

CASE NO. 2006-CP-00856

IN THE SUPREME COURT OF MISSISSIPPI

GERALDINE CREWS,

Appellant

versus

LISA MAHAFFEY,

Appellee

On Appeal from the Circuit Court of Hinds County Mississippi,
First Judicial District

BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

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June 7, 2007

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GERALDINE CREWS

APPELLANT

VS.

CASE NO. 2006-CP-00856

LISA MAHAFFEY

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Geraldine A. Crews
Appellant, Pro-se
2. Honorable Winston L. Kidd
Hinds County Circuit Court Judge
3. Robert Waller, Esquire
Glenn S. Swartzfager, Esquire
Waller & Waller
Trial Attorneys
4. Patrick M. Tatum, Esquire
Upshaw, Williams, Biggers, Beckham & Riddick, LLP
Attorney for Appellee
5. Lisa Mahaffey
Appellee

RESPECTFULLY SUBMITTED, THIS the 8th day of June, 2007.



PATRICK M. TATUM (MSB #9852)

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STATEMENT OF THE ISSUES

- I. Whether the jury verdict awarding Plaintiff/Appellant \$5000.00 in damages was consistent with the credible evidence presented at trial, and therefore not against the overwhelming weight of evidence so as to warrant reversal.
- II. Whether the trial court abused its discretion in denying Plaintiff/Appellant's Motion for Additur or for New Trial on the issue of damages.
- III. Whether the trial court abused its discretion in denying Plaintiff/Appellant's Motion for New Trial, based on the issue of jury instructions which were submitted to the jury.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The case sub judice arises out of a minor traffic incident, wherein the Defendant/Appellee, Lisa Mahaffey's (hereinafter "Mahaffey"), motor vehicle rolled into the back of the Plaintiff/Appellant, Geraldine Crews' (hereinafter "Crews"), vehicle which was stopped in front of Mahaffey's vehicle. Crews brought suit against Mahaffey alleging that she sustained personal bodily injury as a result of the traffic incident, and sought damages for expenses allegedly related to the minor traffic incident. Mahaffey asserts that Crews was not injured as a result of said traffic incident, and that any alleged injury and/or damages are attributable to Crews' pre-existing medical condition and unrelated to the subject incident.

B. COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

On October 13, 2000, Geraldine Crews filed suit against Lisa Mahaffey in the Circuit Court of Hinds County, First Judicial District, alleging that Crews sustained personal bodily injury as a result of a motor vehicle accident on March 3, 2000 between she and Mahaffey, and seeking damages as a result of said accident. [R. 6.] On November 20, 2000, Lisa Mahaffey filed her Answer to Crews' Complaint, admitting that Mahaffey's vehicle came into contact with Crews' vehicle on March 3, 2000 but denying that Crews was entitled to recover any damages. [R. 9.]

From January 17 through January 20 of 2006, the case was tried in the Circuit Court of Hinds County, First Judicial District. [Tr. Transcr. vol.3, 2] On January 20, 2006, the jury returned a verdict holding Lisa Mahaffey liable to Geraldine Crews, and awarding Crews damages in the amount of \$5000.00. [Tr. Transcr. vol. 4, 265] On February 1, 2006, the Circuit Court of Hinds County, Mississippi, First Judicial District entered final judgment in favor of the Plaintiff/Appellant,

Geraldine Crews, and awarded her a sum of \$5000.00 in damages. [R. 188.] On February 9, 2006, Crews filed a Motion For Additur Or For New Trial claiming that the jury award of \$5000.00 was against the overwhelming weight of the evidence and that the trial court erred in the jury instructions which were submitted to the jury. [R. 190] On February 14, 2006, Lisa Mahaffey filed a Response to Motion for Additur or New Trial, asserting that the jury verdict was consistent with the evidence presented at trial and that the trial court finding should be upheld. [R.198.]

On April 18, 2006, the Circuit Court of Hinds County, First Judicial District entered an Order Denying Plaintiff Geraldine Crews' Motion for Additur or New Trial. [R. 204.] From the denial of her Motion for Additur or for New Trial, Crews filed a Notice of Appeal on May 18, 2006 [R. 205.], and appeal was granted by this Court. Geraldine Crews filed her Brief of Appellant with this Court on May 11, 2007.

C. STATEMENT OF THE FACTS

On March 3, 2006, Lisa Mahaffey's motor vehicle rolled into the back of Geraldine Crews' vehicle which was stopped in front of Mahaffey's vehicle at the intersection of Old Canton Road and Ridgewood Road, in Jackson, Mississippi. [R. 9.] The impact between the vehicles was so slight that Ms. Mahaffey's four year old daughter was not even thrown forward while she was sitting unrestrained on the center console of Mahaffey's vehicle. [Tr. Transcr. vol.4, 218:9 - 219:1] The ambulance report stated that there was no visible damage to the vehicles. [Deposition of Dr. Moses C. Jones 9:22-10:9 (January 18, 2005), attached as Exhibit "A"] An unbiased witness to the accident stated that Mahaffey's vehicle was moving at a speed of about a half a mile an hour when it came into contact with Crews' vehicle. [Tr. Transcr. vol. 4, 204: 5-23; 205:3-10; 207:10-15]

Ms. Crews was taken from the scene of the incident in an ambulance to St. Dominic Hospital

where she was diagnosed with a hematoma to her forehead, and no other remarkable injuries. [Tr. Transcr. vol. 3, 34:20-29; 35:17-20] On March 21, 2006, Ms. Crews underwent an MRI of the cervical spine which revealed small disc protrusion at C5,6 and C6,7. [Tr. Transcr. vol.3, 44:22 - 45:3] However, prior to the accident, on September 22, 1997, Ms. Crews had x-rays taken of her neck and cervical spine due to complaints of neck and left shoulder pain, which indicated minimal narrowing of the intervertebral disc spaces in the same areas of C5,6 and C6,7. [Depo. Dr. Jones 21:19-22:23]

On April 20, 2006, approximately six weeks after the incident with Mahaffey, Ms. Crews was involved in another motor vehicle accident which totaled her vehicle. [Tr. Transcr. vol.3, 52-15-25] Ms. Crews had yet another motor vehicle accident on September 28, 2001. [Tr. Transcr. vol.3, 72:20-29] On March 21, ²⁰⁰⁶ ~~2000~~ Ms. Crews brought suit against Lisa Mahaffey [R. 6.], and has claimed \$41,941.27 in damages as a result of the accident with Lisa Mahaffey. [Brief of Appellant 13]

SUMMARY OF THE ARGUMENT

Geraldine Crews has appealed the judgment of the Hinds County Circuit Court, First Judicial District in which the jury returned a verdict in favor of Ms. Crews and awarded her damages in the amount of \$5000.00. Crews claims that the verdict was against the overwhelming weight of evidence, and that the trial court judge erred in denying Crews' Motion for Additur or for New Trial. This Court should affirm the jury verdict and findings of the trial court as Crews' claim is without merit.

The evidence presented at trial showed that there was barely any impact in the motor vehicle incident and that Ms. Crews exaggerated the force of the impact and her alleged injuries. The evidence also showed that Ms. Crews was involved in two motor vehicle accidents subsequent to the incident with Ms. Mahaffey, one of which was just six weeks later. Further, Ms. Crews has a pre-existing, degenerative condition which is unrelated to the subject incident. The weight of the evidence presented at trial did not show that the alleged injuries or damages asserted by Ms. Crews were the result of the motor vehicle incident with Ms. Mahaffey.

