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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Court of Common Pleas

Case No. 2017-CP-08-02153
Appellate Case No. 2020-000757

DORETTA MCHUGH, as Personal Representative for the Estate of Daniel Coy,

Appellant,

v.

JOHN DOE,

Respondent.

APPELLANT'S SUPPLEMENTAL RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0802153

Daniel E Coy
PLAINTIFF(S)

John Doe
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Upon careful consideration of the arguments and submissions from counsel, this court respectfully Denies Plaintiff's Motion for Summary Judgment.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Berkeley Common Pleas

Case Caption: Daniel E Coy VS John Doe

Case Number: 2017CP0802153

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2019-10-03 13:44:11 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0802153

Daniel E Coy et al
PLAINTIFF(S)

John Doe
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This case came before the Court on November 12-13, 2019 for a jury trial on Plaintiff's negligence claims against Defendant. On Comparative Negligence the jury returned a verdict in favor of the Defendant. The Court required post-trial motions. Post-trial Motions were heard. Plaintiff moved for judgment notwithstanding the verdict ("JNOV"). The Court made contemporaneous findings of fact and conclusions of law for the record and incorporates those findings as if stated verbatim therein. The Court must deny a motion for JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/19/2019 .

Estate of Daniel E. Coy
Doretta McHugh

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

In considering a motion for JNOV, the court is concerned with the existence of evidence, not its weight. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003). Based on the foregoing, Plaintiff's motion for JNOV is heard and respectfully Denied. The Court finds that, viewed in the light most favorable to the non-moving party, sufficient evidence exists to support a jury finding in favor of the Defendant. The Court further finds that the verdict is well within the jury's fact finding province and evidence presented, is not unduly liberal, and is not actuated by passion, prejudice or caprice.



Berkeley Common Pleas

Case Caption: Daniel E Coy , plaintiff, et al VS John Doe

Case Number: 2017CP0802153

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2019-11-19 13:03:02 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	Case No.: 2017-CP-08-02153
Doretta McHugh as Personal Representative	)	
of the Estate of Daniel E. Coy,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR NEW TRIAL
vs.	)	
	)	
John Doe,	)	
Defendant.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Counsel:	Daniel C. Boles, Esq.
Defendant's Counsel:	Michael T. Coulter, Esq.
Date of Trial:	November 12-13, 2019
Court Reporter:	Phyllis Norton

THIS MATTER came before the Court on Plaintiff's Motion for a New Trial or to Alter or Amend the Judgment pursuant to Rule 59, SCRCF, filed November 19, 2019, asking this Court for a New Trial or to Amend its Order of the case, filed November 19, 2019. Plaintiff forwarded a copy of its Motion to Reconsider on November 20, 2019.¹ The Defendant served and filed its response in opposition to the Motion on November 26, 2019. Having considered the Plaintiff's Motion, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff's Motion for a New Trial or Motion to Amend is hereby Denied.²

The trial came before the Court on November 12-13, 2019 for a jury trial on Plaintiff's negligence cause of action against Defendant pursuant to a Summons and Complaint filed on September 15, 2017. The jury, after deliberation, returned a verdict in favor of the Defendant on comparative negligence.

¹ A copy of the Motion was sent via email to this office.

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCF; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

I. Motion for a New Trial

The “decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal.” McAlhaney v. McEleveen, 413 S.C. 299, 303, 775 S.E.2d 411, 413 (Ct. App. 2015), reh’g denied (Aug. 20, 2015). “The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.” Rule 59, SCRCP.

At the conclusion of the trial, the Court required post-trial motions. Plaintiff made a Motion for Judgment Notwithstanding the Verdict on the grounds that the jury must have been confused in some way because there was no explanation for the jury having come to the verdict that they did. The Court made contemporaneous findings of fact and conclusions of law at that time. This Court denied Plaintiff’s Motion in its Order dated November 19, 2019.

The Court must deny a motion for JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Strange v. S.C. Dep’t of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In considering a motion for JNOV, the court is concerned with the existence of evidence, not its weight. Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003). The Court made contemporaneous findings of fact and conclusions of law for the record and incorporates those findings as if stated verbatim therein. The Court further found that viewed in the light most favorable to Plaintiff, sufficient evidence existed to support the jury’s finding in favor of the Defendant. The Court also found that the verdict was well within the evidence

presented, was not unduly liberal, and was not actuated by passion, prejudice, caprice or some motive outside of the evidence of the case.

The Court stands by this decision and finds that Plaintiff has presented no argument that would justify disregarding the verdict of the jury. The jury heard testimony from Daniel E. Coy via deposition, Doretta McHugh, and two (2) eyewitnesses to the accident. As the finders of the fact, the jury is “imbued with broad discretion in determining credibility or believability of witnesses.” Small v. Pioneer Machinery, Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Sufficient evidence existed from the witness testimony to support the jury’s finding that Defendant was not negligent, and the Court will not disturb the findings of the jury when sufficient evidence existed to support its verdict.

No other motions were made and were accordingly waived. “The motion for a new trial shall be made promptly after the jury is discharged, *or in the discretion of the court* not later than 10 days thereafter.” Rule 59 (b), SCRCP (emphasis added). The Court, in its discretion, deemed all motions not made at the close of the case waived. Alternatively, Plaintiff has offered no argument as to why the Court should grant the Motion. Plaintiff has not cited any deficiencies in the record such as misconduct, lack of evidence, newly discovered evidence that would entitle Plaintiff to relief. By its verdict, the jury in its fact-finding province found the Defendant was not culpable in comparative negligence. Their findings are amply supported by the any evidence standard. See Parker v. Evening Post Pub. Co., 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 1994) (holding that in reviewing a motion for new trial, the standard of review is limited to whether any evidence supports the trial court’s decision); Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (“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.”).

Plaintiff also seeks a new trial pursuant to Rule 404, SCRE. However, Plaintiff does not present any specific arguments as to Rule 404, SCRE. All objections as to the admissibility of evidence were heard and ruled upon at trial. The Court made contemporaneous findings of fact and conclusions of law for the record as to evidentiary issues and incorporates those findings as if stated verbatim therein. Accordingly, Plaintiff’s Motion is Denied.

II. Motion to Alter or Amend

“The purpose of Rule 59(e), SCRCF, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

As explained supra all motions not made at the close of the case were deemed waived by the parties. See Rule 59 (b), SCRCF. Plaintiff’s Motion seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of the Motion to Alter or Amend the Judgment. Plaintiff has not highlighted any portions

of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, Plaintiff's Motion is heard and respectfully Denied.

For the foregoing reasons, Plaintiff's Motion for a New Trial or Motion to Alter or Amend Judgment is respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

November _____, 2019
Moncks Corner, South Carolina



Berkeley Common Pleas

Case Caption: Daniel E Coy , plaintiff, et al VS John Doe

Case Number: 2017CP0802153

Type: Order/Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2019-11-27 13:52:28 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	Case No.: 2017-CP-08-02153
Doretta McHugh as Personal Representative	)	
of the Estate of Daniel E. Coy,	)	
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
v.	)	MOTION FOR RECONSIDERATION
	)	
John Doe,	)	
Defendant.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Daniel C. Boles, Esq.
Defendant's Attorney:	Michael T. Coulter, Esq.
Date of Trial:	November 12-13, 2019
Court Reporter:	Phyllis Norton

This matter came before the Court on Plaintiff's Motion for Reconsideration, filed December 2, 2019. Plaintiff asks the Court to reconsider its Order Denying Plaintiff's Motion for New Trial, which was entered by the Court on November 27, 2019. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff's Motion for Reconsideration is hereby Denied.¹

PROCEDURAL HISTORY

This case came before the Court on November 12-13, 2019 for a jury trial on Plaintiff's negligence cause of action. On comparative negligence, the jury returned a verdict in favor of the Defendant. After publication of the verdict, the Court required post-trial motions pursuant to Rule 50(e), SCRCF. The Plaintiff moved for judgment notwithstanding the verdict ("JNOV"). The Court Denied the Plaintiff's Motion for JNOV and made contemporaneous findings of fact and conclusions of law for the record. The Court required any further motions or matters for the Court's

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCF; Pollard v. City of Florence, 314 S.C. 397, 401-02, 444 S.E.2d 534, 536 (Ct. App. 1994).

consideration. The parties did not have any further matters to bring before the Court. The Court ruled from the bench on November 13, 2019 and thereafter issued its written Order Denying Plaintiff's Motion for JNOV, which was signed by the Court on November 13, 2019 and filed by the Clerk of Court on November 19, 2019.

On November 19, 2019, the Plaintiff filed a Motion for New Trial or to Alter or Amend the Judgment. The Defendant filed its Response to Plaintiff's Motion on November 26, 2019. The Court issued an Order Denying Plaintiff's Motion for New Trial or to Alter or Amend the Judgment on November 27, 2019. The Plaintiff filed its Motion for Reconsideration on December 2, 2019, but failed to serve its Motion on the Court within the ten (10) days required by Rule 59(g), SCRCP. Likewise, counsel failed to serve a copy of its motion on opposing counsel. Ultimately the Court was provided with a copy of the Plaintiff's Motion for Reconsideration on March 9, 2020 by the Clerk of Court. The Court provided Defense counsel with a copy of the motion on March 9, 2020. Subsequently, the Defendant filed its Response to Plaintiff's Motion for Reconsideration on April 14, 2020.

CONCLUSIONS OF LAW

- I. Plaintiff's Motion for Reconsideration is Denied (1) for Plaintiff's failure to file its Motion for New Trial in compliance with Rule 50(e), SCRCP, (2) for Plaintiff's failure to serve the Court with its Motion for Reconsideration within ten days of receipt of written notice of the entry of the Court's Order Denying Plaintiff's Motion for New Trial as required by Rule 59(e), SCRCP, and (2) because the Motion for Reconsideration is without merit.**

A. Rule 50, SCRCP Standard

As an initial matter, the Court finds that Plaintiff's November 19, 2019 Motion for New Trial was improperly filed. Rule 50(e), SCRCP states that a motion for JNOV "shall be made promptly after the jury is discharged, or in the discretion of the court, not later than 10 days thereafter." Rule 50(e), SCRCP. "A motion for new trial may be joined with this motion, or a new

trial may be prayed for in the alternative.” Rule 50(b), SCRCP. The Supreme Court of South Carolina has interpreted this language to mean, “... a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion.” Boone v. Goodwin, 314 S.C. 374, 444 S.E.2d 524 (1994).

At the close of trial, the Court required post-trial motions. The Plaintiff made a motion for JNOV, which the Court heard, denied, made contemporaneous findings of fact and conclusions of law for the record, and issued its written Order. Plaintiff did not move for a new trial, and did not request ten (10) days within which to make a motion for new trial. As a result of Plaintiff’s failure to request additional time to file further post-trial motions, the Court deemed all post-trial motions not made, waived. Therefore, Plaintiff’s November 19, 2019 Motion for New Trial was filed without leave of the Court in violation of Rule 50(e), SCRCP.

Accordingly, the Court could have summarily denied Plaintiff’s Motion for New Trial without a detailed order. However, for clarity and in the interests of justice, the Court issued its November 27, 2019 Order denying Plaintiff’s Motion for New Trial with detailed findings of fact and conclusions of law. In issuing its Order the Court had the full benefit of the Plaintiff’s motion, the Defendant’s response and the trial record. The Plaintiff now seeks reconsideration of the Court’s Order denying its Motion for New Trial when Plaintiff failed to comply with the rules entitling him to file a Motion for New Trial, as he failed to request ten (10) days within which to file a motion for new trial at the close of the trial. However, for clarity and in the interest of justice, the Court will rule on the substantive allegations of Plaintiff’s Motion for Reconsideration.

B. Rule 59(e), SCRCP Standard

“The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State,

309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRCP. “[T]he ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion.” Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018) (citation omitted) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000)).

1. Plaintiff’s Motion for Reconsideration is Denied for Plaintiff’s failure to serve its Motion on the Court within ten (10) days of receipt of written notice of the entry of the Court’s Order Denying Plaintiff’s Motion for New Trial.

As an initial matter, Plaintiff’s Motion for Reconsideration is Denied for failure to comply with Rule 59(g), SCRCP. In Smith v. Fedor, the Court of Appeals upheld the trial court’s decision to deny Smith’s motion for reconsideration on the basis that Smith failed to provide its motion to the trial judge within ten days of filing. 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017). The Smith Court held, “Rule 59(g) would lack any purpose if trial courts committed error by

denying the motion for failure to comply with the rule. Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.” Id.

The Court’s Order denying Plaintiff’s Motion for New Trial was filed on November 27, 2019. Plaintiff received electronic notice of the Court’s Order on November 27, 2019. However, the Plaintiff never served a copy of its Motion on the Court as required by Rule 59(g), SCRCP. The Court was not made aware of the outstanding Motion for Reconsideration until March 9, 2020 when it was notified by the Berkeley County Clerk of Court that counsel for the Plaintiff was seeking to schedule a hearing on the Motion.

Therefore, Plaintiff’s Motion is time-barred as a matter of law. Accordingly, Plaintiff’s Motion for Reconsideration is Denied pursuant to Rule 59(g), SCRCP for failure to serve the Court with the Motion within ten (10) days of its filing.

2. Plaintiff’s argument that the Court should reconsider its November 27, 2019 Order Denying Plaintiff’s Motion for New Trial is without merit.

Alternatively, the Court will address the merits of the Plaintiff’s Motion for Reconsideration despite the fact that the Motion is time-barred for failure to comply with Rule 59(g), SCRCP. Plaintiff’s only argument in support of its Motion for Reconsideration is that the Plaintiff “had not yet had the chance to supplement their Motion for New Trial before a judgment was rendered.” Plaintiff’s Motion for Reconsideration at 1.

Plaintiff cites no law, and the Court can find no law, supporting the proposition that an order may be altered or amended for counsel’s failure to file its motion with particularity as required by the rules, file all accompanying documents with its motion, or promptly supplement its motion with supporting memorandum. On the contrary, Rule 7(b)(1), SCRCP requires that motions, “shall state with particularity the grounds therefor and shall set for the relief or order

sought.” Plaintiff’s Motion for a New Trial states, “[t]his motion is made pursuant to South Carolina law, including but not limited to, Rule 59 of the South Carolina Rules of Procedure, and Rule 404 South Carolina Rules of Evidence.” Plaintiff’s Motion for New Trial at 1. Plaintiff failed to state with particularity the grounds upon which it sought a new trial. However, the Court carefully considered Plaintiff’s Motion for a New Trial and completed a thorough analysis of Rule 59, SCRPC and Rule 404, SCRE in its Order Denying Plaintiff’s Motion for a New Trial.

On Pages 2-3 of its Order Denying Plaintiff’s Motion for New Trial, the Court reiterated its reasons for denying Plaintiff’s Motion for JNOV. Further, the Court found that Plaintiff made no other motions at the close of the jury trial, and that any other motions were therefore waived. See Rule 59(b), SCRPC (“The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.”); see also Boone, 314 S.C. at 374, 444 S.E.2d at 524. The Court required motions pursuant to Rule 59(b), SCRPC and, in its discretion, deemed all motions not made at the close of the case waived. Order Denying Plaintiff’s Motion for New Trial at 3. The Court also discussed Plaintiff’s Rule 404, SCRE argument, stating:

Plaintiff also seeks a new trial pursuant to Rule 404, SCRE. However, Plaintiff does not present any specific arguments as to Rule 404, SCRE. All objections as to the admissibility of evidence were heard and ruled upon at trial. The Court made contemporaneous findings of fact and conclusions of law for the record as to evidentiary issues and incorporates those findings as if stated verbatim therein. Accordingly, Plaintiff’s Motion is Denied.

Order Denying Plaintiff’s Motion for New Trial at 4.

Approximately four (4) months have elapsed since Plaintiff filed its Motion for New Trial, and Plaintiff has yet to identify any basis for its Rule 404, SCRE argument. Further, Plaintiff’s Motion for New Trial was filed on November 19, 2019. The Defendant filed its Reply to Plaintiff’s Motion on November 26, 2019. The Court issued its Order on November 27, 2019. Plaintiff was

afforded nine (9) days to supplement its Motion with a supporting memorandum. To this date, Plaintiff has not filed a memorandum in support of either its Motion for New Trial or the present Motion to Reconsider.

Furthermore, the Court stands by its decision that the Plaintiff presented no argument at the close of the hearing or in its Motion for New Trial that would justify disregarding the verdict of the jury and granting the Plaintiff a new trial. The Court must deny a motion for JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In considering a motion for JNOV, the court is concerned with the existence of evidence, not its weight. Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003). The Court made contemporaneous findings of fact and conclusions of law for the record in denying Plaintiff's Motion for JNOV. The Court found that viewed in the light most favorable to Plaintiff, ample evidence existed to support the jury's finding in favor of the Defendant. The Court also found that the verdict was well within the evidence presented, was not unduly liberal, and was not actuated by passion, prejudice, caprice or some motive outside of the evidence of the case.

The Court reiterates that decision and finds that Plaintiff presented no argument that would justify disregarding the verdict of the jury and granting the Plaintiff a new trial. The jury heard and considered testimony from Daniel E. Coy via deposition,² Doretta McHugh, and two (2) eyewitnesses to the accident. As the finders of the fact, the jury is "imbued with broad discretion in determining credibility or believability of witnesses." Small v. Pioneer Machinery, Inc., 329

² Daniel E. Coy was deceased at the time of trial. His transition was unrelated to this accident.

S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Ample evidence existed from the witness testimony to support the jury's finding that Defendant was not negligent, and the Court will not disturb the findings of the jury when sufficient evidence existed to support its verdict.

The Plaintiff has not cited any deficiencies in the record such as misconduct, lack of evidence, or newly discovered evidence that would entitle the Plaintiff to a new trial. By its verdict, the jury, in its fact-finding province found the Defendant was not culpable in comparative negligence. Their findings are amply supported by the any evidence standard. See Parker v. Evening Post Pub. Co., 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 1994) (holding that in reviewing a motion for new trial, the standard of review is limited to whether any evidence supports the trial court's decision); Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) ("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.").

In conclusion, the Plaintiff has failed to identify any portion of the record that it believes the court has misunderstood, failed to fully consider, or perhaps failed to rule upon. Accordingly, Plaintiff's Motion for Reconsideration is Denied pursuant to Rule 59(e), SCRCP.

CONCLUSION

For the foregoing reasons, pursuant to Rules 50(e), 59(e) and 59(g), SCRCP, Plaintiff's Motion for Reconsideration is Denied.

AND IT IS SO ORDERED.

[Signature Page to Follow]

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April _____, 2020
Charleston, South Carolina
At Chambers



Berkeley Common Pleas

Case Caption: Daniel E Coy , plaintiff, et al VS John Doe

Case Number: 2017CP0802153

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2020-04-29 16:49:20 page 10 of 10

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Doretta McHugh, as the Personal)
Representative of the Estate of Daniel)
E. Coy,)
)
Plaintiff,)
)
vs.)
)
John Doe,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2017-CP-08-02153

VERDICT

FILED
2018 NOV 14 PM 4:00
LEAH QUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

AS TO THE NEGLIGENCE CAUSE OF ACTION:

SPECIAL INTERROGATORIES

PERCENTAGES REQUIRED TO TOTAL 100%

1. Do you find that the Defendant was negligent and that such negligence proximately caused the Plaintiff's injuries?

_____ YES: If you answer yes, GO TO QUESTION 2

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

2. Do you find that the Plaintiff was negligent and that such negligence proximately caused his injuries?

_____ YES: If you answer yes, GO TO QUESTION 3

_____ NO: If you answer no, GO TO QUESTION 4

3. If your answers to both question number 1 and question number 2 are YES, then answer this question.

Taking the combined negligence that proximately caused the Plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant? (The percentages must add up to 100%).

Plaintiff _____ %

Defendant _____ %

Total 100%

If the Plaintiff's percentage of the combined negligence is greater than 50%, **STOP AND DELIBERATE NO FURTHER.**

If the Plaintiff's percentage of the combined negligence is 50% or less, **GO TO QUESTION 4.**

4. Please state the total amount of damages sustained by the Plaintiff:

\$ _____ (dollars) actual damages.

OR

\$ _____ (dollars) actual damages and

\$ _____ (dollars) punitive damages.

NOTE: If your answer to question number 2 was **YES**, do not reduce the Plaintiff's damages above by the percentage of negligence attributed to him in question number 3.

Please sign and date.



Foreperson

November 13, 2019

Please notify the Bailiff(s) when you have completed your deliberations.

BERKELEY COUNTY COURT OF COMMON PLEAS

DATE: 11/12/2019 CASE NO: 2017 CP080 2153
PLAINTIFF(S): Daniel E. Coy ^{Estate of} Doretta McHugh as Personal Representative of the Estate
DEFENDANT(S): John Doe
ATTORNEY FOR PLAINTIFF(S): Daniel Carson Boles
ATTORNEY FOR DEFENDANT(S): Michael T. Coulter

MOTIONS:

11/12/2019 Motion to bifurcate moot
11/13/2019 Directed verdict as to punitive damages - denied
Directed verdict as to liability - denied
P- Motion Judgment notwithstanding verdict - denied
AMENDMENT OF CAPTION

JURORS SERVING:

1. _____	7. _____
2. _____	8. _____
3. _____	9. _____
4. _____	10. _____
5. _____	11. _____
6. _____	12. _____

2019 NOV 14 PM 4:00
LEAH GREGORY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

ALTERNATE JUROR: _____

PLAINTIFF

WITNESSES:

DEFENDANT

Amy Goblet
Malaea Ward
Doretta McHugh
deposition (read) Daniel Coy

VB

DATE: 11.12.2019

CASE NO.: 2017 CP0802153

WITNESSES CONT'D

_____	_____
_____	_____
_____	_____
_____	_____

JURORS EXCUSED BY THE COURT

1. _____ 3. _____
2. _____ 4. _____

EVIDENCE SHEET ATTACHED: _____ YES _____ NO

CASE SENT TO JURY: 2:45 PM
Plt. Rest 10:49 AM 11/14/2019

VERDICT RENDERED: 3:28 PM.

Defendant VERDICT:

Deadra L. Jefferson

PRESIDING JUDGE

Denise Lauder

COURT REPORTER

ADDRESS

TELEPHONE

3/3/15
MAY 2015

Berkeley County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Jefferson Deadra L.

TRIAL TYPE :

PANEL ID : 2017CP0802153

COURTROOM E

DESCRIPTION : Daniel E. Coy vs. John Doe

Sorted by: Random Nbr

Trial

NAME	JUROR/NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Kinder, Catherine A	98	W	F	()	()	()	
2 Rice, Roger D Jr.	139	W	M	()	()	()	
3 Matayabas, Deena E	113	W	F	()	()	()	
4 Sawyers, Sharon R	144	W	F	()	()	()	
5 Hamm, Marvin L JR	75	W	M	()	()	()	
6 Ludwig, Mary P	110	W	F	()	()	()	
7 Geraghty, James T III	60	W	M	()	()	()	
8 Drew, Randal W	41	W	M	()	()	()	
9 Nelson, Donna P	128	B	F	()	()	()	
10 Thieme, Robert	166	W	M	()	()	()	
11 Varley, Joy A	169	W	F	()	()	()	Foreperson
12 Rosser, Jefferson D III	143	W	M	()	()	()	

FILED
 2019 NOV 14 PM 4:00
 CLERK OF COURT
 BERKELEY COUNTY, SC
 VB

Total Number of Jurors:

12

** END OF REPORT **

VB

Berkeley County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Jefferson Deadra L.

TRIAL TYPE :

Sorted by: Random Nbr

PANEL ID : 2017CP0802153

DESCRIPTION : Daniel E. Coy vs. John Doe

Trial

COURTROOM E

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
~~1 Jackson, Gerald C Jr.~~	~~88~~	~~W~~	~~M~~	~~P1~~	~~()~~	~~()~~	
2 Kinder, Catherine A	98	W	F	()	()	()	
3 Rice, Roger D Jr.	139	W	M	()	()	()	
~~4 Brown, Stinnie~~	~~23~~	~~B~~	~~M~~	~~D2~~	~~()~~	~~()~~	
5 Matayabas, Deena E	113	W	F	()	()	()	
~~6 Harris, Brandon M~~	~~77~~	~~W~~	~~M~~	~~D3~~	~~()~~	~~()~~	
~~7 Todd, John G IV~~	~~168~~	~~W~~	~~M~~	~~D4~~	~~()~~	~~()~~	
8 Sawyers, Sharon R	144	W	F	()	()	()	
~~9 Dixon, Glen D II~~	~~38~~	~~W~~	~~M~~	~~D4~~	~~()~~	~~()~~	
~~10 Cooper, Kristen L~~	~~36~~	~~W~~	~~F~~	~~D3~~	~~()~~	~~()~~	
11 Hamm, Marvin L JR	75	W	M	()	()	()	
12 Ludwig, Mary P	110	W	F	()	()	()	
13 Geraghty, James T III	60	W	M	()	()	()	
14 Drew, Randal W	41	W	M	()	()	()	
15 Nelson, Donna P	128	B	F	()	()	()	
16 Thieme, Robert	166	W	M	()	()	()	
17 Varley, Joy A	169	W	F	()	()	()	
~~18 Pope, Alicia A~~	~~133~~	~~W~~	~~F~~	~~D1~~	~~()~~	~~()~~	
~~19 Smith, Ethan G~~	~~154~~	~~W~~	~~M~~	~~D2~~	~~()~~	~~()~~	
20 Rosser, Jefferson D III	143	W	M	()	()	()	

FILED
 2019 NOV 14 PM 4:00
 LEAH G. HENRY, CLERK
 CLERK OF COURT
 BERKELEY COUNTY, SC

Total Number of Jurors:

20

** END OF REPORT **

VB

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Daniel E. Coy,)
)
Plaintiff,)
)
vs.)
)
JOHN DOE,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-08-

2153

SUMMONS
(Jury Trial Requested)

FILED
SEP 15 PM 3:53
MARY P. BROOKIN
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

September 7, 2017
Charleston, South Carolina

BOLES LAW FIRM, LLC



Daniel C. Boles
Attorney for Plaintiff
S.C. Bar #79135
23 Broad Street | 3870 Leeds Ave. Ste. 104
P.O. Box 381
Charleston, SC 29402
843.576.5775 t
800.878.5443 f
dan@boleslawfirmllc.com

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

DANIEL E. COY,

CASE NO.: 2017-CP-08-

2153

Plaintiff,

v.

JOHN DOE,

Defendants.

COMPLAINT
(Jury Trial Requested)

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2017 SEP 15 PM 3:53

FILED

TO: THE DEFENDANT ABOVE NAMED:

The Plaintiff, Daniel E. Coy, complaining of the actions and omissions of the above named Defendant, says as follows:

1. Plaintiff, Daniel E. Coy, is and was a citizen and resident of Berkeley County, South Carolina.
2. Upon information and belief, Defendant. fled the scene of the collision and is unknown.
3. At all times relevant hereto, the acts and omissions committed by Defendant giving rise to this action occurred in Berkeley County, South Carolina.
4. This Honorable Court has jurisdiction over the parties and subject matter of this action.

FOR A FIRST CAUSE OF ACTION
(Negligence)

5. That on or about June 14, 2017, while Plaintiff Coy was carefully and prudently operating his motorcycle, lawfully traveling on north on U.S. 17 ALT.

6. At approximately the same time and place, Defendant was traveling behind Plaintiff.

7. As Plaintiff slowed to turn right, Defendant, failing to keep a proper look out, suddenly and without warning, drove their vehicle into the back of Plaintiff's motorcycle, causing a violent collision and injuries to Plaintiff.

8. Defendant then left the scene.

9. Defendant owed a duty of care to all other drivers, including Plaintiff, to properly and carefully operate the vehicle and comply with traffic laws of the State of South Carolina.

10. Defendant breached his duty of care and acted with negligence, gross negligence, carelessness, recklessness, willfulness and wantonness in one or more of the following particulars to-wit:

- a. In failing and omitting to keep a proper lookout in violation of the Code of Laws of South Carolina;
- b. In failing and omitting to keep his vehicle under proper control in violation of the Code of Laws of South Carolina;
- c. In failing and omitting to have his vehicle equipped with proper or adequate brakes, or if so equipped, by failing and omitting to use said brakes in violation of the Code of Laws of South Carolina;
- d. In driving the vehicle in an erratic and dangerous manner so as to indicate a conscious disregard for the safety and lives of others;
- e. In failing to use the degree of care which a reasonably prudent person would exercise under the same or similar circumstances, in violation of the Code of Laws of South Carolina;
- f. In failing to properly operate the vehicle in order to avoid the collision; and

- g. In failing to take any evasive action to keep from striking the vehicle occupied by Plaintiff.

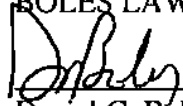
11. Defendant's negligent, grossly negligent, careless, reckless, willful and wanton conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the collision described herein.

12. As a direct and proximate result of Defendant's negligent, grossly negligent, careless, reckless, willful and wanton conduct and breach of duties owed to Plaintiff, Plaintiff has suffered damages in the form of:

- a. Physical injury and harm;
- b. Past and future medical expenses;
- c. Past and future physical pain and suffering;
- d. Injuries/impairment to her body;
- e. Loss of enjoyment of life.
- f. Lost Wages

WHEREFORE, Plaintiff demands judgment against Defendants for actual and punitive damages, for the costs of this action, and for such other and further relief as this Court deems just and proper.

September 7, 2017
Charleston, South Carolina

BOLES LAW FIRM, LLC

Daniel C. Boles
SC Bar # 79135
23 Broad Street
3870 Leeds Avenue, Ste. 104
Post Office Box 381
Charleston, SC 29402
843.576.5775 office
800.878.5443 fax
dan@boleslawfirmllc.com

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DANIEL E. COY

Plaintiff(s)

vs.

JOHN DOE,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 08-

2153

Submitted By: Daniel C. Boles

Address: P.O. Box 381 Charleston, SC 29402

SC Bar #: 79135

Telephone #: 843-576-5775

Fax #: 800.878.5443

Other:

E-mail: dan@boleslawfirmllc.com

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

DOCKETING INFORMATION (Check all that apply)

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

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ - ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☒ Motor Vehicle Accident (320) ☒ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (410) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: Daniel C. Boles

Date: 9.7.2017

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

Common Pleas

Clerk : Mary P. Brown

300 B California Avenue

Moncks Corner, SC 29461

Phone:(843) 719-4400 Fax:(843) 719-4509

Received From: Boles, Daniel Carson
PO Box 381
Charleston, SC 29402

Date: 9/15/2017
Receipt #: 6076381
Clerk: c08thill

Paying for: Coy, Daniel E

Transaction Type: Payment

Reference #: 1624

Payment Type: Check \$150.00

Comment:

Total Paid: \$150.00

Non-Refundable

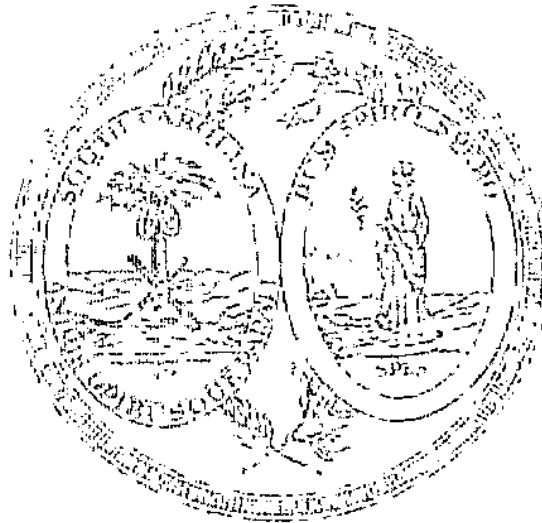
Total Received: \$150.00

Change Due: \$0.00

You may check the status of your Berkeley case at:

<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2017CP0802153	Daniel E Coy VS John Doe	\$150.00	\$150.00	\$0.00	320



Total Cases: 1

\$150.00

\$150.00

\$0.00

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Doretta McHugh, As Personal
Representative of The Estate of
Daniel E. Coy,

CASE NO.: 2017-CP-08-2153

Plaintiff,

v.

**AMENDED SUMMONS
(Jury Trial Requested)**

John Doe,

Defendants.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

BOLES LAW FIRM, LLC

s:/Daniel C. Boles

Daniel C. Boles

SC Bar # 79135

23 Broad Street

3870 Leeds Avenue, Ste. 104

Post Office Box 381

Charleston, SC 29402

843.576.5775 office

800.878.5443 fax

dan@boleslawfirmllc.com

October 23, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Doretta McHugh, As Personal
Representative of The Estate of
Daniel E. Coy,

CASE NO.: 2017-CP-08-2153

Plaintiff,

v.

AMENDED COMPLAINT
(Jury Trial Requested)

John Doe,

TO: THE DEFENDANT ABOVE NAMED:

The Plaintiff, complaining of the actions and omissions of the above named Defendant, says as follows:

1. Plaintiff, Daniel E. Coy, is and was a citizen and resident of Berkeley County, South Carolina.
2. Upon information and belief, Defendant. fled the scene of the collision and is unknown.
3. At all times relevant hereto, the acts and omissions committed by Defendant giving rise to this action occurred in Berkeley County, South Carolina.
4. This Honorable Court has jurisdiction over the parties and subject matter of this action.

FOR A FIRST CAUSE OF ACTION
(Negligence)

5. That on or about June 14, 2017, while Plaintiff Daniel E. Coy was carefully and prudently operating his motorcycle, lawfully traveling on north on U.S. 17 ALT.

6. At approximately the same time and place, Defendant was traveling behind Plaintiff.
7. As Plaintiff slowed to turn right, Defendant, failing to keep a proper look out, suddenly and without warning, drove their vehicle into the back of Plaintiff's motorcycle, causing a violent collision and injuries to Plaintiff.
8. Defendant then left the scene.
9. Defendant owed a duty of care to all other drivers, including Plaintiff, to properly and carefully operate the vehicle and comply with traffic laws of the State of South Carolina.
10. Defendant breached his duty of care and acted with negligence, gross negligence, carelessness, recklessness, willfulness and wantonness in one or more of the following particulars to-wit:
 - a. In failing and omitting to keep a proper lookout in violation of the Code of Laws of South Carolina;
 - b. In failing and omitting to keep his vehicle under proper control in violation of the Code of Laws of South Carolina;
 - c. In failing and omitting to have his vehicle equipped with proper or adequate brakes, or if so equipped, by failing and omitting to use said brakes in violation of the Code of Laws of South Carolina;
 - d. In driving the vehicle in an erratic and dangerous manner so as to indicate a conscious disregard for the safety and lives of others;
 - e. In failing to use the degree of care which a reasonably prudent person would exercise under the same or similar circumstances, in violation of the Code of Laws of South Carolina;
 - f. In failing to properly operate the vehicle in order to avoid the collision; and
 - g. In failing to take any evasive action to keep from striking the vehicle occupied by Plaintiff.
11. Defendant's negligent, grossly negligent, careless, reckless, willful and wanton conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the collision

described herein.

12. As a direct and proximate result of Defendant's negligent, grossly negligent, careless, reckless, willful and wanton conduct and breach of duties owed to Plaintiff, Plaintiff has suffered damages in the form of:

- a. Physical injury and harm;
- b. Past and future medical expenses;
- c. Past and future physical pain and suffering;
- d. Injuries/impairment to her body;
- e. Loss of enjoyment of life.
- f. Lost Wages

WHEREFORE, Plaintiff demands judgment against Defendants for actual and punitive damages, for the costs of this action, and for such other and further relief as this Court deems just and proper.

BOLES LAW FIRM, LLC

s:/Daniel C. Boles
Daniel C. Boles
SC Bar # 79135
23 Broad Street
3870 Leeds Avenue, Ste. 104
Post Office Box 381
Charleston, SC 29402
843.576.5775 *office*
800.878.5443 *fax*
dan@boleslawfirmllc.com

October 23, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2017-CP-08-02153
COUNTY OF BERKELEY	)	
	)	
Daniel Coy,	)	
	)	
Plaintiffs,	)	PROGRESSIVE DIRECT
	)	INSURANCE COMPANY'S NOTICE OF
vs,	)	APPEARANCE AND ANSWER
	)	OF JOHN DOE
John Doe,	)	(Jury Trial Demanded)
	)	
Defendant.	)	

Progressive Direct Insurance Company, as possible underinsured motorist carrier (hereinafter "Carrier") herein, hereby files a Notice of Appearance and Answer to the Complaint as follows:

1. That the Carrier, by and through its assigned counsel, Michael T. Coulter, notices its appearance pursuant to Section 38-77-160, 1976, S.C. Code of Laws, as amended, specifically reserving any and all rights, objections, and defenses it may have available under the law and the insurance policy in question, and request that copies of all pleadings, discovery, and other materials served in this action by any party be served upon the undersigned at the address given below.

2. The alleged uninsured motorist carrier respectfully demands a jury trial pursuant to Rule 38 of the South Carolina Rules of Civil Procedure. That assigned counsel is not representing the Defendant and will not undertake that representation at this time.

3. To the extent that a responsive pleading is required, the undersigned denies each and every allegation of the Complaint, asserts affirmative defenses set forth in Rule 8 of the South Carolina Rules of Civil Procedure, as to service and personal jurisdiction, asserts the defense that the plaintiffs' claims are, or maybe, time barred by the applicable

Statute of Limitations, and raises those defenses set forth in Rule 12, of the South Carolina Rules of Civil Procedure, all to the extent they are applicable.

4. That counsel for the Carrier specifically reserves the option to assume control of the defense of the case in the name of the defendant pursuant to the underinsurance or uninsured statute should the Carrier choose to exercise that option; and

5. Further, in filing this notice, Progressive Direct Insurance Company makes no representations, admissions or otherwise as to the existence, applicability or amount of any insurance coverage. Progressive Direct Insurance Company specifically pleads and asserts any applicable offsets, credits, setoffs or exclusions available under the terms of any applicable policy and South Carolina Law.

6. This appearance is made pursuant to South Carolina Code of Laws, Section 38-77-160, in making this appearance, Progressive Direct Insurance Company specifically reserves all rights, objections, setoffs, exclusions, credits, offsets, and defenses available under the terms of any applicable policy, and the applicable laws and statutes of the State of South Carolina.

7. In making this appearance, the Carrier specifically reserves and does not waive any rights pursuant to its policy of insurance, including, but not limited to, the applicability of underinsured and/or uninsured motorist coverage to this action and/or whether or not underinsured and/or uninsured motorist coverage is included as part of said policy, and further intends to reserve all rights which it may have pursuant to South Carolina Code 38-77-160.

8. That the Carrier requests that its counsel be notified in writing, and served by counsel of record for Plaintiff and Defendant, of all court hearings, motion hearings, status

conferences, trial dates and like matters and be provided copies of all discovery requests, discovery responses and notice of all depositions and like proceedings by the respective counsel for the parties herein.

9. The Carrier admits, upon information and belief, the allegations contained in paragraph 1 of the plaintiffs' Complaint.

10. The Carrier does not have sufficient information to admit or deny, therefore, the Carrier denies the allegations contained in paragraph 2 of the plaintiffs' Complaint, and demands strict proof thereof.

11. The Carrier admits, upon information and belief, the allegations contained in paragraph 3 of the plaintiffs' Complaint.

12. The Carrier admits, upon information and belief, the allegations contained in paragraph 4 of the plaintiffs' Complaint.

13. The Carrier denies the allegations contained in paragraph 5 of the plaintiffs' Complaint.

14. The Carrier denies the allegations contained in paragraph 6 of the plaintiffs' Complaint.

15. The Carrier denies the allegations contained in paragraph 7 of the plaintiffs' Complaint.

16. The Carrier denies the allegations contained in paragraph 8 of the plaintiff's Complaint.

17. The Carrier admits that all drivers owe a duty of care to other vehicles to properly and carefully operate the vehicle and comply with all traffic laws. The Carrier denies the remaining allegations of the plaintiff's Complaint.

18. The Carrier denies the allegations contained in paragraph 10 of the plaintiff's Complaint, including all subparts therein.

19. The Carrier denies the allegations contained in paragraph 11 of the plaintiff's Complaint.

20. The Carrier denies the allegations contained in paragraph 12 of the plaintiff's Complaint, including all subparts therein.

21. The Carrier denies each and every allegation of the plaintiffs' Complaint not specifically admitted, modified, or explained herein above.

FOR A SECOND DEFENSE

22. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

23. The Carrier alleges that the Complaint of the plaintiffs fail to state facts sufficient to constitute a cause of action against them and, therefore, the plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

24. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

25. The Carrier alleges that even assuming that the defendant was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on his/her part operated as a proximate cause of the accident and the plaintiffs' resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that the plaintiffs' negligent, grossly negligent,

reckless, willful and wanton conduct contributed more than 50% to the cause of the accident and the plaintiffs' resulting injuries and damages, if any. For that reason, the Carrier is not liable to the plaintiffs in any sum whatsoever.

FOR A FOURTH DEFENSE

26. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

27. The Carrier alleges that even if the defendant was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and if any such conduct on her part operated as a greater than 50% cause of the accident and the plaintiffs' resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, they are entitled to a determination as to the percentage which the plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to the plaintiffs in an amount equal to that percentage of the plaintiffs' own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

28. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

29. The Carrier alleges that the plaintiff has failed to mitigate his damages and, therefore, the plaintiffs' Complaint should be dismissed.

FOR A SIXTH DEFENSE

30. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

31. The Carrier specifically reserves any additional and/or affirmative defenses as may become available to it or revealed to it during the course of the investigation and/or discovery in this case.

FOR A SEVENTH DEFENSE

32. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

33. The Carrier would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding section of the Constitution of the State of South Carolina, Article 1, Section 3.

Plaintiffs' claim for punitive damages violates the Carrier's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Carrier's exercise of that right.

Plaintiffs' claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons;

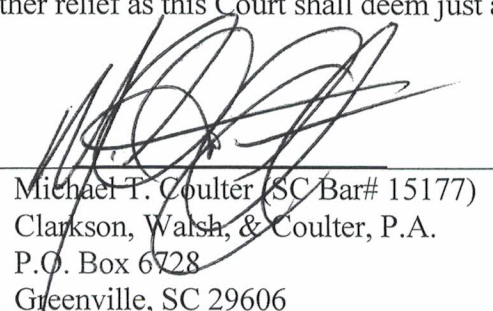
(a) The standard or test for determining the requisite mental state of the defendants for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the plaintiffs and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the

amount of punitive damages that may be awarded is indeterminate at the time of the defendants' alleged conduct.

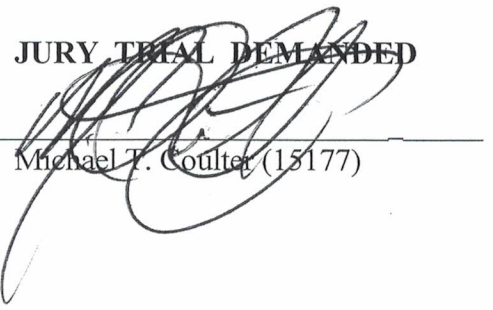
WHEREFORE, having fully answered the Complaint of the plaintiff, the Carrier prays that the Complaint of the plaintiff be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this Court shall deem just and proper.

By: _____


Michael T. Coulter (SC Bar# 15177)
Clarkson, Walsh, & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400/(864) 235-4399 (fax)
Attorneys for Progressive Direct Insurance Company

JURY TRIAL DEMANDED

By: _____


Michael T. Coulter (15177)

Greenville, South Carolina
November 6, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2017-CP-08-02153
COUNTY OF BERKELEY	)	
Doretta McHugh, as Personal	)	
Representative of the Estate of	)	PROGRESSIVE DIRECT INSURANCE
Daniel E. Coy,	)	COMPANY'S NOTICE OF APPEARANCE
	)	AND ANSWER OF JOHN DOE TO
Plaintiff,	)	PLAINTIFF'S AMENDED COMPLAINT
	)	
vs.	)	
	)	(JURY TRIAL DEMANDED)
John Doe,	)	
	)	
Defendant.	)	
	)	

Progressive Direct Insurance Company, as possible underinsured motorist carrier (hereinafter "Carrier") herein, hereby files a Notice of Appearance and Answer to the Amended Complaint as follows:

1. That the Carrier, by and through its assigned counsel, Michael T. Coulter, notices its appearance pursuant to Section 38-77-160, 1976, S.C. Code of Laws, as amended, specifically reserving any and all rights, objections, and defenses it may have available under the law and the insurance policy in question, and request that copies of all pleadings, discovery, and other materials served in this action by any party be served upon the undersigned at the address given below.

2. The alleged uninsured motorist carrier respectfully demands a jury trial pursuant to Rule 38 of the South Carolina Rules of Civil Procedure. That assigned counsel is not representing the Defendant and will not undertake that representation at this time.

3. To the extent that a responsive pleading is required, the undersigned denies each and every allegation of the Amended Complaint, asserts affirmative defenses set forth in Rule 8 of the South Carolina Rules of Civil Procedure, as to service and personal

jurisdiction, asserts the defense that the plaintiffs' claims are, or maybe, time barred by the applicable Statute of Limitations, and raises those defenses set forth in Rule 12, of the South Carolina Rules of Civil Procedure, all to the extent they are applicable.

4. That counsel for the Carrier specifically reserves the option to assume control of the defense of the case in the name of the defendant pursuant to the underinsurance or uninsured statute should the Carrier choose to exercise that option; and

5. Further, in filing this notice, Progressive Direct Insurance Company makes no representations, admissions or otherwise as to the existence, applicability or amount of any insurance coverage. Progressive Direct Insurance Company specifically pleads and asserts any applicable offsets, credits, setoffs or exclusions available under the terms of any applicable policy and South Carolina Law.

6. This appearance is made pursuant to South Carolina Code of Laws, Section 38-77-160, in making this appearance, Progressive Direct Insurance Company specifically reserves all rights, objections, setoffs, exclusions, credits, offsets, and defenses available under the terms of any applicable policy, and the applicable laws and statutes of the State of South Carolina.

7. In making this appearance, the Carrier specifically reserves and does not waive any rights pursuant to its policy of insurance, including, but not limited to, the applicability of underinsured and/or uninsured motorist coverage to this action and/or whether or not underinsured and/or uninsured motorist coverage is included as part of said policy, and further intends to reserve all rights which it may have pursuant to South Carolina Code 38-77-160.

8. That the Carrier requests that its counsel be notified in writing, and served by counsel of record for Plaintiff and Defendant, of all court hearings, motion hearings, status conferences, trial dates and like matters and be provided copies of all discovery requests, discovery responses and notice of all depositions and like proceedings by the respective counsel for the parties herein.

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19. The Carrier denies the allegations contained in paragraph 11 of the plaintiff's Amended Complaint.

20. The Carrier denies the allegations contained in paragraph 12 of the plaintiff's Amended Complaint, including all subparts therein.

21. The Carrier denies the allegations contained in the "WHEREFORE" paragraph of the plaintiff's Amended Complaint.

22. The Carrier denies each and every allegation of the plaintiff's Amended Complaint not specifically admitted, modified, or explained herein above.

23. The Carrier hereby denies all Requests for Admissions served on Defendant/Carrier pursuant to Rule 36 of the South Carolina Rules of Civil Procedure which are inconsistent with Defendant's/Carrier's Answer.

FOR A SECOND DEFENSE

24. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

25. The Carrier alleges that the Amended Complaint of the plaintiffs fail to state facts sufficient to constitute a cause of action against them and, therefore, the plaintiffs' Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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plaintiffs in an amount equal to that percentage of the plaintiffs' own negligent, grossly negligent, reckless, willful and wanton conduct.

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33. The Carrier specifically reserves any additional and/or affirmative defenses as may become available to it or revealed to it during the course of the investigation and/or discovery in this case.

FOR A SEVENTH DEFENSE

34. The Carrier realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

35. The Carrier would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection causes of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding section of the Constitution of the State of South Carolina, Article 1, Section 3.

Plaintiff's claim for punitive damages violates the Carrier's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills the Carrier's exercise of that right.

Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons;

(a) The standard or test for determining the requisite mental state of the defendants for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the plaintiffs and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of the defendants' alleged conduct.

WHEREFORE, having fully answered the Amended Complaint of the plaintiff, the Carrier prays that the Amended Complaint of the plaintiff be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this Court shall deem just and proper.

By: s/Michael T. Coulter

Michael T. Coulter (SC Bar# 15177)
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(864) 232-4400/(864) 235-4399 (fax)
Attorneys for Progressive Direct Insurance Company

JURY TRIAL DEMANDED

By: s/Michael T. Coulter

Michael T. Coulter (15177)

Greenville, South Carolina
October 24, 2019

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BERKELEY

3 DANIEL COY,

4 Plaintiff,

5 vs.

C.A. NO. 2017-CP-08-02153

6 JOHN DOE,

7 Defendant.

8
9
10
11 DEPOSITION OF: DANIEL COY

12 DATE: April 13, 2018

13 TIME: 9:04 a.m.

14 LOCATION: 3870 Leeds Avenue
Charleston, SC

15 TAKEN BY:

Counsel for the Defendant

17 REPORTED BY: Roxanne Easterwood, RPR

18
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919

24 Asheville, NC
25 (828) 123-9876



Page 2 1 APPEARANCES OF COUNSEL: 2 3 ATTORNEYS FOR PLAINTIFF: 4 BOLES LAW FIRM 5 BY: DAN BOLES 6 23 Broad Street 7 Charleston, SC 29401 8 (843) 576-5775 9 Dan@boleslawfirmllc.com 10 11 ATTORNEYS FOR THE DEFENDANT: 12 CLARKSON WALSH & COULTER 13 BY: RAYMOND D. TURNER 14 1164-A Woodruff Road 15 Greenville, SC 29607 16 (864) 232-4400 17 Rturner@clarksonwalsh.com 18 19 (INDEX AT REAR OF TRANSCRIPT) 20 21 22 23 24 25	Page 3 1 PROCEEDINGS 2 * * * * * 3 DANIEL COY 4 being first duly sworn, testified as follows: 5 EXAMINATION 6 BY MR. TURNER: 7 Q. Mr. Coy, my name is Ray Turner. We 8 met earlier. My law firm represents Progressive 9 Insurance, who is your uninsured motorist carrier 10 in this matter. So we -- it's sort of 11 complicated, but I represent the unknown entity 12 that is John Doe. So that's why I'm here today, 13 is to take your deposition regarding that case, 14 okay. 15 I understand you have been involved in 16 a lawsuit before. But have you ever taken a 17 deposition, like, in a setting like this? 18 A. No, not at all. 19 Q. A couple of rules I need to go over 20 with you. During the deposition you will probably 21 anticipate several of my questions. Some of them 22 are redundant. Some of them I probably already 23 know the answer or at least think I know the 24 answer, but allow me to finish that question. 25 I'll allow you to finish your answer. That way
Page 4 1 we're not speaking over each other. Try to give a 2 verbal response instead of shoulder shrug or head 3 nod. She can't take down, obviously, that. 4 Try to stay way from using words like 5 huh-uh. I'm terrible about using the word myself, 6 but we need to try to stay away from it. If we 7 ever need to read it back in court, it's kind of 8 an ambiguous word. Judges don't like it. 9 I don't expect this to be a very long 10 deposition. It's probably going to be pretty 11 short, but we can take as many breaks as you need 12 to take. Just understand, during that break 13 you're still under oath, and not avoid any 14 conversation with attorney, but at least about the 15 extent of this litigation, because I can ask you 16 about those conversations. 17 Ready to get started? 18 A. Yes. 19 Q. Give me your full name. 20 A. Daniel Everett coy. 21 Q. What is your address, Mr. Coy? 22 A. 104 Expressway Drive, Summerville, 23 South Carolina. 24 Q. How long have you lived at that 25 address?	Page 5 1 A. 20-some-odd years. I believe 26. 2 Q. Is that your parents' house? 3 A. Yes. Every time I'm pretty much 4 geared to move out, some other interesting event 5 always ends up happening and sets me back, 6 including my original lawsuit I had 16, 17 years 7 ago, 17 now almost. 8 Q. What are your parents' names? 9 A. Doretta and Mark McHugh. It's with a 10 D, Doretta. 11 Q. Your father is who? 12 A. Mark McHugh. 13 Q. Anybody else live there? 14 A. No. 15 Q. Back at the time of this accident last 16 June was anybody else living there? 17 A. No. 18 Q. At the time of this accident how many 19 vehicles did you have? 20 A. Just the one. Just the bike. 21 Q. Just the bike? 22 A. Still do. 23 Q. Still have it? Still have the same 24 bike? 25 A. No. No. No.

Page 6 1 Q. Your parents, do they have vehicles? 2 A. Yes. At the time my mother had a Ford 3 Escape, and my father still drives a Ford Ranger. 4 Q. Who were they insured with? 5 A. Couldn't tell you. If I had to guess, 6 I believe -- I think it's USAA. 7 Q. Was anyone else living in the 8 household with you back in 2017 other than your 9 parents? 10 A. No. 11 Q. What is your date of birth? 12 A. 9/28/1992. 13 Q. So you're 36 years old? 14 A. I will be soon enough. 15 Q. Okay, 35. What is your social. 16 MR. TURNER: Off the record for this. 17 (Discussion off the Record.) 18 BY MR. TURNER: 19 Q. Do you know your drivers' license 20 number? 21 A. Yes. 011434479. 22 Q. Has your drivers' license ever been 23 suspended? 24 A. Yes. A long time ago back in 2008 it 25 was suspended.	Page 7 1 Q. What was it suspended for? 2 A. Simple possession and driving under 3 suspension as well. 4 Q. What type of license do you have? 5 A. Now I have a motorcycle license as 6 well as a typical drivers' license. 7 Q. Did you have a motorcycle license at 8 the time of this accident? 9 A. I had the beginners permit. 10 Q. What did you have to do to get the 11 motorcycle license? 12 A. For the beginners permit I had to do 13 the written test. I had already passed the 14 Trident Technical's motorcycle safety course for 15 verification, for my insurance as well, just so I 16 could reduce the costs. Also, I had never been on 17 a motorcycle before then. 18 Q. How long was that course? 19 A. It was an entire weekend long. I 20 believe it was close to about 17 hours between the 21 two days. 22 Q. When did you actually start riding the 23 motorcycle? 24 A. Mine or at all? 25 Q. At all?
Page 8 1 A. That weekend. It would have been the 2 29th of April 2017. 3 Q. Two minutes before this accident you 4 began riding a motorcycle? 5 A. Yes, sir. 6 Q. Would you agree you were -- strike 7 that. That's the first time you had rode 8 motorcycles in your life starting that April? 9 A. Yes. Yes. I saw a picture of my 10 bike, and I sold my car, and I walked for four 11 months waiting for it to arrive. 12 Q. Tell me about your education. Where 13 did you go to high school? 14 A. Stratford High School. 15 Q. Did you graduate from there? 16 A. Yes. 17 Q. What year did you graduate? 18 A. 2001. 19 Q. Did you have any college after 20 Stratford? 21 A. Yes. Trident Tech. 22 Q. Other than your motorcycle course you 23 took, did you receive any other degrees or 24 certifications from there? 25 A. From a college or --	Page 9 1 Q. From Trident. 2 A. From Trident, no, nothing more than 3 like surf safe and other stuff. I went for 4 culinary arts training, and so all the stuff that 5 requires basically being certified as a chef. I 6 didn't complete any of the final stuff for the 7 associate's degree basically because my chef told 8 me I was wasting my time spending money on an 9 education when I could just go get a job in a 10 kitchen and I'd learn everything I needed to know. 11 Q. So you never finished that degree? 12 A. No. I had a teacher that said it was 13 a waste of money. It was the most unusual thing I 14 had experienced up to that point. 15 Q. When the teacher tells you that about 16 a degree, he's probably right. Any other ongoing 17 education or higher education than what you just 18 told me about? 19 A. No, not in particular, other than I 20 guess I learn as much as possible almost every 21 night anyway. I'm a night auditor in a hotel, 22 because the degree also works for hospitality. So 23 I ended up taking all of my fine dining background 24 and wrapping it up and going into hotels instead. 25 Q. Have you ever been married before?

