

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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SC Court of Appeals

Michael Smith and Mary Smith, Petitioners,

v.

King Asphalt, Inc., Respondent.

In re: South Carolina Court of Appeals Appellate Case No. 2025-001327

PETITION TO INVOKE THE ORIGINAL JURISDICTION OF THIS COURT AND FOR A WRIT OF CERTIORARI OR MANDAMUS TO THE SOUTH CAROLINA COURT OF APPEALS

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Petitioners Michael and Mary Smith pro se petition this Court to appoint counsel and stay the July 8, 2026 briefing deadline in South Carolina Court of Appeals Appellate Case No. 2025-001327 before that deadline dismisses their appeal and permanently extinguishes their only opportunity for merits review. Pursuant to Rule 245(a) and (b), SCACR, Article V, Section 5 of the South Carolina Constitution, and S.C. Code Ann. § 14-3-310, Petitioners invoke this Court's original jurisdiction and ask it to issue writs of certiorari and mandamus to the South Carolina Court of Appeals vacating its Orders of June 8 and June 23, 2026, which denied appointment of counsel and refused to reconsider that denial while a dismissal deadline ran. The stay is sought by separate motion filed herewith.

QUESTIONS PRESENTED

1. Whether a South Carolina appellate court, when presented with a motion for appointment of counsel by indigent civil appellants, must make the findings this Court's case law requires, namely whether appointment is reasonably necessary to do justice and whether the litigant is reasonably able to obtain counsel, before denying appointment. *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).
2. Whether the Due Process Clause of the Fourteenth Amendment, as construed in *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), requires a case-specific balancing analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), before an appellate court denies appointed counsel to functionally illiterate indigent appellants whose appeal will certainly be dismissed without counsel, where the barriers to self-representation are the product of state judicial action, state-created record defects, and Respondent's sustained opposition to every mechanism that would have provided counsel.
3. Whether Rule 608(g), SCACR, a case-management directive addressed by its terms to circuit and family court judges, limits or displaces an appellate court's inherent power to appoint counsel in an appeal pending before it.
4. Whether the combined operation of state-created and judicially enabled barriers, specifically a defective appellate record acknowledged by the Deputy Clerk, digital evidence appearing in the exhibit inventory but absent from the record without judicial accounting, a non-lawyer assistance barrier entered as a judicial act on proceedings initiated by Respondent, seven years of sustained

opposition by Respondent to every mechanism that would have provided counsel, and a briefing deadline with dismissal as the consequence held in place by a court that twice refused to engage with the legal errors it had committed, constitutes an unconstitutional extinguishment of a protected property interest under *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and the Due Process Clause of the Fourteenth Amendment, where no single barrier standing alone compels appointment but their convergence creates a legal impossibility that no statute, rule, or precedent addresses whole.

I. JURISDICTION

This Court has original jurisdiction to issue writs of certiorari and mandamus under Article V, Section 5 of the South Carolina Constitution and S.C. Code Ann. § 14-3-310, and supervisory authority over the courts of this State under Article V, Section 4. This Court entertains matters in its original jurisdiction where the public interest is involved or special grounds of emergency or other good reasons exist. Rule 245(a), SCACR; *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991). Original jurisdiction is the only available path. The Court of Appeals issued the orders under review, has twice refused to correct them, and holds a dismissal deadline that expires July 8, 2026. No other court has jurisdiction to intervene before that date. If this Court does not act, the appeal will be dismissed, the constitutional questions will go unresolved, and the deprivation will be irreversible.

II. NO ADEQUATE REMEDY EXISTS IN THE ORDINARY COURSE

No ordinary appellate route can reach the orders at issue before they destroy the appeal. Certiorari under Rule 242, SCACR, lies only from a final decision of the Court of Appeals; an order denying appointment of counsel while the appeal remains pending is not a final decision and is not reviewable under Rule 242. Rehearing in the Court of Appeals is foreclosed by Rule 221(c), SCACR, and Petitioners have in any event already sought reconsideration and been denied. Nor is relief after dismissal an adequate remedy: if the appeal is dismissed on July 8, 2026, for failure to brief, Rule 221(a), SCACR, bars rehearing from an order denying reinstatement under Rule 260, SCACR, and the merits of Petitioners' preserved issues would arrive before this Court, if at all, buried beneath a procedural default that the denial of counsel itself manufactured. The only court that can prevent the injury before it occurs is this Court, and only in its original jurisdiction.

Petitioners exhausted every avenue the Court of Appeals offered. They moved for appointment of counsel. They filed a Supplemental Brief on February 27, 2026, addressing the authorities on which the court would later rely. After the June 8, 2026 denial, they moved for reconsideration on June 15, 2026, presenting *Ex parte Dibble*'s findings requirement, the *Lassiter* analysis, and the text of Rule 608(g) itself. The Court of Appeals declined to act on reconsideration by letter dated June 23, 2026, citing Rule 221(c) and confirming the July 8 deadline. The ordinary course has been used up. What remains is the deadline.

III. STATEMENT OF FACTS

Petitioners Michael and Mary Smith are indigent. Michael Smith is functionally illiterate, and both Petitioners have documented health and cognitive limitations. Their underlying action is a personal injury suit arising from a 2019 accident on Highway 8 in Easley, South Carolina, brought against a corporate defendant represented by experienced counsel at Baker, Ravenel & Bender, LLP. The circuit court granted summary judgment against them, and this appeal is their only remaining opportunity to be heard on the merits.

On March 19, 2024, the circuit court found on the record that “all of this clearly warrants that Plaintiffs have counsel.” (Order Mar. 19, 2024, p. 4; App. Ex. F. Bates#000064) That finding has never been rebutted. On March 25, 2024, Petitioners filed a handwritten petition stating “We cant read and write we need help we are both very sick.” (App. Ex. H. Bates#000072)

The appellate record is defective. The Deputy Clerk acknowledged in writing that court scanners flip pages and produce blacked-out and misaligned images (App. Ex. G. Bates #000069), and Petitioners submitted a representative fifty-two-page sample of illegible exhibits confirming that condition across approximately 300 of 830 exhibit pages (App. Ex. I. Bates #000075). The USB digital evidence, including SCHP dashcam video, 911 calls, an insurance interview, and trooper audio, was expressly incorporated as digital exhibits on an accompanying USB flash drive in Plaintiffs' December 13, 2024 Opposition to Defendant's Motion for Summary Judgment (Smith v. King Asphalt Inc., 2021CP39000329, at p. 000006-000007), served on defense counsel by email and certified mail (USPS No. 70210950000135867958) and acknowledged in a notarized Certificate of Service filed the same day (id. at pp. 000084-000085) (App. Ex. J. Bates #000129). That evidence has never been produced, located, or addressed in any hearing, ruling, finding, or order in this proceeding. It is simply absent

from the appellate record without explanation. Without a usable record, even a trained lawyer would face serious difficulty preparing a brief. For functionally illiterate litigants, the problem is dispositive.

A non-lawyer assistance barrier exists on the record of the proceedings below, the consequence of which is that Petitioners cannot prepare appellate filings themselves, cannot lawfully receive non-lawyer assistance, and cannot obtain counsel through the market. The combined effect is a constitutional impossibility: Petitioners have no lawful means to participate in the appeal the Court of Appeals is about to dismiss.

Petitioners' inability to obtain counsel over seven years is not a market failure. It is the documented result of Respondent's sustained litigation strategy to ensure this case could never be heard on the merits. That record is unrebutted. Respondent opposed Rule 40(j) relief in the circuit court on four separate occasions, each time blocking the only realistic procedural mechanism for substituting or obtaining counsel, including after multiple independent attorneys identified Rule 40(j) as the only viable path. Respondents have deliberately maintained the case in a perpetual, eleventh-hour trial posture for years, creating conditions that deter substitute counsel from entering the matter due to the heightened risk of inheriting malpractice exposure. Respondent opposed appointment of a next friend or guardian to assist Petitioners with their documented disabilities. Respondent opposed In Forma Pauperis status at both the circuit court and appellate levels. Respondent now opposes appointment of appellate counsel before this Court, having opposed every mechanism across seven years that would have placed competent representation between these Petitioners and dismissal. The circuit court observed on the record, without hesitation, that there was "no question" that the Smiths needed a lawyer. (Tr. Mar. 7, 2024, p. 44.) Respondent has opposed that outcome at every procedural turn. This pattern did not begin in the appellate courts. Petitioners alleged below, without rebuttal, that Respondent obstructed the investigation of the underlying incident that gave rise to this action. The sustained opposition to every mechanism that would provide counsel is the continuation of that conduct into the appellate arena. A court of equity should not permit a pattern of obstruction that began with the underlying events and persisted through seven years of litigation to succeed at the final stage by ensuring this case is never heard on its merits.

Petitioners moved the Court of Appeals for appointment of counsel (App. Ex. D. Bates#000040) and supported the motion with a Supplemental Brief filed February 27, 2026 (App. Ex. E. Bates#000054). By a single-paragraph Order dated June 8, 2026,

issued for the Court without identification of the authoring judge, the Court of Appeals denied appointment, citing Rule 608(g), SCACR, and *Ex parte Dibble*, reset the briefing deadline to July 8, 2026, and warned that failure to brief would result in dismissal. The Order did not address Rule 608(g)'s limitation to circuit and family court judges, did not make either finding required by *Dibble*, did not address *Logan*, *Lassiter* or *Mathews*, and did not acknowledge the defective record, Respondent's litigation conduct, or the circuit court's un rebutted finding.

Petitioners timely moved for reconsideration on June 15, 2026 (App. Ex. C Bates#000026), and requested suspension of the briefing deadline pending disposition. By letter dated June 23, 2026, the Court of Appeals declined to act on the motion for reconsideration pursuant to Rule 221(c), SCACR, and confirmed the July 8, 2026 deadline. The June 23 response states no grounds and does not address *Dibble*'s findings requirement, the *Lassiter* analysis, or the text of Rule 608(g).

IV. THE ORDERS BELOW

The Court of Appeals' June 8, 2026 Order is an interlocutory procedural ruling that presents a mixed standard of review. The interpretation of *Ex parte Dibble*, *Lassiter*, *Mathews*, *Logan*, and Rule 608(g) are questions of law reviewed de novo. The decision to deny appointment in light of those principles and the record is reviewed for abuse of discretion. Both standards favor Petitioners here. The Court of Appeals' misreading of *Ex parte Dibble* as a categorical divestment of appointment power, rather than a source of discretionary authority subject to required findings, is a legal error reviewable de novo. Its application of Rule 608(g), a trial-management directive addressed by its terms to circuit and family court judges, to an appellate court exercising inherent constitutional authority is a misapplication of the rule's plain text, likewise reviewable de novo. And a court abuses its discretion when its ruling is controlled by an error of law, which is precisely what occurred here.

The June 8, 2026 Order states in its entirety (App. Ex. A. Bates#000021): "This appeal arises out of an order of the circuit court granting summary judgment in favor of Respondent. Appellants filed a motion to appoint counsel. Respondent filed a motion to allow the late filing of a return to the motion to appoint counsel. Respondent's motion is granted. After careful consideration of Appellants' motion, the return, and the reply, the motion to appoint counsel is respectfully denied. See Rule 608(g), SCACR (providing that counsel should not be appointed for an indigent unless the indigent has a right to

appointed counsel under the state or federal constitution, a statute, a court rule, or the case law of this state); *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983) (holding there is no constitutional right to counsel in civil cases).”

The June 23, 2026 response states no grounds (App. Ex. B Bates#000024). It invokes Rule 221(c), SCACR, declines to act, and holds the July 8 deadline.

The June 8 Order misapplies both authorities it cites and omits the findings its own precedent requires. Rule 608(g) provides that counsel “should not be appointed for an indigent unless the indigent has a right to appointed counsel under the state or federal constitution, a statute, a court rule, or the case law of this state.” Petitioners presented exactly that: a case-specific federal due process right under *Lassiter* and *Mathews*, and the case law of this State, *Ex parte Dibble*. The rule the Court of Appeals invoked incorporates the very authorities it declined to address.

The Order’s characterization of *Dibble* as “holding there is no constitutional right to counsel in civil cases” is incomplete to the point of inversion. *Dibble* held that courts possess inherent power to appoint counsel where reasonably necessary to do justice, and that this power must necessarily include the power to appoint lawyers to serve without compensation in such circumstances. 279 S.C. at 595, 310 S.E.2d at 442. The Court of Appeals extracted the threshold proposition *Dibble* recited before announcing the inherent-authority holding, and stopped there. That is not a reading of *Dibble*; it is a selective quotation that reverses its operative holding.

The June 23 response adds nothing. It invokes Rule 221(c) without analysis and holds the deadline. The motion for reconsideration was brought under Rule 240 and the Court’s inherent authority over its interlocutory orders, not under Rule 221. Rule 221(c) bars petitions for rehearing on motions; it does not bar reconsideration of an interlocutory order under Rule 240. And because the June 8 Order’s certain operation is dismissal of the appeal, it effectively decides the appeal within the meaning of Rule 221(c) in any event, which means reconsideration was available on that ground as well. The procedural bar the Court of Appeals invoked does not fit the motion it was applied to.

The Refusal to Engage Is Itself Dispositive.

The June 23 refusal to consider the reconsideration motion is not a peripheral procedural misstep. It is the mechanism by which the constitutional error of June 8 becomes permanent and

unreviewable. A court's refusal to exercise its corrective authority while a dismissal deadline runs, is a final decision for due process purposes. When the Court of Appeals denied appointment on June 8, Petitioners had one remaining opportunity to obtain correction before the deadline: a motion for reconsideration presenting the precise legal errors the June 8 Order committed. The Court of Appeals had the authority under Rule 240 and its inherent power over interlocutory orders to correct those errors. It declined to engage at all.

That refusal is dispositive because of what it forecloses. Petitioners cannot brief the appeal: Michael Smith is functionally illiterate, a non-lawyer assistance barrier exists on the record, the certified record is defective, and seven years of effort to obtain counsel have failed. The Court of Appeals knows all of this; it was presented in the motion for appointment, the Supplemental Brief, and the motion for reconsideration. The June 23 letter was issued with full knowledge that declining to act meant the appeal would be dismissed on July 8 without any merits review, and that Petitioners had no lawful means to prevent that outcome.

A court that possesses the authority to correct a constitutional error, is presented with that error in specific terms, and declines to engage while a dismissal deadline runs, has not merely made a procedural ruling. It has made a final decision about whether these Petitioners will ever receive merits review of their appeal. The form of that decision, a one-sentence letter citing a procedural rule, does not change its substance. The substance is that the Court of Appeals, with full knowledge of the consequences, chose to allow the July 8 deadline to extinguish this appeal rather than engage with the legal errors that produced it. That choice is what brings this matter before this Court, and it is why the writ must issue.

The lower court's refusal to engage on reconsideration is not a peripheral procedural misstep that can be set aside as harmless. It is, as set out above, the mechanism by which the constitutional error of June 8 becomes permanent and unreviewable. The direct consequence is not a procedural delay. It is the absolute forfeiture of Petitioners' entire underlying appeal by summary dismissal on July 8, 2026. An error that is completely determinative of the litigation and permanently extinguishes a protected property interest satisfies the highest threshold for emergency supervisory intervention this Court can provide.

The Court of Appeals was presented with a systemic failure in the due process protections this State affords pro se litigants, intersecting with the specific factual circumstances of these

Petitioners to create a legal impossibility that the system has no mechanism to address, and responded with a procedural bandage: hold the deadline, deny the motion, move on. A wound does not heal because it has been covered. The Court of Appeals cannot cure what it has refused to examine, and reconsideration asked it to do exactly that. This Court's intervention is not a matter of appellate preference. It is a constitutional necessity. The injury will not resolve itself on July 8. It will become permanent.

V. GROUNDS FOR THE WRIT

A. The Court of Appeals refused to apply its own controlling precedent.

Petitioners do not claim a categorical constitutional right to appointed counsel in civil cases. *Dibble* correctly holds that no such right exists, and that proposition is undisputed. What *Dibble* also holds, and what the Court of Appeals ignored, is that South Carolina courts possess inherent power to appoint counsel where reasonably necessary to do justice, and that this power “must necessarily include the power to appoint lawyers to serve without compensation where it appears reasonably necessary for the court to do justice.” 279 S.C. at 595, 310 S.E.2d at 442. *Dibble* directs that appointment turns on two findings: whether appointment is reasonably necessary to do justice, and whether the litigant is reasonably able to obtain counsel. The discretion *Dibble* recognizes cuts both ways. A court may decline to appoint. But it may not decline to engage. Both findings are already established on this record by the circuit court's unrebutted March 19, 2024 finding and by seven years of documented failed effort to retain counsel, effort made impossible in substantial part by Respondent's sustained opposition to every mechanism that would have provided it. The circuit court's finding that “all of this clearly warrants that Plaintiffs have counsel” was never rebutted by Respondent and was never challenged on appeal. It operates as an established fact on the record of this proceeding. The Court of Appeals denied appointment without acknowledging that finding, without explaining why the circumstances that produced it below have no bearing on the question of appellate appointment, and without making either of the findings *Dibble* requires. The Court of Appeals cited *Dibble* for the undisputed proposition that no categorical right to counsel exists in civil cases, made neither finding *Dibble* requires, and never explained why the standard it announced in *Dibble* is unmet on this record. The Court of Appeals cited *Dibble* for the threshold it recited before announcing the inherent-authority holding, and stopped there. That is not a reading of *Dibble*. It is a selective quotation

that reverses its operative holding. A court's refusal to apply its own precedent to a motion that squarely invokes it, twice, with dismissal of the appeal as the consequence, is precisely the circumstance for which certiorari and mandamus exist.

B. The Court of Appeals refused to conduct the due process analysis *Lassiter* requires.

Lassiter establishes a presumption against a constitutional right to counsel in civil cases, not an absolute bar. That presumption is rebuttable where the *Mathews v. Eldridge* balancing of the three factors demands counsel for fundamental fairness. In *Lassiter* itself, the Court found the presumption was not rebutted on those facts. The argument here is that the combined barriers in this case push the analysis to the other side of that line.

Petitioners presented all three *Mathews* factors. The private interest is the permanent extinguishment of their only remaining opportunity to be heard on the merits of injuries sustained in 2019, an interest that cannot be recovered once the July 8 deadline passes. The risk of erroneous deprivation is not hypothetical but certain: functionally illiterate appellants cannot brief three preserved issues of regulatory interpretation, negligence per se doctrine, and statutory construction under S.C. Code Ann. § 56-5-1535(F)(1) from a record in which 300 of 830 exhibit pages are illegible and the dispositive digital evidence is missing without explanation. The significance of that absence cannot be overstated. The USB evidence, including SCHP dashcam video, 911 calls, an insurance interview, and trooper audio, provided direct visual and audio corroboration of the road conditions, the hazard created by Respondent, and the chain of causation supporting Plaintiffs' claims. It was filed, served, and acknowledged in a notarized certificate. It did not disappear because Petitioners failed to preserve it. It disappeared from the appellate record after the state's own court system took custody of it. That evidence directly depicted the road hazard, the removal of safety signage, and the chain of causation that are the core issues on appeal. The appellate court cannot evaluate those issues because the state's own system failed to preserve the evidence that would allow it to do so. The risk of erroneous deprivation is not merely elevated by its absence. It is made certain. No functionally illiterate pro se litigant can brief an appeal on issues of negligence per se and statutory construction without the video and audio evidence that provided direct corroboration of the road conditions, the hazard, and the chain of causation documented in Respondent's own records. Unlike *Lassiter*,

where the barriers were ordinary, the barriers here are extraordinary and each is state-created. The governmental interest favors appointment: the State's interest is in adjudication on the merits rather than dismissal driven by the procedural incapacity of unrepresented litigants, an interest the circuit court itself recognized. The barriers Petitioners face arise from a combination of state judicial action and Respondent's sustained litigation conduct: the Deputy Clerk acknowledged the record defects in writing, the circuit court issued the non-lawyer assistance warning on proceedings initiated by Respondent, and the Court of Appeals set the deadline and the dismissal consequence while twice refusing to engage. That warning does not merely create a practical obstacle. It attaches the threat of legal jeopardy to the act of seeking assistance with court proceedings, implicating the liberty interests of both Petitioners and any person who would help them, and chilling the one informal avenue that might otherwise have bridged the gap between these Petitioners and meaningful appellate participation. On these facts the *Lassiter* presumption is rebutted. Neither order below addressed *Lassiter*, *Mathews*, or any factor.