The standard of review for denial of Motion for Additur or Motion for New Trial is a very high standard; the question is whether the trial judge abused his discretion in denying Additur or a new trial, and the review is very deferential to the trial judge's decision. The jury verdict awarding \$5000.00 in favor of Ms. Crews was consistent with the evidence presented at trial in this matter, and therefore the trial judge did not abuse his discretion in denying Additur or new trial. Therefore, the judgment of the trial court should be affirmed.

ARGUMENT

The jury verdict rendered in the trial court proceeding was consistent with the evidence presented at trial. The trial court did not err in denying the Motion For Additur Or For New Trial, and therefore, the trial court findings should be upheld.

STANDARD OF REVIEW

The standard of review on denial of a motion for Additur is “abuse of discretion.” *McClatchy Planting Company v. Harris*, 807 So.2d 1266, 1270 (Miss. 2001). The focus is on “whether the trial judge abused his discretion in denying or granting the motion for Additur, not upon the jury’s action in awarding damages.” *Id.* Further the evidence is to be reviewed in the “light most favorable to the party against whom Additur is sought and must give him or her the benefit of all favorable inferences reasonably drawn therefrom.” *Id.*

A motion for a new trial challenges the weight of evidence in support of the verdict and asserts that the judgment was against the overwhelming weight of the evidence. *Lee v. State*, 910 So.2d 1123 (Miss. 2005). The standard of review on denial of a motion for new trial is “abuse of discretion.” *Hampton v. State*, 760 So.2d 803, 806 (Miss. 2000). “New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice.” *Id.* “In determining whether a jury verdict is against the overwhelming weight of the evidence, [an appellate court] must accept as true the evidence which supports the verdict and . . . the scope of review on this issue is limited in that all evidence must be construed in the light most favorable to the verdict.” *Lee v. State*, 910 So.2d 1123, 1128-29 (Miss. 2005). An appellate court’s standard of review on motions for new trial are very differential to the trial court’s judgment, and a lower court’s denial of motion for a new trial will only be reversed where the verdict

is so contrary to the overwhelming weight of the evidence that to allow it to stand would be to sanction an unconscionable injustice. *Lee v. State*, 910 So.2d 1123, 1126 (Miss. 2005); *Whitten v. Cox*, 799 So.2d 1 (Miss. 2000).

I. Damages awarded to Geraldine Crews were consistent with the evidence presented at trial, and trial court did not err in denying Crews' Motion for Additur or for New Trial on issue of damages.

The jury award of \$5000.00 in damages was reasonable and adequate based on the evidence presented at trial. Plaintiff/Appellant, Geraldine Crews (hereinafter "Crews" or "Ms. Crews"), asserts that the award was "against the overwhelming weight of evidence" because "[l]iability in this accident is undisputed and Defendant produced no witnesses or evidence at trial to the contrary." [Brief of Appellant 12, May 11, 2007] However, the *amount* of damages awarded to Crews is not based on whether or not the Defendant was liable; the amount of damages awarded is based on whether Crews is able to show that she sustained any damage and whether that damage was caused by the traffic incident with the Defendant.

In *Patterson v. Liberty Associates, L.P.*, the Mississippi Supreme Court affirmed a jury verdict awarding no damages to the plaintiff, and the trial judge's refusal to grant Additur or a new trial regarding same. 910 So. 2d 1014 (Miss. 2004). In *Patterson*, the trial court instructed the jury that the defendants were negligent, and the "sole issue presented to the jury was what damages, if any, were sustained by the [plaintiffs] as a proximate cause of the defendants' negligence." *Id.* at 1017. The jury found that the plaintiffs sustained no damages as a proximate result of the defendants' negligence, and the Supreme Court of Mississippi affirmed the ruling. *Id.* **The court in *Patterson* stated "[t]he Pattersons claim that they have presented uncontroverted evidence of their damages. While it is true that they have presented evidence concerning the**

expenditures made in connection with the purchase of the new home, and while it is true that the defendants were unquestionably negligent, the jury acted within its province from the evidence before it, when the jury found that the Pattersons had suffered no damages as a proximate result of the defendants' negligence. *Id.* at 1019.

The jury verdict in the case at bar reflects that Ms. Mahaffey was found liable in that the jury returned a verdict in favor of Ms. Crews. The jury verdict awarding \$5000.00 in damages shows that the jury found that Crews' alleged injuries and/or damages *were not the result of the traffic incident in question.*

A. The evidence shows that Geraldine Crews exaggerated the impact of the traffic incident and her alleged injury and/or damages.

The evidence presented at trial consistently showed that Ms. Crews exaggerated the impact of the traffic incident and her alleged injuries. Ms. Crews claims the impact was so violent that she felt lucky to be alive. [Brief of Appellant 7] Crews stated at trial that the impact was a "huge jolt and my whole body fell forward" [Tr. Transcr. vol. 3, 29:23], and that "the noise was just like those noises you hear from a crash, a bad, bad crash . . ." [Tr. Transcr. vol. 3, 32:16-17] Ms. Crews later stated in her testimony that her car was such a safe car that it "saved her life." [Tr. Transcr. vol. 3, 109:15-16]

The credible evidence presented at trial shows that Ms. Crews' testimony is greatly exaggerated. Danny Petty, an unbiased witness to the incident who does not know Ms. Crews or Ms. Mahaffey, stated at trial:

A. After she walked to the car the lady in the car started waiving her arms and flailing her head. My thought was maybe she was having an epileptic fit. It was kind of strange

to me seeing what I just saw and **the lady sitting there and then all of a sudden she starts all these gyrations.** I thought that was kind of strange.

[Lines omitted]

A. [Lines omitted] So I drove on through the intersection and after I had driven probably two or three blocks down Old Canton Road, **I'm thinking somebody is thinking about money here, somebody is trying to rip somebody off.**

So I turned around and came back and parked . . . [a]nd I walked up to where the cars were sitting and walked up to the white car. The window was rolled up and the sunroof was open and **the lady was still just doing these gyrations.**

[Tr. Transcr. vol. 4, 205:24-29; 206:11-22] When asked about Ms. Crews' actions on cross-examination, Danny Petty stated:

Q. Was she shaking, was she hysterical?

A. **To me she was acting kind of crazy.** That's the best way I can explain it.

Q. **Was she acting?**

A. **It appeared to me she was trying for an Oscar.**

Q. **She was play-acting?**

A. **That's exactly what it appeared to me, sir.**

[Tr. Transcr. vol. 4, 213:5-11]

Lisa Mahaffey's testimony as to Ms. Crews' actions was as follows:

Q. And tell me what happened when you walked up to Mrs. Crews' car.

A. I walked up to her car and **she absolutely was hysterical, screaming and waiving her arms; why did you do this to me.**

[Tr. Transcr. vol. 4, 220:4-8]

Ms. Crews' own husband, David Crews, testified on direct examination by counsel for Ms. Crews:

Q. What did you observe when you got there?

A. My wife sitting in the car by herself. I think there was a policeman there, someone taking pictures. Just, you know - - nobody with her. Just - - I don't know.

[Lines omitted]

Q. Nobody was - -

A. **No one was around her. They were off to the side talking and laughing like it was a big put-on.**

[Tr. Transcr. vol. 4, 181:4-29] Similar testimony was given by Bryan Cotten who confirmed that the ambulance personnel were laughing at Crews and her alleged injury. [Tr. Transcr. vol. 4, 167:4-28]

The testimony of four people, including Ms. Crews' own husband, was consistent. All of this testimony showed that Ms. Mahaffey, Bryan Cotten, Danny Petty, the policemen, and the ambulance personnel all felt that there was no way that Ms. Crews could be injured due to the minimal nature of the traffic incident. The impression of each of these persons was that Crews had to be exaggerating and just acting as if she was injured. Crews' version of the incident, however, was that the impact was so violent that her car saved her life and she was lucky to be alive. The incident was a fender-bender. The evidence presented at trial showed that Crews' version of this incident was a dramatic exaggeration, and the jury award of \$5000.00 in damages indicates that the jury found accordingly.

