

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

RECEIVED

Oct 01 2026

SC Court of Appeals

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

RECORD ON APPEAL

VOLUME 5 OF 5, Pages 1202 to 1535

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

Catharine Garbee Griffin
SC Bar No.: 9821
BAKER, RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone (803) 799-9091; Fax: (803) 779-3423
E-Mail: cgriffin@brblegal.com

INDEX

Smith v. King Asphalt, Inc., Court of Appeals Case No. 2025-001327

Entries are numbered continuously. Each entry is in the wording of the Designation that lists it. App. is the Appellants' Designation of July 6, 2026; Resp. is the Respondent's Designation of August 5, 2026; Supp. is the Appellants' Supplemental Designation of August 17, 2026. Where two Designations list the same document, both entries sit on one line. Documents filed as exhibits to another filing are listed under that filing. [Click underlined page number to view page. Hold <ALT> key and press <left arrow> to return.]

Page

ORDERS, JUDGMENTS, DECREES, AND DECISIONS

1.	Form 4 Order of Judgment, entered February 18, 2025. (App. 10)	6
2.	Order Granting Summary Judgment, filed March 10, 2025. (App. 12) / Order Granting Defendant King Asphalt, Inc.'s Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment, filed on March 10, 2025. (Resp. 13)	10
3.	Initial Order Regarding Motion for Reconsideration, filed April 4, 2025. (App. 15)	23
4.	Order (Electronic Form 4), entered May 1, 2025. (App. 20)	26
5.	Final Order Regarding Motion to Reconsider, filed May 27, 2025. (App. 22) / Final Order Regarding Motion to Reconsider, filed on May 27, 2025. (Resp. 16)	30
6.	Order (Electronic Form 4), entered June 24, 2025. (App. 25)	33

PLEADINGS

7.	Summons and Complaint, filed on March 23, 2021. (Resp. 1) / The Complaint. (App. 1)	37
8.	Affidavit of Service on King Asphalt, Inc., filed on July 16, 2021. (Resp. 2)	49
9.	Defendant South Carolina Department of Transportation (SCDOT'S) Motion to Dismiss, filed on July 21, 2021. (Resp. 6)	52
10.	Stipulation of Dismissal, filed on July 27, 2021. (Resp. 7)	54
11.	Answer of King Asphalt, filed on August 2, 2021. (Resp. 4) / The Answer of King Asphalt, Inc. (App. 2)	56
12.	Affidavit of Service on Themistoklis Economou, filed on September 2, 2021. (Resp. 3)	64
13.	Answer of Defendant Themistoklis Economou, filed on September 13, 2020. (Resp. 5)	67
14.	Stipulation on Dismissal with Prejudice Pursuant to Rule 41 as to Themistoklis Economou Only, filed on January 17, 2024. (Resp. 8)	77

	Page
15. King Asphalt, Inc.'s Motion for Summary Judgment, filed on January 19, 2024. (Resp. 9) / Respondent's Motion for Summary Judgment. (App. 4)	80
16. Handwritten filing of Appellants dated March 25, 2024. (App. 3)	83
17. Appellants' Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment, served December 13, 2024, with Certificate of Service and all exhibits filed December 13, 2024, as one continuous document, Bates 000001 through 000459, and the digital exhibits (video and audio) on USB drive submitted therewith, retained in the trial court under Rule 210(f), SCACR. Exhibit J to that filing, Bates 000169 through 000178, contains the deposition of Themistoklis Georgios Economou including pages 42 and 43, designated at Resp. 24, page 43 being the reporter's certification. (App. 5) / Plaintiffs' Opposition to Defendant King Asphalt, Inc.'s Motion for Summary Judgment, Cross-Motion for Summary Judgment, and Prayer for Alternative Relief, filed on December 13, 2024. (Resp. 10)	85
Themistoklis Georgios Economou (Exhibit J, excerpts)	256
18. Appellants' Request to Clarify Rulings and Preserve Issues for Appeal, dated January 22, 2025, and Amended Request to Clarify Rulings, filed January 24, 2025, with the Certificates of Service and Exhibits filed January 23 and January 24, 2025. (App. 6)	545
19. Memorandum in Support of King Asphalt's Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment, filed January 27, 2025, with the attachments filed therewith. (Resp. 11) / Memorandum in support. (App. 4) The attachments are:	569
a. SCDOT's Primary Route Daytime Lane Closure Drawing. (Resp. 18)	585
b. Transcript of Deposition of Douglas Eugene Limbaugh, Jr., title page and pages 15, 22 through 25, 28 through 30, 32 through 34, and 42 through 44, as filed. (Resp. 20; Supp. 26) Page 45, designated at Supp. 26, does not appear in the record below.	587
c. Transcript of Deposition of Zachary Shane Michael, title page and pages 19 through 21, 23, 29, 36 through 38, 46, 54, and 55, as filed. (Resp. 22)	603
d. Transcript of Deposition of Michael Smith, pages 103, 104, 116 to 121. (Resp. 23)	617
e. Transcript of Deposition of Themistoklis Georgios Economou, title page and pages 19 through 26, 40, and 41, as filed. (Resp. 24)	627
f. Transcript of Deposition of Frank Pressly, pages 7 to 10. (Resp. 25)	640
20. SCDOT Proposal and Contract No. 3948130, as filed by Respondent on January 27, 2025, in its entirety. (App. 7) / SCDOT Proposal, Contract and	646

	Page
Bond for Highway Construction: Resurfacing/Reconstruction, FDR; Bid Received: June 12, 2028; Award Date: July 3, 2018, with attachments. (Resp. 17)	
21. Appellants' Response to Defendant's Memorandum, filed January 30, 2025, with Exhibits A-R and Certificate of Service filed January 30, 2025. (App. 9) Exhibit I, as filed, is the Transcript of Deposition of Michael Laginestra (Resp., second item numbered 18), and Exhibit H, as filed, is page 62 of the Transcript of Deposition of Zachary Shane Michael (Resp. 22).	774
Zachary Shane Michael (Exhibit H, excerpts)	811
Michael Laginestra (Exhibit I, excerpts)	812
22. Appellants' Motion to Reconsider Pursuant to Rule 59(e), SCRC, filed February 28, 2025, with the Exhibits filed February 28, 2025. (App. 11)	825
22b. Exhibits filed February 28, 2025, to Appellants' Motion to Reconsider Pursuant to Rule 59(e), SCRC. (App. 11)	867
23. Appellants' Supplement to Motion to Reconsider, filed March 20, 2025, with the Exhibits and Certificates of Service filed March 20, 2025. (App. 13) / Supplement, Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e), filed on March 20, 2025. (Resp. 14)	991
24. Appellants' letter to the Court, filed March 26, 2025. (App. 14)	1202
25. Appellants' Second Supplemental Submission, filed April 11, 2025. (App. 16)	1208
26. Appellants' Exhibits, filed by Michael Smith and docketed April 11, 2025. (App. 17)	1224
27. King Asphalt, Inc.'s Return to Plaintiffs' Motion for Reconsideration, filed April 18, 2025. (App. 18) / King Asphalt, Inc.'s Return to Plaintiffs' Motion for Reconsideration, filed on April 18, 2025. (Resp. 15)	1298
28. Appellants' Motion for Leave to File Surreply to Defendant's Return, filed April 21, 2025. (App. 19)	1303
29. Appellants' Surreply to Defendant's Return to Plaintiffs' Motion to Reconsider, filed May 8, 2025, with all exhibits thereto, including the full deposition transcripts of Joe Daniel Laws, III, and Joshua Frazier Makison (Exhibit D) and the deposition excerpts of eyewitness Olivia Paige Bryan (Exhibit E). (App. 21) The full transcripts at Exhibit D are also designated as Transcript of Deposition of Joshua Frazier Makison (Resp. 19) and Transcript of Deposition of Joe Daniel Laws (Resp. 21). Exhibit C, as filed, contains the title page and pages 6 and 7 of the deposition of Zachary Shane Michael (Resp. 22), the title page and pages 6, 8, and 9 of the deposition of Douglas Eugene Limbaugh, Jr. (Resp. 20), the title page and page 9 of the deposition of Joshua Frazier Makison (Resp. 19), and the title page and pages 9 and 16 of the deposition of Joe Daniel Laws, III (Resp. 21).	1404

	Page
Zachary Shane Michael (Exhibit C, excerpts)	1418
Douglas Eugene Limbaugh, Jr. (Exhibit C, excerpts)	1421
Joshua Frazier Makison (Exhibit C, excerpts)	1425
Joe Daniel Laws, III (Exhibit C, excerpts)	1427
Joe Daniel Laws, III (Exhibit D, full deposition)	1430
Joshua Frazier Makison (Exhibit D, full deposition)	1463
Olivia Paige Bryan (Exhibit E, excerpts)	1484
30. Notice of Appeal, filed June 23, 2025. (App. 23)	1503
31. Motion and Affidavit to Proceed In Forma Pauperis (Appeal), filed by Michael Smith June 23, 2025. (App. 24)	1507

TRANSCRIPT

32. Transcript of the hearing held January 27, 2025, before the Honorable Jessica A. Salvini, filed in the circuit court July 11, 2025. (App. 8) / Transcript of Record: January 27, 2025 Hearing on Motions for Summary Judgment before The Honorable Jessica Ann Salvini, Circuit Judge, dated February 20, 2025. (Resp. 12)	1510
--	------

EXHIBITS AND OTHER MATERIALS

33. SCDOT 2007 Standard Specifications for Highway Construction, incorporated by reference into SCDOT Proposal and Contract No. 3948130, Subsection 107.9, Public Convenience and Safety. (Supp. 27) Incorporated by reference into the contract. See ROA-20.	1532
---	------

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 24

Appellants' letter to the Court, filed March 26, 2025. (App. 14)

Michael and Mary Ann Smith
220 Stancil Street
Easley, South Carolina 29640
MichaelDSmith@housemail.com

Letter

Clerk of Court Pickens County, SC
MAR 26 '25 PM 1:31

March 26, 2025

The Honorable Jessica A. Salvini
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

Re: Smith v. King Asphalt, Inc. #2021-CP-39-00329 -- Clarification of Legal Standard,
Procedural Fairness, and Regulatory Violations

Dear Judge Salvini:

Plaintiffs write respectfully to clarify a critical issue of law and procedural fairness currently affecting this case. Specifically, the distinction between negligence per se and ordinary negligence appears to have been blurred, to the prejudice of Plaintiffs, based on defense counsel's repeated efforts to shift the applicable standard and change the narrative of this case to suit what they want to defend.

In the transcript of the Summary Judgment hearing held on January 27, 2025, at 11:30 AM in Courtroom 4 of the Pickens County Courthouse, at page 15, lines 4 through 7, Plaintiff began to enter his statement of the case into the record. However, immediately after Plaintiff completed the first sentence, the Court interjected at line 8, stating: "Okay. So let me stop you there, Mr. Smith." Although the Court later stated at page 16, lines 3 and 4: "Okay. All right. You can finish reading it but that's the issue that I've got to focus in on...", Plaintiff was not thereafter given the opportunity to fully complete his statement for the record.

Plaintiff respectfully submits that the statement he intended to read was crucial to his case because it was specifically prepared to clarify that Plaintiffs' claim is based on negligence per se, premised on statutory and regulatory violations, and to explain that defense counsel was deliberately attempting to blur this distinction by reframing the case as one of ordinary negligence, thereby luring the Court into applying the wrong legal standard.

Plaintiff believes this clarification was essential to preserve the correct framing of the case for the record and to ensure that the Court's ruling would be based on the proper legal theory as pleaded and supported by Plaintiffs' evidence.

For this reason, Plaintiff now submits this letter, which summarizes the statement Plaintiff was attempting to enter into the record during that hearing.

Plaintiff respectfully requests that the Court accept this letter as part of the official record in this matter and specifically acknowledge its inclusion.

The following facts and arguments are submitted in support of Plaintiffs' position:

Clarifying the Legal Distinction – Negligence Per Se vs. Ordinary Negligence

South Carolina law clearly states that negligence per se arises directly from violating a statute or regulation designed to protect the public. Once such a violation is established, duty and breach are satisfied automatically as a matter of law. From that point forward, the only remaining issues are causation and damages, both of which are factual determinations well-supported by Plaintiff's evidence.

By contrast, ordinary negligence requires Plaintiffs to separately prove:

- Duty
- Breach (measured against a subjective "reasonable person" or "industry" standard)
- Causation
- Damages

Negligence per se eliminates the need for subjective standards, expert testimony, or industry practice evidence because the law itself sets the standard of care. This is confirmed by *Whitlaw v. Kroger Co.*, 306 S.C. 51 (1991) and *Rayfield v. S.C. Dept. of Corrections*, 297 S.C. 95 (1988).

Despite this, the defense continues to argue that Plaintiffs must produce an expert to explain subjective industry standards, attempting to reframe this as ordinary negligence. Respectfully, this argument is legally flawed and directly undermines the negligence per se cause of action Plaintiffs have consistently pled and supported.

Specific SCDOT Regulations and Guidelines Violated

King Asphalt's conduct violated multiple clear and enforceable SCDOT regulations, which serve as the basis of our negligence per se claim. These include:

1. SCDOT Standard Specifications Section 401.4.21 (2014 Edition) – Prohibiting opening lanes to traffic where lane height differentials exceed one inch (1") (milled lane next to paved lane).
 - The record proves King Asphalt stipulated to a 2-inch lane height differential, double the legal limit, exposing motorists to an unreasonable hazard.
2. SCDOT Work Zone Safety Guidelines and Project Traffic Control Plan (TCP) – Requiring continuous traffic control devices until the hazardous condition is mitigated.
 - King Asphalt admitted prematurely (without first mitigating the safety hazard) removing all traffic control devices, leaving the traveling public exposed to unmarked hazards.

3. SCDOT Specification Section 401.4.20 – Limiting milling operations to no more than ten (10) calendar days before repaving or eliminating the hazard.
 - o King Asphalt violated this regulation by leaving the LISL (at the accident site) milled for twenty-one (21) days (March 6-27, 2019), more than double the permissible time.

Each of these objective violations independently satisfies the breach element of negligence per se. No expert testimony is required to interpret these clear regulatory limits.

Procedural Fairness Concerns – Defense Tactics and Court's Adoption

Plaintiffs must also respectfully highlight repeated procedural fairness concerns that have further disadvantaged us as pro se litigants:

- Ambush Memorandum: Defense counsel served Plaintiffs a 212-page memorandum with new arguments and evidence at the start of the hearing, depriving us of any meaningful opportunity to review or respond. This tactic undermines the fair hearing principle enshrined in our system.
- Reframing of Claims: Defense has improperly reframed our negligence per se claim into ordinary negligence, imposing a higher burden of proof requiring subjective expert interpretation that does not apply to the cause of action we pled.
- Judicial Adoption of Defense Framing: Plaintiffs are deeply concerned that the Court's current analysis appears to accept defense counsel's improper reframing, creating an erroneous expert witness requirement that contradicts well-established South Carolina law on negligence per se.

These errors, when considered together, undermine the integrity of the proceedings and create an impression of judicial imbalance.

Procedural fairness requires that Plaintiffs' properly pleaded claims be adjudicated under the correct legal framework and not dismissed due to procedural manipulation or incorrect application of law.

Summary Judgment Standard and Proper Application

Finally, under Rule 56(c), SCRCP and *Baughman v. AT&T*, 306 S.C. 101 (1991), summary judgment is warranted only where the non-moving party fails to show evidence of an essential element of their claim.

Here, Plaintiffs have produced:

- Direct evidence of statutory and regulatory violations;
- SCHP dashcam footage (photographic evidence), Trooper testimony;
- Eyewitness testimony;
- Defendant's own admissions regarding lane height/condition and removal of traffic controls.

Additionally, *The Kitchen Planners, LLC v. Friedman* (2023) reaffirms that South Carolina rejects federal Celotex standards. Plaintiffs are not required to produce an expert to explain the law, the law speaks for itself when it comes to statutory or regulatory violations.

Plaintiff's Summons and Complaint clearly supports a negligence per se claim:

1. Explicit Allegation of Regulatory Violations

- **Complaint Language:** Paragraph 22(d) of Plaintiff's complaint directly states that King Asphalt failed to comply with the guidelines set by SCDOT for Work Zone Traffic Control.
 - **Significance:** This allegation is critical because it invokes a specific regulatory standard (SCDOT guidelines) designed to protect public safety.
-

2. Reference to Specific Regulations

- **Complaint Language:** Paragraphs throughout the complaint refer to SCDOT regulations, South Carolina Code, and Work Zone Traffic Control guidelines.
 - **Significance:** By referencing these regulations, Plaintiffs establish that a legal standard exists that the defendants were required to follow.
-

3. Protected Class

- **Complaint Context:** The complaint indicates that the Plaintiffs were motorists traveling through an SCDOT work zone operated by King Asphalt.
 - **Significance:** This establishes that Plaintiffs belonged to the class of people (motorists) that SCDOT regulations were designed to protect.
-

4. Causal Linkage

- **Complaint Language:** Paragraphs 21, 22, and 23 state that the damages were a direct and proximate result of the negligence of the Defendants.
 - **Significance:** By explicitly connecting the injuries to the Defendants' negligent commission/omission (including failure to comply with SCDOT regulations and contract language), the complaint asserts a causal link between the regulatory violations and the Plaintiffs' harm.
-

5. Elements of Negligence Per Se

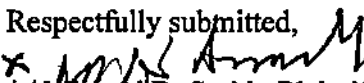
- **Violation of a Statute or Regulation:**
The Complaint clearly points out the failure to comply with regulations set by SCDOT for Work Zone Traffic Control.
 - The purpose of the law is to protect from the kind of harm that the plaintiff suffered; and
 - The plaintiff is a member of the class of persons that the law is intended to protect.
-

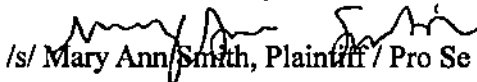
Under a theory of negligence per se, a jury does not need to decide if the defendant acted as a reasonable person would act given the circumstances. Instead, the jury just needs to decide whether the defendant's violation of the law caused the plaintiff's injuries. If so, then the plaintiff will be entitled to recover compensation for their medical treatment, lost wages, pain and suffering, and other losses. For the foregoing reasons, Plaintiffs respectfully request the Court:

- Reaffirm that negligence per se governs this case, with no requirement for subjective expert testimony;
- Recognize that SCDOT regulations set the applicable standard of care and King Asphalt's violations are proven;
- Acknowledge the procedural unfairness Plaintiffs have endured due to defense tactics, including the ambush memorandum and improper legal framing of Plaintiff's case;
- Deny summary judgment for the defense based on the correct application of South Carolina law.

Thank you for your time and careful consideration of these important clarifications. Your ruling in this case will not only determine the outcome for Plaintiffs but also set a precedent for fair treatment of pro se litigants who may face similar challenges in the future.

Respectfully submitted,


/s/ Michael D. Smith, Plaintiff / Pro Se - March 26, 2025


/s/ Mary Ann Smith, Plaintiff / Pro Se - March 26, 2025

CC: Filed on March 26, 2025
Smith v. King Asphalt, Inc.
2021-CP-39-00329

By US Mail: March 26, 2025
The Honorable Jessica A. Salvini
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

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

By Email: March 26, 2025
jsalvinisc@sccourts.org
CGriffin@brblegal.com

/s/ Michael D. Smith, Plaintiff / Pro Se - March 26, 2025



Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 25

Appellants' Second Supplemental Submission, filed April 11, 2025. (App. 16)

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' SECOND
SUPPLEMENTAL SUBMISSION
REGARDING MOTION TO
RECONSIDER PURSUANT TO RULE
59(e)**

Clerk of Court Pickens County, SC
APR 11 125 PM 1:13

**PLAINTIFFS' SECOND SUPPLEMENTAL SUBMISSION REGARDING MOTION TO
RECONSIDER PURSUANT TO RULE 59(e)**

TO THE HONORABLE COURT:

Plaintiffs Michael and Mary Smith, pro se, submit this second supplemental brief in support of their Motion to Reconsider the Court's Order granting summary judgment to Defendant King Asphalt, Inc. This submission is timely made in accordance with the Court's Order of April 4, 2025 setting a deadline of 4:00 PM April 11, 2025, for additional filings.

These Second Supplemental Submissions, in their entirety, were filed April 11, 2025.

I. INTRODUCTION

This second supplemental submission is timely made pursuant to the Court's procedural order issued in response to Plaintiffs' Rule 59(e) Motion to Reconsider, originally filed and served on February 28, 2025. The Court acknowledged receipt of Plaintiffs' supplemental filing for reconsideration dated March 20, 2025 and served on March 21, 2025, and has ordered that it will decide the motion based solely on written submissions. No oral argument will be held. Pursuant to that order, the Court has granted Plaintiffs until the aforementioned deadline, to file additional materials, with the non-movant permitted to file a reply by April 18, 2025. Plaintiffs submit this final brief as their complete and final written submission in support of reconsideration.

Plaintiffs respectfully assert that the Court's initial Order overlooked critical evidence, misapplied relevant South Carolina law, and failed to adequately address the procedural unfairness resulting from Defense Counsel's last-minute submission of a voluminous memorandum. This supplemental brief clarifies these points and demonstrates that summary judgment was improper. This case turns on a clear-cut question of law: whether a jury may evaluate undisputed regulatory violations without the need for expert testimony.

II. ARGUMENT

A. The Court Erred in Requiring Expert Testimony for a Negligence Per Se Claim

The Plain Meaning Rule and Public Safety Regulations

South Carolina courts consistently apply the “plain meaning” rule to statutes and regulations. As the Supreme Court stated in *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), where the language of a statute is clear and unambiguous, “the court has no right to impose another meaning.” See also *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007), which reaffirms that statutory terms must be given their plain and ordinary meaning and that courts must not engage in forced interpretation when the language is clear. See also *Beaty v. Richardson*, 56 S.C. 173, 34 S.E. 73 (1899). This principle applies equally to regulations and contractual provisions that function as regulatory mandates.

The only recognized exception, articulated in *City of Rock Hill v. Harris*, 391 S.C. 149, 705 S.E.2d 53 (2011), citing *Kiriakides v. United Artists Commc’ns, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994), is where applying the plain meaning would lead to an “absurd result” or clearly defeat legislative intent. No such absurdity exists here. On the contrary, applying the literal text of the 1-inch rule, traffic cone retention, correct traffic control implementation and 10-day milling limit advances the clear public safety purpose behind these regulations.

South Carolina Law on Negligence Per Se: It is well-established in South Carolina that a violation of a statute or regulation constitutes negligence per se if the statute or regulation is designed to protect a class of persons, which includes the plaintiff, and the violation proximately causes injury.

***Whitlaw v. Kroger Co.*, 306 S.C. 51, 410 S.E.2d 251 (1991):** This case appears to be directly on point and explicitly addresses the elements:

- **Duty from Statute:** To establish a duty of care arising from a statute, the plaintiff must show: “(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.”
- **Breach via Violation = Negligence Per Se:** If the plaintiff makes the above showing (establishing duty) and then shows the defendant *violated* the statute, they have proven breach (“failed to exercise due care”). The court stated, “This constitutes proof of negligence per se.”
- **Causation Required Separately:** *Whitlaw* strongly emphasizes that proving negligence per se (duty and breach) is not the end of the inquiry. It explicitly states: “The finding of a statutory violation, however, does not end the inquiry. The causation of the injury must also be evaluated.” And further: “After establishing negligence per se, the Plaintiff must then prove that the violation of the statute was causally linked, both in fact and proximately, to the injury.”

SCDOT Regulations as Basis for Negligence Per Se: Plaintiffs' claim is predicated on King Asphalt's violation of specific SCDOT regulations concerning work zone safety, particularly those related to lane height differentials and traffic control devices. These regulations are designed to protect motorists, including the Plaintiffs. Specific violations include:

- Removing traffic control protections and exposing motorists to a hazardous lane height differential exceeding SCDOT's 1-inch limit between a milled inside lane and an adjacent paved outside lane, in violation of SCDOT safety requirements. This point is reinforced by the deposition testimony of SCDOT Construction Services Engineer Joe Daniel Laws III, who testified that cones and protections are to remain in place until the hazardous differential is 'safened up' [Exhibit C - Joe Daniel Law III CSE SCDOT deposition pages 28,29] as is clarified on page 23 of Defendant's exhibit attached to their memorandum. [Exhibit C - Joe Daniel Law III CSE SCDOT deposition pages 28,29] Furthermore, King Asphalt acknowledged the existence of the lane height differential and the absence of cones at the time of the crash (Defendant's Memorandum, p.5), thereby confirming that the public was exposed to the hazard when traffic control protections were prematurely/unlawfully removed.
- Prematurely removing traffic control cones/devices from the hazardous area before mitigating the height differential, thus unlawfully reopening the lane. [Exhibit C - Joe Daniel Law III CSE SCDOT deposition pages 28,29]
- Leaving the inside lane milled for 21 days, exceeding the 10-day limit. [Exhibit J - SPECIAL PROVISION - Lane shall not be left milled for more than 10 consecutive days]
- Failing to implement the required overall traffic control scheme/signage. [Exhibit P - Page 23 -2 Delineate shoulder edges]

These regulations are not obscure or ambiguous, they are written in plain English, understandable to any reader. For example:

- **SCDOT Division 600/400 Standard:**

"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," [emphasis added]

as stated verbatim on page 22 of the contract proposal filed by Defendant as part of its Memorandum in Support of Summary Judgment. [Exhibit M -Page 22 -1 -One inch regulation]

- As specifically stated on page 23 of the contract proposal exhibit filed by Defendant in support of its Motion for Summary Judgment. [Exhibit N - Page 22-2 Lane closures required]

"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." [emphasis added]

- **Traffic Control:** "Cones and warning devices shall remain in place until hazards are corrected."

"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. " [emphasis added]

[Exhibit P - Page 23 -2 Delineate shoulder edges]

- **Painted Left-Turning Arrows:**

"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 RCE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings." [emphasis added] [page 30 Defendants Exhibit 1 attached to Memorandum]

King Asphalt, Inc. failed to paint left-turning arrows on the LISL, for over 21 days

- **Milling Duration:**

"No milled surface shall remain open to traffic for more than 10 calendar days." [emphasis added] [Exhibit J - SPECIAL PROVISION - Lane shall not be left milled for more than 10 consecutive days]

These directives require no technical training to interpret. They are straightforward safety rules. The jury is certainly composed of "common persons," and these plainly-worded rules are easily within their grasp. If reading and understanding these safety regulations requires expert interpretation, then it follows that the general public, the very class of persons these regulations are designed to protect, would be excluded from understanding or complying with them. Such a result is incompatible with the purpose of public safety regulations, which must be accessible and enforceable by laypersons. This principle is well recognized in jurisprudence, including the South Carolina Supreme Court's acknowledgment that laws designed to protect public safety must be comprehensible to the people they are intended to protect. See, e.g., *Whitlaw v. Kroger Co.*, 306 S.C. 51 (1991), where the Court enforced a statutory duty without requiring expert interpretation because the governing law was specific, objective, and intended to provide a clear

benchmark for conduct. The legislative intent behind such regulations is to ensure public compliance and protection, not to shield violators under a veil of technical ambiguity accessible only through expert testimony. The plain language of the cited regulations does not require the public to understand the engineering or material science of paving to recognize when a condition is unsafe or in violation of law.

These SCDOT-mandated contractual provisions function as enforceable regulatory standards due to SCDOT's continuous oversight and control of the project. King Asphalt was not operating independently; it was performing work under contract with the South Carolina Department of Transportation. As such, the contractual language in the SCDOT-issued proposal book governs construction conduct with the force and effect of regulatory compliance. Violations of these directives are thus tantamount to violations of applicable safety regulations, making them actionable under a negligence per se theory.

Because these regulations must be interpreted by their plain meaning (*Hodges*), it follows that the general public, the very class of persons these regulations are designed to protect, must be able to understand and follow them without requiring technical expertise.

Because these provisions function as binding safety requirements under the Department's regulatory authority, and because their language is plain, directive, and comprehensible, there is no legitimate need for expert interpretation. The same attributes that qualify these provisions as enforceable also qualify them as accessible: they communicate required conduct in clear terms consistent with both legal and common understanding. Their enforceability and intelligibility go hand-in-hand.

Contrary to the assumption underlying the Court's original ruling, the regulations at issue do not require specialized knowledge of civil engineering or materials science to be understood or applied by a jury. Rather, they represent objective safety mandates that are plainly worded and self-executing. To require expert testimony to interpret clear safety language would transform the regulatory function into an exclusive domain, unintelligible to the very public it is designed to protect.

This approach is supported not only by case law, but also by longstanding canons of statutory interpretation. In South Carolina, as elsewhere, courts are to apply the "plain meaning" rule: 'Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.' That principle applies equally to regulations, including those adopted through contracts with regulatory agencies when they set binding safety standards for public protection.

No Expert Testimony Required: The Court's reliance on the need for expert testimony is misplaced. The issue is not whether King Asphalt met an industry standard of care, but whether it violated specific SCDOT regulations. The regulations themselves provide the standard, and the evidence demonstrates that King Asphalt failed to comply. As established in *Whitlaw v. Kroger Co.*, 306 S.C. 51 (1991) and *Rayfield v. S.C. Dept. of Corrections*, 297 S.C. 95 (1988), negligence per se eliminates the need for subjective standards, expert testimony, or industry practice evidence because the law itself sets the standard of care. Like in *Rayfield* and *Whitlaw*,

Plaintiffs rely not on abstract industry standards but on objective regulatory violations that require no expert interpretation.

B. The Court Overlooked Key Evidence Establishing Regulatory Violations

Admission of Lane Height Differential: King Asphalt has admitted that a 2-inch lane height differential existed at the time of the accident. This exceeds the 1-inch limit established by SCDOT regulations for lanes open to traffic when a milled lane is adjacent to a paved lane). In their [Memorandum, p.5; Depositions: Michael, p.36; Limbaugh, p.44, King Asphalt confirms the LISL was milled, and the LOSL had new asphalt at the time of the crash, saying], "It is not disputed that at the time of the collision between the moped operated by Smith and the car operated by Economou that the inside left lane had been milled and was in that condition and the outside lane had been paved with new asphalt." [Memorandum, p.5] This admission by Defendants of the circumstance of the roadway, coupled with the language of the pertinent regulation, **PROHIBITING** opening of the lane for public use when such a circumstance exceeds 1" in lane height differentiation, conclusively establishes breach under the negligence per se doctrine.

Premature Removal of Traffic Control Devices: Undisputed evidence, including dashcam footage and witness testimony, confirms that traffic control devices were removed before the lane height differential was mitigated. (Trooper Laginestra - SCHP dashcam video) This is a direct violation of SCDOT regulations. SCDOT's Construction Services Engineer Joe Daniel Laws III testified that cones are to remain in place until the lane has been "safened up." However, King Asphalt admits to removing the cones, as demonstrated in the Defendant's Memorandum, p.6-7 and Depositions of Limbaugh and Michael.

Contradictory Testimony: The Court relied on the testimony of King Asphalt and SCDOT witnesses who claimed compliance with regulations. However, these claims are contradicted by documentary evidence and admissions, including the SCDOT Daily Work/Inspection Reports. Specifically, witness testimony from Olivia Paige Bryan confirmed that cones between the lanes "ended about ten seconds before the accident." [Exhibit E - Olivia Paige Bryan - ten seconds] A verification that King Asphalt, Inc. employees were present or at least "ten seconds away". But for 6 years denied knowledge of the accident or that it was in a SCDOT work zone. A clear failure to comply with Division 600/400 regulations regarding protecting the public from hazardous road conditions.

Even after denying it for 6 years, Defendants finally acknowledged the accident occurred in their active SCDOT work zone, and was admitted to by King Asphalt in their Memorandum, p.2.

Deposition Testimony of Makison: While Defense Counsel highlighted selected excerpts from Mr. Makison's deposition to support their position, they declined to submit the entire deposition transcript, thereby omitting critical context and contradictions. A full reading of Makison's testimony reveals that he acknowledged the 1-inch regulation governing lane height differentials mitigation during milling operations before adjacent travel (one milled and one paved) lanes are opened to traffic. [Exhibit G3 - Michael - Limbaugh - Makison - Laws Deposition excerpts] Makison also acknowledges Defense counsels claimed 2" standard; but for a different

circumstance (dropoffs and shoulders). This recognition directly supports Plaintiffs' claim that King Asphalt violated the regulation (for adjacent lanes which are milled and paved - which was defense counsel's stipulated condition of the accident site at the time of the accident) and undermines Defense Counsel's effort to frame the regulation as ambiguous or irrelevant.

C. The Court Failed to Address Procedural Unfairness

Last-Minute Memorandum: Defense counsel's submission of a 212-page memorandum on the day of the hearing prejudiced Plaintiffs' ability to respond effectively. This constitutes trial by ambush, which is disfavored under South Carolina law. [Exhibit B - 01272025.PICKENS.SMITHvTHEMISTOKLIS.transcript] A description of this conduct is described by the Court in the MSJ hearing transcript. This deprived Plaintiffs of the opportunity to meaningfully address and refute the arguments raised in that submission, in violation of due process principles.

Pro Se Status: The Court should consider the challenges faced by pro se litigants and ensure that they are afforded a fair opportunity to present their case. The last-minute memorandum created an imbalance in the proceedings.

D. Rebuttal of Defense Arguments

Explicit Rebuttal of Court's Case Law Citations: In its prior Order, the Court appeared to rely on cases such as *Kemmerlin v. Mutual Benefit Ins. Co.* and *Etheredge v. Richland Sch. Dist. 1* in concluding that expert testimony was necessary or that summary judgment standards weighed against Plaintiffs. However, these cases are materially distinguishable. *Kemmerlin* involved a professional malpractice claim in which expert testimony was essential to establish complex standards of care within a specialized profession, a context fundamentally different from a negligence per se claim based on clear safety regulations governing public roadway construction. *Etheredge*, meanwhile, applied a traditional summary judgment analysis not tailored to the specific context of negligence per se arising from regulatory violations. It did not involve a statutory or regulatory framework that set forth objective safety rules as the applicable standard of care, and thus does not control here.

In contrast, Plaintiffs' case is governed by binding authorities such as *Whitlaw v. Kroger Co.*, 306 S.C. 51 (1991), and *Rayfield v. S.C. Dept. of Corrections*, 297 S.C. 95 (1988), which affirm that when the law itself defines the applicable standard of care, such as through clearly articulated public safety regulations, expert testimony is not required. These cases underscore that when a statutory or regulatory violation forms the basis for a negligence per se claim, the court and jury may apply the law directly without reliance on subjective professional norms. Plaintiffs respectfully direct the Court's attention to their prior discussion of this point in their Supplemental Motion to Reconsider.

Accident Location: The precise location of the accident is established by the GPS coordinates in the SCHP accident report TR-310, Fleetwatcher GPS data, and Trooper Laginestra's deposition testimony. Expert testimony is not required to interpret these sources. These coordinates are basic, objective data recorded by law enforcement and SCDOT systems, not expert

interpretation, and plainly locate the accident within the King Asphalt, Inc. SCDOT work zone. SCDOT accident report TR-310 GPS coordinates place the accident in the LOSL, eastbound between Owen Lane and Old Easley Pickens Hwy 8. The GPS coordinates recorded in the TR-310 accident report, entered by SCDOT Trooper Laginestra, place the accident precisely at: Latitude: 34° 50' 48.8" N; Longitude: 82° 39' 12.64" W. [Exhibit K - Original and Amended TR-310 Accident Reports by SCDOT Trooper Laginestra -March 22 2019 and August 4 2023]

Highway Conditions: The condition of the highway at the time of the accident is confirmed by the SCDOT Daily Work Reports and SCDOT Daily Inspection Reports - Form 400.04, which describe the milled condition of the fast lane (LISL) and the paved condition of the slow lane (LOSL) on March 22, 2019 at approximately 5:08 PM. [Defendant's Memorandum] [Exhibits aa aa1 aa2 aa3 - King Asphalt Inc SCDOT Daily Work Reports March 6th 12th 22nd 27th 2019]

Witness Testimony: King Asphalt claims that four witnesses affirm that the King Asphalt, Inc. paving crew complied with South Carolina state law, Division 600/400 regulations, MUTCD guidelines, and contract requirements at all times. However, none of the four deponents had firsthand knowledge of the accident, having admitted they were not present at the accident scene when it happened, nor were they aware of it for weeks, months even years after the fact. [Exhibit G - Michael - Limbaugh - Makison - Laws Deposition excerpts] While witnesses and GPS data show King Asphalt, Inc. workers to be present at the time of the accident, King Asphalt, Inc. has denied that fact to this day.

E. Clarification Regarding the Record and Concerns Regarding Corrupted Evidence

Plaintiffs respectfully clarify that the term "the record," for purposes of this motion and any potential appeal, includes all filings since the Defendant's Motion for Summary Judgment (January 19, 2024), as well as the initial pleadings that frame the nature of the case. This includes the original Summons and Complaint, which defines the claims under a negligence per se theory and identifies the legal basis for Plaintiffs' allegations, as well as: Plaintiffs' Response and Cross-Motion; Motion to Clarify; Defendant's Memorandum in Support; Plaintiffs' Objection to that Memorandum; Plaintiffs' Motion to Reconsider; the Supplemental Rule 59(e) Submission; Plaintiffs' letter to the Court regarding improper framing of the Complaint by Defense Counsel, corrupted exhibit data, and procedural improprieties [Exhibit H -Plaintiffs letter - Judge Salvini]; and the present supplemental submission. Plaintiffs request that the Court consider the totality of this body of filings (with attached exhibits) in ruling on the motion and preserving the record on appeal.

Plaintiffs are especially concerned that the corrupted exhibit files, if left unremedied, may prevent the Court from reviewing the complete set of supporting evidence. If the Court intends to apply a standard of ordinary negligence, then full consideration of the Plaintiffs' complete evidentiary record, including the corrected corrupted exhibits, is necessary to properly assess duty, breach, causation, and damages.

However, if the Court agrees that the Plaintiffs have sufficiently established the elements of a negligence per se claim, as framed in the Complaint, supported by Defendant's admissions, and governed by clear SCDOT regulatory standards, leading to causation and damages, then the

omission of certain exhibit files may be mitigated at trial, and need not preclude reconsideration at this stage.

F. Procedural Irregularities and Judicial Conduct at Summary Judgment Hearing

Plaintiffs respectfully raise concerns about the conduct and structure of the January 27, 2025, hearing on Defendant's Motion for Summary Judgment. These concerns are raised not to disparage the Court but to preserve due process objections for appellate review and ensure a complete record. Plaintiffs acknowledge the heavy demands placed upon the Court and submit these points with full respect for the judicial role. However, several specific actions and omissions, each documented in the transcript, raise serious concerns regarding the fairness and neutrality of the proceedings: [Exhibit B – 01272025 PICKENS SMITH v THEMISTOKLIS MSJ transcript]

1. **Premature Framing of the Dispositive Issue:** After hearing the full opening arguments of Defense counsel, Judge Salvini interrupted Plaintiff Michael Smith shortly after he began reading a prepared statement and stated: "Okay. So let me stop you there, Mr. Smith. That is the issue." [SJ hearing transcript - page 15, line 8] This occurred less than one minute after Plaintiff began speaking. At that point, Plaintiff had not been allowed to fully articulate his theory of the case, specifically, the argument that expert testimony is unnecessary under the negligence per se doctrine because the relevant safety regulations are clear, specific, and publicly accessible. The Court's abrupt conclusion, reached without hearing Plaintiff's framing, effectively foreclosed Plaintiffs' opportunity to present their case on their own terms and prematurely adopted the Defendant's narrative, denying Plaintiffs a fair opportunity to frame their own case.
2. **Admitted Failure to Review Defendant's Filing:** The Court acknowledged that it had not read the 212-page memorandum submitted by Defendant that same day: "She handed up her memorandum. I haven't had a chance to read it..." [SJ hearing transcript - page 14, line 1]. Despite this, the Court permitted defense counsel to argue extensively from that memorandum while restricting Plaintiff's ability to read a prepared summary into the record. This created an asymmetry in advocacy and raises concerns about fairness and full consideration of arguments, undermining Plaintiffs' due process rights. The Court thus allowed its time and focus to be dominated by a document it openly had not reviewed, while denying Plaintiffs the opportunity to provide oral context for their filing.
3. **Discrediting of Pro Se Filings Based on Literacy Concerns:** Defense counsel remarked: "Whoever wrote this brief... it is very literate... Mr. Smith... said he's completely illiterate and he cannot read, so somebody else wrote this brief." [SJ hearing transcript - page 8, line 5]. This comment, although made by Defense Counsel and not the Court, implied skepticism about the legitimacy of Plaintiff's written filings. However, a pro se litigant is entitled to receive non-lawyer assistance in preparing documents, particularly where literacy or disability is a barrier. The credibility or substance of a filing should not be diminished on that basis. The implication that literacy is a prerequisite to credibility contravenes the principle of access to justice for all, including disabled litigants.
4. **Disparate Solicitude Toward Defense Counsel:** At the end of the hearing, the Court asked defense counsel: "Counsel, anything else we need for the record?" [SJ hearing

transcript - page 19, line 1]. While this may have been a routine inquiry, the use of the inclusive term “we” and the decision to extend this question only to the represented party may give the appearance of a more collaborative relationship with defense counsel. No similar invitation was extended to the pro se Plaintiff, and no opportunity was provided to confirm that his presentation was complete. In the context of a proceeding involving an unrepresented party, such asymmetry may contribute to a perception of partiality and should be avoided in order to ensure evenhandedness and confidence in the process.. In the context of a pro se proceeding, this asymmetry may signal unequal treatment. While possibly unintentional, in the context of the other observed behaviors, this subtle difference contributes to an overall impression of partiality and fails to actively ensure the pro se litigant felt fully heard and accommodated.

5. **No Remedy Offered Despite Acknowledged Prejudice:** Although the Court acknowledged the voluminous and last-minute nature of Defendant’s memorandum, no remedial action, such as a continuance, formal exclusion, or written response opportunity, was offered to Plaintiff. The imbalance created by defense counsel’s ambush tactics was thus left unaddressed. Plaintiffs did file a written objection to the memorandum after the hearing, as well as an objection to the proposed order, a Motion to Reconsider, a Supplemental Motion to Reconsider, and a letter to the Court. However, none of these were acknowledged by the Court on the record until its Order of April 4, 2025. This delay magnified the structural disadvantages already faced at the hearing and remains a relevant due process concern, contributing to the appearance that Plaintiffs’ filings and objections were not afforded timely or equal consideration.
6. **Silence Regarding Corrupted Evidence and Procedural Misconduct:** During the hearing, the Court twice stated, “I read everything” and again “Okay. Because I read everything.” [Exhibit B - Motion for Summary Judgment Transcript, p. 13, line 25; p. 17, line 12]. Plaintiffs take the Court at its word. Yet despite multiple filings explicitly raising the issue of corrupted exhibit files, across Plaintiffs’ Supplemental Rule 59(e) Submission and formal letter to the Court dated March 26, 2025, there has been no indication in any order or transcript that these defects were acknowledged, investigated, or remedied. The corruption involved hundreds of pages of photographic and documentary evidence, rendering entire portions of the record unreadable or inaccessible through the public docket and scourts.org portal. The same filings also alerted the Court to alleged procedural misconduct by Defense counsel, including the strategic timing of filings and document tampering. Plaintiffs’ multiple cries for equitable intervention and clarification went unanswered until the Court’s procedural Order of April 4, 2025, more than two months after the hearing and after its summary judgment ruling of March 10, 2025. Additionally, Plaintiffs have received no indication that the Court received, accessed, or examined the digital exhibits submitted on USB drive with Plaintiffs’ Cross-Motion for Summary Judgment, exhibits which contain critical photographic and video evidence not viewable through the corrupted versions on the public docket. For a Court that “reads everything,” this silence is concerning and contributes to the appearance that only one party’s pleadings have been fully credited or engaged. Plaintiffs raise this not to presume oversight but to respectfully ensure the Court has fully considered the broader evidentiary and procedural context. Plaintiffs simply request that the complete record, including previously corrupted or unreadable exhibits, be available for consideration if the Court deems it relevant or necessary to its final adjudication.

Although the Court's Order dated April 4, 2025 has now acknowledged Plaintiffs' filings and directed that the matter be resolved on written submissions, this acknowledgment occurred more than two and a half months after the January 27, 2025 hearing. The absence of any interim recognition of Plaintiffs' timely objections deprived them of the assurance that their legal position and procedural concerns were under timely consideration. This delay magnified the structural disadvantages already faced at the hearing and remains a relevant due process concern.

Taken together, these issues support Plaintiffs' contention that their legal theory was not adequately considered and that the hearing structure placed them at an inherent disadvantage. Plaintiffs expressly preserve these procedural irregularities for appellate review under the Fourteenth Amendment and the South Carolina Constitution's guarantee of due process. The transcript of the January 27, 2025 hearing [Exhibit B – 01272025 PICKENS SMITHvTHEMISTOKLIS MSJ transcript] provides a verbatim record of the conduct and remarks at issue.

G. Causation: Unlawful Reopening of the Lane as the Direct Cause of Harm

Plaintiffs respectfully clarify that the causation theory supporting their negligence per se claim arises not solely from the existence of regulatory violations, but from the unlawful and premature reopening of the lane to public traffic while those known violations remained unremedied.

Defendant's admission and stipulation to all the elements of negligence per se are clearly articulated in their Memorandum and attached exhibits. It is Plaintiff's belief Defense counsel thought they had remedied the complaint by reframing it to one of ordinary negligence and use the expert witness argument to convince the Court to grant them Summary Judgment. By stipulating and admitting to all the crucial elements that made Plaintiff's case, Defendants thought they could forego the scrutiny of Summary Judgment based on material issues of fact being in dispute. With Defendant's admissions placed in a negligence per se context, Defense counsel made Plaintiff's case.

King Asphalt's actions created and exposed motorists to a known hazard: a lane height differential greater than one inch between the milled inside lane (LISL) and the newly paved outside lane (LOSL), in clear violation of SCDOT Division 600/400 standards. But the hazard alone did not cause the accident. Rather, Plaintiffs contend that the collision was directly caused by King Asphalt's subsequent and compounding act of prematurely removing the required traffic control protections, cones, signage, and lane closure barriers, thereby unlawfully reopening the LOSL to live traffic while the unsafe condition persisted.

This reopening was not merely a regulatory breach; it was the proximate cause of the collision. Plaintiffs were lawfully maneuvering through the work zone when a trailing vehicle, driven by Economou, entered the now-unprotected right lane (LOSL) and struck the moped. But for King Asphalt's removal of the cones and improper/unlawful lane reopening, the Economou vehicle could not have entered the LOSL and the accident could not have occurred in the manner it did.

This theory of causation is not speculative. The work zone was governed by regulatory prohibitions on lane reopening when hazards such as height differentials remained uncorrected.

The regulations exist specifically to prevent public exposure to such hazards, and to avoid precisely this type of conflict. Furthermore, the presence of “No Passing Zone” signage reinforces that the LOSL was not intended for traffic flow at the time of the accident. The negligent act of removing the protective barriers turned a static hazard into a kinetic one by channeling live traffic into a lane that should have remained closed under applicable safety rules.

Plaintiffs assert that the causal sequence, Violation → Unlawful Lane Reopening → Collision, meets both elements of proximate and but-for causation. The reopening allowed the collision path to form, and the collision itself was a foreseeable and direct consequence of allowing public traffic access to an unsafe, unregulated lane within an active SCDOT work zone.

This theory is supported by the testimony of multiple witnesses and by King Asphalt’s own admissions and records regarding the height differential, milling timeline, and cone removal. Plaintiffs respectfully request that the Court expressly consider this theory of causation, which is fully consistent with the applicable negligence per se framework.

H. Incorporation by Reference and Evidentiary Record:

Plaintiffs hereby incorporate by reference all exhibits previously filed in support of their Cross Motion for Summary Judgment, Response to Defendant’s Motion for Summary Judgment, Objection to Defense counsel’s proposed Order, Motion to Reconsider, Supplemental Motion to Reconsider (filed March 20, 2025), Letter to the Court and all related filings. This includes, but is not limited to, documentary exhibits, deposition excerpts, photographic and video files, and the SCHK dashcam footage and related digital audio/video exhibits provided on USB media. Plaintiffs specifically incorporate, but do not limit Plaintiff’s filed exhibits to, the list provided below, along with all supporting factual materials referenced in their prior submissions. To the extent that any exhibits were previously submitted in digital or physical format, or were affected by file corruption, Plaintiffs request that the Court consider those exhibits as part of the full evidentiary record for the purpose of this Rule 59(e) reconsideration (so they may be drawn from for a Record on Appeal). This clarification is made to ensure the completeness of the record without requiring unnecessary duplication or resubmission of evidence already provided to the Court.

Review of previously submitted exhibits:

A. Regulatory and Contractual Authority

Purpose: Prove that SCDOT standards were clear, binding, and violated.

- *SCDOT Division 600/400 Safety Regulations* (Highlight 1-inch rule, cone retention, 10-day milling limit.)
- *Contract Proposal/Project Specifications from King Asphalt (filed by Defendant)* (Pages 22–23, 30: Showing verbatim language on lane height, cone usage, turning arrows.)

B. Factual Evidence of Violation

Purpose: Establish that King Asphalt created unsafe conditions and prematurely reopened the lane.