Page 10

1 A. No.
2 **Q. Got any children?**
3 A. No.
4 **Q. In Berkeley County, other than**
5 **potentially your parents, do you have any other**
6 **relatives in Berkeley County?**
7 A. No.
8 **Q. I know you told me you're a night**
9 **auditor in a hotel. What hotel is that?**
10 A. SpringHill Suites in North Charleston,
11 Ashley Phosphate now.
12 **Q. How long have you been there for?**
13 A. I started there in October.
14 **Q. October 2017?**
15 A. Yes.
16 **Q. So roughly about four months after**
17 **this accident?**
18 A. Yes.
19 **Q. Your job as a night auditor, describe**
20 **those duties a little bit to me.**
21 A. I balance the books for the day, make
22 sure all of the money is going to the right place
23 in the hotel between either the customers that are
24 in-house or any direct billing that might need to
25 be done. Beyond that, of course, making sure that

Page 12

1 Main Street is the Circle K.
2 **Q. How long had you worked for the Circle**
3 **K?**
4 A. At that point I had been there for, it
5 was just shy of two years at that point. I
6 started with them in August 2015.
7 **Q. What did you do for them?**
8 A. Nightshift.
9 **Q. Cashier?**
10 A. Yes.
11 **Q. How much were they paying you per**
12 **hour?**
13 A. At that time I would have been making
14 close to, I believe, \$9.25 an hour, because
15 there's an additional hazard pay for being on the
16 nightshift. So usually it gives you an additional
17 quarter, 50 cents, 75 cents depending on the
18 building.
19 **Q. How many hours did you typically work**
20 **a shift?**
21 A. Typically did almost over nine hours a
22 day. I would go in at 1:00 at night, and I would
23 usually stay until 8:00 in the mornings.
24 **Q. Following this accident did you miss**
25 **any work?**

Page 11

1 the guests are as comfortable as possible. We
2 want to make sure that it's their home away from
3 home.
4 **Q. Before SpringHill, had you been a**
5 **night auditor somewhere else?**
6 A. Yes. I've been doing night auditing
7 now for almost five years. I only exclusively
8 worked in night shift in general for almost
9 17 years, pretty much since I got out of high
10 school.
11 **Q. What hotels have you worked for?**
12 A. I worked for the Residence Inn at
13 Riverview as well as the Courtyard in Mount
14 Pleasant and 526.
15 **Q. At the time of this accident back in**
16 **June 2017, where were you working at that time?**
17 A. I was working split places. I was
18 working two jobs at the time. The primary, which
19 is where the accident happened out front of, was
20 the Circle K Gas Station on 17A at Main Street,
21 and the other one was at the Courtyard on Fridays
22 and Saturday nights.
23 **Q. Where was that Courtyard at again?**
24 A. 526 and 17. What is it? It's 1251
25 Wood Lawn Avenue is the Courtyard. 1667 North

Page 13

1 A. Yes. I actually couldn't go that
2 single day, and then, thankfully, the Thursday
3 after that was a day off. I limped in to the
4 Courtyard on Friday.
5 **Q. So you had worked on the date of this**
6 **accident?**
7 A. No. No. Like, the night of, no. No.
8 No. I was hit maybe about 20 minutes before my
9 shift was supposed to start.
10 **Q. You were coming to work when you were**
11 **hit?**
12 A. Yes. I was pulling into the building
13 and hit just outside of the parking lot.
14 **Q. About what time was that?**
15 A. I would say it would have been close
16 to about 10:37 at night.
17 **Q. Your shift was supposed to start at**
18 **11:00 that night?**
19 A. Yes, sir. I had just gone down the
20 street for something else beforehand.
21 **Q. I'm familiar with that area. Is it**
22 **fairly well lit?**
23 A. Sure. It's Main Street, Summerville,
24 right across from the Tasty Express.
25 **Q. So you really only missed one shift of**

Page 14

1 **work? You're telling me you basically missed one**
2 **shift of work at Circle K?**
3 A. I couldn't afford to miss any others.
4 I actually didn't want to miss that one, but my
5 manager insisted that I actually go home. I
6 believe the amount of bleeding I was doing out of
7 my face was basically not good for the customers.
8 **Q. Who was your manager?**
9 A. Delma Azucena.
10 **Q. How do you spell that last name?**
11 A. A-Z-U-C-E-N-A, I believe.
12 **Q. When did you -- do you still work for**
13 **Circle K?**
14 A. No. I was required, basically, to
15 quit all of my other jobs to start on SpringHill.
16 **Q. SpringHill was a sort of promotion for**
17 **you?**
18 A. Considerably. It was an uptick
19 overall. I mean, I'm not making as much as I was
20 between the two jobs, but.
21 **Q. It was more than one apiece?**
22 A. Yes.
23 **Q. I shouldn't say sort of. That's a bad**
24 **word. It was a promotion for you?**
25 A. More or less. It's certainly more of

Page 16

1 almost an entire year at that point. I started on
2 with the Courtyard and Marriott September 5th,
3 2016.
4 **Q. So this didn't hinder you from getting**
5 **your job; you were already working there, right?**
6 A. Yes. But being able to get other
7 stuff, because I was still actively pursuing
8 another job. Like I said, I had been basically
9 waiting for another auditor to get out of the way
10 for almost maybe four and a half years at that
11 point.
12 **Q. Maybe I'm confused here. Where are**
13 **you a night auditor at right now?**
14 A. SpringHill in North Charleston.
15 **Q. You started there when?**
16 A. October 2017.
17 **Q. Had you applied at SpringHill in June?**
18 **Had you already applied to get a job?**
19 A. No. No. No. No. No. I wasn't
20 there, but I was applying at other auditing
21 positions all over town at the time.
22 **Q. Which other ones had you applied at?**
23 A. The Courtyard -- not the Courtyard.
24 Well, I had been applying for more positions in
25 the Courtyard, and the woman who is the night

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1 what I've been wanting and doing. Unfortunately,
2 night auditing positions are treasured positions
3 in town. Most of the night auditors in a lot of
4 these buildings have been in them for 5, 6, 10,
5 15 years.
6 I was basically just waiting for one
7 of them to get out of the way so I could finally
8 pick up my own nightshift. That's how competitive
9 that is, because I had already been doing part
10 time as a relief auditor, basically, for their
11 weekend shifts.
12 **Q. Did this accident hinder you from**
13 **being able to get a job in any way?**
14 A. Totally, because you need
15 transportation in this town to basically work.
16 Anybody is aware of that that's lived here long
17 enough. To have suddenly lost my only principal
18 transportation meant that then I was stuck. The
19 only thing I could really do is work up in
20 Summerville unless I borrowed somebody's car or I
21 rented a vehicle to get down to Mount Pleasant,
22 which is almost 33 minutes from my front door.
23 **Q. So had you already applied for your**
24 **job at the Courtyard at this time?**
25 A. I was already working for them for

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1 auditor still there has been trying to move on
2 herself into nursing, I believe is what she was
3 going for, but it sounded like she's moving away
4 from that and going to accounting, oddly enough.
5 I had been applying at a couple of
6 other places, including the Francis Marion Hotel
7 downtown, the King Charles Inn. I prefer to work
8 more of a high-end hotel if I have a choice about
9 it.
10 **Q. When did you apply at SpringHill?**
11 **When did you put in application with them where**
12 **you started in October 2017? When did you apply**
13 **or put in application with them?**
14 A. I put in with them 2017, on
15 September 26th, I believe it was.
16 **Q. You were hired about a month later?**
17 A. No. No. No. I was hired within
18 about two days later. I just basically had to put
19 in all of my notices for my other jobs that I
20 would be leaving them and give them enough
21 cushion, basically, so they could find a viable
22 replacement, not just leave them high and dry.
23 **Q. What were you driving in this**
24 **accident?**
25 A. What was I in?

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1 **Q. Yes.**
2 A. Same bike as the one that's outside,
3 Ducati Scrambler Cafe Racer.
4 **Q. After this accident it was never**
5 **repaired, right?**
6 A. Not that I'm aware of. I was told it
7 was auctioned off in Savannah.
8 **Q. It was totaled?**
9 A. Yes, I'm told, unfortunately.
10 **Q. Were you paid by your insurance**
11 **company for the motorcycle, or they paid you?**
12 A. They paid off the deed, I believe it
13 was. Progressive paid the deed directly to
14 Ducati, as far as I'm aware. Unfortunately, I was
15 removed more or less from most of that information
16 as to what was or wasn't happening. All I know, I
17 was basically informed that my bike had been
18 considered totalled and taken to auction in
19 Savannah to be, I guess, parsed out to somebody
20 who wanted the pieces if they bid on it.
21 **Q. So paid it. How long after that**
22 **accident was this when they paid the vehicle off**
23 **or paid the motorcycle off?**
24 A. I couldn't tell you exactly, because I
25 actually was continuing to make payments on the

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1 or less, to buy another bike at all of my own
2 expense.
3 **Q. What type of bike is that?**
4 A. The same. They're both the same.
5 I've only ridden on three bikes in my life, the
6 one that I trained on and then two of the exact
7 same bike.
8 **Q. How much was it that Progressive paid**
9 **for your deed or lien or whatever it was on your**
10 **bike?**
11 A. I couldn't tell you offhand, but I
12 believe the settled amount was somewhere around
13 the number of 10,500 I think, including deductible
14 and other things like that. I was still required
15 to finish paying off the amount of the loan, which
16 I believe my loan was in excess of almost \$15,000.
17 And I had placed a giant chunk of my own money on
18 that one as well to begin with, almost 3300
19 overall of my own money. No. Yeah. About 3300
20 of my own money to begin with on the first bike.
21 **Q. Who was your lienholder for that bike?**
22 A. Ducati Financial.
23 **Q. How long had you been paying payments**
24 **on it?**
25 A. That bike at that time?

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1 bike all the way up until I believe it was the end
2 of September. I can't remember if I made a
3 payment on it in October or not. But I was still
4 required to pay on the motorcycle that I had no
5 longer been riding for a few months after the
6 accident.
7 **Q. When did you get a new motorcycle**
8 **following the accident?**
9 A. I scrounged up every bit of money I
10 could and made myself nearly destitute basically
11 trying to get another bike immediately, because
12 they only brought two of them to town. So if I
13 wasn't able to get that bike, then I probably
14 wouldn't have been able to get that bike again
15 until this time of the year.
16 **Q. Because you wanted that particular**
17 **bike?**
18 A. As I said, I sold my car and walked
19 for four months to pay for it.
20 **Q. So you didn't have a motorcycle for**
21 **four months following this accident?**
22 A. No. No. No. Following the accident
23 I didn't have a motorcycle for almost three and a
24 half weeks. Like I said, I pushed it as much as I
25 could to make a decent enough down payment, more

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1 **Q. Yes.**
2 A. I had already made two payments.
3 Well, no. The first month I didn't make a
4 payment. I made a payment for the month of June,
5 and the bike was destroyed ten days later.
6 **Q. You got licensed, and in the meantime**
7 **you had just bought this bike, correct?**
8 A. I got my beginners permit right away,
9 as soon as I could with the bike. Then, yes,
10 after that I basically made payments on my bike as
11 quick as I possibly could.
12 **Q. Where did you buy it from?**
13 A. Champion Honda Ducati BMW. Not too
14 far. Just around the corner here on Dorchester.
15 Only dealership for Ducati's in the area.
16 **Q. I want to switch gears here a little**
17 **bit. We submitted some questions to your attorney**
18 **for him to answer on your behalf, and he did. I**
19 **just want to go over some of this stuff. Don't be**
20 **embarrassed by this. I have to ask this. Have**
21 **you been arrested?**
22 A. Yes.
23 **Q. How many times?**
24 A. Twice. Like, technically arrested,
25 yes.

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1 **Q. What were those two times for?**
2 A. One was for speeding and simple
3 possession in Georgetown, and the other was for
4 speeding and simple possession, as well as driving
5 under suspension in Chester County.
6 **Q. When did the one in Georgetown happen?**
7 A. January 2005.
8 **Q. That was possession of marijuana,**
9 **correct?**
10 A. Yes.
11 **Q. The one in Chester County, when did**
12 **that happen?**
13 A. 2008, June or July 20, 2008.
14 **Q. That was simple possession of**
15 **marijuana as well?**
16 A. Yes.
17 **Q. It looks like there was another simple**
18 **possession charge in 2007 in Berkeley County. Do**
19 **you recall that?**
20 A. Yes. That was also in -- I believe
21 that was in 2006, but that didn't -- I wouldn't
22 say that counted as an arrest as much as a stop.
23 It was a stop, and they handed me a ticket and let
24 me go about my way.
25 **Q. You were charged with driving under**

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1 **Q. Did you ever file a lawsuit against**
2 **them for false arrest?**
3 A. No. I didn't bother, basically
4 because we saw the judge railroad some poor kid in
5 the courthouse. My mom was digging her nails in
6 my leg to not speak up for the fact that the
7 fellow just got blind-sided with a charge for no
8 reason or a serious sentence for no reason.
9 **Q. The day of this accident, was this on**
10 **a Wednesday?**
11 A. Yes.
12 **Q. Prior to the accident had you consumed**
13 **any alcohol or taken any prescription drugs?**
14 A. No. No. No. I went to go see
15 Ghostbusters down at the Charleston Music Hall
16 downtown. They were running the Summer of Bill
17 Murray last year.
18 **Q. Did you take any nonprescription drugs**
19 **that day or use any marijuana?**
20 A. No.
21 **Q. You told me you were on the way to**
22 **work. You were at work. You were actually near**
23 **the parking lot there, right?**
24 A. Just outside of it on Main Street,
25 yes. I was turn into the parking lot when

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1 **suspension in Georgetown County, right, when you**
2 **had that possession?**
3 A. Yes.
4 **Q. It says simple possession of marijuana**
5 **in Charleston County. Do you recall that?**
6 A. I believe that would have been the one
7 that gave me a suspension. That would have been
8 right around the corner here from Leeds,
9 basically. A friend of mine needed help getting
10 to a appointment over here at the jail or the
11 courthouse. That was not very far around here on
12 the off ramp where I got my first simple
13 possession charge ever. That was at the end of
14 2004, I believe it was.
15 **Q. Was that an arrest or just a stop?**
16 A. Just another stop. I also had another
17 arrest that ended up being nullified in 2005,
18 2006, I believe it was. The officers that stopped
19 me at 5:00 in the morning in St. George said that
20 I had a suspended license when I didn't, and I had
21 verifiable proof from the state that I didn't. I
22 still had to end up spending the weekend in St.
23 George.
24 **Q. For driving with suspended license?**
25 A. Supposedly, but I wasn't.

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1 somebody hit me.
2 **Q. What roadway was that again?**
3 A. 17A, Main Street, Summerville.
4 **Q. What were the weather conditions like?**
5 A. Clear.
6 **Q. Roads were dry?**
7 A. Yes.
8 **Q. What is the speed limit on that right**
9 **there, 17A?**
10 A. Most of it is 45. At different parts
11 it opens up at 45. At that direction area right
12 there is definitely 45.
13 **Q. Tell me what happened in the accident.**
14 A. I had just gone to the Cook Out Burger
15 just down the street, because I was going to go in
16 to work early, and then I noticed that my coworker
17 and her daughter were there. And a few weeks
18 prior they had brought me something in to eat
19 completely unprompted. And I had had a great
20 night seeing Ghostbusters downtown.
21 I was feeling rather magnanimous. So
22 I went to the Cook Out Burger down the street and
23 grabbed them all something to eat and was riding
24 back to the store when, as I was turning into the
25 store, I thought the bike had seized up completely

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1 underneath me, and I picked myself up off the
2 ground and started making an insurance phone call
3 when somebody informed me that I had not been on a
4 seized bike.
5 They were listening in on my
6 conversation out of concern for me, to make sure I
7 was, you know, not damaged in my head or anything.
8 I was bleeding profusely as well as limping all
9 over the place. They informed me that I actually
10 had not had a bike seize up under me, but that
11 somebody had hit me and ran.
12 **Q. You didn't notice that a vehicle hit**
13 **you from behind?**
14 A. No. No. I was too busy paying
15 attention to the turn that I was about to make. I
16 was in the turning lane. I was in first gear,
17 possibly going no faster than 19 miles per hour,
18 because any faster than that in first gear starts
19 sounding kind of loud on that bike.
20 **Q. This was a left turn you were going to**
21 **make?**
22 A. No. Right turn.
23 **Q. Did you see any lights behind you or**
24 **anything like that?**
25 A. No. No. The last time I had seen

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1 plate, as you will see on my bike outside. They
2 noticed that it had actually been scraped, which
3 is likely only possible if somebody had just
4 brushed it basically with a --
5 **Q. Did you see this yourself?**
6 A. Yeah, I noticed. I didn't know what I
7 was basically looking at until other people were
8 informing me. Like, I couldn't understand why
9 they were calling my bike totalled. It looked
10 like just a little fix or a patch there and it
11 should be operable. But three different mechanics
12 at the store, when I was able to finally wheel it
13 in there or have it towed in there, three
14 different mechanics looked at it at different
15 times, and all claimed totalled for different
16 reasons. They were all looking at a different
17 part of the bike. I couldn't see it. I'm rather
18 new the bikes in general.
19 **Q. Had your bike ever seized up on you**
20 **before?**
21 A. No.
22 **Q. When you fell off the bike, did you go**
23 **off the handle bars, or did you just fall over?**
24 A. No. I went over the handle bars. I
25 distinctly remember seeing my own headlight coming

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1 anybody it was before the -- I had crossed the
2 intersection of the stoplight previous or
3 whatever. There were people in the other lane to
4 my left and the inner track. But beyond that, no,
5 I hadn't noticed anybody offhand myself. I had no
6 idea that I had been hit at all.
7 **Q. You didn't hear a vehicle behind you?**
8 A. No. No, I didn't. Like I said, I was
9 paying attention to the turn I was about to make.
10 I was completely focussed on that, because I was a
11 newer rider. So I was making sure I was taking
12 everything at the right speed as much as I could.
13 **Q. So do you know -- other than somebody**
14 **telling you, did you even know that you were**
15 **actually hit from behind by another vehicle?**
16 A. No. I had no idea at all. Literally,
17 I had to be informed. Unfortunately, we tried to
18 confirm as much as possible with any of the video
19 feeds around. Everything was not pointed in the
20 best direction, unfortunately.
21 **Q. Other than somebody telling you you'd**
22 **been hit, do you have any other proof that your**
23 **bike was actually hit by another vehicle?**
24 A. I don't personally, but I believe the
25 fellows at the store said they noticed the tail

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1 at me.
2 **Q. You didn't feel a jerk; you just felt**
3 **the bike stop?**
4 A. I felt a jerk. I definitively felt a
5 jerk. I tried to halt myself as much as possible
6 between my brakes. And I mean, I was already
7 going at a slow pace to begin with. Like I said,
8 I couldn't have been going faster than 19 miles
9 per hour, but I imagine I was going a little bit
10 slower than that anyway. I was approaching my
11 turn. I was about maybe, I want to say no more
12 than 35, 40 feet from where I was actually going
13 to be turning into.
14 **Q. Jerked is a bad word. You didn't feel**
15 **the impact? You didn't feel an impact? You just**
16 **felt a jerk instead?**
17 A. Pretty much. I just know that the
18 bike completely halted underneath me, and it was
19 while I was making sure that I was changing my
20 gears. So that way when I get into the store I
21 still need to make sure that not only am I in
22 first, but sometimes I need to pop up because it's
23 a rather busy gas station. Sometimes I have to
24 pop up into second just so I can coast in at the
25 proper speed without the bike being ridiculously

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1 loud. Like I said, in the lower gear, once you
2 get to 19 miles per hour it's at 4000 RPMs, and it
3 sounds like it wants to change gears.
4 Since it was still in the break-in
5 phase of the bike, they recommend that you change
6 gears at 4000 RPMs and never ever try to go above
7 that during the first initial break-in phase of
8 the bike. They basically insist if you want to
9 make sure that your bike is performing as best as
10 it's going to for the longest run that you never
11 get above 4000 RPMs. I was consistently doing
12 that because, as far as I was concerned, it was a
13 piece of moving art, and I wanted to make sure
14 that it would be around as long as possible.
15 **Q. Did you see this vehicle after it hit**
16 **you at any point? Did you see it leave the scene?**
17 A. No. No. I tried to get off the
18 ground as quick as I could because I knew I was
19 still in the middle of the road. I couldn't tell
20 you how long I was down, but I couldn't imagine it
21 being longer than just a few moments, possibly
22 longer than five seconds at the very most.
23 Personally, I think I was off the ground in three,
24 but the person who did it, from what was described
25 to me was principally, they saw them touch my rear

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1 lot of the employees, would just usually have
2 herself dropped off, and her kids would use the
3 car while she was gone.
4 **Q. What was Mya doing there the night --**
5 A. Waiting to pick her mom up to go home,
6 basically.
7 **Q. You came there and spoke with them**
8 **before the accident?**
9 A. No. No. I just noticed they both
10 happened to be there when I was coming home,
11 because I had to get gas from the bike. So I came
12 back through Summerville, and I noticed that they
13 were there. I figured I would just show up early.
14 When I saw that they were there, like I said, I
15 thought about how they had brought me something to
16 eat, and I thought it would be nice to do the same
17 in return. When I left there, I went home and
18 took off my helmet, and then got back on the bike
19 and went to grab everybody something to eat.
20 **Q. Mya, where was she standing at when**
21 **the accident occurred?**
22 A. She was out front of the gas station.
23 She was by -- I noticed her as I was pulling in.
24 She was actually standing near the front door,
25 which is where a lot of people kind of linger

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1 end, saw that the bike had seized up, basically,
2 and they just scooted around me and kept going.
3 **Q. Who told you this?**
4 A. Mya, because she was the one who
5 actually standing outside of the store.
6 **Q. Mya was your co-worker or co-worker's**
7 **daughter?**
8 A. Daughter.
9 **Q. What is Mya's last name?**
10 A. Couldn't tell you.
11 **Q. Who is Mya's mother?**
12 A. Her name, Aimee, with an A-I-M-E-E.
13 **Q. Do you know her last name?**
14 A. Not offhand, but I know it's German.
15 **Q. Mya, did she work there, too?**
16 A. No. No. No. She -- Aimee would
17 typically get dropped off by her daughters or
18 whatever so that way her daughters were still able
19 to use the cars, because they were going to
20 school, as well as they had their own jobs and
21 stuff like that.
22 Typically Aimee, since she's just
23 going to be there for eight hours one way or the
24 other or longer, considering some of our shifts
25 that typically run nine to ten hours there for a

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1 about anyway.
2 **Q. She was the first person that**
3 **approached you after this accident?**
4 A. No. Actually, I jumped up off the
5 ground, like I said, as quick as I thought I
6 could. By the time I was coming up off the
7 ground, Aimee was already coming out of the store
8 screaming, oh my God, Coy, are you okay. I said
9 no.
10 I was disoriented, but I was still
11 looking around and making sure the traffic wasn't
12 coming at me. She asked me what could she do to
13 help. I was able to help her basically lift my
14 bike and then wheeled it out of the street just so
15 that way we weren't obstructing the traffic or
16 making myself an easy target for another.
17 **Q. Did you get any other witness's names**
18 **that may have saw this accident?**
19 A. Unfortunately, since it was a gas
20 station and they already saw that a couple of
21 people had witnessed it, they decided to go on
22 about their day. I recognized a few people that
23 were there. And a few people said they were
24 sorry, because some had pulled up just after the
25 accident and some were already leaving when the

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1 accident happened.
2 I saw a few people. Unfortunately, I
3 wasn't able to collect any of their names, even
4 though I begged for more help, more information,
5 because as soon as I found out I was hit, you
6 know, I was basically looking for as much help as
7 I possibly could. That's when I actually hung up
8 my phone call. I believe if Progressive still has
9 the audio of me saying, what, I was hit, hold on a
10 second. That's when Mya actually took the phone
11 from me and described the person on the phone,
12 what happened at all.
13 **Q. Did anyone make any pursuit or any**
14 **type of attempt to find this other vehicle that**
15 **hit you?**
16 A. No, I don't believe so. Perhaps maybe
17 a customer had been concerned might have gone in
18 that direction to see who they were, but I never
19 got my results on that front, no.
20 **Q. Who called the police?**
21 A. I did. As soon as I said, what, I've
22 been hit, she began to explain to the person or
23 whatever, and I thought then for prudence I should
24 probably go ahead and call 911 as well as getting
25 a police report filed considering I figured it

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1 A. Originally the EMS showed up, and then
2 I saw officers from Berkeley County first that
3 were just there principally to assist, but then
4 after I was about maybe, I want to say, possibly
5 more than, like, 15 minutes into my interview more
6 or less with the EMS and them -- having them check
7 me out and look me over and make sure that nothing
8 is broken or, you know, completely destroyed on
9 me, the state troopers finally pulled up, and it
10 was handled by Officer Rebman, R-E-B-M-A-N.
11 **Q. Did you know Officer Rebman**
12 **beforehand?**
13 A. Yes. Actually most of the state
14 troopers use that Circle K specifically as a
15 satellite for where they would typically meet up,
16 because we never hassled them about coffee, and
17 the conversation was typically better at our store
18 than it was typically at the other one.
19 **Q. What did you tell the officer had**
20 **happened? Did you tell them anything different?**
21 A. No.
22 **Q. Tell me about that conversation.**
23 A. No. It was principally pretty much
24 the same stuff of what happened. I don't know. I
25 thought the bike seized up on me, she said I was

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1 would probably be for the best overall in my
2 eventual claim on my bike being destroyed.
3 **Q. How long did it take the police to**
4 **come out there?**
5 A. A lot longer than I would have liked,
6 in fact. The emergency services arrived first,
7 and they took almost eight to nine minutes post my
8 call to them.
9 **Q. EMS you mean?**
10 A. Yes. Which at that point that would
11 have been almost 15, 16 minutes post the accident,
12 because I was about maybe four and a half minutes,
13 five minutes. I couldn't tell you. Actually,
14 Progressive would probably know if they still have
15 the audio log. I was hell over deep into that
16 phone call with them.
17 I didn't know I had been hit. I
18 possibly almost upwards of seven minutes into the
19 phone call making a claim on insurance after
20 holding on wait, you know, and then finally
21 talking to an agent. As a matter of fact, if I
22 could find my old phone, I would be able to look
23 up the call log. But I hung up with the insurance
24 immediately and called 911 myself.
25 **Q. What police agency came to there?**

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1 hit. That was pretty much the extent of it.
2 **Q. Did the officer make any attempt or**
3 **tell you he was going to make any attempt to find**
4 **the person that struck you?**
5 A. Yes. As well as basically asking
6 right away for video feed from the store and
7 asking any other details, if I saw anybody else on
8 the highway. I told him that I knew that there
9 was a car behind me in another lane, as I told
10 you. But I didn't know that there was anybody
11 directly behind me at that time, no.
12 **Q. When the accident occurred -- and I'm**
13 **sorry to go back in time here. Was there any**
14 **vehicles -- I know you were taking a right into**
15 **the store, but were there any vehicles coming from**
16 **the opposite direction at the time you were taking**
17 **that right?**
18 A. Couldn't tell you offhand. Like I
19 said, I was completely centered in on focussing on
20 the turn I was going to make.
21 **Q. You believe you had slowed down to at**
22 **least 19 miles per hour?**
23 A. Yes. Like I said, I was about 30,
24 40 feet away from where I was turning. So to go
25 any faster than that would pretty much mean my own

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1 doom.

2 **Q. What type of -- how many lanes were in**

3 **that roadway?**

4 A. Typically it's a four-lane highway,

5 but where I was at was an offshoot turn. It was

6 where a turning lane was beginning, basically,

7 which was -- where I picked myself up off the road

8 is just where the signage on the pavement says

9 only, signifying the right turn lane.

10 **Q. Did you tell me Officer Rebman was**

11 **with state patrol?**

12 A. State trooper.

13 **Q. Is he the one that wrote the accident**

14 **report, or do you know if he made an accident**

15 **report, Rebman?**

16 A. Yes. Berkeley County declined to

17 write because it was an issue, apparently, for a

18 state trooper on their highway.

19 **Q. So you wouldn't have any idea of how**

20 **fast this vehicle hit you when it occurred, right?**

21 A. Right. No. No. I don't.

22 **Q. You're doing a good job explaining to**

23 **me what happened. Tell me a little bit about your**

24 **injuries. Tell me what happened to you. I know**

25 **you said you got thrown over the handlebars. Tell**

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1 literally gives clear vantage point of where I was

2 struck.

3 **Q. Do you know any of these other**

4 **customers that saw this?**

5 A. Offhand not particularly. The only

6 one I could think that might have been there at

7 that time would have been David. I never quite

8 got his last name, but me and him have exchanged

9 music, stuff like that from time to time. But he

10 would have been facing towards the counter I

11 believe. He might have been in the back of the

12 store. But he definitely saw me get up off the

13 ground.

14 I couldn't tell you as to whether or

15 not he actually saw it. I asked him later on, and

16 he said he didn't really notice anything in

17 particular because he wasn't actually looking at

18 the incident as it happened, and if any traffic

19 was going by, it's not like he clocked it, because

20 everybody was centered on to me as to whether or

21 not I was even alive.

22 **Q. Do you know how I can reach David?**

23 A. Best I have is his cell phone number.

24 **Q. What is his cell phone?**

25 A. I have it in my coat in the other

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1 **me what happened from there.**

2 A. I was thrown over the handlebars, and

3 my bike actually rolled over me. I still have the

4 destroyed jacket that has the arm completely

5 destroyed from having the bike completely go over

6 my right arm, and it went over part of my chest.

7 And I was still continuing to roll, but I actually

8 landed still in front of my bike, which means that

9 I continued to move after the bike had finally

10 stalled out. As a matter of fact, the bike was

11 still turned on whenever I was able to get up off

12 the highway and get some help lifting it up.

13 **Q. Who helped you lift it up?**

14 A. Aimee.

15 **Q. But you don't think Aimee witnessed**

16 **it, just Mya?**

17 A. She saw it from inside the store. She

18 happened to be looking up. Apparently, they both

19 heard it, and a couple of other guests said they

20 heard it as well, customers said they heard it as

21 well, the actual. But to decipher between whether

22 or not it was the actual hit or the bike flipping,

23 you know, some people were turned the other way.

24 The way that the store is located and the way that

25 the counter -- the store is also located, it

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1 room.

2 **Q. You can go grab it.**

3 MR. TURNER: Off the record.

4 (A recess transpired.)

5 MR. TURNER: Back on the record.

6 BY MR. TURNER:

7 **Q. What is David's cell phone number?**

8 A. I have (843) 371-0135. Me and him

9 would talk occasionally through the nights and

10 trade opinions on music and live shows and stuff

11 like that.

12 **Q. What injuries did you sustain as a**

13 **result of this accident?**

14 A. My left foot ax-kicked the ground as I

15 was thrown over the handlebars, and my ankle is

16 still -- not my ankle, but my actual heel is still

17 constantly in pain from that. My back, obviously,

18 slammed into the ground also as hard as possible.

19 Picked up some road rash there. My glasses, as my

20 face hit the pavement -- because that was, of

21 course, the first contact with the ground -- my

22 glasses shoved into my face and left me with a

23 cut, persistent scar that I still have.

24 **Q. Do you care -- after we get through**

25 **taking your deposition, do you mind me taking a**

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1 **photograph of your scar?**
2 A. Sure. Sure. Sure. And it's not as
3 frequent, but I still get headaches from time to
4 time because I also had a minor fall with my bike
5 where -- it was where we were practicing the
6 training on motorcycle training where you're
7 moving along, and then basically you have to learn
8 how to take a bit of a turn and then be able to
9 brake properly without basically flipping the bike
10 or flipping yourself off the bike, and I messed up
11 and went off the bike to the side and landed on my
12 head with a helmet on, but the accident six weeks
13 later or whatever, I basically incurred two
14 concussions within principally two months.
15 **Q. So this other event was six weeks**
16 **earlier?**
17 A. Yes. At the motorcycle training
18 course.
19 **Q. Did they send you to get treatment**
20 **anywhere after you fell?**
21 A. No. I was perfectly fine. I didn't
22 even scuff my clothing. I had a bit of a
23 headache. But you know.
24 **Q. How do you know you had a concussion?**
25 A. Don't know offhand, but I definitely

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1 **Q. Did EMS offer to take you to the**
2 **hospital, or did the officer ask you if you needed**
3 **to be transported to the hospital?**
4 A. They did. They all asked -- or they
5 asked if I would like to go to the hospital, and I
6 just tried to shake it off because I knew I
7 couldn't afford any bit of it. Still can't, to be
8 honest.
9 **Q. After the accident where did you go**
10 **to?**
11 A. The two places that he recommended to
12 me, because they would basically be covered more
13 or less as a part of the -- any of the suit that I
14 might be making claim, because I couldn't afford
15 any other alternative. I had already stretched
16 myself as hard as I possibly could to secure the
17 second bike.
18 **Q. When you say he, you mean your**
19 **attorney referred you to somewhere?**
20 A. Yes, sir.
21 **Q. You said two places?**
22 A. Both of them were Omni. Honestly, I
23 remember only getting the one checkup, actually,
24 the one at the Omni Healthcare on Dorchester Road.
25 **Q. That's the only place you sought**

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1 got one from the second incident. And ever since
2 then I've had mildly persistent headaches. This
3 is coming from the fact that I hadn't typically
4 gotten more than a headache a single year -- a
5 single headache in a single year pretty my entire
6 life before. At most, I'd get an odd headache.
7 **Q. You have had constant headaches since?**
8 A. I wouldn't say constant, but they do
9 pop up, where I'll usually get one about once
10 every three and a half weeks or so, which is
11 considerably unusual for me.
12 **Q. Did you have headaches following that**
13 **first event where you fell at the training course?**
14 A. No.
15 **Q. Did any doctor ever diagnose you with**
16 **a concussion following this accident?**
17 A. This second one? No. No. No. On
18 the scene they said I seemed responsive enough.
19 They did encourage me to go to the hospital, but I
20 wasn't covered medically. I had no health
21 insurance at that time. So I couldn't afford what
22 would likely be ridiculous triage bills, any of
23 them that would come my way. I couldn't have them
24 destroying my credit rating. I had already taken
25 a hit enough on the bike alone.

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1 **treatment after this accident?**
2 A. Yes. No. That's right. The other
3 place was -- Omni referred me to an ultrasound
4 place on Trident or out of the Trident area. I
5 can't remember the name of the building offhand,
6 but they wanted to look at the giant hematoma in
7 my arm from where my bike rolled over my arm.
8 I wanted to make sure that it was
9 okay, because in the mornings I have coffee at
10 Carolina Coastal Roasters or Carolina Coffee
11 Roasters -- it's Coastal Coffee Roasters, I
12 believe is the actual name of it. There the
13 fellow that would sit beside me in the mornings is
14 actually an ER surgeon, and I said what's going on
15 with this, and -- because I wanted to make sure,
16 because I was asking for as much help as I
17 possibly could.
18 And he said, it appears to be a
19 hematoma under the arm, and he said I should get
20 it looked at in case of any blood clots or
21 anything like that, because it usually doesn't go
22 bad, but if it does it would be best to know
23 whether or not ahead of time if there's any kind
24 of, like, pinched or crimped vein or nerve. But
25 of course, he couldn't give me an official

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1 diagnosis, because that wasn't his purview or
2 prerogative at the time. Just one person looking
3 at another.

4 **Q. Did you have the ultrasound done?**
5 A. Yes.

6 **Q. When did you first go to Omni Health
7 on Dorchester Road?**
8 A. I believe it would have been in
9 August.

10 **Q. My records indicate you went in
11 July 6, 2017?**
12 A. Was it? That's probably more correct.
13 I don't know. I was doing quite a bit of stuff,
14 including securing the second bike, which I
15 grabbed on July 7th.

16 **Q. Is that why you waited three weeks,
17 because you were trying to get a bike? Why did
18 wait three weeks to go get treatment?**
19 A. To get treatment? Because, for
20 starters, I didn't have any health coverage at
21 all. And when I came in looking for a lawyer
22 after I discovered I had been hit, I debated for
23 about maybe four or five days whether or not it
24 was worth suing my own insurance, but after it
25 became apparent that Progressive wasn't going to

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1 know if it was something I could just get over.
2 But the thing in my arm, I was concerned that
3 perhaps maybe a ligament or tendon had been torn.

4 And if you've ever seen an image of
5 sports imagery or whatever, when that happens, it
6 tends to take the muscle and curl up, and it ends
7 up being like a hard lump. And that's all I could
8 feel in my arm. So I was beginning to be scared
9 basically that I might be in real peril,
10 particularly after talking with the fellow in the
11 morning. He made it seem like it wasn't bad but
12 could be if I didn't get it looked at. So I took,
13 basically, that as the sign that I should probably
14 go and start looking to get more help.

15 **Q. You told me -- where exactly did you
16 have this ultrasound done?**
17 A. It was on Tricom Road. I don't
18 remember the building offhand, unfortunately.

19 **Q. I don't have records from that place.
20 Do you have them?**
21 A. I don't offhand, but they sent me --
22 it was through the Omni Health Care Center, or
23 their plan of, like, what is it, people more or
24 less, their network. It was recommended through
25 them.

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1 help me at all and they weren't actually moving
2 fastly to write the claim or make any adjustments
3 at all -- of course, I imagine they were in early
4 discovery, but I had to start making as many moves
5 as possible.

6 Within that three weeks I got over as
7 much of the injury as possible and was able to
8 help myself enough to more or less be able to get
9 around town by either borrowing my father's truck
10 or doing what I could either between meetings from
11 here and their recommendation that I go and
12 actually get medical treatment and deciding as to
13 whether or not I actually wanted to file a suit,
14 which I honestly think I didn't decide until the
15 start of July that I would actually need to go
16 ahead and file a lawsuit.

17 **Q. That was because of your frustration
18 with Progressive insurance?**
19 A. It wasn't just that. It was just that
20 I became more nervous mostly about the hematoma in
21 my arm, because the scar in my face is
22 unfortunate. I would very much like it to go
23 away. I didn't know that my heel would be as
24 persistently agitated as it still is. Of course,
25 it's still early bruising or whatnot. I didn't

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1 **Q. How long after your visit with Omni
2 did you have this ultrasound done?**
3 A. I believe I was able to be scheduled
4 in almost a month later, but I still had a giant
5 hematoma on my arm that long out.

6 **Q. Did they do the ultrasound to your
7 arm?**
8 A. Actually, if I can remember correctly,
9 I think it might have been August 12th when I went
10 to go see them.

11 **Q. Did they do the ultrasound to your
12 arm?**
13 A. Yes.

14 **Q. What did they tell you about the
15 results of that ultrasound?**
16 A. They didn't tell me anything, because
17 I believe they're not really supposed to, because
18 the technician isn't like the doctor. So they
19 just do what they're supposed to do. They're
20 supposed to check out this place, and they sent me
21 on my way. So I never got any positive or
22 negative results at all. I never found out what
23 happened.

24 **Q. Did you ever get any other medical
25 treatment other than that?**

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1 A. No. Because already the bill for just
2 75 bucks for the ambulance even showing up had
3 come around. I was still so destitute at that
4 point I could barely pay off that. I couldn't
5 begin to incur any more, because what I really
6 want to do is seek help, basically some kind of
7 cosmetic surgeon to look at my scar on my face,
8 because the last thing I want to do is accrue any
9 more of those, particularly in a noticeable spot
10 like the bridge of my nose.
11 Unfortunately, there was nothing in
12 Omni's Healthcare where I could talk to anybody
13 about what it might cost for any kind of cosmetic
14 surgery that might be required.
15 **Q. Just the two visits, the Omni and the**
16 **ultrasound?**
17 A. Yes.
18 **Q. Tell me, let's go through it again so**
19 **I'm clear about every injury you believe you**
20 **received in the accident, even if minor. Tell me**
21 **everything that you believe you hurt in the**
22 **accident.**
23 A. I have photographs.
24 **Q. I want to know from you.**
25 A. My left foot that hit the ground as

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1 A. No. I was so covered in scars. I was
2 so mentally damaged basically about what had
3 happened, because it was my 19th birthday, and my
4 friend in the accident had died, that I could have
5 sued, apparently, for a lot more money, but it
6 would have been against his family's estate, and
7 they just lost their son.
8 It happened to be their anniversary as
9 well as my birthday as a coincidence. I felt that
10 they had suffered plenty as well. So I took my
11 meager settlement. I don't believe -- I would
12 have been under Tricare at that time. I don't
13 think they cover facial scars, and we never looked
14 into it.
15 **Q. Were you ever in the military?**
16 A. No.
17 **Q. How were you on Tricare?**
18 A. I had my father's medical insurance at
19 the time. He was military.
20 **Q. You told me you still have pain to**
21 **your heel. Do you still have pain to any other**
22 **areas of your body?**
23 A. Yes. My spine still hurts
24 occasionally from time to time as well.
25 **Q. When you went to Omni, what did they**

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1 hard as possible when I flipped over the bike, my
2 back. I originally hit with my face, but it was
3 mostly the side of my face, which forced my metal
4 glasses into the bridge of my nose. My left arm
5 -- or my right arm, I'm sorry, was -- had the bike
6 roll over me, and part of my chest was also sore
7 from where the bike had also -- the tire had hit
8 part of that as well, and my back was covered in
9 different areas of road rash and bruising and all
10 sorts of other things.
11 **Q. Anything else other than that?**
12 A. Did I mention my -- I guess my left
13 heel. But other than that, no, not anything else
14 that I can recall at this time.
15 **Q. You testified a couple of minutes ago**
16 **that you thought about seeing a plastic surgeon**
17 **for scar revision to the scar on the bridge of**
18 **your nose?**
19 A. Yes.
20 **Q. I notice you have a scar on your**
21 **forehead. Is that from the accident you were in a**
22 **long time ago?**
23 A. Yes, it was.
24 **Q. Did you ever have a scar revision done**
25 **on that?**

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1 **do for you there?**
2 A. Gave me a good once over. Looked to
3 see what was happening with me. They kept
4 insisting on -- not insisting, but they kept
5 asking as to whether or not I would like x-rays to
6 such and such, but I could tell that nothing was
7 broken, and nothing felt like it was broken, just
8 a lot of bruising mostly. But I didn't know the
9 extent of how bad it was, and I felt it
10 unnecessary to spend an awful lot of money on
11 x-rays, which they kept insisting, where I thought
12 if I was going to get anything helpful, it would
13 be more along the lines of MRI, which they didn't
14 offer.
15 **Q. Did they ever take any x-rays of you?**
16 A. No, because they wanted me to pay out
17 of pocket for them on that day, and I couldn't
18 because I was literally gearing up for a new
19 motorcycle so I could continue getting to and from
20 work easily without having to burden other people
21 by borrowing their cars.
22 **Q. Did anyone at Omni ever diagnose you**
23 **with a permanent injury?**
24 A. No.
25 **Q. Did they ever make any other**

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1 **recommendations other than x-rays? Strike that.**
2 **Did they ever make any other**
3 **recommendations other than get an ultrasound or**
4 **x-rays?**
5 A. No. No. Not offhand that I can
6 recall.
7 **Q. Did they refer you to physical**
8 **therapy?**
9 A. No.
10 **Q. Do you have any plans to go back and**
11 **get treatment anywhere?**
12 A. No. No. Basically I would like to
13 get some kind of a consultation to find out what I
14 can do about the scar on the bridge of my nose.
15 **Q. At that time are you going to have the**
16 **scar maybe seen on the forehead, too?**
17 A. I doubt it, personally. Most people
18 don't even recognize it, but I can almost see the
19 scar on the bridge of my nose out of the corner of
20 my eyes. So that one.
21 **Q. You wear glasses, correct? You have**
22 **them on today, right?**
23 A. (Witness Nods in the Affirmative.)
24 **Q. Is that yes.**
25 A. Yes.

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1 around between, either/or. I would have to grab
2 the receipt, but I could have swore that it was
3 \$587 after tax and everything included.
4 **Q. It says you had an Adidas sports bag?**
5 A. Yes.
6 **Q. Was it damaged?**
7 A. Yes, it was. The bag was damaged
8 between different scuffs and tears, but that was
9 principally what protected more of my back from
10 any more serious injury since I was wearing it at
11 the time. I had to use basically cheeseburgers
12 for air bags since that was what was in the
13 backpack.
14 **Q. How much was that backpack?**
15 A. I think I got it at Burlington Coat
16 Factory for about 40 bucks at the time, but I'm
17 sure it's certainly valued more. It's just an
18 outlet place.
19 **Q. Did you have a cell phone that you**
20 **damaged as well?**
21 A. No, the cell phone wasn't expressly
22 damaged. None of the electronics really were at
23 the time. The jacket was completely destroyed
24 between the scuff marks and the new puncture holes
25 in it.

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1 **Q. Were you wearing glasses at the time**
2 **of this accident?**
3 A. Yes, I was. That's how I got the
4 scar.
5 **Q. Do you just, you wear glasses all the**
6 **time, or is it just when you're driving?**
7 A. I wear them as much as possible. I
8 don't -- what is it? To get my glasses that had
9 been destroyed replaced, I have 20/15 sight. So
10 it's not particularly bad, but basically it can be
11 sharpened up as much as possible. I'm not seeing
12 as clearly as I could be if I'm wearing glasses.
13 **Q. Do you still have that pair of glasses**
14 **that were broken?**
15 A. No. No. All I could find was part of
16 a lens. It almost seems like they evaporated on
17 impact. I searched out there by the highway.
18 **Q. How much were those glasses to**
19 **replace?**
20 A. Well, let's see. The pair of glasses
21 that I use for riding are Polo. Those ones were
22 almost \$587 for everything.
23 **Q. It says \$549 in the discovery**
24 **responses. You believe it's more like \$587?**
25 A. Yeah. Well, it would be somewhere

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1 **Q. So you had no damaged cell phone?**
2 A. Not that I'm aware of.
3 **Q. You damaged the jacket?**
4 A. Yes. I'm trying to think of which
5 phone I had at the time. That would have been the
6 S7. I don't completely recall there being any
7 damage to it, but.
8 **Q. How much was the jacket that was**
9 **damaged?**
10 A. I don't know. The list price on it is
11 just shy of, like, 600 bucks after tax, because
12 the website states it in euros. So I couldn't
13 tell you offhand, but I believe it's about \$580,
14 at least I think that's what it clocked into in my
15 agreement when I purchased the vehicle, because I
16 bought -- I roped it in with the price of the loan
17 for the bike.
18 It was the Ducati Scrambler official
19 jacket for the Cafe Racer. It's the one I wore in
20 today. I bought another one with my new loan.
21 Unfortunately, I was only reimbursed 400 something
22 bucks, which wasn't enough.
23 **Q. Who reimbursed you for that?**
24 A. Progressive, as far as I know.
25 **Q. They paid you for at least part of the**

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1 jacket?
2 A. Yes.
3 **Q. Do you have any plans -- I know that**
4 **you said you may want to see someone about the**
5 **scar revision. Have you actually set an**
6 **appointment with any doctors, medical providers**
7 **for anything resulting from this accident?**
8 A. I would have loved to, but I couldn't
9 afford to.
10 **Q. You've been involved in other**
11 **accidents, I understand, right?**
12 A. Just a few, but mostly minor
13 fender-benders. It's kind of hard to not in this
14 state, particularly this area.
15 **Q. I'm just going to go with what your**
16 **attorney gave to us here about your accident**
17 **history. It says you were involved in an accident**
18 **in Berkeley County in 2001. That's the one --**
19 **that's the serious one you were telling me about**
20 **where you went through the --**
21 A. If it was the September 28th event,
22 yes.
23 **Q. That was the one where your friend was**
24 **killed?**
25 A. Yes.

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1 maybe 55 miles per hour when he slammed into a
2 dead stopped cold into a tree. I was a perfectly
3 fine human being. Since then I had a nerve damage
4 issue to the brachial plexus on my left arm. I
5 used to be left-handed. I no longer am. The
6 windshield, obviously, destroyed my face. I have
7 a metal rod in my arm and in my leg on my left
8 side.
9 **Q. Metal rod in your --**
10 A. Yes, my left femur and my left humerus
11 are both titanium alloy, blah, blah, blah.
12 **Q. Do you have any other scarring from**
13 **that accident?**
14 A. Medical scarring in significant
15 amounts as well as the fact that I ended up a year
16 and a half later doing a -- I wouldn't say it was
17 completely cutting edge, but I ended up getting a
18 nerve transfer done in St. Louis, which left me
19 with a new scar that runs from the inside of my
20 arm to my elbow all the way up and into part of my
21 chest.
22 **Q. That was for the left arm surgery?**
23 A. Yes. It was to do what I could to get
24 some feeling or movement back. The doctor that
25 was here in Charleston, Dr. McKennan than -- or

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1 **Q. You filed a lawsuit against his estate**
2 **as a result of that accident?**
3 A. No. No. No. I was able to collect
4 his -- his insurance came out, and then I had to
5 sue my own parents' insurance because I was
6 covered by them at the time for uninsured, and
7 they stacked the two vehicles that we owned,
8 apparently, is what I was told by Mr. Baring.
9 **Q. Who recommended you for that?**
10 A. Chris Baring.
11 **Q. There's a case number on here. It**
12 **says Daniel Coy versus Jason Harvey, 2004 Common**
13 **Pleas Case Number. That's in discovery responses.**
14 **Do you think you actually did file a lawsuit**
15 **against his estate?**
16 A. Not that I'm aware of. At least I
17 tried everything I could not to. Like I said, his
18 parents had already been through enough pain and
19 suffering between losing their son and having it
20 happen on their anniversary, which means they're
21 going to be constantly reminded of it for the rest
22 of their lives.
23 **Q. Tell me about the injuries you**
24 **suffered in that accident.**
25 A. I went through a windshield at about

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1 was it McFadden -- I believe it was McFadden, who
2 still works out of the area, he recommended the
3 completely wrong procedures, and we didn't realize
4 how wrong he was until we ended up looking over
5 his notes. He knew exactly what my issue was, but
6 he continued to tell me it was something else for
7 almost six months, which was a nerve damage issue.
8 Time is everything. It's really
9 ashamed how naive we were at the time, but the
10 only reason that clued us in that he wasn't
11 actually going to be helpful at all was when we
12 were getting closer and closer to possibly having
13 some procedure done to find out what I could do to
14 get some of the usage of my arm back.
15 He said during the beginning phase,
16 like, literally before we were going to, like,
17 schedule a surgery to possibly fuse the femur or
18 the humor bone to the collarbone that when he was
19 in there he would noodle around and see what he
20 could do about bringing any kind of extra ability
21 back to the nerves in my arm, and I looked at my
22 mother immediately at the word noodle from a
23 doctor. And so we demanded that he go ahead and
24 tell us who the primary physicians are in that
25 field alone of either nerve damage or any kind of,

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1 like, arm or hand kind of specialists, because it
2 was clear that this fellow was completely inept,
3 and he would have basically fused an arm or my
4 bone from my arm to my shoulder where I would have
5 permanently been stuck like this for the rest of
6 my life. So I would have been basically
7 destabilized.

8 **Q. Your arm, about what functionality do**
9 **you have for your arm now? Your left arm you**
10 **can't raise?**

11 A. I'm trying to mirror with my right.

12 **Q. Does that cause you issues when you're**
13 **driving a motorcycle, not being able to raise it?**

14 A. No, because I'm able to reach up and
15 put my hands on everything and operate clearly.
16 That was actually my main concern, which is why I
17 was going for the training first, because I would
18 have just initially jumped on the bike if I had
19 had any previous experience and known, but since I
20 didn't, I went through the training course just to
21 make sure that my arm would be able. I figured it
22 would be better to do it on their bikes for 250
23 bucks for a weekend as opposed to destroying a
24 piece of moving art.

25 **Q. You can't raise your left arm above**

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1 some little kid cut me off, and I decided it was
2 better to take the hit myself and let myself go
3 back and flatten out as much as possible, which is
4 basically a back flop on a hard floor. Other than
5 that, no.

6 **Q. When was that?**

7 A. That was for the little girl's
8 birthday party I believe in 2013.

9 **Q. Looks like you were in an accident in**
10 **Berkeley County in 2002. It says you were a**
11 **passenger in a vehicle and the vehicle flipped.**
12 **Do you recall that?**

13 A. It wasn't flipped. It rolled. I was
14 with a couple of idiots, and at that time I had
15 been pretty emotionally damaged basically from the
16 accident that I had been in. And so I wasn't
17 drinking. I wasn't doing anything crazy, because
18 we were having drinks for my 19th birthday party,
19 which we could do at the Harvey's house because
20 his parents didn't mind as long as everybody
21 stayed there and did do anything stupid.

22 Well, I dropped my guard and I fell
23 asleep in my buddy's passenger seat in his truck
24 because we used it to move some stuff out to a
25 bonfire that we had going in the back corner of

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1 **your head?**

2 A. No, sir.

3 **Q. Did you reinjure, aggravate your left**
4 **arm as a result of this accident?**

5 A. No. No. Because it's a natural
6 instinct. Whenever I'm in any kind of sudden
7 movement I tend to tuck my left arm as much as
8 possible. That's one of the few things I can do
9 very well, because I have a very strong bicep.
10 Immediately my body just naturally reacts by
11 tucking in as much as possible.

12 **Q. Did you injure your back in that**
13 **accident?**

14 A. Not significantly, but, yeah. And I
15 still feel little bits of it. I'm not sure if I
16 maybe displaced my spine, but, unfortunately, at
17 that time I was just sore and didn't know that it
18 might be a continuing problem.

19 **Q. Talking about the accident back in --**

20 A. Surprisingly, no.

21 **Q. Had you ever suffered a back injury**
22 **before this accident we're talking about today?**

23 A. No, sir. Not of anything. If not
24 just like a whoopsy daisy. Like, I fell at a
25 rolling rink once for a kid's birthday party when

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1 his yard. And then since then I had been fairly
2 guarded and I hadn't been drinking and I pretty
3 much stayed at home a lot of the time because I
4 felt pretty raw about the incident.