C. Rule 608(g), SCACR, does not support the orders below.

Rule 608(g) is addressed by its own terms to “a circuit or family court judge,” within a rule whose stated purpose is managing the appointment of lawyers to serve as counsel for indigent persons in the circuit and family courts. Rule 608(a), (g)(1), SCACR. By its express title, Rule 608 is denominated “**Appointment of Counsel in the Circuit and Family Courts.**” The Court of Appeals' reliance on a localized trial-management rule to displace its own inherent appellate authority is a structural misapplication of the South Carolina Appellate Court Rules. It does not govern, limit, or mention an appellate court's authority to appoint counsel in an appeal pending before it. Even were it applicable, Rule 608(g)(1) authorizes appointment where the indigent has a right to appointed counsel under “the state or federal constitution, a statute, a court rule, or the case law of this State.” Petitioners presented exactly that: a case-specific federal due process right under *Lassiter* and *Mathews*, and the case law of this State, *Ex parte Dibble*. And Rule 608(h)(1), SCACR, confirms that nothing in the rule prohibits the appointment of any member of the Bar who volunteers, so the rule erects no barrier of any kind to the relief sought.

D. The orders below create a constitutional impossibility and deny access to the courts.

The combined operation of the orders below and the record they ignore forecloses every lawful path: Petitioners cannot prepare filings themselves due to functional illiteracy; they face a non-lawyer assistance barrier on the record of the proceedings below; they cannot obtain counsel through the market after seven years of documented effort obstructed at every turn by Respondent; and the court that alone could appoint counsel has twice refused while holding a dismissal deadline over them. A judicial system may not simultaneously close every lawful avenue of participation and then dismiss the appeal for non-participation. That is a denial of access to the courts and of due process in its most elemental form.

E. The state-created barriers unconstitutionally extinguish a protected property interest under *Logan v. Zimmerman Brush Co.*

A cause of action is a constitutionally protected property interest. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). Once state law creates a legal claim, the Fourteenth Amendment protects that interest from deprivation without due process. The State may not extinguish it through the arbitrary operation of its own procedures. *Id.* at 433. That is precisely what is occurring here.

Three independent state-created barriers have converged to make dismissal of this appeal inevitable. First, the Deputy Clerk acknowledged in writing that the appellate record is defective, with court scanners producing blacked-out, flipped, and misaligned images across approximately 300 of 830 exhibit pages (App. Ex. G. Bates #000069), and the USB digital evidence that appears in the exhibit inventory submitted below has never been produced, located, or addressed in any hearing, ruling, finding, or order. It is absent from the appellate record without explanation. Petitioners are required to brief from a record whose defects the state's own clerk acknowledged and whose missing digital evidence no judicial officer has ever accounted for. Under *Logan*, the state's record-keeping choices have effectively extinguished Petitioners' ability to establish causation on appeal, not because the evidence does not exist, but because the state system failed to preserve it in usable form after Petitioners properly filed and served it. In a negligence per se action the statutory violation establishes the standard of care and its breach. What the missing digital evidence directly corroborates is causation: that the violation proximately caused the injuries Petitioners sustained. That is precisely the arbitrary state procedural action *Logan* forbids. Second, the circuit court issued an on-the-record warning that any non-lawyer assisting Petitioners does so at his own peril,

the product of proceedings initiated by Respondent and entered as a judicial act, which forecloses the one informal path that might otherwise allow functionally illiterate litigants to navigate the appellate process. That warning does not merely foreclose assistance. It converts the act of helping into a legally threatened act, imposing a state-sanctioned chill on the liberty of any person who would assist Petitioners in exercising their right of access to the courts. That is not a neutral procedural condition. It is a state imposition on liberty, and it is one of the mechanisms by which the protected property interest at stake here is being extinguished. Third, the Court of Appeals set a briefing deadline with dismissal as the stated consequence and has twice refused to stay it, hold it, or appoint counsel to meet it, while knowing that Petitioners have no lawful means to comply.

None of these barriers is a private hardship or a neutral operation of generally applicable procedure. Each is a direct product of state judicial action. The Deputy Clerk is a state officer. The circuit court warning is a judicial act. The briefing deadline and its dismissal consequence are orders of a state court. The state has not merely failed to assist Petitioners; it has affirmatively constructed the conditions under which dismissal is the only possible outcome.

Respondent's role in producing those conditions is part of the constitutional record. The non-lawyer assistance warning arose from proceedings Respondent initiated. The seven years during which Petitioners could not obtain counsel was prolonged at every stage by Respondent's opposition to Rule 40(j) relief, IFP status, next friend appointment, and now appellate counsel. A corporate defendant that systematically uses judicial process to ensure its opponents remain unrepresented, then benefits from the dismissal that lack of representation produces, is participating in the extinguishment of a protected property interest. The state procedures Respondent invoked and the state courts that granted its oppositions are the mechanism of that extinguishment.

Under *Logan*, the State cannot do this. When state procedures operate to extinguish a protected property interest and the litigant whose interest is at stake has no meaningful opportunity to avoid that outcome, the deprivation is unconstitutional regardless of whether the procedures themselves are facially neutral. The Smiths' cause of action for injuries sustained in 2019 is a protected property interest. Its extinguishment through the combined operation of an acknowledged defective record whose missing digital evidence has never been accounted for, a judicially imposed assistance barrier, and a dismissal deadline the state court controls and refuses to stay is not the

neutral working of appellate procedure. It is the State taking a protected property interest without due process. The State is not a passive bystander to this deprivation. It is the architect of the conditions that make it inevitable. Respondent, who has opposed every mechanism that would have provided counsel across seven years of litigation and who stands to benefit directly from the dismissal these barriers will produce, does not come to this proceeding with clean hands.

This Court is squarely presented with that question by Question 4 above. If this Court does not resolve it, the federal constitutional question is preserved for direct review by the Supreme Court of the United States under 28 U.S.C. § 1257, which authorizes certiorari from a final/dispositive judgment of a state's highest court where the validity of a right, privilege, or immunity claimed under the Constitution of the United States is specially set up and claimed and the decision is against that right. Petitioners set up that right here, in this Court, with specificity. A decision of this Court that leaves the state-created barriers in place and the protected property interest extinguished is a final judgment of the state's highest court on a federal constitutional question preserved for exactly that review. While not final in the sense of a hearing on the merits, it is final in the sense of being dispositive before the merits are even reached. Petitioners do not seek that outcome. They ask this Court to resolve the question now by granting the relief requested.

VI. THE CONVERGENCE OF CIRCUMSTANCES REQUIRES THIS COURT TO ACT.

No single ground compels this result in isolation. Respondent may contest each barrier standing alone and find a rule, a case, or a principle that narrows its reach. Functional illiteracy alone does not require appointment. A defective record alone does not require appointment. A non-lawyer assistance barrier alone does not require appointment. Seven years of obstructed effort alone does not require appointment. Each barrier, viewed in isolation, can be rationalized away.

But the question before this Court is not whether each barrier individually rises to the level of constitutional violation. It is whether the convergence of all of them, each a product of state judicial action or Respondent's sustained litigation strategy, has created a circumstance so impossible that no single statute, rule, or precedent addresses it whole. The Smiths cannot read. The record is corrupted. The digital evidence has vanished without explanation. Every informal path to assistance has been closed by judicial act. Every formal path to counsel has been blocked by Respondent for seven years. The Court of Appeals has twice refused to engage. The deadline is July 8, 2026.

That is precisely the circumstance for which the citizens of South Carolina vested in this Court its inherent supervisory authority over the courts of this State: the power of fundamental fairness, exercised when the machinery of justice has produced an outcome that justice cannot tolerate. No rule compels this Court to act. The Court's own authority compels it. The Smiths' appeal will be dismissed on July 8 not because they lost on the merits, not because they failed to try, and not because the law denies them a hearing. It will be dismissed because every avenue was closed around them, one by one, until nothing remained. This Court has the power to prevent that. The Smiths ask only that this Court exercise the authority the citizens of South Carolina gave it for exactly this moment.

VII. THE QUESTIONS PRESENTED INVOLVE THE PUBLIC INTEREST

The questions presented are recurring, statewide, and undecided. Whether South Carolina appellate courts must conduct a case-specific *Lassiter* analysis before denying counsel to indigent civil appellants, what findings *Dibble* requires of a court that declines appointment, whether Rule 608(g) constrains appellate appointment power, and whether the combined operation of state-created procedural barriers can constitutionally extinguish a protected property interest under *Logan* are questions that affect every indigent civil litigant in this State who reaches the appellate courts without counsel. They also implicate the integrity of appellate adjudication itself: whether appeals in this State are decided on their merits or on the procedural incapacity of the parties least able to protect themselves. This Court's resolution will govern far beyond this case.

A ruling by this Court on the questions presented will do more than resolve this case. It will establish the framework within which every pro se litigant in South Carolina who faces structural barriers to appellate participation can seek relief. It will bring equity to a category of proceedings where none currently exists, by making clear that the courts of this State possess the inherent authority to ensure that justice is not defeated by the convergence of circumstances no single rule was designed to address. That is the proper work of a supreme court exercising its supervisory authority. This case presents the Court with the opportunity to do it.

VIII. SPECIAL GROUNDS OF EMERGENCY EXIST

The Court of Appeals' briefing deadline is July 8, 2026, and its June 8, 2026 Order warns that failure to brief will result in dismissal. Petitioners cannot lawfully brief by any means remaining

open on this record. Absent intervention by this Court before July 8, 2026, the appeal will be dismissed. That dismissal will not be on the merits. It will be a procedural default for failure to brief, compelled not by any failure of diligence; but by circumstances entirely beyond Petitioners' control: state-created barriers to the record, a judicially imposed barrier to non-lawyer assistance, and seven years of sustained opposition by Respondent to every mechanism that would have placed counsel between these Petitioners and dismissal. The default this deadline will produce is the product of those forces, not of Petitioners' choosing. Once entered, it is effectively unreviewable: Rule 221(a), SCACR, bars rehearing, reinstatement under Rule 260 requires good cause that the denial of counsel itself foreclosed, and the merits of Petitioners' preserved issues will never be reached. The deprivation will be complete before this Court can act. Petitioners have filed herewith a motion to stay the briefing deadline pending disposition of this Petition.

IX. RELIEF REQUESTED

Petitioners respectfully request that this Court: (1) entertain this matter in its original jurisdiction pursuant to Rule 245, SCACR; (2) immediately stay the July 8, 2026 briefing deadline in Court of Appeals Appellate Case No. 2025-001327 and all related deadlines pending disposition of this Petition; (3) issue a writ of mandamus directing the Court of Appeals to apply *Ex parte Dibble* and the *Lassiter/Mathews* framework before dismissing Petitioners' appeal, and a writ of certiorari vacating the June 8, 2026 and June 23, 2026 orders and directing either the appointment of counsel for the duration of the appeal in the Court of Appeals or new orders supported by the required findings; (4) in the further alternative, appoint counsel for the limited purpose of representing Petitioners in this Court in connection with this Petition, with such appointment to extend to representation of Petitioners in the Court of Appeals upon a favorable disposition of this Petition; and (5) grant such other relief as justice requires.

Respectfully submitted,

[signature page to follow]

/s/ Michael Smith
Michael Smith, Petitioner pro se

/s/ Mary Smith
Mary Smith, Petitioner pro se

220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Dated: June 29, 2026

APPENDIX

Exhibit A: Court of Appeals Order of June 8, 2026, denying appointment of counsel. (Bates#000021)

Exhibit B: Court of Appeals letter of June 23, 2026, declining to act on reconsideration. (Bates#000024)

Exhibit C: Motion for Reconsideration filed June 15, 2026. (Bates#000026)

Exhibit D: Motion for Appointment of Counsel. (Bates#000040)

Exhibit E: Supplemental Brief filed February 27, 2026. (Bates#000054)

Exhibit F: Circuit Court Order of March 19, 2024 (counsel finding at p. 4). Excerpt from Circuit Court Order of March 19, 2024, Page 4 of [total pages], Circuit Court Case No. 2021-CP-39-00329, County of Pickens. (Bates#000064)

Exhibit G: Deputy Clerk email acknowledging record defects. (Bates#000069)

Exhibit H: Handwritten petition filed March 25, 2024. (Bates#000072)

Exhibit I: Representative sample of 52 illegible exhibit pages. (Bates#000075)

Exhibit J: Plaintiffs' December 13, 2024 Opposition cover page, Certificate of Service, and Notary Acknowledgement (Smith v. King Asphalt Inc., 2021CP39000329, pp. 000001, 000006-000007, 000084-000085), documenting the filing and service of digital exhibits on USB flash drive. (Bates#000129)

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2026, I served a true and correct copy of the foregoing **PETITION TO INVOKE THE ORIGINAL JURISDICTION OF THIS COURT AND FOR A WRIT OF CERTIORARI OR MANDAMUS TO THE SOUTH CAROLINA COURT OF APPEALS** with Exhibits A-J and accompanying **EMERGENCY MOTION FOR IMMEDIATE STAY OF BRIEFING DEADLINE PENDING DISPOSITION OF PETITION TO INVOKE ORIGINAL JURISDICTION** with Exhibit 1 upon:

Clerk, Supreme Court of South Carolina: suptctfilings@sccourts.org (original, with proof of service)

Clerk, South Carolina Court of Appeals: ctappfilings@sccourts.org (courtesy copy)

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

/s/ Michael Smith
Michael Smith, Petitioner pro se

/s/ Mary Smith
Mary Smith, Petitioner pro se

June 29, 2026

THE STATE OF SOUTH CAROLINA

In The Supreme Court

Michael Smith and Mary Smith, Petitioners,

v.

King Asphalt, Inc., Respondent.

In re: South Carolina Court of Appeals Appellate Case No. 2025-001327

PETITION TO INVOKE THE ORIGINAL JURISDICTION OF THIS COURT AND FOR A WRIT OF CERTIORARI OR MANDAMUS TO THE SOUTH CAROLINA COURT OF APPEALS

EXHIBITS A – J

Michael and Mary Smith, Petitioners pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
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3710 Landmark Drive, Suite 400
Columbia, SC 29204
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Exhibit A: Court of Appeals Order of June 8, 2026, denying appointment of counsel.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

June 8, 2026

Michael Smith
220 Stancil Street
Easley SC 29640

Mary Smith
220 Stancil Street
Easley SC 29640

Re: Michael and Mary Smith v. King Asphalt, Inc.
Appellate Case No. 2025-001327

Dear Mr. Smith and Ms. Smith:

Enclosed is this Court's order regarding your motion to appoint counsel. The time for serving and filing the appellants' initial brief and designation of matter will expire thirty (30) days from the date of this letter. Failure to comply with the Court's request will result in the dismissal of this appeal.

Very truly yours,


CLERK

cc: Catharine Garbee Griffin, Esquire

The South Carolina Court of Appeals

Michael and Mary Smith, Appellants,

v.

King Asphalt, Inc., Respondent.

Appellate Case No. 2025-001327

ORDER

This appeal arises out of an order of the circuit court granting summary judgment in favor of Respondent. Appellants filed a motion to appoint counsel. Respondent filed a motion to allow the late filing of a return to the motion to appoint counsel. Respondent's motion is granted. After careful consideration of Appellants' motion, the return, and the reply, the motion to appoint counsel is respectfully denied. *See* Rule 608(g), SCACR (providing that counsel should not be appointed for an indigent unless the indigent has a right to appointed counsel under the state or federal constitution, a statute, a court rule, or the case law of this state); *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983) (holding there is no constitutional right to counsel in civil cases).



FOR THE COURT

Columbia, South Carolina

FILED
Jun 08 2026

cc:

Michael Smith

Mary Smith

Catharine Garbee Griffin, Esquire

Exhibit B: Court of Appeals letter of June 23, 2026, declining to act on reconsideration.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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June 23, 2026

Michael Smith
220 Stancil Street
Easley SC 29640

Mary Smith
220 Stancil Street
Easley SC 29640

Re: Michael and Mary Smith v. King Asphalt, Inc.
Appellate Case No. 2025-001327

Dear Mr. Smith and Ms. Smith:

We are in receipt of your motion for reconsideration filed on June 15, 2026. This Court declines to act on the motion for reconsideration of this Court's June 8, 2026 order pursuant to Rule 221(c), SCACR. The time for serving and filing the appellants' initial brief and designation of matter remains as July 8, 2026.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Catharine Garbee Griffin, Esquire

Exhibit C: Motion for Reconsideration filed June 15, 2026.

Jun 15 2026

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM PICKENS COUNTY

Court of Common Pleas
Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

**MOTION FOR RECONSIDERATION OF ORDER DENYING
APPOINTMENT OF COUNSEL, AND MOTION TO STAY BRIEFING
DEADLINE PENDING DISPOSITION**

Appellants Michael and Mary Smith respectfully move this Court to reconsider its June 8, 2026 Order denying appointment of counsel, and to stay the current July 8, 2026 briefing deadline pending disposition of this Motion. This Motion is brought under Rule 240, SCACR, and the Court's inherent authority over its interlocutory

orders. To the extent the June 8 Order has the practical effect of finally deciding whether this appeal may proceed to merits review, Appellants further preserve in the alternative the principles reflected in Rule 221(a) and Rule 221(c), SCACR.

The June 8 Order does not address the authorities and circumstances Appellants presented in support of appointment. It does not engage the inherent judicial power recognized in *Ex parte Dibble*, 279 S.C. 592, 595, 597 (Ct. App. 1983), does not address the case-specific due process analysis required by *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), and *Mathews v. Eldridge*, 424 U.S. 319 (1976), and does not address the combination of circumstances that make meaningful appellate review impossible here absent counsel: Appellants' functional illiteracy and medical limitations, a defective and incomplete certified record, the trial court's un rebutted finding that counsel is warranted, and the barrier created by the trial court's on-the-record warning concerning non-lawyer assistance. Because the Order does not address those arguments or authorities, reconsideration is warranted.

I. THE PROPER VEHICLE IS RECONSIDERATION OF AN INTERLOCUTORY ORDER UNDER RULE 240 AND THE COURT'S INHERENT AUTHORITY

The June 8 Order is not a final disposition on the merits of this appeal. It is an interlocutory order entered in the course of appellate administration. Appellants

therefore seek reconsideration under Rule 240, SCACR, and under the Court's inherent authority to revise interlocutory orders entered before final disposition.

The Order's consequences are not merely administrative. It denies counsel, leaves in place a July 8, 2026 briefing deadline, and thereby places Appellants in the position of either attempting appellate briefing they are not capable of preparing or suffering dismissal for failure to comply. To the extent the Order's certain operation is dismissal or final foreclosure of merits review, Appellants preserve the alternative argument that rehearing principles remain available because the Order effectively decides whether this appeal can proceed at all.

II. THE ORDER DOES NOT ADDRESS THE COURT'S INHERENT POWER TO APPOINT COUNSEL WHERE REASONABLY NECESSARY TO DO JUSTICE

South Carolina courts possess inherent power to do what is reasonably necessary to ensure just results. In *Ex parte Dibble*, this Court held that courts have the inherent power to appoint counsel without compensation where such appointment appears reasonably necessary to do justice, describing the case before it as extraordinary because appointment was necessary to render justice and the litigant was not reasonably able to secure a lawyer on his own. The standard *Dibble* announced is

whether appointment is reasonably necessary to do justice. That standard governs here.

This record satisfies it. The trial court found in its March 19, 2024 Order that "all of this clearly warrants that Plaintiffs have counsel." That finding was presented to this Court and remains unrebutted. Appellants also presented that after years of diligent effort, contact with more than twenty-five attorneys and legal aid entities, and documented indigency, they have been unable to obtain counsel through ordinary means. The June 8 Order cites *Dibble* but does not apply the standard *Dibble* announced, does not address the trial court's unrebutted finding, and does not explain why this record falls outside *Dibble*'s scope. That omission is the threshold error requiring reconsideration.

III. THE ORDER DOES NOT ADDRESS THE CASE-SPECIFIC DUE PROCESS ANALYSIS REQUIRED BY *LASSITER* AND *MATHEWS*

Appellants did not argue that there is a categorical constitutional right to counsel in every civil appeal. Ex parte *Dibble* correctly holds there is no such categorical right, and that proposition is undisputed. Appellants' argument was narrower: where state action combines with a litigant's severe incapacity and procedural barriers so that a protected claim cannot be meaningfully presented, due process requires a case-

specific analysis under *Lassiter* and *Mathews v. Eldridge*. The June 8 Order does not address *Lassiter*, *Mathews*, or any of the three factors that analysis requires.

A. The Private Interest Is Exceptional

This appeal is Appellants' only remaining opportunity to obtain review of the dismissal of their personal injury claims arising from the March 2019 accident on Highway 8 in Easley, South Carolina. For these Appellants, denial of counsel does not merely create procedural disadvantage. It threatens permanent extinguishment of their only realistic opportunity to obtain appellate review on the merits of a personal injury claim brought by injured, indigent, functionally illiterate individuals against a corporate defendant with experienced appellate counsel and institutional resources. The asymmetry is total. The private interest at stake could not be higher for these litigants.

B. The Risk of Erroneous Deprivation Is Extreme

The risk of erroneous deprivation here is not hypothetical. It is certain. Appellants represented that Michael Smith is functionally illiterate, that both Appellants have documented health and cognitive limitations, and that the certified record is materially defective: hundreds of exhibit pages are illegible, blacked out, flipped, or sheared, a defect confirmed in writing by Deputy Clerk Michelle Broom of the Pickens County Clerk of Court, and critical digital evidence submitted below on

USB flash drive, including SChP dashcam video, 911 call audio, insurance interview audio, and trooper audio statements, is missing from the certified record entirely.