- *Deposition Excerpts – Joe Daniel Laws III* (Testimony on “safening up” lane before opening lane to traffic and when cones must remain. Was not aware of accident until two years after fact.)
- *Deposition Excerpts – Makison* (Acknowledgment of 1 inch regulation for adjacent milled and paved lanes, 2 inch for shoulders and drop-offs. Had no involvement with this contract except to gather FOIA info)
- *Deposition Excerpts – Limbaugh, and Michael* (Acknowledgment of lane height differentials, cone removal, misunderstanding of standards. Were not present and did not perform any work on this project to have first hand knowledge. Their certifications for SCDOT traffic control were expired.)
- *SCDOT Daily Work Reports / Form 400.04* (Showing milling and paving dates for LISL and LOSL, confirming hazardous 2.16” differential on March 22, 2019.)
- *SCHP Accident Report (TR-310) with GPS Coordinates* (To prove accident occurred in LOSL of active work zone.)
- *Fleetwatcher GPS Logs* (Confirming King Asphalt’s presence in work zone during time of accident.)

C. Multimedia/Visual Support

Purpose: Demonstrate hazardous condition and lack of signage at the time.

- *SCHP Dashcam Footage (USB or screenshots)* (Shows absence of cones, physical layout of work zone, visible lane height differentiation.)
- *Still Images/Photos from Accident Scene* (Screen grabs from dashcam, video of Trooper arrival.)

D. Procedural Fairness & Court Oversight

Purpose: Document efforts to alert the Court of corrupted exhibits and Defense tactics.

- *Plaintiffs’ Letter to the Court (March 26, 2025)* (Addresses corrupted files, asks for action.)
- *Supplemental Motion to Reconsider (March 20, 2025)* (Details problems with record, corruption, and appeal concerns.)
- *Transcript of Summary Judgment Hearing (Jan. 27, 2025)* (For verbatim reference to judicial conduct and statements.)

E. Summons and Complaint

Purpose: Establish legal theory as negligence per se.

- *Original Summons and Complaint*
(Filed at case initiation, reference regulatory framework.)

F. Additional

- *Defense Memorandum (ambush filing)*
(To contrast with timing and Court's handling of it.)
- *Plaintiffs' Objection to Defense Memorandum*
(Plaintiff's attempt to cure prejudice.)

III. CONCLUSION

Plaintiffs further clarify that their position regarding expert testimony is specific to the legal standard governing summary judgment and the viability of a negligence per se claim, not a categorical waiver of expert input at trial. Plaintiffs assert that where, as here, the governing regulations are clear and violations are established through undisputed evidence and party admissions, expert testimony is not legally required to survive summary judgment. However, should the Court find that expert testimony would be helpful or necessary at trial on any remaining issue, Plaintiffs are fully prepared to retain an expert accordingly.

Additionally, Plaintiffs notify the Court that a licensed South Carolina attorney has agreed to represent them should the matter proceed to trial. This assurance reinforces the Plaintiffs' readiness to advance the case and address any procedural or evidentiary matters the Court may find appropriate for trial. Plaintiff's request a 40(j) or similar scheduling order that will permit their attorney ample time to prepare for this complex case. The misconduct of Defense counsel needs some type of remediation.

To preserve this issue for appellate review, Plaintiffs specifically object to the Court's prior ruling, embodied in its Order Granting Summary Judgment dated March 10, 2025 (Docket No. 2021-CP-39-00329), to the extent it suggests that the SCDOT regulations and related contractual provisions require expert interpretation. Plaintiffs assert that the plain meaning of these safety standards governs their application and enforcement, and that disregarding this principle would constitute reversible legal error under South Carolina precedent.

For the foregoing reasons, Plaintiffs respectfully request that the Court reconsider its prior Order, deny Defendant's Motion for Summary Judgment, grant Plaintiff's Motion for Summary Judgment or in the alternative allow this case to proceed to trial. The combination of clear regulatory mandates, coupled with King Asphalt's admissions, establishes the elements of negligence per se without need for expert testimony. This Court's reconsideration avoids both the

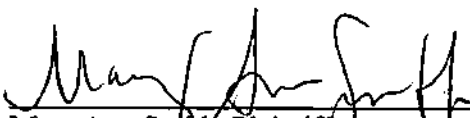
injustice of prematurely terminating Plaintiffs' claim and the needless complexity of requiring expert evidence where the law and facts speak plainly.

Plaintiff's respectfully request judicial notice of all the attached exhibits whether specifically referenced in the body of this document or not.

Respectfully submitted,



Michael D. Smith, Plaintiff pro se April 11, 2025
Date



Mary Ann Smith, Plaintiff pro se April 11, 2025
Date

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

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 26

Appellants' Exhibits, filed by Michael Smith and docketed April 11, 2025. (App.

17)

EXHIBITS

**Smith v. King Asphalt, Inc.
2021-CP-39-00329**

**PLAINTIFFS' SECOND SUPPLEMENTAL SUBMISSION REGARDING MOTION TO
RECONSIDER PURSUANT TO RULE 59(e)**

Inspector		Brezeale, Darren		File Number		3948130		Date		Mar 06, 2019 (Wed.)	
Weather						Temperature				Rain Gauge (")	
A.M.		Fair		P.M.		Fair		High:		50	
								Low:		25	
										N/A	
Remarks											
KING ASPHALT:											
2" MILLED ON SC-8 FROM 83+28 TO 22+00 LTISL 9,021.78 SY											
FSC: PAINTED 4" YELLOW SOLID 10,930.00 LF, 4" WHITE SKIP 1,420.00 LF ON SC-8											
Work Items											
Route / Road	Pay Item & Description					Units	Quantity Placed	Offset	Offset Distance	Station	Station
SC - 8	4013200 MILL EXIST. ASPHALT PVMT 2.0"					SY	9,021.780	LISL	17'-5'	83+28	22+00
SC - 8	6250110 4"YEL.SLD.LINE-PVT EDGE-F.D.PNT					LF	10,930.000	LT	0'-5'	83+28	22+00
SC - 8	6250005 4"WH.BRKN.LINE-GAP EX-F.D.PNT					LF	1,420.000	LT	17'	83+28	22+00
									-	-	-
									-	-	-
									-	-	-
Contractor	Name:	King Asphalt, Inc.				Contractor	Name:	Fields Specialties Co.			
	Foreman:	FARGIS	Skilled:	14		Foreman:	CHRIS	Skilled:	1		
	Equipment						Equipment				
Broom Truck	1.00					Paint Truck	1.00				
Milling Machine	1.00										
Skid Steer Loader	1.00										
Dump Truck	7.00										
Water Truck	1.00										
Truck w/ T.C.D.	1.00										

Inspector		Brezeale, Darren		File Number		3948130		Date		Mar 12, 2019 (Tue.)		
Weather						Temperature				Rain Gauge (")		
A.M.		Partly Cloudy		P.M.		Partly Cloudy		High:		66		
								Low:		41		
Remarks												
<p>KING ASPHALT:</p> <p>>2" MILLED ON SC-8 FROM 100+60 TO 31+53</p> <p>>2" MILLED ON SC-8 TO TIE IN INTERSECTIONS:</p> <p>*OLD BETHLEHEM SCHOOL RD.</p> <p>*OLD SAWMILL RD.</p> <p>*WEST ROPER RD.</p> <p>FSC: REPAINTED 4" YELLOW SOLID, 4" WHITE SKIP, 24" STOP BAR ON SC-8 AFTER MILLING</p>												
Work Items												
Route / Road	Pay Item & Description			Units	Quantity Placed	Offset	Offset Distance	Station	Station			
SC - 8	4013200	MILL EXIST. ASPHALT PVMT 2.0"			SY	8,748.870	LOSL	29'-17'	100+60	31+53		
SC - 8	4013200	MILL EXIST. ASPHALT PVMT 2.0"			SY	291.330	LT	40'	100+20	99+24		
SC - 8	4013200	MILL EXIST. ASPHALT PVMT 2.0"			SY	90.670	LT	32'	84+24	83+68		
SC - 8	4013200	MILL EXIST. ASPHALT PVMT 2.0"			SY	323.210	LT	29'	67+07	66+20		
SC - 8	6250110	4"YEL.SLD.LNE-PVT EDGE-F.D.PNT			LF	8,002.000	CL	0'-5'	100+60	22+00		
SC - 8	6250005	4"WH.BRKN.LINE-GAP EX-F.D.PNT.			LF	3,010.000	LT	17'	100+60	22+00		
SC - 8	6250025	24"WH.SLD.LNE-STOP/DIA-F.D.PNT			LF	46.000	LOSL	5'-29'	100+60	31+53		
Contractor	Name:	King Asphalt, Inc.					Contractor	Name:	Fields Specialties Co.			
	Foreman:	FARGIS-CORY	Skilled:	18	Foreman:	CHRIS		Skilled:	1			
	Equipment					Equipment						
Broom Truck	1.00						Paint Truck	1.00				
Milling Machine	2.00											
Skid Steer Loader	2.00											
Dump Truck	7.00											
Water Truck	1.00											
Truck w/ T.C.D.	1.00											

Exhibit aa2

[illegible]

Employee Signature:

Defendant King Asphalt, Inc.'s Document Production 009873

Smith v. King Asphalt, Inc. - Record on Appeal - CoA#2025-001327

Bates Page 1228 of 1535

Inspector		Brezeale, Darren		File Number		3948130		Date		Mar 06, 2019 (Wed.)	
Weather						Temperature				Rain Gauge (")	
A.M.		Fair		P.M.		Fair		High:		50	
								Low:		25	
Remarks											
KING ASPHALT:											
2" MILLED ON SC-8 FROM 83+28 TO 22+00 LTISL 9,021.78 SY											
FSC: PAINTED 4" YELLOW SOLID 10,930.00 LF, 4" WHITE SKIP 1,420.00 LF ON SC-8											
Work Items											
Route / Road	Pay Item & Description					Units	Quantity Placed	Offset	Offset Distance	Station	Station
SC - 8	4013200 MILL EXIST. ASPHALT PVMT 2.0"					SY	9,021.780	LISL	17'-5'	83+28	22+00
SC - 8	6250110 4"YEL.SLD.LINE-PVT EDGE-F.D.PNT					LF	10,930.000	LT	0'-5'	83+28	22+00
SC - 8	6250005 4"WH.BRKN.LINE-GAP EX-F.D.PNT					LF	1,420.000	LT	17'	83+28	22+00
									-	-	-
									-	-	-
									-	-	-
Contractor	Name: King Asphalt, Inc.					Contractor	Name: Fields Specialties Co.				
	Foreman:	FARGIS	Skilled:	14			Foreman:	CHRIS	Skilled:	1	
	Equipment						Equipment				
	Broom Truck	1.00					Paint Truck	1.00			
	Milling Machine	1.00									
	Skid Steer Loader	1.00									
	Dump Truck	7.00									
	Water Truck	1.00									
	Truck w/ T.C.D.	1.00									

Inspector		Brezeale, Darren		File Number		3948130		Date		Mar 12, 2019 (Tue.)	
Weather						Temperature				Rain Gauge (")	
A.M.		Partly Cloudy		P.M.		Partly Cloudy		High:	66	Low:	41
Remarks											
<p>KING ASPHALT:</p> <p>>2" MILLED ON SC-8 FROM 100+60 TO 31+53</p> <p>>2" MILLED ON SC-8 TO TIE IN INTERSECTIONS:</p> <p>*OLD BETHLEHEM SCHOOL RD.</p> <p>*OLD SAWMILL RD.</p> <p>*WEST ROPER RD.</p> <p>FSC: REPAINTED 4" YELLOW SOLID, 4" WHITE SKIP, 24" STOP BAR ON SC-8 AFTER MILLING</p>											
Work Items											
Route / Road	Pay Item & Description			Units	Quantity Placed	Offset	Offset Distance	Station	Station		
SC - 8	4013200	MILL EXIST. ASPHALT PVT 2.0"			SY	8,748.870	LOSL	29'-17'	100+60	31+53	
SC - 8	4013200	MILL EXIST. ASPHALT PVT 2.0"			SY	291.330	LT	40'	100+20	99+24	
SC - 8	4013200	MILL EXIST. ASPHALT PVT 2.0"			SY	90.670	LT	32'	84+24	83+68	
SC - 8	4013200	MILL EXIST. ASPHALT PVT 2.0"			SY	323.210	LT	29'	67+07	66+20	
SC - 8	6250110	4"YEL.SLD.LNE-PVT EDGE-F.D.PNT			LF	8,002.000	CL	0'-5'	100+60	22+00	
SC - 8	6250005	4"WH.BRKN.LINE-GAP EX-F.D.PNT.			LF	3,010.000	LT	17'	100+60	22+00	
SC - 8	6250025	24"WH.SLD.LNE-STOP/DIA-F.D.PNT			LF	46.000	LOSL	5'-29'	100+60	31+53	
Contractor	Name:	King Asphalt, Inc.				Contractor	Name:	Fields Specialties Co.			
	Foreman:	FARGIS-CORY	Skilled:	18	Foreman:		CHRIS	Skilled:	1		
	Equipment				Equipment						
Broom Truck	1.00					Paint Truck	1.00				
Milling Machine	2.00										
Skid Steer Loader	2.00										
Dump Truck	7.00										
Water Truck	1.00										
Truck w/ T.C.D.	1.00										

Exhibit aa2

[illegible]

Employee Signature:

Defendant King Asphalt, Inc.'s Document Production 009873

Smith v. King Asphalt, Inc. - Record on Appeal - CoA#2025-001327

Bates Page 1232 of 1535

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
MICHAEL and MARY SMITH	)	NO. 2021-CP-39-00329
	)	
VS.	)	
	)	<u>TRANSCRIPT OF RECORD</u>
THEMISTOKLIS ECONOMOU, et al	)	
_____	)	Motions

B E F O R E:

THE HONORABLE JESSICA ANN SALVINI, JUDGE

DATE: Monday, January 27, 2025
Pickens, South Carolina

A P P E A R A N C E S:

MICHAEL SMITH, PLAINTIFF

Pro Se

CATHARINE GARBEE GRIFFIN, ESQUIRE

Attorney for the Defendant King Asphalt, Inc.

Reported by: Cathy J. Provost, RMR, Official Court Reporter

INDEXESPAGE:

Order/Ruling of the Court	16
Certificate of Reporter	20

INDEX TO WITNESSESDIRECT: CROSS: REDIRECT: RECROSS:

(No witnesses called.)

INDEX TO EXHIBITSIDENTIFIED: ADMITTED:

(No exhibits marked.)

- - - - -

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought

ellipses ... trailing off

[ph] phonetically written

[sic] written as said

[indiscernible] unable to be understood

-- P R O C E E D I N G S --

THE COURT: We are here in the matter of Michael Smith and Mary Ann Smith versus King Asphalt, Inc., et al. This is Case No. 2021-CP-39-00329. I have plaintiff, Mr. Smith, present. He's self-represented. I have defense counsel present.

This is on the court's docket for plaintiffs' motion for summary judgment, the Smiths' opposition and their motion for summary judgment, and I've been handed up the defendant's memorandum in support of their motion and in opposition to the Smiths.

So I think what I'd like to do is let's start with some argument, because it will take me some time to read through this this afternoon. So I am happy to hear from you. Let's start with your motion since it was docketed first.

ATTORNEY GRIFFIN: Yes, Your Honor. Catharine Griffin for King Asphalt, Inc., the only remaining defendant in this case.

THE COURT: I saw that.

ATTORNEY GRIFFIN: Yes. So first I want to point out, because this is the second or third time it's happened, that Mrs. Smith is not here today. Since these plaintiffs are representing themselves, Mrs. Smith has failed to appear and so I think for that reason, that her motion for cross-motion for summary judgment should be denied, and also the motion that I had filed seeking summary judgment on behalf of King Asphalt should be granted as to Mrs. Smith because she has failed to appear at

1 the hearing today and she was properly noticed to come today.

2 Mr. Smith is not allowed to represent her as his wife, so
3 having said that --

4 THE COURT: I'll take it under advisement and I'll consider
5 that. But then, Mr. Smith, tell me why your wife isn't present.

6 THE PLAINTIFF: She's sick today.

7 THE COURT: Okay. All right. I'll take that into
8 consideration, the fact that the reason you're telling me she's
9 not here is because she's sick.

10 But, all right, yes, ma'am.

11 ATTORNEY GRIFFIN: Okay. Your Honor, this motion for
12 summary judgment has been filed broadly on the basis that the
13 plaintiffs cannot meet their burden of proof and prove negligence
14 against King Asphalt because they need expert testimony.

15 So to just give you some background as to this case, this
16 arises out of an accident which happened back on March 22nd,
17 2019. And in that accident Mr. Smith, who's here today, was
18 driving a moped on Highway 8, and his wife, Mrs. Smith, was a
19 passenger on the back of the moped.

20 On that day -- it's not disputed -- King Asphalt had
21 previously milled the pavement on Highway 8 so they had removed
22 asphalt, and then they were coming back on that particular day
23 and replacing asphalt which was in the right lane, or outside
24 lane, so the inside lane was already milled, and so there was a
25 differential in the two lanes.

1 On that day Mr. Smith had gone with his wife to go get some
2 things that they needed that day, and when they were driving back
3 the traffic was backed up behind them because the right lane had
4 been closed according to DOT specifications to do the new
5 asphaltting.

6 And so at the end of the day when the asphaltting was
7 completed up to the point where they were planning to stop that
8 day -- and all of this was approved by DOT and inspected by the
9 DOT -- they then remove what was a lane closure. So the lane
10 closure is put in place according to SCDOT specifications, and
11 when they put it in place they put a taper in so that you direct
12 the traffic away from the closed lane to protect the workers who
13 are in the closed lane.

14 So when you take the taper off of a lane what you do is you
15 start at the backside and you go from, in reverse, so King
16 Asphalt's truck was heading against the traffic in the right lane
17 picking up the cones. As they were picking up the cones, then
18 the testimony is that the cars could move over to the right lane
19 which had previously been closed. So now we have a newly
20 asphalted right lane and an inner milled left lane.

21 Mr. Smith was on his moped in the inner lane/left lane. The
22 defendant who has already settled, Mr. Economou, moved his car
23 either from the left lane or had already been in the right
24 lane -- I'm not sure, but it doesn't really matter for the
25 purposes of this motion -- he ends up in the right lane after the

1 cones have been removed. When he is in the right lane then
2 Mr. Smith either stops completely, according to his testimony and
3 according to the complaint, or gator walks his moped, according
4 to Mr. Pressley, an eyewitness who's here in the courtroom today,
5 or proceeds across into the right lane. When he proceeds into
6 the right lane, whether it's after he stopped, or after he gator
7 walked, or whatever happens, he is in a collision with the car
8 driven by Economou.

9 So those are kind of the facts that are the background of
10 what happened on that day.

11 In this case you'll see in the memo and in the over-450
12 pages filed by the plaintiff that there is a lot of discussion
13 about the DOT standards, the applicable standards for road
14 closures, the applicable standards for signage, the applicable
15 standards for how much asphalt needs to be on the road, and what
16 the lane differential can be between a milled lane and an asphalt
17 lane.

18 So the only testimony with respect to any of those issues
19 which are now raised by the plaintiff comes from the King Asphalt
20 witnesses and the South Carolina DOT witnesses, and what they all
21 say is that they had properly installed all the permanent
22 construction signs. So they would have been put in at the
23 beginning of the project notifying the public, hey, there's a
24 construction zone here, be careful in this construction zone,
25 uneven pavement, the speed limit may or may not have been

1 reduced -- that was an issue with Mr. Economou's case -- but
2 those are the permanent signs. And then King Asphalt, when they
3 do a lane closure, according to the DOT, would have done
4 temporary signs in addition to these cones, or delineation
5 devices.

6 So that is the only testimony with respect to what their
7 complaint is that there wasn't proper signage and we didn't have
8 any notice that the lane had been closed and it was really
9 confusing to us. So the part that they claim was really
10 confusing is that they say, well, you had a truck going in the
11 opposite direction down the highway picking up the cones, and we
12 didn't realize essentially the lane would be reopened so we had
13 no idea to know that Mr. Economou was in the right lane. Well,
14 that also is not supported by any expert testimony.

15 The only testimony that supports how you open a lane closure
16 is from the King Asphalt people and the DOT people, and they say
17 this is the way we always open the lane closures, a temporary
18 lane closure, is we go in reverse, and we go from where the lane
19 had been last asphalted back to where it was tapered off. So
20 they have no evidence from any expert with respect to that issue.

21 Then the next issue that they have raised is that somehow it
22 is within the knowledge of Mr. Smith that you can calculate the
23 lane differential between the right lane and the left lane by
24 looking at a DOT document and then using mathematics to then say
25 you didn't meet the specifications, King Asphalt, based upon my

1 simple math and the DOT standards.

2 So with respect to that, it is not simple math; it requires
3 expert testimony. So whoever wrote this brief, because you have
4 to believe that Mr. Smith, who is here today, didn't have a hand
5 in writing the brief because it is very literate, and the
6 most-recent filing last week said he's completely illiterate and
7 he cannot read, so somebody else wrote this brief.

8 Whoever wrote the brief says that, well, all of these issues
9 have to be within a layperson's knowledge, so a layperson should
10 be able to, one, identify where the accident occurred, because
11 there's a very long description within the plaintiffs' motion
12 about if you measure from the last station, or the beginning
13 station, for the construction project and then you measure back,
14 then you would have been at this area on Highway 8, and then we
15 would have known the accident would have occurred around in that
16 area based upon a video. Okay.

17 Well, that is all not opinion testimony that a layperson can
18 give; that is all subject to expert testimony, an expert who
19 would have to opine on the distances, opine on exactly where this
20 accident occurred, and then once you get to the location of where
21 the accident occurred, which there's no evidence of, then the
22 next thing they have to do is say, okay, what was the condition of
23 the road in that area.

24 So what we have is -- it's not disputed -- it was milled in
25 the left lane, and it was higher in the right lane where the new

1 asphalt had been placed, and the DOT regulations allowed for that
2 lane differential by up to two inches. And so the testimony from
3 the King Asphalt people, the DOT people, is that it was within
4 specifications on that day because the DOT workers, inspectors,
5 and there are two of them that are on every project, they allowed
6 the roads to be reopened that day and there was no dispute about
7 there is an issue here with what you're looking at, is the
8 intersection.

9 So where there's a junction between the milled lane and the
10 asphalt lane, and then the shoulder is an issue, like what is the
11 drop-off on the shoulder if you get too close to the edge and
12 would that be unsafe for the motoring public.

13 So Mr. Smith, or whoever drafted this document, calculated
14 that, oh, the lane differential was 2.16 inches based upon my
15 calculations, based upon the information I have. That is not
16 something a layperson can do. It requires way more expertise
17 than simple mathematics. It requires that somebody actually have
18 the knowledge to do these calculations, and it probably requires
19 something more than calculations.

20 It probably requires that an expert go out to the scene,
21 they could have gone, back at the time they could core [ph] the
22 area that we're talking about. Once you figure out where the
23 accident took place, you can core in the area where it happened,
24 determine what the differential was, and then you have to next
25 say this uneven lane, that is acceptable in road construction by

1 SCDOT, caused Mr. Smith to lose control of his moped on that
2 particular day. So you have to take it another step.

3 There is absolutely no testimony that they have provided
4 that supports any of those theories for the plaintiff, so their
5 arguments fail and should be rejected.

6 Now, I'll point out to you -- also I put it in my memo -- a
7 couple of the cases cited by the plaintiff, Mr. Smith, don't even
8 exist. One of them doesn't exist at all, I don't know if it's a
9 ChatGPT case, and one of them stands for some proposition that it
10 doesn't stand for when you read the case law.

11 The other cases they cite have to do with, like, a medical
12 malpractice situation where the court applied a common-knowledge
13 exception where it's, you know, if you cut off your left arm then
14 you should have cut off the right arm. That's pretty common,
15 you, know, you cut off the wrong arm. But we don't have that
16 kind of a case here.

17 We have a case that's highly technical that requires the
18 knowledge of people who understand road construction, understand
19 the specifications of the South Carolina DOT, how our contract
20 works under the South Carolina DOT specifications, and then even
21 requires an accident reconstructionist to go out there and place
22 where this accident took place.

23 So in this case, when you try to elevate it to a higher
24 level than the 457 pages filed by Mr. Smith, it is a simple
25 failure of proof. They cannot prove their case. They cannot

1 bootstrap anybody's opinions, layperson's opinions based upon
2 their interpretation of the documentation that's been provided in
3 discovery in this case, they cannot bootstrap that into an issue
4 of fact for the Court then to consider to deny the motion for
5 summary judgment.

6 It has to be considered from a legal perspective which
7 requires that these Smiths present expert testimony as to all of
8 these issues, and without any expert testimony then their case
9 fails and this Court should grant our motion for summary
10 judgment, dismiss their case, deny their motion, and allow this
11 entire case to end.

12 There are some other motions that they brought that I'm not
13 sure that I need to address any of them that have to do with
14 things that are on the record or other things that Mr. Smith may
15 want to address, but I'll just leave it at that for my motion for
16 summary judgment and in opposition to their cross-motion for
17 summary judgment.

18 THE COURT: All right. Mr. Smith, do you know the standard
19 that I have before me is I have to determine whether or not there
20 is a genuine issue of material fact in this case. And their
21 position is, based on all the discovery that you all have done --
22 and now I've got some copies of the deposition transcript showing
23 what the testimony is, is that -- and I've got your complaint in
24 front of me and I'm looking at the causes of action against King
25 Asphalt, but that one of the primary things that you and

1 Mrs. Smith allege is that SCDOT work zone traffic control
2 guidelines were not complied with.

3 But I also have the testimony now in front of me, and I'm
4 going read it, of Joshua Makison who's a district construction
5 engineer for SCDOT who disagrees with you, and King Asphalt who
6 disagrees and has provided to me what the standard is that they
7 are to follow and that they did, in fact, follow that standard.

8 And so their argument is that because there is no expert
9 other than you just making a bold allegation that they didn't
10 follow it when she's provided to me evidence that they have,
11 means you can't meet your burden of proof as to the allegations
12 against King Asphalt, and that in order for you to be able to
13 move forward, you would need some type of expert testimony
14 because you all have done depositions, you've pretty much
15 concluded the discovery process.

16 So that tell me why I shouldn't agree with her and dismiss
17 your case since you all don't have an expert?

18 THE PLAINTIFF: I don't know what you're saying.

19 THE COURT: All right. So, Mr. Pressley, you can't help
20 him, because if he doesn't have an attorney -- and I saw that he
21 was previously represented by Mr. Smith -- what I will do is I
22 will speak up.

23 So, Mr. Smith, can you hear me if I speak up?

24 THE PLAINTIFF: This is better.

25 THE COURT: Is that better?

1 THE PLAINTIFF: Yes, ma'am.

2 THE COURT: Okay. What I'm asking you is is to tell me your
3 position. Their position, King Asphalt's position, is that you
4 all have completed deposition testimony, they pulled the SCDOT
5 guidelines, the district construction manager -- and I hope I'm
6 saying his position correctly -- indicates that King Asphalt
7 followed all of SCDOT's guidelines when they were milling the
8 road, and how they did their signage, that they found no defect
9 in what they did.

10 And so their position then is you're claiming that they
11 didn't follow those guidelines, or that they did something that
12 wasn't in accordance with the standards required to mill a road
13 and to do the construction that they were doing and so,
14 therefore, you would need an expert to come into this court and
15 say they made a mistake somewhere because you allege that, as a
16 result of what they did, that they didn't follow the guidelines
17 and, therefore, somehow that proximately caused the injury to you
18 and Mrs. Smith.

19 And I'm asking you to tell me your position. And you can
20 tell me that you don't have any argument, you just want to rely
21 on your brief. I have it. She's correct, it's over 400 pages if
22 I take into consideration the exhibits. If you're just relying
23 on that, that's okay, but we are here for argument. So is there
24 anything you want to tell me?

25 I'm a judge that reads everything. She handed up her

1 memorandum. I haven't had a chance to read it because she just
2 handed it to me, so I am going to take it under advisement and
3 now look at everything together, but is there anything that you
4 think you need to tell me?

5 THE PLAINTIFF: I [indiscernible].

6 THE COURT: Say it again.

7 THE PLAINTIFF: I can bring up this statement here.

8 THE COURT: Is this something that's new that you haven't
9 filed yet?

10 THE PLAINTIFF: Yeah. No, ma'am, I don't really know.

11 THE COURT: Was that filed?

12 THE PLAINTIFF: I think it was in my, in my documents sent
13 to her to show it to the --

14 THE COURT: Okay. Well, let's show it to counsel, and let's
15 see what her position is. You don't need to hand it my court
16 reporter yet. I want counsel for King Asphalt to look at it
17 first. If there's something more you want her to take a look at,
18 I want to see what her position is.

19 ATTORNEY GRIFFIN: Okay. Your Honor, this is not part of
20 this filing.

21 THE COURT: Okay.

22 ATTORNEY GRIFFIN: But I think he was intending to read it
23 to you out loud.

24 THE COURT: Is that correct, Mr. Smith, --

25 THE PLAINTIFF: I'm going to try --

1 THE COURT: -- that you want to read it to me?

2 THE PLAINTIFF: I'm going to try to.

3 THE COURT: Okay.

4 THE PLAINTIFF: The Defendant, King Asphalt, Incorporated,
5 violated South Carolina law by failing to properly mark the work
6 zone of a lane where it tapers at 2.16 inches,
7 while [indiscernible] --

8 THE COURT: Okay. So let me stop you there, Mr. Smith.
9 That is the issue. So she indicated that King Asphalt's position
10 and SCDOT's position is that they did the two inches that were
11 required by SCDOT's guideline. I read that before I got here.

12 And her position is is that how is it that you know, or how
13 is it that you can prove, that they have did it in addition, more
14 than two inches? How is that possible if you don't have someone
15 who is an expert to say it? What are you going to base the
16 evidence on?

17 THE PLAINTIFF: Just the high place in the road where I run
18 into.

19 THE COURT: Okay. Did you go out there and measure it?

20 THE PLAINTIFF: No, ma'am.

21 THE COURT: Okay. That is the issue she's raising, is she's
22 saying you, as the person that was injured and/or your wife,
23 didn't go out there and measure it and SCDOT and King Asphalt
24 did, and there's no evidence to contradict their position that it
25 was within the two inches that were required by the guideline.

1 Did you intend to hire an expert?

2 THE PLAINTIFF: No, ma'am.

3 THE COURT: Okay. All right. You can finish reading it,
4 but that's the issue that I've got to focus in on, is her
5 position is there's nothing to contradict SCDOT and King Asphalt
6 and, therefore, you can't prove your case. I'm not saying that
7 that's true and correct but that's their position.

8 So if you want to finish reading that, you can, but I want
9 to make sure you understand that that's what they're arguing.
10 That was her oral argument. I want to read her memorandum
11 because I'm sure she's going to go into the law that there has
12 been no genuine issue of material fact because you have nobody
13 that can say it other than you just saying it had to be because
14 there was an accident. Does that make sense?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: Okay. I think this is what we should do. As to
17 your motion for me to make a finding that Mrs. Smith's failure to
18 appear here today would require me to grant your motion and deny
19 her motion, that's denied because I am going to rule based on the
20 briefs. They filed -- because they're husband and wife, they
21 filed a 400-and-some page memorandum opposing and asking me for
22 summary judgment. Because I'm going to find she's sick, and I'm
23 going to rule on the briefs because she just waives her right to
24 come and present argument.

25 Mr. Smith is relying on his brief and his initial

1 statements.

2 So what I'm going to do is I'm going to rely on the record
3 before the Court. I've been handed up the memorandum that
4 counsel gave me, along with, it looks like I have, SCDOT's
5 guidelines, and along with the deposition transcripts. I'm going
6 to read through all of those and then make my decision as to
7 whether or not I'm going to grant her motion or grant you all's
8 motion. All right.

9 THE PLAINTIFF: Okay.

10 THE COURT: Okay. Do you have questions for me, Mr. Smith?

11 THE PLAINTIFF: No.

12 THE COURT: Okay. Because I read everything.

13 THE PLAINTIFF: Okay.

14 THE COURT: Then what I'm going to do is I'm going to issue
15 an order that indicates what the position is --

16 THE PLAINTIFF: Okay.

17 THE COURT: -- of the Court. If I grant her motion -- I
18 know you filed something that indicated you wanted me to make
19 specific findings -- I will do a Form 4 that has some specific
20 findings, but I will ask counsel to draft a more detailed order.

21 If I deny her motion and I grant yours, I will draft the
22 order myself. Do you understand?

23 THE PLAINTIFF: Yes, ma'am.

24 THE COURT: If I grant her motion and I ask her to draft it,
25 I will ask her to email it to me.

1 So do you have an email address for him?

2 ATTORNEY GRIFFIN: Yes, Your Honor. I would like for you to
3 ask him if he reads the emails I sent him.

4 THE COURT: Okay. Mr. Smith, do you read the emails that
5 counsel sends you?

6 THE PLAINTIFF: [indiscernible] some.

7 THE COURT: You read some?

8 THE PLAINTIFF: [indiscernible] some.

9 THE COURT: Okay. Does somebody read them to you?

10 THE PLAINTIFF: I have a problem reading.

11 THE COURT: Say that again. I couldn't understand.

12 THE PLAINTIFF: I have a problem reading and seeing them
13 [indiscernible], seeing [indiscernible].

14 THE COURT: All right. Well, then this is what we're going
15 to do. Just upload it to my queue. If I grant your motion and
16 direct that you issue the order, just upload it to my queue.

17 And then if -- Mr. Smith, I'm not saying I'm granting her
18 motion, but then if you have an objection you can always file a
19 motion to reconsider or an appeal, but nevertheless I'm not
20 saying I'm granting it. I'm still going to do what I'm telling
21 you. If I grant yours, I will draft the order based on it
22 appears you're having some difficulty.

23 THE PLAINTIFF: Okay.

24 THE COURT: All right. Questions for me, Mr. Smith?

25 THE PLAINTIFF: No, ma'am.

1 THE COURT: Counsel, anything else we need for the record?

2 ATTORNEY GRIFFIN: No, Your Honor.

3 THE COURT: Okay. All right. Then that's what we're going
4 to do. I'm going to take it under advisement, because you all
5 gave me quite a bit to read.

6 I hope to have my decision for you probably the end of this
7 week, beginning of next. I never like to sit on anything; I like
8 it when it's fresh in my mind. Okay.

9 THE PLAINTIFF: Thank you.

10 THE COURT: Okay. Then that will conclude our hearing.

11 THE PLAINTIFF: Okay. Thank you.

12 (End of Transcript of Record.)
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/proceedings of the captioned case in the Court of Common Pleas for Pickens County, South Carolina, on the 27th day of January, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Date: February 20, 2025

\s\ Cathy J. Provost
Cathy J. Provost, RMR
Official Circuit Reporter



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOE DANIEL LAWS, III

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS) CASE NO.: 2021-CP-39-00329
3 Michael and Mary Smith,)
4 Plaintiffs,)
5 v.)
6 Themistoklis Economou and)
7 King Asphalt, Inc.)
8 Defendants.)
9

10 DEPOSITION OF

11 JOE DANIEL LAWS, III

12 *****

13 Tuesday, May 24th, 2022

14 2:02 p.m. - 2:54 p.m.

15 The deposition of Joe Daniel Laws, III, was taken
16 before Marcie Smith, a notary public in and for the State of
17 South Carolina, commencing on Tuesday, May 24th, 2022, in
18 Clemson, South Carolina, pursuant to Notice of Deposition
19 and/or agreement of counsel.
20
21
22
23
24
25

1 beginning of the work and would angle you toward
2 the inside lane?

3 A. Yes, sir.

4 Q. And then the taper at the back end would do the
5 exact opposite? It would taper from the inside
6 to the outside lane?

7 A. Yes, sir.

8 Q. And those tapers are created with cones?

9 A. Yes, sir. Cones and barricades.

10 Q. If they're done with cones, are they taken down
11 every day?

12 A. So that depends on the duration of the project
13 for that day. Some projects could go on for more
14 than one day.

15 Q. Since only the outside lane had been done and not
16 the inside, would that mean that it would be
17 carrying on for more than one day?

18 A. It depends on the situation. If the contractor
19 was required to leave the work zone up due to an
20 emergency or a shortage of materials or something
21 to that effect. It would be a rare situation.

22 Q. And so you remove the taper and the rest of the
23 cones at the same time, is that right?

24 A. Would you repeat the question.

25 Q. Yes, sir. How do you remove the cones that

1 **create the barrier/taper?**

2 A. Yes, sir. So those would be removed at the end
3 of the construction operation after everything
4 has been safened (sic) up. And typically they
5 would remove it from the back taper towards the
6 front.

7 **Q. Against the traffic?**

8 A. Yes, sir.

9 Q. Is there any way of alerting the people on the
10 front that it's taking place?

11 A. Would you repeat that question.

12 Q. Yes, sir. The front of the one lane of traffic.
13 Is there any way that you can tell them that the
14 lane is open?

15 A. So once that taper has been removed, then that
16 lane becomes open.

17 Q. All right, so it's a common sense situation?

18 A. I'm not sure.

19 Q. If there's no longer a taper and no longer a
20 barrier, that means you can use the road?

21 A. Yes, sir.

22 Q. The individuals that have already passed the sign
23 that says move to the left or lane ends or --
24 what is the sign that would tell you that? To go
25 to the left?

The attachment file called "vehicle 210TC movement" provided by King Asphalt, Inc. is a rendering of the movement of one of their vehicles tracked by GPS and a software called Flectwatcher. The panels here provided show, the movement of a vehicle identified as "210TC", which is their "cone" deployment/pickup vehicle, on March 22, 2019 between the hours of 4:45PM and 5:45PM. The panels show where the vehicle moved/stopped periodically along Hwy 8 as it picked up the cones between the lanes. As per SCDOT guidance the vehicle opened the lane moving against traffic. Each of the panels are time stamped and indicate as follows:

@4:45PM - 210TC is sitting in the slow lane of oncoming traffic from Pickens on Hwy8
at Old Easley Pickens Hwy - distance marker 31+53

@5:00PM - 210TC is still sitting in the same location begins to move up the closed slow lane

@5:07PM - 210TC picking up the cones between the lanes

@5:08PM - 210TC stops at the bridge beside Owens Lane (this is the timeframe of the accident and is consistent with Mr. Smith's deposition where he states the cone truck was stopped at the bridge next to Owens Lane - and consistent with the girl witness who was the driver of the vehicle directly behind the moped - who said the cones ended about ten seconds before the accident)

@5:09PM - 210TC takes off and hesitates about 50 yards further up Hwy 8 (and then proceeds clearing all evidence of the work zone away before the Troopers arrived)

@5:11PM - 210TC has reached 3CS Lane

@5:13PM - 210TC is in front of Graceway Baptist Church

Exhibit D

@5:16PM - 210TC is at Old Sawmill Road

@5:30PM - 210TC has passed Pickens YMCA

@5:45PM - 210TC is at the intersection of HWY8 and West Main Street in Easley (beside Miracle Hill Thrift store)



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

OLIVIA PAIGE BRYAN

January 13, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. I do not.

2 **Q. Do remember what speed you were traveling?**

3 A. Between 35 and 45. I didn't want to be too close
4 to the moped, because it's too much anxiety.

5 **Q. Were there two people on the moped?**

6 A. Yes.

7 **Q. Did you see what they were doing when they were**
8 **traveling?**

9 A. They were -- it just looked like they were
10 driving normally.

11 **Q. Was it a man driving or a woman driving?**

12 A. I think it was a man, but I'm not 100% sure on
13 that.

14 **Q. Did you see if they were holding onto anything**
15 **when they were on the moped?**

16 A. As in holding onto each other or ---

17 **Q. Each other, or the moped itself, or have anything**
18 **in their arms?**

19 A. I think that the person on the back was holding
20 onto the driver.

21 **Q. Do you remember if anybody had on helmets?**

22 A. I do not remember. I'm sorry.

23 **Q. That's okay. So you're in the left lane. And**
24 **was there traffic in the right lane?**

25 A. No, it was blocked off for the road work.

1 Q. And were there traffic cones out?

2 A. Yes, ma'am.

3 Q. Okay, and where were the traffic cones?

4 A. They were on the dotted lines between -- like the
5 white lines between the two lanes.

6 Q. Okay, so were the traffic cones in the area where
7 this accident happened?

8 A. We had like just finished passing through all of
9 them, so the right lane was opening back up. So
10 I guess kind of.

11 Q. Okay, explain that to me.

12 A. I don't understand the question. Like it wasn't
13 right at the cones or in between the cones, it
14 was like right after the cones were finished, if
15 that makes sense.

16 Q. Okay, so if there are cones in the middle of the
17 two lanes. That's what you're saying?

18 A. Yes.

19 Q. And then the cones ended?

20 A. Yes, ma'am.

21 Q. That's what you're trying to say. And then how
22 far after the cones ended did this accident
23 happen?

24 A. I'm not gonna say right after, but maybe like ten
25 seconds after.



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

ZACHARY SHANE MICHAEL

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. We have one main office headquarters. We're in
2 Liberty, South Carolina at 107 Tech Lane.
3 Liberty, 29657. We have a plant about three
4 miles away from there in Liberty as well. And
5 two other asphalt plants. One in Pacolet, South
6 Carolina, and one in Simpsonville, South
7 Carolina. Those are not -- those are plant
8 locations. Our only main office is in Liberty.

9 **Q. So Pacolet, Simpsonville, Liberty all have the**
10 **actual plants to make the asphalt?**

11 A. Correct.

12 **Q. Have you attended any classes or received any**
13 **certificates, licenses or anything of that sort**
14 **for your position?**

15 A. I have an OSHA 30. I've done traffic control
16 supervisory training compliant with the SCDOT.
17 I've had asphalt roadway technician certification
18 for roadway compaction on the road. I don't
19 believe there's anything further.

20 **Q. What topics will you be speaking on today, do you**
21 **know?**

22 A. Anything safety related.

23 BY MS. GRIFFIN:

24 Can you show him the notice. Or do you have
25 the notice? I think I have a copy of it.

1 EXAMINATION RESUMED BY MR. SMITH:

2 Q. I could ask him. Would you be able to respond to
3 questions concerning policies, procedures,
4 protocols, methods, manuals, instructions, things
5 of that nature?

6 A. For the most part. When it becomes job site
7 specific for specifications and operations from a
8 milling standpoint, I believe Doug can answer
9 those questions. Doug Limbaugh.

10 Q. What did you say about your work with compaction?

11 A. When we apply asphalt pavement, we actually have
12 to do compaction testing. And we have to try to
13 achieve the desired compaction numbers the DOT
14 requires us to.

15 Q. And that is something that you are certified in?

16 A. No longer. It's expired.

17 Q. Will you be able to discuss the accident site
18 itself?

19 A. The site in general, yes. Specific to the
20 accident, no.

21 Q. Would you be able to describe where you were in
22 the process of the road?

23 A. I'd probably let Doug for the specific operations
24 and where we were.

25 BY THE COURT REPORTER:



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

DOUGLAS EUGENE LIMBAUGH, JR.

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 Like what?

2 BY MS. GRIFFIN:

3 Whatever else is left.

4 BY MS. HERBKERSMAN:

5 Policies and procedures.

6 BY MS. GRIFFIN:

7 But go ahead. He doesn't know anything about
8 the investigation into the incident to the extent
9 there was any. The communication with Mr. Presley,
10 he doesn't know about that.

11 EXAMINATION RESUMED BY MR. SMITH:

12 **Q. What's your date of birth?**

13 A. 03-16-1978.

14 **Q. Can you tell me about your education.**

15 A. Yeah. I have a Bachelor of Science from Clemson.
16 Graduated in 2001.

17 **Q. Where did you go to high school?**

18 A. Easley High School.

19 **Q. What county do you live in now?**

20 A. I live in Anderson County. Powdersville,
21 specifically.

22 **Q. Do you have any family in Pickens County? On**
23 **either side.**

24 A. Direct family? No, sir.

25 **Q. What is direct family?**

1 A. To what -- like anything?

2 **Q. Anything.**

3 A. I mean, I was -- did a little stint in life
4 insurance and health insurance. So I was
5 certified in that. Asphalt roadway certification
6 in this industry.

7 **Q. When did you get that?**

8 A. 2000 -- and I'm sorry, it's been a long time.
9 But 2007 or '8. It expired in '12, I believe.
10 It's a four year -- four to five year if you
11 don't -- you have to re-cert as you go because
12 of, you know, updated policies and stuff like
13 that.

14 **Q. Certainly. And so you were done in 2012?**

15 A. In that time frame, yes.

16 **Q. Did you ---**

17 A. I mean, I don't remember the specific year, but
18 it's somewhere in that range.

19 **Q. Did you recertify?**

20 A. No, sir.

21 **Q. Isn't that imperative for your job?**

22 A. For my job tasks? No.

23 **Q. No? What is your ---**

24 A. It's actually about testing of asphalt and, you
25 know, the day-to-day function of asphalt. If

1 that makes sense.

2 **Q. All right, so you were talking about the actual**
3 **asphalt that's placed on the road. That you have**
4 **to know the ingredients, the temperature and that**
5 **sort of thing?**

6 A. Yes.

7 **Q. That's what you were certified for?**

8 A. The quality control of it. Yes, sir. Which it's
9 just roadway certification is just the ability to
10 be able to test behind a paving crew to certify
11 compactions, certify acceptance with the DOT.
12 That sort of thing. We have one -- this job, for
13 example, on every site. Part of the reason that
14 I took that was more or less to understand and
15 know that information. Not to actually go out
16 and perform that. We have a quality control lab
17 and department that does that routinely for us.

18 **Q. Right. So the people that are out on the job are**
19 **below you in the scheme of things and, therefore,**
20 **you want to be able to talk to them and tell them**
21 **---**

22 A. On an org chart. Yes. Not below us. But yes,
23 they work for us.

24 **Q. Yes, sir. The position you were hired for was**
25 **what?**



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOSHUA FRAZIER MAKISON

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. Greenville has got the most growth as a county.
2 Spartanburg right now has the largest projects as
3 far as the scope and scale of them.

4 **Q. Your involvement with the 8130 contract. How**
5 **would you characterize that?**

6 A. I had no involvement. At the time this one was
7 done I was still the RCE, I believe it was, over
8 the special projects in that period. So I didn't
9 have any knowledge of it.

10 **Q. All right, but you were asked to help out with**
11 **this due to some number issues or typographical**
12 **errors?**

13 A. I helped with the FOIA request that came through
14 for some documents, and I helped make sure those
15 documents were gathered and provided.

16 **Q. The only contract relating to the Route 8 project**
17 **was the 3948130 contract?**

18 A. Yes.

19 **Q. Would that be right?**

20 A. Yes, that's correct.

21 **Q. Because there was a 3949130, and then there was a**
22 **3984130. And those were merely typographical**
23 **errors, is that right?**

24 A. I cannot remember the exact number, but I do know
25 that there was a misunderstanding in how our



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOE DANIEL LAWS, III

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 whose name is Joshua Makison. And we oversee all
2 construction operations for the SCDOT. Over
3 Greenville, Pickens, Spartanburg and Oconee. We
4 oversee the resident construction engineers and
5 they administer the construction projects for our
6 agency.

7 **Q. All right, so for a jury or for myself, what**
8 **exactly do you do? You oversee projects or ---**

9 A. So I manage -- I assist the DCE in managing the
10 resident construction engineers in any question
11 they may have in regards to a construction
12 project. I take care of the preconstruction
13 activities leading up to the construction office.
14 I coordinate with our headquarters office in
15 Columbia in regards to pre construction tasks
16 that lead up to these construction projects. We
17 try to minimize risk for our agency.

18 **Q. What were you doing March 22nd, 2019?**

19 A. I was -- I took a look back, and I was actually
20 off work that day. I was on annual leave. But
21 as far as work goes, I was a resident
22 construction engineer for Pickens County.

23 **Q. And what were your responsibilities there?**

24 A. I oversaw a construction office of 13 at the
25 time. And we managed construction projects for

1 going to work in.

2 **Q. And the last one?**

3 A. So I would interpret that statement that King
4 Asphalt was in the process of milling out the
5 road prior to the traffic control being properly
6 installed.

7 **Q. How deep was the asphalt?**

8 A. This project had eight inch full depth patching.

9 **Q. Eight inch what?**

10 A. Full depth patching.

11 **Q. Is there a measurement done on the difference**
12 **between the two lanes after a day of work?**

13 A. Yes, sir.

14 **Q. Who is responsible for the measurement?**

15 A. The contractor is responsible.

16 **Q. The contractor is King Asphalt?**

17 A. Yes, sir.

18 **Q. Were you made aware of the wreck that occurred on**
19 **March 22nd, 2019?**

20 A. The first I heard of it was July of 2021.

21 **Q. And what did you understand?**

22 A. Our legal inspector, Mr. Alexander, contacted me
23 via e-mail and informed me that there had been an
24 accident on that particular date.

25 **Q. So you learned that in 2021?**

Michael and Mary Ann Smith
220 Stancil Street
Easley, South Carolina 29640
MichaelDSmith@housemail.com

Letter

March 26, 2025

The Honorable Jessica A. Salvini
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

Clerk of Court Pickens County, SC
MAR 26 25 PM 1:31

Re: Smith v. King Asphalt, Inc. #2021-CP-39-00329 -- Clarification of Legal Standard,
Procedural Fairness, and Regulatory Violations

Dear Judge Salvini:

Plaintiffs write respectfully to clarify a critical issue of law and procedural fairness currently affecting this case. Specifically, the distinction between negligence per se and ordinary negligence appears to have been blurred, to the prejudice of Plaintiffs, based on defense counsel's repeated efforts to shift the applicable standard and change the narrative of this case to suit what they want to defend.

In the transcript of the Summary Judgment hearing held on January 27, 2025, at 11:30 AM in Courtroom 4 of the Pickens County Courthouse, at page 15, lines 4 through 7, Plaintiff began to enter his statement of the case into the record. However, immediately after Plaintiff completed the first sentence, the Court interjected at line 8, stating: "Okay. So let me stop you there, Mr. Smith." Although the Court later stated at page 16, lines 3 and 4: "Okay. All right. You can finish reading it but that's the issue that I've got to focus in on...", Plaintiff was not thereafter given the opportunity to fully complete his statement for the record.

