

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

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Case No. 07-CP-23-0779

S.C. Supreme Court

Kenneth B. Jenkins,..... Respondent,

v.

Benjamin Scott Few, and
Few Farms, Inc.,..... Petitioners.

APPENDIX

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1 compete with somebody that had two or three trucks
2 that were bigger, haul bigger loads, and stay in
3 business.

4 I decided if I was going to stay in business
5 and be able to stay in business, I had to have a
6 truck that was bigger and haul more and a
7 determination that I was not going to sit down and
8 roll over.

9 Q Your Ford F-700, did you consider it to be reliable
10 in late 2004?

11 A Late 2004? No, it wasn't reliable at all. It
12 would barely pull itself at that time.

13 Q Have you gotten an estimate on what it would cost
14 you to rebuild the engine?

15 A The estimate I got was in -- yeah, it was in 2004.

16 MR. CHILDS: Objection, hearsay.

17 THE COURT: If you want to try to lay more
18 foundation, you can, but I would have to sustain the
19 objection at this time.

20 MR. SUGGS: We will let someone else testify
21 to it.

22 BY MR. SUGGS:

23 Q Ken, let's talk about something else. Did your
24 interaction with Scott Few change at all after
25 February 2004?

1 A Yes.

2 Q Explain to the jury how his behavior changed, if at
3 all.

4 A Well, we haul fertilizer from the same company.
5 When I would pull into that plant and he was there
6 or in the office, I would go in one door, and he
7 would go out the other door. He would never look
8 me in the face and hasn't to this day made eye
9 contact with me.

10 I was suspicious of his actions because prior
11 to this, you would go and get in line to be loaded
12 with fertilizer, and you would be waiting and you
13 would always talk with each other, have something
14 to say.

15 I had worked a couple of jobs with him
16 previous to this time, and I would be going down
17 the road and meet him, and he would give me the
18 bird. So I feel there was a big change in his
19 personality at that time.

20 Q How do you feel about the fact that someone put
21 sugar in your gas tank and tried to take you out of
22 the business?

23 A Repeat that.

24 Q How do you feel about the fact that someone put
25 sugar in your gas tank and tried to take you out of

1 business?

2 A I was shocked at first. I'm not that kind of
3 person so I can't visualize doing that to someone
4 else, disbelief. It was a coward act, greed. You
5 had to go to the bottom of the barrel to scrape up
6 something like that to do.

7 It just -- it was something that was just --
8 I'm not used to it. I'm a registered land surveyor
9 also, and my ethics is for the public interest. We
10 have a code of ethics that we try to honor, and I
11 try to do that in all my business, and it was kind
12 of hard to take.

13 Q Ken, do you think Scott Few could do this again to
14 you or someone else?

15 MR. CHILDS: Objection, calls for speculation.

16 THE COURT: Sustained.

17 BY MR. SUGGS:

18 Q Do you believe that Scott Few's actions affect the
19 public?

20 MR. CHILDS: Objection, calls for speculation.

21 MR. SUGGS: Judge, I respectfully disagree. I
22 don't think it's speculative.

23 THE COURT: I will overrule the objection.

24 A Repeat the question, please.

25 Q I'm sorry, Ken. Do you believe that Scott Few's

1 actions affect the public?

2 A Yes. And why I believe that is in my business and
3 the surveying business prior to moving back in 1997
4 or '96, that we look out for the public interest.
5 That's one of our main codes of ethics is to look
6 out for the public.

7 Like I said, I apply this today and I feel
8 like if we didn't have this -- what am I trying to
9 say -- unfair trade practice, that people could put
10 you out of business. Then if it's not going to
11 be -- the public is going to suffer from it. He
12 will have a monopoly over it, and the public will
13 suffer from it.

14 Q Do you think it's important for there to be a
15 competitive market?

16 A Oh, absolutely.

17 Q Ken, give me one moment here to make sure I have
18 covered everything I need to. Just hold on one
19 moment.

20 (Pause).

21 BY MR. SUGGS:

22 Q Ken, have you seen Johnny Lindsey in the last
23 couple of years?

24 A I have seen Johnny on several occasions. I didn't
25 know -- I lived in another state for 30 years. So

1 I didn't know Scott Few. I knew his family. I
2 knew Johnny's family. I didn't have any personal
3 contact with them until I got back in '96. So I
4 have seen Johnny on a couple of occasions since I
5 have been back.

6 Q Since he gave a deposition and became involved in
7 this lawsuit, did you have an occasion to visit him
8 in the hospital?

9 A Yes, I did.

10 Q Why did you visit him in the hospital?

11 A Well, at that time I think we were fixing to
12 have -- like he testified, he didn't have a phone
13 at times, and he only lives four miles away. I
14 drove up to his place to see if he had gotten his
15 subpoena or his paperwork to testify.

16 I think at that time he was due to come up for
17 a deposition, and I heard that he was in a bad
18 accident in a vehicle and was in serious condition
19 at the hospital. I was at the hospital seeing
20 someone else, and I dropped in and spoke with him.

21 Q Thank you. If you will answer questions for
22 Mr. Childs, I would appreciate it.

23 A Yes, sir.

24 THE COURT: Cross examination.

25 MR. CHILDS: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. CHILDS:

3 Q Mr. Jenkins, did you have your Ford truck parked at
4 Steven's Garage during this time?

5 A Yes, the first time, yes.

6 Q The first time that Mr. Lindsey says he sugared the
7 tank, it was parked at Steven's Garage?

8 A Yes.

9 Q And so it wasn't parked at your mother's house, was
10 it?

11 A No, it wasn't.

12 Q It was parked at Steven's Garage for a reason,
13 wasn't it?

14 A Yes.

15 Q And the reason it was parked at Steven's Garage is
16 it needed work?

17 A Yes.

18 Q And you also had a fellow, Roy Budenot (phonetic)?

19 A Budenot, yes.

20 Q He is your mechanic?

21 A He is not my mechanic. He is a, I guess you would
22 say, a farm mechanic that assisted me in taking the
23 fuel tank off. It's not a job that one person can
24 do. So he assisted me with that, yes.

25 Q Does he work at Steve's Garage?

1 A No.

2 Q So when you started having trouble with your truck
3 after you had cleaned out the sugar from the gas
4 tank, you didn't go to Mr. Budenot to fix your
5 truck, did you, to have it examined?

6 A Examined on the first time? I'm sorry, say it
7 again.

8 Q After you had gone through the routine of cleaning
9 out the fuel filters and the tank.

10 A The first time?

11 Q Right. Well, did you do it twice?

12 A Yes.

13 Q I'm trying to understand. It seemed to me like the
14 first time you changed the fuel filter, and the
15 next day you had to change it again?

16 A Yes.

17 Q Are you saying something happened between those two
18 days?

19 A No. I'm saying that after that second time, I
20 drained the fluid out.

21 Q Right.

22 A Yes.

23 Q So after that you didn't ever have anymore
24 instances of having sugar or having your fuel
25 filter clogged up?

- 1 A You asked me two questions.
- 2 Q Okay. You changed two fuel filters, correct?
- 3 A I changed them three or four times.
- 4 Q Three or four times?
- 5 A I would change them at least three or four times
6 during that period.
- 7 Q But it started back fine for awhile? Your truck
8 worked fine for awhile?
- 9 A I still don't understand.
- 10 Q After you went through all the changing of the
11 filters --
- 12 A Yes, I got you now.
- 13 Q -- your truck started operating fine?
- 14 A Yes.
- 15 Q And then after awhile you started to have
16 backfiring and difficulty starting it?
- 17 A Yes.
- 18 Q And at that point you had it seen by absolutely
19 nobody, until 2008?
- 20 A I didn't have it looked at by anybody because I
21 didn't know that sugar was put it in the second
22 time until November of '06. I was having problems
23 with it, but I didn't know that he had sugared it
24 twice.
- 25 Q So Johnny Lindsey didn't tell you that he sugared

1 it twice?

2 A He said it in his testimony a while ago.

3 Q But you never had a clogged up filter but once,
4 right? When do you think he sugared it again?

5 A I don't know. I didn't know until -- I didn't know
6 it until November the 8th that it was sugared
7 twice.

8 Q According to Johnny Lindsey?

9 A Not according to Johnny Lindsey. Well, you are
10 asking me to say something that I don't think I can
11 say it.

12 Q I won't ask you to say it then. But you only had a
13 problem with a clogged fuel filter, right?

14 A Yes.

15 Q A series of problems ongoing and that resolved.
16 You didn't have two episodes of clogged up --

17 A No.

18 Q I'm trying to understand the scenario of events
19 here. You suspect somebody put sugar in your fuel
20 tank. You only suspected that happened once based
21 on how your vehicle operated?

22 A Yes, based on the fuel system.

23 Q Right. And after that your truck ran okay for
24 awhile, started to backfire, and you had difficulty
25 starting it?

1 A Yes, sir.

2 Q But you did not take the filters off again or find
3 any --

4 A I changed filters probably every couple of weeks
5 when I am running in it.

6 Q Right. But you didn't find anymore sugar in it?

7 A I didn't look to be honest with you because I
8 thought everything was cleared up.

9 Q You don't recall finding sugar in it after that?

10 A I wasn't looking for it.

11 Q You weren't looking for sugar in your gas tank
12 after somebody had already sugared it once?

13 A No, I wasn't.

14 Q Nevertheless, you never took it to anybody, any
15 mechanic or anybody, to have it examined until
16 April of 2008?

17 A I had Steve's Garage take the carburetor off in
18 September of '04, and I had that carburetor rebuilt
19 and he put it back on.

20 Q Okay. And did Steve find any sugar in the
21 carburetor?

22 MR. SUGGS: Objection, that calls for hearsay.

23 THE COURT: Overruled.

24 A He didn't -- I took it to a rebuilding plant, a
25 battery and electric over here in Greenville that

1 rebuilt the carburetor.

2 Q Did you see any sugar in the carburetor?

3 A I didn't tear it down.

4 Q So you don't know anybody who saw sugar in the
5 carburetor?

6 A On the second time? Are you talking about this
7 time?

8 Q Ever.

9 A No, I didn't -- we didn't go into the carburetor
10 the first time, but we had to go into the
11 carburetor the second time. I don't know as you
12 would see sugar in the form of granulated sugar
13 when it got to that point in the carburetor.

14 Q You saw it in the fuel filter?

15 A But to get into the carburetor it would be in a
16 liquid form.

17 Q So you had the carburetor done, but you don't know
18 if that has got anything to do with this?

19 A I mean, if you drive a vehicle, it don't take a
20 rocket scientist to know that something ain't
21 right.

22 Q Right. But it was a while before you had that
23 difficulty, and then you had the carburetor
24 rebuilt, but you can't say that is related to this
25 thing, the sugar in your gas tank, because you

1 don't know. You are not a mechanic, are you?

2 A I didn't know it until I found out that sugar was
3 put in it for the second time.

4 Q But you don't know it from fixing the carburetor?

5 A I'm sorry?

6 Q You don't know it from fixing the carburetor?

7 A No, we weren't looking for sugar.

8 Q So have you looked for sugar since?

9 A I parked that truck. I had no reason to look for
10 anything once I purchased the other truck.

11 Q After you found out and you believe that it was
12 sugared twice, it seems to me like you hadn't
13 cleaned out the gas tank except once.

14 A Well, it had been sitting for two years. What are
15 you going to do after two years? There is nothing
16 I can do to the truck two years later when you find
17 out it's something that had been sugared.

18 Q Except drain the sugar out of the gas tank?

19 A What good would it be? The engine has got to be
20 fixed, too. It ain't going to hurt it sitting
21 there now.

22 Q Wouldn't it be important to know whether or not
23 there was sugar in the gas tank still?

24 A Not to me.

25 Q So you had your vehicle taken out to Delta Power

1 Systems on Cedar Lane Road on April the 24th,
2 2008?

3 A Yes.

4 Q And do you know if the vehicle's engine was opened?

5 A My understanding is it wasn't.

6 Q So nobody has ever looked inside your vehicle's
7 engine ever?

8 A I don't think so. When I took the truck over
9 there, the mechanic had the option to determine
10 what he felt was damage to the truck, and he had
11 the option to tear it down or take the heads off.
12 That was up to him.

13 Q And you never had it tore done and had the heads
14 taken off?

15 A I haven't had it torn down, no.

16 Q This 1971 Ford F-700, when did you buy it?

17 A I purchased it the end of '97.

18 Q How much did you pay for it?

19 A Somewhere in the neighborhood -- well, for the
20 truck?

21 Q Yes, sir.

22 A When I purchased it, I purchased the business, and
23 the truck came along with it. Part of it was all
24 the records, the client list, and the vehicle. I
25 paid in the neighborhood -- I don't know the exact

- 1 number -- but I think it's around \$17,000.
- 2 Q For the whole business?
- 3 A For the whole business.
- 4 Q Including the truck and some other equipment?
- 5 A No other equipment, just the records.
- 6 Q What value did you put down for the price of the
7 truck?
- 8 A I don't recall a value, but somewhere around 8 or
9 \$10,000.
- 10 Q So you are asking for \$38,000 for a new truck?
- 11 A The \$8,000 is only a small amount that I've got
12 into that truck. I think I testified just a few
13 minutes ago of rebuilding the engine, doing and
14 completely overhauling everything on the truck. So
15 it's more than the 8 to \$10,000 I had in it.
- 16 Q Well, is it \$38,000 that you've got in it?
- 17 A It could be.
- 18 Q It just happens to be the same amount you paid for
19 your new truck?
- 20 A Yes.
- 21 Q The new truck --
- 22 A I wouldn't have bought that new truck if it hadn't
23 been for this incident.
- 24 Q You wouldn't have bought a bigger truck if it
25 hadn't been for this incident?

1 A I wouldn't have bought another truck period. I was
2 a couple of years away from retirement, and I don't
3 think anybody who wants to retire would want to put
4 out that kind of money for nothing.

5 Q Well, did you need a bigger truck?

6 A I felt I needed a bigger truck if I was going to be
7 competitive. If somebody is going to try -- if
8 somebody is sitting there with two or three trucks
9 that are bigger, better trucks than what you have
10 got, it's hard enough to make ends meet without
11 somebody damaging your truck.

12 Q So you are saying Mr. Few had two or three trucks
13 bigger and larger than yours at the time of this
14 incident?

15 A I know of two, yes.

16 Q Did that bother you?

17 A No. It bothered me after he did the damage he did
18 because I knew what -- he had accomplished what he
19 had set out to do, to put me out of business.

20 Q Take you out of operation for eight days?

21 A He meant to take me out of business for good.

22 Q By sugaring your gas tank?

23 A Well, yes.

24 Q Surely somebody can come up with a better idea than
25 that.

1 A He should have.

2 Q Your gross sales for 2004 was \$116,000?

3 A I would have to look. I don't recall.

4 MR. CHILDS: Let me mark this as Defendant's
5 Exhibit Number 1.

6 (Defendant's Exhibit Number 1 is marked for
7 identification).

8 BY MR. CHILDS:

9 Q (Hands to witness).

10 A Yes.

11 Q So you made \$116,000 of gross sales after you were
12 almost put out of business?

13 A And that was a slow year, too.

14 Q Okay. How much was your profit in 2004?

15 A Well, I'm reading off of my profit and loss for
16 business, Schedule C. My profit for tax purposes
17 was \$86.

18 Q Let me show you your profit and loss for business
19 from 2005, Schedule C.

20 MR. CHILDS: Let me mark that as Exhibit 2.

21 (Defendant's Exhibit Number 2 is marked for
22 identification).

23 BY MR. CHILDS:

24 Q Do you recognize that?

25 A Yes.

1 Q What were your gross sales for 2005?

2 A A hundred and twenty-four.

3 Q And what was your profit for 2005?

4 A 8,633.

5 Q So this incident actually from 2004 your business
6 has improved in 2005?

7 A It was improving every year.

8 MR. CHILDS: I would like to move these into
9 evidence, Your Honor.

10 MR. SUGGS: May I see them?

11 (Attorneys confer).

12 MR. SUGGS: Without objection.

13 THE COURT: They are in evidence.

14 (Defendant's Exhibits Number 1-2 are received
15 into evidence).

16 BY MR. CHILDS:

17 Q Mr. Jenkins, I asked you in your deposition about
18 this eight days of lost of operation that you say
19 you had. This was a time period from February 24
20 to March 24; is that correct?

21 A I think so, yes.

22 Q Did it rain from February 24 to March 24?

23 A I don't recall.

24 Q Do you work on days it rains?

25 A You can.

1 Q Some days you can.

2 A And some days you can't.

3 Q So in these records that you have, were there some
4 days that you were out of work because of rain?

5 A I don't recall being out of work for any rain.

6 Q You have testified that obviously you must have
7 missed some business because you could not
8 immediately respond to inquiries from people who
9 needed fertilizer. I think you explained that
10 based on planting.

11 A Based on what?

12 Q Planting, planting crops.

13 A It's not only based on planting crops. That's just
14 one of them.

15 Q That was the example you used. But you said when
16 they plant their corn -- and I caught this -- when
17 they plant their corn, they want to have their
18 fertilizer in; right?

19 A Yes.

20 Q Who plants corn in February?

21 A That was an example I was giving --

22 Q Who plants crops in February?

23 MR. SUGGS: Your Honor, if he would allow the
24 witness to answer.

25 THE COURT: Let him explain.

1 A You plant wheat. You plant soybeans. You can
2 plant -- that was one of the examples of it. I
3 have one farmer that wants his fertilizer in
4 January. Every year he wants it in January. I
5 have some that wants it in February.

6 Q Right.

7 A So it was giving an example of it. It's not
8 something that's affixed. It's when they wanted
9 it. If they decide they are going to need it on
10 their grass, the weather is warm. Especially when
11 it turns warm and the sun is shining and the grass
12 turns green, actually everybody wants it.

13 Q Right. But that wouldn't have been February or
14 March?

15 A It will be in February -- what, the grass turning
16 green?

17 Q Yes, sir.

18 A Oh, yes, it is.

19 Q You cannot identify a single customer that called
20 you during those eight days that you were down that
21 you could not service; isn't that correct?

22 A I didn't identify any, but it's a little hard to go
23 back two or three years later and try to identify
24 somebody that you missed. I know I had calls and I
25 told people I was down that didn't call me back,

1 that they went ahead and got somebody else to haul
2 it.

3 Q You know then?

4 A I couldn't give you a name, no, not four and a half
5 years later.

6 Q So you don't know exactly what business you missed,
7 you just know that you were down for eight days?

8 A I know if I wasn't down, I would have been hauling
9 those days.

10 Q If it wasn't raining?

11 A I don't recall any rain at that time.

12 Q You stated earlier and you talked about Mr. Few's
13 conduct toward you later on. You said he shot you
14 a bird?

15 A Yes.

16 Q Wasn't that after you had made public your opinion
17 that he had caused this two individuals,
18 Mr. Lindsey and Mr. Guest, to sugar your gas tank?
19 Didn't he know you were telling people that Mr. Few
20 has sugared your gas tank? Wouldn't he be upset by
21 that?

22 A We are now getting into -- I don't know how to
23 answer that.

24 Q Okay. You say there were no other problems between
25 you and Mr. Few before this happened?

1 A Not to my knowledge.

2 Q No problems afterwards?

3 A Pardon me?

4 Q No problems afterwards?

5 A I haven't spoke to the man afterwards.

6 Q This is your complaint that you filed in this
7 action, is it not?

8 A Yes.

9 Q And in this complaint do you not say that Mr. Few
10 informed your customers that you were a dishonest
11 businessman, as well as other defamatory comments?

12 MR. SUGGS: Your Honor, may I approach? May
13 we approach?

14 THE COURT: Sure.

15 (Whereupon there was a bench conference off
16 the record in the presence of the jury but out of the
17 hearing of the jury).

18 THE COURT: Ladies and gentlemen, we will take
19 about a five-minute break while we discuss this up here.
20 How about y'all do me a favor, too. When you are out
21 there if you will just elect someone to be the
22 foreperson of the jury.

23 Mr. Vangieson, I don't know how good your
24 chances are, sir.

25 JUROR: I'm not feeling real good.

1 (The jury retires to the jury room).

2 (Whereupon there was a bench conference off
3 the record).

4 THE COURT: You can bring the jury back in,
5 please.

6 (The jury returns to the courtroom).

7 THE COURT: Well, you made it.

8 JUROR: Thanks for your support, Your Honor.

9 THE COURT: And you agreed to it?

10 JUROR: He didn't have a choice?

11 THE COURT: I'm sure of that.

12 Yes, sir, Mr. Childs, you may resume.

13 **CROSS EXAMINATION**

14 BY MR. CHILDS:

15 Q Mr. Jenkins, I was asking you if you had not
16 alleged in your complaint that Mr. Few had informed
17 your customers that you were a dishonest man, as
18 well as other defamatory comments.

19 A Yes.

20 Q Is that your complaint?

21 A Yes.

22 Q So apparently there were some other problems that
23 you haven't testified about; is that correct?

24 A Not really because that particular item was
25 after -- repeat the question again.

1 Q Apparently there were some other problems that you
2 have not testified about, correct? You can say yes
3 or no to that, and then you can explain it.

4 A I don't recall any other problems, but maybe I can
5 clarify it after the next question or something
6 here. I don't quite understand where you are
7 coming from.

8 Q Okay. You apparently felt like at some point that
9 Mr. Few also was interfering with your customers?
10 Am I correct?

11 A This was after the fact of him throwing the bird at
12 me. This was later. Up to that point, there was
13 no problem. At one time there was no problem.
14 When I said that, he was flipping the bird at me
15 when I would meet him on the highway. At the later
16 point -- and I don't know the exact time -- I had
17 one customer tell me that he said that.

18 Q Now, let's continue with your complaint and let's
19 talk about it some more. You have alleged in your
20 complaint that Mr. Few voluntarily entered onto the
21 real property owned by you, as well as into your
22 property, which consisted of the Ford truck,
23 without your permission. What real property did
24 Mr. Few or anybody acting on his behalf enter? You
25 are suing him for trespass. Let's be clear about

1 that. The second cause of action --

2 A When Mr. Lindsey entered my property or my mother's
3 property, which was in a life estate, that is what
4 is referred to in that.

5 Q I thought Mr. Lindsey entered Steve's Garage
6 property?

7 A No, he entered my mother's property the second
8 time.

9 Q Did he say that?

10 A Yes.

11 Q So are you suing on behalf of your mother?

12 A No. That property is -- I think it's a living
13 estate, and it's in my brothers' -- myself and my
14 two brothers' names.

15 Q Your mother is the life holder of the property?

16 A Yes.

17 Q And you have a remainder interest in that property
18 after she dies, correct?

19 A I'm not a lawyer. I don't know exactly the terms.
20 It was set up. The estate was set up.

21 Q But you didn't allege in this lawsuit that
22 individuals hired by and acting on behalf of the
23 Defendants voluntarily entered on the real estate
24 owned by your mother and you said by you?

25 A I felt like that I still own part of it is why it

1 was that way.

2 Q And you sued Mr. Few and Few Farms, Incorporated
3 for trespassing upon that real property?

4 A Yes.

5 Q What are your damages for that?

6 A The damages is the damage he did to my vehicle.

7 Q Okay. So there was no damage to your real property
8 or to your mother's real property?

9 A I think I gave in my deposition I don't know
10 because I did not know it was entered at that time.
11 I didn't know until two years later that they
12 entered the property.

13 Q According to Johnny Lindsey?

14 A According to the testimony, yes, sworn testimony.

15 Q Now, you have also sued Mr. Few and Few Farms,
16 Incorporated for wrongful conversion, and you have
17 alleged that by placing sugar in the fuel system of
18 the truck, they converted your truck to their own
19 use. Could you explain that please to this jury,
20 how they converted that truck to their own use?

21 MR. SUGGS: Judge, I believe that calls for a
22 legal conclusion. He is asking a lay person to explain
23 a legal concept that his lawyer pled, as Mr. Childs well
24 knows.

25 MR. CHILDS: I will rephrase it.

1 THE COURT: Go ahead.

2 BY MR. CHILDS:

3 Q Did Mr. Few ever use your truck?

4 A Mr. Few took control of that truck the moment he
5 put that sugar in it and I had no use of it.

6 Q Did Mr. Few use that truck for his own purposes?

7 A That was for his own purposes, to put me out of
8 business.

9 Q So you are saying that Mr. Few came in possession
10 of your truck at some point?

11 A I guess there is a fine line of what you call
12 possession, but he took possession of my truck
13 because I didn't have use of it, the moment he put
14 that sugar in it.

15 Q You have also sued Mr. Few and Few Farms,
16 Incorporated for conspiracy. You have alleged that
17 the conspiracy of these individuals, who I believe
18 to be Johnny Lindsey -- and are you saying there
19 was a second individual with Mr. Lindsey?

20 A I believe his testimony of it.

21 Q William Guest?

22 A Yes.

23 Q And because of the conspiracy, you suffered special
24 damages. What other damages have you suffered
25 because of their conspiracy that you have not

1 already testified about?

2 A I suffered the damage he did to my truck. I
3 suffered from the lost wages because the conspiracy
4 was to put me out of business.

5 Q By sugaring your gas tank?

6 A Yes.

7 Q Would not a more effective way of putting you out
8 of business be that if you are going to commit a
9 crime, to steal your truck, to burn it, to do
10 something else, as opposed to putting sugar in the
11 gas tank?

12 A Repeat the question.

13 Q Wouldn't there be a much more effective way of
14 doing those things?

15 A If you are smart enough, it probably would have
16 been, but I don't think he thought too well when he
17 did it.

18 Q You have alleged unfair trade practices in this
19 case?

20 A Yes.

21 Q And you have alleged that Mr. Few and Few Farms,
22 Incorporated, their acts or their alleged acts,
23 have an inverse impact on the public interest. Let
24 me ask you this. Did your prices go up because of
25 this?

- 1 A My prices of what?
- 2 Q That you charge the public?
- 3 A If they did, it was because the fertilizer prices
4 went up.
- 5 Q That wasn't my question. Did your prices go up
6 because of this, because of this sugar in your gas
7 tank? Did you charge more to the public?
- 8 A Did I charge more?
- 9 Q Yes, sir.
- 10 A No.
- 11 Q Do you have any evidence that Few Farms,
12 Incorporated got more business because of this?
- 13 A No.
- 14 Q Do you know if anybody got anymore business because
15 of this eight days that you weren't able to operate
16 your truck?
- 17 A Somebody got it.
- 18 Q But you don't know who?
- 19 A No.
- 20 Q And it didn't affect the prices that the consumers
21 pay?
- 22 A It didn't affect it at that time, no, but if I had
23 stayed out of the business, if he was successful,
24 it could have very well affected it.
- 25 Q Your one truck being out of business is going to

1 affect the price of fertilizer in the upstate of
2 South Carolina?

3 A Yes.

4 Q Have you done a market survey on that to figure
5 out --

6 A You don't have to, if there is only one person
7 hauling right up in the upstate.

8 Q Well, you are not the only person hauling in the
9 upstate.

10 A Right in this area we are.

11 Q You named three or four different people.

12 A But the three or four other people is in
13 Spartanburg County. There's three trucks that
14 Carolina Eastern has. There's two or three more
15 trucks that haul out of there.

16 They haul over into the area, say, into
17 Greenville County, but they don't very seldom come
18 into the upstate part. You take the ones in
19 Anderson, Gray Court, they get the Simpsonville
20 area. They get like the Dacusville. It's an
21 overlapping in there, but very seldom do they come
22 right up into the upstate.

23 Q Has any other fertilizer spreader gone out of
24 business in the past several years?

25 A There is one retired. I wouldn't know.

1 Q Did prices go up after he retired?

2 A I wouldn't know. I don't keep up with what they
3 charge.

4 MR. CHILDS: Hang on just one minute, Your
5 Honor.

6 THE COURT: Yes, sir.

7 (Pause).