These are not abstract hardships. They bear directly and concretely on the ability to identify appellate issues, review the record, cite controlling authority, prepare a brief that conforms to Rule 208, SCACR, and respond to a represented respondent in this Court. For functionally illiterate litigants operating from a corrupted and incomplete record, the risk of erroneous deprivation through procedural default is not a possibility to be weighed. It is the inevitable result of denying appointment. The June 8 Order does not address any of these barriers.

C. The State's Interest Favors Accurate Adjudication, Not Procedural Default

The State's interest is not merely administrative efficiency. It encompasses the institutional interest in accurate adjudication and in avoiding the extinguishment of a protected claim through the arbitrary operation of court-controlled procedures.

Every barrier Appellants face here arises from state judicial action: the clerk of court certified the defective record, the circuit court issued the warning concerning non-lawyer assistance, and this Court set the briefing deadline and the consequence of dismissal for non-compliance.

Under *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), a cause of action is a protected property interest, and the State may not extinguish it through the arbitrary operation of its own procedures. Where the procedures that threaten to extinguish the claim are themselves the product of state judicial action, the State's interest weighs in favor of appointment, not against it. The June 8 Order does not address Logan or the framework it establishes, and does not explain why it does not apply to these facts.

IV. THE ORDER DOES NOT ADDRESS THE COMBINED CIRCUMSTANCES THAT MAKE SELF-REPRESENTATION FUNCTIONALLY IMPOSSIBLE

This is not a case involving an ordinarily capable self-represented litigant seeking a tactical advantage. The motion presented a combination of circumstances that, taken together, make meaningful self-representation impossible, and the June 8 Order does not engage any of them.

First, Michael Smith is functionally illiterate. The handwritten petition filed March 25, 2024, stating "We cant read and write we need help we are both very sick," was not rhetoric submitted for effect. It is physical evidence, filed in the circuit court record, of Appellants' incapacity to identify controlling authority, frame dispositive legal questions, or prepare a conforming appellate brief without assistance.

Second, the certified record is not merely voluminous. It is corrupted and incomplete. Appellants identified illegible and damaged exhibits confirmed by the Deputy Clerk's own email and the omission of digital evidence submitted below. Without a usable record, even a trained lawyer would face serious difficulty preparing a brief on a defective factual foundation. For functionally illiterate litigants, the problem is dispositive.

Third, the trial court's warning concerning non-lawyer assistance forecloses the only informal help that might otherwise bridge the gap. The circuit court warned on the record that any non-lawyer assisting Appellants does so at his own peril. That warning, entered after proceedings initiated by Respondent, is unrebutted and unaddressed by the June 8 Order. Its combined effect with Appellants' functional illiteracy is a constitutional impossibility: Appellants cannot prepare filings themselves, cannot lawfully receive non-lawyer assistance, and cannot obtain counsel in the market after seven years of effort.

The Order does not explain how this appeal is expected to proceed under those conditions, and no answer to that question exists that does not require either appointment of counsel or abandonment of the claim entirely.

V. THE ORDER DOES NOT ADDRESS THE TRIAL COURT'S UNREBUTTED FINDING THAT COUNSEL IS WARRANTED

The circuit court expressly found that "all of this clearly warrants that Plaintiffs have counsel." That finding was presented to this Court in support of appointment and remains unrebutted by Respondent. Although the trial court's finding does not bind this Court on the separate question of appellate appointment, it is directly relevant. It reflects the direct observation of the presiding circuit judge of Appellants' limitations and of the practical inability of these litigants to proceed without counsel. The June 8 Order does not acknowledge that finding or explain why the circumstances that warranted it below have no bearing on the question of appellate appointment.

VI. THE ORDER DOES NOT ADDRESS THE COMPLEXITY OF THE PRESERVED APPELLATE ISSUES IN RELATION TO THESE APPELLANTS' INCAPACITY

This appeal presents three preserved issues that require legal training, regulatory knowledge, and a complete and usable record to brief competently.

The first is whether the trial court erred in applying a two-inch height differential standard when the SCDOT contract and South Carolina Work Zone Safety Guidelines prohibited a differential exceeding one inch for milled surfaces reopened to traffic. Briefing this issue requires knowledge of how South Carolina courts resolve conflicts between contract provisions, regulatory standards, and the

negligence per se doctrine, and requires access to and comprehension of the full trial record including exhibits Appellants cannot read.

The second is whether a trial court may impose a mandatory expert witness requirement in a negligence per se action based on statutory violations, and whether doing so at summary judgment without prior notice constitutes reversible error. This question has statewide implications for how negligence per se claims are litigated in South Carolina and requires knowledge of how summary judgment procedure intersects with evidentiary standards and the elements of negligence per se under South Carolina law.

The third is whether the trial court misinterpreted the statutory definition of a highway work zone under S.C. Code Section 56-5-1535(F)(1), a question of pure statutory construction that directly controlled the standard of care applied to Respondent and requires knowledge of how definitional provisions function within a negligence per se framework.

The point is not to brief the merits prematurely. It is to demonstrate that this is not a simple appeal that can realistically be presented by litigants who cannot read, who lack legal training, and who are operating from a corrupted and incomplete certified record against experienced appellate counsel with institutional resources. The June 8 Order does not address that mismatch.

VII. A STAY OF THE BRIEFING DEADLINE IS NECESSARY PENDING DISPOSITION OF THIS MOTION

Rule 240(b), SCACR, makes clear that filing a motion does not itself stay time limits absent a court order. Unless the July 8, 2026 deadline is stayed, Appellants will be forced to attempt briefing while this Motion remains pending, and the very injury this Motion seeks to prevent, dismissal for failure to produce a conforming brief that these Appellants are constitutionally and practically incapable of producing, may occur before the Court rules.

A short stay will not prejudice Respondent. The underlying litigation has been pending since 2021 and the merits of the appeal have not yet been briefed by either side. By contrast, denial of a stay risks mooted the request for appointment by allowing the appeal to be dismissed before reconsideration is resolved, permanently extinguishing a protected property interest through the operation of a deadline that this Court controls. The balance of hardships permits only one answer.

VIII. CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court:

1. Reconsider and vacate the June 8, 2026 Order denying appointment of counsel;

2. Stay the July 8, 2026 briefing deadline immediately and pending full disposition of this Motion; and
3. Appoint counsel pursuant to the Court's inherent authority as recognized in *Ex parte Dibble* and consistent with the due process considerations addressed in *Lassiter, Mathews v. Eldridge, and Logan v. Zimmerman Brush Co.*

Respectfully submitted,

/s/ Michael Smith
Michael Smith, Appellant pro se
/s/ Mary Smith
Mary Smith, Appellant pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Dated: June 15, 2026

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2026, I served a true and correct copy of the foregoing MOTION FOR RECONSIDERATION OF ORDER DENYING APPOINTMENT OF COUNSEL, AND MOTION TO STAY BRIEFING DEADLINE PENDING DISPOSITION via email upon:

SC Court of Appeals: ctappfilings@sccourts.org

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

/s/ Michael D. Smith
Michael D. Smith, Pro Se Appellant
/s/ Mary Smith
Mary Smith, Appellant pro se

June 15, 2026

RECEIVED

Jun 15 2026

SC Court of Appeals

Exhibit D: Motion for Appointment of Counsel.

RECEIVED

Feb 09 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondents,

MOTION FOR APPOINTMENT OF COUNSEL AND REMAND TO REPAIR THE RECORD

Michael and Mary Smith
Appellants, pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
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MOTION FOR APPOINTMENT OF COUNSEL AND REMAND TO REPAIR THE RECORD

I. INTRODUCTION

Appellants Michael Smith and Mary Smith, appearing pro se, respectfully move this Court for an Order appointing qualified appellate counsel and remanding this case to the trial court to correct a materially defective record. This request is made pursuant to Rule 608, SCACR; Rule 210, SCACR; Article I, § 9 of the South Carolina Constitution; the Court’s inherent equitable authority recognized in *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983) and *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995); and all relevant case law. These circumstances make this one of the “few cases in which it is reasonably necessary to do justice” under Rule 608(b), SCACR.

As a practical matter, this appeal cannot be meaningfully prosecuted without counsel. Appellants are pro se and functionally unable to navigate the South Carolina Appellate Court Rules, repair a materially defective record, and prepare a compliant appellate brief with accurate record citations on a compressed deadline. Where the record itself is objectively illegible in substantial part and critical materials are missing or unusable, unrepresented litigants cannot realistically preserve issues, assemble a usable record, and present the case in the form required for appellate review.

If counsel is not appointed (and the case not remanded for record repair), the likely outcome is not a decision on the merits but a loss by procedural default—missed or unenforceable briefing requirements, inability to cite the record, and inability to cure record defects in time. Denial of counsel under these circumstances would therefore be effectively dispositive, terminating the

appeal in substance not because the issues lack merit, but because Appellants lack the capacity to present them in a manner that permits appellate review.

As noted in the Court's letter dated January 14, 2026 (Exhibit K), Appellants previously expressed their intent to seek counsel, and this formal Motion now places that request, and the evidence of substantial record corruption, before the Court for adjudication. This motion is an appeal to this Court to intervene and restore the fair administration of justice, which has been fundamentally compromised by the extraordinary circumstances of this case. Without the assistance of appointed counsel and a remand to repair the record, Appellants will be effectively denied their fundamental constitutional right to due process, as they are unable to meet the 30-day briefing deadline due to the objective illegibility of the trial materials and their functional illiteracy.

II. FINANCIAL EXHAUSTION AND SEVEN-YEAR DURATION

The underlying accident in this case occurred in March 2019. For nearly seven years, Appellants have diligently sought a resolution on the merits. Appellants have demonstrated the utmost good faith by paying the \$250 statutory filing fee and approximately \$500 for hearing transcripts to satisfy Rule 207, SCACR. This expenditure has exhausted their limited resources. Appellants remain indigent under the factors set forth in Rule 608(b)(4), SCACR, as their current income, substantial debts, and lack of liquid assets leave them unable to afford private appellate counsel.

III. EXTRAORDINARY AND COMPOUNDING CIRCUMSTANCES

A. Functional Illiteracy and Health Limitations

Michael Smith is functionally illiterate, and both Appellants suffer from health and cognitive limitations that prevent effective self-representation. Requiring a functionally illiterate litigant to prepare a Record on Appeal from a defective volume of 830 pages of exhibits, of which approximately 300 are currently illegible, creates a manifest risk of denying justice. On March 25, 2024, Appellants filed a handwritten petition for a "Next Friend," the physical composition of which serves as primary evidence of the literacy and communication barriers that preclude Appellants from navigating the complex appellate process without assistance (Exhibit I). The document provides a visual record of the necessity for court intervention.

B. Procedural Ambush at Summary Judgment

At the hearing on January 27, 2025, Appellants were ambushed with a 212-page memorandum from defense counsel (Tr Hearing January 27, 2025, p.13,14, ll. 25-2) (Exhibit D), filed that same morning at 8:38 AM. This document completely reframed the long-standing negligence per se claim into one of ordinary negligence, arguing for the first time that an expert witness was required. The Court acknowledged receipt of the unread document, stating, "it will take me some time to read through this this afternoon" (Tr. Jan. 27, 2025, p. 3, ll. 8-13) (Exhibit D). This eleventh-hour shift in legal theory deprived Appellants of notice and any meaningful opportunity to respond.

C. Impairment and Contemporaneous Notice to Counsel

On January 17, 2024, Appellants notified defense counsel via email at 10:27 AM (prior to an 11:30 hearing) that Mr. Smith was "on scripshun narcoticks" and would be unable to participate effectively without counsel (Exhibit F). Despite this written notice and subsequent verbal advisement to the Court that his "mind's real cloudy," proceedings

moved forward without counsel present to protect his rights (Tr. Jan. 17, 2024, p. 6, ll. 8–14) (Exhibit C).

D. Objectively Defective Record and Representative Sampling

The public record is unusable for review. On March 4, 2025, Deputy Clerk Michelle Broom explicitly admitted that court scanners "only scan in black and white," "flip pages," and "unfortunately with larger filings... will flip pages" (Exhibit E). This equipment failure rendered approximately 300 of the 830 exhibit pages illegible.

Appellants informed the Court of this and received no response. (Exhibit P)

Rather than burden the Court with the full volume of defective materials, Appellants attach as (Exhibit L) a curated set of 52 representative pages, a 20% sampling, illustrating the nature and severity of the record corruption. These pages include absolute black blocks where photographs were intended, blurred pages, pages sideways and upside down, and pages where text has been sheared off due to scanner misalignment.

Furthermore, critical digital evidence properly submitted on a USB drive remains unreviewed and omitted from the record (Exhibit J). This digital data includes:

- SCHP dashcam video and audio evidence;
- Audio of 911 calls;
- Defendant's insurance audio interview;
- Recorded audio statements by the SCHP Trooper.

The omission of these materials constitutes a structural defect in the record. *See State v. Brown*, 411 S.C. 332 (2014); Rule 210, SCACR.

E. Judicial and Respondent Recognition of Need for Counsel

During a hearing, Judge Gravely recognized the Appellants' need for an attorney "The Smiths need help getting a lawyer. THE COURT: Well, there's no question about that." (Tr. Mar. 7, 2024, p. 44, ll. 11,12) (Exhibit B) Subsequently in its order the trial court found that "As in most complicated legal matters, the Plaintiffs need representation by an attorney licensed to practice law in South Carolina. Due to the Plaintiffs' health condition and other limitations, it is even more important that they not proceed as unrepresented litigants...All of this clearly warrants that Plaintiffs have counsel. " (Order, Mar. 19, 2024, p. 4) (Exhibit A). The extraordinary nature of these proceedings is confirmed by the mandatory recusal of the prior presiding judge, who Judge Gravely noted: "is recused from any further participation in this case" due to "various filings in this matter"(Order, Mar. 19, 2024, p. 4) (Exhibit A). Additionally, the Respondent itself previously petitioned the court for the appointment of a third party to "protect the Smiths" (Tr. Mar. 7, 2024, p. 30, ll. 7-16) (Exhibit B), admitting the Appellants lack the capacity to navigate this alone.

F. Documented Pattern of Denied Procedural Relief (Rule 40(j))

Request 1: April 25, 2023 Requesting Party: Michael D. Smith Response: Attorney Still: "There will be no continuance." Defense refused to respond to written 40(j) inquiry (Exhibit H). Outcome: Denied.

Request 2: May 19, 2023 Requesting Party: Mary A. Smith Response: Mary Smith: "May I, please, get a 40 (j)?" Atty Davis: "No, sir." Atty Griffin: "We do not." (Tr. May 19, 2023, p. 6-8) (Exhibit N). Outcome: Denied.

Request 3: October 30, 2023 Requesting Party: Mary A. Smith Response: Mary Smith filed a written motion for Rule 40(j) relief to allow for replacement of counsel. Outcome: Denied (Respondent withheld consent). Outcome: Denied.

Request 4: January 17, 2024 Requesting Party: Michael D. Smith Response: M. Smith: "I need a 40-J." Atty Griffin: "We are not consenting to 40-J the case." (Tr. Jan. 17, 2024, p. 3,4) (Exhibit M). Outcome: Denied.

IV. PRESERVED LEGAL ISSUES OF PUBLIC IMPORTANCE

This appeal raises significant legal questions that warrant professional appellate advocacy, including:

1. **The 1-Inch vs. 2-Inch Rule:** Whether the trial court erred in applying a 2-inch height differential standard when the SCDOT contract and the South Carolina Work Zone Safety Guidelines prohibited a height differential exceeding 1 inch for milled surfaces reopened to traffic.
2. **Expert Witness Requirement:** Whether a trial court may impose a mandatory expert witness requirement in a negligence per se action based on statutory violations, and whether doing so at the Summary Judgment stage without prior notice constitutes reversible error.
3. **Work Zone Definition:** Whether the Court erred in its legal interpretation of a "highway work zone" under **S.C. Code § 56-5-1535(F)(1)**, which fundamentally impacted the standard of care applied to the Respondent.

V. PRAYER FOR RELIEF

WHEREFORE, Appellants respectfully request that this Court:

1. **APPOINT** qualified appellate counsel for the remainder of this appeal;
2. **REMAND** this matter to the trial court to oversee repairs to the record, including re-scanning the approximately 300 illegible pages and including the digital data on the submitted USB drive (SCHP dashcam, 911 calls, insurance interview, and Trooper audio statements);
3. **STAY** all appellate briefing deadlines, specifically the 30-day deadline triggered by the Court's letter of January 14, 2026 (Exhibit K), until the record is certified as complete and legible and Appellants have had a meaningful opportunity to review the corrected record with counsel.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

/s/ Michael D. Smith
Michael D. Smith, Appellants (pro se)

/s/ Mary A. Smith
Mary A. Smith, Appellants (pro se)
220 Stancil Street, Easley, SC 29640
MichaelDSmith@housemail.com

February 9, 2026

RECEIVED
Feb 09 2026
SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that a copy of the

1. MOTION FOR APPOINTMENT OF COUNSEL AND REMAND TO REPAIR THE RECORD
2. Certificate of Service
3. Exhibits A-P

in Smith v. King Asphalt, Inc., Court of Appeals Case No. 2025-001327 was served upon the following counsel of record:

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204

The document was served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: February 9, 2026

Respectfully submitted,

<u>/s/ Michael Smith</u>	<u>February 9, 2026</u>
Michael Smith	Date
Pro Se Appellant	
220 Stancil Street	
Easley, S.C. 29640	
MichaelDSmith@housemail.com	

INDEX OF EXHIBITS

Exhibit A – Order of Judge Perry H. Gravely (Mar. 19, 2024)

Trial court order in 2021-CP-39-00329 finding that “the Plaintiffs need representation” and that “all of this clearly warrants that Plaintiffs have counsel,” and noting that the prior presiding judge “is recused from any further participation in this case due to various filings in this matter.”

Exhibit B – Transcript Excerpt (Mar. 7, 2024 – Judge Gravely)

Hearing transcript where the court states that “The Smiths need help getting a lawyer... no question about that,” and where the following additional exchange occurs:

- THE COURT: “First of all, I don't think that they've requested a guardian be appointed.”
- MR. PRESSLY: “Yes, they did.”
- MS. GRIFFIN: “Your Honor, in the initial joint petition, we did as an alternative ground, somebody to protect the Smiths...”

This exhibit shows both the court and Respondent acknowledging that the Smiths needed protection and assistance.

Exhibit C – Transcript Excerpt (Jan. 17, 2024 – Judge Morgan, narcotics / 40(j))

Hearing transcript where Mr. Smith tells the court he is on prescription narcotics, that his “mind’s real cloudy,” and states “I need me a lawyer. I need a 40-J,” while defense counsel refuses to consent to Rule 40(j) and the proceedings continue.

Exhibit D – Transcript Excerpt (Jan. 27, 2025 – Summary Judgment memorandum)

Summary Judgment hearing transcript showing that, at the start of the hearing, the court states it has just been handed the defendant’s memorandum in support of its motion and opposition to the Smiths’ cross-motion and says that it “will take me some time to read through this this afternoon,” documenting the late delivery of a lengthy memorandum on the day of the hearing. Ambushing pro se Appellants.

Exhibit E – Email from Deputy Clerk Michelle Broom (Mar. 4, 2025)

Email in which the Deputy Clerk explains that the clerk’s scanners only scan in black and white, flip pages, and that larger filings “will flip pages,” confirming that scanning equipment problems caused pages to become blacked out, flipped, or misaligned in the record.

Exhibit F – Email Regarding Prescription Narcotics and Hearing Participation (Jan. 17, 2024)

Written notice sent on the morning of the January 17, 2024 hearing stating that Mr. Smith was on “scripshun narcoticks” for a hernia and would not be able to participate effectively without counsel, documenting contemporaneous notice of impairment to opposing counsel.

Exhibit G – Verified Statement of Michael D. Smith (Jan. 2026)

Sworn statement detailing: (1) seven-year duration since the March 2019 accident; (2) more than twenty-five unsuccessful attempts to obtain counsel; (3) functional illiteracy and health limitations; (4) repeated but denied Rule 40(j) requests; and (5) indigency and inability to pay for appellate counsel.

Exhibit H – Email communication dated April 25, 2023, filed in the circuit court record as Exhibit H to the Amended Petition for Rule to Show Cause (electronically filed Feb. 23, 2024) by Respondents

Written email communication to defense counsel stating: “The Smith's have conferred with the following attorneys regarding the taking of this case as substitute counsel. They all agree that given the complexity and large amount of discovery in this case and due to the backlog of COVID they cannot just drop all their other clients to take up a contingency case with ten days to prepare. To a man, they have all suggested requesting a 40(j) removal from the docket to permit finding substitute counsel and giving them time to prepare and position the case as they see fit.” This exhibit shows multiple attorneys independently recommending Rule 40(j) removal as the realistic way to obtain substitute counsel. On the last page, conversation includes “there will be no continuance.”

