



Deposition of:  
**Trial Vol. I**

*January 17, 2017*

In the Matter of:

**In Re: Georgia Southern Nurses**

**Tiffany Alley, A Veritext Company**

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IN THE SUPERIOR COURT OF BRYAN COUNTY  
STATE OF GEORGIA

MEGAN REBECCA RICHARDS,

Plaintiff,

CIVIL ACTION FILE

vs.

NO. 2015-V-174(RO)

TOTAL TRANSPORTATION OF  
MISSISSIPPI, LLC, U.S. XPRESS  
ENTERPRISES, INC., U.S.  
XPRESS, INC., U.S. XPRESS  
LEASING, INC., NEW MOUNTAIN  
LAKE HOLDINGS, LLC, MOUNTAIN  
LAKE RISK RETENTION GROUP,  
INC., JOHN WAYNE JOHNSON,  
GREYWOLF LOGISTICS, INC., ARCH  
INSURANCE COMPANY, and ROBERT  
GORDON TAYLOE,

Defendants.

PROCEEDINGS HELD  
BEFORE HONORABLE CHARLES P. ROSE  
January 17, 2017  
10:15 A.M.

151 South College Street  
Pembroke, Georgia  
Lee Ann Barnes, CCR-1852, RPR, CRR

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1 THE COURT: All right. Good morning.  
2 We'll go ahead and get started. This is Case  
3 No. 2015-V-174, Richards versus Total  
4 Transportation of Mississippi, et al.

5 Let the record reflect that all counsel of  
6 record are present in the courtroom. We have  
7 95 jurors who are outside the courtroom at this  
8 time. They're ready to go. We have another 30  
9 or 40 jurors that we had sent to another  
10 courtroom for state court juries. So we are  
11 ready to go.

12 I do see -- I was just handed by defense  
13 counsel a motion to continue this case. I'll  
14 hear that and a couple of other issues that I  
15 looked at over the weekend and then we'll  
16 proceed with jury selection.

17 So, Mr. Dial, you're the moving party.

18 MR. D. DIAL: Yes, Your Honor. Thank you.  
19 Good morning. How are you?

20 THE COURT: I'm good, thank you.

21 MR. D. DIAL: Your Honor, yesterday  
22 starting at about 12:18 in the afternoon, we  
23 began to receive new expert reports from the  
24 plaintiff. The first receive was around 12:18  
25 from Dr. Sass, and I'll talk about the details

1 of it in a moment; the second was received I  
2 believe sometime after 5:00 p.m., and it was  
3 the first time we received a written report  
4 from Dr. Lacy; and then after 7:00 p.m., we  
5 received for the first time a report from  
6 Mr. Stone providing opinions for the first  
7 time. All of these were literally provided to  
8 us within 24 hours of the start of trial.

9 With respect to the issues, as Your Honor  
10 may be aware from our earlier motion to  
11 continue, the deadline for disclosure of expert  
12 reports was October the 28th. It was in an  
13 order signed by Your Honor, October 28th of  
14 2016.

15 With respect to Mr. --

16 THE COURT: And let me ask this: These  
17 are all treating physicians?

18 MR. D. DIAL: No, sir.

19 THE COURT: They're not?

20 MR. D. DIAL: No, sir.

21 THE COURT: Then tell me what they are.

22 MR. D. DIAL: Dr. Sass, as he testified in  
23 his deposition I believe we may have cited to  
24 Your Honor, but we certainly can, was retained  
25 by Mr. Cheeley, is being paid by Mr. Cheeley at

1 the rate of \$250 per hour for evaluation and  
2 \$700 an hour for testimony. He specifically  
3 testified that he is not a treating  
4 neuropsychologist, that he is serving as an  
5 expert. So he is certainly an expert that was  
6 subject to the disclosure on October the 28th  
7 and subject to all the rules concerning  
8 disclosures by expert witnesses.

9 Dr. Sass' involvement we know started at  
10 least in October of 2015, when he did a testing  
11 and evaluation of Ms. Richards and issued a  
12 report. Importantly, in that report, he said  
13 based upon his evaluation and his testing,  
14 Ms. Richards did not have a traumatic brain  
15 injury. He definitively stated that, something  
16 that has been relied upon by the defense in  
17 preparing to defend this case.

18 He also ruled out that she suffers from a  
19 disorder called somatic symptom disorder. He  
20 ruled that out. It's specifically in his  
21 report. There's no question about it, he ruled  
22 out that she suffered from that symptom or that  
23 disorder.

24 Yesterday -- and in his deposition, I  
25 should state, that was -- took place on



1 November the 30th of 2016, he confirmed both of  
2 those opinions. He confirmed that she -- his  
3 testing and evaluation revealed no traumatic  
4 brain injury and he confirmed that she did not  
5 have somatic symptom disorder.

6 He also confirmed that based upon his  
7 testing and evaluation, Ms. Richards would be  
8 able to continue and perform services as a  
9 nurse without qualification. That was his  
10 opinion in his report and that was the opinions  
11 in his deposition.

12 Yesterday, those opinions completely  
13 flipped, went 180. He now says she suffers  
14 from a mild traumatic brain injury, after  
15 having denied it both in his report and his  
16 deposition. He has now changed that opinion.

17 He also has completely flipped on the  
18 opinion of whether she has somatic symptom  
19 disorder. He now testified in his -- despite  
20 what he said in his deposition and despite what  
21 he said in his report, he now changed that in  
22 this report we received yesterday at 12:18 and  
23 says she now suffers from that. So he's  
24 completely changed his diagnosis, completely,  
25 without any notice, a 180.

1           Now, what he also has done, and equally  
2           important, is he has taken that change in the  
3           diagnosis to project into the future what it  
4           will mean to Ms. Richards in a fashion he has  
5           never previously done. He now says and talks  
6           about issues she will have being a nurse or  
7           risks she has in being a nurse and she -- talks  
8           about chronic pain issues, which he's never  
9           discussed before, and how that may -- or puts  
10          her at risk from being able to perform the  
11          services and duties of a nurse, all brand new,  
12          all without disclosure, all without any notice,  
13          all occurring yesterday at 12:18.

14                 We have had no opportunity to determine  
15          whether those opinions are challengeable under  
16          Daubert. We think there may be some issues  
17          with them. We have had no opportunity to  
18          consult with any neuropsychologist,  
19          neurologist, or anyone else concerning the  
20          change and whether the change is based on  
21          something that is credible, real, reliable, and  
22          will pass the test.

23                 Same for the change in the somatic symptom  
24          disorder, what is the basis of it? Why did you  
25          make that change? And we haven't been able to

1 ask Dr. Sass that, much less consult with our  
2 own consulting experts to determine whether or  
3 not that is a legitimate and sound change.

4 So this is completely new. There is no  
5 question. Plaintiffs recognize it. When they  
6 sent the new report over in an e-mail, they  
7 say, "Here are his revised opinions." Now, I  
8 mean, you know, they were up front about it,  
9 these are different opinions. These have been  
10 revised. These are new. These are different.

11 And not only is the diagnosis different,  
12 the projection for the impact on Ms. Richards  
13 in the future is different. It changes the  
14 case completely. It's a different case  
15 completely.

16 And, again, he brings into the issue of  
17 chronic pain resulting from this disorder,  
18 which is new.

19 Now, with Dr. Lacy, Dr. Lacy is a treating  
20 doctor. There's no question about that.  
21 Her -- she had her depo- -- she's been treating  
22 Ms. Richards since May of 2015. She never  
23 issued any report based on the fact that I  
24 suppose that she is a treating physician.

25 She was, however -- had her deposition

1 taken on December the 1st, and at that  
2 deposition, she testified and her records  
3 indicated that she was treating Ms. Richards  
4 for PTSD; she was also treating Ms. Richards  
5 for post-concussive syndrome. She did not  
6 testify that she was treating Ms. Richards for  
7 traumatic brain injury other than the fact that  
8 a concussion falls within the large category of  
9 traumatic brain injuries.

10 Yesterday, and the first time we received  
11 a report from her, she opines that Ms. Richards  
12 is suffering from complicated mild traumatic  
13 brain injury, a significantly different  
14 diagnosis than post-concussion syndrome and a  
15 brand new diagnosis, never revealed by her in  
16 her deposition or in any of her treating notes  
17 that were provided to us.

18 She also expands on her opinions about  
19 what possible problems Ms. Richards may  
20 experience in the future performing services as  
21 a nurse, again a brand new diagnosis.

22 Now, both of these diagnoses of these  
23 doctors, one a paid-for expert and the other  
24 one a treating physician, result supposedly  
25 from having seen the MRI performed in --

1 December 2, 2016. To put that in context, that  
2 happens to be a day after we took the  
3 depositions of Dr. Lacy and two days after we  
4 took the deposition of Dr. Sass. Then there is  
5 an MRI performed and then Dr. Forseen  
6 eventually reads that MRI, which is provided to  
7 the plaintiffs and it was the subject matter of  
8 the call we had, if Your Honor recalls.

9 THE COURT: I remember.

10 MR. D. DIAL: Provided to the plaintiffs  
11 and then I suppose, obviously, provided to  
12 these experts. I assume it would have been  
13 provided in December, December the 8th of 2016.

14 Why they have waited until literally  
15 within 24 hours of starting trial to have these  
16 doctors give an opinion based upon that MRI and  
17 Dr. Forseen's report, which changes the  
18 diagnosis, I have no explanation, nor have they  
19 afforded us any explanation, and, frankly, I  
20 don't know that there could be an explanation.

21 They may tell you that they waited to  
22 provide the MRI -- and, remember, Dr. Forseen  
23 did issue a report, along with reading -- once  
24 he read the MRI, he issued a report, and it's  
25 been available since at least early December of

1           2016.

2                   His deposition was not taken -- his  
3           discovery deposition was not taken until  
4           January the 4th, I believe, of 2017, because he  
5           went on vacation and was unavailable and that  
6           was the first time the parties could get back  
7           and take his evidentiary deposition -- I mean,  
8           excuse me, discovery deposition, and then his  
9           evidentiary deposition was taken --

10                   MR. J. DIAL:   Just thereafter.

11                   MR. D. DIAL:   -- that same day on the 4th.

12                   So his information has been available  
13           since early December and his deposition's been  
14           taken a couple of weeks ago.  Again, I have no  
15           explanation why these opinions found their way  
16           to us for the first time yesterday right before  
17           trial.

18                   That, Your Honor -- this case is a  
19           different case than we prepared for.  It is  
20           different.  We are dealing with a diagnosis of  
21           different injuries that have different  
22           ramifications if they are, in fact, true.

23                   We have had no opportunity to take  
24           anyone's deposition concerning these diagnoses.  
25           We've had no opportunity to consult with

1 potential experts to help us prepare for the  
2 deposition and perhaps serve as rebuttal  
3 witnesses, and it would be grossly unfair and  
4 it would prejudice -- and I will tell you on  
5 the record it will greatly prejudice our  
6 clients to put us to trial on the case that --

7 THE COURT: How?

8 MR. D. DIAL: Because I don't have experts  
9 available to rebut this.

10 THE COURT: You don't have an expert in  
11 this case?

12 MR. D. DIAL: Not with respect to these  
13 opinions, Your Honor, no. They just came  
14 forward. These are brand new opinions.

15 We were satisfied with the state of the  
16 record as it existed and weren't going to call  
17 an expert. We were satisfied that Dr. Sass  
18 testified she had no traumatic brain injury.  
19 We were satisfied with what Dr. Lacy had said.  
20 We could live with that. We could defend that  
21 case.

22 THE COURT: Well, those are the facts.  
23 Whether you can live with them or not is  
24 inconsequential.

25 MR. D. DIAL: What aren't the facts are

1           these opinions, Your Honor, that we just got.  
2           Those aren't facts, those are opinions.

3           THE COURT:   What you're telling me is you  
4           liked the status of the case before, you don't  
5           like the status of it now.   That's not the  
6           focus.   How are you prejudiced?

7           MR. D. DIAL:   Because I don't have expert  
8           witnesses to rebut this testimony.   I have been  
9           given no opportunity to take the deposition of  
10          these witnesses concerning these new diagnoses.

11          I've had no opportunity to look at the  
12          literature and look at everything and determine  
13          whether I want to make a Daubert challenge with  
14          respect to these opinions, which I should be  
15          entitled to do and would be entitled to do.

16          I have been hit in the face, ambushed with  
17          new opinions, and I think it's, frankly,  
18          self-evident how I would be prejudiced.   I've  
19          not had an opportunity to defend these  
20          assertions and these opinions, which go to the  
21          heart of their damages, the very heart of their  
22          damages.

23          Before Your Honor, as you'll recall, most  
24          of the testimony and all of the opinions or  
25          most of the opinions, the vast majority of the



1           opinions, were that Ms. Richards was suffering  
2           her distress and similar issues because of her  
3           participation in the event.

4           And as you know, we don't think that's  
5           recoverable under Georgia law. Your Honor  
6           disagrees with us. We don't agree that that's  
7           recoverable. We were satisfied with that  
8           testimony because it was going to give us a  
9           clear path to put that issue before an  
10          appellate court in the future.

11          That now has changed. We now have someone  
12          opining that there is a physical injury, a  
13          traumatic brain injury, which is giving cause  
14          to the problems -- at least in part to the  
15          problems she's suffering. That's new. That's  
16          a different case. That's a different case to  
17          defend and we have not been afforded an  
18          opportunity to do it.

19          Your Honor put in scheduling order in  
20          place to avoid this exact problem, and the  
21          defendants did nothing to create this problem,  
22          not a thing to create this problem. We had  
23          nothing to do with the timing of the MRI, we  
24          had nothing to do with the timing of providing  
25          that information to their doctors, and we had

1 nothing to do with the timing of the release of  
2 this information.

3 We did file a motion on Friday, last  
4 Friday, asking Your Honor to exclude from  
5 evidence any opinions, supplemental or  
6 whatever, new, revised, supplemental, based  
7 upon Dr. Forseen's work and his testimony. We  
8 filed that and it was after that motion was  
9 filed -- well, two days after that motion was  
10 filed or three days after that motion was  
11 filed, that we got these changed reports.  
12 Perhaps that motivated the late disclosure of  
13 the opinions, was that motion pending before  
14 Your Honor.

15 So that's where we stand, and it is  
16 simply -- frankly, Your Honor, it is incredible  
17 to think that a defendant would be getting new  
18 opinions and changed opinions within 24 hours  
19 of trial and the question to be how are you  
20 prejudiced. We are very prejudiced.