5 My friends encouraged me to go out.
6 They were drinking. I was in the backseat of
7 their truck, and the idiot decided to do donuts in
8 the front of the neighborhood I live in. And I
9 had been in the back wearing my seat belt, knowing
10 that the worst was probably going to happen. And
11 I felt relieved because he's like, all right,
12 let's go. He started to leave out of the field,
13 and then he cut the wheel, because he was
14 speeding, and the car just went onto its side, and
15 I don't think I really spoke to that guy ever
16 again.

17 **Q. Were you injured in that accident?**

18 A. Not at all.

19 **Q. It says you were in an accident in**
20 **2002 or 2003. You were a passenger again, and a**
21 **driver veered off and hit -- crashed into some**
22 **concrete?**

23 A. A pylon out in front of the Pilot
24 there on 17A. It was while it was still in
25 construction, switching from the Speedway to the

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1 Pilot. I had previously worked for the Speedway.
2 His car had previously been in an accident about
3 two or three weeks prior. Apparently, it knocked
4 the pinion loose for the steering. So when we
5 were turning he came around the turn and then the
6 car just had nothing. So it just gently kind of
7 carried on into a cement piling in front of the
8 store. Damaged my -- gave me a bruise on my right
9 shin, but nothing beyond that.

10 **Q. It says in March 2016 you were riding**
11 **your motorcycle with a spare tire on the front**
12 **wheel and traffic was coming to a stop. You**
13 **slowed or were unable to stop in time, and you**
14 **rear-ended a truck ahead of you. Do you recall**
15 **that?**

16 A. When was that?

17 **Q. March 24, 2016. It says it happened**
18 **on St. James Boulevard?**

19 A. Yes. I was in my Firebird.

20 **Q. So not a motorcycle?**

21 A. No. No. I was in my Firebird, and I
22 had just went and paid for the replacement tire on
23 my front right passenger side tire, and they said
24 it wasn't there and it would be delivered the next
25 day. So later on that afternoon as I was taking

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1 A. Just for the one in 2001. I had to go
2 to rehab with Health South as a requirement from
3 my insurance. Basically I was told that if I
4 didn't go through rehab, then there is a chance
5 that Tricare would refuse to pay for any of the
6 bills beforehand.

7 **Q. Did they perform treatment on you at**
8 **that rehab?**

9 A. No. As a matter of fact, they made me
10 worse physically. They ended up not helping me
11 clean out deodorant from my arm and gave me a
12 yeast infection from that, which I didn't know men
13 could get those. They ended up dehydrating me for
14 the entire extent of my stay. They pretty much
15 gave me no water, left no water by the bed. I was
16 still coming down from all of the morphine they
17 were giving me at MUSC, because I had been in a
18 morphine-induced coma, basically, for the first
19 two weeks after the accident on September 29th.

20 **Q. Do you know the name of this rehab**
21 **place?**

22 A. Health South. I know it. I despise
23 them to this day, because they -- with the
24 dehydration, I ended up having to get all sorts of
25 CAT scans and stuff like that because they weren't

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1 care of different errands that I had to do I saw
2 the -- I saw the light was green very far ahead of
3 me. And as I was moving along I saw the light was
4 green, but the traffic slowed ahead or whatever.
5 So I took my foot off the gas at that point and
6 looked out to my right.

7 Because it was around tax time, there
8 was an idiot at the side of the road holding up
9 one of those signs, but I'm usually concerned with
10 any kind of pedestrians or anybody close to the
11 side of the street. So I glanced at that, glanced
12 back, saw the traffic was at a full stop, hit the
13 brakes. I could just hear my tire, my spare tire
14 up on the front of the Firebird just skidding,
15 unfortunately, not giving the stopping power.

16 So I, unfortunately, hit the guy maybe
17 going about 15 miles per hour. On the front end
18 of the Firebird, particularly on V6s, there's not
19 an engine in there for that much space, and so it
20 just crumpled the front end and destroyed the car.

21 **Q. Were you injured in that accident?**

22 A. Not at all.

23 **Q. Before this accident had you ever**
24 **treated with a chiropractor or a physical**
25 **therapist for any reason?**

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1 sure if the headaches that I was experiencing, as
2 well as the fact that I couldn't sit up for longer
3 than a minute and a half at a time was some kind
4 of emerging problem from the accident itself. But
5 it turns out, the doctor came in and took a look
6 at me and said, this dude is dehydrated. They
7 gave me some water, and I was basically let go
8 within about two days after that.

9 **Q. Other than the right arm surgery you**
10 **told me about --**

11 A. Left.

12 **Q. Left. Excuse me. Left arm surgery.**
13 **Have you had any other surgeries?**

14 A. No. Never had a broken bone before
15 that one I suppose.

16 **Q. Have you been in any other accidents**
17 **since the accident we're talking about today?**

18 A. No. No. I live a nightlife. I
19 usually don't leave my house until after 10:30 at
20 night. I'm usually going the opposite direction
21 of traffic every day. That's on purpose. I
22 personally despise the way most people drive in
23 this town. Being out here for this at this time
24 of day is something that already makes me nervous
25 as much as possible.

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1 **Q. Have you ever filed a workers'**
2 **compensation claim before?**
3 A. No.
4 **Q. Do you know if you have a medical bill**
5 **from Omni?**
6 A. I don't know. I imagine I do,
7 considering I made a visit with them.
8 **Q. Have they ever sent you a bill to your**
9 **house?**
10 A. No, not yet.
11 **Q. Because I don't have any bills for**
12 **you. Any other property damage that you had other**
13 **than your glasses and your Adidas bookbag and your**
14 **jacket?**
15 A. My pants were destroyed. A pair of
16 rare Adidas shoes were destroyed.
17 **Q. How much do you have those pants and**
18 **those Adidas shoes valued at?**
19 A. The pants were Apartment 9 pair, the
20 Kohl's brand. That couldn't be more than about 65
21 bucks, a pair for men's dress pants, and the shoes
22 were topped out when I bought them. They were
23 almost \$105, because Adidas originally had been
24 making them special pair of shoes, which I have a
25 few pairs of, that were a special collaboration

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1 A. The fact that I had to replace my own
2 bike as well as continue to pay for a bike that
3 was destroyed. I probably spent, between the two,
4 almost an additional, I want to say about, maybe,
5 \$5000 between the two, because I had to lose \$5000
6 originally on the first bike, which I never got
7 back more or less on any bit of it, and then I
8 dropped another \$1100 as quickly as possible as I
9 could on the new bicycle.
10 And with the old bike, like I said, a
11 part of that \$5000 was just paying off, getting
12 rid of the actual, because I was still on the hook
13 for the loan for the bike itself. Turns out you
14 guys, Progressive, didn't pay out the full amount
15 of the loan. So I was still required to pay for
16 almost an additional \$1300.
17 **Q. Let's talk about that, because that's**
18 **kind of important to me if you're claiming that's**
19 **going to be a loss. You had just purchased the**
20 **bike two months earlier, right?**
21 A. Six weeks.
22 **Q. How much did you purchase it for?**
23 A. The bike?
24 **Q. The bike.**
25 A. Everything entailed in the loan was

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1 with Goodyear, and these were the first time
2 outside of that contract. So they had such a
3 radical and different design. I bought those as
4 well because it was so different from the other
5 pairs I already owned.
6 **Q. Is there anything you can't do now**
7 **that you could do before this accident?**
8 A. Sometimes because of my back I
9 honestly can't sleep comfortably. It takes a few
10 hours just to, you know, be moving around before
11 the pain that I feel is pretty much subsided. And
12 the problem with my foot is, I'm not quite
13 certain, honestly, but it's still pretty ginger to
14 walk on occasionally. Some days are better than
15 others. I wonder sometimes if that's a matter of
16 inflammation and possibly diet issue, but there is
17 lingering pains from both my back and foot, more
18 than I would have ever expected.
19 I continue to think or continued to
20 think for the longest time that the arm was the
21 primary issue because that was the one that showed
22 the most damage other than the scar on my face.
23 **Q. Any other financial loss you've**
24 **suffered in this lawsuit that you could testify**
25 **to?**

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1 almost \$15,000. I thought it was almost \$16,000.
2 **Q. Did you buy it new?**
3 A. Yes.
4 **Q. How much did you -- do you know how**
5 **much Progressive paid total on the bike?**
6 A. I believe they just paid 10,080 or
7 like 10,5 basically, somewhere around there.
8 Either 10,500 or 10,800. I never got a specific
9 on the number unfortunately.
10 **Q. Would you agree with me that a used**
11 **bike is worth less than a new bike?**
12 A. Principally. But no, actually, I
13 wouldn't. That's certainly how it tends to go for
14 most things, but bikes more often than not do tend
15 to get more expensive with age. Certain things
16 are rare, paint jobs, certain bits about them as
17 well. Particularly with that bike, the bike --
18 the issue that they had released before of the
19 Ducati Scrambler was called Italia something. I
20 can't remember the specific name. But when I
21 looked at it around the time after I had just
22 bought the bike, the owner of the Champion had
23 said that that bike was now selling for almost
24 \$19,000 as opposed to the original list price,
25 which was the same at the 11,995.

Page 74 1 Q. You said the bike was actually 2 \$11,995? 3 A. (Witness Nods in the Affirmative.) 4 Q. That's a yes. 5 A. Yes, sir. 6 Q. So your finance charges and everything 7 made it increase to \$15,000? 8 A. No. All of the additional gear, kit, 9 all that other stuff I bought for the bike, all of 10 that. 11 Q. In two months time the value of the 12 bike had increased to \$19,000? 13 A. No. No. No. It's just that bike is 14 likely to continue accruing in cost, because they 15 make it as it's a limited edition. 16 Q. No. I'm talking about from you, from 17 the time you bought it to the two months later, 18 you had it in a wreck. Are you trying to say the 19 price, the value of the bike increased in those 20 two months? 21 A. No. I'm telling you the total cost of 22 the loan that I took out on the bike that I was 23 still required to pay overall. 24 Q. Do you agree that the amount of a loan 25 and the finance charges can be different than the	Page 75 1 actual value of the property that you have 2 financed? 3 A. Possibly, but I've never looked too 4 deeply into it. 5 Q. Anything else other than the bike 6 related that you have a claim as a financial loss 7 as a result of this wreck? 8 A. Not offhand that I can recall at the 9 moment. 10 MR. TAYLOR: I don't think I have 11 anything else. 12 MR. BOLES: Can you mark this as an 13 exhibit. 14 (EXH. 1, Medical Bills and Records, 15 marked for identification.) 16 EXAMINATION 17 BY MR. BOLES: 18 Q. I just have a couple of questions for 19 you. I asked the court reporter to mark that as 20 an exhibit. If you will take a second, a moment, 21 and review it for me. I believe those are your 22 medical bills and records related to this 23 accident. I just want to know if you can confirm 24 that -- I don't mean to say that that's all of 25 them, but are those applicable to this accident?
Page 76 1 A. It's a good chunk of most of it, yes. 2 Yeah, these are definitely all part of the 3 accident. 4 Q. Malia Goblet I believe is the young 5 lady you were talking about who is the witness to 6 this case? 7 A. Yes. 8 Q. Are you aware that she's given a 9 statement to your insurance company about what she 10 saw? 11 A. Was I aware? 12 Q. Yes. 13 A. I don't know offhand that she did, but 14 I was told that she would by her and her mother. 15 They both said that they were -- 16 Q. I'll read you what she said to the 17 insurance company. I want to know if this 18 accurately reflects what she told you happened. 19 She says that you were coming from the direction 20 of the highway. You were slowing down for the 21 turn, and the car came up behind you really, 22 really fast. It looked like they were trying to 23 do what a lot of cars do if they decide you're 24 taking too long, which is get too close to you to 25 scare you into going faster, and instead of	Page 77 1 stopping, he hit your back tire. And your bike 2 flipped, and you went over the handlebars, and the 3 car kept going. Does that sound like what she 4 described to you? 5 A. That's what she said to me. 6 Q. She says that she was on one end of 7 the parking lot, and the accident happened at the 8 other end, which she says may be a few yards from 9 end to end. Does that sound right, from her 10 advantage point? 11 A. Pretty much, yeah. It wouldn't be 12 more than 100 -- 13 Q. Sorry. She also says that she 14 actually saw the other vehicle make impact with 15 your back tire. Is that -- does that correspond 16 with what she said? 17 A. That's what she told me after the 18 event, yes. 19 MR. BOLES: Those are all the questions 20 I have for you. 21 (The deposition was concluded at 10:29 22 p.m.) 23 (The witness, after having been advised 24 of his right to read and sign this transcript, 25 does waive that right.)

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1	CERTIFICATE OF REPORTER	
2		
3	I, Roxanne M. Easterwood, Registered	
4	Professional Reporter and Notary Public for the	
5	State of South Carolina at Large, do hereby	
6	certify that the foregoing transcript, pages 1	
7	through 79, is a true, accurate, and complete	
8	record.	
9	I further certify that I am neither	
10	related to nor counsel for any party to the cause	
11	pending or interested in the events thereof.	
12	Witness my hand, I have hereunto	
13	affixed my official seal this 13th day of April	
14	2018 at Charleston, Charleston County, South	
15	Carolina.	
16		
17		
18		
19		
20		
21		
22		
23	Roxanne M. Easterwood, RPR	
24	My Commission expires	
25	February 1, 2025	

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4	EXAMINATION	3 5
5	BY MR. TURNER	
6		
7	EXAMINATION	75 16
8	BY MR. BOLES	
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12	REQUESTED INFORMATION INDEX	
13	(No Information Requested)	
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1 STATE OF SOUTH CAROLINA) FAMILY COURT
 2 COUNTY OF BERKELEY) CASE NO. 2017-CP-08-02153

3
 4 Doretta McHugh, as)
 5 P.R. of the Estate of)
 6 Daniel E. Coy,) Transcript of Record
 7)
 8 Plaintiff,)
 9 vs.) Date: September 12,
 10 John Doe,) 2019-September 13, 2019
 11)
 12 Defendant.

13 * * * * *

14 B E F O R E:

15 The Honorable Deadra Jefferson

16 * * * * *

17 Denise J. Lauder, RPR

18 Ninth Judicial Circuit

1 A P P E A R A N C E S

2

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1 (The following proceedings were had
2 November 12, 2019, Berkeley County Common Pleas
3 Court, McHugh v. Doe, Judge Jefferson, 10:27 a.m.)

4 THE COURT: Good morning. I am Deadra
5 Jefferson. I'm one of your resident judges for the
6 ninth circuit which is made up of Charleston and
7 Berkeley County.

8 This week we have -- excuse me, I've
9 got a little bug. I apologize. We have a term of
10 civil court. I will tell you at the outset this is
11 a particularly good week for you to satisfy your
12 jury service, because we only have one case to try
13 this week.

14 So I would strongly suggest that you
15 remain with us and then you won't have to have jury
16 service -- well, at least it would be satisfied for
17 the next three years. So, again, I emphasize, this
18 is a particularly good week for you to satisfy your
19 jury service.

20 It is my pleasure and privilege --

21 (The proceedings were interrupted.)

22 THE COURT: I'm sorry. We have to wait
23 for those three to get back.

24 (A recess transpired.)

25 THE COURT: Good morning, ladies and

1 gentlemen. I am Deadra Jefferson. I am one of
2 your resident judges for the ninth circuit which is
3 made up of Berkeley County and Charleston County.

4 It is my pleasure and privilege to
5 serve with you for this term of common pleas court.
6 Again, I emphasize, this is a particularly good
7 week for you to satisfy your jury service as we --
8 the civil docket has over the weekend reduced
9 itself to one case. So we only have one case to
10 try this week, and it probably will only take a
11 couple of days at the most.

12 And so, again, I emphasize, this is a
13 particularly good week for you to satisfy your jury
14 service and have completed it for the next three
15 years. If you are not selected, you will be able
16 to go about your life as you normally do.

17 Our purpose this morning is to
18 determine your general eligibility to serve as
19 jurors. Each one of you is here because you meet
20 one of three criteria. That is, if you are a
21 licensed driver, if you have an ID card from the
22 highway department, or you're a registered voter
23 then you are subject to jury service.

24 We understand the inconvenience that
25 jury service poses both to your personal and your

1 professional lives. We thank you for being here
2 this morning. It's my sincere desire that jury
3 service will be educational for you, and you will
4 learn it is nothing like what you see on
5 television. While entertaining, it is nothing like
6 the real process.

7 I cringe a little every time I see a
8 new show, but I recognize that again they are
9 entertainment. People enjoy them and they are very
10 lucrative.

11 Judge Judy recently sold her catalog
12 shows of 5,000 hours for \$100 million. She renewed
13 her contract for \$45 million, and that was for one
14 year.

15 So, again, I emphasize, it is very
16 lucrative, but it's nothing like the real process
17 where 12 ordinary citizens listen to the facts of a
18 case, apply the law to those facts and render
19 verdicts. So I hope you know how very valuable
20 your service is to us.

21 Again, our system is the only kind in
22 the world. We are the envy of the world in terms
23 of how we dispose of your disputes. And, again, I
24 hope this will be educational for you.

25 As you look around the room, there are

1 some people that you should familiarize yourself
2 with. Those -- oh, you-all are wearing navy today.
3 It's Tuesday. I love my bailiffs.

4 The bailiffs have on blue jackets.
5 Tomorrow they may have on burgundy. I don't know
6 the dress code for this week. It might be blue all
7 week. So look for a blue jacket or a burgundy
8 jacket. They can assist you in everything you
9 need, and if they can't resolve your need, they can
10 certainly get to the clerk's office or to the Court
11 to get a resolution of your issue.

12 Also, seated throughout the courtroom
13 are deputies who are here to make sure that our
14 safety is maintained, as well as my deputy clerks
15 who are seated to my right and your left.

16 My industrious court reporter, Ms.
17 Denise, who is seated directly in front of me, her
18 charge is to keep the official court record.

19 And seated immediately to my right and
20 to your left is my law clerk. The state is very
21 generous; they provide each judge with a lawyer
22 licensed to practice law to assist us in our
23 responsibilities.

24 And also seated here are lawyers and
25 litigants here to observe the jury qualification

1 process.

2 I will try to make this -- do this in
3 an abbreviated format so that we can get you in and
4 out of here as quickly as possible this morning.
5 And, again, we appreciate your indulgence and your
6 patience.

7 Jury qualification is done in several
8 stages. You have already gone through the first
9 stage, which is roll call where you provided us
10 with certain information. And the clerk has
11 already administered the oath to you.

12 There are certain questions I'm
13 mandated to ask of you. Each of these are mandated
14 by state law. I know some of them may seem
15 intensely personal. If you are uncomfortable in
16 answering a question, please make me aware of that
17 so I can speak with you privately with the Court
18 Reporter and deputy clerks; however, I emphasize
19 that it is absolutely essential that we have
20 accurate information consistent with the oath that
21 you have taken.

22 So if a question applies to you, please
23 stand, and in a loud and clear voice tell us your
24 name and juror number, an answer to the question if
25 applicable, and remain standing until I have

1 completed questioning you.

2 Again, I emphasize it is absolutely
3 essential that we have accurate information, but it
4 is not our intention to cause anyone any
5 embarrassment.

6 Here are the questions that are
7 mandated by state law. Is there any member of the
8 jury panel not now a citizen of the United States?
9 If so, please stand at this time.

10 Is there any member of the panel not
11 now a resident of Berkeley County, State of South
12 Carolina? If so, please stand at this time.

13 Is there any member of the jury panel
14 unable to read, write, speak or understand the
15 English language? If so, please stand.

16 Yes, sir. Tell me your name and juror
17 number.

18 PROSPECTIVE JUROR: Isabel Lazo. My
19 juror number is 104.

20 THE COURT: And, sir, give me one
21 moment.

22 You work with Safelite.

23 PROSPECTIVE JUROR: I work at Quoizel.

24 THE COURT: You work at Quoizel.

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And do you have a driver's
2 license?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. You took the
5 driver's test?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: How long have you been in
8 the United States?

9 PROSPECTIVE JUROR: About 30 years.

10 THE COURT: You're qualified, sir. If
11 you have any difficulty, just let us know. Jury
12 service really doesn't require much reading. Most
13 of what we do is self-explanatory. If you
14 encounter any difficulties, please let us know.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: You're welcome.

17 Is there any member of the panel unable
18 to read, write, speak, or understand -- sorry, I
19 asked that question already.

20 Does any member of the panel have less
21 than a sixth grade education or its equivalent? If
22 so, please stand at this time.

23 Is there any member of the panel
24 incapable by reason of a mental or physical
25 infirmity to render efficient jury service? If so,

1 please stand at this time.

2 Has any member of the panel ever been
3 convicted by guilty plea or trial in a state or
4 federal court of record, that means in the federal
5 court system or the circuit court system, not
6 magistrate court, municipal court, or city court of
7 a crime punishable by imprisonment which means you
8 could have gone to jail for a year and a day or
9 more, but you may have received probation and you
10 have not had a pardon or some form of amnesty which
11 has completely restored your civil rights?

12 I know that's a very long question and
13 if anyone is confused, please make me aware of it.
14 I also know it's intensely personal and you may not
15 want to stand in the presence of your fellow
16 jurors. If you feel this question applies and you
17 wish to stand, I would ask that you do so.

18 Yes, ma'am. Tell me your name and
19 juror number.

20 PROSPECTIVE JUROR: Teresa Stanich, my
21 juror number is 160.

22 THE COURT: Okay. Are you comfortable
23 speaking in the presence of the panel?

24 PROSPECTIVE JUROR: I would rather
25 speak a little private. I'm not ashamed.

1 THE COURT: Okay. You can speak with
2 me privately if you like. I'll call -- just
3 remember to come forward at the end when I invite
4 you to do so.

5 PROSPECTIVE JUROR: Thank you.

6 THE COURT: You're welcome.

7 Is there any member of the panel a
8 clerk of court, deputy clerk of court, constable,
9 sheriff, or other commissioned law enforcement
10 officer, probate judge, county commissioner,
11 magistrate, or other county officer, or any person
12 employed within the walls of a courthouse? If so,
13 please stand at this time.

14 Is there any member of the panel who
15 has previously served on jury duty in the circuit
16 court during this calendar year, which is 2019? If
17 so, please stand at this time.

18 Is there any member of the panel who
19 served on the Berkeley County grand jury during the
20 past few years? If so, please stand at this time.

21 We will now move to exemptions. An
22 exemption does not mean that you are not qualified
23 to serve. It simply means in some instances you
24 have the ability to be excused. I can transfer
25 you, but, again, each circumstance is different.

1 For example, those who are 65 years of
2 age or older are exempted from jury service. We
3 would encourage you to remain with us if you were
4 inclined to do so because you represent a
5 tremendous pool of talent for jury service;
6 however, if you are 65 or older and wish to be
7 exempted, I would ask that you stand at this time.

8 Is there any member of the panel who
9 previously served on jury duty in the circuit
10 court, not magistrate court, municipal court, city
11 court, or federal court during 2018 or 2017, and
12 you wish to be exempted? I would ask that you
13 stand at this time because no one is required to
14 serve more than once every three calendar years.
15 If you feel this applies to you and your situation,
16 please stand.

17 Next exemption has several parts all of
18 which must apply, so please listen carefully. It
19 is for stay-at-home parents who do not work outside
20 of the home who have a minor child or children
21 under the age of seven and you cannot make
22 alternate arrangements for their care.

23 Is there any member of the panel who
24 has a minor child or minor children under the age
25 of seven and you have their legal custody, care and

1 control, and you are unable to make arrangements
2 for their adequate care while performing jury duty?
3 If all of these requirements apply to you, then you
4 may be exempted on this basis, but only if all of
5 the requirements are present. If you feel this
6 applies and you wish to be exempted, I would ask
7 that you stand at this time.

8 Yes, ma'am, tell me your name and juror
9 number.

10 PROSPECTIVE JUROR: Aisha Broughton,
11 number 20.

12 THE COURT: Tell me what your situation
13 is, ma'am.

14 PROSPECTIVE JUROR: I have two that are
15 under the age of seven.

16 THE COURT: How old are they?

17 PROSPECTIVE JUROR: Five and six.

18 THE COURT: And do you work outside of
19 the home.

20 PROSPECTIVE JUROR: No, ma'am, I work
21 from home.

22 THE COURT: Ma'am, if you would come
23 forward. Come forward so the clerk can accommodate
24 you.

25 Is there any member of the panel

1 attending school at this time, working in some
2 capacity with the school, who is a full-time
3 student, school teacher, school crossing guard,
4 school bus driver or serves in any other
5 school-related function who is unable to serve on
6 jury duty this week as a result of that school
7 involvement?

8 If this applies, we will transfer you
9 to you another term of court. If you feel this
10 applies to you and you wish to be transferred, I
11 would ask that you stand at this time.

12 Is there any member of the panel who
13 performs services for a business, commercial or
14 agricultural enterprise and whose services are so
15 essential to the operation of the enterprise that
16 the enterprise must close or cease to function if
17 you are required to perform jury duty?

18 This exemption is for those who are
19 seasonal type workers such as agricultural workers,
20 commercial fishermen and the like whose business is
21 more busy during certain times of the year than
22 others. Under these circumstances, we can transfer
23 you. If you feel this applies, I would ask that
24 you stand at this time.

25 Is there any member of the jury panel

1 employed as a guard with the Department Corrections
2 at a penitentiary? If so, I would ask that you
3 stand because state law exempts you on that basis.

4 Is there any member of the panel who is
5 the primary care giver of a person age 65 years of
6 age or older or a severely disabled person, either
7 of whom cannot be left unattended, you cannot make
8 alternate arrangements for their care and you are
9 not employed outside of the home? If you feel this
10 applies to you and your situation, I would ask that
11 you stand at this time.

12 Ladies and gentlemen, this concludes
13 the statutory list of qualifications and exemptions
14 for jury service. It may be that you are qualified
15 and that an exception doesn't apply to you, but
16 that jury service would constitute an extreme
17 hardship this week upon you for a particular
18 reason.

19 I cannot permanently transfer a
20 qualified -- I cannot permanently excuse a
21 qualified juror from service, but under extreme and
22 compelling circumstances, I can transfer a juror
23 from this term to another term, particularly those
24 not previously transferred.

25 Recognize general inconvenience is not

1 a sufficient basis to transfer your services to
2 another term of court; however, I will ask at this
3 time is there any member of the panel who has a
4 doctor's appointment or other pre-arranged
5 appointment that you scheduled prior to receiving
6 your summons or arose emergently since you received
7 your summons that would require you to attend an
8 appointment for yourself or family member? If so,
9 I would ask you to stand at this time.

10 Yes, ma'am, tell me your name and juror
11 number.

12 PROSPECTIVE JUROR: Renee Stelljes,
13 number 162.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: I have a
16 15-year-old child that is special needs and he has
17 an annual appointment at MUSC tomorrow.

18 THE COURT: I can protect you for
19 tomorrow.

20 162 is protected for Wednesday.

21 Yes, sir.

22 PROSPECTIVE JUROR: Michael Cannon,
23 juror number 29. I'm supposed to get an emergency
24 endoscopy today.

25 THE COURT: What time do they need to

1 do it?

2 PROSPECTIVE JUROR: I'm supposed to be
3 there at 1:30.

4 THE COURT: I'll protect you for today.
5 And then keep us posted if you need any additional
6 treatment or if we need to transfer you from this
7 week. Okay.

8 Number 29 will be protect for today.

9 As soon as I'm done qualifying, we'll
10 release you to attend to your situation.

11 Ladies and gentlemen, this is now the
12 opportunity for those who did not respond to
13 questions they felt were personal, or anyone who
14 has a compelling reason to request a transfer of
15 your jury service, or if you have a question or
16 concern about any exemption or qualification and as
17 it may apply to your particular situation.

18 I would ask that you stand in the aisle
19 with the bailiff and I'll speak with you privately
20 with the court reporter and the deputy clerk.
21 Again, I emphasize, this is a particularly good
22 week to satisfy your jury service as we have one
23 case to try.

24 (The following was held at the bench.)

25 THE BAILIFF: Juror 160.

1 THE COURT: Tell me your name and juror
2 number.

3 PROSPECTIVE JUROR: Teresa Stanich,
4 160.

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR: I have three
7 felonies.

8 THE COURT: Okay. What are they?

9 PROSPECTIVE JUROR: I don't know. They
10 were 15 years ago.

11 THE COURT: Were they in South
12 Carolina?

13 PROSPECTIVE JUROR: Arizona.

14 THE COURT: Okay. And what happened as
15 a result of them? Did you have to go to jail?

16 PROSPECTIVE JUROR: I did 309 days in
17 prison.

18 THE COURT: But they were felonies,
19 they carried more than a year and a day?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Have you had your civil
22 rights restored? Have you gotten a pardon or any
23 form of amnesty?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: You may want to look into

1 it.

2 PROSPECTIVE JUROR: Okay.

3 THE COURT: Thank you, ma'am. Have a
4 great day.

5 Number 160 is exempt.

6 THE BAILIFF: Number 26.

7 THE COURT: Good morning. Tell me your
8 name and juror number.

9 PROSPECTIVE JUROR: Twenty-six, Stacy
10 Burick.

11 THE COURT: Yes, ma'am.

12 PROSPECTIVE JUROR: I'm going through a
13 separation and I'm moving in, like, a week to
14 Florida. And my job has agreed to let me work over
15 to make the money I need to make and so I would
16 like to be able to do that. They know I'm here
17 today.

18 THE COURT: Why don't you stick with
19 us?

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Number 26 is qualified.

22 THE BAILIFF: 189.

23 THE COURT: Morning, ma'am. Tell me
24 your name and juror number.

25 PROSPECTIVE JUROR: Terri Wright, 189.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR: I have a kidney
3 transplant appointment on Friday.

4 THE COURT: I will protect you for
5 Friday.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: 189 is protected for
8 Friday.

9 THE BAILIFF: 74.

10 THE COURT: Good morning, ma'am.

11 PROSPECTIVE JUROR: How are you?

12 THE COURT: I'm well. How are you?

13 Tell me your name and juror number.

14 PROSPECTIVE JUROR: Annie Hamlin, 74.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: I don't know if it
17 qualifies. I have eight children, four with
18 medical special needs and two with cerebral palsy
19 and one who is blind. They are at school today,
20 but both of my girls fall, but one in particular
21 falls quite frequently. I never know when I'm
22 going to be needed.

23 THE COURT: What we can do is, we have
24 a phone number, and if anything comes up, they will
25 be able to call it. If there's anything that comes

1 up, we'll tell you immediately and I'll accommodate
2 you.

3 PROSPECTIVE JUROR: -- is picking them
4 up today.

5 THE COURT: What time do you normally
6 pick them up?

7 PROSPECTIVE JUROR: 2:30. And I live
8 in the Cainhoy area off of Clements Ferry. It took
9 me about an hour to get here today.

10 THE COURT: Yeah, traffic has gotten
11 crazy. Just stick with us.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: Thank you, ma'am. 74 is
14 qualified.

15 Good morning. Tell me your name and
16 juror number.

17 PROSPECTIVE JUROR: Alicia Pope.

18 THE COURT: Juror number?

19 PROSPECTIVE JUROR: 133.

20 THE COURT: Yes, ma'am.

21 PROSPECTIVE JUROR: I'm actually in the
22 middle of a criminal case right now for Berkeley
23 County and Charleston County.

24 THE COURT: This is a week of civil
25 trial. That would come out during voir dire if you

1 feel it affects your impartiality.

2 Okay. 133 is qualified.

3 THE BAILIFF: 176.

4 THE COURT: Tell me your name and juror
5 number.

6 PROSPECTIVE JUROR: Melissa Weaver,
7 176.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR: I don't have a
10 child under seven, but I have an eight-year-old --

11 THE COURT: Uh-huh.

12 PROSPECTIVE JUROR: -- that I usually
13 pick up from school and I'm home with her the rest
14 of the day.

15 THE COURT: Are you a housewife?

16 PROSPECTIVE JUROR: No. I'm single,
17 but I work in the mornings, 7 to 2.

18 THE COURT: Oh, I can't excuse you on
19 that basis. Only thing I can do is transfer you.
20 So I will give you the option.

21 PROSPECTIVE JUROR: I've already had a
22 transfer because I'm a full-time student.

23 THE COURT: Where are you a student?

24 PROSPECTIVE JUROR: It's online, WGO,
25 Western Governors University. I do that at home

1 and with my child.

2 THE COURT: I will give you the option.
3 You can stay with us or you will have to pick
4 another week, but I can't excuse you on that basis.

5 PROSPECTIVE JUROR: Can I have another
6 transfer?

7 THE COURT: You can, but I can't do it
8 again after this. You will have to pick a week
9 that's going to work for you.

10 PROSPECTIVE JUROR: Okay.

11 THE COURT: What do you do with the
12 child during the summer? Does she go to camp?

13 PROSPECTIVE JUROR: Her dad takes her
14 during the summer.

15 THE COURT: So you may want to pick a
16 week in the summer.

17 PROSPECTIVE JUROR: That would probably
18 be the easiest --

19 THE COURT: Transfer her to a summer
20 term.

21 PROSPECTIVE JUROR: -- when the kids
22 are out. That would be perfect.

23 THE COURT: Okay. You're transferred.

24 PROSPECTIVE JUROR: Thank you.

25 THE COURT: You're welcome, ma'am.

1 THE BAILIFF: 190.

2 THE COURT: Good morning. Tell me your
3 name and juror number.

4 PROSPECTIVE JUROR: Tina Yagman, 190.

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR: I don't make enough
7 money to take off from work.

8 THE COURT: If you're not selected, you
9 will go to work everyday, but, unfortunately, I
10 can't excuse you on that basis.

11 Are you telling me your employer
12 doesn't pay you when you are on jury duty?

13 PROSPECTIVE JUROR: I don't think they
14 do.

15 THE COURT: Have you asked?

16 PROSPECTIVE JUROR: No.

17 THE COURT: You may want to ask.

18 PROSPECTIVE JUROR: Yeah, I need to.

19 THE COURT: Yeah, because --

20 PROSPECTIVE JUROR: I wouldn't think
21 they would though.

22 THE COURT: Well, some employers do.
23 They just require you to give them your jury check.
24 You may want to ask.

25 190 is qualified.

1 THE BAILIFF: Number 80.

2 PROSPECTIVE JUROR: I didn't heard the
3 question earlier.

4 THE COURT: That's okay.

5 PROSPECTIVE JUROR: I had the labrum
6 surgery and they botched it. I'm going to have
7 resurgery, but I can't sit for a long time.

8 THE COURT: Yeah. We try not to -- we
9 have lots of --

10 PROSPECTIVE JUROR: I can try, but I
11 may have to stretch my legs.

12 THE COURT: That's fine. We can sit
13 you by the bailiff and if you need to stand up, you
14 can stand up.

15 PROSPECTIVE JUROR: Okay. That's fine.

16 THE COURT: Tell me your name and juror
17 number.

18 PROSPECTIVE JUROR: Joe Heyward, 80.

19 THE COURT: And if you experience any
20 discomfort, tap the bailiff and we will take a
21 break.

22 PROSPECTIVE JUROR: Okay.

23 THE COURT: Number 80 is qualified.

24 THE BAILIFF: Number 1.

25 THE COURT: Tell me your name and juror

1 number.

2 PROSPECTIVE JUROR: Tama Alexander,
3 number 1.

4 THE COURT: Yes, ma'am.

5 PROSPECTIVE JUROR: I have some
6 disability. I can't sit down. I have to be able
7 to sit up or stand.

8 THE COURT: That's fine. We deal with
9 that all the time.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: And if you're selected,
12 we'll just sit you by a bailiff. If you need to
13 stand up, stretch your back or legs, or you
14 experience any discomfort, just let us know and
15 we'll take a break.

16 PROSPECTIVE JUROR: Okay. Thank you.

17 THE COURT: Number 1 is qualified.

18 (Following held within the presence and
19 hearing of the venire.)

20 THE COURT: Thank you, ladies and
21 gentlemen. The panel is now qualified.

22 Please permit me to share with you some
23 general guidelines for your service this week.
24 It's important that you have no interaction with
25 anyone in or about the courthouse that you do not

1 recognize to be a fellow juror.

2 Even an innocent conversation can be
3 observed and misinterpreted. We would not want you
4 to have an innocent conversation with a witness or
5 party and have someone observe that conversation
6 and misinterpret it.

7 If an emergency occurs at home, work or
8 otherwise, please make us aware of it. We don't
9 want you distracted when, in most instances, we can
10 assist you.

11 We ask that you be prompt. It is not
12 fair when we have to delay the proceedings because
13 someone is tardy. By the same token, we recognize
14 things happen and things come up, you know,
15 traffic, especially these days, as well as
16 accidents and other things that happen during the
17 course of getting to the courthouse.

18 So if you encounter some delay, make us
19 aware of it. Again, we would not want you stressed
20 out when, in most instances, we can render
21 assistance to you. We begin court at 9:30. We try
22 to break as close to 5:00 as possible recognizing
23 you have other obligations that you must attend to
24 during the evening recesses.

25 If you are not selected for a jury --

1 as a juror today, you will have to call the jury
2 information line after 6:00 each evening to
3 determine if we have need of you.

4 But as I've indicated, once I select
5 this jury for today, we will not -- in all
6 likelihood, we'll be excusing the panel for the
7 week.

8 If you will bear with me just one
9 moment, I'm going to select the jury and then,
10 hopefully, I'll be able to get you all on your way.

11 Ladies and gentlemen, we are going to
12 go through a process called voir dire, which is
13 simply a legal term meaning that I'm going to ask
14 you some questions so that the attorneys can more
15 effectively exercise their peremptory challenges
16 during jury selection.

17 If a question applies to you, please
18 stand, and in a loud and clear voice tell us your
19 name, your juror number, an answer to the question
20 if applicable, and remain standing until I have
21 completed questioning you.

22 Before we begin that process, this case
23 involves an automobile -- a motorcycle car accident
24 which took place on June 14th of 2017, northbound
25 on US Highway 17. And we are going to select a

1 jury for the case of Doretta McHugh, the personal
2 representative of the estate of Daniel E. Coy
3 versus John Doe.

4 Before we begin I will have counsel for
5 the plaintiff to introduce himself, tell us any
6 names of other lawyers in his law office, and have
7 counsel for the defendant provide us with the same
8 information. You may proceed.

9 MR. BOLES: Thank you. Good morning.
10 My name is Dan Boles and I represent the plaintiff
11 in this case. I work for myself, I'm the only
12 lawyer in my firm. I have offices downtown
13 Charleston and North Charleston and I handle cases
14 across the state. Thank you.

15 MR. COULTER: Morning. My name is
16 Michael Coulter. The law firm I work for is
17 Clarkson Walsh and Coulter. I have another
18 attorney -- Jeff Crudup, Ray Turner and Jim Walsh
19 are attorneys in that firm as well.

20 THE COURT: Again, ladies and
21 gentlemen, if a question applies, please stand, and
22 in a loud and clear voice tell us your name, your
23 juror number, an answer to the question if
24 applicable, and remain standing until I have
25 completed questioning you.

1 Is there any member of the panel
2 related by blood or marriage to Doretta McHugh or
3 Daniel E. Coy? If so, please stand at this time.

4 Does any member of the panel have a
5 close, personal or social relationship with Doretta
6 McHugh or Daniel E. Coy? If so, please stand at
7 this time.

8 The following are a list of potential
9 witnesses in this case. Please listen carefully.
10 Doretta McHugh, Aimee Goblet, Malaea Goblet, Sarah
11 Osborne of the South Carolina Department of Public
12 Service, a Troop Six representative, Daniel Coy.

13 Is there any member of the panel
14 related by blood or marriage to any of the people
15 that I've just listed or does anyone have a close,
16 personal, or social relationship with any of these
17 individuals? If so, please stand at this time.

18 Is there any member of the panel ever
19 been represented by any of the attorneys involved
20 in this case or any of the lawyers in their law
21 firm? If so please stand at this time.

22 Is there any member of the panel
23 related by blood or marriage, or have a close,
24 social, or personal relationships with any of the
25 attorneys in the case, any of the lawyers in their

1 law firm or any person employed in any capacity
2 whatsoever in their law firms? If so, please stand
3 at this time.

4 Has any member of the panel formed or
5 expressed an opinion about any issue or matter
6 involved in this case? If, so please stand at this
7 time.

8 Does any member of the panel have
9 personal knowledge of the alleged facts and
10 circumstances of the case? If so, please stand at
11 this time.

12 Is there any member of the panel aware
13 of any bias or prejudice towards either the
14 plaintiff or the defense in this case? If so,
15 please stand at this time.

16 Is there any member of the panel a
17 member of or a contributor to any group which has
18 as its primary concern the promotion of tort
19 reform? If so, please stand at this time.

20 Is there any member of the panel who
21 has ever been injured as a result of an automobile
22 accident? Is so, please stand at this time.

23 Tell me your name, your juror number
24 and remain standing for me.

25 PROSPECTIVE JUROR: Deena Matayabas,

1 juror 113.

2 THE COURT: Thank you.

3 Yes, ma'am.

4 PROSPECTIVE JUROR: Mary Ludwig, 110.

5 THE COURT: Okay. And behind you in
6 the blue and -- ma'am if you'd remain standing for
7 me.

8 PROSPECTIVE JUROR: -- juror number 1.

9 THE COURT: 110 stand back up.

10 Yes, ma'am, in the green.

11 PROSPECTIVE JUROR: Twenty-six, Stacy
12 Burick.

13 THE COURT: And next to my lady in the
14 striped shirt.

15 PROSPECTIVE JUROR: Terri Wright, 189.

16 THE COURT: Okay. Yes, sir.

17 PROSPECTIVE JUROR: Roger Rice, 139.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR: Lucianne Cassels,
20 32.

21 THE COURT: Yes, sir.

22 PROSPECTIVE JUROR: Isabel Lazo, 104.

23 THE COURT: And right beside you, yes,
24 sir.

25 PROSPECTIVE JUROR: Patrick Maguire,

1 112.

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR: Tina Yagman, 190.

4 THE COURT: And, yes, ma'am.

5 PROSPECTIVE JUROR: Sharon Limehouse,

6 108.

7 THE COURT: And, yes, ma'am.

8 PROSPECTIVE JUROR: Deborah Faulling,

9 46.

10 THE COURT: And right behind you.

11 PROSPECTIVE JUROR: Michael Cannon, 29.

12 THE COURT: And, yes, sir, that just

13 stood up.

14 PROSPECTIVE JUROR: Brando Biggs, 11.

15 THE COURT: Did I get everyone? As a
16 result of these experiences, do you all feel that
17 you can remain fair and impartial and render a fair
18 and impartial decision in this case, based solely
19 on the evidence as it will be presented and on the
20 law as the Court will instruct? If your answer is
21 yes, please take your seat.

22 Let the record reflect that all
23 answered yes.

24 Does any member of the panel know of
25 any reason whatsoever why he or she should not

1 serve as a juror in this case with particular
2 emphasis being placed on your ability to be fair
3 and impartial to both the plaintiff and the
4 defense?

5 Does any member of the panel have a
6 moral, philosophical or religious opposition to the
7 filing of lawsuits? If so, please stand at this
8 time.

9 Does any member of the panel have a
10 moral, philosophical, or religious opposition to
11 sitting in judgment of a fellow human being? If
12 so, please stand at this time.

13 THE COURT: Yes, ma'am. Tell me your
14 name and juror number.

15 PROSPECTIVE JUROR: Tina Yagman, 190.

16 THE COURT: Okay. Can you set aside
17 this belief and follow the law as the Court
18 instructs?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Okay. You will be excused
21 from the trial of this case only. You may take
22 your seat.

23 Any additional questions from the
24 plaintiff?

25 MR. BOLES: No, thank you.

1 THE COURT: Any from the defense?

2 MR. COULTER: No, ma'am.

3 THE COURT: Can we waive the alternate
4 or do we need an alternate? From the plaintiff?

5 MR. BOLES: I will leave it to the
6 Court's discretion.

7 THE COURT: I don't have a feeling one
8 way or the other. I need you to tell me what you
9 want.

10 MR. BOLES: I think we can make do with
11 just 12. We can waive.

12 MR. COULTER: That would be fine.

13 THE COURT: Alternate will be waived.
14 Strikes are four and four.

15 Ladies and gentlemen, give us a few
16 moments. We need to prepare what are called strike
17 sheets where your names are listed randomly 1
18 through 20. So please don't take care for the
19 numbers that we use because they have absolutely no
20 correlation to your juror number.

21 If you will be patient with us as we
22 prepare those, and then very shortly I should have
23 you on your way. We appreciate your patience.

24 I will give counsel a ten-minute recess
25 to review the strike sheet which is about 11:21.

1 You are welcome to stretch your legs and walk
2 around, but please don't go too far. Make sure
3 that you are back in your seats at 11:21, at which
4 time we will strike the panel.

5 (A recess transpired.)

6 THE COURT: We appreciate your
7 patience.

8 Plaintiff ready?

9 MR. BOLES: Yes.

10 THE COURT: Defense ready?

11 MR. COULTER: Yes.

12 THE COURT: Give the clerk your
13 attention using the numbers on the left-hand side.
14 Strikes are four and four. You may proceed.

15 THE CLERK: Thank you.

16 THE COURT: You're welcome.

17 THE CLERK: Beginning with the
18 plaintiff. The plaintiff strikes.

19 MR. BOLES: Number 1.

20 THE CLERK: Plaintiff strikes one.
21 Defendant strikes.

22 MR. COULTER: Number 18.

23 THE CLERK: Defendant strikes number
24 18.

25 Plaintiff strikes.

1 MR. BOLES: Number 4.

2 THE CLERK: Plaintiff strikes number

3 four.

4 Defendant strikes.

5 MR. COULTER: 19.

6 THE CLERK: Defendant strikes number

7 19.

8 Plaintiff strikes.

9 MR. BOLES: Number 6.

10 THE CLERK: Plaintiff strikes 6.

11 Defendant strikes.

12 MR. COULTER: Number 10.

13 THE CLERK: Defendant strikes number

14 ten.

15 Plaintiff strikes.

16 MR. BOLES: Number 7.

17 THE CLERK: Plaintiff strikes 7.

18 Defendant strikes.

19 MR. COULTER: I'm sorry, 9.

20 THE CLERK: Defendant strikes 9.

21 Please check our strikes. Plaintiff
22 strikes number 1, 4, 6, and 7; is that correct.

23 MR. BOLES: Yes, ma'am.

24 THE COURT: Defendant strikes number 9,
25 10, 18, and number 19; is that correct?

1 MR. COULTER: It is correct.

2 THE CLERK: Thank you.

3 THE COURT: Please give me your
4 attention and make sure that we have the same
5 numbers remaining, 2, 3, 5, 8, 11, 12, 13, 14, 15,
6 16, 17, and 20. Is that correct from the
7 Plaintiff?

8 MR. BOLES: It is, Your Honor.

9 THE COURT: From the defense?

10 MR. COULTER: Yes, ma'am.

11 THE COURT: Ladies and gentlemen,
12 please give me your attention. If your name is
13 called, will you come forward with all of your
14 belongings and stand in front of the jury box for
15 me?

16 Katherine Kinder, Roger Rice, Deena --

17 A JUROR: Matayabas.

18 THE COURT: Thank you.

19 A JUROR: Not a problem.

20 THE COURT: Sharon Sawyers, Marvin
21 Hamm, Mary Ludwig, James Geraghty, Randal Drew,
22 Donna Nelson, Robert Thieme -- and if I
23 mispronounce your name, I apologize.

24 A JUROR: Theme.

25 THE COURT: -- Thieme, Joy Valey, and

1 Jefferson Rosser.

2 To the balance of the panel, we thank
3 you for your time and attention this morning.

4 Please call the jury information line after 6:00
5 this evening for further instruction. We thank you
6 for your time and your patience. Have a great day.

7 (Remaining jury panel dismissed.)

8 THE COURT: Ladies and gentlemen, you
9 have been selected for the case of Doretta McHugh
10 versus John Doe. I will send you into your jury
11 room -- actually, if you could raise your right
12 hands for the clerk to administer the oath to
13 you.

14 THE JURY,
15 being first duly sworn, testified as follows:

16 THE COURT: Thank you.

17 I'm going to send you into your jury
18 room so that the bailiff can give you just a moment
19 to collect yourselves, as well as get your cell
20 phone numbers in the event we need to contact you
21 during any recesses.

22 During the break, please do not discuss
23 this case in any manner whatsoever. Do not
24 speculate what you think it may or could be about.
25 I am going to discuss scheduling with counsel, and

1 I think we will go ahead and get started today,
2 probably get a witness or two in before lunch.

3 We appreciate your patience. Please go
4 with the bailiff.

5 (Jury out, 11:25 a.m.)

6 THE COURT: Are there any motions or
7 exceptions to the jury selection? From the
8 plaintiff?

9 MR. BOLES: No, Your Honor.

10 THE COURT: From the defense?

11 MR. COULTER: No, ma'am.

12 THE COURT: All right. Any pretrial
13 matters we need to deal with prior to proceeding?
14 From the plaintiff?

15 MR. BOLES: Very briefly, Judge.

16 Yesterday, we e-filed the Rule 32
17 disclosure of deposition excerpts. I think maybe
18 because it was a holiday it bounced back. I just
19 wanted to -- and I e-mailed it to everybody. I
20 wanted to make sure, I guess as a housekeeping
21 matter, that everyone has it and is aware --

22 THE COURT: Did you check with counsel
23 to see if he had it or if he has exceptions --

24 MR. BOLES: There are some exceptions
25 that I'm sure he would take up during his turn.

1 THE COURT: Was it counter designations
2 or exceptions?

3 MR. BOLES: I will have to leave
4 that --

5 THE COURT: How long is the deposition?

6 MR. BOLES: 77 pages total. I culled
7 that down to about 32 pages of selected excerpts.

8 THE COURT: Okay.

9 MR. BOLES: I don't think it would take
10 me more than a couple of minutes to go through the
11 reading of the excerpts.

12 THE COURT: Okay. Do you have counter
13 designations?

14 MR. COULTER: I do, Judge.

15 THE COURT: Have you talked about it to
16 see if you could resolve it?

17 MR. BOLES: So, Your Honor, the short
18 answer is no.

19 THE COURT: Why haven't you talked?

20 MR. BOLES: I got some e-mails from
21 opposing counsel that he had a chance to look at it
22 and had some exceptions, but we haven't gotten
23 past --

24 THE COURT: -- in our profession
25 instead of just picking up the phone and talking to

1 each other, you go back and forth with e-mails. An
2 e-mail means one thing to me and means something
3 else to somebody else. I think they are an extreme
4 waste of time. You spend two days dealing with
5 e-mails and you could have a ten-minute phone
6 conversation.

7 I suggest that you all talk about the
8 deposition and see if you can swear the excerpts.
9 I don't see the need for me to have extraneous
10 argument if you all can just talk.

11 MR. BOLES: Yes, ma'am.

12 THE COURT: It seems to be a fairly
13 clear-cut issue. The gentlemen is deceased.
14 That's the only preservation of his testimony,
15 correct?

16 MR. BOLES: That's correct.

17 THE COURT: Did you have the ability to
18 cross-examine?

19 MR. COULTER: Yes.

20 THE COURT: Seems to me you should be
21 able to resolve that.

22 Do you all need a few minutes to do
23 that?

24 MR. BOLES: I do, Judge. I just
25 received their --

1 THE COURT: I assume you're going to
2 read it, or was it a video, or was it just
3 simply --

4 MR. BOLES: It was just a discovery
5 deposition. It was not -- there was no
6 videography.

7 THE COURT: You will have to -- you
8 need somebody to read it, correct?

9 MR. BOLES: If the Court prefers to
10 have two people then, yes, ma'am, I would.

11 THE COURT: I think you have to. I
12 don't think it's going to make sense outside of the
13 context. That's generally the way it's done.

14 MR. BOLES: Yes, ma'am.

15 THE COURT: You will need to find
16 somebody to do that for you. And I would assume
17 you might be able to draft somebody to do that
18 because he'll need his portions read as well.

19 MR. BOLES: Yes, ma'am.

20 THE COURT: Okay. Was there something
21 else you needed to take up?

22 MR. BOLES: For witness purposes and
23 planning this trial, Judge?

24 THE COURT: Uh-huh.

25 MR. BOLES: The defense has asked for a

1 bifurcated trial.

2 THE COURT: Are you still pursuing
3 punitive damages?

4 MR. BOLES: Yes, ma'am.

5 THE COURT: Tell me why. I'm curious.

6 And I'm also curious why you want to bifurcate.

7 The same evidence is going to come in and it really
8 irritates the jurors. I know the law gives it to
9 you, but it really irritates them.

10 They think they're done and then I have
11 to reinstruct them. I'm not going to have anymore
12 evidence, so it really -- you're going to hear a
13 big sigh. They're going to be like, why do I have
14 to do this again?

15 MR. COULTER: I understand that
16 completely, Judge. And I would think that I could
17 probably withdraw it. There is just one issue with
18 something that the plaintiff's attorney is wanting
19 to present that causes me concern.

20 THE COURT: What is it?

21 MR. COULTER: He's wanting to present
22 to the jury some statistics that say the state of
23 South Carolina has 10,000 or so hit-and-run
24 accidents a year.

25 THE COURT: Is that correct,

1 Mr. Boles?

2 MR. BOLES: That's right.

3 THE COURT: How are you going to get
4 that in?

5 MR. BOLES: So I spoke -- we have
6 talked about some of these other evidentiary
7 matters. Opposing counsel does not object to the
8 authenticity. The admissibility issue, Judge, is
9 this. One of the chief purposes --

10 THE COURT: I'm beyond authenticity.
11 I'm at the relevance.

12 MR. BOLES: The relevance? The issue
13 is this --

14 THE COURT: The relevance is, did this
15 person leave this accident? It's not how many
16 other people have left accidents. It's whether he
17 violated the safety statute and whether by clear
18 and convincing evidence that's a consciousness of
19 wrong doing.

20 MR. BOLES: That is one of the things I
21 want to ask the jury. The other thing that I want
22 to ask them as to think about another part, or the
23 intent of punitive damages is to prevent similar
24 conduct from other people.

25 THE COURT: If you look at drunk

1 driving stats, we can bear out that that don't
2 work. I don't care how many people we put in jail,
3 somebody is still going to get in their car tonight
4 drunk, or tomorrow, and kill somebody.

5 MR. BOLES: People are going to --

6 THE COURT: I don't think it's
7 relevant.

8 MR. BOLES: People will keep making bad
9 decisions, Judge, but I do respectfully submit for
10 your consideration that it is relevant when we see
11 that this is not something perhaps in our daily
12 lives people aren't aware of it happening, but it
13 happens --

14 THE COURT: I think a lot of people are
15 aware of it happening. I think enough people have
16 had it happen. I think as much traffic has
17 increased exponentially, as many more cars as we
18 have on the road, I think you would be hard-pressed
19 if you asked the jury if one of them hasn't had a
20 hit and run or somebody in their family hasn't had
21 a hit and run.

