your fellow citi-
19 zens,

20 (Jury excused by the Court)

21 THE COURT: Do you have motions to make at this time?

22 MR. KALISH: I would like some time, Your Honor.

23 THE COURT: I am sure you are going to ask for an addi-
24 tur and I will seriously consider it.

25 In the meantime, I would suggest to you that this is

1 a matter that should be resolved.

2 I will give you ten days.

3 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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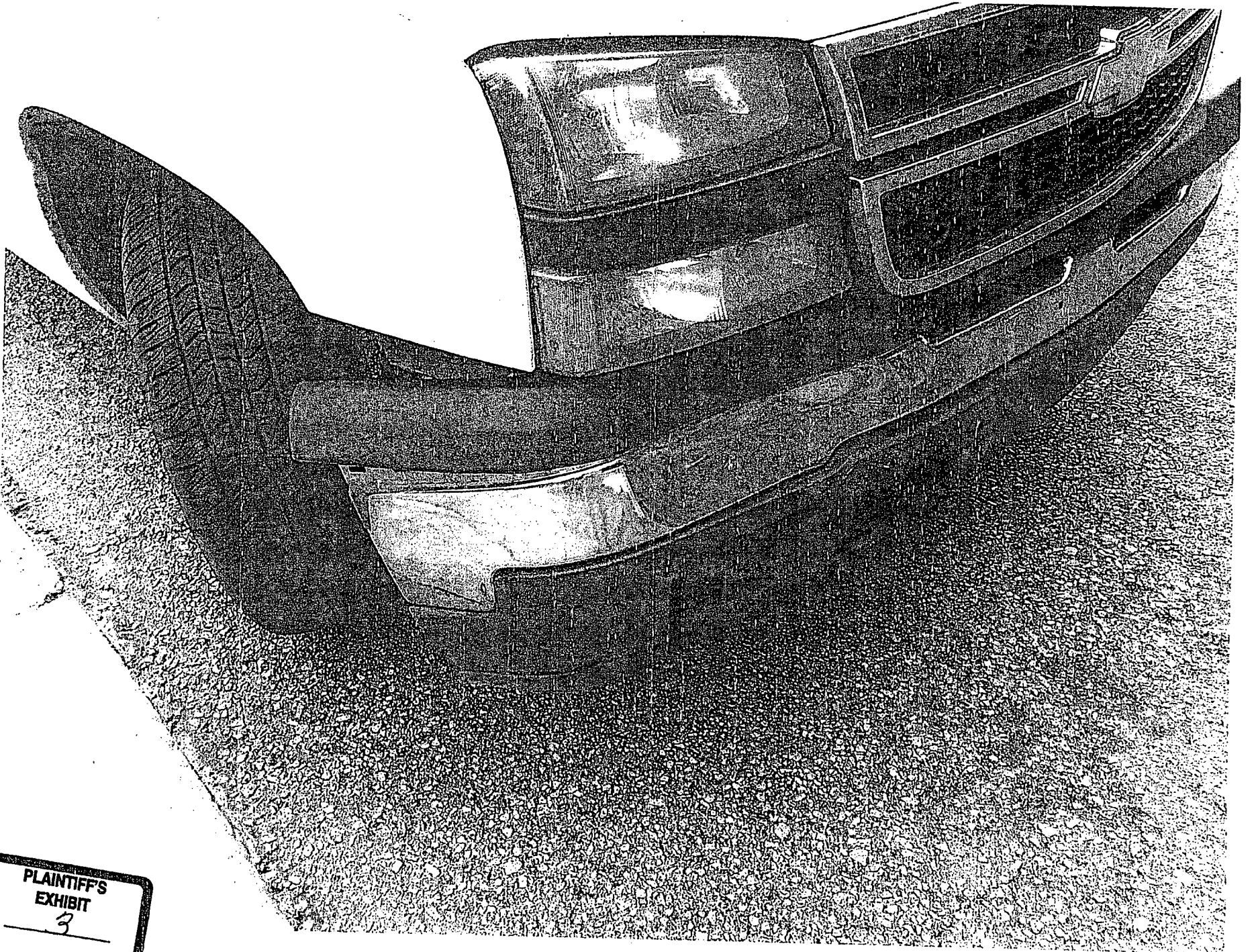
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PLAINTIFF'S
EXHIBIT
2