Plaintiff respectfully submits that the statement he intended to read was crucial to his case because it was specifically prepared to clarify that Plaintiffs' claim is based on negligence per se, premised on statutory and regulatory violations, and to explain that defense counsel was deliberately attempting to blur this distinction by reframing the case as one of ordinary negligence, thereby luring the Court into applying the wrong legal standard.

Plaintiff believes this clarification was essential to preserve the correct framing of the case for the record and to ensure that the Court's ruling would be based on the proper legal theory as pleaded and supported by Plaintiffs' evidence.

For this reason, Plaintiff now submits this letter, which summarizes the statement Plaintiff was attempting to enter into the record during that hearing.

Plaintiff respectfully requests that the Court accept this letter as part of the official record in this matter and specifically acknowledge its inclusion.

The following facts and arguments are submitted in support of Plaintiffs' position:

Clarifying the Legal Distinction – Negligence Per Se vs. Ordinary Negligence

South Carolina law clearly states that negligence per se arises directly from violating a statute or regulation designed to protect the public. Once such a violation is established, duty and breach are satisfied automatically as a matter of law. From that point forward, the only remaining issues are causation and damages, both of which are factual determinations well-supported by Plaintiff's evidence.

By contrast, ordinary negligence requires Plaintiffs to separately prove:

- Duty
- Breach (measured against a subjective "reasonable person" or "industry" standard)
- Causation
- Damages

Negligence per se eliminates the need for subjective standards, expert testimony, or industry practice evidence because the law itself sets the standard of care. This is confirmed by *Whitlaw v. Kroger Co.*, 306 S.C. 51 (1991) and *Rayfield v. S.C. Dept. of Corrections*, 297 S.C. 95 (1988).

Despite this, the defense continues to argue that Plaintiffs must produce an expert to explain subjective industry standards, attempting to reframe this as ordinary negligence. Respectfully, this argument is legally flawed and directly undermines the negligence per se cause of action Plaintiffs have consistently pled and supported.

Specific SCDOT Regulations and Guidelines Violated

King Asphalt's conduct violated multiple clear and enforceable SCDOT regulations, which serve as the basis of our negligence per se claim. These include:

1. SCDOT Standard Specifications Section 401.4.21 (2014 Edition) – Prohibiting opening lanes to traffic where lane height differentials exceed one inch (1") (milled lane next to paved lane).
 - The record proves King Asphalt stipulated to a 2-inch lane height differential, double the legal limit, exposing motorists to an unreasonable hazard.
2. SCDOT Work Zone Safety Guidelines and Project Traffic Control Plan (TCP) – Requiring continuous traffic control devices until the hazardous condition is mitigated.
 - King Asphalt admitted prematurely (without first mitigating the safety hazard) removing all traffic control devices, leaving the traveling public exposed to unmarked hazards.

3. SCDOT Specification Section 401.4.20 – Limiting milling operations to no more than ten (10) calendar days before repaving or eliminating the hazard.
 - o King Asphalt violated this regulation by leaving the LISL (at the accident site) milled for twenty-one (21) days (March 6-27, 2019), more than double the permissible time.

Each of these objective violations independently satisfies the breach element of negligence per se. No expert testimony is required to interpret these clear regulatory limits.

Procedural Fairness Concerns – Defense Tactics and Court's Adoption

Plaintiffs must also respectfully highlight repeated procedural fairness concerns that have further disadvantaged us as pro se litigants:

- Ambush Memorandum: Defense counsel served Plaintiffs a 212-page memorandum with new arguments and evidence at the start of the hearing, depriving us of any meaningful opportunity to review or respond. This tactic undermines the fair hearing principle enshrined in our system.
- Reframing of Claims: Defense has improperly reframed our negligence per se claim into ordinary negligence, imposing a higher burden of proof requiring subjective expert interpretation that does not apply to the cause of action we pled.
- Judicial Adoption of Defense Framing: Plaintiffs are deeply concerned that the Court's current analysis appears to accept defense counsel's improper reframing, creating an erroneous expert witness requirement that contradicts well-established South Carolina law on negligence per se.

These errors, when considered together, undermine the integrity of the proceedings and create an impression of judicial imbalance.

Procedural fairness requires that Plaintiffs' properly pleaded claims be adjudicated under the correct legal framework and not dismissed due to procedural manipulation or incorrect application of law.

Summary Judgment Standard and Proper Application

Finally, under Rule 56(c), SCRPC and *Baughman v. AT&T*, 306 S.C. 101 (1991), summary judgment is warranted only where the non-moving party fails to show evidence of an essential element of their claim.

Here, Plaintiffs have produced:

- Direct evidence of statutory and regulatory violations;
- SCHP dashcam footage (photographic evidence), Trooper testimony;
- Eyewitness testimony;
- Defendant's own admissions regarding lane height/condition and removal of traffic controls.

Additionally, *The Kitchen Planners, LLC v. Friedman* (2023) reaffirms that South Carolina rejects federal Celotex standards. Plaintiffs are not required to produce an expert to explain the law, the law speaks for itself when it comes to statutory or regulatory violations.

Plaintiff's Summons and Complaint clearly supports a negligence per se claim:

1. Explicit Allegation of Regulatory Violations

- **Complaint Language:** Paragraph 22(d) of Plaintiff's complaint directly states that King Asphalt failed to comply with the guidelines set by SCDOT for Work Zone Traffic Control.
- **Significance:** This allegation is critical because it invokes a specific regulatory standard (SCDOT guidelines) designed to protect public safety.

2. Reference to Specific Regulations

- **Complaint Language:** Paragraphs throughout the complaint refer to SCDOT regulations, South Carolina Code, and Work Zone Traffic Control guidelines.
- **Significance:** By referencing these regulations, Plaintiffs establish that a legal standard exists that the defendants were required to follow.

3. Protected Class

- **Complaint Context:** The complaint indicates that the Plaintiffs were motorists traveling through an SCDOT work zone operated by King Asphalt.
- **Significance:** This establishes that Plaintiffs belonged to the class of people (motorists) that SCDOT regulations were designed to protect.

4. Causal Linkage

- **Complaint Language:** Paragraphs 21, 22, and 23 state that the damages were a direct and proximate result of the negligence of the Defendants.
- **Significance:** By explicitly connecting the injuries to the Defendants' negligent commission/omission (including failure to comply with SCDOT regulations and contract language), the complaint asserts a causal link between the regulatory violations and the Plaintiffs' harm.

5. Elements of Negligence Per Se

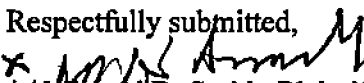
- **Violation of a Statute or Regulation:**
The Complaint clearly points out the failure to comply with regulations set by SCDOT for Work Zone Traffic Control.
- The purpose of the law is to protect from the kind of harm that the plaintiff suffered; and
- The plaintiff is a member of the class of persons that the law is intended to protect.

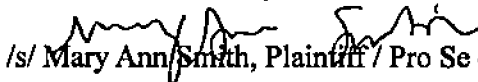
Under a theory of negligence per se, a jury does not need to decide if the defendant acted as a reasonable person would act given the circumstances. Instead, the jury just needs to decide whether the defendant's violation of the law caused the plaintiff's injuries. If so, then the plaintiff will be entitled to recover compensation for their medical treatment, lost wages, pain and suffering, and other losses. For the foregoing reasons, Plaintiffs respectfully request the Court:

- Reaffirm that negligence per se governs this case, with no requirement for subjective expert testimony;
- Recognize that SCDOT regulations set the applicable standard of care and King Asphalt's violations are proven;
- Acknowledge the procedural unfairness Plaintiffs have endured due to defense tactics, including the ambush memorandum and improper legal framing of Plaintiff's case;
- Deny summary judgment for the defense based on the correct application of South Carolina law.

Thank you for your time and careful consideration of these important clarifications. Your ruling in this case will not only determine the outcome for Plaintiffs but also set a precedent for fair treatment of pro se litigants who may face similar challenges in the future.

Respectfully submitted,


/s/ Michael D. Smith, Plaintiff / Pro Se - March 26, 2025


/s/ Mary Ann Smith, Plaintiff / Pro Se - March 26, 2025

CC: Filed on March 26, 2025
Smith v. King Asphalt, Inc.
2021-CP-39-00329

By US Mail: March 26, 2025
The Honorable Jessica A. Salvini
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

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

By Email: March 26, 2025
jsalvinisc@sccourts.org
CGriffin@brblegal.com

/s/ Michael D. Smith, Plaintiff / Pro Se - March 26, 2025



6271025	24" WH SLDLINES THERMO-125 MIL.	165.000	LF
6271030	WHITE SGL ARROWS THERMO-125MIL	15.000	EA
6271035	WH.WORD MESS"ONLY"-THERMO-125M	1.000	EA
6271074	4"YEL.SLD.LNES.- THERMO. 90MIL	36,720.000	LF
6300005	PERM.CLR PAV.MARK MONO. 4"X 4"	279.000	EA
6301100	PERM.YEL.PAV.MARK BI-DIR 4"X4"	491.000	EA
6750275	1.0" SCHEDULE 80 PVC CONDUIT	420.000	LF
6770413	NO. 14 COPPER WIRE, 1-COND.	7,540.000	LF
6780495	SAWCUT FOR LOOP DETECTOR	2,740.000	LF
6800518	13X24X18D.ELEC.UNGRD.ENCLOS/HD	6.000	EA
6886042	F&I VIDEO DETECTION CAMERA W/H	2.000	EA
7209100	SUR.APPLIED DETECTABLE WARNING	10.000	SF

Special Provisions:**Seq Details**

- 0001 Pavement Design: 8" FDP, 2" Mill, 220 PSY Surface B
- 0002 Asphalt quantities are included in the leveling for turn lanes.
- 0003 Variable milling is included for the bridge tie.
- 0004 Milled surfaces shall not be left unpaved for more than 10 consecutive calendar days.



2019545842 ORIGINAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY				Page # 1 of 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 04/2016)				# Of Units 2	Amended - Attach Copy of Original Report Corrected	Notified 1726	Arrived 1745
Date 03-22-2019	Time of Collision 1720	County 39	1 - Interstate 2 - US Primary 3 - SC Primary	4 - Secondary 5 - County 6 - PP 7 - Ramp	Collision Location (Rt. # / Name) 8 / GENTRY MEM HWY	① Main line 6 - Connection 2 - Alternate 7 - Business 5 - Spur	Miles 1.43	Dir. N E S W	In (Near) City or Town of EASLEY				
Lane # / Dir # 2 Of 4 N (E) S W		Distance Offset 0.01 Miles	Direction N E S W	1 - Interstate 2 - US Primary 3 - SC Primary	4 - Secondary 5 - County 6 - Other 7 - Ramp	Base Intersection (Rt. # / Name) / OWEN LN		① Main line 6 - Connection 2 - Alternate 7 - Business 5 - Spur	GPS COORDINATES 00 00'00.00" DEGREES MINUTES SECONDS				
R. R. Id		From Ramp Only	To	1 - Interstate 2 - US Primary 3 - SC Primary	4 - Secondary 5 - County 6 - Other 7 - Ramp	Second Intersection (Rt. # / Name) 88 / OLD EASLEY PICKENS HWY		① Main line 6 - Connection 2 - Alternate 7 - Business 5 - Spur	Latitude 0 34 60 48.88 Longitude 0 62 39 12.64				
R-623535 Drive/Pedestrian's Full Name ECONOMOU THEMISTOKLIS GEORGIOS						R-623536 Drive/Pedestrian's Full Name SMITH MICHAEL DANNY							
Unit # 1	Sex M	Race W	Street 329 MULBERRY RD			Unit # 2	Sex M	Race W	Street 220 STANCIL ST				
# Occ 1	Birth Date 07-12-1951		City, State, & Zip EASLEY SC 296408887			# Occ 2	Birth Date 08-16-1953		City, State, & Zip EASLEY SC 296408872				
State SC	Driver's License # 101600817		Class D	Insurance Company USAA			State SC	Driver's License # 004597693		Class G	Insurance Company UNINSURED		
Year 1998	Body CP	Vehicle Make BMW	VIN WBABF8328WEH60917			Year 2017	Body MP	Vehicle Make TAOT	VIN L9NTEACXXE1301262				
State SC	Year 2019	License Plate # 2049LL	Owner's D.L. # 101600817			State OT	Year	License Plate # NONE	Owner's D.L. # 004597693				
Home Telephone 6318305114			Owner's Full Name ECONOMOU THEMISTOKLIS GEORGIOS			Home Telephone 8644345991			Owner's Full Name SMITH MICHAEL DANNY				
Bus. Telephone			Street 329 MULBERRY RD			Bus. Telephone			Street 220 STANCIL ST				
Contributed To Collision Yes			City, State & Zip EASLEY SC 296408887			Contributed To Collision Yes			City, State & Zip EASLEY SC 296408872				
Estimated Speed 40	Speed Limit 45	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg info (see back): Yes (No)		Estimated Speed 35	Speed Limit 45	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg info (see back): Yes (No)		Towed By Yes (No)	
Driver/Pedestrian's Full Name			State			Year			License Plate #			Owner's D.L. #	
Unit # #	Sex Occ	Race Birth Date	Street City, State, & Zip			Home Telephone Bus. Telephone			Owner's Full Name Street				
State	Driver's License #		Class	Insurance Company			Contributed To Collision Yes No			City, State & Zip			
Year	Body	Vehicle Make	VIN			Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg info (see back): Yes No		Towed By Yes No	
Dir. of Travel		Unit 1: N S (E) W		Unit 2: N S (E) W		Unit 3: N S E W							
Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam. 1		Prop. Dam. 2					
\$ 1500		\$ 500											
Property Owner (Witness) BRYAN BRYAN OLIVIA						Property Owner (Witness) FREEMAN FREEMAN BRIANNA							
Address 329 CANVASBACK WAY EASLEY						Address 200 RIVERS EDGE DR EASLEY							
State SC		Zip 29642		Phone 8645084975		State SC		Zip 29642		Phone 8647227196			
Photo: Describe What Happened (Refer to Units by Number)						Pending Investigation							
(Y) N						(Y) N							
UNIT 1 WAS IN THE #2 LANE EASTBOUND ON SC 8. UNIT 2 WAS IN THE #1 LANE EASTBOUND ON SC 8 NEXT TO UNIT 1. UNIT 2 MADE AN IMPROPER TURN INTO THE LANE OF TRAVELING OF UNIT 1 CAUSING UNIT 1 TO STRIKE UNIT 2.													

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name LAGINESTRA - M	Rank TRP	SCCJA# 9598-3483	Jurisdiction Code HP03	Review Date 03-02-2020	Reviewer's Name K N Brown	Rank F/SGT	Internal Agency Code 19GV058216
--	-------------	---------------------	---------------------------	---------------------------	------------------------------	---------------	------------------------------------

2019545842

Unit	Date of Birth	Sex	Race	INJ	Seat	RSD	A.B.D.	Eject	LAI	Tran	Name	Street Address	Zip Code																																																																																																																																																																																																						
1	07-12-1951	M	W	0	b	01	13	4	3	1	1	2	296408887																																																																																																																																																																																																						
2	08-15-1953	M	W	2	b	01	31	7	3	3	1	1	296408872																																																																																																																																																																																																						
2	2/13/1971	F	W	2	b	04	00	7	3	3	1	1	29640																																																																																																																																																																																																						
<table border="1"> <thead> <tr> <th>Race</th> <th>A - Asian/Pacific Islander</th> <th>W - Caucasian</th> <th>B - African American</th> <th>H - Hispanic</th> <th>O - Other</th> <th>I - Alaskan Native or American Indian</th> <th>U - Unk</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> </tr> </tbody> </table>														Race	A - Asian/Pacific Islander	W - Caucasian	B - African American	H - Hispanic	O - Other	I - Alaskan Native or American Indian	U - Unk	01	02	03	04	05	06	07	08																																																																																																																																																																																						
Race	A - Asian/Pacific Islander	W - Caucasian	B - African American	H - Hispanic	O - Other	I - Alaskan Native or American Indian	U - Unk																																																																																																																																																																																																												
01	02	03	04	05	06	07	08																																																																																																																																																																																																												
<table border="1"> <thead> <tr> <th>Seating Loc.</th> <th>20. Pedestrian</th> <th>60. Sleeper of Cab</th> <th>30. Trailing Unit</th> <th>70. Riding on Unit Exterior</th> <th>40. Bus or Van (4th row or Higher)</th> <th>80. Lap</th> <th>50. Other Enclosed Area (nontrailing)</th> <th>99. Unk./NA</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> </tr> </tbody> </table>														Seating Loc.	20. Pedestrian	60. Sleeper of Cab	30. Trailing Unit	70. Riding on Unit Exterior	40. Bus or Van (4th row or Higher)	80. Lap	50. Other Enclosed Area (nontrailing)	99. Unk./NA	01	02	03	04	05	06	07	08	09																																																																																																																																																																																				
Seating Loc.	20. Pedestrian	60. Sleeper of Cab	30. Trailing Unit	70. Riding on Unit Exterior	40. Bus or Van (4th row or Higher)	80. Lap	50. Other Enclosed Area (nontrailing)	99. Unk./NA																																																																																																																																																																																																											
01	02	03	04	05	06	07	08	09																																																																																																																																																																																																											
<table border="1"> <thead> <tr> <th>Restrain/Safety Device</th> <th>00. None Used</th> <th>21. Child Safety Seat</th> <th>11. Shoulder belt</th> <th>12. Lap Belt Only</th> <th>88. Other</th> <th>13. Shoulder & Lap Belt</th> <th>99. Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> </tr> </tbody> </table>														Restrain/Safety Device	00. None Used	21. Child Safety Seat	11. Shoulder belt	12. Lap Belt Only	88. Other	13. Shoulder & Lap Belt	99. Unk.	01	02	03	04	05	06	07	08																																																																																																																																																																																						
Restrain/Safety Device	00. None Used	21. Child Safety Seat	11. Shoulder belt	12. Lap Belt Only	88. Other	13. Shoulder & Lap Belt	99. Unk.																																																																																																																																																																																																												
01	02	03	04	05	06	07	08																																																																																																																																																																																																												
<table border="1"> <thead> <tr> <th>Air Bag Deployment / Switch</th> <th>1. Deployed Front</th> <th>4. Not Deployed</th> <th>2. Deployed Side</th> <th>7. Not Applicable</th> <th>3. Deployed Both</th> <th>9. Deployment Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> </tr> </tbody> </table>														Air Bag Deployment / Switch	1. Deployed Front	4. Not Deployed	2. Deployed Side	7. Not Applicable	3. Deployed Both	9. Deployment Unk.	01	02	03	04	05	06	07																																																																																																																																																																																								
Air Bag Deployment / Switch	1. Deployed Front	4. Not Deployed	2. Deployed Side	7. Not Applicable	3. Deployed Both	9. Deployment Unk.																																																																																																																																																																																																													
01	02	03	04	05	06	07																																																																																																																																																																																																													
<table border="1"> <thead> <tr> <th>Ejection</th> <th>b) 2 or 3 Wheel Motorized Vehicle Only</th> <th>Head Injury</th> <th>1) Yes</th> <th>2) No</th> <th>Location After Impact</th> <th>3. Freed (non-mech)</th> <th>4. Not Applicable</th> <th>9. Unknown</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> </tr> </tbody> </table>														Ejection	b) 2 or 3 Wheel Motorized Vehicle Only	Head Injury	1) Yes	2) No	Location After Impact	3. Freed (non-mech)	4. Not Applicable	9. Unknown	01	02	03	04	05	06	07	08	09																																																																																																																																																																																				
Ejection	b) 2 or 3 Wheel Motorized Vehicle Only	Head Injury	1) Yes	2) No	Location After Impact	3. Freed (non-mech)	4. Not Applicable	9. Unknown																																																																																																																																																																																																											
01	02	03	04	05	06	07	08	09																																																																																																																																																																																																											
<table border="1"> <thead> <tr> <th>Sequence of Events</th> <th>1. Not Trapped</th> <th>2. Extricated (Mechanical Means)</th> <th>3. Not App.</th> <th>9. Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> </tr> </tbody> </table>														Sequence of Events	1. Not Trapped	2. Extricated (Mechanical Means)	3. Not App.	9. Unk.	01	02	03	04	05																																																																																																																																																																																												
Sequence of Events	1. Not Trapped	2. Extricated (Mechanical Means)	3. Not App.	9. Unk.																																																																																																																																																																																																															
01	02	03	04	05																																																																																																																																																																																																															
<table border="1"> <thead> <tr> <th>Non-Collision</th> <th>04. Equipment Failure</th> <th>01. Cargo/Equip Loss or Shift</th> <th>02. Cross Median/Center</th> <th>03. Downhill Runaway</th> <th>05. Fire/Explosion</th> <th>06. Immersion</th> <th>07. Jackknife</th> <th>08. Overturn/Rollover</th> <th>09. Ran off Road Left</th> <th>10. Ran off Road Right</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> </tr> </tbody> </table>														Non-Collision	04. Equipment Failure	01. Cargo/Equip Loss or Shift	02. Cross Median/Center	03. Downhill Runaway	05. Fire/Explosion	06. Immersion	07. Jackknife	08. Overturn/Rollover	09. Ran off Road Left	10. Ran off Road Right	01	02	03	04	05	06	07	08	09	10	11																																																																																																																																																																																
Non-Collision	04. Equipment Failure	01. Cargo/Equip Loss or Shift	02. Cross Median/Center	03. Downhill Runaway	05. Fire/Explosion	06. Immersion	07. Jackknife	08. Overturn/Rollover	09. Ran off Road Left	10. Ran off Road Right																																																																																																																																																																																																									
01	02	03	04	05	06	07	08	09	10	11																																																																																																																																																																																																									
<table border="1"> <thead> <tr> <th>Collision: Not Fixed</th> <th>20. Animal (Deer Only)</th> <th>21. Animal (All Other)</th> <th>22. Motor Veh. (In Transport)</th> <th>23. Motor Veh. (Stopped)</th> <th>24. Motor Veh. (Other Roadway)</th> <th>25. Motor Veh. (Parkd)</th> <th>26. Pedalcycle</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> </tr> </tbody> </table>														Collision: Not Fixed	20. Animal (Deer Only)	21. Animal (All Other)	22. Motor Veh. (In Transport)	23. Motor Veh. (Stopped)	24. Motor Veh. (Other Roadway)	25. Motor Veh. (Parkd)	26. Pedalcycle	01	02	03	04	05	06	07	08																																																																																																																																																																																						
Collision: Not Fixed	20. Animal (Deer Only)	21. Animal (All Other)	22. Motor Veh. (In Transport)	23. Motor Veh. (Stopped)	24. Motor Veh. (Other Roadway)	25. Motor Veh. (Parkd)	26. Pedalcycle																																																																																																																																																																																																												
01	02	03	04	05	06	07	08																																																																																																																																																																																																												
<table border="1"> <thead> <tr> <th>Collision: Fixed Object</th> <th>47. Embankment</th> <th>48. Equipment</th> <th>49. Fence</th> <th>50. Guardrail End</th> <th>51. Guardrail Face</th> <th>52. Highway Traffic Sign Post</th> <th>53. Impact Attenuator/Crash Cushion</th> <th>54. Light/Luminaire Support</th> <th>55. Mail Box</th> <th>56. Median Barrier</th> <th>57. Overhead Sign Support</th> <th>58. Other (Post, Pole, Support, Etc.)</th> <th>59. Other (Wall, Building, Tunnel, Etc.)</th> <th>60. Tree</th> <th>61. Utility Pole</th> <th>62. Work Zone Maint. Equipment</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> </tr> </tbody> </table>														Collision: Fixed Object	47. Embankment	48. Equipment	49. Fence	50. Guardrail End	51. Guardrail Face	52. Highway Traffic Sign Post	53. Impact Attenuator/Crash Cushion	54. Light/Luminaire Support	55. Mail Box	56. Median Barrier	57. Overhead Sign Support	58. Other (Post, Pole, Support, Etc.)	59. Other (Wall, Building, Tunnel, Etc.)	60. Tree	61. Utility Pole	62. Work Zone Maint. Equipment	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17																																																																																																																																																																				
Collision: Fixed Object	47. Embankment	48. Equipment	49. Fence	50. Guardrail End	51. Guardrail Face	52. Highway Traffic Sign Post	53. Impact Attenuator/Crash Cushion	54. Light/Luminaire Support	55. Mail Box	56. Median Barrier	57. Overhead Sign Support	58. Other (Post, Pole, Support, Etc.)	59. Other (Wall, Building, Tunnel, Etc.)	60. Tree	61. Utility Pole	62. Work Zone Maint. Equipment																																																																																																																																																																																																			
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17																																																																																																																																																																																																			
<table border="1"> <thead> <tr> <th>Manner of Collision (Struck Veh.)</th> <th>30. Rear-to-Rear</th> <th>40. Angle (↘ ↗)</th> <th>42. Angle (→ ←)</th> <th>43. Angle (↖ ↗)</th> <th>44. Angle (↘ ↗)</th> <th>45. Angle (→ ←)</th> <th>46. Angle (↖ ↗)</th> <th>47. Angle (↘ ↗)</th> <th>48. Angle (→ ←)</th> <th>49. Angle (↖ ↗)</th> <th>50. Sideswipe Same Dir.</th> <th>51. Sideswipe Opposite Dir.</th> <th>52. Backed Into</th> <th>53. Backed Into</th> <th>54. Backed Into</th> <th>55. Backed Into</th> <th>56. Backed Into</th> <th>57. Backed Into</th> <th>58. Backed Into</th> <th>59. Backed Into</th> <th>60. Backed Into</th> <th>61. Backed Into</th> <th>62. Backed Into</th> <th>63. Backed Into</th> <th>64. Backed Into</th> <th>65. Backed Into</th> <th>66. Backed Into</th> <th>67. Backed Into</th> <th>68. Backed Into</th> <th>69. Backed Into</th> <th>70. Backed Into</th> <th>71. Backed Into</th> <th>72. Backed Into</th> <th>73. Backed Into</th> <th>74. Backed Into</th> <th>75. Backed Into</th> <th>76. Backed Into</th> <th>77. Backed Into</th> <th>78. Backed Into</th> <th>79. Backed Into</th> <th>80. Backed Into</th> <th>81. Backed Into</th> <th>82. Backed Into</th> <th>83. Backed Into</th> <th>84. Backed Into</th> <th>85. Backed Into</th> <th>86. Backed Into</th> <th>87. Backed Into</th> <th>88. Backed Into</th> <th>89. Backed Into</th> <th>90. Backed Into</th> <th>91. Backed Into</th> <th>92. Backed Into</th> <th>93. Backed Into</th> <th>94. Backed Into</th> <th>95. Backed Into</th> <th>96. Backed Into</th> <th>97. Backed Into</th> <th>98. Backed Into</th> <th>99. Backed Into</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>18</td> <td>19</td> <td>20</td> <td>21</td> <td>22</td> <td>23</td> <td>24</td> <td>25</td> <td>26</td> <td>27</td> <td>28</td> <td>29</td> <td>30</td> <td>31</td> <td>32</td> <td>33</td> <td>34</td> <td>35</td> <td>36</td> <td>37</td> <td>38</td> <td>39</td> <td>40</td> <td>41</td> <td>42</td> <td>43</td> <td>44</td> <td>45</td> <td>46</td> <td>47</td> <td>48</td> <td>49</td> <td>50</td> <td>51</td> <td>52</td> <td>53</td> <td>54</td> <td>55</td> <td>56</td> <td>57</td> <td>58</td> <td>59</td> <td>60</td> <td>61</td> <td>62</td> <td>63</td> <td>64</td> <td>65</td> <td>66</td> <td>67</td> <td>68</td> <td>69</td> <td>70</td> <td>71</td> <td>72</td> <td>73</td> <td>74</td> <td>75</td> <td>76</td> <td>77</td> <td>78</td> <td>79</td> <td>80</td> <td>81</td> <td>82</td> <td>83</td> <td>84</td> <td>85</td> <td>86</td> <td>87</td> <td>88</td> <td>89</td> <td>90</td> <td>91</td> <td>92</td> <td>93</td> <td>94</td> <td>95</td> <td>96</td> <td>97</td> <td>98</td> <td>99</td> </tr> </tbody> </table>														Manner of Collision (Struck Veh.)	30. Rear-to-Rear	40. Angle (↘ ↗)	42. Angle (→ ←)	43. Angle (↖ ↗)	44. Angle (↘ ↗)	45. Angle (→ ←)	46. Angle (↖ ↗)	47. Angle (↘ ↗)	48. Angle (→ ←)	49. Angle (↖ ↗)	50. Sideswipe Same Dir.	51. Sideswipe Opposite Dir.	52. Backed Into	53. Backed Into	54. Backed Into	55. Backed Into	56. Backed Into	57. Backed Into	58. Backed Into	59. Backed Into	60. Backed Into	61. Backed Into	62. Backed Into	63. Backed Into	64. Backed Into	65. Backed Into	66. Backed Into	67. Backed Into	68. Backed Into	69. Backed Into	70. Backed Into	71. Backed Into	72. Backed Into	73. Backed Into	74. Backed Into	75. Backed Into	76. Backed Into	77. Backed Into	78. Backed Into	79. Backed Into	80. Backed Into	81. Backed Into	82. Backed Into	83. Backed Into	84. Backed Into	85. Backed Into	86. Backed Into	87. Backed Into	88. Backed Into	89. Backed Into	90. Backed Into	91. Backed Into	92. Backed Into	93. Backed Into	94. Backed Into	95. Backed Into	96. Backed Into	97. Backed Into	98. Backed Into	99. Backed Into	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99																																						
Manner of Collision (Struck Veh.)	30. Rear-to-Rear	40. Angle (↘ ↗)	42. Angle (→ ←)	43. Angle (↖ ↗)	44. Angle (↘ ↗)	45. Angle (→ ←)	46. Angle (↖ ↗)	47. Angle (↘ ↗)	48. Angle (→ ←)	49. Angle (↖ ↗)	50. Sideswipe Same Dir.	51. Sideswipe Opposite Dir.	52. Backed Into	53. Backed Into	54. Backed Into	55. Backed Into	56. Backed Into	57. Backed Into	58. Backed Into	59. Backed Into	60. Backed Into	61. Backed Into	62. Backed Into	63. Backed Into	64. Backed Into	65. Backed Into	66. Backed Into	67. Backed Into	68. Backed Into	69. Backed Into	70. Backed Into	71. Backed Into	72. Backed Into	73. Backed Into	74. Backed Into	75. Backed Into	76. Backed Into	77. Backed Into	78. Backed Into	79. Backed Into	80. Backed Into	81. Backed Into	82. Backed Into	83. Backed Into	84. Backed Into	85. Backed Into	86. Backed Into	87. Backed Into	88. Backed Into	89. Backed Into	90. Backed Into	91. Backed Into	92. Backed Into	93. Backed Into	94. Backed Into	95. Backed Into	96. Backed Into	97. Backed Into	98. Backed Into	99. Backed Into																																																																																																																																																							
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99																																																																																																																	
<table border="1"> <thead> <tr> <th>Vehicle Type</th> <th>15. Full Size Van</th> <th>16. Mini Van</th> <th>17. Sport Utility</th> <th>18. Other</th> <th>19. School Bus</th> <th>20. Passenger Bus</th> <th>21. School Bus</th> <th>22. Passenger Bus</th> <th>23. School Bus</th> <th>24. Passenger Bus</th> <th>25. School Bus</th> <th>26. Passenger Bus</th> <th>27. School Bus</th> <th>28. Passenger Bus</th> <th>29. School Bus</th> <th>30. Passenger Bus</th> <th>31. School Bus</th> <th>32. Passenger Bus</th> <th>33. School Bus</th> <th>34. Passenger Bus</th> <th>35. School Bus</th> <th>36. Passenger Bus</th> <th>37. School Bus</th> <th>38. Passenger Bus</th> <th>39. School Bus</th> <th>40. Passenger Bus</th> <th>41. School Bus</th> <th>42. Passenger Bus</th> <th>43. School Bus</th> <th>44. Passenger Bus</th> <th>45. School Bus</th> <th>46. Passenger Bus</th> <th>47. School Bus</th> <th>48. Passenger Bus</th> <th>49. School Bus</th> <th>50. Passenger Bus</th> <th>51. School Bus</th> <th>52. Passenger Bus</th> <th>53. School Bus</th> <th>54. Passenger Bus</th> <th>55. School Bus</th> <th>56. Passenger Bus</th> <th>57. School Bus</th> <th>58. Passenger Bus</th> <th>59. School Bus</th> <th>60. Passenger Bus</th> <th>61. School Bus</th> <th>62. Passenger Bus</th> <th>63. School Bus</th> <th>64. Passenger Bus</th> <th>65. School Bus</th> <th>66. Passenger Bus</th> <th>67. School Bus</th> <th>68. Passenger Bus</th> <th>69. School Bus</th> <th>70. Passenger Bus</th> <th>71. School Bus</th> <th>72. Passenger Bus</th> <th>73. School Bus</th> <th>74. Passenger Bus</th> <th>75. School Bus</th> <th>76. Passenger Bus</th> <th>77. School Bus</th> <th>78. Passenger Bus</th> <th>79. School Bus</th> <th>80. Passenger Bus</th> <th>81. School Bus</th> <th>82. Passenger Bus</th> <th>83. School Bus</th> <th>84. Passenger Bus</th> <th>85. School Bus</th> <th>86. Passenger Bus</th> <th>87. School Bus</th> <th>88. Passenger Bus</th> <th>89. School Bus</th> <th>90. Passenger Bus</th> <th>91. School Bus</th> <th>92. Passenger Bus</th> <th>93. School Bus</th> <th>94. Passenger Bus</th> <th>95. School Bus</th> <th>96. Passenger Bus</th> <th>97. School Bus</th> <th>98. Passenger Bus</th> <th>99. School Bus</th> <th>100. Passenger Bus</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>18</td> <td>19</td> <td>20</td> <td>21</td> <td>22</td> <td>23</td> <td>24</td> <td>25</td> <td>26</td> <td>27</td> <td>28</td> <td>29</td> <td>30</td> <td>31</td> <td>32</td> <td>33</td> <td>34</td> <td>35</td> <td>36</td> <td>37</td> <td>38</td> <td>39</td> <td>40</td> <td>41</td> <td>42</td> <td>43</td> <td>44</td> <td>45</td> <td>46</td> <td>47</td> <td>48</td> <td>49</td> <td>50</td> <td>51</td> <td>52</td> <td>53</td> <td>54</td> <td>55</td> <td>56</td> <td>57</td> <td>58</td> <td>59</td> <td>60</td> <td>61</td> <td>62</td> <td>63</td> <td>64</td> <td>65</td> <td>66</td> <td>67</td> <td>68</td> <td>69</td> <td>70</td> <td>71</td> <td>72</td> <td>73</td> <td>74</td> <td>75</td> <td>76</td> <td>77</td> <td>78</td> <td>79</td> <td>80</td> <td>81</td> <td>82</td> <td>83</td> <td>84</td> <td>85</td> <td>86</td> <td>87</td> <td>88</td> <td>89</td> <td>90</td> <td>91</td> <td>92</td> <td>93</td> <td>94</td> <td>95</td> <td>96</td> <td>97</td> <td>98</td> <td>99</td> <td>100</td> </tr> </tbody> </table>														Vehicle Type	15. Full Size Van	16. Mini Van	17. Sport Utility	18. Other	19. School Bus	20. Passenger Bus	21. School Bus	22. Passenger Bus	23. School Bus	24. Passenger Bus	25. School Bus	26. Passenger Bus	27. School Bus	28. Passenger Bus	29. School Bus	30. Passenger Bus	31. School Bus	32. Passenger Bus	33. School Bus	34. Passenger Bus	35. School Bus	36. Passenger Bus	37. School Bus	38. Passenger Bus	39. School Bus	40. Passenger Bus	41. School Bus	42. Passenger Bus	43. School Bus	44. Passenger Bus	45. School Bus	46. Passenger Bus	47. School Bus	48. Passenger Bus	49. School Bus	50. Passenger Bus	51. School Bus	52. Passenger Bus	53. School Bus	54. Passenger Bus	55. School Bus	56. Passenger Bus	57. School Bus	58. Passenger Bus	59. School Bus	60. Passenger Bus	61. School Bus	62. Passenger Bus	63. School Bus	64. Passenger Bus	65. School Bus	66. Passenger Bus	67. School Bus	68. Passenger Bus	69. School Bus	70. Passenger Bus	71. School Bus	72. Passenger Bus	73. School Bus	74. Passenger Bus	75. School Bus	76. Passenger Bus	77. School Bus	78. Passenger Bus	79. School Bus	80. Passenger Bus	81. School Bus	82. Passenger Bus	83. School Bus	84. Passenger Bus	85. School Bus	86. Passenger Bus	87. School Bus	88. Passenger Bus	89. School Bus	90. Passenger Bus	91. School Bus	92. Passenger Bus	93. School Bus	94. Passenger Bus	95. School Bus	96. Passenger Bus	97. School Bus	98. Passenger Bus	99. School Bus	100. Passenger Bus	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100											
Vehicle Type	15. Full Size Van	16. Mini Van	17. Sport Utility	18. Other	19. School Bus	20. Passenger Bus	21. School Bus	22. Passenger Bus	23. School Bus	24. Passenger Bus	25. School Bus	26. Passenger Bus	27. School Bus	28. Passenger Bus	29. School Bus	30. Passenger Bus	31. School Bus	32. Passenger Bus	33. School Bus	34. Passenger Bus	35. School Bus	36. Passenger Bus	37. School Bus	38. Passenger Bus	39. School Bus	40. Passenger Bus	41. School Bus	42. Passenger Bus	43. School Bus	44. Passenger Bus	45. School Bus	46. Passenger Bus	47. School Bus	48. Passenger Bus	49. School Bus	50. Passenger Bus	51. School Bus	52. Passenger Bus	53. School Bus	54. Passenger Bus	55. School Bus	56. Passenger Bus	57. School Bus	58. Passenger Bus	59. School Bus	60. Passenger Bus	61. School Bus	62. Passenger Bus	63. School Bus	64. Passenger Bus	65. School Bus	66. Passenger Bus	67. School Bus	68. Passenger Bus	69. School Bus	70. Passenger Bus	71. School Bus	72. Passenger Bus	73. School Bus	74. Passenger Bus	75. School Bus	76. Passenger Bus	77. School Bus	78. Passenger Bus	79. School Bus	80. Passenger Bus	81. School Bus	82. Passenger Bus	83. School Bus	84. Passenger Bus	85. School Bus	86. Passenger Bus	87. School Bus	88. Passenger Bus	89. School Bus	90. Passenger Bus	91. School Bus	92. Passenger Bus	93. School Bus	94. Passenger Bus	95. School Bus	96. Passenger Bus	97. School Bus	98. Passenger Bus	99. School Bus	100. Passenger Bus																																																																																																																													
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100																																																																																																																
<table border="1"> <thead> <tr> <th>Vehicle Use Code</th> <th>04. Ambulance</th> <th>05. Military</th> <th>06. Fire Fighting</th> <th>07. Logging</th> <th>08. Farm Use</th> <th>09. Wrecker or Tow</th> <th>10. Police</th> <th>11. Other</th> <th>12. Fire Fighting</th> <th>13. Logging</th> <th>14. Other</th> <th>15. Fire Fighting</th> <th>16. Logging</th> <th>17. Other</th> <th>18. Fire Fighting</th> <th>19. Logging</th> <th>20. Other</th> <th>21. Fire Fighting</th> <th>22. Logging</th> <th>23. Other</th> <th>24. Fire Fighting</th> <th>25. Logging</th> <th>26. Other</th> <th>27. Fire Fighting</th> <th>28. Logging</th> <th>29. Other</th> <th>30. Fire Fighting</th> <th>31. Logging</th> <th>32. Other</th> <th>33. Fire Fighting</th> <th>34. Logging</th> <th>35. Other</th> <th>36. Fire Fighting</th> <th>37. Logging</th> <th>38. Other</th> <th>39. Fire Fighting</th> <th>40. Logging</th> <th>41. Other</th> <th>42. Fire Fighting</th> <th>43. Logging</th> <th>44. Other</th> <th>45. Fire Fighting</th> <th>46. Logging</th> <th>47. Other</th> <th>48. Fire Fighting</th> <th>49. Logging</th> <th>50. Other</th> <th>51. Fire Fighting</th> <th>52. Logging</th> <th>53. Other</th> <th>54. Fire Fighting</th> <th>55. Logging</th> <th>56. Other</th> <th>57. Fire Fighting</th> <th>58. Logging</th> <th>59. Other</th> <th>60. Fire Fighting</th> <th>61. Logging</th> <th>62. Other</th> <th>63. Fire Fighting</th> <th>64. Logging</th> <th>65. Other</th> <th>66. Fire Fighting</th> <th>67. Logging</th> <th>68. Other</th> <th>69. Fire Fighting</th> <th>70. Logging</th> <th>71. Other</th> <th>72. Fire Fighting</th> <th>73. Logging</th> <th>74. Other</th> <th>75. Fire Fighting</th> <th>76. Logging</th> <th>77. Other</th> <th>78. Fire Fighting</th> <th>79. Logging</th> <th>80. Other</th> <th>81. Fire Fighting</th> <th>82. Logging</th> <th>83. Other</th> <th>84. Fire Fighting</th> <th>85. Logging</th> <th>86. Other</th> <th>87. Fire Fighting</th> <th>88. Logging</th> <th>89. Other</th> <th>90. Fire Fighting</th> <th>91. Logging</th> <th>92. Other</th> <th>93. Fire Fighting</th> <th>94. Logging</th> <th>95. Other</th> <th>96. Fire Fighting</th> <th>97. Logging</th> <th>98. Other</th> <th>99. Fire Fighting</th> <th>100. Logging</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>18</td> <td>19</td> <td>20</td> <td>21</td> <td>22</td> <td>23</td> <td>24</td> <td>25</td> <td>26</td> <td>27</td> <td>28</td> <td>29</td> <td>30</td> <td>31</td> <td>32</td> <td>33</td> <td>34</td> <td>35</td> <td>36</td> <td>37</td> <td>38</td> <td>39</td> <td>40</td> <td>41</td> <td>42</td> <td>43</td> <td>44</td> <td>45</td> <td>46</td> <td>47</td> <td>48</td> <td>49</td> <td>50</td> <td>51</td> <td>52</td> <td>53</td> <td>54</td> <td>55</td> <td>56</td> <td>57</td> <td>58</td> <td>59</td> <td>60</td> <td>61</td> <td>62</td> <td>63</td> <td>64</td> <td>65</td> <td>66</td> <td>67</td> <td>68</td> <td>69</td> <td>70</td> <td>71</td> <td>72</td> <td>73</td> <td>74</td> <td>75</td> <td>76</td> <td>77</td> <td>78</td> <td>79</td> <td>80</td> <td>81</td> <td>82</td> <td>83</td> <td>84</td> <td>85</td> <td>86</td> <td>87</td> <td>88</td> <td>89</td> <td>90</td> <td>91</td> <td>92</td> <td>93</td> <td>94</td> <td>95</td> <td>96</td> <td>97</td> <td>98</td> <td>99</td> <td>100</td> </tr> </tbody> </table>														Vehicle Use Code	04. Ambulance	05. Military	06. Fire Fighting	07. Logging	08. Farm Use	09. Wrecker or Tow	10. Police	11. Other	12. Fire Fighting	13. Logging	14. Other	15. Fire Fighting	16. Logging	17. Other	18. Fire Fighting	19. Logging	20. Other	21. Fire Fighting	22. Logging	23. Other	24. Fire Fighting	25. Logging	26. Other	27. Fire Fighting	28. Logging	29. Other	30. Fire Fighting	31. Logging	32. Other	33. Fire Fighting	34. Logging	35. Other	36. Fire Fighting	37. Logging	38. Other	39. Fire Fighting	40. Logging	41. Other	42. Fire Fighting	43. Logging	44. Other	45. Fire Fighting	46. Logging	47. Other	48. Fire Fighting	49. Logging	50. Other	51. Fire Fighting	52. Logging	53. Other	54. Fire Fighting	55. Logging	56. Other	57. Fire Fighting	58. Logging	59. Other	60. Fire Fighting	61. Logging	62. Other	63. Fire Fighting	64. Logging	65. Other	66. Fire Fighting	67. Logging	68. Other	69. Fire Fighting	70. Logging	71. Other	72. Fire Fighting	73. Logging	74. Other	75. Fire Fighting	76. Logging	77. Other	78. Fire Fighting	79. Logging	80. Other	81. Fire Fighting	82. Logging	83. Other	84. Fire Fighting	85. Logging	86. Other	87. Fire Fighting	88. Logging	89. Other	90. Fire Fighting	91. Logging	92. Other	93. Fire Fighting	94. Logging	95. Other	96. Fire Fighting	97. Logging	98. Other	99. Fire Fighting	100. Logging	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
Vehicle Use Code	04. Ambulance	05. Military	06. Fire Fighting	07. Logging	08. Farm Use	09. Wrecker or Tow	10. Police	11. Other	12. Fire Fighting	13. Logging	14. Other	15. Fire Fighting	16. Logging	17. Other	18. Fire Fighting	19. Logging	20. Other	21. Fire Fighting	22. Logging	23. Other	24. Fire Fighting	25. Logging	26. Other	27. Fire Fighting	28. Logging	29. Other	30. Fire Fighting	31. Logging	32. Other	33. Fire Fighting	34. Logging	35. Other	36. Fire Fighting	37. Logging	38. Other	39. Fire Fighting	40. Logging	41. Other	42. Fire Fighting	43. Logging	44. Other	45. Fire Fighting	46. Logging	47. Other	48. Fire Fighting	49. Logging	50. Other	51. Fire Fighting	52. Logging	53. Other	54. Fire Fighting	55. Logging	56. Other	57. Fire Fighting	58. Logging	59. Other	60. Fire Fighting	61. Logging	62. Other	63. Fire Fighting	64. Logging	65. Other	66. Fire Fighting	67. Logging	68. Other	69. Fire Fighting	70. Logging	71. Other	72. Fire Fighting	73. Logging	74. Other	75. Fire Fighting	76. Logging	77. Other	78. Fire Fighting	79. Logging	80. Other	81. Fire Fighting	82. Logging	83. Other	84. Fire Fighting	85. Logging	86. Other	87. Fire Fighting	88. Logging	89. Other	90. Fire Fighting	91. Logging	92. Other	93. Fire Fighting	94. Logging	95. Other	96. Fire Fighting	97. Logging	98. Other	99. Fire Fighting	100. Logging																																																																																																																		
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100																																																																																																																
<table border="1"> <thead> <tr> <th>Vehicle Attachment</th> <th>4. Utility Trailer</th> <th>5. Towed Motor Vehicle</th> <th>6. Other Tanker</th> <th>7. Flat Bed</th> <th>8. Lowboy Trailer</th> <th>9. E-Twin Trailers</th> <th>10. Semi-Trailer</th> <th>11. Camper Trailer</th> <th>12. Autocarrier Trailer</th> <th>13. Other</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> </tr> </tbody> </table>														Vehicle Attachment	4. Utility Trailer	5. Towed Motor Vehicle	6. Other Tanker	7. Flat Bed	8. Lowboy Trailer	9. E-Twin Trailers	10. Semi-Trailer	11. Camper Trailer	12. Autocarrier Trailer	13. Other	01	02	03	04	05	06	07	08	09	10	11																																																																																																																																																																																
Vehicle Attachment	4. Utility Trailer	5. Towed Motor Vehicle	6. Other Tanker	7. Flat Bed	8. Lowboy Trailer	9. E-Twin Trailers	10. Semi-Trailer	11. Camper Trailer	12. Autocarrier Trailer	13. Other																																																																																																																																																																																																									
01	02	03	04	05	06	07	08	09	10	11																																																																																																																																																																																																									
<table border="1"> <thead> <tr> <th>Action Prior to Impact</th> <th>(Vehicle)</th> <th>(Non-motorist)</th> <th>01. Backing</th> <th>02. Changing lanes</th> <th>03. Entering traffic lane</th> <th>04. Leaving traffic lane</th> <th>05. Making U-turn</th> <th>06. Movements Essentially Straight Ahead</th> <th>07. Overtaking/passing</th> <th>08. Parked</th> <th>09. Slowing or Stopped in traffic</th> <th>10. Turning left</th> <th>11. Turning right</th> <th>12. Approaching Leaving Vehicle</th> <th>13. Entering/Crossing Location</th> <th>14. Pushing/Working on Vehicle</th> <th>15. Pushing Vehicle</th> <th>16. Standing</th> <th>17. Walking, Playing, Cycling</th> <th>18. Working</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>18</td> <td>19</td> <td>20</td> <td>21</td> </tr> </tbody> </table>														Action Prior to Impact	(Vehicle)	(Non-motorist)	01. Backing	02. Changing lanes	03. Entering traffic lane	04. Leaving traffic lane	05. Making U-turn	06. Movements Essentially Straight Ahead	07. Overtaking/passing	08. Parked	09. Slowing or Stopped in traffic	10. Turning left	11. Turning right	12. Approaching Leaving Vehicle	13. Entering/Crossing Location	14. Pushing/Working on Vehicle	15. Pushing Vehicle	16. Standing	17. Walking, Playing, Cycling	18. Working	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21																																																																																																																																																												
Action Prior to Impact	(Vehicle)	(Non-motorist)	01. Backing	02. Changing lanes	03. Entering traffic lane	04. Leaving traffic lane	05. Making U-turn	06. Movements Essentially Straight Ahead	07. Overtaking/passing	08. Parked	09. Slowing or Stopped in traffic	10. Turning left	11. Turning right	12. Approaching Leaving Vehicle	13. Entering/Crossing Location	14. Pushing/Working on Vehicle	15. Pushing Vehicle	16. Standing	17. Walking, Playing, Cycling	18. Working																																																																																																																																																																																															
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21																																																																																																																																																																																															
<table border="1"> <thead> <tr> <th>Weather Condition</th> <th>3. Cloudy</th> <th>4. Fog, Smog, Smoke</th> <th>5. Sleet, Hail</th> <th>6. Blowing Sand, Oil, Dirt or Snow</th> <th>7. Severe Crosswinds</th> <th>8. Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> </tr> </tbody> </table>														Weather Condition	3. Cloudy	4. Fog, Smog, Smoke	5. Sleet, Hail	6. Blowing Sand, Oil, Dirt or Snow	7. Severe Crosswinds	8. Unk.	01	02	03	04	05	06	07																																																																																																																																																																																								
Weather Condition	3. Cloudy	4. Fog, Smog, Smoke	5. Sleet, Hail	6. Blowing Sand, Oil, Dirt or Snow	7. Severe Crosswinds	8. Unk.																																																																																																																																																																																																													
01	02	03	04	05	06	07																																																																																																																																																																																																													
<table border="1"> <thead> <tr> <th>Light Condition</th> <th>3. Dusk</th> <th>4. Dark (Street Lamp Not Lit)</th> <th>5. Dark (No Lights)</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> </tr> </tbody> </table>														Light Condition	3. Dusk	4. Dark (Street Lamp Not Lit)	5. Dark (No Lights)	01	02	03	04																																																																																																																																																																																														
Light Condition	3. Dusk	4. Dark (Street Lamp Not Lit)	5. Dark (No Lights)																																																																																																																																																																																																																
01	02	03	04																																																																																																																																																																																																																
<table border="1"> <thead> <tr> <th>Junction Type</th> <th>03. Five/More Points</th> <th>04. Shared Use Paths or Trall</th> <th>05. Y - intersection</th> <th>06. Crossover</th> <th>07. Four-way Intersection</th> <th>08. T-Intersection</th> <th>09. Nonjunction</th> <th>10. Driveway</th> <th>11. Railway Grade Crossing</th> <th>12. Traffic Circle</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> </tr> </tbody> </table>														Junction Type	03. Five/More Points	04. Shared Use Paths or Trall	05. Y - intersection	06. Crossover	07. Four-way Intersection	08. T-Intersection	09. Nonjunction	10. Driveway	11. Railway Grade Crossing	12. Traffic Circle	01	02	03	04	05	06	07	08	09	10	11																																																																																																																																																																																
Junction Type	03. Five/More Points	04. Shared Use Paths or Trall	05. Y - intersection	06. Crossover	07. Four-way Intersection	08. T-Intersection	09. Nonjunction	10. Driveway	11. Railway Grade Crossing	12. Traffic Circle																																																																																																																																																																																																									
01	02	03	04	05	06	07	08	09	10	11																																																																																																																																																																																																									
<table border="1"> <thead> <tr> <th>Contributing Factors</th> <th>01. Disregarded Signs, Signal, Etc.</th> <th>02. Distracted/Inattention</th> <th>03. Driving Too Fast for Conditions</th> <th>04. Exceeded Authorized Speed Limit</th> <th>05. Failed to Yield Right of Way</th> <th>06. Ran off Road</th> <th>07. Fatigued/Asleep</th> <th>08. Followed Too Closely</th> <th>09. Made an Improper Turn</th> <th>10. Medical Related</th> <th>11. Aggressive Operation of Vehicle</th> <th>12. Over-correcting/Over-steering</th> <th>13. Swerving to Avoid Object</th> <th>14. Wrong Side or Wrong Way</th> <th>15. Under the Influence</th> <th>16. Vision Obscured (Within Unit)</th> <th>17. Improper lane Usage/Change</th> <th>18. Cell Phone</th> <th>19. Texting</th> <th>20. Other Improper Action</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>18</td> <td>19</td> <td>20</td> </tr> </tbody> </table>														Contributing Factors	01. Disregarded Signs, Signal, Etc.	02. Distracted/Inattention	03. Driving Too Fast for Conditions	04. Exceeded Authorized Speed Limit	05. Failed to Yield Right of Way	06. Ran off Road	07. Fatigued/Asleep	08. Followed Too Closely	09. Made an Improper Turn	10. Medical Related	11. Aggressive Operation of Vehicle	12. Over-correcting/Over-steering	13. Swerving to Avoid Object	14. Wrong Side or Wrong Way	15. Under the Influence	16. Vision Obscured (Within Unit)	17. Improper lane Usage/Change	18. Cell Phone	19. Texting	20. Other Improper Action	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20																																																																																																																																																													
Contributing Factors	01. Disregarded Signs, Signal, Etc.	02. Distracted/Inattention	03. Driving Too Fast for Conditions	04. Exceeded Authorized Speed Limit	05. Failed to Yield Right of Way	06. Ran off Road	07. Fatigued/Asleep	08. Followed Too Closely	09. Made an Improper Turn	10. Medical Related	11. Aggressive Operation of Vehicle	12. Over-correcting/Over-steering	13. Swerving to Avoid Object	14. Wrong Side or Wrong Way	15. Under the Influence	16. Vision Obscured (Within Unit)	17. Improper lane Usage/Change	18. Cell Phone	19. Texting	20. Other Improper Action																																																																																																																																																																																															
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20																																																																																																																																																																																																
<table border="1"> <thead> <tr> <th>Roadway</th> <th>30. Debris</th> <th>31. Non-highway Work</th> <th>32. Obstruction in Roadway</th> <th>33. Road Surface Condition (i.e., Wet)</th> <th>34. Rut, Holes, Bumps</th> <th>35. Shoulders (None, Low, Soft, High)</th> <th>36. Traffic Control Device (i.e., Missing)</th> <th>37. Work Zone (Constr./Maint./Utility)</th> <th>38. Worn, Travel-Polished Surface</th> <th>48. Other</th> <th>49. Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> </tr> </tbody> </table>														Roadway	30. Debris	31. Non-highway Work	32. Obstruction in Roadway	33. Road Surface Condition (i.e., Wet)	34. Rut, Holes, Bumps	35. Shoulders (None, Low, Soft, High)	36. Traffic Control Device (i.e., Missing)	37. Work Zone (Constr./Maint./Utility)	38. Worn, Travel-Polished Surface	48. Other	49. Unk.	01	02	03	04	05	06	07	08	09	10	11	12																																																																																																																																																																														
Roadway	30. Debris	31. Non-highway Work	32. Obstruction in Roadway	33. Road Surface Condition (i.e., Wet)	34. Rut, Holes, Bumps	35. Shoulders (None, Low, Soft, High)	36. Traffic Control Device (i.e., Missing)	37. Work Zone (Constr./Maint./Utility)	38. Worn, Travel-Polished Surface	48. Other	49. Unk.																																																																																																																																																																																																								
01	02	03	04	05	06	07	08	09	10	11	12																																																																																																																																																																																																								
<table border="1"> <thead> <tr> <th>Non-Motorist</th> <th>50. Inattentive</th> <th>51. Lying &/or Illegally in Roadway</th> <th>52. Failure to Yield R. of W.</th> <th>53. Not Visible (Dark Clothing)</th> <th>54. Disregard Signs, Signals, Etc.</th> <th>55. Improper Crossing</th> <th>56. Daring</th> <th>57. Wrong Side of Road</th> <th>58. Other</th> <th>59. Unk.</th> <th>60. Animal in Road</th> <th>61. Glare</th> <th>62. Weather Cond.</th> <th>63. Other</th> <th>64. Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> </tr> </tbody> </table>														Non-Motorist	50. Inattentive	51. Lying &/or Illegally in Roadway	52. Failure to Yield R. of W.	53. Not Visible (Dark Clothing)	54. Disregard Signs, Signals, Etc.	55. Improper Crossing	56. Daring	57. Wrong Side of Road	58. Other	59. Unk.	60. Animal in Road	61. Glare	62. Weather Cond.	63. Other	64. Unk.	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16																																																																																																																																																																						
Non-Motorist	50. Inattentive	51. Lying &/or Illegally in Roadway	52. Failure to Yield R. of W.	53. Not Visible (Dark Clothing)	54. Disregard Signs, Signals, Etc.	55. Improper Crossing	56. Daring	57. Wrong Side of Road	58. Other	59. Unk.	60. Animal in Road	61. Glare	62. Weather Cond.	63. Other	64. Unk.																																																																																																																																																																																																				
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16																																																																																																																																																																																																				
<table border="1"> <thead> <tr> <th>Environmental</th> <th>70. Brakes</th> <th>71. Steering</th> <th>72. Power Plant</th> <th>73. Tires/Wheel</th> <th>74. Lights</th> <th>75. Signals</th> <th>76. Windows/Shield</th> <th>77. Restraint System</th> <th>78. Truck Coupling</th> <th>79. Cargo</th> <th>80. Fuel System</th> <th>81. Other</th> <th>82. Unk.</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>02</td> <td>03</td> <td>04</td> <td>05</td> <td>06</td> <td>07</td> <td>08</td> <td>09</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> </tr> </tbody> </table>														Environmental	70. Brakes	71. Steering	72. Power Plant	73. Tires/Wheel	74. Lights	75. Signals	76. Windows/Shield	77. Restraint System	78. Truck Coupling	79. Cargo	80. Fuel System	81. Other	82. Unk.	01	02	03	04	05	06	07	08	09	10	11	12	13	14																																																																																																																																																																										
Environmental	70. Brakes	71. Steering	72. Power Plant	73. Tires/Wheel	74. Lights	75. Signals	76. Windows/Shield	77. Restraint System	78. Truck Coupling	79. Cargo	80. Fuel System	81. Other	82. Unk.																																																																																																																																																																																																						
01	02	03	04	05	06	07	08	09	10	11	12	13	14																																																																																																																																																																																																						

