1	THE STATE COURT OF STATE OF GE	
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3	KEITH TRABUE, Individually and as Guardian of SHANNON MARIE TRABUE,)
4	and ADVOCACY TRUST OF TENNESSEE L Conservator of SHANNON MARIA TRAB	UE,)
5	Plaintiffs,) CIVIL ACTION FILE) NO. 14-EV-001821Y
6	VS.)
7	ATLANTA WOMEN'S SPECIALISTS, LLC AND STANLEY R. ANGUS, M.D.	}
8	Defendants.)
9	berendanes.	
10	VOLUME IX O	of IX
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12	Civil Jury Trial hea	
13	Honorable Fred C. Ead Fulton County Justice Ce Courtroom 3B, State Court o Atlanta, Georgia com February 16-21, 2	enter Tower,
14		a commencing
15	February 16-21	., 2017.
16	APPEARANCES OF COUNSEL	
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PROCEEDING

The Court: Good morning. Thank you, ladies and gentlemen. Be seated. Let's discuss the matters that we need to talk about for discussions.

First one, Mr. Huff, there's a request for hindsight. Tell me how this hindsight is applicable.

Mr. Huff: Your honor, it's applicable in this case because of the chest x-ray that was done when Mrs. Trabue was down in Radiology which there has been testimony about whether it was just moderate pulmonary edema or it was consistent with pulmonary edema. There's been some questions asked including a -- the Defendants' in this case about with well if pulmonary edema right the chest x-ray shows that.

The Court: Okay.

Mr. Huff: And that's the basis for why we believe the hindsight charge should be given in case, your Honor.

The Court: Any response?

Mr. Stone: He foresaw that it would be because that's why he ordered the test in the first place now. He ordered the x-ray now and he put her on 10 liters per mask oral oxygen. So he knew there was a breathing

problem and he knew pulmonary edema could be the cause of it and all that and he sent her down there. First he ordered the chest x-ray to rule it out. So it's not in hindsight. He foresaw it.

The Court: I will give you a response.

Mr. Huff: Just the last word on that. It's not just that he sent her down there but that he should have treated her differently because there was pulmonary edema at the time and the chest x-ray being after-acquired information about pulmonary edema is why. So, yes, he sent here down there for the chest x-ray, but the implication is that should not have been done because of the pulmonary edema so -- and it's after the after-acquired information.

Mr. Stone: Since he has brought up something new, may I just comment on that?

The Court: You may.

Mr. Stone: The testimony was about what is the standard of care for a patient in her condition if you suspect pulmonary edema and you have got oxygen saturations that have dipped down to 88 percent and you have a severe hypoxic patient, in his own words. And so the thinking was you should foresee this is something that very likely could happen and go ahead and treat it first while she's on the floor with care

up in the semi ICU BLH unit and stabilize her before
you send her down or order a chest x-ray. You don't
subject her to that. But he foresaw the problem. He
just was kind of keeping his fingers crossed that it
wouldn't happen.

The Court: All right, sir. Thank you. All right hearing the discussion we just had on the request for hindsight charge, the Court's consideration, I'm going to give the hindsight charge. So add that into the packet.

Let me have the next one that's in dispute.

Mr. Stone: Ms. Court Reporter, are you taking down this right now?

The Court Reporter: Yes.

The Court: All right.

Mr. Stone: Your Honor, could I ask you to consider this: If you are going to give the hindsight chart, at least give a full one because it's more to it than what the pattern charge has got.

And in the Smith versus Finch case where the Supreme Court in 2009 disapproved part of the pattern charge at that point in time, they say at Page 712 of that opinion -- wait -- it says that -- the third sentence of the charge misstates the standard for analyzing foreseeability. Now that third sentence is

not in pattern charge anymore but the Court goes on to state what the standard really is.

It says general negligence law holds that negligence may be established where it is shown by the exercise of reasonable care the defendant might have foreseen that some injury would result from his act or omission or that the consequences of a generally injurious nature might have been expected. Okay.

Now if you give the charge like they have asked for, you are blessing their argument and you are leaving out part of what the jury needs to consider. It's only something that they don't consider if it wasn't reasonably foreseeable to the defendant in the first place when is he sent her down there.

The Court: Do you have that change?

Mr. Stone: I have got it right here. I will just give it to you.

The Clerk: I will add that to the charge.

Mr. Huff: Your honor, the hindsight charge that's in the pattern is the hindsight charge and that's what should be given. The foreseeability that Mr. Stone is talking about is actually covered in a different part of the charge. It's covered in the torts proximate cause foreseeability. Again, it's natural foreseeable consequences and we believe the hindsight pattern

charge should be given. The foreseeability pattern charge should be given and then both concepts are charged to the jury.

Mr. Stone: That is the specific language the Supreme Court said the pattern charge at the time conflicted with, with the general statement of Georgia law on foreseeability. You can't instruct them on some isolated charge on hindsight without telling them what hindsight is. Hindsight is not a defense for anything as long as it was reasonably foreseeable to a reasonably careful physician.

That's the question in the case. And what it does if you give that pattern charge without the additional language, the Supreme Court has said the statement of the law is, is just bolstering Mr. Huff's argument. It's like the Court endorsing his argument. They need to be whole law about this issue, not just a piece of it.

The Court: It's sounds like Mr. Huff agrees, that he is saying that that language is covered in the --

Mr. Stone: But it's not. That's not covered in the proximate cause charge. That specific language that I just quoted you is not in the charge that you are going --

The Court: If it is not in there, then I'm going

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1	to add it.
2	Mr. Huff: Your Honor, may I say one thing?
3	The Court: Yes, sir.
4	Mr. Regas: If you look at the pattern book, the
5	pattern book specifically says consider whether this
6	point is adequately covered by the general charge under
7	6-2-300 in view of Smith v. Finch which is the case we
8	that we just provided.
9	The Court: That he provided, yes. And you are
10	saying in the case that it's not?
11	Mr. Stone: That's correct.
12	The Court: All right. Well, if it's not and it's
13	not covered in the any other language, then I'm going
14	to give it.
15	Mr. Regas: You can compare that to the 62-300
16	which is the proximate cause argument that Mr. Huff
17	just made.
18	Mr. Huff: 62-02
19	Mr. Regas: I'm sorry.
20	Mrs. Tribble: Foreseeability.
21	The Clerk: All right. So what we are going to do
22	is have the language negligent may be established where
23	it is determined by a reasonable by the exercise of
24	reasonable care the defendant might have foreseen that
25	some injury would result from his act or omission or

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that consequences of a general injurious nature might have been expected.

And then add to that in the medical malpractice action, the Defendant cannot be found negligence on the basis of an assessment of the patient's condition they only later in hindsight could have seen as correct as long as the initial assessment was made in accordance with a reasonable standard of medical care. It will be one charge.

Mr. Stone: If you are going to give it, that's fine.

The Court: Just one blanket. All right. All right. This must be a Defense request. It says

Number one, where a physician has no distinct or independent recollection of the care and treatment rendered to a particular patient, he may testify as to her -- his or her should be -- his or her own usual custom, habits, or course of practice in such situation that the treatment rendered in the given situation is in accordance with that custom. This is your request?

Mr. Huff: Yes, your Honor.

The Court: Mr. Huff, any objections?

Mr. Stone: Mr. Stone, Your Honor.

The Court: Mr. Stone.

Mr. Stone: That's okay.

The Court: Mr. Stone. That's right it's his request.

Mr. Stone: We object to that because first of all it's not necessary. There was no objection to the testimony given by the witnesses. The Court allowed it in. The jury has heard it. There is no reason for the Court commenting on it at all. It's not a pattern charge and so the Court's been following a policy of avoiding giving anything that's not pattern charges and we've had to live with that and we suggest that it's only fair that they have to live with that same rule.

The Court: Good point, Mr. Huff. We allowed it in over -- it wasn't any objection. It's not an issue in the case now although there has been some testimony but it was allowed in. So the jury has heard it. I agree, Mr. Huff -- Mr. Stone. I want to make you Mr. Huff today. I agree. Can you tell me something that I haven't -- that I need to consider.

Mr. Huff: I don't think so, Judge. But I would just say that there has been testimony and if there is argument to the extent that these people don't even remember, you can't rely on their memory like Dr. Simonsen, it's inadequate or something like that, I would like to be able to revisit this charge at that point. But it is a proper charge under the Hardy case

and so there was testimony by Dr. Simonsen that she didn't remember certain things.

The Court: Right, well --

Mr. Huff: Testified to her habit and custom. It wasn't objected to but it's improper to then argue you should discount that testimony because she doesn't remember.

The Court: Gotcha.

Mr. Huff: And so if that comes up, I think that this is an appropriate charge that can be instructed to the jury.

Mr. Stone: It's not something the Court could intervene and tell them how to assess the credibility of it. That's the point I'm making. They are the judges of the credibility of the witnesses. The evidence came to them. They can take it for whatever it's worth. And the witnesses didn't say that they knew that they followed their habit and pattern. They say I believe I followed it and in some instances, they admitted they did not.

So, you know, it's all over the map right there.

So the jury can take it for whatever it's worth and believe whatever part of it they want to and disbelieve the rest but I don't think the Court needs to get involved in telling the jury what they need to do as

1	far as a finding of belief enough or disbelief about
2	having a custom. It's just a piece of admissible
3	evidence that they can consider it along with all the
4	other evidence.
5	The Court: I agree with the Plaintiff. I will
6	not give the Defense request Number 1. Take that one
7	out.
8	Charts and summaries. Help explains the facts
9	disclosed about books, records, and documents.
10	First of all, did we admit any summaries?
11	Mr. Stone: They were admitted for record only,
12	your Honor. They are not going out with them.
13	The Court: Well, then is this applicable?
14	Mr. Stone: I have we don't care. I mean we
15	I think Mr. Huff objected to it but we don't care
16	whether you give that or not. The point is it's in
17	evidence to talk about it in the front of the jury. It
18	just isn't going out with them to the jury room.
19	The Court: I won't give it.
20	Mr. Stone: Save some time.
21	The Court: Yes. I mean, I'm going to try to make
22	this shorter, not longer.
23	Mr. Stone: Okay.
24	The Court: All right. So that's out. All right
25	Plaintiffs' Request of Charge Number 32, agency

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1	liability of the corporation and the employees officers
2	and agents.
3	Mr. Huff: We have a stipulation written out.
4	The Court: You do?
5	Mr. Huff: Ritu, did you get our email?
6	Mr. Regas: I typed it and sent it to you.
7	The Court: That's it.
8	Mr. Stone: Well, not quite. But let me just tell
9	you what I'm concerned about.
10	The Court: Okay.
11	Mr. Stone: Okay. Throughout this case over at
12	least the last six months or so, there has been a lot
13	of argument saying, well, you didn't sue Dr. Simonsen.
14	The Court: All right.
15	Mr. Stone: You did sue Dr. Simonsen. I think the
16	jury needs to be instructed that that's our choice. We
17	can sue the corporation, we can sue the employer or
18	both of them. It doesn't it's just our choice and
19	that's the part that we wanted really charged in this.
20	Because I think the stipulating statement right there
21	about the corporation is liable for the negligence of
22	any of its employees is fine. We don't need to go any
23	further than that but we just needed to say that the
24	person harmed as a result of a wrongful act committed

by a corporate officer, employer or agent may sue to

1 recover damages from the individual employer or agent with the corporation or both of them. 2 The Court: I can agree with that, Mr. Huff. Any 3 objection to just giving that sentence? 4 Mr. Huff: I do object to it, Judge, because --5 6 and here is why. I'm not going to point out in closing 7 argument about not suing Dr. Simonsen. It's kind of like the habit and custom. It's allowed in. They were 8 allowed to make claims in this case against AWS for 9 10 Dr. Simonsen. 11 The Court: True. Mr. Huff: It's part of the case. It's been 12 13 presented that way. 14 The Court: True. Mr. Huff: I don't think instructing them about 15 that is -- it's just another -- it's just another 16 comment on the law and the admissibility of the 17 testimony without any reason for them -- we have a 18 stipulation that they are responsible for and so I just 19 don't think --20 21 The Court: Does the stipulation cover Simonsen as we11? 22 Mr. Stone: It does unless Mr. Huff decides he 23 24 wants to get up and argue, well, they didn't even sue

her, you know, and we don't have to sue her.

doesn't matter whether we sued her as long as we sued her employer. That's the only purpose of that one statement you don't have to give the whole charge. It's just that one sentence.

Mr. Huff: The jury already -- we have already had the case presented that way. The Court has ruled on and has allowed the evidence to come in that way. So the jury has heard it that way.

The Court: Well, what I want to know is -- I don't want to stop Ritu right in the middle but tell me, read the stipulation to me.

Mr. Regas: Defendant AWS -- we will you use the formal name -- stipulates that at all relevant times herein Stanley Angus M.D., and Rebecca Simonsen M.D, were acting within the course and scope of their employment with AWS. Accordingly, AWS stipulates that it is liable for there act of negligence, if any.

Mr. Stone: That does cover that part of it. My only concern is that one sentence that we have the right to sue either AWS or Simonsen or both of them.

And I don't want to be in a situation where I am blamed for not doing -- for not doing what Mr. Huff would prefer that I do, when I have a legal right to do what I'm doing anyway.

The Court: I agree with Mr. Huff.

1	Mr. Huff: Thank you.
2	The Court: Can y'all switch.
3	Mr. Stone: As long as I'm playing the whole of
4	Mr. Huff, would it be okay if I just confess judgment
5	against the defendants?
6	The Court: All right. Add that sentence. I
7	believe Ritu, unless you have some those are the
8	only ones that I have that were in dispute.
9	Mr. Huff: There's a couple of more.
10	The Clerk: There's a couple more in dispute.
11	They want to talk about the verdict form.
12	The Court: I'm saving the verdict form until
13	last.
13 14	last. The Clerk: To be clear, Judge, the only sentence
14	The Clerk: To be clear, Judge, the only sentence
14 15	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful
14 15 16	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue
14 15 16 17	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or
14 15 16 17 18	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or agent or the corporation or both.
14 15 16 17 18 19	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or agent or the corporation or both. The Court: Yes.
14 15 16 17 18 19 20	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or agent or the corporation or both. The Court: Yes. Mr. Stone: That's correct.
14 15 16 17 18 19 20 21	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or agent or the corporation or both. The Court: Yes. Mr. Stone: That's correct. Mr. Huff: Last word is both on that?
14 15 16 17 18 19 20 21	The Clerk: To be clear, Judge, the only sentence I'm adding is a person harmed as a result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or agent or the corporation or both. The Court: Yes. Mr. Stone: That's correct. Mr. Huff: Last word is both on that? The Clerk: The last word is both the employee or

Mr. Huff: Yes.

1	The Clerk: A person harmed as a result of the
2	wrongful act committed by a corporate employee or agent
3	may sue to recover damages from the individual employee
4	or agent or the corporation or both the employee or
5	agent and the corporation.
6	The Court: Yes, that's good.
7	Mr. Regas: There's one more. The mere difference
8	of views.
9	The Clerk: I'm going to come back to that.
10	The Court: Yeah, I'm going to have her doing some
11	research on that one.
12	All right. While she's doing that, let's go ahead
13	and talk about the verdict form and apportionment.
14	Mr. Stone: Well, before we talk about that, would
15	it be more appropriate for me to go ahead and move for
16	directed verdict on those claims and the Court decide
17	whether or not they are even in the case.
18	The Court: All right. You are right. In fact, I
19	meant to cover Mr. Huff's motion as well. Let's go
20	ahead and hear the motions now.
21	Mr. Stone: Okay. Well, the first motion for
22	directed verdict is a motion for directed verdict on
23	the defendant's claim to submit the issue of
24	apportionment for the negligence of the nurses of

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Northside Hospital to the jury because there has been

1	absolutely no evidence introduced by anybody that the
2	nurses did anything that fell below the standard of
3	nursing care or proximately caused the injuries to
4	Mrs. Trabue. That being the case, then there is no
5	basis for submitting that issue to the jury in the
6	first place. The Defendant having the burden of proof
7	and having failed to offer any such evidence under all
8	the case law that we have cited in the apportionment
9	charge, it doesn't go to the jury.
10	Mr. Huff: We agree.
11	The Court: I mean I was going to say this is the
12	first I have ever heard, if any, that there was a
13	claim
14	Mr. Stone: It's in the pretrial order.
15	The Court: of the nurses.
16	Mr. Stone: Yes. It's in the pretrial order.
17	They just didn't put up any evidence about it.
18	The Court: You want to respond?
19	Mr. Huff: Judge, there's evidence of it. We
20	agree it's not on the proposed verdict form that we
21	submitted. It's not evidence in the case.
22	Mr. Stone: This is just housekeeping as far as

The Court: All right.

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I'm concerned just to get it out of the case all

together because it is in the pretrial order and --

1	Mr. Stone: it shouldn't be considered but
2	because it hasn't been proved by the party having the
3	burden of proof
4	The Court: Well, is the motion for directed
5	verdict even applicable?
6	Mr. Stone: Sure. If defendants support their
7	affirmative defense it's a directed verdict is the
8	correct thing to do. Just like it would be on summary
9	judgment if admitted on summary judgment they didn't
10	have any evidence to support it. That's the McReynolds
11	versus Kravitz case.
12	The Court: Is it.
13	Mr. Stone: McReynolds versus Kravitz?
14	The Court: I'm speaking to Mr. Huff now. To
15	Mr. Stone, Mr. Stone.
16	Mr. Stone: Don't do that because he might dismiss
17	my case.
18	Mr. Huff: Without prejudice. No. Judge, there
19	is no the evidence of it. It's not a directed
20	verdict is when there's been a claim made during the
21	trial. We haven't made the claim during the trial,
22	albeit whether it was in the pretrial order or not,
23	it's not a claim that's been presented at trial. It's
24	not proper to be on the verdict form.
25	Mr. Stone: I think we are in agreement with this.

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1	I think it's the mechanism of how you go about getting
2	it out of the case because it is in the pretrial order,
3	okay, and therefore
4	The Court: Then at this point it's abandoned.
5	Mr. Stone: It is abandoned.
6	The Court: It's abandoned.
7	Mr. Stone: Okay. That's fine.
8	The Court: We've tried the case. The evidence is
9	closed.
10	Mr. Stone: If it's out of the case based on
11	abandonment, that's fine. I don't care what we call it
12	as long as it's gone.
13	The Court: Well, it's abandoned.
14	Mr. Huff: We have abandoned it.
15	Mr. Stone: Now, the second motion I want to make
16	is a little bit more complicated. We have been told
17	yesterday for the first time that Mr. Huff wants to put
18	Dr. Simonsen on the verdict form to have apportionment
19	between the Defendants Angus and Simonsen and Atlanta
20	Women's Specialists. We don't believe that's proper
21	for several reasons, not the least of which is that
22	Mr. Huff has never given the statutory notice for claim

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of apportionment under 51-12-33. There's several cases

that I have here that I can hand up if you want to see

them. Because if you don't give the notice, it doesn't

1 -- is not an issue for trial.

The Court: 120 days.

Mr. Stone: 120 days. He never gave it at all.

The first time we heard of it is yesterday.

The Court: So you are moving for what?

Mr. Stone: For either to exclude that claim at this point in time or for a directed verdict on that claim if -- there is no evidence. They haven't put up any case for that. They have got the burden of proof and they have to tell us they were going to do that before they got here 120 days ahead of time.

It's not in the pretrial order. We have been through that at great length a couple of weeks ago but if it's in the pretrial order, it's waived. Okay. And then we've got statements that were made in their motion for summary judgment that amount to judicial admissions where on Page 7 of their motion for summary judgment brief, they say the Defendants have never alleged either in pleadings or through expert testimony that Dr. Simonsen or any employee of the Atlanta Women's Services was negligent or caused or contribute to Mrs. Trabue's injuries. And now for the first time they want to say that she's on the verdict form.

Because my third motion for directed verdict if they are allowed to do that is to move for directed

verdict against Atlanta Women's Specialists based on their admitted negligence of Dr. Simonsen's proximate causation. Because you can't have it both ways, okay. I mean if you are going to come in here and say my employee was negligent and she contributed or caused the injuries, then I'm entitled to a directed verdict on the vicarious liability claim against them for that.

So I mean there's a lot of reasons why we just can't do this here today. Some of them procedural.

Some of them substantive. The substantive reason is that a corporation and its employees are treated as a single tortfeasor.

The PN Express case that I sent to you and Ritu last night holds that it's not error to fail to charge on apportionment in that circumstance. Where the truck driver and the trucking company were being sued and the truck driver was being sued for his direct liability and the trucking company was being sued for vicarious liability. You know, it's just one tortfeasor. There's no independent act of negligent alleged against Atlanta Women's Specialists. It's just they were responsible for the acts of their employees.

The Court: All right.

Mr. Stone: And that's that. For about four or five reasons, they ought not to be on the verdict form

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or go to the jury.

The Court: Essentially, that's where we are. We are discussing their apportionment, so let's just have Mr. Huff respond.

Mr. Huff: Thank you. So, Judge, you have got two claims here. You have a claim again Atlanta Women's Specialists for Dr. Angus and you have got a claim against Atlanta Women's Specialists for Dr. Simonsen. And on the verdict form, it's broken out that way. For -- we find in favor of the Plaintiff against AWS for Mr. Angus. We find in favor of the Plaintiff against AWS for Dr. Simonsen.

It is absolutely correct, it's not disputed in the case. It's not our position that Dr. Simonsen was negligent. Our position is AWS cannot be held liable because she was not negligent.

Now here is the problem with the apportionment statute. She is a nonparty. There is no party fault. But we have a claim in this case against the Defendant for her actions and under subsection (b) of 51-12-33 where an action is brought against more than one person for injury to person or property, the trier of fact whose determination of the total amount of damages to be awarded, if any, and then it goes on shall apportion its award of damages among the persons who are liable

according to the percentage of fault of each person.

So here is my position and I think this is a very unusual case but here is my position. If they are broken apart AWS had got actions -- is responsible for actions of Angus and AWS can be responsible for actions of Simonsen. One or -- if it's both, then I think the jury under the statute should assign the percentages between the two of them. I think that's what the statute requires. If there are going to be separate claims against AWS on the verdict form, then the verdict form should have the jury assign a percentage for each of their separate actions. Are they both employees? Yes.

The Court: Yes. And AWS is responsible 100 percent even if we -- even if we apportion, they are still responsible for 100 percent whether it's 90/10 or 50/50.

Mr. Huff: You are right, Judge, but I think the statute still requires them to assign the percentages between the two.

The Court: For what purpose?

Mr. Huff: For the purpose of knowing whether they're finding against Dr. Simonsen, Dr. Angus and to what extent. They are not joint -- they are not joint tortfeasors. Dr. Angus -- AWS for Dr. Angus' actions

and AWS for Dr. Simonsen's actions. It's not joint and several.

The Court: How does that -- how does that benefit or help in any way AWS?

Mr. Huff: I don't know --

The Court: -- in terms of their liability?

Mr. Huff: I don't know that it does, Judge. I just think the statute requires that. That's my concern about this. And I object to having separate claims against AWS for two different actors without some apportionment of the liability between the two. That's all I'm saying.

And this case -- the case certainly, the PN

Express case talks about vicarious liability but in the last part of it, it talks unless additional and independent acts of negligence over and above those alleged against the servant or employee are alleged against the employer, a verdict exonerating the employee also exonerates the employer.

The Court: True.

Mr. Huff: So you have got different claims here.

The jury could find against both -- and I agree, Judge,

it's AWS if they find against both and the percentages

may not matter but I think the statute if you are going

to have separate lines for them, I think the statute

requires percentages. It's not a defense that we are asserting. It's just what the statutory language requires. That's why we have had this discussion and debate. Mr. Stone and I have been very disagreeable the last 12 hours about this. But that's why. It's not because we have changed the position or taken a new position regarding Dr. Simonsen. The position is still the same. But if we are going to have separate lines for separate claims, then I think the jury ought to put percentages on them.

Mr. Stone: Let me bring this up. I mean, he has not addressed the issue of failing to give a statutory notice.

Mr. Huff: Oh, yeah, I have. We didn't give it. We didn't give it.

The Court: Well, he's saying under (b) he's not required to give it.

Mr. Stone: Well, I think the Court of Appeals disagrees with him. The Court of Appeals in the Freese versus Mitchell case decided in 2012 -- and that's at 318 Ga. App. 662 -- says specifically Freese contends the trial court erred in excluding the issue of apportionment through from the jury's consideration, assuming without deciding this issue survived default judgment as to liability. Freese failed to comply with

the notice requirements for the apportionment statute in 51-12-33 (d) 1. It filed no notice and did not raise the issue of apportionment until the first day of trial. Under the plain language of the statute, therefore, apportionment could not be considered period. And it relies on Ingles Market v. Kempler, 317 Ga. App. 192, another 2012 case and these are the latest pronouncements from the Court on this amended new question distinguished or modified in any way.

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Mr. Huff: Your honor, if this was a case against Dr. Angus and Atlanta Women's Specialists, then I'm in agreement with Mr. Stone's position on this. Dr. Simonsen -- she is a nonparty.

Regardless, she's a nonparty. The Court:

Mr. Huff: But she's also on the verdict form that's been proposed. So she is a nonparty on the verdict form because the claims against her are that Atlanta Women's Specialists is alleged to be liable for are different of the claims against Dr. Angus. That's why it's an usual issue. And I think if she's a nonparty, then she shouldn't be on the verdict form at all. And if she -- and if she on the verdict form, then it's separate claims against Atlanta Women's Specialists.

The Court: Is she really on the verdict form?

1	Mrs. Tribble: Yeah.
2	The Court: Is she on the verdict form or is I
3	know her name is on the verdict form but what's been
4	alleged here is that AWS
5	Mr. Huff: Yes.
6	The Court: is responsible because of her
7	actions, not because that she is responsible for her
8	actions and there is a line item for her. So in a
9	sense, she's literally not they are not deciding
10	against Rebecca Simonsen. They are deciding against
11	AWS based on Rebecca Simonsen's actions. So I'm not
12	sure if she's really on the verdict form in the
13	traditional sense.
14	Mr. Huff: Well, I think she's gonna be listed on
15	the verdict form.
16	The Court: Well, her name is going to appear.
17	Mr. Huff: Right. And I think if they are going
18	to be separated out, again, those are distinct claims
19	against AWS for fractions
20	The Court: Let's say this was against a
21	hospital
22	Mr. Huff: Um hmm.
23	The Court: do we put all of the nurses' names
24	down there and say individual nurses, Nurse A, Nurse B,
25	or Nurse C? They all of them.