PHOTO 800-437-8889

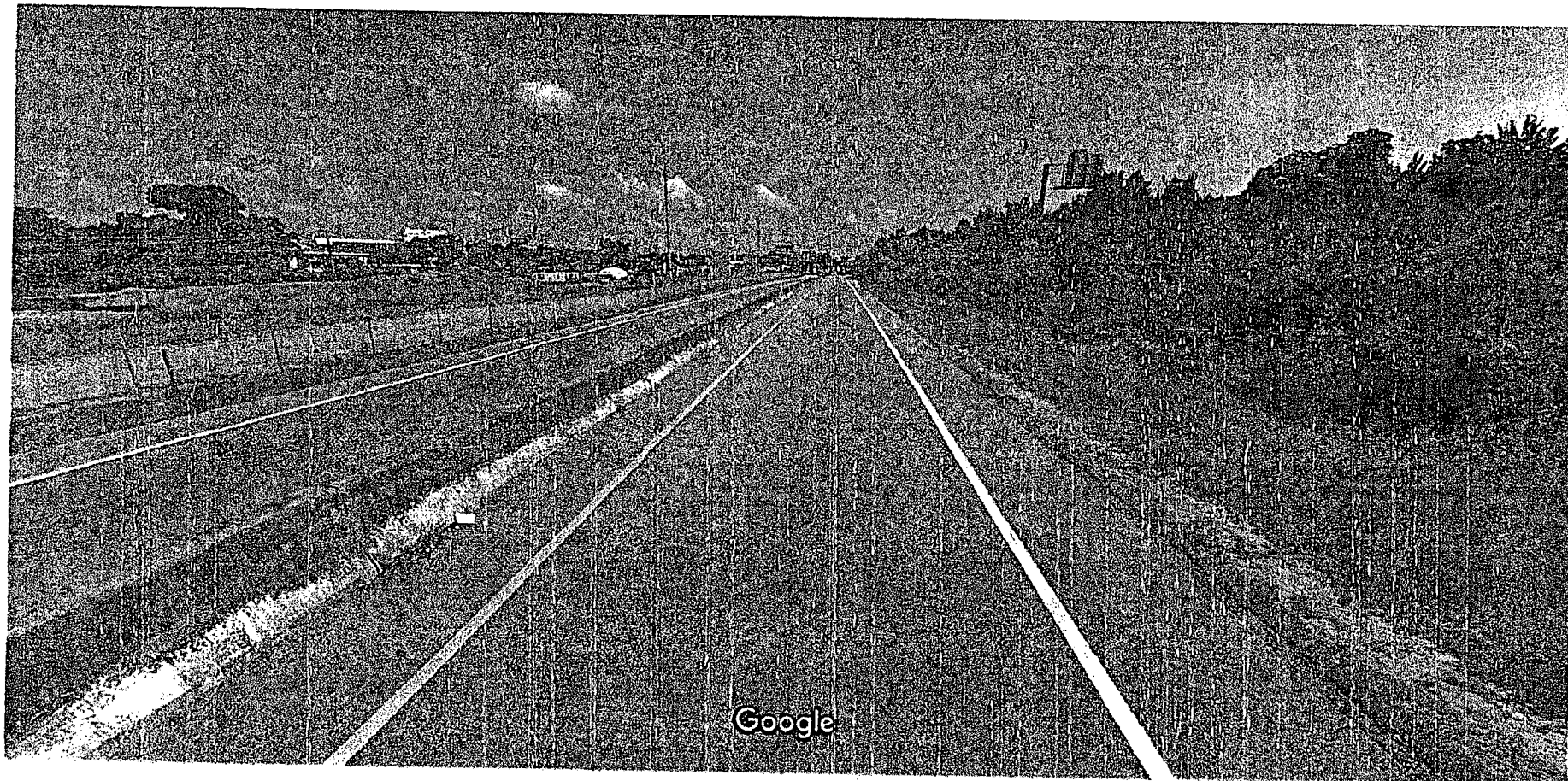


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PLAINTIFF'S
EXHIBIT
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FENGLAD 000-891-0880