2019545842

Unit:	Date of Birth	Sex:	Race	INJ:	Seat:	R/S/D	A.B.D.	Eject	LAI:	Tran:	Name	Street Address	Zip Code
1	7/12/1951	M	W	a	01	13	a	3	1	a	ECONOMOU THEMISTOKLIS GEORGI	329 MULBERRY RD EASLEY SC	296408887
2	8/15/1953	M	W	a	01	31	a	3	1	a	SMITH MICHAEL DANNY	220 STANCIL ST EASLEY SC	296408872
2	2/13/1971	F	W	a	04	00	a	3	1	a	SMITH, MARY ANN	220 STANCIL ST EASLEY SC	29640

Race	A - Asian/Pacific Islander	W - Caucasian	B - African American	H - Hispanic	O - Other	I - Alaskan Native or American Indian	U - Unk
Injury Status	0 - Not Injured 3 - Incapacitating 1 - Possible Injury 4 - Fatal						
Seating Loc.	01 02 03 04 05 06 07 08 09						
Air Bag Deployment / Switch	1 - Deployed Front 4 - Not Deployed 2 - Deployed Side 7 - Not Applicable 3 - Deployed Both 9 - Deployment Unk						
Ejection	1 - Not Ejected 2 - Part. Ejected 3 - Tot. Ejected 7 - Not App 9 - Unk						
Head Injury	1 - Yes 2 - No						
Location After Impact	1 - Not Trapped 2 - Extricated (Mechanical Means) 3 - Freed (non-mech) 4 - Not Applicable 9 - Unknown						
Sequence of Events							
Transported to Medical Facility	1 - Yes 2 - No 3 - Unknown By: 1-EMS 2-Police 8-Other 9-Unk						
Restraint/Safety Device	00 - None Used 21 - Child Safety Seat 11 - Shoulder belt 88 - Other 12 - Lap Belt Only 99 - Unk 13 - Shoulder & Lap Belt 99 - Unk 31 - Helmet 51 - Reflective Clothing 41 - Protective Pads 61 - Lighting						

Non-Collision	Collision: Not Fixed	Collision: Fixed Object
01 - Cargo/Equip Loss or Shift 02 - Cross Median/Center 03 - Downhill Runaway 04 - Equipment Failure 05 - Fire/Explosion 06 - Immersion 07 - Jackknife 08 - Overturn/Rollover 09 - Ran off Road Left 10 - Ran off Road Right 11 - Separation of Units 12 - Spill (Two-Wheeled Veh) 18 - Other Non-collision 19 - Unk. Non collision	20 - Animal (Deer Only) 21 - Animal (AK Other) 22 - Motor Veh (in Transport) 23 - Motor Veh (Stopped) 24 - Motor Veh (Other Roadway) 25 - Motor Veh (Parked) 26 - Pedalcycle 27 - Pedestrian 28 - Railway Veh 29 - Work Zone 30 - Work Zone Maint. Equip 38 - Other Movable Object 39 - Unk. Movable Object	47 - Embankment 48 - Equipment 49 - Fence 50 - Guardrail End 51 - Guardrail Face 52 - Highway Traffic Sign Post 53 - Impact Attenuator/Crash Cushion 54 - Light/Luminaire Support 55 - Mail Box 56 - Median Barrier 57 - Overhead Sign Support 58 - Other (Post, Pole, Support, Etc.) 59 - Other (Wall, Building, Tunnel, Etc.) 60 - Tree 61 - Utility Pole 62 - Work Zone Maint. Equipment 63 - Other 69 - Unk

Manner of Collision (Struck Veh.)	1st / Most Deformed Area	1st Deformed	Most Deformed
43 - 00 - Not Coll. w/ Motor Veh 41 - Angle (↘ ↗) 42 - Angle (→ ←) 43 - Angle (↖ ↗) 44 - Angle (↘ ↗) 45 - Angle (↖ ↗) 46 - Angle (↘ ↗) 47 - Angle (↖ ↗) 48 - Angle (↘ ↗) 49 - Angle (↖ ↗) 50 - Sideswipe Same Dir 51 - Sideswipe Opposite Dir 52 - Backed Into 53 - Unknown			

Vehicle Type:	Vehicle Use Code	Vehicle Attachment	Action Prior to Impact	Weather Condition	Light Condition	Junction Type	Contributing Factors	Roadway	Non-Motorist	Environmental
01 - 01 - Automobile 02 - 12 - Pickup Truck 03 - 13 - Truck Tractor 04 - 14 - Other Truck 15 - Full Size Van 16 - Mini Van 17 - Sport Utility 18 - Other 19 - Pedestrian 20 - Train 21 - Pedalcycle 22 - Animal Drawn Veh 23 - Animal (Ridden) 24 - Pedestrian 25 - Train 26 - School Bus 27 - Passengers Bus 28 - Other 29 - Unk (Hit and Run Only)	01 - 01 - Personal 02 - 02 - Driver Training 03 - 03 - Construction/Maint 04 - 04 - Ambulance 05 - 05 - Military 06 - 06 - Transport Passengers 07 - 07 - Transport Property 08 - 08 - Farm Use 09 - 09 - Wrecker or Tow 10 - 10 - Police 11 - 11 - Government 12 - 12 - Fire Fighting 13 - 13 - Logging 14 - 14 - Other	1 - 1 - None 2 - 2 - Mobile Home 3 - 3 - Semi-Trailer 4 - 4 - Utility Trailer 5 - 5 - Farm Trailer 6 - 6 - Trailer w/ Boat 7 - 7 - Camper Trailer 8 - 8 - Towed Motor Vehicle 9 - 9 - Petroleum Tanker 10 - 10 - Lowboy Trailer 11 - 11 - Autocarmer Trailer 12 - 12 - Other Tanker 13 - 13 - Flat Bed 14 - 14 - Twin Trailers 15 - 15 - Other	01 - 01 - Backing 02 - 02 - Changing lanes 03 - 03 - Entering traffic lane 04 - 04 - Leaving traffic lane 05 - 05 - Making U-turn 06 - 06 - Movements Essentially Straight Ahead 07 - 07 - Overtaking/passing 08 - 08 - Parked 09 - 09 - Slowing or Stopped in traffic 10 - 10 - Turning left 11 - 11 - Turning right 12 - 12 - Walking 13 - 13 - Working 14 - 14 - Approaching Leaving Vehicle 15 - 15 - Entering/Crossing Location 16 - 16 - Playing/Working on Vehicle 17 - 17 - Pushing Vehicle 18 - 18 - Standing 19 - 19 - Walking 20 - 20 - Walking 21 - 21 - Walking 22 - 22 - Walking 23 - 23 - Walking 24 - 24 - Walking 25 - 25 - Walking 26 - 26 - Walking 27 - 27 - Working	1 - 1 - Clear (no adverse conditions) 2 - 2 - Rain 3 - 3 - Cloudy 4 - 4 - Sleet/Hail 5 - 5 - Snow 6 - 6 - Fog, Smog, Smoke 7 - 7 - Blowing Sand 8 - 8 - Severe Crosswinds 9 - 9 - Unk	1 - 1 - Daylight 2 - 2 - Dawn 3 - 3 - Dusk 4 - 4 - Dark (Lighting Unspecified) 5 - 5 - Dark (Street Lamp Lit) 6 - 6 - Dark (Street Lamp Not Lit) 7 - 7 - Dark (No Lights)	13 - 13 - Crossover 01 - 01 - Driveway 02 - 02 - Four-way Intersection 03 - 03 - Five/More Points 04 - 04 - Four-way Intersection 05 - 05 - Railway Grade Crossing 06 - 06 - Shared Use Paths or Trail 07 - 07 - Y - Intersection 08 - 08 - T-Intersection 09 - 09 - Traffic Circle 10 - 10 - Nonjunction 11 - 11 - Unk	01 - 01 - Disregarded Signs Signal Etc 02 - 02 - Distracted/Inattention 03 - 03 - Driving Too Fast for Conditions 04 - 04 - Exceeded Authorized Speed Limit 05 - 05 - Failed to Yield Right of Way 06 - 06 - Ran off Road 07 - 07 - Fatigued/Asleep 08 - 08 - Followed Too Closely 09 - 09 - Made an Improper Turn 10 - 10 - Medical Related 11 - 11 - Aggressive Operation of Vehicle 12 - 12 - Over-correcting/Over-steering 13 - 13 - Swerving to Avoid Object 14 - 14 - Wrong Side or Wrong Way 15 - 15 - Under the Influence 16 - 16 - Vision Obscured (Within Unit) 17 - 17 - Improper lane Usage/Change 18 - 18 - Cell Phone 19 - 19 - Texting 20 - 20 - Other Improper Action 21 - 21 - Unk	30 - 30 - Debris 31 - 31 - Non-highway Work 32 - 32 - Obstruction in Roadway 33 - 33 - Road Surface Condition (i.e. Wet) 34 - 34 - Rut Holes Bumps 35 - 35 - Shoulders (None Low Soft, High) 36 - 36 - Traffic Control Device (i.e. Missing) 37 - 37 - Work Zone (Const/Maint/Utility) 38 - 38 - Worn Travel/Polished Surface 48 - 48 - Other 49 - 49 - Unk	50 - 50 - Inattentive 51 - 51 - Lying &/or Illegally in Roadway 52 - 52 - Failure to Yield R. of W 53 - 53 - Not Visible (Dark Clothing) 54 - 54 - Disregard Signs Signals Etc 55 - 55 - Improper Crossing 56 - 56 - Daring 57 - 57 - Wrong Side of Road 58 - 58 - Other 59 - 59 - Unk 60 - 60 - Under the Influence 61 - 61 - Other Person Under Influence	60 - 60 - Animal in Road 61 - 61 - Glare 62 - 62 - Obstruction 63 - 63 - Weather Cond 64 - 64 - Other 65 - 65 - Unk

SOUTH CAROLINA DPS/OHS & DMV USE ONLY				Page # 1 Of 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 04/2016)				# Of Units 2		☒ Amended / Attach Copy of Original Report Corrected		Notified 1726		Arrived 1745					
Date 03-22-2019		Time of Collision 1720		County 39		1 - Interstate 2 - US Primary 3 - SC Primary		4 - Secondary 5 - County 6 - PP - 7 - Ramp		Collision Location (Rt # / Name) 8 / GENTRY MEM HWY				Main line 6 - Connection 2 - Alternate 7 - Business 5 - Spur		Miles 1.43		Dr N E S W		In (Near) City or Town of EASLEY	
Lane # / Dir # 2 Of 4 N E S W		Distance Offset 0.01 Miles Feet		Direction N E S W		1 - Interstate 2 - US Primary 3 - SC Primary		4 - Secondary 5 - County 6 - Other 7 - Ramp		Base Intersection (Rt # / Name) OWEN LN				Main line 6 - Connection 2 - Alternate 7 - Business 5 - Spur 9 - Other		GPS COORDINATES 00 00'00 00" DEGREES MINUTES SECONDS					
R R Id		From Ramp Only N E 1 - Entrance S W 2 - Exit		To N E S W		1 - Interstate 2 - US Primary 3 - SC Primary		4 - Secondary 5 - County 6 - Other 7 - Ramp		Second Intersection (Rt # / Name) 88 / OLD EASLEY PICKENS HWY				Main line 6 - Connection 2 - Alternate 7 - Business 5 - Spur 9 - Other		Latitude 34 50 48.88 Longitude 82 39 12.64					
R-623535										R-623536											
Onver/Pedestrian's Full Name ECONOMOU THEMISTOKLIS GEORGIOS										Onver/Pedestrian's Full Name SMITH MICHAEL DANNY											
Unit # 1		Sex M		Race W		Street 329 MULBERRY RD				Unit # 2		Sex M		Race W		Street 220 STANCIL ST					
# Occ 1		Birth Date 07-12-1951		City, State, & Zip EASLEY SC 296408887						# Occ 2		Birth Date 08-15-1953		City, State, & Zip EASLEY SC 296408872							
State SC		Driver's License # 101600817				Class D		Insurance Company USAA				State SC		Driver's License # 004597693				Class G		Insurance Company UNINSURED	
Year 1998		Body CP		Vehicle Make BMW		VIN WBABF8326WEH60917				Year 2017		Body MP		Vehicle Make TAOT		VIN L9NTEACXXE1301262					
State SC		Year 2019		License Plate # 2049LL		Owner's D.L. # 101600817				State OT		Year		License Plate # NONE		Owner's D.L. # 004597693					
Home Telephone 6318305114				Owner's Full Name ECONOMOU THEMISTOKLIS GEORGIOS						Home Telephone 8644345991				Owner's Full Name SMITH MICHAEL DANNY							
Bus. Telephone				Street 329 MULBERRY RD						Bus. Telephone				Street 220 STANCIL ST							
Contributed To Collision Yes No				City, State & Zip EASLEY SC 296408887						Contributed To Collision Yes No				City, State & Zip EASLEY SC 296408872							
Estimated Speed 40		Speed Limit 45		C.D.L. Req. Yes No		T/B S Req. Yes No		Alc/Drg info (see back) Yes No		Estimated Speed 35		Speed Limit 45		C.D.L. Req. Yes No		T/B S Req. Yes No		Alc/Drg info (see back) Yes No			
Statute # 56-10-0225		Statute #		Towed By Yes No		Statute # 56-10-0225		Statute #		Towed By Yes No		Statute # 56-10-0225		Statute #		Towed By Yes No		LEWIS AUTO (NOR)			
Driver/Pedestrian's Full Name										State Year License Plate # Owner's D.L. #											
Unit # # Occ		Sex Birth Date		Race City, State, & Zip		Home Telephone Bus. Telephone				Owner's Full Name Street											
State		Driver's License #				Class		Insurance Company				Contributed To Collision Yes No		City, State & Zip							
Year		Body		Vehicle Make		VIN				Estimated Speed Speed Limit		C.D.L. Req. Yes No		T/B S Req. Yes No		Alc/Drg info (see back) Yes No					
Dir. of Travel		Unit 1: N S E W		Unit 2: N S E W		Unit 3: N S E W				Statute #		Statute #		Towed By Yes No							
										Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam 1		Prop. Dam 2			
										\$ 1500		\$ 500									
Property Owner (Witness) BRYAN BRYAN OLIVIA										Property Owner (Witness) FREEMAN FREEMAN BRIANNA											
Address 329 CANVASBACK WAY EASLEY										Address 200 RIVERS EDGE DR EASLEY											
State		Zip		Phone		State		Zip		Phone		State		Zip		Phone					
SC		29642		8645084975		SC		29642		864727196		SC		29642		864727196					
Photo (Y) N		Describe What Happened (Refer to Units by Number)														Pending Investigation (Y) (N)					
UNIT 1 WAS IN THE #2 LANE EASTBOUND ON SC 8. UNIT 2 WAS IN THE #1 LANE EASTBOUND ON SC 8 NEXT TO UNIT 1. UNIT 2 MADE AN IMPROPER TURN INTO THE LANE OF TRAVEL OF UNIT 1 CAUSING UNIT 1 TO STRIKE UNIT 2. UNIT 2 CROSSED A RAISED PORTION OF PAVEMENT WHERE MILLING AND PAVING WERE BEING PERFORMED.																					
03/02/20: REPORT WAS AMENDED TO SHOW WITNESS INFORMATION.																					
08/04/2023: REPORT WAS AMENDED TO REFLECT THAT THE COLLISION OCCURRED IN A WORK ZONE, DUE TO EVIDENCE THAT WAS PRESENTED ON 8/4/2023. THAT THIS WAS A ACTIVE WORK ZONE AND THAT UNIT 2 WAS STRUCK IN THE PASSENGER SIDE OF UNIT 2.																					

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name LAGINESTRA - M	Rank TRP	SCCJA# 9598-3463	Junsdiction Code HP03	Review Date 03-02-2020	Reviewer's Name KN Brown	Rank F/SGT	Internal Agency Code 19GV058216
--	-------------	---------------------	--------------------------	---------------------------	-----------------------------	---------------	------------------------------------

From: Johnson, Shirley E (johnsonse@scdot.org)

To: fpressly@yahoo.com

Cc: RadekerAL@scdot.org

Date: Friday, May 15, 2020 at 04:39 PM EDT

With reference to my previous email response dated 4/3/2020, I again confirm the work zone belonged to SCDOT on 3/22/2019. I am also attaching the Daily Work Report (DWR) for your information.

This concludes the response of SCDOT to your request.

Shirley E. Johnson
FOIA Officer
South Carolina Department of Transportation
955 Park Street
Columbia, SC 29201
Telephone: (803) 737-0997
Email: johnsonse@scdot.org



3.22.19 SC-8.pdf
101.7kB

[illegible]

Employee Signature:_____



Daily Work Report

Form CR. 2-49. A

3/21/19

[illegible]

Employee Signature _____

[illegible]

Employee Signature:

**In-Place Density
CONTRACTOR QA**

Type Mix: Surface B Job Mix No.: D0510 Lot No.: 5 File No.: 3948130
 County: Pickens Lot Date: 3/22/19
 Prime Contractor: King Asphalt Asphalt Contractor: King Asphalt
 Weather: Clear Air Temperature (°F) Low: 45° High: 68°
 Daily Average MSG: 2.467 Plant Location: Liberty

Core	Lane	Station Number	Distance From Right Edge	Weight in Air (gms)	Weight in Water (gms)	SSD Weight (gms)	Bulk Specific Gravity (gms)	Avg. Daily MSG	Percent Compaction	
									LSL	93.0
									USL	-
1	L2	87+25	4.0	1713.7	977.1	1715.3	2.321	2.467		94.08
2	L2	73+80	6.3	1694.8	955.3	1696.1	2.288			92.74
3	L2	65+32	5.7	1701.2	965.8	1703.2	2.307			93.51
4	L2	45+76	1.3	1302.6	743.1	1304.1	2.322			94.12
5	L2	34+33	7.7	1794.4	1032.8	1795.7	2.352			95.34
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
Average							2.318	2.467		94.0
Core Date:	Security Tag No(s):			Cores Trimmed By:			Cores Weighed By:		Weigh Date:	
3/22/19	0007303								3/26/19	

Form 400.09



DAILY REPORT OF ASPHALT ROADWAY INSPECTION

Form 400.04

Rev. 06/2016

Page 1 of 3

Date: 3/22/19 Contract #: 3984130 Project #: PO37242 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 *ag*

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

Prime Contractor: King Asphalt Asphalt Contractor: King Asphalt

Rate of Quantities on the Road(Ditch and Leveling to be completed on separate Form 400.04)
(rate frequency = 200 ton maximum)

Load #	Road #	Lane	From Station	To Station	Avg. Width (feet)	Linear Feet	Total SY	Total Tons	Actual lbs / SY	Spec lbs/ SY or Leveling
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	
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	12:54	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:	VOGELE	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: [REDACTED]

Signature: [REDACTED] Date: _____

SCDOT Rd. Inspec: [REDACTED]

Signature: [REDACTED] Date: 3/22/19

RCE: [REDACTED]

Signature: [REDACTED] Date: 3/29/19

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.

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

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.

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.



July 3, 2018

KING ASPHALT, INC.
PO BOX 179
LIBERTY, SC 29657

NOTIFICATION OF AWARD

S.C. File No.: 3948130
Contract No.: 17352
Proj. No.: P037242 & P037243
Work Type: ASPHALT

Dear Contractor:

This letter serves as the official notification of award for the above referenced project based upon the bid submitted by your company in the amount of **\$2,290,905.14** in the **June 12, 2018** Highway Letting.

Contracts and bond forms will be forwarded under separate cover. Subcontractor Request forms can be found on the SCDOT Extranet website under the Miscellaneous Construction tab. If required, please submit Sub1, Sub2 and Subreq3 to the appropriate Road or Bridge Construction Engineer.

Please contact the District Construction Engineer of **District # 3** at **PHONE # 864-241-1010** in order to schedule the preconstruction conference as set forth in Section 108.2 of the 2007 Standard Specifications for Highway Construction.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Claude R. Ipock", is written over a light blue background.

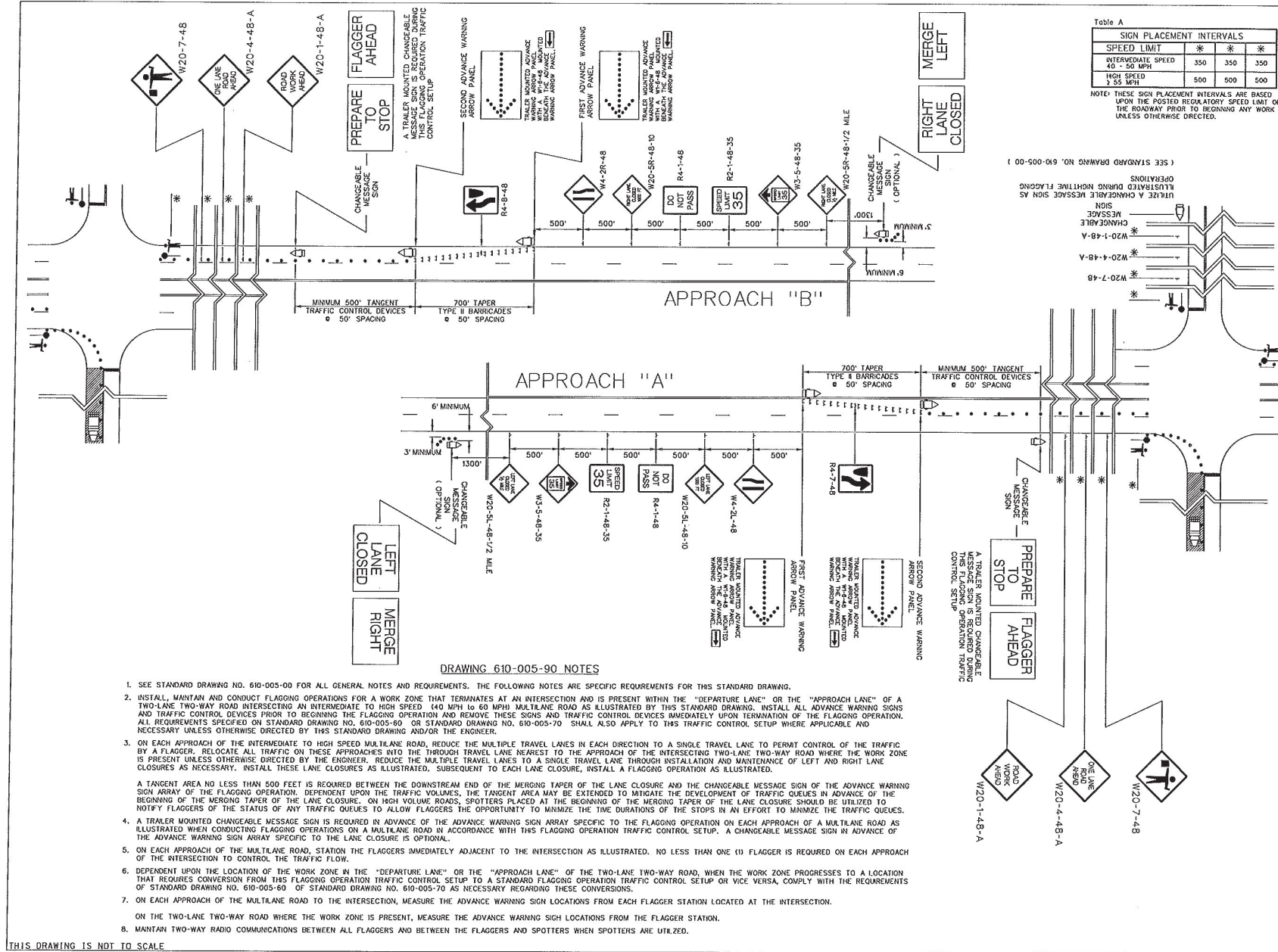
Claude R. Ipock, P.E.
Director of Construction

CRI/JBP/mad
File:CCA/JBP

Post Office Box 191
955 Park Street
Columbia, SC 29202-0191



www.scdot.org
An Equal Opportunity
Affirmative Action Employer
855-GO-SCDOT (855-467-2368)



REFERENCES

WORK ZONE TRAFFIC
CONTROL ENGINEER

SIGNATURE
7/27/15
DATE

6					
5					
4					
3					
2					
1					
0	8-12-14	JCS	NEW DRAWING		
#	DATE	CHK	DESCRIPTION		

SCDOT

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
DESIGN STANDARDS OFFICE
955 PARK STREET
ROOM 405
COLUMBIA, SC 29201

STANDARD DRAWING

FLAGGING OPERATIONS
STOP SIGN CONTROLLED
INTERSECTIONS with
INTERMEDIATE to
HIGH SPEED
40 MPH - 60 MPH
MULTILANE ROADS

610-005-90
EFFECTIVE LIFTING DATE | JAN 2016

Smith v. King Asphalt Inc. (2021CP3900329) 000441

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 27

King Asphalt, Inc.'s Return to Plaintiffs' Motion for Reconsideration, filed April 18, 2025. (App. 18) / King Asphalt, Inc.'s Return to Plaintiffs' Motion for Reconsideration, filed on April 18, 2025. (Resp. 15)

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Michael and Mary Smith,

Plaintiffs,

v.

Themistoklis Economou, King Asphalt Inc.,
and South Carolina Department of
Transportation (SCDOT),

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C/A No. 2021-CP-39-00329

**KING ASPHALT, INC.'S
RETURN
TO PLAINTIFFS'
MOTION FOR RECONSIDERATION**

The defendant King Asphalt, Inc. opposes the plaintiffs Michael and Mary Smith's Motion to Reconsider this Court's March 10, 2025 Order Granting Defendant King Asphalt, Inc.'s Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment and submits this Return to briefly address the key points of Plaintiffs' motion:

1. Plaintiffs seek to establish King Asphalt's negligence *per se* by reference to a regulatory provision they fail to correctly interpret and apply, thus inadvertently demonstrating the necessity of expert testimony:

- a. The relevant paragraph of the SCDOT Special Provisions, Division 600: Traffic Control, found on page 22 of the SCDOT Proposal, Contract and Bond for Highway Construction, File No. 3948130, reads as follows:

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.

- b. In relying on the above paragraph of Division 600, Plaintiffs fail to appreciate its opening clause, which limits the prohibition of grade elevation differences

between adjacent travel lanes in excess of one inch to *surface planing and milling operations*. In other words, when a contractor is milling a road (and not paving it), the elevation of a milled lane and a yet-to-be milled lane shall not be greater than one inch, or—after milling both lanes—the lanes’ levels shall be within an inch of each other.

- c. This one-inch standard was applicable to the operation King Asphalt completed—according to Plaintiffs’ own calculation found on the unnumbered page 16 of their Motion to Reconsider (filed on February 28, 2025)—on March 12, 2019, ten days before Plaintiffs’ accident, leaving both lanes in a milled condition. It did not apply when King Asphalt was paving the outside lane.
- d. On March 22, 2019, having paved the outside lane, King Asphalt could remove the traffic cones separating the lanes because the grade elevation difference between the milled inside lane and the newly laid asphalt surface on the outside lane did not exceed two inches. In doing so, King Asphalt complied with the requirements of Division 600 because its relevant paragraph—which immediately precedes the paragraph setting the one-inch standard for milling operation on page 22—reads as follows:

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. (emphasis added)

- e. Plaintiffs mistakenly claim that the above standard applies only to the grade elevation difference between a lane and a shoulder, citing the deposition of SCDOT’s Joshua Makinson. (Supplement–Plaintiffs’ Motion to Reconsider, filed on 3/20/25, at 40.) Makinson, however, did not so testify. Quite the contrary, he testified that the two-inch limit applies to the grade differential between lanes.

Q. Have you ever seen a situation where the differential was greater than two inches? A. On the center of the road in between lanes? Q. Between lanes. A. It is -- it is outside of our specification to have a differential greater than two inches on if you’ve got asphalt, *the differential can be up to two*

inches. (Makinson Dep. 13:3–10.)

2. The confusion Plaintiffs exhibit in regard to applicability of relevant regulatory standards clearly demonstrates that they cannot prove their case without the assistance of an expert. Explication of the standards set by Division 600 and their application to the facts of the case—whether and when King Asphalt was engaged in milling operation as opposed to paving operation—would require testimony in the form of opinions or inferences, which Plaintiffs cannot provide because such opinions would not be “rationally based on the perception of the witness . . . and [would] require special knowledge, skill, experience or training.” Rule 701, SCRE. Terms such as “hot mixed asphalt (HMA) base courses” and “planing and milling operation,” to name a few, are not matters familiar to an average juror.
3. Plaintiffs have indicated that they would call SCDOT’s engineer Joseph Daniel Laws to testify. Note, however, that Mr. Laws, who assisted the district engineer Joshua Makinson, testified at his deposition that the two-inch standard applied to the grade differential between lanes. (Laws Dep. 19:22–24, 23:10–13, 26:24–27:3.)

WHEREFORE, for the reasons stated in its motion for summary and further articulated in this reply, the defendant King Asphalt, Inc. asks this Court to deny Plaintiffs’ Motion to Reconsider and dismiss this case with prejudice.

(signature page follows)

Respectfully submitted,

s/Catharine Garbee Griffin

Catharine Garbee Griffin, SC Bar No. 9821
BAKER, RAVENEL & BENDER, LLP
3710 Landmark Drive, Suite 109
Post Office Box 8057
Columbia, South Carolina 29202
Tel: (803) 799-9091
Fax: (803) 779-3423
E-Mail: cgriffin@brblegal.com
Attorney for the Defendant
King Asphalt, Inc.

April 18, 2025

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 28

Appellants' Motion for Leave to File Surreply to Defendant's Return, filed April
21, 2025. (App. 19)

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

MOTION FOR LEAVE TO FILE
SURREPLY TO DEFENDANT'S
RETURN TO PLAINTIFFS' MOTION
TO RECONSIDER

Clerk of Court Pickens County, SC
APR 21 '25 AM 10:51

MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER

Plaintiffs, pursuant to the Court's discretion under Rule 59(e), SCRCF, respectfully move for leave to file a Surreply to Defendant King Asphalt, Inc.'s Return to Plaintiffs' Motion to Reconsider.

I. Procedural Posture

The Court's April 4, 2025 Order ("Initial Order Regarding Motion to Reconsider") set forth the briefing schedule as follows:

- Plaintiffs (as Movants) were to submit any filings in support of their Motion to Reconsider by **April 11, 2025**.
- Defendant (Non-Moving Party) was permitted to file a Return by **April 18, 2025**.

Plaintiffs complied fully and timely submitted their Second Supplemental Submission. Defendant subsequently filed a Return. The Order did not provide for a Surreply by Plaintiffs, but did not expressly prohibit the Court from granting leave to file one. This motion respectfully requests such leave in light of material mischaracterizations raised in Defendant's Return. Denying Plaintiffs this opportunity would prejudice them by allowing the Court to rule on a distorted record.

II. Grounds for Leave

Courts have discretion to accept Surreplies where a reply brief raises new arguments or misstates material facts. Courts routinely grant leave to file a surreply where the opposing party's reply or return introduces new arguments or factual claims that the movant has not had an opportunity to address. See, e.g., *Lewis v. Rumsfeld*, 154 F. Supp. 2d 56, 61 (D.D.C. 2001) ("The standard for

granting leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party's reply."). Plaintiffs submit that Defendant's Return:

1. **Introduced new factual mischaracterizations** of deposition testimony, particularly testimony by Joe Daniel Laws III and Joshua Makison.
2. **Misapplied and misstated the controlling SCDOT regulatory standard**, misrepresenting the scope and applicability of the 1-inch differential rule governing surface planing and milling operations.
3. **Constructed artificial complexity** to persuade the Court that expert testimony is required, contrary to long-standing South Carolina precedent.
4. **Misrepresented to the Court that one contested issue, lane height differential, controls all claims**, incorrectly suggesting that dismissal of one theory warrants summary judgment on all others, despite the presence of multiple independent violations.

Absent an opportunity to address these misstatements, the Court risks ruling based on a distorted record. Plaintiffs would be prejudiced if leave is not granted, as the Defendant's Return raises new factual and legal contentions that Plaintiffs have not previously had an opportunity to address. The attached Surreply is narrowly tailored to respond to those new or misleading statements.

III. Legal Basis

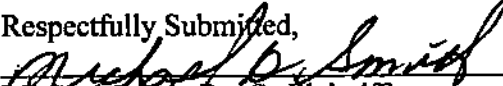
Under **Rule 59(e), SCRCP**, a court may alter or amend a judgment to correct manifest errors of law or fact. As emphasized in **Elam v. S.C. Dept. of Transp., 361 S.C. 9 (2004)**, the Rule ensures the Court may reconsider rulings when critical legal issues or factual misapprehensions are identified.

Plaintiffs seek to file the attached Surreply not to reiterate prior arguments, but solely to correct demonstrably misleading representations made by Defense counsel in the Return. Plaintiffs may reiterate points, but not for the purpose of rearguing them, only to place them in proper context.

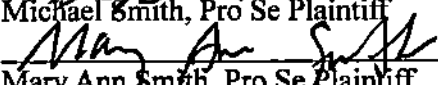
IV. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court grant leave to file the attached Surreply in further support of their Motion to Reconsider and permit it to be entered into the record as Exhibit A.

Respectfully Submitted,


Michael Smith, Pro Se Plaintiff

4/21/25
Date


Mary Ann Smith, Pro Se Plaintiff

4/21/25
Date

220 Stancil Street

Easley, SC 29640

MichaelDSmith@housemail.com

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, SC
APR 21 '25 AM 10:53

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER** in **Smith v. King Asphalt, Inc., Case No. 2021-CP-39-00329** 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: April 21, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867736
Date of Mailing: April 21, 2025

Respectfully submitted,



Michael Smith
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

April 21, 2025
Date

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, SC
APR 21 '25 AM 10:51

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER** in **Smith v. King Asphalt, Inc., Case No. 2021-CP-39-00329** was served upon the following counsel of record:

The Honorable Jessica A. Salvini
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

The document was served via the following methods:

By Email to: jsalvinisc@sccourts.org, jsalvinilc@sccourts.org
Date of email service: April 21, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867743
Date of Mailing: April 21, 2025

Respectfully submitted,



April 21, 2025

Michael Smith

Date

Pro Se Plaintiff

220 Stancil Street

Easley, S.C. 29640

MichaelDSmith@housemail.com

Clerk of Court Pickens County, SC
APR 21 '25 AM 10:52

Exhibits

Smith v. King Asphalt, Inc.
2021-CP-39-00329

**MOTION FOR LEAVE TO FILE SURREPLY TO DEFENDANT'S RETURN TO
PLAINTIFFS' MOTION TO RECONSIDER**

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

PROPOSED SURREPLY TO
DEFENDANT'S RETURN TO
PLAINTIFFS' MOTION TO
RECONSIDER

**PROPOSED SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO
RECONSIDER**

I. Introduction

Defendant's Return contains material misstatements that mischaracterize the record, distort deposition testimony, and improperly interpret governing regulations. This Surreply is narrowly tailored to correct those issues, not to reargue the Motion to Reconsider.

II. Plaintiffs' Complaint Alleges Multiple Independent Regulatory Violations

Under Rule 56(a), SCRCP, and as clarified by the South Carolina Supreme Court in *The Kitchen Planners, LLC v. Friedman*, summary judgment is appropriate only when there is no genuine dispute of material fact as to a specific claim. Defense counsel's motion targets only the lane height differential issue, ignoring the five other claims alleging distinct regulatory violations. Even if the Court were to accept their interpretation of the 1-inch rule (which Plaintiffs dispute), the remaining claims, premature traffic control removal, excessive milling duration, failure to deploy a mandated overall compliant traffic control scheme, unreplaced turn arrows, and obstruction, present independent factual disputes that preclude summary judgment, rule 56(a) requires courts to evaluate each claim individually, and summary judgment cannot be granted on the entire case based on a single disputed issue. See *The Kitchen Planners, LLC v. Friedman*, Op. No. 28173 (S.C. Aug. 23, 2023) ("[T]he proper standard is the 'genuine issue of material fact' standard outlined in the text of [Rule 56].").

While Defendant has focused narrowly on the lane height differential issue and framed it as a technically complex matter requiring expert testimony, this approach misleads the Court into treating the case as if it hinges on a single disputed issue, when in fact, multiple independent regulatory violations are at stake. Plaintiffs' pleadings identify multiple, distinct violations of law

and regulation, each independently sufficient to support a finding of negligence per se. These include:

1. **Excessive Lane Height Differential** – A greater-than-1-inch height differential existed between the paved and milled lanes, contrary to SCDOT specifications.
2. **Unlawful and Premature Removal of Traffic Control Devices** – Devices were removed before the surface was safe for traffic, in violation of regulatory safety requirements.
3. **Milled Lane Left Open for Over Ten Days** – The inside lane remained milled and unpaved for sixteen days before the incident (in violation of 10 day limit).
4. **Unreplaced Turn Arrows** – Required turning lane directional arrows were missing from turning lanes for well beyond the 72-hour regulatory limit (for as much as 21 days in this instance).
5. **Failure to Implement a Compliant Traffic Safety Plan** – Defendant failed to deploy the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer-compliant traffic safety plan required for long-term projects conducted under contract with SCDOT.

Additionally, the pleadings asserts claims for **fraud and obstruction**, including Defendant's misrepresentation that no work zone existed, redaction of important discovery documents to conceal the names of persons responsible for oversight and inspection, denial that workers were present (or played a role) at the time of the accident, and the removal of materials from the scene prior to law enforcement's arrival. Some of which occurred after the fact of the filing of the complaint; but, came into the knowledge of the Plaintiffs as the case evolved.

Each of these violations is supported by the record and stands independently. The defense's effort to center the litigation solely on one contested issue, lane height differential, does not negate the existence of these separate violations. Even if one theory of liability were deemed insufficient, the others would still compel trial.

III. Defendant Misstates the Applicability of the 1-Inch Rule

Defendant's Return narrowly interprets the 1-inch rule to apply only during active milling, arguing that it no longer controlled by March 22, the day of the crash. However, the Defendant King Asphalt's Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - (pp. 22,23 & 30) state:

"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." [Exhibit B - Defendant King Asphalt's Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 22] [emphasis added]

"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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 22] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 22] [emphasis added]

“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 before opening the travel lane to traffic at these locations.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 23] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 23] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 23] [emphasis added]

“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 RCE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 30] [emphasis added]

So long as a lane has been milled and remains in a milled condition, the milling operation is not complete, as further surface preparation is required prior to paving. That the regulatory text

includes a 2-inch standard applicable during certain paving operations does not mean that such a standard governs merely because paving is taking place nearby. In this case, the adjacent inside lane remained in the middle of its milling procedure and had been left in that condition for 16 days prior to the accident. The regulations clearly limit milling operations to a 1-inch height differential between adjacent lanes open to traffic. For Defendant to construe that the 1-inch rule for milled lanes is effectively doubled, solely because paving occurred next to it, produces an absurd result that contravenes the plain language and intent of the regulation. The regulation does not present the 1-inch and 2-inch standards as alternatives, but as context-specific requirements that apply based on the operation performed. If only paving is occurring, the 2-inch limit may apply. If milling is occurring, the 1-inch limit governs. When both operations are happening, such as in this case, where milling occurred in one lane and paving in the adjacent lane of the eastbound Highway 8, the stricter 1-inch limitation must apply. This interpretation is further supported by the paragraph that follows in the regulation, which prescribes the specific corrective action required before such a lane may be reopened to traffic. Any interpretation that allows a doubling of the permissible differential when milling and paving are performed simultaneously yields a result so contrary to the regulation's safety purpose that it must be rejected under controlling principles of statutory construction. See *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("A statute should not be construed in a way that would lead to an absurd result or defeat plain legislative intent."); see also *State v. Landis*, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004) (statutory construction must avoid unreasonable or absurd results and effectuate the intent found in the language used). These authorities reinforce Plaintiffs' position that King Asphalt's reading of the regulation introduces a dangerous loophole, relaxing standards precisely when hazards are greatest, and should be rejected in favor of a reading that preserves the regulation's plain safety objective.

IV. Defendant Mischaracterizes Deposition Testimony

Defendant claims that deposition testimony supports the application of a 2-inch tolerance between lanes. However, this assertion is misleading. Defense counsel presents cherry-picked excerpts without including the corresponding questions, depriving the Court of the necessary context. What a witness may have said in one setting or sequence does not constitute a definitive response to the plain language violations now before the Court.