8 MR. CHILDS: That's all the questions I have.

9 THE COURT: Redirect?

10 MR. SUGGS: Thank you, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. SUGGS:

13 Q Ken, you were just asked a bunch of complicated
14 questions about your complaint. Did you draft that
15 complaint?

16 A No, and that's why you were hired. You are the one
17 that drafted that complaint.

18 Q It was pretty good though, wasn't it?

19 A I thought it was.

20 Q Now, I want to talk to you a little bit about this
21 timeline just to make sure everything is clear. I
22 believe you testified earlier that you first
23 started experiencing problems with your truck on or
24 about February 24, 2004; is that true?

25 A That's correct.

1 Q How long did you experience it? What was the time
2 frame there? For how long did you continue to have
3 problems with your truck? You know what, I will
4 hand you Plaintiff's Exhibit 4.

5 A Okay. On the 24th, if I am correct on this, I
6 think that that was the first day that I had a
7 problem. The 25th was when I went out, and it was
8 the first time I discovered the sugar. On the 24th
9 and 25th, I went out and hauled only one load, and
10 I got a third of the day down. Then the 25th --

11 Q Let me stop you. That's the day you called -- what
12 did you do that day? Did you do anything to your
13 truck that day, on the 25th?

14 A No. That's when I went to these different
15 mechanics and auto places to try to find out how to
16 get the sugar out of the system.

17 Q Okay. Carry on. I apologize for interrupting you.

18 A On the 25th -- it would have been the 26th because
19 the 26th, 27th was probably when I was trying to
20 recollect here. That was when I went to Steve's
21 Garage. I went to another couple of mechanics.

22 I went to the two auto parts places, and
23 that's when I decided that I would try to drain the
24 tanks out, drain the fuel out, and see if I could
25 get the sugar out.

1 That ended up on a Saturday, the 28th. We had
2 Sunday. I didn't count it as a down time on
3 Sunday; which I could haul lime on Sunday even
4 though the fertilizer business is closed. Then on
5 the 1st, I hauled one load, and I was down again.

6 Q Why were you down again on the 1st?

7 A It still had sugar in it.

8 Q Is that when Roy Budenot helped you?

9 A I can't recall because I was down a half a day on
10 the 1st. I was down a full day on the 2nd, a full
11 day on the 3rd. Then I worked the 4th. I hauled
12 two loads.

13 I believe it was the 5th and 6th that Roy
14 helped me on it. I can't recall which one. I
15 believe it was this one because after this date was
16 when I started running again, on the 5th.

17 Q That's March 5th?

18 A 2004.

19 Q And you got back up and running on the 8th, right?

20 A Back up and running on the 8th. Then there was the
21 7th. That was on a Sunday.

22 Q There was a total of a little over eight days you
23 could not operate, correct?

24 A That's correct, not including any Sundays that I
25 probably could have if I had wanted to.

1 Q Now, Mister -- and I'm sorry I can't produce his
2 name -- Budenot?

3 A Budenot, yes.

4 Q The mechanic that came over to your shop.

5 A Yes.

6 Q Did he charge for his services?

7 A Yes.

8 Q What did you pay him?

9 A I would say probably \$80 or so. I think I paid him
10 about \$8 an hour. He was more of a farmer type
11 person, and he just did mechanic work on the side.
12 I had him to come over because unbolting a tank and
13 getting it off the truck I just needed some
14 assistance on it.

15 Q Did you spend about \$400 on the parts and
16 replacement filters and fuel lines?

17 A That 400-something dollars included replacing the
18 fuel that I had to throw away. It included oil,
19 refilling the oil, oil treatment, gas treatment,
20 and filters.

21 Q Now, Mr. Childs asked you a bunch of questions
22 about how do you know you have business, how do you
23 know you would have had anything to do. From the
24 time you got back up and running on March 8, 2004,
25 were you busy every day that month?

1 A Yes, I had 42 clients through this period of
2 2/24 to 3/25. That's 30 days.

3 Q So you were working?

4 A Every day.

5 Q You were asked a couple of questions about the
6 value of this spreader truck, and I believe you
7 testified that it was part of the business that you
8 purchased and that you put additional monies into
9 it. You are not telling the jury that this truck
10 is worth \$38,000?

11 A No.

12 Q But you spent \$38,000 on purchasing a replacement
13 truck, correct?

14 A That's correct.

15 Q And I believe if I understood your testimony
16 previously, that was because you no longer had
17 faith in your old truck, and it wasn't operating
18 correctly?

19 MR. CHILDS: Objection, leading the witness.

20 THE COURT: Sustained.

21 BY MR. SUGGS:

22 Q Do you believe your Ford F-700 truck is dependable
23 here today?

24 MR. CHILDS: Not proper redirect.

25 MR. SUGGS: Judge, I think he got into the

1 value of the Ford.

2 THE COURT: Yes, I overrule the objection.

3 BY MR. SUGGS:

4 Q Do you believe that this Ford F-700 is a dependable
5 truck today?

6 A As it sits now?

7 Q Right.

8 A Not as it sits now. It would have to have a lot of
9 money spent on it.

10 Q Is there a reason you haven't gone ahead and spent
11 that money?

12 A I couldn't see putting that amount of money in an
13 older vehicle at this time when I knew that I
14 couldn't be competitive, and I wanted to be
15 competitive. That's the decision I made at the
16 time, to purchase the other truck.

17 Q Ken, you were shown Defendant's Exhibits 1 and 2,
18 which are P&L statements or profit and loss. I
19 will tell you, I'm no economist. I made a D. in
20 accounting, and you are going to have to help me
21 out. Explain to the jury why your profit and loss
22 statements from 2004 and 2005 reflect such a
23 minimal profit.

24 A In 2004 I purchased the truck for about \$38,000.
25 I'm not an accountant myself. So I have a C.P.A.

1 that does my books. When I purchased the truck, he
2 deducted a \$24,000 write-off, \$24,343 write-off.

3 It's an I.R.S. Code 179 that you can legally
4 write-off when you reinvest equipment, reinvest
5 your profits in equipment, and that's what was
6 decided to do.

7 I think that the truck bed itself was
8 specially made by a company in Georgia, stainless
9 steel bed. If it's new, you can write it all off,
10 100 percent in one year.

11 On the truck, which was a used '99 truck, I
12 don't remember what the depreciation schedule put
13 it on, but it ended up on a depreciation Section
14 179 expense, which was 24,343. If I hadn't written
15 it off, that would have been a profit.

16 Q Ken, do you stand by your testimony earlier that
17 you were making \$720 a day during the time frame
18 that you were out of business?

19 A Yes.

20 Q Thank you.

21 THE COURT: Any recross?

22 MR. CHILDS: No, sir, Your Honor.

23 THE COURT: Thank you, sir. You may step
24 down.

25 Ladies and gentlemen, we are going to go ahead

1 and recess for the evening. Just be back in the jury
2 room at 9:00 o'clock in the morning. We will resume the
3 case at that time.

4 Don't talk about the case. Don't do any kind
5 of outside research. Remember you have to confine your
6 decision to the evidence you hear during the course of
7 this trial. So keep an open mind, and we will see you
8 in the morning.

9 (The jury is excused for the day at 5:12 p.m.)

10 THE COURT: See you in the morning. Thank
11 you.

12 (Whereupon the proceedings were concluded for
13 August 25, 2008).

14 (The follow proceedings were reported on
15 August 26, 2008).

16 THE COURT: Anything before we bring the jury
17 in?

18 MR. SUGGS: None from the Plaintiff, Your
19 Honor.

20 MR. CHILDS: No, sir, Your Honor.

21 THE COURT: Thank you very much. You can
22 bring them in, please.

23 (The jury returns to the courtroom at
24 9:05 a.m.)

25 THE COURT: Good morning, ladies and gentlemen

1 of the jury. We are going to resume now with the
2 presentation of the evidence.

3 Mr. Suggs, you can call your next witness.

4 MR. SUGGS: Thank you, Your Honor. May it
5 please the Court. The Plaintiff would call Juan
6 Faneytte, please.

7 JUAN FANEYTTTE, being
8 first duly sworn, testified as follows:

9 CLERK: State your full name for the record,
10 please, and spell your last name.

11 THE WITNESS: Juan Faneytte, F-A-N-E-Y-T-T-E.

12 CLERK: Thank you.

13 **DIRECT EXAMINATION**

14 BY MR. SUGGS:

15 Q Good morning, Juan.

16 A Good morning.

17 Q I would like for you to tell the jury a little bit
18 about yourself, starting with where you were born
19 and raised.

20 A I was originally born in the Dominican Republic. I
21 was born and grew up there. It's customary that
22 children go to trade shops, and I end up in a
23 garage. I started working at the garage at the age
24 of seven and a half as an apprentice.

25 From there, just learning how to be around

1 vehicles and machinery, as it went on, I went to
2 schools, correspondence schools, then trade
3 schools, and then college to become a mechanic and
4 then just kept practicing until today.

5 Q Juan, what did you do in the garage in the
6 Dominican Republic?

7 A As a mechanic, building engines, repairing cars,
8 diesel, gas machinery, whatever comes in,
9 electrical, electronics and transmissions. You
10 name it, we have done that. That's my experience.
11 So any kind of equipment that is made out of steel
12 and it's got wheels and burns fuel, we work on it
13 and repair it.

14 Q Juan, how far did you go in school over there in
15 the Dominican?

16 A I graduated elementary, middle school, high school,
17 and did not finish college by about 20 or 15
18 credits of becoming a mechanical engineer.

19 Q Juan, when did you decide to come to the States?

20 A We -- me and my ex-wife, American born -- we
21 decided to come to the United States back in 1978.
22 We arrived in the United States as a permanent move
23 in 1980, and I been here ever since.

24 Q Tell the jury a little bit about what you do here
25 in South Carolina.

1 A In the United States since I came in here, I
2 started working at a charter bus company with big
3 buses, like Greyhounds, the bigger buses, involving
4 all the electronics, engines, transmissions, body
5 work, and the full maintenance of the vehicles, and
6 all the electrical and all the electronics of it,
7 from sound system, to the locomotion, the power
8 train, engines and wheels and everything.

9 Then in 1988 the company changed hands, and I
10 decided to go ahead and open my own business, and I
11 went in business in 1988, and ever since then we
12 are still in business under the name of Delta Power
13 Systems on the northwest side of town, Cedar Lane
14 Road.

15 Q Juan, what do you do there at Delta Power Systems?

16 A At Delta Power Systems, we are a full scope repair
17 garage. By that I mean we repair little
18 automobiles, medium size trucks, tractor trailers,
19 buses, tractors, off-the-road equipment of any
20 kind, and construction equipment, such as pumps and
21 hydraulic conveyors. You name it, we do it.

22 Q During your tenure as a mechanic, have you had the
23 opportunity to inspect and/or repair a vehicle that
24 had sugar put in the gas tank?

25 A In the United States, at least twice, and in my

1 country, I will say every bit of 10, 12, maybe 15
2 in my country. Here, probably two or three.

3 MR. SUGGS: Judge, at this time I would offer
4 Mr. Faneyttte as an expert in vehicle mechanics.

5 MR. CHILDS: No objection, Your Honor.

6 THE COURT: Okay.

7 BY MR. SUGGS:

8 Q Now, Juan, based upon your education and your
9 experience, what happens when sugar is put into a
10 vehicle's gas tank?

11 A The vehicle will shortly after start developing
12 problems with the engine performance, and naturally
13 will stall and won't go nowhere. The condition
14 depends on what kind of vehicle you do this to, due
15 to the fact that late model vehicles are not so
16 prone to be affected as badly as an earlier model
17 vehicle.

18 By earlier and late model, I mean anything
19 prior to 1980, '82 because of the E.P.A. and
20 O.S.H.A. regulations as far as the fumes admitted
21 into the atmosphere. The gas tank prior to 1982,
22 somewhere around the date, did not have to have a
23 vacuum fuel tank to collect the fumes of the gas
24 being slashed into the tanks into the atmosphere.

25 Therefore without no vacuum, the air, the

1 atmospheric pressure on the air, goes into the
2 tank, and that moisture with time turns into
3 condensation, which goes to the bottom of the fuel
4 tank.

5 Then when the gas -- when the sugar is poured
6 into a gas tank, a very low percentage of sugar
7 will melt with gas. But if there is moisture at
8 the bottom of the tank, then the moisture turns
9 into, condensates to water, and the water and sugar
10 will turn into liquid, turn the sugar into liquid,
11 which allows it to go through all the filter system
12 and into the engine where the carburation process,
13 when it heats the gas, along with the air, turns
14 into a vapor, but the sugar crystals are still
15 there.

16 Then the water will evaporate as it hits the
17 hot components, such as valves and so on, and then
18 it turns back into caramel, like people in their
19 houses make caramel with sugar and water. The same
20 process takes place, and that becomes a real
21 sticky, gooey element that don't allow the valves,
22 that are very low tolerance moving up and down in
23 the engine, to stay open, and the piston will hit
24 it when the piston goes up to full compression.

25 That becomes a total destruction of the engine

1 naturally because it starts breaking parts. Sugar
2 does create damage, not only just on that, but
3 stuffs filters and corrodes because you are
4 bringing a total new element into the system.

5 On late model cars, it's not the same thing
6 because late model cars, due to the government
7 specifications, the tanks have to be on a vacuum to
8 keep the fumes from migrating to the atmosphere and
9 being recycled back to the engine. Earlier model
10 vehicles didn't have that prohibition, so it
11 happens.

12 Q Juan, you mentioned the damage that can be caused
13 to the engine. Tell the jury a little bit about
14 the damage that sugar in the gas can cause to the
15 fuel delivery system.

16 A It definitely starts through the filter and the
17 pumps. It will damage all the check valves that
18 allow the flow of fuel in one direction only. The
19 carburation system is the same thing.

20 All the jets -- it's little tiny, little
21 bitty holes -- in which the gas is metered through
22 it to deliver the exact and precise amount to the
23 engine that happens to be delivered. Therefore,
24 it's the carburation, filter system, and ultimately
25 the engine itself, the intake valves and the

1 pistons.

2 Q You mentioned briefly some of the symptoms of
3 sugar in the gas. Can you elaborate on that for
4 the jury, what a vehicle may do when -- what
5 symptoms the vehicle may have if sugar is in the
6 gas tank.

7 A When sugar is in the fuel system of any vehicle,
8 regardless whether it's a car, bus, truck or
9 airplane for that matter, what happens is it
10 disrupts the supply of fuel.

11 When the fuel is disrupted, you lose
12 performance in the engine. In other words, if
13 you are going down a hill and the engine stalls,
14 then that's where you lose your brakes, you lose
15 control of the steering wheel because it's just
16 stalled.

17 So the gas in the engine -- I mean, gas in the
18 fuel tank -- a lot of people say sugar does not
19 melt in gas. Well, not with the naked eye, one.
20 But, two, actually sugar is a form of fuel. Sugar
21 itself is a form of fuel.

22 Q Juan, have you had a chance to actually look at and
23 run tests on Mr. Jenkins' truck?

24 A Yes, sir.

25 Q Are you aware that there has been testimony that

1 sugar was placed into the gas tank on two different
2 occasions?

3 A Yes, I was told that.

4 Q And you are aware that there has been testimony
5 that Mr. Jenkins' truck was losing power and was
6 stalling?

7 A Yes, sir.

8 Q Have you had an opportunity -- this is Plaintiff's
9 Exhibit 2. Have you seen this before?

10 A Yes, I believe so. It was carried to me by
11 Mr. Jenkins at one time so that I could see it.

12 Q What is that?

13 A This is a fuel filter with solid sugar that is
14 restricting the flow of fluid through the filter's
15 elements.

16 Q Now, will you please tell the jury what kind of
17 inspection or tests you ran on the truck at your
18 shop?

19 A When we saw the truck, we had it hooked up to a lab
20 scope. The lab scope is a device that we use in
21 the industry to read all the electrical signals
22 that the engine produces.

23 With those measurements we go about
24 determining where the problems are at. We measure
25 the voltage on the primary system and secondary

1 system to see where the power is coming from.

2 Also, the device has vacuum probes that senses and
3 converts vacuum signals to electronic signals so
4 the machine can read it.

5 In our test, when we run the test on this
6 truck in the presence of the gentleman, defense
7 attorney or the other person, we showed him that
8 the valves were sticking because of the sugar on
9 the stem.

10 Because the vacuum probe was converting the
11 vacuum signal to electrical, and then we can see it
12 in the stream of the lab scope. That's all I need
13 to see to know that the engine is missing because
14 it's not creating a proper vacuum. That's damage
15 that it causes, and it can be more extensive if it
16 is kept running.

17 Q Juan, you talked about it missing. What are you
18 referring to?

19 A The term missing, in an engine you've got eight
20 pistons going up and down, and every one is
21 supposed to be carrying their load of power
22 producing capability.

23 When one drops out and doesn't carry its own
24 power -- it doesn't expand and carry the load
25 that it's trying to carry -- then we call that

1 missing.

2 Q Based upon your tests, how many of the valves or
3 the pistons were missing?

4 A We had three pistons in the right bank and two in
5 the left bank.

6 Q Do you have an opinion as to whether -- excuse
7 me -- let me start over. Do you have an opinion to
8 a reasonable degree of certainty as to whether
9 sugar being introduced into the gas tank caused
10 this damage to the engine?

11 A Definitely.

12 Q And your opinion is?

13 A That's what caused the valves to be lagging.

14 Q Now, I understand that Plaintiff's Exhibit 3 is an
15 invoice. Is that an invoice that your company
16 prepared?

17 A Yes, sir.

18 Q And that was an invoice -- was it related to the
19 tests that were run on the vehicle?

20 A Definitely. This is the report of the tests.

21 Q Juan, do you have an estimate as to what it's going
22 to require to repair Mr. Jenkins' Ford F-700
23 engine?

24 A I have not made that estimate. I can guess as to
25 how much it would cost to have the engine repaired,

1 but we have not have run an estimate to repair it.

2 Q You haven't actually formed an estimate?

3 A No, or made one.

4 Q You haven't drafted one. Will you give the jury an
5 idea of what you would expect it to cost, based
6 upon your custom and practice?

7 MR. CHILDS: Objection. I don't think it's
8 proper to give an idea based upon his examination of the
9 engine. All he has testified to so far is he thinks
10 that the valves were sticky.

11 I don't think he can go any further than
12 testifying about what repairs that might be related to.
13 I have not been disclosed any of these figures in
14 discovery as well.

15 MR. SUGGS: Actually -- may we discuss this
16 because I believe he has.

17 THE COURT: Okay.

18 MR. SUGGS: Do you want to do it in open court
19 or at side bar?

20 THE COURT: Do you want to discuss it with
21 him?

22 MR. SUGGS: No, no, I meant with you, Your
23 Honor.

24 THE COURT: All right. Y'all come on up.

25 (Whereupon there was a bench conference off

1 the record in the presence of the jury but out of the
2 hearing of the jury).

3 BY MR. SUGGS:

4 Q Juan, you just testified that you had an
5 opportunity to run tests on the vehicle; correct?

6 A Yes, sir.

7 Q And I believe you testified that the tests showed
8 that there were three to five valves that were
9 damaged, correct?

10 A Yes, sir.

11 Q Based upon that information, can you give the jury
12 an idea of an estimate as to how much it would cost
13 to repair the vehicle?

14 A When you go into the engine to make repairs of that
15 sort, you don't want to cut no corners. So you
16 want to go through it thoroughly. In this case we
17 would have to completely examine the engine and
18 change all the wearable components involved and
19 have it go to the machine shop. The estimated cost
20 of overhauling the engine in this case would be
21 anywhere between 46 to 52, \$5,300, somewhere around
22 there.

23 Q Okay. If you will answer any questions of
24 Mr. Childs, I would appreciate it.

25 A Thank you.

1 CROSS EXAMINATION

2 BY MR. CHILDS:

3 Q Mr. Faneytte, I took your deposition in February of
4 2008. Do you remember that?

5 A Yes, sir.

6 Q Do you remember that you were under oath and sworn
7 to tell the truth in your deposition?

8 A I always do tell the truth.

9 Q You always do tell the truth. I will show you that
10 deposition, and I will ask you to look at it.

11 A The entire, every page?

12 Q I will identify a page for you, sir.

13 A Good.

14 Q Page 8. I asked you on page 8, line 6: Have you
15 ever been involved in any lawsuits? What was your
16 answer?

17 A My answer was no.

18 Q Your answer was: Not ever?

19 A No.

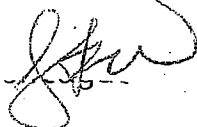
20 Q Isn't it true that you were sued by the Greenville
21 Hospital System on December 8, 2003?

22 A That I was sued? No, I was not aware of that.

23 Q Are you Juan Adidas Faneytte?

24 A Yes, sir.

25 Q Do you recognize this document?

- 1 A (Pause). No.
- 2 Q Were you residing at -- do you have a daughter or a
3 person living with you named Daisy Faneytte?
- 4 A It's my wife, not by daughter.
- 5 Q That's your wife, and you live at 
6 in Greenville, South Carolina?
- 7 A That is correct.
- 8 Q Did not the Greenville Hospital System sue you for
9 \$8,744?
- 10 A I paid Greenville Hospital System \$8,000 in
11 payments, but I was not aware that they sued me.
- 12 Q Were you sued on October 22, 2002, by the Bank of
13 New York?
- 14 A Was I sued?
- 15 Q Yes, sir.
- 16 A No.
- 17 Q Along with Jody Jones, Ann Jones, Dan Jones,
18 Patricia Jones, and you.
- 19 A Are you asking me if they sued me or I sued them?
- 20 Q They sued you.
- 21 A I was not aware of that.
- 22 Q Let me show you a complaint filed in 2002-7390 and
23 ask you if you can identify this.
- 24 A (Pause). I was not even notified of this. I have
25 no idea where that comes from.

1 Q Okay. Do you know an Annie Jones?

2 A Annie Jones was a customer of Delta Ways, a
3 corporation that I owned. She hired my corporation
4 to run a trip to New Orleans that she failed to pay
5 in full. I hired an attorney to suit (sic) her for
6 the money that she owed my company.

7 Q Well, what part of my question to you in your
8 deposition, Have you ever been involved in a
9 lawsuit, and your answer, Not ever, did you not
10 understand?

11 A Me personally? No.

12 Q Isn't your name Juan Faneyttte?

13 A Yes, sir.

14 Q Is this your lawsuit against Annie L. Jones?

15 A Delta Ways Corporation, a corporation that I owned,
16 sued the lady.

17 Q Is that your name on that lawsuit?

18 A If the attorney filed it improperly, that's the
19 attorney's fault.

20 Q That's your name on that lawsuit, sir; isn't it?

21 A It is.

22 Q And is that Annie Jones' name on the lawsuit?

23 A Annie Jones is a lady that owed Delta Ways the
24 money.

25 Q And Stuart Anderson was your lawyer?

1 A No, Wally.

2 Q Wally Fayssoux with Anderson, Fayssoux, and
3 Chasteen?

4 A Correct. But me personally, I have never sued
5 nobody.

6 Q Well, I asked you if your company has ever been
7 involved in any lawsuit.

8 A You did not ask that, sir.

9 Q Look down on the next line, sir, page 8, line 8:
10 Has your company ever been involved in lawsuits?
11 What was your answer?

12 A Okay.

13 Q What was your answer?

14 A No.

15 Q No, sir?

16 A Uh-huh. (Indicating affirmative response).

17 MR. CHILDS: I would like to move this in
18 evidence, Your Honor, this Juan Faneytte versus Annie
19 Jones. It's a certified copy of the summons and
20 complaint filed with this Court.

21 MR. SUGGS: I would object.

22 THE COURT: You do object?

23 MR. SUGGS: I do object.

24 THE COURT: I sustain the objection.

25 MR. SUGGS: Thank you.

1 BY MR. CHILDS:

2 Q Hold on to that.

3 A By all means.

4 Q You testified earlier that you graduated from high
5 school?

6 A Yes, sir.

7 Q Page 6 of your deposition. My question to you on
8 page 6 --

9 A Can you hold on a second, please. My fingers are
10 not as good on paper as they are on wrenches.

11 Okay, page 6.

12 Q Line 15: Do you ever recall receiving a degree in
13 any of those? And your answer was?

14 A I don't even have my high school diploma. I never
15 collected it.

16 Q Your answer was, I don't even have my high school
17 diploma. I don't like that. Wasn't it?

18 A I don't have a diploma, a piece of paper hanging on
19 the wall. I graduated. That's why I was able to
20 go to college.

21 Q Do you have a college degree?

22 MR. SUGGS: Judge, I will ask if I may that
23 the witness -- Mr. Childs wants to read two lines and
24 not continue down.

25 MR. CHILDS: And he can redirect him if he

1 likes.

2 THE COURT: Yes, that's for redirect.

3 MR. SUGGS: Thank you, Your Honor.

4 BY MR. CHILDS:

5 Q Now, Mr. Faneytte, when were you contacted by
6 Mr. Jenkins?

7 A To the exact date and hour, I don't remember.

8 Q Try giving me a year.

9 A Okay, this year.

10 Q Okay. Was that your first contact with Mr. Jenkins
11 was this year?

12 A Yes.

13 Q Let me direct your attention to page 10 of your
14 deposition, line 20. This is your deposition that
15 was taken in February of this year?

16 A Okay.

17 Q I asked you in your deposition on line 20: And
18 when were you first contacted by Mr. Jenkins? And
19 your answer was?

20 A I don't remember, maybe six or five months ago.

21 Q Well, six or five months ago in February would have
22 been in 2007?

23 A Okay.

24 Q So were you contacted by Mr. Jenkins this year or
25 last year?

1 A Sir, I cannot tell you right now or then exactly
2 when because I don't remember. I have so many
3 people go in and out of my shop. It would be
4 impossible for me to tell you when exactly or if it
5 was this year or closer to the end of last year.
6 I'm sorry but my memory is not as good as the
7 paper.

8 Q Did you tell me that you couldn't remember whether
9 it was five or six months ago or last month?

10 A Right now I am telling you I can't remember.

11 Q Okay. Now, what did Mr. Jenkins tell you when he
12 contacted you about the trouble with his vehicle?

13 A Please repeat the question.

14 Q What did Mr. Jenkins tell you when he contacted you
15 about the trouble with his vehicle?

16 A He told me that -- he asked me what was the result
17 of putting sugar in a gas tank and will it affect
18 it, and I said definitely.

19 Q What problems did he tell you that he had with his
20 truck?

21 A I exactly don't remember the conversation, but I
22 can tell you right now, if you put sugar in a gas
23 tank, the vehicle is going to start showing up with
24 problems, such as stalling and not running or not
25 able to crank.

1 Q But you don't remember what he told you the
2 problems with the vehicle were?

3 A When people go to my business, they go with the
4 symptoms, and they ask me what kind of problems
5 that may be coming from or causing. I go as a
6 professional mechanic and tell them, This is what
7 it produces and this is what it could be.

8 Q I am trying to find out what symptoms he gave you
9 that makes you think that that was because of
10 sugar.

11 A What samples?

12 Q What symptoms, symptoms.

13 A Stalling of the vehicle, not being able to crank,
14 running the highway and all of a sudden it looses
15 power.

16 Q Did he tell you when that happened?

17 A You are trying to make my memory into a recorded
18 tape. It's not a tape. My memory doesn't function
19 that way.

20 Q Let me ask a little bit more elaboration. A
21 vehicle that has been sitting since 2004 until
22 2008, sitting for four years and not running, is
23 that engine going to have problems in and of
24 itself?

25 A Not necessarily.

1 Q But possibly?

2 A We have vehicles in my shop that haven't been
3 running for eight months. We go and crank them.
4 For three years we go and crank them and they run
5 fine.

6 Q But a lot of things can happen with an engine
7 sitting up for four years?

8 A Not by itself. We crank vehicles all the time that
9 have been sitting for four, five, six years and
10 they run just fine.

11 Q Did Mr. Jenkins tell you about what he had done
12 with his engine as far as the clog in the fuel
13 system and things like that?