B. The evidence showed that the impact of the traffic incident was very minor.

At trial, Ms. Mahaffey presented evidence which showed that there was barely any impact in the traffic incident. Ms. Mahaffey's testimony as to how the accident occurred states:

A. Okay. We were stopped. There was a siren and Rebecca was in the back seat. She unbuckled her seatbelt, came to the front seat, got on the console and leaned across me and was watching the fire truck go by.

From that point, the fire truck passed and she got back on the console. I looked back to see if there was any oncoming traffic. It was clear so **I released my brake and literally rolled into her.**

Q. You said Rebecca was actually sitting on the console?

A. **She was sitting on the console next to me. She did not hit her head on the dashboard, the windshield, or anything.**

Q. **Did she even fall forward after this impact?**

A. **No, I mean it was no impact.**

Q. Did you hear a loud boom or bang?

A. No. **Rebecca didn't even cry. A four-year-old, if I had hit someone hard, she would have cried.**

Q. Did your daughter receive any injury in this accident?

A. No. [Lines omitted]

[Tr. Transcr. vol. 4, 218:9 - 219:1] According to Ms. Mahaffey's testimony, the impact of the traffic incident was so slight that her four year old daughter, who was sitting unrestrained on the center console of the vehicle, was not injured, startled or crying, or even thrown forward.

Danny Petty was an unbiased eyewitness to the traffic incident. Mr. Petty testified that he does not know Ms. Mahaffey or Ms. Crews personally, and that he did witness the incident as it occurred. [Tr. Transcr. vol. 4, 202:7-21] Mr. Petty's account of the incident states:

Q. Tell the jury what you saw as the fire truck came through the intersection.

A. Well, I saw the fire truck pass through the intersection and after the fire truck had cleared the intersection I glanced back at the light and it was still red and I glanced over to my left and **I noticed a white SUV start to slowly roll forward and rolled into a white car that was stopped in front of it.**

Q. **And you said rolled. How fast do you think this white SUV was going when it made contact?**

A. Well, when I looked up there was probably two or three feet difference between the cars and **maybe a half a mile an hour, if that's possible. It was just barely rolling.**

Q. Did you actually see the impact?

A. Well, I saw the car bump because **the car in front moved just a little bit. It was just barely perceptible** but you could see it move a little bit so I did see it roll into the other car.

[Lines omitted]

Q. And you had your window down, correct?

A. Yes.

Q. Did you hear this impact?

A. **Did I hear the impact?**

Q. **Yes, sir.**

A. **It wasn't an impact.** Like I said, the car just bumped the car in front **so there was**

nothing to hear.

[Lines omitted]

Q. I want you to again **describe to the jury what you would consider the severity of this bump as you would characterize it.**

A. **Well, I've probably been bumped into harder in the line at the grocery store or at the movie []** as hard as those two vehicles bumped.

[Tr. Transcr. vol. 4, 204: 5-23; 205:3-10; 207:10-15]

Further evidence that supports how slight the impact was, is the fact that no one came to check on Ms. Crews to see if she was injured. The impact was so minimal that no one believed a person could have been injured in such an incident. Ms. Crews herself testified that no one came to check on her to see if she was injured. On direct examination, Ms. Crews stated:

A. [Lines omitted] So I just remained in the car and I just figured that someone would come to help me and - -

Q. **Nobody thought you were hurt, did they?**

A. **Unh - uh (negative).**

Q. They couldn't see any damage to the car.

A. (Witness nodded negatively).

Q. Nobody came to help you.

A. No.

Q. Did Ms. Mahaffey check on you?

A. No.

[Lines omitted]

A. [Lines omitted] **And even when the policeman got there, he wouldn't even help. After he got there it took so long** and he came to the side of the car and said something like, oh, are you hurt, or what happened here. And I said, "I was hit from the rear and I need some help." **And he said, "Oh, you're hurt now?"** And I said, "Yes, sir." But **that was such a strange response** that that kind of made me not want to sign his paper when I got in the ambulance because I didn't feel like I was getting help. [Lines omitted]

[Tr. Transcr. vol. 3, 30:14-23; 36:17-25]

Danny Petty testified that Crews' husband did not seem concerned either. In his testimony Mr. Petty stated:

A. [Lines omitted] **I saw her husband when I came back standing over on the grassy part between the cars.** This was after I had spoken to her and spoken to the lady in the SUV. So I walked between the vehicles over to where he was standing and I didn't know who he was and I asked him if he witnessed the accident and he said, "No, that's my wife." And I said, "What's going on here?" **And he said something to the effect that she wants an ambulance and I said, "Man I saw this happen and there's no way your wife is hurt."**

And I thought that was kind of strange, too, because if it was my wife and I thought she was hurt, rather than letting her sit in a car by herself, I'd have been over there trying to comfort her and see what she needed but he was just standing up there and he just kind of shrugged when I said that.

[Tr. Transcr. vol. 4, 208:5-20]

The fact that there was no damage to the vehicles is also evidence indicating how slight the

impact was. Dr. Moses Jones testified in his deposition regarding the ambulance report taken at the scene of the incident:

Q. [Lines omitted] **Does this record indicate the severity of the impact with my client Lisa Mahaffey?**

A. Well, there's a description, yes.

Q. What description is given, doctor?

A. [Lines omitted] The main thing was **it says no visible damage noted to the car.** It says that the patient states her head hit the windshield but **no star burst noted on the windshield.** So basically, to summarize this, **from what I read here is there's no evidence of any vehicular damage.**

[Deposition of Dr. Moses C. Jones 9:22-10:9 (January 18, 2005), attached as Exhibit "A"]

Danny Petty also testified to the fact that there was no damage to either vehicle as a result of the traffic incident. Counsel for Ms. Crews elicited the following testimony from Danny Petty on cross:

Q. What kind of work were you doing at the time of the wreck?

A. I was buying and wholesaling cars.

Q. **Did you notice any damage to either car when you were there.**

A. **No fresh damage to either car. I looked at them both.**

Q. **Do you have some experience in that?**

A. **About 18 years buying and selling cars. At the time my livelihood depended on me being able to look at a vehicle and determine if there was damage to it and whether I could sell it and make money on it.**

Q. Did you do an inspection of both cars?

A. I looked at where the two cars bumped, a visual inspection, yeah.

Q. And there was no fresh damage? Is that your testimony?

A. **No fresh damage. No skinned places where the paint was scratched or no broken glass. There would have had to have been some broken glass if there was any impact.**

A tail light would have had to have been broken I would have thought.

[Tr. Transcr. vol. 4, 209:10 - 210:210:2]

All of the evidence presented above shows that there was very minimal impact and little to no damage sustained in this minor traffic incident. An unbiased witness, Danny Petty, testified that he saw Mahaffey's vehicle "roll" into Crews' vehicle at a rate of about half a mile an hour. Lisa Mahaffey's testimony states that her four year old daughter was not thrown forward or even startled by the impact. No one, *not even the emergency personnel*, checked on Ms. Crews to see if she was hurt because the impact was so slight that no one believed that a person could be injured in such an incident. Ms. Crews' own testimony confirms this. Ms. Crews' own husband was not even attending to her, but was standing away on a grassy area just waiting for an ambulance to arrive. Further, both the ambulance report and the witness, Danny Petty, reported that there was no visible damage to either of the vehicles. All of this unbiased evidence contradicts Ms. Crews' contention that the impact was so violent that she is "lucky to be alive".