Mr. Huff: It depends.

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The Court: No, you wouldn't do that unless you sued them individually but you are suing the hospital.

Mr. Huff: Right. But let's say you had a hospital and there was an individual nurse who was alleged to be negligent and the hospital was responsible for her, okay. And then you had the hospital being alleged to be negligent for polices and procedures or something like that or the hospital being alleged to be negligent for something else in the care of that patient. Okav. All vicarious. Hospital is ultimately responsible but distinct acts that the jury could determine in deciding the damages, what percentage those played in the total amount. I think that --I think that's how it would do. I mean, I agree with you, Judge. You would haven't a bunch of different nurses but when there's different claims that involved different people and different aspects of the case then I think that's where there's a difference.

The Court: Mr. Huff makes a good argument in that regard but I'm not convinced. So I'm going to rule that apportionment does not apply. If it does apply, then the Defendant has not complied with 51-12-33(d)1 which I believe which requires 120 days notice. And over objection -- and then I will not -- I rule that it

doesn't apply. So then the verdict form based on that ruling will have to be conformed. So that takes out the Defendant's request for verdict form.

So other than that, Mr. Huff, do you have any issues with the Plaintiff's version proposed verdict form?

Mr. Huff: Your Honor, I believe I do. We are going to pull it up. I would still ask that the Defendant's verdict form be used taking out the apportionment part because then it's just a standard verdict form if we just take out Question 2.

The Court: Well, less is better in my opinion.

The simpler, the better. They used to call it vanilla or he has on Question 1 -- are you looking at it

Mr. Stone?

Mr. Stone: Yes, sir. If you think simpler is better, we can combine Questions 1 and 2 and just one finding for each of those two parties. But the reason we did it this way is because of the issues that were raised in argument in the summary judgment motion a week or two ago and we were trying to come up with a verdict form that would avoid a retrial if they should appeal regardless.

The Court: Yeah. That's what you mentioned the other day.

Mr. Stone: And that's what we are trying to do right here is just make sure that the jury returns a verdict about the negligence or finding about the negligence of Dr. Angus and separately about Dr. Simonsen so that we'll know what to do about it if it decides to appeal and the Court of Appeals reverses for some reason.

I have had this happen before and with a special verdict form what winds up happening, if the jury has made the findings, then if it comes back down, it comes back down with direction just to modify the verdict, I mean the judgment to conform to the ruling of the Court of Appeals and it's not necessary to go through the trouble and expense and time of a new trial on the thing. If you do it any other way and it's a general verdict form or something like that, you can't unwrap it. Once it goes up, it comes back down and you have to got to start from square one and do it all again.

So my point is when you say simpler is better, simpler in this case involves getting this one jury to make its findings about these two individuals and their negligence and then we frame a verdict, a judgment based on their verdict.

Now, it's okay with me if we combine Questions 1 and 2. Was the negligence of any of the Defendants

1	WomensAtlanta Women's Specialists physicians
2	employee a proximate cause or contributing proximate
3	cause to Shannon Trabue? Yes or no. If so, check
4	which ones. That's fine. I don't have a problem with
5	doing it that way. And that way, we can eliminate one
6	whole question off the verdict form and it will be a
7	half a page shorter.
8	The Court: How about that?

Mr. Stone: And that's fine, you know.

Mr. Huff: Judge, I thought we were talking about the Defendant's taking out this section two of the Defendants.

Mr. Stone: I'm not going to agree to that, either, because the way the defense have got this thing cast, they want to have the claims presented to the jury backwards from the way they are in the pleadings. They want them to decide damages for Keith Trabue first and then go to Shannon and decide. That's not the way the case was brought. His case --

Mr. Huff: We can switch that.

Mr. Stone: -- is derivative of her damages. He doesn't get anything if they don't find in her favor. They have him listed on the verdict form as being awarded for damages for loss of consortium in his capacity as guardian for Shannon Trabue. That's not

the capacity he would be awarded those damages. It's him individually. Only.

The Court: That's true.

4 Mr. Stone: So for a number of reasons that 5 verdict form is not right and --

The Court: He's right, Mr. Huff.

Mr. Huff: Judge, I'm just trying -- I thought we were going trying to simplify this.

The Court: Okay.

Mr. Huff: I don't have a problem with the Plaintiff changing questions -- the last question on the defense verdict form to have the correct Plaintiffs in the amount of damages lines for those. I don't have a problem with that. I'm just trying to think of if we can make it simple in Question Number 1 about liability and then go to the damages next without several pages on the verdict form.

Mr. Stone: Well, we won't have several pages on the verdict form, if we just modify Question 1 like I had just suggested and the reason you have got several pages is because you have a paragraph of instructions after each one of these things right here. If you take out one question, you take out the instruction paragraph along with it.

The Court: Well, other than that, Mr. Huff, what

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1	other issue do you have with the Plaintiff's, if any,
2	Plaintiff's version? Because if there aren't any other
3	challenges to it, I'm just going to ask Mr. Huff not
4	Mr. Huff, Mr. Stone, to put it together the way he's
5	outlined here and see how that looks.
6	Mr. Huff: So we are taking out 2?
7	The Court: Your proposal is to take out 2; right,
8	Mr. Stone?
9	Mr. Stone: Combine Questions 1 and 2 into one
10	question.
11	The Court: Into one question.
12	Mr. Stone: And take out 2 and the instructions
13	that go along with it.
14	Mr. Huff: Your Honor, Number 3 I don't think
15	although we have stipulated to the amounts of damages,
16	I don't agree that those amounts should be included
17	this a verdict form.
18	The Court: I agree. That's what I thought your
19	objection was to when I first read it.
20	Mr. Huff: That's an additional objection.
21	Mr. Stone: Well, let me ask you how you want to
22	handle that then because unless to list those
23	fill-in-the blanks on the verdict form because if they
24	don't use those numbers, we are going to have to go
25	through the process of a motion to conform the verdict

to the stipulation because they are bound by the stipulation. They have got to use those numbers.

Mr. Huff: They are not bound by the stipulations.

Mr. Stone: Yes, they are. They are bound by the stipulations because it was a stipulated admitted fact in judicio. They can't contradict it and the jury is required to find based on the pattern charge on stipulation.

You tell them you will accept this as true. They don't even deliberate about facts that have been stipulated. So if they don't come back with those exact numbers, then we are going to have to go through the process of having an order entered by the Court directing the jury to go back and find those numbers or to put them on the verdict form anyway.

So what's the point in that? I mean this is the numbers that they have agreed to. And all the verdict form says is the parties have stipulated that these amounts are the economic losses, just exactly what the stipulation says.

Mr. Huff: Your Honor --

Mr. Stone: No more, no less.

Mr. Huff: The stipulation was entered to avoid the proof of these amounts of damages. We agree that those are the amounts. They have been stipulated to. We are not going to argue that they should be any less but to put those amounts in the verdict form is going a step further. The jury can determine in their own deliberations whether or not these Plaintiffs are entitled to recover these damages or not.

Mr. Stone: That's the liability question. That's not the damages question. The stipulation says we are entitled to recover those damages if they are negligent has proximately caused injuries to Shannon Trabue. I mean if that was not what that stipulation had said, we would never have agreed to it in the first place.

Now, he obviously does not understand the effects of a stipulation in court about a fact. It is a judicial admission. He is estopped from challenging it or taking a different position. And, you know, I have had this come up in different contexts but never have I had somebody try to go back on a stipulation like that and say they can find other numbers. That's just not right. And that's not the premise under which we've agreed and that's not what the stipulation says.

Mr. Huff: Your Honor, I have never -- I have done this before where we have stipulated damages. It's never been put in the verdict form. It can be confusing to the jury. They can think these amounts have already -- must be awarded, could be awarded, must

be awarded. Again, the stipulation, I mean --

The Court: How would the verdict form then read to reflect the economic losses then, Mr. Huff? They would have to go in and sign a blank for every item that's claimed, like past medicals, past future, future earnings, loss capacity, each one of them, they have to fill in the numbers?

Mr. Huff: Yes, your Honor. I mean I don't think giving them the numbers, even in this stipulation in the verdict form is appropriate. I just -- I think it's suggesting that they award those amounts without considering the other issues in the verdict form so -- and again it is not a dispute.

The Court: I understand the proof is not -Mr. Huff: Correct.

The Court: -- is not in dispute. Here is the issue that I want -- and I may have -- we may have to do some -- because I have never had this request myself. Can a jury, for example her past medicals and future medical and other expenses, whatever the number is, can a jury -- that's been stipulated, the proof of that -- can a jury award \$1 less or \$1 more?

Mr. Stone: No.

The Court: That's the question.

Mr. Huff: If they do, your Honor, we can deal

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with it at the time. But putting it into the verdict itself I think it's suggesting to the jury that those amounts should be awarded independent of the other issues in the case. That's my problem with it.

The Court: My question, though, Mr. Huff is how would we deal with it later? Do we conform it to the actual amount minus the \$1? Do we take out that \$1 or do we add the \$1?

Mr. Huff: I think that we have to -- if the jury comes back some but not all, then we have to conform it to that. We have a stipulation as to the amount of damages but I think it's dangerous and potentially confusing to the jury. They have already asked a question about the stipulation to include those amounts in the verdict form as if they are, you know, to be awarded and I think it just creates confusion.

It's a stipulation as to the proof. I mean I don't mean to be backing out of any stipulation and I'm not but I have a fundamental problem with putting amounts like that, even if they are not in dispute, into the verdict form to the jury. That's my problem.

Mr. Stone: I will tell you that when we tried the Foster case up in Cobb County before Judge Golick, we stipulated to economic losses in that and she put it on the verdict form and submitted it to the jury. Nobody

had a problem about it at all because it was agreed to.

The pattern charge on stipulation says the parties have entered into a stipulation that has been approved by the Court about the following facts. Then it specifies where parties stipulate the facts with the approval of the Court, this is in the nature of evidence and you must take that fact or those facts as a given without necessity of further proof.

So if we are not going to put it on the verdict form, that requires that you read the stipulation back to them and say you will fill these numbers in on that verdict form and no others, you know. And it just seems like to me it's a less intrusive way for us just to put them in there to begin with and have the verdict form just say the parties have stipulated to this.

The Court: Well, that would require the Court to read the stipulation again.

Mr. Huff: I figure the Court was going to read the stipulation again or it was going to be part of the -- introduced into evidence or the Court would read the stipulation.

Mr. Stone: Well, the evidence is closed. It was my understanding that when you read it to them in the first place, you read it to them so they could write it down and put those number there. But you are going to

have to instruct them that these are the numbers the parties have agreed to and they are uncontested and if you find for the Plaintiff, you must fill in these banks with these numbers.

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Now what's the point this doing that kind of a vain thing if you can just put it on there for them to start with. Because it just takes more time on your part to read it to them.

The Court: Makes sense to me, Mr. Stone.

What do you say about that, Mr. Huff?

Mr. Huff: I think the Court can read the stipulation. The stipulation can be marked and given to the jury as for consideration of their evidence. Again, putting the amounts on the verdict form creates confusion. I just have an objection to that and I'm not backing out of the stipulation.

The Court: I feel your -- as a matter of fact, when I first saw this proposal and you said that there was an issue with it, I felt immediately that that's what the -- what's his objection was going to be.

Here is what I'm going to do. I'm going to read to them the stipulation and send the stipulation out with them and not put it on the verdict form. That's what I'm going to do.

Mr. Stone: Are you going to tell them they have 1764

1	to follow it?
2	The Court: Yes.
3	Mr. Stone: Okay. All right.
4	The Court: Because it's been agreed to.
5	Mr. Stone: Fair enough. I'm just trying to get
6	this done in the shortest simplest, easiest way
7	possible. And since I have done it this was in the
8	past with no problem, I didn't have any idea it would
9	be a problem or I wouldn't have done it here. But, you
10	know
11	The Court: All right.
12	Mr. Stone: it's fine to do it the way you are
13	talking about doing it.
14	The Court: Yeah. I will
15	Mr. Stone: We can just change to it have blanks
16	and those numbers can fit in.
17	The Court: That's what we will have to do, put
18	them all blank.
19	Mr. Stone: And I guess the verdict form will at
20	least have an instruction you will fill-in the numbers
21	that according to the stipulation.
22	The Court: Either that or I'm going to have to
23	tell them. So, all right, we have gotten over that
24	hurdle. I think we are from good; right? Except for
25	the rest of them except we want to Keith Trabue's

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1	assessment
2	Mr. Huff: He's last.
3	Mr. Stone: He's last on our form. If we just
4	change our form and do it that way and leave the
5	numbers blank and send the stipulation out to them and
6	you tell them they have to follow the stipulation, then
7	that gets that done.
8	The Court: All right. Conform it accordingly.
9	Mr. Stone: All right.
10	Mr. Huff: Will we have a chance to get a copy of
11	the verdict form before?
12	The Court: Yeah. We probably need to. I'm sure
13	you want to refer to it.
14	Mr. Stone: Can we do that then now before we
15	bring them in to do closings?
16	The Court: Yes. Let's go ahead and conform it.
17	Mr. Stone: It won't take me long to do that. Let
18	us go back into our office and take care of that and
19	take a comfort break.
20	The Court: Yes, we need one.
21	(whereupon, a break was taken.)
22	The Deputy: Court come to order.
23	The Court: Be seated.
24	The Clerk: On Plaintiff's Exhibit Number 37
25	negligence of the physician, Mr. Stone wanted two
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1 sentences out of that charge to be included as part of 2 our pattern charge. 3 Mr. Stone: Right. 4 The Clerk: And those two sentences were the failure of a physician to possess and use that degree 5 6 of care or skill in his or her diagnosis and treatment 7 of a patient is negligence and subjects a physician and his employer to liability for damages to the Plaintiff 8 for all injuries and harm proximately caused by such 9 failure. A physician's possession of skill is not 10 11 sufficient unless due care is taken to exercise it in this case on trial. 12 Mr. Stone: We move to strike out the case on 13 trial. 14 The Clerk: Those two sentences Judge Eady will 15 16 add to the pattern charge. The Court: All right. Let's put -- are you done? 17 The Clerk: I'm done. 18 The Court: Let's put the objections, if any, 19 Mr. Huff on the record about the verdict form that we 20 21 have conformed. 22 Mr. Huff: Judge, the verdict form that has been

Mr. Huff: Judge, the verdict form that has been submitted to the Court and as I understand it will be sent out to the jury, we object to it because it does not have language assigning the percentages of fault

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1	between Dr. Angus and Dr. Simonsen, both of whom are
2	listed on the verdict form. And as we discussed
3	earlier this morning, we believe the verdict form
4	should contain that information and that it should
5	reflect that there can be an assignment of percentages
6	between Dr. Angus and Dr. Simonsen because AWS is being
7	alleged to be liable for different acts of different
8	people who were employed by their agency.
9	So that's my objection to verdict form, is that
10	part of the 50 that the verdict form does not
11	have apportionment it in which is part of the 51-12-33
12	statute.
13	Understanding the Court's ruling, the verdict form
14	that the Plaintiffs submitted is otherwise agreeable.
15	The Court: Great. I don't know if you need to
16	put anything in response. I just wanted to put his
17	objection.
18	Mr. Stone: I understand.
19	The Court: All the other objections you may have
20	to the charges that were submitted and not given, I
21	will let you put those on after.
22	Mr. Stone: That's fine.
23	The Court: After we complete the charge.
24	Mr. Huff: Great. Your Honor, the only other

thing that we would need to do for the record is renew

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1	our motions for directed verdict that we made at the
2	close of the Plaintiff's case at this time prior to
3	submission of case to the jury.
4	The Court: All right. And I will deny the
5	motion. The renewal motion I will deny for directed
6	verdict.
7	All right. Bring in the jurors, Sheriff.
8	Mr. Stone: If you want to, if you wanted to, Mike
9	makes good point, they might appreciate it if you just
10	go back there and talk to them.
11	Mr. Regas: Filing in and filing out.
12	Mr. Stone: If y'all don't have a problem with
13	that, I will do that.
14	Mr. Huff: That's fine with us.
15	The Court: All right.
16	Mr. Huff: 12:30?
17	The Court: 1230. We'll see y'all then.
18	(Whereupon, a lunch break was taken.)
19	The Court: All right. Everyone is ready?
20	Mr. Stone: Let me get one thing real quick.
21	The Court: All right. Is everyone ready?
22	Mr. Stone: Let me get one thing real quick.
23	Mr. Stone: Are you ready?
24	The Court: Sheriff, let's's receive the jury.
25	(Whereupon, the jury entered the courtroom.)

1	The Deputy: All rise. All jurors are present.
2	The Court: Thank you, ladies and gentlemen. Be
3	seated.
4	Ladies and gentlemen, good afternoon. We are
5	ready for closing arguments.
6	Mr. Stone, you may address the jury.
7	Mr. Stone: Thank you, your Honor.
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11	CLOSING ARGUMENT
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13	Mr. Stone: Good afternoon.
14	The Jury: Good afternoon.
15	Mr. Stone: I do mean good afternoon. You have
16	been waiting on this a long time. The first thing I
17	would like to do on behalf of the Trabue family, on
18	behalf of our law firm, the trial team here is I would
19	like to thank you for your services as jurors in this
20	case. If I can remember to turn the microphone on that
21	helps. Thank you for your service as jurors in this
22	case. This is something I told you would be some
23	serious sacrifice to you and your families and your
24	friends and your work and all that but we have to have
25	people like you to come serve as jurors because believe

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it or not, what you are doing right here is probably the most powerful thing you are ever going to do in your life really because today is a day that your vote matters.

There's only 12 of you that are going to decide this case. Every one of your votes matter because your vote has to be unanimous. And today is your day to do justice to decide what is the standard of medical care you would expect from doctors in your community.

You know when we started the jury Selection, I asked the question when you are trying to find a doctor, did you want to look for a person who takes care of details, dots the I's and crosses the T's or did you want to look for a person who was a corner cutter. I asked that question for a reason because I wanted to see exactly what the folks that were going to serve on this jury thought about that. And everybody, everybody says they want a doctor that pays attention to details, dot the I's and crosses the T's. A doctor who practices medicine from a viewpoint of patient safety first. Patient safety first rather -- better to be safe than to be sorry about what happens.

Now, I'm going to get into that a little bit more in a minute, but what I want to tell you is you've had an opportunity to meet new people. I hope you have had

an opportunity to sit and listen to evidence in a interesting case. I hope you feel like the case that has been presented is nothing like the frivolous lawsuits that you hear. I hope you believe that the lawyers who have presented this case have conducted themselves professionally and have done a good job putting up the evidence for both sides. We certainly tried to do that and I know Dan and Taylor have done the same.

You know, the civil justice system is so important to our society because it is the foundation of all our rights and all that is good about this country. If you think back about it in your lifetime, the real strokes for justice that have been made in the country have been made by courts and juries. You don't very often see politicians do it a lot. They talk a lot about doing a lot of other things. I don't care what your political party is, that doesn't matter to me, but they all talk and they don't really get down to doing business but courts with juries have to make the decisions that have great impact on our society.

You think about the fact that, you know, a good number of you on this panel right here would not be enjoying the rights you enjoy today had it not been for Federal Courts and Federal juries enforcing Civil

Rights laws and making that happen. And I will tell you that all the rest of us are so much better because you have your rights. It made us a better country.

The same is true for automobiles. I have done a fair amount of automotive product liability work in my time. I can tell you from the time I started until now cars have gotten progressively safer and it's because juries like yourselves held automobile manufacturers accountable when they made unsafe cars.

If you look at the National Highway Traffic Safety Administration Accident Statistics now, there's so many fewer deaths per million miles traveled on our roads than there were 20 years ago just because cars are safer and juries made them that way. You are truly the regulators of your community.

Think about tobacco. Tobacco companies were making a killing selling cigarettes that were laced with chemicals that addicted young children to nicotine and after a long period of litigation, the truth came out, documents were exposed and juries held the tobacco companies accountable. We don't have that kind of problem any more, at least not to the extent that we used to have it.

So thank for being here and thank you for being willing to listen to the evidence and paying as close

attention as you have. We have watched you because that's our job. You guys have been really great about paying attention to the evidence as it came in. Most of you have just run through a couple of notepads taking notes and that's much appreciated. Because, you know, you guys are a really well-educated jury. You know, you look at the backgrounds of all of you, most of you have got a lot more education than the average juror has just about anywhere you select jurors. So, we feel fortunate to have a jury to try this case and listen to it, pay attention to some fairly technical ideas and understand them and apply them.

The Judge is going to tell you what the law is and we have to try to help you see what the facts are and all that. But the big issue in this case is what is the standard of care. What is the standard of care. You have heard evidence that's contradictory about that. You have heard the Plaintiffs' expert who are, in fact, world class experts. We don't take these cases lightly. We don't come before you accusing professional people like Dr. Angus of negligence or something without very heavy evidence to support it. So we tried to bring you the best. The best that we can find.

We bring you one of the ladies who co-authored the

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the Williams Obstetrics textbook which is the number one textbook in the field of obstetrics and gynecology in this country.

We brought you Dr. Saade who along with Michael Belfort and Jeffrey Phelan and Gary Dildy writes this book Critical Care Obstetrics.

And we brought you a Harvard professor who teaches medical students up there about obstetrics and gynecology.

Now, what have you got on the other side? You have got a professor from the University of Alabama who came solely to testify about medical causation and all he was able to give you was his best guess as to what caused this event which he had to admit is not supported by any objective evidence in this case.

Tests were run that came back negative. Other tests were recommended. Nobody had any high suspicion that pulmonary embolus was the cause of the problem. The treatment for pulmonary embolus everybody agrees is the administration of Heparin. That was never given in therapeutic doses for treatment of Mrs. Trabue's condition.

And she didn't have another pulmonary embolus which is surprising if they didn't treat it because that's one of the hallmarks of pulmonary embolism. If

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you have one, you are probably going to have another. Didn't happen.

So, when you look at the objective evidence, the stuff you can reach out and see in the medical records, the things that were done to take care of the lady and save her life, everybody tells you pulmonary embolism is a very serious, life-threatening condition and it is but it never arose to anybody's index of suspicion high enough to do anything about it. And the reason it didn't arise is because it wasn't never there in the first place and everybody knew it. The evidence pointed to pulmonary edema and it pointed to unregulated, uncontrolled, high, systolic blood pressures in a severely preeclamptic lady.

Now, you are going to hear a lot from the defense about the concept of hindsight. That's a real good cop out, hindsight. That's what you have to do when you try to figure out what happened after there's been a goof up in a real bad event. That's what ballplayers do after they have loss a ballgame, they go to the Monday morning quarterback. If I would have done this. If I would have done that. Well, this hindsight stuff, it's just something to distract you from trying to find the real cause. Because to find the real cause of something, you can generally look to the most obvious

cause. The one that's supported by objective evidence.

Pulmonary edema. We know that she had that.

That's confirmed by x-ray after the code event took place. The x-ray was taken immediately before the code. And we know that she had labile high blood pressure. You have seen those graphs so many times I hate to show them to you again. I'm not going to do that right now but you know that she had them because you have seen them with your owns eyes. You can go through the medical records when you get those medical records and look at the numbers if you don't believe the graphs.

We've tried to do this so that you would be able to see it and you would be able to understand what the massive data is in this stack of medical records about that tall that would take you probably a week to go through, if you could go through them at all. Now I had trouble reading them and I do this business and I had trouble so folks that aren't exposed to that kind of thing, rightfully so you would have trouble, too. So we try to make it easy because that's our job to help you find the truth in the case to make your job easy and I hope we have done that.

But on this hindsight thing, I want to tell you what I believe the Judge is going to give you at the

beginning of the instruction on the hindsight charge.

He's going to give you an instruction about that. You are going to have to follow it.

He's going to say that negligence may be established where it is shown by the exercise of reasonable care that the Defendant might have foreseen that some injuries would result from his act or omission or that consequences of a generally injurious nature might have been expected. Okay.

If you can reasonably foresee it happening, then this is not hindsight. That's not what we are talking about. Because you see, doctors don't have to try about missing something in hindsight if they pay attention to the details; if they dot their I's and cross their T's and if they use reasonable foresight to avoid subjecting their patients to foreseeable and avoidable harm. That's the key right there. The doctor is supposed to be looking ahead.

It's like when you are driving your automobile. You don't just drive down the road with your eyes transfixed on the tag of the car in front of you. You are looking around all over the place. You are looking in front of that car. You are looking down the road. You are looking for the things going on and you are paying attention to what you are doing. So that if you

see something that might hurt you or that might get you involved in an accident, hopefully long before it happens so that you can take the proper steps to avoid getting in that situation in the first place.

You know, Benjamin Franklin probably said it best 700 years when he was writing Poor Richard's Almanac. He said an ounce of prevention is worth a pound of cure. A ounce of prevention is worth a pound of cure. And we expect everybody to look ahead, pay attention to what's going on and prevent accidents and prevent events like this, if they can reasonably be prevented in the exercise of ordinary care.

Now, here we are having a combination of labile, high systolic blood pressure and pulmonary edema, secondary to it, and severe overload of fluid that has foreseeable risks of harm to the patient.

You remember Dr. Bills, the defense witness, he testified -- I had to remind him about it by videotaped deposition -- play it to him. He says it's not whether it's going to hit the fan, it's when it's going to hit the fan. Okay. If you don't manage and pay attention to severe preeclampsia and pay attention to it and treat those blood pressures aggressive and keep them within safe levels of both 160 systolic and maintain them that way for -- periodically for hours, you don't

just give them one dose and it goes down and then walk away and leave them and see what happens next. You keep them down. You keep giving them increased medication until you get them level and keep them level within normal limits and that way you don't have to worry about spiking because you have got them under control.