14 A He didn't go into specific detail.

15 Q Oh, he didn't? Is that your sworn testimony?

16 A I beg your pardon?

17 Q That's your sworn testimony?

18 A Mr. Jenkins has been in my place at least three or
19 four times. What time do you want me to remember
20 what he tells me when? The first time he showed up
21 there he asked me the typical question of a
22 customer: Hey, what happened to the vehicle when
23 that happened? This is what my symptoms are. I
24 explained to him how it could happen. So in what
25 visit do you want me to remember what did he say

1 when?

2 Q When did you see this filter?

3 A Probably the second, third time that he went by the
4 shop.

5 Q Which was when?

6 A Again, I can't remember the confirmation.

7 Q Was it in 2007 or 2008?

8 A I don't even remember meeting him in 2007.

9 Q When did you see this?

10 A Sometime prior to or close to the deposition.

11 Q You hadn't seen this when I took your deposition.

12 A There you go, maybe October.

13 Q Maybe in March of this year?

14 A Possibly.

15 Q You hadn't even looked at the truck in February of
16 this year, had you?

17 A I don't remember. I would have to see the date of
18 the invoice.

19 Q When I took your deposition, you hadn't looked at
20 it; had you?

21 A I don't even remember the date of the deposition.
22 Here, it was February 27th. I don't think I had
23 seen the engine at that point.

24 Q Right. Well, isn't it in fact true that
25 Mr. Jenkins told you a great detail about what his

- 1 truck had been through when he came and saw you?
- 2 A What it had been doing, symptoms, yes.
- 3 Q Page 8 of your deposition when I asked you about
- 4 that -- I'm sorry, the bottom of page 10.
- 5 A So even you make mistakes, huh?
- 6 Q I sure do. I sure do.
- 7 A Okay.
- 8 Q At the bottom of that I asked you: What did
- 9 Mr. Jenkins tell you, if anything? And at the top
- 10 of page 11, what was your answer? Can you read
- 11 that for us?
- 12 A Yeah, I guess my English is good for that.
- 13 Mr. Jenkins told me that his truck was having this
- 14 problem when he came down to the bottom of the
- 15 hill. He discovered that his fuel tank had sugar
- 16 in the tank. Then he was asking me if the symptoms
- 17 that he experienced with the engine... I said yes,
- 18 indeed.
- 19 Did you look at this engine? And I said no.
- 20 Q I said: What did he describe to you as the
- 21 problems with his engine?
- 22 A He described to me that the engine was, as he was
- 23 going down the hill, losing power.
- 24 Q Wait a minute. You have got to read that. Read
- 25 line 11.

1. A Line 11, okay. The way he described it to me, he
2 wasn't having a lot of vehicle and it stalled, and
3 he had no idea as to why the engine was shutting
4 down on the fuel power demand precision (sic).

5 Q Continue on, please.

6 A And then he went to look for the source of the
7 problem and couldn't see anything, couldn't see
8 nothing. He went to change the spark plugs and
9 mess with the ignition, the primary and secondary
10 systems, to sort of locate the source of the
11 problem.

12 Then after that he kept on looking for the
13 problem. The truck started and after a little bit
14 of fiddling with the situation, then he kept
15 going.

16 Q So does that refresh your memory about what
17 Mr. Jenkins told you?

18 A It's the same thing I'm telling you, yes.

19 Q Did he tell you that that's the situation that had
20 happened almost three years before? Did he come in
21 and say, Three years ago my engine was having
22 trouble stalling, and I would like for you to look
23 at it?

24 A I don't exactly remember the order of the words or
25 the statement specifically made, but it was on the

1 line of: My truck is having problems, and this is
2 how long ago it happened. I cannot remember like a
3 tape recorder or the manuscript.

4 Q Now, in your deposition you indicated to me some
5 interesting theories about how sugar affects a
6 motor vehicle. One of the questions I asked you
7 was the difference between putting sand in the gas
8 tank and sugar in the gas tank. Do you remember
9 that?

10 A No.

11 Q Go to page 13 of your deposition, line 12.

12 A Okay.

13 Q I asked you a question that you raised, which was,
14 What is the density of sand compared to sugar?

15 A Uh-huh. (Indicating affirmative response).

16 MR. SUGGS: Judge, I don't know that this is
17 relevant at all to this case.

18 THE COURT: Overruled.

19 BY MR. CHILDS:

20 Q What was your answer?

21 A The answer is here, At least four to one.

22 Q Question: So sand is four times lighter than
23 sugar?

24 A More dense.

25 Q So the density of sugar is something within your

1 own reasonable knowledge? Do you know the density
2 of sugar?

3 A Something that is dense, density is the
4 relationship between weight and volume. And what
5 difference does it make what the density of sugar
6 as opposed to a grain of sand is? Sand will go
7 down just as good as sugar goes down to the bottom
8 of the tank. So sand is more dense than sugar
9 because of the weight and its mass.

10 Q I asked you in your deposition about your testimony
11 here today that sugar can reach the engine of a
12 motor vehicle and cause damage?

13 A Uh-huh. (Indicating affirmative response).

14 Q And I ask you: Do you believe that sugar dissolves
15 in gasoline?

16 A Uh-huh. (Indicating affirmative response).

17 Q And do you believe that sugar dissolves in
18 gasoline?

19 A Yes, sir, to a percentage, not completely.

20 Q You also believed that water dissolves in gasoline,
21 don't you?

22 A No.

23 Q Let me direct your attention to page 15 of your
24 deposition.

25 A Okay.

1 Q Sir, I made the mistake. You are correct. You
2 said water did not dissolve in gasoline.

3 A Oh.

4 Q So when you mix sugar with water and then it
5 dissolves in gasoline, is that the theory behind
6 this caramelization of sugar on the --

7 A Water is a liquid. Sugar is a solid, granulated
8 solid. Filters have places to keep the solids from
9 going through the system. Filters are placed in
10 the fuel system of a vehicle to keep the solids
11 from reaching the engine. When water mixes with
12 sugar, it melts, turns into a liquid. Liquids go
13 through the filters.

14 Q When liquid water goes through your filters on your
15 engine, what happens?

16 A Nothing.

17 Q The engine doesn't shut off?

18 A When liquid water goes through your filter, nothing
19 happens. The filter is just filtering the solids
20 of the liquids so it can go through the tiny little
21 passages and into the engine.

22 Q Are you saying that an engine burns water?

23 A The engine will stall.

24 Q Exactly.

25 A With water.

1 Q Exactly.

2 A Exactly. If the amount is sufficient to it, but we
3 all know that an engine will consume a certain
4 amount of water because the amount is not
5 significant without stalling the engine.

6 Q Let me try to understand how you believe that
7 running an oscilloscope -- is that what you ran on
8 this vehicle?

9 A Yes, sir.

10 Q -- indicates that sugar has gunked the valves on
11 this engine?

12 A Yes.

13 Q Isn't it true that a number of other things will
14 gunk the valves on an engine?

15 A Yeah, give 2 or 300,000 miles over the years,
16 possibly.

17 Q Well, you see engines gunked with valves all the
18 time. You see engines with valve problems all the
19 time?

20 A No, not all the time. It's rare. When you run
21 extremely bad quality fuel or there's extremely
22 stage of wear in the engine that is passing oil and
23 burning and turning into carbon, then the carbon do
24 create problems on the engine.

25 Q Right. Carbon build-up is what you are talking

1 about?

2 A Yeah.

3 Q It's a common problem with engines?

4 A Worn out engines. Engines that are worn out.

5 Q Well, how do you know this engine wasn't worn out?

6 A This engine, due to the tests that we performed,
7 showed a high level of compression in certain
8 cylinders. So high compression in the engine
9 indicates it's not a worn out engine.

10 Q How do you know it's not worn out until you look
11 into it?

12 A How do you know the air you are breathing is good
13 quality unless you breathe it?

14 Q Right. Do you --

15 A You don't have to run tests on the air quality to
16 know if it's bad or good. The point is this. The
17 engine is not worn out because when we started, it
18 had a high rate of compression. A high rate of
19 compression is evidence that the engine doesn't
20 have the 200,000 miles.

21 Q It had a low rate of compression on some of the
22 pistons?

23 A And some had high. All the pistons will wear
24 evenly.

25 Q Well, you don't know when this engine was rebuilt;

1 do you?

2 A No, I have no idea.

3 Q And you can't tell what is on the valves until you
4 actually look at them?

5 A What do you mean by that?

6 Q By taking the valve cover off and looking at the
7 valves.

8 A No, sir. I don't need to take it apart to tell
9 that when one valve is sticking and the other one
10 is not, the problem is coming from the source that
11 we discussed.

12 Q That a valve is sticking?

13 A That they are sticking, yes.

14 Q You can't tell what is sticking the valve until you
15 look at it.

16 A My experience tell me what it is.

17 Q Your experience in all the engines you have
18 examined with sugar in them?

19 A Uh-huh. (Indicating affirmative response).

20 Q Is that right?

21 A Yes, sir.

22 Q Did you tell this jury that you looked at several
23 cars in the United States with sugar in the gas
24 tank?

25 A Uh-huh. (Indicating affirmative response).

1 Q Is that your sworn testimony?

2 A Yes, sir.

3 Q Let me direct you to your sworn testimony in your
4 deposition, page 20.

5 A Okay, tit for tat.

6 Q I asked you on line 30: When was the last time you
7 looked at an engine that had sugar in it? And your
8 answer was?

9 A Excuse me. You said page 20?

10 Q Page 20, line 3.

11 A Oh, line 3.

12 Q Your answer is on line 4.

13 A Okay. When was the last time you looked at an
14 engine that had sugar in it?

15 Q What was your answer? Read it.

16 A Okay. That would be hard to tell. I have been
17 here 30 years. I have not done it here. I have
18 done it in my country.

19 Q And my question was: In the Dominican Republic
20 prior to 1979, you looked at engines that had been
21 contaminated with sugar? And your answer was?

22 A Yes.

23 Q So that's the basis of your experience of sugar
24 contaminating a motor vehicle? And your answer
25 was?

1 A Here I have got several engines that I have
2 repaired --

3 Q Your answer was uh-huh.

4 A Uh-huh. (Indicating affirmative response).

5 Q So suddenly today you are now remembering other
6 engines that you examined here in the United
7 States?

8 A Yeah, I remember seeing it here.

9 Q So you lied to me in your deposition?

10 A Sir, poor memory doesn't relate to lying.

11 Q Poor memory is I don't remember.

12 A Lying means on purpose, intentionally, saying
13 something that is not so knowingly, and I didn't
14 say that.

15 Q You just have a poor memory?

16 A Do you have a perfect memory, too?

17 Q No, sir, I do not.

18 A I hope you don't expect me to believe that.

19 Q I asked in your deposition about how quickly
20 contamination of a engine will show as far as
21 problems with the engine was concerned. Isn't it
22 your testimony that it would happen within maybe
23 five weeks of the introduction of the
24 contamination?

25 A I mean, this is an estimate, guess.

1 Q Was that your answer to me?

2 A Where?

3 Q Page 22.

4 A Okay. What's the question?

5 Q Line 2: How quickly does that happen after the
6 contamination? It seems to me like if your engine
7 continued to run for awhile and all the sugar had
8 gone through, then the problems -- And your answer
9 was?

10 A It is a progressive issue. It doesn't just happen
11 immediately. It takes time for the whole process
12 to come in full cycle. It depends on how many
13 miles the vehicle is driven in a day. It can take
14 from a week to minimum to three, four, maybe five
15 weeks. That's reasonable.

16 Q And then I asked you: When you open the engine
17 that had been running three, four, five weeks, how
18 can you tell that it was sugar that caused the
19 damage?

20 A I don't know I am going to convince you of my
21 knowledge.

22 Q I am trying to convince you -- I am trying to ask
23 you why you have an opinion based on an
24 oscilloscope of an engine that you could have
25 easily opened the top of and looked in to see if it

1 had any kind of piston or valve damage.

2 A I object to the easy part of it. That's a job,
3 hard, long-time consuming job, and it isn't done
4 for free. If the customer is not willing to pay me
5 for the disassembling and inspection, I will not
6 voluntarily do it.

7 The testing process of an oscilloscope can
8 tell me what I need to know as far as symptoms for
9 me to determine what is wrong with the vehicle or
10 the engine.

11 Q How old is your oscilloscope?

12 A My oscilloscope is probably -- it's hard to tell,
13 10, 12 years old.

14 Q Now, isn't some of the same problems you have
15 described common when you mix diesel fuel in the
16 gasoline tank?

17 A The same problems?

18 Q Yes.

19 A I've seen situations where if you mix enough diesel
20 in a gas consuming engine, it will develop similar
21 symptoms, very similar.

22 Q And also if you have bad fuel, you can develop
23 similar symptoms?

24 A No.

25 Q Bad gasoline doesn't cause sticky valves?

1 A No.

2 Q You told me in your deposition that the only way
3 you could really tell about whether a valve had
4 been contaminated with sugar was to wash it in
5 water.

6 A That's a way to do it.

7 Q Could you explain that to the jury --

8 A It's not the only way.

9 Q -- of how your method of determining that sugar had
10 gotten into the engine, explain to them what
11 washing the valve with water would do.

12 A Well, if you take an lollipop, one you suck and
13 eat, and put it in water, what happens? The same
14 thing would happen to the caramel that got formed
15 on the valve stem by the heat of the engine.

16 So indeed that's a good, positive way to
17 determine whether the substances in the valve are
18 organic by nature, like sugar, or just carbon
19 residue because carbon will not melt in water from
20 an engine.

21 Sugar will. Any sugar product, any caramel
22 that happens through heating sugar in water, it
23 will melt in water. So that's what it is.

24 Q So basically you have a caramel coated engine?

25 A I don't know what I call it. If you want to call

1 it that, that's fine.

2 MR. CHILDS: Just one minute, Your Honor.

3 (Pause).

4 BY MR. CHILDS:

5 Q Mr. Faneytte, you didn't remove any filters from
6 the truck?

7 A Huh-uh. (Indicating negative response).

8 Q You didn't look in the gas tank to see if there was
9 sugar in the gas tank?

10 A I don't think so.

11 Q Have you found other substances in gas tanks over
12 the years?

13 A Have I ever found other substances in gas tanks?

14 Q Yes.

15 A Sure, I have. I don't remember specifically which.

16 Q How about lime?

17 A Lime?

18 Q Yes.

19 A I don't even know exactly what lime is.

20 Q All right. Thank you.

21 THE COURT: Redirect?

22 **REDIRECT EXAMINATION**

23 BY MR. SUGGS:

24 Q Juan, at this point we need to sort a couple of
25 things out.

1 THE COURT: Just ask the questions, Mr. Suggs.

2 BY MR. SUGGS:

3 Q Juan, turn with me to page 46. Mr. Childs
4 suggested that your deposition testimony and your
5 trial testimony was inconsistent with regard to
6 vehicles you had seen in the United States.

7 Let me please turn your attention to page 46,
8 and line 14 and answer whether I have read this
9 correctly please, sir. Question: Let me follow up
10 and clarify. Have you, since coming to the States,
11 have you seen any vehicles that you are aware that
12 had sugar introduced in the fuel tank? And your
13 answer was?

14 A Yes.

15 Q And in any of those vehicles that you saw in the
16 States, was there damage to the vehicles? And your
17 answer?

18 A Definitely.

19 Q Is it fair to say that in your deposition, you
20 testified that you had seen vehicles with sugar in
21 the States?

22 A I have seen it here and dealt with it.

23 Q Now, were you aware that Mr. Jenkins testified that
24 his vehicle's engine had been rebuilt in 2000?

25 A He mentioned that to me at one point or another. I

1 don't remember when.

2 Q The stalling, the symptoms that Mr. Jenkins relayed
3 to you, regarding the stalling and the engine
4 failing, those were symptoms that he experienced in
5 2004; is that correct?

6 MR. CHILDS: Objection to leading the witness.

7 THE COURT: Sustained.

8 BY MR. SUGGS:

9 Q What did you understand to be the time frame
10 Mr. Jenkins was talking about experiencing the
11 problems with his truck?

12 A Mr. Jenkins went by my office I'd say three, maybe
13 four times and different conversations took place
14 back and forth. He told me many things. I cannot
15 specifically remember all the little details or the
16 conversations on all the different occasions.

17 He mentioned to me that his vehicle had been
18 repaired, it was freshly rebuilt, and he mentioned
19 to me that this thing happened so many years ago.
20 I mean, this is not my business, discussing this
21 issue. My business is fixing vehicles.

22 Q Juan, have you been honest with this jury today?

23 A Definitely.

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

25 THE COURT: Recross?

1 MR. CHILDS: No, sir.

2 THE COURT: Thank you, sir. You may step
3 down.

4 THE WITNESS: Thank you.

5 THE COURT: You may call your next witness.

6 MR. SUGGS: The Plaintiff rests, Your Honor.

7 THE COURT: Ladies and gentlemen, the
8 Plaintiff has completed his presentation of evidence.
9 At this time we have to take a short recess, and we will
10 try to resume at 10:15. Don't talk about the case.
11 Continue to keep an open mind. Thank you very much.

12 (The jury retires to the jury room).

13 THE COURT: Any motions or matters at this
14 juncture?

15 MR. CHILDS: Yes, sir. I have motions for
16 directed verdict on several issues. First of all, I
17 have a motion for directed verdict on the first cause of
18 action for trespass.

19 There is no evidence whatsoever that the
20 Plaintiff or his agents or employees trespassed on the
21 real property of the Plaintiff -- the Defendants, excuse
22 me -- trespassed on the real property of the Plaintiff.

23 There is no cause of action that I can discern
24 for trespass on personal property. There is an old case
25 that I have cited previously about, I think, some

1 trespass to chattels, but I do not know any recent case
2 that indicates a right or cause of action to trespass on
3 personal property.

4 In fact, there is -- I think the Plaintiff
5 admits that he was not the owner in possession of the
6 real estate. His cause of action for trespass on real
7 property has to fail. I think his trespass on personal
8 property is unsupported by the law in this State and is
9 not a recognized cause of action.

10 As far as the second cause of action, I would
11 move for directed verdict on that cause of action for
12 wrongful conversion. Conversion is an unauthorized
13 assumption in the exercise of right of ownership over
14 goods or personal property belonging to another.

15 There is no allegation that the Defendant has
16 exercised the right of ownership over goods or property
17 of the Plaintiff, that he has exercised any type of
18 dominion or control over the objects, and a directed
19 verdict on that should be granted.

20 On the third cause of action, conspiracy, the
21 Plaintiff alleges that my client conspired apparently
22 with Mr. Lindsey to injure the Plaintiff; however, they
23 have failed to establish any kind of special injury.

24 In order to establish a conspiracy, they must
25 prove that the overt acts caused some special injury

1 otherwise raised in the claim. In this case the third
2 element of conspiracy is the same element of damages as
3 related to the other causes of action and does not
4 create any kind of special damages in relation to the
5 conspiracy claim.

6 In the fourth cause of action, the unfair
7 trade practices cause of action, clearly fails under the
8 law in that the damage to the liming truck, if it
9 occurred and if it occurred by the Defendant, was
10 unconnected with trade or commerce in any manner
11 whatsoever.

12 In other words, there was not an advertising,
13 offering for sale, distribution or service. It was not
14 related to any matter that is subject to injury to the
15 public.

16 At best the unfair trade practice cause of
17 action is a private harm in this case. The wrongful
18 conduct does not rise to the level that would affect the
19 public.

20 The Plaintiff will argue that it's subject to
21 repetition because Mr. Lindsey has indicated two
22 incidents having occurred; however, even if the incident
23 is not -- if the incidents are not involved in the
24 conduct of trade or commerce, it doesn't matter if they
25 are repeated or not.

1 All the case law that you will see addresses
2 issues that affect the public because the public is
3 involved in a transaction with a defendant and those
4 transactions are related to sales, advertisement,
5 exchange of goods or services. Nothing is involved in
6 this situation.

7 The Plaintiff cannot come forward and say the
8 public must surely be harmed by some method of
9 speculation, that members of the public must be
10 adversely harmed by impacting the competitive nature of
11 the area.

12 There is no evidence that it did or is likely
13 to. This is a mere presumption on behalf of the
14 Plaintiff that somehow it would impact the public
15 interest. This is a clearly at best a private wrong.

16 It does not rise to the level to an unfair or
17 deceptive act or practice that affects the public. In
18 fact, it may only affect the parties involved in this
19 case.

20 I see no argument or authority that says that
21 an attempt to disable a vehicle would have an adverse
22 public impact. There has been testimony that there's
23 numerous other providers. There is testimony that it
24 doesn't affect prices.

25 The assertion that somehow it's trying to

1 affect the public prices for products does not convert
2 an action into an Unfair Trade Practices Act under
3 Wilson Group versus Forum Health Services, 88 Fed.Sup.
4 416.

5 Potentially higher consumer prices is too
6 remote a consequence to satisfy the public impact
7 requirement. That was also reflected in the Omni
8 Outdoor Advertising versus Columbia Outdoor Advertising
9 case, 974 F.2d 052. So I also submit that the unfair
10 trade practices cause of action fails.

11 I also move for directed verdict on some of
12 the issues of damages in this case. The Plaintiff is
13 somehow trying to allege that he has had to purchase a
14 new vehicle and that somehow that is damages.

15 The damages for injury to personal property
16 are pretty well defined by law. They are generally the
17 loss of use of the vehicle. If the total loss of the
18 vehicle would be the reasonable market value of the
19 vehicle, it is not the replacement value of the vehicle.
20 It's clearly not that.

21 It's not an issue of the speculative nature of
22 these repairs testified to by Mr. Faneytte. Certainly I
23 think the damages in this case should be limited to what
24 the Plaintiff alleges by way of changing filters of \$420
25 and his alleged loss of use of the vehicle, which he

1 alleges to be 700-something dollars a day for eight
2 days. I think the other damages are unproven, too
3 speculative to be submitted to the jury.

4 Finally, I move for a directed verdict on the
5 issue of punitive damages in this case. Although I
6 recognize that if the Plaintiff could sustain a cause of
7 action for conversion or trespass, they may be entitled
8 to punitive damages as a matter of law.

9 But there is no evidence presented here about
10 the likelihood that an award of punitive damages will
11 deter the Defendant or others from the conduct, about
12 the Defendant's wealth or ability to pay.

13 They have only raised an issue about the
14 purchase price of a lumber mill. They have not elicited
15 any other testimony as it would relate for the jury to
16 properly consider the Gamble factors relating to
17 punitive damages.

18 For that failure to raise those elements for
19 the jury to consider, I would move for directed verdict
20 on punitive damages.

21 THE COURT: Thank you, Mr. Childs. Let's take
22 a break. We will come back at 10:15, and I will let
23 Mr. Suggs make his arguments. Then we will go on from
24 there. Thank you very much.

25 MR. SUGGS: Judge, may I ask a quick question?

1 THE COURT: Sure.

2 MR. SUGGS: May Mr. Faneytte be released, as
3 long as he is available by telephone, so he can run his
4 business?

5 MR. CHILDS: That's fine.

6 THE COURT: Okay. Thank you.

7 (Whereupon there was a recess).

8 THE COURT: Yes, sir, Mr. Suggs.

9 MR. SUGGS: May it please the Court. I figure
10 it's easiest and if it suits you just to go down the
11 line and take the issues in the same order as they were
12 presented, and it makes it easier for all of us because
13 all these arguments have been presented at the summary
14 judgment stage.

15 Judge, on the trespass issue, I would concede
16 with Mr. Childs as far as I don't think we can support
17 that the real property was invaded, at least as far
18 as -- is a life estate good enough? I don't have any
19 case law to support that. I will concede that point.

20 However, there was a trespass to personal
21 property, and that action is recognized explicitly in
22 Barbee, B-A-R-B-E-E, versus Winnsboro Granite, which is
23 190 S.C. 245. Mr. Childs is correct that it is an old
24 case; however, just because law is old doesn't mean it's
25 no longer good.

1 In that case the Court indicated that one
2 commits a trespass to personal property if that property
3 is destroyed or injured. I have researched it. I have
4 not found any case law in South Carolina which states
5 that one only can carry a cause of action for trespass
6 if it's a violation of real property.

7 I assume that if Mr. Childs was able to find
8 such a case, he would have shared it with us. So that
9 is our position on trespass, that it certainly can make
10 its way to the jury.

11 Moving to conversion, I believe the law that
12 Mr. Childs cited is correct. I just believe the
13 conclusion he has drawn is not. Conversion is the
14 unauthorized assumption and exercise of the right of
15 ownership of the goods or personal chattels of another
16 to the alteration of the condition or the exclusion of
17 the owner's rights.

18 It is also, however, the illegal use, misuse
19 or detention of another's chattel to the exclusion of
20 the owner's rights by entering onto his property by way
21 of an agent. By destroying or injuring Mr. Jenkins'
22 truck, the Defendant has misused that chattel.

23 He has damaged that chattel to the exclusion
24 of Mr. Jenkins' rights. Mr. Jenkins testified in his
25 cross that, you know, I couldn't use it because it had

1 been damaged. It had been misused by way of the actions
2 of the agents of the Defendants. Therefore, Judge, we
3 submit to the Court that conversion is, in fact, an
4 appropriate cause of action in this case and should be
5 submitted to the jury.

6 Moving to conspiracy, there is ample evidence
7 in this case that Johnny Lindsey and his cohort, Billy
8 Guest or William Guest, worked in conjunction with
9 Mr. Few and at his behest to damage and injure
10 Mr. Jenkins. As you know, conspiracy is a combination
11 of two or more persons willfully to injure a man in his
12 trade.

13 THE COURT: He is just saying that you don't
14 have any evidence of special damages.

15 MR. SUGGS: Judge, my evidence of special
16 damages is the fact that truck was damaged, and the
17 engine must be rebuilt, and he lost eight days of
18 revenue due to the actions, the Defendant's actions, of
19 intentionally damaging my client's truck and his
20 business.

21 THE COURT: How do those differ from the
22 damages you are seeking on all the other causes of
23 action?

24 MR. SUGGS: I guess it would have to be that
25 these damages were caused directly by the actions of the

1 agents and the relationship between Mr. Few and the
2 co-conspirators, rather than just on behalf of Mr. Few.

3 THE COURT: Run that by me one more time.

4 MR. SUGGS: You are going to make me do that?
5 Judge, it's my position that it's because these damages
6 that we are talking about with conspiracy are the result
7 of the conspiratorial actions between these three
8 parties that we are talking about versus just on -- but
9 I guess that is not really addressing the issue of
10 special damages.

11 THE COURT: I see what you are saying. Okay.

12 MR. SUGGS: Judge, looking to the Unfair Trade
13 Practices Act, there has been ample testimony from two
14 different witnesses that the motive for this attack on
15 Mr. Jenkins' business was to take him out of business so
16 that -- because Mr. Jenkins was cutting prices, and
17 Mr. Few wanted to be able to dominate the marketplace up
18 there.

19 His motive was directly related to trade or
20 commerce. It was business. That's precisely what the
21 legislature had in mind when they concocted the South
22 Carolina Unfair Trade Practices Act. It was to protect
23 the public, as well as businesses, from this kind of
24 action.

25 As far as the repetition goes, it happened

1 twice, and it could happen again. That's the testimony.
2 So it has, in fact, been repeated. The potential for
3 repetition may be demonstrated in either of two ways, by
4 showing the same kind of actions occurred in the past
5 and by showing the company's procedures create a
6 potential for repetition of the unfair and deceptive
7 acts.

8 Both here, Judge, have been established. I
9 mean, there is clearly an issue -- there is an issue of
10 fact here for the jury to determine whether the public
11 is affected by his actions and whether they deem these
12 actions to be capable of repetition.

13 For that reason alone, the cause of action
14 should be submitted to the jury. You told the jury in
15 the beginning that they are the determiners of fact, and
16 here there are facial issues which would lead a jury to
17 conclude that the actions of the Defendants were, in
18 fact, in violation of the Unfair Trade Practices Act.

19 THE COURT: So an individual can violate the
20 Unfair Trade Practices Act?

21 MR. SUGGS: Judge, I'm not positive. It's our
22 position that the actions were brought on behalf of
23 Scott Few and Few Farms, Incorporated. His actions
24 were -- the reason he conspired with these fellows to
25 take these actions was to benefit not only himself but

1 his business. Scott Few is acting as the business when
2 he asked Johnny Lindsey to go over there and sugar
3 Mr. Jenkins' gas tank.