21 THE COURT: That's the legal analysis. If  
22 you go back and look at the GM case, that's  
23 what the Court's focused on. You had a GM case  
24 where they disclosed expert testimony just a  
25 couple of days before trial and the Court of

1 Appeals held that it was within the Trial's  
2 Court's discretion to allow the case to go  
3 forward.

4 And the problem the defense had in that  
5 case is they didn't articulate how they were  
6 prejudiced. That's why I'm asking the  
7 question --

8 MR. D. DIAL: Well, Your Honor, let me  
9 articulate --

10 THE COURT: -- because I'm relying on the  
11 law.

12 MR. D. DIAL: Thank you.

13 THE COURT: So, I mean, if you're offended  
14 by me asking how you're prejudiced, I'm looking  
15 at the case law.

16 By the way, it's General Motors versus  
17 Blake, and that's the analysis the Court  
18 undertakes. So all I'm trying to understand is  
19 what is your legal basis for making this  
20 request.

21 MR. D. DIAL: And my legal basis, as I  
22 stated, is that we have been prejudiced in the  
23 ability to defend this case and that we have  
24 not retained any -- we have not been -- we have  
25 a consulting expert, but he has not been

1           confronted with these opinions or the basis of  
2           these opinions to advise us about whether or  
3           not it's valid, invalid, here's how you would  
4           attack it, here's some...

5           And more importantly, we have not had an  
6           opportunity to identify him and determine  
7           whether we want him to be a rebuttal witness.  
8           It simply has not been available to us because  
9           these opinions are new and different than what  
10          we have been working with up to this time, new  
11          and different.

12          Complete reversals. I mean, I really have  
13          never seen anything quite like it. It's one  
14          thing on one day and the day before the trial  
15          it's something else dealing with the exact same  
16          issue, a complete different opinion, a 180.

17          Now, in addition to that, at 7:00 we get  
18          for the first time a report from a gentleman  
19          named Randy Stone, who has been involved in  
20          this case since way back in 2015, at least  
21          since the summer of 2015, and his focus has  
22          been on whether or not he could discern whether  
23          there's been texts that involved the transferal  
24          of videos and -- and/or photographs between  
25          Mr. Johnson and others. He says that in his

1 new report. He actually describes what he was  
2 doing and he describes it accurately.

3 As Your Honor knows, we were able to point  
4 out to Your Honor via records, the AT&T records  
5 that we have in hand, that, in fact -- and  
6 records that everyone's had in hand, frankly,  
7 since at least December 2015, because they were  
8 used in Mr. Johnson's deposition, been able to  
9 point out to Your Honor that there were no  
10 texts that had photos -- that had the photos or  
11 videos attached to it that occurred during this  
12 trip.

13 And the reason we pointed that out to Your  
14 Honor was because in our pretrial conference,  
15 you made it known and clear that you weren't  
16 going to allow this idea of texts that had  
17 photos or videos attached to it into evidence  
18 with some allegation that it involved sexting  
19 unless it could have been shown to have  
20 occurred during the trip, and we quoted that to  
21 Your Honor in our supplemental motion.

22 We gave Your Honor the records that showed  
23 that it did not happen during the trip, that  
24 there was no such text during this trip, and at  
25 that point in time -- and, frankly, Mr. Stone

1 agrees with that in the report he issued  
2 yesterday. He agrees that that did not happen  
3 during this trip.

4 So what he did was he honestly says in his  
5 report, "I started looking at different data,  
6 new data, a new basis, and in looking at it, I  
7 have decided that I think maybe there was a use  
8 of an app going on based upon me looking at  
9 this data and opining from this data." He  
10 says, "I really don't know whether it was or  
11 not, but the amount of data being used, in my  
12 view, is consistent with someone streaming  
13 music or some other type of, you know, usage --  
14 data usage."

15 Mr. Stone never has said that before. He  
16 admits he's never done it before. He admits  
17 that he started a new review, looked at  
18 different data, and now is giving a different  
19 opinion. Again, that's brand new to us.

20 Do we have a phone consultant? Yes, we  
21 do. Has this phone consultant been confronted  
22 with this and had an opportunity to analyze it?  
23 No. Have we had an opportunity to depose  
24 Mr. Stone about these opinions like we did his  
25 earlier opinions? No.

1           So we've been prejudiced again, because we  
2           have new allegations being made about what  
3           Mr. Johnson was doing during the trip. Now  
4           that we've disproven the texting allegation,  
5           we've got a new allegation based on some data  
6           that Mr. Stone is just now reviewing that we've  
7           had no opportunity to address.

8           I mean, we literally got this at 7:18 last  
9           night and we did have other things to do,  
10          including trying to get ready to pick a jury,  
11          do opening statements, and everything else.

12          So that's where we stand, Your Honor, and  
13          I would ask that Your Honor continue this case.  
14          I suppose Your Honor could give the plaintiffs  
15          the option, "Either you're gonna proceed with  
16          trial without these new opinions or I'm going  
17          to grant a continuance." I am concerned at  
18          some point because of some fuzzy law, I'll call  
19          it, on whether or not it is a proper remedy for  
20          the late disclosure of opinions to essentially  
21          strike those opinions or exclude those  
22          opinions. I now that issue's up before the  
23          Georgia Supreme Court as we speak, but I  
24          suppose if Your Honor gave people an option, he  
25          could do that.

1           But I don't know whether I can ask for  
2           that as relief. Maybe I can, we're not clear  
3           on it, and I sure don't want to invite any  
4           error into this case. It seems to me that  
5           unless there's a scheduling order in place that  
6           specifically says, "And if you disclose it late  
7           I am going to exclude it," so everybody's on  
8           notice, in that situation I think I could ask  
9           you to strike these opinions.

10           We did have a scheduling order in place.  
11           We have discussed this issue with Your Honor  
12           previously. Whether that is enough notice that  
13           will allow you to strike it, I don't know, but  
14           I would say if Your Honor believes that that is  
15           in his discretion, I would ask for that relief  
16           or that the case be continued.

17           Thank you.

18           THE COURT: All right. Thank you.

19           MR. CHEELEY: Your Honor, I want to take  
20           the last issue that Mr. Dial brought up first,  
21           if you would allow me to do.

22           Mr. Randy Stone is -- he works for Dell,  
23           Dell SecureWorks. He is a forensic IT guy.  
24           He, at my request, went back and looked at the  
25           data that had been subpoenaed from AT&T or the



1 cell phone of Mr. Johnson. He compared that  
2 data for the first time with the data from the  
3 defendants' very own GPS system on this truck,  
4 and when you put the two together, it shows  
5 where that truck was at every mile marker along  
6 the route on I-16 headed to Savannah.

7 And when he put those two together,  
8 something popped up that he had not seen  
9 before, and that was he had been focusing on  
10 whether or not Mr. Johnson had been texting or  
11 was on his cell phone at the time of the crash,  
12 but he had not looked at the data for uploads  
13 and downloads of data for applications on his  
14 cell phone.

15 And what he discovered, when you put those  
16 two together, that Mr. Johnson was uploading  
17 and downloading data for 42 minutes from the --  
18 preceding the crash up until the moment of the  
19 crash, and then suddenly at the time of the  
20 crash, at 5:53 a.m., the data uploading  
21 stopped.

22 The next thing that happened on that cell  
23 phone was a phone call from Mr. Johnson to U.S.  
24 Xpress claims department notifying them of this  
25 tragedy.

1           So, again, the defendants have a cell  
2 phone expert. He was there when we tried to  
3 get into this cell phone of Mr. Johnson back  
4 in -- a month or so after the wreck, and they  
5 can call him if they -- if they disagree with  
6 Mr. Stone's opinions, they can call their  
7 expert and say, "I disagree and here are the  
8 reasons I disagree."

9           Mr. Stone, Randy Stone, lives in Wichita,  
10 Kansas. He's flying in today. We thought  
11 there for a minute he was going to be trapped  
12 by that ice storm that hit, but he is able to  
13 get out today and he'll be in Atlanta and we're  
14 going to have him over here this evening. If  
15 they want to depose him tonight, they can, and  
16 he'll -- but it's simple. He's spelled it out  
17 in a two-page report -- two- or three-page  
18 report. I sent it to him as soon as I received  
19 it from him yesterday.

20           As far as their other protests about the  
21 supplemental opinions of Dr. Lacy, who is a  
22 neuropsychologist, and Dr. Sass, who is also a  
23 neuropsychologist, who did cognitive testing on  
24 Megan back in 2015, the only difference that  
25 has occurred -- and we made them aware of this,

1           that this was coming -- because Dr. Sass and  
2           Dr. Lacy relied upon this new MRI that was  
3           performed by Dr. Forseen. Dr. Forseen was not  
4           able to give a deposition because he was  
5           traveling over the Christmas holidays for two  
6           weeks to Michigan, and so I gave the defendants  
7           an opportunity. I sent several e-mails to them  
8           saying, "Here's the dates that he's available  
9           in December before he leaves. Please take  
10          advantage of this opportunity. Don't push it  
11          off into January. Take his deposition."

12                 So as soon as we got his deposition  
13          completed, we -- I sent that deposition -- in  
14          fact, I ordered expedited delivery of it, got  
15          it the next morning, and I sent it to Dr. Sass  
16          and Dr. Lacy and told them to take a look at  
17          what Dr. Forseen is describing in this MRI,  
18          which shows shearing of the brain.

19                 Up until that point in time before this  
20          MRI was taken, we -- nobody had any proof that  
21          there was any kind of definitive head injury.  
22          So that's why as soon as we got that  
23          information from Dr. Forseen in Augusta in mid  
24          December, December 7th or 8th, I sent that  
25          report, his one-page report, to Dr. Lacy and

1 Dr. Sass and they said, "Yes, this is what we  
2 suspected, but we weren't able to prove that  
3 Megan has a head injury."

4 So instead of this being a concussion,  
5 this goes to the next step up to a mild  
6 traumatic brain injury. And so they are  
7 just -- we're just making the defendants aware  
8 that they have new basis for their opinions  
9 that Megan did, in fact, suffer a traumatic  
10 brain injury, instead of the assumed concussion  
11 that we had all been operating under until this  
12 MRI was done in December.

13 THE COURT: Wouldn't you have to concede  
14 that is a very significant difference?

15 MR. CHEELEY: I don't think it is a very  
16 significant difference.

17 THE COURT: From a concussion to a brain  
18 injury?

19 MR. CHEELEY: Well, we -- they took the  
20 deposition of Dr. Forseen on January the 4th  
21 and they've had the report since well before  
22 that. They had it as soon as I got it back on  
23 December the 7th or 8th.

24 So they never said, "We're going to name a  
25 rebuttal expert to rebut this or to interpret

1           these -- this susceptibility-weighted imaging  
2           in a different way than Dr. Forseen is  
3           interpreting it."

4           THE COURT: Specifically, what was  
5           Dr. Forseen's opinion back on January the 4th?

6           MR. CHEELEY: Well, we received his  
7           opinion -- I think it was dated December the  
8           7th, a report, and on that -- in that report,  
9           he said Megan has a shearing injury of the left  
10          frontal lobe of the brain and it is  
11          susceptible -- it is suspicious for closed head  
12          injury.

13          So they've had that since then. They've  
14          not done anything to say, "We need to name a  
15          rebuttal expert or bring this to the attention  
16          of the Court." They knew this was going to be  
17          an issue and they've sat on their hands and  
18          done nothing. This is nothing more than a  
19          tempest in a teapot.

20          THE COURT: And you acknowledge that  
21          Dr. Sass, who's your retained expert, you don't  
22          supplement your discovery responses, you know,  
23          under 9-11-26 until yesterday? Is that true?

24          MR. CHEELEY: I supplemented them as soon  
25          as Dr. Sass -- he wanted -- before he wrote any

1 additional supplement to his report, he wanted  
2 to speak with Dr. Forseen. So I got  
3 Dr. Forseen and Dr. Sass on a phone call last  
4 week and they discussed it, and then as soon  
5 as -- you know, Dr. Sass sees patients every  
6 day.

7 THE COURT: Right, but they're alleging  
8 that his revised report came in yesterday. Is  
9 that correct?

10 MR. CHEELEY: That's when I received it.  
11 As soon as I received it, I sent it to them.

12 THE COURT: They make the same allegation  
13 about Dr. Lacy.

14 Is that correct?

15 MR. CHEELEY: They do, and, again --

16 THE COURT: But --

17 MR. CHEELEY: -- this is just a basis of  
18 their opinions, that instead of it being a  
19 concussion, there is evidence of a closed head  
20 injury, and the doctors both -- all three  
21 doctors, Dr. Forseen, Dr. Sass, and Dr. Lacy,  
22 all concur that it's a mild traumatic brain  
23 injury.

24 THE COURT: Would they be available for a  
25 deposition in the next day or so?

1 MR. CHEELEY: They'll be available for  
2 deposition, yes, as early as tomorrow morning.  
3 They'll be here in Hinesville.

4 I mean, it's unfortunate that this  
5 information has been disclosed. I mean, it is  
6 in violation of the scheduling order. It's  
7 very late. I mean, it's prejudicial.

8 MR. CHEELEY: Your Honor, I would point  
9 out that the scheduling order, paragraph --

10 THE COURT: When you go from a concussion  
11 to a brain injury the week or so before trial,  
12 that is significant. I think any objective  
13 view of the case would be that that is a  
14 significant change or a potential significant  
15 change in how the case is tried.

16 MR. CHEELEY: The defense is still that  
17 Megan is making up these symptoms, that she is  
18 faking that she has all these symptoms, such  
19 as --

20 THE COURT: Well, I don't know that. I  
21 haven't heard that, but --

22 MR. CHEELEY: That's not going to change.

23 THE COURT: -- the medical diagnosis has  
24 definitely changed to the point where the  
25 injury appears to be much more significant than

1           it was just a couple months ago.

2           MR. CHEELEY: Well, and, Your Honor, I  
3           would point out that the defendants do have,  
4           apparently, a consultant medical doctor. They  
5           said -- if you recall in our conversation on  
6           the phone when they filed their emergency  
7           motion to stop the deposition of Dr. Forseen --

8           THE COURT: Yes, sir.

9           MR. CHEELEY: -- Mr. Dial made the  
10          statement that he needed time to get with his  
11          own medical consultants to take this up with  
12          them.