C. The evidence showed that Geraldine Crews had a pre-existing medical condition and that her alleged injuries were not a result of the subject traffic incident.

The deposition testimony of Dr. Moses Jones offered at trial showed that Ms. Crews had a pre-existing medical condition, and that it is unlikely that Crews' alleged injuries were a result of

the traffic incident with Ms. Mahaffey. Dr. Moses Jones was established as an expert in the field of neurosurgery. [Depo. Dr. Jones 8:3-6] In his deposition, Dr. Jones stated that **“Ms. Crews primarily has degenerative disc disease . . . and it seems like most of her problems are related to her degenerative disc disease.”** [Depo. Dr. Jones 9:9-15] Specifically referring to the tests and x-rays taken *just after the traffic incident*, Dr. Jones states:

Q. Dr. Jones, in laymen’s terms, do any of these tests or x-rays that you’ve looked at show anything that’s objectively wrong from an acute standpoint with the plaintiff?

A. At this point, no. **All of these tests only show chronic processes that are obviously not an occurrence that just happened.**

[Lines omitted]

Q. And doctor what were the **findings of that MRI in March of 2000?**

A. It was described as **small disc protrusion at C-5,6 on the left of the small right paracentral disc protrusion at C6,7.**

[Lines omitted]

Q. **So in your opinion, doctor, these disc protrusions would have been present prior to the motor vehicle accident with my client?**

A. **Yes, because it all relates to the degenerative changes we’ve already described at C-5,6 and 6,7.**

Q. And doctor, is that opinion based on a reasonable degree of medical certainty?

A. Yes.

[Depo. Dr. Jones 15:12-18; 16:17-21; 18:2-10]

Dr. Jones was then asked to offer an opinion regarding a radiology report based on x-rays

taken of Ms. Crews' cervical spine and left shoulder *in the year 1997*. [Depo. Dr. Jones 21:1-15]

In his deposition, Dr. Jones states:

Q. And **what were her complaints again at that time**, doctor?

A. Well, I don't know, but according to **this report it says neck and left shoulder pain**.

Q. And what did they find from that x-ray, doctor?

A. Well, **they found minimal narrowing of the intervertebral disc spaces at C5-6 and C6,7**, and basically an unremarkable cervical spine.

Q. Doctor, if you compare this study to the x-rays taken in 2000, what does it tell you as far as how her neck was degenerating?

A. [Lines omitted]

But clearly both - - in all cases, **even all the way back to '97 someone is commenting about something happening at C5,6 and C6,7, and that's not new**.

I would suspect just - - and again, looking at the report, if this date and time is correct, if this is September 22, 1997 and this is 2314, this is almost 11:30 at night. I assume that she must have had some - - we don't routinely do x-rays at that hour of the night.

So if that's when it was done **I would suspect that she was having some kind of problem in an emergency department or something that was done with neck and shoulder pain**.

[Depo. Dr. Jones 21:19-22:23]

Dr. Jones' objective opinion was offered to a reasonable degree of medical certainty based on his evaluation of Ms. Crews' medical records provided to him. Dr. Jones stated that *the tests and x-rays performed immediately following the traffic incident showed nothing remarkable with Ms. Crews' condition, other than pre-existing degenerative disc disease* which is unrelated to the

incident in question. [Depo. Dr. Jones 9:9-15; 15:12-18] Dr. Jones then evaluated medical records which showed that Crews was treated for neck and left shoulder pain three years prior to the traffic incident with Ms. Mahaffey, and stated that the records indicate that Crews was having neck and shoulder problems before the accident; that clearly this was not a “new” condition. *The radiology report regarding the 1997 x-rays showed problems at C5,6 and C6,7; the exact same area that was noted in the MRI report in 2000 which was taken just after the subject traffic incident.*

Ms. Crews testified that she had never had pain or problems with her neck or back prior to the traffic incident with Ms. Mahaffey [Tr. Transcr. vol. 3, 45:23-29], and that her alleged injuries are all the result of the subject traffic incident. On cross examination, counsel for Ms. Mahaffey presented Ms. Crews with the x-ray report from the year 1997 which showed x-rays taken of the cervical spine due to complaints of neck and left shoulder pain. Ms. Crews’ testimony regarding this x-ray and prior neck pain stated:

Q. And you’re telling this jury you never had any prior problems with your neck or your back before this accident?

A. Right. Severity like this, right.

Q. In 1997 you said that you were having chest problems and you thought it was your heart, correct?

A. Right. It wasn’t chest. It was right there (indicating), right on the left side of my breastbone, right there where your heart is. You know, where your heart is; right there.

[Lines omitted]

Q. Mrs. Crews, if you went to the doctor and told them that you thought your heart was hurting, why would they take x-rays of your neck?

[Lines omitted]

A. **I don't know that they x-rayed my neck.** [Lines omitted]

Q. Well, earlier you said you did know cervical was neck, correct?

A. Well, now I do, yes.

Q. **On this x-ray it says multiple views of cervical spine. Do you see that there?**

A. **Okay.**

Q. **And I want you to read indication for study. What does that say up at the top?**

A. **Neck and left shoulder pain.**

Q. **Why would they put neck and left shoulder pain if you did not have neck and shoulder pain back in 1997?**

A. **Well, I'm only telling you what I told her.** [Lines omitted]

[Lines omitted]

Q. **And you deny that you told them neck and shoulder pain?**

A. **Yes.**

[Tr. Transcr. vol. 3, 87:10-25; 88:10-26; 89:23-25] Counsel for Ms. Mahaffey then presented Ms. Crews with a doctor report from the year 2000 which revealed complaints of low back pain in Crews' history. Ms. Crews' testimony regarding this report of prior low back pain stated:

Q. **You also testified that prior to the accident you had never had any problems with your back.**

A. **Right.**

Q. You did go see Dr. Lay, correct?

A. **Yes.**

Q. Do you see where it says her past medical history is unremarkable? Do you see that part?

A. Right.

Q. Except for rare menstrual migraine, which is what you testified to. **And it says, “and possible low back pain for which she vaguely recalls having had an EMG study.” Did you tell Dr. Lay that you had low back pain as your history?**

A. When I was probably about 25 at some point - - and I’m really digging back into this - - **there was maybe somebody that wanted to do some type of study with just a little lower back pain or something but no history of it, no chronic pain, no injury or anything** that I can remember ever doing.

[Lines omitted]

Q. In your deposition I asked if you had prior problems with your back or neck and you told me no. I didn’t ask the severity of them.

A. **I can’t be positive that I never had any lower back pain in my whole lifetime ever** but not a history of anything in my life have I ever had a chronic situation and a severe injury to anything.

Q. **But in 2000 when you saw Dr. Lay you remembered having low back pain before.**

A. **Right.**

[Tr. Transcr. vol. 3, 89:27-90:15; 90:27-91:7]

Ms. Crews also testified that she hit her head on the windshield of her vehicle as a result of being hit from behind. Although the emergency room records indicate a contusion on Crews’ forehead, there is no evidence which supports Ms. Crews’ assertion that that contusion was sustained

as a result of the minor traffic incident. The ambulance report said that there was no star burst noted on the windshield of her car. [Depo. Dr. Jones 10:8-11] Further, Dr. Jones', without any objection from Crews, gave this opinion regarding Ms. Crews' assertion that she hit her head on the windshield was as follows:

Q. All Right. Do you place any significance on her stating that she hit her head on the windshield, doctor?

A. Well, yes, in the sense that that would be an unusual mechanism of injury for someone struck from behind. What we call the kinematics of that just don't quite work.