Exhibit I – Handwritten Petition for Next Friend (Mar. 25, 2024)

Handwritten petition stating “We can’t read and write... we need help... we are both very sick,” serving as physical evidence of Appellants’ functional illiteracy and health limitations and their plea for court-appointed assistance.

Exhibit J – Digital Exhibits on USB Drive (SCHP Dashcam, 911 Calls, Insurance Interview, Trooper Audio)

Filing documenting submission of a USB flash drive containing SCHP patrol car dashcam video, 911 audio, the defendants’ insurance interview, and audio statements by the SCHP Trooper, which evidence was submitted but not incorporated into the certified record. Digital evidence not considered by the circuit court and ineligible for the record on appeal.

Exhibit K – Court of Appeals Correspondence (Jan. 15, 2026)

Letter from the South Carolina Court of Appeals referencing or setting the 30-day appellate briefing deadline, underscoring the urgency of appointing counsel and repairing the record before briefing is required.

Exhibit L – Representative Sample of Corrupted Record Pages (Approx. 20% of 300)

Curated sample of roughly 52 pages (of over 300) from the 830-page exhibits show blacked-out images, flipped pages, sheared text, and other scanner-induced defects, illustrating the nature and severity of the record’s illegibility.

Exhibit M – Transcript Excerpt (Jan. 17, 2024 – Additional Narcotics / Impairment Passages)

Additional pages from the January 17, 2024 hearing highlighting Mr. Smith’s statements about

prescribed narcotics and impaired mental clarity at the time a settlement and other critical matters were addressed. Mr. Smith requested a 40(j). Denied

Exhibit N – Transcript Excerpt (May 19, 2023 – Motion to Relieve Counsel and Rule 40(j) Request)

Hearing transcript where prior attorney representation is terminated and Ms. Mary Smith states, “May I, please, get a 40(j)?,” the court confirms, “You want a -- a 40(j), Rule 40(j)?,” and defense counsel responds, “Yes, Your Honor. We would object to it,” resulting in denial of 40(j) relief while the Smiths are directed to try to obtain new counsel. Denied

Exhibit O – March 26, 2025 Letter from Michael and Mary Smith to Judge Salvini

Letter clarifying that Appellants’ theory is negligence per se based on specific SCDOT statutes and regulations, explaining that Mr. Smith was interrupted when attempting to read his prepared negligence-per-se statement into the record at the January 27, 2025 Summary Judgment hearing, and describing procedural unfairness, including the late-filed memorandum and an unusable record.

Exhibit P – Email to Judge Salvini Regarding Corrupted Exhibits (Mar. 3, 2025)

Email advising the trial court that many exhibits in the public record are “messed up,” out of order, blacked out, or illegible, and requesting that the record be repaired before appeal, showing contemporaneous notice of record defects.

Exhibit E: Supplemental Brief filed February 27, 2026.

RECEIVED

Feb 27 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL

Michael and Mary Smith
Appellants, pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, Michael and Mary Smith, Appellants pro se in the above-styled matter, and respectfully submit this Supplemental Brief in support of the pending Motion for Appointment of Counsel and Remand to Repair the Record.

I. THE STATUTORY LIST IS NOT EXCLUSIVE OF CONSTITUTIONAL OR INHERENT AUTHORITY

South Carolina statutory law enumerates specific categories of civil proceedings in which appointment of counsel is mandatory: parental rights proceedings under S.C. Code §§ 63-7-1620, 63-7-2560(A) and (B); involuntary commitments for mental health and substance abuse treatment under S.C. Code §§ 44-17-410, 44-17-530, 44-52-60, 44-52-70, and 44-24-90(D); protection of persons under disability under S.C. Code §§ 62-5-303B and 62-5-403A; and post-conviction relief under S.C. Code § 17-27-60.

The existence of these statutes does not foreclose the authority of this Court to appoint counsel outside those categories. The statutory list addresses mandatory appointment; it does not strip this Court of discretionary appointment authority rooted in constitutional due process, Rule 608(b) of the South Carolina Appellate Court Rules, or the inherent equitable power of the Court to ensure the fair administration of justice.

II. RULE 608(b), SCACR, AUTHORIZES DISCRETIONARY APPOINTMENT

Rule 608(b), SCACR, expressly preserves the authority of this Court to appoint counsel in civil appellate proceedings in "those few cases in which it is reasonably necessary to do justice." This

Court has recognized that rule in *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983), and *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995).

The rule functions as a fail-safe mechanism to prevent manifest injustice where:

- The legal issues exceed the capacity of a layperson to comprehend or navigate;
- The adversary possesses trained counsel and institutional resources creating structural imbalance;
- The substantive rights at stake are of such magnitude that denial of counsel would violate fundamental fairness; or
- The absence of representation would render the judicial process itself unreliable or illegitimate.

The appointment of counsel under Rule 608(b) is not a constitutional entitlement in every civil case, but a discretionary remedy invoked in extraordinary circumstances to preserve the integrity of the adjudicative process. This case presents those extraordinary circumstances.

III. DUE PROCESS ANALYSIS CONFIRMS APPOINTMENT IS BOTH PERMISSIBLE AND NECESSARY

The Due Process Clause of the Fourteenth Amendment does not guarantee appointed counsel in all civil matters. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 31–32 (1981). However, *Lassiter* confirms that due process analysis is inherently fact-specific and case-by-case. The three-factor *Mathews v. Eldridge* balancing framework applied in *Lassiter*, the private interest affected, the risk of erroneous deprivation, and the governmental interest in accurate adjudication, is the proper analytical tool for determining whether appointment is constitutionally permissible in a given case. Applied here, all three factors confirm that this case falls squarely within the category of exceptional circumstances where appointment is both constitutionally permissible and necessary to prevent erroneous deprivation.

Factor 1, The Private Interest:

This appeal is Appellants' only remaining opportunity to obtain any measure of justice for personal injuries sustained in a 2019 accident that has consumed nearly seven years of their lives, depleted their financial resources, and left them substantially behind on ordinary living expenses. The underlying claim is not a commercial dispute, it is a personal injury action brought by injured, indigent, functionally illiterate individuals against a corporate defendant. That interest, while not implicating physical liberty, is of substantial magnitude and is irreplaceable. Denial of counsel does not merely disadvantage Appellants, it extinguishes their only remaining opportunity to be heard on the merits.

Factor 2, The Risk of Erroneous Deprivation:

This is the most compelling factor. Michael Smith is functionally illiterate. Both Appellants suffer from documented health and cognitive limitations. The certified record is structurally defective, approximately 300 of 830 exhibit pages are illegible, confirmed by the Deputy Clerk's own email, and critical digital evidence remains omitted entirely. The three preserved appellate issues require interpretation of state regulatory standards, application of the negligence per se doctrine, analysis of summary judgment procedure, and statutory construction of S.C. Code § 56-5-1535(F)(1). The risk that this appeal will be decided on procedural default rather than its merits, solely because Appellants cannot navigate a corrupted record without counsel, is not speculative. It is certain. That is precisely the erroneous deprivation *Lassiter* identifies as the central concern of due process analysis.

Factor 3, The Interest in Accurate Adjudication:

The State and this Court have a direct institutional interest in ensuring that appellate decisions

rest on the merits rather than on the procedural inability of unrepresented, functionally illiterate litigants to brief issues from a defective record. A decision against the Smiths rendered under these circumstances would not reflect the reliability that the adjudicative process demands. The trial court itself recognized this, finding that "all of this clearly warrants that Plaintiffs have counsel." (Order Mar. 19, 2024, p. 4.) That finding is unrebutted on appeal.

IV. THE COURT'S INHERENT EQUITABLE AUTHORITY SUPPORTS

APPOINTMENT

South Carolina courts retain inherent authority to regulate their own proceedings and ensure the fair administration of justice. This authority includes the discretionary power to appoint counsel where necessary to prevent a manifest miscarriage of justice, even in the absence of express statutory authorization.

The South Carolina Supreme Court has recognized that appellate courts possess broad discretionary authority to manage proceedings, ensure fairness, and prevent abuse. The appointment of counsel in extraordinary circumstances is a permissible exercise of that authority when no other remedy adequately protects the integrity of the judicial process. That principle is confirmed by the trial court's own March 19, 2024 Order finding that "all of this clearly warrants that Plaintiffs have counsel", a finding Respondent has never challenged on appeal.

V. EXTRAORDINARY CIRCUMSTANCES EXIST IN THIS CASE

A. Legal Complexity Beyond Layperson Capacity

This appeal presents three preserved issues of statewide importance that require professional appellate advocacy:

- Whether the trial court erred in applying a 2-inch height differential standard when the SCDOT contract and South Carolina Work Zone Safety Guidelines prohibited a differential exceeding 1 inch for milled surfaces reopened to traffic, a question requiring interpretation of state regulatory standards and their relationship to the negligence per se doctrine;
- Whether a trial court may impose a mandatory expert witness requirement in a negligence per se action based on statutory violations, and whether doing so at summary judgment without prior notice constitutes reversible error, a question with statewide implications for how negligence per se claims are litigated in South Carolina; and
- Whether the trial court misinterpreted the statutory definition of a highway work zone under S.C. Code § 56-5-1535(F)(1), a question of statutory construction that directly controlled the standard of care applied to Respondent.

Michael Smith is functionally illiterate. Both Appellants suffer from documented health and cognitive limitations. The handwritten petition filed March 25, 2024, stating "We cant read and write we need help we are both very sick", is itself physical proof that these Appellants cannot identify controlling authority, frame dispositive legal questions, or preserve issues for appellate review without assistance. Furthermore, the certified record is structurally defective.

Approximately 300 of 830 exhibit pages are illegible, blacked out, flipped, or sheared, as confirmed by the Deputy Clerk's own email. Critical digital evidence submitted on USB (SCHP dashcam video, 911 calls, insurance interview, Trooper audio) remains omitted from the certified record. No layperson, much less a functionally illiterate one, can brief complex appellate issues from a corrupted and incomplete record.

B. Adversarial Imbalance

Respondent King Asphalt, Inc. is represented by experienced appellate counsel at Baker, Ravenel & Bender, LLP, a Columbia firm with institutional resources, full access to the South Carolina appellate electronic filing system, Westlaw or Lexis legal research platforms, and professional support staff. Respondent filed a 212-page memorandum at the summary judgment hearing, handed to the court and to Mr. Smith simultaneously on the morning of the hearing,

reframing the entire theory of the case without prior notice. Appellants had no counsel present to object, request a continuance, or preserve the issue. That structural imbalance at the trial level persists and intensifies at the appellate level, where briefing requirements, preservation doctrine, and record citations demand legal training that Appellants do not possess.

C. Fundamental Interest at Stake

This appeal is Appellants' only remaining opportunity to obtain justice for injuries sustained in 2019. As Appellants documented under oath, the nearly seven years of litigation depleted their financial resources, left them substantially behind on ordinary living expenses, and exhausted the proceeds of a prior partial settlement, proceeds that went primarily to their then-attorney and were obtained at a time when Mr. Smith was impaired by prescription narcotics. Denial of counsel does not merely disadvantage Appellants, it extinguishes that opportunity entirely and renders the result of this appeal the product of procedural attrition rather than merits adjudication.

VI. CONCLUSION

The statutory list of civil proceedings requiring appointed counsel does not displace the constitutional, inherent, or rule-based authority of this Court to appoint counsel where extraordinary circumstances demand it. *Lassiter* confirms that due process analysis is case-by-case, and all three *Lassiter* factors weigh in favor of appointment here. Rule 608(b) independently authorizes appointment where "reasonably necessary to do justice." The trial court found that counsel is warranted. The record proves it. Respondent has never rebutted it.

Appointment of counsel is necessary to ensure the reliability of these proceedings, the protection of fundamental rights, and the integrity of the judicial process.

WHEREFORE, Appellants respectfully request that this Court exercise its discretionary authority under Rule 608(b), SCACR, the Due Process Clause of the Fourteenth Amendment, and its inherent equitable power, and enter an Order appointing counsel to represent the Smiths for the duration of this appeal.

Respectfully submitted,

/s/ Michael Smith
Michael Smith, Appellant pro se

/s/ Mary Smith
Mary Smith, Appellant pro se

220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Dated: February 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2026, I served a true and correct copy of the foregoing SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL with COS upon the Court and Respondent's counsel of record by electronic mail:

SC Court of Appeals : ctappfilings@sccourts.org

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

s/ Michael D. Smith
Michael D. Smith
Pro Se Appellant

RECEIVED
Feb 27 2026
SC Court of Appeals

Exhibit F: Circuit Court Order of March 19, 2024 (counsel finding at p. 4). Excerpt from Circuit Court Order of March 19, 2024, Page 4, Circuit Court Case No. 2021-CP-39-00329, County of Pickens.

Exhibit F – March 19, 2024 Order (Gravely)

Smith v. King Asphalt, Inc. – C/A No. 2021-CP-39-00329 – App. Case No. 2025-001327

Source:

Order of Judge Perry H. Gravely, filed March 19, 2024, Pickens County Court of Common Pleas, Case No. 2021-CP-39-00329.

Key Language:

The court finds that “the Plaintiffs need representation by an attorney licensed to practice law in South Carolina” and that “all of this clearly warrants that Plaintiffs have counsel.”

Purpose:

Shows the trial court’s express recognition that Appellants need counsel, supporting appointment of appellate counsel under Rule 608 and a remand to repair the record.

Submitted by:

Michael D. Smith and Mary A. Smith,
Appellants, pro se
220 Stancil Street,
Easley, SC 29640
MichaelDSmith@housemail.com

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

vs.

King Asphalt, Inc.,

Defendant/Petitioner,

IN RE:

FRANCIS HUNTER PRESSLY,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

Case No: 2021CP3900329

ORDER

This matter came before the Court upon Defendant King Asphalt, Inc.'s Amended Petition for Rule to Show Cause relating to a 3rd party: Francis Hunter Pressly. The hearing was held on March 8, 2024 and Kathryn Griffin appeared on behalf of Defendant and Mr. Pressly appeared on his own behalf. The Plaintiffs, who are unrepresented at this time, did not appear, but had sent an email to the Court prior to the hearing stating that they would not be present.

The case is an action against the Defendant for personal injuries sustained by the Plaintiffs in an automobile accident. Initially, the case was brought against this defendant and Defendant Themistoklis Economo, but the case against Defendant Economo has been resolved. The issue raised by the Amended Petition is whether Mr. Pressly's action in this matter constitute the unauthorized practice of law and what sanctions should be imposed if he has. The lawsuit was originally filed by attorney Donald Smith of the Anderson County Bar and by Order of Judge G.D. Morgan, Jr. issued May 19, 2023, Donald Smith was relieved as counsel and the Plaintiffs were afforded 90 days to retain substitute counsel. Throughout this litigation, Mr.

6) Various other incidents set forth in Defendant's Amended Petition.

Even though the Court cannot impose sanctions, the Court would advise Mr. Pressly that if he continues with these actions or similar actions, he does so at his own peril. Further, the Court would Order that the Clerk's office not accept for filing any pleadings or documents submitted by Mr. Pressly on behalf of the Plaintiffs without approval by the Acting Chief Administrative Judge.

As in most complicated legal matters, the Plaintiffs need representation by an attorney licensed to practice law in South Carolina. Due to the Plaintiffs' health condition and other limitations, it is even more important that they not proceed as unrepresented litigants, but Mr. Pressly, as their Attorney-in-Fact, is not a viable substitute for an attorney. In the future, the Court may need to hear Motions for Summary Judgment by Defendant and other Pre-trial Motions. If the matter goes forward, the parties may need to submit to additional mediation and if not resolved, proceed to trial. All of this clearly warrants that Plaintiffs have counsel. Mr. Pressly advises that he has been assisting the Plaintiffs in trying to obtain substitute counsel, but has been unable to do so due to the time constraints in this case. The accident at issue is 5 years old and the case is 3 years old, so the Court must carefully craft a remedy which protects the interests of the Plaintiffs, but also does not unnecessarily delay the resolution of the case for the Defendant. The Plaintiffs need sufficient time to retain counsel and a dismissal under Rule 40(j), South Carolina Rules of Civil Procedure, would give them the time needed for this, but it would require the consent of the Defendant. In the event that the Defendant does not consent to a dismissal under Rule 40(j), which is within its right, then the Court orders that the matter be stayed for a period of 5 months for the Plaintiffs to secure substitute counsel. In the event that



Pickens Common Pleas

Case Caption: Michael Smith , plaintiff, et al VS Themistoklis Economo , defendant,
et al
Case Number: 2021CP3900329
Type: Order/Judgment For Relief

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2024-03-19 09:45:35 page 6 of 6

Exhibit G: Deputy Clerk email acknowledging record defects.

Exhibit G – Deputy Clerk Email re Illegible Exhibits

Smith v. King Asphalt, Inc. – C/A No. 2021-CP-39-00329 – App. Case No. 2025-001327

Source:

Email from Deputy Clerk Michelle Broom, Pickens County Clerk of Court, dated March 4, 2025, regarding scanning and image quality of exhibits in Case No. 2021-CP-39-00329.

Key Language (paraphrased):

Advises that the court's scanners "only scan in black and white," "flip pages," and that "unfortunately with larger filings... will flip pages," acknowledging problems that produce "messed up," out-of-order, and unreadable exhibit pages.

Purpose:

Confirms that scanning equipment used to create the public record causes flipping and degradation of exhibit pages, supporting Appellants' showing that approximately 300 of the 830 exhibit pages are illegible and that a remand is needed to repair the record.

Submitted by: Submitted by:

Michael D. Smith and Mary A. Smith,
Appellants, pro se
220 Stancil Street,
Easley, SC 29640
MichaelDSmith@housemail.com

Re: Smith v Economou 39-00329

From: "Michelle H. Broom" <michelleb@pickenscountysc.gov>
To: "Michael Smith" <MichaelDSmith@housemail.com>, "Pat Welborn" <pwelborn@pickenscountysc.gov>
Date: Mar 4, 2025 10:47:04 AM

Mr. Smith,

The E-filing portal is only for SC licensed attorney's to E-File and the only option we have is scanning to our system with a desk scanner with pro se filings. Our scanners only scan in black and white and unfortunately with larger filings to scan, the scanner program will flip pages. If anyone reviewing the online file has any issues with scanned filings, they can come into our office and look at the original hard copy filing. With you supplying the Judge and other counsel with your filings, they shouldn't have to view the online copies, but if there is a problem they will reach out to our office.

Thank you,

Michelle Broom



From: Michael Smith <MichaelDSmith@housemail.com>
Sent: Tuesday, March 4, 2025 9:23 AM
To: Michelle H. Broom <michelleb@pickenscountysc.gov>; Pat Welborn <pwelborn@pickenscountysc.gov>
Subject: Smith v Economou 39-00329

ms michel

i am cuncernd about if filings can be red
we haf send hard copys to judge salvini an ms cathren by hand
but othr lawyurs who wan 2 reed it cant reed
the zibits ar flipt round th pages mixt up and pics r all blak
i no u don't haf pro se filing alot
i wuz wandring if it wood hep to file this th sam way lawyers do
threw th digital portul
i haf tached 2 pdf fils of the filngs that r clockt
the firs is motion an letters wit COS
th secun is zibits
they r same zackly as wut u haf postd
i wuz thnkng u cood use thes fils to uplode to th pubic record
so other lawyers an peepl can reed th filngs
thank u 4 ur hep

MDS
MAS

Attachments

- Outlook-cca2e3xt.png

Exhibit H: Handwritten petition filed March 25, 2024.

Exhibit H – Petition for Next Friend (March 25, 2024)

Smith v. King Asphalt, Inc. – C/A No. 2021-CP-39-00329 – App. Case No. 2025-001327

Source:

Handwritten Petition for “Next Friend” filed March 25, 2024, by Michael and Mary Smith.

Key Language:

States that “we can’t read and write... we need help... we are both very sick,” and requests appointment of a Next Friend to assist.

Purpose:

Serves as physical evidence of Appellants’ functional illiteracy and health limitations, supporting the argument that they cannot meaningfully navigate the appellate process or repair the record without appointed counsel.

Submitted by: Submitted by:

Michael D. Smith and Mary A. Smith,

Appellants, pro se

220 Stancil Street,

Easley, SC 29640

MichaelDSmith@housemail.com

STATE of South Carolina
County of Pickens

Michael and Mary Ann Smith

2024 MAR 25 P 2:09
Plaintiffs

CLERK OF COURT in the County of Pickens
PICKENS COUNTY
SOUTH CAROLINA for the thirteenth judicial circuit

CASE NO. 2021-LP-29-00329

REK WES 2 Relent From
Ju 05 mt

vs

Phenistoklis Economou &
King Asphalt Inc.