22 I just don't think it's that far
23 outside of the ambit of common knowledge. I think
24 it happens so regularly now that people hit folk
25 and they leave the scene. People have one-car

1 accidents and they leave the scene. I don't know
2 that this -- it's that unusual anymore. I don't
3 know that this was ever that unusual.

4 I think it happened a lot more -- I
5 think it happened probably as much as -- and we may
6 have had some incremental increase that ties to the
7 incremental increase of cars on the highway, but we
8 just know about it more now because of the
9 proliferation of media.

10 If you look at the stats, it hasn't
11 increased that much from probably 1963 until now.
12 Probably incrementally it's tied with the
13 increasing of cars on road, but I don't know that
14 it's any indication of people having some
15 indication of poor conduct.

16 In any event, I don't make evidentiary
17 decisions in advance of trial. You are going to
18 have to have somebody to enter it. Who are you
19 going to bring it in through? You don't have an
20 expert, do you?

21 MR. BOLES: In my client's prayer for
22 relief, she's going to ask the jury to award
23 punitive damages in such a way that it will
24 deter --

25 THE COURT: Talking about the

1 statistics. Not talking about punitive damages.

2 MR. BOLES: And so the statistics, what
3 I'm arguing is my client can make them relevant to
4 the jury as a tool --

5 THE COURT: That's not my question. My
6 question is, who is going to testify about these
7 statistics? You don't have an expert witness. You
8 don't get to just publish statistics.

9 MR. BOLES: So I had Subpoenaed Sarah
10 Osborne.

11 THE COURT: Oh, from SC --

12 MR. BOLES: And I asked opposing
13 counsel, do I need to bring that person here to
14 explain these statistics to lay the foundation.

15 THE COURT: How are you going to
16 establish that she is somebody other than a record
17 keeper? She didn't gather them. Who compiled
18 them?

19 MR. BOLES: Well, I was going to bring
20 her here, but Mr. Coulter said he wouldn't object
21 to the authenticity of the statistics.

22 THE COURT: Yeah, but this goes beyond
23 authenticity. We're talking about relevance now.
24 Talking about how -- and I'm assuming --
25 anticipating he's going to say, how were they

1 compiled? Who did it and what was the methodology?

2 MR. BOLES: I take all that to be
3 authenticity questions rather than relevance,
4 meaning --

5 THE COURT: Those are two different
6 things. Two different things.

7 MR. BOLES: So in considering whether
8 it's probative or prejudicial, which is the
9 relevant way --

10 THE COURT: You have relevance; you
11 have scientifically how was it compiled; and then
12 you have authenticity. All different things. It's
13 not all in the same realm of analysis.

14 MR. BOLES: Then perhaps I need to
15 bring Ms. Osborne here tomorrow to --

16 THE COURT: You might want to save her
17 a trip before I hear it in camera, but I'm not
18 making an evidentiary decision before I hear
19 opening arguments.

20 MR. BOLES: What I was wanting to ask
21 you about before we got into the statistics part,
22 with the bifurcation --

23 THE COURT: I think he said he really
24 doesn't want a bifurcation. He has the evidentiary
25 issue about the statistics. Did I hear you

1 correctly?

2 MR. COULTER: You did, Your Honor.

3 MR. BOLES: If there's no bifurcation,
4 then it's just one trial straight through.

5 THE COURT: I think that makes sense.
6 You know, for me, it doesn't matter. I'm going to
7 be here anyway. I just think it exhausts the jury.
8 They don't understand the legal aspects of it and
9 when they think they're done with something and
10 then you tell them, well, now, we're not so done, I
11 think it exacerbates them. Especially blue-collar
12 workers who are making like 6.50 an hour to be
13 here.

14 And I'm sure you could overhear people
15 them telling me their employers don't pay them.
16 And we can't make them pay them. You have to
17 maximize people's time while they're here.

18 MR. BOLES: Well, if we're not having
19 to do the second trial --

20 THE COURT: Well, it wouldn't be a
21 second trial. I would just give them a second set
22 of instructions, because the same evidence would
23 come in on negligence comes in on punitive damages.

24 The only thing really that would come
25 in on punitives is violation of the safety statute.

1 You don't have any financial information about it,
2 do you?

3 MR. BOLES: We don't have any
4 information about John Doe.

5 THE COURT: The only thing that would
6 come in would be the statutory violation that you
7 alleged took place. One would be following too
8 close, hit and run, failing to render aid -- trying
9 to think which other statute would be applicable.
10 Maybe there's one -- I don't know.

11 I haven't heard the evidence yet, so I
12 don't know if there's any evidence about exceeding
13 the speed limit.

14 MR. BOLES: I don't think speed limit
15 is going to be part of the testimony.

16 THE COURT: So those are the only three
17 statutes that I could think of off the top of my
18 head that would be, you known, evidence pertaining
19 to those that would come in.

20 The only element you can meet right now
21 for punitive is violation of the safety statute,
22 and whether you met that by clear and convincing
23 evidence and whether that rises to the level
24 willful, wanton and reckless behavior.

25 You don't have any evidence regarding

1 whether he or she had any other penalty, because
2 they weren't there. So no tickets were issued. We
3 don't know anything about their financial
4 wherewithal. So really that's the only evidence
5 that you would present and that comes in on regular
6 negligence as well.

7 All right. Anything else we need to
8 take up from the defense, other than the issue
9 regarding the statistics?

10 MR. COULTER: No, ma'am.

11 THE COURT: All right. Do you want to
12 take a quick break and then we'll resume opening
13 argument, opening instruction and -- who is your
14 first witness?

15 MR. BOLES: Aimee Goblet.

16 THE COURT: Is she here?

17 MR. BOLES: Let me check. She may be
18 in the lobby.

19 THE COURT: We'll be at ease about ten
20 minutes. I need notepads for the jury and I have
21 appointed number 169 as the foreperson.

22 (Whereupon, there was a break in these
23 proceedings, 11:37 a.m.)

24 (PLF. EXH. 1 - 13, Photographs in
25 evidence.)

1 (DFT. EXH. 1 Poster, in evidence.)

2 (DFT. EXH. 2 - 3, Photographs, in

3 evidence.)

4 THE COURT: Bring the jury in for me,
5 please.

6 (Jury in, 12:23 p.m.)

7 THE COURT: You may be seated.

8 Ladies and gentlemen, we're going to --
9 I know that you have been sitting for a moment; I
10 appreciate your patience. I had another hearing in
11 a totally unrelated matter, and I appreciate you
12 accommodating my ability to dispose of that. I'm
13 sure counsel would thank you for that as well.

14 We are having some technology
15 challenges we need to work out. Instead of you all
16 sitting while we do that, I'm going to let you go
17 to lunch. We'll resume at 1:30.

18 During the break do not discuss the
19 case amongst yourselves. Please don't speculate
20 about what you think it may or could be about.
21 Please don't have any contact with anybody in or
22 about the courthouse as you return. The bailiffs
23 will show you where you need to go, and once
24 everyone is back upstairs, we will resume the
25 proceedings.

1 At that time, we will have the Court's
2 opening instructions and opening arguments. I
3 suspect we will get through quite a few witnesses.
4 I anticipate we will finish this case on tomorrow
5 sometime.

6 We may order your lunch tomorrow. I
7 think it's going to be raining all day tomorrow. I
8 will see how the weather pans out. I hope you have
9 a good lunch. We'll see you at 1:30.

10 (Jury out, 12:24 p.m.)

11 THE COURT: All right. We will be at
12 ease until 1:30.

13 (A luncheon recess transpired.)

14 MR. BOLES: Your Honor, I did want to
15 make you aware. Opposing counsel and I were
16 talking about the consolidated agreed upon
17 excerpts. We are prepared to do the opening. I
18 have two witnesses I can through and then we do
19 need to confer just a little bit longer to get the
20 excerpts ready.

21 THE COURT: Do you have any other
22 witnessed you need to call, or are those your only
23 three witnesses?

24 MR. BOLES: I have two that are here, I
25 have the personal representative, and then the

1 excerpts.

2 THE COURT: Why don't you all try to
3 get through as many witnesses as you can before you
4 deal with the deposition.

5 MR. BOLES: I definitely can do the
6 two. Just for the story to make sense, I would --
7 I would like to do the excerpts first, but --

8 THE COURT: I think you need to think
9 like a layperson intend of a lawyer. We tend to
10 make things very complex.

11 MR. BOLES: Sure.

12 THE COURT: Jurors don't. But they
13 don't like waiting. That's why I suggested it.
14 Sometimes you test their patience and it makes
15 their attention span a little bit shorter than it
16 need be.

17 Play it by ear and see how it guess.

18 MR. BOLES: Yes, ma'am.

19 THE COURT: Defense ready to proceed?

20 MR. COULTER: Yes, ma'am.

21 THE COURT: Please bring in the jury.

22 (Jury in, 1:30 p.m.)

23 THE COURT: You may be seated. Ladies
24 and gentlemen, I hope that you had a pleasant lunch
25 recess, and we appreciate also your patience in

1 allowing us to work through some of our technology
2 speed bumps, I guess is a good way to put it.

3 With older courthouses, sometimes we
4 have to work a little bit to get the technology to
5 line up with devices. So we appreciate, again,
6 your patience, and please know we do not take your
7 time for granted.

8 As I explained, we are about to begin
9 the case of Doretta McHugh, as the personal
10 representative of the estate of Daniel E. Coy
11 versus John Doe, 2017-CP-08-2153. I'm going to
12 give you some preliminary instructions so you all
13 will better understand how we proceed in a case.

14 And you all have notebooks. You will
15 be allowed to take notes during the course of the
16 trial.

17 Did you -- somebody hold up the front
18 of your notebook for me.

19 A JUROR: (Complies)

20 THE COURT: Yeah, they each have
21 numbers. So if you just remember what your number
22 is so that you will know which corresponds with
23 your notebook. And I think what we do is leave
24 them in your seats and then they collect them and
25 secure them.

1 THE BAILIFF: Thank you very much.

2 THE COURT: They will be placed back in
3 your seats in the morning before you arrive, but
4 know that your notes will be secured during any
5 recesses. And I will give you some notes regarding
6 note-taking so that you will better understand the
7 parameters of that as well.

8 First thing that will occur, ladies and
9 gentlemen, the attorney for the plaintiff, and the
10 plaintiff is the person who has brought the lawsuit
11 or the action, will make an opening statement
12 followed by a similar statement by the attorney for
13 the defense.

14 Opening statements are not arguments.
15 They are merely the parties contention as to what
16 they believe the evidence will show in a case.
17 Arguments come at the conclusion of the case.

18 Again, the purpose of opening
19 statements is for each party to outline his or her
20 claims and the evidence which they intend to
21 present in support of their claims.

22 Following the opening statements, each
23 side will present its evidence; once again with the
24 plaintiff going first. Evidence may take many
25 forms. It may be testimony, documents, models,

1 photographs, or the like.

2 You should pay close attention to all
3 of the evidence as presented by each party; because
4 you, the jury, are the sole finders of the facts in
5 this case and no one else will be permitted to
6 weigh the evidence and render a verdict based upon
7 it.

8 After all of the evidence has been
9 presented, the attorneys will make their closing
10 arguments; and unlike the opening statements, the
11 final remarks will be true arguments. That is,
12 each side will emphasize certain portions of the
13 evidence in an attempt to persuade you to agree
14 with their version of the facts.

15 Keep in mind that the opening
16 statements, as well as the closing arguments, do
17 not represent evidence in this case. I would ask
18 that you give counsel your undivided attention, but
19 keep in mind that what they say is not evidence.

20 After the arguments are finished, I
21 will then explain to you the law that applies to
22 this cause of action. You will then retire to your
23 jury room to consider the facts and the law. Once
24 you have done so, you will return a verdict in
25 favor of one side or the other.

1 During the course of this trial the
2 plaintiff has the burden of proving their claims.
3 They must meet this burden by the preponderance or
4 the greater weight of the evidence. What we mean
5 by the preponderance or the greater weight of the
6 evidence can be illustrated by imagining a
7 traditional set of scales. When the case begins,
8 the scales are even.

9 After all of the evidence has been
10 presented, if the scales remain evenly balanced, or
11 if they should tip even slightly in favor of the
12 defendant, then the plaintiffs would have failed to
13 have met their burden of proof and your verdict
14 would be for the defendant.

15 If, on the other hand, the scales
16 should tip even slightly in favor of the
17 plaintiffs, they will have met their burden of
18 proof and your verdict would be for the plaintiffs.

19 There are a few additional comments
20 that I will share with you before we begin. As I
21 mentioned earlier, although I'm the only one that
22 can tell you what the law is, you are the only ones
23 who can determine the facts.

24 I do not have a right to indicate how I
25 might feel about the testimony and the evidence

1 presented. In fact, the law does not allow me to
2 have an opinion, and you should not imply anything
3 from what the Court says in ruling upon the
4 admissibility of evidence or, otherwise, that I
5 have any opinion about the facts of this case.

6 And throughout this trial, ladies and
7 gentlemen, it will be my intention to be fair and
8 impartial to each of the parties as well as their
9 counsel.

10 Also, from time to time, attorneys will
11 object. Objections are a healthy part of the
12 process. They deal with procedure as well as
13 evidence. So, from time to time, you will hear
14 objections.

15 And just as in sports, business, or any
16 other structured activity, there are certain rules
17 that we must obey. These rules ensure that you
18 receive the most trustworthy and reliable evidence
19 available. An objection is the procedure that is
20 used for an attorney to call a possible violation
21 of the rules to my attention as the judge of the
22 court.

23 And for this reason, you should never
24 hold an attorney's objection against them, nor
25 should you conclude from the Court overruling or

1 sustaining an objection that I favor one side or
2 the other.

3 Also, from time to time, you will hear
4 the attorneys say, Your Honor, we have a matter of
5 law we need to take up, or sometimes I might ask
6 them to approach the bench, or sometimes they may
7 ask to approach the bench.

8 Sometimes it might even be necessary
9 for us to excuse you from the courtroom for a short
10 while while we discuss matters of law. The reason
11 we do this, ladies and gentlemen, is because you
12 are the finders of the fact. And sometimes when
13 I'm discussing matters of law with counsel, it
14 might be necessary for me to make some comment in
15 connection with the facts.

16 For this reason, we exclude you from
17 those discussions so that in no way will you be
18 influenced by anything that the Court may say or do
19 in connection with the facts of this case.

20 During the course of this trial you
21 will be allowed to take notes. Note-taking is a
22 privilege that you may choose to exercise or choose
23 not to exercise. Please don't feel it's required;
24 not everyone finds note-taking helpful to them.

25 If you should decide to take notes, do

1 not try to record everything that is said. It's
2 physically impossible. I find -- this is -- I'm
3 entering the -- coming to the close of my 24th year
4 of being on the bench. And I find as I have done
5 this, I talk faster.

6 And I have to really, like, modulate
7 myself because I have to recognize my court
8 reporter, even though she takes down things
9 phonetically so that she can catch it all. But as
10 you can imagine, even a moderate speaker speaks
11 over 200 words a minute. That's a lot of words.

12 And since you are the finders of the
13 fact, you need to observe the witnesses so that you
14 can make the appropriate determinations regarding
15 their credibility and believability. So, please,
16 don't allow note-taking to become a distraction to
17 you.

18 And even as adept as Denise is and as
19 professional as she is in taking down the
20 proceedings, she still listens to a backup tape
21 before she produces a transcript to make sure that
22 she has not missed anything. So, again, please
23 don't allow note-taking to become a distraction to
24 you.

25 You may want to keep an outline of the

1 main points of the arguments that are being made so
2 that when you retire to deliberate you can allow
3 your notes to refresh your memory. Please be
4 reminded that your notes are for your specific and
5 your individual purposes. They are only to be used
6 to refresh your own recollection. They are not to
7 be shared with anyone else.

8 And also be reminded that someone's
9 notes should not be anymore reliable than a fellow
10 juror's memory. A fellow juror's memory should be
11 considered just as reliable as notes that may have
12 been taken as a fellow juror.

13 And as I have already indicated, we
14 will secure your notes during breaks and recesses.
15 We do this so there is no premature temptation to
16 deliberate regarding any matter or issue in the
17 case.

18 Finally, ladies and gentlemen, I would
19 ask that you pay close attention to all of the
20 evidence that is presented to you because it is
21 you, the jury, who will have to determine the facts
22 in this case which means that you will have to
23 evaluate the credibility, meaning the believability
24 of each witness who testifies in this case.

25 Each of you is participating in a

1 time-tested system, and it is essential that you
2 listen carefully to all of the evidence presented.
3 And I'm sure that each of you will perform your
4 duties accordingly.

5 Also, I have selected your foreperson.
6 The foreperson is purely administrative. We just
7 need someone to fill out the verdict form or write
8 out any questions you may have during
9 deliberations. I wish there was some scientific
10 method that we use to do that, but it's purely
11 random. And I emphasize that that person does not
12 have any greater vote or voice than you do. The
13 foreperson, again, is for purely administrative
14 purposes.

15 In order to preserve everyone's rights,
16 I will give counsel the opportunity to take
17 exception to anything that the Court has said by
18 way of opening instructions.

19 Any exception from the plaintiff?

20 MR. BOLES: None Your Honor. Thank
21 you.

22 THE COURT: You're welcomed.

23 From the defense?

24 MR. COULTER: No.

25 THE COURT: Ladies and gentlemen, I

1 would ask that you give counsel your undivided
2 attention.

3 Mr. Boles, you may proceed.

4 MR. BOLES: Thank you. May it please
5 the Court.

6 THE COURT: Yes, sir.

7 MR. BOLES: May I approach?

8 THE COURT: Yes, sir.

9 MR. BOLES: Afternoon. We met earlier.
10 My name is Dan Boles and I represent the plaintiffs
11 in this case. I want to go over the cast of
12 characters that you guys are going to meet
13 throughout the trial that you're here for.

14 We have the plaintiff himself. He's
15 named Daniel Coy. As you heard the judge say, I
16 actually represent the estate of Daniel Coy.
17 Mr. Coy since the accident that we're here about
18 passed away in an unrelated tragedy.

19 I want to clear that up real quick.
20 We're not here about Mr. Coy's passing; however,
21 that does explain why his mother, Doretta McHugh,
22 has been appointed as his representative. So she's
23 going to be here today on his behalf.

24 We have two witnesses, Aimee and Malaea
25 Goblet waiting outside. I will introduce you to

1 them after opening statements. And then also you
2 will hear from Mr. Coy's deposition; because while
3 this case was pending and the lawyers were involved
4 in what we call the discovery process, we did a
5 recorded interview, basically, of Mr. Coy. And you
6 will hear some of the questions and answers from
7 Mr. Coy himself.

8 Also a character in this case is John
9 Doe. You will notice that my colleague,
10 Mr. Coulter, the defense attorney, is alone at his
11 table. And that's because a person that we don't
12 know who they are or where they are on the date in
13 question, June 14, 2017, hit Mr. Coy while Mr. Coy
14 was riding his motorcycle, caused him to go over
15 the handlebars, flip, caused his bike to run over
16 Mr. Coy after he went over his motorcycle.

17 All of that happened right out of the
18 front windshield of John Doe, and John Doe did not
19 remain on scene. Okay. Our two eyewitnesses are
20 going to explain to you what John Doe did. And I
21 don't expect him to show up between now and the end
22 of the trial.

23 I want to take a second to thank you
24 again for your service and attention while we are
25 unpacking the evidence of this case. As the judge

1 said earlier, the American jury trial system is the
2 envy of the world.

3 There has been no criminal prosecution
4 in this case because we don't have a defendant.
5 You 12 are the first chance that the family has to
6 get justice, and you are probably the only chance
7 they will have.

8 I thank you for listening to us today.

9 Let's dial a little bit more into the
10 facts as I think you will hear through the
11 witnesses. As I said, June 14th, 2017, Mr. Coy was
12 riding his motorcycle to work. He lives -- he
13 lived and worked pretty close together. And on his
14 way home from just out for a pleasure cruise, he
15 rode by the gas station where he works, which I've
16 pulled up here on this road. (Indicating)

17 The gas station is the black roof
18 building. He rode by on his way home, and he saw
19 that two of our witnesses Aimee and Malaea were
20 working. So he thought, before I go to work --
21 Mr. Coy worked at the gas station -- before I go to
22 work, I'm going to go to Cook-Out and pick up some
23 cheeseburgers for Aimee and Malaea, which he did.

24 He had the cheeseburgers in his
25 backpack and was riding his motorcycle back from

1 the left side of the screen to the right. If you
2 look up on that right turning lane, there is a
3 right turn arrow right there. (Indicating) I
4 think the witnesses are going to use that as kind
5 of a guidepost, okay, to describe where the
6 incident took place.

7 It's right about as Mr. Coy was
8 approaching that right turn arrow an unknown
9 vehicle came up behind him hit him, basically,
10 seizing the motorcycle in place. Okay.

11 In the deposition transcript, Mr. Coy
12 described it as he felt a jerking motion. He
13 described it actually as he thought that his
14 motorcycle had somehow locked up underneath him
15 because it stopped and he kept going. Okay.

16 I think the witnesses will describe
17 that -- because Aimee likes to ride motorcycles and
18 so does Malaea -- they heard his engine approaching
19 and they looked up to see who was arriving. So
20 they happened to see the entire event unfold.

21 They will describe to you how Mr. Coy
22 flew over the handlebars, the motorcycle rolls over
23 him and falls on the ground. And that driver, that
24 John Doe driver pulled up a little bit further,
25 which is outside of the screen. It's a turning

1 lane, a red light. He pulled up a little bit,
2 paused, and ran the light.

3 They're going to tell you that at the
4 time the driver did all that, Mr. Coy was laying
5 face down in the road.

6 I'm going to show you guys throughout
7 the trial some photographs of the damage to the
8 motorcycle and some photographs of Mr. Coy's
9 injuries. Very briefly -- we'll get into that
10 later in detail. Very briefly, Mr. Coy landed on
11 his face, okay, and he rolled over. He described
12 it in his deposition as his feet -- I believe he
13 called it ass chomping the ground. He hit his
14 face, rolled over and his feet slapped the ground.

15 Mrs. McHugh -- he lived with his mother
16 at the time, they saw each other every day. She
17 will tell you about his injuries, and she will tell
18 you about how long he couldn't walk very well.

19 The date of the deposition excerpts
20 that we will offer was April of 2018, almost a year
21 after this accident. And he told the defense
22 lawyer at that time that he still had trouble
23 sleeping and still had trouble walking.

24 Mrs. McHugh is going to describe to you
25 what the bruising was like on his feet. And we

1 have photographs of the road rash. We have
2 photographs of the cut on his face, which
3 eventually scarred his face.

4 We're going to talk a little bit about
5 the motorcycle itself. Okay. This was Daniel's
6 pride and joy. Later on in the trial when I'm
7 talking to Aimee and Malaea, you'll probably hear
8 me say Coy. That was his nickname. I knew him as
9 Dan, but Daniel Coy. Coy loved his motorcycle. He
10 sold his car and then walked for a couple of weeks,
11 I think -- or a couple of months, so he could save
12 up money to buy this Ducati Scrambler. It was his
13 pride and joy.

14 I ride motorcycles. I could sleep in
15 my garage just looking at the things. I don't know
16 if anybody else on the jury is familiar with boys
17 and their toys, but there is a special affection
18 between these things.

19 You know, there was some problems with
20 -- well, the motorcycle was totalled. Okay. So
21 we're going to ask you as part of the relief in the
22 case to put him back to where he was before the
23 accident happened. That includes the motorcycle.
24 There was some out of pocket he incurred getting
25 another one to replace it, and we are going to ask

1 for that.

2 We're going to ask that you take into
3 consideration his medical treatment. You will -- I
4 believe the witness is going to tell you -- I think
5 you're going to hear in the deposition transcript
6 that Daniel didn't really go to the doctors. He
7 was very concerned about being indebted for his
8 hospital care.

9 He had a \$75 ambulance bill where they
10 just came and looked at him on the side of the road
11 when the accident happened, and he was worried
12 about paying that. Okay.

13 So he did have some medical expenses.
14 His family was able to convince him to go and get
15 checked out somewhat. I must admit at the end of
16 all this I want you all to take that into
17 consideration, but also consider it's not really
18 the ending point of his loss. Okay.

19 We're also going to ask you at the end
20 of this case to compensate Daniel for his pain and
21 suffering, for his loss of enjoyment. He had
22 permanent scarring on his face after the accident.

23 All of these things are going to be
24 part of what we're going to ask you all to award
25 his family to bring him some measure of justice.

1 On top of that, after you decide what
2 is fair and justice for Daniel Coy, I want you to
3 turn your attention to that blank -- to that empty
4 chair and think about that person and what is fair
5 and just to send a signal wherever that person is
6 that what they did will not be tolerated by you.

7 I want you to think about what would
8 send a message to other people in Berkeley County.
9 Okay. Hit and runs happen all the time. It's not
10 supposed to be that way. You all are going to have
11 an opportunity at the end of the trial to send a
12 message to everyone, as far as I'm concerned, in
13 the state about how you feel about that kind of
14 behavior. And you can award an amount that would
15 send that message.

16 And I want you to think about how that
17 person who is not here today violated Daniel Coy's
18 rights, and I want you to take that into account.

19 Now, the judge talked about the burden
20 of proof. She is right; we bear the burden of
21 proving everything I just told you about. And I
22 know we will. We have to meet what's called the
23 preponderance of the evidence.

24 On television, we talk about beyond a
25 reasonable doubt, but that's criminal cases when

1 you're proving guilt beyond a reasonable doubt.

2 That's not what applies in this case. Okay.

3 This case the burden is called
4 preponderance of the evidence or greater weight.
5 The judge gave you an example about the scales. If
6 they tip ever so slightly in our favor, you must
7 find in favor of the plaintiff. We're going to
8 squash that. No problem.

9 Another analogy I give is, in football
10 we just have to make it past the 50-yard line. Not
11 even the 51-yard line. Just the nose of the
12 football past the 50-yard line and the plaintiff
13 has met their burden.

14 Now, I anticipate because we've had --
15 strike that. Let me start this over again.

16 The preponderance of evidence standard
17 that I just told you about applies to the
18 compensatory damages, like medical bills,
19 motorcycle pain and suffering; the things for
20 Daniel. That burden applies to -- we have to prove
21 those damages were caused by the accident by that
22 standard.

23 The punitive damages that I talked
24 about, okay, the things that the empty chair is
25 going to get, those require a little bit higher

1 standard. That's clear and convincing. It's
2 greater than preponderance and somewhat less than
3 beyond a reasonable doubt.

4 There will be instructions at the end
5 that reinforce these two burdens. Again, I'm
6 confident we will have no problem meeting whatever
7 burden you want to put in front of us. I want you
8 familiar with the vocabulary you will hear at the
9 end of the case. We have compensatory damages
10 we're going to ask for and punitive damages.

11 Now, throughout the life of this case
12 we have done discovery, as I talked about. And the
13 defense has alleged an affirmative defense called
14 comparative negligence. What does that mean? I
15 don't think it applies to this case, but I have to
16 walk you through it in the opening because I want
17 you to be prepared for it.

18 Comparative negligence is where the
19 defendant says, maybe I messed up, but the
20 plaintiff did too; and they messed up more than I
21 did; and, therefore, I should not be responsible.

22 Again, John Doe ran up behind a
23 motorcycle, hit it, drove away. I don't think
24 comparative negligence applies, but they are free
25 to make that argument. And if they do, the burden

1 of proof applies to the defendant.

2 They have to prove, based on a
3 preponderance of the evidence, that Daniel Coy was
4 negligent and somehow he caused himself to
5 magically fly over his own handlebars and land on
6 the ground. And somehow the car that was right
7 behind him had nothing to do with it. Okay. Be
8 ready for that.

9 I like to frame it like, you know, the
10 theme of this case is like we're on a journey
11 together, all of us in this courtroom are on a
12 journey together. Okay. And I want you to arrive
13 at the verdict. That's our designation, the
14 verdict.

15 How are you going to navigate to the
16 verdict? You're going to use road signs. Like on
17 the interstate, you've got green road signs.
18 You've got mile markers. That's the information.
19 That's the true information that you can rely upon
20 to tell you how to get to your destination while
21 driving on the road.

22 What else do you see when you're
23 driving on the interstate? Billboards. Okay.
24 Billboards is what is coming from over there.
25 Okay. Witnesses, evidence, those are the mile

1 markers. These are guide posts. (Indicating)
2 Those are your road signs. (Indicating) Those are
3 your bright green and white road signs that you
4 follow to make it to your destination.

5 If you're driving down the highway and
6 all you do is pay attention to billboards, you're
7 never going to get to your destination. You're
8 just going to get distracted. That's what
9 billboards are for. They're flashy and bright and
10 distract your information from the true
11 information. Be aware of what is being presented
12 to you. Does it classify as information or
13 evidence you can rely on, or is it a distraction?

14 Because you have taken time out of your
15 day and your lives and you're here listening to us
16 right now, and we are going to honor that by
17 bringing you evidence. Okay.

18 And anyone who does not come into a
19 court of law and present a case to a jury based on
20 evidence, who doesn't bring their witnesses and who
21 doesn't convince you, doesn't meet their burden of
22 proof should stay home. Because you-all didn't.
23 You-all heeded the call.

24 That just about wraps up my opening
25 argument. Again, I appreciate your time and your

1 patience. I can promise you that I will move
2 through this case as expeditiously as possible.
3 And all that I ask in return is that you keep an
4 open mind and listen to the evidence, and at the
5 end of the case return us the only true verdict
6 which would be in favor of the plaintiff, the
7 estate of Daniel Coy. Thank you very much.

8 THE COURT: Opening, Mr. Coulter.

9 MR. COULTER: Thank you, Judge. May it
10 please the Court.

11 THE COURT: Yes, sir.

12 MR. COULTER: Ladies and gentlemen,
13 good afternoon. My name is Mike Coulter, and I
14 represent the fictional John Doe that you heard
15 about. I want to start out by kind of talking
16 about the different types of court we have in South
17 Carolina because it's going to be very important
18 when you realize where we're headed down this road
19 as we present this trial.

20 There are two types. There is general
21 sessions court, which is criminal court. Okay.
22 Person charged with a crime goes in front of a
23 jury. Then there is this court which is called
24 common pleas court, which is typically referred to
25 as civil. Okay. This court is about money. It's

1 about money.

2 And you're going to hear an awful lot
3 about that from the plaintiff's attorney in this
4 case wanting money. Okay. Not only does he want
5 his client to be whole based on what he claims to
6 have happened that day, which I'm going to address
7 in just a minute, but on top of that he wants the
8 fictional John Doe to be punished by receiving more
9 money. So make no mistake, that's what this is
10 about. Okay.

11 He's going to try to make it seem like
12 it's something else. He's going to try to say, oh,
13 this will teach John Doe who is sitting at home.
14 You know, we'll punish John Doe. He'll know he
15 shouldn't do that, but it's about the money right
16 here. Okay.

17 So let's talk about the facts. Now,
18 what I'm about to tell you is not fact. What I'm
19 about to tell you is not facts. What the
20 plaintiff's attorney just told you is not facts.
21 Facts, evidence comes from this stand.

22 I'm going to suggest some things that
23 you're going to hear from this stand. I'm going to
24 suggest some things that you will see in evidence
25 and photographs and such, but what I say now is not

1 evidence. If I were to agree with everything that
2 he just said, we wouldn't here. I can promise you
3 that. Okay.

4 Now, you heard that Mr. Coy passed
5 away, unfortunately; horrible. Another motorcycle
6 accident and he died. Okay. This particular case
7 is an incident I will say. Could it be interpreted
8 as an accident would be up to you to decide that.
9 But there are some things that you haven't heard
10 yet.

11 One, again, this happened in June of
12 2017. You will find out that Mr. Coy had been
13 driving a motorcycle, Ducati, kind of a racing
14 motorcycle. Okay. And he had been driving
15 motorcycles for two months. Not just this Ducati
16 motorcycle. He had just started driving it his
17 entire life two months before this accident.
18 Thirty-five years old, just started driving a
19 Ducati.

20 You're going to find out that just six
21 weeks before this accident while he was training to
22 learn how to drive on a motorcycle he did something
23 wrong and flipped over the handlebars and hit his
24 head. Just like this accident.

25 The one person -- just think about

1 this. And you'll be hearing this testimony I
2 submit. The one person in the world that ought to
3 know if they got hit in this accident by another
4 car would be who? Mr. Coy. Right. That's what
5 you would think. Right?

6 You're going to hear, I submit to you,
7 in his deposition that Mr. Coy didn't think he got
8 hit by a car. He thought his motorcycle seized up
9 and he went over the handlebars and hit the
10 pavement. The one person you would think would
11 know doesn't know.

12 You're going to hear that Mr. Coy said,
13 I didn't know. I didn't see any cars behind me.
14 There weren't any headlights behind me. I heard no
15 car behind me. And yet this happens.

16 And, see, I would suggest to you if you
17 look at this, you're going to hear Mr. Coy say when
18 he left, there was -- there was a light a little
19 bit further back here. (Indicating) When he left
20 he was only aware of vehicles in the far lane of
21 traffic. Not right behind him.

22 So as he's travelling up -- and
23 understand this. This is going to be a line of
24 sight issue. These two witnesses -- who, by the
25 way, are close friends of Mr. Coy. I absolutely

1 understand that. He's passed away and they feel
2 bad.

3 It's a horrible thing and they
4 certainly want to help their close friend, but
5 they're standing right in this area here
6 (indicating) looking back across the parking lot
7 into the roadway at almost midnight.

8 And it's a line of sight. They see a
9 car coming up. Whether or not it's behind him or
10 not has nothing to do with perspective as you're
11 looking that way. And I will tell you, one of
12 these witnesses is going to tell you, I assumed he
13 got hit and it was impossible for me to be able to
14 see if that car hit the back of the motorcycle
15 because we were too far away. That's what I submit
16 you will hear.

17 So I'm going to sit down and would just
18 say this last thing. All I would ask you to do on
19 behalf of anybody that I represent, whether it
20 happened to be John Doe or whoever, is that you --
21 at least one thing and I know you will, and that is
22 to be reasonable. Okay.

23 Because the judge told us about how
24 important this system is. It is so important and
25 works when we make decisions based on

1 reasonableness as opposed to passion or prejudice.
2 When that comes in, that's when things get a little
3 strange.

4 I'm asking you to be reasonable because
5 I know that you will be reasonable. I'm certain of
6 that. And I just ask that you consider everything
7 and make sure you hear what comes from the stand as
8 opposed to what is said right down here.

9 Thank you.

10 THE COURT: Call your first witness.

11 MR. BOLES: Thank you, Your Honor. The
12 Plaintiff calls Aimee Goblet.

13 AIMEE GOBLET,

14 being first duly sworn, testified as follows:

15 THE CLERK: Please be seated. State
16 your full name for the record and spell your last
17 name.

18 THE WITNESS: My first name is Aimee --

19 THE COURT: Ma'am, I need you to speak
20 directly into the microphone. Pull it down in
21 front of you.

22 THE WITNESS: My first name is Aimee --

23 THE COURT: Turn the microphone on.
24 Bear with us for one second for her to be able to
25 hear you.

1 (Break in proceedings.)

2 THE COURT: If you will just speak
3 directly into the microphone.

4 THE WITNESS: Can you hear me now?

5 THE COURT: Uh-huh.

6 THE WITNESS: Okay. My name is Aimee,
7 A-I-M-E-E, Goblet, G-O-B-L-E-T.

8 THE COURT: You may proceed.

9 MR. BOLES: Thank you, Your Honor.

10 Don't feel bad about the electronics.
11 It took me about 45 minutes to get that picture up
12 there on the projector.

13 DIRECT EXAMINATION

14 BY MR. BOLES:

15 Q. Ms. Goblet, you know who Daniel Coy
16 was?

17 A. Yes, I did.

18 Q. And tell the jury a little bit about
19 how you knew Mr. Coy.

20 A. I worked with him. I worked second
21 shift and he worked third and we passed shifts, and
22 we were friends.

23 Q. Where did you work?

24 A. At Circle K.

25 Q. And if you turn around, is that the

1 building that's up there with the black roof on it?

2 A. Correct.

3 Q. Okay. You understand that we're here
4 today about a motorcycle collision?

5 A. Yes.

6 Q. Were you working on the night that the
7 collision took place?

8 A. I was.

9 Q. Did you witness the collision?

10 A. I did.

11 Q. Okay. Let's start just a couple of
12 minutes before the collision happened and tell the
13 jury what you were doing and what you saw.

14 A. Okay. I was in the store getting ready
15 for him to get there, and I heard the motorcycle.
16 I ride, I like motorcycles. So when I hear one it
17 doesn't matter whose it is, I'm going to look.

18 I was waiting, I heard it, and I
19 started walking out the door to see. And I could
20 see him coming down the road which got me excited.

21 Q. Tell the jury -- sorry to interrupt you
22 there. What kind of door are you talking about?
23 Wood? Black?

24 A. No. It's like regular gas station
25 doors. You know, the two glass doors with the

1 metal handles in the middle, just push them to get
2 out. And then on the side there's nothing but
3 glass. It's all glass windows from the top of the
4 ceiling to the floor.

5 Q. Were you able to see Mr. Coy clearly as
6 he approached?

7 A. Yes, sir.

8 Q. Okay. And now please continue. You
9 heard it and you looked up?

10 A. Right. And then he was coming into the
11 beginning of the turn lane. I couldn't see him
12 then yet; I could just hear him. When he got up
13 towards Circle K is when I could see him.

14 Q. Okay. Then what happened?

15 A. He was turning to make a right, and he
16 was slowing to make the right. There was a car
17 coming up behind him rather fast. I think the car
18 thought he was going -- there's a stoplight right
19 ahead that also does a right turn there. And I
20 think the car assumed he was going to the
21 stoplight. And when he didn't, that's when he was
22 hit from behind and he was thrown from the bike. I
23 was one of the first ones out on the road to him.

24 Q. Okay. Let's unpack that just a little
25 bit. I think you just testified that the car came

1 up from behind him?

2 A. Correct. The car was in the turn lane
3 also.

4 Q. Right behind Mr. Coy?

5 A. Right. Correct.

6 Q. And then did I hear you testify that
7 the car made contact with the motorcycle?

8 A. I heard the car screech and I heard
9 what sounded like impact. What it looked like to
10 me is the car hit. When I was asked what hit what,
11 I can't tell you.

12 At that point, all I was worried about
13 was getting him out of the street. The car went
14 past and stopped right before the light. And it
15 was like they were thinking about stopping. And
16 then they hurried up and made a right turn and went
17 into that neighborhood that was Beauregard.

18 Q. Did they ever come back?

19 A. No. I didn't get the license plate or
20 the make of the car or anything. I was thinking
21 about getting him out of the road. He went into
22 oncoming lanes where traffic was coming. We went
23 up to get him.

24 Q. Again, I want to unpack this because
25 this is the first time that the jury is hearing the

1 story from you. Okay? You were concerned about
2 traffic because Mr. Coy was laying in the road?

3 A. Correct.

4 Q. And you were focused on helping him out
5 of the roadway as opposed to looking at the license
6 plate of the car?

7 A. Right. I didn't think about that until
8 after the fact when people asked did you get the
9 license plate or a make or model? I didn't.

10 Q. Let's take a little fork in the road --
11 okay. We'll come back to Coy and him in the road
12 and you coming up -- to talk about the car.

13 A. Okay.

14 Q. Okay. Did law enforcement show up?

15 A. Yes, they did.

16 Q. And did they ask for your account of
17 what happened?

18 A. Yes, they did.

19 Q. And did you guys try to -- let me ask
20 you this: Does the gas station have video cameras?
21 Seems like everybody has cameras these days.

22 A. They did. They have very old
23 surveillance. When the police tried to go in and
24 look, they couldn't get anything from the
25 surveillance.

1 Q. When you say anything. They were
2 unable to identify --

3 A. Like what was going on at the road.
4 The surveillance was mostly their money in the
5 register. You could see that better than you could
6 see out in front of the store. It just wasn't very
7 good cameras.

8 Q. Okay. So they tried to ascertain
9 something about some identifying information and
10 weren't able to about the car?

11 A. Correct.

12 Q. Okay. Let's come back to that fork in
13 the road and talk about your arrival to Coy when he
14 was laying in the road. What did you see when you
15 saw him laying in the road?

16 A. He wasn't moving. He still had his
17 helmet on so I don't know if he was awake or not.
18 To me, it seemed like he was unconscious. At that
19 point he was not moving. His body was laying -- I
20 didn't know what was wrong. We went out to him.

21 I was a little more petite then, but he
22 was also a healthy man. He was tall and broad and
23 I couldn't get him up by myself. My daughter
24 Tressa helped me. She was there picking me up from
25 work. She tried to help me. The two of us

1 struggled to get him up.

2 He finally was waking up and kind of
3 groaning and talking and he took his helmet off,
4 and that's when he looked like he was okay, but he
5 wasn't talking.

6 Q. Okay. Did you guys get him out of the
7 roadway?

8 A. Yes. We got him into the parking lot.
9 We had two other gentlemen that came that were just
10 customers of the store. They helped get him into
11 the lot and then they helped get his bike off the
12 road.

13 Q. Was he bleeding? Did he appear
14 injured?

15 A. I didn't see anything like that.

16 Q. Okay.

17 A. He was very disoriented though.

18 Q. Can you describe what you mean by that?

19 A. He knew he was there for work. He
20 didn't want me to stay at work. He kept telling me
21 he would be able to stay for work, but he couldn't
22 tell me what day it was and what gas station we
23 were at.

24 It was just little things, but it would
25 just let you know that he wasn't quite right.

1 Q. As you sit here today, is there any
2 doubt in your mind that that car caused the
3 accident?

4 A. No, sir.

5 Q. Okay. What would you say -- because we
6 heard that maybe Mr. Coy did not cause the
7 accident. What would you say to someone who told
8 you it was Mr. Coy's fault?

9 MR. COULTER: I would object.

10 THE COURT: Basis? There's no speaking
11 objections. What's the basis of the objection?

12 MR. COULTER: Attempting to --

13 THE COURT: Please approach.

14 MR. COULTER: Excuse me?

15 THE COURT: Please approach.

16 (Bench conference.)

17 THE COURT: Overruled. Rephrase the
18 question.

19 BY MR. BOLES:

20 Q. Did Mr. Coy -- strike that. Let me
21 start the question over.

22 Let's talk about what you saw as far as
23 how Mr. Coy was driving his motorcycle before the
24 collision happened. If I remember correctly, you
25 heard the motorcycle and you looked up, right?

1 A. Right.

2 Q. Okay. Was he going fast or slow?

3 A. No. He was coming into the turn lane
4 just like you would normally, and he was slowing
5 his bike. And he was a new rider so kind of still
6 did the wide -- he didn't go over the line or
7 anything.

8 He was going wide to make his right
9 hand and you could tell he was slowing to make it
10 and you could tell the car behind him just wasn't
11 prepared.

12 Q. Okay. And did Mr. Coy cause this
13 collision?

14 A. No. He was doing everything he was
15 supposed to do. I mean, I didn't see him -- he
16 wasn't speeding or trying to go flying through the
17 block. He didn't cut the car off.

18 Q. He wasn't brake checking the car in
19 front of him or anything that would cause that car
20 to not be able to not hit him?

21 A. That's not what I saw.

22 Q. Okay. And from what you saw, did the
23 collision between the car and Mr. Coy happen right
24 through the driver's windshield?

25 A. Right.

1 Q. Right in front of the car?

2 A. Right.

3 Q. And he went over the handlebars right
4 in front of that driver?

5 A. That car knew what happened.

6 Q. Unless they had a blindfold on or they
7 had their eyes closed, right?

8 MR. COULTER: Judge, objection;
9 speculation.

10 MR. BOLES: I'll withdraw the question.

11 BY MR. BOLES:

12 Q. It happened right in front of the car?

13 A. Correct.

14 Q. And then you said the car went around
15 him and paused?

16 A. The car went around the whole thing and
17 it just kind of hurried up. And it got to the
18 light and it was, like, it was trying to decide if
19 it was going to go straight on Main or make a right
20 into the neighborhood.

21 And then it made a quick -- they cut
22 into the neighborhood. At that point, it was
23 decided that it was like gone.

24 Q. And never came back?

25 A. No. Not that I noticed. I never saw

1 them again.

2 MR. BOLES: Those are all the questions
3 I have for you. Please answer any that Mr. Coulter
4 may have for you.

5 THE COURT: You may proceed.

6 MR. COULTER: Thank you.

7 THE COURT: You're welcome.

8 CROSS-EXAMINATION

9 BY MR. COULTER:

10 Q. Afternoon. So as I understand it, you
11 of course knew Mr. Coy very well?

12 A. Fairly well.

13 Q. Well, you worked together for about a
14 year, right?

15 A. Yes.

16 Q. And I think we took your deposition the
17 other day. Actually, it was yesterday, right?

18 A. Correct.

19 Q. If you want to see it at any time, let
20 us know.

21 A. Okay.

22 Q. And even at some point he even hinted
23 that he kind of wanted to have more than just a
24 friendship with you.

25 A. It was kind of hinted, but it was never

1 pursued in any way. It wasn't like -- no.

2 Q. Okay. And at some point, the
3 plaintiff's attorney asked you to draft an
4 affidavit as to what you saw.

5 A. Excuse me?

6 Q. Sign an affidavit. Do you remember
7 signing an affidavit?

8 A. Yes, I did sign an affidavit.

9 Q. And he actually wrote it out for you,
10 correct?

11 A. Yes.

12 Q. He printed it out and put in typed
13 words what he wanted you to sign, correct?

14 A. Correct.

15 Q. All right. And you knew that Mr. Coy
16 was very, very new to driving motorcycles?

17 A. I did. I knew that he had taken
18 classes to learn to ride and he was saving up and
19 very excited about it.

20 Q. And he actually only had a beginner's
21 permit at the time this accident occurred.

22 A. I am not aware of what he had.

23 Q. Okay. Let me show you these
24 photographs if I could. These are -- this is
25 Defense Exhibit Number 2 and Defense Exhibit Number

1 3.

2 MR. COULTER: May I approach, Judge?

3 THE COURT: You may.

4 MR. COULTER: Thank you.

5 BY MR. COULTER:

6 Q. Looking at Defense Exhibit Number 2, if
7 you will just describe for the jury what that is a
8 photograph of.

9 A. That's the front of our store.

10 Q. Okay. All right. And so I'm going to
11 go old fashion and use this large poster that's --
12 that's showing the angle in Number 2 if you were
13 here in the road looking back towards the Circle K.
14 Can you see that? (Indicating)

15 A. This is about where the front door
16 would be, correct.

17 Q. Okay. So that just shows the front of
18 the store?

19 A. Right.

20 MR. COULTER: Judge, if I can publish
21 these photographs?

22 THE COURT: Uh-huh.

23 BY MR. COULTER:

24 Q. And this particular store, it's
25 assigned 17A?

1 A. Correct.

2 Q. And it used to be a Circle K. I think
3 it's a Kangaroo now?

4 A. Yes.

5 Q. And it's really close to 26, the
6 intersection with Highway 26?

7 A. There's one a little bit closer, but,
8 yes.

9 Q. There is. There's another Kangaroo a
10 little bit --

11 A. Correct, there's one.

12 Q. Okay. Now, looking at Defendant's
13 Exhibit 3, take a look at this if you would.

14 A. Okay.

15 Q. Tell the jury what that is a photograph
16 of.

17 A. That looks like it's probably taken
18 from Tractor Supply lot across the way.

19 Q. Okay. Do you see in the foreground
20 that turn -- painted turn indicator?

21 A. Yes.

22 Q. Okay. And would that appear to be if
23 we were looking at Defense Exhibit Number 1, this
24 large blowup, that same turn arrow right there?
25 (Indicating)

1 A. Yes. This picture seems a little
2 skewed though because this lot seems extremely long
3 in this picture.

4 Q. All right. Well, you wouldn't disagree
5 with the fact that it's at least -- well, even in
6 your deposition you said it's a good ways from that
7 area.

8 A. Correct.

9 Q. That would be at least 50 feet between
10 there, correct?

11 MR. BOLES: Objection.

12 THE COURT: Basis?

13 MR. BOLES: Foundation.

14 THE COURT: Sustained; foundation,
15 speculation.

16 BY MR. COULTER:

17 Q. Okay. Do you know how -- is the -- is
18 the area of the front of the Circle K, is that --
19 to the road, is that as far as a half football
20 field?

21 A. I can't tell you as far as that. I
22 could tell you that you could park two cars kind of
23 one behind the other and have them come in.

24 Q. Okay. And there were cars parked in
25 front of the Circle K that night?

1 A. No. There were no customers until
2 after his wreck.

3 Q. Okay. So there was no customers in the
4 store at all?

5 A. There may have been one in the store,
6 but there was nobody parked out front. We had
7 people that came in on bicycles and foot traffic.
8 There wasn't anything out there, because when the
9 ambulance came in they came in and parked in front
10 of the store.

11 Q. I heard something a little bit
12 different than what I heard before. You're saying
13 that when you saw Mr. Coy -- just make sure I
14 understood this correctly. When you saw Mr. Coy
15 making his turn, that's a right turn into the gas
16 station?

17 A. Correct.

18 Q. He -- he made a wide turn?

19 A. It wasn't wide. It was just that when
20 you make a right on a motorcycle, sometimes you
21 swing out a little bit. He swung out a little bit,
22 but he was always in his lane. He never went out
23 of his lane.

24 Q. You could tell standing -- and make
25 sure I understand this. You're standing inside the

1 Circle K?

2 A. Yes.

3 Q. You're standing inside the Circle K and
4 you could see that he never left his lane of travel
5 from where you were standing?

6 A. I can tell you that when the police
7 confronted me about the man running across, I could
8 see.

9 Q. The what?

10 A. There was a man on a different night
11 running across the Tractor Supply. I could see him
12 as well.

13 Q. That's not my question. My question is
14 about not being able to say if you see somebody.
15 My question is, you're saying he never left his
16 lane and you could tell from standing inside the
17 Circle K that he never left his lane?

18 A. What it looked like to me is he did
19 everything correct. I didn't see anything out of
20 the ordinary.

21 Q. I understand you didn't see anything
22 out of the ordinary, but it would have been
23 impossible for you to see whether or not when he
24 was making his swooping turn that he didn't
25 potentially leave his lane of travel --

1 MR. BOLES: Objection.

2 MR. COULTER: -- isn't that true?

3 THE WITNESS: Maybe I didn't --

4 THE COURT: Sustained;

5 characterization --

6 Ma'am, there's an objection pending.

7 Please don't answer the question.

8 The objection is sustained; form of the
9 question, characterization, speculation,
10 foundation. Rephrase.

11 BY MR. COULTER:

12 Q. Okay. Do you -- were you able to tell
13 whether or not he had a turn signal on?

14 A. I remember him having one on.

15 Q. So you saw a turn signal, too, from
16 where you were standing in the store?

17 A. He was -- when the bike -- when I could
18 hear the bike, he had already gotten in the right
19 lane. I had already started to watch. I watched
20 every motorcycle that came up to the store.

21 Q. And when we're talking about a rear
22 turn signal, that rear signal on the motorcycle
23 would clearly have been facing down the road
24 towards Interstate 26, correct?

25 A. Correct. So when they brought the bike

1 into the parking lot it still had it on.

2 Q. Okay. All right. Now, as I
3 understand, you mentioned that not only were you
4 inside the Circle K looking towards 17, but your
5 daughter was standing next to you inside the Circle
6 K?

7 A. Right. I told them I wasn't sure, she
8 could have been taking out the trash. She could
9 have been -- there was different things. I know
10 that I was in there. My daughter came to pick me
11 up every night, so our routine got to be very --

12 Q. Well, do you want to look at your
13 deposition to --

14 A. You can show me the deposition.

15 Q. I just want to make sure that we're on
16 the same page.

17 A. Okay.

18 MR. COULTER: Judge, can I hand --

19 THE COURT: You need to use the proper
20 procedure under the Rules. Ask her a question. If
21 it's contrary, you can use it to impeach her. If
22 it's authenticated she needs to refresh her
23 memory --

24 MR. COULTER: Okay. Judge, that's
25 fine.

1 BY MR. COULTER:

2 Q. Do you recall saying in your deposition
3 that your daughter was standing beside you in the
4 store?

5 A. Yes. I said I thought she was. I also
6 said I thought she could have been taking out the
7 trash, we could have been putting the candy bars
8 in. There was a lot of things right there.

9 Q. Well, you did say you were messing with
10 things and talking and stuff inside the store,
11 correct?

12 A. Correct.

13 Q. Okay. You didn't say anything about
14 her taking out any trash or anything of that
15 nature, did you?

16 A. I believe I did.

17 Q. All right. But there is no question,
18 is there, that your daughter would have been closer
19 to where the incident happened than you would?

20 A. She was.

21 Q. Okay. And as I also understand it, you
22 testified in your deposition -- and a deposition is
23 something you do under oath. Those are questions
24 you're asked under oath, correct?

25 A. Correct.

1 Q. Okay. That you were able to tell that
2 the person --

3 MR. BOLES: Objection.

4 THE COURT: Basis? Basis of the
5 objection?

6 MR. BOLES: Improper foundation.

7 THE COURT: Please approach.

8 (Bench conference)

9 BY MR. COULTER:

10 Q. As I understand, you testified in your
11 deposition that you were able to tell that the
12 individual driving the vehicle that you say hit
13 Mr. Coy's motorcycle was a white male. You were
14 able to see that?

15 A. Not at the time of that. When he
16 paused at the light.

17 Q. Okay.

18 A. Before the light when he paused, when
19 he was thinking about which way to go, that's when
20 I saw who was in the car.

21 Q. Right. You saw him and there was only
22 one person in the car and that was a white male --

23 A. I don't know if there was more than one
24 or not. I know that I saw him.

25 Q. Well, do you remember testifying that

1 you only saw the driver --

2 MR. BOLES: Same objection.

3 THE WITNESS: That's what I'm saying --

4 THE COURT: Ma'am, there is an
5 objection pending.

6 What is the basis of the objection?

7 MR. BOLES: Improper foundation and
8 testifying for the witness.

9 THE COURT: Rephrase the question for
10 me, please.

11 BY MR. COULTER:

12 Q. Okay. Do you remember testifying that
13 you were --

14 MR. BOLES: Same objection.

15 THE COURT: You need to ask a direct
16 question. Ask the exact question and then she
17 either confirms it or denies it. If she denies it,
18 then you can utilize the deposition.

19 MR. COULTER: That's what I'm --
20 absolutely.

21 THE COURT: Then you need to ask it
22 exactly the way it was asked.

23 BY MR. COULTER:

24 Q. Do you recall testifying --

25 MR. BOLES: Same objection.

1 THE COURT: That's not the way to ask
2 it. You ask the exact same question that's in the
3 deposition without making reference to the
4 deposition.