**PLAINTIFF'S
EXHIBIT**
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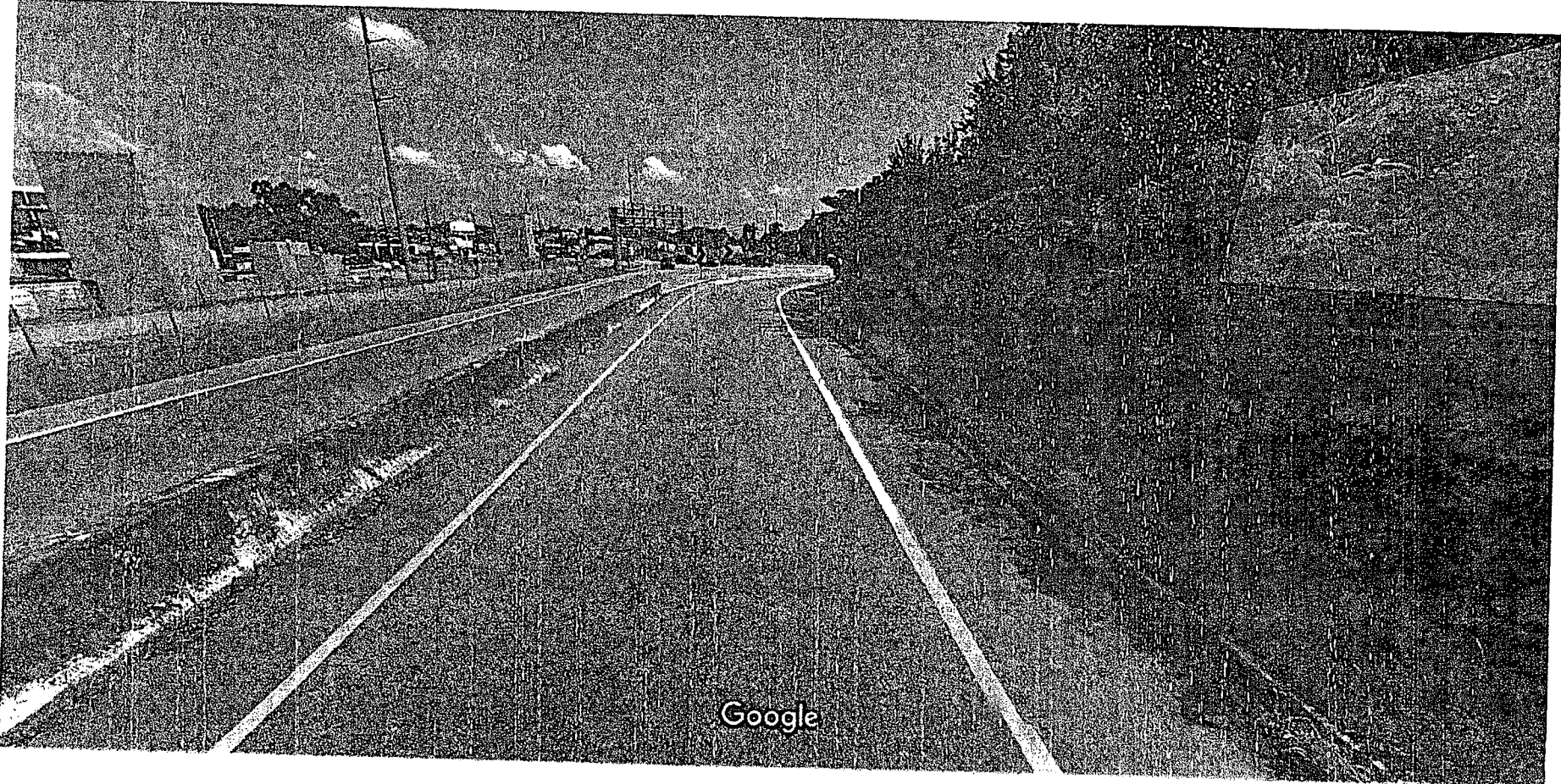
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Street View - Jul 2015