If you're seated in a car all the models and studies of that kind of rear-end collision show that the forces drive you posteriorly and not anteriorly into the windshield; especially if you're restrained it would be very, very difficult in this degree impact where there's no visible damage to the car . . . in a vehicle impact that creates no damage, and that's based on the assumption that most vehicles have bumpers that will sustain crashes of 5 miles per hour or less, it would be hard for her to have much of an impact that would create no damage that would end up with her hitting the windshield from the rear.

[Depo. Dr. Jones 10:14-11:11]

The evidence presented at trial shows that Ms. Crews suffers from degenerative disc disease. The medical reports are consistent with findings of this chronic condition which occurs over time and is not the result of one specific incident. The tests and reports performed on Ms. Crews immediately following the motor vehicle incident showed nothing wrong with Ms. Crews, other than

this degenerative disc disease and the contusion to her forehead. The evidence offered by Mahaffey indicated that even the contusion was not likely caused by the traffic incident. Further, when confronted with actual medical records indicating that Crews had had previous pain and medical problems with her neck and back, Crews continued to deny any prior issues and maintained that all of her medical treatment was solely the result of this traffic incident with Ms. Mahaffey.

Ms. Crews' appeal brief states that "Plaintiff provided the Court with composite exhibits including voluminous medical bills and records incurred by the Plaintiff which totaled \$41,941.27." [Brief of Appellant 13] However, *Ms. Crew has not presented evidence which shows that any of these medical records or bills are the result of the motor vehicle incident between Ms. Mahaffey and Ms. Crews*. In fact, Ms. Crews was involved in two other motor vehicle accidents after the March 3, 2000 accident involving Ms. Mahaffey. About five or six weeks after the March 3rd accident involving Ms. Mahaffey, Crews was involved in a motor vehicle accident on April 20, 2000, which totaled her vehicle. [Tr. Transcr. vol. 3, 52-15-25] Ms. Crews had another accident on September 28, 2001. [Tr. Transcr. vol. 3, 72:20-29] Three separate motor vehicle accidents within a time period of 17 months, however, Ms. Crews asserts that all of her damages are the result of the traffic incident with Ms. Mahaffey. As the Mississippi Supreme Court noted in *Patterson, supra*, although the plaintiffs had presented evidence of damages and although it was established that the defendants were negligent, the jury found that the evidence did not show that plaintiffs' damages were the proximate result of the defendants' negligence. *Patterson v. Liberty Associates, L.P.*, 910 So. 2d 1014, 1019 (Miss. 2004).

II. Trial court did not err in denying Geraldine Crews' Motion for New Trial based on allegations of erroneous jury instructions.

Ms. Crews asserts that the trial judge should have granted her Motion for New Trial because the trial court erred in refusing to give Plaintiff's peremptory instruction, P-1, to the jury. Plaintiff's jury instruction P-1, states that "[t]he Court instructs you to find for the Plaintiff, Geraldine Crews, and to assess her damages, if any, in accordance with the other instructions of the Court." [Jury Instruction No.1, attached as Exhibit "B"] Ms. Crews contends that "[h]ad said instruction been given to the jury, a more favorable decision for the Plaintiff may have been awarded." [Brief of Appellant 16] Jury instruction P-1 simply instructs the jury to find for the Plaintiff on the issue of liability. It is an instruction which takes the issue of whether Ms. Mahaffey is to be found liable out of the hands of the jury, and instructs that Ms. Mahaffey is to be found liable. The jury did not get Plaintiff's instruction P-1, however the jury returned a verdict finding that Ms. Mahaffey was liable. As the jury found in favor of Ms. Crews on the issue of liability, there is no way that the jury could have returned a more favorable decision in this regard. Any error on the part of the trial court in failing to give Plaintiff's instruction P-1 to the jury, was harmless error. Accordingly, this is not grounds for error entitling Ms. Crews to a new trial.

Further, the trial judge's decision not to grant Plaintiff's peremptory instruction and to allow the jury to decide the issue of liability in this case was within his discretion and sufficiently based on evidence presented at trial. Danny Petty, an unbiased eyewitness to the incident testified that he believed that the accident was staged based on the very slight impact between the two vehicles which he witnessed and Crews' dramatic and exaggerated response to such minor contact between the vehicles. A trial judge's determination as to whether a jury issue has been presented must be given

great respect (*Patterson v. Liberty Associates, L.P.*, 910 So. 2d 1014, 1020 (Miss. 2004)), and taking the evidence in the light most favorable to the Defendant, the trial judge acted within his discretion in allowing the issue to go to the jury (*See Jones v. State*, 912 So.2d 501, 505 (Miss. App. 2005); trial judges enjoy considerable discretion regarding jury instructions).

Ms. Crews also claims that Defendant's jury instruction D-5 given to the jury was confusing to the jury, and that it was error on the part of the trial court to allow this instruction to be considered by the jury. [Brief of Appellant 16] Defendant's jury instruction D-5 gives the jury the definition of the word negligence. [Jury Instruction No.5, attached as Exhibit "C"] Plaintiff's counsel did not object to jury instruction D-5 when counsel was conferring with the court on which instructions to give to the jury [Tr. Transcr. vol. 4, 240:23-29], therefore, Ms. Crews is not allowed to now assert that instruction D-5 was confusing to the jury. The right to challenge said jury instruction was waived when the issue was not raised at trial. *See Sumrall v. State*, 2006 WL 1390452 (Miss. App.) (waived for appellate review where jury instruction was accepted without objection).

In *Hillier v. Minas*, the court stated "[i]t is well established under Mississippi law that we do not review jury instructions in isolation; rather, the instructions are read as a whole to determine if the jury was properly instructed. Where it may be fairly charged that one or more instructions may have been confusingly worded, we should not reverse if other instructions clear up the confusing points. *Hillier v. Minas*, 757 So.2d 1034, 1039 (Miss. App. 2000). Although as stated above, the issue was waived as instruction D-5 was not objected to during the trial proceedings, even if the instruction had been confusing to the jury, when read in context with all other instructions given the jury was properly instructed. Ms. Crews has no basis for requesting a new trial on the issue of erroneous jury instructions, and the trial court did not abuse its discretion in denying her motion regarding same.

CONCLUSION

The standard of review for denial of a Motion for Additur or a Motion for New Trial is a very high standard to overcome. As stated *supra*, the question is whether the trial judge abused his discretion in denying the additur or new trial, and the review is very deferential to the trial judge's decision. *Lee v. State*, 910 So.2d 1123, 1128-29 (Miss. 2005). All of the evidence supporting the verdict must be taken as true, and construed in a light most favorable to the party against whom the additur or new trial is being sought. *Lee v. State*, 910 So.2d 1123, 1128-29 (Miss. 2005); *McClatchy Planting Company v. Harris*, 807 So.2d 1266, 1270 (Miss. 2001).

The evidence presented at trial in the case at bar showed that Ms. Crews exaggerated the impact of the traffic incident and her injuries; that there was barely any impact; and, that Geraldine Crews had a pre-existing medical condition which was unrelated to the subject incident. The evidence further showed that Ms. Crews had been involved in multiple motor vehicle accidents, one of which was about five or six weeks subsequent to the incident involving Ms. Crews. The weight of the evidence presented at trial showed that any alleged injury and/or damage which Ms. Crews may have is not the result of the motor vehicle incident between Ms. Crews and Ms. Mahaffey.