5 MR. COULTER: Okay.

6 THE COURT: If she answers
7 consistently, there is no need for the deposition.
8 If she answers inconsistently, then you can --

9 MR. COULTER: I'm just asking her a
10 question. Can I approach?

11 THE COURT: Uh-huh.

12 (Bench conference)

13 THE COURT: Proceed.

14 MR. COULTER: Thank you, Judge.

15 THE COURT: You're welcome.

16 BY MR. COULTER:

17 Q. Did you see more than just a driver in
18 the vehicle?

19 A. I don't recall anyone else --

20 THE COURT: Ma'am, I need you to speak
21 up. I can barely hear you.

22 THE WITNESS: I don't recall anyone
23 else aside from the driver. I couldn't tell you
24 for sure one way or the other. I recall the
25 driver.

1 BY MR. COULTER:

2 Q. No question that you could see inside
3 the vehicle and see that there was a white male in
4 the car?

5 A. I couldn't tell you for sure it was a
6 white male.

7 MR. COULTER: Okay. Thank you. That's
8 all I have.

9 THE COURT: Any redirect?

10 MR. BOLES: Very briefly.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MR. BOLES:

14 Q. Hello again, Ms. Goblet. I want to
15 cover some of the questions you were just asked.

16 A. Okay.

17 Q. Mr. Coulter asked if you had a personal
18 relationship with Mr. Coy.

19 A. Yes.

20 Q. Do you remember that? Is that anything
21 to do with the truth of what happened?

22 A. I wouldn't think that it was, but we
23 didn't anyway.

24 Q. Are you telling the jury the truth of
25 what you remember?

1 A. Yes. Yes. There is not a doubt in my
2 mind of what happened.

3 Q. You mentioned something about an
4 incident at the Tractor Supply Company.

5 A. Correct.

6 Q. So across Highway 17, across about six
7 lanes there's a Tractor Supply Company over there?

8 A. Correct.

9 Q. And I think you were trying to get it
10 out, it didn't come all the way out, that there was
11 an unrelated incident, and you were able to see all
12 the way across the road a person committing a crime
13 at Tractor Supply?

14 A. What I was just trying to explain is
15 that it's well lit at night right there, very well
16 lit. You can see all the way across. And Tractor
17 Supply is probably better well lit than we were,
18 but it made everything on that road you can see.
19 Even though the store's a little further back, you
20 can see everything. That's one of the ways they
21 felt we were safe there.

22 Q. There was no problem with your view of
23 seeing the collision that we're talking about
24 today?

25 A. No.

1 Q. Okay. Also, Mr. Coulter said, well,
2 how could you see the turn signal because his rear
3 turn signal would be facing down Highway 17. Do
4 you remember when he asked you that question?

5 A. Yes.

6 Q. Now a motorcycle, just like on a car,
7 there's a rear turn signal and there's a front turn
8 signal, isn't there?

9 A. Yes.

10 Q. And you could see the front turn signal
11 from where you were?

12 A. Actually, I just know that when the
13 bike was pulled back into the lot the turn signal
14 was still on.

15 Q. Still flashing?

16 A. Yes.

17 MR. BOLES: Okay. Okay. Thank you for
18 being here today. That's all of the questions I
19 have for you.

20 THE COURT: Any objection to the
21 witness being excused? From the plaintiff?

22 MR. BOLES: None, Your Honor.

23 THE COURT: From the defense?

24 MR. COULTER: None.

25 THE COURT: Ma'am, you're excused.

1 Madame Forelady, ladies and gentlemen,
2 I'm going to give you a brief comfort break.
3 During the break, please do not discuss the case
4 and please leave your notepads in your seats. We
5 should be out about ten minutes.

6 (Jury out, 2:41 p.m.)

7 THE COURT: You may be seated.

8 I saw some people nodding. The
9 lighting in here is horrible and it's raining and
10 they ate. So they need to move around before we
11 take the next witness.

12 MR. BOLES: Thank you.

13 THE COURT: You're welcome.

14 (A recess transpired.)

15 MR. COULTER: Judge, real briefly.

16 THE COURT: Sure.

17 MR. COULTER: I didn't want to cause
18 any delay. The plaintiff's attorney had a
19 statement transcribed.

20 THE COURT: I'm sorry, say that one
21 more time.

22 MR. COULTER: Yeah. There's a
23 transcribed statement that the carrier took from
24 the next witness. He had it. I was just asking if
25 he was going to use it. He said, I don't know. I

1 just don't want to have to worry about a foundation
2 where that somehow comes in.

3 THE COURT: Well, it's not a sworn
4 statement so I don't he can -- she didn't prepare
5 it. I think you're going to have a problem with
6 foundation --

7 For what purpose are you going to use
8 it?

9 MR. BOLES: I'm just looking at my
10 notebook, Judge. If Mr. Coulter wants to peak at
11 my cards, you want to come over and look at my
12 hand, you know, if you get worried about what's in
13 there, I don't know what to tell you. I'm playing
14 by the rules. I'm not going to offer anything
15 that's not properly admissible.

16 MR. COULTER: I'm not trying to peak at
17 anybody's hand. I'm just trying to ask the
18 questions like the Court had asked so we could kind
19 of agree on what's coming into evidence. That's
20 the only point.

21 THE COURT: I'm not the Great Carnac.
22 I don't know what he -- you'll just have to make a
23 contemporaneous objection. I can only rule on what
24 is before me.

25 All right. Are we ready?

1 MR. BOLES: Yes, ma'am.

2 (Jury in, 3:07 p.m.)

3 THE COURT: Hope everybody is
4 refreshed. You may be seated.

5 The dim light in here and all the rain
6 makes you a little sleepy. You need to move around
7 a little bit, especially after lunch.

8 We are now going to resume testimony.
9 You may call the next witness, Mr. Boles.

10 MR. BOLES: Thank you. Plaintiff calls
11 Malaea Goblet.

12 THE COURT: Come to the witness stand
13 to be sworn for me.

14 Ladies and gentlemen, we're trying to
15 work on the mics. My court reporter shared with
16 me, I didn't realize, a few weeks ago I think the
17 lightning may have struck the audio system. So
18 we're trying to -- I think we have it all squared
19 away.

20 A JUROR: Bluetooth, Judge.

21 THE COURT: I know; it's an old
22 courthouse.

23 A JUROR: We pay a lot of taxes.

24 THE COURT: It's hard to upset
25 everything, but we're working our way toward it.

1 MALAEA GOBLET,

2 being first duly sworn, testified as follows:

3 THE CLERK: Please be seated. State
4 your full name for the record and please spell your
5 last name.

6 THE WITNESS: My name is Malaea Laura
7 Andrew Ward now. I have just recently been
8 married, W-A-R-D.

9 THE COURT: If you could spell your
10 first name.

11 THE WITNESS: M-A-L-A-E-A.

12 THE COURT: And your last name is now
13 Ward.

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 You may proceed.

17 MR. BOLES: Thank you, Your Honor. May
18 it please the Court.

19 THE COURT: You're welcome. Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. BOLES:

22 Q. Good afternoon, Mrs. Ward.
23 Congratulations.

24 A. Thank you.

25 Q. We just heard testimony from Aimee

1 Goblet.

2 A. Uh-huh.

3 THE COURT: Ma'am, if you could say yes
4 or no for me.

5 THE WITNESS: Yes, ma'am.

6 BY MR. BOLES:

7 Q. You may call me yes, ma'am if you like,
8 but you can also say -- I'm just playing with you.
9 I'll start that over. We have a court reporter
10 right here and she's taking down everything that
11 you and I and the judge and Mr. Coulter say.
12 Sometimes the judge or I might say, is that a yes?
13 Is that a no? That's for the Court Reporter.
14 She's not picking on you.

15 THE WITNESS: Okay.

16 THE COURT: She can't take down head
17 nods or uh-huh, so have to have a yes or no. I
18 appreciate you accommodating me.

19 THE WITNESS: I understand.

20 BY MR. BOLES:

21 Q. Makes sense?

22 A. Yes, it does.

23 Q. I can see you, the jury can see you if
24 you nod, but we're making a record of all of this
25 as well. Okay?

1 A. Okay.

2 Q. We heard from Aimee Goblet. What is
3 your relationship to Aimee?

4 A. That's my mom.

5 Q. Okay. And we're here for the trial
6 regarding Daniel Coy. Do you know Daniel Coy?

7 A. Yes. He was my mom's co-worker.

8 Q. Okay. And where did they work?

9 A. At the Circle K near our house.

10 Q. Okay. You understand that we're here
11 about a collision that took place involving
12 Mr. Coy?

13 A. Yes, sir.

14 Q. Okay. Did you witness the collision?

15 A. I did.

16 Q. Okay. Now I'm going to get you in a
17 second to unpack all of that for the jury.

18 A. Okay.

19 Q. Before you talk about the actual wreck,
20 let's tell everybody a little bit about what you
21 were doing at the gas station and minutes before.

22 A. I was actually waiting for Coy to show
23 up and relieve my mom from her shift so that I
24 could take my mom home.

25 Q. Okay. And while you were waiting,

1 where were you waiting?

2 A. At that time I was actually outside of
3 the gas station standing on the sidewalk.

4 Q. Okay. I'm going to show you
5 Defendant's Exhibit 1. We had some overheads, but
6 it was dark. We're going to leave all the lights
7 on and see if this works.

8 Can you see Exhibit 1 okay?

9 A. I can.

10 Q. Okay. Here, I'm going to put this up
11 where you can point.

12 THE COURT: If you want, I think the
13 ELMO is working.

14 MR. BOLES: I just hate to turn the
15 lights off.

16 THE COURT: You don't have to turn them
17 off. It should work okay. Do you want to try?

18 I just want to make sure you know that
19 it's available to you.

20 MR. BOLES: We may in just a second.

21 BY MR. BOLES:

22 Q. Are you able to show the jury on here
23 where the gas station was?

24 A. This is it. (Pointing)

25 Q. Okay. And you're pointing down there.

1 It's marked 18 USA on this exhibit?

2 A. Yes.

3 Q. And says Kangaroo Express on top right
4 there?

5 A. Yes.

6 Q. And can you show -- you said that you
7 were waiting outside. Can you point to the area
8 where you were waiting?

9 A. Probably on -- there's a shadow right
10 here, but there is a sidewalk right in front of it
11 in this area. I was standing to the left of the
12 door, so I was standing somewhere over here.

13 (Indicating)

14 Q. And if you can also point up here on
15 Exhibit 1, where did the collision take place?

16 A. The collision took place like right
17 before the turn area on this stretch of road right
18 here. (Pointing)

19 Q. Okay. Thank you.

20 So you testified you were waiting on
21 Coy to show up. You were waiting outside, right?

22 A. Yes.

23 Q. Were you -- were you looking at your
24 feet? Looking at the sky? What was going on?

25 A. I was looking at the road waiting to

1 see if I could see him, because I remember thinking
2 that he was running a little bit late and I wanted
3 to go home. I was tired.

4 Q. Okay. Did you see him approach on the
5 motorcycle?

6 A. I did.

7 Q. Now, walk us through that. You saw him
8 approach. What happened?

9 A. As he got into the turn lane and
10 started to slow down so that he could prepare to
11 turn into the parking lot, there was a black car
12 that started creeping closer and closer behind him
13 as if they were trying to intimidate him to go
14 faster.

15 And I guess they overshot how much they
16 were creeping up on him and actually hit the back
17 of his motorcycle. And once he flew off of the
18 bike, they took off.

19 Q. It's a lot of information. Let's
20 unpack that a little bit. Okay?

21 A. Uh-huh.

22 Q. From where you were standing, did you
23 have a clear view of Coy as he was approached on
24 the motorcycle?

25 A. Yes.

1 Q. Okay. And you could see the car
2 clearly coming up behind him?

3 A. Yes, sir.

4 Q. Okay. Let's kind of describe what
5 happened after the collision. When you said Coy
6 flew off, how did he fly off the motorcycle?

7 A. He went over the handlebars and into
8 the lane -- almost into the lane next to the
9 turning lane. I would say he was kind of like on
10 the center line between the two lanes and hit his
11 head first.

12 Q. Okay. So what did the car do? As you
13 were seeing all that happen, Coy going over the
14 handlebars, land on his head, what did the car do?

15 A. The car never stopped. The light had
16 just started to turn red, so it slowed down like it
17 was debating on turning into the parking lot. It
18 slowed down with the brakes and there was a small
19 hesitation, and then the car went through the light
20 and turned into the neighborhood.

21 Q. Okay. The car went through the light
22 while it was red into the neighborhood?

23 A. Yeah.

24 Q. Did they ever come back?

25 A. No.

1 Q. Do you know as you sit her today if
2 they have ever been caught?

3 A. I don't think they have ever been
4 caught. I even went through looking, just tried to
5 see if I could find the car in my neighborhood
6 again after that a few times and I could never find
7 it either. I don't think anybody ever found them.

8 Q. Okay. Okay. So let's focus on Coy
9 himself for a little bit. When you saw all of that
10 unfold like you described, did you go to him?

11 A. Yes. First I went inside, but I did go
12 over to him.

13 Q. Tell me step by step. You went inside.
14 What did you do?

15 A. I wasn't sure if my mom had seen it or
16 not. So I stuck my head in to tell her he had
17 gotten into an accident and call 911. And then I
18 started running across the parking lot over to him
19 to make sure he was okay.

20 Q. Okay. And tell the jury about what you
21 observed when you arrived to Coy.

22 A. When I got to him, he -- I'm not sure
23 if he had regained consciousness or not. It didn't
24 seem like it. He wasn't moving or making any
25 noises or anything. I wasn't even sure if he was

1 alive.

2 And then he started to, it looked like,
3 try to move a little bit, and he started groaning
4 like he was in a lot of pain. And then when he
5 started talking, he didn't -- he didn't know really
6 where he was. At first, I don't think he even
7 understood who I was.

8 My mom and I tried to help him up,
9 which he was a lot bigger than we were, so it was
10 much more of a struggle than we planned. I'm
11 actually glad he was able to get up. And we walked
12 out of the street.

13 At that point there was some customers
14 that had helped pull his bike out of the street and
15 into the parking lot.

16 Q. Okay. So you guys helped him up and
17 kind of -- he walked, slash, got help from you and
18 your mom to get out of the street?

19 A. Yes, sir.

20 Q. Okay. Did you start asking him
21 questions or anything like that?

22 A. I remember asking him if he was okay.
23 I remember telling him that we called police. I
24 don't think it had occurred to me to ask him
25 questions to see where his mind was at at that

1 point. I think I was more concerned with what can
2 you tell us hurt. Is there anything that you can
3 tell already is probably going to need prioritizing
4 attention.

5 Q. Was there, could you tell?

6 A. Not at that moment. At that time I
7 couldn't really tell. When he took his helmet off
8 his head was bleeding, and I remember being really
9 worried about that.

10 Q. Where was he bleeding from his head?

11 A. On his forehead. I can't remember
12 which side, but it was just slightly over the
13 corner of his eye. Probably on the left side I'm
14 thinking.

15 But that was the only thing that I
16 remember standing out, to be honest. He was
17 walking with a limp like his knee was hurt.

18 Q. Okay. Let's talk about the impact on
19 the road. Was this something like if a person just
20 they kind of tripped over their own feet and fell?

21 A. No.

22 Q. What kind of impact was it?

23 A. I mean, his whole body went over the
24 handlebars of the motorcycle, which that in itself
25 takes a lot of momentum. So that's a lot of force

1 to land with on your head especially.

2 And it was kind of like, I want to say,
3 a little bit at the top of the head and back of the
4 head when he landed and then the rest of his body
5 followed.

6 Q. Did he roll or stay still?

7 A. Once the rest of his body hit the
8 ground, he didn't roll or anything. He was pretty
9 still like that was the end of it.

10 Q. Okay.

11 A. But it was definitely not like just a
12 minor fall. I mean, I can't think of what I could
13 compare it to. I certainly don't want to feel that
14 kind of fall. That would have me down for a couple
15 of days, that kind of fall.

16 Q. Got you. Did Coy do anything to
17 contribute to the collision?

18 A. Not that I saw. I mean, I know he was
19 new to riding a motorcycle. At least that was my
20 impression from the way he was talking about it,
21 but, I mean, he wore a full face helmet. He -- he
22 was using a turn signal. He wasn't braking too
23 hard or too fast. He seemed like he knew how to
24 handle the bike pretty well.

25 Q. Was he popping a wheelie or --

1 A. Oh, no.

2 Q. -- or riding on the front tire trying
3 to come in?

4 A. No.

5 Q. Did he approach coming in really fast
6 and then slow down very quickly or cause the car
7 behind him to not be able to get out of the way?

8 A. Oh, no, definitely not. He was coming
9 in a little quickly before that, but it was not
10 anywhere near I would say the normal speed on that
11 road is.

12 Q. Okay. Any doubt in your mind that that
13 car caused this collision?

14 A. None.

15 Q. Were you able to tell anything about
16 the person or persons inside the car?

17 A. I never noticed the person inside the
18 car. From the angle I was standing at, I couldn't
19 even see inside the car from the glare of the
20 street lights. The windows looked pretty well
21 tinted and I could not really see inside the car.

22 Q. Okay. Did the police respond?

23 A. They did. With that gas station,
24 there's a very strong repetitive pattern of not
25 responding to the correct -- the gas station on the

1 first try. So it definitely took a little while,
2 but they did respond and the ambulance showed up.
3 The ambulance wanted him to go to the hospital.

4 Q. Did he go to the hospital?

5 A. While I was there, I never saw him
6 going to the hospital. The last I heard, he was
7 refusing to go because he wanted to still work.

8 Q. He still wanted to work his shift?

9 A. Yes.

10 Q. After all that?

11 A. Yes, sir. He was convinced he wasn't
12 really hurt that badly, but the paramedics were
13 telling him he showed signs that he might need to
14 be concerned, and he definitely should go to the
15 hospital.

16 Q. Signs like he was bleeding from his
17 face?

18 A. Yes. And I remember hearing one
19 paramedic mention something about the way the
20 pupils were responding to the light, but it was a
21 whole lot of things going on at that point that I
22 couldn't follow the conversation all that well.

23 Q. Okay. Let's step away from the
24 accident for a second. Tell the jury a little bit
25 what you knew about Coy before that time. For

1 instance, I understand that you guys had like a
2 book club?

3 A. Yeah. He and I had started to get to
4 know each other a little bit, because he was
5 usually the one that was working right after my
6 mom. So I'd come up there a little bit early and
7 we would talk and chat now and then.

8 And we got on the subject of books so
9 we began to swap books. I would bring him books
10 that I had read that I thought he would find
11 interesting, and he would give me books that he
12 thought I would find interesting or that he thought
13 I needed to read because it could teach me
14 something important.

15 Q. Okay. Does your friendship with Coy in
16 any way affect your ability to tell the truth to
17 the jury about what happened?

18 A. I don't think so. I don't like to
19 manipulate the truth in general to begin with. We
20 weren't super close friends. I knew him from my
21 mom working with him, but I didn't really know him
22 all that much outside of Circle K. I didn't know
23 him long enough to get to know him more than that.

24 MR. BOLES: I appreciate you being here
25 today. That's all the questions I have right now.

1 Please answer any that Mr. Coulter may have.

2 THE COURT: You may proceed.

3 MR. COULTER: Thank you, Judge.

4 THE COURT: You're welcome.

5 CROSS-EXAMINATION

6 BY MR. COULTER:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. You are how old now?

10 A. I am 22.

11 Q. And you graduated from Wando High
12 School?

13 A. I did, yes.

14 Q. Okay. And you actually spent a
15 year-and-a-half at Winthrop?

16 A. Yes.

17 Q. The college up in Spartanburg?

18 A. Rock Hill.

19 Q. Rock Hill, excuse me. All right. So
20 you were up there for a year-and-a-half. As I
21 understand, you are married now and you have a
22 child?

23 A. I do.

24 Q. Okay. Now, as far as Mr. Coy, you guys
25 were close friends, correct?

1 A. I wouldn't say close friends. We were
2 friends, but I didn't --

3 Q. You didn't get to be close friends with
4 him?

5 A. No.

6 MR. COULTER: Judge, if I could.

7 (COURT EXH. 1, Deposition transcript,
8 was marked for identification.)

9 BY MR. COULTER:

10 Q. Mrs. Ward, do you remember giving your
11 deposition awhile back?

12 A. I do.

13 Q. And as a matter of fact, it was back in
14 March of 2019. Do you remember doing that?

15 A. I do.

16 Q. Okay. And I just was asking you about
17 your relationship with Mr. Coy and asked if you
18 considered yourself a close friend with him.

19 A. Yes.

20 Q. If you would just turn to page 8. I
21 want to make sure that we get this cleared up. Let
22 me know when you get there.

23 A. Page 8?

24 Q. Yes.

25 A. I'm at page 8.

1 Q. Okay. And we were asking you if you
2 knew him. And if you look at page 7, when we asked
3 you about whether or not -- excuse me, not page 7.
4 Line 7.

5 A. Okay.

6 Q. If you will look at how you responded
7 to knowing Mr. Coy. You said what?

8 A. I did say, so we got to become close
9 friends.

10 Q. Okay. Right. So over that period of
11 time you become close and you exchanged books, and
12 you would actually see each other about three times
13 a week, as I understand it.

14 A. Yes.

15 Q. And he would come over to the house a
16 couple of times, correct?

17 A. Twice, yes, I believe.

18 Q. Okay. Now, this is -- we'll go back to
19 June 15th. It was 11:00 at night. Does that sound
20 about right?

21 A. I would say closer to around 12:15.

22 Q. Okay. 12:15. It was dark out?

23 A. Yes, very.

24 Q. And you just testified, as I understand
25 it, you were actually not inside the Circle K. You

1 were outside the Circle K?

2 A. Yes.

3 Q. So you weren't inside the Circle K with
4 your mom when this incident took place?

5 A. No.

6 Q. All right. And as I understand, the
7 reason that you actually looked up is because the
8 car that you saw behind Mr. Coy's vehicle was
9 louder than the motorcycle?

10 A. I remember the car being louder than
11 the motorcycle, yes. I think that's what initially
12 drew my attention to the car behind the motorcycle.

13 Q. And when we say outside. You're on the
14 sidewalk outside of the Circle K?

15 A. Yes.

16 Q. It doesn't really show us here -- okay.
17 Maybe it does here. So right in front of -- and
18 this down here is the Circle K (indicating),
19 correct?

20 A. Yes.

21 Q. There is a sidewalk that goes out in
22 front, correct?

23 A. Yes, there is.

24 Q. Is that where you were talking about
25 standing?

1 A. Yes.

2 Q. And so from back here, whatever
3 distance that is, you are able to hear the car more
4 so than the motorcycle?

5 A. Yes.

6 Q. All right. And as I understand, you
7 said a minute ago when you actually did see Mr. Coy
8 on his motorcycle, it was actually coming in
9 quicker than the norm?

10 A. No. I was saying it wasn't quicker
11 than the normal speed. I was -- maybe a little bit
12 quick just because he was on a motorcycle, but not
13 quicker than normal speed by any means.

14 Q. Okay. You didn't say that a minute
15 ago?

16 A. That's not what I was trying to say.

17 Q. Okay. Now, you mentioned the fact that
18 -- you said the car caused the wreck, but you
19 actually did not and were not able to see that car
20 touch the motorcycle at all, could you?

21 A. Could I see the point of contact from
22 where I was standing? No. I could see the car get
23 very close to the motorcycle where I would think
24 that it was touching the motorcycle when I saw the
25 back tire stop.

1 Q. In fact, you just assumed that it
2 touched the motorcycle?

3 A. If you want to put it in those words, I
4 guess you can say that.

5 Q. You put it in those words, didn't you?

6 A. From where I was standing, it looked
7 like the car was touching the motorcycle. I would
8 say definitively that it was touching the
9 motorcycle, but could I see the exact point of
10 contact from where I was standing? No.

11 Q. Let me ask you this specific question.
12 You assumed that the car touched the motorcycle,
13 right?

14 A. Yes.

15 Q. Yes. And as a matter of fact, you
16 would agree that it would have been impossible for
17 you to have seen what was going on behind Mr. Coy
18 in the front of that other vehicle? It would have
19 been impossible?

20 A. Sure.

21 Q. Okay. And you would also agree that
22 you didn't make -- you didn't see the car make
23 contact with any part of the motorcycle because of
24 how dark and how far away it was. I couldn't see
25 it actually hit the wheel; isn't that right?

1 A. Yes.

2 Q. And you were closer to the motorcycle
3 in this incident than your mother was?

4 A. Yes.

5 Q. All right. And just a minute ago did
6 you say that when this other car left that it
7 actually turned into this Beauregard Road?

8 A. Yes.

9 Q. Do you remember telling us that it
10 actually went straight through the intersection and
11 went further down Main Street?

12 MR. BOLES: Objection.

13 THE COURT: Basis?

14 MR. BOLES: Foundation.

15 THE COURT: If you're going to impeach
16 the witness, please follow the rules.

17 MR. COULTER: Okay.

18 BY MR. COULTER:

19 Q. All right. Did they turn on Beauregard
20 Street, or did they keep going straight across, the
21 other vehicle?

22 A. Honestly, at this point, I don't
23 remember. It was a little over two years ago.

24 Q. Let me see if I can refresh your
25 recollection.

1 A. Yes.

2 Q. Go to page 26 of your deposition.

3 A. Okay.

4 Q. All right. And if you go down there to
5 page -- excuse me, line 17. Let me know when you
6 get there.

7 A. Okay.

8 Q. And I will read the question, and you
9 tell the jury what you told us when you were
10 deposed. Okay.

11 Did they turn on Beauregard and keep
12 going on or did they go straight across?

13 A. They went straight.

14 Q. They went straight -- or, excuse me,
15 straight across?

16 A. Yes.

17 Q. Further down Main Street?

18 A. Yes.

19 Q. Okay. And, in fact, you weren't able
20 to see inside the vehicle because the windows were
21 too dark?

22 A. Yes.

23 Q. You didn't see a white male in there
24 because the windows were too tinted?

25 A. I didn't see anybody. To be honest, I

1 wasn't focussing on them any way that want.

2 Q. And after you saw Coy fall down, you
3 had to stick your head into the Circle K to tell
4 your mother to call the police?

5 A. Yes. I wasn't sure if she had seen the
6 accident or not. I wanted to make sure that
7 somebody was calling.

8 Q. And when you went in there to tell her
9 about this happening, your mother was inside and
10 she was behind the counter?

11 A. Yes.

12 Q. Okay. She wasn't standing at the door?

13 A. No.

14 Q. So she was further inside Circle K?

15 A. Not by much, but, yes.

16 MR. COULTER: All right. Thank you.

17 THE COURT: Any redirect?

18 MR. BOLES: Briefly.

19 REDIRECT EXAMINATION

20 BY MR. COULTER:

21 Q. I want to go over some of the questions
22 that you were asked.

23 A. Okay.

24 Q. And this is something that opposing
25 counsel made a point about. Could you see the

1 motorcycle and car touch from how far away? Do you
2 remember being asked about that?

3 A. Yes, sir.

4 Q. Okay. Well, where you are right now,
5 am I touching my chair?

6 A. No.

7 Q. Am I touching my chair now?

8 A. Yes.

9 Q. Okay. Hard to tell because you can't
10 see the space between my hand and the chair, can
11 you?

12 A. No.

13 Q. In fact, you would need to come here
14 and put your face right here to know if I was
15 touching my chair, wouldn't you?

16 A. I would.

17 Q. But now when the chair moves
18 (Indicating), was I touching my chair?

19 A. Yes.

20 Q. I had to because the chair moved,
21 right?

22 A. Yes.

23 Q. Okay. And in the same way, you weren't
24 right there --

25 MR. COULTER: Judge.

1 THE COURT: Basis?

2 MR. BOLES: -- were you?

3 MR. COULTER: Leading.

4 THE COURT: Please refrain from leading
5 the witness.

6 MR. BOLES: Okay.

7 BY MR. BOLES:

8 Q. Were you right there looking at the
9 space between the back of the motorcycle and the
10 front of the car?

11 A. No.

12 Q. But did you see a natural reaction of a
13 car hitting a motorcycle?

14 A. Absolutely.

15 Q. Okay. You know, is it safe to assume
16 if something is on fire it's hot?

17 A. Yes.

18 Q. Is it safe -- because you were asked
19 about your assumptions. Do you remember being
20 asked about your assumptions?

21 A. Yes.

22 Q. If I pour water on something, is it
23 safe to assume that now that thing is wet?

24 A. Yes.

25 Q. And you don't have to go measure it.

1 You can just know, based on your experience in this
2 world, the natural outcome of something like that,
3 correct?

4 A. Yes.

5 Q. Okay.

6 A. It's like being taught the simple laws
7 of physics in science class over and over again.

8 Q. You were asked about being close
9 friends with Coy. You said that you didn't think
10 you were close friends. Mr. Coulter said that you
11 said you were earlier. Does any of that matter to
12 the truth of what happened on that night?

13 A. It has nothing to do with the other.
14 The truth is still going to be truth.

15 Q. And you are telling the truth?

16 A. Yes. And while I did say we were close
17 friends, we were just growing closer. I think we
18 would have been close friends if we had gotten to
19 know each other more. I don't think we knew each
20 other enough to say, yes, Coy and I are great
21 friends. I know everything about him.

22 Q. Well, you're not here to make something
23 up to help Coy, are you?

24 A. No. That doesn't help anybody.

25 Q. You know, another thing that you were

1 asked about is did the car turn or did the car go
2 straight. Okay. And there's conflicting
3 recollections about that. Do you remember that
4 line of questioning?

5 A. I do.

6 Q. Regardless of whether the car turned or
7 went straight, did the car flee the scene?

8 A. Yes, sir.

9 Q. Did the car ever come back to the
10 scene?

11 A. No.

12 Q. Does it matter if the car turned right
13 or went straight?

14 A. Not really. They were still never
15 found.

16 MR. BOLES: Thank you for being here.
17 Those are all the questions that I have.

18 THE COURT: Any objection to the
19 witness being excused? From the plaintiff?

20 MR. BOLES: No, Your Honor.

21 THE COURT: From the defense?

22 MR. COULTER: No.

23 THE COURT: Ma'am, you're excused.

24 THE WITNESS: Thank you.

25 THE COURT: Call the next witness.

1 MR. BOLES: The plaintiff calls Doretta
2 McHugh.

3 MR. COULTER: Judge, can we approach
4 before examination?

5 (Bench conference)

6 DORETTA MCHUGH,

7 being first duly sworn, testified as follows:

8 THE CLERK: Please have a seat. Please
9 state your full name and spell your last name.

10 THE COURT: My name is Doretta McHugh,
11 M-C-H-U-G-H.

12 THE COURT: You may proceed.

13 MR. BOLES: Thank you.

14 DIRECT EXAMINATION

15 BY MR. BOLES:

16 Q. Afternoon, Mrs. McHugh.

17 A. Afternoon.

18 Q. What is your relationship to Daniel
19 Coy?

20 A. Daniel was my son.

21 Q. Okay. And you are also now the
22 personal representative of Daniel's estate?

23 A. I am, thank you.

24 Q. Let's talk about the collision that we
25 are here about first. Okay. Did you witness the

1 collision?

2 A. I did not.

3 Q. Okay. When did you arrive at the
4 scene?

5 A. It was probably about 20 minutes or so
6 afterwards. EMS had already left. There was no
7 police there. Things had settled down.

8 Q. How did you know to go?

9 A. He gave me a call.

10 Q. Okay. Let's kind of walk the jury
11 through what it was like when you arrived at the
12 scene of the collision.

13 A. When I arrived, he was sitting on one
14 of those concrete bumper things, or leaning against
15 it, and looking rather upset.

16 Q. Okay. How did he appear?

17 A. He was bleeding. He had a couple of
18 places on his -- one place on his forehead and a
19 cut across the bridge of his nose.

20 Q. Okay. How about -- I'm going to show
21 you some exhibits. Okay. I'm going to show you
22 what was entered into evidence as Plaintiff's
23 Exhibits 9, 10 and 11.

24 Let me know when you've had a second to
25 look at those.

1 A. Okay.

2 Q. Do these exhibits show the injuries to
3 Daniel's face that you were talking about?

4 A. Yes.

5 MR. BOLES: May I publish these to the
6 jury, Your Honor?

7 THE COURT: You may proceed. You can
8 use the ELMO now I think if you want to. I think
9 it's easier for them to see it all at one time.

10 MR. BOLES: Yes, ma'am.

11 BY MR. BOLES:

12 Q. So these exhibits which are marked 9,
13 10 and 11, they show the injuries to Daniels's face
14 which were a result of the motorcycle accident; is
15 that right?

16 A. That's correct.

17 Q. Okay. And I'm going to show you also
18 what we have marked as Plaintiff's 12 and 13. Take
19 a second to look at these also.

20 And what I have showed you as 12 and
21 13, are these photographs of some of the injuries
22 that Daniel sustained in the collision we're here
23 about today?

24 A. Yes. And there's actually more
25 injuries than what is shown.

1 Q. This one on my right, Exhibit 13, is
2 that road rash?

3 A. That's correct.

4 Q. Okay. And then -- well, I will do road
5 rash first. And then Exhibit 12, is this a
6 photograph of your son's foot?

7 A. Yes, that's correct.

8 Q. And what are we looking at here?

9 A. That there is bruising in between each
10 bone of his toes.

11 Q. In between the toes?

12 A. Uh-huh.

13 Q. Now, where did he live at the time of
14 the accident?

15 A. He lived with me.

16 Q. And he lived with you after the
17 collision?

18 A. Yes.

19 Q. Okay. Did you see him every day?

20 A. Every day.

21 Q. All right. Let's talk about -- we'll
22 come back to the night of. Let's talk about some
23 of the stuff in the house, okay? Specifically your
24 observations about the effects that these injuries
25 had on your son. Okay.

1 Let's go down the list. What effect
2 did the injuries to his face have on your son?

3 A. Well, the scarring on the bridge of his
4 nose, he wanted to have that somehow taken care of
5 so that it wasn't so obvious. It was almost like
6 the first thing you would see when you would see
7 him is the deep scar that his glasses left on him.

8 Q. Okay. How about, let's see -- let's go
9 down the line. If we move down the body from the
10 head, what's the next place in your house you could
11 tell he was hurting?

12 A. I could tell that his arm -- he had an
13 awful lot of road rash from that and some bruising
14 in that area as well.

15 Q. Okay.

16 A. Moving down a little further, he had
17 severe bruising on his -- (pointing) --

18 Q. You're pointing to your back right now?

19 A. Yeah, right here, (pointing) lower
20 back. He also had road rash in that area as well.
21 And when he landed so violently from the collision,
22 his feet smacked, I guess, the pavement. And the
23 whole entire sides around his ankle and heels were
24 black and blue. He walked with a limp after that.

25 Q. For how long?

1 A. Several months.

2 Q. Okay. Did it cause him -- did he have
3 any issues doing day-to-day things?

4 A. Yeah. He was without transportation,
5 so I would help him because he couldn't walk to
6 work. So I would take him to work.

7 Q. You say he couldn't walk. Because his
8 feet hurt?

9 A. His feet hurt. His leg hurt from
10 whatever injury that he might have had from this
11 leg because he was limited. He walked with a limp.

12 Q. Did it affect his sleeping?

13 A. Yes, it did. He had a hard time
14 sleeping, very restless nights. You know, he said
15 he could never find a comfortable position.

16 Q. Do you remember how long that went on,
17 the sleep issues?

18 A. For a very long time that continued.

19 Q. In fact, as of -- strike that question.
20 I will come back to that.

21 Okay. What you're describing sounds
22 like a person who sustained injuries that needed
23 medical attention. Did Daniel get enough medical
24 attention?

25 A. No, he didn't.

1 Q. What's the deal there? Why?

2 A. He was afraid of the cost.

3 Q. Okay. Do you remember how much money
4 he was making at the time?

5 A. He might have been making 9, \$10 an
6 hour.

7 Q. And he was working how many hours a
8 week at that time?

9 A. He was working for Circle K at least
10 37. Not quite full-time, part-time. But he was
11 also trying to work other jobs as well.

12 Q. And despite his fear of incurring
13 medical debt, did he get some treatment?

14 A. Yes, he did. He did go to see somebody
15 to get some help, find out why he was having so
16 much pain in his arm.

17 Q. How much did that cost?

18 A. That was 375.

19 Q. Okay.

20 A. And he was referred to a place to have
21 some imaging done to see what was behind the pain
22 in the arm. And he went to Tricom Imaging, and
23 that was 350.

24 Q. Okay.

25 A. I might have those numbers switched,

1 350 for the doctor and 475 for the imaging.

2 Q. Do you know what his total medical
3 expenses were?

4 A. Yeah. They were out of pocket \$900.

5 Q. Well, you were his mom and you saw him
6 every day. Did he need more treatment than what he
7 got?

8 A. I believe so, yes.

9 Q. And I know this seems a little bit
10 redundant, but all of the stuff we're talking
11 about, the treatment, the cost, all of that, was
12 that a direct result of his collision that we're
13 here about today?

14 A. Yes, it was.

15 Q. Aimee and Malaea talked about some
16 difficulty helping Daniel up. How big of a guy was
17 he?

18 A. He was 6 foot 4 and, at least, maybe
19 290.

20 Q. Okay.

21 A. He was a big guy.

22 Q. Okay. Now, let's put a pin in the
23 medical conversation for now. Let's go back to the
24 accident and the motorcycle. Okay.

25 I brought with me today a motorcycle.

1 Take a look at this. Is this a fair and accurate
2 representation of the motorcycle Daniel was riding
3 on the night of the collision?

4 A. It's almost exact. In fact, it's very
5 close. Actually, same coloring, pipes in the same
6 place. Everything is exactly the same.

7 Q. Okay.

8 A. Just miniaturized.

9 Q. At this time -- I need to see what
10 exhibit number we're at. I would offer this into
11 evidence as demonstrative evidence.

12 THE COURT: If it's demonstrative, it
13 doesn't go back to the jury. It's marked for ID
14 only.

15 MR. BOLES: I'll mark it for ID only
16 then as 14.

17 (PLF. EXH. 14, Toy motorcycle, was
18 marked for identification.)

19 BY MR. BOLES:

20 Q. I think I heard somebody describe the
21 motorcycle that your son was on as a racing bike.
22 Is that a fair characterization of the bike?

23 A. No.

24 Q. Was Daniel a race-type driver of the
25 motorcycle?

1 A. No.

2 Q. Did he like to pop wheelies and --

3 A. No.

4 Q. -- and ride aggressively?

5 A. No.

6 Q. Okay. Did you see the motorcycle --
7 let's go back to the night of the collision and you
8 were talking about you arrived.

9 A. Yes.

10 Q. Did you see the motorcycle in the
11 parking lot?

12 A. Yes, I did.

13 Q. Let's look at Plaintiff's Exhibits 1
14 through 8. And we are going to unpack these.
15 Please bear with me.

16 A. Okay.

17 Q. Start with Exhibit 1. I believe these
18 have already been admitted into evidence. Exhibit
19 1, is that photograph a part of Daniel's
20 motorcycle?

21 A. Yes. That's the rear end of the
22 motorcycle.

23 Q. Okay. And what do we see on the
24 motorcycle?

25 A. You see damage to the license plate

1 area.

2 Q. Okay. If I can take that from you. So
3 this is -- Exhibit 1 is the license plate of the
4 rear of that motorcycle, and we can see damage on
5 the rear part of the license plate.

6 Was that there before the collision?

7 A. No.

8 Q. This motorcycle was Daniel's favorite
9 thing. Were there any blemishes on it before the
10 collision?

11 A. No. He took perfect care of it.

12 Q. And that license plate holder was
13 actually in the same place on what's been IDed as
14 Exhibit 14, isn't it?

15 A. Correct. It's in the same place.

16 Q. Covering the back tire, right?

17 A. Yes.

18 Q. That's where it was on Daniel's
19 motorcycle?

20 A. Yes.

21 Q. First point of contact on that
22 motorcycle. Okay. Hang in there. We have to go
23 through six more of these exhibits.

24 I want to hand you Exhibit 2. What are
25 we looking at here?

1 A. We're looking at a side view of the
2 rear tire that shows more damage to the license
3 plate and damage to the tires itself.

4 Q. Okay. This is the rear tire?

5 A. Rear tire, yes, that is.

6 Q. Okay. I appreciate you being patient
7 with me, but there was a discussion that this
8 motorcycle was not hit from the rear. So we need
9 to go through and point out these photographs.

10 A. Okay.

11 Q. Look at Exhibit 3. What is that?

12 A. That's damage to the rear taillight
13 area. Completely broken off on the right side of
14 the bike.

15 Q. Okay.

16 A. And hanging on the left side.

17 Q. Okay. Again, we're looking at the rear
18 tire with -- the rear tire and there is a turn
19 signal broken off on the rear dangling under the
20 fender.

21 Okay. This is another picture. This
22 is Exhibit 4. What is this?

23 A. That's from above, looking down on the
24 back part of the bike. You can see that there is
25 damage to the actual seat.

1 Q. Use the pointer --

2 A. It would be on this side of the seat.

3 (Indicating) and I see the taillight on the left
4 side of the bike, looking from the rear, completely
5 broken off.

6 Q. So we're looking at the -- I call this
7 the cowling. It's this -- it's this what you said
8 is this rear cover on the very rear part of the
9 break. What is this stuff right here?

10 (Indicating)

11 A. That's -- that's damage from the crack,
12 I believe.

13 Q. And was that there before --

14 A. No, it was not.

15 Q. -- the collision?

16 And, again, I appreciate you being
17 patient with me, Mrs. McHugh. There was an issue
18 made that somehow this motorcycle was not hit from
19 behind so we need to unpack all of these
20 photographs. Okay?

21 I'm going to show you Plaintiff's
22 Exhibit 7. And what are we looking at here?

23 A. Okay. That is a view taken from the
24 lower side, I believe, looking towards the back of
25 the bike, and the handlebars broken off.

1 Q. Kind of looking straight at the
2 motorcycle in that picture?

3 A. Right. Like as you're down lower on
4 the same level as the motorcycle taking a panoramic
5 view of it.

6 Q. And this dangling part you say is the
7 handlebar?

8 A. It is.

9 Q. And the handlebars are made out of
10 metal, right?

11 A. Right. It was completely broken
12 through and through.

13 Q. Because of the collision; is that
14 correct?

15 A. Yes, sir.

16 Q. Okay. So the collision was enough and
17 the bike was tumbling hard enough that it broke a
18 metal handlebar up front?

19 A. Correct.

20 Q. All of these photographs I'm showing
21 you were photos showing damage to the motorcycle as
22 a result of the collision?

23 A. Yes, that's correct.

24 Q. Okay. Now, do you know what the debt
25 was related to the motorcycle that was wrecked?

1 A. Yes, it was 16,000.

2 Q. \$16,000?

3 A. Yes, \$16,000.

4 Q. 16,000 euros?

5 A. No.

6 Q. Dollars?

7 A. Dollars.

8 Q. Did Daniel have to come out of pocket,
9 you know, to replace this bike?

10 A. Yes, he did.

11 Q. How much?

12 A. He had to come up with about another
13 \$3,000.

14 Q. He had to pay another \$3,000?

15 A. Uh-huh. He continued to make monthly
16 payments on it so that he could keep his credit up.

17 Q. So even after the bike was totalled, he
18 had to make a couple of more payments before he
19 could afford to replace it?

20 A. Yes.

21 Q. All right. Well, you are here as
22 Daniel's mother, but you're also here as the
23 personal representative of his estate?

24 A. Yes.

25 Q. And at the end of the trial, do you

1 want the jury to award to Daniel these things we've
2 talked about as compensatory damages?

3 A. Yes.

4 Q. You want this jury to, first of all,
5 put Daniel back to where he was before this
6 collision took place?

7 A. Yes.

8 Q. Are you also asking the jury to take
9 into account his pain and suffering?

10 A. Yes.

11 Q. The lack of sleep that you described?

12 A. Yes.

13 Q. The difficulty walking that you
14 described?

15 A. Yes, sir. He had headaches.

16 Q. The headaches. The scar on his face?

17 A. Uh-huh.

18 Q. The road rash --

19 A. Yes.

20 Q. -- on his back?

21 A. And they took a long time to heal.

22 Q. You're also asking the jury to consider
23 the amount we talked about for the motorcycle?

24 A. Yes.

25 Q. Okay. All of that being the things --

1 and not an exhaustive list, but some of the things
2 that would bring him back to where he was before
3 that person ran into him?

4 A. Yes.

5 Q. Put a pin in that for a second.

6 This empty chair over here, let's focus
7 on that person. Are you also asking the jury to
8 award punitive damages that would make an example
9 out of what happened?

10 A. Yes.

11 Q. You want the jury to make a punitive
12 award that would keep other people from behaving
13 like this John Doe driver did?

14 A. Yes.

15 Q. And you are also asking for that
16 punitive award to consider the invasion into
17 Daniel's personal rights --

18 MR. COULTER: Judge.

19 THE COURT: Basis?

20 MR. COULTER: He's testifying.

21 THE COURT: Rephrase the question.

22 BY MR. BOLES:

23 Q. Do you want this jury to consider in
24 their punitive award whether this John Doe
25 defendant violated your son's rights?

1 A. He was the victim of a crime. And,
2 yes, I would like to have those kind of punitive
3 damages taken into consideration.

4 Q. All right. Now, let's talk about that,
5 damages. In his opening statement, John Doe's
6 lawyer told our jury that we are just here for
7 money. Is that right?

8 A. Yes.

9 MR. COULTER: Judge, he's testifying.

10 THE COURT: I need the basis of the
11 objection.

12 MR. COULTER: Excuse me?

13 THE COURT: I need the basis of the
14 question.

15 MR. COULTER: Form of the question.

16 THE COURT: Leading; sustained.
17 Rephrase.

18 MR. BOLES: Thank you.

19 THE COURT: You're welcome.

20 BY MR. BOLES:

21 Q. Did you hear Mr. Coulter tell these
22 jurors that we are just here to get money?

23 A. Yes, I did hear him say that.

24 Q. Are you here just for money?

25 A. No, sir. My son suffered.

1 Q. How did it make you feel to hear that
2 man say you were just here --

3 MR. COULTER: Judge, I'm going to
4 object --

5 THE COURT: Do not make him a witness.
6 Rephrase the question. You need to ask what relief
7 she's seeking. Her emotions are irrelevant.

8 THE COURT: Ladies and gentlemen, you
9 are to disregard the last question. You are to
10 disabuse it from your mind and give it absolutely
11 no consideration in your deliberations.

12 Proceed.

13 MR. BOLES: Thank you.

14 THE COURT: You're welcome.

15 BY MR. BOLES:

16 Q. Do you understand that as part of the
17 civil process all that we can ask of this jury is
18 an award?

19 A. Yes.

20 Q. If we could do more, would you ask them
21 to do more?

22 MR. COULTER: I'm going to object.

23 THE COURT: Basis of the objection?

24 MR. COULTER: He's testifying; form of
25 question; it's not relevant.

1 THE COURT: Refrain from leading,
2 Mr. Boles. Rephrase the question.

3 BY MR. BOLES:

4 Q. We haven't been able to locate the
5 person that did this to your son, have we?

6 A. No, we have not.

7 Q. Okay. And I will reask that; that was
8 leading. Have we located the person that did this
9 to your son?

10 A. No. And I wish we could.

11 Q. Would you prefer that to being here and
12 having to do all this right now?

13 A. Yes.

14 Q. But understanding limitation of what we
15 can ask from our jury, do you want them to come as
16 close to justice as we possibly can?

17 A. Yes.

18 MR. BOLES: Okay. Those are all the
19 questions I have. Please answer any that
20 Mr. Coulter may have for you.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Any questions for the
23 witness?

24 MR. COULTER: Just briefly.

25 CROSS-EXAMINATION

1 BY MR. COULTER:

2 Q. Good afternoon. Now, as I understand,
3 you said you weren't present at the accident?

4 A. No.

5 Q. Okay. And you testified at length
6 about the damage that was done to the motorcycle,
7 correct?

8 A. Yes.

9 Q. Okay. And, in fact, one of the things
10 you said at some point -- or your attorney said,
11 that the motorcycle was tumbling after the
12 accident, correct?

13 A. It rolled over my son.

14 Q. Okay. When you look at these different
15 pieces of damage, you don't know -- you,
16 personally, don't know when those particular
17 damages were caused, do you?

18 A. I'm not a forensic scientist.

19 Q. Sure. You're not, but you were asked
20 an extensive amount of questions about this damage,
21 correct?

22 A. Yes. I can see it for myself though.

23 Q. Oh, I understand. We agree that the
24 vehicle was damaged, but you can't tell from this
25 or any other photograph it was damaged at the time

1 of impact or as it was tumbling down the road, can
2 you?

3 A. What would that matter?

4 Q. Well, the fact that there is damage to
5 the rear of this vehicle doesn't necessarily mean
6 that it was struck in the rear, does it?

7 A. That's what caused the damage.

8 Q. Okay. But you don't know if that
9 damage to the rear was caused after it began to
10 roll, correct?

11 A. No, sir. He was hit from behind.

12 Q. Because you saw that?

13 A. No. My son told me.

14 Q. Okay. All right. Your son -- did your
15 son tell you that he did not think he was hit from
16 behind and that, in fact, he thought that his
17 motorcycle had seized up?

18 A. He had his doubts about that.

19 Q. That's right. And he was the one that
20 was supposedly hit. He had his doubts, correct?

21 A. He was also disoriented after the
22 accident, sir.

23 MR. COULTER: Okay. Thank you. That's
24 all I have.

25 THE COURT: Any further questions for

1 the witness?

2 MR. BOLES: Real quick.

3 REDIRECT EXAMINATION

4 BY MR. BOLES:

5 Q. Mrs. McHugh, let's go over a couple of
6 questions that you were just asked regarding the
7 photographs showing the rear-end damage of the
8 motorcycle. You were not just shown any
9 photographs from the defense that would tend to
10 show damage anywhere else, were you?

11 A. No.

12 Q. In fact, all of the evidence shows
13 damage to the rear of the motorcycle, doesn't it?

14 MR. COULTER: Your Honor, I'm going to
15 object.

16 THE COURT: Basis?

17 MR. COULTER: There was damage that --

18 THE COURT: Please don't make any
19 speaking objections.

20 MR. COULTER: May I approach?

21 THE COURT: You may.

22 (Bench conference)

23 THE COURT: Objection overruled.

24 Rephrase. And watch the leading.

25 BY MR. BOLES:

1 Q. Did he present you with any new photos,
2 other than the ones that you and I talked about?

3 A. No.

4 Q. Did he present you with any evidence to
5 support his theory that Mr. Coy could have caused
6 this accident?

7 A. No.

8 Q. Okay. In fact, he asked you about
9 Daniel saying that he was unaware of how the bike
10 got yanked out from underneath him?

11 A. Yes.

12 Q. Okay. So -- strike that.

13 Are you telling the truth today?

14 A. Yes.

15 MR. BOLES: Thank you for being here.
16 That's all the questions I have.

17 THE COURT: Ma'am, you may step down.

18 Madame Forelady, ladies and gentlemen,
19 I'm going to give you a brief comfort break.
20 During the break, please do not discuss the case
21 and please leave your notepads in your seats.

22 (Jury out, 4:17 p.m.)

23 THE COURT: You may be seated.

24 Who is your next witness, Mr. Boles?

25 Is this when you need to deal with the

1 deposition?

2 MR. BOLES: The excerpt.

3 THE COURT: How much time do you need
4 to deal with the deposition excerpts? Do you need
5 the rest of the afternoon?

6 MR. BOLES: Kind of, because we do need
7 to talk. We are close to agreeing on everything.
8 I would hate -- it is 3:10.

9 THE COURT: It's 4:18. I'm just asking
10 how long do you need to finish dealing with the
11 deposition?

12 MR. BOLES: I don't know.

13 THE COURT: Mr. Coulter, how long do
14 you think you need to finish dealing with the
15 deposition?

16 MR. COULTER: I have gone through
17 everything and I've marked everything. I think
18 that plaintiff's attorney needs to look at it and
19 see if he agrees.

20 THE COURT: Simple question: How long
21 do you need? I'm trying to give you enough time to
22 do what you need to do. If you need the rest of
23 the afternoon, that's fine. I need to know.

24 MR. BOLES: I prefer to stop now and do
25 that in the morning and do closings after that, and

1 then we are done.

2 THE COURT: Well, I don't know. You're
3 presuming that he doesn't have -- so you're not
4 going to call Ms. Osborne?

5 MR. BOLES: No, ma'am.

6 THE COURT: And you're not calling a
7 trooper; is that correct?

8 MR. BOLES: That's correct.

9 THE COURT: Okay. And does the defense
10 have any witnesses they intend to present?

11 MR. COULTER: No, ma'am.

12 THE COURT: So you basically just the
13 need the rest of the afternoon to work on the
14 deposition?

15 MR. BOLES: I would appreciate that.

16 THE COURT: Did you find somebody to
17 read for you?

18 MR. BOLES: Mrs. McHugh.

19 THE COURT: Are you agreeable to that,
20 Mr. Coulter?

21 MR. COULTER: That will be fine.

22 THE COURT: So what we'll do then is I
23 will send the jury home, and then you all can work
24 on the deposition and resolve what you need to.

25 Do you all have any requests for

1 instructions that you want to share with me?

2 MR. BOLES: Parting instructions for
3 tonight or --

4 THE COURT: Instructions for at the end
5 of the trial. I will have a charge conference, but
6 I don't like doing things at the last minute. If
7 you have something you want me to look at, I need
8 you to give it to me now.

9 MR. BOLES: I did print some
10 instructions, yes, ma'am. I only have one copy.

11 If I may approach, Your Honor.

12 THE COURT: Yes, sir.

13 MR. BOLES: I did write notes from this
14 morning about some things. I can print this for
15 tomorrow.

16 THE COURT: Mr. Coulter, do you have
17 any requests for instructions?

18 MR. COULTER: I do not.

19 THE COURT: And of course we will have
20 a charge conference.

21 Is there anything else other than the
22 deposition that we need to deal with before --
23 well, let me let the jury go home and then we'll
24 deal with that.

25 Please get the jury.

1 (COURT EXH. 2, Composite, Jury
2 Instructions Request, was marked for
3 identification.)

4 (Jury in, 4:22 p.m.)

5 THE COURT: You may be seated.

6 Madame Forelady, ladies and gentlemen,
7 we have some matters of law that we need to work
8 through the rest of the afternoon. I'm going to
9 let you all go. We will resume in the morning at
10 9:30.

11 During the break, please do not discuss
12 the case in any manner whatsoever. Do not read,
13 watch, or listen to any media accounts if there are
14 any. That includes anything on the radio,
15 television, newspapers or Internet.

16 Also, you are strictly instructed that
17 you are not to do any independent research of any
18 type on the Internet. That includes Google Maps or
19 any other searches if you become curious.

20 As the finders of the facts, you are
21 bound by your oath to decide this case according to
22 the sworn testimony and the other evidence
23 introduced, disabusing your mind of anything
24 outside of the evidence.

25 You are strictly instructed to follow

1 that admonition.

2 In addition, you are instructed not to
3 make any comments on any social networking sites
4 regarding your jury service. Even an innocent
5 comment on Instagram, Facebook Twitter, Snapchat --
6 I forget. There's too many. And I'm challenged
7 when it comes to social media -- it can be
8 misinterpreted.