Defense counsel's claim that deposition testimony supports a 2-inch tolerance between a milled and newly paved lane is unsupported by the record. No witness provided explicit, categorical testimony endorsing such a differential under the circumstances here—where live traffic was permitted to cross a hazardous elevation gap exceeding regulatory limits, absent required traffic controls, in direct violation of SCDOT safety rules. Limbaugh and Michael (King Asphalt's corporate employees) spoke only in theoretical or general terms about hypothetical compliance. [Exhibit C - Michael - Limbaugh - Makison - Laws Deposition excerpts] **Indeed, both witnesses testified under oath that they were not present at the site, records show they were not assigned to the project payroll, and therefore possessed no firsthand knowledge of the project's specifics or Defendant's actual adherence to safety protocols at the accident site.** Their speculative assertions, therefore, untethered to the facts of this case, cannot negate the plain regulatory violations documented in the record. See *Shelton v. LS & K, Inc.*, 374 S.C. 294,

297, 648 S.E.2d 307, 308 (Ct. App. 2007) ('A mere scintilla of evidence is insufficient to defeat summary judgment').

Defendant quotes Joshua Makison's deposition (Dep. 13:3-10) to suggest that a 2-inch elevation difference between lanes is permissible. But Makison testified strictly about the general regulatory standard, not the specific sequence of operations or conditions at the accident site. He does however mention the differentiation between milling operations having the 1" limitation. (Makison Dep. 13:7-11) Makison testified he was not involved with the project, had no firsthand knowledge of the site, and appeared solely in the context of gathering FOIA documents. Citing regulatory text in the abstract does not validate King Asphalt's conduct on March 22. [Exhibit D - Laws - Makison Deposition - FULL]

Plaintiffs do not dispute that a 2-inch differential may be permitted in certain paving contexts, but not where the adjacent lane is still milled, triggering the stricter 1-inch limit.

Defendant similarly cites testimony from Joe Daniel Laws, claiming he supported the 2-inch standard. However, Laws did not make a categorical statement approving such a tolerance between a milled and paved lane. He acknowledged that traffic control devices must remain until the lane is "safened up" (as did Makison at page 15:3-7 "that everything is kosher, before the traffic control was pulled up") and confirmed the full extent of the work zone parameters being between "Roadwork Ahead" and End of Roadwork" signage, as per statutory description. His testimony, taken in full, supports Plaintiffs' contention that live traffic should not have been introduced into a clearly unsafe and incomplete roadway. [Exhibit D - Laws - Makison Deposition - FULL]

These witnesses were offered by Defendants under Rule 30(b)(6). After frustrating Plaintiff's discovery for years, Defendant now attempts to capitalize on the shallow and incomplete record those depositions produced, quoting its own employees (none of whom qualify as expert witnesses) without relevant site knowledge, contract familiarity, or project oversight. Worse still, the testimony was taken before Plaintiffs had obtained critical evidentiary documentation, limiting the scope of their questioning at the depositions.

An independent eyewitness driving a car directly behind Plaintiff, Olivia Bryan, placed the accident in a work zone, described the cones between the lanes, testified to the presence of King Asphalt Inc. workers within ten seconds of the accident site and affirmed the significant berm between the lanes. [Exhibit E - Eyewitness Olivia Paige Bryan Deposition - Excerpts]

The Court should approach Defendant's reliance on this testimony cautiously. While defense counsel emphasizes witness job titles, this emphasis does not account for the timeline limitations or the witnesses' admitted lack of firsthand knowledge regarding the specific project site and incident, undermining the testimony's applicability. Furthermore, by presenting deposition answers isolated from the preceding questions, the defense removes essential context. Without the questions that elicited them, the answers lack foundation and their significance can be easily distorted, potentially misrepresenting the actual testimony given.

V. No Expert Testimony is Required to Establish the Violation

The defense's argument that expert interpretation is needed is also contradicted by its own conduct. Defense counsel themselves cite and interpret the regulation, claiming to understand it so thoroughly that they can assert it exceeds the comprehension of jurors. Yet one of their own deponents, Joshua Makison, an SCDOT engineer with no involvement in the project, no firsthand knowledge of the accident site, and who was deposed solely for his understanding of regulations, quoted the 1-inch rule directly in his deposition: That an SCDOT engineer, was able to summarize the rule in under seven plain-English words (Makison Dep. 13:10,11) during deposition strongly undercuts the argument that the regulation is so technical it requires expert explanation to a jury.

Regulations governing public safety, such as those issued by SCDOT, are intentionally written in clear and accessible language so they can be understood by contractors, inspectors, and members of the general public. Defense counsel cannot simultaneously claim the rule is too complex for jurors to apply, while interpreting it themselves and urging the Court to accept their interpretation at the summary judgment stage, where Plaintiffs are not yet required to produce expert testimony. This inconsistency further undermines their argument and reinforces that the alleged violation is one that a jury is fully competent to evaluate. Requiring jurors to possess engineering expertise to understand a plainly written safety rule would be tantamount to expecting a watch owner to know how a watch works in order to be qualified to tell time.

VI. Conclusion

Defendant's Return relies, in part, on mischaracterizations of testimony and misinterpretation of applicable regulations. The Court should consider the totality of the record, including the violations and supporting evidence addressed in this Surreply.

Plaintiffs respectfully request that the Court grant their Motion to Reconsider based on the full and accurate record before it.

Respectfully Submitted,

Michael Smith, Pro Se Plaintiff

Date

Mary Ann Smith, Pro Se Plaintiff

Date

220 Stancil Street

Easley, SC 29640

MichaelDSmith@housemail.com

Name: *KING ASPHALT, INC.*

Address: *LIBERTY, SC*



**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
COLUMBIA, SC**

**PROPOSAL, CONTRACT AND BOND
FOR
HIGHWAY CONSTRUCTION**

BIDS RECEIVED

June 12, 2018

AWARD DATE

July 3, 2018

DESCRIPTION OF CONTRACT

**RESURFACING/RECONSTRUCTION - FDR, MILL & REPLACE,
S-171, SC 8**

S.C. File Number: 3948130

County: Pickens

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

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.

SPECIAL PROVISIONS

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.

However, on two-lane two-way and multilane primary and secondary roadways, application of a 4-inch wide solid line utilized for an edge line adjacent to an earth shoulder, white or yellow, may be delayed up to 72 hours after eradication of the original line when the length of eradicated line at a single location is no longer than 250 feet. In the event of multiple locations along the same line, each location must be separated from the adjacent location by no less than 250 feet with a cumulative total distance of eradicated line of no more than 1300 feet within any continuous 1 (one) mile length of roadway measured from a selected location. If the length of eradicated line exceeds 250 feet at any single location, the distance interval between multiple adjacent locations is less than 250 feet or a cumulative total distance of multiple locations of eradicated line exceeds 1300 feet within any continuous 1 (one) mile length of roadway measured from a selected location, replace the eradicated line(s) prior to reopening the adjacent travel lane to traffic.

On interstate 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 6-inch wide solid lines, utilized for edge lines, and 6-inch wide by 10 feet long white broken lines with a 30-foot gap, utilized for lane lines between travel lanes and auxiliary lanes, unless otherwise specified. 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.

On all roadways, apply and place white stop bars and white triangle yield bars in all locations where previous stop bars and triangle yield bars have been eradicated by the work. Apply and place white stop bars and white triangle yield bars at intersections controlled by stop and yield signs within 72 hours of the eradication of the original pavement marking. Apply and place white stop bars at signalized intersections controlled by traffic control signals and at railroad crossings prior to reopening a closed travel lane to traffic.

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 RCE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings. However, in regard to newly constructed turn lanes, apply and place white arrows the within turn lanes as directed by the RCE.

Within the limits of existing lane-drop sites on all roadways, apply and place white arrows in all locations where previous arrows have been eradicated by the work prior to the end of each day's work or shift or reopening the closed travel lane to traffic. In regard to newly constructed lane-drop sites, apply and place white arrows within the travel lane to be terminated prior to opening the travel lane to traffic and as directed by the RCE.

(J) Temporary Pavement Markings (Sub-section 609.4.1) --

Sub-section 609.4.1.1 Application Requirements General (Revision to paragraph 8) -



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

ZACHARY SHANE MICHAEL

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. We have one main office headquarters. We're in
2 Liberty, South Carolina at 107 Tech Lane.
3 Liberty, 29657. We have a plant about three
4 miles away from there in Liberty as well. And
5 two other asphalt plants. One in Pacolet, South
6 Carolina, and one in Simpsonville, South
7 Carolina. Those are not -- those are plant
8 locations. Our only main office is in Liberty.

9 Q. So Pacolet, Simpsonville, Liberty all have the
10 actual plants to make the asphalt?

11 A. Correct.

12 Q. Have you attended any classes or received any
13 certificates, licenses or anything of that sort
14 for your position?

15 A. I have an OSHA 30. I've done traffic control
16 supervisory training compliant with the SCDOT.
17 I've had asphalt roadway technician certification
18 for roadway compaction on the road. I don't
19 believe there's anything further.

20 Q. What topics will you be speaking on today, do you
21 know?

22 A. Anything safety related.

23 BY MS. GRIFFIN:

24 Can you show him the notice. Or do you have
25 the notice? I think I have a copy of it.

1 EXAMINATION RESUMED BY MR. SMITH:

2 Q. I could ask him. Would you be able to respond to
3 questions concerning policies, procedures,
4 protocols, methods, manuals, instructions, things
5 of that nature?

6 A. For the most part. When it becomes job site
7 specific for specifications and operations from a
8 milling standpoint, I believe Doug can answer
9 those questions. Doug Limbaugh.

10 Q. What did you say about your work with compaction?

11 A. When we apply asphalt pavement, we actually have
12 to do compaction testing. And we have to try to
13 achieve the desired compaction numbers the DOT
14 requires us to.

15 Q. And that is something that you are certified in?

16 A. No longer. It's expired.

17 Q. Will you be able to discuss the accident site
18 itself?

19 A. The site in general, yes. Specific to the
20 accident, no.

21 Q. Would you be able to describe where you were in
22 the process of the road?

23 A. I'd probably let Doug for the specific operations
24 and where we were.

25 BY THE COURT REPORTER:



Garber

Reporting Service

& Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

DOUGLAS EUGENE LIMBAUGH, JR.

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 Like what?

2 BY MS. GRIFFIN:

3 Whatever else is left.

4 BY MS. HERBKERSMAN:

5 Policies and procedures.

6 BY MS. GRIFFIN:

7 But go ahead. He doesn't know anything about
8 the investigation into the incident to the extent
9 there was any. The communication with Mr. Presley,
10 he doesn't know about that.

11 EXAMINATION RESUMED BY MR. SMITH:

12 Q. What's your date of birth?

13 A. 03-16-1978.

14 Q. Can you tell me about your education.

15 A. Yeah. I have a Bachelor of Science from Clemson.
16 Graduated in 2001.

17 Q. Where did you go to high school?

18 A. Easley High School.

19 Q. What county do you live in now?

20 A. I live in Anderson County. Powdersville,
21 specifically.

22 Q. Do you have any family in Pickens County? On
23 either side.

24 A. Direct family? No, sir.

25 Q. What is direct family?

1 A. To what -- like anything?

2 Q. Anything.

3 A. I mean, I was -- did a little stint in life
4 insurance and health insurance. So I was
5 certified in that. Asphalt roadway certification
6 in this industry.

7 Q. When did you get that?

8 A. 2000 -- and I'm sorry, it's been a long time.
9 But 2007 or '8. It expired in '12, I believe.
10 It's a four year -- four to five year if you
11 don't -- you have to re-cert as you go because
12 of, you know, updated policies and stuff like
13 that.

14 Q. Certainly. And so you were done in 2012?

15 A. In that time frame, yes.

16 Q. Did you ---

17 A. I mean, I don't remember the specific year, but
18 it's somewhere in that range.

19 Q. Did you recertify?

20 A. No, sir.

21 Q. Isn't that imperative for your job?

22 A. For my job tasks? No.

23 Q. No? What is your ---

24 A. It's actually about testing of asphalt and, you
25 know, the day-to-day function of asphalt. If

1 that makes sense.

2 Q. All right, so you were talking about the actual
3 asphalt that's placed on the road. That you have
4 to know the ingredients, the temperature and that
5 sort of thing?

6 A. Yes.

7 Q. That's what you were certified for?

8 A. The quality control of it. Yes, sir. Which it's
9 just roadway certification is just the ability to
10 be able to test behind a paving crew to certify
11 compactions, certify acceptance with the DOT.
12 That sort of thing. We have one -- this job, for
13 example, on every site. Part of the reason that
14 I took that was more or less to understand and
15 know that information. Not to actually go out
16 and perform that. We have a quality control lab
17 and department that does that routinely for us.

18 Q. Right. So the people that are out on the job are
19 below you in the scheme of things and, therefore,
20 you want to be able to talk to them and tell them
21 ---

22 A. On an org chart. Yes. Not below us. But yes,
23 they work for us.

24 Q. Yes, sir. The position you were hired for was
25 what?



Garber

Reporting Service & Videoconferencing

**1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999**

JOSHUA FRAZIER MAKISON

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. Greenville has got the most growth as a county.
2 Spartanburg right now has the largest projects as
3 far as the scope and scale of them.

4 Q. Your involvement with the 8130 contract. How
5 would you characterize that?

6 A. I had no involvement. At the time this one was
7 done I was still the RCE, I believe it was, over
8 the special projects in that period. So I didn't
9 have any knowledge of it.

10 Q. All right, but you were asked to help out with
11 this due to some number issues or typographical
12 errors?

13 A. I helped with the FOIA request that came through
14 for some documents, and I helped make sure those
15 documents were gathered and provided.

16 Q. The only contract relating to the Route 8 project
17 was the 3948130 contract?

18 A. Yes.

19 Q. Would that be right?

20 A. Yes, that's correct.

21 Q. Because there was a 3949130, and then there was a
22 3984130. And those were merely typographical
23 errors, is that right?

24 A. I cannot remember the exact number, but I do know
25 that there was a misunderstanding in how our



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOE DANIEL LAWS, III

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 whose name is Joshua Makison. And we oversee all
2 construction operations for the SCDOT. Over
3 Greenville, Pickens, Spartanburg and Oconee. We
4 oversee the resident construction engineers and
5 they administer the construction projects for our
6 agency.

7 **Q. All right, so for a jury or for myself, what**
8 **exactly do you do? You oversee projects or ---**

9 **A.** So I manage -- I assist the DCE in managing the
10 resident construction engineers in any question
11 they may have in regards to a construction
12 project. I take care of the preconstruction
13 activities leading up to the construction office.
14 I coordinate with our headquarters office in
15 Columbia in regards to pre construction tasks
16 that lead up to these construction projects. We
17 try to minimize risk for our agency.

18 **Q. What were you doing March 22nd, 2019?**

19 **A.** I was -- I took a look back, and I was actually
20 off work that day. I was on annual leave. But
21 as far as work goes, I was a resident
22 construction engineer for Pickens County.

23 **Q. And what were your responsibilities there?**

24 **A.** I oversaw a construction office of 13 at the
25 time. And we managed construction projects for

1 going to work in.

2 Q. And the last one?

3 A. So I would interpret that statement that King
4 Asphalt was in the process of milling out the
5 road prior to the traffic control being properly
6 installed.

7 Q. How deep was the asphalt?

8 A. This project had eight inch full depth patching.

9 Q. Eight inch what?

10 A. Full depth patching.

11 Q. Is there a measurement done on the difference
12 between the two lanes after a day of work?

13 A. Yes, sir.

14 Q. Who is responsible for the measurement?

15 A. The contractor is responsible.

16 Q. The contractor is King Asphalt?

17 A. Yes, sir.

18 Q. Were you made aware of the wreck that occurred on
19 March 22nd, 2019?

20 A. The first I heard of it was July of 2021.

21 Q. And what did you understand?

22 A. Our legal inspector, Mr. Alexander, contacted me
23 via e-mail and informed me that there had been an
24 accident on that particular date.

25 Q. So you learned that in 2021?



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOE DANIEL LAWS, III

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS) CASE NO.: 2021-CP-39-00329
3 Michael and Mary Smith,)
4 Plaintiffs,)
5 v.)
6 Themistoklis Economou and)
7 King Asphalt, Inc.)
8 Defendants.)
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF
JOE DANIEL LAWS, III

Tuesday, May 24th, 2022
2:02 p.m. - 2:54 p.m.

The deposition of Joe Daniel Laws, III, was taken before Marcie Smith, a notary public in and for the State of South Carolina, commencing on Tuesday, May 24th, 2022, in Clemson, South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES

Attorney for Plaintiffs:

Donald L. Smith, Esquire
ATTORNEY OFFICE OF DONALD L. SMITH
122 N. Main Street
Anderson, South Carolina 29621
Attorneydonaldsmith@gmail.com

Attorney for Defendant Themistoklis Economou:

Shelby C. Herbkersman, Esquire
CLAWSON AND STAUBES
1000 E. North Street
Greenville, South Carolina 29601
Tstill@clawsonandstaubes.com
Shelby@cslaw.com

Attorney for Defendant King Asphalt, Inc.:

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
P.O. Box 8057
Columbia, South Carolina 29202
Cgriffin@brblegal.com

INDEX

Stipulations	4
Examination by Mr. Smith	4
Certificate	32

EXHIBITS

Plaintiff's Exhibit Number 8	11
(E-mail to Joe Laws)	
Plaintiff's Exhibit Number 9	12
(SCDOT daily work report)	
Plaintiff's Exhibit Number 10	24
(Special provisions)	
Plaintiff's Exhibit Number 11	30
(Handwritten list)	

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

— — — —

Whereupon,

EXAMINATION

BY MR. SMITH:

Q. Mr. Laws, my name is Don Smith, and I'm the one that subpoenaed you here today for purposes of discussing an SCDOT work project and a wreck which occurred in the work zone. And I'm hoping that you will be able to add insight to this. But anyway, the lady next to you is of course taking down your testimony. Have you had your disposition taken before?

1 A. I've had one deposition taken before.

2 Q. When was that?

3 A. It was several years ago. I can't recall the
4 exact time frame.

5 Q. Yes, sir. So based on that experience, you're
6 aware that you need to speak with audible
7 answers, so she can write that down. Right?

8 A. Yes, sir.

9 Q. All right, fantastic. I'm ridiculous at asking
10 questions. So you may not understand them. And
11 I may not either. So when that occurs, please
12 ask me to rephrase the question. So that way you
13 can understand what I'm asking. Because if you
14 answer me, I'll believe that you understood my
15 question and answered accordingly.

16 A. Yes, sir.

17 Q. If I mumble, speak too fast, please ask me to
18 restate. If you need to stop for any reason,
19 please tell me and that's what we'll do. Other
20 than that, just speak as clear as you can for the
21 court reporter and we'll be fine. Can you state
22 your name for the record, please.

23 A. Joe Daniel Laws, III.

24 Q. And tell me your birth date.

25 A. January 5th, 1988.

1 Q. Can you tell me about your educational
2 background.

3 A. Yes, I went to Laurens High School and received
4 my high school diploma. Then I went to the
5 Citadel, Military College of South Carolina, and
6 received a Bachelor of Science in Civil
7 Engineering.

8 Q. All right, and when did you graduate from the
9 Citadel?

10 A. 2010.

11 Q. Have you done any postgraduate work?

12 A. No, sir.

13 Q. Who are you currently employed by?

14 A. I currently work with the South Carolina
15 Department of Transportation.

16 Q. And how long have you been there?

17 A. A little bit over nine years now.

18 Q. Did you work anywhere prior to that?

19 A. Yes, sir.

20 Q. What was that?

21 A. So I worked at a company called Wood Group
22 Mustang prior to that.

23 Q. Wood Group Mustang?

24 A. Mm-hmm.

25 Q. Is that a yes?

1 A. Yes, sir.

2 Q. What did you do there?

3 A. I was a structural engineer, structural designer.
4 And I also worked at two other companies prior to
5 that.

6 Q. What were their names?

7 A. Dennis Corporation and EAS Professionals.

8 Q. What did you do with those particular places?

9 A. I did construction inspections, material testing.
10 Roadway inspections.

11 Q. So the job that you hold now, is it similar to
12 what you were doing there?

13 A. Yes, sir.

14 Q. What were you hired as title-wise?

15 A. At which company? Which location?

16 Q. At DOT.

17 A. The DOT I was hired as an engineer, level one.
18 It's an entry level engineer in a construction
19 office in Charleston, South Carolina.

20 Q. And you came up here for what reason?

21 A. I transferred to the Greenville construction
22 office about a year after I started in
23 Charleston, just to relocate closer to my family.

24 Q. Yes, sir. So how long did you hold the level one

25 ---

1 A. It was less than two years for those two
2 positions combined. They were both engineer
3 level one positions. The Charleston and the
4 Greenville position. Then I transferred to
5 Oconee construction as an engineer level two,
6 assistant resident construction engineer.

7 Q. So Oconee construction?

8 A. Yes, sir.

9 Q. Level two and you were the resident construction
10 ---

11 A. Assistant resident construction engineer for less
12 than a year. And then I transferred to
13 Spartanburg construction as a resident
14 construction engineer for two years. And then I
15 went to Pickens construction as a resident
16 construction engineer for four years. And now my
17 title is the Assistant District Construction
18 Engineer for district three, which oversees
19 Greenville, Pickens, Spartanburg and Oconee. And
20 I've been in this position for roughly six months
21 now.

22 Q. What's this one again?

23 A. Assistant District Construction Engineer.

24 Q. What would you say your responsibilities are now?

25 A. So I assist the district construction engineer,

1 whose name is Joshua Makison. And we oversee all
2 construction operations for the SCDOT. Over
3 Greenville, Pickens, Spartanburg and Oconee. We
4 oversee the resident construction engineers and
5 they administer the construction projects for our
6 agency.

7 **Q. All right, so for a jury or for myself, what**
8 **exactly do you do? You oversee projects or ---**

9 **A.** So I manage -- I assist the DCE in managing the
10 resident construction engineers in any question
11 they may have in regards to a construction
12 project. I take care of the preconstruction
13 activities leading up to the construction office.
14 I coordinate with our headquarters office in
15 Columbia in regards to pre construction tasks
16 that lead up to these construction projects. We
17 try to minimize risk for our agency.

18 **Q. What were you doing March 22nd, 2019?**

19 **A.** I was -- I took a look back, and I was actually
20 off work that day. I was on annual leave. But
21 as far as work goes, I was a resident
22 construction engineer for Pickens County.

23 **Q. And what were your responsibilities there?**

24 **A.** I oversaw a construction office of 13 at the
25 time. And we managed construction projects for

1 Pickens County. We administered them.

2 Q. And when you say construction projects, what does
3 that include?

4 A. So that entails resurfacing or repaving projects,
5 bridge construction projects, bridge maintenance
6 projects, intersection improvements, pavement
7 marking projects, safety projects.

8 Q. How often did you go to the Route 8 location?

9 A. I can't recall how often I went out there.

10 Q. Would that be something you would do every once
11 in a while or you would allow your person that's
12 doing it -- overseeing that construction, that
13 person would be responsible. Is that right?

14 A. Could you rephrase that question?

15 Q. Yes. Basically what I'm asking is did you have a
16 tendency to check on jobs that were going on
17 throughout Pickens County? So you'd have the
18 opportunity to see the Route 8 work. Or did you
19 just simply allow the person that was running
20 that or overseeing that job address it?

21 A. So yes to the first question. And yes to the
22 second question as well.

23 Q. Do you remember doing anything regarding the
24 Route 8 job?

25 A. Would you repeat that again? I'm sorry.

1 Q. Do you recall doing anything with the Route 8
2 job, specifically 8130? I believe that's what
3 it's called.

4 A. Yes, sir. I was the active resident construction
5 engineer while that project was going on.

6 Q. That's right. Sorry about that.

7 (PLAINTIFF'S EXHIBIT NUMBER 8, MARKED, ATTACHED)

8 EXAMINATION RESUMED BY MR. SMITH:

9 Q. All right, I'm showing you what's been marked as
10 plaintiff's exhibit number 8. Could you tell me
11 what we're looking at here.

12 A. Yes, sir. So this request was submitted by King
13 Asphalt to me. We have what's called a SIT team.
14 And it's a partnership between the SCDOT and our
15 local law enforcement. And sometimes depending
16 on which road we're working on. The volume of
17 traffic, speed, safety concerns, the contractor
18 will request that the SIT team help assist on a
19 road. They'll typically park within a
20 construction work zone and just kind of be there
21 for the safety of the contractors, the
22 department, and the citizens.

23 Q. And so the bottom line is what? So you have them
24 come out, is that your intent? King Asphalt?

25 A. So King Asphalt requested it through me and then

1 I requested it up to our district construction
2 engineer at the time, Pat McKenzie. And he
3 delegated that task to his assistant D.C., Ben
4 Olson.

5 Q. So there was speeding going on in the ---

6 A. Yes, sir. According to this document.

7 (PLAINTIFF'S EXHIBIT NUMBER 9, MARKED, ATTACHED)

8 EXAMINATION RESUMED BY BY MR. SMITH:

9 Q. I'm showing you plaintiff's exhibit 9. What
10 would this be?

11 A. So this is a daily work report. Our inspectors
12 use this form to fill out construction pay items
13 that need to be paid to the contractor. And it
14 details locations, stations and elevations and
15 units for these pay items so that we can make
16 sure we're tracking those items accurately when
17 we pay the contractors. It also includes general
18 construction remarks as to any activity that
19 happened that day on the project. It also
20 includes the contractor's information, who all
21 was on the work -- on the job site and equipment
22 being used that particular day. It also includes
23 weather and the file number and inspector
24 information.

25 Q. So where was this work being done?

1 A. According to this document, the work is taking
2 place on Highway 8 at station 83 plus 10 to 88
3 plus 00 in the right outside lane. And also from
4 95 plus 00 to 92 plus 00 in the left outside
5 lane.

6 Q. And the work was being done in 2018?

7 A. Yes, sir.

8 Q. So the SCDOT told the contractor to correct these
9 items. Who are these players in the traffic
10 control notes?

11 A. Yes, sir. So according to this document, Colt
12 Greene was the inspector on this date, and he was
13 representing the SCDOT. And he informed King
14 Asphalt to correct these items.

15 Q. Now Colt Greene, what was his position compared
16 to yours?

17 A. So he was the project manager responsible for the
18 project at this point in time.

19 Q. So was his position under yours?

20 A. Yes, sir.

21 Q. And would this have been something that you would
22 have been made aware of?

23 A. It could have been. I can't recall at this time.

24 Q. What is this channeling devices were not
25 installed adequately, if installed at all?

1 A. Would you repeat that question.

2 Q. Channeling devices were not installed adequately,
3 if installed at all. What does that mean?

4 A. I would interpret this to mean that if they
5 installed the channeling devices on the project,
6 they could either have them flipped the wrong way
7 or not spaced properly.

8 Q. So how long did Mr. Greene -- was he the
9 inspector throughout the process?

10 A. I can't recall if he was a project manager on
11 this one throughout the entire duration. Because
12 he left and obtained a different position. I
13 can't remember if that was while this project was
14 ongoing or a little bit afterwards.

15 Q. All right, and how would I find that out?

16 A. I can get you that information.

17 Q. All right, that would be outstanding. Speed
18 reduction signs were not executed properly. And
19 it says regular signs not covered. Is that self
20 explanatory?

21 A. Would you like for me to explain it?

22 Q. Please, yes.

23 A. On our construction projects when we set up lane
24 closures, we have to install new speed signs
25 within those -- within the construction zone to

1 typically reduce the speed. And those speed
2 limits will be in conflict with the permanent
3 speed limit signs. So typically the permanent
4 speed limit signs will need to be covered up so
5 that it's not conflicting with the construction
6 speed limit signs.

7 Q. So do you know what the speed limit was or what
8 it was reduced to? What it was supposed to be
9 reduced ---

10 A. I can't recall on this particular road.

11 Q. All right. No crash truck. Would you explain
12 that, please.

13 A. So I would interpret this that two crash trucks
14 was needed on this particular setup. And that
15 one crash truck arrived at 1:45 p.m. I don't --
16 according to this document. I don't know when
17 the lane closure was set up.

18 Q. The crash trucks. They have something to absorb
19 on the back of them or something to that effect?

20 A. Yes, sir.

21 Q. Lanes chosen for lane closure. What's the
22 situation there?

23 A. So I would interpret this as a lack of
24 communication between the SCDOT and the
25 contractor in regards to which lane they were

1 going to work in.

2 Q. And the last one?

3 A. So I would interpret that statement that King
4 Asphalt was in the process of milling out the
5 road prior to the traffic control being properly
6 installed.

7 Q. How deep was the asphalt?

8 A. This project had eight inch full depth patching.

9 Q. Eight inch what?

10 A. Full depth patching.

11 Q. Is there a measurement done on the difference
12 between the two lanes after a day of work?

13 A. Yes, sir.

14 Q. Who is responsible for the measurement?

15 A. The contractor is responsible.

16 Q. The contractor is King Asphalt?

17 A. Yes, sir.

18 Q. Were you made aware of the wreck that occurred on
19 March 22nd, 2019?

20 A. The first I heard of it was July of 2021.

21 Q. And what did you understand?

22 A. Our legal inspector, Mr. Alexander, contacted me
23 via e-mail and informed me that there had been an
24 accident on that particular date.

25 Q. So you learned that in 2021?

1 A. Yes, sir.

2 Q. What is the relationship between you and your
3 contractee? What does that require with regard
4 to notice of anything such as a wreck or an
5 accident?

6 A. I'm not sure of the answer to that question.

7 Q. Do the construction people have -- since they're
8 a part of SCDOT, is that right? They are
9 contracted with them?

10 A. Yes, sir.

11 Q. Do they have a duty to tell them of issues such
12 as that?

13 A. I'm not sure of the answer to that question.

14 Q. Yes, sir. The work zone traffic control review
15 weekly inspection report. Who fills that out?

16 A. Typically the inspector fills that form out and
17 turns it in to the project manager to review it.

18 Q. Do you receive that? Do you at any time review
19 it?

20 A. Yes, sir. So once the project manager reviews it
21 and any discrepancy has been taken care of from
22 that review. It is turned in to the assistant
23 resident to review and also the resident
24 construction engineer to review. And then it's
25 turned in to our office admin to file it.

1 Q. Did you bring any documentation with you today?

2 A. No, sir.

3 Q. There's usually four pages with these work zone
4 reports, right? Or is that based on the job?
5 I'll show you what ---

6 A. If you don't mind if you could show me ---

7 Q. Yes, sir. King Asphalt has provided me with
8 three pages. So we've got three pages here.
9 Would there normally be four?

10 A. Yes, sir.

11 BY MS. GRIFFIN:

12 Just to correct the record. I mean, we
13 provided what SCDOT provided to us, I believe.

14 BY MR. SMITH:

15 So there's supposed to be four?

16 BY MS. GRIFFIN:

17 And I think in the SCDOT production, they have
18 the same documents.

19 BY MR. SMITH:

20 Are they missing that, too?

21 BY MS. GRIFFIN:

22 I don't know. I didn't check that actually.
23 But we have the same documents.

24 BY THE WITNESS:

25 To clarify on our SCDOT forms. It may have

1 one of four at the top. Sometimes that fourth page
2 is an instruction sheet. But I would have to see
3 the actual traffic control -- our reports just to
4 confirm with you on that.

5 EXAMINATION RESUMED BY MR. SMITH:

6 Q. There's no signature page. Would there be a
7 signature page?

8 A. Yes, sir.

9 Q. And that would be done by Mr. Greene or that
10 would be done by yourself?

11 A. So that page is signed by the contractor and the
12 resident construction engineer.

13 Q. So that'd be you?

14 A. Yes, sir. Or a designee.

15 Q. So that could be Mr. Greene?

16 A. Yes, sir.

17 Q. And one of these is done each week?

18 A. Yes, sir.

19 Q. Did I already ask you who is responsible for
20 measuring the difference between the lanes?

21 A. Yes, sir. You've already asked me that.

22 Q. And what if the lane is three inches thick? The
23 difference in the depth of the asphalt.

24 A. So typically it's not to exceed two inches.

25 Q. And if it does?

- 1 A. Then it's up to the contractor to fix that.
- 2 Q. The particular job that you were doing in March
3 of '19 was part of a two mile stretch of road.
4 Did they start work in December?
- 5 A. They were working in December. But I can't
6 recall if they were working prior to December.
- 7 Q. Two miles would take three months?
- 8 A. It could.
- 9 Q. When you have a work zone, is the speed limit
10 reduced every time?
- 11 A. No.
- 12 Q. When is an example of when it wouldn't be? What
13 is an example?
- 14 A. So on some of our projects, we don't have to
15 install a lane closure. It can be a mobile
16 operation. And on those particular operations,
17 they don't require us to put in a speed limit
18 reduction sign.
- 19 Q. This was not a mobile ---
- 20 A. No, sir.
- 21 Q. Do you know what the speed limit is down that
22 road?
- 23 A. I don't recall.
- 24 Q. Wherever we see we posted 35 miles an hour,
25 that's the speed limit in that work zone?

1 A. Could you repeat that question, please.

2 Q. If the work zone has 35 for a speed limit, that's
3 the speed limit in the work zone regardless of
4 the actual speed?

5 A. Yes, sir.

6 Q. So you've been a construction engineer then and
7 you know the asphalt process?

8 A. Yes, sir.

9 Q. Could you tell me from the beginning when you get
10 to the site, what steps are involved in the
11 asphalt? Putting the asphalt in, cleaning out,
12 milling, whatever is necessary.

13 A. For this particular project?

14 Q. Well, I guess so. But at the same time, isn't it
15 a normal project?

16 BY MS. GRIFFIN:

17 Object to the form.

18 EXAMINATION RESUMED BY MR. SMITH:

19 Q. So it ---

20 A. All projects have different approaches to them.
21 So there's not really -- not really a typical
22 operation.

23 Q. Well, if you could, do this one then.

24 A. Okay. You want me to sketch it?

25 Q. No, I want you to tell me what you do first.

1 First you clean and then you mill or take me to
2 the point where you do the rolling and that sort
3 of thing. Are you with me?

4 A. Yes, sir. Question for you. Do you want the
5 process prior to paving the asphalt?

6 Q. From the beginning of the paving. Not the
7 beginning of the paving, but the beginning of the
8 project where you clean the road first and then
9 you mill. Is that right?

10 A. Yes, sir. So at the beginning of this project
11 our contractor installed permanent construction
12 signs to establish the work zone.

13 Q. Right.

14 A. You want me to write it down?

15 Q. Yes, sir. And it doesn't have to be lengthy.
16 Just like a couple words or whatever describes
17 the process. Like milling would be
18 understandable.

19 A. So the first step is to install the permanent
20 construction signs. And the next step on this
21 particular project is to identify locations for
22 full depth patching. And then the next step
23 would be to perform the eight inch full depth
24 patching operation, which entails bringing a
25 milling machine on the job site. Milling down

1 eight inches and filling the void back up with
2 asphalt in accordance to our specifications.

3 **Q. All right, so you call that patching?**

4 **A. Yes, sir.**

5 **Q. All right.**

6 **A. Once that has been done on this particular**
7 project, the contractor was to mill two inches
8 off of the existing roadway. And then they would
9 sweep and clean that surface for any kind of
10 loose material. Then once all the milling is
11 done, they can begin the two inch resurfacing
12 asphalt. And they would proceed in accordance
13 with our specifications until it was completed.

14 **Q. What are your specifications?**

15 **A. Specifically, our 2007 SCDOT standards and**
16 specifications manual. Also our special
17 provisions in the contract. Special provisions
18 supersede our 2007 SCDOT standards and
19 specifications.

20 **Q. Are you aware of any special provisions?**

21 **A. Yes, sir.**

22 **Q. What were they?**

23 **A. I don't remember at this point in time. I'd have**
24 to review the contract.

25 **BY MR. SMITH:**

1 I beg your indulgence.

2 (OFF THE RECORD)

3 (PLAINTIFF'S EXHIBIT NUMBER 10, MARKED, ATTACHED)

4 EXAMINATION RESUMED BY MR. SMITH:

5 Q. Exhibit 10 is 9968 and 9969. Is that the
6 entirety of the special provisions?

7 A. It's not the -- this isn't all of the special
8 provisions. No, sir.

9 Q. Can you name some of the special provisions.

10 (OFF THE RECORD DISCUSSION)

11 BY MR. SMITH:

12 There seems to be pages missing.

13 EXAMINATION RESUMED BY MR. SMITH:

14 Q. So what provisions do you have?

15 A. According to this document, section 108,
16 subletting of contracts, specialty items.
17 Section 108, partnering. Which entails covenant
18 of good faith and fair dealing. Section A --
19 section B, partnering. Section 108, temporary
20 suspension of the resurfacing work. Section 108,
21 prosecution of the resurfacing work. Section
22 108, paving operations. Section 108, contract
23 time and determination and extension of contract
24 time. Section 108, critical path method in
25 construction schedules. And section 108, failure

1 to complete the work on time.

2 Q. I believe you were involved with some email
3 exchanges relating to the name of the contract or
4 what contract it was. Is the contract the one
5 ending in 8130?

6 A. Yes, sir.

7 Q. So where do a 9130 and a 4130 come from?

8 A. So on this particular project, the file number is
9 3948130. And any other file numbers will be
10 incorrect. However, these projects do have sub
11 project numbers for different roads that may be
12 on this particular project.

13 Q. Yes, sir. The removal of the cones. Are there
14 any rules associated with that?

15 A. Yes, sir.

16 Q. Where are they?

17 A. It falls under our traffic control
18 specifications, under -- in our 2007 SCDOT
19 standards and specification manual. And the
20 traffic control plan prepared by the contractor.

21 Q. All right.

22 A. And our SCDOT standard drawings that are relevant
23 to that traffic control plan.

24 Q. The work zone is defined by the entering work
25 zone and the end work zone signs. Is that right?

1 A. Yes, sir.

2 Q. Those are permanent signs?

3 A. On some projects they are. And some projects
4 they're not.

5 Q. All right, so in this particular project it was
6 two miles to be done. So the begin work zone and
7 the end work zone, would those signs ever move?

8 A. No, sir. Not unless they were hit or struck by a
9 car. And in that case they would have to be
10 replaced.

11 Q. So in between there is a work zone the entire
12 time this project is being worked on?

13 A. Yes, sir.

14 Q. Did I ask you whether you were allowed to pass in
15 a work zone?

16 A. No, sir.

17 Q. Can you?

18 A. Are you referring to ---

19 Q. Passing on the right.

20 A. Are you referring to people traveling through
21 this work zone?

22 Q. Yes, sir.

23 A. I'm not sure.

24 Q. Have you ever -- in your career have you ever
25 dealt with an excess of asphalt being the

1 differential between two lanes that was greater
2 than two inches?

3 A. No, sir. Not that I can recall.

4 Q. When this particular work was being done, there
5 would be a -- and they were going to one lane.
6 How would you direct the traffic to go to one
7 lane?

8 A. So the contractor will be required to install a
9 lane closure to taper down from two lanes to one
10 lane.

11 Q. And how do you know it's ended?

12 A. So typically there's a taper at the end of a work
13 zone for the vehicles to taper back over to the
14 other lane.

15 Q. With regard to the -- how do you illustrate the
16 taper?

17 A. It typically will shift from the lane they were
18 restricted from, over to the lane that is now
19 open free from a work zone.

20 Q. Okay, so ---

21 A. At the end of a taper.

22 Q. In this situation the outside lane was the one
23 being worked on, is that right?

24 A. Yes, sir.

25 Q. So the taper would be in the outside lane at the

1 beginning of the work and would angle you toward
2 the inside lane?

3 A. Yes, sir.

4 Q. And then the taper at the back end would do the
5 exact opposite? It would taper from the inside
6 to the outside lane?

7 A. Yes, sir.

8 Q. And those tapers are created with cones?

9 A. Yes, sir. Cones and barricades.

10 Q. If they're done with cones, are they taken down
11 every day?

12 A. So that depends on the duration of the project
13 for that day. Some projects could go on for more
14 than one day.

15 Q. Since only the outside lane had been done and not
16 the inside, would that mean that it would be
17 carrying on for more than one day?

18 A. It depends on the situation. If the contractor
19 was required to leave the work zone up due to an
20 emergency or a shortage of materials or something
21 to that effect. It would be a rare situation.

22 Q. And so you remove the taper and the rest of the
23 cones at the same time, is that right?

24 A. Would you repeat the question.

25 Q. Yes, sir. How do you remove the cones that

1 create the barrier/taper?

2 A. Yes, sir. So those would be removed at the end
3 of the construction operation after everything
4 has been safened (sic) up. And typically they
5 would remove it from the back taper towards the
6 front.

7 Q. Against the traffic?

8 A. Yes, sir.

9 Q. Is there any way of alerting the people on the
10 front that it's taking place?

11 A. Would you repeat that question.

12 Q. Yes, sir. The front of the one lane of traffic.
13 Is there any way that you can tell them that the
14 lane is open?

15 A. So once that taper has been removed, then that
16 lane becomes open.

17 Q. All right, so it's a common sense situation?

18 A. I'm not sure.

19 Q. If there's no longer a taper and no longer a
20 barrier, that means you can use the road?

21 A. Yes, sir.

22 Q. The individuals that have already passed the sign
23 that says move to the left or lane ends or --
24 what is the sign that would tell you that? To go
25 to the left?

1 A. So it's a sign that details a taper is coming up
2 ahead.

3 Q. And of course you can't see those signs when you
4 have passed them already. Right?

5 A. That's correct.

6 Q. When do you take the veer to the left signs down?

7 A. So those signs are removed once the lane has been
8 opened back up and the taper removed.

9 Q. And once all the cones have been removed?

10 A. Yes, sir.

11 Q. Wouldn't it be safer to drive with the traffic so
12 that people could see that the lane is going to
13 be open?

14 A. I'm not sure.

15 Q. Was the resurfacing work suspended in this
16 manner?

17 BY MS. GRIFFIN:

18 Object to the form. You can answer it.

19 You're allowed to answer it.

20 BY THE WITNESS:

21 A. I can't recall.

22 BY MR. SMITH:

23 Let's mark this.

24 (PLAINTIFF'S EXHIBIT NUMBER 11, MARKED, ATTACHED)

25 BY MR. SMITH:

1 I don't have any further questions.

2 BY MS. HERBKERSMAN:

3 I don't have any questions.

4 BY MS. GRIFFIN:

5 No questions.

6 (DEPOSITION CONCLUDED)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 Be it known that I, Marcie Smith, do hereby
3 certify that Joe Daniel Laws, III, appeared before me and
4 I took the foregoing deposition at the time and place
5 aforesaid by means of stenomask with backup; that I was
6 then and there a notary public in and for the State of
South Carolina and that by virtue thereof, I was duly
authorized to administer an oath; and that the witness
was by me first duly sworn to testify to the truth, the
whole truth, and nothing but the truth.

7 I further certify that the foregoing transcript
8 represents a true, accurate, and complete transcript of
9 said deposition. This transcript may contain quoted
material; said material is transcribed as read or quoted
by the speaker.

10 I further certify that the witness was given an
11 opportunity to read and correct said deposition and to
12 subscribe the same. Should the signature of the witness
13 not be affixed to the deposition, the witness shall not
have availed himself/herself of the opportunity to sign
or the signature has been waived.

14 I further certify that I am neither employed by
15 nor related to any of the parties in this matter nor
their counsel; nor do I have any interest, financial or
otherwise, in the outcome of this action.

16 Witness my hand and seal this 8th day of June,
17 2022.



18 _____
19 MARCIE L. SMITH, REPORTER
20 NOTARY PUBLIC FOR S.C.
21 COMMISSION EXPIRES: 11-26-2026
22
23
24
25



Garber

Reporting Service & Videoconferencing

**1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 || Fax (803) 256-1999**

JOSHUA FRAZIER MAKISON

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS) CASE NO.: 2021-CP-39-00329
3 Michael and Mary Smith,)
4 Plaintiffs,)
5 v.)
6 Themistoklis Economou and)
7 King Asphalt, Inc.)
8 Defendants.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF
JOSHUA FRAZIER MAKISON

Tuesday, May 24th, 2022

2:59 p.m. - 3:23 p.m.

The deposition of Joshua Frazier Makison was taken before Marcie Smith, a notary public in and for the State of South Carolina, commencing on Tuesday, May 24th, 2022, in Clemson, South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES

Attorney for Plaintiffs:

Donald L. Smith, Esquire
ATTORNEY OFFICE OF DONALD L. SMITH
122 N. Main Street
Anderson, South Carolina 29621
Attorneydonaldsmith@gmail.com

Attorney for Defendant Themistoklis Economou:

Shelby C. Herbkersman, Esquire
CLAWSON AND STAUBES
1000 E. North Street
Greenville, South Carolina 29601
Tstill@clawsonandstaubes.com
Shelby@cslaw.com

Attorney for Defendant King Asphalt, Inc.:

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
P.O. Box 8057
Columbia, South Carolina 29202
Cgriffin@brblegal.com

INDEX

Stipulations	4
Examination by Mr. Smith	4
Certificate	20

EXHIBITS

Plaintiff's Exhibit Number 12	19
(Handwritten list)	

1 questions. So if I ask one of those that you
2 don't understand what the question is asking,
3 then I ask you to have me rephrase it so you
4 understand it. If I speak too fast or mumble,
5 please ask me to restate it. I'm happy to do
6 that. If you need a break to talk to your son,
7 we can do that as well. This is not going to be
8 very long. I would just ask that you make your
9 answers audible, as opposed to gestures or non-
10 verbal answers for the court reporter. So that
11 she understands what you're saying or mean.
12 Rather than guessing at that.

13 A. Okay.

14 Q. Could you state your name for the record, please.

15 A. Joshua Frazier Makison.

16 Q. Can you tell me your date of birth.

17 A. April 27th, 1980.

18 Q. Your educational background? Can you tell me
19 about that.

20 A. Yes, I am a graduate of Clemson University. I
21 graduated in 2002, with a bachelor's.

22 Q. In science?

23 A. Yes, bachelor's of science. And I am a
24 registered professional engineer.

25 Q. Have you done any postgraduate work?

1 A. Postgraduate work?

2 Q. Meaning master's or anything like that?

3 A. No, sir.

4 Q. Do you have any certificates or licenses based on
5 your work experience or any other classes you've
6 taken?

7 A. No, sir. Outside of the P.E. Professional
8 engineer license.

9 Q. Where did you work when you got done with
10 college?

11 A. I came -- I surveyed for one year for Midway
12 Surveying. And then I began work at the SCDOT in
13 2004.

14 Q. When you were hired what position did you have?

15 A. At the time it was called a civil engineer one.

16 Q. How long did you maintain that position?

17 A. That position, approximately one year -- I mean,
18 I'm sorry, four years. And then I moved to civil
19 engineer two, which was project manager.

20 Q. Where was that located?

21 A. These have all been in Greenville.

22 Q. All right.

23 A. And then I became assistant resident construction
24 engineer in Greenville. And then I was resident
25 construction engineer in Oconee.

1 Q. About what time period was that?

2 A. That was up until, I'm going to say, 2017. I
3 don't remember the exact dates. And then I came
4 back to Greenville as a special projects
5 residence construction engineer. And I was in
6 that position until about the end of 2019. And
7 then I became assistant district construction
8 engineer. And I served there until April of this
9 year. And now I'm the district construction
10 engineer in Greenville.

11 Q. What happened to the last one?

12 A. He moved to Columbia to work in the director of
13 construction office.

14 Q. People come to work for the DOT and they don't
15 leave?

16 A. Not often. I mean if they leave, it's usually in
17 the first year or two.

18 Q. Yes, sir. So Mr. Laws has basically traveled the
19 same route you have, is that right?

20 A. Similar, yeah. I don't remember when he came in.
21 I wasn't in the office when he came in. But
22 yeah, he's had a similar career path.

23 Q. A special project person?

24 A. Mm-hmm.

25 Q. What is that?

1 A. We have some projects that are really big, and
2 they employ a lot of consultant inspectors and
3 consultant project managers. And they consider
4 those the special projects. And I was over the
5 one. The S.C. 153 extension.

6 Q. So that was where it ended at 123 and you took it
7 beyond that?

8 A. Mm-hmm. To Saluda Dam Road.

9 Q. So that's your claim to fame?

10 A. That was one of the biggest ones we did in the
11 district. And that was kind of my last hurrah as
12 a resident construction engineer was that one.

13 Q. So now you're the district construction engineer?

14 A. Yes, sir.

15 Q. In Greenville?

16 A. Yes, sir.

17 Q. And what are your responsibilities?

18 A. I oversee all of the resident construction
19 engineers in Spartanburg, Greenville, Oconee and
20 Pickens. And the construction projects and
21 everything included in that.

22 Q. So you probably don't have much work to do then?

23 A. Nothing. No, I'm just kidding.

24 Q. Which of those four counties do you see as having
25 the most growth?

1 A. Greenville has got the most growth as a county.
2 Spartanburg right now has the largest projects as
3 far as the scope and scale of them.

4 Q. Your involvement with the 8130 contract. How
5 would you characterize that?

6 A. I had no involvement. At the time this one was
7 done I was still the RCE, I believe it was, over
8 the special projects in that period. So I didn't
9 have any knowledge of it.

10 Q. All right, but you were asked to help out with
11 this due to some number issues or typographical
12 errors?

13 A. I helped with the FOIA request that came through
14 for some documents, and I helped make sure those
15 documents were gathered and provided.

16 Q. The only contract relating to the Route 8 project
17 was the 3948130 contract?

18 A. Yes.

19 Q. Would that be right?

20 A. Yes, that's correct.

21 Q. Because there was a 3949130, and then there was a
22 3984130. And those were merely typographical
23 errors, is that right?