Image capture: Jul 2015 © 2016 Google

PENJAD 800-837-6889
**PLAINTIFF'S
EXHIBIT**
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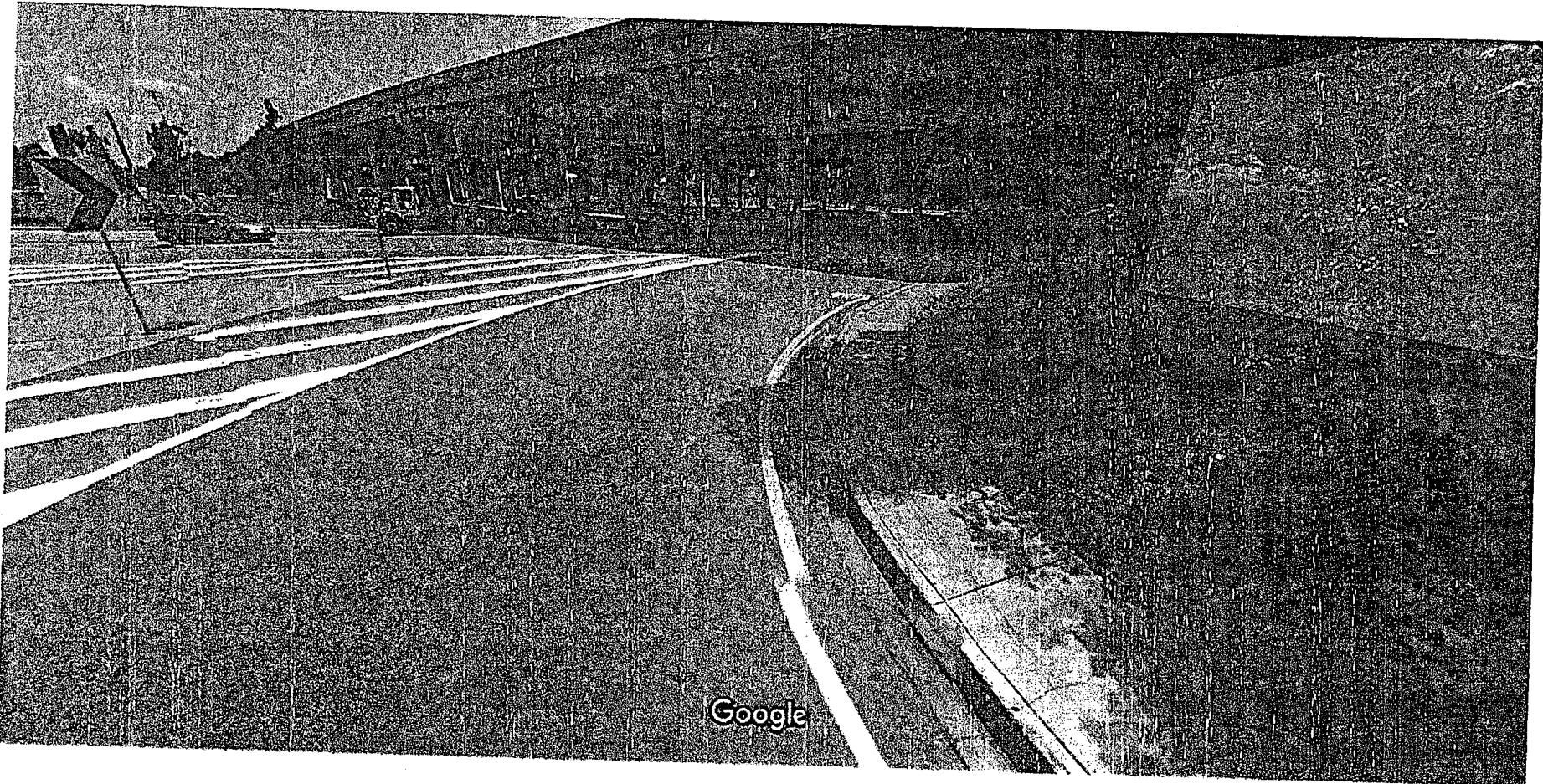


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Street View - Jul 2015

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**PLAINTIFF'S
EXHIBIT**
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Street View - Jul 2015

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PLAINTIFF'S
EXHIBIT
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GA 30384
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5 FED. TAX NO. 500
STATEMENT COVERS PERIOD FROM 582296052 021615 THROUGH 021615 013

8 PATIENT NAME a PRESSLEY, HENRY b PATIENT ADDRESS c 121 GARNER FERRY WAY d SC e 29044

10 BIRTHDATE 05011946 M 11 SEX 12 DATE 021615 13 14 TYPE 1 15 SHG 1 16 DMR 01 17 STAT 18 19 20 21 22 23 24 25 26 27 28 29 ACCT RATE 30 ERB

31 OCCURRENCE CODE 01 32 OCCURRENCE DATE 021615 33 OCCURRENCE CODE A1 34 OCCURRENCE DATE 050146 35 OCCURRENCE CODE B1 36 OCCURRENCE DATE 050146 37 OCCURRENCE SPAN FROM THROUGH 38 OCCURRENCE SPAN FROM THROUGH 39

38 ACCIDENT POSSIBLE LIABILITY REFERRED TO ACI COLUMBIA SC 29203
40 VALUE CODES AMOUNT 45 1000
41 VALUE CODES AMOUNT
42 VALUE CODES AMOUNT