Defendants

RESPECT sir

My wife and I want to ask you please a point Mr Frank Persley
as are new friends
we need help cuz we are old n were sick
we cant keep track of them any days
we doan need an Rite 2 sud
we no Mr Frank is not a lyer but
he is the only one that peepal in this suit case
without Mr Frank help we cant live nother 1 year
an hat 2 drop suit case
we no the Ms. Gathrow wan but tha not justice 4 us

Thank you

Michael D. Smith 03/25/2024
MICHAEL D. SMITH

Mary Ann Smith 03/25/2024
Mary Ann Smith
220 S. W. 1st Street
Easley SC 29640

Exhibit I: Representative sample of 52 illegible exhibit pages

Exhibit I – Sample of 52 Corrupted Exhibit Pages (Approx. 20% of 300)

Smith v. King Asphalt, Inc. – C/A No. 2021-CP-39-00329 – App. Case No. 2025-001327

Source:

Compilation of 52 representative pages drawn from the approximately 300 corrupted/illegible pages in the 830-page exhibit volume.

Key Features:

Pages that are blacked out, blurred, flipped, or sheared, rendering text and images unreadable and demonstrating scanner-induced corruption.

Purpose:

Provides a 20% sampling illustrating the nature and severity of exhibit corruption, corroborating the need for a remand to rescan and repair the record.

Submitted by: Submitted by:

Michael D. Smith and Mary A. Smith,

Appellants, pro se

220 Stancil Street,

Easley, SC 29640

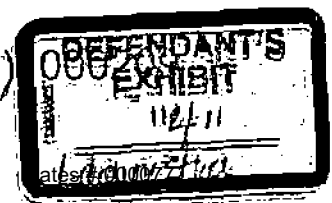
MichaelDSmith@housemail.com

Owen Ln



Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 59 ft

Smith v. King Asphalt Inc. (2021CP3900329)







[Exhibit ee] - Accident site March 22 2019 Owens Lane Hwy8 Easley SC - SCHP dashcam screengrab (stills) picture – Have not met statutory and regulatory requirements prior to opening closed lane.

(Temporary Pavement Markings (Sub-section 609.4.1))

On multilane primary and secondary roadways, apply and place temporary or permanent pavement markings as specified hereupon to the travel lanes prior to reopening a closed travel lane or traffic emphasis added. These pavement markings shall include a four inch wide solid line utilized for edge lines and solid center lines and a four inch wide by 10 foot long broken line with a 50 foot gap utilized for the lines and turn lanes unless otherwise specified. The center line pavement markings shall be either double yellow solid lines or an appropriate combination of yellow solid line and four inch wide by 10 foot long yellow broken lines for two way left turn median areas. The edge line pavement markings shall be white solid line and the edge lines shall be yellow solid line except in areas where the travel lanes separate to create a gore type situation and then the color scheme shall comply with SC DOT application practices for gore areas. The lane lines between travel lanes shall turn lanes shall be four inch wide by 10 foot long white broken lines with a 50 foot gap.

Within the limits of existing turn lanes on all roadways apply and place white arrows at all locations where previous arrows have been obliterated by the work unless otherwise directed by the K92. Apply and place white arrows with a 72 hour notice application of the original pavement markings.

This is where King
Asphalt Inc 210TC was
stopped @ 5:08 PM at
Owen Lane bridge



Car Economou

Moped Smith



Lane Height

Differential 2.16"

Lane height berm

Owen Lane

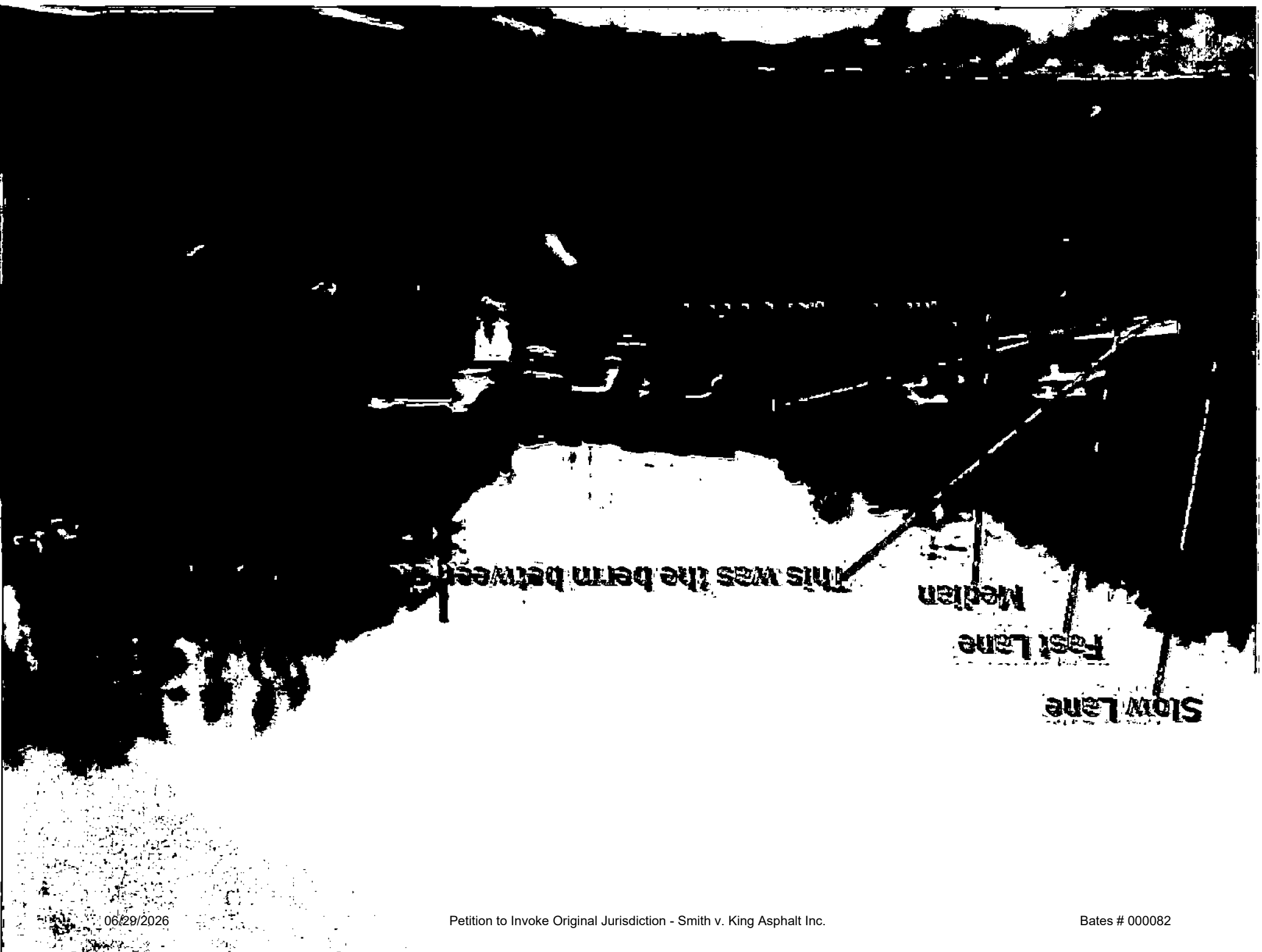
Paved LOS

Milled LSL

Milled Turn Lane

No Traffic Control

Smith v. King Asphalt Inc (2000) 1000



Slow Lane

Fast Lane

Median

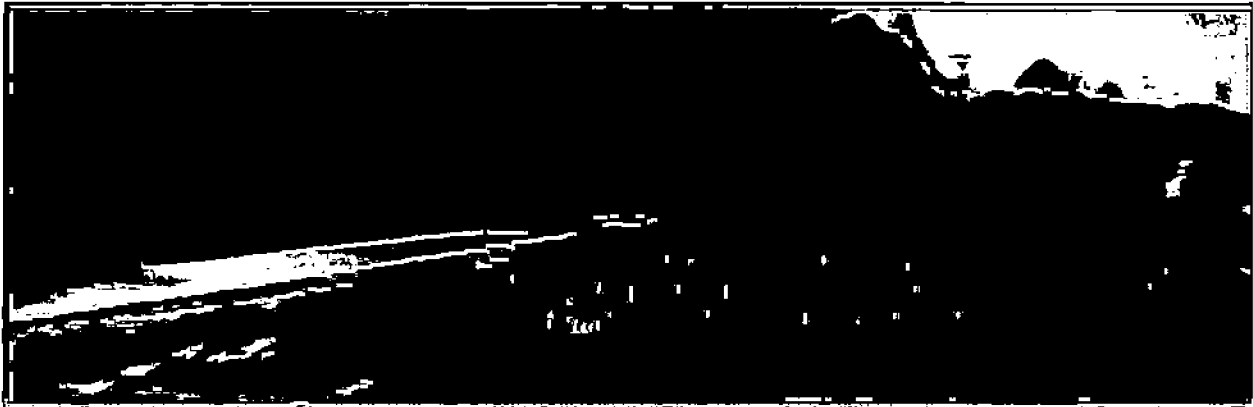
this was the berm between



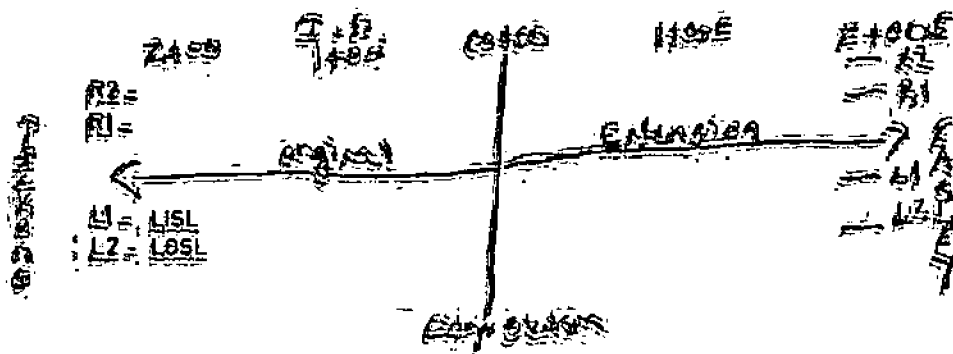
King Asphalt Inc. End of Work Zone sign HWY 8 Eastbound March 22, 2019



Smith v. King Asphalt Inc. (2021CP3900329) 000332



If the location has an "E" indicator,
it represents the Extension to the project.
The Extension is in Reverse numerically
from the original



Smith v. King Asphalt Inc. (2021CP3900329) 000333

Smith v. King Asphalt Inc. (2021)

29, 000334



Smith v. King Asphalt Inc. (2021CP3900329) 000336

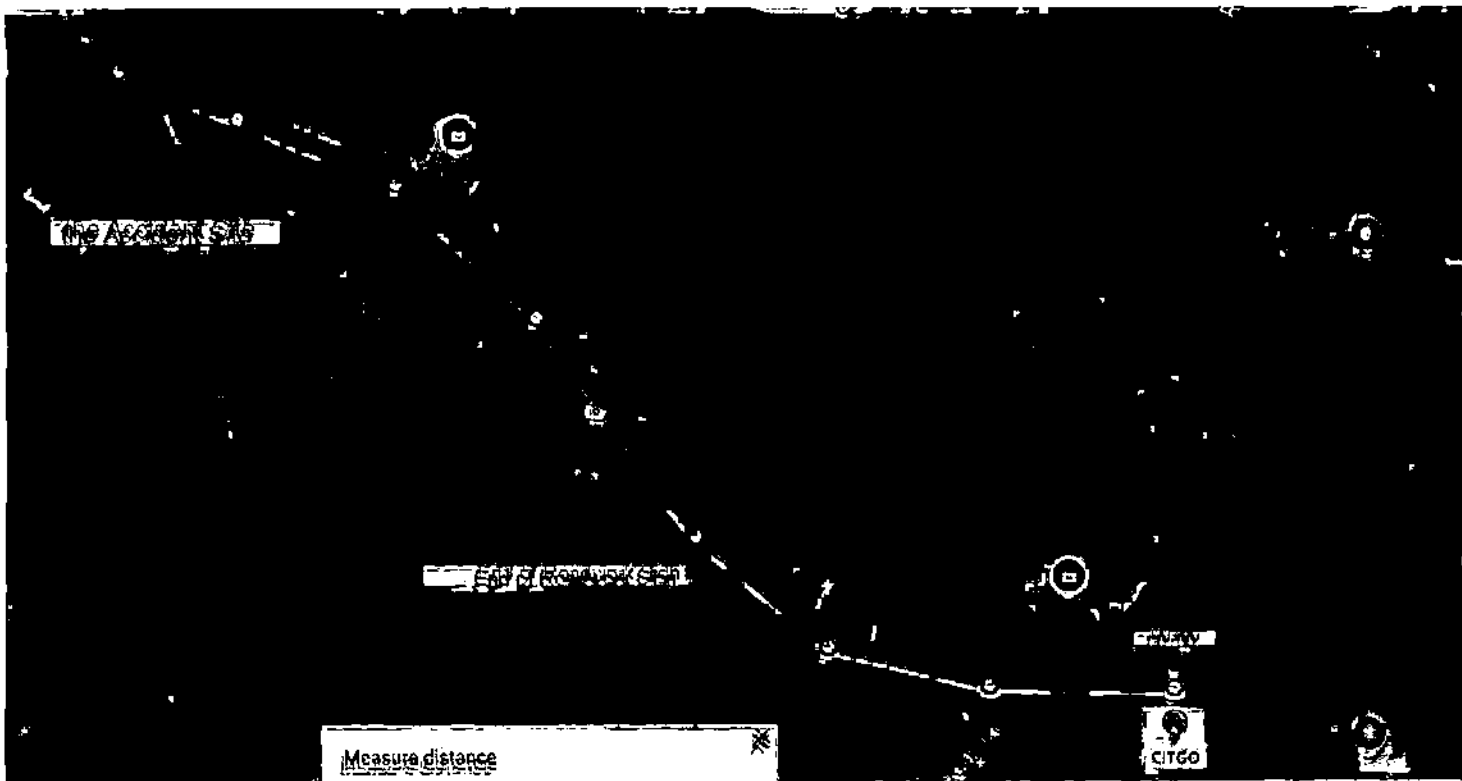
[Exhibit 00] – All traffic control shall be installed per plan and maintained until hazards are mitigated.

“...The Contractor shall maintain the travel patterns as directed by the traffic control plans and shall execute construction schedules expeditiously. The Contractor shall provide the Resident Engineer with not less than a two-week prior notification of changes in traffic patterns...”

“...Within the limits of existing turn lanes on all roadways, apply and place white arrows in all locations where previous arrows have been eradicated by the work unless otherwise directed by the RGE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings...”

“...The Contractor shall install all lane closures as directed by the Standard Specifications for Highway Construction (latest edition), the Standard Drawings for Road Construction, these special provisions, the MCDOT, and the Engineer. The Contractor shall close the travel lanes of two-lane two-way roadways by installing flagging operations. The Contractor shall close the travel lanes of multilane roadways as directed by the typical traffic control standard drawings designated for lane closures on primary routes...”

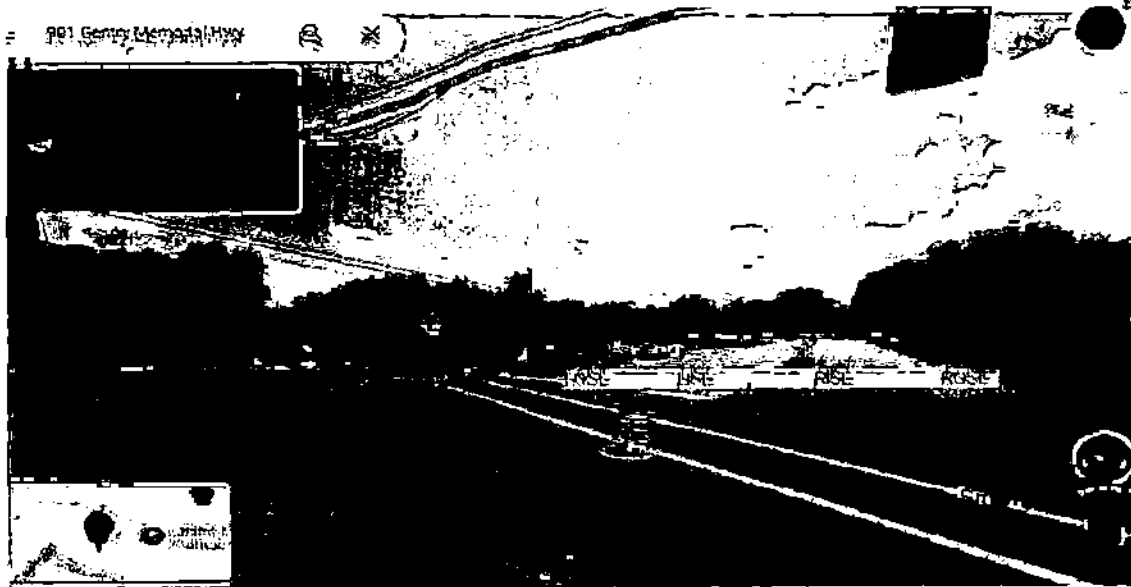
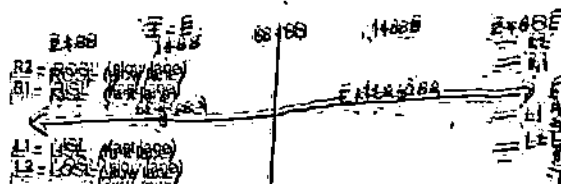
“...On multilane primary and secondary roadways, apply and place temporary or permanent pavement markings, as specified hereupon, to the travel lanes prior to reopening a closed travel lane to traffic. These pavement markings shall include 4-inch wide solid lines, utilized for edge lines and solid center lines, and 4-inch wide by 10 feet long broken lines with a 30-foot gap, utilized for lane lines and turn lanes, unless otherwise specified. The center line pavement markings shall be either double yellow solid lines or an appropriate combination of a yellow solid line and 4-inch wide by 10 feet long yellow broken lines for two-way left turn median areas. The right edge line pavement markings shall be a white solid line and the left edge line shall be a yellow solid line except in areas where the travel lanes separate to create a gore type situation and then the color schemes shall comply with SCDOT application practices for gore areas. The lane lines between travel lanes and turn lanes shall be 4-inch wide by 10 feet long white broken lines with a 30-foot gap...”



Lexman's explanation of topography:

The project consisted of two parts. The first running WEST of the Citgo station at 901 Hwy 8 (entry Memorial Highway) and the extension project running EAST. The demarcation point (00+00) is the Citgo Station. Lane descriptions and distances are all relative to the Citgo station. This leads to confusion as the flow of traffic is in reverse in the Eastbound L2SL (left inside shoulder lane - fast lane) and L2OSL (left outside shoulder lane - slow lane). The accident occurred in L2OSL (the slow lane of Eastbound traffic towards Eastley). In the SCMP Troopers dashcam video is leaving the Citgo station going West in the R1SL (fast lane). His camera is showing the entire roadway with the road condition of the L1SL and L2OSL on the left of the screen as he approaches the accident. The dashcam video clearly shows the absence of any traffic control devices or road work, despite the ongoing milling/paving roadwork described in the Daily Work and Inspection reports. His dashcam shows the entire roadway between the Citgo and the accident and pans the highway beyond, showing NO TRAFFIC CONTROL DEVICES WHATSOEVER.

IF the location was an "E" location, it represents the extension to the project. The extension is in reverse direction to the original.



Lexman's Explanation of distance notations:

Throughout various reports by King Asphalt to SCDOT, there are distance notations describing how far a point is from 00+00. These notations take the form:

00+00
hundredth increase of hundred
69
2+32 = 222 feet
5+85 = 566 feet
10+28 = 1029 feet
101+18 = 10118 feet

To calculate the distance between any two points you subtract the larger from the smaller: 9+84 - 2+32 = 3154
566 - 237 = 354 feet

In this instance the numbers grew larger as you progress EAST and WEST from 00+00. Everything is relative to 00+00 (the crosswalk at Citgo).