4 Looking at damages, Judge, Mr. Childs has
5 suggested to the Court that this was an attack on a
6 vehicle, and therefore since it's an attack on personal
7 property, the only remedy is to repair that personal
8 property.

9 No, sir. This was an attack on Mr. Jenkins'
10 business, and that's what the testimony has been from a
11 number of witnesses. They set out to attack the truck
12 and therefore destroy the business of Mr. Jenkins.

13 The purchase of the new vehicle was in
14 order -- rather the purchase of the replacement vehicle
15 was a proximate cause of this attack on his business.
16 So we should not be prohibited from putting that in
17 front of the jury.

18 If they think it's hogwash, if they think that
19 Mr. Jenkins didn't really need a replacement vehicle due
20 to the actions of the Defendants, then fine. They won't
21 award it, but certainly that is something that should be
22 considered by the jury.

23 Finally, Your Honor, turning to punitive
24 damages, I actually looked at this last night as I
25 started thinking through things, and I looked at the

1 number of factors set forth in the B.M.W. case and a
2 couple of other cases on the Federal level, as well as
3 South Carolina.

4 From what I can tell, it is not the
5 Plaintiff's burden to necessarily establish that the
6 Defendant is capable of paying punitive damages. It's
7 not our burden to show that.

8 That is not one of the fundamental elements of
9 establishing that we are entitled to punitive damages;
10 however, even if it were so, we have established that he
11 paid \$550,000 for a business just last year.

12 So he certainly has wealth, and he has a ton
13 of equipment, a sawmill, et cetera, et cetera. So he is
14 certainly capable of sustaining and paying for punitive
15 damages.

16 There has been testimony and evidence that the
17 actions of Mr. Few were malicious. They were intended
18 to harm. They were downright mean. I certainly believe
19 that this is the type of case which should be submitted
20 to a jury for consideration on punitive damages.

21 THE COURT: Thank you, sir.

22 MR. SUGGS: Thank you, Judge.

23 MR. CHILDS: Your Honor, I can only equate
24 these arguments for these cause of actions to an
25 automobile accident case where a car hits a business

1 truck. So we are going to have a cause of action for
2 that for trespass because the car hit the truck and
3 damaged the truck? The law doesn't support that.

4 You will have a cause of action for conversion
5 because the car hit the truck and the truck couldn't
6 operate? The law doesn't support that. You will have a
7 cause of action for unfair trade practices because the
8 car was operated by a business competitor of the
9 Defendant -- of the Plaintiff?

10 The fact about the unfair trade practices is
11 this transaction, whatever you can characterize it as
12 what it is, was totally unconnected with either trade or
13 commerce. That's the critical issue, whether or not the
14 transaction itself was related to trade or commerce.

15 That's the definition and the reasoning behind
16 the unfair trade practices. That's what it's to
17 protect, the public interest. There is a plethora of
18 private wrongs as we can see in the case law that the
19 unfair trade practices don't address.

20 I think that is pretty clear. I think that
21 the trespass cause of action, if you look at it and you
22 analyze it as if it were a wreck case, you can't sue
23 people for trespass because they hit your car and
24 damaged it. You can't sue people for converting your
25 car because they hit your car and you couldn't use it.

1 The damages -- it goes back to damages -- it's
2 the loss of use of the vehicle, and it's the reasonable
3 repair of the vehicle or it's the replacement value of
4 the vehicle.

5 We have no estimate as far as replacement
6 value yet, but we do know that it was purchased for
7 \$7,000. The Plaintiff can't allege that for some reason
8 now they are entitled to \$28,000 because they decided to
9 get a bigger vehicle to compete.

10 THE COURT: Let me ask you this. If I decided
11 to send some kind of computer virus to you and it got on
12 your computers and shut down all the computers in your
13 law firm, what could you sue me for?

14 MR. CHILDS: I think there is a statute about
15 that, about damages.

16 THE COURT: Well, put that aside. I will put
17 aside the judicial immunity, too, if you do that.

18 MR. CHILDS: I could probably sue you for
19 negligence, Your Honor.

20 THE COURT: Negligence?

21 MR. CHILDS: Yes, sir, I would. Negligence
22 covers that willful conduct. You owe me a duty not to
23 send me a virus.

24 THE COURT: So a reasonable person wouldn't
25 have sent the virus in the same way?

1 MR. CHILDS: Or wouldn't have sent it at all,
2 I would hope. I was kind of questioning why we didn't
3 have a negligence cause of action in this case, and I
4 thought maybe it was an effort to kind of box the Court
5 and the jury in, some of these imaginative causes of
6 action.

7 But I asked Mr. Suggs about that, and he
8 denied that. But I think it would be negligence, Your
9 Honor. That's the remedy for a lot of these things that
10 are undefined by statute or a particular cause of
11 action. It's simply negligence.

12 THE COURT: But it was intentional.

13 MR. CHILDS: Well, negligence covers willful
14 and intentional. There's no question about that. It's
15 in every one of our pleadings.

16 THE COURT: So you couldn't sue me for
17 conversion, that I rendered your computer system
18 inoperable?

19 MR. CHILDS: I don't think so. I think, you
20 know, it's exercising dominion and control over my
21 computer system. So every time an accident happens or
22 every time somebody wrecks a car, you could say that are
23 trying to convert the other person's car.

24 I think the conversion is exercising your
25 control. In this case the Plaintiff continued to have

1 control over his vehicle. He just alleges that he
2 didn't have an ability to operate it because it had been
3 damaged.

4 THE COURT: Mr. Suggs, why do you want to send
5 both trespass to personal property and conversion to the
6 jury? Do you have some special fondness for the term
7 chattel?

8 MR. SUGGS: No, sir.

9 THE COURT: One to burden the jury with.

10 MR. SUGGS: No, sir. You know, I imagine I
11 did what you did back when you were practicing. If you
12 have one of those elements of civil -- one of those
13 element's books and just kind of looked through it to
14 figure out what causes of action were best for these
15 facts.

16 I discounted -- and I told Robbie or
17 Mr. Childs when we were discussing it -- he asked me a
18 couple of times, Why didn't you plead negligence? I
19 said, I just don't think this is a negligence case.

20 When I was flipping through my book, it just
21 didn't seem right, but I came to trespass and found
22 supporting case law in that little book. The same goes
23 with the conversion.

24 Judge, I always plead as many causes of action
25 as I believe meet the smell test, for lack of a better

1 term. In this case I believe both of them are well
2 established by the facts, but I guess I'm not actually
3 addressing your question.

4 I do not have a particular fondness for either
5 one of the causes of action, but I am concerned that the
6 jury might get hung up on some of the cross examination
7 of Mr. Childs regarding trespass and whether there was
8 any trespass to the real property, et cetera, et cetera.

9 I think that a jury, if only trespass was
10 submitted to them, might think, Oh, I remember
11 Mr. Childs questioning Mr. Jenkins about this, and
12 Mr. Jenkins didn't really -- wasn't able to explain how
13 they came on his real property.

14 I just don't want to confuse the jury. I
15 think it's easiest to -- and I realize that's what you
16 are trying to avoid doing as well. But I think it would
17 be easiest for them to look at two, and if they didn't
18 think one met the smell test, toss it out, and you have
19 still got the other one.

20 THE COURT: So if you have conversion in
21 there, what does trespass add to it? That's what I'm
22 trying to figure out.

23 MR. SUGGS: I just don't believe that they are
24 absolutely synonymous. I just would hate for an
25 intelligent jury, which is what we have, to get caught

1 up on some bit of cross examination by Mr. Childs or
2 myself which they misinterpreted and thought that the
3 cause of action didn't stand because of some tidbit. I
4 think giving them multiple options is certainly the best
5 thing to do.

6 THE COURT: Do you have a proposed charge on
7 trespass?

8 MR. SUGGS: Yes, sir.

9 MR. CHILDS: I didn't find a charge on
10 trespass to personal property, but I would assume that
11 the same elements would apply, if that is a cause of
12 action, it would be the same elements as trespass to
13 real property.

14 MR. SUGGS: Judge, if you were to say,
15 Mr. Suggs or Trey, whenever you prefer, which one -- you
16 only get one.

17 THE COURT: I think in a courtroom it's
18 Mr. and Ms.

19 MR. SUGGS: If you were to say, Mr. Suggs,
20 which do you prefer? You only get one. Which do want
21 me to send to the jury? I would probably go with
22 conversion.

23 THE COURT: All right. I think there is
24 sufficient evidence, viewed in the light most favorable
25 to the Plaintiff at this stage, to support the causes of

1 action that have been pled.

2 I understand the trespass to real property has
3 been withdrawn. There is sufficient evidence of
4 malicious conduct or conscious wrongdoing that if
5 believed would warrant punitive damages as an
6 alternative or option for the jury to consider.

7 Regarding the unfair trade practices, I find
8 under the Crary case and other cases that there could be
9 sufficient or there is sufficient evidence, viewed in
10 the light most favorable to the Plaintiff, that there
11 was a violation.

12 The public impact, there was testimony about
13 impact on the market. While that certainly is
14 debatable, that's not the test at this stage. The test
15 is whether there is evidence in existence that would
16 support it. I can't be concerned with the weight of the
17 evidence at this stage, of course.

18 So in the conspiracy, the special damages
19 requirement that Mr. Childs raised, arguably has been
20 satisfied by damages to his business that Mr. Jenkins
21 testified about.

22 The case involving the abortion office
23 picketers, I believe would be analogous. There is a
24 special damage that has allegedly accrued to the
25 business that Mr. Jenkins has.

1 Therefore, unlike the damage simply to his
2 automobile, that could satisfy the special damages
3 requirement. So based on those reasons and all the
4 other reasons in the record, I respectfully deny the
5 motions. Are y'all ready for the jury?

6 MR. CHILDS: Yes, sir.

7 MR. SUGGS: I believe we are, Your Honor.

8 THE COURT: If you would bring our jury,
9 please.

10 (The jury returns to the courtroom).

11 THE COURT: Ladies and gentlemen, as you will
12 recall, the Plaintiff did complete its presentation of
13 the evidence, and now it's the opportunity of the
14 defense to present any evidence they wish to.

15 So, Mr. Childs, you may call your first
16 witness.

17 MR. CHILDS: John Wheeler.

18 JOHN FLEETWOOD WHEELER, being
19 first duly sworn, testified as follows:

20 CLERK: State your full name for the record,
21 please.

22 THE WITNESS: John Fleetwood Wheeler.

23 **DIRECT EXAMINATION**

24 BY MR. CHILDS:

25 Q Mr. Wheeler, how are you employed?

1 A I am a chemist and professor at Furman University.

2 Q And how long have you been a chemist and professor
3 at Furman University?

4 A I was originally hired by Furman in 1991 and have
5 been there throughout that time without any change.

6 Q What kind of chemistry do you teach at Furman?

7 A My background and training is in the area of
8 analytical chemistry. So this deals with analysis,
9 as you might imagine, also forensics and
10 environmental chemistry.

11 Q What kind of forensics investigations have you been
12 involved in?

13 A Over the years we have been asked to be involved in
14 a number of cases with a company in Charlotte
15 called Forensic Analytical Services and Testing. I
16 have done a lot of different kinds of tests on
17 fuels and accelerants and heavy metals and things
18 like that that might be involved in either criminal
19 or civil cases in that regard as a function of that
20 organization.

21 I also have two students, one who is employed
22 by Spartanburg County as their forensics expert in
23 the area of accelerant technology and drugs and so
24 on who is a criminalist there, and he did his
25 master's work with me while employed at

1 Spartanburg. A second student did a master's
2 degree who is now at the S.B.I., the Special Bureau
3 of Investigations in North Carolina.

4 Q What kind of education do you have in chemistry
5 besides being a professor? I assume you got there
6 somehow.

7 A It was a long one and expensive one unfortunately.
8 Let's see, I did my bachelor's work at Georgetown
9 College, which is a college in central Kentucky. I
10 did my Ph.D. work in analytical chemistry at the
11 University of Cincinnati. Then I did post doctoral
12 work there as well.

13 Q Now, you were retained in this case to form an
14 opinion as to the mechanism of sugar involved with
15 gasoline and its introduction into a motor vehicle.
16 What kind of professional history do you have about
17 that issue?

18 A My knowledge of this, first off, is in the realm of
19 looking at the solubility parameters for things
20 like water, sugar, and so on which are known as
21 polar molecules into substances like gasoline and
22 oil and so on.

23 We have all heard oil and water don't mix, for
24 example. We look at oil and vinegar dressings, and
25 we know that they don't mix very well. So sugar is

1 a molecule that, from a chemical standpoint, does
2 not mix with gasoline. It will not dissolve in
3 gasoline.

4 So my first investigation into this, and this
5 is what most scientists sort of do is to look back,
6 just like we do in law, at the history. So what is
7 the known history of people who have studied the
8 solubility of sugar in gasoline? This goes back a
9 long time because we all heard growing up about
10 sugaring gas tanks.

11 Q Go ahead.

12 A So in this regard there is actually quite a history
13 here in that there has been a lot of study done
14 over the years --

15 MR. SUGGS: Judge, I apologize for
16 interrupting. We would object. That would all be
17 hearsay as far as other studies.

18 THE WITNESS: Well, if I can continue, I will
19 cite some if that is helpful.

20 THE COURT: We will tell you when you can
21 continue.

22 Yes, sir, Mr. Childs.

23 MR. CHILDS: I believe he was going through
24 the history of his opinion in this case concerning the
25 ability of sugar to dissolve into a gasoline tank engine

1 and to be infused into the engine itself. So what he is
2 doing is reciting the basis of his research, as far as
3 formalizing his opinion.

4 MR. SUGGS: Judge, in response, it sounded
5 like he was getting ready to talk about his research,
6 possibly articles or investigation he had done, other
7 tests or what have. That would all be hearsay.

8 MR. CHILDS: It is the basis of his
9 professional opinion as far as an expert chemist and his
10 analysis of the issues in this case relative to the
11 introduction of sugar into a gasoline tank, thereby into
12 the engine of an automobile. So I would stipulate that
13 he is an expert on that issue.

14 THE COURT: I appreciate your stipulation.

15 MR. CHILDS: I would submit him, I'm sorry.

16 THE COURT: Have you offered him as an expert?

17 MR. CHILDS: I am offering him as such now,
18 Your Honor.

19 THE COURT: Is there any objection?

20 MR. SUGGS: There is, Your Honor. It may be
21 something we need to take up. I don't believe that
22 this chemist, who I'm sure is very well versed in
23 chemistry, his opinion has any relevance in this case.
24 This is a case about what damage is caused by sugar and
25 gas in a vehicle, not about the solubility of sugar and

1 gas.

2 MR. CHILDS: They put up two witnesses to
3 testify about how sugar migrates from a gasoline tank
4 into an engine. I think it's perfectly --

5 THE COURT: What are you offering him as an
6 expert in, Mr. Childs?

7 MR. CHILDS: On the solubility of sugar into
8 gasoline and water as it may be injected into a fuel
9 engine.

10 THE COURT: Mr. Suggs, you have got some
11 questions you want to ask about his qualifications?

12 MR. SUGGS: Sure, yes, sir. Do you want to do
13 that voir dire now?

14 THE COURT: I want you to do it.

15 MR. SUGGS: Yes, sir.

16 VOIR DIRE EXAMINATION

17 BY MR. SUGGS:

18 Q Professional Wheeler, should I call you doctor or
19 professor?

20 A It doesn't matter. You can call me Mister is fine.

21 Q I hate to take away that doctorate. Doctor, how
22 many engines have you inspected that had sugar
23 introduced into the gas system of that vehicle?

24 A I'm not a mechanic, so I have not looked at engines
25 specifically with sugar damage.

1 Q How many -- well, let me clarify. Have you ever
2 taken sugar, put it in gas, and run it through the
3 fuel system in the engine of a vehicle?

4 A I have not done experimentation with an engine with
5 sugar dissolved in gasoline because the sugar
6 doesn't dissolve in the gasoline.

7 Q But have you ever tried to run sugar --

8 A No.

9 Q Okay.

10 MR. SUGGS: Judge, it's our position that
11 Professor or Dr. Wheeler's testimony here is irrelevant
12 if he has never even run a test and doesn't know what
13 sugar and gas does to an engine.

14 THE COURT: I find he is qualified. Yes, sir,
15 Mr. Childs, you may continue.

16 MR. CHILDS: Thank you.

17 DIRECT EXAMINATION

18 BY MR. CHILDS:

19 Q Tell me, Dr. Wheeler, about your research about the
20 issue of the introduction of sugar into gasoline
21 into an engine tank, into an engine.

22 A Well, again, the research here is that there have
23 been a number of studies. I might need to ask a
24 question. Is the report that I have submitted
25 entered into evidence somewhere?

1 Q It's not entered into evidence. It has been
2 provided to the parties.

3 A Okay. I can see someone standing up already. So
4 before we get any further, let's just do that,
5 whatever it is. The cases that have been
6 presented, the studies that have been done, have
7 been in reference to the question of whether or not
8 sugar is soluble in gasoline.

9 We were approached by your office to do an
10 investigation, to do experiments, to determine
11 whether or not sugar was soluble in gasoline.
12 Those reports demonstrated that we were unable to
13 detect any solubility whatsoever of sugar in the
14 gasoline. The particles are there, the solid
15 particles remain.

16 MR. SUGGS: Judge?

17 THE COURT: Yes, sir.

18 MR. SUGGS: I do not believe this expert can
19 testify about an out-of-court experiment. For an
20 out-of-court experiment to be admissible, the experiment
21 must be made under conditions and circumstances similar
22 to those prevailing at the time of the occurrence at
23 issue in this case.

24 Taking a test tube, mixing it with gasoline
25 and sugar, and shaking it up is not the same as running

1 sugar and gas through the engine of a vehicle at 700-odd
2 degrees. Therefore, any lab experiment that has been
3 performed should not be admissible, and he should not be
4 allowed to testify as to it.

5 THE COURT: Overruled. Go forward.

6 A So maybe it will help to explain why this is
7 comparable in that regard. The question from my
8 prospective that we were asked to investigate is
9 not what happens to sugar that is dissolved in
10 gasoline at 700 degrees.

11 Because, again, the fundamental question is
12 what happens in the gas tank. If you introduce
13 sugar into the gas tank of a vehicle, it's at the
14 temperature of the gas tank. It's not at 700
15 degrees or any other temperature.

16 The humidity conditions are the humidity
17 conditions that prevail in the gas tank, which are
18 atmospheric conditions. So the experiments that we
19 carry out in the lab are, in fact, quite equitable
20 to those that actually exist in the real
21 circumstance in the gasoline tank.

22 So in this regard in our experiments and in a
23 number of other experiments that have been
24 published by criminologists at Cal Tech and in
25 Minnesota and in other cases, the conclusion is the

1 same, that sugar does not dissolve in gasoline.

2 It does remain as a particle. So from the
3 standpoint of creating problems for the fuel
4 delivery system, I would not argue that that is not
5 quite possible.

6 These particles get carried. They get
7 blocked. They can clog the fuel system. They can
8 clog the fuel filter. That can cause the engine to
9 starve and that can cause loss of fuel supply, the
10 engine to quit and so on.

11 If you do your own research on this, I think
12 you will find that that's the prevailing outcome of
13 sugaring someone's gas tank. It does very much the
14 same thing as sand in that regard.

15 Q Why does sugar not dissolve in gasoline?

16 A Again, from a chemical prospective, it's a function
17 of its chemical structure. The bonds there are
18 said to have dipole moments --

19 COURT REPORTER: Just one moment. You lost me
20 on that.

21 A The molecule is much more like water in its
22 structure than it's like gasoline. Why don't we
23 leave it at that.

24 Q Exactly what kind of experiment did you run?

25 A Our experiment was similar to some prior

1 experiments that had been done by investigators in
2 California to take sugar at a ratio that would have
3 equated to approximately ten pounds of sugar per
4 eight gallons of gasoline.

5 So it wasn't a full ten-pound bag of sugar in
6 eight gallons of gasoline. That's a little bit
7 unwieldy to handle, but the ratio was the same. So
8 we looked at a full saturation experiment.

9 In other words, it was putting as much sugar
10 as you possibly could under realistic conditions
11 into gasoline. We allowed those materials to
12 agitate for a period of time, to mix.

13 Then we did an experiment to recover, by
14 filtration, the sugar back. The sugar is wet at
15 this point because it has the moisture of the
16 gasoline associated with it. We dry that initially
17 in an oven at low temperatures, maybe a hundred
18 degrees Fahrenheit, in that range.

19 Sugar is not volatile, so it does not
20 evaporate or anything like that. Then we dry it
21 with some other gasses and we weigh it out. So
22 what we weighed out at the end of the experiment
23 within our experimental error was as much as we put
24 in. In other words we could not measure with the
25 accuracy of our instrumentation, our balances, any

1 Toss of sugar.

2 Q So you poured -- let me make sure that the jury
3 understands it and I do, too. So you poured a
4 whole bunch of sugar in gasoline?

5 A Right, and we got it all back.

6 Q And you got it all back. You heard or you read
7 Mr. Faneytte's deposition. I believe you were here
8 in the courtroom when he testified. Do you
9 disagree with his opinions?

10 MR. SUGGS: Objection, Your Honor. That would
11 be pitting two witnesses against one another.

12 THE COURT: Overruled.

13 BY MR. CHILDS:

14 Q Do you disagree with his opinion about the effects
15 of sugar upon an automobile engine?

16 A I was impressed. The characterization that
17 Mr. Faneytte gave of engines and how they work and
18 function and so on is from my prospective all very
19 reasonable.

20 As far as what would happen if one were to
21 take a solution that contained sugar water and coat
22 or pour over an engine inside the valves, inside
23 the internal parts of the engine, I can't speak to.
24 I haven't done that expert. I'm not aware of
25 anyone that has really done that experiment in my

1 research.

2 What I have found is that the sugar does not
3 make it past, in my research in terms of solubility
4 arguments and prior research from other groups, the
5 fuel filter to the point to have enough, high
6 enough, concentration to create that type of
7 internal engine damage in the valves.

8 I would believe if this an old engine, it's
9 carbureted. There would be at worse some potential
10 damage to the carburation, the injection system
11 basically of the fuel oxygen mixture at that point.
12 That would be obvious and apparent and would not
13 even require going into the valves and so on at
14 that point.

15 So I can't agree or disagree. I'm not a
16 mechanic from that standpoint, except to say that
17 the evidence would be prevalent without having to
18 go to that extent.

19 Q What about this theory that somehow temperatures
20 and conditions and humidity from the air and
21 atmospheric pressure in the tank and possibly some
22 water in the tank is going to hijack the sugar and
23 try to get it into the engine?

24 A It's certainly true, as we all have probably or
25 most of us have vehicles made since 1980, you know

1 you have to turn the gas cap several times and get
2 several clicks or you are warned about that and so
3 on.

4 This is, as Mr. Faneytte testified, to keep
5 the vapors from escaping for all sorts of good
6 reasons. In older vehicles that was not
7 necessarily the case.

8 So there is the possibility of more
9 condensation, more water ending up in the fuel tank
10 in older vehicles, and that's true. However, the
11 amount of water that is there is still very, very
12 low or otherwise the vehicle would, as Mr. Faneytte
13 testified -- this isn't my knowledge -- would
14 stall, would create problems in that respect.

15 So the amount of water that would be present
16 due to any type of condensation even in the gas
17 tank would not be enough to create sufficient
18 amount of any kind of sugar being carried through
19 and making through to the internal workings of the
20 engine, such that you wouldn't already have had
21 problems with the fuel filter clogging up and all
22 of those kinds of things.

23 Q So is it your opinion within a reasonable degree of
24 scientific certainty as to whether or not the sugar
25 that was placed in Mr. Jenkins' fuel tank could

1 have caused engine damage?

2 A It is my opinion that based on my knowledge of the
3 interaction of sugar with gasoline, to the extent
4 that there is any sugar that can make it through
5 the fuel system to the fuel delivery point, the
6 problems would be limited to that point, fuel
7 injectors or carburetors, not internal in the
8 valves and in the pistons and so.

9 Q Is that simply a myth that you can sugar somebody's
10 gas tank and caramelize their engine?

11 MR. SUGGS: Objection, Your Honor. He is
12 leading the witness.

13 THE COURT: Sustained.

14 BY MR. CHILDS:

15 Q Can you caramelize somebody's engine by putting
16 sugar in the gas tank?

17 A This again is an urban legend that has been dealt
18 with on a number of popular T.V. shows. Myth
19 Busters is one. From a more scientific standpoint,
20 they actually measured using radioisotopic labeling
21 the amount of sugar that dissolves in gasoline.

22 You have to have a radioactive label to even
23 be able to measure it because of the sensitivity
24 there. So that is an issue from that standpoint
25 that has attracted a lot of attention. And, yes,

1 from my opinion.

2 Q Please answer any questions Mr. Suggs may have.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION

5 BY MR. SUGGS:

6 Q Mr. Wheeler.

7 A Hey.

8 Q How are you?

9 A Good, thank you.

10 Q Now, you are a chemist and a professor?

11 A Yes, sir.

12 Q And you have already told the jury in response to
13 my earlier questions that you are not a mechanic?

14 A Yes, sir.

15 Q And I believe you testified that as to automobile
16 mechanical issues, you would defer to someone like
17 Juan Faneytte?

18 A That's correct.

19 Q Now, I looked at your C.V., your résumé, and I see
20 that one of your interests is the interaction of
21 certain transition metal complexes defined strongly
22 to D.N.A. and exhibit the potential to behave as
23 anticancer agents when excited by light? Is that
24 correct?

25 A Yes.

1 Q And your publications include an article called,
2 The Use of Chiral Capillary Electrophoresis, Coupled
3 with Circular Dichroism, in the Determination of
4 Absolute Values of Transition Metal Complexes?

5 A You are doing a great job, yes, sir.

6 Q You would agree with me that this interest in this
7 publication won't have anything to do with whether
8 gas dissolves -- excuse me -- sugar dissolves in
9 gas and transfers into the engine?

10 A But you would also see on that same C.V. other
11 publications and forensic journals that deal with
12 accelerant use and so on. So I do have experience
13 and training students in that regard and also in
14 performing many analyses that did not result in
15 publication.

16 As I'm sure you know, when it comes to things
17 of legal matters, we can't publish the results for
18 every experiment that we do. So I don't publish
19 those kinds of outcomes in professional journals.

20 Q But I believe you have already told the jury that
21 you have not set up an experiment in which you took
22 sugar, put it in gas, ran it through a fuel
23 delivery system with a fuel filter, and then tested
24 what effect it had on the engine of the vehicle;
25 correct?

1 A That's correct.

2 Q And you would agree with me that that would be a
3 better experiment in this case, to test whether
4 sugar in gas actually damages the engine?

5 A The best experiment that one could design would be
6 to have a Ford F., whatever it is, 700 engine from
7 1971 that has been rebuilt with however many
8 hundred thousand miles on it, and test it
9 beforehand and test it after. I can see that in
10 terms of experimental signs, there are better
11 things that we could do, but it's just not feasible
12 and possible.

13 Q But, Professor, that is what we have already done;
14 isn't it? Because we have already taken an F-700
15 from 1971, put sugar in the gas tank, run it
16 through, and seen that it damaged the valves and
17 the engine.

18 A No. I don't think that we have established that
19 that's what caused the damage. We didn't do the
20 control.

21 Q Do you have another experiment -- do you have
22 another answer or explanation for what caused his
23 previously perfectly working vehicle to suddenly
24 start seizing?

25 A In terms of -- again, as you have established, I'm

1 not the mechanic, so this is my opinion. But my
2 opinion would be that if that fuel filter came from
3 that vehicle, that starving the vehicle for fuel
4 would certainly cause it to seize, would certainly
5 cause those kinds of problems.