42 REV. CO.	43 DESCRIPTION	44 HCPCS / RATE / MIPPS CODE	45 SERV. DATE	46 SERV. UNIT	47 TOTAL CHARGE	48 NON-COVERED CHARGE	49
0320	CR CERVICAL SPINE 4V	72050	021615	1	52700		
0450	LEVEL 4	99284	021615	1	112500		



HOSPITAL BENEFITS ASSIGNED TO
PATIENT TO RICHLAND MEMORIAL HOSPITAL
PLEASE SHOW PATIENT ACCOUNT
NUMBER ON REMITTANCE CHECK

0001 PAGE 1 OF 1 CREATION DATE 022015 TOTALS 165200

60 PAYER NAME 199 ACCIDENT POSSIBLE L 0600 SELF PAY 20
61 HEALTH PLAN ID 582296052500 582296052500
62 P REL Y Y
63 AMT BEN Y Y
64 PRIOR PAYMENTS
65 EST AMOUNT DUE
66 NPI 1205889458
67 OTHER 582296052500
68 PRV ID 582296052500

69 INSURED'S NAME PRESSLEY, HENRY PRESSLEY, HENRY
69 P REL 18 18
60 INSURED'S UNIQUE ID 251801375 251801375
61 GROUP NAME ACI REFERRED
62 INSURANCE GROUP NO.

63 TREATMENT AUTHORIZATION CODES
64 DOCUMENT CONTROL NUMBER
65 EMPLOYER NAME MIDSTATE MASONRY MIDSTATE MASONRY

66 7231 U7245 U25000 U4019 U2720 U2749 UV5869 U
67

69 ADMIT DX 7231 70 PATIENT REASON DX 7231 71 PPE CODE 7245 72 ECI E8120 UE6495 U 73
74 PRINCIPAL PROCEDURE CODE DATE 75 OTHER PROCEDURE CODE DATE 76 ATTENDING NPI 417990276 QUAL 10R38097
LAST MARTIN FIRST DIMA H
77 OPERATING NPI QUAL
LAST FIRST
78 OTHER DN NPI QUAL 10
LAST MS FIRST MS
79 OTHER NPI QUAL
LAST FIRST

PALMETTO HEALTH BAPTIST
 293 GREYSTONE BLVD
 COLUMBIA, SC 29210

ITEMIZED STATEMENT OF CHARGES

DATE OF BILL	DATE OF BILL	PAGE NO.

PATIENT NAME		PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE
HENRY PRESSLEY		1504702032	M	68Y	02/16/15	02/16/15
INSURANCE COMPANY NAME		GROUP NUMBER	POLICY NUMBER			
702014 ACCIDENT POSSIBLE LIA 010020 SELF PAY 20			251801375 251801375		PLEASE RETA FOR YOUR RECORDS	
GUARANTOR NAME AND ADDRESS	HENRY PRESSLEY 121 GARNER FERRY WAY EASTOVER SC 29044		FOR PATIENT INFORMATION ONLY. ALL BENEFITS ASSIGNED TO PALMETTO HEALTH BAPTIST FOR QUESTIONS CALL (803) 296-5091 1-800-243-7711.			

DATE	ITEM NO.	DESCRIPTION	CLM. CODE	ORDER NO.	QTY.	UNIT PRICE	TOTAL CHAF
		0320 DX X-RAY					527.0
		0450 EMERGENCY ROOM					1125.0
		TOTAL CHARGES					1652.0
02/21/15	A8604	159 PATHWAYS CONTRACT MANAGEMENT					0.0
		TOTAL PAYMENTS/ADJUSTMENTS					0.0

HOSPITAL BENEFITS ASSIGNED TO
 PALMETTO RICHLAND MEMORIAL HOSPITAL
 PLEASE SHOW PATIENT ACCOUNT
 NUMBER ON REMITTANCE CHECK

PATIENT NUMBER
 1504702032

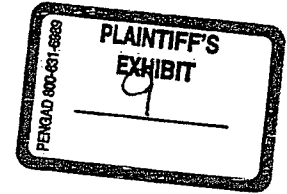
PLEASE REFER TO PATIENT NUMBER ON ALL INQUIRIES AND CORRESPONDENCE.

ADDITIONAL PATIENT BILLING MAY BE NECESSARY FOR ANY CHARGES NOT POSTED WHEN THIS BILL IS PREPARED, OR IF ANY INSURANCE CARRIERS DO NOT PAY ANY AMOUNT OF THE AMOUNTS SHOWN.