King Asphalt Inc. (2021) CP3900329) 800393



Form FR-10-15 SC Department of Motor Vehicles Office of Financial Responsibility (SOS) 898-5009 PO Box 1498, Blythewood, SC 29016-0050				SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES (FR-10) REV 02/2019 NOTICE OF REQUIREMENT				Submit Electronically Agents or Company Representatives can submit your Insurance Information at WWW.SC.ALR.COM			
03-02-2019	1117	39	1- Interstate 2- US Highway 3- SC Primary 4- Secondary 5- County 6- RR	Collision Location (Rt. # / Name) 654 / BREEZEALE RD	0- Main City 1- Allstate 2- Business 3- Scout	85	City or Town of EASLEY				
To Vehicle Owner/Operator Failure to return this form to the Department of Motor Vehicles within 15 days from the date of the collision could result in the suspension of your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.											
R-516400		Driver's Full Name CRAIG ROBERT			R-516754		Driver's Full Name KATHY W				
Unit #	01	Street	187 MISTR LN			Unit #	02	Street	104 WOODSTREAM LN		
City, State, & Zip	PICKENS SC 296718487			City, State, & Zip	EASLEY SC 296406415						
State	SC	Driver's License #	100901501			State	SC	Driver's License #	1681495		
Year	2018	Body	FR	Vehicle Make	INTL	VIN #	3HT0TAPT02N322695			Year	2014
Year	2020	Body	FR	Vehicle Make	INTL	VIN #	1FADP3F25EL157266			Year	2020
State	SC	License Plate #	P660974			State	SC	License Plate #	118657W		
Owner's Full Name	CRL HAULENG LLC			Owner's Full Name	LOUDERMILK KATHY W						
Street	187 MISTR LN			Street	104 WOODSTREAM LN						
City, State, & Zip	PICKENS SC 296718487			City, State, & Zip	EASLEY SC 296406415						
Accident Insurance Information for Unit # 01 Company Name: STATE FARM Policy Number: 4055268999											
Accident Insurance Information for Unit # 02 Company Name: STATE FARM Policy Number: 4055268999											
Automobile Liability Insurance Information Notice of Requirement Accepted: [Signature]											
To Be Completed Below or Emailed at WWW.SC.ALR.COM by Insurance Company Representative. This form should not be mailed to DMV if insurance information has been submitted electronically. Reference to Unit #: [Blank] I hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated insurance company on the date of the collision.											
Insurance Company				Policy #				Signature			
Beginning Date				Ending Date				Policy Holder			
Notice: If liability insurance was not in effect for your vehicle involved in the collision, the Department of Motor Vehicles could suspend your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.											
If any of the below are applicable, Disregard the above portion. Check here if a Form FR-25, First policy of 25 or more vehicles is on file with the Department of Motor Vehicles covering the vehicle. Check here if a certificate of self-insurance has been issued by the Department of Motor Vehicles covering the vehicle and indicate the certificate number: [Blank] Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.											
Form FR-10 Not Issued: Section 56-10-520 No FR-10 issued to Operator/Owner of Unit #: [Blank] Signature issued to: [Blank] Signature: [Blank] Date: [Blank]											
Smith v. King Asphalt Inc. (2021-CP3900329) 000447 Investigating Officer's Name: COBB, C. J. 06/29/2026 Rank: F.T.S. Date: 08/26/2026 Signature: [Blank] Date: [Blank]											
Reviewer's Name: [Blank] Rank: [Blank] Signature: [Blank] Date: [Blank]											

Smith v. King Asphalt Inc. (2021CP3900329) 000448

[illegible]

2021-CP-39-00329

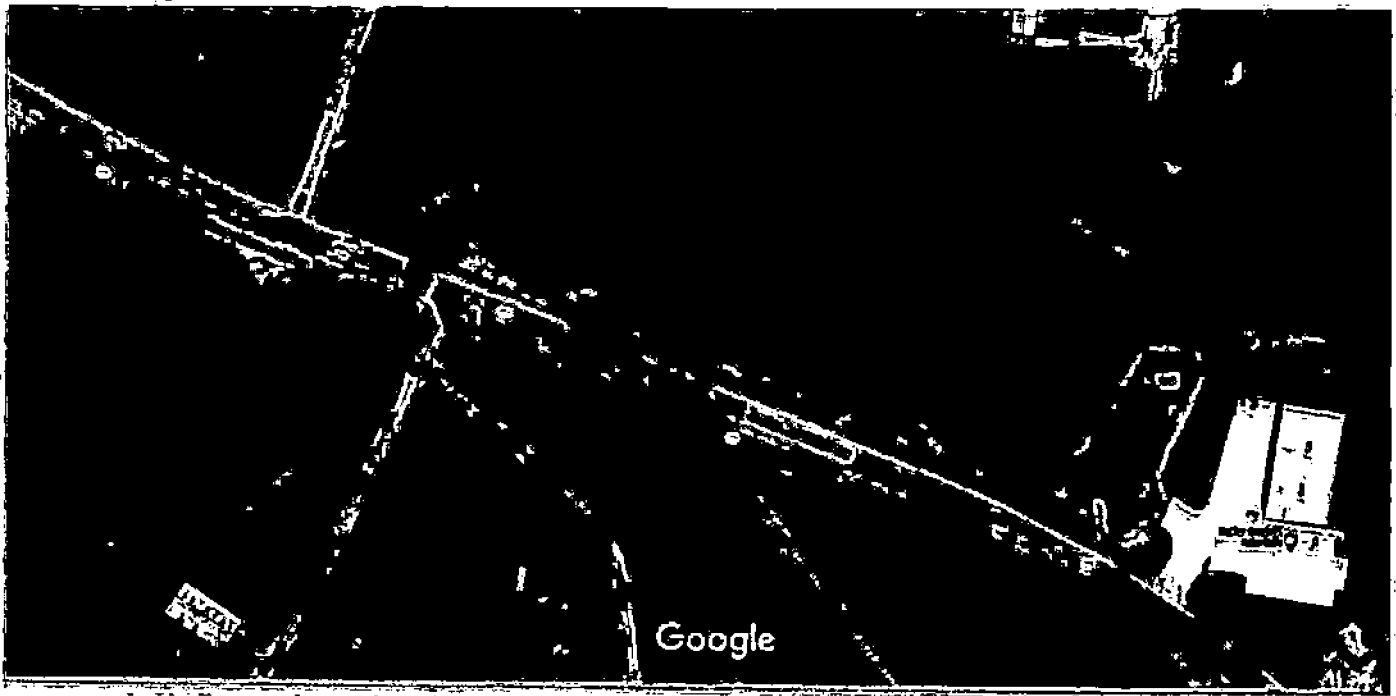
[Exhibit zz] - 2021CP3900329 Screengrab (stills) SChP Dashcam - Accident Scene March 22 2019

NOTE: These are stills from Trooper Lagnestra's Dashcam as he approaches the Accident scene. Trooper Lagnestra reports arriving on scene at 1720 hours (5:20PM). A PCSO vehicle is parked at the location the King Asphalt Inc. cone truck was stopped at 1708 hours (5:08PM). By the time of Trooper Lagnestra's arrival all indications of Traffic Control from the direction he came and as far as the eye can see in this video all Traffic Control has been removed (or never installed to begin with)

- Absence of any Traffic Control in SCBOT Work Zone = Unprotected Hazards
- Lane Height Differential between L1SL and L9SL greater than 1"
- Milled state of L1SL and Turn Lane (obscuring Road Paint)
- Proximity of King Asphalt Inc Cone Truck 210TC to accident at 5:08 PM March 22, 2019 [GPS data indicates 210TC was stopped at Owen Lane bridge]

Smith v. King Asphalt Inc. (2021CP3900329) 000458

Owen Ln



Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 50 ft.





DAILY REPORT OF ASPHALT ROADWAY INSPECTION

Form 400.04

Rev. 05/2016

Page 1 of 3

Date: 3/22/19 Contract #: 3984130 Project #: P037242 County: 39- Pickens

Plant Name & Location:			
Plant Name:	King Asphalt Inc.	County:	39- Pickens
		City:	Liberty

Type Mix: Surface BR Job Mix #: D0510 Lot #: 5 *OK*

Weather: Clear Low: 35 °F High: 68 °F Wind: Light

Prime Contractor: King Asphalt Asphalt Contractor: King Asphalt

Rate of Quantities on the Road										
<i>(Ditch and Levelling to be completed on separate Form 400.04)</i>										
<i>(Rate frequency = 200 feet maximum)</i>										
Load #	Road #	Lane	From Station	To Station	Avg. Width (feet)	Linear Feet	Total SY	Total Tons	Actual lbs/SY	Spec lbs/SY or Levelling
1-9	SC-8	LOSL	100+60	87+36	11	1,324	1,618.222	187.11	231.254	220
10-18	SC-8	LOSL	87+36	73+65	11	1,371	1,675.667	189.73	226.453	220
19-27	SC-8	LOSL	73+65	59+67	11	1,398	1,708.667	190.34	222.794	220
28-36	SC-8	LOSL	59+67	43+98	11	1,569	1,917.667	211.87	220.966	220
37-44	SC-8	LOSL	43+98	33+31	11	1,067	1,304.111	147.65	226.438	220
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
							0.000		0.000	
Total Asphalt Tons:								926.7		

DAILY REPORT OF ASPHALT ROADWAY INSPECTION

Form 400.04
Rev. 06/2016
Page 2 of 3

Rate of Tack									
Type of Tack:	Emulsified				Dilution Rate (gal/SY):		=		
Rate #1:	.06	Rate #2:	.06	Rate #3:	.07	Rate #4:	.06	Rate #5:	.07

Temperature									
Ambient Air Temperature:	Time	10:20	AM	11:23	AM	12:38	PM	2:54	PM
	Temp	48	°F	52	°F	57	°F	68	°F
Mat Temperature	Time	10:20	AM	11:23	AM	12:38	PM	2:54	PM
	Temp	280	°F	298	°F	293	°F	287	°F
Temp. of Mix at Arrival	Time	10:20	AM	11:23	AM	12:38	PM	2:54	PM
	Temp	315	°F	319	°F	320	°F	310	°F

Equipment				Roller Stage	Roller Mode	# of Passes
Paver Make:	VOGEL	Paver Type:	TRACK	Breakdown	Steel Wheel (vibratory)	3
Laying Quality: <u>Good</u>				Intermediate	Pneumatic-Tire	3
				Finish	Steel Wheel	3

Additional Info: (Use this section to describe anything out of the normal asphalt placing procedures.)

Contractor Rep: Brandon Whitmire

Signature: _____

Date: _____

SCDOT Rd. Inspect: Addison Chandler

Signature: [Signature]

Date: 3/22/19

RCE: JOE LAWS

Signature: [Signature]

Date: 3/24/19

EXHIBIT L - Smith v. King Asphalt
Inc. 2021-CP-39-00329

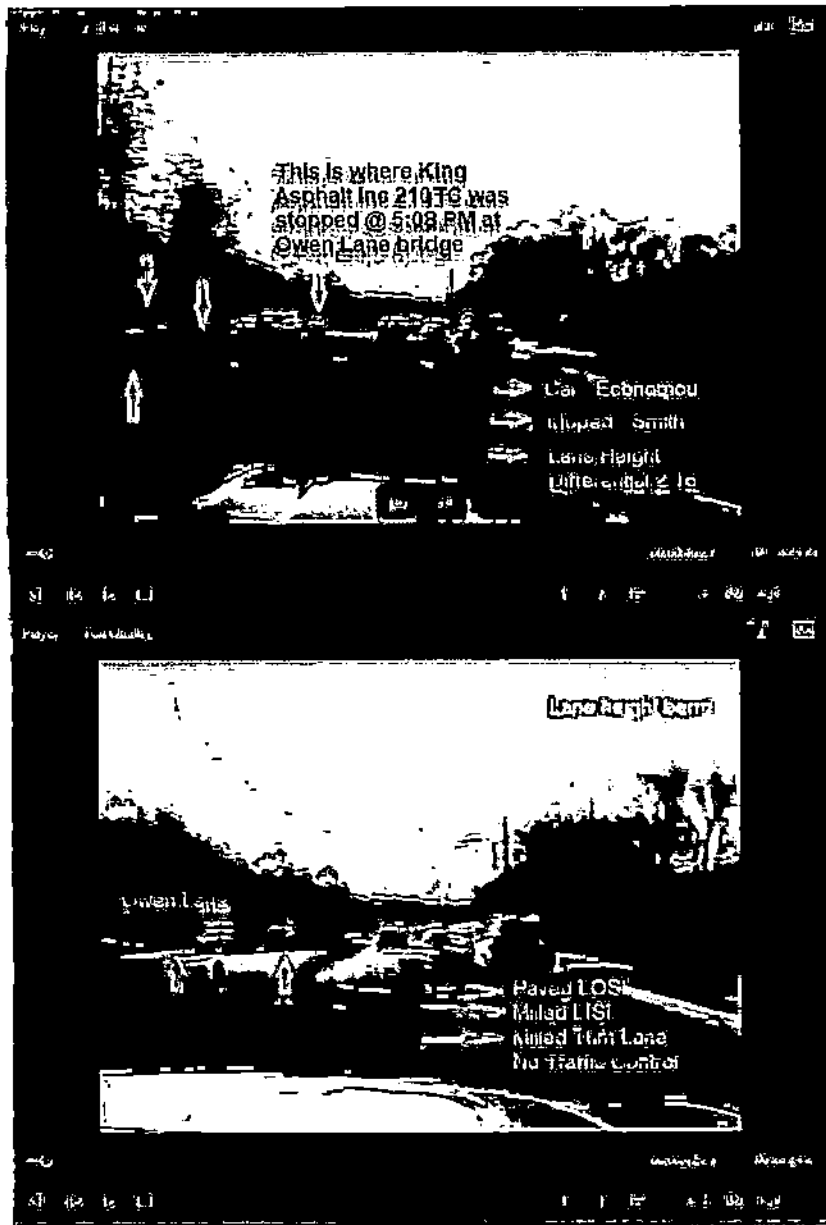


EXHIBIT N - Smith v. King Asphalt Inc. 2021-CP-39-00329





Lamar's Expansion of distance notation.

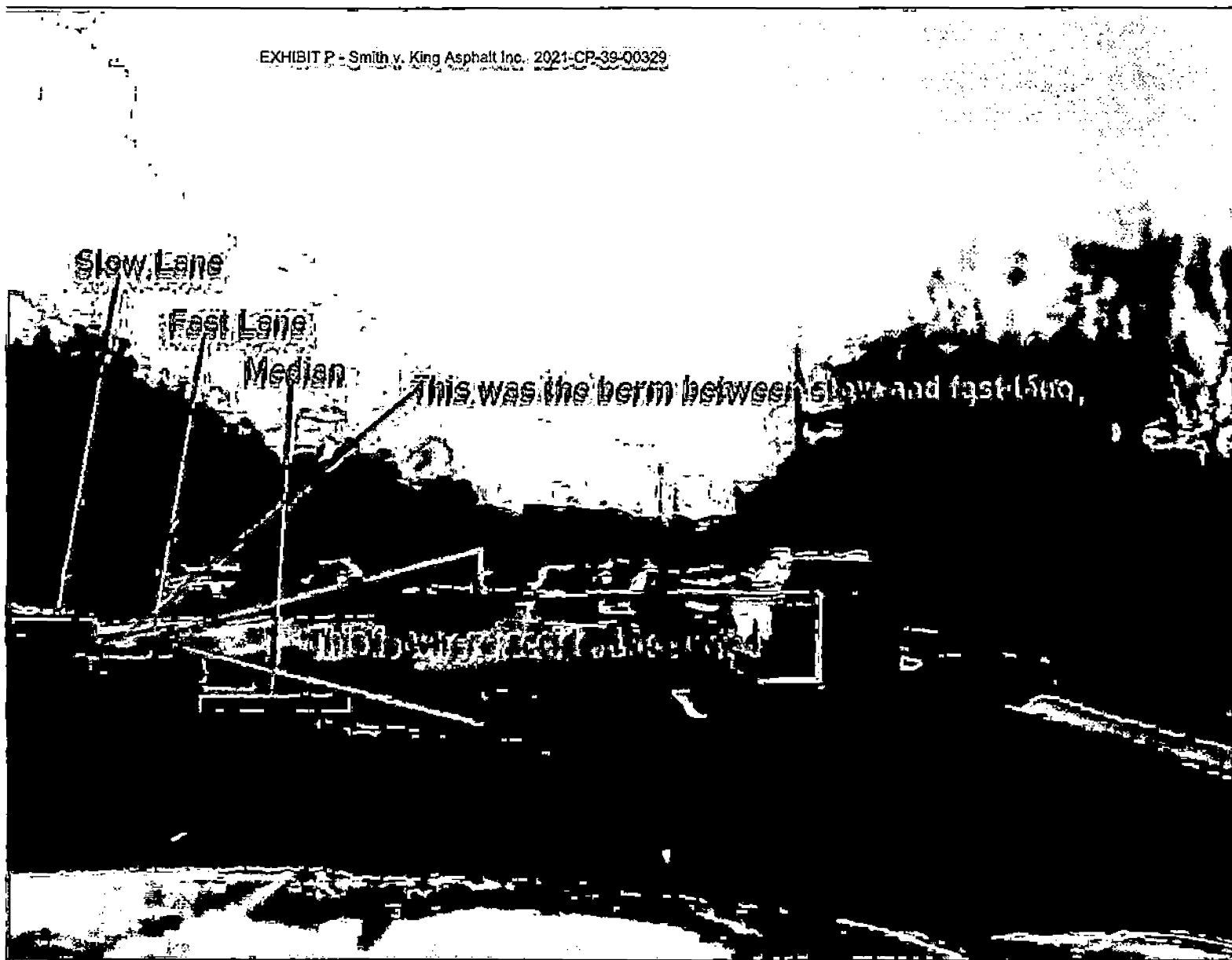
Throughout various reports by King Aspruit to SCOOT, there are distance notations taken down from the flight log. These notations take the form of:

00-00
2-22 232 feet
3-38 533 feet
4-29 1029 feet
4-18 1018 feet
4-18 1018 feet

To calculate the distance between any two points you subtract the flight from the start: 3-38 - 2-22 = 3-54

In this instance the numbers grow larger as you progress EAST and WEST from 00-00. Everything is relative to 00-00 the crosswalk at CIGCO.