13          Well, I guess he did take it up with them  
14          and they apparently didn't see anything that  
15          they could challenge about Dr. Forseen's report  
16          that he had found a traumatic brain injury.

17          So they've sat on this information now  
18          since December the 9th and done nothing. I  
19          tried to schedule Dr. Forseen's deposition the  
20          following week after we made that report  
21          available to them and, you know, they -- they  
22          filed -- I file a notice of the deposition and  
23          they filed an emergency motion to quash the  
24          deposition and for a protective order.

25          And they obviously -- they told the Court



1 at that phone call that they had a medical  
2 doctor they wanted -- that there wasn't going  
3 to be enough time from the date that I had it  
4 noticed for a deposition, there wasn't going to  
5 be enough time for them to talk to their expert  
6 and prepare for a defense of the case.

7 Then I finally get the deposition  
8 scheduled on June the -- or January the 4th and  
9 Mr. Dial Sr. doesn't even show up for the  
10 deposition. You know, he was the one that was  
11 making the claims of prejudice on the phone  
12 call to you, Your Honor, and he didn't even  
13 bother to show up for the deposition in Augusta  
14 of Dr. Forseen.

15 And instead, Jad Dial, his son, shows up  
16 and takes the deposition, doesn't ask him  
17 anything, doesn't have any questions about  
18 literature, you know, "What's your opinion  
19 about this? Is it not substantiated in the  
20 literature?" So it was just a rudimentary  
21 deposition.

22 In fact, Jad Dial asked Dr. Forseen if the  
23 kind of injury that Megan is showing in her  
24 brain could have been suffered from shaken baby  
25 syndrome. That's the kind of ludicrous

1 positions that these defendants are taking, and  
2 they're taking this whole thing so  
3 nonchalantly, like Megan is faking her  
4 injuries, and that's all this whole thing boils  
5 down to. It's a tempest in a teapot. They've  
6 had an expert. Apparently, he's not going to  
7 help them, so now they want the Court to help  
8 them by saying, "Well, go find another expert."

9 THE COURT: Let me hear Mr. Dial's  
10 response.

11 Mr. Dial, I want you to respond to what I  
12 think is a good point made by plaintiffs'  
13 counsel that when back in December there was  
14 testimony in the record about brain shearing,  
15 you were on notice. So, you know, how did you  
16 sit on your hands and not be proactive? You  
17 were on notice early December that this was a  
18 potential issue. You need to respond to that.

19 MR. D. DIAL: I am. I'm prepared to do  
20 it.

21 What happened, Your Honor, was we had an  
22 MRI and a report from the MRI. We ended up  
23 getting the films from the MRI -- I forget --  
24 sometime I think in --

25 MR. J. DIAL: December 16th they were back

1 in our office.

2 MR. D. DIAL: December the 16th is when we  
3 first get the MRI. By that time, we had  
4 located a neuroradiologist to look at those  
5 films to see if he agreed or disagreed with  
6 the -- what the -- remember, what Dr. Forseen  
7 is is a neuroradiologist. In other words, did  
8 he read the film in the same way that  
9 Dr. Forseen reads the film.

10 We did do that, as we said we would do.  
11 Frankly, there wasn't a lot of difference.  
12 He's a difference in degrees and he says it's  
13 a -- he doesn't believe -- it's mild, it shows  
14 maybe some mild injury.

15 THE COURT: Well, that's what Mr. Cheeley  
16 just said.

17 MR. D. DIAL: Right, and it ultimately  
18 came down. So that's step one.

19 We then take Dr. Forseen's deposition in  
20 January, and remember, we take Dr. Forseen's  
21 deposition January the 4th because he goes on  
22 vacation. And at that deposition, after we get  
23 him to confirm what his readings were, we then  
24 ask him a series of questions of whether he can  
25 opine or is he opining that this injury is

1 causing Ms. Richards a litany of problems,  
2 anxiety, cognitive problems, depression. We go  
3 through the list and he says, "No, I'm not  
4 opining to any of that." So he's not made any  
5 link between what he sees on the film and any  
6 problems Ms. Richards may or may not be having.  
7 He doesn't provide that link.

8 So at that deposition, we say to -- on the  
9 record to counsel for plaintiffs, "If some  
10 other witness" -- this is January 4th -- "If  
11 some other witness is going to modify their  
12 opinions, Dr. Sass and Dr. Lacy specifically,  
13 if they're going to modify their opinions based  
14 on Dr. Forseen's report on this MRI film and  
15 his deposition, please let us know  
16 immediately." That's on the record. Nothing  
17 happened, no -- no response then, no response  
18 later.

19 We follow it up with an e-mail. "If  
20 anybody is going to rely on Dr. Forseen's  
21 testimony and his work and services to modify  
22 their opinions, let us know ASAP." No  
23 response.

24 We follow it up again. "If you're going  
25 to supplement opinions or change opinions based

1 on Dr. Forseen's work, let us know." Nothing  
2 happened. We don't hear anything until  
3 yesterday.

4 So it wasn't us sitting on our hands.  
5 We're trying to find out. We're trying to find  
6 out, because we've got Sass saying no brain  
7 injury. We've got Lacy saying concussion.  
8 We've got none of them making the kind of links  
9 to future problems that they're now making.

10 We're satisfied that we can live with that  
11 testimony. We can go forward because we think  
12 that we can defend the case on that basis,  
13 and -- but we didn't want to be ambushed. So  
14 we kept asking and asking for the reports to be  
15 supplemented and finally they were yesterday.

16 Admittedly by Mr. Cheeley, they changed  
17 the diagnosis. And it's not just the  
18 diagnosis, it's what the diagnosis means in the  
19 future, which, you know, makes the case worse  
20 and more difficult to defend.

21 They're taking a position that she may not  
22 be able to perform some of the services as a  
23 pediatric nurse. We don't have a vocational  
24 expert who addresses that. We don't have any  
25 kind of opinion like that. That's their

1 opinion.

2 We think the opinions may very well be  
3 challengeable under Daubert, but we've got to  
4 have an opportunity to be able to do that.  
5 That's where we stand.

6 When we got the reports yesterday, we shot  
7 them off to our consulting doctors to see, you  
8 know, what they may be able to do or not do.

9 But, Your Honor, I'm in the middle of  
10 trial. I can't go take depositions. These  
11 gentlemen can't go take depositions. We can't  
12 prepare a witness. We can't prepare a possible  
13 rebuttal witness. This trial will be over  
14 before that.

15 Your Honor gives -- in the scheduling  
16 order has given the parties 30 days to react to  
17 opinions. Here we're talking about trying to  
18 do it live while in trial. That just can't be  
19 done.

20 So let's see where we are.

21 THE COURT: I've seen it done in many  
22 cases, Mr. Dial.

23 MR. D. DIAL: Your Honor, it prejudices  
24 the case.

25 And I want to tell you what a big

1 different it makes. And I won't speak  
2 specifics, but you'll recall in a conference we  
3 had before Your Honor on Friday, this last  
4 Friday, when there was discussion of case  
5 exposure and values. The case went up  
6 tremendously in the eyes of the plaintiff and  
7 it's based on this development.

8 So to say that it's a tempest in the  
9 teapot is just not being truthful with Your  
10 Honor. It is supposedly the basis for  
11 increased exposure to the defendants and  
12 increased harm to the plaintiffs.

13 This is it, I suppose. We've finally seen  
14 the justification that I believe Your Honor  
15 inquired about. So it's not honest to say this  
16 didn't have a significant impact on this case  
17 and we need a fair opportunity. There's a lot  
18 to do. They're saying they're going to call 20  
19 witnesses -- that's what they said on the news  
20 last night when they were being interviewed,  
21 they're going to call 20 witnesses in this  
22 case. They have 50-something people  
23 identified. We've got multi-parties.

24 We can't, in the most critical area of  
25 this case -- this is a damages case. That's

1           what this is about. This is a damages case and  
2           here we are confronted with a brand new theory  
3           which supposedly increases those damages  
4           substantially, according to the plaintiff.

5           Thank you, Your Honor.

6           THE COURT: All right. Do you have any  
7           cases that you rely upon in support of your  
8           position?

9           MR. D. DIAL: We have cited in our motion,  
10          Your Honor, which we put together last night,  
11          the general rules on continuance, but if Your  
12          Honor would like further authority --

13          THE COURT: No, I did some research  
14          yesterday. I've seen some cases.

15          Well, the way I view the case, it's  
16          unfortunate that this development has occurred.  
17          Obviously, I would have preferred that this  
18          information had come to light earlier than it  
19          has.

20          However, the Court views it in a way that  
21          appears this issue was surfacing back in  
22          December, so I think it's unfair to say that  
23          this was all thrown into the fray the day  
24          before trial. This issue has been bubbling  
25          since early December.



1           We can't control course of treatment. We  
2           can't control totally what doctors will opine,  
3           when they will revise their opinions, but it  
4           seems to me that you were placed on some notice  
5           that there were going to be some revised  
6           opinions.

7           You had an expert that apparently you  
8           referred this information to back in December.  
9           When I asked you about specifically how you  
10          would be prejudiced, you noted you wanted to  
11          explore the Daubert issue and you wanted to  
12          consult with other experts. That's exactly  
13          what you said. I don't think a delay would  
14          serve any purpose. I don't think the evidence  
15          is going to change.

16          The Court's going to exercise its  
17          discretion and deny the motion for continuance  
18          and will proceed with the trial. I'll give  
19          counsel about 10 minutes and we'll bring our  
20          jury panel in.

21          MR. D. DIAL: Thank you, Your Honor.

22                 (Thereupon, there was an interruption in  
23          the proceedings.)

24          THE COURT: Mr. Dial wanted to place  
25          something else on the record.

1           Go ahead, sir.

2           MR. D. DIAL: Thank you, Your Honor.

3           In your ruling on the motion to continue,  
4           you made reliance on the fact that the issue  
5           had been percolating -- and I think you were  
6           talking about the medical issues -- since  
7           December, and I just wanted to point out this  
8           phone issue has not been percolating since  
9           December. It is brand new. It is pending and  
10          this data usage issue only surfaced yesterday.

11          THE COURT: All right. I understand that,  
12          but the Court's going to deny the motion to  
13          continue the case on that basis also. So  
14          that's now on the record.

15          MR. D. DIAL: Thank you, Your Honor.

16          MR. CHEELEY: Thank you.

17          (Thereupon, there was an interruption in  
18          the proceedings.)

19          MR. D. DIAL: There's several objections.  
20          I don't know if Your Honor intends to read the  
21          pretrial statement.

22          THE COURT: No.

23          MR. D. DIAL: Okay. And in terms of  
24          qualifications, there are a number of insurance  
25          company lists under the theory that they have a

1 financial interest in the outcome of the case.

2 THE COURT: Yes, sir.

3 MR. D. DIAL: They do not. As Your Honor  
4 knows, there's been other resolutions of the  
5 cases. There's only one insurance company that  
6 remains with any financial interest in the case  
7 and that is Lexington Insurance, listed as  
8 No. 12.

9 THE COURT: Lexington?

10 MR. D. DIAL: The other insurances above  
11 it -- 9, 10, and 11 -- have exhausted their  
12 policy limits and have no remaining financial  
13 interest.

14 THE COURT: Mr. Jones?

15 MR. JONES: Your Honor, a bare statement  
16 by Mr. Dial I don't believe is sufficient.  
17 Mountain Lake Risk Retention Group is a named  
18 defendant in the case, and without any evidence  
19 of the fact that they've exhausted their  
20 limits, we've named them. They've been a party  
21 for a long time. The pretrial scheduling order  
22 requires --

23 THE COURT: I think he's specifically  
24 referring to American International Group, AIG;  
25 National Fire and Marine; and National Union

1 Fire Insurance Company.

2 MR. JONES: Are you saying AIG has no  
3 financial interest in the outcome of the case?

4 MR. D. DIAL: Not anymore. Their policy  
5 was exhausted. Lexington still does.

6 And, Your Honor, I'm expecting that these  
7 lawyers wouldn't accept my representation. I  
8 have Ms. Battersby available.

9 THE COURT: Look, if you say they've  
10 exhausted their limits, I believe you, and if  
11 they have exhausted their limits, I would not  
12 qualify the jury as -- they have no exposure.  
13 But any insurance company that has any exposure  
14 I'll qualify the jury on.

15 Now --

16 MR. JONES: So which ones are in the case  
17 now?

18 MR. D. DIAL: Lexington Insurance Company.  
19 They have the remaining policy limits.

20 THE COURT: I'll tell you what, the  
21 parties that I will qualify the jury on will  
22 be, obviously, the plaintiff; the plaintiff's  
23 lawyers; Total Transportation of Mississippi,  
24 LLC; U.S. Xpress Enterprises, Inc.; U.S.  
25 Xpress, Inc.; U.S. Xpress Leasing, Inc.; New

1 Mountain Lake Holdings, LLC; Mountain Lake Risk  
2 Retention Group, Inc.; Greywolf Logistics, Arch  
3 Insurance Company; Lexington Insurance Company;  
4 the Cheeley Law Group; Jones Osteen & Jones;  
5 and all the lawyers.

6 MR. JONES: And the defendant drivers,  
7 Your Honor, John Wayne Johnson and Robert  
8 Gordon Tayloe.

9 THE COURT: Correct.

10 All right. Are we on the same page?

11 MR. D. DIAL: Yes, Your Honor.

12 THE COURT: Okay. All right. Then let's  
13 bring our jury in.

14 (Whereupon, voir dire was conducted and  
15 the jury was selected and sworn.)

16 THE COURT: If I could see counsel at the  
17 bench.

18 (The following proceedings were held at  
19 the bench, outside the hearing of the jury.)

20 THE COURT: I thought we'd go ahead and  
21 proceed with opening statements, then come back  
22 in the morning and begin with our live  
23 testimony.

24 MR. D. DIAL: Judge, that means I'm going  
25 to be doing my opening --

1 THE COURT: Excuse me?

2 MR. D. DIAL: Are we sure we want to keep  
3 them here that long? And I'm worn out.

4 THE COURT: You're going to go an hour?  
5 How long did you expect? 30 or 40 minutes  
6 apiece?

7 MR. CHEELEY: Yes.

8 THE COURT: I'd rather be here on Tuesday  
9 night than Friday night, so we'll proceed with  
10 the opening statements.

11 MR. BARBER: Judge, there's one other  
12 thing I wanted to mention I mentioned to  
13 Mr. Cheeley. I haven't heard back from him.  
14 We did file a motion about the confidentiality.