You are not driving too fast for conditions. You are driving within a range where your brakes will work, that kind of thing. You are paying attention to what's going on around you and you make sure that you don't get yourself in a jam. That's not what happened.

Those blood pressures were never under control.

You heard Dr. Simonsen admit that if the standard of care is what the Plaintiffs, the Trabues, say through their experts is, to maintain blood pressures within normal limits below 160 systolic and keep giving medications until you have got it down there and kept it there through the sequential measurements for hours at a time, you are not practicing within the standard of care in this field.

If you allow somebody to become grossly fluid overloaded like what happened to Shannon Trabue without taking steps to make sure the blood pressures were reduced so the kidneys will begin flushing and

diuresing and getting that fluid off, then you are not practicing within the standard of care. If you let those two things happen together at the same time you are creating a train wreck that's bound to happen and the way Dr. Wenstrom described it, in her perspective as a obstetrician who has never before testified on behalf of a patient against a doctor, the way she put it was when I read this case, I was just really horrified because the patient had one of the most common complications we see in pregnancy. What ultimately led to her downfall was complications that could have easily been treated and I thought this was just such bad management, I had to speak out.

Now, you don't know this but we who do this kind of work, we know that that is a outstanding statement. That is a statement that a person has to have a conviction to make. You don't hear it very often. She had never testified for a patient before. She came down here to give you the benefit of her expertize and experience and what she does when she writes books about this subject to teach other doctors how to practice within the standard of care.

The same with George Saade. He said the standard of care is to keep the blood pressures below 160.

The same is true with Dr. Litcher. He said the

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same thing.

There was no disparity between what the three expert witnesses we called told you, as Mr. Huff said there would be. They all said exactly the same thing. We gave it to you from three different perspectives. Maternal Fetal Medicine, from a person who write critical care obstetrics book and practices critical care obstetrics at the University of Texas, Galveston and a person who teaches and practices OB-GYN at Harvard University. These are some of the finest educational institutions in the world and we brought these experts to you so that you could get the benefit of their expertize and to help you find the truth in this case.

Now the two obstetricians that were brought in here as experts, Dr. Davis and Dr. Bills, really all they said was the practice was within the standard of care. It was within the standard of care. It was within the standard of care as though repeating that many, many times was going to make it true. They didn't have a standard of care that they gave you. It's all variable.

You know, you treat the patient within the patient's limits and all. They didn't know anything about this patient. One of them even thought she had

1	chronic hypertension. Find out that it wasn't true.
2	She had gestational hypertension according to
3	Dr. Angus. According to everybody else that knows
4	anything about it.
5	Now, the way we know that this was simply not a
6	unforeseeable, unpredictable, unavoidable outcome but
7	something that should have been foreseen by a physician
8	practicing with the standard of care comes right out of
9	the mouth of Stanley Angus.
10	And if you would right now play the Angus clip.
11	Question: What are the consequences of pulmonary
12	edema to a patient such as Mrs. Trabue, if she were to
13	develop it?
14	Answer: Pulmonary edema would cause you to be
15	hypoxic.
16	Question: Okay. And what are the consequences of
17	hypoxia, of being hypoxic?
18	Answer: Not being able to get enough oxygen to
19	your brain, your heart, you know, your normal
20	functions.
21	Question: And as we spoke earlier when we were
22	talking about 02 saturation
23	Answer: Um hmm.
24	Question: if you become hypoxic, a patient can
25	have an event; correct?

1 Answer: Correct.

Question: And if you become hypoxic, that patient can go into a code?

Mr. Stone: He just admitted to you that he knew this could happen and he let this lady go down to Radiology, away from a place where she had care, one nurse for every two patients, where she had monitoring equipment, where she had the most concentrated monitoring you can have in that hospital if you are an OB patient to a place where they have an x-ray pod where they had no care at all and within 20 minutes after she arrived -- excuse me -- within 20 minutes after she left the floor where care was available, she had a cardiopulmonary arrest.

Dr. Angus sent her down there allegedly in a stable condition right after she had had what he described to the ER doctor, Dr. Ragu who saved her life during the code, was a severe hypoxic event back up on the floor. So we have got hypoxia. We have got labile high blood pressures that had spiked to 209 for which Dr. Angus admits he had to give her an emergency dose of Hydralazine to stabilize her; but he never stabilized her. He just brought her blood pressures down briefly because they had never been under control with medication. When the medication would wear off,

they would go back up.

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He told you the effective time for Hydralazine is about 20 minutes. So in 20 minutes guess what happens? They take her off the floor, the blood pressure is still high, over 160, send her down unmonitored, unattended by a nurse to a place where there is no care and within another 20 minutes, her blood pressure has -- some event had happened that caused her blood pressure to crash to 0/0 because of her asystole. means no heartbeat. And that's what precipitated 12 minutes without oxygen to the brain and has resulted in the person you saw here the other day when we were doing jury selection to a permanent, disabling, anoxic brain injury for no reason whatever except for the doctors who were taking care of her in the hospital were not following the standard of care and they were not dotting their I's and crossing their T's and they were not paying attention to detail and they were not getting control of obvious labile blood pressures which could easily have been brought under control if the proper regimen had been used and the proper monitoring had been followed by the doctors who have ultimate responsibility to do that per the hospital policy. They just didn't do it.

Now I'm not saying they are bad people. They are

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not bad people. You know, may be they just don't know any better. May be they need to go to some refresher courses. But I believe the Judge is going to tell you that it is as much negligence to practice when you don't know what the standard of care is as it is not to practice within the standard of care. You have to know it first before you can do it.

And I was sort of shocked when Dr. Angus told us that he did not really know what the interaction between Hydralazine and Labetalol were. Two drugs that he was giving this patient, he did not know what the combined effect of those drugs. But he admitted that as a doctor within the standard of care, he should know those things.

Now, here catastrophic damages are undisputed. Mr. Huff told you that himself. There are several reasons why defense Counsel are not disputing the catastrophic massive damage.

First, they know they can't defend them because they are there. This woman is permanently hypoxic brain damage. She requires a lot of care. She's totally disabled from doing the things she was doing in life before. She can't take care of her household. She can't go to work and earn income. She can't take care of her children. She can't do a lot of things.

In fact, she can hardly do anything. I'm going to talk to you about that more later.

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But what happened to her is totally indefensible in terms of saying you are not really hurt. You are Nobody believes that, not even defense faking. Counsel. Admitting catastrophic massive damages allows the defense counsel to defend this case on the standard of care with some possibility of convincing you that they didn't do anything wrong. Because if they didn't admit the obvious, that this lady is horribly injured, then you wouldn't believe anything that they say about the standard of care either. So they basically have to do it if they are going to put up any defense. But giving you a false standard of care or an unsafe standard of care and then telling you this event was caused by an unforeseeable, unpredictable massive blood clot that clotted off and blocked her central pulmonary artery and then while -- see, while CPT was going on, it just somehow dissolved into a gazillion microscopic pieces and diffused all through her lungs so that they could never be seen by anybody.

Unconfirmed. There is not one bit of objective evidence that that ever happened and that should explain why it wasn't seen on the CT scan that was searching for that very condition. It wasn't there.

You can't see something that never was there in the first place.

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The reason we know it wasn't there is because we know from Dr. Nichols, our pathologist, forensic pathologist who has done just thousands of autopsies on people and testified a lot because he used to do this for a living with the Commonwealth of Kentucky until he went to private business -- he's kind of like -- some of you may remember the old TV show Quincy M.E. They had the TV character who was the medical examiner and his name was Quincy. It was always about how he would solve the murder mystery or something like that. Well, this is what this man does for a living and has for all of his professional life. He has seen this kind of thing many, many times. And he told you that from his perspective as a medical examiner who looks for the cause of injury, who looks for the cause of death, things like that, if she had had this massive pulmonary embolus that they say she did, she would have never been revived in a code. She would have died right there on the floor in the hall or on the stretcher in the ER. Somewhere down there she would have died. wouldn't be here talking about a live woman today.

But, in fact, we are not here talking about the same live woman who checked into that hospital to have

a beautiful baby. We are talking about a person that didn't exist at that time. We are talking about a person who's life really as she knew it has been taken away from her and what we have got left is a person who's a complete invalid who requires care around the clock. I will talk to you more about that later.

You know, they spent so much time during jury selection trying to make sure that you would not base your verdict in this case on sympathy.

The Judge is going to tell you not to do that. That's the law. You know, you are supposed to base your judgment on the facts and on the law -- the evidence that comes to you in this courtroom and the law the Judge gives you in his instructions. And he will tell you, you shouldn't have sympathy for or against either party.

Now what this is really about is inviting you to be sympathetic to these doctors so that you will try to work so hard to be fair that you are going to be unfair. That's what it really is. It's reverse psychology. Is to plant the seed in your mind that if you feel any compassion for this lady, if you feel any empathy for her and her family, that you have to put the brakes on that because otherwise you can't be a fair juror.

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Nobody told you you had to check your humanity at the door when you walked in this courtroom. You come here with all of your life experiences to do the right thing. We are not asking you for your sympathy. We are asking you for your justice under the facts and under the law.

Your verdict in the case will go a long way towards establishing what the people of this community think about what the standard of care for doctors who practice medicine in it should be. Should it be patient safety? Should it be dotting I's and crossing T's, paying attention to detail, using your God-given foresight to avoid patient injury when it could be avoided through ordinary care and readily available therapy or should it just be the going through the motions of showing up fourteen and a half hours after your shift begins and we have a woman not making urine. Well you know, geez, she's got high blood pressure. She's got low urine output. She's got preeclampsia and she's fluid overloaded. And I'm going to talk to you about that when I come back up here to talk to you again.

Instead of doing what should have been done again in control of these blood pressures, Dr. Simonsen loads her up with 1500 cc's more fluid. And I will tell you

that the condition of the fluid inputs and outputs that Mr. Huff did for you the other day, I think he determined that the fluid output at the end of her shift was something like 4630 cc's net total. When I come back up here, I'm going to show you it was more like 5630. This nice nurse which you saw testify -- the first one -- she got forgot to add a thousand cc's. You heard about it when we played her deposition testimony in here because she testified about it in her deposition. I'm supposing that Mr. Huff just didn't catch that or whatever but we have been knowing that all along.

And you can look. If you're Dr. Simonsen or you're Dr. Angus, you can look at that input and output record and you can see the first entrances. One of them is 500 cc's and one of them is 1,000 cc's totaling 1500 cc's in. Okay. And when you look down at the tally at the bottom of the thing for that eight-hour shift, you will see her tally is something on the order of 1180 and you can tell from the first two entrances just from glancing at it, it's more than what the total shift tally was.

Now you heard the testimony about how it's important to look at the intake and output numbers and check them on a hourly basis so they can make sure the

patient is getting on the low end of care 30 milliliters an hour in output so your kidneys won't just dry up or fry or at least a hundred cc's of output so you can diurese and get rid of all this extra fluid taken on when. You are an obstetrical patient after you have had a baby, you've had IV fluids running and things like that.

You heard Dr. Angus say that he was not going to send her home until her blood pressures got down around 150 systolic controlled with Labetalol at that level and she had diuresed, loss that fluid.

Well, folk, when are we going to start this? Now I will talk to you about using Lasix and all that later after I hear what Mr. Huff has got to say about all of this but I have spoken longer to you right now than I thought I was going to do first.

I'm going to get to come back and give you the final closing summation when Mr. Huff gets finished. But what I want you to pay attention to is the little things that get in the way of finding the truth. Like putting a hospital policy up here trying to persuade you in opening statement that that hospital policy sets the standard of care of maintaining blood pressure at 180 when he doesn't show you the whole picture and in the bottom left of that hospital policy we showed you

this is not intended to be the standard of care.

Now that's just not helpful to you when somebody puts something out there and shows you a piece of the picture and presents that it's something that it's not. Okay. And when he tries to say that it's the nurses that keep up with all that, that policy says quite clearly in plain English, that the ultimate responsibility for prescribing dosage, monitoring and follow up on patients receiving Labetalol at Northside Hospital remains the obligation and the duty of the physician, not the nurses.

And there were no real monitoring policies. You saw Dr. Hathaway enter the monitoring order refer to her Labetalol order. She said if you have to repeat this, call me. Let me know what's going on.

So what should have happened here is -- I'm -- nobody is saying these doctors should have just stayed there constantly with one patient. What our experts said is they should have remained reasonably available to respond to the nurses call and the nurses should report to them regularly the blood pressures and anything else they find out of order.

And I show you to begin with the assessments made by the nurses on the shift Dr. Simonsen had that day every single one of them said cardiovascular abnormal. Not a single cardiovascular assessment was within normal limits.

We didn't have good urine output that day.

Dr. Simonsen had to admit that. That's why she -- what she uses the justify the fluid orders that she gave.

Instead of taking fluid off they are putting fluid on.

That's adding to the problem.

And it's just like Dr. Wenstrom said. The thing that is so sad about this, is it could have easily been prevented in reading the record. It's like watching someone drive a car over a cliff and not being able to do anything about it to stop it.

We can't stop it. It's already done and what's done is done. It can't be undone. But what you can do is make it right as far as you're able to with the remedy the law provides which is damages.

We have made it easy for you by stipulating the economic losses are 9.2 some odd million dollars. You will get those stipulations again. The stipulations entered will be sent to you in the jury room.

So most of you I saw took notes down. Some of you didn't but you will get the written stipulations signed by counsel for both parties agreeing that these are the numbers for economic loss present day cash value. So that will be what you will have to fill in the verdict,

if you find that Dr. Simonsen or Dr. Angus or both of them were negligent and their negligence proximately caused these injuries. So you don't have to spend time with a calculator. That's been done for you and agreed to.

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I really do appreciate the Defense doing this. You don't know this but by doing that, you were spared a whole day of testimony. Because we had a life care planner named Jackie Willard and we had an economist named Mike Daniels who had put these things together, crunched the numbers. We had it approved by the doctors up in Louisville which you heard testify by videotaped deposition and it was going to take probably about a day to go through that life care plan and get that evidence to you. But we were able to do this without you having to sit through and listen to that. Because while it's necessary evidence for you to consider in the case, I will have to tell you that it's some of the most boring evidence you would have listened to. We would have to bring you in some coffee or tea or something like that to keep you awake while you were listening to it. So I really do appreciate us not have to go through all that and I really do appreciate you not having to go through all that.

I have talked about as much as I need to right

now. I will come back and visit with you a little while later after defense gets the opportunity to make their closing argument but I want to end this just telling you something a little personal. The thing that really breaks my heart about this case is we have a beautiful little child that was conceived in love at some effort who was supposed to make everything very joyous when they took this little girl home. And everything was just a real catastrophe as a result of this pregnancy.

The pregnancy is not what caused it. It's the negligence of the two doctors that caused it. I don't mean to say negligence as a bad word. What negligence simply means is they were careless. They were careless. They did some careless things and as a result of those careless things, great harm was caused. And damages in a case like this are supposed to be awarded commensurate with the injury done. Not one life was destroyed, at least two. And this lady does not have an opportunity to be the mother to her little girl that she was to her older girl.

Now I have a daughter. My daughter is a grown woman now, married and all that, but my daughter was that same vivacious little kid that you saw. And I just remember when she was little she would say her

prayers. And what she'd say -- she grew up during the period of the Gulf War -- so she would see stuff on TV all the time about soldiers and all and she would wind up after she had said her prayers, she would say God bless the soldiers in Saudi Arabia and she would wind up and say God bless my daddy because he needs it. And what I have to say right now is God bless Keith and Shannon Trabue because Lord knows they do need it.

Thank you very much.

Your Honor, I do reserve the right to a concluding argument.

The Court: So done.

Mr. Huff: Keep going?

The Court: Yes.

Mr. Huff: Something Mr. Stone said, thank you again for your attention and time. I know y'all have taken a lot of notes. Some of you have brought pads from home, it looks like. I have seen you take notes. I know you have paid attention to the evidence in this case.

I told you at the start of this case that reasonable doctors exercising the standard of care make decisions about their patients based on the information they have at the time and not based on hindsight. They can't see the future. They don't know what's going to

happen.

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Mr. Stone was up here telling you the evidence presented by the experts in the case said that on the 24th and the 25th of August back in 2009 Mrs. Trabue was the sickest patient in the hospital. Car getting ready to drive off a cliff. Car about to have an accident. Uncontrolled blood pressure. Fluid overload causing pulmonary edema. And that's what the experts like Dr. Wenstrom told you about.

We brought you people who were there. They were with Shannon Trabue that day. Dr. Angus, Dr. Simonsen, but also the nurses who were involved in taking care of her that day. None of them agree with that description of how she was doing that day. And so, one of the things to keep in mind -- and Mr. Stone is right -- you don't check your humanity because you have been a juror and you are going to go deliberate. But the other thing that you don't check when you go into the jury room is your common sense. Your common sense about is it reasonable to suggest that Mrs. Trabue is crashing as Mr. Stone has described for you, when a 30-year labor and delivery nurse, Patty Jarvis, who is there and who testified and remembers what happened that day completely disagrees. She was at the bedside. brought you those people.

1 Mr. Stone: Your Honor --

Mr. Huff: As Dr. Wenstrom said --

Mr. Stone: I want to make an objection to that argument right there. He said she remembers what happened. Every one of those nurses testified that they didn't have any present recollection of that. They were doing it from the records; not from their memory, so it's just not an accurate statement of the evidence that they were testifying from memory. They were testifying from records.

Mr. Huff: Your Honor, Ms. Jarvis testified that she remembered that she went to ICU, prayed with Mrs. Trabue, she remembered taking care of her. She remembered conversations that she had with her about losing weight. She testified about all of those things. None of that's in the records.

The Court: Well, with regard to Ms. Jarvis, I do recall that testimony, so I will overrule the objection as relating to Ms. Jarvis.

You may continue.

Mr. Huff: All right. We brought you those people. We brought you the people who were there during this time taking care of Mrs. Trabue on the days in question not only Dr. Angus and Dr. Simonsen but the nurses who were there taking care of her and who have a

recollection and documented about what was taking place that day.

As Dr. Wenstrom told you when it comes to these books, including Hypertension in Pregnancy, pregnancy ends with delivery of the baby. When it comes to these books, these books don't set the standard of care either. It's like a cookbook. Clinical judgment, individualized care. That's what Dr. Wenstrom said is the standard of care.

So I can get a cookbook and I can look up a recipe for my mom's chili but it's not going to be my mom's chili. It's going to be a cookbook recipe for chili. There's not any description in these books of Shannon Trabue of what she was going through that day with her high systolic blood pressure and other vital signs along with her signs and symptoms. There's nothing you can look up here and say, okay, we have this patient. This is what's going on. What is the standard of care for that?

So you are left with the testimony of people who regularly take care of these patients. Doctors you see like Dr. Angus and and Dr. Simonsen as well as all the experts who testified in this case.

The procedure this afternoon is going to be I'm going to start by talking a little bit about Dr. Angus

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and Atlanta Women's Specialists. Mrs. Trabue is going to -- Mrs. Tribble is going to talk after me and she's going to talk about causation and the cause of Mrs. Trabue's arrest. But then after that Mr. Stone will get up again and have a chance to address you and then the Judge will give you the law.

So I want to talk a little about some of the things that the Judge will charge you on the law. The Plaintiff has the burden of proof. After considering all of the evidence, they have to convince you by a greater weight of the evidence that Dr. Simonsen and Dr. Angus failed to exercise that reasonable degree of care and skill.

In addition to this, the allegation of malpractice and not something else that caused Mrs. Trabue's injuries. Like I said, preponderance of the evidence. It's not beyond a reasonable doubt but it is the greater weight taking everything into account.

So the burden of proof and what is required of doctors is reasonable care and reasonable skill. Not perfect care, not the best care but what's reasonable under the same or similar circumstances. And that's an important phrase because it's the same conditions that Shannon had at the time they were taking care of her. And the presumption is, the legal presumption is that

the care was skillful.

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The Plaintiffs will overcome that by bringing expert testimony to overcome that presumption. That will be the law you will hear.

And you will also hear about an unfavorable outcome is not evidence of negligence and I will read this because it's going to be mentioned by the Court, I charge you that a physician does not guarantee too. the results of treatment and the absence of negligence on the part of the physician, proves simply that the treatment is different in its outcome or is followed by disastrous instead of beneficial results neither establishes or supports a inference of lack of proper care, skill or diligence. And that's an important part of the law for a case like this. Because admittedly -and I have not said anything otherwise during this whole case -- this is a tragic outcome for Mrs. Trabue. There's no question about that. And I told you in opening statement we weren't going to be questioning witnesses about damages. We weren't going to be contesting damages. We believe that Dr. Angus and Dr. Simonsen when you take into account all of the evidence in this case, they did what was reasonable in taking care of Shannon but she has had significant damages.

And the other part that the Judge is going to charge you -- Mr. Stone read you part of this but not all of it -- is that in a medical malpractice action, a defendant cannot be found negligent on the basis of assessment of the patient's condition that only later in hindsight proves to be incorrect as long as the initial assessment was made in accordance with reasonable standards of medical care.

why is that law important in this case? Well, we know when Dr. Angus was evaluating Shannon around 5:00 in the afternoon on the 25th before she went down to Radiology, he was considering a variety of different possible causes for her condition; one of the reasons why he was getting the test. And I'll talk to you a little bit more about that. And he has agreed and appropriately because a reasonable doctor would consider this, the possibility of pulmonary edema.

But the evidence in this case from him and from Nurse Jarvis was that the lungs were clear, the oxygen saturations had gone back up and the vital signs other than the systolic blood pressure were all within normal range. They didn't believe that it was pulmonary edema at that time.

So Shannon goes down to Radiology. May have a chest x-ray that comes back that says consistent with

pulmonary edema. And you heard Dr. Nixon's testimony about that.

So hindsight is not permitted. You are not permitted by the law to say, well, the chest x-ray showed evidence of pulmonary edema. They should have known that. They were wrong in their assessment of it. You have to evaluate their assessment based on the information they had at the time.

Now, Mr. Stone gives me too much credit for talking about sympathy. It's not a tactic. It's not some legal strategy at all. I think everybody who has been in this courtroom during any part of this case knows that this is a sympathetic case. And in finding jurors that would be fair in this case, what we are trying to do is to make sure that in a sympathetic case you will be able to put the sympathy aside and decide this case with the evidence and the law. I told you it was going to be hard to do. It is hard to do and there's no question about it.

I find myself thinking about this case all the time and have for a long time simply because of the sympathy. But like other things that are in this charge the Judge is going to give you, including various prejudices, they can't be considered in deciding this case based on the law. It's in no way an

attempt to have sympathy for Dr. Angus or Dr. Simonsen.

Here is the bottom line. When you go back into that jury room, think of that doorway as having a detector like you have to go through the first floor of the courthouse for metal. It is a sympathy detector. When you go in to deliberate, you can't take any sympathy with you. The detector will go off. You have to leave sympathy aside for not only Dr. Angus and Dr. Simonsen but for Mr. and Mrs. Trabue and their family as well.

So let's talk a little bit about the care and treatment. Shannon in 2009 was 38 years old and she had been diagnosed with pregnancy-induced hypertension superimposed preeclampsia, high blood pressure. When she was admitted to the hospital for delivery, it was severe preeclampsia. And she had elevated blood pressures before and after her C-section.

So on August 24th, 2009, this is when Dr. Simonsen and nurses are taking care of her. We know that she was out of the bed going to the bathroom. We know that she had some shortness of breath but only when she was moving around. No shortness of breath after respiratory therapy was provided and decreased urine output that Dr. Simonsen treated with the IV fluids.

And the evidence in this case is not only was it

appropriate but it improved her condition. This is a doctor, Dr. Simonsen, who's taking into account everything that's going on. She is looking at the details. She is seeing that decreased urine output could be jeopardizing Mrs. Trabue's kidneys. Let's give her some fluid and see if it improves her condition. And there are no signs of preeclampsia because everybody is looking for that except the systolic blood pressure which was being treated with Labetalol.

This is a vital sign chart and I wish I would have told you like Mr. Stone I wasn't going to show you any charts but I do have a few up here and apologize for you having to see these again but these numbers are all in the medical records. And they all show what the vital signs were at different times. And as you will see on the 24th, the blood pressures do fluctuate.

Some are under 160. Some are above 160 and they are treated with Labetalol sometimes but other times they come down on their own.

Further on the 24th -- and Mr. Stone eluded to this -- you may remember this from the Plaintiffs' expert Dr. Litcher, that the nurses were documenting during the 24th different abnormalities. And this is actually one of the reasons why we played you Ms.

Roberson's deposition testimony, the nurse. You
remember she was the one who wasn't wearing her scrubs,
the first nurse in the deposition that was played.
Didn't have the scrubs on. And she testified that the
reason the cardiovascular was starred was because she
had edema, 3 plus edema. And she also said the reason
why the genitourinary status was starred was because
Mrs. Trabue had a Foley catheter in during that whole
time. It wasn't because there was some change in her
condition or worsening of her condition cardiovascular
standpoint or from a genitourinary status. She also
starred respiratory because Shannon was having some
shortness of breath while she was moving around. But
her lungs were always clear and by the end of the shift
that had resolved with the incentive spirometer.

So here is Dr. Simonsen who again when you talk about the evidence in this case, the Judge will tell you there's two kinds. There's direct evidence and there's circumstantial evidence. And so direct evidence is when somebody testifies like Dr. Simonsen and says, well, I don't remember this patient but I can look at my notes and tell you what I did that day. It's actual testimony from the witness.

Circumstantial evidence is a little bit more. It's where you look at all of the circumstances of

what's happening and then decide whether or not that supports a fact or not.

So the Judge will tell you circumstantial evidence is the testimony of a witness who has seen or heard the facts to which the witness testifies from which such facts, if believed, you may find other facts to exist that are reasonable and believable to you in light of 827 experience.

So when you think about Dr. Angus and Dr. Simonsen and they say we met the standard of care, I took these things into account, that's one thing. That's direct evidence that you can consider in whether they met the standard of care.

Another way to think of it and sometimes I think of this story when I talk about direct and circumstantial evidence is with my kids. I have three kids. The two younger are a little closer together than my oldest one. And my wife several years ago when they were much littler made cupcakes and the cupcakes were on the countertop in the kitchen and there was one that had been virtually eaten. It was just a little bit left.