TOTAL AMOUNT DUE 1652.0

RESPONSIBLE PARTY	ACCOUNT #	BILL DATE
HENRY PRESSLEY	353359-PITT	04-29-2015

PITTS RADIOLOGY
 PO BOX 602728
 CHARLOTTE, NC 28260-2728



HAMMOND A. BEALE
 POST OFFICE BOX 9526
 791 GREENLAWN DRIVE, SUITE 2
 COLUMBIA, SC 29290

DOS	Patient	Physician	Phys. Tax ID	Charge Description	Am	Pm	Adj	Bal
02-16-2015	HENRY PRESSLEY	23-Meredith, William		72050 26 - X-RAY EXAM NECK SPINE 4/5VWS	50.00	0.00	0.00	50.00

Account Balance: \$50.00

Account Number: 353359-PITT

FOR BILLING QUESTIONS PLEASE CALL (866) 481-7572

1 of 1

COLEn

Fields Chiro Clinics, PA

3930 Devine Street
Columbia, SC 29205-2804
(803)787-7050



Page: 1

3/18/2015

Patient: Henry L. Pressley
121 Garners Ferry Way
Eastover, SC 29044

Instructions:

[REDACTED]

Chart #: PREHE000

Case #: 14346

Date	Description	Procedure	Modify	Dx 1	Dx 2	Dx 3	Dx 4	Units	Charge
2/17/2015	New Pt. Office Visit (30min)	99203	25	847.0	846.0	847.1	724.1	1	75.00
2/17/2015	Chiropractic Manipulation (3-4	98941	AT	847.0	846.0	847.1	724.1	1	55.00
2/17/2015	Hydrocollator/Cryo Pack Therapy	97010		847.0	846.0	847.1	724.1	1	30.00
2/17/2015	Electrical Stimulation	97032	GP	847.0	846.0	847.1	724.1	1	30.00
2/17/2015	X-ray (cervical, 2 or 3 views)	72040		847.0	739.1	723.1		1	65.00
2/17/2015	X-ray (lumbosacral, 2 or 3 views)	72100		739.3	846.0	724.2		1	79.00
2/18/2015	Chiropractic Manipulation (3-4	98941	AT	847.0	846.0	847.1	724.1	1	55.00
2/18/2015	Hydrocollator/Cryo Pack Therapy	97010		847.0	846.0	847.1	724.1	1	30.00
2/18/2015	Electrical Stimulation	97032	GP	847.0	846.0	847.1	724.1	1	30.00
2/19/2015	Chiropractic Manipulation (3-4	98941	AT	847.0	846.0	847.1	724.1	1	55.00
2/19/2015	Hydrocollator/Cryo Pack Therapy	97010		847.0	846.0	847.1	724.1	1	30.00
2/19/2015	Electrical Stimulation	97032	GP	847.0	846.0	847.1	724.1	1	30.00
2/23/2015	Chiropractic Manipulation (3-4	98941	AT	847.0	846.0	847.1	724.1	1	55.00
2/23/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	30.00
2/23/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	30.00
2/24/2015	Chiropractic Manipulation (3-4	98941	AT	847.0	846.0	847.1	724.1	1	55.00
2/24/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	30.00
2/24/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	30.00
2/25/2015	Chiropractic Manipulation (3-4	98941	AT	847.0	846.0	847.1	724.1	1	55.00
2/25/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	30.00
2/25/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	30.00
3/2/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	30.00
3/2/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	30.00
3/2/2015	Chiropractic Manipulation (3-4	98941	AT	739.1	739.3	739.2		1	55.00
3/3/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	30.00
3/3/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	30.00
3/3/2015	Chiropractic Manipulation (3-4	98941	AT	739.1	739.3	739.2		1	55.00

Provider Information

Provider Name: Fred Vallejo
License: 2715
Insurance PIN:
SSN or EIN:

Total Charges: \$ 1139.00
Total Payments: \$ 0.00
Total Adjustments: \$ 0.00

Total Account Balance: \$ 2,059.00

Assign and Release: I hereby authorize payment of medical benefits to this physician for the services described above. I also authorize the release of any information necessary to process this claim.