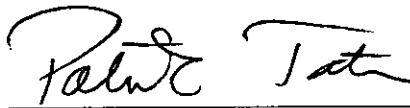
Viewing this evidence in a light with all reasonable inferences most favorable to Ms. Mahaffey, and accepting this evidence in support of the verdict as true, the jury verdict was not against the overwhelming weight of the evidence. The jury award of \$5000.00 in favor of Ms. Crews was both adequate and reasonable, in that it was consistent with the evidence presented at trial. Accordingly, the trial judge did not abuse his discretion in denying Ms. Crews' Motion for Additur or New Trial. Lisa Mahaffey respectfully requests that this Court affirm the judgment of the Circuit Court of Hinds County, First Judicial District, upholding the jury verdict awarding Ms. Crews \$5000.00 in damages.

CERTIFICATE OF SERVICE

I, Patrick M. Tatum, counsel of record for Appellee, Lisa Mahaffey, do hereby certify that I have this day caused to be served, via United States mail, postage pre-paid, a true and correct copy of the foregoing document to the following:

Geraldine Crews
107 South Park Drive
Jackson, Mississippi 39211

THIS, the 8th day of June, 2007.

A handwritten signature in black ink, appearing to read "Patrick Tatum", written over a horizontal line.

PATRICK M. TATUM

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1 Q. And what is your occupation?

2 A. I'm a physician in the practice of
3 neurosurgery.

4 Q. All right. And where is your practice
5 located, Dr. Jones?

6 A. My address is 501 Marshall Street, Suite
7 204, which is the building next to Baptist Hospital in
8 Jackson, Mississippi.

9 Q. And how long have you been in the field of
10 neurosurgery?

11 A. I've been post-training practice in
12 neurosurgery since 1979.

13 Q. Can you explain to the jury what the field
14 of neurosurgery is and what it treats?

15 A. Yes. Neurosurgery is the specialty in
16 medicine that primarily deals with the surgical
17 treatment of diseases of the brain, spinal cord and the
18 associated structures. It's comparable to cardiology
19 and cardiovascular surgery.

20 Neurology does the nonsurgical treatment of the
21 same disease categories, and neurosurgery tends to
22 specialize more in the surgical treatment of those
23 problems, especially things like trauma and spine
24 diseases which would be an overlap area.

25 Q. All right. Can you explain to the jury your

1 call it a subsidiary of Baptist Health Services as well
2 affiliated with Baptist Health Services.

3 Q. All right. And through your job at Jackson
4 Neurosurgery and Spine Associates, do you treat
5 patients who have suffered from automobile accidents?

6 A. Yes.

7 Q. All right. And you treat patients who
8 suffer from spine injuries?

9 A. Yes.

10 Q. Have you ever testified as an expert before
11 in the field of neurosurgery?

12 A. Yes.

13 Q. All right. Doctor, I'm going to show you
14 what we've been given as a copy of your CV or what we
15 like to call a resume. Is that your full resume,
16 Dr. Jones?

17 A. That's correct. This is a resume and not a
18 CV. Technically speaking, a CV would contain all of
19 the continuing education, every presentation and
20 everything you've done.

21 Quite honestly, that to me is something that's
22 done primarily by academic neurosurgeons as opposed to
23 a resume which basically lists sort of an overview of
24 your training qualifications and positions you've held.

25 Q. Okay. Does this explain your educational

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1 educational background, I guess starting with college
2 through medical school?

3 A. Yes. I graduated from the University of
4 Alabama in 1970; entered the University of Alabama
5 School of Medicine from September of 1970 through the
6 end of September of 1973, and from about October 1st of
7 1973 through the end of September of 1974 I was a
8 general surgery intern at Mayo Clinic in Rochester,
9 Minnesota.

10 And from October of 1974 through the end of
11 1976 I was a neurosurgery resident at New York
12 University Bellevue Hospital Medical Center, and from
13 January of '77 through June of 1979 I was a
14 neurosurgery resident at the Kansas University Medical
15 Center.

16 I've been in independence -- well, in the
17 private practice of neurosurgery since about July of
18 1979. I'm board certified by the American Board of
19 Neurological Surgeons and got licensure in several
20 states if you need me to go into all that.

21 Q. That's okay, doctor. Where are you
22 now, what's the name of your company or

1 background and your experience?

2 A. Yes.

3 MR. TATUM: I would like to have this
4 marked as Exhibit 1 and tender Dr. Jones as an expert
5 in the field of neurosurgery.

6 MR. WALLER: No objection.

7 (Exhibit 1, resume, was marked for
8 identification.)

9 Q. Dr. Jones, have you had an opportunity to
10 review some medical records of a Ms. Jeri Crews?

11 A. Yes.

12 Q. In particular, doctor, what I'm going to ask
13 you --

14 A. I assume the name Geraldine and Jeri are
15 going to be used synonymously in this case?

16 MR. WALLER: That's correct.

17 THE WITNESS: I just didn't want to
18 confuse and we're talking about two different people or
19 something.

20 Q. Correct, doctor. In particular I want to
21 ask you some questions about some medical records
22 following a March 3rd, 2000 accident and some records
23 after an April 20th, 2000 accident. Have you reviewed
24 those records, doctor?

25 A. Yes, I have reviewed records based on those

EXHIBIT

A

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1 two events, yes.

2 Q. And have you formed any opinions after
3 reviewing those records?

4 A. Yes.

5 Q. Can you just give us a brief overview of
6 what your opinions are, doctor, and I'll specifically
7 ask you questions about these documents?

8 A. Well, my brief overview of the records that
9 I've seen lead me to the conclusion that Ms. Crews
10 primarily has degenerative disc disease. That's
11 primarily, again, degenerative in nature.

12 I do not see any objective evidence in the
13 records to suggest an acute abnormality, and it seems
14 like most of her problems are related to her
15 degenerative disc disease.

16 Q. All right. Have you based any opinion as to
17 whether or not the treatment incurred after the second
18 motor vehicle accident of April 20th is related to the
19 accident with my client on March 3rd of 2000?

20 A. No, it's not directly related in any
21 fashion.

22 Q. All right. Doctor, I want to hand you some
23 records that you've reviewed. The first record I want
24 to hand you is an ambulance report.

25 Does this record indicate -- and this is dated

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1 March 3rd of 2000. Does this record indicate the
2 severity of the impact with my client Lisa Mahaffey?

3 A. Well, there's a description, yes.

4 Q. What description is given, doctor?

5 A. Number 1, it says that driver of car that
6 was hit in rear, 42 year-old-female restrained driver
7 of car that was hit in the rear.

8 The main thing was it says no visible damage
9 noted to the car. It says that the patient states her
10 head hit the windshield but no star burst noted on the
11 windshield. So basically to summarize this, from what
12 I read here is there's no evidence of any vehicular
13 damage.

14 Q. All right. Do you place any significance on
15 her stating that she hit her head on the windshield,
16 doctor?

17 A. Well, yes, in the sense that that would be
18 an unusual mechanism of injury for someone struck from
19 behind. What we call the kinematics of that just don't
20 quite work.

21 If you're seated in a car all the models and
22 studies of that kind of rear-end collision show that
23 the forces drive you posteriorly and not anteriorly
24 into the windshield; especially if you're restrained it
25 would be very, very difficult in this degree impact

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1 where there's no visible damage to the car.

2 Certainly if you have a high speed collision in
3 a vehicle then the person is basically tumbled in all
4 kinds of directions and it may be very -- you could
5 strike the windshield in that level of impact, but in a
6 vehicle impact that creates no damage, and that's based
7 on the assumption that most vehicles have bumpers that
8 will sustain crashes of 5 miles per hour or less, it
9 would be hard for her to have much of an impact that
10 would create no damage that would end up with her
11 hitting the windshield from the rear.

12 (Exhibit 2, ambulance report, was marked for
13 identification.)