15 THE COURT: Yes, sir. I've got it. I  
16 wouldn't think there would be any objection  
17 about that except that I'm not going to exclude  
18 people from the courtroom. There's -- that's  
19 too perilous a path to take.

20 MR. BARBER: Okay. The taping on the TV  
21 screen of our personal -- of our confidential  
22 financial information, that's the piece that  
23 we're worried about.

24 THE COURT: All right. Bring that to my  
25 attention when we get there. I didn't see any

1 other problems with the order, but when you  
2 start excluding the public from the courtroom,  
3 you have to go through that analysis.

4 MR. BARBER: Right.

5 THE COURT: And just very recently, Judge  
6 Peterson, who's now with the Supreme Court,  
7 wrote a scathing opinion about trial judges  
8 excluding people from courtrooms. I'm not  
9 going down that path unless it's absolutely  
10 necessary.

11 MR. BARBER: Okay. Well, I just would ask  
12 that before we start talking specific numbers,  
13 somebody give us a warning of that.

14 THE COURT: That's fine. Just bring it to  
15 my attention. We'll investigate it at that  
16 time.

17 MR. D. DIAL: Your Honor, we raised  
18 [inaudible].

19 THE COURT: We'll talk about all that, as  
20 well.

21 MR. D. DIAL: About the opening, I'm  
22 wondering if Your Honor is going to allow them  
23 to talk about this new opinion that they got  
24 from the phone guy.

25 THE COURT: Yes, sir. You asked for

1 clarification --

2 MR. D. DIAL: Yeah.

3 THE COURT: -- when I made the ruling and  
4 I clarified by telling you that I was denying  
5 your motion for continuance on that basis also,  
6 which would necessarily imply that evidence  
7 would be admissible.

8 MR. D. DIAL: Just -- I was -- you  
9 mentioned and they had mentioned that we would  
10 have a chance to take their deposition and we  
11 haven't had that, and we're about to have  
12 opening.

13 THE COURT: We can talk about that after  
14 we have the opening statements.

15 MR. BARBER: Could we have a chance to  
16 reorient our seats?

17 THE COURT: Sure, that's fine.

18 MR. BARR: Judge, we have one evidentiary  
19 issue in terms of a motion in limine was  
20 [inaudible] yesterday on my client's drug test.

21 THE COURT: I won't allow that.

22 MR. BARR: I just wanted to clarify  
23 before --

24 THE COURT: That's the other accident?

25 MR. BARR: Yes.



1 THE COURT: I'm not going to allow that.

2 (The following proceedings were held in  
3 open court, in the hearing of the jury.)

4 THE COURT: All right. Ladies and  
5 gentlemen of the jury, we are going to allow  
6 you to hear the opening statements made by  
7 counsel. Then we'll break for the evening.  
8 We'll come back tomorrow around 8:30, 8:40.

9 Do you all feel well enough to hear the  
10 opening statements before we go home for the  
11 evening?

12 All right. Very well. Mr. Cheeley, you  
13 may proceed for the plaintiffs.

14 MR. CHEELEY: Thank you, Your Honor.

15 May it please the Court. I want to read  
16 something to you, ladies and gentlemen, from  
17 Megan.

18 Just a moment, Your Honor.

19 May I proceed, Your Honor?

20 THE COURT: Yes, sir.

21 MR. CHEELEY: Ladies and gentlemen, I want  
22 to show you a photograph of the car at the  
23 scene of the wreck that Megan was a passenger  
24 in. This is a Ford Escape. Megan was in the  
25 right rear seat.

1           This is what Megan wrote to me for me to  
2           read to each of you. "When I look at this  
3           picture, I see a picture of me because even  
4           though I look normal on the outside now, I  
5           really feel like damaged goods on the inside.  
6           So when I look at this picture, instead of  
7           seeing the totally destroyed car, which I am  
8           amazed I did not die in, I see a picture of  
9           what happened to my body, to my back, to my  
10          brain, to my memory, to my emotions, to my  
11          confidence, to my relationships, my career, my  
12          hopes, my dreams, my future, my everything.

13                 "I know you see a picture of a horribly  
14                 mangled SUV, but I see a picture of my whole  
15                 life cracked and not put together, smashed and  
16                 damaged from the inside out.

17                 "But when people look at me now, they see  
18                 the Megan who is different from the Megan who  
19                 enjoyed everything about life and looked  
20                 forward to her future with enthusiasm. That  
21                 was before April 22, 2015. That day changed my  
22                 life forever.

23                 "When people see me, the Megan on the  
24                 outside, they have absolutely no idea just how  
25                 much things have changed for me on the inside.

1           They don't see me as a person filled with  
2           anxiety. They don't see the Megan who has  
3           difficulty going to sleep at night. They don't  
4           see the Megan who wakes up from awful  
5           nightmares about this wreck. They don't see me  
6           when I am a basket case driving on the road and  
7           another giant truck comes up on my rear bumper  
8           and I freak out.

9                        "Now, I no longer have the self-confidence  
10           I had that horrible April morning -- or before  
11           that horrible April morning when my world  
12           changed. For me, April 22, 2015, was my 9/11.  
13           That's the day my world stopped turning  
14           smoothly on its axis and what had been a  
15           wonderful world now is a wobbly and uncertain  
16           world, and that for me is the most frustrating  
17           thing of all.

18                        "Now that I have a brain injury on the  
19           inside, my outward appearance is deceiving and  
20           I hate that I can no longer be the Megan who I  
21           once was."

22                        That's the end of the note.

23                        May it please the Court, counsel, ladies  
24           and gentlemen of the jury, what I just read is  
25           a note from Megan to you. Megan's world is

1 wobbly now. It is not the innocent world which  
2 she once lived in. Megan is clearly a changed  
3 person for those who know her best, and she  
4 does not like her new reality.

5 Later in this trial, you will meet Megan.  
6 Megan's doctors cautioned us that this trial  
7 would retraumatize her if she had to sit here  
8 in this courtroom and listen to all this  
9 evidence. Those wounds that are attempting to  
10 heal would be reopened. Those wounds are raw  
11 and they are real.

12 Megan suffered physical injuries to her  
13 left shoulder, her lower vertebrae and her  
14 spine, and a physical injury to her brain,  
15 which can be seen on an MRI. No human being  
16 should have to live through what Megan lived  
17 through on I-16 in Bryan County once, much less  
18 a second time during this trial. Megan was  
19 traumatized once and once is too much. That is  
20 why we have elected to spare her fragile spirit  
21 from having to relive these terrible things  
22 that she saw, the things that she smelled, the  
23 things that she heard, the things that she  
24 felt, and even the things that she tasted in  
25 the awful morning air of April 22. You will

1 understand why this day was Megan's 9/11.

2 Megan has been diagnosed by three  
3 different doctors with a mild traumatic brain  
4 injury to the left frontal lobe of the brain.  
5 This is an injury which is suffered when the  
6 brain is violently slammed against the inside  
7 of the skull. This traumatic brain injury,  
8 together with the horrific near-death  
9 experience of this violent collision between a  
10 75,000-pound tractor-trailer traveling at  
11 68 miles per hour and slamming into this tiny  
12 SUV in which she was a passenger when she was  
13 hit from the rear while at a stop has played a  
14 significant role in Megan's development of and  
15 diagnosis of PTSD, posttraumatic stress  
16 disorder, of her depression, and of her acute  
17 anxiety disorder.

18 The defendants would have you believe that  
19 Megan is faking or grossly exaggerating her  
20 mental and emotional trauma arising out of this  
21 tragedy which killed five of her closest  
22 friends.

23 One important thing to note, ladies and  
24 gentlemen, is that we are bringing in four  
25 board-certified medical doctors to give you the

1 truth. These are Megan's treating physicians,  
2 they're not some hired gun.

3 And you might ask will the defendants  
4 bring before you anyone to testify about their  
5 contention that Megan is either exaggerating or  
6 faking her injuries or that she is really doing  
7 okay, all things considered, and that she  
8 should just get over it? No one, not one  
9 single doctor, could the defendants find to  
10 challenge any of the facts which Megan's  
11 doctors have testified about, not one.

12 A preeminent doctor in the field of  
13 neuroradiology, which is the study of injury to  
14 the brain, Dr. Scott Forseen, is in Augusta at  
15 what used to be known as Medical College of  
16 Georgia, which is now referred to as Augusta  
17 University Hospital.

18 Dr. Forseen performed a special type of  
19 MRI known as a susceptibility-weighted analysis  
20 or imaging analysis on Megan back in December.  
21 That MRI was ordered by Megan's neurologist,  
22 Dr. Ellen Shaver of Augusta, because Megan was  
23 reporting problems with memory, cognition,  
24 concentration, and being depressed and moody.

25 This -- I'll call it an SWI, for

1           susceptibility-weighted imaging -- this SWI MRI  
2           is a very sophisticated piece of medical  
3           equipment which is only found in a handful of  
4           hospitals in Georgia. It detects blood stains  
5           in the brain, which are known as hemosiderins.  
6           Hemosiderins are markers that shearing injuries  
7           have been suffered by Megan. It's like --  
8           these hemosiderins are like footprints in the  
9           sand. It's proof positive that the brain and  
10          its functioning have been permanently  
11          compromised. This SWI MRI proves beyond a  
12          shadow of a doubt that Megan has suffered a  
13          traumatic brain injury.

14                 Dr. Forseen sees all types and levels of  
15          severity of brain injuries in his patients,  
16          most from high-speed car crashes, but a few  
17          from sports-related concussions like football.

18                 Dr. Forseen will testify that Megan's  
19          brain injury severity is in the mid range of  
20          the types of injuries to the brain that he sees  
21          in his practice. Dr. Forseen says that a  
22          number of -- that the number of hemosiderins  
23          that he counts is indicative of how serious the  
24          brain injury is, and given that Megan has 8 to  
25          10 of these hemosiderins, Dr. Forseen scales

1 her brain injury as mild TBI, which is much  
2 more severe than a concussion.

3 Dr. Forseen took a picture of Megan's  
4 damage to her brain and he has labeled one of  
5 the many hemosiderins that you will see when he  
6 testifies by video.

7 Dr. Forseen characterized these as  
8 evidence of shearing of the axons in the brain  
9 where the gray matter and the white matter come  
10 together. Dr. Forseen says that the shearing  
11 occurred in the left frontal lobe directly  
12 inside of where Megan had suffered an outward  
13 contact to her forehead during this terrible  
14 tragedy.

15 Megan had external physical injuries to  
16 her left forehead, which Dr. Forseen says  
17 correlates to the internal injuries to her  
18 brain.

19 You will be presented with undisputed and  
20 conclusive testimony about the permanency of  
21 Megan's physical injury to her brain and  
22 physical injury to her back and shoulder, all  
23 of which cause her problems and pain.

24 Megan also was tested by a renowned  
25 neuropsychologist, Dr. John Sass in Atlanta.



1 Dr. Sass is a specialist in treating patients  
2 with brain injuries to determine if there is  
3 evidence of diminished cognitive ability.

4 Dr. Sass tested Megan and found that she did,  
5 in fact, have significant cognitive deficits in  
6 her brain.

7 Defendants have no medical experts to  
8 disagree with or deny our medical proof. The  
9 defendants are, by any window, and without a  
10 single doctor to testify on their behalf,  
11 suggesting that Megan is not hurt on the  
12 inside.

13 You need to be on the lookout during this  
14 trial for a sneak attack on Megan. I call it,  
15 S-I-P-E. It's an acronym.

16 The first, "S," suspicion. They will want  
17 you to be suspicious of Megan's complaints of  
18 pain or that she will continue to suffer pain,  
19 physical pain of the body and the mind.

20 Secondly, "I," innuendo. They want you to  
21 believe that Megan is an opportunistic  
22 plaintiff, that she is sue happy and trying to  
23 take advantage of the situation.

24 MR. D. DIAL: Your Honor, I object. This  
25 has moved from opening into argument.

1 THE COURT: It is more argument. Proceed.

2 MR. CHEELEY: I'll move along, Your Honor.

3 "P," prejudice, and "E," envy. And I'll  
4 tell you more about those in closing argument.

5 Dr. Forseen will tell you that Megan is  
6 now at an elevated risk of developing more  
7 serious conditions, such as early onset of  
8 dementia, according to scientific studies. He  
9 will tell you that Megan is at risk of a much  
10 more serious level of traumatic brain injury if  
11 she sustains another head injury. The prospect  
12 of dementia is something that the defendants  
13 are unwilling to acknowledge and are unwilling  
14 to compensate Megan for.

15 And this is very important, ladies and  
16 gentlemen. One thing you will not see is any  
17 medical doctor for the defendant coming into  
18 this courtroom to tell you otherwise.

19 The defendants want you to look at Megan  
20 and consider that she looks like a normal  
21 person, like the pre-wreck Megan, but you must  
22 remember her brain is damaged goods. It is not  
23 the brain that God blessed Megan with, and it's  
24 because of the negligence of the company's  
25 driver that we are here. Megan did not ask for

1           this; it was thrust upon her by the company's  
2           driver.

3           We have an expert, an engineer, named  
4           Bryant Buckner. Bryant has a company located  
5           in Tallahassee, Florida which does  
6           reconstruction of serious wrecks like this one.

7           Bryant will tell you that Megan's head  
8           experienced such a terrifically violent force  
9           from sitting still and then being struck by  
10          this 68-mile-per-hour 75,000-pound  
11          tractor-trailer that the resulting change in  
12          velocity to her entire body and to her brain  
13          was equivalent to having Megan hit the ground  
14          after being pushed in a strapped seat from a  
15          seven-story building. That's how serious this  
16          is.

17          Think about that, ladies and gentlemen.  
18          It's a wonder that Megan isn't in a coma for  
19          life, and there is no telling what kind of  
20          complications she is going to have in the  
21          future.

22          Before April 22, 2015, Megan had an  
23          unlimited and bright future. This wreck  
24          occurred when the company's driver, who had to  
25          wait over nine hours before he could depart the

1 terminal in Mississippi because his truck  
2 wasn't ready, was operating on very little  
3 sleep. He was headed for Savannah, Georgia,  
4 from Richland, Mississippi.

5 The company's driver had ridden a bus all  
6 night from Shreveport, Louisiana, to Jackson,  
7 Mississippi. The driver did not sleep on the  
8 bus. We know that because we have his cell  
9 phone records. He was on the phone making and  
10 receiving calls and making and receiving text  
11 messages. In fact, the driver had slept very  
12 little for the two to three days prior to this  
13 wreck.