24 A. I cannot remember the exact number, but I do know
25 that there was a misunderstanding in how our

1 contracts are set up. So there's a contract ID,
2 which would be the 39 number. And then under
3 that would be -- in this case, I think there were
4 two project IDs and those would be associated
5 with certain roads.

6 Q. At this point, are you aware of the process of
7 asphaltting, whether it be resurfacing or creating
8 a surface?

9 A. Yes.

10 Q. Can you do me a favor -- and we'll talk from a
11 resurfacing perspective because that's what this
12 was.

13 A. Okay.

14 Q. If you could take me from the beginning when you
15 come to the site and you have to wash the road,
16 and then you mill, right?

17 A. Yes, some projects we mill.

18 Q. All right, well, let's say we're going to mill on
19 this one.

20 A. Okay.

21 Q. So if you could take me from the cleansing the
22 road to milling, all the way to the rolling three
23 times. Can you do that?

24 A. Yes. You want me to write it down?

25 Q. Please. Just like step one ---

1 A. Okay.

2 Q. It doesn't have to be crazy. Just brief, like
3 two words that say like milling. You only have
4 to use milling. You don't have to do anything
5 more than milling.

6 A. Okay. So if this is a milling project, a mill
7 and fill project, where we're removing the
8 existing asphalt and placing new asphalt. So
9 when we first arrive to the job, of course
10 traffic control is set up for any activities.
11 Lane closure or whatever it may be by our
12 standard drawings. And then so if the operations
13 began, if it's a milling operation, they would
14 set it at whatever depth we're milling. Usually
15 two inches. And then they would mill the lane.
16 And this is, you know -- again, this is very
17 project dependent. Some projects, depending on
18 the way the contract is set up, the contractor
19 may mill both lanes and then come back and pave
20 it the next day. Sometimes they mill and fill in
21 a certain operation. Interstate, for example.
22 So I can't really get into as far as -- I mean,
23 the general idea is, you know, you would have to
24 mill the surface and then you would pave. And
25 roll the surface. And then each day, pavement

1 markings at the end of each day. But this number
2 two and three would just be -- you know, it can
3 vary contract to contract as far as the actual
4 procedure and how they want to do it. So long
5 as, you know, they follow the contract. So I
6 can't really speak on the actual staging of that.
7 But it's traffic control, milling, paving, and
8 pavement marking would be the typical day's work.

9 Q. Where would tacking be?

10 A. Or traffic control is what I meant. Tacking
11 would be after the milling, if they were going to
12 pave that day. They would -- they would tack
13 that surface.

14 Q. Was it your understanding everything would be
15 done for that piece that they were working on,
16 would that be done the day they started?

17 A. Not necessarily. So long as they do not -- that
18 they follow the procedures as far as our
19 maintaining, you know, safe shoulders and ensure
20 that there's not over two inch drop offs of the
21 surface on the edge of the shoulder. They may
22 choose -- again, they may choose to pave -- I
23 mean mill the entire roadway and then come back
24 and do the paving at a later date. And they
25 would be charged with maintaining the road during

1 that time. If any potholes or anything of that
2 nature developed.

3 **Q. Have you ever seen a situation where the**
4 **differential was greater than two inches?**

5 **A. On the center of the road in between lanes?**

6 **Q. Between lanes.**

7 **A. It is -- it is outside of our specification to**
8 **have a differential greater than two inches on --**
9 **if you've got asphalt, the differential can be up**
10 **to two inches. For a milled surface, it's one**
11 **inch.**

12 **Q. Have you ever seen that where it's been greater**
13 **than two inches?**

14 **A. I have not seen it. I've seen it -- it is**
15 **allowed to be that way on a temporary basis,**
16 **meaning while the traffic control is setup. But**
17 **by the time the traffic control is removed, the**
18 **differential should be within our specification.**

19 **Q. So how many times is it rolled?**

20 **A. The asphalt?**

21 **Q. Yes.**

22 **A. We have roller patterns that are established**
23 **based on compaction shots to determine how many**
24 **times it's rolled. Typically it's on average**
25 **three passes per roller for each stretch that's**

1 paved.

2 Q. And then there are three different kind of
3 rollers?

4 A. Yes, sir.

5 Q. So that would be nine rolls?

6 A. Typically. Again, this -- I'm not familiar with
7 this one or what the roller pattern was
8 established for this particular road. But three
9 passes, sometimes it may be four, three, two, and
10 so on and so forth.

11 Q. Yes, sir.

12 A. But about nine is usually what we look at.

13 Q. If the rolling has not been completed, the
14 differential is going to be greater than two
15 inches, isn't it?

16 BY MS. GRIFFIN:

17 Object to the form.

18 BY THE WITNESS:

19 A. The differential isn't really measured when
20 rolling has not been completed. It's a loose
21 product at that point. So it's really in no form
22 at all. It's just loose asphalt that once it's
23 rolled, and then that's where the differential
24 will be established.

25 EXAMINATION RESUMED BY MR. SMITH:

1 Q. And your records illustrate or would show us that
2 the rolling had been done for that day?

3 A. If the traffic control has been removed, then the
4 work for the day is done at that point. Or we
5 would make sure typically, you know, that
6 everything is kosher before the traffic control
7 was pulled up.

8 Q. There's been testimony that the differential was
9 six inches, three or four inches. Is that
10 possible?

11 A. Now it would depend on -- again, I'm not familiar
12 with this job. The only time I've seen a
13 differential of that nature would be if we're
14 full depth patching. And if we were patching
15 four inches or six inches, there would be a
16 temporary differential of that. But that would
17 be inside the lane closure and it would be an
18 active situation as being -- having asphalt
19 placed back in there to bring it even with the
20 surface before the traffic control is pulled up.

21 Q. The work zone consists of the area between the
22 begin work zone and end work zone. Is that
23 correct?

24 A. Are you talking about the work area or ---

25 Q. The work zone. Are those signs permanent?

1 A. Usually we do have permanent construction signs.
2 Yes.

3 Q. All right. And so those go from the very
4 beginning, regardless of what stage you're at --
5 and if you're resurfacing the road, that's a
6 somewhat slow process. Is that right?

7 A. Yes.

8 Q. Okay. And if you're doing 30 miles, it's going
9 to take a while. So the work zone begins before
10 that zero mile and 30 miles is where the end zone
11 will be. Is that right?

12 A. Yes. If we had mile markers or mile points in
13 the contract that designate the beginning and end
14 of the work zone, the work area from where the
15 milling and paving would start and where it would
16 stop.

17 Q. All right, with regard to the reduction in speed.
18 When does that occur?

19 A. The reduction in speed -- if there is a reduction
20 in speed it would have to be -- it would be
21 posted and it would be posted prior to the work
22 zone. Prior to where the traffic control began
23 to set up the lane closure.

24 Q. So that would then be permanent as well for the
25 duration of the work?

1 A. Yes. We would be required -- for law enforcement
2 to be able to enforce the speed limit it would
3 have to be posted as such. Otherwise the speed
4 limit is assumed to be the same as posted.

5 Q. Any difference between a cone grabber and a
6 flagman?

7 BY MS. GRIFFIN:

8 Object to the form.

9 BY THE WITNESS:

10 A. I'm not sure what a cone grabber would be.

11 EXAMINATION RESUMED BY MR. SMITH:

12 Q. A cone setter?

13 A. Okay. I'm not sure how the positions are divided
14 up with a contractor or how -- who they have
15 doing what activities. But the flagman is
16 stationed at a stationary location and is
17 equipped with a radio and the flag and the sign.
18 And the one setting up the cones, sometimes they
19 work for other -- for sub-contractors. Sometimes
20 the prime contractor does their own.

21 Q. All right.

22 A. But I couldn't say if any of the ones setting up
23 the devices actually acts as a flagman as well.

24 Q. The removal of the cones. Which way do you pick
25 them up?

1 A. They are picked up backwards in order to provide
2 the taper until the last -- the last moment. So
3 when you're approaching in the lane, you'll have
4 your cones at an angle, which is your taper that
5 directs you into the other lane. When you're
6 removing the cones, you remove them backwards.
7 People can start moving over earlier, but the
8 taper remains there to protect anything that
9 still may be in the closure, as well as the
10 workers removing the cones.

11 Q. Doesn't that create a drafting situation where
12 people will slide over the right side and get
13 around the people in the front?

14 BY MS. GRIFFIN:

15 Object to the form.

16 BY THE WITNESS:

17 A. I'm not sure I understand that.

18 EXAMINATION RESUMED BY MR. SMITH:

19 Q. Well, there's one lane of traffic and the cones
20 are removed behind the people in the front.
21 Doesn't that create a dangerous situation with
22 the people passing?

23 A. With the people passing, as long as the lane
24 closure is set up it would still be flagged. The
25 people removing the cone would typically utilize

1 the closed lane to move back and remove the cones
2 as they go.

3 BY MR. SMITH:

4 I have no further questions.

5 BY MS. HERBKERSMAN:

6 No questions.

7 BY MS. GRIFFIN:

8 I don't have any questions.

9 (PLAINTIFF'S EXHIBIT NUMBER 12 MARKED, ATTACHED)

10 (DEPOSITION CONCLUDED)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 Be it known that I, Marcie Smith, do hereby
3 certify that Joshua Frazier Makison, appeared before me
4 and I took the foregoing deposition at the time and place
5 aforesaid by means of stenomask with backup; that I was
6 then and there a notary public in and for the State of
7 South Carolina and that by virtue thereof, I was duly
8 authorized to administer an oath; and that the witness
9 was by me first duly sworn to testify to the truth, the
10 whole truth, and nothing but the truth.

11 I further certify that the foregoing transcript
12 represents a true, accurate, and complete transcript of
13 said deposition. This transcript may contain quoted
14 material; said material is transcribed as read or quoted
15 by the speaker.

16 I further certify that the witness was given an
17 opportunity to read and correct said deposition and to
18 subscribe the same. Should the signature of the witness
19 not be affixed to the deposition, the witness shall not
20 have availed himself/herself of the opportunity to sign
21 or the signature has been waived.

22 I further certify that I am neither employed by
23 nor related to any of the parties in this matter nor
24 their counsel; nor do I have any interest, financial or
25 otherwise, in the outcome of this action.

Witness my hand and seal this 8th day of June,
2022.



MARCIE L. SMITH, REPORTER
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 11-26-2026



Garber

Reporting Service & Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

OLIVIA PAIGE BRYAN

January 13, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 Q. Okay, so when you had been driving around, had
2 you been in Easley already and then gone to
3 Pickens and came back?

4 A. Yes, ma'am.

5 Q. Do you remember seeing any of the road
6 construction earlier that day?

7 A. Yes, ma'am. On the way to Pickens and then on
8 the way back as well.

9 Q. Okay, when you were heading to Pickens, do you
10 remember what time it would have been?

11 A. No, ma'am. I do not.

12 Q. Do you remember any of the signs that were up in
13 the area where there was road work going on?

14 A. On the way there or on the way back or both?

15 Q. Either way.

16 A. On the way back, so whenever I was driving on the
17 side of the construction, I did remember seeing
18 an orange sign saying construction zone or
19 construction work ahead.

20 Q. Earlier that day, before this accident happened,
21 did you actually see workers out ---

22 A. No, ma'am

23 Q. --- doing work?

24 A. No, ma'am.

25 Q. Do you recall what time you were heading back to

1 Easley?

2 A. Maybe somewhere around four or five. Maybe.

3 Q. Was it still light?

4 A. Yes, ma'am.

5 Q. And so you didn't have your headlights on?

6 A. No, ma'am.

7 Q. And when you were on Highway 8, going back toward

8. . . . Easley, can you describe what type of traffic

9. . . . there was.

10. A. It was -- it was busier than usual. Just because

11. . . . there was only one lane. So it was kind of just

12. . . . like a line of cars.

13. Q. Okay, which lane were the cars in?

14. A. We were in the left lane.

15. Q. And were you following the moped?

16. A. The moped was in front of me.

17. Q. Directly in front of you?

18. A. Directly in front of me.

19. Q. Okay, so you were the first car behind the moped?

20. A. Yes, ma'am.

21 Q. And how long had you been following behind the
22 moped?

23 A. I don't remember. But it couldn't have been more
24 than five minutes.

25 Q. Do you know what speed the moped was going?

- 1 .Q. .And were there traffic cones out?
- 2 .A. .Yes, ma'am.
- 3 .Q. .Okay, and where were the traffic cones?
- 4 .A. .They were on the dotted lines between -- like the
- 5 . . . white lines between the two lanes.
- 6 .Q. .Okay, so were the traffic cones in the area where
- 7 . . . this accident happened?
- 8 .A. .We had like just finished passing through all of
- 9 . . . them, so the right lane was opening back up. . So
- 10 . . . I guess kind of.
- 11 .Q. .Okay, explain that to me.
- 12 .A. .I don't understand the question. . Like it wasn't
- 13 . . . right at the cones or in between the cones, it
- 14 . . . was like right after the cones were finished, if
- 15 . . . that makes sense.
- 16 .Q. .Okay, so if there are cones in the middle of the
- 17 . . . two lanes. . That's what you're saying?
- 18 .A. .Yes.
- 19 .Q. .And then the cones ended?
- 20 .A. .Yes, ma'am.
- 21 .Q. .That's what you're trying to say. . And then how
- 22 . . . far after the cones ended did this accident
- 23 . . . happen?
- 24 .A. .I'm not gonna say right after, but maybe like ten
- 25 . . . seconds after.

1 Q. Can you translate that into like the cones ended
2 and there's a business there, or a road there,
3 and then where the accident happened? I'm trying
4 to get distance.

5 A. Do you want me to use like feet or ---

6 Q. Yeah, well, if you know feet. A lot of times
7 people don't do too well on feet. But that's why
8 I was asking about like if there was a landmark
9 that you know, okay, the last cone I saw, I was
10 where on Highway 8. And then this accident
11 happened where.

12 A. I'm trying to remember. I'm sorry.

13 Q. That's okay.

14 A. Because what I remember is I remember passing the
15 Pickens YMCA, because that's where all the cones
16 was on the left lane. I don't remember -- I know
17 -- I don't remember what places were there.

18 Q. Do you have any recollection as to where you last
19 saw a cone, other than it was ten seconds
20 earlier?

21 A. No, ma'am.

22 Q. So as you traveled from Pickens to Easley, were

23 there cars in the left lane?

24 A. Where the cones were?

25 Q. Yes, were there any cars traveling in that lane?

1 A. I do not.

2 Q. Do remember what speed you were traveling?

3 A. Between 35 and 45. I didn't want to be too close
4 to the moped, because it's too much anxiety.

5 Q. Were there two people on the moped?

6 A. Yes.

7 Q. Did you see what they were doing when they were
8 traveling?

9 A. They were -- it just looked like they were
10 driving normally.

11 Q. Was it a man driving or a woman driving?

12 A. I think it was a man, but I'm not 100% sure on
13 that.

14 Q. Did you see if they were holding onto anything
15 when they were on the moped?

16 A. As in holding onto each other or ---

17 Q. Each other, or the moped itself, or have anything
18 in their arms?

19 A. I think that the person on the back was holding
20 onto the driver.

21 Q. Do you remember if anybody had on helmets?

22 A. I do not remember. I'm sorry.

23 Q. That's okay. So you're in the left lane. And

24 was there traffic in the right lane?

25 A. No, it was blocked off for the road work.

1. A. Yes.

2. Q. Okay, so there are cones and then there were cars

3. in the lane that would be the center lane; and

4. then the curb lane we'll call it. Were there

5. cars traveling in both lanes?

6. A. Oh, no. I'm sorry. I thought you meant like in

7. the left lane.

8. Q. No. So if we're saying we're going towards

9. Easley, we'll call it the curb lane. And then

10. the other one, the left lane, heading toward

11. Easley. Were there any cars in the lane where

12. the curb was?

13. A. Oh, no, ma'am. I'm sorry.

14. Q. Do you know when cars ended up in that lane?

15. A. When the cones ended.

16. Q. Okay, when the cones ended. So like ten seconds

17. earlier?

18. A. Yes.

19. Q. And then when the cones ended, and then cars were
20. traveling in the right lane, do remember how many
21. cars would have passed you in the right lane?

22. BY MR. SMITH:

23. Object to the form.

24. EXAMINATION RESUMED BY MS. GRIFFIN:

25. Q. If any? And he can object to the form, but

1 you're to answer it anyway.

2 A. Okay. Well, that is kind of like when the
3 accident had happened. So nobody had passed me,
4 because the moped was in front of me. And then
5 the car -- I think it was a blue car was behind
6 me.

7 Q. A blue car was directly behind you?

8 A. Yes, ma'am.

9 Q. And what type of car was it?

10 A. I don't remember. I just kind of remember that
11 it was blue.

12 Q. Do you remember like if it was a sedan or a
13 pickup truck? Do you remember that?

14 A. It was just a small four door blue car. I don't
15 know what kind of car, though.

16 Q. So the small four door blue car is behind you?

17 A. Yes, ma'am.

18 Q. And then what do you remember happening?

19 A. I remember the blue car had went to get into the
20 right lane, because the cones had ended. And
21 then the moped had went to get into the right
22 lane. And I assume that they were doing that
23 because they were going slower. And they were
24 just trying to get out of the way. And so I
25 guess the moped did not see the blue car. So

1 did happen. So yeah.

2 Q. Had you seen the blue car move into the right

3 lane?

4 A. Yes, I did.

5 Q. When did he move into the right lane?

6 A. He moved into the right lane, basically, right

7 after the cones ended. Because we were traveling

8 pretty slow, because I think it's 45 through

9 there. And we were going like 30, 35.

10 Q. Okay, so you're saying once that lane opened up,
11 then the blue car moves to the right lane because
12 it was clear to accelerate?

13 A. Yes, ma'am.

14 Q. During the time you were traveling on Highway 8
15 that day, and before this accident happened, did
16 you ever see a truck removing traffic cones from
17 the road?

18 A. No, ma'am.

19 Q. When you said somebody called you in 2020, was it
20 a trooper or was it a man named Mr. Presley?

21 A. It was not a man named Mr. Presley. It might
22 have been -- it had to have been a trooper. I
23 think his name was, like, Sergeant -- can I look
24 at my phone? I think I still have the voice
25 mail.

1 February 4th, 2020, at 1:30 was when I got the
2 voice mail.

3 Q. Had you talked to anyone else about the accident,
4 other than your mother and calling 911 before you
5 heard from Sergeant Brown?

6 A. No.

7 Q. Did you take any photographs?

8 A. I did not.

9 Q. I know you said you saw it happen and just so I
10 understand. You were right next to the moped, or
11 had you already passed it when the accident
12 happened?

13 A. I was in the process of accelerating to pass it,
14 but it still happened like directly in front of
15 my car. Because it had like -- I never know how
16 to explain this. Because when I was trying to
17 explain it to my mom, she didn't understand. So

18 | | | you know how, like, when they're redoing the

19 | | | roads there's like that little like step up kind

20 | | | of.

21 Q. Correct.

22 A. They were about to merge over to go over that,
23 and I didn't want to speed up in case they're
24 like, never mind, you know. Always expect the
25 unexpected. So I stayed back just a little bit.

1 And then whenever I got faster, that's when it
2 happened like right in front of my car.

3 Q. Do you know how far into the lane the moped was

4 before it was hit? That is was the entire moped

5 in the lane or part of the moped or ---

6 A. So when the moped got hit, it had like just --

7 like the back tire had just crossed over the

8 white line to be, I guess, fully in the right

9 lane.

10 Q. Okay, did the moped fall down on the pavement

11 first before it got hit?

12 A. Yes.

13 Q. So the moped leaned over, fell down, and then the

14 car hit it?

15 A. Yes.

16 Q. And do you know if the moped fell over because
17 the driver lost control?

18 BY MR. SMITH:

19 Object to the form.

20 EXAMINATION RESUMED BY MS. GRIFFIN:

21 Q. You can answer it. Why do you think ---

22 BY MR. SMITH:

23 You're leading her.

24 EXAMINATION RESUMED BY MS. GRIFFIN:

25 Q. Why do you think the moped fell over?

1 testimony was?

2 A. Yes.

3 Q. All right. And what I'm telling you is, is that
4 between the point of impact, where we understand
5 it happened, and the DMV is roughly one and a
6 half miles. So what I'm asking you when I just
7 played ten seconds, does it seem like you were
8 traveling longer than ten seconds after the cones
9 stopped when the accident happened?

10 A. No, I think ten seconds is right.

11 BY MR. STILL:

12 Nothing further.

13 EXAMINATION BY MR. SMITH:

14 Q. Ms. Bryan, my name is Don Smith. I represent the

15 Smiths for this particular wreck. My

16 understanding is you were sure where the cones

17 ended. Is that right?

18 A. Yes.

19 Q. And the first car to go into the right lane was

20 what?

21 A. The blue car.

22 Q. The blue car. Is the blue car the one that hit

23 them?

24 A. Yes.

25 Q. Who went into the right lane first?

1 A. I don't know.

2 Q. Did you ever talk to anyone who was on the moped,
3 so Mr. or Mrs. Smith?

4 A. No, ma'am.

5 Q. Had you ever seen them in the area before?

6 A. No, ma'am.

7 Q. Did you talk to anyone else about the accident?

8 A. No, ma'am.

9 Q. Do you have any recollection of how much distance

10 . . . went by between when you saw the moped going to

11 . . . the right and when the moped was on its side?

12 . . A. You said how many seconds?

13 . . Q. How many feet.

14 . . A. Feet? Oh, maybe two or three feet.

15 . . Q. So it traveled about two or three feet. And then

16 . . . the next thing you saw was it was on its side?

17 . . A. Yes, ma'am.

18 Q. In the right lane?

19 . . A. Yes, ma'am.

20 . . Q. And then the collision happened?

21 . . A. Mm-hmm.

22 . . Q. You have to answer ---

23 . . A. Yes, ma'am. Sorry.

24 BY MS. GRIFFIN:

25 All right. Well, those are all the questions

1 A. The blue car.

2 Q. He was directly behind you?

3 A. Yes. So the blue car was directly behind me.
4 But I was checking my mirrors, you know, because
5 I was gonna get over. And then I had seen the
6 blue car get over, so I didn't. And then the
7 moped had gotten over and that's when the
8 accident had happened.

9 Q. Had the blue car already completely gotten into
10 the right lane?

11 A. When?

12 Q. When the moped started.

13 A. Yes.

14 Q. How far behind you was the blue car?

15 A. I'm not sure.

16 Q. At that point, how close were the cars in the left
17 lane since it was behind the moped?

18 A. Can I do like car lengths?

19 Q. Certainly.

20 A. Okay, I'd say like half a car length.

21 Q. Was there a long line in the left lane?

22 A. I don't think it was too long.

23 Q. What did you tell the trooper when you called him
24 back?

25 A. I don't remember. Actually, I think I told him

1 Q. So the cones were there, but you had no
2 indication or you didn't see anybody picking them
3 up?
4 A. No, there was nobody picking up the cones.
5 Q. Okay.
6 A. I don't think they were finished doing road work.
7 Q. So there was still road work?
8 A. Well, there was nobody out there like working on
9 the roads physically. But I just assume when I
10 see cones, and there's nobody out there working,
11 that they're not done and that there's something
12 they need to fix on that side that they haven't
13 gotten to yet. So they block it off.
14 Q. So you said that you were about ready to go into
15 the right lane as well?
16 A. Yes.
17 Q. Is that because you believed the construction
18 zone or whatever had completed?
19 A. Yeah, because it was the end of the cones. So I
20 was, like, end of construction zone, and I wanted
21 to go at least the speed limit. So I was gonna
22 get over, but the blue car had gotten over first.
23 Q. Was there anything that told you, other than your
24 belief, that that's what it meant?
25 BY MS. GRIFFIN:

1 Object to the form.

2 BY THE WITNESS:

3 A. . . No.

4 EXAMINATION RESUMED BY MR. SMITH:

5 Q. . . So it didn't say this is the end of construction?

6. . . . There was no sign saying that?

7. . . A. . . I don't remember seeing a sign say that.

8. . . Q. . . So then that was just your belief? It wasn't

9. . . . because someone else told you or, you know, some

10. . . . sign said that you were done with construction.

11. . . . And you believed that so you were getting over?

12. . . A. . . Yes.

13 Q. . . Is there any doubt in your mind that that blue

14. . . . car was behind you?

15. . . A. . . No doubt in my mind the blue car was behind me.

16. . . Q. . . And that's in the left lane?

17. . . A. . . Yes.

18 Q. . . There was one sign that said road work ahead?

19. . . A. . . Yes.

20. . . Q. . . But there were no signs saying road work was

21. . . . done?

22. . . A. . . I don't remember seeing -- there might have been

23. . . . one. . . But I didn't see it.

24 Q. Did the blue car have a turn signal on?

25 A. I don't recall seeing a turn signal.

1 walk my moped across the lanes.

2 A. No, ma'am.

3 Q. Did that happen?

4 A. No, ma'am.

5 Q. Okay, so you never saw the moped operator stop
6 his moped and walk it into the other lane?

7 A. No, ma'am. I did not.

8 Q. Okay, so he was always proceeding when he was in
9 the left lane and as he moved to the right lane?

10 A. Yes, ma'am.

11 Q. Do you remember at what angle he would have moved

12 into the right lane? And I mean, like, did he

13 make a right turn that would be more like a 90

14 degree angle, or was it more of a 45 degree

15 angle?

16 A. Well, it started out as like a regular merge, I

17 guess. And then whenever the blue car honked

18 their horn saying, like, hey, I'm coming, I'm

19 speeding up. They did like a sharp 90 degree

20 angle and basically laid the moped down.

21 Q. Okay, so when you say the blue car honked and
22 like they were speeding up, did you see them
23 speeding up?

24 A. A little bit, yes. It was -- they couldn't have
25 gotten much faster just because of how fast it

1 Q. Was the blue car passing you?

2 A. They were like near the end of my car, kind of in
3 the blind spot.

4 Q. But they had been behind you?

5 A. Yes.

6 Q. And now part of the car was ahead of you or next
7 to your car?

8 A. Yeah, kind of. And then I slowed down because I
9 had started to see the moped get over.

10 Q. Do you believe the moped was speeding up?

11 A. No, no. I don't think the moped was speeding up
12 at all. The moped was getting into the right
13 lane because -- well, what I -- the reason why I
14 think they were getting into the right lane was
15 because they were traveling at a slower speed
16 than the rest.

17 Q. Can you estimate how many cars might have been
18 behind you?

19 A. I don't know exactly. But I know there had to
20 have been more than five.

21 Q. And when the moped was struck, the entire moped
22 was on the other side of the white line?

23 A. Into the right lane, yes.

24 BY MR. SMITH:

25 I have nothing further.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

Be it known that I, Marcie Smith, do hereby
certify that Olivia Paige Bryan appeared before me and I
took the foregoing deposition at the time and place
aforesaid by means of stenomask with backup; that I was
then and there a notary public in and for the State of
South Carolina and that by virtue thereof, I was duly
authorized to administer an oath; and that the witness
was by me first duly sworn to testify to the truth, the
whole truth, and nothing but the truth.

I further certify that the foregoing transcript
represents a true, accurate, and complete transcript of
said deposition. This transcript may contain quoted
material; said material is transcribed as read or quoted
by the speaker.

I further certify that the witness was given an
opportunity to read and correct said deposition and to
subscribe the same. Should the signature of the witness
not be affixed to the deposition, the witness shall not
have availed himself/herself of the opportunity to sign
or the signature has been waived.

I further certify that I am neither employed by
nor related to any of the parties in this matter nor
their counsel; nor do I have any interest, financial or
otherwise, in the outcome of this action.

Witness my hand and seal this 28th day of
January, 2022.



MARCIE L. SMITH, REPORTER
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 11-26-2026

ROA - 29

Appellants' Surreply to Defendant's Return to Plaintiffs' Motion to Reconsider, filed May 8, 2025, with all exhibits thereto, including the full deposition transcripts of Joe Daniel Laws, III, and Joshua Frazier Makison (Exhibit D) and the deposition excerpts of eyewitness Olivia Paige Bryan (Exhibit E). (App. 21) The full transcripts at Exhibit D are also designated as Transcript of Deposition of Joshua Frazier Makison (Resp. 19) and Transcript of Deposition of Joe Daniel Laws (Resp. 21). Exhibit C, as filed, contains the title page and pages 6 and 7 of the deposition of Zachary Shane Michael (Resp. 22), the title page and pages 6, 8, and 9 of the deposition of Douglas Eugene Limbaugh, Jr. (Resp. 20), the title page and page 9 of the deposition of Joshua Frazier Makison (Resp. 19), and the title page and pages 9 and 16 of the deposition of Joe Daniel Laws, III (Resp. 21).

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

SURREPLY TO DEFENDANT'S
RETURN TO PLAINTIFFS' MOTION
TO RECONSIDER

Clerk of Court Pickens County, SC
MAY 8 '25 PM 3:12

SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER

I. Introduction

Defendant's Return contains material misstatements that mischaracterize the record, distort deposition testimony, and improperly interpret governing regulations. This Surreply is narrowly tailored to correct those issues, not to reargue the Motion to Reconsider, and filed pursuant to the Order of the Honorable Jessica A. Salvini, granting leave to file a surreply on May 1, 2025. This surreply is timely filed within the ten-day period authorized.

II. Plaintiffs' Complaint Alleges Multiple Independent Regulatory Violations

Under Rule 56(a), SCRCP, and as clarified by the South Carolina Supreme Court in *The Kitchen Planners, LLC v. Friedman*, summary judgment is appropriate only when there is no genuine dispute of material fact as to a specific claim. Defense counsel's motion targets only the lane height differential issue, ignoring the five other claims alleging distinct regulatory violations. Even if the Court were to accept their interpretation of the 1-inch rule (which Plaintiffs dispute), the remaining claims, premature traffic control removal, excessive milling duration, failure to deploy a mandated overall compliant traffic control scheme, unreplaced turn arrows, and obstruction, present independent factual disputes that preclude summary judgment, rule 56(a) requires courts to evaluate each claim individually, and summary judgment cannot be granted on the entire case based on a single disputed issue. See *The Kitchen Planners, LLC v. Friedman*, Op. No. 28173 (S.C. Aug. 23, 2023) ("[T]he proper standard is the 'genuine issue of material fact' standard outlined in the text of [Rule 56].").

While Defendant has focused narrowly on the lane height differential issue and framed it as a technically complex matter requiring expert testimony, this approach misleads the Court into treating the case as if it hinges on a single disputed issue, when in fact, multiple independent

regulatory violations are at stake. Plaintiffs' pleadings identify multiple, distinct violations of law and regulation, each independently sufficient to support a finding of negligence per se. These include:

1. **Excessive Lane Height Differential** – A greater-than-1-inch height differential existed between the paved and milled lanes, contrary to SCDOT specifications.
2. **Unlawful and Premature Removal of Traffic Control Devices** – Devices were removed before the surface was safe for traffic, in violation of regulatory safety requirements.
3. **Milled Lane Left Open for Over Ten Days** – The inside lane remained milled and unpaved for sixteen days before the incident (in violation of 10 day limit).
4. **Unreplaced Turn Arrows** – Required turning lane directional arrows were missing from turning lanes for well beyond the 72-hour regulatory limit (for as much as 21 days in this instance).
5. **Failure to Implement a Compliant Traffic Safety Plan** – Defendant failed to deploy the Standard Specifications For Highway Construction (latest edition), the Standard Drawings For Road Construction, these special provisions, the MUTCD, and the Engineer-compliant traffic safety plan required for long-term projects conducted under contract with SCDOT.

Additionally, the pleadings asserts claims for **fraud and obstruction**, including Defendant's misrepresentation that no work zone existed, redaction of important discovery documents to conceal the names of persons responsible for oversight and inspection, denial that workers were present (or played a role) at the time of the accident, and the removal of materials from the scene prior to law enforcement's arrival. Some of which occurred after the fact of the filing of the complaint; but, came into the knowledge of the Plaintiffs as the case evolved.

Each of these violations is supported by the record and stands independently [see PLAINTIFFS' OPPOSITION TO DEFENDANT KING ASPHALT, INC.'S MOTION FOR SUMMARY JUDGMENT, CROSS-MOTION FOR SUMMARY JUDGMENT, AND PRAYER FOR ALTERNATIVE RELIEF - Exhibits]. The defense's effort to center the litigation solely on one contested issue, lane height differential, does not negate the existence of these separate violations. Even if one theory of liability were deemed insufficient, the others would still compel trial.

III. Defendant Misstates the Applicability of the 1-Inch Rule

Defendant's Return narrowly interprets the 1-inch rule to apply only during active milling, arguing that it no longer controlled by March 22, the day of the crash. However, the Defendant King Asphalt's Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - (pp. 22,23 & 30) state:

"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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 22] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 22] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 22] [emphasis added]

“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 before opening the travel lane to traffic at these locations.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 23] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 23] [emphasis added]

“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.” [Exhibit B - Defendant King Asphalt’s Memorandum Exhibit 1 - SCDOT - Proposal Contract and Bond - page 23] [emphasis added]

“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 RCE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings.” [Exhibit B - Defendant

So long as a lane has been milled and remains in a milled condition, the milling operation is not complete, as further surface preparation is required prior to paving. That the regulatory text includes a 2-inch standard applicable during certain paving operations does not mean that such a standard governs merely because paving is taking place nearby. In this case, the adjacent inside lane remained in the middle of its milling procedure and had been left in that condition for 16 days prior to the accident. The regulations clearly limit milling operations to a 1-inch height differential between adjacent lanes open to traffic. For Defendant to construe that the 1-inch rule for milled lanes is effectively doubled, solely because paving occurred next to it, produces an absurd result that contravenes the plain language and intent of the regulation. The regulation does not present the 1-inch and 2-inch standards as alternatives, but as context-specific requirements that apply based on the operation performed. If only paving is occurring, the 2-inch limit may apply. If milling is occurring, the 1-inch limit governs. When both operations are happening, such as in this case, where milling occurred in one lane and paving in the adjacent lane of the eastbound Highway 8, the stricter 1-inch limitation must apply. This interpretation is further supported by the paragraph that follows in the regulation, which prescribes the specific corrective action required before such a lane may be reopened to traffic. Any interpretation that allows a doubling of the permissible differential when milling and paving are performed simultaneously yields a result so contrary to the regulation's safety purpose that it must be rejected under controlling principles of statutory construction. See *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("A statute should not be construed in a way that would lead to an absurd result or defeat plain legislative intent."); see also *State v. Landis*, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004) (statutory construction must avoid unreasonable or absurd results and effectuate the intent found in the language used). These authorities reinforce Plaintiffs' position that King Asphalt's reading of the regulation introduces a dangerous loophole, relaxing standards precisely when hazards are greatest, and should be rejected in favor of a reading that preserves the regulation's plain safety objective.

IV. Defendant Mischaracterizes Deposition Testimony

Defendant claims that deposition testimony supports the application of a 2-inch tolerance between lanes. However, this assertion is misleading. Defense counsel presents cherry-picked excerpts without including the corresponding questions, depriving the Court of the necessary context. What a witness may have said in one setting or sequence does not constitute a definitive response to the plain language violations now before the Court.

Defense counsel's claim that deposition testimony supports a 2-inch tolerance between a milled and newly paved lane is unsupported by the record. No witness provided explicit, categorical testimony endorsing such a differential under the circumstances here—where live traffic was permitted to cross a hazardous elevation gap exceeding regulatory limits, absent required traffic controls, in direct violation of SCDOT safety rules. Limbaugh and Michael (King Asphalt's corporate employees) spoke only in theoretical or general terms about hypothetical compliance. [Exhibit C - Michael - Limbaugh - Makison - Laws Deposition excerpts] **Indeed, both witnesses testified under oath that they were not present at the site, records show they were not**

assigned to the project payroll, and therefore possessed no firsthand knowledge of the project's specifics or Defendant's actual adherence to safety protocols at the accident site. Their speculative assertions, therefore, untethered to the facts of this case, cannot negate the plain regulatory violations documented in the record. See *Shelton v. LS & K, Inc.*, 374 S.C. 294, 297, 648 S.E.2d 307, 308 (Ct. App. 2007) ('A mere scintilla of evidence is insufficient to defeat summary judgment').

Defendant quotes Joshua Makison's deposition (Dep. 13:3-10) to suggest that a 2-inch elevation difference between lanes is permissible. But Makison testified strictly about the general regulatory standard, not the specific sequence of operations or conditions at the accident site. He does however mention the differentiation between milling operations having the 1" limitation. (Makison Dep. 13:7-11) Makison testified he was not involved with the project, had no firsthand knowledge of the site, and appeared solely in the context of gathering FOIA documents. Citing regulatory text in the abstract does not validate King Asphalt's conduct on March 22. [Exhibit D - Laws - Makison Deposition - FULL]

Plaintiffs do not dispute that a 2-inch differential may be permitted in certain paving contexts, but not where the adjacent lane is still milled, triggering the stricter 1-inch limit.

Defendant similarly cites testimony from Joe Daniel Laws, claiming he supported the 2-inch standard. However, Laws did not make a categorical statement approving such a tolerance between a milled and paved lane. He acknowledged that traffic control devices must remain until the lane is "safened up" (as did Makison at page 15:3-7 "that everything is kosher, before the traffic control was pulled up") and confirmed the full extent of the work zone parameters being between "Roadwork Ahead" and End of Roadwork" signage, as per statutory description. His testimony, taken in full, supports Plaintiffs' contention that live traffic should not have been introduced into a clearly unsafe and incomplete roadway. [Exhibit D - Laws - Makison Deposition - FULL]

These witnesses were offered by Defendants under Rule 30(b)(6). After frustrating Plaintiff's discovery for years, Defendant now attempts to capitalize on the shallow and incomplete record those depositions produced, quoting its own employees (none of whom qualify as expert witnesses) without relevant site knowledge, contract familiarity, or project oversight. Worse still, the testimony was taken before Plaintiffs had obtained critical evidentiary documentation, limiting the scope of their questioning at the depositions.

An independent eyewitness driving a car directly behind Plaintiff, Olivia Bryan, placed the accident in a work zone, described the cones between the lanes, testified to the presence of King Asphalt Inc. workers within ten seconds of the accident site and affirmed the significant berm between the lanes. [Exhibit E - Eyewitness Olivia Paige Bryan Deposition - Excerpts]

The Court should approach Defendant's reliance on this testimony cautiously. While defense counsel emphasizes witness job titles, this emphasis does not account for the timeline limitations or the witnesses' admitted lack of firsthand knowledge regarding the specific project site and incident, undermining the testimony's applicability. Furthermore, by presenting deposition answers isolated from the preceding questions, the defense removes essential context. Without

the questions that elicited them, the answers lack foundation and their significance can be easily distorted, potentially misrepresenting the actual testimony given.

V. No Expert Testimony is Required to Establish the Violation

The defense's argument that expert interpretation is needed is also contradicted by its own conduct. Defense counsel themselves cite and interpret the regulation, claiming to understand it so thoroughly that they can assert it exceeds the comprehension of jurors. Yet one of their own deponents, Joshua Makison, an SCDOT engineer with no involvement in the project, no firsthand knowledge of the accident site, and who was deposed solely for his understanding of regulations, quoted the 1-inch rule directly in his deposition. That an SCDOT engineer, was able to summarize the rule in under seven plain-English words (Makison Dep. 13:10,11) during deposition strongly undercuts the argument that the regulation is so technical it requires expert explanation to a jury.

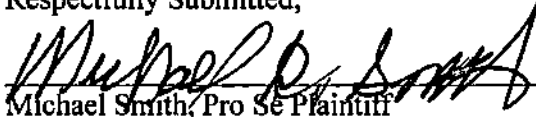
Regulations governing public safety, such as those issued by SCDOT, are intentionally written in clear and accessible language so they can be understood by contractors, inspectors, and members of the general public. Defense counsel cannot simultaneously claim the rule is too complex for jurors to apply, while interpreting it themselves and urging the Court to accept their interpretation at the summary judgment stage, where Plaintiffs are not yet required to produce expert testimony. This inconsistency further undermines their argument and reinforces that the alleged violation is one that a jury is fully competent to evaluate. Requiring jurors to possess engineering expertise to understand a plainly written safety rule would be tantamount to expecting a watch owner to know how a watch works in order to be qualified to tell time.

VI. Conclusion

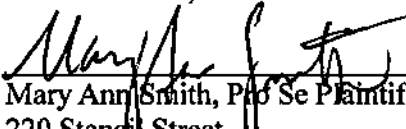
Defendant's Return relies, in part, on mischaracterizations of testimony and misinterpretation of applicable regulations. The Court should consider the totality of the record, including the violations and supporting evidence addressed in this Surreply.

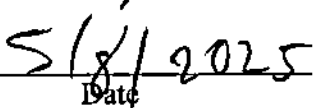
Plaintiffs respectfully request that the Court grant their Motion to Reconsider based on the full and accurate record before it.

Respectfully Submitted,


Michael Smith, Pro Se Plaintiff


Date


Mary Ann Smith, Pro Se Plaintiff
220 Standen Street
Easley, SC 29640
MichaelDSmith@housemail.com


Date

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, SC
MAY 8 '25 PM 3:12 PM

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER** in **Smith v. King Asphalt, Inc., Case No. 2021-CP-39-00329** 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: May 8, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867750
Date of Mailing: May 8, 2025

Respectfully submitted,



Michael Smith
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

May 8, 2025
Date

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, SC
MAY 8 '25 PM 3:13

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO RECONSIDER** in **Smith v. King Asphalt, Inc., Case No. 2021-CP-39-00329** was served upon the following counsel of record:

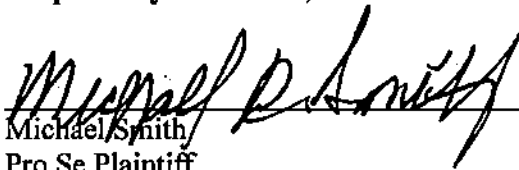
The Honorable Jessica A. Salvini
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

The document was served via the following methods:

By Email to: jsalvinisc@sccourts.org, jsalvinilc@sccourts.org
Date of email service: May 8, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867767
Date of Mailing: May 8, 2025

Respectfully submitted,



Michael D. Smith
Pro Se Plaintiff
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com
May 8, 2025
Date

Clerk of Court Pickens County, SC
MAY 8 '25 PM3:13

Exhibits

Smith v. King Asphalt, Inc.
2021-CP-39-00329

**SURREPLY TO DEFENDANT'S RETURN TO PLAINTIFFS' MOTION TO
RECONSIDER**

Name: KING ASPHALT, INC.

Address: LIBERTY, SC



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
COLUMBIA, SC

**PROPOSAL, CONTRACT AND BOND
FOR
HIGHWAY CONSTRUCTION**

BIDS RECEIVED
June 12, 2018

AWARD DATE
July 3, 2018

DESCRIPTION OF CONTRACT

RESURFACING/RECONSTRUCTION - FDR, MILL & REPLACE,
S-171, SC 8

S.C. File Number: 3948130

County: Pickens

ELECTRONICALLY FILED 2025 JUN 27 11:11 AM PICKENS COUNTY CLERK CASE#2025-001327

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.

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.

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.

However, on two-lane two-way and multilane primary and secondary roadways, application of a 4-inch wide solid line utilized for an edge line adjacent to an earth shoulder, white or yellow, may be delayed up to 72 hours after eradication of the original line when the length of eradicated line at a single location is no longer than 250 feet. In the event of multiple locations along the same line, each location must be separated from the adjacent location by no less than 250 feet with a cumulative total distance of eradicated line of no more than 1300 feet within any continuous 1 (one) mile length of roadway measured from a selected location. If the length of eradicated line exceeds 250 feet at any single location, the distance interval between multiple adjacent locations is less than 250 feet or a cumulative total distance of multiple locations of eradicated line exceeds 1300 feet within any continuous 1 (one) mile length of roadway measured from a selected location, replace the eradicated line(s) prior to reopening the adjacent travel lane to traffic.

On interstate 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 6-inch wide solid lines, utilized for edge lines, and 6-inch wide by 10 feet long white broken lines with a 30-foot gap, utilized for lane lines between travel lanes and auxiliary lanes, unless otherwise specified. 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.

On all roadways, apply and place white stop bars and white triangle yield bars in all locations where previous stop bars and triangle yield bars have been eradicated by the work. Apply and place white stop bars and white triangle yield bars at intersections controlled by stop and yield signs within 72 hours of the eradication of the original pavement marking. Apply and place white stop bars at signalized intersections controlled by traffic control signals and at railroad crossings prior to reopening a closed travel lane to traffic.

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 RCE. Apply and place white arrows within 72 hours of the eradication of the original pavement markings. However, in regard to newly constructed turn lanes, apply and place white arrows the within turn lanes as directed by the RCE.

Within the limits of existing lane-drop sites on all roadways, apply and place white arrows in all locations where previous arrows have been eradicated by the work prior to the end of each day's work or shift or reopening the closed travel lane to traffic. In regard to newly constructed lane-drop sites, apply and place white arrows within the travel lane to be terminated prior to opening the travel lane to traffic and as directed by the RCE.

(J) Temporary Pavement Markings (Sub-section 609.4.1) –

Sub-section 609.4.1.1.1 Application Requirements General (Revision to paragraph 8) -



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

ZACHARY SHANE MICHAEL

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. We have one main office headquarters. We're in
2 Liberty, South Carolina at 107 Tech Lane.
3 Liberty, 29657. We have a plant about three
4 miles away from there in Liberty as well. And
5 two other asphalt plants. One in Pacolet, South
6 Carolina, and one in Simpsonville, South
7 Carolina. Those are not -- those are plant
8 locations. Our only main office is in Liberty.

9 Q. So Pacolet, Simpsonville, Liberty all have the
10 actual plants to make the asphalt?

11 A. Correct.

12 Q. Have you attended any classes or received any
13 certificates, licenses or anything of that sort
14 for your position?

15 A. I have an OSHA 30. I've done traffic control
16 supervisory training compliant with the SCDOT.
17 I've had asphalt roadway technician certification
18 for roadway compaction on the road. I don't
19 believe there's anything further.

20 Q. What topics will you be speaking on today, do you
21 know?

22 A. Anything safety related.

23 BY MS. GRIFFIN:

24 Can you show him the notice. Or do you have
25 the notice? I think I have a copy of it.

1 EXAMINATION RESUMED BY MR. SMITH:

2 . . . Q. . I could ask him. . Would you be able to respond to
3 questions concerning policies, procedures,
4 protocols, methods, manuals, instructions, things
5 of that nature?

6 . . A. . For the most part. . When it becomes job site
7 specific for specifications and operations from a
8 milling standpoint, I believe Doug can answer
9 those questions. . Doug Limbaugh.

10 . . Q. . What did you say about your work with compaction?
11 . . A. . When we apply asphalt pavement, we actually have
12 to do compaction testing. . And we have to try to
13 achieve the desired compaction numbers the DOT
14 requires us to.

15 . . Q. . And that is something that you are certified in?

16 . . A. . No longer. . It's expired.

17 . . Q. . Will you be able to discuss the accident site
18 itself?

19 . . A. . The site in general, yes. . Specific to the
20 accident, no.

21 . . Q. . Would you be able to describe where you were in
22 the process of the road?

23 . . A. . I'd probably let Doug for the specific operations
24 and where we were.

25 BY THE COURT REPORTER:



Garber

Reporting Service & Videoconferencing

**1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999**

DOUGLAS EUGENE LIMBAUGH, JR.

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 Like what?

2 BY MS. GRIFFIN:

3 Whatever else is left.

4 BY MS. HERBKERSMAN:

5 Policies and procedures.

6 BY MS. GRIFFIN:

7 "But go ahead." He doesn't know anything about

8 the investigation into the incident to the extent

9 there was any. The communication with Mr. Presley,

10 he doesn't know about that.

11 EXAMINATION RESUMED BY MR. SMITH:

12 Q. What's your date of birth?

13 A. 03-16-1978.

14 Q. Can you tell me about your education.

15 A. Yeah. I have a Bachelor of Science from Clemson.

16 Graduated in 2001.

17 Q. Where did you go to high school?

18 A. Easley High School.

19 Q. What county do you live in now?

20 A. I live in Anderson County. Powdersville,
21 specifically.

22 Q. Do you have any family in Pickens County? On
23 either side.

24 A. Direct family? No, sir.

25 Q. What is direct family?

1 A. To what -- like anything?

2 Q. Anything.

3 A. I mean, I was -- did a little stint in life
4 insurance and health insurance. So I was
5 certified in that. Asphalt roadway certification

06 Q. in this industry.

07 Q. When did you get that?

08 A. 2000 -- and I'm sorry, it's been a long time.

09 Q. But 2007 or '8. It expired in '12, I believe.

10 Q. It's a four year -- four to five year if you

11 Q. don't -- you have to re-cert as you go because

12 Q. of, you know, updated policies and stuff like

13 Q. that.

14 Q. Certainly. And so you were done in 2012?

15 A. In that time frame, yes.

16 Q. Did you --

17 A. I mean, I don't remember the specific year, but

18 Q. It's somewhere in that range.

19 Q. Did you recertify?

20 A. No, sir.

21 Q. Isn't that imperative for your job?

22 A. For my job tasks? No.

23 Q. No? What is your ---

24 A. It's actually about testing of asphalt and, you
25 know, the day-to-day function of asphalt. If

1 that makes sense.

2 Q. All right, so you were talking about the actual
3 asphalt that's placed on the road. That you have
4 to know the ingredients, the temperature and that
5 sort of thing?

6 A. Yes.

7 Q. That's what you were certified for?

8 A. The quality control of it. Yes, sir. Which it's
9 just roadway certification is just the ability to
10 be able to test behind a paving crew to certify
11 compactions, certify acceptance with the DOT.
12 That sort of thing. We have one -- this job, for
13 example, on every site. Part of the reason that
14 I took that was more or less to understand and
15 know that information. Not to actually go out
16 and perform that. We have a quality control lab
17 and department that does that routinely for us.