9 And you would be amazed at the people
10 that call us and let us know what you say on social
11 media, which also begs the question what are they
12 doing all day that they have the time to know that
13 you are on jury duty and to call us.

14 So to Avoid that all together, I would
15 ask that you refrain from making any posts
16 regarding your jury service.

17 Also, when you return to the
18 courthouse, please have no contact with anyone in
19 or about the courthouse. Again, we would hate for
20 an innocent interaction to be misinterpreted.

21 I think it's going to be like 35 or 40
22 degrees tomorrow, so I'm probably going to order
23 your lunch. When you arrive, we will have the
24 bailiff or the clerk'S staff to take your lunch
25 orders and you can plan accordingly. I think we

1 will finish this case on tomorrow. So I give that
2 to you for your planning purposes as well.

3 Hope you have a great evening. We
4 appreciate your patience. You've been very
5 indulgent with us. It's just been one of those
6 Mondays. We appreciate it.

7 If you will leave your notebooks --

8 A JUROR: It's Tuesday.

9 THE COURT: It is Tuesday. When we
10 have a holiday, we have like a double Monday on
11 Tuesday.

12 A JUROR: I will take a three-pound
13 lobster tail.

14 THE COURT: I think we're limited to
15 Chick-fil-A and Music Man. I'm not sure. We'll
16 see what we have available, who is quick and who is
17 reliable which can change from week to week.

18 Please leave your notepads in your
19 seats and we will secure them during the evening.

20 (Jury out, 4:25 p.m.)

21 THE COURT: You may be seated.

22 Is there anything else, other than the
23 deposition, that we need to deal with before we
24 recess for the evening?

25 MR. BOLES: No, Your Honor.

1 THE COURT: From the defense?

2 MR. COULTER: No, Judge.

3 THE COURT: Hopefully, we will have the
4 ELMO working tomorrow. I don't know why it's
5 disconnected.

6 MR. COULTER: I'm sorry, I do have
7 something. It's just something to keep in thought.

8 THE COURT: Sure.

9 MR. COULTER: There has been a pretty
10 substantial payment of property damage already in
11 the case. So there may be the issue of the setoff
12 potentially. And so what I'm asking --

13 THE COURT: I assume that the purpose
14 the property damage was introduced was to deal with
15 the severity of the collision. Not to collect on
16 an element of damages. Based on the way I heard it
17 questioned.

18 MR. COULTER: I don't know. I'm
19 just --

20 THE COURT: And based on pretrial, I
21 thought he said he wasn't asking for the property
22 damage. He was asking for his out of pocket.

23 MR. COULTER: Oh, I didn't hear --

24 MR. BOLES: We are.

25 THE COURT: You're not asking for the

1 actual damage to the motorcycle. You don't get it
2 twice. You only get it one time. If he has
3 additional damages outside of the fair market value
4 of the vehicle, he can get that, but he can't get
5 the damages -- if he's already been paid for that
6 motorcycle, you don't get it twice.

7 MR. BOLES: I understand, you can't
8 double collect, but there is some out of pocket.
9 There was a gap --

10 THE COURT: That's what I said. He's
11 entitled to that. He's entitled to be made whole.
12 His estate is entitled to be made whole. If he had
13 a loan on his motorcycle, he's entitled to be
14 compensated for that if it left it with -- the
15 estate with a deficit.

16 He's not entitled to the fair market
17 value of the vehicle. Let's just say the
18 motorcycle -- he had a loan on the bike for \$10,000
19 and he owed -- it was -- was it totalled?

20 MR. BOLES: Yes, ma'am.

21 THE COURT: And he was paid the fair
22 market value of the motorcycle?

23 MR. BOLES: He owed 16. He was
24 paid 11, roughly --

25 THE COURT: He's entitled to the

1 difference.

2 MR. COULTER: I'm not saying he's not,
3 Judge.

4 MR. BOLES: But I do hear Mr. Coulter's
5 concern because I do want to ask the jury to
6 consider the full amount in calculating --

7 THE COURT: You can't do that.

8 MR. BOLES: -- further damages --

9 THE COURT: That's confusing.

10 MR. BOLES: -- and then subtract -- so
11 the Court can subtract out --

12 THE COURT: I'm not doing all that;
13 that's confusing. And then you're going to ask me
14 to ask them questions later, and it's going to be a
15 problem. You're only going to argue the
16 appropriate element of damages.

17 He's already been compensated for the
18 motorcycle. You don't get to argue that again.
19 It's misleading --

20 MR. BOLES: So --

21 THE COURT: -- misapprehension that he
22 hasn't been paid for it already. Then I get
23 questions about insurance which are improper.

24 MR. BOLES: I don't want to bring
25 insurance into it either, Your Honor. Just so I'm

1 clear, we're making a record and talking about this
2 stuff.

3 THE COURT: I assumed that's why the
4 Court Reporter is taking it all down.

5 MR. BOLES: You're always right. I'm
6 looking at this from the collateral source rule
7 which would say he can't recover it, but we can
8 talk about it.

9 THE COURT: You can talk about what
10 your actual elements of damages are. You don't
11 introduce fictional -- it's not the same as when
12 you have medical bills and you've been paid for
13 the -- you know, your insurance has paid for the
14 medical bills. That's different because your
15 insurance company is going to come back against you
16 to get their money. They're going to subrogate.

17 And, anymore, insurance companies don't
18 pay your medical bills. The first thing they ask
19 you when you go to the doctor is, do you have
20 medical insurance? And if you do, the medical
21 provider bills you directly. They don't even
22 submit it to your insurance company anymore.

23 So it's really a nullity when you say
24 -- most times anymore -- I can't think of a
25 situation other than with Medicaid where somebody

1 has had their bills paid because nobody else
2 submits it to the insurance company anymore.

3 If I go out here right now and somebody
4 hits me, God forbid, and I have to be transported
5 by EMS, before they hooked me up --

6 MR. BOLES: Call me.

7 THE COURT: -- they're going to ask me,
8 do you have insurance? Was this the result of an
9 automobile accident?

10 MR. BOLES: That's right.

11 THE COURT: And if I say, yes, they're
12 going to give me a different kind of slip and
13 they're going to bill me directly and they're going
14 to expect me to pay it. They're not going to
15 submit it to my insurance company.

16 And even if they did, my insurance
17 company is going to send me a long questionnaire
18 and they're not going pay it. They are going to
19 say it's not their responsibility.

20 MR. BOLES: All true. And all a huge
21 problem for people.

22 THE COURT: So to use that as a -- to
23 use that as a barometer is misleading. It's not
24 analogous, because the purpose you admit medical
25 bills is to the severity of the -- your injury. In

1 other words, that's the barometer by which the jury
2 can calculate your actual damages, that being your
3 pain and suffering, that being how much time you
4 were out of work.

5 But when you start talking about
6 property damage, the amount of the property damage
7 -- I think to say that the bike was totalled, I
8 don't have a problem with that. That goes to the
9 severity of the collision. That goes to the
10 severity potential physical damage to the body.

11 When you start talking about what it
12 cost to repair it or all of that, I don't know that
13 it's -- that it's relevant.

14 MR. BOLES: It's the -- I think --

15 THE COURT: We're not talking about
16 argument, which I think is premature. I don't know
17 how the rest of the case is going to develop, and
18 I'm going to have a charge conference.

19 I guess I'm trying to figure out what
20 we're debating about.

21 MR. COULTER: My concern is, Judge, he
22 has already put up what he said the loan was to the
23 jury and he's out this and it was caused by John
24 Doe. It's a damage that they were writing down in
25 their books.

1 THE COURT: He's entitled to the gap
2 between the loan and --

3 MR. COULTER: That's not how it was
4 presented.

5 THE COURT: I don't know how he's going
6 to argue it. You didn't make a contemporaneous
7 objection, but now I have to deal with how its
8 argued and I'll deal with that in charge
9 conference. I can't do anything about it now.

10 MR. COULTER: Well, the reason I was
11 just bringing it up was, if we could have a special
12 interrogatory which would say --

13 THE COURT: I'm not -- I don't know how
14 the case is going to play out. I have no idea.

15 MR. COULTER: I'm just going to throw
16 it out there just to put it on there, that there
17 would be actual damages, property damages and
18 punitive damages. That way an offset could apply
19 easily.

20 THE COURT: I don't know that it's
21 going to be germane. I don't know until charge
22 conference. I don't know how the case is going to
23 be argued. I don't know.

24 I'm not trying to look into the future.
25 I have to take this a stage at a time. I don't

1 know how the case is going to develop, and I'm not
2 making any rulings that are going to impair -- I
3 don't know.

4 We'll have to have a charge conference
5 and I'll have to see -- once all of the evidence is
6 developed and once we get to that point, then we
7 can -- it may be a moot issue. I just don't see us
8 spending a whole lot of time talking on something
9 that may or may not happen.

10 MR. BOLES: It's an academic exercise
11 right now.

12 THE COURT: So why don't you put your
13 energy into the deposition and we'll go from there.

14 MR. BOLES: Thank you.

15 THE COURT: You all have a good
16 evening. Make sure that the Court Reporter has all
17 of the evidence.

18 (These proceedings were recessed at
19 4:32 p.m., to be continued 11/13/19, 9:30 a.m.)
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21
22
23
24
25

1 (The following proceedings were had
2 11/13/2019, McHugh v. Doe, Judge Jefferson,
3 Berkeley County Common Pleas, 9:49 a.m.)

4 THE COURT: I did not realize until --
5 I had a little fender bender. When I was leaving
6 court yesterday, they called and let me know my car
7 was ready. And to tell you the truth, I had not
8 focused on what insurance company it was. And it
9 is Progressive.

10 MR. BOLES: I'm sorry to hear that.

11 THE COURT: Again, I always look at the
12 glass half full, not half empty. It could have
13 been worse. I mean, I could have had a significant
14 injury, and I didn't. So I feel blessed in the
15 whole scheme of things, so all I had to do was deal
16 with my car being repaired.

17 They've accepted responsibility.
18 They've repaired my car. For all intents and
19 purposes, it's done. I just have to pick up my car
20 today.

21 I don't think I have any duty to recuse
22 or disclose it, but I just always -- you know, my
23 fair barometer is like it falls under the heading
24 of no harm, no foul. And it's better that I
25 disclose it than not disclose it.

1 So I need to know if you-all have any
2 issue with the fact that I had a fender bender and
3 Progressive handled my claim.

4 MR. BOLES: None from the plaintiff.

5 MR. COULTER: None from the defense.

6 THE COURT: Okay. Perfect. Let me
7 know when you all are done and we will go from
8 there. I'm sure that you heard Grainger just tell
9 me we're ordering for the grand jury as well. So
10 they're going to pick up at noon. So we're
11 probably looking at 12:15. But they have a
12 microwave in the jury room.

13 I don't want you to feel that you are
14 under some artificial pressure in terms of
15 finishing your argument. So I tell you that for
16 planning purposes.

17 MR. BOLES: Appreciate it.

18 THE COURT: No worries. Let me know
19 when you're done. And the issue that you all have,
20 is there something I can be reading while you're
21 still going through the deposition?

22 MR. BOLES: Sure. This is the page
23 right here.

24 THE COURT: Give it to the deputy so I
25 can go ahead and read it.

1 And I assume the highlighted part is
2 what you have the issue with?

3 MR. BOLES: That's correct.

4 THE COURT: Okay. I'll be in my
5 office. Let me know when you're ready.

6 MR. BOLES: Yes, ma'am.

7 (A recess transpired.)

8 THE COURT: Do you have everything
9 ready on the deposition?

10 MR. BOLES: We have everything except
11 what we handed to you.

12 THE COURT: When I say ready, you-all
13 know pretty much in theory what you're going to
14 agree on and all that.

15 MR. BOLES: On everything else.

16 THE COURT: Now, who is going to read
17 the deposition?

18 MR. BOLES: Your Honor, I'm going to do
19 the questioning and Mrs. McHugh is going to read
20 the answers.

21 THE COURT: Okay. That's for both
22 sides.

23 MR. BOLES: We're just going to do one
24 reading of the whole --

25 MR. COULTER: Yes.

1 THE COURT: Okay. And I had one page
2 that you all gave me which is page 42. Whose
3 objection is that?

4 MR. BOLES: That's mine, Your Honor.

5 THE COURT: What would be the basis of
6 the objection?

7 MR. BOLES: Prior -- okay. So one of
8 the defenses in this case is comparative
9 negligence. The defense has alleged that on the
10 night in question of this collision Mr. Coy was
11 negligent in contributing to the collision.

12 On page 42, there is reference to a
13 completely unrelated prior incident where Mr. Coy
14 was at the training course learning how to ride a
15 motorcycle, okay, and he had a spill. It's not
16 even the same as what happened --

17 THE COURT: Didn't he introduce this of
18 his own accord where he said -- and I'm referring
19 to the deposition excerpt and I'm reading at page
20 42, line 4. Well, let's start at the whole -- I
21 assume there was some question about a scar, which
22 is the line 1.

23 And the answer is, sure, sure, sure.
24 And it's not as frequent, but I still get headaches
25 from time to time because I also had a minor fall

1 with my bike where -- it was where we were
2 practicing the training on motorcycle training
3 where you're moving along, and then basically you
4 have to learn how to take a bit of a turn and then
5 be able to brake properly without basically
6 flipping the bike or flipping yourself off the
7 bike.

8 And I messed up and went off the bike
9 to the side and landed on my head with the helmet
10 on, but the accident six weeks later, or whatever,
11 I basically incurred two concussions within
12 principally two months.

13 Question: So this other event was six
14 weeks earlier?

15 Answer: Yes, at the motorcycle
16 training course.

17 But the whole purpose of me reading
18 that is he indicates that while he was practicing
19 -- the first part of the question he says, it's not
20 as frequent, but I still get headaches from time to
21 time. Then he says why.

22 And he indicates that, I got them
23 because I fell during this training, but I also
24 have them because I had two concussions during this
25 accident.

1 He interjects this as the underlying
2 cause of the headaches. It's not extrapolated from
3 another source. I'm just anticipating
4 Mr. Coulter's argument, that it's a pre-existing
5 condition for which is also a contributing cause to
6 his headaches.

7 And the jury in their fact-finding
8 province can parcel out what amount, if any, is
9 attributable to the first spill where he says he
10 has headaches, and the second spill where he says I
11 had two concussions, which clearly in terms of
12 relative seriousness, one is more serious than the
13 other; however, he's not entitled to be compensated
14 for what may have pre-existed.

15 And the law makes -- you know, has an
16 instruction for that. It says that. He had
17 something that pre-existed. He can't be -- you
18 know, if he had some minor headaches because of
19 this first spill, he's not entitled to be
20 compensated for that; however, if his condition has
21 worsened, or he has a new injury because of the new
22 spill, he is entitled to be compensated for that.

23 And I'm assuming, Mr. Coulter, that is
24 your argument; that, that was a pre-existing defect
25 for which he's not entitled to be compensated.

1 MR. COULTER: Yes, ma'am.

2 MR. BOLES: Your Honor, it's a little
3 bit fictitious for opposing counsel to say that in
4 his opening argument. His point was that the
5 plaintiff had the exact same accident before, and
6 he mentioned nothing about it in the context of,
7 this relates to injuries -- this relates to a
8 pre-existing condition.

9 THE COURT: He pointed to his
10 inexperience. But, you know, cases develop and the
11 proof conforms to whatever is presented. He's not
12 limited to his opening argument.

13 MR. BOLES: Right. And for the purpose
14 of this motion what I'm pointing out is the defense
15 is using this in line with their opening argument
16 which is that the prior accident indicates conduct
17 consistent with that prior accident, which is not
18 admissible.

19 THE COURT: I don't think he can argue
20 that. I think you have to make a contemporaneous
21 objection. I can't look into the future as to what
22 Mr. Coulter's going to argue. Just like I told him
23 yesterday, I can't look into the future about what
24 you're going to argue.

25 But based on his opening argument, what

1 he basically says is that your client was an
2 inexperienced rider. I think that the evidence so
3 far has borne that out. I don't know that it -- I
4 don't know that being an inexperienced rider rises
5 to the level of you being comparatively negligent
6 or somebody, based on the testimony so far in the
7 light most favorable to you, was tailgating him and
8 then hit him.

9 Well -- and I believe the second
10 eyewitness testimony was that he was aggressively
11 on his bumper, he misjudged the distance, and hit
12 him. All of those are factual things that you can
13 parse out, but your client interjected that he had
14 a previous injury that caused him headaches. I
15 don't think --

16 MR. BOLES: So the testimony --

17 THE COURT: Because isolated this first
18 sentencing is misleading.

19 MR. BOLES: Testimony about having
20 prior headaches from time to time I understand.
21 It's the testimony about prior incident and using
22 that to prove --

23 THE COURT: I don't know what he's
24 going to argue in his closing argument. I think he
25 would be restricted to this being a prior -- an

1 aggravation of a pre-existing condition. He had a
2 previous fall that he of his own volition says
3 caused him headaches. It was exacerbated by two
4 concussions.

5 MR. BOLES: Correct. But the fall
6 itself and the circumstances of the fall --

7 THE COURT: I don't think you can take
8 it out of its context. He's complaining how he
9 felt. Nobody asked him to say this. He elicited
10 it on his own. To his credit, he was honest about
11 how he felt.

12 MR. BOLES: We could, for instance, put
13 in there, I still get headaches from time to time
14 because I had a minor fall.

15 THE COURT: That's misleading. You
16 don't know why he fell. You don't know where he
17 fell from. He could have fell off of the porch and
18 had minor headaches. I think it's misleading to
19 the jury, and it's out of context. It's part of
20 the res gestae, how he fell.

21 And he, like I said, to his credit was
22 honest. I fell off of the motorcycle and I had
23 some minor headaches. And then subsequently, six
24 weeks later, I had this worse hit where I had two
25 concussions and the headaches continued. It sounds

1 like a pre-existing injury to me.

2 Now, I don't know what Mr. Coulter is
3 going to argue about his inexperience. I don't
4 know if he's going to try -- I think the whole
5 purpose of taking motorcycle training is so I can
6 fall in a contained environment. I mean, I think
7 they expect you to fall in the motorcycle training.
8 If you weren't going to fall, you wouldn't need the
9 training, right?

10 Motorcycles are very heavy. Most
11 people have a very hard time navigating them.
12 That's why they require you to go to courses and
13 learn how to ride them. I would think if we had a
14 motorcycle instructor, he would say probably ten
15 out of ten people fall during training.

16 I don't think that's a sign of
17 inexperience. I mean, that's why you go to
18 training; so that you can not fall on the highway.

19 MR. BOLES: So when the supreme court,
20 for instance, reviews things that the president is
21 trying to do, they look at stuff he says
22 beforehand --

23 THE COURT: I don't know. I'm not one
24 of those -- how many people are on the United
25 States Supreme Court? I don't even know.

1 MR. BOLES: Nine. So --

2 THE COURT: I'm not one of them. I
3 don't know. I can't like -- I don't know what's in
4 their minds.

5 MR. BOLES: We do know what is in the
6 defense's mind based on prior statements and
7 whether --

8 THE COURT: You're going to have to
9 make a contemporaneous objection. I can't rule in
10 a vacuum. I don't know what he's going to argue.
11 For this issue, as I read this in its context, it's
12 a pre-existing injury and it's admissible.

13 And there's an instruction to deal with
14 it that says you can't fault him. And, actually, I
15 think it inures to your client's benefit, because
16 you can't -- he had an injury. It was less extreme
17 than the other injury. I don't think you can
18 compare the two.

19 But he's not entitled -- he's the one
20 that said, I have headaches. The inception of
21 these headaches is when I fell the first time. My
22 headaches were exacerbated and continued because of
23 the second time.

24 I don't think -- I mean, they're
25 entitled to a clear picture of his injuries, but

1 his injuries and whether he -- where he -- whether
2 he's comparatively negligent are two separate
3 things.

4 And I can't rule in advance on
5 something that hasn't come up yet. I don't know
6 what he's going to argue. It's incumbent upon you
7 to make a contemporaneous objection so I can make a
8 ruling.

9 MR. BOLES: At this time before we
10 offer this excerpt is me making that objection.

11 THE COURT: You can't make it until he
12 introduces the testimony. You can't, like,
13 anticipate what he's going to say. He may not say
14 it. I don't know.

15 I'm not making a ruling in a vacuum
16 until I hear the testimony. If you hear the
17 question and then you feel it's objectionable, make
18 a contemporaneous objection. If necessary, I will
19 hear argument and I will make a ruling. If I feel
20 it's inappropriate, I will strike it. If not --

21 MR. BOLES: So looking forward, because
22 I'm going to be reading the question, so I will
23 say, Your Honor, at this point I object.

24 THE COURT: You can't object to this
25 because I've already ruled on it. If there's

1 another objection --

2 MR. BOLES: Right. I'm objecting to
3 the admission of the excerpt. You're saying --

4 THE COURT: That's a matter of law for
5 the Court, and I've ruled on it.

6 MR. BOLES: Okay. I just want to be
7 clear.

8 THE COURT: I'm talking about you're
9 saying that he's going to argue later on that this
10 is evidence of his inexperience. What I'm telling
11 you is it's incumbent upon you to make a
12 contemporaneous objection.

13 MR. BOLES: Understood.

14 THE COURT: I don't know what he's
15 going to argue. I'm not in his mind. I have no
16 idea.

17 MR. BOLES: I appreciate you clarifying
18 that for me, that point. So we're going to bring
19 in page 42.

20 THE COURT: All the way to line 18.
21 That's what you objected to, right?

22 MR. BOLES: That's correct.

23 THE COURT: If you want to make the
24 answer more complete, you can add the rest of this.
25 Did they send you to get treatment anywhere after

1 your fall?

2 No, I was perfectly fine. I didn't
3 even scuff my clothing. I had a bit of a headache,
4 but -- you know.

5 MR. BOLES: Okay.

6 THE COURT: For completeness if you
7 want to include the rest of that, I think it's
8 completely appropriate because it explains the
9 context of whether he got treatment or not.

10 MR. BOLES: Can I take that back and --

11 THE COURT: Sure. What was the other
12 thing you said you objected to? I thought you said
13 there was another objection.

14 MR. BOLES: Well, it really has more to
15 do with what we talked about yesterday. It doesn't
16 have to do with this, with the transcript.

17 THE COURT: I don't know. You'll have
18 to refresh my memory.

19 MR. BOLES: Had to do with damages.

20 THE COURT: I'm not having any hearing
21 on anything that deals with charge conference
22 until --

23 MR. BOLES: So it's for later.

24 THE COURT: All right. Are we ready to
25 proceed? From the plaintiff?

1 MR. BOLES: As soon as I finish this.

2 THE COURT: From the defense?

3 Mr. Coulter?

4 MR. COULTER: Yes, ma'am.

5 THE COURT: Anything further?

6 MR. COULTER: Oh, no.

7 THE COURT: I assume that I anticipated
8 what your argument was going to be? I saw you over
9 there shaking your head.

10 MR. COULTER: Yes.

11 THE COURT: Okay. And do you have the
12 original transcript --

13 MR. BOLES: Yes, ma'am.

14 THE COURT: -- for the court reporter?

15 And do you have the designations?

16 Because she doesn't take any of this down. She
17 will need the original which will be marked as a
18 Court's Exhibit, and she will need the designations
19 that you are reading.

20 Or if you want to make a copy -- well,
21 you could create the designations or you could give
22 her a copy for yourself and then give us a
23 highlighted copy. That way she will have the
24 designations. That's the only way it would be in
25 the record.

1 MR. BOLES: Would it please the Court
2 and everybody if we do the reading first, and then
3 I will give this --

4 THE COURT: Sure. And you may want to
5 make a copy for yourself as well so you will have a
6 copy.

7 MR. BOLES: That's right.

8 THE COURT: That works. Any exception
9 from the defense?

10 MR. COULTER: No, ma'am.

11 THE COURT: Ma'am, if you could take
12 the stand for me.

13 (COURT'S EXH. 3, Deposition
14 Transcription of Daniel Coy, was marked for
15 identification.)

16 (Jury in, 10:24 a.m.)

17 THE COURT: Good morning, ladies and
18 gentlemen. I hope that everybody had a pleasant
19 evening. We appreciate your patience.

20 We had some matters of law we needed to
21 work through this morning that would allow us to go
22 forward with minimal interruptions. So please know
23 we do not take your time for granted.

24 We've ordered your lunch, which the
25 feast of the day will be Chick-fil-A.

1 A JUROR: I know I like Chick-fil-A.

2 A JUROR: I like Popeye's.

3 THE COURT: I haven't tried Pop Eye's
4 sandwich yet.

5 MR. BOLES: I heard it's overhyped.

6 THE COURT: I don't do lines well. My
7 taste buds make a left turn. So we have
8 Chick-fil-A, and it should be here -- I'll gauge it
9 when it comes so it isn't cold so that you're able
10 to eat. We'll break at the appropriate time so
11 that you all can have lunch.

12 But we anticipate that we will conclude
13 this case today. You're about to hear testimony by
14 deposition. A deposition is sworn testimony taken
15 outside of court in the presence of counsel who
16 each have the opportunity to ask questions of the
17 witness.

18 This particular testimony will be of
19 Daniel E. Coy, the deceased, who is the original
20 plaintiff in this action.

21 It is then for you, ladies and
22 gentlemen, to give the testimony the weight, value,
23 and effect that you decide it should receive as if
24 the witness was here present and testifying.

25 Mr. Boles, you may proceed.

1 MR. BOLES: Thank you, Your Honor. May
2 it please the Court.

3 THE COURT: Yes, sir.

4 MR. BOLES: As the judge instructed, we
5 will have a question and answer based on -- I've
6 provided you with the transcript right there.
7 Okay?

8 THE WITNESS: Okay.

9 (Whereupon, excerpts of the deposition
10 testimony of Daniel E. Coy was read into the
11 record.)

12 MR. BOLES: I believe this concludes
13 the deposition excerpts.

14 THE COURT: Plaintiff may proceed.

15 MR. BOLES: Plaintiff rests, Your
16 Honor.

17 THE COURT: Ladies and gentlemen, the
18 plaintiff has rested their case. I have some
19 matters of law to take up with counsel. During
20 this break, please do not discuss the case and
21 please leave the notepads in your seats. We
22 appreciate your patience.

23 (Jury out, 10:49 a.m.)

24 THE COURT: Plaintiff has rested. Are
25 there any motions?

1 MR. COULTER: Judge, just for the
2 record, the only motion I would make is for
3 directed verdict on the issue of punitive damages
4 as I believe it's --

5 THE COURT: I'm sorry, can you speak up
6 a little bit for me. My ears are a little clogged
7 up.

8 MR. COULTER: I'm sorry. I apologize.
9 Okay. Just because I believe it's
10 fiction to try to punish John Doe. That's really
11 the only motion I have, Judge.

12 THE COURT: Okay. Would you like to
13 respond, Mr. Boles?

14 MR. BOLES: Very briefly.

15 Your Honor, so this motion is only
16 addressing the issue of punitive damages. There
17 are three reasons for punitive damages; one is to
18 punish, one is to set an example, and one is to
19 compensate plaintiff for invasion of their private
20 rights. In this case, there is plenty of evidence
21 in front of the jury to make a determination
22 whether they want to issue punitive damages.

23 We don't have to have someone in the
24 chair. That's why John Doe lawsuits exist, in
25 order for the jurors to make a finding that

1 punitive damages exist.

2 The findings can be based on the
3 testimony of the eyewitnesses that the car was
4 following too closely, that the car impacted the
5 plaintiff, and then concealment by the operator of
6 the car their identity by fleeing the scene
7 afterwards.

8 So it's not necessary, as stated by the
9 defense, that we have a person physically present
10 in order to have the jury award punitive damages.

11 So just to recap, there is ample
12 evidence on the record. It's a -- really a matter
13 for the jury to decide if they want to award
14 punitive damages. We don't need a person
15 physically possible and, therefore, I would ask --
16 physically present, I'm sorry, and, therefore, I
17 would ask that you deny the motion. Thank you.

18 THE COURT: Anything further?

19 MR. COULTER: No, Judge.

20 THE COURT: Considering the evidence in
21 the light most favorable to the non-moving party
22 and all reasonable inferences in their favor, the
23 motion for directed verdict is denied.

24 The Court is not the finder of fact.
25 The pivotal issue or the issue of consequence

1 regarding punitive damages is whether the plaintiff
2 has proven by clear and convincing evidence that
3 the John Doe defendant was culpable of reckless,
4 willful, or wanton behavior, thereby, not only
5 being negligent, but aware of their being
6 negligent.

7 That remains a factual issue for the
8 jury to determine. That being the violation of a
9 safety code or statute as well as the common law is
10 evidence of reckless, willful and wanton behavior.

11 And, clearly, at this point in the
12 evidence, there is eyewitness testimony not only of
13 simple negligence, but that the John Doe defendant
14 was aggressively driving behind the plaintiff, over
15 -- underestimated the extent of the reckless
16 behavior, thereby causing an injury to the
17 plaintiff and then exacerbating that by fleeing the
18 scene of the incident.

19 So, theoretically, under our common
20 law, as well as statutory provisions, he was
21 following too closely and then exacerbated that by
22 failing to report the accident and then having fled
23 the scene of the accident where -- which was a
24 result of bodily injury.

25 So there exists a question of fact for

1 the jury to determine. And whether there is legal
2 fiction, it is one that our supreme court has
3 recognized. It is my job to interpret the law, not
4 make it. And if the legislature sees fit in their
5 province to change that, that is their prerogative.
6 It's not the Court's job to make law. The motion
7 is denied.

8 Are there any motions from plaintiff at
9 this point?

10 MR. BOLES: No, ma'am.

11 THE COURT: Do you have any witnesses,
12 Mr. Coulter?

13 MR. COULTER: No, ma'am.

14 THE COURT: Do you want to go ahead and
15 rest, and then I'll let you rest in the presence of
16 the jury?

17 MR. COULTER: The defense does rest.

18 MR. BOLES: If it's expeditious, Judge,
19 I would make a motion following resting of the
20 defense.

21 THE COURT: Well, I'm going to do
22 everything outside of the jury's presence so that
23 when I bring them back we will start with closing.

24 The defense has rested. Are there any
25 motions?

1 MR. BOLES: There are, Your Honor.

2 Plaintiff makes a motion for directed
3 verdict on the issue of liability. The
4 uncontroverted testimony has been that, as the
5 Court has already stated, John Doe was driving
6 aggressively, following too closely, that John Doe
7 caused this collision, that John Doe did, in fact,
8 collide with the plaintiff. There is no question
9 that John Doe failed to remain afterwards.

10 By focussing on liability alone, the
11 only reasonable inference that can be made from the
12 evidence, even in the light most favorable to the
13 defendant, is that John Doe caused this collision.

14 We would ask that the Court direct a
15 verdict as to liability and instruct the jury
16 simply to find as to damages alone. Thank you for
17 hearing me.

18 THE COURT: You're welcome.

19 Mr. Coulter, would you like to respond?

20 MR. COULTER: Yes, Judge.

21 Again, in the light most favorable to
22 the defense, I believe there has been evidence
23 shown through deposition testimony that the
24 plaintiff himself did not think that he had been
25 hit by the vehicle, but instead he believed that

1 his vehicle had seized up causing him to fall off
2 of the motorcycle.

3 As a matter of fact, when his mother
4 testified yesterday, she said that her son had
5 doubts as to whether or not he had been hit. So
6 there is, I would suggest, evidence that this was
7 actually operator error as opposed to anybody
8 striking the rear of the vehicle.

9 And the witnesses themselves, as I
10 believe you have seen yesterday, are somewhat
11 sketchy as to what they could see and what they
12 could not see. In addition to Mrs. White (sic)
13 saying closer to the incident that she was -- it
14 was impossible for her to see what had happened
15 based on it being too dark and too far away.

16 So I think there is evidence that would
17 support the argument that there was operator error
18 which caused him to be injured.

19 THE COURT: Would you like to respond?

20 MR. BOLES: Very briefly, Your Honor.

21 You know, to say that the plaintiff was
22 not aware that a car came up behind him
23 aggressively and hit him and then drove off while
24 he was laying in the road is not evidence that John
25 Doe did not cause this accident. It's simply

1 evidence that the plaintiff was taken unaware by
2 the accident.

3 To say that the jury could draw the
4 conclusion that just because Mr. Coy didn't see
5 that car come up behind him and hit him, to say
6 that the jury could conclude that that's somehow
7 evidence that Mr. Coy caused the accident, because
8 that's what they have to show, it's just simply not
9 possible.

10 The defense would like to say that the
11 lack of awareness that the car ran into him somehow
12 supports that Mr. Coy caused the accident; but,
13 again, viewing all of the evidence on record in the
14 light most favorable to the defense, they have
15 offered nothing to indicate that Mr. Coy somehow
16 was not operating the motorcycle competently or in
17 any way caused the accident.

18 In fact, all of the eyewitnesses that
19 have testified said with absolute certainty that
20 John Doe caused the accident, that Mr. Coy was not
21 driving unreasonable, he wasn't popping wheelies,
22 he was not speeding, he was slowing down.

23 So, again, focussing on liability only
24 there is nothing on the record, even in the light
25 most favorable to the defendant, to support

1 anything other than the conclusion that John Doe
2 caused the accident.

3 So thank you for hearing us.

4 THE COURT: You're welcome.

5 Motion for directed verdict is denied.

6 All of the points that you all have argued are
7 questions of fact for the jury to determine. And,
8 clearly, there are questions of fact. Whether the
9 damage to the vehicle is evidence of an actual
10 contact with the vehicle, there are eyewitnesses
11 for the jury to determine credibility. And,
12 clearly, the defendant was injured.

13 And I do not think it is dispositive as
14 to whether he knew who hit him. I don't think
15 there's any duty upon him to know that when you're
16 sitting stationary in the process or preparing to
17 make a turn that you have to be aware that someone
18 has rear-ended you or that you should anticipate
19 someone rear-ending you; however, those still
20 remain questions of fact for you to argue to the
21 jury and for them to sort out.

22 So there do exist questions of fact,
23 and the motion for directed verdict is denied.

24 MR. BOLES: Thank you.

25 THE COURT: You're welcome.

1 Do you have all of the exhibits,
2 Denise?

3 THE COURT REPORTER: Yes, ma'am.

4 THE COURT: I will give the jury a
5 general instruction regarding their responsibility
6 and my responsibility; how they are to judge
7 witness credibility and believability.

8 I will also give them a very general
9 instruction about John Doe actions; in other words,
10 that pursuant to our state law, a John Doe action
11 can be brought, and that the plaintiff can allege
12 that an unknown vehicle was negligent, reckless, or
13 willful or wanton and cause them damages, and that
14 if the owner of a vehicle is alleged to have caused
15 injury to the plaintiff and their identity is
16 unknown, that a cause of action may be brought
17 against the unknown defendant as John Doe.

18 I will then continue explaining to them
19 their responsibility as the finders of facts, how
20 they are to judge witness credibility and
21 believability.

22 And I will instruct them that they have
23 to follow the law as I instruct it, that they
24 cannot set up their own arbitrary standard.

25 I will give them a general instruction

1 regarding deposition testimony much like what I
2 already have given them.

3 I will give them a general instruction
4 on the burden of proof, which is a preponderance of
5 the evidence, again, using the traditional set of
6 scales.

7 I will then instruct them on the
8 elements of negligence, which I think we all know
9 and I don't think I need to belabor by going
10 through each of those.

11 I will then give them a more specific
12 John Doe instruction which instructs them on the
13 elements of the John Doe action, which is if the
14 owner or operator of any motor vehicle which causes
15 bodily injury or damage or property damage to the
16 plaintiff is unknown, the plaintiff may recover if
17 the plaintiff first proves that the plaintiff or
18 someone on the plaintiff's behalf reported the
19 incident, that they had injuries as a result of the
20 incident, and that there was physical contact with
21 the unknown vehicle, and that that has to be
22 corroborated by an independent witness, and that
23 the plaintiff was not negligent in failing to
24 determine the identity of the other vehicle and the
25 driver of the other vehicle at the time of the

1 accident.

2 I will then give them a general
3 instruction regarding damages. And under these
4 circumstances, the plaintiff would be entitled to
5 actual damages. Those being pain and suffering,
6 both past -- well, it would be past for him because
7 he's deceased, as well as mental anguish,
8 impairment of health and physical condition and any
9 disfigurement, as there was testimony that he had a
10 scar as a result of this collision, that it is fair
11 for them to take into consideration past aspects of
12 the injury.

13 And I'm going to leave -- I usually
14 say, past and present, but since he's deceased, I
15 will exclude that language. And that it is proper
16 for them to take into consideration physical and
17 mental pain and suffering endured, expenses
18 incurred for necessary medical treatment, for loss
19 of enjoyment of life suffered as a result of the
20 injury which includes courses, hobbies, avocations
21 and other interests, and any other losses which are
22 reflected by the character of the injury.

23 I will not be instructing on future
24 damages as that would not be applicable under the
25 circumstances.

1 I will then give a general instruction
2 on pain and suffering which, again, under these
3 circumstances would be past pain and suffering.
4 And then I will give a general instruction
5 regarding burden of proof on damages.

6 I will then give a general instruction
7 regarding pre-existing conditions, as there was
8 testimony regarding a previous spill he had that he
9 said caused the inception of headaches, but it was
10 exacerbated by the subsequent incident.

11 I will then instruct on comparative
12 negligence, which we already know the elements of.
13 I will then move to punitive damages. I think we
14 all know the standard language regarding punitive
15 damages, so I will not belabor the point.

16 Within the confines of defining
17 reckless, willful, and wanton behavior, I will
18 instruct the common law elements regarding proper
19 lookout, duty to keep your vehicle under control.
20 And in that context, I will also instruct 15 --
21 56-519-30(a), which is following too closely. The
22 operator of a motor vehicle shall not follow
23 another vehicle more closely than is reasonable and
24 prudent, having due regard for the speed of such
25 vehicles and the traffic upon and the condition of

1 the highway.

2 Also, I will instruct 56-5-1210(a).

3 The driver of a vehicle involved in an accident
4 resulting in injury to or death of a person
5 immediately shall stop the vehicle at the scene of
6 the accident or as close to it as possible. He
7 then shall return to and in every event shall
8 remain at the scene of the accident until he has
9 fulfilled the requirement of 56-5-1230. However,
10 he may temporarily leave the scene to report the
11 accident to proper authorities. The stop must be
12 made without obstructing traffic more than is
13 necessary.

14 And then I will instruct 56-5-1230,
15 which is duty to give information. The driver of
16 any vehicle involved in an accident resulting in
17 injury to or death of any person or damage to any
18 vehicle which is driven or attended by any person
19 shall give his name, address and the registration
20 number of the vehicle he was driving and shall upon
21 request and if available exhibit his driver's
22 license to the person struck or the driver or
23 occupant of or person attending any vehicle
24 collided with and shall render to any person
25 injured in such accident reasonable assistance,

1 including the carrying or making arrangement of the
2 carrying of such person to a physician, surgeon, or
3 hospital for medical or surgical treatment if it is
4 apparent that such treatment is necessary or if
5 such carrying is requested by the injured person.

6 I will then instruct that violation of
7 any of these provisions of statutes is negligence
8 as a matter of law. And then I will also instruct
9 that that is evidence of reckless, willful and
10 wanton behavior, that that is for the jury to
11 determine.

12 And just backtracking a little bit.
13 Within the negligence instruction on duty, I will
14 likewise instruct these same statutes of common
15 law, as well as statute, and instruct that
16 violation of any of those statutes would be
17 considered negligence per se.

18 I will give a general instruction,
19 because there has been a vague reference to it, and
20 just I'm -- more and more, automobile accidents
21 that I have are getting more and more questions
22 about insurance so this eclipse that all together.
23 I will instruct the jury that in reaching their
24 verdict, they cannot consider whether any party was
25 or was not covered by insurance. The law does not

1 allow the parties to present any evidence about
2 insurance, the lack of insurance, or the amount of
3 insurance.

4 More importantly, they are instructed
5 that insurance or lack of insurance has no bearing
6 on whether any party was negligent or on the amount
7 of damages, if any, that the plaintiff has
8 suffered, and that it should not be discussed in
9 any manner whatsoever in their deliberative
10 process.

11 I will then give them a general
12 instruction regarding being fair and impartial, and
13 then I will instruct on the form of the verdict,
14 which will be a comparative negligence verdict
15 form. And I will print that so you all can read
16 it.

17 I will also instruct them on unanimity,
18 as well as their verdict not being influenced by
19 passion, prejudice, or emotion or any other
20 consideration that is not found in the evidence.

21 Are there any exceptions to the charges
22 proposed? From the plaintiff?

23 MR. BOLES: Not to what you said, Your
24 Honor, no exception, but maybe this is the point to
25 clarify what opposing counsel and I have been

1 talking about --

2 THE COURT: I need to deal with this.

3 MR. BOLES: -- verdict form.

4 THE COURT: I need to deal with this.

5 I'm going to -- I'm very regimented. I take things

6 -- and I do it that way, it's purely selfish, so I

7 won't forget. So I need to do one thing at a time.

8 MR. BOLES: No exception as to what you
9 just said.

10 THE COURT: Any exceptions to the
11 charges proposed, Mr. Coulter?

12 MR. COULTER: Not an exception, Judge.
13 I just didn't want to either read or hear the clear
14 and convincing charge.

15 THE COURT: I think it's standard.
16 Everything I charge is straight from supreme court
17 precedent. And it simply says, clear and
18 convincing is a legal term meaning more than just a
19 preponderance of the evidence.

20 Clear and convincing proof leaves no
21 substantial doubt in your mind. It is proof that
22 establishes in your mind not only that the
23 proposition at issue is probable, but that it is
24 highly probable.

25 MR. COULTER: No exception.

1 THE COURT: Now what was the other
2 issue?

3 MR. BOLES: It was a verdict form.

4 THE COURT: No. You said there was
5 another -- I'm going to let you all review the
6 verdict form.

7 MR. BOLES: As regards to jury charges,
8 nothing else.

9 THE COURT: Are there any other issues
10 that the Court needs to address before we move on
11 to closing arguments and instruction?

12 MR. BOLES: I think there is because it
13 kind of affects how we maybe structure our closing
14 arguments, which is what we started talking about
15 yesterday with the collateral source rule.

16 THE COURT: I don't know that it's
17 collateral source. I need you to be -- I need you
18 to be really direct about what you feel the issue
19 is so I can address it if need be. Because you all
20 might agree and it may be a nonissue.

21 MR. BOLES: We do agree on what we
22 would like the outcome to be --

23 THE COURT: Okay. Tell me.

24 MR. BOLES: -- which is this: We would
25 like -- we would like the jury to have three

1 damages lines, three awards, one being actual or
2 compensatory, one being property, and one being
3 punitive. And here's why.

4 THE COURT: Actual damages are not
5 property damages. Property damages is when your
6 car is damaged and you're being compensated for the
7 fair market value of your vehicle. You're talking
8 about gap in his loan and consequential personal
9 property damages. Those are not property damages.

10 A gap loan is an actual damage. It is
11 a damage that makes me whole. Because I had a
12 loan, my car was damaged, it's been paid for, but
13 I'm still left with the residual of this loan.

14 So you really don't have to make
15 reference to the car except to say my car was
16 damaged and I still was left with the loan. That's
17 actual damages, that's not property damage, and
18 he's not entitled to a setoff from that.

19 A setoff is when the property is
20 damaged, I get a certain amount for my property
21 damage, but then I get an additional amount for the
22 fact that my car was damaged. This is not your car
23 being damaged.

24 This is, I'm personally damaged because
25 I've got indebtedness. I've got a promissory note

1 to a loan, that I have a gap for now because my car
2 was damaged. That's an actual damage. That's
3 compensatory. That's I need to be made whole.
4 That's not a property damage on the vehicle. It's
5 not a collateral source. They're not entitled to a
6 setoff on his gap loan.

7 MR. BOLES: That's right. I'm not -- I
8 don't mean to tell you I'm presenting it like that.
9 What I want the jury to be able to do is award the
10 full \$16,000 --

11 THE COURT: On the gap loan?

12 MR. BOLES: On the motorcycle itself.

13 THE COURT: Why would you do that?
14 That's mixing apples and oranges. He has a gap
15 loan.

16 MR. BOLES: No. There's no gap loan.

17 THE COURT: I thought you said he still
18 owed money on the motorcycle.

19 MR. BOLES: Yeah. I'm using different
20 terminology --

21 THE COURT: That's a loan. He would
22 owe that whether the motorcycle was damaged or not.
23 When he bought that motorcycle, a day later they
24 sold his loan to somebody else.

25 MR. BOLES: That's right.

1 THE COURT: So even if it was a lemon,
2 it's not relevant.

3 MR. BOLES: Right. But --

4 THE COURT: Let's just say it blew up
5 and he could never drive it. He still owed the
6 loan.

7 MR. BOLES: This has to do with how --
8 and if there is an award of punitive damages and it
9 has to be related to the underlying actual damages,
10 right? It has to be --

11 THE COURT: Punitive damages is to
12 punish and deter. Punitive damages are based on
13 him violating a safety statute or ordinance. It
14 said not only that he was careless, but that he was
15 aware he was being careless. It almost raises to
16 the level of criminality --

17 MR. BOLES: That's right.

18 THE COURT: -- when I do something with
19 an intent that I know I'm wrong. It's not only
20 that I was careless and I didn't do what a person
21 similarly situated would do, but I was aware I was
22 being careless. That is only -- the only way that
23 is contingent is if they award actual damages.

24 The amount doesn't -- the amount has to
25 be related from a ratio standpoint, but it does not

1 have to be the same.

2 I don't know if I'm articulating as I'd
3 like to.

4 MR. BOLES: Well, if I can argue that
5 his property damage, 16,000, plus medical bills are
6 his total damages --

7 THE COURT: But those aren't his total
8 damages because he's already been compensated for
9 it.

10 MR. BOLES: But the collateral source
11 rule says that the defense can't benefit from
12 already being paid by an unrelated source. They
13 cannot have his damages reduced at trial just
14 because he benefitted from being paid.

15 THE COURT: I don't know that it's
16 benefitting. You only get to argue what you
17 actually have losses for.

18 MR. BOLES: Right.

19 THE COURT: And what you're trying to
20 do is get him the difference between the loan he
21 owes -- which I think you can argue. I think you
22 can say he had a loan on this motorcycle and it was
23 totally damaged, and I'm entitled to recover for
24 the amount that is outstanding on that loan.

25 The only problem you have is you never

1 had anybody testify or bring the promissory note
2 and show what he still owes on that loan, which I
3 think it's compensable. It's an actual damage.
4 It's what he would need to be made whole. And it
5 happens all the time. That's why people buy gap
6 insurance. They don't want to be left --

7 MR. BOLES: So if he had gap insurance,
8 we still would be able to argue to the jury that
9 the loss -- the harm caused by the defendant is in
10 the amount of the value of the motorcycle --

11 THE COURT: I don't know. I have never
12 had anybody argue that when they've already been
13 compensated.

14 MR. BOLES: It's squarely within the
15 collateral source rule.

16 THE COURT: I have to read it again.

17 MR. BOLES: What would happen otherwise
18 is the defense would end up saying, well, his
19 damages are only \$5,000 and \$900. Okay. And
20 that's not correct. The damages are the full value
21 of the motorcycle, and at the end they get credit
22 for any amounts they can show that were paid to the
23 plaintiff.

24 THE COURT: That's a matter of law for
25 the Court. Not a jury.

1 MR. BOLES: The jury does not get to
2 hear any of that stuff. That's for the Court to do
3 post judgment.

4 THE COURT: But you haven't presented
5 any evidence regarding the fair market value of the
6 vehicle, have you?

7 MR. BOLES: He testified in the
8 deposition and Mrs. McHugh testified about, you
9 know, the full value of the motorcycle. And then
10 looking at the request to charge, Section 13-20,
11 compensation received by an injured party from a
12 source wholly independent of the wrong-doer, so
13 John Doe, did not pay this money.

14 Progressive paid this money.
15 Progressive Insurance who is the big name in the
16 room that we're not allowed to talk about --

17 THE COURT: That's a fiction because
18 they stand in the shoes of him if he were insured.
19 So if he -- let's just say as far as the law is
20 concerned, it's not her insurance company. She is
21 suing her insurance company, but that's not what
22 the law says.

23 The law says you pay UIM coverage just
24 in case this happens, and they become a fictional
25 defendant who stands on their own.

1 And as far as her insurance company is
2 concerned, they don't represent her. They
3 represent their own interests, and their posture is
4 we have paid -- we stand in the shoes of John Doe
5 and we have paid the property damage.

6 It's no different than if you had a
7 separate insurance company, say GEICO, that had
8 paid the property damage, you would not be able to
9 argue that.

10 MR. BOLES: So, in this case,
11 Progressive unilaterally decides they're going to
12 pay --

13 THE COURT: They didn't unilaterally --

14 MR. BOLES: -- then that take it or
15 leave it and, therefore, our damages can't be.

16 THE COURT: No. You're entitled to get
17 the gap in the insurance -- I mean, the gap in his
18 loan. I think he's entitled to be made whole. If
19 he still had a loan payment, he's entitled to be
20 compensated for that. That's what makes him whole.

21 I think it's misleading to a jury to
22 say something other than that, because, really,
23 what you want is the gap between what he still owes
24 -- I assume it's still outstanding, isn't it? Did
25 he have gap insurance?

1 MR. BOLES: No. He testified he paid
2 the gap. He paid it.

3 THE COURT: So he paid off the
4 difference. I think he's entitled to be
5 compensated for that. If somebody hits me today --
6 and we all know how loans work; it's the same as
7 your house.

8 If you go mortgage a house -- if you
9 buy a house today, within 24 hours your loan is
10 sold to somebody else. So even if your house burns
11 to the ground, falls to the ground, and you don't
12 have the appropriate coverage, you will still owe
13 your mortgage payment. It's not contingent on the
14 collateral.

15 So if you went out here today to this
16 corner and somebody totalled your car and you owe a
17 loan to someone and your property damage is paid,
18 you don't get to recover for what has already been
19 paid. You're entitled to what would make you
20 whole. What you're trying to recover is the gap;
21 in other words, what he owed on his loan.

22 MR. BOLES: Well, what I would say to
23 the jury in that case, my car is worth --
24 literally, my car is worth 1,500. And let's say I
25 owe --

1 THE COURT: It's irrelevant --

2 MR. BOLES: -- \$2,000 --

3 THE COURT: It's irrelevant what your
4 car is worth. The point is, I have a promissory
5 note and I owe somebody some money, and I'm out of
6 pocket now because I don't have my car and I still
7 have to pay them.

8 MR. BOLES: And I get the value of my
9 car.

10 THE COURT: No. You get the value of
11 what you owe the company on the promissory note is
12 what you owe because that's what makes you whole.

13 MR. BOLES: Respectfully, our position
14 is that we should be able to argue for the full
15 amount and then the defense gets -- defendant gets
16 credit at the end for what they have paid.

17 THE COURT: I just never had anybody
18 attempt to argue it that way. Generally, lawyers
19 accept that once property damages have been paid,
20 it's a moot issue. It's been paid.

21 MR. BOLES: I don't think it's fair to
22 give John Doe help just because our insurance
23 company has paid. What I would like to argue to
24 the jury is the full \$16,000 because that's what --
25 I don't even how to reduce it to a particular

1 motion.

2 My motion is that I want that included
3 in the ability to argue for damages and that we
4 have, as -- I agree with Mr. Coulter if we do that,
5 put a line on the --

6 THE COURT: I think as lawyers we tend
7 to make things unduly complicated --

8 MR. BOLES: Yeah.

9 THE COURT: -- and then you-all expect
10 the Court to fix it, and I'm not going to. I'm not
11 going to insert myself into that. So if you make
12 it unduly complicated, it's going to be left for
13 you to deal with it and with an appellate court to
14 deal with. I'm not sending any more notes back.
15 I'm not going to try to fix it.

16 And we tend to -- as lawyers, we think
17 a certain way and we think people think that way,
18 and they don't. We make things unduly complicated
19 when they don't have to be.

20 Mr. Coulter, what is your position
21 regarding what Mr. Boles wants to do? I don't have
22 a dog in the fight. I just have never had it
23 argued that way.

24 MR. COULTER: I'm absolutely fine with
25 your ruling. I'm a little -- guess I have to

1 listen to the closing and figure out what he's
2 actually asking for --

3 THE COURT: I think I need clarity as
4 well. What exactly is it that you're trying to --
5 I need more clarity, Mr. Boles, on what it is that
6 you're saying you're attempting to do.

7 MR. BOLES: I want to ask for the
8 \$16,000 property damage, plus medical bills that
9 were testified to, plus pain and suffering, loss of
10 enjoyment, disfigurement -- all of the things that
11 you listed in the jury instructions.

12 THE COURT: Pardon me, say it one more
13 time.

14 MR. BOLES: All of the things that Your
15 Honor listed in the jury instructions as far as
16 mental anguish, disfigurement, loss of enjoyment,
17 and any other losses that the jury feels are
18 applicable based on the evidence. I want to say to
19 them, add all of those things up and then multiply
20 them to come up with your punitive award.

21 If they agree with me and if they give
22 a punitive award, I want it to be -- I want there
23 to be a rational tie to the underlying damages as
24 required by the law.

25 In order to assist them and calculate

1 it, if they agree with me on it -- maybe they don't
2 agree with me on it, but if they do, it will have
3 -- there will be an index related to the underlying
4 award.

5 THE COURT: The thing is, though,
6 collateral source only applies to sources paid
7 unrelated to the wrong-doer. It doesn't apply to
8 sources paid by the wrong-doer. And that's where
9 I'm getting confused.

10 Collateral source applies when you have
11 a damage and somebody totally unrelated to the
12 action pays it. It is not related when somebody
13 related to the action pays it; otherwise, there's a
14 double recovery. And that's why you have me
15 confused.

16 MR. BOLES: We do not want a double
17 recovery. That's why --

18 THE COURT: But I need us to follow
19 precedent. And precedent is that collateral source
20 only applies when the payment is unrelated to the
21 wrong-doer. In other words, some third -- and I
22 hate to use this example. I get hurt. I go to the
23 emergency room as a result of an automobile
24 accident. Blue Cross Blue Shield pays my ER bill.

25 I get to present to a jury that I had

1 that bill because that's the measure of my damages.
2 That's the only way I can show I was compensated.
3 I don't get to present that if the PIP coverage
4 from the wrong-doer pays my insurance bill. That's
5 related to the wrong-doer.

6 Blue Cross Blue Shield is totally
7 wholly unrelated, and under legal theory can sue me
8 to get their money back. That's why I'm entitled
9 to present it to a jury and be compensated, because
10 the law says I cannot be left at a deficit because
11 of someone else's wrong doing.

12 You don't get to argue collateral
13 source when the actual wrong-doer has compensated
14 you.

15 MR. BOLES: But you also should not be
16 penalized in the --

17 THE COURT: I don't think he's being
18 penalized, because what you're trying to recover is
19 the gap in his loan. I think he's entitled to
20 recover actual damages. That's not a property
21 damage. That's a separate contract he had with
22 someone else.