So my daughter, who is the youngest, when my wife says, all right, who ate the cupcake, pointed to my son and says he ate it. Direct evidence. Okay. The

frosting all over my daughter's mouth circumstantial evidence. And that's the difference between those two. You can look at what the testimony was but you also have to consider all of the facts.

And so think about that as Mr. Stone is suggesting Dr. Simonsen is a corner cutter. Well, where is the frosting in this note about whether or not she is thinking about the right things and cutting corners?

She's evaluating for chest pain and shortness of breath. She writes down all the blood pressures and urine outputs. She listens to the chest which is clear auscultation bilaterally. She notes the Labetalol. She's got the decreased urine output to start the 500 cc's to see if there is improvement. She's looking at all the right things for a postpartum patient like Shannon in evaluating the risk of pulmonary edema, the risk of preeclampsia, the complications from a heart problem from high blood pressure.

And I'm not going to spend a lot of time going through these notes because, number one, you have seen them several times and; number two, they are difficult to read but you will have these out and you can see here at 2:00 in the morning urine output increased. Patient expresses mild anxiety. No shortness of breath. No difficulty breathing. Oxygen saturation is

98 percent. Sleeping respiration even; not unlabored. No shortness of breath, difficulty breathing.

And the next morning the blood pressures had been elevated. They were treated with Labetalol and they had gone down right before being seen by Dr. Angus. So, we have a patient, Mrs. Trabue, who's been diagnosed with preeclampsia. Her blood pressures are going up and down, labile. They are being managed at times with medications and not only the doctors but the nurses who were taking care of her are evaluating her for the signs and symptoms of things that they should be worried about.

And this is Dr. Angus that morning. Again, he comes and sees her at 10. Lung exam clear to auscultation. He increases the blood pressure medication. He now is going to begin to give her oral medication three times a day and we are going to give her PO fluids and discontinue the IV fluid and see how she does.

So that morning lungs are clear. No shortness of breath. Using the incentive spirometry. Seen by Dr. Angus, the Foley catheter and IV were discontinued. Mrs. Trabue is out of bed into the bathroom and shower with good urine output.

Now Dr. Wenstrom who testified in this case, you

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may remember that I asked her about how she thought Mrs. Trabue was doing on the 25th and she actually testified that she thought she was doing fine. That's the same as to what Ms. Jarvis testified to and that's the same as to what Dr. Angus's assessment of her was when he came and saw her. Now that was between the time the Foley was discontinued and 4:00 in the afternoon.

But when I talked to you in opening statement about how the experts were going to have different opinions about this, remember Dr. Wenstrom: This patient was one of the sickest patients in the hospital on the 25th. Needs to be treated. These blood pressures are out of control. Fluid overload unmanaged. High blood pressure. And Dr. Wenstrom, again, her main criticism was too much fluid was being given. She felt like Shannon was doing well that day based on all the information that she had.

So when we look at the expert testimony, we have got Dr. Litcher, Dr. Wenstrom, Dr. Saade, Dr. Nichols and we called experts as well. Dr. Bills, Dr. Davis, and Dr. Cooper along with Dr. Simonsen and Dr. Angus who are testifying as people who took care of Shannon but also testifying about the standard of care in this case.

Dr. Litcher testified that both Dr. Angus and Dr. Simonsen violated the standard of care in their blood pressure management of Shannon. When Mrs. Tribble asked him questions, he came off of the fluid criticisms because the urine output improved overnight and he agreed that Dr. Angus in changing the Foley catheter that was an appropriate thing to do.

Dr. Wenstrom, her only criticism of Dr. Simonsen was related to the fluid management. She didn't feel like the IV's should have been given, the additional fluids should have been given IV.

Dr. Saade who was provided with the medical records in this case, was only asked to review Dr. Angus's deposition and was only asked to give opinions about Dr. Angus.

So they did all have different opinions about the care and treatment provided and they had different opinions about who provided care that was below the standard of care.

So Dr. Bills and Dr. Davis who we called to you testified in this case. Dr. Davis, he's a professor of Maternal Fetal Medicine at the University of Alabama Birmingham. He takes care of patients like this. He has actually seen patients who developed pulmonary edema from preeclampsia. You heard him describe how

those patients would look.

And Dr. Bills, who practices at Northside
Hospital, other than Dr. Angus and Dr. Simonsen and the
nurses, he's the only person who wasn't involved with
Mrs. Trabue who knows how patients are taken care of
and monitored at Northside Hospital. He knows how the
Radiology Department works. He's sent patients down
for x-rays and CT scans at Northside Hospital. And he
testified that Dr. Angus and Dr. Simonsen met the
standard of care. They did so appropriately.

Now you may remember there was an exchange when Mr. Stone was asking Dr. Bills some questions about maintaining the blood pressure under 160 and they were talking about this book. And Dr. Bills made an important distinction in the case between before delivery or after delivery. Because before delivery you would want to try and have it below 160. But after delivery, you would want to try and have the blood pressures in the range that the patient has been living at. And that was the testimony that Dr. Bills gave and that was testimony that Dr. Davis gave.

I'm going to let Mrs. Tribble talk to you about Dr. Cooper.

Okay. So we are very clear about this, this is not the whole policy. You will have the whole policy.

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It's the Labetalol administration policy. I am again just showing you the top part because I think like frosting around my daughter's mouth, this is some circumstantial evidence about the issue of the standard of care and what do the blood pressures need to be maintained at Northside Hospital. First of all --

Mr. Stone: Your Honor, may we approach?

The Court: All right.

(whereupon, a discussion was held at the bench between the court and counsel, after which the following proceedings were had.)

The Court: Ladies and gentlemen of the jury, I am going to sustain Mr. Stone's objection to the last statement made by Mr. Huff regarding the hospital's policy on whether or not the hospital policy is evidence of the standard of care and direct you to disregard that last statement.

You may continue, Mr. Huff.

Mr. Huff: Thank you, your Honor.

So the Labetalol policy for Northside Hospital, the hospital that delivers either the most or the second most babies in the United States for postpartum patients, that means after the delivery of the baby, indicates that the clinical indication for Labetalol use is hypertensive systolic blood pressure 180

1	diastolic 110
2	Mr. Stone: Your Honor, I'm sorry but I have got
3	the same objection. This is just back dooring this
4	whole thing in. The policy itself clearly says it's
5	not the standard of care.
6	The Court: Well, he may talk about what the
7	policy is.
8	Mr. Stone: No. But he's talking about first this
9	hospital is a hospital that delivers these the most
10	or the next to the most babies in the United States
11	like somehow this policy means something for all the
12	rest of us.
13	The Court: Yes.
14	Mr. Stone: It says on its face that it doesn't.
15	The Court: All right. I will overrule that
16	objection. Allow that statement, if that's a true
17	statement that they deliver more babies then
18	Mr. Huff: That's what the evidence is, your
19	Honor.
20	The Court: All right.
21	Mr. Stone: I made the objection to the context of
22	him saying this is what their policy is because he is
23	trying to back door this standard of care
24	The Court: This is what whose policy is?
25	Mr. Huff: Northside Hospital.

1	The Court:	Tt is	Northside's	nolicy.

2 Mr. Stone: Sure. But it's not the standard of 3 care according to the face of the policy.

The Court: That's what -- I sustained that objection.

Mr. Stone: Sure. Okay.

Mr. Huff: Your Honor, I was just reading the policy.

The Court: The policy. You may continue.

Mr. Huff: This is Northside Hospital's policy and y'all have seen what it says. And I'm not going to belabor this anymore. We know that policy says that it doesn't set forth the Standard of Care. But this is what the policy was that was in place at the time and it's for your consideration as to whether that has any meaning when you listen to the issues in this case about not only what the nurses were doing but what the physicians' expectation of the nurses were in managing the blood pressure for patients on Labetalol.

The experts in this case on behalf of the Plaintiff, in particular Dr. Litcher, who's critical of blood pressures, he stated that the blood pressures during the time that Dr. Simonsen and Dr. Angus were managing Mrs. Trabue were not being managed. They were allowed to get too dangerously high. No one in this

case offered standard of care criticism of

Dr. Wyatt-Hathaway who is the initial OB-GYN who was

taking care of Mrs. Trabue. And the evidence in this

case is that the blood pressures during this period of

time were within the same range.

This is the history and physical where Mrs. Trabue came in. The blood pressure was 166/92. She had 3 plus edema. And 36 week blood pressure is 170s to 180s 85 to 90s and she had gestational hypertension during the pregnancy, worsening pressures.

And then her progress note from the 23rd: Failed induction, chronic hypertension superimposed preeclampsia. Stable on mag sulfate, labile blood pressures, goods diureses and this is when she added the Labetalol 200 milligrams.

So on August the 23rd before Dr. Simonsen -- this is after the delivery of Jada but before Dr. Simonsen and Dr. Angus are involved, Shannon has labile systolic blood pressures and Dr. Hathaway orders oral Labetalol twice a day and IV Labetalol as needed for systolic blood pressure over 170.

The Plaintiff's position in this case is that IV Labetalol or other medication should have been given to lower that top number sooner. And you can see during the time Dr. Hathaway is taking care of Mrs. Trabue,

she has blood pressures that go over 160 and also over 170 and they come down. And even on the Plaintiff's chart, you will see here that they are elevated at times.

Now remember the Plaintiff's experts' testimony that when these are elevating, medication needs to be given to bring them down below what they contend the safe number is which is 160.

Even during Dr. Hathaway's care and treatment, though, the blood pressures are above that number that they said without any medications being given.

The green is the medication and during this time, the blood pressure would elevate but then it would come down on its own without medication.

Again, no one is critical of Dr. Hathaway for how she is managing this same patient the day before.

Where is the frosting on that part of the evidence? And here again on the 25th, fluctuating blood pressures. Everything else is in the normal range until 4:50 and it's being treated appropriately. That's what Dr. Davis says and that's what Dr. Bills says.

I'm going to fast-forward and cover the late afternoon. Because I think this is an important part of this case and it's part of the case that we probably

spent the most time on. But we know that Shannon's lungs were clear until 4:00. She had no shortness of breath until 4. Her blood pressure actually improved all day until after 4 and her urine output improved.

At 4:00 we have this episode that was documented and talked about by Nurse Jarvis. Shortness of breath and oxygen saturations were 88 percent. Dr. Angus orders 10 liters of oxygen and a chest x-ray. So hypoxia, severe hypoxia. All right. Treated with oxygen and corrected.

So, Mr. Stone showed you Dr. Angus's clip where he was talking about it and Dr. Angus said appropriately, yes, hypoxia can cause a cardiac arrest. Can cause a code and that can lead to arrest as you heard him testify about. That's absolutely true. If you don't treat it but he did treat it with 10-liters of oxygen and the oxygen saturations went from 88 percent to 98 percent.

We know at 4:52 the blood pressure went up and Hydralazine was ordered for the blood pressure and Dr. Angus saw Shannon right before 5 and he does another lung examination that shows the lungs are clear.

This is during the period of time when the Plaintiffs would have you believe that Shannon Trabue is having full-blown pulmonary edema. The pulmonary

edema is what caused the shortness of breath at 4:00; that caused the spike in the blood pressures and that those things are contributing to her condition late that afternoon.

Dr. Angus sees her at 5:00. The lungs are clear.

5:20. Nurse Jarvis told you and documented
Shannon appears to be relaxed, talking to her family,
having no shortness of breath and her oxygen saturation
was 98 percent.

And this is Dr. Angus's note. And I heard it suggested that Dr. Angus maybe had tunnel vision. He was only focused on the license plate. He was staring at the wrong thing; not the big picture.

Is that really what the evidence in this case is?

We went through this note not only with Dr. Angus but with Dr. Wenstrom, the Plaintiff's expert, to talk about was it reasonable for him to think about all of these things and was it reasonable for him to be concerned these things may be going on. And everyone agreed that these -- this was a reasonable thought process. Restart the IV, consider whether it's preeclampsia that is worsening and get those labs. Give the Hydralazine which everyone felt like was an appropriate thing to do.

It was appropriate to also consider pulmonary

edema as the possible -- excuse me -- pulmonary embolism as the possible cause of what was happening to Shannon along with pulmonary edema. He's trying to figure what happened. He's trying to rule out what might be causing a change in her condition by ordering tests to get that done.

The lungs are clear and so his differential diagnosis, he's thinking preeclampsia. He orders the labs. He's thinking high blood pressure. He orders Hydralazine. Pulmonary embolism, CT scan of chest. Other lung disease chest x-ray and CT scan.

Is that somebody who has got tunnel vision or is that somebody who's really thinking I'm not sure what this is but I'm going to consider all of the possibilities and try to figure out what's happening? And we know the blood pressures were elevated and then we know they went down in response to the Hydralazine.

The other suggestion about what's going on with Shannon that day is that she was ahead of her fluid. We know that on August 24th she was approximately three and a half liters ahead based on the documentation. On August 25th she was basically -- she was drinking and it was even to what she was putting out.

Now when we talk about the I's and O's documented by the nurses, whether it's on a chart or on the nurses

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flow sheet, everyone agrees imputing clues, all of the oral fluids. So it's not just what goes in the IV; it's what you drink. And the testimony has been that what you drink doesn't go right into 827 tissue. It goes into your digestive system and it eventually gets to 827 tissue. And the output does not include all the insensible loss, which Dr. Wenstrom testified would be about 800 cc's a day.

So I and O is important information. Should be taken into account, particularly urine output, but it doesn't tell you the whole story about how much is really going in, where it's coming -- where it's going to and the insensible loss.

So think of it this way: I put this together myself so it could be really simple and basic for me to understand. You have intravascular fluid. This is fluid inside the blood vessels that goes into the kidneys and is excreted in the urine. This is what you worry about if it's low, if urine output is low, you worry about this being --

Mr. Stone: Your Honor.

Mr. Huff: -- this being low --

Mr. Stone: There has been no testimony about this diagram at all in this case and this is nothing but
Mr. Huff testifying to the jury after the evidence has

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closed. This testimony is not in evidence. No doctor testified that this is correct and it's totally unauthenticated.

Mr. Huff: Your honor, it's demonstrative as if I have got the chalkboard up here and drew a couple of buckets to explain what the testimony has been. There has been testimony about intravascular fluid, what it is and extravascular fluid.

The Court: I will allow it.

Mr. Huff: Extravascular is fluid that is outside.
That's what constituting the edema.

Urine output does not go to this right away. And you heard testimony about what Lasix does. Lasix causes an immediate response to the intravascular fluid. So you give Lasix right away. It will take the fluid out of what's inside the blood vessels and increase urine output. But it's not going to do anything for the extravascular fluid right away. That's going to take about 24 hours according to the testimony.

So the concern with giving Lasix even on the 24th or the 25th was if this fluid is low, then you are going to bottom out the intravascular which causes kidney failure and heart failure.

The evidence about the Hydralazine at 4:52 there

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was a good response. Even Dr. Wenstrom testified that the Hydralazine was an appropriate thing to do. A second dose wasn't needed and there was a good response. And there was no evidence, she testified, that the Hydralazine bottomed out the blood pressure.

Mrs. Trabue continued to get Hydralazine because she continued to have high blood pressures after the arrest while she was in ICU. It never bottomed out her blood pressure.

Dr. Wenstrom noted that and testified about that when I asked her about that as well.

It was at 5:30 after Shannon was reported to be doing well, 5:30 that she went to the Radiology Department. Her blood pressure was back to its normal range. Her respiratory status had improved. She was relaxed and talking without any shortness of breath.

And Patty Jarvis, nurse from almost 30 years, her testimony is she was stable, having a good day, and she said she was 100 percent stable when she went to Radiology.

Dr. Angus had seen her before she left and she testified she would never have let her leave if she wasn't stable. That's the nurse who had been with her all day taking care of her.

And then in Radiology the Plaintiffs did play the
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testimony of the two radiology techs who were there who talked about Shannon going up to go to the bathroom, standing up for the chest x-ray and she fainted and the arresting crew were called at that time.

Now remember this: When Shannon is in her room on the 25th, she's not being continuously monitored. They are coming in and taking her blood pressure and they are coming in and taking her pulse ox every hour and documenting it. So she's not on a continue monitor in her room. She is getting up and going to the bathroom. She's standing up in her room and she wasn't asked to do anything different in the Radiology Department. The expectation was depending on who testified 15 minutes to an hour to get these studies done in Radiology and then she would be back.

Was it reasonable for Shannon to go to Radiology?

It was reasonable to try and find out what was going on with her and these tests were the appropriate things to do. She is on oxygen and there are medical professionals down there, radiology techs, including one gentleman who actually -- from the Fire Department for a number of years. The Radiology Department is next to Emergency Room and there is no delay if a code happens there.

We talked to Dr. Wenstrom about whether or not she

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could say that the outcome would have been any different if the arrest had happened in the room instead of Radiology and she testified that would be pure speculation.

Mrs. Tribble is now going to talk to you a little about the causation part of the case. We both presented the case on behalf of Dr. Angus and Atlanta Women's Specialists and so it's appropriate for her to talk to you as well since she did a significant part of the case and I was very proud of everything she did.

If she or I did anything during this case that you thought was mean spirited, heavy-handed, inappropriate, don't hold it against Dr. Angus and Dr. Simonsen.

We've tried to do our best to represent them. We have tried very hard to be respectful of your time during this trial and to tried to bring you the evidence that you need to decide this case.

I have an incredible amount of respect for the job that you do. I have an incredible amount of respect for everyone who makes this courtroom function. The Judge, our court reporter, Melissa, the deputies. It's an incredible process and I can't thank you enough for being a part of it.

Mrs. Tribble and I, we have lived with this case for a long time as have the Plaintiffs and this is the

1	end of the line, so to speak. And Mrs. Tribble may
2	have the same problem. It's hard for me to stop
3	talking in general, especially now. But it's because I
4	know when I sit down, I'm done and I have handed
5	Dr. Angus and Dr. Simonsen over to y'all to decide the
6	case and that's our duty.
7	So vou'll have a verdict form out with vou and

So you'll have a verdict form out with you and Mrs. Tribble will talk to you about the verdict form. We have stipulated to some things because there's not any reason to fight about those things. But we are asking that you return a verdict in favor of Dr. Angus and Atlanta Women's Specialists in this case.

Thank you again for 827 time. Like Mr. Stone, I talked longer than I wanted to and I apologize for that.

Your Honor, may Mrs. Tribble take over for me?

The Court: Mrs. Tribble, you may address the jurors.

Mrs. Tribble: Good afternoon, Ladies And gentlemen.

The Jury: Good afternoon.

Ms. Tribble: Like both Mr. Stone and Mr. Huff said I want to thank you, too, for your time and 827 dedication and 827 wonderful attention over the past two weeks. This is a very important case to everyone

in this courtroom, so thank you so much. And I'm not going to talk very long, but what I'm going to talk to you about is causation and what the evidence has been on that issue.

So like in every medical malpractice case, causation is an essential element of the Plaintiff's case. Like standard of care, the Plaintiff also has the burden to prove causation. So it's the Plaintiff's burden to prove to you that the negligence of Dr. Simonsen and Dr. Angus was the cause of the injuries and the injuries in this case are Shannon Trabue's arrest and the aftermath from the arrest.

This element, like standard of care, has to be proven by a preponderance of the evidence. And what that means is more likely than not. The Plaintiff has the burden to prove every element of the case by this preponderance of the evidence. So they have to tip the scales. They have to tip the scales on standard of care and they have to tip the scales on causation.

Let me just explain to you, ladies and gentlemen, that if you don't think Dr. Angus and Dr. Simonsen were negligent, you don't even have to get to causation. But, likewise, even if you think they were negligent and you don't think the Plaintiff has met the burden of causation, then the defense also should be -- should

get the verdict for the defense in that case. So it's both elements have to be proven in this case.

The Judge is going to instruct you on some law regarding causation and there's a term called proximate cause. It is a term that not even some lawyers really understand. The Judge is going to read to you what proximate cause means. I'm not going to read that to you but sort of the common test to determine whether someone's negligence was the proximate cause of injuries is to think about was it foreseeable that their actions or inactions would result in this cardiac arrest.

Should it have been foreseeable to Dr. Simonsen and Dr. Angus when they were caring for Shannon on the 24th or the 25th that she would end up having this cardiac arrest?

The Judge will tell you regarding foreseeability a defendant may be held liable for an injury when that person commits a negligent act that puts other forces in motion or operation resulting in the injury when such other forces are the natural and probable result of the act that the defendant committed and that reasonably should have been foreseen by the defendant.

When the injuries could not reasonably have been foreseen as the natural, reasonable and probable result

of the original negligent act, then there can be no recovery. If the chain reaction that resulted from the Defendants' alleged negligence, if any, meets the above test, then the Plaintiffs may recover.

So, let's put that into perspective of this case. Dr. Simonsen. Was it foreseeable to her on the 24th when she was caring for Shannon that she would have this cardiac arrest or it should have been foreseeable that she would have this cardiac arrest the next day?

So, what was her condition that day? Her blood pressures, she had labile systolic blood pressures, the same as the day before. Her urine output was decreased. They improved with the fluid. She had shortness of breath during the morning. It improved with the respiratory therapy treatment. Remember we talked about what atelectasis is. After surgery you can have collapsed lungs at the bottom if you aren't taking deep enough breaths.

Once she was treated for that, her shortness of breath went away. That's not the clinical picture of pulmonary edema. Her lungs also were clear on every single exam on the 24th by the nurses, multiple nurses and Dr. Simonsen about 11:00 p.m. There's no clinical signs or symptoms of pulmonary edema on the 24th.

She also -- you saw the nurses notes -- that's

that really long page of nursing note from the 24th, and those are important because we can look at how her condition was after she got this, what the Plaintiffs have characterized as this dangerous amount of fluid overload. After she got these boluses of fluid, she has no shortness of breath. Her lungs are clear. She's able to lay down and go to sleep at night with unlabored breathing.

You have heard the evidence in the case. If you have fluid overwhelming in 827 lung tissue when you lay down at night, you are not going to be able to breathe. There's no evidence of that at all that evening after she received the additional fluid.

So then you have to ask yourself: Was it foreseeable to Dr. Simonsen that Shannon was in arrest the next afternoon, early evening? And if the answer is, no, which I think the evidence has proven, then the Plaintiff has not met their burden as to causation regarding Dr. Simonsen.

So then we can move to Dr. Angus and think about was it foreseeable for Dr. Angus that she would have this arrest?

Mr. Huff has gone through Shannon's condition on the 25th in detail but we know she had no shortness of breath at all. She's sort of rocking along that day. The nurse said she's having a good day. She's up to the bathroom I think six times. She goes and takes a shower. There is nothing going on with her at all to think that she's going to have an arrest.

She has this change in her condition at 4:00.

Shortness of breath and her 02 sat drops. She's given oxygen. It immediately goes back up to 99 percent. If you had so much fluid overwhelming in 827 lungs, the oxygen mask wouldn't take your 02 sats back up to 99 percent. That doesn't make sense. That's not the clinical picture of this overwhelming pulmonary edema.

Her lungs that day also were clear to Dr. Angus.

And the nurse said she heard wheezing but, ladies and gentlemen, no one in this case, none of the Plaintiffs' experts have testified wheezing on lung exam is consistent with pulmonary edema.

In fact, Dr. Saade and Dr. Nichols agreed that it wasn't.

You remember Dr. Cooper explained it when you have pulmonary edema you are going to hear sort of a Velcro, ripping the Velcro apart. Crackles is what they call it. That was never on any of her lung exams on the 25th.

Right before she went down to Radiology she is relaxed. She's laughing. She's talking with her

family. Her blood pressure had come down. She didn't have any shortness of breath or difficulty breathing. So then was it foreseeable to Dr. Angus that she would have this cardiac arrest 15 minutes later?

Again, if the answer is no, which I believe the evidence has borne out, then the Plaintiff has not met their burden on causation with regard to Dr. Angus.

In order to prove causation in any medical malpractice case, the Plaintiff has to bring you expert testimony. They have to bring you experts to come in and talk to you about how the injury occurred. And the experts have to connect the negligence to the injuries. They can't just say the negligence caused the injury. They have to explain to you, they have to convince you that this is how it happened in this case.

And so the Plaintiffs have brought you several different experts. MFMs, obstetricians, and then a medical examiner.

And I believe Mr. Stone said in his opening last week that the cause -- the Plaintiffs' theory regarding the cause is that she had persistent, severe hypertension that combined with gross fluid overload led to the arrest.

So, in order to establish that that really is the cause, the Plaintiff has to bring you expert testimony.

So you heard there was testimony about pulmonary edema, heart failure and then this week there were a lot of questions about, well, could it have been a drop in her blood pressure? But there was no evidence in the Plaintiffs' case that that is the cause -- that was the cause of arrest.

So let's talk about what the experts did say. Dr. Litcher: He was all about the blood pressure. The blood pressure was too high. The blood pressure was too high. You have to treat the blood pressure and the blood pressure was so high that it led to heart failure. But did he ever explain how labile systolic blood pressures meaning that someone is actually in the normal range, how that within itself can lead to heart failure?

Dr. Wenstrom. She was about the pulmonary edema. It was too much fluid in the lungs. But did she ever explain how you can get such severe pulmonary edema to cause an arrest when there's no clinical symptoms or signs on exam? Did that explain to you, did she convince you that was really the cause?

Dr. Saade. He testified when I asked him some questions on cross-examination that for pulmonary edema to cause a cardiac arrest you would have to have progressive, worsening of pulmonary function or

progressive worsening your of respiratory ability.

So we know that Shannon was breathing normally.

She -- her respiratory arrest on the morning on the

24th that improved. Her respiratory rate was always

normal. Her lung exams never showed signs of worsening

pulmonary findings. So where is the evidence to

support that? It doesn't exist.

Dr. Nichols, he's the medical examiner. Mr. Stone just mentioned a lot of autopsies. He doesn't treat living patients. He doesn't diagnosis these problems in living patients.

what he did say on cross-examination if you remember when I was asking him, he basically ruled out the diagnosis of pulmonary edema because she had no clinical signs or symptoms. He was also the one who agreed that based on the vital signs, Mrs. Trabue was stable. She was stable at 5:30 before she went down to radiology.