18 Q. Right. So the people that are out on the job are
19 below you in the scheme of things and, therefore,
20 you want to be able to talk to them and tell them
21 ---

22 A. On an org chart. Yes. Not below us. But yes,
23 they work for us.

24 Q. Yes, sir. The position you were hired for was
25 what?



Garber

Reporting Service & Videoconferencing

**1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999**

JOSHUA FRAZIER MAKISON

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 A. Greenville has got the most growth as a county.
2 Spartanburg right now has the largest projects as
3 far as the scope and scale of them.

4 Q. . . Your involvement with the 8130 contract. . . How

5 . . . would you characterize that?

6 A. . . I had no involvement. . . At the time this one was

7 . . . done I was still the RCE, I believe it was, over

8 . . . the special projects in that period. . . So I didn't

9 . . . have any knowledge of it.

10 Q. . . All right, but you were asked to help out with

11 . . . this due to some number issues or typographical

12 . . . errors?

13 A. . . I helped with the FOIA request that came through

14 . . . for some documents, and I helped make sure those

15 . . . documents were gathered and provided.

16 Q. . . The only contract relating to the Route 8 project

17 . . . was the 3948130 contract?

18 A. . . Yes.

19 Q. Would that be right?

20 A. Yes, that's correct.

21 Q. Because there was a 3949130, and then there was a
22 3984130. And those were merely typographical
23 errors, is that right?

24 A. I cannot remember the exact number, but I do know
25 that there was a misunderstanding in how our



Garber

Reporting Service & Videoconferencing

1226 Pickens Street

Columbia, South Carolina 29201

info@garberreporting.com

Telephone: (803) 256-4500 | Fax (803) 256-1999

JOE DANIEL LAWS, III

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 whose name is Joshua Makison. And we oversee all
2 construction operations for the SCDOT. Over
3 Greenville, Pickens, Spartanburg and Oconee. We
4 oversee the resident construction engineers and
5 they administer the construction projects for our
6 agency.

7 Q. All right, so for a jury or for myself, what
8 exactly do you do? You oversee projects or ---

9 A. So I manage -- I assist the DCE in managing the
10 resident construction engineers in any question
11 they may have in regards to a construction
12 project. I take care of the preconstruction
13 activities leading up to the construction office.
14 I coordinate with our headquarters office in
15 Columbia in regards to pre construction tasks
16 that lead up to these construction projects. We
17 try to minimize risk for our agency.

18 Q. **What were you doing March 22nd, 2019?**

19 A. **I was -- I took a look back, and I was actually**

20 **off work that day. I was on annual leave.** But

21 as far as work goes, I was a resident
22 construction engineer for Pickens County.

23 Q. And what were your responsibilities there?

24 A. I oversaw a construction office of 13 at the
25 time. And we managed construction projects for

1 going to work in.

2 Q. And the last one?

3 A. So I would interpret that statement that King
4 Asphalt was in the process of milling out the
5 road prior to the traffic control being properly
6 installed.

7 Q. How deep was the asphalt?

8 A. This project had eight inch full depth patching.

9 Q. Eight inch what?

10 A. Full depth patching.

11 Q. Is there a measurement done on the difference

12 between the two lanes after a day of work?

13 A. Yes, sir.

14 Q. Who is responsible for the measurement?

15 A. The contractor is responsible.

16 Q. The contractor is King Asphalt?

17 A. Yes, sir.

18 Q. Were you made aware of the wreck that occurred on

19 March 22nd, 2019?

20 A. The first I heard of it was July of 2021.

21 Q. And what did you understand?

22 A. Our legal inspector, Mr. Alexander, contacted me
23 via e-mail and informed me that there had been an
24 accident on that particular date.

25 Q. So you learned that in 2021?

Garber
Reporting Service
& Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOE DANIEL LAWS, III

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS) CASE NO.: 2021-CP-39-00329
3 Michael and Mary Smith,)
4 Plaintiffs,)
5 v.)
6 Themistoklis Economou and)
7 King Asphalt, Inc.)
8 Defendants.)
9

10 DEPOSITION OF

11 JOE DANIEL LAWS, III

12 *****

13 Tuesday, May 24th, 2022

14 2:02 p.m. - 2:54 p.m.

15 The deposition of Joe Daniel Laws, III, was taken
16 before Marcie Smith, a notary public in and for the State of
17 South Carolina, commencing on Tuesday, May 24th, 2022, in
18 Clemson, South Carolina, pursuant to Notice of Deposition
19 and/or agreement of counsel.
20
21
22
23
24
25

APPEARANCES

Attorney for Plaintiffs:

Donald L. Smith, Esquire
ATTORNEY OFFICE OF DONALD L. SMITH
122 N. Main Street
Anderson, South Carolina 29621
Attorneydonaldsmith@gmail.com

Attorney for Defendant Themistoklis Economou:

Shelby C. Herbkersman, Esquire
CLAWSON AND STAUBES
1000 E. North Street
Greenville, South Carolina 29601
Tstill@clawsonandstaubes.com
Shelby@cslaw.com

Attorney for Defendant King Asphalt, Inc.:

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
P.O. Box 8057
Columbia, South Carolina 29202
Cgriffin@brblegal.com

INDEX

Stipulations	4
Examination by Mr. Smith	4
Certificate	32

EXHIBITS

Plaintiff's Exhibit Number 8	11
(E-mail to Joe Laws)	
Plaintiff's Exhibit Number 9	12
(SCDOT daily work report)	
Plaintiff's Exhibit Number 10	24
(Special provisions)	
Plaintiff's Exhibit Number 11	30
(Handwritten list)	

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

JOE DANIEL LAWS, III, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Mr. Laws, my name is Don Smith, and I'm the one that subpoenaed you here today for purposes of discussing an SCDOT work project and a wreck which occurred in the work zone. And I'm hoping that you will be able to add insight to this. But anyway, the lady next to you is of course taking down your testimony. Have you had your disposition taken before?

1 A. I've had one deposition taken before.

2 Q. When was that?

3 A. It was several years ago. I can't recall the
4 exact time frame.

5 Q. Yes, sir. So based on that experience, you're
6 aware that you need to speak with audible
7 answers, so she can write that down. Right?

8 A. Yes, sir.

9 Q. All right, fantastic. I'm ridiculous at asking
10 questions. So you may not understand them. And
11 I may not either. So when that occurs, please
12 ask me to rephrase the question. So that way you
13 can understand what I'm asking. Because if you
14 answer me, I'll believe that you understood my
15 question and answered accordingly.

16 A. Yes, sir.

17 Q. If I mumble, speak too fast, please ask me to
18 restate. If you need to stop for any reason,
19 please tell me and that's what we'll do. Other
20 than that, just speak as clear as you can for the
21 court reporter and we'll be fine. Can you state
22 your name for the record, please.

23 A. Joe Daniel Laws, III.

24 Q. And tell me your birth date.

25 A. January 5th, 1988.

1 Q. Can you tell me about your educational
2 background.

3 A. Yes, I went to Laurens High School and received
4 my high school diploma. Then I went to the
5 Citadel, Military College of South Carolina, and
6 received a Bachelor of Science in Civil
7 Engineering.

8 Q. All right, and when did you graduate from the
9 Citadel?

10 A. 2010.

11 Q. Have you done any postgraduate work?

12 A. No, sir.

13 Q. Who are you currently employed by?

14 A. I currently work with the South Carolina
15 Department of Transportation.

16 Q. And how long have you been there?

17 A. A little bit over nine years now.

18 Q. Did you work anywhere prior to that?

19 A. Yes, sir.

20 Q. What was that?

21 A. So I worked at a company called Wood Group
22 Mustang prior to that.

23 Q. Wood Group Mustang?

24 A. Mm-hmm.

25 Q. Is that a yes?

1 A. Yes, sir.

2 Q. What did you do there?

3 A. I was a structural engineer, structural designer.
4 And I also worked at two other companies prior to
5 that.

6 Q. What were their names?

7 A. Dennis Corporation and EAS Professionals.

8 Q. What did you do with those particular places?

9 A. I did construction inspections, material testing.
10 Roadway inspections.

11 Q. So the job that you hold now, is it similar to
12 what you were doing there?

13 A. Yes, sir.

14 Q. What were you hired as title-wise?

15 A. At which company? Which location?

16 Q. At DOT.

17 A. The DOT I was hired as an engineer, level one.
18 It's an entry level engineer in a construction
19 office in Charleston, South Carolina.

20 Q. And you came up here for what reason?

21 A. I transferred to the Greenville construction
22 office about a year after I started in
23 Charleston, just to relocate closer to my family.

24 Q. Yes, sir. So how long did you hold the level one

25 ---

1 A. It was less than two years for those two
2 positions combined. They were both engineer
3 level one positions. The Charleston and the
4 Greenville position. Then I transferred to
5 Oconee construction as an engineer level two,
6 assistant resident construction engineer.

7 Q. So Oconee construction?

8 A. Yes, sir.

9 Q. Level two and you were the resident construction
10 ---

11 A. Assistant resident construction engineer for less
12 than a year. And then I transferred to
13 Spartanburg construction as a resident
14 construction engineer for two years. And then I
15 went to Pickens construction as a resident
16 construction engineer for four years. And now my
17 title is the Assistant District Construction
18 Engineer for district three, which oversees
19 Greenville, Pickens, Spartanburg and Oconee. And
20 I've been in this position for roughly six months
21 now.

22 Q. What's this one again?

23 A. Assistant District Construction Engineer.

24 Q. What would you say your responsibilities are now?

25 A. So I assist the district construction engineer,

1 whose name is Joshua Makison. And we oversee all
2 construction operations for the SCDOT. Over
3 Greenville, Pickens, Spartanburg and Oconee. We
4 oversee the resident construction engineers and
5 they administer the construction projects for our
6 agency.

7 **Q. All right, so for a jury or for myself, what**
8 **exactly do you do? You oversee projects or ---**

9 **A.** So I manage -- I assist the DCE in managing the
10 resident construction engineers in any question
11 they may have in regards to a construction
12 project. I take care of the preconstruction
13 activities leading up to the construction office.
14 I coordinate with our headquarters office in
15 Columbia in regards to pre construction tasks
16 that lead up to these construction projects. We
17 try to minimize risk for our agency.

18 **Q. What were you doing March 22nd, 2019?**

19 **A.** I was -- I took a look back, and I was actually
20 off work that day. I was on annual leave. But
21 as far as work goes, I was a resident
22 construction engineer for Pickens County.

23 **Q. And what were your responsibilities there?**

24 **A.** I oversaw a construction office of 13 at the
25 time. And we managed construction projects for

1 Pickens County. We administered them.

2 Q. And when you say construction projects, what does
3 that include?

4 A. So that entails resurfacing or repaving projects,
5 bridge construction projects, bridge maintenance
6 projects, intersection improvements, pavement
7 marking projects, safety projects.

8 Q. How often did you go to the Route 8 location?

9 A. I can't recall how often I went out there.

10 Q. Would that be something you would do every once
11 in a while or you would allow your person that's
12 doing it -- overseeing that construction, that
13 person would be responsible. Is that right?

14 A. Could you rephrase that question?

15 Q. Yes. Basically what I'm asking is did you have a
16 tendency to check on jobs that were going on
17 throughout Pickens County? So you'd have the
18 opportunity to see the Route 8 work. Or did you
19 just simply allow the person that was running
20 that or overseeing that job address it?

21 A. So yes to the first question. And yes to the
22 second question as well.

23 Q. Do you remember doing anything regarding the
24 Route 8 job?

25 A. Would you repeat that again? I'm sorry.

1 Q. Do you recall doing anything with the Route 8
2 job, specifically 8130? I believe that's what
3 it's called.

4 A. Yes, sir. I was the active resident construction
5 engineer while that project was going on.

6 Q. That's right. Sorry about that.

7 (PLAINTIFF'S EXHIBIT NUMBER 8, MARKED, ATTACHED)

8 EXAMINATION RESUMED BY MR. SMITH:

9 Q. All right, I'm showing you what's been marked as
10 plaintiff's exhibit number 8. Could you tell me
11 what we're looking at here.

12 A. Yes, sir. So this request was submitted by King
13 Asphalt to me. We have what's called a SIT team.
14 And it's a partnership between the SCDOT and our
15 local law enforcement. And sometimes depending
16 on which road we're working on. The volume of
17 traffic, speed, safety concerns, the contractor
18 will request that the SIT team help assist on a
19 road. They'll typically park within a
20 construction work zone and just kind of be there
21 for the safety of the contractors, the
22 department, and the citizens.

23 Q. And so the bottom line is what? So you have them
24 come out, is that your intent? King Asphalt?

25 A. So King Asphalt requested it through me and then

1 I requested it up to our district construction
2 engineer at the time, Pat McKenzie. And he
3 delegated that task to his assistant D.C., Ben
4 Olson.

5 Q. So there was speeding going on in the ---

6 A. Yes, sir. According to this document.

7 (PLAINTIFF'S EXHIBIT NUMBER 9, MARKED, ATTACHED)

8 EXAMINATION RESUMED BY BY MR. SMITH:

9 Q. I'm showing you plaintiff's exhibit 9. What
10 would this be?

11 A. So this is a daily work report. Our inspectors
12 use this form to fill out construction pay items
13 that need to be paid to the contractor. And it
14 details locations, stations and elevations and
15 units for these pay items so that we can make
16 sure we're tracking those items accurately when
17 we pay the contractors. It also includes general
18 construction remarks as to any activity that
19 happened that day on the project. It also
20 includes the contractor's information, who all
21 was on the work -- on the job site and equipment
22 being used that particular day. It also includes
23 weather and the file number and inspector
24 information.

25 Q. So where was this work being done?

1 A. According to this document, the work is taking
2 place on Highway 8 at station 83 plus 10 to 88
3 plus 00 in the right outside lane. And also from
4 95 plus 00 to 92 plus 00 in the left outside
5 lane.

6 Q. And the work was being done in 2018?

7 A. Yes, sir.

8 Q. So the SCDOT told the contractor to correct these
9 items. Who are these players in the traffic
10 control notes?

11 A. Yes, sir. So according to this document, Colt
12 Greene was the inspector on this date, and he was
13 representing the SCDOT. And he informed King
14 Asphalt to correct these items.

15 Q. Now Colt Greene, what was his position compared
16 to yours?

17 A. So he was the project manager responsible for the
18 project at this point in time.

19 Q. So was his position under yours?

20 A. Yes, sir.

21 Q. And would this have been something that you would
22 have been made aware of?

23 A. It could have been. I can't recall at this time.

24 Q. What is this channeling devices were not
25 installed adequately, if installed at all?

1 A. Would you repeat that question.

2 Q. Channeling devices were not installed adequately,
3 if installed at all. What does that mean?

4 A. I would interpret this to mean that if they
5 installed the channeling devices on the project,
6 they could either have them flipped the wrong way
7 or not spaced properly.

8 Q. So how long did Mr. Greene -- was he the
9 inspector throughout the process?

10 A. I can't recall if he was a project manager on
11 this one throughout the entire duration. Because
12 he left and obtained a different position. I
13 can't remember if that was while this project was
14 ongoing or a little bit afterwards.

15 Q. All right, and how would I find that out?

16 A. I can get you that information.

17 Q. All right, that would be outstanding. Speed
18 reduction signs were not executed properly. And
19 it says regular signs not covered. Is that self
20 explanatory?

21 A. Would you like for me to explain it?

22 Q. Please, yes.

23 A. On our construction projects when we set up lane
24 closures, we have to install new speed signs
25 within those -- within the construction zone to

1 typically reduce the speed. And those speed
2 limits will be in conflict with the permanent
3 speed limit signs. So typically the permanent
4 speed limit signs will need to be covered up so
5 that it's not conflicting with the construction
6 speed limit signs.

7 Q. So do you know what the speed limit was or what
8 it was reduced to? What it was supposed to be
9 reduced ---

10 A. I can't recall on this particular road.

11 Q. All right. No crash truck. Would you explain
12 that, please.

13 A. So I would interpret this that two crash trucks
14 was needed on this particular setup. And that
15 one crash truck arrived at 1:45 p.m. I don't --
16 according to this document. I don't know when
17 the lane closure was set up.

18 Q. The crash trucks. They have something to absorb
19 on the back of them or something to that effect?

20 A. Yes, sir.

21 Q. Lanes chosen for lane closure. What's the
22 situation there?

23 A. So I would interpret this as a lack of
24 communication between the SCDOT and the
25 contractor in regards to which lane they were

1 going to work in.

2 Q. And the last one?

3 A. So I would interpret that statement that King
4 Asphalt was in the process of milling out the
5 road prior to the traffic control being properly
6 installed.

7 Q. How deep was the asphalt?

8 A. This project had eight inch full depth patching.

9 Q. Eight inch what?

10 A. Full depth patching.

11 Q. Is there a measurement done on the difference
12 between the two lanes after a day of work?

13 A. Yes, sir.

14 Q. Who is responsible for the measurement?

15 A. The contractor is responsible.

16 Q. The contractor is King Asphalt?

17 A. Yes, sir.

18 Q. Were you made aware of the wreck that occurred on
19 March 22nd, 2019?

20 A. The first I heard of it was July of 2021.

21 Q. And what did you understand?

22 A. Our legal inspector, Mr. Alexander, contacted me
23 via e-mail and informed me that there had been an
24 accident on that particular date.

25 Q. So you learned that in 2021?

1 A. Yes, sir.

2 Q. What is the relationship between you and your
3 contractee? What does that require with regard
4 to notice of anything such as a wreck or an
5 accident?

6 A. I'm not sure of the answer to that question.

7 Q. Do the construction people have -- since they're
8 a part of SCDOT, is that right? They are
9 contracted with them?

10 A. Yes, sir.

11 Q. Do they have a duty to tell them of issues such
12 as that?

13 A. I'm not sure of the answer to that question.

14 Q. Yes, sir. The work zone traffic control review
15 weekly inspection report. Who fills that out?

16 A. Typically the inspector fills that form out and
17 turns it in to the project manager to review it.

18 Q. Do you receive that? Do you at any time review
19 it?

20 A. Yes, sir. So once the project manager reviews it
21 and any discrepancy has been taken care of from
22 that review. It is turned in to the assistant
23 resident to review and also the resident
24 construction engineer to review. And then it's
25 turned in to our office admin to file it.

1 Q. Did you bring any documentation with you today?

2 A. No, sir.

3 Q. There's usually four pages with these work zone
4 reports, right? Or is that based on the job?
5 I'll show you what ---

6 A. If you don't mind if you could show me ---

7 Q. Yes, sir. King Asphalt has provided me with
8 three pages. So we've got three pages here.
9 Would there normally be four?

10 A. Yes, sir.

11 BY MS. GRIFFIN:

12 Just to correct the record. I mean, we
13 provided what SCDOT provided to us, I believe.

14 BY MR. SMITH:

15 So there's supposed to be four?

16 BY MS. GRIFFIN:

17 And I think in the SCDOT production, they have
18 the same documents.

19 BY MR. SMITH:

20 Are they missing that, too?

21 BY MS. GRIFFIN:

22 I don't know. I didn't check that actually.

23 But we have the same documents.

24 BY THE WITNESS:

25 To clarify on our SCDOT forms. It may have

1 one of four at the top. Sometimes that fourth page
2 is an instruction sheet. But I would have to see
3 the actual traffic control -- our reports just to
4 confirm with you on that.

5 EXAMINATION RESUMED BY MR. SMITH:

6 Q. There's no signature page. Would there be a
7 signature page?

8 A. Yes, sir.

9 Q. And that would be done by Mr. Greene or that
10 would be done by yourself?

11 A. So that page is signed by the contractor and the
12 resident construction engineer.

13 Q. So that'd be you?

14 A. Yes, sir. Or a designee.

15 Q. So that could be Mr. Greene?

16 A. Yes, sir.

17 Q. And one of these is done each week?

18 A. Yes, sir.

19 Q. Did I already ask you who is responsible for
20 measuring the difference between the lanes?

21 A. Yes, sir. You've already asked me that.

22 Q. And what if the lane is three inches thick? The
23 difference in the depth of the asphalt.

24 A. So typically it's not to exceed two inches.

25 Q. And if it does?

1 A. Then it's up to the contractor to fix that.

2 Q. The particular job that you were doing in March
3 of '19 was part of a two mile stretch of road.
4 Did they start work in December?

5 A. They were working in December. But I can't
6 recall if they were working prior to December.

7 Q. Two miles would take three months?

8 A. It could.

9 Q. When you have a work zone, is the speed limit
10 reduced every time?

11 A. No.

12 Q. When is an example of when it wouldn't be? What
13 is an example?

14 A. So on some of our projects, we don't have to
15 install a lane closure. It can be a mobile
16 operation. And on those particular operations,
17 they don't require us to put in a speed limit
18 reduction sign.

19 Q. This was not a mobile ---

20 A. No, sir.

21 Q. Do you know what the speed limit is down that
22 road?

23 A. I don't recall.

24 Q. Wherever we see we posted 35 miles an hour,
25 that's the speed limit in that work zone?

1 A. Could you repeat that question, please.

2 Q. If the work zone has 35 for a speed limit, that's
3 the speed limit in the work zone regardless of
4 the actual speed?

5 A. Yes, sir.

6 Q. So you've been a construction engineer then and
7 you know the asphalt process?

8 A. Yes, sir.

9 Q. Could you tell me from the beginning when you get
10 to the site, what steps are involved in the
11 asphalt? Putting the asphalt in, cleaning out,
12 milling, whatever is necessary.

13 A. For this particular project?

14 Q. Well, I guess so. But at the same time, isn't it
15 a normal project?

16 BY MS. GRIFFIN:

17 Object to the form.

18 EXAMINATION RESUMED BY MR. SMITH:

19 Q. So it ---

20 A. All projects have different approaches to them.
21 So there's not really -- not really a typical
22 operation.

23 Q. Well, if you could, do this one then.

24 A. Okay. You want me to sketch it?

25 Q. No, I want you to tell me what you do first.

1 First you clean and then you mill or take me to
2 the point where you do the rolling and that sort
3 of thing. Are you with me?

4 A. Yes, sir. Question for you. Do you want the
5 process prior to paving the asphalt?

6 Q. From the beginning of the paving. Not the
7 beginning of the paving, but the beginning of the
8 project where you clean the road first and then
9 you mill. Is that right?

10 A. Yes, sir. So at the beginning of this project
11 our contractor installed permanent construction
12 signs to establish the work zone.

13 Q. Right.

14 A. You want me to write it down?

15 Q. Yes, sir. And it doesn't have to be lengthy.
16 Just like a couple words or whatever describes
17 the process. Like milling would be
18 understandable.

19 A. So the first step is to install the permanent
20 construction signs. And the next step on this
21 particular project is to identify locations for
22 full depth patching. And then the next step
23 would be to perform the eight inch full depth
24 patching operation, which entails bringing a
25 milling machine on the job site. Milling down

1 eight inches and filling the void back up with
2 asphalt in accordance to our specifications.

3 **Q. All right, so you call that patching?**

4 **A. Yes, sir.**

5 **Q. All right.**

6 **A. Once that has been done on this particular**
7 project, the contractor was to mill two inches
8 off of the existing roadway. And then they would
9 sweep and clean that surface for any kind of
10 loose material. Then once all the milling is
11 done, they can begin the two inch resurfacing
12 asphalt. And they would proceed in accordance
13 with our specifications until it was completed.

14 **Q. What are your specifications?**

15 **A. Specifically, our 2007 SCDOT standards and**
16 specifications manual. Also our special
17 provisions in the contract. Special provisions
18 supersede our 2007 SCDOT standards and
19 specifications.

20 **Q. Are you aware of any special provisions?**

21 **A. Yes, sir.**

22 **Q. What were they?**

23 **A. I don't remember at this point in time. I'd have**
24 to review the contract.

25 **BY MR. SMITH:**

1 I beg your indulgence.

2 (OFF THE RECORD)

3 (PLAINTIFF'S EXHIBIT NUMBER 10, MARKED, ATTACHED)

4 EXAMINATION RESUMED BY MR. SMITH:

5 Q. Exhibit 10 is 9968 and 9969. Is that the
6 entirety of the special provisions?

7 A. It's not the -- this isn't all of the special
8 provisions. No, sir.

9 Q. Can you name some of the special provisions.

10 (OFF THE RECORD DISCUSSION)

11 BY MR. SMITH:

12 There seems to be pages missing.

13 EXAMINATION RESUMED BY MR. SMITH:

14 Q. So what provisions do you have?

15 A. According to this document, section 108,
16 subletting of contracts, specialty items.
17 Section 108, partnering. Which entails covenant
18 of good faith and fair dealing. Section A --
19 section B, partnering. Section 108, temporary
20 suspension of the resurfacing work. Section 108,
21 prosecution of the resurfacing work. Section
22 108, paving operations. Section 108, contract
23 time and determination and extension of contract
24 time. Section 108, critical path method in
25 construction schedules. And section 108, failure

1 to complete the work on time.

2 Q. I believe you were involved with some email
3 exchanges relating to the name of the contract or
4 what contract it was. Is the contract the one
5 ending in 8130?

6 A. Yes, sir.

7 Q. So where do a 9130 and a 4130 come from?

8 A. So on this particular project, the file number is
9 3948130. And any other file numbers will be
10 incorrect. However, these projects do have sub
11 project numbers for different roads that may be
12 on this particular project.

13 Q. Yes, sir. The removal of the cones. Are there
14 any rules associated with that?

15 A. Yes, sir.

16 Q. Where are they?

17 A. It falls under our traffic control
18 specifications, under -- in our 2007 SCDOT
19 standards and specification manual. And the
20 traffic control plan prepared by the contractor.

21 Q. All right.

22 A. And our SCDOT standard drawings that are relevant
23 to that traffic control plan.

24 Q. The work zone is defined by the entering work
25 zone and the end work zone signs. Is that right?

1 A. Yes, sir.

2 Q. Those are permanent signs?

3 A. On some projects they are. And some projects
4 they're not.

5 Q. All right, so in this particular project it was
6 two miles to be done. So the begin work zone and
7 the end work zone, would those signs ever move?

8 A. No, sir. Not unless they were hit or struck by a
9 car. And in that case they would have to be
10 replaced.

11 Q. So in between there is a work zone the entire
12 time this project is being worked on?

13 A. Yes, sir.

14 Q. Did I ask you whether you were allowed to pass in
15 a work zone?

16 A. No, sir.

17 Q. Can you?

18 A. Are you referring to ---

19 Q. Passing on the right.

20 A. Are you referring to people traveling through
21 this work zone?

22 Q. Yes, sir.

23 A. I'm not sure.

24 Q. Have you ever -- in your career have you ever
25 dealt with an excess of asphalt being the

1 differential between two lanes that was greater
2 than two inches?

3 A. No, sir. Not that I can recall.

4 Q. When this particular work was being done, there
5 would be a -- and they were going to one lane.
6 How would you direct the traffic to go to one
7 lane?

8 A. So the contractor will be required to install a
9 lane closure to taper down from two lanes to one
10 lane.

11 Q. And how do you know it's ended?

12 A. So typically there's a taper at the end of a work
13 zone for the vehicles to taper back over to the
14 other lane.

15 Q. With regard to the -- how do you illustrate the
16 taper?

17 A. It typically will shift from the lane they were
18 restricted from, over to the lane that is now
19 open free from a work zone.

20 Q. Okay, so ---

21 A. At the end of a taper.

22 Q. In this situation the outside lane was the one
23 being worked on, is that right?

24 A. Yes, sir.

25 Q. So the taper would be in the outside lane at the

1 beginning of the work and would angle you toward
2 the inside lane?

3 A. Yes, sir.

4 Q. And then the taper at the back end would do the
5 exact opposite? It would taper from the inside
6 to the outside lane?

7 A. Yes, sir.

8 Q. And those tapers are created with cones?

9 A. Yes, sir. Cones and barricades.

10 Q. If they're done with cones, are they taken down
11 every day?

12 A. So that depends on the duration of the project
13 for that day. Some projects could go on for more
14 than one day.

15 Q. Since only the outside lane had been done and not
16 the inside, would that mean that it would be
17 carrying on for more than one day?

18 A. It depends on the situation. If the contractor
19 was required to leave the work zone up due to an
20 emergency or a shortage of materials or something
21 to that effect. It would be a rare situation.

22 Q. And so you remove the taper and the rest of the
23 cones at the same time, is that right?

24 A. Would you repeat the question.

25 Q. Yes, sir. How do you remove the cones that

1 create the barrier/taper?

2 A. Yes, sir. So those would be removed at the end
3 of the construction operation after everything
4 has been safened (sic) up. And typically they
5 would remove it from the back taper towards the
6 front.

7 Q. Against the traffic?

8 A. Yes, sir.

9 Q. Is there any way of alerting the people on the
10 front that it's taking place?

11 A. Would you repeat that question.

12 Q. Yes, sir. The front of the one lane of traffic.
13 Is there any way that you can tell them that the
14 lane is open?

15 A. So once that taper has been removed, then that
16 lane becomes open.

17 Q. All right, so it's a common sense situation?

18 A. I'm not sure.

19 Q. If there's no longer a taper and no longer a
20 barrier, that means you can use the road?

21 A. Yes, sir.

22 Q. The individuals that have already passed the sign
23 that says move to the left or lane ends or --
24 what is the sign that would tell you that? To go
25 to the left?

1 A. So it's a sign that details a taper is coming up
2 ahead.

3 Q. And of course you can't see those signs when you
4 have passed them already. Right?

5 A. That's correct.

6 Q. When do you take the veer to the left signs down?

7 A. So those signs are removed once the lane has been
8 opened back up and the taper removed.

9 Q. And once all the cones have been removed?

10 A. Yes, sir.

11 Q. Wouldn't it be safer to drive with the traffic so
12 that people could see that the lane is going to
13 be open?

14 A. I'm not sure.

15 Q. Was the resurfacing work suspended in this
16 manner?

17 BY MS. GRIFFIN:

18 Object to the form. You can answer it.

19 You're allowed to answer it.

20 BY THE WITNESS:

21 A. I can't recall.

22 BY MR. SMITH:

23 Let's mark this.

24 (PLAINTIFF'S EXHIBIT NUMBER 11, MARKED, ATTACHED)

25 BY MR. SMITH:

1 I don't have any further questions.

2 BY MS. HERBKERSMAN:

3 I don't have any questions.

4 BY MS. GRIFFIN:

5 No questions.

6 (DEPOSITION CONCLUDED)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 Be it known that I, Marcie Smith, do hereby
3 certify that Joe Daniel Laws, III, appeared before me and
4 I took the foregoing deposition at the time and place
5 aforesaid by means of stenomask with backup; that I was
6 then and there a notary public in and for the State of
7 South Carolina and that by virtue thereof, I was duly
8 authorized to administer an oath; and that the witness
9 was by me first duly sworn to testify to the truth, the
10 whole truth, and nothing but the truth.

11 I further certify that the foregoing transcript
12 represents a true, accurate, and complete transcript of
13 said deposition. This transcript may contain quoted
14 material; said material is transcribed as read or quoted
15 by the speaker.

16 I further certify that the witness was given an
17 opportunity to read and correct said deposition and to
18 subscribe the same. Should the signature of the witness
19 not be affixed to the deposition, the witness shall not
20 have availed himself/herself of the opportunity to sign
21 or the signature has been waived.

22 I further certify that I am neither employed by
23 nor related to any of the parties in this matter nor
24 their counsel; nor do I have any interest, financial or
25 otherwise, in the outcome of this action.

Witness my hand and seal this 8th day of June,
2022.



MARCIE L. SMITH, REPORTER
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 11-26-2026



Garber

Reporting Service

& Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

JOSHUA FRAZIER MAKISON

May 24, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS) CASE NO.: 2021-CP-39-00329
3 Michael and Mary Smith,)
4 Plaintiffs,)
5 v.)
6 Themistoklis Economou and)
7 King Asphalt, Inc.)
8 Defendants.)
)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF
JOSHUA FRAZIER MAKISON

Tuesday, May 24th, 2022

2:59 p.m. - 3:23 p.m.

The deposition of Joshua Frazier Makison was
taken before Marcie Smith, a notary public in and for the
State of South Carolina, commencing on Tuesday, May 24th,
2022, in Clemson, South Carolina, pursuant to Notice of
Deposition and/or agreement of counsel.

APPEARANCES

Attorney for Plaintiffs:

Donald L. Smith, Esquire
ATTORNEY OFFICE OF DONALD L. SMITH
122 N. Main Street
Anderson, South Carolina 29621
Attorneydonaldsmith@gmail.com

Attorney for Defendant Themistoklis Economou:

Shelby C. Herbkersman, Esquire
CLAWSON AND STAUBES
1000 E. North Street
Greenville, South Carolina 29601
Tstill@clawsonandstaubes.com
Shelby@cslaw.com

Attorney for Defendant King Asphalt, Inc.:

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
P.O. Box 8057
Columbia, South Carolina 29202
Cgriffin@brblegal.com

INDEX

Stipulations	4
Examination by Mr. Smith	4
Certificate	20

EXHIBITS

Plaintiff's Exhibit Number 12	19
(Handwritten list)	

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

— — — —

Whereupon,

JOSHUA FRAZIER MAKISON, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Mr. Makison, my name is Don Smith. I represent the Smiths in an action they've brought against King Asphalt and Mr. Economou. And we've asked you here today to discuss your knowledge of the contract relating to this project and anything else you might be able to offer to me regarding implementation of the asphalt or reworking of asphalt or anything like that. I ask bad

1 questions. So if I ask one of those that you
2 don't understand what the question is asking,
3 then I ask you to have me rephrase it so you
4 understand it. If I speak too fast or mumble,
5 please ask me to restate it. I'm happy to do
6 that. If you need a break to talk to your son,
7 we can do that as well. This is not going to be
8 very long. I would just ask that you make your
9 answers audible, as opposed to gestures or non-
10 verbal answers for the court reporter. So that
11 she understands what you're saying or mean.
12 Rather than guessing at that.

13 A. Okay.

14 Q. Could you state your name for the record, please.

15 A. Joshua Frazier Makison.

16 Q. Can you tell me your date of birth.

17 A. April 27th, 1980.

18 Q. Your educational background? Can you tell me
19 about that.

20 A. Yes, I am a graduate of Clemson University. I
21 graduated in 2002, with a bachelor's.

22 Q. In science?

23 A. Yes, bachelor's of science. And I am a
24 registered professional engineer.

25 Q. Have you done any postgraduate work?

1 A. Postgraduate work?

2 Q. Meaning master's or anything like that?

3 A. No, sir.

4 Q. Do you have any certificates or licenses based on
5 your work experience or any other classes you've
6 taken?

7 A. No, sir. Outside of the P.E. Professional
8 engineer license.

9 Q. Where did you work when you got done with
10 college?

11 A. I came -- I surveyed for one year for Midway
12 Surveying. And then I began work at the SCDOT in
13 2004.

14 Q. When you were hired what position did you have?

15 A. At the time it was called a civil engineer one.

16 Q. How long did you maintain that position?

17 A. That position, approximately one year -- I mean,
18 I'm sorry, four years. And then I moved to civil
19 engineer two, which was project manager.

20 Q. Where was that located?

21 A. These have all been in Greenville.

22 Q. All right.

23 A. And then I became assistant resident construction
24 engineer in Greenville. And then I was resident
25 construction engineer in Oconee.

1 Q. About what time period was that?

2 A. That was up until, I'm going to say, 2017. I
3 don't remember the exact dates. And then I came
4 back to Greenville as a special projects
5 residence construction engineer. And I was in
6 that position until about the end of 2019. And
7 then I became assistant district construction
8 engineer. And I served there until April of this
9 year. And now I'm the district construction
10 engineer in Greenville.

11 Q. What happened to the last one?

12 A. He moved to Columbia to work in the director of
13 construction office.

14 Q. People come to work for the DOT and they don't
15 leave?

16 A. Not often. I mean if they leave, it's usually in
17 the first year or two.

18 Q. Yes, sir. So Mr. Laws has basically traveled the
19 same route you have, is that right?

20 A. Similar, yeah. I don't remember when he came in.
21 I wasn't in the office when he came in. But
22 yeah, he's had a similar career path.

23 Q. A special project person?

24 A. Mm-hmm.

25 Q. What is that?

1 A. We have some projects that are really big, and
2 they employ a lot of consultant inspectors and
3 consultant project managers. And they consider
4 those the special projects. And I was over the
5 one. The S.C. 153 extension.

6 Q. So that was where it ended at 123 and you took it
7 beyond that?

8 A. Mm-hmm. To Saluda Dam Road.

9 Q. So that's your claim to fame?

10 A. That was one of the biggest ones we did in the
11 district. And that was kind of my last hurrah as
12 a resident construction engineer was that one.

13 Q. So now you're the district construction engineer?

14 A. Yes, sir.

15 Q. In Greenville?

16 A. Yes, sir.

17 Q. And what are your responsibilities?

18 A. I oversee all of the resident construction
19 engineers in Spartanburg, Greenville, Oconee and
20 Pickens. And the construction projects and
21 everything included in that.

22 Q. So you probably don't have much work to do then?

23 A. Nothing. No, I'm just kidding.

24 Q. Which of those four counties do you see as having
25 the most growth?

1 A. Greenville has got the most growth as a county.
2 Spartanburg right now has the largest projects as
3 far as the scope and scale of them.

4 Q. Your involvement with the 8130 contract. How
5 would you characterize that?

6 A. I had no involvement. At the time this one was
7 done I was still the RCE, I believe it was, over
8 the special projects in that period. So I didn't
9 have any knowledge of it.

10 Q. All right, but you were asked to help out with
11 this due to some number issues or typographical
12 errors?

13 A. I helped with the FOIA request that came through
14 for some documents, and I helped make sure those
15 documents were gathered and provided.

16 Q. The only contract relating to the Route 8 project
17 was the 3948130 contract?

18 A. Yes.

19 Q. Would that be right?

20 A. Yes, that's correct.

21 Q. Because there was a 3949130, and then there was a
22 3984130. And those were merely typographical
23 errors, is that right?

24 A. I cannot remember the exact number, but I do know
25 that there was a misunderstanding in how our

1 contracts are set up. So there's a contract ID,
2 which would be the 39 number. And then under
3 that would be -- in this case, I think there were
4 two project IDs and those would be associated
5 with certain roads.

6 Q. At this point, are you aware of the process of
7 asphaltting, whether it be resurfacing or creating
8 a surface?

9 A. Yes.

10 Q. Can you do me a favor -- and we'll talk from a
11 resurfacing perspective because that's what this
12 was.

13 A. Okay.

14 Q. If you could take me from the beginning when you
15 come to the site and you have to wash the road,
16 and then you mill, right?

17 A. Yes, some projects we mill.

18 Q. All right, well, let's say we're going to mill on
19 this one.

20 A. Okay.

21 Q. So if you could take me from the cleansing the
22 road to milling, all the way to the rolling three
23 times. Can you do that?

24 A. Yes. You want me to write it down?

25 Q. Please. Just like step one ---

1 A. Okay.

2 Q. It doesn't have to be crazy. Just brief, like
3 two words that say like milling. You only have
4 to use milling. You don't have to do anything
5 more than milling.

6 A. Okay. So if this is a milling project, a mill
7 and fill project, where we're removing the
8 existing asphalt and placing new asphalt. So
9 when we first arrive to the job, of course
10 traffic control is set up for any activities.
11 Lane closure or whatever it may be by our
12 standard drawings. And then so if the operations
13 began, if it's a milling operation, they would
14 set it at whatever depth we're milling. Usually
15 two inches. And then they would mill the lane.
16 And this is, you know -- again, this is very
17 project dependent. Some projects, depending on
18 the way the contract is set up, the contractor
19 may mill both lanes and then come back and pave
20 it the next day. Sometimes they mill and fill in
21 a certain operation. Interstate, for example.
22 So I can't really get into as far as -- I mean,
23 the general idea is, you know, you would have to
24 mill the surface and then you would pave. And
25 roll the surface. And then each day, pavement

1 markings at the end of each day. But this number
2 two and three would just be -- you know, it can
3 vary contract to contract as far as the actual
4 procedure and how they want to do it. So long
5 as, you know, they follow the contract. So I
6 can't really speak on the actual staging of that.
7 But it's traffic control, milling, paving, and
8 pavement marking would be the typical day's work.

9 Q. Where would tacking be?

10 A. Or traffic control is what I meant. Tacking
11 would be after the milling, if they were going to
12 pave that day. They would -- they would tack
13 that surface.

14 Q. Was it your understanding everything would be
15 done for that piece that they were working on,
16 would that be done the day they started?

17 A. Not necessarily. So long as they do not -- that
18 they follow the procedures as far as our
19 maintaining, you know, safe shoulders and ensure
20 that there's not over two inch drop offs of the
21 surface on the edge of the shoulder. They may
22 choose -- again, they may choose to pave -- I
23 mean mill the entire roadway and then come back
24 and do the paving at a later date. And they
25 would be charged with maintaining the road during

1 that time. If any potholes or anything of that
2 nature developed.

3 **Q. Have you ever seen a situation where the**
4 **differential was greater than two inches?**

5 A. On the center of the road in between lanes?

6 **Q. Between lanes.**

7 A. It is -- it is outside of our specification to
8 have a differential greater than two inches on --
9 if you've got asphalt, the differential can be up
10 to two inches. For a milled surface, it's one
11 inch.

12 **Q. Have you ever seen that where it's been greater**
13 **than two inches?**

14 A. I have not seen it. I've seen it -- it is
15 allowed to be that way on a temporary basis,
16 meaning while the traffic control is setup. But
17 by the time the traffic control is removed, the
18 differential should be within our specification.

19 **Q. So how many times is it rolled?**

20 A. The asphalt?

21 **Q. Yes.**

22 A. We have roller patterns that are established
23 based on compaction shots to determine how many
24 times it's rolled. Typically it's on average
25 three passes per roller for each stretch that's

1 paved.

2 Q. And then there are three different kind of
3 rollers?

4 A. Yes, sir.

5 Q. So that would be nine rolls?

6 A. Typically. Again, this -- I'm not familiar with
7 this one or what the roller pattern was
8 established for this particular road. But three
9 passes, sometimes it may be four, three, two, and
10 so on and so forth.

11 Q. Yes, sir.

12 A. But about nine is usually what we look at.

13 Q. If the rolling has not been completed, the
14 differential is going to be greater than two
15 inches, isn't it?

16 BY MS. GRIFFIN:

17 Object to the form.

18 BY THE WITNESS:

19 A. The differential isn't really measured when
20 rolling has not been completed. It's a loose
21 product at that point. So it's really in no form
22 at all. It's just loose asphalt that once it's
23 rolled, and then that's where the differential
24 will be established.

25 EXAMINATION RESUMED BY MR. SMITH:

1 Q. And your records illustrate or would show us that
2 the rolling had been done for that day?

3 A. If the traffic control has been removed, then the
4 work for the day is done at that point. Or we
5 would make sure typically, you know, that
6 everything is kosher before the traffic control
7 was pulled up.

8 Q. There's been testimony that the differential was
9 six inches, three or four inches. Is that
10 possible?

11 A. Now it would depend on -- again, I'm not familiar
12 with this job. The only time I've seen a
13 differential of that nature would be if we're
14 full depth patching. And if we were patching
15 four inches or six inches, there would be a
16 temporary differential of that. But that would
17 be inside the lane closure and it would be an
18 active situation as being -- having asphalt
19 placed back in there to bring it even with the
20 surface before the traffic control is pulled up.

21 Q. The work zone consists of the area between the
22 begin work zone and end work zone. Is that
23 correct?

24 A. Are you talking about the work area or ---

25 Q. The work zone. Are those signs permanent?

1 A. Usually we do have permanent construction signs.
2 Yes.

3 Q. All right. And so those go from the very
4 beginning, regardless of what stage you're at --
5 and if you're resurfacing the road, that's a
6 somewhat slow process. Is that right?

7 A. Yes.

8 Q. Okay. And if you're doing 30 miles, it's going
9 to take a while. So the work zone begins before
10 that zero mile and 30 miles is where the end zone
11 will be. Is that right?

12 A. Yes. If we had mile markers or mile points in
13 the contract that designate the beginning and end
14 of the work zone, the work area from where the
15 milling and paving would start and where it would
16 stop.

17 Q. All right, with regard to the reduction in speed.
18 When does that occur?

19 A. The reduction in speed -- if there is a reduction
20 in speed it would have to be -- it would be
21 posted and it would be posted prior to the work
22 zone. Prior to where the traffic control began
23 to set up the lane closure.

24 Q. So that would then be permanent as well for the
25 duration of the work?

1 A. Yes. We would be required -- for law enforcement
2 to be able to enforce the speed limit it would
3 have to be posted as such. Otherwise the speed
4 limit is assumed to be the same as posted.

5 **Q. Any difference between a cone grabber and a**
6 **flagman?**

7 BY MS. GRIFFIN:

8 Object to the form.

9 BY THE WITNESS:

10 A. I'm not sure what a cone grabber would be.

11 EXAMINATION RESUMED BY MR. SMITH:

12 **Q. A cone setter?**

13 A. Okay. I'm not sure how the positions are divided
14 up with a contractor or how -- who they have
15 doing what activities. But the flagman is
16 stationed at a stationary location and is
17 equipped with a radio and the flag and the sign.
18 And the one setting up the cones, sometimes they
19 work for other -- for sub-contractors. Sometimes
20 the prime contractor does their own.

21 **Q. All right.**

22 A. But I couldn't say if any of the ones setting up
23 the devices actually acts as a flagman as well.

24 **Q. The removal of the cones. Which way do you pick**
25 **them up?**

1 A. They are picked up backwards in order to provide
2 the taper until the last -- the last moment. So
3 when you're approaching in the lane, you'll have
4 your cones at an angle, which is your taper that
5 directs you into the other lane. When you're
6 removing the cones, you remove them backwards.
7 People can start moving over earlier, but the
8 taper remains there to protect anything that
9 still may be in the closure, as well as the
10 workers removing the cones.

11 Q. Doesn't that create a drafting situation where
12 people will slide over the right side and get
13 around the people in the front?

14 BY MS. GRIFFIN:

15 Object to the form.

16 BY THE WITNESS:

17 A. I'm not sure I understand that.

18 EXAMINATION RESUMED BY MR. SMITH:

19 Q. Well, there's one lane of traffic and the cones
20 are removed behind the people in the front.
21 Doesn't that create a dangerous situation with
22 the people passing?

23 A. With the people passing, as long as the lane
24 closure is set up it would still be flagged. The
25 people removing the cone would typically utilize

1 the closed lane to move back and remove the cones
2 as they go.

3 BY MR. SMITH:

4 I have no further questions.

5 BY MS. HERBKERSMAN:

6 No questions.

7 BY MS. GRIFFIN:

8 I don't have any questions.

9 (PLAINTIFF'S EXHIBIT NUMBER 12 MARKED, ATTACHED)

10 (DEPOSITION CONCLUDED)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 Be it known that I, Marcie Smith, do hereby
3 certify that Joshua Frazier Makison, appeared before me
4 and I took the foregoing deposition at the time and place
5 aforesaid by means of stenomask with backup; that I was
6 then and there a notary public in and for the State of
7 South Carolina and that by virtue thereof, I was duly
8 authorized to administer an oath; and that the witness
9 was by me first duly sworn to testify to the truth, the
10 whole truth, and nothing but the truth.

11 I further certify that the foregoing transcript
12 represents a true, accurate, and complete transcript of
13 said deposition. This transcript may contain quoted
14 material; said material is transcribed as read or quoted
15 by the speaker.

16 I further certify that the witness was given an
17 opportunity to read and correct said deposition and to
18 subscribe the same. Should the signature of the witness
19 not be affixed to the deposition, the witness shall not
20 have availed himself/herself of the opportunity to sign
21 or the signature has been waived.

22 I further certify that I am neither employed by
23 nor related to any of the parties in this matter nor
24 their counsel; nor do I have any interest, financial or
25 otherwise, in the outcome of this action.

Witness my hand and seal this 8th day of June,
2022.



MARCIE L. SMITH, REPORTER
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 11-26-2026

Garber
Reporting Service
& Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

OLIVIA PAIGE BRYAN

January 13, 2022

Michael and Mary Smith

VS

Themistoklis Economou, et. al.

2021-CP-39-00329

REPORTER: Marcie L. Smith

1 Q. Okay, so when you had been driving around, had
2 you been in Easley already and then gone to
3 Pickens and came back?

4 A. Yes, ma'am.

5 Q. Do you remember seeing any of the road

6 . . . construction earlier that day?

7 A. Yes, ma'am. On the way to Pickens and then on

8 . . . the way back as well.

9 Q. Okay, when you were heading to Pickens, do you
10 remember what time it would have been?

11 A. No, ma'am. I do not.

12 Q. Do you remember any of the signs that were up in

13 . . . the area where there was road work going on?

14 A. On the way there or on the way back or both?

15 Q. Either way.

16 A. On the way back, so whenever I was driving on the

17 . . . side of the construction, I did remember seeing

18 . . . an orange sign saying construction zone or

19 . . . construction work ahead.

20 Q. Earlier that day, before this accident happened,
21 did you actually see workers out ---

22 A. No, ma'am

23 Q. --- doing work?

24 A. No, ma'am.

25 Q. Do you recall what time you were heading back to

1 Easley?

2 A. Maybe somewhere around four or five. Maybe.

3 Q. Was it still light?

4 A. Yes, ma'am.

5 Q. And so you didn't have your headlights on?

6 A. No, ma'am.

7 Q. And when you were on Highway 8, going back toward

8. . . . Easley, can you describe what type of traffic

9. . . . there was.

10. A. It was -- it was busier than usual. Just because

11. . . . there was only one lane. So it was kind of just

12. . . . like a line of cars.