14 The company's dispatcher told the driver  
15 to be at the terminal on April 21, the day  
16 before this wreck, at 7:00 a.m. and be ready to  
17 roll. The driver showed up on time but his  
18 truck was not ready. It was in the shop and it  
19 stayed there for another nine or so hours.

20 The driver did not catch a nap, but stayed  
21 on his cell phone in the company's driver's  
22 lounge. We know that by his cell phone  
23 records.

24 The driver says no one at the company said  
25 anything to him about causing him to wait an

1 extra nine hours, and he could have, but  
2 didn't, tell the company that he needed to take  
3 a nap before driving through the night.

4 So the driver left Jackson, Mississippi  
5 around 5:00 p.m. He had to be fatigued from  
6 staying awake for more than 24 to as much as 36  
7 hours.

8 As he approached the point where this  
9 traffic was backed up on I-16 around 5:45 to  
10 5:50 in the morning on April the 22nd, the  
11 driver had a line of sight of almost one mile.

12 This is towards -- this is the west. This  
13 is towards Savannah at the bottom of the  
14 photograph. Here is the collision location.  
15 This distance from around the curve to this  
16 location is about 8/10 of a mile.

17 The company's driver was not paying  
18 attention to the road either because he was  
19 sleepy or distracted. We don't know for sure  
20 what the company's driver was doing and he is  
21 not telling us, but we have some ideas.

22 Any professional truck driver getting paid  
23 by the company to drive for the company's very  
24 large tractor-trailers for a living must pay  
25 attention to the traffic in front of them at

1 all times. Professional truck drivers are not  
2 allowed to do anything that could distract them  
3 as they are driving.

4 These drivers are supposed to have  
5 professional training and experience before  
6 they drive. It's the truck driver's  
7 responsibility to avoid doing anything that  
8 could take their eyes, focus, or attention off  
9 the road while driving these large trucks.

10 It is also the responsibility of the  
11 trucking companies to make sure that their  
12 truck drivers are not driving distracted. We  
13 have learned that the company did try to train  
14 this driver, but maybe he did not care enough  
15 to obey the company's policies. It will be for  
16 you to decide whether he was a good,  
17 responsible driver.

18 Trucking companies like these companies  
19 are having a hard time finding qualified  
20 drivers because the skilled and seasoned  
21 drivers are retiring and there are not enough  
22 good younger people wanting to drive large  
23 trucks and live on the road.

24 This defendant had been driving for Total  
25 Transportation of Mississippi since December of

1           2013. Before he took this job with this  
2           company, he drove for a company named Stevens  
3           Transport in Dallas, Texas. Mr. Johnson did  
4           not follow that company's policies and he had  
5           several speeding violations there.

6           MR. D. DIAL: Objection, Your Honor. I  
7           believe that violates the motion in limine Your  
8           Honor had ruled on.

9           THE COURT: Come to the bench, gentlemen.

10           (The following proceedings were held at  
11           the bench, outside the hearing of the jury.)

12           MR. CHEELEY: This goes to the punitive  
13           damages against Mr. Johnson.

14           MR. D. DIAL: Your Honor, you ruled  
15           that -- in your ruling that the punitive  
16           conduct against Mr. Johnson would arise from  
17           his conduct on the trip that was the cause of  
18           the accident, not what he did several years  
19           prior. That would be inadmissible. We made a  
20           motion in limine and Your Honor granted the  
21           motion in limine.

22           MR. JONES: Not as to John Wayne Johnson.

23           MR. D. DIAL: Not -- as to his driving, he  
24           did.

25           MR. CHEELEY: Judge, I am going to prove

1 in this case that Mr. Johnson is the kind of  
2 man that did not follow corporate policies. He  
3 didn't follow it at Stevens Transport and he  
4 didn't follow it here for TTM. I am entitled  
5 to prove that because that's the basis for  
6 punitive damages against this man.

7 MR. D. DIAL: Your Honor, punitive damages  
8 have to be based on the actions that caused the  
9 harm, not things that happened several years  
10 ago.

11 THE COURT: I'm going to ask that you stay  
12 away from that. I'll reserve ruling, but the  
13 ruling was solely to his conduct. As long as  
14 you don't get into what they overlooked about  
15 him.

16 MR. CHEELEY: I'm not going to get into  
17 what they overlooked; I'm going to talk about  
18 what he did himself. He didn't follow  
19 anybody's corporate policies and he never got  
20 enough rest. He was always driving fatigued.

21 THE COURT: That would involve his  
22 conduct; it doesn't involve the conduct of the  
23 corporate defendants.

24 MR. D. DIAL: My objection is that the  
25 only conduct that Mr. Johnson -- under the law,



1 Your Honor, that would even support a punitive  
2 damages is the conduct that caused the harm,  
3 Mr. Johnson's conduct that caused the harm.  
4 What happened several years ago at a different  
5 company had nothing to do with the conduct that  
6 caused the harm.

7 THE COURT: I'll have to look at that  
8 overnight, but it does appear to be evidence  
9 that you're putting in his past wrong acts to  
10 show that he was not in conformance with that  
11 same act. I'll look at that from a punitive  
12 aspect, but I'm a little skeptical of that.

13 MR. CHEELEY: Okay.

14 (The following proceedings were held in  
15 open court, in the hearing of the jury.)

16 MR. CHEELEY: In this case, ladies and  
17 gentlemen, as Mr. Dial told you in the jury  
18 selection process, Total Transportation of  
19 Mississippi has acknowledged that Mr. Johnson  
20 was acting within the course and the scope of  
21 his employment on the morning of April the 22,  
22 2015, when he crashed into the rear of these  
23 two cars.

24 Johnson was, in fact, driving for Total  
25 Transportation of Mississippi and Total

1           Transportation of Mississippi is liable for his  
2           negligence, so when you, the jury, bring back  
3           money damages of any kind, Total Transportation  
4           of Mississippi is liable to Megan for those  
5           damages, for compensatory damages.

6           Now back to the facts of this tragedy. On  
7           the morning of April 22, 2015, at about  
8           5:30 a.m. or so, the company's driver,  
9           Mr. Johnson, was a few miles west of where the  
10          two cars of Georgia Southern University nursing  
11          students were getting onto I-16 headed east to  
12          Savannah. Abbie and Emily's vehicles were  
13          probably only a couple miles ahead of the  
14          company's driver.

15          Here's a picture of the occupants of the  
16          two cars. First of all, the Ford Escape  
17          contained four young ladies: Abbie Deloach of  
18          Savannah, the driver; right front seat was  
19          Brittney McDaniel; left rear seat, Morgan Bass;  
20          right rear seat, Megan Richards.

21          The two young ladies on the left-hand side  
22          of the vehicle did not make it, the two on the  
23          right side did, and I'll tell you why they did  
24          shortly.

25          The Toyota Corolla, which was following

1 behind, had three individuals in it: Emily  
2 Clark was the driver, Catherine Pittman was the  
3 right front passenger, Caitlyn Baggett was the  
4 left rear passenger. None of these three girls  
5 made it. Their car caught on fire and burned  
6 them alive.

7 MR. D. DIAL: Objection, Your Honor. Move  
8 to strike. There is a motion in limine -- may  
9 I approach, Your Honor?

10 THE COURT: Yes. Counsel approach.

11 (The following proceedings were held at  
12 the bench, outside the hearing of the jury.)

13 MR. D. DIAL: Your Honor, there was a  
14 motion in limine.

15 THE COURT: Their conscious pain and  
16 suffering is not --

17 MR. CHEELEY: I'm not getting into that.

18 THE COURT: You just said that they were  
19 burned alive.

20 MR. CHEELEY: They did burn alive.

21 THE COURT: Yes, they did, but it's not  
22 admissible in this case.

23 MR. D. DIAL: And, Your Honor, I move for  
24 a mistrial. That is so inflammatory and  
25 prejudicial and it violated a motion in limine

1           that counsel each agreed that he wasn't going  
2           to try to get into the pain --

3           THE COURT: We did talk about this at the  
4           pretrial. The conscious pain and suffering of  
5           other plaintiffs would not be admissible to  
6           prove damages on behalf of Megan.

7           MR. JONES: Your Honor, we have to be able  
8           to show the facts and circumstances of the  
9           accident.

10          THE COURT: No. The Court's not going to  
11          allow that.

12          MR. D. DIAL: On that point, Your Honor,  
13          we have a pending motion in limine that also  
14          goes to this issue that based upon what he  
15          said --

16          THE COURT: But what I talked about was  
17          whatever she perceived, whatever she saw. She  
18          doesn't know whether they suffered.

19          MR. CHEELEY: I'm not saying that she  
20          knew --

21          THE COURT: But you just said that. I'm  
22          going to ask the jury if they can disregard  
23          that and I'll give curative instructions.

24          MR. D. DIAL: To keep me from having to  
25          object, he's now also going to talk about what

1 Abbie Deloach perceived and did, accelerated.  
2 That goes to her pre- --

3 THE COURT: I'll deny that as part of the  
4 accident. Impact, speed, angles, all of that's  
5 admissible, so I'm overruling your objection  
6 with regard to that. I am sustaining it with  
7 regard to this conscious pain and suffering.

8 MR. D. DIAL: Okay.

9 THE COURT: All right. We can go into  
10 that later.

11 (The following proceedings were held in  
12 open court, in the hearing of the jury.)

13 THE COURT: Mr. Cheeley, can we put down  
14 the exhibits?

15 MR. CHEELEY: Yes, sir.

16 THE COURT: Ladies and gentlemen, the  
17 plaintiff's counsel just made reference to the  
18 fact that other people who were at the scene  
19 and who are now deceased may have suffered.

20 I instruct you, ladies and gentlemen, that  
21 you cannot consider that in any way whatsoever.  
22 It has no bearing on the issues that you have  
23 to decide in this case.

24 Now, I'm going to ask you very directly  
25 right now, is there anyone who cannot abide by

1 the Court's instructions in that regard? If  
2 you cannot abide by those instructions, please  
3 raise your hand.

4 All right. Let the record reflect there  
5 was no response from any juror.

6 All right. You may proceed, Mr. Cheeley.

7 MR. CHEELEY: Thank you, Your Honor.

8 Megan and these other young women would  
9 meet once a week or twice a week at a place  
10 called Woody's in Statesboro. It's a place  
11 where nurses bought their attire and their  
12 supplies. They would meet early in the morning  
13 in the parking lot and they would carpool  
14 together for clinicals in Savannah.

15 Megan regrets that she was not tardy that  
16 morning arriving at Woody's Scrubs, because she  
17 feels that if she had been tardy, none of these  
18 friends of hers would have lost their lives and  
19 that she would not be suffering as she is  
20 today.

21 Megan's mind tortures her all the time,  
22 accusing her that it is her fault that her  
23 friends died. She feels guilty about the fact  
24 that she survived but her friends died. That  
25 is known in the medical profession as a

1 byproduct of PTSD. It's known as survivor's  
2 guilt.

3 Megan hears something inside of her accuse  
4 her that "if only you had done something  
5 different, Megan." That's the PTSD haunting  
6 her.

7 Abbie and Emily's vehicles entered I-16  
8 less than two minutes or so ahead of the  
9 company's driver. About Mile Marker 141, the  
10 young women encountered stopped traffic due to  
11 an earlier wreck caused by another defendant in  
12 this case, Greywolf Logistics, but Abbie, Emily  
13 saw, along with another 150 or so cars ahead of  
14 them. They were all able to stop safely.  
15 After all, the bright red taillights were  
16 easily visible against the clear, dark, early  
17 morning sky.

18 As our young women have been stopped for  
19 about 10 to 20 seconds, the company's truck and  
20 the company's driver approached rapidly from  
21 the rear at a speed of 68 miles per hour. The  
22 truck was set on cruise control. There was no  
23 slowing. There was no braking. There was  
24 nothing.

25 Suddenly, a horrific crash occurred.

1           Witnesses in the left lane -- this occurred in  
2           the right lane, the crash, but witnesses in the  
3           left lane will come in and testify to you about  
4           what a horrible event it was, that it looked  
5           like two trains colliding because these two  
6           cars of nursing students were sitting right  
7           behind a tanker truck and they were crushed  
8           momentarily between the two massive trucks.

9           Witnesses in the left lane said that it  
10          sounded like a bomb. The 75,000-pound Total  
11          Transportation tractor-trailer crashed at its  
12          full-end top speed into the rear of Emily's  
13          little car, shearing the roof off and casting  
14          it aside like a Coke can being chewed up by a  
15          lawnmower. The three girls inside did not make  
16          it.

17          The large tractor-trailer then collided  
18          violently into the rear of Abbie's little SUV,  
19          slamming it into the rear of the tanker truck  
20          owned by Shepherd's Tanker Service. That truck  
21          was stopped or barely moving in front of Abbie.

22          According to our expert, Bryant Buckner,  
23          if not for the quick reflexes of Abbie Deloach,  
24          Megan and Brittany would both be dead. We know  
25          that Abbie steered hard to the right and she



1 stepped hard on the accelerator pedal at the  
2 last moment in an attempt to get off the road.  
3 She must have seen the mammoth tractor-trailer  
4 barreling down on her in her rearview mirror.

5 If Abbie had not gotten the least -- at  
6 least the front of her vehicle pointed in the  
7 direction of the shoulder and not directly into  
8 the rear of the tanker truck, her little SUV  
9 would have been crushed like a Coke can between  
10 these two giant rigs. Megan and Brittany would  
11 surely have died.

12 The little SUV was slammed violently  
13 against the rear of the tanker. Then it was  
14 kicked like a football to the shoulder of the  
15 road, where it rolled over violently two times  
16 and then smashed against the trees, facing back  
17 towards Statesboro.

18 Megan was knocked unconscious. Morgan  
19 Bass, who moments before was sitting just to  
20 the left of Megan in the rear seat, was ejected  
21 and died when her body hit the ground.

22 Morgan's body was lying within a few feet of  
23 the SUV when the vehicle came to a rest and it  
24 was just outside Megan's door. This white  
25 sheet covers Morgan's body. That's where Megan

1 was.

2 What I'm about to tell you is going to be  
3 hard for you to listen to. I'm not telling you  
4 these facts to upset you, but rather to give  
5 you a word picture of what Megan experienced  
6 and what continues to haunt her.