14 Q. All right. Doctor, Ms. Crews, or the
15 plaintiff, was taken by ambulance to the St. Dominic
16 Hospital where some tests were run. Do you have the
17 tests that were run on Ms. Crews, in particular some CT
18 scans?

19 A. I'll look at what you're handing me. I
20 haven't reviewed this yet, but.

21 Q. What is that document I just handed you,
22 doctor?

23 A. Well, this is a radiology report, and it
24 contains a report of a CT brain scan and a cervical
25 spine.

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1 Q. What were the results of those two scans,
2 doctor?

3 A. The conclusion of the radiologist was
4 unremarkable CT brain, unremarkable CT cervical spine.

5 Q. All right. Doctor, on the second page of
6 that scan it mentions that there was some spondylosis?

7 A. Right.

8 Q. Did I pronounce that correctly?

9 A. Right, spondylosis.

10 Q. Spondylosis. Explain to the jury what
11 spondylosis is, doctor?

12 A. Spondylosis is basically what laymen call
13 spurring, and that's a wear and tear on the bone.
14 Bones are pretty much so -- I'll explain this to laymen
15 in this fashion:

16 If you have a shoe on your foot and it rubs on
17 your big toe you get a corn. Corns come about because
18 tissue under pressure thickens.

19 Soft tissue under pressure and constant wear
20 thickens, as you will see with a corn, or as with
21 people who work with their hands a lot notice the skin
22 thickens and your surface becomes harder.

23 The same thing happens with bone. Where bone
24 rubs against bone or any wear and tear of bone and
25 joint tends to cause the joints to thicken.

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1 Same thing that people notice over time if they
2 can't get a ring off their finger because their joints
3 get thicker. It's part of the wear and tear we all
4 experience over time, and it's just wear and tear to a
5 certain extent.

6 Obviously, it can get to the point that it is
7 of major significance and some people end up with cord
8 compression and nerve compression and all of that from
9 it, but that's an accumulation over time. That's not
10 an acute finding.

11 Q. All right. So is that spondylosis caused by
12 the accident with my client?

13 A. No.

14 Q. All right. It also mentions bony spurring,
15 and is that basically the same thing as spondylosis?

16 A. Yes. That's what I was explaining that the
17 spurring occurs because of the wear and tear.

18 Q. And again, the bone spurring was not caused
19 by the accident with my client?

20 A. No.

21 (Exhibit 3, radiology report, was marked for
22 identification.

23 Q. Okay. Doctor, I want to show you another
24 document. It looks like it's some more x-rays. Can
25 you identify that document, please?

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1 A. This is another radiology report, and this
2 one particularly is of the pelvis and there's a lumbar
3 spine on here. And yeah, I think it's just the pelvis
4 and lumbar spine.

5 Q. Is there also a cervical spine series at the
6 bottom?

7 A. It must be although -- yeah, there it is,
8 yeah, cervical spine series, yeah.

9 Q. Doctor, what was the impression from the
10 lumbar testing done?

11 A. AP lateral lumbar spine x-ray reveal mild
12 lumbar scoliosis which is a curvature in the spine.

13 Q. Does that have anything to do with the
14 accident with my client?

15 A. Well, no, it doesn't have anything to do
16 with the accident with your client, however, people can
17 have a scoliosis from trauma but certainly, again, this
18 is a coincidental finding.

19 Q. And just so the jury is clear, what is the
20 lumbar -- or where is the lumbar region, doctor?

21 A. The lumbar region is the low back what
22 people call it, the low back.

23 Q. And when we're talking about cervical, what
24 region is that, doctor?

25 A. We're talking about the neck.

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1 Q. All right. What is the impression for the
2 cervical? Is it the same impression from the x-rays
3 that you talked about previously?

4 A. Yeah. She had some spondylosis at C-5,6 and
5 6,7 which is just -- if you want to call it spurring or
6 wear and tear, and that's it.

7 Q. All right. And again, that's degenerative
8 in nature, correct?

9 A. Yes, over time.

10 (Exhibit 4, radiology report, was marked for
11 identification.)

12 Q. Dr. Jones, in laymen's terms, do any of
13 these tests or x-rays that you've looked at show
14 anything that's objectively wrong from an acute
15 standpoint with the plaintiff?

16 A. At this point, no. All of these tests only
17 show chronic processes that are obviously not an
18 occurrence that just happened.

19 Q. In somebody with these types of degenerative
20 problems and they experience a mild impact, how long
21 does it normally take a person to recover from any
22 discomfort they experience from a mild impact?

23 A. Well, it can be -- obviously it varies from
24 individual to individual. It can be all the way from
25 nonexistent in a sense that people have these kind of

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1 impacts all the time and have no symptoms whatsoever;
2 two, generally no more than a few days or a couple of
3 weeks or so.

4 Q. And doctor, at some point an MRI was taken
5 of Ms. Crews, and I'll go ahead and hand that to you,
6 doctor. It was taken on March 21st of 2000.

7 A. Okay.

8 Q. What is the difference between an MRI and an
9 x-ray or a CT Scan?

10 A. An MRI is a technology that does not involve
11 x-ray. Both CT and plain x-rays involve x-rays. MRI
12 is a technology that's based on the tissue densities,
13 and it actually is based on the chemical makeup of the
14 tissues. It is a much better test for soft tissue as
15 compared to a plain x-ray or a CT scan which is much
16 better for bony detail.

17 Q. And doctor, what were the findings of that
18 MRI in March of 2000?

19 A. It was described as a small disc protrusion
20 at C-5,6 on the left of the small right paracentral
21 disc protrusion at C6,7.

22 Q. All right. Doctor, is there any way you can
23 tell how long, assuming that she does have disc
24 protrusion, how long those were present?

25 A. Well, I think we've got to first start with

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1 the terminology. We use terms and these can be very
2 confusing even to physicians. We talk about things
3 like disc bulges; we talk about disc herniations; we
4 talk about disc protrusions and disc ruptures, so the
5 terminology can be very confusing.

6 My interpretation of the general use by
7 radiology is the term protrusion is this is again a
8 degenerative kind of phenomenon where the disc is just
9 a kind of sagging and not herniated, not compressing the
10 nerve but just the whole configuration of the disc,
11 sort of like my tummy protrudes but it does -- you
12 know, I can kind of sag but I'm not -- that's not
13 pathological, in other words. It's more descriptive
14 than it is pathological.

15 So how long that could have been there, it
16 could have been there forever. I mean, obviously not
17 forever because we don't see these things in children,
18 we almost never. I can't recall ever hearing of a
19 child say under 14 with a disc herniation, disc
20 protrusion or any kind of disc disease.

21 It just doesn't happen. It's a degenerative
22 phenomenon over time to a certain extent. So how long
23 it's been there is pure speculation, but it certainly
24 predated the accident I would say, given that this was
25 done what, within three weeks of the accident, less

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1 than three weeks of the accident.

2 Q. So in your opinion, doctor, these disc
3 protrusions would have been present prior to the motor
4 vehicle accident with my client?

5 A. Yes, because it all relates to the
6 degenerative changes we've already described at C-5,6
7 and 6,7.

8 Q. And doctor, is that opinion based upon a
9 reasonable degree of medical certainty?

10 A. Yes.

11 Q. All right. Doctor, I'm going to show you a
12 second MRI that was taken after --

13 A. Did you want this --

14 Q. Yes, I'm sorry.

15 (Exhibit 5, radiology report, was marked for
16 identification.)

17 Q. This second MRI, doctor, was taken after the
18 second motor vehicle accident, and this MRI doesn't
19 make any reference to her having any disc protrusions.
20 Can you explain that to the jury, please, doctor?