Patient Signature: _____

BENEFITS ASSIGNED

Date: 2/17/2015

Fields Chiro Clinics, PA

3930 Devine Street
Columbia, SC 29205-2804
(803)787-7050

Page: 2

3/18/2015

Patient: Henry L. Pressley
121 Garners Ferry Way
Eastover, SC 29044

Instructions:

[REDACTED INSTRUCTIONS]

Chart #: PREHE000

Case #: 14346

Date	Description	Procedure	Modify	Dx 1	Dx 2	Dx 3	Dx 4	Units	Charge
3/4/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	40.00
3/4/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	40.00
3/4/2015	Chiropractic Manipulation (3-4	98941	AT	739.1	739.3	739.2		1	65.00
3/9/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	40.00
3/9/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	40.00
3/9/2015	Chiropractic Manipulation (3-4	98941	AT	739.1	739.3	739.2		1	65.00
3/9/2015	Mechanical Traction (one or more	97012		739.2	724.1			1	60.00
3/10/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	40.00
3/10/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	40.00
3/10/2015	Chiropractic Manipulation (3-4	98941	AT	739.1	739.3	739.2		1	65.00
3/10/2015	Mechanical Traction (one or more	97012		847.1	724.1			1	60.00
3/11/2015	Chiropractic Manipulation (3-4	98941	AT	739.1	739.3	739.2		1	65.00
3/11/2015	Electrical Stimulation	97032	GP	739.1	723.1	739.2	724.1	1	40.00
3/11/2015	Hydrocollator/Cryo Pack Therapy	97010		739.1	723.1	739.2	724.1	1	40.00
3/11/2015	Mechanical Traction (one or more	97012		739.2	724.1			1	60.00
3/11/2015	Establishe Pt. Office Visit (15min)	99213	25	847.0	846.0	847.1	780.5	1	110.00
3/11/2015	One Use Electrodes	00037		847.0	846.0	847.1	780.5	1	50.00

Provider Information

Provider Name: Fred Vallejo
License: 2715
Insurance PIN:
SSN or EIN:

Total Charges: \$ 920.00
Total Payments: \$ 0.00
Total Adjustments: \$ 0.00

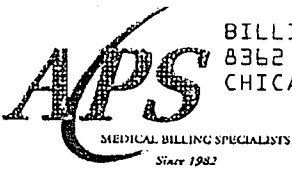
Total Account Balance: \$ 2,059.00

Assign and Release: I hereby authorize payment of medical benefits to this physician for the services described above. I also authorize the release of any information necessary to process this claim.

Patient Signature: _____

BENEFITS ASSIGNED

Date: 2/17/2015



BILLING OFFICE / C24
8362 SOLUTIONS CENTER
CHICAGO, IL 60677-8003



42

Billing Questions: 800-294-5696
Office Hours: 8:30am - 4:30pm

STATEMENT DATE	PAY THIS AMOUNT	ACCOUNT NO.
08/18/15	\$989.00	332282C024

SHOW AMOUNT PAID HERE	\$
-----------------------	----

MAKE CHECKS PAYABLE / REMIT TO:



118744 - 15



ATTY PALMETTO LAW CENTER PC
PO BOX 9526
COLUMBIA SC 29290-0526

REMIT TO

INMED DIAGNOSTIC SERVICES OF SC
BILLING OFFICE / C24
8362 SOLUTIONS CENTER
CHICAGO, IL 60677-8003



Please check box if above address is incorrect or insurance information has changed, and indicate change(s) on reverse side.

STATEMENT

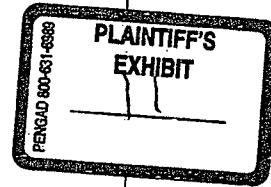
PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT IN ENCLOSED ENVELOPE

Patient: HENRY PRESSLY

Account Number: 332282C024

Services Provided By: INMED DIAGNOSTIC SERVICES OF SC

DATE	LOCATION	DIAG	PROC	SERVICE DESCRIPTION	CHARGES/ADJUSTMENTS	PT BAL	MSG
03/04/15	INMED DIAGNOSTIC SVC			RADIOLOGY SERVICES	989.00	989.00	
CURRENT		31 - 60	61 - 90	OVER 90	PAYMENT DUE	PATIENT BALANCE	
\$989.00		\$0.00	\$0.00	\$0.00	09/02/15	\$989.00	



MANAGE YOUR ACCOUNT INFORMATION AND PAY YOUR BILL ONLINE.
VISIT US AT WWW.APSPHYSICIANBILLING.COM
Billing Questions: 800-294-5696
Office Hours: 8:30am - 4:30pm

Primary Insurance
NONE

Secondary Insurance
NONE

STATEMENT

SEE REVERSE SIDE FOR IMPORTANT BILLING INFORMATION

118744-15

FAMILY MEDICINE CENTERS OF SOUTH CAROLINA, LLP PRINTED 10:46:59am 16 Jun 2015
 PO BOX 79 BY: PM.AR LAMT
 COLUMBIA, SC 29202-0079 PAGE 1
 803-779-1420 TAX ID# 57-1073380



HENRY L PRESSLEY (127470)
 121 GARNERS FERRY WAY
 EASTOVER, SC 29044
 803-353-0641

NOTICE, THIS IS LISTED FROM MOST RECENT TO THE OLDEST

Date... Name... Code... Description... Link... Dr.. Fcl Amount... Diag...