23 That's almost considered in line with
24 personalty, like when you have rims on your car
25 that you pay for that are after market, or where

1 you have a stereo system that's after market. That
2 is not considered property damage. That is
3 considered personalty for which you can recover and
4 be made whole.

5 So if you want to argue that -- I
6 guess, I need you to clarify for me for collateral
7 source how is this compensation that he received
8 for his personal -- for his property damage totally
9 unrelated to the tortfeasor? Because the
10 tortfeasor in this case paid it.

11 Do you understand the theory -- I mean,
12 collateral source basically says, I cannot be left
13 at a deficit because my insurance company paid
14 this. Blue Cross Blue Shield may have paid it, but
15 they're going to sue me to get it back. They're
16 going to sue somebody to get it back or they're
17 going to deny it.

18 And the law says I should not be left
19 in a deficit because somebody else injured me, and
20 I have a third party that's paid for these things
21 that's entitled to be compensated because it wasn't
22 their fault.

23 I'm not aware of any case that says
24 collateral source is applicable to the tortfeasor
25 who damaged me.

1 MR. BOLES: Okay. GEICO v Cool is a
2 case that talks about putting together property
3 damage and bodily injury coverage. Property damage
4 coverage and bodily injury coverage satisfy
5 punitive award. And that case --

6 THE COURT: I don't know that that's
7 applicable, but under those circumstances if a
8 third party paid for their property damage, that --
9 that might be applicable, but that's not our
10 factual circumstance here.

11 The wrong-doer in this case paid the
12 property damage. What you're trying to recover is
13 -- and he's -- he shouldn't have to pay off his
14 loan. He's entitled to be compensated for that.
15 He's entitled to be made whole for that.

16 If he paid \$11,000 on a loan for a
17 motorcycle that he didn't have, he's entitled to
18 get that money back as an element of his damages,
19 but that's not property damage.

20 Property damage is a physical damage to
21 the instrumentality, that being a motorcycle or a
22 car or a moped. I don't know if mopeds are covered
23 by insurance. Are they? I don't know. They have
24 different levels of mopeds now.

25 MR. BOLES: The contracts are catching

1 up to that.

2 THE COURT: Pardon me?

3 MR. BOLES: The company contracts are
4 catching up to that.

5 THE COURT: Isn't there a bill pending
6 about that? I think there's a bill pending about
7 mopeds having to be covered by insurance.

8 MR. BOLES: Golf carts and things like
9 that, too.

10 What will happen, Your Honor, is we
11 will reduce the amount of actual damages such that
12 if the jury does agree it's a punitive award, my
13 client will be penalized if that award is greater
14 than some related index. Because if we say I want
15 you to take \$17,000 and multiple it by five, that's
16 more than if I say, I want you to take \$6,000 and
17 multiply by five.

18 I'm not saying that's what I'm going to
19 say, but there are --

20 THE COURT: My punitive damage analysis
21 -- well, you presume they're going to give you
22 punitive damages.

23 MR. BOLES: That's totally a
24 presumption --

25 THE COURT: And you presume it's going

1 to be a large amount of money that will exceed the
2 single digit multiplier.

3 MR. BOLES: They may not.

4 THE COURT: And I don't know until I do
5 a punitive damage analysis. And I don't have a
6 crystal ball, but I can't allow your strategy to
7 dictate what the law says, and it's not a
8 collateral source.

9 The tortfeasor paid it. It's
10 misleading to a jury to say that he's entitled to
11 be compensated for the fair market value of the
12 vehicle when he's already been compensated for the
13 value of the vehicle.

14 I do not, however, think it's improper
15 for you to say he had a loan on this vehicle. He
16 had a promissory note. He was left in the hole and
17 had to pay off this loan of \$11,000, and he's
18 entitled to be compensated for it.

19 And I don't see how that prejudices
20 your analysis because that then is the total amount
21 of damages that you still can argue, that I think
22 you should multiply this by whatever amount and I
23 should be compensated for that.

24 Mr. Coulter, what is your position
25 regarding what Mr. Boles is requesting? And what

1 is your position regarding the applicability of the
2 collateral source rule?

3 MR. COULTER: We had -- not to the
4 extent you've done now, but we had the same
5 discussion this morning, and I said the same thing.
6 Progressive has already paid this. Collateral
7 source does not apply in this situation.

8 It would have been completely different
9 if it was a different carrier. That's not what
10 that is here. We had that discussion this morning.
11 So that's what I would say about that.

12 I'm still a little confused as to what
13 the damages are that he's going to argue. He just
14 stood up and said \$16,000 again, and I understand
15 that that's not what's going to be --

16 THE COURT: Well, I would assume -- and
17 I have to plead ignorance on the exact amount of
18 the medical bills. He's entitled to argue that.
19 There's been no testimony about lost wages.

20 There has clearly been testimony about
21 pain and suffering. There's clearly been testimony
22 about mental anguish regarding -- and there's been
23 testimony regarding disfigurement because he was
24 concerned about -- and reasonably so, about this
25 disfigurement, scar, to his face that he wanted to

1 have revised, which I think certainly he would have
2 been entitled to recover for.

3 Conceivably, there's testimony about
4 loss of enjoyment of life, him being able to
5 participate in what he would normally have done in
6 terms of -- in conjunction with pain and suffering.

7 Of course, there can be no future
8 damages; unfortunately, he's deceased. He's
9 entitled to anything else that would make him
10 whole. That could mean -- he said there was no
11 testimony regarding -- well, there was testimony
12 regarding loss of use, wasn't there.

13 MR. BOLES: Yes. He had to walk, his
14 mom had to drive him to work.

15 THE COURT: And I had that as a
16 question mark on my piece of paper. I'm glad we're
17 discussing this. I think he's entitled to talk
18 about loss of use.

19 MR. COULTER: Fine.

20 THE COURT: And there's no quantifiable
21 figure on loss of use. You're entitled to
22 something comparable to what you would normally
23 have been driving. So certainly he's entitled to
24 loss of use comparable to the motorcycle he would
25 have been riding.

1 He doesn't actually have to rent
2 something or have been shown to have rented
3 something to be entitled to loss of use. He's
4 entitled to any diminution in value which is
5 depreciation, but he did not keep the vehicle, so
6 that would not be applicable. Give me one second.

7 MR. BOLES: Well, it was totalled.

8 THE COURT: It's totalled. You don't
9 get -- you can't depreciate something that's
10 totaled. You only get depreciation if my car is
11 fixed and I go to trade it in and the dealer is
12 going to deduct it because they've looked in CarFax
13 and my car has been wrecked. We all know they're
14 going to depreciate your vehicle when they see it's
15 been wrecked.

16 It doesn't matter the extent of the
17 damage, they're going to depreciate it. Especially
18 if there are after market parts on it. So you
19 don't get depreciation where a car has been
20 totaled.

21 Let's see here. The depreciation is
22 the value of it before it was struck contrasted
23 with the value of it after it was struck. It was
24 totaled, so that's not applicable. There was no
25 repair, so that would not be applicable.

1 And I assume he was compensated the
2 fair market value of the vehicle, which is the
3 \$11,000 -- how much was it?

4 MR. BOLES: 11,445.

5 THE COURT: Say that one more time.

6 MR. BOLES: I believe it was \$11,445.

7 THE COURT: That was the fair market
8 value? What year was the vehicle?

9 MR. BOLES: Brand new, 2017.

10 THE COURT: Yeah. But you know, as
11 soon as you drive off the lot the car depreciates
12 by about 30 percent.

13 MR. BOLES: That motorcycle did not.
14 There was a discussion in the --

15 THE COURT: And motorcycles depreciate
16 like boats and mobile homes.

17 MR. BOLES: This one was rare, hard to
18 find, and it was actually resold for more later.

19 THE COURT: Let me give you an example.
20 If you go to BMW right now --

21 MR. BOLES: I know.

22 THE COURT: -- and buy a \$140,000 car,
23 they won't give you 100,000 for it 24 hours later.
24 It depreciates just that much.

25 MR. BOLES: I understand that. This is

1 just a different setting, but I'm not planning --

2 THE COURT: You didn't bring any
3 evidence --

4 MR. BOLES: I'm not bringing that up.

5 THE COURT: The fair market value, I
6 assume, according to industry standard was \$11,445.

7 MR. BOLES: Yeah.

8 THE COURT: How much was his loan on
9 the vehicle?

10 MR. BOLES: \$16,000.

11 THE COURT: And how much was he left
12 paying on that loan?

13 MR. BOLES: To the best of my memory,
14 it was \$16,000.

15 MR. COULTER: I'm going to get to where
16 the testimony was. If you can show me 16, I'll be
17 more than happy to concede that.

18 MR. BOLES: It was in the deposition
19 transcript.

20 THE COURT: Say that one more time.

21 MR. BOLES: It's in the -- it's in the
22 packet.

23 You know, Daniel testified that he paid
24 \$5,000.

25 THE COURT: Wait. You're getting

1 ahead. I need you to answer my question. So the
2 fair market value on the totaled vehicle was
3 \$11,445, correct?

4 MR. BOLES: Exactly. I'm looking right
5 here. It's actually \$10,370.

6 THE COURT: \$10,370. And that's what
7 they paid in 2017, correct?

8 MR. BOLES: I mean, none of this is in
9 evidence in the --

10 THE COURT: I just need you to answer.
11 There's a method to everything I do. These are not
12 random questions.

13 MR. BOLES: Can I hand you -- I have
14 this thing from Progressive. I'm not sure how to
15 interpret which number --

16 THE COURT: You don't know how much
17 they paid?

18 MR. BOLES: It says, actual cash value
19 is \$11,455.18.

20 THE COURT: Okay.

21 MR. BOLES: But then it says, total
22 settlement, 10,000.

23 THE COURT: Which means that implicates
24 they had a conversation with him and he said what
25 he was willing to take, right?

1 MS. MCHUGH: They had no communication
2 with him. They did not communicate --

3 THE COURT: I don't know that --

4 MR. BOLES: They sent it directly to
5 his loan.

6 THE COURT: They sent it to the
7 lienholder.

8 MR. BOLES: Yeah. They didn't give
9 anything to Daniel.

10 THE COURT: Well, that's because he
11 didn't really own it. The bank owned it all.
12 Technically, they didn't have to negotiate with
13 him. They had to negotiate with the lienholder.

14 You think -- it's just like your house.
15 You think you own it. You really don't. Not
16 unless it's paid off.

17 MR. BOLES: So I just -- the number at
18 the bottom is 10,755.

19 THE COURT: So that's what they paid to
20 the loan.

21 MR. BOLES: I'm reading off the paper.

22 THE COURT: Well, that would have to be
23 what was paid.

24 MR. BOLES: I don't want to sound like
25 I'm -- I think that's what was paid.

1 THE COURT: What year did he buy the
2 motorcycle?

3 MR. BOLES: 2017.

4 THE COURT: Within how many months of
5 him owning it was it wrecked?

6 MR. BOLES: April, May -- yeah, month
7 and a half.

8 THE COURT: What year was the
9 motorcycle?

10 MS. MCHUGH: 2017.

11 THE COURT: Okay. So then how much was
12 -- how much did he owe on his loan?

13 MR. COULTER: I'm looking at --

14 MR. BOLES: He testified that it was
15 16,000.

16 MR. COULTER: I'm looking at the
17 deposition, Judge. It says on page 74, you said
18 the bike was actually 11,995?

19 Yes, sir.

20 So your finance charges and everything
21 made it increase to \$15,000?

22 MR. BOLES: I don't think any of that
23 was what we read into the record. I mean, if we
24 want to start reading outside of the record --

25 THE COURT: I just asked a simple

1 question and you said he testified to it.

2 MR. BOLES: He testified that he paid
3 \$5,000.

4 THE COURT: To his loan, to pay it off?

5 MR. BOLES: Yes, ma'am.

6 THE COURT: So that would be the gap
7 between what he owed and what was compensated for
8 the motorcycle.

9 MR. BOLES: Yes, ma'am. Then he
10 testified that he paid another \$11,000 --

11 THE COURT: For?

12 MR. BOLES: -- to replace it.

13 THE COURT: Okay. So he's entitled to
14 that. So we are \$6100?

15 MR. BOLES: Yes, ma'am.

16 THE COURT: And then he's entitled to
17 loss of use, and that is quantified as the
18 plaintiff may also be entitled to recover for the
19 loss of use of a vehicle during the time that the
20 plaintiff was unable to use it.

21 Actual damages for this purpose may be
22 measured by determining what it would have cost the
23 plaintiff to rent a similar vehicle while the
24 plaintiff's own vehicle was being repaired. Which
25 I don't know particularly what go under these

1 circumstances because you're -- you're still
2 entitled to loss of use, theoretically, and an
3 insurance company allows you a certain amount of
4 time to go get another vehicle. They are not going
5 to pay for loss of use indefinitely because you
6 have a duty to mitigate.

7 Damages for loss of use of a vehicle
8 may be awarded even if the plaintiff did not rent a
9 car and even if the plaintiff borrowed a car;
10 however, the plaintiff is required to make all
11 reasonable efforts to minimize the damages.

12 Now, based on his deposition, how long
13 did he walk and did not have the use of this
14 vehicle? Because I think he's entitled to loss of
15 use in between when his vehicle was wrecked and
16 when they decided to total it. In other words,
17 because it was going to cost more to repair than to
18 replace it.

19 (Off-the-record conference.)

20 THE COURT: Okay. What are we looking
21 for?

22 MR. BOLES: How long he was between --

23 THE COURT: I think that's something
24 that you would -- you don't have any real argument
25 about, right?

1 MR. COULTER: I think it's
2 three-and-a-half weeks. I'm trying to find --

3 THE COURT: Okay. I remember him
4 testifying about it. I just didn't remember the
5 amount of time we were talking about.

6 You-all should be able to agree to a
7 time frame of loss of use, correct?

8 MR. COULTER: Yes, ma'am.

9 THE COURT: Okay. And you would agree
10 he's entitled to loss of use for the vehicle?

11 MR. COULTER: Yes, ma'am.

12 THE COURT: If you could approach for
13 me please and look at the verdict form, that would
14 be helpful.

15 Mr. Boles, I marked your request for
16 instructions as a Court's Exhibit.

17 MR. BOLES: I will just take three
18 weeks if that's all right with you, Mike.

19 MR. COULTER: Yes.

20 THE COURT: As long as you can -- I
21 will mark the record as that being stipulated. And
22 that arrow just means I'm putting more space
23 between the lines. I think it's way too close
24 together.

25 Any exceptions to the verdict form as

1 posed? From the plaintiff?

2 MR. BOLES: No, Your Honor.

3 THE COURT: From the defense?

4 MR. COULTER: No, ma'am.

5 THE COURT: And, Mr. Coulter, you did
6 not complete your argument regarding -- we got
7 sidetracked -- whether you believe collateral
8 source applies or any argument on collateral source
9 and any argument -- I assume you agreed with the
10 Court's analysis that he is entitled to argue the
11 \$5,000 that he had to pay off his loan and the
12 \$1100 he had to pay to get into new transportation
13 as a consequential loss of this accident.

14 MR. COULTER: That's fine, Judge.

15 THE COURT: And what is your posture
16 regarding the applicability of the collateral
17 source rule regarding him being able to argue that
18 he's entitled to the full measure of damages on the
19 loss of the property damage?

20 MR. COULTER: Yeah, Judge. As I said,
21 we had this discussion this morning, Dan and I did.
22 Progressive has paid this. Progressive is not a
23 collateral source under this particular factual
24 scenario. It's coming from the same entity and,
25 therefore, it's not a collateral source.

1 THE COURT: I'm inclined to, in terms
2 of analyzing collateral source -- and the most
3 recent case regarding collateral source is
4 Bardsdale v. Government Employees Insurance
5 Company, which is 405 S.C. 68 at 79, 747 S.E.2d.
6 436 at 442, which is a 2013 case.

7 And the Court articulated that the
8 collateral source rule provides that compensation
9 received by an injured person from a source wholly
10 independent of the wrong-doer will not reduce the
11 amount of damages owed by the wrong-doer.

12 Just looking at a simple analysis of
13 the collateral source rule, the pertinent language
14 is wholly independent of the wrong-doer. Clearly,
15 Progressive would not be a collateral source under
16 this rule as it is the culpable party, and it
17 compensated the plaintiff for the full measure of
18 his property damage, that being the fair market
19 value of the vehicle.

20 Now, who they paid it to -- of course,
21 I think we all know when there's a lienholder on
22 any property that we have, we don't own it. We own
23 it, basically, as a joint tenant, so to speak, with
24 the person who holds the lien on the collateral.

25 So they cannot be faulted for dealing

1 with his insurance company as they had a direct
2 duty to pay off his loan regarding them having --
3 really holding the title to this collateral. But,
4 clearly, under the plain interpretation of the
5 collateral source, Progressive would not and John
6 Doe would not be a collateral source under that
7 precedent.

8 The collateral source rule provides
9 that a tortfeasor has no right to any mitigation of
10 damages because of payment of compensation received
11 by the injured person from a source wholly
12 independent of the wrong-doer. And, clearly,
13 again, the germane language being wholly
14 independent of the wrong-doer.

15 The wrong-doer in this case as
16 contended by the plaintiff is John Doe. And,
17 clearly, John Doe made payment for the property
18 damage, but, however, I do as -- I do interpret the
19 law to mean that when we look at actual damages,
20 that is to put that injured party as near as
21 possible in the position they were in before the
22 incident occurred.

23 He does not have to suffer any
24 consequence of loss, that being any money owed on a
25 promissory note or in the indebtedness he had to

1 incur to receive or get new transportation.

2 So I think clearly the plaintiff can
3 argue the loss of use, which you all agreed is
4 three weeks, correct?

5 MR. BOLES: Yes, ma'am.

6 THE COURT: And he's entitled to argue
7 any gap he had in his loan, which would have been
8 owed to a third party unrelated to the
9 collateral -- well, not unrelated because they held
10 the title.

11 But it's certainly a wholly separate
12 measure of damages, and so the testimony in the
13 record is that he paid \$5,000 for that. And he
14 certainly also is entitled to be made whole for any
15 money he had to spend to get new transportation,
16 which as I understand, you all told me was \$1,100.

17 So I think, certainly, in terms of
18 arguing actual damages Mr. Boles is entitled to
19 argue that \$6,100 as an element of being made
20 whole.

21 And I will instruct exactly what I read
22 to you on loss of use, which is -- I think I read
23 it to you and that comes from Adams v -- or Scott
24 v. Southern Railroad Company and Coleman v.
25 Levkoff.

1 THE COURT REPORTER: The last part,
2 Judge? Coleman versus?

3 THE COURT: L-E-V-K-O-F-F. Although it
4 is a 1924-case, it's still good precedent.

5 And I just fixed -- if you all want to
6 look at it again, I fixed the margins and the lines
7 on here so that they weren't on top of each other.
8 If you want to look at it again, you are welcome
9 to.

10 I'm thinking we can start argument, and
11 then when lunch gets here, Grainger will let me
12 know and we can stop and let the jury eat. You-all
13 don't want them eating cold food even though there
14 is a microwaved in there --

15 MR. BOLES: It's not the same.

16 THE COURT: No. Especially when you're
17 dealing with something fried.

18 Is there any exception to the verdict
19 form?

20 MR. BOLES: No, ma'am.

21 THE COURT: From the defense?

22 MR. COULTER: No, ma'am.

23 THE COURT: Let's take a quick break.

24 (A recess transpired.)

25 THE COURT: Plaintiff ready to proceed?

1 MR. BOLES: Yes, ma'am.

2 THE COURT: Defense ready to proceed.

3 MR. COULTER: Yes.

4 THE COURT: Mr. Coulter, I will let you
5 rest in the presence of the jury and then we'll go
6 straight into closing argument.

7 MR. COULTER: Thank you.

8 THE COURT: You're welcome.

9 (COURT EXH. 4, Transcript excerpts, was
10 marked for identification.)

11 THE COURT: You may be seated. Ladies
12 and gentlemen, we appreciate your patience. We
13 will now resume the proceedings.

14 Mr. Coulter, you may proceed.

15 MR. COULTER: Your Honor, the defense
16 would rest.

17 THE COURT: The defense has rested.

18 Ladies and gentlemen, both the
19 plaintiff and the defense have rested. We have now
20 reached the stage of the trial where we will have
21 closing argument and instruction.

22 You will hear from the plaintiff,
23 followed by the defense, and then again from the
24 plaintiff. Under our rules, the party with the
25 burden of proof gets the last say, so to speak. I

1 would ask that you give counsel your undivided
2 attention.

3 When your lunch arrives, we'll break
4 and take time for you to eat and get a little bit
5 of air, and then we'll resume the process. I will
6 play it by ear based on when the bailiff gets back
7 with the lunch and keep you posted.

8 Mr. Boles, you may proceed.

9 MR. BOLES: Thank you, Your Honor. May
10 it please the Court.

11 THE COURT: Yes, sir.

12 MR. BOLES: Good afternoon. Now it's
13 afternoon.

14 Okay. This is the part where I get to
15 tell you what I think all the evidence means, what
16 the conclusions are that I draw from this case.

17 I've got some notes I'm going to work
18 through. They're a little bit scattered because
19 they kind of relate to the evidence as it came out
20 through trial. Just hang in there with me. I'm
21 going to work through my notes and then I will have
22 a couple of better organized closing remarks and
23 then that would be it.

24 I want to thank you at the outset for
25 your attention and thank you for hanging in there

1 with us. I know yesterday was dark and it was
2 tough to be in here. Right now, it's nice and like
3 a refrigerator and it's bright. So we're all alert
4 and ready to wrap up this trial.

5 Let's go back to the opening statements
6 that you heard from me and opposing counsel. You
7 know, I tried to explain to you why Daniel is not
8 here by simply letting you know that he had passed
9 in an unrelated matter.

10 The defense thought it appropriate to
11 tell you that Daniel actually died in another
12 motorcycle accident insinuating somehow that other
13 accident is related to this one, to his ability as
14 an operator in the other accident related to this
15 one.

16 What he didn't bother telling you is
17 that Daniel was killed by a drunk driver. Okay.

18 MR. COULTER: Judge, can we approach?

19 THE COURT: Approach.

20 (Bench conference)

21 THE COURT: The objection is sustained.
22 Counsel's last argument is withdrawn.

23 Ladies and gentlemen, please disabuse
24 from your minds Counsel's last comment and give it
25 no consideration in your deliberations.

1 You may proceed.

2 MR. BOLES: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MR. BOLES: Disregarding what I said,
5 opposing counsel's remarks I think are out of line.
6 I think that what he told you is misleading. And I
7 hope that you guys share my opinion on this.

8 There was something else that was
9 brought up in opposing counsel's argument, that
10 this is all about money. We are here about money.
11 Well, as he explained to you, also, this is a civil
12 case. Okay.

13 John Doe is not here. We wish he were.
14 I'm sure that Doretta would like nothing more than
15 to confront the witness and look him in the eye,
16 but the plaintiff has been robbed of that
17 opportunity by that same person.

18 So to say this is about money is a
19 joke. This is all about plaintiff's only
20 opportunity at justice, and that's what we are here
21 about. Okay.

22 Because of the constraints of the civil
23 justice system, I can't ask you to order John Doe
24 to be put in jail. If I could, that's the first
25 thing I would come to you with. Okay. All I can

1 do is say, when you take the evidence, the
2 testimony, the evidence in this case, the road
3 signs and the mile markers I was telling you about,
4 when you take those and weigh them, will you give
5 us an appraisal of the harm that was done in this
6 case?

7 That's just the constraints of the
8 civil justice system, unfortunately. So to say
9 it's all about money, that we're greedy and here
10 trying to get money out of you is a farce.

11 In the beginning, I asked you to keep
12 an eye out for road signs, mile markers, and be
13 wary of billboards which are there to distract you.
14 So let's go over what I think the road signs and
15 mile markers were.

16 Our witnesses: You heard from Aimee
17 Goblet. She was our first witness. She was
18 working the night of. She liked motorcycles. She
19 looked up and she heard Mr. Coy approach. She saw
20 the accident. She saw the car come up behind him.

21 For the defense, again, without their
22 own witnesses, without any of their own evidence to
23 come before you and insinuate that Mr. Coy somehow
24 caused himself to fly off of his own motorcycle
25 over the handlebars is absurd. And you are owed

1 more than that in a court of law.

2 Aimee Goblet sat right here and
3 explained her point of view. She told you that she
4 could see all the way across the street. She said
5 she had seen someone robbing the Tractor Trailer
6 Supply, doing something they weren't supposed to do
7 before.

8 To me, it's very clear what she saw.
9 Very clear she was being honest with you. She had
10 no dog in this fight. She had nothing to gain by
11 being here. She told you the truth.

12 Then we heard from her daughter Malaea
13 Ward. She told you largely the same thing. Malaea
14 was outside of the store she said. She looked up
15 and she heard the sound of the exhaust. It may
16 have been the car. It may have been the
17 motorcycle. But she saw it; she explained it all
18 to you.

19 You know, I did my example with my hand
20 and the chair; because the defense wants to ask
21 her, well, you know, you weren't right there
22 measuring the gap between the motorcycle and car so
23 you can't say.

24 Well, when you see a car run up on a
25 motorcycle and you see the motorcycle seize, which

1 is what she described, it's also what Daniel Coy
2 described, when you see the rider fly over the
3 handlebars, when you see the motorcycle fall down
4 and run over the rider, and then when you see that
5 same driver who caused it and saw it unfold out of
6 their own windshield, when you see all of those, I
7 think it's safe for you to say that the car caused
8 the accident.

9 And I think that anyone who stands up
10 here and looks you in the eye and says somehow
11 that's not what happened, I really -- I don't know
12 how to characterize that. That's not being honest.
13 I will tell you that. And lack of honesty is all
14 you've been getting from John Doe since this
15 collision happened.

16 We heard from Mrs. McHugh. She told
17 you about what happened after the wreck. She told
18 you about Daniel's injuries. The effect that it
19 had on his life. The lack of sleep, the pain, the
20 suffering.

21 You know, the pain and suffering is a
22 thing that you see on television. It becomes
23 equated with kind of a joke for the legal
24 profession. If you have ever been hurt before, you
25 know that pain and suffering is a real thing.

1 Loss of enjoyment is real. Okay.
2 Daniel had trouble walking after this. He couldn't
3 sleep. If I miss one night's sleep, I am a
4 horrible person to be around. Okay. If I was
5 months on end of not getting good sleep, it
6 destroys your ability to enjoy your day-to-day
7 activities. Okay. And that's what was happening
8 to Daniel in this case.

9 I know it's not the most exciting thing
10 to hear the deposition read to you, but that was
11 all we had to give to you. I appreciate you
12 sitting through it. But what did Daniel say, you
13 know? And that deposition testimony is all written
14 down. It's highlighted.

15 What did Daniel say? He said he felt
16 the motorcycle jerk under him. Okay. I know the
17 defense is going come up here and they're going to
18 say, he didn't know that he got hit.

19 All right. Well, are we also supposed
20 to have eyes in the back of our head and know if
21 someone runs up behind us at night in their car and
22 runs us over? Is that out fault? Is everyone in
23 America supposed to just watch out for someone that
24 might run up behind them breaking the law and
25 following too closely? Following too closely,

1 that's against the law. Failing to yield, that's
2 against the law. Failing to render aid, that's
3 against the law.

4 Are we supposed to make sure that other
5 people don't do that to us? No. The law is that
6 we don't do that to each other. And the law is if
7 someone does that to you, they are responsible.
8 And you-all are here to enforce that. Okay. Like
9 I said, this is our shot right now.

10 Daniel said he felt the motorcycle
11 jerk. Okay. That's when the car hit him. This
12 toy that I ordered that Doretta told you was pretty
13 much an exact replica of the motorcycle, and I will
14 show the pictures here in a second, but let's look
15 at where the back tire and the license plate is on
16 this. Okay?

17 When the car -- when John Doe came up
18 and hit Daniel, what's the first thing he hit? The
19 license plate holder and tire. Okay. What does
20 that do? Anyone who has driven a car before, it's
21 -- as soon as that car touches the rear tire, it
22 grabs the bike. It seizes the bike, holds it in
23 place. And the rider, the 290-pound young man,
24 going 19 miles an hour keeps going. That's what
25 happened.

1 The fact that anyone is saying anything
2 contrary to that, after two witnesses and evidence
3 of the photographs of the damage to the rear of the
4 motorcycle, the fact that anyone would stand here
5 and try to tell you that's not what happened is
6 amazing.

7 And you shouldn't believe it. You
8 don't have to believe it. You get to decide what
9 evidence has weight, what evidence is credible in
10 this case. Our evidence, our witnesses, our
11 exhibits are the truth. All the noise you're
12 hearing from the other side, that's the billboards
13 I was telling you about. That's the flashy stuff
14 that's intended to scare you or grab your
15 attention, make you think that Mrs. McHugh is being
16 greedy.

17 You know, she's just a representative
18 of the estate. There's nothing to suggest that
19 Mrs. McHugh is going to get anything out of this.
20 Daniel also told you -- you know, so there was a
21 little bit to do that he was a new motorcycle
22 rider. Okay. He'd been driving cars for 20 years;
23 he knew the rules of road.

24 Now, he testified he bought the
25 motorcycle in April and this wreck was in June. He

1 knows the rules of the road. He knows the speed
2 limit and he knows you're supposed to signal for
3 turns. He was obeying the rules of the road, but I
4 don't think he was so green as everyone says.

5 In his testimony I read him talking
6 about that 4,000 RPM. He can only do 19 miles an
7 hour because above that he knows he needs to shift
8 into second gear. That's not somebody who is
9 entirely unfamiliar with the operation of their
10 motorcycle.

11 Let's focus on the motorcycle for a
12 second. If it were up to me, I wouldn't have to
13 talk about any of this stuff with you all, but I
14 know that you're going to hear from the other side
15 that the motorcycle wasn't hit. You're going to
16 have these exhibits back in the jury room with you.
17 Just look at them.

18 The rear of the motorcycle was hit.
19 Okay. The rear of the motorcycle was hit. It was
20 damaged. Okay. If the other side wants to tell
21 you that somehow it wasn't, and that this damage
22 was from something else, like just the motorcycle
23 falling over, there would be damage to the gas
24 tank. There would be damage to the seat. There
25 would be damage to the front. And they haven't

1 shown you none of that.

2 They're just picking on what we've
3 presented. That's not evidence. Okay. That's not
4 carrying the burden of proof that they have to
5 carry if they want to convince you that somehow
6 Daniel Coy is responsible in any way in what
7 happened.

8 Going back to the opening remarks, my
9 notes show, and I think I remember, John Doe's
10 lawyer saying, if anyone should have known they
11 were hit, it would have been Mr. Coy. I find that
12 to be a ridiculous statement.

13 Someone comes up and knocks you from
14 behind, are you responsible for knowing who it was
15 and seeing it? Are you responsible for chasing
16 them down? No.

17 All the testimony was that he landed
18 head first on the road. I'm surprised he
19 remembered anything about what happened. We don't
20 have to rely on what Daniel said. We don't need to
21 worry that he remembered the motorcycle being
22 jerked out from under him.

23 We're aware of that because we have two
24 witnesses who saw the whole thing. We have
25 photographs of the motorcycle showing where the

1 damage was. It's all out there in front of you.
2 To say that somehow Mr. Coy is responsible is just
3 not possible in this case.

4 That's significant because you're going
5 to be asked at the end of this to find that the
6 defendant was negligent. And I want you and the
7 plaintiff is asking you to mark yes. You are going
8 to be asked, do you find that the plaintiff, that's
9 us, we're the plaintiff, was negligent? We want
10 you to mark no. So be clear about that.

11 You know, there was some questioning by
12 John Doe's lawyer about a friendly relationship
13 with the witnesses. I don't know. They strike me
14 as credible people. They were brought here, taken
15 out of their lives to testify for you all. They
16 are not getting paid. They are not sitting here
17 with us at the plaintiff's table.

18 I think they are telling the truth. I
19 found them to be credible. I think you're going to
20 find the same. Whether they knew him or not, I
21 don't think they're here to make something up.

22 All right. So that's what I would call
23 the liability phase of my closing. And that is
24 that I ask -- we ask, the plaintiffs ask that you
25 find the defendant 100 percent negligent, 100

1 percent responsible. I don't think that's a big
2 ask based on the data, the evidence that we
3 presented to you all.

4 Now, let's talk about damages. Okay.
5 There are two kinds of damages that we would like
6 you to award. First one is called compensatory or
7 actual damages. Okay. And in my opening I talked
8 about that. That is an award that will put Daniel
9 Coy where he was before this accident happened.

10 Okay. So where was he? How do we
11 measure where he was before? Well, let's go into
12 that. There0 are some dollars and cents, and there
13 is some intangible parts of that. Okay.

14 In the transcript that was read this
15 morning, Daniel Coy testified he had to pay \$5,000
16 to get the difference between -- or what was owed,
17 I guess, called the gap on the motorcycle. He had
18 to come out of pocket as a result of this collision
19 \$5,000.

20 And he had to come out of pocket as a
21 result of this collision \$1100 to replace the
22 motorcycle. He had about \$900 in medical bills.
23 That's not where it ends. That's certainly where
24 it begins.

25 Okay. This morning in the deposition

1 reading, the glasses that he was wearing that
2 caused the cuts on his face were \$587. Okay.
3 That's the dollars and cents part of this. My
4 math -- and please verify my math. I'm a lawyer,
5 not an accountant. My math is that totals \$7,487.
6 This is out-of-pocket expenses.

7 In addition to that -- I know it's a
8 funny-looking cup, but I don't like making trash
9 every time I need a drink of water.

10 In addition to that amount -- that's
11 the gateway to the damages, because in addition to
12 that we're asking you to come up with an award that
13 compensates Daniel for the experience that he had
14 as a result of this collision. Okay.

15 And I was thinking last night, how do I
16 give an example that may help you calculate what
17 that would be? Here's what I came up with. About
18 three years ago I took my mom on a vacation. It
19 was just the two of us. It was the only time as an
20 adult kind of the two of us spent any extended time
21 together. And I treated her. Okay.

22 We spent about ten days, traveled
23 around, went to museums, we had three meals a day
24 together, we had to share a room, you know, I snore
25 at night and I kept her up, but we had an

1 experience that can never be replaced.

2 And if you were to say to me, come up
3 with a value for that, if I were to just tell you,
4 well, it was airline tickets, hotel rooms, and
5 dinner tabs, that doesn't even begin to measure the
6 value of that experience.

7 Daniel had the opposite of that
8 experience. Okay. And these numbers that I gave
9 you, those are the airline tickets and the dinner
10 tabs. Okay. And his lack of sleep, his inability
11 to walk, his pain and suffering is the opposite of
12 my wonderful experience travelling with my mom. He
13 had the exact opposite experience in his life.

14 Now, just like I can't quantify for you
15 that ten-day trip I took, how do I quantify for you
16 the impact of lack of sleep and inability to walk
17 for months on end? What is that? There is no
18 number, but you have to. Okay.

19 Daniel had scarring on his face. All
20 right. I'm no Brad Pitt, but if I had a scar
21 across the center of my face, it would upset me.
22 For the rest of my life when I looked in the mirror
23 that's what I'd see; a reminder that someone ran
24 over me and drove away.

25 How do we quantify that? I don't know.

1 They don't teach us that in law school. But we
2 have to today. Okay.

3 There was about three weeks where
4 Daniel didn't have any transportation. He had to
5 pay off the old motorcycle. He couldn't afford a
6 new one yet. Three weeks, that's loss of use.

7 The Judge is going to give you
8 instructions at the end. When I get done and
9 opposing counsel gets done, you will hear
10 instructions. Loss of use will be one of them.
11 You know, what's a reasonable amount to compensate
12 someone for the loss of transportation?

13 I also told you in the opening that we
14 are going to ask for a big number, because I think
15 what happened here is serious. I think what
16 happened here needs to be brought to peoples'
17 attention.

18 You live in Berkeley County. And I'll
19 bet -- well, I will say this: None of you said yes
20 when the judge asked if you had heard about this
21 accident before. And now that you have heard about
22 it, does it shock you that people are doing this?

23 Does it bother you that people who
24 drive the same roads that we do when we leave here
25 today, they're out there. And if you want to tell

1 people who act like John Doe that this is
2 unacceptable, then you have to. You have to turn
3 that into a dollar amount. It's a grotesque task,
4 but it's all we've got. Okay.

5 If there is a way that I could get a
6 newspaper in here and you-all could just as a group
7 come up with a statement that said, we, the jury,
8 find John Doe acted illegally and find it
9 despicable, and anyone that is caught doing this we
10 would put them in jail, I would do it now. But I
11 can't force that. But you can shine a light on
12 this, and it starts with the damages.

13 Now, I talked about the questions that
14 you are going to be asked. Was the defendant
15 negligent? Yes.

16 Was the plaintiff negligent? No.

17 What amount of damages do you award?
18 There would be a blank, actual damages. Okay. It
19 starts with those numbers that I gave you and it
20 goes up from there. I'm going to leave it to you.

21 You are 12 people from different
22 backgrounds. You have different experiences in
23 life. What would it be worth? What do you think
24 it's worth? The pain and suffering, the loss of
25 enjoyment?

1 Just come up with a fair number. We
2 would take whatever you think is fair. Okay.

3 And then after that, we're asking you
4 to come up with a punitive award. We don't have
5 John Doe here. I'm certain opposing counsel is
6 going to say that punitive damages serves no
7 purpose. So why even do it?

8 Well, no one comes and looks at my
9 bathroom, but I still clean it. I don't want to
10 show it off to anybody. Just because we may not
11 know who John Doe is now doesn't mean we won't know
12 after this. Okay.

13 I'm of the opinion that a proper award
14 in this case will raise enough public awareness
15 that we may have a chance of finding this guy. Or
16 girl. Okay. A proper award in this case is going
17 to get to the public.

18 And I guarantee you, whoever was in
19 that car, wherever they went, they told somebody,
20 and that somebody probably told somebody. And as
21 we sit here, I will wager there's no less than a
22 handful of people who know about this and know what
23 happened. And if they'd read about it, they might
24 think about coming forward.

25 But if you follow the advice of John

1 Doe's lawyer, you come back with \$50,000. That's a
2 lot of money. \$50,000 is a lot of money. That's
3 not going to get any attention. No one is going to
4 know about it.

5 Think about your experiences. What
6 gets your attention? If you were at home and you
7 heard about this, what would get your attention?
8 Craft a verdict that would get your attention and
9 the attention of people you know. Okay.

10 But keep this in mind, it's not just
11 the attention of people like you. You-all are on a
12 jury because you're a registered voter or have a
13 valid driver's license. You are responsible
14 people. I can tell by looking at you all.

15 I wanted you on this jury because I
16 trust you just by looking at you. You stood up and
17 told me what you did and your spouse did. How much
18 information does that give me about you? None.
19 Okay.

20 I trusted the answers to be truthful.
21 Okay. John Doe is not a truthful person. So it
22 needs to be something that is going to get the
23 attention of the kind of people that John Doe
24 travels with. If we stand any chance of ever
25 putting a butt in that chair, it's going to have

1 to.

2 So how do you calculate punitive
3 damages? Well, I said this little bit in my
4 opening. Here's three things to think about. What
5 is an amount that would punish a person? What is
6 an amount that would deter other people from doing
7 the same thing? And what is an amount that
8 vindicates the rights of the plaintiff?

9 In my opinion, a crime was committed
10 against this man. What amount is commensurate with
11 a crime being committed against a person and that
12 crime going unpunished? Okay.

13 If you harken back to the testimony,
14 both eyewitnesses told you that John Doe either
15 paused or stopped. Okay. That person was aware.
16 This happened in front of their car. It's not like
17 they grazed him maybe. There's no argument that
18 somehow they aren't aware.

19 They saw what happened and they made
20 the conscious decision to flee and to not return.
21 Even when that person made it to where they were
22 going, they didn't have a cool-down moment and say,
23 oh, my gosh, I panicked. I really need to go back
24 and make sure that the guy was okay.

25 Aimee and Malaea told us Daniel was

1 face down, still in the road when the car drove
2 away. That person -- for all that driver should
3 have believed is that they killed him. And knowing
4 that, they drove away. They got somewhere, and to
5 this day have decided not to come forward about it.
6 That kind of conduct needs to be deterred.

7 And I will leave it to your expertise,
8 your experience in this world to come up with what
9 you think is a number that will deter that kind of
10 conduct.

11 I anticipate you are going to get some
12 instructions at the end of this. Some of the
13 instructions you may hear -- keep your ear out for
14 things like that. Under the law when we operate a
15 car, a motor vehicle, we are all supposed to keep a
16 proper lookout. That means keep your eyes open and
17 watch out for what's in front of you. Clearly,
18 John Doe did not do that; breaking the law.

19 Following too closely. Okay. We're
20 not supposed to tailgate people. I'm sure it's
21 happened to all of you. Okay. And you know how
22 unsafe it makes you feel when a car or truck is
23 right on your tail. That's the second part of the
24 law they're breaking.

25 A driver is supposed to stop a vehicle

1 when a wreck happens and render aid. Clearly, did
2 not happen. There is nothing to contradict any of
3 this. And a driver who is in a wreck, if they
4 think they need to leave to go call for help, they
5 can do that, but in every event they shall return
6 to and remain at the scene. Okay. There's no call
7 for help happening here.

8 There's a duty to give information.
9 What happened on that night was a crime in so many
10 ways. Okay. I think we're all clear about that.
11 If John Doe's lawyer or John Doe or anyone tried to
12 convince you otherwise, I would really question the
13 truthfulness of what they are telling you.

14 You are going to have to render a
15 unanimous verdict. All 12 of you have to agree.
16 Okay. All 12 of you have different backgrounds,
17 different strengths. I encourage in your
18 deliberations that all of you speak and that all of
19 you listen to each other's strength, the background
20 that each of you brings. Okay. It's going to be
21 different. It's going to be helpful.

22 So, at the outset I told you we were on
23 a journey. We're arriving at our destination.
24 We're wrapping this up. And I told you to look out
25 for road signs, the mile markers, the true evidence

1 that brings you to the verdict, which is what you
2 are about to render. Okay.

3 Verdict is a Latin phrase. It means to
4 speak the truth. And that's all that we ask you to
5 do is render a just verdict. Review the evidence,
6 which is the road signs and mile markers, the true
7 direction, and disregard the billboards.

8 I thank you all for your time very
9 much. Please listen to opposing counsel.

10 THE COURT: Madame Forelady, ladies and
11 gentlemen, your lunch has arrived. It is in the
12 jury room. We are going to take a lunch break.
13 During the break, please do not discuss the case in
14 any manner whatsoever.

15 Please leave your notepads in your
16 seats so that I can give counsel adequate time to
17 eat as well. We're going to break about
18 40 minutes, which takes us to about 12:20 -- 1:20.
19 I'm not good at math. That's why I have a law
20 degree. That takes us to 1:20.

21 During this break, you are welcome to
22 go outside and walk around, get some air. The
23 bailiffs will have to go with you because we've
24 already started the closing argument process.

25 Just let them know if you want to go.

1 I know there may be some smokers or you may just
2 want some air. I think the temperature has
3 increased a little bit. I think it's about 45 now
4 instead of 37, but the wind -- you can tell the
5 wind is a little high outside. If you want to go
6 outside, just let them know and they'll take you.

7 Enjoy your lunch. We'll see you about
8 1:20.

9 (Jury out, 12:36 p.m.)

10 THE COURT: You may be seated.

11 Anything we need to take up before we
12 take an abbreviated lunch recess?

13 MR. BOLES: No, ma'am.

14 MR. COULTER: No, ma'am.

15 (A luncheon recess transpired.)

16 THE COURT: Plaintiff ready to proceed?

17 MR. BOLES: Yes, Your Honor.

18 THE COURT: Defense ready to proceed?

19 MR. COULTER: Yes, Your Honor.

20 (Jury in, 1:33 p.m.)

21 THE COURT: Ladies and gentlemen, I
22 hope you enjoyed your luncheon recess. We will now
23 resume argument.

24 Mr. Coulter, you may proceed.

25 MR. COULTER: Thank you, Judge. May it

1 please the Court.

2 THE COURT: Yes, sir.

3 MR. COULTER: Ladies and gentlemen,
4 afternoon.

5 THE JURY: Afternoon.

6 MR. COULTER: We're getting near the
7 end and I know that I'm tired of talking, to be
8 honest with you, and I'm sure you're tired of
9 listening, so I will try to go through this as
10 quickly as I can. I am going to take about 15 to
11 20 minutes to talk about some things in the case
12 that I hope you would take back into the jury room
13 when you go back and deliberate.

14 I've got to do that, not only based on
15 what you've already heard, but I've got to
16 anticipate some things that the plaintiff's
17 attorney is going to say because he gets to come up
18 and argue again. So I have to anticipate those
19 things.

20 And the reason he gets to come up
21 again, and this is something that he didn't mention
22 at all during his closing argument, was that he has
23 the burden of proof.

24 Not only does he have the burden of
25 proof on the actual damages by a preponderance of

1 the evidence, he then has the burden of proof under
2 this allegation and claim for punitive damages,
3 which is the highest standard in civil law. It's
4 by clear and convincing evidence.

5 And we're going to talk about that a
6 little bit later, and the judge will charge you on
7 it. I won't spend much time on that. The judge
8 does a great job instructing you.

9 Now, a lot of the argument presented to
10 you by the plaintiff's attorney was basically
11 community justice, do good for your community, save
12 and protect your community. And I get those kind
13 of arguments. I was a deputy solicitor for
14 13 years. That's what I did. I was in general
15 sessions court prosecuting cases.

16 But my job wasn't just to prosecute
17 cases. Similar to your job, it's to seek justice.
18 And you just -- just because a person is charged
19 with something doesn't mean that you just go in
20 there, and like a bull in a china shop, and try to
21 get convictions. That's not what you do.

22 You have to look at the evidence and
23 you have to weigh the evidence and you have to
24 decide, is this just in this circumstance? Okay.
25 It's what I mentioned at the beginning. It's about

1 being reasonable and about not using passion or
2 prejudice to drive your decision in the case.

3 No -- this should be based on a
4 reasonable analysis of the facts. Now, the
5 plaintiff's mother is a very, very nice person.
6 She had a tragic loss. Horrible. Okay. But
7 understand, as horrible as that is, that's not this
8 case. Okay.

9 I know it's -- it would be easy to say,
10 I feel bad, therefore, I should do this. It's got
11 to be based on these facts. I think you know that.

12 So I'm going to talk about some of the
13 things that I believe has been presented in the
14 case that are arguments that I'm going to make, and
15 I have been making, that the plaintiff's attorney
16 -- and I wrote down some of those things.

17 He's already called my opinions
18 ridiculous, absurd, a farce, not truthful, a joke.
19 That's what he's called everything that I have to
20 say.

21 Well, I'm not going to insult him and
22 disparage his comments or anything like that. I
23 want to use this time to talk about what we've
24 seen. And the reality is, the position we're
25 taking is none of those things.

1 When you break it down and look at the
2 facts, Mr. Coy himself did not think he got hit in
3 the rear. That's what he said. When the police
4 officers came to him after this was all over, after
5 EMS was there, he told the police officers through
6 the deposition testimony that you heard today that
7 my motorcycle -- I thought my motorcycle seized up.
8 That's what he said.

9 So, it's not ridiculous or absurd. We
10 do need to look at some of the facts.

11 Now, as you heard from today the
12 plaintiff himself, brand new driver of a
13 motorcycle. And not just this motorcycle, not just
14 the Ducati Cafe Sports Racer. He was new to
15 driving motorcycles all together. All together.
16 He had a beginner's permit.

17 If we look at this diagram -- and I'm
18 sorry, you will have that back with you. It kind
19 of gets in the way. It's hard to use that. But if
20 we're looking at that diagram, he was travelling in
21 this direction. (Indicating) Okay. From -- I
22 guess this would be from 26, this way, up towards
23 this area here. (Indicating)

24 And what he testified to in his
25 deposition was he had just left a traffic light,

1 was travelling up this road, and he did not see any
2 headlights behind him. He did not hear any
3 vehicles behind him. I'm going to stop at that
4 point real quick.

5 He heard no vehicles behind him. You
6 remember Ms. Wade (sic)? We'll talk about Ms.
7 Wade. She said the thing that caused her to be
8 drawn out to this was because that car behind him
9 was so loud. Louder than the bike.

10 But that's not what Mr. Coy said. I
11 didn't hear any car behind me. I didn't see any
12 lights behind me. He said that there were vehicles
13 behind him in the lane next to him, which I will
14 get to in a minute because it does go to an
15 argument about line of sight.

16 He does say there were vehicles behind
17 him over in this area (indicating) travelling the
18 same direction, but not behind him. Another reason
19 that he didn't think he got hit from behind; there
20 was nobody behind him according to him. He was out
21 there on the road. None of us were out there.
22 He's out there. He's driving down that road.

23 And the two witnesses who we'll talk
24 about are over here. (Indicating) Happens over
25 here. They're over here. And I will show you some

1 other photographs of that.

2 The witnesses. So using this -- it's
3 called an ELMO I've been told. All right. So
4 there's the front of the Circle K, (indicating)
5 which is now a Kangaroo. There's another Kangaroo
6 100 yards away from there. I don't know how.

7 But, anyway, there's the Kangaroo. And
8 what do we hear from Ms. Ward? We hear from
9 Ms. Ward and Ms. Goblet that they are there
10 (indicating) and they see this thing all happening.
11 That's what he said. But -- but, listen. If you
12 put their stories side by side, what did we learn
13 from the stories? Okay.

14 Ms. Wade said she was outside on that
15 sidewalk, if you recall her saying. She's outside
16 the store viewing this. What did Ms. Goblet say?
17 Her mother. She said they were both standing
18 inside the Circle K when this happened. Okay.

19 Next, Ms. Wade said that Ms. Goblet
20 wasn't even at the door. She was behind the
21 counter at the Circle K when all of this happened.
22 Okay. No question that Ms. Wade is far closer to
23 where this all occurred. There is no question.
24 They both say that. Okay.

25 They say -- now, initially, Ms. Wade

1 said that after this incident occurred, that the
2 vehicle turned onto Beauregard, which was what her
3 mother had just said just minutes before she took
4 her testimony where she was sitting back there and
5 heard all of it.

6 So Ms. Goblet said the vehicle turned
7 down here. (Indicating) And when the daughter got
8 up, she said the same thing. When she was deposed,
9 that's not what she said. She said the vehicle
10 instead of turning went straight through down Main
11 Street. These are discrepancies in a very
12 important story. Discrepancies that can tell you
13 different things about what the actual event was.

14 Lastly, Ms. Goblet says the person
15 driving that car was a white male. That's what she
16 saw. Ms. Wade, closer than Ms. Goblet, said she
17 couldn't see who was in the car because the windows
18 were too dark. Okay. Those are all very huge
19 discrepancies in the story.

20 Now, are they lying? They're going to
21 say, oh, you're calling them liars. I'm not saying
22 that. I'm not saying that. There is an issue
23 about, well, friends. Come on, we all have friends
24 and we all want to see friends get, I mean, the
25 best. It's just natural.

1 And, initially, Ms. Wade wouldn't admit
2 she was close to Mr. Coy. I had to pull out her
3 deposition where she told us, we were close. So is
4 it unusual that they may have wanted to see
5 something the way they claim they did? No. It's
6 human nature to say, hey, I want the best for my
7 friend.

8 And, by the way, they weren't sitting
9 with them -- you may or may have not noticed, once
10 they got off the stand and were excused from their
11 Subpoena, they sat right there for the entire day.

12 And here -- we know what Ms. Wade said
13 in her deposition without question. She's right
14 here. (Indicating) And she said in her deposition
15 it was impossible for her to see behind Daniel's
16 vehicle when this happened.

17 She said in her deposition she assumed,
18 assumed, that the vehicle hit Coy's vehicle.
19 Assumed. And then finally said she couldn't see
20 what was happening out here (indicating) because it
21 was too dark and too far. That's what she said in
22 sworn testimony given back in March of this year.

23 Didn't when she takes the stand now,
24 but that's what she said in sworn testimony in
25 March of 2019, too dark and too far.

1 Using the ELMO again, 11:30 at night,
2 and it's too dark and too far. Now, what could
3 have happened? A number of things. One thing is,
4 remember, Mr. Coy said there were vehicles next to
5 him in this outside lane as he left that traffic
6 signal. Okay. No cars behind him, but they were
7 next to him.

8 Is it possible that as Mr. Coy is
9 making a maneuver on his Ducati Cafe Racer to turn
10 into that parking lot, going around 19 miles an
11 hour, attempting to change gears loses control of
12 that bike, flips, and at that same time, a car goes
13 by.

14 I mean, you remember they were looking
15 at it from this kind of angle. Not an overview.
16 Could a car come right through here the same time
17 he flips? It's certainly possible. And, of
18 course, again, they have the burden of proof case
19 by preponderance of the evidence.

20 And I thought it was also because I had
21 not heard it before -- remember, there was also
22 testimony from Ms. Goblet that as -- and she's
23 standing -- remember, she was looking this street
24 view, that the plaintiff makes a wide turn like
25 this into the parking lot.

1 And somehow from this angle, she can
2 tell that motorcycle never left the lane. That's
3 an example of wanting to see something the way they
4 want to see it.

5 Now, the damage that the plaintiff's
6 attorney said he had to talk about because of my
7 claims, look at it. Now, as I understood, he was
8 showing his toy bike and said that -- if I'm not
9 mistaken, I was back here, so I may not have seen
10 it right. I thought he said it would hit this back
11 plate causing it to stop. (Indicating)

12 I've looked at it. I've looked at it
13 ten times. Does that look like a car smashed the
14 back of that plate that he has demonstrated in his
15 closing argument?

16 Now, next to the wheel -- the rear
17 wheel there absolutely appears to be some damage.
18 Remember, when he -- and I submit to you he loses
19 control of his vehicle, that motorcycle goes
20 rolling over him and skidding down the street. Do
21 those look like skid marks on the street?

22 Plaintiff's attorney kept pointing at
23 these photographs and saying, look at all the
24 damage. Look at all the damage. Of course there's
25 damage. That thing, as he described it, tumbled

1 down the road. Here is the handlebars.

2 (Indicating) Obviously, there is a lot of damage to
3 the car when it goes tumbling down 17.

4 Now, as far as -- I'm actually getting
5 pretty close to the end.

6 The damages involved, plaintiff's
7 attorney just told you that the starting point is
8 the \$7,000. Okay. Now, remember, six of that was
9 simply for payments on the motorcycle. Okay.
10 There's \$900 in actual medical bills. \$900.
11 Plaintiff went and treated twice. Okay. Twice.
12 You heard no testimony that he missed any type of
13 work as a result of this accident.

14 He didn't go for his first treatment
15 until three weeks later. Three weeks later was his
16 very first medical appointment. Not today. Three
17 weeks later.