6 That is typical when we look at the literature
7 for what happens when somebody puts sugar in a gas
8 tank. As I think was testified to, this happens a
9 lot. Lots of folks have heard of putting sugar in
10 the gas tank, and yet we can't come up with a lot
11 of cases where there has been documented engine
12 damage.

13 All we can come up with is cases like this
14 where we have got the fuel system clogging and so
15 on. I also think that potentially if this went on
16 unabated for a long period of time, you kept
17 replacing the fuel filters and so on, you might
18 eventually create some potential for deposit on the
19 carburation and fuel delivery system. That would
20 be the worst case scenario of what has been
21 reported.

22 Q You mentioned this fuel filter that is chucked
23 up -- I'm sorry, were you here yesterday?

24 A No, sir.

25 Q Let me go ahead and tell you that Mr. Jenkins

1 testified that he removed this fuel filter. Then
2 from what we understand, sugar was reintroduced
3 into the gas tank, possibly less sugar this time.
4 So there has been sugar introduced into the system
5 since this filter was removed.

6 A Yes, sir.

7 Q Did you understand that?

8 A I understand it now.

9 Q And the problems that Mr. Jenkins continues to have
10 with the vehicle are post removing that filter.

11 A My response would be it wouldn't matter if there
12 were a hundred grams -- that's a few ounces -- of
13 sugar introduced into the gas tank or ten pounds of
14 sugar introduced into the gas tank.

15 Since neither one is measurably soluble, the
16 filter would clog either way or the crystals would
17 be there. So if that's that case, then there
18 should be a second filter that is full of granules.
19 That's all I'm saying.

20 Q What happens when you mix water and sugar?

21 A If you mix water and sugar, the sugar will, in the
22 absence of any other agent, the sugar will
23 dissolve.

24 Q What happens when you heat it back up?

25 A When you heat?

1 Q I'm sorry, the substance, the sugar and water.

2 A If you heat it to a high enough temperature, then
3 eventually the water would boil away, it would
4 evaporate, and leave the sugar residue behind.

5 Q And then that sugar residue, upon being heated up
6 further, what would happen to it? It would
7 caramelize?

8 A Well, I'm not -- that's not probably the term that
9 I would use, but you've got to end up with -- I
10 mean, you know what you end up with. It doesn't
11 have to be heated up. If you leave a Coke
12 container out and all the water evaporates, we have
13 probably done that before, it's sticky.

14 Q The experiment that you conducted, that was done in
15 a lab; correct?

16 A Yes, sir.

17 Q And not in a garage and you didn't use a truck?

18 A No, sir, I did not use a truck for the
19 investigation. I would clarify that the conditions
20 in the lab are comparable to conditions in a garage
21 for all the things that matter: Temperature,
22 humidity, et cetera.

23 Q I saw something about manual agitation. What does
24 manual agitation mean?

25 A That means you are shaking it up. There are

1 devices that can do that or you can at a repetitive
2 rate -- it's basically a chemical way of producing
3 mixing.

4 Q With regard to Mr. Jenkins vehicle --

5 A Yes.

6 Q -- you do not know how much sugar was put in the
7 gas tank, do you?

8 A No, sir.

9 Q And you don't know how long that sugar, gas, and
10 water mixture sloshed back and forth?

11 A No, sir.

12 Q And you don't know how hot it got in that gas tank?

13 A I could tell you it didn't get very hot because
14 there is still a truck. The flashpoint of
15 gasoline --

16 Q It didn't explode?

17 A That's right. I don't mean to be -- I'm just being
18 serious. The gas tank did not get appreciably
19 above 120, 130 degrees or we would run serious
20 risk, if that happened in gas tanks, of potential
21 explosion.

22 To respond to your question or your statement,
23 that is correct the solubility of a substance in
24 terms of measuring whether it dissolves in another
25 substance, can be done very quickly.

1 You can determine that within a few minutes.
2 It does not change with time. It does not change
3 with days, years, decades. If sand is insoluble in
4 water today, it will remain so in a thousand years.

5 Q Tell me what you did when you inspected the Ford
6 F-700.

7 A As you know, I did not inspect the vehicle.

8 Q So you have never seen the vehicle?

9 A That's correct.

10 Q Would you -- do you have an opinion and would you
11 agree that sugar in the gas tank will result in
12 damage to the tank?

13 A To the tank? Again, if there is sugar in the gas
14 tank, then the tank needs to be -- the sugar needs
15 to be removed. So, yes.

16 Q What about to the fuel lines? You would agree that
17 it would damage fuel lines?

18 A I would agree -- again, having not inspected the
19 vehicle -- but, yes, that fuel --

20 Q Theoretically?

21 A -- the particulates will certainly cause problems.

22 Q And you would agree that it could cause damage to
23 the fuel injectors?

24 A If there were fuel injectors or carburation, that
25 is the point, which under the kind of worst case

1 scenario, yes, that is a possibility over an
2 extended period of time.

3 Q Cause damage to the fuel pump?

4 A That's again more questionable, possibly.

5 Q You wrote somewhere that it is unlikely that
6 significant internal damage would result from the
7 addition of sugar to a gas tank?

8 A Correct.

9 Q Do you believe that ruining a man's truck is
10 insignificant?

11 A That was not what I was making the statement about.

12 Q Okay.

13 A You understand, I'm not -- whether someone's truck
14 is damaged or the conditions of this case are not
15 what I really want to be here for. I just want to
16 be here to answer question about the solubility of
17 sugar and gasoline. That's really what I'm
18 speaking to.

19 Q Professor, I appreciate your time.

20 A Thank you very much.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. CHILDS:

24 Q You mentioned something about experimenting on
25 Mr. Jenkins' truck. You mentioned something about

1 a control. What did you mean by a control?

2 A I think at that point we were talking about kind of
3 the best experiment that we could run. It would be
4 to do this on a real engine, a real truck, the same
5 model, the same milage, the same everything, the
6 same type of fuel pump, delivery system, all of
7 those things.

8 Of course, everyone realizes that is not
9 practical. I think counsel was suggesting --
10 Mr. Suggs, is that correct -- that that experiment
11 had already been run. In chemical terms or in
12 scientific terms, we can't run an experiment unless
13 we have a control.

14 A control would mean we would have an engine
15 that was that same age, under that same condition,
16 with those same miles and so on. We would look to
17 do it in the absence of any exposure of any
18 substance like sugar that was supposed to have been
19 introduced into the gasoline. That's, I guess, the
20 point I was making.

21 Q Did some of the research that you conducted on the
22 issue actually involve the introduction of sugar
23 into a gasoline tank that was running, into an
24 engine?

25 A Yes. The most commonly cited presentation in this

1 regard is a show that actually aired in 2002 --

2 MR. SUGGS: Judge, I'm sorry to interrupt.

3 This is hearsay. It's not a recognized treatise under,
4 I believe, 809, 803.

5 THE COURT: You can lay additional foundation,
6 Mr. Childs.

7 MR. CHILDS: I will rephrase the question.

8 THE COURT: All right.

9 BY MR. CHILDS:

10 Q In your research of all the literature available
11 and the expert treatises and the studies, did you
12 find any incident whereby an engine was damaged by
13 the introduction of sugar into the gas tank?

14 MR. SUGGS: We continue with our objection,
15 Your Honor.

16 THE COURT: Overruled.

17 MR. SUGGS: Thank you.

18 A I found no indication from an comprehensive study
19 that was done where someone set out to
20 intentionally study this phenomenon where they came
21 up with an answer that an engine was internally
22 damaged.

23 I also will point out that anecdotally, there
24 are folks who will say, Oh, my gas tank was sugared
25 in 1975, and I had engine damage. But there has

1 A Again, I would put that into the same category of
 2 anecdotal reports where this has happened, but no
 3 study -- and there have been many because it's such
 4 a common thing -- where this has ever been shown to
 5 actually happen.

6 Q You say a common thing. Do you know anybody who
 7 has sugar in their gas tank?

8 A Oh, when I was growing up -- I grew up in Kentucky.

9 Q Enough said. Thank you.

10 MR. CHILDS: That's all the questions I have.

11 THE COURT: Thank you, Professor.

12 MR. CHILDS: May the witness be excused?

13 MR. SUGGS: Absolutely.

14 THE COURT: Yes, sir. You may call your next
 15 witness, Mr. Childs.

16 MR. CHILDS: Ronnie Maness.

17 RONALD WESLEY MANESS, being
 18 first duly sworn, testified as follows:

19 CLERK: State your full name for the record
 20 please.

21 THE WITNESS: Ronald Wesley Maness,
 22 M-A-N-E-S-S.

23 DIRECT EXAMINATION

24 BY MR. CHILDS:

25 Q You need to scoot up and speak loudly so we can

1 hear you. Mr. Maness, how old are you?

2 A I'm fine.

3 Q How old are you?

4 A I'm 54.

5 Q What is your profession?

6 A I was a mechanic at Wallace White Pontiac, Buick,
7 G.M.C. in Gaffney.

8 Q What kind of experience as a mechanic have you had?

9 A I did engine transmission work.

10 Q How long did you do that for Wallace White?

11 A From 1999 until 2006.

12 THE COURT: Sir, can you scoot up a little
13 closer to that microphone. I think that will help.
14 Thank you.

15 BY MR. CHILDS:

16 Q Were you certified in your expertise as it relates
17 to mechanics?

18 A Yes, sir, I was A.S.E. certified.

19 Q What does your certificate, what does that mean?

20 A Automotive Service Excellence. All the mechanics
21 at the dealership have to be A.S.E. certified in
22 the work that they did for General Motors
23 warranties to pass.

24 Q Prior to working with Wallace White, did you have a
25 lot of experience with mechanicing before that?

- 1 A Yes.
- 2 Q How long?
- 3 A I was a mechanic all my life, since I was about 15
4 working on my own vehicles.
- 5 Q Are you familiar with mechanicing on farm vehicles
6 and trucks?
- 7 A Yes, some.
- 8 Q Have you had a lot of experience with them?
- 9 A Not a whole lot. I have had some experience, yes.
- 10 Q As far as your experience at Wallace White -- is
11 that the correct dealership name?
- 12 A Yes, it's Robert Schiffer now.
- 13 Q Have you retired from that now?
- 14 A I had cancer of the bladder. I was out from
15 October 2006 till February of 2007 for
16 chemotherapy, once a month. I went back to work in
17 February when the dealership changed hands to
18 Robert Schiffer. I worked for about three weeks.
19 I had to go out again to take chemotherapy again
20 for once a week for about nine weeks, and they kind
21 of eased me out the door.
- 22 Q So are you retired now?
- 23 A I've put in for disability.
- 24 Q Now, you were retained by Mr. Few to observe the
25 analysis of a 1971 Ford fertilizer truck that was

1 done at Delta Power Systems on April 24, 2008; is
2 that correct?

3 A Yes, sir.

4 Q What did you observe about that vehicle while you
5 were there?

6 A I saw the man hook up his oscilloscope to it, and
7 he removed a breather, cranked the truck, and the
8 machine showed several high spike lines which were
9 cylinders that weren't firing, misfired.

10 Then he hooked the vacuum line to it and did a
11 vacuum test that showed about the same thing, the
12 high spike lines, and he said that they were
13 sticking valves.

14 Q You are familiar with analyzing a motor vehicle
15 engine for those types of problems?

16 A I'm sorry?

17 Q Are you familiar with analyzing a motor vehicle
18 engine for those types of problems, for compression
19 and for firing the pistons and that kind of thing?

20 A Yes, I am.

21 Q Now, when you worked for Wallace White Ford, did
22 you perform those kind of tests on engines over
23 there?

24 A I did but we didn't use an oscilloscope. We didn't
25 have one.

1 Q What did you use?

2 A We used a compression gauge, and we had a vacuum
3 gauge with a dial, a needle dial.

4 Q In your experience with Wallace White, did you run
5 across a number of engines that exhibited those
6 kind of characteristics that you saw of
7 Mr. Jenkins' truck? Did you run across engines
8 that were showing those same problems, lack of
9 compression and lack of firing of the pistons?

10 A I worked on one like that.

11 Q You have also been involved in tearing down of
12 engines and opening them up and repairing them
13 completely; is that correct?

14 A Yes.

15 MR. CHILDS: Your Honor, I would submit he is
16 an expert, capable of qualifying concerning the
17 mechanics of a motor vehicle engine.

18 MR. SUGGS: No objection, Your Honor.

19 THE COURT: Okay.. He is qualified.

20 BY MR.. CHILDS:

21 Q Do you believe the tests that you saw Mr. Faneytte
22 conduct on April 24, 2008, can indicate to you the
23 cause of any particular engine problems?

24 A I'm sorry, I didn't hear you.

25 Q You observed those tests that Mr. Faneytte

1 conducted on Mr. Jenkins' engine, correct?

2 A Yes.

3 Q Were you able to reach any conclusions based upon
4 those tests that he conducted?

5 A Not a conclusion, no.

6 Q Why not?

7 A It just puts you in the ball park of where to look.

8 Q What do you mean by that?

9 A You have to disassemble the engine, take the valve
10 cover, start dismantling and looking inside to see
11 what is wrong. You can't go -- I mean, the tests
12 he done, it just puts you near the ballpark of
13 where to begin.

14 Q Does the test he does show the symptoms and not the
15 cause?

16 A Sir?

17 Q Does the test he does show the symptoms and not the
18 cause?

19 A It shows the symptoms, yes, not the cause.

20 Q What things can cause an engine to operate like
21 that?

22 A Misfires, could be sticking valves, could be plugs,
23 wires. It could be low compression, which I don't
24 think it was, because it cranked pretty good. I
25 heard it crank. Weak valve springs, broke valve

1 springs, worn valve guides, no gas getting into
2 that cylinder.

3 Q Based upon the observations that you saw of
4 Mr. Faneytte's testing of this engine, could you
5 reach a conclusion that this engine was damaged
6 internally by the introduction of sugar in the
7 gasoline tank?

8 A No.

9 Q Why not?

10 A Not standing there looking at it, I couldn't. As
11 far as sugar, it wouldn't do any damage to the
12 valves or the pistons.

13 Q Why not?

14 A The pistons, that is what they call a
15 non-interference engine, where, you know, like if
16 the timing chain broke and the cam quit turning
17 with the valve stuck open, the piston wouldn't hit
18 the valve. The piston comes up to the block about
19 half a inch from the top. It does not come all the
20 way up high. You have to hit the valve.

21 Q Anything else about this engine that causes you to
22 believe that it could not be damaged by
23 introduction of sugar in the gasoline tank?

24 A No, sir.

25 Q Have you ever seen sugar damage the internal

1 workings of an automobile engine?

2 A Yes.

3 Q How is that?

4 A Do what?

5 Q Have you ever seen an engine damaged by sugar in
6 the gasoline?

7 A Oh, no, no. I worked on one that had sugar in the
8 tank, but all it done was clogged up the fuel
9 system.

10 Q Please answer any questions Mr. Suggs may have.

11 **CROSS EXAMINATION**

12 BY MR. SUGGS:

13 Q Mr. Maness, you have been friends with the Few
14 family for a number of years; is that true?

15 A Sir?

16 Q I'm sorry, I will speak up.

17 A I'm hard of hearing.

18 Q I am, too. You have been friends with the Few
19 family for a number of years, correct?

20 A I know Ben Few; yes.

21 Q That's Scott's father?

22 A Yes.

23 Q Now, your work as a mechanic was on the engine, it
24 was on transmissions, air conditioner, power
25 windows. You are kind of a jack of all trades when

- 1 it comes to a vehicle, right?
- 2 A Pretty much.
- 3 Q But you don't specialize in engine repair; isn't
- 4 that accurate?
- 5 A Well, I did do that. My main job mainly was engine
- 6 repair.
- 7 Q Okay. But you just worked on everything else as
- 8 well?
- 9 A I did when I got the chance.
- 10 Q You worked as a certified mechanic for about seven
- 11 years?
- 12 A Yes.
- 13 Q You are not certified anymore, correct?
- 14 A Well, my certification run out because I'm not
- 15 employed anymore.
- 16 Q And during your tenure or during the time you were
- 17 a mechanic, you never worked on a Ford F-700; did
- 18 you?
- 19 A Not an F-700, no.
- 20 Q And during your time as a mechanic, you saw one car
- 21 that had sugar in the gas tank; isn't that right?
- 22 A Yes.
- 23 Q And that was a 2000 Oldsmobile?
- 24 A 2000-something, yeah.
- 25 Q A 2000 Oldsmobile has a much different fuel

1 delivery system than a 1971 Ford F-700, doesn't
2 it?

3 A It does.

4 Q But with regard to this Oldsmobile, y'all had to
5 remove the gas tank and wash it out; right?

6 A Yes.

7 Q You had to replace the fuel pump?

8 A Yes.

9 Q You had to replace the fuel filter, of course?

10 A Yes.

11 Q You had to replace the fuel injectors?

12 A Did on precautionary measures, yes, cleaned the
13 fuel rails, cleaned the fuel lines. All of that
14 had to be cleaned out.

15 Q Did you replace the carburetor?

16 A Well, it didn't have a carburetor. It was
17 injectors.

18 Q Okay. Would you agree with me that sugar in the
19 fuel lines can result in low pressure, low fuel
20 pressure?

21 A Yes.

22 Q And if you lose the vacuum pressure in a truck,
23 that can cause you to lose the steering and the
24 brakes and all that stuff; right?

25 A If the engine cuts off, yes.

1 Q Then when you have that low pressure, that can
2 result in sticking valves; isn't that right?

3 A Not necessarily.

4 Q Do you remember telling me that in your deposition?

5 A I don't think so.

6 Q Let's look at it real quick just to make sure we
7 are on the same page. I might be misremembering.
8 Just bear with me and we will sort it out. I will
9 hand that to you and let me get my copy.

10 Look with me on page 16, and if you don't
11 mind, I will come around you. Forgive me for
12 intruding in your space. Let's see, I asked you on
13 page 16, line 4: If a filter gets stuck, can that
14 affect the fuel pressure? You said, Say that
15 again. I said, If a fuel filter gets clogged, can
16 that affect the fuel pressure in the engine? You
17 said yeah.

18 A Yeah.

19 Q I said, Which can in turn cause problems with the
20 pistons, correct?

21 Yeah.

22 Or the valves?

23 Well, if the fuel filter gets clogged, then
24 you are not going to be receiving any gas.

25 I said, But if it's partially clogged, that

1 can affect the fuel pressure; correct? You said
2 yes.

3 So I may be misinterpreting it, but I thought
4 you were telling me that low fuel pressure can
5 result in problems with the valves or the pistons.
6 Is that not what you meant?

7 A No.

8 Q Forgive me. I misunderstood. Now, if the valves
9 do get stuck up for whatever reason, whether it be
10 sugar or some other reason, that can cause the
11 truck to lose power and to choke down; right?

12 A Yes.

13 Q Now, you were at Delta Power Systems when
14 Mr. Faneytte ran the oscilloscope test on the
15 vehicle; right?

16 A Yes.

17 Q And I believe you testified earlier that y'all
18 didn't have an oscilloscope at your old place of
19 business, but you know enough where you can look at
20 it and tell pretty much what is going on; right?

21 A Yes.

22 Q Based on what you saw, it appeared that three or
23 four of the valves were sticking; correct?

24 A Possibly sticking valves, yes.

25 Q In your deposition you said they were sticking,

1 right?

2 A Well, I went by what he said. He said they were.

3 Q The testimony thus far from Mr. Jenkins is that the
4 truck was running well before the sugar was
5 introduced into the system, all right? And we know
6 from other testimony that sugar was put in the fuel
7 tank.

8 Then we know from Mr. Jenkins' testimony that
9 the truck stopped working properly thereafter. So
10 wouldn't a reasonable conclusion to draw be that
11 the sticking valves were caused by the sugar being
12 introduced into the gas tank?

13 A No, I don't think so.

14 Q I believe I asked you in your deposition whether
15 you could say for certain whether putting sugar in
16 the gas tank caused damage to the truck, and I
17 believe you said you couldn't say that for certain.
18 Is that accurate?

19 A (Witness nods). (Indicating affirmative response).

20 Q Yes?

21 A I think I heard your question.

22 Q Is that right?

23 A Could you ask me a question.

24 Q Sure. I believe I asked you in your deposition
25 whether you could say for certain whether putting

1 sugar in Mr. Jenkins' gas tank resulted in damage,
2 and you said you couldn't say for sure either way.
3 Is that accurate?

4 A Yes.

5 Q I think that's all I have. Thank you, sir.

6 THE COURT: Redirect?

7 MR. CHILDS: No more questions, Your Honor.

8 THE COURT: Thank you, sir.

9 MR. SUGGS: We don't have any objection to him
10 being excused if that's what they would like to do.

11 THE COURT: All right. Yes, sir, you can call
12 your next witness.

13 MR. CHILDS: Benjamin Scott Few.

14 BENJAMIN SCOTT FEW, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CHILDS:

18 Q Mr. Few, Mr. Suggs had called you as a witness in
19 his case in chief, and now it's my opportunity to
20 call you as a witness in your defense. Tell the
21 jury a little bit about yourself. We got some of
22 it out. You have been married for how many years?

23 A Seventeen.

24 Q Where did you go to high school?

25 A I went to Blue Ridge High School.

1 Q What year did you graduate?

2 A '87.

3 Q And I understand you went to Clemson after that. I
4 won't hold it against you. Some people may favor
5 that. You went to Clemson and graduated in what
6 year?

7 A I finished in December of '92.

8 Q And you got a degree in what?

9 A Agriculture, mechanization, and business.

10 Q And so after you got out of Clemson, you returned
11 back to the Blue Ridge area of Greenville?

12 A Right.

13 Q And so have you lived there ever since?

14 A Yes, sir.

15 Q Now, how did you develop Few Farms, Incorporated?
16 Was it your business to begin with or was it your
17 father's business?

18 A It was just my business. We just decided in
19 about -- when I worked for the fertilizer company,
20 I started it when I bought my truck. We just went
21 ahead and got incorporated right then.

22 Q So you started it on your own?

23 A Sure.

24 Q Your own money and effort and all that stuff into
25 it?

1 A Well, I financed nearly every piece of equipment I
2 have, the ones I have got now. I didn't pay cash
3 or nothing like that. I didn't have a lot of
4 capital to work with, I think maybe five or ten
5 grand to start with. As times goes on, I picked up
6 more business and so forth.

7 Q And how has the business grown since you started
8 it?

9 A Well, it went real good for a number of years until
10 just in the last two or three years, fuel has
11 gotten so high. It has drove the price of raw
12 materials up as well.

13 It's the same thing in my lumber business.
14 The housing market has fell back, again, fuel
15 prices are just -- they are about triple what they
16 used to be.

17 As times goes on, you have children growing up
18 now and getting jobs in town. You have got less
19 farmers, more landscaping people. There are
20 several variables involved in it.

21 Q Mr. Suggs asked you about purchasing a lumber
22 business. Can you explain that to the jury, what
23 you did with respect to the lumber business?

24 A Well, we were -- again, as you know, you all know
25 it's seasonal by now, I'm sure. We were hunting

1 something to do in the off season, especially in
2 the wintertime.

3 So in 1999 I bought a sawmill and set it up
4 there at the farm and started selling lumber. Then
5 last year I had the opportunity to buy a larger
6 sawmill, which is Glassy Mountain Lumber. We
7 financed that and are now running -- we took a
8 small sawmill and put both of them together. It
9 kind of helps fill in the bare spots in between the
10 summers and winters.

11 Q Are your businesses very profitable?

12 A They have been in the past, but right now the
13 economy is slow. It has slowed housing starts.
14 You've got a lot of variables in it. We are
15 selling lumber, but the demand is low. We are
16 still spreading lime, but the demand isn't what it
17 used to be.

18 Q So the lime expenses have gone up?

19 A Lime, we used to buy lime for \$9 a ton and now
20 it's, I want to say, 34.

21 Q What kind of assets does Few Farms, Incorporated
22 have?

23 A I have got some loaders. I will have to think. I
24 think I have got three loaders, a couple of trucks,
25 a dozer and a track hoe, some sawmill equipment,

1 some edgers, several flatbed trailers.

2 Q Do you have more assets than liabilities?

3 A Right now I do, yeah. At one time I had paid my
4 debt way down, but last year I went back in debt
5 and purchased the other sawmill. So, yeah, I do
6 right now.

7 Q You do what?

8 A I've got more liabilities than I do assets.

9 Q You grew up in the Blue Ridge area, and I think you
10 knew Mr. Mack Brown that sold his business to
11 Mr. Jenkins. Were you involved in any discussions
12 with Mack Brown about the value of Mr. Jenkins'
13 truck back then?

14 A Well, Mack and I, like I say, we had worked
15 together. He was at retirement age. He wanted to
16 sell his business, and he wanted \$17,000 for it.
17 But at that time it was, like I say, 1996 or so --
18 I'm not sure exactly on the year -- but by then I
19 had already gotten rid of all my gas trucks and
20 went to diesel engines with air conditioning.

21 We were going to Calhoun Falls, we were going
22 to Columbia, Hendersonville. I needed better
23 equipment, so I had traded up as time went on. I
24 didn't want to buy a 1971 Ford to go with what I
25 had going on because we had went to diesel trucks,

1 stainless steel bodies, that type thing. We traded
2 up into a later model.

3 Q What condition was that truck in when it was
4 offered to you?

5 A Mack brought that truck new. I am sure y'all
6 remember Mack's Fuel Oil. He bought it new in
7 1971. They ran it for about 20-some-odd years as a
8 fuel oil delivery truck, similar to what we are
9 doing now.

10 I know that he rebuilt the engine at least one
11 time. When you bore an engine like that and then
12 you rebuild it again and you bore it again, your
13 walls are going to become thinner.

14 I just didn't see spending a lot. I didn't
15 want to put \$17,000 in a truck and another business
16 that was similar to what I had going on. I already
17 had two trucks at that time going anyway. I
18 just -- I didn't.

19 Q Weren't you afraid of the competition?

20 A Well, again, I have always just worked and did what
21 I could do for the public or whoever. Again, I
22 considered the weather my competition. Because you
23 can only get out two to three loads a day,
24 sometimes four depending on the situation.

25 You've got a window there that you've got to

1 get it. My competition was just the weather.
2 There was plenty of other spreaders around. I had
3 enough grading and enough sawmill work, you know,
4 to make it through years to justify me working on
5 my own for a year anyway.

6 Q Let me ask you about the seasonability of people
7 needing fertilizer or lime in the February or
8 March time period. You have heard Mr. Jenkins'
9 testimony about that. What is the experience with
10 your business about the demand for business in
11 February and March?

12 A The demand is up. There's no doubt. People want
13 to get their fertilizer on in March so the grass
14 will green up. You obviously wouldn't want to put
15 it out in July when you have no water. It's
16 raining in the spring.

17 But I don't agree with what he had to say
18 about the planting season. There is virtually no
19 planting at all done in February or March. Most of
20 your planting is done in the fall of the year or
21 sometimes you will put in some soy beans or
22 something later.

23 In our part of the country, there is minimal
24 planting done during that season that requires you
25 to be there on that day. It's just if somebody

1 calls on Monday and said, I am planting corn on
2 Tuesday, they want you to have a load of
3 fertilizer, I just don't see that in our part of
4 the country.

5 Q Do you see that later in the season?

6 A No, not -- you know, most farmers are pretty good
7 guys. They will coordinate with you. They will
8 say, Hey I'll be planting next week. Can you be
9 here?

10 They're not going to call you up, and then --
11 most farmers, I'm sure you know are loyal people.
12 If you give them good service and do a good job,
13 they will stay with you and call you back.

14 Q Were you ever even aware of the fact back in
15 February or March of 2004 that Mr. Jenkins wasn't
16 operating his truck?

17 A I had heard through some of my customers that he
18 had called and, you know, made some slander type
19 remarks --

20 Q I am just asking you, had you heard or seen whether
21 or not he was operating his truck in that time
22 period?

23 A No.

24 Q At some point you became aware of the fact that
25 Mr. Jenkins was saying that you had something to do

1 with the damage to his truck?