So I want to talk to you about the evidence that I think disproves the arrest was caused by pulmonary edema. There were no clinical signs or symptoms for pulmonary edema, especially such severe pulmonary edema that's going to lead to cardiac arrested.

You've seen in the nursing notes 17:20. She has that her blood pressure had come down. She appears

relaxed. Talking with family. No shortness of breath and her oxygen saturation is 98 percent. That is not the clinical picture of overwhelming with pulmonary edema and that's 23 minute before she has her cardiac arrest.

Her vital signs, all her vital signs were always normal. Her respiratory rate was always normal on the 24th on 25th. If you have so much fluid in your lungs that it's causing 827 lung function to decline, your respiratory rate is going to go up. You are going to start breathing heavier. She never had that. She never had to work on breathing.

Remember Dr. Davis told you about that. Some of the patients he's seen having pulmonary edema where they decompensate, they start breathing really heavy and they can't catch their breath. There's no evidence of that in this case.

The clinical exams. When we talk about was there pulmonary edema or was there so much pulmonary edema that's it's going to cause someone to arrest, we listened to the lungs. There were no lung findings consistent with pulmonary edema before her arrest or after her arrest.

I think I showed this to one of Plaintiffs'

experts. This is a respiratory therapy note and just

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so you know, the numbers down here on the right-hand side are the numbers from the charts. So if you want to, write those down, so you can find them later. So this is the respiratory therapy note from August 25th about two hours after her arrest. Her lungs are clear. That is not consistent with fluid overflowing in the lungs enough to cause you to have a cardiac arrest.

And remember something that Dr. Davis said as well. That if you have this fluid in your lungs that's building up from pulmonary edema and they put the endotracheal tube down her esophagus called intubation which they did for Shannon during the code, fluid is going to be flowing out of that. We never had that.

One of the things that Dr. Nichols, the Plaintiffs' causation expert said, when you have really severe pulmonary edema, you are going to be sort of foaming at the mouth, frothing at the mouth because the fluid is so much it's coming up. We never had that with Shannon.

Now don't be fooled by what the x-ray report says. You will have the report. It doesn't diagnosis pulmonary edema. It said it's consistent with pulmonary edema. And Dr. Nixon testified she was the one they read the deposition in. She's the radiologist who interpreted that study and she said at best, it's

moderate. Moderate pulmonary edema. Well, there was no evidence in this case that moderate, not severe pulmonary edema can cause a cardiac arrest.

The CT scan. No fluid in the lungs. This is the gold standard test to look at lung tissues. Everyone agreed and it shows no evidence of pulmonary edema.

Let's talk about the radiologist. Dr. Cooper, he is the critical care pulmonology expert who came up last Friday. He was our expert that came out of turn. And remember he is the only evidence expert in this case who discussed the actual images with you.

The Plaintiffs' whole case is based on this x-ray taken on August 25th right before the arrest but they never even showed you the films in their case. We are the ones who brought the films and showed them to you and explained to you what they really show.

And Dr. Cooper said that he's not a radiologist but he is a pulmonologist. He reads thousands of chest x-rays and he reads thousands of CT scans of the chest. And what he said is that x-ray is not consistent with severe pulmonary edema.

You've seen the complete white out of the lungs.

And what he said, if you remember, this is her x-ray

from the 25th right before the arrest, minutes before.

You wouldn't see any of the blackness here. The

blackness is air. You would -- it would all be white and that's not what we have here.

He talked about CT scan. He is the only person during this entire trial who talked about the CT scan. And Mr. Stone said earlier that, you know, you have to look to objective evidence. Well, this is objective evidence. This is direct evidence to disprove that she ever had such severe pulmonary edema to cause an arrest. Because if she did, remember Dr. Cooper told you that you would have -- this is -- these are the lungs here. It would be all white. It wouldn't be black. Black is air. What he did talk about what he saw is at the bottom here there's some whiteness. That's the pleural effusions.

Pleural effusions are fluid in the pleura or the outside of the lungs. It's not in the lung tissue. That's where the fluid was. It was in the pleural space. That's doesn't cause a cardiac arrest. Why? Because you have all this other air in the lungs. The lungs are oxygenating just fine.

Another thing that Dr. Cooper told you is we know she got some Lasix. She got some about 11:00 p.m. on the 25th and that's at 9:45 on the morning on the 25th. He told you that it's going to take 24 hours -- Mr. Huff showed that you little diagram -- for the

Lasix to draw the fluid out of extracellular spaces, which would be the lungs, lungs or the pleural space.

There wasn't enough time -- if there was pulmonary edema there wasn't enough time for the Lasix to draw it out of the lungs yet by the time the CT was taken. We would see still it. And how do we know that? Because we still have the fluid in the pleural spaces. The Lasix hasn't drawn that out yet. So this is direct, objective evidence that pulmonary edema did not cause Shannon's cardiac arrest.

So let's talk about heart failure. This is the other part of Plaintiffs' causation theory that the labile, systolic, elevated blood pressures got to a point where her heart just couldn't take it anymore and it failed.

So we know she had elevated systolic blood pressures for days to weeks before this event. And this is like the frosting, the circumstantial evidence, to disprove that she had heart failure because she never had a cardiac arrest before, even though she had these blood pressures.

So I think I showed this to Dr. Saade. This is from August 17th, 2009, another hospitalization that Shannon had. Her blood pressures are in the same range. She has labile, elevated, systolic blood

pressures and she has never arrested before because of them.

She had labile systolic blood pressures after the arrest. You have the ICU nursing record you can look to from the chart. For days she had elevated, systolic blood pressures. This is from August 30th of 2009. 157 and it goes to 180, 170, 180, 170. She never arrest again. This is where she's living at. It was not causing her heart to fail before or after. That's circumstantial evidence that it didn't cause her heart to fail on August 25th.

And you heard, I think it was her primary care doctor from Kentucky. She testified via video. She said she continued to treat Shannon for blood pressure for years afterwards and sometime she had labile, systolic blood pressure in the 160s. Again, she's never had a cardiac arrest since August 25th.

Her heart rate. You've seen the vital signs chart and I'm not going to bring it back up but it was always normal. If 827 heart is working so hard because the blood pressure is too high, it's gonna pump faster and you are going to pick that up on the heart rate. It was all normal.

The echocardiogram. I think a couple people talked about this, including Dr. Cooper and Dr. Davis.

Again, this -- I don't think this came up until our case but this is another example of objective evidence and it disproves she ever had heart failure. If she had heart failure from the systolic blood pressures, she would not have a normal ejection fraction. Normal is 55 to 60 percent. This is completely normal and it was objective evidence to disprove that heart failure was the cause or the contributing cause of her arrest.

So Mr. Huff and I brought you three different experts. Two of whom talked about causation and I thought they were very reasonable people. I mean they weren't here to tell you they knew 100 percent what caused this arrest. What they did tell you is that based on their experience seeing patients who have pulmonary edema, who have pulmonary embolism, that her cardiac arrest was most consistent with pulmonary embolism. It was so sudden and that is consistent with a pulmonary embolism.

But what they did say, even though -- they agree there were no tests that said for sure this is pulmonary embolism but it was most consistent. That was their testimony. But what they were really sure about to a reasonable degree of medical probability, her arrest was not caused by pulmonary edema. They were able to rule that out because she didn't have the

clinical picture of pulmonary edema and the radiology is not the picture of pulmonary edema.

So just briefly about pulmonary embolism. We all know we have heard it's a blood clot that can come from your legs or 827 pelvis if you have been pregnant and it can travel to the lungs and it can cause an abrupt cardiac arrest and death.

I think everyone agreed, every one of the Plaintiffs' experts and all the defense experts said pulmonary embolism is the leading cause of death in postpartum women. Every one also agreed that she had risk factors.

She was postoperative, so her blood is not flowing as normally. It's more likely to clot. She was postpartum so her blood is hypercoagulable, meaning that it's more likely to clot. She was also overweight and that puts her at a little bit greater risk to have a pulmonary embolism.

And let's just be fair with what the records really do show. It doesn't rule it in but it also doesn't rule it out. The CT scan that was done on the 26th to look for a pulmonary embolism, the report specifically said that the study is limited for evaluation of blood clot in the lungs. So the CT scan never rules it out.

1 And I want to talk to you, ladies and gentlemen, 2 3 4 5 6 7 8 9 10 11 12 13 14 15

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about the Northside ICU records. The doctors who were caring for her after the arrest. There has been a lot of testimony about -- and questions about what were they thinking. You know, what did they think the cause of her arrest was? Well, if you look through those records, there really was never a definitive cause. one ever said this is what caused her arrest. And even iust a few those of records -- this is from the neurologist on August 26, 2009 -- it is not clear to me at this point whether or not respiratory arrest occurred prior to seizure. Possibly secondary to eclampsia but need to rule out a central nervous symptom etiology. Etiology means cause. Venous thrombosis is always a concern post partum CPA the stroke possible as well.

So at this point, a neurologist doesn't know yet. This is right after the arrest. That was the next day -- this is an OB-GYN note from August 27th, so the day - two days after the arrest.

Respiratory arrest. Seizures still unclear etiology. Unclear cause. I don't think this is a note y'all have seen and it's hard to read. It's from Maternal Fetal Medicine on August 30th, 2009, so five days after the arrest. Status post cardiac

arrest/code? Etiology. They don't know what the cause is. Don't you think they would have come and testified in this courtroom if they knew what the cause was? I mean the truth is what they were doing is they were taking care of her condition. They were dealing with the aftermath of her arrest and trying to get her in the best possible place that she could be transferred to the Shepherd's Center. That's what they were worried about.

I'm going to talk to you about the verdict form.

It's two pages and it has an explanation for you about to -- follow the instructions on the form and answer each question in the order that it's asked on the form.

The first question: Was the negligence of any Defendant Atlanta Women's Specialists physician employees a contributing proximate cause of injury to Shannon Trabue? If so, place an "X" in the blank before each physician employee whose negligence was a proximate cause of her injury. And then it allows you to answer that question yes or no.

If you answer yes, then you move on to the next page and you determine what the damages are for the different elements of damages the Plaintiff has mentioned and will discuss after I sit down.

What we ask you to do is check no on the first

page, you move on and whoever you elected as foreperson signs and dates the verdict form.

So as Mr. Huff said, it's really hard to sit down. I cannot get back up, neither can Mr. Huff after Mr. Stone because the Plaintiff has the burden of proof. They have the last word in the trial. But I ask you when Mr. Stone is talking to think about how would the Defendants respond to what he says. How would Mrs. Tribble or Mr. Huff respond to the comments or the argument that he makes.

I want to thank you again for your time and 827 really, really good attention during this trial.

There's been a lot of evidence and this is a really complicated medical issue, issues in this trial and y'all have done such a wonderful job of paying attention to everything.

It's our job as lawyers to present to you the evidence in this case and we do so through witnesses who we have called either by video, reading depositions or live persons. We also do so through the medical records, including the radiology images.

It's your job as the jury to listen to witness evidence, sort through the evidence and find what rings true to you.

Verdict means to speak the truth and we ask that

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1	you speak the truth as you find it.
2	We believe that the evidence has shown that
3	Dr. Simonsen and Dr. Angus were not negligent and they
4	didn't cause the arrest. We ask you to find in favor
5	of the Defendant. Thank you so much.
6	The Court: Five minute comfort break.
7	The Deputy: All rise for the jury.
8	(Whereupon, the jury exited the courtroom after
9	which the following proceedings were had.)
10	(Whereupon, a break was taken.)
11	The Court: Let me know if you are ready,
12	Mr. Stone.
13	Mr. Stone: Give me a second. Ready to go.
14	Ready to go, your Honor.
15	The Court: Okay. Sheriff, let's receive the
16	jury.
17	The Deputy: All rise.
18	(Whereupon, the jury entered the courtroom after
19	which the following proceedings were had.)
20	The Deputy: All jurors are present.
21	The Court: Thank you, sheriff. Thank you, Ladies
22	and Gentlemen. Be seated.
23	Mr. Stone: Now it really will be over within a
24	few minutes. I'd like to start off by touching on a
25	few things that defense counsel said. I thought it was
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interesting that Mr. Huff would call these published medical records right here just something like cookbooks but in reality there is some truth to that because, you know, they tell you how to watch a patient. They tell you how to treat a patient. They are where the doctors go for advice. This book here is -- williams is the book that Dr. Angus testified in his deposition that he goes to regularly to get advice on how to handle things. So it's kind of strange that we have got one of the ladies that wrote the book to come testify about this case in which Dr. Angus's involved.

Mr. Huff says it's like a cookbook. Well, he looked up a recipe for chili in his mother's cookbook. One thing I think you see when you look up a recipe for chili is it tells you how high it's supposed to be cooked and it tells you, you know, and then you watch chili while it's cooking. If you don't watch the chili while it's cooking, you are probably going to wind up scorching 827 pot and that's what happened. And what we are talking about here is watching a patient so we don't have a patient having a bad outcome when you can intervene and stop it.

Now, the next thing he used was the illustration of his little girl with the cupcake frosting all over

her mouth after she pointed to her brother.

You know, Dr. Angus's first thought when he found out his patient was having a hypoxic, serious hypoxic event when her oxygen saturation went down to 88 at 4:00 was to order a chest x-ray to rule out what? Pulmonary edema. He didn't even think about pulmonary embolism until 5:00. That was the secondary thought. Pointing the finger at something else.

Now, the illustration about the cupcakes was used with Dr. Simonsen. Where is the icing around her mouth? Well, she didn't come in on her shift for 14 and a half hours to see this patient, although the nurses did call her on several occasions to tell her about the problem, low urine output. She had labile blood pressures during that time. Nothing being done about that.

Dr. Simonsen admitted she gave no orders of any kind of medication to control blood pressure and keep it stable within the same range. Gave no orders for blood pressure at all except she noted in the progress note that she was on Labetalol twice a day by mouth. That's it.

She admits her urine output was below her standard of care of 100 cc's an hour for effective diuresis, getting rid of the fluid, for the entire shift almost.

Only on a couple of occasions was her urine output more than a hundred cc's in output and the two fluid boluses that she gave and she said worked didn't work for very long, about a hour, then went back to low urine. And it was low urine when Dr. Angus showed up onboard the next morning. It wasn't 100 cc's an hour even then.

And this whole 30 cc's an hour business is just something that is the bottom end of the fluid output so that 827 kidneys won't fail. And protecting a patient means more than just looking at the computer. There's other things that you have to look after, too.

Now, Dr. Bills, he says there's a difference between Dr. Saade's book about keeping blood under 160 he says that's for pregnant women. Once they deliver the baby, it doesn't matter anymore. But he did confirm that the treatment within the standard of care for a postpartum, severely hypertensive labile pressures after they have delivered the baby is exactly the same as it would be before they delivered the baby. You just don't have to worry about the baby anymore. That's the only difference. So did Dr. Simonson testify to that.

You know, there has been testimony in this case
that Mrs. Trabue was morbidly obese. She was fat. If
you look at those pictures of her that you are going to
MELISSA BROCK, RPR 1850

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take back with you, I think you will see that, you know, she wasn't fat. She had gained a lot of weight during her pregnancy but that's not an abnormal thing for women to do. It happens all the time and after they deliver the baby and have had time to recover postpartum, they lose weight because they lose the fluids. That's what making that weight.

Now, Dr. Simonson says you don't treat a large woman any differently than you do a middle-sized woman. It doesn't make any difference in your care. So all this business about morbidly obese and everything, it doesn't have anything to do with the care. It's just another reason to focus 827 attention somewhere it doesn't matter to get you off the real issue.

Now, you know Mr. Huff says at 4:00 shortness of breath down to 88 percent oxygen saturation and that Dr. Angus wasn't talking about that kind of situation when he said hypoxia because of the code because he had treated the oxygen -- he had treated the oxygen saturation in the hypoxic event and he brought her O2 sats back up.

Dr. Angus only treated the symptom was the problem. He did not treat the cause of it. The cause of it was elevated blood pressure. He gave Hydralazine after the blood pressure spiked at 210. 209, 210. One

treatment. Now nobody has suggested that that caused the blood pressure to crash. It dropped out of sight because of one dosage of Hydralazine. Because that's a low dosage.

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What happened, the reason that Mr. Regas went into that with Dr. Davis is because Dr. Davis had to acknowledge that after 5:20 nobody knows what happened because the blood pressure monitor was taken off and it was never used again until after the code. So if that's the point right there, it's not that the Hvdralazine caused the severe crash because it probably didn't do that. It brought the blood pressures down some but who knows what they did once they got down to 161 because we do know during the two and a half hours before then, she had had labile blood pressures spiking, Hydralazine was given in a small amount to bring the blood pressure down to 161. Nobody watches and waits and see if it's going to stay there. They just take the cuff off and take her down to Radiology where 20 minutes later she has a cardiopulmonary arrest and has anoxic brain damage. Okay.

Now, did it go back up? Probably. That's probably what happened because Hydralazine takes 20 minutes to apply. So it works for 20 minutes from 5 to 5:20, then after that, it wears off, blood pressure

goes back up because it's uncontrolled. Nobody is doing what they need to do to control this lady's blood pressure. And any -- you know, high blood pressure is a bad thing to have.

Now, I'm just trying to go over the things that defense counsel said before I get into the rest of my summation here.

Mrs. Tribble read you a little bit of the jury charge about causation which she seemed to imply that somehow or another we have to prove that what happened and the exact cause of it in Radiology was foreseeable and predictable to Dr. Angus. Okay.

Now, that is not what the law says. You have to foresee that some harm will cause it. It's not specific. It's just that you can reasonably foresee if you do something it will result in some harm to the patient. Not exactly the thing that happened. It could be something a little bit different than what happened but you should be able to foresee some harm.

So I'm going to read it to you again and the Judge is going to read it to you again in a minute.

Negligence may be established where it is shown by an exercise of reasonable care, the Defendant might have foreseen that some injury would result from his act or omission or the consequences of a generally injurious

nature might have been expected.

It's not necessary for us to prove that Dr. Angus foresaw and predicted that a pulmonary edema would play into this down in the Emergency Department. I mean Radiology in Emergency.

Now, in fact, that's not even what we are claiming happened. Because the case that they are defending is certainly not the one we are proving. Because the case that we are proving is a combination of labile high blood pressures on the systolic end which stressed the heart and pulmonary edema which causes the heart to have to work harder. High blood pressure makes it work harder and congestion of the lungs make it work harden -- and that's what gets it tired and that's what causes it to fail.

She had a heart failure. It's a cardiopulmonary arrest. Her heart failed first. That's cardio. Pulmonary arrest happens secondary to that when the heart stops, the breathing becomes a problem. That's the mechanism of this and the causation model they are talking to you about has no sibilance of reality to what we are proving here. We are proving a cardiopulmonary arrest occurred, which is exactly what everybody admits. So that means the heart stops first. The lungs follow behind.

It's easy to get you distracted when you are not talking about the issue. That's why sometimes you see me when a witness is asked a question and they start off down a different trail from what's asked, I try to say let's get back to my question. I need to get an answer to my question, not what you want to say but what I need to get you to answer here. And so we have to bring them back so they talk about something relevant rather than something that's immaterial and not relevant. And we have to focus on the problems here not on something that we are not claiming, if we are going to get to the truth of it.

Now I hear all this background noise about how there's no clinical picture of pulmonary edema. I hear that. There, in fact, is because we have shortness of breath. That's one of the symptoms. We have anxiety. That's another symptom. We have wheezing which we all saw yesterday from Mayo Clinic literature is consistent with pulmonary edema and Dr. Angus had to concede that. We have a nurse who writes it in 4:00 hour heard wheezing and reported it in the nurses notes. So we have got those things.

But even if we don't, Dr. Angus's first thought when he heard that she had oxygen saturations dipping below 88 was pulmonary edema. Get an x -- chest x-ray

now to rule that out. He was only about 45 minutes later that he ordered the CT scan and that nurse says it was probably because I suggested it because Dr. Angus thought it. Remember that?

Now, so we have her going down there to get both and what do we find when she gets there? Well, the anterior posterior chest x-ray was taken and it didn't get developed or processed before the code occurred so it was processed and read later that evening by Dr. Nichols. And guess what? The way those reports come out, they always say consistent with whatever condition they are consistent with. There are just findings in that x-ray report.

And, Liz, if you would pick up for me Page 558 of Exhibit 2. Let me move this out of 827 way right here because I'm going to need this in a minute but I don't need this right now. There's a suggestion of Kerley B lines noted in the left lung base. An effusion suggest -- on the left side cannot be excluded. This study is otherwise unremarkable. But otherwise it says diffuse bilateral pulmonary infiltrates are noted with central vascular congestion. Vascular is blood, blood vessels. Findings. Consistent with pulmonary edema.

And then you heard Dr. Nixon testify by

deposition. She wasn't equivocal about it. She said

MELISSA BROCK, RPR 1856

1	it's pulmonary edema. I see it all the time with
2	patient that are in the hospital. See it lots.
3	Because patients in the hospital are sicker than the
4	average walking around population and they frequently
5	have it. I see this all the time. I know what I'm
6	looking at.
7	She says Kerley B lines are remarkable for
8	pulmonary edema. So are the infiltrates.

The Court: Hold on, Mr. Stone.

Sheriff, adjust it so they can see that.

Is that better?

The Jury: That's better.

Mr. Stone: All right. Kerley B lines. My pointer is like that blood clot. It just disappeared. And we have the suggestion of Kerley B lines in the left lung. So she said this is pulmonary edema. Sure, it's moderate pulmonary edema because pulmonary edema is not the operative cause of what happened to begin with. It is a cause that played into it but it is not what caused this to happen. It's the hypertension that caused this to happen.

If you remember beginning at about 3:00, she started spiking. It goes up to 170 and you see that line presented trending on up. They don't take any blood pressures at all during the 4:00 hour. When

she's having the oxygen saturation problem, the severe hypoxic event that Dr. Angus describes, no blood pressure at all is taken about that. He finally gets around to her room and her blood pressure by that time had climbed to 202 and they take another blood pressure on the other arm and it's at 209.

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Okay. So he doesn't give what is just a normal dose of something. He gives what he has described as an emergency dose of Hydralazine. So he's got a patient at 5:00 who has -- who can't breath on her own. Remember she's getting 10 liters of oxygen by mask. So, okay, her O2 saturation is back up because she's getting -- she's being -- it's like drinking out of a water hose or a fire hose really, because she's getting high pressure oxygen going in at 10 liters a minute and so her atmosphere that she should be breathing is quite different than what we are breathing in this room because this is 20 percent oxygen in this room not under pressure. What she's breathing is almost 100 percent pure oxygen under pressure. So she's getting a lot more oxygenation. She's not functioning on her own at that point in time.

Her heart is causing problems. Her blood pressure has gone up to 209. He realizes he needs to bring it down. So he does. He brings it down and it starts

coming down. He leaves to go deliver a baby. Nobody is monitoring the blood pressure to see if it's going to keep going down or if it's going to go back up. That's why you monitor a patient that's got labile blood pressures because the blood pressure continues to change. And we have seen that fluctuation all through her hospital course. Dr. Simonson admitted it. Dr. Angus admitted it. That's not a disputed fact in this case. The graph shows it.

Neither one of these doctors did anything to get control of those blood pressures and bring them down and keep them down and in a safe range under 160. That could have been done but nobody ever made the effort to do it. Because the only time they ever gave it was sometimes when the blood pressure spiked up over 160 or 170, they would give it to bring it down under that red line and then they would walk away and just leave it to do whatever it's going to do.

And remember with high blood pressure like this, you have got vasospasms. 827 veins are opening, I mean your arteries are opening and closing, opening and closing, getting bigger and smaller and that's what you are trying to get under control is to get those arteries to maintain a certain diameter so that 827 blood pressure stays in a level zone within safe,

normal limits. That was never done and there is no claim that it could have been done, it just wasn't done. But both of these two doctors admitted they never attempted to do it.

Now the standard of care that we've proved that is what you have to do and they have admitted without a doubt if that's the standard of care, they did not comply with it. What they said they complied with is a standard of care that really is no standard of care. Because what you do is you get her blood pressure to the level that she is normally comfortable with.

And having -- you remember Dr. Angus did not say anything at all having gone back and reviewed her medical records back for a month to get some kind of picture of what her blood pressures had been like over the course of the last month. He reviewed medical records from the last shift the last day. That's as far as he went to checking into her medical history. Simonson didn't do it either. She said she reviewed the last day.

So how do you know what she's comfortable with and all that if you don't go back and look or ask? They just are guessing. And they are not regulating her blood pressure. If they had tried, they would have been able to bring those pressures under control with

adequate medication. Because remember the dosage of oral Labetalol they were giving her is about one-third of the dose that they can give her per hour. They gave her like 200 milligrams an hour three times a day. That would be a total of 600 milligrams a day. You can give up to 600 -- you can give three times that much in an hour. So you are looking at 1800 milligrams a day that you can give to be safe with. So they had plenty of room to include the medication, both in terms of the number of times they gave it to her and the amounts that they gave it to her to maintain that blood pressure down to a safe level. They just didn't do that.

And we do know this: So much has been made of diastolic blood pressure, the low end. If you look at all those blood pressures that you see in there, diastolic is hardly moving when they give her Labetalol. So it's not really effecting diastolic. Instead of worrying about that, it having any effect on it, they didn't have a problem with diastolic in the first place. So there is no effort being made to take care of the blood pressure problem.

Now, I want to talk about a normal echocardiogram.

Dr. Davis testified that the echocardiogram proves

long-term heart failure caused by heart disease not

heart problems caused from short-term hypertension.

Short-term hypertension is what we are dealing with here so you wouldn't really expect that study to demonstrate anything. So the fact that it doesn't is hardly surprising.

So what you have got is high blood pressure in conjunction with demonstrated pulmonary edema making that heart work harder and it starts dropping probably because of the Hydralazine but that's not really what caused the problem. It's just that was the effects of it. But the heart fails and it goes asystole. It quit beating. That's why it gets such a plummeting in blood pressure. The heart just quit beating and that's why you have a problem with breathing because the lungs quit working, too, when the heart quit breathing. Something's got to -- when the heart quits pumping because something has got to move blood through the lungs to get oxygenation.