7 After being hit from the rear by this  
8 company's truck driver, Megan woke after being  
9 knocked out briefly. She saw a horrible sight.  
10 Megan sees the Toyota on fire. She smells an  
11 awful smell. It was the smell of human bodies.  
12 The smell was thick in the early morning air  
13 and witnesses at the scene described that you  
14 could almost taste that awful smell.

15 Megan panics. She is in intense pain.  
16 She thinks her arm is broken, but instead it's  
17 a fracture to her left shoulder. She fears  
18 that Abbie's SUV will catch fire, too.

19 Her heart races and she thinks that she is  
20 about to die. She hears screams. It is dark  
21 and eerie and dust is still floating through  
22 the air where these two massive trucks collided  
23 and skidded off the road.

24 The company's tractor-trailer shoved that  
25 tanker truck clear off the road. The company's

1 tractor has its entire engine and front axle  
2 knocked away from the cab and chassis.

3 There is a strong odor of diesel fuel  
4 leaking from the ruptured fuel tanks on the  
5 Total Transportation truck into the ditch  
6 beside Megan. She fears that the fire from the  
7 burning car will ignite that diesel fuel, which  
8 is all around the SUV.

9 Megan cannot get free. She feels  
10 entrapped in the vehicle. The flames from the  
11 burning Toyota are growing higher and more  
12 intense and they're reaching high above the  
13 tractor-trailer, the Total Transportation's  
14 trailer.

15 Megan's heart races. She can hardly  
16 breathe due to the adrenaline rush. Megan has  
17 never seen anything like this and she wrestles  
18 to try to find a way out of that mangled  
19 vehicle.

20 Her side window is broken and there's  
21 glass all over her. Megan feels blood running  
22 down her face from her left forehead and eye.  
23 She is hoping that this is a dream, but it is  
24 not. Megan screams and she cries out,  
25 "Someone, please help me. Help."

1           That morning, to Megan, is a day that will  
2           live in infamy. That morning, she witnessed  
3           what happens when an inattentive driver causes  
4           a deadly crash because he is more interested in  
5           watching something on his smartphone than he is  
6           watching the road ahead.

7           The driver put everyone's life in danger  
8           that morning at Mile Marker 141. We know that  
9           based on his cell phone records, that he was  
10          downloading and uploading something for 42  
11          minutes leading up to this crash. You will  
12          hear our expert from Dell Computers SecureWorks  
13          come in and testify and show you how that data  
14          was being uploaded and downloaded for 42  
15          minutes.

16          We know that he was looking at his cell  
17          phone, he had to be, and he's going to be given  
18          the chance to tell you what he was doing,  
19          because up until now he has not told us. When  
20          the crash occurred, the data transfer  
21          interestingly stopped on his phone.

22          This is truly, in my opinion, a wicked  
23          act, an act which was played out by the  
24          defendant's chosen driver, John Wayne Johnson.  
25          The company's driver was playing Russian

1 roulette with the lives of everyone on that  
2 stretch of I-16 that morning, driving a  
3 75,000-pound 18-wheeler at almost 70 miles per  
4 hour while watching movies or whatever he was  
5 doing, Facebooking or whatever, is  
6 unconscionable. It displays a conscious  
7 indifference to the consequences.

8 Unfortunately, the company never  
9 interviewed John Wayne Johnson to find out what  
10 he was doing in that line of traffic or asked  
11 him what he was doing before the wreck.  
12 Unfortunately, the company did not seize his  
13 cell phone immediately after the wreck so that  
14 it could be tested.

15 Now, Mr. Johnson, when we get ahold of it,  
16 the cell phone, about a month or so after the  
17 wreck, guess what? He claims that he cannot  
18 remember his four-digit code to open up his  
19 cell phone so that the folks from Dell  
20 Computers could check it out and see what was  
21 going on. To this day, the company's driver  
22 has not told us what that four-digit code is.

23 Seven young women paid dearly for what  
24 Mr. Johnson was doing on that cell phone. That  
25 morning, seven young women left Statesboro

1           pursuing their dreams of becoming nurses.  
2           Abbie and Megan wanted to work together at  
3           Memorial Hospital in Savannah.

4                     Unfortunately, only two of those seven  
5           nurses returned to Statesboro, ultimately,  
6           Megan Richards and Brittany McDaniel, but they  
7           returned very different people than the ones  
8           who had left that morning.

9                     Both Megan and her friends will tell you  
10          that there is a material change in her  
11          personality. Megan is haunted by that terrible  
12          morning. Instead of working at Memorial  
13          Hospital with Abbie, Megan will be working  
14          there, she hopes, with the knowledge that Abbie  
15          was pronounced dead in that hospital. That,  
16          too, haunts her.

17                    We're here today because the defendants  
18          will not accept responsibility for the  
19          permanent damage that has been done to Megan's  
20          once healthy body, including her back and her  
21          brain.

22                    So, members of the jury, this case is  
23          about a company driver who essentially was  
24          operating a missile on the interstate that  
25          morning in Bryan County with a conscious

1 indifference to the safety of these young  
2 women.

3 Now, insult is added to injury because the  
4 company and its insurers claim that Megan is  
5 not hurt as much as she claims. That  
6 arrogance, ladies and gentlemen, adds more  
7 anxiety to Megan. I will tell you something,  
8 most 22-year-olds would not take on the  
9 nation's fourth largest motor carrier, U.S.  
10 Xpress.

11 MR. D. DIAL: Objection, Your Honor. It's  
12 improper argument.

13 THE COURT: It's more in the way of  
14 argument than evidence.

15 MR. CHEELEY: This case is about permanent  
16 brain damage to an innocent, beautiful young  
17 woman, pure and simple. The case is about  
18 taking a dreadful wrong and making it right.

19 Your duty is to sift through the facts and  
20 decide that -- if we, as Megan's lawyers, are  
21 shooting straight with you or if the defendants  
22 are.

23 Remember, as you listen to the evidence  
24 that will come from that witness stand, if  
25 you're hearing fact or fiction, medical proof

1 or artful lawyering.

2 This case is about the refusal of these  
3 defendants to acknowledge that Megan's brain  
4 injury is very real.

5 The facts of this case will show that U.S.  
6 Xpress has total control over Total  
7 Transportation.

8 First, U.S. Xpress is shown as the carrier  
9 on the last document that was provided to the  
10 Georgia State Patrol, not Total Transportation  
11 of Mississippi.

12 Second, U.S. Xpress and Total  
13 Transportation's revenues are deposited into a  
14 single bank account which U.S. Xpress controls.

15 Third, U.S. Xpress pledged all of the  
16 assets of Total Transportation to a bank to  
17 secure a \$200-and-some-odd million line of  
18 credit, all without the knowledge of this man,  
19 John Stomps, the CEO of Total Transportation.  
20 He didn't even know about it. That's control  
21 and that's what the law of Georgia requires  
22 that we show, control, and we will.

23 And lastly, but probably most tellingly,  
24 is that John Wayne Johnson's W-2s are issued by  
25 U.S. Xpress.



1           There are many other examples of control  
2           of the parent over the subsidiary, so the  
3           question is why is U.S. Xpress trying to get  
4           out of this? I submit that the answer is that  
5           they're trying to avoid responsibility here.

6           My job and Billy's job is to lead you on a  
7           diligent search for the truth, and I will not  
8           mislead you.

9           But before I discuss our specific claims,  
10          I want you to understand one thing about the  
11          burden of proof. Judge Rose will tell you more  
12          about this, but this is not a criminal case  
13          where you have to prove everything beyond a  
14          reasonable doubt.

15          When you hear the term "burden of proof,"  
16          I want you to think of the scales of justice  
17          and I want you to remember that all we have to  
18          do is prove that what we're saying is more  
19          likely than not that it was the company's  
20          negligence that caused all of Megan's injuries.

21          Physically, Megan now lives in chronic  
22          pain with her back and you'll hear the  
23          testimony of her doctor, her orthopaedic doctor  
24          from Emory in Atlanta.

25          Emotionally, Megan's family and friends

1 will testify that she's depressed. She takes  
2 Zoloft for depression. She has frequent crying  
3 spells, which is totally unlike her.

4 Megan now must take sleeping pills every  
5 night just to go to sleep. She wakes up in the  
6 middle of the night with nightmares and in full  
7 sweat.

8 Cognitively, Megan's family and friends  
9 will testify that she's forgetful, she often  
10 repeats herself, forgetting that she just said  
11 the same thing only a few minutes before.  
12 There are signs and symptoms of traumatic brain  
13 injury.

14 Megan now has to write herself notes to  
15 stay on track throughout the day. Megan's  
16 worried that her memory may adversely affect  
17 her ability to be a careful and effective  
18 pediatric ICU nurse.

19 Vocationally, Megan's family and friends  
20 and coworkers will testify that she's  
21 lethargic. She's slow and inefficient, which  
22 frustrates her to no end. Her roommate will  
23 tell you that she sleeps for way more than  
24 eight hours a day, also another telltale sign  
25 of PTSD and depression. That's not the Megan

1 who existed prior to April 22, 2015.

2 Relationally, Megan's family and friends  
3 will tell you that Megan is at times moody and  
4 irritable, which is totally and completely  
5 opposite of the before version of Megan.

6 Megan is also impatient with almost  
7 everyone because she's always tired and  
8 hurting. According to her boyfriend, Jacob,  
9 Megan seldom does anything of the things that  
10 she used to do before the wreck, such as  
11 outdoor activities and exercising, playing with  
12 her dog.

13 My time is about up, but at the conclusion  
14 of this case, ladies and gentlemen, we're going  
15 to ask you for a significant verdict that  
16 speaks the truth about the importance of having  
17 this right be corrected -- this wrong be  
18 corrected and made right. We're going to ask  
19 you to bring back an award that shows that --  
20 the importance of having the right to be left  
21 alone and not be almost killed on the road  
22 going to work and pursuing your education and  
23 about the resulting value of human suffering  
24 when someone like this company's driver is so  
25 consciously indifferent to the safety of these

1 young women that it has perpetrated a serious  
2 permanent harm to a totally innocent young  
3 woman.

4 Now, after you hear from defense counsel,  
5 tomorrow morning we'll start putting up our  
6 evidence on the amount of her damage. She is a  
7 wonderful young woman, but she is a shell of  
8 her former self because of these defendants'  
9 driver's carelessness.

10 And we ask you to be attentive to both the  
11 plaintiff and the defense and to render a just  
12 and true verdict at the end that fully and  
13 completely makes Megan whole.

14 Thank you.

15 Thank you, Judge.

16 THE COURT: Thank you, Mr. Cheeley.

17 Mr. Dial, you may proceed.

18 MR. D. DIAL: Thank you, Your Honor.

19 Good evening, jury.

20 The judge will tell you that everything  
21 that the lawyers say in this case is not  
22 evidence. Everything you just heard is not  
23 evidence. It doesn't prove a thing.

24 What happens after opening statements,  
25 when the lawyers are supposed to give you a

1           brief and concise statement of what the  
2           evidence will be, is that the evidence will  
3           then start. So everything you just heard,  
4           everything that you just read, is not evidence.

5           Evidence comes from this witness stand by  
6           witnesses who take an oath and testify.  
7           Evidence comes in the form, these days, in  
8           video testimony, where people have already  
9           taken the oath and are testifying. Evidence is  
10          documentary evidence that comes in. That is  
11          what you will make your decision upon, not what  
12          Mr. Cheeley says, not what Mr. Cheeley thinks,  
13          what not -- not what Mr. Cheeley argues.

14          And I am asking you on behalf of my client  
15          that you wait and hear the evidence. Wait and  
16          hear the evidence and compare it to what you  
17          just heard, and you decide who -- what the  
18          evidence is, not what Mr. Cheeley says it is.

19          And I'm going to point out where there  
20          will be some grave differences in the actual  
21          evidence and the argument you just heard.

22          What I say is not evidence either. I ask  
23          that you wait and hear all the evidence. He'll  
24          put on witnesses, we'll get to cross-examine  
25          witnesses, and then we'll put on witnesses.

1 Don't make your decision up until you've heard  
2 it all. Don't make it up until you hear Your  
3 Honor instruct you on what the law is so that  
4 you'll know how to properly apply the evidence,  
5 as opposed to lawyer argument, to the law and  
6 then make a decision. And the decision you're  
7 going at be making here is what is fair  
8 compensation -- as I said in my voir dire, what  
9 is fair compensation to both parties for the  
10 injuries suffered by Ms. Richards. That will  
11 be your decision to be made.

12 Mr. Cheeley said on several occasions that  
13 the defendants or the defendants' lawyers are  
14 saying that Megan Richards is faking and that  
15 she was not injured. There will be not a shred  
16 of evidence that that is the case. That is  
17 absolutely false. The defendants have never  
18 taken the position that Ms. Richards was not  
19 injured, never, never, never. That is false.

20 And what he's tried to do by using  
21 analogies and arguments is to tell you that if  
22 we even dare to question anything about the  
23 treatment of her injuries, if we introduce to  
24 you all the evidence about Ms. Richards'  
25 condition both prior to the accident and after

1 the accident, if we ask you to listen to all  
2 the evidence, not hand-selected evidence by the  
3 plaintiff's lawyers, they then accuse us of,  
4 "Well, you must be insensitive and uncaring.  
5 Why don't you just accept Mr. Cheeley's  
6 argument. You say she's faking." That is  
7 flat-out false. It never happened, it never  
8 would happen, and it never will happen in the  
9 future. We know Ms. Richards was injured.  
10 There is no question about that.

11 If you hear evidence that she had to, for  
12 instance, expend a certain amount of money to  
13 treat her injuries, award that money. Give it  
14 to her, please. Entitled to every penny of it.

15 If you hear evidence of what her future  
16 care will be related to her injuries, give her  
17 that money. We don't dispute it. Pay for it.  
18 We want to pay for it. We want to pay for her  
19 care and treatment. We've never disputed it.  
20 Never been disputed that she's injured.

21 As I told you, your decision, again, is  
22 going to be to decide what's fair, and when  
23 you're doing that, we simply want to tell the  
24 complete story, not just part of the story.

25 Now, one of the things that he talked

1 about was the conduct of the driver. Again,  
2 listen to what the evidence actually is, and  
3 here's what it will be.

4 The evidence will be that Mr. Johnson had  
5 been on vacation prior to this trip. The  
6 evidence is that he returned to -- was planning  
7 to return from vacation back to work and he was  
8 asked, "When will you be available?" He was  
9 not told when to be available, he was asked,  
10 "When will you be ready to work," and  
11 Mr. Johnson said, "I'll be ready to go at  
12 7:00 a.m." He wasn't told to be anywhere, he  
13 said, "I'll be available at 7:00 a.m."