Date	Name	Code	Description	Link	Dr.	Fcl	Amount	Diag
-----<current>-----								
BALANCE							[REDACTED]	
-----<05/31/15>-----								
BALANCE							[REDACTED]	
-----<04/30/15>-----								
BALANCE							[REDACTED]	
04/20/15	HENRY	99213	EST REGULAR OV	08518.1	2	2	138.30	723.1
04/20/15	HENRY	100	PROCESSING FEE	85185.1	2	2	[REDACTED]	723.1
04/20/15	HENRY	1.53	PT CASH PAYMENT	67428.1	246	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	44482.1	244	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	44482.5	244	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	44482.4	244	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	44482.3	244	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	44482.1	244	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	40169.1	4	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	37512.2	4	2	[REDACTED]	
04/20/15	HENRY	1.53	PT CASH PAYMENT	37512.1	4	2	[REDACTED]	
-----<03/31/15>-----								
BALANCE							[REDACTED]	
-----<02/28/15>-----								
BALANCE							[REDACTED]	
-----<01/31/15>-----								
BALANCE							[REDACTED]	
-----<12/31/14>-----								
BALANCE							[REDACTED]	
-----<11/30/14>-----								
BALANCE							[REDACTED]	
-----<10/31/14>-----								
BALANCE							[REDACTED]	
-----<09/30/14>-----								
BALANCE							[REDACTED]	

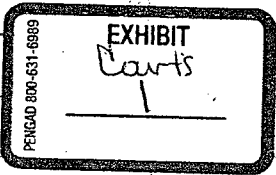
Charleston
 3030 Ashley Town Center Drive, A-102 Charleston, SC 294145664
 Phone: (843) 573-9997 Fax: (843) 377-1446
 Patient History: Pressley, Henry (PT00003791LOP)



CPT	Unit	Service	Type	Description	Claim Order	Responsible	Amount	Balance	Provider	Pos	Diagnosis
1. 99214	1.00	06/09/15	CH	OFFICE VISIT EST. LEVEL 4 Patient Responsible : 295.00	Patient(Sent)	Patient	295.00	295.00	Zgleszewski, Timothy M.	11	724.2 723.1 724.6
2. 99214	1.00	05/26/15	CH	OFFICE VISIT EST. LEVEL 4 Patient Responsible : 295.00	Patient(Sent)	Patient	295.00	295.00	Zgleszewski, Timothy M.	11	724.2 723.1 724.6
3. 27096	2.00	05/21/15	CH	INJECTION OF JOINT OF LOWER BACK INTO PELVIS Patient Responsible : 2850.00	Patient(Sent)	Patient	2850.00	2850.00	Zgleszewski, Timothy M.	11	724.2
4. 76942	1.00	05/21/15	CH	US NDL PLMT IMG S&I Patient Responsible : 610.00	Patient(Sent)	Patient	610.00	610.00	Zgleszewski, Timothy M.	11	724.2
5. 99070	1.00	05/21/15	CH	SUPPLIES&MATERIALS PRV BY PHYS Patient Responsible : 395.00	Patient(Sent)	Patient	395.00	395.00	Zgleszewski, Timothy M.	11	724.2
6. 99204	1.00	05/14/15	CH	OFFICE VISIT NEW LEVEL 4 Patient Responsible : 490.00	Patient(Sent)	Patient	490.00	490.00	Zgleszewski, Timothy M.	11	724.2 723.1
CH: 4935.00		PR: 0.00	IR: 0.00	PW: 0.00	IW: 0.00	PF: 0.00	Balance: 4935.00				

185

PLAINTIFF'S EXHIBIT 13 PAGE 03/13



Robert Weigan

285

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-000163

Henry Pressley,.....Respondent,

v.

Eric Sanders,.....Appellant.

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

Respectfully submitted,



R. Hawthorne Barrett
Richard A. Jones, III
Turner Padgett Graham & Laney P.A.
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Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadgett.com
TJones@TurnerPadgett.com

Attorneys for the Appellant