EXHIBIT P - Smith v. King Asphalt Inc. 2021-CP-39-00329





SOUTH CAROLINA DPS/ORS & DMV USE ONLY										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM (Rev. 04/2016)										# of Units		Amended - Attach Copy of Original Report		Numbered		Revised			
Page # 1										TRAFFIC COLLISION REPORT FORM (Rev. 04/2016)										2		X		1726		1745			
Date		Time of Collision		County		1- Interstate 4- Secondary		2- US Primary 5- County		3- SC Primary 6- PP 7- Ramp		Collision Location (RT #7 Name)		Mainline 6- Connection		Miles		Dir		In City or Town of									
03-22-2019		1720		39								GENTRY MEM HWY		5- Spur		1.43		N E		EASLEY									
Lane # / Dir		Distance Offset		Direction		1- Interstate 4- Secondary		2- US Primary 3- County		3- SC Primary 6- Other 7- Ramp		Base Intersection (RT #7 Name)		Mainline 6- Connection						GPS COORDINATES ON ROAD OR									
2 / 4 N E		0.01 Miles		N E								OWEN LN		2- Alternate 7- Business						DEGREES MINUTES SECONDS									
RR #		From		To		1- Interstate 4- Secondary		2- US Primary 5- County		3- SC Primary 6- Other 7- Ramp		Second Intersection (RT #7 Name)		Mainline 6- Connection						Latitude									
		N E - Entrance		N E								88 / OLD EASLEY PICKENS HWY		2- Alternate 7- Business						34 50 48.83									
		S W - Exit		S W										5- Spur 9- Other						Longitude									
																				82 39 12.64									
R-623535										R-623536																			
Driver/Pedestrian's Full Name										Driver/Pedestrian's Full Name																			
ECONOMOU THEMISTOKLIS GEORGIOS										SMITH MICHAEL DANNY																			
Unit #		Sex		Race		Street		City, State, & Zip		Birth Date		State		Driver's License #		Class		Insurance Company		Home Telephone									
1		M		W		329 MULBERRY RD		EASLEY SC 29640887		07-12-1951		SC		101500817		D		USAA		6318306114									
2		M		W		220 STANCL ST		EASLEY SC 29640887		08-15-1953		SC		004597693		G		UNINSURED		8644345991									
Year		Body		Vehicle Make		VIN		State		Year		Body		Vehicle Make		VIN		State		Year									
1998		CP		BMW		WBABF8326WEH60917		SC		2017		MP		TAOT		LSNTEACXKE1301282		OT		2017									
License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State									
2049LL		101500817		SC		2019		2049LL		101500817		SC		2019		NONE		004597693		OT									
Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No									
Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No									
Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed									
40		45		56-10-0225		56-10-0225		56-10-0225		35		45		56-10-0225		56-10-0225		56-10-0225		35									
Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name									
		SC		2019		2049LL		101500817				SC		2019		NONE		004597693											
Unit #		Sex		Race		Street		City, State, & Zip		Birth Date		State		Driver's License #		Class		Insurance Company		Home Telephone									
1		M		W		329 MULBERRY RD		EASLEY SC 29640887		07-12-1951		SC		101500817		D		USAA		6318306114									
2		M		W		220 STANCL ST		EASLEY SC 29640887		08-15-1953		SC		004597693		G		UNINSURED		8644345991									
Year		Body		Vehicle Make		VIN		State		Year		Body		Vehicle Make		VIN		State		Year									
1998		CP		BMW		WBABF8326WEH60917		SC		2017		MP		TAOT		LSNTEACXKE1301282		OT		2017									
License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State									
2049LL		101500817		SC		2019		2049LL		101500817		SC		2019		NONE		004597693		OT									
Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No									
Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No									
Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed									
40		45		56-10-0225		56-10-0225		56-10-0225		35		45		56-10-0225		56-10-0225		56-10-0225		35									
Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name									
		SC		2019		2049LL		101500817				SC		2019		NONE		004597693											
Unit #		Sex		Race		Street		City, State, & Zip		Birth Date		State		Driver's License #		Class		Insurance Company		Home Telephone									
1		M		W		329 MULBERRY RD		EASLEY SC 29640887		07-12-1951		SC		101500817		D		USAA		6318306114									
2		M		W		220 STANCL ST		EASLEY SC 29640887		08-15-1953		SC		004597693		G		UNINSURED		8644345991									
Year		Body		Vehicle Make		VIN		State		Year		Body		Vehicle Make		VIN		State		Year									
1998		CP		BMW		WBABF8326WEH60917		SC		2017		MP		TAOT		LSNTEACXKE1301282		OT		2017									
License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State									
2049LL		101500817		SC		2019		2049LL		101500817		SC		2019		NONE		004597693		OT									
Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No									
Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No									
Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed									
40		45		56-10-0225		56-10-0225		56-10-0225		35		45		56-10-0225		56-10-0225		56-10-0225		35									
Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name									
		SC		2019		2049LL		101500817				SC		2019		NONE		004597693											
Unit #		Sex		Race		Street		City, State, & Zip		Birth Date		State		Driver's License #		Class		Insurance Company		Home Telephone									
1		M		W		329 MULBERRY RD		EASLEY SC 29640887		07-12-1951		SC		101500817		D		USAA		6318306114									
2		M		W		220 STANCL ST		EASLEY SC 29640887		08-15-1953		SC		004597693		G		UNINSURED		8644345991									
Year		Body		Vehicle Make		VIN		State		Year		Body		Vehicle Make		VIN		State		Year									
1998		CP		BMW		WBABF8326WEH60917		SC		2017		MP		TAOT		LSNTEACXKE1301282		OT		2017									
License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State									
2049LL		101500817		SC		2019		2049LL		101500817		SC		2019		NONE		004597693		OT									
Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No									
Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No									
Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed									
40		45		56-10-0225		56-10-0225		56-10-0225		35		45		56-10-0225		56-10-0225		56-10-0225		35									
Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name									
		SC		2019		2049LL		101500817				SC		2019		NONE		004597693											
Unit #		Sex		Race		Street		City, State, & Zip		Birth Date		State		Driver's License #		Class		Insurance Company		Home Telephone									
1		M		W		329 MULBERRY RD		EASLEY SC 29640887		07-12-1951		SC		101500817		D		USAA		6318306114									
2		M		W		220 STANCL ST		EASLEY SC 29640887		08-15-1953		SC		004597693		G		UNINSURED		8644345991									
Year		Body		Vehicle Make		VIN		State		Year		Body		Vehicle Make		VIN		State		Year									
1998		CP		BMW		WBABF8326WEH60917		SC		2017		MP		TAOT		LSNTEACXKE1301282		OT		2017									
License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State									
2049LL		101500817		SC		2019		2049LL		101500817		SC		2019		NONE		004597693		OT									
Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision		Yes		No									
Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No		EASLEY SC 29640887		Yes		No									
Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed		Speed Limit		C.D.L. Req Yes (No)		T/B S Req Yes (No)		Alc/Drg Info (See back) Yes (No)		Estimate Speed									
40		45		56-10-0225		56-10-0225		56-10-0225		35		45		56-10-0225		56-10-0225		56-10-0225		35									
Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #		Driver/Pedestrian's Full Name									
		SC		2019		2049LL		101500817				SC		2019		NONE		004597693											
Unit #		Sex		Race		Street		City, State, & Zip		Birth Date		State		Driver's License #		Class		Insurance Company		Home Telephone									
1		M		W		329 MULBERRY RD		EASLEY SC 29640887		07-12-1951		SC		101500817		D		USAA		6318306114									
2		M		W		220 STANCL ST		EASLEY SC 29640887		08-15-1953		SC		004597693		G		UNINSURED		8644345991									
Year		Body		Vehicle Make		VIN		State		Year		Body		Vehicle Make		VIN		State		Year									
1998		CP		BMW		WBABF8326WEH60917		SC		2017		MP		TAOT		LSNTEACXKE1301282		OT		2017									
License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State									
2049LL		101500817		SC		2019		2049LL		101500817		SC		2019		NONE		004597693		OT									
Contributed To Collision		Yes		No		City, State, & Zip		Contributed To Collision																					

Owen Ln



Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 59 ft



Figure 1



—C

01/01/2025 10:24:21

4. 11. 11

4 } 14 } 15 } 16 } 17 }



PAVEMENT DESIGN REQUEST

04/11/2002

Base Seal
0000
(Mail or Email)
State Received
0000
BY PM

New Pavement Design or Payment Design Review

Road Design Group Coordinator/Program Manager

Road/Route: _____
 From: _____
 To: _____
 Security: _____

Type of Construction: _____
 WE = Widening with Earth Median
 WPG = Widening with Paved Median about Centerline
 WPM = Widening with Paved Median, Variable
 NL = New Location
 Other = Please Explain *

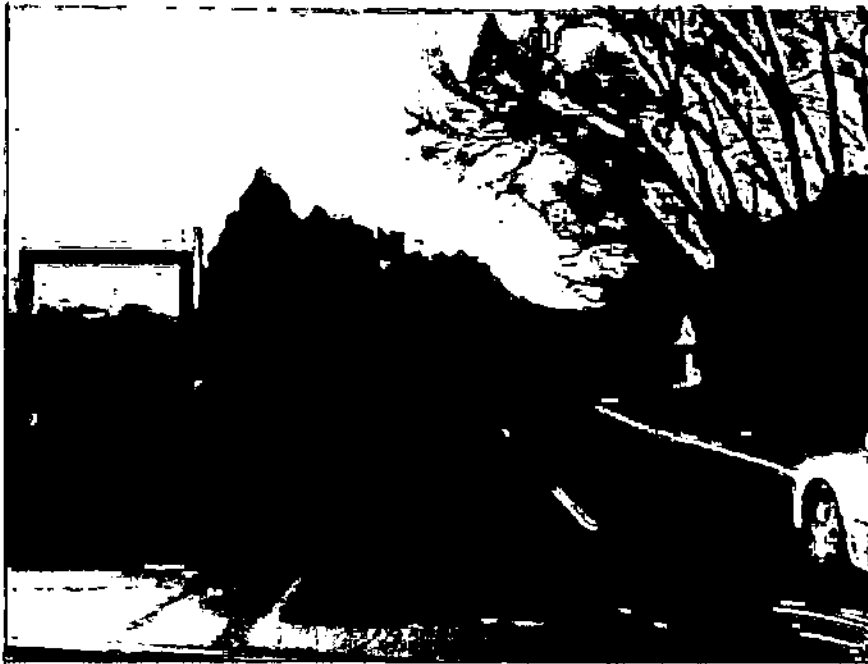
* Partial completion of flexible vs rigid pavement design (Yes/No)

Start Description of Proposed Work: _____

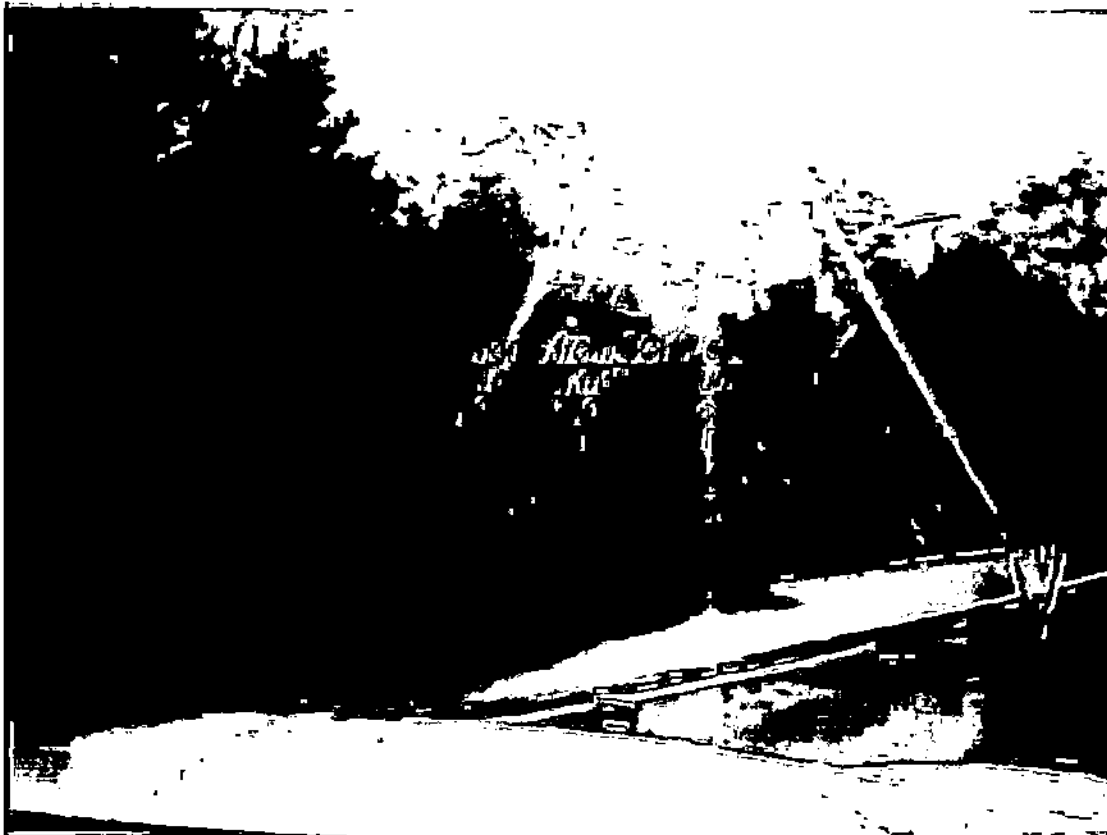
Proposed Length: _____
 Base Plans & Map (Mail/Email) _____
 Government: _____
 Traffic Signs Requested? (Yes/No) _____
 Classification Count Requested? (Yes/No) _____

Base Design Needed: _____
 Change Order: _____
 File Number: _____
 Proposed Letting Date: _____
 Comments: _____





King Asphalt Inc. End of Work Zone sign HWY 8 Eastbound March 22, 2019





IF THE LOCATION HAS AN "E" INDICATOR,
IT REPRESENTS THE EXTENSION TO THE PROJECT.
THE EXTENSION IS IN REVERSE NUMERALLY
FROM THE ORIGINAL

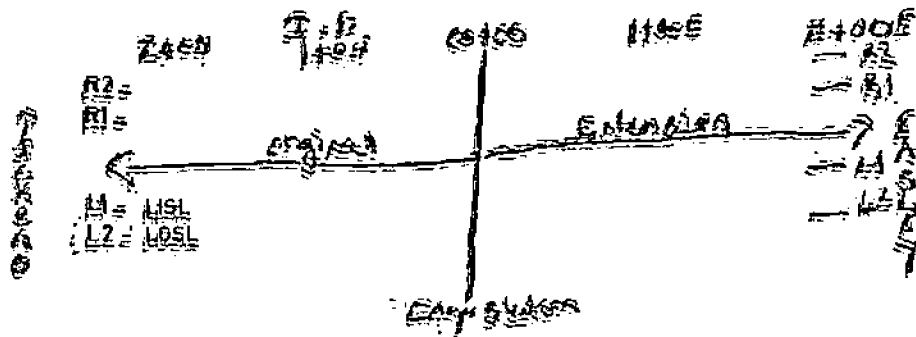




Exhibit X - Motion to Reconsider - Smith v. Economou 2021-CP-00329

This is where King
Asphalt Inc 210TC was
stopped @ 5:08 PM at
Owen Lane bridge



Car Economou

Moped Smith



Lane Height

Differential 2' 10"

0000 12/25 1000 12/25

0000 12/25 1000 12/25

Owen Lane



Paved LOS

Milled LOS

Milled Turn Lane

No Traffic Control

0000 12/25 1000 12/25

SPECIAL PROVISIONS

Install these signs immediately upon creation of this pavement condition and maintain these signs until this pavement condition is eliminated.

Install "Steel Plate Ahead" signs (W8-24-48) in advance of an area of roadway where temporary steel plates are present. Install these signs no further than 300 feet in advance of locations where steel plates are present. On multilane roadways, comply with the same guidelines as applied to all other advance warning signs and install two sign assemblies at each sign location, one on each side of the roadway, when roadway conditions warrant. Install these signs immediately upon installation of a temporary steel plate and maintain the signs until the temporary steel plates are removed.

Install and maintain any necessary detour signing as specified by the typical traffic control standard drawings designated for detour signing, Part VI of the MUTCD, these Special Provisions, and the Engineer. The lump sum price bid item for "Traffic Control" includes payment for installation and maintenance of the detour signing.

The Contractor shall maintain the travel patterns as directed by the traffic control plans and shall execute construction schedules expeditiously. The Contractor shall provide the Resident Engineer with no less than a two-week prior notification of changes in traffic patterns.

During nighttime flagging operations, flaggers shall wear a safety vest and safety pants that comply with the requirements of ANSI / ISEA 107 standard performance for Class 3 risk exposure, latest revision, and a fluorescent hard hat. The safety vest and the safety pants shall be retroreflectORIZED and the color of the background material of the safety vest and safety pants shall be fluorescent orange-red or fluorescent yellow-green.

During nighttime flagging operations, the contractor shall illuminate each flagger station with any combination of portable lights, standard electric lights, existing street lights, etc., that will provide a minimum illumination level of 108 Lx or 10 fc.

During nighttime flagging operations, supplement the array of advance warning signs with a changeable message sign for each approach. These changeable message signs are not required during daytime flagging operations. Install the changeable message signs 500' in advance of the advance warning sign arrays. Messages should be "Flagger Ahead" and "Prepare To Stop".

Upon completion of the final riding surface on each road, the Contractor will be allowed up to 3 working days to begin eliminating shoulder drop-offs greater than 2" and continue the work until these drop-offs are eliminated.

During paving operations, the Department requires lane closures at all times where grade elevation differences and drop-offs greater than 2" exist adjacent to or between the travel lanes of a roadway opened to traffic, unless otherwise specified by these special provisions. Maintain lane closure restrictions at all times unless otherwise directed by these special provisions.

During surface planing and milling operations, grade elevation differences greater than 1 inch in areas with pavements composed of hot mixed asphalt (HMA) base courses, intermediate courses or surface courses and Portland cement concrete are PROHIBITED between adjacent travel lanes open to traffic unless otherwise directed by the Department. However, during surface planing and milling operations for removal of Open-Graded Friction courses ONLY, a grade elevation difference of 1½ inches between adjacent travel lanes opened to traffic may exist unless otherwise directed by the Department.

During any surface planing and milling operations, lane closures are required at all times where grade elevation differences and drop-offs greater than the acceptable measurements specified heretofore exist adjacent to or between travel lanes open to traffic unless otherwise specified by the department.

SPECIAL PROVISIONS

Install these signs immediately upon creation of this pavement condition and maintain these signs until this pavement condition is eliminated.

Install "Steel Plate Ahead" signs (W8-24-48) in advance of an area of roadway where temporary steel plates are present. Install these signs no further than 300 feet in advance of locations where steel plates are present. On multilane roadways, comply with the same guidelines as applied to all other advance warning signs and install two sign assemblies at each sign location, one on each side of the roadway, when roadway conditions warrant. Install these signs immediately upon installation of a temporary steel plate and maintain the signs until the temporary steel plates are removed.

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~~During any surface planing and milling operations, lane closures are required at all times where grade elevation differences and drop-offs greater than the acceptable measurements specified heretofore exist adjacent to or between travel lanes open to traffic unless otherwise specified by the department~~

SPECIAL PROVISIONS

~~If a grade elevation difference in excess of the specified acceptable ranges exist, either mill the adjacent travel lane or pave the milled travel lane as necessary to eliminate the grade elevation difference prior to opening the travel lane to traffic at these locations. Maintain the lane closure restrictions at all times unless otherwise directed by these special provisions.~~

During the paving operations, the length of roadway with an acceptable grade elevation difference less than or equal to 2" shall not exceed 2 miles.

During surface planing and milling operations, the length of roadway with an acceptable grade elevation difference less than or equal to 1" shall not exceed 2 miles.

Supplement and delineate the shoulder edges of travel lanes through work zones with traffic control devices to provide motorists with a clear and positive travel path. Utilize portable plastic drums unless otherwise directed by the Department. Vertical panels may be used where specified by the plans and directed by the RCE. The installation of traffic control devices are required in all areas where those areas immediately adjacent to a travel lane open to traffic have been altered in any manner by work activities, including but not limited to activities such as grading, milling, etc.

Install the traffic control devices immediately upon initiating any alterations to the areas immediately adjacent to or within 15 feet of the near edge line of the adjacent travel lane. When sufficient space is available, place the traffic control devices no closer than 3 feet from the near edge of the traffic control device to the near edge line on the adjacent travel lane. When sufficient space is unavailable, place the traffic control device at the maximum distance from the near edge of the adjacent travel lane available.

LANE CLOSURE RESTRICTIONS -

The lane closure restrictions stated below are project specific, for all other restrictions, see supplemental specification, "Restrictions", dated September 1, 2015.

The Contractor shall install all lane closures as directed by the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer. The Contractor shall close the travel lanes of two-lane two-way roadways by installing flagging operations. The Contractor shall close the travel lanes of multilane roadways as directed by the typical traffic control standard drawings designated for lane closures on primary routes.

The Department prohibits lane closures on multilane primary and secondary routes during any time of the day that traffic volumes exceed 800 vehicles per hour per lane per direction.

The Department prohibits flagging operations on two-lane two-way primary and secondary routes during any time of the day that traffic volumes exceed 800 vehicles per hour.

The Department reserves the right to suspend a lane closure or flagging operation if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the plans, these special provisions and the Engineer.

Lane closures, including flagging operations, are restricted to maximum distances of 2 miles. Install all lane closures according to the typical traffic control standard drawings. On occasions when daytime lane closures must be extended into the nighttime hours, substitute the nighttime lane closure standards for the daytime lane closure standards.

The Department reserves the right to suspend a lane closure if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the Standard Specifications, these special provisions, and the Engineer.

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The Department reserves the right to suspend a lane closure if any resulting traffic backups are deemed excessive by the Engineer. Maintain all lane closure restrictions as directed by the Standard Specifications, these special provisions, and the Engineer.

For the Period Ending: 03-23-1981

For the Period Ending: 03-23-1981

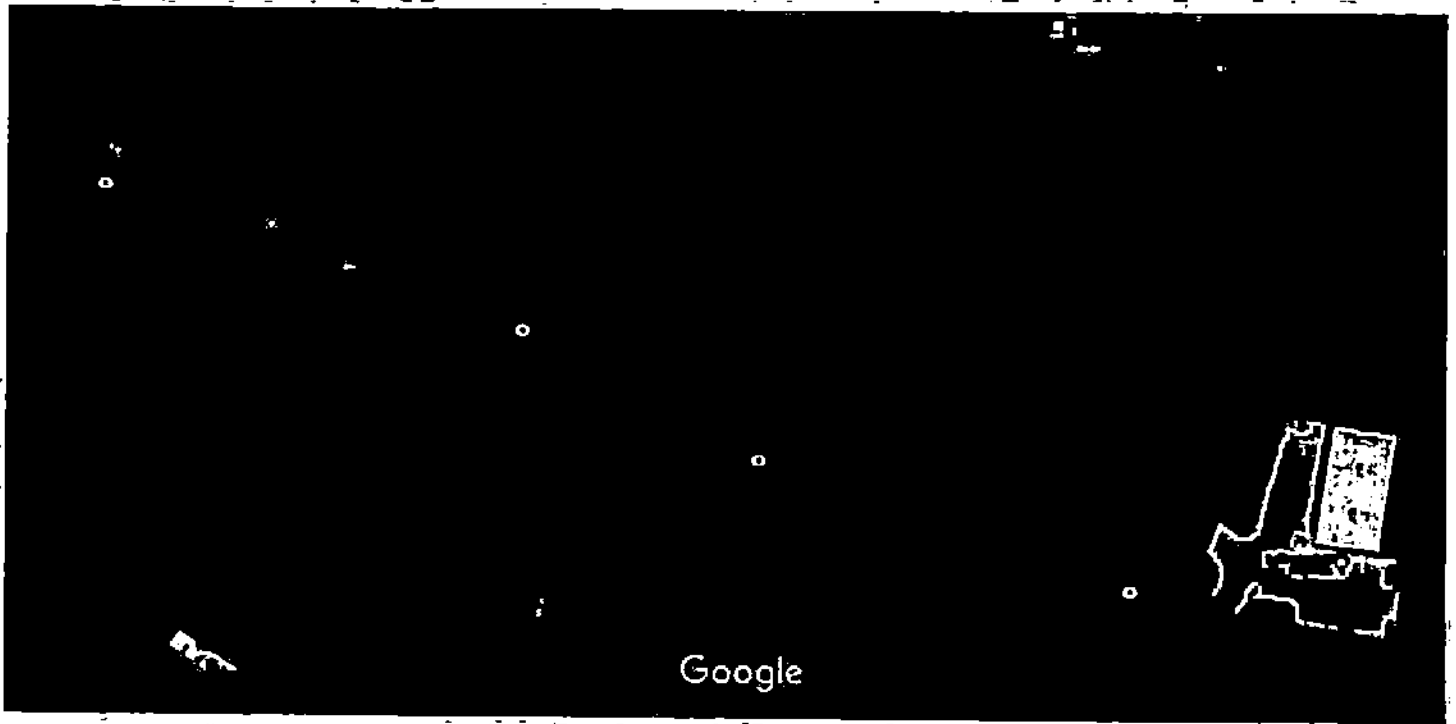
Defendant King Asphalt, Inc.'s Document Production 009930

2

03-23-87

1. *Journal of the American Medical Association*, 2000; 283: 2686-2692.