Mrs. Tribble says okay oxygenation was just fine. That's kind of an interesting observation for somebody who's just had what Dr. Angus describes as a severe hypoxic event up on the floor for which he had to give 10 liters of oxygen by mask in order to bring it around and keep on her. When he sends her down to Radiology, he sends her down there on oxygen by mask at 10 liters.

Is that what you do when somebody is having a good oxygenation? They are not breathing by themselves on room air. They have got problems going on. It's just not being addressed. It's kind of like when you are driving your car, you know, and you see a sign that says stop ahead, you know, and you just don't slow down. You keep on going. First thing you know you are up on the stop sign at the traffic light or whatever and you maybe going too fast to stop and you enter that intersection and you have some sort of an accident because you just aren't paying attention. Most things in life happen like that because people just aren't paying attention. Aren't taking care of details, taking care of business.

And I'm going to suggest to you that what happens when these doctors who are on call like this is they see so much, they do see a lot of babies at Northside, they see so much they just get real familiar with it and they just get real complacent about what they are doing. Here is the chart. I see what's going on here. That's fine. And I don't mean that they are doing this purposely to do something wrong but they just get in a hurry and when you get in a hurry to do something to get through your day, you just leave things undone. You don't check things off the list.

1	You know, they give airline pilots and military
2	pilots and whatnot a checklist to fly that airplane so
3	that they won't forget to do the things that they need
4	to do as a pilot. And you go through a checklist when
5	you are flying an airplane and you say power on.
6	Check. Next thing. Check. Next thing. Check.
7	Radio. Check, to make sure every all of your
8	systems are working before you put that plane in motion
9	and get it off the ground. And you do that for a
10	reason because if you overlook something, trying to fix
11	it when you are in the air is a hard thing to do
12	because you just can't pull over and park a airplane on
13	a cloud at night and step out and look at it, you know.
14	You have got to make sure everything is working right
15	before you get up there. That's why they use a
16	checklist.

And what happens, I think, lots of times in the hospital setting, is they got so familiar with things they just get complacent and they just go from A, B, C because they think they remember it all and they don't.

It's just like Dr. Angus doesn't remember what the interactions are between Hydralazine and Labetalol. He might have known at one time but he hasn't kept up with it.

Now, I think one thing that we -- I want to talk

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about right now is -- pull up please Exhibit 2, Page 100. Now, you know we've heard this described as a complex case about what went on while Shannon Trabue was a patient in Northside Hospital under Dr. Angus's care.

well, Dr. Angus on September the 25th of 2009, a month after she had the code, writes a discharge summary for Shannon. And if you would highlight this down to that line right there. Go back up. Go back up a little bit. That's good right there. Highlight it and bring it up as much as you can.

Patient was admitted on 8-21-09 for delivery.

Patient had elevated blood pressures toward the end of her pregnancy. Now that's what he thought then. He didn't think she had elevated blood pressures for a long time. She had elevated blood pressures toward the end of her pregnancy because that's all he knew then. What has he learned since then if it's real is something that has been learned for purposes of this case.

Now, the patient had a repeat low transverse cesarean section on 8-22-09. Postoperatively the patient was doing well until 8-25-09 which was postoperative day three where the patient had a sudden increase in her blood pressure, an acute drop in her O2

saturation. Therefore, a spiral CT was ordered to rule out PE, pulmonary embolism. Prior to getting the study completed, the patient coded on the table and was apparently unconscious for seven to eight minutes where the patient was bagged and bagged mask down and was given chest compressions. Patient was immediately transferred to ICU and was there with seizure activity.

Now that's all he says in his discharge summary about what happened to his patient, Shannon Trabue, while she was in the hospital. You notice he doesn't say anything in this discharge summary about ordering a chest x-ray. He doesn't say anything about her having a -- he says she has an acute drop in O2 saturation but he doesn't say anything about that being a severe hypoxic event like he did to the code doctor when he talked to him.

This is a really abbreviated discharge summary and you really can't tell what's going on with this patient in the hospital just by reading this discharge summary, you would think by looking at this, if she was doing just fine during this entire hospital course until something just totally unexpected happened on the evening on the afternoon of August 25th and she had this code.

He doesn't describe anything about the fact she

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had labile, uncontrolled, blood pressures during the entire hospital course. He doesn't say anything about her being on blood pressure medication during the hospital course. He said nothing whatsoever about pulmonary edema in here and you don't see anything at all about pulmonary embolism in this discharge summary either because it wasn't there. Okav.

Now, you have to wonder why this careful doctor would write such an uncareful discharge summary about an event like this. Why would he do that? Could it be that he realized he had a problem on his hands and he didn't want to write a discharge summary that would drawn attention to him? I don't know. That's just something to think about.

I've got one more thing I want to talk to you about and I'm going to get into the area of damages and then we will be over with real quick: All right.

If you would please bring up Page 1399 of Exhibit 2. Okay. Now let's focus on this area right in here. Now you see Nurse Pederson -- I really had a hard time trying to understand who Mr. Huff was talking about when he referred to Nurse Pedersen because that's the one that came in for her deposition that was dressed with pearls and -- attractive lady that was dressed with pearls and all and not in her nursing scrubs.

1	When he described her like that that's who we are
2	talking about, Nurse Pedersen. She was working this
3	shift right here. If you see here if we begin at
4	12:00 a.m. we have got 500 cc's right there and then 50
5	cc's at 1:00 which puts us at 550 and a thousand cc's
6	at 2:00 a.m. which puts us at a thousand five fifty.
7	Okay.
8	And now you can tell this is an addition error
9	very readily when you look down here at the eight-hour
10	total it says 1180 when these three entries alone total
11	1550. See that? So when you add it all up during this
12	shift, Nurse Pedersen had a total net fluid of
13	5640 milliliters up not 4640 milliliters up. So, this
14	lady was, in fact, a good bit more volume overloaded
15	than Mr. Huff suggested. By at least a liter.
16	Now, she confirmed that. And if you would, play
17	the Petersen clip for us, please.
18	Question: Just wrapping up for a moment. With
19	regard to the I's and O's
20	Answer: Um hmm.
21	Question: during 827 shift
22	Answer: Okay.
23	Question: you had no PO intake during 827
24	shift at all; correct?

Answer: Correct.

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1	Question: The I's, the inputs as I get it from
2	the IV starts with your 500 recognized at midnight?
3	Answer: Um hmm.
4	Question: And add 50 at 1:00 time. Add 1000
5	millimeters for this back by the 2:00 hour. Add 50
6	more at 3:00 hour. Add 140 more at the 4:00 hour. 107
7	at the 5:00 hour. 126 at the 6:00 hour and 107 at the
8	7:00 hour; correct?
9	Answer: Correct.
10	Question: If I did my math correct, that's
11	2080 milliliters during 827 shift?
12	Answer: That is correct.
13	Question: Okay. If I did the output correctly,
14	we would only take the numbers that you just gave me
15	12:00 p.m. 1, 2, 3, 4, 5, 6, 7; correct?
16	Answer: Correct.
17	Question: And those numbers would this is how
18	much she was peeing out at the rate?
19	Answer: Yes.
20	Question: 12 plus 40 plus 125 plus 180 plus 40
21	plus 30 plus 125, plus 20. If I did my math correctly
22	that's 572 milliliters out?
23	Answer: Okay.
24	Question: If so for you to see where the
25	patient stands now

1 Answer: Um hmm.

Question: -- as 827're leaving 827 shift but for the new nurse to see the patient for the eight-hour shift before 7:00 a.m. has taken in 2080 milliliters and has given out 572 milliliters?

Answer: Um hmm.

Question: So there is a 1508-milliliter addition of fluids to her body during your shift; correct?

Answer: Correct.

Mr. Stone: She confirmed the addition right there for you because her I's and O's showed a thousand milliliters in less than what she had actually recorded on the chart. She just didn't add it correctly. But it's an obvious error because anybody looking at that and paying attention to an hourly urine input and output rate would see it immediately when you look at the first two lines.

Now I'm not going to trouble you with this again.

We have showed you the care and consult notes during
the code that show that the most likely cause of this
respiratory arrest is cardiac arrest in the Radiology
Department in the idea of Dr. Reed, the Maternal Fetal
Medical Specialist and Dr. Lisa Johnson, the Critical
Care Pulmonologist are -- she experienced an episode of
flash pulmonary edema which caused the respiratory

arrest. That's secondary to the cardiovascular incident heart failure.

Now I want to move to a different area.

Causation, evidence of causation. We put Dr. Litcher Dr. Wenstrom and Dr. Saade and Dr. Nichols up. Each one of them had a causation opinion. Each one of them had the same causation opinion. It's exactly what I have been telling you is hypertension resulting in the heart getting tired because it's pushing against hypertension and it's also pushing against the fluid in the lungs and it just gets tired and it fails. So you have a cardiopulmonary arrest in the Radiology Department and that is the most likely cause of what happened. Because that's what the objective evidence demonstrates.

As you recall there was an x-ray taken in the ICU of the Emergency Department after the code was called and she had been somewhat stabilized and it also showed the same thing the earlier chest x-rayed showed, pulmonary edema.

Now the only person that had suggested otherwise, the only witness that had testified about any other cause is Dr. Cooper. And Dr. Cooper himself says he really doesn't know what the cause was. He just thinks his best guess is pulmonary embolism. His best guess

that's the best he can do. Because there's no evidence there and he can't prove it ever happened because his view is that this massive blood clot came through the central pulmonary artery, did its nasty work, caused the cardiopulmonary arrest and then just disappeared off the face of the planet into a million, zillion, little bitty, small microscopic clots that went all over the lungs and you can't find them or see them anywhere.

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And it's just like a magic trick. You know, you show somebody something real like cardio -- a pulmonary embolism is a real thing. Everybody knows that. You hear about it. You can be really scared of it and then you get everybody interested. You tell them you are going to make it do something. Make this disappear. You know, and then it disappears. But the trick to the magic trick -- the key to the magic trick is in order to prove who did it, that you found it, you have got to make it reappear and here, it doesn't reappear because it's never shown on any of the tests that were done afterwards. And the caregivers at Northside were so doubtful that it could possibly be a pulmonary embolism that they didn't even do a follow up study from the CT scan that show it wasn't there. They just -- it's not likely so we are going to do a CT scan. They didn't

shoot the CT film again to see if they could get a better shot to confirm or not. They just -- it's not here so they didn't treat her with Heparin. They gave her no therapy and you have to believe that if they didn't treat the life threatening condition that Dr. Cooper suggests was there, then they are guilty of malpractice for not doing it. And this life-threatening condition that -- they stopped short of saying that because they don't want to say that about these other doctors and these people at Northside. They are not going there.

The microscopic particles, Dr. Nichols had testified that if this is what really happened she would be a dead woman. She would have never made it out the code. It's impossible for that to be the explanation for what happened to her.

So we are faced with two things. We either have to accept what the caregivers there who saved her life and treated her accordingly believe it was or we have to believe this magic theory that it was something totally unprovable that just came and did its lethal handiwork and disappeared into thin air never to be seen again.

Now you have to -- use 827 common sense. That's what Mr. Huff has invited you to do. Generally

speaking, when we are trying to figure out what happened and we are looking for the cake frosting around the mouth. We look for the cake frosting. don't just try to dream up something that didn't happen after you see cake frosting. And here we have got the x-rays proving the pulmonary edema. We have got the blood pressure readings proving the severe labile systolic hypertensions that are high. We have got the CT scan that shows no evidence of the pulmonary embolism. We have got the doctor is not thinking that is any possibility of it, so they don't do the VQ scan to try to rule it out. They don't shoot another film and then we have secondary x-rays that are taken that confirm the PE, the pulmonary edema. Again, I get all confused. We have got preeclampsia, pulmonary edema, pulmonary embolism and they all start with P's so I get a little confused about that and I apologize. try to be clear about it.

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But, anyway, so use 827 common sense. And the demonstrable cause is probably the cause. And what we have is demonstrable objective evidence of our theory and all they have got is the best guess of a paid witness who can't substantiate it at all and really are unsure of it. That's it. You are just supposed to say that prevents us from proving 827 case.

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Remember what she told you, what Mrs. Tribble told you about the burden of proof. We don't have to prove this by a standard of beyond a reasonable doubt. We don't have to eliminate all other possibilities. A11 we have got to do is prove that our theory of causation is just a little bit more likely than their theory of causation. And we are the ones with the objective evidence to prove it. We are the ones with the doctors who relied on that objective evidence to treat a very sick person to try to save her life and were successful in doing so. We are the ones who showed that those doctors didn't give her any treatment at all for pulmonary embolism and so she didn't have a recurrence even though she went untreated, which is highly unlikely, and we are the ones who produced the only forensic pathologist who testified that if she had had the pulmonary embolism, she would be a dead woman because you couldn't possibly revive her in that code if that's what happened.

And in, fact Dr. Cooper even suggested that pulmonary embolism if you are like that, you don't usually survive. So it's just a miracle that she survived even if it happened like he says, you know. And the likelihood is it didn't happen. It's very unlikely that it happened that way.

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So as far as tilting the scales, I think our scales are in favor of pulmonary edema and that joined with the progressive hypertension is what tilted it like that, enough that you should find for Plaintiff in this case and not for the Defendant doctors.

I want to talk to you in a few minutes about the remedy in the case because the law -- there is no value button that any of us can press and bring back Shannon Trabue to the woman that she was before this event happened.

Now we haven't gotten that far yet in our technology that we can do that and it would be very nice if we could because I'm quite sure that if that were possible to do, this gentleman over here, Dr. Angus, would be the first one standing in line to press that button. Okav.

This is not about whether Dr. Angus is a good person or a bad person or generally a good doctor or a bad doctor. That's not what this is about at all. This is about whether on a particular occasion Dr. Angus did not do what he should have within the standard of care and a very bad thing happened to his patient.

It's the same with Dr. Simonsen. I'm willing to admit right now these are good people, you know, and so 1876 MELISSA BROCK, RPR

are the Trabues and so we are not judging on the basis of personality or on the basis of reputation or anything like that. We are just judging this on the basis of the evidence in this case. And that's what your job is.

So by finding in favor of the Trabues in this case, you are not making a decision that these two doctors are bad people or bad doctors. You are just saying that, you know, it's just like -- I put my pencil down somewhere -- but, you know, the reason you have erasers on the end of pencils is because people make mistakes. And people have to fix that. They have to correct it somehow and in our law an award of money damages is the only way we figure it out.

You know, if you think back in history some of you may realize this but in old Babylonian times when you had the Code of Hammurabi which is the first set of codified laws in the history of the world, you know what they did when a doctor was found guilty of malpractice under the Code of Hammurabi? They cut his hand off. They just had a quick way of making sure it wasn't never going to happen again. They cut the doctor's hand off.

Now we are a lot more civilized than that. That's barbaric, you know. So what we have decided in our

world, there is an award of damages, compensation is much better than something like that. And that's all you are being asked to do is to evaluate the injury that has been done to Shannon and to her husband Keith and make them whole so far as money can.

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Now, we have stipulated that the cost for the financial loss to Shannon present day cash value of that is somewhere north of I believe it's \$9.8 million. And the Judge will give you the stipulation. have it right in front of me right now but he will give you the stipulation. Those figures are there. have them here. I have them right here. The total comes to \$9,822,777.17. And you are going to have blanks on the verdit form to fill those in, just like they are listed in the stipulation, so you don't even have to remember those because the Judge is going to tell you when he gives you the stipulation right here that that's what you have to return in damage if you the find that Dr. Angus or Dr. Simonsen were negligent and caused these injuries or contributed to them. I'll go over the verdict form in a minute.

But I want to talk to you about a different kind of damages because this is a little -- it's harder to prove and it really lends itself to your enlightened conscious. What that means is your -- it means that it

1 appeals to your souls as decent human beings to try to evaluate the injury that's been done and award monetary 2 compensation that's consistent with it. And from that, 3 you draw from all of 827 experiences of life, you draw 4 from everything you know from the day you were born 5 6 until the day you are sitting here, everything that's 7 ever happened to you and what you are asked to do is come up with an amount that is full, fair, just and 8 adequate compensation for what happened here. And 9 10 there's no yardstick for me to help you with that other 11 than I can suggest some ways you might think about it to arrive at that number but I want you to understand 12 that what I'm going to do here is just a suggestion. 13 It's up to you. These are ways you can go about trying 14 to figure it out if you want to but you can use 827 own 15 16 methods if you want to.

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But -- now the first method, because nobody buys this kind of injury. There is no marketplace out there for it. Nobody would ever go out and pay money to have this happen to themselves. So you can't use any kind of yardstick like that and no really sane person would ever accept this kind of injury for the payment of any kind of money. So that's not a good yardstick either.

But, it's just like anesthesia when you have a surgical operation. Pain is something everybody wants

to avoid and so we are willing to pay fairly large sums of money to an anesthesiologist to put us to sleep to block pain so we have the surgery we need to come out of it without feeling pain. And I know there's going to be residual pain after surgery but that surgical pain is the real killer if you have to go through it. People are willing to pay large sums of money all the time to do that.

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So remember it's not value we are trying to come It's fair compensation. So my first way of coming up with it is I think about what the defense is willing to pay their experts per hour to avoid having to pay Shannon Trabue anything because that is what this is really all about. This is going to be a 100 percent either way proposition. Either you are going to come back with a no verdict on Question 1 for both Dr. Simonsen and Dr. Angus and then this family is going to have to go their way with no compensation and deal with whatever comes that way or you are going to come backing with a yes and, you know, you are going to award them something reasonable, just and fair to adequately compensate them for what's going on. And my hope is that you are going to check yes and award the compensation. So I'm going through this right now to try to help you figure out what that would be.

If we take and use some factor of the amount of money the Defense has been willing to pay these experts to prevent Shannon and Keith from getting any compensation at all for what has happened, you can start with highest paid expert they got with Dr. Bills. He's getting paid \$5,000 an hour -- or excuse me \$500 an hour. That would probably come out to a very large number that I'm not even going to write on the board because I'm not going to suggest that's what you should do.

Below that you have got Dr. Cooper who charges \$400 an hour and then you have got Dr. Davis who charges \$350 an hour. I'm not even going to go with any of those numbers either. But I am going to suggest that you should consider maybe 20 percent of what -- I'm not saying this is what you should do. I'm saying just look at it and see what it comes to. Because they're paying these folks that much an hour -- five times that much in the case of Dr. Bills -- to prevent these folks from having any kind of compensation at all.

so \$500 -- at \$100 an hour, if we multiply that and get how many hours there are in a year, you would take 24 hours a day times 365 days a year and that would be times 8760 hours in a year for a 24-hour day

because, remember, this injury doesn't sleep. This injury works 24/7, 365 days a year for the rest of Shannon's life. So that number would come to 36,792,000 and that's one way of looking at it.

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Now if we take it another way, you can look at it from the other end of the telescope what is the least amount of money that we have in our currency? One penny. Okay. What is the least amount of time we have on our clock? One second. So if you were to compensate Shannon at the rate one penny per second for the rest of her life that she's got to endure the injuries that she has received, her lifetime life expectancy according to the mortality table from the time she was 38 to the time she probably will statistically die is 42 years. So at a penny a second times 60 equals 60 cents a minute. And then if you take 60 cents a minute times 60 minutes in an hour, you get \$36 an hour. And if you multiply \$36 an hour times 24 hours, you get \$864 a day. And if you multiply \$864 a day time 365 days a year you will get \$315,360 per year. And if you the multiply by that 42 year life expectancy, you come out with a total of \$13,245,120 at a penny a year -- a penny a second. If you think it's worth more than a penny a second you just multiply that number by the number if you thought it was worth a

nickel a second, you just multiply that by five. If you thought it's worth eight cents a second, you would multiply that number by eight and so forth. If you thought it was half a penny a second, you would cut it in half. Whatever you want to do. That's just one way of calculating what this is all about.

Now let me tell you what we are talking about compensating here in terms of general damages for Shannon. General damages may be recovered without proof of any amount. And you should not decline to award some reasonable fair and just amount of compensation for physical injury disfigurement, physical disability, physical and mental pain and suffering.

You can assess her general damages from looking to her relationships with her friends and her family that have been destroyed as a result of this injury, although you have to keep in mind all the time that it is not their loss but it's her loss that is being compensated. Because she can't tell you about her loss because you have seen her condition. She has a guardian. She is not even competent to give sworn testimony in a court of law because she is incompetent as a result of this.

So you look to the people she had the relationship

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with and what they can say about how that relationship went. You have seen her children. You have seen her friends. You have seen her mother-in-law. You have seen her husband. And remember that for this item of damages, you are not compensating their loss, you are compensating her loss. But you can look into the mirror of these relationships to get some kind of idea what her loss is based on what the loss of their same relationship is. Because that's really the best yardstick we have got for something like that.

Shannon's loss of her intangible relationships and associated factor such as society, advice, counsel with her husband, children, her friends and others are part of her loss of enjoyment of life and she should be compensated based on those relationships from your own observation and 827 experience of human life and 827 enlightened conscious.

The amount you should award for -- as compensation for Shannon's general damage is damages for bodily injury, resulting disfigurement, disability, impairment, physical pain and suffering, mental pain and emotional distress, loss of capacity and for enjoyment of life experienced in the past to the experience in the future, anxiety, fright, shock, worry frustration, depression, loss of peace of mind, loss of

capacity to work and labor separately from loss of income are examples of what might be included under mental pain and suffering. No evidence has to be introduced. It is not value we are trying to determine but it's an amount that will fairly compensate Shannon for the damage she has suffered.

To do that, I think you need to consider what these damages really are. If you would, let's put up the Shannon Exhibit. This is what I put together as a want ad that would appear in the newspaper for a new employee. You see Shannon didn't apply for this job. She was drafted by the employees of Atlanta Women's Specialists who caused this problem and this is the kind of job duties that she's going to have to fulfill for the rest of her life. She going to have to give up the love of her life, Keith. And the worst is yet to come. You remember the scrapbook the best is yet to come. Well, what's ahead for Shannon is the worse, not the best.

You must forever give up dreams of being a mother to your children. You cannot be a primary role model for Jordan and Jada.

You will never get to know Jada.

You will can never make scrapbooks again.

You cannot travel for pleasure.

1	You can't be included in your children's
2	activities. You can't be their cheerleader.
3	Becoming a grandmother is not permitted. And let
4	me tell you something, one of the joys of my life have
5	been my children I have five of them and I have two
6	of my boys who practice law with me and I have one
7	little grandson who's about two years old, and he
8	will be two in May and I can't imagine what it would
9	be like not to be able to spend time with him and do
10	things like that. But that's Shannon will never
11	have any time with her family that she remembers or can
12	do anything about.
13	You get no breaks or holidays.
14	There will be no Christmas. No Thanksgiving. No
15	Easter. No 4th of July off.
16	You can't shop or wrap Christmas presents.
17	No summer vacations.
18	There is no chance for promotion or advancement.
19	You have to shake uncontrollably.
20	You can't get out of bed or walk again without
21	assistance.
22	You have to endure the stares of people when you
23	are in public places.
24	A wheelchair becomes 827 primary conveyance.
25	You have no independence. No autonomy. No

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1	privacy.
2	You must live with a caretaker. Don't even
3	recognize that caretaker as your husband anymore.
4	You can not cook, clean or care for yourself.
5	You can't dress yourself.
6	You may never style 827 own hair or put on jewelry
7	or button a shirt again.
8	You can't take a bath, shower or take care of your
9	personal hygiene needs without assistance.
10	You must take medication every day.
11	You must lose 827 confidence, 827 dignity, 827
12	self-esteem. You must be willing to feel inadequate
13	and impose on other people.
14	You must live with the guilt of being a constant
15	burden to others.
16	You must live in fear that if something happens to
17	Keith, you will be institutionalized.
18	You cannot appreciate the love of your husband and
19	family.
20	You can no longer live the dream but you cannot
21	stop living the nightmare.
22	827 bucket list will never been checked off.
23	And this job is for life. You may not retire
24	until the day you die.
25	The hours are 24 hours a day, seven days a week

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1 365 days a year.

827 job is to figure out what a fair compensation would be to take on that job that you didn't ask for or didn't want in the first place.

That may put it in a little bit of perspective to help you.

What I will ask you to do is not come back with a specific number but search your hearts, search 827 conscious, do what you think is the right thing to do given what this lady has had to go through and where she is and award a stable verdict, a very substantial verdict because this woman has lost more than anybody can imagine as a result of this.827It is not your place to worry about where the Defendant may acquire the money.

Mr. Huff: Your Honor, excuse me. Objection.

The Court: Sustained. Sustain the objection.

Direct the jury to disregard the last statement about where the money is coming from.

Mr. Stone: Okay. I wasn't going to say where it was coming from but my point is the collection part of this is my problem not yours.

Mr. Huff: Your Honor, objection.

The Court: Sustained, Mr. Stone.

Mr. Stone: All right, your Honor.

The Court: Move on.

Mr. Stone: Then we have the claim of Keith Trabue. Keith Trabue has a claim for what's called loss of consortium. I believe the Court is going to instruct you something like this. Probably very much just like this.

A married person has a right to recover for the loss of society, companionship, affection and services of the spouse. You should be careful to remember that services the law refers to are not only household labor and also society, companionship, affection and all matters of value arising from marriage. There does not have to be direct evidence of their value but the measure of damage is a reasonable value as determined by the enlightened conscious of impartial jurors taking into consideration the nature of the services and all of the circumstances of the case.

when permanent loss of consortium occurs, you will determine the damages on the basis of joint life expectancy of the husband and wife, that is, how long they will both have lived, if they lived together if injuries to this spouse had not occurred.

If your verdict is for Plaintiff, it should include any loss Keith Trabue has suffered because of his wife's injuries, service of comfort of society in

the past and in the future.

Now, you will find from the Life Mortality Table that's in evidence in this case that the joint life that they could have expected together is 38 years. I will just go ahead and tell you that right now.