2 A Sure.

3 Q Was that in the fall of 2004?

4 A It was later that year but I don't remember. It
5 was a lot later. The flyer was already out and
6 posted, but again, I think it was just -- you know,
7 I don't know.

8 Q Did Mr. Jenkins ever call you and ask you about it?

9 A No, sir.

10 Q Did you ever run across Mr. Jenkins going to or
11 from jobs or around Blue Ridge?

12 A Once in a while, we would run up in the fertilizer
13 plant in the line together, but that's about it. I
14 never run into him at the store or anything like
15 that.

16 Q What was his attitude toward you when you saw him?

17 A Well, we didn't -- I didn't really have any
18 confrontations or anything with him. We had our
19 own business going, and then when that played out,
20 we went to doing something else.

21 Q Did you ever flip him the bird or anything like
22 that?

23 A No, sir.

24 Q Has he ever done that to you?

25 A Yes.

1 Q How often has that happened?

2 A Just one time. I had my son with me, and I just
3 kind of played it off. He saw it and we kind of
4 just worked around it another way. Basically I
5 just shucked it off like it didn't happen. I don't
6 know. I don't know what happened to his truck or
7 whatever, and I don't wish him any harm, but I
8 didn't do it, and I didn't have anybody do it.

9 Q What kind of activities are you involved with in
10 the community?

11 A Well, I go to Mount Lebanon Baptist Church, and I
12 help with the R.A.s, and I'm on the athletic
13 advisory board at North Greenville University. We
14 are trying to boost up their athletics to get
15 involved into a different conference.

16 I help -- my son plays baseball, and I help
17 coach on his team. I'm just a helper on that. I'm
18 not really a key role. That's about all that I
19 know of.

20 Q Has this situation with Mr. Jenkins affected your
21 business?

22 A I don't think so.

23 Q Did you ever -- were you one of those people that
24 had ever heard about sugar in a gas tank damaging
25 engines?

1 MR. SUGGS: Objection, Your Honor, that's
2 hearsay. He asked whether he ever heard.

3 THE COURT: Sustained.

4 BY MR. CHILDS:

5 Q Have you ever thought in your life that sugar in a
6 gas tank is going to caramelize a motor vehicle
7 engine?

8 A I had never thought about it, no, sir.

9 Q Have you ever thought about putting sugar in
10 somebody's gas tank?

11 A No, sir.

12 Q Have you ever thought about putting iron filings in
13 somebody's oil?

14 A No, sir.

15 Q Did you ever talk to anybody about doing those kind
16 of things?

17 A No, sir.

18 Q Have you ever wanted to injure Mr. Jenkins or
19 damage his property?

20 A No, sir.

21 Q Have you ever been involved in any kind of
22 transactions with Mr. Jenkins commercially? Have
23 you ever bought products from him or he sold to
24 you?

25 A No, sir. I have traded up there at the store that

1 he's talking about that him and his brother owned.
2 I've stopped in there and bought gas and drinks and
3 whatnot over the years. That's all.

4 Q Are you aware of the value of a 1971 Ford F-700 in
5 the market today?

6 A In the market today? I can give you a range of
7 what I think it's worth. I will say 3,500 to
8 \$5,000 in today's market. Today's market is down.
9 People are selling equipment a lot. I know what my
10 trucks are worth, and they are down, too.

11 Q Please answer any questions Mr. Suggs may have.

12 MR. SUGGS: One moment, please.

13 (Pause).

14 CROSS EXAMINATION

15 BY MR. SUGGS:

16 Q Mr. Few, you plant -- y'all were talking about the
17 seasons when you plant. You plant spring wheat
18 around the beginning of March?

19 A Not usually.

20 Q When do you plant it?

21 A January. You try to get it in in November, but it
22 the rain starts coming in and you can't get it in,
23 you have to get it in in December or January. But
24 usually it's already too late if you wait until
25 February or March.

1 Q Mr. Childs was asking you a number of questions
2 about your financial status. I requested your
3 Federal and State tax returns back on February 19,
4 2007, a year and a half ago. You wouldn't give
5 them to me. What would those tax returns show?

6 A What year again, '07?

7 Q I asked for 2001 to the present. Let's take 2004,
8 just to pull one out. How much income?

9 A I couldn't say. I don't know.

10 Q You don't know. Do you know what your net worth
11 is?

12 A No.

13 Q Do you know what the net worth of your business is?

14 A No, sir, I don't.

15 Q How can you make the determination that your
16 liabilities exceed your assets if you don't even
17 know the net worth of your company?

18 A Well, right now I am just concentrating on my debt.
19 I got a good bit of debt since I bought that
20 company last year --

21 Q And you -- I didn't mean to cut off.

22 A Go ahead.

23 Q You haven't provided any documentation to me or in
24 this court to establish your net worth, what
25 liabilities you have or what assets you have; have

1 you?

2 A No, sir, I don't really see where that's relevant
3 in this case, but...

4 Q Well, your attorney was asking you about it; right?

5 A I don't remember. I don't remember anything being
6 brought up about it.

7 Q You stated on your direct examination that you
8 didn't wish any harm to Mr. Jenkins. What did you
9 expect to happen when you hired Johnny Lindsey to
10 put sugar in his gas tank?

11 A I didn't hire Johnny Lindsey to put it. I didn't
12 hire Johnny Lindsey to put sugar or anything else
13 in anybody's tank or do any other kind of work for
14 me.

15 Q Is it your position that Johnny Lindsey and Rocky
16 Stokes stood before this jury and just lied?

17 A Yes, sir, it is.

18 Q Okay. Thank you.

19 THE COURT: Redirect?

20 MR. CHILDS: No, sir, Your Honor. The defense
21 rests.

22 THE COURT: Mr. Few, you may step down. Does
23 the Plaintiff have any reply?

24 MR. SUGGS: We do, Your Honor. If I could
25 have five minutes to run to my vehicle. I was not able

1 to carry everything with me, and I have something that
2 Mr. Jenkins needs for his rebuttable testimony.

3 THE COURT: All right. Ladies and gentlemen,
4 I will ask you to go to your jury room momentarily.
5 Don't talk about the case and continue to keep an open
6 mind. Thank you.

7 (The jury retires to the jury room).

8 (Attorneys confer).

9 MR. CHILDS: Your Honor, I was just asking him
10 what he was having to bring up here, and apparently the
11 Plaintiff wants to do an experiment in front of the jury
12 with water, gas, and sugar.

13 MR. SUGGS: Yes, sir.

14 THE COURT: What kind of experiment?

15 MR. SUGGS: Where you take a mason jar of gas,
16 pour some water on top of it, pour some sugar in it and
17 mix it up. It's their contention that sugar and gas
18 don't mix. It's our contention that there is water in
19 gas. Water and sugar mix together, and that's what we
20 would like to show the jury.

21 MR. CHILDS: I don't think -- without one of
22 their experts or somebody testifying to it, I don't
23 think the Plaintiff is competent to do tests of that
24 nature.

25 I was not aware of any scientific tests they

1 intended to introduce here at trial. I would like to
2 have my expert here to look at the test and to testify
3 about what significance, if any, it has.

4 THE COURT: So Mr. Childs had no idea that you
5 were going to conduct this experiment?

6 MR. SUGGS: No, sir, I didn't know we were
7 going to conduct it until -- I didn't know that the
8 expert was going to be permitted to testify about an
9 out-of-court lab experiment very similar to the one we
10 would like to introduce.

11 MR. CHILDS: You've got the report.

12 MR. SUGGS: I didn't think he was going to be
13 granted to testify to it.

14 THE COURT: So you just happen to have gas,
15 sugar, and water in your car?

16 MR. SUGGS: In case he was allowed to testify
17 to it.

18 MR. CHILDS: I move to exclude that, Your
19 Honor.

20 THE COURT: Yes, I will not allow that.

21 MR. SUGGS: Okay. May I go grab my client?

22 THE COURT: Sure.

23 (Pause).

24 THE COURT: I understand the jury's food is
25 here. I'm going to go ahead and let them eat, and we

1 will just plan on reconvening about 12:45 and have the
2 closing arguments. Do you have any other reply other
3 than that?

4 MR. SUGGS: Judge, yes, there will be a brief
5 reply.

6 THE COURT: He is going to testify?

7 MR. SUGGS: Yes, sir.

8 THE COURT: Okay. We will do the reply and
9 then we will do the closing arguments and the charge.
10 Anything for the record at this point?

11 MR. CHILDS: After the reply I would renew my
12 motions previously made at the close of the Plaintiff's
13 case.

14 THE COURT: Mr. Childs has submitted some
15 requests to charge. Do you have any you want to submit,
16 Mr. Suggs?

17 MR. SUGGS: Your Honor, I do. May I ask for
18 some clarification on one thing?

19 THE COURT: Yes.

20 MR. SUGGS: Can Mr. Jenkins testify about an
21 experiment he conducted outside and just not do the
22 expert here, just tell the jury about what he has done?

23 MR. CHILDS: I don't think he is competent to
24 testify about any kind of experiment.

25 MR. SUGGS: I think it would go to the weight

1 and credibility of the evidence.

2 THE COURT: Unless he is qualified as an
3 expert. Y'all have had numerous experts testify about
4 the properties of sugar and gasoline and interaction
5 that occurs when they are put together and so forth.

6 Unless he is qualified as an expert to testify
7 to that, I don't understand how that would be
8 admissible. And as far as the experiment itself, there
9 was no notice given to the other side about the proposed
10 experiment.

11 Mr. Childs certainly would have an opportunity
12 to look at the materials involved in the experiment to
13 make sure they were what they were represented to be.
14 To produce that at this late stage would prejudice him.
15 It would exacerbate the issues in the case.

16 Moreover, Sergeant McCall was concerned that
17 there was going to be gasoline brought into the
18 courtroom, which, of course, concerns me as well. So
19 surprises are good for birthdays and Christmas. Other
20 than that, I respectfully would not allow that without
21 any kind of prior notice or any other ground for its
22 admissibility. Anything further?

23 MR. SUGGS: Not from us, your Honor.

24 THE COURT: Be back at 12:45.

25 (Whereupon there was a luncheon recess).

1 THE COURT: You can bring the jury on in.
2 (The jury return to the courtroom at
3 12:53 p.m.)

4 THE COURT: Ladies and gentlemen, the
5 Defendant has rested, and now there is the opportunity
6 for the Plaintiff to present any evidence in reply.
7 Mr. Suggs.

8 MR. SUGGS: Briefly, Your Honor, we call Ken
9 Jenkins to the stand.

10 KENNETH B. JENKINS, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SUGGS:

14 Q Mr. Jenkins, do you own a convenience store?

15 A Yes, my brother and I own one together.

16 Q Does that convenience store sell gasoline?

17 A It does.

18 Q What does D.H.E.C. require of a gasoline station?

19 MR. CHILDS: Objection. What is the relevancy
20 of that, Your Honor? I object to relevancy.

21 MR. SUGGS: May I explain where I am going
22 with it, Judge?

23 THE COURT: Why don't y'all come up here.

24 (Whereupon there was a bench conference off
25 the record in the presence of the jury but out of the

1 hearing of the jury).

2 BY MR. SUGGS:

3 Q Mr. Jenkins, I will have to switch gears here for a
4 moment. There has been testimony about the value
5 of your Ford F-700 truck. Can you please tell the
6 jury what value you place on that vehicle.

7 A Yes. If it was in good running condition and the
8 engine was rebuilt. I think -- I'm not sure
9 whether I was asked that or testified earlier --
10 but somewhere between 8 and \$10,000.

11 The way I come up with that is that the truck
12 itself is probably worth 3,500 to 5,000. The
13 special steel bed on it, although it's used, the
14 replacement of it is about \$16,000. So if you take
15 about one-quarter off what a new one would cost,
16 say \$4,000, you'd come up in the neighborhood of 8
17 to \$10,000.

18 Q Thank you, Ken.

19 **CROSS EXAMINATION**

20 BY MR. CHILDS:

21 Q Mr. Jenkins, you still have the truck; don't you?

22 A Yes.

23 Q You still have the bed, don't you?

24 A Yes.

25 Q You have no intention of selling it, do you?

1 A If somebody wants it bad enough, yes.

2 Q You paid \$7,000 for it when you bought it?

3 A I didn't pay \$7,000 for it.

4 Q You paid \$17,000?

5 A I paid \$17,000 for the whole business.

6 Q So the bed that is on it is still good, isn't it?

7 A Sure.

8 Q So that's what it's worth?

9 A I just said that I estimated that a new one would
10 could \$16,000. If you took one-quarter of that,
11 that would be \$4,000.

12 Q So your truck is worth at least \$4,000?

13 A No, the bed.

14 Q Do you still have the bed?

15 A Yes.

16 MR. CHILDS: That's all the questions I have.

17 MR. SUGGS: Nothing further, Your Honor.

18 THE COURT: Thank you, Mr. Jenkins.

19 Anything further from the Plaintiff?

20 MR. SUGGS: None, Your Honor.

21 THE COURT: Let me see the lawyers up here
22 just one second if I could.

23 (Whereupon there was a bench conference off
24 the record in the presence of the jury but out of the
25 hearing of the jury).

1 THE COURT: Ladies and gentlemen, we will take
2 a brief recess. We will have the conclusion of the
3 case. Go back to the jury room. I am sorry we had to
4 shuffle you in and out so quickly. Don't talk about the
5 case.

6 (The jury retires to the jury room).

7 THE COURT: Any motions at this stage?

8 MR. CHILDS: Yes, sir. At this stage I would
9 renew my previous motions for directed verdict on all
10 the Plaintiff's causes of action based upon the
11 arguments I previously stated.

12 In addition to that, I would reiterate most
13 strongly the unfair trade practices argument. At this
14 stage of the proceeding, all the evidence is in. There
15 is no evidence of a public impact or public interest in
16 this alleged private wrong.

17 There is no evidence of a transaction in the
18 trade or commerce that would possibly affect the public
19 interest. Any testimony that has been solicited so far
20 is by way of mere speculation and has no -- does not
21 raise the issue of these causes of action to that of an
22 unfair trade practice.

23 In addition to that, I move for directed
24 verdict on the damages for the Plaintiff issuing a
25 reward and also printing for a reward poster of \$35, I

1 believe, and the reward of \$2,000.

2 Those type of damages are not the proximate
3 cause or the result of the acts alleged in the
4 complaint, nor can they be considered to be the natural
5 derision of that conduct, in that any plaintiff could
6 issue any unreasonable or untenable or unquestionable
7 amounts for awards or other conduct that is not directly
8 and proximately related to these alleged torts.

9 So I think that the damages related to the
10 poster and the payment of a reward, which is entirely
11 within the discretion of the Plaintiff, whether he paid
12 it or not and the amount of an reward he posts, are not
13 proximate damages in this case, and I would move to
14 strike those damages in this case.

15 THE COURT: Okay. Yes, sir, Mr. Suggs.

16 MR. SUGGS: Judge, we reiterate our defenses
17 as to the various causes of action or rather arguments
18 regarding each cause of action, why it should be
19 submitted to the jury. If you would like me to, I will
20 rehash it. But unless otherwise instructed, I will move
21 along.

22 As to the damages, I believe that it's up to
23 the jury to decide whether the reward payment and
24 printing of the poster was a proximate result of the
25 actions taken by the Defendant in this case.

1 Granted, he exercised some decision making --
2 he being Mr. Jenkins -- had to make the decision. I
3 guess it was somewhat of subjective situation to do so.
4 But for the fact that sugar was introduced into his gas
5 tank, he wouldn't have had to put up a reward poster and
6 pay out \$2,000. So we submit that should be left for a
7 jury to decide. Thank you, Your Honor.

8 THE COURT: Thank you. As to the reward being
9 an improper element of damages, I will charge the jury
10 on actual damages. They are designed to compensate the
11 victim and put the victim -- or the Plaintiff rather --
12 in the same position he was before the incident
13 occurred.

14 Whether that extension of a reward was a
15 reasonable act is something the jury will have to
16 determine, if that's an element of damages that
17 proximately was caused by the Defendant's conduct if
18 they, in fact, find the Defendant did do anything
19 improper.

20 As to the unfair trade practices, based on the
21 Singleton versus Stokes Motors case and the Crary case,
22 I find that the public interest requirement has been met
23 by the evidence viewed in the light most favorable to
24 Mr. Jenkins at this stage.

25 In the Crary case, the Supreme Court said that

1 after alleging and proving facts demonstrating the
2 potential for repetition of the Defendant's actions, the
3 Plaintiff has proven an adverse affect on the public
4 interest. The Plaintiff need not allege or prove
5 anything further in relation to the public interest
6 requirement.

7 Then the Supreme Court said, We held in Daisy
8 Outdoor Advertising Company, Inc. versus Abbott that the
9 Court of Appeals erred in requiring more. They further
10 held and also noted in the Wright versus Craft case that
11 the potential for repetition may be shown either by
12 showing the same kind of actions occurred in the past,
13 thus making it likely they will continue to occur absent
14 deterrence or, two, by showing the company's procedure
15 create a potential repetition of the unfair and
16 deceptive acts.

17 They said, We specifically declined in Daisy
18 to hold that these are the only means for showing
19 potential repetition or potential for repetition. As
20 stated, each case must be evaluated on its own merits.

21 There's other case law saying that even a
22 single incident can provide the basis for the public
23 impact element. Furthermore, as to the trade or
24 commerce, I believe the definition, although somewhat
25 circular, of a trade would encompass a corporation, who

1 is one of the Defendants here. So I respectfully deny
2 the motions.

3 Is there anything further before we bring the
4 jury in?

5 MR. SUGGS: Judge, the only thing I would like
6 to do is take a moment to set up that chart so I'm not
7 blocking your view, counsel's view, the court reporter's
8 view or anything like that.

9 THE COURT: Okay. Go ahead.

10 (Pause).

11 THE COURT: All right. If you would bring the
12 jury.

13 (The jury returns to the courtroom).

14 THE COURT: Okay, ladies and gentlemen, we
15 have reached the stage of the trial where it's now time
16 for the closing arguments of the lawyers.

17 Yes, sir, Mr. Suggs.

18 MR. SUGGS: May it please the Court.

19 THE COURT: Yes, sir.

20 **CLOSING ARGUMENT**

21 MR. SUGGS: Ladies and gentlemen of the jury,
22 I appreciate y'all's patience and attention during the
23 last two days. As Judge Hill told you at the outset,
24 your service is one of the most important things a
25 citizen can do for his community and for his country. I

1 appreciate y'all being here, being so attentive, and
2 being so patient with us as we presented our evidence
3 and testimony.

4 I would submit to you jurors that today you
5 will have more power than possibly ever before or ever
6 again. When you go to vote for government, for mayor,
7 you are one of hundreds of thousands. When you go to a
8 P.T.A. meeting, you are one of maybe a hundred or maybe
9 less.

10 Here today you are one of 12. You are one of
11 12 people who has the power to do what is right and what
12 is just. You have the power to help Mr. Jenkins. You
13 have the power to make him whole. That's what we are
14 here to ask you to do.

15 The judge is going to instruct you on what is
16 called the burden of proof, and I know you have all seen
17 C.S.I. or Law and Order or other types of shows where
18 they talk about the burden of proof, and they talk about
19 beyond a reasonable doubt.

20 That is not the burden of proof in a civil
21 case. What I have got to show to you, I have to prove
22 my case by a preponderance of the evidence, which means
23 more likely than not.

24 If you think about it like a football field, I
25 don't have to take it from end zone to end zone. All I

1 have to do is get beyond the 50-yard line. Some people
2 like to talk about scales, the scales of justice, if you
3 will. I have got to tip it ever so lightly in my favor,
4 and we have proven our case.

5 I would submit to you that here today and over
6 the course of the last two days, we have met that burden
7 of proof in establishing that Ken Jenkins has been
8 significantly damaged by the wrongful and deceitful and
9 just plain mean actions of Scott Few on behalf of
10 himself and on behalf of his company, Few Farms.

11 I am not going to sit here and rehash the
12 testimony and the evidence. You heard it once. I know
13 you were paying attention. So I'm not going to go line
14 by line through everything you have heard. I will
15 comment briefly on some disparity between the witnesses
16 and some of the other testimony.

17 Folks, you heard from two people in this case
18 that don't have a dog in the fight, Johnny Lindsey and
19 Buford "Rocky" Stokes. These are credible witnesses,
20 but they're not angels. Folks, I didn't pick them. Ken
21 Jenkins didn't pick them.

22 Scott Few picked them. You are not going to
23 pick your preacher or your teacher or another pillar of
24 the community to sugar somebody's gas tank. You go to
25 someone who is desperate.

1 You go to someone like Johnny Lindsey who will
2 do anything for a hundred dollars, even if it means
3 violating what he has been taught or what his daddy told
4 him: Don't mess with another man's property.

5 He just wants that fix. Do not judge Johnny
6 Lindsey because of his bad actions. Judge him on
7 whether you believe he was credible or not. Rocky
8 Stokes, the same way. He doesn't have a thing to gain
9 here. He has no grudge against Scott Few.

10 He was here to tell you what he knows. Was he
11 able to say Ken Jenkins was the target? No, but we all
12 heard what Ken said. We all heard what Rocky said. I
13 think we can put two and two together.

14 Folks, in determining the credibility of the
15 cases, not just the witnesses, but the cases consider
16 the defense: We didn't do it. Well, if we did it, it
17 didn't cause harm. If it caused some harm, it wasn't a
18 whole lot of harm. Then finally, if it hurt Ken, it
19 only hurt Ken and didn't hurt everybody else. It didn't
20 hurt the community. It didn't hurt commerce.

21 The evidence supports but one conclusion in
22 this case, and that conclusion is Scott Few, on behalf
23 of Few Farms, hired Johnny Lindsey to sneak in to
24 Steve's Garage, to sneak in to Ken's mother's house or
25 into her yard and pour sugar in the gas tank.

1 That is what the evidence supports. There is
2 only one person that disagrees, and that is the
3 Defendant in this case, and I wouldn't expect him to
4 admit it.

5 The goal of Scott Few and Few Farms was not
6 just to hurt Ken Jenkins' truck. You heard the
7 testimony. You heard what Mr. Few told Johnny Lindsey
8 and what he told Rocky. He said, I want to take him
9 out. I want to damage him. I want to destroy his
10 business, not just his truck. The truck was just a
11 means to an end.

12 He wanted to take Ken Jenkins out. He
13 wanted the competition gone. He wanted all of the
14 business to himself, and he wanted to attack at the
15 perfect time, the time when it would hurt Ken Jenkins
16 the most, the time when he would gain the most from
17 those actions.

18 Now, it has been suggested to you that he
19 could have come up with a better way to do it. If he
20 wanted to hurt Ken Jenkins' truck, he would have set it
21 on fire. Well, guess what? Ken Jenkins would have
22 known someone had set his car on fire or his truck on
23 fire. That would be obvious.

24 The reason you sugar someone's gas tank is
25 because it's clandestine. It's secretive. He is not

1 going to know for a couple of days. By the time he
2 figures it out, it's eight, ten days later. He has got
3 a leg down, and Mr. Few is up and running and gathering
4 that business up. That's why you do it. That's why you
5 choose sugar in the gas tank versus setting it on fire.

6 The defense has suggested that Mr. Few is an
7 intelligent guy and I'm sure he is. If he graduated
8 from college, kudos to him. Smart people do dumb
9 things. It was dumb to hire Johnny Lindsey to attack
10 Ken Jenkins' truck and his business.

11 I suggested to you all three tenets at the
12 outset, three things that I think are so fundamental for
13 our society here: Act honestly. Respect each other's
14 property. Don't interfere with another man's ability to
15 earn a living and provide for his family.

16 Folks, y'all know these rules to be true, just
17 as I do. I believe the evidence and the testimony has
18 proven to you that Scott Few doesn't know those rules.
19 He doesn't live by those rules. He does not operate his
20 business by those rules.

21 Scott Few didn't want competition. He wanted
22 all of it to himself. I know he says there is plenty
23 out there to do for everybody. Hogwash, there wasn't.
24 If Ken is out of the way, he has got it all.

25 Now, moving to the defense's position on sugar

1 in the gas tank, you have heard from two mechanics who
2 said without a doubt putting sugar in a gas tank causes
3 damage to the engine.

4 Everybody has agreed apparently that there is
5 some amount of water in gas, and I think all of us know
6 that water and gas dissolves -- excuse me -- sugar and
7 water dissolves. If water is with gas, it makes its way
8 to the filter, it's heated up, it's crystallized, it
9 gums up the valves.

10 That's exactly what the tests showed. Even
11 their own expert admitted, Mr. Maness admitted, that it
12 appeared from the tests that three or four valves were
13 not firing.

14 Okay. Now, we also heard from the chemist. I
15 think y'all liked him because I liked him. If I am on
16 the other side and enjoyed hearing from him, he is a
17 likeable guy. Folks, he is a chemist.

18 He told you he conducted a lab experiment, and
19 based upon that experiment, Oh, it wouldn't cause any
20 harm to a engine. You heard from two mechanics, people
21 who do this every day, that have seen vehicles with
22 sugar in their gas tanks, get ruined by gas -- excuse
23 me -- by sugar in the gas.

24 The more credible evidence, the evidence and
25 the testimony of people who actually know what they are

1 talking about and have actually seen vehicles with sugar
2 in the gas, suggests that, in fact, it will not only
3 damage the fuel delivery system and all that goes with
4 it, as the defense experts acknowledged, but also it
5 will damage the engine.

6 But, folks, the most important testimony is
7 not from any expert. It's from that man right there.
8 Because he told you that prior to February 24, 2004, his
9 truck was running well. Thereafter he had problems with
10 it.

11 He cleaned it all up. Subsequently the truck
12 was sugared again, and it has never been the same. He
13 has not undertaken tearing that engine down, hadn't had
14 the money to do it, hasn't chosen to do it. That's not
15 for me to judge, and it's not for you to judge either.

16 The fact of the matter is all the credible
17 evidence and testimony suggests that the engine is
18 irreparably damaged by that sugar being introduced into
19 the gas tank.

20 The way I was -- I was sitting there talking
21 to a couple of my colleagues, as well as my father. We
22 were talking about whether sugar really does damage
23 gasoline. One of my colleagues said, Trey, when was the
24 last time --

25 MR. CHILDS: Objection. It's not facts in

1 evidence.

2 THE COURT: Sustained.

3 MR. SUGGS: Let me ask you this. When was the
4 last time you pulled up to a fuel pump, and they asked
5 you how much sugar you wanted in the gas tank? It
6 doesn't happen because sugar doesn't belong in a fuel
7 tank.

8 Now is the time when we have to talk about
9 damages. When you go to work, how are you compensated?
10 You are compensated with money. When you are injured
11 or damaged in a court system, you are compensated with
12 money. That's the bottom line.

13 Nobody can make Ken Jenkins whole. Y'all
14 can't make his truck right. All you can do is award
15 money, and that's what I'm asking you to do here today.
16 I am asking you to do everything in your power to help
17 Ken Jenkins out, to help make him as whole as you
18 possibly can.

19 But at the same time I want you to go a step
20 further. I want to send a message to Scott Few and Few
21 Farms and everybody else in this county that we are not
22 going to stand by and allow people to act deceitfully
23 and dishonestly.

24 We are not going to allow people to damage
25 each other's property. We are not going to allow people

1 to interfere with other's businesses and keep them from
2 providing for their families. We are not going to stand
3 for it.

4 The only way to make sure we accomplish that
5 goal is to award a sufficient amount of damages to
6 deter such activity in the future and to punish Scott
7 Few and Few Farms. I am asking you to do that. I am
8 asking you to render a verdict which will sufficiently
9 punish Scott Few and his company for the actions that
10 he has taken.

11 This is a brief summary of the damages that we
12 have all heard about throughout the course of this
13 trial. Mr. Jenkins talked to you about not being able
14 to operate his vehicle for eight days. He told you it
15 was about \$722 or so per day that he lost. That's
16 \$5,891.