21 A. Certainly. All of these terms, like I say,
22 and that's why I say we have to address this whole
23 issue of terminology. One radiologist will call a
24 disc, again, a protruding, or some use bulging even.
25 That is not a pathological finding.

1 These are descriptive terms, and this person
2 just simply said they just see a spondylosis which is
3 all part of the same spurring, narrowing process of the
4 disc space, and it's more descriptive than it is any
5 indication of pathology.

6 Q. Okay.

7 (Exhibit 6, radiology report, was marked for
8 identification.)

9 Q. All right, doctor. I'm going to hand you
10 one more MRI, and this was of the lumbar area or the
11 low back, and I noticed on this MRI result it had the
12 same thing that their -- well, what was the results of
13 this MRI, doctor?

14 A. Well, this MRI says the central
15 subligamentous disc extrusion at L5-S1.

16 Q. And what is your opinion, doctor, as to
17 whether or not this predated the injury or the accident
18 with my client?

19 A. I would say it's unlikely. I mean, because
20 if you look in the description above the impression,
21 you're talking about diminished signal in the L4-5 and
22 L5-S1 intervertebral disc space indicating water loss
23 which is another one of those degenerative processes.

24 The disc just dry out. That's what we call
25 desiccate, wear out, and then as they wear out they

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1 tend to sag and not look normal. And here's another
2 term, an extrusion. Radiologists sometimes come up
3 with very creative ways of describing things.

4 Q. So in your opinion, doctor, did this predate
5 the accident with my client?

6 A. Almost certainly.

7 Q. Is that to a reasonable degree of medical
8 certainty?

9 A. Yes.

10 Q. Doctor, in order to answer the question as
11 to how long Ms. Crews was having these complaints, is
12 it important to know if she had similar complaints
13 before the accident of March 3rd of 2000?

14 A. It certainly would help, yeah.

15 Q. All right. Doctor, in this case Ms. Crews
16 --

17 A. Before we move, did you want to mark this?

18 Q. I'm sorry, yes, doctor. Thank you.

19 (Exhibit 7, radiology report, was marked for
20 identification.)

21 Q. Doctor, and just so you know, in this case
22 Ms. Crews has denied that she ever had any prior
23 problems with her neck. I want to show you a radiology
24 report from 1997. Can you tell me what that report is,
25 doctor?

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1 A. Well, it's again, a radiology report --
 2 yeah, radiology report.
 3 Q. So would that be an x-ray?
 4 A. Yes, x-ray report on cervical spine and her
 5 left shoulder.
 6 Q. And what was the reason for that study,
 7 doctor?
 8 A. It says on the report indication for study,
 9 neck and left shoulder pain.
 10 Q. And what was the date that study was done,
 11 doctor?
 12 A. I see the transcription date but I don't see
 13 the -- I guess it was done on September 22nd. That's
 14 the same date as the transcription. The date up at the
 15 top says September 22nd, 1997.
 16 Q. So clearly that would have been before March
 17 of 2000, correct, doctor?
 18 A. Right.
 19 Q. And what were her complaints again at that
 20 time, doctor?
 21 A. Well, I don't know, but according to this
 22 report it says neck and left shoulder pain.
 23 Q. And what did they find from that x-ray,
 24 doctor?
 25 A. Well, they found minimal narrowing of the

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1 intervertebral disc spaces at C5-6 and C6,7, and
 2 basically an unremarkable cervical spine.
 3 Q. Doctor, if you compare this study to the
 4 x-rays taken in 2000, what does it tell you as far as
 5 how her neck was degenerating?
 6 A. Well, obviously you -- for me to do that
 7 well I need to look at the actual x-ray studies or the
 8 actual images. I'm basing it on what a radiologist has
 9 interpreted. And again, we've already said different
 10 radiologists will use different terminology.
 11 But clearly both -- in all cases, even all the
 12 way back to '97 someone is commenting about something
 13 happening at C5,6 and C6,7, and that's not new.
 14 I would suspect just -- and again, looking at
 15 the report, if this date and time is correct, if this
 16 is September 22nd, 1997 and this is 2314, this is
 17 almost 11:30 at night. I assume that she must have had
 18 some -- we don't routinely do x-rays at that hour of
 19 the night.
 20 So if that's when it was done I would suspect
 21 that she was having some kind of problem in an
 22 emergency department or something that that was done
 23 with neck and shoulder pain.
 24 (Exhibit 8, radiology report, was marked for
 25 identification.)

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1 Q. All right. Doctor, now I want to hand you
 2 which is a report from Dr. McGuire dated April 7th of
 3 2000. And doctor, this would have been, I guess, a
 4 little over a month after the accident with my client.
 5 What does the physical exam state, doctor?
 6 A. States that on exam she has full range of
 7 motion of her cervical spine. She has a negative
 8 Spurling's. She has a normal motor, sensory and reflex
 9 exam. She has a negative Hoffman's. She has a
 10 negative Phalen's and Tinel at the wrist and elbow.
 11 Examination of her lower back reveals normal
 12 tenderness to direct palpation. She has a good range
 13 of motion of the lumbar spine with no paraspinal spasm.
 14 She has a negative straight leg raise bilateral. She
 15 has a normal motor, sensory and reflex exam.
 16 Q. All right, doctor. Let me ask you some
 17 questions about this: When he says full range of
 18 motion, what does that mean?
 19 A. Well, when we do range of motion, that is in
 20 the cervical spine, this is flexion, and this is
 21 extension, rotation. That's the range of motion that
 22 we do, and you send the patient through those
 23 maneuvers, and that's what we call range of motion.
 24 Q. All right. Does that indicate on April 7th
 25 she can move her neck like any other normal person

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1 could?
 2 A. That would be what I would interpret this to
 3 mean.
 4 Q. It also has that the examination of her low
 5 back reveals tenderness to direct palpation -- I'm
 6 sorry, normal tenderness to direct palpation. What
 7 does that mean?
 8 A. Well, that seems like, you know, one of
 9 those oxymoron statements. There's no such thing as
 10 normal tenderness. Tenderness by definition is
 11 abnormal, but I think what he means is that she doesn't
 12 really have tenderness rather than -- there's no such
 13 thing as normal tenderness, but I assume what he is
 14 really saying is normal meaning lack of tenderness.
 15 Q. All right. In your opinion, doctor, by this
 16 date had Ms. Crews started to get better or started to
 17 recover from the accident with my client on March 3rd
 18 of 2000?
 19 A. Well, I can't say she has gotten any better
 20 because we haven't demonstrated that we have anything
 21 abnormal in the first place. So I don't know how we --
 22 you're leading me to a conclusion that we haven't
 23 established. From what we've looked at so far we
 24 haven't found anything wrong, so I can't say she's
 25 getting better.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

GERALDINE CREWS

PLAINTIFF

VS.

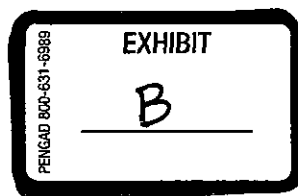
CAUSE NO. 251-00-1097-CIV

LISA MAHAFFEY

DEFENDANT

JURY INSTRUCTION NO. 1

The Court instructs you to find for the Plaintiff, Geraldine Crews, and to assess her damages, if any, in accordance with the other instructions of the Court.



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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI**

GERALDINE CREWS

PLAINTIFF

VS.

CIVIL ACTION NO.251-00-1097-CIV

LISA MAHAFFEY

DEFENDANT

JURY INSTRUCTION NO. 5

The Court instructs the jury that the word "negligence" as used in these instructions means the doing of some act which a reasonably prudent person would not do under the same or similar circumstances as are present at the time, or the failure to do some act which a reasonably prudent person would do under the same or similar circumstances as are present at the time.