And you have heard what a great person Keith

Trabue has been throughout all of this tragedy. He's
been right there for this woman that he married years
ago for eight long years now and he plans to stay
there. And he is entitled to fair compensation for
what he goes through every day because he has no life
of his own anymore. His life is taking care of Shannon
and taking care of those girls and he does a mighty
fine job of it.

And I told you to begin with that he is the paradigm of a real man. You heard that lady testify up here when she was asked if she wanted her daughter to have a husband like Keith. She said, no, I want one like that myself.

I'm not going to come up with any numbers with him. I think you can follow the same kind of analysis that we have gone through with regard to Shannon but Keith told you when they got married the two of them became one. He meant that. And what happens to her when you cut Shannon he bleeds. He's entitled to be

compensated at the same -- for the same type of thing that she's entitled to be compensated for. Because he's around to understand what's happening to his wife. He's around to suffer for her.

You know, it's always easier to accept an injury to yourself than it is to accept an injury to somebody that you love. Most people would just really rather take it on themselves than have it happen to a loved one. So keep that in mind.

Now like Mr. Huff it's time now for me to turn this over to you. I have done all I can. All these folk that are working on this case have done all they can to get justice for Keith and Shannon.

You were selected, chosen and sworn to be the jury of 12 impartial people to find the truth of this case and to do justice. That's all we ask of you. To do justice. We feel like we have proven a very strong case. We have been very meticulous about it. We have brought you the best of the best as far as experts are concerned and we hope you will return that verdict for Keith and for Shannon.

Fill out the verdict form Question Number 1 yes.

Check both blocks Simonson and Dr. Angus having been negligent having caused or contributed to causing these injuries. Then go to Question 3 which will be the

amount for economic losses. The stipulation the Judge will read to you. Fill those numbers into that blank, into those blanks, and we have got it all added up so you get the total of it and all of that. And go to Question 4 -- Question 2, excuse me. Question 2 is gonna be the economic loss. Question 3 is the general damages for Shannon Trabue for her injuries.

And Question 4 is the compensatory damages for Keith Trabue for the loss of his marital relationship with his wife.

You have been a very attentive jury. I really appreciate the attention you have paid to this case. I appreciate the sacrifices you have made on behalf of the Trabue family. God bless you.

18 CHARGE OF THE COURT

The Court: Ladies and Gentlemen of the jury, I am going to read to you the law now that is applicable to this case. What I'm about to read to you, I'm going to read it to you slowly and clearly to make sure you understand all of the principles of law because this

will not go out with you. Likewise, anything that's hasn't been admitted into evidence will not go out with you. You will have out with you those items which have been admitted into evidence.

You have been considering the case of Keith Trabue individually and as guardian of Shannon Marie Trabue and Advocacy Trust of Tennessee, LLC, as conservator of Shannon Maria Trabue, as the Plaintiff versus the Atlanta Women's Specialists, LLC, and Stanley R. Angus M.D. as Defendant, Civil Action Number 14EV001821.

Plaintiff filed this action here in the State

Court of Fulton County to which Defendants filed an

answer. The pleadings are not evidence. They are only

claims or contentions of the parties.

The Plaintiff has the burden of proof which means that the Plaintiff must prove whatever it takes to make out his or her case except for any admissions by the Defendant.

The Plaintiff must prove his or her case by what is known as a preponderance of the evidence. That is, evidence upon the issues involved, while not enough to wholly free the mind from a reasonable doubt is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other.

Evidence is the means by which any fact that is

put in question is established or disproved.

Evidence includes all of the testimony of the witnesses as well as the exhibits admitted during the trial. It also includes any stipulations which are facts agreed to by the attorneys.

Evidence may either be direct or circumstantial or both.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions.

Direct evidence is evidence that immediately points to the question at issue.

Direct evidence is the testimony of a witness who has seen or heard the facts to which the witness testifies and that, if believed, is sufficient to prove or establish these facts.

Circumstantial or indirect evidence is the testimony of a witness who has seen or heard the facts to which the witness testifies and from which such facts, if believed, you may find other facts to exist that are reasonable and believe to you in light of 827 experience.

Circumstantial evidence is evidence that only tends to establish the fact. It must be such as to reasonably establish that fact rather than anything

else. It is proof of facts and/or circumstances that tend to prove or disprove another fact by inference.

When circumstantial evidence is relied upon to establish a fact or theory, it must be such as to reasonably establish that fact or theory rather than anything else.

There is no legal difference in the weight you may give to either direct or circumstantial evidence. The comparative weight of circumstantial and direct evidence on any given issue is a question of fact for you to decide.

Testimony has been given in this case by certain witnesses who are termed experts. Expert witnesses are those who because of their training and experience possess knowledge in a particular field that is not common knowledge or known to the average citizen.

The law permits expert witnesses to give their opinions based upon their training and experience. You are not required to accept the testimony of any witnesses, expert or recognize. Testimony of an expert like that of all witnesses is to be given only such weighing as credit as you think it is properly entitled to receive.

You, the jury, must determine the credibility of the witnesses. In deciding this, you may consider all MELISSA BROCK, RPR

of the facts and circumstances of the case including the witnesses manner of testifying, their intelligence, their means and opportunity for knowing the fact about which they testify, the nature of the facts about which to testify, the probability or improbability of their testimony, their interest or lack of interest in the outcome of the case and their personal credibility as you observed it.

Ladies and gentlemen, to impeach a witness is to show that the witness unworthy of belief. A witness maybe impeached by disproving the facts to which the witness testified. 827 assessment of a trial witness's credibility may be affected by comparing or contrasting the testimony to the statements or testimony of that same witness before the trial started. It is for you to decide whether there is a reasonable explanation for any inconsistencies in the witness's pretrial statements and testimony when compared to the same witnesses trial testimony.

As with all issues of witness credibility, you, the jury, must apply 827 common sense and reason to decide what testimony you believe or you do not believe.

Ladies and gentlemen of the jury, the law does not require any party to call as witnesses all -- to have

as witnesses all persons who may have been present at the time or place involved in the case or who may appear to have some knowledge of the matters in issue at this time trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Ladies and gentlemen of the jury, you must consider this case as a lawsuit between persons of equal worth and equal standing in the community and between persons holding the same or similar positions in life.

All persons stand equal before the law and all persons are to be dealt with as equals in a court of justice.

A business entity such as Atlanta Women's Specialists, LLC, is regarded as a person in this instance.

Ladies and gentlemen of the jury, the parties have entered into a stipulation that has been approved by the Court about the following: Defendant Atlanta Women's Specialists, LLC, stipulates that at all times relevant herein, Stanley R. Angus M.D. and Rebecca V. Simonsen M.D., were acting within the courses and scope of their employment with Atlanta Women's Specialists.

Accordingly, Atlanta Women's Specialists

stipulates that it is liable for their actions of negligence, if any.

A person harmed as the result of a wrongful act committed by a corporate employee or agent may sue to recover damages from the individual employee or agent or the corporation or both the employee or agent and the corporation.

Ladies and gentlemen of the jury, this case before you is one in which the Plaintiff must prove by a preponderance of the evidence that the negligence of the Defendant, if any, was a proximate cause of the injuries to the Plaintiff.

The Plaintiff must prove that the Defendant was negligent in one or more ways alleged in order to recover. It is not necessary for Plaintiff to prove that the Defendant was negligent in every way that the Plaintiff claims.

If you find no negligence at all on the part of the Defendant, then the Plaintiff case against the Defendant ends.

Proximate cause, ladies and gentlemen, means that which in the natural and continuous consequence produces an event and without which cause such event would not have occurred.

In order to be a proximate cause, the act or MELISSA BROCK, RPR

omission complained of must be such as -- such that a person using ordinary care would have foreseen that the event or some similar event might reasonably result therefrom. There may be one than more proximate cause of an event, but if an act or omission of any person not a party to the suit was the sole proximate cause of an occurrence, then no act or omission of any party could have been a proximate cause.

A defendant may be held liable for an injury that person -- let me start that again. A defendant may be held liable for an injury when that person commits a -- a defendant may be held liable for an injury when that person commits a negligent act that put other forces in motion or operation resulting in the injury when such other forces are the natural and probable result of the act that the Defendant committed. And that reasonably should have been foreseen by the Defendant.

When the injuries could not reasonably have been foreseen as the natural, reasonable and probable result of the original negligent act, then there can be no recovery. If the chain reaction that resulted from the Defendant's alleged negligence, if any, meets the above test, then the Plaintiff may recover.

Ladies and gentlemen of the jury, a person professing to practice the administering of medicine

for compensation must bring to the exercise of the profession a reasonable degree of care and skill. The failure of a physician to possess and use that degree of care or skill in his or her diagnosis and treatment of a patient is negligent and subjects the physician and his employer to liability for damage to the Plaintiff for any injury or harm proximately caused by such failure.

A physician's possession of skill is not sufficient unless due care is taken to exercise care any injury resulting from a want of such care and skill shall be an act for which a recovery may be had. This standard, when applied to the facts and circumstances of any particular case, must be of such degree of care and skill as under similar conditions and like surrounding circumstances is ordinarily employed by the profession generally.

If a physician in the treatment and care of a patient should use that degree of care and skill ordinarily employed by the profession generally under similar conditions and like surrounding circumstances then the physician would not be negligent. Therefore, there could be no finding of malpractice.

If on the other hand, the doctor should fail to use such degree of care and skill, the doctor would be MELISSA BROCK, RPR 1900

negligent and if injury resulted because of such failure, the doctor would be liable for such injury as a result of malpractice.

The presumption in such cases is that the services were perform in an ordinarily skillful manner. The person claiming an injury may overcome this legal presumption by introducing evidence that the physician did not treat the patient in a ordinarily skillful manner.

Expert testimony is usually required to overcome the presumption and the burden is on the one claiming injury to show a lack of due care and skill by a preponderance of the evidence.

In order for the Plaintiff to show that the Defendant's allege negligence was the proximate cause of the Plaintiff's injury, the Plaintiff must present expert testimony.

An expert's opinion on the issue of whether the Defendant's alleged negligence caused the Plaintiff's injury cannot be based on speculation or possibility. It must be based on reasonable medical probability or reasonable medical certainty.

If you find that the expert's testimony regarding causation is not based on reasonable medical probability or reasonable medical certainty, then the

Plaintiff has not proved that this Plaintiff's injury was proximately caused by the Defendant's alleged negligent and you would return a verdict for the Defendant.

The law imposes upon a physician the same degree of care in making a diagnosis of a patient's condition as in prescribing or administering treatment to the patient.

In informing himself or herself of the patient's condition, a physician is required to use the same degree of skill and care ordinarily exercised by physicians generally under similar conditions and like surrounding circumstances.

If a physician fails to exercise this disagree of skill and care in diagnosing and treating his patient's condition, an error in judgment would not relieve him or her of liability.

Ladies and gentlemen, I charge you that a physician does not guarantee the results of a treatment and that in the absence of negligent as a matter of fact or as a matter of law, on the part of the physician, proof simply than -- proof simply that the treatment is different in the outcome from that expected or is followed by a disastrous instead of beneficial result, neither establishes nor supports an

inference of lack of proper skill or diligence on the part of the physician.

Negligence may be established where it is shown that by exercise of reasonable care the Defendant might have foreseen that some injury would result from his act or omission or that consequences of a generally injurious nature might have been expected.

In a medical malpractice action, a defendant cannot be found negligent on the basis of an assessment of a patient's condition that only later in hindsight proves to be incorrect as long as the initial assessment was made in accordance with reasonable standards of medical care.

Ladies and gentlemen of the jury, damages are given as pay or compensation for injury done. When one party is required to pay damages to another, the law seeks to ensure that the damages awarded are fair to both parties.

If you believe from a preponderance of the evidence that the Plaintiff is entitled to recover, you should award to Plaintiff such sum as you believe are reasonable and just in this case.

Pain and suffering is a legal item of damages.

The measure is the enlightened conscious of fair and impartial jurors. Questions of whether, how many, how

long the Plaintiff has suffered or will suffer are for you to decide.

Pain and suffering includes mental suffering but mental suffering is not a legal item of damage unless there is physical suffering also.

In evaluating the Plaintiff's pain and suffering you may consider the following factors, if proven.

Interference with normal living, interference with enjoyment of life, loss of capacity to labor and earn money, impairment of bodily health and vigor, fear of the extent of injury, shock or impact, actual pain and suffering, past and future mental anguish, past and future and extent to which Plaintiff must limit activity.

If you find that Plaintiff's pain and suffering will continue into the future, you should award damages for such future pain and suffering as you believe the Plaintiff will endure.

In making such an award, 827 standard should be 827 enlightened conscious as impartial jurors. You would be entitled to take into consideration the fact that Plaintiff is receiving a present cash award for damages not yet suffered.

Ladies and gentlemen of the jury, a married person has a right to recover for the loss of consortium.

Sometimes called the loss of services of the spouse. You should be careful to remember that services the law refers to are not only household labor but also society, companionship, affection and all matters of value arising from the marriage. There does not have to be any direct evidence of their value but the measure of damages is the reasonable value as determined by the enlightened conscious of impartial jurors, taking into consideration the nature of the services and the circumstances of the case.

When permanent loss of consortium occurs, you will determine the damages on the basis of the joint life expectancy of the husband and wife. That is, by how long they would both have lived together if the injury of the spouse had not occurred. The joint lifetime loss would have to be reduced to its present cash value. You may determine the life expectancy of the person when the person's age, is shown without any other direct evidence on the subject.

In deciding this matter, you are entitled to consider evidence pertaining to the person's health, habits, surroundings, and method of living.

There is another way in which you may determine the life expectancy of the Plaintiff. There has been introduced into evidence a copy of a 1949 Ultimate Mortality Table. If you desire to determine from this table the life expectancy of a person, look up that person's age in one column and across from the age column, you will find a life expectancy of a person of that age. Life expectancy shown on any such table is merely a guide that you may follow while considering the evidence as a whole.

Ladies and gentlemen of the jury, if you believe from a preponderance of the evidence that the Plaintiff is entitled to recover damages, you would find for the Plaintiff.

If you do not think Plaintiff is entitled to recover damage based upon the evidence presented, you should find for the Defendant.

When you go out to deliberate, you are going to have out with you a verdict form and the verdict form reads as follows: Instructions. It gives you instructions first. It says verdict form and then the next line is instruction.

Number One. Is follow the instructions on this form.

Two. Answer each of the questions in the order they appear.

Three. Do not deliberate on these questions out of order.

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We, the jury, unanimously find the question -- the answers to questions one through four submitted by the Court by a preponderance of the evidence as follows:

Was the negligence of any of the Defendant Atlanta Women's Specialists physicians employees a contributing proximate cause of the injury to Shannon Trabue. If so, place an "X" in the blank before each physician employee whose negligence was a proximate cause of her injuries and you have to insert 827 finding and the answer which gives you the choices of yes or no. And it gives you a further direction.

If you answer to Question 1 was, yes, then you answer Question 2.

If your answer to Question 2 was, no, then 827 verdict is for the Defendants.

If yes, you go to Number 2 and you fill out
Number 2 and go to 3 and you also proceed to Number 4.

Now, you are also going to have out with you the joint stipulation between the parties. And that is the joint stipulation of Shannon Trabue economic damages. I read those to you earlier but you are going to have as part of this joint stipulation go out with you all of the numbers and they do add up to \$9,822,777.12.

If you find for the Plaintiff, then these -- 827 finding should be on those numbers as follows. And you

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will have the list out with you and you will insert those findings then into the blank spots basis on Ouestion Number 2.

Ladies and gentlemen of the jury, whatever 827 verdict is in this case, it must be agreed to by each juror. It must be in writing dated and signed by your foreperson and must be returned and read allowed here in open court.

Ladies and gentlemen of the jury, I want to emphasize to you now that anything the Court did or said during the course of this trial was not intended to suggest to suggest to you, hint to you, intimate in any way which of the parties should prevail in the case. Whenever of the parties is entitled to a verdict is matter entirely for you, the jury, to determine. And whatever 827 verdict is, it must be agreed to by all of you this.

This Court's interest in this matter is that the case be fairly presented according to the law and that you as honest, conscientious, impartial jurors consider the case as the Court has instructed you and return a verdict that speaks the truth as you find the truth to be in this case.

827 verdict, ladies and gentlemen, should be a true verdict based upon your opinion of the evidence

according to law as given you in this charge. You are not to show favor or sympathy to one party or the other. It is 827 duty to consider the facts objectively without favor affection or sympathy to either party.

In deciding this case, you should not be influenced by sympathy or prejudice because of corporate status, for or against either party.

Your verdict must be unanimous.

one of 827 first duties when you go to the jury room, ladies and gentlemen, should be to select one of your numbers who will act as the foreperson. The foreperson that you select will preside over 827 deliberations and sign the verdict form to which all 12 of you freely and voluntarily agree.

Now there are 13 of you. Martin Johnson, you are the alternate juror, so you will -- we will have a special place for to you sit.

Ladies and gentlemen, start 827 deliberations though, with an open mind. You should carefully consider all of the evidence in this case and deliberate with an aim toward reaching a unanimous verdict consistent with your consciouses and oaths as jurors.

Avoid premature, fixed opinions. Consult with one MELISSA BROCK, RPR 1909

other and consider each other's views. Each of you must decide this case for yourself but you should do so only after discussion and consideration of this case with your fellow jurors.

Do not hesitate to change an opinion if convinced that it is wrong. However, you should never surrender an honest conviction or opinion in order to be congenial or to reach a verdict solely because of the other jurors.

Ladies and gentlemen, before I send you to the jury room, when you go out, go ahead and select the foreperson. You should not begin deliberating, though, until you have all of the evidence that has been admitted and the verdict form to be sent back with you.

Now it is 20 minutes to 5. I would say that you have time to go ahead and select a foreperson and I'm going to ask that you come in in the morning to start deliberating.

So if you would, plan on being here and ready to go by 9:00.

with that, Sheriff, ladies and gentlemen, you may retire to the jury room.

The Deputy: All rise for the exit of the jury.

(Whereupon, the jury exited the courtroom, after which the following proceedings were had.)

The Court: All right. Let's a take them up. 1 saw y'all corroborating. 2 Mr. Huff: It's just something on the verdict form 3 that I think we need to take out. 4 5 The Court: Fix. 6 Mr. Huff: I don't mind approaching. 7 The Court: Yeah. 8 Mr. Huff: We have got this language here to Question 1 by a preponderance of the evidence as 9 follows and it asks yes or no finding for the Plaintiff 10 11 or for the Defendant. And I think it's confusing because it -- they have to find for the Plaintiff by a 12 preponderance of the evidence. So if they don't find 13 for the Plaintiff by a preponderance of the evidence, 14 then they would find for the Defendant. That's the 15 16 charge. Anyway I just want to take that out. Mr. Stone: That's the way the verdict form is. 17 Ι It doesn't make any difference to me. 18 don't care. 19 The Court: All right. 20 Mr. Stone: If they are going to get hung up about 21 that, it's fine with me. You can take it out because 22 you read them the charge about the burden of proof. 23 That's just the way that verdict form reads in all the Federal courts and all that so it's not something I 24

came up with. I just picked it out of the form book.

1	The Court: Well, we haven't sent it back to them.
2	Mr. Huff: Sure.
3	The Court: Where is James?
4	Other than that, Mr. Stone, starting with the
5	Plaintiff, any exception to the charge?
6	Mr. Stone: No exceptions.
7	The Court: No exceptions.
8	Mr. Stone: Aren't you glad?
9	The Court: Yes. Mr. Huff or Mrs. Tribble.
10	Mr. Huff: Just three, your Honor. We accept to
11	the Court not giving Defendant's Request of Charge
12	number one, number three and number four.
13	Number one is the physician notice independent
14	recollection of care and treatment rendered to the
15	patient. We had a discussion about it.
16	There has been testimony from physicians in this
17	case that they don't recall treating Mrs. Trabue that
18	have a habit and custom and belief that they followed
19	it at the time. So we would ask that that be given.
20	There are two cases that actually support the
21	giving of that charge: Hardy v. Tanner and
22	Thomas v. Newnan.
23	Then Defendant's Request of Charge number three is
24	the mere difference of views between medical experts.
25	Actually I don't except to that under the facts of this

Τ	case, so that's withdrawn.
2	And the last one is we requested that the
3	hindsight charge be given and the pattern charge was
4	given but there was some additional language added from
5	Smith v. Finch case. We except to that additional
6	language. I think it was the foreseeability part of
7	that language was inconsistent with the other
8	foreseeable part of the charge. So we except to that.
9	That's all.
10	The Court: All right. Very well. All right.
11	Well, we ask them to go ahead and choose the
12	foreperson.
13	Now what did you the alternate, where is he
14	now?
15	The Deputy: He left. Is that okay?
16	The Court: He left?
17	The Deputy: Yeah for to come back tomorrow
18	at 9:00.
19	The Court: Oh. Do y'all want to get together on
20	the evidence now?
21	Mr. Stone: Sure.
22	The Court: There has to make sure they are all
23	there so we can they picked their foreperson so I'm
24	just going to go ahead to dismiss them. Have the
25	Sheriff and see them in the morning. 9:00.

1	You dismissed them?
2	The Deputy: I can.
3	The Court: Tell them we will see them in the
4	morning at 9:00.
5	(Whereupon, the proceedings concluded.)
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1	PROCEEDINGS
2	February 17, 2017
3	The Deputy: Deliberations begin at 9:21 a.m.
4	The Court: Sheriff, let's receive the Jury. We
5	need the alternate as well. He needs to hear this,
6	too.
7	The Deputy: All rise for the entrance the jury.
8	(Whereupon, the jury entered the courtroom at
9	10:47 a.m., after which the following proceedings were
10	had.)
11	The Deputy: Your Honor, all jurors are present at
12	accounted for at this time.
13	The Court: Thank you, Sheriff. Thank you, ladies
14	and gentlemen. You may seated and good morning
15	The Jury: Good morning.
16	The Court: ladies and gentlemen of the jury.
17	I just wanted to use this as an opportunity to first of
18	all say good morning to all of you and I know you have
19	started 827 important work in this case. And with the
20	last question that was sent to me, I want to use this
21	as an opportunity to remind you of a couple of things
22	that I said on yesterday.
23	And what I said to you yesterday was that in
24	the words of something in the nature of the evidence
25	this case has been tried now before you for the last

1	several days. And if you recall, there were several
2	instances where I would say admitted into evidence, not
3	admitted into evidence, for record purpose only. We
4	went through that process. That's a legal process that
5	we go through with the lawyers and the Court to make
6	sure that we have the things that the law permits us or
7	allows us to put into the record and things that are
8	not does not go into the record that go back to the
9	jury.
10	Textbooks are not permitted to go back to the jury

Textbooks are not permitted to go back to the jury room with you. What I want to stay to you is if it was admitted into evidence, you have it back there. If it wasn't admitted into evidence for your purposes of deliberating, it's not back there with you.

Ladies and gentlemen of the jury, you have to rely on your collective memory as to what the evidence was as it was presented in this case. You have everything that was intended for you to have back there with you.

Now does that answer the question --

The Juror: Yes.

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The Court: -- about the last question? I assume all of you know what the last question was.

The Jury: Yes.

The Court: All right. I'll let y'all decide when you want to take a break or if you want to take a

1	break, a morning break. So you just let the Sheriff
2	know whenever and we will take one accordingly. Also
3	with lunch breaks, let the Sheriff know when you want
4	to go to lunch and we will adjust our lunch and breaks
5	with yours. All right.
6	The Jury: Okay.
7	The Court: You may return back to the jury room.
8	The Deputy: All rise for the exit of the jury.
9	(Whereupon, the jury exited the courtroom.)
10	The Court: Any objection to the
11	Mr. Stone: No.
12	Mr. Huff: No.
13	The Court: to the statement? Did y'all see
14	what that juror out when she was going out? She has on
15	her bedroom shoes. I don't know if that's
16	(Whereupon, a break was taken.)
17	The Deputy: Court come to order.
18	The Court: We have got another
19	Mr. Stone: We have been trying to guess what this
20	one is.
21	The Court: This is more of a statement than a
22	question.
23	The Deputy: All rise for the entrance the jury.
24	(Whereupon, the jury entered the courtroom, after
25	which the following proceedings were had.)

The Deputy: Your Honor, all jurors are present and accounted for.

The Court: Thank you, ladies and gentlemen. You maybe seated. In trying to answer the last question that was sent out before you before the break, this is a stipulation that I read to you that did not go out with you that I'm going to read it to you again. If this does not answer the question, then let me know.

The parties have entered into a stipulation that has been approved by the Court about the following:

Defendant Atlanta Women's Specialists, LLC, stipulates that at all times relevant herein, Stanley R. Angus M.D., and Rebecca V. Simonsen M.D., were acting within the course and scope of their employment with Atlanta Women's Specialists. Accordingly, Atlanta Women's Specialists stipulate that it is liable for their actions of negligence, if any. I see people still writing so I'll wait until you complete. The way they do it in grade school, they wait until they see pencils down.

Does that answer the question?

The Juror: That's it.

The Court: It does. Okay. All right. You may return back to the Jury room.

The Deputy: All rise for exit of the jury.

1	(Whereupon, the jury exited the courtroom at
2	11:34. a.m, after which the following proceedings were
3	had.)
4	The Court: Any exceptions
5	Mr. Stone: No.
6	The Court: to that question?
7	Mr. Huff: No, your Honor.
8	The Court: All right. We'll wait to hear from
9	them.
10	(whereupon, a lunch break was taken.)
11	The Deputy: Deliberations resume at 1:27 p.m.
12	Remain seated. Court will now come to order.
13	The Court: Come on up, gentlemen.
14	(whereupon, a break was taken.)
15	The Deputy: Court will now come to order.
16	The Court: All right. It's 5 minute til. I'm
17	going to have the Sheriff now to go in and get a read
18	on where they are
19	The Deputy: Okay.
20	The Court: so we can make a decision about
21	what we're going to do for the day.
22	The Deputy: Yes, sir.
23	The Court: Come back out with the report.
24	The Deputy: They said they need 30 minutes. They
25	are trying to work it out.