Owen Ln.



Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 50 ft

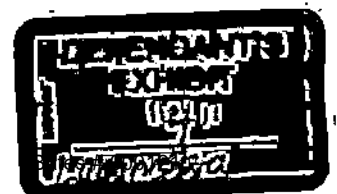


EXHIBIT L - Smith v. King Asphalt
c. 2021-CP-39-00329

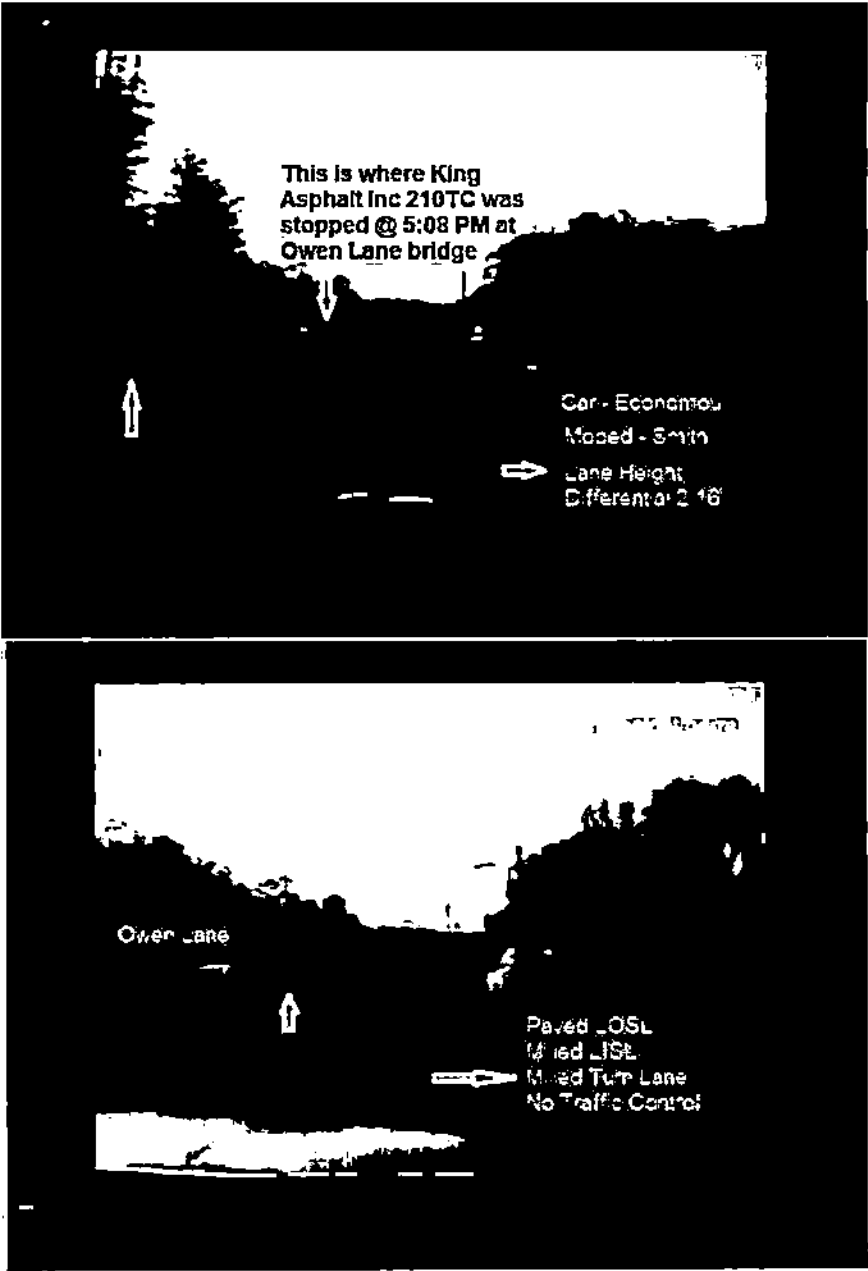
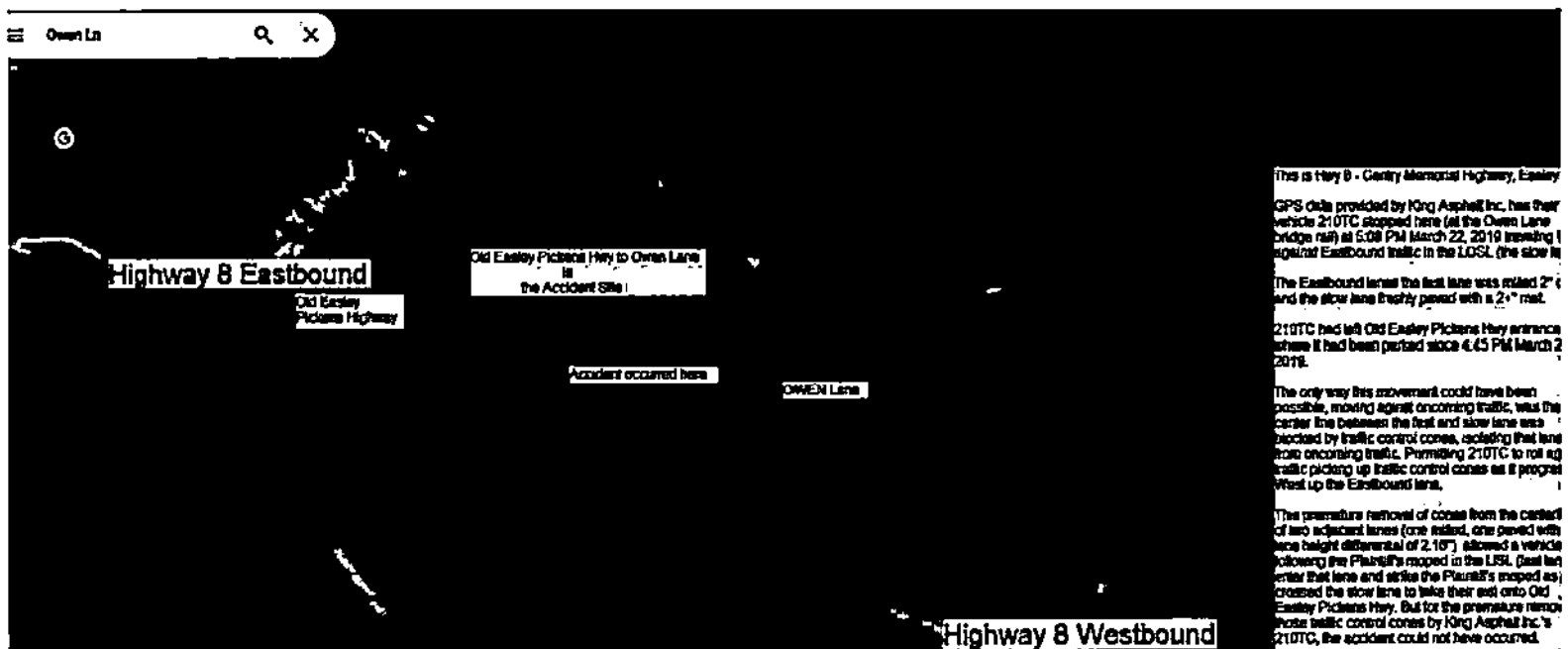


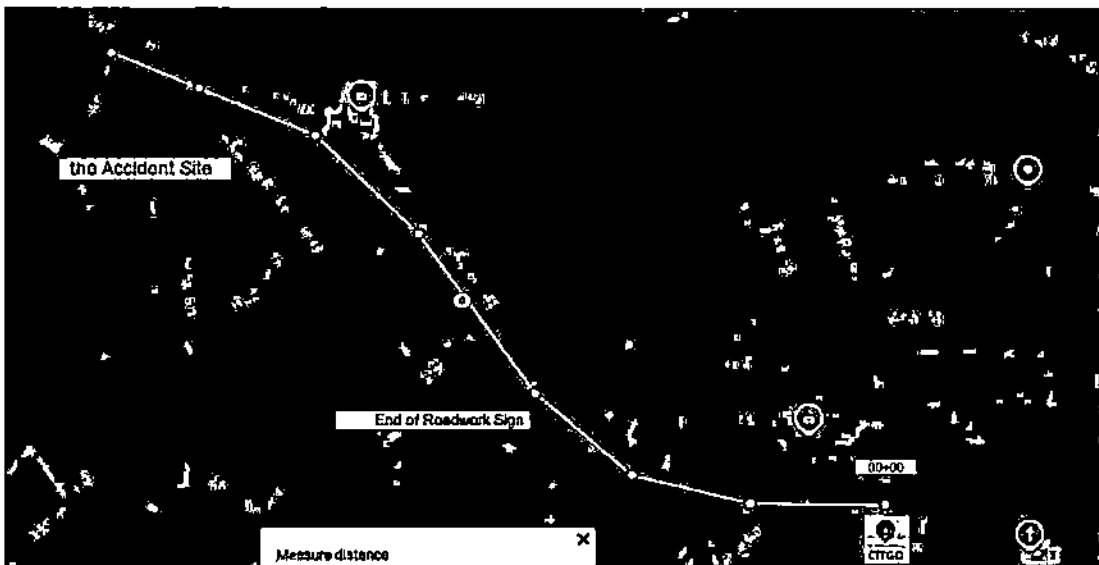
EXHIBIT M - Smith v. King Asphalt Inc. 2021-CP-39-00329

Page



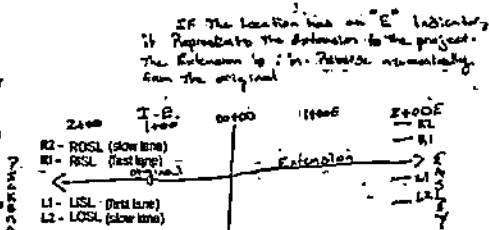
EXHIBIT N - Smith v. King Asphalt Inc. 2021-CP-39-00329





Layman's explanation of topography:

This project consisted of two parts. The first running WEST of the Cigo station at 901 Hwy 8, Gentry Memorial Highway and the extension project running EAST. The demarcation point (00+00) is the Cigo Station. Lane descriptions and distances are all relative to the Cigo station. This can lead to confusion as the flow of traffic is in reverse in the Eastbound LISL (left inside shoulder lane - fast lane) and LOSL (left outside shoulder lane - slow lane). The accident occurred in L2 - LOSL (the slow lane of Eastbound traffic towards Easley). In the SCHP Troopers dashcam video he is leaving the Cigo station going West in the RISL (fast lane). His camera is showing the entire roadway with the road condition of the LISL and LOSL on the left of the screen as he approaches the accident. The dashcam video clearly shows the absence of any traffic control devices or road paint, despite the ongoing milling/paving roadwork described in the Daily Work and Inspection Reports. His dashcam shows the entire roadway between the Cigo and the accident and pans the entire highway beyond - showing NO TRAFFIC CONTROL DEVICES WHATSOEVER.



Layman's Explanation of distance notations:

Throughout various reports by King Asphalt to SCDOT there are distance notations describing how far a point is from 00+00. These notations take the form:

00+00
thousand(s) = increment of hundred:
50
2+32 = 232 feet
5+88 = 588 feet
10+29 = 1029 feet
101+10 = 10110 feet

To calculate the distance between any two points you subtract the larger from the smaller 5+88 - 2+32 = 3+54
= 588 - 232 = 354 feet

In this instance the numbers grow larger as you progress EAST and WEST from 00+00. Everything is relative to 00+00 (the crosswalk at CIGGO).



Daily Work Report

Form CR-249-A

3/21/19

Remarks

King Asphalt placed Surface BR in the right inside lane.

FSC applied temporary paint markers.

Work Items

[illegible]

Contractor Information

Contractor Name:		KING ASPHALT		Contractor Name:		FIELD SPECIALTIES	
Skilled Workers on Site:		10		Skilled Workers on Site:		24	
Foreman Name:		[REDACTED]		Foreman Name:		[REDACTED]	

Equipment				Equipment			
1	Off road	1	1	1	1	1	1
2	Truck	1	1	1	1	1	1
3	Truck	1	1	1	1	1	1
4	Truck	1	1	1	1	1	1
5	Truck	1	1	1	1	1	1
6	Truck	1	1	1	1	1	1
7	Truck	1	1	1	1	1	1
8	Truck	1	1	1	1	1	1
9	Truck	1	1	1	1	1	1
10	Truck	1	1	1	1	1	1
11	Truck	1	1	1	1	1	1
12	Truck	1	1	1	1	1	1
13	Truck	1	1	1	1	1	1
14	Truck	1	1	1	1	1	1
15	Truck	1	1	1	1	1	1
16	Truck	1	1	1	1	1	1
17	Truck	1	1	1	1	1	1
18	Truck	1	1	1	1	1	1
19	Truck	1	1	1	1	1	1
20	Truck	1	1	1	1	1	1
21	Truck	1	1	1	1	1	1
22	Truck	1	1	1	1	1	1
23	Truck	1	1	1	1	1	1
24	Truck	1	1	1	1	1	1
25	Truck	1	1	1	1	1	1
26	Truck	1	1	1	1	1	1
27	Truck	1	1	1	1	1	1
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59	Truck	1	1	1	1	1	1
60	Truck	1	1	1	1	1	1
61	Truck	1	1	1	1	1	1
62	Truck	1	1	1	1	1	1
63	Truck	1	1	1	1	1	1

Employee Signa

Exhibit J: Plaintiffs' December 13, 2024 Opposition cover page, Certificate of Service, and Notary Acknowledgement (Smith v. King Asphalt Inc., 2021CP39000329, pp. 000001, 000084-000085), documenting the filing and service of digital exhibits on USB flash drive.

Exhibit J – Digital Exhibits on USB Drive

Smith v. King Asphalt, Inc. – C/A No. 2021-CP-39-00329 – App. Case No. 2025-001327

Source:

Filing describing submission of a USB flash drive in the trial court record, identified in Plaintiffs' Cross-Motion for Summary Judgment and related filings.

Contents Described:

SCHP patrol car dashcam video; 911 call audio; Defendant's insurance audio interview; and audio statements by the SCHP Trooper.

Purpose:

Shows that critical digital evidence was properly submitted on a USB drive but omitted from the record considered by the circuit court and thereby precluded from the record on appeal, supporting the request for a remand to include these materials under Rule 210, SCACR.

Submitted by: Submitted by:

Michael D. Smith and Mary A. Smith,

Appellants, pro se

220 Stancil Street,

Easley, SC 29640

MichaelDSmith@housemail.com

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

vs.

Themistoklis Economou and King
Asphalt Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2021-CP-39-00329

**PLAINTIFFS' OPPOSITION TO
DEFENDANT KING ASPHALT,
INC.'S MOTION FOR SUMMARY
JUDGMENT, CROSS-MOTION FOR
SUMMARY JUDGMENT, AND
PRAYER FOR ALTERNATIVE
RELIEF**

**PLAINTIFFS' OPPOSITION TO DEFENDANT KING ASPHALT, INC.'S
MOTION FOR SUMMARY JUDGMENT, CROSS-MOTION FOR SUMMARY
JUDGMENT, AND PRAYER FOR ALTERNATIVE RELIEF**

INTRODUCTION

Plaintiffs Michael and MaryAnn Smith respectfully oppose Defendant King Asphalt, Inc.'s motion for summary judgment and submit their own cross-motion for summary judgment. Plaintiffs contend that King Asphalt's violations of statutory, regulatory, and contractual obligations, as well as its acts of negligence per se, negligent entrustment, fraudulent misrepresentation, and obstructive litigation tactics, collectively entitle Plaintiffs to summary judgment. Defendant's failure to raise any genuine material issues of fact in their motion for summary judgment further underscores the appropriateness of granting summary judgment in favor of Plaintiffs.

Plaintiffs' claims are supported by uncontroverted evidence of Defendant's failure to comply with South Carolina Code Section 56-5-1535(F)(1), South Carolina Department of Transportation (SCDOT) Division 600 Regulations, the SCDOT Standard Specifications for Highway Construction and contract-specific provisions. Defendant King Asphalt's actions and omissions directly created hazardous conditions that proximately caused Plaintiffs' injuries, rendering

3 Smith v. King Asphalt Inc. (2021CP39000329) 000006

them liable as a matter of law. [Exhibit B] - Rayfield v. SC Dept. of Corrections, 297 S.C. 13, 374 S.E.2d 910 (1988).

Defendant's assertion that expert testimony is required to establish negligence is misplaced. The facts and violations in this case are well within the understanding of a layperson and do not necessitate expert analysis. As detailed in this motion, the documented evidence, statutory violations, and admissions by Defendant clearly establish liability without the need for expert interpretation.

This submission incorporates all referenced Exhibits A-Z and also aa-zz, the Bibliographic Appendix, and digital exhibits (video/audio) contained on the accompanying USB flash drive. Each Exhibit has a cover page with highlights/excerpts of the attached documents relevant portions.

Given that the Court and its clerks operate under significant time constraints and may not be intimately familiar with every nuance of this case, it is crucial to present the facts and arguments with clarity, precision, and sufficient context. As many of the same facts are foundational to multiple claims and elements, a degree of repetition is unavoidable. This is not meant to be verbose, but rather a deliberate effort to ensure that each claim is fully supported and articulated in the context of the legal framework it addresses. Plaintiffs respectfully apologize for any perception of repetitiveness, as this approach is necessary to avoid ambiguity and to meet the high standards of thoroughness and specificity required in these proceedings. Accordingly, Plaintiffs move for summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure, as the overwhelming evidence establishes that no genuine issues of material fact remain for trial.

Case Overview

Factual Background

1. Accident Site Location

This case involves a segment of Highway 8 (Gentry Memorial Highway) in Easley, SC, specifically the Eastbound lanes between Owen Lane and Old Easley Pickens Highway ("the Accident Site"), defined as distance markers 36+00 to 31+53. This site was part of a larger SCDOT road project. [Exhibit kk] - Google Maps current day pictures of accident scene and King Asphalt Inc 2019 photographs

2. Contract Award

On July 3, 2018, King Asphalt, Inc. of Liberty, SC, was awarded two projects (P037242 and P037243, Contract No. 17352, SC File No.

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Michael and Mary Smith,
Plaintiffs,

vs.

Themistoklis Economou and King
Asphalt Inc.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CASE NO.: 2021-CP-39-00329

CERTIFICATE OF SERVICE

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2024 DEC 13 A 9:22

CERTIFICATE OF SERVICE

I, Michael D. Smith, hereby certify that I have this day served the following documents:

**PLAINTIFFS' OPPOSITION TO DEFENDANT KING ASPHALT, INC.'S
MOTION FOR SUMMARY JUDGMENT, CROSS-MOTION FOR SUMMARY
JUDGMENT, AND PRAYER FOR ALTERNATIVE RELIEF**

along with all attached exhibits and digital exhibits on USB drive/and by email attachment.

The aforementioned documents were served upon the following counsel of record:

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The documents were served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: 12/13/2024
By U.S. Mail return receipt requested via certified mail,
Certified Mail Number: USPS 70210950000135867958
Date of Mailing: 12/13/2024

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I further certify that a copy of this Certificate of Service was also included with the documents sent by U.S. Mail and email.

Respectfully submitted,

Michael D. Smith

12-12-2024

Michael D. Smith
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Date

NOTARY ACKNOWLEDGEMENT
STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

I, Kendra Taylor, the undersigned Notary Public, do hereby certify that Michael D. Smith, personally appeared before me this day and acknowledged the due execution of the foregoing Certificate of Service.

Sworn to and subscribed before me this 12 day of December, 2024.

Kendra Taylor
Notary Public, State of South Carolina
My Commission Expires: 07/07/2032



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