17 You heard from Juan Faneytte. He testified
18 that it would be 4,600 to \$5,200 to rebuild the engine.
19 I have included \$5,200 here to rebuild the engine. You
20 have heard from Ken Jenkins. He told you that he had to
21 go out and buy a replacement truck.

22 Why? It's not just because his truck was
23 attacked, because his business was attacked. He was
24 under attack, and the only way he could defend himself
25 was to go out and get another truck, one he could depend

1 on, one he could compete with, and one with which he
2 could earn a living.

3 You heard that he undertook some repairs to
4 his own vehicle. It cost \$402. We had testimony that
5 there were tests run on the truck by Mr. Faneytte. That
6 costed \$296.40.

7 Mr. Jenkins testified that he had to drain his
8 backhoe because he was concerned that that had been
9 sugared as well. He has undertaken printing out a
10 reward flyer which cost \$35, and he paid a reward. That
11 was \$2,000.

12 The total of damages that were caused by Scott
13 Few's actions, acting on behalf of himself as well as
14 his company, are just over \$52,000. I would submit to
15 you that is a fair and just amount to reward Mr. Jenkins
16 to start helping to make him whole.

17 However, I want you to consider that that is
18 not enough. That's not enough. Just saying you have to
19 make him whole isn't enough. Folks, if I were to go or
20 if anyone goes into a Belk department store, walking
21 along, turn around and the bag over your shoulder bumps
22 into a vase or lamp, and it falls to the ground. What
23 happens?

24 You pay to replace the vase. But by the same
25 token if you were going with a baseball bat and just

1 started swinging and crashing through Belk's, swinging
2 at everything with intent, with malice, you wouldn't
3 just have to replace it, you would be punished by
4 society. That is only right.

5 Some of us balk at the idea of punitive
6 damages. Punitive damages have been in existence for
7 thousands of years. If you look back through the Bible
8 to Exodus 22:1, you will find a passage that states:
9 When a man destroys one oxen, he shall replace it with
10 five.

11 Folks, the only thing you can do here to make
12 sure that this kind of deceit, malicious and plain mean
13 type of actions do not take place in the future, not
14 only by Scott Few, but by others is to send a message
15 that we are not going to stand for it.

16 I would submit to you that three times, maybe
17 five times that amount right there would be adequate to
18 do so, maybe more. I will leave that up to the jury.
19 Whatever you do decide to do here, I will be satisfied.
20 Ken Jenkins is going to be satisfied.

21 We will know that you listened intently. We
22 will know that you have made him whole. We will know
23 that you have acted justly and rightly, and we
24 appreciate it. Thank you.

25 THE COURT: Thank you, Mr. Suggs. Mr. Childs.

CLOSING ARGUMENT

1
2 MR. CHILDS: Ladies and gentlemen of the jury,
3 I, too, want to thank you for your careful attention and
4 your patience in this case. If we didn't have juries to
5 decide these issues, folks would be out shooting each
6 other in the back yard.

7 That's really why our society works. It works
8 also because jurors are common people, not that you are
9 common, but that you are normal people who have been
10 derived from our general population who decide these
11 factual things.

12 In the United States, judges don't sit and
13 decide whether or not a defendant in a criminal case is
14 guilty or innocent. Normal people do. In civil cases,
15 everybody has a right to a jury trial on factual issues
16 because we trust you.

17 We trust you to listen carefully, use your
18 common sense, and apply it to the facts that you hear.
19 Now, you are not here, as Mr. Suggs has said, to reward
20 Mr. Jenkins. You are here to decide a civil case.

21 A lot of things stick out to me in this case
22 that harkens back to my experience over the years.
23 There was a comment by Mr. Suggs that, you know, why do
24 people lie? Why would Buford Stokes and Johnny Lindsey
25 come in here and tell this fabulous tale?

1 Well, in many years as a prosecutor, I would
2 tell anybody that criminals don't often make a lot of
3 sense about what they do, okay. It doesn't often make a
4 lot of sense about what people do in the conduct of
5 their criminal behavior.

6 But also that goes to the issue that Mr. Suggs
7 raised about our questioning of damages. If you see a
8 wreck case where there is a nick on a fender, and a
9 plaintiff comes in here in traction and in a body cast,
10 you know something is up.

11 Well, that is what this Plaintiff has done.
12 He has come in here with \$420 in damages, he says. And
13 remember this, this is what Johnny Lindsey was ordered
14 to pay him by way of restitution, \$420.

15 He comes in here and says, Oh, my God, I have
16 been damaged so horribly. What does that do -- why did
17 we even raise that issue when we didn't do this? Well,
18 because it attaches a question of the credibility of the
19 entire Plaintiff's case.

20 The fact that they would exaggerate their
21 damages means that they would exaggerate other facts and
22 circumstances of this case. I have to defend the whole
23 thing. I can't just say, you know, we didn't do it, but
24 you are entitled to a hundred million dollars in
25 damages. That is just not right.

1 It's not what he would be entitled to in the
2 worse case scenario. But let's look at this as it is.
3 It's two individuals who came into this courtroom and
4 said that -- one individual -- said that Mr. Few, my
5 good buddy, contacted me in the winter, in December of
6 2003, and said something about sugaring a fuel tank or
7 putting filings in oil.

8 This good friend, Mr. Stokes, who if you use
9 your common sense and listen carefully to what people
10 say never visited Mr. Few's home, never knew anything
11 about his children or his family. He never testified
12 about his phone numbers or his associations or anything
13 like that.

14 Mr. Stokes testified about something that he
15 says happened in December of 2003 that he told two other
16 individuals about, Mark Turner and Greg Lewis, who
17 didn't testify, who also told his wife who he is still
18 with, who didn't testify.

19 So what does that cause you to think about his
20 version of what he says happened? What motive did he
21 have? He got a thousand dollars. That's a pretty good
22 motive.

23 Now, Mr. Suggs says, you know, don't pay any
24 attention to the fact that Mr. Stokes had a criminal
25 record because, you know, he was telling the truth in

1 here.

2 The reason we are able, under the rules of
3 evidence, to ask people: Are you the Buford Wesley
4 Stokes who was convicted of assault and battery of a
5 high and aggravated nature in the year 2000, is because
6 that raises an issue of their credibility in and of
7 itself.

8 A person who has been convicted of such a
9 serious offense shows a propensity not to be truthful,
10 not to be trustworthy, and not to be credible. The
11 rules of evidence allow us to ask those questions about
12 their prior convictions.

13 The same things holds true for Johnny Truman
14 Lindsey, Johnny Truman Lindsey. God bless him. He has
15 repented probably a million times in his life. He is
16 perfectly clean of crack, perfectly clean of it today.

17 You say why would Johnny Lindsey get in all
18 this difficulty and all this trouble, you know, and say
19 that Mr. Few, his good friend according to Mr. Lindsey,
20 had paid him a hundred dollars to go sugar Mr. Jenkins'
21 gas tank? Who would give a hundred dollars to Johnny
22 Lindsey to do anything? And who would expect him to do
23 it?

24 Who would expect him to do anything with a
25 hundred dollars except to go buy crack. That is just

1 the most ridiculous proposition I have ever heard,
2 particularly somebody who has known him in the
3 community, known this record would say: I trust you. I
4 trust you, buddy, first of all, not to tell anybody that
5 I called you up and said do this. I trust you with a
6 hundred dollars to go to do this.

7 This is from a man that can't drive a car,
8 that's an habitual traffic offender. How many times?
9 Five, six times, habitual traffic offender. You know
10 what is interesting about Johnny Lindsey? He knows how
11 to work the system, doesn't he?

12 He walked right up in here and testified, a
13 free man, well maybe semi free, his home incarceration.
14 He came up here. He is living in his house. With that
15 criminal record, how does he accomplish that?

16 He accomplishes that because he is a snitch.
17 When he gets in trouble, he tries to get other people in
18 trouble. That is his nature. That's his affliction.
19 That's his modis operandi. That's what he did in this
20 case.

21 Who better to get in trouble than somebody
22 that he knew Mr. Jenkins was after. You can't tell me
23 that the community of Blue Ridge didn't know that
24 Mr. Jenkins was after Mr. Few.

25 What is missing about Johnny Lindsey's story?

1 William Guest. I also heard another name, Gary Gantt,
2 Officer Gillstrap. Apparently this officer arrested
3 Mr. Lindsey for committing this crime, but we didn't
4 hear from him.

5 Mr. Lindsey, of course, hasn't paid the \$420
6 in restitution he has been ordered to pay for how long
7 now, two years? I submit to you that Johnny Lindsey has
8 benefited an awful lot by what he has done. What else
9 about this case is bothersome? Roy Budenot, the
10 mechanic that works for the business, Steve's Garage.

11 You know, Mr. Jenkins wants to submit Mr. Few
12 and Few Farms, Incorporated to a judgment by you that he
13 acted deceitfully and dishonestly. That's what he wants
14 your verdict to say based upon the testimony of Johnny
15 Lindsey and Buford Stokes. That's what he is asking you
16 to do.

17 He wants to brand this man and his business as
18 deceitful and dishonest based upon Johnny Lindsey's
19 testimony. That's bothersome. But he is so --
20 Mr. Jenkins is so convinced of this, he is so convinced,
21 he would leave no stone unturned.

22 Do you think if there was somebody else that
23 could corroborate any of this testimony, would they not
24 be here? Do you think that the person who has their
25 vehicle damaged could reasonably be entitled to go in

1 and buy him a new truck, a bigger truck?

2 That's what they are selling to you. That is
3 an exaggeration. That is the full body cast on a fender
4 bender. That is what that is about. These two folks.
5 probably spent way too much time -- and I'm not
6 belittling Mr. Jenkins -- but they have spent way too
7 much time bickering over this.

8 There was not one phone call from Mr. Jenkins
9 to Mr. Few and probably not one call to Mr. Few to
10 Mr. Jenkins to say, No, I didn't do this. But
11 Mr. Jenkins wants to label Mr. Few as a criminal and
12 crook and is engaged in unfair trade practices.

13 He is so rabid about this that he wants us to
14 believe that this has destroyed his vehicle's engine.
15 It has caramelized. He has got a candy apple engine.
16 He has got caramelized sugar in the engine.

17 I don't know why it's not so hard to look
18 inside the engine and say that or not. Do you know why
19 it's so hard not to do that? Because he doesn't want to
20 know the answer to that question. But, you know, if he
21 wants to try and produce the evidence, he needs to
22 produce that to you.

23 I think this filter answers about all the
24 questions you have to do about that substance. Whether
25 it's sugar or not -- and I'm not an expert -- nobody has

1 tested that. But whatever was in that tank is in this
2 filter, and that's where it went.

3 So from that he wants his lost profit margin
4 for eight days, not his loss of use of the vehicle, not
5 what he could have gone and rented another vehicle for
6 to pick up all that business. That tells you something.

7 Are you missing customers or are you just
8 sitting down going I'm not busy? Are you missing
9 customers or are you going to go out and rent a vehicle
10 to do this? Or are you just going to turn them down on
11 the phone?

12 So what does that tell you about missing these
13 customers? If you are missing \$795 dollars a day, I am
14 pretty sure you would go out and rent a truck. It's not
15 too hard to do.

16 But every plaintiff has a duty to mitigate
17 their damages. He has not done that in this case, and
18 then he wants damages for \$52,000. It's just
19 incredible, all this based upon Buford Stokes and Johnny
20 Lindsey.

21 So the final thing that he asks you to do is
22 invoke punitive damages against Mr. Few and Few Farms,
23 Incorporated. One of the things he didn't tell you was
24 that you must find by clear and convincing evidence that
25 punitive damages are necessary. That is pretty much the

1 standard that we would apply to a criminal case.

2 But what is bothering me so much is this is a
3 man that has worked hard for a living, has done the
4 right things in the community. Everything about him
5 tells you this never happened. He has been called
6 dishonest and deceitful, fraudulent, and now he is being
7 asked to pay punitive damages for clogging a fuel
8 filter.

9 Now, I could go through each of these causes
10 of action that they have raised individually or one at
11 a time. The judge will go through the elements of each
12 one. I will submit to you that they are as much an
13 exaggeration as the allegations are and the damages
14 are.

15 Mr. Few did not convert Mr. Jenkins' vehicle
16 to his own use. Mr. Few did not trespass. Mr. Few did
17 not commit an unfair trade practice in trade or commerce
18 or business. There's no business transactions involved
19 here. The judge will instruct you more fully on those
20 issues.

21 Mr. Few did not conspire with Mr. Lindsey or
22 Mr. Stokes or Mr. Gantt or Mr. Guest or Mr. Turner or
23 Mr. Lewis or anybody else to injure Mr. Jenkins. A
24 plaintiff must establish their right to recover based on
25 the preponderance of the evidence.

1 in Greenville County? That is for you to decide.

2 You have been asked to consider whether Johnny
3 Lindsey and Buford Stokes are credible. Once again, the
4 litany of troubles that have plagued Johnny Lindsey over
5 his adult life has been brought up for your
6 consideration and not once did Johnny Lindsey dispute
7 his past or his mistakes.

8 However, we are all capable of weighing the
9 credibility of the witness. Y'all heard from Buford
10 Stokes. You heard from Johnny Lindsey. Mr. Childs told
11 you jurors a moment ago that my case, our case, rests
12 upon you believing Johnny Lindsey in establishing that
13 Mr. Few and Few Farms was deceitful and dishonest. I
14 would ask you, Did Scott Few commit some other lies?

15 You were also asked to consider where these
16 other witnesses are. I know y'all have heard through
17 the course of the testimony various objections. One you
18 hear often is hearsay. These witnesses -- Billy Guest,
19 Gary Gantt, Gillstrap, Mark Lewis, Greg Turner (sic) --
20 wouldn't have been able to testify to anything. It
21 would have all been hearsay. That's why we didn't call
22 them.

23 Let me change that. Billy Guest, I don't know
24 where he is. Roy Budenot would not respond --

25 MR. CHILDS: Objection. That's facts not in

1 evidence.

2 THE COURT: Sustained.

3 MR. SUGGS: If I may continue. But these
4 witnesses you haven't heard him from are for a very good
5 reason, folks.

6 To suggest again that Mr. Jenkins should have
7 come up with a way to mitigate his damages, he should
8 have just gone and gotten another spreader truck, you
9 can't get a spreader truck at your local rental car
10 place. It doesn't operate that way.

11 He had no options other than to get through
12 those eight days; try to determine what was wrong with
13 his vehicle, repair it as best he could, and get back on
14 the road. That's exactly what he did.

15 Folks, I'm not going to keep you any longer.
16 I would submit to you once again that you have the power
17 to help Mr. Jenkins. You have the ability to make him
18 whole. You have the chance here today to send a
19 message, and I would ask that you do so. Thank you.

20 (Whereupon the Court charged the jury as
21 follows).

22 THE COURT: Ladies and gentlemen, you have
23 heard all the evidence in this case, and you have heard
24 the final arguments of the lawyers. It's now my duty to
25 instruct you on the law of this case.

1 It's your job to find the facts from all the
2 evidence in this case, and to those facts you must apply
3 the law as I give it to you. You should not be
4 concerned with what the law should be, but with what the
5 law is.

6 You must not be influenced in this case by any
7 personal likes or dislikes or undue sympathy or
8 prejudice. That means you must decide this case based
9 on the evidence and according to the law. You will
10 recall that you took an oath to do just that when we
11 began this case yesterday morning.

12 Now, you must not read into these instructions
13 or into anything I may have said or done during the
14 course of this trial as suggesting to you what I think
15 the facts are or what your verdict should be.

16 Because as I told you, you are the sole and
17 exclusive judges of the fact. Under our Constitution
18 and laws, I'm not allowed to have an opinion on the
19 facts of this case to share with you, and you and you
20 alone are the judges of the facts.

21 How do you decide what the facts are? You do
22 that by evaluating and weighing the evidence you have
23 heard during the course of this trial. There is no way
24 for me to give you a set of scales to take back in the
25 jury room with you to let you conduct experiments on the

1 evidence.

2 That obviously wouldn't be practical. It is
3 not a physical process. It's a mental process, and you
4 weigh and evaluate evidence simply by using your good
5 common sense and your sound judgment and your sense of
6 logic and reason and your life experiences.

7 I told you at the beginning of the case that
8 the Plaintiff, Mr. Jenkins, has the burden of proof. In
9 order to prevail and obtain a verdict at your hands, he
10 must meet his burden of proof. His burden of proof is
11 simply this.

12 It is to convince you that what he is trying
13 to show is more likely true than not true. Another way
14 of putting it is in order to win, Mr. Jenkins must have
15 the greater weight of the evidence on his side.

16 We all are familiar with the scale of justice.
17 In fact, there's scales of justice on the symbol of this
18 courthouse on the old side, and we are familiar with the
19 concept that in order for a party to win in a civil
20 case, those scales must tip ever so slightly in that
21 party's favor.

22 If the scales are equally balanced after you
23 have weighed and evaluated all the evidence, then the
24 Plaintiff has not carried his burden of proof because
25 the greater weight of the evidence is on no one's side.

1 Likewise, if the scales tip in the Defendant's
2 favor, then the greater weight is on the Defendant's
3 side, and therefore the Defendant is entitled to a
4 verdict.

5 But if those scales do tip ever so slightly in
6 the Plaintiff's favor, then he has the greater weight of
7 the evidence on his side, and he is entitled to a
8 verdict at your hands.

9 So what you must do then is mentally weigh the
10 evidence and mentally place it on those scales to see
11 which side of the evidence has the greater weight in
12 your mind.

13 Now, the burden of proof in a civil case, the
14 greater weight of the evidence, is a lesser standard
15 than you have in a criminal case, which is proof beyond
16 a reasonable doubt.

17 So if you have that idea of proof beyond a
18 reasonable doubt in your mind, you just need to put it
19 out of your mind because it does not apply in this civil
20 case.

21 As I told you at the beginning of the trial,
22 you must determine what the facts are from the evidence.
23 There are two sources of evidence. The first is witness
24 testimony and the second is by way of exhibits. I
25 believe we have had both in this case.

1 I also told you that certain things are not
2 evidence, including the statements of the lawyers
3 because they are not witnesses. Likewise, it's not
4 anything that you may have seen or heard when court is
5 not in session.

6 Ladies and gentlemen, lawyers have an ethical
7 duty to object when they think evidence is improper. I
8 know you wouldn't hold it against them for doing their
9 job when they object. So don't take that into account
10 or be influenced by that in any way. It's certainly not
11 evidence.

12 You are to decide this case solely on the
13 evidence that has been received during this trial. I
14 told you about the different sources of evidence. There
15 are also difference types of evidence.

16 What I'm talking about, ladies and gentleman,
17 is the concept of direct evidence and circumstantial
18 evidence. Direct evidence is direct proof of a fact,
19 such as the testimony of an eye witness.

20 Circumstantial evidence is indirect evidence;
21 that is, proof of a chain of facts from which you could
22 find that another fact exists even though it has not
23 been proven directly.

24 You are entitled to consider both kinds of
25 evidence, and let me give you a brief example to help

1 you understand the difference between direct and
2 circumstantial evidence.

3 Direct evidence proves a fact directly, such
4 as the testimony of a witness who saw a jet plane fly
5 across the sky. Some evidence proves a fact indirectly,
6 such as a witness who testifies that they saw only a
7 white trail of the kind that jets often leave in the
8 sky.

9 The law permits you to give equal weight to
10 both direct and circumstantial evidence. In the example
11 I gave you, each witness's testimony is evidence that
12 the jet plane flew across the sky.

13 But it is for you to decide how much weight to
14 give any evidence. It is for you to decide whether a
15 fact has been proven by direct or circumstantial
16 evidence. In making that decision you must consider all
17 the evidence in light of your reason, common sense, and
18 experience.

19 I told you at the beginning of the trial that
20 as the finders of fact, you would have to, by necessity,
21 determine the credibility or believability of the
22 evidence.

23 I'm not going to go over that with you again,
24 other than to say you can believe everything a witness
25 tells you. You can believe nothing a witness tells you.

1 You can believe part of a witness's testimony and
2 disbelieve the other parts.

3 You certainly can believe one witness over
4 several or several over one, but it certainly doesn't
5 matter to you whether the true facts of this case come
6 from a witness for the Plaintiff or the Defendant
7 because your sole objective is to determine the true
8 facts in this case. I know you wouldn't decide this
9 idea of credibility simply by counting up the number of
10 witnesses on either side.

11 Now, you have also heard testimony from
12 persons described as expert witnesses. Expert witnesses
13 are those people who, by virtue of their training
14 education or experience, have become an expert in their
15 field.

16 They may testify as to their opinion on
17 matters within their field and state their reasons for
18 their opinion. Expert opinion testimony should be
19 judged by you, just as any other testimony in this
20 particular important respect.

21 You may accept it or reject it and give it
22 whatever weight you think it deserves, considering the
23 witness's education and experience, the reasons given,
24 and all the other evidence in the case.

25 Now, the Plaintiff, Mr. Jenkins, in this case

1 has brought this lawsuit against Mr. Few and Few Farms,
2 Incorporated, and he has alleged a number of what are
3 called causes of actions or claims against Mr. Few.

4 I will go over each one of those with you and
5 let you know the elements of the causes of action and
6 tell you what Mr. Jenkins must prove by the greater
7 weight of the evidence in order to prevail.

8 Before I do that, I will tell you that a
9 corporation in the eyes of the law is treated the same
10 as an individual, and they are to be given no different
11 treatment than an individual would be under the law.

12 The claims that Mr. Jenkins has brought
13 against Mr. Few are as follows. First, a claim under
14 the Unfair Trade Practices Act. Second, a claim known
15 as trespass to personal property. Third, a claim for
16 conversion. Fourth, a claim for civil conspiracy.

17 Now, the Unfair Trade Practices Act is an act
18 that has been passed by our legislature, and it provides
19 that unfair methods of competition and unfair or
20 deceptive acts or practices in the conduct of any trade
21 or commerce are unlawful.

22 The terms trade and commerce include the
23 advertising, offering for sale, sale or distribution of
24 any services and any property, real, personal or mixed,
25 and any other article, commodity or thing of value and

1 any trade or commerce directly or indirectly affecting
2 the people of South Carolina.

3 Now, in order to recover under this claim for
4 unfair trade practices, Mr. Jenkins must prove the
5 following things. A trade, act or practice must be
6 unfair or deceptive. A trade practice is disfavored if
7 it offends established public policy or is immoral,
8 unethical or oppressive. A deceptive act is one that
9 has a tendency to deceive.

10 Mr. Jenkins must prove by the greater weight
11 of the evidence that he suffered actual damages as a
12 proximate result of the Defendant's unfair trade
13 practice or act.

14 In addition, he must prove that the unfair
15 trade practice or act affected persons other than the
16 parties to the transaction. He must prove that the
17 unfair trade practice or act has an adverse impact on
18 the public's interest.

19 This may be shown by proof that the unfair
20 trade practice or act is capable of repetition or has a
21 potential for repetition. In other words, the Unfair
22 Trade Practices Act is not available to address purely
23 private wrongs; that is, wrongs that only affect the
24 parties and have no impact on the public at large.

25 The second claim that Mr. Jenkins has brought

1 is called trespass to personal property. In order to
2 recover under this claim, he must prove by the greater
3 weight of the evidence that he was in legal possession
4 of personal property -- personal property is defined as
5 everything but real estate -- that the Defendant,
6 Mr. Few or Few Farms, Incorporated or their agent
7 voluntarily entered the Plaintiff's property or
8 committed an intentional physical interference with the
9 Plaintiff's present right to possess the property, and
10 that the entry or interference was made without the
11 Plaintiff's permission.

12 The entry or interference must be intentional.
13 An intent is proved by showing that the Defendant acted
14 voluntarily and knew or should have known that the
15 result would follow the act.

16 Motive or malice on the part of the Defendant
17 is not required, and the Defendant does not have to
18 intend damaging consequences but only must intend the
19 act that constituted the unwarranted interference with
20 the Plaintiff's right of possession.

21 If you find that the Defendant or Defendants
22 committed an unauthorized entry or interference with the
23 Plaintiff's personal property, then you must determine
24 the damages that the Plaintiff suffered as a direct and
25 proximate result of the Defendant's act.

1 A plaintiff is entitled to at least nominal
2 damages. Nominal damages may be a token sum, such as
3 one cent or one dollar. However, you may also find
4 that the Plaintiff suffered actual damages.

5 These would include depreciation, injury or
6 damage to the property or loss of use or enjoyment of
7 the property. Damages may also include mental pain and
8 suffering, discomfort or annoyance that are reasonable
9 and natural consequences of the trespass.

10 The amount of damages for the injury or damage
11 to the property would be the difference between the fair
12 market value of the property immediately before the
13 trespass, and the value of the property immediately
14 after. Fair market value is the price a willing buyer
15 would pay and a willing seller would take in the
16 ordinary course or business if a sale were not required.

17 The damages for loss of use or enjoyment of
18 property may include recovery for the loss of value of
19 the use and enjoyment of the property during the time
20 the injury to the property exists. This should be
21 measured by the loss of use or enjoyment as an ordinary
22 person, acting reasonably under the same or similar
23 circumstances, would suffer.

24 Now, Mr. Jenkins has also brought a claim for
25 conversion. In order to prove conversion, he must first

1 show by the greater weight of the evidence that he owned
2 or had a right to possess a certain piece of personal
3 property.

4 He must next show that the Defendant gained
5 control and possession of the property or prevented the
6 Plaintiff from using the property. Finally, he must
7 show the Defendant did this without the Plaintiff's
8 permission.

9 If the Plaintiff expressly or impliedly agreed
10 to or approved the Defendant's taking, use, retention or
11 disposition of the property, the Plaintiff cannot
12 recover for conversion.

13 Now, generally the measure of actual damages
14 in an action for conversion of personal property is the
15 value of property on the date of the conversion, plus
16 the interest on that amount from the date of the
17 conversion until the date of the trial.

18 You may give the highest value up to the time
19 of trial. You are not required to adopt the higher
20 value, but you are permitted to do so according to your
21 own view of the justice of the case.

22 In the case of willful and intentional
23 conversion where the property is converted with
24 knowledge of the owner's rights in the property, the
25 damages are the highest market value of the property

1 with interest up to the time of trial, including any
2 additional value to the improvements or additions made
3 by the converter.

4 The general rule is that compensation for lost
5 profits may be recovered in an action for conversion
6 where the lost profits are a proximate result of the
7 Defendant's act or the loss can be shown with reasonable
8 certainty.

9 The final claim that Mr. Jenkins has brought
10 is one for civil conspiracy. A conspiracy is simply an
11 agreement between two or more people who join together
12 for the purposes of injuring another and who thereby
13 proximately cause the Plaintiff special damages.

14 A civil conspiracy consists of three elements
15 that a plaintiff must prove by the greater weight of the
16 evidence in order to recover. First, the Plaintiff,
17 Mr. Jenkins, must prove a combination of two or more
18 people. Second, that they joined for the purpose of
19 injuring the Plaintiff. Third, that he suffered special
20 damages as a proximate result.

21 A conspiracy may be inferred from the acts,
22 the nature of the acts, the relationship of the parties,
23 the interest of the alleged conspirators, and any other
24 circumstances.

25 A civil conspiracy is an act which is by its

1 very nature covert and clandestine and is usually not
2 susceptible of proof by direct evidence, so it may be
3 shown by circumstantial evidence, as well as direct
4 evidence.

5 In order to establish a civil conspiracy,
6 evidence must be produced which one may reasonably infer
7 the joint assent of the minds of two or more people to
8 the prosecution of the unlawful enterprises. As I said,
9 there must also be shown special damages.

10 The injured party under a claim of civil
11 conspiracy may recover the damages that flow from the
12 conspiracy. A plaintiff is entitled to recover only
13 such damages as naturally and proximately result from
14 the wrongful act or acts done in pursuance of the
15 conspiracy and that directly result from it.

16 These elements that may be awarded are any
17 damage or injury done to the profession, business or
18 occupation of the person by any loss of business and any
19 loss of profits resulting from the conspiracy.

20 Now, ladies and gentlemen, if you decide that
21 Mr. Jenkins is entitled to a verdict, your next step
22 would be to determine how much money the Defendant
23 should be required to pay.