14 The evidence will be that he got plenty of  
15 rest the day before, the day before leaving for  
16 the trip, in his hotel in Shreveport, that he  
17 rested.

18 The evidence will be that during the bus  
19 trip from Shreveport to Jackson he slept, he  
20 took naps. Yes, he was up occasionally. Yes,  
21 he was occasionally texting or on the phone,  
22 but there's plenty of time where there's long  
23 time periods of no interaction and Mr. Johnson  
24 will tell you that during those time periods,  
25 he was getting additional rest.



1           Yes, when he got to the terminal at  
2           7:00 a.m. that morning, his truck wasn't ready.  
3           What did he do? He went to a driver's lounge  
4           that is supplied by Total for its drivers so  
5           that they can rest, take naps, sleep while  
6           they're waiting to get their load, and that's  
7           what he did.

8           Was he asleep the entire time? No. But  
9           was he napping? Was he resting? Was he  
10          lounging? Yes, he was.

11          And at that point in time when he got his  
12          load later that day, it is up to Mr. Johnson to  
13          decide whether he feels rested. He doesn't  
14          have to take the load. If he feels fatigued,  
15          if he feels like he's not capable of driving,  
16          then he doesn't take the load.

17          But he felt fine. He had had plenty of  
18          rest the days prior, he had had plenty of rest  
19          during the trip, he had rested all day in the  
20          lounge, there's nice sleeper lounges. It's  
21          easy. Many drivers go in there and rest while  
22          waiting on the truck.

23          The idea that he went two days without  
24          sleep is false. Listen to the evidence on  
25          that. Yes, he wasn't asleep the entire time,

1 but, yes, he was also resting and he felt  
2 rested when he started his trip.

3 With respect to his driving, it will show  
4 that at the time of the accident, these facts  
5 are undisputed:

6 Mr. Johnson was not speeding.

7 Mr. Johnson was not over hours. In the  
8 trucking industry, there's strict rules and  
9 regulations about how much a trucker -- how  
10 long a trucker can drive and be on duty. He  
11 was in one hundred compliance with the law in  
12 that regard.

13 He was not texting. They're going --  
14 they're asking you to speculate that he somehow  
15 was using the phone otherwise. He has  
16 testified that he was not, and they're relying  
17 on a witness -- expert witness that they have  
18 called who just yesterday came up with this  
19 opinion that you heard about, this  
20 Johnny-come-lately, brand new opinion that's  
21 never been in this case, because the first  
22 opinion he had that he was texting and there  
23 are videos and photographs attached to the  
24 texts, so surely Mr. Johnson must have been  
25 looking at those at the time of the accident,

1 guess what, that was proved to be false and  
2 wrong.

3 So at the very last minute, literally  
4 within several hours of this trial, this expert  
5 comes up with yet another theory of what  
6 Mr. Johnson was doing. That will also be  
7 proven wrong. Wait and hear the evidence.  
8 It's just not true, just like the texting while  
9 he was driving and he must have been looking at  
10 a picture or video that he received in a text.  
11 That was their position for two years of  
12 litigation. They changed it last night because  
13 it was proven to be false.

14 This is a Johnny-come-lately theory only  
15 for the purpose of trying to anger you and have  
16 you make this decision on some reason other  
17 than the evidence that you will hear.

18 He told you a lot about the scene, and  
19 that is gleaned from other witnesses because,  
20 again, the evidence will show that Ms. Richards  
21 recalls very little from the scene. She was  
22 knocked unconscious. We don't dispute that.  
23 She suffered a concussion. We don't dispute  
24 that.

25 Her testimony that you will see on

1 videotape and perhaps live, she will tell you  
2 that she remembers very little. She doesn't  
3 remember anything about the truck coming from  
4 behind her; she doesn't remember anything about  
5 Abbie Deloach driving; she doesn't remember  
6 seeing or whether she even did see the other  
7 girls that were in the wreck. She has no  
8 recollection of that.

9 She didn't even know that the people in  
10 the Corolla behind her were fellow nursing  
11 students. She had no idea. Yes, she saw a  
12 burning car, but she never saw the occupants,  
13 whoever they might have been, and she never  
14 knew they were her co-students, her fellow  
15 students at Georgia Southern. She learned that  
16 well after the accident. She has very little  
17 recollection of the actual accident scene, very  
18 little.

19 What you heard from Mr. Cheeley is what  
20 other people observed, not Ms. Richards, what  
21 other people know about the accident scene, not  
22 Ms. Richards. She testified, again, that she  
23 recalled very little.

24 Again, certainly Ms. Richards is grieved  
25 by the fact that she had friends and colleagues

1 that died in this accident. No one doubts it.  
2 Certainly she has anxiety. Certainly she has  
3 bouts of depression. Certainly she grieves.  
4 It's only normal that you would grieve and no  
5 one disputes that. That's simply not true to  
6 say that's disputed. Absolutely she does.

7 And when you're determining that, you  
8 should award damages to the extent that under  
9 Georgia law they are recoverable for that type  
10 of emotional distress arising from injuries you  
11 suffered in an automobile accident. You should  
12 award that, absolutely. If it can be shown she  
13 was injured and her emotional distress arises  
14 from those injuries, you should award damages  
15 for that. No one disputes that. No one  
16 disputes that.

17 What you can't award her damages for is  
18 the suffering of anyone else, the suffering of  
19 the family members, the tragedies bestowed upon  
20 others. That's not an element of damages she  
21 can recover. That's not recoverable under law.  
22 That's other people's claims, which has been  
23 resolved, as I mentioned to you earlier in voir  
24 dire.

25 Speaking of Ms. Richards, there's no

1 question -- again, this is not a dispute that  
2 prior to this event, Ms. Richards was a happy,  
3 was a productive, was a fun-loving college  
4 student who was doing well in college. That is  
5 the facts. She was. No one disputes it.

6 She had no problems that had ever been  
7 diagnosed with any type of issues that she  
8 suffered after the accident. We don't dispute  
9 that there was some preexisting problem here  
10 prior to the accident. That's not an issue  
11 that's in dispute.

12 What has her life been like after the  
13 accident? Now, you've heard from Mr. Cheeley  
14 his description, and this is an instance where  
15 I am going to give you some other evidence you  
16 will hear and you should consider. And it's  
17 not being done, again, because we don't believe  
18 Megan was injured or because we believe she's  
19 faking; it's simply so that you will have the  
20 full evidence, and here it is.

21 And don't hold it against me. Don't make  
22 it appear that I'm insensitive and clearly  
23 don't hold it against my client. I simply want  
24 you to know the rest of the story. The next  
25 story has these parts, as well. The story says

1           this:

2                   This accident happened on April 22, 2015.  
3           By July of 2015, Ms. Richards had recovered  
4           enough that she was able to return to school  
5           and take finals that she would have taken in  
6           late April or May. They were delayed to allow  
7           her time to recover and she went and took her  
8           finals in nursing and she did well. She  
9           finished that semester with about a 3.44  
10          average.

11                   She reentered school full time in August  
12          of '15 and continued in the nursing program,  
13          and each semester her grades continued to  
14          improve. She made a 3.6 GPA in her curriculum  
15          in the immediate semester, the fall semester of  
16          2015, and eventually in the last two years, her  
17          semesters were 3.93 GPA and a 3.8-something GPA  
18          and she was able to graduate in December with  
19          honors, cum laude. She did very well as a  
20          student, and she's to be congratulated and  
21          admired for doing that.

22                   But that shows that the problems she has  
23          have not prevented her from being a very  
24          successful student and from being offered a job  
25          as a nurse, which we know takes a lot of

1           achievement and it's difficult and it's not  
2           easy to do.

3           That's just additional facts that you need  
4           to consider when considering how serious her  
5           brain injury is.

6           And let me say this about brain injuries.  
7           Her treating doctors, who treated her from the  
8           time of the accident, until yesterday, until  
9           last night, never diagnosed her with a  
10          traumatic brain injury. They always diagnosed  
11          her with a concussive syndrome. That was the  
12          diagnosis.

13          Her neuropsychologist who tested her  
14          testified under oath that she did not -- this  
15          testing and evaluation did not indicate that  
16          she suffered a traumatic brain injury.

17          Dr. Lacy, who treated her on several  
18          occasions over the years, never said -- she's  
19          treating her for post-concussive syndrome.  
20          That changed last night and became now  
21          something that they're contending she has, and  
22          frankly we just heard of this, that she has  
23          complicated mild traumatic brain injury, and  
24          her neuropsych, who had tested her and  
25          evaluated her, has flipped his opinion



1 completely, 180, to go from not being  
2 traumatically brain injured to now being  
3 traumatically brain injured.

4 That all happened last night after these  
5 witnesses and treaters consulted hours with  
6 Mr. Cheeley, and that will be the evidence you  
7 will hear. They submitted in their own records  
8 the communications they had with Mr. Cheeley  
9 before they changed their opinions, and that  
10 happened literally last night, folks. Last  
11 night.

12 Dr. Forseen, who he speaks of and he  
13 opines about, he was a neuroradiologist. He  
14 read the film. He interpreted what the film  
15 shows and he testified, not surprisingly, that  
16 the evidence shows that she did, in fact,  
17 suffer a concussion and would be even qualified  
18 perhaps as a mild traumatic brain injury, but  
19 he would not link that -- what he saw on the  
20 film to any problems that Megan Richards was  
21 experiencing. He wouldn't make -- he wouldn't  
22 say, "Here's what I see and I believe and I'm  
23 opining that it's causing these problems."  
24 He's never seen Megan Richards. He never met  
25 Megan Richards. He never interviewed Megan

1 Richards.

2 He simply said what was on the film and  
3 that he was not willing to take that and turn  
4 it into some sort of diagnosis of a problem.  
5 He simply interpreted the film.

6 So when you hear about Dr. Forseen, please  
7 keep in mind that Dr. Forseen's never seen  
8 Megan Richards and will not -- and you'll see  
9 from the testimony -- will not link her  
10 problems up to any particular problem she's  
11 having.

12 I would just ask you when you hear the  
13 medical testimony, listen to it all. We're  
14 going to present to you in the portions that we  
15 get to ask what the doctors are saying  
16 contemporaneously with the treatment when it  
17 was ongoing in '15 and '16, that Megan is  
18 showing continued improvement in all areas.  
19 Did she continue to have some problems from  
20 time to time? Yes, she did, but was she  
21 improving? Just listen -- don't take my word  
22 for it, listen to what the doctors say and what  
23 they wrote in their notes.

24 And, again, that's not -- we're not saying  
25 she wasn't injured. We're not. We're not

1 saying that this was not a horrific event. It  
2 was. We're not saying she shouldn't be fairly  
3 compensated. She should. We're just asking  
4 that you consider everything.

5 Personally, after the accident, you heard  
6 the description by Mr. Cheeley. And, again,  
7 this is an area where we'll want to submit some  
8 additional evidence, and the additional  
9 evidence is that since the accident, she's gone  
10 on eight different vacations throughout the  
11 country, West Palm Beach, Puerto Rico, other  
12 places, and that's great. It's great that  
13 she's able to have fun and enjoy herself with  
14 her family and friends. We're happy about  
15 that. We want that. We're so happy about  
16 that. Nobody wants this young lady to be sad  
17 or miserable.

18 But she is able to enjoy herself. Just as  
19 she was successful in school, she has been able  
20 to also have moments of pleasure and joy, and  
21 the pictures show it. And these are pictures  
22 she posted on social media, not anything we  
23 fabricated or discovered.

24 That's just another piece of evidence for  
25 you to consider when you're trying to decide

1           what's fair and what her condition is and what  
2           needs to be provided to her to compensate her.  
3           And we want you to compensate her. That's what  
4           we're asking you to do, to fairly compensate  
5           her.

6                   I should have also mentioned additional  
7           evidence you will hear about Mr. Johnson that's  
8           important for you in considering whether his  
9           conduct shows a willful and wanton and  
10          oppressive -- and acted in that fashion.  
11          Again, wasn't speeding, wasn't over hours,  
12          wasn't impaired by drugs, wasn't impaired by  
13          alcohol, wasn't texting, wasn't on the phone.  
14          His cell records -- the cell phone records show  
15          that, wasn't on the phone making any calls.

16                   He will explain to you and has explained  
17          consistently over and over again that he was  
18          driving down I-16. He had been driving on  
19          interstate traffic for some time. The traffic  
20          had been light and he had not been gaining on  
21          any traffic the entire trip. Traffic had been  
22          passing him because, as everyone knows, if  
23          you're going 68 on I-75 or I-16, you're getting  
24          passed by somebody in the left-hand lane going  
25          faster.

1                   This was not an experience where  
2                   Mr. Johnson had experienced a lot of  
3                   stop-and-go driving, where he's coming up on  
4                   traffic and having to stop, catching up with  
5                   traffic and having to slow down. He's  
6                   essentially -- as he said, he's got it on his  
7                   cruise control. He's moving at 68 and  
8                   everybody's moving away from him.

9                   He sees -- he's testified to this from the  
10                  moment he was asked about it when he got out of  
11                  the truck by the State Patrol and by a  
12                  bystander, he has admitted, "I saw the lights  
13                  ahead of me. I saw the lights of the tanker  
14                  truck. I saw them. I thought I saw the tanker  
15                  truck move from the left lane into the right.  
16                  I thought I might be gaining on him, but I had  
17                  no perception that I was gaining on him this  
18                  quickly, and the next thing I knew I was on him  
19                  and I hit him."

20                  He was on doubt, road hypnosis. He was  
21                  not -- his depth perception was not working.  
22                  He saw it, but he didn't react, couldn't react.  
23                  But he always consistently told everyone who  
24                  asked, including immediately after the  
25                  accident, he admitted that he saw him ahead,

1 but he just didn't react.

2 He told the State Patrol that, he's told a  
3 good Samaritan that, he testified to that in  
4 his deposition. He has been 100 percent  
5 consistent. He can't explain why he didn't  
6 react. He wishes he could. He saw, but he  
7 didn't perceive and react after driving from --  
8 a long time on the interstate.

9 He wishes he had a better explanation, but  
10 he doesn't. He can't understand it himself.

11 He's remorseful. You'll see he's  
12 remorseful. As I told you earlier, he's  
13 serving -- he's being punished now in prison as  
14 a result of him pleading guilty for the  
15 criminal offense associated with this.