18 He wants to talk to you about pain and
19 suffering and how that should be factored in.
20 Okay. If you believe it's reasonable and they've
21 proven that this John Doe caused this accident,
22 then it's certainly reasonable to return those
23 monetary rewards.

24 As far as pain and suffering goes,
25 please understand the context of what we're talking

1 about. We're talking about \$900 in medical bills.
2 Part of it as well was his issue with having
3 headaches. Do you remember that?

4 He said, I've got -- there was some
5 damages regarding pain and suffering for headaches.
6 And how is it that he -- then you heard about the
7 situation where six weeks before he is turning and
8 braking and making a maneuver on the bike and flies
9 off and hits his head.

10 MR. BOLES: Objection; facts not in
11 evidence.

12 MR. COULTER: It's absolutely in
13 evidence.

14 THE COURT: Do not argument with one
15 other. I didn't elicit argument.

16 Please approach.

17 (Bench conference)

18 THE COURT: Ladies and gentlemen, you
19 are to disregard counsel's last comment. You are
20 to disabuse it from your mind and give it no
21 consideration in your deliberation. The objection
22 is sustained; facts not in evidence.

23 You may proceed.

24 MR. COULTER: All right. I will
25 rephrase it.

1 You-all heard it from the deposition,
2 and I'm drawing the facts from my memory as well,
3 that he was making this maneuver on the bike. He
4 was making a turning and braking motion, and he
5 fell from the bike and hit his head. Okay. Six
6 weeks before this accident which resulted in
7 headaches as well.

8 So that's a damage that you need to
9 consider as to how that happened and the headache
10 itself and how much more that that should be in
11 terms of pain and suffering.

12 Now, finally, finally to finish. The
13 issue of punitive damages. Okay. Plaintiff's
14 attorney has already jumped up and down about
15 wanting to send a message to John Doe, John Doe,
16 that he needs to be punished, but he never said
17 this.

18 And that is that there has to be clear,
19 as I mentioned, and convincing evidence that this
20 John Doe was reckless, willful and acted in
21 complete disregard for the life of others. Willful
22 reckless and complete disregard for others, and
23 they have to prove it by clear and convincing
24 evidence.

25 And clear and convincing evidence,

1 again, the highest standard under civil law, is
2 that you should have, if you reach that conclusion,
3 no substantial doubt in your mind as to that act,
4 that conduct, what John Doe did. You should have
5 no substantial doubt in your mind if you are to
6 return punitive damages.

7 This is not based on emotion, community
8 sentiments. It's got to be based on these facts.
9 It does. And the thing that stuns me about this
10 case and keeps going through my mind is the last
11 answer that the plaintiff's mother gave me when she
12 was on the stand.

13 Talking about being hit. And she said
14 about Mr. Coy, he had doubts. He had doubts. For
15 you to return a punitive damage verdict means no
16 substantial doubt in your mind. And the person who
17 was hit himself had doubts.

18 Again, this verdict is -- that's
19 actually Latin, veredicto, means to speak the
20 truth. That's what happens when we get justice
21 following the parameters of the law and the facts
22 of the case.

23 And here we have a situation where he's
24 asking you to give punitive damages in the case so
25 that you reach a conclusion with no substantial

1 doubt. And the person that's getting that award
2 had doubts.

3 I don't know what you do with the
4 actual damage award if you really believe that he
5 was struck from behind by this vehicle. Any
6 reasonable -- with your verdict, which I know you
7 will, absolutely understandable. I get that.

8 But to award punitive damages in the
9 case where the main person didn't think he got hit
10 and had doubts as to whether he got hit?

11 So appreciate your time. I know that
12 you will keep all that in mind. Thank you for your
13 service.

14 THE COURT: Mr. Boles.

15 MR. BOLES: Very briefly.

16 We'll go most recent to what
17 Mr. Coulter started with. Yeah, there was
18 testimony that Daniel Coy had doubts about what
19 happened to him. The two witness right after it
20 happened -- he had no idea that John Doe came up
21 behind up and hit him. We covered that.

22 It's not our responsibility as drivers
23 on the road to have eyes on the back of our head
24 and anticipate someone is going to speed up behind
25 us and hit us and knock us over. It's just simply

1 not the way the world works and it's not the way it
2 worked in this case.

3 You know, if the defense wants to say
4 that somehow the motorcycle seized up, I guess that
5 was Daniel's first thought, why didn't they take
6 his bike to a mechanic and have it looked at? Why
7 isn't he offering you evidence? Because he doesn't
8 have it. He's got to offer you evidence if he
9 wants to persuade you to agree with him.

10 MR. COULTER: Judge, I'm going to
11 object.

12 THE COURT: There's an objection
13 pending. Overruled. He can comment on the absence
14 of evidence.

15 MR. COULTER: He was just saying
16 that --

17 THE COURT: He can comment on the
18 absence of evidence. Overruled.

19 Be very careful, Mr. Boles.

20 MR. BOLES: Yes, ma'am.

21 THE COURT: He has no burden of proof
22 except on comparative negligence.

23 MR. BOLES: On comparative negligence,
24 that's right.

25 If he wants to persuade you that

1 Mr. Coy was comparatively negligent, he needs to
2 come correct and give you evidence. Not some
3 fantasy.

4 To think -- I feel actually flattered
5 to think that somehow I could orchestrate witnesses
6 and evidence and bring everyone here and carry on
7 this trial as some sort of misleading play for you
8 all.

9 All we have done -- all the plaintiff
10 has done is just put everyone up and let them tell
11 their story. I think everyone has been credible.

12 You know, prior -- Daniel going to the
13 motorcycle class, I've done that. I've done the
14 motorcycle training, doing slow speed maneuvering
15 like he's talking about. Falling over is just part
16 of the class.

17 I don't know why John Doe and his
18 lawyer think that anything related to that class
19 has anything to do with what happened on the night
20 of this collision. Because it doesn't.

21 Let's look at this photo. You know,
22 I've been putting these photos in front of you
23 guys. I've got to address what was brought up
24 here. You know, Mr. -- the testimony was that
25 Mr. Coy was turning right into the gas station, the

1 car came up from behind him and hit him on the
2 right side of the rear of his bike.

3 As he's making a right-hand turn, the
4 car connects with the license plate and the tire
5 creating the jerking motion that he described in
6 his deposition, seizing the bike in place, like he
7 said happened.

8 If you look at his plate, it's warped.
9 And you-all will be able to take this into the jury
10 room and look at it closely. It's bent. It's bent
11 from impact. You know, same thing here with the
12 cowling on the back. (Indicating) Okay.

13 There's no damage on top. It's all to
14 the rear from the rear impact. Very clear and very
15 clearly corroborated by our witness accounts.

16 Let's talk about the witness accounts,
17 because opposing counsel wanted to discuss with you
18 the discrepancies in the stories. I love
19 discrepancies in witness stories. That's how you
20 know they were telling the truth. Okay.

21 The example that always jumps to the
22 front of my mind, when I was a kid, my parents made
23 me go to church, like, three times a week. And I
24 distinctly remember raising my hand in Sunday
25 School and asking the teacher why do we have four

1 gospels? It's one story about one man.

2 And my teacher said, the differences in
3 the story are where you know the truth is. That's
4 how you know that the witnesses didn't come
5 together and cook up something. That was a mother
6 and daughter. They had plenty of chances before
7 court to get together and get their stories
8 straight and sit down and tell you the same story.
9 And they didn't. And that is how you know that
10 they were telling you the truth.

11 The commentary about them setting in
12 the back, they didn't have a ride. They didn't
13 have a way to leave. I don't know why that would
14 be brought up, but I wanted to address that with
15 you.

16 Oh, this was interesting, the photo of
17 the gas station. This photo was presented to say,
18 look how far away that is. There's no way --
19 there's no way they could possibly see that far.
20 If I took out my phone right now and took a picture
21 of the back of the courtroom, it will look really
22 far away.

23 I don't know if you all have ever tried
24 this, but I tried to take a picture of the moon
25 because I thought it was really pretty. And I look

1 on my phone and it's just a spec, but in real life
2 I could see it clear, very clear. It was big. But
3 then I go to send the picture to someone and it
4 looks like a white dot. Okay. That is what is
5 happening here.

6 John Doe's lawyer got a photo taken in
7 such a way that it makes it look like it's really
8 far. I mean, look. This overhead -- I think this
9 is from Google Maps -- it's not that far. It's
10 about -- there's cars right here. I mean, you can
11 use context clues. It's like five car lengths or
12 six car lengths.

13 I don't know, it, may be a little bit
14 further from one corner of the courtroom to the
15 very far end. That's not that far away. It looks
16 far away, but, again, this is a billboard. This is
17 not valid information. This is not a road sign
18 that would guide you to the truth. It's designed
19 to distract you.

20 You know, could a car have been passing
21 at the same time and not made -- could this all
22 have just been some sort of a misunderstanding? Is
23 it possible that at the same moment Daniel Coy was
24 rapidly dismounting over the front of the
25 handlebars of his motorcycle that a car came right

1 behind him and then stopped and then drove off? I
2 mean, is it possible? I guess.

3 Well, listen, this is a court of law
4 and we're not concerned with is it possible. There
5 is a burden of proof. I don't come in here and
6 say, hey, guys, isn't it kind of probably likely
7 what I'm telling you? Huh-uh. I say, listen to my
8 witnesses please, look at the evidence please, and
9 if you agree with me, render a verdict.

10 To come in front of you and say, isn't
11 it possible? Sure. I guess a meteor could fall
12 out of the sky too, but we're concerned with
13 evidence, with burden of proof. Okay.

14 You know, only the guilty flee. Only
15 the guilty run.

16 Final point that I will touch on and
17 then sit down and stop talking. Just this idea
18 that somehow Daniel Coy not seeing the car before
19 it hit him, I don't -- it's been repeated so much I
20 feel the need to address it. I just don't buy into
21 it. I don't see why you guys should either. It's
22 not his responsibility to make sure that someone
23 didn't run up behind him and run into him.

24 The fact that it happened so quickly
25 and the fact that he landed on his head makes sense

1 that he wouldn't know what happened. He was very
2 clear in his deposition testimony that there was a
3 jerking motion. The bike got jerked out from under
4 him.

5 He didn't say it got wobbly or I felt a
6 little bit unsteady. I was making a turn; I was
7 going 19 miles an hour; I was focused on where I
8 was going and the bike got jerked out from
9 underneath me. That's entirely consistent with all
10 of the evidence that's been put out there today.

11 So thank you for hearing me again.
12 Again, please render a verdict in favor of the
13 plaintiffs. Okay. Thank you.

14 THE COURT: Ladies and gentlemen, why
15 don't you stand up for me and stretch.

16 THE JURY: (Complies)

17 THE COURT: You can sit down whenever
18 you're ready.

19 Madame Forelady, members of the jury,
20 you have heard the evidence and the argument of
21 both parties. I will now explain to you the law
22 which applies to this case.

23 Doretta McHugh, as the personal
24 representative of the estate of Daniel E. Coy,
25 claims that the deceased, Mr. Coy, was injured by

1 the actions of John Doe, the defendant. In
2 bringing this lawsuit, the plaintiff claims that
3 the defendant should compensate Mr. Coy's estate
4 for the injuries that he sustained while living.

5 Under our constitution and code of
6 laws, only you, the jury, can make the findings of
7 facts in this case. I'm not permitted to indicate
8 to you how I might feel about the testimony and
9 evidence which has been presented; and throughout
10 this trial, it has been my intention to be fair and
11 impartial toward each of the parties involved as
12 well as their attorneys.

13 Under our laws, ladies and gentlemen,
14 this is what we call a John Doe action. And in
15 that type of action a plaintiff alleges that they
16 have suffered injuries for which they should be
17 compensated by a John Doe. John Doe causes of
18 action are allowed pursuant to our code of laws in
19 the state of South Carolina.

20 In a John Doe action, the plaintiff
21 claims that the identity of the driver of the
22 vehicle is unknown, and that is the reason that it
23 is brought as a John Doe proceeding. John Doe is
24 simply a legal form for a fictitious person whose
25 identity is not known.

1 I instruct you that if the owner of a
2 vehicle is alleged to cause injury to the plaintiff
3 and their identity is unknown, a cause of action
4 may be brought against the unknown defendant as a
5 John Doe.

6 During this trial, ladies and
7 gentlemen, you and I have certain duties to
8 perform. As the trial judge, it is my
9 responsibility to preside over the trial of this
10 case; and I also have a duty to pass upon or rule
11 upon the admissibility of evidence which has been
12 offered during the trial.

13 You are to consider only the competent
14 evidence before you, and you are to disregard and
15 disabuse from your mind any testimony which has
16 been ordered stricken from the record during the
17 progress of this case. You are to consider only
18 the testimony which has been presented from the
19 witness stand, together with any exhibits which
20 have been made part of the record in this case.

21 To determine the facts in this case,
22 ladies and gentlemen, you will have to evaluate the
23 credibility, which simply means the believability,
24 of each witness who has testified.

25 Some of the things you may consider as

1 you decide whether or not to believe a witness's
2 testimony about a particular matter includes, what
3 was the manner and appearance of the witness who
4 testified? Was he or she straight forward or
5 hesitant in answering? Was the testimony of a
6 witness consistent or inconsistent? How did the
7 witness come to know the facts that he or she
8 testified to? What was his or her ability to know
9 these facts? Is there some reason a witness would
10 want to give testimony which would help or hurt one
11 side or the other? In other words, was the witness
12 biased or prejudiced? Was the testimony of a
13 witness strengthened or weakened by other testimony
14 or evidence?

15 You can believe as much or as little of
16 each witness's testimony as you think proper. Of
17 course, you do not determine the facts merely by
18 counting the number of witnesses which have been
19 presented.

20 Throughout this process, ladies and
21 gentlemen, you have but one objective, to determine
22 the facts regardless of their source and apply the
23 law as to those facts.

24 Mr. Dan, could you do me a favor?
25 Could you turn that ELMO off for me and hand all

1 the exhibits to Ms. Denise for me? I should have
2 done that before I got started. Thank you, sir.

3 THE BAILIFF: (Complies)

4 Ladies and gentlemen, as I have
5 instructed, it is your duty to determine the
6 effect, value, and weight of the evidence presented
7 during this trial. And, again, necessarily as a
8 part of that responsibility, you must assess the
9 credibility of witnesses who have testified.

10 And, again, credibility is simply a
11 legalistic term meaning believability.

12 I further instruct you that in
13 determining the question of the credibility of
14 witnesses, as you analyze and evaluate the evidence
15 on their question of credibility or believability,
16 you may believe one witness as against several
17 witnesses or several witnesses as against one
18 witness. You may believe a part of the testimony
19 of a witness and reject the remaining part of the
20 testimony of that same witness.

21 If you have a good and sound reason,
22 you may believe the testimony of a witness in its
23 entirety or reject the testimony of a witness in
24 its entirety. You may consider the demeanor of a
25 witness, that is the manner and appearance of the

1 witness from the witness stand.

2 As I have instructed, ladies and
3 gentlemen, you have but one objective in your
4 factfinding province, that is to determine the
5 facts, give those facts the weight, value, and
6 effect you decide they should receive and apply the
7 law to those facts.

8 The same constitution and laws which
9 designate and make you the finders of the fact, as
10 I have just explained, also make me the instructor
11 of the law. You must accept the law as I instruct
12 it.

13 If I'm wrong, there is another place
14 and time for that error to be corrected. For this
15 case, ladies and gentlemen, you must apply the law
16 as I instruct it. And this means that you should
17 not be concerned with what you may think the law
18 should be, but only with what I instruct you the
19 law actually is.

20 You have heard testimony by deposition.
21 And, as I've explained, a deposition can be in
22 written form or in video form, and it contains
23 sworn testimony given by a witness outside of court
24 in the presence of lawyers for each party who may
25 ask questions of the witness.

1 This testimony, ladies and gentlemen,
2 is entitled to the same consideration and is to be
3 judged as to credibility and weighed by you in the
4 same way as if the witness had been here present
5 and testified.

6 It is then for you, the jury, to
7 determine the effect, value, and weight of the
8 testimony given in the deposition just like any
9 other witness.

10 The plaintiff has the burden of proving
11 claims in this case. They must meet this burden by
12 proving their claims by the greater weight or the
13 preponderance of the evidence. Again, using my
14 earlier example of a traditional set of scales,
15 after all of the evidence has been presented, if
16 the scales should remain evenly balanced, or they
17 should tip slightly in favor of the defendant, the
18 plaintiff would have failed to have met their
19 burden of proof.

20 If on the other hand, the scales should
21 tip even slightly in favor of the plaintiff, then
22 they will have met their burden of proof.

23 Preponderance of the evidence means
24 evidence which as a whole shows that the fact or
25 factors sought to be proven are more probable than

1 not. Of course, there is no way to weigh evidence
2 except through the exercise of your good common
3 sense and judgment. It is entirely a mental
4 process. And the evidence you should give the most
5 weight to is that which convinces you, regardless
6 of from whom or what source it comes.

7 The plaintiff claims that the defendant
8 was negligent and should compensate the plaintiff
9 for the injuries the plaintiff suffered as a result
10 of the defendant's negligence. In order to prove
11 that the defendant was negligent, the plaintiff
12 must first -- the plaintiff must prove by a
13 preponderance or greater weight of the evidence
14 four things.

15 First, the plaintiff must prove by a
16 preponderance or greater weight of the evidence
17 that the defendant owed the plaintiff a duty of
18 care. Next, the plaintiff must prove by a
19 preponderance or greater weight of the evidence
20 that the defendant reached that duty by a negligent
21 act or omission.

22 It can be said that a negligent person
23 has done something that a reasonable person would
24 not have done if faced with the same situation. On
25 the other hand, that he has failed to do something

1 that a reasonable person would have done, or both
2 if faced with -- if faced by the same or a similar
3 situation.

4 In that regard, ladies and gentlemen, I
5 instruct you that our common law rules of the road
6 require the operator of the motor vehicle to use
7 the same care that would have been exercised by a
8 person of ordinary reason and prudence if that
9 person were driving the same vehicle at the same
10 time and place and under the same circumstances.

11 This standard of care includes the
12 obligation to maintain a proper lookout for other
13 vehicles which may be on the highway.

14 I instruct you that a person operating
15 a motor vehicle on the public roads of this state
16 owes a duty to keep a proper lookout for other
17 vehicles upon the highway. The duty is not merely
18 one of looking, but one of observation.

19 I instruct you that a motorist must
20 look in such an intelligent and careful manner as
21 to enable him to see a vehicle or a person upon the
22 highway in the exercise of ordinary care or caution
23 for the safety of himself and others.

24 I further instruct you that a motorist
25 who fails to keep a proper lookout or fails to see

1 what a person of ordinary care and prudence would
2 have seen is guilty of negligence.

3 I further instruct you that under our
4 common law standard, the person has a duty to keep
5 their vehicle under control. And this means that
6 the driver of an automobile has a duty to keep the
7 automobile under proper control so that the driver
8 is able to slow down, stop, or turn the automobile
9 to avoid colliding with other vehicles,
10 pedestrians, and objects lawfully on the road.

11 In addition to our common law
12 standards, our state laws provide other rules which
13 likewise must be followed. Those include Code
14 Section 56-5-1930.

15 And that statute provides as follows:
16 The operator of a motor vehicle shall not follow
17 another vehicle more closely than is reasonable and
18 prudent, having due regard for the speed of such
19 vehicle and the traffic upon and the condition of
20 the highway. What we commonly refer to as
21 following too closely.

22 And Code Section 56-5-1210, duties of
23 drivers involved in accidents. Subsection a, the
24 driver of a vehicle involved in an accident
25 resulting in injury to or the death of a person

1 immediately shall stop the vehicle at the scene of
2 the accident or as close to it as possible. He
3 then shall return to and in every event shall
4 remain at the scene of the accident until he's
5 fulfilled the requirements of section 56-5-1230.
6 However, he may temporarily leave the scene to
7 report the accident to the proper authorities. The
8 stop must be made without obstructing traffic more
9 than is necessary.

10 And Code Section 56-5-1230, duty to
11 give information provides as follows: The driver
12 of any vehicle involved in an accident resulting in
13 injury to or death of any person or damage to any
14 vehicle which is driven or attended by any person
15 shall give his name, address, and the registration
16 number of the vehicle he's driving, and shall upon
17 request and if available exhibit his driver's
18 license to the person struck or the driver or
19 occupant of or person attending any vehicle
20 collided with and shall render to any person
21 injured in such accident reasonable assistance,
22 including the carrying or making arrangement for
23 the carrying of such person to a physician,
24 surgeon, or hospital for medical or surgical
25 treatment if it is apparent that such treatment is

1 necessary or such carrying is requested by the
2 injured person.

3 I instruct you, ladies and gentlemen,
4 that violation of any of these provisions of common
5 law statute is negligence as a matter of law. This
6 means that proof of such violation is in itself
7 proof of negligence. So that should you find such
8 violation, your only concern would be whether the
9 violation caused the injury and damage.

10 The plaintiff must also prove by a
11 preponderance or greater weight of the evidence
12 that he suffered damages as a result of the breach
13 of duty. Finally, the plaintiff must prove by a
14 preponderance or greater weight of the evidence
15 that the damages were proximately caused by the
16 defendant's breach of duty.

17 Proximate cause is something that
18 produces a natural chain of events which in the end
19 brings about the injury. It is the direct cause of
20 the injury. To prove that the defendant's
21 negligence proximately caused the plaintiff's
22 injury, the plaintiff must prove causation and
23 fact. This is proven by showing that the injury
24 would not have occurred but for the defendant's
25 negligence.

1 The plaintiff must also prove legal
2 cause. Legal cause is proven by showing that the
3 injury was foreseeable. This means that the injury
4 occurred as a natural and probable consequence of
5 the defendant's negligence.

6 The plaintiff must prove that some
7 injury from the defendant's negligence was
8 foreseeable, but does not have to prove that the
9 particular injury that occurred was foreseeable;
10 however, the defendant cannot be held responsible
11 for things which could not be expected to happen.

12 Proximate cause does not mean the only
13 cause. The defendant's act can be a proximate
14 cause of the plaintiff's injury if it was at least
15 one of the direct concurring causes of the injury.

16 I instruct you that if the owner or
17 operator of any motor vehicle which causes injury
18 to the plaintiff is unknown, the plaintiff may
19 recover if the plaintiff first proves that the
20 plaintiff or someone on the plaintiff's behalf has
21 reported the accident to some appropriate police
22 authority within a reasonable time under all of the
23 circumstances after the accident.

24 Next, the plaintiff must prove that the
25 injury or damage was caused by physical contact

1 with the unknown vehicle or that the accident was
2 witnessed by someone other than the owner or
3 operator of the vehicle.

4 Physical contact with the unknown
5 vehicle requires that something touched or be
6 touched by that vehicle. If there was a witness,
7 the witness must testify to the circumstances
8 surrounding the accident, such as the actions of
9 the unknown driver that contributed to the accident
10 and not just the fact that an accident occurred.

11 And, finally, the plaintiff must prove
12 that the plaintiff was not negligent in failing to
13 determine the identity of the other vehicle and the
14 driver of the other vehicle at the time of the
15 accident.

16 Ladies and gentlemen, should you decide
17 that the plaintiff is entitled to a verdict, your
18 next step would be to decide how much money the
19 defendant should be required to pay. We call such
20 an award damages.

21 Actual damages are intended to
22 compensate the injured party, that is to put that
23 party as near as possible in the same position they
24 were in before the incident occurred. In other
25 words, actual damages would be the actual losses

1 and expenses which the plaintiff has suffered
2 because of the other party's negligence.

3 Actual damages for a plaintiff who has
4 been injured includes pain and suffering, as well
5 as mental anguish, impairment of health or physical
6 condition and disfigurement.

7 As with all other factors in this case,
8 the plaintiff must prove his actual damages by the
9 greater weight of the evidence. In determining the
10 amount of compensation for personal injuries, it is
11 proper to take into consideration the aspects of
12 the injury.

13 This would include physical and mental
14 pain and suffering endured, expenses incurred for
15 necessary medical treatment, the loss of enjoyment
16 of life suffered as a result of the injury which
17 includes the injured person's ability to
18 participate in and derive pleasure from the normal
19 activities of daily life, and for the individual's
20 ability to pursue his talents, recreational
21 interests, hobbies, or avocations, and any other
22 losses which are reflected by the character of the
23 injury.

24 I further instruct you that mental pain
25 and suffering, sometimes called mental distress, is

1 a proper element of actual damages where it is the
2 natural and proximate consequence of the wrong.

3 I further instruct you that pain and
4 suffering is a material element of damages on which
5 a recovery may be based. I instruct you that the
6 law does not prescribe any definite standard by
7 which to compensate an injured person for pain and
8 suffering.

9 You and you alone have the authority to
10 determine the amount, if any, to be allowed for
11 pain and suffering. And the law requires that when
12 making an award for pain and suffering, the jury
13 shall exercise its authority with calm and
14 reasonable judgment and that the damages shall be
15 just and reasonable in light of the testimony and
16 evidence presented in the case.

17 I further instruct you, ladies and
18 gentlemen, that a plaintiff also may be entitled to
19 recover for the loss of the use of a vehicle during
20 the time that the plaintiff was unable to use it.
21 Actual damages for this purpose may be measured by
22 determining what it would have cost the plaintiff
23 to rent a similar vehicle while the plaintiff's own
24 vehicle was unable to be used.

25 Damages for loss of use of a vehicle

1 may be awarded even if the plaintiff did not rent a
2 vehicle and even if the plaintiff borrowed a
3 vehicle; however, the plaintiff is required to make
4 all reasonable efforts to minimize their damages.

5 Ladies and gentlemen, the plaintiff has
6 the burden of proving their damages by the greater
7 weight of the evidence. This does not mean that
8 they must prove them to a mathematical certainty or
9 produce evidence of the precise amount of damages
10 claimed to have been suffered. Rather the evidence
11 put forth by the plaintiff should be such as to
12 enable you, the jury, to determine what amount of
13 damages is fair, just, and reasonable.

14 I instruct you that the defendant
15 claims that at the time of the incident the
16 plaintiff was suffering from an existing physical
17 defect. Even if you should find this to be so, the
18 mere fact of an existing defect would not prevent
19 the plaintiff from recovering from the defendant.

20 The defendant takes the plaintiff as he
21 or she is found, and the plaintiff is entitled to
22 recover damages resulting from the aggravation of a
23 pre-existing condition, as well as for any new or
24 additional injury sustained in the subsequent
25 incident provided, of course, such aggravation or

1 new injuries are the natural and proximate result
2 of the negligent acts or omissions of the
3 defendant.

4 Under our laws, a person who
5 negligently injures another is responsible for all
6 of the effects which are related to the incident.
7 And this is true no matter what the plaintiff's
8 physical condition was when the incident occurred.
9 It may seem that if the plaintiff had been in good
10 health, the injury would not have happened, or that
11 it would have been easier to cure. That would in
12 no way affect the defendant's liability.

13 If the presence of a disease or an
14 existing physical condition aggravates and prolongs
15 the injury which in turns increases the amount of
16 damages, then the plaintiff is entitled to recover
17 the increased amount.

18 If you find, ladies and gentlemen, that
19 the plaintiff had an existing physical impairment
20 before the incident, the amount you award for
21 actual damages should not include damages for the
22 existing impairment.

23 The defendant claims that the
24 plaintiff's own negligence proximately caused the
25 plaintiff's injury. Ladies and gentlemen, if you

1 find that the defendant was negligent, you must
2 then decide whether the plaintiff was negligent.

3 The defendant must prove by a
4 preponderance or greater weight of the evidence
5 that the plaintiff breached a duty of care which
6 proximately caused the plaintiff's own injury.

7 The same law which I have instructed
8 you in deciding whether the defendant was negligent
9 should be used in deciding whether the plaintiff
10 was negligent. If you find that the negligence of
11 both the plaintiff and the defendant proximately
12 caused the plaintiff's injuries, you must then
13 decide how much the negligence of the plaintiff
14 contributed to the plaintiffs's injuries and how
15 much the defendant's negligence contributed to the
16 plaintiff's injuries.

17 In deciding the percentages of
18 negligence of a plaintiff and the defendant, you
19 may consider, among other things, the following
20 factors: Whether each party's conduct was only
21 inadvertent or whether it was engaged in with an
22 awareness of the danger involved; the magnitude of
23 the risk created by each party's conduct including
24 the number of persons in danger and the possible
25 severity of the injury; the significance of the

1 goal that each party was trying to reach and the
2 need to achieve the goal in that manner; each
3 party's capacity, capability and ability to realize
4 and eliminate the risk involved; particular
5 circumstances confronting each party at the time
6 the conduct occurred, such as the existence of an
7 emergency requiring a quick decision; the relative
8 closeness of the causal relationship of the
9 negligent conduct of the defendant and the harm to
10 the plaintiff; and whether the conduct of either
11 party involved a violation of a state statute or
12 regulation.

13 I will give you what are called written
14 interrogatories. It's just a legal term meaning
15 questions that are very simple to follow, and I
16 will go over that with you at the conclusion of
17 this instruction.

18 You don't have to try to write any of
19 this down because it will go into the jury room,
20 that being the interrogatories or questions will go
21 into the jury room with you. I will go over those
22 with you again. They are fairly self-explanatory,
23 and there would be spaces for you to write your
24 answers. And, again, I will go over that with you
25 near the conclusion of this instruction.

1 If you, the jury, should decide to
2 award actual damages, you may also consider an
3 award of punitive damages. Punitive damages are
4 intended to punish the wrong-doer for extraordinary
5 and outrageous misconduct and serve as a deterrent
6 to others and to the defendant.

7 Punitive damages are awarded to punish,
8 deter, and vindicate the rights of the plaintiff
9 when the conduct of the defendant is willful,
10 wanton, or reckless. The terms reckless, willful,
11 and wanton are words used to describe a conscious
12 failure to use reasonable care; in other words,
13 while a negligent person is one who acts
14 carelessly, a person whose behavior is reckless,
15 willful, and wanton is not only careless in their
16 actions, but also is aware they are being careless.

17 I further instruct you in that regard
18 that our common law rules of the road require the
19 operator of a motor vehicle to use the same care
20 that would have been exercised by a person of
21 ordinary reason and prudence if that person were
22 driving the same vehicle at the same time and place
23 and under the same circumstances.

24 As I have instructed, that standard
25 includes the duty to keep a proper lookout. And as

1 I've instructed, a person operating a motor vehicle
2 on the public roads of this state owes a duty to
3 keep a proper lookout for other vehicles upon the
4 highway. This duty is not merely one of looking,
5 but one of observation.

6 I instruct you that a motorist must
7 look in such an intelligent and careful manner as
8 to enable him to see a vehicle or person upon the
9 highway and to exercise ordinary care or caution
10 for the safety of himself and others.

11 I instruct you that a motorist who
12 fails to keep a proper lookout or fails to see what
13 a person of ordinary care and prudence would have
14 seen is guilty of negligence. Also, the driver of
15 an automobile has a duty to keep the automobile
16 under proper control so that the driver is able to
17 slow down, stop, or turn the automobile to avoid
18 colliding with vehicles, pedestrians, and objects
19 lawfully on the road.

20 And, again, as I have instructed, in
21 addition to the common law rules there are state
22 statutes that provide that certain rules must be
23 followed.

24 And, again, as I have instructed,
25 56-5-1930, following too closely; the operator of a

1 motor vehicle should not follow another vehicle
2 more closely than is reasonable and prudent having
3 due regard for the speed of such vehicles and the
4 traffic upon and the condition of the highway.

5 And 56-5-1210, duties of drivers
6 involved in an accident. The driver of a vehicle
7 involved in an accident resulting in injury to or
8 the death of a person immediately shall stop the
9 vehicle at the scene of the accident, or as close
10 to it as possible. He shall then return to and in
11 every rent remain at the scene of the accident
12 until he has fulfilled the requirements of Section
13 56-5-1230, however, he may temporarily leave the
14 scene to report the accident to the proper
15 authorities. The stop must be made without
16 obstructing traffic more than is necessary.

17 And 56-5-1230, duty to give
18 information. The driver of any vehicle involved in
19 an accident resulting in injury to or death to any
20 -- of any person or damage to any vehicle which is
21 driven or attended by any person shall give his
22 name, address, and the registration number of the
23 vehicle which he's driving and shall upon request,
24 and if available, exhibit his driver's license to
25 the person struck or the driver or occupant of or

1 person attending any vehicle collided with and
2 shall render to any person injured in such accident
3 reasonable assistance, including the carrying or
4 making arrangement for the carrying of such person
5 to a physician, surgeon, or hospital for medical or
6 surgical treatment if it is apparent that such
7 treatment is necessary or if such carrying is
8 requested by the injured person.

9 As I've instructed, ladies and
10 gentlemen, violation of any of these provisions of
11 common law or statute is negligence as a matter of
12 law. This means that proof of such violation is in
13 itself proof of negligence; however, while
14 violation of a statute constitutes negligence, such
15 violation does not by itself constitute
16 recklessness, willfulness, or wantonness; however
17 it does constitute evidence of reckless,
18 willfulness, and wantonness and you may consider
19 such violation along with all of the other factors
20 and circumstances surrounding the event to
21 determine whether the actions of the defendant was
22 reckless, willful, or wanton.

23 To support an award of punitive
24 damages, the plaintiff must prove by clear and
25 convincing evidence that the conduct complained of

1 included a consciousness of wrongdoing at the time
2 of the conduct.

3 Clear and convincing, ladies and
4 gentlemen, is a legal term meaning more than just a
5 preponderance of the evidence. Clear and
6 convincing proof leaves no substantial doubt in
7 your mind. It is proof that establishes in your
8 mind not only that the proposition at issue is
9 probable, but that it is highly probable.

10 Punitive damages are awarded for the
11 benefit and in the public interest. Not as
12 compensatory or actual damages, but in addition to
13 such damages. Before awarding punitive damages you
14 must consider and weigh four elements which may be
15 pertinent to the facts of this case.

16 You must first consider the
17 relationship between any punitive damage award and
18 the harm caused. Any penalty imposed should take
19 into account the reprehensibility of the conduct,
20 the harm caused, the defendant's awareness of the
21 conduct's wrongfulness, the existence of similar
22 past conduct, the duration of the conduct, and any
23 concealment; thus, any penalty imposed should bear
24 a relationship to the nature and extent of the
25 conduct and the harm caused including the

1 compensatory or actual damage award made by you.

2 Secondly, any penalty imposed should
3 take into account as a mitigating factor any other
4 penalty that may have been imposed or which may be
5 imposed for the conduct involved, including any
6 criminal or civil penalty or any other punitive
7 damages award rising out of this same conduct.

8 Next, you should consider whether the
9 award of and the amount of any punitive damages
10 award may deprive the defendant of any profits
11 derived from the improper conduct and whether the
12 ill-gotten conduct should be properly awarded to
13 the plaintiff.

14 And, finally, any award of punitive
15 damages must be limited to punishment. And to this
16 end, the defendant's ability to pay any punitive
17 damage award should be considered.

18 Ladies and gentlemen, I instruct you
19 that in reaching your verdict in this case you
20 should not consider whether any party was or was
21 not covered by insurance. The law does not allow
22 the parties to present any evidence about
23 insurance, the lack of insurance, or the amount of
24 insurance. More importantly, I instruct you that
25 insurance or lack of insurance has no bearing on

1 whether any party was negligent or on the amount of
2 damages, if any, the plaintiff has suffered.

3 I instruct you that insurance should
4 not be discussed in any manner whatsoever in your
5 deliberation process.

6 You have been selected as fair and
7 impartial jurors, sworn to impartially try the
8 facts of this case. And when you comply with your
9 oath to do so, you would have fully discharged your
10 duty as jurors in this case.

11 You should not be influenced by
12 opinions or expressions of opinions, what you may
13 have heard outside of the evidence. You are to
14 decide this case according to the sworn testimony
15 that you have heard, along with the other evidence
16 that has been introduced.

17 As I explained, the verdict form is in
18 the nature of what we call special interrogatories,
19 which is just a legal term meaning questions. And
20 I'm going to go over that with you, but prior to
21 doing that, I instruct you that your verdict must
22 be unanimous, which means all 12 of you must agree
23 in order to reach a verdict in this case.

24 I further instruct you that your
25 verdict cannot be based on sympathy, passion,

1 prejudice, emotion or any other consideration not
2 found in the evidence of this case. And the
3 interrogatories are as follows: And you don't have
4 to try to write this down. The verdict form goes
5 into the jury room with you and it is
6 self-explanatory.

7 As to the negligence cause of action,
8 special interrogatory percentages required to total
9 100 percent.

10 Question one: Do you find that the
11 defendant was negligent and that such negligence
12 proximately caused plaintiff's injuries? If you
13 answer yes, you go to question two. If you answer
14 no, you stop and deliberate no further.

15 Question two: Do you find that the
16 plaintiff was negligent and that such negligence
17 proximately caused his injury? If your answer is
18 yes, you go to question three. If your answer is
19 no, you go to question four.

20 Question three: If your answers to
21 both question one and question number two are yes,
22 then answer this question. Taking the combined
23 negligence that proximately caused the plaintiff's
24 injury as 100 percent, what percentage of that
25 negligence is attributable to the plaintiff and

1 what percentage of that negligence is attributable
2 to the defendant, with, again, the percentages
3 having to add up to 100 percent?

4 If the plaintiff's percentage of the
5 combined negligence is 50 percent or more, you are
6 to stop and deliberate no further. If the
7 percentage is -- if the plaintiff's is less than
8 50 percent, then you go to question four.

9 Question number four: Please state the
10 total amount of damages stained by the plaintiff.
11 And there is a line, actual damages. Or a line,
12 actual damages and punitive damages.

13 I instruct you, ladies and gentlemen,
14 that should you decide that the plaintiff is
15 entitled to damages, you are to award the full
16 measure of damages you find appropriate in your
17 fact-finding province. You are to make no attempts
18 to reduce any amount of damages by any percentages
19 that you find in question number three.

20 Any adjustments or calculations are
21 matters of law for the Court and you should not
22 concern yourselves with that. I reinforce, that if
23 you should find that damages are appropriate, you
24 are to award the full measure of damages that you
25 find appropriate in the fact-finding province and

1 you are to make no attempt to reduce any damages by
2 any percentages that you find in question number
3 three.

4 And then there is a place for the
5 foreperson to sign and date the form.

6 Again, ladies and gentlemen, your
7 verdict must be unanimous which means all 12 of you
8 must agree.

9 Madame Forelady, it is your
10 responsibility to fill out the verdict form. It is
11 also your responsibility to sign and date the form.
12 Once the jury has reached a unanimous verdict,
13 knock on the door and advise the bailiff that the
14 jury has reached a unanimous verdict.

15 It is also your responsibility that if
16 the jury has any questions, to write those out in
17 your notebook, sign and date the note, knock on the
18 door and advise the bailiff that the jury has a
19 question.

20 Any notes that you provide to the Court
21 should never provide a numerical breakdown of the
22 jury, as your deliberations are secret and they
23 should remain within the confines of the jury room.
24 So none of that should ever be enumerated outside
25 of your 12.

1 Ladies and gentlemen, if you have any
2 questions during deliberations, please know there
3 would be a delay in our response. We are not
4 ignoring you, but the law mandates a process that
5 we must follow in answering your question. So know
6 if you have a question, we are following that
7 procedure and then we will answer your question
8 shortly. Please don't think that we are ignoring
9 you in any way.

10 Again, ladies and gentlemen, your
11 verdict must be unanimous, which means all 12 of
12 you must agree.

13 I have some brief matters of law that I
14 have to take up with counsel that may require
15 further instruction or clarification of an
16 instruction; however, if there is no further
17 instruction, we will send in the evidence, along
18 with the verdict forms and notepads, and at that
19 time, you will be allowed to begin your
20 deliberations.

21 So for now you need to leave your
22 notepads on the banister or in your seats and do
23 not yet begin your deliberations. Once I have
24 completed these matters of law, we will allow you
25 -- advise you when you may begin your

1 deliberations.

2 Also, while you're deliberating, if
3 anyone wants to go get air, let the bailiffs know.
4 They will escort you downstairs for that purpose,
5 but be aware, you cannot deliberate when any member
6 of the panel is absent. If you would go with the
7 bailiffs please. Do not begin your deliberations.

8 (Jury out, 2:43 p.m.)

9 THE COURT: You can take your seats.
10 Any exception from the plaintiff?

11 MR. BOLES: No, Your Honor.

12 THE COURT: Any from the defense?

13 MR. COULTER: No, ma'am.

14 THE COURT: Can you all make sure that
15 all of the evidence is in place for it to be sent
16 back? You-all can go ahead and get their notebooks
17 for me.

18 (Jury deliberating 2:45 p.m.)

19 (Back on the record 3:28 p.m.)

20 THE COURT: We have a verdict.

21 Anything before we bring in the jury?

22 MR. BOLES: No, ma'am.

23 MR. COULTER: No, ma'am.

24 (Jury in, 3:28 p.m.)

25 THE COURT: You may be seated.

1 Madame Forelady, is it correct that the
2 jury has reached a verdict?

3 FORELADY: Yes.

4 THE COURT: Give the verdict form to
5 the bailiff please.

6 Doretta McHugh, as the personal
7 representative of the estate of Daniel Lee Coy,
8 2017-CP-08-2153. As to the negligent cause of
9 action special interrogatory percentages required
10 to total 100 percent. Do you find that the
11 defendant was negligent and that such negligence
12 proximately caused the plaintiff's injuries? The
13 verdict is no.

14 Therefore judgment will be entered in
15 favor of the defendant.

16 It is signed and dated by the
17 foreperson.

18 Ladies and gentlemen, if this is your
19 verdict, please indicate by raising your right
20 hand.

21 THE JURY: (Raised hands)

22 THE COURT: Let the record reflect that
23 all 12 indicated by raising their right hand.

24 You may put your right hands down.

25 Are there any requests to poll the

1 jury? From the plaintiff?

2 MR. BOLES: Please, Your Honor.

3 THE COURT: Ladies and gentlemen, we
4 are going to poll the jury. I'm going to ask you
5 two questions; is this your verdict and is it still
6 your verdict. And all you have to do when I call
7 your juror number is to raise your right hand.

8 Katherine Kinder, is this your verdict?

9 A JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 A JUROR: Yes.

12 THE COURT: Roger Rice, is this your
13 verdict?

14 A JUROR: Yes.

15 THE COURT: Is this still your verdict?

16 A JUROR: Yes.

17 THE COURT: Deena -- and I know I'm
18 going to mutilate your name. Say it for me.

19 A JUROR: Matayabas.

20 THE COURT: Is this your verdict?

21 A JUROR: Yes.

22 THE COURT: Is this still your verdict?

23 A JUROR: Yes.

24 THE COURT: Sharon Sawyers, is this
25 your verdict?

1 A JUROR: Yes.

2 THE COURT: Is this still your verdict?

3 A JUROR: Yes.

4 THE COURT: Marvin Hamm, is this your
5 verdict?

6 A JUROR: Yes.

7 THE COURT: Is it still your verdict?

8 A JUROR: Yes.

9 THE COURT: Mary Ludwig, is this your
10 verdict.

11 A JUROR: Yes.

12 THE COURT: Is this still your verdict?

13 A JUROR: Yes.

14 THE COURT: James Geraghty, is this
15 your verdict?

16 A JUROR: Yes.

17 THE COURT: Is this still your verdict?

18 A JUROR: Yes.

19 THE COURT: Randal Drew, is this your
20 verdict?

21 A JUROR: Yes.

22 THE COURT: Is this still your verdict?

23 A JUROR: Yes.

24 THE COURT: Donna Nelson, is this your
25 verdict?

1 A JUROR: Yes.

2 THE COURT: Is this still your verdict?

3 A JUROR: Yes.

4 THE COURT: Robert Thieme, is this your
5 verdict?

6 A JUROR: Yes.

7 THE COURT: Is this still your verdict?

8 A JUROR: Yes.

9 THE COURT: Joy Barley, is this your
10 verdict?

11 A JUROR: Yes.

12 THE COURT: Is this still your verdict?

13 A JUROR: Yes.

14 THE COURT: And, Jefferson Rosser, is
15 this your verdict?

16 A JUROR: Yes, ma'am.

17 THE COURT: Is this still your verdict?

18 A JUROR: Yes, ma'am.

19 THE COURT: You can put your right
20 hands down. The verdict -- the jury has been
21 polled and the verdict stands.

22 Ladies and gentlemen, we thank you for
23 your time and your attention to this case. I know
24 that jury service may seem thankless. I hope that
25 it has been educational for you. People laugh when

1 I say it's nothing like Judge Judy. I mean it
2 sincerely.

3 I'll tell you, my mother is a fan of
4 Judge Judy. If I call at a certain time of day,
5 she will say, you know I'm watching Judge Judy and
6 I can't talk to you right now. And she has a child
7 that's a judge. She knows it's not real, but she
8 finds it entertaining. So while it is very
9 entertaining, it is nothing like the real process.

10 I hope you know how very valuable your
11 service to us is. Our system -- and I don't always
12 think that people understand the gravity of that,
13 of what we have available to us in the United
14 States, but our system is the only system where 12
15 citizens listen to the facts of the case, apply the
16 law to those facts and render verdicts.

17 So I hope it has been educational for
18 you, and I hope you know how very valuable your
19 service is to us.

20 True to my word, this was the last case
21 of the week so you are excused for the remainder of
22 the week.

23 Does anyone need a jury excuse before
24 they leave?

25 The bailiff has them.

1 We will mail your checks to you, but he
2 has your work excuses for you.

3 You are welcome to discuss this case if
4 you would like. Sometimes lawyers just want your
5 commonsense feedback. That's why we call it the
6 practice of law because it's never quite perfected.

7 You are excused with the Court's
8 profound thanks.

9 (Jury dismissed, 3:33 p.m.)

10 THE COURT: Do you have any posttrial
11 motions?

12

13 MR. BOLES: Motion for verdict not
14 withstanding the verdict, Your Honor. I'm not
15 sure --

16 THE COURT REPORTER: I can't hear you.

17 THE COURT: Please close that door for
18 me.

19 (Complies)

20 THE COURT: Let's start over. Any
21 posttrial motions from the plaintiff?

22 MR. BOLES: Judgment -- plaintiff would
23 make a judgment notwithstanding the verdict in
24 favor of the plaintiff obviously. There must have
25 been some confusion on that jury verdict form,

1 confusion of the facts in the case, but the only
2 reasonable inference was that liability lies with
3 the defendant.

4 We ask that you enter judgment in favor
5 of the plaintiffs in the amount pled.

6 Thank you.

7 THE COURT: You're welcome.

8 Mr. Coulter, would you like to respond?

9 MR. COULTER: Judge, I'm not going to
10 go through the full closing, but I clearly think
11 there was argument to be made that there was no
12 defendant that was negligent in the case, and I
13 think the jury actually did return the proper
14 verdict.

15 THE COURT: I can find no basis to
16 grant relief for a new trial based on the judgment
17 notwithstanding the verdict. Credibility and
18 believability is an issue solely within the
19 province of the jury. While I'm the instructor the
20 law, they are the finders of the facts.

21 And there are two different -- there
22 are two versions of the events. The jury had the
23 option to believe the eyewitnesses propounded by
24 the plaintiff that this incident in fact happened,
25 or they had the option to disbelieve those

1 witnesses, to believe that somehow their testimony
2 was actuated by some prejudice because they were
3 friends with the plaintiff in this case.

4 It is not for me to determine or to
5 contradict their findings of fact where there is
6 ample evidence to support their finding of facts in
7 this case. It was either one or the other.

8 They believed the plaintiff's version
9 or they believed the defense version; in other
10 words, that no John Doe existed, that he was -- he
11 wasn't an experienced rider and that the bike
12 halted and that he was the cause of his own injury.
13 Apparently, that is what they believe.

14 I can find no instance in the record
15 that this verdict was actuated by passion,
16 prejudice, or caprice or some evidence outside of
17 the proceedings, and as such I'm constrained to
18 deny your motion where there is any evidence to
19 support the verdict; therefore, the motion is
20 denied.

21 We will do a Form 4. If you look
22 online in about 48 hours, you should have a copy of
23 the order.

24 You all have a great weekend. Have a
25 great holiday season.

1 (These proceedings were concluded at
2 3:36 p.m.)
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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 18th day of September, 2020 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Carol Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

20

21

22

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Doretta McHugh, as Personal
Representative of the Estate of
Daniel E. Coy,

CASE NO.: 2017-CP-08-02153

Plaintiff,

v.

**MOTION FOR NEW TRIAL OR TO ALTER
OR AMEND THE JUDGEMENT**

John Doe,

Defendant.

PLEASE TAKE NOTICE that the above-named Plaintiff, by and through undersigned attorney, shall and hereby does, move before this Honorable Court for an Order for a new trial or alternatively setting aside the judgement entered in the above-captioned. This motion is made pursuant to South Carolina law, including but not limited to, Rule 59 of the South Carolina Rules of Procedure, and Rule 404 South Carolina Rules of Evidence.

This motion shall be supplemented with a memorandum in accordance with South Carolina law.

BOLES LAW FIRM, LLC

November 19, 2019
Charleston, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Doretta McHugh, as Personal
Representative of the Estate of
Daniel E. Coy,

CASE NO.: 2017-CP-08-02153

Plaintiff,

v.

MOTION FOR RECONSIDERATION

John Doe,

Defendant.

Plaintiff, by and through the undersigned counsel, will move before the Honorable Deadra L. Jefferson, ten (10) days after service hereof or as soon thereafter as counsel may be heard, to reconsider its Order Denying Plaintiff's Motion for New Trial, lift said Order and set a hearing date on the underlying Motion for New Trial.

The trial in this matter was held during the week of November 11th, 2019. A verdict was rendered in favor of Defendant. On November 19, 2019, the Plaintiff filed a Motion for New Trial Or To Alter or Amend the Judgment. On November 27, 2019, Plaintiff received notice of Judge Jefferson's Order Denying Plaintiff's Motion for New Trial.

This Motion to Reconsider is based upon the fact that Plaintiff had not yet had the chance to supplement their Motion for New Trial before a judgment was rendered.

WHEREFORE, Plaintiff respectfully requests this Court to reconsider its Order Denying Plaintiff's Motion for New Trial, lift said Order and set a hearing date on the underlying Motion for New Trial.

December 2, 2019
Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2017-CP-08-02153
	)	
DORETTA MCHUGH, AS P.R. OF	)	
THE ESTATE OF DANIEL E. COY,	)	
	)	
Plaintiff,	)	NOTICE OF INTENT TO APPEAL
	)	
vs.	)	
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

Plaintiff, by and through undersigned counsel, files this notice of intent to appeal the decision of the Court of Common Pleas rendered on April 29, 2020 denying Plaintiff's Motion for Reconsideration, denying Plaintiff's request to read Plaintiff's Voir Dire at jury selection, denying Plaintiff's Motion for Judgment Notwithstanding the Verdict, denying Plaintiff's Motion for Directed Verdict, Denying Plaintiff's Motion to Reconsider, in admitting evidence, over Plaintiff's objections, of Plaintiff's prior conduct to prove comparative negligence, and in such particulars as will be further discussed in Plaintiff's Initial Brief.

WHEREFORE, Plaintiff believes the relief requested herein is necessary for the preservation of justice, protection of her due process rights, and preservation of her right to appeal.

[Signature page to follow]

Respectfully submitted,

BOLES LAW FIRM, LLC

s:/Daniel C. Boles

Daniel C. Boles

SC Bar # 79135

Attorney for Plaintiff

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May 6, 2020
Charleston, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2017-CP-08-02153

Doretta McHugh, as Personal)
Representative of the Estate of)
Daniel E. Coy,)

Plaintiff,)

vs.)

John Doe,)

Defendant.)
_____)

**PROGRESSIVE DIRECT INSURANCE
COMPANY'S RESPONSE TO
PLAINTIFF'S MOTION FOR NEW
TRIAL OR TO ALTER OR AMEND
JUDGMENT**

The defendant requests that this Court deny the plaintiff's Motion a for New Trial or Alter or Amend the Judgment. First, the plaintiff's makes her Motion pursuant to South Carolina Rules of Civil Procedure Rule 59 and Rule 404 of the South Carolina Rules of Evidence. However, the plaintiff fails to state what grounds the Court should base granting a New Trial pursuant to these rules. Nevertheless, the defendant will address the standard for granting of a New Trial below.

Granting or denying a motion for a new trial based on an occurrence during trial is a matter addressed to the sound discretion of the trial judge. Watson v. U. S. Rubber Co., 260 S.C. 129, 194 S.E.2d 395 (1973). The ruling of the trial judge in this regard will not be disturbed, unless it is shown that there was an abuse of discretion amounting to an error of law. Watson v. U. S. Rubber Co., 260 S.C. 129, 194 S.E.2d 395 (1973). However, error, without prejudice, is not a basis for granting a new trial. State v. Greene, 255 S.C. 548, 180 S.E.2d 179 (1971). While granting a motion for a new trial *nisi additur* rests within the sound discretion of the trial Court, substantial deference must be afforded to a jury's determination of damages. Green v. Fritz, 356 S.C. 566, 590 S.E.2d 39 (Ct.

App. 2003). Additionally, as a general rule, the shortness of time taken by a jury in reaching its verdict has no effect upon the validity of the verdict, for purposes of a motion for a new trial. Youmans ex rel. Elmore v. South Carolina Dept. of Transp. (S.C.App. 2008) 380 S.C. 263, 670 S.E.2d 1, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 386 S.C. 640, 690 S.E.2d 582.

This case involved a motorcycle accident involving the fictitious driver, John Doe. This matter was tried before 12 jurors in the Berkeley County Court of Common Pleas on November 12 through November 13, 2019. The jury heard testimony from the plaintiff's decedent, alleged eyewitnesses to the accident, and the plaintiff. There was compelling testimony which revealed that John Doe was not involved in the subject accident. The jury deliberated for approximately 30 minutes and returned a verdict in favor of the defendant. There is no evidence of motivation by caprice, passion, or prejudice on the part of the jury, which gives grounds for a new trial. Green, 356 S.C. 566, 590 S.E.2d 39 (Ct. App. 2003). Essentially, the jury did not believe that this accident occurred as described by the plaintiff. At a minimum, the plaintiff simply did not meet her burden of proof. For these reasons, the plaintiff's Motion for a New Trial or alter or amend the judgment should be denied.

(Signature Page to Follow)

By: s/Michael T. Coulter

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Attorneys for Progressive Direct Insurance Company

Greenville, South Carolina
November 25, 2019

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Jul 06 2021

SC Court of Appeals

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 5, 2021

s:/Daniel C. Boles

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Attorney for the Appellant

Doretta McHugh

CERTIFICATE OF SERVICE

I, Daniel C. Boles, attorney for the Appellant do hereby certify that on July 5, 2021, I served a copy of Appellant's Supplemental Record on Appeal on counsel for Respondent, via U.S. Mail, first class, postage prepaid to the following address:

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Clarkson Walsh Coulter
P.O. Box 6728
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mcoulter@clarksonwalsh.com

s:/Daniel C. Boles

Daniel C. Boles