1	The Court: They've got it. Now the alternate, I
2	don't know what his issue is. Go check with him. The
3	lady next door said he needs to leave at 5:00.
4	The Deputy: Okay.
5	The Court: Go check on him.
6	Mr. Stone: Well, here is what I suggest doing by
7	the alternate: Is there any particular reason why he
8	can't go ahead and leave. Because if they break down
9	and have to lose one or anything, they are going to
10	come back on Tuesday anyway.
11	Mr. Huff: They have got to come back anyway.
12	Mr. Stone: So why can't he just go ahead and take
13	care of his business 'cause it's unfair to him to make
14	him stay because they can't be done.
15	The Court: All right.
16	Mr. Stone: If they hadn't taken a ten-minute
17	break with the phone we might be through.
18	The Court: That turned into 15. All right. But
19	I want him available for Tuesday. Bring him in here.
20	Mr. Stone: Just need to get a phone number and
21	call him and let him know he may be needed Tuesday
22	Monday.
23	The Court: I want to do it formally.
24	The Deputy: All rise for the juror.
25	The Court: I understand you need to there are
	4000

1	some things you need take care of and go ahead and go
2	ahead and leave for the day.
3	The Juror: Yes.
4	The Court: Okay. We are going to go ahead and
5	excuse you for the day.
6	The Juror: Okay.
7	The Court: But I do need you to be available and
8	ready to come on Tuesday
9	The Juror: Okay.
10	The Court: unless you receive a phone call
11	telling you you don't have to come from my office.
12	The Juror: Okay.
13	The Court: So if you will come up and let me
14	find a pad and make sure I have the numbers that we can
15	find you.
16	The Juror: I'll send you a text.
17	The Court: Come up, if you will, and just give me
18	the numbers both your cell and whatever numbers you
19	want to give. And put 827 name down, too.
20	Okay. All right. So do you need to go in the
21	jury room at all? You already have everything?
22	The Juror: I have all my stuff.
23	The Court: All right. We'll see you. Have A
24	good weekend. And by the way, there's a holiday here

on Monday, remember.

1	The Juror: Yes.
2	The Court: So if you hear from us it will be
3	about Tuesday.
4	The Juror: Excellent.
5	The Court: All right, sir.
6	(Whereupon, a break was taken.)
7	The Deputy: Court come to order.
8	The Court: Here is the read from the Sheriff.
9	They are 11 to 1. We don't know where, of course, but
10	11 to 1 and the read is that the one is not bulging.
11	Mr. Stone: Is not what?
12	Mr. Huff: Bulging.
13	The Court: They said they don't mind staying a
14	little bit longer but feels like that it's not going to
15	be helpful for that one person.
16	Mr. Stone: So what do you propose to do?
17	The Court: Bring them back on Tuesday.
18	Mr. Stone: Okay.
19	Mr. Stone: You want to wait until 6.
20	Mr. Stone: If they don't think it's going to be
21	helpful to stay until 6, there's no point.
22	Mr. Stone: Do they know they are not staying
23	until 6?
24	The Court: No, they don't. They thought they
25	were staying until 5:30 when the they came out and said
	MELISSA BROCK, RPR 1922

1	that they wanted another 30 minutes which would have
2	been 5:30. So they thought that they were staying
3	until 5:30.
4	Mr. Stone: Do we want to tell them to keep
5	working and then at 6 bring them back in and tell them
6	to go home. They don't know that you said 6.
7	Mr. Huff: The phrase the one person won't budge
8	doesn't make me feel like 25 minutes are going to make
9	a difference tonight but
10	Mr. Stone: To allow them to chill out over the
11	weekend might.
12	Mr. Stone: They don't know they are not staying
13	past 6.
14	The Court: No.
15	Mr. Stone: We talked about that.
16	Mr. Huff: We checked at 5. They didn't say
17	anything. They said we need another 30 minutes. We
18	have not stayed in court this late, I don't think,
19	since jury selection, maybe. So we've always excused
20	them right around 5, your Honor. I don't care but
21	Mr. Stone: Just seems like
22	Mr. Huff: Sound likes
23	Mr. Stone: a lot of people are going to have
24	to, you know, be inconvenienced next week. If they
25	don't know that they are going to get to go home at 6,

1	that one might decide she don't want to come back next
2	week.
3	Mr. Huff: We did talk about that at the bench and
4	the threat of coming back Tuesday making somebody
5	change their mind because of that I don't know,
6	Judge. I'm really just thinking out loud.
7	The Court: All right. Listening to y'all talk
8	and kind of thinking out loud about it, I'm going to
9	keep them a little bit while longer this evening.
10	Sheriff, tell them the Court says keep working.
11	The Deputy: Yes, sir.
12	Mr. Huff: What did the deputy specifically report
13	about where they were?
14	The Court: 11 to 1.
15	Mr. Huff: But the one
16	The Court: One wasn't bulging.
17	The Deputy: Okay.
18	The Court: Are they working?
19	The Deputy: Yes, sir.
20	The Court: All right.
21	The Deputy: They would like to take a break and
22	use their phones to call their family.
23	Mr. Stone: They think they are having to stay all
24	night.
25	The Court: What is the latest time I can keep

1	them? 6? I think the shuttle stops running at 7:00.
2	Confirm and check with them and ask them what is the
3	latest time I need to stop to get them out of here for
4	the shuttle. Let's take a break and I'll come back.
5	I'll let them take a break.
6	(Whereupon, a break was taken.)
7	The Deputy: Court come to order.
8	Mr. Stone: You know, it might be appropriate to
9	send us a note and tell us where they are so we can put
10	that in the record.
11	The Court: Sheriff has already gotten the read.
12	Mr. Stone: Okay.
13	The Court: No change and so I'm going to send
14	them home and have them come back Tuesday at 9:00.
15	Mr. Stone: Are you going to bring them in and
16	give them any instructions for the weekend.
17	The Court: Yes. Yes. So that's why I wanted to
18	go ahead and get the courtroom together, whoever is
19	coming in.
20	Sheriff, let's receive the jury.
21	The Court: All right. All rise for the Jury.
22	(Whereupon, the jury entered the courtroom at 6:45
23	PM.
24	The Court: Thank you, ladies and gentlemen. You
25	may be seated. All right. Ladies and gentlemen, it is
	MELISSA BROCK, RPR 1925

6:45. You have put in a full day today work and I need to get you out here now so you can -- those of you that need to catch the shuttle, it is getting dark, so the Sheriff will stand out there with you while you wait for the shuttle. Those of you that need to do so.

It's more work to be done. I will expect to see all of you on Tuesday morning. Monday morning is a County holiday. In fact, it's a Federal holiday. I believe President's Day, so we will reconvene on Tuesday morning at 9:00.

I need to remind you of the some things before you leave. One is first of all, you can't discuss this case outside of the jury deliberating room with one another. There can be no discussions among yourselves while you are out.

And two, you can't discuss it with anyone else.

Do now allow anyone to discuss it in 827 presence. If
that happens bring it to the Court's attention and
we'll deal with it accordingly.

Finally, you are not to do any independent research reminder in any form, in any word, any topic subject or anything related to this case while you are out.

For those of you that need to make arrangements with your employer or wherever you need to be on

1	Tuesday morning, if you have some issues with that,
2	bring to it our attention on Tuesday morning and we
3	will do what is necessary to intervene and take care of
4	that for you.
5	Any procedural questions or anything from any
6	member of the jury before we leave and you all have to
7	report on Tuesday morning?
8	All right. Anything procedurally from the
9	Plaintiff side?
10	Mr. Stone: No, your Honor.
11	The Court: Anything, Mr. Huff?
12	Mr. Huff: No, your Honor.
13	The Court: from the Defense side procedurally.
14	Mr. Huff: No, your Honor.
15	The Court: All right. Ladies and gentlemen, you
16	are excused until Tuesday morning at 9:00.
17	The Deputy: All rise for the jury.
18	(Whereupon, the jury exited the courtroom at 6:51
19	p.m., after which the following proceedings were had.)
20	The Court: Okay.
21	Mr. Stone: Well, we tried to get it done in two
22	weeks.
23	The Court: We gave it a good shot.
24	Mr. Stone: It's out of our hands.
25	The Court: Yes, that's true. Y'all have good
	MELISSA BROCK, RPR 1927

1 weekend. Tuesday morning, I'm trying to decide we have a 2 calendar coming in. 3 Mr. Stone: I don't believe you told them what 4 5 time Tuesday morning. Mrs. Tribble: 9:00. 6 7 The Court: Yes, 9:00. 8 Mr. Stone: My bad. The Court: We have another calendar starting on 9 10 Tuesday morning, so we are trying to decide -- I'm 11 trying to decide whether I want to move y'all or the 12 calendar but when you come in on Tuesday morning, we may have some shuffling to do when y'all get here. In 13 all likelihood I'm probably going to keep them where 14 they are because I'm sure they have morning stuff and 15 we'll move the calendar, if we can next-door but just 16 heads-up. 17 Mr. Huff: We'll be here. 18 19 The Court: All right. Y'all have a good weekend 20 we'll see you on Tuesday. 21 (whereupon, the proceedings were concluded at 6:51 22 p.m.) 23 24

1	PROCEEDINGS
2	February 21, 2017
3	Deliberations begin at 9:20 a.m.
4	The Deputy: All rise. State Court of Fulton
5	County Civil Division is now in session. The Honorable
6	Fred Eady is presiding. Court will now come to order.
7	The Court: Thank you be seated. First let me
8	have the lawyers to approach.
9	(Whereupon, a discussion was held at the bench
10	between the court and counsel, after which the
11	following proceedings were had.)
12	The Court: In light of the words she just said we
13	are not going to stop them now. They want to forego
14	lunch and keep going.
15	The Deputy: Are they going to send the question
16	in?
17	The Court: Now that I do need to know.
18	The Deputy: I'm going in.
19	The Court: Right.
20	The Deputy: There's not a question.
21	The Court: All right. They want to go back to
22	their room. Take them back.
23	So y'all can hang out here.
24	(Whereupon, a break was taken.)
25	The Deputy: Court come to order.

1	The Court: Thank you be seated. You ready to
2	receive the jury?
3	Mr. Stone: Yes.
4	The Court: Ready to receive the jury.
5	Mr. Huff: Yes, your Honor.
6	The Court: All right. Sheriff.
7	The Deputy: All rise for the entrance of the
8	jury.
9	(Whereupon, the jury entered the courtroom at 3:42
10	p.m)
11	The Deputy: All jurors are present.
12	The Court: Thank you, ladies and gentlemen. Be
13	seated. To the jury, foreperson, have you reached a
14	verdict?
15	The Foreperson: Yes, sir.
16	The Court: All right. Please rise. State your
17	name.
18	The Foreperson: My name is Anastasia Richardson.
19	The Court: And publish the verdict.
20	The Foreperson: And 827 verdict is in
21	The Court: Read it as follows.
22	The Foreperson: All right.
23	The Court: You will start reading from question
24	number one.
25	The Foreperson: Okay.

1	VERDICT
2	
3	The Court: Read them in order.
4	The Foreperson: Was the negligence of any of
5	Defendant Atlanta Women's Specialists physician
6	employees a contributing proximate cause of injury to
7	Shannon Trabue? If so, place an "X" in the blank
8	before each physician employee whose negligence was a
9	proximate cause of her injury.
10	We answered yes for Dr. Rebecca Simonsen and
11	Dr. Stanley R. Angus.
12	And then question number two. What amount do you
13	find and assess as the present day cash value of
14	Shannon Trabue's economic loss results from her
15	injuries as follows:
16	Past medical and other expenses, \$565,624.12.
17	Future medical and other expenses, \$6,710,820.
18	Past Lost Earnings, \$252,237.60.
19	Future Lost Earning Capacity, \$736,886.00.
20	Past loss of household services, \$492,055.00.
21	Future loss of household services, 1,065,054.
22	Total economic loss damages, \$9,822,777.12.
23	Question number three. What amount do you find
24	and assess as the total of Shannon Trabue's full, fair
25	and just compensatory general damages for her injuries?

1 We agreed \$18 million. Question number four. What amount do you find and 2 assess as the total of Keith Trabue's full, fair, and 3 just compensatory damages for the loss of his marital 4 relationship with Shannon Trabue? 5 6 we also agreed \$18 million. 7 The Court: All right. Take it, Sheriff, and take it to both counsel. Take it to both counsel for 8 review. 9 10 You may take 827 seat. 11 Bring it to the Court. The Court will check it for its proper form. It's been properly dated on 12 today's date February 21st, 2017 and contains the 13 signature of the foreperson. 14 Is there anything else from this jury before I 15 16 release them on behalf of the Plaintiff? Mr. Stone: No, your Honor, except our thanks. 17 The Court: On behalf of the Defendant, is there 18 19 anything else? 20 Mr. Huff: Your Honor, we would ask that the jury 21 be polled, please. 22 23 24 25

1 POLL OF THE JURY

2

- The Court: Ladies and gentlemen, I'm going to ask
- 4 you a series of questions beginning with Martha Schuon.

4:05:53:09EM The Court:

- 4:05:56:02PM Q Martha, this verdict that was just read, is this
- 4:06:04:02PM r verdict?
- 4:06:08:12PM A I agree to everything but -- is that what I'm
- **4:06:12:13PM** posed to answer?
- 4:06n13:27PM Q My question to you is: Is this your verdict and
- 4:06:17:11PM you reach this verdict in the jury room?
- 4:06:24:22PM A we did. we did.
- 4:06:28:20PM Q No. I understand the jury reached a verdict. I'm
- 4:06:34:09 Mking a individual question to you. This is addressed to
- 4:06:39:12 Artha Schuon. Is this your verdict? Your verdict?
- 4:06:45:21PM A Meaning did I eventually change to agree with the
- 4:06748:18FMry? Or I found -- I'm sorry. I don't understand.
- 4:06:51:11FM iously I don't understand. I apologize.
- 4:06:56:18PM Q All right. This verdict represent a unanimous
- **4:07:08:28** tision by the jury.
- **4:07:11:07PM** A Yes, it does.
- 4:07:214:07EM Q So individually, that's 12 people that I'm going
- 4:07:18:22PM ask the same question, Mrs. Schuon. Is this your
- 4:07:23:15PM dict?
- 4:07:24:20PM A Yes.

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4:07:27:11PM Q Was this your verdict in the jury room before
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4:07:230:29EMhing out here? Did you reach this verdict in the jury

4:07:39:24PMbm?

4:07:40:12PM A we did.

4:07:44:20PM Q I understand you did as juror. This takes 12 of

4:07:50:25:Mu to make up the jury. Is this 827 verdict? Did you

4:07:56:23PMach this verdict in the jury room?

4:08:00:06EM A Yes.

4:08:03:02PM Q Is this still 827 verdict?

4:08:13:06PM A Is this still my verdict? Are you asking me

4:08:16:08:Mrsonally?

4:08:18:00PM Q Yes. Was that -- what was your answer? I thought

4:08:31:29PM eard yes, earlier.

4:08:33:29PM A Yes.

4:08:35:05PM Q All right.

16 Deborah Malik.

4:08:740:29EM A Yes.

4:08:41:17PM Q Is this your verdict?

4:08:942:20PM A Yes, your Honor.

4:08:13:21PM Q was this your verdict in the jury room?

4:08:45:15PM A Yes.

4:08:246:06PM Q Is this your verdict now?

4:08:347:25PM A Yes.

4:08:51:16EM Q Keith Anthony Coachman.

4:08:53:18PM A Yes.

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4:08:54:13EM
                    This is your verdict?
               Q
4:08:55:29EM
                    Yes, sir.
               Α
4:08:56:20PM
                    was this your verdict reached in the jury room?
               Q
4:08:259:22EM
                    Yes.
               Α
4:08:59:22FM
                    Is this your verdict now?
               Q
4:09:02:08EM
                    Yes, sir.
               Α
4:09:06:16PM
                    Anastasia Richardson.
               Q
4:09:08:22PM
                    Yes. sir.
               Α
4:09:09:02EM
                    Is this 827 verdict?
               Q
4:09r09:29PM
                    Yes, sir.
4:09:10:11PM
                    was this your verdict in the jury room?
               Q
4:09:12:00PM
                    Yes. sir.
               Α
4:09:12:14PM
                    Is this 827 verdict now?
               Q
4:09:14:07PM
               Α
                    Yes, sir.
4:09:19:15PM
                    Allegra Jackson, is this 827 verdict?
               Q
4:09:22:15PM
               Α
                    Yes.
4:09:22:15PM
                    was this your verdict in the jury room?
               0
4:09:24:18PM
                    Yes.
               Α
4:09:25:04PM
                    Is this your verdict now?
               Q
4:09r26:23PM
               Α
                    Yes.
4:09:28:29PM
                    Willie Mae Smith.
               Q
4:09:30:10FM
                    Yes.
4:09:30:10PM
                    Is this your verdict?
               Q
4:09;31:22PM
                    Yes, sir.
               Α
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was this your verdict in the jury room?

4:09:32:16PM

Q

4:09:34:08EM Yes, sir. Α 4:09₂34:21PM Is this 827 verdict now? Q 4:09:36:08PM Yes, sir. 4:09:40:05EM Harold Turner. Q 4:09:41:14PM Yes, sir. Α 4:09:41:25EM Q Is this your verdict? 4:09:43:03PM Α Yes. 4:09:43:16EM was this your verdict in the jury room? Q 4:09:45:10EM Yes. 4:09:46:05PM Is this your verdict now? Q 4:09:47:23EM Α Yes, sir. 4:09:50:17_{EM} 0 Lauren Yawn. 4:09:52:20PM Yes. Alexander. Α 4:09:255:19PM Lauren Alexander. That's right. You changed it. 0 4:10:00:07_{EM} I have so many issues. Α 4:10:01:09PM Is your verdict? Q 4:10:02:17PM It is. Α 4:10:03:00PM was this your verdict in the room? Q 4:10:05:00EM Yes. 4:10:05:11PM Is this your verdict now? Q 4:10:06:25PM Yes. Α 4:10:09:04PM George Sonime. Q 4:10:310:21PM Α Yes.

Is this your verdict?

4:10:10:21PM

4:10:12:02PM

Q

Yes.

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4:10:12:07EM
               Q
                    was this your verdict in the room?
4:10:14:03PM
                    Yes, sir.
               Α
4:10:14:23PM
                    Is this your verdict now?
               Q
4:10:16:02PM
                    Yes, sir.
               Α
4:10:16:07PM
                    Sonya Khan. Is this 827 verdict?
               Q
4:10:20:08PM
               Α
                    Yes, your Honor.
4:10:20:24PM
               Q
                    was this 827 verdict in the jury room?
4:10:22:19PM
                    Yes, sir.
               Α
4:10:23:16EM
                    Is this your verdit now?
               Q
4:10:24:27PM
                    Yes, sir.
4:10:28:15PM
                    Rebecca Taylor Settles.
               Q
4:10:31:02PM
               Α
                    Yes.
4:10:31:15PM
               Q
                    Is this your verdict?
4:10:432:24PM
               Α
                    Yes.
4:10:33:08PM
                    was this your verdict in the jury room?
               Q
4:10:35:01PM
               Α
                    Yes.
4:10:235:20PM
                    Is this your verdict now?
               0
4:10:36:29PM
                    Yes.
               Α
4:10:41:10PM
                    James Mormino. Is this your verdict?
               Q
4:10:44:09PM
               Α
                    Yes.
4:10:44:09PM
                    was this your verdict in the room?
               Q
4:10:47:01PM
                    Yes.
4:10:47:15PM
                    Is this your verdict now?
               Q
4:10:48:23PM
                    Yes, your Honor.
               Α
   25
                    The Court: All right. Anything else for this
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1	jury before I release them on behalf of the Defendant?
2	Mr. Huff: No, your Honor.
3	The Court: All right. Anything else for the
4	jury?
5	Mr. Stone: May we approach?
6	The Court: All right. Approach.
7	(Whereupon, a discussion was had between the Court
8	and Counsel at the bench.)
9	The Court: Ladies and gentlemen of the jury, this
10	will conclude 827 involvement in this case. On behalf
11	of all of the parties involved and the citizens of
12	Fulton County, we thank you for your service.
13	I gave you several instructions about this matter
14	when it came down to you deliberating one of the
15	instructions I gave was you were not to discuss this
16	case with anyone.
17	You are now released from that instruction. You
18	may feel free to discuss this matter. It is over now,
19	including you may discuss it with the lawyers. They
20	may have some questions for you. You are not obligated
21	to answer them. But if you feel you want to
22	accommodate and answer some questions, feel free to do
23	SO.
24	You have letters from my office indicating where
25	you have been for the last two weeks plus, two weeks

structions, you are
and the lawyers will
come out and speak to
d the courtroom at 3:51
udgment. And with that,
s were concluded at 3:15
ŀ

1	
2	
3	CERTIFICATE
4	
5	STATE OF GEORGIA:
6	COUNTY OF FULTON:
7	
8	I hereby certify that the foregoing pages
9	represent a true, complete, and correct transcript of
10	the proceedings taken down by me in the case aforesaid
11	(AND EXHIBITS ADMITTED, IF APPLICABLE).
12	This certification is expressly withdrawn and
13	denied upon the disassembly or photocopying of the
14	foregoing transcript of any part thereof, including
15	exhibits, unless said disassembly or photocopying is
16	done by the undersigned official court reporter and
17	original signature and seal is attached thereto.
18	This, the 11th day of April 2017.
19	
20	
21	
22	Melissa Brock. RPR, CCR-B-1370 Official Court Reporter
23	State Court of Fulton County Atlanta Judicial Circuit
24	Actanca Judicial Circuit

1	
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3	
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5	COUNTY OF FULTON:
6	
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15	done by the undersigned official court reporter and
16	original signature and seal is attached thereto.
17	This, the 11th day of April, 2017.
18	
19	
20	
21	Melissa Brock. RPR, CCR-B-1370 Official Court Reporter
22	State Court of Fulton County Atlanta Judicial Circuit
23	Actuned Judicial Circuit
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1905/19 1905/21 1905/25	expect [4] 1771/9 1779/9	extracellular [1] 1840/1
1906/7 1906/9 1906/13	1862/3 1926/6 expectancy [9] 1882/13	extravascular [3] 1823/8 1823/10 1823/18
1907/3 1908/25 1909/21 1910/13 1911/9 1911/13	1882/22 1889/20 1905/13	eyes [2] 1777/9 1778/20
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exactly [7] 1759/19	1733/2 1778/9 1854/1 1890/4 1902/24 1903/7	1747/22 1759/5 1760/13
1771/16 1782/4 1850/18	expense [1] 1755/14	1763/7 1764/17 1772/22
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examination [3] 1819/22	experience [8] 1781/20 1808/8 1842/14 1884/16	1855/15 1859/8 1862/4 1866/25 1868/14 1875/20
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Excellent [1] 1922/4	1774/18 1782/3 1802/3	1904/7 facts [25] 1736/8
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exceptions [3] 1912/6	expert's [2] 1901/18	1894/20 1894/20 1895/1
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exclude [1] 1745/6	expertize [2] 1781/19	1900/13 1909/3 1912/25
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exercise [11] 1730/5	1843/9 1880/12 1881/2	1871/11 1902/14
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exercising [1] 1797/22 Exhibit [5] 1766/24	explained [2] 1832/19 1838/16	1900/8 1901/2
Exhibit [5] 1/66/24	explains [1] 1736/8	fainted [1] 1825/3
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familiar [2] 1863/18	fill-in [1] 1765/20	1870/17 1876/15 1877/17
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1932/13	1911/15 1921/14 1921/15	1806/6 1810/18 1811/14
Federal [4] 1772/25	1931/13 1931/23 1932/2 finding [11] 1736/1	1811/16 1812/5 1812/9 1821/19 1822/16 1822/17
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foreperson [10] 1846/1 1908/7 1909/12 1909/13	found [7] 1733/4 1803/4	1850/3 1851/24 1859/14
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1913/23 1930/13 1932/14	foundation [1] 1772/11	1938/13 1938/15
foresaw [4] 1727/22	four [4] 1746/24 1907/2	gazillion [1] 1787/19
foresee [5] 1728/23 1778/10 1853/14 1853/15	1912/12 1932/2 fourteen [1] 1790/16	geez [1] 1790/18 general [12] 1730/3
1853/19	fraction [1]	1731/6 1732/6 1733/1 1755/15 1827/3 1883/8
foreseeability [8] 1729/25 1730/21 1730/24	fractions [1] 1752/19 frame [1] 1755/22	1883/9 1883/15 1884/19
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1829/17 1913/6 foreseeable [14] 1730/13	free [3] 1893/22 1938/18	1776/25 1778/8 1853/25
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foresight [2] 1778/15 1790/13	front [4] 1736/17	1897/18 1898/8 1898/21
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whom [2] 1768/1 1842/10	willing [7] 1773/25 1876/24 1880/1 1880/7	1756/1 won't [7] 1736/19
whose [5] 1747/23 1815/24 1845/18 1907/8	1880/12 1881/2 1887/12	1757/18 1766/17 1792/2
1931/8 why [26] 1727/18 1727/23	wind [3] 1797/3 1797/5 1848/19	1850/9 1864/3 1923/7 wonder [1] 1867/8
1728/11 1738/6 1746/8	winds [1] 1755/9 wish [1] 1806/11	wonderful [2] 1827/24 1846/15
1750/3 1750/5 1751/20 1786/17 1787/24 1794/4	withdrawn [3] 1913/1	word [6] 1728/6 1740/21
1803/9 1803/14 1806/25	1940/12 1941/11 within [28] 1739/15	1740/22 1796/13 1846/6 1926/21
1807/7 1839/18 1855/2 1859/4 1862/12 1862/13	1779/24 1780/5 1780/9 1780/17 1780/20 1781/2	words [3] 1728/22 1915/24 1929/12
1864/15 1867/8 1867/10 1920/7 1920/12 1925/17	1781/22 1782/17 1782/18	work [18] 1770/24 1773/5
wife [6] 1808/18 1808/23	1782/19 1782/23 1784/11 1784/12 1785/7 1786/6	1780/9 1781/15 1786/24 1789/19 1836/12 1850/3
1889/20 1891/3 1892/11 1905/13	1786/13 1794/1 1803/21 1817/5 1834/14 1847/23	1854/12 1854/12 1854/13 1862/8 1872/4 1885/1
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