13. Q. Okay, which lane were the cars in?

14. A. We were in the left lane.

15. Q. And were you following the moped?

16. A. The moped was in front of me.

17. Q. Directly in front of you?

18. A. Directly in front of me.

19. Q. Okay, so you were the first car behind the moped?

20. A. Yes, ma'am.

21 Q. And how long had you been following behind the
22 moped?

23 A. I don't remember. But it couldn't have been more
24 than five minutes.

25 Q. Do you know what speed the moped was going?.

- 1 .Q. . . And were there traffic cones out?
- 2 .A. . . Yes, ma'am.
- 3 .Q. . . Okay, and where were the traffic cones?
- 4 .A. . . They were on the dotted lines between -- like the
- 5 . . . white lines between the two lanes.
- 6 .Q. . . Okay, so were the traffic cones in the area where
- 7 . . . this accident happened?
- 8 .A. . . We had like just finished passing through all of
- 9 . . . them, so the right lane was opening back up. So
- 10 . . . I guess kind of.
- 11 .Q. . . Okay, explain that to me.
- 12 .A. . . I don't understand the question. Like it wasn't
- 13 . . . right at the cones or in between the cones, it
- 14 . . . was like right after the cones were finished, if
- 15 . . . that makes sense.
- 16 .Q. . . Okay, so if there are cones in the middle of the
- 17 . . . two lanes. That's what you're saying?
- 18 .A. . . Yes.
- 19 .Q. . . And then the cones ended?
- 20 .A. . . Yes, ma'am.
- 21 .Q. . . That's what you're trying to say. And then how
- 22 . . . far after the cones ended did this accident
- 23 . . . happen?
- 24 .A. . . I'm not gonna say right after, but maybe like ten
- 25 . . . seconds after.

1 Q. Can you translate that into like the cones ended
2 and there's a business there, or a road there,
3 and then where the accident happened? I'm trying
4 to get distance.

5 A. Do you want me to use like feet or ---

6 Q. Yeah, well, if you know feet. A lot of times
7 people don't do too well on feet. But that's why
8 I was asking about like if there was a landmark
9 that you know, okay, the last cone I saw, I was
10 where on Highway 8. And then this accident
11 happened where.

12 A. I'm trying to remember. I'm sorry.

13 Q. That's okay.

14 A. Because what I remember is I remember passing the
15 Pickens YMCA, because that's where all the cones
16 was on the left lane. I don't remember -- I know
17 -- I don't remember what places were there.

18 Q. Do you have any recollection as to where you last
19 saw a cone, other than it was ten seconds
20 earlier?

21 A. No, ma'am.

22 Q. So as you traveled from Pickens to Easley, were

23 there cars in the left lane?

24 A. Where the cones were?

25 Q. Yes, were there any cars travelling in that lane?

1 A. I do not.

2 Q. Do remember what speed you were traveling?

3 A. Between 35 and 45. I didn't want to be too close
4 to the moped, because it's too much anxiety.

5 Q. Were there two people on the moped?

6 A. Yes.

7 Q. Did you see what they were doing when they were
8 traveling?

9 A. They were -- it just looked like they were
10 driving normally.

11 Q. Was it a man driving or a woman driving?

12 A. I think it was a man, but I'm not 100% sure on
13 that.

14 Q. Did you see if they were holding onto anything
15 when they were on the moped?

16 A. As in holding onto each other or ---

17 Q. Each other, or the moped itself, or have anything
18 in their arms?

19 A. I think that the person on the back was holding
20 onto the driver.

21 Q. Do you remember if anybody had on helmets?

22 A. I do not remember. I'm sorry.

23 Q. That's okay. So you're in the left lane. And

24 was there traffic in the right lane?

25 A. No, it was blocked off for the road work.

1. A. Yes.

2. Q. Okay, so there are cones and then there were cars

3. in the lane that would be the center lane; and

4. then the curb lane we'll call it. Were there

5. cars traveling in both lanes?

6. A. Oh, no. I'm sorry. I thought you meant like in

7. the left lane.

8. Q. No. So if we're saying we're going towards

9. Easley, we'll call it the curb lane. And then

10. the other one, the left lane, heading toward

11. Easley. Were there any cars in the lane where

12. the curb was?

13. A. Oh, no, ma'am. I'm sorry.

14. Q. Do you know when cars ended up in that lane?

15. A. When the cones ended.

16. Q. Okay, when the cones ended. So like ten seconds

17. earlier?

18. A. Yes.

19. Q. And then when the cones ended, and then cars were
20. traveling in the right lane, do remember how many
21. cars would have passed you in the right lane?

22. BY MR. SMITH:

23. Object to the form.

24. EXAMINATION RESUMED BY MS. GRIFFIN:

25. Q. If any? And he can object to the form, but

1 you're to answer it anyway.

2 A. Okay. Well, that is kind of like when the
3 ... accident had happened. So nobody had passed me,
4 ... because the moped was in front of me. And then
5 ... the car -- I think it was a blue car was behind
6 ... me.

7 Q. A blue car was directly behind you?

8 A. Yes, ma'am.

9 Q. And what type of car was it?

10 A. I don't remember. I just kind of remember that
11 it was blue.

12 Q. Do you remember like if it was a sedan or a
13 pickup truck? Do you remember that?

14 A. It was just a small four door blue car. I don't
15 know what kind of car, though.

16 Q. So the small four door blue car is behind you?

17 A. Yes, ma'am.

18 Q. And then what do you remember happening?

19 A. I remember the blue car had went to get into the
20 ... right lane, because the cones had ended. And

21 then the moped had went to get into the right
22 lane. And I assume that they were doing that
23 because they were going slower. And they were
24 just trying to get out of the way. And so I
25 guess the moped did not see the blue car. So

1 did happen. So yeah.

2 Q. Had you seen the blue car move into the right

3 lane?

4 A. Yes, I did.

5 Q. When did he move into the right lane?

6 A. He moved into the right lane, basically, right

7 after the cones ended. Because we were traveling

8 pretty slow, because I think it's 45 through

9 there. And we were going like 30, 35.

10 Q. Okay, so you're saying once that lane opened up,
11 then the blue car moves to the right lane because
12 it was clear to accelerate?

13 A. Yes, ma'am.

14 Q. During the time you were traveling on Highway 8
15 that day, and before this accident happened, did
16 you ever see a truck removing traffic cones from
17 the road?

18 A. No, ma'am.

19 Q. When you said somebody called you in 2020, was it
20 a trooper or was it a man named Mr. Presley?

21 A. It was not a man named Mr. Presley. It might
22 have been -- it had to have been a trooper. I
23 think his name was, like, Sergeant -- can I look
24 at my phone? I think I still have the voice
25 mail.

1 February 4th, 2020, at 1:30 was when I got the
2 voice mail.

3 Q. Had you talked to anyone else about the accident,
4 other than your mother and calling 911 before you
5 heard from Sergeant Brown?

6 A. No.

7 Q. Did you take any photographs?

8 A. I did not.

9 Q. I know you said you saw it happen and just so I
10 understand. You were right next to the moped, or
11 had you already passed it when the accident
12 happened?

13 A. I was in the process of accelerating to pass it,
14 but it still happened like directly in front of
15 my car. Because it had like -- I never know how
16 to explain this. Because when I was trying to
17 explain it to my mom, she didn't understand. So

18- you know how, like, when they're redoing the

19- roads there's like that little like step up kind

20- of.

21 Q. Correct.

22 A. They were about to merge over to go over that,
23 and I didn't want to speed up in case they're
24 like, never mind, you know. Always expect the
25 unexpected. So I stayed back just a little bit.

1 And then whenever I got faster, that's when it
2 happened like right in front of my car.

3 Q. Do you know how far into the lane the moped was
4 before it was hit? That is was the entire moped

5 in the lane or part of the moped or ---

6 A. So when the moped got hit, it had like just --

7 like the back tire had just crossed over the

8 white line to be, I guess, fully in the right

9 lane.

10 Q. Okay, did the moped fall down on the pavement

11 first before it got hit?

12 A. Yes.

13 Q. So the moped leaned over, fell down, and then the

14 car hit it?

15 A. Yes.

16 Q. And do you know if the moped fell over because
17 the driver lost control?

18 BY MR. SMITH:

19 Object to the form.

20 EXAMINATION RESUMED BY MS. GRIFFIN:

21 Q. You can answer it. Why do you think ---

22 BY MR. SMITH:

23 You're leading her.

24 EXAMINATION RESUMED BY MS. GRIFFIN:

25 Q. Why do you think the moped fell over?

1 testimony was?

2 A. Yes.

3 Q. All right. And what I'm telling you is, is that
4 between the point of impact, where we understand
5 it happened, and the DMV is roughly one and a
6 half miles. So what I'm asking you when I just
7 played ten seconds, does it seem like you were
8 traveling longer than ten seconds after the cones
9 stopped when the accident happened?

10 A. No, I think ten seconds is right.

11 BY MR. STILL:

12 Nothing further.

13 EXAMINATION BY MR. SMITH:

14 Q. Ms. Bryan, my name is Don Smith. I represent the

15 Smiths for this particular wreck. My

16 understanding is you were sure where the cones

17 ended. Is that right?

18 A. Yes.

19 Q. And the first car to go into the right lane was

20 what?

21 A. The blue car.

22 Q. The blue car. Is the blue car the one that hit

23 them?

24 A. Yes.

25 Q. Who went into the right lane first?

1 A. I don't know.

2 Q. Did you ever talk to anyone who was on the moped,
3 so Mr. or Mrs. Smith?

4 A. No, ma'am.

5 Q. Had you ever seen them in the area before?

6 A. No, ma'am.

7 Q. Did you talk to anyone else about the accident?

8 A. No, ma'am.

9 Q. Do you have any recollection of how much distance

10. . . . went by between when you saw the moped going to

11. . . . the right and when the moped was on its side?

12. . . A. You said how many seconds?

13. . . Q. How many feet.

14. . . A. Feet? Oh, maybe two or three feet.

15. . . Q. So it traveled about two or three feet. And then

16. . . . the next thing you saw was it was on its side?

17. . . A. Yes, ma'am.

18 Q. In the right lane?

19. . . A. Yes, ma'am.

20. . . Q. And then the collision happened?

21. . . A. Mm-hmm.

22. . . Q. You have to answer ---

23. . . A. Yes, ma'am. Sorry.

24 BY MS. GRIFFIN:

25 All right. Well, those are all the questions

1 A. The blue car.

2 Q. He was directly behind you?

3 A. Yes. So the blue car was directly behind me.

4 But I was checking my mirrors, you know, because

5 I was gonna get over. And then I had seen the

6 blue car get over, so I didn't. And then the

7 moped had gotten over and that's when the

8 accident had happened.

9 Q. Had the blue car already completely gotten into
10 the right lane?

11 A. When?

12 Q. When the moped started.

13 A. Yes.

14 Q. How far behind you was the blue car?

15 A. I'm not sure.

16 Q. At that point how close were the cars in the left

17 lane since it was behind the moped?

18 A. Can I do like car lengths?

19 Q. Certainly.

20 A. Okay, I'd say like half a car length.

21 Q. Was there a long line in the left lane?

22 A. I don't think it was too long.

23 Q. What did you tell the trooper when you called him
24 back?

25 A. I don't remember. Actually, I think I told him

1 Q. . . So the cones were there, but you had no
2 indication or you didn't see anybody picking them
3 up?
4 . . A. . No, there was nobody picking up the cones.
5 . . Q. . Okay.
6 . . A. . I don't think they were finished doing road work.
7 . . Q. . So there was still road work?
8 . . A. . Well, there was nobody out there like working on
9 the roads physically. . But I just assume when I
10 see cones, and there's nobody out there working,
11 that they're not done and that there's something
12 they need to fix on that side that they haven't
13 gotten to yet. . So they block it off.
14 Q. So you said that you were about ready to go into
15 the right lane as well?
16 A. Yes.
17 Q. . Is that because you believed the construction
18 zone or whatever had completed?
19 . . A. . Yeah, because it was the end of the cones. . So I
20 was, like, end of construction zone, and I wanted
21 to go at least the speed limit. . So I was gonna
22 get over, but the blue car had gotten over first.
23 . . Q. . Was there anything that told you, other than your
24 belief, that that's what it meant?
25 BY MS. GRIFFIN:

1 Object to the form.

2 BY THE WITNESS:

3 A. No.

4 EXAMINATION RESUMED BY MR. SMITH:

5 Q. So it didn't say this is the end of construction?

6 There was no sign saying that?

7 . A. I don't remember seeing a sign say that.

8 . Q. So then that was just your belief? It wasn't

9 because someone else told you or, you know, some

10 sign said that you were done with construction.

11 And you believed that so you were getting over?

12 . A. Yes.

13 Q. Is there any doubt in your mind that that blue

14 car was behind you?

15 . A. No doubt in my mind the blue car was behind me.

16 . Q. And that's in the left lane?

17 . A. Yes.

18 Q. There was one sign that said road work ahead?

19 . A. Yes.

20 . Q. But there were no signs saying road work was

21 done?

22 . A. I don't remember seeing -- there might have been

23 one. But I didn't see it.

24 Q. Did the blue car have a turn signal on?

25 A. I don't recall seeing a turn signal.

1 walk my moped across the lanes.

2 A. No, ma'am.

3 Q. Did that happen?

4 A. No, ma'am.

5 Q. Okay, so you never saw the moped operator stop
6 his moped and walk it into the other lane?

7 A. No, ma'am. I did not.

8 Q. Okay, so he was always proceeding when he was in
9 the left lane and as he moved to the right lane?

10 A. Yes, ma'am.

11 Q. Do you remember at what angle he would have moved

12 . . . into the right lane? And I mean, like, did he

13 . . . make a right turn that would be more like a 90

14 . . . degree angle, or was it more of a 45 degree

15 . . . angle?

16 A. Well, it started out as like a regular merge, I

17 . . . guess. And then whenever the blue car honked

18 . . . their horn saying, like, hey, I'm coming, I'm

19 . . . speeding up. They did like a sharp 90 degree

20 . . . angle and basically laid the moped down.

21 Q. Okay, so when you say the blue car honked and
22 like they were speeding up, did you see them
23 speeding up?

24 A. A little bit, yes. It was -- they couldn't have
25 gotten much faster just because of how fast it

1 Q. Was the blue car passing you?

2 A. They were like near the end of my car, kind of in
3 the blind spot.

4 Q. But they had been behind you?

5 A. Yes.

6 Q. And now part of the car was ahead of you or next
7 to your car?

8 A. Yeah, kind of. And then I slowed down because I
9 had started to see the moped get over.

10 Q. Do you believe the moped was speeding up?

11 A. No, no. I don't think the moped was speeding up
12 at all. The moped was getting into the right
13 lane because -- well, what I -- the reason why I
14 think they were getting into the right lane was
15 because they were traveling at a slower speed
16 than the rest.

17 Q. Can you estimate how many cars might have been
18 behind you?

19 A. I don't know exactly. But I know there had to

20 have been more than five.

21 Q. And when the moped was struck, the entire moped
22 was on the other side of the white line?

23 A. Into the right lane, yes.

24 BY MR. SMITH:

25 I have nothing further.

1

CERTIFICATE

2. . . . Be it known that I, Marcie Smith, do hereby
 3. certify that Olivia Paige Bryan appeared before me and I
 4. took the foregoing deposition at the time and place
 5. aforesaid by means of stenomask with backup; that I was
 6. then and there a notary public in and for the State of
 7. South Carolina and that by virtue thereof, I was duly
 8. authorized to administer an oath; and that the witness
 9. was by me first duly sworn to testify to the truth, the
 10. whole truth, and nothing but the truth.

11. . . . I further certify that the foregoing transcript
 12. represents a true, accurate, and complete transcript of
 13. said deposition. This transcript may contain quoted
 14. material; said material is transcribed as read or quoted
 15. by the speaker.

16. . . . I further certify that the witness was given an
 17. opportunity to read and correct said deposition and to
 18. subscribe the same. Should the signature of the witness
 19. not be affixed to the deposition, the witness shall not
 20. have availed himself/herself of the opportunity to sign
 21. or the signature has been waived.

22. . . . I further certify that I am neither employed by
 23. nor related to any of the parties in this matter nor
 24. their counsel; nor do I have any interest, financial or
 25. otherwise, in the outcome of this action.

26. . . . Witness my hand and seal this 28th day of
 27. January, 2022.

28. 
 29.
 30.
 31.
 32.
 33.
 34.
 35.
 36.
 37.
 38.
 39.
 40.
 41.
 42.
 43.
 44.
 45.
 46.
 47.
 48.
 49.
 50.
 51.
 52.
 53.
 54.
 55.
 56.
 57.
 58.
 59.
 60.
 61.
 62.
 63.
 64.
 65.
 66.
 67.
 68.
 69.
 70.
 71.
 72.
 73.
 74.
 75.
 76.
 77.
 78.
 79.
 80.
 81.
 82.
 83.
 84.
 85.
 86.
 87.
 88.
 89.
 90.
 91.
 92.
 93.
 94.
 95.
 96.
 97.
 98.
 99.
 100.

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 30

Notice of Appeal, filed June 23, 2025. (App. 23)

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Clerk of Court Pickens County, SC
JUN 28 2025 PM 12:01

Michael and MaryAnne Smith)

Plaintiffs,)

vs.)

King Asphalt, Inc.)

Defendant.)

**NOTICE
OF APPEAL**

FILE NO. 2021-CP-39-00329

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiffs, Michael and MaryAnne Smith, appeal to the South Carolina Court of Appeals from the Final Order entered on May 27, 2025, by the Honorable Jessica A. Salvini. This Final Order denied Plaintiffs' Rule 59(e) Motion for Reconsideration and left undisturbed the Form 4 Order previously entered granting Defendant's Motion for Summary Judgment.

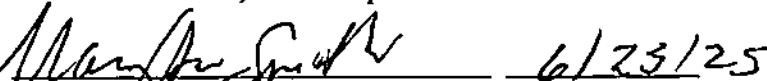
This appeal includes all prior final and interlocutory orders that merged into the Final Order, specifically:

1. The Form 4 Order granting Defendant's Motion for Summary Judgment.
2. The Final Order entered on May 27, 2025, denying reconsideration.

A copy of the appealed Order is attached as Exhibit A.

Respectfully submitted this 23rd day of June, 2025.


Michael D. Smith, Plaintiff pro se Date 6/23/25


MaryAnne Smith, Plaintiff pro se Date 6/23/25

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
Michael and Mary Smith,	)	
	)	
Plaintiff,	)	FINAL ORDER REGARDING
vs.	)	MOTION TO RECONSIDER
	)	
King Asphalt, Inc.,	)	
	)	
Defendants.	)	Case No.: 2021-CP-39-00329

A Rule 59(e), SCRCP motion to reconsider and to alter or amend has been received, filed with the Court on February 28, 2025, and served on the Court on February 28, 2025. Plaintiffs' then filed a Supplement – Plaintiffs' Motion to Reconsider Pursuant to Rule 59(e) on March 20, 2025 and served it upon the Court on March 21, 2025. As previously explained, pursuant to Rule 59(f), SCRCP, the Court, in its discretion, may decide the motion based on briefs without oral argument. The Court indicated to the parties by prior order in the Initial Order Regarding Motion for Reconsideration that it would decide the issues on written submissions. Further, the Court informed the parties that written submissions were not required by the non-moving party, and that the moving party could rely upon its filings or supplement. Plaintiffs then filed a Motion for Leave to File a Surreply to Defendant's Return to Plaintiffs' Motion to Reconsider, which this Court granted. The deadlines to file written submissions regarding this motion has now passed.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP,¹ is respectfully DENIED.

IT IS SO ORDERED.

Presiding Judge's Signature Page to Follow.

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.



Pickens Common Pleas

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

So Ordered

Jessica A. Salvini

Electronically signed on 2025-05-27 12:21:53 page 2 of 2

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 31

Motion and Affidavit to Proceed In Forma Pauperis (Appeal), filed by Michael
Smith June 23, 2025. (App. 24)

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)
Michael and MaryAnne Smith)
Plaintiffs,)
vs.)
King Asphalt, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS

FILE NO. 2021-CP-39-00329

Clerk of Court Pickens County, SC
JUN 23 '25 PM 12:03

Motion and Affidavit to Proceed IN FORMA PAUPERIS

We, Michael and MaryAnne Smith, Plaintiffs pro se, are unable to pay the costs of filing, service, and all additional court-related expenses associated with the action and appeal. We respectfully request leave to proceed in forma pauperis, pursuant to **Rule 3(b)(1), SCRCP** and **S.C. Code Ann. § 15-9-30**, and as interpreted by **Ex parte Martin, 321 S.C. 533 (1995)**.

Plaintiffs respectfully assert that this appeal is taken in good faith and is not frivolous. The issues on appeal include whether the Circuit Court committed legal error by:

1. Granting summary judgment despite undisputed evidence of a statutory and regulatory violation supporting a negligence per se claim; and
2. Denying Plaintiffs' Rule 59(e) motion without addressing material factual and procedural issues raised therein.

Plaintiffs believe the Court of Appeals has jurisdiction to correct these errors and that substantial questions of law and fact remain unresolved. Plaintiffs are functionally indigent and unable to secure adequate legal representation without in forma pauperis status, and therefore request permission to proceed accordingly.

Plaintiffs submit the following financial affidavit in support of this motion. A proposed Order is attached.

Address	220 Stancil Street, Easley, SC 29640
Age	72/54
Occupation	Retired/Disabled
Employer	None
Employer Address	N/A

<u>Gross Monthly Income</u>	<u>Amount:</u>
1) Earnings (attach recent pay stubs)	-0-
2) Overtime	N/A
3) Social Security, VA Benefits, Workers' Comp or Disability (SSI)	\$1470

4) Unemployment	N/A
5) Alimony / Child Support (receiving)	N/A
6) Other (Specify) <u>SNAP/EBT</u>	\$156
Total Amount (Add lines 1-6):	\$1626

<u>Assets</u>	<u>Amount:</u>
1) Cash	\$20
2) Money in Bank Accounts (Checking & Savings)	\$35
3) IRA / 401k / Pensions	N/A
4) Other (Specify) <input type="text"/>	<input type="text"/>
Total Amount (Add lines 1-4):	\$55

<u>Monthly Expenses</u>	<u>Amount:</u>
1) Rent / Mortgage	\$300
2) Utilities	\$150
3) Cell phone / Phone	\$32
4) Food	\$450
5) Child Support / Alimony (Paying)	N/A
6) Child Care	N/A
7) Car Payment	N/A
8) Car Operating Expenses (Insurance, gas, maintenance)	N/A
9) Clothing	\$150
10) Cable / Satellite TV / Internet	\$30
11) Medical / Dental / Vision Expenses	N/A
12) Medical / Dental / Vision Insurance	N/A
13) Credit Card / Loan Payments	\$186
14) Other (Specify) <input type="text"/>	<input type="text"/>
Total Amount (Add lines 1-14):	\$1298

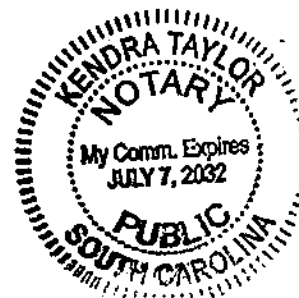
We declare under penalty of perjury that the above information is true and correct.

Michael D. Smith 6/23/25
 Michael D. Smith, Plaintiff pro se Date

MaryAnne Smith 6/23/25
 MaryAnne Smith, Plaintiff pro se Date

Sworn to before me this 23rd day
 Of June, 2025

Kendra Taylor
 Notary Public for South Carolina
 My Commission Expires: 07/07/2032



Paid \$25.00 cash for motion fee
 09/12/2026 Smith v. King Asphalt, Inc. - Record on Appeal - CoA#2025-001327
 MS Brown 6/23/25

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 32

Transcript of the hearing held January 27, 2025, before the Honorable Jessica A. Salvini, filed in the circuit court July 11, 2025. (App. 8) / Transcript of Record:
January 27, 2025 Hearing on Motions for Summary Judgment before The Honorable Jessica Ann Salvini, Circuit Judge, dated February 20, 2025. (Resp. 12)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

) IN THE COURT OF COMMON PLEAS
)
) THIRTEENTH JUDICIAL CIRCUIT

MICHAEL and MARY SMITH
VS.
THEMISTOKLIS ECONOMOU, et al

) NO. 2021-CP-39-00329
)
)
) TRANSCRIPT OF RECORD
)
) Motions

B E F O R E:

THE HONORABLE JESSICA ANN SALVINI, JUDGE

DATE: Monday, January 27, 2025
Pickens, South Carolina

A P P E A R A N C E S:

MICHAEL SMITH, PLAINTIFF

Pro Se

CATHARINE GARBEE GRIFFIN, ESQUIRE

Attorney for the Defendant King Asphalt, Inc.

Reported by: Cathy J. Provost, RMR, Official Court Reporter

INDEXESPAGE:

Order/Ruling of the Court	16
Certificate of Reporter	20

INDEX TO WITNESSESDIRECT: CROSS: REDIRECT: RECROSS:

(No witnesses called.)

INDEX TO EXHIBITSIDENTIFIED: ADMITTED:

(No exhibits marked.)

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
 ellipses ... trailing off
 [ph] phonetically written
 [sic] written as said
 [indiscernible] unable to be understood

-- P R O C E E D I N G S --

THE COURT: We are here in the matter of Michael Smith and Mary Ann Smith versus King Asphalt, Inc., et al. This is Case No. 2021-CP-39-00329. I have plaintiff, Mr. Smith, present. He's self-represented. I have defense counsel present.

This is on the court's docket for plaintiffs' motion for summary judgment, the Smiths' opposition and their motion for summary judgment, and I've been handed up the defendant's memorandum in support of their motion and in opposition to the Smiths.

So I think what I'd like to do is let's start with some argument, because it will take me some time to read through this this afternoon. So I am happy to hear from you. Let's start with your motion since it was docketed first.

ATTORNEY GRIFFIN: Yes, Your Honor. Catharine Griffin for King Asphalt, Inc., the only remaining defendant in this case.

THE COURT: I saw that.

ATTORNEY GRIFFIN: Yes. So first I want to point out, because this is the second or third time it's happened, that Mrs. Smith is not here today. Since these plaintiffs are representing themselves, Mrs. Smith has failed to appear and so I think for that reason, that her motion for cross-motion for summary judgment should be denied, and also the motion that I had filed seeking summary judgment on behalf of King Asphalt should be granted as to Mrs. Smith because she has failed to appear at

1 the hearing today and she was properly noticed to come today.

2 Mr. Smith is not allowed to represent her as his wife, so
3 having said that --

4 THE COURT: I'll take it under advisement and I'll consider
5 that. But then, Mr. Smith, tell me why your wife isn't present.

6 THE PLAINTIFF: She's sick today.

7 THE COURT: Okay. All right. I'll take that into
8 consideration, the fact that the reason you're telling me she's
9 not here is because she's sick.

10 But, all right, yes, ma'am.

11 ATTORNEY GRIFFIN: Okay. Your Honor, this motion for
12 summary judgment has been filed broadly on the basis that the
13 plaintiffs cannot meet their burden of proof and prove negligence
14 against King Asphalt because they need expert testimony.

15 So to just give you some background as to this case, this
16 arises out of an accident which happened back on March 22nd,
17 2019. And in that accident Mr. Smith, who's here today, was
18 driving a moped on Highway 8, and his wife, Mrs. Smith, was a
19 passenger on the back of the moped.

20 On that day -- it's not disputed -- King Asphalt had
21 previously milled the pavement on Highway 8 so they had removed
22 asphalt, and then they were coming back on that particular day
23 and replacing asphalt which was in the right lane, or outside
24 lane, so the inside lane was already milled, and so there was a
25 differential in the two lanes.

1 On that day Mr. Smith had gone with his wife to go get some
2 things that they needed that day, and when they were driving back
3 the traffic was backed up behind them because the right lane had
4 been closed according to DOT specifications to do the new
5 asphaltting.

6 And so at the end of the day when the asphaltting was
7 completed up to the point where they were planning to stop that
8 day -- and all of this was approved by DOT and inspected by the
9 DOT -- they then remove what was a lane closure. So the lane
10 closure is put in place according to SCDOT specifications, and
11 when they put it in place they put a taper in so that you direct
12 the traffic away from the closed lane to protect the workers who
13 are in the closed lane.

14 So when you take the taper off of a lane what you do is you
15 start at the backside and you go from, in reverse, so King
16 Asphalt's truck was heading against the traffic in the right lane
17 picking up the cones. As they were picking up the cones, then
18 the testimony is that the cars could move over to the right lane
19 which had previously been closed. So now we have a newly
20 asphalted right lane and an inner milled left lane.

21 Mr. Smith was on his moped in the inner lane/left lane. The
22 defendant who has already settled, Mr. Economou, moved his car
23 either from the left lane or had already been in the right
24 lane -- I'm not sure, but it doesn't really matter for the
25 purposes of this motion -- he ends up in the right lane after the

1 cones have been removed. When he is in the right lane then
2 Mr. Smith either stops completely, according to his testimony and
3 according to the complaint, or gator walks his moped, according
4 to Mr. Pressley, an eyewitness who's here in the courtroom today,
5 or proceeds across into the right lane. When he proceeds into
6 the right lane, whether it's after he stopped, or after he gator
7 walked, or whatever happens, he is in a collision with the car
8 driven by Economou.

9 So those are kind of the facts that are the background of
10 what happened on that day.

11 In this case you'll see in the memo and in the over-450
12 pages filed by the plaintiff that there is a lot of discussion
13 about the DOT standards, the applicable standards for road
14 closures, the applicable standards for signage, the applicable
15 standards for how much asphalt needs to be on the road, and what
16 the lane differential can be between a milled lane and an asphalt
17 lane.

18 So the only testimony with respect to any of those issues
19 which are now raised by the plaintiff comes from the King Asphalt
20 witnesses and the South Carolina DOT witnesses, and what they all
21 say is that they had properly installed all the permanent
22 construction signs. So they would have been put in at the
23 beginning of the project notifying the public, hey, there's a
24 construction zone here, be careful in this construction zone,
25 uneven pavement, the speed limit may or may not have been

1 reduced -- that was an issue with Mr. Economou's case -- but
2 those are the permanent signs. And then King Asphalt, when they
3 do a lane closure, according to the DOT, would have done
4 temporary signs in addition to these cones, or delineation
5 devices.

6 So that is the only testimony with respect to what their
7 complaint is that there wasn't proper signage and we didn't have
8 any notice that the lane had been closed and it was really
9 confusing to us. So the part that they claim was really
10 confusing is that they say, well, you had a truck going in the
11 opposite direction down the highway picking up the cones, and we
12 didn't realize essentially the lane would be reopened so we had
13 no idea to know that Mr. Economou was in the right lane. Well,
14 that also is not supported by any expert testimony.

15 The only testimony that supports how you open a lane closure
16 is from the King Asphalt people and the DOT people, and they say
17 this is the way we always open the lane closures, a temporary
18 lane closure, is we go in reverse, and we go from where the lane
19 had been last asphalted back to where it was tapered off. So
20 they have no evidence from any expert with respect to that issue.

21 Then the next issue that they have raised is that somehow it
22 is within the knowledge of Mr. Smith that you can calculate the
23 lane differential between the right lane and the left lane by
24 looking at a DOT document and then using mathematics to then say
25 you didn't meet the specifications, King Asphalt, based upon my

1 simple math and the DOT standards.

2 So with respect to that, it is not simple math; it requires
3 expert testimony. So whoever wrote this brief, because you have
4 to believe that Mr. Smith, who is here today, didn't have a hand
5 in writing the brief because it is very literate, and the
6 most-recent filing last week said he's completely illiterate and
7 he cannot read, so somebody else wrote this brief.

8 Whoever wrote the brief says that, well, all of these issues
9 have to be within a layperson's knowledge, so a layperson should
10 be able to, one, identify where the accident occurred, because
11 there's a very long description within the plaintiffs' motion
12 about if you measure from the last station, or the beginning
13 station, for the construction project and then you measure back,
14 then you would have been at this area on Highway 8, and then we
15 would have known the accident would have occurred around in that
16 area based upon a video. Okay.

17 Well, that is all not opinion testimony that a layperson can
18 give; that is all subject to expert testimony, an expert who
19 would have to opine on the distances, opine on exactly where this
20 accident occurred, and then once you get to the location of where
21 the accident occurred, which there's no evidence of, then the
22 next thing they have to do is say, okay, what was the condition of
23 the road in that area.

24 So what we have is -- it's not disputed -- it was milled in
25 the left lane, and it was higher in the right lane where the new

1 asphalt had been placed, and the DOT regulations allowed for that
2 lane differential by up to two inches. And so the testimony from
3 the King Asphalt people, the DOT people, is that it was within
4 specifications on that day because the DOT workers, inspectors,
5 and there are two of them that are on every project, they allowed
6 the roads to be reopened that day and there was no dispute about
7 there is an issue here with what you're looking at, is the
8 intersection.

9 So where there's a junction between the milled lane and the
10 asphalt lane, and then the shoulder is an issue, like what is the
11 drop-off on the shoulder if you get too close to the edge and
12 would that be unsafe for the motoring public.

13 So Mr. Smith, or whoever drafted this document, calculated
14 that, oh, the lane differential was 2.16 inches based upon my
15 calculations, based upon the information I have. That is not
16 something a layperson can do. It requires way more expertise
17 than simple mathematics. It requires that somebody actually have
18 the knowledge to do these calculations, and it probably requires
19 something more than calculations.

20 It probably requires that an expert go out to the scene,
21 they could have gone, back at the time they could core [ph] the
22 area that we're talking about. Once you figure out where the
23 accident took place, you can core in the area where it happened,
24 determine what the differential was, and then you have to next
25 say this uneven lane, that is acceptable in road construction by

1 SCDOT, caused Mr. Smith to lose control of his moped on that
2 particular day. So you have to take it another step.

3 There is absolutely no testimony that they have provided
4 that supports any of those theories for the plaintiff, so their
5 arguments fail and should be rejected.

6 Now, I'll point out to you -- also I put it in my memo -- a
7 couple of the cases cited by the plaintiff, Mr. Smith, don't even
8 exist. One of them doesn't exist at all, I don't know if it's a
9 ChatGPT case, and one of them stands for some proposition that it
10 doesn't stand for when you read the case law.

11 The other cases they cite have to do with, like, a medical
12 malpractice situation where the court applied a common-knowledge
13 exception where it's, you know, if you cut off your left arm then
14 you should have cut off the right arm. That's pretty common,
15 you, know, you cut off the wrong arm. But we don't have that
16 kind of a case here.

17 We have a case that's highly technical that requires the
18 knowledge of people who understand road construction, understand
19 the specifications of the South Carolina DOT, how our contract
20 works under the South Carolina DOT specifications, and then even
21 requires an accident reconstructionist to go out there and place
22 where this accident took place.

23 So in this case, when you try to elevate it to a higher
24 level than the 457 pages filed by Mr. Smith, it is a simple
25 failure of proof. They cannot prove their case. They cannot

1 bootstrap anybody's opinions, layperson's opinions based upon
2 their interpretation of the documentation that's been provided in
3 discovery in this case, they cannot bootstrap that into an issue
4 of fact for the Court then to consider to deny the motion for
5 summary judgment.

6 It has to be considered from a legal perspective which
7 requires that these Smiths present expert testimony as to all of
8 these issues, and without any expert testimony then their case
9 fails and this Court should grant our motion for summary
10 judgment, dismiss their case, deny their motion, and allow this
11 entire case to end.

12 There are some other motions that they brought that I'm not
13 sure that I need to address any of them that have to do with
14 things that are on the record or other things that Mr. Smith may
15 want to address, but I'll just leave it at that for my motion for
16 summary judgment and in opposition to their cross-motion for
17 summary judgment.

18 THE COURT: All right. Mr. Smith, do you know the standard
19 that I have before me is I have to determine whether or not there
20 is a genuine issue of material fact in this case. And their
21 position is, based on all the discovery that you all have done --
22 and now I've got some copies of the deposition transcript showing
23 what the testimony is, is that -- and I've got your complaint in
24 front of me and I'm looking at the causes of action against King
25 Asphalt, but that one of the primary things that you and

1 Mrs. Smith allege is that SCDOT work zone traffic control
2 guidelines were not complied with.

3 But I also have the testimony now in front of me, and I'm
4 going read it, of Joshua Makison who's a district construction
5 engineer for SCDOT who disagrees with you, and King Asphalt who
6 disagrees and has provided to me what the standard is that they
7 are to follow and that they did, in fact, follow that standard.

8 And so their argument is that because there is no expert
9 other than you just making a bold allegation that they didn't
10 follow it when she's provided to me evidence that they have,
11 means you can't meet your burden of proof as to the allegations
12 against King Asphalt, and that in order for you to be able to
13 move forward, you would need some type of expert testimony
14 because you all have done depositions, you've pretty much
15 concluded the discovery process.

16 So that tell me why I shouldn't agree with her and dismiss
17 your case since you all don't have an expert?

18 THE PLAINTIFF: I don't know what you're saying.

19 THE COURT: All right. So, Mr. Pressley, you can't help
20 him, because if he doesn't have an attorney -- and I saw that he
21 was previously represented by Mr. Smith -- what I will do is I
22 will speak up.

23 So, Mr. Smith, can you hear me if I speak up?

24 THE PLAINTIFF: This is better.

25 THE COURT: Is that better?

1 THE PLAINTIFF: Yes, ma'am.

2 THE COURT: Okay. What I'm asking you is is to tell me your
3 position. Their position, King Asphalt's position, is that you
4 all have completed deposition testimony, they pulled the SCDOT
5 guidelines, the district construction manager -- and I hope I'm
6 saying his position correctly -- indicates that King Asphalt
7 followed all of SCDOT's guidelines when they were milling the
8 road, and how they did their signage, that they found no defect
9 in what they did.

10 And so their position then is you're claiming that they
11 didn't follow those guidelines, or that they did something that
12 wasn't in accordance with the standards required to mill a road
13 and to do the construction that they were doing and so,
14 therefore, you would need an expert to come into this court and
15 say they made a mistake somewhere because you allege that, as a
16 result of what they did, that they didn't follow the guidelines
17 and, therefore, somehow that proximately caused the injury to you
18 and Mrs. Smith.

19 And I'm asking you to tell me your position. And you can
20 tell me that you don't have any argument, you just want to rely
21 on your brief. I have it. She's correct, it's over 400 pages if
22 I take into consideration the exhibits. If you're just relying
23 on that, that's okay, but we are here for argument. So is there
24 anything you want to tell me?

25 I'm a judge that reads everything. She handed up her

1 memorandum. I haven't had a chance to read it because she just
2 handed it to me, so I am going to take it under advisement and
3 now look at everything together, but is there anything that you
4 think you need to tell me?

5 THE PLAINTIFF: I [indiscernible].

6 THE COURT: Say it again.

7 THE PLAINTIFF: I can bring up this statement here.

8 THE COURT: Is this something that's new that you haven't
9 filed yet?

10 THE PLAINTIFF: Yeah. No, ma'am, I don't really know.

11 THE COURT: Was that filed?

12 THE PLAINTIFF: I think it was in my, in my documents sent
13 to her to show it to the --

14 THE COURT: Okay. Well, let's show it to counsel, and let's
15 see what her position is. You don't need to hand it my court
16 reporter yet. I want counsel for King Asphalt to look at it
17 first. If there's something more you want her to take a look at,
18 I want to see what her position is.

19 ATTORNEY GRIFFIN: Okay. Your Honor, this is not part of
20 this filing.

21 THE COURT: Okay.

22 ATTORNEY GRIFFIN: But I think he was intending to read it
23 to you out loud.

24 THE COURT: Is that correct, Mr. Smith, --

25 THE PLAINTIFF: I'm going to try --

1 THE COURT: -- that you want to read it to me?

2 THE PLAINTIFF: I'm going to try to.

3 THE COURT: Okay.

4 THE PLAINTIFF: The Defendant, King Asphalt, Incorporated,
5 violated South Carolina law by failing to properly mark the work
6 zone of a lane where it tapers at 2.16 inches,
7 while [indiscernible] --

8 THE COURT: Okay. So let me stop you there, Mr. Smith.
9 That is the issue. So she indicated that King Asphalt's position
10 and SCDOT's position is that they did the two inches that were
11 required by SCDOT's guideline. I read that before I got here.

12 And her position is is that how is it that you know, or how
13 is it that you can prove, that they have did it in addition, more
14 than two inches? How is that possible if you don't have someone
15 who is an expert to say it? What are you going to base the
16 evidence on?

17 THE PLAINTIFF: Just the high place in the road where I run
18 into.

19 THE COURT: Okay. Did you go out there and measure it?

20 THE PLAINTIFF: No, ma'am.

21 THE COURT: Okay. That is the issue she's raising, is she's
22 saying you, as the person that was injured and/or your wife,
23 didn't go out there and measure it and SCDOT and King Asphalt
24 did, and there's no evidence to contradict their position that it
25 was within the two inches that were required by the guideline.

1 Did you intend to hire an expert?

2 THE PLAINTIFF: No, ma'am.

3 THE COURT: Okay. All right. You can finish reading it,
4 but that's the issue that I've got to focus in on, is her
5 position is there's nothing to contradict SCDOT and King Asphalt
6 and, therefore, you can't prove your case. I'm not saying that
7 that's true and correct but that's their position.

8 So if you want to finish reading that, you can, but I want
9 to make sure you understand that that's what they're arguing.
10 That was her oral argument. I want to read her memorandum
11 because I'm sure she's going to go into the law that there has
12 been no genuine issue of material fact because you have nobody
13 that can say it other than you just saying it had to be because
14 there was an accident. Does that make sense?

15 THE PLAINTIFF: Yes, ma'am.

16 THE COURT: Okay. I think this is what we should do. As to
17 your motion for me to make a finding that Mrs. Smith's failure to
18 appear here today would require me to grant your motion and deny
19 her motion, that's denied because I am going to rule based on the
20 briefs. They filed -- because they're husband and wife, they
21 filed a 400-and-some page memorandum opposing and asking me for
22 summary judgment. Because I'm going to find she's sick, and I'm
23 going to rule on the briefs because she just waives her right to
24 come and present argument.

25 Mr. Smith is relying on his brief and his initial

1 statements.

2 So what I'm going to do is I'm going to rely on the record
3 before the Court. I've been handed up the memorandum that
4 counsel gave me, along with, it looks like I have, SCDOT's
5 guidelines, and along with the deposition transcripts. I'm going
6 to read through all of those and then make my decision as to
7 whether or not I'm going to grant her motion or grant you all's
8 motion. All right.

9 THE PLAINTIFF: Okay.

10 THE COURT: Okay. Do you have questions for me, Mr. Smith?

11 THE PLAINTIFF: No.

12 THE COURT: Okay. Because I read everything.

13 THE PLAINTIFF: Okay.

14 THE COURT: Then what I'm going to do is I'm going to issue
15 an order that indicates what the position is --

16 THE PLAINTIFF: Okay.

17 THE COURT: -- of the Court. If I grant her motion -- I
18 know you filed something that indicated you wanted me to make
19 specific findings -- I will do a Form 4 that has some specific
20 findings, but I will ask counsel to draft a more detailed order.

21 If I deny her motion and I grant yours, I will draft the
22 order myself. Do you understand?

23 THE PLAINTIFF: Yes, ma'am.

24 THE COURT: If I grant her motion and I ask her to draft it,
25 I will ask her to email it to me.

1 So do you have an email address for him?

2 ATTORNEY GRIFFIN: Yes, Your Honor. I would like for you to
3 ask him if he reads the emails I sent him.

4 THE COURT: Okay. Mr. Smith, do you read the emails that
5 counsel sends you?

6 THE PLAINTIFF: [indiscernible] some.

7 THE COURT: You read some?

8 THE PLAINTIFF: [indiscernible] some.

9 THE COURT: Okay. Does somebody read them to you?

10 THE PLAINTIFF: I have a problem reading.

11 THE COURT: Say that again. I couldn't understand.

12 THE PLAINTIFF: I have a problem reading and seeing them
13 [indiscernible], seeing [indiscernible].

14 THE COURT: All right. Well, then this is what we're going
15 to do. Just upload it to my queue. If I grant your motion and
16 direct that you issue the order, just upload it to my queue.

17 And then if -- Mr. Smith, I'm not saying I'm granting her
18 motion, but then if you have an objection you can always file a
19 motion to reconsider or an appeal, but nevertheless I'm not
20 saying I'm granting it. I'm still going to do what I'm telling
21 you. If I grant yours, I will draft the order based on it
22 appears you're having some difficulty.

23 THE PLAINTIFF: Okay.

24 THE COURT: All right. Questions for me, Mr. Smith?

25 THE PLAINTIFF: No, ma'am.

1 THE COURT: Counsel, anything else we need for the record?

2 ATTORNEY GRIFFIN: No, Your Honor.

3 THE COURT: Okay. All right. Then that's what we're going
4 to do. I'm going to take it under advisement, because you all
5 gave me quite a bit to read.

6 I hope to have my decision for you probably the end of this
7 week, beginning of next. I never like to sit on anything; I like
8 it when it's fresh in my mind. Okay.

9 THE PLAINTIFF: Thank you.

10 THE COURT: Okay. Then that will conclude our hearing.

11 THE PLAINTIFF: Okay. Thank you.

12 (End of Transcript of Record.)
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/proceedings of the captioned case in the Court of Common Pleas for Pickens County, South Carolina, on the 27th day of January, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Date: February 20, 2025

\s\ Cathy J. Provost
Cathy J. Provost, RMR
Official Circuit Reporter

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this **NOTICE OF FILING TRANSCRIPTS** (and (2) two Transcript Exhibits) 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

RECEIVED

Jan 05 2026

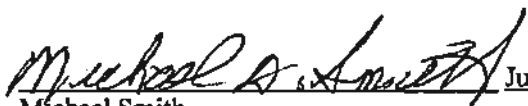
SC Court of Appeals

The documents were served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: July 11, 2025

To the above address by U.S. Mail via certified mail (return receipt requested),
Certified Mail Number: USPS 70210950000135867811
Date of Mailing: July 11, 2025

Respectfully submitted,


Michael Smith
Pro Se Plaintiff
220 Stencil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com
July 11, 2025
Date

Smith v. King Asphalt, Inc.

Court of Appeals Case No. 2025-001327

ROA - 33

SCDOT 2007 Standard Specifications for Highway Construction, incorporated by
reference into SCDOT Proposal and Contract No. 3948130, Subsection 107.9,
Public Convenience and Safety. (Supp. 27)



South Carolina Department of Transportation

2007

STANDARD

SPECIFICATIONS

FOR

HIGHWAY

CONSTRUCTION

The South Carolina Department of Transportation 2007 Standard Specifications for Highway Construction is hereby approved for application on highway and related construction contracts as referenced in the Contract and the Plans, and applies as noted and amended by those documents.

Approved,



D. R. Shealy, P.E.
Director of Construction

I hereby certify that The South Carolina Department of Transportation 2007 Standard Specifications for Highway Construction was prepared under my direct supervision and that I am a duly registered professional engineer under the laws of the State of South Carolina.



G. A. Peck, P.E.
Construction Specifications Engineer

COPIES OF THIS BOOK MAY BE OBTAINED FROM:

South Carolina Department of Transportation
Engineering Publications Office
955 Park Street
Columbia, South Carolina 29201
Telephone 803-737-4533
Fax 803-737-4530
E-mail: engrpubsales@dot.state.sc.us.
http://www.scdot.org/doing/const_man.shtml

All orders must be prepaid. We accept payment by check, US Postal money order, Visa or Mastercard. Shipping and handling are separate from the price of the book. A street address is required for shipping for tracking purposes.

for the USDA are as follows:

- | | |
|---|--|
| <p>3 USDA, APHIS, PPQ
Room 513 Federal Building
334 Meeting Street
Charleston, SC 29403</p> <p>USDA, APHIS, PPQ
1030 St. Andrews Road,
Suite A-1
P. O. Box 21792
Columbia, SC 29210</p> <p>USDA, APHIS, PPQ
2102 Airport Road
Greer, SC 29651</p> <p>USDA, APHIS, PPQ
180 Airport Road, Suite F
Mullins, SC 29574</p> | <p>USDA, APHIS, PPQ
9600 Two Notch Road,
Suite 10
Columbia, SC 29229</p> <p>USDA, APHIS, PPQ
1949 Industrial Park Road,
Room 153
P. O. Box 762
Conway, SC 29526</p> <p>USDA, APHIS, PPQ
P. O. Box 12212
Greenville, SC 29612</p> <p>USDA, APHIS, PPQ
I-95 & Hwy. 68
P. O. Box 707
Yemassee, SC 29945</p> |
|---|--|

107.9 Public Convenience and Safety

- 1 At all times, conduct the work in such a manner as to reasonably provide for the safety and convenience of the traveling public and of the residents along and adjacent to the highway and to offer the least practicable obstruction to the flow of traffic. This provision does not require the Contractor to provide for the safety and convenience of the traveling public for those portions of the highway or roadway that are not within the scope and the work being performed by the Contractor as defined by the Contract. Do not close any bridge or culvert or any portion of the road to traffic until permission has been granted by the RCE.
- 2 When materials and equipment are stored within the right-of-way, place them to cause the minimum obstruction to the traveling public. Conform to the requirements for storage of material equipment in **Subsection 601.2.1**.

107.10 Construction of Bridges Over or Adjacent to Navigable Waters

- 1 Conduct all work over, on, or adjacent to navigable waters so that free navigation of the waterways is not interfered with and that the existing navigable depths are not impaired except as allowed by permit issued by the U.S. Coast Guard and/or the U.S. Army Corps of Engineers as applicable.
- 2 Provide and maintain such temporary navigation lights and signals as may be required by U.S. Coast Guard regulations for the protection of navigation. When, in the judgment of the RCE, the construction has reached a point where such action should be taken, promptly clear the channel or channels through the structure of all falsework, piling, or other obstructions placed