24 When one person is injured by the acts of
25 another, the injured person is entitled to be fully

1 compensated for all injuries directly or proximately
2 resulting from any act or omission by the Defendant.

3 The purpose of actual damages is to compensate
4 the Plaintiff and to put him in the same position he
5 would have been or he was in before the incident
6 occurred; that is, as near as possible as money can. In
7 other words, actual damages are the actual losses and
8 expenses the Plaintiff has suffered because of the
9 Defendant's conduct.

10 In the case of personal property and damage to
11 personal property, a property owner may recover
12 compensation for losses that are the proximate result of
13 the Defendant's wrongful act.

14 The owner of personal property which is
15 injured by the act of another is entitled to recover the
16 difference between the market value of the property
17 immediately before the damage and its market value
18 immediately after.

19 In other words, the amount of damage equals
20 the market value just before the injury, minus the
21 market value after the injury. I have already defined
22 for you the term market value.

23 If the personal property was lost or
24 completely destroyed, the measure of damages is the
25 market value of the item at the time of the loss or

1 destruction.

2 If there is no market value for the property,
3 the owner is entitled to recover the property's actual
4 or reasonable value or its special value to him,
5 excluding fanciful or sentimental value.

6 If the property can be repaired, the damages
7 include the reasonable cost of repairs, plus the value
8 of the use of the property during the reasonable repair
9 time.

10 Recovery for the value of the loss of use of
11 an item of personal property is generally allowed as an
12 item of damages over and beyond the usual measure of
13 recovery where it has been damaged through the wrongful
14 conduct of the Defendant and is repairable. Evidence of
15 the value of the use of property may include the expense
16 of hiring a substitute.

17 If the property can be only partially repaired
18 and not returned fully to its preinjury state, damages
19 are measured by the difference in market value
20 immediately before the injury and the market value
21 immediately after the partial repair, plus the
22 reasonable costs of repair and the value of the use of
23 the property during a reasonable repair time.

24 Now, a party who has suffered injury or damage
25 from the conduct of another is under a duty to make all

1 reasonable efforts to minimize the damages incurred.
2 When a plaintiff is injured or damaged by the wrongful
3 act of another, it is the duty of the Plaintiff to make
4 reasonable efforts to try to minimize and lesson those
5 damages.

6 To the extent that he reasonably could have so
7 minimized the damages and failed to do so, he is not
8 entitled to recover from the other party. In other
9 words, one cannot recover any damages that might have
10 been avoided by the use of reasonable care and
11 diligence.

12 However, a plaintiff is not required to use
13 extraordinary or unreasonable efforts or go to great
14 expense to avoid and lessen the damages, and the
15 Defendant has the burden of proving a failure to lessen
16 or mitigate damages by the greater weight of the
17 evidence.

18 Now, ladies and gentlemen, a plaintiff always
19 bears the burden of proving by the greater weight of
20 evidence that he is entitled to actual or compensatory
21 damages, and the existence or the cause or the amount of
22 damages can never be left to guesswork or speculation.

23 However, proof of an amount of loss with
24 absolute or mathematical certainty is not required, and
25 damages must simply be proven with a reasonable degree

1 of certainty. The evidence presented by the Plaintiff
2 must be sufficient to enable you the jury to determine
3 what amount is fair, just, and reasonable.

4 I have talked several times about this concept
5 of proximate cause and proximate result. I know you
6 have heard me use that term, and you may be wondering
7 what that term means.

8 In the law proximate cause is something that
9 produces a natural chain of events that in the end
10 brings about the injury. It is the direct cause of the
11 injury.

12 To prove that a defendant's conduct
13 proximately caused the Plaintiff's injury, a plaintiff
14 must first prove something called causation in fact.
15 This is proven by showing that the injury would not have
16 occurred but for the Defendant's conduct.

17 The Plaintiff must also prove something called
18 legal cause, and legal cause is proven by showing the
19 injury was foreseeable. This means the injury occurred
20 as a natural and a probable consequence of the
21 Defendant's conduct.

22 The Plaintiff must prove some injury from the
23 Defendant's conduct was foreseeable, but he does not
24 have to prove the particular of injury that occurred was
25 foreseeable.

1 As I have said, the Defendant may be held
2 liable for anything that appears to have been a natural
3 and probable consequence of his conduct. However, a
4 defendant cannot be held responsible for things that
5 could not reasonably be expected to happen.

6 Where the cause of a plaintiff's injury or
7 damage can readily be attributed to an act for which the
8 Defendant is not responsible as to an act for which he
9 is, then the Plaintiff has failed to carry his burden of
10 establishing that his injuries were the proximate result
11 of the Defendant's conduct.

12 However, proximate cause does not mean the
13 sole or only cause. A defendant's actionable conduct
14 can be a proximate cause of a plaintiff's injury if it
15 was at least one of the direct concurring causes of the
16 injury.

17 Now, if you award actual damages in favor of
18 Mr. Jenkins against Mr. Few or Few Farms, Incorporated,
19 you may then consider the request for punitive damages.
20 Punitive damages are intended to punish a defendant for
21 extraordinary and outrageous misconduct and to prevent
22 the Defendant and others from committing the same types
23 of acts in the future.

24 Punitive damages can only be awarded when
25 conduct of the Defendant has been something more than

1 mere negligence. The evidence must establish the
2 Defendant's acts were reckless, willful, and wanton,
3 meaning that there was a conscious failure to exercise
4 due care or a conscious indifference to the rights and
5 safety of others or a reckless disregard thereof.

6 If you find the Defendant's conduct was
7 willful, wanton or reckless, you may award the Plaintiff
8 punitive damages. To support an award of punitive
9 damages, a plaintiff must prove by clear and convincing
10 evidence that the conduct complained of included a
11 consciousness of wrongdoing at the time it was done.

12 Now, clear and convincing evidence is
13 something more than the greater weight of the evidence
14 but something less than proof beyond a reasonable doubt.
15 Clear and convincing evidence is evidence that persuades
16 you that a party's claim is not ambiguous, doubtful,
17 equivocal or contradictory.

18 Convincing means persuading by proof or
19 argument, causing one to believe in the truth of what is
20 asserted. Clear and convincing proof establishes in
21 your mind not only that the fact is probable but it is
22 highly probable.

23 Before awarding punitive damages, you must
24 consider and weigh four elements that may be pertinent
25 to the facts of the case. You must first consider the

1 relationship between any punitive damage award you may
2 give and the harm caused.

3 Any award should take into account the
4 reprehensibility of the conduct of the Defendant, the
5 harm caused, the Defendant's awareness of the conduct's
6 wrongfulness, the duration of the conduct, and any
7 concealment by the Defendant.

8 Thus any award should bear a relationship to
9 the nature and extent of the conduct or the harm caused
10 -- excuse me -- and the harm caused, including the
11 compensatory damage award made by you.

12 Secondly, any penalty imposed should take into
13 account as a mitigating factor any other penalty that
14 may have been imposed or which may be imposed for the
15 conduct involved, including any criminal or civil
16 penalty or any other punitive damage award arising out
17 of the same conduct.

18 Next you should consider whether the award of
19 and the amount of any punitive damage award may deprive
20 the Defendant of any profits derived from the improper
21 conduct and whether the ill-gotten profits should be
22 properly awarded to the Plaintiff.

23 Finally, any award of punitive damages must be
24 limited to punishment, and thus may not affect economic
25 bankruptcy. To that end the Defendant's ability to pay

1 any punitive damage award should be considered.

2 However, the economic bankruptcy factor is not an
3 absolute bar to a punitive damage award.

4 Punitive damages may only be awarded for
5 injuries that the Defendant caused to the parties to
6 this action, although it may be appropriate to consider
7 the reasonableness of a punitive damage award in light
8 of the potential harm the Defendant's conduct could have
9 caused. That potential harm is harm potentially to the
10 Plaintiff, not all other potential victims.

11 Evidence of actual harm to non-parties may
12 help show the reprehensible nature of the Defendant's
13 actions in that the conduct which harmed the Plaintiff
14 also poses substantial risk of harm to the general
15 public. However, the jury may not use a punitive damage
16 verdict to punish a defendant directly for harm
17 allegedly caused to non-parties.

18 That covers the substantive law that applies
19 to this case. I will finish up here with a few words
20 about your deliberations. You don't serve as jurors to
21 be partisans or advocates for either side.

22 You were chosen because both sides, Mr.
23 Jenkins, Mr. Few, and Few Farms, Incorporated believe
24 you can be fair and impartial, and you can decide this
25 case solely on the law and the evidence.

1 That means that you use your common sense and
2 your sense of logic and reason and your life
3 experiences, and you bring those things to bear on what
4 you have heard during the course of this trial.

5 Once you do that, you will be able to
6 determine the facts of this case, and once you determine
7 the facts, you take the law that I have just given to
8 you and apply it to those facts. Then you will be able
9 to come up with a verdict in this matter.

10 If you went to the dictionary and looked up
11 the word jury, you will see it is defined as a company
12 of people -- actually it used to be defined as a company
13 of men but no longer -- a company of people who have
14 been sworn to render a true answer. That's what your
15 objective is, to determine the true facts of this case
16 and use the law and apply those facts and come up with a
17 verdict.

18 If you went also to that dictionary and looked
19 up the word deliberation, you would see that it is
20 defined as a careful consideration, a weighing up with a
21 view to a decision. I have already talked to you about
22 this idea of weighing and evaluating the evidence.

23 The genius of our jury system is it allows 12
24 people from different walks of life and backgrounds to
25 come together and talk about the evidence and ultimately

1 reach a verdict and share their perspectives and
2 consider other people's points and points of view.

3 Now, there are a lot of discussions that I'm
4 sure will take place in the jury room when you start
5 talking about the case. Don't be afraid to change your
6 mind if the discussion persuades that you should, but
7 don't change your mind simply to get the case over with
8 in order to reach an unanimous verdict. This case is
9 important for both sides, and this is their only day in
10 court. In the end your vote is just that, it's your
11 vote and no one else's.

12 Mr. Foreman, I have prepared the jury verdict
13 form, and you are only authorized to sign this, sir,
14 when the verdict is unanimous of course. I want to go
15 over it with you so you understand it.

16 It has two questions. The first one is
17 whether you find for the Defendant or for the Plaintiff.
18 Then if you find for the Plaintiff and award the
19 Plaintiff actual damages, then and only then would you
20 go to question two which asks you about punitive
21 damages.

22 If you do not find for the Defendant -- excuse
23 me -- if you do not find for the Plaintiff, if you find
24 for the Defendant on question one, then you would not
25 deliberate any further. Just sign the form and let the

1 bailiffs know.

2 There is no significance to which option is
3 first. It's simply that I had to put one first. It
4 doesn't mean anything, so don't try to read anything
5 into that.

6 The record is now closed. You are not going
7 to hear anymore witnesses. You are not going to have
8 anymore exhibits. If something has been referred to
9 during the course of this trial and it's not in the
10 exhibits, I can't give it to you. So please understand
11 that you must make your decision on the record as it now
12 stands.

13 I appreciate your attention to me. Ms. Miles,
14 if you will just wait with Mr. Corley out there, I will
15 talk to you as well. But don't talk about the case
16 until you receive the exhibits. That will be your
17 signal to begin deliberating. Because believe it or not
18 as long as I have been talking, I might have left
19 something out. Thank you very much.

20 (The jury retires to the jury room).

21 THE COURT: Any objection or exception to the
22 charge from the Plaintiff?

23 MR. SUGGS: Judge, we don't have any objection
24 or exception to the charge. I think -- and I don't mean
25 to speak for Robbie. We kind of made eye contact there

1 for a moment.

2 I have one concern about the verdict form. It
3 has separating out the causes of action due to the fact
4 that under Unfair Trade Practices Act, special damages
5 and considerations accompany that cause of action.

6 MR. CHILDS: Well, unfortunately I believe
7 that is true as far as if the jury were to award actual
8 damages under the unfair trade practices, I think they
9 would be entitled to treble it. So we would have to
10 know what their verdict would be in respect to the
11 unfair trade practices cause of action.

12 THE COURT: Okay. I apologize, I should have
13 shared this with y'all before. Tell me how you want to
14 structure it.

15 MR. CHILDS: I would like to just eliminate
16 that entirely, but I think you are going to have to say
17 or you are going to have to identify the causes of
18 action, I think, it's how it's going to be.

19 Normally it would be: Do you find in favor of
20 the Plaintiff on the unfair trade practices cause of
21 action? And then do you find in favor of the Plaintiff
22 on the other causes of action?

23 MR. SUGGS: I think that is correct. Judge,
24 my understanding under unfair trade practices, and I
25 don't mean to talk out of turn, is that the award is or

1 can be treble damages and attorney's fees.

2 THE COURT: Well, yeah, obviously I understand
3 that. I don't think it has ever been determined whether
4 the finding that's it willful, which would trigger those
5 special damages and attorney's fees, is something that
6 will determined by the Court or the jury. Judge
7 Anderson says it by the Court. I never have been able
8 to find any authority for that other than his book.

9 MR. CHILDS: In light of that, I don't really
10 have any problems with the form the way it is. I just
11 don't want to get a verdict in favor of the Plaintiff on
12 a conversion claim and see the Court treble it. That is
13 my concern as far as the form is concerned.

14 MR. SUGGS: Judge, I had some proposed
15 requests to charge that I did not end up handing up. I
16 do have a request to charge if it helps at all on the
17 treble damages and reasonable attorney's fees. It just
18 cites some law. I think it is directly out of
19 Anderson's request to charge.

20 THE COURT: I am familiar with that. I don't
21 think it's a question really for the jury.

22 MR. SUGGS: Judge, I agree for what that is
23 worth.

24 (Pause).

25 THE COURT: What about this? If I just go

1 through and say as to the claim for unfair trade
2 practices, we the jury by unanimous consent find for the
3 Defendant, Benjamin S. Few and Few Farms, Inc. or for
4 the Plaintiff in the amount of blank actual damages.

5 Then question number two is as to the claim
6 for trespass, personal property and then go all through
7 each one of them. Is that what you want me to do?

8 MR. CHILDS: Or maybe just say the other
9 causes of action.

10 THE COURT: I can do that, too, whatever.

11 MR. SUGGS: Judge, I think it's probably best
12 to do all four. I hate to trouble you with that.

13 THE COURT: It's no problem.

14 MR. SUGGS: I think that would probably be the
15 best thing to do.

16 MR. CHILDS: In the unlikely event that
17 appellate issues are necessary, it might be difficult
18 for us to ascertain where we were on that issue,
19 particularly if we get one for trespass to personal
20 property.

21 MR. SUGGS: There is good case law on that.

22 (Pause).

23 THE COURT: I guess my first reaction to this
24 is do you want to have a separate -- should there be a
25 separate question just for the damages?

1 MR. SUGGS: Judge, I think number five is
2 incorrect.

3 MR. CHILDS: Incorrect.

4 MR. SUGGS: I think they can award punitive
5 damages for several of the other causes of action as
6 well.

7 MR. CHILDS: You cannot award punitive damages
8 for an unfair trade practice, right? It's only treble
9 damages.

10 THE COURT: That's a typo.

11 MR. SUGGS: But you can award punitive damages
12 for several of the others.

13 MR. CHILDS: Right. It's actually on all
14 three: Two, three and four.

15 THE COURT: It's supposed to be actual damages
16 under any of the above questions.

17 MR. CHILDS: Right. Then you have got
18 conversion twice, and one of them should be conspiracy.

19 MR. SUGGS: Civil conversion should be civil
20 conspiracy.

21 MR. CHILDS: It's number four.

22 THE COURT: Don't we just want to renew number
23 five? It says we find the Plaintiff should be awarded
24 blank actual damages.

25 MR. CHILDS: Yes, if you have awarded actual

1 damages.

2 THE COURT: No, I mean the danger is that they
3 start --

4 MR. SUGGS: A different award for each cause
5 of action.

6 THE COURT: Yes.

7 MR. SUGGS: If you eliminated the dollar
8 amount for each cause of action and then had a number
9 five for actual damages and number six for punitive
10 damages without the asteric.

11 I would suggest, just to keep things from
12 getting confusing, just to remove, "In the amount of,"
13 from all of these, and then just have number five: If
14 you found by unanimous consent for the Plaintiff in the
15 amount of blank dollars actual -- or something.

16 Do you follow what I'm saying? So the jury
17 doesn't give an award for this cause of action and give
18 another award for the second one and another one for the
19 third one.

20 MR. CHILDS: Yeah, that's a good point.

21 MR. SUGGS: We don't have to.

22 (Pause).

23 THE COURT: I will let y'all look at this
24 verdict form.

25 MR. SUGGS: It looks good to me, Judge.

1 MR. CHILDS: Yes.

2 THE COURT: All right. Bring the jury on back
3 in now, and I will explain it.

4 (The jury returns to the courtroom).

5 THE COURT: Ladies and gentlemen, I made a
6 mistake, and the verdict form has consequentially gotten
7 a little longer. It doesn't change anything that I have
8 already told you, except this. I will ask y'all to
9 render a verdict on each particular claim that
10 Mr. Jenkins has brought.

11 Remember, there are four claims. So the first
12 four questions are asking y'all to render a verdict as
13 to each separate claim. Then the fifth question is the
14 damages.

15 So if you found for him in any of the first
16 four claims, then you would go to question five to
17 determine actual damages. Then if you find actual
18 damages, you go on to question six and determine
19 punitive damages.

20 Of course, the order doesn't mean anything.
21 We did have to make that change and that was my error.
22 The exhibits are ready to come back to you. So y'all
23 can start deliberating.

24 Mr. Miles, if you will stay with us one
25 second.

1 (The jury retires to deliberate its verdict at
2 2:42 p.m.)

3 THE COURT: Any objections or objections to
4 that supplemental charge?

5 MR. SUGGS: No, sir, Your Honor.

6 MR. CHILDS: No, sir.

7 (The alternate juror is excused).

8 THE COURT: We will be at ease until we hear
9 something. Thank you very much.

10 (Whereupon there was a recess).

11 (The follow occurred at 3:30 p.m.)

12 THE COURT: We have a question which has been
13 marked as Court's Exhibit 1. Please define unfair trade
14 practice. Please define conversion. It's signed by the
15 foreman.

16 What took me awhile was getting the charge I
17 read to them modified. I have got a copy of those two
18 charges. I just intend on giving the written charge to
19 them. I will let y'all come look at them. If y'all
20 have any objection or input into that, I would be glad
21 to entertain it.

22 (Pause).

23 MR. CHILDS: Wasn't your charge a little
24 longer than that. Didn't you define trade or commerce?

25 THE COURT: Yes, I did do that.

1 MR. CHILDS: I thought the charge was a little
2 longer than that. I thought you used the statutory
3 definition.

4 THE COURT: I did have some kind of precatory
5 language. I think I took it from this.

6 (Pause).

7 MR. SUGGS: No objection, Your Honor.

8 THE COURT: I will mark these as Court's
9 Exhibit 2 and 3, and I will let y'all look at them one
10 more time. They are the written definitions of
11 conversion and unfair trade practices.

12 (Pause).

13 MR. CHILDS: Yes, sir.

14 MR. SUGGS: That's fine, Your Honor.

15 (Court's Exhibit Numbers 1-3 are marked for
16 purposes of the record).

17 THE COURT: Mr. Bailiff, if you will take
18 these back to the jury, please. We will be at ease
19 until we hear from the jury.

20 (Whereupon there was a recess).

21 (The following occurred at 4:45 p.m.)

22 THE COURT: I understand there is a verdict.
23 So bring the jury on in.

24 (The jury returns to open court to report its
25 verdict).

1 THE COURT: Mr. Foreman, has the jury reached
2 a unanimous verdict, sir?

3 FOREMAN: Yes, we have, Your Honor.

4 THE COURT: If you will hand the verdict form
5 to Mr. Ford, we will receive it and publish it.

6 (Hands to Court).

7 THE COURT: Yes, ma'am.

8 (Whereupon the verdict of the jury is
9 published as follows):

10 CLERK: Your Honor, this is case number
11 2007-CP-23-779, Kenneth Jenkins, Plaintiff, versus
12 Benjamin Few and Few Farms, Incorporated, the Defendant.
13 As to the claim for unfair trade practice, we the jury
14 by unanimous consent find for the Defendant, Benjamin
15 Few and Few Farms, Incorporated.

16 As to the claim for trespassing to personal
17 property, we the jury by unanimous consent find for the
18 Plaintiff, Kenneth Jenkins.

19 As to the claim for conversion, we the jury by
20 unanimous consent find for the Plaintiff, Kenneth
21 Jenkins.

22 As to the claim for civil conspiracy, we the
23 jury by unanimous consent find for Plaintiff, Kenneth
24 Jenkins.

25 We find Plaintiff, Kenneth Jenkins, should be

1 awarded \$28,000 actual damages. As to Kenneth Jenkins'
2 claim for punitive damages against Benjamin Few and Few
3 Farms, Incorporated, we the jury by unanimous consent
4 find for Plaintiff, Kenneth Jenkins, in the amount of
5 \$100,000 punitive damages. It is signed Michael
6 Vangieson.

7 If this is your verdict, so say you all.

8 (All jurors so indicate).

9 THE COURT: Thank you. Any matters before the
10 jury is discharged from the Plaintiff?

11 MR. SUGGS: Judge, if we may approach very
12 briefly.

13 THE COURT: Okay.

14 (Whereupon there was a bench conference off
15 the record in the presence of the jury but out of the
16 hearing of the jury).

17 THE COURT: Ladies and gentlemen, thank you
18 for your service. Just call back tonight after six, and
19 there will be instructions there for the rest of the
20 week. I don't know what it holds at this point because
21 I don't know what the other two courts are doing.

22 We don't have professional jurors in this
23 country, so we have to rely on good people like you to
24 come in here and spend your time and energy to resolve
25 difficult disputes. I want to thank you for that and

1 know that we appreciate that.

2 I hope you never have to sit at one of these
3 tables, but if you do, I think the last thing you would
4 want to see when you look across the courtroom into the
5 jury box was 12 people who didn't have anything better
6 to do.

7 So we have to take productive citizens away
8 from their other pursuits instead of going out and just
9 picking the first 12 people we can find on Main Street.
10 I certainly appreciate your hard work on this case. As
11 I said, Ms. Cline, if you need something for your work,
12 she will be glad to provide that for you.

13 Just call back after six and thank you again.
14 I have told you not to talk about the case. I know you
15 are tired of me saying that, and obviously that didn't
16 apply to your deliberations, and it doesn't apply also
17 to talking to anybody about the case now.

18 If one of the lawyers approaches you or
19 contacts you about the case, you are certainly free to
20 talk to them, but please understand you are under no
21 obligation to. If it becomes a problem, which I'm sure
22 it won't, if you want to talk to them, they would be
23 glad to talk with you.

24 That's how they learn and get feedback
25 obviously, but you don't have to talk to anybody about

1 it. Don't let anybody pester you about it. If you are
2 pestered, just bring to it my attention, and we will
3 take care of that. Thank you very much.

4 (The jury is excused).

5 THE COURT: Any matters or motions at this
6 stage?

7 MR. SUGGS: None from the Plaintiff, Your
8 Honor.

9 THE COURT: Mr. Childs?

10 MR. CHILDS: Your Honor, I would make a motion
11 for a new trial absolute on the issues related to the
12 trespass of personal property not being an appropriate
13 cause of action on which the jury could reach a verdict.

14 Furthermore, on the cause of action for
15 conversion, there was no evidence that my client used or
16 converted the item to his use, the use of someone else.
17 As to the civil conspiracy, I would also move for a new
18 trial absolute on the issue of that and as to special
19 damages which are unrelated to the other cause of
20 action.

21 I would move for a new trial nisi remittitur
22 on the issue related to the award of actual damages in
23 the amount of \$28,000, as there is no basis under the
24 facts and circumstances to justify an award. I would
25 also move for a post verdict review of the award of

1 punitive damages.

2 THE COURT: All right, sir. Thank you. In
3 viewing the evidence and all the reasonable inferences
4 in the light most favorable to Mr. Jenkins, I find that
5 there is sufficient evidence for the causes of action
6 that were the basis of the jury's verdict; that is,
7 civil conspiracy, conversion, and trespass to personal
8 property.

9 They all were supported by sufficient evidence
10 in the record. I can't weigh the evidence. Based on
11 the Curcio case and Welch versus Epstein case, I can
12 only determine whether there is evidence in the record;
13 that is, whether it exists.

14 I do find there is evidence in the record that
15 exists to support all those causes of action as I
16 elaborated on earlier when denying the directed verdict
17 motions.

18 I find that the verdict was not excessive
19 given the evidence and certainly came within the range
20 of the evidence. There are no compelling reasons to
21 justify invading the jury's province. So I respectfully
22 deny the motion for new trial nisi.

23 As to the punitive damages, I find that using
24 the eight factors under Gamble versus Stevenson, I find
25 that the Defendant's degree of culpability -- and again,

1 there was evidence in the record and I can't pass on the
2 credibility, but I would say that was the jury's
3 prerogative.

4 There was evidence to find a high degree of
5 culpability. It happened not once but twice. Mr. Few
6 was aware of the conduct, that he directed it occur the
7 second time after he saw the truck obviously not
8 hampered by the first effort.

9 I find that there is a substantial likelihood
10 that the award would deter others from similar conduct,
11 and it's reasonably related to the harm. I find there
12 was conflicting evidence on the Defendant's ability to
13 pay, and that was something the jury would have to sort
14 out. They certainly had enough evidence to find that
15 there was an ability to pay.

16 I find the conduct had a high degree of
17 reprehensibility and that the disparity between the
18 actual and potential harm suffered by the Plaintiff and
19 the punitive damages award is not too great.

20 The difference between the punitive damages
21 awarded by the jury and the civil penalties authorized
22 or imposed in comparable cases, there has been no
23 evidence under the Gore guideposts.

24 I find that the reprehensibility factor is
25 most important. As far as the ratio, I would note that

1 the actual damages award was \$28,000. The punitive
2 damages award was \$100,000.

3 Single digit multipliers are more likely to
4 comport with due process and still achieve the State's
5 goal of deterrence and retribution, which is a quote
6 from the State Farm versus Campbell case.

7 I would note that here it's not only a single
8 digit, but it's less than four times the amount of the
9 actual damages, which would be well within the range set
10 forth in those cases.

11 I would note that in Cock-N-Bull Steakhouse,
12 Inc. versus General Insurance Company, a punitive
13 damages award of 28 times the actual damages was upheld.
14 In the Collins Entertainment Corporation versus Coates
15 Rental, an award ten times the amount of actual damages
16 was upheld.

17 Accordingly, I decline to set aside or modify
18 the punitive damage award and find it comports with the
19 Gamble case and the United States Supreme Court case.
20 Anything further at this juncture?

21 MR. CHILDS: No, sir, Your Honor.

22 THE COURT: Thank you very much. I enjoyed
23 trying the case with you.

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25

C E R T I F I C A T E

1
2 I, the undersigned L. Coconut Pantsari, Official
3 Reporter for the Thirteenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete Transcript
6 of Record of all the proceedings had and the evidence
7 introduced in the trial of the captioned cause, relative
8 to appeal, in the Civil Court for Greenville County,
9 South Carolina on the 25th and 26th days of August,
10 2008.

11 I do further certify that I am neither of kin,
12 counsel nor interest to any party hereto.

13
14
15 December 5, 2008
16
17

18
19 L. Coconut Pantsari

20 Court Reporter
21
22
23
24
25

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
D. Garrison Hill, Circuit Judge

Case No. 07-CP-23-0779

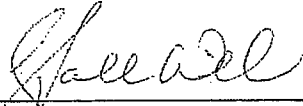
Kenneth B. Jenkins, Respondent,

v.

Benjamin Scott Few, and
Few Farms, Inc, Appellant.

Certificate

I certify that the record contains all of that matter designated by the Parties and no irrelevant matter, with the exception of the Plaintiff's Exhibit 2 which is a physical object which can not be included in the Record on Appeal.



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