16 There's another -- I want to briefly move  
17 over to something and then come back. Greywolf  
18 is a defendant in this case, as well, sued by  
19 the plaintiffs, not by the defendant. The  
20 plaintiffs blame Greywolf for being partly  
21 responsible for causing this accident.

22 Greywolf was the trucking company who the  
23 driver was involved in the first accident that  
24 caused the traffic to back up. Greywolf and  
25 its driver have admitted that they were at

1           fault for that accident, it was their fault for  
2           that accident occurring.

3           The plaintiffs sued them essentially  
4           saying, "But for the fact that you caused this  
5           wreck, this backup would not have happened and  
6           the wreck, therefore, would not have happened."

7           Now, I'm telling you that not because I'm  
8           saying it excuses Mr. Johnson for not reacting  
9           properly or quickly enough in coming to a safe  
10          stop; I'm telling you that because when you're  
11          trying to figure out whether or not Greywolf is  
12          responsible for any of the fault associated  
13          with this -- the plaintiffs contend they are --  
14          Your Honor will instruct you that the law in  
15          Georgia is that if you cause an accident which  
16          causes a backup, you can be deemed liable for a  
17          subsequent accident that happens. That's the  
18          law in Georgia. It's called Smith. All these  
19          lawyers in here are familiar with it.

20          I'll leave it up to you, once you hear  
21          that, to decide what, if any, percentage of  
22          fault, which you'll be asked to do, to allocate  
23          fault between John Wayne Johnson and Greywolf,  
24          what, if any, percentage of that fault should  
25          go to Greywolf.

1           Plaintiffs sued. Plaintiffs allege they  
2           were at fault. Plaintiffs brought them in  
3           here, that wasn't done by the defendants, but  
4           that is the fact. That's why they're here.  
5           You may have been wondering why they're here.  
6           That's why they're here.

7           Total was Mr. Johnson's employer. As you  
8           heard from Mr. Cheeley, they're going to argue  
9           to you that these U.S. Xpress, Inc., U.S.  
10          Xpress Enterprises, U.S. Xpress Leasing, New  
11          Mountain Lake Holdings, that all of those  
12          people somehow are also Mr. Johnson's employer.  
13          Those people are all part of the same corporate  
14          family. They're all individual members of the  
15          same corporate family, and under the law, a  
16          corporation is treated just as a person is  
17          treated.

18          So when you're talking about families,  
19          each individual company is essentially like a  
20          member of a family. Could be the son, could be  
21          the brother, could be the mother, could be the  
22          father. They're part of a family.

23          So, yes, they do cooperate in some areas,  
24          but you will hear, for instance, John Stomps  
25          controls the operations of Total. He will tell



1           you, "The buck stops with me, John Stomps. I  
2           decide what the policies and considerations and  
3           I run Total. I have control over Total's  
4           operations."

5           Mr. Stomps will also tell you he has no  
6           control over what the U.S. X companies do. He  
7           has no authority over them, just as they have  
8           no authority over his employees. He hires his  
9           own employees. He has contracts with his  
10          won -- Total does -- with his own customers.  
11          Sometimes he competes with U.S. Xpress for  
12          customers. They enter into totally separate  
13          contracts with customers. They have different  
14          DOT numbers. They have different names, of  
15          course. They have different placards, which is  
16          meaningful in the trucking industry. They are  
17          different companies. Each is its own legal  
18          entity, its own corporation.

19          There is ownership interest. U.S. X does  
20          own part of Total. It owns the majority of  
21          Total, but it doesn't control Total. It  
22          doesn't control its operations and its actions,  
23          and that's what's important in determining  
24          whether these companies are, indeed, separate,  
25          what level of control exists.

1           Mr. Johnson is not the employee of any of  
2           the U.S. Xpress entities. There are -- there  
3           is an agreement in place which Total pays U.S.  
4           Xpress for where U.S. Xpress provides certain  
5           kind of general and administrative services to  
6           Total. Just as if they were to go outside and  
7           hire an accounting firm, instead they pay U.S.  
8           Xpress to perform some services for them.  
9           They're just like an outside vendor. They pay  
10          for it, they're not providing it. They have a  
11          contract for it and Mr. Stomps and Total pay  
12          for the services they're provided. That  
13          doesn't show control at all. They're related,  
14          but not the same. John Stomps runs Total and  
15          John Stomps doesn't do anything to run the U.S.  
16          X entities.

17                 It is very unfortunate that we are here,  
18                 but we are not here because the defendants  
19                 think Megan Richards is faking. We are not  
20                 here because the defendants don't take Megan  
21                 Richards' injuries seriously.

22                 From the day this accident happened,  
23                 Total, led by Mr. Stomps, have done everything  
24                 they could to resolve all of these claims and  
25                 to try to see that these families and these

1 young ladies were fairly compensated. It's  
2 been unsuccessful here.

3 Plaintiffs say it's unsuccessful because  
4 we don't take Ms. Richards serious. That's not  
5 the reason why. Nobody has ever said that and  
6 nobody ever will. She deserves compensation  
7 and we expect that you will do it. We expect  
8 and are asking you to provide fair  
9 compensation. Base it on the evidence, base it  
10 on the law, base it on what you hear from the  
11 witness stand. Don't base it on wild  
12 speculation, base it on the facts.

13 Ms. Richards, I assume, will be here at  
14 some point. She will testify. You will  
15 probably see her testify via video, as well.  
16 I've already been able to ask her some  
17 questions. She's a wonderful young lady. She  
18 deserves to be treated fairly and we want her  
19 to be treated fairly, and I know that you will  
20 and you will do it in a fashion that the law  
21 requires that is fair to all.

22 Thank you.

23 MR. BARR: Judge, can I just take five or  
24 ten minutes?

25 THE COURT: Go ahead.

1 MR. BARR: Good afternoon, ladies and  
2 gentlemen. It's always hard going last and  
3 it's really hard to go last when it's 6:30, but  
4 I promise my part will only take five or ten  
5 minutes. It will be much, much shorter, and I  
6 do appreciate y'all paying attention even  
7 though it's later in the day.

8 My name is Matt Barr. I really haven't  
9 had a chance to talk to you yet. Before I tell  
10 you who I represent, let me tell you who I  
11 don't represent. I do not represent John Wayne  
12 Johnson, I do not represent Total  
13 Transportation, and I do not represent U.S.  
14 Xpress.

15 My clients, Greywolf Logistics, which is a  
16 company down the street in Pooler, and its  
17 driver, Robert Tayloe, who lives in Dublin with  
18 his wife and kids, have been named in this case  
19 because they caused the first wreck that caused  
20 the traffic to back up in the first place.

21 My client's vehicle did not come within a  
22 mile of Ms. Richard's vehicle, and so what I'd  
23 like to do is just sort of explain a little bit  
24 about the first wreck, because you really  
25 haven't heard about it.

1           Mr. Cheeley spoke about 30 to 45 minutes  
2           and he mentioned Greywolf one time and that's  
3           it. Mr. Dial spent some time on it.

4           But -- we are technically in the case, but  
5           it's our position that it is grossly unfair for  
6           my clients to be involved in this case. There  
7           were two wrecks. I'm going to tell you a  
8           little bit about the differences. We believe  
9           this case is about the second wreck, the one  
10          involving this driver and this young lady.

11          There is no relationship between Greywolf  
12          and Mr. Tayloe and these other defendants.  
13          Again, the accidents happened Mile Marker 143  
14          and 141, so it may have been a little bit more  
15          than a mile apart.

16          They also happened about six hours apart.  
17          The first accident happened at around midnight;  
18          the one involving Mr. Johnson happened just  
19          before 6:00 a.m., so six hours later.

20          So with regard to the first wreck, as  
21          Mr. Dial just pointed out, Greywolf has  
22          admitted that the driver, Mr. Tayloe, was  
23          responsible for that wreck. It involved a  
24          tractor-trailer and a Winnebago and it was his  
25          fault.

1           What's important that I wanted to point  
2           out to y'all is that the occupants of the  
3           Winnebago have been compensated. We have  
4           resolved -- taken responsibility and resolved  
5           that claim asserted by the occupants of the  
6           Winnebago, okay, and that's not an issue in  
7           this case.

8           And so because we've admitted that the  
9           first wreck was caused by my client,  
10          Mr. Tayloe, how it happened and why it  
11          happened, you're really not going to hear any  
12          evidence about that.

13          What's important, though, is can the first  
14          wreck be considered to be a cause of the second  
15          wreck? And that's what I want to spend my  
16          remaining minutes on here.

17          I mentioned the time difference, I  
18          mentioned the distance, the six miles, and I  
19          think you can tell by listening to Mr. Cheeley  
20          and the presentation of the evidence, the focus  
21          of this case is on Mr. Johnson. It's on the  
22          second wreck, where it should be, and that  
23          makes sense.

24          The claims against my clients are  
25          completely different than the ones that you've

1 heard about so far today. There is no claim  
2 against my clients for punitive damages.  
3 There's no claim that our driver, Mr. Tayloe,  
4 was sleepy or overworked or was texting.  
5 You're not going to hear any evidence about  
6 that. That's not a claim that's being asserted  
7 in this case.

8 Again, there's only one issue that you'll  
9 have to, at the end of the trial, address as to  
10 my clients, and that is did the first accident  
11 happen close enough to the second to be  
12 considered one in the same, to be considered a  
13 direct or what we call a proximate cause of it.

14 And what Mr. Dial said is true a minute  
15 ago, that if you cause one accident and cause a  
16 backup where there's a second accident, you  
17 could be responsible, but only in certain  
18 circumstances. Okay? And it's only where the  
19 second accident is reasonably foreseeable.

20 If you cause an accident and it's  
21 reasonably foreseeable -- again, this is not a  
22 situation where the first accident happened and  
23 then Mr. Johnson came up on it 15 seconds later  
24 and had an accident. This is six hours later.

25 This is not a situation where the first

1 accident happened and Mr. Tayloe was right  
2 there behind and couldn't avoid it. If that  
3 was the case, then it would be a different  
4 case. This is six hours and a full mile.  
5 Okay?

6 So as it relates to my clients, what  
7 you'll need to decide -- and think about the  
8 evidence as you hear it -- is were the actions  
9 of Mr. Johnson reasonably foreseeable?

10 Mr. Johnson himself admits that they  
11 weren't reasonable. Right? He's admitted  
12 responsibility. He's admitted -- he doesn't  
13 have an explanation for why he didn't stop.

14 In addition to the -- the difference in  
15 the time and the distance, think about the time  
16 of day this happened. You would have been  
17 confronted with a sea of red lights, and so the  
18 question is: Is it reasonably foreseeable that  
19 a professional driver would come upon a sea of  
20 red lights when it's still dark, with a mile  
21 full of sight, and not stop like the hundreds  
22 of people in front of him stopped. Okay?

23 We believe the evidence will show without  
24 question that that is not reasonably  
25 foreseeable, and if it wasn't a reasonably



1           foreseeable thing to happen, then the first  
2           accident automatically is too far removed from  
3           the second and there can't be any liability.

4           So that's basically what I wanted to  
5           outline. I can talk to you a little bit more  
6           at closing, but that's who we are. You heard  
7           the word "Greywolf," but clearly it's not a  
8           focus in the case. I don't know that I'll have  
9           much of a role to play in the case because it's  
10          a dispute between these parties, but we are in  
11          the case, and so I am here to stand up for  
12          Greywolf and Mr. Tayloe.

13          Again, they have taken responsibility for  
14          what they did, but we are here to defend  
15          ourselves on what we didn't do. We don't  
16          believe it's fair for Greywolf or Mr. Tayloe to  
17          be alleged liable for the things that happened  
18          to Ms. Richards.

19          Thank you for your time and, again, thanks  
20          for your attention.

21          THE COURT: All right. Thank you,  
22          counsel.

23          All right. Ladies and gentlemen, we're  
24          about finished here this evening. I do want to  
25          apologize for the late hour and hopefully

1 things will move along at a better pace as we  
2 get into the actual evidence in the trial.

3 The lawyers have correctly advised you and  
4 told you that what they have just said is not  
5 evidence and cannot be considered by you as  
6 evidence in the case. Those statements are  
7 what they expect the evidence will show in the  
8 case. The actual evidence will begin tomorrow  
9 with the sworn testimony offered by witnesses.  
10 There may be videos, exhibits. That will be  
11 the evidence that you must decide the case  
12 upon.

13 Now, ladies and gentlemen, I am required  
14 to give you certain instructions before I  
15 dismiss you.

16 You have taken an oath and you have -- to  
17 quote the oath, have told us that you would  
18 decide this case to the best of your skill and  
19 knowledge without favor or affection to either  
20 party; that is, you will render a verdict  
21 fairly and impartially to both parties.

22 Now, in order to do that, there are  
23 certain things you cannot consider. You see  
24 all of the cameras. You see all of the  
25 television media here. You cannot watch those

1 programs.

2 Ladies and gentlemen, to preserve the  
3 integrity of the jury, you, as the finders of  
4 fact, must decide this case based solely upon  
5 the evidence presented in the courtroom. That  
6 means that during the trial, you cannot conduct  
7 any independent research. You cannot confer  
8 with any Google searches, you know, phone  
9 searches. In fact, we've had some trials where  
10 we've actually had to take the cell phones away  
11 from the jurors, so please do not -- I won't do  
12 that, but do not try to conduct any inquiries  
13 to try to learn anything about the facts of the  
14 case, anything outside the confines of this  
15 courtroom.

16 One last thing. You cannot discuss this  
17 case with your fellow jurors until you actually  
18 begin your deliberations at the conclusion of  
19 the trial. You also cannot discuss the case  
20 with any family members or friends. You have  
21 to preserve the integrity of this case until  
22 you actually publish your verdict in open  
23 court.

24 So please abide by those instructions.  
25 Have a good evening and I'm going to ask that

1           you come back at 8:45 in the morning. Thank  
2           you very much.

3                   (Thereupon, the proceedings were suspended  
4           at 6:30 p.m.)

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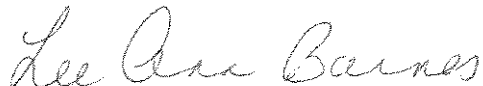
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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.



LEE ANN BARNES, CCR B-1852, RPR, CRR

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Georgia Code  
Title 9, Chapter 11  
Article 5, Section 9-11-30

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code

Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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